19/index

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ACCOUNTING AND AUDITING

Accounting Series Releases

No. 274, Accountant Liability for Reports on Unaudited Interim Financial Information under Securities Act of 1933, 12/28/79, no. 2, p. 82
No. 275, In the Matter of Darrel L. Nielsen, 1/10/80, no. 3, p. 158
No. 276, Bank Holding Companies and Banks—Requirements for Form and Content of Financial Statements, 3/6/80, no. 11, p. 798
No. 277, Oil and Gas Reserve Information—Postponement of Audit Requirement, 4/17/80, no. 17, p. 1209

Regulation S-X

Rules 1-02 and 2-02, *proposed amendment;* Articles 3 and 5 related sections of Article 12, *proposed general revision,* 33-6178, 34-16498, 35-21393, IC-11019, 1/15/80, no. 4, p. 229; ext. of time for comment, 33-6204, 34-16720, 35-21510, IC-11113, 4/2/80, no. 15, p. 1080
Articles 3 and 4, *proposed amendment;* proposed new rules 3-01 to 3-16, 33-6179, 34-16499, 35-21394, IC-11020, 1/15/80, no 4, p. 279; ext. of time for comment, 33-6204, 34-16720, 35-21510, IC-11113, 4/2/80, no. 14, p. 1080
Rule 3-18 *amended,* 33-6207, 34-16752, 35-21526, IC-11133, AS-277, 4/17/80, no. 17, p. 1209
Rules 9-02, 9-03, 9-04, and 9-05 *amended,* 33-6195, 34-16629, 35-21467, IC-11070, AS-276, 3/6/80, no. 11, p. 798

Staff Accounting Bulletins

No. 38, 2/26/80, no. 10, p. 794

ADMINISTRATIVE PROCEEDINGS

See list at end of index for persons and companies named in Findings, Opinions, Orders, Notices

AMERICAN STOCK EXCHANGE

Joint action with other SRO's in planning, developing, operating, or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Joint industry plan filed for development and operation of a system for the collection and dissemination of consolidated options last sale report and quotation information, 34-16519, 1/22/80, no. 5, p. 370

Applications to Trade in Options

Bausch and Lomb Incorporated, granted, 34-16758, no. 18, p. 1251
Caesar's World, Inc., granted, 34-16490, no. 4, p. 319; superseded, 34-16531, no. 6, p. 424
Natomas Company, granted, 34-16531, no. 6, p. 424
Tosco Corporation, granted, 34-16579, no. 9, p. 653

SE 1.29:

Applications to Strike Options from Listing and Registration
Fleetwood Enterprises, Inc., granted, 34-16582, no. 9, p. 654
Rite Aid Corporation, granted, 34-16761, no. 18, p. 1252

Applications to Strike from Listing and Registration
AMC Investors, Inc., granted, 34-16569, no. 8, p. 573
Barwick Industries, Inc., E. T., granted, 34-16674, no. 13, p. 924
Brody Seating Co., B., granted, 34-16614, no. 10, p. 764
Glover, Inc., granted, 34-16530, no. 5, p. 379
Inproject Corporation, granted, 34-16550, no. 6, p. 437
Mi Fund, Inc., granted, 34-16564, no. 8, p. 570
Tenna Corporation, granted, 34-16580, no. 9, p. 653
Western Pacific Railroad Company, The, granted, 34-16745, no. 17, p. 1219
Whippany Paper Company, The, granted, 34-16693, no. 14, p. 993

Applications to Withdraw from Listing and Registration
AVX Corporation, 34-16552, no. 7, p. 501; granted, 34-16595, no. 9, p. 696
Baldor Electric Company, 34-16552, no. 7, p. 501; granted, 34-16595, no. 9, p. 696
Carnation Company, 34-16552, no. 7, p. 501; granted, 34-16595, no. 9, p. 696
Emerson Radio Corporation, 34-16713, no. 15, p. 1096; granted, 34-16777, no. 19, p. 1308
Grow Group, Inc., 34-16594, no. 9, p. 696, granted, 34-16653, no. 13, p. 913
Hi-Shear Industries, Inc., 34-16509, no. 4, p. 331; granted, 34-16555, no. 7, p. 502
La Quinta Motor Inns, Inc., granted, 34-16470, no. 3, p. 148
Napco Industries, Inc., 34-16509, no. 4, p. 331; granted, 34-16555, no. 7, p. 502
Prime Motor Inns, granted, 34-16471, no. 3, p. 148
Telecom Corporation, granted, 34-16452, no. 1, p. 15
Vulcan, Inc., 34-16509, no. 4, p. 331; granted, 34-16555, no. 7, p. 502
Zero Corporation, granted, 34-16453, no. 1, p. 16

Proposed Rule Changes
78-6, approved, 34-16535, no. 6, p. 426
79-11, amended, 34-16477, no. 3, p. 15; approved, 34-16696, no. 14, p. 994
79-12, approved, 34-16698, no. 14, p. 996
79-15, approved, 34-16502, no. 4, p. 326
79-19, approved, 34-16483, no. 4, p. 313
79-20, and order approving, 34-16557, no. 1, p. 11
79-21, 34-16575, no. 9, p. 650
79-22, 34-16625, no. 11, p. 811; approved, 34-16744, no. 17, p. 1219
80-1, 34-16542, no. 6, p. 430; approved, 34-16722, no. 15, p. 1106
80-4, 34-16620, no. 11, p. 804; approved, 34-16669, no. 13, p. 921
80-5, and order approving, 34-16709, no. 15, p. 1094
80-6, 34-16690, no. 14, p. 991; proceedings to determine whether to disapprove, 34-16781, no. 20, p. 1372
80-7, and order approving, 34-16788, no. 20, p. 1381
80-10, and order approving, 34-16771, no. 19, p. 1305
80-12, and order approving, 34-16793, no. 20, p. 1385

ANNOUNCEMENTS

Antibribery Prohibitions in Section 30A of SEA, impact of, request for public comment, 34-16593, 2/21/80, no. 9, p. 691
Confidential Treatment of Records, procedure for requesting, proposed rule-making, 33-6172, 34-16458, 35-21363, 39-548, IC-11003, IA-711, FI-59, 12/28/79, no. 2, p. 70; ext. of comment period, 33-6194, 34-16627, 35-21466, 39-557, IC-11068, IA-714, FI-60, 3/5/80, no. 11, p. 798

Credit Controls, effect on operations of certain registered investment companies, including money market funds, general statement of policy, 33-6200, IC-11088, 3/14/80, no. 13, p. 908
Delegation of authority to Director of Division of Investment Management, the Director of Division of Enforcement, and the Regional Administrators, *correction*, IA-710A, 1/24/80, no. 5, p. 406
Delegation of authority to Director of Division of Investment Management to issue notices of applications for orders pursuant to Section 26(b) of the Investment Company Act, IC-11030, 1/30/80, no. 6, p. 455
Delegation of authority to Director of Division of Market Regulation to approve amendments to joint industry plan governing consolidated transaction reporting system *amended*. 33-6189, 34-16589, 2/19/80, no. 9, p. 616
Delegation of authority to Director of Division of Market Regulation to grant exemptions from Rule 13e-4, 33-6199, 34-16647, IC-11081, 3/13/80, no. 12, p. 859
Employee Benefit Plans, interpretations of statute, 33-6188, 2/1/80, no. 7, p. 465
General Counsel's Consideration of Commission *Amicus Curiae* Participation, LR-9023, 2/27/80, no. 10, p. 793
Investment Advisers Act Study, solicitation of public comments concerning issues to be considered, IA-717, 4/4/80, no. 16, p. 1195
Joint industry plan, notice of receipt of amendments to (consolidated quotation system), 34-16446, 12/21/79, no. 1, p. 10
Joint industry plan, notice of Commission action declaring effective amendments to consolidated tape plan, 34-16467, 1/4/80, no. 3, p. 146
Lost and Stolen Securities Program: Announcement of Inquiry Participation Status Open Season, 34-16605, 2/22/80, no. 10, p. 758
Options Moratorium Termination, 34-16701, 3/26/80, no. 14, p. 998
Petition by Institute for Public Representation concerning disclosure of relationships between attorneys and registrants, denial of, 34-16769, 4/30/80, no. 19, p. 1300
Pooled Income Funds, statement of staff position, 33-6175, 34-16478, IC-11016, 1/10/80, no. 3, p. 142
Ratio of Earnings to Fixed Charges, advance notice of proposed rulemaking, 33-6196, 34-16635, 35-21469, IC-11074, 3/7/80, no. 12, p. 852
Tender Offer Rules, interpretative release, 34-16623, 3/5/80, no. 11, p. 807

BOSTON STOCK EXCHANGE

Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Plan for allocating regulatory responsibilities, NASD/BSE, order granting temporary approval, 34-16462, 1/2/80, no. 2, p. 93; proposed amendments, 34-16591, 2/20/80, no. 9, p. 689; order granting temporary approval, 34-16719, 4/2/80, no. 15, p. 1099

Applications to Strike from Listing and Registration
General Alloys Company, granted, 34-16450, no. 1, p. 15

Applications to Withdraw from Listing and Registration
Dynamics Research Corp., 34-16509, no. 4, p. 331; granted, 34-16734, no. 16, p. 1164
Electronics, Missiles & Communications, Inc., 34-16652, no. 13, p. 913

Applications for Unlisted Trading Privileges
APL Corporation, AZL Resources, Inc., Alaska Airlines, Inc., Amrep Corporation, Bancal Tri-State Corporation, Bandag, Inc., Bangor Punta Corporation, Craig Corporation, DWG Corporation, Deltona Corporation, Mobil Corporation, and Moore McCormack Resources, Inc., 34-16510, no. 4, p. 331; 34-16510A, no. 5, p. 364
Dynamics Research Corporation, 34-16565, no. 8, p. 570
See list, 34-16571, no. 9, p. 643
Electronics, Missiles & Communications, Inc., 34-16677, no. 13, p. 925; 34-16678, no. 13, p. 926
Valero Energy Corporation, 34-16757, no. 18, p. 1251

Proposed Rule Changes
79-3, 34-16513, no. 4, p. 333; approved, 34-16616, no. 11, p. 801
79-4, 34-16656, no. 13, p. 914
80-1, 34-16610, no. 10, p. 761; approved, 34-16671, no. 13, p. 922

BOSTON STOCK EXCHANGE CLEARING CORPORATION

Proposed Rule Changes
79-5, effective, 34-16456, no. 2, p. 89
80-1, 34-16494, no. 4, p. 322

BRADFORD SECURITIES PROCESSING SERVICES, INC.

Proposed Rule Changes
77-5, amended, 34-16655, no. 13, p. 913
79-3, amended, effective, 34-16729, no. 16, p. 1163
80-3, 34-16654, no. 13, p. 913

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Joint industry plan filed for development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information, 34-16519, no. 5, p. 370

Proposed Rule Changes
77-28, approved, 34-16534, no. 6, p. 425
78-4, approved, 34-16484, no. 4, p. 314
79-9, amended, 34-16466, no. 2, p. 96; aproved, 34-16696, no. 14, p. 994
79-10, approved, 34-16540, no. 6, p. 429
79-13, approved, 34-16541, no. 6, p. 429
80-1, and order ext. time period for Commission action, 34-16551, no. 7, p. 500
80-2, 34-16578, no. 9, p. 651; approved, 34-16606, no. 10, p. 758
80-3, 34-16618, no. 11, p. 803; approved, 34-16740, no. 17, p. 1214
80-4, and order approving, 34-16788, no. 20, p. 1381
80-9, and order approving, 34-16793, no. 20, p. 1385

CINCINNATI STOCK EXCHANGE

Plan for allocating regulatory responsibilities, NASD/CSE, order granting temporary approval, 34-16462, 1/2/80, no. 2, p. 93; proposed amendments, 34-16591, 2/20/80, no. 9, p. 689; order granting temporary approval, 34-16719, 4/2/80, no. 15, p. 1099
Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367

Applications for Unlisted Trading Privileges
Caesar's World, Inc., 34-16731, no. 15, p. 1109; granted, 34-16778, no. 20. p. 1370
Colonial Penn Group, granted, 34-16488, no. 4, p. 318
Digital Equipment Corporation, granted, 34-16488, no. 4, p. 318
Greyhound Corporation (Arizona), granted, 34-16488, no. 4, p. 318
Jefferson-Pilot Corporation, granted, 34-16488, no. 4, p. 318
LTV Corporation, The, 34-16731, no. 15, p. 1109; granted, 34-16778, no. 20, p. 1370
Lincoln National Corporation, granted, 34-16488, no. 4, p. 318
NLT Corporation, granted, 34-16488, no. 4, p. 318
Southwestern Public Service Co., granted, 34-16488, no. 4, p. 318
USLIFE Corporation, granted, 34-16488, no. 4, p. 318

Trans World Corporation, granted, 34-16488, no. 4, p. 318
See list, 34-16571, no. 9, p. 643; 34-16684, no. 14, p. 982

Proposed Rule Changes
79-5, approved, 34-16544, no. 6, p. 431
79-6, approved, 34-16504, no. 4, p. 328
79-7, approved, 34-16472, no. 3, p. 148
80-1, 34-16562, no. 8, p. 568; approved, 34-16672, no. 13, p. 924
80-2, 34-16608, no. 10, p. 760; approved, 34-16670, no. 13, p. 922

Consolidated quotation system, see 34-16446, 12/21/79, no. 1, p. 10; 34-16467, 1/4/80, no. 3, p. 146

Corporate books and records, see LR-8636, 1/5/79, no. 2, p. 137; LR-8993, 1/31/80, no. 6, p. 462; LR-8995, 2/8/80, no. 8, p. 609; LR-9069, 4/28/80, no. 19, p. 1347

DEPOSITORY TRUST COMPANY

Proposed Rule Changes
79-6, effective, 34-16449, no. 1, p. 15
80-1, effective, 34-16746, no. 17, p. 1219

DISQUALIFICATION FROM PRACTICE

Blair, Elliot S., attorney, reinstated to appear and practice before the Commission, 34-16588, 2/19/80, no. 9 p. 658
Brumley, Paul H., attorney, disqualified from appearing or practicing before the Commission, 34-16558, 2/6/80, no. 7, p. 503
Coven, Bernard J., attorney, suspended for a period of three months, effective 11/26/79, from appearing or practicing before the Commission, 34-16448, 12/21/79, no. 1, p. 12
Natelli, Anthony M., accountant, order granting application for reinstatement to practice before the Commission, 34-16546, 1/30/80, no. 6, p. 432
Nielsen, Darrel L., accountant, disqualified from appearing or practicing before the Commission, 34-16479, AS-275, 1/10/80, no. 3, p. 158

INTERMOUNTAIN STOCK EXCHANGE

Applications to Strike from Listing and Registration
Midwest Energy Corporation, 34-16716, no. 15, p. 1099

INVESTMENT COMPANY ACT OF 1940

Forms
Form N-1, *proposed amendment,* 33-6183, IC-11028, 1/28/80, no. 6, p. 412; 33-6205, IC-11114, 4/3/80, no. 15, p. 1081
Form N-27F-1, *amended,* IC-11086, 3/14/80, no. 13, p. 953

Rules
Rules 2a-6, Certain transactions not deemed assignments, and 15a-4, Temporary exemption for certain investment advisers, *adopted,* IC-11005, 1/2/80, no. 2, p. 132
Rule 6c-4(T), Temporary exemption for certain money market funds and other persons and companies, *adopted,* IC-11137, 4/22/80, no. 18, p. 1275
Rule 17a-7, *proposed revision,* IC-11136, 4/21/80, no. 18, p. 1268
Rules 17a-8, Mergers of certain affiliated investment companies, 22d-4, Sale of redeemable securities pursuant to certain mergers with private investment companies, and 22d-5, Exemption from section

22(d) for certain offers of exchange by certain registered investment companies, *adopted;* Rules 17d-1 and 22c-1 *amended;* IC-11053, 2/19/80, no. 9, p. 733
Rule 27f-1 *amended,* IC-11086, 3/14/80, no. 13, p. 953
Proposed Rule 0-9, Liability for certain statements by issuers, 33-6201, 34-16702, 35-21496, IC-11105, 3/27/80, no. 14, p. 977

LITIGATION

See list at end of index for persons and companies named

Management remuneration, see 33-6210, 34-16785, 35-21550, IC-11156, 5/6/80, no. 20, p. 1351

Manipulation schemes, see LR-8999, 2/11/80, no. 8, p. 611; 34-16638, 3/10/80, no. 12, p. 863

MIDWEST CLEARING CORPORATION

Proposed Rule Change
79-3, effective, 34-16492, no. 4, p. 321

MIDWEST SECURITIES TRUST COMPANY

Proposed Rule Change
79-4, effective, 34-16500, no. 4, p. 325

MIDWEST STOCK EXCHANGE, INC.

Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Joint industry plan filed for development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information, 34-16519, 1/22/80, no. 5, p. 370
Plan for allocating regulatory responsibilities, NASD/MSE, order granting temporary approval, 34-16462, 1/2/80, no. 2, p. 93; proposed amendments 34-16591, 2/20/80, no. 9, p. 689; order granting temporary approval, 34-16719, 4/2/80, no. 15, p. 1099

Applications to Trade in Options
Superior Oil Company, granted, 34-16687, no. 14, p. 990

Applications to Strike Options from Listing and Registration
Carrier Corporation, granted, 34-16688, no. 14, p. 990

Applications for Unlisted Trading Privileges
Anheuser-Busch, Inc., 34-16757, no. 18, p. 1251
Gelco Corporation, 34-16510, no. 4, p. 331; 34-16510A, no. 5, p. 364; granted, 34-16568, no. 8, p. 572
Greyhound Corporation (Arizona), granted, 34-16489, no. 4, p. 319
Houston Oil & Minerals Corporation, granted, 34-16489, no. 4, p. 319
Modern Merchandising, Inc., 34-16510, no. 4, p. 331; 34-16510A, no. 5, p. 364; granted, 34-16568, no. 8, p. 572
Purex Industries, Inc., granted, 34-16489, no. 4, p. 319
Tucson Electric Power, granted, 34-16489, no. 4, p. 319
Valero Energy Corporation, 34-16510, no. 4, p. 331; 34-16510A, no. 5, p. 364; granted, 34-16568, no. 8, p. 572
See list, 34-16571, no. 9, p. 643; 34-16685, no. 14, p. 983

Proposed Rule Changes
78-6, approved, 34-16536, no. 6, p. 426
79-17, approved, 34-16503, no. 4, p. 327
79-18, amended, 34-16577, no. 9, p. 651; approved, 34-16696, no. 14, p. 994
79-20, 34-16543, no. 6, p. 430
79-21, 34-16557, no. 7, p. 503; approved, 34-16650, no. 12, p. 881
79-22, and order approving, 34-16468A, no. 4, p. 311
79-23, effective, 34-16476, no. 3, p. 157
79-25, filed and approved, 34-16468, no. 3, p. 147
80-1, effective, 34-16657, no. 13, p. 915
80-2, effective, 34-16665, no. 13, p. 919
80-3, and order approving, 34-16788, no. 20, p. 1381
80-9, and order approving, 34-16793, no. 20, p. 1385

MUNICIPAL SECURITIES RULEMAKING BOARD

Proposed Rule Changes
77-12, amended, approved, 34-16630, no. 11, p. 816
79-6, approved, 34-16707, no. 15, p. 1092
79-14, 34-16459, no. 2, p. 90; approved, 34-16570, no. 8, p. 573
80-1, 34-16712, no. 15, p. 1096
80-2, 34-16726, no. 16, p. 1161
80-3, effective, 34-16735, no. 16, p. 1164
80-4, 34-16739, no. 17, p. 1213
80-5, 34-16786, no. 20, p. 1380

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Plan for allocating regulatory responsibilities, order granting temporary approval, 34-16462, 1/2/80, no. 2, p. 93; proposed amendments to NASD/BSE, CSE, MSE and PSI plans, 34-16591, 2/20/80, no. 9, p. 689; order granting temporary approval, 34-16719, 4/2/80, no. 15, p. 1099

Applications for Review of Disciplinary Action
Apex Financial Corporation, action affirmed, 34-16749, 4/16/80, no. 17, pp. 1221 & 1224
Cook & Co., Inc. and Cook, L. Howard, action set aside, 34-16705, 3/28/80, no. 15, pp. 1088 & 1090
Gatliff, Howard D., proceedings remanded, 34-16680, 3/20/80, no. 13, pp. 934 & 937
Godfrey, Charles B., action affirmed, 34-16749, 4/16/80, no. 17, pp. 1221 & 1224
Gooch, Leonard L., action affirmed, 34-16751, 4/16/80, no. 17, pp. 1229 & 1231
Hyun, Edmund C. H., action set aside, 34-16705, 3/28/80, no. 15, pp. 1088 & 1090
Kendrick, Paul F., action affirmed, 34-16475, 1/8/80, no. 3, pp. 153 & 156
Langbein, Thomas K., action affirmed, 34-16638, 3/10/80, no. 12, pp. 863 & 866
Listrom Company, Inc., Lowell H., and Listrom, Lowell H., action affirmed, 34-16750, 4/16/80, no. 17, pp. 1224 & 1228
Lodge, David R., action affirmed, 34-16637, 3/10/80, no. 12, pp. 861 & 863
Martinson, Earl, proceedings remanded, 34-16680, 3/20/80, no. 13, pp. 934 & 937
Robinson, Richard L., action modified, 34-16597, 2/21/80, no. 9, pp. 697 & 699
Todd and Company, Inc., action affirmed, 34-16638, 3/10/80, no. 12, pp. 863 & 866
Wernimont, Wayne H., action affirmed, 34-16749, 4/16/80, no. 17, pp. 1221 & 1224

Proposed Rule Changes
77-8, amended, 34-16659, no. 13, p. 916
77-19 and 78-19, withdrawn, 34-16599, no. 9, p. 702

READEX FICHE

79-10, approved, 34-16491, no. 4, p. 320
79-12, ext. of comment period, 34-16549, no. 6, p. 437
79-14, 34-16508, no. 4, p. 331
79-15, 34-16465, no. 2, p. 95
79-16, and order ext. time period within which Commission must take action, 34-16460, no. 2, p. 91; amended, 34-16660, no. 13, p. 917
79-51, approved, 34-16603, no. 10, p. 757
80-1 and 80-2, 34-16563, no. 8, p. 569
80-3, 34-16686, no. 14, p. 989
80-4, 34-16711, no. 15, p. 1095

NATIONAL SECURITIES CLEARING CORPORATION

Three comment letters received from NSCC concerning the issues remanded to the Commission in the *Bradford* case have been placed in the public file, 34-16486, 1/14/80, no. 4, p. 315

Proposed Rule Changes
77-5, amended, 34-16592, no. 9, p. 690
79-18, effective, 34-16514, no. 5, p. 365
80-3, effective, 34-16581, no. 9, p. 653
80-6, effective, 34-16634, no. 12, p. 860

NEW ENGLAND SECURITIES DEPOSITORY TRUST COMPANY

Proposed Rule Change
79-3, effective, 34-16455, no. 2, p. 89

NEW YORK STOCK EXCHANGE

Joint action with other SROs in planning, developing, operating, or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367

Applications to Strike from Listing and Registration
Amcord, Inc., granted, 34-16550, no. 6, p. 437
Flintkote Company, The, granted, 34-16632, no. 11, p. 819
Jantzen, Inc., granted, 34-16631, no. 11, p. 818
New York Central & Hudson River Railroad Co., granted, 34-16451, no. 1, p. 15
Pertec Computer Corporation, granted, 34-16604, no. 10, p. 757
Pier 1 Imports, Inc., granted, 34-16550, no. 6, p. 437
Tappan Company, The, granted, 34-16550, no. 6, p. 437

Applications to Withdraw from Listing and Registration
Eltra Corporation, granted, 34-16457, no. 2, p. 90
Studebaker-Worthington, Inc., 34-16573, no. 9, p. 649; granted, 34-16673, no. 13, p. 924

Proposed Rule Changes
77-13, amended, 34-16566, no. 8, p. 571
77-35, approved, 34-16611, no. 10, p. 762
79-45, amended, 34-16676, no. 13, p. 925; approved, 34-16696, no. 14, p. 994
79-46, effective, 34-16482, no. 4, p. 312
79-47, effective, 34-16461, no. 2, p. 92
79-49, 34-16507, no. 4, p. 330; approved, 34-16617, no. 11, p. 802
79-51, 34-16481, no. 4, p. 312; 34-16517, no. 5, p. 367; approved, 34-16607, no. 10, p. 759
79-55, effective, 34-16485, no. 4, p. 314

80-2, 34-16538, no. 6, p. 427; proceedings to determine whether to disapprove, 34-16721, no. 15, p. 1100
80-4, 34-16612, no. 10, p. 763; approved, 34-16695, no. 14, p. 994
80-6, and order approving, 34-16681, no. 13, p. 937
80-9, effective, 34-16649, no. 12, p. 879
80-10, 34-16708, no. 15, p. 1093
80-11, 34-16689, no. 14, p. 990; proceedings to determine whether to disapprove, 34-16781, no. 20, p. 1372
80-20, and order approving, 34-16772, no. 19, p. 1306

Non-public information, see LR-8985, 1/29/80, no. 6, p. 459; LR-9013, 2/22/80, no. 10, p. 788; LR-9021, 2/27/80, no. 10, p. 792; 34-16639, 3/10/80, no. 12, p. 866; LR-9049, 4/2/80, no. 15, p. 1153

OPTIONS CLEARING CORPORATION

Proposed Rule Changes

79-6, approved, 34-16755, no. 18, p. 1250
79-7, approved, 34-16444, no. 1, p. 8
80-1, 34-16512, no. 4, p. 332; approved, 34-16754, no. 17, p. 1234
80-2, 34-16532, no. 6, p. 424
80-3, effective, 34-16779, no. 20, p. 1371
80-4, 34-16792, no. 20, p. 1384

PACIFIC CLEARING CORPORATION

Proposed Rule Changes

80-1, 34-16574, no. 9, p. 649; approved, 34-16699, no. 14, p. 997

PACIFIC SECURITIES DEPOSITORY TRUST COMPANY

Proposed Rule Changes

80-1, effective, 34-16493, no. 4, p. 321

PACIFIC STOCK EXCHANGE, INC.

Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Joint industry plan filed for development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information, 34-16519, 1/22/80, no. 5, p. 370
Plan for allocating regulatory responsibilities, NASD/PSE, order granting temporary approval, 34-16462, 1/2/80, no. 2, p. 93; proposed amendments, 34-16591, 2/20/80, no. 9, p. 689; order granting temporary approval, 34-16719, 4/2/80, no. 15, p. 1099

Applications to Trade in Options

Data General Corporation, granted, 34-16758, no. 18, p. 1251
Resorts International, granted, 34-16501, no. 4, p. 326

Applications to Strike Options from Listing and Registration

Itel Corporation, granted, 34-16759, no. 18, p. 1252
Sambo's Restaurants, Inc., granted, 34-16511, no. 4, p. 332

Applications to Strike from Listing and Registration

Financial Corporation of America, granted, 34-16760, no. 18, p. 1252
Hungry Tiger, Inc., 34-16651, no. 13, p. 913
Morehouse Industries, Inc., granted, 34-16683, no. 14, p. 982

Trico Industries, Inc., 34-16651, no. 13, p. 913
Union Oil of California, granted, 34-16760, no. 18, p. 1252

Applications to Withdraw from Listing and Registration
McCarthy Co., 34-16710, no. 15, p. 1095
Pacific Resources, Inc., order amending effective date, 34-16454, no. 1, p. 16
U. S. Home Corporation, 34-16776, no. 19, p. 1308

Applications for Unlisted Trading Privileges
AMP Incorporated, granted, 34-16487, no. 4, p. 317
Cluett, Peabody & Co., Inc., granted, 34-16487, no. 4, p. 317
Delmarva Power & Light Co., granted, 34-16487, no. 4, p. 317
Household Finance Corporation, granted, 34-16487, no. 4, p. 317
Jefferson-Pilot, 34-16633, no. 12, p. 860; granted, 34-16732, no. 15, p. 1109
Penn Central Corp., granted, 34-16445, no. 1, p. 9
Resorts International, Inc., 34-16510, no. 4, p. 331; 34-16510A, no. 5, p. 364; granted, 34-16567, no. 8, p. 571
Searle & Co., G. D., granted, 34-16487, no. 4, p. 317
Squibb Corporation, granted, 34-16487, no. 4, p. 317
Tandy Corporation, 34-16790, no. 20, p. 1383
Total Petroleum (N.A.) Ltd., 34-16633, no. 12, p. 860; granted, 34-16732, no. 15, p. 1109
Valero Energy Corporation, 34-16787, no. 20, p. 1381
Wang Laboratories, Inc., granted, 34-16487, no. 4, p. 317

Proposed Rule Changes
77-36, approved, 34-16533, no. 6, p. 424
79-2, withdrawn, 34-16463, no. 2, p. 94
79-13, amended, 34-16667, no. 13, p. 920; approved, 34-16696, no. 14, p. 994
79-14, 34-16658, no. 13, p. 915; approved, 34-16768, no. 19, p. 1299
79-16, effective, 34-16601, no. 10, p. 756
79-17, 34-16602, no. 10, p. 756; approved, 34-16736, no. 16, p. 1165
79-18, effective, 34-16515, no. 5, p. 366
80-1, 34-16706, no. 16, p. 1090; approved, 34-16767, no. 19, p. 1297
80-2, 34-16723, no. 16, p. 1157
80-4, and order approving, 34-16788, no. 20, p. 1381
80-6, and order approving, 34-16793, no. 20, p. 1385

Payments to foreign government officials or employees, see LR-8993, 1/31/80, no. 6, p. 462

PHILADELPHIA STOCK EXCHANGE, INC.

Administrative proceedings instituted and remedial sanctions imposed, 34-16648, 3/13/80, no. 12, p. 876
Joint action with other SROs in planning, developing, operating or regulating quotation system in accordance with terms of CQ plan as amended, order authorizing, 34-16518, 1/22/80, no. 5, p. 367
Joint industry plan filed for development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information, 34-16519, 1/22/80, no. 5, p. 370

Applications to Withdraw from Listing and Registration
Vulcan, Inc., 34-16509, no. 4, p. 331

Applications for Unlisted Trading Privileges
Bache Group, Inc., 34-16757, no. 18, p. 1251
Central Jersey Industries, Inc., 34-16775, no. 19, p. 1308
Coastal Caribbean Oil & Minerals Ltd., 34-16757, no. 18, p. 1251

Dean Witter Reynolds Organization Inc., 34-16757, no. 18, p. 1251
Hutton Group, Inc., The E. F., 34-16757, no. 18, p. 1251
Pantepec International, Inc., 34-16757, no. 18, p. 1251
Penn Central Corporation, The, 34-16757, no. 18, p. 1251
Pogo Producing Company, 34-16757, no. 18, p. 1251
Sav-A-Stop, Inc., 34-16757, no. 18, p. 1251
Schlitz Brewing Company, Jos., 34-16757, no. 18, p. 1251
Simplicity Pattern Co., Inc., 34-16757, no. 18, p. 1251
Tosco Corporation, 34-16757, no. 18, p. 1251
See list, 34-16691, no. 14, p. 991

Proposed Rule Changes
78-6, approved, 34-16537, no. 6, p. 427
79-7, amended, 34-16539, no. 6, p. 428; approved, 34-16696, no. 14, p. 994
79-8, approved, 34-16697, no. 14, p. 996
79-10, 34-16505, no. 4, p. 329; approved, 34-16675, no. 13, p. 924
79-11, 34-16553, no. 7, p. 501; approved, 34-16668, no. 13, p. 921
79-13, 34-16464, no. 2, p. 94
79-14, effective, 34-16506, no. 4, p. 330
80-1, 34-16613, no. 10, p. 764; approved, 34-16727, no. 16, p. 1162
80-2, and order approving, 34-16576, no. 9, p. 650
80-4, 34-16624, no. 11, p. 810; approved, 34-16741, no. 17, p. 1214
80-5, 34-16619, no. 11, p. 803; approved, 34-16742, no. 17, p. 1215
80-6, 34-16694, no. 14, p. 993; approved, 34-16789, no. 20, p. 1383
80-10, and order approving, 34-16788, no. 20, p. 1381
80-11, and order approving, 34-16793, no. 20, p. 1385

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Forms
Form U-13-60 *revised*, 35-21447, 2/22/80, no. 10, p. 764; 34-21447A, 3/13/80, no. 12, p. 882

Rules
Rule 94 *revised*, 35-21447, 2/22/80, no. 10, p. 764; 34-21447A, 3/13/80, no. 12, p. 882
Rule 103A, *proposed revision*, 33-6201, 34-16702, 35-21496, IC-11105, 3/27/80, no. 14, p. 977

Rebates, see LR-8995, 2/8/80, no. 8, p. 609

RULES OF PRACTICE

Rule 24, *proposed amendment*, 33-6177, 34-16497, 1/15/80, no. 4, p. 210

SECURITIES ACT OF 1933

Forms
Form N-1, *proposed amendment*, 33-6183, IC-11028, 1/28/80, no. 6, p. 412; 33-6205, IC-11114, 4/3/80, no. 15, p. 1081
Forms S-1, S-2, S-3, S-7, S-8, S-11, *proposed amendment*, 33-6179, 34-16499, 35-21394, IC-11020, 1/15/80, no. 4, p. 279
Form S-7 *amended*, 33-6203, 34-16718, 4/2/80, no. 15, p. 1072
Form S-8 *amended*, 33-6190, 2/22/80, no. 10, p. 747; 33-6202, 34-16717, 4/2/80, no. 15, p. 1056
Form 242, notice of sales of securities pursuant to §230.242, *adopted*, 33-6180, 1/17/80, no. 4, p. 295
Proposed Form S-15, optional form for registration of securities to be offered in certain business

combination transactions, 33-6177, 34-16497, 1/15/180, no. 4, p. 210; ext. of time for comment, 33-6204, 34-16720, 35-21510, IC-11113, 4/2/80, no. 15, p. 1080

Guides for Preparation and Filing of Registration Statements
Review of Guides, request for public comment; ext. of time, 33-6191, 34-16615, 2/29/80, no. 11, p. 796

Rules
Rule 144 *amended*, 33-6180, 1/17/80, no. 4, p. 295
Rules 144 and 148 *amended*, 33-6189, 34-16589, 2/19/80, no. 9, p. 616
Rule 175, *proposed revision*, 33-6201, 34-16702, 35-21496, IC-11105, 3/27/80, no. 14, p. 977
Rule 242, Exemption of limited offers and sales by qualified issuers, *adopted*, 33-6180, 1/17/80, no. 4, p. 295
Rule 411, *proposed amendment*, 33-6177, 34-16497, 1/15/80, no. 4, p. 210
Rule 434d, *proposed amendment*, 33-6183, IC-11028, 1/28/80, no. 6, p. 412
Rule 436 *amended*, 33-6173, AS-274, 12/28/79, no. 2, p. 82; *proposed amendment*, 33-6208, 4/30/80, no. 19, p. 1289
Rule 464, Effective date of post-effective amendments on Form S-8, and Rule 475a, Pre-effective amendments on Form S-8 deemed filed with consent of Commission, *adopted;* Rules 473, 477 and 485 *amended*, 33-6190, 2/22/80, no. 10, p. 747
Proposed Rule 465, Effective date of post-effective amendments filed by certain registered investment companies, 33-6205, IC-11114, 4/3/80, no. 15, p. 1081

SECURITIES EXCHANGE ACT OF 1934

Forms
Form 8-K *amended*, 33-6203, 34-16718, 4/2/80, no. 15, p. 1072
Form 10, *proposed amendment*, 33-6179, 34-16499, 35-21394, IC-11020, 1/15/80, no. 4, p. 279
Form 10-K, *proposed amendment*, 33-6176, 34-16496, 1/15/80, no. 4, p. 186; ext. of time for comment, 33-6204, 34-16720, 35-21510, IC-11113, 4/2/80, no. 15, p. 1080; 33-6179, 34-16499, 35-21394, IC-11020, 1/15/80, no. 4, p. 279
Form 11-K *amended*, 33-6202, 34-16717, 4/2/80, no. 15, p. 1056
Form 12b-25, Notification of late filing, *revised*, 33-6203, 34-16718, 4/2/80, no. 15, p. 1072

Guides for the Preparation and Filing of Reports and Proxy and Registration Statements
Review of Guides, request for public comment; ext. of time, 33-6191, 34-16615, 2/29/80, no. 11, p. 796

Rules
Rule 3b-6, *proposed revision*, 33-6201, 34-16702, 35-21496, IC-11105, 3/27/80, no. 14, p. 977
Rules 10a-1, 11Acl-1, 12f-1 and 31-1 *amended*, 33-6189, 34-16589, 2/19/80, no. 9, p. 616
Rule 10b-6 *amended*, 33-6197, 34-16645, IC-11079, 3/13/80, no. 12, p. 856; *proposed amendment*, 33-6198, 34-16646, IC-11080, 3/13/80, no. 12, p. 857
Rule 11Acl-2, Display of transaction reports, last sale data and quotation information, *adopted*, 34-16590 2/19/80, no. 9, p. 659
Rule 12b-25 *revised*, 33-6203, 34-16718, 4/2/80, no. 15, p. 1072
Rules 12f-1 and 12f-3, *proposed amendment*, 34-16730, 4/3/80, no. 15, p. 1108
Rule 13d-2, *proposed amendment*, 33-6206, 34-16748, IC-11132, 4/16/80, no. 17, p. 1206
Rules 14a-3 and 14c-3, *proposed amendment*, 33-6176, 34-16496, 1/15/80, no. 4, p. 186; 33-6178, 34-16498, 35-21393, IC-11019, 1/15/80, no. 4, p. 229
Rules 14a-3, 14a-6, 14a-12, 14c-2 and 14c-5, *proposed amendment*, 33-6177, 34-16497, 1/15/80, no. 4, p. 210
Rules 14a-3, 14a-101, and 14c-3, *proposed amendment*, 33-6179, 34-16499, 35-21394, IC-11020, 1/15/80, no. 4, p. 279
Rule 14d-1, *proposed revision*, ext. of time for comment, 33-6187, 34-16547, IC-11032, 1/31/80, no. 6, p. 423
Rule 15b10-12, *amended*, 34-16495, 1/15/80, no. 4, p. 322

Rule 16b-3, *proposed amendment*, 34-16770, 4/30/80, no. 19, p. 1303
Rule 17a-1, *amended*, 34-16598, 2/21/80, no. 9, p. 699
Rule 17a-4, *proposed amendment*, 34-16644, 3/11/80, no. 12, p. 874
Rule 17a-15, *revised and redesignated* Rule 11Aa3-1, Dissemination of transaction reports, 33-6189, 34-16589, 2/19/80, no. 9, p. 616
Rule 17Ad-8, Securities position listings, *adopted*, 34-16443, 12/20/79, no. 1, p. 3
Rule 19d-1, *proposed amendment*, 34-16628, 3/5/80, no. 11, p. 812
Proposed Rule 9b-1(T) *withdrawn*, 34-16780, 5/2/80, no. 20, p. 1371
Proposed Rules 14e-3, Trading in subject company securities on the basis of material non-public information; 14e-4, Equal treatment of security holders; and 14e-5, Prohibiting purchases not made by means of a tender offer, ext. of time for comment, 33-6187, 34-16547, IC-11032, 1/31/80, no. 6, p. 423

STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

Rule 20, items 1 and 8, proposed amendment; Proposed Item 9, Market price of the registrant's securities and statement of dividend policy, Item 10, Selected financial data, and Item 11, Management's discussion and analysis of financial condition and results of operations, 33-6176, 34-16496, 1/15/80, no. 4, p. 186
Rule 20, Proposed Item 12, Supplementary financial information, 33-6178, 34-16498, 35-21393, IC-11019, 1/15/80, no. 4, p. 229; proposed amendment, 33-6201, 34-16702, 35-21496, IC-11105, 3/27/80, no. 14, p. 977
Rule 20, Item 4, proposed amendment, 33-6210, 34-16785, 35-21550, IC-11156, 5/6/80, no. 20, p. 1351

STOCK CLEARING CORPORATION OF PHILADELPHIA

Proposed Rule Changes
79-13, approved, 34-16469, no. 3, p. 148
80-1, effective, 34-16560, no. 8, p. 561

SUSPENSIONS OF TRADING

Alpha Energy and Gold, 34-16626, no. 11, p. 811
American Technical Resources, Inc., 34-16747, no. 17, p. 1220
Bache Group, Inc., 34-16703, no. 14, p. 1012; terminated, 34-16715, no. 15, p. 1098
Itel Corporation, 34-16766, no. 19, p. 1297
Lilac, Inc., 34-16692, no. 14, p. 993
McDowell Enterprises, Inc., 34-16643, no. 12, p. 874; 34-16682, no. 13, p. 938; 34-16704, no. 15, p. 1088
Oceania Resources, Inc., 34-16773, no. 19, p. 1307
Olympic Gas & Oil, Inc., 34-16636, no. 12, p. 861; 34-16738, no. 17, p. 1213
SNG & Oil Energy Company, 34-16636, no. 12, p. 861; 34-16738, no. 17, p. 1213
Union Petrochemical Corp of Nevada, 34-16545, no. 6, p. 432

ALPHABETICAL LIST OF PERSONS AND COMPANIES NAMED IN NOTICES, ORDERS, FINDINGS, OPINIONS, ADMINISTRATIVE PROCEEDINGS, AND OTHER COMMISSION RELEASES

A Corporate Trust, (Series 1 and Subsequent Series), IC-11143, vol. 19, no. 19, p. 1332
A. M. Coal Partners - 1976 A through E, LR-8988, vol. 19, no. 6, p. 461
A. V. A. Qualified Income Fund, The, IC-11025, vol. 19, no. 5, p. 395; IC-11045, vol. 19, no. 8, p. 604
A. V. A. Income Fund, The, IC-11025, vol. 19, no. 5, p. 395; IC-11045, vol. 19, no. 8, p. 604
Adamek, John A., 34-16725, vol. 19, no. 16, p. 1159
Adrian, Robert, LR-9030, vol. 19, no. 11, p. 849
Aegean Industries, Inc., LR-9036, vol. 19, no. 13, p. 971; LR-9006, vol. 19, no. 9, p. 743
Air West, LR-9032, vol. 19, no. 12, p. 906

Alabama Power Company, 35-21483, vol. 19, no. 13, p. 950; 35-21403, vol. 19, no. 5, p. 386; 34-21519, vol. 19, no. 16, p. 1175; 35-21435, vol. 19, no. 8, p. 595; 35-21446, vol. 19, no. 9, p. 718
Alabama Property Company, 35-21483, vol. 19, no. 13, p. 950; 35-21446, vol. 19, no. 9, p. 718
Allegheny Pittsburgh Coal Company, 35-21378, vol. 19, no. 2, p. 123
Allegheny Power System, Inc., 35-21504, vol. 19, no. 15, p. 1121; 35-21509, vol. 19, no. 15, p. 1129; 35-21512, vol. 19, no. 16, p. 1166; 35-21423, vol. 19, no. 7, p. 512; 35-21529, vol. 19, no. 18, p. 1253; 35-21542, vol. 19, no. 19, p. 1318; 35-21463, vol. 19, no. 11, p. 826; 35-21378, vol. 19, no. 2, p. 123; 35-21470, vol. 19, no. 12, p. 882; 35-21475, vol. 19, no. 12, p. 888
Alm, Kane, Rogers & Co., 34-16639, vol. 19, no. 12, p. 866
Alpha Associates, LR-9048, vol. 19, no. 15, p. 1152
Altschuler, Stanley S., 34-16586, vol. 19, no. 9, p. 657
Amarillo Investments, Inc., 34-16714, vol. 19, no. 15, p. 1096; 34-16714A, vol. 19, no. 18, p. 1249
Amcole Energy Corp., LR-8968, vol. 19, no. 2, p. 140
American Electric Power Company, Inc., 35-21479, vol. 19, no. 13, p. 944; 35-21488, vol. 19, no. 14, p. 1019; 35-21498, vol. 19, no. 15, p. 1110; 35-21507, vol. 19, no. 15, p. 1126; 5-21408, vol. 19, no. 6, p. 439; 35-21528, vol. 19, no. 17, p. 1241; 35-21433, vol. 19, no. 8, p. 581; 35-21442, vol. 19, no. 9, p. 715; 35-21544, vol. 19, no. 19, p. 1322; 35-21453, vol. 19, no. 10, p. 773; 35-21456, vol. 19, no. 10, p. 776; 35-21352, vol. 19, no. 1, p. 25; 35-21357, vol. 19, no. 1, p. 33
American General Enterprise Fund, Inc., IC-10995, vol. 19, no. 1, p. 54
American General Insurance Company, IC-11000, vol. 19, no. 1, p. 59
American Health Services, Inc., 34-16600, vol. 19, no. 10, p. 753
American Music Stores, Inc., IC-11161, vol. 19, no. 20, p. 1423
American National Bank & Trust of New Jersey, LR-9039, vol. 19, no. 13, p. 972
American Variable Annuity Fund, IC-11025, vol. 19, no. 5, p. 395
American Variable Annuity Life Assurance Company, IC-11025, vol. 19, no. 5, p. 395; IC-11110, vol. 19, no. 15, p. 1137; Separate Accounts D, E and F, IC-11110, vol. 19, no. 15, p. 1137; IC-11045, vol. 19, no. 8, p. 604; IC-11144, vol. 19, no. 19, p. 1336; Separate Accounts D, E and F, IC-11144, vol. 19, no. 19, p. 1336
American Variable Fund, IC-11045, vol. 19, no. 8, p. 604
Aminex Resources Corporation, LR-9001, vol. 19, no. 8, p. 612; LR-9019, vol. 19, no. 10, p. 791
Amsterdam-Rotterdam Bank N.V., IC-11129, vol. 19, no. 17, p. 1244; IC-11072, vol. 19, no. 11, p. 844
An-Car Oil Co., Inc., LR-8980, vol. 19, no. 5, p. 409; LR-9012, vol. 19, no. 9, p. 745
Anaconda Company, The, 34-16756, vol. 19, no. 18, p. 1250
Andrecom Advisers Corporation, 34-16679, vol. 19, no. 13, p. 926
Anglo American Properties, Inc., 34-16700, vol. 19, no. 14, p. 997
Apex Financial Corporation, 34-16749, vol. 19, no. 17, pp. 1221 & 1224
Appalachian Power Company, 34-21488, vol. 19, no. 14, p. 1019; 35-21424, vol. 19, no. 7, p. 513; 35-21434, vol. 19, no. 8, p. 594; 35-21442, vol. 19, no. 9, p. 715; 35-21445, vol. 19, no. 9, p. 718; 35-21453, vol. 19, no. 10, p. 773; 35-21353, vol. 19, no. 1, p. 27; 35-21474, vol. 19, no. 12, p. 888; 35-21391, vol. 19, no. 4, p. 339; 35-21352, vol. 19, no. 1, p. 25
Arc Limited, LR-8998, vol. 19, no. 8, p. 610
Arkansas Power & Light Company, 35-21395, vol. 19, no. 4, p. 341; 35-21493, vol. 19, no. 14, p. 1026; 35-21520, vol. 19, no. 16, p. 1176; 35-21426, vol. 19, no. 8, p. 575; 35-21540, vol. 19, no. 19, p. 1313; 35-21459, vol. 19, no. 11, p. 821; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103; 35-21380, vol. 19, no. 2, p. 127; 35-21473, vol. 19, no. 12, p. 886
Arkansas-Missouri Power Company, 35-21390, vol. 19, no. 4, p. 338; 35-21397, vol. 19, no. 4, p. 344; 35-21398, vol. 19, no. 4, p. 345; 35-21426, vol. 19, no. 8, p. 575; 35-21449, vol. 19, no. 10, p. 768; 35-21450, vol. 19, no. 10, p. 769; 35-21370, vol. 19, no. 2, p. 110; 35-21473, vol. 19, no. 12, p. 886
Arlan's Dept. Stores, Inc., LR-9056, vol. 19, no. 16, p. 1200
Aronheim, Marcel H., 34-16556, vol. 19, no. 7, p. 502
Ash Creek Mining Company, 35-21486, vol. 19, no. 14, p. 1013; 35-21506, vol. 19, no. 15, p. 1124; 35-21468, vol. 19, no. 11, p. 831; 35-21364, vol. 19, no. 2, p. 97
Atla National Investments Corporation, LR-9037, vol. 19, no. 13, p. 972
Atlantic Improvement Corporation, LR-9069, vol. 19, no. 19, p. 1347
Atlas Consultants, Inc., LR-8961, vol. 19, no. 1, p. 65

Atlas Oil Corporation, LR-8961, vol. 19, no. 1, p. 65
Atlas Oil Exploration, Inc., LR-8961, vol. 19, no. 1, p. 65
Automated Medical Laboratories, Inc., 34-16638, vol. 19, no. 12, p. 863
AAA Recording Studios, Inc., LR-9061, vol. 19, no. 16, p. 1203; LR-9075, vol. 19, no. 19, p. 1350
AEIC Investors Co. #12, IC-11047, vol. 19, no. 8, p. 607; IC-11024, vol. 19, no. 5, p. 392
AGC Industries, Inc., LR-8962, vol. 19, no. 1, p. 66
ATVA Enterprises, Inc., 34-16586, vol. 19, no. 9, p. 657; 34-16587, vol. 19, no. 9, p. 658

Babson Money Market Fund, Inc., D. L., IC-11122, vol. 19, no. 16, p. 1188; IC-11122A, vol. 19, no. 19, p. 1328; IC-11087, vol. 19, no. 13, p. 956
Bagley, Smith W., LR-9065, vol. 19, no. 18, p. 1286; LR-9011, vol. 19, no. 9, p. 745
Ball & Associates, Tom, LR-8978, vol. 19, no. 5, p. 408; LR-9008, vol. 19, no. 9, p. 744
Ball, Thomas J., LR-8978, vol. 19, no. 5, p. 408; LR-9008, vol. 19, no. 9, p. 744
Banque Europeenne de Credit S.A., IC-11094, vol. 19, no. 13, p. 967; IC-11138, vol. 19, no. 18, p. 1284
Barclays Bank International Limited, IC-11089, vol. 19, no. 13, p. 958; IC-11051, vol. 19, no. 9, p. 728; IC-11090, vol. 19, no. 13, p. 959; IC-11052, vol. 19, no. 9, p. 730
Barrabee, Brian D., 34-16784, IA-720, vol. 19, no. 20, p. 1379
Bateman Eichler, Hill Richards Inc., 34-16679, vol. 19, no. 13, p. 926
Batson, Clifton J., 34-16586, vol. 19, no. 9, p. 657
Baumann, Marcus Theodore, LR-8959, vol. 19, no. 1, p. 65
Bear Stearns & Co., IC-11143, vol. 19, no. 19, p. 1332
Becton, Dickinson & Co., LR-8957, vol. 19, no. 1, p. 63
Beech Mountain, Ltd., LR-8982, vol. 19, no. 6, p. 458
Beech Run, Ltd., LR-8982, vol. 19, no. 6, p. 458
Bender, James F., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Beneficial National Life Insurance Company, IC-11101, vol. 19, no. 14, p. 1044
Berkson, Robert, 34-16753, vol. 19, no. 17, pp. 1231 & 1234
Bernstein and Bernstein, Inc., LR-8973, vol. 19, no. 4, p. 361
Bernstein, Charles P., 34-16725, vol. 19, no. 16, p. 1159
Bernstein, Irving, LR-9056, vol. 19, no. 16, p. 1200
Bernstein, Jerome A., LR-8973, vol. 19, no. 4, p. 361
Bernstein, Lawrence, LR-8973, vol. 19, no. 4, p. 361
Beverly Bank, 34-16679, vol. 19, no. 13, p. 926
Big D Oil & Gas Co., Inc., LR-8960, vol. 19, no. 1, p. 65
Binder, Harry J., LR-9077, vol. 19, no. 20, p. 1429
Bittick, Halton Q., LR-9015, vol. 19, no. 10, p. 788
Blackstone Valley Electric Company, 34-21490, vol. 19, no. 14, p. 1022; 34-21409, vol. 19, no. 6, p. 440; 35-21518, vol. 19, no. 16, p. 1173; 35-21559, vol. 19, no. 20, p. 1402; 35-21374, vol. 19, no. 2, p. 116
Blair, Elliot S., 34-16588, vol. 19, no. 9, p. 658
Blank, Barry W., 34-16743, vol. 19, no. 17, p. 1215
Bloom, Gerald Leon, LR-9060, vol. 19, no. 16, p. 1202; LR-9027, vol. 19, no. 11, p. 848
Bondstock Corporation, IC-11017, vol. 19, no. 4, p. 347
Bondstock Investment Plan, IC-11017, vol. 19, no. 4, p. 347
Bonner, Haskell J., LR-8961, vol. 19, no. 1, p. 65
Bookkeepers Ltd., LR-8965, vol. 19, no. 2, p. 138; LR-9078, vol. 19, no. 20, p. 1430
Brainard, Daniel King, LR-9015, vol. 19, no. 10, p. 788
Bromley, John R. and Bertha M., LR-9016, vol. 19, no. 10, p. 789
Brownlow, Ronald L., 34-16473, vol. 19, no. 3, p. 150
Bruce, Robert, LR-9000, vol. 19, no. 8, p. 611
Brumley, Paul H., Esq., 34-16558, vol. 19, no. 7, p. 503
Buchbaum, Paul, 34-16622, IC-11065, vol. 19, no. 11, p. 805
Buckhannon River, Ltd., LR-8982, vol. 19, no. 6, p. 458
Burkhart, Delbert K., LR-8982, vol. 19, no. 6, p. 458
Burlingham Underwood & Lord, 33-6181, vol. 19, no. 4, p. 311; 33-6171, vol. 19, no. 1, p. 1

BDM International, Inc., 34-16763, vol. 19, no. 18, p. 1252
BEC Finance N. V., IC-11094, vol. 19, no. 13, p. 967; IC-11138, vol. 19, no. 18, p. 1284

Cahill, Eugene J., LR-9041, vol. 19, no. 13, p. 975
Cal-Am Corporation, 34-16749, vol. 19, no. 17, p. 1221
Cal-Western Separate Account A, IC-11000, vol. 19, no. 1, p. 59
Cal-Western Variable Fund C, IC-11000, vol. 19, no. 1, p. 59
California Capital Planning Services, Inc., LR-9020, vol. 19, no. 10, p. 791
California West Properties, Inc., 34-16561, vol. 19, no. 8, pp. 562 & 568
Canadian Barranca Corp., Ltd., 34-16783, IA-719, vol. 19, no. 20, p. 1377
Cape Cod Gas Company, 35-21392, vol. 19, no. 4, p. 340; 35-21432, vol. 19, no. 8, p. 581; 35-21359, vol. 19, no. 1, p. 36
Capital Bond Fund, IC-11042, vol. 19, no. 8, p. 602; IC-11076, vol. 19, no. 12, p. 896
Capital Planning Associates, Inc., 34-16561, vol. 19, no. 8, pp. 562 & 568
Capital Planning Securities Company, Inc., 34-16561, vol. 19, no. 8, pp. 562 & 568
Carboline Company, The, LR-8985, vol. 19, no. 6, p. 459
Cardiff Industries, Inc., LR-9076, vol. 19, no. 20, p. 1429
Cardinal Government Securities Trust, IC-11155, vol. 19, no. 20, p. 1411
Carnegie Liquid Assets, Inc., IC-11158, vol. 19, no. 20, p. 1415
Carolina Telephone and Telegraph Company, 39-547, vol. 19, no. 2, p. 131
Carrier Corporation, 34-16528, vol. 19, no. 5, p. 378; LR-9031, vol. 19, no. 11, p. 850
Carson, Royal W., Jr., 34-16572, vol. 19, no. 9, p. 649
Casey, Francis S., 34-16586, vol. 19, no. 9, p. 657; 34-16587, vol. 19, no. 9, p. 658
Cedar Coal Company, 35-21356, vol. 19, no. 1, p. 32
Cenco Incorporated, LR-8970, vol. 19, no. 3, p. 183; LR-8975, vol. 19, no. 5, p. 407; LR-9055, vol. 19, no. 16, p. 1199
Cenco Medical Health, LR-8970, vol. 19, no. 3, p. 183; LR-8975, vol. 19, no. 5, p. 407; LR-8989, vol. 19, no. 6, p. 461; LR-9055, vol. 19, no. 16, p. 1199
Cenco, Incorporated, LR-8989, vol. 19, no. 6, p. 461
Centennial Capital Cash Management Trust, IC-11140, vol. 19, no. 19, p. 1329; IC-11100, vol. 19, no. 14, p. 1042
Centennial Capital Special Fund, Inc., IC-10997, vol. 19, no. 1, p. 55
Central and South West Corporation, 35-21481, vol. 19, no. 13, p. 947; 35-21482, vol. 19, no. 13, p. 948; 35-21481, vol. 19, no. 13, p. 947; 35-21389, vol. 19, no. 4, p. 335; 35-21396, vol. 19, no. 4, p. 342; 35-21492, vol. 19, no. 14, p. 1025; 35-21517, vol. 19, no. 16, p. 1172; 35-21421, vol. 19, no. 7, p. 508; 35-21443, vol. 19, no. 9, p. 716; 35-21452, vol. 19, no. 10, p. 771; 35-21455, vol. 19, no. 10, p. 775; 35-21555, vol. 19, no. 20, p. 1396
Central and South West Fuels, Inc., 35-21506, vol. 19, no. 15, p. 1124; 35-21468, vol. 19, no. 11, p. 831
Central and South West Services, Inc., 35-21482, vol. 19, no. 13, p. 948; 35-21389, vol. 19, no. 4, p. 335; 35-21421, vol. 19, no. 7, p. 508; 35-21452, vol. 19, no. 10, p. 771
Central Appalachian Coal Company, 35-21356, vol. 19, no. 1, p. 32
Central Ohio Coal Company, 35-21491, vol. 19, no. 14, p. 1024; 35-21416, vol. 19, no. 6, p. 450; 35-21417, vol. 19, no. 6, p. 451; 35-21356, vol. 19, no. 1, p. 32; 35-21457, vol. 19, no. 10, p. 777
Central Power & Light Company, 35-21386, vol. 19, no. 3, p. 168; 35-21482, vol. 19, no. 13, p. 948; 35-21389, vol. 19, no. 4, p. 335; 35-21492, vol. 19, no. 14, p. 1025; 35-21506, vol. 19, no. 15, p. 1124; 35-21421, vol. 19, no. 7, p. 508; 35-21452, vol. 19, no. 10, p. 771; 35-21455, vol. 19, no. 10, p. 775; 35-21468, vol. 19, no. 11, p. 831
Centron Corporation, LR-9058, vol. 19, no. 16, p. 1201
Charter Supply Co., Inc., IC-11151, vol. 19, no. 20, p. 1405
Chase Fund of Boston, The, IC-11160, vol. 19, no. 20, p. 1420
Chatham, Richard L., 34-16479, AS-275, vol. 19, no. 3, p. 158
Cherry Hills Fuel Corporation, 35-21358, vol. 19, no. 1, p. 34
Chrylser Corporation, 39-560, vol. 19, no. 14, p. 1033; 39-563, vol. 19, no. 16, p. 1180; 39-564, vol. 19, no. 19, p. 1328; 39-554, vol. 19, no. 10, p. 778
Chrysler Financial Corporation, 39-558, vol. 19, no. 13, p. 953; 39-552, vol. 19, no. 9, p. 720

Chrysler Overseas Capital Corporation, 39-564, vol. 19, no. 19, p. 1328
Cline & Associates, Inc., Joe M., 34-16728, vol. 19, no. 16, p. 1162; LR-9057, vol. 19, no. 16, p. 1200
Cobblestone Capital Fund, Inc., IC-11014, vol. 19, no. 3, p. 178
Cochise College Park, Inc., LR-8959, vol. 19, no. 1, p. 65
Cohen, Irving, LR-9048, vol. 19, no. 15, p. 1152
Cohn, Philip R., LR-9042, vol. 19, no. 13, p. 975; LR-9066, vol. 19, no. 18, p. 1287
Coker, Stephen C., LR-8974, vol. 19, no. 5, p. 407; LR-9022, vol. 19, no. 10, p. 792
Coleco Industries, Inc., LR-9024, vol. 19, no. 11, p. 846
Colman, Eugene L., LR-8971, vol. 19, no. 3, p. 183; LR-8984, vol. 19, no. 6, p. 459
Columbia Alaskan Gas Transmission Corporation, 35-21411, vol. 19, no. 6, p. 443; 35-21377, vol. 19, no. 2, p. 120
Columbia Coal Gasification Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120; 35-21541, vol. 19, no. 19, p. 1316
Columbia Gas of Kentucky, Inc., 35-21541, vol. 19, no. 19, p. 1316; 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443
Columbia Gas of Maryland, Inc., 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas of New York, Inc., 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas of Ohio, Inc., 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120; 35-21508, vol. 19, no. 15, p. 1128
Columbia Gas of Pennsylvania, Inc., 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas of Virginia, Inc., 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas of West Virginia, Inc., 35-21411, vol. 19, no. 6, p. 443; 35-21508, vol. 19, no. 15, p. 1128; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas Development of Canada, Ltd., 35-21411, vol. 19, no. 6, p. 443; 35-21377, vol. 19, no. 2, p. 120; 35-21508, vol. 19, no. 15, p. 1128; 35-21373, vol. 19, no. 2, p. 114
Columbia Gas Development Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas System Service Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas System, Inc., The, 35-21508, vol. 19, no. 15, p. 1128; 35-21546, vol. 19, no. 19, p. 1325; 35-21547, vol. 19, no. 19, p. 1326; 35-21516, vol. 19, no. 16, p. 1171; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gas Transmission Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Gulf Transmission Company, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia Hydrocarbon Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbia LNG Corporation, 35-21508, vol. 19, no. 15, p. 1128; 35-21411, vol. 19, no. 6, p. 443; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Columbus and Southern Ohio Electric Company, 35-21548, vol. 19, no. 20, p. 1386
Com/Link International Corporation, LR-9046, vol. 19, no. 14, p. 1052
Commercial International Corporation, LR-9062, vol. 19, no. 17, p. 1247
Conchemco, LR-9013, vol. 19, no. 10, p. 788
Congress Street Fund, IC-11142, vol. 19, no. 19, p. 1331
Connecticut Yankee Atomic Power Company, 35-21522, vol. 19, no. 16, p. 1178; 35-21551, vol. 19, no. 20, p. 1390
Consolidated Gas Supply Corporation, 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125
Consolidated Natural Gas Company, 35-21388, vol. 19, no. 4, p. 333; 35-21503, vol. 19, no. 15, p. 1119; 35-21425, vol. 19, no. 7, p. 514; 35-21524, vol. 19, no. 17, p. 1237; 35-21535, vol. 19, no. 18, p. 1262; 35-

21-553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125; 35-21474, vol. 19, no. 12, p. 888
Consolidated Natural Gas Service Company, Inc., 35-21553, vol. 19, no. 20, p. 1393
Consolidated System LNG Company, 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125
Continental Concepts, LR-8973, vol. 19, no. 4, p. 361
Continental Illinois Leasing Corporation, IC-11024, vol. 19, no. 5, p. 392; IC-11047, vol. 19, no. 8, p. 607
Continental Income Fund, Inc., IC-11011, vol. 19, no. 3, p. 174; IC-11035, vol. 19, no. 7, p. 519
Continental Petroleum, Inc., LR-8961, vol. 19, no. 1, p. 65
Contrafund, Congress Street Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Cook & Co., Inc., 34-16705, vol. 19, no. 15, p. 1088
Cook, L. Howard, 34-16705, vol. 19, no. 15, p. 1088
Copenhagen Handelsbank, IC-11112, vol. 19, no. 15, p. 1142; IC-11075, vol. 19, no. 12, p. 894
Corenco Corporation, 34-16521, vol. 19, no. 5, p. 376
Cornerstone Financial Services, Inc., IC-11009, vol. 19, no. 3, p. 172
Corporate Bond Trust, Series 1 and Subsequent Series, The, IC-11147, vol. 19, no. 19, p. 1341; IC-11116, vol. 19, no. 15, p. 1144; IC-11010, vol. 19, no. 3, p. 173
Corporate Income Trust, Series 1 and Subsequent Series, IC-11010, vol. 19, no. 3, p. 173
Coulson, Jack C., LR-8989, vol. 19, no. 6, p. 461; LR-9055, vol. 19, no. 16, p. 1199
Coven, Bernard J., 34-16448, vol. 19, no. 1, p. 12
Covington-Knox, Inc., 34-16554, vol. 19, no. 7, p. 501
Cowen & Company, 34-16679, vol. 19, no. 13, p. 926
Craig, David R., 34-16666, vol. 19, no. 13, p. 919
Credit Lyonnais North America, Inc., IC-11040, vol. 19, no. 8, p. 597; IC-11071, vol. 19, no. 11, p. 843
Crested Butte Silver Mining, Inc., LR-8987, vol. 19, no. 6, p. 460
Crum, William P., Jr., 34-16583, vol. 19, no. 9, p. 654
CNG Coal Company, 35-21553, vol. 19, no. 20, p. 1393
CNG Development Company Ltd., 35-21553, vol. 19, no. 20, p. 1393
CNG Producing Company, 35-21388, vol. 19, no. 4, p. 333; 35-21503, vol. 19, no. 15, p. 1119; 35-21425, vol. 19, no. 7, p. 514; 35-21535, vol. 19, no. 18, p. 1262; 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125
CNG Research Company, 35-21553, vol. 19, no. 20, p. 1393
CUIC Investors Co. #12, IC-11047, vol. 19, no. 8, p. 607; IC-11024, vol. 19, no. 5, p. 392

Davis, Chester C., LR-9032, vol. 19, no. 12, p. 906
Davis, James A., 34-16584, vol. 19, no. 9, p. 654
Davis, Peter S., Esq., LR-9034, vol. 19, no. 13, p. 971
Dental Health Services, Inc., LR-9059, vol. 19, no. 16, p. 1202
Deutsch, James K., LR-9058, vol. 19, no. 16, p. 1201
Devonshire Street Fund, Inc., IC-11127, vol. 19, no. 17, p. 1242; IC-11163, vol. 19, no. 20, p. 1428
Difund, Inc., IC-11012, vol. 19, no. 3, p. 175; IC-11044, vol. 19, no. 8, p. 604
Doll Fund, Inc., IC-11007, vol. 19, no. 2, p. 136
Doyle, James S., LR-9045, vol. 19, no. 14, p. 1052; LR-9052, vol. 19, no. 16, p. 1198
Dreyfus A Bonds Plus, Inc., IC-11101, vol. 19, no. 14, p. 1044
Dreyfus Liquid Assets, Inc., IC-11101, vol. 19, no. 14, p. 1044
Dreyfus Rainbow Annuity Variable Account A, The, IC-11101, vol. 19, no. 14, p. 1044
Dreyfus Tax Exempt Money Market Fund, Inc., IC-11134, vol. 19, no. 18, p. 1265
Dubinsky, Albert I., LR-8985, vol. 19, no. 6, p. 459
Duke, Douglas, LR-9026, vol. 19, no. 11, p. 847
Duncan, Robert C., LR-8960, vol. 19, no. 1, p. 65

Eagle Management & Trust Co., 34-16679, vol. 19, no. 13, p. 926
Eagle Roofing & Art Metals, Inc., LR-8981, vol. 19, no. 6, p. 458
East Ohio Gas Company, The, 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125

Eastern Edison Company, 35-21490, vol. 19, no. 14, p. 1022; 35-21409, vol. 19, no. 6, p. 440; 35-21374, vol. 19, no. 2, p. 116
Eastern Utilities Associates, 35-21490, vol. 19, no. 14, p. 1022; 35-21409, vol. 19, no. 6, p. 440; 35-21514, vol. 19, no. 16, p. 1168; 35-21560, vol. 19, no. 20, p. 1403; 35-21374, vol. 19, no. 2, p. 116
Eaton & Howard Cash Management Fund, IC-10990, vol. 19, no. 1, p. 43
Eaton & Howard, Vance Sanders Inc., IC-11026, vol. 19, no. 5, p. 402
Eberstadt & Co., Inc., F., LR-9010, vol. 19, no. 9, p. 744
Eberstadt Asset Management, Inc., IC-11120, vol. 19, no. 16, p. 1184; IC-11049, vol. 19, no. 9, p. 724; LR-9010, vol. 19, no. 9, p. 744
Eberstadt Fund Management, Inc., IC-11021, vol. 19, no. 4, p. 352; IC-11022, vol. 19, no. 4, p. 356; IC-11120, vol. 19, no. 16, p. 1184; IC-11037, vol. 19, no. 7, p. 521; IC-11038, vol. 19, no. 7, p. 522; IC-11049, vol. 19, no. 9, p. 724; LR-9010, vol. 19, no. 9, p. 744
Econetics, Inc., 34-16664, vol. 19, no. 13, p. 918; 34-16516, vol. 19, no. 5, p. 366
El Taco, Inc., LR-9004, vol. 19, no. 9, p. 742
Electronic Control Systems, Inc., 33-6209, vol. 19, no. 19, p. 1296
Elizabethtown Water Company, 39-561, vol. 19, no. 15, p. 1132; 39-556, vol. 19, no. 11, p. 833
Ellis, Richard C., 34-16725, vol. 19, no. 16, p. 1159
Energy Associates, Incorporated, LR-8961, vol. 19, no. 1, p. 65
Engle, Clyde William, LR-9071, vol. 19, no. 19, p. 1347; LR-9072, vol. 19, no. 19, p. 1349
Equity Growth Fund of America, Inc., IC-10995, vol. 19, no. 1, p. 54
Ernst & Company, Inc., 34-16679, vol. 19, no. 13, p. 926
Evans, Max, LR-8987, vol. 19, no. 6, p. 460
EFIC Investors Co. #12, IC-11047, vol. 19, no. 8, p. 607; IC-11024, vol. 19, no. 5, p. 392
ETI Corporation, 34-16584, vol. 19, no. 9, p. 654
ETI Development Company, 34-16583, vol. 19, no. 9, p. 654
ETI Investment Corporation, 34-16584, vol. 19, no. 9, p. 654
ETI Management Company, 34-16584, vol. 19, no. 9, p. 654
ETI Resources, Inc., 34-16584, vol. 19, no. 9, p. 654
EUA Service Company, 35-21490, vol. 19, no. 14, p. 1022

Fairchild Camera and Instrument Corporation, LR-8963, vol. 19, no. 1, p. 66
Fairmont Building and Investment Company, 33-6209, vol. 19, no. 19, p. 1296
Family Record Plan, Inc., LR-8986, vol. 19, no. 6, p. 460; LR-9018, vol. 19, no. 10, p. 790
Farm & Ranch Financial, Inc., LR-9030, vol. 19, no. 11, p. 849
Farris, Jamie Matlick, LR-8959, vol. 19, no. 1, p. 65
Fava, Vincent, LR-9036, vol. 19, no. 13, p. 971; LR-9006, vol. 19, no. 9, p. 743
Federated Convertible Income Securities, Inc., IC-11115, vol. 19, no. 15, p. 1143; IC-11146, vol. 19, no. 19, p. 1340
Federated Money Market Trust, IC-11106, vol. 19, no. 14, p. 1049; IC-11063, vol. 19, no. 11, p. 835
Federated Tax-Free Trust, IC-11117, vol. 19, no. 16, p. 1180
Fidelity Aggressive Income Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Asset Investment Trust, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Cash Reserves, IC-11015, vol. 19, no. 3, p. 179; IC-11107, vol. 19, no. 15, p. 1132; IC-11036, vol. 19, no. 7, p. 519; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Corporate Bond Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Daily Income Trust, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331; IC-11078, vol. 19, no. 12, p. 897
Fidelity Destiny Fund, IC-11142, vol. 19, no. 19, p. 1331
Fidelity Equity-Income Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Fund, IC-11142, vol. 19, no. 19, p. 1331
Fidelity Fund, Puritan Fund, IC-11107, vol. 19, no. 15, p. 1132
Fidelity Government Securities Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity High Yield Municipals, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Limited Term Muncipals, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331

Fidelity Money Market Trust, IC-11027, vol. 19, no. 5, p. 403; IC-11107, vol. 19, no. 15, p. 1132; IC-11054, vol. 19, no. 9, p. 736; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Municipal Bond Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Tax-Exempt Money Market Trust, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331; IC-10999, vol. 19, no. 1, p. 58
Fidelity Thrift Trust, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Fidelity Trend Fund, IC-11142, vol. 19, no. 19, p. 1331
Fidelity Trend Fund, Salem Fund, IC-11107, vol. 19, no. 15, p. 1132
Fidelity Triad Fund, IC-11107, vol. 19, no. 15, p. 1132; IC-11142, vol. 19, no. 19, p. 1331
Field Planning Corporation, LR-8967, vol. 19, no. 2, p. 139
Fields, Douglas P., LR-9034, vol. 19, no. 13, p. 971; LR-8976, vol. 19, no. 5, p. 408
Finance Company of Pennsylvania, The, IC-11102, vol. 19, no. 14, p. 1047; IC-11048, vol. 19, no. 9, p. 721
First Citizens Municipal Corporation, 34-16725, vol. 19, no. 16, p. 1159
First Financial Equity Corporation, LR-8980, vol. 19, no. 5, p. 409; LR-9012, vol. 19, no. 9, p. 745
First Financial Group of Texas, Inc., LR-9047, vol. 19, no. 14, p. 1053; LR-9067, vol. 19, no. 18, p. 1287
First Multifund for Daily Income, Inc., IC-11152, vol. 19, no. 20, p. 1409; 34-16621, IC-11064, vol. 19, no. 11, p. 804; 34-16622, IC-11065, vol. 19, no. 11, p. 805
First Multifund of America, Inc., 34-16621, IC-11064, vol. 19, no. 11, p. 804; 34-16622, IC-11065, vol. 19, no. 11, p. 805
First Multifund Advisory Corp., 34-16621, IC-11064, vol. 19, no. 11, p. 804; 34-16622, IC-11065, vol. 19, no. 11, p. 805
First National Bank & Trust Company of Oklahoma, 34-16679, vol. 19, no. 13, p. 926
First National Bank in Grand Junction, 34-16679, vol. 19, no. 13, p. 926
Fitzgerald, DeArman & Roberts, Inc., LR-9053, vol. 19, no. 16, p. 1198
Fitzgerald, Keith R., LR-9053, vol. 19, no. 16, p. 1198
564 Southern Boulevard Corporation, IC-11096, vol. 19, no. 14, p. 1033; IC-11135, vol. 19, no. 18, p. 1268
Five Star Coal Company, Inc., LR-8969, vol. 19, no. 3, p. 182
Fleiss, William S., 34-16642, vol. 19, no. 12, p. 872
Flick, Richard C., LR-9004, vol. 19, no. 9, p. 742
Fontaine, Ronald C., 34-16725, vol. 19, no. 16, p. 1159
Frank, Conrad, LR-8967, vol. 19, no. 2, p. 139
Franklin National Bank, LR-9029, vol. 19, no. 11, p. 849
Franklin New York Corporation, LR-9029, vol. 19, no. 11, p. 849
Freedom Fund, Inc., IC-11009, vol. 19, no. 3, p. 172
Friedman, Frederick M., LR-9035, vol. 19, no. 13, p. 971; LR-8976, vol. 19, no. 5, p. 408; LR-8981, vol. 19, no. 6, p. 458; LR-8994, vol. 19, no. 7, p. 527
Fundpack Management, Inc., LR-9026, vol. 19, no. 11, p. 847
Fundpack, Inc., The, LR-9026, vol. 19, no. 11, p. 847
Furman Selz Mager Dietz & Birney Incorporated, IC-11001, vol. 19, no. 1, p. 60
Futrell, Robert L., LR-9002, vol. 19, no. 8, p. 613; LR-9028, vol. 19, no. 11, p. 849
Future Communities, Inc., LR-9009, vol. 19, no. 9, p. 744

G. L. Corporation, 34-16743, vol. 19, no. 17, p. 1215
Gaston, Don F., IC-11041, vol. 19, no. 8, p. 600; LR-8997, vol. 19, no. 8, p. 610; IC-11084, vol. 19, no. 12, p. 903
General Dynamics Corporation, LR-9021, vol. 19, no. 10, p. 792
General Public Utilities Corporation, 35-21410, vol. 19, no. 6, p. 441; 35-21358, vol. 19, no. 1, p. 34; 35-21371, vol. 19, no. 2, p. 111; 35-21372, vol. 19, no. 2, p. 113; 35-21375, vol. 19, no. 2, p. 118; 35-21376, vol. 19, no. 2, p. 119; 35-21474, vol. 19, no. 12, p. 888
General Resources Corporation, LR-9037, vol. 19, no. 13, p. 972
Georgia Power Company, 35-21501, vol. 19, no. 15, p. 1115; 35-21483, vol. 19, no. 13, p. 950; 35-21403, vol. 19, no. 5, p. 386; 35-21407, vol. 19, no. 6, p. 438; 35-21436, vol. 19, no. 9, p. 703; 35-21446, vol. 19, no. 9, p. 718; 35-21539, vol. 19, no. 19, p. 1311; 35-21451, vol. 19, no. 10, p. 770; 35-21471, vol. 19, no. 12, p. 883

Gerlach, Karl J., LR-9020, vol. 19, no. 10, p. 791
Gilley, James R., LR-9011, vol. 19, no. 9, p. 745
Giuffrida, Frank J., 34-16586, vol. 19, no. 9, p. 657
Gleason, Harold V., LR-9029, vol. 19, no. 11, p. 849
Godfrey, Charles B., 34-16749, vol. 19, no. 17, pp. 1221 & 1224
Goldberg, Paul A., 34-16725, vol. 19, no. 16, p. 1159
Golden Gate Income Securities, Inc., IC-11109, vol. 19, no. 15, p. 1136; IC-11153, vol. 19, no. 20, p. 1410
Gooch, Leonard L., 34-16751, vol. 19, no. 17, pp. 1229 & 1231
Goss, Zeno A., LR-8961, vol. 19, no. 1, p. 65
Granite State Electric Company, 35-21500, vol. 19, no. 15, p. 1112; 35-21458, vol. 19, no. 11, p. 819
Grantham, Mayo, Van Otterloo & Co., IC-11001, vol. 19, no. 1, p. 60
Great Lakes Dredge & Dock Company, LR-9013, vol. 19, no. 10, p. 788
Great Southern Corporation, 34-16526, vol. 19, no. 5, p. 378
Greene, Jay, LR-8986, vol. 19, no. 6, p. 460; LR-9018, vol. 19, no. 10, p. 790
Greenspan, Gerald, LR-8986, vol. 19, no. 6, p. 460; LR-9018, vol. 19, no. 10, p. 790
Gulf Power Company, 35-21483, vol. 19, no. 13, p. 950; 35-21385, vol. 19, no. 3, p. 167; 35-21403, vol. 19, no. 5, p. 386; 35-21501, vol. 19, no. 15, p. 1115; 35-21419, vol. 19, no. 7, p. 506; 35-21414, vol. 19, no. 8, p. 574; 35-21427, vol. 19, no. 8, p. 576; 35-21436, vol. 19, no. 9, p. 703; 35-21446, vol. 19, no. 9, p. 718; 35-21451, vol. 19, no. 10, p. 770; 35-21348, vol. 19, no. 1, p. 19
GPU Service Corporation, 35-21358, vol. 19, no. 1, p. 34; 35-21371, vol. 19, no. 2, p. 111; 35-21372, vol. 19, no. 2, p. 113
GSC Enterprises, Inc., LR-9072, vol. 19, no. 19, p. 1349

Halajen Mineral Development Corp., LR-9048, vol. 19, no. 15, p. 1152
Hall, David H., LR-9013, vol. 19, no. 10, p. 788
Hamilton Funds, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Hamilton Growth Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Harter Bancorp, 34-16764, vol. 19, no. 18, p. 1253
Hartford Electric Light Company, The, 35-21484, vol. 19, no. 13, p. 951; 35-21440, vol. 19, no. 9, p. 709
Hawks, Richard G., 34-16559, vol. 19, no. 7, p. 504
Hayes, Warren K., 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151
Heritage Securities, Inc., IC-11111, vol. 19, no. 15, p. 1141; IC-11073, vol. 19, no. 12, p. 889
Heritage Trust Company, LR-9016, vol. 19, no. 10, p. 789
Hetra Computer and Communications Industries, Inc., LR-9068, vol. 19, no. 19, p. 1346
Hibbard & O'Connor Government Securities, Inc., LR-8964, vol. 19, no. 2, p. 138
Hiller Aviation, Inc., LR-8986, vol. 19, no. 6, p. 460
Hoak, Daniel R., LR-9062, vol. 19, no. 17, p. 1247
Hodge, C. M., LR-9000, vol. 19, no. 8, p. 611
Holding Trust, LR-9026, vol. 19, no. 11, p. 847
Holdings of U.S. Government Securities, Inc., LR-9026, vol. 19, no. 11, p. 847
Holman, Alan Richard, 34-16725, vol. 19, no. 16, p. 1159
Holschuh, Edward E., LR-8988, vol. 19, no. 6, p. 461
Home Savings and Loan Association, 34-16520, vol. 19, no. 5, p. 376
Howton, William H., LR-9047, vol. 19, no. 14, p. 1053; LR-9067, vol. 19, no. 18, p. 1287
Hughes Air Corp., LR-9032, vol. 19, no. 12, p. 906
Hughes, Howard R., LR-9032, vol. 19, no. 12, p. 906
Human Service Group, Inc., 34-16600, vol. 19, no. 10, p. 753
Hunziker, Robert, 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151
Hycel, Inc., 34-16663, vol. 19, no. 13, p. 918; 34-16522, vol. 19, no. 5, p. 376
Hyman, Irwin, LR-9001, vol. 19, no. 8, p. 612; LR-9019, vol. 19, no. 10, p. 791
Hyun, Edmund C. H., 34-16705, vol. 19, no. 15, p. 1088

Independence Fund, Inc., IC-11009, vol. 19, no. 3, p. 172
Indiana & Michigan Electric Company, 35-21352, vol. 19, no. 1, p. 25; 35-21488, vol. 19, no. 14, p. 1019; 35-

21489, vol. 19, no. 14, p. 1020; 35-21404, vol. 19, no. 5, p. 387; 35-21536, vol. 19, no. 18, p. 1263; 35-21442, vol. 19, no. 9, p. 715; 35-21444, vol. 19, no. 9, p. 717; 35-21453, vol. 19, no. 10, p. 773; 35-21554, vol. 19, no. 20, p. 1395; 35-21558, vol. 19, no. 20, p. 1400; 35-21366, vol. 19, no. 2, p. 101
Indiana & Michigan Power Company, 35-21431, vol. 19 , no. 8, p. 580
Inland Gas Company, Inc., The, 35-21508, vol. 19, no. 15, p. 1128; 35-21541, vol. 19, no. 19, p. 1316; 35-21373, vol. 19, no. 2, p. 114; 35-21377, vol. 19, no. 2, p. 120
Institute for Financial Planning, 34-16585, IA-713, vol. 19, no. 9, p. 656
Intercapital High Yield Securities, Inc., IC-11044, vol. 19, no. 2, p. 131
Intercapital Industry-Valued Securities, Inc., IC-11085, vol. 19. no. 12, p. 904
Intercapital Liquid Asset Fund Inc., IC-10991, vol. 19, no. 1, p. 45
Intercapital Tax-Exempt Securities Inc., IC-11085, vol. 19, no. 12, p. 904
International South African, N.V., LR-8998, vol. 19, no. 8, p. 610
International Trade Development of Costa Rica, S.A., 34-16587, vol. 19, no. 9, p. 658
Investment & Capital Management, Inc., 34-16679, vol. 19, no. 13, p. 926
Investment Information, Inc. et al., LR-9039, vol. 19, no. 13, p. 972
Investment Information, Inc., 34-16679, vol. 19, no. 13, p. 926
Investment Research Group, Inc., LR-9020, vol. 19, no. 10, p. 791
Investors Diversified Services, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
Investors Economic Systems, Inc., LR-9064, vol. 19, no. 18, p. 1286
Investors Mutual, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
Investors Selective Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
Investors Stock Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
Investors Syndicate of America, Inc., IC-11139, vol. 19, no. 18, p. 1284
Investors Variable Payment Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
Itel Corporation, 39-553, vol. 19, no. 10, p. 778; 39-559, vol. 19, no. 14, p. 1033
Itel Finance International N.V., 39-553, vol. 19, no. 10, p. 778
Ivy Fund, Inc., IC-11001, vol. 19, no. 1, p. 60
IDS Bond Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS Cash Management Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS Growth Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS High Yield Tax-Exempt Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS New Dimensions Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS Progressive Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IDS Tax-Exempt Bond Fund, Inc., IC-11091, vol. 19, no. 13, p. 960; IC-11128, vol. 19, no. 17, p. 1243
IES Management Group, Inc., The, 34-16784, IA-720, vol. 19, no. 20, p. 1379
INA Capital Bond Trust, IC-11108, vol. 19, no. 15, p. 1135; IC-11150, vol. 19, no. 19, p. 1346
ISC Financial Corporation, 34-16548, vol. 19, no. 6, p. 433

Jacobs, Jerry, LR-8997, vol. 19, no. 8, p. 610
Jacobsen, Gary B., IC-11151, vol. 19, no. 20, p. 1405
Jaffer, Yasin, 34-16480, vol. 19, no. 3, p. 162; 34-16596, vol. 19, no. 9, p. 696
Jalyn, Inc., LR-9002, vol. 19, no. 8, p. 613; LR-9028, vol. 19, no. 11, p. 849
Jastromb, Marshall L., LR-9026, vol. 19, no. 11, p. 847
Jefferies & Company. Inc., 34-16679, vol. 19, no. 13, p. 926
Jersey Central Power & Light Company, 35-21399, vol. 19, no. 5, p. 379; 35-21410, vol. 19, no. 6, p. 441; 35-21549, vol. 19, no. 20, p. 1389; 35-21358, vol. 19, no. 1, p. 34; 35-21360, vol. 19, no. 1, p. 38; 35-21369, vol. 19, no. 2, p. 109; 35-21376, vol. 19, no. 2, p. 119; 35-21474, vol. 19, no. 12, p. 888
Jet Capital Corporation, IC-11097, vol. 19, no. 14, p. 1035; IC-11098, vol. 19, no. 14, p. 1037
John Hancock Cash Management Trust, IC-11013, vol. 19, no. 3, p. 176
John Hancock Distributors, Inc., IC-11013, vol. 19, no. 3, p. 176
John Hancock Mutual Life Insurance Company, IC-11123, vol. 19, no. 16, p. 1188; IC-11046, vol. 19, no. 8, p. 605; IC-11066, vol. 19, no. 11, p. 838; IC-11077, vol. 19, no. 12, p. 897; IC-11083, vol. 19, no. 12, p. 901; IC-11104, vol. 19, no. 14, p. 1048
John Hancock Variable Account A-1, IC-11104, vol. 19, no. 14, p. 1048; IC-11066, vol. 19, no. 11, p. 838; IC-

11046, vol. 19, no. 8, p. 605; IC-11077, vol. 19, no. 12, p. 897
John Hancock Variable Account C-1, IC-11123, vol. 19, no. 16, p. 1188; IC-11083, vol. 19, no. 12, p. 901
Johnson, Ward S., LR-8962, vol. 19, no. 1, p. 66
Johnston Mutual Fund, The, IC-11121, vol. 19, no. 16, p. 1185; IC-11149, vol. 19, no. 19, p. 1344
Johnston, David R., LR-9065, vol. 19, no. 18, p. 1286
Jones & Co. Daily Passport Cash Trust, Edward D., IC-11162, vol. 19, no. 20, p. 1426
Julius, Marvin, LR-9059, vol. 19, no. 16, p. 1202

Kaiser, Arnold, LR-8997, vol. 19, no. 8, p. 610
Kansas City Southern Industries, Inc., LR-9013, vol. 19, no. 10, p. 788
Keegstra, Nicholas H., 34-16725, vol. 19, no. 16, p. 1159
Keenum, Gerald W., LR-8961, vol. 19, no. 1, p. 65
Kekich, Jack M., 34-16641, vol. 19, no. 12, p. 871
Kelly Associates, Ltd., 34-16679, vol. 19, no. 13, p. 926
Kendall, John R., IC-11067, vol. 19, no. 11, p. 840; LR-9026, vol. 19, no. 11, p. 847
Kentucky Coal Resources, Ltd., LR-9048, vol. 19, no. 15, p. 1152
Kentucky Power Company, 35-21488, vol. 19, no. 14, p. 1019; 35-21438, vol. 19, no. 9, p. 707; 35-21442, vol. 19, no. 9, p. 715; 35-21453, vol. 19, no. 10, p. 773; 35-21352, vol. 19, no. 1, p. 25
Keystone Custodian Funds, Inc., IC-11009, vol. 19, no. 3, p. 172
Keystone International Fund, Inc., IC-11009, vol. 19, no. 3, p. 172
Keystone Massachusetts, Inc., IC-11009, vol. 19, no. 3, p. 172
Kilpatrick, John, LR-9000, vol. 19, no. 8, p. 611
Kingsport Power Company, 35-21488, vol. 19, no. 14, p. 1019; 35-21401, vol. 19, no. 5, p. 382; 35-21442, vol. 19, no. 9, p. 715; 35-21453, vol. 19, no. 10, p. 773; 35-21352, vol. 19, no. 1, p. 25
Klausman, Henry M., 34-16585, IA-713, vol. 19, no. 9, p. 656
Kleiner, Burt, LR-8998, vol. 19, no. 8, p. 610
Kleinman, Aaron A., LR-9048, vol. 19, no. 15, p. 1152
Kleinman, Aaron Albert, LR-9005, vol. 19, no. 9, p. 742
Knox, Roger Kenneth, 34-16554, vol. 19, no. 7, p. 501
Kolterman, Robert M., LR-8999, vol. 19, no. 8, p. 611
Korhumel, Lee, 34-16639, vol. 19, no. 12, p. 866

L.N.I.B., LR-9004, vol. 19, no. 9, p. 742
La Pointe Industries, Inc., LR-8977, vol. 19, no. 5, p. 408
Laclede Steel Company, LR-9013, vol. 19, no. 10, p. 788
Landi, Frank J., LR-9046, vol. 19, no. 14, p. 1052
Langbein, Thomas K., 34-16638, vol. 19, no. 12, pp. 863 & 866
Language Learning Systems, LR-8972, vol. 19, no. 4, p. 361
Larsen, John L., LR-8987, vol. 19, no. 6, p. 460
Larsen, Lloyd, LR-8987, vol. 19, no. 6, p. 460
Lee National Corporation, 34-16737, vol. 19, no. 16, p. 1165; 34-16765, vol. 19, no. 18, p. 1253
Lee, John H., & Co., 34-16679, vol. 19, no. 13, p. 926
Left Fork, Ltd., LR-8982, vol. 19, no. 6, p. 458
Lerner, David, Littenberg & Samuel, LR-9048, vol. 19, no. 15, p. 1152
Levy, S. Jay, 34-16622, IC-11065, vol. 19, no. 11, p. 805
Lewin, Kurt I., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Liakas, Nicholas V., LR-9063, vol. 19, no. 17, p. 1248
Libco Corporation, LR-9071, vol. 19, no. 19, p. 1347
Life Insurance Company of North America Separate Account A, IC-11126, vol. 19, no. 16, p. 1192; IC-11154, vol. 19, no. 20, p. 1410
Life Insurance Company of North America, IC-11126, vol. 19, no. 16, p. 1192; IC-11154, vol. 19, no. 20, p. 1410
Link-Up + 1 Securities, Inc., LR-8973, vol. 19, no. 4, p. 361

Lipper, Kenneth, IC-11119, vol. 19, no. 16, p. 1184; IC-11050, vol. 19, no. 9, p. 726; LR-9010, vol. 19, no. 9, p. 744
Liquid Capital Income, Inc., IC-11148, vol. 19, no. 19, p. 1342
Listrom Company, Inc., Lowell H., 34-16750, vol. 19, no. 17, pp. 1224 & 1228
Listrom, Lowell H., 34-16750, vol. 19, no. 17, pp. 1224 & 1228
Lively, Dean Edward, 34-16714A, vol. 19, no. 18, p. 1249; 34-16714, vol. 19, no. 15, p. 1096
Lodge, David R., 34-16637, vol. 19, no. 12, pp. 861 & 863
Lopata, Monte L., LR-8985, vol. 19, no. 6, p. 459
Lord Abbett Developing Growth Fund, Inc., IC-11034, vol. 19, no. 7, p. 518; IC-11006, vol. 19, no. 2, p. 135
Louis & Co., Inc., R. J., IA-712, vol. 19, no. 8, p. 607; LR-8996, vol. 19, no. 8, p. 610; LR-9025, vol. 19, no. 11, p. 847
Louisiana Power & Light Company, 35-21497, vol. 19, no. 14, p. 1030; 35-21505, vol. 19, no. 15, p. 1123; 35-21513, vol. 19, no. 16, p. 1167; 35-21520, vol. 19, no. 16, p. 1176; 35-21426, vol. 19, no. 8, p. 575; 35-21540, vol. 19, no. 19, p. 1313; 35-21448, vol. 19, no. 10, p. 767; 35-21557, vol. 19, no. 20, p. 1399; 35-21464, vol. 19, no. 11, p. 828; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103; 35-21473, vol. 19, no. 12, p. 886
Lowell Gas Company, 35-21392, vol. 19, no. 4, p. 340; 35-21432, vol. 19, no. 8, p. 581; 35-21359, vol. 19, no. 1, p. 36
Lubin, Robert J., 34-16725, vol. 19, no. 16, p. 1159
Lubitz, Sheldon, LR-9069, vol. 19, no. 19, p. 1347
Luftig, Paul, LR-9029, vol. 19, no. 11, p. 849
Lummis, William R., LR-9032, vol. 19, no. 12, p. 906
Lyon, David E., LR-9042, vol. 19, no. 13, p. 975

Madden, Terrence C., LR-9064, vol. 19, no. 18, p. 1286
Magdovitz, Bernard, LR-8975, vol. 19, no. 5, p. 407
Magellan Fund, IC-11142, vol. 19, no. 19, p. 1331
Magellan Fund, Fidelity Destiny Fund, IC-11107, vol. 19, no. 15, p. 1132
Maine Yankee Atomic Power Company, 35-21543, vol. 19, no. 19, p. 1320
Manus, Allen S., LR-8998, vol. 19, no. 8, p. 610
Manus, Inc., LR-9048, vol. 19, no. 15, p. 1152; LR-9005, vol. 19, no. 9, p. 742
Marantette, David T., III, 34-16724, IC-11124, IA-718, vol. 19, no. 16, p. 1158
Margala, Joseph, LR-9078, vol. 19, no. 20, p. 1430; LR-8965, vol. 19, no. 2, p. 138
Marholin, Dr. George, LR-9059, vol. 19, no. 16, p. 1202
Marose, David, LR-9055, vol. 19, no. 16, p. 1199
Marqusee, John E., LR-9069, vol. 19, no. 19, p. 1347
Marsh & McLennan Management Company, IC-11021, vol. 19, no. 4, p. 352; IC-11022, vol. 19, no. 4, p. 356; IC-11037, vol. 19, no. 7, p. 521; IC-11038, vol. 19, no. 7, p. 522
Maryland National Bank, 34-16679, vol. 19, no. 13, p. 926
Massachusetts Companies, Inc., The, IC-11009, vol. 19, no. 3, p. 172
Massachusetts Financial Services Company, IC-11118, vol. 19, no. 16, p. 1183; IC-11055, vol. 19, no. 9, p. 738
Masachusetts Fund For Income, IC-11009, vol. 19, no. 3, p. 172
Massachusetts Fund For Tax Exempt Income, IC-11009, vol. 19, no. 3, p. 172
Matheson & Company, Don. P., 34-16640, IA-715, vol. 19, no. 12, p. 869
Matheson, Donald Phelps, 34-16640, IA-715, vol. 19, no. 12, p. 869
Matusow, Jerome, LR-9001, vol. 19, no. 8, p. 612; LR-9019, vol. 19, no. 10, p. 791
Maxa Corporation, LR-9048, vol. 19, no. 15, p. 1152
McCarthy, Daniel J., LR-9060, vol. 19, no. 16, p. 1202; LR-9027, vol. 19, no. 11, p. 848
McDowell Enterprises, Inc., LR-9057, vol. 19, no. 16, p. 1200
McDowell, A. V., LR-9000, vol. 19, no. 8, p. 611
McGregor, Donald R., LR-9048, vol. 19, no. 16, p. 1152
Mendell, M. Lester, 34-16621, IC-11064, vol. 19, no. 11, p. 804
Mesirow & Company, 34-16679, vol. 19, no. 13, p. 926

Metropolitan Edison Company, 35-21399, vol. 19, no. 5, p. 379; 35-21410, vol. 19, no. 6, p. 441; 35-21358, vol. 19, no. 1, p. 34; 35-21360, vol. 19, no. 1, p. 38; 35-21368, vol. 19, no. 2, p. 107; 35-21376, vol. 19, no. 2, p. 119; 35-21474, vol. 19, no. 12, p. 888
Mezrahi, Joseph, LR-9048, vol. 19, no. 15, p. 1152
Michael, Patrick, LR-9000, vol. 19, no. 8, p. 611
Michigan Power Company, 34-21488, vol. 19, no. 14, p. 1019; 35-21418, vol. 19, no. 7, p. 505; 35-21453, vol. 19, no. 10, p. 773; 35-21357, vol. 19, no. 1, p. 33; 35-21381, vol. 19, no. 2, p. 129
Mick Stack Associates, Inc., LR-9030, vol. 19, no. 11, p. 849
Mick, Kenneth L., LR-9030, vol. 19, no. 11, p. 849
Middle South Energy, Inc., 35-21400, vol. 19, no. 5, p. 380; 35-21429, vol. 19, no. 8, p. 578; 35-21347, vol. 19, no. 1, p. 17; 35-21473, vol. 19, no. 12, p. 886
Middle South Services, Inc., 35-21477, vol. 19, no. 13, p. 941; 35-21525, vol. 19, no. 17, p. 1238; 35-21439, vol. 19, no. 9, p. 708; 35-21552, vol. 19, no. 20, p. 1391
Middle South Utilities, Inc., 35-21477, vol. 19, no. 13, p. 941; 35-21493, vol. 19, no. 14, p. 1026; 35-21400, vol. 19, no. 5, p. 380; 35-21502, vol. 19, no. 15, p. 1118; 35-21505, vol. 19, no. 15, p. 1123; 35-21412, vol. 19, no. 6, p. 445; 35-21520, vol. 19, no. 16, p. 1176; 35-21521, vol. 19, no. 16, p. 1177; 35-21525, vol. 19, no. 17, p. 1238; 35-21426, vol. 19, no. 8, p. 575; 35-21429, vol. 19, no. 8, p. 578; 35-21532, vol. 19, no. 18, p. 1258; 35-21439, vol. 19, no. 9, p. 708; 35-21552, vol. 19, no. 20, p. 1391; 35-21459, vol. 19, no. 11, p. 821; 35-21464, vol. 19, no. 11, p. 828; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103; 35-21370, vol. 19, no. 2, p. 110; 35-21472, vol. 19, no. 12, p. 885; 35-21473, vol. 19, no. 12, p. 886
Miller, Edward H., Jr., LR-8969, vol. 19, no. 3, p. 182
Miller, Frank M., 34-16584, vol. 19, no. 9, p. 654
Miller, John Scott, IA-716, vol. 19, no. 15, p. 1148
Miller, Willard John, IA-716, vol. 19, no. 15, p. 1148
Mims, Jerry F., LR-8961, vol. 19, no. 1, p. 65
Mississippi Power & Light Company, 34-21494, vol. 19, no. 14, p. 1027; 35-21520, vol. 19, no. 16, p. 1176; 35-21426, vol. 19, no. 8, p. 575; 35-21540, vol. 19, no. 19, p. 1313; 35-21460, vol. 19, no. 11, p. 822; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103; 35-21473, vol. 19, no. 12, p. 886; 35-21483, vol. 19, no. 13, p. 950; 35-21403, vol. 19, no. 5, p. 386; 35-21501, vol. 19, no. 15, p. 1115; 35-21510, vol. 19, no. 15, p. 1131; 35-21422, vol. 19, no. 7, p. 511; 35-21436, vol. 19, no. 9, p. 703; 35-21446, vol. 19, no. 9, p. 718; 35-21451, vol. 19, no. 10, p. 770
Missouri Acceleration Corporation, 34-1661, vol. 19, no. 13, p. 918; 34-16525, vol. 19, no. 5, p. 377
Monongahela Power Company, 35-21512, vol. 19, no. 16, p. 1166; 35-21378, vol. 19, no. 2, p. 123; 35-21470, vol. 19, no. 12, p. 882
Monroe Clinic, The, 33-6174, vol. 19, no. 3, p. 142
Montana Tax Exempt Income Trust, Series 1, IC-11131, vol. 19, no. 17, p. 1246
Montauk Corporation, LR-8997, vol. 19, no. 8, p. 610
Montaup Electric company, 35-21490, vol. 19, no. 14, p. 1022; 35-21409, vol. 19, no. 6, p. 440; 35-21374, vol. 19, no. 2, p. 116
Montesinos, Jon W., 34-16725, vol. 19, no. 16, p. 1159
Moog Inc., LR-8636, vol. 19, no. 2, p. 137
Moog, William C., LR-8636, vol. 19, no. 2, p. 137
Moore, Gene, LR-9026, vol. 19, no. 11, p. 847
Morgan, Olmstead, Kennedy & Gardner Incorporated, 34-16679, vol. 19, no. 13, p. 926
Mosinee Paper Corporation, LR-9013, vol. 19, no. 10, p. 788
Moss, Sheldon S., LR-9044, vol. 19, no. 14, p. 1051; LR-9015, vol. 19, no. 10, p. 788
Mound, Milton, 34-16621, IC-11064, vol. 19, no. 11, p. 804
Mountainview Associates, LR-9048, vol. 19, no. 15, p. 1152
Munger, Tolles & Rickershauser, 33-6182, vol. 19, no. 5, p. 364
Municipal Bond Fund, Series 1 through Series 43, The, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Municipal Bond Trust, Multi-State Program, Series 1 and Subsequent Series, The, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341

Municipal Bond Trust, Multiple Maturity Series 1 and Subsequent Series, The, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Municipal Bond Trust, Puerto Rico Series 1 and Subsequent Series, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Municipal Bond Trust, Series 44 and Subsequent Series, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Municipal Securities Trust, (Series 1 and Subsequent Series), IC-11143, vol. 19, no. 19, p. 1332
Mutual Investing Foundation, IC-11111, vol. 19, no. 15, p. 1141; IC-11073, vol. 19, no. 12, p. 889
MFS Managed Municipal Bond Trust, IC-11118, vol. 19, no. 16, p. 1183; IC-11055, vol. 19, no. 9, p. 738
MFS Variable Account, IC-10996, vol. 19, no. 1, p. 55
MPO Videotronics, Inc., LR-8997, vol. 19, no. 8, p. 610

Narragansett Capital Corporation, IC-11018, vol. 19, no. 4, p. 348; IC-11043, vol. 19, no. 8, p. 603; IC-11145, vol. 19, no. 19, p. 1336; IC-11151, vol. 19, no. 20, p. 1405
Narragansett Electric Company, The, 35-21500, vol. 19, no. 15, p. 1112; 35-21458, vol. 19, no. 11, p. 819
Natelli, Anthony M., 34-16546, vol. 19, no. 6, p. 432
National Bank of Detroit, IC-11161, vol. 19, no. 20, p. 1423
National Breast Care Centers, Inc., 33-6184, vol. 19, no. 6, p. 419
National Fuel Gas Company, 35-21383, vol. 19, no. 3, p. 164; 35-21384, vol. 19, no. 3, p. 166; 35-21487, vol. 19, no. 14, p. 1014; 35-21402, vol. 19, no. 5, p. 383; 35-21415, vol. 19, no. 6, p. 449; 35-21515, vol. 19, no. 16, p. 1169; 35-21534, vol. 19, no. 18, p. 1261; 35-21441, vol. 19, no. 9, p. 711; 35-21350, vol. 19, no. 1, p. 21
National Fuel Gas Distribution Corporation, 34-21402, vol. 19, no. 5, p. 383; 35-21350, vol. 19, no. 1, p. 21
National Fuel Gas Supply Corporation, 35-21384, vol. 19, no. 3, p. 166; 35-21402, vol. 19, no. 5, p. 383; 35-21441, vol. 19, no. 9, p. 711; 35-21350, vol. 19, no. 1, p. 21; 35-21487, vol. 19, no. 14, p. 1014
National Gas Storage Corporation, 34-21487, vol. 19, no. 14, p. 1014; 35-21441, vol. 19, no. 9, p. 711
National Partnership Investments Associates, IC-11039, vol. 19, no. 7, p. 523; IC-11082, vol. 19, no. 12, p. 900
National Steel Corp., 34-16639, vol. 19, no. 12, p. 866
National Student Marketing Corporation, 34-16546, vol. 19, no. 6, p. 432
Nationwide Life Insurance Company, IC-10996, vol. 19, no. 1, p. 55
Navidad Natural Gas Program 1979, LR-8971, vol. 19, no. 3, p. 183
New England Electric System, 35-21387, vol. 19, no. 3, p. 169; 35-21495, vol. 19, no. 14, p. 1029; 35-21500, vol. 19, no. 15, p. 1112; 35-21523, vol. 19, no. 17, p. 1235; 35-21428, vol. 19, no. 8, p. 577; 35-21430, vol. 19, no. 8, p. 579; 35-21354, vol. 19, no. 1, p. 29; 35-21458, vol. 19, no. 11, p. 819; 35-21462, vol. 19, no. 11, p. 825; 35-21365, vol. 19, no. 2, p. 98
New England Energy Incorporated, 34-21462, vol. 19, no. 11, p. 825; 35-21365, vol. 19, no. 2, p. 98
New England Power Company, 35-21476, vol. 19, no. 13, p. 939; 35-21406, vol. 19, no. 5, p. 390; 35-21500, vol. 19, no. 15, p. 1112; 35-21458, vol. 19, no. 11, p. 819
New England Power Service Company, 35-21495, vol. 19, no. 14, p. 1029; 35-21430, vol. 19, no. 8, p. 579; 35-21354, vol. 19, no. 1, p. 29
New Orleans Public Service Inc., 35-21412, vol. 19, no. 6, p. 445; 35-21413, vol. 19, no. 6, p. 447; 35-21520, vol. 19, no. 16, p. 1176; 35-21540, vol. 19, no. 19, p. 1313; 35-21362, vol. 19, no. 1, p. 41; 35-21472, vol. 19, no. 12, p. 885; 35-21426, vol. 19, no. 8, p. 575; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103; 35-21473, vol. 19, no. 12, p. 886
New York Municipal Trust, (Series 1 and Subsequent Series), IC-11143, vol. 19, no. 19, p. 1332
Nielsen, Darrel L., 34-16479, AS-275, vol. 19, no. 3, p. 158
Nietzel, Donald F., 34-16609, vol. 19, no. 10, p. 760
Nineveh Water Company, 35-21349, vol. 19, no. 1, p. 20; 35-21420, vol. 19, no. 7, p. 507; 35-21358, vol. 19, no. 1, p. 34; 35-21474, vol. 19, no. 12, p. 888
Norris Perne & French, 34-16679, vol. 19, no. 13, p. 926
Northeast Utilities, 35-21538, vol. 19, no. 19, p. 1310

NACA Investors Co. #12, IC-11047, vol. 19, no. 8, p. 607; IC-11024, vol. 19, no. 5, p. 392

O'Donnell, Thomas J., 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151
Ohio Power Company, 35-21480, vol. 19, no. 13, p. 946; 35-21488, vol. 19, no. 14, p. 1019; 35-21491, vol. 19, no. 14, p. 1024; 35-21499, vol. 19, no. 15, p. 1111; 35-21416, vol. 19, no. 6, p. 450; 35-21417, vol. 19, no. 6, p. 451; 35-21533, vol. 19, no. 18, p. 1259; 35-21442, vol. 19, no. 9, p. 715; 35-21537, vol. 19, no. 19, p. 1309; 35-21453, vol. 19, no. 10, p. 773; 35-21457, vol. 19, no. 10, p. 777; 35-21352, vol. 19, no. 1, p. 25; 35-21355, vol. 19, no. 1, p. 31; 35-21474, vol. 19, no. 12, p. 888
Old Security Life Insurance Company, 34-16548, vol. 19, no. 6, p. 433
Olde & Co., Inc., 34-16782, vol. 19, no. 20, p. 1377; 34-16559, vol. 19, no. 7, p. 504
Ollrogge, John P., IA-712, vol. 19, no. 8, p. 607; LR-8996, vol. 19, no. 8, p. 610; LR-9025, vol. 19, no. 11, p. 847
Oman, Frederick P., 34-16679, vol. 19, no. 13, p. 926; LR-9039, vol. 19, no. 13, p. 972
Omega Securities, Inc., LR-9074, vol. 19, no. 19, p. 1350; LR-9079, vol. 19, no. 20, p. 1430
Openheimer Directors Fund, Inc., IC-11058, vol. 19, no. 10, p. 782
Oppenheimer & Co., Inc., 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151; IC-11056, vol. 19, no. 9, p. 741; IC-11056, vol. 19, no. 10, p. 778
Oppenheimer A.I.M. Func, Inc., IC-11058, vol. 19, no. 10, p. 782; IC-11033, vol. 19, no. 7, p. 516
Oppenheimer Asset Management Corporation, IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer Directors Fund, Inc., IC-10997, vol. 19, no. 1, p. 55, IC-11033, vol. 19, no. 7, p. 516
Oppenheimer Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer High Yield Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer Income Fund of Boston, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer Investor Services, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer Monetary Bridge, Inc., IC-11099, vol. 19, no. 14, p. 1040; IC-11141, vol. 19, no. 19, p. 1330
Oppenheimer Option Income Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Oppenheimer Special Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782; IC-10992, vol. 19, no. 1, p. 46; IC-11062, vol. 19, no. 11, p. 834
Oppenheimer Time Fund, Inc., IC-11033, vol. 19, no. 7, p. 516; IC-11058, vol. 19, no. 10, p. 782
Osborne Estates Company, The, IC-11023, vol. 19, no. 4, p. 360; IC-10993, vol. 19, no. 1, p. 49
Outdoor Sports Industries, LR-9071, vol. 19, no. 19, p. 1347

Packer, Wilbur & Co., Inc., 34-16753, vol. 19, no. 17, p. 1231
Paddington Press Limited, LR-9069, vol. 19, no. 19, p. 1347
Page Airways, Inc., LR-9054, vol. 19, no. 16, p. 1198
Paine, Webber Municipial Bond Fund, First Series, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Paine, Webber Municipal Bond Fund, Second Series, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Paine, Webber Municipal Bond Fund, Third Series, IC-11116, vol. 19, no. 15, p. 1144; IC-11147, vol. 19, no. 19, p. 1341
Park Nursing Center, Inc., 34-16725, vol. 19, no. 16, p. 1159
Patterson, Inc., W. A., 34-16641, vol. 19, no. 12, p. 871
Patterson, William A., 34-16641, vol. 19, no. 12, p. 871
Peedo, Endel, LR-8972, vol. 19, no. 4, p. 361; LR-9007, vol. 19, no. 9, p. 743
Penn Pacific Corporation, LR-9043, vol. 19, no. 14, p. 1051; LR-9017, vol. 19, no. 10, p. 790
Pennsylvania Electric Company, 35-21410, vol. 19, no. 6, p. 441; 35-21420, vol. 19, no. 7, p. 507; 35-21349, vol. 19, no. 1, p. 20; 35-21358, vol. 19, no. 1, p. 34; 35-21360, vol. 19, no. 1, p. 38; 35-21376, vol. 19, no. 2, p. 119; 35-21474, vol. 19, no. 12, p. 888; 35-21399, vol. 19, no. 5, p. 379
Peoples Natural Gas Company, The, 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125
Perry, Adams & Lewis Securities, Inc., LR-9073, vol. 19, no. 19, p. 1349
Petro Natural Resource Corporation, LR-8971, vol. 19, no. 3, p. 183; LR-8984, vol. 19, no. 6, p. 459
Philadelphia Stock Exchange, Inc., 34-16648, vol. 19, no. 12, p. 876

Photo Systems, Inc., IC-11018, vol. 19, no. 4, p. 348; IC-11043, vol. 19, no. 8, p. 603; IC-11145, vol. 19, no. 19, p. 1336
Piedmont-Forrest Corporation, 35-21483, vol. 19, no. 13, p. 950; 35-21446, vol. 19, no. 9, p. 718
Piet, Daniel J., 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151
Pillsbury, Madison & Sutro, 33-6185, vol. 19, no. 6, p. 419; 33-6193, vol. 19, no. 11, p. 797
Pioneer Bond Fund, Inc., IC-11095, vol. 19, no. 13, p. 970; IC-11060, vol. 19, no. 10, p. 783
Pioneer Group, Inc., The, IC-11095, vol. 19, no. 13, p. 970; IC-11060, vol. 19, no. 10, p. 783
Pioneer II, Inc., IC-11095, vol. 19, no. 13, p. 970; IC-11060, vol. 19, no. 10, p. 783
Pioneer Western Corp., LR-9013, vol. 19, no. 10, p. 788
Pioneering Management Corporation, IC-11095, vol. 19, no. 13, p. 970; IC-11060, vol. 19, no. 10, p. 783
Platteville Telephone Company, 34-16529, vol. 19, no. 5, p. 378
Pollack, Gary J., 34-16725, vol. 19, no. 16, p. 1159
Potomac Edison Company, The, 35-21512, vol. 19, no. 16, p. 1166; 35-21378, vol. 19, no. 2, p. 123; 35-21470, vol. 19, no. 12, p. 882
Potomac Investment Advisers, Ltd., IA-716, vol. 19, no. 15, p. 1148
Potts, Eurrell V., 34-16728, vol. 19, no. 16, p. 1162; LR-9057, vol. 19, no. 16, p. 1200
Preiser, Randall F., LR-9059, vol. 19, no. 16, p. 1202
Price & Company, LR-9038, vol. 19, no. 13, p. 972
Price and Company, LR-8992, vol. 19, no. 6, p. 462
Price, Earl Lawrence, LR-8992, vol. 19, no. 6, p. 462
Professional Group Programs of Florida, Inc., LR-9059, vol. 19, no. 16, p. 1202
Public Service Company of Oklahoma, 35-21389, vol. 19, no. 4, p. 335; 35-21482, vol. 19, no. 13, p. 948; 35-21486, vol. 19, no. 14, p. 1013; 35-21492, vol. 19, no. 14, p. 1025; 35-21506, vol. 19, no. 15, p. 1124; 35-21421, vol. 19, no. 7, p. 508; 35-21527, vol. 19, no. 17, p. 1239; 35-21437, vol. 19, no. 9, p. 706; 35-21545, vol. 19, no. 19, p. 1323; 35-21452, vol. 19, no. 10, p. 771; 35-21455, vol. 19, no. 10, p. 775; 35-21556, vol. 19, no. 20, p. 1398; 35-21351, vol. 19, no. 1, p. 24; 35-21468, vol. 19, no. 11, p. 831; 35-21364, vol. 19, no. 2, p. 97
Purdy, Charles E., III, 34-16774, vol. 19, no. 19, p. 1308; 34-16791, vol. 19, no. 20, p. 1384
Puritan Fund, IC-11142, vol. 19, no. 19, p. 1331
Putman Daily Dividend Trust, IC-11037, vol. 19, no. 7, p. 521; IC-11021, vol. 19, no. 4, p. 352
Putman Income Fund, Inc., The, IC-11022, vol. 19, no. 4, p. 356; IC-11038, vol. 19, no. 7, p. 522
PMI Mortgage Corporation, as Packager and Master Servicer, 34-16762, vol. 19, no. 18, p. 1252

Quarles, Robert, LR-9000, vol. 19, no. 8, p. 611

Rabi, I. I., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Rabjohns, Russell, LR-9055, vol. 19, no. 16, p. 1199
Ragonese, Louis J., IA-712, vol. 19, no. 8, p. 607; LR-8996, vol. 19, no. 8, p. 610; LR-9025, vol. 19, no. 11, p. 847
Ragsdale, Evelyne P., LR-9057, vol. 19, no. 16, p. 1200
Read, Ralph, LR-8970, vol. 19, no. 3, p. 183; LR-9055, vol. 19, no. 16, p. 1199
Real Estate Associates Limited II, IC-11039, vol. 19, no. 7, p. 523; IC-11082, vol. 19, no. 12, p. 900
Reavy, John J., 34-16784, IA-720, vol. 19, no. 20, p. 1379
Reed, Russell, LR-9045, vol. 19, no. 14, p. 1052; LR-9052, vol. 19, no. 16, p. 1198
Refac Technology Development Corporation, LR-9048, vol. 19, no. 15, p. 1152
Refco-Consolidated, Inc., 34-16743, vol. 19, no. 17, p. 1215
Reliance Mortgage Corporation, LR-9041, vol. 19, no. 13, p. 975
Remit Securities, Ltd., 34-16700, vol. 19, no. 14, p. 997
Renberg & Associates, Inc., Daniel H., 34-16679, vol. 19, no. 13, p. 926
Resort Car Rental Systems, Inc., LR-8966, vol. 19, no. 2, p. 139
Reynolds Metals European Capital Corporation, 34-16527, vol. 19, no. 5, p. 378
Reynolds, Vining Towner, Jr., LR-9047, vol. 19, no. 14, p. 1053; LR-9067, vol. 19, no. 18, p. 1287

Rice, K. Wayne, LR-9020, vol. 19, no. 10, p. 791
Rimmer, Roy T., LR-8962, vol. 19, no. 1, p. 66
River Gas Company, The, 34-21553, vol. 19, no. 20, p. 1393
Robinson, Richard L., 34-16597, vol. 19, no. 9, pp. 697 & 699
Rose and Co., Inc., G.P., LR-9057, vol. 19, no. 16, p. 1200
Rose Packaging Corporation, LR-9055, vol. 19, no. 16, p. 1199
Rose, John P., 34-16784, IA-720, vol. 19, no. 20, p. 1379
Rosenbaum, Marvin F., LR-8958, vol. 19, no. 1, p. 64
Ross, Hardies, O'Keefe, Babcock & Parsons, 33-6186, vol. 19, no. 6, p. 421; 33-6192, vol. 19, no. 11, p. 796
Rotan Mosle Inc., 34-16679, vol. 19, no. 13, p. 926
Roth, Maurice S., LR-8969, vol. 19, no. 3, p. 182
Rothman, Sheldon, LR-9015, vol. 19, no. 10, p. 788
Roulston & Company, Inc., 34-16679, vol. 19, no. 13, p. 926
Russell Co., Inc., Frank, IC-11017, vol. 19, no. 4, p. 347
Ryan, Thomas Francis, LR-9045, vol. 19, no. 14, p. 1052; LR-9052, vol. 19, no. 16, p. 1198

Saia, Joseph F., LR-9061, vol. 19, no. 16, p. 1203; LR-9075, vol. 19, no. 19, p. 1350
Salem Corporation, 34-16743, vol. 19, no. 17, p. 1215
Salem Fund, IC-11142, vol. 19, no. 19, p. 1331
Salomon Brothers, IC-11119, vol. 19, no. 16, p. 1184; IC-11050, vol. 19, no. 9, p. 726; LR-9010, vol. 19, no. 9, p. 744
Sandberg, Alan E., LR-9035, vol. 19, no. 13, p. 971; LR-8976, vol. 19, no. 5, p. 408; LR-8981, vol. 19, no. 6, p. 458
Sanders, Stanley J., LR-9036, vol. 19, no. 13, p. 971; LR-9006, vol. 19, no. 9, p. 743
Sartain, Thomas A., Sr., 34-16561, vol. 19, no. 8, pp. 562 & 568
Saxton Nuclear Experimental Corporation, 35-21399, vol. 19, no. 5, p. 379; 35-21360, vol. 19, no. 1, p. 38
Schaefer, Harry S., LR-8964, vol. 19, no. 2, p. 138
Schwartz, Stephen C., 34-16784, IA-720, vol. 19, no. 20, p. 1379; 34-16586, vol. 19, no. 9, p. 657
Scibelli, James, 34-16556, vol. 19, no. 7, p. 502
Scott Paper International, Inc., IC-10998, vol. 19, no. 1, p. 56
Scudder Tax Free Money Fund, IC-11088, vol. 19, no. 3, p. 171
Seatrain Lines, Inc., LR-8995, vol. 19, no. 8, p. 609
Seatrain Shipbuilding Corp., LR-8995, vol. 19, no. 8, p. 609
Security Distributors, Inc., IC-11017, vol. 19, no. 4, p. 347
Security Equity Fund, Inc., IC-11017, vol. 19, no. 4, p. 347
Security First National Bank in Sheboygan, LR-9039, vol. 19, no. 13, p. 972
Security Management Co., Inc., IC-11017, vol. 19, no. 4, p. 347
Seifert, Robert J., 34-16725, vol. 19, no. 16, p. 1159
Seneca Resources Corporation, 35-21382, vol. 19, no. 3, p. 162; 35-21383, vol. 19, no. 3, p. 164; 35-21415, vol. 19, no. 6, p. 449; 35-21534, vol. 19, no. 18, p. 1261
Sewanee Ridge Associates, LR-9048, vol. 19, no. 16, p. 1152
Shea, Raymond E., LR-9070, vol. 19, no. 19, p. 1347
Shearson Loeb Rhoades Inc., 39-550, vol. 19, no. 7, p. 516; 39-555, vol. 19, no. 11, p. 833
Shelby Bond Service Corp., LR-9004, vol. 19, no. 9, p. 742
Shell Oil Company, 39-549, vol. 19, no. 6,, p. 453; 39-551, vol. 19, no. 8, p. 597
Shelton, William, LR-9000, vol. 19, no. 8, p. 611
Shenandoah Oil Corporation, 34-16523, vol. 19, no. 5, p. 377
Sherlock, James P., Jr., LR-8999, vol. 19, no. 8, p. 611
Shumagco, 34-16679, vol. 19, no. 13, p. 926
Shuman Agnew & Co., Inc., 34-16679, vol. 19, no. 13, p. 926
Siemer, Michael A. C., 34-16725, vol. 19, no. 16, p. 1159
Sierra Capital Group, LR-9072, vol. 19, no. 19, p. 1349
Silverman, Joel, LR-9048, vol. 19, no. 15, p. 1152
Silverman, Stanley, LR-9048, vol. 19, no. 15, p. 1152

Simpson, Emery & Company, Inc., LR-9033, vol. 19, no. 12, p. 906
Slanker Company, T. E., 34-16783, IA-719, vol. 19, no. 20, p. 1377
Slanker, Ted E., Jr., 34-16783, IA-719, vol. 19, no. 20, p. 1377
Sloane, Inc., John Edison, 34-16679, vol. 19, no. 13, p. 926
Sloate, Weisman, Murray & Company, Inc., 34-16679, vol. 19, no. 13, p. 926
Smith, Carlos, LR-9000, vol. 19, no. 8, p. 611
Smith, Meredith K. M., LR-9074, vol. 19, no. 19, p. 1350; LR-9079, vol. 19, no. 20, p. 1430
Smith, Richard E., LR-9030, vol. 19, no. 11, p. 849
Societe Generale North America, Inc., IC-11092, vol. 19, no. 13, p. 962; IC-11130, vol. 19, no. 17, p. 1245
Sonnenblick-Goldman Corp. of California, IC-11039, vol. 19, no. 7, p. 523; IC-11082, vol. 19, no. 12, p. 900
Southern Appalachian Coal Company, 35-21424, vol. 19, no. 7, p. 513; 35-21356, vol. 19, no. 1, p. 32
Southern Company Services, Inc., 34-21483, vol. 19, no. 13, p. 950; 35-21446, vol. 19, no. 9, p. 718
Southern Company, The, 35-21478, vol. 19, no. 13, p. 942; 35-21483, vol. 19, no. 13, p. 950; 35-21501, vol. 19, no. 15, p. 1115; 35-21485, vol. 19, no. 14, p. 1012; 35-21531, vol. 19, no. 18, p. 1256; 35-21436, vol. 19, no. 9, p. 703; 35-21446, vol. 19, no. 9, p. 718; 35-21451, vol. 19, no. 10, p. 770; 35-21454, vol. 19, no. 10, p. 774
Southern Electric Generating Company, 35-21483, vol. 19, no. 13, p. 950; 35-21446, vol. 19, no. 9, p. 718
Southern Ohio Coal Company, 35-21499, vol. 19, no. 15, p. 1111; 35-21537, vol. 19, no. 19, p. 1309; 35-21355, vol. 19, no. 1, p. 31; 35-21356, vol. 19, no. 1, p. 32
Southwestern Electric Power Company, 35-21482, vol. 19, no. 13, p. 948; 35-21389, vol. 19, no. 4, p. 335; 35-21492, col. 19, no. 14, p. 1025; 35-21506, vol. 19, no. 15, p. 1124; 35-21421, vol. 19, no. 7, p. 508; 35-21530, vol. 19, no. 18, p. 1254; 35-21452, vol. 19, no. 10, p. 771; 35-21455, vol. 19, no. 10, p. 775; 35-21361, vol. 19, no. 1, p. 39; 35-21468, vol. 19, no. 11, p. 831
Spiegal, Ronald, LR-8970, vol. 19, no. 3, p. 183
Sprecher, Benjamin G., LR-8969, vol. 19, no. 3, p. 182
Starbuck, Inc., and Associates, Michael, LR-8979, vol. 19, no. 5, p. 409
State Mutual Life Assurance Company of America, IC-11103, vol. 19, no. 14, p. 1048; IC-11061, vol. 19, no. 10, p. 785
Steir, Berton, LR-9063, vol. 19, no. 17, p. 1248
Stephens, Robert G., Jr., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Stephens, Roy E., LR-9037, vol. 19, no. 13, p. 972
Sterge, John C., LR-8980, vol. 19, no. 5, p. 409; LR-9012, vol. 19, no. 9, p. 745
Stilwell, Charles D., LR-8974, vol. 19, no. 5, p. 407; LR-9022, vol. 19, no. 10, p. 792
Stilwell, Coker & Co., Inc., LR-8974, vol. 19, no. 5, p. 407; LR-9022, vol. 19, no. 10, p. 792
Strauss, Elliott B., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Summa Corporation, LR-9032, vol. 19, no. 12, p. 906
Summers, Jack, LR-8998, vol. 19, no. 8, p. 610
Sun Co., Inc., LR-9010, vol. 19, no. 9, p. 744
Sun Company, Inc., LR-8985, vol. 19, no. 6, p. 459; LR-8957, vol. 19, no. 1, p. 63
Sunny Land Tours, Inc., 34-16700, vol. 19, no. 14, p. 997
Sunnyhills Associates, LR-9048, vol. 19, no. 15, p. 1152
Sutnick, Hyman, 34-16700, vol. 19, no. 14, p. 997
Sutton, Irwin, LR-9048, vol. 19, no. 15, p. 1152
Svilar, Daniel P., LR-8987, vol. 19, no. 6, p. 460
Swiger, Howard, LR-8970, vol. 19, no. 3, p. 183; LR-9055, vol. 19, no. 16, p. 1199
Swiss Bank Corporation, IC-11125, vol. 19, no. 16, p. 1189; IC-11157, vol. 19, no. 20, p. 1414
System Fuels, Inc., 35-21520, vol. 19, no. 16, p. 1176; 35-21540, vol. 19, no. 19, p. 1313; 35-21465, vol. 19, no. 11, p. 829; 35-21367, vol. 19, no. 2, p. 103
SAFECO Equity Fund, Inc., IC-11031, vol. 19, no. 6, p. 456; IC-11059, vol. 19, no. 10, p. 783
SAFECO Growth Fund, Inc., IC-11031, vol. 19, no. 6, p. 456; IC-11059, vol. 19, no. 10, p. 783
SAFECO Income Fund, Inc., IC-11031, vol. 19, no. 6, p. 456; IC-11059, vol. 19, no. 10, p. 783
SAFECO Securities, Inc., IC-11031, vol. 19, no. 6, p. 456; IC-11059, vol. 19, no. 10, p. 783
SAFECO Special Bond Fund, Inc., IC-11031, vol. 19, no. 6, p. 456; IC-11059, vol. 19, no. 10, p. 783

SBC Overseas Finance N.V., IC-11125, vol. 19, no. 16, p. 1189; IC-11157, vol. 19, no. 20, p. 1414
SCA Services, Inc., LR-9063, vol. 19, no. 17, p. 1248
SMA Equities, Inc., IC-11025, vol. 19, no. 5, p. 395; IC-11045, vol. 19, no. 8, p. 604

Tamuty, Richard, LR-8959, vol. 19, no. 1, p. 65
Tanaka, Richard T., 34-16725, vol. 19, no. 16, p. 1159
Tawil, Solomon, LR-9048, vol. 19, no. 15, p. 1152
Telco Marketing Services, Inc., LR-9071, vol. 19, no. 19, p. 1347
Television Marketing and Correlated Equities Corp., LR-9044, vol. 19, no. 14, p. 1051; LR-9015, vol. 19, no. 10, p. 788
Tellco Information Services, LR-8999, vol. 19, no. 8, p. 611
Templet Industries, Inc., LR-9040, vol. 19, no. 13, p. 975; LR-8990, vol. 19, no. 6, p. 461
Textron Inc., LR-8993, vol. 19, no. 6, p. 462
The Columbia Gas System, Inc., 35-21411, vol. 19, no. 6, p. 443
The Income Builders, Inc., LR-8982, vol. 19, no. 6, p. 458
The Inland Gas Company, Inc., 35-21411, vol. 19, no. 6, p. 443
Thomas, William F., LR-9011, vol. 19, no. 9, p. 745
Tinsky, Dennis S., 34-16700, vol. 19, no. 14, p. 997
Todd and Company, Inc., 34-16638, vol. 19, no. 12, pp. 863 & 866
Tolchin Instruments, Inc., LR-8958, vol. 19, no. 1, p. 64
Tolchin, Martin, LR-8958, vol. 19, no. 1, p. 64
Tomlinson, Emery, LR-8987, vol. 19, no. 6, p. 460
Toth Aluminum Corporation, LR-9003, vol. 19, no. 8, p. 613
Toth, Charles, LR-9003, vol. 19, no. 8, p. 613
Towneley Capital Management, Inc., 34-16679, vol. 19, no. 13, p. 926
Trailer Train Company, 39-562, vol. 19, no. 16, p. 1180; 39-566, vol. 19, no. 20, p. 1404
Trans America Petroleum Company, Inc., LR-9060, vol. 19, no. 16, p. 1202; LR-9027, vol. 19, no. 11, p. 848
Trans World Airlines, Inc., 39-565, vol. 19, no. 19, p. 1328
Transamerica Cash Reserve, Inc., IC-11093, vol. 19, no. 13, p. 965; IC-11057, vol. 19, no. 10, p. 779
Transok Pipe Line Company, 35-21351, vol. 19, no. 1, p. 24
Trimble, Henry W., Jr., LR-8998, vol. 19, no. 8, p. 610
Trinwall Bond Fund, Inc., IC-11022, vol. 19, no. 4, p. 356; IC-11038, vol. 19, no. 7, p. 522
Trinwall Cash Reserve, Inc., IC-11021, vol. 19, no. 4, p. 352; IC-11037, vol. 19, no. 7, p. 521
Trust for U.S. Treasury Obligations, IC-11029, vol. 19, no. 6, p. 453
Trust For Cash Reserves, IC-11106, vol. 19, no. 14, p. 1049; IC-10994, vol. 19, no. 1, p. 51; IC-11063, vol. 19, no. 11, p. 835
TDA Industries, Inc., LR-9034, vol. 19, no. 13, p. 971; LR-9035, vol. 19, no. 13, p. 971; LR-8976, vol. 19, no. 5, p. 408; LR-8981, vol. 19, no. 6, p. 458; LR-8994, vol. 19, no. 7, p. 527

U.S. Energy Corp., LR-8987, vol. 19, no. 6, p. 460
United Financial Corporation of California, 34-16639, vol. 19, no. 12, p. 866
United Monetary Services, Inc., 34-16586, vol. 19, no. 9, p. 657
United Technologies Corporation, LR-9031, vol. 19, no. 11, p. 850
Universal Lancaster Corporation, LR-8962, vol. 19, no. 1, p. 66
Untermeyer, Walter, Jr., IC-11078, vol. 19, no. 12, p. 897

Vallen, Randy, LR-9000, vol. 19, no. 8, p. 611
Valo, John, LR-9014, vol. 19, no. 10, p. 788
Vance, Sanders Municipal Bond Fund, Ltd, IC-11026, vol. 19, no. 5, p. 402
Vaportech Corp., LR-8991, vol. 19, no. 6, p. 462
Ventresca, Thomas F., 34-16725, vol. 19, no. 16, p. 1159
Vermont Yankee Nuclear Power Cooperation, 35-21405, vol. 19, no. 5, p. 388; 35-21461, vol. 19, no. 11, p. 824
Verrilli, Altschuler, Schwartz, Inc., 34-16586, vol. 19, no. 9, p. 657

Verrilli, M. Richard, 34-16586, vol. 19, no. 9, p. 657
Vertrees, N. William, LR-9020, vol. 19, no. 10, p. 791
Vittorio Widemann International Corporation, LR-8999, vol. 19, no. 8, p. 611

W.D.L. Enterprises, Inc., LR-9002, vol. 19, no. 8, p. 613; LR-9028, vol. 19, no. 11, p. 849
Walter, Wencke, LR-8965, vol. 19, no. 2, p. 138
Warner, Aaron W., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Washington Group, Incorporated, LR-9065, vol. 19, no. 18, p. 1286
Waters, Norman D., 34-16621, IC-11064, vol. 19, no. 11, p. 804
Weeks & Co., Inc., G., LR-9000, vol. 19, no. 8, p. 611
Weeks Securities, Inc., G., LR-9000, vol. 19, no. 8, p. 611
Weeks, Gerald D., LR-9000, vol. 19, no. 8, p. 611
Weenie Machine International, Inc., 34-16666, vol. 19, no. 13, p. 920
Weiss Rosenthal & Schwartzman, P.C., LR-9048, vol. 19, no. 15, p. 1152
Weiss Rosenthal Heller Schwartzman & Lazar, LR-9048, vol. 19, no. 15, p. 1152
Wencke, Walter, LR-9078, vol. 19, no. 20, p. 1430
Wentworth Manufacturing Company, 34-16662, vol. 19, no. 13, p. 918; 34-16524, vol. 19, no. 5, p. 377
Wernimont, Wayne H., 34-16749, vol. 19, no. 17, pp. 1221 & 1224
Wescalind Corp., LR-8981, vol. 19, no. 6, p. 458
West Hills Associates, LR-9048, vol. 19, no. 15, p. 1152
West Ohio Gas Company, 35-21553, vol. 19, no. 20, p. 1393; 35-21379, vol. 19, no. 2, p. 125
West Penn Power Company, 35-21378, vol. 19, no. 2, p. 123; 35-21512, vol. 19, no. 16, p. 1166; 35-21470, vol. 19, no. 12, p. 882
West Texas Utilities Company, 35-21482, vol. 19, no. 13, p. 948; 35-21389, vol. 19, no. 4, p. 335; 35-21506, vol. 19, no. 15, p. 1124; 35-21421, vol. 19, no. 7, p. 508; 35-21452, vol. 19, no. 10, p. 771; 35-21468, vol. 19, no. 11, p. 831
Western Daily Income Fund, Inc., IC-11159, vol. 19, no. 20, p. 1417
Weston, Roger L., LR-9072, vol. 19, no. 19, p. 1349
Wheeling Electric Company, 35-21488, vol. 19, no. 14, p. 1019; 35-21442, vol. 19, no. 9, p. 715; 35-21352, vol. 19, no. 1, p. 25
Wheeling Electric Company, Inc., 35-21453, vol. 19, no. 10, p. 773
Wheelock, Robert L., LR-8964, vol. 19, no. 2, p. 138
Whitaker, Frederick, III, 34-16725, vol. 19, no. 16, p. 1159
Whitaker, Paul S., 34-16725, vol. 19, no. 16, p. 1159
White, Letcher T., LR-9019, vol. 19, no. 10, p. 791
Whitley, Jerry, LR-9078, vol. 19, no. 20, p. 1430; LR-8965, vol. 19, no. 2, p. 138
Whitney, Stephen, LR-9045, vol. 19, no. 14, p. 1052; LR-9052, vol. 19, no. 16, p. 1198
Williamson, Richard A., 34-16725, vol. 19, no. 16, p. 1159
Winslow, Clark Joseph, IC-11002, vol. 19, no. 1, p. 61; LR-8963, vol. 19, no. 1, p. 66; IC-11069, vol. 19, no. 11, p. 842
Wiser Oil Company, The, 34-21474, vol. 19, no. 12, p. 888
Wolf & Co., W. R., LR-8958, vol. 19, no. 1, p. 64
Wolfe, Michael Sutton, 34-16733, vol. 19, no. 16, p. 1164
Wolfson, Abraham Gurdon, LR-8966, vol. 19, no. 2, p. 139
Worton, Robert K., 34-16784, IA-720, vol. 19, no. 20, p. 1379
Wright, Charles W., 34-16473, vol. 19, no. 3, p. 150; 34-16474, vol. 19, no. 3, p. 151

Xonics, LR-8983, vol. 19, no. 6, p. 459

Yankee Atomic Electric Company, 35-21523, vol. 19, no. 17, p. 1235
York Haven Power Company, 35-21358, vol. 19, no. 1, p. 34

Zappala, Joseph T., 34-16586, vol. 19, no. 9, p. 657
Ziegler, Rondo J., 34-16559, vol. 19, no. 7, p. 504; 34-16782, vol. 19, no. 20, p. 1377

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RELEASES IN THIS ISSUE **PAGE**

Securities Act	- 6171	1
Securities Exchange Act	- 16443-54	3
Public Utility Holding Company Act	- 21347-62	17
Investment Company Act	- 10990-02	43
Litigation	- 8957-63	63

This listing covers releases issued from 12/20/79-12/27/79.

This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS
RULES

34-16443 Adoption of rule requiring clearing agencies to provide securities position listings to issuers whose securities the clearing agency holds in its name or that of its nominee.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6171/December 21, 1979

In the Matter of

BURLINGHAM UNDERWOOD & LORD RETIREMENT PLAN
One Battery Park Plaza
New York, New York 10004

(18-65)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE BURLINGHAM UNDERWOOD & LORD RETIREMENT PLAN

NOTICE IF HEREBY GIVEN that Burlingham Underwood & Lord (the "Applicant"), a law firm organized as a partnership under the laws of the State of New York, has, by letters dated June 1, 1979, November

SE 1.29:

21, 1979, November 27, 1979 and December 5, 1979, filed an application for exemption from the registration requirements of the Securities Act of 1933 (the "Act") for interests or participations issued in connection with the Burlingham Underwood & Lord Retirement Plan (the "Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers Applicant's employees, of whom 43 persons were eligible to and did participate in the Plan as of January 1, 1979. Employees of the Applicant are eligible to participate in the Plan if they completed three years of service with Applicant.

Applicant states that the Plan is of the type, commonly referred to as a "Keogh" plan, which covers persons (in this case, Applicant's partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 (the "Code"), and therefore is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in certain employee benefit plans of corporate employers.

In relevant part, Section 3(a)(2) provides, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan was adopted on December 28, 1978, effective as of January 1, 1978. Applicant has applied to the Internal Revenue Service for a determination that the Plan is a qualified plan under Section 401(a) of the Code but has not yet received such a ruling. The Plan is an "employee pension benefit plan" subject to regulation by the Department of Labor under the Employee Retirement Income Security Act of 1974, ("ERISA") and is subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA.

Applicant states that the Plan covers partners and employees of a single firm and is not a uniform prototype or a master plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons.

Applicant states that United States Trust Company of New York is the trustee (the "Trustee") for the Plan under a trust agreement (the "Trust Agreement"). Under the Trust Agreement the Trustee has physical custody of the assets of the Plan. Also, Applicant has appointed an independent investment manager of the assets of the trust established under the Plan. Said manager is duly registered with the Commission pursuant to the Investment Advisers Act of 1940.

Applicant represents that it contributes to the Plan on an annual basis on behalf of each participant out of its net earnings amounts equal to the lesser of 5% of such participant's compensation or $5,000. Under the Plan, participants may make voluntary contributions to the Plan in amounts up to 10% of their compensation.

Applicant states that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan (other than such material as Applicant is required under ERISA or the Code to distribute to participants or to employees) and has not made and does not intend to make any solicitation of voluntary contributions under the Plan. Applicant makes available to Plan participants, upon request and without charge, copies of the Plan, the Trust Agreement and the latest interim financial statement of the Plan.

Applicant contends that were it a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would be participating in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant submits that the intent of Congress in excluding from the blanket registration exemption of the Act plans in which self-employed persons are participants was to prevent the sale without registration of interests or participations in prepackaged plans offered by financial institutions to self-employed persons lacking the sophistication to protect themselves and their participating employees.

Applicant states that it is engaged in furnishing professional services of a type which necessarily involves financially sophisticated and complex matters and is therefore able to represent and protect adequately its interest and those of Plan participants.

Applicant concludes that for the foregoing reasons, granting the requested exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 15, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following January 15, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16443/December 20, 1979

Securities Position Listing Rule

ACTION: Final rule.

SUMMARY: The Commission is adopting a previously proposed rule requiring clearing agencies to provide securities position listings to issuers whose securities the clearing agency holds in its name or that of its nominee. A securities position listing is a list of the participants in a clearing agency on whose behalf the clearing agency holds the issuer's securities and of their positions in the issuer's securities as of a specified date.

EFFECTIVE DATE: 30 days after publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Jerry R. Marlatt, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2792.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 17Ad-8, requiring clearing agencies to furnish a securities position listing to an issuer at the issuer's request. The rule, which becomes effective 30 days after publication in the Federal Register, was proposed in Securities Exchange Act Release No. 14493, February 22, 1978; 43 FR 8269, March 1, 1978. In accordance with Section 17A(d)(3)(A)(i) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System at least fifteen days prior to this announcement.

The rule as proposed would have required registered clearing agencies to transmit securities position listings to issuers at least annually, or more frequently at an issuer's request. Annual and quarterly listings would have been provided without charge, but more frequent listings would have been

subject to a reasonable charge based on the clearing agency's cost of preparation.

Under the proposed rule, clearing agencies also would have been required to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's list of security holders of record or securities position listing or (ii) who attested that the issuer had consented to the clearing agency providing the list to them. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

The impetus for the proposed rule was the recommendation in the Final Report of the Street Name Study that "each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities."[1] That recommendation was intended to formalize an existing depository practice which permits issuers to initiate the issuer-security owner communication process directly with depository participants rather than with depositories. The proposed rule went beyond the Street Name Study recommendation, however, by extending the requirement to all clearing agencies. The reason for the extension was that, although depositories hold the great majority of securities held by clearing agencies, clearing corporations also may hold securities in their name or that of their nominee.

The proposal also went beyond the recommendation in the Street Name Study by providing that certain non-issuers would have been able to obtain securities position listings directly from clearing agencies without the need for issuer cooperation. The reason for extending this authority to certain non-issuers was that depositories sometimes have refused to provide securities position listings to persons other than issuers. In addition, issuers often have argued that under state law they are obligated to reveal only their shareholders of record list, a list which discloses depositories as the owner of record but not the identities of depository participants on whose behalf the depository is holding securities. As a result, non-issuers that are entitled to inspect, obtain or otherwise gain access to an issuer's shareholders of record list often are required to begin the communication process with depositories rather than with depository participants—a requirement that adds an additional step to the security owner communications process.

The Commission received nineteen comment letters on the proposed Rule.[2] The commenters generally endorsed that part of the proposed rule which would require clearing agencies to provide securities position listings to issuers. Numerous criticisms were raised regarding the providing of securities position listings to non-issuers, however.

After reviewing the comment letters and reassessing the need for the proposed rule, the Commission has decided to (i) adopt, with certain changes, that

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[1]SEC, *Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities*, pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Committee Print 1976) (the "Street Name Study"), 55.

[2]Eight letters were received from corporations: American Standard, Inc. ("American Standard"), Caterpillar Tractor Co. ("Caterpillar"), Dresser Industries, Inc. ("Dresser"), Glosser Bros. ("Glosser Bros."), Joy Manufacturing Co. ("Joy Mfg."), Litton Industries ("Litton"), Pacific Gas and Electric Company ("PG&E"), and A.O. Smith Corporation ("Smith Corp.").

Four letters were received from associations: American Bar Association ("ABA"), American Bankers Association ("Am. Bankers Assoc."), American Society of Corporate Secretaries, Inc. ("ASCS"), and Western Stock Transfer Association, Inc. ("WSTA").

Four letters were received from clearing agencies: Bradford Securities Processing Services, Inc. ("BSPS"), Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), and Pacific Securities Depository Trust Company ("PSDTC").

Two letters were received from individuals: Joseph M. Jankite ("Jankite"), and Charles P. Stetson, Jr. ("Stetson").

One letter was received from an investment banker: A.F. Castellano ("Castellano").

portion of proposed Rule 17Ad-8 which would require clearing agencies to provide securities position listings to issuers, but (ii) withdraw that portion of the proposed Rule which would have provided non-issuers with access to securities position listings. The following discussion focuses on the four sections of proposed Rule 17Ad-8 and consists of (i) a description of each proposed section, (ii) a summary of the comments received on the section, and (iii) the Commission's action on the adoption, amendment, or withdrawal of the section.

A. Proposed Section 17Ad-8(a)—Definition of Securities Position Listing.

This section of the proposed rule defines the term "securities position listing." No comments were received on the definition, and the Commission has adopted the section as proposed.

B. Proposed Section 17Ad-8(b)—Requirement that Clearing Agencies Transmit Securities Position Listings to Issuers.

As discussed, this section of the proposed rule would have required clearing agencies to transmit securities position listings to issuers annually, or more frequently at the issuers' request. Annual and quarterly listings would have been provided without charge, but more frequent listings would have been subject to a reasonable charge.

Some commenters specifically supported the prevailing depository practice of providing securities position listings to issuers, and no commenter criticized the practice. There was a difference of opinion, however, concerning the need to formalize the practice in a Commission rule and on the need to extend the practice to clearing corporations. More specifically, four commenters endorsed the section as proposed, while one depository indicated that it was not aware of occurrences which suggested a need for the proposed rule. A clearing corporation argued that the rule should be limited to depositories and should not be applied to clearing corporation functions, such as delivery and receipt services and the provision of financing for securities transactions, although in providing those services a clearing corporation may hold some customer securities in a segregated account or in nominee name pending delivery.

In addition to those general comments, there were two specific concerns raised by the commenters. A corporation suggested that a depository should be required to transmit securities position listings to issuers within fifteen days of the request and that a regular annual listing be transmitted within thirty days of the close of the corporate year.

A number of commenters also were concerned about the provision which would have required clearing agencies to transmit annual and quarterly securities position listing to issuers free of charge. One commenter argued, for example, that "the cost will be passed on to all participants in a depository, even those who do not have a position in a particular stock." A clearing corporation said that, if the proposed rule were to apply to all clearing agencies, not only to depositories, then a clearing agency should be compensated for each listing it is required to provide. A depository wrote that it "believes the current practice of requiring issuers to bear such costs other than at the time of a shareholders meeting represents a more reasonable approach . . . ." Another depository expressed a similar view. A second clearing corporation felt that requiring clearing agencies to provide an annual and quarterly listing to issuers free of charge was an unnecessary burden in view of the modest cost now imposed on issuers to receive a securities position listing.

Finally, a corporation expressed concern about the ability of corporations with small capitalization to communicate directly to their shareholders with frequency and without delay. It argued that the proposed rule does nothing to alleviate "the hiding of beneficial ownership via usage of nominee names," but "actually gives tacit approval to the continuance."

The Commission believes that section (b) of the proposed rule, with the amendments discussed below, should be adopted for two reasons. First, unlike depositories, clearing corporations customarily do not provide securities position listings to issuers. As a result, although the great majority of securities held by registered clearing agencies are held by depositories, issuers still are required to initiate the communication process with clearing corporations rather than with the clearing agencies' participants, a step that the Commission believes should be eliminated.

Second, this requirement is a necessary complement to Securities Exchange Act Rule 14d-5 (17 CFR 240.14d-5) which the Commission recently

adopted.[3] Rule 14d-5 gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Because the operation of Rule 14d-5 is dependent on issuers receiving securities position listings from clearing agencies, the Commission believes requiring clearing agencies to furnish issuers with those listings is a necessary complement to the implementation of Rule 14d-5.

With regard to the comment that clearing agencies should be required to provide securities position listings to issuers within specific time periods, the Commission is unaware of any instance in which a depository has not furnished a securities position listing to an issuer in a timely manner. In addition, because the number of issues held by clearing agencies vary greatly and because the degree to which clearing agencies are automated also varies, the Commission does not favor imposing specific time requirements on clearing agencies. At the same time, the Commission believes it would be beneficial to include a "promptly" standard in section (b) of the proposed rule. Such a standard would help ensure that securities position listings are provided to issuers in a timely manner.[4]

As for the proposal that annual and quarterly securities position listings be provided to issuers free of charge, the Commission agrees with those commenters who argued that clearing agencies should be able to charge a reasonable fee for providing securities position listings to issuers. DTC, for example, currently charges issuers $60 per year for quarterly securities position listings. If DTC were required to provide those quarterly listings free of charge, it could represent a potential loss of income to DTC of approximately $750,000, a loss in income which is not insignificant and which would have to be absorbed by DTC's participants.[5] At the same time, the Commission does not believe that clearing agencies should be authorized to charge issuers for unwanted securities position listings. As a result, the Commission has amended section (b) to provide that clearing agencies are authorized only to charge for securities position listings requested by issuers and has eliminated the requirement that securities position listings be sent to issuers annually. Clearing agencies, of course, still would be able to send securities position listings to issuers free of charge if they so desired.

The Commission recognizes that issuers normally are not represented on clearing agencies' boards of directors and therefore have no input into determining the amount charged for securities position listings. At the same time, there is no indication that depositories have charged unreasonable fees for securities position listings, and such fees would have to be filed with the Commission pursuant to Rule 19b-4 under the Act.

Finally, with regard to the comment that the proposed rule would not assist corporations of small capitalization in communicating directly to their shareowners, Rule 17Ad-8 is not designed to reveal an issuer's beneficial security owners or to permit issuers to communicate directly with their beneficial security owners.

C. Proposed Sections 17Ad-8(c) and (d)—Transmission of Securities Position Listings to Non-Issuers.

Section (c) of the proposed rule would have required clearing agencies to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's shareholders of record list or securities position listing, or (ii) who attested that the issuer

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[3]Securities Exchange Act Release No. 16384, November 29, 1979; 44 FR 70326, December 6, 1979.

[4]As discussed, Securities Exchange Act Rule 14d-5 requires issuers to undertake certain actions regarding the dissemination of tender offer materials within specified time periods. Some of those actions require the use of a securities position listing by the issuer. In responding to requests for securities position listings arising from the operation of Rule 14d-5, a clearing agency should be mindful of the obligations that rule places on issuers.

[5]There currently are over 13,000 issues eligible for deposit into DTC, and DTC charges issuers $60 per annum for quarterly securities position listings.

had consented to their receiving the listing. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

Section (d) of the proposed rule, in turn, would have made it unlawful for any person (i) knowingly or willfully to certify falsely their entitlement to an issuer's securities position listing or (ii) to violate willfully any provision of the proposed rule.

Two commenters supported proposed Rule 17Ad-8 in its entirety. Another commenter endorsed the concept of providing securities position listings to non-issuers whenever the issuer was required to provide a non-issuer with its shareholders of record list. One commenter also thought the concept was a useful one. The latter two commenters, however, had a number of concerns about the specific provisions of sections (c) and (d) of the proposed rule. Every other person who commented on sections (c) and (d) either objected to the concept of clearing agencies providing securities position listings to non-issuers or were concerned about specific provisions of those two sections. One commenter, for example, indicated that it was not aware of significant opposition by issuers to providing securities position listings to those entitled under state law to the shareholders of record list. A depository argued that the proposal would not achieve its primary purpose of facilitating issuer-shareowner communication because non-consenting issuers always would intervene to block the release of a securities position listing to a non-issuer. That depository also argued that it was not aware of any court that had denied access to a securities position listing when a non-issuer was entitled to an issuer's shareholders of record list and, thus, that existing state law already may provide for access to securities position listings by qualified non-issuers. A clearing corporation saw no apparent benefit from these sections of the proposed rule since broker-dealers are only required to cooperate with issuers under Securities Exchange Act Rule 14b-1 (17 CFR 240.14b-1). That clearing corporation also argued that securities position listings should be given only to issuers and that any dispute over access to the list should be resolved directly between the issuer and non-issuer. Finally, a number of other commenters opposed the concept of providing securities position listings to non-issuers.

In addition to those general comments, there were several concerns raised about specific provisions of sections (c) and (d) of the proposed rule. A number of commenters complained that there were no restrictions on the subsequent use of the list by non-issuers and that the list could be used for improper purposes. Other commenters were concerned that the proposed rule might be contrary to existing state law. One of those commenters argued, for example, that the proposal could be viewed as shifting the burden of proof regarding access to the securities position listing from the non-issuer to the issuer, a change it felt should be made only by state legislatures.

Numerous concerns also were raised regarding the certification provision of the proposed rule. More specifically, some commenters felt that securities position listings should not be given to non-issuers on the basis of an unconfirmed certification prepared by the non-issuer, while others felt that the notification process may not give issuers sufficient time to respond to a non-issuer's claim of entitlement. A number of commenters were concerned that it was unclear whether clearing agencies had any responsibility to evaluate the validity of a non-issuer's claimed entitlement to a securities position listing, while other commenters were concerned that the proposal could expose clearing agencies to liability if they furnished a non-issuer with a securities position listing and the non-issuer's claimed entitlement later proved to be invalid.

The two principal areas in which non-issuers have sought access to securities position listings are the tender offer and proxy areas. After reviewing the comment letters on proposed Rule 17Ad-8 and reassessing the non-issuer access provisions of that proposal, the Commission believes, as discussed below, that the question of non-issuer access to securities position listings in the above two areas is best addressed in the context of the Commission's tender offer and proxy rules rather than in a general provision such as proposed Rule 17Ad-8. Aside from the tender offer and proxy areas, the Commission is unaware of situations in which non-issuers entitled to an issuer's shareholders of records list have unsuccessfully sought access to the issuer's securities position listing. Accordingly, the Commission perceives no need at this time for sections (c) and (d) of proposed Rule 17Ad-8 and has withdrawn those sections.

With regard to the tender offer area, the Commission, as discussed, recently adopted Securities Exchange Act Rule 14d-5, which gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder

lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Rule 14d-5 also contains specific provisions concerning the use, handling and disposition of the lists by bidders and otherwise addresses many of the concerns raised about the non-issuer access provisions of proposed Rule 17Ad-8.

As for the proxy area, Securities Exchange Act Rule 14a-7 (17 CFR 240.14a-7) currently provides an election similar to that contained in Rule 14d-5. In brief, Rule 14a-7 gives an issuer the option of mailing security holders' communications or of providing security holders with its shareholders of record list and other information that would enable security holders to mail the communications themselves. The Commission believes that amending Rule 14a-7 to include securities position listings among the information that the issuer may elect to provide security holders may be a better approach for providing non-issuer access to securities position listings in the proxy area. The Commission will review the possible amendment of that rule.

In accordance with the foregoing, the Commission adopts Rule 17Ad-8, as set forth below, effective thirty days after publication in the Federal Register.

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

Pursuant to the Securities Exchange Act of 1934 and, in particular, Sections 2, 17A, and 23(a) thereof [15 U.S.C. 78b, 78q-1, and 78w(a)], the Commission amends Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add §240.17Ad-8, as set forth below, effective thirty days after publication in the Federal Register. The Commission does not perceive that any burden is imposed upon competition by this amendment.

TEXT OF RULE

§240.17Ad-8 Securities position listings.

(a) For purposes of this section, the term "securities position listing" means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16444/December 21, 1979

OPTIONS CLEARING CORPORATION

(SR-OCC-79-7)

ORDER APPROVING PROPOSED RULE CHANGE

On November 2, 1979, the Options Clearing Corporation ("OCC") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change amending the timeframes during which members may submit instructions to OCC dealing with segregation of long positions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16337 (November 13, 1979) and by publication in the Fed-

eral Register (44 FR 66718, November 20, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16445/December 21, 1979

In the Matter of Application of the

PACIFIC STOCK EXCHANGE, INC.

For Unlisted Trading Privileges

Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange ("PSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Penn Central Corp.
Common Stock, $1 Par Value (File No. 7-5074)[1]

The Commission finds that approval of the PSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Pacific Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the Federal Register. 44 FR 10166 (February 16, 1979). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16446/December 21, 1979

NOTICE OF RECEIPT OF AMENDMENTS TO PLAN FILED PURSUANT TO SECTION 11A(a)(3)(B) OF THE SECURITIES EXCHANGE ACT OF 1934 No. 4-281.

On November 20, 1979, the participants in the consolidated quotation system ("CQS") submitted to the Commission various amendments to the joint industry plan (the "Plan") authorized pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act") governing and implementing the operation of the CQS.

I. DESCRIPTION OF AMENDMENTS

A. *Amendments Relating to NASD Participation in the Plan*

The Plan participants have proposed the amendment of Sections I(j), VI(c), VI(d) and IX(c) of the Plan and the addition of a new Section III(d) to the Plan. Among other things, these proposals would provide that at some future date the Plan may be amended and submitted to the Commission for approval: (i) to provide for a 'CQ Network C' for unlisted, over-the-counter NASDAQ securities; (ii) to name the NASD as the network's administrator thereof, with all of the rights and authority with respect to 'CQ Network C' that the network's administrators for CQ Network A and B have under the CQ Plan with respect to their respective networks; (iii) to properly allocate income and expenses in relation to unlisted, over-the-counter NASDAQ securities; and (iv) to make such other changes as deemed necessary at that time.

B. *Amendments Relating to the Regulatory Halt Provision*

The Plan participants have proposed the deletion of Section IX(a) of the Plan and the amendment of Section IX(b) of the Plan. Section IX(a) of the Plan, as originally filed with the Commission, provided that, during a regulatory halt of trading in a security called by the "primary" exchange, all Plan participants must cease making available quotation information in that security to the Plan Processor. The Commission determined to condition its temporary authorization of the Plan on the Plan participants not implementing this provision of the Plan and requested the Plan participants to execute and file amendments to the Plan eliminating this provision.[1] The amendment to Section IX(b) of the Plan would provide that each Plan participant shall be authorized to suspend the furnishing of quotation information in any "eligible security" for any reason deemed adequate by it. Any Plan participant which does so suspend furnishing of quotation information shall immediately advise the Plan processor of its actions and reasons therefor.

C. *Amendments Relating to Financial Arrangements Among the Participants*

The Plan participants have proposed the amendment of Section X(b) (i) of the Plan. Section X(b) of the Plan provides for the sharing of income and expenses associated with making available Network A and Network B quotation information. Specifically, as to each network, it provides that a participant's "Annual Share" of net income for any calendar year will be measured by the number of transactions reported by that participant during that year in the consolidated transaction reporting system as compared with all transactions reported by all participants during that year. The amendment would modify the definition of the term "Annual Share" to exclude those transactions reported in those securities as to which an exemption has been granted to a participant from the requirements of Rule 11Ac1-1 under the Act.

II. REQUEST FOR COMMENT

In order to assist the Commission in determining whether to approve the proposed amendments, interested persons are invited to submit their views and comments on the proposal to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, within 21 days from the date of publication in the *Federal Register*. The amendments to the Plan will be available for public inspection in the Commission's public reference room. All such communications should refer to File No. 4-281.

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[1] *See* Securities Exchange Act Release No. 14415 (July 28, 1978) 43 FR 34851; Securities Exchange Act Release No. 15511 (January 24, 1979) 44 FR 6230.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16447/December 21, 1979

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-79-20)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on December 17, 1979, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change which would amend Articles II, III and XIV of the Amex Constitution relating to the structure and terms of service of the Board of Governors, the Nominating Committee, and their members.

The proposal would change the composition and election procedures of the Board of Governors as follows. The size of the Board would be increased from 21 to 25 Governors by the addition of two floor representatives and two public representatives. At least three of the public Governors would be required to be principal executive officers of listed companies. And, commencing in 1981, Governors would serve for three-year terms and would be eligible to be elected for two consecutive terms. (Article II, Section 1).

The proposed rule change also would modify the composition and election procedures for the Nominating Committee so that one Committee member would be selected from among the incumbent public Governors and another would be selected from among former industry Governors who have recently retired from the Board. The public Governor representative on the Committee would be required to be in his last term as Governor and would thus be ineligible for re-election. He would be nominated by his fellow public Governors, instead of by the Nominating Committee. In addition, one of the public representatives on the Committee also would be required to be an executive officer of a listed company. Members of the Committee would serve for two-year terms and their terms would be staggered so that only four members would be replaced each year. (Article III, Sections 1, 5, 6 and 7).

The proposed amendments would authorize the Board to take all action necessary and appropriate to carry out the reclassification of Governors contemplated by the proposals and to assure a smooth transition to the reconstituted Board. The restructured Nominating Committee would be elected at the 1980 annual meeting so that it can select nominees for the reconstituted Board in 1981. (Article XIV, Sections 1 and 2).

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex 79-20.[1]

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be

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[1]The proposed rule change is based on the recommendations contained in the June 1979, report of the Amex Advisory Committee on Governance. That report incorporated ideas and suggestions solicited from seat holders, listed companies, members of the Board of Governors and other interested parties. In addition, the proposal reflects modifications the Board made in response to comments it received from the membership at meetings held following distribution of the Committee report.

withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(3) of the Act, and the rules and regulations thereunder, in that they are designed to assure a fair representation of Amex members in the selection of the Board of Governors and administration of Amex affairs and provide that one or more Board members shall be representative of issuers and investors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that these changes must take effect by January 1980, to enable the present Nominating Committee to select candidates for the restructured Nominating Committee to be elected at the 1980 annual meeting, and to facilitate the transition to the reconstituted Board.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16448/December 21, 1979

Administrative Proceedings File No. 3-5786

In the Matter of

BERNARD J. COVEN

ORDER ACCEPTING OFFER OF SETTLEMENT AND IMPOSING REMEDIAL SANCTION

I.

The Commission has instituted public proceedings with respect to Bernard Jay Coven ("Coven") pursuant to Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.1(e), to determine whether Coven should be denied the privilege of appearing or practicing before it as an attorney. On July 3, 1979, the Commission entered an order temporarily suspending Coven from appearing or practicing before the Commission pursuant to Rule 2(e). Upon the petition of coven, that suspension was lifted on November 5, 1979, for the pendency of the proceedings.

Coven has submitted an offer of settlement. Under the terms of his offer, the Respondent, without admitting or denying the allegations and findings contained herein, consents to the findings and order of the Commission imposing the remedial sanction set forth below.

II.

On the basis of the proceedings as to Coven, the Commission makes the following finding:

On August 20, 1975, a Final Judgment of Permanent Injunction was entered by the United States District Court for the Southern District of New York against Coven, defendant in a Commission action entitled *Securities and Exchange Commission* v. *Joseph Rega, Jr., et al*, 73 Civil 2944, enjoining him from future violations of Section 17(a) of the Securities Act. The Second Circuit Court of Appeals affirmed, *Securities and Exchange Commission* v. *Coven*, 581 F. 2d 1020 (2d Cir. 1978), and the

Supreme Court denied certiorari 99 S. Ct. 2043 (1979).

III.

In view of the foregoing, and after due consideration of the offer of settlement, the three month period of temporary suspension already incurred by the Respondent, and the recommendation of its staff, the Commission has determined that it is in the public interest to accept the offer of settlement and to impose the sanction specified in the offer of settlement.

IV.

Accordingly, IT IS ORDERED that:

Respondent Bernard Jay Coven be and hereby is suspended for a period of three (3) months, effective November 26, 1979, from appearing or practicing before the Commission. "Practice before the Commission" shall include any and all matters falling within the purview of Rule 2(g) of the Rules of Practice, 17 CFR 201.2(g) which defines "practice" to include, *but not be limited to*: (1) transacting any business with the Commission, and (2) the preparation of any statement, opinion or other papers by any attorney, accountant, engineer or other expert filed with the Commission in any registration statement, notification, application, report, or other document with the consent of such attorney.

By the Commission (Commissioners Philip L. Loomis, Jr., Irving M. Pollock); Commissioner Roberta S. Karmel dissenting*

George A. Fitzsimmons
Secretary

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*Dissenting Opinion of Commissioner Karmel Follows

Commissioner Karmel, dissenting:

I dissent from the Commission's action against this respondent. The record in this proceeding contains only an injunction against the respondent and opinions of the trial court, an opinion of the circuit court,[1] and Mr. Coven's own petition for a lifting of a temporary suspension ordered on July 3, 1979. Respondent, therefore, is being suspended from appearing or practicing before the Commission solely because he has been enjoined for aiding and abetting a securities laws violation by making a misrepresentation in a letter to an escrow agent. There are no other facts which form the basis for instituting this proceeding, or ordering this sanction. Although the escrow account was established in connection with a registered offering of securities, this attorney's misrepresentation in no way affected the administrative processes of this agency. In addition, it is not clear that the respondent was practicing securities law in rendering advice to the escrow agent. I do not believe the Commission has the statutory authority to discipline an attorney administratively solely because he has been enjoined from violating the federal securities laws.

I have dissented from the Commission's actions under Rule 2(e) against Mr. Coven in this matter on two previous occasions. On July 3, 1979, when the Commission issued a temporary suspension of Mr. Coven from practice before this agency,[2] I dissented on the grounds that even if the Commission has some authority to sanction attorneys administra-

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[1]The opinions in the record are: SEC v. Joseph Rega, Jr., et al., 73 Civil 2944, 75-75 CCH Fed. Sec. L. Rep. Par. 95,222 (S.D.N.Y. 1975), *reconsideration denied (August 19, 1975) affirmed in part and reversed in part sub nom.* SEC v. Coven, 581 F.2d 1020 (2d Cir. 1978), *cert. denied*, 440 U.S. 950 (1979).

[2]The Commission has acted three times in this proceeding prior to its acceptance of Mr. Coven's consent. On July 3, 1979, the Commission summarily suspended Mr. Coven from practice before the agency on a temporary basis, and issued an order opening proceedings to determine whether Mr. Coven should be permanently suspended from Commission practice pursuant to Rule 2(e). On September 26, 1979, the Commission denied without prejudice Mr. Coven's telegraphic request that the temporary suspension be rescinded. On November 1, 1979, the Commission granted Mr. Coven's petition that the temporary suspension be lifted.

tively,[3] such authority is limited to cases in which an attorney has improperly conducted himself while personally representing clients before the Commission.

On September 26, 1979, I also dissented from the Commission's decision not to rescind its temporary suspension of Mr. Coven and to institute proceedings pursuant to Rule 2(e). In my second dissent in this matter I took the position that the Commission cannot sanction attorneys administratively for behavior committed outside the Commission's processes, and that it is above all improper to use an implied remedy like Rule 2(e) to establish and enforce Commission standards for ethics and competency. I continue to believe that a prosecutorial agency of the federal government cannot and should not attempt to regulate the practice of law or attorneys' ethics.

There are several considerations which I believe militate against sanctioning Mr. Coven in this proceeding, with or without his consent. First, I believe that the Commission has no subject matter jurisdiction to bring this disciplinary proceeding. Even if the Commission has any implied authority to proceed against attorneys under its Rule 2(e), that authority cannot be extended to the circumstances here, where the respondent's conduct in no way interfered with the Commission's exercise of its powers or performance of its responsibilities.

I am also persuaded that the Commission is bound by a different standard on the burden of proof to impose this suspension than that which was applicable to the court proceedings which resulted in the issuance of an injunction. The Commission must, in my opinion, find the evidence in the record of wrongdoing clear and convincing before it can impose an administrative sanction against an attorney under Rule 2(e). The record indicates that such a standard was not met in the court proceedings upon which the Commission relies. Although the district court did not articulate the standard under which it made its findings of fact, it seems clear from the nature of its discussion that the trial court applied the statutory standard of preponderance of the evidence.[4] The Second Circuit also fails to shed any light on the standard of proof applicable to the findings of fact, which it, too, recites.[5] The majority's order in this proceeding fails to find that the record contains clear and convincing evidence of violations of either Section 17(a) of the Securities Act or Rule 10b-9 under the Exchange Act.[6] The order merely takes notice of the injunction entered against Mr. Coven, and on that basis alone the majority, with no further findings, suspends him from practice. The findings of fact in the court opinions and in the majority's opinion in this case do not suffice to support the Commissions actions.

This majority relies upon Commission Rule 2(e)(2),[7] as it previously relied upon Rule 2(e)(3)(i),[8] to suspend Mr. Coven from practice before the Commission *solely* because of the court's findings and injunction entered against him. I am generally dubious about the validity of this rule, and I feel that under the facts presented here, the Commission's action cannot be sustained.

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[3]This is a position with which I do not necessarily agree. *See* my dissent In the Matter of Keating, Muething and Klekamp, Securities Exchange Act Release No. 15982 (July 2, 1979).

[4]SEC v. Joseph Rega, Jr., *supra* n. 1.

[5]SEC v. Coven, *supra* n. 1.

[6]The Commission has been informed by the judiciary that the exercise of its administrative authority in broker dealer and similar disciplinary proceedings must be based on clear and convincing evidence, Whitney v. SEC, 604 F.2d 676 (D.C. Cir. 1979); Collins Securities Corporation v. SEC, 562 F.2d 820 (D.C. Cir. 1977); *See also*, Steadman v. SEC 603 F.2d 1126 (5th Cir. 1979).

It seems to me that this same burden of proof should apply when a federal agency attempts to administratively discipline an attorney for misconduct. This is because, as the D.C. Circuit Court of Appeals has pointed out, professional disciplinary proceedings are adversary proceedings of a quasi-criminal nature. Charlton v. Federal Trade Commission, 543 F.2d 903, 906 (D.C. Cir. 1976). *Cf.* Addington v. Texas, 441 U.S. 418 (1979).

[7]17 CFR 201.2(e)(2).

[8]17 CFR 201.2(e)(3)(i).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16449/December 26, 1979

(File No. SR-DTC-79-6)

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE DEPOSITORY TRUST COMPANY

The Depository Trust Company ("DTC") submitted on December 4, 1979, a proposed rule change under Rule 19b-4 to permit a corporation which acts as its own transfer agent and which does not maintain insurance analogous to Bankers Blanket Bond Standard From 24 with respect to its transfer agent function to participate in DTC's Fast Automated Securities Transfer program.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 31, 1979. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 . Reference should be made to File No. SR-DTC-79-6.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16450/December 26, 1979

An order has been issued granting the application of the Boston Stock Exchange, Inc. to strike the common stock (Par Value $1) of GENERAL ALLOYS COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16451/December 27, 1979

An order has been issued granting the application of the New York Stock Exchange, Inc. to strike the Michigan Central Collateral 3-1/2% Gold due February 1, 1998 of New York Central & Hudson River Railroad Co. (included in the reorganization of Penn Central Co., Penn Central Transportation Co.) from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16452/December 27, 1979

An order has been issued granting the application of TELECOM CORPORATION to withdraw its common stock (Par Value $1) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16453/December 27, 1979

An order has been issued granting the application of ZERO CORPORATION to withdraw its common stock (Par Value $1) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16454/December 27, 1979

In the Matter of

PACIFIC RESOURCES, INC.

Common Stock, no par value

File No. 1-6884

Securities Exchange Act of 1934 Sections 12(d) and 17(a)

ORDER AMENDING EFFECTIVE DATE OF WITHDRAWAL FROM LISTING AND REGISTRATION AND EXTENDING THE EXEMPTION OF CERTAIN PERSONS AND SECURITIES FROM THE PROVISIONS OF RULE 17a-15

On June 22, 1977, the Commission, by order, approved the application under Section 12(d) of the Securities Exchange Act ("Act"), of Pacific Resources, Inc. ("PRI") to withdraw its securities from listing and registration on the Pacific Stock Exchange Incorporated ("PSE").[1] The Commission, however, stayed the effective date of the order until it could consider the PSE's pending application, under Section 12(f)(2) of the Act, for unlisted trading privileges in PRI common stock, but in no event later than 120 days after June 22, 1977.[2] Since that time, the Commission has found it necessary to extend the date upon which PRI's withdrawal from listing and registration on the PSE becomes effective; most recently, the effective date was delayed to December 31, 1979.[3]

In amending the delisting order, the Commission has found that a delay in the effective date of the delisting order was necessary for the protection of investors principally because even a temporary disruption in trading in PRI stock on the PSE, during the interim period after delisting, but before unlisted trading privileges are (if at all) granted, would result in a lessening of potential competition among dealers and between exchange markets and markets other than exchange markets.[4]

A decision on the PSE application for unlisted trading privileges in PRI stock, like any other application for unlisted trading privileges in a security not listed on another national securities exchange, involves the consideration of several major policy issues including: whether sufficient progress has been

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[1]*See* Securities Exchange Act Release No. 13657 (June 22, 1977) 42 FR 33398 (June 30, 1977).

[2]In addition to staying the effective date of the order, the Commission granted the National Association of Securities Dealers and all brokers and dealers an exemption for a similar period of up to 120 days, from the last sale reporting requirements of Rule 17a-15 under the Securities Exchange Act [17 CFR 240.17a-15] with respect to over-the-counter ("OTC") transactions in the common stock of PRI. The Commission has determined that this temporary exemption was justified since, if the unlisted trading privileges application of the PSE is denied, PRI stock will be traded solely OTC and therefore will not be subject to current reporting under Rule 17a-15.

[3]*See* Securities Exchange Act Release No. 16073 (August 2, 1979) 17 SEC Docket 1487. Each time the Commission delayed the effective date of the delisting order, it also extended the exemption from the reporting requirements of Rule 17a-15.

[4]In its initial stay of the order's effective date, the Commission also noted that if delisting were effective immediately, new extensions of margin credit would be prohibited until the security was admitted to the list of OTC Margin Stocks issued periodically by the Board of Governors of the Federal Reserve System. PRI common stock was admitted to the list on October 2, 1978.

made toward the development of a national market system to satisfy the standards of Section 12(f)(2); whether the progress contemplated by Congress in adopting that section is met by an exchange's rescission of its off-board trading rules as they apply to transactions in unlisted stocks; [5] and, whether that progress and the statutory goals of eliminating unnecessary burdens on competition are satisfied by existing communications facilities and provisions for access between the exchange and over-the-counter ("OTC") markets.

The Commission has not yet resolved these issues insofar as they arise with respect to consideration of the PSE application for unlisted trading privileges. The Commission believes, however, that, consistent with the purposes of the Act,[6] it is appropriate to permit the existing competition between the PSE and OTC markets in PRI stock to continue pending resolution of these issues. Therefore, for the reasons enunciated in the June 22 delisting order, and as stated above, the Commission finds it necessary to delay until December 31, 1980, the effective date of removal of PRI stock from listing and registration on the PSE, and to extend until that date the exemption from Rule 17a-15 for OTC transactions in PRI common stock.

ACCORDINGLY, IT IS ORDERED that the order of June 22, 1977, be, and it hereby is, amended.

By the Commission.

George A. Fitzsimmons
Secretary

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[5]The PSE has exempted from its off-board trading restrictions securities, such as PRI stock, which are both the subject of a delisting application and in which the PSE has applied for unlisted trading privileges. *See* Securities Exchange Act Release No. 13656 (June 22, 1977) 42 FR 33400 (June 30, 1977).

[6]*See, e.g.,* Section 11A(a)(1)(C)(ii).

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21347/December 20, 1979

In the Matter of

MIDDLE SOUTH ENERGY, INC.
New Orleans, Louisiana

(70-6259)

ORDER RELEASING JURISDICTION OVER TERMS OF FIRST MORTGAGE BOND SALE; CONTINUED RESERVATION OF JURISDICTION OVER FEES

Middle South Energy, Inc. ("MSEI"), a wholly owned subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the proposed transaction.

By an order dated March 28, 1979 in this matter (HCAR No. 20977) the Commission authorized MSEI to privately place up to $400,000,000 principal amount of a second series of its first mortgage bonds with a group of institutional investors. At that time jurisdiction was reserved over the terms and conditions of the bonds as such were negotiated by MSEI as well as over the fees, commissions and expenses to be incurred by MSEI in connection with the proposed transaction.

MSEI has now filed a post-effective amendment to its application-declaration informing the Commission that negotiations for the sale of the bonds have been substantially completed. Due to market conditions, MSEI has reduced the principal amount of the bonds to be issued and sold ("Second Series Bonds") to an amount not more than $200 million, depending upon final commitments of purchasers. purchasers.

The bonds will bear interest at a rate of 12.50% per annum, will be sold at 100% of their principal amount and will mature 20 years from the date of issue. The bonds will be noncallable for five years from date of issuance and will be optionally redeemable at 115% of their principal amount between the sixth and tenth year from the date of issuance. Thereafter, the bonds will be redeemable at their principal amount plus a premium equal to the interest rate from the date of issuance and declining on a straight line basis to par in the year of maturity. The bonds will be subject to level redemption on a pro rata basis at part through operation of a mandatory sinking fund commencing five years from the date of issuance and annually thereafter on the anniversary of such date. The average life of the bonds will be approximately 12.4 years. There are no provisions for optional sinking fund payments.

The bonds will be issued and sold under a Second Supplemental Indenture to MSEI's Mortgage and Deed of Trust, dated as of June 15, 1977 by and between MSEI and the Trustees, as supplemented by the First Supplemental Indenture dated as of June 15, 1977. The terms and provisions of the Second Supplemental Indenture will be substantially the same as those of the First Supplemental Indenture.

The Second Series Bonds will be secured on a *pari passu* basis with the First Series Bonds and MSEI's lenders under the bank loan agreement by the assignment of MSEI's rights under the capital funds agreement between MSEI and Middle South and by the assignment of MSEI's rights under the Availability Agreement between MSEI and the five Middle South System operating companies.

The proceeds of the sale will be applied to reduce outstanding loans under MSEI's bank loan agreement with a group of banks as authorized in the Commission's order of June 24, 1977 (HCAR No. 20090) or short-term borrowings not exceeding 5% of MSEI's capitalization made from Manufacturers Hanover Trust Company.

On March 28, 1979 MSEI was authorized to negotiate the sale of up to $400 million of first mortgage bonds to institutions. No progress was made on the placement of the securiites until mid-August, 1979 when it became evident that no more than $200 million of first mortgage bonds could be sold. Intensive efforts thereafter culminated in the discovery that little more than $100 million could be placed with a group of ten insurance companies.

MSEI attributes this lack of better results to a general decline of interest in securities of public utilities dependent to a significant degree on nuclear generation following the incident at the Three Mile Island nuclear plan of Metropolitan Edison Company near Harrisburg, Pennsylvania on March 28, 1979.

MSEI asserts that the successful sale of the first mortgage bonds is essential to the financing plan for the completion of the Grand Gulf plant, which also includes a contemplated increase in the revolving bank loan commitments from the present $565 million level to approximately $765 million. An expansion in this credit is required to provide financing of the project during 1980. The construction budget for Grand Gulf for next year is projected at approximately $420 million. With 65% to be supplied by debt, Middle South Energy needs approximately $270 million of debt next year. The proposed increase in the banks' line of credit will be the subject of a future application to the Commission.

The loan was negotiated but essentially on terms insisted on by the lenders. The terms as to refundability are more restrictive for the borrowers than the terms contemplated by our Statement of Policy, but applicant's need for the financing is urgent, and circumstances seem to preclude resort to other markets. The Commisison will grant its authorization, which should not be considered a precedent. It is an exception under our Statement of Policy.

A statement of the fees, commissions and expenses to be incurred in connection with the instant transaction will be filed by further post-effective amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is. granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act:

IT IS FURTHER ORDERED that the jurisdiction reserved in the order of March 28, 1979 with

respect to the terms and conditions of the bonds to be sold by MSEI be, and it hereby is, released effective forthwith:

IT IS FURTHER ORDERED that the jurisdiction be, and it hereby is, reserved with respect to the fees, commissions and expenses to be incurred by MSEI in connection with the proposed transactions.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21348/December 21, 1979

In the Matter of

GULF POWER COMPANY
75 North Pace Boulevard
P.O. Box 1151
Pensacola, Florida 32520

(70-6383)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Gulf Power Company ("Gulf"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Gulf proposes to issue and sell up to $50,000,000 aggregate principal amount of its first mortgage bonds ("Bonds"). The new Bonds will have a term of not less than five nor more than thirty years and will be sold at competitive bidding for the best price obtainable, but for a price to Gulf of not less than 98% nor more than 101-3/4% of the principal amount thereof, plus accrued interest. The Bonds will be issued under the Indenture dated as of September 1, 1941, between Gulf and The Chase Manhattan Bank ("National Association") and The Citizens & Peoples National Bank of Pensacola, as Trustees, as heretofore supplemented and to be further supplemented by a Supplemental Indenture to be dated as of February 1, 1980.

It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Gulf to sell the Bonds with a 30-year term or some shorter term and that it is in the public interest for Gulf to be afforded the necessary flexibility to adjust its financing program to developments in the market for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate, and term for its Bonds. Gulf intends, therefore, to decide on the term of the Bonds after the date of the public invitation for proposals and then notify prospective bidders.

Gulf also proposes to issue up to 100,000 shares of its preferred stock, par value $100 per share, ("Preferred Stock") and to sell such securities at competitive bidding for the best price obtainable but for a price of Gulf of not less than $100 per share nor more than $102.75 per share, which shall also be the public offering price per share. In addition, Gulf proposes to pay to the purchasers of the Preferred Stock compensation for their services in purchasing and making a public offering of such shares.

It is stated that Gulf may request by amendment that each of the proposed sales be excepted from the competitive bidding requirements of Rule 50, should circumstances develop which, in the opinion of Gulf's management, make such exception in the best interest of Gulf and its investors and consumers.

Gulf intends to use the proceeds from the sales of the Bonds and Preferred Stock, along with other funds, in financing business as an electric utility company, including the repayment of outstanding short-term indebtness, the payment of costs

incurred in its on-going construction program and the discharges of other general corporate obligations. Gulf's construction program is estimated at $146,779,000 for 1980.

Statements of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The Florida Public Service Commission has jurisdiction over the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21349/December 21, 1979

In the Matter of

PENNSYLVANIA ELECTRIC COMPANY

NINEVEH WATER COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

(70-6067)

NOTICE OF PROPOSED CASH CAPITAL CONTRIBUTIONS TO WATER COMPANY SUBSIDIARY

NOTICE IS HEREBY GIVEN that Pennsylvania Electric Company ("Penelec"), an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, and Nineveh Water Company ("Nineveh"), a water company subsidiary of Penelec, have filed with this Comission a further post-effective amendment to their application-declaration in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

In accordance with orders in this proceeding dated December 22, 1977, and February 15, 1979 (HCAR Nos. 20333 and 20922), Nineveh has issued $915,000 of its demand notes to Penelec in order to obtain funds to repair facilities damaged by the July 1977 flood in Johnstown, Pennsylvania and to modify the Findley Run Dam. It is stated that Nineveh applied to the U.S. Small Business Administration for a disaster relief loan in the amount of $1,230,600, the proceeds of which loan were to be used by Nineveh to repay such demand notes. Because certain of the conditions imposed by the Small Business Administration upon such loan were not acceptable to Nineveh and Penelec, the authorization with respect to such loan was cancelled. (The filing with this Commission with respect to such loan (File No. 70-6201) was withdrawn on August 23, 1979.)

Penelec now proposes that the demand notes be converted to cash capital contributions. In addition,

Nineveh will require an additional $68,500 for construction purposes in 1980, and Penelec also proposes to provide such additional funds by cash capital contributions. Accordingly, it has been requested that an order be issued authorizing Penelec cash capital contributions to Nineveh through December 31, 1980, in the aggregate amount of $983,500, $915,000 of which will represent the conversion of the demand notes to capital contributions and the balance, $68,500, will represent additional cash capital contributions in 1980.

The fees and expenses to be incurred in connection with the proposed transaction are to be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 15, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21350/December 21, 1979

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
10 Lafayette Square
Buffalo, New York 14203

NATIONAL FUEL GAS SUPPLY CORPORATION
308 Seneca Street
Oil City, Pennsylvania 16301

(70-6395)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMERCIAL PAPER AND NOTES TO BANKS BY HOLDING COMPANY AND INTRASYSTEM FINANCING

NOTICE IS HEREBY GIVEN that National Fuel Gas Company, ("National"), a registered holding company, and two of its subsidiaries, National Fuel Gas Distribution Corporation ("Distribution Corporation") and National Fuel Gas Supply Corporation ("Supply Corporation"), have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7,9(a),10,12(b), and 12(f) of the Act and Rules 42,43,45, and 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

National proposes to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $30,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to Distribution Corporation. Such short-

term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest equal to the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. In addition, National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are stated to be sufficient to cover these amounts. Assuming an average balance of 20% was required, the effective cost of money, based on a 15.25% prime rate, would be 19.0625%. There will be no commitment fee or any closing or related costs in connection with the above borrowings. National presently intends to repay the $30,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

National proposes to use the proceeds from the sale of its short-term notes to acquire up to $30,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Distribution Corporation. Each such note will be dated the same date and bear the same effective interest rate as the related short-term note of National and will mature within twelve months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment. Distribution Corporation intends to use the proceeds from the sale of its notes for working capital, including working capital in connection with deferred gas costs.

National also proposes to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $20,000,000 aggregate principal amount at any one time outstanding of its commercial paper to a dealer in commercial paper and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation. The decision to issue commercial paper or short-term notes is at the discretion of National, except that, if the effective interest cost for commercial paper exceeds the cost of equivalent borrowings from Chase on the date of issue, National will issue its short-term unsecured notes to Chase.

The commercial paper will be sold by National to the dealer in minimum sales amounts of not less than $50,000 and note denominations of not less than $25,000, with varying maturities not to exceed nine months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the commercial paper; however, the dealer will reoffer and sell the commercial paper at a discount rate of 1/8 of 1% per annum less than the prevailing discount rate from the dealer to National. The dealer, in reoffering the commercial paper, will limit the reoffer and sale to a nonpublic list of not more than 200 buyers of commercial paper. It is anticipated that the commerical paper of National will be held by the buyer to maturity; however, the dealer may, if desired, repurchase the commercial paper and reoffer it to others on the list of buyers.

The short-term unsecured notes issued to Chase will mature within 12 months of the date of issue, will be payable at any time without premium, and will bear interest equal to the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. As set forth above, National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding.

National proposes to use the proceeds from the sale of its short-term notes and/or commercial paper to acquire up to $20,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Distribution Corporation. Each such note will be dated the same date and bear the same effective interest rate as the related commercial paper and/or short-term note of National. Each note related to the commercial paper of National will mature within nine months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Each note related to a short-term note of National to Chase will mature within twelve months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any such note at any time or from time to time, in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment.

Distribution Corporation proposes to use the proceeds from the sale of its notes pursuant to this transaction for working capital, including working

capital in connection with deferred gas costs. National presently intends to repay its borrowings of $20,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

National further proposes to establish lines of credit with various banks aggregating $50,000,000 and to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, short-term unsecured notes pursuant thereto, up to an aggregate principal amount at any one time outstanding of $50,000,000 and loan the proceeds therefrom to Supply Corporation. The names of the banks and the maximum amount to be borrowed and outstanding at any one time from each such bank are as follows:

BUFFALO GROUP	
Marine Midland Bank-Western Buffalo, New York	$20,200,000
Manufacturers and Traders Trust Company- Buffalo, New York	11,000,000
Liberty National Bank & Trust Company- Buffalo, New York	4,000,000
ERIE GROUP	
*First National Bank of Pennsylvania-Erie, Pennsylvania	2,600,000
Marine Bank-Erie, Pennsylvania	1,700,000
Warren National Bank-Warren, Pennsylvania	1,700,000
OIL CITY GROUP	
*First Seneca Bank & Trust Co.-Oil City, Pennsylvania	3,200,000
Pennsylvania Bank & Trust Co.-Titusville, Pennsylvania	2,400,000
Northwest Pennsylvania Bank & Trust Co.- Oil City, Pennsylvania	1,700,000
*McDowell National Bank-Sharon, Pennsylvania	1,500,000
	$50,000,000

*Agent Bank

The notes will be dated the date of issue, will mature not later than twelve months from the date thereof, and will be prepayable at any time, in whole or in part, without penalty or premium. The notes issued and sold to the Erie and Oil City banks will bear interest at the prime rate of interest in effect from time to time at Chase. The notes issued and sold to the Buffalo banks will bear interest at the prime rate of interest in effect from time to time of each individual bank. Interest will be payable monthly until the principal amount is paid in full. There will be no commitment fee or any closing or related costs in connection with the above borrowings.

National proposes to use the proceeds from the sale of such short-term notes to acquire for cash from time to time up to $30,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Supply Corporation. Each note will be dated the date and bear the effective interest rate of the related short-term notes of National. Each note will mature within twelve months from its date of issue, with interest payable monthly until the principal amount is paid in full. Supply Corporation will have the option to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without penalty or premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment.

Supply Corporation intends to use the proceeds from the sale of its notes for working capital and to purchase gas placed in storage during the summer months. Repayment of these notes by Supply Corporation will be made as gas is withdrawn from storage and sold and from funds generated internally.

Finally, it is stated that during 1980, Supply Corporation will have excess cash resulting from the sale by Supply Corporation of gas withdrawn from storage. Thus, Supply Corporation and Distribution Corporation request authority during the period from January 21, 1980, through December 31, 1980, for Supply Corporation to loan and reloan to Distribution Corporation excess cash generated as a result of the sale by Supply Corporation of gas withdrawn from storage to the extent that such cash is available and is required by Distribution Corporation for working capital, but not in excess of $50,000,000 aggregate principal amount at any one time outstanding. The funds would be loaned in exchange for unsecured notes maturing within one year. Interest will be payable monthly, at the commercial paper rate applicable to National in effect at the time the loan is made. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any such note at any time or from time to time in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such

prepayment. Distribution Corporation proposes to repay these loans through monies received as a result of bank borrowings or the sale of commercial paper by National as outlined above.

It has been requested that authorization be granted to file on a quarterly basis certificates under Rule 24, with respect to the proposed transactions and that the issuance and sale of the commercial paper be exempted from competitive bidding pursuant to Rule 50(a)(5)

A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21351/December 21, 1979

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA

TRANSOK PIPE LINE COMPANY
Tulsa, Oklahoma

(70-5648)

SUPPLEMENTAL ORDER AUTHORIZING INCREASE IN AMOUNT OF NOTES ISSUED BY SUBSIDIARY PIPELINE COMPANY TO PARENT ELECTRIC UTILITY COMPANY

Public Service of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Transok Pipe Line Company ("Transok"), a subsidiary pipeline company of PSO, have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By supplemental order issued July 20, 1979 (HCAR No. 21152), Transok was authorized to issue and sell to PSO its short-term notes in an aggregate principal amount outstanding at any one time not to exceed $10,000,000, such notes to mature not later than December 31, 1980.

It is now proposed that the amount of such notes issued and sold by Transok to PSO be increased to $20,000,000. In all other respects the transactions remain unchanged. The notes will bear interest at the rate published in The Wall Street Journal for commercial paper placed directly by a major finance company and having terms most nearly equal to the terms of the loans. The proceeds of the notes have been and will continue to be used to finance Transok's continuing construction program and for Transok's general working funds.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21304), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21352/December 21, 1979

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

KENTUCKY POWER COMPANY
Ashland, Kentucky

KINGSPORT POWER COMPANY
Roanoke, Virginia

OHIO POWER COMPANY
Canton, Ohio

WHEELING ELECTRIC COMPANY
Wheeling, West Virginia

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6361)

ORDER AUTHORIZING ISSUANCE AND SALE OF NOTES TO BANKS AND TO A DEALER IN COMMERCIAL PAPER BY HOLDING COMPANY, CAPITAL CONTRIBUTIONS BY HOLDING COMPANY TO SUBSIDIARIES, AND GRANTING EXEMPTION FROM COMPETITIVE BIDDING

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling Electric"), AEP's subsidiary public utility companies, have filed a joint application-declaration and an amendment thereto pursuant to Sections 6(b) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

AEP requests that it be permitted to issue and sell from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper, respectively, in an aggregate amount not to exceed $165,000,000 outstanding at any one time. None of such notes or commercial paper shall mature later than June 30, 1981. The notes to be sold to banks will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance and will be prepayable at any time without premium or penalty. AEP proposes to issue and sell such short-term notes to 10 banks with lines of credit in an aggregate amount of $208,000,000. The banks and the line of credit which AEP has established at each such bank is as follows:

Name	Amount
Chemical Bank, New York, N.Y.	$50,000,000
The Chase Manhattan Bank (National Association), New York, N.Y.	50,000,000
Manufacturers Hanover Trust Company, New York, N.Y.	25,000,000
Morgan Guaranty Trust Company of New York, New York, N.Y.	18,000,000
Bankers Trust Company, New York, N.Y.	9,000,000
The Bank of New York, New York, N.Y.	6,000,000
The Cleveland Trust Company, Cleveland, Ohio	7,000,000
First Pennsylvania Bank and Trust Company, Philadelphia, Pa.	9,000,000
Mellon Bank, N.A., Pittsburgh, Pa.	9,000,000
Credit Lyonnais, New York, N.Y.	25,000,000
Total	$208,000,000

AEP will be required to maintain either (1) maintain compensating balances of 10% of the bank lines made available and additional compensating balances of 10% of the amount of any borrowings, or (2) maintain compensating balances and pay an annual fee for the availability of the line of credit, equivalent generally, in combination, to compensating balances not in excess of 10% of the line of credit made available. Where only compensating balances are required, borrowings under such lines will bear interest at an annual rate not greater than the bank's prime commercial rate in effect at the time of issuance. Where a combination of compensating balances and fees are required, borrowings under such lines would bear interest at a specified rate in excess of the bank's prime commercial rate in effect at the time of issuance, but such specified rate would not be greater than the equivalent rate of borrowings bearing interest at the prime rate with compensating balances equal to 10% of the amount borrowed. If the full amounts were borrowed from the banks, the effective interest cost to AEP would be 19.4%, based on a prime commercial rate of 15-1/2%. In the case of one bank, borrowings may be made in Eurodollars and the interest rate on such borrowings will be a designated percent of the London Interbank Offering Rate.

AEP also has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to AEP but represent merely the ability of AEP to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable by AEP at any time without premium or penalty. No compensating balances are required. The interest rate, which is currently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from those banks listed above including the effect of any compensating balances and fees paid.

The commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; none will be prepayable prior to maturity. The commercial paper notes will be sold directly to Lehman Commercial Paper Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper notes will be issued having a maturity of more than 90 days if such commercial paper notes would have an effective interest cost which exceeds the effective interest cost at which AEP could borrow from banks.

The Dealer will reoffer the commercial paper notes to not more than 200 of such Dealer's customers identified and designated in a non-public list prepared by such Dealer in advance, at a discount rate of 1/8 of 1% per annum less than the discount rate at which such commercial paper notes were purchased from AEP. It is expected that the customers of the Dealer will hold such commercial paper notes to maturity, but, if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper sold by it and reoffer it to other customers on the non-public list.

AEP also requests authority to make cash capital contributions from time to time prior to January 1, 1981, to its public utility subsidiary companies in the following aggregate amounts: Appalachian, $100,000,000, I&M, $50,000,000, KPCO,

$30,000,000, Kingsport, $1,000,000 Ohio Power, $30,000,000 and Wheeling Electric, $1,000,000.

The proceeds from the sale of the notes to banks and the commercial paper, together with other funds available to AEP, will be invested by AEP in its public utility subsidiaries to assist them in financing the costs of their respective construction programs and to retire their short-term debt. The construction programs of AEP's public utility subsidiary companies for 1980 are estimated as follows: Appalachian, $340,048,000, I&M, $199,607,000, KPCO, $134,483,000, Kingsport, $4,824,000, Ohio Power, $231,521,000 and Wheeling Electric, $3,917,000.

AEP claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes pursuant to paragraph (a)(2) thereof, and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The State Corporation Commission of Virginia and the Public Service Commission of West Virginia have both authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with this proceeding are estimated at $12,000.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21248), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, as amended, be granted, and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21353/December 21, 1979

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6363)

ORDER AUTHORIZING SHORT-TERM BORROWING

Appalachian Power Company ("Appalachian"), a subsidiary electric utility company of American Electric Power Company, Inc. ("AEP"), a registered holding company; has filed with this Commission an application and an amendment thereto pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

Appalachian requests that from the date of the granting of this application to January 1, 1981, the exemption from the provisions of Section 6(a) of the Act, afforded by the first sentence of Section 6(b), be increased to the extent necessary to cover the sale of notes to banks and commercial paper to a dealer in commercial paper in an aggregate amount not to exceed $200,000,000, provided that none of such notes to banks and commercial paper shall mature later than June 30, 1981

Appalachian has credit arrangements with 95 banks which total $352,490,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not

more than 270 days after the date of issuance or renewal thereof, and will be prepayable by Appalachian at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed, generally not in excess of 10% of the line of credit and 10% of the amount borrowed. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by Appalachian at any time without premium or penalty. Appalachian's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay a fee for the availability of the line of credit, which is equal to 4% of the bank's prime commercial rate then in effect times the size of the line. The combination of a 5% compensating balance and a fee is generally equivalent to a compensating balance not in excess of 10% of the line of credit made available. In addition, Appalachian must pay interest on the borrowings at the rate of up to 108.5% of the bank's prime commercial rate then in effect. In the case of one bank, borrowings may be made in Eurodollars; the interest rate on such borrowings will be a designated percent of the London Interbank Offering Rate. The total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. It is stated that if the balances maintained and the fees paid by Appalachian with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by Appalachian, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 19.4% on the basis of a prime commercial rate of 15-1/2%.

With respect to Class III banks, Appalachian has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to Appalachian, but represent merely the ability of Appalachian to request unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance; any such borrowings will be prepayable by Appalachian at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case by case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent if the borrowings are made in Eruodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

Appalachian also proposes to issue commercial paper, in the form of promissory notes, in denominations of not less than $50,000 nor more than $5,000,000, or varying maturities, with no maturity more than 270 days after the date of issue; such notes will not be prepayable prior to maturity. The commercial paper notes will be sold directly by Appalachian to Lehman Commercial Paper, Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper will be issued having a maturity of more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which Appalachian could borrow from commercial banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the dealer in advance, at a discount rate of 1/8 of 1% less than the discount rate at which such notes were purchased from Appalachian. It is expected that such customers will hold such commercial paper notes to maturity, but if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its nonpublic list.

The proceeds of the short-term debt incurred by Appalachian will be used to pay the general obligations of Appalachian, including expenses incurred in its various construction projects. The estimated cost of its construction program for 1980 is approximately $340,048,000.

Appalachian claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof, and requests exemption

from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The State Corporation Commission of Virginia has authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,000.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21246), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21354/December 21, 1979

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM

NEW ENGLAND POWER SERVICE COMPANY
Westborough, Massachusetts

(70-6353)

(70-576)

ORDER AUTHORIZING DIVIDEND PAYMENT BY, CAPITAL CONTRIBUTION TO AND SHORT-TERM BORROWING AUTHORIZATION FOR SUBSIDIARY SERVICE COMPANY

New England Electric System ("NEES"), a registered holding company, and its service company subsidiary New England Power Service Company ("NEPSCO") have filed with this Commission an application-declaration and amendments thereto pursuant to Sections 6(a), 7, 9(a), 10, 12 and 13 of the Public Utility Holding Act of 1935 ("Act") and Rules 42, 45, 50, 90 and 91 promulgted thereunder concerning the following proposed transactions.

During 1978 NEPSCO billed its customers $50,910,622 for services, an average of approximately $4,250,000 per month, and NEPSCO's monthly working capital needs ranged from a minimum of $1,375,000 to a maximum of $4,500,000. Since it has no authorization to borrow funds to meet its working capital requirements, NEPSCO met such requirements through a combination of open account advances from NEES of $1,100,000 and prepayments of bills by NEPSCO's customers. The open account advances from NEES consisted of $550,000 which had been made between 1936 and 1941 and which bear interest at 4% per annum, together with other advances totaling $550,000 which were made in amounts of $50,000 each, the last such advance having been made in 1965, and which do not bear interest. To provide for NEPSCO's ongoing working capital requirements it is proposed that NEES make a capital contribution to NEPSCO, that NEPSCO be granted its own short-term borrowing authority and that NEPSCO declare and pay to NEES a dividend of $273,436, a sum represent-

ing the full amount of its retained earnings. A portion of NEPSCO's retained earnings include work performed for non-affiliates, including work performed for the United States government during World War II. The disposition of this war income must be approved by this Commission in accordance with the order of August 8, 1942, in File No. 70-576.

NEES proposes to make a capital contribution of $1,350,000 to NEPSCO, from which contribution NEPSCO would repay NEES $1,100,000, the full amount of outstanding open account advances. NEPSCO will credit the capital contribution to "Miscellaneous paid-in capital" and NEES will charge it to "Investment: Common Stock of Subsidiaries, at Equity."

NEPSCO also proposes to issue and sell from time to time through March 31, 1980, its short-term notes up to a maximum amount of $4,000,000 outstanding. Such short-term notes would be issued to banks and/or to NEES, would mature in less than one year from date of issuance and would provide for prepayment in whole or in part without penalty. The notes issued to banks would bear interest at a rate not exceeding the prime rate in effect at the time of issuance (not including any fees in lieu of compensating balances), and those issued to NEES would bear interest at a rate not in excess of the prime rate in effect at the time of issuance. Assuming a prime rate of 15.75% and compensating balance requirements of 20%, or fees equivalent thereto, the effective interest cost of bank borrowings would be 19.69%, and the effective interest cost of borrowings from NEES would be 15.75%.

It is proposed that NEPSCO may prepay its notes to NEES, in whole or in part, with borrowings from banks and that NEPSCO may prepay its notes to banks, in whole or in part, with borrowings from NEES. In the event of borrowings from banks at a higher interest rate than the rate on notes to NEES being prepaid with such bank borrowings, NEES will credit NEPSCO with the interest differential from the date of issuance of the new notes to the normal maturity date of the notes to NEES being prepaid. In the event of borrowings from NEES to prepay notes to banks, the interest rate on the notes to NEES will be the lower of (1) the interest rate on the bank notes being prepaid (but only until the maturity date of the notes so prepaid, and thereafter at the prime rate) or (2) the prime rate.

NEPSCO also seeks authorization to include in its service charges to customers (1) the actual interest on funds borrowed by it, and (2) a rate of return on equity capital (excluding retained earnings) equal to the rate of return on common equity most recently authorized by the Federal Energy Regulatory Commission ("FERC") in rate proceedings involving NEPSCO's affiliate, New England Power Company ("NEP"). The most recent rate of return on common equity authorized NEP in FERC proceedings was 12.75%. NEPSCO further requests that any new rate authorized NEP by FERC become effective for NEPSCO (1) upon filing with this Commission of the FERC order authorizing such new rate for NEP, or (2) upon the effective date of such FERC order, whichever is later.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $3,500. No state commission and no federal commission, other than this Commission, has jurisdiction over the propsed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR Nos. 21259 and 21312), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that NEPSCO shall file Rule 24 certificates within 30 days of the end of each calendar quarter setting forth concerning its activities during such quarter the following: (a) a balance sheet and statement of income for NEPSCO, including a statement of retained earnings; (b) a computation of the cost of capital for the quarter included in its service charges to customers; and (c) a report of any borrowings by NEPSCO from banks and/or receipt of capital contributions from NEES. These reporting requirements may be modified from time to time.

IT IS FURTHER ORDERED that the jurisdiction reserved over the retained earnings of NEPSCO in File No. 70-576 be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21355/December 21, 1979

In the Matter of

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

OHIO POWER COMPANY
Canton, Ohio

(70-6215)

ORDER AUTHORIZING EXTENSION OF FINANCING FOR COAL MINING SUBSIDIARY

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Southern Ohio Coal Company ("SOCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6, 7, 12(b), 12(c) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45, 46 and 50 promulgated therunder concerning the following matter.

By order dated April 17, 1979 (HCAR No. 21008), SOCO was authorized, among other things, to enter into a term loan agreement with a group of banks providing for a loan of up to $130,000,000, which loan matures December 31, 1986, and requires the payment of quarterly installments in such amounts as will retire 15% of the prinipal amount outstanding on December 31, 1980, in each of the years 1981 through 1985 and 25% of such principal amount in 1986. The notes ("Notes") evidencing the loan bear interest, payable quarterly, at 109% of the prime rate of Citibank, N.A., and SOCO pays the banks a commitment fee of ½ of 1% per annum on the unused amount of the banks' commitments. Other terms of the loan, and related matters concerning it as it related to the pricing of SOCO's coal, are set forth in said order. The order also provided that the Notes "shall be prepaid on or prior to December 31, 1979, unless the borrowings are permitted for a longer period by further order of this Commission . . ."

By post-effective amendments applicants-declarants request an extension from December 31, 1979, until December 31, 1980, of the time by which the Notes must be prepaid unless permitted for a longer period by further order. Applicants-declarants claim that possible economic benefits from the authorized financing arrangements (which were claimed to result in a reduction in the price of coal sold to Ohio Power when the prime rate is below 9.71%, and to result in possible reductions in such price with a prime of 9.71% or above, depending on effective tax rates (assuming an effective tax rate of 13.8%, the "break even" prime rate under the proposal was calculated to be 10.56%)) will be realized when the prime rate (currently 15%) returns to more normal historical levels. In addition they assert that the financial alternatives for repayment of the Notes are currently unattractive, stating that repayment would require the sale of senior securities at an interest rate in excess of 13%, such rate to be locked in for at least five years.

There are no additional fees or expenses to be incurred in connection with the proposed extension. No state commission and no federal commission, other than this Commission, has jurisdiction fover the proposed extension.

Upon the basis of the facts in the record, as amended by said post-effective amendments, it is hereby found that the applicable standards of the Act and Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that said

application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21356/December 21, 1979

In the Matter of

CEDAR COAL COMPANY

SOUTHERN APPALACHIAN COAL COMPANY

CENTRAL APPALACHIAN COAL COMPANY
Charleston, West Virginia

CENTRAL OHIO COAL COMPOANY
Canton, Ohio

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

(70-6152)

ORDER AUTHORIZING MINING EQUIPMENT LEASE

Cedar Coal Company ("Cedar"), Central Appalachian Coal Company ("CACO") and Southern Appalachian Coal Company ("SACO"), coal mining subsidiaries of Appalachian Power Company ("Appalachian"), and Central Ohio Coal Company ("COCO") and Southern Ohio Coal Company ("SOCO"), coal mining subsidiaries of Ohio Power Company, which, like Appalachian, is an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed with this Commission a post-effective amendment to their application previously filed and amended pursuant to Sections 9 and 12 of the Public Utility Holding Compoany Act of 1935 ("Act") concerning the following proposed transaction.

By order dated August 8, 1979 (HCAR No. 21178), applicants (excluding CACO) were authorized to enter into leasing arrangements with the Commonwealth Plan, Inc. ("Commonwealth"), under separate master leasing agreements ("Commonwealth Leases") pursuant to which Commonwealth is committed to lease to applicants (excluding CACO), on or before March 31, 1980, certain mining equipment having a total aggregate acquisition cost not to exceed $20,000,000. Under the Commonwealth Leases rents are payable quarterly and provide for full amortization of the acquisition cost of each unit of equipment over a period of either 12, 20, 28, or 40 quarters. The quarterly rental payments per $1,000 of acquisition cost are $97.369 over a 12-quarter term, $64.026 over a 20-quarter term, $49.962 over a 28-quarter term and $39.702 over a 40-quarter term. Such quarterly payments contain an implicit interest rate to the lessor (assuming no residuals) of 9.92% per annum (on a 360-day year basis). When the cost of an item is fully amortized the quarterly rental payment becomes an amount equal to 0.125% of its acquisition cost. The Commonwealth Leases are net leases, with all expenses directly related to the leased equipment borne by the lessee.

By post-effective amendment it is requested that Cedar be permitted to enter into a rider to its lease with Commonwealth, which rider would provide for the lease to Cedar (as part of the $20,000,000 of equipment to be leased to applicants (excluding CACO), at a total acquisition cost of approximately $2,250,000, of a heavy duty electric yard shovel ("Shovel"). The rider provides for the lease of the Shovel at a quarterly rental of $28.867 per $1,000 of acquisition cost over an 80-quarter term. Such quarterly payment contains the same implicit interest rate to lessor (9.92%, assuming no residuals and a 360-day year) as the other rental terms under the Commonwealth Leases.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21302), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) applicants shall file Rule 24 certificates at the end of each calendar quarter setting forth concerning their activities during such quarter the following: (a) corporate balance sheets and income statements, including computations of cost of capital for the quarter on investments made by Appalachian in Cedar, CACO and SACO, and by Ohio Power Company in COCO and SOCO; (b) a description of mine operations and improvements made during the quarter; (c) the quantities of coal sold to each buyer, the price of such coal and the computation of the cost of coal sold; (d) supporting schedules of operating expenses incurred during the quarter; and (f) a supporting schedule of mining plant in service, and (2) applicants shall include with the certificates reporting for the last quarter of the calendar year a description of the construction expenditures budgeted for the following calendar year.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21357/December 21, 1979

In the Matter of

MICHIGAN POWER COMPANY
Three Rivers, Michigan

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-4538)

ORDER AUTHORIZING EXTENSION OF TIME FOR OPEN-ACCOUNT ADVANCES BY HOLDING COMPANY

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its electric utility subsidiary Michigan Power Company ("MPC"), have filed with this Commission a post-effective amendment to their declaration previously filed and amended pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder concerning the following proposed transaction.

By orders dated October 10, 1967, May 2, 1968, May 26, 1969, December 16, 1969, October 28, 1970, December 21, 1971, March 23, 1972, November 29, 1972, December 27, 1973, December 4, 1974, December 16, 1975, December 23, 1976, December 31, 1977, and December 29, 1978 (HCAR Nos. 15872, 16051, 16383, 16559, 16880, 17405, 17508, 17783, 18232, 18686, 19297, 19820, 20281 and 20858), this Commission, among other things, authorized AEP to make open-account advances to MPC of up to $12,000,000 outstanding at any one time. Such advances are to be repaid on or before December 31, 1979.

By post-effective amendment declarants request an extension of time until the earlier of December 31, 1980, or 45 days after any order by the Commission authorizing MPC's issuance of term notes in File No. 70-6374, to make said open account advances and to repay such advances. It is stated that MPC has pending before this Commission (in File No. 70-

6374) an application concerning its proposed issuance and sale to two banks of up to $20,000,000 of notes having a maturity of December 31, 1987.

A part of the proceeds from the sale of such notes would be used to repay the open-account advances to AEP. Declarants presently anticipate that the Michigan Public Service Commission, which has jurisdiction over the issuance of such notes, may require a hearing with respect to their issuance, resulting in a possible delay in their issuance and sale until after December 31, 1979.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21303), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21358/December 26, 1979

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY

YORK HAVEN POWER COMPANY
Reading, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY

NINEVEH WATER COMPANY
Johnstown, Pennsylvania

GENERAL PUBLIC UTILITIES CORPORATION

CHERRY HILLS FUEL CORPORATION

GPU SERVICE CORPORATION
Parisippany, New Jersey

(70-6376)

ORDER AUTHORIZING ALLOCATION OF CONSOLIDATED FEDERAL INCOME TAX LIABILITY BY METHOD OTHER THAN SPECIFIED IN RULE 45(b)(6)

General Public Utilities Corporation ("GPU"), a registered holding company, and its subsidiary companies named above have filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 45 promulgated thereunder as applicable to the following proposal.

GPU and its subsidiaries join as a group in the filing of consolidated Federal income tax returns. They state that two of the electric utility subsidiaries, Metropolitan Edison Company ("Met-Ed") and Jersey Central Power & Light Company ("JC") are expected to report losses for tax purposes for the year 1979. Such losses will be used, in the consolidated return, to eliminate taxable income from

other sources, and to adjust the consolidated tax liabilities for prior and future years.

Applicants state that the general allocation formula for allocation of consolidated return tax liabilities authorized by Rule 45(b)(6) is not suitable for a case in which an operating utility company suffers a material loss. Applicants have entered into a tax allocation agreement, pursuant to Section 1552 of the Internal Code of 1954, as amended, and submit that agreement for approval under Section 12(b) of the Act and Rule 45(a). They propose to allocate the consolidated return liability in accordance with the tax allocation agreement, for the year 1979 and subsequent years, until further order of the Commission.

The tax allocation agreement provides that there shall be allocated to each company in the consolidated group, except the holding company, the tax benefits of its own net operating losses. The tax benefits of the holding company's deductions will be allocated among the subsidiaries in proportion to the holding company's average common stock equity investment in each company during the year. The prior allocation of the holding company deductions under Rule 45(b)(6) for years before 1979, however, will not be adjusted in connection with allocating operating loss carry backs.

A company which does not have a net operating loss of its own and which would have income tax liability (allowing for its own investment tax credits which it could utilize on a separate return basis,) were the liability not offset by net operating losses of other companies in the group, will pay the amount of such tax reduction to the companies, other than the holding company, whose net operating losses are so used in the consolidated return. Such payments will be divided among the loss companies in proportion to the use of their net operating losses. If there is a consolidated minimum tax arising from "preference" items as defined in the Internal Revenue Code, such minimum tax will be independently allocated among the companies in the ratio of their respective preference incomes.

Based on estimates of income and expenses for the balance of the tax year, and the companies' interpretation of the relevant tax laws, it is believed that the current operating losses of Met-Ed and JC will produce about $16 million of 1979 tax deductions. These amounts will be paid to the two operating companies providing the deductions. It appears that no refunds of taxes paid in prior years will occur, but that the operating loss carry backs expected will replace investment tax credits previously claimed and increase the investment tax credits available for use in future years. The tax allocation agreement would preserve such benefits for the operating utility company which created such credits.

The fees, commissions and expenses to be incurred in connection with this proposal are estimated to total $9,500, including legal fees of $6,650 and miscellaneous expenses of $850. Although it is not entirely clear whether the contract involved in this Declaration is embraced within Section 2102 of the Pennsylvania Public Utility Code, the Companies have filed a copy of this declaration with the Pennsylvania Public Utility Commission in response to that provision of the Pennsylvania Public Utility Code. No other state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposal.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21323), and no hearing has been requested or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21359/December 26, 1979

In the Matter of

LOWELL GAS COMPANY
Lowell, Massachusetts

CAPE COD GAS COMPANY
Hyannis, Massachusetts

(70-6170)

ORDER AUTHORIZING TEMPORARY INCREASE IN SHORT-TERM FINANCING

Lowell Gas Company ("Lowell") and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this Commission a post-effective amendment to the joint declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Lowell and Cape Cod each have revolving lines of credit pursuant to separate credit agreements (collectively, the "Credit Agreements") dated January 1, 1976, as amended, with Chase Manhattan Bank (N.A.), Union National Bank, Shawmut Bank of Boston, N.A., State Street Bank and Trust Company, and BayBank Middlesex, N.A. By order in this proceeding dated June 30, 1978 (HCAR No. 20185), Lowell and Cape Cod were authorized to extend the term of the Credit Agreements to June 30, 1980, and to borrow up to the indicated amounts from the following banks:

	Lowell	Cape Cod
Chase Manhattan Bank, N.A.	$ 5,144,800	$2,464,000
Union National Bank	991,200	1,351,000
Shawmut Bank of Boston, N.A.	2,277,400	1,351,000
State Street Bank and Trust Company	2,183,000	868,000
BayBank Middlesex, N.A.	1,203,600	966,000
	$11,800,000	$7,000,000

The cost of the borrowing would be: The sum of (a) a variable charge of 1/4 of a percent per annum plus 1/8 of the Chase Manhattan Bank's prime rate from time to time on the total commitment; plus (b) 1/2 of a percent per annum of the unborrowed funds, and (c) 3/4 of a percent above 112-1/2% of the Chase Manhattan Bank's prime rate from time to time. The notes evidencing such loans are dated as of the date of issue or June 30, 1980, whichever is earlier. The loans may be prepaid, in whole or in part, in multiples of $100,000, at the option of the companies, without premium or penalty.

Lowell and Cape Cod have entered into amendments to the Credit Agreements dated as of June 15, 1979 ("Amended Credit Agreements") which modify the terms of the Credit Agreements in certain respects. Lowell proposes to further amend the Lowell Credit Agreement ("Proposed Lowell Amendment") to provide for a temporary increase in the maximum aggregate principal amount Lowell may borrow under that agreement. Lowell is now seeking authorization to borrow up to such increased amount.

Under the Proposed Lowell Amendment, the maximum aggregate principal amount of loans available from each bank for the period through March 31, 1980 would be as follows:

Bank	Maximum Loan Amount Through March 31, 1980
The Chase Manhattan Bank (National Association)	$ 5,450,000
Union National Bank	1,050,000
Shawmut Bank of Boston, N.A.	2,412,500
State Street Bank and Trust Company	2,312,500
BayBank Middlesex, N.A.	1,275,000
	$12,500,000

After March 31, 1980, Lowell's lines of credit would automatically be reduced to the maximum loan amounts authorized by the June 30, 1978 order (HCAR No. 20185). Lowell will file a post-effective amendment to the joint declaration in this proceeding requesting that the increase in the maximum aggregate principal amount Lowell may borrow pursuant to this authorization be extended through the period ending June 30, 1980. The working capital requirements of Lowell and Cape Cod include a seasonal factor due to the financing of gas inventory in the months when demand is low and to the repayments of that indebtedness during the course of the winter heating season as the gas is sold. The temporary increase in Lowell's Credit Agreement is occasioned by an increase of approximately $.50 per mcf for natural gas supplied by its pipeline supplier which results in approximately $2,000,000 of additional gas costs to be experienced during the period from October through December 1979, only a portion of which will be recovered through Lowell's cost of gas adjustment clause during 1979. The other increased costs will be recovered as gas is delivered to customers, such increased costs are billed, and receivables thereby generated are collected during the first quarter of 1980. Recovery of these costs will permit a return to the maximum loan amounts previously authorized.

Lowell and Cape Cod's cost of borrowings under the Amended Credit Agreements and the Proposed Lowell Amendment would be: (a) 1/2 of a percent per annum of the unborrowed funds plus (b) 3/4 percent above the Chase Manhattan Bank's prime rate from time to time. The variable charge of 1/4 of a percent per annum plus 1/8 of the Chase Manhattan's Bank prime rate from time to time on the total commitment has been eliminated. In lieu of these eliminated fees, Lowell and Cape Cod, have informally agreed with the banks to either (1) maintain compensating balances of 10% of the banks' total commitment and additional compensating balances of 10% of the amount of any loans outstanding or (2) pay a fee equal to the prime rate plus 3/4 of a percent times the amount by which the average bank balances are less than 10% of the banks' total commitment plus 10% of the amount of any loans outstanding. The cost of borrowings under the Amended Credit Agreements and the Proposed Lowell Amendment would not be greater than the cost of borrowings under the Credit Agreements. If the full amount were borrowed from the banks and the required compensating balances were not maintained, the effective interest cost would be 19.5%, based on a prime commercial rate of 15.5%.

The amended Credit Agreements provide for relaxation of the restriction on construction expenditures by increasing Lowell's allowed expenditures from $3,000,000 to $3,300,000 and Cape Cod's from $1,450,000 to $1,800,000. The dollar amount Lowell and Cape Cod are allowed to retain before applying the balance of any proceeds from the sale of property otherwise than in the normal course of business and not subject to the lien of their first mortgage bond indentures to reduce the loan commitments of each lending bank and to make any necessary prepayment of outstanding loans has been raised in each case from $25,000 to $50,000. Finally, the requirements that Lowell and Cape Cod provide the lending banks with a monthly aging of accounts receivable and that the banks consent to any new contracts for the purchase or storage of fuel gas have been eliminated in the Amended Credit Agreements.

The amended Cape Cod Credit Agreement further provides for a minor relaxation of restrictions upon the payment of cash dividends on the common stock of Cape Cod. It allows Cape Cod to pay such dividends to the extent that such cash dividends declared or paid since January 1, 1979, do not in the aggregate exceed the net income of the company for the period subsequent to said date, less the sum of the retained earnings deficit of Cape Cod as of December 1, 1978 plus $1,000.

It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction. The fees and expenses incurred or to be incurred in connection with the proposed transaction are estimated at $2,000, comprised of legal fees.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21262), and no hearing has been requested of or ordered by the Commission. Upon

the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended so as to allow filing as requested.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21360/December 27, 1979

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

METROPOLITAN EDISON COMPANY
2800 Pottsville Pike
Muhlenberg Township
Berks County, Pennsylvania 19603

PENNSYLVANIA ELECTRIC COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

SAXTON NUCLEAR EXPERIMENTAL CORPORATION
2800 Pottsville Pike
Muhlenberg Township
Berks County, Pennsylvania 19603

(70-3816)

NOTICE OF PROPOSED EXTENSION OF TIME FOR CAPITAL CONTRIBUTIONS TO BE MADE BY SUBSIDIARY UTILITY COMPANIES TO A NON-UTILITY SUBSIDIARY COMPANY

NOTICE IS HEREBY GIVEN that Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company ("utility companies"), all public utility subsidiary companies of General Public Utilities Corporation, a registered holding company, and the utility companies' non-utility subsidiary company, Saxton Nuclear Experimental Corporation, have filed with this Commission post-effective amendments to their joint application-declaration, as previously amended, filed in this proceeding designating Sections 2(a)(3), 2(a)(19), 6(a), 7,(a), 10, 12(f) and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 7(b),24(c)(3)(C) and 100 as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as further amended by the post-effective amendments, which are summarized below, for a complete statement of the proposed transactions.

By Orders issued in this proceeding dated May 11, 1960 (HCAR No. 14427) May 20, 1968 HCAR No. 15481), and December 31, 1974 (HCAR No. 18738), the utility companies were authorized to acquire all of the capital stock of Saxton and to make capital contributions to Saxton aggregating $10,000,000 through December 31, 1979. Saxton was organized as a nonprofit stock corporation to construct, operate, and maintain a small experimental nuclear reactor and the capital contributions were to be used for such purposes.

It is stated that Saxton's experimental and research activities have been terminated and its reactor facility has been decommissioned. It is further stated that pursuant to the regulations of the Nuclear Regulatory Commission, Saxton must continue in existence long enough to dismantle its nuclear facility. As a result, Saxton's corporate charter has been amended to extend Saxton's corporate existence in perpetuity.

Saxton and the utility companies have filed further post-effective amendments to the joint application-declaration proposing to extend the period wherein capital contributions may be made by the utility companies to Saxton through December 31, 1984. It is proposed that utility companies continue making contributions to Saxton through the extended period of its corporate life, such contributions to be used by Saxton to wind up its affairs, dispose of its properties or maintain them in a safe condition and obtain all necessary governmental and other releases. It is stated that in the absence of unusual circumstances, the cost of surveillance, insurance and maintenance for the facility through December 31, 1984, will be approximately $10,000 per year. Approximately $100,000 of the $10,100,000 of authorized contributions by the utility companies remains available.

The order of May 11, 1960, also exempted Saxton's operations and the research agreement between Saxton and the utility companies from the requirements of Section 13 of the Act and the rules thereunder. The sixth post-effective amendment requests a confirmation that such exemption from said section and applicable rules continues in effect.

It is stated that the Board of Public Utility Commissioners of the State of New Jersey has approved the period within which contributions may be made by the utility companies and that no other state and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is stated that the utility companies will incur no fees or expenses in connection with the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21361/December 27, 1979

In the Matter of

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

(70-6357)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Southwestern Electric Power Company ("SWEPCO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(b) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transaction.

SWEPCO proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50, up to $60,000,000 principal amount of its First Mortgage Bonds, Series P, ____% to be dated January 1, 1980, ("Bonds"), and to mature January 1, 2010.

The proceeds to be derived by SWEPCO from the sale of the Bonds (exclusive of accrued interest and after deducting expenses of issue) will be used by SWEPCO to repay in full short-term borrowings which were incurred for its obligations including projects under construction. Approximately $60,000,000 of short-term borrowings are expected to be outstanding as of December 18, 1979, the planned date of issuance of the Bonds. Estimated construction and fuel exploration and development expenditures of SWEPCO (exclusive of allowance for funds used during construction) for 1979 through 1981 are as follows:

	1979	1980	1981
Production	$ 83,000,000	$106,000,000	$120,000,000
Transmission	22,000,000	31,000,000	30,000,000
Distribution & Other	30,000,000	33,000,000	55,000,000
TOTAL	$135,000,000	$170,000,000	$205,000,000

It is stated that SWEPCO will need to sell additional securities during the period 1979-81 to finance further portions of this program. The amount, types and timing of such additional security sales are not presently determinable.

The annual interest rate and the redemption prices of the Bonds, and the price to be paid to SWEPCO therefore (which will not be less than 99% nor more than 102.75%) will be determined through competitive bidding. The Bonds will be nonrefundable until January 1, 1985 in anticipation of or through the use of funds borrowed by SWEPCO at a lower interest cost than that of the Bonds. The Bonds will be subject to a 1% sinking fund beginning in 1980. The Bonds will be issued under and secured by the Company's Indenture, dated February 1, 1940, under which Continental Illinois National Bank and Trust Company of Chicago and M.J. Kruger are Trustees, as amended by the indentures supplemental thereto heretofore executed ("Indenture"), and to be further amended by a proposed supplemental indenture to be dated January 1, 1980 ("Supplemental Indenture"). The Supplemental Indenture will set forth the terms, provisions and characteristics of the Bonds, will extend various covenants and conditions in the Indenture in connection with the issuance of the Bonds and will confirm the lien of the Indenture on certain "after-acquired property" constructed or otherwise acquired by SWEPCO on or subsequent to August 1, 1978 (the date of SWEPCO's last previous supplemental indenture extending the lien of the Indenture).

Bonds in the principal amount of $55,500,000 will be authenticated under the Indenture against $92,500,000 of available unused net expenditures for SWEPCO's bondable property and the remainder against $4,500,000 of previously retired bonds. Unused net expenditures will aggregate approximately $220,000,000 at the issuance of the Bonds.

The fees, commissions and expenses to be incurred by SWEPCO in connection with the proposed transaction are estimated at $105,000, including legal fees of $21,450 and accounting fees of $6,000. The proposed transaction has been authorized by the Arkansas Public Service Commission and the Corporation Commission of Oklahoma. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21324), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, per-

mitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21362/December 27, 1979

In the Matter of

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70160

(70-6392)

NOTICE OF PROPOSED AMENDMENTS TO ARTICLES OF INCORPORATION; ORDER AUTHORIZING SOLICITATION OF STOCKHOLDER'S CONSENT

NOTICE IS HEREBY GIVEN that New Orleans Public Service Inc. ("NOPSI"), a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 23, 24, and 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

NOPSI proposes to amend the Restated Articles of Incorporation under which the company is constituted ("the Charter") so as to raise the fixed ceiling on the amount to which the capital stock of the Company may be increased from $100,000,000 to $200,000,000.

The provision of the Charter limiting the total amount of capital stock of NOPSI to $100,000,000 has been contained in the Charter and has remained essentially unchanged since 1922. Since that time NOPSI has grown and the company believes, on the basis of current projections of its financing needs, that the present $100,000,000 ceiling would severely limit it's ability in the future to obtain outside capital funds. Currently, NOPSI's construction program contemplates expenditures of approximately $30,400,000 in 1980 and $26,100,000 in 1981. The company is planning sales of an aggregate of $25,000,000 of its capital stock, consisting of $15,000,000 of Preferred Stock and $10,000,000 of Common Stock, to finance a portion of its 1980 construction expenditures. In view of the fact that as of September 30, 1979 the NOPSI's total capital stock outstanding amounted to $79,138,800, the current $100,000,000 ceiling on capital stock would effectively prohibit the company from completing its planned financing program. In order to permit NOPSI to finance an appropriate portion of its future construction program through sales of capital stock, it is necessary that the fixed ceiling limitation be raised.

Moreover, in addition to the fixed ceiling limitation on the total amount of capital stock, the Charter contains various earnings and capitalization restrictions for the protection of the company's stockholders in connection with the issuance of additional preferred stocks. In contrast to the latter restrictions, the fixed ceiling limitation on the total amount of capital stock takes no account of the growth of the Company or its financial strength, and makes no provision once the ceiling is reached for the meeting of future financing requirements.

Accordingly, NOPSI proposes to raise the capital stock limitation from the present $100,000,000 to $200,000,000, a figure believed by the company to be sufficiently high, after giving effect to the currently planned financing program, to obviate the necessity for further increases in the ceiling for the forseeable future. The other restrictions on the issuance of additional preferred stocks contained in the Charter will not be affected by the proposed amendment.

The Company also proposes to amend its Charter so as to permit the Company to establish sinking fund requirements for the purchase or redemption of shares of any new series of its Preferred Stock. NOPSI plans to raise a major portion of funds during the next few years to finance its continuing construction program through the issuance and sale of

additional securities, including additional shares of its Preferred Stock. While the exact nature and amount of each such security issue will depend upon NOPSI's earnings and capital requirements and the market conditions existing at the time, NOPSI is presently planning to issue and sell through an underwritten public offering 150,000 shares of new series of its Preferred Stock in the first quarter of 1980, and is also planning to issue and sell to Middle South during 1980 an additional 1,000,000 shares of Common Stock. These proposed sales will be the subject of a separate filing with this Commission under the Act. The proceeds from these securities sales, expected to approximate $15,000,000 and $10,000,000, respectively, will be applied by NOPSI to its construction program and to other corporate purposes.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that other electric utilities have under present market conditions been able to sell shares of preferred stock at favorable dividend rates (if at all) only with the benefit of sinking funds. The Charter presently does not permit NOPSI to issue any series of Preferred Stock containing a sinking fund.

Under the provisions of the Charter as currently in effect, authorized but unissued shares of the Preferred Stock may be issued by NOPSI from time to time in one or more series. Except in certain respects as to which there may be variations among series, the shares of each series have the same rank and are identical with each other. The respects in which there may be variations among separate series consists of (1) the number of shares constituting each series and the distinctive designation thereof, (2) the dividend rate, dividend payment dates and the date from which dividends shall be cumulative and (3) the amount or amounts payable upon redemption. When a new series of the Preferred Stock is issued, those characteristics thereof as to which there may be variations among series are stated and expressed in an appropriate amendment of the Charter creating such series.

In order to allow NOPSI to issue shares of any future series of its Preferred Stock with the benefit of a sinking fund and thus to enable it to sell securities when it might not otherwise be able to do so on acceptable terms, NOPSI proposes to effect certain amendments of its Charter so as to afford the company, in dividing authorized but unissued shares of the Preferred Stock into series and establishing the characteristics as to which there may be variations among series, the right to include in the amendment creating any future series of its Preferred Stock the terms and amount of sinking fund requirements for the purchase or redemption of shares of any such series. These amendments will also provide in effect that if at any time dividends payable upon the Preferred Stock are in default, NOPSI may not make any payment, or set aside any funds for payment, into any sinking fund for the purchase or redemption of any shares of the Preferred Stock unless approval is obtained under the Act. Under present laws, no additional shares of the Preferred Stock can be issued without prior approval of the Council of the City of New Orleans and the Commission, including, among other things, approval by the Commission of the terms and amount of sinking fund requirements for the purchase or redemption thereof.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that the Charter presently does not permit NOPSI to issue any series of Preferred Stock containing a sinking fund. In furtherance of these proposals NOPSI proposes to solicit proxies from the holders of its outstanding stock in connection with its special meeting of shareholders at which the shareholders will take action upon the proposed amendments to the Charter. In connection with the solicitation of shareholder consent, NOPSI has filed the relevant proxy materials with the Commission and requests accelerated Commission action thereon pursuant to Rule 62.

A statement of the fees, commissions, and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be further amended, may

be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of the consents of NOPSI stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration regarding the proposed solicitation of the consents of NOPSI stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 10990/December 20, 1979

In the Matter of

EATON & HOWARD CASH MANAGEMENT FUND
24 Federal Street
Boston, Massachusetts 02110

(812-4550)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER.

Eaton & Howard Cash Management Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 10, 1979, and an amendment thereto on November 16, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuing portfolio securities.

On November 21, 1979, a notice (Investment Company Act Release No. 10949) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemptions requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Trustees undertake—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included with the procedures to be adopted by the Trustees shall be the following:

(a) Review by the Trustees as they deem appropriate and at such intervals as are reasonable in light of current market conditions to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds one half of one percent, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, Applicant undertakes that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its assets in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investment, including repurchase agreements, to those U.S. dollar denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10991/December 21, 1979

In the Matter of

INTERCAPITAL LIQUID ASSET FUND INC.
One Battery Park Plaza
New York, New York 10004

(812-4555)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

On November 23, 1979, a notice was issued (Investment Company Act Release No. 10951) of an application filed on October 22, 1979, and amended on November 27, 1979, by InterCapital Liquid Asset Fund Inc. ("Applicant"), a registered, open-end, diversified, management investment company, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to calculate its net asset value per share using the amortized cost method of valuing portfolio securities.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to its investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and its investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included among the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the board of directors as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of director's considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10992/December 21, 1979

In the Matter of

OPPENHEIMER SPECIAL FUND, INC.
1 New York Plaza
New York, New York 10004

(812-4553)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED EXCHANGE OF SHARES FROM SECTIONS 22(c) AND 22(d) OF THE ACT AND RULE 22c-1 THEREUNDER, AND PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING THE PROPOSED EXCHANGE OF SHARES FROM SECTION 17(a) OF THE ACT

NOTICE IS HEREBY GIVEN that Oppenheimer Special Fund, Inc. ("Fund"), a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 16, 1979, and an amendment thereto on December 17, 1979, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Fund from Section 22(c) of the Act and Rule 22c-1 thereunder to permit the issuance of Fund shares in exchange for substantially all the assets of Moneco, Inc. ("Moneco"), a Nevada corporation operating as an investment company without registration under the Act pursuant to Section 3(c)(1) of the Act, at a price based on the current net asset value of fund shares as of the close of trading on the New York Stock Exchange on the day preceding the exchange, and exempting the Fund from the provisions of Section 22(d) of the Act to permit the proposed exchange of Fund shares without a sales charge, and pursuant to Section 17(b) of the Act exempting the proposed exchange of Fund shares from the provisions of Section 17(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that the Fund and Moneco will enter into an Agreement and Plan of Reorganization ("Agreement") whereby substantially all the assets of Moneco will be transferred to the Fund in exchange for shares of its voting capital stock. The

Fund states that it had net assets of approximately $40 million as of September 30, 1979, and that Moneco had total net assets of $3,393,031 as of August 31, 1979. According to the application, the number of fund shares to be issued to Moneco will be determined by dividing the aggregate market value of the Moneco assets to be transferred to the Fund by the net asset value per share of the Fund, both of which shall be determined as of the valuation date as defined in the Agreement. The application states that no adjustment will be made for any realized or unrealized capital gain of either the fund or Moneco because each party believes that the benefits and detriments that may arise from the variance of the net unrealized capital gains of each party are too indefinite to warrant any adjustment in the exchange formula. The Fund represents that neither company is expected to have a material amount of net realized capital gains or losses on the valuation date. The application indicates that each company will bear its own expenses incurred by reason of the transaction. According to the application, a cash reserve will be retained by Moneco in an amount sufficient in the judgment of its board of directors to pay its liabilities and expenses of liquidation and dissolution. The Fund represents that the cash reserve will not exceed 10% of Moneco's net assets or 30% of its gross assets and any part of the cash reserve not used for the payment of such liabilities and expenses will be distributed to Moneco shareholders.

None of the directors or officers of Moneco are affiliated with the Fund or Oppenheimer Management Corporation ("OMC"), the Fund's investment adviser, except Mr. A.P. Kibbe, the chief executive officer and a director of Moneco. Mr. Kibbe is a director of the Fund and seven other registered investment companies advised by OMC. Mr. Kibbe and his wife each own 18.28% of the stock of Moneco.

Rule 22c-1, adopted pursuant to Section 22(c) of the Act, provides in pertinent part, that redeemable securities of registered investment companies must be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

The application states that under the Agreement, shares of the Fund and the assets of Moneco will be valued as of the time of the close of trading on the New York Stock Exchange on January 15, 1980, or such earlier or later date as may be agreed to by the parties ("the Valuation Time"), and the issuance of Fund shares in exchange for Moneco assets will occur on the next full business day following the Valuation Time, and may not be in compliance with Rule 22c-1. The Fund states that it will be impracticable to comply with Section 22(c) and Rule 22c-1, because the number of Fund shares to be issued is determined by dividing the net asset value per share of the Fund into the total net assets of Moneco available for acquisition and that such a computation can be made only after the close of business when both portfolios can be fully valued. The Fund believes that valuation of fund assets at the Valuation Time on the last business day immediately preceeding the date of exchange will be fair to its shareholders and will not present any of the potential for abuse that Rule 22c-1 was designed to prohibit.

Section 22(d) of the Act provides, in pertinent part, that a registered open-end investment company may sell its shares only at a current public offering price described in the prospectus. The application states that since shares of the Fund to be issued to Moneco will not be subject to the sales charge described in the Fund's prospectus, an order of exemption from Section 22(d) of the Act is necessary if the proposed transaction is to comply with the Act.

It is further represented that the granting of the requested exemption from Section 22(c) and 22(d) of the Act and Rule 22c-1 thereunder is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person or transaction from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 2(a)(3) provides, in pertinent part, that an affiliated person of another person means any person directly or indirectly owning 5 percentum or more of the outstanding voting securities of such other person, any person 5 percentum or more of whose outstanding voting securities are directly or

indirectly owned by such other person and any officer or director of such other person. The application states that Mr. Kibbe, as a director of the Fund, is an affiliated person of the Fund. The application also states that Moneco is an affiliated person of Mr. Kibbe because he may control Moneco within the meaning of the Act, and thus Moneco might be deemed to be an affiliate of an affiliate of the Fund.

Section 17(a) of the Act provides, in pertinent part, that it shall be unlawful for an affiliated person of a registered investment company, or any affiliated person of such person, knowingly to sell to or purchase from such registered investment company any security or other property. Because Moneco may be deemed an affiliated person of an affiliated person of the Fund, any disposition of portfolio securities by Moneco to the Fund or any acquisition by the fund of portfolio securities of Moneco pursuant to the Agreement might be prohibited by Section 17(a) of the Act. Section 17(b) of the Act provides, in pertinent part, that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. The Fund has requested an order pursuant to Section 17(b) of the Act exempting the proposed transaction from the provisions of Section 17(a) of the Act.

The Fund submits that the proposed transaction represents an opportunity for the Fund to acquire a substantial portion of portfolio securities without the necessity of paying brokerage commission. The application also states that the assets to be acquired by the Fund are substantially similar to assets it already holds, thus reducing the need to sell any of the securities to be acquired from Moneco other than as the result of subsequent investment decisions. Based upon the portfolio of Moneco on November 30, 1979, if the transaction had occurred on that date, it is asserted that an investment decision to retain the security position would have been made by the fund with respect to more than 90% of the value of the securities acquired from Moneco. The Fund represents that it will benefit from a reduction in its projected per share expenses due to a reduced expense ratio that can be expected from a larger fund.

The Fund further submits that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair to the Fund and do not involve overreaching on the part of any person concerned. In this regard, it is asserted that Mr. Kibbe did not participate in any of the negotiations between Moneco and the Fund concerning the Agreement between the Fund and Moneco nor did he participate in the consideration of approval of the Agreement by the Fund's Board of Directors. The application states that Mr. Kibbe has advised the Fund that he has no interests or relationships with the fund, its affiliates or with Moneco that are not disclosed in the application and that he will derive no benefit from the transaction that is not also received by the other shareholders of Moneco. The application states that no broker or finder has been employed by either party with respect to the Agreement or the transactions contemplated therein, and no finder's fee will be paid to anyone with respect to the proposed transaction. The application also states that the proposed transaction is consistent with the general purposes of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 14, 1980 at 5:30p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he mayrequest that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10993/December 21, 1979

In the Matter of

THE OSBORNE ESTATES COMPANY
4614 Prospect Avenue
Cleveland, Ohio 44103

(812-4560)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT.

NOTICE IS HEREBY GIVEN that The Osborne Estates Company ("Applicant"), an Ohio corporation, filed an application on November 1, 1979, and an amendment thereto on November 29, 1979, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are sumarized below.

According to the application, Applicant was organized in 1921 pursuant to a direction in the will of Francis M. Osborne, who died in 1911, that assets in his estate not distributed within 10 years of his death be contributed to a corporation for management purposes. The application further states that from Applicant's inception in 1921 until 1957 it was engaged primarily in the management of real estate assets that it owned. The initial shareholders of Applicant were the nine children of Francis Osborne.

As stated in the application, in 1956 and 1957 Applicant's principal real estate assets were sold and the proceeds were reinvested in securities, with the result that Applicant became primarily engaged in the management of a portfolio of marketable securities. Applicant states that it has only one class of securities outstanding, common stock without par value, and that there are presently 10,000 shares of such stock issued and outstanding. Applicant also states that as of June 30, 1979, the value of its total assets, determined in accordance with the provisions of Section 2(a)(41) of the Act, was approximately $35,000,000. Applicant represents that 88% of the value of these assets consists of shares of common stock of Panhandle Eastern Pipeline Company ("Panhandle"); that 9% of the value of these assets consists of other marketable stocks and bonds; and that the remainder of Applicant's assets consists of one real estate asset and cash.

In pertinent part, Section 3(a)(3) of the Act defines an "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of its total assets. Applicant states that because more than 40% of its non-cash items have, since 1957, consisted of investment securities, it may technically have been an investment company since 1957. However, Applicant believes it is not the type of organization intended by Congress to be subject to regulation under the Act, for the following reasons: (1) the families of the children of Francis Osborne continue to own 89.9% of the outstanding shares of Applicant; (2) the remaining 10.1% of the outstanding shares of Applicant is held by F.E. Gibson & Co. ("Gibson") as nominee of AmeriTrust Company ("AmeriTrust") (formerly The Cleveland Trust Company), a wholly owned subsidiary of AmeriTrust Corporation, which in turn is a publicly owned bank holding company; (3) the shares held by Gibson were acquired as the result of the foreclosure of certain "Depression-era" loans which were made to certain Osborne family members and are held for AmeriTrust's own account; (4) with the exception of shares held by AmeriTrust, all of the outstanding shares of Applicant are, and since Applicant's inception have been, held solely by descendants of Francis Osborne and their spouses; and (5) Applicant is internally managed by its directors and officers, each of whom is a descendant of Francis Osborne.

Section 3(c)(1) of the Act, excludes from the definition of an "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not propose to make a public offering. That Section further states that where any company owns 10% or more of the outstanding voting securities of the issuer, the holders of such company's outstanding securities shall be deemed to be the beneficial owners of the issuer's securities. In this regard, Applicant states that it has never offered any of its securities to members of the public; that it has no intention of making any such offer in the future; and that no public market has ever existed for Applicant's stock. Applicant further states that

only two companies, Gibson and Gray Horse Inc. ("Gray Horse"), own more than 10% of Applicant's stock. As noted above, the shares held by Gibson were acquired through a foreclosure. According to the application, Gray Horse, an Ohio Corporation organized in 1976, owns 12.5% of Applicant's stock and has only 18 shareholders, consisting of James Osborne (a shareholder of Applicant), his spouse, their descendants, and spouses of such descendants. Based upon information contained in the application, Applicant presently has 82 shareholders, excluding the ownership attributable to Gibson and Gray Horse.

Applicant includes as a part cf its application a proposed Agreement and Plan of Reorganization ("Agreement") between itself and Panhandle, whereby Panhandle would acquire all of Applicant's securities and cash in exchange for Panhandle stock. Applicant states that it currently holds 618,113 shares (3.4%) of Panhandle common stock, which was acquired in 1976 in connection with the acquisition by Panhandle of the Youghiogheny and Ohio Coal Company, in which Applicant had been the largest shareholder (Applicant owned 28%). Applicant also states that William M. Osborne, Jr., Vice President, director and shareholder of Applicant, is also a director and shareholder of Panhandle, but owns, directly and indirectly, less than 1% of the outstanding shares of Panhandle. Applicant further states that under the terms of the agreement, it will take steps to dissolve under Ohio law, as soon as practicable after completion of the proposed transaction with Panhandle.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it believes the requested order should be granted for the following reasons: (1) Applicant is not and never has been the type of organization that Congress intended be subject to regulation under the Act; (2) since its inception, Applicant has been essentially a family corporation organized for the purpose of managing family investments; (3) submission of Applicant to regulation under the Act would not provide significant benefits to the shareholders of Applicant, which is the group that the Act primarily is designed to protect and the additional costs of operating subject to the provisions of the Act would, it is believed, be deemed a detriment by those shareholders; and (4) if the Agreement is entered into and carried out, Applicant will be liquidated and dissolved within a relatively short period of time.

Applicant states that any order granted by the Commission in response to this application may be subject to the following conditions:

(1) That such order shall not be effective for a period of more than one year from the date thereof unless the Commission, upon further application, shall grant a further order extending such period;

(2) That no registered broker-dealer initiates any regular trading market in any securities issued by Applicant;

(3) That the information statement delivered to shareholders of Applicant concerning the Agreement contain a paragraph substantially as follows:

Since about 1957, more than 40% of the non-cash assets of [Applicant] have consisted of investment securities. For that reason,[Applicant] may have been an "investment company" as defined in the Investment Company Act of 1940 (the "1940 Act") from 1957 until the present time, although it has never registered under the 1940 Act. [Applicant] believes, however, that since it is a closely held family corporation which has never offered its securities to the public, it is not the type of organization which the 1940 Act was intended to regulate. Accordingly, [Applicant] has applied the the Securities and Exchange Commission for an order under Section 6(c) of the 1940 Act exempting [Applicant] from all of the provisions of the 1940 Act. Such an order would have no retroactive application. Receipt of such an order is a condition upon the obligations of both [Applicant] and Panhandle to complete the transactions contemplated by the Agreement and,

(4) That no transfer of shares of Applicant will be made except to other family members, or to Applicant in connection with its liquidation.

NOTICE IS FURTHER GIVEN that any interested peson may, not later than January 14, 1980, at 5:30 p.m., submit to the Commission in wirting a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10994/December 21, 1979

In the Matter of

TRUST FOR CASH RESERVES
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4544)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER.

NOTICE IS HEREBY GIVEN that Trust for Cash Reserves ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 1, 1979, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a) (41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Appplicant's assets to be valued at amortized cost. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant states that it is a "money market" fund organized as a Massachusetts Business Trust and that Cash Management Research Corporation, a wholly-owned subsidiary of Federated Investors, Inc., serves as its investment adviser. Applicant furhter states that it is designed as an investment vehicle for investors with temporary cash balances or cash reserves seeking current income consistent with stability of principal and that its portfolio may be invested in a variety of money market instruments. According to the application, Applicant does not invest in instruments issued by banks or savings and loan associations unless at the time of investment they have capital, surplus and undivided profits in excess of $100,000,000 at the date of their most recently published financial statements. The application states that investments in commercial paper are limited to commercial paper rated A-1 by Standard & Poor's Corporation, Prime 1 by Moody's Investors Service or F-1 by Fitch Investors Service.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and(2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that experience indicates that two features are necessary in a "money market" fund: (1) certainty of stability of princiapl and (2) steady flow of predictable and competitive investment income. Applicant asserts that by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost it can provide these features to investors. Applicant represents that its Trustees ("Management") has properly determined in good faith under the provisions of the Act to value the portfolio of Applicant by use of the amortized cost method and that this method is in the best interest of its shareholders. According to the application, experience has shown that, given the unique nature of Applicant's policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Applicant further represents that: (1) its Management has determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method, (2) its Management has further determined to continuously monitor valuation indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors. Accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit its assets to be valued as set forth in the application, and as described above, whether or not market quotations are available.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemptions it requests satisfy these standards in view of its management policies and the conditions hereinafter set forth.

Applicant consents to the imposition of the following conditions in an order granting the relief it reqeusts:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Management undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Management shall be the following:

(a) Review by Management, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if

any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds one half of one percent, a requirement that Management will promptly consider what action, if any, should be initiated by Management.

(c) Where Management believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portflio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Management's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of Management's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which Management determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Management.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 14, 1980 at 5:30p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the act, an order disposing of the application herein will be issued as of course

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Management in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia,* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10995/December 26, 1979

In the Matter of

AMERICAN GENERAL ENTERPRISE FUND, INC.

and

EQUITY GROWTH FUND OF AMERICA, INC.
2777 Allen Parkway
Houston, Texas 77019

(812-4563)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED TRANSACTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT

On November 30, 1979, a notice was issued (Investment Company Act Release No. 10961) of an application filed on November 5, 1979, by American General Enterprise Fund, Inc. ("Enterprise") and Equity Growth Fund of America, Inc. ("Equity Growth") (hereinafter collectively referred to as "Applicants"), both registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Section 17(a) of the Act the proposed combination of Equity Growth with and into Enterprise through the exchange of shares of Enterprise, at net asset value, for the assets of Equity Growth.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of the Applicants and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed combination of Equity Growth into Enterprise through the exchange of shares of Enterprise at net asset value for the assets of Equity growth be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10996/December 26, 1979

In the Matter of

NATIONWIDE LIFE INSURANCE COMPANY

and

MFS VARIABLE ACCOUNT
One Nationwide Plaza
Columbus, OH 43216

(812-4552)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTIONS 22(e), 22(c)(1) AND 27(d) OF THE ACT

Nationwide Life Insurance Company ("Nationwide"), a stock life insurance company organized under the laws of the state of Ohio, and MFS Variable Account, a separate account of Nationwide registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on October 15, 1979, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1), and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas.

On November 28, 1979, the Commission issued a notice (Investment Company Act Release No. 10956) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it has been found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas as it would apply to payments made on variable annuity contracts offered in that state, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10997/December 26, 1979

In the Matter of

OPPENHEIMER DIRECTORS FUND, INC.

and

CENTENNIAL CAPITAL SPECIAL FUND, INC.
One New York Plaza
New York, New York 10004

(812-4543)

ORDER PURSUANT TO SECTIONS 6(c) AND 17(b) OF THE ACT EXEMPTING PROPOSED ACQUISITION FROM SECTIONS 22(c) AND 17(a) OF THE ACT AND PURSUANT TO SECTIONS 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER TO PERMIT PARTICIPATION IN PROPOSED ACQUISITION

On November 30, 1979, a notice was issued (Investment Company Act Release No. 10965) of an application filed on October 1, 1979, and amendments thereto on November 13 and 19, 1979, and December 10, 1979, by Oppenheimer Directors Fund, Inc. ("Directors Fund"), and Centennial Capital Special Fund, Inc. ("Centennial") ("Applicants"), both open-end, diversified management

investment companies registered under the Investment Cmpany Act of 1940 (the "Act"), requesting an order of the Commission (1) pursuant to Section 6(c) of the Act, exempting the proposed acquisition of Centennial by Directors Fund from the provisions of Section 22(c) of the Act and Rule 22c-1 thereunder, to permit the proposed issuance of Directors Fund shares at net asset value, but at a price other than the price next determined after receipt of a purchase order; (2) pursuant to Section 17(b) of the Act, exempting such acquisition from the provisions of Section 17(a) of the Act; and (3) permitting the sharing of the expenses of such acquisition as provided in an Agreement and Plan of Reorganization.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is also found, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the respective policies of the Applicants and with the general purposes of the Act. It is further found that the participation of the Applicants in the proposed transaction is consistent with the provisions, policies and purposes of the Act and that neither of the Applicants' participation is on a basis less advantageous than that of any other participant. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 22(c) of the Act and Rule 22c-1 thereunder, to the extent requested, be, and hereby is, granted, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition of Centennial by Directors Fund be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that said application to permit the sharing of expenses of the proposed acquisition between Centennial and Directors Fund be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10998/December 26, 1979

In the Matter of

SCOTT PAPER INTERNATIONAL, INC.
Scott Plaza
Philadelphia, Pennsylvania 19113

(812-4519)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On November 29, 1979, a notice was issued (Investment Company Act Release No. 10957) of an application filed by Scott Paper International, Inc. ("Applicant"), pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of exemption from all provisions of the Act. The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act is hereby granted, subject to the following conditions to which Applicant has consented:

(1) Applicant will comply with all the requirements of subparagraphs (1)-(3), (4) (except to the extent that foreign branches of United States banks are considered to be nationals or residents of the United States), (5), and (8) (except to the extent that entering into parallel loans or buying and selling forward exchange contracts are considered to be dealing or trading in securities) of paragraph (b) of Rule 6c-1;

(2) at least 90 per cent of the assets of the Applicant, exclusive of United States Government securities, cash items (including bank certificates of deposit), and short-term investments in foreign government paper, commercial paper, banker's acceptances of domestic and foreign banks, state and municipal general obligations, revenue bonds, and notes, will be invested in or loaned to its parent company, Scott Paper Company ("Scott"), or to companies at least ten percent of the equity securities of which are, or at the completion of the investment will be, owned, directly or indirectly, by Scott or will be invested in assets utilized in the Applicant's function as an operating company (*i.e.*, various patent, trademark, and other intellectual property rights and technical assistance contracts, the branch operation in Canada, forward exchange contracts, parallel loans, and tangible personal property and real estate interests utilized by the Applicant in its operations); and any asets of the Applicant not so invested will only be invested in or loaned to companies which are customers or suppliers of Scott or a subsidiary of Scott; and any of the assets invested in or loaned to investment companies will only be invested in or loaned to Applicant's wholly owned subsidiary, Scott Finance Liberia ("SFL"), or to investment companies which are wholly-owned subsidiaries of Scott; and

(3) that unless and until a tax is enacted providing a deterrent to the purchase of the Applicant's securities United States persons comparable to that provided by the Interest Equalization Tax, the Applicant will not issue any securities other than (a) common stock issued to Scott, (b) debt securities issued to SFL as part of the Canadian financing arrangements described in the application, (c) a promissory note guaranteed by Scott issued to the Royal Bank of Canada upon put of the preferred stock of Owikeno Finance, Ltd. as described in the application, and (d) other debt securities, guaranteed by Scott and publicly sold abroad, not exceeding $50,000,000 (excluding the Canadian financing described in the application) issued to foreign purchasers under arrangements, including legends restricting transfers within the United States or its territories within the United States or its territories or possessions or to citizens, nationals, or residents thereof and covenants with purchasers or underwriters, precluding transfers contrary to these restrictions, without a further order of the Commission; provided, however, that in the event that the Applicant becomes exempt from each and every provision of the Act or the Commission adopts, amends, or interprets a Rule under the Act which would exempt the Applicant from each and every provision of the act, nothing contained in this order or the conditions to which it is subject, shall preclude the Applicant from being exempt from the Act by virtue solely of the applicability of said Rule or interpretation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 10999/December 26, 1979

In the Matter of

FIDELITY TAX-EXEMPT MONEY MARKET TRUST
82 Devonshire Street
Boston, Massachusetts 02109

(812-4508)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER.

Fidelity Tax-Exempt Money Market Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 17, 1979, and amendments thereto on November 15, 1979, and November 28, 1979, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, subject to conditions, to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation.

On November 30, 1979, a notice was issued (Investment Company Act Release No. 10964) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is granted, effective forthwith, subject to the following conditions agreed to by Applicant:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included with the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds one half of one percent, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing share-

[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia,* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

holders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, if any, to those United States dollar denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Board of Trustees.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11000/December 27, 1979

In the Matter of

AMERICAN GENERAL INSURANCE COMPANY

CAL-WESTERN SEPARATE ACCOUNT A

CAL-WESTERN VARIABLE FUND C
2727 Allen Parkway
Houston, TX 77019

(812-4562)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED TRANSACTION FROM SECTION 17(a) OF THE ACT

American General Insurance Comany, a Texas Corporation, Cal-Western Separate Account A, an open-end diversified management company registered under the Investment Company Act of 1940 ("Act") and Cal-Western Variable Fund C, another open-end diversified management company which is similarly registered, filed an application on November 5, 1979, and an amendment thereto on December 6, 1979, for an order pursuant to Section

17(b) of the Act exempting a proposed transaction from the provisions of Section 17(a) of the Act.

On December 10, 1979, a notice (Investment Company Act Release No. 10875) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is appropriate in the public interest and is consistent with the protection of investors and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed transaction be, and hereby is, exempted from the provision of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11001/December 27, 1979

In the Matter of

IVY FUND, INC.
201 Devonshire Street
Boston, Massachusetts 02110

and

FURMAN SELZ MAGER DIETZ & BIRNEY INCORPORATED
110 Wall Street
New York, New York 10005

and

GRANTHAM, MAYO, VAN OTTERLOO & CO.
125 High Street
Boston, Massachusetts 02110

(812-4573)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING TEMPORARY EXEMPTION FROM PROVISIONS OF SECTION 15(a) OF THE ACT.

Ivy Fund, Inc. ("Fund"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, Furman Selz Mager Dietz & Birney Incorporated ("Furman Selz"), and Grantham, Mayo, Van Otterloo & Co. ("Grantham Mayo"), both registered investment advisers under the Investment Advisers Act of 1940 (the Fund, Furman Selz and Grantham Mayo hereinafter collectively referred to as the "Applicants") filed an application on November 21, 1979, and an amendment thereto on December 3, 1979, pursuant to Section 6(c) of the Act, for an order of the Commission temporarily exempting the Applicants from the provisions of Section 15(a) of the Act to permit the Fund and Furman Selz to enter into an interim investment advisory contract and Furman Selz and Grantham Mayo to enter into an interim subadvisory contract whereby Furman Selz and Grantham Mayo will manage that portion of the Fund's portfolio currently being managed by SCNC Advisory Corporation SCNC until new investment advisory and subadvisory contracts between the

above parties have been implemented in accordance with the procedures of Section 15 of the Act.

On December 5, 1979, a notice (Investment Company Act Release No. 10973) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for temporary exemption from the provisions of Section 15(a) of the Act, to the extent requested, be, and hereby is, granted effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11002/December 27, 1979

CLARK JOSEPH WINSLOW
16 Bobolink Lane
Greenwich, Connecticut

File No. 812-4587
Investment Company Act of 1940

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 9(c) OF THE ACT AND ORDER OF TEMPORARY EXEMPTION PENDING DETERMINATION OF THE APPLICATION

NOTICE IS HEREBY GIVEN that Clark Joseph Winslow ("Winslow") has filed an application pursuant to Section 9(c) of the Investment Company Act of 1940 (the "Act") for an order exempting him and any company with which he is presently or in the future may become an affiliated person, from the provisions of Section 9(a) of the Act and, without prejudice to the Commission's consideration of such application, has requested that the Commission grant a temporary exemption from Section 9(a) pending the Commission's determination of the application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Winslow is an employee of Glickenhaus & Co., a partnership registered with the Commission as a broker-dealer and investment adviser, with offices at 522 Fifth Ave., New York, New York. Winslow was formerly a vice president and director of Campbell Advisers, Inc., a registered investment adviser, also with offices in New York, New York. Glickenhaus & Co., among other things, acts as an investment adviser, depositor and principal underwriter for investment companies.

On December 27, 1979, the Commission commenced an action, pursuant to Sections 21(d) and (e) of the Securities Exchange Act of 1934, against Winslow, alleging that he engaged in acts and practices which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. During the period covered by the complaint, Winslow was a vice president and director of Campbell Advisers, Inc.

Simultaneously with the commencement of the action, and without admitting or denying any of the allegations of the Complaint, Winslow consented to the entry of a Final Order by the United States District Court for the Southern District of New York prohibiting him directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange in connection with the purchase or sale for his own account, for the account of any member of his family or for any account in which he has a beneficial interest of any security, from making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Section 9(a) of the Act, insofar as is pertinent here, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security .

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Winslow submits pursuant to Section 9(c) that the prohibitions of Section 9(a) of the Act, to the extent applicable by virtue of the entry of the Final Order, would be unduly and disproportionately severe as applied to Winslow and that his conduct has not been such as to make it against the public interest or protection of investors to grant this exemption. In support thereof, Winslow represents that:

(1) The prohibitions of Section 9(a) would deprive Glickenhaus & Co. of the services of Winslow.

(2) The activities of Winslow with regard to the purchase and sale of Fairchild common stock did not relate to his activities as an investment adviser.

(3) All personnel of Glickenhaus & Co. including Winslow are supervised by management personnel so as to assure compliance with applicable federal, state and other applicable laws, rules and regulations.

(4) Winslow has never before been required to apply for an exemption from the provisions of Section 9(a) of the Act.

(5) The prohibitions of Section 9(a) would deprive Winslow of his ability to be employed as an employee of Glickenhaus & Co., thereby potentially jeopardizing his livelihood.

(6) The application of the law regarding the activities complained of by the Commission in the Complaint is complex and uncertain and was a case of first impression. Winslow had no intention to violate the federal securities laws and believes he has been punished sufficiently.

The Commission has considered the matter and finds that:

(1) the prohibitions of Section 9(a) may be unduly, or disproportionately severe as applied to Winslow in that his conduct has been such as not to make it against the public interest or protection of investors to grant the application for a temporary exemption from Section 9(a) pending determination of the application; and

(2) in order to maintain the uninterrupted services provided by Winslow and Glickenhaus & Co. to the regulated investment companies involved, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order be issued forthwith.

Accordingly, IT IS ORDERED, pursuant to Section 9(c) of the Act, that Winslow and any company with which he presently is or in the future may become an affiliated person be and they are hereby temporarily exempted from the provisions of Section 9(c) of the Act operative as a result of the entry of the Final Order against Winslow, pending final determination by the Commission of Winslow's application for an order exempting him and any company with which he presently is or in the future may become an affiliated person from the provisions of Section 9(a) operative as a result of the entry of such Final Order.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 27, 1980 at 5:30p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon John F.X. Peloso, Esq., Sage Gray Todd & Sims, 140 Broadway, New York, New York, 10005. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 8957/December 19, 1979

SECURITIES AND EXCHANGE COMMISSION v. SUN COMPANY, INC., ET AL. (S.D.N.Y., 78 Civ. 284 and related cases)

The Securities and Exchange Commission announced today that it had reached a settlement agreement with Sun Company, Inc. ("Sun"), whereby Sun agreed to a court order requiring it to divest itself of all the shares of common stock of Becton, Dickinson & Co. it acquired in January, 1978. The order will require that the stock be disposed of in accordance with a plan of divestiture satisfactory to the Commission. The settlement is subject to a number of conditions, including the submission to the Commission of a definitive agreement as to the precise manner in which Sun will dispose of the Becton-Dickinson stock. The settlement also includes a settlement of related litigation brought against Sun by Becton, Dickinson & Co., certain of its shareholders, and related class actions brought on behalf of various public investors.

The agreement in principle was arrived at among the parties after a trial on the issue of liability was held before Judge Robert L. Carter of the United States District Court for the Southern District of New York. Following that trial, Judge Carter issued his opinion finding, among other things, that Sun had engaged in an illegal tender offer for the shares of Becton-Dickinson in January, 1978. At that time, Sun acquired approximately 6.5 million shares (32%) of Becton-Dickinson stock. Judge Carter's opinion is reported at 475 F.Supp. 783 (S.D.N.Y., 1979). The litigation as to the other defendants has not been settled and will continue.

Sun's settlement with the Commission contemplates that Sun will dispose of its shares of Becton-Dickinson in accordance with a plan of divestiture that has been tentatively agreed to between Sun and Becton-Dickinson. Under that tentative agreement, Sun will dispose of its stock in Becton-Dickinson pursuant to an offering by Sun of approximately $390 million in debentures exchangeable into Becton-Dickinson shares. During the period that the debentures are outstanding, the underlying shares of Becton-Dickinson will be voted at the direction of the debenture holders.

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In addition to consenting to a court order requiring it to divest itself of the Becton-Dickinson stock, Sun has agreed with the Commission to consent to a final judgment of the Commission's action which prohibits Sun from acquiring within ten years from the date of the court's order any securities of Becton-Dickinson so long as it retains a beneficial interest in any of the common stock of Becton-Dickinson acquired in January, 1978 which totals 5% or more of the class of securities acquired, unless permitted by the court upon notice to the Commission and Becton, Dickinson & Co.

The Commission understands that Sun and Becton-Dickinson have today issued a joint announcement which in more detail sets forth the terms of the divestiture agreement.

The entire settlement is contingent upon a resolution of all claims against Sun in all of the related litigation, which will require agreement on the final terms and approval by the court.

Litigation Release No. 8958/December 20, 1979

UNITED STATES v. MARTIN TOLCHIN 79 Crim. 858 (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission and Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, announced that on December 4, 1979, a federal grand jury sitting in the Southern District of New York returned a sixteen (16) count indictment charging Martin Tolchin ("Tolchin") of Lawrence, New York with conspiracy to violate the federal securities statutes as well as the laws prohibiting the obstruction of justice and the filing of false statements to secure loans from federally insured banks.

Tolchin is president and chairman of the Board of Directors of Tolchin Instruments, Inc., a New York corporation engaged in the manufacture and sale of musical instruments. The indictment charges that during the years 1969 through 1975 Tolchin caused the financial statements of Tolchin Instruments, Inc. to be falsely inflated by a total of $3,239,756.00. The false financial statements were allegedly used to obtain loans totalling $1,725,000 from Chemical Bank and $1,104,000 from Bank Leumi.

According to the indictment, the false financial statements were prepared at Tolchin's direction by Marvin F. Rosenbaum ("Rosenbaum") of W. R. Wolf & Co., the independent outside account for Tolchin Instruments, Inc. False profits were ahcieved, it is alleged, by falsely inflating the company's inventories.

The indictment further charges that the conspiracy ended in 1976 when the creditors of Tolchin Instruments, Inc. forced Tolchin to replace Rosenbaum as auditor. At that time, Tolchin tried to conceal the inflated financial statements by writing-down the inventory by $2,844,000 and falsely attributing this loss to competition with another company.

Finally, the indictment charges that Tolchin attempted to obstruct justice by perjuring himself and suborning the perjury of another witness during a 1977 investigation by the Securities and Exchange Commission.

If convicted, Tolchin faces maximum sentences of five years imprisonment and a $10,000 fine on the conspiracy count and each of the six securities fraud counts; two years imprisonment and a $5,000 fine on each of the eight bank fraud counts; and five years and a $5,000 fine on the obstruction of justice count.

In a related civil action brought by the Commission, Tolchin consented to the entry of a permanent injunction on August 23, 1977 enjoining him from further violations of the anti-fraud, reporting and proxy provisions of the federal securities laws. (*S.E.C.* v. *Tolchin Instruments, Inc., et al.,* 77 Civ. 4155 (CHT) (S.D.N.Y.)). (LR-8100)

Litigation Release No. 8959/December 20, 1979

U.S. v. JAMIE MATLICK FARRIS, ET AL. (9th Circuit, No. 78-2514)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on November 26, 1979 the United States Court of Appeals for the Ninth Circuit affirmed the convictions of Jamie Matlick Farris and Marcus Theodore Baumann, both of Phoenix, Arizona, on two counts of securities fraud. The Court also affirmed the conviction of Richard Tamuty of Cave Creek, Arizona on two counts of mail fraud and reversed his convictions on seven other counts of mail fraud. The defendants Farris, Baumann and Tamuty had been convicted in connection with the sale of various interests in land contracts offered for sale and sold by Cochise College Park, Inc.

For further information see Litigation Releases Nos. 5315, 5399, 5427, 5445, 7571, 7946, 8064 and 8154.

Litigation Release No. 8960/December 26, 1979

SEC v. BIG D OIL & GAS CO., INC., ET AL CA-3-77-0440-C (N.D. TEX)

Michael J. Stewart, Administrator of the Fort Worth Regional Office of the Securities and Exchange Commission, announced that on November 15, 1979, the Honorable William M. Taylor, Jr., United States District Judge, after a trial on the merits, found that Big D Oil & Gas Co., Inc., and Robert C. Duncan, both of Dallas, Texas, had violated the registration provisions but not the antifraud provisions of the Securities Act of 1933 or the antifraud provisions of the Securities Exchange Act of 1934.

The Commission's amended Complaint, filed on August 12, 1977, alleged that defendants had offered and sold unregistered securities in the form of fractional undivided working interests in oil and gas bases based upon misrepresentations of, and omissions to state, material facts concerning defendants prior operational history.

The Court found that defendants had violated the registration provisions of the federal securities laws with respect to their initial offerings but not the antifraud provisions. The Court declined to enter permanent injunctions against the defendants based upon a finding that there was no reasonable likelihood of future violations. Judgment for defendants was entered on November 29, 1979.

For further information, see Litigation Release No. 7875.

Litigation Release No. 8961/December 26, 1979

SECURITIES AND EXCHANGE COMMISSION v. ATLAS OIL EXPLORATION, INC., ET AL. (S.D. Miss. Civil Action No. S-79-0259 (R))

Jule B. Greene, Regional Administrator of the Atlanta Regional Office of the Securities and Exchange Commission, announced that on December 3, 1979 the Honorable Dan M. Russell, Jr., District Court Judge for the Southern District of Mississippi, entered final judgments of permanent injunction restraining defendants Haskell J. Bonner of Shreveport, Louisiana, Jerry F. Mims of Hogansville, Georgia, and Gerald W. Keenum of New Orleans, Louisiana, from further violations of the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. The permanent injunctions specifically enjoin these defendants from further violations of the anti-fraud provisions in connection with the sale of securities of Atlas Oil Exploration, Inc. ("Atlas"), Atlas Oil Corporation ("Atlas Oil"), Continental Petroleum, Inc. ("Continental"), and Energy Associates, Incorporated ("Energy"), or any other security. The injunction entered against Bonner specifically enjoins him from making misrepresentations and omitting to disclose material facts concerning: (1) the background and experience of the driller; (2) the production of the issuer's existing wells; (3) the expected return of the investment; and (4) the risks of the investment. The final judgments of permanent

injunction were entered upon the consent of these defendants without admitting or denying the allegations in the Commission's Complaint.

The Complaint, filed July 12, 1979, alleged violations of the registration and anti-fraud provisions of the federal securities laws by four Mississippi corporations: Atlas, Atlas Oil, Continental, and Energy and violations of the anti-fraud provisions by Atlas Consultants, Inc., a Mississippi corporation, and eight individual defendants in connection with the offer and sale of fractional undivided working interests of oil and gas leases. The Complaint further alleged that Mims, former executive vice president of Atlas, Bonner, the driller of the Atlas and Continental wells, and Keenum, a former salesman with Atlas and Atlas Oil, made untrue statements of material fact and omitted to state material facts, concerning, but not limited to: (1) the anticipated production of proposed wells; (2) the return on an investment; (3) that Zeno A. Goss, president of Atlas, misappropriated not less than $275,000 of the proceeds of the offerings; (4) the entry of cease and desist orders by seven states restraining the sale of securities of Atlas, Atlas Oil, Continental, and Energy. Final orders of permanent injunction had previously been entered against all other defendants on July 13, 1979.

(For further information see Litigation Release No. 8835.)

Litigation Release No. 8962/December 26, 1979

SEC v. UNIVERSAL LANCASTER CORPORATION, ET AL CA4-77-267-E (N.D. TEX.)

Michael J. Stewart, Administrator of the Fort Worth Regional Office of the Securities and Exchange Commission, announced that on November 19, 1979, the Honorable Eldon B. Mahon, United States District Judge, after a trial on the merits, found that Universal Lancaster Corporation, Roy T. Rimmer, both of Fort Worth, Texas, and Ward S. Johnson, of Orange, California, had not violated the antifraud and proxy solicitation provisions of the federal securities laws.

The Commission's Complaint, filed September 22, 1977, alleged that AGC Industries, Inc., formerly a publicly-held, Fort Worth-based corporation, was merged into Universal Lancaster Corporation on September 30, 1976, in a going-private transaction whereby the shareholders of AGC were to be paid $1.25 per share for their stock. The Complaint alleged that Rimmer and Johnson prepared proxy statements soliciting the proxies of the AGC shareholders to vote their approval of the merger without disclosing, among other things, that there would be insufficient funds available to pay the AGC shareholders for their stock.

As to all defendants, the Court declined to enter orders of permanent injunction.

For further information, see Litigation Release No. 8192

Litigation Release No. 8963/December 27, 1979

SECURITIES AND EXCHANGE COMMISSION v. CLARK JOSEPH WINSLOW (United States District Court for the Southern District of New York) Civil Action No. 79-7012

The Securities and Exchange Commission today announced that the United States District Court for the Southern District of New York entered a Final Order against Clark Joseph Winslow of Greenwich, Connecticut in an action by the Commission alleging violations of the anti-fraud provisions of the Securities Exchange Act of 1934. The Defendant Winslow consented to entry of the Final Order without admitting or denying the allegations in the Commission's Complaint, which was filed today.

In its Complaint the Commission alleged that in March 1979, as a result of his inquiry about unusual trading in the common stock of Fairchild Camera and Instrument Corporation ("Fairchild"), Winslow was informed of a rumor that a major British electrical products manufacturer, which was identified, might be interested in acquiring Fairchild. Upon hearing the rumor, according to the Complaint, Winslow contacted an officer of Fairchild, made

false and misleading statements to him, including that he knew who it was that was seeking to acquire Fairchild, and offered to convey the name of that company to Fairchild in exchange for several hundred thousand dollars, to be returned if the information proved to be incorrect. The Complaint alleged that Winslow also represented to the Fairchild officer that he thought he could say at what price the offer would be made; that the company to acquire Fairchild had a history of acquiring other firms, purging management and operating the company in a way that would result in dismemberment of the structure of the organization; and that their pattern was clear in previous acquisitions, and that Fairchild would certainly find it to be the case if Fairchild were to be acquired by them. Fairchild declined Winslow's offer, according to the Complaint. Winslow purchased 700 shares of Fairchild common stock on the day of his conversations with the Fairchild officer and subsequently effected other transactions in the stock.

The District Court ordered that Winslow not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of any security for his own account, for the account of any member of his family or for any account in which he has a beneficial interest.

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Vo. 19 No 2

sec docket

VOLUME 19, NO. 2 JANUARY 15, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 6172-73	70
Securities Exchange Act	- 16455-66	89
Public Utility Holding Company Act	- 21363-81	96
Trust Indenture Act	- 547-48	131
Investment Company Act	- 11003-07	131
Investment Advisers Act	- 711	136
Accounting Series	- 274	137
Freedom of Information Act	- 59	137
Litigation	- 8636*, - 8964-68	137

This listing covers releases issued from 12/28/79-1/3/80.

This listing does not affect the legal status of any document published in this issue.

*NOTE: Litigation Release No. 8636 dated January 5, 1979 was inadvertently omitted from Volume 16 No. 11 dated January 23, 1979.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

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SIGNIFICANT ITEMS RULES

The following releases related to self-regulatory organization rule proposals and/or adoptions

34-16455 34-16461 34-16464
34-16456 34-16462 34-16465
34-16459 34-16463 34-16466
34-16460

33-6172 Solicitation of Public Comments on proposed procedural rules relating to requests that records provided to or obtained by the Commission be treated in confidence (File No. 4-229 Comment Period Expires March 5, 1980) .....

33-6173 Adoption of a rule which provides that a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of the 1933 Act shall not include a report by an independent accountant on a review of unaudited interim financial information .....

IC-11005 Adoption of two rules regarding the assignment of contracts for services of an investment adviser or principal underwriter and the temporary service by an investment adviser without a written contract approved by investment company shareholders .

SE 1.29:

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

SECURITIES EXCHANGE ACT OF 1934
Release No. 16458/December 28, 1979

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21363/December 28, 1979

TRUST INDENTURE ACT OF 1939
Release No. 548/December 28, 1979

INVESTMENT COMPANY ACT OF 1940
Release No. 11003/December 28, 1979

INVESTMENT ADVISORS ACT OF 1940
Release No. 711/December 28, 1979

FREEDOM OF INFORMATION ACT
Release No. 59/December 28, 1979

REQUESTS FOR CONFIDENTIAL TREATMENT OF RECORDS OBTAINED BY THE COMMISSION

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission is requesting written comments on proposed procedural rules relating to requests that records provided to or obtained by the Commission be treated in confidence. The rules are designed to allow persons who submit records to the Commission to assert a claim that disclosure of the records would not be required under the Freedom of Information Act, 5 U.S.C. 552, for reasons of personal privacy or business confidentiality, or for other reasons permitted by the Act. The proposal also sets forth a statement of the Commission's policy with respect to such matters pending the adoption of a final rule.

DATE: Comments should be received by the Commission on or before March 5, 1980.

ADDRESS: All communications concerning this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such communications should refer to File No. 4-229, and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Mitchell D. Dembin
Office of the General Counsel
Securities and Exchange Commission
Washington, D.C. 20549.
(202) 272-2454

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission today published for comment proposed rules relating to requests for confidential treatment of records obtained by the Commission. The Commission proposes to adopt a new Section 200.83 of Part 200, Chapter II, Title 17, Code of Federal Regulations, which will implement a procedure that will allow persons to request confidential treatment of information supplied to the Comission to the fullest extent permitted by the Freedom of Information Act, 5 U.S.C. 552, and other relevant statutes.

The Securities and Exchange Commission, as an administrative agency with significant law enforcement responsibilities, often is required to walk a narrow line in fulfilling its obligations to disclose records to the public under the Freedom of Information Act while preserving the legitimate interests in confidentiality of the corporations and individuals who submit information to the Commission.

The Commission had earlier adopted procedures, found at 17 CFR 240.24b-2, for granting confidential treatment with respect to documents which, in the normal course of Commission business, would be placed in public files upon their receipt by the Commission. That procedure was adopted so that the Commission could make a determination with respect to whether or not to grant confidential treatment to such records at the time they are received.

The instant, proposed procedures will apply to documents for which there is no other specific procedure at the *present time and which, in the normal course*

of Commission business, will be placed in a non-public file upon receipt. Accordingly, the Commission would determine any request for confidential treatment under these procedures only at such time as a Freedom of Information Act request is made for the particular documents.

These procedures are instituted in the wake of the Supreme Court's decision in *Chrysler* v. *Brown*, 47 U.S.L.W. 4434, No. 77-922, April 18, 1979, in which it held that submitters of information did not have a right to *de novo* review under the FOIA of an agency's decision to release purportedly confidential records. In addition, the Court instructed agencies that an agency's preference or need for confidentiality is a controlling factor in determining the reach of Exemption 4 of the Freedom of Information Act relating to business and financial records. The Commission will determine, in the first instance, the merits of such requests for confidential treatment.

The confidential treatment rules will provide a procedure for the Commission to examine a request for confidential treatment and evaluate the impact of the disclosure of such information on the Commission's continuing ability to acquire information in the future as well as the legitimate interests of the corporation or individual in maintaining the confidentiality of the information. The procedures, however, do not establish substantive criteria for the Commission to apply in considering confidential treatment requests. Rather, the procedures are designed to give the Commission the maximum amount of flexibility in making a determination on these important issues on a case-by-case basis.

The Commission is very sensitive to the concerns which corporations and individuals have with respect to preserving the confidentiality of records which have been requested or required to be disclosed to the Commisison. To the extent permitted by law and consistent with the Commission's responsibilities in connection with administering the federal securities laws, the Commission desires to alleviate legitimate concerns and to give the submitters of information as much comfort as the Commission can that it will seek to preserve the confidentiality of such material.

While the Commission has been operating under informal procedures designed to permit the expeditious processing of such requests, the Commission intends, by publishing the proposed rules for comment, to promote greater public awareness of the method for claiming entitlement to confidential treatment of information obtained by the Commission in a variety of circumstances.[1] The rules proposed herein are generally designed to apply to any type of record obtained by the Commission; for example, the rules will apply, *inter alia*, to records obtained in the course of Commission investigations and to records (other than those required to be filed and made publicly available) submitted in connection with applications or the review of filings made with the Commission. The proposed rule will, however, not affect the applicability of sections of the federal securities laws or other federal statutes which either require or authorize the confidential treatment of information on the basis of standards other than those contained in the Freedom of Information Act, but made applicable by Exemption 3 of the Act,[2] nor are these rules intended to apply in cases where the Commission has rules of specific applicability, governing the treatment of specific types of records,[3] or where the Commission establishes other procedures, on an *ad hoc* basis, in connection with a particular study, report or

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[1]The informal procedures, as they presently exist with respect to Commission investigatory records, are described in Securities Act Release No. 5571, 6 SEC Docket 281 (February 21, 1975).

[2]*See, e.g.*, Item 30 of Schedule A of the Securities Act of 1933; Sections 13(d)(1)(B) and 13(f)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d)(1)(8) and 78m(f)(3); Section 22(c) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79v(c); Section 321(b) of the Trust Indenture Act of 1939, 15 U.S.C. 77uuu(b); Section 45(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-44(a); Section 210 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-10. *See also*, 25 U.S.C. 6103; 18 U.S.C. 1905. *Cf.*, *Chrysler Corp.* v. *Brown, supra*, 47 U.S.L.W. at 4444, n. 49 (declining to determine whether 18 U.S.C. 1905 is an exempting statute for purposes of Exemption 3 of the FOIA).

[3]*See, e.g.*, Rule 24b-2 under the Securities Exchange Act, 17 CFR 240.24b-2, applicable to records filed pursuant to the securities acts, in circumstances where the data filed would otherwise become a part of the Commission's public files, and thus immediately available to anyone upon request. *See also*, Section 23(a)(3) of the Securities exchange Act, 15 U.S.C. 78w(a)(3), concerning statements filed in connection with rulemaking proceedings; 17 CFR 200.81, concerning requests made of the Commission's staff for legal advice or opinions.

investigation [§200.83(e)(1)].[4] Rule 200.83 will supplement the provisions of the Commission's general regulations concerning the handling of requests for access to records, 17 CFR 200.80, and will apply when the Commission receives a request for record which may contain confidential business information or information the disclosure of which would constitute an unwarranted invasion of personal privacy. It will establish procedures designed to allow the Commission to ascertain whether a request for confidentiality has been made, and to determine the validity of such request.

Policy Pending Final Promulgation of New Rules

In responding to requests for information under the Freedom of Information Act, the Commission will follow the procedures of current Rule 200.80. Where a request for confidential information has been made, the Commission will, to the extent practicable, follow the general approach outlined in proposed Rule 200.83 until final rules are promulgated. However, pending final promulgation, the Commission will not rely on the provisions of the proposed rule that would establish new, affirmative requirements for persons requesting that the Commission not release information concerning themselves.

Thus, for example, proposed Rule 200.83(a), which specifies the procedure for making a timely assertion of a claim of entitlement to confidential treatment, and proposed Rule 200.83(d)(3), which prescribes the consequences of a failure to make and substantiate a claim at the time information is submitted, will not be relied upon to justify disclosure of information over the objections of any person. However, the Commission may require that proper substantiation be furnished promptly, so that the determinations required by the Freedom of Information Act can, to the fullest extent possible, be made within the time periods allowed by that Act.

Background

Section 24 of the Securities Exchange Act, as amended in 1975, defines the term "records" as all "applications, statements, reports, contracts, correspondence, notices and other documents filed with or otherwise obtained by the Commission pursuant to [the Securities Exchange Act] or otherwise." It further prohibits the disclosure of records in contravention of the rules of the Commission under the FOIA, or the disclosure of records as to which the Commisison has determined, pursuant to such rules, to afford confidential treatment. 15 U.S.C. 78x(b). The amended Section 24 thus establishes that the substantive provisions of the Freedom of Information Act govern public access to all Commission records.

The Commission has, and will continue to acquire, a great deal of information from private parties. Some of this information is regarded as very sensitive by the persons and businesses to which it relates. On the other hand, members of the public are often interested in obtaining disclosure of the information in the Commission's possession. Under the Freedom of Information Act, a request for agency records by "any person," 5 U.S.C. 552(a)(3), must be honored, unless the Commission can demonstrate the applicability of an exemption to the FOIA's disclosure requirements. If an FOIA exemption applies to a record, the Commission retains the discretion to disclose the record, unless another statute forbids such disclosure. *Chrysler Corp.* v. *Brown, supra,* 47 U.S.L.W. 4434 (April 18, 1979).

Of course, the Commission itself also has important interests with respect to the treatment of the information in its files. The Commission needs access to such information in order to make informed decisions under the various laws the Commission is charged with administering. In a few cases, useful information may not be subject to compulsory production, and can only be obtained voluntarily. In many cases, information can be obtained on a more timely basis through voluntary submission, rather that pursuant to subpoena. The Commission believes that the voluntary submission of information will be encouraged if the Commission has procedures which promote the fair evaluation of claims of confidentiality, and enable it to determine which records may be withheld from public disclosure under the FOIA.

In addition, the Commission is aware that, on the one hand, its officers and employees may potentially be subject to criminal penalty under the Trade Secrets Act, 18 U.S.C. 1905,[5] or the Privacy Act of

[4]References herein to provisions of the proposed rule are set forth in brackets.

[5]The Trade Secrets Act, 18 U.S.C. 1905, has its origin in an internal revenue statute enacted in 1864. Rev. Stat. 3167. Its original legislative

1974, 5 U.S.C. 552a, for the wrongful disclosure of certain information received in confidence. On the other hand, disciplinary proceedings may be brought against its officers or employees who are found to have arbitrarily and capriciously withheld information required to be made available by the Freedom of Information Act. 5 U.S.C. 552(a)(4)(F).[6]

These two possibilities suggest the need for guidance with respect to the way the Commission interprets its responsibilities under these and other relevant statutes.

Moreover, as the Commission noted in Securities Act Release No. 5571, 6 SEC Docket 281 (February 21, 1975), the Commission finds it regrettable that, in many situations where it has conducted an investigation pursuant to the federal securities laws, the Commission may inadvertently disclose information obtained in the course of the investigation, in circumstances where persons who supplied the information would have reasonable grounds to object, either because of personal privacy or business confidentiality considerations. The stringent time requirements of the Freedom of Information Act, as well as the heavy financial and manpower burdens that the Commission would be obliged to sustain if it had to examine each individual record for these purposes, and consult with those with a potential concern, means that as a practical matter the Commission may often not be aware of valid objections to disclosure that might be made. Because of these considerations, the Commission instituted an informal procedure, set forth in Securities Act Release No. 5571, pursuant to which persons who gave testimony or supplied documentary evidence in a Commission investigation were requested to write to the Director of the Division of Enforcement if it was believed that particular portions of testimony or specified documents or portions thereof would be exempt from the disclosure requirements of the Freedom of Information Act. The Commission has obtained valuable experience in connection with these informal procedures and believes it is now able to formalize the agency's practices under the Act with respect to confidentiality requests. These rules are thus meant to supplant the informal procedures now in effect, as they have developed since the issuance of Securities Release No. 5571.

Finally, in keeping with the spirit of the Freedom of Information Act and its "general philosophy of full agency disclosure,"[7] the Commission desires that the public understand the bases for its decisions interpreting the Act and have the fullest possible appreciation of the policy which leads to any particular agency action. The Commission believes that these rules will promote these objectives.

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history was sparse, but statements made on the occasions when the statute was re-enacted "indicate that Congress was primarily concerned with unauthorized disclosure of business information by feckless or corrupt" government employees. *Chrysler Corp.* v. *Brown, supra*, 47 U.S.L.W. at 4438. In 1948, Rev. Stat. 3167 was consolidated with two other statutes to form the present-day Trade Secrets Act. *See* H.R. Rep. No. 304, 80th Cong., 2d Sess., A127-128 (1947). The Department of Justice has recently issued a statement of policy with respect to criminal prosecutions under 18 U.S.C. 1905, declaring that it is not the policy of the Criminal Division to prosecute government employees if the release of the information in question was made "in a good faith effort to comply with the Freedom of Information and the appropriate applicable regulations." Unites States Attorney's Manual, §9-2.025.

[6]5 U.S.C. 552(a)(4)(F) provides:

> Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

[7]S. Rep. No. 813, 89th Cong., 1st Sess. 3 (1965); *EPA* v. *Mink*, 410 U.S. 73, 80 (1973).

Summary of Procedural Provisions

The basic principle embodied in the Commission's proposed rule is that it is generally the responsibility of a business or an individual making a claim of confidentiality to substantiate that claim; the Commission's responsibility is to afford a reasonable opportunity to provide such substantiation and to afford appropriate consideration to the matters brought to its attention. Thus, while it is contemplated that the Commission office concerned with a particular document will evaluate any claim of confidentiality asserted, and may make a limited inquiry where it is necessary to do so, the proposed rule makes it clear that the Commission will not honor requests that are unnecessarily broad or where the basis on which confidential treatment is requested is not adequately explained. Nor will the Commission permit its limited manpower to be devoted to any substantial degree to the correction of deficiencies in a request; the burden is entirely on the requesting party to meet the rule's requirements in the first instance. The proposed rules are not intended to create, and do not confer, any new rights on those who submit records or information to the Commission.

The rule requires that a person wishing to make a request for confidentiality must submit that request at the time the information is first received by the Commission, whenever it is possible to do so [§200.83(a)], and as soon thereafter as possible where a request cannot be made simultaneously with the submission of the records [§200.83(b)]. Documents for which confidential treatment is requested should be prominently marked "Confidential Treatment Requested" [§200.83(a)(1)].[8] A "request for confidentiality" is defined as consisting of the statement of the person requesting confidential treatment, setting forth those items of information specified in the rule [§200.83(as)(2), (3)]. The request for confidential treatment should be given to the staff member who receives the records in question, and a copy of the request (but not the records to which the request relates) should be sent to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20549 [§200.83(a)(5), (b)].

In certain circumstances, however, the Commission recognizes that this procedure cannot be followed. For example, the Commission regularly conducts inspections of regulated entities in the course of which documents are copied and removed to Commission offices on an expedited basis. It is not contemplated that the request procedures of §200.83(a) would apply to materials obtained in circumstances where there is no reasonable oportunity to make the request. The Commission is aware that such records would often be covered by one or more of the exemptive provisions of the FOIA and its personnel will continue to be alert, with respect to records obtained in such circumstances, to protect those records for which confidential treatment is warranted. (In the event the Commission does need additional information with respect to a possible claim of confidentiality, that information can be requested and obtained pursuant to proposed §200.83(d)(3)(ii).)

Similarly, in an investigatory or enforcement context, it will often be the case that a request for confidentiality cannot be submitted along with the records in question, such as may be the case where information is provided in the course of testifying in a Commission investigation, or where documents are submitted pursuant to subpoena on a schedule that does not permit the simultaneous submission of a request for confidential treatment. With respect to such circumstances, the rule requires that the person who intends to assert a request for confidential treatment state his intention to do so at the time the information is provided, and that he take reasonable steps to submit the actual request required by §200.83(a) as soon as the documents in question can be reviewed and the formal request prepared [§200.83(b)]. In no circumstances, however, may

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[8]A congressional committee which studied the problems associated with FOIA requestf for business information found significant potential benefits in a requirement that submitters of documents identify and suitably mark records for which confidential treatment is requested, while cautioning that submitters must avoid the temptation to mark everything submitted as "confidential" if these benefits are to be realized. "Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits," H. Rep. No. 95-1382, 95th Cong., 2d Sess. at 34 (1968).

Normally, the best method of marking records is to stamp each page containing information for which confidential treatment is requested with the appropriate legend. Where this is for any reason impracticable, the rule permits a submitter of documents to make use of a cover sheet containing the legend.

the need to comply with the procedural requirements of the proposed rule be cited as justification for delay in complying with a legal requirement to submit records or information to the Commission.

In certain other circumstances, the Commission will obtain, through a third person, records concerning a person which that person may not even be aware are in the Commission's possession. In some cases, the records will be of such a nature (e.g., current personal financial information obtained in an investigation of a broker-dealer or investment adviser) that generally would always be considered confidential by the Commission. In such cases, the person to whom the information relates will not be consulted, but the records will not be made publicly available, or will be made available only after the deletion of names and identifying personal details. In appropriate situations, the staff may inquire as to whether the person wishes to make a request for confidentiality, and as to the basis for that request, in accordance with the provisions of §200.83(d)(3)(ii). It is expected that this would be accomplished on an expedited basis to allow for the prompt response required by the Freedom of Information Act, to the extent possible. It is emphasized that this procedure will normally be invoked only where it appears that the information in question was not acquired indrectly from the affected person and that, for this reason, that person may not have had a reasonable opportunity to make a request for confidentiality. Generally, persons who themselves submit information to the Commission, or who know that information about them has been obtained by the Commission from third persons, and who fail to assert a request for confidentiality with respect to that information, will be presumed to have waived any request which might have been made [§200.83(d)(3)].

The request for confidential treatment will be acknowledged, but no determination with respect to entitlement to confidentiality will be made until such time as the Commisison receives a request for access to the information covered by the request [§200.83(c)].[9] The Commission's experience with problems of confidentiality under the Freedom of Information Act indicates that in many, if not most, cases, it is impossible to render a final decision on the status of particular information prior to and without reference to a specific request that the information be publicly disclosed. This is principally due to the fact that the passage of time can affect the question whether confidential treatment continues to be warranted with respect to any particular information. In addition, the process of balancing the privacy interests of an individual requesting that records be maintained in confidence against the public interests that would be served by disclosure,[10] is one that is generally facilitated if the identity of all relevant parties is known. The decisional process involved can, therefore, generally only occur after both requests—the request for confidential treatment and the request for disclosure—have been made and each requester has had an opportunity to substantiate his claim.[11]

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[9]The House Committee on Governr ent Operations recommended against ruling on requests for confidential treatment at the time they are made, finding this practice to be wasteful of agency resources and noting that "information loses its confidential nature over time, and it is rarely possible to adequately determine confidentiality in advance of an actual Freedom of Information Act Request." "Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits," H. Rep. No. 95-1382, 95th Cong., 2d Sess. at 3, 34-40. The Commission's experience is consistent with these findings.

[10]*See, Department of the Air Force* v. *Rose*, 425 U.S. 352 (1976).

[11]The written request for confidentiality required by the rules should not itself contain information which the person requesting confidential treatment would wish to keep undisclosed, except to the extent that the inclusion of such material is necessary to explain the basis on which confidential treatment is requested [§200.83(a)(4)]. The request for confidential treatment should indicate those specific portions of the request itself which the requestor believes should not be disclosed [§200.83(a)(2)(vii)]. The request for confidential treatment will, to the extent possible, be made available to the public upon request, and may thus be made available to a person requesting access, under the FOIA or otherwise, to the records to which the request relates [§200.83(a)(4)]. This procedure is intended to permit the person requesting access to submit countervailing arguments during the administrative decisional process. The House Committee on Government Operations has recommended that agencies should "make certain" that those requesting access to documents under the FOIA "are offered a full

Once a request for the information is received, if it appears that the information is of a type for which confidential treatment is warranted, the Commission's Freedom of Information Act Officer or other officer concerned with the information will inform both the submitter and athe requesters that confidential treatment of the information has been granted [§200.83(d)(2)].[12] At that point, the person requesting access pursuant to the FOIA will have the right, under the Act, to an administrative appeal of this determination. Pursuant to existing Commission rules, such appeals are submitted to the FOIA Officer, and are decided by the Commission. See 17CFR 200.80(d)(6). If the Commission affirms the decision to withhold the documents in question, the requester will be so informed, and will be entitled, under the provisions of the FOIA, to seek *de novo* review of the Commission's decision in an appropriate federal district court. 5 U.S.C. 55s(a)(4)(B).

If the Commission staff initially determines to disclose the information in question, the concerned parties will be so informed and the person who requested confidential treatment will have fifteen calendar days to appeal that determination to the Commission before any disclosure is made [§200.83(d)(1)]. If such an appeal is taken and the Commission also determines to disclose the information to the person requesting it under the FOIA, the person seeking confidential treatment will be provided ten days notice, to permit him to seek whatever judicial remedy may be available before any disclosure of the information occurs [§200.83(d)(1)(v)]. *See Chrysler Corp.* v. *Brown, supra.*

In the event that the initial decision of the FOIA Officer or the concerned Commission office results in a determination to afford confidential treatment to part of the information in question and to disclose another part of the information, both parties—the person seeking confidential treatment and the person seeking disclosure—may appeal to the Commission. It is contemplated that, wherever possible, such appeals will be considered by the Commission simultaneously.

The Commission will seriously consider requests for confidential treatment for reasons of personal privacy or business confidentiality if it is demonstrated, to the Commission's satisfaction, that the claim of confidentiality is reasonable in view of normal expectations of privacy or the normal practices of the concerned business and of other similar businesses and that no statute requires disclosure. In the case of a claim of business confidentiality, the business generally should provide information to the Commission concerning whether the business information is in fact confidential in the hands of the business and has been so treated, and that public disclosure would be likely to cause substantial harm to the competitive position of the business, or to affect adversely the Commission's ability to obtain information.[13] *See, e.g., National Parks and Conservation Association* v. *Kleppe*, 574 F.2d 673 (D.C. Cir. 1977); *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974); *Continental Stock Transfer and Trust Co.* v. *Securities and Exchange Commission*, CCH Fed. Sec. L. Rep. §96,172 (2d Cer. 1977). The Commission recognizes that the law relating to Exemption 4 is still developing and that the applicable standards may be modified.[14] Thus, while the Commission believes that records falling within the above criteria may be exempt under

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Footnote 11, continued:

opportunity to participate in the compilation of a record of the agency decision" to release or withhold records. Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits," H. Rep. No. 95-1382, 95th Cong., 2d Sess., at 52 (1978). As a general rule, an opportunity to respond to the arguments made by a submitter of documents will promote fairness and aid the Commission in deciding the issue.

[12]A grant of confidential treatment does not preclude appropriate disclosure of the information, such as disclosure in connection with an investigation or litigation, or disclosure to Congress or to another governmental authority; nor does it preclude disclosure pursuant to a court order or subpoena [§200.83(d)(4)]. Moreover, the applicability of FOIA exemptions relied upon to withhold records may have to be re-examined if another FOIA request is received after a significant amount of time has passed.

[13]Exemption 4 applies to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

[14]The Supreme Court declined to address the ques-tion of the ambit of Exemption 4 in *Chrysler Corp.* v. *Brown, supra,* since the court of appeals had not addressed the issue. 47 U.S.L.W. at 4144, n. 49.

FOIA Exemption 4, the rule does not exclude the possibility that the Commission may conclude that records are within the exemption based on other applicable standards or criteria.

Judicial Review of Determination Denying Confidential Treatment; Stays Pending Review

As noted above, the proposed regulation contains provisions which afford a waiting period after a Commission determination during which information would not be released and during which the person affected could seek judicial review of that determination [§200.83(d)(1)(v)]. This proposed provision would appear appropriate in view of the decision of the Supreme Court in *Chrysler Corp.* v. *Brown, supra,* 47 U.S.L.W. 4434 (No. 77-922, April 18, 1979). In that case, the Court held that 28 U.S.C. 1331 and the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 704, confer jurisdiction on federal district courts to review the proposed release of information by a federal agency, upon complaint of an aggrieved party. In order to allow a person the time necessary to seek such review, the regulation would provide that when the Commission denies a request for confidential treatment, the information would not be released for an additional period of 10 calendar days.

In the event that judicial review is sought, the Commission's determination to disclose the information will be stayed, unless the Commission orders otherwise. The Commission may determine to vacate the stay on its own motion or at the request of the party seeking disclosure. If the stay is vacated, the party opposing disclosure could seek an order from the court in which the action is pending, staying any disclosure until further order of the court [§200.83(d)(1)(vi)].

The Freedom of Information Act imposes strict time limits on the processing of requests under the Act and further requires that non-exempt records must be made "promptly available" to a requester once a determination has been made to comply with his request. The Commission's proposed rules, including the provisions for delay in the disclosure of information determined not to be exempt, are intended to encourage the prompt and diligent pursuit of any available judicial remedies, and to recognize the rights, under the FOIA, of persons who request access to information, as well as the countervailing interests of those who request confidential treatment.[15] The Commission believes that the failure of a person or business to seek and obtain judicial relief within the time limits allowed by the proposed regulation would constitute a waiver of any claim to confidential treatment, and would negate any subsequent allegation that the Commission's release of information willfully violated the Trade Secrets Act, the Privacy Act of 1974, or any other statute.

Authority

This notice of proposed rulemaking is effected under the authority of the Freedom of Information Act, The Privacy Act of 1974, and the Administrative Procedure Act, 5 U.S.C. 552, 552a and 553; Section 19 of the Securities Act of 1933, 15 U.S.C. 77s; Sections 23 and 24 of the Securities Exchange Act of 1934, 15 U.S.C. 78w, 78x; Section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; Section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; Section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a-37; and Section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-11.

CONCLUSION

It is therefore proposed to amend Subpart D of Part 200 of Chapter II of Title 17, Code of Federal Regulations, by adding thereto Section 200.83, as set forth below.

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[15]The Congressional Committee which extensively studied problems relating to requests for business data, while recommending the institution of procedures such as those proposed in this release, recognized that the FOIA time limits were "virtually an inpenetrable barrier to any realistic form of agency proceeding except where the requestor is willing to allow an extension." Freedom of Information Act Requests for Business Data and Reverse-FOIA Lawsuits, H. Rep. No. 95-1382, 95th Cong., 2d Sess. at 51. Noting that there are "several ways" in which agencies can attempt to reconcile the FOIA's time requirements to procedures designed to evaluate requests for confidential treatment, the Committee stated that "if in practice neither of these methods is sufficient, the committee will consider the need to extend or restructure the time limits" by amending the FOIA. *Id.* at 53.

§200.83 Procedure for requesting confidential treatment of records.

(a) *Request for confidentiality to accompany records.*

Any person who either voluntarily or pursuant to any requirement of law submits any document or causes or permits any document to be submitted to the Commission for which no other specific procedure exists for according confidential treatment, and who desires that the Commission afford confidential treatment to such document for reasons of personal privacy or business confidentiality, or for any other reason permitted by federal law, shall take all steps reasonably necessary to ensure, whenever it is possible to do so, that at the time the document is first received by the Commission it is supplied separately from the documents containing information for which confidential treatment is not being requested, that it is appropriately marked, and that it is accompanied by a written request for confidentiality.

(1) All records which contain information for which a request for confidentiality is made shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page, stating "Confidential Treatment Requested." If marking each page is impossible or impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested" shall be securely attached to each group of records submitted for which confidential treatment is requested.

(2) A request for confidentiality shall consist of a statement by the person making the request, setting forth, to the extent appropriate or necessary for the determination of the request for confidentiality, the following information regarding the request:

(i) The reasons, concisely stated, and referring to specific exemptive provisions of the Freedom of Information Act, why the information in the document should be accepted and retained in confidence;

(ii) The length of time for which confidential treatment is requested;

(iii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iv) The existence and applicability of any prior determinations by the Commission, by other federal agencies, or by a Court, concerning the entitlement of the information to confidential treatment;

(v) What other purportedly confidential information, if any, would be divulged by disclosure of the information in question;

(vi) The circumstances under which the information was furnished to the Commission, referring to any applicable Commission file numbers;

(vii) The extent, if any, to which portions of the request for confidential treatment should itself be afforded confidential treatment; and

(viii) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(3) In the case of a request for confidentiality for business information, the statement of the person making the request shall, in addition to the matters set forth in paragraph (a)(2) of this section, also provide the following information:

(i) The adverse consequences to the business, financial or otherwise, that would result from disclosure of the information, including any adverse effect on the business' competitive position;

(ii) The measures taken by the business to protect the confidentiality of the information in question, and of similar information;

(iii) The ease or difficulty of a competitor's obtaining or compiling the information; and

(iv) Whether the information was voluntarily submitted to the Commission and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Commission.

(4) To the extent possible, a written request for confidentiality should not itself contain information which the person requesting confidential treatment believes should not be disclosed. Requests for confidential treatment will, to the extent disclosure will not reveal confidential information, be made available to the public upon request.

(5) In addition to providing a copy of any statement required by paragraphs (a)(2) or (3) of this section to the Commission personnel receiving the records in question, the person requesting confidential treatment shall also send a copy of the statement (but not the records to which the statement applies) to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20549.

(b) *Where request for confidentiality cannot accompany records.*

In certain circumstances, such as when a person is testifying in the course of a Commission investigation or producing documents under circumstances where time does not permit a thorough review of the documents, it may be impossible to submit a written request for confidentiality at the time the records are first provided to the Commission. In no circumstances may the need to comply with the requirements of this rule be cited as justification for delay in complying with a legal requirement to submit records or information to the Commission. Rather, in such circumstances, the person testifying or submitting documents should inform the Commission employee receiving the information, in writing or on the record if practicable, at the time the information is received or as soon thereafter as possible, that he believes certain of the information may be entitled to confidential treatment. The person must then take all reasonable and necessary steps to submit a request for confidentiality with respect to the information believed to be confidential within thirty days of the original receipt of the material. In circumstances where copies of the testimony or documents in question are not immediately available for review by the person asserting a claim of confidentiality, the person must inform the Commission office, in writing, at the time the records are received by the Commission or as soon thereafter as possible, that he intends to assert a confidentiality as to certain records, or portions thereof, and must identify that material with as much specificity as possible under the circumstances. Under these circumstances, a person will not be required to submit the request for confidentiality required by paragraph (a) of this section until thirty days after the records in question are first made available for his inspection and review. Any request for confidentiality submitted pursuant to this paragraph should be given or mailed to the staff member who received or is known to have possession of the records, and a copy of the request should be sent to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20459.

(c) *Initial response to requests for confidentiality.*

Requests for confidential treatment received by the Commission will be acknowledged, but no determination as to the validity of any claim of entitlement to confidential treatment will be made until a request for disclosure of the information is received.

(d) *Further action on receipt of a request that information be made publicly available.*

If it is determined that records which are the subject of a request for access under the Freedom of Information Act are also the subject of a prior request for confidential treatment, Commission personnel responding to the request for access shall at that time evaluate the claim of entitlement to confidential treatment. The procedures of this section shall be followed whenever a Commission office learns that it is responsible for responding to a request under the Freedom of Information Act for information which is the subject of a request for confidential treatment submitted under paragraph (a) of this section.

(1) *Determination that confidential treatment is not warranted.*

If it is determined, after review by appropriate Commission staff personnel, that confidential treatment is, under the circumstances, not

warranted with respect to all or part of the information in question, the person requesting access to the record and the person requesting confidential treatment will be so informed. The person requesting confidential treatment will also be informed of his right to appeal such decision to the Commission within fifteen calendar days of the date of the mailing of the decision to his last known address. Information which is determined not to be entitled to confidential treatment may be made publicly available fifteen calendar days after the mailing of notice to the person requesting confidential treatment. If within that fifteen day period the Commission has received an appeal from the person requesting confidential treatment, the person requesting access to the information will be informed of the pending appeal, and further informed that no disclosure of the information will be made until the appeal is resolved.

(i) Any appeal of a denial of an application for confidential treatment shall be in writing, and shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by the legend "Confidential Treatment Appeal."

(ii) The appeal should be delivered to the Freedom of Information Act Officer or sent by mail to the Securities and Exchange Commission, Freedom of Information Act Officer, Washington, D.C. 20459.

(iii) The applicant may, if he desires, supply additional documentary evidence, by means of affidavits or otherwise, and may state such additional facts and cite such legal or other authorities as he may consider appropriate.

(iv) All appeals taken under this section will be considered by the Commission as expeditiously as circumstances permit. Although other procedures may be employed, to the extent possible, the Commission will decide the matter on the basis of the affidavits and other documentary records submitted by the interested parties, and such relevant materials as are brought to the attention of the Commission by the staff or otherwise.

(v) If the Commission determines that confidential treatment is not warranted with respect to all or part of the information in question, the person requesting confidential treatment will be so informed by letter directed to his last known address. Disclosure of the records will occur ten calendar days after mailing of such notice to the person requesting confidential treatment, unless within that ten-day period the Commission has been notified that the person has commenced an action in a federal court to obtain judicial review of the decision to make information publicly available, and an order preventing disclosure.

(vi) If an action is instituted against the Commission to obtain review of a decision to disclose any records, the Commission's decision will be stayed, and disclosure will not occur until the Court rules. The Commission may vacate a stay effected under this provision either on its own motion or at the request of a party seeking access to the records in question.

(2) *Determination that confidential treatment is warranted.*

If it is determined, after review by appropriate Commission personnel, that confidential treatment of records to which access has been requested is warranted, the person submitting the records and the person requesting access to the records will be so informed. The person requesting access will also be informed of his right, pursuant to the Freedom of Information Act and Commission regulations, to appeal the determination of the Commission. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. In this regard, see 17 CFR 200.80(d)(6).

(3) *Effect of no prior request for confidentiality.*

(i) If access is requested to records received by the Commission on or after [30 days after the effective date of this section] with respect to which no request for confidentiality has been made, the information will be presumed not to be

exempt from disclosure for reasons of personal privacy or business confidentiality, or for other reasons.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, in appropriate circumstances, inquiry may be made of a person or entity who would be affected by the disclosure of certain information whether the person or entity wishes to make a request for confidentiality as to the information. Any request for confidentiality that is asserted in response to such inquiry should be made in accordance with the provisions of paragraph (a) of this section; however, if a request for the release of the information under the Freedom of Information Act is pending, inquiry may be made by telephone or other prompt means as to the basis for the request, and the matter may be decided on the basis of the information received in response to such inquiry.

(4) *Disclosure of confidential information in certain circumstances.*

Notwithstanding the fact that information may be entitled to confidential treatment under the Freedom of Information Act, the Commission or a member of its staff may disclose such information in order to further purposes for which the information was compiled. In this regard, see the published routine uses for systems of records under the Privacy Act of 1974. Circumstances in which disclosure of exempt information may occur include, but are not limited to, the following:

(i) Disclosure may be made to either House of Congress or to a Committee of either House of Congress (the Commission may provide records to Congress without notice to the person who submits the records to the Commission, but will notify the receiving body of any prior request for confidentiality covering the information, and of any prior determination, if any, concerning entitlement to confidential treatment).

(ii) Disclosure may be made to another federal, state or foreign governmental authority, to a securities industry self-regulatory organization or to a bar association, accountant's professional association, or similar federal, state or local licensing authority (the Commission may provide records to such authorities without notice to the person who submitted the records to the Commission, but will notify the receiving authority of any request for confidentiality covering the information, and of any prior determination concerning entitlement to confidential treatment).

(iii) Disclosure may be made if required by subpoena or ordered by a court having appropriate jurisdiction.

(iv) Disclosure may be made, in the discretion of the Commission's staff, to any person during the course of any inquiry or investigation conducted by the staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appear relevant to the subject matter of the staff's inquiry.

(v) Disclosure may be made to the extent necessary or appropriate to litigate any judicial or administrative proceeding in which the Commission, or a member or employee of the Commission, is a party or has an interest.

(e) *Exclusions from the applicability of this rule.*

(1) *Other statutes or commission rules or procedures applicable to particular records.*

The provisions of this section shall not apply to the extent they are inconsistent with any statute or Commission rule governing the availability of specific records, or where another specific procedure applies (*see, e.g.,* 17 CFR 240.24b-2) or where the Commission has specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter.

(2) *Personnel and medical files.*

The provisions of this section shall not apply to any record which is contained in or is part of a personnel, medical or similar file relating to a Commission member or employee which would normally be exempt from public disclosure pursuant to Section 552(b)(6) of title 5, United States Code.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6173/December 28, 1979

ACCOUNTING SERIES RELEASE
Release No. 274/December 28, 1979

ACCOUNTANT LIABILITY FOR REPORTS ON UNAUDITED INTERIM FINANCIAL INFORMATION UNDER SECURITIES ACT OF 1933

ACTION: Final rules.

SUMMARY: The Commission is adopting a rule which provides that a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Securities Act of 1933 shall not include a report by an independent accountant on a review of unaudited interim financial information ("SAS NO. 24 report"), thereby having the effect of excluding accountants issuing such reports from Section 11(a) liability. The rule is being adopted, in part, to further the Commission's goals of encouraging increased auditor involvement with interim financial information and greater usage of reports containing a limited statement of assurance by accountants concerning unaudited financial information or other matters for which a full audit has not been undertaken. The Commission wishes to emphasize that it will closely monitor the rule as well as other matters relating to excluding the accountants from liability under Section 11 for similar reports on unaudited data and that the rule adopted is not necessarily a final resolution of this matter.

EFFECTIVE DATE: The rule is effective December 28, 1979.

FOR FURTHER INFORMATION CONTACT: James J. Doyle or James L. Russell (202-272-2130), Office of the Chief Accountant, Mary Margaret Hammond (202-272-3059), Division of Corporation Finance, or Roberta Chira (202-272-2437), Special Advisor, Office of the General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting a rule which amends 17 CFR 230.436 to exclude from the definition of a "report" for the purposes of Sections 7 and 11 of the Securities Act of 1933 SAS No. 24 reports by independent accountants on reviews of unaudited interim financial information. The rule will have the effect of excluding accountants from potential liability under Section 11(a) of the Securities Act of 1933 for SAS No. 24 reports included in Securities Act filings. The rule is based upon one of the two alternative rule formulations proposed in Securities Act Release No. 6127 (September 20, 1979) (44 FR 55894). The rule is being adopted, in part, to further the Commission's goals of encouraging increased auditor involvement with interim financial information and greater usage of reports containing a limited statement of assurance by accountants concerning unaudited financial information or other matters for which a full audit has not been undertaken.

The Commission has also approved issuance of a related release in which the Commission will propose, for comment, a similar rule for reports by independent accountants on reviews of unaudited supplemental information on the effects of changing prices required to be included in a document containing financial statements.[1]

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[1]See Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," FASB, September 1979.

I. BACKGROUND

A. SAS No. 24

In March 1979, the Auditing Standards Board of the AICPA issued Statement on Auditing Standards No. 24[2] which delineates procedures to be followed by accountants with respect to reviews of unaudited interim financial information and which sets forth standards for reports based on such reviews. The procedures prescribed by SAS No. 24 are limited to inquiries and review procedures which are substantially less than an audit.

A report under SAS No. 24 consists of the following: 1) a statement that the review of interim financial information was made in accordance with established professional standards for such reviews; (2) an identification of the interim information reviewed; (3) a description of the procedures for a review of interim financial information; (4) a statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and (5) a statement about whethe the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.[3]

The Commission has encouraged increased au litor involvement with interim financial information and greater usage of reports containing a limited statement of assurance by accountants concerning unaudited financial information or other matters for which a full audit has not been undertaken.[4] SAS No. 24 reports represent the first type of public reporting, applicable to public companies, by independent accountants containing such limited assurances based on procedures less than an audit.

B. Statutory Framework

Section 11(a)(4) of the Securities Act imposes civil liability for material misstatements or ommissions in registration statements upon "every accountant . . . .who has, with his consent, been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement . . . ."[5] Section 7 of the Securities Act deals with the matter of consent by requiring the filing of a written consent with the registration statement by any accountant who is named as having prepared or certified a report for use in connection with the registration statement. Section 7 establishes a separate requirement for reports which are used in a registration statement but which were prepared by the accountant for some other purpose; here, written consent is required "unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement."[6]

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[2]SAS No. 24, "Review of Interim Financial Information," AICPA, March 1979. SAS No. 24 superseded SAS No. 10, "Limited Review of Interim Financial Information," AICPA, December 1975; and SAS No. 13, "Reports on a Limited Review of Interim Financial Information," AICPA, May 1976.

[3]See Id., paragraph 17.

[4]See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role, U.S. Government Printing Office, July 1979, pages 241-243.

[5]Section 11(a) in imposing civil liability for material misstatements or omissions in registration statements applies to:

> (4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him . . . .

[6]The pertinent language of Section 7 is:

> If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in

An important consequence of Section 11(a) liability is that a plaintiff who makes a showing of a material misstatement or omission in a registration statement will have met his burden of proof. The burden will then shift to the defendant under Section 11(b)(3)(B)(i) to demonstrate that he believed the statement was true and not misleading after conducting a "reasonable investigation" and that he had reasonable ground for this belief.[7]

Footnote 6, continued:

> connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement.

[7]Section 11(b)(3) provides a defense to Section 11(a) liability for every person named in Section 11(a), other than an issuer, if such person sustains the burden of proof that:

> (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert . . . .

Accountants have heretofore considered their duty to conduct a "reasonable investigation" under Section 11 to have been met when they performed a full audit[8] and not when only limited procedures are involved as in SAS No. 24 reviews.

As a consequence of the interrelationship between Sections 7 and 11, concern had been expressed that accountants issuing SAS No. 24 reports, who subsequently consent under Section 7 to being named in a registration statement which incorporates their report by reference, could be held subject to Section 11(a) which imposes liability on every accountant "who has with his consent been named as having prepared . . . any report . . . ."

Since SAS No. 24 was only recently issued, the question of whether accountants could be held liable under Section 11(a) for SAS No. 24 reports included with the consent of the accountants pursuant to Section 7 in Securities Act filings has not yet been tested in the courts. Under existing case law, Section 11(a) liability of an accountant who has consented to being named in a registration statement has been limited to audited financial statements which have been certified by him. *See Escott* v. *Bar Chris Construction Corp.*, 283 F. Supp. 643 (S.D.N.Y. 1968), and *Grimm* v. *Whitney—Fidalgo Seafoods, Inc.*, [1977-78 Transfer Binder] CCH Fed. Sec. L. Rep. §96,029 (S.D.N.Y. 1973). These cases arose, however, before the issuance of SAS No. 24 reports and their inclusion in Securities Act filings with the accountant's consent to being named as having prepared them. As a result of the different facts presented by issuance of SAS No. 24 reports, absent the rule adopted, the accountant's consent and issuance of such a report may have been found to come within the language of Section 11(a)(4) which imposes liability on an accountant "who has with his consent been named as having prepared or certified . . . any report or valuation which is used in connection with the registration statement . . . ." Therefore, absent the rule adopted, additional uncertainty would exist, if Section 11(a)(4) were applicable to accountants for SAS No. 24 reports, as to whether SAS No. 24 limited procedures would constitute a reasonable investigation defense in the circumstances under Section 11(b)(3)(B)(i).

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[8]E.g., Codification of Statements on Auditing Standards, AU §630.02, in the context of "Letter to Underwriters" states: "The accountant's reasonable investigation must be premised upon an audit; it cannot be accomplished short of an audit."

II. PURPOSE

The rule is being adopted, in part, to further the Commission's goals of encouraging increased auditor involvement with interim financial information and greater usage of reports containing a limited statement of assurance by accountants concerning unaudited financial information or other matters for which a full audit has not been undertaken. In this connection, an impetus for proposing the rules was concern that, if SAS No.24 reports are used by registrants in connection with Securities Act registration statements, there may be reluctance on the part of accountants to issue reports on the basis of the limited review procedures specified in SAS No. 24 because of their potential liability under Section 11(a) of the Securities Act; and that, alternatively, if accountants perform significantly expanded procedures, much closer to a complete audit, in order to meet potential liability concerns under Section 11(a), substantial increased costs to issuers could result.

The Commission expects that directors and underwriters will continue to exercise due dilligence in a vigorous manner with respect to SAS No. 24 reports. In any suit for damages under Section 11(a), the directors and underwriters in defense should not be able to rely on SAS No. 24 reports on interim financial data included in a registration statement as statements "purporting to be made on the authority of an expert . . . which they had no ground to believe . . . were untrue . . . " under Section 11(b)(3)(C).[9] Rather, directors and underwriters should be required, as has previously been the case whenever unaudited financials are included in a registration statement, to demonstrate affirmatively under Section 11(b)(3)(A) that, after conducting a reasonable investigation, they had reasonable ground to believe, and did believe, that the interim financial data was true.[10]

It should be emphasized that accountants will nevertheless remain subject to liability under Section 17(a) of the Securities Act of 1933 for SAS No. 24 reports used in connection with registration statements.[11] This section provides a vehicle for

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[9]Section 11(b)(3) provides a defense to Section 11(a) liability to every person named in Section 11(a), other than an issuer, if such person sustains the burden of proof that:

> (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe, and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert . . . .

[10]Section 11(b)(3) provides a defense to Section 11(a) liability to every person named in Section 11(a), other than an issuer, if such person shall sustain the burden of proof that:

> (A) as regards any part of the registration statement not purporting to be made on the authority of any expert and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements thereinwere true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading . . . .

[11]Section 17(a) of the Securities Act provides in its entirety:

It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

securing many of the protections afforded under Section 11 of the Securities Act,[12] although there are significant differences between the two sections.

III. OTHER CONSIDERATIONS

The Commission recognizes that, although, as a result of this rule, accountants will not be liable to shareholders in actions under Section 11, there are other remedies available to aggrieved shareholders including those under common law, state statutes, and the general anti-fraud provisions of the federal securities statutes. For example, a shareholder may bring an action under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, although the plaintiff will have the burden of proving scienter in that case.[13] As to directors and underwriters who rely on the accountant's SAS No. 24 reports on interim financial information, they also can bring actions under other applicable laws.

In addition, the Commission wishes to emphasize that the adoption of this rule excluding accountants from potential liability under Section 11 for SAS No. 24 reports is not its final view as to the proper resolution of this matter. The Commission has also approved issuance of a related release in which the Commission will propose a rule excluding accountants from potential liability under Section 11 for reports on reviews of unaudited supplem ntal information on the effects of changing prices.[14] In that release the Commission will specifically solicit the views of registered companies, shareholders, directors, underwriters, accountants and their respective counsel, as well as all other interested parties, as to whether exclusion of potential Section 11 liability for accountants is appropriate and desirable in these circumstances. Further, the Commission in that related release will specifically solicit comments on what effects such exclusion of potential Section 11 liability for accountants may have on the ability of directors and underwriters to meet their due diligence defense under Section 11(b)(3)(A).[15] Finally, the Commission will solicit comments in the related release as to whether alternative approaches exist which are more desirable. In any event, after adopting this rule, the Commission will closely monitor its workings. In addition, the Commission will review these issues in connection with the rule being proposed in the related release.

IV. RESULTS OF COMMENT PROCESS

A. General

Twenty comment letters were submitted in response to the proposals: eleven from accounting firms or professional accounting bodies; four from law firms or bar association groups; three from registrants; and two from individuals. All commentators supported the appropriateness and desirability of adoption by the Commission of a rule which

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Footnote 11, continued:

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

[12]With respect to Commission enforcement actions, Section 17(a) has generally been interpreted by the courts to impose civil liability without scienter. *Securities and Exchange Commission* v. *World Radio Mission,* 554 F. 2d 535 (1st Cir. 1976); *Securities and Exchange Commission* v. *Coven,* 581 F. 2d 120 (2d Cir. 1978), *cert. denied,* 47 U.S.L.W. 3568 (1979); *Securities and Exchange Commission* v. *Aaron,* CCH Fed. Sec. L. Rep. §96,800 (2d Cir. 1979), *cert. granted,* October 15, 1979, Docket Number 79-66; *Securities Exchange Commission* v. *American Realty Trust,* [1978] CCH Fed. Sec L. Rep. §96,605 (4th Cir. 1978). Therefore, insofar as material misstatements or omissions are made by accountants in SAS No. 24 reports used in registration statements, the Commission may take appropriate enforcement action against such accountants under Section 17(a). Of course, where an accountant's report is found to be fraudulent, and the fraud has occurred in connection with the purchase or sale of a security, civil liability would also arise pursuant to Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240. 10b-5. *See,* e.g., *Blue Chip Stamps* v. *Manor Drug Stores,* 421 U.S. 723 (1975).

[13]See *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185 (1976).

[14]See note 1, *supra.*

[15]See note 10, *supra.*

would have the effect of excluding accountants issuing SAS No. 24 reports from Section 11(a) liability.

B. **Definitional Rule**

The Commission proposed two alternative rule formulations, either of which it believed would have the effect of excluding accountants from potential liability under Section 11(a) of the Securities Act for SAS No. 24 reports included in Securities Act filings. Proposed Version "A" (the "exemptive rule") would have provided that the written consent of an accountant pursuant to Section 7 of the Act may be omitted, without specific application to the Commission, in respect of a report on unaudited interim financial information prepared by an independent accountant has conducted a review of and reported on such information in accordance with SAS No. 24. The Commission believed that a waiver of the consent requirement should operate to insulate the accountant from Section 11(a) liability if such SAS No. 24 report is included in a Securities Act filing.

Proposed Version "B", which is the formulation being adopted, in effect, defines SAS No. 24 reports not to be reports prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Act. Accordingly, the filing of a consent under Section 7 will be unnecessary, and accountants will not be liable for such reports under Section 11(a).

In inviting public comment on which rule would be preferable if either were to be adopted, the Commission noted that, among other considerations, the exemptive rule appeared to be more limited in that it would apply to circumstances where SAS No. 24 reports are prepared for uses other than inclusion in the registration statement, and not when prepared specifically for use in a registration statement, while the definitional rule would apply in either case.

All commentators favored the definitional rule. Most commentators suggested that it is the nature of the accountant's review of interim financial information, not whether such review was performed for purposes of a registration statement, which should determine to Section 11(a) liability. In addition, many commentators pointed out that in many instances it may be difficult to determine whether or not an SAS No. 24 report has been prepared for use in a registration statement.

The rule as adopted has been broadened to ensure that Sections 7 and 11(a) do not apply to these reports. The language of the proposed rule made clear that an SAS No. 24 report does not constitute a "report" which was prepared or certified for use in connection with a registration statement. However, the relevant provisions of Sections 7 and 11(a) also apply to the preparation of "any part of the registration statement." In order to ensure that SAS No. 24 reports do not fall within these provisions of Section 7 and 11(a), the rule as adopted specifically states that "a report on unaudited interim financial information . . . shall not be considered a part of the registration statement prepared or certified by an accountant . . . ."

C. **Other Matters**

In the opinion of many of the commentators, an independent accountant should have the ability to control the use of his SAS No. 24 report in a registration statement, and the Commission's staff should have a vehicle to determine that the SAS No. 24 report has not been included in a registration statement without the accountant's knowledge. While the rule adopted eliminates the requirement of Section 7 of the Act that accountants consent to use of SAS No. 24 reports, the Commission agrees with the commentators and believes that independent accountants should acknowledge their awareness that their SAS No. 24 reports are being included in a registration statement. The Commission intends to adopt an amendment to the exhibit requirements applicable to appropriate forms for the registration of securities. This amendment will require issuers to file as an exhibit to a registration statement a letter from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which are not subject to the consent requirement of Section 7. This amended exhibit requirement will therefore require an acknowledgement whenever an issuer makes use of an SAS No. 24 report in a registration statement.[16]

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[16]The Commission has proposed amendments to Regulation S-K and certain forms for the registration of securities under the Securities Act of 1933 in order to integrate the exhibit filing requirements and eliminate certain exhibit filing requirements (Securities Act Release No. 6149, November 16, 1979). The exhibit filing requirement relating to the accountant's acknowledgement of an awareness that a report

A number of the commentators suggested that a prospectus include disclosure about the independent accountants' role in preparing SAS No. 24 reports. The Commission agrees that disclosure which clarifies the distinction between the role of accountants in preparing SAS No. 24 reports as opposed to their role in certifying financial statements is needed in order to fully inform investors. Such disclosure would correct any misleading implication about the extent of accountants' involvement which might otherwise arise from the inclusion of both an SAS No. 24 report and a certification in a registration statement and thus satisfy the requirements of Rule 408 of Regulation C under the Securities Act. Accordingly, a prospectus which includes a discussion about the independent accountants' involvement in a registration statement should clarify that SAS No. 24 reports included in such registration statement are not "reports" or "parts" of the registration statement within the meaning of Sections 7 and 11 of the Securities Act. The fact that the independent accountants' Section 11 liability does not extend to such SAS No. 24 reports should be specifically stated.

V. AUTHORITY

The rule is adopted pursuant to Section 19(a) of the Securities Act of 1933 which grants the Commission authority to define "accounting, technical and trade terms used in this title."

VI. TEXT OF RULE

In consideration of the foregoing, 17 CFR Chapter II is amended as follows:

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding paragraphs (c) and (d) to §230.436 as follows:

Footnote 16, continued:

which is not subject to the consent requirement of Section 7 is included in a registration statement will be adopted at the same time as final action is taken on the amendments to the exhibit requirements proposed in Securities Act Release No. 6149.

§230.436 Consents required in special cases.

* * * * * *

(c) Notwithstanding the provisions of paragraph (b), a report on unaudited interim financial information (as defined in paragraph (d) below) by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term "report on unaudited interim financial information" shall mean a report which consists of the following: (1) a statement that the review of interim financial information was made in accordance with established professional standards for such reviews; (2) an identification of the interim financial information reviewed; (3) a description of the procedures for a review of interim financial information; (4) a statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and (5) a statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16455/December 28, 1979

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NEW ENGLAND SECURITIES DEPOSITORY TRUST CO. (File No. SR-NESDTC-79-3)

The New England Depository Trust Company (NESDTC) has submitted as a proposed rule change an interpretation of an agreement dated March 5, 1957 between the Philadelphia-Baltimore Stock Exchange (now the Philadelphia Stock Exchange) and the Boston Stock Exchange, the parent corporation of NESDTC. That interpretation would permit the Boston Stock Exchange Clearing Corporation to deliver securities to the Stock Clearing Corporation of Philadelphia, a subsidiary of the Philadelphia Stock Exchange, by depositing them with NESDTC.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 31, 1979. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NESDTC-79-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organiztion.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16456/December 18, 1979

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE CLEARING CORPORATION

File No. SR-BSECC-79-5

The Boston Stock Exchange Clearing Corporation (BSECC) has submitted as a proposed rule change an interpretation of an agreement dated March 5, 1957 between the Philadelphia-Baltimore Stock Exchange (now the Philadelphia Stock Exchange) and the Boston Stock Exchange the parent corporation of BSECC. That interpretation would permit BSECC to deliver securities to the Stock Clearing Corporation of Philadelphia, a subsidiary of the Philadelphia Stock Exchange, by depositing them with the New England Securities Depository Trust Company (NESDTC).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of

December 31, 1979. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSECC-79-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16457/December 28, 1979

An order has been issued granting the application of ELTRA CORPORATION to withdraw its 8-½% Sinking Fund Debentures due January 15, 2001 from listing and registration on the *New York Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16458/December 28, 1979

SEE

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

SECURITIES EXCHANGE ACT OF 1934
Release No. 16459/December 28, 1979

NOTICE OF FILING OF PROPOSED RULE CHANGE BY MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-79-14

The Municipal Securities Rulemaking Board ("MSRB") submitted on December 17, 1979, a proposed rule change under Rule 19b-4 to conform the provisions of the MSRB's current arbitration code, contained in rule G-35, to those of the Uniform Code of Arbitration ("Uniform Code") developed by the Securities Industry Conference on Arbitration. The proposed rule change would modify the MSRB's arbitration procedures for the resolution of disputes arising between customers and the municipal securities professionals and intra-industry disputes involving municipal securities brokers and dealers. The proposal anticipates that the Uniform Code will be adopted by other self-regulatory organizations to provide a uniform arbitration system throughout the securities industry.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 31, 1979. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views, and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the

Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-79-14.

Copies of the submission and all subsequent amendments and copies of all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16460/December 31, 1979

File No. SR-NASD-79-16

NOTICE OF FILING OF PROPOSED RULE CHANGES BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. AND ORDER EXTENDING THE TIME PERIOD WITHIN WHICH THE COMMISSION MUST TAKE ACTION ON THE PROPOSED RULES

The National Association of Securities Dealers, Inc. ("NASD") submitted on December 7, 1979 proposed rule changes under Rule 19b-4 in response to certain recommendations made by the Commission's Special Study of the Options Markets which the Commission requested the self-regulatory organizations which currently list and trade standardized options or which have proposed to list and trade standardized options to implement before further expansion of the standardized options markets is permitted.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of December 31, 1979. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days of the date of publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-16.

The Commission has determined that it is necessary and appropriate to provide additional time for Commission consideration of the proposed rule changes. Because the subject filing contains numerous rule proposals which, if approved, would affect significantly the operation of the standardized options markets, the Commission believes that additional time is necessary to enable the Commission to give the proposals the careful consideration they warrant before determining whether to apoprove the proposals or to initiate proceedings to determine whether they should be disapproved. Additional time for Commission consideration also will permit the Commission to make a single determination with respect to similar rule proposals by other self-regulatory organizations.[2]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, hereby extends until 90 days from the date of publication of notice of filing of the proposed rule changes captioned above, the time period within which the Commission must

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[1] *See* Securities Exchange Act Release No. 15575 (February 22, 1979), Section I.

[2] *See* File Nos. SR-CBOE-79-9, SR-Amex-79-18, SR-PSE-79-13, SR-Phlx-79-7, SR-MSE-79-18, and SR-NYSE-79-45.

either approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16461/January 2, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-47

The New York Stock Exchange, Inc. ("NYSE") submitted on November 21, 1979, a proposed rule change under Rule 19b-4, which would change the amounts set forth in NYSE Rules 451 and 465 as reasonable for a member organization to charge an issuer for forwarding issuer communications to beneficial shareowners. Member organizations are required to mail these materials under NYSE Rules 451 and 465, and may seek lower or higher reimbursement fees than the approved rates.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrograte such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 7, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-79-47.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commisison, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16462/January 2, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, Massachusetts 02109

CINCINNATI STOCK EXCHANGE, INC.
209 Dixie Terminal Building
Cincinnati, Ohio 45202

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60604

PACIFIC STOCK EXCHANGE, INC.
618 South Spring Street
Los Angeles, California 90014

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

Plans filed pursuant to 17 CFR 240.17d-2.

(File Nos. 4-196, 4-273, 4-274, 4-267)

ORDER GRANTING TEMPORARY APPROVAL

By this Order, issued pursuant to Sections 17(d)(1) and 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78q(d)(1) and 78k-1(a)(3)(B)), the Securities and Exchange Commission (the "Commission") is hereby approving for a period of ninety-five (95) days the plans for allocating regulatory responsibilities (the "allocation plans") filed pursuant to 17 CFR 240.17d-2") by the National Association of Securities Dealers, Inc. ("NASD") in conjunction with the Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Midwest Stock Exchange, Inc. ("MSE"), and Pacific Stock Exchange, Inc. ("PSE") (with the NASD, the "parties"). The period of approval will thus expire on April 5, 1980. The responsibilities of the parties to the plans during this period of temporary approval shall be controlled by the terms of the Commission's September 26, 1978 order, Securities Exchange Act Release No. 15191 (the "September order"), provisionally approving the plans until June 23, 1979. The approval period was subsequently extended by Securities Exchange Act Release No. 15491 (June 21, 1979) until January 1, 1980.

The September order conditioned further Commission consideration of the plans upon the filing of specified amendments to the plans and of certain supplementary materials which were necessary in order to identify with precision the responsibilities of the parties under the plans and to facilitate evaluation of the adequacy of the regulatory programs of the parties. A number of these required submissions have not yet been completed. Extension of the approval period will permit the parties to execute the remaining amendments and to prepare the supplementary material.

The Commission will not consider approving these allocation plans without conditions until such time as they articulate accurately and completel: the agreements reached by the parties and until such time as the supplementary materials identify with precision both the examination and enforcement responsibilities of the parties.

During the period of provisional approval, the Commisison will continue its on-going review of the performance of the parties under the plans. It may consider alternative allocations of responsibilities to those proposed, including termination of the approval period, if the parties' progress in concluding this phase of the program to reduce unnecessary regulatory duplication is not completed within an appropriate time frame. In addition, the Commission may at any time consider alternative allocations if its review of the regulatory capabilities and procedures and staffing of the parties, or other germane factors which the Commission may consider under Section 17(d) of the Act, indicates that the parties are unable to fulfill their responsibilities under the Act or the allocations plans or if the allocation of responsibilites in the plans becomes inconsistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act (15 U.S.C. 78q(d) and 78k-1(a)(3)(B)) that, for a period ending April 5, 1980, unless such period is otherwise extended

by the Commission, the plans between the NASD and BSE, the NASD and CSE, the NASD and MSE, and the NASD and PSE filed pursuant to Section 240.17d-2 are approved subject to the terms and conditions set forth in this Order and the Commission's September Order.

IT IS FURTHER ORDERED that the BSE, CSE, MSE, and PSE are relieved of those responsibilities allocated to the NASD by such plans as approved subject to the terms and conditions set forth in the above Commission Orders.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16463/January 3, 1980

NOTICE OF WITHDRAWAL OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-79-2

The Pacific Stock Exchange Incorporated ("PSE"), by letter dated December 14, 1979, withdrew a proposed rule change (File No. SR-PSE-79-2) which had been submitted on March 12, 1979, pursuant to Section 19(b) of the Securities Exchange Act of 1934, and Rule 19b-4 thereunder.[1] The proposal would have amended PSE Rule VI Section 35 concerning options sales communications.

[1]Notice of filing of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15704, April 6, 1979, and by publication in the Federal Register (44 FR 22235, April 13, 1979).

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16464/January 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-79-13

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on December 20, 1979, a proposed rule change under Rule 19b-4 which sets forth procedures for handling cabinet orders in options, including the circumstances under which an option order may be placed in the cabinet, the manner in which priority is to be assigned for such orders, and the obligations of the specialist in handling such orders.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-79-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the

Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16465/January 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-79-15

The National Association of Securities Dealers, Inc. ("NASD") submitted on December 7, 1979, a proposed rule change under Rule 19b-4 to eliminate the requirement that member firms which engage in options transactions solely for their own account must have at least one Registered Options Principal. Additionally, the proposed rule change provides procedures for member firms that engage in options transactions with the public regarding the replacement of a firm's sole Registered Options Principal.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 8, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the NASD submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Stret, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16466/January 3, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGE BY THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-79-9

The Chicago Board Options Exchange Incorporated ("CBOE") submitted on December 19, 1979, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of January 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-79-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of filing of the proposed rule changes was given by publication of a Commission release (Securities Exchange Act Release No. 16127, August 21, 1979) and by publication in the Federal Register (44 FR 50111, August 27, 1979).

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21363/December 28, 1979

SEE

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21364/December 28, 1979

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA

ASH CREEK MINING COMPANY
Tulsa, Oklahoma

(70-5868)

SUPPLEMENTAL ORDER AUTHORIZING EXTENSION OF SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos. 20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926, 20975 and 21049).

By post-effective amendment applicants-declarants request authorization to continue PSO's financing of Ash Creek through December 31, 1980, in a maximum principal amount outstanding of $1,500,000. Said amount includes approximately $950,000 of such loans expected to be outstanding at December 31, 1979, and $550,000 to cover the proposed 1980 budget for Ash Creek.

The reason for such loans is the continued and indefinite suspension of mining operations at Ash Creek, pending the securing of permission from the Wyoming Department of Environment Quality for coal trucks to use the state highway serving Ash Creek's proposed coal outloading facility for PSO mine No. 1 near Sheridan, Wyoming, and the availability of federal coal leasing on PSO's States Ranch property. Accordingly, Ash Creek has not budgeted expenditures for further coal exploration and mine development activities or for construction of a coal outloading facility. Expenditures are needed, however, for maintenance and administrative costs required to maintain the interests of Ash Creek and PSO.

Ash Creek and PSO intend to hold part or all of said interests until any of several options become available: (a) the interests can be sold or otherwise transferred to nonaffiliates of PSO or Ash Creek; (b) the environmental and transportation difficulties have been resolved to the point where further development would become economically feasible, or (c) PSO and/or Ash Creek would become able, either on their own or through joint ventures, economically to pursue federal coal leasing programs in the area.

The 1980 budgeted expenditures of $550,000 are for property maintenance ($418,000), advance royalties ($42,000) and interest expense ($90,000) associated with the holding of coal interests which Ash Creek owns or which PSO has heretofore proposed be transferred to Ash Creek.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,200. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendments, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that PSO be, and it hereby is, authorized forthwith to continue its financing of Ash Creek through March 31, 1980, in the maximum principal amount of $1,117,500 outstanding at any one time (said amount representing the $950,000 expected to be outstanding at December 31, 1979, and $167,500 of budgeted expenditures for Ash Creek through March 31, 1980), subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to any further extension of time and any expenditures to be after March 31, 1980.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21365/December 28, 1979

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM

NEW ENGLAND ENERGY INCORPORATED
Westborough, Massachusetts 01581

(70-5543)

ORDER AUTHORIZING EXTENSION OF OIL AND GAS EXPLORATION PARTNERSHIP AND 1980 INVESTMENT THEREIN

New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary New England Energy Incorporated ("NEEI"), have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45(a) promulgated thereunder concerning the following proposed transactions.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize NEEI, acquire its capital stock and make investments (including subordinated notes) in NEEI up to $20,250,000 through July 31, 1976, and NEEI was authorized to enter into a partnership agreement ("Agreement") with Samedan Oil Corporation ("Samedan"), a wholly owned subsidiary of Noble Affiliates, Inc., to explore for oil and gas in the continental United States (both onshore and offshore). NEEI was at that time authorized to invest a maximum of $10,000,000 in that partnership through July 31, 1976. NEEI was also authorized to acquire other interests in similar ventures for oil and gas exploration, development and production and to undertake various fuel procurement and inventory activities. Said order also granted a request for an exception from the tax allocation provisions of Rule 45(b)(6) pursuant to Rule 45(a) on terms and conditions therein set forth.

By order dated June 18, 1976 (HCAR No. 19580), NEES was authorized to increase its investment in

NEEI to $45,000,000 through December 31, 1979, with NEEI to use such investments to finance its procurement and inventory activities and to finance fuel exploration and development activities with Samedan and/or other parties. Said order also continued the exception from the tax allocation provisions of Rule 45(b)(6) through the same period.

By order dated July 19, 1978 (HCAR No. 20632), NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract on terms and conditions set forth in said order. Those terms included a pricing policy under which NEEI's total costs related to its exploration and development program, including capital costs as defined, are divided by total estimated equivalent barrels of reserves to determine a unit cost to be applied to each equivalent barrel produced. With respect to capital costs, a method was prescribed for their determination based on a hypothetical capital structure imputed to NEEI approximately equivalent to the capital structure of NEP. In this connection, it was contemplated that NEEI would obtain outside financing and apply the proceeds to reduce the subordinated notes issued to NEES.

By order dated July 25, 1979 (HCAR No. 21158), NEEI was authorized to enter into an $80,000,000 revolving credit loan with Bank of Montreal and National Bank of North America, upon the termination of which becomes a term loan. The proceeds of the initial advance under said loan ($30,000,000) were used to reduce the amount of NEEI's subordinated notes to NEES. Said order also extended the authority granted in the order of June 18, 1976 (HCAR No. 19580), for NEES to make investments in NEEI up to $45,000,000 through December 31, 1988.

By post-effective amendments applicants-declarants request authorization to enter into an amendment to the Agreement with Samedan, which amendment would (1) extend the term of the Agreement from December 31, 1979, to December 31, 1984; and (2) increase to $30,000,000 the average annual amount which NEEI can be called upon to invest in the partnership during the period 1980-1984.

It is stated that through June 30, 1979, NEEI had invested $55,000,000 in the partnership with Samedan, that 248 of the 485 wells drilled in which the partnership participated have been found to be productive, and that NEEI's share of the total equivalent reserves of oil and gas represented by these wells is now estimated to exceed 10,000,000 barrels. Through the same date it is claimed that total savings of over $423,000 have been achieved through the pricing mechanism set forth in the order of July 19, 1978 (HCAR No. 20632), under which NEEI's proceeds from the sale of oil and gas in its exploration programs are used to purchase residual fuel oil for NEP. NEP had purchased through June 30, 1979, approximately 246,000 barrels of fuel oil related to NEEI production at prices averaging $1.72 less per barrel than the market price. NEEI's share of production from its exploration and development activities is currently estimated to be about 430,000 equivalent barrels in 1979 and about 1,700,000 equivalent barrels in 1980.

Due to the relatively small amount of production received by NEEI to date (246,000 barrels is approximately equal to one tanker cargo), NEEI has not yet been able to take full advantage of the other options for disposition of NEEI production. These options include, in addition to the sale of production to nonaffiliates, the exchange of production for fuel oil to be delivered to NEP, and arrangements for refining NEEI production with delivery of the resulting fuel oil to NEP. NEEI has agreed with Sun Oil Company ("Sun") on an arrangement under which NEEI will make available to Sun by pipeline delivery its entire entitlement to gas condensate from one of its prospects in exchange for fuel oil to NEEI for delivery to NEP. It is felt that arrangements for exchanging NEEI's btu entitlement (whether in the form of crude oil, natural gas or gas condensate) for fuel oil from fuel suppliers can be utilized to obtain reliable supplies of fuel for NEP at advantageous prices.

Most of the basic features of the Agreement would remain the same under the proposed amendment, including (1) Samedan's acting as managing partner, (2) a limitation on the geographical scope of the partnership's activities to the continental United States (including Alaska), both onshore and offshore, (3) each partner having a fifty percent interest in the partnership, with NEEI paying a larger share of the costs of exploration (to compensate Samedan for management and expertise in running the partnership as managing partner as well as for Samedan's accumulated geological and geophysical work in evaluating prospects), (4) each partner sharing equally the costs of development and productiosn of successful

prospects, (5) each partner being entitled to take in kind or sell one-half of the partnership production of oil and gas (with NEEI also having a first call to purchase Samedan's share of oil produced from any prospect), and (6) the partnership being terminable by either partner at the end of any calendar year on sixty days' prior notice. The amendment would, as previously mentioned, extend the Agreement through December 31, 1984, and increase to $30,000,000 the average annual amount which NEEI could be called upon to invest for exploration activities during each year of the extension period. The amendment would also change some other minor features of the Agreement. NEEI further requests authority to amend the Agreement without Commission approval from time to time as the parties may agree, except that no such amendment may permit (i) any contribution to or investment in the partnership by NEEI in excess of the limitations on capitalization and financing of NEEI imposed by order of the Commission, or (ii) participation by NEEI in partnership activities outside the continental United States (including Alaska), onshore and offshore.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $5,000, all of which amount represents services to be performed, at cost, by New England Power Service Company, an affiliate, No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21321), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that NEEI be, and it hereby is, authorized forthwith (1) to enter into the amendment to the Agreement, and (2) to invest in the partnership with Samedan from January 1, 1980, through December 31, 1980, a maximum amount of $30,000,000 for exploration, development or any other purpose, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that NEEI shall file reports within 45 days of the end of each calendar quarter providing, as to the activities during such quarter: (a) the investment in the partnership by prospect to include estimated total cost, incurred cost and cost to be incurred; (b) a summary statement of proven and probable reserves, distinguishing between oil and condensate in barrels and natural gas in MCF's; (c) total production and revenue by prospect, for oil and condensate in barrels and for natural gas in MCF's; (d) a description of exploration and development operations undertaken during the quarter, including expenditures and investments made by NEEI, together with a comparison of such expenditures to the budget authorized by the Commission; (e) the amount of fuel produced, pricing option exercised, disposition and price, such information to include computation of average price per barrel in determining fuel production sales revenue; (f) the computation and application of any charges or credits to NEP arising from sales to nonaffiliates of fuel produced; (g) the increase or decrease in investment in NEEI by associate companies, the computation of the rate of return, and a comparison of such investments to the budget authorized by the Commission; (h) balanace sheets and income statements for NEEI, including a statement of change in financial position and a computation of the cost of capital for the quarter; (i) the physical quantities and prices of fuel procured by NEEI for the account of such associate company, of fuel purchased by NEEI for inventory and of fuel delivered by NEEI from inventory to each associate company during the quarter, and a statement of the charges made by NEEI for these services; and (j) a copy of the Form 423 reports submitted to the Federal Energy Regulatory Commission. These reporting requirements may be modified from time to time.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to any further NEEI investments in the partnership.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21366/December 28, 1979

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6362)

ORDER AUTHORIZING SHORT-TERM BORROWING

Indiana & Michigan Electric Company ("I&M"), anelectric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application and an amendment thereto pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

I&M requests that from the date of the granting of this application to January 1, 1981 the exemption from the provisions of Section 6(a) of the Act, afforded by the first sentence of Section 6(b) of the Act, be increased to the extent necessary to cover the sale of notes to banks and commercial paper to a dealer in commercial paper in an aggregate amount not to exceed $150,000,000 provided that none of such notes to banks and commercial paper shall mature later than June 30, 1981.

I&M has credit arrangements with 42 banks which total $308,655,000. For purposes of borrowing, these banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. I&M's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed, generally not in excess of 10% of the line of credit and 10% of the amount borrowed. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by I&M at any time without premium or penalty. I&M's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay a fee, which is equal to 4% of the bank's prime commercial rate then in effect times the size of the line. The combination of 5% compensating balances and the fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. In addition, I&M must pay interest on the borrowings at the rate of up to 108.5% of the bank's prime commercial rate then in effect. In the case of the one bank, borrowings may be made in Eurodollars; the interest rate on such borrowings will be a designated percent of the London Interbank Offering Rate. The total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. It is stated that if the balances maintained and the fees paid by I&M with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by I&M, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 19.4% on the basis of a prime commercial rate of 15 1/2%.

With respect to the Class III banks, I&M has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to I&M, but represent merely the ability of I&M to request unsecured borrowings in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable by I&M at any time without premium or penalty. No compensating balances are required. The interest rate which is presently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a

designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

I&M also proposes to issue commercial paper, in the form of promissory notes, in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; such notes will not be prepayable prior to maturity. The commercial paper notes will be sold directly by I&M to Lehman Commercial Paper Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper will be issued having a maturity of more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which I&M could borrow from commercial banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of 1/8 of 1% less than the discount rate at which such notes were purchased from I&M. It is expected that such customers will hold such commercial paper notes to maturity, but if any such customer wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its nonpublic list.

The proceeds of the short-term debt incurred by I&M will be used to pay the general obligations of I&M, including expenses incurred in its various construction projects. The estimated cost of I&M's net construction program (adjusted to reflect the proposed acquisition, subject to regulatory approvals, of a portion of the Rockport Plant by an affiliated company) for 1980 is approximately $199,607,000. This figure does not include estimated construction expenditures of approximately $15,000,000 to be incurred in 1980 by I&M's wholly-owned subsidiary, Indiana & Michigan Power Company.

I&M claims exemption from the competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,000. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21247), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application, as amended, be granted.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21367/December 28, 1979

In the Matter of

SYSTEM FUELS, INC.
New Orleans, Louisiana

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

NEW ORLEANS PUBLIC SERVICE, INC.
New Orleans, Louisiana

(70-6097)

ORDER AUTHORIZING PROPOSAL BY NON-UTILITY SUBSIDIARY RELATING TO PROCUREMENT, STORAGE AND TRANSPORTATION OF FUEL FOR THE BENEFIT OF OPERATING COMPANIES AND FINANCING SUCH OPERATIONS THROUGH LOANS FROM PARENT COMPANIES

System Fuels, Inc. ("SFI"), a fuel subsidiary of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power &Light ("MP&L") and New Orleans Public Service, Inc. ("NOPSI") (collectively referred to as the "Operating Companies"), all of which are public utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a second post-effective amendment to an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(3), 90, and 91 promulgated thereunder as applicable to the following transactions.

By orders dated January 4, 1978 (HCAR No. 20363), March 9, 1978 (HCAR No. 20441), May 4, 1978 (HCAR No. 20530), and December 29, 1978 (HCAR No. 20867), in this matter the Commission approved, through December 31, 1979, certain financing arrangements and other transactions related to the procurement, storage and transportation of fuel by SFI for use by the Operating Companies. SFI was authorized to borrow up to $109,900,000 from the Operating Companies under a loan agreement ("1979 Loan Agreement"). It is estimated that$56,500,000 will be outstanding under the 1979 Loan Agreement on December 31, 1979 and will be converted into loans under an amended 1980 Loan Agreement ("Loan Agreement") which will provide for additional borrowings by SFI from the Operating Companies in 1980 of up to $117,000,000 to be used to finance, in part, transactions entered into by SFI in the ordinary course of its fuel supply business for the 1979 calendar year. The exact amount of the borrowings proposed to be made under the Loan Agreement will be adjusted to reflect the actual amount of loans outstanding on December 31, 1978; total borrowings by SFI under the Loan Agreement are presently estimated at $173,500,000.

Potential borrowing requirements of SFI during 1980 include up to $60,900,000 for payment of commercial paper and bank notes and a net amount of $56,100,000 for SFI's fuel supply program, including $52,100,000 for fuel procurement $3,400,000 for storage facilities and $600,000 for transportation facilities.

Certain other Commission authorizations are also requested in the instant filing where required, to carry out or continue programs which the initial years of SFI's operation have shown to be essential.

It is presently contemplated that net capital requirements of $52,100,000 will be required for SFI's fuel procurement program during 1980 as follows:

	1980
Gas and Oil Exploration and Development	$36,300,000
Uranium Exploration	14,700,000
Nuclear Fuel Procurement	*
Coal Procurement	1,100,000
Fuel Oil Procurement	**
Net Requirements	$52,100,000

*Capital requirements for nuclear fuel procurement will be financed as described in the Commission's order dated October 31, 1978 (HCAR No. 20753).

**Capital requirements for fuel oil procurement will be financed as described in the Commission's orders dated August 1, 1979 (HCAR No. 21171) and August 14, 1979 (HCAR No. 21185).

It is presently estimated that $43,800,000 will be required for SFI to continue its gas and oil exploration and development activities in the tri-state area of Arkansas, Louisiana and Mississippi during 1980. Additionally $10,400,000 will be required by SFI to purchase gas and pay royalties on gas produced from prospects in which SFI has an interest. During the same period, SFI estimates that it will generate approximately $17,900,000 from the sale of gas and oil, thereby resulting in a net capital requirement of $36,300,000 during the period.

Pursuant to the Commission's order of March 9, 1978 (HCAR No. 20441), in this matter, SFI has embarked on a uranium exploration program to help assure an adequate supply of uranium to accommodate the increased commitment to nuclear power of the System. SFI is involved, acting individually or together with nonaffiliates, in conducting geological and geophysical studies and explorations for, and acquiring and disposing of leases and other mineral rights with respect to, uranium reserves, and proving such reserves. It is presently contemplated that SFI's net capital requirements for this program during 1980 will be approximately $14,700,000.

SFI contemplates that during 1980 approximately $47,600,000 will be expended for the acquisition of nuclear materials and services offset by $43,800,000 from charges for processing services to the Operating Companies and Middle South Energy, Inc. ("MSE"), a generating subsidiary of MSU. SFI's nuclear materials and processing services supply program during 1979 will be financed by the issuance by SFI of short-term notes as authorized in the Commission's order of October 31, 1978 (HCAR No. 20753).

It is presently contemplated that SFI's coal procurement program during 1980 will involve expenditures of $1,100,000 for carrying costs, including interest charges, storage and certain overhead expenses, to be capitalized primarily in connection with SFI's participation in a coal supply arrangement with Antelope Coal Company ("Antelope")pursuant to a contract entered into between SFI and Antelope as approved by the Commission's order dated March 8, 1977 (HCAR No. 19924).

To assure the availability to the Operating Companies and Arkansas-Missouri Power Company ("Ark-Mo"), another utility subsidiary of MSU, of an adequate supply of fuel oil it will be necessary to have an inventory on hand at January 1, 1980, and December 31, 1980, of 7,000,000 bbls. During the ensuing twelve months, the inventory level will vary because of seasonal factors and other conditions. However, due to an increase in cost, the inventory at December 31, 1980, is expected to be worth approximately $161,800,000 compared to an estimated worth of approximately $125,400,000 at January 1, 1980. Net cash requirements of $36,400,000 are therefore expected during 1980. SFI anticipates expenditures of $5,800,000 in 1980 to insulate certain of its storage tanks to facilitate storage of heavier fuel oils, to construct an additional storage tank and to make certain improvements to existing docking and unloading facilities. The anticipated expenditures will be funded in part by $2,400,000 in fuel storage depreciation expenses included in oil billing to the Operating Companies and Ark-Mo, thereby resulting in a net requirement of $3,400,000.

It is presently contemplated that SFI's fuel transportation program during 1979 will involve expenditures of $1,000,000 for the provision of gathering systems and/or pipelines to transport gas, which has been discovered pursuant to SFI's exploration program, to certain of the System's power plants, for certain improvements to towboats and barges and for the financing and general costs applicable to the program to be capitalized. The anticipated expenditures will be funded in part by $400,000 in fuel transportation depreciation expenses included in fuel billing to

the Operating Companies and Ark-Mo, thereby resulting in a net requirement of $600,000.

SFI's capital requirements during 1980 may involve the following:

$20,900,000	- To pay SFI's commercial paper notes or the Aetna Casualty and Surety Company ("Aetna") under the arrangement described below.
$40,000,000	- To pay notes payable to Citibank due April 17, 1980 under a loan agreement (File No. 70-5415)
$56,100,000	- To cover capital expenditures for activities herein described.
$117,000,000	- Total

Pursuant to the financing program authorized by Commission order dated October 31, 1978 (HCAR No. 20753), SFI will finance its nuclear materials and processing services supply program during 1980 by the issuance of its commercial paper notes backed by Aetna's Bond of Indemnity. SFI has retained the right to cancel this program at any time should it become economically disadvantageous. In addition, the program may be terminated upon the occurrence of certain events. SFI currently estimates that the maximum amount of notes or obligations to Aetna at any one time outstanding during 1980 will total $20,900,000. Authority is herein requested to make borrowings under the Loan Agreement, if necessary, in 1980, in an amount sufficient to effect repayment of its borrowings or reimbursement of Aetna. In addition, SFI will endeavor to extend, renew or otherwise refinance its obligations to Citibank, but in the event that such refinancing is not available, it will need $40,000,000 to pay the notes upon their maturity. SFI also needs the assurance that borrowing capacity is available immediately to meet contingencies which might arise in connection with leasing and other transactions previously entered into upon authorization from the Commission.

Commission authorization is therefore sought for SFI to enter into the Loan Agreement with the Operating Companies pursuant to which SFI would be authorized to make borrowings, which will mature on December 31, 2005, from the Operating Companies, from time to time through December 31, 1980, in an aggregate amount not to exceed, at any one time, the sum of $117,000,000 and the amount to be outstanding at December 31, 1979, under the 1979 Loan Agreement, currently estimated to be $56,500,000 which amount will be converted into loans under the Loan Agreement as described below. Such borrowings would be in addition to the $26,500,000 of outstanding borrowings authorized by the Commission by order dated December 17, 1971 (HCAR No. 17400) and the $13,000,000 of outstanding borrowings authorized by Commission orders dated December 17, 1973 (HCAR No. 18221), December 24, 1975 (HCAR No. 19214) and December 30, 1976 (HCAR No. 19835).

Under the Loan Agreement, each Operating Company will agree to make loans to SFI until December 31, 1980, in aggregate principal amounts at any one time outstanding up to but not exceeding the amount set opposite its name below (collectively the "Commitments" and individually the "Commitment").

Operating Company	Commitment
Arkansas Power & Light Company	$ 54,520,000
Louisiana Power & Light Company	73,305,000
Mississippi Power & Light Company	29,495,000
New Orleans Public Service Inc.	16,180,000
Total	$173,500,000

The amount of the Commitments include an assumed $56,500,000 to be outstanding under the 1979 Loan Agreement at December 31, 1979. The amounts will vary to reflect the loans actually outstanding at that time.

Each Operating Company's Commitment to make additional loans in 1980 is equal to an amount in such proportion as its kilowatt-hour sales for the twelve months ended September 30, 1979, bear to the total kilowatt-hour sales of the Operating Companies for that period, computed in both cases by including sales to rural electric cooperatives and municipalities but excluding sales to other public utilities.

The obligation of SFI to repay the loans made by each Operating Company under the Loan

Agreement shall be evidenced by the promissory note ("Note") of SFI in the principal amount equal to such Operating Company's Commitment and payable to the order of such Operating Company on December 31, 2005. SFI will authorize each Operating Company to endorse on the reverse side of the Note payable to such Operating Company an appropriate notation evidencing its pro rata share of the loans made to SFI under the Loan Agreement and each prepayment and payment of principal with respect to such loans. Each loan will be made pro rata according to the Commitments. Simultaneously with the delivery of the Notes and their appropriate notation for borrowings outstanding at December 31, 1979, under the 1979 Loan Agreement, the notes issued under the 1979 Loan Agreement which evidence such borrowings will be returned to SFI and cancelled.

Each Note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the last day of the preceding month by the short-term bank borrowings of the Operating Company to which such Note shall have been issued. If on the last day of any month, such Operating Company shall have short-term bank borrowings bearing more than one rate of interest, the highest rate shall apply. If, on the last day of any month, such Operating Company shall not have any short-term bank borrowings, the prime commercial rate generally charged by commercial banks in New York City on such day to responsible and substantial corporate borrowers shall apply. The loans will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the unpaid principal balance of the Notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage shares of the Commitments.

SFI is endeavoring and will endeavor to obtain funds from external sources under arrangements advantageous to SFI and the System to meet SFI's capital expenditure requirements in lieu of borrowings from the Operating Companies. Subject to the receipt of such regulatory approvals from the Commission as may be necessary at the time, it is anticipated that SFI may borrow from banks, insurance companies and other nonaffiliated lenders and enter into specific arrangements for financing.

The rights and obligations of the parties under the Loan Agreement will be subject to certain restrictions set forth in (1) the loan agreement with Hibernia, (2) the acceptance facility line of credit agreement with Citibank, as amended, and (3) the participation agreement with The Aetna Casualty and Surety Company. These restrictions relate principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of those agreements.

In carrying out its financing program for 1980 SFI represents that it will at all times, unless the Commission shall otherwise expressly authorize, maintain the aggregate of its capital stock, surplus, and principal amount of its indebtedness to the Operating Companies at an amount equal to at least 35% of SFI's total capitalization.

SFI proposes to file certificates of notification pursuant to Rule 24 promulgated under the Act on a quarterly basis through 1980. Such certificates will include a description of the progress of its fuel supply program for 1980 including any deletions, additions or changes therein, and will furnish the Commission on or before December 1 in 1980 a copy of SFI's budget and projected cash flow statement for the next succeeding calendar year. It is specifically agreed that SFI will make, keep and preserve for such period, such accounts, cost-accounting procedures, correspondence and other records relating to any transaction in which SFI participates as may be required by Section 15 of the Act or any rules, regulations or orders promulgated thereunder and that all of the foregoing shall be subject at any time and from time to time to such reasonable periodic, special and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

SFI and the Operating Companies have found the flexibility resulting from certain authorizations previously granted to SFI in the ordinary course of its fuel supply business to be of great use in the economical and efficient supply of fuel for the System. Accordingly it is requested that authorization be extended during 1980 for the following:

1. The Operating Companies, in connection with a transaction in the ordinary course of SFI's fuel supply business as described above and not involving the issuance of a security, to assure any

party contracting with SFI that the Operating Companies will, in accordance with their respective shares of ownership of the Common Stock of SFI, take such action as may be appropriate from time to time to keep SFI in a sound financial condition so that it may discharge its obligations under the particular contract; and

2. To have personnel employed by the other companies in the System perform services for SFI at cost where it is more economical and efficient for such personnel to perform such services.

No state or federal commission other than this Commission, is required to authorize the proposed transactions. As required, AP&L has filed pertinent information relating to its participation in the proposed transactions with the Arkansas Public Service Commission.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21306), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to beocme effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21368/December 28, 1979

In the Matter of

METROPOLITAN EDISON COMPANY
Berks County, Pennsylvania

(70-6283)

ORDER AUTHORIZING EXTENSION OF AND ADJUSTMENT IN SHORT-TERM BORROWING AUTHORIZATION

Metropolitan Edison Company ("Met-Ed"), an electric utility subsidiary of General Public Utilities Corporation, ("GPU") a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), as applicable to the following transactions.

By Order dated May 4, 1979 (HCAR No. 21037), the Commission granted Met-Ed authority to issue or renew, from time to time until December 31, 1979, its unsecure promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings. Such promissory notes would bear interest at the lending bank's prime interest rate for commercial borrowings at the date of issuance and would be prepayable at any time without premium. Met-Ed is authorized during such period, to issue and renew, as commercial paper, its unsecured promissory notes in denominations of $100,000 or multiples thereof, maturing not more than 270 days from the date of issue. The aggregate principal amount of unsecured promissory notes to banks and commercial paper outstanding at any one time would not exceed the lesser of (a) $97,000,000 or (b) the amount permitted by Met-Ed's Articles of Incorporation. By Order dated October 30, 1979 (HCAR No. 21276; File No. 70-6311), the Commission authorized an increase in the amount of indebtedness which Met-Ed may have outstanding under the GPU System Revolving Credit Agreement (the "loan agreement"), dated as of June 15, 1979, with a syndicate of commercial banks. As a result, Met-Ed may now incur indebtedness under that

agreement which, when added to its borrowings outstanding hereunder would not exceed the lesser of (a) $125,000,000 or (b) the amount permitted by Met-Ed's Articles of Incorporation.

Met-Ed now requests that it be permitted to issue, sell and renew its unsecured promissory notes from time to time during the period ending December 31, 1980; provided that such borrowings, when added to Met-Ed's borrowings outstanding under the previously authorized loan agreement would not in the aggregate exceed the lesser of (a) $125,000,000 or (b) the amount permitted by Met-Ed's Articles of Incorporation. As Met-Ed does not expect to sell commercial paper during this period, Met-Ed does not request that the Commission's Order herein authorize Met-Ed's issuance and sale thereof.

From time to time, certain lending banks have advised Met-Ed that it would be more convenient if Met-Ed's borrowings were made at an interest rate in excess of the bank's prime rate with a reduction in the compensating balances which Met-Ed would otherwise normally be required to maintain. Met-Ed is normally required to maintain compensating balances ranging from a minimum of 10% of the available line to a maximum of 10% of the line plus 10% of the loan outstanding. Consequently, assuming compensating balances will equal 20% of the aggregate amounts borrowed, the result is presently to increase the effective cost of borrowing to an amount equal to 125% of the prime rate. In order to provide the necessary flexibility, Met-Ed therefore further requests authority to effect such borrowings at rates in excess of the prime rate; provided, however, that any such interest rate, after giving effect to compensating balance requirements, would not result in an effective cost to Met-Ed in excess of 125% of the lending bank's prime rate in effect from time to time.

Although no commitments or agreements for such borrowings have been made, Met-Ed expects that, as and to the extent that its cash needs require, they would be effected from time to time from one or more of the following banks, the maximum to be borrowed and outstanding at any one time from each such bank being as follows:

Bank	Amount
Cumberland County National Bank	$ 500,000
Lafayette Trust Bank	300,000
Lebanon County Trust Co.	250,000
The Merchants National Bank of Bangor	200,000
Nazareth Natinal Bank & Trust Co.	200,000
The Valley Trust Co. of Palmyra	150,000
	$1,600,000

Met-Ed expects that there may be additional banks from which it may effect such borrowings from time to time. In all other respects the transactions as heretofore authorized by the Commission herein would remain unchanged.

The fees, commissions and expenses to be incurred in connection with the transactions are estimated to total $5,250 including legal fees of $5,000 and miscellaneous expenses of $250. No state or federal commission, other than this Commission, has jurisdiction in connection with the proposed transactions.

Due notice of the filing of said post-effective amendments to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21320), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted;

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21369/December 28, 1979

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

(70-6098)

ORDER AUTHORIZING EXTENSION OF AND ADJUSTMENT IN SHCRT-TERM BORROWING AUTHORIZATION

Jersey Central Power & Light Company ("Jersey Central"), an electric utility subsidiary of General Public Utilities Corporation, ("GPU"), a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), as applicable to the following transactions.

By order dated May 4, 1979 (HCAR No. 21031), this Commission granted Jersey Central authority to issue or renew, from time to time until December 31, 1979, its unsecured promissory notes maturing not more than nine months after the date of issue, evidencing short-term bank borrowings provided that the aggregate principal amount of such unsecured promissory notes outstanding at any one time shall not exceed the lesser of (a) $140,000,000 or (b) the amount permitted by Jersey Central's Charter. Such promissory notes would bear interest at the lending bank's prime interest rate for commercial borrowings at the date of issuance and would be prepayable at any time without premium. By Order dated June 19, 1979 (HCAR No. 21107; File No. 70-6311), this Commission authorized Jersey Central to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from the date of issue) pursuant to a Revolving Credit Agreement (the "loan agreement"), dated as of June 15, 1979, with a syndicate of commercial banks. Jersey Central is authorized to incur indebtedness under the loan agreement up to an amount, which, when added to GPU's borrowings outstanding hereunder, would not exceed the lesser of (a) $139,000,000, or (b) the amount permitted by Jersey Central's Charter.

By post-effective amendment Jersey Central requests that it be permitted to issue and sell its unsecured promissory notes hereunder from time to time during the period ending December 31, 1980; provided that Jersey Central's borrowings hereunder, when added to its borrowings outstanding under the previously authorized loan agreement would not in the aggregate exceed the lesser of (a) $139,000,000, or (b) the amount permitted by Jersey Central's Charter. From time to time, certain lending banks have advised Jersey Central that it would be more convenient if Jersey Central's borrowings were made at an interest rate in excess of the bank's prime rate with a reduction in the compensating balances which Jersey Central would otherwise normally be required to maintain. Jersey Central is normally required to maintain compensating balances ranging from a minimum of 10% of the available line to a maximum of 10% of the line plus 10% of the loan outstanding. Consequently, assuming compensating balances will equal 20% of the aggregate amounts borrowed, the result is presently to increase the effective cost of borrowing to an amount equal to 125% of the prime rate. In order to provide the necessary flexibility, Jersey Central therefore further requests authority to effect such borrowings at rates in excess of the prime rate; provided, however, that any such interest rate, after giving effect to compensating balance requirements, would not result in an effective cost to Jersey Central in excess of 125% of the lending bank's prime rate in effect from time to time.

Although no commitments or agreements for such borrowings have been made, Jersey Central expects that, as and to the extent that its cash needs require, they would be effected from time to time from one or more of the following banks, the maximum amount currently expected to be borrowed and outstanding at any one time from each such bank being as follows:

National Community Bank	$ 3,000,000
Central Jersey Bank & Trust Company	3,000,000
Mercantile-Safe Deposit & Trust Company	3,000,000
National State Bank, Elizabeth, N.J.	2,500,000
First National Bank of Toms River, N.J.	1,000,000
The Philadelphia National Bank	1,000,000
	$13,500,000

Jersey Central expects that there may be additional banks from which it may effect such borrowings from time to time. In all other respects the transactions as heretofore authorized by the Commission herein would remain unchanged.

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated to total $4,250, including legal fees of $4,000 and miscellaneous expenses of $250. No state or federal commission, other than this Commission, has jurisdiction in connection with the proposed transactions.

Due notice of the filing of said post-effective amendments to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21319), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21370/December 28, 1979

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

ARKANSAS-MISSOURI POWER COMPANY
Blytheville, Arkansas

(70-5936)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES BY SUBSIDIARY COMPANY AND ACQUISITION THEREOF BY HOLDING COMPANY

Arkansas-Missouri Power Company ("Ark-Mo"), a subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South have filed with this Commission a third post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), and 10 of the Public Utility Holding Cmpany Act of 1935 ("Act") regarding the following proposed transactions.

By orders in this proceeding dated December 28, 1976, December 29, 1977, and December 20, 1978 (HCAR Nos. 19826, 20349, and 20841), Ark-Mo was authorized to issue and sell to Middle South from time to time through December 31, 1979, and Middle South was authorized to acquire, up to $2,100,000 of Ark-Mo's unsecured short-term promissory notes of a maturity of not more than twelve months. Presently, $2,100,000 of such notes are outstanding, with a maturity of December 31, 1979.

Ark-Mo now proposes to extend such $2,100,000 of short-term borrowings for one year. The proposed notes will be in the form of unsecured promissory notes payable not more than twelve months from the date of issuance (and in any event maturing not later than December 31, 1980) and will bear interest at a rate per annum equivalent to 110% of the commercial loan rate in effect at Manufacturers Hanover Trust Company from time to time. The notes will, at the option of

Ark-Mo, be prepayable in whole or in part at any time without premium or penalty. The net proceeds to be received by Ark-Mo from the issuance and sale of the notes proposed will be applied to the payment at maturity of Ark-Mo's currently outstanding borrowings from Middle South. It is stated that Ark-Mo presently intends to repay the notes from the proceeds of permanent financing or from funds otherwise available to Ark-Mo from its operations.

The Arkansas Public Service Commission has authorized the issuance and sale of the notes. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21300), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21371/December 28, 1979

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION

GPU SERVICE CORPORATION
Parsippany, New Jersey

(70-4990)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF NOTES BY SUBSIDIARY TO HOLDING COMPANY

General Public Utilities Corporation ("GPU"), a registered holding company, and its wholly-owned subsidiary company, GPU Service Corporation ("Service Company"), have filed a further post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By order dated April 29, 1971 (HCAR No. 17112), the Commission authorized the organization of, and conduct of business by, Service Company. The Commission's order also authorized GPU to acquire for cash long-term unsecured notes of Service Company not exceeding $5,000,000 aggregate principal amount at any one time outstanding. Each such note would mature 40 years from the date of issuance of the first note, would be prepayable without premium or penalty by Service Company at any time, and would bear interest at a rate equal to the prime rate for short-term commercial borrowings generally in effect, from time to time, in New York City, plus not more than 20% thereof. It was stated that Service Company would at all times maintain its aggregate capital, including the principal amount of notes outstanding, at an amount approximately equal to the sum of two months' operating expenses, plus the cost of its property, less applicable reserves, prepayments, and petty cash working funds.

Subsequently, by orders dated June 3, 1975, and March 7, 1977 (HCAR Nos. 19023 and 19921), authorization was granted for increases from $5,000,000 to $10,000,000 in the maximum aggregate principal amount of Service Company's unsecured notes which could be acquired by GPU. However, all such notes representing borrowings in excess of $5,000,000 were to be notes of a maturity not exceeding two years from the date of issuance and were to bear interest at a rate equal to the actual cost of short-term borrowings by GPU, taking into consideration GPU's compensating balance requirements. At November 19, 1979, the aggregate outstanding amount of Service Company's unsecured notes so acquired by GPU was $8,755,683.

GPU and Service Company now seek authority to increase to $14,000,000 from $10,000,000 the maximum aggregate principal amount of Service Company's unsecured notes which may be acquired by GPU. All such notes representing borrowings in excess of $5,000,000 will continue to be notes of a maturity not exceeding two years from the date of issuance and will bear interest at a rate equal to the prevailing New York City prime rate, plus 20%. This rate approximates GPU's cost of borrowed funds, taking into account compensating balances and commitment fees. Service Company will, moreover, continue to maintain its aggregate capital, including the principal amount of all such notes outstanding, at all times equal to the sum of approximately two months' operating expenses, plus the cost of its property (to the extent not financed from borrowings from others), less applicable reserves, prepayments, and petty cash working funds. In all other respects the transactions will remain unchanged.

It is stated that GPU and Service Company expect that through the period ending December 31, 1981, it will be necessary for Service Company to obtain through unsecured loans from GPU an additional approximate $4 million. Such funds will be required principally for working capital and additional operating expenses, the remaining costs of construction and equipment associated with the Parsippany, New Jersey headquarters office building, and the acquisition of certain additional fixtures and equipment for use by Service Company personnel.

The fees and expenses to be incurred in connection with the proposed notes are estimated at $6,500. No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21317), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21372/December 31, 1979

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION

GPU SERVICE CORPORATION
Parsippany, New Jersey

(70-6151)

ORDER AUTHORIZING EXTENSION OF AND ADJUSTMENT IN SHORT-TERM DEBT AUTHORIZATION

General Public Utilities Corporation ("GPU"), a registered holding company and its service company subsidiary General Public Utilities Service Corporation ("Service Company"), have filed with this Commission post-effective amendments to its declaration previously filed and amended in this matter pursuant to Sections 6(a), 7 and 12 of the Public Utility Holding Company Act of 1935 ("Act"), as applicable to the following transactions.

By orders dated May 18, 1978 (HCAR No. 20550) and July 31, 1978 (HCAR No. 20652), this Commission authorized (a) Service Company to issue its unsecured promissory notes maturing on December 31, 1979, evidencing borrowings of up to $13,000,000 from Hartford National Bank and Trust Company ("Hartford") and Citibank, N.A., and (b) GPU to guarantee the payment of principal and interest on such borrowings. Such promissory notes were to bear interest at 105% of the banks' prime rate for commercial borrowings as in effect from time to time. The proceeds from such borrowings were to be used to finance the construction and partial equipping of a 125,000 sq. ft. headquarters office building to be constructed by Service Company on a 25 acre site in Parsippany, New Jersey, or to reimburse Service Company's treasury for funds previously expended therefrom for such purposes. By order dated June 5, 1979 (HCAR No. 21082) this Commission authorized Service Company to secure such borrowings by granting Hartford a first mortgage on the 25 acre site and office building. At the date hereof, Service Company has outstanding $12,700,000 principal amount of such promissory notes.

GPU and Service Company are seeking more permanent financing arrangements for the building. Pending the making of such arrangements, GPU and Service Company by post-effective amendment now request that the time during which Service Company may issue, and GPU may guaranteee, notes evidencing borrowings from Hartford and Citibank, as well as the maturity date of such notes, be extended until December 31, 1980. In addition, GPU and Service Company further request that such notes be permitted to bear interest at 108% of the prime rate, in effect from time to time, during the period January 1, 1980 through December 31, 1980. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged.

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated to total $21,500, comprising legal fees of $9,385 and miscellaneous expenses (including a title company survey and recording expenses) of $12,115. No state or federal commission, other than this Commission, has jurisdiction in connection with the proposed transactions.

Due notice of the filing of said post-effective amendments to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21328), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21373/December 31, 1979

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.

COLUMBIA LNG CORPORATION

COLUMBIA GAS DEVELOPMENT CORPORATION

COLUMBIA GAS SYSTEM SERVICE CORPORATION

COLUMBIA GAS DEVELOPMENT OF CANADA, LTD
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.

COLUMBIA GAS OF KENTUCKY, INC.

COLUMBIA GAS OF VIRGINIA, INC.

COLUMBIA GAS OF WEST VIRIGNIA, INC.

COLUMBIA GAS OF PENNSYLVANIA, INC.

COLUMBIA GAS OF NEW YORK, INC.

COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

COLUMBIA COAL GASIFICATION CORPORATION

COLUMBIA HYDROCARBON CORPORATION

THE INLAND GAS COMPANY, INC.
Ashland, Kentucky

(70-6389)

ORDER AUTHORIZING OPEN ACCOUNT ADVANCES TO SUBSIDIARY COMPANIES BY PARENT COMPANY IN CONNECTION WITH INTRASYSTEM PREPAYMENT OF PROMISSORY NOTES AND RELATED TRANSACTIONS

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly-owned subsidiary companies listed above, have filed an application-declaration with this Commission pursuant to Sections 6(a), 6(b), 9, 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b) (2) and 45 promulgated thereunder as applicable to the following transactions.

It is stated that during the winter heating season Columbia's distribution subsidiary companies generate substantial amounts of cash in excess of current requirements. During the same period, however, the transmission subsidiary companies generate lesser amounts of cash and have generally larger construction expenditures, requiring Columbia to advance funds to such subsidiary companies. In recent years, the Commission has authorized open account advances by Columbia to subsidiary companies and certain related transactions which are designed to alleviate this situation. The present filing requests authorization to continue such transactions during the calendar year 1980.

It is proposed that the subsidiary companies listed below will prepay from time to time prior to the end of 1980, with excess cash in aggregate amounts not to exceed the amounts set forth below, a portion of their outstanding installment promissory notes ("Notes") held by Columbia. The following amounts represent the estimated aggregate maximum excess funds that such companies are expected to accumulate at any one time during the year 1980.

Columbia Gas System Service Corporation	$ 5,000,000
Columbia Gas Transmission Corporation	270,000,000
Columbia Gas of Pennsylvania, Inc.	55,000,000
Columbia Gas of New York, Inc.	7,500,000
Columbia Gas of Maryland, Inc.	4,000,000
Columbia Gas of Kentucky, Inc.	12,000,000
Columbia Gas of Virginia, Inc.	5,000,000
Columbia Gas of West Virginia, Inc.	20,000,000
Columbia Gas of Ohio, Inc.	125,000,000
Columbia Gulf Transmission Company	100,000,000
Columbia Hydrocarbon Corporation	3,158,000
The Inland Gas Company, Inc.	4,500,000
Columbia LNG Corporation	104,000,000
Columbia Gas Development Corporation	20,000,000
Columbia Coal Gasification Corporation	4,000,000
Total	$739,158,000

The Notes ("Indebtedness") prepaid by the individual companies will be those bearing the highest interest rate or rates outstanding at the time of each prepayment. Interest on such Indebtedness will cease upon prepayment and recommence upon reissuance. As any of such companies require funds for construction and other corporate purposes after prepayment, it is proposed that advances be made to them on open account by Columbia, provided that at no time will the amount of such advances to any subsidiary exceed the amount of Indebtedness theretofore prepaid by it, less any current maturities applicable to Notes which have matured subsequent to the date of prepayment.

The open account advances to any subsidiary company will bear interest commencing on the date of the advances, at the same rate or rates as borne by the equivalent principal amounts of Indebtedness previously prepaid by it during 1979, but in reverse order to that of the prepayments, i.e., beginning from the lowest rate payable on the Indebtedness previously prepaid to the highest rate. Interest on the open account advances will become due on June 30, 1980, and December 31, 1980, and/or on the date such advances are repaid by the reinstatement of Notes. It is further proposed that advances on open account to individual subsidiary companies will be increased or decreased from time to time in accordance with variations in the cash flow of the individual subsidiary companies. The proposed advances will not be in excess of the Indebtedness prepaid theretofore. At such time as the advances to any subsidiary company equal the aggregate amount of the Indebtedness prepaid by it, or in any event not later than December 31, 1980, such prepaid Indebtedness will be reinstated in repayment of the outstanding open account advances.

Financing of construction or gas storage programs of any operating subsidiary company pursuant to Commission authorization will not be consummated until such time as advances have been made in amount equal to the amount of Indebtedness prepaid. Any subsidiary company which during 1980 has borrowed on open account from Columbia an amount smaller than the amount of Indebtedness theretofore prepaid by it will, on December 31, 1980, reinstate its Indebtedness to Columbia in an amount sufficient to discharge its open account borrowings, and the balance of its prepaid Indebtedness will be considered to have been permanently prepaid. Such permanent prepayment would be applied against Indebtedness bearing the highest interest rates and would be consummated only with respect to Indebtedness bearing interest at a rate equal to or in excess of the rate applicable to borrowings by subsidiary companies from Columbia as of December 31, 1980. In the event that a permanent prepayment by any subsidiary company would be indicated with respect to Notes bearing an interest rate less than the rate applicable to debt purchased by Columbia from subsidiary companies at December 31, 1980, such Notes will be reinstated by the subsidiary company at or before the end of 1980.

It is stated that the proposed transactions are designed to achieve the following: (1) flexibility to prepay at the earliest possible date inventory loans with commercial banks and other short-term borrowings; (2) deferment of outside financing until aggregate system funds approach a minimum balance, (3) facilitate the internal financing of emergency requirements, and (4) allow subsidiaries, during any period in which they have excess cash, to temporarily prepay Notes owed Columbia, thereby decreasing their own net corporate interest expense.

The fees commissions and expenses to be incurred by Columbia and its subsidiary companies in connection with the proposed transactions are estimated at $7,000, including $4,000 for services, at cost, provided by Columbia Gas System Service Corporation.

The Public Service Commission of West Virginia has authorized the prepayment and reissuance of prepaid Notes by Columbia Gas of West Virginia, Inc., the Public Service Commission of New York has authorized the reissuance of prepaid Notes by Columbia Gas of New York, Inc., the Public Utility Service Commission of Kentucky has authorized the reissuance of prepaid Notes by Columbia Gas of Kentucky, Inc., and the State Corporation Commission of Virginia has authorized the reissuance of prepaid Notes by Columbia Gas of Virginia, Inc. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. The applicants-declarants have requested that authorization be granted to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21236), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21374/December 31, 1979

In the Matter of

EASTERN UTILITIES ASSOCIATES
P.O. Box 2333
Boston, Massachusetts 02107

BLACKSTONE VALLEY ELECTRIC COMPANY
P.O. Box 1111
Lincoln, Rhode Island 02865

EASTERN EDISON COMPANY
36 Main Street
Brockton, Massachusetts 02403

MONTAUP ELECTRIC COMPANY
P.O. Box 391
Fall River, Massachusetts 02722

(70-5388)

NOTICE OF PROPOSED EXTENSION OF BANK BORROWING BY SUBSIDIARY

NOTICE IS HEREBY GIVEN that Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiaries Blackstone Valley Electric Company ("Blackstone"), Eastern Edison Company ("Eastern") and Montaup Electric Company ("Montaup"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(f) of the Act and Rules 43(a) and 45(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By prior orders issued in this proceeding, EUA was authorized to enter into a series of transactions designed to effect the transfer of Blackstone's proportionate ownership in the securities of

Montaup (the EUA system's generating company) to Eastern, which now owns all of Montaup's securities.

As a part of that reorganization program, Blackstone was authorized, by order dated February 19, 1975 (HCAR No. 18817), to borrow $25,000,000 pursuant to a loan agreement with the Chase Manhattan Bank, N.A. ("Chase"). Blackstone originally issued its note ("Note") to Chase in said amount, which note bore interest at 115% of the prime rate and was to mature February 16, 1976. By subsequent orders dated February 12, 1976, February 8, 1977, January 17, 1978, and February 1, 1979 (HCAR Nos. 19386, 19880, 20402 and 20909), Blackstone was authorized to extend the maturity of the Note, in each case for approximately one year. The Note next matures on January 28, 1980, and presently bears interest at a rate per annum equal to 115% of the sum of the prime rate plus 1/2%. The Note is secured by a first mortgage on certain properties of Blackstone. No compensating balances are required in connection with the borrowings.

By post-effective amendment it is now proposed that Blackstone and Chase enter into an amendment to their loan agreement, which amendment would (1) extend the maturity of the Note to January 28, 1981, and (2) change the interest rate to a rate per annum equal to the sum of the prime rate plus 2%, with a minimum interest rate of 12%. No compensating balances will be required in connection with the borrowings. Assuming a prime rate of 15.25%, the effective interest cost of the borrowings would be 17.25%.

It is stated that Blackstone presently contemplates the payment of the Note from the proceeds of a future debt financing, the undertaking of which is felt is to be dependent upon Blackstone's ability to obtain sufficient rate relief. The issuance of such securities might be possible by early 1981.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Rhode Island Division of Public Utilities and Carriers has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21375/December 31, 1979

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

(70-6099)

ORDER AUTHORIZING EXTENSION OF AND ADJUSTMENT IN SHORT-TERM DEBT AUTHORIZATION

General Public Utilities Corporation ("GPU"), a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), as applicable to the following transactions.

By Order dated May 4, 1979 (HCAR No. 21035), the Commission granted GPU authority to issue or renew, from time to time until December 31, 1979, its unsecured promissory notes maturing not more than nine months after the date of issue, to various commercial banks pursuant to informal lines of credit provided that the aggregate principal amount of such unsecured promissory notes outstanding at any one time shall not exceed $150,000,000. Such promissory notes would bear interest at the lending bank's prime interest rate for commercial borrowings at the date of issuance and would be prepayable at any time without premium. By Order dated June 19, 1979 (HCAR No. 21107; File No. 70-6311), the Commission authorized GPU to issue, sell and renew from time to time through October 1, 1981, its promissory notes (having a maturity of not more than six months from the date of issue) pursuant to a Revolving Credit Agreement (the "loan agreement"), dated as of June 15, 1979, with a syndicate of commercial banks. GPU is authorized to incur indebtedness under the loan agreement up to an amount which, when added to GPU's borrowings outstanding hereunder, would not exceed $150,000,000.

By post-effective amendment GPU now requests that it be permitted to issue, sell and renew its unsecured promissory notes hereunder such borrowings from time to time during the period ending December 31, 1980; provided that GPU's borrowings hereunder, when added to its borrowings outstanding under the previously authorized loan agreement would not in the aggregate exceed $150,000,000. From time to time, certain lending banks have advised GPU that it would be more convenient if GPU's borrowings were made at an interest rate in excess of the bank's prime rate with a reduction in the compensating balances which GPU would otherwise normally be required to maintain. GPU is normally required to maintain compensating balances ranging from a minimum of 10% of the available line to a maximum of 10% of the line plus 10% of the loan outstanding. Consequently, assuming compensating balances will equal 20% of the aggregate amounts borrowed, the result is presently to increase the effective cost of borrowing to an amount equal to 125% of the prime rate. In order to provide the necessary flexibility, GPU therefore further requests authority to effect such borrowings at rates in excess of the prime rate; provided, however, that any such interest rate, after giving effect to compensating balance requirements, would not result in an effective cost to GPU in excess of 125% of the lending bank's prime rate in effect from time to time. Although no commitments or agreements for such borrowings have been made, GPU expects that, as and to the extent that its cash needs require, they would be effected from time to time from one or more commercial banks with which GPU would establish informal lines of credit. In all other respects the transactions as heretofore authorized by the Commission herein would remain unchanged.

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated to total $3500, including legal fees of $3250 and miscellaneous expenses of $250. No state or federal commission, other than this Commission, has jurisdiction in connection with the proposed transaction.

Due notice of the filing of said post-effective amendments to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21318), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21376/December 31, 1979

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
260 Cherry Hill Road
Parsippany, New Jersey 07054

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

METROPOLITAN EDISON COMPANY
2800 Pottsville Pike, Muhlenberg Township
Berks County, Pennsylvania 19605

PENNSYLVANIA ELECTRIC COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

(70-6311)

NOTICE OF POST-EFFECTIVE AMENDMENT REGARDING ISSUANCE AND SALE OF ADDITIONAL FIRST MORTGAGE BONDS, AND REQUEST FOR AN EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries Jersey Central Power & Light Company ("Jersey Central"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a post-effective amendment to their application-declaration in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 44, 45, 50(a) (2) and 50(a) (5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By orders dated June 19, 1979 (HCAR NO. 21107) and October 30, 1979 (HCAR No. 21276), the Commission authorized GPU, Jersey Central, Met-Ed and Penelec to issue, sell and renew their respective promissory notes (the "notes") having a maturity of not more than six months from the date of issue from time to time through October 1, 1981 pursuant to a revolving credit agreement with a syndicate of commercial banks (the "Loan Agreement"). Aggregate borrowings under the Loan Agreements are limited to $500,000,000 and Met-Ed's indebtedness thereunder is restricted to $125,000,000. The indebtedness under the Loan Agreement was to be secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of Jersey Central, Met-Ed, Penelec and GPU Service Corporation, and, in the cases of Jersey Central and Met-Ed, certain other collateral.

Met-Ed now proposes to issue and sell for cash to the banks participating in the Loan Agreement and requests an exception from the competitive bidding requirements of Rule 50 under the Act for such issuance and sale, up to $14,000,000 aggregate principal amount of additional first mortgage bonds (the "New Bonds"). The New Bonds would be issued under the Indenture, dated November 1, 1944, between Met-Ed and Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture. Of the New Bonds, up to $7,000,000 principal amount will be issued against a like principal amount of Met-Ed's First Mortgage Bonds due February 1, 1980, and up to $7,000,000 principal amount will be issued against cash or bondable value of property additions. The New Bonds may be subject to redemption and to

mandatory repurchase upon the occurrence of certain events.

The New Bonds will mature on or before December 31, 1981. The interest rate on the New Bonds will be computed in accordance with the formula for determining the interest rate on the notes issued by Met-Ed under the Loan Agreement—that is, ranging from 105% to 111% of the higher of (i) Citibank's base rate, as in effect from time to time, or (ii) 1/2 of 1% above the three-week moving average of offering rates for three-month certificates of deposit of major banks. In other words, the New Bonds will bear interest at a rate equal to the rate that the notes issued by Met-Ed under the Loan Agreement would have borne had they, and not the New Bonds, been issued. The aggregate principal amount of notes issued by Met-Ed under the Loan Agreement and the New Bonds outstanding at any one time shall not exceed $125,000,000. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged.

The fees, commissions and expenses to be incurred in connection with proposed transaction will be filed by amendment. The Pennsylvania Public Utility Commission has jurisdiction with respect to Met-Ed's proposed issuance and sale of the New Bonds. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21377/December 31, 1979

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314

COLUMBIA GAS OF OHIO, INC.

COLUMBIA GAS OF WEST VIRGINIA, INC.

COLUMBIA GAS OF KENTUCKY, INC.

COLUMBIA GAS OF VIRGINIA, INC.

COLUMBIA GAS OF PENNSYLVNIA, INC.

COLUMBIA GAS OF NEW YORK, INC.

COLUMBIA GAS OF MARYLAND, INC.
99 North Front Street
Columbus, Ohio 43215

COLUMBIA HYDROCARBON CORPORATION

THE INLAND GAS COMPANY, INC.
340 - 17th Street
Ashland, Kentucky 41101

COLUMBIA GULF TRANSMISSION COMPANY
3805 West Alabama Avenue
Houston, Texas 77027

COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION

COLUMBIA LNG CORPORATION

COLUMBIA GAS DEVELOPMENT OF CANADA LTD.

COLUMBIA COAL GASIFICATION CORPORATION

COLUMBIA GAS DEVELOPMENT CORPORATION

COLUMBIA GAS SYSTEM SERVICE CORPORATION
20 Montchanin Road
Wilmington, Delaware 19807

(70-6393)

NOTICE OF PROPOSED ALLOCATION OF HOLDING COMPANY SYSTEM'S CONSOLIDATED TAXES

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its above-named wholly owned subsidiary companies have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to allocate the System's consolidated taxes for the years 1979 and 1980 in the same manner as was previously authorized for the years 1977 and 1978 by the Commission's orders dated March 2, 1978 (HCAR No. 20427), February 2, 1979, (HCAR No. 20913), and February 27, 1979 (HCAR No. 20936). Those orders provided that the cash difference between the adjusted consolidated tax liability and the actual consolidated tax liability be remitted by Columbia to Columbia Gas Development Corporation (Development U.S.), and Columbia Gas Development of Canada Ltd. (Development Canada) in proportion to their respective tax losses, if any, incurred in 1977 and 1978 for use in further exploration and development work. It is stated that the proposed transaction is necessitated by the continually growing needs of the System for supplies of natural gas, coupled with the general decline of supplies from traditional sources. This has resulted in expanded exploration and development activities by two of Columbia's exploration and development subsidiary companies, Development U.S. and Development Canada. These activities have required large amounts of capital to be supplied by the parent company. In connection with such activities, these subsidiaries have in recent years incurred tax losses. The inclusion of such tax losses in the consolidated tax returns filed by the System will result in commensurate reductions in the System's consolidated tax liabilities. However, under the tax allocation provisions of rule 45(b) (6), the benefits of such tax reductions are allocated to companies in the System other than the subsidiaries whose tax losses give rise to the tax reductions, thus making unavailable to the latter the tax benefits which might otherwise be applied in furtherance of their efforts to develop additional gas reserves to meet the System's requirements.

Under the instant proposal Columbia will calculate the System's tax liability for 1979 and 1980 to be reported on its consolidated tax returns for such years in the usual manner, but for purposes of assessing liability among individual companies of the System, will add back the reduction in such tax liability generated by Development U.S.'s and Development Canada's tax losses. The combined amount (adjusted consolidated tax liability) will then be apportioned among the Columbia system companies other than Development U.S. and Development Canada in accordance with Rule 45(b) (6).

The other Subsidiaries will then make payments to Columbia of their allocable share of the adjusted consolidated tax liability in accordance with Rule 45(b) (6). Columbia, in turn, will pay to Development U.S. and Development Canada, in proportion to their respective tax losses, the cash equivalent of

the difference between the actual consolidated tax return liability of the System and the aggregate amounts received by Columbia from the other Subsidiaries.

As a result of the Commission's previous Orders which authorized Columbia to allocate the System's consolidated Federal income tax liability by a method other than prescribed by Rule 45(b) (6), the exploration and development companies have received tax benefits from their 1973 through 1978 losses sustained as a result of their exploration and development activities as follows:

Years	Tax Benefits Generated From Net Tax Losses	
	Development U.S.	Development Canada
	$	$
1973 a/	6,468,115	6,524,520
1974 a/	5,475,729	3,028,467
1975	12,989,153	2,731,909
1976	19,438,754	4,076,678
1977	28,041,480	5,082,723
1978	20,568,053	4,469,787

a/In addition, in 1973 and 1974, Columbia Coal Gasification Corporation received similar tax benefits from its tax losses equal to $498,105 in 1973 and $329,944 in 1974 as authorized by the Commission.

Gross expenditures for exploration and development for Development U.S. for the years 1979 and 1980 are estimated to be $62,332,000 and $56,251,000 respectively, and gross expenditures for exploration and development for Development Canada for 1979 and 1980 are estimated to be $17,562,000 and $15,296,000 respectively.

The present net income projections for Development U.S. for the years 1979 and 1980 are $8,307,000 and $9,895,000 respectively. Net income projections for Development Canada for 1979 and 1980 are $831,000 and $2,222,000 respectively. However, it is estimated that both Development U.S. and Development Canada will have Federal income tax losses for the years 1979 and 1980. The estimated net tax losses for Development U.S. for 1979 and 1980 are $22,670,000 and $13,449,000 respectively. The estimated net tax losses for Development Canada for 1979 and 1980 are $11,283,000 and $7,548,000, respectively. The proposed transaction will allow these companies to continue to receive the benefit of the tax losses attributable to them, for 1979 and 1980, and enable them to sustain the level of expenditures necessary to find and produce gas reserves adequate to meet the needs of the System and its customers.

In future years, when Development U.S. or Development Canada have net taxable income they, or either of them, may be entitled to tax credits as a result of the loss carry-back or carry-over provisions of Section 172(b) of the Internal Revenue Code of 1954 in order to comply with the separate return limitations required by Rule 45(b) (6). To the extent that these companies receive tax benefits pursuant to the Commission's order or the proposed transaction, such benefits would be applied to reduce any tax credits in future years to which either of these companies might otherwise be entitled under the separate return limitations of Rule 45(b) (6).

Development Canada signed an agreement on Octoer 8, 1979 which would sell to a Japanese group most of the 3.75% working interest it holds in acreage being operated by Dome Petroleum Ltd. in the Canadian Beaufort Sea. Under the agreement, Development Canada retains a 0.25% interest in the acreage as well as the right to purchase 21.5% of any gas found on the 2.9 million net acres. Sale price under the agreement is $50 million, Canadian, or approximately $42 million, U.S. As a result, $10.5 million will be added to the 1979 projected net income of $831,000 listed above. Dome Petroleum had the right to match any offer made for Development Canada's interest in the Beaufort Sea and did, in fact, exercise such right on December 5, 1979. In past years Development Canada has received tax benefits for some of its share of the costs of unsuccessful drilling of this acreage. Consummation of this transaction with either of the prospective purchasers would produce earnings for Development Canada sufficient to reverse approximately $9 million of tax benefits and retire a like amount of the non-interest bearing Demand Promissory Notes substantiating such tax benefits which Development Canada has issued pursuant to Commission authorization.

Subject to the foregoing, in no event will the tax allocated to any subsidiary company exceed the amount of tax based upon a separate return computed as if such company had always filed its tax return on a separate return basis. No changes

in the accounting requirements authorized by the Commission will occur as a result of approval of the proposed transaction.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory body, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21378/January 2, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
New York, New York

ALLEGHENY PITTSBURGH COAL COMPANY
Greensburg, Pennsylvania

MONONGAHELA POWER COMPANY
Fairmont, West Virginia

THE POTOMAC EDISON COMPANY
Hagerstown, Maryland

WEST PENN POWER COMPANY
Greensburg, Pennsylvnia

(70-6358)

ORDER AUTHORIZING HOLDING COMPANY TO MAKE OPEN ACCOUNT ADVANCES TO COAL COMPANY SUBSIDIARY: RESERVATION OF JURISDICTION OVER TRANSFERS OF OWNERSHIP INTERESTS IN SUCH SUBSIDIARY

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, and its three electric utility subsidiaries, Monongahela Power Company ("Monongahela"). The Potomac Edison Company ("Potomac") and West Penn Company ("West Penn"), and Allegheny Pittsburgh Coal Company ("AP Coal"), a jointly owned subsidiary of Monongahela, Potomac and West Penn, nave filed an application-declaration and amendments thereto with this Commission pursuant to Sections 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") regarding the proposed transactions.

AP Coal was organized under the laws of the Commonwealth of Pennsylvania in 1918 for, among other things, the purpose of developing, mining and selling coal.

AP Coal is authorized to issue 10,000 shares of $0.05 par value common stock. Since 1974 AP

Coal's common shares have been owned as follows:

Monongahela	-	2,500 shares
Potomac	-	2,500 shares
West Penn	-	5,000 shares

The principal assets of AP Coal are a coal reserve acquired in 1971 and the Cowen coal mine acquired in 1974. Its principal liabilities are the amounts remaining to be paid pursuant to the long-term installment purchase agreement for the Cowen Mine, about $2.4 million each year for the next 6 years, and the interest bearing, open account cash advances which Monongahela, Potomac and West Penn have made primarily to enable AP Coal to finance the acquisition of the Cowen Mine. As of June 30, 1979, Monongahela, Potomac and West Penn have made open account advances aggregating $5,077,550, $5,077,550 and $10,155,100, respectively. Except for the coal reserves which it holds, AP Coal is an inactive company.

It is proposed that Monongahela, Potomac and West Penn transfer their respective shares of AP Coal stock to Allegheny either by sale or as a dividend payment by each of the companies to Allegheny. The value of the shares to be transferred on behalf of each company, would be equal to the transferring company's equity investment in AP Coal on the transfer date. After the proposed reorganization, Allegheny would own 100% of the common stock of AP Coal. Monongahela, Potomac and West Penn would indemnify Allegheny for any claims arising out of past operations of AP Coal in excess of the reserve for such claims on the books of AP Coal on the stock transfer date. After AP Coal's reorganization, its liabilities would continue to include the obligation for the open account advances made by Monongahela, Potomac and West Penn unless they have been repaid or until such time as they are repaid from the proceeds of the open account advances described below or such other source of funds as may be available. The proposed transactions will have no effect on AP Coal's status as an inactive company.

It is further proposed that Allegheny make interest-bearing, open account cash advances to AP Coal from time to time as funds may be required, in an aggregate amount not to exceed $35 million outstanding at any one time. Such advances would be prepayable at any time without premium or penalty and would bear interest at any annual rate equal to the actual cost to Allegheny of short-term borrowings.

The proceeds of the open account advances will be used for installment payments of about $2.4 million each for the Cowen Mine, due on the frist business day of January of each year through January 1985, to repay the open account advances from Monongahela, Potomac and West Penn, which as of August 31, 1979 total about $20,300,000 and to provide AP Coal with funds necessary to pay real estate taxes, licensing fees and other expenses. The open account advances will not be used to provide funds for equipment or other purposes necessary to commence mining operations if in the future it should prove necessary or desirable for AP Coal to commence operations.

Allegheny proposes to obtain the additional funds necessary to make open account advances to AP Coal from internal cash generation and other funds available to APS including short-term borrowings. As of August 31, 1979, Allegheny had approximately $1.1 million of short-term debt outstanding.

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated at $3,000. The proposed transactions have been authorized by the Pennsylvania Public Utility Commission and the Virginia State Corporation Commission. The West Virginia Public Service Commission has jurisdiction over the transfer of ownership interests by Potomac and Monongahela. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21292), and no hearing has been requested of or orderd by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the open account advances to be made by Allegheny to AP Coal, and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and

permitted to become effective with respect to the open account advances to be made by Allegheny to AP Coal:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the open account advances to be made by Allegheny to AP Coal, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the transfers of ownership interests in AP Coal from Monongahela, Potomac and West Penn to Allegheny pending completion of the record with respect to those transactions.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21379/January 2, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
New York, New York

CNG PRODUCING COMPANY

CONSOLIDATED GAS SUPPLY CORPORATION

CONSOLIDATED SYSTEM LNG COMPANY

THE EAST OHIO GAS COMPANY

THE PEOPLES NATURAL GAS COMPANY

WEST OHIO GAS COMPANY

(70-6387)

ORDER AUTHORIZING INTRASYSTEM FINANCING

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and six of its wholly-owned subsidiaries, CNG Producing Company ("Producing Company"), Consolidated Gas Supply Corporation ("Supply Corporation"), Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), and West Ohio Gas Company ("West Ohio"), have filed a joint application-declaration and an amendment thereto with this Commission pursuant to Sections 6, 7, 9, 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45 and 50 promulgated thereunder regarding the proposed transactions.

It is stated that certain companies in the Consolidated System temporarily accumulate cash over and above current requirements, for the most part because of large seasonal heating business. At the same time, Consolidated may require funds for working capital and for the financial requirements of other system companies. Therefore, Consolidated may be making short-term borrowings when subsidiaries with excess

cash are making temporary money market investments outside the System. Accordingly, the joint applicants-declarants are of the opinion that it would be advantageous to alleviate this situation and to continue the temporary prepayment of subsidiary long-term notes which optimizes the internal utilitization of excess cash funds accumulated within the System. The proposed procedures will benefit the System because they would: (1) permit subsidiary companies with excess cash to prepay temporarily long-term notes held by Consolidated, with a resulting reduction in their interest expense; (2) make available to Consolidated a temporary cash source for working capital and for the financing of other companies within the System; (3) permit Consolidated, which obtains all external financing required by the system, to defer or prepay short-term financing such as inventory loans with banks and commercial paper borrowings for working capital.

System subsidiaries would temporarily prepay from excess cash funds a portion of their outstanding long-term non-negotiable notes held by Consolidated. It is proposed that the following subsidiaries make aggregate prepayments on long-term notes, from time to time prior to December 31, 1980, not exceeding at any time the amounts set forth below for each subsidiary, respectively:

East Ohio	$ 75,000,000
Peoples	15,000,000
Producing Company	10,000,000
Supply Corporation	50,000,000
LNG Company	10,000,000
West Ohio	3,500,000
	$163,500,000

Consolidated estimates that the aggregate prepayment of $163,500,000 is the maximum that can be utilized for the temporary financing of System requirements during 1980. The long-term notes temporarily prepaid by an individual subsidiary will be those bearing the highest interest rate outstanding at the time of each prepayment. Prepayments will be evidenced by letter, and the notes will not be altered. Interest on such notes will cease upon prepayments and start again upon reinstatement of the notes.

As funds are thereafter required by such subsidiary for corporate purposes, including construction, it is proposed that advances be made on open account to the subsidiary by Consolidated in an aggregate amount not to exceed the amount of long-term notes previously prepaid, less any current maturities applicable to notes which have matured subsequent to the prepayment dates. The open account advances will bear interest during 1980 at the same rate or rates as borne by the equivalent principal amounts of the notes previously prepaid by such subsidiary but in reverse order to that of the prepayments, i.e., from the lowest rate on the notes previously prepaid to the highest rate. Interest on the open account advances will commence on the date of the advance and will become due on June 30, 1980, and December 31, 1980,and/or on the date such advances are repaid by the reinstatement of the prepaid notes. It is proposed that open account advances to a subsidiary be increased or decreased from time to time in accordance with variations in the cash flow of the subisdiary. However, at no time will the advances outstanding be in excess of the notes prepaid.

At such time as the open account advances equal the aggregate amount of the prepaid notes, or in any event not later than December 31, 1980, the notes prepaid by a subsidiary will be reinstated in repayment of the related outstanding open account advances made to the subsidiary by Consolidated. However, if the aggregate of the notes prepaid exceeds such advances at the end of 1980, Consolidated proposes to make cash repayment of the difference in order to effect reinstatement of the prepaid notes in full.

No financing of any subsidiary which may be presently or subsequently authorized by this Commission in connection with the construction or gas storage programs of any such subsidiary will be consummated until such time as advances have been made in amount equal to the amount of notes prepaid.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,600. The Public Service Commission of West Virginia has authorized the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner

prescribed in Rule 23 promulgated under the Act (HCAR No. 21335), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21380/January 2, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

(70-6381)

ORDER AUTHORIZING ISSUANCE AND SALE OF NOTES TO BANKS AND COMMERCIAL PAPER AND EXCEPTION FROM COMPETITIVE BIDDING

Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a) (5) promulgated thereunder regarding the following proposed transactions.

Arkansas is presently authorized (HCAR Nos. 20711 and 21281 (September 19, 1978, and November 2, 1979)) to issue and sell from time to time, through February 29, 1980, up to $125,000,000 aggregate principal amount outstanding at any one time of unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper to meet its interim financing requirements.

Arkansas now intends to revise the foregoing program and proposes to issue and sell, from time to time through June 30, 1981, unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper in an aggregate principal amount outstanding at any one time of not more than $150,000,000. It is stated that the nature of each issue of such notes (including commercial paper) will be determined in the light of the then prevailing market conditions and other factors.

As of September 30, 1979, Arkansas' construction program is expected to result in expenditures of approximately $265,213,000 in 1980 and $188,649,000 in 1981. Arkansas will use the net proceeds of the proposed notes for the acquisition of property, the construction, extension, or improvement of its facilities, or the discharge or lawful refunding of its obligations. Most of such net proceeds, together with other funds available from time to time to Arkansas from its operations or derived from the issuance and sale of long-term debt and/or equity securities, will be applied to its construction program.

The notes proposed to be issued and sold to commercial banks will be in the form of unsecured promissory notes payable not more than nine months from the date of issuance with right of renewal, will bear interest at the prime commercial bank rate in effect at the lending bank on the date of issuance or renewal or, from time to time, depending upon the requirements of the lending bank, and will, at the option of Arkansas,

be prepayable, in whole or in part, at any time without premium or penalty. While no formal commitments for future borrowings have been made with any bank, it is expected that the banks to whom such notes will be issued and sold and the maximum amount to be issued and outstanding at any one time to each such bank will be substantially as follows:

	Maximum Amount to be Borrowed
First National Bank of Eastern Arkansas, Forrest City, Arkansas	$ 400,000
Arkansas Bank & Trust Company, Hot Springs, Arkansas	800,000
The Commercial National Bank, Little Rock, Arkansas	2,000,000
First National Bank in Little Rock, Arkansas	4,000,000
Union National Bank, Little Rock, Arkansas	2,000,000
Worthen Bank & Trust Company, N.A. Little Rock, Arkansas	4,000,000
National Bank of Commerce, Pine Bluff, Arkansas	1,700,000
Simmons First National Bank, Pine Bluff, Arkansas	19,000,000
Peoples Bank & Trust Company, Russellville, Arkansas	300,000
Security Pacific National Bank, Los Angeles, California	18,500,000
Wells Fargo Bank, N.A., Los Angeles, California	5,000,000
Chemical Bank, New York, New York	10,000,000
Irving Trust Company, New York, New York	10,000,000
Manufacturers Hanover Trust Company, New York, New York	45,000,000
Marine Midland Trust Company, New York, New York	10,000,000
Morgan Guranty Trust Company of New York, New York	8,000,000
J. Henry Schroder Bank & Trust Company, New York, New York	5,300,000
Mellon Bank, N.A., Pittsburgh, Pennsylvania	4,000,000
	$150,000,000

Arkansas maintains accounts with the above Arkansas banks, and, although balances in these accounts may be deemed to be compensating balances, these accounts are stated to be working accounts, and fluctuations in their balances do not reflect or depend upon fluctuations in the amounts of bank loans outstanding. Assuming that a 15% compensating balance is maintained and assuming a 15.25% prime rate, the effective interest cost would be 17.94%. The above non-Arkansas banks may require compensating balances of up to 10% of the amount of the commitment for loans and in some instances may require additional compensating balances or fees equivalent thereto not exceeding in any event 10% of the average annual amount of the loans outstanding from those banks. Assuming a 15.25% prime rate and a 20% compensating balance, the effective interest cost on loans from the non-Arkansas banks would be 19.06%.

Arkansas proposes to issue, reissue, and sell commercial paper in denominations of not less than $100,000 directly to a dealer in commercial paper at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality of that particular maturity. The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturities to be determined by market conditions, effective cost of money to Arkansas, and the company's anticipated cash requirements at the time of issuance. In accordance with the established custom and practices in the market, the proposed commercial paper will not be payable prior to maturity. No commission or fee will be payable by Arkansas in connection with the issuance and sale of commercial paper. The dealer, as principal, will reoffer and sell the commercial paper at a discount rate of 1/10 of 1% per annum less than the prevailing discount rate to the company. The dealer in reoffering the commercial paper will limit the reoffer and sale to a non-public customer list of not more than 200 buyers of commercial paper. It is anticipated that the commercial paper will be held by the buyers to maturity; however, the dealer may, if desired by a buyer, repurchase the commercial paper for resale to others on the list of customers.

It is stated that the application of the competitive bidding requirements of Rule 50 with respect to the issuance and sale of commercial paper is not necessary or appropriate in the public interest or for the protection of investors or consumers

because the commercial paper will have a maturity not in excess of 270 days, current rates for commercial paper for such prime borrowers as Arkansas are published daily in financial publications, and it is not practical to invite bids for commercial paper.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21327), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21381/January 3, 1980

In the Matter of

MICHIGAN POWER COMPANY
P. O. Box 367
Three Rivers, Michigan 49093

(70-6374)

NOTICE OF PROPOSED LONG-TERM BANK BORROWINGS

NOTICE IS HEREBY GIVEN that Michigan Power Company ("Michigan Power"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

Michigan Power proposes to enter into a term loan agreement ("Agreement") with Manufacturers Hanover Trust Company and National Bank of Detroit (the "Banks"), under which agreement Michigan Power would issue through December 31, 1981, up to $20,000,000 principal amount of its notes ("Notes") due December 31, 1987. The loan commitments from the Banks are $13,000,000 from Manufacturers Hanover Trust Company and $7,000,000 from National Bank of Detroit. Under the Agreement Michigan Power will pay to each Bank, quarterly, a commitment fee of 1/2 of 1% per annum on the average unused amount of such Bank's commitment, computed from the effective date of the Agreement (which date is defined to be the 31st day following the later of the date of the order by the Michigan Public Service Commission authorizing such transaction, or the date of the order by this Commission so authorizing it).

The Notes will be due December 31, 1987, and will bear interest payable quarterly prior to

maturity at a fluctuating rate per annum equal to Manufacturers Hanover Trust Company's prime rate (the "Prime Rate") to December 31, 1982, at 102% of the Prime Rate from December 31, 1982, to December 31, 1985, and at 104% of the Prime Rate from December 31, 1985, to December 31, 1987. Interest after maturity (whether by acceleration or otherwise) is payable at a fluctuating rate per annum equal at all times to 1% plus the Prime Rate. There are no compensating balances required in connection with borrowings under the Agreement.

The Notes will be prepayable, in whole at any time or in part from time to time, without penalty. The Agreement contains covenants requiring prepayment in part upon terms and conditions set forth therein if Michigan Power should sell or otherwise dispose of its gas utility property and related assets (such sale is the subject of a separate proceeding before the Commission in File No. 70-5213), and other restrictive covenants concerning liens, indebtedness and capitalization ratios, and mergers and sales of assets (excluding the gas properties).

The proceeds from the issuance of the Notes will be used by Michigan Power as follows: (1) to repay in full (no penalty being required) $7,000,000 principal amount of notes held by National Bank of Detroit, which notes bear interest at an annual rate of that bank's prime plus ¼ of 1% and require 15% compensating balances; (2) to repay in full open account advances made by AEP to Michigan Power pursuant to Commission orders in File No. 70-4538, such advances aggregating $10,250,000 as of October 15, 1979; and (3) to pay, or reimburse its treasury for the payment of, other maturing indebtedness, construction expenditures or other corporate purposes.

Michigan Power claims exemption from the competitive bidding requirements of Rule 50 for its issuance and sale of the Notes pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $4,000, including legal fees of $2,000. It is stated that the Michigan Public Service Commisison has jurisdiction over the proposed transaction, and that no other state commission and no federal commission, other then this Commisison, has jurisdiction thereover.

NOTICE IS FURTHER GIVEN that any interested person may not later than January 30, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 547/December 28, 1979

The Securities and Exchange Commission has issued an order under the Trust Indenture Act of 1939 (the "Act") on application of Carolina Telephone and Telegraph Company (the "Applicant") that the trusteeships of Bankers Trust Company udner five prior indentures of the Applicant qualified under the Act and under a new indenture not so qualified is not so likely to involve a material conflict of interest as to make it necessary to disqualify Bankers Trust Company from acting as trustee.

TRUST INDENTURE ACT OF 1939
Release No. 548/December 28, 1979

SEE

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11003/December 28, 1979

SEE

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

INVESTMENT COMPANY ACT OF 1940
Release No. 11004/December 31, 1979

In the Matter of

INTERCAPITAL HIGH YIELD SECURITIES INC.
One Battery Park Plaza
New York, New York 10004

(812-4556)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 2(a) (19)

InterCapital High Yield Securities Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 22, 1979, and an amendment thereto on November 27, 1979, for an order of the Commission pursuant to Section 6(c) of the Act declaring that Dr. Irwin Friend, a director of Applicant, shall not be deemed an interested person of Applicant within the meaning of Section 2(a (19) of the Act solely by reason of his position as director of PMI Securities Co., a registered broker-dealer under the Securities Exchange Act of 1934.

On December 4, 1979, a notice (Investment Company Act Release No. 10970) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing. The matter has been considered, and it is found that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(19) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11005/January 2, 1980

EXEMPTIONS FOR CERTAIN INVESTMENT ADVISERS AND PRINCIPAL UNDERWRITERS OF OF INVESTMENT COMPANIES

ACTION: Final rules.

SUMMARY: The Commission is adopting two rules under the Investment Company Act of 1940 regarding the assignment of contracts for services of an investment adviser or principal underwriter and temporary service by an investment adviser without a written contract approved by investment company shareholders.

The act effectively requires that the investment advisory contract or principal underwriting contract with an investment company must, by its terms, terminate upon its assignment. One rule deems not to be an assignment for purposes of that provision a transaction which does not result in a change of actual control or management of an investment adviser or principal underwriter.

The act also provides that a person may not act under an investment advisory contract unless it has been approved by the holders of a majority of the investment company's voting securities. The second rule permits, subject to certain restrictions, a person to act temporarily as an investment adviser to an investment company, without the prior approval of the investment company's shareholders.

EFFECTIVE DATE: January 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Joseph F. Mazzella, Esq.
(202) 272-2033
Investment Company Act Study Group
Division of Investment Management
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 2a-6 [17 CFR §2702a-6] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), which deems certain transactions not to involve the assignment of a contract for purposes of sections 15(a) and 15(b) of the Act [15 U.S.C. 80a-15(a) and (b)] that do not result in a change of actual control or management of the investment adviser or the principal underwriter, respectively. The Commission today also is adopting rule 15a-4 [17 CFR §270.15a-4] under the Act, which provides a temporary exemption, not to exceed 120 days, from the requirement of the Act that an investment advisory contract with an investment company must be approved by the investment company's shareholders. The reasons for the Commission's proposing these rules were discussed thoroughly in Investment Company Act Release No. 10809 (Aug. 6, 1979), 44 FR 47100 (Aug. 10, 1979). Persons interested in a more detailed discussion of the rules should refer to that release.

RULE 2a-6

Discussion

In response to its request for comments the Commission received seven letters of comment which addressed proposed rule 2a-6. All the commentators generally endorsed the proposed rule, although several commentators suggested certain modifications. After considering these comments, the Commission has determined to adopt the rule as proposed.

Final Rule

Accordingly, a transaction which does not result in a change of actual control or management of the investment adviser to, or principal underwriter

of, an investment company is deemed not to be an assignment for purposes of section 15(a)(4) of the Act, regarding investment advisory contracts, or section 15(b)(2) of the Act, regarding principal underwriting contracts.[1]

RULE 15a-4

Discussion

The Commission received seven letters of comment which addressed proposed rule 15a-4. All of these comments generally endorsed the adoption of the proposed rule, although most commentators suggested some modification in its terms. Numerous commentators asserted that the proposed rule would not provide sufficient time to secure shareholders' approval of a successor investment advisory contract in the context of certain unusual assignments, the scheduling of annual shareholders' meetings, and the occurrence of unforeseeable events during the solicitation process, and in light of what they consider to be the increasing difficulty in getting security holders to respond to proxy solicitations. After carefully considering these comments, the Commission has determined to extend the availability of the exemptive period from 90 days to 120 days as a balance between a reasonable period for an investment company to retain the benefit of exemption and the Act's strong policy requiring investment company advisers to be subject to prior shareholders' approval.

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[1]The Commission emphasizes that the rule requires that there be no change as a result of the transaction in either actual control or actual management. The rule does not assume that a transaction which results in a change in management is merely a nominal assignment that, in fact, has no impact upon an investment company

As noted in Investment Company Act Release No. 10809, proposing the rule, in determining whether a transaction is within the purview of rule 2a-6, the rule should be construed narrowly in light of the investor protection concerns Congress intended to be fulfilled, as expressed in section 1(b), section 2(a)(4) and section 15 of the Act. Thus, for example, transferring actual control or management to a receiver would constitute an assignment.

Final Rule

Accordingly, notwithstanding section 15(a) of the Act, a person may act as investment adviser[2] for

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[2]One commentator questioned the Commission's statement that section 2(a)(20) of the Act [15 U.S.C. 80a-2(a)(20)] does not exclude from the Act's definition of the term "investment adviser" a person who provides investment advisory services at cost to particular clients only. See American Law Institute, Federal Securities Code, §270A, comment (3)(c) (Tentative Draft No. 6, April 1, 1977). While the Commission has in the past granted certain temporary exemptions from the provisions of section 15(a) conditioned on such person's serving during an interim period on a cost basis, it did not interpret such persons not to be investment advisers as defined in section 2(a)(20). Any such interpretation would be inconsistent with the investor protections mandated by the Act. There is no basis for excusing such external investment advisers in those circumstances from being deemed affiliated persons of investment companies for purposes, for example, of the prohibited transactions provisions under section 17 of the Act [15 U.S.C. 80a-17] or from being deemed interested persons for purposes, for example, of determining the composition of investment companies' boards of directors under section 10 of the Act [15 U.S.C. 80a-10].

Moreover, in its release proposing rule 2a-6 and rule 15a-4, the Commission found that the investor protection concerns expressed by Congress with respect to section 15(a) are better fulfilled when investment company shareholders are provided the opportunity to approve any successor adviser's serving the company. Additionally, it noted that when an assignment of the investment advisory contract is foreseeable, an investment adviser, pursuant to its fiduciary responsibilities to the investment company, may well be obliged to continue to provide advisory services to the investment company until such shareholders' approval is secured for the successor investment adviser's contract. Therefore, the Commission stated its belief that it may be inappropriate for it to continue to grant exemptive orders from the shareholder voting requirement of section 15(a) of the Act under circumstances in which it was practicable for an investment adviser to secure prior approval by the investment company shareholders of a successor advisory contract.

an investment company, pursuant to a written contract which has not been approved by a majority of the outstanding voting securities of such company, during the 120 day period after the termination of an investment advisory contract by an event (other than an assignment by an investment adviser in connection with which such investment adviser, or a controlling person thereof, directly or indirectly receives money or other benefit) described in parapraphs (3) or (4) of section 15(a) of the Act or by the failure to renew such contract,[3] if:

(1) Such contract has been approved by the investment company's board of directors, including a majority of the directors who are not interested persons thereof, and

(2) The compensation[4] to be received under that contract does not exceed the compensation which would have been received under the most recent investment advisory contract that had been approved by the vote of a majority of the outstanding voting securities of the investment company.[5]

AUTHORITY, EFFECTIVE DATE

The Commission, pursuant to section 6(c) [15 U.S.C. 80a-6(c)] and section 38(a) [15 U.S.C. 80a-37(a)] of the Act hereby amends 17 CFR Part 270 by adding new part §270.2a-6. Further, the Commission pursuant to section 6(c) of the Act hereby amends 17 Part 270 by adding new part §270.15a-4. Because the rules are exemptive they are effective immediately.

TEXT OF AMENDED RULES

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

I. By adding §270.2a-6 as follows:

§270.2a-6 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of the investment adivser to, or principal underwriter of, an investment company is not an assignment for purposes of section 15(a)(4) or section 15(b)(2) of the act, respectively.

II. By adding §270.15a-4 as follows:

§270.15a-4 Temporary exemption for certain investment advisers.

Notwithstanding section 15(a) of the act, a person may act as investment adviser for an investment company pursuant to a written contract which has not been approved by a majority of the outstanding voting securities of such company during the one hundred and twenty day period after the termination of an investment advisory contract by an event (other than an assignment by an investment adviser in connection with which such investment adviser, or a controlling person thereof, directly or indirectly receives money or other benefit) described in paragraphs (3) or (4) of section 15(a) of the act or by the failure to renew such contract; *Provided*, That:

(a) Such contract has been approved by the investment company's board of directors, including a majority of the directors who are not interested persons thereof; and

(b) The compensation to be received under that contract does not exceed the compensation which

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[3]However, the Commission believes that the failure of an investment adviser timely to present the ivnestment advisory contract for renewal, or the failure of an investment company's directors timely to consider the renewal of such contract in accordance with the procedures mandated by the Act, may constitute a breach of fiduciary duty.

[4]Such compensation may be described either as an absolute amount for a specified time period or as a rate of compensation, provided that it conforms to the method of compoensation in the most recent investment advisory contract which had been approved by the vote of a majority of the outstanding securities of the investment company.

[5]As a technical modification of this requirement, the term "voting securities" replaces the term "shares" to describe more accurately the voting requirements of section 15(a) of the Act.

would have been received under the most recent investment advisory contract that had been approved by the vote of a majority of the outstanding voting securities of the investment company.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11006/January 2, 1980

In the Matter of

LORD ABBETT DEVELOPING GROWTH FUND, INC.
63 Wall Street
New York, New York 10005

(811-2393)

NOTICE OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Lord Abbett Developing Growth Fund, Inc. ("Applicant"), a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified investment company, filed an application on October 29, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act as Lord Abbett OTC Growth Fund, Inc., on July 11, 1973, and filed a registration statement pursuant to Section 8(b) of the Act on July 30, 1973. Applicant represents that its legal existence was terminated as a result of a statutory merger into Developing Growth Shares, Inc. ("New Fund"), which thereafter changed its name to Lord Abbett Developing Growth Fund. Applicant represents that all portfolio securities and other assets of Applicant in connection with the merger were transferred to New Fund on the basis of relative net asset values pursuant to the terms of the merger agreement. Applicant represents that all portfolio securities and other assets of Applicant in connectin with the merger were transferred to New Fund on the basis of relative net asset values pursuant to the terms of the merger agreement. Applicant further represents that on February 5, 1979, immediately prior to the merger, Applicant distributed substantially all of its net investment income.

Applicant states that is has retained no assets, has no debts or other liabilities outstanding, and is not a party to any litigation or administrative proceding. Applicant also states it has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a rgistered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As

provided by Rule 0-5 of the Rules and Regulations promulgated under the act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11007/January 2, 1980

In the Matter of

DOLL FUND, INC.
Thackeray Lane
Mendham, New Jersey 07945

(811-1584)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On December 4, 1979, a notice was issued (Investment Company Act Release No. 10969) of an application filed on October 22, 1979, by Doll Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, requesting an order of the Commission, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, declaring that Applicant has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that Applicant has ceased to be an investment company as defined by the Act. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration under the Act of Doll Fund, Inc. shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 711/December 28, 1979

SEE

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

ACCOUNTING SERIES

ACCOUNTING SERIES
Release No. 274/December 28, 1979

See

SECURITIES ACT OF 1933
Release No. 6173/December 28, 1979

FREEDOM OF INFORMATION ACT

FREEDOM OF INFORMATION ACT
Release No. 59/December 28, 1979

See

SECURITIES ACT OF 1933
Release No. 6172/December 28, 1979

LITIGATION

Litigation Release No. 8636/January 5, 1979

SECURITIES AND EXCHANGE COMMISSION v. MOOG INC., ET AL. (United States District Court for the District of Columbia, Civil Action No. 79-0024)

The Securities and Exchange Commission today announced that the United States District Court for the District of Columbia entered Final Judgments of Permanent Injunction enjoining Moog Inc., an East Aurora, New York manufacturer of electrohyraulic servovalves and control systems for industrial, aviation and aerospace applications, and William C. Moog, Moog Inc.'s largest shareholder and President and Chairman of its Board of Directors, from further violation of the reporting and proxy provisions of the Securities Exchange Act of 1934. Moog Inc. and William Moog consented to the entry of the Judgments without admitting or denying the allegations in the Commission's Complaint, which was also filed today.

The Commission's Complaint alleges violations of the reporting and proxy provisions of the Securities Exchange Act of 1934 including that substantial amounts of corporate funds and other corporate assets were diverted for the personal use of William Moog, the Complaint alleges that Corporate funds of Moog Inc. were used and other favorable terms arranged to secure the use of a condominium in Aspen, Colorado for the personal benefit of William Moog. Further, the Complaint alleged that a so-called vacation benefit plan was established solely for the benefit of Willaim Moog without adequate disclosure being made. Under this arrangement William Moog received payments of approximately $153,377 in lieu of accrued vacation time.

In addition, the Complaint alleges that Moog Inc. maintained a personal account for Mr. Moog, through which interest free advances were made in part for the payment of personal expenses of William Moog; that assets, including sports cars and personal services were also provided and that a substantial portion of the benefits conferred on William Moog were inaccurately or improperly reflected in Moog Inc.'s books and records. The Complaint alleged that these matters were not disclosed or were inadequately disclosed in proxy statements and periodic reports files with the Commission.

In addition to the entry of the injunctive relief the Court ordered a limited investigation by the Audit Committee of the Board of Directors of Moog Inc. concerning transactions in Moog Inc.'s general corporate account to or for William Moog and payments of money by Moog Inc. to or for a discotheque in Worcester, England; a report, which will be filed with the Commission, of any findings of the Audit Committee; and the repayment by Mr. Moog of any sums found by the

Audit Committee to exceed that to which he was entitled. The Court further ordered Moog Inc. to comply with its undertaking to adopt, implement and maintain internal control procedures designed to avoid the unauthorized or undisclosed use of corporate assets or other things of value for the benefit of officers, directors, and employees of Moog Inc., its subsidiaries or affiliates.

Litigation Release No. 8964/December 28, 1979

SEC v. HIBBARD & O'CONNOR GOVERNMENT SECURITIES, INC., ET AL. (S.D. TX./Houston Div.) (CA H-79-2512)

The Fort Worth Regional Office and the Houston Branch Office announce that on December 18, 1979, the Honorable Carl O. Bue, United States District Judge, Southern District of Texas, signed Orders of Permanent Injunction against Harry S. Schaefer and Robert L. Wheelock. The Orders enjoin each of the defendants from further violations of the anti-fraud provisions of the federal securities laws in connection with the offer and sale of Government National Mortgage Association (GNMA) and Federal Home Loan Mortgage Corporation (Freddie Mac) securities or any other security of any issuer. Wheelock and Schaefer consented to the Orders without admitting or denying the allegations in the Commission's complaint.

For further information about this action see Litigation Release No. 8955 dated December 18, 1979.

Litigation Release No. 8965/December 31, 1979

SEC v. BOOKKEEPERS, LTD., ET AL. (S.D. CA CV-79-1715-N)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office of the Securities and Exchange Commission, announced that on December 20, 1979, the Honorable Leland C. Nielsen, United States District Judge for the Southern District of California in San Diego, issued a preliminary injunction against Bookkeepers Ltd., located in Ontario, California, Joseph Margala of Upland, California and Jerry Whitley of Whittier, California. Judge Nielsen also named Mr. R. N. Gould as temporary trustee of Bookkeepers. The Court's action came on a motion by the Commission in SEC v. Bookkeepers, Ltd., et al., an action filed by the Commission in March 1978.

The preliminary injunction bars Bookkeepers and Margala and Whitley, President and Vice President of Bookkeepers respectively, from violating the anti-fraud and registration provisions of the federal securities laws. In its preliminary findings, the Court found that Bookkeepers, Margala and Whitley violated Section 10(b) of the Securities Exchange Act of 1934 and Section 17 of the Securities Act of 1933 by engaging in a fraudulent scheme to deprive the public shareholders of Bookkeepers of their stock in the company by, among other things, a series of reverse stock splits. The Court also found that, in furtherance of the scheme, the defendants made false statements to shareholders, issued false financial statements, withheld information from shareholders and violated state securities laws. As a result of defendants' conduct, the number of shareholders was reduced from over a thousand to approximately 29 and the defendants increased their ownership of the company.

The Court also found that the defendants violated Section 12(g) of the Securities Exchange Act of 1934 by failing to register the securities of Bookkeepers with the Commission as required by law.

Mr. R. N. Gould, appointed temporary trustee, was directed to take possession of the assets, property and records of Bookkeepers and to hold and manage them until final judgment in this case. A

trial is expected to be held in 1980 on the Commission's complaint seeking a permanent injunction and trustee, who would, among other things, restore the former shareholders of Bookkeepers to their previous position of ownership in the company.

The fourth and remaining defendant named in the Commission's complaint, Walter Wencke of Rancho Santa Fe, California, was permanently enjoined from further violation of the securities laws in a final judgment entered against him November 19, 1979.

In a related matter, a federal grand jury sitting in San Diego handed down an indictment on December 13 against Wencke, Margala and Whitley charging each of them with 12 counts of mail fraud and three counts of securities law violations in connection with their conduct similar to that alleged in the Commission's complaint. Each count of mail fraud carries a maximum penalty of five years in jail and a $1,000 fine. Each count of securities violations carries a maximum penalty of five years in jail and a $10,000 fine. For further information, see Litigation Release No. 8328, March 14, 1978 and 8937, December 3, 1979.

Litigation Release No. 8966/December 31, 1979

SEC v. RESORT CAR RENTAL SYSTEM, INC., AND ABRAHAM GURDON WOLFSON (United States District Court for the District of Nevada), Civil Action No. 79-282-HEC)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office, announced the filing of a civil injunctive action against Resort Car Rental Systems, Inc. ("Resort") and Abraham Gurdon Wolfson ("Wolfson") alleging violations of the reporting provisions of the federal securities laws. The Complaint seeks a judgment of permanent injunction and equitable relief.

The Complaint alleges that Resort has failed to file with the Commission annual reports on Form 10-K for its fiscal years 1976 through 1978 and quarterly reports on Form 10-Q for the same period.

The Complaint further alleges that Wolfson, Resort's former president, failed to file with the Commission and send to the company a Schedule 13D with respect to his acquisition in 1976 of 26% of Resort's issued and outstanding common stock.

The Complaint requests that the Court order Resort to file its annual report on Form 10-K for its fiscal year ending December 31, 1978 within 60 days of the Court's order and all other delinquent reports within 180 days of the entry of the order. The complaint also requests that Wolfson be ordered to file a Schedule 13-D with respect to his acquisition of Resort's common stock within 10 days of the order. Further, the Commission requested the Court to enjoin Resort and Wolfson from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 8967/January 2, 1980

SECURITIES AND EXCHANGE COMMISSION v. NATIONAL FILM PRODUCTIONS, INC., ET AL., (M.D. Fla., Civil Action No. 79-1060-T-WC)

Jule B. Greene, Administrator, Atlanta Regional Office, and William Nortman, Associate Regional Administrator, Miami Branch Office of the Securities and Exchange Commission, announce that on December 20, 1979, The Honorable Ben Krentzman, United States District Judge, Middle District of Florida, Tampa Division, entered a Final Judgment of Permanent Injunction as to defendants Field Planning Corporation and Conrad Frank, pursuant to a Consent and Undertaking by said defendants. The defendants consented without admitting or denying the substantive allegations contained in the Commission's Complaint.

The Undertaking provides that for a period of two (2) years from the date of said Judgment, the defendants shall file with the Miami Branch Office of the Securities and Exchange Commission, a

report advising of any tax shelter investment programs involving the offer and sale of a security of which said defendants are, directly or indirectly, the sponsors, promoters, and/or affiliates. The report shall include the name and address of the issuer, the defendants' relationship to the issuer, and a description of the tax shelter. The defendants further undertook, in connection with the offer and sale of any such tax shelter investment program, to disclose that they were the subjects of a Complaint filed by the Commission, its allegations, and disposition.

The Commission filed its Complaint on October 15, 1979, alleging violations of the registration and anti-fraud provisions of the federal securities laws by the defendants.

For further information see Litigation Release No. 8911, October 31, 1979.

Litigation Release No. 8968/January 3, 1980

SECURITIES AND EXCHANGE COMMISSION v. AMCOLE ENERGY CORP. (United States District Court for the District of Columbia, Civil Action No. 79-3227)

The Commission announced today that on January 2, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Amcole Energy Corp. ("Amcole") of Dallas, Texas, restraining and enjoining Amcole from failing to file timely periodic reports and ordered it to comply with certain undertakings. Amcole, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 12 separate occasions. The Commission's Complaint was filed on November 29, 1979.

The Complaint had alleged that Amcole, as part of a continuing course of conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to be filed under the Securities Act of 1934.

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VOLUME 19, NO. 3 JANUARY 22, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6174-75	142
Securities Exchange Act	16467-80	146
Public Utility Holding Company Act	21382-87	162
Investment Company Act	11008-16	171
Litigation	8969-71	182
Accounting Series	275	184

This listing covers releases issued from 1/4/80-1/10/80.

This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS

RULES

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34-16468 34-16472 34-16477
34-16469 34-16476

33-6175 Announcement of the position of the Commission's staff with respect to the creation and operation of pooled income funds which qualify as recipients of tax deductible contributions under the Internal Revenue Code of 1954.

OPINIONS

PAUL F. KENDRICK

Where president of member firm of registered securities association was responsible for firm's operation with net capital deficiencies, and was responsible for firm's violation of reporting, recordkeeping, customer protection and credit extention provisions, and for the sale of stock in a public offering at a price below the offering price, *held*, association's findings of violation and assessment of sanctions sustained.

SE 1.29:

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6174/January 9, 1980

In the Matter of

THE MONROE CLINIC EMPLOYEES' RETIREMENT PLAN
1515 Tenth Street
Monroe, WI 53566

(18-37)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE MONROE CLINIC EMPLOYEES' RETIREMENT PLAN

Monroe Clinic, a Wisconsin partnership providing health care to Monroe, Wisconsin and surrounding areas, filed an application on February 16, 1979, for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Monroe Clinic Employees' Retirement Plan ("Plan").

On December 14, 1979, a notice was issued (Securities Act Release No. 6168) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6175/Jan. 10, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16478/Jan. 10, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11016/Jan. 10, 1980

POOLED INCOME FUNDS

ACTION: Statement of staff position.

SUMMARY: The Commission is announcing the position of its staff with respect to the creation and operation of pooled income funds which qualify as recipients of tax deductible contributions under section 642(c)(5) of the Internal Revenue Code of 1954. The announcement states the circumstances under which the staff will not recommend that the Commission take any enforcement action if public charities establish and maintain these funds without registration under the federal securities laws of the public charities, the funds, the interests in the funds, or the persons soliciting gifts by means of the funds. The purpose of the announcement is to offer guidance to the public and thereby obviate the need for no-action requests which present no novel facts or interpretative problems about pooled income funds.

DATE: January 10, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley B. Judd, 202-272-2032, or Elizabeth T. Tsai, 202-272-2028, Division of Investment Management,

Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission's Division of Investment Management ("staff") will not, in the circumstances described below, recommend that the Commission take any enforcement action if a public charity[1] establishes and maintains a pooled income fund without registration under (1) the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.] of the fund, the public charity, or a trustee of the fund, (2) the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] of interests in the fund, or (3) the 1934 Act of persons soliciting gifts by means of the fund. The circumstances in which the staff will take such a no-action position are the following: (1) the fund qualifies as a recipient of tax deductible contributions under section 642(c)(5) of the Internal Revenue Code of 1954 ("Code") [26 U.S.C. 642(c)(5)]; (2) each prospective donor is furnished written disclosures which fully and fairly describe the operation of the fund; and (3) any person soliciting contributions to the fund is either a volunteer, or a person who is employed in the public charity's overall fund-raising activities and who is not compensated on the basis of the amount of gifts transferred to the pooled income fund.

I. BACKGROUND

The Tax Reform Act of 1969 amended the Code to allow a charitable contribution deduction (for income tax, gift tax, or estate tax purposes) for a charitable gift of a remainder interest in trust where, among other circumstances, the trust is a pooled income fund described in section 642(c)(5) of the Code. Although pooled income fund arrangements existed as a means of making charitable contributions before this amendment, the amendment was intended to impose certain limitations in order to prevent overstating of the charitable contribution deduction. S. Rep. No. 552, 91st Cong., 1st Sess. 87 (1969). This was accomplished by adding to the Code section 642(c)(5), "Definition of pooled income fund."

As defined in section 642(c)(5) of the Code and explained in Treasury Regulation § 1.642(c)-5, a pooled income fund is a trust to which a person transfers property, giving an irrevocable remainder interest in the property to a public charity and retaining an income interest in the property for the life of one or more beneficiaries living at the time of the transfer. The fund must commingle the property with other property transferred to it in like manner. Although the fund must not include property transferred to it under other arrangements, a portion of its properties may be invested jointly with other properties of the public charity, such as its general endowment fund. However, records must be maintained which sufficiently identify the portion of the total fund which is owned by the pooled income fund and the income earned by, and attributable to, such portion.

Tax-exempt securities may not be transferred to the fund, nor may the fund invest in them. The fund must be maintained by the public charity itself, but this requirement is satisfied when the public charity has the power to remove the trustee or trustees of the fund and designate a new trustee or trustees. No donor or income beneficiary (other than the public charity) may serve as a trustee to the fund or have direct or indirect responsibilities with respect to the fund which are ordinarily exercised by a trustee. Each income beneficiary receives a proportionate share of the income earned by the fund each year. Upon the termination of an income interest, the trustee must sever from the fund and pay to, or retain for the use of, the public charity an amount equal to the value of the remainder interest in the property upon which the income interests is based.

II. STATUS OF SECTION 642(c)(5) POOLED INCOME FUNDS UNDER THE SECURITIES LAWS, AND PREVIOUS NO-ACTION POSITIONS

Section 3(a)(1) of the 1940 Act [15 U.S.C. 80a-3(a)(1)] defines "investment company" to mean any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 2(a)(22) of the 1940 Act [15 U.S.C. 80a-2(a)(22)] defines "issuer" to mean every person who issues or proposes to issue any security, or has outstanding any security which it has issued. Section 2(a)(36) [15 U.S.C. 80a-2(a)(36)] defines "security" to mean, among other things, any investment contract. The

[1]As used here, "public charity" has the same meaning that it has in Treas. Reg. §1642(c)-5(a)(5)(iv) [26 CFR 1.642(c)-5(a)(5)(iv)].

test for an investment contract is "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

An acquisition of an interest in a pooled income fund for consideration may be an investment. In that case the interest would be a security of which the pooled income fund would be the issuer. Furthermore, if the pooled income fund were an issuer of a security, it would, if primarily engaged in the business of investing in securities, be an investment company.

Section 3(a)(4) of the 1933 Act [15 U.S.C. 77c(a)(4)] exempts from the provisions of the 1933 Act

> Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual.

Section 12(g)(2)(D) of the 1934 Act [15 U.S.C. 78l(g)(2)(D)] exempts from the registration provisions of section 12(g)

> any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 3(c)(10) of the 1940 Act [15 U.S.C. 80a-3(c)(10)] excepts from the definition of "investment company"

> Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

To satisfy the requirements of the charitable organization exception in section 3(c)(10) of the 1940 Act, section 12(g)(2)(D) of the 1934 Act, and section 3(a)(4) of the 1933 Act, (1) an issuer must be organized and operated exclusively for "religious, educational, benevolent, fraternal, charitable, or reformatory purposes" and (2) no part of its net earnings may inure to the benefit of any private shareholder or individual. It is questionable whether a pooled income fund could be deemed to be organized and operated exclusively for chartiable purposes, since it is organized and operated to produce a regular income which must be currently distributed to beneficiaries who are for the most part private individuals. In any event, the second part of the test would seem not to be met by a pooled income fund because of the distribution of its income to beneficiaries.

Beginning with *American Council on Education*, [1972-1973 Transfer Binder] FED. SEC. L. REP. (CCH) §79,179, the staff has consistently taken a no-action position where an eligible public charity sought to establish and maintain a pooled income fund, as described in section 642(c)(5) of the Code, without complying with the registration requirements of the 1933 Act, the 1934 Act, and the 1940 Act. In each instance, the position has been conditioned on each prospective donor's receiving written disclosures which fully and fairly describe the operation of the particular pooled income fund. The position has also been conditioned on all gift solicitors' being either volunteers, or persons employed in the overall fund-raising activities of the public charity who would receive no commissions or other special compensation based upon the amount of gifts transferred to the fund.

In each instance, the staff expressed its view that the antifraud provisions of the federal securities laws apply to sales of interests in the fund. Further, the staff indicated that it did not necessarily agree that the exemptions in section 3(a)(4) of the 1933 Act and, recently, section 12(g)(2)(D) of the 1934 Act, or the exception in section 3(c)(10) of the 1940 Act, are available to a pooled income fund, or that no "sale" for "value" occurs. The staff explicitly based its no-action position on the assumption that the primary purpose of persons who transfer property to pooled income funds is to make a gift to a charity of their choice and the belief that this donative intent and the applicable Code restrictions and Treasury regulations make registration under the federal securities law unnecessary.

At first, the staff indicated that, although it was not then raising any objection to the existence of a

provision in trust agreements authorizing the bank trustee to invest the pooled assets in interests in a common trust fund maintained by the trustee, it was its view that if a bank created a common trust fund consisting solely or primarily of assets of pooled income fund trusts the question would arise as to whether such a fund would be entitled to rely on the exception from the definition of an "investment company" provided for a bank common trust fund by section 3(c)(3) of the 1940 Act [15 U.S.C. 80a-3(c)(3)]. Subsequently, however, the staff indicated that that was no longer its view since the availability of this exception did not turn on whether the fund is solely or primarily used for the investment of pooled income fund assets.

III. THE STAFF'S PRESENT POSITION

The staff, under the circumstances set forth below, will not recommend that the Commission take any enforcement action if a public charity establishes and maintains a pooled income fund without registration (1) under the 1940 Act of the fund, the public charity, or any trustee of the fund, including any bank, (2) under the 1933 Act or the 1934 Act of interests in the fund, or (3) under the 1934 Act of persons soliciting gifts by means of the fund. The circumstances in which the staff will take such a position are the following:

(a) The fund qualifies as a recipient of tax deductible contributions under section 642(c)(5) of the Code;

(b) each prospective donor is furnished written disclosures which fully and fairly describe the operation of the fund;[2] and

(c) each person soliciting gifts by means of the fund is either a volunteer, or a person who is employed in the public charity's overall fund-raising activities who receives no commissions or other special compensation based on the amount of gifts transferred to the pooled income fund.

The staff does not necessarily agree that the exemptions in section 3(a)(4) of the 1933 Act and section 12(g)(2)(D) of the 1934 Act are available to interests in a pooled income fund, or that the exception in section 3(c)(10) of the 1940 Act is available to the fund itself, or that no "sale" for "value" occurs in the exchange of property for life income interests in such a fund. Furthermore, the staff believes that the anti-fraud provisions of the federal securities laws apply to sales of such interests.

In light of this release, public charities which propose to establish and maintain pooled income funds in accordance with the standards enunciated above do not need to seek no-action assurance in order to ascertain that the staff will not insist upon registration of the fund, charity, trustee, or persons soliciting gifts by means of the fund. The staff will not respond to requests for no-action or interpretative letters relating to such pooled income funds in the future unless they present novel facts or interpretative problems, such as departures from the specific circumstances stated above.

Accordingly, Parts 231, 241, and 271 of Title 17 of the Code of Federal Regulations are amended by adding this statement of staff position relating to pooled income funds.

By the Commission.

George A. Fitzsimmons
Secretary

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[2]As a matter of policy, the staff will not review these disclosures in advance. The responsibility for determining compliance with this requirement lies with the public charity.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16467/January 4, 1979

NOTICE OF COMMISSION ACTION DECLARING EFFECTIVE AMENDMENTS TO THE CONSOLIDATED TAPE PLAN

The Securities and Exchange Commission announced that it has sent to the sponsors of the joint industry plan ("Plan") declared effective pursuant to Rule 17a-15 under the Securities Exchange Act of 1934 governing the consolidated transaction reporting system ("consolidated system"), a letter declaring various amendments to the Plan effective as of January 4, 1979. The amendments (i) establish procedures to be followed in recommencing dissemination, on a current and continuous basis, of last sale information for any security eligible for reporting in the consolidated system ("Eligible Security") which is the subject of a regulatory halt; (ii) reduce charges to vendors for access to the Network A high speed line; and (iii) eliminate or reduce certain of the charges imposed on participants or other reporting parties which are national securities exchanges for receipt of last sale information and permit any of those exchanges to enter into an agreement with the Plan processor to use the high speed line for the purpose of disseminating last sale information relating to transactions in securities other than Eligible Securities.

The text of the letter follows:

American Stock Exchange, Inc.
Midwest Stock Exchange, Incorporated
National Association of Securities Dealers, Inc.
New York Stock Exchange, Inc.
Pacific Stock Exchange, Incorporated
Philadelphia Stock Exchange, Inc.

Dear Sirs:

This is in response to the filing by the Consolidated Tape Association ("CTA") of various amendments to the joint industry plan ("Plan") declared effective pursuant to Rule 17a-15 under the Securities Exchange Act of 1934 ("Act") governing the consolidated transaction reporting system ("consolidated system"). The amendments are as follows:

On January 12, 1978, the CTA filed with the Commission, and on June 15, 1978, the CTA refiled with the Commission, a proposed amendment to Section X(a) of the Plan which would establish procedures to be followed in recommencing dissemination, on a current and continuous basis, of last sale information for any security eligible for reporting in the consolidated system ("Eligible Security") which is the subject of a regulatory halt. On April 5, 1978, the CTA filed with to the Commission a proposed amendment to Section XI(c) of the Plan which would reduce charges to vendors for access to the Network A high speed line. On September 5, 1978, the CTA filed with the Commission proposed amendments to Section XI of the Plan which would eliminate or reduce certain of the charges imposed on participants or other reporting parties which are national securities exchanges for receipt of last sale information and permit any of those exchanges to enter into an agreement with the Plan processor to use the high speed line for the purpose of disseminating last sale information relating to transactions in securities other than Eligible Securities.

The Commission, having due regard for the purposes of the Act, including the public interest, the protection of investors, the maintenance of fair and orderly markets, and the need to remove impediments to and perfect the mechanisms of, a national market system, has declared each of the amendments effective as of the date of this letter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16468/January 4, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, IL 60603

(SR-MSE-79-25)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 (s)(b)(1) ("Act"), notice is hereby given that on December 28, 1979, the Midwest Stock Exchange, Inc. ("MSE") filed with the Commission copies of a proposed rule change which would provide for a full-time compensated Chairman of the Board of Governors, appointed by the Board to serve at its pleasure, as Chief Executive Officer of the MSE. Currently, the Chairman would appoint the President, subject to Board approval, to serve as Chief Operating Officer at the pleasure of the Board. Presently, the President is appointed annually and acts as the Chief Executive Officer of the MSE. Neither the Chairman nor the President may be a member of the MSE, or affiliated in any way with a member organization, during his incumbency.

The following sections of the MSE Constitution would be amended to accomplish these changes, and other modifications necessary to ensure internal consistency: Article II, §6, Article III, §§1, 2 and 6, Article IV, §2, 4, 5, 8, 9, 18, 21 and 22, Article V, §§1 and 4, Article VI, §§1, 2, 3, 4, and 5, Article VI, §1.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisons of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(1) of the Act relating to the organization of the Exchange and its capacity to carry out the purposes of the Act and Section 6(b)(3) of the Act relating to assuring fair representation of exchange members in the selection of directors and the administration of its affairs, and the rules and regulations thereunder. The proposed rule change is intended to provide for continuity of executive leadership at the MSE and was necessitated by the demands of conducting the business of the MSE in a manner conducive to making a smooth transition to the national market system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in order to enable the MSE to select a new Chairman under the proposed amendments at its Board Meeting on January 18, 1980.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16469/January 4, 1980

STOCK CLEARING CORPORATION OF PHILADELPHIA ("SCCP")

(SR-SCCP-79-13)

ORDER APPROVING PROPOSED RULE CHANGE

On September 21, 1979, SCCP filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change establishing a monthly verification procedure for statements received by members concerning each type of account they maintain.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publicatio of a Commission Release (Securities Exchange Act Release No. 16250, October 5, 1979) and by publication in the Federal Register 44 FR 59306, October 15, 1979. No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16470/January 7, 1980

An order has been issued granting the application of LA QUINTA MOTOR INNS, INC. to withdraw its common stock (Par Value $.10) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16471/January 7, 1980

An order has been issued granting the application of PRIME MOTOR INNS, INC. to withdraw its common stock (Par Value $.05) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16472/January 8, 1980

In the Matter of

CINCINNATI STOCK EXCHANGE
205 Dixie Terminal Building
Cincinnati, Ohio 45202

(SR-CSE-79-7)

ORDER APPROVING PROPOSED RULE CHANGE

On November 20, 1979, the Cincinnati Stock Exchange ("CSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on

arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers. The proposal revokes the present CSE arbitration rules and adopts the entire Code as new CSE Rule 9.1. The proposal also incorporates the simplified arbitration procedures that were drafted by SICA and adopted by the CSE on July 5, 1979,[4] regarding small claims not exceeding $2500.[5]

A primary purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the CSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16387, November 30, 1979) and by publication in the *Federal Register* (44 FR 70266, December 6, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]For the CSE's current arbitration rules, *see* CSE Rule 9.1.

[2]The Code was published on December 28, 1978, as the "Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission."

[3]SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securiites Industry Association and three public representatives.

[4]Securities Exchange Act Release No. 15998, 16 SEC Docket 425 (July 17, 1979), 43 FR 48399 (August 17, 1979).

[5]CSE Rule 9.1, Section 2.

[6]The Code has already been adopted by the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 16390 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979), 44 FR 70616 (December 7, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16473/January 8, 1980

In the Matter of

OPPENHEIMER & CO., INC., et al.

The Securities and Exchange Commission has ordered public adminsitrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against: Oppenheimer & Co., Inc. ("Oppenheimer"), a registered broker-dealer with its principal place of business in New York City; Ronald L. Brownlow ("Brownlow") and Daniel J. Piet ("Piet"), formerly registered representatives in Oppenheimer's Chicago, Illinois office; Warren K. Hayes ("Hayes"), Charles W. Wright ("Wright"), and Robert Hunziker ("Hunziker"), registered representatives in Oppenheimer's Chicago office; and Thomas J. O'Donnell ("O'Donnell"), manager of Oppenheimer's Chicago office.

The Order for Proceedings alleges that Oppenheimer, Brownlow, Piet, Hayes, Wright, and Hunziker wilfully violated and wilfully aided and abetted violations of the antifraud provisions of the Securities Act of 1933 ("Securities Act") and of the Exchange Act in connection with soliciting and transacting option business with public investors; that O'Donnell wilfully aided and abetted violations of the antifraud provisions of the Securities Act and Exchange Act; and that Oppenheimer and O'Donnell failed to reasonably supervise persons subject to their supervision and control with a view toward preventing the alleged violations.

Specifically, the Order alleges that at various times during the period September, 1976 through July, 1978, Brownlow, Piet, Hayes, Wright, and Hunziker, in inducing public customers to trade in options and maintain option accounts with them, made false and misleading statements of material facts and omitted to state material facts about the risks inherent in option trading strategies, methods employed in purchasing and selling options for such costomers' accounts, potential profits and rates of return realizable from option trading strategies, and the suitability of these trading strategies to their customers' financial situations, investment sophistication, and investment objectives.

The Order also alleges that Oppenheimer, Brownlow, Piet, Hayes, Wright, and Hunziker caused certain of their respective customers, who could not afford the risk and did not sufficiently understand the risk, margin requirements, mechanics and other fundamental aspects of option trading strategies, to open option trading accounts and purchased and sold options notwithstanding that such transactions were not suited to the financial suituations, investment sophistication, and investment objectives of certain of these customers. As a result of such transactions, investors incurred substantial financial harm. At least eight (8) customers of Brownlow and Piet suffered losses aggregating approximatley $215,000 during the period September, 1976 through December, 1977. Twelve (12) accounts of Hayes, Wright, and Hunziker suffered losses aggregating approximately $1,153,000 during the period September , 1976 through July, 1978.

The Order further alleges that Oppenheimer, Brownlow, Piet, Hayes, Wright, and Hunziker effected purchase and sale transactions in options and related securities which were excessive in size and frequency in view of the financial resources, investment sophistication, and investment objectives of such customers. As a result of such activities, eight of Brownlow's and Piet's customers, whose accounts were handled for an average of eleven (11) months, incurred commissions amounting to approximately $142,000 and twelve of Hayes', Wright's, and Hunziker's customers, whose accounts were handled on average of seventeen (17) months, incurred commissions amounting to approximately $822,000.

The Order also alleges that such excessive and unsuitable option trading was effected in accounts of certain customers, who, having been caused to believe they would be dealt with fairly, vested discretionary authority in Brownlow, Piet, Hayes, Wright, and Hunziker.

Additionally, the Order alleges that O'Donnell knew or should have known that Brownlow, Piet, Hayes, Wright, and Hunziker were engaged in the above-described activities.

The Order further alleges that Brownlow represented to certain existing customers that their option accounts were profitable when in fact they were not.

Oppenheimer, Piet, Hayes, Wright, Hunziker, and O'Donnell have submitted Offers of Settlement

which have been accepted by the Commission. (See Exchange Act Release No. 34-)

A hearing will be scheduled to determine whether the allegations against Brownlow are true, and if so, to decide what, if any, remedial action should be ordered by the Commisison.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16474/January 8, 1980

Administrative Proceeding File No. 3-5860

In the Matter of

OPPENHEIMER & CO., INC.

(File No. 8-018333)

DANIEL J. PIET

WARREN K. HAYES

CHARLES W. WRIGHT

ROBERT HUNZIKER

THOMAS J. O'DONNELL

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these proceedings ordered today pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), Respondents Oppenheimer & Co., Inc. ("Oppenheimer"), Daniel J. Piet ("Piet"), Warren K. Hayes ("Hayes"), Charles W. Wright ("Wright"), Robert Hunziker ("Hunziker"), and Thomas J. O'Donnell ("O'Donnell") have submitted Offers of Settlement which the Commission has determined to accept.[1] Solely for the purpose of settling these proceedings and without admitting or denying the allegations contained in the Order for Proceedings, the above Respondents consent to the findings of violations and sanctions contained in this Order.[2]

Additionally, Oppenheimer states in its Offer of Settlement that it will make restitution in the amount of at least $175,000 to customers of Oppenheimer's Chicago office who had suffered losses in 1977 and 1978 in option trading. Oppenheimer has also agreed pursuant to its Offer of Settlement to establish a Compliance Review Board and an Option Subcommittee. These committees would, among other things, formulate and oversee Oppenheimer's compliance policies and procedures and review all substantive customer complaints. Oppenheimer further agrees to file with the Commission periodic reports of the actions taken by Compliance Review Board and Option Subcommittee for one year.

Oppenheimer's Offer of Settlement also states that the compliance manual will be revised to more fully discuss options, training of its registered representatives with regard to compliance will be increased, and certain registered representatives may be required to retake and pass the Chicago Board Option Exchange exam. Pursuant to its Offer of Settlement, Oppenheimer has also agreed to replace the person who was director of compliance and senior registered options principal during the period of the alleged violative conduct.

On the basis of the Order for Proceedings and the Offers of Settlement, the Commission finds:

1. Oppenheimer wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with option transactions in customer accounts as alleged in the Order for Proceedings;

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[1]The Order instituting proceedings was entered simultaneously with the Commission's acceptance of their Offers of Settlement.

[2]The findings herein are not binding on any other respondents named in these proceedings.

2. Piet, Hayes, Wright, and Hunziker wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with option transactions in customer accounts as alleged in the Order for Proceedings;

3. O'Donnell wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with option transactions in customer accounts as alleged in the Order for Proceedings;

4. Oppenheimer and O'Donnell failed to reasonably supervise employees under their supervision and control as alleged in the Order for Proceedings.

In view of the foregoing matters, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, that:

1. Oppenheimer be and hereby is censured and all solicited trading in securities options in Oppenheimer's Chicago office is suspended for a period of twenty-five (25) calendar days for any accounts for which option account opening documents have not been submitted to Oppenheimer prior to the date of this Order.[3]

2. Piet is suspended from association with any broker, dealer, investment adviser, or investment company, or affiliate thereof for a period of two (2) months effective at the opening of business on the second Monday after the date of this Order.

3. Hunziker is suspended from association with any broker, dealer, investment adviser, or investment company, or affiliate thereof for a period of two and one-half (2 1/2) months, effective at the opening of business on the second Monday after the date of this Order.

4. Wright is suspended from association with any broker, dealer, investment adviser, or investment company, or affiliate thereof for a period of two and one-half (2 1/2) months, effective at the opening of business one month following the second Monday after the date of this Order.

5. Hayes is suspended from association with any broker, dealer, investment adviser, investment company, or affiliate thereof for a period of four (4) months, effective at the opening of business two and one-half months following the second Monday after the date of this Order.

6. O'Donnell is suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser, or investment company, of affiliate thereof for a period of three (3) months effective at the opening of business on the second Monday after the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

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[3]Existing customers of salesmen hired by Oppenheimer during the suspension period may continue their option activities at Oppenheimer.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16475/January 8, 1980

Administrative Proceeding File Nos. 3-5475 and 3-5573

In the Matter of the Applications of

PAUL F. KENDRICK
One Post Street
San Francisco, California

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Inadequate Net Capital

Concealment of Net Capital Deficiencies

Failure to Comply with Reporting, Recordkeeping, Customer Protection and Credit Extension Provisions

Sale of Stock Below Offering Price

Where president of member firm of registered securities association was responsible for firm's operation with net capital deficiencies, attempted to conceal those deficiencies, and was responsible for firm's violation of reporting, recordkeeping, customer protection and credit extension provisions, and for the sale of stock in a public offering at a price below the offering price, *held*, association's findings of violation and assessment of sanctions sustained.

APPEARANCES:

***Geoffrey P. Knudsen*, of Boone & Knudsen, for Paul F. Kendrick**

***Frank J. Wilson, Andrew McR. Barnes* and *Edward R. Venit*, for the National Association of Securities Dealers, Inc.**

I.

Paul F. Kendrick, who was president of Paul Kendrick & Co., Inc. ("the firm"), formerly a member of the National Association of Securities Dealers, Inc. ("NASD"),[1] appeals from two NASD disciplinary actions which, at Kendrick's request, we have consolidated for review.[2] The NASD found Kendrick responsible for net capital deficiencies, attempts to conceal those deficiencies, violations of reporting, recordkeeping, customer protection and credit extension provisions, and for the sale of stock in a public offering at a price below the offering price. It censured Kendrick, fined him $5,000, and barred him from association with any NASD member in any capacity.

II.

In the first NASD proceeding, Kendrick was found responsible for the following violations:

(1) The firm operated with net capital deficiencies ranging from $133,000 to $349,000 as of month-end dates from March through July of 1976.

(2) In an effort to conceal those deficiencies, the firm engaged in a series of month-end transactions in which securities belonging to the firm were "parked" in certain customer accounts, thereby substantially reducing the firm's inventory and making it appear that the firm was in compliance with net capital requirements.

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[1]The firm did not appeal its explusion from NASD membership. Pursuant to its consent, its broker-dealer registration was revoked in proceedings brought by this Commission. Securities Exchange Act Release No. 16101 (August 13, 1979), 18 SEC Docket 87.

[2]The second appeal covers two NASD complaints which the Association consolidated for hearing and decision.

(3) The firm submitted a false and misleading annual report to this Commission as of March 31, 1976, and, during the period March to July 1976, submitted FOCUS reports to the Association which showed compliance with net capital requirements when the contrary was true.

(4) During the period March to July 1976, the firm failed in several respects to comply with the customer protection provisions of Rule 15c3-3 under the Securities Exchange Act, including a failure to make required deposits in the firm's "Special Reserve Account for the Exclusive Benefit of Customers."

(5) The firm failed to maintain a trial balance and computations of aggregate indebtedness and net capital for the month ending April 30, 1976.[3]

(6) During the period March to July 1976, the firm violated credit extension provisions. It executed two purchases of securities in a customer's special cash accounts which were sold prior to payment, and thereafter executed six purchases in those accounts when there were insufficient funds therein to pay for those purchases.[4]

In the second proceeding, the NASD found Kendrick responsible for the following violations:

(1) The firm operated with net capital deficiencies on seven dates from June 30 through December 16, 1977.

(2) In order to conceal its June 30 net capital deficiency, the firm did not record on its books a purchase of 2000 shares of Occidental Petroleum stock, and submitted a FOCUS report to the Association as of that date which omitted that stock from the firm's inventory. The firm also submitted a false and misleading FOCUS report to the NASD as of November 30, 1977, which showed that the firm was in compliance with net capital requirements when such was not the case.

(3) The firm sold 800 shares of its 3,000-share participation in an underwriting of Dayton Power & Light Company at a price below the public offering price in the prospectus.

Kendrick makes no specific objection to the NASD's findings. On the basis of an independent review of the record, we affirm the NASD's findings of violation as set forth above.[5]

III.

Kendrick argues that the NASD should not be permitted to impose a bar in this case because of the inherent conflict of interest that exists when NASD members are called upon to pass judgment on their competitors. He asserts that Congress recognized this danger in Section 19(e) (2) of the Exchange Act when it empowered this Commission to reduce NASD sanctions if they impose an undue burden on competition. And he suggests that, pursuant to Section 19(g) (2) of the Act,[6] we should relieve the NASD of responsibility in this matter in the light of the Association's asserted bias and our then pending action against him.[7]

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[3]Rule 17a-4(b) (5) under the Exchange Act.

[4]Section 4(c) (8) of Regulation T.

[5]In the first proceeding, the Association also found Kendrick responsible for the firm's violation of the NASD's free-riding interpretation in connection with its distribution of two "hot issues," and for its submission of false questionnaires to the Association in connection with those offerings. We are unable to conclude that the record supports those findings, and we accordingly set them aside.

[6]Section 19(g) (2) of the Act provides:

> "The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this title, may relieve any self-regulatory organization of any responsibility under this title to enforce compliance with any specified provision of this title or the rules or regulations thereunder by any member of such organization or person associated with such a member . . . ."

[7]That action was subsequently settled. Pursuant to his offer of settlement, Kendrick was barred from association with any broker-dealer, investment adviser, and/or investment company

These arguments are wholly lacking in substance. In recently re-examining the regulatory scheme it has established for the securities industry, Congress recognized the NASD's importance in that system's continued successful operation.[8] We have consistently rejected the notion that NASD members are unable to pass fair judgment on others in the industry.[9] And there is no justification for our supplanting the NASD in its disciplinary role. As we have previously pointed out:

> "Self-regulation to the extent practicable in the securities business is to be encouraged, and the roles of the NASD and this Commission are in a sense complementary. The Exchange Act . . . provides several parallel and compatible procedures for the achievement of its objectives, and the use of more than one avenue is not precluded and is appropriate in many instances."[10] (Footnotes omitted).

Applicant further asserts that, in addition to the inherent conflict of interest in NASD disciplinary proceedings, there was a specific conflict here which violated the NASD's Code of Procedure.[11] Mr. Thomas Witter, executive vice president of Dean Witter & Co., was a member of the District hearing panel in the first NASD proceeding against Kendrick. During the relevant period, Dean Witter had a clearing agreement with the firm pursuant to which more than three-fourths of the firm's acocunts were carried and settled by Dean Witter on a fully disclosed basis. Applicant claims that, given this pre-existing relationship with the firm's clients, Dean Witter was "the obvious candidate" to pick up the firm's business in its absence, and that Mr. Witter should therefore have disqualified himself.[12]

This contention is without merit. It is by no means clear that the relationship between Dean Witter and the firm was such as to disqualify Mr. Witter from sitting on the hearing panel. In any event, Kendrick was aware of Witter's presence on the panel but made no objection. Thus he must be deemed to have waived any objection he may have had.[13] Moreover, the decision of the NASD's District Committee has been accorded *de novo* review, both by the NASD's Board of Governors, which increased the sanctions imposed by the allegedly tainted panel, and by this Commission.[14]

IV.

Kendrick argues that the total bar imposed on him by the NASD is too severe. He asserts, among

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Footnote 7, continued:

with the proviso that, after 5 years, he could become so associated in a non-proprietary, non-supervisory capacity, upon a showing of proper supervision. Securities Exchange Act Release No. 16101 (August 13, 1979), 18 SEC Docket 87.

[8]See *Todd & Company, Inc.*, Freedom of Information Act Release No. 41 (January 20, 1976), 8 SEC Docket 1085, 1088.

[9]See, e.g., *Management Financial, Inc.*, Securities Exchange Act Release No. 12098 (February 11, 1976), 8 SEC Docket 1248, 1252 n. 17; *Ernest F. Boruski, Jr.*, 40 S.E.C. 258, 263 (1960).

[10]*Lile & Co., Inc.*, 42 S.E.C. 664, 670 (1965).

[11]Section 23 of the NASD's Code of Procedure for Handling Trade Practice Complaints (NASD Manual § 3022, p. 3030) provides:

> "No member . . . of any District Business Conduct Committee . . . shall in any manner, directly or indirectly participate in the determination of any complaint affecting his interest or the interests of any person in whom he is directly or indirectly interested. In any case where such an interest is involved, the particular member shall disqualify himself, or shall be disqualified by the Chairman of any such . . . Committee."

[12]Kendrick also suggests that there was "the appearance of a potential conflict" because the chairman of the hearing panel was an executive of Reynolds & Co. Reynolds was then conducting merger negotiations with Dean Witter which came to fruition some nine months later. We agree with the NASD that this contention is wholly lacking in substance.

[13]See *Marcus* v. *Director*, 548 F.2d 1044, 1050-1051 (C.A.D.C., 1976).

[14]See *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855; *Sumner B. Cotzin*, Securities Exchange Act Release No. 10850 (June 12, 1974), 4 SEC Docket 420, 422.

other things, that he had an unblemished record of more than 20 years in the securities business prior to these proceedings; that his violations were supervisory in nature, and arose only when he was trying to operate his own firm; and that neither any of his customers nor the public suffered any harm.

We cannot accept these contentions. While the extensive violations in which Kendrick engaged are themselves matters of serious concern, the heart of this case is the pattern of deliberate deception which Kendrick practiced on regulatory authorities. Kendrick engaged in repeated efforts to conceal his firm's net capital deficiencies. He parked securities in customer accounts, failed to record a securities purchase in his firm's books, and filed a series of false reports with the NASD. In addition to these deceptions, he admittedly forged affidavits from customers in whose accounts securities had been parked, and introduced those affidavits into evidence before the District Committee hearing the NASD's first complaint.[15]

In a business which depends as heavily on candor and fidelity to one's word as the securities business, such conduct cannot possibly be countenanced. Kendrick has shown himself unfit to participate in any aspect of that business.[16] Under the circumstances, we see no basis for concluding that the sanctions which the NASD imposed are excessive or oppressive.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS, POLLACK and KARMEL); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

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[15]The affidavits stated that all transactions in the customers' accounts had been authorized.

[16]See *Roald George Gregerson*, Securities Exchange Act Release No. 12523 (June 8, 1976), 9 SEC Docket 828, 831.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16475/January 8, 1980

Administrative Proceeding File Nos. 3-5475 and 3-5573

In the Matter of the Applications of

PAUL F. KENDRICK
One Post Street
San Francisco, California

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Paul F. Kendrick, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16476/January 8, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-79-23

The Midwest Stock Exchange, Incorporated ("MSE") submitted, on December 18, 1979, a proposed rule change under Rule 19b-4 to provide an interpretation of Article VIII, Rule 7 of the MSE Rules, that the trading of Intermarket Trading System ("ITS") issues, for which no MSE specialist has been apppointed, through superior prices available in other ITS marketplaces is a violation of just and equitable principles of trade.

The foregoing rule change has become effective, pursuant to Section 19(b) (3) (A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 14, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D. C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16477/January 10, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGES BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-79-11

The American Stock Exchange, Inc. ("Amex") submitted on December 31, 1979, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of January 14, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the

[1]Notice of filing of the proposed rule changes was given by publication of a Commission release (Securities Exchange Act Release No. 16145, August 29, 1979) and by publication in the Federal Register (44 FR 52763, September 10, 1979).

Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-AMEX-79-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16478/January 10, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6175/January 10, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16479/January 10, 1980

ACCOUNTING SERIES
Release No. 275/January 10, 1980

Administrative Proceeding File No. 3-5833

In the Matter of

DARREL L. NIELSEN
1123 Chevy Chase Circle
Salt Lake City, Utah 84117

NOTICE OF PERMANENT DISQUALIFICATION FROM APPEARANCE OR PRACTICE BEFORE THE COMMISSION

On September 5, 1979, the Commission[1] entered an order, pursuant to Rule 2(e)(3)(i) of its Rules of Practice, temporarily suspending Darrel L. Nielsen, an accountant, from appearing or practicing before the Commission. The order was based on a permanent injunction entered against Mr. Nielsen in *Securities and Exchange Commission* v. *Richard L. Chatham, et al.*, (C 78-0104, D. Utah).

On June 7, 1979, the United States District Court for the District of Utah, following a trial on the merits, found that Mr. Nielsen had aided and abetted violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act of 1934. Specifically, the court found that Mr. Nielsen had knowingly furthered, aided and abetted a conspiracy to defraud public investors by certifying financial statements that he knew were fraudulent. The court permanently enjoined Mr. Nielsen from the violations of the antifraud provisions of the federal securities laws.[2] Mr. Nielsen took no appeal from the court's order.

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[1]Commissioner Roberta S. Karmel, dissenting.

[2]The court's findings of fact and conclusions of law as to Mr. Nielsen are published; *see* [Current] CCH Fed. Sec. L. Rep. §96,911.

Rule 2(e)(3)(ii) of the Commission's Rules of Practice provides that any person temporarily suspended in accordance with paragraph (e)(3)(i) of that rule may, within 30 days after service upon him of the order of temporary suspension, petition the Commission to lift such suspension, but that if no petition has been received by the Commission within 30 days after such service, the suspension shall become permanent. Mr. Nielsen was duly notified of this provision. The 30-day period has expired and no petition to lift the suspension has been received by the Commission.

Accordingly, notice is hereby given that the temporary suspension of Darrel L. Nielsen has become permanent and that Mr. Nielsen is, therefore, disqualified from appearing or practicing before the Commission.

* * * * * * *

Commissioner Karmel, dissenting:

The Commission's authority to discipline accountants does not rest on any grant by Congress of express authority in the federal securities laws. Rather, whatever authority the Commission may have derives solely by implication from its general rulemaking powers. For example, under Sections 19(a) of the Securities Act of 1933 ("Securities Act") and 23(a) of the Securities Exchange Act of 1934 ("Exchange Act"), the Commission may make such rules as may be necessary or appropriate to implement other express provisions of the securities acts, or as may be necessary for the execution of the functions vested in it.[3]

The only express provisions of the securities laws concerning accountants are such provisions as Section 19(a) of the Securities Act which empower the Commission to define "accounting, technical, and trade terms" used in the statute and to "prescribe the form . . . in which required information shall be set forth, the items . . . to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, ..." Similar authority is also set forth in Section 13(b)(1) of the Exchange Act and Section 20(a) of the Public Utility Holding Company Act of 1935.

In addition, Congress expressly granted the Commission authority to require that financial statements filed with it,[4] including those filed in connection with the registration of a security on any national securities exchange,[5] be certified by an independent public or certified accountant. The Commission has adopted Regulation S-X, and similar regulations under the Public Utility Holding Company Act[6] to implement these express

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[3]*See* Section 19 of the Securities Act of 1933, 15 U.S.C. §77s; Section 23(a)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78w.

See also Touche Ross & Co. v. SEC, [Current] CCH Fed. Sec. L. Rep. §96,854 (2d Cir. May 10, 1979).

[4]*See* Items 25, 26 and 27 to Schedule A of the Securities Act of 1933, Section 13(a) of the Securities Exchange Act of 1934, Section 14 of the Public Utility Holding Company Act of 1935, and Section 30(e) of the Investment Company Act of 1940.

[5]*See* Sections 12(b)(1)(J) and (K) of the Securities Exchange Act of 1934.

[6]*See generally* Rule 2-01 (Qualifications of Accountants) which prescribes independence and good standing standards, Rule 2-02 (Accountant's Reports), which prescribes representations and opinions required in the accountant's report on financial statements, and Rules 3.01 through 12.43 which prescribe the form, content and method of presentation of financial statements.

See generally Uniform System of Accounts for Public Utility Holding Companies, 17 CRF 257.01 *et seq.* and Uniform System of Accounts for Multiple Service Companies and Subsidiary Service Companies, 17 CRF 256.00-1 *et seq.*

Further support for some Commission authority over accountants and their work product may be derived from the legislative history of the Securities Act. Certain Congressmen had proposed that a corps of government auditors be established to audit public companies, but this proposal was not adopted when representatives of the accounting profession and others persuaded the Congress to rely instead on the private sector for this responsibility. *See* Hearings on S.875, Senate Committee on Banking and Currency, 73d Cong., 1st Sess. 55-63 (1933).

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provisions to define accounting terms, prescribe the form, content and method of preparing financial statements and to require certification by an independent public accountant.

This statutory authority to regulate financial statement presentation and independence requirements of accountants is, in my view, barely sufficient to sustain the Commission's use of Section 23(a) under the Exchange Act of 1934 to promulgate a disciplinary rule to sanction administratively accountants who practice before the Commission.[7] Further, while it can be argued that the need to discipline accountants who fail to meet the Commission's standards is a necessary and appropriate corollary to a significant express power to set those standards,[8] whether the Supreme Court will ultimately accept this rationalization for Rule 2(e) remains to be seen.[9] The fact is that the securities laws contain no provision giving the Commission specific authority to institute administrative proceedings against accountants.[10]

In any event, the Commission's ability to exercise general disciplinary authority over accountants is not free from doubt. Further, the Rule 2(e) of the Commission's Rules of Practice as an enforcement tool against both attorneys and accountants, and the breadth and scope of the rule, give rise to questions concerning its legitimacy.

Previously, I have expressed my concerns about the Commission's unrestrained use of Rule 2(e) to sanction attorneys.[11] Although I believe that the Commission has greater and better claim to the use of an administrative procedure to discipline accountants, I have similar fears about the exercise of the rule by an agency with significant prosecutorial functions which does not concede or specify as a matter of law or policy the limits of its disciplinary powers.[12]

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[7]By contrast, the Commission has been given no substantive authority to regulate attorneys in the practice of their profession. Section 23(a) and similar Sections giving the Commission the power to implement by rule provisions of the securities laws cannot properly be used to enlarge an agency's jurisdiction.

[8]*See* Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 655 (1978); Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369-72 (1973).

[9]In Touche Ross & Co. v. SEC, note 1 *supra*, the Second Circuit upheld Rule 2(e), as to accountants, as "a necessary adjunct to the Commission's power to protect the integrity of its administrative procedures and public in general." [Current] CCH Fed. Sec. L. Rep. §96,854, p. 95483 (2d. Cir., May 10, 1979).

[10]Whatever regulatory authority the Commission may have over financial statement presentation and certification requirements by accountants and their work product filed with the Commission must be distinguished from the lack of any express procedural jurisdiction to discipline an accountant administratively. I acknowledge that Rule 2(e) has been generally and historically recognized and acquiesced in by the profession as an administrative remedy to discipline accountants, and that such acceptance of the Rule is some support for its continued use by the Commission. *Cf.* Cannon v. University of Chicago 47 U.S.L.W. 4549, 4552, note 13 (May 14, 1979) (regarding the history behind an implied private right of action under Rule 10b-5). *But see*, SEC v. Sloan, 436 U.S. 103, 117-19 (1978). In addition, in the last two years the Congress has stressed the Commission's oversight responsibilities in the regulation of the accounting profession. *See*, "SEC Report to Congress on the Accounting Profession and the Commission's Oversight Role," prepared for the Senate Subcommittee on Governmental Efficiency and the District of Columbia, 95th Cong., 2d Sess. (July 1978); "SEC Report to Congress on the Accounting Profession and the Commission's Oversight Role," prepared for the Senate Subcommittee on Governmental Efficiency and the District of Columbia, 96th Cong., 1st Sess. (July 1979).

However, in another context, I have previously expressed doubt about the extent of the Commission's procedural powers under Section 15(c)(4) of the Exchange Act. *See* In the Matter of Spartek, Inc. and John A. Cable, Securities Exchange Act Rel. No. 15567 (Feb. 14, 1979).

[11]*See*, In the Matter of Keating, Muething & Klekamp (Dissent), Securities and Exchange Release No. 15982 (July 2, 1979).

[12]An inherent weakness of any implied power, and especially a power to discipline, is the lack of any defined standards. When the government acts without reference to a regulatory standard which circumscribes such action, there is always the danger that such action will be arbitrary and capricious.

If the Commission continues to institute administrative proceedings against professionals, despite the lack of any express statutory authority to do so, and despite the restrictions of the Administrative Practice Act of 1965,[13] it is time to formulate and justify some parameters to Rule 2(e). It is also time to enunciate reasonable standards in applying it.

Rule 2(e) of the Commission's Rules of Practice refers to matters such as requisite qualifications to represent others, a professional's character or integrity, unethical or improper professional conduct, and wilfull violations of the federal securities laws. The Commission's application of these general standards of ethics and character is not related to the express authority granted to the Commission in the federal securities laws to define accounting terms and prescribe the form, content and methods to be followed in the preparation of financial statements. Even though the ethics and character of an accountant may have a bearing on the accountant's independence, any application of the limited authority of the Commission to discipline accountants should not rest entirely on general standards of integrity, ethics, qualifications to represent others, or whether the federal securities laws are violated.

In my opinion, some direct connection between the accountant's improper conduct and the Commission's express regulatory authority must be demonstrated before an implied statutory sanction like Rule 2(e) can be invoked with respect to an accountant. In a case involving an offering by the use of false financial information, I do not believe accountants should be subject to discipline by the Commission in an administrative proceeding under Rule 2(e) except for knowing conduct which results in the certification of a false financial statement in a document filed with the Commission. Such a nexus to the Commission's processes is not present in this case.[14]

This summary suspension is based upon a civil action brought by this Commission in which respondent, an accountant licensed to practice in Utah, was enjoined for aiding and abetting violations of the antifraud provisions of the federal securities laws by certifying financial statements which were fraudulent and which were used in a public intrastate offering in Utah.[15] No document prepared by the respondent in this matter was filed, or was required to be filed, with this agency. I do not believe the Commission has the statutory authority to discipline administratively an accountant solely because he has been enjoined from violating the securities laws.

This respondent has not practiced before this agency nor did his enjoined misconduct touch upon the processes of this agency. Absent a showing of any nexus between improper professional conduct and the Commission's responsibilities to regulate questions of independence and the form, content and methods to be followed in preparing financial statements in registered offerings, I believe Rule 2(e) is being used improperly as a general enforcement remedy.

In view of the foregoing, it is my opinion that Rule 2(e) as presently drafted, and as applied in this case, is invalid. Although, as I have indicated, I believe there may be some basis for the institution of disciplinary proceedings against accountants, the Commission's jurisdiction is at best tenuous and should be exercised only where improper conduct directly interferes with the administration of specifically granted express authority.

My opinion that Rule 2(e) is a questionable procedure for disciplining accountants is related to my opinion that the Commission has virtually no authority to discipline attorneys. Disciplinary action against accountants and attorneys must rest on very different legal analyses and involves very different policy questions. The Commission has confounded the very real issues involved in disciplining these two disparate professions by

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[13]5 U.S.C. §500(b).

[14]Assuming I could surmount the legal hurdle arising from the lack of specific statutory authority to administratively proceed against accountants, and if the financial statements in question in this case were included in a registration statement filed with the Commission, I could find an appropriate jurisdictional nexus for a disciplinary proceeding. I note that other conduct upon which a disciplinary proceeding against an accountant might be predicated, for example, a false representation concerning an accountant's independence, is not at issue here.

[15]Securities and Exchange Commission v. Chatham *et al.* (C.D. Utah, C-78-0104).

adhering to a single overly broad rule for enforcing professional responsibility. I believe the Commission's continued refusal to recognize or acknowledge the problems involved in administering its professional responsibility program is a disservice to both professions and to the public the Commission is attempting to protect.

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George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16480/January 10, 1980

In the Matter of

YASIN JAFFER

The Securities and Exchange Commission has ordered public administrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against Yasin Jaffer ("Jaffer"), a registered broker-dealer located in Chicago, Illinois.

The proceedings are based on allegations by the staff that Jaffer wilfully violated the antifraud provisions of the Securities Act of 1933 and the Exchange Act during the period from in or about January 1978 to the present, in that he made misrepresentations and omitted to state material facts to customers, converted customer funds, and forged customer checks. In addition, the Order alleges that Jaffer wilfully violated the record-keeping and reporting requirements of the Exchange Act, and that Jaffer failed to send confirmations of securities transactions to customers.

A hearing will be scheduled to take evidence on the staff's allegations and to afford Jaffer an opportunity to offer any defenses, and for the purpose of determining whether the allegations are true and, if so, whether any remedial action should be ordered by the Commission.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21382/January 4, 1980

In the Matter of

SENECA RESOURCES CORPORATION
Buffalo, New York

(70-6372)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTE TO BANK BY SUBSIDIARY COMPANY; RESERVATION OF JURISDICTION OVER ISSUANCE OF ADDITIONAL NOTES

Seneca Resources Corporation ("Seneca"), a wholly-owned subsidiary of National Fuel Gas ("National"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 (a)(2) promulgated thereunder regarding the proposed transactions.

Seneca is engaged in the exploration and development of oil and natural gas reserves in the Gulf Coast, Southwest and Rocky Mountain areas and in the processing of liquified petroleum products. Seneca's exploration and development program is characterized by agreements between Seneca and a number of different participants who initiate and develop oil and gas prospects on lease-holds which have been secured by Seneca

or others. In most cases the leases were acquired by others not subject to the Act. In those instances where leases or working interests were acquired by Seneca, the acquisition was made pursuant to the exemption provided by Rule 49(d). Typical agreements include a commitment from Seneca to pay a percentage of the expenses involved in drilling and operating wells in return for a percentage working interests in the production from those wells. Most of the current drilling activity is focused in areas of Louisiana and East Texas where exploration and drilling for oil and gas is being actively pursued by a number of different individuals. During fiscal 1979 Seneca participated in the drilling of 80 wells. On the average, Seneca's participation in each well amounted to a 24% working interest. On any individual well Seneca's working interest ranged from 1.5% to 50%. In most cases Seneca is billed for its proportionate share of expenses on a monthly basis after the well operator has incurred expenses in drilling and operating the well. Due to the lag time between the incurring of the expenses by the well operators and the billing of participants, Seneca's payment for its committed share of expenses usually occurs after substantial progress has been made in the development of individual prospects.

By order dated February 1, 1979 (HCAR No. 20911), the Commission authorized Seneca to issue a note to Houston National Bank ("Bank") pursuant to a Loan Agreement with the Bank which provides a line of credit of up to $20,000,000 through January 31, 1980. Seneca presently has $20,000,000 of short-term borrowings outstanding under this line of credit and is contemplating refunding these loans with long-term borrowings. Such long-term borrowings will be the subject of a future filing which will be independently considered.

Seneca is now seeking authorization to issue and sell a note pursuant to a separate Loan Agreement ("Loan Agreement") with the Bank. The Loan Agreement will provide an additional line of credit through December 31, 1980 not to exceed $10,000,000 or an amount ("Borrowing Base") established by the Bank from time to time based upon the Bank's evaluations of the value of Seneca's producing oil and gas reserves ("Producing Reserves") in Texas, Oklahoma and Louisiana. The Borrowing Base may be increased or decreased from time to time based on the Bank's evaluation but such redetermined Borrowing Base will not exceed $10,000,000. Seneca will also have the right to reduce any redetermined Borrowing Base by notifying the Bank within a specified period after it has been notified of a redetermination. Borrowings pursuant to the Loan Agreement will be evidenced by a note to be dated as of the date of issue and to mature not more than one year from the date of issue. The note will be prepayable at any time, in whole or in part, without penalty or premium. The note will bear interest at a variable rate not to exceed the Bank's prime rate from time to time and will be secured by a first mortgage on the Producing Reserves.

Seneca has agreed to maintain a balance ("Average Daily Available Balance") after subtracting the amount of uncollected funds and an amount required to support bank services and reserve requirements which totals 10% of the Bank's total commitment plus 10% of the amount of any loans outstanding. If the Average Daily Available Balances for a specified period is less than such required amounts, Seneca has agreed to pay a fee equal to the Bank's prime rate times the amount by which the Average Daily Available Balances for such period is less than 10% of the Bank's average total commitment for such period plus 10% of the average amount of any loans outstanding for that period. Assuming Seneca borrows the full amount of the commitment and the required balances are not maintained, the effective interest cost would be 18.60% based upon the current 15.5% prime commercial rate.

Seneca expects to initially borrow up to $6,000,000 under the Loan Agreement. Of the proceeds from the loan, $5,000,000 would be used to repay interest-free emergency loans aggregating up to $7,000,000 advanced to Seneca by National Fuel Gas Supply Corporation ("Supply") and National Fuel Gas Distribution Corporation ("Distribution"), wholly-owned subsidiaries of National. These loans were made by Supply and Distribution to provide Seneca with working capital to finance its gas exploration and development program. The balance of the initial borrowing will be used to pay Seneca's portion of expenses for past drilling. Seneca plans to draw down the remaining amount available under the proposed Loan Agreement as funds are needed during 1980 to pay its portion of expenses involved in drilling, completing and operating wells in which Seneca has obtained a working interest. Repayment of borrowings under the Loan Agreement is expected to be made through internally generated funds and by possible external financing arrangements.

Under the terms of the Loan Agreement, Seneca will pay the reasonable fees and expenses of counsel for the Bank in connection with the preparation of the Loan Agreement and all transactions pursuant thereto. The fees and expenses to be incurred in connection with the proposed transactions are estimated at $10,600, including legal feees of $7,600. It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21313), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the proposed initial borrowing of $6,000,000 under the Loan Agreement and that no adverse findings with respect thereto are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective with respect to the proposed initial borrowing of $6,000,000 under the Loan Agreement:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith with respect to the proposed initial borrowing of $6,000,000 under the Loan Agreement, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to additional borrowings of up to $4,000,000 under the Loan Agreement pending a showing of need for such borrowings.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21383/January 4, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

SENECA RESOURCES CORPORATION
10 Layfayette Square
Buffalo, New York 14203

(70-6241)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANK BY SUBSIDIARY COMPANY AND GUARANTY THEREOF BY HOLDING COMPANY

NOTICE IS HEREBY GIVEN that National Fuel Gas Company ("National"), a registered holding company, and one of its wholly-owned subsidiary companies, Seneca Resources Corporation ("Seneca") have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated February 2, 1979 (HCAR No. 20911), Seneca was authorized to issue and sell not to exceed $20,000,000 of short-term notes outstanding at any one time to Houston National Bank, such notes to be unconditionally guaranteed by National. In accordance therewith, Seneca currently has $20,000,000 of short-term borrowings outstanding pursuant to a note issued under a loan agreement, which note becomes due on January 31, 1980. Payment of principal and interest on the note is unconditionally guaranteed by National.

Seneca and National now request that the authorization for the issuance and sale of such

$20,000,000 of notes, and the guarantee by National, be extended for a period of nine months so that Seneca may borrow or reborrow up to $20,000,000 from the bank on the same terms and conditions. Any new note issued, or any outstanding note of which the maturity date is extended, shall mature not later than October 31, 1980. Payment of principal and interest on such note will be unconditionally guaranteed by National.

The note or notes will continue to bear interest not in excess of the prime rate of interest at Houston National Bank as it fluctuates from time to time. In addition, Seneca has agreed with the bank to maintain deposits at the bank ("Average Daily Available Balance") equal to 10% of the amount of funds available under the loan agreement plus 10% of the amount drawn down by Seneca under the loan agreement. In the event that the Average Daily Available Balance is less than the required amount during a three-month period, Seneca has agreed to pay the bank a fee equal to the greater of (a) the average prime rate of the bank for the period or (b) the average rate paid by the bank for 90-day certificates of deposit (with certain adjustments) multiplied by the amount of the deficiency in the Average Daily Available Balance. Assuming Seneca borrows the full amount available under the loan agreement and determines not to maintain the required Average Daily Available Balance, based on a 15.25% prime rate and a 13.50% rate for 90-day certificates of deposit, Seneca would be obligated to pay the Bank $610,000 annually pursuant to this provision, and its effective cost of money would be 18.30% per annum.

Seneca is currently planning to refund the $20,000,000 short-term note or notes by issuing a long-term note or notes which will be secured by approximately 65,000 acres of hardwood timber owned by Seneca and located in Pennsylvania. Seneca expects that such note or notes will be placed with an insurance company which has had experience with similar loans secured by timber.

It is stated that no special and separable fees and expenses are to be incurred and that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, a certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21384/January 8, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

(70-5831)

ORDER AUTHORIZING EXTENSION OF INTRASYSTEM LOANS

National Fuel Gas Company ("National"), a registered holding company, and National Fuel Gas Supply Corporation ("Supply"), a wholly-owned subsidiary of National, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder regarding the proposed transactions.

By order dated May 10, 1976 in this matter (HCAR No. 19521) the Commission, among other actions, authorized National to loan to Supply a portion of the proceeds of National's unsecured short-term borrowings from The Chase Manhattan Bank, N.A. ("Chase") and a portion of the proceeds of National's sale of preferred stock.

Pursuant to such authorization National issued and sold a twelve-month note in the amount of $4,900,000 to Chase on December 31, 1976 and loaned the proceeds to Supply in exchange for Supply's note maturing December 31, 1977. Supply used the $4,900,000 for construction of existing wells. Although National prepaid its note to Chase, Supply's corresponding note to National was not prepaid. National also issued and sold $30,000,000 of its preferred stock pursuant to the May 10, 1976 order of the Commission, and loaned $5,000,000 of the proceeds to Supply in exchange for Supply's note maturing December 31, 1977.

When National and its subsidiaries filed the above application-declaration, it was anticipated that all necessary approvals, including that of the Federal Energy Regulatory Commission ("FERC" would be received by December 31, 1977, so that, among other things, (a) Supply Corporation would be permitted to transfer, and National Gas Storage Corporation ("Storage") would be permitted to acquire from Supply, facilities, materials and preliminary development at certain operating and undeveloped storage areas ("Storage Project") and (b) Storage would be permitted to issue certain of its securities to Supply and to National. Due to delays in the proceedings before the FERC, the Commission authorized the extension of the maturity of Supply's $4,900,000 note to National by order dated September 20, 1977 (HCAR 20181). The maturity date was extended from December 31, 1977 to December 31, 1978. The Commission also authorized the extension of the maturity of Supply's $5,000,000 note to National from December 31, 1977 to December 31, 1978. The Commission also authorized the extension of the maturity of Supply's $5,000,000 note to National from December 31, 1977 to December 31, 1978, by its order dated December 14, 1977 (HCAR 20317). Further delays in the FERC proceedings necessitated a further extension of the maturity date of such notes to December 31, 1979, which the Commission authorized in its order dated December 27, 1978 (HCAR 20848). After prolonged proceedings, FERC issued an order in June, 1979, which directed that the development of the storage project should proceed in phases. The order also authorized "Phase I" of the storage project, and Supply has undertaken certain construction activities in accordance with such FERC order. However, due to the delay in the FERC proceedings, it is not anticipated that Storage will begin operations and start rendering storage service to non-affiliated customers until April, 1980.

Accordingly, National and Supply propose that the authorization given National to loan and of Supply to borrow, be extended, so that National may: (1) loan or reloan $4,900,000 to Supply in exchange for a promissory note maturing at the earlier of December 31, 1980 or the date of completion of the capitalization of Storage on the same terms as authorized by the Commission's previous orders in this matter, and (2) loan or reloan $5,000,000 to Supply Corporation in exchange for a promissory note maturing at the earlier of December 31, 1980 or the date of completion of the capitalization of Storage on the same terms as authorized by the Commission's previous orders in this matter.

It is stated that no special or separable fees, commissions or expenses will be incurred in connection with the proposed transactions. It is further stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21341), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21385/January 8, 1980

In the Matter of

GULF POWER COMPANY
75 North Pace Boulevard
P.O. Box 1151
Pensacola, Florida 32520

(70-6390)

NOTICE OF PROPOSED ACQUISITION OF RAILROAD CARS FOR TRANSPORTING COAL

NOTICE IS HEREBY GIVEN that Gulf Power Company ("Gulf"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement and the proposed transaction.

Gulf proposes to acquire railroad coal cars for use in transporting coal to Unit No. 2 ("Unit No. 2") of a steam electric generating plan located along the bank of the Pascagoula River in Jackson County, Mississippi ("Plant Daniel"). Unit No. 1 of Plant Daniel, which currently is owned by Mississippi Power Company ("Mississippi"), began its commercial operation in September 1977. Gulf is now bearing all costs of construction of Unit No. 2, which is expected to commence commercial operation in June 1981. At such time, the entire plant, consisting of both units and all other facilities and equipment, will be owned as tenants in common by Gulf and Mississippi with each company owning an undivided 50% interest therein (See HCAR No. 19696, September 28, 1976).

Mississippi, as agent for Gulf, has contracted to purchase low sulphur coal to be mined in Utah and Colorado. Beginning in the year 1980, the contract calls for the delivery of 800,000 tons annually for use as fuel for Unit No. 2. In the opinion of Gulf's management, the most

economical method for obtaining reliable delivery service of the coal is by use of several unit trains utilizing cars specifically constructed so that each will automatically discharge onto the coal pile at Plant Daniel. Cars for such specialized unit trains are not furnished by the railroads, but rather are supplied by the shipper with the railroads providing the locomotives and cabooses. A total of approximately 230 cars will be required for the handling of this coal movement for use in the operation of Unit No. 2.

Gulf's management believes that the most economical method of providing the required cars will be by purchase thereof. The price for the purchase of the cars is $33,720 per car, making an aggregate acquisition cost of $7,755,600, plus escalation costs, F.O.B. Covington, Kentucky. It is expected that delivery of the cars will begin February 22, 1980. Payment will be made by Gulf within 15 days after receiving each invoice. There will be eight invoices covering 25 cars each and one invoice covering 30 cars.

Gulf and Mississippi currently are negotiating an amendment to the plan of joint ownership of Plant Daniel which is expected to provide, among other things, that upon commencement of commercial operation of Unit No. 2 the railroad coal cars purchased by Gulf will be included as facilities to be jointly owned by Gulf and Mississippi.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Information as to fees and expenses to be incurred in connection with the proposed transaction is to be filed by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interst, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21386/January 10, 1980

In the Matter of

CENTRAL POWER & LIGHT COMPANY
Corpus Christi, Texas

(70-6375)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Central Power & Light Company ("CP&L), an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

CP&L proposes to issue and sell at competitive bidding $75,000,000 principal amount of its First

Mortgage Bonds, Series Q, Due January 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until January 1, 1985, and will be subject to a 1% sinking fund beginning in 1981. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated January 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred for company obligations, including projects under construction. Approximately $80,000,000 of short-term borrowings are expected to be outstanding as of January 29, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by CP&L for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, CP&L assumes that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceeding in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of the company if it were not part of the Central and South West System.

CP&L's estimated construction and fuel exploration and development expenditures for the years through 1981 are estimated at $234,900,000, $219,600,000, and $209,300,000, respectively. Approximately $163,000,000 of the 1979 estimated total had been expended as of September 30, 1979.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21305), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDER, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21387/January 10, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
Westborough, Massachusetts

(70-6384)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK PURSUANT TO AN EMPLOYEE SHARE OWNERSHIP PLAN

New England Electric System ("NEES"), a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of

1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

NEES and its subsidiaries propose to establish The New England Electric System Companies Incentive Thrift Plan ("Plan"). Pursuant to the Plan, NEES proposes to issue and sell from time to time through December 31, 1984, up to 1,000,000 shares of its authorized but unissued common shares, $1 par value. Under the Plan, employee contributions will be supplemented by employer contributions, part of which will be determined by corporate performance. The proceeds from the sale will be used for investment in NEES' subsidiaries or for payment of NEES' indebtedness.

Participating companies are NEES, Granite State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Power Company, and New England Power Service Company ("Employers"). Each employee of a participating company who is not included in a unit of employees covered by a collective bargaining agreement and who has completed one year of service is eligible to participate in the Plan.

Participants may contribute from 1% to 11% of their compensation to the Plan. Each participant's contribution up to 3% will be a Basic Contribution. Contributions in excess of 3% will be a Supplemental Contribution. Participants may change the percentage of their contribution on the first day of any month.

The Employers shall contribute monthly on behalf of each participant an amount equal to 50% of the participant's Basic Contribution. In addition, the Employers will make an annual contribution equal to a percentage of the participant's total Basic Contributions during the year. Such percentage shall be linked to the NEES companies return on average common equity for the year. For each 0.1% that the return on average common equity exceeds 12%, an additional 2% of the participant's Basic Contributions for the year will be contributed by the Employers, up to a maximum additional contribution of 50%. There will be no matching of participant's Supplemental Contributions by the Employers.

The monthly contribution made by participants and Employers shall be remitted to the trustee, the First National Bank of Boston, and credited to the individual accounts of participants. Each participant's contribution shall be invested by the trustee, as directed by the participant, in one or more of the following three funds: (a) the Fixed Income Fund, which will earn a guaranteed minimum rate of return; (b) the Equities Fund, consisting of stocks (or bonds or other securities convertible into stocks) and similar types of equity investments; and (c) the NEES Share Fund consisting of NEES common shares purchased in the open market or from NEES. Employer Contributions on behalf of participants shall be invested entirely in NEES common shares. Participants contributions are fully vested at all times. Employer contributions shall become vested at the earlier of (a) the end of the fifth year of Plan participation or (b) the participant's retirement at age 61 or later, total and permanent disability, death, termination by employer without cause and transfer to Yankee Atomic Electric Company.

Participants may, subject to certain restrictions, apply for distribution of the balance in their accounts. In the case of retirement, participants may elect one of several methods of distribution.

The administration expenses of the Fixed Income Fund will be paid by the excess return over the guaranteed return; administration expenses which are greater than the excess return (or if there is no excess return) will be paid by the Employers. The administration expenses of the Equities Fund will be paid by participants while such expenses of the NEES Share Fund will be paid by the Employers. Brokerage fees, commissions, taxes and expenses incident to the income or assets of the trust or the purchase or sale of securities will be paid by the participants.

At the discretion of the Retirement Trust Committee, the responsibility for the investment management of the Plan assets held in each fund may be divided among one or more investment managers or investment vehicles. The Incentive Thrift Plan Committee shall be the named fiduciary who shall have authority to control and manage the operation and administration of the Plan.

No amendment of the Plan may be made which will (1) deprive any participant or beneficiary of any part of an account existing on the date of such amendment; (2) result in the reversion to an

Employer of any part of the funds contrary to the provisions of the Plan; or (3) increase the duties or liabilities of the trustee without its written consent. Any employer, with the written consent or vote of the board of directors of each other employer, may terminate the Plan at anytime.

NEES requests an exemption from the competitive bidding requirements of Rule 50 for such issuance and sale pursuant to Rule 50(a)(5).

The record is incomplete with respect to fees and expenses to be incurred with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21342), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) certificates thereunder shall be filed quarterly, including a summary of the total shares issued and total net proceeds realized, and (2) the certificate reporting the results of the first quarter of the calendar year shall also include a summary of the total expenses incurred, directly or indirectly, by AEP for operating the Plan during the preceding calendar year.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to fees and expenses to be incurred in connection with the proposed transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11008/January 4, 1980

In the Matter of

SCUDDER TAX FREE MONEY FUND
175 Federal Street
Boston, Massachusetts 02110

(812-4564)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTIONS 2(a)(19) AND 10(b)(2) OF THE ACT

On December 11, 1979, a notice was issued (Investment Company Act Release No. 10977) of an application filed on November 7, 1979, by Scudder Tax Free Money Fund ("Applicant"), a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 (the "Act"), requesting an order of the Commission pursuant to Section 6(c) of the Act (1) declaring that Hester L. Sargent, a proposed Trustee of the Applicant, shall not be deemed an "interested person" of the Applicant, its investment adviser, Scudder Stevens & Clark, or its principal underwriter, Scudder Fund Distributors, Inc. ("Distributors"), by reason of her positions as director of the Boston Company, Inc. and of Boston Safe Deposit and Trust Company and (2) exempting Applicant from Section 10(b)(2) of the Act to permit its use of

Distributors as principal underwriter for its shares.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemptions from the provisions of Section 2(a)(19) and 10(b)(2) of the Act be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11009/January 7, 1980

In the Matter of

KEYSTONE CUSTODIAN FUNDS, INC.

KEYSTONE MASSACHUSETTS, INC.

CORNERSTONE FINANCIAL SERVICES, INC.

THE MASSACHUSETTS COMPANIES, INC.

MASSACHUSETTS FUND FOR TAX EXEMPT INCOME

MASSACHUSETTS FUND FOR INCOME

FREEDOM FUND, INC.

INDEPENDENCE FUND, INC.

and

KEYSTONE INTERNATIONAL FUND, INC.
99 High Street
Boston, Massachusetts 02110

(812-4516)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 22(d) OF THE ACT

Keystone Custodian Funds, Inc., as trustee of the Keystone Custodian Funds Series B-1, B-2, B-4, K-1, K-2, S-1, S-3, and S-4 (the "Series Funds"), Keystone International Fund, Inc. ("KIF"), The Massachusetts Companies, Inc., as trustee of Massachusetts Fund ("Mass Fund"), Massachusetts Fund for Tax Exempt Income ("MFTEI"), Massachusetts Fund for Income ("MFI"), Freedom Fund, Inc. ("Freedom"), and Independence Fund, Inc. ("Inde") (hereinafter the Series Funds, KIF, Mass Fund, MFTEI, MFI, Freedom, and Inde collectively referred to as the "Funds"), Keystone Massachusetts, Inc., and Cornerstone Financial Services, Inc., filed an application on August 13, 1979, and an amendment thereto on November 20, 1979, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from Section 22(d) of the

Act to permit shareholders of any of the Funds to invest the dividends paid on shares of one Fund in shares of any other Fund without payment of a sales charge.

On December 11, 1979, a notice was issued of the filing of said application (Investment Company Act Release No. 10978). The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, Pursuant to Section 6(c) of the Act, that the application for exemption from Section 22(d) of the Act, to the extent requested be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11010/January 7, 1980

In the Matter of

CORPORATE INCOME TRUST, SERIES 1 AND SUBSEQUENT SERIES
c/o Donaldson, Lufkin & Jenrette Securities Corporation
140 Broadway
New York, New York 10005

(811-2904)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Corporate Income Trust, Series 1 (a Unit Investment Trust) and Subsequent Series ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on November 29, 1979, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On December 11, 1979, a notice (Investment Company Act Release No. 10976) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of the Corporate Income Trust, Series 1 and Subsequent Series, shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11011/January 7, 1980

In the Matter of

CONTINENTAL INCOME FUND, INC.
731 S. Highway 101
Suite 2H
Solana Beach, CA 92075

(811-2128)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Continental Income Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation organized under the laws of the State of California. A notification of registration and registration statement pursuant to Section 8 of the Act were filed with the Commission on October 5 and November 24, 1970, respectively, under the name of California Intercontinental Fund, Inc.

Applicant states that business operations of Applicant were never commenced and that Applicant has no assets. Applicant further states that the State of California has suspended Applicant's legal existence.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall ceased to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 1, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11012/January 8, 1980

In the Matter of

DIFUND, INC.
P.O. Box 35
The Dresser Building
1505 Elm Street
Dallas, Texas 75221

(811-2023)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY.

NOTICE IS HEREBY GIVEN that Difund, Inc. ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 27, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that on February 10, 1970, it registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 ("Securities Act") with respect to 100,000 shares of its capital stock. Applicant further states that its Securities Act registration was declared effective by the Commission on September 29, 1970, and that it commenced a public offering of its shares on that date.

According to the application, on March 14, 1979, Applicant's board of directors approved an Agreement and Plan of Reorganization ("Agreement") between Applicant and Merrill Lynch Basic Value Fund, Inc. ("Basic Value Fund"), registered under the Act as an open-end, diversified, management investment company, which provided for: (i) the acquisition by Basic Value Fund of substantially all of the assets of Applicant in exchange for shares of common stock of Basic Value Fund; (ii) the *pro rata* distribution of such shares of Basic Value Fund stock to shareholders of Applicant; and (iii) the subsequent dissolution and deregistration of Applicant ("reorganization"). In connection with the Agreement, Applicant states that it and Basic Value Fund, among others, filed an application for an order: (i) pursuant to Section 6(c) of the Act, for an order exempting Basic Value Fund from the provisions of Section 15(f)(1) (A) of the Act; (ii) pursuant to Section 17(b) of the Act, exempting the proposed reorganization from the provisions of Section 17(a) of the Act; and (iii) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the consummation of the proposed reorganization, to the extent that Fund Asset Management, Inc. ("FAMI"), a subsidiary of Merrill Lynch Asset Management, Inc., and investment adviser to Basic Value Fund, might be deemed to be a participant in a joint enterprise with Applicant and Basic Value Fund through FAMI's receipt of increased advisory fees following Basic Value Fund's acquisition of Applicant's assets. The requested order was granted on July 23, 1979 (Investment Company Act Release No. 10791). The application states that the shareholders of Applicant approved the Agreement at the Annual Meeting of Applicant's shareholders held on August 14, 1979.

Applicant states that, pursuant to the Agreement, on August 22, 1979, Basic Value Fund acquired substantially all of the assets of Applicant in exchange for shares of Basic Value Fund. Applicant further states that such exchange was effected at the respective net asset values per share of the two companies and that such shares have been distributed to Applicant's shareholders. According to the application, immediately prior to the acquisition of its assets by Basic Value Fund, Applicant had outstanding 45,053.736 shares of its capital stock having a net asset value per share of $8.13. Applicant states that: (i) it is not now engaged, and does not propose to engage, in any business activity other than that necessary to wind up its affairs; (ii) on September 5, 1979, it filed a certificate of dissolution with the Secretary of State of Delaware; (iii) it has no asets; (iv) it is not a party to any litigation or administrative proceedings; (v) it has no debts or other liabilities which remain outstanding.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and that, upon the taking effect of

such order, the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 31, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11013/January 8, 1980

In the Matter of

JOHN HANCOCK CASH MANAGEMENT TRUST
John Hancock Place
P.O. Box 111
Boston, Massachusetts 02117

and

JOHN HANCOCK DISTRIBUTORS, INC.
John Hancock Place
P.O. Box 21
Boston, Massachusetts 02117

(812-4533)

ORDER OF THE COMMISSION AMENDING A PREVIOUS ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

John Hancock Cash Management Trust ("Fund"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, and John Hancock Distributors, Inc. ("Distributors"), the principal underwriter for the Fund (referred to collectively with Fund as "Applicants"), filed an application on November 16, 1979, and an amendment thereto on December 7, 1979, requesting an order of the Commission amending an earlier order of the Commission dated October 19, 1979 (Investment Company Act Release No. 10906). This earlier order, pursuant to Section 6(c) of the Act, exempted Applicants from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the Fund to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. The amended order, pursuant to Section 6(c) of the Act, would exempt Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Fund to utilize the amortized cost valuation method for purposes of pricing its shares for sale, redemption and repurchase.

On December 13, 1979, a notice (Investment Company Act Release No. 10983) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated October 19, 1979, contained in Investment Company Act Release No. 10906 to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicants have consented:

(1) That the Fund's Board of Trustees, in supervising the Fund's operation and delegating special responsibilities involving portfolio management to the Fund's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to the Fund's shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Fund's investment objective, to stabilize the Fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) That included within the procedures to be adopted by the Trustees shall be the following duties and responsibilities:

(a) Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Fund's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event that such deviation from the Fund's $1.00 amortized cost price per share exceeds one-half of one percent, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe that the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, the Trustees shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of the Fund; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.[2]

(3) That the Fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; *provided*, however, that the Fund will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain

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[1]The Fund states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Trustees in the exercise of their discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In determining what action might be appropriate under this condition, the Trustees further propose to consider the possibility of splitting, combining or otherwise recapitalizing oustanding shares of the Fund.

a dollar-weighted average portfolio maturity which exceeds 120 days.[3]

(4) That the Fund will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and the Fund will include in the minutes of Trustees' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) That the Fund will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Trustees.

(6) That the Fund will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, the Fund will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[3]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Fund will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT COMPANY ACT OF 1940
Release No. 11014/January 9, 1980

In the Matter of

COBBLESTONE CAPITAL FUND, INC.
49 Broad Street
Charleston, South Carolina 29401

(811-2148)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

Cobblestone Capital Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified management investment company, filed an application on November 6, 1978, and an amendment thereto on September 11, 1979, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On December 14, 1979, a notice (Investment Company Act Release No. 10984) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company as defined in the Act. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Cobblestone Capital Fund, Inc., shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11015/January 9, 1980

In the Matter of

FIDELITY CASH RESERVES
82 Devonshire Street
Boston, Massachusetts 02109

(812-4418)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER OF THE COMMISSION AMENDING A PREVIOUS ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

NOTICE IS HEREBY GIVEN that Fidelity Cash Reserves ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on December 3, 1979, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated April 5, 1979 (Investment Company Act Release No. 10654). This earlier order, pursuant to Section 6(c) of the Act, exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below.

Applicant states that it is a "money market fund" offering to individuals, corporations, fiduciaries and institutions a means of investment in a professionally managed portfolio of money market instruments with the objective of obtaining as high a level of current income as is consistent with the preservation of capital and liquidity. Applicant further states that its shares are sold without a sales charge.

Applicant states that it invests exclusively in various high-grade money market instruments including U.S. government and federal agency obligations; U.S. dollar-denominated obligations of the largest banks, including United States banks and their branches located outside of the United States and United States branches of foreign banks; prime commercial paper; high-grade corporate obligations which are rated AAA or AA by Standard & Poor's Corporation or Aaa or Aa by Moody's Investor Services, Inc.; and certain repurchase agreements with respect to obligations which, without regard to maturity, it is authorized to invest.

According to the application, all of Applicant's assets are invested in money market instruments maturing in less than one year, and the dollar-weighted average portfolio maturity of its portfolio may not exceed 120 days. The minimum initial investment in shares of the Applicant is $1,000 with additional investments accepted in amounts of $100 or more. Applicant further represents that at the close of business on October 31, 1979, its aggregate net assets were approximately $240,228,461. Fidelity Management and Research Company serves as investment adviser to Applicant.

Applicant represents that pursuant to the earlier order of the Commission dated April 5, 1979, Applicant presently computes its net asset value per share to the nearest one cent on a share value of one dollar utilizing the "penny rounding" valuation method. Applicant now seeks an order of the Commission, pursuant to Section 6(c) of the Act, amending this earlier order, which amended order would exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant's assets to be valued according to the amortized cost valuation method. Applicant further states that under the amortized cost valuation method portfolio instruments are valued at their cost as of the date of acquisition assuming a constant rate of amortization to maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of such instruments.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment

company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, Applicant's Trustees have determined in good faith that in light of its characteristics as described above, including the conditions to which Applicant must adhere as set forth in the earlier order of the Commission dated October 19, 1979, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and in Applicant's best interests and reflects the fair value of such securities. Applicant further represents that under the amortized cost method its shareholders would continue to have all the conveniences and advantages of a stable purchase and redemption price of $1.00 per share as described in its previous application to support the exemptive relief granted in such earlier order of the Commission.

Applicant has agreed that the following condtions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market condtions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the

[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

Board of Trustees will promptly consider what action if any should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Board of Trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken will describe the nature and circumstances of such action.

Applicant submits that use of the amortized cost method of valuing its portfolio securities, subject to the conditions enumerated above, will benefit its shareholders by enabling the Applicant to more effectively maintain the $1.00 per share purchase and redemption price in a manner which is substantially similar to that permitted under the Commission's earlier order. The Applicant further believes that granting of the requested exemptions by the Commission is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 31, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission

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[2]In fulfilling this condtion, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11016/January 10, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6175/January 10, 1980

LITIGATION

LITIGATION RELEASE NO. 8969/January 4, 1980

SECURITIES AND EXCHANGE COMMISSION v. FIVE STAR COAL COMPANY, INC., ET AL. (United States District Court for the Southern District of Ohio, Civil Action No. C-2-77-832)

The Securities and Exchange Commission announced today that on December 31, 1979, Hon. Robert M. Duncan, a Federal District Judge in Columbus, Ohio, entered a Final Order of Permanent Injunction against Five Star Coal Company, Inc. ("Five Star") of Gallipolis, Ohio. The Order enjoins Five Star from future violations of the antifraud and registration provisions of the federal securities laws. In addition, the Court signed Stipulations between the Commission and three individual defendants which will have the effect of terminating the Commission's litigation with prejudice as to them. The three individuals are Edward H. Miller, Jr., a businessman from Fort Erie, Ontario; Benjamin G. Sprecher, a New York attorney; and Maurice S. Roth, also a New York attorney.

The Commission's case was filed on November 2, 1977 and named Five Star, Miller, Sprecher, Roth, one other company and six other individuals. See Litigation Release No. 8181 (Nov. 3, 1977). The Complaint alleged that, from August 1976 through November 1977, certain defendants sold and offered the stock of Five Star to the public without registering it pursuant to the Securities Act of 1933. It alleged further that a merger between Five Star and another company in October 1976 was brought about by means of proxy materials that were materially false and misleading and that other statements made in an apparent attempt to correct these falsehoods were likewise materially false and misleading. The Complaint also charged that certain of the defendants attempted to manipulate the price of Five Star stock in the over-the-counter market.

In the early stages of this case, six individuals consented to the entry of permanent injunctions and three of those also agreed to disgorge moneys received as a result of the merger transaction. See Litigation Release No. 8319 (March 13, 1979).

In February and March, 1978, the Commission moved for a preliminary injunction against Five Star, Miller, Sprecher and Roth. On July 6, 1978, the Court granted the motion as to Five Star, but denied it as to the three individuals. Instead, he required that, in the event they attempted to sell any Five Star stock, they were to notify any prospective purchasers of the Commission's lawsuit and, upon request, to provide them with a copy of the Complaint. See Litigation Release No. 8474 (July 25, 1978).

The three individuals have agreed, despite the Court's preliminary finding, not to sell any Five Star stock which they own or control for a period

of six months and then to sell not more than 2% of the company's stock in any six months thereafter in broker transactions. The limitation does not apply to privately negotiated transactions as described in the Stipulation. All four defendants have agreed to forward to the Commission, in order to facilitate its reviewing responsibilities, all information which they transmit or cause to be transmitted to the National Quotation Bureau in connection with the initiation or resumption of quotations of Five Star stock in the over-the-counter market. The Commission has agreed that the entry of this Injunction itself will not effect Five Star's ability to use Regulation A of the Securities Act, provided that, if Five Star uses Regulation A in the next two years, it must include certified financial statements in the offering circular.

Litigation Release No. 8970/January 9, 1980

UNITED STATES v. RALPH READ, ET AL. (N.D. Ill. 79 CR 277)

William D. Goldsberry, Administrator of the Chicago Regional Office, and Gregory C. Jones, Acting U.S. Attorney for the Northern District of Illinois, announced that on December 21, 1979, the Honorable John Powers Crowley, United States District Judge for the Northern District of Illinois, sentenced Ralph Read, Ronald Spiegal and Howard Swiger.

On October 29, 1979, Read, Spiegal and Swiger were found guilty of securities and mail fraud charges, conspiracy and making false statements to the Securities and Exchange Commission. The convictions arose from the activities of these three and other individuals while employed by Cenco Incorporated (Cenco), a Chicago based corporation.

The indictment charged that from 1970 through 1974, approximately $25 million in false profit figures were reported by Cenco. It was alleged that a variety of devices were used to create this false profit, including the inflation of the inventory of Cenco Medical Health (CMH), a Cenco subsidiary. It was further alleged that in late 1974 and 1975, a scheme was developed to create the appearance that non-existent inventory had been destroyed.

Ralph Read of Chicago, Illinois, the former president of Cenco, was sentenced to three years imprisonment, fined $50,000 and placed on probation for three years, following completion of his sentence.

Ronald Spiegal of Oak Brook, Illinois, the former executive vice-president of Cenco and former president of CMH was sentenced to 30 months imprisonment, fined $10,000 and placed on probation for five years, after completion of his sentence.

Howard Swiger, of Downers Grove, Illinois, a former officer of CMH and former treasurer of a Cenco Division, was sentenced to one year imprisonment, with the recommendation that he serve that time at the work release program of the Metropolitan Correctional Center, to be followed by three years probation.

The civil injunctive action filed in September, 1976, by the Securities and Exchange Commission against Ralph Read and other former Cenco employees is still pending before the United States District Court for the Northern District of Illinois.

For further information, see Securities Exchange Act of 1934 Release No. 11495 and Litigation Release Nos. 7538, 8509, 8747, 8786, and 8919.

Litigation Release No. 8971/January 10, 1980

SEC v. PETRO NATURAL RESOURCE CORPORATION AND EUGENE L. COLMAN (S.D.N.Y.) 79 Civil 6977 (LFM)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, and Robert Abrams, New York State Attorney General, jointly announced

the filing of Complaints in the United States District Court for the Southern District of New York and the New York State Supreme Court, respectively, on December 26, 1979, against Petro Natural Resource Corporation ("Petro"), a Delaware Corporation located in New York, New York, and Eugene L. Colman ("Colman") of New York, New York.

The Commission's action seeks to enjoin Petro and Colman from further violations of the registration and anti-fraud provisions of the federal securities laws. During the period alleged in the Commission's Complaint, Colman and Petro engaged in the offer and sale of securities in the form of tax-sheltered limited partnership interests in Navidad Natural Gas Program 1979 ("Navidad"), a limited partnership in formation under the laws of Texas. Colman is the president and sole shareholder of Petro. Petro was incorporated in Delaware in March, 1979 for the purpose of offering such tax-sheltered limited partnership interests. Its first and only offering was Navidad, where Petro acted as Navidad's exclusive selling agent.

The Commission's Complaint alleges that from July 1979 through September 1979, the defendants offered for sale and sold to investors unregistered securities in the form of limited partnerahip interests, in violation of Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"). The Complaint also alleges that, in connection with their solicitation of approximately 300 prospective investors, the defendants made false and misleading statements in violation of Sections 17(a) of the Securities Act, Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The false and misleading statements concerned, among other things, the nature and degree of the risks associated with the Navidad offering, the sponsor and author of certain offering materials mailed to prospective investors, and the defendants' prior experience in offering similar securities.

The New York Attorney General's action seeks to enjoin and permanently bar Colman and Petro from future public securities business within or from the State of New York. The Attorney General's Complaint alleges that defendants violated the registration and anti-fraud provisions of the New York State Blue Sky Law in connection with the offering of tax-sheltered limited partnership interests within that state. Simultaneously with the filing of the Attorney General's Complaint, defendants Colman and Petro consented to a permanent bar from future securities transactions with the public within or from New York State.

The Commission's case is pending. The two actions resulted from a joint investigation conducted by the Office of the New York State Attorney General and the Commission.

ACCOUNTING SERIES

ACCOUNTING SERIES
Release No. 275/January 10, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16479/January 10, 1980

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VOLUME 19, NO. 4 JANUARY 29, 1980

RELEASES IN THIS ISSUE

Securities Act	- 6176-80	186
Securities Exchange Act	- 16468A, 16481-13	311
Public Utility Holding Company Act	- 21388-98	333
Investment Company Act	- 11017-23	347
Litigation	- 8972-73	361

This listing covers releases issued from 1/11/80-1/17/80 This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	VOL. V, No. 15	12/3/74
II	VOL. V, No. 16	12/10/74
III	VOL. VI, No. 3	1/8/75
IV	VOL. VI, No. 15	4/22/75
V	VOL. VI, No. 20	5/28/75
VI	VOL. VII, No. 8	7/22/75
VII	VOL. VIII, No. 15	1/28/76
VIII	VOL. IX, No. 15	5/18/76
IX	VOL. X, No. 11	10/5/76
X	VOL. XI, No. 9	2/8/77
XI	VOL. XII, No. 12	7/19/77
XII	VOL. XIII, No. 11	11/29/77
XIII	VOL. XIV, No. 12	4/25/78
XIV	VOL. XV, No. 12	9/12/78
XV	VOL. XVI No. 10	1/16/79
XVI	VOL. XVII No.7	5/15/79
XVII	VOL. XVIII No.6	9/13/79

SIGNIFICANT ITEMS RULES

34-16468A	34-16483	34-16491
34-16481	34-16484	34-16492
34-16482	34-16485	34-16493
34-16494	34-16503	34-16506
34-16500	34-16504	34-16507
34-16502	34-16505	34-16508
34-16512		
34-16513		

33-6176 Solicitation of comments on proposed amendments to the present annual report form required to be filed by most publicly-owned companies, Form 10-K, and on related forms, rules and guides under the 1933 Act and the 1934 Act [File No. S7-816—Comment Period Expires April 15, 1980] .....

33-6177 Solicitation of comments on a proposed short form form which may be used to register under the 1933 Act securities issued in business combination transactions which meet certain criteria (Form S-15) [File No. S7-817—Comment Period Expires April 15, 1980] .....

33-6178 Solicitation of comments on proposed general revision of Articles 3 and 5 and the related sections of Article 12 of Regulation S-X [File No. S7-818—Comment Period Expires April 30, 1980] .....

33-6179 Solicitation of comments on proposed amendments which, if

FEB 5 1980 U.S. GOVT. DEPOSITORY

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adopted, would establish uniform instruction governing the periods to be covered by financial statements [File No. S7-819—Comment Period Expires April 30, 1980] .....

33-6180 Adoption of a small issue exemptive rule under Section 3(b) of the 1933 Act (Rule 242) and a corresponding amendment to Rule 144 .....

34-16495 Exemption of non-member brokers and dealers from certain SECO fair practice rules .....

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6176/Jan 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16496/Jan 15, 1980

Proposed Amendments to Annual Report Form; Integration of Securities Acts Disclosure Systems.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting comments on proposed amendments to the present annual report form required to be filed by most publicly-owned companies, Form 10-K, and on related forms, rules and guides under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed revisions are part of a series of proposals intended to reduce disclosure burdens and to facilitate the integration of the disclosure systems under the two acts.

DATE: Comments must be received on or before April 15, 1980.

ADDRESS: All communications on the matters discussed in this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-816 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: William H. Carter (202/272-2604), or Mary Margaret W. Hammond (202/272-3059), Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today the publication for comment of a revised Form 10-K, the annual report form required to be filed by most publicly-owned companies, and a number of related rule changes. The rule changes include amendments to Rules 14a-3 and Rule 14c-3, with respect to annual reports to security holders, an expasion of Regulation S-K to include three new items: Mangement's Discussion and Analysis of Financial Condition and Results of Operations, Selected Financial Data, and Market Price of the Registrant's Securities and Statement of Dividend Policy, an amendment to Regulation S-K Item 1, Description of Business, as well as proposed amendments to related forms, rules, and guides under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.]. The proposed revisions of Form 10-K and related rule changes are part of a series of proposals intended to reduce the burdens of disclosure under the Securities Act and the Exchange Act. Three other releases also propose (1) uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act; (2) amendments to Regulation S-X designed to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S-X; and (3) a new simplified form for the registration of securities issued in certain merger and reorganization transactions.

FORM 10-K
INTRODUCTION

The Commission is today proposing major changes in the Securities Act and Exchange Act disclosure systems. These changes are designed both to facilitate the integration of these two sys-

tems into the single disclosure system long advocated by many commontators[1] and to reduce current impediments to combining informal shareholder communications, such as annual reports to shareholders, with official Commission filings.

This release deals with format and content changes in the Form 10-K annual report. Under the proposed combined system it is anticipated that certain information called for by this form will be set forth in the registrant's annual repport to shareholders. The annual report will become the principal resource for use in connection with most filings required for the registration of securities. This release also describes briefly how the integrated disclosure system will operate if the modifications proposed are adopted and where present duplicative dsclosure will be eliminated.

Two separate releases being issued concurrently with this one contain proposals for changes in accounting disclosure requirements. One release proposes certain uniform instructions as to financial statements included in annual reports to security holders and in most registration and reporting forms filed under the Securities Act and the Exchange Act.[2] The second release proposes changes to Regulation S-X designed to eliminate, to the extent possible, the differences between the requirements of Regulation S-X and generally accepted accounting principles.[3] These accounting proposals, if implemented, would eliminate a large number of technical impediments to integration, would reduce the need to duplicate or repeat substantially identical financial information in various filings and reports and would complement the related changes in the Form 10-K.

Finally, under cover of a fourth release a new simplified form for the registration of secruities issued in certain merger and reorganization transactions has been proposed. This form, designated Form S-15, would be the first to utilize the annual report to shareholders as the principal integrating disclosure document.[4]

As currently envisioned by the Commission, an integrated disclosure system would eliminate duplicative disclosure by allowing periodic and other reports filed under the Exchange Act to be used in connection with the registration of securities under the Securities Act. One way to permit such use is by incorporating a filed Exchange Act report by reference into a Securities Act registration statement, as is permitted in the case of persent Form S-16. Incorporation by reference, however, has limitations; there is no assurance that the mere reference to incorporated informatim will be meaningful to the recipient of a prospectus. With respect to seasoned, exchange-traded companies the disadvantages of the incorporation by reference technique generally appear to be outweighed by the likelihood that the information in the incorporated filings has been thoroughly analyzed and has been reflected in the price or rating of the securities which are being offered. Thus, the cost savings of incorporation is justified. However, the Commission has been reluctant to extend the incorporation by reference technique to offerings by companies which are neither seasoned nor exchange-traded because the analysis may be less thorough.

The Structure of the New Form 10-K

The proposed Form 10-K has been structured to permit integrated disclosure concepts to be implemented to some extent with respect to all registered companies, whether or not they are exchange-traded and whether or not they qualify to use Form S-16. In this regard, the principal feature of the proposed Form 10-K is the requirement that certain basic financial information must be set forth in a registrant's annual report to shareholders and that this information, in turn, must be incorporated by reference into the Form 10-K. This procedure assures that the annual re-

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[1] *See generally* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340 (1966); SEC, *Disclosure to Investors (Wheat Report)* (1969); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess., November 3, 1977 (Advisory Committee).

[2] Securities Act Release No. 6179, January 15, 1980.

[3] Securities Act Release No. 6178, January 15, 1980.

[4] Securities Act Release No. 6177, January 15, 1980.

port to shareholders will contain information which the Commission believes should be given maximum public exposure. If this information is then available to supplement other documents describing offerings, it will not be necessary to duplicate the information in those other documents.

Although the proposed Form 10-K is designed to promote the integration of the Securities Act and Exchange Act disclosure systems, which was the basic goal set forth in the report of the Advisory Committee on Corporate Disclosure ("Advisory Committee"), the restructured format of the proposed form does not follow that suggested by the Advisory Committee. The Advisory Committee recommended a relatively unstructured document which would encourage registrants to combine informal annual and quarterly reports to shareholders into single documents to be filed as Form 10-K's and 10-Q's. The proposed form continues to encourage the combination of formal and informal reports. However, by mandating that some information must be in a registrant's annual report to shareholders, some of the flexibility advocated by the Advisory Committee will not be available. Moreover, the proposed form changes the emphasis from the Form 10-K to the shareholder report. As a result, where the Advisory Committee envisioned the Form 10-K as the document to be integrated with the Securities Act filing, the proposed form now looks to the shareholder report as the critical integrating document.

The principal reasons for changing the emphasis from the Form 10-K to the shareholder report have been twofold. First, the presently existing annual report to shareholders is a readable document which is designed to be delivered to shareholders. In contrast, since the present Form 10-K has not been primarily designed for delivery to shareholders, it has a structure and technical quality which, though useful for analytical purposes, is not generally considered to be as readable as the annual report to shareholders. Second, the Commission does not believe it would be appropriate at this time to mandate a totally combined Form 10-K and annual report to shareholders in order to produce the readable Form 10-K which would be needed to form the basis for integration. Such a mandate might be overly burdensome on some registrants and also might make Commission staff review more difficult.[5] Under these circumstances the Commission belives that it would be wise to move slowly while still encouraging combination on a voluntary basis. In the meantime, the detailed disclosure will remain available in the filed Form 10-K in order to supplement the more abbreviated presentation in the shareholder's report.

The Content of the New Form 10-K

To some extent the Commission's decision to refocus attention on the annual report to shareholders has resulted from an increasing conviction that the quality of such reports is generally high and that few changes would be required to meet existing disclosure standards. In this regard, an examination of existing Form 10-K requirements and the requirements of Rule 14a-3 (17 CFR 240.14a-3) indicate that only two major innovations are necessary to insure minimum content would be in the shareholder report so that it could be used in connection with Securities Act filings. First, the requirements for financial statements in Regulation S-X and in Commission forms must be standardized and any major differences with generally accepted accounting principles must be resolved. The Commission believes that the changes proposed under cover of the two separate releases which are being promulgated concurrently address these needs.[6] Second, a more meaningful analysis of the registrant's business and financial condition must be presented in order to capture, at least in summary form, some of the essential qualities of the detailed business description which is presently only set forth in the

[5] The inability to assure in all cases that there will be a single document which will be usable as a combined report to shareholders and Form 10-K arises primarily because of the Business, Properties and Legal Proceedings disclosures called for under Items 1, 2 and 5 of Regulation S-K and because of certain parent and subsidiary financial statements required by Regulation S-X. Although it is hoped that most registrants will have little difficulty in presenting these items in a combined document, there is considerable evidence that in some cases the sheer volume of the disclosure called for by these times would adversely impact the readability of the registrant's annual reports to shareholders.

[6] Securities Act Release Nos. 6179 and 6178, January 15, 1980.

Form 10-K and in most Securities Act forms. The proposed form addresses the business description in two ways. First, it is expected that reliance on the abbreviated description in the annual report required under Rule 14(a)(3) (17 CFR 240.14a-3) in connection with Securities Act filings should result in some additional attention and detail. Second, a totally revised management's discussion and analysis of the issuer's financial statements, liquidity and capital resources is expected to add needed analysis.

It should be emphasized that the minimal content changes proposed by the Commission are not intended to change the basic structure or quality of existing shareholder reports. Indeed, the Commission believes that the communicative style of these reports is generally excellent and that, by and large, these reports do not include the type of boilerplate disclosures and disclaimers which frequently do appear in formal Commission filings. It is hoped that the type of attention to style which is evidenced by better examples of shareholder reports will continue to have a salutary effect on all of the report content whether or not the particular information is also a part of the Form 10-K.

Since implementation of the requirements needed to insure that the annual report to shareholders will have the required minimum content does not involve combining all of the information in the Form 10-K with that in the annual report to shareholders, the proposed Form 10/k has been divided into three information packages. The first package consists of the information which is to be included in the annual report to shareholders. This information includes market price data for the registrant's shares, a summary of selected financial data, three years of audited financial statements and management's discussion and analysis of the issuer's financial statements. The requirements relating to this information package are set forth in Part II of the revised form. The second package consists of the traditional proxy disclosure information relating to beneficial ownership, directors and executive officers, and management remuneration. Requirements relating to this informational package are set forth in Part III of the form. Finally, the third information package retains the detailed disclosure requirements relating to business, properties and legal proceedings and, in accordance with the Commission's recent proposals, includes scaled down requirements for exhibits.[7] This last package, which is detailed in Parts I and IV of the revised form, is to a great extent supplemental to the first two packages.

While the three packages of information set forth in the four parts of the proposed Form 10-K do not fully implement the Advisory Committee's recommendations as to information content, the basic content advocated by the Advisory Committee has been preserved. The Advisory Committee suggested a five part form including: (1) a fact sheet consisting principally of capsule financial data and a brief description of the registrant's business; (2) background information intended to report special risks and uncertainties and special or distinct features of the registrant's operations or industry; (3) an analysis of financial statements and forward-looking information; (4) information relating to management currently found in proxy materials; and (5) audited financial statements. The proposed Form 10-K would require substantially all of the information in parts (1), (3) and (5) of the Advisory Committee's form to be in the annual report to shareholders. Although a separate discussion of risk factors would not be required in the proposed Form 10-K,[8] some of the other features of part (2) of the Advisory Committee report have been incorporated into a proposed new management's discussion and analysis of the financial statements. Finally, part (4) of the Advisory Committee form relating to information usually contained in the registrant's proxy materials, which is Part II of the present form, becomes Part III of the proposed form.

The Proposed New Integrated Disclosure System

It is currently anticipated that the integrated disclosure concept with respect to registered companies will be implemented in three general categories or levels. The degree of disclosure and

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[7] Securities Act of 1933 Release No. 6149 (November 16, 1979) [44 FR 67143].

[8] Notwithstanding the decision to exclude the discussion of risk factors in the Form 10-K which is applicable to all registrants, such a discussion may be included in certain of the revised Securities Act forms. In this context, however, the focus would be on the particular issuer and the circumstances of the offering.

to some extent the means of dissemination of the disclosure documents would vary with respect to each level. First, with respect to certain exchange or other widely traded, solvent companies, a short form registration similar to the present S-16 form would be available. This form would incorporate the 10-K and subsequent reports by reference. These disclosure requirements would be premised upon a finding that more extensive disclosure requirements are neither necessary nor appropriate in the public interest or for the protection of investors, since information concerning the issuer is generally available in the marketplace and is properly reflected in the price of the securities being distributed. In light of this finding, there would be little need to gather the information into a single comprehensive document or package of documents or to make physical delivery of the entire information package to offerees or purchasers.

The second level would be solvent companies which had been subject to the reporting requirements of the Exchange Act for three or more years.[9] Securities Act registration could be accomplished by preparing a prospectus describing the distribution and by delivering that prospectus together with the issuer's most recent shareholder's annual and quarterly reports to offerees and purchasers, rather than delivering a prospectus combining all the information required by Form S-1.[10] These types of disclosure and delivery requirements would attempt to minimize duplicative reporting under the Securities Act and the Exchange Acts, but would not assume that previously reported information was necessarily reflected in securities prices or had otherwise reached offerees and purchasers.[11]

Finally, with respect to financially troubled companies and those which had been subject to the Exchange Act reporting requirements for less than three years, a full Securities Act registration statement along the lines of either present Form S-1 or Form S-18 would be required. This approach would reflect differing concerns relating to each of the two classes of companies for which full disclosure and delivery of a detailed prospectus would be required. First, insofar as financially troubled companies would be involved, the concern would be that Exchange Act reports would be rapidly outdated and that risks relating to the possibility of insolvency would call for enhanced disclosure. Second, with respect to companies which did not have three years of reports under the Exchange Act reporting system; the concern would be that there would have been an inadequate opportunity to evaluate the quality and sophistication of those reports.[12]

Obviously, under the integrated disclosure system, there would be some exceptions which would not fit precisely into the three levels outlined above.

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[9] The three year qualification requirement would correspond to the uniform three year requirement for financial statements proposed in Release No. 33-6179.

[10] Comments from interested persons are also requested at this time as to whether delivery of the most recent proxy statement of the issuer concerning the election of directors should also be required in this situation. *See* the accompanying release proposing the new Form S-15, Securities Act Release No. 6177.

The Commission is aware that subsequent events may require issuers to include updating disclosures as to such events in the prospectus in addition to delivery of the annual and quarterly reports. *Id.* Release No. 33-6177.

[11] As has been previously indicated, under cover of a separate release the Commission concurrently has proposed for comment a new Form S-15 which incorporates many of the features which it is envisioned would be applied to second level companies. Thus, the new proposed Form S-15, which would cover securities registered in certain merger and acquisition transactions, contemplates streamlined disclosure of the transaction and relies on annual and quarterly reports to shareholders for specific business and financial information relating to the individual participants in the transaction.

[12] Although no final determination has been made, at the present time it is contemplated that the integrated disclosure forms would not continue present distinctions as to the size of the registered entity, except to the extent that small business considerations might be involved. Instead, the new system would focus on the quality of the information concerning the registrant and the degree to which that information had been disseminated to shareholders and to potential investors.

For example, there is no doubt that the Commission's ongoing program to assist and to reduce the burdens upon small business would be continued. Accordingly, it is anticipated that in some cases even the lowered burdens of the new system might be modified and abbreviated.

It is contemplated that the integrated disclosure system, utilizing the new Form 10-K and the annual report to shareholders, will neither increase nor decrease the liability of any person under current securities laws. Although the new Form 10-K does call for signatures from the registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by a majority of the board of directors, current legal authorities indicate that under certain circumstances these persons are presently responsible for inaccurate information filed under the existing Exchange Act disclosure system.[13] Additionally, because the type of information which is to be contained in the annual report to shareholders under the new system is not significantly more extensive than that presently required under Rule 14a-3 (17 CFR 240.14a-3), the new system is not expected to increase liability in this area but instead should merely reduce the duplicated disclosure in the Form 10-K. Finally, to the extent that the annual report to shareholders is to be used in connection with Securities Act filings, it should be understood that only those portions of the report which are also a part of the Form 10-K would be incorporated into the filing and would therefore be subject to the liability provisions of Section 11 of the Securities Act.[14]

BACKGROUND

In response to the recommendation of the Advisory Committee that Form 10-K be amended to eliminate unnecessary requirements, add new requirements, and present the information in a more effective format, the Commission issued a release on August 16, 1978[15] requesting comments both on Part I of the existing Form 10-K and on the substantially revised Form 10-K format recommended by the Committee. One hundred and eight letters of comment were received.

While the comments were obviously carefully conceived and drafted, and a number of them are reflected in the provisions which follow (with express notations where such is the case), as a whole there was not sufficient focus or agreement among the commentators to enable the Commission to draw any broad conclusions concerning either the existing Form 10-K or that recommended by the Advisory Committee.

The resultant proposed Form 10-K, described and set forth below, is a combination of changes resulting from the comments, staff studies, and other information sources. As is indicated above, the revisions were designed primarily to facilitate the implementation of an integrated disclosure system. However, many changes are also designed to promote a number of other important purposes, including:

(1) Elimination of unnecessary disclosure;

(2) Reduction of Commission staff review time;

(3) Preservation of Form 10-K as the basic information repository on a particular company; and

(4) Improvement of the quality of disclosure in shareholder communications to the extent consistent with registrants' prerogative to exercise reasonable discretion with respect to the format and content of the annual report to shareholders.

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[13] *See, e.g., Securities and Exchange Commission* v. *Kalvex*, 425 F. Supp. 310 (S.D.N.Y. 1975); *Blakely* v. *Lisac*, 357 F. Supp. 255 (D. Ore. 1972); Exchange Act §20, 15 U.S.C. 78t.

[14] The Commission also believes that the commonly stated perception that disclosures made under the Securities Act must be more legalistic and less communicative is a misperception. Differences in the Securities Act and the Exchange Act with respect to liability do not relate to the form or the lucidity of disclosure but only to the degree of care taken in making the disclosure. On balance, the Commission believes that the slight increased cost associated with a higher standard of care in some circumstances will be more than offset by corresponding general reductions in the volume of required disclosure.

[15] Securities Exchange Act of 1934 Release No. 15068 (August 16, 1978) [43 FR 37460].

The following table presents, in outline form, the changes proposed in the existing Form 10-K:

Item	Status
General Instructions	Revised
PART I	
Item 1. Business.	Revised [In revised S-K Item 1]
Item 2. Summary of Operations.	Delated [Replaced by Selected Financial Data, New Item 5]
Item 3. Properties.	Unchanged
Item 4. Parents and Subsidiaries.	Deleted [But Replaced by an Exhibit]
Item 5. Legal Proceedings.	Unchanged
Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.	Deleted
Item 7. Changes in Securities and Changes in Security for Registered Securities.	Deleted
Item 8. Defaults Upon Senior Securities.	Deleted
Item 9. Approximate Number of Equity Security Holders.	Deleted [But Replaced by a Requirement in New S-K Item 9]
Item 10. Submission of Matters to a Vote of Security Holders.	Deleted
Item 11. Indemnification of Directors and Officers.	Deleted
Item 12. Financial Statements, Exhibits filed, and Reports on Form 8-K.	Revised.
Part II	
Item 13. Security Ownership of Certain Beneficial Owners and Managers.	Unchanged
Item 14. Directors and Executive Officers of the Registrant.	Unchanged
Item 15. Management Remuneration and Transactions.	Unchanged
Signatures	Revised
Instructions as to Financial Statements	Deleted [Replaced by New Item 7]
Instructions as to Exhibits	Revised [Per New Regulation S-K Item 8]
Supplemental Information	Unchanged

The proposed new Form 10-K consists of four parts containing the items outlined below. The information required by Part I, at the registrant's option, may be supplied by incorporating the information from an annual report to shareholders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a), provided the report contains the required disclosure. Conversely, the information required by Part II must be supplied by incorporating by reference from the annual report to shareholders if such report is available, and the information required by Part III must be supplied by incorporating by reference from the election of directors proxy statement (or information statement), if such statement is available.

OUTLINE OF PROPOSED FORM 10-K

General Instructions

Part I

Item 1. Business.

Item 2. Properties.

Item 3. Legal Proceedings.

Part II

Item 4. Market for the Registrant's Securities and Statement of Dividend Policy.

Item 5. Selected Financial Data.

Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Item 7. Financial Statements.

Part III

Item 8. Directors and Executive Officers of the Registrant.

Item 9. Management Remuneration and Transactions.

Item 10. Security Ownership of Certain Beneficial Owners and Management.

Part IV

Item 11. Exhibits and Reports on Form 8-K.

Signatures

Supplemental Information

DISCUSSION OF ITEMS IN PROPOSED FORM 10-K WHICH ARE UNCHANGED FROM CURRENT FORM 10-K

Item 2. Properties. [Item 3 of Current Form 10-K]

Except for the numbering this Item is unchanged from the existing Item 3, "Properties."

A thorough analysis was made of Item 2 of Regulation S-K. Consideration was made of such factors as the comments received on the Item when it was originally proposed for comment in May of 1977, as well as comments received on the existing Form 10-K in the Commission's release of August 16, 1978.[16] Accordingly, on the bases of the careful work that went into drafting Item 2, the Commission's short experience with the Item (since March 31, 1978), and the importance of maintaining the integrity of Regulation S-K with its attendant value to the integration of Form 10-K into Securities Act filings, the Commission believes Item 2 should not be revised at this time.

Item 3. Legal Proceedings. [Item 5 of Current Form 10-K]

Except for the numbering the Item is unchanged from the existing Item 5, "Legal Proceedings." The underlying Regulation S-K Item 5, "Legal Pro-

[16] Securities Exchange Act of 1934 Release No. 15068 (August 16, 1978) [43 FR 37460].

ceedings," was recently adopted (July 28, 1978)[17] and the Commission accordingly does not believe it is necessary to revisit this disclosure at the present time.

Item 8. Directors and Executive Officers of the Registrant. [Item 14 of Current Form 10-K]

Item 9. Management Remuneration and Transactions. [Item 15 of Current Form 10-K]

Item 10. Security Ownership of Certain Beneficial Owners and Management. [Item 13 of Current Form 10-K]

All three of these items have recently been the subject of the comment process, Item 9 (Item 15 of current Form 10-K; also Item 4 of Regulation S-K) having been adopted as recently as December 4, 1978.[18] Certain aspects of these items are still being reconsidered at the present time. Accordingly, the Commission does not feel it appropriate or necessary to propose amending these Items at this time.

DISCUSSION OF ITEMS IN CURRENT FORM 10-K WHICH ARE DELETED FROM PROPOSED FORM 10-K

Item 2. Summary of Operations.

The basis for deleting this Item is contained in the discussion of the new replacement Item 5 relating to selected financial data. Briefly, however, it is proposed to delete this item as a consequence of two basic decisions. First, the Commission believes that five year information is relevant primarily where it can be related to trends in the registrant's business. The current summary is not limited to this type of information about trends. Second, as a result of the change of focus of Management's Discussion and Analysis to a discussion of the financial statements, the summary of operations is no longer the subject of that discussion. Therefore, its presentation is no longer needed.[19]

Item 4. Parents and Subsidiaries.

While the Advisory Committee's Form 10-K contains only a "list of all subsidiaries" as contrasted with the more detailed parent and subsidiary disclosure of Item 4 of the existing Form 10-K, a number of commentators felt that the list of all subsidiaries should not be required. After consideration the Commission has determined that the value of parent and subsidiary data is not sufficient to warrant its inclusion in Form 10-K itself and accordingly proposes the deletion of Item 4. On the other hand, the Commission does believe that occasional references to this data may be useful. Accordingly, a new exhibit requiring a list of all subsidiaries in the form suggested by the Advisory Committee has been proposed.

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.

Item 7. Changes in Securities and Changes in Security for Registered Securities.

Item 8. Defaults Upon Senior Securities.

Item 10. Submission of Matters to a Vote of Security Holders.

Item 11. Indemnification of Directors and Officers.

The above five Items were omitted by the Advisory Committee from their Form 10-K and were the subject of an express inquiry in Release No. 34-15068 as to their usefulness. A significant number of commentators agreed with the Advisory Committee that all of these Items should be deleted, either because the information called for is not generally useful (this was felt to be particularly true of Item 12, Indemnification of Directors and

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[17] Securities Act of 1933 Release No. 5949 (July 28, 1978) [43 FR 34402].

[18] Securities Act of 1933 Release No. 6003 [43 FR 58181].

[19] If the Summary of Operations is deleted from Form 10-K, it is anticipated that technical changes will be adopted which also delete the Summary of Operations from the various other forms where it appears. Examples would be deletion of Item 6 of Form S-1 under the Securities Act and Item 2 of Form 10 under the Exchange Act.

Officers) or because the information is available elsewhere (i.e., in Form 10's or in the financial statements). Several commentators indicated that this information would have to be disclosed either in the text or in the notes to the financial statements. If material, even if there is no specific item requirement covering the particular event or transaction. The Commission agrees with these commentators and accordingly proposes omitting these items from the revised Form 10-K.

Item 9. Approximate Number of Equity Security Holders.

This item has been deleted, but the substance has been added to new item 9 of Regulation S-K, which deals with market information concerning the registrant's securities and the registrant's dividend policy. The Commission believes that the information concerning the number of security holders will have greater utility in this context.

DISCUSSION OF PROPOSED FORM 10-K ITEMS AND INSTRUCTIONS WHICH ARE NEW OR ARE REVISED FROM CURRENT FORM 10-k

General Instruction D. Signatures and Filing of Report.

This instruction is proposed to be expanded to require that the Form now be signed on behalf of the issuer by the registrant's principla executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions.

While the Commission is aware that this proposed change constitutes a significant expansion of the existing signature requirements, it does not believe that this expansion will have substantial legal effect. In the Commission's view the persons who would be required to sign the revised form are presently legally responsible for the information content of the existing form. Although it does appear that in most cases these persons are aware of their present responsibilities, there have been cases where a lack of awareness may have existed. Accordingly, it is believed that the proposed signature requirement will enhance director awareness of and participation in the preparation of the Form 10-K information.[20]

The Commission believes that an enhanced quality of disclosure in the Form 10-K and in shareholder reports will be necessary if the integration of disclosure under the Securities Act and the Exchange Act is to be achieved in a successful manner. To some extent increased director participation in the preparation of these documents should contribute to this goal. The Commission acknowledges, however, that director participation alone may not be enough. In this regard, the Division of Corporation Finance has recently announced its intention to devote greater resources to a review of filings made under the Exchange Act, including in particular Form 10-K's.

General Instruction H. Form 10-K Information Required To Be Incorporated By Reference.

Three proposed revisions are set forth in this instruction. The first revision requires that the financial statements and certain other disclosures called for by Rule 14a-3 (17 CFR 240.14a-3) [or Rule 14c-3(17 CFR 240.14c-3)] contained in the annual report to shareholders must be incorporated by reference into the Form 10-K.[21] The sec-

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[20] The Commission, of course, is aware that specific signature requirements are imposed under Section 6(a) of the Securities Act and that the Exchange Act contains no corresponding specific signature provision. The Commission does not believe that this omission in the Exchange Act precludes signature requirements for Exchange Act reports. Indeed, signature requirements have long been imposed with respect to filings made under Section 13(a), including the Form 10-K. In this regard it should be noted that the proposed Form 10-K. In this regard it should be noted that the proposed Form 10-K requires each person to sign on behalf of the registrant and indicates that each person separately shall set forth the position held with the registrant.

[21] Pursuant to the proposed revised Rule 14a-3 (Rule 14c-3) and Items 7 and 11 of this proposed new Form 10-K, all financial statements required by Regulation S-X shall be included in the annual report to security holders (which is then incorpo-

ond requires that the proxy or information statement for election of directors must be incorporated by reference into the Form 10-K. The third requires that any annual report to shareholders or proxy statement (information statement) incorporated by reference must be furnished to everyone who receives a copy of the Form 10-K from the registrant.

The required incorporation by reference of the annual report to shareholders and proxy statement (information statement) is motivated by a desire to reduce the number of different documents companies must file, to concurrently reduce the number of documents the Commission staff must review, and to make portions of the annual report to shareholders available for use in connection with Securities Act filings. The policy behind the delivery requirement for the annual report to the shareholders and the proxy statement (information statement) is simply to assure adequate dissemination of the information contained in those documents.

Item 1. Business.

As presently constituted this item consists of the information required by Item 1 of the Regulation S-K, except that the discussion of the development of a registrant's business need only include developments since the beginning of the fiscal year.

It is proposed to amend paragraph (b) of Item 1 of S-K to reduce from five to three the number of years for which specific industry segment data must be supplied. This change is proposed to conform to the general decision to require financial statement and related information for a uniform three year period. Notwithstanding this proposed change, however, it should be noted that significant trend data might still be presented in the Selected Financial Data called for under Item 5 of the proposed Form 10-K, and some registrants might find it advisable to include five year selected segment data in that context.

A thorough analysis was made of the other provisions of Item 1 of Regulation S-K. Consideration was given to such factors as the comments received on the Item when it was originally proposed for comment in May of 1977,[22] as well as comments received on the existing Form 10-K in the Commission's release of August 16, 1978. While the terms of the Item are quite detailed and lengthy, a factor which has not gone unnoticed by some commentators, the actual disclosure required is not that rigid, as can be seen from an excerpt from part c(1) of the Item which provides: "The description of each such segment shall include the information specified in paragraphs (i) through (x) below *to the extent material to an understanding of the registrant's business taken as a whole.*" (Emphasis supplied). Accordingly, on the bases of the careful work that went into drafting Item 1, the Commission's short experience with the Item (since March 31, 1978), and the importance of maintaining the integrity of Regulation S-K with its attendant value to the integration of Form 10-K into Securities Act filings, the Commission believes that no major revisions other than the one referred to above should be made at this time.

Notwithstanding the foregoing, however, the Commission believes that it would be appropriate for commentators to suggest any changes in the form or content of the business description which they may feel would be appropriate. In particular, commentators who do wish to suggest changes should consider the advisability of (1) requiring Item 1 disclosure to be included in annual reports to shareholders in its current form or as modified by proposed changes; or (2) conforming the present detailed segments reporting requirements in

Continued from preceding page

rated by reference into the Form 10-K) except: (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and its subsidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statements of consolidated majority-owned subsidiaries of the registrant engaged in diverse financial activities; (4) separate financial statements of affiliates whose securities are pledged as collateral; and (5) financial statement schedules.

[22] Securities Act of 1933 Release No. 5826 (May 10, 1977) [42 FR 26010]

paragraph (b) of Item 1 to the similar but somewhat less extensive requirements in SFAS 14.[23]

Item 4. Market for the Registrant's Securities and Statement of Dividend Policy.

Although this item is new to the Form 10-K and to Regulation S-K its contents are similar to that of paragraph (8) of Rule 14a-3 [17 CFR 240.14a-3] (which requires market price information to be included in the annual report to shareholders), to Guide 26 of the Guides for Preparation and Filing of Registration Statements under the Securities Act (which requires a statement of a registrant's dividend policy) and to Item 9 of present Form 10-K (which requires information as to the approximate number of equity security holders.) The language setting forth the proposed disclosure on market price information has been slightly amended to conform to identical disclosure requirements in Schedule 13E-3 (17 CFR 240.13e--100). Otherwise, the principal change which would be implemented if this time were adopted would be to move the item to Form S-K where it can more easily be referenced into other forms, if at a later date such a reference appears to be advisable.

The Commission is aware that the information requirements presently set forth in paragraph (8) of Rule 14a-3 (⅛⅞ CFR 240.14a-3) have been criticized for not also requiring the presentation of industry or market data which may be used for comparison purposes. In light of this criticism the Commission would like commentators to consider whether the item should be expanded to require the presentation of market data either of a general nature or of an industry specific nature and whether, if such data were required, it should be presented in one or more specific graphic forms. For example, one such possibility might require the presentation in graphic form of individual company market data together with data relating to a standardized market performance index.

Item 5. Selected Financial Data.

The summary of operations presently called for under Item 2 of Form 10-K has been deleted and in lieu thereof there has been inserted as Item 5 to the proposed form a requirement calling for Selected Financial Data. This new requirement is designed to present significant five year trend data relating to a registrant's revenues, income from continuing operations, liquidity and capital resources. Although a registrant would be permitted to include other financial information in addition to that specified, it would be expected that any presentation of additional information would not unnecessarily emphasize income or revenues as opposed to liquidity or capital resources.

The deletion of the present summary and the substitution of selected financial data reflects the Commission's concern that operations summaries have duplicated information otherwise available in income statements, have not presented significant trend information and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents of format of a summary might not cure the perceived deficiencies. Accordingly, it is hoped that the proposal will strike a reasonable balance between specified content and a flexible approach which permits registrants to select that data which best indicates performance. In particular, those registrants who present the information relating to the impact of inflation and current prices on their business required by SFAS 33[24] would be encouraged to combine the summary information required by SFAS 33 with the information required by the proposed new item.

To a great extent the revised selected financial data follows the format suggested by the Advisory Committee and presented in Release 34-15068. The few revisions included have been made in response to the commentators' requests for increased flexibility in the form and content of the presentation. In particular, instructions relating to working capital have been included in response to suggestions that a traditional working capital measure may not always be appropriate for all businesses.

Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.

[23] "Financial Reporting For Segments of A Business Enterprise."

[24] "Financial Reporting and Changing Prices."

The proposed Form 10-K incorporates an entirely restructured management's discussion and analysis. Additionally, this item have been moved from the Guides to become new Item 9 in Regulation S-K.[25]

The major features of the new proposal are as follows:

(1) The discussion is to be focused on the financial statements, and is no longer centered upon a summary of operations. Indeed, as has been indicated above, the summary of operations has been eliminated.

(2) The new item calls for inclusion in the discussion of three financial aspects of the registrant's business - liquidity, capital resources and results of operations.

(3) Within each area of the discussion there is emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) Segment information is required only if, in the registrant's judgment, it is appropriate to an understanding of the registrant's business.

(5) Information concerning the effects of inflation and changing prices is required. However, those registrants which also are required to comply with SFAS 33 relating to the same subject may satisfy both the SFAS 33 requirements and the requirements of the proposed item with a single presentation.

(6) The percentage tests and line by line analysis encouraged by the present requirements contained in Guides 1 and 22 have been eliminated. However, instruction 4 to the proposed item does indicate that the causes for material changes in line items should be discussed.

(7) The new item would not specifically require projections or other forward-looking information, although instruction 7 would encourage the presentation of this type of information on a voluntary basis.

(8) No specific provisions with respect to the location of management's discussion have been included, except for the general requirement that the discussion must be included within the annual shareholders report.

The Commission is concerned that the disclosure elicited by the present requirements of Guides 1 and 22 is not fulfilling originally contemplated objectives. A statement of corporate objectives can be helpful to investors. The management discussion and analysis affords to management an opportunity to discuss the implication of numerical results on a realistic basis. In general, however, a disclosure format has developed whereby a discussion of implications is not presented. Instead, the percentage tests are applied without regard to any concept of materiality or significance to the registrant's business. Accordingly, although some portions of the resulting discussion may be meaningful, the meaningful discussion is obscured by the inclusion of material which is of little relevance.

Secondly, the Commission is concerned that the focus of the requirements of Guides 1 and 22 is too narrow. In today's environment there is a growing need to analyze enterprise liquidity and capital resources, in addition to revenues and income. The narrow approach presently set forth in Guides 1 and 22 does not necessarily produce a discussion which will focus upon the financial condition of the enterprise as a whole.

Finally, the Commission, as it has indicated on a number of occasions, is concerned about the adequacy of disclosures with respect to the impact of inflation and changing prices on individual registrant's businesses. Although the Commission does not believe that it would be appropriate at this time to expand the applicability of SFAS 33 beyond that established by the Financial Accounting Standards Board, it does believe that all registrants, including those which are not required to present SFAS 33 information, should make some textual presentation with respect to these matters. In this regard the Commission believes that management's dis-

[25] Should the approach be adopted with regard to the Form 10-K it is expected that the new Item 9 of Regulation S-K will also be made a part of other Securities Act and Exchange Act forms, such as Form S-1 and Form 10.

cussion and analysis should focus on translating what some believe to be potentially confusing information into a meaningful discussion of the effects of changing prices on the registrant's business. In some cases those registrants which are required to report under 33 may determine to display data in addition to that required in order to make the required data more meaningful. In any event, however, all registrants should take advantage of the opportunity to to present the additional quantitative and qualitative information that they believe will be useful to investors in evaluating their companies.

The Commission believes that the revised discussion and analysis will be responsive to at least some of the concerns raised by the commentators in response to specific inquiries numbered 9, 10, and 11 set forth in Release No. 34-15068. For example, the commentators generally favored a structure that would broaden the scope of the analysis and which would eliminate the percentage tests. There were, however, dissenters from this view who felt that such a broadening of scope or the elimination of the percentage tests would leave registrants with insufficient guidance as to the matters requiring discussion. The revised proposal indicates the Commission's concurrence with the majority view. In response to the concerns of the minority, though, considerable detail as to the matters to be discussed has been included.

The commentators responding to Release No. 34--15068 also resisted the suggestion that the location of management's discussion should be specified. Again, the current proposals would follow the majority view. The Commission believes, however, in light of the new focus and substantial changes in the item, that it would be appropriate for the commentators to again address the issue as to whether or not a specific location of management's discussion and analysis should be prescribed.

The Commission is aware that several of the concepts included in the revised item may be controversial and that the proposed item requires the discussion of complex questions where no definitive answers may be available. Accordingly, it may be helpful for the commentators to address alternatives which might better achieve the Commission's goals or which would eliminate some of the controversy or complexity without decreasing the usefulness of the proposed discussion. In particular, commentators should address the following issues:

(1) In light of the fact that working capital is not always an appropriate measure of liquidity, should the Commission be more specific as to possible alternative presentations which would describe a registrant's liquidity position? If so, what alternatives should be offered?

(2) Is the requirement as to the presentation of segment information appropriate? Should this requirement be deleted or, conversely, should it be expanded?

In presenting comments it is hoped that the basic objectives of the revised discussion will be recognized. The management discussion gives the registrant an unusual opportunity to articulate its objectives and financial policies; to describe where it is headed and how it hopes to get there; and to establish and maintain credibility. Included in the management discussion should be factors about the particular business which management is in the best position to know. For each business, there is a limited set of critical variables which presents the pulse of the business. Management is in the best position to know what it is about its company that is important to the users of its reports, and management need not await the development of specific disclosure requirements by the Commission.

Item 7. Financial Statements.

Concurrently with the publication of this release the Commission, under cover of a separate release, has proposed for comment uniform financial statement instructions and various amendments to Regulation S-X which are designed to facilitate the implementation of the proposed integrated disclosure system.[26] Although reference should be made to the two releases setting forth these proposals for full details, the principal goals of the proposed amendments are to adopt uniform three year income statement and statement of changes in financial position and two year balance sheet re-

[26] Securities Act Release Nos. 6179 and 6178, January 15, 1980.

quirements for all registration forms and to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S-X.

Although the Commission will consider these issues separately in the context of the two accounting releases, commentators should be aware that the issues raised by those releases are intimately related to those raised by the proposed amendments to Form 10-K.

Item 11. Exhibits and Reports on Form 8-K.

Recently in Release No. 33-6149[27] the Commission proposed extensive revisions in the general exhibit requirements applicable to all forms including the Form 10-K. The proposed form set forth below assumes the adoption of the proposed exhibit changes. Naturally, should the Commission decide not to implement some or all of the proposed exhibit changes a corresponding revision would be made in proposed Item 11. An addition has been made to this Item as proposed in Release No. 33-6149 to require that the financial statements and schedules which are required in the Form 10-K but which are not required in the annual report to shareholders pursuant to Rule 14a-3 (or Rule 14c-3), be filed as exhibits to the Form. The purpose of this change is to facilitate integration of the annual report to shareholders and the Form 10-K.

Finally, a new exhibit requiring the preparation of a list of the registrant's subsidiaries and setting forth limited data concerning subsidiaries has been added to the proposed new Item 8, Exhibits, of Regulation S-K. This list replaces Item 4 in the present Form 10-K. It is contemplated that this list would be repeated in each annual filing or an express reference to the most recent list filed would be included.

AMENDMENTS TO RULE 14a-3 AND RULE 14c-3—DISCUSSION

The proposed changes in Rule 14a-3 and Rule 14c-3 are minimal and are basically technical in nature, that is, they are made to reflect other substantive rule and regulation amendments proposed in this release and the two accounting releases.[28] Subparagraphs (b)(1), (b)(2), and (b)(3) of Rule 14a-3 and subparagraphs (a)(1), (a)(2), and (a)(3) of Rule 14c-3 are amended to reflect the proposed new uniform Regulation S-X financial statement instructions. Subparagraph (b)(4) of Rule 14a-3 and subparagraph (a)(4) of Rule 14c-3 are revised to delete the reference to the summary of operations and to replace it with proposed Items 10 and 11 of Regulation S-K, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively. The disclosure presently contained in subparagraph (b)(8) of Rule 14a-3 and subparagraph (a)(8) of Rule 14c-3 is deleted and a reference to the new Regulation S-K Item 9, Market Price of the Registrant's Securities and Statement of Dividend Policy,which is a revised and expanded version of that subparagraph, is inserted. Subparagraph (b)(9) of Rule 14a-3 and subparagraph (a)(9) of Rule 14c-3 is expanded to indicate that if a registrant prepares an annual report to shareholders which meets all the Form 10-K disclosure requirements, it need not also supply a Form 10-K to requesting shareholders. Finally, subparagraph (c) of Rule 14a-3 and subparagraph (b) of Rule 14c-3 are revised to reflect the fact that General Instruction H to the proposed Form 10-K requires that certain information from the annual report to shareholders be incorporated by reference into the Form 10-K and that such parts of the annual report are therefore "filed" for purposes of Section 18 of the Exchange Act.

AMENDMENTS TO GUIDES FOR PREPARATION AND FILING OF REPORTS AND REGISTRATION STATEMENTS UNDER THE SECURITIES EXCHANGE ACT OF 1934

Guide No. 1. Summary of Operations.

If the proposal to delete Item 2, Summary of Operations, from the Form 10-K is adopted, appropriate deletions would also be made from other Exchange forms and this Guide would be concurrently rescinded.

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[27] November 16, 1979 [44 FR 67143].

[28] Securities Act Release Nos. 6178 and 6179, January 15, 1980.

Guide No. 4 Integrated Reports to Shareholders.

Depending upon the proposed changes to Form 10-K that are finally adopted, corresponding changes may be made in this Guide.

AMENDMENTS TO GUIDES FOR PREPARATION AND FILING OF REGISTRATION STATEMENTS UNDER THE SECURITIES ACT OF 1933

Guide No. 22 Summary of Operations.

If the proposal to delete Item 2, Summary of Operations, from the Form 10-K is adopted, appropriate deletions would be made from other Securities Act forms and this Guide would be concurrently rescinded.

Guide No. 26 Statement of Dividend Policy.

If proposed Item 9 of Regulation S-K, Market Price of the Registrant's Securities and Statement of Dividend Policy, is adopted, this Guide would be concurrently rescinded.

TEXT OF PROPOSED FORM AND RULES

17 CFR Chapter II is proposed to be amended as follows:

1. By amending §249.310 to read as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§249.10 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report.

(a) This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12. Except as provided in General Instruction H, the report shall contain the item numbers and captions of all items but the text of such items may be omitted. The answers to the items shall be prepared in the manner specified in Rule 12b-13.

* * * * *

D. Signature and Filing of Report.

* * * * *

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

* * * * *

H. Form 10-K Information Required to be Incorporated by Reference.

(a) The information called for by Part II of this form (Items 4 through 7) shall be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a). The information so incorporated by reference shall be furnished to everyone who receives a copy from the registrant of its Form 10-K (except for security holders who have previously received the incorporated information).

(b) The information called for by Part III (Items 8 through 10) shall be incorporated by reference from the registrant's definitive proxy statement (filed pursuant to Regulation 14A) or definitive information statement (filed pursuant to Regulation 14C) which involves the election of directors. However, the information regarding executive offi-

cers called for by Item 3 of Regulation S-K may be included in Part I of Form 10-K. *See* Instruction 4 to Item 3(b) of Regulation S-K (17 CFR 229.20). The Part III information may, at the option of the registrant, by filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8. The information so incorporated by reference shall be furnished to everyone who receives from the registrant a copy of its Form 10-K (except for security holders who have previously received the incorporated information).

(c) The information required by Part I of this form (Items 1 through 3) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a).

(d) If, at the time the Form 10-K is due, the registrant is not required to furnish the Commission with an annual report to security holders pursuant to Rule 14a-3(b) or Rule 14c-3(a) or a proxy statement pursuant to Regulation 14A or an information statement pursuant to Regulation 14C which involves the election of directors, the information required by Parts II and III of this form (Items 4 through 10) shall be set forth in the form.

(e) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b-23(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this form (Items 1 through 7) by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a) and all of the information in Part III of this form (Items 8 through 10) by reference from a definitive proxy statement or information statement involving the election of directors, then notwithstanding General Instruction C(a), this form shall consist of the facing page, the annual report to security holders, the proxy or information statement and the information, if any, required by Part IV of this form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this form and the page or pages in the referenced materials where the corresponding information appears.

* * * * *

J. Issuers Filing on Form S-18.

If the issuer . . . in lieu of the information called for by Item 1, Business, and Item 9, Management Remuneration and Transactions, herein. Item 5, Selected Financial Data, may be omitted at the election of such issuer.

* * * * *

K. Omission of Information by Certain Wholly-Owned Subsidiaries.

(a) * * *

(1) All of the registrant's equity securities . . . as applicable, and which is named in conjunction with the registrant's description of its business;

(b) * * *

(1) Such registrants may omit the information called for by Item 5, Selected Financial Data, and Item 6, Management's Discussion and Analysis of Financial Condition and Results of Operations . . .

(2) Such registrants may omit the list of subsidiaries exhibit called for by Item 8 of Regulation S-K (17 CFR 229.20).

(3) Such registrants may omit the information called for by the following otherwise required Items: Item 8, Directors and Executive Officers of the Registrant; Item 9, Management Remuneration and Transactions; and Item 10, Security Ownership of Certain Beneficial Owners and Management.

(4) In response to Item 1 . . . and in response to Item 2, Properties . . .

PART I
[SEE GENERAL INSTRUCTION H (c)]

* * * * *

Item 2. Properties.

Information relating to properties shall be furnished in acordance with the provision of Item 2 of Regulation S-K (17 CFR 229.20).

Item 3. Legal Proceedings.

The description of legal proceedings shall include the information required by Item 5 of Regulation S-K (17 CFR 229.20).

PART II
[SEE GENERAL INSTRUCTION H(a)]

Item 4. Market for the Registrant's Securities and Statement of Dividend Policy.

Information relating to the market for the registrant's securities and the statement of dividend policy shall be furnished in accordance with the provisions of Item 9 of Regulation S-K (17 CFR 229.20).

Item 5. Selected Financial Data.

Selected financial data shall be furnished in accordance with the provisions of Item 10 of Regulation S-K (17 CFR 229.20).

Item 6. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The management's discussion and analysis of financial condition and results of operations shall be furnished in accordance with the provisions of Item 11 of Regulation S-K (17 CFR 229.20).

Item 7. Financial Statements.

Financial statements meeting the requirements of Regulation S-X (17 CFR 210.1-02) shall be filed. Financial statements of the registrant and its subsidiaries consolidated [as required by Rule 14a-3(b)] shall be filed under this Item. Other financial statements and schedules required under Regulation S-X shall be filed as an exhibit pursuant to Item 11, Exhibits and Reports on Form 8-K, of this Form.

PART III
[SEE GENERAL INSTRUCTION H(b)]

Item 8. Directors and Executive Officers of the Registrant.

The description of directors and executive officers shall include the information required by Item 3 of Regulation S-K (17 CFR 229.20).

Item 9. Management Remuneration and Transactions.

The description of remuneration of directors and officers shall include the information required by Item 4 of Regulation S-K (17 CFR 229.20).

Item 10. Security Ownership of Certain Beneficial Owners and Management.

The description of principal security holders and security holdings of management shall include the information required by Item 6 of Regulations S-K (17 CFR 229.20).

PART IV

Item 11. Exhibits and Reports on Form 8-K.

(a) * * *

(2) Exhibits, as required by Item 8 of Regulation S-K (17 CFR 229.20).

(b) * * *

(c) Registrants shall file, as exhibits to this Form, the financial statements required by Regulation

S-X which are excluded from the annual report to shareholders by Rule 14a-3(b)(1), including (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and its subsidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statement of consolidated majority-owned subsidiaries of the registrant engaged in diverse financial activities; (4) separate financial statements of affiliates who securities are pledged as collateral; and (5) financial statement schedules.

SIGNATURES
[SEE GENERAL INSTRUCTION D]

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

_____
(Registrant)

By _____
(Signature and Title)*

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title)*	(Date)
* * *	* * *
(Signature and Title)*	(Date)

*Print the name and title of each signing officer and director under his signature.

SUPPLEMENTAL INFORMATION TO BE FURNISHED WITH REPORTS FILED PURSUANT TO SECTION 15(d)OF THE ACT BY ISSUERS WHICH HAVE NOT REGISTERED SECURITIES PURSUANT TO SECTION 12 OF THE ACT.

* * * * *

2. By amending §229.20 to amend Item 1 to read as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 ANS SECURITIES EXCHANGE ACT OF 1934—REGULATIONS S-K.

* * * * *

Item 1. Description of business

(a) * * *

(b) Financial information about industry segments.

(1) Industry segments. State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter . . .

* * * * *

3. By ameding §229.20 to amend Item 8 [as proposed in Securities Act of 1933 Release No. 6149 (November 16, 1979)] to read as follows:

Item 8. Exhibits.

(a) * * *

Table II *Securities Exchange Act of 1934-Frequently Used Forms*

(a) * * *

	10-K / X
(21) Subsidiaries of the registrant	

(b) * * *

(21) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.

* * * * *

4. By amending §229.20 by adding Item 9 to read as follows:

Item 9. Market price of the registrant's securities and statement of dividend policy.

Identify the principal marker or markets in which the registrant's securities are being traded and, if a principal market for a class of securities is an exchange, state the high and low sales prices for the securities as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for a class of securities is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such securities (excluding limited or sporadic quotations), furnish a statement to that effect.

Set forth the approximate number of holders of each class of equity securities of the registrant as of a recent date.

State the frequency and amount of any dividends paid during the past two years with respect to each class of equity securities and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

Instructions

1. Information need not be given with respect to outstanding non-transferable options and interests in employee plans or with respect to classes of securities which neigher are registered under section 12 of the Exchange Act nor have given rise to a reporting requirement under section 15(d) of the Exchange Act.

2. The computation of the approximate number of holders of a class of equity securities may be based upon the number of record holders or may also include individual participants in security position listings. *See* Rule 17Ad-8 (17 CFR 240.17Ad-8). The method of computation which is chosen should be indicated.

3. Where a registant has a record of paying no dividends although earnings indicate an ability to do so, the registrant should consider the question of its intention to pay cash dividends in the foreseeable future, and if no such intention exists, a statement of that fact should be set forth in the filing. Registrants which have a history of paying dividends are also strongly encouraged to indicate whether dividends will continue to be paid in the future. Such forward-looking information is expressly covered by the safe harbor rule for projections. *See* Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810].

5. By amending §229.20 by adding Item 10 to read as follows:

Item 10. Selected financial data.

Furnish in comparative columnar form a summary of selected financial data for the registrant, for

(1) each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(2) any additional fiscal years necessary to keep the summary from being misleading.

Instructions.

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlights significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; working capital (except as is indicated in Instruction 3); total assets; and long-term obligations (including long-term debt, capital leases and redeemable preferred stock as defined in ASR 268) and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. If the registrant believes that working capital is not a meaningful measure of liquidity, working

capital may be omitted from the summary and in lieu thereof some other indicator or indicators shall be included.

4. Those registrants which are required to provide five years summary information in accordance with SFAS 33 may combine such information with the selected data and my modify the information presented to conform to the requirements of SFAS 33.

5. All references to the registrant in the summary and in these instructions shall mean the registrant and its consolidated subsidiares.

6. By amending §229.20 by adding Item 11 to read as follows:

Item 11. Management's discussion and analysis of financial condition and results of operations.

Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this section with respect to liquidity, capital resources and results of operations, and may provide such other information which the registrant believes to be relevant to an understanding of its financial condition, changes in financial condition and results of operations. Where in the registrant's judgment a discussion of segment information would be appropriate to an understanding of the registrant's business, the discussion should focus on each reportable segment of the business and on the registrant as a whole.

(a) *Liquidity.*

State registrant's views of the extent to which working capital (the excess of current assets over curent liabilities) is an appropriate indicator of the liquidity of its business. If working capital is not an appropriate indicator, state the basis or bases used by the registrant to measure its liquidity. Identify any known trends or any unusual demands, commitments, events of uncertainties resulting in or which are reasonably likely to result in liquidity increasing or decreasing in any material way. If a deficiency is identified, indicate the course of action which the registrant proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and identify any unused sources of liquidity.

(b) *Capital resources.*

Describe any favorable or unfavorable trends in the registrant's capital resources. Indicate any changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off balance sheet financing arrangements.

Describe the registrant's material commitments for capital expenditures as of the end of the lastest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(c) *Results of operations.*

Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

Describe any identified trends or uncertainties which have had or which the registrant expects will have a favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments) the change in the relationship should be disclosed.

To the extent that the financial statements disclose material increases in net sales or revenues, indicate the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

For the most recent three year period, indicate the effect of inflation and changing prices on the re-

gistrant's net sales and revenues and on income from continuing operations.

Instructions.

1. The registrant's discussion and analysis should be of the financial statements and of other statistical data which the registrant believes will enhance a reader's understanding of financial condition, changes in financial condition or results of operations. Generally, the discussion should cover the three year period covered by the financial statements. However, where trend information is relevant, reference to the five year selected financial data appearing elsewhere may be helpful.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and, if material, from outside sources. The information provided should include that which is available to the registrant without undue effort or expense but which is not obvious from the registrant's financial statements.

3. The registrant's discussion and analysis should specifically focus on events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which could have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations. When focusing on unusual events or transactions or significant economic changes the registrant should consider such items as unusually large promotion or research and development expenses or large price increases or decreases in basic resources.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described; *provided, however,* if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (a) of this section refers to an assessment of the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Liquidity should be assessed on both a long-term and short-term basis. Since liquidity relates directly to cash flows, it is recognized that balance sheet indicators such as "working capital" or "quick assets" may be inadequate. Registrants are asked to address the issue of liquidity in the context of their business or businesses. If the registrant believes that working capital may be a misleading measure of its liquidity, working capital need not be discussed but in lieu thereof some other indicator or indicators shall be presented.

6. Registrant's discussion of results of operations should identify and significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business. Such items might include unusually large promotion or research and development expenses, unusually high or low export activities, identifiable costs associated with a business interruption caused by labor strikes or other events, or significant gains or losses from disposition of assets.

7. Registrants are encouraged but are not required to address future periods. It should be noted, however, that the disclosure of presently existing firm commitments for future material expenditures may be required, and such information should be distinguished from planned and uncommitted expenditures. Such forward-looking information is expressly covered by the safe harbor rule for projections. *See* Securities Act Release No. 6084 (June 25, 1979) [44FR 38810].

8. Registrants which are required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may combine such explanations with the registrant's discussion and analysis required pursuant to this provision. If such statement is combined, the supplementary information required by SFAS 33 shall be located in

reasonable proximity to the discussion and analysis.

9. Registrants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required.

10. All references to the registrant in the discussion and in these instructions shall mean the registrant and its consolidated subsidiaries.

7. By amending §240.14a-3 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include the financial statements required by Regulation S-X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

(4) (i) The report shall contain selected financial data in accordance with the provisons of Item 10 of Regulation S-K (17CFR 229.20).

(ii) The report shall contain management's discussion and analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S-K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's securities and its statement of dividend policy in accordance with the provisions of Item 9 or Regulation S-K (17 CFR 229.20).

(9) * * * If the issuer's annual report to security holders complies with the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such issuer need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

NOTE: * * *

* * * * *

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to secruity holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a-6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

8. By amending §240.14c-3 to read as follows:

§240.14c-3 Annual report to be furnished to security holders.

(a) * * *

(1) The report shall include the financial statements required by Regulation S-X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. Alltype shall be leaded at least 2-point.

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

(4) (i) The report shall contain selected financial data in accordance with the provisions of Item 10 of Regulation S-K (17 CFR 229.20).

(ii) The report shall contain management's discussion and analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S-K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's securities and its statement of dividend policy in accordance with the provisions of Item 9 of Regulation S-K (17 CFR 229.20).

(9) * * * If the issuer's annual report to security holders complies with the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such issuer need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

NOTE: * * *

* * * * *

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of the information statement are filed with the Commission pursuant to Rule 14c-5, whichever date is later. The report is not deemed to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

COMMENTS

Any interested persons wishing to submit written comments on the proposals, as well as on other matters which might have an impact upon the proposals contained herein, are invited to do so. Mindful of its responsibilities to weigh with care the costs and benefits which result from its rules and form requirements, the Commission specifically invites comments on the cost to registrants and others of these proposals. In light of Section 23(a)(2) of the Exchange Act, the Commission also specifically invites comments as to any competitive impact of any changes in the disclosure requirements.

AUTHORITY

The amendments to the forms and guides prescribed under the Securities Act of 1933 are being proposed pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of that Act. The amendments to Rule 14a-3, Rule 14c-3, and the forms and guides prescribed under the Securities Exchange Act of 1934 are being proposed pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S-K are being proposed pursuant to all of the 1933 and 1934 Act provisions referred to above.

[Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1,

8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503, secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 306(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78 m, 78o(d), 78w(a).]

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6177/Jan 15, 1979

SECURITIES EXCHANGE ACT OF 1934
Release No. 16497/Jan 15, 1979

Business Combination Transactions—Proposed Short Form for Registration and Proposed Amendments of Related Rules

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposed short form which may be used to register under the Securities Act of 1933 securities issued in business combination transactions which meet certain criteria. Specifically, the Commission is proposing for comment: (1) proposed Form S-15, an optional short form for registration under the Securities Act of securities issued in certain business combination transactions; (2) proposed amendments to certain provisions of Regulations 14A and 14C under the Securities Exchange Act of 1934 to provide that the informational and filing requirements of those regulations would be satisfied when Form S-15 is used to register securities under the Securities Act; and (3) proposed amendments to Rule 24 of the Commission's Rules of Practice and Rule 411 under the Securities Act of 1933 to permit the incorporation by reference of material contained in annual reports to shareholders furnished to the Commission pursuant to Rules 14a-3 and 14c-3 under the Exchange Act. These proposals are part of a coordinated rulemaking effort designed to further integrate disclosure requirements under the Federal securities laws.

DATE: Comments should be submitted on or before April 15, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-817. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Collins (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The proposed Form S-15 and related amendments being published for comment today represent part of the Commission's continuing efforts to simplify the disclosure provided to investors, to reduce the burdens and costs which registration of securities under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] imposes on issuers, and to integrate further the corporate disclosure requirements of the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act) [15 U.S.C. 78a et seq.] This rulemaking action is being proposed simultaneously with the Commission's publication for comment of (i) proposed amendments to Form 10-K [17 CFR 249.310] and Rule 14a-3 [17 CFR 240.14a-3] under the Exchange Act; (ii) proposed amendments to Regulation S-K [17 CFR 229.20] under the Securities Act and the Exchange Act; and (iii) a proposed addition to Regulation S-X (17 CFR Part 210) which would establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act and various amendments to Regulation S-X which would eliminate, to the extent possible, the differences between the requirements of Regulation S-X and the requirements of Generally Accepted Accounting Principles. These proposals taken together constitute a major effort to achieve

an integrated disclosure system under the Securities Act and the Exchange Act. Proposed Form S-15 relies to a great extent upon the amendments proposed in these three releases; accordingly, attention is directed to Securities Exchange Act Release No. 6176, January 15, 1980, Securities Act Release No. 6178, January 15, 1980, and Securities Act Release No. 6179, January 15, 1980, for a fuller understanding of proposed Form S-15 and its relationship with the Commission's move toward integration and simplified disclosure requirements.

Proposed Form S-15 provides for an abbreivated prospectus to be delivered to security holders together with copies of the issuer's latest annual report to security holders, certain portions of which would be incorporated by reference into the registration statement. The form would be available for Securities Act registration of securities issued in certain business combination transactions where the acquiring company meets the conditions as to the use of Form S-7 (17 CFR 239.27).[1] This and the other conditions to the form's availability, the requirements of the proposed form, and the related rule amendments being proposed are discussed in greater detail below under "Synopsis of the Proposals."

BACKGROUND

On September 27, 1976 (Securities Act Release No. 5744, 41 FR 43876), the Commission proposed for comment Form S-14A, an optional short form for registration under the Securities Act of securities to be issued in certain reclassifications or business combinations. The Commission, mindful of the unwieldy (often 150 page) disclosure document involved in registration statements on Form S-14, had two goals in proposing Form S-14A: (1) simplifying the disclosure provided to investors and (2) reducing unnecessary burdens on issuers. The form was designed to be available where the issuer met the conditions for the use of Form S-7 and the securities were to be issued in a transaction of the type specified in Rule 145(a) (17 CFR 230.145(a)). The proposed form was based on the concept of "differential disclosure," that is, that investors need not be directly furnished all material informatoin about an issuer before making an investment decision so long as other information is available to the markets and to investors in the form of annual, quarterly and periodic reports and proxy statements filed with the Commission. The concept would have been implemented by the use of a bifurcated prospectus. A short prospectus would have been required to be delivered to all security holders and would principally contain information involving the transaction in which the securities registered were to be issued. The second part of the registration statement would be filed with the Commission and would contain more detailed information about the issuer and the transaction. The second part would be incorporated by reference into the prospectus and delivered to shareholders upon request.

The public comments received on the 1976 proposal overwhelmingly supported the Commission's objectives. Several commentators furnished specific reasons why the full scale disclosure of Form S-14 (17 CFR 239.23) frequently imposes a burden not outweighed by corresponding benefits to investors. Among the reasons mentioned were that: (1) individual investors may be better served by delivery of a readable and understandable disclosure document; (2) security holders are protected by state and federal law from over-reaching by the majority or by members of management or the Board of Directors; (3) the acquired company's shareholders are the beneficiaries of an agreement which is the result of extended negotiations; (4) adequate public information about the issuer may already be available; and (5) the transaction many not require the vote of shareholders of the acquired company or there may be a relatively small number of such shareholders.

The 1976 commentators did not believe, however, that the form as proposed would have achieved the goals of simplified disclosure and reduced costs because (1) the two part format would actually increase printing and preparation costs to issuers and (2) the uncertain potential liability for a short prospectus not itself containing all material information would discourage issuers from taking

[1] These conditions include a minimum earnings test and a requirement that the registrant has provided continuous disclosure to investors pursuant to the reporting requirements of Sections 13, 14, and 15(d) of the Exchange Act. *See* Note 6, *infra*.

advantage of the short form.[2] Accordingly, the Commission decided not to adopt the form as proposed, or the amendments to related rules, and announced instead its intention to develop a new short registration form for the same purpose. This determination was announced in Securities Act Release No. 5806 (February 16, 1977) [42 FR 10855], which described the contemplated new form generally as one which would consist of a single abbreviated prospectus incorporating by reference substantial information already filed with the Commission pursuant to the reporting requirements of the Exchange Act and/or information contained in the issuer's annual report to security holders.

The proposed Form S-15 being published today reflects the Commission's on-going reexamination and reformulation of the disclosure requirements under the Securities Act and the Exchange Act with a view to further integrating those requirements. Specifically, the proposal would integrate the appliable disclosure provisions of these Acts in the registration of securities issued in certain types of business combination transactions. As was the case in Securities Act Release Nos. 5744 and 5806,*supra*, the Commission's intent in proposing Form S-15 is to provide a means for reducing registrants' costs in registering securities to be issued in business combinations and at the same time to provide to investors a simplified and more understandable disclosure document upon which to make decisions. The proposals published herein would accomplish these dual goals by restricting the use of the short form to those transactions in which the security holder's need for disclosure may be met by delivery of an abbreviated prospectus accompanied by the issuer's annual report to security holders. For liability purposes, pertinent information such as financial statements would be incorporated by reference into the registration statement from the annual report to security holders.

These proposals also reflect in part the recommendation of the Advisory Committee on Corporate Disclosure (the "Advisory Committee") that registration statements relating to the public offering of securities in an exchange offer or Rule 145(a) transaction should be shortened and simplified.[3] The Advisory Committee concurred with the Commission's objectives in proposing Form S-14A in 1976, stating that it saw no need for a detailed registration statement repeating information already available about the companies involved in the transaction and of which the professional investor/analyst is already aware. Further, the Advisory Committee pointed out that where the disclosure document actually reaches the individual investor, and requests him to make an investment decision without the benefit of an intermediary adviser, it should not be of a type which would overwhelm and confuse him.[4]

The Advisory Committee recommended that the Commission could achieve its objectives through further integration of the securities acts by incorporating Exchange Act reports by reference into the statutory prospectus under the Securities Act. While the proposals published today take this approach, they do not go as far as was recommended by the Advisory Committee. Form S-15 is an interim measure and would only be available for registration of securities issued in the limited types of transactions discussed below, not in all business combinations and exchange offers.

If adopted, proposed Form S-15 would be in the nature of an experiment. The Commission will carefully watch the use and effects of the form to determine whether it is consistent with the Commission's responsibility to protect investors and safeguard the public interest in connection with the

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[2]The commentators expressed concern that, where information summarized in or omitted from the short prospectus actually delivered but contained in the second part of the prospectus filed with the Commission is later found to be material, the issuer may be exposed to liability because the information was not contained in the distributed document.

[3]Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission ("Report"), House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977), Committee Print 95-29 at 440-450.

[4]The Advisory Committee noted a study conducted by the Division of Corporation Finance in 1976 which found that the average length of Form S-14 registration statements filed with the Commission was 110 pages, with some exceeding 200 pages.

purchase and sale of securities. This will enable the Commission to consider the advisability of either expanding the types of transactions for which the form may be used or, if the protection of investors so requires, limiting the availability of the form.

SYNOPSIS OF THE PROPOSALS

The following brief synopsis is intended to assist interested parties in their understanding of the form and amendments proposed. Attention is directed to the text of the proposals for a more complete understanding.

I. Availability of Form S-15.

Proposed Form S-15 would be available only for registration of securities issued in transactions of the character specified in Rule 145(a)(2) and (a)(3) or in an exchange offer for securities of another person where the exchange offer will result in acquisition of the other person by the issuer. The transaction must also meet the five conditions set forth in General Instruction A.

The first two conditions are designed to allow the form to be used only where relatively small companies are acquired by substantially larger companies. Under the first condition, the effect of the transaction must not be a change of more than 10% between the items listed in General Instruction A. 1(a) (gross sales and operating revenues, net income, etc.) for the issuer on a pro forma combined consolidated basis giving effect to the transaction in question.[5] In addition, the total purchase price must not exceed 10% of the aggregate market value of voting stock held by unaffiliated shareholders.

The latter limitation, on the percentage of the nonaffiliate "float," reflects the Commission's concern that an abbreviated prospectus may not be appropriate when a transaction does not result in greater than a 10% change for the issuer on a pro forma basis but nevertheless may be large in terms of publicly traded shares and thus have a significant impact on the market price of the issuer's stock. Such disparity may indicate that the issuer is not sufficiently followed by market professionals to assure that previously filed material is reflected in the market price of the issuer's stock or that the sheer volume of shares issued in the proposed business combination may affect the market price of the issuer's securities. The Commission's concern is similar to that which promoted the limitation on the availability of Form S-16 (17 CFR 239.27) for primary offerings to offerings by issuers whose voting stock held by non-affiliates has an aggregate market value of at least $50 million. This limitation was imposed because the Commission believed that such a condition would provide some assurance that information about such companies would be widely disseminated in the market place and that securities analysts would follow such companies (*See* Securities Act Release No. 5923, April 11, 1978). These expected consequences of the "float" requirement were seen as ways to help assure market reaction to material information about a company and thereby to reduce the need to provide that information directly to offerees at the time of the offering.

The Commission invites specific comment as to whether Form S-15 use should be prohibited where there is this disparity, and, if so, as to which condition would best achieve this end: (1) the proposed requirement, which is of an experimental nature, that would make the form unavailable if the total purchase price of the company being acquired exceeds 10% of the aggregate market value of the issuer's voting stock held by unaffiliated shareholders; (2) a flat requirement that the aggregate market value of the issuer's voting stock

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[5] The test for the effect of the transaction used in General Instruction A to proposed Form S-15 is similar in some respects to the tests set forth in Securities Act Release No. 4950 (February 20, 1969) for determining whether relief should be granted from the requirement for 3 year certified financial statements of companies acquired or to be acquired. It should be noted, however, (1) that the standards are not identical, (2) that the test in General Instruction A to proposed Form S-15 is to be used only for purposes of determining the availability of such form, and (3) that for all purposes rather than Form S-15 availability and disclosure requirements the standards and positions expressed in Release No. 4950 remain unchanged.

held by non-affiliates be of a certain minimum amount; or (3) any other condition which commentators may suggest. In addition, commentators are specifically invited to suggest what additional items of disclosure not required to be presented in the prospectus pursuant to proposed Form S-15 would be appropriate where such disparities exist.

Under the second condition, the issuer must meet the requirements for the use of Form S-7[6] and must have furnished an annual report to its security holders pursuant to and meeting the requirements of Rule 14a-3 [17 CFR 240.14a-3] or Rule 14c-3 [17 CFR 240.14c-13] for its latest fiscal year.

The other conditions which must be met in order for proposed Form S-15 to be available are designed generally to ensure that the abbreviated prospectus is only used in transactions and under conditions where security holders will not suffer as a result of streamlined disclosure. These additional conditions are as follows.

(1) The boards of directors of both companies involved in the transaction must have approved the transaction.

(2) The prospectus must be delivered to security holders at least 20 days prior to the meeting date or, if there is to be no meeting, 20 days prior to effectuating the transaction.

(3) Proposed Form S-15 would not be available if either the issuer or the company being acquired engaged in significant oil and gas operations. The Commission believes it is appropriate to exclude transactions involving such companies at this time because of the staff's current study of oil and gas disclosure requirements.[7]

Commentators are specifically invited to comment on the above conditions to the use of Proposed Form S-15. Particular attention is directed to whether these conditions protect public security holders by providing adequate disclosure upon which to base informed investment and voting decisions without so restricting the proposed form's use and that few issuers would be able to avail themselves of the benefits of its reduced costs. In this regard, the Commission invites specific comment as to which of the following would be the preferable alternative for registration where all of the conditions to the use of the proposed form are met except that the transaction has a greater than 10% effect on the issuer on a pro forma combined basis (General Instruction A 1.): (1) registration on Form S-14 or (2) registration on Form S-15 as proposed but with an additional requirement for presentation of pro forma summary information (Item 1(c)) and financial statements with respect to the transaction.

Because a Form S-15 prospectus would consist largely of information concerning the business combination itself and would contain only limited information concerning the issuer and other parties to the transaction, the Commission believes that such a prospectus would not be appropriate for use in connection with offers or sales of the registered securities to persons who are not security holders of a party to the transaction. Accordingly, proposed Form S-15 includes an instruction prohibiting use of the form for reoffers or resales by any affiliate of the issuer or any other persons who may be deemed to be underwriters of the securities. Instead, reoffers or resales of securities by such persons would have to be made pursuant to a registration statement under the Securities Act or pursuant to an appropriate exemption from the registration requirements of the Securities Act, such as Regulation A (17 CFR 230.251 to 262) or Rule 145(d) (17 CFR 230.145(d)). Because the

[6]Generally, an issuer may use Form S-7 if it (a) has a class of securities registered under Section 12 (15 U.S.C. 78[1]) or is required to file reports pursuant to Section 15(d) (15 U.S.C. 78m) of the Exchange Act; (b) has been subject to the requirements of Section 12 or 15(d), and has filed all applicable reports, for 36 calendar months prior to the filing of the registration statement and has timely filed all required reports for the past twelve calendar months; (c) has not defaulted in payments on preferred stock, indebtedness for borrowed money or long-term leases during the past 36 months; and (d) has had consolidated net income of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

[7]Form S-18 (17 CFR 239.28) and Proposed Rule 242 (17 CFR 230.242) similarly exclude companies engaged in significant oil and gas operations from use of the proposed rule. *See* Securities Act Release No. 6121, September 11, 1979 [44 FR 54258].

issuer of the securities being registered must meet the requirements for the use of Form S-7 in order to use Proposed Form S-15, Form S-16 (17 CFR 239.27) would be available for secondary distributions of securities issued pursuant to the business combination transaction. Form S-16 imposes only abbreviated prospectus disclosure requirements and relies upon incorporation by reference of the issuer's Exchange Act filings. It is contemplated that, since the boards of directors of both companies will have approved the proposed transaction, arrangements can be made during negotiation for future Form S-16 registration for reoffers and resales by affiliates.

Proposed Form S-14A (Securities Act Release No. 5744, *supra*) contained a similar prohibition on use for reoffers and resales, and the Commission continues to believe such a restriction appropriate, especially in light of the experimental nature of proposed Form S-15. Comments are specifically invited, however, on the necessity for and any undue burdens imposed by this prohibition.

Proposed Form S-15 would not be available to registered investment companies. The Commission believes that the special circumstances of those companies warrant specific consideration as to their use of the proposed form. Comments are specifically invited as to whether proposed Form S-15 should be available to investment companies and, if so, how the conditions for their use of the form should be stated and what, if any, modifications would be appropriate in the items of proposed Form S-15.

II. Relationship with Proxy or Information Rules.

The proposed Form S-15 prospectus may serve as the proxy or information statement used in connection with the transaction and would be deemed to meet the informational and filing requirements of the proxy or information rules under Section 14 of the Exchange Act, and Regulations 14A and 14C (17 CFR 240.14a-1 to 14a-101 and 240.14c-1 to 14c-101) thereunder, where applicable to the transaction. All other provisions of those regulations still apply.

III. Information Required in the Prospectus.

Proposed Form S-15 is designed to provide for a shorter, simpler prospectus which will be more comprehensible to ordinary investors. Registrants are urged to present information in the prospectus as clearly and concisely as possible.

The proposed Form S-15 prospectus may be streamlined primarily because the issuer's latest annual report to security holders would be required to be delivered along with the prospectus. Disclosure regarding the issuer's business description, financial statements, industry segments, market price of securities and dividend policy, selected financial data, and management's discussion and analysis would be incorporated by reference from the annual report rather than presented in the prospectus itself. In addition, if the acquired company is also a reporting company with a class of securities registered pursuant to Section 12 of the Exchange Act, its latest annual report to security holders also would be required to be delivered with the prospectus and the same items of disclosure would be incorporated by reference into the prospectus from that report.

The prospectus itself would be required to present only: a summary of the transaction placed in the front of the prospectus (Item 1); information regarding the terms of the transaction (Item 2); financial and other information concerning the acquired company if it is not a reporting company with a class of securities registered pursuant to Section 12 of the Exchange Act (Item 3); voting information and information on dissenters' rights, beneficial ownership of the issuer's securities, and the identity of both companies' executive officers and directors (Item 4); a description of the interests of any affiliates in the transaction (Item 5); and additional information as to subsequent material changes, and changes in control and availability of reports and other information similar to that required by Item 8 of Form S-16 (17 CFR 239.27) Items 6 and 7).

The disclosure called for by Item 4(c)(2) of the proposed form with respect to beneficial ownership is that required by Item 6(a) and 6(b) of Regulation S-K. The Commission invites specific comment on whether the beneficial ownership disclosure required in Proposed Form S-15 should be limited to voting power alone instead of both voting and in-

vestment power as required by Item 6 of Regulation S-K.

The Commission recognizes that material changes or events, such as significant acquisitions, may have occurred subsequent to the close of the latest fiscal year reflected in the issuer's latest annual report to security holders. In such cases, the annual report required to be delivered with the prospectus may no longer adequately describe the business and financial status of the issuer. Accordingly, the Commission invites specific comment on which of the following alternatives would be preferable in such event: (1) require the issuer to use Form S-14; (2) require disclosure of the subsequent changes in the prospectus (proposed Item 6(a)) and delivery of the annual report with the prospectus; (3) provide issuers with the option of either (a) delivering the annual report and disclosing the subsequent material changes or (b) delivering only a prospectus, which would contain the same type of disclosure with respect to the issuer as is required by Rule 14a-3(b); or (4) provide any other means to address this matter.

Proposed Form S-15 would allow material being incorporated by reference to be dealt with in the prospectus only be means of the statement required by Item 8 to the effect that the prospectus is accompanied by the annual report(s) to security holders and that certain information therefrom is incorporated by reference into the registration statement. As proposed, the detailed description of which pages and/or portions of the annual report(s) are incorporated by reference would be contained in Part II (Item 10) of the registration statement. While the Commission believes that this will help keep the prospectus a simple, readable document, specific comment is invited, however, on whether this detailed description of material incorporated by reference should be presented in the prospectus itself rather than in Part II.

IV. *Information Not Required in the Prospectus.*

Part II of proposed Form S-15 would be similar to the second part of other registration statement forms adopted for Securities Act registration of securities. It would be a part of the registration statement filed with the Commission but not delivered to security holders. In addition to the statement incorporating by reference required portions of the annual report(s) to security holders (Item 10(a)), as well as that incorporating portions of quarterly reports delivered with the prospectus (Item 10(b)), Part II also would require that the issuer's latest 10-K and other recent filings filed with the Commission, as well as those of the acquired company if the latter is subject to Exchange Act reporting requirements, be incorporated by reference (Item 10(c)). Part II also would require an undertaking by the issuer to deliver with each prospectus a copy of its latest annual report to security holders, a copy of the acquired company's annual report if material contained therein has been incorporated by reference and copies of the latest of any later quarterly reports on Form 10-Q distributed by the issuer or by the acquired company to security holders for periods subsequent to the end of the last fiscal year. Forms 10-K would only be required to be delivered upon the written request of the security holder. The remaining requirements of Part II would be a statement as to the interests of experts named in the registration statement (Item 11) and the listing and furnishing of certain exhibits (Item 12).

Proposed Form S-15 does not require that the issuer's latest proxy statement must be delivered along with the annual report to security holders and the prospectus. The proxy statement would contain disclosure concerning directors and executive officers (Item 3 of Regulation S-K), management remuneration (Item 4 of Regulation S-K), and security ownership of certain beneficial owners and management (Item 6 of Regulation S-K) that is not required to be included in the annual report to security holders. Item 4 of proposed Form S-15 would call for the same disclosure as to directors and executive officers and security ownership which would be contained in the proxy statement. Since disclosure as to management remuneration would not be delivered to security holders, however, the Commission invites specific comment on whether the issuer's latest proxy statement should be delivered with the prospectus.

The rationale for requiring Form(s) 10-K and 10-Q to be incorporated by reference into the registration statement is similar to that for the corresponding requirement in Form S-16 (17 CFR 239.27). Where companies are subject to and comply with the continuous reporting requirements of Section 13 of the Exchange Act, and the market's awareness of the information contained in

such Exchange Act filings serves as a basis for abbreviated disclosure requirements in a Securities Act registration statement, then Securities Act liability should attach to those Exchange Act filings.

Proposed Form S-15 assumes that the Commission's presently outstanding proposal to incorporate uniform exhibit requirements into Item 8 of Regulation S-K will be adopted.[8] If for any reason this is not the case, or such adoption has not occurred at the time Form S-15 is considered for adoption, changes would be made in Item 12 of Form S-15 which would set forth exhibit requirements which are substantially the same as those contained in proposed Item 8 of Regulation S-K. These requirements are outlined in the following paragraph.

If proposed Item 8 of Regulation S-K relating to exhibit requirements has been adopted at such time as the Commission decides to adopt proposed Form S-15, then new Item 8 of Regulation S-K would be amended by adding a new column to Table I thereof indicating that the following exhibits would be required for filings on Form S-15: underwriting agreement; plan of acquisition, reorganization arrangement, liquidation or succession; instruments defining the rights of security holders; opinion re legality; opinion re tax matters; and material contracts.

V. *Proposed Related Amendments.*

A. *Rules on Incorporation by Reference.*

Proposed Form S-15 requires incorporation by reference into the registration statement of certain information contained in the annual report to security holders. That report, prepared pursuant to Regulation 14A or 14C. particularly Rules 14a-3 or 14c-3 thereof, is furnished to the Commission for its information but is not deemed "filed" with the Commission.[9] The Commission is proposing amendments to Rule 24 of its Rules of Practice (17 CFR 201.24) and to Rule 411 (17 CFR 230.411) which would make clear that information contained in such reports, though the reports are not deemed filed with the Commission, nevertheless may be incorporated by reference into a registration statement filed pursuant to the Securities Act.

B. *Rules 14a-3, 14a-6, 14c-2, 14c-5.*

Exchange Act Rule 14a-3(a) (17 CFR 240.14a-3(a)) provides that no solicitation subject to the proxy rules shall be made unless each person solicited is concurrently furnished or has previously been furnished a written proxy statement containing the information specified in Schedule 14A (17 CFR 240.14a-101) under that Act. The Commission proposes to amend Rule 14a-3 to provide that material filed in a Form S-15 registration statement under the Securities Act containing the information required by that form would satisfy the requirements of the rule.

The Commission proposes to amend Exchange Act Rule 14a-6(j) (17 CFR 240.14a-6(j)) to provide that material filed in an S-15 registration statement under the Securities Act would satisfy the filing requirements of the proxy rules under the Exchange Act. This amendment would enable registrants to avoid filing copies of the registration statement as a proxy statement under the Exchange Act and paying a proxy filing fee.

Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12) provides that solicitations in opposition to prior solicitations may be made before furnishing security holders a written proxy statement containing the information specified in Schedule 14A if certain conditions are met, including that no form of proxy be furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) is furnished. Where a proxy state-

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[8] *See* Securities Act Release No. 6149 (November 16, 1979).

[9] Rule 14a-3(c) (17 CFR 240.14a-3(c)) provides that:

"Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information .... The report is not deemed ... to be "filed;; with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement by reference."

Rule 14c-3(b) (17 CFR 240.14c-3(b)) contains a similar provision.

ment then meeting the requirements of Schedule 14A has already been furnished to security holders, however, this latter condition is inapplicable.

Since the proposed amendment to Rule 14a-3(a) would provide that a proxy statement included in a registration statement filed under the Securities Act on Form S-15 could contain the information specified in that form in lieu of the information specified in Schedule 14A, the Commission proposes to amend Exchange Act Rule 14a-12(a) to refer to Rule 14a-3(a) and to delete the reference to Schedule 14A.

Rule 14c-2(a) under the Exchange Act (17 CFR 240.14c-2(a)) requires an issuer subject to the information rules to transmit to its security holders a written information statement containing the information specified in Schedule 14C. To provide similar treatment for proxy material and information statements, the Commission proposes to amend Rule 14c-2 to provide that material filed in a Form S-15 registration statement would satisfy the requirements of the rule.

In order to provide similar treatment for proxy material and information statements, the Commission proposes to amend Exchange Act Rule 14c-5(e) (17 CFR 240.14c-5(e)), to provide that material filed in a Form S-15 registration statement under the Securities Act would satisfy the filing requirements of Regulation 14C under the Exchange Act. In such instances, no information statement filing fee would be required.

TEXT OF PROPOSALS

It is proposed to amend 17 CFR Chapter II as follows: PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933 1. By adding §239.29 to read as follows:

§239.29 Form S-15, optional form for registration of securities to be offered in certain business combination transactions.

SECURITIES AND EXCHANGE COMMISSION
FORM S-15
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

_____
(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)	(Standard industrial classification code number)	(I.R.S. Employer Identification No.)

_____
(Address of principal executive offices, including Zip Code)

_____
(Address of principal place of business)

Issuer's telephone number, including area code _____

_____
(Name and address of agent for service)

Approximate date of commencement of the proposed sale of the securities to the public _____.

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed Maximum offering price per unit	Proposed Maximum aggregate offering price	Amount of Registration Fee

FORM S-15
GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S-15.*

In addition to Form S-1 (§239.11) or Form S-14 (§239.23), Form S-15 may be used for registration under the Securities Act of 1933 of securities to be issued either (a) in a transaction of the type specified in Rule 145(a)(2) and (3); or (b) in an exchange offer for securities of another person if the voting securities sought to be acquired together with any securities owned by the issuer at the time of the filing of the registration statement will aggregate at least 80% of the outstanding voting power of each class of outstanding securities of the other person; if each of the following conditions is met:

1. (a) The change in each of the following items for the issuer on an historical basis compared to those for the issuer on a pro forma consolidated basis giving effect to the transaction does not exceed 10 percent for the latest fiscal year (with respect to items (i) and (ii)) and as of the end of the latest fiscal year (with respect to items (iii) and iv)):

(i) gross sales and operating revenues;

(ii) net income;

(iii) total assets; and

(iv) total shareholder's equity.

(b) The total purchase price (market value of the securities being registered as of the date of filing the registration statement plus any additional cash consideration being offered) does not exceed 10% of the aggregate market value of the issuer's voting stock held by non-affiliates. The latter value shall be computed as of a date which is not more than 30 days prior to the date of filing the registration statement.

2. At the time of filing the registration statement, the issuer meets the rquirements for the use of Form S-7 (§239.26), and has furnished an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year.

3. The transaction has been approved by the board of directors of the issuer and of the company being acquired.

4. The prospectus is delivered to the security holders whose vote, consent, or authorization is solicited at least 20 days prior to the date on which the meeting of such security holders is held or, if no such meeting is held, that date of such vote, consent, or authorization.

5. Neither the issuer nor the company being acquired engages in oil and gas related operations which exceed the criteria for exemption specified in §210.3-18(k) of Regulation S-X.

6. Neither the issuer nor the acquired company is a registered investment company.

B. *Application of General Rules and Regulations.*

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C [17 CFR 230.400 to 230.494]. That regulation contains general requirements regarding the preparation and filing of the registration statement. Rules 405, 411, 412, and 439 should be especially noted.

C. *Documents Comprising Registration Statement.*

The registration statement shall consist of the facing sheet of the form, a prospectus containing the information called for by Part I, the information and undertaking called for by Part II, signatures, consents of experts, exhibits and any other information or documents filed as a part of the registration statement.

D. *Compliance with Proxy or Information Rules.*

(a) If a corporation or other person submits to its security holders entitled to vote or consent a proposal to approve the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§240.14a-1 to 14a-101 of this chapter) or 14C (§§240.14c-1 to 14c-101) under the Securities Exchange Act of 1934, then the provisions of such regulations shall apply in all respects to such person's submission, except that (1) the prospectus may be in the form of a proxy or

information statement and shall contain the information required by this form in lieu of that required by Schedule 14A (§240.14a-101 of this chapter) or 14C (§240.14c-101) of Regulation 14A or 14C under the Securities Exchange Act of 1934; and (2) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to the requirements of such regulations. All other soliciting material shall be filed in accordance with such regulations.

(b) If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

E. *Unavailability of the prospectus for reoffers or resales.*

The Form S-15 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer or any other persons who may be deemed underwriters of such securities.

F. *Notice of intention to file the registration statement.*

The issuer is requested to advise the Branch Chief in the Division of Corporation Finance who regularly reviews issuer's filings, by letter, of the intention to file a registration statement on Form S-15 as soon as possible prior to the actual filing thereof, and to indicate a contemplated filing date for such registration statement. Such pre-filing notice, which is intended to assist the Commission staff in its processing of registration statements, is optional on the part of the issuer and is not a condition to the use of Form S-15.

PART I. INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. *Summary.*

Immediately following the cover page of the prospectus, set forth a summary containing the following:

(a) a brief description of the general nature of the business conducted by the issuer and by the acquired company;

(b) a brief description of the transaction pursuant to which the securities being registered are to be offered; and

(c) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the acquired company, for the following items: (i) book value per share as of the date of the most recent balance sheet presented in response to Item 3 or incorporated by reference in response to Item 10; (ii) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 3 or incorporated by reference in response to Item 10; (iii) net earnings per share; and (iv) market value of securities as of the day preceding public announcement of the proposed transaction, or, in none, as of the day preceding the day the agreement with respect to the transaction was entered into.

Item 2. *Terms of the Transaction.*

(a) Give the name of the issuer of the securities to be registered, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(b) Give the name of the acquired comapny, its complete mailing address, including the zip code, and the telephone number, including the area code of its principal executive offices.

(c) Outline briefly the material features of the proposed transaction, including a description of the securities to be issued pursuant thereto. State the acquired company's reasons for engaging in the transaction, the federal income tax consequences thereof to the security holders of the acquired company, and the significant differences between the rights of those security holders and the rights of holders of the securities being offered.

(d) Briefly describe any restrictions on the issuer's present or future ability to pay dividends with respect to any class of securities. Disclose whether any dividends are in arrears or whether any defaults exist with respect to payment of principal or

interest on any securities of the issuer or of the company being acquired and disclose the effect of the transaction pursuant to which the securities registered are to be offered on such arrears or defaults.

(e) Include a brief description by the company to be acquired or whose shares are subject to the exchange offer of any matter, not otherwise disclosed pursuant to another item of this form, which is material to the fairness of the transaction to unaffiliated security holders of the acquired company.

Item 3. *Description of the Acquired Company.*

(a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year, then portions of such annual report to security holders shall be incorporated by reference and shall be delivered in accordance with the provisions of Items 9 and 10 of this form.

(b) If the company being acquired either does not have a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 or has not furnished an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year then the following shall be set forth with respect to the acquired company:

(i) a brief description of the acquired company's business which indicates its general nature and scope;

(ii) market prices of securities and statement of dividend policy as required by Item 9 of Regulation S-K;

(iii) selected financial data as required by Item 10 of Regulation S-K

(iv) management's discussion and analysis as required by Item 11 of Regulation S-K;

(v) financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) had the company being acquired been required to prepare such a report; provided, however, the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously ben audited; and

(vi) such quarterly financial information as would have been required had the acquired company been required to file reports on Form 10-Q (§249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective.

Item 4. *Voting Information.*

(a) If proxies, consents, or authorizations are to be solicited, include, where applicable, the information called for by the following items of Schedule 14A (§240.14a-101 of this chapter) of Regulation 14A under the Securities Exchange Act of 1934:

Item 1. Revocability of proxy;

Item 3. Persons making the solicitation;

Item 5. Voting securities and principal holders thereof;

Item 22. Vote required for approval.

(b) If proxies, consents, or authorizations are not to be solicited, include, where applicable, the information called for by Items 5 and 22 of Schedule 14A and the following items of Schedule 14C (§240.14c-101 of this chapter) of Regulation 14C under the Securities Exchange Act of 1934:

Item 2. Statement that proxies are not solicited;

Item 3. Date, time and place of meeting.

(c) In addition to the information called for by paragraphs (a) and (b) above, in all cases include the following:

(i) *Dissenters' Rights of Appraisal.* Outline briefly appraisal or other similar rights of dissenters with respect to the proposed transaction and indicate any statutory procedure required to

be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the person solicited will be notified of such date.

Instruction. Indicate whether or not a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or other similar rights and whether or not a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

(ii) *Beneficial Ownership.* Provide the information required by Items 6(a) and 6(b) of Regulation S-K (§229.20) with respect to both the issuer of the securities being registered and the company being acquired. No response to this paragraph (c)(2) is necessary to the extent that this information is already provided pursuant to paragraph (a) of this item.

(iii) *Executive Officers and Directors.* With respect to the issuer, provide the information required by Item 3 of Regulation S-K. With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

Item 5. *Interest of Certain Persons in the Transaction.*

Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the issuer and of the company being acquired, in the proposed transaction.

Instruction.

This item shall not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

Item 6. *Additional Information with Respect to the Issuer.*

(a) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the annual report to security holders and which have not been described in the issuer's most recent report on Form 10-Q (§249. 308a). Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(b) State that reports, proxy statements and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(c) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements and other information concerning the registrant can be inspected at such exchanges.

(d) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of the issuer's Form 10-K(s) (§249.310) information from which is incorporated by reference in response to any item and indicate the name and address of the person to whom such a written request is to be directed.

Item 7. *Additional Information With Respect to the Acquired Company.*

(a) Describe any and all changes in the acquired company's affairs which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(i) in the acquired company's annual report to shareholders incorporated by reference and de-

livered pursuant to Items 9 and 10 of this form; or

(ii) in the prospectus as a result of the provisions of paragraph (b)(v) of Item 3 of this form.

Financial information may be required in the prospectus if such financial statements do not reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(b) Describe any changes in control of the acquired company which have occurred within thirty-six months prior to the filing date of the registration statement.

(c) If the acquired company has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or is required to file reports under Section 15(d) of that Act:

(i) state that reports and other information filed by the acquired company can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates;

(ii) name any national securities exchange on which the acquired company's securities are listed and state that reports, proxy statements and other information concerning the acquired company can be inspected at such exchange; and

(iii) include an undertaking to provide without charge to each person to whom a prospectus is delivered, on a written request of such person, a copy of the acquired company's Form 10-K(s) (§249.310) information from which is incorporated by reference in response to any item and indicate the name and address of the person to whom such a written request is to be directed.

Item 8. *Information Delivered and Incorporation by Reference*

(a) A statement shall be made indicating that the prospectus is accompanied by the following documents:

(i) the issuer's annual report to security holders for its latest fiscal year and latest Form 10-Q, if any, filed with the Commission after the latest fiscal year; and

(ii) if the acquired company has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to and meeting the requirements of Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year, such annual report and the latest Form 10-Q filed by the acquired company with the Commission after the latest fiscal year.

(b) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the documents which accompany the prospectus. The issuer may also state, if it so chooses, that specifically described portions of documents which are not incorporated by reference are not a part of the registration statement. The description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS; UNDERTAKINGS

Item 9. *Undertaking to Transmit Certain Material.*

(a) The registration statement shall contain an undertaking, dated as of a date which is not more than twenty days prior to the effective date of the registration statement, substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each person to whom the prospectus is sent or given by the issuer or by the acquired company:

(i) the issuer's annual report to security holders for its latest fiscal year;

(ii) the acquired company's annual report to security holders furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 for its latest fiscal year;

(iii) the issuer's latest Form 10-Q and

(iv) the acquired company's latest Form 10-Q."

However, if the issuer is not required to indicate in the prospectus in response to Item 8(a)(ii) of this form that the acquired company's annual report to security holders and latest Form 10-Q will accompany the prospectus, then paragraphs (ii) and (iv) of this undertaking may be omitted.

(b) All Form 10-Q(s) which accompany the prospectus and which are referred to in the issuer's undertaking made in accordance with paragraph (a) of this item shall be filed with the Commission on or before the earlier of the date of such undertaking or two business days prior to the effective date of the registration statement.

Item 10. *Incorporation of Certain Information by Reference.*

(a) There shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission, the following information contained in the issuer's and acquired company's annual report(s) to security holders delivered with the prospectus pursuant to Item 9;

(1) description of business;

(2) certified financial statements furnished in acordance with the provisions of Rule 14a-3(b);

(3) information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions and export sales furnished in acordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (§229.20);

(4) market price of the issuer's securities and statement of dividend policy furnished in accordance with Item 9 of Regulation S-K;

(5) selected financial data furnished in accordance with Item 10 of Regulation S-K; and

(6) management's discussion and analysis furnished in accordance with Item 11 of Regulation S-K.

(b) There shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission, the issuer's and acquired company's Form 10-Q(s) delivered with the prospectus pursuant to Item 9.

(c) The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission:

(i) the issuer's Form 10-K for its latest fiscal year;

(ii) the acquired company's Form 10-K, if any, for its latest fiscal year; and

(iii) any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer or by the acquired company, other than Form 10-Q(s) incorporated under paragraph (b) of this item, on or after the end of the issuer's latest fiscal year and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction described in the registration statement is fully consummated.

Item 11. *Interest of Experts Named in Registration Statement.*

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection. Instruction. In the case of an accountant, any direct financial interest or any material indirect financial interest held during the period covered by the financial

statements prepared or certified shall be deemed a "substantial interest" for the purpose of this item.

Item 12. *Exhibits.*

Subject to the rules regarding incorporation by reference, the exhibits as required by Item 8 of Regulation S-K (17 CFR 229.20) shall be filed as a part of the registration statement. List all exhibits so filed and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the desgination given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19__.

_____
(Issuer)

BY _____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature)	(Title)	(Date)

Instructions.

1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

(Attention—the text of the following proposed amendments uses ▶ ◀ arrows to indicate additions and [ ] brackets to indicate deletions.)

PART 201—RULES OF PRACTICE

2. By amending §201.24 to read as follows:

§201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and ▶, where the document being incorporated by reference has been filed with the Commission, ◀ to the prior filing in which such document was physically filed. Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location and by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. By amending paragraph (b) of §230.411 to read as follows:

§230.411 Incorporation of certain information by reference.

* * * * *

(b) Any financial statement or part thereof filed with the Commission pursuant to any Act administered by the Commission▶, or any financial statement or part thereof contained in an annual report to security holders prepared in compliance with Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3), and furnished to security holders and mailed to the Commission in compliance with those rules, ◀ may be incorporated by reference in any registration statement if it substantially conforms to the requirements of the appropriate form and is not required to be included in the prospectus. However, a financial schedule incorporated by reference to an annual report filed with the Commission pursuant to any Act administered by it need not be certified, if such schedule was not required to be certified in connection with the filing of the annual report, any requirement of any registration form to the contrary notwithstanding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1940

4. By amending paragraph (a) of §240.14a-3 to read as follows:

§240.14a-3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§240.14a-101), ▶ or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S-15 (§239.29 of this chapter) and containing the information specified in such form.◀

* * * * *

5. By amending paragraph (j) of §240.14a-6 to read as follows:

§240.14a-6 Material required to be filed.

* * * * *

(i) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S-14 (§239.23 of this chapter) ▶ or Form S-15 (§239.29 of this chapter) ◀shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14▶ or Form S-15◀ shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

6. By amending paragraph (a) of §240.14a-12 to read as follows:

§240.14a-12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of Rule 14a-3(a) (§240.14a-3(a)), a solicitation (other than one subject to Rule 14a-11 (§240.14a-11)) may be made prior to furnishing security holders a written proxy statement meeting the requirements of Rule 14a-3(a) if—

(1) * * *

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) (§240.14a-3(a)) is furnished to security holders: *Provided, however,* that this paragraph (2) shall not apply where a proxy statement then meeting the requirements of [Schedule 14A (§240.14a-101)] ▶ Rule 14a-3(a) ◀has been furnished to security holders by or on behalf of the person making the solicitation.

* * * * *

7. By amending paragraph (a) of §240.14c-2 to read as follows:

§240.14c-2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (17 CFR 240.14c-1 et seq.) ▶, or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-15 (§239.29 of this chapter) and containing the information specified in such form, ◀ to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided,* That in the case of a class of securities in unregistered or bearer form, such statement need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

8. By amending paragraph (e) of §240.14c-5 to read as follows:

§240.14c-5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement, filed under the Securities Act of 1933 on Form S-14 (§239.2 of this chapter) ▶ or Form S-15 (§239.29 of this chapter) ◀ shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S-14 ▶ or Form S-15 ◀ shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; sec 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 68 sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77

77s(a); secs. 14(a), 23(a), 48 Stat. 985, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78w(a); secs. 12(e), 38(a), 54 Stat. 822, 841; 15 U.S.C. 80a-20(a), 80a-37(a)).

STATUTORY AUTHORITY FOR PROPOSALS

The foregoing amendments to 17 CFR Parts 201, 230, 239, and 240 are proposed pursuant to the Securities Act of 1933, particularly Sections 6, 7, 10 and 19(a) thereof, and pursuant to Sections 14(a) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

Pursuant to Section 23(a) of the Exchange Act, the Commission has considered the effect that the proposals would have on competition and is not aware, at this time, of any burdens that the proposals, if adopted, would impose on competition not necessary or appropriate in furtherance of the purposes of that Act. However, the Commission specifically invites comment as to the anti-competitive effects, if any, the proposals would likely engender.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6178 January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16498/January 15, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21393/January 15, 1980

INVESTMENT CO. ACT OF 1940
Release No. 11019/January 15, 1980

General Revision of Regulation S-X

ACTION: Proposed rules.

SUMMARY: The Commission is proposing a general revision of Articles 3 and 5 and the related sections of Article 12 of Regulation S-X ("S-X"). The changes in the content of S-X are being proposed to (i) eliminate rules which are presently duplicative of generally accepted accounting principles ("GAAP"), (ii) effect changes to recognize predominant current practice and changes in circumstances, (iii) clarify and modify requirements which are presently subject to differing interpretations, and (iv) expand certain requirements to improve financial reporting. These proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X.

DATE: Comments should be submitted on or before April 30, 1980.

ADDRESSES: Comments should refer to File S7--818 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. (File No. S7-818).

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser or Rita J. Gunter, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

General

In 1940, the Securities and Exchange Commission issued Accounting Series Release ("ASR") No. 12, "Adoption of Regulation S-X." This regulation was a substitute for the several existing sets of accounting instructions which applied to the various forms. In general, it constituted a codification of existing instructions as to the form and content of financial statements. The regulation did not prescribe accounting methods, but rather stated requirements which were intended to elicit informative disclosures. In 1940, there was little available authoritative accounting literature. Indeed, the predecessor of the American Institute of Certified Public Accountants ("AICPA") only two years earlier had instituted a research program resulting in the publication of accounting principles in the form of Accounting Research Bulletins ("ARB's"). This was the first attempt by the accounting profession to formally promulgate standards. Consequently, the Commission considered it beneficial to have a regulation, such as S-X, with condensed requirements contained in one authoritative source.

Regulation S-X is subdivided into twelve articles. The first four articles contain rules of general application; namely, Application of Regulation S-X, Qualifications and Reports of Accountants, Rules of General Application and Consolidated and Combined Financial Statements. The next six articles prescribe the form and content of financial statements for, respectively, commercial and industrial companies (including companies in a development stage), investment companies, insurance companies, committees issuing certificates of deposit, bank holding companies and banks, and natural persons. The remaining two articles deal with the form and content of statements of shareholders' equity and source and application of funds and with the supplemental schedules.

Private Sector Initiatives

As previously mentioned, S-X was conceived at a time when GAAP was perceived to be less than a complete guide for financial accounting and reporting. However, since the initiation of S-X, the private sector through various organized bodies—the Accounting Principles Board ("APB"), other units of the AICPA and, most recently, the Financial Accounting Standards Board ("FASB")—has demonstrated an appropriate initiative in establishing and improving accounting standards. This initiative is supported by ASR No. 150, in which the Commission stated that financial statements which conform to standards set by the FASB will be presumed to have substantial authoritative support. Additionally, in its 1978 and 1979 "Report to Congress on the Accounting Profession and the Commission's Oversight Role," the Commission indicated that it continues to believe that the initiative for establishing and improving accounting standards should remain in the private sector, subject to Commission oversight.

The advances being made by the FASB toward improved financial accounting and reporting are evident in documents such as Statements of Financial Accounting Standards ("SFAS") Nos. 12, 14 and 33, addressing marketable securities, segments of a business, and the effects of changing prices, respectively. Further, the FASB has also initiated a Conceptual Framework Project which is anticipated to "establish the objectives and concepts. . . [to be] used in developing standards of financial accounting and reporting."[1] This endeavor includes projects such as "Reporting Earnings," "Funds Flow and Liquidity," "Elements of Financial Statements of Business Enterprises," "Accounting Recognition Criteria," and "Financial Statements/Financial Reporting." The Commission continues to support the efforts of the FASB in developing a conceptual framework.

Need for Revision

Similarly, the Advisory Committee on Corporate Disclosure[2] supported private sector standard set-

[1] "Statement of Financial Accounting Concepts No. 1, Objectives of Financial Reporting by Business Enterprises," issued in November 1978, is the first in a series of concept statements.

[2] An *ad hoc* committee established by the Securities and Exchange Commission for the purpose of assessing the adequacy of the corporate disclosure system.

ting in its report to the Commission, issued in November 1977, in which it recommended among other things, that:

> A continuing goal of the Commission should be the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S-X and those prepared in accordance with GAAP. When the Commission requires an extension of disclosures beyond those required by GAAP because of an emerging problem, the reasons for the extension and the underlying accounting issues involved should be stated. The Commission should then ask the FASB to consider the issue .... the Commission should undertake the following:
>
> 1. Eliminate all financial statement disclosures required by Regulation S-X which duplicate those required in financial statements prepared in accordance with codified GAAP.
>
> 2. Critically review all disclosures of general applicability which are supplementary to those required by GAAP with the objective of eliminating disclosures which may not be necessary to users in making investment decisions.

In recent years, the Commission has pursued a policy of integration of registration and reporting requirements under the Securities Act of 1933 and Securities Exchange Act of 1934. The Commission believes integration of the requirements of these two Acts not only benefits registrants but also offers a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of reexamining the present reporting and disclosure system focusing principally on the form, content and use of Form 10-K. This reexamination process has resulted in four separate but related projects. In addition to this project the other three endeavors are: (1) a project directed toward identification and deletion of duplicative and outmoded requirements of the present Form 10-K and a reassessment of the present management's discussion and analysis included in Form 10-K as well as in other registration and reporting forms; (2) a project to consider the feasibility of establishing uniform financial statement instructions applicable to most registration and reporting forms and to annual reports to security holders; and (3) a project to introduce a new streamlined disclosure form, Form S-15, for the registration of securities issued in certain merger and reorganization transactions.[3]

The most recent comprehensive revision of S-X was in 1972, which was prior to the last seven opinions issued by the APB and the establishment of the FASB. During the ensuing seven year period, the authoritative accounting literature has expanded dramatically and many of the requirements of S-X are now outdated. Accordingly, this proposed revision has been undertaken to:

1. Eliminate rules which are presently duplicative of GAPP;
2. Effect changes to recognize predominant current practice and changes in circumstances;
3. Clarify and modify requirements which are presently subject to differing interpretations; and
4. Expand certain requirements to improve financial reporting.

These proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X.

Uniformity

Certain of the disclosure requirements of S-X presently exceed those of GAAP. Consequently, the content of the financial statements filed with the Commission frequently is somewhat different from that included in annual reports to shareholders. As mentioned previously, these proposed changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining greater uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X. Therefore, this release addresses whether

[3] Refer to Securities Act Release Nos. 33-6176, 33-6179, and 33-6177, respectively.

the disclosure requirements of S-X are of such significance and relevance that they should be required uniformly or, alternatively, that they do not have sufficient disclosure value to be retained.

S-X presently requires information which can be grouped into three distinct classes; namely, (i) disclosures which are important to all users of financial statements, (ii) disclosures which are important to a more limited, sophisticated group of users, and (iii) disclosures which have become of lesser value to any users or which duplicate GAAP. The Commission is proposing the following respective disposition in its rules of the requirements falling into these classifications: (i) required in all annual reports filed with the Commission or furnished to security holders; (ii) required in all annual reports filed with the Commission, but included in supplemental schedules; and (iii) not required at all.

Uniformity in the content of financial statements is a desirable objective which should result in decreased cost to preparers and increased understanding of users. The Commission believes that annual reports to shareholders should not be overburdened with information which, although important to meaningful analysis, is of little interest to the majority of users. A logical and accessible place for such supplemental information is the annual report on Form 10-K filed with the Commission. This analytical data would be included outside the primary financial statements; that is, in the supplemental schedules. By including the information in the Form 10-K schedules, it is available to those who require or desire such detail, and the cost of dissemination is reduced.

Accordingly, all disclosure requirements to be retained in present Articles 3 and 5 of S-X, other than the supplemental schedules, are proposed to be included in the annual reports to shareholders required by Rule 14a-3 of the Commission's proxy rules. The following are examples of items, which are not currently specifically required to be disclosed under GAAP although they often are presented in annual reports to shareholders, which would require disclosure:

1) Restrictions on the payment of dividends.

2) Types and amounts of income-tax timing differences, and a reconciliation of reported income and the provision for income taxes to taxable income and the income tax shown on tax returns.

3) Warrants and rights.

4) Disagreements with accountants.

5) Separate presentation of and disclosures regarding redeemable preferred stock.

6) Excess of replacement or current cost over the stated LIFO value of inventories.

7) Weighted average interest rates on short term debt, maximum and average amounts outstanding, and unused lines of credit.

8) Five year maturities of long-term debt.

9) Related party transactions.

10) Information regarding proved oil and gas reserves.

11) Earnings applicable to common stock.

12) Supplementary income statement information.

Certain other financial information is considered to be of significant importance to a limited number of users, as discussed above. Since these users (frequently analysts, investment advisers, etc.) are intermediaries for individuals who might otherwise be primary users, the needs of these users are also important. However, since this group is limited in size, it is not considered appropriate to require this information in annual reports to shareholders. It is proposed that such information only be required in the supplemental schedules to the Commission's forms thus making it accessible while at the same time holding costs to a minimum.

The following are examples of items which would be included in the schedules to the financial statements:

1) Detailed information regarding marketable securities.

2) Details of certain borrowings by related parties and others, including employees.

3) Investments in and amounts due to or from affiliates.

4) Components of property, plant and equipment (assets and accumulated depreciation, depletion or amortization) including additions and deletions by depreciation method, major classifications or other homogeneous groups, as appropriate.

5) Details of valuation accounts.

Supplemental Information

As mentioned previously, the FASB is currently working on a project which is expected to identify operational criteria for use in determining the information to be disclosed inside or outside financial statements. Although this project is in its early stages, one attribute which may be associated with the distinction between financial statements and the broader issue of financial reporting is the level of auditor association.

Based upon the premise that information contained within the financial statements should be audited, the proposed rules would remove from S-X the requirement relating to unaudited information concerning selected quarterly financial data and place this requirement under Regulation S-K.[4]

* * * * *

The next four sections discuss the proposed changes in the content of S-X.

Duplication of GAAP

The primary objective of this revision of S-X involves those requirements which are presently a direct or indirect duplication of GAAP. Consistent with the conclusions of the Advisory Committee, the Commission believes that S-X should provide a format outline for the preparation of financial statements.

A detailed discussion of those rules proposed to be eliminated because they duplicate GAAP is included in Section II of this proposal.

Predominant current practice and changes in circumstances

The significance of certain mandated disclosures may fade with the passage of time and changes in circumstances. Additionally, requirements included in rules other than GAAP may eliminate the need for a requirement. An example of this is Rule 3-16(n) with regard to stock option disclosures. The stock option information presently required by S-X is very detailed. The rule was adopted in 1953 and since that time the APB, New York Stock Exchange, American Stock Exchange, and the Commission (management remuneration) have adopted rules that address this topic. The incremental disclosure value of the information required by S-X on stock options has become minimal. Therefore, this requirement is being proposed for elimination from S-X.

Clarification and modification of rules

A comprehensive revision of S-X provides the opportunity to clarify, modify and condense rules. The changes that are being proposed in this area are minor and involve such items as relocating and combining related rules, and making cosmetic changes to improve consistency. These proposed modifications are designed to simplify S-X and make it more understandable.

Expansion of requirements

The Commission believes that there are certain disclosure areas that should be expanded beyond the present requirements of GAAP because of the informational value of the additional disclosures. The three principal items being proposed involve property, plant and equipment, income taxes and related party transactions.

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[4] This proposed change does not pertain to present rule 210.3-18 concerning disclosures of certain oil and gas reserve information for which the audit requirement has been postponed for one year.

Property, plant and equipment

Presently, with regard to property, plant and equipment, GAAP requires that enterprises disclose:

1) Depreciation method

2) Asset balances by major class.

3) Asset additions in the aggregate.

4) Accumulated depreciation in the aggregate.

5) Depreciation expense in the aggregate.

In addition, S-X requires disclosure of:[5]

1) Method of valuation.

2) Treatment of maintenance, repairs, renewals, and betterments.

3) Method of adjusting accumulated depreciation at retirement or disposal including treatment of gain or loss.

4) Depreciation rates by major class.

5) Asset additions by major class.

6) Asset deletions and other changes by major class and in the aggregate.

7) Accumulated depreciation by major class.

8) Depreciation expense by major class.

9) Changes in accumulated depreciation from other than depreciation expense by major class and in the aggregate.

Although the data required is quite extensive, it frequently falls short of fulfilling the objectives of financial reporting set forth by the FASB in Concepts Statement No. 1.[6] There are several reasons for this deficiency. First, companies use different methods of depreciation (e.g. straight line, double declining balance or sum of the years digits) without identifying the classes of property, or the amounts of depreciation computed, using each method. Second, the classes of assets are often quite broad with regard to type of asset and depreciable life, especially for registrants with diversified business interests. For example, items classified as buildings may include one-level prefabricated structures with an estimated useful life of 10 years, and multi-floor steel and concrete structures with an estimated useful life of 50 years. In the area of equipment, heavy industrial equipment with a life of 20 years may be combined with high technology equipment such as computers, whose estimated useful life may not exceed 5 years. Third, much of the disclosure with regard to property, plant and equipment has become very general, resulting in loss of informational value. Fourth, policy disclosures with regard to asset lives and treatment of maintenanace, repairs, renewals and betterments have been substantially ineffective.

Accordingly, the Commission is proposing rules which it believes will improve the quality of the information being presented. These proposed rules will conform the required financial statement disclosures for property, plant and equipment in S-X with GAAP, with any additional disclosures being included in the supplemental schedules. The proposed rules for the supplemental schedules would require disclosure of:

1) Assets classified by depreciation, depletion or amortization method and thereunder by major classification.

2) Fully depreciated, depleted or amortized assets which are still in use.

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[5] Certain information is not required based on percentage calculations: these calculations primarily relate to Schedules V and VI, and Rules 12-06 and 12-07.

[6] "Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions. . . . . [It should provide information to help investors, creditors, and others assess the amounts, timing, and uncertainty of prospective net cash flows to the related enterprise." para. 34 and 37.

3) By classification, the rate used in computing depreciation, depletion or amortization, and if more than one rate is used, the range and weighted average rate.

4) Any asset or group of homogeneous assets (such as, computers, equipment used in a specific manufacturing process, warehouses, and office buildings) which comprises 25 percent or more of a major class of property, plant and equipment and the depreciation, depletion or amortization rate. This requirement, however, does not apply if the asset or group of homogeneous assets constitutes less than five percent of total assets.

The disclosures which are being proposed are more detailed than the previous requirements. However, the Commission believes that property, plant and equipment is of such significance to most enterprises that this information should be available to sophisticated users to assist in making informed investment decisions. Accordingly, the proposed rules would require this information from registrants where such amounts are significant in relation to the size of the enterprise.

Income taxes

In 1973 the Commission issued ASR No. 149 which adopted rules for improved disclosure of income tax expense. The requiements of that release include disclosure of the components of income tax expense, the reasons for timing differences between book and tax reporting resulting in deferred income taxes, and a reconciliation between the effective income tax rate indicated by the income statement and the statutory Federal income tax rate. These requirements have had a positive impact in enabling users of financial statements to better understand the basis for the registrant's tax accounting, including the degree to which, and the reasons why, the level of income tax expense incurred differs from the statutory rate. However, after observing the disclosures made by registrants under this rule, the Commission believes that certain refinements are appropriate in order to make the disclosure more comprehensive and understandable. In discussing these proposals, it is worthwhile to identify the missing information and the shortfalls of the present rule.

First, the present rule requires a reconciliation of a hypothetical amount (taxes derived by multiplying pretax book income by the Federal statutory rate, which is almost never comparable to the calculation that an enterprise makes in computing its taxes) to actual reported income tax expense, often in percentage terms only. Further, this reconciliation uses the accounting income tax provision which includes both domestic and foreign income tax expense, and although this analysis can be informative, it is frequently confusing.

Second, the required information regarding foreign income taxes is frequently insufficient for a thorough understanding of a company's current tax position. Although the amount of foreign income tax expense is presented, the amount of income related to that expense and the accompanying effective income tax rate are usually not disclosed. The Commission believes that information concerning foreign income and related taxes are of importance to investors.

Additionally, the available information related to items of permanent and timing differences between book income and tax income are frequently not presented in a comprehensible manner. These differences can significantly affect the amount of taxes payable currently or postponed to the future and, accordingly, affect the cash flow of an enterprise. Utilization of the comprehensive allocation method,[7] as required by APB Opinion No. 11, "Accounting for Income Taxes," makes it important that users understand both the components of the income tax provision and the related income amounts. Accordingly, information about items which create differences between book and tax income is important.

The proposed rule would require registrants to reconcile pretax income and income tax expense for both their Federal and foreign components, as reported in their financial statements, to Federal (foreign) taxable income and related income taxes anticipated to be reported on the registrant's Federal (foreign) income tax return. A summary of the actual tax computation showing amounts taxed at various rates, statutory, capital gains, etc., and the

[7] Comprehensive allocation is a concept which requires allocation of taxes to all timing differences in determining the income tax expense for the period.

effect of offsetting credits, would be required. This reconciliation will provide the information discussed above in a more comprehensive, coherent and understandable manner. The Commission believes that this proposal should not have a significant cost burden since the information which would be required is already available because registrants need such information to calculate their current and deferred income tax provisions for purposes of financial reporting.

The following example of the reconciliation pr posed to be required is provided to assist in a praising the proposal.

Assumptions

The following facts apply to a hypothetical bu ness corporation:

1) Book income before tax - $2,000,000, comprised of the following:

Federal	- $1,000,000
Foreign	- $1,000,000

2) Currently taxable income is computed as follows:

	Federal	Foreign
Book income	$1,000,000	$1,000,000
Less:		
Tax exempt income	100,000	-
State & local taxes	50,000	-
Timing differences:		
Accelerated depreciation	250,000	500,000
Deferred compensation	50,000	10,000
Other	5,000	-
Taxable income	$ 545,000*	$ 490,000

3) Reported income tax expense - $845,000, comprised of the following:

	Federal	State & Local	Foreign
Current	$155,000	$50,000	$245,000
Deferred	140,000	-	255,000

* $100,000 of this amount is a result of capital gains.

4) Available U.S. investment tax credits amount to $80,000. The entire amount can be utilized in the current year and the flow through method is used.

5) Federal income tax rate is 46% on ordinary income and 30% on capital gains. The foreign income tax rates is 50% on all taxable income.

Proposed Reconciliation

	Income	Income Tax Expense
Per Books	$2,000,000	$845,000
Less:		
Foreign	1,000,000	500,000
Permanent differences		
Tax exempt income	100,000	-
State and local taxes	50,000	50,000
Subtotal	850,000	295,000
Less:		
Timing differences:		
Accelerated depreciation	250,000	115,000
Deferred compensation	50,000	23,000
Other	5,000	2,000
	305,000	140,000
Per Federal tax return	545,000	155,000
Federal currently taxable income:		
At statutory rate (46%)	445,000	205,000
At capital gains rate (30%)	100,000	30,000
Less:		
Investment tax credits	-	80,000
Estimated to be reported on Federal income tax return	$ 545,000	$155,000
Components of Foreign:		
Per Books	$1,000,000	$500,000
Less:		
Permanent differences	-	-
Timing differences:		
Accelerated depreciation	500,000	250,000
Other	10,000	5,000
	510,000	255,000
Per foreign tax return(s)	$ 490,000	$245,000

Related party transactions

In 1975 the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants issued Statement on Auditing Standards No. 6 ("SAS No. 6"), "Related Party Transactions," which "provides guidance on procedures that should be considered by the auditor when he is performing an examination of financial statements in accordance with generally accepted auditing standards to identify related party transactions and to satisfy himself as to the substance of and accounting for such transactions, including financial statement disclosure."

The current accounting literature refers to certain types of transactions between related parties in SFAS Nos. 13 and 14, "Accounting for Leases" and "Financial Reporting for Segments of a Business Enterprise," respectively; however, GAAP does not include any general accounting or reporting guidelines for these types of transactions. As a result, the Commission believes that it would be beneficial to integrate the disclosure requirements of SAS No. 6 into S-X and therefore these requirements are being proposed for inclusion in S-X. The definition of a related party (as set forth in SAS No. 6) is proposed to be included in the definition section of Article 1. It should be pointed out that the term "principal owner" as used in this definition looks only to the voting interest of the registrant, whereas the present S-X definition of "principal holder" looks to any class of equity security. While this difference in terms would appear to unduly limit the persons covered by the related party rule, such is not the case since the related party definition also covers a person who can exercise significant influence.

II. DISCUSSION OF PROPOSED CHANGES TO THE RULES

Article 3. Rules of General Application

In a concurrent release, the Commimission is proposing to establish uniform financial statement instructions for most registration and reporting forms and annual reports to shareholders. To achieve a logical sequence, these instructions are proposed to be included in a new Article 3 in addition to the requirements for consolidated financial statements, presently Article 4, which are proposed to be moved without amendment. The rules addressing general application, present Article 3, are proposed to be relocated to Article 4. Other changes are being proposed to the rules of general application and are discussed in the paragraphs which follow.

Article 3 is the section of S-X which now contains rules on the general content of financial statements for all registrants. The specific rules applicable to companies in certain specialized industries are contained in successive articles of the Regulation and such rules include both general and specific references to the rules in Article 3. As discussed above, significant changes are being proposed concerning the individual rules contained in Article 3. The following is a discussion of the proposed changes according to the type (four categories identified previously) of change. The tabular guide preceding the revised rules provides a summary of the changes which are being proposed.

Certain changes are being proposed to delete rules in Article 3 which duplicate requirements of GAAP. Some of the rules being proposed for deletion were included in S-X prior to the time GAAP contained a specific requirement for such disclosure. The present rules in Article 3 which are proposed for deletion (or partial deletion) since such requirement is also included in GAAP are as follows (designated by the present rule numbers):

1. Rule 3-07—*Changes in accounting principles and practices and retroactive adjustment of accounts.* Such requirements are contained in APB Opinion Nos. 9, "Reporting the Results of Operations," and 20, "Accounting Changes," and SFAS No. 16, "Prior Period Adjustments."

2. Rule 3-08—*Summary of accounting principles and practices.* Currently, disclosure of accounting principles and practices is required by APB Opinion No. 22, "Disclosure of Accounting Policies."

3. Rule 3-11—*Current assets* and Rule 3-12—*Current liabilities.* Definitions of these terms are contained in ARB No. 43, Chapter 3, "Working Capital." Additionally, the use of an operating cycle in excess of one year is also provided for therein and the require-

ment to disclose such is contained in APB Opinion No. 22, "Disclosure of Accounting Policies." Other disclosures required by Rules 3-11 and 3-12 are proposed to be combined into one rule.

4. Rule 3-16(b)—*Principles of translation of items in foreign currencies.* SFAS No. 8, "Accounting for the Translation of Foreign Currency Transactions and Foreign Currency Financial Statements," now prescribes the accounting and reporting requirements for the translation of foreign currencies.

5. Rule 3-16(d)—*Intercompany profits and losses.* APF No. 51, "Consolidated Financial Statements," and APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," require that intercompany profits and losses be eliminated with respect to consolidated subsidiaries and equity investees. Disclosure of profits or losses not eliminated with respect to related parties, as well as affilites, is a requirement of proposed Rule 4-11(1).

6. Rule 3-16(e)—*Defaults.* The portion of this rule dealing with the classification of an obligation to which a default or breach relates is proposed to be deleted since ARB No. 43, Chapter 3, "Working Capital," defines the term "current liabilities." There does not appear to be a sufficient reason to retain the second and third sentences of this rule since the current practice is to look to the terms of the agreement to determine the proper classification in the particular circumstances. However, commentators are specifically requested to comment on whether these two sentences do serve a clarifying purpose and should appropriately be retained.

7. Rule 3-16(f)—*Preferred shares.* The requirement to disclose the dividend rates, participation rights, call prices and dates, conversion terms and voting rights of securities outstanding is contained in APB Opinion No. 15, "Earnings per Share." Disclosure of arrearages of cumulative dividends is required by APB Opinion No. 9, "Reporting the Results of Operations." APB Opinion No. 10, "Omnibus Opinion-1966," requires disclosure of the liquidation preference of stocks; however, such disclosure is not required on the face of the balance sheet. Thus, this portion of the present rule is retained since the Commission believes this disclosure is of sufficient importance to be required on the face of the statement. The requirement to disclose any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of preferred shares exceeds the par or stated value is also retained since there is no such requirement currently included in GAAP.

8. Rule 3-16(g)—*Pension and retirement plans.* This rule duplicates present GAAP requirements except for the requirement to disclose unfunded past service costs. APB Opinion No. 8, "Accounting for the Cost of Pension Plans," contains the present GAAP disclosure requirements for pension plans. An exposure draft entitled "Disclosure of Pension and Other Post-Retirement Benefit Information," has been issued by the FASB a proposed amendment to APB Opinion No. 8. This proposal would require expanded disclosures about the financial status of pension plans. Accordingly, the existing rule in S-X is proposed to be deleted in its entirety with the expectation that the FASB will adopt an acceptable final standard prior to the Commission's final action on these proposed rules.

9. Rule 3-16(i)—*Commitments and contingent liabilities.* The requirement to disclose commitments and contingencies is contained in SFAS No. 5, "Accounting for Contingencies."

10. Rule 3-16(l)—*Bases of revenue recognition.* APB Opinion No. 22, "Disclosure of Accounting Policies," requires desclosure of the significant accounting policies followed by a company, including disclosure of the principles relating to recognition of revenues.

11. Rule 3-16(q)—*Leased assets and lease commitments.* SFAS No. 13, "Accounting for Leases," established standards of financial accounting and reporting for leases. The Commission's rule is consistent with SFAS No. 13 requirements, except that it provides for an earlier effective date and for certain

disclosures by rate-regulated enterprises. The proposed revisions to this rule simply eliminate the portions of the rule which duplicate the requirements of SFAS No. 13. The accelerated implementation requirements of the rule make its retention necessary since the effective date for retroactive application of SFAS No. 13 is for years beginning after December 31, 1980. The rule is also required because of the "as if" disclosures by rate-regulated companies.

The second type of proposed change which is being proposed in Article 3 results from predominant current practices and/or changes in circumstances. In some instances, reporting practices have changed or become better established; thus, the significance of certain rules has diminished. Therefore, the following rules are proposed for revision or deletion:

1. Rule 3-01(b)—*Form, order, and terminology.* The rule presently specifies that amounts be expressed whole dollars, in thousands of dollars or in hundred thousands of dollars. A change is being proposed to specify that amounts be stated in whole dollars or in multiples thereof since some of the larger companies are beginning to present some disclosures in millions of dollars.

2. Rule 3-05—*Omission of names of certain subsidiaries.* In a concurrent release the Commission proposes to move to an exhibit the present Form 10-K requirement to list all subsidiaries. For this reason, this rule seems unnecessary.

3. Rule 3-06—*Additional information.* The first sentence of the present rule is proposed to be moved to Rule 3-01(a) and is discussed below (under the third type of proposed change). The second sentence of this rule is proposed for deletion since registrants are no longer allowed to use statements filed with other governmental agencies in lieu of the financial statements prescribed by S-X.

4. Rule 3-16(j)—*Bonus, profit sharing, and other similar plans.* This disclosure is being proposed for deletion because it is not generally of financial significance. If, in an unusual situation, this information is of significance to the financial statements, disclosure would be required by GAAP. When it affects management remuneration, this disclosure is substantially required outside the financial statements by Item 4 of Regulation S-K.

5. Rule 3-16(n)—*Capital stock optioned, sold, or offered for sale to directors, officers, and key employees.* Some of the disclosures required by this rule are presently required by GAAP and the remaining disclosures appear to be no longer necessary. This rule was adopted in 1953, a time when uniform accounting and disclosure requirements were much less complete. The Commission considered it inappropriate to prescribe the amount, if any, to be charged against income representing compensation to recipients of stock options since at that time there was no unanimity of opinion on this question. However, since that time APB Opinion No. 25 "Accounting for Stock Issued to Employees," has been issued on the appropriate accounting method for stock options issued to employees. That opinion specifies the amount to be included in income statements and the timing of such charges. The supplemental disclosures are proposed for deletion because they are not generally of financial significance. If, in an unusual situation, this information is of significance to the financial statements, disclosure would be required by GAAP. When it affects management remuneration, this disclosure is substantially required outside the financial statements by Item 4 of Regulation S-K.

The third type of proposed change is that made to clarify the present rules which may be subject to various interpretations and/or to modify the rule or the location of such rules to enhance the simplicity and readability. The following proposed changes are of this type:

1. Rule 3-01(a)—*Form, order, and terminology.* The word "may" in the first sentence of the paragraph is proposed to be changed to "should" in an effort to be more definitive. An additional sentence is proposed to be added to this paragraph; however, this is simply a transfer of the first sentence from Rule 3-06 and does not represent a change in the present requirements.

2. Rule 3-03—*Inapplicable captions and omission of unrequired or inapplicable financial statements.* In paragraphs (a) and (b) of this rule the word "need" is proposed to be changed to "should" in an effort to be more definitive. The wording of paragraph (c) is also proposed to be revised to delete the specification of where the reason for the ommission of a financial statement must be presented.

3. Rule 3-09—*Valuation and qualifying accounts.* An addition to this rule is being proposed to allow valuation and qualifying accounts be presented parenthetically on the face of the balance sheet rather than requiring a separate deduction from assets to which they apply. The Commission continues to believe that disclosure of such amounts is of sufficient importance to be required on the face of the statement.

4. Rule 3-14—*Reacquired shares.* The working in this rule has been revised to conform to the position taken in ASR No. 268, "Presentation in Financial Statements of 'Redeemable Preferred Stocks.'"

5. Rule 3-15—*Discount on capital shares.* This rule has also been revised to conform to the position taken in ASR No. 268.

6. Rule 3-16(t)—*Disclosure of selected quarterly financial data in notes to financial statements.* The Commission is proposing to relocate the disclosure required by this rule to Item 12 of Regulation S-K. Also related Rule 2-02(e) is proposed for deletion. This information would no longer be part of the financial statements; however, the Commission believes this information should be included in annual reports to shareholders, thus the Commission is also proposing an amendment to the proxy rules to accommodate this change. The Commission continues to believe that auditor association with this information is desirable and therefore is proposing this rule change with the expectation that the existing auditor association and review of this information will remain unchanged and that appropriate amendments to the auditing literature will be recommended and adopted.

The final type of proposed change to Article 3 is that made to improve certain financial reporting and disclosures. After considering certain disclosure rules presently in effect, the Commission believes that improvements can be made to the present requirements. The following is a discussion of the proposed changes:

1. Rule 3-13—*Reacquired evidences of indebtedness.* The wording of this rule has been proposed for modification including the addition of a requirement to state the purpose for which reacquired evidences of indebtedness, shown as an asset in the balance sheet, were acquired. The presentation of reacquired evidences of indebtedness as an asset is rare in practice; however, in such cases, complete explanations should be provided.

2. Rule 3-16—*General notes to financial statements.* The introductory paragraph to this rule is being proposed to be expanded to require appropriate note references on the face of the financial statements for disclosures contained in footnotes. The current rule requires note references for only the disclosures specifically required by Rule 3-16; however, the proposed rule would also apply to disclosures required by GAAP.

3. Rule 3-16(h)—*Restrictions which limit the availability of retained earnings for dividend purposes.* This rule is being proposed to be expanded to include a specific requirement to disclose any restriction on the payment of dividends including, (i) restrictions dependent on the achievement of certain levels of net income and (ii) payments by a subsidiary to its parent. The Commission believes that the current rule requires these disclosures; however, contrary positions have been argued. The expansion of this rule will clarify the Commission's intended requirements.

4. Rule 3-16(m)—*Depreciation, depletion, obsolescence and amortization.* This specific rule is proposed for deletion; however, certain of the present requirements, as well as certain disclosure requirements from Article 5, have been combined and included in a proposed schedule. The specifics of the proposed requirements are discussed below in connection with the schedule revisions. The requirement to disclose the accounting treat-

ment for maintenance, repairs, renewals and betterments id proposed to be deleted. The Commission believes the general practice is for companies to expense maintenance and repairs and to capitalize renewals and betterments; however, if any other method is used, disclosure should be provided under the requirements of APB Opinion No. 22, "Disclosure of Accounting Policies." Thus, the present specific requirement is considered unnecessary.

5. Rule 3-16(o)—*Income tax expense.* The present rule is proposed to be revised to modify the format and expand the content of the disclosures. As discussed in section I (Background-Income Taxes, see example), the proposed revision is intended to present the composition of the company's current tax liability and to specifically associate with each component the income amounts that give rise to such tax provision. This proposed tax disclosure requires a reconciliation of the total tax expense and income before tax amounts to the currently payable Federal income tax expense and the income to be taxed currently. Aside from that change, the proposed rule requires information similar to that which is currently required in subparagraphs (1) and (3) of the existing rule.

   The Commission is also inviting commentators to consider and respond to whether subparagraph (2) of Rule 3-16(o) should be retained and, if so, in what form. The Commission believes that information concerning future cash outlays for income taxes, that are anticipated to substantially exceed income tax expense, is important. Information concerning future cash requirements and an enterprise's liquidity are essential to users who are attempting to make rational investment or similar decisions. Although important, this is a difficult rule to enforce since the omission of disclosure cannot be recognized until the year after the disclosure should have been presented. Therefore, in an attempt to make this rule more effective, comments with regard to retention and alteration are specifically requested.

6. Rule 4-11(1)(new)—*Transactions with related parties.* The purpose of this new proposed rule is to (1) incorporate the disclosure requirements of SAS No. 6, "Related Party Transactions," into S-X and (2) to combine within one rule all the current S-X requirements related to balances due to or from affiliates and to other transactions with affiliates. The Commission believes that this proposal will not change current disclosure practices concerning related party transactions. The present S-X requirements deal only with affiliates and are contained in Rules 3-16(d); 5-02.3, .10, .11, .25, .29, .31, and .32; and 5-03.1A, B, and C, .2A, B and C, .7, .8, and .17 of S-X. The disclosure requirements are now included in the proposed rule since the definition of related parties includes affiliates. The disclosure requirements contained in SAS No. 6 are being proposed to be included in S-X since GAAP does not include disclosure guidelines for transactions with related parties.

It should also be pointed out that Rule 3-16(r) (Interest cost) reflects the changes effected in Accounting Series Release No. 272, dated November 6, 1979. Reference is made to that release for a discussion of the recently adopted changes. With respect to Rule 3-17 (Current replacement cost information), reference is made to Accounting Series Release No. 271, dated October 23, 1979, in which the Commission announced its intention to delete the replacement cost rule for fiscal years ending on or after December 25, 1980. Since the deletion has been announced, the rule is not included in the text of the proposed rules below.

Article 5. Commercial and Industrial Companies

Article 5 contains line items for balance sheets and income statements which are to be filed by all registrants, except for registrants in certain specialized industries. (See Rule 5-01 for a list of excepted businesses.) As discussed above, the outline of the items to be included in the financial statements is being retained; however, significant changes are being proposed herein concerning the individual rules of Article 5. These proposed changes fall into the same four categories as used for Article 3 and are discussed below according to the type of change. The present rule numbers are used in this discussion; however, the tabular guide presented in section III of this release summarizes

the proposed changes and sets forth the proposed new rule numbers.

The following is a discussion of the changes which are being proposed to delete the rules in Article 5 which duplicate GAAP:

1. Rule 5-02.2—*Marketable securities.* SFAS No. 12, "Accounting for Certain Marketable Securities," prescribes the accounting required for certain marketable equity securities, thus obviating the need for such portion of this rule. Also, the first two sentences of this rule are unnecessary since GAAP defines a current asset. The proposed rule is revised specifically to cover current marketable securities which are covered by SFAS No. 12).

2. Rule 5-02.5—*Unearned income.* APB Opinion No. 6, "Status of Accounting Research Bulletins," contains the requirement that such amounts be deducted from the related receivable.

3. Rule 5-02.6—*Inventories.* The first sentence of the first paragraph and the second paragraph under subparagraph (b) of this rule are proposed for deletion since such information is presently required by ARB No. 43, Chapter 4, "Inventory Pricing."

4. Rule 5-02.12—*Other security investments* and Rule 5-02.13—*Other investments.* The requirements of Rule 5-02.13 are being proposed for combination with Rule 5-02.12. Also, since SFAS No. 12, "Accounting for Certain Marketable Securities," prescribes the accounting and disclosure requirements for marketable equity securities, the rule has been revised to so indicate. The proposed rule is also revised to specify the disclosure necessary for non-current security investments (other than marketable equity securities) and other investments.

5. Rule 5-02.30—*Unamortized debt discount and premium* APB Opinion No. 21, "Interest on Receivables and Payables." contains a disclosure requirement similar to this present rule.

6. Rule 5-02.35—*Deferred credits.* The last sentence of this rule is being proposed for deletion since separate curent classification of deferred taxes is required by APB Opinion No. 11, "Accounting for Income Taxes."

7. Rule 5-02.36—*Reserves.* SFAS No. 5, "Accounting for Contingencies," sets forth the accounting and reporting requirements for loss contingencies.

8. Rule 5.03(a) and (b). The nature of items to be included in the income statement is governed by APB Opinion Nos. 9 and 30, both titled "Reporting the Results of Operations," and also by SFAS No. 16, "Prior Period Adjustments."

9. Rule 5-03.3A—*Research and development expenses.* SFAS No. 2, "Accounting for Research and Development Costs," requires disclosure of research and development costs.

10. Rule 5-03.4—*Selling, general and administrative expenses.* The requirement to disclose unusual items is contained in APB Opinion No. 30, "Reporting the Results of Operations."

11. Rule 5-03.9—*Profits on securities and* Rule 5-03.12—*Losses on securities.* The requirements of these rules are contained in SFAS No. 12, "Accounting for Certain Marketable Securities," and APB Opinion No. 30, "Reporting the Results of Operations."

12. Rule 5-.03.10—*Miscellaneous other income* and Rule 5-.0313—*Miscellaneous income deductions.* The information required by the last sentence of both these results is presently contained in APB Opinion No. 30, "Reporting the Results of Operations."

13. Rule 5-03.11—*Interest and amortization of debt discount and expense.* The FASB recently issued SFAS No. 34, "Capitalization of Interest Cost," which established standards for capitalizing and disclosing interest costs; thus, the present requirement to separately disclose different types of interest expense appears to be no longer necessary or appropriate.

14. Rule 5-03.17—*Equity in earnings of unconsolidated subsidiaries and 50 percent or*

less owned persons. APB Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," prescribes the disclosures that are required when the equity method of accounting is used.

15. Rule 5-03.19—*Extraordinary items, less applicable tax.* The accounting and disclosure requirements for extraordinary items is contained in APB Opinion No. 30, "Reporting the Results of Operations," and SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt."

16. Rule 5-03.20—*Cumulative effects of changes in accounting principles.* APB Opinion No. 20, "Accounting Changes," enumerates the disclosure requirements of the cumulative effects of accounting changes.

17. Rule 5-03.22—*Earnings per share data.* The requirements for computing and disclosing earnings per share are contained in APB Opinion No. 15, "Earnings per Share," and No. 30, "Reporting the Results of Operations."

The second type of proposed change results from the changes necessitated by predominant current practices and/or changesin circumstances. The following proposed revisions or deletions are of this type:

1. Rule 5-02.1—*Cash and cash items.* The first two sentences of this rule are proposed to be revised to delete the list of cash items required to be separately disclosed. Disclosure of cash which is restricted as to withdrawal or usage and the description of the provisions of such restrictions continue to be considered relevant disclosures. This proposed rule has been revised accordingly.

2. Rule 5-02.4—*Allowances for doubtful accounts and notes receivable.* It is common practice for companies to exclude from their receivables amounts which are known to be uncollectable; thus, this specific requirement is no longer necessary.

3. Rule 5-03.7—*Dividends.* The requirement to separately disclose dividends from different sources is being proposed for deletion since the amounts are not usually significant, but, if significant, current practice would necessitate disclosure. Also, if dividends from related parties are material, disclosure will be required by the proposed rule or related party transactions.

4. Rule 5-03.8—*Interest on securities.* The reasoning for proposing to delete the requirements of this rule is the same as for Rule 5-03.7 above.

The third type of proposed change is that made to clarify the present rules which may be subject to various interpretations and/or to modify the rules or the location of such rules to enhance the simplicity and readability of such requirements. The following proposed changes are of this type:

1. Rule 5-02.3—*Accounts and notes receivable.* Paragraphs (a) and (c) of this rule are being proposed to be revised to reflect the changes which result from adding a separate rule in Article 4 concerning related party transactions. Paragraph (b) is being proposed for transfer to revised Rule 4-07. Paragraphs (e), (f) and (g) are being proposed for revision to be presented in a more concise format; however, the requirements are unchanged.

2. Rule 5-02.7—*Other current assets.* The last sentence of this rule is proposed for deletion as being unnecessary.

3. Rule 5-02.—*Intangible assets.* The list of the different types of intangible assets has been removed and the ruleis proposed to require separate disclosure of items which exceed 5% of total assets. This proposed change is consistent with other rules in this article which use a 5% significance test. Also the proposed rule would add a specific requirement to explain significant additions or deletions during the period. This represents predominant practice and, therefore, should not require new disclosures. With the addition of this provision to the rule, the provisions of Schedules VII and VIII are being proposed for deletion.

4. Rule 5-02.18—*Other assets;* Rule 5-02.19—*Prepaid expenses and deferred charges;* Rule 5-02.20—*Preoperating ex-*

penses and similar deferrals; Rule 5-02.21—*Deferred organization expense;* Rule 5-02.22—*Deferred debt expense;* and Rule 5-02.23—*Deferred commissions and expense on capital shares.* The rule concerning other assets is being proposed to combine all the above noted rules into one by simply requiring disclosure of any other asset (not includable in other captions) which exceeds 5% of total assets. The proposed rule would also require disclosure of significant additions or deletions during the period. The reason for such a proposed requirement is explained in the paragraph above.

5. Rule 5-02.25—*Accounts and notes payable.* Paragraph (a) of this rule is proposed for revision as a result of adding a separate rule in Article 4 on related party transactions.

6. Rule 5-02.26—*Accrued liabilities* and Rule 5-02.27—*Other current liabilities.* These two rules are effectively combined in a proposed rule, and any item which exceeds 5% of total current liabilities would require separate disclosure.

7. Rule 5-02.32—*Other long-term debt,* and Rule 5-02.33—*Other liabilities.* These two rules are combined; thus, any other long-term liability in excess of 5% of total liabilities would require separate disclosure.

8. Rule 5-03(c). This proposed subparagraph has been rewritten as a result of the changes made in Rules 5-02.1 and .2 (see discussion below), but no change in the requirement is being proposed

9. Rule 5-03.1A—*Net sales of tangible products;* Rule 5-03.1B—*Operating revenues of public utilities;* and Rule 5-03.1C—*Other revenues.* These present rules are proposed to be combined primarily to make the rules more readable and understandable. Additionally, a change is being proposed to lower the present percentage test for disclosing excise taxes from 10% to 1% of total sales and revenues. This change is being proposed since excise tax amounts which are less than 10% of sales and revenues are frequently significant to the reported tax amount which includes the corresponding excise tax expense.

10. Rule 5-03.2A—*Cost of tangible goods sold;* Rule 5-03.2B—*Operating expenses of public utilities,* and Rule 5-03.2C—*Costs and expenses applicable to other revenues.* The combination of these rules are for the same reason as stated in the paragraph above.

11. Rules 5-03.14 and 5.03.15 (new rule numbers) give effect to the GAAP requirements to disclose "income or loss from continuing operations" and "discontinued operations."

12. Rule 5-03.20 (new rule)—*Earnings applicable to common stock.* The requirement to disclose this amount is presently contained in the "Summary of Operations" items of the various Securities Act and Securities Exchange Act forms; however, the current requirements to present the summary of operations are proposed for deletion in a concurrent release. The Commission believes that disclosure of earnings applicable to common stock is important information and that such disclosure should be made in the income statement; therefore, this requirement is proposed to be transferred to Article 5.

(It should also be noted that the requirement to present the ratio of earnings to fixed charges is also contained in the "Summary of Operations" items to certain forms. The Commission's staff is presently reviewing the existing requirements and expects to recommend that the Commission issue a concept release focusing on the calculation and utility of this ratio.)

The fourth type of proposed change to Article 5 is that made to improve present financial reporting and disclosure. The following changes are of this type:

1. Rule 5-02.10—*Securities of affiliates and other persons,* and Rule 5-02.11—*Indebtedness of affiliates and other persons—not current.* The specific requirements of these rules are proposed to be deleted and replaced with a reference to the proposed rule on related party transactions. This proposed rule significantly expands the

present requirement to separately disclose investments in and receivables from affiliates.

2. Rule 5-02.14—*Property, plant and equipment.* The specific requirements relating to property, plant and equipment have been transferred to a proposed schedule and expanded. See the discussion below regarding the changes proposed to be made in Schedules V and VI.

3. Rule 5-02.29—*Bonds, mortgages and similar debt.* The specific requirement to separately disclose amounts owed to affiliates is being proposed to be deleted and replaced with a reference to the proposed rule on related party transactions.

4. Rule 5-02.31—*Indebtedness to affiliates and other persons—not current.* The specific requirements of this rule are being proposed to be deleted and replaced with a reference to the proposed new rule on related party transactions.

It should also be pointed out that Rule 5-04 (What schedules are to be filed) is also proposed to be revised as a result of the changes proposed for Article 12. See below for a discussion of such proposed changes to the schedules except for Schedule XV (Other Securities) for which there is no corresponding rule in article 12. This schedule is being proposed for deletion which is consistent with the elimination of Rules 12-10, 12-14 and 12-15. Schedule XV was intended to provide disclosures similar to those required by the above rules, but for other classes of securities.

Article 12. Form and Content of Schedules

Article 12 of S-X prescribes the form and content of the schedules required by other Articles of S-X. The proposed changes to Article 12 fall into four categories discussed previously and are treated below according to the reason for the change. Corresponding changes are being proposed to other Article of S-X and the Forms which are affected by the changes proposed to Article 12. Generally, the proposed revisions to other Articles of S-X and the Forms, as a result of changes in Article 12, involve the elimination of a requirement to provide disclosure required by a rule proposed for deletion or to otherwise conform disclosure requirements. The present rules in Article 12 which are proposed for deletion (or partial deletion) for this reason are as follows (designated by present rule numbers):

1. Rule 12-08—*Intangible Assets, Preoperating Expenses and Similar Deferrals* and Rule 12--09—*Accumulated Depreciation and Amortization of Intangible Assets.* APB Opinion No. 17, "Intangible Assets," establishes accounting and disclosure standards for intangible assets. Rule 12-08 is proposed to be deleted since proposed Rules 5-02.15 and 5-02.17 have been expanded to require disclosure of any significant additions or deletions of intangible assets or deferred charges, and proposed Rule 4-11(m) requires disclosure of depreciation and amortization of intangible assets, preoperating costs and similar deferrals.

The second type of change involves changes to conform to predominant current practice. The title of Rule 12-13 is being proposed for revision to eliminate the words "and reserves." The use of the word "reserve" to designate valuation and qualifying accounts is not consistent with current usage of terminology.

The third type of change being proposed is that made to enhance the simplicity and readability of the rule requirements by clarifying the rules which are presently subject to various interpretations. It is proposed that the following requirements be deleted from Article 12 since the disclosures sought are adequately provided by other rules:

1. Rule 12-10—*Bonds, mortgages and similar debt.* The Commission believes the disclosures required by Rule 5-02.29 and the proposed rule on related party transactions will adequately provide the relevant information presently sought by Rule 12-10.

2. Rule 12-14—*Capital shares.* The Commission believes that the disclosures prescribed by present Rules 5-02.38, .39, .40, .41 and the proposed rule on related party transactions will generally provide the disclosures sought by the present rule.

3. Rule 12-15—*Warrants or rights.* The essential requirements of this Rule are presently contained in Rule 3-16(p).

4. Rule 12-16—*Supplementary income statement information.* Rule 12-16 is proposed for deletion; however, the present requirements which are not required by GAAP are proposed to be transferred to a disclosure rule in Article 4. The requirements to report rents and depreciation, depletion and amortization of property, plant and equipment are presently required by SFAS No. 13, "Accounting for Leases," and APB Opinion No. 12, "Omnibus Opinion-1967," respectively, and therefore are proposed to be deleted.

The fourth type of proposed change to Article 12 is being made to improve present financial reporting and disclosure. After considering the disclosure rules presently in effect, the Commission believes that improvements can be made in the disclosures provided. The following is a discussion of such proposed changes.:

1. Rule 12-03—*Amounts receivable from underwriters, promoters, directors, officers, employees, and principal holders* and Rule 12-04—*Investment in, equity in earnings of, and dividends received from affiliates and other persons.* The scope of these rules are being proposed for expansion to encompass a broader group of persons defined as related parties in the auditing literature and to be consistent with new Rule 4-11(1) and the definition of related parties proposed in Rule 1-02(t). The Commission is also proposing that the reporting level of Rule 12-03 be revised from an aggregate indebtedness of $20,000 or 1 percent of total assets, whichever is less, to an aggregate indebtedness of $100,000 or 1 percent of total assets, whichever is less.

2. Rule 12-05—*Indebtedness of affiliates and other persons—not current.* Rule 12-05 is being proposed for expansion to also include the disclosures presently prescribed by Rule 12-11 and to require an analysis of changes in balances. The combination of the schedules prescribed by Rules 12-05 and 12-11 places related disclosures in juxtaposition. The analysis of the change in balances provides increased information concerning transactions between affiliates and other persons.

3. Rule 12-06—*Property, plant and equipment.* This rule is being proposed for expansion in several areas. Disclosure of additional information is being proposed concerning composition of assets, and the methods and rates of depreciation, depletion or amortization. In addition to disclosing property, plant and equipment by major classification, assets or homogeneous groups which comprise 25 percent or more of a major class of property, plant and equipment, and material amounts of fully depreciated assets still in service and idle assets are being proposed for disclosure in the schedule. By obtaining a more detailed analysis of the composition of assets, more specific information will be provided with respect to additions and retirements or other dispositions of assets. More specific disclosure of the rates and methods of depreciation, depletion or amortization and the related charges to income in relationship to the related assets is also being proposed.

The proposed requirements of Rule 12-06 are intended to provide more meaningful information concerning investments in property, plant and equipment and charges for depreciation, depletion and amortization.

III. REFERENCE TABLE OF RULE CHANGES.

The table which follows is presented to enable the reader to trace each of the current rules to its proposed rule number or to identify which current rules are being proposed for deletion. Very brief indications of the proposed changes are also provided. The discussions in section II of this release provide the detailed explanation of each proposed change and deletion. No discussion is provided for rules in which no changes are proposed. The table is intended only as a guide to go from the present to the proposed rule numbers; therefore, the proposed rules and the discussion of changes should also be read in conjunction with this table.

Present Rule	Proposed Rule
ARTICLE 3:	
210.3-01(a)	210.4-01(a) Minor wording revisions in the first sentence. Second sentence moved from present rule 210.3-06.
210.3-01(b)	210.4-01(b) First sentence revised. Second sentence deleted.
210.3-01(c)	210.4-01(c) No change.
210.3-02	210.4-02 No change.
210.3-03	210.4-03 Minor wording revision in paragraph (a). Paragraph (c) also revised.
210.3-04	210.4-04 No change.
210.3-05	Deleted.
210.3-06	First sentence moved to 210.4-01(a). Second sentence deleted.
210.3-07	Deleted.
210.3-08	Deleted.
210.3-09	210.4-05 Minor revisions to rule.
210.3-10	210.4-06 No change.
210.3-11	210.4-07 Revised and present rule 210.3-12 combined with this rule.

Present Rule	Proposed Rule
ARTICLE 3 (continued):	
210.3-12	Combined with present rule 210.3-11.
210.3-13	210.4-08 Minor revisions to rule.
210.3-14	210.4-09 Minor revisions to recognize changes made in ASR No. 268.
210.3-15	210.4-10 Minor revisions to recognize changes made in ASR No. 268.
210.3-16	210.4-11 Expanded to recognize GAAP requirements and to require appropriate cross-referencing to footnote disclosures.
210.3-16(a)	210.4-11(a) No change.
210.3-16(b)	Deleted.
210.3-16(c)	210.4-11(b) No change.
210.3-16(d)	Deleted.
210.3-16(e)	210.4-11(c) Minor revisions to rule.
210.3-16(f)	210.4-11(d) Subparagraphs (1), (2), (3)(i), and (3)(ii) deleted. Minor revisions to remainder of rule.
210.3-16(g)	Deleted.
210.3-16(h)	210.4-11(e) Requirements of the rule are clarified.
210.3-16(i)	Deleted.
210.3-16(j)	Deleted.

Present Rule	Proposed Rule
ARTICLE 3 (continued):	
210.3-16(k)	210.4-11(f) No change.
210.3-16(l)	Deleted.
210.3-16(m)	Deleted.
210.3-16(n)	Deleted.
210.3-16(o)	210.4-11(g) Subparagraphs (1) and (3) revised and expanded.
210.3-16(p)	210.4-11(h) No change.
210.3-16(q)	210.4-11(i) Most of the rule is deleted but the references to SFAS No. 13, "Accounting for Leases," continue the current requirements.
210.3-16(r)	210.4-11(j) No change from the rule adopted in Accounting Series Release No. 272 (November 6, 1979).
210.3-16(s)	210.4-11(k) No change.
210.3-16(t)	Moved to Item 12 of Regulation S-K.
210.3-17	210.4-12 No change but also see Accounting Series Release No. 271 (October 23, 1979).
210.3-18	210-4-13 No change.
ARTICLE 5	
210.5-01	210.5-01 No change.
210.5-02	210.5-02 No change.
210.5-02.1	210-5-02.1 Minor revisions to the rule.

Present Rule	Proposed Rule
ARTICLE 5 (continued):	
210.5-02.2	210.5-02.2 Revised to recognize current GAAP requirements.
210.5-02.3	210.5-02.3 Subparagraphs (a) revised; (b) deleted; (c) deleted; (d) through (g) combined.
210.5-02.4	210.5-02.4 Caption only retained.
210.5-02.5	210.5-02.5 Caption only retained.
210.5-02.6	210.5-02.6 A portion of the first and second paragraphs of subparagraph (b) deleted.
210.5-02.7	210.5-02.7 Last sentence deleted.
210.5-02.8	210.5-02.8 Reference deleted.
210.5-02.9	210.5-02.9 No change.
210.5-02.10	210.5-02.10 Caption only retained with a reference to proposed rule 210.4-11(l) being added.
210.5-02.11	210.5-02.11 Caption only retained with a reference to proposed rule 210.4-11(l) being added.
210.5-02.12	210.5-02.12 Revised to recognize current GAAP requirements and to combine the requirements of present rule 210.5-02.13.
210.5-02.13	Deleted. Requirement combined with 210.5-02.12.

Present Rule	Proposed Rule
ARTICLE 5 (continued):	
210.5-02.14	210.5-02.13 Subparagraph (a) revised; subparagraph (b) revised to delete part of next to last sentence and all of last sentence.
210.5-02.15	210.5-02.14 No change.
210.5-02.16	210.5-02.15 Present requirement revised and expanded.
210.5-02.17	210.5-02.16 No change.
210.5-02.18	210.5-02.17 Present requirement revised and expanded.
210.5-02.19	Deleted.
210.5-02.20	Deleted.
210.5-02.21	Deleted.
210.5-02.22	Deleted.
210.5-02.23	Deleted.
210.5-02.24	210.5-02.18 No change.
210.5-02.25	210.5-02.19 Minor revisions to subparagraph (a). No change in subparagraphs (b) and (c).
210.5-02.26	Deleted. Requirement combined with present rule 210.5-02.27.
210.5-02.27	210.5-02.20 Revised to also include the present requirements of 210.5-02.26.
210.5-02.28	210.5-02.21 No change.
210.5-02.29	210.5-02.22 Minor revisions in subparagraph (a); no change in subparagraph (b).

Present Rule	Proposed Rule
ARTICLE 5 (continued):	
210.5-02.30	Deleted.
210.5-02.31	210.5-02.23 Caption only retained with a reference to proposed rule 210.4-11(1) being added.
210.5-02.32	Deleted.
210.5-02.33	210.5-02.24 No change.
210.5-02.34	210.5-02.25 No change.
210.5-02.35	210.5-02.26 Revised to delete last sentence.
210.5-02.36	Deleted.
210.5-02.37	210.5-02.27 No change.
210.5-02.38	210.5-02.28 No change.
210.5-02.39	210.5-02.29 No change.
210.5-02.40	210.5-02.30 No change.
210.5-02.41	210.5-02.31 No change.
210.5-02.42	210.5-02.32 No change.
210.5-03	210.5-03 Subparagraphs (a) and (b) deleted; minor revisions made to subparagraph (c).
210.5-03.1A	210.5-03.1 Minor revisions made and combined with present rules 210.5-03.1B and .1C.
210.5-03.2A	210.5-03.2 Minor revisions made and combined with present rules 210.5-03.2B and .2C.
210.5-03.3A	Deleted.

Present Rule	Proposed Rule	
ARTICLE 5 (continued):		
210.5-03.1B	210.5-03.1	See 210.5-03.1A above.
210.5-03.2B	210.5-03.2	See 210.5-03.2A above.
210.5-03.1C	210.5-03.1	See 210.5-03.1A above.
210.5-03.2C	210.5-03.2	See 210.5-03.2A above.
210.5-03.3	210.5-03.3	No change except for reference to preceding rules.
210.5-03.4	210.5-03.4	Caption only retained.
210.5-03.5	210.5-03.5	No change.
210.5-03.6	210.5-03.6	No change.
210.5-03.7	210.5-03.7	Revised and combined with present Rules 210.5-03.8, .9, and .10.
210.5-03.8	See 210.5-03.7 above.	
210.5-03.9	See 210.5-03.7 above.	
210.5-03.10	See 210.5-03.7 above.	
210.5-03.11	210.5-03.8	Caption only retained.
210.5-03.12	210.5-03.9	Revised and combined with present rule 210.5-03.13.
210.5-03.13	210.5-03.9	Revised and combined with present rule 210.5-03.12.

Present Rule	Proposed Rule	
ARTICLE 5 (continued):		
210.5-03.14	210.5-03.10	No change.
210.5-03.15	210.5-03.11	No change.
210.5-03.16	210.5-03.12	No change.
210.5-03.17	210.5-03.13	No change.
210.5-03.18	210.5-03.16	No change.
210.5-03.19	210.5-03.17	Caption only retained.
210.5-03.20	210.5-03.18	Caption only retained.
210.5-03.21	210.5-03.19	No change.
210.5-03.22	210.5-03.21	Caption only retained.
210.5-04	210.5-04	The changes made to this rule are as a result of the revisions made in Article 12 (see below) and a renumbering of schedules.
ARTICLE 12:		
210.12-01	210.12-01	No change.
210.12-02	210.12-02	No change.
210.12-03	210.12-03	Revised and expanded to include related parties.
210.12-04	210.12-04	Expanded to include related parties.
210.12-05	210.12-05	Format of schedule changed and combined with present 210.12-11.
210.12-06	210.12-06	Expanded and format revised.

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Present Rule	Proposed Rule	
ARTICLE 12 (continued):		
210.12-07	210.12-07	No change.
210.12-08	Deleted.	
210.12-09	Deleted.	
210.12-10	Deleted.	
210.12-11	Combined with 210.12-05 above.	
210.12-12	210.12-08	No change.
210.12-13	210.12-09	Revised title.
210.12-14	Deleted.	
210.12-15	Deleted.	
210.12-16	Eliminated part of present disclosures and moved remaining requirements to proposed rule 210.4-11(m).	
210.12-17	Previously revoked.	
210.12-18	Previously revoked.	
210.12-19	210.12-10	No change.
210.12-20	Previously revoked.	
210.12-21	210.12-11	No change.
210.12-22	210.12-12	No change.
210.12-23	Previously revoked.	
210.12-24	Previously revoked.	
210.12-25	Previously revoked.	
210.12-26	Previously revoked.	
210.12-27	210.12-13	No change.

Present Rule	Proposed Rule
ARTICLE 12 (continued):	
210.12-28	Previously revoked.
210.12-29	210.12-14 No change.
210.12-30	Previously revoked.
210.12-31	210.12-15 No change.
210.12-31a	210.12-16 No change.
210.12-32	Previously revoked.
210.12-33	210.12-17 No change.
210.12-34	210.12-18 No change.
210.12-35	210.12-19 No change.
210.12-36	210.12-20 No change.
210.12-37	210.12-21 No change.
210.12-38	210.12-22 No change.
210.12-39	210.12-23 No change.
210.12-40	210.12-24 No change.
210.12-41	210.12-25 No change.
210.12-42	210.12-26 No change.
210.12-43	210.12-27 No change.

The Commission recognizes that there are numerous cross-references in other articles of S-X to the rules which are proposed to be deleted, revised or renumbered in this release. Changes in such cross references are not being made in this release, but instead such changes will be made in conjunction with the adoption of final rules.

IV. REQUESTS FOR COMMENTS

All interested persons are invited to submit their views and comments concerning the amendments proposed herein in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capital Street, Washington, D.C. 20549. All comments should be received no later than April 30, 1980. Such communications should refer to File S7-818 and will be available for public inspection.

V. TEXT OF PROPOSED AMENDMENTS

The Commission hereby proposes to amend 17 CFR Chapter II as follows: PART 210 - FORM AND

CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By adding a new paragraph (t) to §210.1-02 and by redesignating the former paragraphs (t) through (y).

§210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(t) *Related parties.* The term "related parties" means the registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other, to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other, to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, the terms (1) "principal owner" means the owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and (2) "management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decsions by which such objecties are to be pursued.

(u) No change from former paragraph (t)

(v) No change from former paragraph (u)

(w) No change from former paragraph (v)

(x) No change from former paragraph (w)

(y) No change from former paragraph (x)

(z) No change from former paragraph (y)

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2. By deleting 2210.2-02(e).

§210.2-02 Accountants' reports.

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(e) Deleted.

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3. By revising Article 4 to read as follows:

RULES OF GENERAL APPLICATION

§210.4-01 Form, order, and terminology.

(a) Financial statements should be filed in such form and order, and should use such generally accepted terminology, as will best indicate their significance and character in the light of the provisions applicable thereto. The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or multiples thereof, as appropriate: *Provided*, That, when stated in other than whole dollars, an indication to that effect is inserted immediately beneath the caption of the statement of schedule, at the top of the money columns, or at an appropriate point in narrative material.

(c) Negative amounts (red figures) shall be shown in brackets or parentheses and so described in the

related caption, columnar heading or a note to the statement or schedule, as appropriate.

§210.4-02 Items not material.

If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth (but see Release No. AS-41).

§210.4-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.

(a) No caption should be shown in any financial statement as to which the items and conditions are not present.

(b) Financial statements not required or inapplicable because the required matter is not present should not be filed.

(c) The reasons for the omission of any required financial statements shall be indicated.

§210 4-04 Omission of substantially identical notes.

If a note covering substantially the same subject matter is required with respect to two or more financial statements relating to the same or affiliated persons, for which separate sets of notes are presented, the required information may be shown in a note to only one of such statements: *Provided,* That a clear and specific reference thereto is made in each of the other statements with respect to which the note is required.

§210.4-05 Valuation and qualifying accounts.

Valuation and qualifying accounts shall be shown separately in financial statements as deductions from the specific assets to which they apply or parenthetically on the face of the statements.

§210.4-06 Basis of determining amounts—book value.

If an instruction requires a statement as to "the basis of determining the amount," the basis shall be stated specifically. The term "book value" will not be sufficiently explanatory unless, in a particular instruction, it is stated to be acceptable with respect to a particular item.

§210.4-07 Current assets and current liabilities.

If a company's normal operating cycle is longer than one year, generally recognized trade practices should be followed with respect to the inclusion or exclusion of items in current assets or current liabilities. An appropriate explanation of the circumstances should be made and, if practicable, an estimate given of the amount not realizable or payable within one year. The amounts maturing in each year (if practicable) along with the interest rates or range of rates shall also be disclosed. (See also Release No. AS-102).

§210.4-08 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption. However, reacquired evidences of indebtedness held for pension and other special funds not related to the particular issues may be shown as assets: *Provided,* That there be stated the amount of such evidences of indebtedness, the cost thereof, the amount at which stated, and the purpose for which acquired.

§210.4-09 Reacquired shares.

Reacquired shares not retired shall be shown separately as a deduction from the applicable account(s) at either par, stated value, or cost, as appropriate or as circumstances require.

§210.4-10 Discount on shares.

Discount on shares, or any unamortized balance thereof, shall be shown separately as a deduction from the applicable account(s) as circumstances require.

§210.4-11 General notes to financial statements. (See Release No. AS-4).

It should be recognized that generally accepted accounting principles must be followed in preparing financial statements filed with the Commission. However, certain additional disclosures are required by this rule and other rules in this Regula-

tion and, therefore, must also be included in the financial statements being filed.

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate stateement or in appropriately captioned notes. If disclosure is provided in a note, appropriate cross-references to the applicable notes should be contained on the face of the statement. Appropriate cross-references should also be made to the disclosures required by generally accepted accounting principles. The information shall be provided for each statement required to be filed, except that the information required by items (b), (c), (d), (e), (f), and (h) shall be provided as of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed. When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.* With regard to consolidated or combined financial statements, refer to §§210.3A-01 to 3A-08 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* Assets mortgaged pledged, or otherwise subject to lien, and the approximate amounts thereof, shall be designated and the obligations collateralized briefly identified.

(c) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of convenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not be subsequently cured, shall be stated in the financial statements. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(d) *Preferred shares.* (1) Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet. (2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

(e) *Restrictions which limit the availability of retained earnings or net income for dividend purposes (see Release No. AS-35).* Describe the most restrictive of any such restrictions, other than as reported in paragraph (d) of this section, but including any restriction on the payment of dividends of a subsidiary to the parent, indicating briefly its source, its pertinent provisions, and, where appropriate and determinable, the amount of retained earnings or net income (1) so restricted, or (2) free of such restrictions.

(f) *Significant changes in bonds, mortgages and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(g) *Income tax expense.* (1) Amounts applicable to United States Federal income taxes, to foreign income taxes and to other income taxes shall be stated separately for each major component of income tax expense. Amounts applicable to foreign or other income taxes each of which are less than five percent of the total of the major component need not to be separately disclosed.

(2) If it is expected that the cash outlay for income taxes with respect to any of the succeeding three years will substantially exceed income tax expense for such year, that fact should be disclosed together with the approximate amount of the excess, the year (or years) of occurrence and the reasons therefor.

(3) Provide a reconciliation in comparative form between items (i) and (ii) (below) showing the estimated dollar amount for each of the items comprising the differences between such amounts.

(i) Reported income (loss) before income tax expense (benefit) and the related income tax expense (benefit).

(ii) Current Federal taxable income (loss) (anticipated to be reported on the appropriate tax form; this amount may be other than that which

is applicable to U.S. Federal taxable income if the reporting entity is not a U.S. corporation) and the related current tax expense (benefit).

The reconciliation should commence with income and related income tax expense as reported in the financial statements; from these amounts should be deducted foreign income and related taxes, state and local income taxes, permanent differences, etc., arriving at a subtotal which constitutes reported income upon which taxes, relating to the reporting company's country of incorporation, are provided in the financial statements. From these totals, timing differences and their related tax effects should be deducted, arriving at the amounts identified in (ii) above. The components (i.e., permanent differences, timing differences, etc.) of foreign income and the related taxes, if applicable, should be shown separately. [An example of this format, see section I of this proposal, will be included with the final rules, if adopted.] The calculation of current tax expense should be presented indicating income multiplied by the applicable rate(s) (i.e., statutory rate, capital gains rate, or applicable foreign rates if the reporting person is a foreign entity) less applicable credits. If no individual reconciling item amounts to more than five percent of the amount computed by multiplying income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. However, the calculation of the current tax expense should be presented. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation.

(h) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1)Title of issue of securities called for by warrants or rights.

(2) Aggregate amount of securities called for by warrants or rights outstanding.

(3) Date from which warrants or rights are exercisable.

(4) Price at which warrant or right is exercisable.

(i) *Leased assets and lease commitments.* (1) Leased assets and lease commitments of regulated enterprises subject to the rate-making process. (i) Paragraph (1) of this section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases as assets with associated liabilities.

(ii) The following information shall be provided for capital leases covered by this rule:

(A) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(B) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any aditional information management believes is necessary as to the rate-making process.

(2) Leased assets and lease commitments of enterprises which are not covered by paragraph (1). The financial statement requirements in SFAS No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined below, exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this paragraph "problem" is defined as: that situation where capitalization of capital leases as defined in SFAS No. 13 would result in the violation or probable future violation expected to occur prior to fiscal years beginning after December 31, 1980 of a restrictive clause in an existing loan indenture or other agreement.

(j) *Interest cost.* Disclosure shall be provided for each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(k) *Disagreements on accounting and financial disclosure matters.* If, (1) within the twenty-four

months prior to the date of the most recent financial statements, a Form 8-K has been filed reporting a change of accountants, (2) included in the Form 8-K there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (3) during the fiscal year in which the change of accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (4) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

(l) *Transactions with related parties.*

(1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlement.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position for any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the footnotes.

(4) With respect to the classification of current amounts due from related parties, consideration should be given to the intent and the net current asset position of such related parties in determining whether such recievable justifies a current classification.

(m) *Supplementary income statement information.* The following information with respect to certain income statement items shall be disclosed in a note to the financial statements, if such item exceeds one percent of total sales and revenues as reported in the related income statement:

(1) Maintenance and repairs.

(2) Depreciation and amortization of intangible assets, preoperating costs and similar deferrals. (State separately each category of cost itemized.)

(3) Taxes, other than income taxes. (State separately each category of tax which exceeds one percent of total sales and revenues.)

(4) Royalties.

(5) Advertising costs. (Include all costs related to advertising the company's name, products or services in newspapers, periodicals or other adversiting media.)

§210.4-12. No change from present Rule §210.3-17.

§210.4-13 No change from present Rule §210.3-18.

* * * * *

4. By amending Article 5 to read as follow:

COMMERCIAL AND INDUSTRIAL COMPANIES

§210 5-10 Application of §§210.5-01 to 210.5-04.

(a) Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(1) Management investment companies (see §§210.6-01 to 210.6-10).

(2) Unit investment trusts (see §§210.6-10a to 210.6-13).

(3) Face amount certificate investment companies (see §§210.6-20 to 210.6-24).

(4) Employee stock purchase, savings and similar plans (see §§210.6-30 to 210.6-34).

(5) Insurance companies other than title insurance companies (see §§210.7-01 to 210.7-06 and §§210.7a-01 to 210.7a-06).

(6) Committees issuing certificates of deposit see §§210.8-01 to 210.8-03).

(7) Bank holding companies and banks (see §§210.9-01 to 210.9-05).

(8) Brokers and dealers when filing Forms X-7A-5 and X-17A-10]§249.617] (see §240.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

b) Companies in the development stage.

ection 210.5A-02 prescribes additional information to be included in financial statements filed by ompanies in the development stage.

210.5-02 Balance sheets.

xcept as otherwise permitted by the Commission, e balance sheets filed for persons to whom this rticle is applicable shall comply with the following rovisions [see §210.4-01(a) and Release No. S-41].

ASSETS AND OTHER DEBITS
Current Assets, when appropriate
(See §210.4-07)

§210.5-02.1 *Cash and cash items.* Separate disclosure shall be made of the cash and cash items which are restricted as to withdrawal or usage. The provisions of any restrictions shall be described in a referenced footnote. Restrictions may include legally restricted deposits held as compensating balances, contracts entered into with others, or company statements of intention with regard to particular deposits (see also Release No. AS-148); however, time deposits and short-term certificates of deposit are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required in the notes to the financial statements. Compensating balances that are maintained under an agreement to assure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of such agreement.

§210.5-02.2 *Marketable securities.* The accounting and disclosure requirements for current marketable equity securities are specified by generally accepted accounting principles. With respect to all other current marketable securities, state, parenthetically or otherwise, the basis of determining the aggregate amount shown in the balance sheet, along with the alternatives of the aggregate cost or the aggregate market value at the balance sheet date.

§210.5-02.3 *Accounts and notes receivable.* (a) State separately amounts receivable from (1) customers (trade); (2) related parties (see §210.4--11(1); (3) underwriters, promoters, and employees (other than related parties) which arose in other than the ordinary course of business; and (4) others. (b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately for accounts receivable and notes receivable. (c) If receivables include amounts due under long-term contracts (see

§210.5-02.6(d)), state separately in the balance sheet or in a note to the financial statements the following amounts:

(1) Balances billed but not paid by customers under retainage provisions in contracts.

(2) Amounts representing the recognized sales value of performance and such amounts that had not been billed and were not billable to customers at the date of the balance sheet. Include a general description of the prerequisites for billing.

(3) Billed or unbilled amounts representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization. Include a description of the nature and status of the principal items comprising such amount.

(4) With respect to (1) through (3) above, also state the amounts included in each item which are expected to be collected after one year. Also state, by year, if practicable, when the amounts of retainage (see (1) above) are expected to be collected.

§210.5-02.4 *Allowances for doubtful accounts and notes receivable.*

§210.5-02.5 *Unearned income.*

§210.5-02.6 *Inventories.* (a) State separately here, or in a note referred to herein, if practicable, the major classes of inventory such as: (1) finished goods; (2) inventoried costs relating to long-term contracts or programs (see (d) below and §210.4-07); (3) work in process (see §210.4-07); (4) raw materials; and (5) supplies.

(b) The basis of determining the amounts shall be stated.

If "cost" is used to determine any portion of the inventory amounts, the description of this method shall include the nature of the cost elements included in inventory.

The method by which amounts are removed from inventory (e.g., "average cost," "first-in, first-out," "last-in, first-out," "estimated average cost per unit") shall be described. If the estimated average cost per unit is used as a basis to determine amounts removed from inventory under a total program or similar basis of accounting, the principal assumptions (including, where meaningful, the aggregate number of units expected to be delivered under the program, the number of units delivered to date and the number of units on order) shall be disclosed.

If any general and administrative costs are charged to inventory, state in a note to the financial statements the aggregate amount of the general and administrative costs incurred in each period and the actual or estimated amount remaining in inventory at the date of each balance sheet.

(c) If the LIFO inventory method is used, the excess of replacement or current cost over stated LIFO value shall, if material, be stated parenthetically or in a note to the financial statements.

(d) For purposes of §§210.5-02.3 and 210.5-02.6, long-term contracts or programs include (1) all contracts or programs for which gross profits are recognized on a percentage-of-completion method of accounting or any variant thereof (e.g., delivered unit, cost to cost, physical completion), and (2) any contracts or programs accounted for on a completed contract basis of accounting where, in either case, the contracts or programs have associated with them material amounts of inventories or unbilled receivables and where such contracts or programs have been or are expected to be performed over a period of more than twelve months. Contracts or programs of shorter duration may also be included, if deemed appropriate.

For all long-term contracts or programs, the following information, if applicable, shall be stated in a note to the financial statements:

(i) The aggregate amount of manufacturing or production costs and any related deferred costs (e.g., initial tooling costs) which exceeds the aggregate estimated cost of all in-process and delivered units on the basis of the estimated average cost of all units expected to be produced under long-term contracts and programs not yet complete, as well as that portion of such amount which would not be absorbed in cost of sales based on existing firm orders at the latest balance sheet date. In addition, if practicable, disclose the amount of deferred costs by type of

cost (e.g., initial tooling, deferred production, etc.)

(ii) The aggregate amount representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization, and include a description of the nature and status of the principal items comprising such aggregate amount.

(iii) The amount of progress payments netted against inventory at the date of the balance sheet.

§210.5-02.7 *Other current assets.* State separately any amounts in excess of five percent of total current assets.

§210.5-02.8 *Prepaid expenses.*

§210.5-02.9 *Total current assets, when appropriate.*

§210.5-02.10 *Securities of related parties.* (See §210.4-11(1).)

§210.5-02.11 *Indebtedness of related parties—not current.* See §210.4-11(1).)

§210.5-02.12 *Other investments.* The accounting and disclosure requirements for non-current marketable equity securities are specified by generally accepted accounting principles. With respect to other security investments and any other investment, state, parenthetically or otherwise, the basis of determining the aggregate amounts shown in the balance sheet, along with the alternate of the aggregate cost or aggregate market value at the balance sheet date.

§210.5-02.13 *Property, plant and equipment.*

(a) State the basis of determining the amounts.

(b) Tangible and intangible utility plant of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicable regulatory authorities. This rule shall not be applicable in respect to companies which are not required to make such a classification.

§210.5-02.14 *Accumulated depreciation, depletion, and amortization of property, plant and equipment.*

§210.5-02.15 *Intangible assets.* State separately each class of such assets which is in excess of five percent of the total assets, along with the basis of determining the respective amounts. Any significant addition or deletion shall be explained in a note.

§210.5-02.16 *Accumulated depreciation and amortization of intangible assets.*

§210.5-02.17 *Other assets.* State separately any other item not properly classed in one of the preceding asset captions which is in excess of five percent of total assets. Any significant addition or deletion should be explained in a note. With respect to any significant deferred charge, state the policy for deferral and amortization.

§210.5-02.18 *Total assets and, when appropriate, other debits.*

LIABILITIES AND STOCKHOLDERS' EQUITY
Current Liabilities, When Appropriate
(See §210.4-07)

§210.5-02.19 *Accounts and notes payable.* (a) State separately amounts payable to (1) banks for borrowings; (2) factors or other financial institutions for borrowings; (3) holders of commercial paper; (4) trade creditors; (5) related parties (see §210.4-11(1)); (6) underwriters, promoters, and employees (other than related parties); and (7) others.

(b) The weighted average interest rate and general terms (as well as formal provisions for the extension of the maturity) of each category of aggregate short-term borrowings (the sum of items (a)(1), (a)(2) and (a)(3) above) reflected on each balance sheet required shall be disclosed along with the maximum amount of aggregate short-term borrowings outstanding at any month end (or similar time period) during each period for which an end-of-period balance sheet is required. In addition, the approximate average aggregate short-term borrowings outstanding during the period and the approximate weighted average interest rate (and a brief description of the means used to compute

such averages) for such aggregate short-term borrowings shall be disclosed in the notes to the financial statements.

(c) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

§210.5-02.20 *Other current liabilities.* State separately any item in excess of 5 percent of total current liabilities. Such items may include, but are not limited to, accrued payrolls, accrued interest, taxes, indicating the current portion of deferred income taxes, and the current portion of long-term debt. Remaining items may be shown in one amount.

§210.5-02.21 *Total current liabilities, when appropriate.*

LONG-TERM DEBT

§210.5-02.22 *Bonds, mortgages and other long-term debt, including capitalized leases.* (a) State separately here, or in a note referred to herein, each issue or type of obligation and such information as will indicate (see §210.4-08): (1) the general character of each type of debt including the rate of interest; (2) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990"; (3) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (4) a brief indication of priority; (5) if convertible, the basis; and (6) the combined aggregate amount of maturities and sinking fund requirements for all issues, each year for the five years following the date of the balance sheet. For amounts owed to related parties, see §210.4-11(1).

(b) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that would be disclosed under this rule if used shall be disclosed in the notes to the financial statements if significant.

§210.5-02.23 *Indebtedness to related parties—noncurrent.* Include under this caption indebtedness to related parties as required under §210.4-11(1).

§210.5-02.24 *Other liabilities.* State separately any item not properly classified in one of the preceding liability captions which is in excess of 5 percent of total liabilities.

§210.5-02.25 *Commitments and contingent liabilities.*

§210.5-02.26 *Deferred credits.* State separately amounts for (a) deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income.

MINORITY INTERESTS

§210.5-02.27 *Minority interests in consolidated subsidiaries.* State separately in a note referred to herein amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

REDEEMABLE PREFERRED STOCKS

§210.5-02.28 *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (1) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (2) it is redeemable at the option of the holder; or (3) it has conditions for redemption which are not solely within the control of the issuer, such as stocks which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under §210.5-02.29 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title of each issue, the carrying amount, and redemp-

tion amount. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by §210.5-02.28(c). State the face of the balance sheet or in the note, referred to herein, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [See §§210.4-09 and 210.-4-10].

(c) State in a separate note captioned "Redeemable Preferred Stocks" (1) a general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event or default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed. (See also §210.4-11(d).]

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 29, 30 or 31 which follow.

NON-REDEEMABLE PREFERRED STOCKS

§210.5-02.29 *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* State on the face of the balance sheet the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [see §§210.4-09 and 210.4-10]. Show in a note or statement referred to herein the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be filed. (See also §210.4-11(d).]

COMMON STOCKS

§210.5-02.30 *Common stocks.* For each class of common shares state, on the face of the balance sheet, the title of the issue, the number of shares authorized, the number of shares issued or outstanding, as appropriate (see §§210.4-09 and 210.4-10], and the dollar amount thereof, and, if convertible, the basis of conversion [see also §210.4-11(d)]. Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show in a note or statement referred to herein the changes in each class of common shares for each period for which an income statement is required to be filed.

OTHER STOCKHOLDERS' EQUITY

§210.5-02.31 *Other stockholders' equity.* (a) Separate captions shall be shown for (1) additional paid-in capital, (2) other additional capital and (3) retained earnings (i) appropriated and (ii) unappropriated. [See §210.4-11(e).]

(b) If undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons are included, state the amount in each category parenthetically or in a note referred to herein.

(c) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least three years shall indicate the total amount of the deficit eliminated.

(d) A summary of each account under this caption setting forth the information prescribed in Rule 11-02 [§210.11-02] shall be given in a note or statement referred to herein, for each period for which an income statement is required to be filed.

§210.5-02.32 *Total liabilities and stockholders' equity.*

§210.5-03 Income statements.

Except as otherwise permitted by the Commission, the income statements filed for persons to whom

this article is applicable shall comply with the provisions of this rule (see §210.4-01(a) and Release No. AS-41).

If income is derived from more than one of the sub-captions under §210.5-03.1, each class which is not more than 10 percent of the sum of the items may be combined with another class. If these items are combined, related costs and expenses as described under §210.5-03.2 shall be combined in the same manner.

§210.5-03.1 *Net sales and gross revenues.* State separately (a) net sales of tangible products (gross sales less discounts, returns and allowances), (b) operating revenues of public utilities or others; (c) income from rentals; (d) revenues from services; and (e) other revenues. Amounts earned from transactions with related parties shall be disclosed as required under §210.4-11(1). A public utility company using a uniform system of accounts or a form for annual report prescribed by federal or state authorities, or a similar system or report, shall follow the general segregation of operating revenues and operating expenses reported under §210.5-03.2 prescribed by such system or report. If the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1 percent or more of such total, the amount of such excise taxes shall be shown parenthetically or otherwise.

§210.5-03.2 *Costs and expenses applicable to sales and revenues.* State separately the amount of (a) cost of tangible goods sold, (b) operating expenses of public utilities or others, (c) expenses applicable to rental income, (d) cost of services, and (e) expenses applicable to other revenues. Merchandising organizations, both wholesale and retail, may include occupancy and buying costs under caption 2(a). Amounts of costs and expenses incurred from transactions with related parties shall be disclosed as required under §210.4-11(1).

§210.5-03.3 *Other operating costs and expenses.* State separately any material amounts not included under caption 2 above.

§210.5-03.4 *Selling, general and administrative expenses.*

§210.5-03.5 *Provision for doubtful accounts and notes.*

§210.5-03.6 *Other general expenses.* Include items not normally included in caption 4 above. State separately any material item.

§210.5-03.7 *Non-operating income.* State separately amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under §210.4-11(1). Material amounts included under miscellaneous other income shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

§210.5-03.8 *Interest and amortization of debt discount and expense.*

§210.5-03.9 *Non-operating expenses.* State separately amounts of (a) losses on securities (net of profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

§210.5-03.10 *Income or loss before income tax expense and appropriate items below.*

§210.5-03.11 *Income tax expense.* Include under this caption only taxes based on income (see §210.4-11(g)).

§210.5-03.12 *Minority interest in income of consolidated subsidiaries.*

§210.5-03.13 *Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.*

State, parenthetically or in a note referred to herein, the amount of dividends received from such persons.

If justified by the circumstances, this item may be presented in a different position and a different manner (see §210.4-01(a)).

§210.5-03.14 *Income or loss from continuing operations.*

§210.6-03.15 *Discontinued operations.*

§210.5-03.16 *Income or loss before extraordinary items and cumulative effects of changes in accounting principles.*

§210.5-03.17 *Extraordinary items, less applicable tax.*

§210.5-03.18 *Cumulative effects of changes in accounting principles.*

§210.5-03.19 *Net income or loss.* (See §210.5-02.31).

§210.5-03.20 *Earnings applicable to common stock.*

§210.5-03.21 *Earnings per share data.*

§210.5-04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this section as Schedules I, VII, IX, X, and XI shall be filed as of the dates of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed for each person or group.

(2) The schedules specified below in this section as Schedules II, III, IV, V, VI, and VIII shall be filed for each person or group for each of the latest two fiscal years preceding the date of the most recent audited balance sheet and for the interim period, if any, between the end of the most recent such fiscal year and the date of the most recent balance sheet being filed.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated it may be presented in the form of a single schedule: *Provided*, That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Marketable securities - other investments. The schedule prescribed by §210.12-02 shall be filed—

(1) In support of caption 2 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of marketable securites as of the balance sheet date constitutes 10 percent or more of total assets.

(2) In support of caption 12 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of other investments as of the balance sheet date constitutes 10 percent or more of total assets.

(3) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market of other investments plus the greater of the aggregate cost or the aggregate market value of marketable securities as of the balance sheet date constitutes 15 percent or more of total assets.

(4) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market value of the securities as of the balance sheet date of any issuer reported under either caption 2 or caption 12 constitutes 2 percent or more of total assets.

Scheduled II—Amounts receivable from related parties, and underwriters, promoters, and employees other than related parties.

The schedule prescribed by §210.12-03 shall be filed with respect to each person among related parties, and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $100,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the latest two fiscal years or for the interim period, if any, between the end of the most recent fiscal year and the date of the most recent balance sheet being filed, was owed. This schedule shall not include information which is prescribed by §210.12-05. For the purposes of this schedule, exclude in the determination of the amount of indebtedness all amounts re-

ceivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business.

Schedule III—Investments in, equity in earnings of, and dividends received from related parties. The schedule prescribed by §210.12-04 shall be filed in support of caption 10 of each balance sheet. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule IV—Indebtedness of and to related parties —not current. The schedule prescribed by §210.12-05 shall be filed in support of captions 11 and 23 of each balance sheet; however, the required information may be presented separately on Schedule III. This schedule may be omitted if: (1) neither the sums of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule V—Property, plant and equipment. The schedule prescribed by §210.12-06 shall be filed in support of caption 13 of each balance sheet, provided that this scheudle may be omitted if the total shown by caption 13 does not exceed 5 percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule VI—Accumulated depreciation, depletion, and amortization of property, plant and equipment. The schedule prescribed by §210.12-07 shall be filed in support of caption 14 of each balance sheet. This schedule may be omitted if Schedule V is omitted.

Schedule VII—Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule VIII—Valuation and qualifying acounts. The schedule prescribed by §210.12-09 shall be filed in support of valuation and qualifying accounts included in each balance sheet but not included in Schedule VI. (See §210.4-02.)

Schedule IX—Real estate and accumulated depreciation. The schedule prescribed by §210.12-26 shall be filed for real estate (and the related accumulated depreciation) held by persons a substantial portion of whose business is that of acquiring and holding for investment real estate or interests in real estate, or interests in other persons a substantial portion of whose business is that of acquiring and holding real estate or interests in real estate for investment. Real estate used in the business shall be excluded from the schedule.

Schedule X—Mortgage loans or real estate. The schedule prescribed by §210.12-27 shall be filed by persons specified under Schedule X for investments in mortgage loans on real estate.

Schedule XI—Other investments. If there are any other investments, under caption 12 of §210.5-02 or elsewhere in a balance sheet, not required to be included in Schedule I or III, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

* * * * *

5. By amending Article 12 as follows:

FORM AND CONTENT OF SCHEDULES

GENERAL

§210.12-01 Application of §210.12-01 to §210.12-27.

These sections prescribe the form and content of the schedules required by §210.5-04, 210.6-10,

210.6-13, 210.6-24, 210.6-34, 210.6-06, 210.7A-06 and 210.9-95.

No change from former schedule format.

§210.12-02 Marketable securities—other investments. No change from former schedule format.

§210.12-03 Amounts receivable from related parties and underwriters, promoters, and employees other than related parties.

§210.12-04 Investments in, equity in earnings of, and dividends from related parties.

No change from former schedule format. However, the term "related parties" is proposed to be substituted for "affiliates and other persons."

§ 210.12-05 Indebtedness of and to related parties -- non current

Column A.	Column B.	Column C.	Column D.	Column E.	Column F.	Column G.	Column H.	Column I.
		--Indebtedness of--				--Indebtedness to--		
Name of person (Note 1)	Balance at beginning	Additions (Note 2)	Deductions (Note 3)	Balance at end	Balance at beginning	Additions (Note 2)	Deductions (Note 3)	Balance at end

Note 1. The person named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

Note 2. For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

Note 3. If deduction was other than a receipt or disbursement of cash, explain.

§ 210.12-06 Property, plant and equipment (Note 1)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Classification (Note 2)	Depreciation method (Note 3)	Depreciation rate range/average (Note 4)	Balance at beginning of period (Notes 2 & 5)	Additions at cost (Note 6)	Retirements (Note 7)	Other changes add (deduct) describe (Note [illegible])	Balance at end of period

Note 1 Comment briefly on:

(a) any significant and unusual additions, abandonments, or retirements, or any significant and unusual changes in the general character and location, of principal plants and other important units, which occurred within the period.

(b) the adjustment of accumulated depreciation, depletion, obsolescence and amortization at the time the properties are retired or otherwise disposed of, including the disposition of any gain or loss on sale of such properties.

Note 2 (a) Show separately nondepreciable assets and assets under construction; then show depreciable assets by depreciation, depletion, or amortization method used and thereunder by major classifications, such as buildings, machinery and equipment, leaseholds, or functional grouping. If such classification is not present or practicable, such classification as is present and practicable shall be used. The additions included in column E, however, shall be segregated in accordance with an appropriate classification. If property, plant and equipment abandoned is carried at other than a nominal amount indicate, if practicable, the amount thereof and state the reasons for such treatment. Property, plant and equipment which is fully depreciated, depleted or amortized or is carried at net estimated salvage value but is still being used, should either be included with the appropriate major classification or disclosed as one amount with the amount for each major classification stated in a note. Property, plant and equipment which is idle (other than temporarily), or is expected to be idle in excess of an operating cycle, should be stated separately, if material. Items of minor importance may be included under a miscellaneous caption.

SEC DOCKET/273

(b) Show separately any asset or homogeneous group of assets (such as computers, equipment used in a specific manufacturing process, warehouses, office buildings, etc.), which comprises 25 percent or more of a major class of property, plant and equipment. Provided, however, that the item need not be shown separately if it does not exceed 5 percent of total assets.

(c) Public utility companies. - A public utility company shall classify, to the extent practicable, utility plant by the type of service rendered (such as electric, gas, transportation and water) and shall state separately under each of such service classifications the major subclassifications of utility plant accounts.

Note 3 State the method(s) used in computing depreciation, depletion or amortization and the amount determined by each method. If more than one method of depreciation, depletion or amortization is used, the categorization specified in Note 2 shall be shown unless the method is used for less than 5 percent of total property, plant and equipment.

Note 4 (a) State the rate used in computing depreciation, depletion or amortization if more than one rate is used, state the range and weighted average rate. If a unit of production method is used, state in a note (i) the percentage of original cost charged to expense in each of the past two years (ii) the amount of expense taken in the current period and (iii) the total original cost and remaining undepreciated, undepleted, or unamortized asset balances, of each such major class.

(b) State for any asset or homogeneous group of assets (such as computers, equipment used in a specific manufacturing process, warehouses, office building, etc.), which comprises 25 percent or more of a major class of property, plant and equipment, the rate used in computing depreciation, depletion or amortization. If more than one rate is used for such assets, state the range and weighted average rate. If a unit of production method is used, state the percentage of original cost charged to expense in each of the past two years. This section (b) shall not apply if the asset or homogeneous group of assets constitutes less than five percent of total assets.

Note 5 If neither the total additions nor total deductions during any of the periods covered by the schedules amount to more than 10 percent of the ending balance of that period and a statement to that effect is made, the information required by columns D, E, F, and G may be omitted for that period, provided that the totals of columns E and F are given in a note hereto and provided further that any information required by instructions 6, 7, and 8 shall be given and may be in summary form.

Note 6 For each change in accounts in column E that represents anything other than an addition from acquisition, and for each change in that column that is in excess of 2 percent of total assets, at either the beginning or end of the period, state clearly the nature of the change and the other accounts affected. If cost of property additions represents other than cash expenditures, explain. If acquired from an affiliate at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within two years prior to the acquisition by the person for which the statement is filed.

Note 7 If changes in column F are stated at other than cost, explain if practicable.

Note 8 State clearly the nature of the changes and the other accounts affected. If provision for depreciation, depletion and amortization of property, plant and equipment is credited in the books directly to the asset accounts, the amounts shall be stated in column G with explanations, including the accounts to which charged.

§210.12-07 Accumulated depreciation, depletion and amortization of property, plant and equipment.

No change from former schedule format.

§210.12-08 Guarantees of securities of other issuers.

No change from format of schedule formerly prescribed by §210.12-12.

§210.12-09 Valuation and qualifying accounts.

No change from format of schedule formerly prescribed by §210.12-13.

FOR MANAGEMENT INVESTMENT COMPANIES

§210.12-10 Investments in securities of unaffiliated issuers [For management investment companies only]

No change from format of schedule formerly prescribed by §210.12-19.

§210.12-11 Investments; other than securities. [For management investment companies only]

No change from format of schedule formerly prescribed by §210.12-21.

§210.12-12 Investments in affiliates. [For management investment companies only]

No change from format of schedule formerly prescribed by §210.12-22.

§210.12-13 Summary of investments - other than investments in affiliates. [For insurance companies]

No change from format of schedule formerly prescribed by §210.12-27.

§210.12-14 Premiums, losses and claims, and policy acquisition costs. [For insurance companies other than life and title insurance companies]

No change from format of schedule formerly prescribed by §210.12-29.

§210.12-15 Future policy benefits and insurance in force. [For insurance companies]

No change from format of schedule formerly prescribed by §210.12-31.

§210.12-16 Deferred policy acquisition costs. [For insurance companies]

No change from format of schedule formerly prescribed by §210.12-31a.

FOR UNIT INVESTMENT TRSUTS, AND FOR THOSE UNINCORPORATED MANAGEMENT INVESTMENT COMPANIES WHICH ARE ISSUERS OF PERIODIC PAYMENT PLAN CERTIFICATES

§210.12-17 Investment in securities.

No change from format of schedule formerly prescribed by §210.12-33.

§210.12-18 Trust shares. [For all unit investment trusts, and for those unincorporated management investment companies which are issuers of periodic payment plan certificates]

No change from format of schedule formerly prescribed by §210.12-34.

FOR FACE-AMOUNT CERTIFICATE INVESTMENT COMPANIES

§210.12-19 Investments in securities of unaffiliated issuers.

No change from format of schedule formerly prescribed by §210.12-35.

§210.12-20 Investments in and advances to affiliates and income thereon.

No change from format of schedule formerly prescribed by §210.12-36.

§210.12-21 Mortgage loans on real estate and interest earned on mortgages.

No change from format of schedule formerly prescribed by §210.12-37.

§210.12-22 Real estate owned and rental income.

No change from format of schedule formerly prescribed by §210.12-38.

§210.12-23 Supplementary profit and loss information.

No change from format of schedule formerly prescribed by §210.12-39.

§210.12-24 Certificate reserves.

No change from format of schedule formerly prescribed by §210.12-40.

§210.12-25 Qualified assets on deposit.

No change from format of schedule formerly prescribed by §210.12-41.

FOR CERTAIN REAL ESTATE COMPANIES

§210.12-26 Real estate and accumulated depreciation. [For certain real estate companies]

No change from format of schedule formerly prescribed by §210.12-42.

§210.12-27 Mortgage loans on real estate. [For certain real estate companies]

No change from format of schedule formerly prescribed by §210.12-43.

* * * * *

PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 - REGULATION S-K

The Commission hereby proposes to add a new Item 12 to Regulation S-K.

§229.20 Information required in document.

* * * * *

Item 12. Supplementary financial information.

(a) *Selected quarterly financial data.*

(1) Exemption. This rule shall not apply to any registrant that does not meet both of the two folliwng tests:

(i) First test. The registrant

(A) Has securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of that Act and has securities which also meet the tests set forth in paragraphs (1)(i) (C) *(1)* and *(2)* of this section; or

(C) Has securities registered pursuant to section 12(g) of that Act which also

(1) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(2) Meet the following criteria:

(i) Three or more dealers stand willing to, and do in fact, make a market in such stock including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934.

(a-1) For purposes of this subsection, the insertion of quotations into the National Association of Securities Delaers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market.

(ii) There continue to be 800 or more holders of record as defined in Rule 12g5-1(§240.12g5-1) under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock.

(iii) The issuer continues to be a U.S. corporation.

(iv) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(v) In addition, the issuer shall meet two of the three following requirements:

(a-1) The shares described in paragraph (1)(i)(C)*(2)(iv)* continue to have a market value of at least $2.5 million.

(a-2) The minimum representative bid price of such stock is at least $5 per share.

(a-3) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions. 1. The computation required by *(v)* (a-1) and *(v)* (a-2) shall be based on the average of the closing representative bid prices as reported by NASDAQ for the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by *(v)* (a-3) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting, of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

(2) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(3) When the data supplied in paragraph (2) of this section vary from the amounts previously reported on the Form 10-Q [17 CFR 249.308a] filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(4) Describe the effect of any disposals of segments of business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(5) Paragraphs (1) through (4) of this rule shall not apply to a foreign private issuer not required to report quarterly financial information on Form 10-Q; *Provided, however,* That a foreign registrant which reports or is requird to report interim financial information on Form 6-K shall disclose such data in the manner provided in paragraphs (1) through (4) with respect to the financial information reported on Form 6-K.

* * * * *

PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraph (b)(3) of §240.14a-3 to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

* * * * *

2. By revising paragraph (a)(3) of §240.14c-3 to read as follows:

§240.14c-3 Annual report to be furnished security holders.

(a) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

* * * * *

These amendments are proposed to be effective with respect to annual and interim periods ending after December 15, 1980, although earlier application is encouraged.

These amendments are proposed to be adopted pursuant to authority in Sections 6, 7, 8, 10, and 19(a) [15 U.S.C. 77 f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14, and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)] of the Investment Company Act of 1940.

Pursuant to Section 23 (a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and is not aware at this time of any burden that such rule amendments, if adopted, would impose on competition. However, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

In addition, the Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weigh with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITY ACT OF 1933
Release No. 6179 January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16499/January 15, 1980

PUBLIC UTILITY HOLDING CO. ACT OF 1935
Release No. 21394/January 15, 1980

INVESTMENT CO. ACT OF 1940
Release No. 11020/January 15, 1980

Uniform Instructions as to Financial Statements—Regulation S-X

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for comment amendments which, if adopted, would establish uniform instructions governing the periods to be covered by financial statements included in (1) most registration and reporting forms filed with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934, and (2) annual reports to security holders furnished pursuant to the proxy rules. The proposed amendments would remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of instructions in Regulation S-X. In addition, amendments are being proposed which would allow, in most cases, interim financial information included in registration statements to be presented in the same degree of detail as is required in quarterly reports filed on Form 10-Q under the Exchange Act. The proposed rules are intended to simplify the registration and reporting and reporting requirments under the Federal securities laws and further the integration of reporting under the 1933 and 1934 Acts.

DATE: Comments should be received by the Commission on or before April 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File S7-819. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for public comment amendments to existing rules which, if adopted, would (1) establish uniform instructions governing the periods to be covered by financial statements; (2) position a centralized set of instructions as to financial statements in a new Article 3 of Regulation S-X; and (3) reduce the burden of registration by allowing most reporting companies filing unaudited interim data under the Securities Act to provide condensed financial statements, in a Form 10-Q format, in lieu of complete financial statements and schedules.

Adoption of the rules proposed under this release would result in amendments to Forms S-1 [17 CFR 239.13], S-2 [17 CFR 239.12], S-3 [CFR 239.13], S-7 [17 CFR 239.26], S-8]17 CFR 239.16b], S-11 [17 CFR 239.18], 10 [17 CFR 249.210], 10-K [17CFR 249.310], Rule 14a-3 [17 CFR 240.14a-3], Schedule 14a [17 CFR 240.14a-1 *et seq.*], Rule 14c-3 [17 CFR 240.14c-3], and Regulation S-X [17 CFR 210]under the Securities Act of 1933 or the Securities Exchange Act of 1934.

I. BACKGROUND

A. Integration of Reporting Under the Securities Acts

In recent years, the Commission has pursued a policy of integration of registration and reporting requirements under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act," together, the "securities acts"). The Commission believes integration of the securities acts not only benefits registrants, but also offers a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of reexamining the present reporting and disclosure system focusing principally on developing ways to improve and simplify the registration and reporting process. Initiatives to date have resulted in four separate but related projects: (1) a project directed toward developing the fundamental blueprints for a system of integration using principally the annual report to security holders as the key disclosure document; (2) a project to reevaluate requirements for financial statements focusing on issues such as the periods to be covered, the entities separately reported upon, and pro forma financial statements; (3) a review of Regulation S-X to identify ways to facilitate the integration of the securities acts and eliminate requirements which are unnecessary or duplicative when compared to existing generally accepted accounting principles; and (4) a project to design a short form for registration of securities in certain merger and reorganization transactions using concepts of integration envisioned by the project outlined in (1) above.

Each of these projects have progressed to the extent that the Commission, in four concurrent releases, is publishing for comment proposed rules which, if ultimately adopted, would have a significant impact on the overall registration and reporting process. The releases can be distinguished by the projects from which they evolve. One release encompasses the proposed revisions to Form 10-K, Regulation S-K and the proxy rules, and introduces the fundamental design of the integrated reporting system as currently envisioned by the Commission.[1] Another release contains proposed changes to Regulation S-X pertaining to those articles reexamined to date (Articles 3, 5 and related sections of 12).[2] A third release introduces a new streamlined disclosure form, Form S-15, designed as a short form for registration of securities in certain merger and reorganization transactions.[3]

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[1] Securities Act Release No. 6176.
[2] Securities Act Release No. 6178.
[3] Securities Act Release No. 6177.

And, as the fourth, this release proposes amendments to establish uniform instructions to govern the periods for which financial statements are provided. All four releases relate to the overall goal of achieving a single integrated disclosure system. Each invites public comment and each should be read in the context of the proposed format for an integrated disclosure system as described more fully in the concurrent release on revision of Form 10-K.

B. Reexamination of Requirements to Provide Financial Statements

The integrated disclosure system envisioned by the Commission and introduced in the concurrent release on revision of Form 10-K would serve to combine the two present disclosure systems under the securities acts into a single disclosure framework. When fully operative it would eliminate duplicative disclosure by allowing periodic and other reports filed under the Exchange Act to also be used in registration statements filed under the Securities Act. In proposing such an integrated system, the Commission recongizes that the basic financial statement disclosures under the securities acts should not differ significantly and that present rules require revision to bring about the degree of consistency needed for an integrated reporting structure.

Accordingly, with the objective of integration and therefore consistency in mind, the Commission is in the process of reexamining the present rules governing the financial statements included in (1) registration statements filed under the Securities Act; (2) periodic reports filed under the Exchange Act; and (3) annual reports to security holders furnished pursuant to the proxy rules. The principle issues being focused on include the appropriate periods for which financial statements should be provided; the significance and utiltiy of separate financial statements for the parent company only, subsidiaries not consolidated, 50 percent or less owned persons, consolidated majority-owned subsidiaries engaged in diverse financial activities, and affiliates whose securities are pledged as collateral; and the objectives of pro forma financial statements, the appropriate methods to be used in their preparation, and the degree of detail necessary for sufficient disclosure of the effects of past and future successions to other businesses.

The first of these areas, the periods for which financial statements should be provided, has been given careful consideration and is the principal subject of the amendments proposed in this release. Studies of the other issues, regarding the requirements for separate financial statements and pro forma statements, have not yet been completed. To assist in its reevaluation of present rules regarding these other areas, the Commission, in addition to soliciting comments on the proposed amendments under this release, encourages commentators to also provide their views on existing rules governing preparation of parent company only financial statements, other separate financial statements referred to above, and pro forma financial statements. In providing comments, commentators should take into consideration the basic needs of investors as well as the proposed format for an integrated reporting system.

II. DISCUSSION OF PROPOSED RULES

A. Uniform Requirement for Periods to be Covered by Financial Statements

Presently, the periods for which financial statements are required to be filed with the Commission vary depending on the particular registration or reporting form being filed. A registrant, for example, filing a registration statement on Form S-1 under the Securities Act is required to include statements of income and changes in financial position for three years and a balance sheet as of a recent date. A registrant filing a registration statement under the same act on Form S-7 is required to provide statements of income and changes in financial position for five years and a balance sheet as of a recent date. For registration of securities using Form S-8, a registrant must provide the financial statements required to be included in Form 10-K (under the 1934 Act) or in the annual report to security holders which include statements of income and changes in financial position for two years plus balance sheets as of the end of the most recent two fiscal years.

As registration and reporting requirements have evolved, differences in the rules have been created as to the periods for which financial disclosures are required. These differences, in part,

have resulted from attempts to tailor disclosure requirements to the particular circumstances surrounding the use of the respective forms. Such differences in requirements have been a source of confusion for many and have contributed to the complexity of the present disclosure system.

The Commission, in connection with its reassessment of the present reporting and disclosure requirements, has questioned the necessity for these differences among various forms. Common to all investment decisions involving securities is the need for sufficient information to assess the financial health of the underlying issuer. Whether a potential investor is considering investing in a security traded on the open market or in one being registered for the first time, his method of analysis and evaluation is most likely very similar and his basic informational needs the same. It is, therefore, difficult to draw meaningful distinctions among the various registration and reporting forms to support the need for the financial statements to encompass differing periods of time. Although the nature of securities and the purpose of registration may differ in many respects and thus require certain disclosures tailored to the specific circumstances of the filing, the Commission believes that such varying circumstances may not warrant a variation among forms as to the periods to which primary financial statements relate.

The Commission believes that the present differences in requirements among the various forms, as to the periods to be covered by financial statements, may not be necessary and that a uniform requirement may be appropriate. The establishment of a uniform requirement would contribute significantly to the simplification of the present disclosure framework and would enhance the ability to further integrate reporting under the securities acts.

Accordingly, the Commission in connection with the other proposed changes to the present disclosure system, as contemplated by the concurrent release on revision of Form 10-K, is proposing for comment uniform instructions to govern the periods to which financial statements relate. The proposed rule would require, in all disclosure documents affected by this release, the inclusion of audited statements of income and changes in financial position for the most recent three fiscal years and audited balance sheets as of the end of the most recent two fiscal years. The proposed amendments would also remove substantially all of the present instructions as to financial statements from the individual forms and would position the revised requirements in Regulation S-X. The centralization of these instructions should serve to simplify present rules and enhance the ability to further integrate reporting under the securities acts.

In proposing a uniform requirement, the Commission recognizes that the views of investors may vary as to the appropriate number of years necessary for an informed investment decision. Some investors may view financial statements covering five years as a minimum while others may be satisfied with financial statements covering a lesser number of years. Still others may believe that the more historical information presented in a disclosure document the better protected they are as investors.

The Commission's responsibility, and therefore its objective, in structuring a disclosure framework is to ensure that the investing public is provided sufficient information upon which to premise investment decisions. The determination of what constitutes a sufficient degree of disclosure, given the broad application of a uniform requirement, is a difficult one. Moreover, any uniform rule based on sufficiency of disclosure must take into consideration the practical implications of compliance and refrain from mandating financial disclosure in excess of the minimum necessary to meet the needs of investors in general.

Two principal alternatives have been considered. Alternative one would require audited statements of income and changes in financial position for the most recent five fiscal years while alternative two, which is proposed in this release, would require such statements for only the three most recent fiscal years. In approving the proposal of a three-year income statement, the Commission considered the proposed changes to Regulation S-K contemplated by the concurrent release on revision of Form 10-K. In that release, the Commission is proposing to refocus "Management's Discussion and Analysis" from the results of operations, as presently disclosed in the summary of operations, to financial position, changes in financial position and results of operations as presented in the audited financial statements. Ac-

cordingly, the release also proposes the elimination of the present requirement to provide a five-year summary of operations.

Because the Commission believes that disclosure of five years of certain data, in many cases, may be necessary for an evaluation of trends, it proposes to retain a requirement for companies to supply certain data for a five-year period. On the other hand, the Commission believes that the information necessary for a disclosure of trends may be less than that encompassed by a complete set of financial statements. As a consequence, the Commission is proposing, in the concurrent release on revision of Form 10-K, an amendment to Regulation S-K requiring registrants to provide a summary of selected financial data which management believes best portrays trends in a company's operations. At a minimum, registrants would be required to include in the summary of selected financial data, for five years: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations (including long-term debt, capital leases and redeemable preferred stock); working capital or some other appropriate measure of liquidity; and cash dividends declared per common share.

The proposed summary of selected financial data should generally provide investors sufficient information upon which to assess trends. It should also serve to eliminate the need for requiring complete financial statements for the earliest two years. Although the rules proposed herein would require an income statement covering the three most recent fiscal years, specific comments on the propriety of a five-year income statement requirement are invited.

Consideration was also given to the notion of using two years as a uniform requirement for statements of income and changes in financial position. A two-year requirement, however, was rejected on the basis that statements for two years would most likely not satisfy the needs of most users. To evaluate a company's operations in any given year, in terms of changes in operations, comparative data for the immediately preceding year is required. Accordingly, it is the Commission's view that a three-year requirement provides the minimum data necessary for an understanding of changes in performance for two years. A three-year requirement is also consistent with the periods presently required to be covered by "Management's Discussion and Analysis" and with the provisions of the Securities Act of 1933.

Consistent with the emphasis being placed on increased use of annual reports and the integration of reporting under the securities acts, the proposed amendments extend to the proxy rules governing the distribution of annual reports to security holders. Since the proposed amendments represent an expansion of present requirements for reporting in annual reports to security holders, commentators are specifically invited to provide their views on any anticipated increased costs which may be incurred in complying with the rules as proposed. In providing comments, consideration should be given to the proposed changes discussed in the concurrent releases on revision of Form 10-K and Regulation S-X and the emphasis which is being placed on the use of the annual report as a key document in integrating reporting under the securities acts.

B. Interim Financial Information—Age, Form and Content

In addition to proposing a uniform requirement for periods to be covered by audited financial statements, revisions are being proposed relating to the age, form and content of unaudited interim financial information required to be provided in registration statements. Under existing requirements of the various forms, a "90 day" or "six-month" rule must be followed to determine the age of financial information required to be filed. The proposed rules would revise and update these requirements to recognize quarterly reporting requirements under the Exchange Act and would ensure that information provided in registration statements under the Securities Act is at least as current as the data already required to be filed under the Exchange Act. As to form and content, changes are being proposed which should greatly reduce the burden on most registrants who are required to file interim financial information. The proposed amendments would in most cases eliminate the need to provide complete financial statements and schedules for interim periods and would allow interim data to be provided in the same degree of detail as is required under Form 10-Q.

AGE OF FINANCIAL STATEMENTS

The proposed uniform financial statement requirement would require audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the most recent three fiscal years. Exceptions to this would occur under the proposed rules when filings, other than on Forms 10-K or 10, are made within 90 days after the registrant's fiscal year and the audited financial statements for the most recent fiscal year are not available. In these circumstances, the audited balance sheets may be as of the end of the two preceding years and audited statements of income and changes in financial position may be presented for each of the three fiscal years preceding the date of the most recent audited balance sheet presented. However, under these circumstances, an additional balance sheet would be required (which may be anaudited) as of a date within 90 days of the date of filing and unaudited statements of income and changes in financial position would be required on a comparative basis for the interim period between date of most recent audited balance sheet presented and date of most recent balance sheet filed.

Where a filing is not made within 90 days after the end of the registrant's fiscal year (or 120 days for a filing on Form 10), the filing would be required to include an additional balance sheet (which may be unaudited) as of an interim date within 90 days prior to the date of filing, or 135 days if the tests described below are met. There would also be included unaudited statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the most recent balance sheet filed as well as for the corresponding interim period of the preceding year.

Under the proposed amendments, if the registrant meets the "135 day" tests described below, (i) an additional balance sheet need not be provied for filings made after 90 days but before 135 days after the end of the fiscal year and (ii) the most recent balance sheet included in a filing, made after 134 days subsequent to the end of the fiscal year, may be as of a date within 135 days prior to the date of filing.

"135 Day" Tests:

(a) the filing includes audited financial statements as of the registrant's most recent fiscal year end;

(b) the registrant files annual and other reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports (10-K, 10-O and 8-K) due at the time of filing have been filed; and

(c) no debt of the registrant is in default as to principal, interest or sinking fund provisions.

This new 135 day rule is being proposed primarily to update present rules to recognize quarterly reporting requirements under the Exchange Act. The existing six-month rule under Forms S-1, S-7, and S-11 has never been updated in recognition of requirements to file interim data on Form 10-Q. Applicable to registrants meeting certain conditions more restrictive than those proposed above, the six-month rule was originally adopted with Form S-1 prior to the inception of quarterly reporting requirements and was subsequently incorporated into Forms S-7 and S-11 without modification.

Presently, reporting companies are required to file unaudited interim financial information on Form 10-Q within 45 days of the end of each of the first three quarters of their fiscal year. Under present registration requirements a filing could conceivably be filed under the Securities Act with financial information less current than that already filed under the Exchange Act. Under the proposed amendments financial statements included in a registration statement would be required to be at least as current as any financial statements filed under the Exchange Act. Although the proposed amendments would require more current information than is required under the six-month rule, they would not require reporting companies to provide information any more current than is now required under the Exchange Act.

In addition to the above proposal of a 135 day rule, applicable to financial statements as of the filing date of a registration statement, financial statement updating requirements are also being proposed which focus on the age of financial statements at the effective date of a registration statement or at the proposed mailing date in the case of a proxy statment. Where the financial statements in a filing are as of a date more than 135 days prior

to the expected effective date of the filing, or proposed mailing date in the case of a proxy statement, the proposed updating requirement would require the financial statements to be updated through the end of the latest fiscal quarter, on a comparative basis, in the same detail as required in quarterly reports filed pursuant to Section 13 or 15(d) of the Exchange Act. The Commission believes such an updating requirement is needed to ensure that registration statements under the Securities Act contain information at least as current as that required to be filed under the Exchange Act. Moreover, the proposed updating requirement is generally consistent with present provisions included in "Guide 23" of "Guides for Preparation and Filing of Registration Statements." If the proposed amendments are ultimately adopted, "Guide 23" would be revised or eliminated.

Form and Content

In order to achieve a fully integrated disclosure system the Commission recognizes that the requirements under the Securities Act and the Exchange Act must ultimately be made consistent as to the form and content of financial statements presented for interim periods. Presently, the disclosure requirements for interim data under the two acts are significantly different. Interim or stub period information included in registration statements under the Securities Act is required to be presented in full compliance with Regulation S-X, including complete financial statements and schedules. If separate financial statements, for annual periods, for the parent company only, unconsolidated subsidiaries or any 50 percent or less owned persons are required, complete financial statements and schedules for these entities are also required for interim periods. Under the Exchange Act the disclosure required for interim periods is significantly different as to the degree of detail and entities for which financial statements are provided. On a Form 10-Q only condensed financial statements, without schedules, are required for the registrant and its subsidiaries consolidated. In most cases parent company only financial statements are omitted and only summarized data is provided for significant unconsolidated subsidiaries and 50 percent or less owned persons.

To move toward greater consistency in requirements for disclosure of unaudited interim information, the Commission is proposing to allow reporting companies which meet the new 135 day tests to present financial statements for interim periods, in Securities Act filings, in the same degree of detail as is required by form 10-Q under the Exchange Act—condensed financial statements with schedules omitted. This proposed reduction in detail, however, would not eliminate the need to provide separate financial statements for entities for which annual financial statements may be required—parent company only, subsidiaries not consolidated, 50 percent or less owned persons, consolidated majority-owned subsidiaries engaged in diverse financial activities, and affiliates whose securities are pledged as collateral. As referred to earlier in this release, the Commission has not completed its studies regarding the signifcance and utility of these separate financial statements and therefore it would not be appropriate to eliminate the requirements for separate financial statements at this time. Consequently, under the proposed rules separate financial statements would continue to be required, but could be presented in the same degree of detail as is required by Form 10-Q. Other registrants, not meeting the new 135 day tests, would continue to be required to present complete financial statements and schedules for interim periods, as is currently specified. Commendts are specifically requested on whether this new 135 day test should be extended to all registrants.

Although the proposed rules regarding interim financial information would not result in total uniformity in disclosure under the Securities Act and the Exchange Act, they should significantly reduce the burden on most registrants required to prepare registration documents.

C. Instructions to Financial Statements Centralized in Regulation S-X

Instructions as to the financial statements to be provided in a filing and the periods to be covered are presently located in the various registration and reporting forms. As previously mentioned, the proposed amendments would remove substantially all these instructions from the various forms and would position a centralized set of instructions in a new Article 3 of Regulation S-X. The Commission believes that the centralization of these instructions would facilitate the establishment of a uni-

form requirement for periods to be covered by financial statements and would simplify adoption of future amendments needed to further integrate reporting under the securities acts. If the proposed amendments are ultimately adopted, Regulation S-X which is now titled "Form and Content of Financial Statements" would be revised as "Form and Content of and Requirements for Financial Statements."

In proposing to relocate the instructions as to financial statements to Regulation S-X, it should be noted that no significant changes are being proposed at this time other than those relating to the periods to be covered by financial statements and those regarding the form and content of interim data in registration statements. One minor change however that should be considered by commentators relates to financial statements of development stage companies.

The proposed amendments would revise the present rules applicable to financial statements of development stage companies required to be filed on Form 10-K. Presently, when receipts and expenditures of a development stage company, each, do not exceed $5,000, the financial statements may be unaudited. The proposed rules would encompass financial statements of any inactive company and would raise the receipts and expenditures levels, each, to $100,000. This proposal broadens and updates the present rules.

TEXT OF PROPOSED RULES

(Regulation S-X)

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

* * * * *

Articles 3 and 4 are proposed to be amended by (1) renumbering the present Article 3 as Article 4, (2) renumbering the present §210.4-01 through §210.4-08 as §210.3A-01 through §210.3A-08, and (3) inserting new §210.3-01 through §210.3-16 as set forth below:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income and changes in financial position to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedule to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to §230.411(b regarding incorporation by reference to financial statements and section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to §240.12b-23 regarding incorporation by reference and §240.12b-36 regarding use of financial statements filed under other acts.

§210.3-01 Balance sheets of the registrant.

There shall be filed for the registrant and its predecessors audited balance sheets as of the end of each of the two most recent fiscal years.

If the filing, other than a filing on Form 10-K or Form 10, is made within 90 days after the end of the registrant's fiscal year and the audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet (which may be unaudited) as of a date within 90 days of the date of filing.

If the filing is not made within 90 days after the end of the registrant's fiscal year (or 120 days for filings on Form 10), the filing shall also include an additional balance sheet (which may be unaudited) as of a date within 90 days prior to the date of

filing. If the registrant meets the tests set forth below, (a) an additional balance need not be provided for filings made after 90 days but before 135 dyas after the end of the fiscal year, and (b) the most recent balance sheet included in a filing, made after 134 days subsequent to the end of the fiscal year, may be as of a date within 135 days prior to the date of filing and need not be presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934:

(1) The filing includes audited financial statements as of the registrant's most recent fiscal year end;

(2) the registrant files annual and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due at the time of filing have been filed; and

(3) no debt of the registrant is in default as to principal, interest or sinking fund provisions.

Notwithstanding the above requirements, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10-Q.

§210.3-02 Statements of income and changes in financial position of the registrant.

There shall be filed for the registrant and its predecessors audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

In addition, for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. These interim financial statements may be unaudited. If the registrant meets all the tests under §210.3-01 for inclusion of the most recent balance sheet as of a date within 135 days prior to the date of filing, the statements of income and changes in financial position required for interim periods need not be presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

See also the instructions under §210.3-06.

§210.3-03 Omission of registrant's financial statements in certain cases.

Notwithstanding §§210.3-01 and 3-02 above, the individual financial statements of the registrant may be omitted if (a) consolidated financial statements of the registrant and one or more of its subsidiaries are being filed, (b) the conditions specified in either of the following paragraphs are met, and (c) the basis for the omission is stated in the index of financial statements filed.

(1) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interests and/or indebtedness to any person other than the registrant or its consolidated subsidiaries in amounts which together exceed 5 percent of the total assets as shown by the most recent year end consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the registrant by guarantee, pledge, assignment or otherwise are to be excluded for the purpose of this determination.

(2) The registrant's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75 percent or more of the total assets as shown by the most recent year-end consolidated balance sheet; and the registrant's total sales and revenues, exclusive of interest and dividends received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement, for the most recent fiscal year if it were filed, constitute 75 percent or more of the total sales and revenues shown by the most recent annual consolidated income statement.

§210.3-04 Consolidated balance sheets.

There shall be filed consolidated balance sheets of the registrant and its subsidiaries as of the same

dates and in the same detail as each balance sheet of the registrant filed pursuant to §210.3-01. The consolidated balance sheets shall be audited if the registrant's balance sheet as of the same date is audited. If the registrant's balance sheets are omitted pursuant to §210.3-03, the consolidated balance sheets being filed shall be as of the same dates and in the same detail as the balance sheets of the registrant which otherwise would be required and shall be audited if the corresponding balance sheet of the registrant would otherwise be required to be audited.

§210.3-05 Consolidated statements of income and statements of changes in financial position.

There shall be filed for the registrant and its subsidiaries audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

In addition, for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. Such interim financial statements may be unaudited. Further, if the registrant meets all the tests under §210.3-01 for inclusion of the most recent balance sheet as of a date within 135 days prior to the date of filing, the statements of income and changes in financial position required for interim periods need not be presented in greater detail than is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

§210.3-06 Instructions to registrant and consolidated income statement requirements.

(a) The statements shall be prepared in compliance with the applicable requirements of this Regulation.

(b) If the registrant is engaged primarily (1) in the general, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and changes in financial position (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the income statements for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported; *Provided, however,* That such reconciliations need not be made (1) if they have been made in filings with the Comission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

§210.3-07 Past successions to other businesses.

If, during the period for which its income statements are required, the registrant has by purchase or pooling of interests succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any comparable interim periods. In addition, if any purchased business or businesses, singly or in the aggregate, had major significance in relation to the registrant, audited income statements, separate or combined as appropriate, for such business or businesses shall be filed for such periods prior to the purchase

as may be necessary when added to the time, if any, for which audited income statements after the purchase are filed to cover the equivalent of the period specified in §§210.3-02 and 3-05 above. The test of major significance shall be based on the tests used in the term "significant subsidiary" with substituted percentages (determined in comparison to the most recent annual consolidated financial statements of the registrant being filed) being utilized in relation to the period the businesses have been merged prior to the date of the registrant's most recent audited balance sheet as follows: (1) for one full year or less, no substitution; (2) more than one but less than two full years, 25 percent; and (3) two full years or more, 45 percent. If financial statements for an acquired business would not be required in the year of acquisition, they would not be required subsequently. (See Release No. 33-4950 with regard to audit requirements for such financial statements.)

This instruction shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

Information required by the foregoing instruction is not required to be included in a filing on Form 10-K.

§210.3-08 Future successions to other businesses.

(a) If, after the date of the most recent balance sheet filed pursuant to §210.3-01 or 3-04 above, the registrant by purchase or by pooling of interests has succeeded to or is about to succeed to one or more businesses or has acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, prepared in accordance with Regulation S-X. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (1) a balance sheet of the registrant (or the registrant and its subsidiaries consolidated, if appropriate), (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(b) The acquisiton of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subsidiary; *Provided* That the statements of any business may not be omitted where any of the securities being registered are to be offered in exchange for securities representing such business or for assets of such business.

Information required by the foregoing instruction is not required to be included in a filing on Form 10-K.

§210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a)(1) Subject to §210.3A-03 regarding group financial statements and paragraphs (b) and (c) below, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method

by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant.

(2) If it is impracticable to file financial statements of any subsidiary not consolidated or 50 percent or less owned person accounted for by the equity method as of a date within 90 days, or within 135 days if registrant's financial statements are permitted pursuant to §210.3-01 to be filed as of a date within 135 days prior to the date of filing, there may be filed in lieu thereof audited financial statements of such subsidiary or other person as of the end of its most recent annual or semi-annual fiscal period preceding the date of filing the registration statement for which it is practicable to do so.

(b) *Summarized financial information.* Notwithstanding paragraph (a) above, summarized information as to assets, liabilities and results of operations may be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, except such subsidiaries or 50 percent or less owned persons which are individually significant under the tests specified in paragraph (c) below.

(c) *Omission of financial statements required by (a) and (b) above.* Notwithstanding paragraphs (a) and (b) there may be omitted all financial statements of any one or more consolidated subsidiaries or 50 percent or less owned persons accounted for by the equity method, if in the aggregate (1) neither the registrant's and its other subsidiaries' investments in and advances to, nor their proportionate share of the total assets (after intercompany eliminations) of, such subsidiaries and other persons exceed 10 percent of the total assets as shown by the most recent year-end consolidated balance sheet; (2) the total sales and revenues (after intercompany eliminations) of such subsidiaries or other persons, reduced to the percentages of equity interests held by the registrant and its subsidiaries in such subsidiaries and other persons, do not exceed 10 percent of the total sales and revenues as shown by the most recent annual consolidated income statement; and (3) the registrant's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiaries and other persons does not exceed 10 percent of such income of the registrant and consolidated subsidiaries for the most recent fiscal year; *Provided* That, if such income of the registrant and its consolidated subsidiaries for the last fiscal year is at least 10 percent lower than the average of such income for the last five fiscal years, such average income may be substituted in the determination.

§210.3-10 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each entity whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual, consolidated or combined basis.

(b) For the purposes of this instruction, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value as shown by the books of the registrant, or market value, whichever is the greatest, of such securities equals 20 percent or more of the principal amount of the class secured thereby.

§210.3-11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation may be unaudited. An inactive entity is one meeting all of the following conditions:

(a) Gross receipts from all sources for the fiscal year are not in excess of $100,000;

(b) The registrant has not purchased or sole any of its own stock, granted options therefore, or levied assessments upon outstanding stock;

(c) Expenditures for all purposes for the fiscal year are not in excess of $100,000;

(d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases;

and

(e) no exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of, audited financial statements.

§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

If the financial statements in a filing are as of a date more than 135 days prior to the date the filing is expected to become effective, or proposed mailing date in the case of a proxy statement, the financial statements shall be supplemented with condensed financial statements through the end of the latest fiscal quarter on a comparative basis. Such condensed financial statements shall be presented in the same degree of detail as is required for quarterly reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

§210.3-13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also be informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§210.3-14 Special instructions for real estate operations to be acquired.

If, during the period for which income statements are required, the registrant (a) has acquired one or more properties which in the aggregate are significant, or (b) since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements, for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operation of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes. Earnings per unit shall not be given in these statements.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

Information called for by the foregoing instruction is not required to be included in filings on Form 10-K.

§210.3-15 Special provision as to real estate investment trusts.

In lieu of the income statements required by §210.5-03 there shall be filed statements of income and expense and statements of realized gain or loss on properties and investments which shall generally conform with the requirements of §§210.6-04 and 6-05. In place of the balance sheet caption prescribed by §210.5-02-39(a)(3) there shall be shown separately (a) the balance of undistributed net income and (b) accumulated net realized gain or loss on investments, and the statements of other stockholders' equity shall generally conform to the requirements of §210.6-07.

The trust's status as a "real estate investment trust" under applicable provisions of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the trust has relied in making or not making provisions for Federal income taxes.

The tax status of distributions per unit shall be stated (e.g., ordinary income, capital gain, return of capital).

§210.3-16 Reorganization of registrant.

(a) If, during the period for which its income statements are required, the registrant has emerged from a reorganization in which substantial changes occurred in its asset, liability, capital shares, other stockholders' equity or reserve accounts, a brief explanation of such changes shall be set forth in a note or supporting schedule to the balance sheets filed.

(b) If the registrant is about to emerge from such a reorganization, there shall be filed, in addition to the balance sheet of the registrant otherwise required, a balance sheet giving effect to the plan of reorganization. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheet of the registrant prior to the reorganization, the changes to be effected in the reorganization and the balance sheet of the registrant after giving effect to the plan of reorganization. By a footnote or otherwise a brief explanation of the changes shall be given.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

* * * * *

1. Form S-1 is proposed to be amended by deleting Instructions as to Financial Statements and revising Item 19 to read as follows:

§239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 19. Financial Statements

Include in the prospectus the financial statements required by Regulation S-X. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-27, 12-42 and 12-43 of the Regulation, may be omitted from the prospectus.

* * * * *

2. Form S-2 is proposed to be amended by revising Item 13 to read as follows: * * * * *

§239.12 Form S-2, for shares of certain corporations in the development stage. * * * * *

* * * * *

Item 13. Financial Statements

Include in the prospectus the financial statements required by Regulation S-X. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

3. Form S-3 is proposed to be amended by revising Item 12 to read as follows: * * * * *

§239.13 Form S-3, for shares of mining corporations in the development stage.

* * * * *

Item 12. Financial Statements

Include in the prospectus the financial statements required by Regulation S-X. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

4. Form S-8 is proposed to be amended by revising Item 17 and paragraph (b) of Item 11 to read as follows: * * * * *

§239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans. * * * * *

* * * * *

Item 17. Financial Statements of the Issuer

Include in the prospectus the financial statements required by Regulation S-X for the issuer and its subsidiaries consolidated. All schedules may be omitted from the registration statement except those prepared in accordance with Rules 12-27, 12-42 and 12-43 which shall be included in the prospectus.

Instruction. If the annual report of the issuer to its security holders for its last fiscal year includes audited financial statements substantially meeting the above requirements, such statements may be incorporated by reference in the prospectus. If such financial statements are incorporated by reference in the prospectus, copies of the annual report shall be filed as an exhibit of the registration statement and the accountant's certificate shall be manually signed on one of such copies.

* * * * *

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

* * * * *

5. Form S-11 is proposed to be amended by deleting Instructions to Financial Statements and revising Item 24 to read as follows:

§239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 24. Financial Statements

Include in the prospectus the financial statements required by Regulation S-X. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-19 (which replaces Rule 12-02 for this form), 12-42 and 12-43 of the Regulation may be omitted from the prospectus.

* * * * *

6. Form S-7 is proposed to be amended by deleting Item 6 and revising Item 11 to read as follows:

§239.26 Form S-7, for regisration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 11. Financial Statements

Include in the prospectus all financial statements required by Regulation S-X. All schedules may be omitted from the registration statement except those prepared in accordance with rules 12-27, 12-42 and 12-43 which shall be included in the prospectus.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. Form 10 is proposed to be amended by deleting Instructions to Financial Statements and adding a new Item 17 to read as follows:

§249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

Item 17. Financial Statements.

Include in the registration statement all financial statements required by Regulation S-X.

* * * * *

2. Form 10-K is proposed to be amended by deleting the Instructions as to Financial Statements and revising the present Item 12. See proposed technical amendments in the concurrent release on revision of Form 10-K (Securities Act Release No. 6176).

PART 240—GENERAL RULES AND REGULATIONS SECURITIES, EXCHANGE ACT OF 1934

* * * * *

1. Rule 14a-3 is proposed to be amended by revising paragraphs (b)(1, (b)(2) and (b)(3). For proposed revision to paragraph (b)((3), see concurrent Securities Act Release No. 6178. Paragraphs (b)(1) and (b)(2) are proposed to be revised to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include the financial statements required by Regulation S-X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

* * * * *

2. Rule 14a-101 is proposed to be amended by revising Item 15 of Schedule 14A (§240.14a-101) to read as follows:

§240.14a-101 Schedule 14a. Information required in proxy statement.

* * * * *

Item 15. Financial statements.

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulation S-X. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S-X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S-14, the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with Rules 12-27, 12-42 and 12-43 of that regulation need by furnished in the proxy statement.

Parent company only financial statements are not required to be filed unless necessary to make the financial statements not misleading.

* * * * *

3. Rule 14c-3 is proposed to be amended by revising paragraphs (a)(1), (a)(2) and (a)(3). For proposed revision to paragraph (a)(3), see concurrent Securities Act Release No. 6178. Paragraphs (a)(1) and (a)(2) are proposed to be revised to read as follows:

§240.14c-3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include the financial statements required by Regulation S-X for the registrant and its subsidiaries consolidated. Any financial statement schedules or exhibits which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

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STATUTORY AUTHORITY FOR PROPOSED AMENDMENTS

These amendments are proposed pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 81, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n 79t] of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) [16 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)] of the Investment Company Act of 1940.

The Commission is mindful of the cost to registrants and others of its proposals and recognizes its responsibilities to weight with care the costs and benefits which result from its rules. Accordingly, the Commission specifically invites comments on the costs to registrants and others of the adoption of the proposals published herein.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission specifically invites comments as to the competitive impact of these proposals, if adopted.

These amendments are proposed to be effective for filings made after December 15, 1980 with the provision that registrants may, at their option, apply the amended rules upon adoption.

All interested persons are invited to submit 10 copies of their views and comments on the foregoing to Georgie A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before April 30, 1980. Such communications should refer to File S7-819 and will be available for public inspection.

By the Commission

George A. Fitzsimmons
Secretary.

SECURITIES ACT OF 1933
Release No. 6180/January 17, 1980

Exemption of Limited Offers and Sales by Qualified Issuers

ACTION: Adoption of rules, rule amendments, and forms.

SUMMARY: The Commission is adopting a small issue exemptive rule under Section 3(b) of the Securities Act of 1933 which allows certain corporate issuers to offer and sell up to $2,000,000 per issue of their securities to an unlimited number of institutional-type purchasers, purchasers of at least $100,000 of securities, or the issuer's executive officers or directors, and to 35 other purchasers. An issuer offering an issue of securities pursuant to the rule must furnish prospective investors with specified information in certain instances and file one or more notices of sales after the first sale of securities of the issue is made.

EFFECTIVE DATE: February 25, 1980.

FOR FURTHER INFORMATION CONTACT: Gail Gordon Alkire, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting Rule

242 [17 CFR 230.242], Form 242 [17 CFR 239.242], and a corresponding amendment to Rule 144 [17 CFR 230.144] under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq., as amended].

The Commission published proposed Rule 242 for comment in Securities Act Release No. 6121 (September 11, 1979) (44 FR 54258). As adopted, Rule 242 allows certain domestic and Canadian corporate issuers to sell up to $2,000,000 per issue of their securities in any six-month period to an unlimited number of "accredited persons," defined as certain specified institutions, purchasers of $100,000 or more of securities, and executive officers and directors of the issuer, and to 35 other purchasers. If sales are made only to accredited persons, the Rule does not require that the issuer furnish specified information to them. If sales are made to accredited and non-accredited persons, or only to non-accredited persons, the Rule requires that the issuer furnish all purchasers with the same kind of information as that specified in Part I of Form S-18 [17 CFR 239.28] to the extent material, during the transaction and prior to sale. In addition, the issuer must make available to any non-accredited person, upon his written request prior to purchase, any information obtained from the issuer in writing by an accredited person prior to the date of purchase by the non-accredited person. No general advertising or solicitation is permitted. Securities sold pursuant to Rule 242 are deemed to have the same status as if they had been acquired in a transaction pursuant to Section 4(2) of the Securities Act and cannot be resold without registration or an exemption therefrom.

Under Rule 242, the issuer must file a notice with the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., 10 days after the first sale of securities in any issue is made in reliance on the Rule and 10 days after the completion of the issue. Every six months until the completion of the issue, the issuer also must file amended notices which disclose facts which have changed since the last notice as to such issue was filed. The notice form calls for certain data regarding the issuer which is necessary for Commission monitoring and rulemaking purposes.

The exemption provided by Rule 242 is in the nature of an experiment. The Commission will monitor closely the use of Rule 242 for an appropriate period to determine whether the Rule has functioned as an effective means for issuers, particularly small issuers, to raise limited amounts of capital through unregistered offerings to the public consistent with the protection of investors. After such period, the Commission will decide whether the Rule ought to be retained, and, if so, whether the conditions for its availability ought to be revised.

This release contains a general discussion of the background, purpose, and effect of the Rule and a brief synopsis of the major provisions of the Rule which will assist in a better understanding of its provisions. In addition, a discussion of the significant public comment received is included.

BACKGROUND

The Commission currently is engaged in an evaluation of the impact of its rules and regulations on the ability of small business to raise capital and the financial and other effects on small businesses of its disclosure policies under the securities acts. In April and May of 1978, the Commission conducted an examination into these matters in 21 days of public hearings held in six cities across the country.[1] Primarily as a result of the views expressed at the hearings, the Commission recently has taken several significant actions designed to ease the impact of the federal securiteis laws on small business consistent with the protection of investors.[2] The adoption of Rule 242 represents an important step in this process.

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[1] A summary of the record of the proceeding is available for public inspection in File No. S7-734 at the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. 20549, (202) 523-5360. The hearings were recommended by the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission. House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 511 (Comm. Print No. 95-29, 1977).

[2] A summary of these actions is set forth in Securities Act Release No. 6049 (April 3, 1979) (44 FR 21562). Subsequently, in Securities Act Release No. 6075 (June 1, 1979) (44 FR 33362), the

DISCUSSION

Rule 242 is designed to address the problems encountered by small businesses in using other exemptive provisions of the Securities Act and rules promulgated thereunder. Commentators at the Commission's small business hearings indicated that existing exemptive rules, particularly Rules 146 [17 CFR 230.146] and 240 [17 CFR 230.240], were not especially helpful to small businesses.

Rule 146 was designed to provide objective standards on which an issuer may rely in claiming the exemption from registration provided in Section 4(2) of the Securities Act for transactions not involving any public offering. The commentators at the hearings consistently stated, however, that Rule 146 raises compliance problems for smaller issuers which render the availability of the exemption uncertain. Specifically, Rule 146 requires the issuer to make a subjective determination as to the sophistication of each offeree and each purchaser. In addition, the commentators were uncertain whether Rule 146 compels compliance with current staff guidelines and interpretations as to the requirements of forms and schedules, in those instances in which the issuer must furnish offerees the same information "as would be required to be included" in a particular registration statement or on Schedule I of Regulation A. The Rule's provisions as to omissions of immaterial information, moreover, may make technial violations likely.

Rule 240 also was criticized, although it does not contain offeree or purchaser sophistication standards or a mandatory disclosure requirement.

Continued from preceding page

Commission authorized the use of a preliminary offering circular in connection with an underwritten offering pursuant to Regulation A [17 CFR 230.251-264]. In Securities Act Release No. 6136 (October 16, 1979) (44 FR 61941), the Commission announced it would not take enforcement action if an issuer fails to qualify under the applicable provisions of the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq., as amended] the trust indenture for a public debt offering of $1,500,000 or less of securities on Form S-18 [17 CFR 239.28].

Commentators claimed that Rule 240 is of limited utility because it is available only for offerings of $100,000 or less in 12 months by an issuer whose securities are owned beneficially by not more than 100 persons. The utility of rule 240 is diminished further by the Rule's prohibition against the payment of commissions for the solicitation of purchasers.

Rule 242 is intended to facilitate small business capital formation in a manner consistent with the protection of investors by addressing the problems encountered by those issuers seeking to utilize the exemptive provisions. The Commission believes that Rule 242 will reduce the currently-perceived uncertainty regarding their use. Specifically, Rule 242, by reference to Part I of Form S-18, specifies the kind of information which must be furnished during the course of an issue and adds a materiality standard to that requirement, rather than requiring all information which would be required to be included in a registration statement on, *e.g.*, Form S-1 [17 CFR 239.11] or in an offering circular pursuant to Regulation A. Also, the Rule does not require the issuer to make any subjective determination regarding the sophistication or financial condition of offerees and purchasers. The issuer need only examine purchasers to determine whether they are accredited or non-accredited persons based upon the objective criteria set forth in the Rule for purposes of computing the 35-purchaser limit.

The Commission received almost 300 comment letters on proposed Rule 242. Virtually all the letters supported the proposed rule; none opposed its adoption. The only significant body of letters which disagreed with approaches taken in the Rule were those (such as those from the real estate industry) which urged expansion of its availability.

SYNOPSIS

A section-by-section discussion of the Rule follows. The reader's attention, however, is directed to the Rule itself for a complete understanding.

Rule 242

Preliminary Notes. The preliminary notes generally follow these found in Rules 146 and 240 and refer

to other securities law considerations which are involved in the use of Rule 242. Preliminary Note 6, in particular, advises the user that the statutory exemption from registration which the Rule provides relates to exempt "issues" of securities. An "issue" is not defined either in Section 3(b) of the Securities Act or in the Rule. The Note provides guidance as to what factors the Division of Corporation Finance previously has indicated should be considered in determinign whether offers and sales should be integrated and, therefore, considered part of a single "issue."

Definitions. Rule 242(a) sets forth definitions of certain terms used in the Rule.

Accredited Person. Paragraph (a)(1)(i) defines as an accredited person any bank of the type whose securities are exempt from registration under the Securities Act of any insurance company, any registered investment company, or any Small Business Investment Company licensed by the Small Business Administration. In addition, certain employee plans advised either by a bank, insurance company, or registered investment adviser also qualify as accredited persons.

Some commentators recommended that the class of institutional investors which paragraph (a)(1)(i) defines as accredited persons be expanded. It was proposed that venture capitalists or other entities with either a specified minimum net worth or asset value, or both, be deemed to be accredited persons. The Commission, however, has determined to adopt paragraph (a)(1)(i) substantially as proposed. After it has had an opportunity to monitor the use of the Rule for an appropriate period, the Commission will reconsider whether to enlarge the class of institutions which may be categorized as accredited persons. The Commission notes that it currently has under review a definition of a "business development company" which it published for comment in July 1979[3] as part of a rule proposal under the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. 80b-1]. Since a "business development company" would be functionally similar to a venture capital company, the Commission believes it appropriate to defer consideration of "accredited person" treatment for venture capital companies until it has defined "business development companies" in the current rulemaking proceeding under the Advisers Act.

Paragraph (a)(1)(i) has been amended to delete the specific reference to Individual Retirement Accounts which appeared in proposed Rule 242. Under the final rule, if a plan fiduciary which is a bank, insurance company, or registered investment adviser makes the investment decision, any employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") will be an accredited person. The Commission believes that the "prudent man" standard to which Title I of ERISA holds the plan fiduciary provides a desirable check on the plan fiduciary's discretion especially with respect to Individual Retirement Accounts.

In a purely technical revision of proposed Rule 242, the Commission has eliminated the separate reference in paragraph (a)(1)(i) to Minority Enterprise Small Business Investment Companies, since the term "Small Business Investment Company" is inclusive of them.

Paragraph (a)(1)(i) of the definition of "accredited person" includes purchasers of at least $100,000 of the issuer's securities sold in reliance on Rule 242 who pay for the securities with cash or a cash-equivalent, including certain obligations to pay, or the cancellation of indebtedness. This part of the definition is similar to Rule 146(g)(2)(i)(d). Rule 146(g) limits the number of purchasers of securities offered in reliance on that Rule to 35, as does Rule 242. In calculating the number of purchasers for purchasers for purposes of determining whether the ceiling has been reached, Rule 146(g(2)(i)(d) excludes persons who buy at least $150,000 of securities for cash or installments. Rule 242(a)(1)(ii) does not permit the minimum purchase price to be paid in installments which last more than 60 days. Otherwise, Rule 242 follows the approach in Rule 146 but lowers the minimum purchase to $100,000.

Several commentators recommended that the threshold be reduced even further to $50,000. Others found the $100,000 minimum a welcome improvement over the $150,000 minimum in Rule

[3] Investment Advisers Act Release No. 680 (June 19, 1979) (44 FR 37470). The proposed rule would exempt registered investment advisers to such companies from certain provisions of the Advisers Act.

146(g)(2)(i)(d). The Commission has determined to retain at this time the $100,000 figure originally proposed as the minimum amount of securities an investor must purchase to qualify as an accredited person.

Similarly, the Commission has retained the requirement that an accredited person discharge any obligation to pay for securities within 60 days of the first issuance of the securities. Some commentators recommended that Rule 242 be conformed to Rule 146 by permitting installment payments. The Commission believes, however, that the 60-day limit on obligations to pay is necessary to assure that the accredited person has the economic bargaining power to obtain access to the information he requires to make an informed investment decision.

New paragraph (a)(1)(iii) includes as an accredited person any director or executive officer of the issuer of securities offered in reliance on the Rule. The definition of "executive officer" is contained in new paragraph (a)(3) and is identical to the definition of that term in Rule 240(a)(3). Paragraph (a)(1)(iii) reflects the Commission's determination that, by virtue of his position with the issuer, an executive officer or director will have access to information which is necessary for him to make an informed investment decision about the issuer's securities.

It should be noted that at the time of the sale of the securities an issuer must have reasonable grounds for believing and must believe that those purchasers whom it does not count for purposes of paragraph (e) of the Rule or who do not receive the information specified in paragraph (f) of the Rule meet the definition of "accredited person" in paragraph (a)(1).

Affiliate and Predecessor. The definition of "affiliate" in subparagraph (a)(2) of the Rule is derived from Rules 146 and 240. "Predecessor," as defined in subparagraph (a)(4), is similarly defined under Regulation A.

Qualified Issuer. Subparagraph (a)(5) provides that the Rule is available to any domestic or Canadian corporate issuer which is not an investment company, a company which is engaged or intends to engage in signficant oil, gas, or mining operations, or a company for the securities of which no exemption under Regulation A is available because of the provisions of Rule 252(c),(d), or (e) of Regulation A. Except for the exclusion of issuers disqualified from using Regulation A, the restrictions on the issuers eligible to use the Rule generally are consistent with similar restrictions recently included in Form S-18.[4]

The Commission excluded any issuer disqualified from using Regulation A from the definition of a qualified issuer in the interest of investor protection. The Commission believes that this safeguard is necessary in light of the experimental nature of Rule 242. Rule 252(c), (d), and (e) provide that no exemption under Regulation A shall be available for the securities of an issuer, if, among other things, the issuer, any of its predecessors, or any of certain affiliates has been convicted within a certain period of time of an offense involving the purchase or sale of securities or is subject to an order enjoining conduct in connection with the purchase or sale of securities.

Rule 252(f) provides that the Commission may grant relief, upon a showing of good cause, from any disqualification from the use of Regulation A imposed by paragraphs (c), (d), or (e) of Rule 252. Relief similarly may be sought under Rule 242 (a)(5)(v), if the issuer otherwise is eligible and wishes to use Rule 242.

A majority of the commentators recommended that the definition of a qualified issuer be significantly expanded. Members of the real estate industry and others connected with it advocated the inclusion of limited partnerships in the definition. They argued that new ventures should not be forced into corporate form to take advantage of Rule 242, since the choice of other than corporate from may be perfectly legitimate. Tax considerations, in particular, may make a limited partnership the optimum vehicle for some businesses. Other commentators recommended that the Commission treat issuers with significant oil and gas or mining operations as qualified issuers for purposes of Rule 242.

The Commission believes it appropriate at this time to limit the definition of qualified issuer and

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[4] *See* Securities Act Release No. 6049 (April 3, 1979) (44 FR 21562).

has retained the exclusions originally proposed primarily for two reasons. As noted above, Rule 242 is in the nature of an experiment. After an appropriate period, the Commission will determine whether the availability of the Rule should be broadened. Moreover, the informational requirements of Rule 242 with respect to non-accredited purchasers, *i.e.*, to provide the same kind of information specified in Part I of Form S-18 to the extent material, do not contemplate offerings of limited partnership interests or offerings by issuers engaged in significant oil and gas or mining operations. Form S-18 would not provide guidance as to the specialized disclosure which would be required to be made in connection with any such offering of securities.

The Commission is committed to undertaking a general review of the use of Form S-18 in the second quarter of 1980. As part of its review, the Commission will consider whether to revise the Form to make it available to limited partnerships and companies engaged in oil and gas or mining operations. It is possible that as a result of this review the Commission will make changes in the definition of "qualified issuer" in Rule 242.

Securities of the Issuer. This term is defined in subparagraph (a)(6) to include within the securities offered and sold by the issuer those securities issued by affiliates who became affiliates in the past year and by predecessors. This type of definitional provision is similar to one found in Regulation A. The purpose of such a provision is to prevent an issuer from setting up numerous corporate entities which it controls and causing each of these entities to make offerings pursuant to Rule 242, thereby avoiding the Rule's dollar ceiling.

Conditions to be Met. Rule 242(b) points out that, in order for a qualified issuer to have a valid exemption for each issue of its securities offered and sold pursuant to Rule 242, the issuer must satisfy all of the Rule's conditions. "Issue" is not defined in Section 3(b) or in Rule 242. Determination of whether separate sales of securities are part of the same issue and thus must be deemed to be integrated depends upon a consideration of traditional integration factors concerning the methods of sale and distribution employed to effect the offering and the disposition of the proceeds. In order to assist the issuer in determining which offers and sales constitute parts of a single issue, paragraph (b) contains a qualified safe harbor from integration. This safe harbor is fashioned after a similar concept contained in Rule 146(b)(1) and provides that any sales of the issuer's securities more than six months prior to a Rule 242 offer or sale and any offers and sales after the six-month period following a Rule 242 offer or sale will not be integrated with the Rule 242 issue. However, normal integration principles will apply to any such sales outside the two six-month periods if the issuer makes an offer or sale of securities of the same or a similar class, other than offers or sales pursuant to any Section 3(b) exemption or any employee plan as defined in Rule 16b-3 [17 CFR 240.16b-3] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended] in the six months before or after the Rule 242 offers or sales.[5]

In the original proposal, only sales pursuant to a Regulation A exemption were permitted within the two six-month periods without rendering the safe harbor inoperative. In the final rule, first, the safe harbor ocntinues to be effective despite transactions under any Section 3(b) exemption during the six months before and after the rule 242 issue. The new provision is intended to allow an issuer greater flexibility in its capital-raising programs, especially since the $2,000,000 aggregate offering price ceiling in paragraph (c) limits the potential for the issuer to raise large sums by circumventing the registration provisions of the Securities Act through multiple offerings pursuant to Section 3(b). Secondly, offers or sales pursuant to employee plans have been added to those transactions which will not render the safe harbor inoperative if made during the applicable six-month periods. This change alleviates the public commentators' fear that continuous offers pursuant to outstanding employee stick options, sales of the underlying securities upon exercise of the options, or offers or sales pursuant to employee stock purchase plans could result in the loss of the issuer's safe harbor.

Limitations on Aggregate Offering Price of Each Issue. Paragraph (c) limits the amount of each issue of securities sold pursuant to Rule 242 to the amount specified in Section 3(b), which presently is $2,000,000.

[5] It should be noted that the Rule provides no safe harbor from integration as to any offers or sales occurring in the six months immediately before or after a Rule 242 offer or sale.

Solely for purposes of calculating this aggregate dollar limit, an issuer must include the aggregate gross proceeds for all Section 3(b) sales of securities of the issuer, other than Regulation A sales under an employee plan, in the six months preceding the commencement of and during the Rule 242 issue.

The offering price ceiling in Rule 242 differs from the ceiling in other Section 3(b) exemptions in that it is computed on a six-month as opposed to a 12-month basis. Subject to the specified exclusion of Regulation A sales pursuant to an employee plan, as more fully discussed below, every sale of securities of the issuer in reliance on a Section 3(b) exemption in the six months immediately preceding the commencement of the Rule 242 issue through its completion reduces the permissible dollar amount of subsequent sales in the Rule 242 issue.

Under the proposed rule, only sales during the six months preceding the commencement of the Rule 242 issue would have reduced the dollar price ceiling on subsequent sales in that issue. The provision was intended to assure that the combined use of Rule 242 and other Section 3(b) exemptions would not exceed $2,000,000 in any six-month period. Consistent with this intent, a revision in the final rule requires that the issuer must also subtract from the aggregate dollar price ceiling all Section 3(b) sales of securities of the issuer made during the issue, unless effected pursuant to an employee plan under the Regulation A exemption. This modification to the proposed rule will prevent an issuer which has had no Section 3(b) sales of securities in the six months before a Rule 242 issue commences from selling a full $2,000,000 of its securities in a purportedly continuous offering of the Rule 242 issue, despite sales made pursuant to other Section 3(b) exemptions during the course of the Rule 242 issue.

In response to the Commission's specific solicitation of comments, several commentators recommended that Regulation A offerings of securities through employee stock options not be aggregated with other Section 3(b) offers and sales for purposes of the offering price ceiling on Rule 242 issues. They noted that offerings through employee stick options are unlike most offerings to raise capital, because they primarily are designed to provide employees with additional compensation and an equity interest in a company without an outflow of cash which the company needs. The Commission has determined that offers and sales under employee stock option plans, or under any other employee plan contemplated by Rule 16b-3 under the Exchange Act, made pursuant to Regulation A need not automatically be aggregated with sales of securities of the issuer pursuant to Rule 242.

By its reference to the defined term "securities of the issuer," paragraph (c) of the final rule also clarifies that the computation of the offering price ceiling includes Section 3(b) sales by the issuer and Section 3(b) sales by affiliates of less than one year and predecessors of the issuer.

The Commission also requested comments as to whether offers and sales under Rule 242 should be excluded from the calculation of the aggregate offering price for purposes of Regulation A. The concept was endorsed by a few commentators. The Commission has deferred consideration of such a proposal until it has had an opportunity to reexamine the entire basis on which the Regulation A offering price ceiling is calculated.

In response to comments seeking clarification, Note 2 to paragraph (c) has been amended to explain the basis on which securities which have no determinable market value shall be valued when offered in exchange for non-cash consideration. The new language follows a similar provision in Rule 254(c) of Regulation A.

Limitation on Manner of Offering. Paragraph (d) of the Rule would prevent general advertising of offers made pursuant to the Rule. This provision is an accordance with similar provisions found in Rules 146 and 240.

Limitation on Number of Purchasers. In a manner similar to Rule 146(g), paragraph (e) of Rule 242 requires that the issuer reasonably believe that there are not more than 35 non-accredited persons who purchase securities in any issue offered pursuant to Rule 242. The calculation of the number of purchasers follows the method set forth in Rule 146(g)(2). Paragraph (e)(2)(iv) of Rule 242 specifically excludes accredited persons from the calculation of the number of purchasers for purposes of the ceiling.

The operation of the purchaser limitation may be illustrated as follows: If an issuer sold $1,000,000

of its Class A common stock on March 1, 1980, to 20 non-accredited persons pursuant to Rule 242, then prior to September 1, 1980, it would be permitted to sell only $1,000,000 more of such stock and to no more than 15 non-accredited persons, assuming that all sales of Class A common stock within the six-month period would be deemed to constitute a single issue of the securities. If, instead, the issuer makes an offering of debt securities on May 1, 1980, pursuant to Rule 242 under circumstances which would constitute a separate issue, the issuer could sell no more than $1,000,000 of the debt securities in light of its March sales. The issuer, however, could sell the debt securities to as many as 35 non-accredited persons.

Furnishing of Information. Paragraph (f) of the Rule specifies the information which must be given in writing to non-accredited purchasers of the securities of the issuer during the transaction and prior to sale. With the exception that only one year's certified financial statements must be prepared, the issuer must furnish the same kind of information specified in Part I of Form S-18 to the extent material to an understanding of the issuer, its business, and the securities being offered. Failure to include information required by any other registration forms or guides or staff interpretations relating to the informational requirements in registered offerings made pursuant to the Securities Act by itself will not result necessarily in the loss of the Rule's availability. Issuers are reminded, however, of the applicability of the anti-fraud provisions of the federal securities laws and of the civil liability provisions of Section 12(2) of the Securities Act.

The reference in the Rule to the furnishing of the same kind of information specified in Part I of Form S-18 to the extent material is intended to provide a guideline to issuers while at the same time alleviating concerns regarding a technical violation os Section 5 of the Securities Act for the omission of information called for by Form S-18 or staff interpretations when such information is not material to the particular issuer and offering involved. The Commission has retained the materiality standard upon consideration of the comments which it specifically solicited as to whether it would be preferable to use the phrase "to the extent applicable" rather than "to the extent material."

If accredited persons are involved in the same transaction they, too, must receive this written information. Furthermore, if accredited persons receive additional information in writing prior to the time any non-accredited person makes his purchase, the non-accredited person must be given access to such information. This provision reflects a relaxation in the Rule, since the original proposal would have required all such information automatically to be furnished to a non-accredited person. The final rule requires that the issuer instead furnish a non-accredited person with a written description of additional information which accredited persons have received in writing and thereafter to furnish the non-accredited person such information as he requests in writing prior to his purchase. The description of additional information must be furnished at a time reasonably prior to purchase in order for the non-accredited person to request, obtain, and review any item before making his purchase. The option to receive the detailed information received by accredited persons protects the interests of non-accredited persons involved in the issue while it simultaneously eases the regulatory burden which mandatory delivery of all information would impose on the issuer.

If the issuer files reports pursuant to Section 13 or 15(d) of the Exchange Act, it may satisfy the informational requirements of the Rule by furnishing purchasers with its most recent annual report on Form 10-K [17 CFR 249.310], definitive proxy statement, and any other reports filed since the filing of the Form 10-K. In addition, the issuer shall also provide the information required by Items 1, 2, 3, and 14 of Part I of Form S-18, if applicable. These items deal with specific information regarding the offering and the use of proceeds.

Paragraph (f)(l)(i) requires the issuer to furnish the same kind of information required by Part I of Form S-18, with one difference. An issuer which registers an offering on Form S-18 must furnish prospective investors with certain certified financial statements for the two most recent fiscal years prepared in accordance with generally accepted accounting principles, as opposed to Regulation S-X [17 CFR 210.1-2 through 210.12-43]. In contrast, Rule 242 requires certification of financial statements for only the most recent fiscal year.

Several commentators opposed this one-year certification requirement. In light of the inherent costs, one commentator recommended that certification

be required only in those instances in which Regulation A would require certification, three recommended that certified financial statements be required to be furnished only if available, and another recommended that the requirement be eliminated altogether. The Commission nevertheless has determined that the requirement in paragraph (f)(l)(i) that the most recent fiscal year's financial statements be certified should be retained for the protection of non-accredited purchasers.

It should be noted that in addition to the narrative and financial information required to be disclosed to investors pursuant to the proposed rule, subparagraph (f)(3) requires that an issuer give prospective investors an opportunity to ask questions and receive answers from the issuer. This provision is similar to that included in Rule 146(e)(2).

In the proposing release, the Commission specifically requested comments as to whether undue burdens would be imposed on issuers if Rule 242 were to require that the information called for by paragraph (f)(l) which is furnished to non-accredited persons, and to accredited persons involved in the same transaction, be filed with the Commission after the completion of the issue for the purpose of monitoring the quality of the disclosure being made in Rule 242 offerings. A few individuals favored a filing requirement, but the majority of persons who commented were opposed. The opponents believed that after-the-fact review with a view to enforcement would have a chilling effect on Rule 242 issues. Other were concerned that proprietary information about nonpublic companies would become publicly accessible through the Freedom of Information Act [5 U.S.C. 522, as amended] if offering materials had to be filed.

The Commission is appreciative of the commentators' concerns. Accordingly, it has not required that disclosure documents used in connection with Rule 242 issue be filed at an issue's completion. As an alternative measure, the issuer must undertake to furnish to the Commission upon the staff's written request any information furnished in connection with a Rule 242 issue to non-accredited persons pursuant to paragraph (f)(l). The undertaking appears in the notice of sales to be filed under paragraph (h).

The Commission expects to sample offering materials on a random basis, in order to monitor the type and quality of disclosure being made in Rule 242 offerings. This random survey, together with empirical analyses of the data submitted by issuers on Form 242, will assist the Commission in assessing the effectiveness of Rule 242 as a method of capital formation by small businesses.

Limitation on Resale. Paragraph (g) indicates that resales of securities purchased pursuant to the Rule must be made pursuant to either an effective registration statement or a valid exemption from registration. In this regard, an amendment to Rule 144 defines Rule 242 securities as "restricted securities" so that resales may be made in reliance on Rule 144.

Filing of Notice of Sales. An important purpose of the notice requirement in paragraph (h) is to collect empirical data which will provide a basis for futher action by the Commission either in terms of amending existing rules and regulations or proposing new ones. Form 242 is designed to enable an issuer to respond to most questions by checking boxes or by filling in blanks. It is comtemplated that a response to Item C.3., which requires a brief description of the issuer's business, would consist only of two or three sentences.

As adopted, Form 242 calls for more informaion than the proposed notice. The new items which have been added to Form 242 are a reasonable itemization of the expenses of the offering, the use of the net proceeds to ths issuer from the offering, the number of accredited and non-accredited purchasers, the aggregate dollar amount of purchases by accredited persons and of purchases by non-accredited persons, the name and address of each broker who receives a commission from the issuer in connection with the Rule 242 issue, and the names and addresses of the issuer's chief executive officer, its affiliates, and promoters involved in the Rule 242 issue. Since Rule 242 is experimental in nature, the new items have been added primarily to elicit information which the Commission expects will be necessary in assessing the effectiveness of Rule 242 as a capital-raising device for small businesses. For example, the expenses of the offering will be studied together with comparable data for registered offerings to determine to what extent capital formation under rule 242 produces cost savings, and the use of proceeds will be studied to determine the purposes for which Rule 242 is being used. Information about the number of purchasers and dollar

amount of their purchases by category will enable the Commission to determine whether the concept of "accredited purchaser" is a useful one and whether persons falling within the category are purchasing securities under the Rule. Information about any broker acting on behalf of the issuer will provide valuable information about the extent of participation by regional brokers in Rule 242 offerings.

The time of filing of the notice has been changed to respond to the comments and to accommodate changes in the periods at to which information must be reported on the Form. The issuer must make an initial filing no later than 10 days after the first sale is made in any issue offered in reliance on the Rule. The issuer must make a final filing no later than 10 days after the completion date of the issue. If the issue is completed before the initial filing is made, a single notice may be filed. The issuer also must file periodic updates every six months until a final notice is filed. After the issuer files the initial notice as to any issue, any subsequent notice need only report information in response to Part D of the Form and any material changes in answers previously made to Parts A through C. It should be noted that failure to file a required notice will result in the loss of the exemption from registration under the Rule.

AMENDMENT TO RULE 144

Rule 242 provides that no resales of securities of the issuer may be made pursuant to its terms. A similar provision is found in Rules 146 and 240. Resales of securities originally sold pursuant to these Rules and provided for by Rule 144. Accordingly, the Commission is adopting a corresponding amendment to Rule 144 to allow resales of securities originally sold pursuant to Rule 242 under Rule 144. The amendment includes Rule 242 securities within the definition of "restricted securities" in Rule 144(a)(3).

OPERATION OF RULE 242

Rule 242 will operate prospectively only since there is now no similar exemption under Section 3(b). The staff will issue interpretive letters to assist persons in complying with the Rule but will not issue no-action letters concerning whether or not a particular transaction satisfies the requirements of the Rule. As to resales of securities, the staff will continue its present policy of not providing a substantive response to letters involving the following: (1) hypothetical situations, (2) the removal of restrictive legends from securities, (3) whether a person is an affiliate, or (4) requests for a no-action position with respect to securities acquired on or after April 15, 1972, as set forth in a recent interpretive release regarding Rule 144.[6]

TEXT OF RULES

17 CFR Chapter II is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By amending paragrpah (a)(3) of §230.144 to read as follows:

§230.144 Persons deemed not to be engaged in destribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term "restricted securities" means securities acquired directly or indirectly from the issuer thereof, or from an affiliate of the issuer, in a transaction of chain of transactions not involving any public offering or from the issuer in a transaction in reliance on Rule 240 or Rule 242 under the Act or which were issued by an issuer in a transaction in reliance on Rule 240 or Rule 242 and were acquired in the transaction or chain of transactions not involving any public offering.

* * * * *

2. By adding §230.242 to read as follows:

§230.242 Exemption of limited offers and sales by qualified issuers.

PRELIMINARY NOTES

1. Rule 242 relates to transactions exempted from section 5 of the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq., as amended] under section

[6] *See* Securities Act Release No. 6099 (August 2, 1979)(44 FR 46752).

3(b) of the Act. It does not provide an exemption from the anti-fraud provisions of section 12(2) of the Act or other provisions of the federal securities laws.

2. Nothing in this rule obviates the need for compliance with any applicable state law relating to the offer and sale of securities.

3. Reliance on this rule does not act as an election; the issuer can also claim the availability of any other applicable exemption.

4. This rule is available only to the issuer of the securities and is not available to affiliates or other persons for resales of the issuer's securities. The rule provides an exemption only for the transactions in which the securities are offered or sold by the issuer, not for the securities themselves. The securities acquired in a transaction effected in reliance on the rule are unregistered securities and are deemed to have the same status as if they were acquired in a transaction pursuant to section 4(2) of the Act.

5. In view of the objectives of the rule and the purposes and policies underlying the Act, the rule is not available to any issuer with respect to any transactions which, although in technical compliance with the rule, are part of a plan or scheme to evade the registration provisions of the Act. In such cases registration pursuant to the Act is required.

6. Section 5 of the Act requires that all securities offered by the use of mails or other channels of interstate commerce be registered with the Commission. Congress, however, provided certain exemptions from the registration provisions in section 3(a) of the Act and in section 3(b) allowed the Commission to exempt othwr securities if it finds that registration is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering. Rule 242 is promulgated under section 3(b) and is designed to help certain corporate issuers raise limited amounts of capital from the public by providing objective requirements which are less burdensome than those found in other exemptions from registration under different sections of the Act.

In order to obtain the protection of the rule, all sales which are part of the same issue must meet all of the conditions of the rule. The issuer claiming the availability of the rule has the burden of establishing, in an appropriate forum, that it has satisfied all the conditions. Broadly speaking, the conditions of the rule relate to limitations on the manner and amount of the issue, the furnishing of information, the number of purchasers, and the filing of notices of sales.

The term "issue" is not defined in section 3(b) or in the rule. Generally, the determination as to whether separate sales of securities are part of the same issue (*i.e.*, are deemed to be "integrated") depends on the particular facts and circumstances. The following factors should be considered in determining whether separate sales are part of the sme issue for purposes of section 3(b) and Rule 242:

(a) whether the sales are part of a single plan of financing;

(b) whether the sales involve issuance of the same class of security;

(c) whether the sales have been made at or about the same time;

(d) whether the same type of consideration is received; and

(e) whether the sales are made for the same general purpose.

These same factors are applicable to a determination of whether offers and sales should be integrated for purposes of the exemption under section 4(2) of the Act. *See* Securities Act Release No. 4552 (November 6, 1962)(27 FR 11316).

The text of the rule follows:

(a) *Definitions.* For purposes of this rule only:

(1) *Accredited person.* The term "accredited person" shall mean any person who the issuer and any person acting on its behalf have reasonable grounds to believe and believe, after making reasonable inquiry, comes within any of the following categories at the time of the sale of the securities of the issuer pursuant to this rule:

(i) Any bank as defined in section 3(a)(2) of the Act whether acting in its individual or fiduciary capacity; insurance company as defined in section 2(13) of the Act; employee benefit plan within the meaning of Title I of the Employee Retirment Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company or registered investment adviser; investment company registered under the Investment Company Act of 1940; Small Business Investment Company licensed by the U.S. Small Business Administration under section 310(c) or (d) of the Small Business Investment Act of 1958.

(ii) Any person who purchases $100,000 or more of securities of the issuer per issue sold pursuant to this rule for any combination of (A) cash, or (B) an obligation to pay which provides for full recourse against the purchaser of the securities and for discharge of the obligation within 60 days of the first issuance of the securities, or (c) the cancellation of any indebtedness owned by the issuer to the purchaser; and

(iii) Any director or executive officer of the issuer of the securities being offered pursuant to this rule.

(2) *Affiliate.* The term "affiliate" of a person shall mean a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with such person.

(3) *Executive officer.* The term "executive officer" shall mean the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy-making functions for the issuer.

(4) *Predecessor.* A "predecessor" of an issuer shall mean (i) a person the major portion of whose assets have been acquired directly or indirectly by the issuer or (ii) a person from which the issuer acquired directly or indirectly the major portion of its assets.

(5) *Qualified issuer.* The term "qualified issuer" shall mean any corporation which is incorporated under the laws of the United States or Canada or any State or Province thereof, and has or proposes to have its principal business operations in the United States, if a domestic coproration, or in Canada or the United States if a Canadian corporation, and which:

(i) Is not an investment company;

(ii) Does not engage or intend to engage in oil and gas related operations which exceed the criteria for exemption specified in §210.3-18(k) of Regulation S-X;

(iii) Does not engage or intend to engage in significant mining operations;

Note: For purposes of this rule, the criteria for exemption specified in §210.3-18(k) of Regulation S-X for oil and gas operations shall be considered by analogy as an appropriate test for determining the significance of mining operations.

(iv) Is not a majority-owned subsidiary of an issuer which does not meet the qualifications for use of this rule as specified in paragraph (a)(5)(i), (ii), or (iii) of this rule.

(v) Is not an issuer described in Rule 252(c), (d), or (e) under the Act; *Provided, however,* that for purposes of this rule only:

(A) The term "filing of the notification required by Rule 255" as used in Rule 252(c), (d), and (e) under the Act shall mean the first sale of securities in any issue in reliance on this rule; and

(b) The term "underwriter" as used in Rule 252(c), (d), and (e) under the Act shall mean a person which has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in any issue offered in reliance on this rule;

Provided, further that paragraph (a)(5)(v) of this rule shall not apply to any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption under this rule be denied. Any such determination by the

Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

(6) *Securities of the issuer.* The term "securities of the issuer" shall mean:

(i) All securities issued by a qualified issuer;

(ii) All securities issued by any predecessor of a qualified issuer; and

(iii) All securities issued by any affiliate of a qualified issuer which was organized or became such an affiliate within the preceding twelve months.

(b) *Conditions to be met.* All sales which are part of the same issue of securities offered or sold by a qualified issuer in compliance with all the conditions in paragraphs (c) through (h) of this rule shall be exempt from registration under section 5 of the Act pursuant to section 3(b) of the Act. For purposes of identifying which securities constitute a single issue, sales of securities occurring more than six months prior to the commencement of an issue of securities pursuant to this rule and sales of securities and offers in connection therewith occurring at any time after six months from the completion date of the issue pursuant to this rule shall not be considered part of the same issue so long as there are during neither of said six-month periods any offers or sales of securities by or for the issuer of the same or similar class as those offered or sold pursuant to this rule, other than offers or sales of securities pursuant to any section 3(b) exemption from registration or any employee plan as defined in paragraph (d)(1) of Rule 16b-3 under the Securities Exchange Act of 1934 which meets the conditions in paragraphs (a) through (c) of that rule.

Note: In the event that the issuer offers or sells securities as to which the safe harbor described in paragraph (b) of this rule is unavailable, see Preliminary Note 6 hereof as to which offers or sales may be deemed to be part of the same issue.

(c) *Limitation on aggregate offering price of each issue.* The aggregate offering price of an issue of securities of the issuer by a qualified issuer shall not exceed the amount allowed under section 3(b) of the Act, less the aggregate gross proceeds for all securities sold pursuant to any section 3(b) exemption (other than securities of the issuer sold pursuant to an exemption from registration provided by Regulation A pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b-3 under the Securities Exchange Act of 1934 which meets the conditions of paragraphs (a) through (c) of that rule) six months prior to the commencement and during the offering of the issue of securities pursuant to this rule.

Note 1: The calculation of the aggregate offering price may be illustrated as follows: If an issuer sold $500,000 if its securities on June 1, 1980 in reliance on this rule, $50,000 on September 1, 1980 pursuant to Rule 240, and an additional $200,000 on October 1, 1980 pursuant to Regulation A, the issuer would be permitted to sell only $1,250,000 more until December 1, 1980, since until that date the issuer must count all three prior sales toward the present section 3(b) $2,000,000 limit. However, if the issuer made its fourth sale under this rule on December 1, 1980, the issuer could sell $1,750,000 of its securities, since the June 1, 1980 sale would not be within the preceding six months.

Note 2: The calculation of the aggregate offering price includes all consideration received by the issuer for the issuance of securities of the issuer, including cash, services, property, notes, cancellation of debt, or other consideration. Where securities which have no determinable market value are offered in exchange for outstanding securities, claims, property, or services, the aggregate offering price thereof shall be computed at the public offering price of securities of the same class for cash, or if no cash offering is to be made, then upon the basis of the value of the securities, claims, property, or services to be received in exchange, as established by bona fide sales made within a reasonable time, or in the absence of such sales, upon the basis of the fair value of the securities, claims, property, or services to be received in exchange as determined by some accepted standard.

(d) *Limitation on manner of offering.* Neither the issuer nor any person acting on its behalf shall offer or sell securities pursuant to this rule by means of any form of general solicitation or general advertising, including, but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or

similar medium or broadcast over the television or radio.

(e) *Limitation on number of purchasers.*

(1) The issuer shall have reasonable grounds to believe, and after making reasonable inquiry, shall believe, that there are no more than 35 purchasers of each issue of the securities of the issuer from the issuer pursuant to this rule.

Note: See paragraph (b) of this rule and Preliminary Note 6 as to what may or may not constitute an issue pursuant to this rule.

(2) For purposes of computing the number of purchasers for paragraph (e) only, the following purchasers shall be excluded:

(i) Any relative, spouse, or relative of the spouse of a purchaser who has the same home as the purchaser;

(ii) Any trust or estate in which a purchaser or any of the persons related to him as specified in paragraph (e)(2)(i) or (iii) of this section collectively have 100 percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser or any of the persons related to him as specified in paragraph (e)(2)(i) or (ii) of this section collectively are the beneficial owners of all the equity securities (excluding director's qualifying shares) or equity interests; and

(iv) Any accredited person as defined in paragraph (a)(1).

Note: The issuer must satisfy all the other provisions of the rule with respect to all purchasers whether or not they are included in computing the number of purchasers under this paragraph.

(3) There shall be counted as one purchaser any corporation or other organization, except that if such entity was organized for the specific purpose of acquiring the securities offered, each benefical owner of equity interests or equity securities in such entity shall count as a separate purchaser for all provisions of this rule.

(f) *Furnishing of information.*

(1) If the issuer sells an issue of securities pursuant to this rule only to accredited persons, the rule does not specify what information must be furnished to such persons. In any offering of an issue of securities involving only non-accredited persons, or both accredited and non-accredited persons, the issuer shall furnish the following information to all purchasers in writing during the course of such offering and prior to sale:

(i) The same kind of information as that specified in Part I of Form S-18, to the extent material to an understanding of the issuer, its business, and the securities being offered; *Provided, however,* That only the financial statements for the issuer's most recent fiscal year must be certified by an independent public accountant or a certified public accountant.

(ii) Such further material information, if any, as may be necessary to make the required information, in the light of the circumstances under which it is furnished, not misleading.

(iii) An issuer that is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the informational requirements of paragraph (f)(1)(i) by furnishing purchasers with the information contained in its most recent annual report, definitive proxy statement, and any other reports or documents required to be filed by the issuer pursuant to section 13(a) or 15(d) of the Securities Exchange Act since the filing of such annual report, except that the information required by items 1, 2, 3, and 14 of Part I of Form S-18, if applicable, shall also be provided.

(2) The issuer also shall make available to each offeree, during the course of the transaction and prior to sale, the opportunity to ask questions of, and receive answers from, the issuer or any person acting on its behalf concerning the terms and conditions of the offering and to obtain any additional information, to the extent that the issuer possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information obtained pursuant to paragraph (f)(1).

(3) At a reasonable time prior to the purchase of securities by any non-accredited person in a transaction pursuant to this rule, the issuer also shall furnish such purchaser a brief description in writing of any written information obtained from the issuer in connection with the offering by any accredited person prior to the date of purchase by the non-accredited person. The issuer shall furnish any portion or all of such information to such non-accredited person upon his written request if made prior to the date of his purchase.

(g) *Limitation on resale.* In determining the availability of an exemption from registration for resale of securities acquired in a transaction pursuant to this rule, such securities shall be deemed to have the same status as if they had been acquired in a transaction pursuant to section 4(2) of the Act and cannot be resold without registration under the Act or exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care shall include, but not necessarily be limited to:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his own account or on behalf of other persons;

(2) Informing the purchaser of the restrictions on resale; and

(3) Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

(h) *Filing of notice of sales.*

(1) The issuer shall file with the Commission five copies of a notice on Form 242 [17 CFR 239.242]:

(i) No later than 10 days after the first sale of securities in any issue is made in reliance on this rule;

(ii) No later than 10 days after the completion date of the offering of such issue; *Provided, however,* That only one notice need be filed for purposes of paragraphs (h)(1)(i) and (ii) under this rule if the offering of the issue is completed within the 10-day period described in paragraph (h)(1)(i) and the notice is filed no later than at the conclusion of that period but subsequent to the completion of the offering of the issue; and

(iii) Every six months after the first sale of securities in the issue is made in reliance on this rule, unless the final notice require by paragraph (h)(1)(ii) of this rule has been filed.

(2) Every notice on Form 242 shall be signed by a duly authorized officer of the issuer and shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer to any non-accredited person pursuant to paragraph (f)(1) of this rule.

(3) If more than one notice is required to be filed pursuant to paragraph (h)(1) of this rule as to any issue of securities offered in reliance thereon, notices other than the original notice need only report the information required by Part D and any material change in the facts from those set forth in Parts A through C of the original notice.

(4) A notice on Form 242 shall be deemed to be filed with the Commission for purposes of paragraph (h)(1) of this rule:

(i) as of the date which it is received at the Commission's principal office in Washington, D.C., or

(ii) as of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. By adding §239.242 as follows:

§239.242 Form 242, notice of sales of securities pursuant to §230.242 of this chapter.

(a) Five copies of a notice on this form shall be filed with the Commission:

(1) No later than 10 days after the first sale of securities in any issue is made in reliance on Rule 242 (§230.242 of this chapter);

(2) No later than 10 days after the completion date of the offering of such issue; *Provided, however,* That only one notice of this form need be filed for purposes of paragraphs (h)(1)(i) and (ii) of the rule if the offering of the issue is completed within the 10-day period described in paragraph (h)(1)(i) and this form is filed not later than at the conclusion of that period but subsequent to the completion of the offering of the issue; and

(3) Every six months after the first sale of securities in the issue is made in reliance on the rule, unless the final notice required by paragraph (h)(1)(ii) of the rule has been filed.

(b) If more than one notice is required to be filed pursuant to paragraph (h)(1) of the rule as to any issue of securities offered in reliance thereon, notices other than the original notice need only report the information in response to Part D and any material changes in Parts A through C from the facts previously reported.

(c) A notice on this form shall be deemed to be filed with the Commission for purposes of paragraph (h)(1) of the rule:

(1) as of the date on which it is received at the Commission's principal office in Washington, D.C.; or

(2) as of the date on which the notice is mailed by means of United States registered or certified mail to the Comission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C., if the notice is delivered to such office after the date on which it is required to be filed.

Securities and Exchange Commission,
Washington, D.C. 20549

EFFECTIVE DATE

Rule 242, Form 242 and related amendments to Rule 144 are effective on February 25, 1980. They are not effective as to offers or sales in any issue commenced prior to that date. [Secs. 3(b), 4(l), 19(a), 48 Stat. 75, 77, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; sec. 6, 68 Stat. 684; sec. 12, 78 Stat. 580; 84 Stat. 1480; sec. 308(a)(1), (2), (3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77d(1), 77s(a)]

STATUTORY AUTHORITY

The Commission hereby adopts Rule 242, Form 242, and an amendment to Rule 144 pursuant to sections 3(b), 4(l), and 19(a) of the Securities Act of 1933.

The Commission finds that the changes in Rule 242 and Form 242 already have been generally subject to comment in Securities Act Release No. 6121 or are technical in nature or less burdensome than previous proposals so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act [5 U.S.C. 533] are not necessary.

By the Commission

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6181/January 17, 1980

IN THE MATTER OF

BURLINGHAM UNDERWOOD & LORD RETIREMENT PLAN
One Battery Park Plaza
NEW YORK, NY 10004

(18-53)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE BURLINGHAM UNDERWOOD & LORD RETIREMENT PLAN.

Burlingham Underwood & Lord, a law firm organized as a partnership under New York law, by letters dated June 1, 1979, November 21, 1979, November 27, 1979 and December 5, 1979, filed an application for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participation issued in connection with the Burlingham Underwood & Lord Retirement Plan ("Plan").

On December 21, 1979, a notice was issued (Securities Act Release No. 6171 of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes farily intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16468A/January 16, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, IL 60603
(SR-MSE-79-22)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

On January 4, 1980, Securities Exchange Act Release No. 16468 was issued providing notice and approval, on an accelerated basis, of a proposed rule change by the Midwest Stock Exchange to, among other things, provide for a fulltime Chairman of the Board to act as Chief Executive Officer of the Exchange. The Release misidentifies the rule change as File No. MSE-79-25; the correct file number is SR-MSE-79-22.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16481/January 11, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-51

The New York Stock Exchange, Inc. ("NYSE") submitted on December 5, 1979, a proposed rule change under Rule 19b-4 to rescind that portion of NYSE Rule 420 that requires reporting to the NYSE of members' and allied members' unsecured non-capital borrowing[1] in excess of $20,000 and relieves NYSE member organizations of the obligation to inform the NYSE of such borrowings.[2]

Publication of the submission is expected to be made in the *Federal Register* during the week of January 14, 1980 In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 11 days from the date of publication in the *Federal Register.* Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capital Street, Washington, D.C. 20549. Reference should be made to File No. SR--NYSE-79-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1] The term "non-capital borrowings" refers to borrowings that do not involve the capital account of any NYSE member organization.

[2] Reporting of "capital borrowings" would be unaffected by this proposal.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16482/January 11, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-46

The New York Stock Exchange, Inc. ("NYSE") submitted, on December 28, 1979, a proposed rule change under Securities Exchange Act Rule 19b-4 to raise by approximately 8% the rates charged for NYSE Bond Ticker, Bond Ticker Display and Equity Total Transaction Tape, in order to recover a portion of the increased operating expenses associated with these services. In addition, the filing establishes rates for the following new services: Bond Bid-Asked Tape; Closing Price Tape; and Range Tape.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 14, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register.* Persons desiring to make written comments should

file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR--NYSE-79-46.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16483/January 11, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-79-19)

ORDER APPROVING PROPOSED RULE CHANGE

On November 1, 1979, the American Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Amex Rule 959, Commentary .01, to delete a requirement that closing sell orders in options which have been placed in the cabinet and which cannot be immediately executed must be filed in time sequence with any order to sell at 1/16 in the regular-way auction market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16334, November 9, 1979) and by publication in the *Federal Register* (44 FR 65844, November 15, 1979). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16484/January 11, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
141 West Jackson Street
Chicago, Illinois 60604

(SR-CBOE-78-4)

ORDER APPROVING PROPOSED RULE CHANGE

On February 16, 1978, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to: (1) amend CBOE Rule 6.2 to require a Board Broker or Order Book Official to alternate the opening of put and call series on the same underlying security unless otherwise permitted by approval of Floor Officials or directed by the Floor Procedure Committee; (2) to amend CBOE Rule 6.54, Interpretations and Policies .01 to revise the procedures applicable to accomodation liquidations; and (3) to amend CBOE Rule 7.7, Interpretations and Policies .01 to require Board Brokers and Order Book Officials to display the full size of a bid or offer up to 999 contracts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14518, March 2, 1978) and by publication in the *Federal Register* (43 FR 9670, March 9, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16485/January 14, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-55

The New York Stock Exchange, Inc. submitted, on December 23, 1979, a proposed rule change under Rule 19b-4 to amend its guidelines for floor conduct and safety to remove the provision that a member's failure to return a visitor's badge on the same day as it is used will result in a one hundred dollar fine.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 14, 1980. Interested persons are invited to submit written data, views and arguments con-

cerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR--NYSE-79-55.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16486/January 14, 1980

The Commission today announced that it has included in the public file, pursuant to Rule 28 of the Commission's Rules of Practice (17 CFR 201.28), three comment letters received from the National Securities Clearing Corporation ("NSCC") and two statements by Professor George A. Hay of the Cornell Law School. Those letters and Professor Hay's statements concern the issues remanded to the Commission for further study and explication by the United States Court of Appeals for the District of Columbia Circuit in the *Bradford* case.[1]

n Securities Exchange Act Release No. 15640 March 14, 1979), the Commission requested public comment on the two issues remanded in the *Bradford* case. Those issues are NSCC's use of the pricing policy known as geographic price mutualization ("GPM") AND NSCC's selection, without competitive bidding, of the Securities Industry Automation Corporation ("SIAC") as facilities manager of its consolidated system. In that release, the Commission also included the text of a letter to Jack Nelson, President of NSCC, requesting (i) that NSCC submit written statements on its views and arguments concerning the two issues remanded by the court and (ii) that NSCC respond to certain specific questions on those two issues. The Commission also indicated that NSCC's two reports would be placed in a public file and that interested persons were encouraged to examine those reports and to comment on them. Finally, the release indicated that the comment period would be open for 45 days (or until May 1, 1979).

Subsequently, on May 30, 1979, the Commission extended the comment period on the issues remanded in the *Bradford* litigation until July 27, 1979.[2] That extension was granted, in part, because of a request from NSCC that the Commission extend, until June 15, 1979, the time for submission of its report on competitive bidding. In addition, the Commission also had received written requests from the National Association of Securities Dealers, Inc. (the "NASD") and Bradford Securities Processing Services, Inc. ("BSPS") and oral requests from Stock Clearing Corporation of Philadelphia ("SCCP") and the Midwest Stock Exchange ("Midwest"), that the comment period on the two issues remanded in the *Bradford* litigation be extended.

NSCC submitted its reports on GPM and competitive bidding on April 20 and June 19, 1979, respectively. Among the comment letters received in response to those reports were letters from Midwest, the Pacific Stock Exchange ("Pacific") and Bradford National Corporation ("Bradford"). Attached to Bradford's letter was a statement on GPM and competitive bidding prepared, at Bradford's request, by Professors John H. Lanbein and Richard A. Posner of the University of Chicago School of Law. The comment period closed on July 27, 1979.[3]

Bradford National Clearing Corporation et al. v. Securities and Exchange Commission et al. 590 F. 2d 1085 (D.C. Cir. 1978).

[2] Securities Exchange Act Release No. 15882, (May 30, 1979).

[3] In addition to NSCC's two reports, the Commission has received comment letters from the Na-

Since the close of the comment period, the Commission has received three comment letters from NSCC. By letter dated October 19, 1979, NSCC submitted a response to Midwest's comments; by letter dated October 22, 1979, NSCC responded to Pacific's comments; and by letter dated December 19, 1979, NSCC submitted a letter in response to Bradford's comments. Attached to NSCC's response to Bradford's comments were statements on GPM and competitive bidding prepared, at NSCC's request, by George A. Hay of the Cornell Law School.

The Commission had decided to include those documents as part of its consideration of the *Bradford* remand. Accordingly, the Commission has included them in the public file pursuant to Rule 28 of the Commission's Rules of Practice (17 CFR 201.28).[4]

Continued from preceding page

tional Association of Securities Dealers, Inc.; the Securities Industry Association; the Midwest Stock Exchange; Bradford National Corporation; The Pacific Stock Exchange; Lewco Securities Corporation; The Depository Trust Company; Merrill Lynch, Pierce, Fenner & Smith, Inc; and F.L. Putnam and Co., Inc. Copies of NSCC's two reports and the comment letters have been placed in Public File No. 600-15.

[4] The pertinent provision of Rule 28 provides:

> (b) In any case of adjudication [which is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing], if the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the public record of the adjudication. The Commission, in its descretion, may accept and include in the public record written comments filed with the Commission after the closing date.

Copies of NSCC's three letters and the statements prepard by professor Hay have been placed in File No. 600-15 at the Commission Public Reference Section, Room 6101, 1100 L St., N.W., Washington, D.C.

For further information contact: Michael J. Simon at (202) 272-2908.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16487/January 11, 1980

In the Matter of Applications of the

PACIFIC STOCK EXCHANGE, INC.

For Unlisted Trading Privileges

Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange ("PSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

AMP Incorporated
Common Stock, No Par Value (File No. 7-51111);

Cluett, Peabody & Co., Inc.
Common Stock, $1.08 1/3 Par Value (File No. 7-5112);

Squibb Corporation
Common Stock, $1.00 Par Value (File No. 7-5114);

Wang Laboratories, Inc.
Class B Common Stock, $.50 Par Value and Common Stock, $.50 Par Value (File No. 7-5115);

Household Finance Corporation
Common Stock, $1.00 Par Value (File No. 7-5113);

G.D. Searle & Co.
Common Stock, $.33 1/3 Par Value (File No. 7-5116); and

Delmarva Power & Light Co.
Common Stock, $3.37 1/2 Par Value (File No. 7-5117).[1]

The Commission finds that approval of the PSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally, the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Pacific Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1] Notice of these applications was given by publication in the *Federal Register*. 44 FR 71926 (December 12, 1979). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16488/January 11, 1980

In the Matter of Applications of the

CINCINNATI STOCK EXCHANGE, INC.

For Unlisted Trading Privileges

Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Cincinnati Stock Exchange ("CSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Colonial Penn Group
Common Stock, $.10 Par Value (File No. 7-5037);

Jefferson-Pilot Corporation
Common Stock, $1.25 Par Value (File No. 7-5038);

Lincoln National Corporation
Common Stock, $2.50 Par Value (File No. 7-5039);

NLT Corporation
Common Stock, $5.00 Par Value (File No. 7-5040);

USLIFE Corporation
Common Stock, $1.00 Par Value (File No. 7-5041);

Trans World Corporation
Common Stock $5.00 Par Value (File No. 7-5121);

Greyhound Corporation (Arizona)
Common Stock, $1.50 Par Value (File No. 7-5056);

Digital Equipment Corporation
Common Stock, $1.00 Par Value (File No. 7-5122); and

Southwestern Public Service Co.
Common Stock, $1.00 Par Value (File No. 7-5123).[1]

The Commission finds that approval of the CSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the CSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the CSE are executed at prices which are reasonably related to those occurring in other markets. Finally, the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the CSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and th e objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Cincinnati Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1] Notice of these applications was given by publication in the *Federal Register*. 44 FR 71918 (December 12, 1979). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16489/January 11, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Purex Industries, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7-5103);

Greyhound Corporation (Arizona)
Common Stock, $1.50 Par Value (File No. 7-5065);[1]

Tucson Electric Power
Common Stock, $2.50 Par Value (File No. 7-4856);[2] and

Houston Oil & Minerals Corporation
Common Stock, $.10 Par Value (File No. 7-4845).[3]

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally, the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1] Notice of these applications was given by publication in the *Federal Register*. 44 FR 71924 (December 12, 1979).

[2] Notice of this application was given by publication in the *Federal Register*. 41 FR 35242 (August 20, 1976).

[3] Notice of this applications was given by publication in the *Federal Register*. 41 FR 48428 (November 3, 1976). The Commission has received no comments regarding the four applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16490/January 14, 1980

The Securities and Exchange Commission today granted the application of the American Stock Exchange, Inc. ("Amex")[1], pursuant to the terms of

[1] *See* letter dated January 7, 1980 from Howard A. Baker, Assistant Vice President, Options Division, Amex, to Gene Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

the voluntary moratorium on expansion of standardized options trading ("the voluntary moratorium"),[2] to begin trading put and call options on the common stock of Caesar's World, Inc. to replace put and call options on the common stock of Reserve Oil and Gas Company (Reserve) which has been delisted involuntarily by the Amex as a result of the merger of Reserve into Getty Oil Company. The Amex intends to commence trading in Caesar's World options on the business day following the effective date of the merger.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16491/January 14, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, DC 20006

(SR-NASD-79-10)

ORDER APPROVING PROPOSED RULE CHANGE

On October 22, 1979, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend the NASD's Code of Procedure for Handling Trade Practice Complaints ("Code") to provide that a mailing to any participant, member, or associated person, directed to the latest address carried on the NASD's records for that person, constitutes proper service under the Code. In addition, the proposed amendment would provide that, for purposes of computing the time for required action under the Code, three days shall be added to the prescribed period if service is effected by mail. The NASD states that the purpose of the proposed amendment is to prevent the possibility of an open-ended period for appeals where an aggrieved person has not received timely notice under the Code.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16366, November 27, 1979) and by publication in the *Federal Register* (44 FR 70250, December 6, 1979). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities associations, and in particular, the requirements of Sections 15A(b)(6), and (b)(8), (h)(1), and (h)(2), concerning fair procedures for the disciplining of members and persons associated with members, especially due process notice requirements, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[2] *See* Securities Exchange Act Release No. 15026 (August 3, 1978).

[1] In connection with its adoption of Rule 19d-3 under the Act, the Commission advised all self-regulatory organizations to review their rules to make sure this problem was dealt with. Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36401 (July 14, 1977).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16492/January 15, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE MIDWEST CLEARING CORPORATION ("MCC")

(File No. SR-MCC-79-3)

The Midwest Clearing Corporation submitted on January 3, 1980, a proposed rule change under Rule 19b-4 to revise fees for certain services provided by MCC.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MCC-79-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16493/January 15, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE PACIFIC SECURITIES DEPOSITORY TRUST COMPANY, INC.

(File No. SR-PSDTC-80-1)

The Pacific Securities Depository Trust Company submitted on January 10, 1980, a proposed rule change increasing the size of the Board of Directors from six to thirteen members.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSDTC-80-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16494/January 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE CLEARING CORPORATION ("BSECC")

(File No. SR-BSECC-80-1)

The Boston Stock Exchange Clearing Corporation submitted on January 8, 1980, a proposed rule change under Rule 19b-4 to establish procedures whereby book-entry transfers within New England Depository Trust Company ("NESDTC") may be used for settlement of trades clearing and settling through BSECC.

Publication of the submission is expected to be made in the *Federal Register* during the Week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSECC-80-1.

Copies of the submission, with accompany in exhibits, and all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16495/January 15, 1980

Exemption of Non-member Brokers and Dealers From Certain SECO Fair Practice Rules

ACTION: Final rule.

SUMMARY: The Commission is amending the rule which exempts certain municipal securities brokers and municipal securities dealers from the fair practice requirements of the SECO program. Previously, exemption from regulation under the fair practice rules of the SECO program was based upon the type of broker or dealer effecting the transaction. The rule, as amended, exempts the municipal securities transactions of all SECO brokers and dealers from the requirements of the Commission's SECO fair practice rules.

As a result, the amendment eliminates the current dual regulation of municipal securities transactions effected by SECO brokers and dealers that conduct business in both municipal and corporate securities. It also makes the SECO fair practice rules applicable to transactions in exempted securities effected by all registered SECO brokers and dealers, including those brokers and dealers engaging exclusively in municipal and exempted securities transactions.

EFFECTIVE DATE: [30 days following publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT:

D. Michael Lefever, Esq.
Office of Self-Regulatory Oversight
Division of Market Regulation
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549
(202) 272-2412.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it has amended Securities Exchange Act Rule 15b10-12 [17 CFR 240.15b10-12] in order to eliminate the current dual regulation of municipal securities transactions effected by Securities and Exchange Commission Only ("SECO") brokers and dealers conducting business in corporate as well as municipal and exempted securities ("mixed product brokers and dealers"). The rule, as

amended, also makes the fair practice rules of the Commission's SECO program[1] applicable to the exempted securities transactions of all registered SECO brokers and dealers, including those brokers and dealers engaging exclusively in municipal and exempted securities transactions ("sole municipal brokers and dealers").

The Securities Acts Amendments of 1975 (the "1975 Amendments")[2] established for the first time the requirement that municipal securities brokers and dealers whose business is confined to effecting transactions in municipal and exempted securities register with the Commission. Registered sole municipal brokers and dealers which did not elect to become members of the National Association of Securities Dealers, Inc. (the "NASD") became subject to regulation under the Commission's SECO program. The program includes a series of Commission rules that establish "fair practice" standards governing such matters as general business conduct, suitability of recommendations, discretionary accounts, supervision of employees, record keeping, and fidelity bonds. The Commission, however, anticipated that the Municipal Securities Rulemaking Board (the "MSRB"), as directed by Section 15B(b)(2)(C) of the Act [15 U.S.C. §78*o*-4(b)(2)(C)], would establish rules of fair practice governing the activities of municipal securities brokers and dealers. Accordingly, the Commission adopted Rule 15b10-12 to relieve SECO sole municipal brokers and dealers of the necessity of developing and implementing compliance procedures for those SECO rules which regulated practices to be covered by anticipated MSRB fair practice rules.[3]

In contrast, SECO mixed product brokers and dealers, having been required to register with the Commission prior to the 1975 Amendments, had already been required to develop the necessary compliance procedures and, accordingly, continued to be subject to the SECO fair practice rules with respect to their transactions in corporate, municipal, and exempted securities. Consequently, when the Commission approved the MSRB fair practice rules on October 19, 1978,[4] transactions in municipal securities effected by SECO mixed product brokers and dealers became subject to regulation by both the Commission and the MSRB. In order to eliminate duplicative regulation,[5] the Commission proposed and published for comment an amendment to Rule 15b10-12.[6] No comments concerning the proposal were received.

The amendment to Rule 15b10-12 makes two changes. First, it eliminates the current fair practice regulation by both the Commission and the MSRB of municipal securities transactions of mixed product brokers and dealers by exempting, with respect to their municipal securities transactions, all SECO brokers and dealers from compliance with SECO fair practice rules that are parallel to rules adopted by the MSRB. Specifically, the rule exempts municipal securities transactions from the requirements of Rules 15b10-12, 15b10-3, 15b10-4, 15b10-5, 15b10-6 and 15b10-11. The municipal securities transactions of both SECO mixed product brokers and dealers and SECO sole municipal brokers and dealers consequently will be subject only to the applicable MSRB rule.

In addition, the amendment makes SECO fair practice rules applicable to transactions in exempted securities effected by SECO sole municipal brokers and dealers.[7] Previously, Rule 15b10-12 exempted SECO sole municipal brokers and dealers from the fair practice requirements of the SECO program. The rule, as amended, converts a class exemption for SECO sole municipal

[1] The SECO fair practice rules consist of Securities Exchange Act Rules 15b10-1 through 15b10-11 [17 CFR 240.15b10-1 through 15b10-11] adopted pursuant to authority granted by Section 15(b)(9) of the Securities Exchange Act of 1934 (the "Act") [15 U.S.C. §78*o*(b)(9)].

[2] Pub. L. No. 94-29 (June 4, 1975).

[3] Securities Exchange Act Release No. 11876 (Nov. 26, 1975) and Release No. 12468 (May 20, 1976).

[4] Securities Exchange Act Release No. 15247 and Release No. 15248 (Oct. 19, 1978).

[5] For example, both the SECO rules and the MSRB rules concern general business conduct, suitability of investment recommendations, supervision of persons associated with brokers and dealers, and discretionary accounts.

[6] Securities Exchange Act Release No. 16018 (July 11, 1979).

[7] Section 15(b)(9) of the Act grants the Commission rulemaking authority over any security, including exempted securities.

brokers and dealers into a transactional exemption limited to municipal securities transactions. As a result, the amendment subjects all non-municipal transactions effected by SECO sole municipal brokers and dealers to Commission regulation, whether or not the transactions would have required the broker or dealer to register with the Commission. The practical effect of the rule change is to require such persons to comply with the SECO fair practice rules with respect to their transactions in exempted securities.

Transactions in exempted securities effected by SECO mixed product brokers and dealers continue to be subject to the requirements of the SECO rules. By removing the exemption from compliance with such rules previously applicable to sole municipal brokers and dealers effecting transactions in exempted securities, uniformity within the SECO program is achieved. Although the scope of SECO regulation is broader than that of the NASD, which is not permitted to regulate exempted securities transactions of its members,[8] the Commission believes it is appropriate to utilize fully the jurisdiction granted to it in Section 15b(b)(9) of the Act to assure that basic standards of fair dealing apply to all securities transactions of SECO brokers and dealers, Accordingly, the Commission has determined, pursuant to Section 23(a)(2) of the Act [15 U.S.C. §78w(a)(2)], that the amendment of Rule 15b10-12 does not impose any burdens on competition not necessary or appropriate in the furtherance of the purpose of the Act.

Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, as amended [15 U.S.C. §78a *et seq.*], and particularly Sections 2, 15, and 23 [15 U.S.C. §§78b, 78o and 78w], hereby amends §240.15b10-12 of Title 17 of the Code of Federal Regulations. Rule 15b10-12, as amended, becomes effective on [30 days following publication in the *Federal Register*]

§240.15b10-12 is revised to read as follows:

[8] Section 15A(f) of the Act [15 U.S.C. §78o-3(f)], in limiting the statutory authority of the NASD, provides: "Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security."

§240.15b10-12 Exemption for municipal securities transactions of non-member brokers and dealers.

The following rules of the Commission adopted pursuant to section 15(b) of the Act shall not apply to transactions in municipal securities effected by brokers and dealers:

Rule 15b10-2
Rule 15b10-3
Rule 15b10-4
Rule 15b10-5
Rule 15b10-6
Rule 15b10-11

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16496/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6176/January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16497/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6177/January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16498/January 15, 1980

SEE

SEUCRITIES ACT OF 1933
Release No. 6178/January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16499/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6179/January 15, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16500/January 15, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE MIDWEST SECURITIES TRUST COMPANY

(File No. SR-MSTC-79-4)

Midwest Securities Trust Company (MSTC) submitted on January 3, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act, revising their pricing schedule.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may sumarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register.* Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSTC-79-4.

Copies of the submission, with accompanying exhibits, and all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16501/January 18, 1980

The Securities and Exchange Commission today granted the application of the Pacific Stock Exchange Incorporated ("PSE")[1], pursuant to the terms of the voluntary moratorium on expansion of standardized options trading,[2] to begin trading call options on Resorts International A common stock ("Resorts") to replace call options on the common stock of Sambo's Restruants, Inc. ("SRI"). SRI has been delisted involuntarily by the PSE because of SRI's failure to satisfy the terms of PSE Rule VI, Section 13, Commentary .01(3) which provides for the withdrawal of approval of underlying stocks if the market price per share closes below $10.00 as measured by the highest closing price in any market on a majority of the business days of any six month period. The PSE intends to commence trading in Resorts call options on January 21, 1980.

By The Commission

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16502/January 18, 1980

In the Matter of
AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, N.Y. 10006

(SR-AMEX-79-15)

ORDER APPROVING PROPOSED RULE CHANGE

On November 7, 1979, the American Stock Exchange ("Amex") filed with the Commission, pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s) (b) (1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers. The proposal revokes the present Amex arbitration rules and adopts the entire Code as new Amex Rules 601-619. The proposal also incorporates the simplified arbitration procedures that were drafted by the SICA and adopted by the Amex on May 4, 1978,[4] regarding small claims not exceeding $2500.[5]

A primary purpose of this proposal is to provide investors with a simple and inexpensive procedure

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[1] *See* letter dated January 8, 1980 from Bernell V. Flath, Vice President, Options Division, PSE to Paul A. Belvin, Division of Corporate Finance, Securities and Exchange Commission.

[2] *See* Securities Exchange Act Release No. 15026 (August 3, 1978).

[1] For the Amex's current arbitration rules, *see* Amex Rules 601-610.

[2] The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3] The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor disput resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23003 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4] Securities Exchange Act Release No. 14737, 14 SEC Docket 985 (May 10, 1978), 43 FR 20585 (May 12, 1978).

[5] *See* new Amex Rule 619.

for resolution of their controversies with broker-dealers who are members of the Amex. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16442 (December 19, 1979), 18 SEC Docket 1386 (January 2, 1980)), and by publication in the *Federal Register* (44 FR 76896 (December 28, 1979)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and, in particular, the requirements of Section 6(b) (5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade.[7]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[6] The Code has already been adopted by the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 16390 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979), 44 FR 70616 (December 7, 1979). Several other self-regulatory organizations are now in the process of adopting it.

[7] The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judical determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16503/January 16, 1980

In the Matter of
MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-79-17)

ORDER APPROVING PROPOSED RULE CHANGE

On November 1, 1979, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbi-

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[1] For the MSE's current arbitration rules, *see* MSE Rules 23-24.

[2] The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3] The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

tration procedures for the settlement of disputes arising between customers and broker-dealers.

The proposal revokes the present MSE arbitration rules and adopts the entire Code as new MSE Rule 24. The proposal also incorporates the simplified abritration procedures that were drafted by the SICA and adopted by the MSE on December 8, 1978,[4] regarding small claims not exceeding $2500.[5] Additionally, new MSE Rule 23 provides that the Code shall apply to resolve disputes between MSE members.

A primary purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the CSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16440 (December 19, 1979), 18 SEC Docket 13864 (January 2, 1980)), and by publication in the *Federal Register* (44 FR 26899 (December 28, 1979)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade.[7]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16504/January 16, 1980

In the Matter of

CINCINNATI STOCK EXCHANGE
205 Dixie Terminal Building
Cincinnati, Ohio 45202

(SR-CSE-79-6)

ORDER APPROVING PROPOSED RULE CHANGE

On December 11, 1979, the Cincinnati Stock Exchange ("CSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which provides criteria for delisting securities from the CSE where such delisting is desired by the issuer.

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[4] Securities Exchange Act Release No. 15390, 14 SEC Docket 985 (December 26, 1978).

[5] *See* new MSE Rule 24, Section 2.

[6] The Code has already been adopted by the New York Stock Exchange, Inc. *See* Securities Exchange Act Release No. 16390 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979), 44 FR 70616 (December 7, 1979). Several other self-regulatory organizations are now in the process of adopting it.

[7] The Commission exmphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judicial determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16411, December 7, 1979), 18 SEC Docket 1318 (December 26, 1979) and by publication in the *Federal Register* (44 FR 72684, December 14, 1979). No comments were received with respect to the proposed rule filing.

The Commisson finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder. In particular, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that the proposed rule change is designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division or Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16505/January 16, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-PHLX-79-10

The Phildelphia Stock Exchange, Inc. ("Phlx") submitted on November 14, 1979, a proposed rule change under Rule 19b-4 to set forth detailed listing and delisting standards for securities listed or admitted to trading on the Phlx.[1] The proposed standards would not be mandatory but would be considered by the Exchange in judging the qualifications of each applicant.

Publication of the submission is expect to be made in the *Federal Register* during the week of January 21, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR--Phlx-79-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1] The proposed rule change would amend Phlx Rules 801-804.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16506/January 18, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-79-14

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on December 21, 1979, a proposed rule change under Rule 19b-4 to amend its options trading floor decorum rules[1] by prohibiting smoking on the options floor "at all times" and prohibiting the presence of alcoholic beverages on the options floor from "9:30 a.m. to 4:30 p.m."

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerign the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR--Phlx-79-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1] These rules are contained within the Phlx's Options Floor Regulations and Schedule of Assessments for Breach of Regulations, pursuant to Phlx Options Rule 1058, CCH Phlx Guide ¶3058, at page 3052.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16507/January 18, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-49

The New York Stock Exchange, Inc. ("NYSE") submitted on December 5, 1979, a proposed rule change under Rule 19b-4 to provide that the proceeds of the transfer of a membership of an equity member of the NYSE, who is associated with a member organization, will no longer be subjected by rule of the NYSE to the claims of all creditors of such member organization, but will continue to be available for sums owed the NYSE and debts arising from floor contracts.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR--NYSE-79-49.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16508/January 16, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. (File No. SR-NASD-79-14)

National Association of Securities Dealers, Inc., submitted a proposed rule change on December 4, 1979, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, which provides that an Association member which is a participant in a registered clearing agency with a continuous net settlement capability shall have no further liability for an over-the-counter transaction that the member has submitted to the clearing agency if the transaction does not compare within fifteen business days after the trade date.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-14.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16509/January 16, 1980

A notice has been issued giving interested persons until January 30, 1980, to comment upon the following issuers' applications for withdrawal of their common stock from listing and registration on the: *American Stock Exchange, Inc.*, HI-SHEAR INDUSTRIES, INC. ($.10 Par Value), VULCAN, INC. ($1.50 Par Value) and NAPCO INDUSTRIES, INC. ($1 Par Value); *Philadelphia Stock Exchange, Inc.*, VULCAN INC. ($1.50 Par Value); and *Boston Stock Exchange, Inc.*, DYNAMICS RESEARCH CORP. ($.10 Par Value).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16510/January 16, 1980

The Commission gives notice that the national securities exchanges listed below have applied, pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934, for unlisted trading privileges in the following common stocks that are listed in one or more national securities exchanges:

Midwest Stock Exchange, Inc.:

Valero Energy Corporation (formerly Coastal States Gas Producing Co.), $1 Par Value (File No. 7-5147);

Gelco Corporation, $.50 Par Value (File No. 7-5148); and

Modern Merchandising, Inc., $.01 Par Value (File No. 7-5149).

Boston Stock Exchange, Inc.:

APL Corporation, $.10 Par Value (File No. 7-5135);AZL Resources, Inc., No Par Value (File No. 7-5136);Alaska Airlines, Inc., $1 Par Value (File No. 7-5137); Amrep Corporation, $.10 Par Value (File No. 7-5138);Bancal Tri-State Corporation, $15 Par Value (File No. 7-5139);

Bandag, Inc., $1 Par Value (File No. 7-5140); Bangor Punta Corporation, $1 Par Value (File No. 7-5141); Craig Corporation, $.25 Par Value (File No. 7-5142); DWG Corporation, $1 Par Value (File No. 7-5143); Deltona Corporation, $1 Par Value (File No. 7-5144); Mobil Corporation, $7.50 Par Value (File No. 7-5145); and Moore McCormack Resources, Inc., $2.50 Par Value (File No. 7-5146).

Pacific Stock Exchange, Inc.:

Resorts International, Inc., Class A common stock, $1 Par Value (File No. 7-5150) and Class B common stock, $1 Par Value (File No. 7-5151).

Comments and/or request for hearing are to be submitted on or before January 28, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16511/January 16, 1980

An order has been issued granting the application of the Pacific Stock Exchange, Inc. to strike all call option contracts respecting the common stock of Sambos Restaurants, Inc. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16512/January 17, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE OPTIONS CLEARING CORPORATION (File No. SR-OCC-80-1)

Options Clearing Corporation, Inc., submitted a proposed rule change on January 3, 1980, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, deleting obsolete provisions from OCC rules that deal with the assignment and allocation of exercise notices and adding a provision that would exempt from the assignment of exercise notices short positions for which closing transactions had been executed.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-OCC-80-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16513/January 17, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE, INC.

File No. SR-BSE-79-3

The Boston Stock Exchange, Inc. ("BSE") submitted on December 26, 1979, a proposed rule change under Securities Exchange Act ("Act") Rule 19b-4 which would add a new Section 32 to Chapter II of the BSE Rules to conform those rules to the proprietary trading restrictions for exchange members under Section 11(a)(1) of the Act. In particular, new Section 32 would require orders subject to the provisions of Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder, to bear an identifying notation on the order ticket that would enable the executing broker to disclose to other members in the trading crowd that the order must yield priority, parity and precedence to any order which is for the account of a person who is not a member, member organization or an associated person thereof.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR--BSE-79-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21388/January 11, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Four Gateway Center
Pittsburgh, Pennsylvania 15222

CNG PRODUCING COMPANY
1800 Bank of New Orleans Building
1010 Common Street
New Orleans, Lousiana 70112

(70-6391)

NOTICE OF PROPOSAL TO ACQUIRE OIL AND GAS LEASEHOLDS AND MINERAL RIGHTS FROM NON-AFFILIATE

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and CNG Producing Company ("CNG Producing"), a wholly owned gas exploration and development subsidiary of Consolidated, have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935

("Act"), designating Sections 6, 7, 9(a), 10, 12(f) and 12(g) of the Act and Rules 43 and 50(a)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Consolidated is engaged solely in the business of owning and holding all of the outstanding securities, with the exception of minor long-term debt, of eleven subsidiary companies including eight in the natural gas business, plus subsidiary service, coal and research companies. The said eight subsidiaries are engaged in natural gas exploration, production, purchasing, gathering, transmission, storage, distribution, by-product operations and importation of LNG. CNG Producing conducts exploration and development operations onshore and offshore, primarily in the southern United States but also in Canada. It sells natural gas, in the United States, to Consolidated Gas Supply Corporation, an affiliate, minor quantities at wholesale to non-affiliates in Louisiana, and to non-affiliates in the Province of Alberta, Canada. Hidalgo-Willacy Oil Company ("Hidalgo"), a non-affiliated Texas corporation, having its principal place of business in McAllen, Texas, engaged primarily in leasing mineral properties to and from others from which it obtains production revenue, collects royalties, bonus payments, and delay rentals. It has leasehold and mineral interests in some 4,000 separate tracts situated in Texas with a minimal interest in Oklahoma. (Collectively, the "Properties.") The Properties constitute over 90% of the market value of all of Hidalgo's net assets.

Consolidated, CNG Producing and Hidalgo propose to enter into an Agreement and Plan of Reorganization ("Agreement"), which will be executed by the respective parties and each of Hidalgo's stockholders, consisting of individuals, corporations and trusts, thereby evidencing their unanimous approval of the transactions contemplated by the Agreement. Pursuant to the Agreement, Consolidated will deliver to CNG Producing such number of shares of its authorized but unissued common stock as shall, in the aggregate, equal $7,000,000. CNG producing, in turn, will: (i) deliver such shares to Hidalgo for distribution to the shareholders of Hidalgo, in exchange for the Properties and (ii) deliver to Consolidated in consideration for the Consolidated stock 70,000 shares of its own common stock, $100 par value, at the par value thereof.

The number of shares of Consolidated common stock to be delivered will be determined by the per share closing price of said stock on The New York Stock Exchange Consolidated Tape five (5) New York business days immediately preceding the closing date or at a mutually acceptable earlier date. Based on a price of $40 per share, Consolidated would be required to deliver 175,000 shares of its common stock. Fractional shares will be rounded to the nearest whole share.

It is proposed that the cost of the Hidalgo Properties to be acquired be recorded on CNG Producing's books of account at the fair value of Consolidated's common stock issued to consumate the tax-free exchange, because fair value of the common stock is more clearly evident than fair value of the Properties. Some 4,000 tracts are involved in the transaction, and an appraisal of each of these would be not only time consuming but also cost-prohibitive. Economic justification for the proposed acquisition was based upon projected royalty revenues that will be forthcoming from the production of gas and liquid reserves estimated by Peppart-Souders & Associates, independent petroleum consultants.

It is stated that CNG Producing's entry into onshore Texas through the proposed property acquisition would be a natural extension of its existing Southern producing operations. Most of CNG Producing's exploration and development activities have been heretofore concentrated off-shore Louisiana and Texas. Since December 1972, CNG Producing has participated in eleven offshore lease sales and has expended some $63 million on winning bids for about 48,000 net acres, including the November 1979 sale in which CNG Producing is an apparent winner of a tract covering 3,000 net acres at a cost of $5 million. Onshore exploration has been pursued to a limited degree in a number of states in the Gulf of Mexico region. The Hidalgo Properties are situated principally in three counties in Southern Texas. The acquisition of these Properties is viewed no differently from successful bids on the federal off-shore acreage. There are, however, noticeable advantages to the Hidalgo Properties: there is current production on and in the area of the Properties, on-shore wells are less expensive to drill than offshore and fewer difficulties are encountered in

drilling wells and gathering production. While the Hidalgo Properties are being purchased for an exploration and development program, revenues and cash flow will be forthcoming immediately in the form of royalties. The contribution of royalty income serves to minimize the financial risk of an exploration and development program. CNG Producing's gas production from the Gulf area was 50.4 billion cubic feet in 1978. The proposed acquisition of the Hidalgo Properties is a part of Consolidated's program to increase its supply capability.

The fees, commissions and expenses to be incurred by Consolidated and CNG Producing in connection with the proposed transaction are estimated at $152,600, including consultant's fee of $80,000 and a $20,000 charge of Consolidated Natural Gas Service Company, Inc. for services performed at cost. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21389/January 11, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

CENTRAL POWER AND LIGHT COMPANY
P.O. Box 21110
Corpus Christi, Texas 78403

SOUTHWESTERN ELECTRIC POWER COMPANY
P.O. Box 21106
Shreveport, Louisiana 71156

PUBLIC SERVICE COMPANY OF OKLAHOMA
P.O. Box 201
Tulsa, Oklahoma 74102

WEST TEXAS UTILITIES COMPANY
P.O. Box 841
Abilene, Texas 79604

CENTRAL AND SOUTH WEST SERVICES, INC.
2700 One Main Place
Dallas, Texas 75250

(70-6163)

NOTICE OF PROPOSAL TO EXPAND LIST OF BANKS FROM WHICH SHORT-TERM BORROWINGS MAY BE MADE AND TO SELL COMMERCIAL PAPER DIRECTLY TO CERTAIN INSTITUTIONS AS AN ALTERNATIVE TO THE SALE OF BANK NOTES OR DEALER - PLACED COMMERCIAL PAPER

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, and five of its wholly-owned subsidiaries, Central Power and Light Company,

Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company and Central and South West Services, Inc. ("subsidiaries") have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to said post-effective amendment to the application-declaration which is summarized below, for a complete statement of the proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 13, 1979, July 19, 1979, July 31, 1979 and October 24, 1979 in this matter (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166 and 21269) CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1980 in a maximum aggregate collective amount of $200,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus funds of any of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, borrowings are made from outside the system. CSW is authorized to issue and sell its commercial paper to commercial paper dealers or borrow from banks to meet short-term borrowing needs which cannot be met by the money pool.

It is now proposed to change the list of banks from which CSW and the subsidiaries may borrow by adding First City National Bank of Houston, Houston Texas, and to increase the aggregate amounts of lines of credit with certain presently authorized banks, as set forth below:

Bank	Amount of Presently Authorized Line	Amount of Proposed Line	Compensation Basis
Bankers Trust Company	$ 25,000,000	$ 25,000,000	Balances (a)
First National Bank of Chicago	15,000,000	15,000,000	Balances (a)
First National Bank in Dallas	6,500,000	6,500,000	$4,000,000 Balances and $2,500,000 Fees
Irving Trust Company	5,000,000	10,000,000	Balances (a)
Marine Midland Bank	5,000,000	10,000,000	Balances (a)
Republic National Bank	5,000,000	5,000,000	$2,500,000 Balances and $2,500,000 Fees
Mercantile-Safe Deposit & Trust Co.	5,000,000	5,000,000	Fees (c)
Security Pacific National Bank	5,000,000	5,000,000	$2,500,000 Balances and $2,500,000 Fees
Citibank	5,000,000	5,000,000	Fees (b)
Chemical Bank	5,000,000	5,000,000	Fees (b)
First City National Bank of Houston	—	5,000,000	$2,500,000 Balances and $2,500,000 Fees
Bank of Delaware	4,500,000	4,500,000	Balances (a)
First City Bank of Dallas	2,000,000	4,000,000	Balances (a)
First National Bank of Denver	3,000,000	3,000,000	Balances (a)
SERVICE AREA BANKS			
Central Power and Light Company (23 Local Banks)	$ 39,939,000	$ 39,939,000	Balances (a)
Public Service Company of Oklahoma (2 Local Banks)	10,000,000	$ 10,000,000	Balances (a)
Southwestern Electric Power Company (37 Local Banks)	24,215,000	26,458,000	Balances (a)
West Texas Utilities (6 Local Banks)	11,875,000	11,875,000	Balances (a)
TOTAL	$179,029,000	$198,272,000	

(a) Balances maintained in support of lines of credit are generally nonsegregated working funds of the applicants and are not restricted as to withdrawal. These nonsegragated balances generally aggregate approximately 5% to 10% of the line of credit. Substantial usage under these lines of credit could result in increased compensating balance requirements.

(b) Line or designated portion thereof is supported by fee equal annually to 7% of principal amount times the prime rate.

(c) Line or designated portion thereof is supported by fee equal annually to ½ of 1% of principal amount.

(d) Line or designated portion thereof is supported by fee equal to ⅜ of 1% of principal amount.

In addition to the above, CSW and its subsidiaries have made arrangements for borrowings from funds managed by the trust departments of the following banks:

Bank	Amount of Agreement	Compensation
*Texas Commerce Bank	$10,000,000	None
Mercantile National Bank at Dallas	5,000,000	None
Republic National Bank	5,000,000	None
First City National Bank of Houston	10,000,000	None
First City Bank of Dallas	5,000,000	None

*Agreements approved but not currently being used.

CSW also seeks authorization to sell commercial paper directly to certain approved financial institutions. Sale of commercial paper directly to such institutions would be undertaken only if the resulting cost of money was equal to or less than that available from dealer-placed commercial paper or bank borrowings. Direct sales of commercial paper would be made only to institutions on a list furnished in advance to the Commission. Terms for directly-placed notes would be identical to those of dealer-placed notes.

The fees, commissions and expenses to be incurred in connnection with the transactions proposed in the post-effective amendment are estimated at $150. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, at certificate) should be filed with the request. At any time after said date, the application declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21390/January 11, 1980

In the Matter of

ARKANSAS-MISSOURI POWER COMPANY
Blytheville, Arkansas

(70-6388)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM BANK NOTES

Arkansas-Missouri Power Company ("Arkansas-Missouri"), a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

Arkansas-Missouri proposes to issue and sell to the First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes in an amount not to exceed $5,000,000 at any one time outstanding. There are two participating banks: First National Bank in Little Rock, Arkansas ($1,500,000) and First National Bank in Dallas, Texas ($3,500,000).

The notes will be issued from time to time during a one-year period commencing on the effective date of the Commission's Order herein. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time but will mature not later than one year from the effective date. The notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to the commercial loan rate of Chemical Bank, New York, New York, from time to time in effect on borrowings having a 90-day maturity by responsible and substantial corporate borrowers. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed transactions. The notes will, at the option of the company, be prepayable in whole or in part at any time without premium or penalty.

The proposed borrowings will be in addition to other bank borrowings by the company from (1) First National Bank in Little Rock, Arkansas, which total $4,000,000 as of the date of this declaration, and may not exceed $5,500,000 at any one time outstanding, and (2) Worthen Bank & Trust Company, Little Rock, Arkansas, which total $5,000,000 as of the date of this declaration, and may not exceed $5,500,000 at any one time outstanding.

It is stated that the net proceeds to be received by Arkansas-Missouri from the issuance and sale of the proposed notes will be applied to its construction progran and to other lawful corporate purposes. The company currently intends to repay the $5,000,000 of borrowings proposed herein and the other bank borrowings referred to from the proceeds of permanent financing or with funds that might otherwise become available.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21315), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21391/January 11, 1980

In the Matter of

APPLACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

(70-6399)

NOTICE OF PROPOSED ISSUE AND SALE OF FIRST MORTGAGE BONDS

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary company of American Electric Power Company, Inc., ("AEP"), a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12 of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Appalachian proposes to issue and sell two new series of its first mortgage bonds, one such series in a private placement with Metropolitan Life Insurance Company ("Metropolitan") in an aggregate principal amount of $23,800,000 (the "First Series"), and the second such series to be sold to underwriters at competitive bidding in an aggregate principal amount of up to $40,000,000 (the "Second Series"). The sale of one series will not be dependent upon the sale of the other.

The First Series will bear interest at the rate of 12½%per annum and will mature and become payable on February 1, 1990. The price to be paid by Metropolitan will be 100%of the principal amount of the First Series. The terms of the First Series will preclude Appalachian from redeeming any bonds of such series at a regular redemption price before the expiration of five years from the first day of the month in which bonds of the First Series are first authenticated and delivered, if such redemption is for the purpose of refunding any such bond through the use, directly or indirectly, of borrowed funds at an effective interest cost less than the effective cost to Appalachian of the First Series. The terms of the bonds also will include a cumulative sinking fund pursuant to which Appalachian will be required to retire annually, commencing on February 1, 1985, $1,190,000 principal amount of the bonds of such series. It is stated that no finder's or other fee, commission or remuneration will be paid to any third person in connectin with the sale. Appalachian further claims that the terms of the First Series compare favorably with the terms of similarly rated bonds of other electric utility companies which have been sold recently

Appalachian proposes to issue and sell the Second Series to underwriters at competitive bidding. The interest rate (which will be expressed in a multiple of ⅛ of1%) and the price to be paid to Appalachian for the bonds (which will not be less than 100% of principal amount, unless Appalachian shall authorize a lower percentage not less than 99%, nor more than 102-¾% of principal amount) will be determined by competitive bidding. The terms of the bonds of the Second Series will also preclude Appalachian from redeeming any bonds of such series as a regular redemption price for five years after the first day of the month in which bonds of such series are first authenticated and delivered, if such redemption is for the purpose of refunding any bonds of such series through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to Appalachian of such series of bonds. It is expected that the successful bidders for the bonds of the Second Series will make a public offering of the same.

Appalachian proposes to issue and sell up to $40,000,000 principal amount of bonds of the Second Series. The actual principal amount to be issued and sold will depend upon the net earnings of Appalachian (computed as provided in the Mortgage) for the twelve months ended December 31, 1979 (or the twelve months ended January 31, 1980, if practicable) and the level of interest rates on comparably rated debt securities prevailing shortly before the submission of bids for the bonds of the Second Series. It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Appalachian to sell the Second Series with a 30-year or some shorter maturity. It is proposed, therefore, that Appalachian decide at a later time, prior to the submission of bids for the bonds of the

Second Series, or the maturity of the bonds of such series.

Each new series of bonds will be issued under and secured by Appalachian's Mortgage and Deed of Trust, dated as of December 1, 1940, as it has been and is proposed to be amended and supplemented.

The proceeds from the sale of the bonds of the First Series, together with other funds available to Appalachian, will be used to pay at maturity $23,874,000 principal amount of First Mortgage Bonds, 2-⅞% Series due 1980, which will become payable on March 1, 1980. The proceeds from the sale of the bonds of the Second Series will be used to repay unsecured short-term debt of Appalachian. As of December 19, 1979, Appalachian had approximately $164,625,000 aggregate principal amount of such unsecured short-term debt outstanding, and it is anticipated that, at the time of the issuance and delivery of the bonds of the Second Series, approximately $160,000,000 aggregate principal amount of such short-term debt will be outstanding.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. The fees and expenses of counsel for the successful bidder or bidders for the bonds of the Second Series, to be paid by such bidder or bidders, (except as otherwise provided in the purchase contract), will also be supplied by amendment. It is stated that the proposed transactions are subject to authorization by the State Corporation Commission of Virginia, and by the Tennessee Public Service Commission, and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than Febraury 6, 1980, request in writing that a hearing be held on such matter, stating the nature of this interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21392/January 14, 1980

In the Matter of

LOWELL GAS COMPANY
95 East Merrimack Street
Lowell, Massachusetts 01853

CAPE COD GAS COMPANY
P.O. Box 1360
Hyannis, Massachusetts 02601

(70-6170)

NOTICE OF POST-EFFECTIVE AMENDMENT RELATING TO SHORT-TERM FINANCING

NOTICE IS HEREBY GIVEN that Lowell Gas Company ("Lowell") and Cape Cod Gas Comapny ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this Commission a post-effective amendment to the joint declaration in this proceeding pursuant to Sections 6 and 7 of

the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the amended declaration for a complete statement of the proposed transaction.

By order dated December 26, 1979 (HCAR No. 21359), this Commission authorized Lowell to increase the maximum loan amount under its credit agreements from $11,800,000 to $12,500,000 through March 31, 1980. Such increase was occasioned by the additional working capital requirements of Lowell and Cape Cod due to increased cost of natural gas supplied by pipeline. By post-effective amendment Lowell hereby requests that the increased maximum loan amount heretofore requested by it be extended through June 30, 1980.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated to total $2,000, comprised of legal fees. It is stated that no state commission, and no federal commission, other than this Commission has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 11, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed. Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in cass of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice at to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21393/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6178/January 15, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21394/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6179/January 15, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 23195/January 15, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

(70-6386)

ORDER AUTHORIZING ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company,

has filed an application and amendments thereto with this Commission pursuant to Section 50 promulgated thereunder regarding the following proposed transaction.

Arkansas proposes to issue and sell up to 2,000,00 shares of a new series of its Preferred Stock, cumulative, $25 par value, subject to the competitive bidding requirements of Rule 50 under the Act. The new preferred stock will be created by appropriate corporate action and, except as to designation, dividend rate, the date from which dividends commence to accumulate, redemption premiums, the terms and conditions of redemption, a sinking fund, and matters pertaining to par value and certain voting rights, will have the same characteristics as, and rank *paripassu* with, the presently outstanding preferred stock of Arkansas.

The dividend rate of the new preferred stock (which will be a multiple of 4/25th of 1%) and the price to be paid to Arkansas (which will be not less than $25 nor more than $25.70 per share, plus accumulated dividends, if any) will be determined by competitive bidding. The terms of the new preferred stock will include a prohibition, until January 1, 1985, against refunding such stock, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost or from the issuance of other stock, which ranks prior to or on a parity with the new preferred stock as to dividends or assets, at a lower effective dividend cost.

The terms of the new preferred stock will include provisions for a sinking fund designed to redeem at $25 per share, plus accumulated dividends, 100,000 shares on each January 1 commencing in the year 1985, with Arkansas having a noncumulative option to redeem an additional 100,000 shares on each January 1 during the sinking fund redemption period.

Arkansas intends to use the net proceeds derived from the issuance and sale of the new preferred stock for the payment of short-term indebtedness incurred or estimated to be incurred to finance Arkansas' construction program, estimted to cost approximately $285,990,000 during 1980.

The Arkansas Public Service Commission and the Tennessee Public Service Commission have authorized the issuance and sale of the new preferred stock by Arkansas. No other state commission and no federal commision, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21333), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21396/January 16, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

(70-5948)

SUPPLEMENTAL ORDER AUTHORIZING HOLDING COMPANY TO AMEND ITS DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN

Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and

amended in this matter pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

By orders dated January 12, 1977, April 24, 1978, and April 20, 1979 (HCAR Nos. 19850, 20514 and 21012), CSW was authorized to issue and sell through December 31, 1981 up to 1,000,000 shares of its authorized but unissued common stock pursuant to its dividend reinvestment and stock purchase plan ("Plan"). CSW now proposes to amend the Plan in the following respects: (a) allowing stockholders to participate in the Plan by reinvesting dividends on less than all shares of common stock owned, (b) allowing stockholders to make optional cash payments whether or not cash dividends are reinvested and (c) allowing optional cash payments to be invested on a monthly rather than a quarterly basis and to be used to purchase shares of common stock on the last business day of a month, except for the months of February, May, August and November when the purchase date will be on the cash dividend payment date. Proceeds derived by CSW will be applied through loans or equity contributions towards the continuing construction programs of CSW's subsidiary committees. Such loans or equity contributions will be the subject of additional filings with this Commission.

The Plan provides that holders of CSW's common stock may automatically reinvest cash dividends on their stock in additional shares and, at their option, may make cash payments of not less than $10 nor more than $3,000 per quarter for the same purpose. The additional shares will be purchased from CSW each quarter by the First National Bank of Chicago (the "Plan administrator"), which will administer the Plan and act as agent for the participants in the Plan. The price per share of the additional shares will be equal to the average of the high and low prices of CSW's common stock reported as New York Stock Exchange Composite Transactions on the cash dividend payment date or on the next preceeding trading day if the dividend payment date is not a trading day or no trades in CSW's common stock occurred on the dividend payment date. Any holder of CSW's common stock may join the Plan at any time. Participation in the Plan will be effective as of the first dividend payment date following receipt by the Plan administrator of an authorization from the stockholder, subject to the requirement that such authorization must be received by the Plan administrator on or before the 15th day of the month in which a cash dividend is paid. Participants will be permitted to withdraw from the Plan at any time, but if the Plan administrator receives the request to withdraw on or after the cash dividend payment date, the amount of the cash dividend and any optional cash payments scheduled to be invested on such date will be so invested, but all subsequent dividends will be paid to the shareholder unless he re-enrolls in the Plan. Upon withdrawing from the Plan, a participant may have the whole shares credited to his account under the Plan delivered to him, along with cash payments for fractional shares, or he may elect to have all his shares sold by the Plan administrator.

CSW has been granted an exemption from the competitive bidding requirements of Rule 50 for the issuance and sale of common stock pursuant to the Plan.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $34,000, consisting of printing and distribution expenses of $30,000, legal fees of $3,500 and miscellaneous expenses of $500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said applicaton-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21397/January 17, 1980

In the Matter of

ARKANSAS-MISSOURI POWER COMPANY
405 West Park Street
Blytheville, Arkansas 72315

(70-5838)

NOTICE OF POST-EFFECTIVE AMENDMENT REGARDING ISSUANCE AND SALE OF SHORT-TERM BANK NOTES

NOTICE IS HEREBY GIVEN that Arkansas-Missouri Power Company ("Arkansas-Missouri"), a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a further post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated May 4, 1976, April 19, 1977, April 12, 1978, and February 23, 1979 (HCAR Nos. 19511, 19993, 20501, and 20929), Arkansas-Missouri was authorized to issue and sell, from time to time until February 23, 1980, up to $5,500,000 of unsecured, short-term promissory notes to Worthen Bank & Trust Company, Little Rock, Arkansas, for the account of a group of participating banks. As of January 7, 1980, $5,000,000 of such notes were outstanding.

It is now proposed that Arkansas-Missouri issue and sell to Worthen Bank & Trust Company, for the account of a group of participating banks, from time to time during the period commencing on the effective date of the supplemental order herein and continuing for one year thereafter, up to $5,500,000 of unsecured, short-term promissory notes. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time, but will mature not later than one year from said effective date. As the notes mature, they will be renewed or repaid out of funds then available to the company. The notes will, at the option of the company, be prepayable in whole or in part, at any time without premium or penalty. The names of the participating banks and the estimated maximum amounts of their respective participations in the new borrowings to be made by Arkansas-Missouri are to be supplied by amendment.

It is stated that the notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at the prime commercial loan rate of Chemical Bank, New York, New York, in effect from time to time on borrowings having a 90-day maturity by responsible and substantial corporate borrowers; provided, however, that such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. On the basis of Chemical Bank's prime commercial loan rate of 15-¼% per annum in effect on January 7, 1980, Arkansas-Missouri's cost of money in respect to the proposed borrowings would be a 15-¼% per annum. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed borrowings.

Arkansas-Missouri will apply the net proceeds received from the new borrowings to the payment at or prior to maturity of the then outstanding bank borrowings referred to above (estimated at that time to aggregate $5,000,000), to the company's construction program, and to other corporate purpose. It is stated that the proposed new borrowings will be in addition to other bank borrowings by the company from the First National Bank in Little Rock, Arkansas, which will total not in excess of $10,500,000 outstanding at any one time (File Nos. 70-6255 and 70-6388). Arkansas/Missouri presently intends to repay the proposed notes with the proceeds of permanent financing or with other available funds.

It is represented that no special or separable expenses are anticipated in connection with the proposed notes and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21398/January 17, 1980

In the Matter of

ARKANSAS-MISSOURI POWER COMPANY
405 West Park Street
Blytheville, Arkansas 72315

(70-6255)

NOTICE OF POST-EFFECTIVE AMENDMENT REGARDING ISSUANCE AND SALE OF SHORT-TERM BANK NOTES

NOTICE IS HEREBY GIVEN that Arkansas-Missouri Power Company ("Arkansas-Missouri"), a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated February 23, 1979 (HCAR No. 20930), Arkansas-Missouri was authorized to issue and sell from time to time until February 23, 1980, up to $5,500,000 of unsecured, short-term promissory notes to the First National Bank in Little Rock, Arkansas, for the account of a group of participating banks. As of January 7, 1980, $4,000,000 of such notes were outstanding.

It is now proposed that Arkansas-Missouri issue and sell to the First National Bank in Little Rock, for the account of a group of participating banks, from time to time during the period commencing on the effective date of the supplemental order herein and continuing for one year thereafter, up to $5,500,000 of unsecured, short-term promissory notes. The notes will be payable in not more than 270 days from the date of issuance and may be renewed from time to time, but will mature not later than one year from said effective date. As the notes mature, they will be renewed or repaid out of funds then available to the company. The notes will, at the option of the company, be prepayable in

whole or in part, at any time without premium or penalty. The names of the participating banks and the estimated maximum amounts of their respective participations in the new borrowings to be made by Arkansas-Missouri are to be supplied by amendment.

It is stated that the notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at the prime commercial loan rate of Chemical Bank, New York, New York, in effect from time to time on borrowings having a 90-day maturity by responsible and substantial corporate borrowers; provided, however, that such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. On the basis of Chemical Bank's prime commercial loan rate of 15-¼% per annum in effect on January 7, 1980, Arkansas-Missouri's cost of money in respect to the proposed borrowings would be 15-¼% per annum. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed borrowings.

Arkansas-Missouri will apply the net proceeds received from the new borrowings to the payment at or prior to maturity of the then outstanding bank borrowings referred to above (estimated at that time to aggregate $4,000,000), to the company's construction program, and to other corporate purpose. It is stated that the proposed new borrowings will be in addition to other bank borrowings by the company from the First National Bank in Little Rock, Arkansas, which will total not in excess of $5,000,000 outstanding at any one time (File No. 70-6388) and from Worthen Bank and Trust Company, Little Rock, Arkansas, which will total not in excess of $5,500,000 outstanding at any one time (File No. 70-5838). Arkansas-Missouri presently intends to repay the proposed notes with the proceeds of permanent financing or with other available funds.

It is represented that no special or separable expenses are anticipated in connection with the proposed notes and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11017/January 11, 1980

In the Matter of

BONDSTOCK CORPORATION
BONDSTOCK INVESTMENT PLAN
FRANK RUSSEL CO., INC.
1100 One Washington Plaza
Tacoma, Washington 98402

SECURITY EQUITY FUND, INC.
SECURITY MANAGEMENT CO., INC.
and
SECURITY DISTRIBUTORS, INC.
700 Harrison Avenue
Topeka, Kansas 66636

(812-4497)

ORDER PURSUANT TO SECTIONS 11(a), 17(d) AND 26(b) OF THE ACT AND RULE 17d-1 THEREUNDER, APPROVING EXCHANGE OF SHARES, APPROVING THE SUBSTITUTION OF THE UNDERLYING INVESTMENT MEDIUM OF A UNIT INVESTMENT TRUST, AND PERMITTING JOINT TRANSACTIONS.

Bondstock Corporation ("Bondstock"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, Bondstock Investment Plan ("BIP"), registered under the Act as a unit investment trust, Frank Russell Co., Inc. ("Russell"), investment adviser of and principal underwriter for Bondstock and depositor for and sponsor of BIP, Security Equity Fund, Inc. ("Equity"), registered under the Act as an open-end, diversified, management investment company, Security Management Company, Inc. ("Management"), investment adviser of Equity, and Security Distributors, Inc., a wholly owned subsidiary of Management which serves as principal underwriter for Equity, filed an application on June 18, 1979, and amendments thereto on August 29, 1979, and October 11, 1979, for an order of the Commission: (1) pursuant to Sections 11(a) and 26(b) of the Act, permitting BIP to surrender shares of Bondstock (the sole underlying investment medium for investment plans offered by BIP) and to receive shares of Equity therefor in connection with Equity's acquisition of substantially all of Bondstock's assets, and thereafter to acquire Equity shares with planholders' subsequent investments and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Russell to pay up to $20,000 of the incremental expenses incurred by Bondstock and permitting Management to pay all of the expenses incurred by Equity in connection with such acquisition.

On December 14, 1979, a notice was issued (Investment Company Act Release No. 10986) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the proposed exchange and the proposed substitution of shares will be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found, on the basis of the information stated in the application, that the participations of Bondstock and Equity with respect to the bearing of the expenses of the proposed asset acquisition will be consistent with the provisions, policies, and purposes of the Act, and that the participations of Bondstock and Equity will not be on a basis less advantageous than that of other participants. The Commission makes no findings as to the appropriateness of the proposed $200,000 payment by Management to Russell under the standards of Section 15(f) of the Act. The proposed payment is described in the application and summarized in the notice. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the proposed exchange offer be, and hereby is, approved.

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the proposed transactions whereby Russell will pay up to $20,000 of the incremental expenses incurred by Bondstock and Management will pay all of the expenses incurred by Equity, in connection

with Equity's acquisition of substantially all of Bondstock's assets be, and hereby are, permitted, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 26(b) of the Act, that the proposed substitution of Equity shares for Bondstock shares as the sole underlying investment medium of BIP be, and hereby is, approved, effective forthwith.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11018/January 14, 1980

In the Matter of

NARRAGANSETT CAPITAL CORPORATION
40 Westminister Street
Providence, Rhode Island 02903
and
PHOTO SYSTEMS, INC.
7200 West Huron River Drive
Dexter, Michigan 48130

(812-4499)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING JOINT TRANSACTION

NOTICE IS HEREBY GIVEN that Narragansett Capital Corporation ("Narragansett"), a non-diversified, closed-end, management investment company registered under the Investment Company Act of 1940 ("Act") and a licensed small business investment company under the Small Business Investment Act of 1958, and Photo Systems, Inc. ("Photo Systems"), a company presumed to be controlled by Narragansett (hereinafter Narragansett and Photo Systems are collectively referred to as "Applicants"), filed an application on June 26, 1979, and an amendment thereto on November 27, 1979, for an order of the Commission purusant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act and, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting certain proposed transactions which are to be made in connection with the restructuring of Narragansett's investment in Photo Systems. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Photo Systems, a Michigan corporation which manufactures and sells darkroom equipment and photographic supplies and operates a film processing laboratory, has a total of 1,030,000 shares of Common Stock which are issued and outstanding, all of which carry voting rights and have a par value of $0.10 per share. The application states that 230,000 of such shares are Class A Common Stock and are held by six persons who were employees or spouses of employees when Photo Systems were organized in 1973. The application further states that the remaining 800,000 shares, or 77.7% of Photo Systems' outstanding shares, are Class B Common Stock held by Narragansett. Applicants state that in addition to an equity investment in Photo Systems, Narragansett holds a note issued by Photo Systems which has a currently outstanding principal balance of $1,172,430. Three of Photo Systems' five directors (Messrs. Sarles, Little and Considine) are directors and present or former officers of Narragansett.

Applicants state that when Photo Systems was organized in July, 1973, Narragansett purchased 250,000 shares of Class B Common Stock at an aggregate purchase price of $250,000 and loaned the company $1,750,000, evidenced by a photo Systems note in that amount ("1973 Note"). Such loan, Applicants state, was subordinate in right of payment to Photo Systems' indebtedness to the Industrial National Bank of Rhode Island ("IN-Bank") in the amount of $2,750,000. Applicants further state that because of financial difficulties experienced by Photo systems, Applicants took certain steps during the period from 1974 through 1975 to refinance and restructure Narragansett's investment. On September 5, 1974, Narragansett loaned Photo Systems an additional $100,000, evidenced by a demand note for such amount

which carried an interest rate of fifteen percent per annum ("Demand Note"). In 1975 Photo Systems underwent an internal reorganization ("1975 Refinancing") under the supervision of Narragansett which included: (a) the refinancing of the principal amount of the Demand Note through (i) the conversion of $50,000 of principal to 50,000 shares of Class B Common Stock at an agreed price of $1.00 per share and (ii) the execution and delivery to Narragansett of Photo Systems' subordinated promissory note in the amount of $50,000, payable on June 30, 1977, together with interest at 5% above INBank's prime rate with a maximum of 15% and a minimum of 12% ("Interim Note"); (b) all accrued interest on the Demand Note was paid in full; (c) conversion of the 1973 Note for $1,750,000 into: (i) 500,000 shares of Class B Common Stock at an agreed valued of $1.00 per share and (ii) a subordinated promissory note in the amount of $1,250,000 payable on August 1, 1983, with an interest rate of 5% above the floating prime rate of INBank, not to exceed 15% nor to be less than 12% ("Substituted Note"); (d) interest due on the 1973 Note, which amounted to $127,388.69, was converted into a subordinated promissory note ("Interest Note") due August 1, 1980, without interest through the maturity date; (e) the election of a third nominee of Narragansett to Photo Systems' Board of Directors; and (f) an amendment to Photo Systems' Articles of Incorporation to provide for Class B Common Stock to receive a 10% cumulative dividend (if permitted by INBank).

Applicants state that these steps, increasing Narragansett's equity ownership from 250,000 shares to 800,000 shares, increased Narragansett's percentage of ownership from 50% to 76.2%, while the principal amount of Photo System's indebtedness to Narragansett was decreased. Additionally, the application states that as a part of the 1975 Refinancing Agreement, Photo Systems was given the option to redeem and purchase 500,000 shares of its stock from Narragansett at a price specified in a schedule included in the agreement. The application further states that following the 1975 Refinancing, William Considine (a director of Narragansett) was elected as chairman of the Board of Directors and chief executive officer of Photo Systems. Additionally, Applicants state that Mr. Considine's actual annual compensation as chief executive officer has ranged from $30,000 to $60,000.

Thereafter, according to Applicants, Photo Systems continued to experience financial difficulties which led to the refinancing of Photo Systems' indebtedness to Narragansett ("1976 Refinancing") through a cancellation of all prior debts in exchange for a subordinated promissory note due June 30, 1981, in the amount of $1,500,000, with interest of 10% ("1976 Note"). As stated in the application, the 1976 Note: (1) refinanced Photo Systems' indebtedness to Narragansett (which included the $50,000 Interim Note, the $1,250,000 Substituted Note and the $127,388.69 Interest Note) by changing the maturity date on the individual notes from June 1977, August 1983, and August 1980, respectively, to June 1981 and by reducing the interest rate to 10% and (2) added all but $66,482.55 of the accrued and unpaid interest on the Interim and Substituted Notes due Narragansett to the principal amount of Photo Systems' indebtedness. Applicants state that part of the interest due was forgiven because Photo Systems was still struggling financially. Applicants further state that as a result of the 1976 Refinancing, the principal amount of Narragansett's investment was increased to $2,300,000, consisting of equity of $800,000 and subordinated debt in the principal amount of $1,500,000.

According to the application, during 1977 and 1978, Photo Systems' financial picture was affected by the following events: (1) On January 13, 1977, Narragansett agreed to permanently waive its right to dividend arrearages on Photo Systems stock in the amount of $94,572; (2) in January 1978, Photo Systems disposed of one of its divisions to an unrelated third party for net cash proceeds of $1,450,000, all of which were used to reduce its then outstanding indebtedness to INBank from $2,400,000 to approximately $950,000; (3) on June 12, 1978, with the approval of the Commission, photo Systems disposed of another division to Sound Color Corporation (a company created for such purpose and in which Narragansett invested $75,000 for 50% of the voting stock) and used $625,000 of the proceeds to reduce its indebtedness to INBank to approximately $325,000 and used $300,000 of the proceeds to reduce the principal amount of its indebtedness to Narragansett from $1,500,000 to $1,200,000; and (4) during 1978 Photo Systems redeemed 20,000 shares of Class A Common Stock.

Applicants state that on June 15, 1979, they entered into a Redemption and Refinancing Agree-

ment ("Agreement") pursuant to which Photo Systems will be restructured and refinanced in the following manner. Photo Systems will purchase 550,000 of the 800,000 shares of Class B Common Stock held by Narragansett for an aggregate purchase price of $550,000. The purchase price is payable by delivery to Narragansett of a cash payment of $5,000 and a promissory note of Photo Systems for the remaining $545,000, plus the outstanding balance of the 1976 Note (amounting to $1,172,430 as of the date of the application) which is being refinanced ("Redemption Note"). Applicants state that the Redemption Note will be due August 1, 1984, will carry an interest rate of 12% per annum, will be payable during each fiscal year in an amount equal to 20% of Photo Systems' after-tax earnings for the preceding fiscal year, and will be subordinated, with respect to principal and interest, to Photo Systems' indebtedness to INBank.

Section 2(a)(3) of the Act includes within the definition of "affiliated person" of another person: (1) any person owning five percent or more of the outstanding voting securities of such other person; (2) any person five percent or more of whose outstanding voting securities are owned by such other person; (3) any officer, director or employee of such other person; and (4) any person controlled by such other person. Section 2(a)(9) of the Act provides, in part, that any person owning, directly or indirectly, more than 25 percent of the voting securities of a company shall be presumed to control such company. Accordingly, Applicants state that: (1) Photo Systems is an affiliate of and, by virtue of Narragansett's ownership of 77.7% of Photo Systems' outstanding voting securities, presumed to be controlled by Narragansett; (2) Narragansett is an affiliate of Photo Systems; and (3) Messrs. Sarles, Little and Considine, by virtue of their positions as directors of Narragansett, are affiliates of Narragansett and, similarly, by virtue of their positions as directors of Photo Systems, are also affiliates of Photo Systems.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to purchase from or sell to such registered company or any company controlled by such registered company, any security or other property except securities of which the seller is the issuer. Section 17(b) of the Act generally provides that, upon application, the Commission shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Although Rule 17a-6 under the Act provides an exemption for transactions with certain affiliated persons, Applicants acknowledge that because Mr. Considine receives a salary from Photo Systems, he may be deemed to have an "indirect financial interest" in Photo Systems, thus rendering the exemption unavailable. Consequently, Applicants request an order pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act, the redemption and refinancing arrangement described above.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (i) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (ii) the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that the proposed transaction may be said to involve a joint arrangement, in which Narragansett and Photo Systems are participants, and thus could be deemed to be prohibited under Rule 17d-1 unless the Commission issues an exemptive order or the transaction is otherwise exempt under the provisions of Rule 17d-1. Although Rule 17d-1(d)(5) under the Act provides that no application need be filed with respect to certain joint transactions, Applicants acknowledge that because of Mr. Considine's salary from Photo Systems, he may be deemed to have an "indirect financial interest" in the joint enterprise, and because Photo Systems might be said to be commiting in excess of 5% of its assets to the joint enterprise, the exemption is not clearly available.

Therefore, Applicants request an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the proposed redemption and refinancing arrangement.

Applicants assert that the proposed transaction is reasonable and fair to Narragansett and Photo Systems and does not involve overreaching on the part of either party. Applicants state that in their judgment the $1.00 per share is a fair and reasonable price for the stock of Photo Systems for the following reasons: (1) the book value of the Photo Systems stock, which is one objective measure of value, was approximately $.92 per share on September 27, 1978, the date on which Narragansett agreed in principal to sell a portion of its Class B Stock back to Photo Systems at $1.00 per share, and, as of March 31, 1979, after final terms of the transaction were agreed to on or about March 8, 1979, and prior to approval of the transaction by Narragansett's Board of Directors on May 3, 1979, Photo Systems' stock had a book value of $1.02 per share; (2) the management of Photo Systems elected not to exercise the option to purchase its shares based on their judgment that, among other things, the applicable option price under the terms of the 1975 Refinancing Agreement exceeded the present fair value and that Photo Systems could not afford to repurchase its shares at the option price even if such price were reasonable; and (3) all the purchases of such shares by Photo Systems and the management-stock-holders occurring between April 1, 1978, and December 28, 1978, amounting to 143,000 shares, were consummated at $1.00 per share, payable in cash, except for 5,000 shares redeemed from an employee whose employment was terminated, and whose shares were redeemed at $.50 per share payable in cash at which time Photo Systems also forgave $2,500 of indebtedness owed by such employee. Applicants note that as a part of the refinancing, the interest rate on all of Photo Systems' oustanding indebtedness to Narragansett will be raised from 10% to 12% and the maturity date extended by three years. Applicants submit that such terms are fair to both parties for the following reasons: (1) the increased yield on Photo Systems' indebtedness and the enhanced potential for gain on its equity ownership which Narragansett will derive by providing management stockholders meaningful equity participation adequately compensates Narragansett for the extension of the maturity date; (2) the rate of interest to be charged on the Redemption Note is fair to Photo Systems given present money market conditions, the extension of the maturity date and the subordinated nature of the loan; (3) it is evident that Photo Systems will be unable to meet its obligation under the 1976 Note to repay Narragansett in 1981; (4) the refinancing is structured in a way which Photo Systems believes will permit it to meet its obligations without unduly burdening it; and (5) Photo Systems believes that the increased equity participation of the management stockholders will assure their continued employment which Narragansett considers essential to the continued profitability and growth of Photo Systems. Additionally, it is noted that Narragansett will continue to control Photo Systems through the ownership of 52.1% of Photo Systems' voting stock.

Applicants also assert that the proposed transaction is consistent with the policy of Narragansett as reflected in its registration statement and reports filed under the Act; that the proposed transaction is consistent with the general purposes of the Act; and participation of both Narragansett and Photo Systems in the joint enterprise is not on a basis less advantageous than that of the other participant. Specifically, Applicants submit that neither participant is advantaged or benefited at the expense of the other in the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 7, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued

in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11019/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6178/January 15, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11020/January 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6179/January 15, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11021/January 15, 1980

In the Matter of

PUTNAM DAILY DIVIDEND TRUST
MARSH & McLENNAN MANAGEMENT COMPANY
265 Franklin Street
Boston, Massachusetts 02110

TRINWALL CASH RESERVE, INC.
EBERSTADT FUND MANAGEMENT, INC.
61 Broadway
New York, New York 10006
(812-4568)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 17(b) OF THE ACT TO EXEMPT A PROPOSED AMERGER FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER TO PERMIT PARTICIPATION IN SUCH MERGER AND PURSUANT TO SECTION 6(c) OF THE ACT TO EXEMPT AN ISSUANCE OF SECURITIES FROM RULE 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Putnam Daily Dividend Trust ("Putnam") and Trinwall Cash Reserve, Inc. ("Trinwall"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), Marsh & McLennan Management Company ("Marsh & McLennan") and Eberstadt Fund

Management, Inc. ("Eberstadt") (collectively "Applicants") filed an application on November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to Section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of Section 17(a) of the Act, (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Marsh & McLennan and Eberstadt to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction, and (3) pursuant to Section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a satement of the representations contained therein, which are summarized below.

Applicants represent that, on September 30, 1979, the total net assets of Putnam were approximately $51 million. Putnam's investment adviser is The Putnam Management Company, Inc. ("Putnam Management"), which is a wholly-owned subsidiary of Marsh & McLennan, a holding company. According to the application, Putnam Management charges Putnam a fee which, on an annual basis is .5 of 1% of Putnam's average net assets but that during Putnam's start-up period, Putnam Management has agreed voluntarily to limit Putnam's expenses to .75% of average daily net assets for each year, or shorter period, if such limitation is terminated. For the fiscal year ending December 31, 1978, Applicants state that the compensation payable by Putnam to Putnam Management was reduced from $68,049 to $4,764 because of such expense limitation. The application states that Putnam's investment objective is to seek a high rate of current income consistent with preservation of capital and maintenance of liquidity.

Applicants further represent that, on September 30, 1979, the total net assets of Trinwall were approximately $17 million. Trinwall's investment adviser is Eberstadt, which is also a wholly-owned subsidiary of Marsh & McLennan. According to the application, Eberstadt charges Trinwall a fee, which on an annual basis, is .5 of 1% of the first $100 million of average net assets but that through July 31, 1980, Eberstadt has undertaken to reduce its fee or reimburse Trinwall to the extent that for any month Trinwall's expenses exceed one-twelfth of .75% of average daily net assets. According to the application, for fiscal years ending July 31, 1977, 1978 and 1979, Eberstadt absorbed expenses of Trinwall amounting to $49,849, $39,787 and $39,432, respectively. Eberstadt had advised Trinwall that it is unwilling to continue to manage Trinwell's assets on the same basis because of the expenses Eberstadt has been required to absorb. The application states that Trinwall's investment objective is to preserve capital and to maximize liquidity and current income yield.

Applicants represent that they have entered into an agreement whereby Putnam proposes to acquire substantially all of the assets of Trinwall (expected to exceed 95%) in exchange for Putnam shares. Applicants state that Trinwall will dissolve and liquidate following the exchange. Trinwall will distribute to its shareholders, in exchange for their shares of Trinwall, the Putnam shares it receives upon the transfer of its assets to Putnam, together with the assets not transferred, if any. Applicants state that each Trinwall shareholder will be entitled to receive that portion of the Putnam shares to be received by Trinwall that the number of Trinwall shares owned by each shareholder bears to the number of Trinwall shares outstanding on the exchange date. The exchange will be done on the basis of net asset value and such computation with respect to Trinwall's assets will be made at the close of business on the business day next preceding the exchange date. The application states that Putnam's shares have a constant net asset value of $1.00 per share. According to the application, the value of the Trinwall assets to be acquired by Putnam and the value of Putnam shares to be issued therefor will be determined in the manner in which Putnam determines the value of its own assets. According to the application, no adjustments will be made in the basis of the exchange to account for realized and unrealized gains and losses because (1) neitther Trinwall nor Putnam experiences significant realized or unrealized gains or losses on its investments and (2) each fund's daily declaration of net income includes all realized short-term gains and losses on each fund's portfolio investments. Applicants state that the reorganization will be submitted to Trinwall's shareholders for approval. Applicants represent that the reorganization is subject to several further conditions, including satisfactory opinions of counsel and any necessary approvals by the Commission.

Applicants state that Eberstadt will reimburse Putnam and Trinwall for expenses incurred in connection with the transaction other than expenses

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which Putnam customarily incurs in connection with the issuance and sale of its shares and other than expenses of Trinwall incident to an annual shareholder meeting. Eberstadt has also agreed to indemnify and save harmless Trinwall and its officers, directors and shareholders against all expenses, losses, claims, damages and liabilities arising before or after the exchange date, other than any Trinwall liability or obligation reflected on its statement of net assets as of the valuation date. Applicants state that there are no such known expenses, losses, claims, damages or liabilities. The application further states that, notwithstanding the foregoing, Eberstadt shall not be obligated to make aggregate payments pursuant to the above indemnity to the extent such payments, together with all payments made by Eberstadt with respect to expenses of Trinwall, exceed the lesser of (a) $1,000,000 or (b) the excess of (i) the fair market value of the Trinwall assets conveyed to Putnam over (ii) 80% of the fair market value of all the properties and assets of Trinwall immediately prior to the exchange. Eberstadt has also agreed to indemnify, without limit, Putnam and Trinwall with respect to state securities laws liaiblities, if any, although no such liabilities are known to exist. The application states that Marsh & McLennan will unconditionally guarantee Eberstadt's performance of its obligations noted above. The application states further that no liabilities for which Eberstadt has agreed to indemnify any person as aforesaid, are known to exist.

Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company or affilated person of such person, acting as principal, knowingly to sell to or purchase from such company any security or other property. Section 17(b) of the Act, however, provides that the Commission may exempt a proposed transaction from Section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 2(a)(3) of the Act provides, in part, that an affiliated person of another person means any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state, without conceding, that Putnam and Trinwall may be affiliated persons of each other because the investment advisers of each fund are wholly-owned subsidiaries of Marsh & McLennan.

Applicants submit that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants submit that the exchange will be done on the basis of the asset values of Putnam and Trinwall, that the costs of the transaction will be borne by Eberstadt, as described above, and that March & McLennan will guarantee such obligations of Eberstadt's. Applicants also assert that Trinwall's directors, including a majority of directors who are not interested persons of Trinwall or Ebserstadt, have determined that the transaction is in the best interests of Trinwall's shareholders. It is submitted that such shareholders will become shareholders in a fund approximately three times larger than Trinwall and that such greater size will tend to result in lower expense ratios for Trinwall shareholders. Applicants state further that Trinwall shareholders will benefit indirectly from greater diversification possible by Putnam's larger portfolio. According to the application, the Putnam trustees, including a majority who are not interested persons of Putnam or Putnam Management, have determined that the transaction is in the best interests of Putnam and will not result in any dilution of existing shareholders' interests. Applicants assert that the transaction will increase the size of Putnam's assets by approximately one-third and will result in certain economies of scale, tending to reduce Putnam's expense ratio. Applicants submit that the proposed merger is consistent with the investment objectives and policies of Putnam and Trinwall.

Section 17(d) of the Act and Rule 17d-1 thereunder prohibit, in part, any affiliated person of a registered investment company or any affiliated person of such person, from effecting any transaction in which such investment company is a joint participant, unless an application has been filed with the Commission and has been granted by order. In passing upon such application, the Commission will consider whether the participation of such registered company in such arrangement, on the basis proposed, is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants. Section 2(a)(3) of the Act also provides,

in part, that an affiliated person of an investment company means any investment adviser thereof.

Applicants state that Eberstadt and Putnam Management are affiliated persons of Trinwall and Putnam, respectively, and that since Eberstadt is also an affiliated person of Putnam Management, Eberstadt is an affiliated person of an affiliated person of Putnam. Applicants state further that Marsh & McLennan is an affiliated person of Eberstadt and Putnam Management and is thus an affiliated person of an affiliated person of Putnam and Trinwall. Applicants submit that Trinwall and Putnam may be deemed affiliated persons of each other.

Applicants submit that, as to the expense reimbursements, indemnification provisions and guarantee arrangements, summarized above, to the extent the participation by Putnam and Trinwall is different from that of Marsh & McLennan and Eberstadt and that of each other. Putnam's and Trinwall's participation is at least as advantageous as that of Marsh & McLennan and Eberstadt and that of each other. Accordingly, Applicants request that the Commission issue an order permitting the transaction to the extent necessary.

Section 22(c) of the Act and Rule 22c-1 thereunder prohibit registered investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase. Section 6(c) authorizes the Commission, upon application, to exempt any transaction from any provision of the Act or any rule thereunder, if it finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Putnam states that the valuation of Trinwall's assets will be determined as of the close of business on the business day next preceding the exchange date, which procedure may be in violation of Rule 22c-1. According to the application, such computation can be made only after the close of business when both portfolios can be fully valued. The application states that the computation of the value of Trinwall's shares at such time will not present any of the potential for abuse that Rule 22c-1 is intended to avoid. Applicants assert that the grant of the order requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 6, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11022/January 15, 1980

In the Matter of

THE PUTNAM INCOME FUND, INC.
265 Franklin Street
Boston, Massachusetts 02110

MARSH & McLENNAN MANAGEMENT COMPANY
265 Franklin Street
Boston, Massachusetts 02110

TRINWALL BOND FUND, INC.
61 Broadway
New York, New York 10006

EBERSTADT FUND MANAGEMENT, INC.
61 Broadway
New York, New York 10006

(812-4567)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 17(b) OF THE ACT TO EXEMPT A PROPOSED MERGER FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(b) OF THE ACT AND RULE 17d-1 THEREUNDER TO PERMIT PARTICIPATION IN SUCH MERGER AND PURSUANT TO SECTION 6(c) OF THE ACT TO EXEMPT AN ISSUANCE OF SECURITIES FROM RULE 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that The Putnam Income Fund, Inc. ("Putnam"), Trinwall Bond Fund, Inc. ("Trinwall"), Marsh & McLennan Management Company ("M & M Management") and Eberstadt Fund Management, Inc. ("EFM"), (collectively, "Applicants") filed an application on November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to Section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of Section 17(a) of the Act, (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting M & M Management and EFM to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction and (3) pursuant to Section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act. All interested persons are referred to the application on file with the Commision for a statement of the representations contained therein, which are summarized below.

Applicants state that, as of July 31, 1979, Putnam had net assets of approximately $172 million. Putnam's investment adviser is The Putnam Management Company, Inc. ("Putnam Management"), which is a wholly-owned subsidiary of M & M Management, a holding company.

Applicants state that, as of July 31, 1979, Trinwall had net assets of approximately $9.1 million. Trinwall's investment adviser is EFM, also a wholly-owned subsidiary of M & M Management. According to the application, EFM charges Trinwall a fee equal to .5 of 1% of the first $100 million of average net assets (which is reduced for average net assets in excess of $100 million); provided, however, EFM has undertaken that for the period through July 31, 1980, if Trinwall's total expenses for any month exceed one-twelfth of .75% of average daily net assets, EFM will reduce its fee or reimburse Trinwall by the amount of such excess. Applicants represent that, for Trinwall's fiscal years ending July 31, 1977, 1978, and 1979, EFM absorbed expenses of Trinwall of $26,793. $26,196 and $25,965, respectively. According to the application, EFM has advised Trinwall that, because of the expenses it has been required to absorb, it is unwilling to continue to manage Trinwall's assets.

Applicants state that pursuant to the Articles of Transfer and Agreement and Plan or Reorganization dated October 31, 1979 ("Agreement"), Putnam will acquire substantially all of the assets and properties of Trinwall in exchange for shares of Putnam and that, following the exchange of Trinwall's assets for Putnam's stock, Trinwall will dissolve and liquidate. Applicants further state that, as part of the liquidation distribution, Trinwall will distribute to its shareholders in exchange for their shares of Trinwall capital stock the Putnam shares it receives upon the transfer of its assets to Putnam, together with the assets which it has not transferred to Putnam, if any. The Agreement states that the value of the assets of Trinwall to be acquired by Putnam and the value of Putnam shares to be issued therefor will be determined by Putnam in the manner in which Putnam would determine the value of its own assets. The application states that the reorganization will be submitted for approval by the holders of a majority of the outstanding shares of Trinwall and that the acquisition

would be consummated shortly thereafter. In addition to such approval, consummation of the reorganization is subject to other conditions, including satisfactory opinions of counsel, and any necessary approvals of the Commission.

The Agreement further provides that Putnam will not assume any liabilities of Trinwall in connection with the acquisition of Trinwall's assets and the subsequent dissolution of Trinwall or otherwise, but that, whether or not the transactions contemplated by the Agreement are consummated, EFM will pay, or cause to be paid, all expenses incurred by Trinwall and Putnam in connection with the reorganization, other than those expenses which Putnam customarily incurs in connection with with the reorganization, other than those expenses which Putnam shares and except that EFM shall not be required to pay or cause to be paid those expenses of Trinwall incident to an annual meeting of shareholders involving the election of directors and appointment of auditors.

The Agreement also states that EFM will indemnify and hold harmless Trinwall and its directors, officers and shareholders against expenses, losses, claims, damages and liabilities relating to any liability or obligation of Trinwall existing on the exchange date or arising thereafter, other than any liability or obligation of Trinwall reflected in Trinwall's statement of net assets as of the valuation time and except that EFM shall not be obligated to make aggregate payments pursuant to the foregoing indemnity to the extent that such payments, together with all payments made by EFM with respect to expenses of Trinwall (as described above), exceed the lesser of (a) $1,000,000 or (B) the excess of (i) the fair market value of the properties and assets of Trainwall acquired by Putnam over (ii) 80%of the fair market value of all of the properties and assets of Trinwall immediately prior to the exchange. EFM will also indemnify and hold harmless Putnam and Trinwall against any expenses, losses, claims, damages, and liabilities incurred by Putnam or Trinwall relating to any violations or alleged violations by Trinwall, EFM or Putnam Fund Distributors, Inc. of any state securities laws.

The Agreement further states that M & M Management will unconditionally guarantee the performance by EFM of its obligations as aforesaid. Applicants represent that no such liabilities, contingent or otherwise for which EFM has agreed to so indemnify any person are known to exist.

Section 22(c) of the Act and Rule 22c-1(a) thereunder prohibit registered investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase. Section 6(c) of the Act authorizes the Commission, upon application, to exempt any transaction from any provision of the Act or of any rule thereunder, if it finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Agreement contemplates that the assets of Trinwall and Putnam would be valued on a Friday and that the issuance of shares of Putnam in exchange for assets of Trinwall would occur on the following Monday. Thus, for purposes of the application only, Applicants submit that the "forward pricing" requirement of Rule 22c-1 may not be met.

Applicants contend that it would be impracticable to comply with Rule 22c-1, because the number of Putnam shares to be issued on the exchange date will be determiend by dividing the net asset value per share of Putnam into the total net assets of Trinwall available for acquisition . Such computation can be made only after the close of business when both portfolios can be fully valued. Applicants further contend that valuation of Putnam's assets at the close of business on the business day next preceding the exchange date will be fair to the shareholders of Putnam and Trinwall, and will not present any of the potential for abuse that Rule 22c-1 is intended to avoid. Pursuant to Section 6(c) of the Act, Applicants request that the Commission issue an order exempting Putnam from the provisions of Rule 22c-1 to the extent necessary to enable valuations to be made at the time set forth above.

Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell to or purchase from such registered company any security or other property,

Section 17(b) of the Act, however, provides that the Commission may exempt a proposed transaction from Section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Applicants assert that, under certain circumstances, it is possible that two or more investment companies having the same investment adviser, or investment advisers under common control, may be deemed to be affiliated persons of each other by virtue of Section 2(a)(3)(C) of the Act. Putnam's and Trinwall's investment advisers are wholly owned subsidiaries of M & M Management. Applicants state, however, that Putnam and Trinwall are managed separately by their respective investment advisers (EFM and Trinwall being located in New York and Putnam Management and Putnam being located in Boston) without consultation with each other and have no directors or officers in common. Applicants further state that EFM and Putnam Management have no directors in common and, except for the Treasurer, Controller, Secretary and Assistant Secretary of each company (none of whom has responsibility for investments or related matters), have no officers in common. Nevertheless, because Trinwall and Putnam might be deemed "affiliated persons" of each other and any disposition of portfolio securities by Trinwall to Putnam or any acquisition by Putnam of portfolio securities of Trinwall pursuant to the Agreement might be deemed to be prohibited by Section 17(a) of the Act, Applicants, without admitting that Trinwall and Putnam are affiliated persons of each other, ask that the Commission exempt the transaction from the prohibition of Section 17(a) of the Act pursuant to Section 17(b) of the Act.

The terms of the Agreement provide that the acquisition of Trinwall's assets by putnam shall be accomplished on the basis of the relative net assets values of the funds. Applicants represent that no adjustment is to be made in the computation of Putnam or Trinwall's net asset value on account of any relative differences between unrealized depreciation in each fund, or other relevant factors, it having been determined that there was no identifiable and quantifiable detriment to the shareholders of either fund that would warrant such adjustment. Applicants state that all costs of the transaction (with the exception of those expenses of Trinwall's incident to an annual meeting of shareowners involving the election of directors and appointment of auditors and those expenses of Putnam normally incurred in connection with the issuance and sale of its shares) will be borne by EFM, and that its obligation is guaranteed by M & M Management.

Applicants expect that the shareholders of Trinwall will benefit from certain economies of scale inherent in becoming shareholders of Putnam and, in addition, that Trinwall shareholders will indirectly benefit from the greater diversification of security holdings possible in Putnam's larger portfolio. Although the Trinwall shareholders who desire to make additional investments will experience an increase in sales charge, the Trinwall directors believe that the advantages to Trinwall shareholders outweigh any disadvantage represented by the increased sales charge for further investments.

Applicants state that the transaction is considered to be in the interest of the Putnam shareholders because (a) many of Putnam's expenses are fixed in nature and the increase in size of Putnam's assets by approximately 5% will tend to result in certain economies of scale tending to further reduce Putnam's expense ratio; (b) Putnam is currently in a net redemption posture with respect to the sale of its shares - the assets to be acquired from Trinwall will be useful in meeting such redemptions without the necessity of raising cash by selling off portions of large round lot units of bonds which are generally owned by Putnam; and (c) under current market conditions, the sale by Putnam of any securities acquired by Trinwall will result in the realization of losses which will be available to offset possible future realized gains at a time when Putnam's current carryfoward losses will have expired. Applicants state that Putnam's directors, including a majority of its disinterested directors, have determined that the transaction is in the interests of its shareholders. Applicants assert that the proposed merger is consistent with the investment objectives and policies of both Putnam and Trinwall. Putnam's investment ofjective is to seek high current income consistent with what is believed to be prudent risk, while Trinwall's objective is to provide a high current income yield consistent with preservation of capital.

Applicants state that the Trinwall directors have evaluated certain policies and practices utilized by or available to Putnam in seeking its investment objective which differ from certain of Trinwall's policies and practices and do not believe that such policies and practices, in light of Putnam's record of performance, represent material differences in Putnam's investment objective as compared to that of Trinwall or are disadvantageous to Trinwall shareholders, Further, Trinwall's board of directors, including a majority of its disinterested directors, has determined that the proposed transaction is in the best interests of Trinwall.

Applicants assert that in accordance with Section 17(b) of the Act, the terms of the proposed transaction are reasonable and fair to Putnam and Trinwall and do not involve overreaching by any person concerned, and that the proposed transaction is consistent with the investment policies of each fund, and with the purposes of the Act.

Rule 17d-1 under the Act provides, in pertinent part, that no affiliated person of any registered investment company and no affiliated person of such person shall participate in, or effect any transaction in connection with a joint enterprise in which such registered investment company is a participant unless an application regarding such joint enterprise has been filed with the Commission and has been granted by an order. In passing upon such application, the Commission will consider whether the participation of such registered investment company is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

EFM and Putnam Management are affiliated persons of Trinwall and Putnam, respectively, under Section 2(a)(3)(E) of the Act. Because EFM is also an affiliated person of Putnam Management under Section 2(a)(3)(C) of the Act, it is an affiliated person of an affiliated person of Putnam, M & M Management is an affiliated person of EFM and Putnam Management under Section 2(a)(3)(A) and (C) of the Act and is thus an affiliated person of an affiliated person of both Putnam and Trinwall. In addition, Applicants state that it is possible that Trinwall and Putnam may be deemdd affiliated persons of each other.

Applicants assert that to the extent that Putnam's and Trinwall's participation in the transaction will be different from that of M & M Management and EFM and that of each other. Putnam's and Trinwall's participation will be at least as advantageous as that of M & M Management, EFM and that of each other. In this regard, Applicants state that, while M & M Management and EFM will be relieved indirectly and directly, respectively, of a management obligation which has proved unprofitable to fulfill, M & M Management and EFM, as described above, will bear substantially all the expenses of the transaction, Further, with respect to Putnam and Trinwall for the reasons set forth above. Accordingly, Applicants request that the Commission issue an order permitting the transaction to the extent necessary.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 6, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11023/January 16, 1980

In the Matter of

THE OSBORNE ESTATES COMPANY
4614 Prospect Avenue
Cleveland, Ohio 44103

(812-4560)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM ALL PROVISIONS OF THE ACT.

The Osborne Estates Company ("Applicant"), an Ohio corporation, filed an application on November 1, 1979, and an amendment thereto on November 29, 1979, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act.

On December 21, 1979, a notice was issued (Investment Company Act Release No. 10993) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the conditions:

(1) That this order shall not be effective for a period of more than one year from the date hereof unless the Commission, upon further application, shall grant an order extending such period;

(2) That no registered broker-dealer initiates any regular trading market in any securities issued by Applicant;

(3) That the information statement delivered to shareholders of Applicant concerning the proposed Agreement and Plan of Reorganization between Applicant and Panhandle Eastern Pipeline Company contain a paragraph substantially as follows:

> Since about 1957, more than 40% of the non-cash assets of [Applicant] have consisted of investment securities. For that reason, [Applicant] may have been an "investment company" as defined in the Investment Company Act of 1940 as defined in the Investment Company Act of 1940 (the "1940 Act") from 1957 until the present time, although it has never registered under the 1940 Act. [Applicant] believes, however, that since it is a closely held family corporation which has never offered its securities to the public, it is not the type of organization which the 1940 Act was intended to regulate. Accordingly, [Applicant] has applied to the Securities and Exchange Commission for an order under Section 6(c) of the 1940 Act exempting [Applicant] from all of the provisions of the 1940 Act. Such an order would have no retroactive application. Receipt of such an order is a condition upon the obligations of both [Applicant] and Panhandle to complete the transactions contemplated by the Agreement.

,and,

(4) That no transfer of shares of Applicant will be made except to other family members, or to Applicant in connection with its liquidation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 8972/January 14, 1980

U.S. v. *Endel Peedo*
(CR-79-171, E.D.Va.)

Justin W. Williams, United States Attorney for the Eastern District of Virginia, and Paul F. Leonard, Administrator of the Washington Regional Office, announced that on January 8, 1980, Endel Peedo (Peedo) of Alexandria, Virginia, entered a plea of guilty before the Honorable Albert Bryan, United States District Court Judge for the Eastern District of Virginia, Alexandria Division, to one count of mail fraud in the execution of a scheme and artifice to defraud and obtain money and property from investors by means of false and fraudulent statments and omissions concerning the publication, viability, and projections of subscriptions of *Quinto Lingo* magazine. *Quinto Lingo* is a multilingual magazine published by Language Learning Systems, A Pennsylvania corporation of which Peedo is an officer.

Violation of the mail fraud statute carries a penalty of up to five years' imprisonment and/or a fine of up to $1000. Sentencing is scheduled to take place on February 8, 1980.

Peebo was indicted on October 25, 1979 by a federal grand jury sitting in Alexandria, Virginia, on three counts of securities fraud, two counts of mail fraud, three counts of making false statements to the United States Postal authorities, and seven counts of travel in interstate commerce in the execution of a scheme and artifice to defraud. For further information, see Litigation Release No. 8916.

Litigation Release No. 8973/January 17, 1980

LINK-UP + 1 SECURITIES, INC., ET AL. (U.S.D.C. for the District of Colorado, Civil Action No. 79-M-581)

Robert H. Davenport, Regional Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on January 4, 1980 the Honorable Richard B. Matsch of the United States District Court for the District of Colorado entered a Final Judgment of Permanent Injunction against Link-Up + 1 Securities, Inc., Jerome A. Bernstein, Lawrence Bernstein, Bernstein and Bernstein, Inc., and Jerome A. Bernstein and Lawrence Bernstein dba Continental Concepts. The defendants consented to the entry of said Final Judgment without admitting or denying the allegations of the Commission's complaint.

The order enjoined the defendants, in substance, from violating the registration and antifraud provisions of the federal securities laws and the registration, bookkeeping, and capital provisions of the federal securities laws applicable to broker-dealers in securities.

The Commission filed its complaint in this matter on May 17, 1979. The court granted a Temporary Restraining Order on May 18 and a Preliminary Injunction on May 25, 1979. The Court also appointed the National Association of Securities Dealers as a receiver for Link-Up + 1 Securities, Inc. in both the Temporary Restraining Order and Preliminary Injunction. Thereafter, on August 9, 1979 the court appointed a SIPC Trustee for Link-Up + 1 Securities, Inc. in the United States District Court for the District of Colorado (79-M-1018). The SIPC Trusteeship is continuing under 79-M-1018.

For further information information see Litigation Releases 8783 and 8767.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 6182	364
Securities Exchange Act	- 16510A, 16514-30	364
Public Utility Holding Company Act	- 21399-06	379
Investment Company Act	- 11024-27	392
Investment Advisers Act	- 710A	406
Litigation	- 8974-80	407

This listing covers releases issued from 1/18/80-1/24/80

This listing does not affect the legal status of any document published in this issue.

Release No. IA-710A corrects Release No. IA-710 found in Vol. 18 No. 20.

Release No. 33-6181 was left out of the Index of Vol. 19, No. 4.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	VOL. V, No. 15	12/3/74
II	VOL. V, No. 16	12/10/74
III	VOL. VI, No. 3	1/8/75
IV	VOL. VI, No. 15	4/22/75
V	VOL. VI, No. 20	5/28/75
VI	VOL. VII, No. 8	7/22/75
VII	VOL. VIII, No. 15	1/28/76
VIII	VOL. IX, No. 11	5/18/76
IX	VOL. X, No. 11	10/5/76
X	VOL. XI, No. 9	2/8/77
XI	VOL. XII, No. 12	7/19/77
XII	VOL. XIII, No. 11	11/29/77
XIII	VOL. XIV, No. 12	4/25/78
XIV	VOL. XV, No. 12	9/12/78
XV	VOL. XVI, No. 10	1/16/79
XVI	VOL. XVII, No. 7	5/15/79
XVII	VOL. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS ANNOUNCEMENTS

34-16519 Giving notice that the five national securities exchanges authorized to trade standardized options contract have filed a joint industry plan which would authorize joint action in the development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information. .....

RULES

34-16514
34-16515
34-16517

SE 1.29.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6182/January 21, 1980

In the Matter of

MUNGER, TOLLES & RICKERSHAUSER RETIREMENT PLAN
612 South Flower Street
Fifth Floor
Los Angeles, CA 90017

(18-56)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE MUNGER, TOLLES & RICKERSHAUSER RETIREMENT PLAN

Munger, Tolles & Rickershauser, a law firm organized as a partnership under the laws of the State of California filed an application on July 9, 1979, for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Munger, Tolles & Rickershauser Retirement Plan ("Plan").

On December 4, 1979, a notice was issued (Securities Act Release No. 6162) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No hearing has been requested and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to rhe requirements of Section 5 of the Act, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16510A/January 22, 1980

The Commission gives notice that the national securities exchanges listed below have applied, pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934, for unlisted trading privileges in the following common stocks that are listed on one or more national securities exchanges:

Midwest Stock Exchange, Inc.:

Valero Energy Corporation (formerly Coastal States Gas Producing Co.), $1 Par Value (File No. 7-5147);

Gelco Corporation, $.50 Par Value (File No. 7-5148); and

Modern Merchandising, Inc., $.01 Par Value (File No. 7-5149).

Boston Stock Exchange, Inc.:

APL Corporation, $.10 Par Value (File No. 7-5135);

AZL Resources, Inc., No Par Value (File No. 7-5136);

Alaska Airlines, Inc., $1 Par Value (File No. 7-5137);

Amrep Corporation, $.10 Par Value (File No. 7-5138);

Bancal Tri-State Corporation, $15 Par Value (File No. 7-5139);

Bandag, Inc., $1 Par Value (File No. 7-5140);

Bangor Punta Corporation, $1 Par Value (File No. 7-5141);

Craig Corporation, $.25 Par Value (File No. 7-5142);

DWG Corporation, $1 Par Value (File No. 7-5143);

Deltona Corporation, $1 Par Value (File No. 7-5144);

Mobil Corporation, $7.50 Par Value (File No. 7-5145); and

Moore McCormack Resources, Inc., $2.50 Par Value (File No. 7-5146).

Pacific Stock Exchange, Inc.:

Resorts International, Inc., Class A common stock, $1 Par Value (File No. 7-5150) and Class B common stock, $1 Par Value (File No. 7-5151).

Comments and/or request for hearing are to be submitted on or before February 11, 1980.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16514/January 18, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-79-18)

The National Securities Clearing Corporation (NSCC) has submitted a proposed rule change amending and automating the procedures by which it borrows securities to satisfy NSCC system needs.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-79-18.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16515/January 18, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-79-18

The Pacific Stock Exchange, Incorporated ("PSE") submitted on December 18, 1979, a proposed rule change under Rule 19b-4 to adopt certain equity trading floor decorum rules that would prescribe standards for appropriate dress. The proposal also would authorize the PSE staff to impose summary fines of up to $500 on male personnel for failure to wear a tie at all times while on the trading floor.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-79-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16516/January 23, 1980

In the Matter of

ECONETICS, INC.

File No. 81-579

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until Feb. 12, 1980 to request a hearing on an application by Econetics, Inc. ("Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting Applicant from certain of the filing requirements of Sections 13 and 15(d) of the 1934 Act, specifically, the requirement to file quarterly reports on Form 10-Q, and the requirement to include audited financial statements in its annual reports on Form 10-K.

The Applicant has ceased all manufacturing activities, operations have not reflected net income in any of the past five fiscal years and based on the transfer records there is presently little or no activity in the common stock.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16517/January 21, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-79-51

The New York Stock Exchange, Inc. ("NYSE") submitted on December 5, 1979, a proposed rule change under Rule 19b-4 to rescind that portion of NYSE Rule 420 that requires reporting to the NYSE of members' and allied members' unsecured non-capital borrowings[1] in excess of $20,000.[2]

Publication of the submission is expected to be made in the *Federal Register* during the week of January 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-79-51.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1] The term "Non-capital borrowings" refers to borrowings that do not involve the capital account of any NYSE member organization.

[2] Reporting of "capital borrowings" would be unaffected by this proposal.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16518/January 22, 1980

In the Matter of

American Stock Exchange, Inc.
Boston Stock Exchange, Inc.
Cincinnati Stock Exchange, Inc.
Midwest Stock Exchange, Inc.
National Association of Securities Dealers, Inc.
New York Stock Exchange, Inc.
Pacific Stock Exchange, Inc.
Philadelphia Stock Exchange, Inc.

Application pursuant to Section 11A(a)(3)(B)

(File No. 4-281)

The Securities and Exchange Commission hereby issues an order, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act"), providing the authorization to certain self-regulatory organizations to act jointly, in accordance with the terms of a plan, as amended, with respect to matters as to which they share authority under the Act in planning, developing, operating and regulating a national market facility consisting of a consolidated quotation system ("quotation system"). This order authorizes those self-regulatory organizations to implement that facility on a permanent basis as a means of facilitating the establishment of a national market system in accordance with the requirements of Section 11A of the Act.

I. Introduction and Background

On January 26, 1978, the Commission adopted Rule 11Ac1-1 (the "Rule") under the Act which requires that every national securities exchange ("exchange") and national securities association ("association") establish and maintain procedures to collect, process and make available to vendors quotations (including size) in reported securities (*i.e.*, securities as to which transaction information is reported in the consolidated transaction reporting system ("consolidated system")).[1] In adopting the Rule, the Commission requested that the various self-regulatory organizations consider joint implementation of the Rule through the creation of a unified data stream of quotations from all market centers. In response to the Commission's request, on July 25, 1978, the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex") filed with the Commission a "Plan for the Purpose of Implementing Rule 11Ac1-1 under the Securities Exchange Act of 1934" ("CQ Plan" or "Plan"). The CQ Plan (i) established joint procedures to govern the collection, processing and dissemination of quotation information by participating market centers, (ii) provided for selection and evaluation of an exclusive processor to collect quotation information from the participating market centers and to make that information available to quotation vendors in a single data stream, and (iii) established fees relating to the receipt of quotation information.

On July 28, 1978, the Commission issued a temporary order, pursuant to Section 11A(a)(3)(B) of the Act, authorizing any self-regulatory organization executing the Plan (collectively, "participants")[2] to act jointly in operating and regulating the quotation system in accordance with the terms of the Plan for 180 days from the date of the order.[3] On January 24, 1979, the Commission issued an order ("CQ Plan Extension Order"), pursuant to Section 11A(a)(3)(B), extending its approval of the CQ Plan for an additional year.[4]

On August 1, 1978, following the Commission's temporary approval of the CQ Plan, the NYSE, Amex, Boston Stock Exchange, Inc. ("BSE"), Midwest Stock Exchange, Inc. ("MSE"), Pacific Stock Exchange, Inc. ("PSE") and Philadelphia Stock Exchange, Inc. ("Phlx") began disseminating quotations in a single data stream pursuant to the terms of the CQ Plan.[5] The National Association of Securities Dealers, Inc. ("NASD") became a participant on December 15, 1978, and began disseminating third-market quotations to the Securities Industry Automation Corporation ("SIAC"), the processor of the CQ Plan data stream, on Feburary 20, 1979. In addition, the Cincinnati Stock Exchange, Inc. ("CSE") has recently signed the CQ Plan and is scheduled to begin disseminating quotations to SIAC by February 2, 1980. A complete copy of the Plan, as amended, and all comments received with respect thereto are avialable for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, DC.[6]

CQ Plan Amendments

On November 20, 1979, the Plan participants submitted to the Commission various proposed amendments to the CQ Plan, which were published for comment in the *Federal Register*.[7] These proposed amendments to the Plan include the following:

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[1] Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342.

[2] In addition to the NYSE and Amex, the following self-regulatory organizations have joined the CQ Plan to date: The Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Pacific Stock Exchange, Inc., Philadelphia Stock Exchange, Inc., Midwest Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.

[3] Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851 ("CQ Order").

[4] Securities Exchange Act Release No. 15511 (January 24, 1979), 44 FR 6230.

[5] Certain of these changes actually began disseminating of quotations through the CQ Plan data stream prior to August 1, 1978, in connection with their participation in the Intermarket Trading System ("ITS").

[6] *See* File No. 4-281.

[7] Securities Exchange Act Release No. 16446 (December 28, 1979), 44 FR 76896.

(a) *Amendments Relating to NASD Participation in the Plan*

The Plan participants have proposed the amendment of Sections I(j), VI(c), VI(d) and IX(c) of the Plan and the addition of a new Section III(d) to the Plan. Among other things, these proposals would provide that at some future date the Plan may be amended and submitted to the Commission for approval: (1) to provide for a "CQ Network C" for unlisted, over-the-counter NASDAQ securities; (ii) to name the NASD as the network's administrator, with all of the rights and authority with respect to "CQ Network C" that the networks' administrators for CQ Networks A and B have under the CQ Plan with respect to their respective networks;[8] (iii) to properly allocate income and expenses in relation to unlisted, over-the-counter NASDAQ securities; and (iv) to make such other changes as deemed necessary at that time.

(b) *Amendments Relating to the Regulatory Halt Provision*

The Plan participants have proposed the deletion of Section IX(a) of the Plan and the amendment of Section IX(b) of the Plan. Section IX(a) of the Plan, as originally filed with the Commission, provided that, during a regulatory halt of trading in a security called by the "primary" exchange, all Plan participants must cease making available quotation information in that security to the Plan processor. The Commission determined to condition its temporary authorization of the Plan on the Plan participants not implementing this provision of the Plan and requested the Plan participants to execute and file amendments to the Plan eliminating this provision.[9] The amendment to Section IX(b) of the Plan would provide that each Plan participant shall be authorized to suspend the furnishing of quotation information in any "eligible security" for any reason deemed adequate by it. Any Plan participant which does so suspend furnishing of quotation information shall immediately advise the Plan processor of its actions and reasons therefor.

(c) *Amendments Relating to Financial Arrangements Among the Participants*

The Plan participants have proposed the amendment of Section X(b)(i) of the Plan. Section X(b) of the Plan provides for the sharing of income and expenses associated with making available Network A and Network B quotation information. Specifically, as to each network, it provides that a participant's "Annual Share" of net income for any calendar year will be measured by the number of transactions reported by that participant during that year in the consolidated system as compared with all transactions reported by all participants during that year. The amendment would modify the definition of the term "Annual Share" to exclude those transactions reported in those securities as to which an exemption has been granted to a participant from the requirements of the Rule.[10]

Fees for Consolidated Quotations

In the CQ Plan Extension Order, the Commission expressed its concern regarding the fee structure established by the CQ Plan.[11] The CQ Plan established a fee schedule for subscription to consolidated quotation information which creates a permanent two-tiered structure for Network A and Network B quotations. Under the two-tiered structure, subscribers to either network who are members of a participant in the CQ Plan (*i.e.*, reporting exchanges and the NASD) are charged a lower fee than are subscribers who are not members of at

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[8] Network A reports quotations in NYSE-listed securities. Network B reports quotations in Amex and certain exchange-listed securities.

[9] *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851; Securities Exchange Act Release No. 15511 (January 24, 1979), 44 FR 6230.

[10] The Commission understands that this amendment was proposed in connection with the CSE's having become a Plan participant. The CSE has been granted an exemption from the Rule with respect to those securities traded on the CSE which are not traded on the CSE's national securities trading system, the so-called CSE System. *See* Securities Exchange Release No. 15010 (July 28, 1978).

[11] CQ Plan Extension Order at 7, 44 FR at 6232.

least one of the participants.[12] In the case of Network A, the rate for subscribers who are not members of participants is more than 50% higher than the rate for members of participants. For Network B, the disparity is approximately 5%. In addition, for a period of six years, commencing on August 1, 1978, NYSE members subscribing to Network A are charged a fee which is lower than the fee charged to members of other participants. During the six year period, the fee charged to members of the NYSE will gradually increase and, at the conclusion of this period, members of all participating market centers will be charged an identical fee.[13]

The Commission continues to be concerned by the absence of a uniform fee structure for subscribers of quotation information (whether they are NYSE members, members of participating market centers or persons who are not members of any participant); however, the Commission believes that the permanent approval of the CQ Plan is not the appropriate context in which to address the generic questions of fee structures for national market system facilities.

* * * * *

IT IS HEREBY ORDERED, pursuant to Section 11A(a)(3)(B) of the Act, that the self-regulatory organizations named above are authorized to act jointly in planning, developing, operating or regulating the quotation system in accordance with the terms of the CQ Plan, as amended.

By the Commission.

George A. Fitzsimmons
Secretary

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[12] Currently, the category of non-members of participants includes brokers and dealers who are sole members of the Intermountain or Spokane Stock Exchanges, broker-dealers registered under Section 15(b) of the Exchange Act (SECO broker-dealers) and institutional and private investors.

[13] *See* letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated January 12, 1979, at 17–25.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16519/January 22, 1980

Notice of Receipt of Plan Filed Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934.

ACTION: Notice and request for comments.

SUMMARY: The Commission gives notice that the five national securities exchanges authorized by the Commission to trade standardized options contracts have filed with the Commission, under Section 11A(a)(3)(B) of the Securities Exchange Act, a joint industry plan which, if approved by the Commission, would authorize joint action on their part in the development and operation of a system for the collection and dissemination of consolidated options last sale reports and quotation information

DATES: Comments should be submitted on or before March 14, 1980.

ADDRESSES: Persons wishing to submit written views should file six copies thereof with George A. Fitzsimmons, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-820 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William S. Muller, Division of Market Regulation, Securities and Exchange Commission, Room 351, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2415.

SUPPLEMENTARY INFORMATION: On October 24, 1979, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Midwest Stock Exchange, Inc. ("MSE"), the Pacific Stock Exchange, Inc. ("PSE") and the Philadelphia Stock Exchange, Inc. ("Phlx") jointly filed with the Commission pursuant to Section 11A(3)(B) of the Securities Exchange Act of 1934 (the "Act")[1] a proposed plan for the

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[1] Section 11A(a)(3)(B) of the Act authorizes the Commission, in furtherance of its directive to

collection and dissemination of options last sale and quotation information (the "Plan") to be administered by the Options Price Reporting Authority ("OPRA"). The above-named exchanges have asked the Commission to approve the proposed Plan under Section 11A(a)(3)(B) of the Act, thereby authorizing joint action on their part in the development and operation of a consolidated options quotation and last sale reporting system pursuant to such Plan.

I. BACKGROUND

On January 22, 1975, the Commission, by order,[2] granted registration as a securities information processor to OPRA, upon finding, inter alia, that OPRA was so organized and had the capacity to carry out its functions as a securities information processor. OPRA consists of a committee of representatives of those national securities exchanges authorized by the Commission to trade standardized options contracts (the OPRA "participants"). The functions which OPRA performed, and which necessitated its registration as a securities information processor, were set forth in a plan filed as part of OPRA's Form SIP registration statement.[3] Briefly, that plan called for OPRA to administer a consolidated system for the collection and dissemination of reports of all completed transactions in options occurring on the national securities exchanges authorized by the Commission to trade options.

On January 31, 1979, OPRA filed with the Commission an amendment to its Form SIP registration statement in which OPRA proposed to amend its plan for reporting consolidated options last sale reports to include authority for the collection and dissemination of consolidated options quotation information from the OPRA participants. In addition, OPRA requested that the Commission authorized joint action on the part of the OPRA participants in proceeding to develop the consolidated options quotation system. OPRA stated that it would not begin the necessary negotiations to effectuate that system until such authorization had been received.[4]

After reviewing the substance of OPRA's request, the Division of Market Regulation informed OPRA that, in light of both the Commission's desire to begin developing a national market subsystem for options,[5] and OPRA's desire for Commission authorization for its participants to act jointly, it would be appropriate for the Commission to consider OPRA's entire Plan, including those provisions relating to the reporting of consolidated options last sale reports as well as quotation information, under Section 11A(a)(3)(B) of the Act.[6] Accordingly, the Division asked that the Amex, CBOE,

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facilitate the establishment of a national market system,

> by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.

On December 7, 1979 the Commission issued a release proposing and seeking comments on Rule 11Aa3-2 under the Act. Securities Exchange Act Release No. 16410 (December 7, 1979), 18 SEC Docket 1306 (December 26, 1979). If adopted, proposed Rule 11Aa3-2 would require self-regulatory organizations requesting joint action under Section 11A(a)(3)(B) to file a plan with the Commission, and would prescribe, among other matters, the information which must be included in such plans and certain standards with respect to their operation.

[2] Securities Exchange Act Release No. 12035 (January 22, 1975), 41 FR 4369.

[3] *See* Rule 11Ab2-1 under the act, 17 CFR 240.11Ab2-1.

[4] *See* letter from Michael Meyer, counsel to OPRA, to Andrew M. Klein, Director, Division of Market Regulation (January 31, 1979).

[5] *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

[6] Letter from Andrew M. Klein To Michael L. Meyer (June 20, 1979).

MSE, PSE and Phlx refile the entire Plan as a joint industry plan under Section 11A(a)(3)(B).[7]

II. Description of the Plan[8]

A. Administration

OPRA would be authorized to administer this Plan and to make all policy decisions under the Plan, in particular (1) setting standards governing the format for reporting last sale and quotation information, and (2) determining the level of fees to be paid by approved vendors, subscribers and new services. Action by OPRA under the Plan would require an affirmative vote of 2/3 of the total voting authority of the participants.

The voting rights of the parties under the Plan would be weighted; each participant's percentage of the total voting authority would correspond to such party's percentage of the total number of compared trades submitted for clearing to the Options Clearing Corporation during the previous year. No participant, however, would be entitled to more than 50 percent of the total voting authority. New participants in the Plan would be entitled to 10 percent of the voting authority, until an annual determination as to such party's percentage of the total options clearing volume could be made. Regular meetings of the parties would be held on not less than 10 days notice, and generally would be rotated among the locations of the principal offices of the parties.

B. Data Processing Functions

The plan would authorize OPRA to perform some or all of the data processing functions under the Plan, or to enter into a contract with a data processing service organization to perform such functions.[9]

C. Options Last Sale Reports

The Plan would require each participant promptly to collect and transmit to OPRA, in a format prescribed by OPRA or its data processing service organization, reports of all sales of options contracts on the participant exchanges. The reports would include the options series, the number of contracts sold, the price at which the contracts were sold, the market of execution, and any late or our of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, or similar matters. The Plan states that current last sale reports would be disseminated through the OPRA system on a uniform, nondiscriminatory basis over a network to vendors,[10] subscribers, [11] and news services.[12]

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[7] The Commission previously has dealt with requests by national securities exchanges for authorization to act jointly under Section 11A(a)(3)(B) of the Act, by requiring the filing of a plan specifying the nature of the joint action to be undertaken. Two such plans have been temporarily approved by the Commission. The first, the Consolidated Quotation ("CQ") Plan, authorizes joint industry action in the development and operation of a consolidated quotation system for equity securities reported in the consolidated transaction reporting system. *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851. The second, the Intermarket Trading System ("ITS") Plan, authorizes joint action on the part of those national securities exchanges participating in the plan, in the development and operation of a system providing an intermarket communications linkage. *See* Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. As noted *supra* at n. 1, the Commission recently issued a proposed rule which, if adopted, would prescribe certain standards with respect to information which must be included in plans filed under Section 11A(a)(3)(B).

[8] Although the Commission is at this time considering whether to aprpove the entire OPRA Plan, under Section 11A(a)(3)(B) of the Act, OPRA currently is administering the options last sale reporting system pursuant to its registration as a securities information processor under Section 11A(b)(2) of the Act.

[9] In discussions with the Commission's staff, OPRA has represented that the Securities Industry Automation Corporation ("SIAC"), which currently performs the data processing functions with respect to the options last sale reporting system, has been selected on the basis of competitive bidding to perform such functions for quotation reporting.

[10] The Plan defines a vendor as a person that receives current option last sale reports or quotation information provided by OPRA or provided by a

D. **Options Quotation Reports**

Under the Plan, each exchange would be required to collect and transmit to the OPRA system bids and offers for each series of options traded on the exchange in a format specified by OPRA or its data processing service organization. The bids and offers would have to be sufficient in number and timeliness to reflect the current state of the market in such security, and would have to reflect the premium bid or offer, the options series, the market in which the quote was entered, and any information concerning cancels, corrections, trading halts and suspensions, market conditions or similar matters. Current quotation information would be disseminated by OPRA on a uniform, non-discriminatory basis to vendors, subscribers and news services.

D. **Vendors, Subscribers and News Services**

Under the Plan, only those vendors, subscribers and news services that have been approved by, and have entered into agreements with, OPRA would be entitled to receive last sale reports and quotation information. The Plan would authorize OPRA to disapprove or revoke its previous approval of any vendor, subscriber or news service, if such entity is found to have violated a provision of its contract with OPRA, or if such action is necessary or appropriate in the public interest or for the protection of investors. An entity which has been disapproved or has had a prior approval revoked could appeal such action to the Commission in accordance with its rules and regulations.[13]

The Plan would require that OPRA's agreements with vendors and subscribers be uniform, non-discriminatory, and designed to assure the timely, orderly and reliable dissemination of last sale reports and quotation information on a current basis. Such agreements could impose upon vendors and subscribers reasonable fees for the receipt of options information. The Plan also would permit OPRA to charge a fee, in addition to that charged for the right to receive options information, for the receipt of such information directly from the OPRA system rather than through an intermediary.

The Plan would require that OPRA's agreements with vendors provide, generally, that last sale reports and quotations information may be received by such persons only for the purpose of providing options information to approved subscribers. Vendor agreements would have to provide uniform specifications governing the format for the transmission of last sale reports and quotation information on behalf of OPRA. The Plan also would require that vendor agreements contain provisions prohibiting vendors from excluding reports or otherwise discriminating on the basis of the market in which a transaction or quotation took place.

With respect to agreements with news services, the Plan would require that such agreements prohibit news services from furnishing current options information to any persons other than the news media. Under the Plan, information furnished by a news service to the news media could not be published during the fifteen-minute period following transmission of the information to the news service.

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vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a current basis to a subscriber, news service, or to another vendor.

[11] The Plan defines a subscriber as a person that receives current last sale reports or quotations information provided by OPRA or provided by a vendor for its own use or for distribution on a non-current basis, other than in connection with its activities as a vendor.

[12] The Plan defines a news service as a person that receives last sale reports or quotation information provided by OPRA or provided by a vendor on a current basis in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication that does not take place within the fifteen-minute period following the time when the information has been first published by OPRA.

[13] Section 11A(b)(5)(A) of the Act, among other matters, authorizes the Commission to review, on its own motion or upon application by an aggrieved person, an action by a registered securities information processor which prohibits or limits any person in respect of access to services offered by such processor.

E. **Financial Matters**

Each participant exchange would be responsible for its own costs in collecting and reporting to OPRA the last sale reports and quotation information prescribed by the Plan. The Plan would require each exchange to share equally in all start-up costs relating to the implementation and administration of the Plan, but administrative and operating costs would be apportioned at the end of each calendar quarter on the basis of the number of compared trades submitted by each party to the Options Clearing Corporation during that quarter. Net revenues from operation of the Plan would be shared by the participants on the same weighted basis.

F. **Withdrawal; Non-transferability of Rights Under the Plan**

The Plan would permit any exchange to withdraw from OPRA on six months notice, provided that withdrawal would not extinguish a withdrawing party's liability for its share of the start-up costs. A participant exchange could not transfer its rights under the Plan to have last sale reports and quotation information disseminated through the OPRA system.

G. **Amendments to the Plan**

The Plan provides that it could be amended by two-thirds votes of the total voting authority; but, under the Plan, such amendments would not be effective until approved by the Commission.

III. Request for Public Comment

In order to assist the Commission in determining whether to authorize joint action pursuant to the Plan on the part of the Amex, CBOE, MSE, PSE and Phlx, interested persons are invited to submit written views, data and arguments with respect to the Plan, not later than March 14, 1980. The Commission believes, as a preliminary matter, that the terms of the Plan would not be in compliance with the standards for Section 11A(a)(3)(B) plans set forth in proposed Rule 11Aa3-2.[14] Thus, commentators may wish to address whether it is appropriate for the Commission to approve the Plan at this time. Particularly, the Commission seeks comments on three aspects of the Plan which the Commission believes may warrant additional consideration prior to approval.

First, the Commission requests comments on whether the OPRA Plan, like the other joint industry plans approved by the Commission, should specify the current level of those fees which the Plan authorizes OPRA to charge for its services or, at least, the manner in which OPRA would calculate these fees. Absent the inclusion of fees or the manner in which they would be calculated in the OPRA Plan, the level of such fees could be changed unilaterally by OPRA in its contracts with vendors, news services and subscribers.

OPRA maintains that inclusion of its fees in the Plan would require amendment thereof any time OPRA wished to change its fees, and would involve the Commission in a "burdensome rate-making proceeding that would be the consequence of requiring approval of specific rates."[15] It would seem anomalous, however, in light of the statutory requirement that self-regulatory organizations, acting individually, file any proposed fee changes with the Commission,[16] for the Commission to permit such organizations, when acting jointly, to proceed on a unilateral basis. Furthermore, consideration of amendments to the OPRA Plan dealing solely with fees would not involve the Commission in rate-making, but could simply involve a determination, among other matters, if whether OPRA had a reasonable basis upon which to derive the fee schedule.[17] Therefore, the Commission believes, as a preliminary matter, that the current level of OPRA's fees, or the method by which such fees would be calculated, should be included as part of the Plan.

Second, the Commission requests comments on whether the Plan should define the time parameters within which quotations and reports of com-

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[14] Securities Exchange Act Release No. 16410 (December 7, 1979), 18 SEC Docket 1306 (December 26, 1979).

[15] *See* letter from Michael L. Meyer to William Muller of the Commission's staff (October 24, 1979) ("October 24 Letter").

[16] *See* Section 19(b)(3)(A) of the Act.

[17] *Cf.* Section 11A(c)(1)(D) of the Act.

pleted transactions must be entered into the system. Although the Plan requires that "late" transactions be identified and that quotations reflect the "current" market, it does not define what those terms mean.

OPRA maintains that it is not practical in an active options market to keep track of the precise time that has elapsed since the execution of a trade, and that it would not be appropriate to specify the time within which quotations must be transmitted to OPRA because no Commission rule requires the collection and dissemination of options quotation information.[18] While the Commission does not feel it necessary, at this time, to prescribe the time parameters within which last sale reports and quotation information for options must be reported, the Commission does believe that OPRA should set some reasonable standards to assure that investors receive timely information and to provide some meaning to the terms of the Plan.

Finally, the Commission requests comments on whether the voting arrangement of the Plan provide for a reasonable allocation of authority among the participant exchanges. Under the Plan's voting provisions, the CBOE and the Amex, because of their respective trading volumes, together would control more than 70 percent of the voting authority and thus would be able to take any action they desired even if the other participants were opposed to such action. Furthermore, the CBOE, by viture of its control of more than one-third of the voting authority, could veto any action proposed by the other participants.

The Commission notes that both the CQ and ITS Plans[19] contain provisions under which each participating self-regulatory organization is granted a single vote in the administration of the respective plans. Additionally, the Commission's staff has suggested that the Consolidated Tape Association consider amending its plan,[20] which contains weighted voting arrangements similar to those under the OPRA Plan, to provide a more equitable governing structure.[21] While the Commission understands that the weighted voting arrangements of the OPRA Plan reflect the wide disparity of trading volume and resulting system usage among the participant exchanges, the Commission is not convinced at this time that such arrangements are reasonable.[22]

Persons wishing to make written submissions should file six copies thereof with Geoge A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-807 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, Washington, D.C.

For the Commission.

George A. Fitzsimmons
Secretary

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[18] *See* October 24 Letter.

[19] *See* n. 7 *supra*.

[20] *The Consolidated Tape Association Plan, declared effective by the Commission on May 10, 1974, involves joint action on the part of national securities exchanges in the operation of the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act* [17 CFR 240.17a-15]. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799.

[21] *See* letter from Andrew M. Klein, Director of the Division of Market Regulation, to Robert C. Hall, Chairman of the CTA (November 17, 1978).

[22] The Commission has received letters from the PSE and Phlx claiming that the present weighted voting arrangements under the Plan are unfair. Letter from Charles J. Henry, President of the PSE, to Andrew M. Klein (May 24, 1979); letter from Nicholas A. Giordano, Executive Vice President of the Phlx, to Andrew M. Klein (July 13, 1979). These letters are available for inspection in the public file referenced above. Recently, a proposal by the PSE to amend the Plan to provide each participant with one vote failed by a weighted vote of two against (Amex and CBOE), and three in favor (MSE, PSE and Phlx).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16520/January 23, 1980

In the Matter of

HOME SAVINGS AND LOAN ASSOCIATION,
as Originator and Servicer,

File No. 81-590

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the application of Home Savings and Loan Association, as Originator and Servicer under a Pooling and Servicing Agreement providing for formation of a Mortgage Pool and the issuance of Mortgage Pass-Through Certificates, (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting the Applicant from certain reporting requirements under Section 13 and from the operation of Section 16 of that Act.

On November 27, 1979, a notice was issued on the filing of said application giving interested persons an opportunity to request a hearing and stating that an order granting the application might be issued upon the basis of the information stated therein unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the requested exemption is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16521/January 23, 1980

File No. 81-584

In the Matter of

CORENCO CORPORATION

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT.

An order has been issued granting the application of Corenco Corporation for an exemption, pursuant to Section 12(h) of the Securities Exchange Act of 1934, from the reporting requirements of Section 15(d) of that Act. It appears to the Commission that the exemption is consistent with the public interest and the protection of investors, in view of the fact that the company no longer has any public shareholders.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16522/January 23, 1980

File No. 81-580

In the Matter of

HYCEL, INC.

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h) OF THE SECURITIES EXCHANGE ACT OF 1934 AND OPPORTUNITY FOR HEARING

The Securities and Exchange Commission has issued a notice giving interested persons until February 12, 1980 to request a hearing on an application by Hycel, Inc. (the "Applicant") for an order exempting the Applicant from filing all reports required to be filed by Sections 13 and 15(d) of the Securities Exchange Act of 1934.

On June 12, 1979, pursuant to shareholder authorization, Hycel was merged with Hyco Tendering Corporation. The resulting corporation was subsequently merged with Hyco Holding Corporation and became known as Hycel, Inc. The Applicant is privately owned by Boehringer Mannheim GmbH and its wholly-owned subsidiary Boehringer

Mannheim Corporation. There exists neither public investors nor any public trading market for Hycel securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16523/January 23, 1980

File No. 81-567

In the Matter of

SHENANDOAH OIL CORPORATION

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT.

An order has been issued granting the application of Shenandoah Oil Corporation for an exemption, pursuant to Section 12(h) of the Securities Exchange Act of 1934, from the reporting requirements of Sections 13 and 15(d) of that Act. It appears to the Commission that the exemption is consistent with the public interest and the protection of investors, in view of the fact that the company has been liquidated and the only remaining shareholders are merely creditors entitled to receive the liquidating value of their shareholdings in cash.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16524/January 23, 1980

In the Matter of:

WENTWORTH MANUFACTURING COMPANY

File No. 81-597

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until February 12, 1980 to request a hearing on an application by Wentworth Manufacturing Company, (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an order exempting the Applicant from the reporting requirements of Sections 13 and 15(d) of that Act.

The Applicant has sold its assets and is in the process of dissolution. There is no trading market in its securities, and Applicant believes that the filing of additional reports is not necessary, in the public interest or consistent with the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16525/January 23, 1980

In the Matter of

MISSOURI ACCELERATION CORPORATION

File No. 81-528

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h) OF THE SECURITIES EXCHANGE ACT OF 1934 AND OPPORTUNITY FOR HEARING

The Securities and Exchange Commission has issued a notice giving interested persons until February 12, 1980 to request a hearing on an application by Missouri Acceleration Corporation (the "Applicant") for an order exempting the Applicant from filing an annual report on Form 10-K for the year ended December 31, 1977 and all other reports required to be filed by Sections 13 and 15(d) of the Securities Exchange Act of 1934 (the "1934 Act").

The Applicant had fewer than fifteen shareholders on January 1, 1977 but did not file a Notice of Suspension of Duty to File Reports pursuant to Rule 15d-6 under the Act until January 15, 1978. There is no public trading in the securities subject to the reporting provisions of Sections 13 and 15(d) of the Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16526/January 23, 1980

In the Matter of

GREAT SOUTHERN CORPORATION

File No. 81-595

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued an order granting the application of Great Southern Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the reporting requirements of Sections 13 and 15(d) of the 1934 Act.

As a result of a merger effective as of January 1, 1979, the Applicant became an indirect wholly-owned subsidiary of NLT Corporation ("NLT"), and all of its outstanding common stock was converted into the right to receive either a cash payment or certain securities of NLT.

Accordingly, it appeared to the Commission that granting the requested exemption would not be inconsistent with the public interest or the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16527/January 23, 1980

In the Matter of

REYNOLDS METALS EUROPEAN CAPITAL CORPORATION

File No. 81-593

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Reynolds Metals European Capital Corporation (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the reporting requirements of Section 13 of the 1934 Act.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16528/January 23, 1980

File No. 81-568

In the Matter of

CARRIER CORPORATION

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT.

An order has been issued granting the application of Carrier Corporation for an exemption, pursuant to Section 12(h) of the Securities Exchange Act of 1934, from the reporting requirements of Sections 13 and 15(d) of that Act. It appears to the Commission that the exemption is consistent with the public interest and the protection of investors, in view of the fact that the company no longer has any public shareholders, and that United Technologies Corporation has assumed Applicant's reporting obligations for its publicly traded debentures.

SECURITIES EXCHANGE ACT OF 1923
Release No. 16529/January 23, 1980

PLATTEVILLE TELEPHONE COMPANY

File No. 81-554

ORDER PURSUANT TO SECTION 12(h) GRANTING AN EXEMPTION FROM REQUIREMENTS UNDER SECTIONS 12(g), 13, 14, and 16

The Securities and Exchange Commission has issued an order exempting Platteville Telephone Company ("Applicant") from the registration, reporting, proxy soliciting and other requirements of

Sections 12(g), 13, 14 and 16 of the Securities Exchange Act of 1934. Applicant furnishes telephone service to a rural area of approximately 150 square miles in southwestern Wisconsin and is regulated as a public utility by the Wisconsin Public Service Commission. Practically all of Applicant's shareholders are Wisconsin residents and there is no trading market for its securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16530/January 24, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock (Par Value $1) of GLOVER, INC. from listing and registration thereon.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21399/January 18, 1980

In the matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Berks County, Pennsylvania

PENNSYVLANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

SAXTON NUCLEAR EXPERIMENTAL CORPORATION
Berks Country, Pennsylvania

(70-3816)

ORDER AUTHORIZING EXTENSION OF TIME FOR CAPITAL CONTRIBUTIONS TO BE MADE BY SUBSIDIARY UTILITY COMPANIES TO A NON-UTILITY SUBSIDIARY COMPANY

Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company ("utility companies"), all public utility subsidiary companies of General Public Utilities Corporation, a registered holding company, and the utility companies' non-utility subsidiary company, Saxton Nuclear Experimental Corporation, have filed with this Commission post-effective amendments to their joint application-declaration, as previously amended, filed in this proceeding pursuant to Sections 2(a)(3), 2(a)(19), 6(a), 7(a), 10, 12(f) and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 7(b),24(c)(3)(C) and 100 as applicable to the following transaction.

By Orders issued in this proceeding dated May 11, 1960 (HCAR No. 14427) May 20, 1968 HCAR No. 15481), and December 31, 1974 (HCAR No. 18738), the utility companies were authorized to acquire all of the capital stock of Saxton and to make capital contributions to Saxton aggregating $10,000,000 through December 31, 1979. Saxton was organized as a nonprofit stock corporation to construct, operate, and maintain a small experimental nuclear reactor and the capital contributions were to be used for such purposes.

It is stated that Saxton's experimental and research activities have been terminated and its reactor facility has been decommissioned. It is further stated that pursuant to the regulations of the Nuclear Regulatory Commission, Saxton must continue in existence long enough to dismantle its nuclear facility. As a result, Saxton's corporate charter has been amended to extend Saxton's corporate existence in perpetuity.

Saxton and the utility companies have filed further post-effective amendments to the joint application-declaration proposing to extend the period wherein capital contributions may be made by the utility companies to Saxton through December 31, 1984. It is proposed that utility companies continue making contributions to Saxton through the extended period of its corporate life, such contributions to be used by Saxton to wind up its affairs, dispose of its properties or maintain them in a safe condition and obtain all necessary governmental and other releases. It is stated that in the absence of unusual circumstances, the cost of surveillance, insurance and maintenance for the facility through December 31, 1984, will be approximately $10,000 per year. Approximately $100,000 of the $10,100,000 of authorized contributions by the utility companies remains available.

The order of May 11, 1960, also exempted Saxton's operations and the research agreement between Saxton and the utility companies from the requirements of Section 13 of the Act and the rules thereunder. Such exemption from said section and applicable rules continues in effect.

The Board of Public Utility Commissioners of the State of New Jersey has approved the period within which contributors may be made by the utility companies. No other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The utility companies will incur no fees and expenses in connection with the proposed transactions.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21360), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21400/January 18, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
MIDDLE SOUTH ENERGY, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6051)

NOTICE OF PROPOSED SALE OF COMMON STOCK BY SUBSIDIARY TO PARENT HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South Energy, Inc. ("MSEI"), a wholly-owned subsidiary of Middle South, have filed post-effective amendments to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a),7,9(a),10 and 12(f) of the Act and Rules 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By Commission order dated December 20, 1977 in this matter (HCAR No. 20327), MSEI was authorized to issue and sell to Middle South and Middle South was authorized to purchase, from time to time, through and including December 31, 1978, 75,000 shares of MSEI's authorized but unissued common stock, no par value ("1978 Common Stock"), at a price of $1,000 per share for an aggregate cash purchase price of $75,000,000. Sales of 1978 Common Stock aggregating 53,000 shares occurred during 1978.

By Commission order dated December 27, 1978 in this matter (HCAR No. 20849) MSEI was authorized to issue and sell to Middle South, and Middle South was authorized to purchase (i) from time to time, through and including June 30, 1979, up to 10,000 shares of the 1978 Common Stock which were unsold as of December 31, 1978 ("Carryover Shares"), and (ii) from time to time through and including December 31, 1979, up to

75,000 additional shares of MSEI's authorized but unissued common stock, no par value ("1979 Common Stock").

By Commission order dated August 13, 1979 in this matter (HCAR No. 21182) MSEI was authorized to issue and sell to Middle South, and Middle South was authorized to purchase from time to time through and including June 30, 1980, up to 50,000 additiokl shares of MSEI's authorized but unissued common stock, no par value ("1980 Common Stock"). As of January 14, 1980 MSEI had sold all of the Carryover Shares, all of the 1979 Common Stock and 29,700 shares of the 1980 Common Stock of Middle South.

It now appears that, based upon MSEI's revised estimate of cash requirements for 1980, in addition to the 21,300 shares of 1980 Common Stock which were unsold as of January 14, 1980 it may be necessary for MSEI to issue and sell to Middle South through and including December 31, 1980, an aggregate of 50,000 additional shares of its authorized but unissued common stock, no par value ("Additional Shares").

MSEI proposes to issue and sell, and for Middle South to purchase, up to such 50,000 shares of Additional Shares through and including December 31, 1980, at a price of $1,000 per share for an aggregate cash purchase of $50,000,000. MSEI will apply the proceeds of sales of Additional Shares to costs incurred by it in the construction of the Grand Gulf Project.

MSEI is authorized by its articles of incorporation to issue up to 1,000,000 shares of its common stock, no par value, and as of January 14, 1980 MSEI has issued and sold an aggregate of 385,700 shares of its common stock no par value to Middle South for an aggregate cash consideration of $385,700,000.

MSEI and Middle South believe it is preferable for sales of Additional Shares to be timed to coincide with the MSEI's cash needs from time to time, which are primarily determined by the nature and pace of the construction work on the Grand Gulf Project. Accordingly, MSEI and Middle South propose that sales of the Additional Shares occur from time to time through December 31, 1980 in increments to be determined by MSEI and Middle South. Each such sale will be reported to the Commission by a Certificate filed pursuant to Rule 24.

To the extent funds are required from external sources to acquire the Additional Shares, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 29, 1979, with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's order dated June 7, 1970 (HCAR No. 21093). Sale of the Additional Shares will enable MSEI to continue construction of the Grand Gulf Project and to maintain capitalization ratios required under various agreements.

It is stated that no special or severable fees, commissions or expenses will be incurred in connection with the proposed transaction. It is further stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 11, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the data of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21401/January 21, 1980

In the Matter of

KINGSPORT POWER COMPANY
Roanoke, Virgnina

(70-6385)

ORDER AUTHORIZING ISSUANCE AND SALE OF UNSECURED NOTES TO BANKS

Kingsport Power Company ("Kingsport"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder regarding the following proposed transaction.

Kingsport proposes to enter into a term loan agreement ("Agreement") with Manufacturers Hanover Trust Company, New York, New York ("Manufacturers") and the First National Bank of Sullivan County, Kingsport, Tennessee ("First National") which will enable Kingsport to make borrowings, to be evidenced by its unsecured notes maturing December 31, 1987, in an aggregate amount of $15,000,000. The Agreement contains commitments of Manufacturers and First National, which, individually and severally and not jointly, agree to lend Kingsport, from time to time, from the effective date of the Agreement (which would be the date of this Order permitting the declaration to become effective) through December 31, 1981, an aggregate amount up to, but not exceeding $14,000,000, and $1,000,000, respectively. The notes evidencing such borrowings will bear interest prior to maturity at a fluctuating rate per annum equal at all times to the then current prime commercial lending rate of Manufacturers for 90-day unsecured domestic loans ("Prime Rate") from the date of issuance to December 31, 1982, 102% of the Prime Rate from December 31, 1982 to December 31, 1985, and 104% of the Prime Rate from December 31, 1985 to December 31, 1987. From maturity (whether by acceleration or otherwise), such borrowings shall bear interest at a fluctuating rate per annum equal at all times to 1% plus the Prime Rate until payment in full. Kingsport will pay to each bank under the Agreement a fee for its commitment, computed at the rate of ½ of 1% per annum on the daily average unused amount of such bank's commitment from the effective date of the Agreement to the date of expiration or termination of such commitment. Payment of accrued commitment fees shall be made quarterly on the last day of March, June, September and December in each year on the date of expiration or termination of such commitments. The notes may be prepaid at anytime without premium or penalty.

It is stated that the proceeds of the borrowings will be used by Kingsport to prepay its outstanding notes issued under a Bank Loan Agreement ("Prior Agreement") dated as of March 1, 1977 (File No. 70-5968). Kingsport will use $14,000,000 loaned under the Agreement to prepay the $14,000,000 now outstanding under the Prior Agreement. Kingsport will use the remaining $1,000,000 of credit under the Agreement to pay, or replenish funds expended, to pay expenses of the Company's construction program and for other proper corporate expenses. It is further stated that the issuance of the notes is excepted from the competitive bidding requirements of Rule 50 by reason of paragraph (a)(2) thereof since no finder's fees or commissions are to be paid by Kingsport in connection with the proposed transaction.

The fees and commission to be incurred in connection with this transaction are estimated at $3,250; including legal fees of $1,000. The Tennessee Public Service Commission has approved the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23

promulgated under the Act (HCAR No. 21337), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21402/January 21, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

NATIONAL FUEL GAS DISTRIBUTION CORPORATION:
Buffalo, New York

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

(70-6395)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMERCIAL PAPER AND NOTES TO BANKS BY HOLDING COMPANY AND INTRASYSTEM FINANCING

National Fuel Gas Company, ("National"), a registered holding company, and two of its subsidiaries, National Fuel Gas Distribution Corporation ("Distribution Corporation") and National Fuel Gas Supply Corporation ("Supply Corporation"), have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a),7,9(a), and 10 of the Public Utility Holding Company Act 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions.

National proposes to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $30,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to Distribution Corporation. Such short-term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest equal to the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. In addition, National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are stated to be sufficient to cover these amounts. Assuming an average balance of 20% was required, the effective cost of money, based on a 15.25% prime rate, would be 19.0625%. There will be no commitment fee or any closing or related costs in connection with the above borrowings. National presently intends to repay the $30,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

National proposes to use the proceeds from the sale of its short-term notes to acquire up to $30,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Distribution Corporation. Each such note will be dated the same date and bear the same effective interest rate as the related short-term note of National and will mature within twelve months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without premium, upon payment

of all interest accrued on the principal amount so prepaid to the date of such prepayment. Distribution Corporation intends to use the proceeds from the sale of its notes for working capital, including working capital in connection with deferred gas costs.

National also proposes to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $20,000,000 aggregate principal amount at any one time outstanding of its commercial paper to a dealer in commercial paper and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation. The decision to issue commercial paper or short-term notes is at the discretion of National, except that, if the effective interest cost for commercial paper exceeds the cost of equivalent borrowings from Chase on the date of issue, National will issue its short-term unsecured notes to Chase.

The commercial paper will be sold by National to the dealer in minimum sales amounts of not less than $50,000 and note denominations of not less than $25,000, with varying maturities not to exceed nine months, and will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the commercial paper; however, the dealer will reoffer and sell the commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing discount rate from the dealer to National. The dealer, in reoffering the commercial paper, will limit the reoffer and sale to a nonpublic list of not more than 200 buyers of commercial paper. It is anticipated that the commercial paper of National will be held by the buyer to maturity; however, the dealer may, if desired, repurchase the commercial paper and reoffer it to others on the list of buyers.

The short-term unsecured notes issued to Chase will mature within 12 months of the date of issue, will be payable at any time without premium, and will bear interest equal to the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. As set forth above, National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding.

National proposes to use the proceeds from the sale of its short-term notes and/or commercial paper to acquire up to $20,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Distribution Corporation. Each such note will be dated the same date and bear the same effective interest rate as the related commercial paper and/or short-term note of National. Each note related to the commercial paper of National will mature within nine months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Each note related to a short-term note of National to Chase will mature within twelve months from its date of issue, with interest payable quarterly until the principal amount is paid in full. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any such note at any time or from time to time, in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment.

Distribution Corporation proposes to use the proceeds from the sale of its notes pursuant to this transaction for working capital, including working capital in connection with deferred gas costs. National presently intends to repay its borrowings of $20,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

National further proposes to establish lines of credit with various banks aggregating $50,000,000 and to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, short-term unsecured notes pursuant thereto, up to an aggregate principal amount at any one time outstanding of $50,000,000 and loan the proceeds therefrom to Supply Corporation. The names of the banks and the maximum amount to be borrowed and outstanding at any one time from each bank are as follows:

BUFFALO GROUP

Marine Midland Bank-Western-Buffalo, NewYork	$20,200,000
Manufacturers and Traders Trust Company-Buffalo, New York	11,000,000
Liberty National Bank & Trust Company-Buffalo, New York	4,000,000

ERIE GROUP

* First National Bank of Pennsylvania-Erie, Pennsylvania	2,600,000
Marine Bank-Erie, Pennsylvania	1,700,000
Warren National Bank-Warren, Pennsylvania	1,700,000

OIL CITY GROUP

* First Seneca Bank & Trust Co.-Oil City, Pennsylvania	3,200,000
Pennsylvania Bank & Trust Co.-Titusville, Pennsylvania	2,400,000
Northwest Pennsylvania Bank & Trust Co.-Oil City, Pennsylvania	1,700,000
McDowell National Bank-Sharon, Pennsylvania	1,500,000
	$50,000,000

* Agent Bank

The notes will be dated the date of issue, will mature not later than twelve months from the date thereof, and will be prepayable at any time, in whole or in part, without penalty or premium. The notes issued and sold to the Erie and Oil City banks will bear interest at the prime rate of interest in effect from time to time at Chase. The notes issued and sold to the Buffalo banks will bear interest at the prime rate of interest in effect from time to time of each individual bank. Interest will be payable monthly until the principal amount is paid in full. There will be no commitment fee or any closing or related costs in connection with the above borrowings.

National proposes to use the proceeds from the sale of such short-term notes to acquire for cash from time to time up to $50,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes proposed to be issued by Supply Corporation. Each note will be dated the date and bear the effective interest rate of the related short-term notes of National. Each note will mature within twelve months from its date of issue, with interest payable monthly until the principal amount is paid in full. Supply Corporation will have the option to prepay any note issued pursuant to this transaction at any time or from time to time, in whole or in part, without penalty or premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment.

Supply Corporation intends to use the proceeds from the sale of its notes for working capital and to purchase gas placed in storage during the summer months. Repayment of these notes by Supply Corporation will be made as gas is withdrawn from storage and sold and from funds generated internally.

Finally, it is stated that during 1980, Supply Corporation will have excess cash resulting from the sale by Supply Corporation of gas withdrawn from storage. Thus, Supply Corporation and Distribution Corporation request authority during the period from January 21, 1980, through December 31, 1980, for Supply Corporation to loan and reloan to Distribution Corporation excess cash generated as a result of the sale by Supply Corporation of gas withdrawn from storage to the extent that such cash is available and is required by Distribution Corporation for working capital, but not in excess of $50,000,000 aggregate principal amount at any one time outstanding. The funds would be loaned in exchange for unsecured notes maturing within one year. Interest will be payable monthly, at the commercial paper rate applicable to National in effect at the time the loan is made. Distribution Corporation will have the option, after payment of all notes of prior maturity, to prepay any such note at any time or from time to time in whole or in part, without premium, upon payment of all interest accrued on the principal amount so prepaid to the date of such prepayment. Distribution Corporation proposes to repay these loans through monies received as a result of bank borrowings or the sale of commercial paper by National as outlined above.

It has been requested that authorization be granted to file on a quarterly basis certificates under Rule 24 with respect to the proposed transactions and that the issuance and sale of the commercial paper be exempted from competitive bidding pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $4,800. No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act

(HCAR No. 21350), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended as requested so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21403/January 21, 1980

In the Matter of

ALABAMA POWER COMPANY
Birmingham, Alabama

GULF POWER COMPANY
Pensacola, Florida

GEORGIA POWER COMPANY
Atlanta, Georgia

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-6367)

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS FOR SINKING FUND PURPOSES

Alabama Power Company ("Alabama"), Gulf Power Company ("Gulf"), Georgia Power Company ("Georgia"), and Mississippi Power Company ("Mississippi"), all of which are public-utility subsidiaries of The Southern Company, a registered holding company, have filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions.

Alabama, Georgia, Gulf, and Mississippi propose to issue their respective first mortgage bonds ("sinking funds bonds") and to surrender such sinking fund bonds to the trustees under their respective indentures for the purpose of satisfying the sinking fund (improvement funds, in the case of Alabama) requirements thereunder to be satisfied on or prior to June 1, 1980. The amounts and series of sinking fund bonds proposed to be issued are as follows:

The sinking fund bonds are to be issued on the basis of unfunded net property additions, thus making available for general corporate purposes cash which would otherwise be needed to satisfy the sinking fund requirements or to purchase bonds to be used for such purpose. It is stated that

the issuance of the sinking fund bonds is exempt from the competitive bidding requirements of Rule 50 by reason of clause (a)(5) thereof inasmuch as such bonds will not constitute obligations of the companies for the payment of money.

Each of the indentures has similar coverage requirements regarding the issuance of bonds for sinking (improvement) fund purposes. Currently, Alabama does not have the necessary coverage to issue any additional bonds under its indenture because of inadequate earnings. If, at the time necessary to satisfy the sinking fund requirement, Alabama is unable to issue additional bonds for that purpose, it will be necessary for Alabama to satisfy such requirement by depositing cash or reacquired bonds with its trustee.

The issuance of the sinking fund bonds by Alabama and Gulf have been expressly authorized by the Alabama Public Service Commission and the Florida Public Service Commission, respectively. Georgia has not yet obtained authorization from the Georgia Public Service Commission with respect to the issuance of its bonds, and, according, jurisdiction thereover will be reserved herein.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21258), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the issuance of sinking fund bonds by Alabama, Gulf, and Mississippi and that no adverse findings are necessary with respect to those transactions and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective with respect to the issuance of sinking fund bonds by Alabama, Gulf, and Mississippi:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith with respect to the issuance of sinking fund bonds by Alabama, Gulf, and Mississippi, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the issuance of sinking fund bonds by Georgia pending completion of the record with respect to that transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21404/January 22, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6394)

ORDER AUTHORIZING ISSUE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Indiana & Michigan Electric Company, ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration and amendments thereto pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

I&M proposed to issue and sell, subject to competitive bidding requirements of Rule 50 under the Act, up to $55,000,000 aggregate principal amount of its first mortgage bonds of a new series ("Bonds"), to mature in net less than 5 years and not more than 30 years. The interest rate (which will be expressed in a multiple of ⅛ of 1%) and the price to be paid to I&M for the Bonds (which shall not be less than 100%, unless the Company shall authorize a lower percentage not less than 99%, and shall not exceed 102.75%) will be determined

by competitive bidding. The terms of the Bonds will preclude I&M from redeeming any such Bonds prior to a date five years subsequent to the first day of the month in which the Bonds are first authenticated and delivered, if such redemption is for the purpose of refunding such Bonds through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to I&M of such Bonds. The Bonds will be issued under an indenture supplemental ("Supplemental Indenture") to I&M's Mortgage and Deed of Trust, dated as of June 1, 1939, as amended and supplemented, and that, in the Supplemental Indenture, I&M will formally convey to the Trustees under said Mortgage and Deed of Trust the properties formally owned by Indiana & Michigan Power Company, which were acquired by I&M as a result of the merger which was completed on November 30, 1979. The Bonds will not be issued and sold, however, unless I&M shall receive, subsequent to December 31, 1979 and prior to such sale, one or more cash capital contributions in an aggregate amount of $25,000,000 from AEP. The making of such cash capital contributions by AEP is the subject of a separate application with this Commission (File No. 70-6361).

The proceeds from the sale of the Bonds, together with the proceeds of the cash capital contributions and any other funds available to I&M, will be used to repay unsecured short-term indebtedness of I&M consisting of notes payable to banks and commercial paper. As of November 14, 1979, I&M had approximately $107,440,000 principal amount of short-term debt outstanding, and it is anticipated that, at the time of the sale of the Bonds, not less than $100,000,000 aggregate principal amount of such unsecured short-term debt will be outstanding.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $236,410; including legal fees of $65,000. The Public Service Commission of Indiana and the Michigan Public Service Commission have approved the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21343), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interst and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21405/January 22, 1980

In the Matter of

VERMONT YANKEE NUCLEAR POWER COOPERATION
77 Grove Street
Rutland, Vermont 05701

(70-6405)

NOTICE OF PROPOSED SHORT-TERM BORROWING

NOTICE IS HEREBY GIVEN that Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), an electric utility subsidiary of both New England Electric System and Northeast Utilities, registered holding companies, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declara-

tion, which is summarized below, for a complete statement concerning the proposed transaction.

Vermont Yankee operates a 540 MW nuclear-powered generating plant in Vernon, Vermont. During 1980 and 1981, Vermont Yankee will be receiving shipments for uranium for ultimate fabrication into nuclear fuel for its reactor and will be making capital improvements which will necessitate payments in excess of Vermont Yankee's current lines of credit. Vermont Yankee currently maintains lines of credit in the principal amount of $6,000,000 each with the First National Bank of Boston and Chase Manhattan Bank (the "Banks"). As of November 30, 1979, Vermont Yankee had $4,000,000 in loans outstanding under those lines.

Vermont Yankee requests a short-term borrowing authorization through December 31, 1981 of up to $16,000,000 aggregate principal amount oustanding at any one time. It is anticipated that these borrowings will be repaid during such period by internally generated funds. The borrowings would be from the Banks pursuant to proposed increased lines of credit ($8,000,000 with each Bank) and would be evidenced by promissory notes having a maturity of up to three months from date of issuance and bearing interest at the Bank's prime rate. The Banks will require compensating balances equal to 7.5% of the lines and 7.5% of any borrowings thereunder. It is stated that assuming full borrowings under the lines and a prime rate of 15 ¼% per annum, the effective costs of borrowings would be 17.94%.

Vermont Yankee claims an exemption from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(2) since the short-term promissory notes mature in less than 10 years, will be issued to commercial banks not for resale to the public and provide for no finder's fee or similar fees to third persons for negotiating the transaction.

The fees and expenses to be incurred in connection with the proposed transaction are $3,250, including legal fees of $750. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than February 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearaing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21406/January 22, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6398)

NOTICE OF PROPOSED TRANSACTIONS RELATED TO FINANCING CONSTRUCTION OF POLLUTION CONTROL FACILITIES; REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that New England Power Company ("NEPCO"), an electric utility subsidiary company of New England Electric System, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

NEPCO proposes to enter into a Loan Agreement ("Agreement") with the Massachusetts Industrial Finance Agency ("MIFA"), an independent public corporation empowered to issue tax-exempt pollution control bonds for the benefit of industrial enterprises, concerning the financing of certain pollution control facilities being constructed at NEPCO's Brayton Point generating station in Somerset, Massachusetts. NEPCO is converting three of the four generating units at Brayton Point from oil burning to coal and must construct pollution control facilities in order to comply with federal and Massachusetts environemntal standards. It is currently estimated that the total cost of coal conversion will be approximately $175 million. NEPCO believes that about $90 million will be eligible for tax-exempt pollution control financing.

Under the Agreement, MIFA will issue bonds to the public and loan the proceeds to NEPCO, which, in turn, will issue general and refunding bonds (G & R Bonds) to MIFA in equivalent amounts with payments to be made to MIFA at such times and in such amounts as will correspond to the payments for principal, premiums and interest on MIFA's bonds. The vehicle for making payments to MIFA will be the Series C and D G & R Bonds. The proceeds of the MIFA bond sale will be deposited with a corporate trustee (the "MIFA Trustee") and will be released to NEPCO for the payment of costs, as they are incurred, of pollution control expenditures relating to the coal conversion project. NEPCO will not be a party to the underwriting agreement between MIFA and the underwriters but that agreement will provide that the terms of the bonds and their sale by MIFA shall be satisfactory to NEPCO.

In light of current high interest rates, NEPCO proposes to complete this financing in two phases. The first phase will be the issue of 3 year MIFA Bonds. The principal amount of these bonds will not exceed $90 million. The interest rate, form and maturity of these bonds will be approved by the board of directors of MIFA. It is stated that further orders from state commissions will be necessary if the interest rate exceeds 9% per year. It is expected that the 3 year MIFA Bonds will be redeemable during the last year, however, if market conditions require, these bond will not be redeemable prior to maturity, except upon the occurrence of certain events such as loss of tax-free status, destruction of the pollution control facilities, etc.

The second phase will be the refinancing of the 3 year MIFA Bonds with long-term bonds having a maturity of not to exceed 30 years. The structure of the 30 year financing will be similar to the 3 year financing, except for interest and redemption provisions. The 30 year MIFA Bonds will be redeemable as a whole or in part at the option of MIFA, upon 30 days notice, after the expiration of 10 years from the date of the bonds, or at any time upon the occurrence of certain events such as loss of tax-free status or destruction of the polllution control facilities. The Agreement will provide that MIFA will exercise its redemption option at NEPCO's request. The bonds will be subject to mandatory redemption through operation of a sinking fund as may be agreed upon prior to the 30 year issue. If the 30 year MIFA Bonds are issued prior to the date when the 3 year MIFA Bonds mature or are to be redeemed, the proceeds from the long-term issue will be deposited with the

MIFA Trustee who will hold the proceeds or investments thereof in trust for the benefit of the bondholders. The MIFA Trustee will, upon receipt of the proceeds, deliver an equivalent amount of the 3 year G & R Bonds to NEPCO.

NEPCO will evidence its obligations to MIFA by the delivery of G & R Bonds in principal amount equal to the principal amount of the MIFA Bonds. There will be a separate issue of G & R Bonds as part of both MIFA Bond issues in order that the interest rate, maturity and redemption provisions may be equivalent to that of the MIFA issues which they support. The first NEPCO issue will not exceed $90 million of General and Refunding Mortgage Bonds, Series C, due 1983. The Series C Bonds will be the third issue under NEPCO's General and Refunding Mortgage indenture and Deed of Trust (G & R Indenture) dated as of January 1, 1977 as amended and supplemented. The second issue will be not exceeding $90 million of General and Refunding Mortgage Bonds, Series D.

The G & R Indenture requires that first mortgage bonds be issued and pledged to the maximum amount permissable (less a reserve for sinking and improvement fund requirements) under the First Mortgage indenture as additional security for all G & R Bonds. The series C and D Bonds will have a lien subordinate to NEPCO's first mortgage bonds.

At the time Series C Bonds are issued, NEPCO will issue and pledge Seriex X First Mortgage Bonds, in an amount not to exceed $20 million, to the trustee under the G & R Indenture ("G & R Trustee"). This represents a first mortgage claim for the holders of G & R Bonds, including the Series C Bonds. The exact amount of the Series X Bond issue will be determined at the time the Series C Bonds are issued. The Series X Bonds will not pay interest as long as interest payments are made on the Series C Bonds, and to the extent payments of principal are made on the Series X Bonds, the debt due from NEPCO to the holders of the Series C Bonds will be reduced so there will be no double recovery.

At the time the Series D Bonds are issued, NEPCO will issue and pledge Series Y First Mortgage Bonds in an amount not to exceed $90 million. The Series Y Bonds will be pledged to the G & R Trustee as security for holders of all G & R Bonds. The provisions of these bonds, except for interest rates, maturity, redemption provisions and a sinking fund, will be essentially the same as those for the Series X Bonds. The exact amount of these bonds will depend upon the property then available.

When the amount of the pledged first mortgage bonds equals the amount of G & R Bonds, the security will be equivalent to that of first mortgage bonds. No new first mortgage bonds will be issued to the public under the first mortgage indenture, however, the other provisions of the first mortgage indenture, including the improvement fund, maintenance obligations and similar protections will remain in full force. When there are no more publicly held first mortgage bonds, the first mortgage indenture will be discharged and the G & R Bonds will have a first mortgage lien.

NEPCO requests that the issuance of Series C and D Bonds be exempted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof, and requests exemption from such requirements for the proposed issue and pledge of Series X and Y Bonds pursuant to paragraph (a)(4) thereof.

The fees and expenses to be incurred in connection with this transaction will be supplied by amendment. It is stated that the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission, the Vermont Public Service Board and the Connecticut Public Utilities Control Authority have jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, and reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the

applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11024/January 18, 1980

In the Matter of

CONTINENTAL ILLINOIS LEASING CORPORATION
231 South LaSalle Street
Chicago, Illinois 60693

and

CUIC INVESTORS CO. #12
AEIC INVESTORS CO. #12
EFIC INVESTORS CO. #12
NACA INVESTORS CO. #12
100 West Tenth Street
Wilmington, Delaware 19801

(812-4585)

NOTICE OF APPLICATION PURSUANT TO SECTION 3(b)(2) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY IS NOT AN INVESTMENT COMPANY OR, ALTERNATIVELY, FOR AN ORDER PURSUANT TO SECTION 6(c) EXEMPTING COMPANY FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Continental Illinois Leasing Corporation, CUIC Investors Co. #12, AEIC Investors Co. #12, EFIC Investors Co. #12, and NACA Investors Co. #12 ("Applicants") have filed an application on December 19, 1979, pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), for an order of the Commission declaring that the Niagara Mohawk Power Corporation Preferred Trust ("NMPC Preferred Trust") is not an investment company, or, alternatively, for an order pursuant to Section 6(c) of the Act exempting the NMPC Preferred Trust from all provisions of the Act. All interested persons are referred to the application filed with the Commission for a statement of the representations contained therein, which are summarized below.

Continental Illinois Leasing Corporation ("CILC"), a Delaware corporation, is a wholly-owned

subsidiary of Continental Illinois Corporation, a publicly owned company. CUIC Investors Co. #12 ("CUIC"), AEIC Investors Co. #12 ("AEIC"), EFIC Investors Co. #12 ("EFIC"), and NACA Investors Co. #12 ("NACA") are Delaware corporations, which are wholly-owned subsidiaries, respectively, of CUIC Leasing, Inc., AEIC Leasing Inc., EFIC Leasing Inc., and NACA Leasing Inc. Each such leasing company is a Delaware corporation. Such leasing companies are wholly-owned subsidiaries, respectively, of Commercial Union Insurance Company, American Employers' Insurance Company, The Employers' Fire Insurance Company and The Northern Assurance Company of America. Each such insurance company is a Massachusetts corporation with its principal office at One Beacon Street, Boston, Massachusetts 02108. Each such insurance company is a wholly-owned subsidiary of Commercial Union Corporation, a Delaware corporation, which is a wholly-owned subsidiary of Commercial Union Assurance Company Limited, a publicly owned company incorporated under the laws of the United Kingdom.

The application states that CILC proposes to invest $5 million in the transaction which is the subject matter of the application. CILC's total assets aggregate approximately $269,000,000 as of July 31, 1979, none of which represents investments in "investment companies" within the meaning of the Act. The application asserts that after giving effect to this transaction, CILC's aggregate investment in "investment companies" would constitute less than two percent of its investment portfolio. The application further states that CUIC, AEIC, EFIC, and NACA propose to invest $3,400,000, $975,000, $400,000 and $225,000, respectively, in the transaction which is the subject matter of the application. Aggregate investments of the parent insurance companies of CUIC, AEIC, EFIC and NACA are approximately $948,000,000, $263,000,000, $103,000,000 and $59,000,000 respectively, as of September 30, 1979. The application states that the aggregate investment of the Applicants and their parent companies in "investment companies" within the meaning of the Act appears to be less than $50,000 as of September 30, 1979.

The application states that Applicants will enter into a trust agreement (the "Trust Agreement"), with United States Trust Company of New York as owner trustee (the "Owner Trustee"), for the purpose of acquiring from Niagara Mohawk Power Corporation, a publicly owned electric and gas utility incorporated under the laws of the State of New York ("NMPC"), 1,600,000 shares of $25 par value ($40,000,000 total purchase price), sinking fund preferred stock (the "Preferred Stock"), of a new series ranking *pari passu* with all existing and future series of NMPC preferred stock. The trust thereby created will be the NMPC Preferred Trust. The Preferred Stock will yield dividends accruing from the dates of issue thereof at the annual rate of 8.20 percent. The dividend rate may be adjusted to a maximum of 8.60 percent if certain economic or tax conditions have changed as of such dates. The purpose of the formation of the NMPC Preferred Trust is to permit the Applicants to make their pro rata investments in the Preferred Stock and to finance and account for a portion of the cost of such investment on a non-recourse basis.

The application further states that NMPC Preferred Trust's capital will consist of $10,000,000 of equity, equal to 25 percent of the total cost of the Preferred Stock, contributed by the Applicants as the beneficial owners, in proportion to their respective interests in the NMPC Preferred Trust, and also of the proceeds of a private placement of the NMPC Preferred Trust's 10-7/8% Secured Notes Due 2001 (the "Notes") aggregating $30,000,000 in principal amount, to be issued under a trust indenture and security agreement (the "Indenture") between the Owner Trustee and a corporate trustee, as indenture trustee (the "Indenture Trustee"). The notes will be purchased by two institutional investors, Connecticut General Life Insurance Company and John Hancock Mutual Life Insurance Company (the "Purchasers"). The Notes will be secured by the Preferred Stock and, in implementation of such security interest, the certificates for the Preferred Stock will be physically delivered to the Indenture Trustee.

The application states that both the Preferred Stock and the Notes are being purchased in private placement transactions, with the Applicants representing that the stock is being acquired by the NMPC Preferred Trust for investment and not with a view to any resale or distribution thereof and, similarly, the Purchasers representing that the Notes are being acquired for investment and not with a view to any resale or distribution thereof.

The application states that the Owner Trustee will not have the power to reinvest moneys in additional securities or in any manner to vary the investment of the Applicants. Furthermore, since the Owner Trustee is required by the Trust Agreement to distribute all amounts received with respect to the NMPC Preferred Trust promptly upon receipt, in the order of priority stated in the Trust Agreement, no reinvestment of such amounts is possible.

Section 3(a) of the Act defines an "investment company" to include "any issuer" which "(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities" or "(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." The Preferred Stock constitutes "investment securities" as defined in the Act, and "issuer" as defined includes "a trust".

While the application states that Applicants believe that the NMPC Preferred Trust is not engaged in the "business' of investing, reinvesting, owning, holding or trading in the securities, but rather is merely a vehicle for the investment being made by the Applicants, inasmuch as the Preferred Stock constitutes the NMPC Preferred Trust's only significant asset and the NMPC Preferred Trust has no function other than as set forth in the Trust Agreement in respect of the Preferred Stock, the inference could be drawn that the NMPC Preferred Trust is, primarily or otherwise, engaged in the business of "investing" or "owning" or "holding" the Preferred Stock.

Section 3(b)(2) of the Act excludes from the definition of investment company "[a]ny issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities. . . ." In the alternative to issuance by the Commission of an order pursuant to Section 3(b)(2), the application requests that the Commission issue an appropriate order under Section 6(c) exempting the NMPC Preferred Trust from all the provisions of the Act and the rules and regulations thereunder. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person or transaction from any provision or provisions of the Act to the extent such exemption is necessary or appropriate in the public inteest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The application submits that while the NMPC Preferred Trust may be regarded, literally speaking, as investing in the Preferred Stock and owning and holding the same under the terms of the Trust Agreement, looking to the realities of the transaction, these literal functions may not fairly be regarded as comprising the "business" of the trust. According to the application, the purchase of the Preferred Stock by the NMPC Preferred Trust is dictated by the investment commitment of the Applicants and represents in no manner any investment judgement on the part of the Owner Trustee. Furthermore, the provisions of the Trust Agreement prevent the Owner Trustee from disposing of the Preferred Stock or varying in any manner the investment of the Applicants, and physical control of the certificates representing the Preferred Stock will have been transferred by the Owner Trustee to the Indenture Trustee in perfection of the security interest in the Preferred Stock granted in favor of the holders of the Notes. The NMPC Preferred Trust is the vehicle through which the Applicants will have made their investment in the Preferred Stock and the function of the Owner Trustee under the Trust Agreement will be a corporate trust function, namely, that of acquiring the Preferred Stock, effectuating the financing transaction with the Purchasers (which will include surrendering possession of the certificates for the Preferred Stock) and collecting and disbursing distributions on the Preferred Stock. Under the security arrangements for the Notes, distributions on the Preferred Stock will first be applied as debt service on the Notes; any remaining distribution balances will then be disbursed to the Applicants as the return on their equity investment.

The application submits that the purchase of the Notes by the Purchasers is not the kind of transaction anticipated by the Act. Payment of the Notes will not be in any way dependent on any investment policy or activities of the Owner Trustee, and therefore the Purchasers do not require the

protection afforded by the Act. Moreover, the application contends that the NMPC Preferred Trust would probably be excluded from the definition of investment company by the proposed amendment to Rule 3c-2 of the Act.

The Applicants have agreed and consented that the NMPC Preferred Trust will not issue any additional debt or any equity securities unless the Owner Trustee shall first have given written notice to the Commission describing the proposed issuance of such additional securities, at least 30 days prior to the date of such proposed issuance. If the Commission shall, after receipt of said written notice, determine that a substantial question shall exist as to whether the exemption granted by the order requested hereunder should continue, it shall mail or otherwise give notice to that effect to the Owner Trustee at its office located at 130 John Street, New York, New York 10038, Attention: Corporate Trust & Agency Division (or at such other address as the Owner Trustee may have previously specified in writing to he Commission) within 15 days after the receipt by the Commission of said written notice from the NMPC Preferred Trust. If the Commission shall give such notice to the Owner Trustee, the NMPC Preferred Trust will not consummate the proposed issuance of such additional debt or equity securities except in accordance with an appropriate order of the Commission.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 12, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11025/January 18, 1980

In the Matter of

AMERICAN VARIABLE ANNUITY LIFE ASSURANCE COMPANY

THE A.V.A. INCOME FUND

THE A.V.A. QUALIFIED INCOME FUND

AMERICAN VARIABLE ANNUITY FUND

AND

SMA EQUITIES, INC.
440 Lincoln Street
Worcester, MA 01605

(812-4536)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(c(2), and 27(d) OF THE ACT AND RULE 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that American Variable Annuity Life Assurance Company (the "Company"), its separate accounts, The A.V.A. Qualified Income Fund ("AVAQIF"), The A.V.A. Income Fund ("AVAIF"), and American Variable Annuity Fund ("AVAF") (AVAQIF, AVAIF and AVAF hereinafter collectively referred to as the "Funds") and

SMA Equities, Inc. ("SMAE"), the principal underwriter for the Funds, (the Company, the Funds and SMAE collectively referred to herein as "Applicants") filed an application on September 13, 1979 and Amendment No. 1 thereto on December 28, 1979 for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from Sections 2(a)(32), 22(c), 27(c(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary or appropriate to permit appplicants to offer the variable annuity policies described in the application. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations therein, which are summarized below.

Introduction

The Company is a stock life insurance company organized under the provisions of the Delaware Insurance Code in July, 1974 with its principal operational office located in Worcester, Massachusetts. It is the successor in interest by virtue of merger to the stock life insurance company of the same name which was incorporated in the State of Arkansas in January, 1967. The Company is a wholly-owned subsidiary of State Mutual Life Assurance Company of America ("State Mutual"), a mutual life insurance company incorporated under the laws of the Commonwealth of Massachusetts in 1844. The Company is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the national Association of Securities Dealers ("NASD").

The Funds are registeres under the Act as open-end management investment companies. Te Funds are separate accounts of the Company maintained pursuant to Section 2933 of the Delaware Insurance Code for the purpose of holding certain assets as reserves for certain of the Company's variable annuity policies. Each Fund constitutes a "separate account" as defined in Section 2(a)(37) and Rule 0-1(e) under the Act and complies with the conditions for availability of the exemptive rules referred to therein.

All series of the Company's variable annuity policies permit purchase payments to be allocated to AVAF. The principal investment objective of AVAF is to select investments from the viewpoint of a prudent investor concerned primarily with longterm growth of capital in relation to the expansion of the economy and the changing value of the dollar. Issets of expansion of the economy and the changing value of the dollar. Assets of AVAF will normally consist of a diversified portfolio of common stocks and other equity securities. Policies participating in AVAF include both those funding retirement plans entitled and those not entitled to special tax treatment under the Internal Revenue Code of 1954 ("Code").

The Company issues a series of variable annuity policies pursuant to which purchase payments may be allocated to AVAQIF or AVAIF as well as to AVAF. AVAQIF is available under contracts issued in connection with retirement plans qualifying under Section 401, 403, 408 or 457 of the Code; AVAIF is available under contracts issued in connection with retirement plans which do not qualify for special tax treatment. The principal investment objective of both AVAQIF and AVAIF is to seek as high a level of current income as is consistent with prudent investment management. The assets of AVAQIF and AVAIF will normally be invested in a diversified portofolio of fixed income securities.

SMAE serves as the principal under writer for the Funds. SMAE is indirectly a wholly-owned subsidiary of State Mutual organized under the laws of the Commonwealth of Massachusetts on March 27, 1969. SMAE is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of NASD.

Applicants propose to issue two new series of individual variable annuity policies ("Policies") to be funded by the Funds, one a "single payment" Policy ("Single Payment Policy") and the other an "elective payment" Policy ("Elective Payment Policy"). The Policies may be used for either immediate or deferred annuties. Single Payment Policies will be available for a single payment in a minimum amount of $5,000; no further payments will be accepted under such Policies. Elective Payment Policies will permit multiple purchase payments unlimited as to frequency or number hut with initial and subsequent payment minimums of $600 and $50, respectively.

The $600 initial payment minimum is reduced to $50 in connection with the monthly automatic payment plan or a salary reduction/deduction ar-

rangement. It is also reduced in connection with retirement plans qualified under Section 401 of the Internal Revenue Code where the contribution on behalf of any employee is less than $600 but more than $300 and the average annual contribution per eligible participant is at least $600.

Under each type of Policy net purchase payments may be allocated to either AVAF, AVAQIF or AVAIF, depending on whether the Policy is issued on connection with a tax favored plan, or to the general account of the Company for accumulation on a fixed basis. Prior to the annuity commencement date, amounts accumulated under the Policies may be transferred among the Funds and between any Fund and the Company's general account without imposition of any charge. All transfers must be with the consent of the Company and must comply with whatever maximum and minimum dollar limitations and other nondiscriminatory rules restricting transfers the Company may impose. Upon commencement of annuity payments, the owner of the Policy ("Policy Owner") may select a variable annuity reflecting the performance of AVAF, or a fixed annuity or a combination of both.

Contingent Deferred Sales Charge

The proposed Policies would assess no sales charge from the gross purchase payments under the Policies. In lieu of a front-end sales charge, Applicants propose to assess a contingent deferred sales charge which will be applied in the case of contract surrenders, partial withdrawals or annuitization under a period certain option during the periods described below or in the event the contract owner annuitizes under an option involving a life contingency during the first five contract years.

Upon surrender, the Policy Owner will be paid an amount equal to the accumulated value under the Policy minus the amount of the contingent deferred sales charge, if applicable, and the Policy will be cancelled. The amount of the charge and the period during which the charge is made differs depending on whether the Policy is a Single Payment Policy or an Elective Payment Policy.

Under Single Payment Policies, the contingent deferred sales charge would be assessed on surrenders during the first nine full contract years as follows:

Years 1-5	5%
Year 6	4%
Year 7	3%
Year 8	2%
Year 9	1%

The charge will be applied as a percentage of the total accumulated value under the Policy and in no event may the charge exceed 6.5% of the gross payments. On and after the 10th Policy anniversary, no charge will be assessed on surrenders of a Single Payment Policy.

Under Elective Payment Policies, the contingent deferred sales charge would be assessed on contract surrenders during the first 14 Policy years as follows:

Years 1-11	8%
Year 12	6%
Year 13	4%
Uear 14	2%

The charge will be applied as a percentage of the total accumulated value under the Policy but in no event may the charge exceed 8% of the gross purchase payments. On and after the 15th Policy year no charge will be assessed on a surrender of an Elective Payment Policy.

Hereinafter the term "Surrender Charge Period" shall be used to mean the period during which the contingent deferred sales charge would be imposed under Single Payment Policies and the period during which the contingent deferred sales charge would be imposed under Elective Payment Policies described above.

Both types of Policies would permit a Policy Owner to make a partial withdrawal of the accumulated value under the Policy at any time prior to the annuity commencement date subject to $2,000 of accumulated value remaining under a Single Payment Policy and $200 under the Elective Payment Policy. A contingent deferred sales charge will be assessed on partial redemptions in the same percentage and during the same period as the charge applicable to surrenders described above. The contingent deferred sales charge will be assessed on partial redemptions as a percentage of the

amount redeemed. The amount redeemed will be the amount requested by the Policy Owner plus the amount of the charge. The amount redeemed is calculated by dividing the amount requested by the Policy Owner by a number equal to one minus the applicable percentage of the charge. The charge is calculated by multiplying the amount redeemed by the applicable percentage of the charge. A partial redemption will result in cancellation of a number of accumulation units equal in value to the amount redeemed.

The contingent deferred sales charge will be assessed if the Policy Owner elects to begin receiving annuity payments under an option involving a life contingency during the first five Policy years or if an annuity under a period certain option is commenced during the Surrender Charge Period. The charge will be 8% under Elective Payment Policies and 5% under Single Payment Policies except if an annuity under a period certain option is commenced during the Surrender Charge Period, a charge will be assessed in the same percentage and during the same periods as the charge applicable to surrenders described above. In all cases, the charge will be applied as a percentage of accumulated value under the Policy but, under an Elective Payment Policy, the charge may not exceed 8% of the gross purchase payments and, under a Single Payment Policy, the charge may not exceed 6.5% of the gross purchase payments. During the first five Policy years, the value applied under an annuity option involving a life contingency or, during the Surrender Charge Period, the value applied under a period certain option will be the accumulated value under the Policy reduced by the amount of the charge. After the expiration of such periods, the value applied under an annuity option will be equal to the accumulated value under the Policy.

In no event may the total of contingent deferred sales charges assessed on partial redemptions and surrenders or annuitizations described above exceed 8% of the gross purchase payments under Elective Payment Policies and 6.55 of the gross purchase payment under Single Payment Policies.

In all cases, the contingent deferred sales charge will be retained by the Company to reimburse it for the expenses incurred in connection with the sale of the Policies. These expenses include commissions, promotional costs, sales administration and the like.

Other Charges Under the Policies

On Elective Payment Policies a semi-annual administrative expense charge of $9 will be deducted from the accumulated value under the contract by cancelling a number of units equal in value to $9; no charge will be made if the total accumulated value under a Policy exceeds $10,000. Where the Policy Owner has allocated amounts to more than one account, a percentage of the total $9 charge will be deducted from each such account. The percentage of the charge deducted from each account will be equal to the percentage which the value in that account represents of the total accumulated value under the Policy.

On Elective Payment Policies issued in connection with employer-sponsored retirement plans with a minimum of 25 participants, the employer, at his option, can arrange that the administrative expense charge be billed to the employer semi-annually at a rate grading downward from $9 per policy.

On Single Payment Policies, an administrative charge of $50 will be deducted from purchase payments of under $10,000; no administrative charge will be made on purchase payments of over $10,000.

The charges described above are for administrative expenses incident to Policy issue and maintenance. None of the administrative expense charges are directly allocated to sales expenses.

A daily charge equivalent to 1.50% on an annual basis will be made against the assets of each of the Funds. The Policies provide that this charge can be increased or decreased by vote of the Board of Directors of the Company but in no event may the charge exceed 1.875% on an annual basis.

Of the 1.50% charge, .25% is paid to the Company's affiliate, Colonial Management Associates, Inc., for investment advisory services, .10% is to repay the contingency reserve required to be established by the Company under New York Insurance Law, .15% is for Board of Managers fees and expenses and audit fees and 1.00% *1 is for mortality and expense risks. The expense risk arises from the Company's guarantee that the charges it makes will not exceed the limits provided in the*

Policies and described in the prospectus. The mortality risk arises from the Company's guarantee of annuity rates under the Policies. The Company is unable to accurately specify the amount of the asset charge which is attributable to either the mortality risk or the expense risk. However, the Company estimates that a reasonable allocation might be .60% for mortality risk and .40% for mortality risk and .40% for expense risk. These amounts represent the insurance element in the Policies.

Applicants represent that the Company does not allocate any portion of the asset charge described above to direct recovery of sales expense. The total asset charge is allocated to the general account of the Company which bears the cost of all expenses related to the contracts including mortality costs, administrative expenses, general expenses and sales expenses. However, the asset charges affect the Company only insofar as they relate to revenue from the aggregate of all the Policies as offset by the expenses attributable to all the Policies. In addition to the other charges described above the Company will make a charge for state premium taxes, where applicable. Such taxes currently range from 0 to 2.50%.

Discussion

Applicants assert that the contingent deferred sales charge under the proposed new Policies is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants further assert that the contingent deferred sales charge is in the best interests of the purchasers of the Policies. Applicants have stated that, if exemption is granted, it will permit all of the purchaser's purchase payments to be invested on his behalf immediately and the purchaser would enjoy the immediate advantage of having his contributions to his Policy value increased by the amount that would have been deducted if a front-end sales charge were assessed. In addition, Applicants state that the Policy Owner has the opportunity for the growth in the value of those additional accumulation units that would not have been purchased were the sales charge deducted from the purchase payment.

Moreover, Applicants state that if a Policy Owner annuitizes under an option involving a life contingency at any time after the first 5 Policy years or under a period certain option after the expiration of the Surrender Charge Period and does not surrender the contract or make partial redemptions during the charge periods described above, contributions to the Policy will be completely free from imposition of any sales charge. Further, additional contributions made to the Elective Payment Policy after the first 14 years will be completely free of imposition of any sales charge even if withdrawn immediately.

Applicants state that the contingent deferred sales charge represents a means by which the Company can eliminate the sale charge for its deferred annuity customers with long-term persistency while providing for reimbursement to the Company of sales and promotional expenses incurred in connection with Policies whose persistency has not been sufficient to permit the Company to otherwise recoup such expenses. The amount, the computation, and the timing of the contingent deferred sales charge are designed to protect the Company from the financial loss that would be incurred as a result of premature Policy terminations. Applicants state that the reason for imposition of the contingent deferred sales charge on Policies which annuitize under a period certain option is that this is essentially equivalent to a surrender as such options can be commuted at any time; the reason for imposition of the contingent deferred sales charge on Policies which annuitize under an option involving a life contingency within 5 years is that the Policy is not priced to permit the Company to recoup the sales and promotional expense on Policies which are used essentially as immediate annuities unless such charge is made. However, Applicants believe that it is preferable to provide for a contingent deferred sales charge on such Policies rather than a front end sales charge because the purchaser may not be certain at the time of purchase when he or she expects to annuitize and if he or she should determine to defer annuitization by at least 5 years, and does not make a surrender, partial redemption or annuitize under a period certain option within the Surrender Charge Period, the Policy would be completely free from sales charge. In the event the purchaser decides to annuitize within the 5 year period, he or she will pay no more than he or she would have paid had the charge been front-ended.

Applicants represent that the variable annuity prospectus will include full disclosure concerning the imposition of the contingent deferred sales charge so that all Policy Owners can decide whether and when surrender, withdrawal or annuitization would be advantageous.

Since the Act expressly defines and permits the assessment of a "sales load" in connection with the issuance of Investment Company securities, Applicants state they are aware of no public policy reasons that should limit the assessment of such charges exclusively to deduction at the time of purchase. To the contrary, public policy should permit the issuer to defer that charge, with the possibility that the charge might never be imposed.

Section 27(c)(2)

Applicants believe that the proposed contingent deferred sales load is consistent with the limitations contained in Section 27(c)(2). However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 27(c)(2), Applicants have requested an exemption from the operation of the provisions of Section 27(c)(2) to the extent necessary or appropriate to permit Applicants to effect their proposed pricing change.

Section 27(c)(2) of the Act makes it unlawful to sell any periodic payment plan certificate unless the proceeds of all payments on such certificates are deposited with a custodian having the qualifications prescribed in Section 26(a)(2), and are held by such custodian under an agreement containing substantially the provisions required in Section 26(a)(2) and (3) of the Act. The Policies may be deemed to be periodic payment plan certificates. However, Section 27(c)(2) excepts deductions for sales load from the requirements that the proceeds be deposited with a custodian. Applicants represent that the contingent deferred sales charge is intended specifically to reimburse Applicants for sales-related expenses. Applicants assert that the deferral of the imposition of this charge, and making it contingent upon an event which may never occur, do not change the basic nature of this charge as a sales charge to which the Section 27(c)(2) exception should apply.

Section 2(a)(35)

Applicants submit that the proposed contingent deferred sales charge is consistent with the intent of the definition of "sales load" contained in the Act. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 2(a)(35), Applicants have requested an exemption from the operation of the provisions of Section 2(a)(35) to the extent necessary or appropriate to permit Applicants to offer the proposed Policies. Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received an invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or "administrative expenses or fees which are not properly chargeable to sales or promotional activities." Clearly, Section 2(a)(35) contemplates that a "sales load" will be charged "front end." The Company proposes to make no front-end deduction from purchase payments for sales charges. However, the Company will continue to incur expenses related to the sale of the Policies, including commissions paid to sales personnel, costs of advertising and sales promotion, costs of the prospectus allocable to new sales and sales administration. Applicants represent that the money to pay these expenses comes from the Company's general account and that the contingent deferred sales charge, therefore, would be retained by the Company to reimburse it solely for expenses related to the sale of the Policies, including commissions, costs of advertising and promotional activity, sales administration, cost of the prospectus allocable to new sales and like expenses. Applicants assert that these expenses are wholly attributable to sales and promotional activity and thus fit squarely within the Section 2(a)(35) definition of "sales load," but for the timing of the imposition of the charge. Applicants state that deferring such sales charge and making it contingent upon the occurrence of an event which might never happen (i.e., changing the timing of the imposition of the charge) permits the Policy Owner to have the increment from that part of his purchase payment which would otherwise have been deducted as a sales load, and, possibly, to escape imposition of the charge completely.

Section 22(c) and Rule 22c-1

Rule 22c-1 prohibits a registered investment company issuing a redeemable security from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that the contingent deferred sales charge is in no way violative of Section 22(c) or Rule 22c-1 promulgated thereunder. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 22(c) and Rule 22c-1, Applicants have requested an exemption from the operation of the provisions of Section 22(c) and Rule 22c-1 to the extent necessary or appropriate to permit Applicants to offer the proposed new Policies with the Contingent deferred sales charge. The value at which a surrender or partial withdrawal is effected will be based on the current net asset value. The contingent deferred sales charge will merely be deducted at such time in arriving at the amount to be paid to the Policy Owner upon surrender or in determining the remaining accumulated value under the Policy in the case of a partial withdrawal.

Section 27(c)(1)

Section 27(c)(1) of the Act prohibits restrictions on the redemption of periodic payment plan certificates. Applicants believe that the assessment of a contingent deferred sales charge upon certain surrenders or withdrawals, which will be fully disclosed in the prospectus, should not be construed as such a restriction on redemption. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 27(c)(1) Applicants request an exemption from the operation of the provisions of Section 27(c)(1) to the extent necessary or appropriate to permit Applicants to effect their proposed pricing change. The Policies are clearly still redeemable securities, whether the sales charge is imposed against the purchase payment at the time of purchase, or whether such charge is deferred and made contingent upon an occurrence at a later instant during the Policy period. This is particularly true where, as here, the deferral of the contingent sales charge until a redemption is effected has the general effect of increasing the Policy value that would be available for redemption were the sales charge deducted from the purchase payment before investment on behalf of the owner.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act requires that the holder of a periodic payment plan certificate surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants submit that the imposition of the contingent deferred sales charge does not violate Section 2(a)(32) or Section 27(d). However, in order to avoid any possibility that questions might be raised as to the potential applicability of Sections 2(a)(32) and 27(d), Applicants request an exemption from the operation of the provisions of Sections 2(a)(32) and 27(d) to the extent necessary or appropriate to permit Applicants to offer the proposed Policies. Both Sections 2(a)(32) and 27(d) contemplate the assessment of a front-end sales load. For purposes of Section 2(a)(32), with a front-end load the holder's "proportionate share" would be the gross purchase payments, less sales load, plus or minus any increase or decrease in valuation. For purposes of Section 27(d) with a front-end load, the holder's account value would be the gross purchase payments, less sales load, plus or minus any increase or decrease in valuation. In each case, the net amount invested contemplates a deduction from gross purchase payments (assuming no state premium tax) and, thus, the holder's "proportionate share" or account value, could be the gross purchase payments, plus or minus any increase or decrease in value, less the contingent deferred sales charge.

Applicants state that deferring the imposition of the sales charge in no way restricts the Policy Owner from receiving his proportionate share of the value of his account on surrender or redemption. The contingent deferred rates charge is merely deductd at the time of redemption in determining the proportionate share of account value, rather than being deducted from purchase payments. The Policy Owner is still entitled to his proportionate share of account value. The contingent deferred sales charge defers the timing of the imposition of the sales charge and makes the charge contingent on the occurrence of an event which might never occure (i.e., it is imposed only on certain redemptions or annuitizations rather than being deducted from each purchase payment). This permits the

purchaser's net amount invested to be increased, with concomitant benefit to the purchaser.

Section 8(c)

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes thereof, from any provisions of the Act or its Rules and Regulations, if and to the extent necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In veiw of the foregoing, Applicants assert that the exemptions requested are appropriate and in the public interest, are consistent with the protection of investors, and are consistent with the purposes fairly intended by the policy and provisions of the Act.

WHEREFORE, Applicants have requested that the Commission enter an order pursuant to Section 6(c) of the Investment Company Act of 1940 granting the exemptions requested in the Application.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 12, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemproraneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following February 12, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or adivce as to whether a hearing is ordered will receive notice of further developments in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11026/January 21, 1980

In the Matter of

VANCE, SANDERS MUNICIPAL BOND FUND, LTD.
EATON & HOWARD, VANCE SANDERS INC.

One Beacon Street
Boston, Massachusetts 02180

(812-4321)

ORDER AMENDING PRIOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(19) OF THE ACT.

Vance, Sanders Municipal Bond Fund, Ltd. ("Bond Fund"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, Eaton & Howard, Vance Sanders Inc. ("EHVS"), investment adviser and principal underwriter for Bond Fund, and Eaton & Howard, Vance Sanders Distributors Inc. ("Distributors"), a newly formed wholly owned subsidiary of EHVS which will assume all of EHVS's activities as principal underwriter for Bond Fund, filed an application on September 10, 1979, for an order, pursuant to Section 6(c) of the Act, amending a prior order of the Commission (Investment Company Act Release No. 10804, August 2, 1979) so that William M. Griffin ("Griffin") shall not be deemed to be an "interested person" of Bond Fund, EHVS or Distributors within the meaning of Section 2(a)(19) of the Act by reason of his status as: (a) a director, executive vice president and chairman of the finance committee

of Hartford Fire Insurance Company ("Hartford Fire"); (b) a director and president of Hartford Securities Company, Inc., a registered broker-dealer and wholly owned subsidiary of Hartford Fire; (c) a director, vice president and chairman of the finance committee of Hartford Life Insurance Company ("Hartford Life"), another wholly owned subsidiary of Hartford Fire; and (d) a director, vice president and chairman of the finance committee of Hartford Variable Annuity Life Insurancce Company, a wholly owned subsidiary of Hartford Life and Parent of Hartford Equity Sales Company, Inc., a registered broker-dealer (such companies are hereinafter referred to as "Hartford Fire and certain of its subsidiaries").

On December 13, 1979, a notice was issued (Investment Company Act Release No. 10982) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for an amended order of exemption from the definition of "interested person" contained in Section 2(a)(19) of the Act, so that Griffin shall not be deemed to be an "interested person" of Bond Fund, EHVS or Distributors by reason of his association with Hartford Fire and certain of its subsidiaries, to the extent requested, be and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11027/January 23, 1980

In the Matter of

FIDELITY MONEY MARKET TRUST
82 Devonshire Street
Boston, Massachusetts 02109

(812-4352)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER OF THE COMMISSION AMENDING A PREVIOUS ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

NOTICE IS HEREBY GIVEN that Fidelity Money Market Trust ("Applicant"), registered under the Investment Company Act of 1940 "(Act") as an open-end, diversified management investment company, filed an application on December 6, 1979, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated January 3, 1979 (Investment Company Act Release No. 10540). This earlier order, pursuant to Section 6(c) of the Act, exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund offering to institutional, corporate and substantial individual investors a convenient and economical means of investment in a professionally managed portfolio of money market instruments with the objective of obtaining as high a level of current income as is consistent with the preservation of capital and liquidity. Applicant further states that its shares are sold without a sales charge.

According to the application, Applicant consists of three portfolios, differentiated in their permitted investments, namely a U.S. Government Portfolio; a Domestic Money Market Portfolio and an Interna-

tional U.S. Dollar-Denominated Money Market Portfolio. Applicant further states that it invests exclusively in various high-grade money market instruments, including U.S. government and federal agency obligations; U.S. dollar-denominated obligations of the largest banks, including United States banks and their branches located outside of the United States and United States branches of foreign banks; prime commercial paper; high-grade corporate obligations which are rated AAA or AA by Standard & Poor's Corporation or Aaa or Aa by Moody's Investor Services, Inc.; and certain repurchase agreements with respect to obligations which, without regard to maturity, it is authorized to invest.

According to the application, all of Applicant's assets are invested in money market instruments maturing in less than one year, and the dollar-weighted averaged portfolio maturity of its portfolio may not exceed 120 days. The minimum initial investment in shares of the Applicant is $250,000 with additional investments accepted in any amount. Applicant further represents that at the close of business on October 31, 1979, its aggregate net assets were approximately $140,838,655. Fidelity Management and Research Company serves as investment adviser to Applicant.

Applicant represents that pursuant to the earlier order of the Commission dated January 3, 1979, Applicant presently computes its net asset value per share to the nearest one cent on a share value of one dollar utilizing the "penny rounding" valuation method. Applicant now seeks an order of the Commission, pursuant to Section 6(c) of the Act, amending this earlier order, which amended order would exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant's assets to be valued according to the amortized cost valuation method. Applicant further states that under the amortized cost valuation method, protfolio instruments are valued at their cost as of the date of acquisition assuming a constant rate of amortization to maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of such instruments.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for with market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors, Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things. (a) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, Applicant's Trustees have determined in good faith that in light of its characteristics as described above, including the conditions to which Applicant must adhere as set

forth in the earlier order of the Commission dated January 3, 1979, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and in Applicant's best interests and reflects the fair value of such securities. Applicant further represents that under the amortized cost method its shareholders would continue to have all the conveniences and advantages of a stable purchase and redemption price of $1.00 per share as described in its previous application to support the exemptive relief granted in such earlier order of the Commission.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested;

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as

[1] Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of portfolio instruments results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Board of Trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Applicant submits that use of the amortized cost method of valuing its portfolio securities, subject to the conditions enumerated above, will benefit its shareholders by enabling the Applicant to more effectively maintain the $1.00 per share purchase and redemption price in a manner which is substantially similar to that permitted under the Commission's earlier order. The Applicant further believes that granting of the requested exemptions by the Commission is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that ny interested person may, not later than February 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

Investment Advisers Act of 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 710A/January 24, 1980

Delegations of Authority to the Director of the Division of Investment Management, the Director of the Division of Enforcement, and the Regional Administrtors; Correction

ACTION: Final rule amendments; correction.

SUMMARY: This document corrects final rule amendments on delegations of authority to the Director of the Division of Investment Management, the Director of the Division of Enforcement, and the Regional Administrators which appear at page 76773 of the FEDERAL REGISTER of December 28, 1979, FR Doc. 79-39620.

EFFECTIVE DATE: December 19, 1979.

FOR FURTHER INFORMATION CONTACT: Michael J. Eizelman, Esq., Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2079.

SUPPLEMENTARY INFORMATION: On page 76774 the first paragraph under the heading "Authority, Effective Date" should read as follows: The

Commission hereby amends Rules 30-4, 30-5 and 30-6 of the rules of the Commission relating to general organization [CFR 200.30-4, 30-5 and 30-6] by adding new paragraph (a)(8) to Rule 30-4; by adding new paragraphs (e)(3),(4),(5) and (6) to Rule 30-5; and by redesignating paragraphs (e), (f) and (g) of Rule 30-6 as paragraphs (f), (g) and (h) respectively, and by adding a new paragraph (e) thereto, pursuant to the authority contained in the Act of August 30, 1962, Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2] and Section 211(a) of the Advisers Act [15 U.S.C. 80b-11(a)].

Under the heading "Commission Action," Amendment No. 1 should read "By adding new paragraph (a)(8) to §200.30-4 as follows:" Amendment No. 3 should read "By redesignating paragraphs (e), (f) and (g) of §200.30-6 as paragraphs (f), (g) and (h) respectively and by adding a new paragraph (e) thereto as follows:"

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 8974/January 21, 1980

UNITED STATES OF AMERICA v. CHARLES D. STILWELL, ET AL.

Criminal Action No. 80-1 (D.S.C.)

Jule B. Greene, Administrator of the Atlanta Regional Office of the Securities and Exchange Commission and Thomas E. Lydon, Jr., United States Attorney for the District of South Carolina announced that on January 10, 1980, Charles D. Stilwell ("Stilwell") and Stephen C. Coker ("Coker"), pled guilty to two counts of securities fraud before the Honorable Sol Blatt, Jr., United States District Judge, for the District of South Carolina. No date has been set for the sentencing of the defendants.

The criminal information filed on the same day charged that Stilwell and Coker, while principals of Stilwell, Coker & Co., Inc. ("Stilco"), a broker-dealer in Charleston, South Carolina, formerly registered with the Commission, violated Section 17(a) of the Securities Act of 1933 by the unauthorized sale of certain securities owned by customers of the firm.

Previously, on December 17, 1976, defendants Stilwell, Coker and others were enjoined by consent from violations of the anti-fraud provisions of the federal securities laws in connection with their activities at Stilco by the United States District Court for the District of South Carolina, and a Trustee appointed pursuant to the Securities Investor Protection Act of 1970. (SEC v. Stilwell, Coker & Co., Inc., Civil Action No. 76-2405 (D.S.C.))

In addition, in connection with administrative proceedings commenced April 18, 1978, Stilwell and Coker were barred from further association with a broker-dealer, investment adviser, and investment company following an initial decision by an administrative law judge, filed June 20, 1979, which has become final as to Stilwell, but as to which Coker has sought review.

For further information, see Litigation Release No. 7726.

Litigation Release No. 8975/January 21, 1980

UNITED STATES v. RALPH READ, ET AL., (N.D. ILL., 79 CR 277)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, and Gregory C. Jones, Acting U.S. Attorney for the Northern District of Illinois, announced that on January 7, 1980, the Honorable John Powers Crowley, United States District Judge for the Northern District of Illinois, sentenced Bernard Magdovitz to five years probation and fined him $11,000. This sanction arose from Magdovitz's earlier plea of guilty to conspiracy and mail fraud charges.

Magdovitz, formerly employed as Treasurer of Cenco Incorporated (Cenco) and President of

Cenco Medical Health, was indicted on April 24, 1979 by a Federal Grand Jury in Chicago, along with six other individuals. The indictment charged that from 1970 through 1974, approximately $25 million in false profit figures were reported by Cenco. While Magdovitz pled guilty to charges arising from the Cenco fraud, three other former Cenco employees contested the charges, and were subsequently tried and convicted by a jury on October 29, 1979.

The civil injunctive action filed in September, 1976, by the Securities and Exchange Commission against Magdovitz and other former Cenco employees is still pending before the United States District Court for the Northern District of Illinois.

Magdovitz currently resides in South Hampton, England.

For further information, see Litigation Release Nos. 7538, 8509, 8747, 8786, 8919 and 8970.

Litigation Release No. 8976/January 21, 1980

UNITED STATES OF AMERICA v. DOUGLAS P. FIELDS AND FREDERICK M. FRIEDMEN, 76 Cr. 1022 (S.D.N.Y.)

Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission ("Commission"), announced that on January 10, 1980 defendants Douglas P. Fields ("Fields") and Frederick M. Friedman ("Friedman"), president and vice president of TDA Industries, Inc., were sentenced by the Honorable Charles S. Haight, Jr., United States District Judge for the Southern District of New York, following their convictions in the above-captioned matter. Defendant Fields was sentenced to six months imprisonment on each of five counts, to run concurrently, and a $50,000 fine. Defendant Friedman was sentenced to three months imprisonment on each of two counts, to run concurrently, and a $25,000 fine. Imposition of the sentences and fines was stayed pending appeal.

The related trial against Alan E. Sandberg and Friedman is scheduled to commence on January 14, 1980.

For further information, see Litigation Release Nos. 8921, 7692, 7369, and 7088.

Litigation Release No. 8977/January 22, 1980

SECURITIES AND EXCHANGE COMMISSION v. LA POINTE INDUSTRIES, INC. (United States District Court for the District of Columbia, Civil Action No. 79-2879)

The Commission announced today that on January 18, 1980 the United States District Court for the District of Columbia entered a final judgment of permanent injunction against La Pointe Industries, Inc. ("La Pointe") of Rockville, Connecticut, restraining and enjoining La Pointe from failing failing to file timely periodic reports with the Commission and requiring La Pointe to comply with certain undertakings. La Pointe, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 7 separate occasions. The Commission's Complaint was filed on October 25, 1979.

The Complaint had alleged that La Pointe, as part of a continuing course of conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. La Pointe has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Act of 1934.

Litigation Release No. 8978/January 22, 1980

SECURITIES AND EXCHANGE COMMISSION v. THOMAS J. BALL A/D/B/A TOM BALL & ASSOCIATES (U.S.D.C., E.D. Va. Alex. Div. C.A. No. 80-44-A)

Paul F. Leonard, Administrator of the Washington Regional Office, and Lewis W. Brothers, Jr. Director, Securities Division of the Virginia State Corporation Commission announced that on January 18, 1980, the Securities and Exchange Commission filed a complaint in the United States District Court for the Eastern District of Virginia, in Alexandria, Virginia, seeking preliminary and permanent injunctions against Thomas J. Ball a/d/b/a Tom Ball & Associates of Great Falls, Virginia, seeking to enjoin the defendant from violations of

the registration and antifraud provisions of the federal securities laws. The Commission's action also seeks a freeze of the defendant's assets until an accounting can be performed of his disposition of investor funds, and disgorgement of wrongfully obtained funds.

The complaint alleges that the defendant violated the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of unregistered securities in the form of "Full Binding Contracts" and "Land Development Investments". The complaint further alleges that the defendant made untrue statements of material facts and failed to state material facts relating to defendant's use of investor funds and about future profits from the securities. The complaint was based on information obtained in a joint investigation of this matter by the Virginia Securities Commission and the Securities and Exchange Commission.

Litigation Release No. 8979/January 22, 1980

SEC v. MICHAEL S. STARBUCK, MICHAEL STARBUCK, INC. AND MICHAEL STARBUCK, AND ASSOCIATES, A PARTNERSHIP, 80 CIVIL 0231 (S.D.N.Y.) (HFW)

Stephen L. Hammerman, Regional Administrator of the New York Regional Office, announced the filing of a Complaint in the United States District Court for the Southern District of New York on January 11, 1980, seeking to enjoin Michael S. Starbuck "Starbuck"), Michael Starbuck, Inc. ("Starbuck, Inc.") and Michael Starbuck, Inc. and Associates, a Partnership ("Starbuck Associates"), all of New York, New York, from further violations of the registration and anti-fraud provisions of the federal securities laws.

The Commission's Complaint alleges that, during the period from in or about January, 1978 through the present, the defendants offered and sold to approximately 250 investors located in New York, Arizona and Florida unregistered securities, in the form of investment interests in Starbuck Associates, raising approximately $2 million to $3 million. Starbuck Associates pooled its investors' contributions and invested those funds primarily in stock options through accounts maintained at various broker dealers. The Complaint further alleges that although the full extent of Starbuck Associates' assets and liabilities cannot be precisely determined, there appears to have been a loss of investors' funds to the extent that only approximately $500,000 remains.

In addition to injunctive relief, the Commission's Complaint seeks the appointment of a Receiver for Starbuck Associates to, among other things, marshall the assets of Starbuck Associates and formulate a plan of distribution to the investors of Starbuck Associates.

Simultaneously with the filing of the Complaint, the defendants consented, without admitting or denying the allegations contained in the Commission's Complaint, to the entry of Final Judgments of Permanent Injunction and an Order appointing a Receiver and granting other equitable relief.

Litigation Release No. 8980/January 22, 1980

UNITED STATES V. JOHN STERGE, AN-CAR OIL CO., INC.; AND FIRST FINANCIAL EQUITY CORPORATION. (D. Mass.) (Criminal No. 79-372-C)

Willis H. Riccio, Administrator of the Boston Regional Office, and the Honorable Edward F. Harrington, United States Attorney for the District of Massachusetts, jointly announce that John C. Sterge of Boston, Massachusetts, on January 8, 1980 pleaded guilty to three counts of a nine count indictment returned him; An-Car Oil Co., Inc. ("An-Car"); and First Financial Equity Corporation ("FFE"). An-Car and FFE are Boston based companies of which Sterge is or formerly was the president and a director. Sterge also pled guilty to two counts of the indictment on behalf of FFE, and a plead of nolo contedere to one count was entered on behalf of An-Car by its receiver in bankruptcy. The counts pled to alleged both securities and mail fraud in connection with the offer and sale of securities in the form of limited partnerships and fractional undivided working interests in oil and gas wells located in Ohio and Tennessee, and in a Wyoming coal tax shelter program.

The indictment alleged, among other things, that Sterge, An-Car and FFE offered and sold securities to approximately 800 investors located throughout the United States. The indictment further alleged that the offer and sale of these securi-

ties was effected through the use of fraudulent omissions and misrepresentations of material facts including, but not limited to, the use to which investors' funds would be put; An-Car's success in drilling oil and gas wells; that An-Car had made a significant discovery of an oil well in Fulton County, Ohio, when in fact it had not; that An-Car was insolvent and was only able to meet its obligations by continually selling to new investors; and that a substantial amount of the funds raised from investors was diverted to the personal use and benefit of Sterge.

Earlier, on May 24, 1976 the Securities and Exchange Commission filed a Complaint, naming An-Car, Sterge and others as defendants in the United States District Court for the District of Massachusetts and seeking, among other things, a Temporary Restraining Order; Preliminary and Permanent Injunctions; the appointment of a Receiver; and the disgorgement of investors' monies, which the Commission alleged had been diverted by Sterge to his own personal use and to the use and purposes of the "Boston Minutemen", a professional soccer team owned and controlled by Sterge which was at that time the Boston entry in the North American Soccer League. The Commission succeeded in obtaining the requested relief it sought, and Sterge ultimately disgorged money and properties to the Receiver in the amount of $1,193,000. In the Complaint filed by the Commission in 1976, it alleged that An-Car, its affiliates and Sterge had sold interests in oil and gas leases to the public in an amount in excess of $9 million, in violation of the registration and anti-fraud provisions of the federal securities laws.

In entering his plea of guilty to three counts of the indictment, Sterge acknowledged to the Court the diversion of investors' funds to include those to the Boston Minutemen.

The Honorable Andrew A. Caffrey, Chief Judge of the United States District Court for the District of Massachusetts, has set February 8, 1980 as the date for imposition of sentence.

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19/6

sec docket

VOLUME 19, NO. 6 FEBRUARY 12, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 6183-87 ...	412
Securities Exchange Act	- 16531-50 ...	424
Public Utility Holding Company Act	- 21407-13, 21415-17	438
Trust Indenture Act	- 549 ...	453
Investment Company Act	- 11028-32 ...	453
Litigation	- 8981-93 ...	458

This listing covers releases issued from 1/25/80 - 1/31/80. This listing does not affect the legal status of any document published in this issue.

NOTE: Public Utility Holding Company Act Release No. 21414 was inadvertently omitted from this docket. The release will appear in Volume 19 No. 7.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS ANNOUNCEMENTS

33-6187 Extension from February 1, 1980 to February 15, 1980 of the date by which comments must be submitted with respect to proposed amendments to new Regulations 14D and 14E pertaining to tender offers and the proposed recission of Rule 10b-13 [File No. S7-812].

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RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-16532	34-16537	34-16542
34-16533	34-16538	34-16543
34-16534	34-16539	34-16544
34-16535	34-16540	34-16549
34-16536	34-16541	

33-6183 Solicitation of comments on a proposed amendment to Form N-1, the registration form for open-end management investment companies, to require the inclusion of a standardized yield computation in the prospectuses of money market funds, and an amendment to Rule 434d to require money market funds to conform yield quotations used in Rule 434d advertisements to that standardized method [File No. S7-821 - Comment Period expires: 4/7/80].

SE1.29

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6183/January 28, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11028/January 28, 1980

"Money Market" Funds; Inclusion of a Standardized Yield Computation in Prospectuses

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is soliciting comment concerning a proposed amendment to Form N-1, the registration form for open-end management investment companies, to require the inclusion of a standardized yield computation in the prospectuses of money market funds, and an amendment to Rule 434d to require money market funds to conform yield quotations used in Rule 434d advertisements to that standardized method. The Commission is also withdrawing a prior proposal relative to the standardization of money market fund yield quotations.

DATE: Comments must be received no later than April 7, 1980.

ADDRESS: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to File No. S7-821 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Larry L. Greene, Esq. (202/272-2104) or Anthony A. Vertuno, Esq. (202/272-2107), Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Form N-1 [17 CFR 239.15, 274.11] under the Securities Act of 1933 [15 U.S.C. 77a-77aa] ("Securities Act") and the Investment Company Act of 1940 [15 U.S.C. 80a-1 - 80a-52] ("Act") and Rule 434d [17 CFR 230. 434d] under the Securities Act. The proposed amendments would require certain investment companies, usually referred to as "money market" funds, to include in their prospectuses a yield figure computed according to a standardized method and to compute any yield quotations used in Rule 434d advertisements according to that standardized method. The proposed method would produce an annualized yield figure based on the average daily net investment income received or accrued by a fund over a seven day period. The requirement for the yield computation would apply to any open-end investment company holding itself out be a "money market fund" or having an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less.[1]

Importance of Comparable Yield Quotations and Purpose of Proposed Amendment

The Commission believes that yield quotations are an important factor affecting an investor's decision concerning money market funds. In this regard, such funds appear to be marketed largely on the basis of liquidity and yield. This is in contrast to traditional equity funds, where an investor's judgment as to competing funds' potential for capital appreciation is likely to be more important than a comparison of stated yields.

Despite the importance of yield quotations to investors making investment decisions and to money market funds in marketing their shares, yields reported and quoted by money market funds are not computed on a standardized basis and thus, in many cases, are not comparable. This lack of comparability of yield quotations may have the potential for confusing and misleading investors. The problem is made more serious by the fact that the use of yield quotations by money market funds for promotional purposes appears to be increasing

[1]Except for the definition of "money market" fund contained in the general instructions to Form N-1R [17 CFR 249.330, 274.101], which is limited in its applicability to that form, the term "money market fund" is not defined in any statutes or Commission rules thereunder. However, money market funds are generally considered to be those open-end investment companies whose portfolios consist primarily of short-term debt obligations, usually referred to as "money market instruments." These funds generally strive to maintain a constant net asset value per share while offering a relatively high yield. Typically, they are designed to attract short-term investors who seek preservation, rather than appreciation, of capital, together with a high level of income.

in light of the adoption of new Rule 434-d [17 CFR 230.434d] under the Securities Act, which permits a new class of investment company advertisements in the form of "omitting" propectuses.

The proposed amendment to Form N-1 will, if adopted, ensure that investors are supplied with yield figures in money market fund prospectuses, and that these figures are calculated in such a way as to help investors make useful comparisons. Furthermore, since the proposed amendment to Rule 434d will, if adopted, require that yield figures presented by money market funds in Rule 434d advertisements be calculated in the same way as the figures in the full prospectus, the yield figures used in such advertisements will also be comparable.

Of course, even if a standard computation of yield is adopted, the extent to which yield quotations can properly be compared will be limited by other considerations. These considerations include the extent to which the fund using the quotations might have unusual characteristics with respect to the quality of its portfolio securities, or the average weighted maturity of its portfolio. It is the responsibility of the person issuing a regular prospectus or advertisement which includes yield figures to include such other information as may be necessary to make those figures not misleading. The Commission has previously made clear that it will normally not prescribe rules containing specific standards as to what is or is not misleading in investment company sales literature,[2] and in the amendments being proposed herein specific requirements as to additional information to be included in money market fund prospectuses or advertisements have been kept to a minimum. Rather, the proposed amendment focuses on the yield computation itself, concerning which definitive guidance seems appropriate in order to achieve standardization.

Different Methods of Computing Yield and Earlier Efforts of the Commission at Standardization

While the lack of comparability in money market fund yield quotations exists for a variety of reasons, the Commission believes that one of the most significant reasons is the fact that various funds use different methods of computing yield. Yield computations may differ in many ways, including the manner of treating unrealized appreciation or depreciation, the weighting factors (if any) used, and the expenses which are included in the calculation. For example, those funds which compute their net asset values on the basis of either amortized cost or "penny-rounding" do not normally reflect changes in the market value of their underlying portfolio securities either in their determination of net asset value per share or in their daily dividend. Other funds recognize unrealized changes in the value of portfolio securities but adjust the daily dividend to reflect such changes and maintain a constant net asset value per share. Still other funds reflect unrealized appreciation or depreciation in portfolio security values in the determination of net asset value per share.

In addition, the computation of yield may be weighted, with respect to each portfolio security, for dollar value, time remaining to maturity, both of these factors, or neither. Finally, the items of expense netted against income in computing yield may or may not include charges made directly to an investor's account.

In 1975, the Commission issued two releases relating, at least in part, to the problems created by this lack of uniformity in yield calculations. One release proposed the standardization of portfolio valuation of short term debt securities by registered investment companies, including money market funds, by use of the "mark-to-the-market" method of portfolio valuation,[3] and the other proposed the standardization of yield quotations by money market funds by use of the yield to average life ("YAL") method.[4]

At the time of the Commission's proposals, some funds were using the mark-to-the-market method to value their portfolios, while others were using the amortized cost method.[5] In Release 8757, relating to valuation, the Commission proposed that the mark-

[2]See Securities Act Release No. 6140 (October 26, 1979 [44 FR 64070 (November 6, 1979)]

[3]Investment Company Act Release No. 8757 (April 15, 1975) [40 FR 18467 (April 28, 1975)].

[4]Investment Company Act Release No. 8816 (June 12, 1975) [40 FR 27492 (June 30, 1975)].

[5]A fund using the mark-to-the-market method obtains a "quote" on each instrument in its portfolio or on one of comparable quality from the issuer or a dealer. A fund using the amortized cost method values a security at its cost on the date of purchase.

to-the-market method be used exclusively, because it was concerned that amortized cost valuation did not satisfy the requirements of the Act and the rules thereunder regarding valuation of investment company assets.[6] In addition, the Commission considered it undesirable for some money market funds to use the amortized cost method while others were using the mark-to-the-market method, because this disparity in methods of valuation impaired the comparability of yield quotations, which are based in part on net asset value.

After consideration of the public comments, the Commission in 1977 issued an interpretive release stating its position that Section 2(a)(41) of the Act and Rule 2a-4 thereunder required money market funds to value all debt securities with remaining maturities of more than 60 days, by the mark-to-the-market method.[7] In addition, the Commission stated in that release its view that the net asset value per share of a money market fund should be calculated with an accuracy of at least one-tenth of one percent (equivalent to the nearest one-tenth of a cent of a net asset value of $1.00).

Subsequent to this release, a number of money market funds filed applications under Section 6(c) [15 U.S.C. 80a-6(c)] of the Act, seeking to use methods of valuing portfolio securities or computing net asset value per share which were at variance with that prescribed in the interpretive release. The Commission ordered hearings on the applications,[8] and thereafter some of the applications were granted pursuant to a settlement arrangement between the applicants and the Commission.[9] In substance, the settlement provided for the use, under certain conditions, of the "penny-rounding" method of calculating net asset value per share. The remaining applications were also granted by the Commission,[10] and permit the use, under certain conditions, of the amortized cost method of portfolio valuation.[11] The use of this method, like penny-rounding, results generally in a stable net asset value for $1.00 per share funds.

Because both penny-rounding net asset value computation and amortized cost valuation either round away or ignore the impact of market value changes on a fund's portfolio, the orders granting the applications incorporate certain conditions designed to alleviate any harmful effects upon shareholders of funds using those methods.[12]

At present, a large number of money market funds maintain a stable net asset value through the use of either the penny-rounding computation or amortized cost valuation. (Other funds, while complying with the procedures prescribed in Release 9786, may attempt to maintain a stable net asset value by adjusting the daily dividend to reflect any appreciation or depreciation in the value of their

[6]Section 2(a)(41) of the Act [15 U.S.C. 80a-2(a)(41)] and Rule 2a-4 [17 CFR 270.2a-4] under the Act, as here relevant, require that the assets of registered investment companies be valued (1) at market value, if quotations are readily available, or (2) if quotations are not readily available, at fair value as determined in good faith by the board of directors.

[7]Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)].

[8]Investment Company Act Releases No. 10201 (April 12, 1978) [43 FR 16830 (April 20, 1978)] and 10366 (August 18, 1978) [43 FR 38143 (August 25, 1978)].

[9]Investment Company Act Release No. 10451 (October 26, 1978) [43 FR 51485 (November 3, 1978)].

[10]Investment Company Act Release No. 10824 (August 8, 1979).

[11]See Footnote 5, *supra*.

[12]For example, both amortized cost and penny-rounding funds must maintain an average weighted portfolio maturity of 120 days or less, must not purchase securities with maturities beyond a year, and must maintain a portfolio with a specified quality.

In addition, funds using amortized cost valuation are required, among other things, to adopt procedures whereby the board of directors review the portfolio from time to time to determine the extent of any deviation of the net asset value per share (as determined by using available market quotations) from the $1.00 per share figure resulting from the use of the amortized cost method. If the deviation exceeds 1/2 of one percent and the board considers that that deviation may result in material dilution or other unfair results to investors or shareholders, it must take action to prevent the results by either marking to market or taking other steps to bring the fund's net asset value, when considered in light of available market quotations, within acceptable limits.

portfolio securities.) Thus, while the Commission's efforts to standardize the valuation of portfolio securities and computation of net asset value per share by money market funds have not resulted in complete uniformity, as a practical matter a substantial degree of standardization has developed in the area of valuation and computation of net asset value.

Such uniformity has not, however, been achieved with respect to yield quotations. The Commission's proposal with respect to YAL provided, in substance, that whenever a money market fund reported a current yield on an investment in the fund by telephone, newspaper, or otherwise, such report would have to include a statement of yield on a "yield to average life" basis. The proposal defined "yield to average life" to mean the rate of return which would be received by shareholders in the company if all of the securities currently in the company's portfolio, valued at market, were held to maturity, redeemed at par value, and the proceeds distributed to the shareholders. The release included the formula according to which the YAL was to be computed. The YAL quotation would have to have been accompanied by the dollar-weighted average portfolio maturity of the fund, and have been based on market values as of not more than one business day prior to the day the quotation was used. The proposal would have permitted the use of a historical yield in addition to the YAL quotation under certain conditions.

Most of the comment letters received expressed opposition to the Commission's proposal. The principal arguments against the proposal were that: (1) the YAL calculation was so complex that it would be expensive to calculate and would likely be misunderstood by investors; and (2) because money market fund's portfolios contain instruments maturing at different times and are continually being replaced, the forward-looking yield quotation produced by the YAL computation would never represent a yield actually to be realized by any investor. It was argued that the figure could thus be misleading to investors, who might interpret it as a projection of future return. The Commission has taken no further action on the YAL proposal until now.

No-Action Request of the Investment Company Institute

By letter of November 6, 1979, the Investment Company Institute ("Institute") requested that the Commission's Division of Investment Management advise the Institute that it would not recommend enforcement action with respect to money market fund advertisements and prospectuses which contained yield quotations computed in accordance with a method described by the Institute, and which contained certain accompanying textual disclosures relative to yield.[13]

In substance, the Institute's no-action request involved the use of an annualized historical yield based on a period of seven calendar days. The yield would be calculated by dividing the average daily net investment income per share earned by the fund (that is, accrued interest income plus or minus amortized purchase discount or premium, less all accrued expenses) during the seven calendar day period, by the fund's average daily price per share over the same period and multiplying the result by 365, i.e.,

$$\frac{\text{average daily net investment income per share} \times 365}{\text{average daily net asset value per share}} = \text{Yield.}^{14}$$

The resulting yield figure would be carried to at least the nearest hundredth of one percent. Net investment income would not include either realized gains and losses or unrealized appreciation and depreciation, but the average price per share would

[13] *Investment Company Institute*, available November 16, 1979. By its terms the Institute's recommendations were limited to the presentation of yield quotations by a mutual fund at least 80% of whose portfolio consists, at the time of the calculation, of money market instruments having a maturity of thirteen months or less.

[14] The computations resulting from this formula can be illustrated by the following example. The assumed figures are on a per share basis:

Average accrued interest income	$0.000234
Average amortization of discount	0.000141
Total	$0.000375
Average expenses	0.000020
Average net investment income	$0.000355

Assuming an average net asset value per share of $1.00 for the relevant seven day period, the yield would be computed as follows:

$$\frac{\$0.000355}{\$1.00} \times 365 = 0.1296. \text{ (Yield = 12.96\%)}$$

include any changes in net asset value during the seven day period. Any fees charged directly to shareholder accounts, such as fixed monthly shareholder service fees, would be included in the accrued expenses of the fund.

In its response to the Institute's letter, the staff stated that it would not recommend enforcement action if money market funds conformed their computations of yield to the method described by the Institute. However, consistent with previously expressed Commission policy,[15] the staff did not express any opinion as to the adequacy of the textual disclosure suggested by the Institute to accompany the yield quotations.[16]

The Commission's Proposal

The Commission has considered the method of computing current yield set forth in the Institute's no-action request, and believes that use of that method might be more appropriate for achieving standardization of yield quotations than the YAL method previously proposed by the Commission. Specifically, the Commission believes that the historical yield figures suggested by the Institute might be more easily understood by investors, and might be more easily verifiable, than the forward-looking yield figures which would have been required under the YAL proposal. Using a seven day base period for the yield computation, rather than basing the computation on the values of portfolio securities determined on one particular day, would seem to make the yield figure less likely to be affected by aberrant changes in portfolio values, and less susceptible to manipulation. Moreover, the treatment of expenses, charges to shareholders' accounts, and capital changes suggested by the Institute appears consistent with assumptions which might be made by many investors.

In light of these considerations and the seeming need for standardization in this area, the Commission is proposing to amend Form N-1, the registration form for open-end management investment companies, by adding a new Item 3A to require money market funds to include in their regular prospectuses: (1) a yield quotation based on the seven days ended on the date of the most recent balance sheet or statement of assets and liabilities included in the prospectus, and computed according to the Institute's recommended method as described above; and (2) a description of the method of yield computation. In addition, because the proposed standardized yield computation is based on certain assumptions as to operational and accounting practices, the instruction to the item would require funds whose practices differ in certain respects to make disclosure relating thereto. The proposed form amendment would apply to any open-end investment company holding itself out to be a "money market fund" or having an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

In connection with its proposal to require the inclusion of yield quotations computed on a standardized basis in money market fund prospectuses, the Commission is also proposing two other amendments, one of which concerns the placement in the prospectus of the proposed mandatory yield figures, and the other of which concerns yield information which money market funds might choose to place in advertisements under Rule 434d.

As indicated earlier, the Commission believes that yield information is particularly important with

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[15]See Note 2, *supra*, and accompanying text.

[16]The staff has also responded to another no-action request concerning use of yield quotations in investment company advertisements, *Dechert Price & Rhodes*, available November 19, 1979. That request sought the staff's views concerning publication by a fund of an advertisement under Rule 434d containing current figures relative to portfolio composition, performance or yield, where the company's Section 10(a) [15 U.S.C. 77j(a)] prospectus contains an explanation of the derivation of such figures, as well as any assumptions on which the calculations are based and any other explanatory material necessary to avoid misleading inferences, but where the specific figures used in the advertisement are based on updated financial information not contained in the Section 10(a) prospectus.

In its response, the staff indicated the view that use of current yield quotations would not constitute a violation of Rule 434d if (1) the company's Section 10(a) prospectus described the concepts of portfolio composition, performance, or yield that were used in the advertisement and (2) the current figures were based on facts which did not materially differ from those stated in the Section 10(a) prospectus.

respect to money market funds, in light of the fact that potential investors are likely to use a comparison of yield quotations as a primary basis for arriving at an investment decision. For this reason, it seems that the yield information required by proposed Item 3A should be placed near the beginning of the prospectus, in order to increase its visibility and utility to investors. In addition, because yield information relates to fund performance, it is closely related to the information presented in the per share table required by Item 3 of Form N-1. Therefore, the Commission is proposing an amendment to the General Instructions to Form N-1 to provide that the information disclosed pursuant to proposed Item 3A must follow immediately the per share table of income and capital changes required by Item 3.

The Commission is also proposing an amendment of Rule 434d under the Securities Act. The amendment would require any yield figures used in advertisements of money market funds to be computed by the same method as that which would have to be used for computing the yield information required in proposed new Item 3A. By its terms, the proposed amendment to Form N-1 requires only that a standardized method for computing yield be used for purposes of supplying the yield information required under proposed new Item 3A. Therefore, in the absence of a requirement to compute advertised yields in the manner required for prospectuses by proposed Item 3A, money market funds might arguably be free to compute advertised yields by non-standard methods so long as the "substance" of the yield advertisement is contained in the Section 10(a) prospectus.

The proposed amendment to Rule 434d would protect against the lack of comparability in advertised yields which could result from such a practice. Yield information contained in a Rule 434d advertisement would not necessarily have to relate to the same seven-day period as the yield information supplied in the full prospectus,[17] but the amendment would require Registrants to specify in the advertisement the period for which yield is quoted.

It should be noted that the specific proposed requirements relative to textual disclosure which may accompany yield figures are limited to an instruction to the proposed form item relating to an aspect of the computation of the yield figure and a requirement in the rule amendment concerning identification of the period used for the computation. The absence of more comprehensive requirements, however, in no way relieves persons using yield quotations from their responsibility to make whatever disclosure is necessary to make such quotations not misleading, whether the quotations are used in a prospectus meeting the requirements of Section 10(a) of the Securities Act [15 U.S.C. 77j(a)] or an "omitting" prospectus permitted under Rule 434d under the Securities Act. In this connection, the instructions to the form item will provide guidance for users of Rule 434d advertisements as well.

Withdrawal of Proposal

The Commission's proposal set forth in Release No. 8816 (June 12, 1975), [40 FR 27492], to require money market funds to use yield quotations based on the yield to average life method, is hereby withdrawn.

Text of the Proposed Amendments

The Commission proposes to amend Parts 239, 274 and 230 of Chapter II of Title 17 of the Code of Federal Regulation by revising Form N-1 as follows:

1. By adding a new Subsection (3) to Section G. 1. a. of the General Instructions and by adding New Item 3A. to Form N-1 [§§239.15 and 274.11] to read as follows:

§239.15 Form N-1, for open-end management investment companies registered on Form N-8A.

§274.11 Form N-1, registration statement of open-end management investment companies.

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GENERAL INSTRUCTIONS

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G. * * *
1. * * *
a. * * *
(3) The disclosure required by Item 3A, when applicable, must follow immediately the information required by Item 3.

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Item 3A. *Yield Quotations of Money Market Funds* (Prospectus Only)

[17]See the *Dechert Price & Rhoads* letter, discussed in note 16, *supra*.

(a) For a registrant which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, furnish the following information:

(i) a yield quotation based on the seven days ended on the date of the most recent financial statements of the Registrant included in the prospectus, computed by dividing the Registrant's daily net investment income per share earned during such seven calendar day period by its average daily price per share for the same period and multiplying the result by 365, with the resulting yield figure carried to at least the nearest hundredth of one percent; and

(ii) a description of the method by which the yield is computed.

(b) For purposes of the calculation required in subsection (a), above, Registrant's daily net investment income per share shall include its accrued interest income plus or minus amortized purchase discount or premium less accrued expenses, but shall not include realized gains and losses or unrealized appreciation and depreciation. For purposes of this computation, fees charged directly to shareholder accounts must be included in the accrued expenses of the fund, and the Registrant's average price per share must include any changes in net asset value during the seven day period.

Instructions: In connection with the presentation of the yield figure, the prospectus must disclose:

(1) if applicable, that the Registrant follows the practice of reflecting changes in portfolio values in its daily dividend, and

(2) if material, the net amount of any change in the yield figure which would result from:

(a) the inclusion in the determination of net investment income of realized gains or losses and unrealized appreciation or depreciation recognized by the Registrant but excluded from the computation pursuant to Item 3A(b).

(b) any change in net asset value during the period used for computing yield.

* * * * *

2. By deleting the word "and" from the end of paragraph (a)(4) of Section 230.434d, adding the word "and" to the end of paragraph (a)(5), and adding a new paragraph (a)(6), to provide as follows:

§230.434d Advertisement by an investment company as satisfying requirements of section 10.

(a) * * *

(4) It states, conspicuously, from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully investing,

(5) It contains the statement required by section 230.433(b) when used prior to effectiveness of the company's registration statement, and

(6) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement is based on the method of computation prescribed in Item 3A of Form N-1, set forth in §§239.15 and 274.11 and identifies [the date of the last day in] the period used in computing that quotation.

STATUTORY AUTHORITY: Sections 10 and 19(a) of the Securties Act [15 U.S.C. 77j and 77s(a)] and Section 38(a) of the Act [15 U.S.C. 80a-37(a)].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6184/January 30, 1980

THE COMMISSION VACATES THE ORDER TEMPORARILY SUSPENDING THE REGULATION A EXEMPTION OF NATIONAL BREAST CARE CENTERS, INC.

The Commission has issued an order vacating the order entered February 22, 1979, temporarily suspending the Regulation A exemption from registration under the Securities Act of 1933 with respect to a proposed public offering of common stock of National Breast Care Centers, Inc., Suite B, Davis Medical Center, 635 Anderson Road, Davis, California, 95616. The Notification and Offering Circular filed on November 2, 1978 with respect to the proposed offering has been withdrawn.

SECURITIES ACT OF 1933
Release No. 6185/January 30, 1980

In the Matter of

PILLSBURY, MADISON & SUTRO RETIREMENT PLAN
Post Office Box 7880
San Francisco, CA 94120

(18-65)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE PILLSBURY, MADISON & SUTRO RETIREMENT PLAN.

NOTICE IS HEREBY GIVEN that the firm of Pillsbury, Madison & Sutro ("Applicant" or the "Firm"), a California partnership, has by letters dated November 15, 1979 and January 23, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with the Pillsbury, Madison & Sutro Retirement Plan (the "Plan"). All interested persons are referred to these documents which are on file with the Commission for the facts and representations contained therein, which are summarized below.

I. *Introduction*

The Plan covers the Applicant's partners and employees who have attained age 25 and have completed one year of service with the Firm. The Plan is of a type commonly referred to as a "Keogh" plan which covers persons (in this case, Applicants' partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"); therefore, the exemption provided by Section 3(a)(2) of the Act is inapplicable to the Plan. However, the Commission may, pursuant to Section 3(a)(2), by order exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a stock bonus, pension, profit sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. *Description and Administration of the Plan*

The Plan was originally adopted in 1952, and was most recently amended and restated as of January 1, 1980. The Plan is a "defined contribution plan," as defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). The Firm has received determination letters from time to time from the Internal Revenue Service to the effect that the Plan met the requirements for qualification under Section 401(a) of the Code, the latest of such letters being dated February 22, 1978, and the Firm will submit the restated Plan to the Internal Revenue Service for determination that it continues to meet such Section 401(a) requirements. The Firm requests that the Commission assume that a favorable determination from the Internal Revenue Service will be received.

Applicant makes contributions to the Plan on behalf of each participant out of its net income. Contributions allocated to the account of each participant are based on the participant's total salary for the year subject to a Social Security integration formula. The Plan permits participants to make voluntary contributions to the Plan, subject to limitations contained in the Plan, the Code, and Income Tax Regulations. As of September 30, 1979, two Partners, four associates, and one terminated associate had voluntary contributions invested pursuant to the Plan.

The Firm's contributions may be made in such proportions as it shall direct to (i) the Trustees of the Plan, who are appointed by and serve at the pleasure of the Firm (the "Trustees"), to be invested in accordance with a Trust Agreement dated as of December 30, 1977 and/or (ii) The Prudential Insurance Company of America (the "Insurance Company"), to be invested in accordance with one of several Investment Group Annuity Contracts entered into by the Insurance Company and by the Trustees, acting at the direction of the Firm. The Investment Group Annuity Contracts authorize the Trustees to designate certain accounts maintained by the Insurance Company for the investment of funds deposited pursuant to such contracts; however, the Insurance Company exercises absolute discretion over the portfolio investments of such accounts. Amounts deposited in such Insurance Company accounts are commingled with funds deposited by other investors; earnings and losses for each account are allocated proportionately among the participating depositors, and the Insurance Company does not guarantee any depositor's rate of return.

Applicant may direct the transfer of Plan assets held by the Trustees or the Insurance Company to the other entity. In addition, participants who have completed 15 years of service and are over 50 years of age may elect to convert their Plan assets accounts into a participant annuity contract selected by each electing participant. Following each such election, the Firm makes all future contributions on behalf of the electing participant to his or her respective participant annuity contract.

A participant's voluntary contributions to the Plan are invested at his or her election, (a) entirely in a mutual fund selected by the participant, (b) entirely in a pooled equity fund of The Bank of California, National Association, (c) entirely in accounts offered by banks and savings and loan associations to their regular customers, (d) entirely in United States Treasury notes, bills or bonds, or (e) in some combination of (a) through (d) as approved by the Applicant.

The present Trustees of the Plan are five individuals who are all partners of the Firm. The Firm is the "plan sponsor," the "plan administrator" and the named fiduciary, as such terms are used in ERISA, with authority to control and manage the operation of the fund. The Firm's authority is presently being exercised by a committee of four partners. As plan sponsor and administrator, the Firm is responsible for all matters relating to funding, eligibility, entitlement to benefits, actuarial determinations and accounting functions in connection with the Plan. The Trustees and the Insurance Company are fiduciaries with respect to the Plan.

As an employee pension benefit plan within the meaning of ERISA, the Plan is subject to ERISA's reporting and disclosure requirements. No promotional materials have been sent with respect to the Group Annuity Contracts except to the Firm.

III. *Discussion*

Applicant contends that if it's business were organized in corporate form, interests and participations in the Plan would be exempt from registration pursuant to Section 3(a)(2) of the Plan. It is only because of the participation of "employees" within the meaning of Section 401(c)(1) of the Code that the exemption is not available.

Applicant also contends that the Plan does not present the risks associated with the sale of interests or participations in multi-employer plans by financial institutions with which Congress was primarily concerned when it drafted Section 3(a)(2). The Plan covers partners and employees of a single firm, and is not a master or prototype plan designed to be marketed by a promoter to unrelated, self-employed persons.

Applicant states that it exercises substantial administrative responsibilities in connection with the Plan and the Plan is of substantial size. Since the Firm is engaged in furnishing legal services of a type which necessarily involve financially sophisticated and complex matters, Applicant believes it is able to protect its interests and those of Plan participants. Further, the Plan is subject to the fiduciary standards and the full reporting and disclosure requirements of ERISA.

Applicant concludes that for the foregoing reasons, the granting of an exemption under Section 3(a)(2) for interests or participations in the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, submit to the Commission in writing a request for a hearing on the application accompanied by a

statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following February 25, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notice or order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6186/January 30, 1980

In the Matter of

ROSS, HARDIES, O'KEEFE, BABOCK & PARSONS PROFIT-SHARING RETIREMENT PLAN FOR LAWYERS
One IBM Plaza - Suite 3100
Chicago, Illinois 60611

(18-68)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE ACT FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE ROSS, HARDIES, O'KEEFE, BABOCK & PARSONS PROFIT-SHARING RETIREMENT PLAN FOR LAWYERS

NOTICE IS HEREBY GIVEN that the law firm of Ross, Hardies, O'Keefe, Babcock & Parsons ("Applicant" or the "Firm"), an Illinois partnership, has, by letters dated December 7, 1979, December 27, 1979, and January 16, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for any participations or interests issued in connection with the Ross, Hardies, O'Keefe, Babcock & Parsons Profit-Sharing Retirement Plan for Lawyers (the "Plan"). All interested persons are referred to these documents, which are on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. *Introduction*

The Plan covers all of Applicant's partners and associate lawyers, of whom there were 31 and 39, respectively, participating in the Plan as of December 1, 1979.

The Plan is an "H.R. 10" plan, which covers persons (in this case the Firm's partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan, absent an order of the Commission issued under Section 3(a)(2).

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. *Description and Administration of the Plan*

Applicant states that the Plan was adopted on December 31, 1970, and was amended and restated effective January 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). An additional amendment was adopted effective January 1, 1979, to authorize the use of investment managers. The Internal Revenue Service has issued a ruling that the Plan, as amended and restated effective January 1, 1976, qualifies under Section 401 of the Code. The Plan is an employee profit-sharing plan subject to the fiduciary standards and to the full reporting and disclosure

requirements of ERISA. The Applicant has the power to amend the Plan. No amendment, however, may reduce any interest that is vested in any participant or beneficiary, and no amendment may cause or permit any portion of the Plan's assets to revert to or become the property of the Applicant.

The Plan is administered by an Administrative Committee (the "Committee") consisting of designated partners of the Firm. The Committee has overall authority and responsibility for the day-to-day administration of the Plan and authority to interpret and construe the Plan, including the authority to determine all questions of eligibility, status, and rights under the Plan. The assets of the Plan are held in trust for the exclusive benefit of the participants and their beneficiaries. Continental Illinois National Bank and Trust Company of Chicago, Illinois, acts as Trustee for the Plan under a Trust Agreement, as amended (the "Trust Agreement"). Stein Roe & Farnham, investment counselors, have been appointed investment managers pursuant to the terms of the 1979 amendment to the Plan and, as such, are responsible for the investment of funds contributed to the Plan, subject only to any limitations or restrictions imposed in writing by the Committee as a "named fiduciary" under Section 402(a)(2) of ERISA.

The Applicant makes annual contributions out of its current earnings and profits based on a percentage of all participants' compensation for the fiscal year. The Applicant's contribution cannot exceed seven percent of the total compensation of each participant. In addition, each participant may make voluntary contributions in an amount not exceeding ten percent of his or her compensation for the fiscal year. Participants may withdraw their voluntary contributions at any time.

III. *Discussion*

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's partners not permitted to participate in the Plan, the interests or participations issued in connection with the Plan would be exempt under Section 3(a)(2) since no other persons covered by the Plan would be "employees" within the meaning of Section 401(c)(1) of the Code. Applicant argues that there is no valid basis for a contrary result merely because the Plan also covers partners in the Firm.

Applicant also argues that the Plan covers only partners and associate lawyers of the Firm, who are professionals generally sophisticated in investments and financial analysis and as a result thereof, and as a result of the administrative control of the Plan maintained by the Applicant and mandated by ERISA, the Applicant and the Plan's participants are able to protect adequately the interests of all participants in the Plan.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that Congress is drafting Section 3(a)(2) of the Act intended to prevent the sale, without registration, of interests in mass-marketed plans offered by financial institutions to self-employed persons who might not be able to protect adequately their interests and the interests of participating employees. Applicant argues that its Plan is not such a prototype or master plan marketed by a financial institution.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the application accompanied by a statement of the nature of his or her interest, the reasons for such a request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant

at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following February 25, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6187/January 31, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16547/January 31, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11032/January 31, 1980

PROPOSED AMENDMENTS TO TENDER OFFER RULES

EXTENSION OF COMMENT PERIOD

ACTION: Extension of comment period.

SUMMARY: The Commission has extended from February 1, 1980, to February 15, 1980, the date by which comments must be submitted with respect to proposed amendments to new Regulations 14D and 14E pertaining to tender offers and the proposed recission of Rule 10b-13.

DATE: Comments must be received on or before February 15, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-812. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: John Huber or Scott Cooper (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Release Nos. 33-6159, 34-16385 and IC-10959 (November 29, 1979) [44 FR 70349], the Commission published for comment amendments to new Regulations 14D and 14E pertaining to tender offers and a proposed recission of Rule 10b-13. If adopted, these proposals would provide a definition of the term "tender offer," require equal treatment of security holders in the context of tender offers, establish certain antifraud provisions concerning trading by certain persons on the basis of material, non-public information relating to a tender offer, and prohibit certain purchases not made by means of a tender offer. The proposals are applicable to any tender offer and would implement and augment the present statutory requirements.

The Commission has received requests from interested members of the public for an extension of the comment period. In view of these requests, the Commission has extended the comment period until February 15, 1980, to allow additional time for interested persons to complete their consideration of the proposals.

Comment letters received after the termination of the comment period as extended may be considered in the discretion of the Commission. However, because of the timetable anticipated by the Commission and the necessity for prompt rulemaking action, there can be no assurance that late comment letters will in fact be considered in this rulemaking procedure.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16531/January 25, 1980

The Securities and Exchange Commission today granted the application of the American Stock Exchange, Inc. ("Amex"),[1] pursuant to the terms of the voluntary moratorium on expansion of standardized options trading,[2] to begin trading put and call options on the common stock of Natomas Company ("Natomas"). The Amex intends to begin trading in Natomas options on Monday January 28, 1980. Natomas options replace put and call options on the common stock of Reserve Oil and Gas Company ("Reserve") which has been delisted involuntarily by the Amex as a result of the merger of Reserve into Getty Oil Company. Amex, by earlier application, had intended to list options on the common stock of Caesar's World, Inc. to replace Reserve options.[3] Amex's application to list Natomas options supersedes that application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16532/January 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE OPTIONS CLEARING CORPORATION ("OCC") (File No. SR-OCC-80-2)

The Options Clearing Corporation submitted on January 15, 1980 a proposed rule change under Rule 19b-4 to permit OCC to offset the value of certain exercised long positions carried by clearing members in customers and firm non-lien accounts against the value of assigned short positions in the same accounts for the purpose of calculating the margin to be required by OCC.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 28, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-OCC-80-2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16533/January 28, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-77-36)

ORDER APPROVING PROPOSED RULE CHANGE

On December 12, 1977, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend PSE Rule VI, on the last day of trading in expiring options series commencing at 12:00 p.m. (P.S.T.).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14278, December 15, 1977) and by publication in the

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[1] See letter dated January 25, 1980 from Howard A. Baker, Assistant Vice President, Options Division, Amex, to Gene Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[2] See Securities Exchange Act Release Nos. 14991 (July 25, 1978) and 15026 (August 3, 1978).

[3] See Securities and Exchange Act Release No. 16490 (January 14, 1980).

Federal Register (42 FR 63983, December 12, 1977). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16534/January 28, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-77-28)

ORDER APPROVING PROPOSED RULE CHANGE

On September 11, 1978, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19-4 thereunder, copies of a proposed rule change to amend its Rule 5.5 to permit CBOE to utilize a closing rotation on the last day of trading in expiring options series commencing at 2:00 p.m. (C.S.T.).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14277, December 15, 1977) and by publication in the *Federal Register* (42 FR 63976, December 12, 1977). All written statements with respect to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No 16535/January 28, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-78-6)

ORDER APPROVING PROPOSED RULE CHANGE

On February 22, 1978, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 its Rules 903 and 917 to permit Amex to utilize trading rotations at the opening of trading each day and at the close of trading on the last day of trading in expiring options series.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14550, March 10, 1978) and by publication in the *Federal Register* (43 FR 11625, March 20, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §522) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

[1]The proposed rule change also would have authorized daily closing rotations. On January 23, 1980, the Amex filed an amendment with the Commission deleting reference to daily closing rotations.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16536/January 28, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-78-6)

ORDER APPROVING PROPOSED RULE CHANGE

On March 15, 1978, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 (s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend its Rule 6 of Article XLI to permit the MSE members to utilize closing rotations on the last day of trading in expiring options series commencing at 2:00 p.m. (C.S.T.).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14623, March 31, 1978) and by publication in the *Federal Register* (43 FR 15821, April 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §522) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the

Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16537/January 28, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th and Stock Exchange Place
Philadelphia, Pennsylvania 19103

(SR-Phlx-78-6)

ORDER APPROVING PROPOSED RULE CHANGE

On May 3, 1978, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend its Rules 1047 and 1012 to permit Phlx to utilize trading rotations in options at the opening of each business day and at the close of trading on the last day of trading in expiring options commencing at 3:00 p.m. Eastern time.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14789, May 22, 1978, and by publication in the *Federal Register* (43 FR 23067, May 30, 1978). On September 27, 1978 the Phlx filed an amendment with the Commission to delete that portion of SR-Phlx-78-6 which would have authorized daily closing rotations. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §522) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16538/January 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-2

The New York Stock Exchange, Inc. ("NYSE") submitted on January 7, 1980, a proposed rule change under Rule 19b-4 which would amend Article IX, Section 1(b) of the NYSE Constitution to limit the potential number of NYSE physical access annual members to two, the number which existed prior to August 31, 1979. The Constitution presently provides for such number of physical access members as the Board of Directors determines, consistent with available physical floor space and facilities.

Publication of the submission is expected to be made in the *Federal Register* during the week of January 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. The Commission is especially interested in receiving

views on whether the proposal is consistent with the stated purposes and goals of the Securities Exchange Act ("Act") and whether it will impose any burden on competition. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. References should be made to File No. SR-NYSE-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W. Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16539/January 28, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGES BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-79-7

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on January 21, 1980, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of January 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceeding to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-79-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D. C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of filing of the proposed rule changes was given by publication of a Commission release (Securities Exchange Act Release No. 16253, October 5, 1979) and by publication in the *Federal Register* (44 FR 59692, October 16, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16540/January 29, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-79-10)

ORDER APPROVING PROPOSED RULE CHANGE

On September 13, 1979, The Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Interpretation .05 of CBOE Rule 8.9 to eliminate the prohibition against transactions between participants in a joint account.[1] On January 28, 1980, CBOE filed an amendment in the Commission which limits the effectiveness of the proposed rule change to a six month period commencing February 1, 1980 and ending on July 31, 1980.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16288, October 22, 1979) and by publication in the *Federal Register* (44 FR 62106, October 29, 1979). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Joint account participants, however, still may not effect transactions with the joint account in which they are participating.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16541/January 29, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-79-13)

ORDER APPROVING PROPOSED RULE CHANGE

On November 28, 1979, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to permit floor brokers, board brokers and order book officials holding options orders to sell at the market to convert such orders to limit orders to sell at 1/16th where the public limit order book is displaying sell orders at a price of 1/16th, without resubmitting the order to the originating member firm office.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16429, December 17, 1979) and by publication in the *Federal Register* (44 FR 76897, December 28, 1979). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16542/January 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-1

The American Stock Exchange, Inc. ("Amex") submitted on January 17, 1980, a proposed rule change under Rule 19b-4 to amend Section 122, Part I of the Amex Company Guide to recommend that listed companies have at least two independent directors. Independent directors would be defined as persons who, in the view of the company's board of directors, are free of any relationships that would interfere with the exercise of independent judgment. Section 122 also would recommend that every listed company establish and maintain an audit committee composed solely of independent directors.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16543/January 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-79-20

The Midwest Stock Exchange, Incorporated ("MSE") submitted on November 5, 1979 a proposed rule change under Rule 19b-4. The change would amend certain rules of the MSE, including qualification rules and financial responsibility rules, purportedly to facilitate the periodic examination of members pursuant to agreements now in effect for that purpose with other stock exchanges and the National Association of Securities Dealers, Inc. ("NASD"). Certain unique MSE rules would be made clearly applicable only to those members for which the MSE is the designated examining authority and certain differences between MSE rules and these of other exchanges and the NASD would be eliminated. In addition, the proposed rule change would amend Article X, Rule 3 of the MSE Rules to include language excluded from a previous amendment to this rule in order to comply with the Federal Reserve Board's margin rules.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16544/January 29, 1980

In the Matter of

THE CINCINNATI STOCK EXCHANGE
209 Dixie Terminal Building
Cincinnati, Ohio 45202

(SR-CSE-79-5)

ORDER APPROVING PROPOSED RULE CHANGE

On November 20, 1979, the Cincinnati Stock Exchange ("CSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend Article IV, Section 2 of the CSE By-Laws to clarify that the extension of unlisted trading privileges in a particular security on the CSE is subject to approval by the Commission.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16441, December 19, 1979) and by publication in the *Federal Register* (44 FR 76898, December 12, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and 12(f) and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16545/January 30, 1980

The Securities and Exchange Commission announced pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act") the single ten day suspension of exchange and over-the-counter trading for the period commencing at 2:30 p.m. (EST) on January 30, 1980 and terminating at midnight (EST) on February 8, 1980 of the securities of Union Petrochemical Corp. of Nevada ("UPC") a Nevada corporation with principal executive offices located in Wichita Falls, Texas.

The suspension was ordered because of an apparent lack of adequate and accurate public information concerning UPC's financial condition, and in view of the recent unusual and unexplained market activity in the securities of UPC.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16546/January 30, 1980

In the Matter of

ANTHONY M. NATELLI

ORDER GRANTING APPLICATION FOR REINSTATEMENT TO PRACTICE BEFORE THE COMMISSION

On December 27, 1974, Mr. Anthony M. Natelli, a partner of Peat, Marwick, Mitchell & Co., was suspended pursuant to Rule 2(e)(2) of the Commission's Rules of Practice from appearing and practicing before the Commission. This automatic suspension was a result of a judgment of conviction for violating the federal securities laws in connection with the filing of a proxy statement on behalf of National Student Marketing Corporation. The activities which led to his conviction took place in 1969 and are described in more detail in the court's opinion affirming his conviction. *United States* v. *Natelli*, 527 F.2d 311 (2d Cir., 1975), *cert. denied*, 425 U.S. 934 (1976). Mr. Natelli thereafter, without admitting or denying the allegations of the Commission's complaint in a civil case arising out of the same and other facts, consented to the entry of a judgment of permanent injunction enjoining certain violations of the federal securities laws.

On October 9, 1979, Mr. Natelli filed an application for reinstatement of his privilege to appear and practice before the Commission, having been reinstated as a Certified Public Accountant in New Jersey and the District of Columbia and reinstated as a member of the District of Columbia Society of Certified Public Accountants and the American Institute of Certified Public Accountants.

As part of his application Mr. Natelli represented that, if his application were granted and he were to resume practice before the Commission, he would participate in a regular program of peer review designed to provide reasonable assurance that auditing and accounting work performed by him meets applicable professional standards. He also agreed that should his resumption of practice be through association with a professional firm, he would make his best efforts to assure that the firm participated in such a peer review program.

The Commission having considered the matter, it is hereby

ORDERED that the application of Anthony M. Natelli for reinstatement of his privilege of appearing and practicing before the Commission be, and it hereby is, granted.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16547/January 31, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6187/January 31, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16548/January 31, 1980

In the Matter of

ISC FINANCIAL CORPORATION
3100 Broadway
Kansas City, Missouri 61414

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND FINDINGS AND ORDER OF THE COMMISSION

The Commission deems it appropriate and in the public interest that proceedings pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 780(c)], be instituted with respect to ISC Financial Corporation ("ISC") to determine whether certain filings by ISC with the Commission failed to comply in any material respect with provisions of Section 13(a) of the Exchange Act and the Rules and Regulations promulgated thereunder. Simultaneously with the institution of these proceedings, ISC has submitted an Offer of Settlement for the purposes of disposing of the issues raised in these proceedings. Under the terms of its Offer of Settlement, ISC consents to the Facts, Findings and Order solely for the purposes of these proceedings and without admitting or denying any of the Facts or Findings set forth herein.

The Commission has determined that it is appropriate and in the public interest to accept this Offer of Settlement by ISC and accordingly is issuing this Order.

I FACTS

ISC Financial Corporation ("ISC") is a holding company, incorporated in the state of Delaware in 1968, with its principal place of business at 3100 Broadway, Kansas City, Missouri. The common stock of ISC is registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. 781(b)], and has been traded on the American Stock Exchange and the Pacific Coast Exchange. Other securities of ISC are or have been registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. 781(g)].

On or about September 7, 1977, ISC caused a voluntary petition under Chapter XI of the Bankruptcy Act ("Bankruptcy petition") to be filed in the United States District Court for the Western District of Missouri. ISC is currently under the direction of a Receiver for the debtor in possession, who was appointed by the Bankruptcy Court on or about September 27, 1977. The facts alleged in this Order occurred prior to the appointment of the Receiver. Prior to the filing of the Bankruptcy petition, the subsidiaries of ISC had engaged primarily in the insurance, savings and loan and consumer finance businesses. The principal insurance subsidiary of ISC, Old Security Life Insurance Company ("Old Security"), was placed in conservatorship by the State of Missouri on or about September 7, 1977, simultaneously with ISC's filing of the Bankruptcy petition. ISC has filed with the Commission at its offices in Washington, D.C. periodic reports pursuant to Section 13(a) of the Exchange Act and the rules thereunder, including an Annual Report on Form 10-K filed on July 29, 1976 for the fiscal year ended April 30, 1976. ("ISC's 1976 10-K").[1]

[1]In addition on February 19, 1976, ISC filed a registration statement with the Commission on Form S-7 for the sale of $12 million in Series "E" subordinated notes. Between April 27, 1976 and August 31, 1976, ISC sold more than $7 million worth of these notes, which were sold in $500 denominations.

II REINSURANCE

Beginning in 1975, Old Security, ISC's principal insurance subsidiary, increased its involvement in a reinsurance practice known as "fronting." Under this practice, Old Security would write group insurance contracts which were produced by certain other insurance companies ("reinsurers"). Old Security would then immediately reinsure all or substantially all of the insurance into the reinsurer which produced the business. Old Security, however, remained primarily liable on the insurance obligations to the policyholders and thus faced a material liability if the reinsurers failed to pay the claims.

Certain of the reinsurers with which Old Security did business were smaller companies which were licensed to do business in only several states and which proved to be financially unsound. In their dealings with Old Security these reinsurers exercised authority for underwriting the insured risk, collecting and managing the premium funds, paying claims and handling all other aspects of the administration of the insurance business. Old Security and ISC did not have adequate controls or safeguards over the disposition of the premium funds and reserves handled by these reinsurers, although the contractual agreements permitted them full access to the books and records of the reinsuring companies.

By the beginning of 1976, the volume of reinsurance business being done by Old Security with these companies started to increase significantly. (As of December 31, 1975, Old Security's insurance business involved a total of $43.7 million in premiums, of which $23.1 million was reinsured into other companies.) By April 30, 1976, Old Security's fronting business with several of these reinsurers amounted to more than $8 million; by July 31, 1976, the amount of such business had increased to more than $22 million, and by year end, 1976, the total premiums written and reinsured pursuant to these fronting arrangements exceeded $40 million.

During this time period the persons who controlled several of the reinsuring companies included Joseph Hauser of Beverly Hills, California, and his associates who were instrumental in securing labor union group contracts to be written by Old Security.[2] The Hauser group, however, misappropriated substantial portions of the insurance premiums related to this reinsurance business, including a $1.5 million diversion of funds in May of 1976, from a bank account jointly owned by Old Security and one of the reinsuring companies controlled by Hauser and his associates. Subsequent to this diversion Old Security was assigned two promissory notes with a total face value of $2.2 million, backed

[2]The Hauser group's activities were the focus of a Congressional investigation by the Permanent Subcommittee on Investigations of the Committee On Governmental Affairs in 1977. This inquiry revealed that during a three year period, 1973-76, the Hauser group collected more than $39 million in insurance premiums, of which more than $13 million is unaccounted for. *See* Labor Union Insurance Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, Ninety-Fifth Congress, Part 1 at p. 12 (Statement of Donald W. Grey, Investigator, October 10, 1977).

Hauser and his associates were enjoined from violating the antifraud provisions of the federal securities laws on December 12, 1976, for conduct arising out of the reinsurance business done with Old Security and their control of several reinsurers. *S.E.C. v. National Pacific Corporation, et al.*, C.A. No. 76-1784 (D.D.C. 1976). Subsequently, Bankruptcy Judge Roger M. Whelan, who was appointed as Special Master in the above captioned proceeding, rendered a report to U.S. District Court Judge Charles R. Richey, recommending that the Court enter a judgment against Hauser, three of his associates and an insurance agency with which they were associated, in the amount of $3.9 million. This amount involved insurance funds which had been misappropriated and diverted from insurance business originally written through Old Security and ultimately reinsured into National American Life Insurance Company, Baton Rouge, Louisiana. On August 6, 1979, Judge Richey entered an order for a judgment against Hauser and his associates in the amount recommended by the Special Master.

Hauser has recently pleaded guilty in United States District Court for the District of Arizona to one count under the Racketeer Influenced and Corrupt Organizations Statute ("RICO"), one count of conspiring to violate RICO, and one count of receiving and disbursing stolen property through interstate commerce.

by two mortgages on condominium properties in Hallandale, Florida, as substitution for the $1.5 million which had been misappropriated. These notes proved to be worthless, having been satisfied prior to the assignment to Old Security.

In addition, in June of 1976, Old Security advanced approximately $740,000 to one of the reinsurers controlled by the Hauser group when that company reportedly experienced a "cash deficiency." This deficiency actually was the result of other diversions and misappropriations by the Hauser group of substantial sums of premium funds which had been paid by various insured labor groups.

By July of 1976 the Hauser group had acquired control of a Louisiana based insurance company and Old Security, in an attempt to remove itself from this insurance business, executed a reinsurance and assumption agreement with this Louisiana company. None of the insured groups, however, had either agreed to the assumption arrangement or granted Old Security a novation. Shortly thereafter, the Teamsters Central States, Southeast and Southwest Areas Health and Welfare Fund, which had awarded Old Security a $24 million premium per-year insurance contract in May, 1976, sued both Old Security, the reinsuring companies controlled by the Hauser group and the principals of those companies, including several officials of Old Security, in connection with the reinsurance arrangements and the diversions of premium funds by the Hauser group. The filing of this lawsuit, during the pendency of which Old Security's exposure to losses from these reinsurance practices became publicly known, preceded a decline in the financial stability of both ISC and Old Security. The lawsuit currently is in abeyance as a result of the bankruptcy proceedings involving ISC.

As a result of its reinsurance arrangements with Mr. Hauser's group of companies, Old Security faced substantial liabilities to the policy holders which were unsupported by the premiums which had been collected or by the reserves which should have been maintained to meet future claims. ISC's 1976 10-K for the period ended April 30, 1976, contained a one-sentence statement regarding its reinsurance business and a footnote to ISC's consolidated financial statements generally describing ISC's reinsurance business, including the amount ceded for reinsurance. Neither the statement in the Form 10-K nor the footnote to the financial statements described the nature of the reinsurance arrangements involving the Hauser group or the specific risks to ISC associated with these arrangements. These were the only descriptions of the company's reinsurance business contained in the 1976 10-K. The financial statements contained in ISC's 1976 10-K made no provision for losses on Old Security reinsurance business. However, as of the close of the company's fiscal year on April 30, 1976, the indicated losses from diversions and misappropriations of premium funds related to this business were substantial. ISC's financial statements should have contained provision for losses of approximately $2 million relative to the reinsurance business of Old Security with the companies controlled by the Hauser group.

Moreover, as Old Security's reinsurance business with the companies controlled by the Hauser group (as well as its reinsurance business with another Arizona company unrelated to the Hauser group) escalated after the close of ISC's 1976 fiscal year, the indicated losses from this business likewise increased. The Quarterly Reports filed by ISC for the first, second and third quarter of the company's 1977 fiscal year contained inadequate provisions for the losses facing ISC as a result of Old Security's reinsurance business. The total losses which ultimately resulted from the business were approximately $18 million.

Discontinued Operations

As indicated above, ISC's subsidiaries were engaged primarily in the insurance, savings and loan and consumer finance businesses. Prior to 1976, ISC had also operated a number of "non-finance" subsidiaries. In December of 1975, ISC adopted a formal plan of disposition for these non-financial businesses, several of which had already been sold. The adoption of a formal plan of disposition enabled ISC to present the operations of these subsidiaries as discontinued in the statement of earnings which was contained in ISC's 1976 10-K. This, in turn, resulted in the elimination of losses by the non-financial subsidiaries from ISC's continuing operations for the fiscal year ended April 30, 1976.

As of April 30, 1976, the most significant of ISC's discontinued operations was a truck manufacturing company called ISCO. The 1976 10-K stated that ISC anticipated "profitable operations" from ISCO and intended to sell ISCO "at no material loss" in fiscal 1977. Prior to the release of the 1976 financial statements ISC had information indicating that ISCO was losing money. In order to realize a favorable price on its sale, ISC intended to hold ISCO for an

indeterminate period of time until its operating results improved. ISCO was operated at a loss in fiscal year 1977. ISC finally sold the subsidiary in January, 1978 at a sales price equal to the book value of the assets but partially represented by notes which were simultaneously discounted by $750,000. This amount was expensed currently and is recoverable over the term of the notes.

III FINDINGS

THE COMMISSION FINDS THAT:

A. ISC filed with the Commission an Annual Report on Form 10-K for the period ended April 30, 1976, which failed to meet the requirements of Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, in the following respects:

1. ISC failed to disclose material facts concerning Old Security's reinsurance transactions and the risk posed thereby to ISC;

2. ISC's consolidated financial statements materially understated liabilities and expenses and materially overstated shareholders' equity and net income because of the failure of ISC to record a provision for losses on Old Security's reinsurance business as of April 30, 1976;

3. ISC improperly classified a subsidiary's operations as discontinued in ISC's statement of earnings, thus materially overstating net income from continuing operations, and ISC failed to disclose its intention to hold the subsidiary until that company's operations became profitable.

B. ISC filed with the Commission Quarterly Reports on Form 10-Q for the first, second and third quarters of fiscal year 1977, which failed to meet the requirements of Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, in the following respects:

1. Revised provisions for losses arising out of the reinsurance business of Old Security were not made in any of the Quarterly Reports;

2. ISC continued to reflect ISCO's operations as discontinued in each of the Quarterly Reports.

IV ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of ISC and accordingly,

IT IS HEREBY ORDERED that such proceedings be, and they hereby are instituted.

IT IS FURTHER ORDERED that ISC amend the reports which have been noted above in accordance with the allegations made herein by promptly filing therewith this Order together with the Complaint, filed by the Commission on July 2, 1979 in the U.S. District Court for the District of Columbia, in an injunctive action, *Securities and Exchange Commission v. Hamilton, et al.*, C.A. No. 79-1704 (D.D.C.), against certain former officers and directors of ISC.

By the issuance of this Order and subject to ISC's compliance with the terms of this Order, this proceeding is concluded.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16549/ January 31, 1980

NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-79-12

The Securities and Exchange Commission today extended the comment period on a proposed rule change submitted on October 19, 1979, by the National Association of Securities Dealers, Inc. (the "NASD") pursuant to Securities Exchange Act Rule 19b-4.[1] The proposed rule change is intended to revise and clarify Schedule G, Article XVIII, of the NASD By-Laws which sets forth the procedures for reporting over-the-counter transaction in listed securities that are required to be reported on the Consolidated Tape. Publication of notice of the proposed rule change was made in the *Federal Register*[2] on December 20, 1979 and comment invited by January 10, 1980.

In view of the interest expressed by several persons to submit comment letters subsequent to that time, the Commission believes that an extension of the comment period is appropriate. Accordingly, all interested persons are invited to submit data, views and arguments concerning the proposed rule change on or before February 22, 1980. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. §553, will be available for inspections and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16550/January 31, 1980

Orders have been issued granting the applications of the following exchanges to strike the common stocks of the following companies from listing and registration thereon: *New York Stock Exchange, Inc.*: AMCORD, INC. (Par Value $5), PIER 1 IMPORTS, INC. (Par Value $.20) and THE TAPPAN COMPANY (Par Value $2.50); *American Stock Exchange Inc.*, INPROJET CORPORATION (Par Value $1).

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[1]On January 9, 1980, the NASD also submitted an amendment to the filing to clarify certain sections of the proposed rule change.

[2]Securities Exchange Act Release No. 16426 (December 14, 1979), 44 F.R. 75542 (December 20, 1979).

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21407/January 25, 1980

In the Matter of

GEORGIA POWER COMPANY
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

(70-6401)

NOTICE OF PROPOSED CHANGE IN UNSECURED DEBT LIMITATION AND SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Georgia Power Company ("Georgia"), an electric utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Georgia states that the terms of its preferred stock, as set forth in its Charter, provide that, except for limited specified purposes or except with the affirmative vote in favor thereof of the holders of at least a majority of the shares of the preferred stock at the time outstanding, the amount of securities representing unsecured indebtedness having maturities of less than ten years as defined in the Charter ("short-term debt") which Georgia may issue or assume shall not exceed 10% of its other capitalization, namely the sum of (a) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Georgia and then to be outstanding and (b) the capital and surplus of Georgia (paid-in, earned, and other, if any) as stated on its books of account.

Georgia states that on March 5, 1975, the holders of a majority of the outstanding preferred stock authorized Georgia until July 1, 1980, to issue or assume unsecured short-term debt as above defined in excess of such 10% limitation, provided that (a) none of such additional short-term debt outstanding on July 1, 1980 shall mature on or after January 1, 1981, and (b) the company's total indebtedness represented by unsecured securities shall at no time exceed 20% of its other capitalization, as above defined. Such action was authorized by order of this Commission dated January 13, 1975 (HCAR No. 18765).

Georgia now intends to submit to the holders of its outstanding preferred stock a proposal that Georgia be authorized, for a further period of 5 years, until July 1, 1985, to issue or assume unsecured short-term debt in excess of the 10% limitation, provided that (a) none of such additional short-term debt outstanding on July 1, 1985, shall mature on or after January 1, 1986, and (b) the company's total indebtedness represented by unsecured securities shall at no time exceed 20% of its other capitalization, as above defined. The exercise by Georgia of any privilege altering the rights of its security holders is subjet to the jurisdiction of this Commission.

Georgia plans to submit the proposed change in its unsecured debt limitation to the holders of its preferred stock for their approval at a special meeting to be held on April 30, 1980. Georgia additionally proposes to solicit proxies regarding such matter from the holders of its preferred stock. The affirmative vote of at least a majority of the shares of preferred stock at the time outstanding is required by Georgia's Charter to adopt the proposal.

Georgia expects to finance its construction program, to the extent possible, from the sales of first mortgage bonds and preferred stock, from the receipt of common equity contributions from The Southern Company, from asset sales, from arrangements with public authorities for the sale by them of revenue bonds, from leasing, and from internal sources. It is stated, however, that from time to time interim financing by means of short-term borrowings may be required during periods when Georgia is unable to satisfy the earnings coverage requirements contained in its mortgage and Charter for the issuance of additional first mortgage bonds and preferred stock; when The Southern Company is unable to make sufficient equity contributions; or when long-term securities rates are unattractive. Accordingly, Georgia believes it is desirable that it have maximum flexibility in respect of such borrowings, since borrowings in excess of the 10% Charter limitation may be required to avoid costly disruptions in the company's construction program.

Fees and expenses to be paid or incurred in connection with the proposed transactions are estimated at $110,000, including a legal fee of $20,000, and an accountants' fee of $5,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21408/January 25, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-6404)

NOTICE OF PROPOSAL THAT HOLDING COMPANY ACT AS SURETY FOR SUBSIDIARY

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulated thereunder as applicable to the proposal. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposal.

AEP requests approval of a surety bond in the amount of $2,900,000 that is to be posted with the Public Service Commission of West Virginia ("State Commission") prior to April 13, 1980, by AEP as surety and Wheeling Electric Company ("Wheeling") as principal.

On November 14, 1979, Wheeling filed with the State Commission new increased rates for electric service in West Virginia. By order dated December 13, 1979, the State Commission suspended the increase rates until April 30, 1980, pending its investigation of such increased rates. The new increased rates can be effective on and after April 13, 1980, subject to the posting by Wheeling of an appropriate bond to assure the making of appropriate refunds to its customers in the event the State Commission's final order in the proceeding should require refunds to be made. It is stated that the State Commission has indicated that it would permit AEP to become a surety for Wheeling in lieu of Wheeling posting the said bond. It is expected that the amount of the bond for the new increased rates will not exceed $2,900,000, which is equal to the estimated additional annual revenue that the new increased rates will provide.

The fees and expenses to be incurred in connection with the proposal are estimated at $2,500. The public Service Commission of West Virginia has authorized the proposal. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposal.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980 request in writing that hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A

copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any time after said date, the declaration, as filed or as it may be amended, may be permitted to be come effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereto.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21409/January 28, 1980

in the Matter of

EASTERN UTILITIES ASSOCIATES
sto ., Massachusetts

BLACKSTONE VALLEY ELECTRIC COMPANY
Lincoln, Rhode Island

EASTERN EDISON COMPANY
Brockton, Massachusetts

MONTAUP ELECTRIC COMPANY
Fall River, Massachusetts

70 5388)

ORDER AUTHORIZING EXTENSION OF BANK BORROWING BY SUBSIDIARY

Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiaries Blackstone Valley Electric Company ("Blackstone"), Eastern Edison Company ("Eastern") and Montaup Electric Company ("Montaup"), have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43(a) and 45 (a) promulgated thereunder concerning the following proposed transaction.

By prior orders issued in this proceeding, EUA was authorized to enter into a series of transactions designed to effect the transfer of Blackstone's proportionate ownership in the securities of Montaup (the EUA system's generating company) to Eastern, which now owns all of Montaup's securities.

As a part of that reorganization program, Blackstone was authorized, by order dated February 19, 1975 (HCAR No. 18817), to borrow $25,000,000 pursuant to a loan agreement with the Chase Manhattan Bank, N.A. ("Chase"). Blackstone originally issued its note ("Note") to Chase in said amount, which note bore interest at 115% of the prime rate and was to mature February 16, 1976. By subsequent orders dated February 12, 1976, February 8, 1977, January 17, 1978, and February 1, 1979 (HCAR Nos. 19386, 19880, 20402 and 20909), Blackstone was authorized to extend the maturity of the Note, in each case for approximately one year. The Note next matures on January 28, 1980, and presently bears interest at a rate per annum equal to 115% of the sum of the prime rate plus ½%. The Note is secured by a first mortgage on certain properties of Blackstone. No compensating balances are required in connection with the borrowings.

By post-effective amendment it is now proposed that Blackstone and Chase enter into an amendment to their loan agreement, which amendment would (1) extend the maturity of the Note to January 27, 1981, and (2) change the interest rate to a rate per annum equal to the sum of the prime rate plus 2%, with a minimum interest rate of 12%. No compensating balances will be required in connection with the borrowings. Assuming a prime rate of 15.25%, the effective interest cost of the borrowings would be 17.25%.

It is stated that Blackstone presently contemplates the payment of the Note from the proceeds of a future debt financing, the undertaking of which is felt is to be dependent upon Blackstone's ability to obtain sufficient rate relief. The issuance of such securities might be possible by early 1981.

The record is incomplete with respect to the fees and expenses to be incurred in connection with the proposed transaction. The Rhode Island Division of Public Utilities and Carriers has authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21374), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the fees and expenses to be incurred in connection with the proposed transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21410/January 28, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Berks County, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-6311)

ORDER AUTHORIZING ISSUANCE AND SALE OF ADDITIONAL FIRST MORTGAGE BONDS, AND GRANTING AN EXCEPTION FROM COMPETITIVE BIDDING

General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries Jersey Central Power & Light Company ("Jersey Central"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission post-effective amendments to their application-declaration in this proceeding pursuant to Sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44, 45, 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the following transactions.

By orders dated June 19, 1979 (HCAR No. 21107) and October 30, 1979 (HCAR No. 21276), the Commission authorized GPU, Jersey Central, Met-Ed and Penelec to issue, sell and renew their respective promissory notes (the "notes") having a maturity of not more than six months from the date of issue from time to time through October 1, 1981 pursuant to a revolving credit agreement with a syndicate of commercial banks (the "Loan Agreement"). Aggregate borrowings under the Loan Agreement are limited to $500,000,000 and Met-Ed's indebtedness thereunder is restricted to $125,000,000. The indebtedness under the Loan Agreement was to be secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of Jersey Central, Met-Ed, Penelec and GPU Service Corporation, and, in the cases of Jersey Central and Met-Ed certain other collateral.

Met-Ed now proposes to issue and sell for cash to the banks participating in the Loan Agreement and requests an exception from the competitive bidding requirements of Rule 50 under the Act for such issuance and sale, up to $14,000,000 aggregate principal amount of additional first mortgage bonds (the "New Bonds"). The New Bonds would be issued under the Indenture, dated November 1, 1944,

between Met-Ed and Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture. Of the New Bonds, up to $7,000,000 principal amount will be issued against a like principal amount of Met-Ed's First Mortgage Bonds due February 1, 1980, and up to $7,000,000 principal amount will be issued against cash or bondable value of property additions. The New Bonds may be subject to redemption and to mandatory repurchase upon the occurrence of certain events.

The New Bonds will mature on or before December 31, 1981. The interest rate on the New Bonds will be a floating rate and will be computed in accordance with the formula for determining the interest rate on the notes issued by Met-Ed under the Loan Agreement—that is, 105% of the higher of (i) Citibank's base rate, as in effect from time to time, or (ii) ½ of 1% above the three-week moving average of offering rates for three-months certificates of deposit of major banks. The aggregate principal amount of notes issued by Met-Ed under the Loan Agreement and the New Bonds outstanding at any one time shall not exceed $125,000,000. Of the proceeds from the sale of the New Bonds, $7,000,000 will be used to repay outstanding short-term undebtedness, and $7,000,000 will be used to refund a like amount of bonds maturing February 1, 1980. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged.

Because GPU guarantees Met-Ed's obligations on notes issued pursuant to the Loan Agreement, GPU will guarantee Met-Ed's indebtedness under the New Bonds. In addition, since the New Bonds are being issued by Met-Ed to the banks, in effect, in lieu of additional notes under the Loan Agreement, the New Bonds will be further secured by the existing pledge by GPU to the banks of the common stock of Jersey Central, Penelec, Met-Ed and GPU Service Corporation and the existing pledge and grant by Met-Ed to the banks of a security interest in certain yellowcake owned by Met-Ed and Kerr-McGee Nuclear Corporation providing for the conversion and delivery thereof. This collateral has previously been pledged to the banks by GPU and Met-Ed, respectively, to secure obligations of Met-Ed (and in the case of the common stock pledged by GPU, the obligations of GPU, Jersey Central, Penelec and GPU Service Corporation as well) under the Loan Agreement.

The fees, commissions and expenses to be incurred in connection with the proposed transaction, including expenditures through December 31, 1979 as well as in connection with the issuance and sale by Met-Ed of the New Bonds, are estimated to total $115,000, including legal fees of $102,000, trustee's fees of $8,400 and miscellaneous expenses of $4,600. The Pennsylvania Public Utility Commission has jurisdiction over and has approved issuance and sale of the New Bonds by Met-Ed. No other state commission and no federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21376), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the appliable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated uner the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21411/January 28, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATIOI
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
Ashland, Kentucky

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT OF CANADA LTD.
COLUMBIA COAL GASIFICATION CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
COLUMBIA GAS SYSTEM SERVICE CORPORATION
Wilmington, Delaware

(70-6393)

ORDER AUTHORIZING ALLOCATION OF HOLDING COMPANY SYSTEM'S CONSOLIDATED TAXES

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its above-named wholly owned subsidiary companies have filed a joint declaration and an amendment thereto with this Commission pursuant to Sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the proposed transaction.

Columbia proposes to allocate the System's consolidated taxes for the years 1979 and 1980 in the same manner as was previously authorized for the years 1977 and 1978 by the Commission's orders dated March 2, 1978 (HCAR No. 20427), February 2, 1979, (HCAR No. 20913), and February 27, 1979 (HCAR No. 20936). Those orders provided that the cash difference between the adjusted consolidated tax liability and the actual consolidated tax liability be remitted by Columbia to Columbia Gas Development Corporation (Development U.S.), and Columbia Gas Development of Canada Ltd. (Development Canada) in proportion to their respective tax losses, if any, incurred in 1977 and 1978 for use in further exploration and development work. It is stated that the proposed transaction is necessitated by the continually growing needs of the System for supplies of natural gas, coupled with the general decline of supplies from traditional sources. This has resulted in expanded exploration and development activities by two of Columbia's exploration and development subsidiary companies, Development U.S. and Development Canada. These activities have required large amounts of capital to be supplied by the parent company. In connection with such activities, these subsidiaries have in recent years incurrred tax losses. The inclusion of such tax losses in the consolidated tax returns filed by the System will result in commensurate reductions in the System's consolidated tax liabilities. However, under the tax allocation provisions of Rule 45(b)(6) the benefit of such tax reductions are allocated to companies in the System other than the subsidiaries whose tax losses give rise to the tax reductions, thus making unavailable to the latter the tax benefits which might otherwise be applied in furtherance of their efforts to develop additional gas reserves to meet the System's requirements.

Under the instant proposal Columbia will calculate the System's tax liability for 1979 and 1980 to be reported on its consolidated tax returns for such years in the usual manner, but for purposes of asssessing liability among individual companies of the System, will add back the reduction in such tax liability generated by Development U.S.'s and Development Canada's tax losses. The combined amount (adjusted consolidated tax liability) will then be apportioned among the Columbia system companies other than Development U.S. and Development Canada in accordance with Rule 45(b)(6).

The other subsidiaries will then make payments to Columbia of their allocable share of the adjusted consolidated tax liability in accordance with Rule 45(b)(6). Columbia, in turn, will pay to Development U.S. and Development Canada, in proportion to

their respective tax losses, the cash equivalent of the difference between the actual consolidated tax return liability of the System and the aggregate amounts received by Columbia from the other Subsidiaries.

As a result of the Commission's previous Orders which authorized Columbia to allocate the System's Consolidated Federal income tax liability by a method other than prescribed by Rule 45(b)(6), the exploration and development companies have received tax benefits from their 1973 through 1978 losses sustained as a result of their exploration and development activities as follows:

	Tax Benefits Generated From Net Tax Losses	
Years	Development U.S.	Development Canada
	$	$
1973 [a]	6,468,115	6,524,520
1974 [a]	5,475,729	3,028,467
1975	12,989,153	2,731,909
1976	19,438,754	4,076,678
1977	28,041,480	5,082,723
1978	20,568,053	4,469,787

[a] In addition, in 1973 and 1974 Columbia Coal Gasification Corporation received similar tax benefits from its tax losses equal to $498,105 in 1973 and $329,944 in 1974 as authorized by the Commission.

Gross expenditures for exploration and development for Development U.S. for the years 1979 and 1980 are estimated to be $62,332,000 and $56,251,000 respectively, and gross expenditures for exploration and development for Development Canada for 1979 and 1980 are estimated to $17,562,000 and $15, 296,000 respectively.

The present net income projection for Development U.S. for the years 1979 and 1980 are $8,307,000 and $9,895,000 respectively. Net income projections or Development Canada for 1979 and 1980 are $831,000 and $2,222,000 respectively. However, it is estimated that both Development U.S. and Development Canada will have Federal income tax losses for years 1979 and 1980. The estimated net tax losses for Development U.S. for 1979 and 1980 are $22,670,000 and $13,449,000 respectively. The estimated net tax losses for development Canada for 1979 and 1980 are $11,283,000 and $7,548,000, respectively. The proposed transaction will allow these companies to continue to receive the benefit of the tax losses attributable to them, for 1979 and 1980, and enable them to sustain the level of expenditures necessary to find and produce gas reserves adequate to meet the needs of the System and its customers.

In future years, when Development U.S. or Development Canada have net taxable income they, or either of them, may be entitled to tax credits as a result of the loss carry-back or carry-over provisions of Section 172(b) of the Internal Revenue Code of 1954 in order to comply with the separate return limitations required by Rule 45(b)(6). To the extent tha these companies receive tax benefits pursuant to the Commission's order or the proposed transaction, such benefits would be applied to reduce any tax credits in future years to which either of these companies might otherwise be entitled under the separate return limitations of Rule 45(b)(6).

Development Canada signed an agreement on October 8, 1979 which would sell to a Japanese group most of the 3.75% working interest it holds in acreage being operated by Dome Petroleum Ltd. in the Canadian Beaufort Sea. Under the agreement, Development Canada retains a 0.25% interest in the acreage as well as the right to purchase 21.5% of any gas found on the 2.9 million net acres. Sale price under the agreement is $50 million, Canadian, or approximately $42 million, U.S. As a result, $10.5 million will be added to the 1979 projected net income of $831,000 listed above. Dome Petroleum had the right to match any offer made for Development Canada's interest in the Beaufort Sea and did, in fact, exercise such right on December 5, 1979. In past years Development Canada has received tax benefits for some of its share of the costs of unsuccessful drilling of this acreage. Consummation of this transaction with either of the prospective purchasers would produce earnings for Development Canada sufficient to reverse approximately $9 million of tax benefits and retire a like amount of the non-interest bearing Demand Promissory Notes substantiating such tax benefits which Development Canada has issued pursuant to Commission authorization.

Subject to the foregoing, in no event will the tax allocated to any subsidiary company exceed the

amount of tax based upon a separate return computed as if such company had always filed its tax return on a separate return basis. No changes in the accounting requirements authorized by the Commission will occur as a result of approval of the proposed transaction.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,400, including a fee of $2,400 to Columbia Gas System Service Corporation for services performed at cost. It is stated that no state or federal regulatory body, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21377), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21412/January 28, 1980

In the Matter of

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70112

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6404)

NOTICE OF PROPOSED ISSUANCE AND SALE BY SUBSIDIARY OF COMMON STOCK TO HOLDING COMPANY AND OF PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that New Orleans Public Service Inc. ("NOPSI"), an electric utility subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its public-utility subsidiary company, New Orleans Public Service Inc., have filed an application with this Commission pursuant to Sections 6(b), 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

NOPSI proposes to issue and sell up to 150,000 shares of a new series of its preferred stock, $100 par value, subject to the competitive bidding requirements of Rule 50 under the Act. The new preferred stock will be created by appropriate corporate action and, except as to designation, dividend rate, redemption prices, and the terms and amount of sinking fund requirements for the purchase or redemption of shares of the new preferred stock, will have the same characteristics as, and rank *pari passu* with, the presently outstanding preferred stock of NOPSI.

The dividend rate of the new preferred stock (which will be a multiple of 1/25th of 1%), the price to be paid to NOPSI (which will be not less than $100 nor more than $102.75 per share, plus accrued dividends, if any), and the amount per share to be paid by the company to the successful bidder or bidders will be determined by competitive bidding. The terms of the new preferred stock will also include provisions for a sinking fund designed to redeem at $100 per share, plus accumulated dividends, 7,500 shares on each March 1 commencing in the year 1985, with NOPSI having a non-cumulative option to redeem an additional 7,500 shares on each March 1 during the sinking fund redemption period.

NOPSI also proposes to issue and sell to Middle South, and Middle South proposes to acquire, 1,000,000 shares of NOPSI's common stock having a par value of $10 per share ("additional common stock") at a cash purchase price of $10 per share, or $10,000,000 in the aggregate. NOPSI's Charter presently provides for 6,000,000 authorized shares of common stock having a par value of $10 per share, of which 5,935,900 shares, having an aggregate par value on the company's books of $59,359,000, are issued and outstanding and owned by Middle South. Accordingly, NOPSI further proposes, by appropriate corporate action and with the consent of Middle South, to amend its Charter, concurrently with the Charter amendment establishing the new preferred stock, so as to increase from 6,000,000 to 7,000,000 the number of authorized shares of its common stock, thereby providing the company with a sufficient number of authorized but unissued shares for purposes of consummating the proposed sale to Middle South of the additional common stock.

NOPSI and Middle South believe it is preferable for sales of the additional common stock to be timed to coincide with the company's cash needs from time to time, which are primarily determined by the nature and pace of its construction program. Therefore, NOPSI and Middle South have proposed that the sales of the additional common stock be effected from time to time at any time through and including December 31, 1980, in increments to be determined by the company and Middle South. Upon the consummation of the issuance and sale by NOPSI, and the acquisition by Middle South, of all the additional common stock, NOPSI intends to credit its Common Stock Account with the amount ($10,000,000) received by it for the additional common stock, and Middle South intends to debit its Investment Account with the amount ($10,000,000) of its cash investment in the additional common stock.

NOPSI intends to apply the net proceeds derived from the issuance and sale of the new preferred stock and the additional common stock to the payment of short-term borrowings, estimated to total $11,500,000 at the time of the sale of the new preferred stock, to the financing in part of NOPSI's 1980 construction program, which provides for expenditures of approximately $30,400,000, and to other corporate purposes.

The fees and expenses paid or to be incurred in connection with the proposed issuance and sale of the new preferred stock are estimated to total $140,000, including counsel fees of $45,000, accountants' fees of $15,000, and fees of Middle South Services, Inc., at cost, of $8,500. The fee of counsel for the purchasers of the new preferred stock is estimated at $21,000 and is to be paid by the successful bidders. It is stated that no special or separable fees are anticipated by either NOPSI or Middle South in connection with the issuance and sale of the additional common stock.

It is further stated that the City of New Orleans has jurisdiction over the proposed issuance and sale of securities by NOPSI and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21413/January 28, 1980

In the Matter of

NEW ORLEANS PUBLIC SERVICE INC.
New Orleans, Louisiana

(70-6392)

ORDER AUTHORIZING AMENDMENTS TO ARTICLES OF INCORPORATION

New Orleans Public Service Inc. ("NOPSI"), a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 23, 24, and 62 promulgated thereunder as applicable to the following transactions.

NOPSI proposes to amend the Restated Articles of Incorporation under which the company is constituted ("the Charter") so as to raise the fixed ceiling on the amount to which the capital stock of the Company may be increased from $100,000,000 to $200,000,000.

The provision of the Charter limiting the total amount of capital stock of NOPSI to $100,000,000 has been contained in the Charter and has remained essentially unchanged since 1922. Since that time NOPSI has grown and the company believes, on the basis of current projections of its financing needs, that the present $100,000,000 ceiling would severely limit its ability in the future to obtain outside capital funds. Currently, NOPSI's construction program contemplates expenditures of approximately $30,400,000 in 1980 and $26,100,000 in 1981. The company is planning sales of an aggregate of $25,000,000 of its capital stock, consisting of $15,000,000 of Preferred Stock and $10,000,000 of Common Stock, to finance a portion of its 1980 construction expenditures. In view of the fact that as of September 30, 1979 the NOPSI's total capital stock outstanding amounted to $79,138,800, the current $100,000,000 ceiling on capital stock would effectively prohibit the company from completing its planned financing program. In order to permit NOPSI to finance an appropriate portion of its future construction program through sales of capital stock, it is necessary that the fixed ceiling limitation be raised.

Moreover, in addition to the fixed ceiling limitation on the total amount of capital stock, the Charter contains various earnings and capitalization restrictions for the protection of the company's stockholders in connection with the issuance of additional preferred stocks. In contrast to the latter restrictions, the fixed ceiling limitation on the total amount of capital stock takes no account of the growth of the Company or its financial strength, and makes no provision once the ceiling is reached for the meeting of future financing requirements.

Accordingly, NOPSI proposes to raise the capital stock limitation from the present $100,000,000 to $200,000,000, a figure believed by the company to be sufficiently high, after giving effect to the currently planned financing program, to obviate the necessity for further increases in the ceiling for the forseeable future. The other restrictions on the issuance of additional preferred stocks contained in the Charter will not be affected by the proposed amendment.

The Company also proposes to amend its Charter so as to permit the Company to establish sinking fund requirements for the purchase or redemption of shares of any new series of its Preferred Stock. NOPSI plans to raise a major portion of funds during the next few years to finance its continuing construction program through the issuance and sale of additional securities, including additional shares of its Preferred Stock. While the exact nature and amount of each such security issue will depend upon NOPSI's earnings and capital requirements and the market conditions existing at the time, NOPSI is presently planning to issue and sell through an underwritten public offering 150,000 shares of new series of its Preferred Stock in the first quarter of 1980, and is also planning to issue and sell to Middle South during 1980 an additional 1,000,000 shares of Common Stock. These proposed sales will be the subject of a separate filing with this Commission under the Act. The proceeds from these securities sales, expected to approximate $15,000,000 and $10,000,000, respectively, will be applied by NOPSI to its construction program and to other corporate purposes.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that other electric utilities have under present market conditions been able to sell shares of preferred stock at favorable dividend rates (if at all) only with the benefit of sinking funds. The Charter presently does

not permit NOPSI to issue any series of Preferred Stock containing a sinking fund.

Under the provisions of the Charter as currently in effect, authorized but unissued shares of the Preferred Stock may be issued by NOPSI from time to time in one or more series. Except in certain respects as to which there may be variations among series, the shares of each series have the same rank and are identical with each other. The respects in which there may be variations among separate series consists of (1) the number of shares constituting each series and the distinctive designation thereof, (2) the dividend rate, dividend payment dates and the date from which dividends shall be cumulative and (3) the amount or amounts payable upon redemption. When a new series of the Preferred Stock is issued, those characteristics thereof as to which there may be variations among series are stated and expressed in an appropriate amendment of the Charter creating such series.

In order to allow NOPSI to issue shares of any future series of its Preferred Stock with the benefit of a sinking fund and thus to enable it to sell securities when it might not otherwise be able to do so on acceptable terms, NOPSI proposes to effect certain amendments of its Charter so as to afford the company, in dividing authorized but unissued shares of the Preferred Stock into series and establishing the characteristics as to which there may be variations among series, the right to include in the amendment creating any future series of its Preferred Stock the terms and amount of sinking fund requirements for the purchase or redemption of shares of any such series. These amendments will also provide in effect that if at any time dividends payable upon the Preferred Stock are in default, NOPSI may not make any payment, or set aside any funds for payment, into any sinking fund for the purchase or redemption of any shares of the Preferred Stock unless approval is obtained under the Act. Under present laws, no additional shares of the Preferred Stock can be issued without prior approval of the Council of the City of New Orleans and the Commission, including, among other things, approval by the Commission of the terms and amount of sinking fund requirements for the purchase or redemption thereof.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that the Charter presently does not permit NOPSI to issue any series of Preferred Stock containing a sinking fund. In furtherance of these proposals NOPSI proposes to solicit proxies from the holders of its outstanding stock in connection with its special meeting of shareholders at which the shareholders will take action upon the proposed amendments to the Charter. In connection with the solicitation of shareholder consent, NOPSI has filed the relevant proxy materials with the Commission and has received accelerated Commission action pursuant to Rule 62.

The fees, commissions, and expenses to be incurred in connection with the proposed transaction are estimated to total $26,500, including legal fees of $20,000, printing expenses of $3,000 and miscellaneous expenses of $1,000. No state and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21362), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21415/January 30, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

SENECA RESOURCES CORPORATION
Buffalo, New York

(70-6241)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANK BY SUBSIDIARY COMPANY AND GUARANTY THEREOF BY HOLDING COMPANY

National Fuel Gas Company ("National"), a registered holding company, and one of its wholly-owned subsidiary companies, Seneca Resources Corporation ("Seneca"), have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

By order in this proceeding dated February 2, 1979 (HCAR No. 20911), Seneca was authorized to issue and sell not to exceed $20,000,000 of short-term notes outstanding at any one time to Houston National Bank, such notes to be unconditionally guaranteed by National. In accordance therewith, Seneca currently has $20,000,000 of short-term borrowings outstanding pursuant to a note issued under a loan agreement, which note becomes due on January 31, 1980. Payment of principal and interest on the note is unconditionally guaranteed by National.

Seneca and National now request that the authorization for the issuance and sale of such $20,000,000 of notes, and the guarantee by National, be extended for a period of nine months so that Seneca may borrow or reborrow up to $20,000,000 from the bank on the same terms and conditions. Any new note issued, or any outstanding note of which the maturity date is extended, shall mature not later than October 31, 1980. Payment of principal and interest on such note will be unconditionally guaranteed by National.

The note or notes will continue to bear interest not in excess of the prime rate of interest at Houston National Bank as it fluctuates from time to time. In addition, Seneca has agreed with the bank to maintain deposits at the bank ("Average Daily Available Balance") equal to 10% of the amount of funds available under the loan agreement plus 10% of the amount drawn down by Seneca under the loan agreement. In the event that the Average Daily Available Balance is less than the required amount during a three-month period, Seneca has agreed to pay the bank a fee equal to the greater of (a) the average prime rate of the bank for the period or (b) the average rate paid by the bank for 90-day certificates of deposit (with certain adjustments) multiplied by the amount of the deficiency in the Average Daily Available Balance. Assuming Seneca borrows the full amount available under the loan agreement and determines not to maintain the required Average Daily Available Balance, based on a 15.25% prime rate and a 13.50% rate for 90-day certificates of deposit, Seneca would be obligated to pay the Bank $610,000 annually pursuant to this provision, and its effective cost of money would be 18.30% per annum.

Seneca is currently planning to refund the $20,000,000 short-term note or notes by issuing a long-term note or notes which will be secured by approximately 65,000 acres of hardwood timber owned by Seneca and located in Pennsylvania. Seneca expects that such note or notes will be placed with an insurance company which has had experience with similar loans secured by timber.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21383), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said

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declaration, as amended by said post-effective amendments be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21416/January 30, 1980

In the Matter of

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

CENTRAL OHIO COAL COMPANY
P.O. Box 98
Cumberland, Ohio 43732

(70-6181)

NOTICE OF PROPOSED EXTENSION OF BORROWINGS BY COAL MINING SUBSIDIARY

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12 of the Act as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated November 1, 1978 (HCAR No. 20758), COCO was authorized to enter into a credit agreement with Irving Trust Company pursuant to which COCO could borrow an aggregate principal amount not to exceed $30,000,000. Such borrowings are evidenced by a note or notes bearing interest at an annual rate equal to 105% of Irving Trust Company's prime rate in effect from time to time, and maturing on February 29, 1980. The purpose of such loans was to provide interim financing for a transaction involving the acquisition and construction of a Dragline, shovel and related equipment (collectively the "Equipment") for use by COCO in its mining operatons. Permanent financing for the Equipment is to be provided from the proceeds of a sale and leaseback transaction that was authorized by order dated August 7, 1978 (HCAR No. 20660), in a separate proceeding (File No. 70-6157).

By post-effective amendment it is stated that completion of the dragline has been delayed until on or about March 25, 1980, which delay will result in a delay in the closing of the sale and leaseback transaction from which the borrowings from Irving Trust Company are to be repaid. COCO and Irving Trust Company have entered into an amendment to their credit agreement, subject to approval of this Commission, which amendment would (1) extend the maturity of the borrowings from February 29, 1980, until June 30, 1980, and (2) change certain terms of the credit agreement effective as of June 28, 1979, so as to permit COCO to pay dividends provided its net worth remains above $7,000,000.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it

may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21417/January 30, 1980

In the Matter of

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

CENTRAL OHIO COAL COMPANY
P.O. Box 98
Cumberland, Ohio 43732

(70-6157)

NOTICE OF PROPOSED SALE AND LEASEBACK OF MINING MACHINERY AND GUARANTEE OF LEASE

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9, 10 and 12 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By order dated August 7, 1978 (HCAR No. 20660), applicants-declarants were authorized to enter into a series of transactions concerning the financing of a dragline, a shovel and in certain related contracts and equipment (collectively the "Equipment") for use by COCO in its mining operations. Said authorization basically provided for the following: (1) the assignment of the Equipment to Girard Bank (the "Lessor"), as trustee for C.I.T. Leasing Corporation (the "Owner Participant"); (2) the lease of the Equipment to COCO, the lease of the shovel to commence at an initial closing in August 1978 and the lease of the rest of the Equipment to commence at a final closing, which is to occur upon completion of the dragline (then estimated to take place in September 1979); and (3) the guarantee of COCO's lease obligations by Ohio Power. The purchase price for all the Equipment, which includes all overhead and indirect costs, was estimated to be $30,000,000, such amount to be financed 50% by the Owner Participant and 50% by John Hancock Mutual Life Insurance Company (the "Loan Participant"). The Owner Participant and the Loan Participant issued commitments extending through March 31, 1980, in the aggregate amount of $30,000,000, plus or minus 10%; approximately $2,000,000 of such amount was provided at the initial closing in August 1978 and the balance was to be provided at the final closing. Interim financing in an amount of $30,000,000 was provided to COCO by a credit agreement with Irving Trust Company, such financing being authorized by Commission order dated November 1, 1978 (HCAR No. 20758), in File No. 70-6181.

The lease is a net lease under which COCO is responsible for all maintenance, insurance, taxes (with certain exceptions) and other costs with respect to operation of the Equipment. Basic rent is payable in forty equal semiannual installments (the shovel and the dragline each have a base rental term of 20 years, but the shovel's term began in August 1978 and that for the dragline will commence on the date of acceptance of its construction by COCO) at an annual rate of 3.89% of the cost of the Equipment, such rate resulting in an effective interest cost to COCO of approximately 4.72% per annum. Such rate reflects the fact that Owner Participant will retain a 10% investment tax credit and that the rent will service the long-term loan from the Loan Participant at a rate of 9.50% per annum. COCO has certain renewal and purchase options under the lease.

By post-effective amendment it is stated that construction of the dragline has been delayed

(completion is now estimated to occur on or about March 25, 1980), and that estimated cost of the dragline portion of the Equipment has increased from $28,000,000 to $36,500,000. Such increase is attributed to higher than anticipated assembly costs and interest costs on money borrowed to finance its construction. Applicants-declarants now propose that (1) the total dollar amount of Equipment to be transferred to Lessor and leased to COCO be increased to $41,000,000 from the $30,000,000 amount previously authorized, and (2) Ohio Power guarantee such increased lease obligations. The $41,000,000 amount represents approximately $2,000,000 for the shovel (which is presently under lease to COCO), $36,500,000 for the dragline, and an additional $2,500,000 for a second shovel (the "New Shovel"). The Owner Participant and the Loan Participant have increased their commitments from $15,000,000 each to $20,500,000 each (plus or minus 10%) to cover the new total estimated cost of the Equipment (including the New Shovel), and agreed to extend such commitments to June 30, 1980.

The New Shovel will be used primarily to prepare benching for the dragline, and will be acquired by Lessor from COCO with money supplied by Owner Participant and Loan Participant. The basic rent on the Equipment (including the New Shovel but excluding the first shovel) will be payable in 40 semiannual installments at an annual rate of 4.152% of such Equipment's cost, resulting in an effective interest cost to COCO of approximately 5.50% per annum. The basic rent on the first shovel, at a rate of 3.89% of its cost per annum, will remain unchanged.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that the Public Utilities Commission of Ohio has jurisdiction over the proposed transactions, and that no other state or federal commission, other than this Commission, has jurisdiction thereover.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 549/January 25, 1980

A notice has been issued giving interested persons until February 12, 1980, to request a hearing on an application of Shell Oil Company, pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939, declaring that the trusteeships of Bankers Trust Company, under an indenture qualified under the Trust Indenture Act, and another indenture not so qualified, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under both indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11028/January 28, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6183/January 28, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11029/January 29, 1980

In the Matter of

TRUST FOR U.S. TREASURY OBLIGATIONS
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4544)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Trust for Cash Reserves ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 1, 1979, pursuant to Section 6(c) of the Act, for an order of the Commission exempting Applicant from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On December 21, 1979, a notice was issued (Investment Company Act Release No. 10994) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

Applicant amended the application on January 23, 1980, stating that Applicant's name had been changed from Trust for Cash Reserves to Trust for U.S. Treasury Obligations to better describe Applicant's underlying investments.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the amended application for an order of exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost, be, and hereby is, granted, effective forthwith, subject to the following conditions agreed to by Applicant:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, its Trustees ("Management") undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Management shall be the following:

(a) Review by Management, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that Management will promptly consider what action, if any, should be initiated by Management.

(c) Where Management believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1. above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Management's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of Management's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which Management determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by Management.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Management in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

INVESTMENT COMPANY ACT OF 1940
Release No. 11030/January 30, 1980

DELEGATION OF AUTHORITY TO DIRECTOR OF DIVISION OF INVESTMENT MANAGEMENT

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Investment Management authority to issue notices of applications for orders under the Investment Company Act of 1940 permitting the depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security. Such authority is limited to applications which, upon examination, do not appear to the Director to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held. This delegation of authority should result in time and cost savings for applicants and the Commission in the processing of such applications.

EFFECTIVE DATE: January 30, 1980.

FOR FURTHER INFORMATION CONTACT: Cathy G. Douglas, Esq., Division of Investment Management, Securities and Exchange Commission, Room 543, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-3021.

SUPPLEMENTARY INFORMATION: Effective December 14, 1970, Section 26 [15 U.S.C. 80a-26] of the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a et seq.] was amended by adding new Section 26(b) which provides that:

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved the substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].

Subsequent to the enactment of Section 26(b) of the Act, the Commission, upon application, has issued several orders approving the substitution of securities in unit investment trusts. The Commission expects that other applications will be filed in the future seeking similar orders. Therefore, the Commission believes it to be appropriate to amend its rules relating to general organization to delegate authority to the Director of the Division of Investment Management to issue notices, pursuant to Rule 0-5 under the Act [17 CFR 270.0-5], of applications for orders pursuant to Section 26(b) of the Act where, upon examination, the matter does not appear to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held.

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended by revising paragraph (a)(1)(xxi) of §200.30-5 and redesignating the subsequent paragraphs to read as follows:

§200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(a) * * *

(1) * * *

(xxi) Section 26(b), 15 U.S.C. 80a-26(b).
(xxii) Section 28(c), 15 U.S.C. 80a-28(c).
(xxiii) Section 31(d), 15 U.S.C. 80a-30(d).
(xxiv) Section 32(c), 15 U.S.C. 80a-31(c).
(xxv) Section 45(a), 15 U.S.C. 80a-44(a).

* * * * *

The Commission finds, in accordance with Sections 553(b)(A) and 553(d) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(b)(A) and 553(d)], that this amendment relates solely to agency organization, procedure, or practice and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment to the Commission's rules relating to general organization 30 days before its effective date is similarly unnecessary. (Pub. L. No. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2).

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11031/January 29, 1980

In the Matter of

SAFECO EQUITY FUND, INC.
SAFECO INCOME FUND, INC.
SAFECO GROWTH FUND, INC.
SAFECO SPECIAL BOND FUND, INC.
and
SAFECO SECURITIES, INC.
c/o James W. Ruddy
SAFECO Plaza
Seattle, Washington 98185

(812-4579)

NOTICE OF FILING OF APPLICATION FOR AN ORDER OF THE COMMISSION PURSUANT TO SECTION 11(a) OF THE ACT TO PERMIT CERTAIN EXCHANGE OFFERS AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT AND RULE 22d-1 THEREUNDER.

NOTICE IS HEREBY GIVEN that SAFECO Equity Fund, Inc. ("Equity"), SAFECO Growth Fund, Inc. ("Growth"), SAFECO Income Fund Inc. ("Income"), and SAFECO Special Bond Fund, Inc. ("Special Bond") (collectively referred to hereafter as the "Funds"), open-end management investment companies registered under the Investment Company Act of 1940 ("Act"), and SAFECO Securities Inc. ("SAFECO Securities"), each Fund's principal underwriter (SAFECO Securities and the Funds are collectively referred to hereafter as the "Applicants") filed an application on December 4, 1979, and amendments thereto on January 21 and 22, 1980, for an order of the Commission, pursuant to Section 11(a) of the Act, permitting certain exchange offers among the Funds on the basis other than their respective net asset value per share at the time of exchange and, pursuant to Section 6(c) of the Act, exempting such exchange offers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

SAFECO Securities as principal underwriter for each of the Funds, maintains a continuous public offering of the shares of each of the Funds at their respective net asset value plus a sales charge. The maximum sales charge for shares of Equity, Growth and Income is 8.5% of the public offering price per share on purchases of less than $5,000, such sales charge being reduced for larger purchases. The sales charge per share for Special Bond is 3% on all purchases with no reduction of sales charge on larger purchases. Shares of each of the Funds may currently be exchanged for shares of Equity, Growth or Income on the basis of the relative net asset value per share at the time of the exchange without payment of a sales charge. Shares of Special Bond may currently be exchanged for shares of the other Funds on the basis of the relative net asset value per share at the time of the exchange, with the Special Bond shareholders paying the difference, if any, between the Special Bond sales charge and the sales charge of the Fund into which the Special Bond shareholder wishes to exchange. A $5 transaction fee is charged by the transfer agent, SAFECO Investment Management Corp., at the time of any exchange. All of the Funds provide that their shares may be acquired through the reinvestment of dividends and distributions at net asset value without a sales charge.

The Applicants state that Fund shares purchased by the reinvestment of dividends and/or capital gains distributions are entitled to identical exchange privileges as purchased shares. No sales or other commission is paid by SAFECO Securities with respect to any exchange and no refund of a sales charge is made on any of the exchanges permitted under the program.

The Applicants assert that the exchange privileges outlined above are in the best interests of the shareholders of each of the Funds because the imposition of no sales charge on the exchange of Equity, Growth and Income shares, and the imposition of the differential sales charge on the exchange of Special Bond shares for shares of the other Funds facilitates the exchange of shares to permit an investor to invest in shares of Funds having different investment objectives in order to meet the investor's changing needs. The Applicants believe that applying either no sales charge or the differential sales charge, as the case may be, is warranted in light of the cost savings to SAFECO Securities, because of the reduced sales effort involved and because no sales commissions are paid by SAFECO Securities to brokers or registered representatives on any exchange. The Applicants also contend that the imposition of the differential sales charge on exchanges of Special Bond shares for shares of Equity, Growth and/or Income will discourage attempts to circumvent the higher sales

charges which would have been applicable on the shares of such Funds had such shares been purchased initially.

The application states that a question has been raised as to the validity of the above exchange offers under Sections 11 and 22(d) of the Act. In order to eliminate any doubts as to the validity of future exchanges between the Funds, the Applicants request an order of the Commission on a prospective basis approving the exchange offers pursuant to Section 11 of the Act, and exempting such exchange offers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder pursuant to Section 6(c) of the Act. Upon issuance of the requested order of the Commission shareholders who have exchanged shares of Equity, Growth or Income for shares of Special Bond and then wish to exchange their Special Bond shares for shares of one of the other Funds, will pay a differential sales charge based on the difference in sales charge imposed by the Fund into which the Special Bond shareholder wishes to exchange and the sales charge imposed by Special Bond or other Fund initially purchased.

Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective security to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. Rule 22d-1 permits certain variations in sales load, but Applicants state that none of such variations are applicable to the exchange privileges outlined above.

Section 6(c) of the Act, provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11032/January 31, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6187/January 31, 1980

LITIGATION

Litigation Release No. 8981/January 25, 1980

UNITED STATES OF AMERICA v. FREDERICK M. FRIEDMAN AND ALAN E. SANDBERG, 76 Cr. 1022 (S.D.N.Y.)

Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission ("Commission"), announced that on January 22, 1980, following a non-jury trial before the Honorable Inzer B. Wyatt, United States District Judge for the Southern District of New York, defendants Frederick M. Friedman ("Friedman") of New York, New York, and Alan E. Sandberg ("Sandberg") of East Northport, New York, were each convicted on two counts of mail fraud and one count of wire fraud. Friedman is a vice president of TDA Industries, Inc. ("TDA"), and Sandberg, is a former officer and director of the company.

The convictions arose out of a transaction involving the payment of a duplicative finder's fee in connection with TDA's acquisition of Eagle Roofing & Art Metals, Inc.

Defendant Friedman was acquitted on one count of the indictment, which charged that Friedman had failed to disclose the above transaction in a TDA proxy statement in violation of the proxy solicitation rules.

Prior to the commencement of the above trial, defendant Friedman had been tried before a jury, convicted, and sentenced by the Honorable Charles S. Haight, Jr., United States District Judge for the Southern District of New York, to three months imprisonment and a $25,000 fine, in connection with other transactions involving TDA and Wescalind Corp. (a majority of whose shares were controlled by TDA). In the prior criminal proceeding, Friedman had been found guilty of five counts of conspiracy, securities fraud and making a false statement.

January 30, 1980 has been set as the sentencing for defendant Friedman and March 6, 1980 for defendant Sandberg.

The criminal trials arose out of the same transactions that were the subject of a prior Commission civil injunctive action, *SEC v. TDA Industries, Inc., et al.*, 75 Civil 4519 (S.D.N.Y. 1975).

For further information, see Litigation Release Nos. 8976, 8921, 7692, 7369 and 7088.

Litigation Release No. 8982/January 28, 1980

SEC v. THE INCOME BUILDERS, INC., ET AL (U.S.D.C. - S.D. Tex., Houston Div.) Civil Action No. H-78-1140

Michael J. Stewart, Administrator of the Fort Worth Regional Office, and Thomas Allen Moon, Assistant Administrator, Houston Branch Office, announced that on January 10, 1980, the Honorable Norman W. Black, United States District Judge for the Southern District of Texas, entered a permanent injunction against The Income Builders, Inc., Delbert K. Burkhart, Beech Mountain, Ltd., Beech Run, Ltd., Buckhannon River, Ltd. and Left Fork, Ltd., all of Houston, Texas, enjoining them from violating the registration provisions of the Securities Act of 1933. The final judgment was entered with the consent of the defendants, who neither admitted nor denied the allegations of the complaint.

In addition, all antifraud allegations pertaining to Section 17(a) of the Securities Act of 1933, to Section 10(b) of the Securities Exchange Act of 1934, and to Rule 10b-5 promulgated thereunder, were dismissed with prejudice.

The Commission commenced this action on June 21, 1978, by filing a complaint which alleged that The Income Builders, Inc., Delbert K. Burkhart, Left Fork, Ltd., Buckhannon River, Ltd., Beech Mountain, Ltd. and Beech Run, Ltd., were offering for sale, selling and delivering after sale, securities, namely investment contracts evidenced by units of limited partnership participation issued by Left Fork, Ltd., Buckhannon River, Ltd., Beech Mountain, Ltd. and Beech Run, Ltd., in violation of the registration and antifraud provisions of the federal securities laws.

For further information, see Litigation Release No. 8456.

Litigation Release No. 8983/January 29, 1980

SEC v. XONICS, INC, ET AL. (United States District Court for the Central District of California), Civil Action No. 77 1274-FW.

Leonard H. Rossen, Administrator of the Los Angeles Regional Office, announced that on January 2, 1980 the Commission filed an application in the United States District Court in Los Angeles, seeking further relief against Xonics, Inc. of Van Nuys, California. On April 11, 1977, Xonics consented, without admitting or denying the allegations, to issuance of a permanent injunction enjoining it from violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

Simultaneously with the Commission's application for further relief, Xonics, without admitting or denying the allegations, consented to issuance of an Amended Final Judgment of Permanent Injunction. The Amended Judgment provides that in addition to the relief set forth in the April 11, 1977 Judgment, Xonics shall permanently maintain an audit committee, the majority of whose members are not officers or employees of the company. In addition, Xonics must have its interim financial statement reviewed by its independent auditors through December 31, 1980.

The Amended Judgment required Xonics to file within 60 days an 8-K report with the Commission describing the current status of Xonics Electron Radiography. Within 90 days, the company must distribute to all of its shareholders a letter setting forth substantially the same information contained in the 8-K report.

The Amended Judgment also expands the specific items enumerated in the antifraud injunction against the company.

For further information, see Litigation Releases numbers 7865 and 7870.

Litigation Release No. 8984/January 29, 1980

SEC v. PETRO NATURAL RESOURCE CORPORATION AND EUGENE L. COLMAN (S.D.N.Y.) 79 Civil 6977 (LFM)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities Exchange Commission, announced that on January 17, 1980, Lloyd F. MacMahon, District Court Judge in the Southern District of New York, signed final judgments of permanent injunction enjoining Petro Natural Resource Corporation ("Petro"), a Delaware corporation located in New York, New York, and Eugene L. Colman ("Colman") of New York, New York, from violating the registration and antifraud provisions of the federal securities laws. Petro and Colman consented to the entry of the judgments without admitting or denying the allegations in the Commission's Complaint. (SEC v. Petro Natural Resource Corporation and Eugene L. Colman, 79 Civil 6977, U.S.D.C., S.D.N.Y.). (LR-).

Litigation Release No. 8985/January 29, 1980

SEC v. MONTE L. LOPATA, ET AL. (United States District Court for the District of Columbia, Civil Action No. 80-0274)

The Securities and Exchange Commission today announced the filing of a Complaint in the United States District Court for the District of Columbia seeking injunctive and other equitable relief against Monte L. Lopata and Albert I. Dubinsky. The Defendants are partners in an accounting firm in Clayton, Missouri. The Complaint alleged that the Defendants violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in connection with transactions in the common stock of The Carboline Company ("Carboline") of St. Louis, Missouri. Simultaneously with the filing of the Complaint, the District Court entered Final Judgments against the Defendants. The Defendants consented to entry of the Final Judgments without admitting or denying the allegations in the Commission's Complaint.

The Commission's Complaint alleged that on Saturday, July 28, 1979, Monte Lopata was advised by his brother, Stanley Lopata, Chairman of the Board of Directors of Carboline, of a preliminary agreement for Sun Company, Inc. ("Sun") to make an offer to purchase Carboline's common stock at $30 to $32 per share. It was alleged that Stanley Lopata told Monte Lopata that he was not to tell anyone about this and that he was not to buy any Carboline common stock. The Complaint alleged that on Monday, July 30, 1979, that Monte Lopata

purchased 1,000 shares of Carboline common stock without disclosing the material, non-public information to the sellers of the stock which he purchased. The Complaint further alleged that Albert Dubinsky also received material, non-public information concerning the preliminary agreement and thereafter, on July 31, 1979, purchased 2,000 shares of Carboline common stock without disclosing much information to the sellers of such stock. Subsequently, according to the Complaint, Monte Lopata and Albert Dubinsky tendered the stock, which they purchased on July 30 and July 31, 1979, respectively, in a tender offer by Sun for all of Carboline's common stock at $30 3/4 per share. The Complaint alleged that Monte Lopata and Albert Dubinsky realized profits of $11,674.45 and $21,924.13, respectively.

The District Court permanently enjoined Monte Lopata from violating the antifraud provisions of the Securities Exchange Act of 1934 and permanently enjoined Dubinsky from violating such provisions by directly or indirectly purchasing or selling securities while in possession of material, non-public information concerning such security or the issuer thereof, without having previously disclosed such information to the person from whom such security is purchased or to whom it is sold. The District Court further ordered the Defendants to disgorge the profits realized to the sellers of the stock which they purchased.

Litigation Release No. 8986/January 29, 1980

SEC v. GERALD GREENSPAN a/k/a JAY GREENE, 75 Civil 2826 (EW) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office ("NYRO"), announced that on January 25, 1980, the Honorable Edward Weinfeld, United States District Judge in the Southern District of New York, signed an Order directing Gerald Greenspan a/k/a Jay Greene ("Greenspan"), of Brooklyn, New York, to show cause why additional equitable relief should not be granted as part of the final judgment of permanent injunction entered against Greenspan on July 8, 1975 in the action *S.E.C. v. Greenspan*, 75 Civil 2826 (EW), in the form of an Order: (1) enjoining Greenspan from purchasing the securities of Family Record Plan, Inc. and Hiller Aviation, Inc.; (2) directing him to disclose his prior injunctions [*S.E.C. v. Greenspan*, 60 Civil 4179 (AB), and *S.E.C. v. Greenspan*, 75 Civil 2826 (EW)], and conviction for criminal contempt [*United States of America ex rel. Securities and Exchange Commission v. Greenspan*, 78 Cr. Misc. #1 (P. 41) (EW)], by delivering copies thereof to any registered broker or dealer prior to purchasing or selling any security through such broker or dealer; and (3) requiring him to submit to the NYRO a written report listing all of his brokerage accounts and securities in which he currently holds a beneficial interest and thereafter, to submit monthly reports detailing all of his securities transactions.

A hearing on the Order to Show Cause has been scheduled for Friday, February 1, 1980 at 10:00 a.m.

For further information see LR-1820, 1832, 6954, 7008, 8622, 8672.

Litigation Release No. 8987/January 29, 1980

S.E.C. v. U.S. ENERGY CORP., ET AL. (USDC COLO, Civil Action No. 78-EK-1233)

Robert H. Davenport, Regional Administrator of the Securities and Exchange Commission, announced that on January 16, 1980, the Honorable Ewing Kerr, Senior Judge, USDC District of Wyoming sitting in Denver, Colorado, at the close of the plaintiff's case, granted the motions of defendants Daniel P. Svilar and Emery Tomlinson to dismiss the action as to these defendants.

The complaint alleged, in substance, that Tomlinson, of Riverton, Wyoming, had violated Rule 10b-5 under the Securities Exchange Act of 1934, as amended, and that Svilar, of Hudson, Wyoming, had violated Rule 10b-5 and the proxy rules under the said Act.

On January 18, 1980, the remaining defendants, John L. Larsen, Lloyd Larsen, Max Evans, Crested Butte Silver Mining, Inc. and U.S. Energy Corp., completed presenting their evidence and Judge Kerr ordered that both plaintiff and defendants submit to the Court proposed findings of fact and conclusions of law within 45 days after the transcript of the trial becomes available.

The trial commenced on January 7, 1980 and was completed on January 18, 1980.

For further information see Litigation Release No. 8563.

Litigation Release No. 8988/January 29, 1980

SEC v. ASSET MANAGEMENT CORP., ET AL. (S.D. Ind., Civil No. IP 78-34-C)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission (Commission), announced that on December 10, 1979, Federal Judge William E. Steckler, Southern District of Indiana, entered a final judgment of permanent injunction enjoining Edward E. Holschuh (Holschuh) from future violations of the registration and antifraud provisions of the Federal securities laws.

Following a trial held in September 1979, the Court found that Holschuh violated the antifraud provisions in connection with the sale of limited partnership interests of A.M. Coal Partners - 1976 A through E. The Court found that in connection with those sales, Holschuh made misrepresentations and omitted to state material facts concerning, among other things, the use of the proceeds derived from the sale of the securities, the existence and ownership of leasehold interests, the application for and the granting of mining permits, and the existence of mining operations.

Litigation Release No. 8989/January 29, 1980

UNITED STATES v. RALPH READ, ET AL. (N.D. Ill., 79 CR 277)

William D. Goldsberry, Administrator of the Chicago Regional Office, and Gregory C. Jones, Acting U.S. Attorney for the Northern District of Illinois, announced that on January 11, 1980, the Honorable John Powers Crowley, United States District Judge for the Northern District of Illinois, sentenced Jack C. Coulson to three years probation. This sentence followed Coulson's earlier plea of guilty to conspiracy and mail fraud charges.

Coulson was employed as National Sales Manager for Cenco Medical Health, a subsidiary of Cenco, Incorporated, a Chicago based corporation. He was indicted on April 24, 1979 by a Federal Grand Jury in Chicago, along with six other individuals. The indictment charged that from 1970 through 1974, approximately $25 million in false profit figures were reported by Cenco. It was alleged that a variety of devices were used to create this false profit, including the inflation of the inventory of Cenco Medical Health. While Coulson pled guilty to conspiracy and mail fraud charges arising from the Cenco fraud, three other former Cenco employees contested the charges. The three, Ralph Read, Howard Swiger and Ronald Spiegel, were subsequently tried and convicted by a jury on October 29, 1979.

The civil injunctive action filed in September, 1976, by the Securities and Exchange Commission against Coulson and other former Cenco employees is still pending before the United States District Court for the Northern District of Illinois.

For further information, see Securities Exchange Act of 1934 Release No. 11495 and Litigation Release Nos. 7538, 8509, 8747, 8786, 8919, 8970 and 8975.

Litigation Release 8990/January 30, 1980

SEC v. TEMPLET INDUSTRIES, INC. (United States District Court for the District. Civil Action No. 80-0324)

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Templet Industries, Inc., ("Templet") 112 East Centre Street, Nutley, New Jersey. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Templet has failed to file its Annual Report on Form 10-K for its fiscal year ended September 30, 1979, required to have been filed with the Commission by December 29, 1979. Further, the Complaint charged that Templet, as part of a continuing course of violative conduct extending over several years, has failed to timely file certain of its Annual Reports and Quarterly Reports required to have been filed with the Commission.

The Complaint requests that the Court order Templet to file forthwith with the Commission its Annual Report on Form 10-K for its fiscal year ended September 30, 1979. Further, the Commission requested that the Court enjoin Templet from further violations of the reporting provisions of the federal securities laws.

Litigation Release 8991/January 30, 1980

SEC v. VAPORTECH CORP. (United States District Court for the District of Columbia. Civil Action No. 80-0325)

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Vaportech Corp. ("Vaportech") of 8337 Hindry Ave., Los Angeles, California. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Vaportech has failed to file its Annual Report on Form 10-K for its fiscal year ended August 31, 1979, required to have been filed with the Commission by November 29, 1979, and four of its Quarterly Reports on Form 10-Q, including one for its fiscal quarter ended November 30, 1979, required to have been filed with the Commission by January 14, 1980. Further, the Complaint charged that Vaportech, as part of a continuing course of violative conduct extending over several years, has failed to timely file certain of its Annual Reports and Quarterly Reports required to have been filed with the Commission.

The Complaint requests that the Court order Vaportech to file forthwith with the Commission its Annual Report on Form 10-K for its fiscal year ended August 31, 1979, and its Quarterly Reports on Form 10-Q for its fiscal quarters ended November 30, 1979, May 31, 1978, February 28, 1978, and November 30, 1977. Further, the Commission requested that the Court enjoin Vaportech from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 8992/January 30, 1980

SEC v. PRICE & COMPANY, ET AL. (United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 80-C-269)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission announced that on January 17, 1980, the Commission filed a complaint in the United States District Court for the Northern District of Illinois, Eastern Division, seeking preliminary and permanent injunctive relief against Price and Company (Price & Co.), a registered broker-dealer in Chicago, Illinois and Earl Lawrence Price, managing partner of Price and Co. alleging violations of the recordkeeping provisions of the federal securities laws.

The Commission's complaint alleges that the defendants failed to make and keep the records required to be maintained under the federal securities laws. In addition the complaint further alleges that the defendants have refused and continue to refuse to make Price & Co.'s books and records available to representatives of the Commission for examination. The Commission has sought mandatory injunctive relief to require the defendants to undertake those steps which will permit representatives of the Commission to review Price & Co.'s records.

Litigation Release No. 8993/January 31, 1980

SEC v. TEXTRON INC. (United States District Court for the District of Columbia. Civil Action No. 80-0326)

The Securities and Exchange Commission today announced the filing of a civil injunctive action in the United States District Court for the District of Columbia seeking to enjoin Textron Inc. from further violations of Sections 10(b) (antifraud), 13(a) (reporting) and 14(a) (proxy) of the Securities Exchange Act of 1934 ("Exchange Act") and rules thereunder.

The Commission's complaint alleged that during the period from at least 1971 to 1978, defendant Textron engaged in a course of business pursuant to which Textron, directly and indirectly, made payments which totalled at least $5,400,000 to

Textron sales agents knowing or having reason to know that payments to such sales agents would be shared in whole or in part with foreign government officials or employees, directly to senior foreign government officials and employees, to members of ruling families, to associates of senior foreign government officials and employees, to persons it believed to be foreign government officials or employees, and to entities in which senior foreign government officials or employees had an ownership or financial interest, in connection with the use of their influence or position to secure business for Textron.

In addition, the Commission's complaint alleged that Textron failed to disclose the above-described course of business and risks to its earnings and revenues occasioned by such practices.

The Commission further alleged that in furtherance of the above-described course of business and the failure to disclose such course of business, Textron, among other things, made false and misleading representations to the United States government in connection with at least three contracts, and either falsely recorded or did not make and keep books, records and accounts which accurately reflected the true nature and disposition of most or all of the payments made by Textron.

Without admitting or denying the allegations contained in the Commission's complaint, defendant Textron consented to the entry of a final judgment of permanent injunction enjoining the company from further violations of Sections 10(b), 13(a) and 14(a) of the Exchange Act and rules thereunder. In addition, the judgment required that Textron file with the Commission a Current Report which describes the procedures Textron has adopted and intends to adopt pursuant to recommendations by a special committee of the Textron Board of Directors to prevent recurrence of matters of the nature alleged in the complaint.

In its consent to the entry of the final judgment, Textron represented that the above-described Current Report would state the present intention of Textron to implement the recommendations of the special committee, and an undertaking that until at least December 31, 1982 Textron will file with the Commission appropriate reports describing any changes to procedures it has adopted that materially weaken the implementation of the recommendations of the special committee.

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19/7

sec docket

VOLUME 19, NO. 7 FEBRUARY 19, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6188	465
Securities Exchange Act	16551-59	500
Public Utility Holding Company Act	21418-25	505
Trust Indenture Act	550	516
Investment Company Act	11033-39	516
Litigation	8994	527

This listing covers releases issued from 2/1/80-2/7/80.

This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS ANNOUNCEMENTS

33-6188 Interpretation release to provide guidance to the public and thereby assist employers and plan participants in complying with the 1933 Act in relation to Employee Benefit Plans

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RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-16551 34-16553 34-16557

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6188/February 1, 1980

EMPLOYEE BENEFIT PLANS

ACTION: Interpretations of statute

SUMMARY: The Commission has authorized the issuance of a release setting forth the views of its staff on the application of the Securities Act of 1933 to employee benefit plans. The purpose of the release is to provide guidance to the public and thereby assist employers and plan participants in complying with the Act.

SE129

FOR FURTHER INFORMATION CONTACT: Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202)272-2573.

SUPPLEMENTARY INFORMATION: On January 16, 1979, The Supreme Court issued a decision in which it addressed for the first time in its history the application of the Securities Act of 1933 ("the Act") [15 U.S.C. 77a et seq.] to participation interests in a private pension plan. The decision, which was rendered in the case of *International Brotherhood of Teamsters* v. *Daniel* ("*Daniel*"),[1] has generated considerable controversy and comment.[2] Moreover, it has raised questions about the application of the Act to many types of employee benefit plans[3] not covered by the decision. In an effort to resolve the uncertainty which has developed and thereby assist employers and plan participants in complying with the 1933 Act, the Commission has authorized the issuance of this release setting forth the views of its Division of Corporation Finance (hereinafter, the "staff")[4] on the application of the Act to such plans.

The release initially discusses the circumstances under which interests in plans and related entities may be subject to the requirements of the 1933 Act. In this connection, an analysis is provided of the criteria to be used in determining when an offer or sale of a security will occur. There is also a discussion of the various exemptions from the Act's registration provisions that may be available for such offers or sales. This is followed by a brief discourse on the application of the Act both to the various types of securities transactions in which plans may engage and to resales by plan participants of securities acquired through the operation of plans. Finally, the release describes the methods of registration under the Act of securities issued by plans and related entities.

Although this release is intended to provide guidance to the public on the application of the 1933 Act to employee benefit plans, it should not be viewed as an exhaustive or all-inclusive treatment of the subject. The complexity and ever-increasing variety of such plans precludes the issuance of a release sufficiently comprehensive to cover all issues that might arise. Because this release is necessarily limited in its scope, the Commission's staff will continue its past practice of providing interpretive advice and assistance to the public regarding such plans upon request, except where otherwise indicated herein.

The staff recognizes that many of the issues discussed herein are controversial and that differences of opinion can exist with respect to them. Although it believes the positions described in the release are in accord with the general policies and purposes of the 1933 Act, the staff nevertheless invites interested members of the public who wish to express an opinion on such positions to submit their views in writing.[5] All comments received from the

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[1] 99 S. Ct. 790,____ U.S. ____ (1979). In *Daniel*, the Supreme Court held that neither the 1933 Act nor the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] apply to a compulsory, noncontributory pension plan.

[2] *See*, e.g., L.J. Haas, *Supreme Court in Daniel leaves open possibility that some plans may be subject to securities laws* J. Tax., 263-267 (May 1979); J.D. Mamorsky and T.L. O'Brien, *Securities Law and the Daniel Case*, Pension World (May 1979); H.S. Bloomenthal, *The ABC's of Employee Benefit Plans - D for Daniel*, Sec. Fed. Corp. L. Rep. Vol. 1, No. 3 at 17 (March 1979); B.W. Nimkin, *Noncontributory Benefit Plans*, Rev. Sec. Reg., Vol. 12:4 (February 28, 1979); H.L. Pitt, *Daniel: A Seed for More Difficulties for the SEC*, Legal Times of Wash., January 29, 1979 at 27, Col. 1; M. Siegel, *Pension Outlook*, N.Y.L.J. Vol. 181, No. 48 at 1, Col. 1; P.M. Kelly, *Securities Regulation of Retirement Plans after Daniel*, Loyola Univ. L. J., 631-665 (Summer, 1979).

[3] As used in this release, the term "employee benefit plan" means a pension, profit-sharing, or similar plan. It does not include welfare and similar plans which provide for hospitalization or disability benefits, funeral expenses, or social or cultural activities. These latter plans historically have not been considered subject to the securities laws because they do not involve any expectation of financial return on the employee's part.

[4] While this release was prepared by the Division of Corporation Finance, in some instances the views described were originally expressed by the Commission's Division of Investment Management. All such instances are duly noted in the release.

[5] Letters pertaining to this release should be addressed to Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

public will be given serious consideration by the staff and, to the extent they are persuasive, could result in a revision of some of the views expressed herein.

Because of the length of this release, the staff believes it would be helpful at the outset to summarize briefly the positions expressed herein. The summary, however, should not be read without also referring to the explanatory section of the release, where the various positions are discussed in detail.

SUMMARY

The registration and antifraud provisions of the 1933 Act are applicable to the offer and sale of securities. Registration, however, would not be necessary if one of the exemptions specified in the Act is available.

1. *The Term "Security"*

There are two types of securities that may be issued in connection with employee benefit plans: (1) participation interests of employees in their respective plans,[6] and (2) participation interests of plans in the collective investment vehicles in which such plans invest their assets.

The interests of plans in collective investment vehicles are in all instances securities, generally in the form of investment contracts. They are therefore subject to both the registration and antifraud provisions of the 1933 Act. The interests of employees in a plan, however, are securities only when the employees voluntarily participate in the plan and individually contribute thereto. Thus, employee interests in plans which are not both voluntary and contributory are not securities and therefore are not subject to the Act.

2. *The Term "Sale"*

A sale of interests in voluntary, contributory plans occurs where there is both an investment decision and the furnishing of value by participating employees. Consistent with this view, the staff does not believe a sale occurs when an existing plan is converted into an ESOP[7] or other type of plan, except where employees are given a choice in the matter and therefore have the opportunity to make an investment decision. Similarly, there is no sale under noncontributory plans when employees make elections as to the manner of investing the employer's contributions.

The definition of "sale" in the 1933 Act also encompasses any "solicitation of an offer to buy" securities of the employer. Such solicitations sometimes will be attributed to employers in the context of certain employee stock purchase plans which acquire the employer's securities in the open market. If the employer's involvement in such a plan is limited to performing ministerial-type functions, no solicitation of an offer to buy is deemed to exist. But if the employer's involvement is so substantial that there are significant differences between acquiring stock under the plan and acquiring it in ordinary brokerage transactions, the employer will be deemed to be soliciting its employees to buy its securities, and registration generally will be necessary. An exception to this general rule, however, exists in the case of a TRASOP[8] where the employer's involvement is limited primarily to performing ministerial-type functions and paying half the price of stock purchased by employees under the plan.

3. *Exemptions from Registration*

Registration of securities offered or sold pursuant to employee benefit plans is necessary unless an exemption is available. In most instances, an exemption is available and registration therefore is not required. Some of the exemptions that are frequently relied upon are those provided by the 1933 Act for nonpublic offerings, intrastate offerings, and certain small offerings. The only exemption, however, which is specifically designed for interests issued in connection with employee benefit plans is the one provided by Section 3(a)(2) of the Act.

The Section 3(a)(2) exemption applies both to the interests of plans in certain investment vehicles maintained by banks and insurance companies and to the interests of participants in the plans themselves. Interests issued in connection with Keogh plans, however, are specifically excluded

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[6] In some plans, such as stock bonus and certain stock purchase plans, where stock is directly acquired by employee participants, there may not be separate employee interests, apart from the stock, that are deemed to be securities. The stock acquired by employees under such plans, however, is a security.

[7] "ESOP" is a shorthand designation for "Employee Stock Ownership Plan."

[8] "TRASOP" is a shorthand designation for "Tax Reduction Act Stock Ownership Plan."

from the exemption, although the Commission can exempt such interests from registration under certain conditions.

Although the language of Section 3(a)(2) can be read to suggest otherwise, the staff does not believe that a single trust fund for a plan must be maintained by a bank in order for the exemption to be available. However, if the trust fund involves a single employer and invests employee monies in securities of the employer, the exemption cannot be utilized. For purposes of Section 3(a)(2), the term "single employer" is deemed to include the employer and any entity controlling, controlled by, or under common control with, the employer. Thus, a parent and its subsidiaries are considered a single employer under this interpretation.

While the Section 3(a)(2) exemption is not available by its terms for so-called "guaranteed investment contracts" issued to plans by insurance companies, the staff has taken a no-action position with respect to the offer and sale of such contracts if certain specified conditions are met. A similar position, again subject to certain conditions, also has been taken with respect to the offer and sale of interests in multiple-employer trusts established by insurance companies for the offering of various forms of annuity contracts to unrelated employers.

4. *Securities Transactions by Plans*

In addition to issuing participation interests to employees or fostering the purchase of employer stock by such persons, a plan may engage in various other transactions involving the purchase, sale or distribution of securities. It may, for instance, acquire stock of the employer from various sources, including the company. For a variety of reasons, however, registration usually would not be necessary with respect to the acquisition transaction.

A plan also may offer or sell securities of the employer or other entities held in its portfolio. If the plan is considered to be an affiliate[9] of the employer, sales by it of the employer's securities would be subject to the registration provisions of the 1933 Act in the same manner as if the employer were engaging in the transaction. Sales by the plan of non-employer securities, however, usually would not have to be registered because of the availability of the exemption provided by Section 4(1) of the Act for transactions not involving issuers, underwriters or dealers.

The distribution, or actual delivery, of employer stock by a plan to individual participants would not be subject to registration, although any offers or sales of such stock to participants prior to actual delivery would have to be registered, unless an exemption were available.

5. *Resales by Plan Participants*

Employees who receive securities under a plan may freely resell such securities without restriction if the securities have been registered and they are not affiliates of the issuer. If the securities have not been registered, they generally must either be registered or sold in reliance upon some exemption, such as that provided by Section 4(1) of the 1933 Act. An exception to this general rule occurs when non-affiliates receive unregistered securities under a plan which satisifies certain conditions.

6. *Methods of Registration*

If the securities to be issued under a plan must be registered, Form S-8 [17CFR 239.16b] would be the appropriate form for this purpose if the employer were able to satisfy the requirements for its use. If Form S-8 cannot be used, the issuer would then consider other forms, such as S-1 [17 CFR 239.11] or S-18 [17 CFR 239.28].

Affiliates who receive securities under a plan and wish to have them registered for resale may utilize a Form S-16 [17 CFR 239.27] reoffer prospectus for this purpose if the securities were originally issued pursuant to a Form S-8 filing. If the securities were not so issued, Form S-1 may be utilized, assuming the issuer is agreeable to a filing on that form, or the securities may be resold pursuant to Rule 144 [17 CFR 240.144] under the 1933 Act.

[9]An "affiliate" of an entity is defined in Rule 405 [17 CFR 230.405] under the 1933 Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the [entity]."

TABLE OF CONTENTS

I. GENERAL STRUCTURE OF THE ACT

II. THE TERM "SECURITY"

A. Interests of participants in plans

1. Defined benefit and defined contributions
2. Corporate plans
   a. Involuntary, noncontributory
   b. Involuntary, contributory
   c. Voluntary, noncontributory
   d. Voluntary, contributory
3. Keogh plans
4. IRAs and simplified employee pension plans
5. Miscellaneous plans
   a. Stock purchase plans
   b. Bond purchase plans
   c. Annuity plans
   d. Stock award plans

B. Interests of plans in collective investment media

III. THE TERM "SALE" AND OTHER FACTORS AFFECTING REGISTRATION

A. What constitutes "value"
1. Conversions of existing plans
2. Investment elections under noncontributory plans
3. The bifurcated sale concept

B. Solicitations of offers to buy
1. Stock purchase plans
2. TRASOPs

IV. EXEMPTIONS FROM REGISTRATION

A. Generally available exemptions

B. Section 3(a)(2)
1. Definitions
2. Scope of the exemption
3. Significant interpretative issues
   a. "Maintained by a bank" requirement
   b. What constitutes a "single employer"
   c. Keogh plans
   d. Plans funded by certain insurance contracts

V. SECURITIES TRANSACTIONS BY PLANS

A. Acquisitions of employer stock
B. Sales of employer stock
C. Distributions of employer stock to plan participants
D. Transactions in non-employer securities

VI. RESALES BY PLAN PARTICIPANTS

A. Registered plans
B. Unregistered plans

VII. METHODS OF REGISTRATION

A. Form S-8
B. Other forms
C. Form S-16 reoffer prospectus

I. GENERAL STRUCTURE OF THE ACT

According to its preamble, the 1933 Act is intended "to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof..." Sections 5 and 17 of the Act are the principal provisions used to implement the Act's disclosure and antifraud purposes. Section 5 provides that every offer or sale of a security made through the use of the mails or interstate commerce must be accomplished through the use of a registration statement[10] meeting the Act's disclosure requirements,[11] unless one of the several exemptions from registration set out in Sections 3 and 4 of the Act is available.[12] Section 17 of the Act prohibits the use of fraud or misrepresentation in the offer or sale of a security.[13]

To promote compliance with the registration and antifraud requirements, the Act provides for both civil liabilities and potential criminal penalties in the event violations occur. The civil liabilities are specified in Sections 11 and 12 and basically give

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[10]A registration statement generally consists of two parts: a prospectus which is delivered to investors before a sale becomes final and a separate section containing information which is on file with the Commission but which is not required to be furnished to investors. Sales of securities cannot be made until the registration statement becomes effective.

[11]The types of information required to be included in registration statements are specified in Schedules A and B of the 1933 Act and in the various registration forms under the Act adopted by the Commission.

[12]Part IV of this release will discuss some of the exemptions commonly relied upon for transactions involving employee benefit plans.

[13]It should be noted that Section 10(b) of the 1934 Act and Rule 10b-5 [17 CFR 240.10b-5] thereunder prohibit the use of any manipulative device or contrivance in connection with the purchase or sale of any security.

the buyer the right to rescind the sale and recover the net cost of the security. the criminal penalties are prescribed in Section 24 and consist of a fine of up to $10,000 or imprisonment for up to five years, or both, if the Act is wilfully violated. In addition, Section 20(b) of the Act authorizes the Commission to bring injunctive actions whenever it appears a person is engaged, or is about to engage, in violations of the Act.

II. THE TERM "SECURITY"

In order for the registration and antifraud provisions of the 1933 Act to be applicable, there must be an offer or sale of a security. The term "security" is defined in Section 2(1) of the Act[14] and includes, among other things, stocks, bonds and investment contracts. The Commission believes that two types of securities, generally in the form of investment contracts, may be issued in connection with employee benefit plans: (1) interests of participants in their respective plans, and (2) interests of plans in collective investment media, such as bank collective trust funds and insurance company separate accounts, in which such plans invest their assets.[15] Each of these interests will be discussed in detail in the sections which follow.

A. *Interests of Participants in Plans*

An investment contract involves "an investment in a common venture premised on a reasonable expectation of profits to be derived from the entreprenurial or managerial efforts of others."[16] The Commission has traditionally applied this test, which is often called the "*Howey* test" because it was first articulated in the case of *S.E.C.* v. *W.J. Howey Co.*,[17] to the interest of employees in pension, profit-sharing and similar plans. In this regard, it has in the past determined that such interests are investment contracts because the plans are in essence investment vehicles designed to produce profits in the form of retirement or other benefits for the employees through the effort of plan managers.[18]

Although the Commission has believed that employee interests in pension and profit-sharing plans generally are securities, it has required such interests to be registered only where a plan is both voluntary[19] and contributory[20] and invests in securities of the employer an amount greater than that paid into the plan by the employer.[21] The basis for this administrative practice, which was codified by Congress in 1970 in Section 3(a)(2) of the 1933 Act,[22] is a follows:

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[14]Section 2(1) states in its entirety that

The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

[15]A plan could, of course, invest its assets directly in stocks, bonds and similar instruments, rather than in collective investment vehicles. Such instruments clearly are securities, for they are expressly referred to in Section 2(1) and otherwise possess the characteristics of securities.

[16]*United Housing Foundation, Inc.* v. *Forman*, 411 U.S. 837, 852 (1975).

[17]328 U.S. 293 (1946).

[18]Opinion of the Assistant General Counsel of the Commission—first opinion (1941), (hereinafter, "Opinion of Assistant General Counsel") CCH Fed. Sec. L. Rep., 1941-1944 Transfer Binder, para. 75,195.

[19]A "voluntary" plan is one in which employees may elect whether or not to participate.

[20]For purposes of this release, a "contributory" plan is one in which employees make direct payments, usually in the form of cash or payroll deductions, to the plan.

[21]Letter to *Commerce Clearing House* dated May 12, 1953.

[22]Pub. L. 91-547 (December 14, 1970) and Pub. L. 91-567 (December 22, 1970). Section 3(a)(2) exempts from registration interests or participations issued in connection with certain corporate plans, unless the plan is held in a single trust or separate account for a single employer and "an amount in excess of the employer's contribution is allocated to the purchase of securities***issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer."

(1) Registration serves no purpose where a plan is involuntary, since a participant is not permitted to make an investment decision in such a circumstance; and

(2) The costs of registration are a significant burden to an employer and should be imposed only where the employer has a direct financial interest in soliciting voluntary employee contributions, as in the case where such contributions will be used to purchase the employer's securities.

The Commission's belief that the registration provisions of the 1933 Act should be applicable to voluntary, contributory plans which involve the purchase by employees of employer stock is supported by the legislative history of the Act. In 1934 Congress considered and rejected a proposed amendment to the Act that would have exempted employee stock investment and stock option plans from the Act's registration provision. The amendment, which had been passed by the Senate but was eliminated in conference, was not adopted "on the ground that the participants in employees' stock investment plans may be in as great need of the protections afforded by the availability of information concerning the issuer for which they work as are most members of the public.[23]

The decision by the Supreme Court in the *Daniel* case, in which the Court held that the interests of employees in involuntary, noncontributory pension plans are not securities, has raised questions concerning the applicability of the 1933 Act to other types of employee benefit plans not covered by the decision.[24] In the interest of providing guidance to the public and because of uncertainty with respect to the implications of *Daniel*,[25] the staff believes it is appropriate at this time to set forth its own views regarding the application of the 1933 Act to employee benefit plans. Those views are expressed according to the major categories into which pension and profit-sharing plans may fall (i.e., defined benefit and defined contribution, corporate, Keogh, IRA, and miscellaneous plans).

1. *Defined Benefit and Defined Contribution Plans*

Employee benefit plans are of an infinite variety. All such plans, however, can be reduced to two broad categories: defined benefit plans and defined contributions plans.

A defined benefit plan[26] pays fixed or determinable benefits.[27] The benefits ordinarily are described in a formula which specifies the amount payable in monthly or annual installments to participants who retire at a certain age.[28] As long as the plan and the employer(s) contributing to the plan remain solvent, and the plan continues to be operated, vested participants will receive the benefits specified. In the event the investment results of the plan do not meet expectations, the employer(s) usually will be required, on the basis of actuarial computations, to make additional contributions to fund the promised benefits.[29] Conversely, if plan earnings are better than anticipated, the employer(s) may be permitted to make contributions that are less than the projected amounts.

A defined contribution plan [30] does not pay any fixed or determinable benefits. Instead, benefits will vary, depending on the amount of plan contributions, the investment success of the plan, and allocations made of benefits forfeited by non-vested participants who terminate employment. Thus, the

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[23]H.R. Report No. 1838, 73rd Cong., 2d Sess. (1934), 41....

[24]Some courts have applied the *Daniel* decision to other types of pension plans. See *Black* v. *Payne*, 951 F. 2d 83 (9th Cir. 1979); *Tanuggi* v. *Grolier, Inc.*, 471 F. Supp. 1209 (S.D.N.Y., 1979); and *Newkirk* v. *General Electric Company*, CCH para. 97,216 (N.D. Cal., 1979).

[25]See Note 2, *supra*.

[26]All defined benefit plans are considered to be pension plans. *See* Internal Revenue Code ("IRC") [26 U.S.C. 1 et seq.] §414(J).

[27]IRC Reg. §1.401(b)(1) (1956).

[28]If retirement occurs at a different age or in a different form, participants will receive an adjusted monthly or annual amount. See IRC §415(b)(2)(B).

[29]An exception to this general rule arises in the case of multi-employer collectively bargained defined benefit plans (such as the one at issue in *Daniel*) where the contribution obligations of participating employers are limited to contractually fixed amounts for each hour, day or week of employment.

[30]Some examples of defined contribution plans are profit-sharing plans, stock bonus plans, ESOPs, and so-called money purchase pension plans.

amount of benefits is based, in part, on the earning generated by the plan.

Both defined benefit and defined contribution plans can provide for employee contributions. In addition, defined contribution plans maintain individual accounts for all participating employees.[31] These accounts reflect each participant's share in the underlying trust assets and are adjusted annually to take into account plan contributions, earnings and forfeitures. In contrast, defined benefit plans ordinarily do not maintain individual accounts, except to the extent necessary under the Internal Revenue Code to record benefits attributable to voluntary contributions by employees.[32]

The *Daniel* decision dealt with an involuntary, noncontributory plan which was also a defined benefit plan. The Supreme Court's opinion in that case, however, did not rest on the fact that the plan was a defined benefit one. Instead, the Court based its decision on the involuntary nature of the plan (unlike all prior cases of the Court involving securities, the employees did not have a choice whether to participate)[33] and the fact that the plan did not provide for direct, identifiable contributions by employees (the employees' labor could be considered a contribution "only in the most abstract sense").[34] This view is supported both by the Court's statement of the issue presented by the case ("whether a noncontributory, compulsory pension plan constitutes a 'security'")[35] and by its later statement that "We hold the Securities Acts do not apply to a noncontributory, compulsory pension plan."[36] In neither instance did the Court refer to the defined benefit nature of the plan.

In light of the foregoing, the staff is of the view that the defined benefit or defined contribution nature of a plan is not dispositive in determining whether a security is present. Other factors, such as whether the plan is voluntary or involuntary, and contributory or noncontributory, must be taken into consideration, as indicated in the analysis of the major types of plans which follows.[37]

2. *Corporate Plans*

Perhaps the largest single catagory of plans in terms of the number of participants are so-called "corporate" plans. Such plans may be defined benefit or defined contribution in nature, but all share the common characteristic of being established by corporations. Common types of corporate plans are pension, profit-sharing, bonus, thrift, savings and similar plans. Almost all such plans are established pursuant to Section 401 of the Internal Revenue Code.[38]

To determine whether or not a participant's interest in a corporate plan is a security, the Court in *Daniel* indicated that it is necessary to demonstrate that a participant "chose" to give up "specific" consideration in return for a "separable financial interest" that had "substantially the characteristics of a security."[39] A participation interest possesses the essential characteristics of a security when the elements of an investment contract are present.[40]

The foregoing suggests that some of the key factors to be considered in connection with the "security" question are whether a plan is voluntary or involuntary, and whether it is contributory or noncontributory. There are four possible combinations in which these elements can appear, each of which is separately discussed in the sections which follow.

a. *Involuntary, Noncontributory Plans*

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[31]In fact, defined contribution plans are sometimes characterized as "Individual Account Plans."

[32]IRC §411(b)(2)(A). The benefits must not be less than the employee's contribution with statutory interest. IRC §411(a)(1) and §411(c)(2)(B).

[33]99 S. Ct. 796.

[34]99 S. Ct. 796-797.

[35]99 S. Ct. 793.

[36]99 S. Ct. 802.

[37]See, in particular, the section herein entitled "Voluntary, Contributory Plans."

[38]Plans which are qualified under Section 401 become entitled to certain tax benefits.

[39]99 S. Ct. 796-797. The Court also stated that the consideration should be "tangible and definable." 99 S. Ct. 797.

[40]As indicated in Note 6, *supra*, some plans, such as stock bonus and certain stock purchase plans, which are in essence mechanisms for the acquisition of stock, may not involve separate securities in the form of participation interests that are investment contracts. The stock acquired by employees under such plans, however, is a security.

The Court in *Daniel* held that "...the Securities Acts do not apply to a noncontributory, compulsory pension plan."[41] This holding clearly precludes a finding that interests in such plans are securities. Accordingly, the 1933 Act is not applicable to such interests.

b. *Involuntary, Contributory Plans*

Where a plan requires direct contributions by employees, it would be possible to take the position that there is an "investment" (in the form of employee contributions) "in a common enterprise" (the plan) "with an expectation of profits" (the excess of benefits over contributions) "from the efforts of others" (the plan managers). In the *Daniel* decision, however, the Supreme Court based its decision that no investment contract was present at least in part on the involuntary nature of the plan involved in that case. The Court noted in this regard that in its other decisions involving investment contracts the person found to have been an investor "chose to give up a specific consideration in return for a separable financial interest with the characteristics of a security."[42]

After consideration of the foregoing, the staff believes it is appropriate from an administrative standpoint for it to take the position that the interests of employees in involuntary, contributory plans are not securities[43] and that the registration and antifraud provisions of the 1933 Act do not apply to them.

c. *Voluntary, Noncontributory Plans*

Plans in which employees may voluntarily participate without making any personal contributions generally arise in rather limited circumstances.[44] The staff traditionally has not required participation interests in such plans to be registered.[45] In its view, no practical purpose is served by requiring registration of such interests, since in almost all instances employees would choose to participate, due to the fact that they would receive benefits without incurring any out-of-pocket expenses.[46]

Whether interests in voluntary, noncontributory plans are securities is a matter that has not been addressed by a court. As previously indicated, the "security" question depends to some extent on whether a plan is voluntary. But the mere presence of a voluntary feature in a plan would not, by itself, necessarily indicate the presence of a security, since the other elements of an investment contract also must be present.

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[41]99 S. Ct. 802.

[42]99 S. Ct. 796.

[43]At least one court subsequent to *Daniel* has addressed the issue of whether such interests are securities in the context of a plan sponsored by a public (i.e., governmental) employer. In *Black* v. *Payne*, 591 F. 2d 83 (9th Cir. 1979), the question raised was whether participation in a state sponsored involuntary, contributory pension plan (which appeared to share the characteristics of a defined benefit plan) constituted an investment contract. The District Court held that such participation failed to satisfy the definition of a security enunciated by the Supreme Court in *Daniel*. The Court of Appeals for the Ninth Circuit agreed, noting that even though the plan was contributory, participation therein did not involve a reasonable expectation of profit nor the element of volition sufficient to bring the transaction within the scope of the securities laws. Pointing to the Supreme Court's discussion of the impact of the Employee Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1001 et seq.] in the *Daniel* situation, the Court also expressed the view that the existence of extensive state regulation and control over the plan constituted a formidable factor militating against extending the federal securities laws to cover this type of plan. *Id.* at 87, n. 3.

[44]The circumstances usually are that the plan contains a number of alternatives for the investment of the employer's contribution, and participating employees are allowed to determine: (1) whether they will participate in the plan (the response almost always being in the affirmative), and (2) the investment alternative they prefer to have an interest in.

[45]*See*, e.g., letter re *Four Phase Systems, Inc.* dated October 5, 1978.

[46]Perhaps the only circumstance in which any employee might choose not to participate would arise where it is more advantageous for tax reasons not to do so. In this regard, one commentator [Nimkin, note 2, *supra*, at 971] has stated that

[Under a noncontributory plan], the employee's choice is not between giving or not giving consideration (his labor) in exchange for the plan interests, but between two retirement plans that under the tax law are mutually exclusive: a personally-financed IRA and an employer-financed

In most instances, the fact that a plan is noncontributory would mean that the "investment of money" aspect of the *Howey* test is not met.[47] Even where a noncontributory plan meets the "investment" requirement, it may not satisfy the "profit" element of the *Howey* test. The Court in *Daniel* seemed to dismiss the earnings generated by the plan managers as being too insignificant in relation to employer contributions to qualify as "profits" in the investment contract sense.[48] Moreover, the Court seemed to believe that any participation by employees in the earnings of the plan at issue in that case depended primarily on the personal efforts of the employees to meet the vesting requirements, rather than on the plan actually generating such earnings.

Although a commentator has suggested that a security may be present in some voluntary, noncontributory plans,[49] the staff, as a matter of administrative practice, will assume that such plans do not involve securities. Accordingly, the registration and antifraud provisions of the 1933 Act are not considered by the staff to be applicable to such plans.

d. *Voluntary, Contributory Plans*

Since 1941, the Commission and its staff have adhered to the position that interests in voluntary, contributory pension and profit-sharing plans are securities.[50] The articulated basis for this view is that such interests constitute investment contracts, although it also has been suggested that they may be "certificates of interest or participation in a profit-sharing agreement" as well.[51]

The Commission recently confirmed its view in the testimony of its Chairman before the Senate Committee on Human Resources on the antifraud provisions of the proposed ERISA Improvements Act of 1979 (S. 209),[52] wherein it was noted that

> ...An employee who is given a choice whether to participate in a voluntary pension plan, and decides to contribute a portion of his earnings

Footnote 46 Continued

plan. It is the Internal Revenue Code that requires the employee to make this choice, not the employer. [However], it can be argued that once the employee has an alternative, he needs to be adequately informed about the employer's plan, and that this need is best protected by the registration and antifraud provisions of the federal securities laws. This suggests that "opt-out" provisions should not be included in noncontributory plans without awareness of their possible securities law implications.

[47]99 S. Ct. 797.

[48]99 S. Ct. 797-798.

[49]One commentator [Nimkin, note 2, *supra*, at 970] has suggested that where some or all of the following characteristics are present in a noncontributory plan, a security may exist:

(a) the interests are close to the commonly understood notion of a security, such as interests in an ESOP that are invested solely in employer stock, and they either satisfy the other elements of the *Howey* test or do not call for a *Howey* investment contract analysis at all;

(b) the value of the interests is measurable and is not insignificant in dollars or in percentage of total compensation;

(c) the amount of employer contributions attributable to each of the interests can be identified, as in a case where such contributions are a percentage of employee compensation; and

(d) there is a fixed relationship between employer contributions and employee benefits as there normally would be in a profit-sharing or other individual account plan.

[50]Opinion of Assistant General Counsel, Note 18, *supra*.

[51]Opinion of the Assistant General Counsel of the Commission-second opinion, (1941), CCH, 1941-1944 Transfer Binder, para. 75,195.

[52]The ERISA Improvements Act of 1979 would, among other things, remove the interests of employees in employee benefit plans from the definitional scope of the term "security" for purposes of the antifraud provisions of the 1933 and 1934 Acts. The proposed legislation, however, would not limit the application of the registration provisions of the 1933 Act to such interests. The Commission's views on the bill are set forth in the Statement of Harold M. Williams, Chairman, Securities and Exchange Commission, Before the Senate Committee on Human Resources, on S. 209, 96th Cong., 1st Sess. (February 8, 1979).

or savings to such plan, has clearly made an investment decision, particularly when his contribution is invested in securities issued by his employer. Employees making such decisions should continue to be afforded the protections of the antifraud provisions of the federal securities laws.

The Commission's view that the interests of employees in voluntary, contributory plans are investment contracts appears to be supported by the reasoning used in the *Daniel* decision. Certainly, where a plan is voluntary, the requirement that employees be able to choose whether or not to invest has been met. And the other elements of an investment contract would also appear to be present where a plan is contributory, regardless of whether the plan is defined contribution or defined benefit in nature, as the following analysis indicates.

(1) *Investment of money.* The payment of cash or its equivalent by an employee to a contributory plan clearly satisfies the "investment" requirement in that the consideration paid is "specific, tangible and definable."[53]

(2) *In a common enterprise.* The opinion in *Daniel* suggests that a plan will satisfy the common enterprise requirement where the interests of employees therein are "separable" and possess "substantially the characteristics of a security."

With regard to the separability aspect, it appears the Court believed that where there is an investment contract, it is possible to segregate the non-investment (or employment) portion of a person's total compensation package from the investment (or pension) portion. In contributory plans, the amount set aside for investment purposes can be readily identified by examining the contributions made by each individual participant. A record of such contributions is always available in defined contribution plans because such plans maintain individual accounts for participants. And it also should be present in defined benefit plans, by virtue of the requirement that, in order to qualify for favorable tax treatment,[54] such plans must return to nonvested employees who cease being participants accrued benefits based upon the employee's contributions. Thus, in both defined contribution and defined benefit plans, there is, in effect, a separate account maintained for each participant to the extent of such person's contributions to the plan. Accordingly, the investment aspects of an employee's compensation package are segregated under both types of plans.

(3) *With an expectation of profits.* An employee who voluntarily contributes his own funds to a pension or profit-sharing plan can expect that in return for his contributions the plan will generate earnings through the efforts of the plan managers that will result in his receiving pension or similar benefits that will exceed his total contributions. In terms of economic realities, the excess of benefits over contributions, to the extent they are dependent on earnings by the plan, may be deemed a profit which the employee fully expects to receive as a result of his payments to the plan. By deciding to participate in the plan voluntarily, the employee implicitly has made an investment decision to the effect that his contributions will achieve investment results that will be equal to or superior to those he could obtain from investing his funds elsewhere. Accordingly, from the employee's standpoint, there would appear to be an "expectation of profits" in the investment contract sense.

The foregoing analysis clearly appears to be valid when applied to a defined contribution plan, for the level of benefits under such a plan is directly related to the plan's investment success. Further analysis, however, is necessary for defined benefit plans.[55]

In *Daniel*, the Court indicated there was no "expectation of profits" with respect to the defined

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[53]This is not to say that a person's "investment," in order to meet the definition of an investment contract, must always take the form of cash. Goods and services may also be sufficient in some instances. 99 S. Ct. 797, n. 12.

[54]IRC §§411(a)(1) and 411(c)(2)(B).

[55]*See*, e.g., the recent case of *Tanuggi* v. *Grolier Inc.*, 471 F. Supp. 1209 (S.D.N.Y. 1979). The question presented in that case was whether the securities laws applied to interests in a voluntary, shared contribution, defined benefit plan. The particular plan featured a mandatory contribution component and a voluntary contribution component. The Court found no security present with respect to the mandatory contribution component. It did not, however, reach the question of whether interests in the voluntary component constituted a security, inasmuch as the plaintiff's contributions did not exceed the mandatory level.

benefit plan at issue in that case because (1) the plan did not depend substantially on earnings to meet its benefit obligations, since it could rely on increased employer contributions to cover any shortfalls in earnings, and (2) the vesting requirements for the plan were so substantial that an employee's participation in the plan's earnings depended more on his own efforts to meet the vesting requirements than it did on the plan actually generating the earnings.[56] The Court's statements can be interpreted to suggest that unless a defined benefit plan has a substantial dependency on earnings, as well as vesting requirements that are not excessively difficult to satisfy, there may be no expectation of profits in the investment contract sense.

Several points should be kept in mind with respect to the Court's statements. First, they were made in the context of an involuntary, noncontributory defined benefit plan, in which employees neither invested any funds of their own nor had any investment choice to make. The situation is materially different in voluntary, contributory plans, where employees clearly make investment decisions by deciding to invest their funds in such plans rather than in other investment media. An employee who participates in such a plan implicitly does so because he expects the plan to generate earnings that will be sufficient to provide him with a return on his investment, in the form of certain promised benefits, that will be equal to or superior to other investment alternatives available to him.

Second, many, if not most, defined benefit plans substantially depend on earnings to pay the benefits promised by them.[57] Quite often, in the case of multi-employer plans, a shortfall in earnings (and thus a shortfall in assets to pay benefits) results not in increased employer contributions, as the Court suggested is usually the case,[58] but in a revision downward of the level of benefits to be paid.[59] Or, in some instances, the plan itself may be terminated and benefits may be paid only to the extent that the Pension Benefit Guaranty Corporation[60] is able to do so within its prescribed limitations. The fact that a plan may reduce its level of benefits or terminate altogether in the event earnings are insufficient to pay benefits underscores the dependency which many plans have on such earnings.

Third, vesting requirements under ERISA (which was not applicable to Daniel) are much less strict than the requirement of 20 years continuous service with which Daniel had to comply.[61] Because the ERISA requirements are substantially less difficult to satisfy than the vesting provision in *Daniel*, the staff takes the position that the ERISA requirements would not be a barrier to finding an investment contract present.

On the basis of all of the foregoing, the staff is of the view that where a plan is both voluntary and contributory, regardless of whether it is defined contribution or defined benefit in nature, a participant generally would have an expectation of profits from it in the investment contract sense.

(4) *From the efforts of others.* Any earnings generated by a plan would, of course, result from the efforts of the plan managers. Thus, the requirement of an investment contract that there be reliance on the efforts of others to produce profits would seem to

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[56] 99 S. Ct. 797-798.

[57] The Supreme Court appeared to believe otherwise, as indicated by its statement that "plan usually can count on increased employer contributions, over which the plan itself has no control, to cover shortfalls in earnings." 99 S. Ct. 798.

[58] *Id.*

[59] Of course, benefits accrued by participants up to the date the level of benefits is revised would be payable on the basis of the schedule of benefits in effect until then.

[60] The Pension Benefit Guaranty Corporation ("PBGC") was created by ERISA to provide some assurance that the benefits promised to vested participants in employee benefit plans would, in fact, be paid. Pursuant to ERISA, every single-employer defined benefit plan must meet certain minimum funding standards and pay annual premiums to the insurance fund maintained by the PBGC. The PBGC guarantees a portion of the defined benefit in the event the employer terminates the plan. The extent of PBGC coverage is set forth in 29 U.S.C. 1301-1381.

[61] Daniel was denied his pension because, although he had over 22 years of service as a teamster, he had suffered an involuntary break-in-service of approximately four months midway through his career. Thus, the years prior to the break-in-service could not be used to satisfy the requirement of 20 years of "continuous" service.

be satisfied in the context of a voluntary, contributory plan.

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As a result of the foregoing analysis, the staff believes that the interests of employees in voluntary, contributory, corporate pension and profit-sharing plans are securities within the meaning of Section 2(1) of the 1933 Act. Moreover, as indicated in Part III of this release, such securities are deemed to be offered and sold to employees within the meaning of Section 2(3) of the Act. Accordingly, they are subject to both the registration and antifraud requirements of the Act. But, as indicated in the discussion of Section 3(a)(2) in Part IV of the release, such securities generally would be required to be registered only where the plan invests in employer securities an amount greater than that contributed to the plan by the employer.

3. *Keogh Plans*

Keogh plans (also known as "H.R. 10 plans") are tax-deferred retirement plans established by self-employed individuals[62] for the benefit of themselves and their employees. They were authorized by Congress in 1962[63] to permit such individuals to share some of the favorable tax benefits[64] which prior thereto were available only in connection with certain corporate plans.

There are two types of securities that may be issued in connection with Keogh plans: (1) interests in collective funding vehicles arising from investments made by the plans, and (2) interests of employee participants in the plan themselves.

With respect to the interests of Keogh plans in collective funding vehicles, these clearly are securities, often in the form of investment contracts. There is an investment of money by the plan in a common enterprise (the funding vehicle) with the expectation that the managers of the funding vehicle will generate earnings on that investment.

Congress gave implicit recognition to the fact that interests in collective funding vehicles maintained for Keogh plans are securities when it amended Section 3(a)(2) of the 1933 Act in 1970. In both the Senate and House reports relating to the 1970 Amendments, it was indicated that such interests were not being exempted under Section 3(a)(2) "because of their fairly complex nature as an equity investment and because of the likelihood that they could be sold to self-employed persons, unsophisticated in the securities field."[65] Clearly, the reference to such interests in the reports (and in Section 3(a)(2) as well) was based on the belief that they are securities. As explained in Part IV of this release, however, the Commission possesses authority under Section 3(a)(2) to exempt interests or participations issued in connection with Keogh plans from the registration requirements of the 1933 Act.

The interests of covered employees in Keogh plans also appear to be securities. Although many such plans involve only one individual, a significant number cover more than one person (as would occur, for example, where a law partnership institutes a plan in which all employees can participate). Using the analysis already described with respect to corporate plans, the staff is of the view that voluntary contributions by participants to such plans would create securities in the form of investment contracts.

Although the interests of participants in voluntary, contributory Keogh plans are deemed to be securities, the staff has not required the separate registration of such interests. Most plans can rely on an exemption from registration for the offer and sale

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[62]An individual who is an "employee" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 may establish a Keogh plan.

[63]The Self-Employed Individuals Tax Retirement Act of 1962, Pub. L. 87-792 (1962).

[64]The tax advantages to a self-employed person in establishing a Keogh Plan are essentially twofold: A deduction can be taken for at least a part of his contributions to the plan and the income earned on his contributions is not taxed until it is distributed.

[65]Senate Report No. 91-184 (1969), at 27-28, and House Report No. 91-1382 (1970), at 44. Although Section 3(a)(2) may not be available, the intrastate offering exemption (see Part IV) often can be relied upon for the offer and sale of interests in collective funding vehicles maintained for Keogh plans. However, if the funds in that vehicle are commingled with those from exempt qualified plans sold to non-residents, the two offerings would be integrated, and the intrastate exemption would not be available.

of employee interests.[66] For those relatively few plans that do not have a readily available exemption, the staff, as a matter of administrative discretion, will not require such interests to be registered. The antifraud provisions of the 1933 Act, however, would continue to apply to the offer and sale of such interests to employees.

4. *IRAs and Simplified Employee Pension Plans*

IRAs (or "Individual Retirement Accounts") are a relatively new form of tax deductible retirement savings created by ERISA in 1974. They are intended to allow employees who are not covered under a corporate or Keogh plan to obtain tax benefits similar to those provided under such plans.[67]

Although IRAs commonly are established by individuals, they also may be sponsored by employers and unions for their employees and members, respectively. In an effort to encourage the establishment of employer-sponsored IRAs, the Revenue Act of 1978[68] introduced the concept of "Simplified Employee Pensions".[69] Simplified pensions have been characterized as plans with a minimum of paper work and red tape,[70] and, in this context, the Revenue Act provides for simplified employer reports to the IRS and to employees.[71] For the purposes of this discussion, IRAs and Simplified Employee Pensions will be considered the same.

The applicability of the federal securities laws to IRAs was specifically considered by Congress at the time ERISA was pending congressional approval. In that regard, the conference report on ERISA stated:

> The conferees intend that this legislation with respect to individual retirement accounts is not to limit in any way the application of the federal securities laws to individual retirement accounts or the application to them of the laws relating to common trusts or investment funds maintained by any institution. As a result, the Securities and Exchange Commission will have the authority to act on the issues arising with respect to individual retirement accounts independently of this legislation.[72]

The status of IRAs under the securities laws was further commented upon by the Senate Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs in a study conducted in 1975. The Subcommittee expressed the belief that "IRAs and collective investment funds for IRAs clearly are not exempt from registration under. . .the Securities Act of 1933."[73] While the question of whether or not an exemption would be available would depend on the facts and circumstances of each case, it is clear that IRAs which involve the placement of an individual's funds in the hands of another person with reliance on that

[66]See Part IV of this release for a discussion of some exemptions available to plans.

[67]For example, an employee can claim a tax deduction for contributions to an IRA of the lesser of 15% of earned income or $1,500, and he will generally not be taxed on the amounts held in the IRA until they are distributed. In addition to the tax benefits, the ERISA requirements for certain employer-sponsored IRAs relating to reporting obligations, fiduciary standards, and prohibitions against self-dealing are generally less burdensome than those which apply to corporate plans.

[68]Pub. L 95-600 (November 6, 1978).

[69]Under a simplified pension plan, the deduction limit for employee contributions to IRAs is increased to $7,500 or 15% of compensation, whichever is less. And, to the extent that an employer's contributions to IRAs for its employees are less than the usual limits on deductible IRA contributions, the employees are permitted to make up the difference through deductible contributions to the IRA, provided such persons are not active participants in a qualified plan for that year.

[70]Hearings before the Subcommittee on Private Pension Plans and Employee Fringe Benefits on S. 3140, S. 3193 95th Cong., 2d Sess. (1978), at 11.

[71]Staff of Joint Committee on Taxation, 96th Cong., 1st Sess. General Explanation of the Revenue Act of 1978, H.R. 13511, Pub. L. 95-600, at 97.

[72]Joint Explanatory Statement of the Committee of Conference, H.R. 93-1280 (1974), 338.

[73]The Securities Activities of Commercial Banks, Study Outline of The Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, 94th Cong., 1st Sess. (1975), at 204. In this regard, it should be noted that the exemption provided by Section 3(a)(2) of the Act clearly does not apply to IRAs because they are authorized by Section 408 of the Internal Revenue Code, not Sections 401 or 404, as is necessary under 3(a)(2).

person to produce profits are securities which are subject to the registration and antifraud requirements of the 1933 Act.

Many IRAs involve a direct investment by an individual in an exempt security (such as one issued by a bank)[74] or in a medium that is not considered to be a security (such as a traditional fixed annuity). In neither instance would registration be necessary, and only in the former would the antifraud provisions be applicable.

Beyond the foregoing are two other situations in which the registration of IRAs is considered unnecessary. The first of these involves IRAs which are funded solely by specific mutual fund shares that are registered under the 1933 Act. The staff has stated that, so long as these shares are offered pursuant to current prospectuses which contain appropriate disclosure of the IRAs to which they may be offered, no separate registration of the IRAs is necessary.[75]

The second situation involves so-called master trust or prototype plan arrangements[76] which are used to market IRAs and Keogh plans. Where these types of trusts or arrangements exist, the sponsoring organization usually limits its own involvement to establishing the plan and/or setting up a separate account for each individual participant. The commingling of account assets is generally prohibited and, for the most part, complete investment discretion is vested in each account holder. Participants usually are afforded several investment alternatives, such as savings accounts or other bank instruments, insurance products or the like. The sponsor generally limits its role to that of a custodian and does not render any investment advice.

An argument often made is that interests in these types of plans do not constitute securities within the meaning of Section 2(1). The theory underlying this view is that each individual relies on his own efforts to earn a profit in his account, rather than on the efforts of others, and therefore one of the key elements of an investment contract is missing.[77] Although in practice this theory does not apply where an IRA or Keogh plan is funded through the use of a pooled investment medium, it has more validity where the sponsor acts as a mere custodian for a participant's separate account (the assets of which are not commingled) and the participant retains complete investment power or control over his account. Recognizing that the existence of an investment contract in such circumstances may be open to question, the staff generally has taken a no-action position regarding the registration of such interests.[78]

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[74]Section 3(a)(2) exempts, among other things, "any security issued or guaranteed by any bank."

[75]Letter re *Investment Company Institute* available October 21, 1974, where the Commission's Division of Corporation Finance also took the same position with respect to accounts and plans created under Section 403(b) of the Internal Revenue Code as deferred compensation arrangements for employees of public school systems and charitable organizations. In addition, it was indicated in the same letter that the Division of Investment Management would not recommend any enforcement action to the Commission with respect to the creation of such plans without registration under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a, et seq.], provided no custodian or trustee could exercise investment discretion with respect to the plans.

[76]The term "master plan" refers to a standardized form of plan with related form of trust or custodial agreement, administered by the sponsoring organization for the purpose of providing plan benefits on a standardized basis.

The term "prototype plan" refers to a standardized form of plan with or without a related form of trust or custodial agreement, which is made available by the sponsoring organization for use without change by employers who wish to adopt such plan and which will not be administered by the sponsoring organization which makes such form available.

CCH Pension Plan Guide para. 32,000.

[77]*See*, e.g., letter re *Security National Bank* dated November 26, 1975.

[78]The staff's no-action position involving master trust prototype plan arrangements extends to both IRA and Keogh plans having substantially the same characteristics as those described in the text. See, e.g., letters re *A.G. Edwards & Sons, Inc.* dated June 15, 1978 and *The National Bank of Georgia* dated November 4, 1976.

5. *Miscellaneous Plans*

In addition to the plans already mentioned, there are four types of employee benefit plans that merit a separate discussion, either because they involve issues of special interest or because they are somewhat unique.

a. *Stock Purchase Plans*

Stock purchase plans permit employees to purchase stock of their employer through payroll deductions or otherwise.[79] The stock may be acquired either directly from the employer or in open market purchases effected by the plan. Clearly, the stock is a security, and where it is supplied by the employer or an affiliate for purchase by employees under the plan registration is necessary absent an exemption. Where the stock is obtained through open market purchases, registration may not be required, as indicated in Part III of this release.

The only significant question presented by stock purchase plans under Section 2(1) of the 1933 Act is whether the interests of participants therein are securities. In Release No. 33-4790 (July 13, 1965) [30 FR 9059], the Commission indicated that employee interests in stock purchase plans which acquire the employer's stock in the open market might be securities where there are substantial differences between the manner of acquiring stock under the plan and the manner of acquiring it in ordinary brokerage transactions. Some of the variations which might be considered substantial, according to the release, are (1) limitations on the rights of employees to withdraw from the plan or to withdraw securities held in custody, (2) the granting of management discretion to someone other than the individual participants, (3) the accumulation of sums by the plan manager for material periods of time before investment, (4) the payment of special fees or charges, such as a front-end load, and (5) the diminution of the employee's rights or privileges as a shareholder.

The staff continues to believe that the presence of some or all of the foregoing factors in a stock purchase plan may create a separate security in the form of a participation interest. The reason is that such factors tend to place the employee in a position where he is relying on the plan managers to maintain or protect his investment. Accordingly, where such participation interests are deemed to be securities, they would be subject to the registration and antifraud provisions of the 1933 Act upon their offer or sale.

b. *Bond Purchase Plans*

Bond purchase plans are authorized under Section 405 of the Internal Revenue Code. They permit employers to purchase a special series of United States bonds for the benefit of employees or their beneficiaries. Although the bonds are securities, they are exempt from the registration requirements of the 1933 Act by virtue of Section 3(a)(2) thereof.[80] Similarly, the interests of employees in such plans are not required by the staff to be registered, because of the nature of the bonds underlying them and the congressional policy to encourage the establishment of these plans.

c. *Annuity Plans*

Section 403(b) of the Internal Revenue Code permits public school systems and charitable organizations to enter into deferred compensation arrangements with their employees that are funded through the purchase of annuity contracts[81] or mutual fund shares for the covered employees. Variable annuity contracts are securities[82] as are mutual fund shares, and both are therefore subject to the registration and antifraud provisions of the 1933 Act. Whether the interests of employees in these plans also are securities in all instances is problematical.

Participation interests in Section 403(b) plans that are both voluntary and contributory on the part of participating employees would appear to be

[79]Plans which possess the essential characteristics of a stock purchase plan will be treated as such under the 1933 Act, even though they may not be labeled as "stock purchase plans." The substance of a plan, rather than the name assigned to it, is the determining factor with respect to the application of the 1933 Act.

[80]Section 3(a)(2) exempts, among other things, any security "issued...by the United States..."

[81]An annuity contract is one which provides an income for a specified period of time, such as a number of years or for life.

[82]*S.E.C.* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65, 79 S. Ct. 618 (1959), and *S.E.C.* v. *United Benefit Life Insurance Co.*,387, U.S. 202, 87 S. Ct. 1557 (1967).

securities, for the reasons already discussed under the section entitled "Voluntary, Contributory Plans." As a matter of administrative practice, however, the staff does not require such interests to be registered. The antifraud provisions, however, would be applicable to the offer and sale of such interests

d. *Stock Bonus Plans*

Stock bonus plans are plans under which an employer awards shares of its stock to covered employees at no direct cost to the employees. These plans can take various forms, such as Employee Stock Ownership Plans ("ESOPs"), Tax Reduction Act Stock Ownership Plans ("TRASOPs"),[83] stock appreciation right plans ("SARs"), and other variations as well.

While the stock awarded to employees under the above types of plans is a security, the staff generally has not required it to be registered. The basis for this position generally has been that there is no "sale" in the 1933 Act sense to employees, since such persons do not individually bargain to contribute cash or other tangible or definable consideration to such plans.[84] It also is justified by the fact that registration would serve little purpose in the context of a bonus plan, since employees in almost all instances would decide to participate if given the opportunity. Similarly, the interests of employees in bonus plans have not been subjected to registration.

B. *Interests of Plans in Collective Investment Media*

The contributions made to employee benefit plans frequently are invested in pools of assets managed by other entities. These pools of assets may take the form, for example, of bank collective trust funds or insurance company separate accounts. In the staff's view, the participation interests of plans in these collective investment vehicles are securities, generally in the form of investment contracts.[85] That is, they involve an investment of money (the assets of the investing plan) in a common enterprise (the fund) with an expectation of profits (the earnings generated by the fund) from the efforts of others (the fund managers). In effect, plans which invest in such funds choose "to give up a specific consideration in return for a separable financial interest with the characteristics of a security."[86] Support for the fact that these interests are securities can be found in Section 3(a)(2) of the 1933 Act, which provides a specific exemption from registration for them if certain specified conditions are met. Clearly, there would be no need to provide such an exemption unless the interests were securities.

The real issue, then, with respect to interests in collective investment media is not whether they are securities, but whether they are exempt from registration by virtue of Section 3(a)(2) or some other exemption. The general exemptions that might be available are discussed separately in Part IV of this release.

III. THE TERM "SALE" AND OTHER FACTORS AFFECTING REGISTRATION

It already has been stated that the application of the registration and antifraud provisions of the 1933 Act depends on there being a "sale" or an "offer" of a security. Section 2(3) of the 1933 Act defines these terms as follows:

> The term "sale" or "sell" shall include every contract of sale or disposition of a securities or interest in a security, for value. The term "offer to sell," "offer for sale," or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. . .

The key elements in the foregoing definition from the standpoint of employee benefit plans are the words "value" and "solicitation of an offer to buy," for without one or both the 1933 Act is inapplicable. Each of these terms is discussed in the following sections.

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[83]Many TRASOPs permit employees to purchase stock of the employer at a price equal to half its market value. See Part III of this release for discussion of the application of the 1933 Act to such purchases.

[84]The staff's position generally is applicable only in the context of bonus plans which are made available to a relatively broad class of employees. With respect to stock awarded to, or acquired by, employees pursuant to individual employment arrangements, the staff generally has concluded that such arrangements involve separately bargained consideration, and that a sale of the stock has occurred.

[85]Collective investment vehicles also are generally considered to be "investment companies" subject to the requirements of the 1940 Act.

[86]99 S. Ct. 796.

A. *What Constitutes "Value"*

While the term "value" is not defined in the 1933 Act, the staff generally has taken the position that it includes all ordinary forms of consideration, such as cash, property, services, or the surrender of a legal right. There are two specific situations involving the term "value" that warrant a separate discussion. These are dealt with in the sections which follow.

1. *Conversions of Existing Plans*

For various reasons, a company may decide to convert its pension or profit-sharing plan into an ESOP or other type of plan. When such a conversion occurs, all of the assets of the old plan are transferred to a trust established under the new new plan.[87] In terms of the application of the 1933 Act, the question arises whether the exchange of interests in the former plan for interests in the new plan constitutes "value" within the meaning of Section 2(3).

The staff's response to this question is that although "value" in the traditional sense may be present in the exchange, no useful purpose is served by applying the Act's registration provisions where employees have no investment decision to make with respect to the proposed conversion.[88] Accordingly, the staff has indicated that it will not recommend any enforcement action concerning registration if the conversion will occur without giving employees any choice in the matter[89] and, likewise, has declined to issue a no-action letter where the situation is otherwise.[90] Because the staff's position on the conversion of existing plans is clear-cut, it will decline to respond to any future requests on the subject.

2. *Investment Elections Under Noncontributory Plans*

The application of Section 2(3) also becomes an issue in the context of noncontributory plans which provide employees with the opportunity to make various investment elections. For example, a plan may permit an employee to invest his share of the employer's contribution in various investment media (including company stock),[91] or to accept cash and defer a portion of the employer's award in the form of company stock,[92] or to elect cash or stock upon a distribution by the plan.[93] Because of the nature of these elections, which appear to involve investment decisions, the staff for some time declined to take a no-action position with respect to them.[94]

As a result of the *Daniel* decision, which dealt with a noncontributory plan, the staff has reconsidered its position. It now is of the view that registration should not be required with respect to investment elections in noncontributory plans.

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[87]*See*, e.g., letter re *Imaginetics, Inc.* dated June 22, 1978, and *G.F. Wacker Stores, Inc.* dated January 27, 1976.

[88]In this regard, whether or not an employee has a choice may depend on the nature of the plan being terminated. Many plans which provide for a choice do so as a result of requirements of the Pension Benefit Guaranty Corporation which, prior to the transfer of assets from a defined benefit plan, will require that such an election be offered. *See*, e.g., letter re *Guaranty Corporation* dated July 22, 1976.

[89]*See*, e.g., letters re *Decouper Industries, Inc.* dated November 20, 1975; *CFW Construction Company Inc.* dated August 20, 1975; *Crowley Maritime Corporation* dated January 27, 1976; *G.F. Wacker Stores, Inc.* dated January 27, 1976; *Tracy-Locke Company Inc.* dated May 18, 1976; and *Mayer-Lang-Marquis, Inc.* dated October 25, 1977.

[90]*See*, e.g., letters re *United Cotton Goods Company Inc.* dated September 29, 1976; *Guaranty Corporation* dated July 22, 1976; *Modern Merchandising, Inc.* dated August 30, 1976; and *Imaginetics Inc.* dated June 22, 1978.

[91]Letter re *Hycel, Inc.* dated December 2, 1977.

[92]Letter re *Aluminum Company of America* dated April 20, 1978.

[93]Letter re *U.S. Trust Corporation* dated December 11, 1978.

[94]*See*, e.g., letter re *First Union Inc.* available December 29, 1971 where, in a noncontributory incentive compensation program which featured an employee election to invest employer contributions in company stock, the staff declined to express a no-action position. *See* also, letters re *Piper Industries, Inc.* available March 6, 1972; and *Midlantic Banks, Inc.* available October 17, 1973.

3. *The Bifurcated Sale Concept*

In its brief in the *Daniel* case, the Commission took the position that it was possible for some employee benefit plan transactions to involve a "sale" for purposes of the antifraud, but not the registration, provisions of the 1933 Act. The basis for this view was the belief that the phrase "unless the context otherwise requires," which precedes the definitional portion of the Act, allows in some cases a different construction of the term "sale" in the context of the Act's registration provisions than it does in the context of the antifraud provisions.[95]

The Supreme Court in *Daniel* did not specifically address the merits of the Commission's "bifurcated sale" concept.[96] The staff, however, has revisited this issue and concluded that, for purposes of analyzing the impact of the 1933 Act on various employee benefit plans, it serves no practical purpose to apply the term "sale" in a bifurcated manner. Accordingly, the term "sale," when applied to employee benefit plans in the future, will be considered to have the same meaning for purposes of both the registration and antifraud provisions of the Act.[97]

B. *Solicitations of Offers to Buy*

The registration and antifraud provisions of the 1933 Act apply not only where there has been a disposition of a security for value, but also where there has been an offer to sell a security or a solicitation of an offer to buy the same for value. Insofar as employee benefit plans are concerned, the issue of whether the employer has made a solicitation of an offer to buy its securities arises most frequently in connection with employee stock purchase plans.

1. *Stock Purchase Plans*

As previously noted in Part II, a stock purchase plan allows an employee to purchase stock of the employer through payroll deductions or otherwise. The stock may be acquired directly from the employer, in which case registration would be necessary unless an exemption were available. Alternatively, the stock may be acquired in the open market through various types of arrangements involving payroll deductions.

The Commission's view as to whether registration by the employer will be necessary with respect to open market purchases depends on the employer's degree of participation in the plan.[98] If the employer's involvement is fairly substantial, it may be deemed to be soliciting its employees to buy its securities, and registration generally would be necessary in such circumstances. On the other hand, if the employer's participation is limited to ministerial-type functions so that purchases of stock under the plan are not significantly different than purchases outside the plan in ordinary brokerage transactions, registration would not be required.

In Release No. 33-4790, the Commission specified the circumstances under which an employer's involvement in a stock purchase plan would be considered sufficiently limited so as not to raise a registration question. According to the release, the employer must not solicit employees to participate in the plan (only the broker or other agent of the employees may do so). It may, however, perform the following functions:

(1) Announce the existence of the plan;

(2) Make payroll deductions for the plan at the request of employees;

(3) Make available to the broker or other agent the names and addresses of employees in order to facilitate communications regarding the plan;

(4) Address communications to be sent to employees by the broker or other agent;

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[95]SEC Amicus Brief, 63-90.

[96]In a note to its decision, the Court indicated that "we express no opinion as to the correct resolution of the divergent views on this issue." 99 S. Ct. 801, n. 22.

[97]In each instance in this release where the staff has concluded that registration is not necessary, the reader should be careful to note the particular ground relied upon. In those instances where interests in an employee benefit plan need not be registered because there is no sale, the antifraud provisions also do not apply. On the other hand, in those instances where an employee plan involves the sale of a security, the antifraud provisions are, of course, applicable even though the staff may be taking the position that interests in the plan need not be registered.

[98]See in this regard Release No. 33-4790.

(5) Include the broker's communications with other announcements by the employer;

(6) Permit an initial meeting of employees regarding the plan to be held at the employer's premises; and

(7) Limit its expenditures to those involved in making payroll deductions and paying the reasonable fees and charges of the broker or other agent for commissions and bookkeeping and custodial expenses.

In addition to the general caveat in Release No. 33-4790 that any deviation from the foregoing standards could necessitate registration, the staff has stated that the following requirements should be complied with in order to avoid any registration difficulties:

(1) The plan should be limited solely to employees[99] or to persons, such as franchisees[100] and independent sales representatives,[101] who have essentially the same degree of access to information regarding the company as do its employees; and

(2) The employer must not make contributions to the plan to defray the cost of the stock[102] or lend money to employees for the purpose of facilitating its purchase.[103] This requirement, however, is not violated where an employee elects to supplement his personal contributions to the plan with his portion of profits distributable from the employer's profit-sharing plan.[104]

2. *TRASOPs*

TRASOPs are a special form of Employee Stock Ownership Plan created by the Tax Reduction Act of 1975.[105] From the employee's standpoint, they are a combined stock bonus and stock purchase plan. That is, employees can receive shares of the employer at no cost to them under such a plan, and they also may be given the opportunity to purchase additional shares of the employer at half the prevailing market price.

Employers derive certain tax benefits by sponsoring TRASOPs. They can, for instance, receive up to an additional one percent investment tax credit for amounts contributed in cash or shares to the plan. In addition, they can become entitled to an extra one-half percent investment tax credit to the extent they match employee contributions for the purchase of company stock under the plan.

Generally, as pointed out in Release 33-4790, it has been the Commission's position that where an employer's involvement in a stock purchase plan (which a TRASOP partially can be) extends beyond the ministerial functions outlined in the preceding section, it is deemed to be soliciting an offer to buy the securities offered through the plan. In a contributory TRASOP, this customary analysis yields the result that the shares purchased by employees under such a plan must be registered. This is based on the theory that the employer's payment of half the price of stock purchased by the employees amounts to a subsidy that provides such a strong incentive to acquire the employer's stock that it is deemed to be a "solicitation of an offer to buy" within the meaning of Section 2(3).

There are, however, persuasive reasons for taking the position that the registration of shares acquired in the open market under TRASOPs is neither necessary nor appropriate. First, no practical purpose appears to be served by requiring registration solely because the employer is paying half the purchase price. To hold otherwise creates the anomalous situation whereby a company is not required to provide a prospectus to employees who pay the full market price for stock under a plan which

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[99]See letter re *Buning the Florist, Inc.* date May 10, 1976, in which the staff declined to take a no-action position with respect to an issuer's proposal that purchasers of its services be allowed to participate in its stock purchase plan without registration.

[100]Letter re *Servicemaster Industries, Inc.* dated January 10, 1979.

[101]Letter re *Baldor Electric Company* dated August 8, 1978.

[102]Letters re *Studebaker-Worthington, Inc.* dated June 13, 1975 and *Carlisle Corporation* dated April 15, 1975. An exception to this general principle involving TRASOPs is discussed later in this section.

[103]Letters re *Texas American Bancshares, Inc.* dated November 12, 1976 and *Atlantic American Corporation* dated August 1, 1977.

[104]Letter re *Manufacturers Hanover Corporation dated March 17, 1978.*

[105]Pub. L. 94-12 (1975), §301(d). The Tax Reform Act of 1976 [Pub. L. 94-455 (1976), §803] extended the TRASOP provisions through 1980.

complies with the requirements of Release 33-4790, but must furnish a prospectus to employees who pay only half the market price under a TRASOP that is essentially identical to the 4790 plan.

Second, the party ultimately subsidizing half of the purchase price of shares acquired under a TRASOP is not the employer but the federal government. Through the device of an investment tax credit conditioned upon the employer's participation in a TRASOP, the employer's payment of half the cost of stock purchased by employees is in effect reimbursed by the U.S. Treasury. The congressional policy underlying this tax credit to encourage the purchase of the employer's stock at half the market price is a further reason for not requiring registration.

On the basis of the foregoing reasons, the staff henceforth will take the position that shares acquired in the open market by employees under a TRASOP which otherwise satisfies the requirements of Release 33-4790 need not be registered. The purchase of such shares would, of course, continue to be subject to the antifraud provisions of the 1933 and 1934 Acts.

III. EXEMPTIONS FROM REGISTRATION

If an issuer determines that an offer or sale of securities will occur in connection with an employee benefit plan, it must either register the securities or rely upon one of the several exemptions from registration contained in the 1933 Act.

A. *Generally Available Exemptions*

Sections 3 and 4 of the Act set forth the various exemptions from registration.[106] Those most likely to be available for securities transactions involving employee benefit plans are set forth below.

(1) *Section 3(a)(2).* This is the only exemption in the 1933 Act which specifically refers to employee benefit plans. Because of its significance, it will be discussed in detail later in this section.

(2) *Section 4(2).* This provision exempts transactions by an issuer not involving any public offering. Known as the "private offering" exemption, it generally is available if an offering is made to a limited number of persons who are sophisticated in business matters and have access to the types of information that could be obtained through the registration process. In connection with the exemption provided by Section 4(2), the Commission has adopted Rule 146 [17 CFR 230.146], which provides certainty, in the form of a safe harbor, that the exemption is available if all of the conditions of the rule are met.

(3) *Section 3(a)(11).* This section, which is commonly referred to as the "intrastate offering" exemption, exempts offerings that are confined to residents of the state in which the issuer is organized and conducts the bulk of its business.[107] Rule 147 [17 CFR 230.147] under the Act provides a safe harbor for reliance upon the intrastate offering exemption if all of its conditions are satisfied.

(4) *Section 3(b).* Under this provision, the Commission has the authority to exempt certain offerings of securities if it finds that neither the public interest nor the protection of investors warrants registration "by reason of the small amount involved or the limited character of the public offering. Pursuant to the authority provided by Section 3(b), the Commission has adopted Regulation A [17 CFR 230.251 to 230.264], Rule 240 [17 CFR 230.240], and Rule 242 [17 CFR 230.242], all of which may be utilized in connection with securities offered pursuant to employee benefit plans. Regulation A can be relied upon for offerings of up to $1.5 million during a 12 month period. Rule 240 is available for offerings of up to $100,000 during a similar period. Rule 242 may be used for offerings of up to $2 million of securities in a single issue if certain conditions are met.

B. *Section 3(a)(2)*

[106]The exemptions in Sections 3 and 4 do not apply to the antifraud provision of the Act. *See* in this regard the introductory phrase to Section 4, as well as Section 17(c) of the Act.

[107]The intrastate offering exemption requires that all plan participants and the plan trustee reside in the same state as the employer. See letters re *Queens County Medical Society* dated January 7, 1972 [plan participants], and *Continental Investors Life Insurance Company* dated March 4, 1971 [plan trustee]. Also, the exemption may not be relied upon if the securities of the employer held by the trustee are not eligible for the exemption. Letter re *Rochester Telephone Corp.* dated June 2, 1978.

Congress amended Section 3(a)(2) in 1970[108] to exempt securities issued in connection with certain employee benefit plans, The relevant provisions of Section 3(a)(2) read as follows:

> *Section 3.* (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:
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> * * *
>
> (2) * * * any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; * * * or any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph (i) the contributions under which are held in a single trust fund maintained by a bank or in a separate account maintained by an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

1. *Definitions*

The lengthy and complex provisions of Section 3(a)(2) quoted above can best be analyzed by first defining the major terms used therein. The meaning of those terms is described below.

(a) *Interest or Participation.* The beneficial right or share which a participant has in a plan, or which a plan has in a single trust fund, collective trust fund, or separate account.

(b) *Common Trust Fund.* A trust fund maintained by a bank as an investment vehicle solely for trusts, estates or similar entities for which the bank acts in a bona fide fiduciary capacity, such as that of trustee, executor, administrator or guardian.[109] Such a fund may not be used as a vehicle for direct investment by members of the public.[110] The staff takes the position that the exemption in Section 3(a)(2) of the 1933 Act (as well as its counterpart in Section 3(c)(3) of the 1940 Act) for interests or participations in bank-maintained common trust funds was not meant to exempt investments by a bank as trustee for

[108]Note 22, *supra*. The amendments made to section 3(a)(2) in 1970 hereinafter are cited as the "1970 Amendments".

[109]House Report No. 91-1382 (1970) (hereinafter "House Report"), at 43, and Senate Report No. 91-184 (1969) (hereinafter "Senate Report") at 27.

[110]House Report at 43, and Senate Report at 27.

employee benefit plans, including Keogh plans.[111] Such investments were meant to be exempted by the later clause in Section 3(a)(2) dealing with collective trust funds for employee benefit plans, provided the conditions of that clause are satisfied.

(c) *Collective Trust Fund.* A trust fund maintained by a bank as an investment vehicle solely for corporate stock bonus, pension, or profit-sharing plans (other than Keogh plans) which meet the requirements for qualification under Section 401(a) of the Internal Revenue Code.[112] Like a common trust fund, a collective trust fund may not be used for direct investment by members of the public.[113] It should be noted that the Section 3(a)(2) exemption for interests or participations in collective trust funds will not be available to a collective fund which commingles the assets of Section 401 qualified plans with those of Keogh plans.[114]

(d) *Single Trust Fund.* A non-collective trust fund (i.e., a fund which is not established at the instance of, or by, a financial intermediary for the use of separate employers).[115] Under this definition, each of the following would be considered a single trust fund: (1) a trust fund for employees of a single employer;[116] (2) a trust fund for employees of employers so closely related as to be regarded as a single employer (e.g., a parent and its subsidiaries);[117] and (3) a trust fund established and controlled by employers and/or a union representing the employees of such employers.

(e) *Bank.* This term includes the following entities only: (1) a banking institution organized under the laws of the United States, (2) a member bank of the Federal Reserve System, (3) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by a State or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the 1940 Act, and (4) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (1), (2) or (3).[118] In connection with the foregoing, neither a savings and loan association[119] nor a bank holding company will be considered a bank, but a foreign bank whose U.S. operations are subject to the regulations of domestic banking authorities will be so considered.[120]

(f) *Separate Account.* An account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.[121]

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[111]See letters re *National Boulevard Bank of Chicago* dated February 20, 1974 and September 18, 1974 (reconsideration request) issued by the Division of Investment Management.

[112]House Report at 43, and Senate Report at 27. See also letter re *Communications Workers of America* dated December 28, 1979 issued by the Division of Investment Management.

[113]House Report at 43, and Senate Report at 27.

[114]Letter re *Pueblo Bank and Trust Company* dated December 4, 1979. The same principle applies to the commingling of assets of Section 401 plans with assets of IRAs.

[115]Letter re *Communications Workers of America* cited in Note 112, *supra*.

[116]See the definition is this section of the term "single employer."

[117]Letter re *Gibson, Dunn & Crutcher* dated March 18, 1974 issued by the Division of Investment Management.

[118]The definition used for the term "bank" is the one found in Section 2(a)(5) of the 1940 Act. The 1940 Act definition is applicable because of the language used in the last clause of Section 3(a)(2), which states that "...in the case of a common trust fund or similar fund, or a collective trust fund, the term 'bank' has the same meaning as in the Investment Company Act of 1940."

[119]Letter re *First Western Savings Association* dated September 8, 1975.

[120]Letter re *Sumitomo Trust and Banking Company, Limited* dated November 27, 1978.

[121]Section 2(14) of the 1933 Act.

(g) *Insurance Company.* A company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risk underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similiar official, or any liquidating agent for such company, in his capacity as such.[122]

(h) *Plan.* The permanent[123] program or arrangement under which participating employees will become entitled to benefits. The four types of plans which are specifically referred to in Section 3(a)(2) are described below. The first three must meet the requirements for qualification under Section 401(a) of the Internal Revenue Code,[124] while the fourth must satisfy the requirements for the deduction of the employer's contribution under Section 404(a)(2) of the Code.

(1) *Pension Plan.* A plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to its employees over a period of years, usually for life, after retirement.[125]

(2) *Profit-Sharing Plan.* A plan established and maintained by an employer to provide for participation in its profits by its employees or their beneficiaries.[126]

(3) *Stock Bonus Plan.* A plan established and maintained by an employer to provide benefits similar to those of a profit-sharing plan, except that the contributions by the employer are not necessarily dependent upon profits and the benefits are distributable in stock of the employer company.[127]

(4) *Annuity Plan.* A pension plan under which retirement benefits are provided under annuity or insurance contracts without a trust.[128]

(i) *Single Employer.* An employer and any entity controlling, controlled by, or under common control with, such employer. This definition represents a departure from prior staff interpretations and will be discussed in detail later in this section.

2. *Scope of the Exemption*

The 1970 Amendments to Section 3(a)(2) codified in part the Commission's longstanding administrative position[129] that interests or participations issued in connection with employee benefit plans need not be registered unless employee funds are used to purchase employer securities. In the *Daniel* decision, however, the

[122]Section 2(13) of the 1933 Act.

[123]IRC Regulation §1.401-1(b)(2) states that for purposes of qualification under Section 401(a) of the IRC, "the term 'plan' implies a permanent as distinguished from a temporary program." The regulation goes on to indicate that "the abandonment of the plan for any reason other than business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program for the exclusive benefit of employees in general."

[124]The availability of the Section 3(a)(2) exemption does not depend on the name given to a plan. What is important is that the plan meet the requirements for qualification under Section 401 of the Internal Revenue Code. Thus, plans with names such as "incentive compensation plan" [letter re *First Union, Inc.* dated November 29, 1971], "thrift and savings plans" [letter re *Finnigan Corporation* dated April 2, 1976], and "savings plan for salaried employees" [letter re *Bell System Savings Plan for Salaried Employees* dated March 18, 1971], have been considered within the scope of the exemption because they satisfied the requirements for qualification under Section 401.

If the pension, profit-sharing, stock bonus, or similar plan does not qualify under Section 401, then the exemption provided by Section 3(a)(2) would not be available. For example, a collective trust fund which included assets of Individual Retirement Accounts would not be able to rely upon the exemption because IRAs fall under Section 408 of the Internal Revenue Code, not Section 401. Letter re *Gary-Wheaton Bank* dated October 30, 1975.

[125]IRC Reg. §1.401-1(b)(1)(i).

[126]IRC Reg. §1.401-1(b)(1)(ii).

[127]IRC Reg. §1.401-1(b)(1)(iii).

[128]IRC Reg. §1.404(a)-3(a).

[129]Opinion of the Assistant General Counsel, Note 18 *supra*.

Supreme Court implied, in *dictum*, that the Section 3(a)(2) exemption extends only to the interests or participations of plans in certain funding vehicles, rather than the interests of employees in the plans themselves.[130]

The legislative history of the 1970 Amendments indicates that their original purpose was to alleviate a concern expressed by banks and insurance companies that there was no clear exemption from registration in the 1933 Act for interests in the collective funding vehicles maintained by those entities for employee benefit plans.[131] While the amendments were under consideration, however, language was added that reflected the Commission's consistent administrative practice of not requiring interests in plans to be registered except where employee money is used to buy securities of the employer.[132]

The inclusion of the language referred to above, as well as a recent decision by a U.S. District Court,[133] would seem to support the staff's view that the implicit purpose of the 1970 Amendments was to exempt not only the interests of plans in certain investment vehicles, but also the interests of participants in the plans themselves.[134] This position is reasonable when one considers that, from the employee's standpoint, his interest in the plan is inseparable from his aliquot share of the plan's interest in the funding vehicle. Moreover, there is the practical consideration that if Section 3(a)(2) were not broadly construed to cover employee interests in plans as well as plan interests in funding vehicles, many plans would have no exemption from registration upon which to rely for the offer and sale of interests to employees.[135] Accordingly, the staff believes it is appropriate to link both the plan's interest in a funding vehicle and the interests of participants in the plan itself for purposes of the exemption provided by Section 3(a)(2).

The staff recognizes that the Supreme Court, in the *Daniel* decision, did not endorse the broad view of the 3(a)(2) exemption described above.[136] While the statements by the Court are entitled to serious consideration, they are *dicta* and therefore do not resolve the issue conclusively. This fact is reflected in Chief Justice Burger's concurring opinion, in which he stated that "There is no need to deal, in this case, with the scope of this exemption, since it is not an issue presented for decision."[137] The Chief Justice further noted that "the construction of the 1970 Amendment may be problematical" and "of real importance to someone in some future case" and that, as a result, he was "reserving any expression of

[130]The Court stated in this regard that the 1970 Amendments to Section 3(a)(2) "recognized only that a pension plan had 'an interest or participation' in the fund in which its assets were held, not that prospective beneficiaries of a plan had any interest in either the plan's bank-maintained assets or the plan itself." 99 S. Ct. 799. *See* also, n. 19 at 99 S. Ct. 799.

[131]In the case of banks, the concern arose because the exemption for bank securities previously included in Section 3(a)(2) and thought be applicable to interests in bank common and collective trust funds was determined not to be available for such interests. This position was codified to some extent in the 1970 Amendments to Section 3(a)(2), which added a provision to that section stating that "a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank." Subsequently, insurance companies also became concerned that the separate accounts maintained by them for investments by Section 401 corporate plans might involve the issuance of securities for which there was no available exemption from registration.

[132]See the portion of Section 3(a)(2) which states that the exemption does not extend to plans for a single employer "under which an amount in excess of the employer's contribution is allocated to the purchase of securities...issued by the employer or [an affiliate thereof]..."

[133]*Leonard* v. *Drug Fair* (D.C. of D.C., 1979), CCH para. 97,144.

[134]The exemption, however, certainly does not extend to stock or other securities that may be held by a plan. Such securities must find their own exemption from registration. *See* letter re *AMF, Inc.* dated September 29, 1978.

[135]This, of course, presumes that such interests are securities, a presumption that, as previously stated, may be applicable only to voluntary, contributory plans.

[136]Note 130, *supra*.

[137]*99 S. Ct. 802.*

views" on the scope of the exemption.[138] In light of all of the foregoing, particularly the negative effects on many plans which might flow from a narrow construction of Section 3(a)(2), the staff will continue to view the exemption as being applicable to both interests in funding vehicles and interests in plans.

3. *Significant Interpretive Issues*

There are several significant interpretive issues under Section 3(a)(2) that have arisen over the years. These are discussed in detail in the sections which follow.

a. *"Maintained by a Bank" Requirement*

Section 3(a)(2) states in part that it shall be available for interests or participations in any "common trust fund. . .maintained by a bank" or any "single or collective trust fund maintained by a bank," provided certain conditions are met. The word "maintained" has been interpreted by the staff to mean that the bank must exercise "substantial investment responsibility" over the trust fund administered by it.[139] Thus, a bank which functions in a mere custodial or similar capacity will not satisfy the "maintained" requirement.[140] In exercising its investment authority over a trust fund, however, a bank may hire an investment adviser to assist it, although the final decision whether or not to invest must be made by the bank.[141]

The principal question concerning the "maintained" requirement is whether it applies to single trust funds. The language of the statute, which is the starting point in statutory construction,[142] suggests that such funds must be so maintained. The staff, however, has taken the position that the "maintained" requirement applies only to common and collective trust funds.[143] Thus, interests or participations in a single trust fund which does not have a bank as trustee will be deemed exempt under Section 3(a)(2) if all other requirements of the provision are satisfied.

The staff's view that single trust funds need not be maintained by a bank is based on its perception of the intent of Congress at the time the reference to such funds was inserted in Section 3(a)(2). The reference was included in 1970[144] at the request of Sperry-Rand Corporation,[145] with the Commission's full support.[146] Sperry-Rand had expressed concern that a failure to refer specifically to single trust funds in the then-pending amendments to Section 3(a)(2) would create a negative inference that interests in such funds were required to be registered. Such an inference, as previously indicated, would have been contrary to the Commission's consistent position over the years that interests in such funds were subject to registration only where employee funds were invested in securities of the employer.[147]

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[138]*Id.*

[139]Letters re *Bank of America* dated December 8, 1971 and *Sterling National Bank and Trust Company of New York* dated February 10, 1976. A similar view has been adopted by the Division of Investment Management with respect to the "maintained" requirement of Section 3(c)(11) of the 1940 Act, a provision comparable to Section 3(a)(2) insofar as employee benefit plans are concerned. See letter re *Bank of Delaware* dated November 15, 1972.

[140]Letter re *Bank of America* dated December 8, 1971.

[141]Letters re *First Liberty Real Estate Fund* dated June 12, 1975 and *Sterling National Bank and Trust Company of New York* dated February 10, 1976.

[142]99 S. Ct. 795.

[143]Letters re *Gilbert Associates* dated October 31 1977 and *New England Electric System* dated April 5, 1979.

[144]Pub. L. No. 91-547 (December 14, 1970).

[145]See letter from the General Counsel of Sperry-Rand to the Honorable John E. Moss dated November 7, 1969. The letter is reproduced at pages 929-930 of the Hearings on H.R. 11995, S. 2224, H.R. 13754, and H.R. 14737 Before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 91st Cong., 1st Sess., pt. 2 (1969). The letter to Congressman Moss was preceded by two letters from the Assistant Secretary of Sperry-Rand to staff members of the Commission dated April 30, 1969 and May 9, 1969, respectively.

[146]Commission minute dated June 18, 1969.

[147]Opinion of Assistant General Counsel, note 18, *supra*.

To eliminate the problem raised by Sperry-Rand, it was decided to insert the words "single or" in Section 3(a)(2) immediately in front of the words "collective trust fund maintained by a bank." In retrospect, this method of resolving the issue was somewhat inartful, since it created the erroneous impression that single trust funds had to be maintained by a bank in order for interests therein to be exempt under Section 3(a)(2). Certainly, there was no intent by Congress to change the Commission's prior interpretive position that such funds did not have to be maintained by a bank in order to avoid registration. This is evident from the Conference Report on the subject, which stated that the amendment "codified a long established administrative practice of the Commission by making it clear that [the Section 3(a)(2)] exemption applied not only to collective trust funds, but also to single trust funds."[148]

Further support for the validity of the staff's interpretation can be found in Section 3(c)(11) of the 1940 Act. That section, together with its predecessor,[149] was the model upon which the provisions in Section 3(a)(2) under discussion were based.[150] It excludes from the operation of the 1940 Act "any employees' stock bonus, pension or profit-sharing trust which meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954," as well as "any collective trust fund maintained by a bank consisting solely of the assets of such trusts." Clearly, single trust funds are not required to be maintained by a bank under Section 3(c)(11). A different view of such funds under Section 3(a)(2) would result in an anomaly whereby virtually all single trust funds for Section 401 plans would have to be maintained by a bank under the 1933 Act but not under the 1940 Act. Such a result would, in the staff's view, be contradictory and counter to the apparent intent of Congress.

b. *What Constitutes a "Single Employer"*

The general exemption provided by Section 3(a)(2) for interests or participations issued in connection with certain employee benefit plans contains two exclusions.[151] One relates to interests in Keogh plans and will be discussed in the next section. The other relates to interests in plans whose contributions are held in a single trust fund or separate account for a "single employer" and which permit amounts in excess of the employer's contribution[152] to be used to purchase securities of the employer or its affiliates.[153]

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[148]House Report No. 91-1631 (1970), 31.

[149]The predecessor of Section 3(c)(11) was Section 3(c)(13), which had been in existence since the inception of the Act in 1940.

[150]See Hearing on Amendment No. 438 to S. 1659 (1967), 1338-1347.

[151]The full text of the two exclusions states that the Section 3(a)(2) exemption does not apply to

any plan described in clause (A) or (B) of this paragraph (i) the contributions under which are held in a single trust fund maintained by a bank or in a separate account maintained by an insur nce company for a single employer and under whic h an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or by a company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of Section 401(c)(1) of such Code.

[152]The reference in the second exclusion to amounts in excess of the employer's contributions simply means that employee funds may not be utilized to purchase securities of the employer or affiliated entities. No tracing of the employer's contributions is necessary to satisfy this requirement. It is enough simply to demonstrate that the amount invested by the plan in employer securities is the same or less than the amount contributed by the employer to the plan. Moreover, the staff has indicated in a letter concerning *Eastman Kodak Company* dated January 22, 1976 that an employee may allocate part or all of his share of the employer's plan contributions to the purchase of employer securities without destroying the 3(a)(2) exemption.

[153]The second exclusion originally applied to both single and collective trust funds maintained by banks for such plans. [Pub. L. 91-547 (December 14, 1970)]. Shortly after its enactment, however, it was amended to delete the reference to collective trust funds. [Pub. L. 91-567 (December 22, 1970)]. This was done in recognition of the fact that such funds might unwittingly lose the 3(a)(2) exemption simply because they invested some of the fund's assets in securities of one of the covered employers.

The purpose of the second exclusion described above is to deny the Section 3(a)(2) exemption to interests in plans which invest employee contributions in securities of the employer or related entities. It appears, however, that this purpose has been frustrated somewhat by the staff's prior interpretation of the term "single employer." Until now, the staff has viewed the term in a literal sense and stated that a parent and its subsidiaries are not a single employer for purposes of Section 3(a)(2)[154] The effect of this has been to permit some plans covering a parent and its subsidiaries to invest employee funds in securities of the parent (or one of the subsidiaries) without abrogating the 3(a)(2) exemption. This has occurred because the exclusion referred to above applies only where a plan both covers a single employer *and* invests employee money in employer securities.

The staff announced some time ago that it was reconsidering its position concerning the single employer question.[155] It has now concluded that its past interpretation of the term was incorrect and contrary to the purpose of the exclusion. A parent and its subsidiaries are in fact under common control and to consider them as separate or unrelated employers ignores reality. Accordingly, in the future, a parent and its subsidiaries will be deemed a single employer for purposes of the 3(a)(2) exclusion being discussed, as will all entities which share a control relationship. It should be noted, however, that the staff's revised view of the single employer question will be applied on a prospective basis only. Therefore, it will not be cited with respect to past activities of employers made in reliance upon the staff's former interpretation.

c. *Keogh Plans*

As indicated in Part II of this release, interests or participations issued in connection with Keogh plans generally are deemed to be securities which are subject to the registration and antifraud provisions of the 1933 Act. Although the intrastate exemption frequently is relied upon for the offer and sale of such interests, registration has been necessary in some instances.[156]

Section 3(a)(2) specifically excludes Keogh plan interests from the general exemption provided by the section[157] but does provide the Commission with the authority to exempt such interests from registration where it is "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes [of the 1933 Act]" to do so. This power was granted to the Commission in 1970[158] but was not used until November 1976,[159] when an exemptive order under Section 3(a)(2) was issued for interests issued in connection with a Keogh plan for a law firm. Since that time, the Commission has issued over 50 exemptive orders[160] in response to applications submitted by various law firms, accounting firms, and a medical clinic.

Almost all applications for exemptive orders under Section 3(a)(2) granted by the Commission have contained the following representations:

(1) The plan is comparable to corporate plans and would be exempt under Section 3(a)(2) if the applicant were organized in corporate, rather than partnership, form;

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[154]*See, e.g.*, letters re *Bell Systems* available April 16, 1971, *Aluminum Company of America* available March 14, 1974, *Western Gear Corporation* available July 11, 1975, and *Monsanto Co.* available November 19, 1976.

[155]Letter re *Public Service Co. of New Mexico* dated February 8, 1978.

[156]*See, e.g.*, the following registration statements: National Bank of Detroit Trust for Retirement Plans (File No. 2-21954), American Security and Trust Company Self-Employed Retirement Trusts (2-51997), and Wells Fargo Keogh Plan Trusts (2-55249).

[157]Note 151, *supra*.

[158]The 1970 Amendments to Section 3(a)(2) granted such authority to the Commission. See Note 22, *supra*.

[159]See Release No. 33-5759 (November 11, 1976) relating to the Keogh plan of the firm of Cravath, Swaine & Moore.

[160]The Commission's Division of Investment Management has been delegated authority by the Commission to issue exemptive orders under Section 3(a)(2) where the applications for such orders do not involve any issues not previously settled by the Commission or raise questions of fact or policy indicating that hearing should be held. See 17 CFR 200.30-5(b-1)(1) and (2).

(2) The plan is designed specifically for the applicant and therefore is not a uniform prototype designed for mass marketing by a financial institution to numerous unrelated self-employed persons;

(3) The plan is administered by the employer, who is subject to the fiduciary and disclosure requirements of ERISA, thereby assuring that the interests of participants are protected by the provisions of ERISA; and

(4) The applicant has the resources and the financial expertise to protect its interests and those of the plan participants adequately.

Because the applications for exemptive orders under Section 3(a)(2) currently being received are essentially identical, the Commission's Division of Investment Management is drafting a proposed exemptive rule that may eliminate the need for granting exemptive orders in the future. It is anticipated that the proposed rule will be published for comment during 1980.

d. Plans Funded by Certain Insurance Contracts

A relatively new development in the pension and profit-sharing plan area is the funding of such plans through the issuance by insurance companies of so-called "guaranteed investment contracts." Generally, these fixed annuity contracts are sold to trustees of plans or corporate employers establishing plans, and they are written in the form of group annuity contracts for contract periods ranging from three years to beyond twenty years. The trustee or corporate employer makes contributions, in either a single sum or on a periodic basis, which contributions are held as part of the general assets or general account of the insurance company. These contracts generally provide for guaranteed interest and annuity purchase rates, both of which may be subject to change after a specified period, commonly three to five years. Some contracts provide for the payment of interest (or dividends in the case of mutual companies) in excess of the guaranteed amount based upon an investment year method of interest allocation. The contracts also provide for or permit the optional purchase of annuities generally at the time a retiree's annuity is desired.

Certain guaranteed investment contracts appear to be securities. They are not exempt from registration under Section 3(a)(2) of the 1933 Act because they are funded by insurance company general accounts, which are not referred to in that section. (Only separate accounts are mentioned.) They also are not exempt under Section 3(a)(8) of the Act in those instances where the issuing insurance company either fails to assume a meaningful mortality risk under the contract or allows the purchaser to bear a significant investment risk.[161]

Notwithstanding the above, the Division of Investment Management has indicated that it will not recommend any enforcement action if the offer and sale of guaranteed investment contracts to pension and profit-sharing plans is not registered, provided certain specified conditions are met.[162] The conditions are:

(1) Each contract must be issued in connection with a pension or profit-sharing plan which (a) covers not less than 15 persons, or (b) involves annual contributions in excess of $10,000, or (c) is established by a corporate employer with a net worth of at least $100,000 on the last day of its fiscal year preceding the day the contract becomes effective;

(2) Each prospective contractholder must be provided with an offer by the issuer (which also should be contained in any printed sales literature used) to provide upon request financial statements and other material information; and

(3) Advertising describing or offering such contracts must be directed solely to employers who may establish tax-qualified corporate plans or to trustees of such plans.

In addition to the foregoing, a more recent development has been the formation of multiple-employer trusts by insurance companies that are funded, respectively, by fixed or variable annuity contracts, or combination contracts providing both fixed and variable annuity alternatives. The formation of a trust for the offering of such contracts

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[161]See in this regard, Release No. 33-6051 (April 5, 1979) (44 FR 21626).

[162]Letter to *American Council of Life Insurance re* Guaranteed Investment Contracts dated March 18, 1977. The letter specifically indicates that to the extent guaranteed investment contracts are securities they would be subject to the antifraud provisions of the 1933 Act.

to unrelated employers appears to be necessary to satisfy state insurance requirements. Moreover, because of the economies of scale involved, it has the advantages of permitting reduced group annuity rates and limiting the expenditures for complying with ERISA recordkeeping and reporting requirements.

The Division of Investment Management has indicated that it will not recommend enforcement action to the Commission if multiple-employer trust arrangements of the type described above are marketed without registration of participations in the trusts under the Securities Act of 1933 or registration of the trusts under the Investment Company Act of 1940. A number of facts and representations were important in reaching the no-action position.[163] Specifically:

(1) Participants in the group annuity contract would tender consideration directly to the insurance company, and would receive annuity payments directly from the insurance company;

(2) The insurance company would perform all marketing, administrative and investment functions involved in funding the group annuity contracts, and any financial claim which the participants would have under the contracts would be against the insurance company itself;

(3) The insurance company would name the trustee of each trust, and reserve the right to remove them and name successor trustees;

(4) The sole responsibility of the trustee would be to serve as group annuity contract holder, and the trust would not have any financial interest in the group annuity contract.

In such circumstances, where the multiple-employer trust is passive, compliance with the federal securities laws would be unnecessary.

V. SECURITIES TRANSACTIONS BY PLANS

In addition to issuing participation interests and fostering stock purchases by employees, either of which may be subject to the registration and antifraud provisions of the 1933 Act depending on the circumstances, a plan may engage in various other transactions involving the purchase, sale or distribution of securities. These are briefly discussed in the sections which follow.

A. *Acquisitions of Employer Stock*

Many plans invest part or all of their assets in stock or other securities of the employer. There are three primary sources that a plan can draw upon to acquire employer securities: the employer, affiliates of the employer, and persons selling their securities in the open market. Generally, no matter from whom the securities are obtained, registration will not be necessary with respect to the acquisition transaction by the plan. The reasons for this result will vary, depending on the manner of acquisition. For instance, there may be no sale involved (as in the case of a contribution of stock or cash to the plan by the employer),[164] or one of the several exemptions from registration provided by Section 4 of the Act may be available.[165]

Although the transaction in which a plan acquires employer securities need not be registered, the same would not necessarily be true with respect to the offer, sale or distribution of those securities to plan participants. These latter transactions are separate and distinct from the acquisition transaction and therefore must either be registered or exempt from registration. Further, the plan trustee should take into consideration, when purchasing stock of the employer in the open market, the application of the antifraud provisions of the 1934 Act[166] to such purchases.

B *Sales of Employer Stock*

A plan may from time-to-time offer or sell the securities of the employer held by it. If the plan is

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[163]Letter re *Equitable Life Assurance Society of the United States* available July 9, 1979 issued by the Division of Investment Management.

[164]Letter re *Modern Merchandising, Inc.* dated March 24, 1977.

[165]Some of the available exemptions under Section 4 are those provided, respectively, by Section 4(1) for open market purchases from persons who are not underwriters, Section "4(1-1/2)" for purchases from affiliates in private transactions, and Section 4(2) for purchases from the employer in private transactions. For more information concerning the so-called Section "4(1-1/2)" exemption, see Note, *infra*.

[166]See Section 10(b) of the 1934 Act and Rule 10b-5 thereunder.

considered an affiliate[167] of the employer, any such offers or sales, whether to plan participants or to persons not associated with the company, would be subject to the registration and antifraud provisions of the 1933 Act[168] in the same manner as if the employer were engaging in the transaction. Thus, even if the securities to be sold were acquired on the open market, registration would be necessary under such circumstances, absent an available exemption.[169]

C. *Distributions of Employer Stock to Plan Participants*

The distribution, or actual delivery, of employer stock by a plan to individual participants is not deemed to be a registerable event. Of course, if the plan were to offer or sell such stock to participants prior to actual delivery, registration would be necessary unless an exemption were available.

D. *Transactions in Non-Employer Securities*

In conducting its operations, a plan may buy or sell securities of issuers other than the employer. Purchases of such securities by the plan ordinarily would not create any 1933 Act consequences,[170] since the compliance provisions of the Act are directed at sellers of securities, not at buyers. Sales of such securities would, of course, have to be made in reliance upon an exemption unless they were registered. The most common exemption relied upon for sales is that provided by Section 4(1) of the Act for persons who are not issuers, underwriters[171] or dealers. Rule 144 [17 CFR 230.144][172] under the 1933 Act provides a safe harbor from registration for persons who wish to rely upon the Section 4(1) exemption for resales of restricted securities,[173] provided all of its conditions are met.

Plan trustees who intend to acquire significant amounts of the equity securities of an issuer (including the employer) should bear in mind the potential applicability of Sections 13(d), 16(a), and 16(b) of the 1934 Act. Section 13(d) requires beneficial owners of more than five percent of a class of equity securities registered under Section 12 of the 1934 Act[174] to report their ownership, as well as any further acquisitions, to the issuer, to any stock exchange on which the securities are traded, and to the Commission. Sections 16(a) and 16(b) apply to beneficial owners of more than 10% of a class of equity securities registered under Section 12.[175] Section 16(a) requires an initial report of a person's holdings and subsequent reports of any changes in such holdings. Section 16(b) permits an issuer to recover any profits realized by persons subject to that section on purchases and sales of the issuer's securities that occur within a period of less than six months.

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[167]See Note 9, *supra*. for a definition of the term "affiliate."

[168]The antifraud provisions of Section 10(b) of the 1934 Act and Rule 10b-5 thereunder also would apply to any such offers or sales.

[169]Letter re *General Motors Corp.* dated May 10, 1972.

[170]The antifraud provisions of the 1934 Act, however, would apply to all such purchases.

[171]The term "underwriter" is broadly defined in Section 2(11) of the 1933 Act and includes persons who acquire securities "with a view to***distribution."

[172]Rule 144 essentially states that a person shall not be deemed an underwriter of the securities he is selling if all of the conditions of the rule are satisfied. These conditions may be summarized as follows: (1) there must be current public information available about the issuer of the securities; (2) the securities must have been held by the seller for at least two years; (3) the amount of securities sold cannot exceed certain specified volume limitations; (4) the securities must be sold either in a broker's transaction or in a transaction with a market-maker; and (5) a notice of sale on Form 144 must be filed with the Commission if certain specified amounts of securities are to be sold during a three-month period.

[173]See Note 180, *infra* for a description of the term "restricted securities."

[174]A class of equity securities is subject to registration under Section 12 if it is either listed on a national securities exchange [Section 12(b)] or if, at the end of the issuer's fiscal year, it is held of record by more than 500 persons and the issuer has assets exceeding $1,000,000 [Section 12(g)].

[175]Officers and directors of issuers whose securities are registered under Section 12 also are subject to the requirements of Sections 16(a) and 16(b).

VI. RESALES BY PLAN PARTICIPANTS

A matter of major concern to participants in a pension or profit-sharing plan is the tradeability of securities received by them under the plan. That is, can the securities be freely resold without restrictions or not? The next two sections will attempt to resolve the uncertainty that may exist regarding this issue.

A. *Registered Plans*

Many plans register the securities offered and sold by them on Form S-8 or some other appropriate registration form under the 1933 Act.[176] Generally, such securities are freely tradeable upon distribution to participants, unless the person acquiring the securities is an affiliate of the issuer. Thus, participants in a registered plan who do not have a control relationship with the issuer may resell the shares or other securities acquired by them under the plan without any restrictions.

Affiliates are in a somewhat different position because their control relationship with the issuer subjects them to the same disabilities regarding registration that would attach to the issuer if it tried to sell the securities. Such persons may resell their shares publicly either pursuant to an effective registration statement or pursuant to Rule 144[177] under the 1933 Act. Affiliates also may resell the securities in a private transaction,[178] provided it is understood that the purchaser is acquiring restricted securities which are subject to the same limitations on resale that applied to the seller.

Registration of plan securities for resale by affiliates is relatively easy to accomplish in most cases, since a Form S-16 reoffer prospectus usually can be used for this purpose.[179] With respect to Rule 144, it should be noted that the two-year holding period requirement of the rule does not apply to securities acquired under a registered plan.[180] Thus, some or all of the securities ordinarily could be resold by affiliates under the rule immediately upon acquisition.

B. *Unregistered Plans*

Other than the one exception noted below, which is based upon an administrative position of the staff, unregistered securities distributed to participants under an employee benefit plan may not be freely resold. Thus, such securities, whether held by affiliates or non-affiliates, must either be registered or sold in reliance upon an exemption, such as that provided by Section 4(1) of the Act. Perhaps the most practical means for relying upon Section 4(1) is to resell the securities pursuant to Rule 144, which, as previously noted, requires that the securities be held a minimum of two years prior to resale.

The exception[181] to the general rule mentioned above applies to shares or other securities received by non-affiliates from a plan under the following conditions: (1) the issuer of the securities is subject

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[176]See Part VII for a discussion of the various forms that can be used under the 1933 Act for the registration of securities offered and sold by plans.

[177]See Note 172, *supra* for a brief description of Rule 144.

[178]In making such private sales, the affiliates presumably would rely on the so-called "Section 4(1-1/2)" exemption. This is a hybrid exemption not specifically provided for in the 1933 Act but clearly within its intended purpose. The exemption basically would permit affiliates to make private sales of securities held by them so long as some of the established criteria for sales under both Section 4(1) and Section 4(2) of the Act are satisfied. For a detailed discussion of the "Section 4(1-1/2)" exemption, *see The Section "4(1-1/2)" Phenomenon: Private Resales of "Restricted Securities"*, a Report to the Committee on Federal Regulation of Securities of the ABA from the Study Group on Section "4(1-1/2)" of the Subcommittee on 1933 Act—General, dated April 30, 1979. The report is reproduced in The Business Lawyer (July 1979), at 1961.

[179]See Part VII for a discussion of the Form S-16 reoffer prospectus.

[180]See in this regard paragraph (d) of Rule 144, which states that the holding period requirement of the rule applies only to restricted securities. The term "restricted securities" is defined in paragraph (a)(3) of the rule and basically includes securities acquired in nonpublic offerings. Securities acquired in registered offerings clearly are not deemed to be restricted securities because such offerings are public in nature, not nonpublic.

[181]See in this regard Release No. 33-5750 (October 8, 1976) [41 FR 45632].

to the periodic reporting requirements of Section 13 or 15(d) of the 1934 Act, (2) the stock being distributed is actively traded in the open market; and (3) the number of shares being distributed is relatively small in relation to the number of shares of that class issued and outstanding.

The above conditions are designed to provide some assurance that there is adequate information available to the public concerning the issuer of the distributed securities and that resales of such securities will not have a measurable impact on the trading market. Thus, where the conditions are satisfied, unregistered securities received by non-affiliates may be resold immediately without any restrictions. Affiliates, of course, would continue to be subject to registration, in the absence of an available exemption.

VII. METHODS OF REGISTRATION

Many plans are structured so that registration under the 1933 Act is not required. Where registration is necessary, an appropriate form for this purpose must be selected and all applicable requirements must be complied with. A brief discussion of the available forms and their requirements follows.

A. *Form S-8*

The principal form used to register securities issued in connection with employee benefit plans is Form S-8. The form is designed primarily to provide information to employees concerning the plan[182] and the securities[183] offered pursuant to it. Some information concerning the employer,[184] including audited financial statements, also is required to be disclosed by the form. This information, however, is not as extensive as that required by many other registration forms, on the theory that employees are more familiar with their company than most other investors.

The form may be used by any issuer which has been subject, at the time of filing, to the periodic reporting requirements of Section 13 or 15(d) of the 1934 Act for at least the prior 90 days and has filed all reports required during the preceding 12 months or such shorter period that it was subject to those requirements.[185]

The availability of Form S-8 is conditioned on its being used to offer securities to "employees" of the issuer and its parents and subsidiaries pursuant to a "plan."[186] Independent contractors and other persons who do not have a formal employment relationship with the employer or its parent or subsidiaries[187] are not considered to be "employees"

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[182]The information concerning the plan would include: (1) eligibility requirements for employees; (2) contributions to be made by the employer and employees; (3) withdrawal provisions; (4) administration of the plan; (5) investments by the plan; and (6) brokerage placement practices. Also, if interests in the plan are registered, audited statements of the financial condition of the plan and the income and changes in equity of the plan for each of the latest two fiscal years, must be included.

[183]The information regarding the securities being registered would include the title of the class and the rights attendant to those securities. These rights would include: (1) dividend rights; (2) voting rights; (3) liquidation rights; (4) pre-emptive rights; (5) conversion rights; (6) redemption provisions; (7) sinking fund provisions, and (8) liability to further calls or to assessment by the issuer.

[184]The information concerning the employer would, in addition to audited financial statements of the type required to be set forth in its annual report to security holders, include: (1) a summary of operations for each of the preceding five fiscal years; (2) market prices of the employer's securities; (3) the employer's dividend policy; (4) certain significant developments in the last three years; (5) the employer's business and management; and (6) a list of the employer's parents. All of this information can be incorporated by reference from the employer's annual report, which must be furnished to employee participants.

[185]General Instruction A to Form S-8 also states that an issuer which is subject to Section 15(d) of the 1934 Act and wishes to use Form S-8 must furnish to its security holders, prior to the date of the effectiveness of the S-8, an annual report for its last fiscal year containing substantially all of the information required by Rule 14a-3 [17 CFR 240.14a-3] under the 1934 Act.

[186]See General Instruction A to Form S-8.

[187]Employees of "sister" companies of an issuer (i.e., companies whose shares are paired for trading purposes with shares of the issuer) also may be offered securities pursuant to an S-8. See letter re the *L.E. Myers Co.* dated May 5, 1978.

for purposes of the form.[188] In addition, a "plan" will not be deemed to exist where only one or a few persons are covered or the incidents of a plan (such as a formal plan document) are not present.[189]

In recent months, the staff has been exploring various possibilities for reducing the time and expense involved in registering securities on Form S-8. In this regard, the Commission recently invited public comment on various proposals concerning the form.[190] One of these proposals would permit new filings on S-8 to become effective automatically on the twentieth after receipt, without review or other action by the Commission or its staff. In addition, the proposal would allow amendments to previously filed Form S-8 registration statements to become effective automatically on the date of filing, without any waiting period. It is believed that this proposal, if adopted, would permit issuers to make offerings on Form S-8 on a more timely basis than in the past and would allow the staff to reallocate the resources which it formerly devoted to reviewing filings on the form.

Another proposal of a more far-reaching nature would amend Form S-8 to resemble Form S-16 in both its disclosure and operational aspects. Form S-16 is an abbreviated registration form which provides a limited amount of information about the issuer and the offering. It does, however, incorporate by reference certain past and future reports required to be filed by the issuer under Section 13 or 15(d) under the 1934 Act. The assumption underlying Form S-16 is that the information in the 1934 Act reports is widely available and sufficiently detailed to satisfy the disclosure requirements of the 1933 Act.

The use of a Form S-16 registration format for employee benefit plans could result in significant cost savings to issuers. For instance, the expense of preparing such a filing would be minimized because of the limited disclosures involved. And, like all S-16 registration statements, there would be no need to amend the prospectus annually to update it, provided the accountant for the issuer filed an appropriate consent in the issuer's annual report on Form 10-K [17 CFR 249.310].[191] Thus, in almost all cases, the initial filing on the revised Form S-8 would be the only one required for the plan, thereby eliminating the expense now involved in preparing and filing annual post-effective amendments to such forms.

It should be noted that final action on the foregoing proposals has yet to be taken by the Commission. It is anticipated, however, that they will be reviewed by the Commission during 1980 and that a decision as to their final status will be made at that time.

B. *Other Forms*

For those issuers who are unable to satisfy the requirements for the use of Form S-8, there are several other forms[192] that may be available to register securities offered under a plan:

(1) *Form S-1.* This is the Commission's general registration form which is available to all issuers for which no other form is authorized or prescribed. It

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[188]*See, e.g.*, letter re *Piedmont Management Company, Inc.* dated March 22, 1977. The form cannot be used for sales to non-employees because such persons presumably do not possess the inherent knowledge of the issuer gained from employment that justifies the abbreviated disclosure requirements of the form.

[189]*See, e.g.*, letter re *United States Surgical Corp.* dated August 16, 1976, in which the staff indicated that Form S-8 was not available for the registration of securities to be issued to employees pursuant to certain options which did not relate to any specific employee benefit plan of the issuer.

[190]Release No. 33-6151 (November 19, 1979) [44 FR 67671]. In addition to the proposals described in this section, Release 33-6151 also invited comments on the following items: (1) amendments to Form S-8 that would conform plan disclosure and description requirements to similar requirements under ERISA; (2) amendments to Form S-8 to allow updating to be accomplished by means of filings or other documents or reports made pursuant to ERISA; and (3) the adoption of one or more new forms that would be less difficult to comply with than Form S-8.

[191]The consent would permit the 10-K financial statements and the accountant's opinion concerning them to be used in connection with filings (such as those on Form S-8) under the 1933 Act.

[192]Specific descriptions of each of these other forms may be found in the Code of Federal Regulations, as follows: Form S-1 [17 CFR 239.11], Form S-7 [17 CFR 239.26], Form S-16 [17 CFR 239.27] and Form S-18 [17 CFR 239.28].

contains detailed disclosure requirements regarding the organization and business of the issuer, as well as extensive financial statement requirements.

(2) *Form S-18.* This form can be used for an offering of up to $5 million in securities for cash. Its availability is limited, however, to U.S. or Canadian corporations who are not subject to the periodic reporting requirements of the 1934 Act and who meet certain other standards.[193] The disclosure requirements of Form S-18 are considerably less difficult to comply with than those of Form S-1.

(3) *Form S-7.* The availability of this form is restricted to established companies who satisfy certain specified criteria.[194] The disclosure requirements of the form are somewhat abbreviated in comparison to those of Form S-1.

(4) *Form S-16.* This form is available only to issuers which qualify for the use of Form S-7 and meet certain other requirements[195] for its use in connection with primary offerings. As previously noted, the disclosure requirements of this form are minimal, with heavy reliance placed on the issuer's continuing disclosures under the 1934 Act.

Although any of the above forms are available to issuers who qualify for their use, the staff takes the position that when they are used in connection with primary offerings by employee benefit plans, they must contain all of the information regarding plans which Form S-8 would otherwise require. Thus, the disclosures regarding the plan would be the same, no matter which registration form were used.

C. *Form S-16 Reoffer Prospectus*

Affiliates who acquire securities under a plan may not, as previously indicated, freely resell such securities because of their control relationship to the issuer. As a practical matter, these persons must either register the securities for resale or rely upon Rule 144[196] if they wish to sell the securities in a public transaction.

Affiliates who wish to register their securities for resale may do so on Form S-16, provided the issuer meets the qualifications for the use of the form and the affiliates have a present intention to sell their securities within the next 16 months.[197] S-16, as stated earlier, is a simplified registration form which consists of little more than the names of the selling security holders, the amount of securities being sold, and the terms of their distribution.

If the securities held by the affiliate are covered by a Form S-8 registration statement, the use of Form S-16 for resale is a relatively simple matter. A reoffer prospectus on that form can be filed as part of the S-8,[198] and no separate registration fee is required in such circumstances. The amount of securities that can be included in the S-16 reoffer prospectus, however, is limited to the quantities that can be sold

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[193]The other requirements are: (1) the issuer must have, or propose to have its principal business operations in the country in which it is incorporated; and (2) the issuer must not be: (a) an investment company; (b) an insurance company exempt from Section 12 of the 1934 Act; (c) a majority owned subsidiary of an issuer which does not meet the requirements for the use of the form; (d) offering limited partnership interests; or (e) engaging or proposing to engage in significant mining operations or oil and gas related operations which exceed the criteria for exemption specified in Rule 3-18(k) [17 CFR 210.3-18(k)] of Regulation S-X.

[194]Among other things, the issuer must have had net income of at least $250,000 for three of the last four fiscal years (including the most recent fiscal year) and been subject to, and filed, all reports and materials required by, Sections 13, 14 and 15(d) of the 1934 Act for at least 36 months preceding the filing on the form. The other requirements for the use of the form can be found in General Instruction A to the form, which is reproduced in CCH para. 7,190.

[195]The issuer, among other things, must have stock held by non-affiliates with a market value of $50 million or more. All of the requirements for the use of the form are specified in General Instruction A thereof, which is reproduced in CCH para. 7,291.

[196]Rule 144 is not the exclusive means for resales without registration, as indicated in paragraph (j) of the rule. It appears, however, that insofar as affiliates are concerned, brokerage firms ordinarily would decline to execute an unregistered resale transaction of a public nature by such persons outside the rule.

[197]If Form S-16 cannot be used, Form S-1 would then become the proper form for resale purposes.

[198]See in this regard, General Instruction E to Form S-8. The staff has indicated that a limited number of

under Rule 144, unless the issuer independently meets the qualifications for the use of the form. In the latter circumstance, there is no limitation on the amount of securities that can be included in the S-16 for resale.

For the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16551/February 1, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-1)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER EXTENDING TIME PERIOD FOR COMMISSION ACTION ON PROPOSED RULE CHANGE

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on January 14, 1980, a proposed rule change under Rule 19b-4 that would revise the rules of the Exchange which relate to the procedures used by the CBOE in disciplining members and associated persons. Among other things, the proposal would replace the CBOE Business Conduct Committee with two committees elected annually by the membership; impose a clear and convincing evidence standard on CBOE disciplinary proceedings; authorize the awarding of attorneys fees to members in certain situations and require that a review of CBOE disciplinary proceedings be conducted by the Appeals Committee, rather than the Board of Directors.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 45 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

The Commission has determined that it is necessary and appropriate to provide additional time for Commission consideration of the proposed rule change in that the proposed rule change would effect a major modification of the CBOE's disciplinary procedures. The Commission believes that additional time is necessary to carefully consider whether the proposals will adversely impact on CBOE's ability to effectively carry out its responsibilities under the Securities Exchange Act of 1934. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, hereby extends until 90 days from the date of publication of notice of filing of the proposed rule change, the time period within which the Commission must either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

Footnote 198 Continued

securities issued by a plan prior to registration may be included in the S-8 filing solely for resale on the Form S-16 reoffer prospectus. Letter re *Colonial Bancorp, Inc.* dated October 17, 1977. The amount that can be so included is limited to 10 percent of the total number of shares issuable under all plans registered by the employer on Form S-8. Letter re *Microdyne Corp.* dated July 3, 1978.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16552/February 4, 1980

Notice is given of the following companies' applications to withdraw their common stocks from listing and registration on the *American Stock Exchange, Inc.*: CARNATION COMPANY ($2 Par Value), BALDOR ELECTRIC COMPANY ($.10 Par Value) and AVX CORPORATION ($1 Par Value).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16553/February 4, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-PHLX-79-11

The Philadelphia Stock Exchange, Inc. ("PHLX") submitted on January 24, 1980, a proposed rule change under Rule 19b-4 of the Securities and Exchange Act ("Act") which would rescind By-Law Sections 18-15 and 18-21 which provide for summary disciplinary proceedings and prohibit representation by counsel at PHLX disciplinary proceedings, respectively, and would amend By-Law Section 18-14, to provide that in responding to disciplinary charges, a member has the right to be represented by counsel. PHLX has not enforced Sections 18-15 and 18-21 since December 1975, on the ground that they are inconsistent with the due process notions embodied in Sections 6(b)(7) and 6(d) of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PHLX-79-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 16554/February 1, 1980

Administrative Proceedings

File No. 3-5868

In the Matter of

ROGER KENNETH KNOX

(8-21374)

ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In anticipation of these proceedings, Roger Kenneth Knox (hereinafter "Knox") who is represented to be in Form BD (the application for registration as a broker-dealer), a one-third shareholder of Covington-Knox, Inc. (hereinafter "CKI"), a broker-

dealer securities firm registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 (File No. 8-21374), has submitted, solely for the purpose of these proceedings, an Offer of Settlement which the Commission has determined to accept. Without admitting or denying the findings herein, Knox consents to the findings and remedial sanctions set forth below.

Accordingly, IT IS ORDERED that public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 be, and hereby are, instituted.

Pursuant to the administrative proceedings and the Offer of Settlement, the Commission finds that Knox was convicted in November, 1979, of a felony involving the purchase and sale of securities and arising out of the conduct of a business as a broker/dealer and that he was given a probated sentence; that Knox is permanently enjoined by order of the United States District Court for the Southern District of Texas from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 of thereunder; that Knox willfully violated and willfully aided, abetted and procured the violation by others of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder as alleged in the Commission's complaint, dated October 5, 1978, in *SEC* v. *Harwell, et al.* (Docket No. 78-1916, S.D. Texas) and that Knox willfully caused false and misleading statements with respect to material facts to be made in CKI's application for registration as a broker/dealer and reports required to be filed with the Commission under the Exchange Act and failed to disclose material facts required to be stated therein, including the financial interest in CKI of another person.

In view of the foregoing, it is appropriate and in the public interest to accept the Offer of Settlement and impose the sanction consented to therein.

Accordingly, IT IS ORDERED that Knox be, and hereby is, barred from association with any broker or dealer.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16555/February 5, 1980

Orders have been issued granting the following companies' applications to withdraw their common stocks from listing and registration on the American Stock Exchange, Inc.: NAPCO INDUSTRIES, INC. (Par Value $1), HI-SHEAR INDUSTRIES, INC. (Par Value $.20) and VULCAN, INC. (No Par Value).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16556/February 5, 1980

In the Matter of

MARCEL H. ARONHEIM, ET AL.

The Commission announced that public administrative proceedings have been ordered under the Securities Exchange Act of 1934 ("Exchange Act") against Marcel H. Aronheim ("Aronheim") of Forest Hills, New York and James Scibelli of Merrick, New York.

The proceedings are based on allegations by the Commission's staff that Aronheim and Scibelli willfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that they opened an options account with a registered broker dealer without revealing their interests in the account, depositing the required margin funds or covering a deficit balance resulting from transactions they effected in the account.

A hearing will be scheduled in order to take evidence of the staff's allegations and to afford the respondents an opportunity to offer any defenses.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16557/February 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-79-21

The Midwest Stock Exchange, Incorporated ("MSE") submitted on November 16, 1979, a proposed rule change under Rule 19b-4. On January 24, 1980, the MSE submitted Amendment No. 1 to the proposed rule change.

As amended, the proposal would delete from the Rules and Practices for Trading on the MSE the requirement that specialists match at least one side of the primary market quotation for each stock in which they are registered as specialists. In addition, the proposal would delete from the MSE Rules current Article XX, Rule 34, pertaining to the MSE Agency Execution System ("MAX"), and would substitute a new Rule 34 governing the MSE Guaranteed Execution System (the "BEST System"). The BEST System would require MSE specialists to guarantee execution, according to a prescribed formula, of all agency market and limit orders of between 100 and 399 shares for dually traded securities in the MSE specialist system. Specifically, market orders entered into the system would be filled at the best consolidated quote system bid on a sell order, or the best consolidated quote system offer on a buy order.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 11, 1980. In order to assist the Commission to determine whether to approve the propose rule change or institute proceedings to determine whether the proposed rule change would be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16558/February 6, 1980

Admin. Proc. File No. 3-5001

In the Matter of

PAUL H. BRUMLEY, ESQ.
215 South Main Street
Dallas, Texas

NOTICE OF PERMANENT DISQUALIFICATION FROM APPEARANCE OR PRACTICE BEFORE THE COMMISSION

On April 6, 1976, the Commission entered an order, pursuant to Rule 2(e)(3)(i) of its Rules of Practice, temporarily suspending Paul H. Brumley, an attorney, from appearing or practicing before the Commission. The order was based on a permanent injunction entered by consent against Mr. Brumley in *Securities and Exchange Commission v. Tex-A-Chief, Inc., et al.*, Civil Action File No. 3-75-1478-D (N.D. Tex.).

On February 3, 1976, the district court permanently enjoined Mr. Brumley from violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act of 1934. Mr. Brumley consented to the entry of the judgment without admitting or denying the allegations of the Commission's complaint.

Rule 2(e)(3)(ii) of the Commission's Rules of Practice provides that any person temporarily suspended in accordance with paragraph (i) of that rule may, within 30 days after service upon him of the order of temporary suspension, petition the Commission to lift such suspension, but that if no petition has been received by the Commission within 30 days after such service, the suspension shall become permanent. Mr. Brumley was duly notified of this provision. The 30-day period expired and no petition to lift the suspension was ever received by the Commission. And by letter dated November 30, 1979, Mr. Brumley confirmed that he had been served with the Commission's order of temporary suspension.

Accordingly, notice is hereby given that the temporary suspension of Paul H. Brumley has become permanent and that Mr. Brumley is, therefore, disqualified from appearing or practicing before the Commission.

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16559/February 7, 1980

In the Matter of

OLDE & COMPANY, INC.
RICHARD G. HAWKS
RONDO J. ZIEGLER

(File No. 8-16752)

The Securities and Exchange Commission (Commission) has ordered public administrative proceedings under the Securities Exchange Act of 1934 (Exchange Act) against Olde & Company, Inc. (Olde), a Detroit, Michigan headquartered registered broker-dealer; Richard G. Hawks (Hawks), a registered securities representative in Olde's St. Charles, Illinois office; and Rondo J. Ziegler (Ziegler) a former registered securities representative with Olde & Co.

The Order for Proceedings (Order) alleges that during the period from April, 1975 to in or about March, 1978, Olde and Hawks wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the sale of securities in the form of options on common stock.

The Order also alleges that during the period from August, 1974 to in or about April, 1979, Olde and Ziegler wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of securities in the form of options on common stock.

The Order additionally alleges that during the period from approximately August, 1974 until April, 1979, Olde failed reasonably to supervise Hawks and Ziegler with a view toward preventing violations of the Securities Act, Exchange Act and rules and regulations thereunder, as described above.

A hearing will be scheduled to take evidence on the staff's allegations and to afford the respondents an opportunity to offer any defenses, in order to determine whether the allegations are true and, if so, whether any remedial action should be ordered by the Commission.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21418/February 4, 1980

In the Matter of

MICHIGAN POWER COMPANY
Three Rivers, Michigan

(70-6374)

ORDER AUTHORIZING LONG-TERM BANK BORROWINGS

Michigan Power Company ("Michigan Power"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application and amendments thereto pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following proposed transaction.

Michigan Power proposes to enter into a term loan agreement ("Agreement") with Manufacturers Hanover Trust Company and National Bank of Detroit (the "Banks"), under which agreement Michigan Power would issue through December 31, 1981, up to $20,000,000 principal amount of its notes ("Notes") due December 31, 1987. The loan commitments from the Banks are $13,000,000 from Manufacturers Hanover Trust Company and $7,000,000 from National Bank of Detroit. Under the Agreement Michigan Power will pay to each Bank, quarterly, a commitment fee of 1/2 of 1% per annum on the average unused amount of such Bank's commitment, computed from the effective date of the Agreement (which date is defined to be the 31st day following the later of the date of the order by the Michigan Public Service Commission authorizing such transaction, or the date of the order by this Commission so authorizing it.)

The Notes will be due December 31, 1987, and will bear interest payable quarterly prior to maturity at a fluctuating rate per annum equal to Manufacturers Hanover Trust Company's prime rate (the "Prime Rate") to December 31, 1982, at 102% of the Prime Rate from December 31, 1982, to December 31, 1985, and at 104% of the Prime Rate from December 31, 1985, to December 31, 1987. Interest after maturity (whether by acceleration or otherwise) is payable at a fluctuating rate per annum equal at all times to 1% plus the Prime Rate. There are no compensating balances required in connection with borrowings under the Agreement.

The Notes will be prepayable, in whole at any time or in part from time to time, without penalty. The Agreement contains covenants requiring prepayment in part upon terms and conditions set forth therein if Michigan Power should sell or otherwise dispose of its gas utility property and related assets (such sale is the subject of a separate proceeding before the Commission in File No. 70-5213), and other restrictive covenants concerning liens, indebtedness and capitalization ratios, and mergers and sales of assets (excluding the gas properties).

The proceeds from the issuance of the Notes will be used by Michigan Power as follows: (1) to repay in full (no penalty being required) $7,000,000 principal amount of notes held by National Bank of Detroit, which notes bear interest at an annual rate of that bank's prime plus 1/4 of 1% and require 15% compensating balances; (2) to repay in full open account advances made by AEP to Michigan Power pursuant to Commission orders in File No. 40-4538, such advances aggregating $10,250,000 as of October 15, 1979; and (3) to pay, or reimburse its treasury for the payment of, other maturing indebtedness, construction expenditures or other corporate purposes.

Michigan Power claims exemption from the competitive bidding requirements of Rule 50 for its issuance and sale of the Notes pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $4,000, including legal fees of $2,000. The Michigan Public Service Commission has authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21380), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are

satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21419/February 5, 1980

In the Matter of

GULF POWER COMPANY
Pensacola, Florida

(70-6383)

MEMORANDUM AND ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING AND DENYING REQUEST FOR HEARING

Gulf Power Company ("Gulf"), an electric utility subsidiary of The Southern Company ("Southern"), a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder. Gulf proposes to issue and sell, at competitive bidding, up to $50,000,000 aggregate principal amount of its first mortgage bonds ("Bonds"), and up to 100,000 shares of its preferred stock, par value $100 per share ("Preferred Stock"). A notice giving interested persons until January 18, 1980, to request a hearing on the proposals was issued on December 21, 1979 (HCAR No. 21348). A request for hearing by certain named stockholders of Southern and customers of Gulf and other subsidiaries of Southern, dated January 17, 1979, was received on January 21, 1979.

The 1933 Act registration statement for the preferred stock became effective January 21, 1980, and Gulf published its invitation for competitive bids, specifying February 6 as the date for receipt of bids, unless extended. The bidders will specify a dividend rate, and a public offering price of not less than $100.00 or more than $102.75 a share.

The bonds are to be offered following the sale of the preferred stock, at a price of not less than 98% or more than 101-3/4% of the principal amount, plus accrued interest. The maturity date of the bonds, within a five to thirty year range, will be specified by Gulf not less than 72 hours before the bidding date.

Gulf serves approximately 575,000 customers in the western half of the Florida panhandle, which includes Pensacola and Panama City. It is one of the smaller of Southern's subsidiaries, with net utility plant, at September 30, 1979, of $550,383,000, and operating revenues, for the twelve months then ended, of $225,889,000. Gulf's capitalization now consists of about $70 million of preferred stock and $250 million mortgage bonds. On a *pro forma* basis, giving effect to the sale of the new Bonds and Preferred Stock, Gulf's capitalization would consist of 52.48% of first mortgage bonds and 14.20% of preferred stock.

Gulf's capital needs in 1980 are estimated at $144 million, to be covered by the present $60 million of senior securities, $28 million in pollution control bonds and an expected common equity investment in December of $56 million by its parent, with short-term borrowing from time to time. Its construction budget for the year 1980 is $147 million, half of which is for ongoing work on a 500 M.W. coal-fired generating plant near Pascaguclea, Mississippi, scheduled for completion in 1981.

Gulf includes in its 1980 budget, an expected investment of $29 million in a four unit coal-fired generating plant ("Plant Scherer") under construction in Monroe County, Georgia, by Georgia Power Company, an associate company, and scheduled for completion in 1987. It is negotiating to acquire, as co-tenant, a 409 M.W. interest in two units of Plant Scherer. Its share of the total construction cost of Plant Scherer would be $326 million, under present estimates.

The Plant Scherer transaction will require our authorization, under Section 9(a)(1) and 10 of the Act, which has not yet been applied for. The objectors criticize the proposed transaction of

grounds which are premature to discuss until the transaction is brought before us by application.

They also state that inclusion in Gulf's construction budget of a proposed investment in Georgia Power Company for Plant Scherer is a misnomer and that it should have been identified as a proposed acquisition. The filing, which includes the registration statements, describes the transaction in sufficient detail to fully identify its character and its status.

None of the present financing is committed to this acquisition and the budget data included in the filing indicates that the $60 million will be spent whether or not the Plant Scherer transaction is authorized. The order herein does not authorize Gulf to pay any part of the purchase price of its intended investment in Plant Scherer.

Objectors's suggestion that Gulf's security issues require authorization by the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act is unsupported by law. The financing has been approved, on December 18, 1979, by the Florida Public Service Commission, The authorization sought here under sections 6 and 7 of the Act is also sufficient under the Federal Power Act, pursuant to section 318 thereof.

We find that none of the issues stated by the objectors have any merit. They present no questions which require a hearing. The request for hearing will therefore be denied.

The fees, commissions and expenses to be incurred in connection with the transaction are estimated to total $329,000, including taxes of $84,280, printing costs of $80,000, legal fees of $47,000, trustees' charges of $30,000, accountants' fees of $29,000, rating fees of $18,700, services of Southern Company Services, Inc. of $10,000 and miscellaneous expenses of $4,265. In addition, the fees of counsel for the purchasers of the bonds and the preferred stock are estimated at $16,000 and $13,000 respectively, and will be paid by the successful bidders.

On the basis of the facts in the record, it is hereby found that the applicable standards of the Act and Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

IT IS FURTHER ORDERED that request for hearing be, and hereby is, denied.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21420/February 5, 1980

In the Matter of

PENNSYLVANIA ELECTRIC COMPANY
NINEVEH WATER COMPANY
Johnstown, Pennsylvania

(70-6067)

SUPPLEMENTAL ORDER AUTHORIZING CASH CAPTIAL CONTRIBUTIONS TO WATER COMPANY SUBSIDIARY

Pennsylvania Electric Company ("Penelec"), an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, and Nineveh Water Company ("Nineveh"), a water company subsidiary of Penelec, have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

In accordance with orders in this proceeding dated December 22, 1977, and February 15, 1979 (HCAR Nos. 20333 and 20922), Nineveh has issued $915,000 of its demand notes to Penelec in order to obtain funds to repair facilities damaged by the July

1977 flood in Johnstown, Pennsylvania and to modify the Findley Run Dam. It is stated that Nineveh applied to the U.S. Small Business Administration for a disaster relief loan in the amount of $1,230,600, the proceeds of which loan were to be used by Nineveh to repay such demand notes. Because certain of the conditions imposed by the Small Business Administration upon such loan were not acceptable to Nineveh and Penelec, the authorization with respect to such loan was cancelled. (The filing with this Commission with respect to such loan (File No. 70-6201) was withdrawn on August 23, 1979.)

Penelec now proposes that the demand notes be converted to cash capital contributions. In addition, Nineveh will require an additional $68,500 for construction purposes in 1980, and Penelec also proposes to provide such additional funds by cash capital contributions. Accordingly, it has been requested that an order be issued authorizing Penelec cash capital contributions to Nineveh through December 31, 1980, in the aggregate amount of $983,500, $915,000 of which will represent the conversion of the demand notes to capital contributions and the balance, $68,500, will represent additional cash capital contributions in 1980.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $1,750. No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21349), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21421/February 5, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

WEST TEXAS UTILITIES COMPANY
Abilene, Texas

CENTRAL AND SOUTH WEST SERVICES, INC.
Dallas, Texas

(70-6163)

ORDER AUTHORIZING EXPANSION OF LIST OF BANKS FROM WHICH SHORT-TERM BORROWINGS MAY BE MADE AND SALE OF COMMERCIAL PAPER DIRECTLY TO CERTAIN INSTITUTIONS AS AN ALTERNATIVE TO THE SALE OF BANK NOTES OR DEALER-PLACED COMMERCIAL PAPER

Central and South West Corporation ("CSW"), a registered holding company, and five of its wholly-owned subsidiaries, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company and Central and South West Services, Inc. ("subsidiaries") have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 Act ("Act) and

Rules 43, 45 and 50 promulgated thereunder regarding the proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 13, 1979, July 19, 1979, July 31, 1979 and October 24, 1979 in this matter (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166 and 21269) CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1980 in a maximum aggregate collective amount of $200,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus funds of any of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, borrowings are made from outside the system. CSW is authorized to issue and sell its commercial paper to commercial paper dealers or borrow from banks to meet short-term

Bank	*Amount of Presently Authorized Line*	*Amount of Proposed Line*	*Compensation Basis*
Bankers Trust Company	$25,000,000	$25,000,000	Balances (a)
First National Bank of Chicago	15,000,000	15,000,000	Balances (a)
First National Bank in Dallas	6,500,000	6,500,000	$4,000,000 Balances (a) and $2,500,000 Fees (b)
Irving Trust Company	5,000,000	10,000,000	Balances (a)
Marine Midland Bank	5,000,000	10,000,000	Balances (a)
Republic National Bank	5,000,000	5,000,000	$2,500,000 Balances (a) and $2,500,000 Fees (b)
Mercantile-Safe Deposit & Trust Co.	5,000,000	5,000,000	Fees (c)
Security Pacific National Bank	5,000,000	5,000,000	$2,500,000 Balances (a) and $2,500,000 Fees (b)
Citibank	5,000,000	5,000,000	Fees (b)
Chemical Bank	5,000,000	5,000,000	Fees (b)
First City National Bank of Houston	—	5,000,000	$2,500,000 Balances (a) and $2,500,000 Fees (d)
Bank of Delaware	4,500,000	4,500,000	Balances (a)
First City Bank of Dallas	2,000,000	4,000,000	Balances (a)
First National Bank of Denver	3,000,000	3,000,000	Balances (a)
Harris Trust & Savings Bank	2,000,000	2,000,000	Balances (a)
SERVICE AREA BANKS			
Central Power and Light Company (23 Local Banks)	$39,939,000	$39,939,000	Balances (a)
Public Service Company of Oklahoma (2 Local Banks)	10,000,000	10,000,000	Balances (a)
Southwestern Electric Power Company (37 Local Banks)	24,215,000	26,458,000	Balances (a)
West Texas Utilities (6 Local Banks)	11,875,000	11,875,000	Balances (a)
TOTAL	$179,029,000	$198,272,000	

(a) Balances maintained in support of lines of credit are generally nonsegregated working funds of the applicants and are not restricted as to withdrawal. These nonsegregated balances generally aggregate approximately 5% to 10% of the line of credit. Substantial usage under these lines of credit could result in increased compensating balance requirements.

(b) Line or designated portion thereof is supported by fee equal annually to 7% of principal amount times the prime rate.

(c) Line or designated portion thereof is supported by fee equal annually to 1/2 of 1% of principal amount.

(d) Line or designated portion thereof is supported by fee equal to 3/8 of 1% of principal amount.

borrowing needs which cannot be met by the money pool.

It is now proposed to change the list of banks from which CSW and the subsidiaries may borrow by adding First City National Bank of Houston, Houston, Texas, and to increase the aggregate amounts of lines of credit with certain presently authorized banks, as set forth above:

In addition to the above, CSW and its subsidiaries have made arrangements for borrowings from funds managed by the trust departments of the following banks:

Bank	*Amount of Agreement*	*Compensation Base*
*Texas Commerce Bank	$10,000,000	None
Mercantile National Bank at Dallas	5,000,000	None
*Republic National Bank	5,000,000	None
First City National Bank of Houston	10,000,000	None
First City Bank of Dallas	5,000,000	None

*Agreements approved but not currently being used.

CSW also seeks authorization to sell commercial paper directly to certain approved financial institutions. Sale of commercial paper directly to such institutions would be undertaken only if the resulting cost of money was equal to or less than that available from dealer-placed commercial paper or bank borrowings. Direct sales of commercial paper would be made only to institutions on a list furnished in advance to the Commission. Terms for directly-placed notes would be identical to those of dealer-placed notes.

The proceeds from the short-term borrowings will be used (1) in the case of borrowings by CPL, PSO, SWEPCO and WTU, for the interim financing of their construction programs and to provide for other temporary working capital needs; (2) in the case of borrowings by CSW, for loans or contributions to capital to the subsidiaries for such purposes; (3) in the case of borrowings by CSWS, to provide working capital for its operations; and (4) to repay borrowings previously incurred for such purposes.

The fees, commissions and expenses to be incurred in connection with the transactions proposed in the post-effective amendment are estimated at $150. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21389), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21422/February 6, 1980

In the Matter of

MISSISSIPPI POWER COMPANY
P.O. Box 4079
Gulfport, Mississippi 39501

(70-6411)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Mississippi Power Company ("Mississippi"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Mississippi proposes to issue up to $25,000,000 aggregate principal amount of its first mortgage bonds ("Bonds"). The new Bonds will have a term of not less than five years nor more than 30 years and will be sold at competitive bidding for a price to Mississippi of not less than 98% nor more than 101-3/4% of the principal amount thereof, plus accrued interest. The new Bonds will be issued under the Indenture dated as of September 1, 1941, between Mississippi and Morgan Guaranty Trust Company of New York, as Trustee, as heretofore supplemented by various indentures supplemental thereto and as to be further supplemented by a Supplemental Indenture to be dated as of April 1, 1980.

It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Mississippi to sell new Bonds having a 30-year or some shorter maturity, and that it is in the public interest for Mississippi to be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate and maturity for the new Bonds. Mississippi intends, therefore, to decide on the maturity of the new Bonds after the date of public invitation for proposals and then notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of the bidding.

Mississippi proposes to use the proceeds from the sale of the new Bonds, along with other funds, to finance its business as an electric utility company, including the payment of costs incurred in its on-going construction program, estimated in 1980 to total $67,748,000, and the discharge of other general corporate obligations.

Statement of the fees, commission and expenses to be incurred in connection with the proposed transactions will be filed by amendment. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21423/February 6, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
320 Park Avenue
New York, New York 10002

(70-6410)

NOTICE OF PROPOSED AMENDMENT OF CHARTER TO INCREASE AUTHORIZED SHARES OF COMMON STOCK AND SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rules 61 and 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Allegheny proposes to amend its charter to increase the number of shares of its common stock, par value $2.50, which Allegheny is authorized to issue from 40,000,000 to 55,000,000 shares. As of January 4, 1980, Allegheny has outstanding 39,828,556 shares of common stock. It is stated that, over the next three years, current projections indicate that Allegheny's subsidiaries will require common equity investments by Allegheny of $55 to $75 million per year for a total of about $200,000,000 in order to operate their electric utility business, including carrying on their construction programs. Most of such equity investments must be obtained through the issuance and sale by Allegheny of its common stock. Estimates of construction expenditures by Allegheny's subsidiaries for the years 1980 and 1981 are now projected to aggregate over $540 million.

The proposed amendment to the charter is to be submitted to Allegheny stockholders at their annual meeting to be held on May 8, 1980. Approval of the charter amendment requires the affirmative vote of the holders of a majority of the shares of common stock outstanding. Allegheny proposes to solicit proxies from its common stockholders to obtain the requisite approval of the proposed charter amendment.

A complete statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21424/February 6, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

SOUTHERN APPALACHIAN COAL COMPANY
Charleston, West Virginia

(70-5723)

SUPPLEMENTAL ORDER AUTHORIZING RATE OF RETURN ON INVESTMENT IN COAL MINING SUBSIDIARY

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Southern Appalachian Coal Company ("SACO"), a coal mining subsidiary of Appalachian, have filed with this Commission post-effective amendments to their declaration previously filed and amended pursuant to Sections 12 and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 86, 87, 90 and 91 promulgated thereunder concerning the following matter.

SACO is developing coal lands and reserves, presently owned by Appalachian, at sites known as Bull Creek, Lens Creek, Julian and Tasa located in the counties of Boone, Kanawha and Lincoln, West Virginia, which sites are currently estimated to contain coal reserves of 50,000,000 tons. By order dated December 29, 1978 (HCAR No. 20860), Appalachian was authorized to make capital contributions to SACO through December 31, 1978, of up to $16,000,000, which contributions were to be utilized by SACO (1) to pay dividends of $12,000,000 to Appalachian, (2) to finance SACO's deferred costs of the coal miners' strike in the amount of $3,200,000, and (3) to provide SACO with $800,000 for its working capital requirements. Jurisdiction was reserved in said order with respect to a requested 10.8% cost of capital allowance proposed for Appalachian's $16,000,000 investment and with respect to a proposed $4,000,000 dividend to be paid by SACO to Appalachian after December 31, 1978.

By post-effective amendments declarants propose that the cost of capital allowance on said $16,000,000 investment be equal to Appalachian's composite cost of such capital as determined by applying to Appalachian's capital structure at the time of the investment (60.0% long-term debt, 6.6% preferred stock and 33.4% common equity) an interest rate on the long-term debt component equal to the effective interest cost of Appalachian's then last bond issue (9.25%), a dividend rate on the preferred stock component equal to the effective dividend cost of Appalachian's then last preferred stock issue (8.51%), and a return on the common equity component not to exceed the rate of return on common equity specified by the Federal Energy Regulatory Commission ("FERC") in its then most recent wholesale proceeding involving Appalachian (13.50%). The composite cost of capital equals 10.62%. The interest rate on the long-term debt component and the dividend rate on the preferred stock component shall be applied for the entire period of the investment; the rate of return on the common equity component shall be applied from the date of the investment until such rate is changed by FERC in Appalachian's wholesale rate proceedings. The composite capital factor shall not be applied to any of SACO's retained earnings, upon which no rate of return is allowed.

It is stated that the Virginia State Corporation Commission and the West Virginia Public Service Commission have previously allowed a 10.8% rate of return with respect to the $16,000,000 investment, which rate has been applied on an interim basis until the cost of capital question had been decided by this Commission. Declarants will make appropriate adjustments to past billings to reflect whatever rate is allowed by this Commission.

There are no additional fees or expenses to be incurred in connection with the proposed rate of return allowance. The Virginia State Corporation Commission and the West Virginia Public Service Commission have authorized the rate of return allowance (to the extent of approving a 10.8% rate). No other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

Upon the basis of the facts in the record, as amended by said post-effective amendments, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendments, be permitted to become effective in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that Appalachian be, and it hereby is, authorized forthwith a 10.62% cost of capital allowance on its $16,000,000 investment in SACO authorized by HCAR No. 20860, such rate to be applied as aforesaid, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that declarants shall file, within 60 days of the date of this order, a statement of the calculation of, and accounting entries for, the appropriate adjustment to coal billings since December 31, 1978, between SACO and Appalachian to reflect the allowed 10.62% rate of return.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the rate of return on the common equity component of the composite cost of capital so as to reflect all changes in the rate of return allowed by FERC in Appalachian's wholesale rate proceedings.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, continued with respect to the proposed $4,000,000 dividend to be paid by SACO to Appalachian after December 31, 1978.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21425/February 6, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Pittsburgh, Pennsylvania

CNG PRODUCING COMPANY
New Orleans, Louisiana

(70-6391)

ORDER AUTHORIZING ACQUISITION OF OIL AND GAS LEASEHOLDS AND MINERAL RIGHTS FROM NON-AFFILIATE

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and CNG Producing Company ("CNG Producing"), a wholly-owned gas exploration and development subsidiary of Consolidated, have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6, 7, 9(a), 10, 12(f) and 12(g) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 50(a)(3) promulgated thereunder regarding the proposed transaction.

Consolidated is engaged solely in the business of owning and holding all of the outstanding securities, with the exception of minor long-term debt, of eleven subsidiary companies including eight in the natural gas business, plus subsidiary service, coal and research companies. The said eight subsidiaries are engaged in natural gas exploration, production, purchasing, gathering, transmission, storage, distribution, by-product operations and importation of LNG. CNG Producing conducts exploration and development operations onshore and offshore, primarily in the southern United States but also in Canada. It sells natural gas, in the United States, to Consolidated Gas Supply Corporation, an affiliate, minor quantities at wholesale to non-affiliates in Louisiana, and to non-affiliates in the Province of Alberta, Canada. Hidalgo-Willacy Oil Company ("Hidalgo"), a non-affiliated Texas corporation, having its principal place of business in McAllen, Texas, engages primarily in leasing mineral properties to and from others from which it obtains production revenue, collects royalties, bonus payments, and delay rentals. It has leasehold and mineral interests in some 4,000 separate tracts situated primarily in six contiguous counties in southern Texas with a minimal interest in Oklahoma. (Collectively, the "Properties".) The Properties constitute over 90% of the market value of all of Hidalgo's net assets.

Consolidated, CNG Producing and Hidalgo propose to enter into an Agreement and Plan of Reorganization ("Agreement"), which will be executed by the respective parties and each of Hidalgo's stockholders, consisting of individuals, corporations and trusts, thereby evidencing their unanimous approval of the transactions contemplated by the Agreement. Pursuant to the Agreement, Consolidated will deliver to CNG Producing such number of shares of its authorized but unissued common stock whose market value shall, in the aggregate, equal $7,000,000. CNG Producing, in turn, will: (i) deliver such shares to

Hidalgo for distribution to the shareholders of Hidalgo, in exchange for the Properties and (ii) deliver to Consolidated in consideration for the Consolidated stock 70,000 shares of its own common stock, $100 par value at the par value thereof.

The number of shares of Consolidated common stock to be delivered will be determined by the per share closing price of said stock on The New York Stock Exchange Consolidated Tape five (5) New York business days immediately preceding the closing date or at a mutually acceptable earlier date. Based on a price of $40 per share, Consolidated would be required to deliver 175,000 shares of its common stock. Fractional shares will be rounded to the nearest whole share.

It is proposed that the cost of the Hidalgo Properties to be acquired be recorded on CNG Producing's books of account at the fair value of Consolidated's common stock issued to consumate the tax-free exchange, because fair value of the common stock is more clearly evident than fair value of the Properties. The price for the proposed acquisition was based upon projected royalty revenues that will be forthcoming from the production of gas and liquid reserves estimated by Peppard-Souders & Associates, independent petroleum consultants. Gas and liquid reserves applicable to Hidalgo's mineral and royalty interests are 10.346 billion cubic feet of gas and 208,200 barrels of liquids (oil and condensate) of which 3.083 billion cubic feet of gas and 49,500 barrels of liquids are proven.

It is stated that CNG Producing's entry into on-shore Texas through the proposed property acquisition would be a natural extension of its existing Southern producing operations. Most of CNG Producing's exploration and development activities have been heretofore concentrated off-shore Louisiana and Texas. Since December 1972, CNG Producing has participated in eleven offshore lease sales and has expended some $63 million in winning bids for about 48,000 net acres, excluding the November 1979 sale in which CNG Producing is an apparent winner of a tract covering 3,000 net acres at a cost of $5 million. On-shore exploration has been pursued to a limited degree in a number of states in the Gulf of Mexico region.

There is current production on and in the area of the Hidalgo Properties. On-shore wells are less expensive to drill than off-shore and fewer difficulties are encountered in drilling wells and gathering production. While the Hidalgo Properties are being purchased for an exploration and development program, revenues and cash flow will be forthcoming immediately in the form of royalties. The contribution of royalty income serves to minimize the financial risk of an exploration and development program. CNG Producing's gas production from the Gulf area was 50.4 billion cubic feet in 1978. The proposed acquisition of the Hidalgo Properties is a part of Consolidated's program to increase its supply capability.

The fees, commissions and expenses to be incurred by Consolidated and CNG Producing in connection with the proposed transaction are estimated at $152,600, including consultant's fee of $80,000 and a $20,000 charge of Consolidated Natural Gas Service Company, Inc. for services performed at cost. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21388), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 550/February 5, 1980

In the Matter of

SHEARSON LOEB RHOADES INC.

File Nos. 2-62327, 22-9696

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a notice giving interested persons until February 25, 1980, to request a hearing on an application by Shearson Loeb Rhoades Inc. (the "Applicant") pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the Trusteeship of Marine Midland Bank under an unqualified indenture of the Applicant is not so likely to involve a material conflict of interest as to make it necessary to disqualify Marine Midland Bank from acting as Trustee under a prior qualified indenture of the Applicant.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11033/February 1, 1980

In the Matter of

OPPENHEIMER FUND, INC.
OPPENHEIMER A.I.M. FUND, INC.
OPPENHEIMER TIME FUND, INC.
OPPENHEIMER INCOME FUND OF BOSTON, INC.
OPPENHEIMER OPTION INCOME FUND, INC.
OPPENHEIMER SPECIAL FUND, INC.
OPPENHEIMER DIRECTORS FUNDS, INC.
OPPENHEIMER INVESTOR SERVICES, INC.
One New York Plaza
New York, New York 10004

and

OPPENHEIMER HIGH YIELD FUND, INC.
HAMILTON FUNDS, INC.
HAMILTON GROWTH FUND, INC.
OPPENHEIMER ASSET MANAGEMENT CORPORATION
3600 South Yosemite Street
Denver, Colorado 80237

(812-4584)

NOTICE OF FILING OF APPLICATION PURUSANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM SECTION 22(d) AND RULE 22d-1

NOTICE IS HEREBY GIVEN that Oppenheimer Fund, Inc., Oppenheimer A.I.M. Fund, Inc., Oppenheimer Time Fund, Inc., Oppenheimer Income Fund of Boston, Inc., Oppenheimer Option Income Fund, Inc., Oppenheimer Special Fund, Inc., Oppenheimer Directors Fund, Inc., Oppenheimer High Yield Fund, Inc., Hamilton Funds, Inc., and Hamilton Growth Fund, Inc. (the "Funds") and Oppenheimer Investor Services, Inc. and Oppenheimer Asset Management Corporation ("Distributors") (collectively the "Applicants") have filed an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales of the Funds' securities at net asset value to Oppenheimer Affiliated Employees, as defined below, who are participants in a Simplified Employee Pension Plan and Group Profit Sharing Plan (the "Plan"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Funds are each registered under the Act as diversified, open-end management investment companies and are organized as corporations under the laws of various states. The Funds are currently engaged in continuous public offerings of their shares through the Distributors, as underwriters, at public offering prices equal to net asset value plus a sales charge.

Oppenheimer Investor Services, Inc., a New York corporation, and Oppenheimer Asset Management Corporation, a Colorado corporation, are both wholly-owned subsidiaries of Oppenheimer Management Corporation. Oppenheimer Management Corporation is controlled by Oppenheimer & Co., a New York limited partnership, through a wholly-owned subsidiary, which also

controls Oppenheimer & Co., Inc., a registered broker-dealer which is a member of national and principal regional stock exchanges, Oppenheimer Capital Corporation, a registered investment adviser, and Oppenheimer Properties, Inc., an affiliate engaged in many aspects of the real estate business. The above companies and subsidiaries thereof which now exist or may be formed subsequent to the date of the application are hereinafter referred to as the "Oppenheimer Companies". As of September 30, 1979, the employees of the Oppenheimer Companies (hereinafter referred to as "Oppenheimer Affiliated Employees") totaled approximately 1,500.

Applicants propose to permit those Oppenheimer Affiliated Employees participating in the Plan to purchase shares of the Funds at net asset value. Applicants state that participating employees will be able to invest in the Plan by payroll deduction plans making monthly investments and by investments at various times in the minimum amounts required by the Funds for investments by investors who are bona-fide, full-time employees of the Funds, the Distributors, or the investment advisers to the Funds.

Applicants state that distributions on Fund shares acquired under the Plan would be reinvested at net asset value in shares of each Fund. Applicants also state that participants will agree not to resell Fund shares acquired through their participation in the Plan except by repurchase or redemption by or for the account of the Fund issuing such shares.

Applicants assert that no individual or in-person group sales solicitations or presentations concerning the Plan will be made. Applicants further indicate that all Oppenheimer Affiliated Employees will receive, at least annually, notice from their employers concerning the Plan. This notice, which will be furnished at the expense of such employers, will identify the various Funds, describe their investment objectives, indicate that investments in the Plan would be at net asset value and detail the payroll deduction and other ways in which investments could be made. This notice would also indicate that additional information concerning the Plan and the Funds could be obtained from the Distributors and would inform employees the availability of prospectuses of the Funds from the employers.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person excepts a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Rule 22d-1 permits reductions in or eliminations of the sales load charged upon the sale of shares under certain circumstances. Applicants submit that the sale of Fund shares to Oppenheimer Affiliated Employees at net asset value under the Plan may conflict with the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder.

Applicants argue that while Rule 22d-1(i) permits sales without any sales charge to certain employees of affiliated persons of the Funds, this would not be available to Oppenheimer Affiliated Employees except for employees of Distributors and the investment advisers to the Funds, Oppenheimer Management Corporation and Oppenheimer Asset Management Corporation. Applicants also claim that an argument may be made that purchases of Fund shares at net asset value by Oppenheimer Affiliated Employees under the Plan are permitted by Rule 22d-1(f), which permits elimination of sales charges upon the sale pursuant to a uniform offer described in the prospectus and made to employee benefit plans qualified under Section 401 of the Internal Revenue Code and also to such plans not so qualified provided such non-qualified plans satisfy uniform criteria relating to the realization of economies of scale in sales effort and sales-related expenses. Applicants submit that it is not clear, however, that net asset value sales to the Oppenheimer Affiliated Employees covered by the Simplified Employee Pension Plan portion of the Plan would meet the "uniform offer" requirement of Rule 22d-1(f) and have determined to seek an exemption from Section 22(d) of the Act and the rules thereunder, pursuant to Section 6(c) of the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

Applicants submit that investment by Oppenheimer Affiliated Employees pursuant to the Plan in shares of the Funds at net asset value is supported by policy considerations, that such sales should result in demonstrable economies in sales effort and sales related expense as compared with other sales and would not be unjustly discriminatory, and that the grant of the exemption requested by the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of Section 22(d) of the Act. Applicants further submit that the affiliation of the Funds' Distributors to the other Oppenheimer Companies affiliates is the basis for a unique relationship of the Oppenheimer Companies to the Funds which can be expected to result in economies of sales effort and sales related expenses that justifies elimination of all sales charges on Funds shares purchased by participants in the Plan without discrimination against other employee benefit plans or other purchasers of Fund shares.

According to the application, features of the Plan which are expected to give rise to economies of scale in sales effort and sales related expense are: (1) there will not be any personal solicitation of participants by the Distributors, their representatives or other broker-dealers; (2) employees purchasing shares through payroll deduction will have shares purchased for their accounts at each payroll date with payment for such shares being made by a single check; (3) distributions on Fund shares will be automatically reinvested in additional Fund shares; and (4) all eligible employees will receive at least annually, at the expense of their employers, notice of the availability of the Plan. Applicants believe that such investments promote employee incentive, good will, and loyalty. In addition, employees can be expected to have some familiarity with the Funds, and this will reduce necessary sales efforts.

NOTICE IS FURTHER GIVEN that any interested person may, not later than February 26, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11034/February 4, 1980

In the Matter of

LORD ABBETT DEVELOPING GROWTH FUND, INC.
63 Wall Street
New York, New York 10005

(811-2393)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Lord Abbett Developing Growth Fund, Inc. ("Applicant"), a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified investment company, filed an application of October 29, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for a order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On January 2, 1980, a notice was issued (Investment Company Act Release No. 11006) of the filing of said application. The notice gave interested persons an

opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Lord Abbett Developing Growth Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11035/February 4, 1980

In the Matter of

CONTINENTAL INCOME FUND, INC.
731 S. Highway 101
Suite 2H
Solana Beach, California 92075

(811-2128)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

Continental Income Fund, Inc. ("Fund"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 20, 1979, pursuant to Section 8(f) of the Act for an order of the Commission declaring that the Fund has ceased to be an investment company as defined in the Act.

On January 7, 1980, a notice (Investment Company Act Release No. 11011) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company, Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Continental Income Fund, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11036/February 4, 1980

In the Matter of

FIDELITY CASH RESERVES
82 Devonshire Street
Boston, Massachusetts 02109

(812-4418)

ORDER OF THE COMMISSION AMENDING A PREVIOUS ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

Fidelity Cash Reserves ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application of December 3, 1979, requesting an order of the Commission amending an earlier order of the Commission dated April 5, 1979 (Investment Company act Release No. 10654). This earlier order, pursuant to Section 6(c) of the Act, exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. The amended order,

pursuant to Section 6(c) of the Act, would exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to utilize the amortized cost valuation method for purposes of pricing its shares for sale, redemption and repurchase.

On January 9, 1980, a notice (Investment Company Act Release No. 11015) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated April 5, 1979, contained in Investment Company Act Release No. 10654 to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

(1) That Applicant's Board of Trustees in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determine by using available market quotations.

(3) That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) That Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) That Applicant will limit its portfolio investments including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, or comparable quality as determined by the Board of Trustees.

(6) That Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11037/ February 7, 1980

In the Matter of

PUTMAN DAILY DIVIDEND TRUST
MARSH & McLENNAN MANAGEMENT COMPANY
265 Franklin Street
Boston, Massachusetts 02110

TRINWALL CASH RESERVE, INC.
EBERSTADT FUND MANAGEMENT, INC.
61 Broadway
New York, New York 10006

(812-4568)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED MERGER FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING PARTICIPATION IN SUCH MERGER AND PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING AN ISSUANCE OF SECURITIES FROM RULE 22c-1 THEREUNDER

Putnam Daily Dividend Trust ("Putnam"), Trinwall Cash Reserve, Inc. ("Trinwall"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), Marsh & McLennan Management Company ("Marsh & McLennan") and Eberstadt Fund Management, Inc. ("Eberstadt"), (collectively, "Applicants") filed an application on November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to Section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of Section 17(a) of the Act, (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Marsh & McLennan and Eberstadt to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction, and (3) pursuant to Section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act.

On January 15, 1980, a notice was issued (Investment Company Act Release No. 11021) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, on the basis of the information stated in the application, as amended, that the terms of the proposed merger are reasonable and fair and do not involve over-reaching on the part of any person concerned and that the proposed merger is consistent with the policies of Putnam and Trinwall and with the general purposes of the Act. It is further found that the participations of Putnam and Trinwall are consistent

with the provisions, policies and purposes of the Act and are not on a basis that is less advantageous than that of the other participants. It is further found that the granting of the requested exemption from Rule 22c-1 is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed merger be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the application to permit the proposed joint transactions involving Putnam, Trinwall, Marsh & McLennan and Eberstadt be, and hereby is, granted, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the proposed issuance by Putnam of its shares in exchange for the assets of Trinwall be, and hereby is, exempted from the provisions of Rule 22c-1 under the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11038/February 7, 1980

In the Matter of

THE PUTNAM INCOME FUND, INC.
265 Franklin Street
Boston, Massachusetts 02110

MARSH & McLENNAN MANAGEMENT COMPANY
265 Franklin Street
Boston, Massachusetts 02110

TRINWALL BOND FUND, INC.
61 Broadway
New York, New York 10006

EBERSTADT FUND MANAGEMENT, INC.
61 Broadway
New York, New York 10006

(812-4567)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED MERGER FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING PARTICIPATION IN SUCH MERGER AND PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING AN ISSUANCE OF SECURITIES FROM RULE 22c-1 THEREUNDER

The Putnam Income Fund, Inc. ("Putnam"), Trinwall Bond Fund, Inc. ("Trinwall"), both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), Marsh & McLennan Management Company ("M & M Management") and Eberstadt Fund Management, Inc. ("EFM"), (collectively, "Applicants") filed an application on November 9, 1979, and an amendment thereto on January 7, 1980, for an order (1) pursuant to Section 17(b) of the Act, exempting the proposed purchase by Putnam of the assets of Trinwall from the provisions of Section 17(a) of the Act, (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting M & M Management and EFM to assume certain expenses and liabilities of Putnam and Trinwall incurred in connection with the transaction, and (3) pursuant to Section 6(c) of the Act, exempting the issuance of Putnam shares from Rule 22c-1 under the Act.

On January 15, 1980, a notice (Investment Company Act Release No. 11022) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found, on the basis of the information presented in the application, as amended, that the terms of the proposed merger are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed merger is consistent with the policies of Putnam and Trinwall and with the general purposes of the Act. It is further found that the participations of Putnam and Trinwall

are consistent with the provisions, policies and purposes of the Act and are not on a basis that is less advantageous than that of the other participants. It is further found that the granting of the requested exemption from Rule 22c-1 is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed merger be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the application to permit the proposed joint transactions involving Putnam, Trinwall, M & M Management and EFM be, and hereby is, granted, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the proposed issuance by Putnam of its shares in exchange for the assets of Trinwall be, and hereby is, exempted from the provisions of Rule 22c-1 under the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11039/February 7, 1980

In the Matter of

REAL ESTATE ASSOCIATES LIMITED II, SONNENBLICK-GOLDMAN CORP. OF CALIFORNIA, and
NATIONAL PARTNERSHIP INVESTMENTS ASSOCIATES
1901 Avenue of the Stars
Los Angeles, California 90067

(812-4580)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Real Estate Associates Limited II ("REAL II"), a California limited partnership, and its general partners, Sonnenblick-Goldman Corp. of California and National Partnership Investments Associates ("General Partners" and, together with REAL II, referred to hereinafter as "Applicants"), filed an application on December 11, 1979, and an amendment thereto on February 4, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order exempting REAL II from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that REAL II was formed under the California Limited Partnership Act on December 4, 1979, and is designed to implement the policy of Title IX of the Housing and Urban Development Act of 1968 to provide private investors with a means of acquiring equity interests in government-assisted low and moderate income housing. REAL II will acquire limited partnership interests in local limited partnerships ("Local Limited Partnerships") which own or lease government-assisted rental housing projects for low and moderate income persons.

REAL II itself is organized as a limited partnership because a limited partnership is the only form of organization which provides an investor with both liability limited to his capital investment and the ability to claim on his individual tax return the deductions, losses, credits and other tax items a partnership can pass through to its partners. Therefore, REAL II will operate as a "two tier" partnership; i.e., REAL II, a limited partnership, will invest in other limited partnerships (Local Limited Partnerships), which in turn will be engaged in the development, building, ownership, or leasing of government-assisted housing for low and moderate income persons.

One of the primary objectives of REAL II is to pass through to its partners during the early years of the partnership net losses which may be used to offset other taxable income. Another of REAL II's primary objectives is to invest in projects which will appreciate in value.

REAL II has filed a registration statement under the Securities Act of 1933, which, as amended, will cover the sale of 240 to 2,000 Units at $5,000 per Unit. Applicants represent that the maximum

number of Units may be increased. Each Unit consists of two limited partnership interests and a warrant to purchase two additional limited partnership interests, exercisable by January 26, 1981 (the "Warrants"). The Warrants will entitle an investor to purchase the related limited partnership interests for $2,500 each, the equivalent price per limited partnership interest acquired pursuant to the purchase of a Unit. In the event that any Warrant is not exercised, the respective limited partnership interests may be sold by REAL II to other qualifying offerees.

Commencing in 1981, REAL II will allocate 62-1/2% of profits and losses to the limited partnership interests sold in 1981 (whether sold by exercise of the Warrants or by subscriptions for interests as to which the Warrants were not exercised) and 37-1/2% of its profits and losses to the limited partnership interests sold in 1980. This allocation will continue until the aggregate profits and losses allocated to the limited partnership interests sold in 1981 equal the aggregate profits and losses allocated to limited partnership interests sold in 1980. The effect of this allocation is expected to be that, in the course of the life of REAL II, interests purchased in 1980 by investors who do not exercise the Warrants to purchase interests in 1981, and interests for which subscriptions pursuant to the unexercised Warrants are accepted in 1981, will have been allocated an equal aggregate amount of profits and losses in REAL II and will have equivalent capital accounts. After this equalization of capital accounts is attained, all interests will be treated equally without regard to the date they were purchased.

Interests in REAL II will be sold only to qualified investors with a minimum subscription of one Unit ($5,000). The General Partners will contribute to REAL II $12,500, an amount representing approximately 1%, .1%, or .06%, respectively, of the total capitalization depending upon whether the minimum, maximum (excluding exercise of the Warrants), or maximum (including exercise of the Warrants) offering amount is sold. It is estimated that REAL II will have as proceeds of its public offering, a minimum of $1,050,000 and maximums (depending upon the exercise of the Warrants) of approximately $8,800,000 or $17,625,000 available for investment after deductions for sales commissions and anticipated offering expenses.

Offers to sell and sales of the Units to the public are proposed to be effected through E.F. Hutton and Company Inc. and other selected members of the National Association of Securities Dealers, Inc., none of which will own or owns any interest in either of the General Partners or will have or has any other material relationship with their directors, officers or partners. Such broker-dealers will use their best efforts, as agents for REAL II, to obtain subscriptions for Units in REAL II and thereafter to sell any limited partnership interests available upon the non-exercise of the Warrants.

No subscription for Units will be accepted unless the subscribing investor will represent in the Subscription Agreement for Units (1) that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $50,000, and an annual gross income of at least $50,000, or that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $200,000, or that he is purchasing in a fiduciary capacity for a person or entity which has such net worth and annual gross income; and (2) that he is aware of the risks involved in investing in REAL II. He also must represent that some part of his annual income for 1980 will be taxable at the federal tax rate of 50% or more, and that he anticipates some part of his income for the next six years will, but for the effect of his investment in the Units and limited partnership interests or other tax shelters, be taxable at such 50% rate. In addition, the partnership agreement of REAL II will require that during the first five years following effectiveness of the registration statement, each transferee of limited partnership interests must represent that he meets the suitability standards set forth above.

REAL II will be controlled by the General Partners pursuant to a partnership agreement ("Partnership Agreement") between the General Partners and limited partners, whereby the limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of REAL II. However, limited partners owning a majority of limited partnership interests will have the right to amend the Partnership Agreement, dissolve REAL II, remove one or both of the General Partners and elect successor general partners, and continue REAL II upon the death, insanity, retirement or bankruptcy of a General Partner. Also under the Partnership Agreement, each limited partner or his representative is entitled to review the records of REAL II at reasonable times, including the register of names, addresses and number of limited partnership interests owned by each other limited partner.

Applicants state that REAL II will invest not less than 90% of its available capital in Local Limited Partnerships which own or lease government-assisted housing projects. REAL II may also invest up to 10% of its capital in limited partnerships owning other residential projects. REAL II has not yet identified any specific Local Limited Partnership or projects in which it proposes to invest. However, the application states that REAL II will make its investments in accordance with both detailed criteria for selecting particular projects for investment and certain investment policies which may not be changed without approval by the limited partners owning at least a majority of the outstanding limited partnership interests.

Because REAL II will invest only in limited partnership interests, both REAL II and the General Partners will have only limited control over the management of the Local Limited Partnerships. However, REAL II will own at least 50% and, in many cases, 90% of the limited partnership interests of a Local Limited Partnership. Moreover, in negotiating Local Limited Partnership Agreements, the General Partners will endeavor to provide REAL II with one or more of the following: the right to approve or disapprove the sale of the project; the right to demand a dissolution of the Local Limited Partnership; and the right to demand the resignation of the local general partner. In addition, REAL II's capital contribution to a Local Limited Partnership will be made in stages, and, in most cases, REAL II will withhold the major portion of its contribution until the project has been constructed and is operating.

Although the General Partners are engaged in other real estate transactions and manage other similar limited partnerships, REAL II will not sell, acquire or lease properties or interests therein to or from the General Partners or their affiliates. Further, the General Partners have undertaken that no new public offerings with the same investment objectives as REAL II will be commenced until substantially all funds raised by REAL II have been committed to investment or otherwise utilized as described in the REAL II prospectus.

The General Partners will be entitled to receive 1% of REAL II's profits, losses and distributions subject to the condition that their 1% share of net cash flow will be reduced each year by the amount of annual management fees which are paid or payable to them in that year. In addition to their 1% participation in REAL II's profits, losses and distributions, the General Partners will receive certain fees for overseeing the conduct of REAL II's affairs and the continuing operation of each project.

In the initial period, the General Partners will be paid a fee for the organization and initial management of REAL II, the syndication of the Units and the provision of certain financing commitments, if any, aggregating approximately 0.9% of invested assets. Invested assets are defined as the sum of the capital contributions anticipated to be made by REAL II to the Local Limited Partnerships and the aggregate amount of the nonrecourse mortgage loans on the projects owned by such Local Limited Partnerships attributable to REAL II's capital contributions. The General Partners also will receive acquisition and selection fees for their services in connection with the selection, evaluation, negotiation and acquisition of REAL II's investments. The aggregate amount of such fees will equal approximately 1.0% of invested assets. Of the proceeds from the sale of the Units, Applicants anticipate that approximately a minimum of $124,000 and maximums (depending upon the exercise of the Warrants) of $1,051,000 and $2,103,000 will be paid for these organization, syndication, commitment, acquisition and selection fees.

During REAL II's operational period, the General Partners will receive, in consideration for their management services, an annual fee in an amount equal to 0.5% of invested assets to be paid out of REAL II's general funds. As noted above, this annual management fee will be applied against the General Partners' 1% share of REAL II's net cash flow. Finally, when a project is sold, the General Partners will receive a liquidation fee based upon the net proceeds only after payment to the limited partners of their invested capital in the project, plus an amount sufficient to pay their federal and state taxes. Applicants represent that all of these fees are in substantial conformity with the standards imposed by the Midwest Securities Commissioners and the California Corporations Commissioner, and that to the best of their knowledge all such fees are in compliance with the current rules promulgated by such authorities.

REAL II states that it will file with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 all required annual reports, quarterly reports, and current reports on Forms 10-K, 10-Q and 8-K, as well as any other reports required by

such Act. The General Partners will also send each limited partner a year-end report containing financial statements audited by REAL II's independent accountants and tax information necessary for the preparation of each limited partner's federal income tax return. In addition, each limited partner will receive a report at least semi-annually of REAL II's activities and the operational status of its investments, as well as interim reports regarding acquisitions.

Under the California Limited Partnership Act, and under the terms of the Partnership Agreement, the corporate General Partner, which has registered as an investment adviser under the Investment Advisers Act of 1940, and the non-corporate General Partner, are fiduciaries of REAL II and its limited partners. Applicants state that under the Partnership agreement, the officers and directors of the corporate General Partner and the partners of the noncorporate General Partner will be indemnified only when a court finds that such person's conduct fairly and equitably merit indemnity in the amount claimed.

Without conceding that REAL II is an investment company as defined in the Act, Applicants request that REAL II be exempted from the provisions of the Act pursuant to Section 6(c). Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act and rule thereunder if, and to the extent that, such exemption is necessary to appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that the exemption of REAL II from all provisions of the Act is both necessary and appropriate in the public interest. Applicants assert that the form of organization of REAL II, i.e., a limited partnership, which is necessary to limit the liability of private investors investing in subsidized low and moderate income housing, is incompatible with the regulatory framework of the Act. Applicants contend that to discourage the two-tier limited partnership arrangement by application of the Act would eliminate the primary means of attracting private equity capital into government-assisted housing and would frustrate the national policy declared by Congress "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income persons." Applicants state that the exemption would be consistent with the protection of investors and the purposes and policies of the Act. The limited partnership interests in REAL II are being sold only to relatively sophisticated investors who will be apprised of the management of REAL II and of the Local Limited Partnerships through reports sent to the limited partners and filed with the Commission. Furthermore, Applicants state that the General Partners' discretion to invest the assets of REAL II is proscribed by its stated investment policies and objectives, which may be changed only by the vote of the holders of at least a majority of the outstanding limited partnership interests. With a majority vote, the limited partners will also have the right to dissolve REAL II, to amend the Partnership Agreement, and to remove the General Partners.

Applicants further assert that although the involvement of the General Partners in similar past and future partnerships could create a conflict of interest, such potential conflicts are mitigated by the General Partners' undertaking not to make any conflicting new public offering until substantially all of REAL II's funds have been committed and to follow prescribed procedures for determining which partnership should make an investment in the event of a conflict. Moreover, Applicants state that the Partnership Agreement prohibits certain transactions between REAL II and its General Partners and their affiliates in order to eliminate or significantly mitigate conflicts of interest.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 3, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to

whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 8994/February 7, 1980

UNITED STATES OF AMERICA v. FREDERICK M. FRIEDMAN AND ALAN E. SANDBERG, 76 Cr. 1022 (S.D.N.Y.)

Robert B. Fiske, Jr., United States Attorney for the Southern District of New York and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on January 30, 1980, defendant Frederick M. Friedman ("Friedman") of New York, New York, vice president of TDA Industries, Inc. ("TDA"), was sentenced by the Honorable Inzer B. Wyatt, United States District Judge for the Southern District of New York, following his conviction on two counts of mail fraud and one count of wire fraud in the above-captioned matter. Defendant Friedman was sentenced to one month imprisonment on each of three counts, to run concurrently, and a fine of $3,000. This sentence is to run consecutively to a three month sentence announced on January 10, 1980 in connection with other transactions involving TDA. Imposition of the sentences and fines was stayed pending appeal.

For further information, see Litigation Release Nos. 8981, 8976, 8921, 7692, 7369 and 7088.

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19/9

sec docket

VOLUME 19, NO. 9 MARCH 4, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6189	616
Securities Exchange Act	16571-99	643
Public Utility Holding Company Act	21436-46	703
Trust Indenture Act	552	720
Investment Company Act	11048-56	721
Investment Advisers Act	713	741
Litigation	9004-12	742

This listing covers releases issued from 2/14/80-2/21/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-16574	34-16577	34-16592
34-16575	34-16578	34-16599
34-16576	34-16581	

33-1689 Amending and redesignating its rule governing the collection and dissemination of transaction information with respect to equity securities listed on a national securities exchange.

34-16590 Adoption of a rule to establish minimum requirements governing the manner in which transaction, quotation and market information is displayed by vendors of securities information.

34-16593 Solicitation of comments on the impact and operation of Section 30A which prohibits registered issuers from using any means or instrumentality of interstate commerce in furtherance of any corrupt offer, payment, gift, promise to pay or give, or authorization of any payment or gift to foreign officials.

34-16598 Adoption of a proposed amendment Rule 17a-1 which authorizes the Commission staff to obtain copies of any documents made or received by a national securities exchange or national securities association in the

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	course of its business or in its self-regulatory activities.
IC-11053	Adoption of rules which exempt specified mergers or consolidations of registered investment companies from certain prohibitions.

OPINION

RICHARD L. ROBINSON

34-16597	Where registered representative of member firm of registered securities association engaged in private securities transactions without prior written notification to member, *held*, association's findings of violation *sustained*, but sanctions *reduced*, in light of applicant's prior oral disclosure to employer, and his written disclosure to customers that employer was not involved in his sales.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6189/February 19, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16589/February 19, 1980

Collection and Dissemination of Transaction Reports and Last Sale Data

ACTION: Final rules.

SUMMARY: The Commission amends and redesignates its rule governing the collection and dissemination of transaction information with respect to equity securities listed on a national securities exchange. The amendment adds explicit procedures for amending transaction reporting plans filed with and approved by the Commission pursuant to the rule and provides that no national securities exchange or association may prohibit transmission of the entire data stream of transaction reports or last sale data on a current and continuing basis for the purpose of creating a moving ticker display. The Commission also amends others of its rules to conform their references to this rule.

EFFECTIVE DATE: April 5, 1980.

FOR FURTHER INFORMATION CONTACT: Brandon Becker, Room 321, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2829.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that it has amended and redesignated Rule 17a-15[1] under the Securities Exchange Act of 1934 ("Act")[2] which currently governs the manner of collecting and disseminating transaction information with respect to equity securities listed or admitted to unlisted trading privileges on a national securities exchange ("exchange"). The amendments restate Rule 17a-15 in revised format, redesignate Rule 17a-15 as Rule 11Aa3-1 ("Rule") under the Act,[3] add explicit procedures for amending transaction reporting plans filed with and approved by the Commission and provide that no exchange or national securities association ("association") may prohibit retransmission of the entire data stream of transaction reports or last sale data made available through the consolidated transaction reporting system ("consolidated system") on a current and continuing basis for the purpose of creating a continuous moving ticker display ("moving ticker"). In addition, those provisions of Rule 17a-15 which currently govern the display of market information are eliminated from the Rule and are included in Rule 11Ac1-2 which the Commission has also adopted today.[4]

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[1] 17 CFR §240.17a-15.

[2] 15 U.S.C. §§78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] 17 CFR § 240.11Aa3-1.

[4] See Securities Exchange Act Release No. 16590 (February 19, 1980), ("Rule 11Ac1-2 Adopting Release").

I. Introduction and Background

A. *General*

On October 20, 1978, as part of its efforts to facilitate the establishment of a national market system[5] and in order to promote the widespread availability of transaction information in accordance with Section 11A(c)(1) of the Act, [6] the Commission proposed to amend Rule 17a-15 which currently governs operation of the consolidated system.[7] In determining to proposed these amendments, the Commission noted that, since the adoption of Rule 17a-15 in 1972, the Securities Acts Amendments of 1975 ("1975 Amendments")[8] had effected changes in the Act not reflected in Rule 17a-15.[9] For example, Rule 17a-15 contained procedures permitting any person whose access to transaction information disseminated pursuant to an effective transaction reporting plan is denied or limited to appeal such

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[5]*See* Securities Exchange Act Release No. 14416, at 41-44, (January 26, 1978) ("January Statement"), 43 FR 4354, 4360 in which the Commission described six initiatives designed to facilitate the establishment of a national market system. One of the initiatives was considering "further action with respect to . . . permitting . . . retransmission of the entire data stream of [transaction] information contained in . . . the consolidated system on a continuous basis by securities information processors other than [the Securities Industry Automation Corporation ("SIAC")], the current processor the consolidated system." *Id.* at 44, 43 FR at 4360 (footnote omitted).

[6]*See* Section 11A(c)(1)(B) of the Act, 15 U.S.C. § 78k-1(c)(1)(B). *See also* Sections 2, 6(a), 6(b)(5), 9, 10, 11A(a)(1)(C), 11A(a)(2), 11A(b), 15(c), 15A(a), 15A(b)(6), 17(a) and 23(a) of the Act, 15 U.S.C. §§ 78b, 78f(a), 78f(b)(5), 78i, 78j, 78k-1(a)(1)(C), 78k-1(a)(2), 78k-1(b), 78o(c), 78o-3(a), 78o-3(b)(6), 78q(a) and 78w(a); Securities Exchange Act Release No. 15326, at 30-31, (June 15, 1979), 44 FR 36912, 36917.

[7]Securities Exchange Act Release No. 15250 (October 20, 1978) ("Transactions Reports Release"), 43 FR 50606.

[8]Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[9]Rule 17a-15, as adopted on November 8, 1972, required every exchange and association, and every broker-dealer not an exchange or association member which executed transactions in listed securities not reported by an exchange or association pursuant to the rule, to file with the Commission a plan providing for collecting, processing and disseminating transaction information in securities registered or admitted to unlisted trading privileges on an exchange. The rule also provided that, after January 22, 1973, no person subject to its provisions could make available transaction information on a current and continuing basis except pursuant to such a plan approved by the Commission. *See* Securities Exchange Act Release No. 9850 (November 8, 1972) ("Adopting Release"), 37 FR 24172. *See also* Securities Exchange Act Release Nos. 9530 (March 8, 1972) ("First Proposal Release") and 9731 (August 14, 1972) ("Second Proposal Release"), 37 FR 5761 and 19148.

On March 2, 1973, various self-regulatory organizations filed with the Commission a joint industry plan ("CTA Plan" or "Plan") to govern the implementation and operation of the consolidated system. The Plan provided for the creation of the Consolidated Tape Association ("CTA") to administer the Plan and the SIAC to act as the initial processor for the consolidated system. *See* Securities Exchange Act Release Nos. 9924 (January 3, 1973), 9981 (February 2, 1973), 10026 (March 5, 1973), 10218 (June 13, 1973) ("First Plan Release"), 10671 (March 8, 1974) ("Second Plan Release"), 38 FR 1121, 3591, 6443 and 15999 and 39 FR 10034. The Plan was approved by the Commission on May 10, 1974. *See* Securities Exchange Act Release No. 10787 (May 10, 1974) ("Approval Release"), 39 FR 17799.

The Plan requires dissemination of transaction information in "eligible securites" which are defined to include: (1) stocks and long-term warrants listed or admitted to unlisted trading privileges on the American ("Amex") or New York ("NYSE") Stock Exchanges on April 30, 1976, (2) stocks and long-term warrants listed or admitted to unlisted trading privileges on any exchange which, on April 30, 1976, substantially meet either Amex or NYSE original listing requirements, (3) stocks and long-term warrants listed or admitted to unlisted trading privileges on any exchange after April 30, 1976, which substantially meet either Amex or NYSE original listing requirements and (4) any right to

action to the Commission. These procedures[10] were redundant and in some technical respects inconsistent with the extensive procedures set forth in Section 11A(b)(5) of the Act which govern such denials or limitations by registered securities information processors.[11]

Similarly, Rule 17a-15 indirectly imposed certain minimal display standards on vendors of market information by requiring any plan filed by an exchange, association or non-member broker-dealer pursuant to that Rule to impose these display standards on vendors. This indirect procedure had been utilized because the Commission did not directly regulate securities information processors prior to the adoption of the 1975 Amendments. However, because Section 11A(c)(1) now provides the Commission with plenary authority to regulate the manner in which vendors display transaction information this indirect regulation is no longer necessary.[12] In addition, Rule 17a-15 was limited in its application to "securities registered or admitted to unlisted trading privileges on the exchange,"[13] whereas Section 11A(a)(2) permits the Commission to designate any security (other than an exempted security) as qualified for trading in the national

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Footnote 9 Continued

acquire any of the securities described in (1) - (3) which is traded on the same exchange as the eligible security, *See* CTA Plan, "Plan Submitted Pursuant to Rule 17a-15 of Securities Exchange Act of 1934," § VI, at 19-23, contained in File No. S7-433.

The Plan provides that the consolidated system consist, in part, of two networks of information Network A and Network B. Network A includes transaction information from all reporting markets for eligible securities listed or admitted to unlisted trading privileges on the NYSE. Network B includes transaction information for eligible securities listed or admitted to unlisted trading privileges on, or substantially meeting the listing requirements of, the Amex. The reporting markets are the Amex, Boston ("BSE"), Cincinnati ("CSE"), and Midwest ("MSE") Stock Exchanges, NYSE, Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges and over-the-counter ("OTC") transactions by members of the National Association of Securities Dealers, Inc. ("NASD") and transactions effected through the Instinet System operated by Institutional Networks Corporation ("Instinet"). The Commission has granted the Intermountain ("ISE") and Spokane ("SSE") Stock Exchanges exemptions from the reporting requirements of Rule 17a-15. Securities Exchange Act Release Nos. 11385 (April 30, 1975) and 14651 (April 11, 1978), 40 FR 1988 and 43 FR 16852. The Commission also has granted a temporary exemption to OTC market makers with respect to OTC trading in Pacific Resources, Inc., Securities Exchange Act Release No. 16454 (December 27, 1979), 45 FR__ Redesignation of the rule under Section 11A(a) of the Act, will note effect the status of these, or any other, exemptions from Rule 17a-15 which do not directly conflict with a provision of Rule 11Aa3-1. *See* note 137, *infra*.

A pilot phase of the consolidated system began operation on October 18, 1974 and the entire system became fully operational on April 30, 1976. *See* Transactions Reports Release, *supra* note 7, at 4-7, 33 n. 63, 43 FR at 50606-07, 50611 n. 63.

[10]*See* Rule 17a-15(i), as amended in 1974. Securities Exchange Act Release No. 11097 (November 13, 1974), 39 FR 40941.

[11]For example, Section 11A(b)(5)(A) of the Act is substantively identical to Rule 17a15(i)(1) and (i)(2) but the Act requires registered securities information processors to file a notice of denial with the Commission and permits the Commission to grant stays summarily. In order to resolve these inconsistencies, the appeals provisions of the proposal were limited to actions which were not reviewable pursuant to Section 11A(b)(5) or Section 19(d) of the Act. However, the procedures of Rule 17a-15(i) were retained in the proposal of rule 11Aa3-1 in modified form because those provisions are somewhat broader in scope than the provisions of Section 11A(b)(5).

[12]*See* Section 11A(c)(1)(A) and (B). These display requirements, currently contained in Rule 17a-15, have been relocated in Rule 11Ac1-2 which was proposed simultaneously with these amendments. *See* Rule 17a-15(b) and Rule 11Ac1-2, Securities Exchange Act Release No. 15251 (October 20, 1978) ("Vendor Display Release"), 43 FR 50615. Rule 11Aa3-1 would, however, continue to contain the requirement that any transaction reporting plan filed pursuant to the Rule provide that transaction reports or last sale data made available to any vendor for purposes of display on interrogation devices be accompanied by a market identifier. Rule 11Aa3-1(b)(4). The Commission has adopted Rule 11Ac1-2 simultaneously with the adoption of Rule 11Aa3-1. *See* 11Ac1-2 Adopting Release, *supra* note 4.

market system.[14] In response the Commission determined to propose amendments to Rule 17a-15 which would restate the rule in revised format, address the changes in the Act discussed above and redesignate the rule as Rule 11Aa3-1 under the Act.[15]

In addition, Proposed Rule 11Aa3-1 explicitly set forth the manner in which any effective transaction reporting plan could be amended. The propsal required that any proposed amendment to a plan be filed with the Commission, notice for public comment and approved by the Commission prior to effectiveness.[16] However, if the Commission found that the proposed amendment was of a technical or ministerial nature, or, if such action were necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to facilitate the establishment of a national market system or otherwise in furtherance of the purposes of the Act, the Rule permitted the Commission to approve an amendment, on a temporary basis not to exceed 120 days upon publication of notice of such amendment.[17] Rule 11Aa3-1 also required a specific statement regarding the terms of access to information made available pursuant to a plan which should conform to the general standards set forth in Section 11A(b) of the Act.[18]

B. *Retransmission*

In addition to these procedural matters, proposed Rule 11Aa3-1 addressed one substantive matter concerning the operation of the consolidated system, those provisions of the CTA Plan which currently prohibit securities information processors from retransmitting to their subscribers, on a current and continuing basis, the data stream of transaction reports contained in the consolidated system for purposes of creating a moving ticker display ("retransmission").

1. *Background of the Retransmission Prohibition*

The concerns raised by retransmission primarily arise from the manner in which transaction information is disseminated through the

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[13]Rule 17a-15(a).

[14]See January Statement, *supra* note 5, at 45-46, 43 FR at 4360-61. Since the Commission published the Transactions Reports Release, the Commission has also published for comment proposed rule 11Aa2-1 which would establish certain procedures and requirements for the designation of securities as qualified for trading in a national market system. Securities Exchange Act Release No. 15926 (June 15, 1979), 44 FR 36912. As proposed, the rule contemplates that certain securities, some of which are not presently listed on an exchange, will automatically be designated for trading in a national market system (defined as tier-one securities in that release) and that under the procedures in the rule other securities may become designated for trading in a national market system (defined as tier-two securities). Depending on the form of Rule 11Aa2-1, if and when adopted, changes may be required in Rule 11Aa3-1. If so, the Commission anticipates making conforming amendments to Rule 11Aa3-1.

[15]Rule 17a-15 was adopted prior to the passage of the 1975 Amendments which specifically direct the Commission to facilitate the establishment of a national market system (Section 11A(a)(2) of the Act) and grant the Commission plenary authority: (1) to regulate, among other matters, the manner in which securities information processors collect, process, distribute or publish transaction information and (2) to ensure the availability of such information. Sections 11A(c) and 11A(a)(C)(1)(iii) of the Act. Therefore, the Commission determined to propose Rule 11Aa3-1 under Section 11A of the Act and the other sections of the Act under which Rule 17a-15 was originally promulgated. *See* Transactions Reports Release, *supra* note 7, 10-13, 43 FR 50607-08, and note 6 *supra*.

[16]Proposed Rule 11Aa3-1(b)(5), (c)(1) and (c)(2). Since the publication of Rule 11Aa3-1 as a proposal, the Commission has also proposed Rule 11Aa3-2 which would establish generic procedures and requirements for national market system plans. *See* Securities Exchange Act Release No. 16410 (December 7, 1979) ("Rule 11Aa3-2 Release"), 44 FR 72606. *See also* Securities Exchange Act Release No. 15838 (May 18, 1972), 44 FR 30924. If Rule 11Aa3-2 is adopted, the Commission plans to conform Rule 11Aa3-1 with Rule 11Aa3-2.

[17]Proposed Rule 11Aa3-1(c)(3). *Cf.* Section 19(b)(3) of the Act.

[18]Proposed Rule 11Aa3-1(b)(4)(vi), Rule 17a-15(b)(4).

consolidated system and the method of financing that system. Since the full implementation of the Consolidated system on April 30, 1976, transaction information has been disseminated to vendors and their subscribers by two means, a "high" speed data stream containing all transaction information disseminated through the consolidated system and two "low" speed data streams, designated Network A, which includes transaction information regarding NYSE listed securities, and Network B which includes transaction information on all other reported securities.[19] Securities information processors who are engaged in the business of disseminating transaction information ("vendors")[20] are permitted to use the transaction information they receive to create a data base from which their subscribers can, upon separate inquiry, recall transaction and other information for display on interrogation devices. In addition, transaction information is distributed over the low speed data streams for purposes of display on moving tickers via nationwide networks of low speed data transmission lines provided to CTA by Western Union ("ticker networks").[21] The CTA Plan provides, in effect, that any moving ticker, regardless of the device on which displayed (*e.g.*, on an interrogation device or on a separate wall unit) only be supplied data directly from these ticker networks.[22] This provision is commonly known as the retransmission prohibition.

In order to defray some of the costs of collecting, processing and disseminating transaction information, the CTA Plan requires vendor subscribers to pay a fee directly to the CTA for the receipt of transaction information. The CTA presently assesses fees on the basis of the number of display and interrogation devices used by a

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[19]For a more complete description of those securities included in Networks A and B, *see* note 9, *supra*.

[20]Rule 11Aa3-1(a)(12), as adopted, defines the term "vendor" to mean:

any securities information processor engaged in the business of disseminating transaction reports or last sale data with respect to transactions in reported securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

[21]The ticker networks provide information to moving tickers at the rate of 900 characters per minute, the generally accepted maximum speed at which a linear wall display of this information would be readable. As a result of this speed limitation, during periods of active trading, complete transaction information cannot be disseminated with considerable delay. Therefore, the CTA has adopted procedures whereby during such periods certain information, such as a transaction's volume, is deleted from the relevant low speed data stream, but not the high speed data stream. Despite these measures, the ticker networks often report transactions several minutes after they are reported on the high speed data stream. It has been argued that the flexibility of interrogation device cathode ray tube terminals would permit a vendor creating a moving ticker from the high speed data stream to avoid these delays or at least include deleted information without incurring further delays. *See* text accompanying notes 27-28, *infra*. In addition, the CTA has approved certain types of moving tickers which display transaction information only with respect to selected securities. Because the retransmission prohibition requires that these "selective" moving tickers be supplied data from the ticker networks, they are subject to the same delays and deletions as are moving tickers displaying transaction information for all securities on the networks. If vendors are permitted to retransmit data to create a selective moving ticker, such a display would not be delayed, even if information were displayed at 900 characters per minute. Transactions Reports Release, *supra* note 7, at 29 n.55, 43 FR at 50610 n.55. *See generally id.* at 7 n.12 and 15-16, 43 FR at 50609 n.12 and 50610.

[22]*See* CTA Plan, *supra* note 9, §VIII(b), at 28 ("Vendors will not be permitted to retransmit on a continuous basis the consolidated last sale prices received by them, except as may be incidental to the operation of approved interrogation devices *or* display devices."); § V(e), at 18, ("Consolidated last sale prices shall be made available to. . . [v]endors. . . by means of a high speed line. . . for the purpose of servicing approved interrogation devices. . . and not for the purpose of furnishing a ticker display."). The CTA does, however, provide a delayed dissemination service which is not subject to this restriction. Persons receiving this low speed data stream (which is delayed 15 minutes and so identified) are permitted to retransmit without restriction and subscribers ultimately receiving the information are required to pay subscriber charges to the CTA.

subscriber.[23] The highest CTA charge to a subscriber is for receiving transaction information on a ticker tape device furnished by the CTA with information supplied through a ticker network; a lesser CTA charge is imposed if transaction information is displayed on a moving ticker device furnished by a vendor (*e.g.*, on a separate wall unit or through an interrogation device); and the smallest CTA charge is for receiving transaction information through an interrogation device upon separate inquiry, which information is supplied over the vendor's communication system.[24]

The retransmission prohibition has been contained in the CTA Plan since its initial filing with the Commission in 1973. In a release commenting on the Plan, the Commission determined not to object to the inclusion of the prohibition[25] noting four potentially harmful effects which might result from retransmission. First, because vendors might concentrate their marketing efforts on easily accessible, more profitable urban areas thereby leaving service to more remote, less profitable areas to the CTA, the CTA might be forced to increase its general level of charges which might in turn threaten the financial viability of the ticker networks. Second, because vendors would be free to charge rates for the provision of moving ticker displays which differ from the rates charged by the CTA, the financial viability of the ticker networks might be threatened and the dissemination of transaction information to distant locations thereby impeded. Third, there might be a deterioration of ticker reliability because vendors might not maintain sufficient back-up systems. Fourth, there might be a loss of direct regulatory oversight by the Commission because vendors were not then subject to express Commission regulation.[26]

2. *Reuters' Request*

In 1976, the Commission received a letter from Reuters Limited ("Reuters")[27] requesting the Commission to eliminate the retransmission prohibition. Reuters proposed to offer its subscribers a new service, a moving ticker in a novel format created from the high speed data stream which would not be subject to the delays and deletions to which the ticker networks are subject. The Commission published Reuters' letter[28] and in response received comments from the CTA, Reuters and four vendors.[29] This commentary raised many of

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[23]A subscriber pays the CTA a first unit charge for the first ticker as well as for the first interrogation device. If an interrogation device is capable of displaying a moving ticker, two fees are assessed: one for the moving ticker and one for receiving transaction and other information through the interrogation device itself. A subscriber pays an additional, lesser charge for each additional ticker or interrogation device. The fees to the CTA are in addition to the fees subscribers pay to vendors for furnishing particular ticker display or interrogation devices. Vendors are also required to pay various charges to the CTA for receipt of transaction information from the high speed data stream.

[24]These CTA charges are uniform throughout the continental United States.

[25]See Second Plan Release, *supra* note 9.

[26]*Id.* at 8-10, 39 FR at 10035-36. *See* Transactions Reports Release, *supra* note 7, at 18-19, 43 FR at 50608-09. The 1975 Amendments eliminated the Commission's concern regarding its regulatory jurisdiction with respect to the retransmission issue. *See id.* at 12-13, 43 FR 50607.

[27]Letter from Phillip Siegal, Reuters, to the Securities and Exchange Commission ("SEC"), dated February 4, 1976, and letter from Dennis J. Block, Weil, Gotshal & Manges, to Bart Friedman, Division of Market Regulation, SEC, dated February 4, 1976. These letters are contained in File No. S7-620.

[28]See Securities Exchange Act Release Nos. 12161 (March 3, 1976) and 12318 (April 6, 1976), 41 FR 10499 and 15924.

[29]See Letter from Richard Brandt, President, Trans-Lux Corporation ("Trans-Lux") to George A. Fitzsimmons, Secretary, SEC, dated March 29, 1976; Letter from M. Sumner, Securities Industry Liaison, Information Systems Division, Bunker Ramo Corporation ("Bunker Ramo"), to George A. Fitzsimmons, Secretary, SEC, dated March 31, 1976; Letter from Francis J. Palamera, Chairman, CTA, to George A. Fitzsimmons, Secrtary, SEC, dated April 28, 1976 ("1976 CTA Letter"); Letter from Dennis J. Block, Weil, Gotshal & Manges, to Eric C. Little, Division of Market Regulation, SEC, dated May 21, 1976; Letter to Desmond Maberly, Reuters, from Carl Bolton, CTA, dated August 3, 1976; Letter to CTA Legal and Policy Committee, from George W. Hernan, Vice President Business Planning, GTE Information Systems, Inc., ("GTE"), dated August 11, 1976; Letter to Robert J. Birnbaum, Chairman

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the concerns discussed by the Commission in its release commenting on the retransmission prohibition in the CTA Plan.[30]

In addition to these concerns, commentators discussed the competitive implications of the prohibition. Reuters argued that the prohibition inhibited competition in distribution and display services by, among other matters, (1) raising the cost of entry through requiring high and low speed receptor mechanisms, (2) precluding any competition in the distribution of transaction information for display on moving tickers, and (3) limiting innovation in the display of that information.[31] In contrast, others argued that removing the prohibition would permit Reuters to begin retransmission before other vendors and would enable Reuters to avoid certain costs already incurred by other vendors. In addition, these commentators argued that, if retransmission were permitted, those vendors which both distribute and display market information would have a marketing advantage over vendors only providing ticker display services because integrated vendors could market their services as a package with interrogation services. They also argued that the demise of the ticker networks might leave them without a source of information for their displays.[32]

These commentators also argued that the removal of the retransmission prohibition would erode the present equality of access to transaction information among brokers, dealers and investors. Because of the unitary nature of the ticker networks, all moving tickers in the same network currently receive transaction information at the same time[33] and in the same format, including the deletion of certain information during periods of active trading.[34] Permitting retransmission might allow a vendor receiving the high speed data stream to display transaction information on a moving ticker prior to its display on a moving ticker fed by a low speed data stream, and possibly to include material deleted from that stream. Thus, subscribers to the various sources of transaction information would receive varying information at different times.[35]

Finally, there was some dispute about whether the ticker networks were of sufficient value to employ regulatory (and possibly anti-competitive) measures to ensure their continued existence. The CTA argued that the networks were important because they provide the complete and official record of transactions and a means to supply all investors throughout the country with identical transaction information. In constrast, one vendor argued the ticker networks are outmoded, redundant with more efficient vendor systems and should ultimately be entirely replaced by the high speed data stream.[36]

3. *Transactions Reports Release*

In the Transactions Reports Release, after reviewing the prior history of the retransmission issue,[37] the Commission

> initially determined that the prohibition against retransmission may have anticompetitive effects which are not necessary or appropriate in furtherance of the purposes of the Act. The prohibition, in effect, requires that vendors providing interrogation devices which also display a moving ticker pay for the maintenance of duplicative and redundant data transmission lines and receptor mechanisms. . . .[and] may impede the development of innovative moving ticker displays. . . .[38]

Footnote 29 Continued

CTA Legal and Policy Committee, from Richard Brandt, President, Trans-Lux, dated August 12, 1976; Letter to Carl Bolton, CTA Legal and Policy Committee, from George H. Levine, Vice President, Quotron Systems, Inc. ("Quotron"), dated August 13, 1976; Letter to CTA Legal and Policy Committee, from Desmond Maberly, Assistant Manager, North America, Reuters, dated August 13, 1976; Letter To CTA Legal and Policy Committee, from Carl L. Bolton, CTA, dated August 16, 1976. These letters are contained in File No. S7-620. *See* Transactions Reports Release, *supra* note 7, at 21-24, 43 FR at 50609.

[30]*See* text accompanying notes 25-26 *supra*.

[31]*See* note 61, *infra*.

[32]*Id.* at 24-27, 43 FR at 50609-10.

[33]*But see* note 21, *supra* and notes 64-81 *infra*.

[34]*See* note 21, *supra*.

[35]*Id.* at 28-29, 43 FR at 50610.

[36]*Id.* at 29-30, 43 FR at 50610.

[37]*Id.* at 13-30, 43 FR at 50608-10.

[38]*Id.* at 31, 43 FR at 50611.

The Commission therefore proposed to eliminate the retransmission prohibition. However, the Commission also concluded "that the ticker network[s are] an important mechanism for dissemination of market information and should be retained. [They] provide. . .a means whereby investors, brokers, and dealers can obtain current [transaction information] at a reasonable price" regardless of their geographic location.[39] Therefore, the Commission proposed that Rule 11Aa3-1 permit exchanges and associations to impose, by means of effective transaction reporting plans, certain conditions on vendors seeking to retransmit transaction information:

(1) In order to ensure the ongoing viability of the ticker networks as a means of providing widespread dissemination of transaction information, the Commission proposed a subscriber charge condition ("Subscriber Charge Condition") which would permit the CTA to require vendors to ensure that CTA charges for the display of transaction information on moving tickers are collected.[40]

(2) In response to concerns regarding equality of access to transaction information, the Commission proposed a synchronization condition ("Synchronization Condition") which would permit exchanges or associations to require vendors to ensure that "transaction reports which are retransmitted for display on moving tickers are displayed at substantially the same rate as reports distributed for display on moving tickers directly by a plan processor."[41]

(3) Finally, in response to concerns regarding the accuracy and reliability of retransmitted transaction information, the Commission proposed an accuracy and reliability condition ("Accuracy and Reliability Condition") which would permit exchanges or associations to require vendors to ensure that "any securities information processor which retransmits transaction reports for display in moving tickers maintains procedures and facilities sufficient to ensure that such display is accurate and reliable."[42]

II. COMMENTS RECEIVED IN RESPONSE TO THE TRANSACTIONS REPORTS RELEASE

In response to its proposal of Rule 11Aa3-1, the Commission received comments from the CTA[43] and four vendors,[44] one exchange[45] and one individual.[46] Although the commentators provided limited technical comments on the procedural provisions of

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[39]*Id.* at 30, 43 FR at 50610.

[40]Proposed Rule 11Aa3-1(e)(1). *See* Transactions Reports Release, *supra* note 7, at 15, 32, 51, 43 FR at 50608, 50611, 50614.

[41]Proposed Rule 11Aa3-1(e)(2). *See* Transactions Reports Release, *supra* note 7, at 15, 32 n.61, 51, 43 FR at 50608, 50611, n.61, 50614.

[42]Proposed Rule 11Aa3-1(e)(3). *See* Transactions Reports Release, *supra* note 7, at 15, 32, 51, 43 FR at 50608, 50611, 50614.

[43]Letter from Robert C. Hall, Chairman, CTA, to George A. Fitzsimmons, Secretary, SEC, dated January 11, 1979, ("1979 CTA Letter"), contained in File No. S7-758.

[44]Letter from Jerome M. Pustilnik, Chairman of the board Instinet, to George A. Fitzsimmons, Secretary, SEC, dated December 27, 1978 ("Instinet Letter"); Letter from Robert M. Steinberg, Executive Vice President, Quotron, to George A. Fitzsimmons, Secretary, SEC, dated October 18, 1978 ("Quotron Letter"); Letter from Lawrence Entel, Assistant House Counsel, Reuters, to SEC, dated April 18, 1979 ("1979 Reuters Letter"); Letter from Lawrence Entel, Assistant House Consel, Reuters, to SEC, dated December 21, 1978 ("1978 Reuters Letter"); Letter from Richard Brandt, President, Trans-Lux, to George A. Fitzsimmons, Secretary, SEC, dated December 11, 1978 ("1978 Trans-Lux Letter"). These letters are contained in File No. S7-758.

[45]Letter from Joseph W. Sullivan, President, Chicago Board Options Exchange, Inc. ("CBOE"), to George A. Fitzsimmons, Secretary, SEC, dated December 19, 1978 ("CBOE Letter"), at 2-4, contained in File No. S7-758.

[46]Letter from Clyde A. Kelley, President, Clyde A. Kelley, Inc., ("Kelley"), to George A. Fitzsimmons, Secretary, SEC, dated December 8, 1978 ("Kelley Letter"), contained in File No. S7-758.

the Rule,[47] virtually all of the commentary focused on retransmission.[48]

A. *General Comments and Subscriber Charge Condition*

1. *Comments*

Most of the commentary concerning retransmission focused on the need to maintain the ticker networks through the retransmission prohibition and the efficacy of the Subscriber Charge Condition in ensuring the financial integrity of the networks. The CTA and Trans-Lux again argued that the retransmission prohibition furthered the goals of the Act by ensuring the ongoing viability of the ticker networks, which in turn provide widespread availability of transaction information at a reasonable cost.[49] In addition, the CTA argued that the ticker networks provide other unique benefits such as market center broadcasts of ex-dividend and other so-called administrative information, dissemination of transaction information 15 minutes delayed at a minimal charge,[50] widespread distribution of information on eligible regional securities and high reliability from beneficial duplication of CTA and vendor distribution systems, which justify the continued maintenance of the ticker networks even by means which are arguably anticompetitive.[51] To the contrary, Instinet argued that the Subscriber Charge Condition is "anticompetitive in the extreme" because it is only designed to protect the ticker networks, "the principal purpose[s]" of which are "to advertise and encourage the buying and selling of securities. . . ."[52]

The CTA and Trans-Lux[53] further argued that the Subscriber Charge Condition would not be sufficient to maintain the viability of the ticker networks. The CTA argued that, if vendors were permitted to retransmit transaction information for display in a moving ticker, subscribers "to such retransmission services cannot be expected to passively continue payment of the CTA charges in order to subsidize CTA's nationwide networks in addition to the fees charged by retransmission vendors for their services."[54] As a result, the CTA's revenues would be reduced and the CTA would be forced to raise remaining subscriber charges or abandon the

[47]*See* text accompanying notes 106-137, *infra*.

[48]In addition, CTA reaffirmed and Instinet and Reuters referred to their earlier comments on retransmission. 1979 CTA Letter, *supra* note 43, at 2-3, *citing*, 1976 CTA Letter, *supra* note 29, and Letter from the Amex and NYSE to the SEC, re: industry Plan Submitted under SEC Rule 17a-15, dated June 1, 1973 ("1973 Amex/NYSE Letter"), contained in File No. S7-433. Instinet Letter, *supra* note 44, at 2 n.*, *citing*, Letter from Richard H. Paul, Paul, Weiss, Rifkind, Wharton & Garrison ("Paul Weiss"), to Ronald F. Hunt, Secretary, SEC, dated May 19, 1972; Letter from Richard H. Paul, Paul, Weiss, to Ronald F. Hunt, Secretary, SEC, dated April 6, 1973; Letter from _____, to _____, dated October 8, 1974,; Letter from Richard H. Paul, Paul, Weiss, to the SEC, dated January 21, 1975. 1978 Reuters Letter, *supra* note 44, at 2, *citing* Reuters' early correspondence. *See* notes 27 and 29 *supra*.

[49]*See* 1979 CTA Letter, *supra* note 43, at 6-10; 1978 Trans-Lux Letter, *supra* note 44, at 2-6.

[50]*See* 1979 CTA Letter, *supra* note 43, at 10-12, 14-15, 19-20. In addition, Trans-Lux argued that any anticompetitive aspects of the retransmission prohibition were not significant because vendors were still at liberty to compete in the manner of display of information. 1978 Trans-Lux Letter, *supra* note 44, at 3-5.

[51]*See* text accompanying note 38, *supra*.

[52]Instinet Letter, *supra* note 44, at 6.

[53]Trans-Lux also argued that the only real effect of retransmission would be anticompetitive. It would allow one vendor to enter the field immediately with the advantage of avoiding certain development costs which other vendors have already incurred. *See* 1978 Trans-Lux Letter, *supra* note 43, at 4; text accompanying notes 31-32 *supra*, and note 94-100, *infra*.

[54]1979 CTA Letter, *supra* note 43, at 6-7 (footnote omitted).

networks.[55] In addition, the CTA seemed to suggest that because most vendors would concentrate their marketing efforts on low cost, urban and eastern areas, the particular revenues lost from the networks would tend to be those providing a geographic subsidy to more remote users.[56]

If retransmission were allowed, CTA further argued that preservation of the ticker networks required it to collect its full charge, including the costs of Western Union circuitry, from vendors' subscribers because the existence of lower charges to subscribers to retransmission services would create a disincentive to using the ticker networks.[57] While Quotron and Reuters did not object to a Subscriber Charge Condition, they argued that the charge should be reduced to reflect cost savings to CTA resulting from vendors providing distribution services previously provided by CTA.[58]

2. *Commission Response*

Sections 11A(a)(1)(C)(iii) and 11A(c)(1)(D) of the Act set forth as an objective of the national market system that transaction information should be made available to brokers, dealers and investors. In addition, Section 11A(c)(1)(B) of the Act specifically authorizes the Commission "to assure the prompt, accurate, reliable, and fair. . .distribution" of transaction information. The Act also contains broad, overriding statutory mandates to facilitate the establishment of a national market system with due regard for the necessity and propriety of any burdens on competition.[59]

In balancing these goals of the Act and the often conflicting views of commentators as to whether the purposes of the Act are furthered or impaired by the retransmission prohibition, the Commission has concluded that the prohibition unnecessarily inhibits competition among vendors in the distribution and display of transaction information without offsetting benefits which are in furtherance of the purposes of the Act.[60] The prohibition inhibits entry into the field by requiring vendors to maintain decentralized processing capabilities at each ticker display site and inhibits innovation by effectively precluding innovative display formats and more

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[55]The CTA also argued that, if it is permitted to collect the Subscriber Charge from customers of its competitors, it would no longer be acting as a neutral processor of information as contemplated by the Act. 1979 CTA Letter, *supra* note 43, at 34 n.28. While the Commission understands that the Act requires the Commission to ensure that all exclusive processors, such as the CTA, act on a neutral basis, *see* Sections 11A(b)(3), 11A(c)(1)(B) and 11A(c)(1)(C) of the Act, the Commission does not believe such neutrality should prevent emerging competition which does not threaten the goals of the Act that neutrality was intended to further.

The CTA further argued that even if it is capable of collecting the Subscriber Charge, the only result would be that broker-dealers will pay more for transaction information because "competitive pressures" will force broker-dealers to subscribe to retransmitted data even though the data will only provide "minor" improvements over the information presently available. 1979 CTA Letter, *supra* note 43, at 9, n.9 cont. at 10. Even assuming that transmission services will increase total costs to the securities industry, the Commission is satisfied, at present, that, if broker-dealers are willing to subscribe to retransmission services, competitive pressures will ensure that vendor charges reasonably reflect the value of the services provided.

[56]*See* 1979 CTA Letter, *supra* note 43, at 7 n.7. *See also* 1976 CTA Letter, *supra* note 29, at 14. CTA further argued that "there is no assurance that vendors would provide retransmission services except as part of a costly package including interrogation services." 1979 CTA Letter, *supra* note 43, at 15-16. *See id.* at 15-17, 29 n.26. *See* note 62, *infra*.

[57]*See* 1979 CTA Letter, *supra* note 43, at 4 n.5.

[58]*See* Quotron Letter, *supra* note 44, at 4, 1978 Reuters Letter, *supra* note 44, 3-4.

[59]*See* Sections 11A(a)(2) and 23(a) of the Act.

[60]*See* Transactions Reports Release, *supra* note 7, at 30, 43 FR at 50610-11.

timely display of transaction information.[61] However, the Commission also continues to believe that the ticker networks presently provide valuable services to the investment community and should be preserved because the networks permit brokers, dealers and investors to obtain current transaction information at reasonable prices, regardless of geographic location.[62] Therefore, while the Commission believes that the retransmission prohibition should be eliminated, it has also concluded that the Subscriber Charge Condition should be retained in order to ensure the continued existence of the networks.

As adopted, the Rule should encourage the prompt distribution of transaction information by authorizing vendors to employ existing high speed distribution systems and by providing a competitive incentive to innovate further in distribution techniques. At the same time, the Subscriber Charge Condition in the Rule permitting the CTA to continue to levy charges on retransmission subscribers should reduce or eliminate the concerns raised by the commentators that the ticker networks might be destroyed. Rather, that Condition should allow the ticker networks to provide fair and widespread distribution of transaction information at a reasonable cost to brokers, dealers and investors no matter where they are located. While the Commission understands the concern expressed by the CTA tha vendor subscribers receiving retransmitted moving ticker displays might refuse to pay CTA charges equal to those imposed on subscribers to the ticker networks, the Commission has no basis to conclude that such an event would necessarily occur. Moreover, even if ticker network revenues were to decline as a result of either differential charges (as between subscribers receiving a retransmitted ticker and a CTA generated ticker) or as a result of loss of ticker subscribers, the Commission believes the CTA would be able to maintain the ticker networks because of resultant cost reductions. Finally, if retransmission were to threaten the existence of the ticker networks, the Commission would consider appropriate regulatory responses at that time.

With respect to the concern of certain commentators that, if retransmission were to result in cost savings to the CTA, vendor subscribers should pay a reduced fee to the CTA which reflects those cost savings, the Commission believes it is premature to reach any conclusion at this time. Implementation of the Subscriber Charge Condition will require the participants in the CTA to agree upon and file an amendment to the CTA Plan.[63] Such an amendment would be considered under the procedures prescribed by the Rule and would provide an opportunity for all interested parties to comment on the specific amendment in light of the Rule's adoption.

B. *Sychronization Condition*

1. *Comments*

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[61]For example, if a vendor sought to create a new type of display format for use by the vendor's subscribers, the vendor could not reformat the transaction information received over the high speed data stream and then retransmit the reformatted data to the vendor's subscribers. Instead, the vendor (and by implication the vendor's subscribers) would have to incur the expense of making each one of the vendor's display terminals capable of reformatting incoming transaction information over the low speed ticker networks.

[62]See Transactions Reports Release, *supra* note 7, at 31, 43 FR at 50611. Preservation of the ticker networks means that subscribers will not be forced to accept a "costly package" of services from a retransmission vendor. *See* note 56, *supra*.

In finding that the ticker networks should be preserved, the Commission is not, as suggested by one commentator (*see* Quotron Letter, *supra* note 44, at 3), seeking to preserve the CTA networks *per se*. Rather the Commission is simply recognizing that at present ticker networks are the primary method of ensuring widespread distribution of transaction information at a nominal fee. Indeed, the Commission notes that virtually all of the benefits cited by the CTA, *see, e.g.*, text accompanying notes 49-51, *supra*, as being unique to the ticker networks are also provided by vendors over their communications systems to users of interrogation devices. In the future, transaction information distribution systems which supplement or replace the ticker networks may evolve.

[63]The CTA Plan provides that "[a]ny additions, deletions or modifications in any. . . charges. . . shall be established by amendment to the Plan. . . ." CTA Plan, *supra* note 9, § XI(c), as amended May 1976, at 20. *E.g.*, Securities Exchange Act Release No. 15253 (October 20, 1978), 43 FR 50520 (publishing for comment CTA Plan amendments regarding, among other matters, certain charges).

Rule 11Aa3-1(e)(2), as proposed, would have allowed an exchange or association, by means of an effective transaction reporting plan, to condition retransmission upon an undertaking by vendors to ensure that subscribers receive transaction information at substantially the same display rate (*i.e.*, at so many transactions or characters per second) as subscribers to the ticker networks.[64] In commenting on this provision, Trans-Lux argued that it is an important objective of the Act that "[a]ll subscribers receive identical data, identically sequenced, at the identical time."[65] The CTA concurred, noting "[a] potential ambiguity" in the Synchronization Condition,[66] which refers to display of transaction reports at the "same rate," not the "same time," and might therefore "be read to require mere synchronization of the frequency at which any transaction reports appear. . .without regard to whether any such report relates to the same transaction report being displayed at the same time by any other [vendor] system. . . ."[67] The CTA argued that a more stringent requirement, display of transaction information at the same time, "is essential to [the Condition's] objective"[68] because otherwise "a retransmission service could display a report of a particular transaction at a time significantly earlier than that at which the same report is displayed by the comparable CTA moving ticker."[69] The CTA further argued that the more stringent requirement should include a "performance standard" which would require "the simultaneous appearance of price changes on all moving tickers."[70] The CTA believed that vendor compliance with such a performance standard and the CTA surveillance of that compliance would be technically and economically difficult[71] unless retransmission were limited to the low speed data streams.[72] Moreover, the CTA argued that limiting retransmission to the lowspeed data streams would not destroy the benefits of allowing retransmission, notably increasing "the arena for vendor competition,"[73] and ensuring that "each investor. . .[is on] an equal footing with respect to this fundamental type of information"[74] which provides investors with an important "feel for the market."[75]

In contrast to the Trans-Lux and the CTA positions, Instinet, Quotron and Reuters argued that even the less stringent Sychronization Condition proposed by the Commission (*i.e.*, that transaction information be displayed at substantially the same rate) imposes additional costs on vendors which would discourage vendor entry and innovation with respect to distribution of transaction information and would eliminate some of the benefits of retransmission.[76]

Instinet argued that

> [t]he. . .objective of disclosure must be to disseminate [transaction information] just as

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[64]See text accompanying notes 40-41 *supra*.

[65]1978 Trans-Lux Letter, *supra* note 44, at 5. *See* 1979 CTA Letter, *supra* note 43, at 23-34, Appendix to 1979 CTA Letter, *id.*, ("1979 CTA Letter Appendix"), at 8-10.

[66]1979 CTA Letter, *supra* note 43, at 5 n.6.

[67]1979 CTA Letter Appendix, *supra* note 65, at 8 (emphasis deleted).

[68]*Id.*

[69]*Id.* at 9.

[70]1979 CTA Letter Appendix, *supra* note 65, at 29.

[71]Id. at 29-31.

[72]*Id.* at 31-32.

[73]*Id.* at 33.

[74]*Id.* at 29.

[75]*Id.* at 28. The CTA further argued that even though subscribers to interrogation devices supplied by the high speed data stream can obtain the same information more quickly than subscribers to the ticker networks, this disparity "does not render the display controversy moot" because a ticker provides a "feel for the market." Moreover, the CTA argued that the availability of interrogation services "lessens the need for more rapid display" of transaction information on tickers and "reinforces the need to preserve the [ticker networks']. . . contribution towards market information equality. . . ." *Id.* at 28 n.25.

[76]Instinet Letter, *supra* note 44, at 5-10; Quotron Letter, *supra* note 44, at 2-3; 1978 Reuters Letter, *supra* note 44, at 7-9.

rapidly and completely[77] as possible.

. . . . . .

The spur of competition among vendors will achieve that objective. Slowing the reporting pace of vendors to the low speed pace. . .will achieve the opposite.[78]

Reuters argued that

> [i]n effect, requiring any vendor to retransmit transaction reports at the same rate as the CTA ticker networks is like making the slowest means of retransmission, Western Union circuitry, the standard to which all vendors must slow down their display of [transaction] information. Such a result will foster stagnation among vendors with respect to the development of communicatioins facilities designed to quicken the development of that system and will eliminate a significant potential area of competition among vendors.[79]

Quotron argued that

> [i]t may be argued by some, that to create a display of moving ticker faster than the current displays would produce at best an unreadable blur. [80] It seems to us that this is a specious argument on two counts: 1) . . .A moving ticker display, posting one more transaction per second than the current ticker during a busy period will have significantly less latency the longer the duration of the busy period. . .[and] 2). . .the regulatory process should not presume the outcome of technical innovation. If. . . [a faster but readable display] cannot be achieved today, the rule should be revised to permit the possibility so that there be a motive for vendors to compete on the basis of improved service.[81]

2. *Commission Response*

The Commission proposed the Sychronization Condition in order to provide some minimal degree of synchronization in the presentation of transaction information on moving ticker displays, while still permitting vendors to utilize the advantages of high speed transmissions in terms of the content of their displays (*i.e.*, permitting more complete data to accompany each transaction report) and the timeliness of data presentations on selective moving tickers.[82] The Commission had considered a more stringent standard, as proposed by the CTA,[83] but such a standard, as CTA recognized, is technically and economically difficult to satisfy, involves difficulties in monitoring compliance and precludes the principal benefits of retransmission. After consideration of the commentary, the Commission has determined that no Synchronization Condition should be included in the Rule. Neither the Condition as proposed nor the more stringent version suggested by the CTA can ensure that all vendor subscribers receive transaction information at the same time. Subscribers to interrogation devices, which receive transaction information over the high speed data stream, receive transaction information in certain securities more quickly than over the ticker networks and that information is more complete than that furnished subscribers to the ticker networks.

On balance, the Commission does not believe that the "feel for the market," if any, provided by the ticker networks requires that the distribution of transaction information be retarded simply to ensure simultaneous receipt of transaction information available over a moving ticker, as opposed to other more timely sources. Moreover, in light of the importance of this information to brokers, dealers and investors, the Commission does not believe it should impose regulatory restraints which preclude the dissemination of that information as promptly as possible.

C. *Accuracy and Reliability Condition*

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[77]Instinet's reference to the completeness of transaction information is apparently to the fact that during periods of active trading various information is deleted from the low speed data streams. The high speed data stream, which vendors might use for their retransmission services, does not involve such deletions. *See* note 21, *supra*, and 1979 CTA Letter, *supra* note 43, at 26-28.

[78]Instinet Letter, *supra* note 44, 9, 10.

[79]1978 Reuters Letter, *supra* note 44, at 9.

[80]See note 21, *supra*.

[81]Quotron Letter, *supra* note 44, at 3.

[82]See note 75, *supra*.

[83]See text accompanying notes 68-75, *supra*.

1. *Comments*

In various comment letters prior to the Transactions Reports Release, the CTA had expressed some concern that vendors might not adequately ensure the accuracy and reliability of ticker service if allowed to retransmit transaction information.[84] In response, the Commission proposed for comment the Accuracy and Reliability Condition in Rule 11Aa3-1(f)(3) which would have permitted a transaction reporting plan to condition retransmission on vendors undertaking to ensure the accuracy and reliability of their dissemination systems.

In commenting on this provision of the rule, Instinet argued that competitive pressures alone should ensure adequate accuracy and reliability.[85] Instinet noted that "[i]n today's competitive securities industry, no broker, dealer or institutional investor will long make use of and pay for a vendor device which does not supply an accurate and reliable display of" transaction information.[86] To the contrary, in support of the Accuracy and Reliability Condition, the CTA went so far as to suggest that

> confining retransmission to the low speed lines and prohibiting [vendors from combining their high and low speed services into a single information feed]. .might be appropriate methods to achieve the reliability of vendor displays contemplated by the [Accuracy and R]eliability [C]ondition.[87]

2. *Commission Response*

The Commission understands that, at the present time, the CTA has not imposed any formal or informal accuracy or reliability standards on vendors in conection with either their interrogation device services or their moving ticker displays. To the contrary, the CTA has relied upon competitive pressures to ensure minimum levels of accuracy and reliability in the dissemination and display of market information.[88] Absent some showing of a unique need for accuracy and reliability standards with respect to retransmission for ticker displays, the Commission does not perceive any reason to permit the imposition of an Accuracy and Reliability Condition only on that type of service.

Moreover, given the apparent hesitancy of the CTA to impose accuracy and reliability standards on vendors providing information for use on interrogation devices, it would not appear that such regulation is necessary at this time. Accordingly, the Commission has eliminated the Accuracy and Reliability Condition.

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[84]*See, e.g.*, 1976 CTA Letter, *supra* note 29, at 17-18; 1973 Amex/NYSE Letter, *supra* note 48, at 8-9.

[85]Instinet Letter, *supra* note 44, at 10-11.

[86]*Id.* at 11.

[87]1979 CTA Letter, *supra* note 43, 20 n.15. *See id.* at 5, 19-20. The CTA noted that

> [i]n any event, the need for reliability can be expected to lead CTA to insist that vendors upgrade their facilities in order to provided the requisite excess capacity needed to avoid the kind of delays initially experienced by some vendors in connection with the dissemination of quotation information.

Id. at 20 n. 15.

[88]For example, soon after the adoption of Rule 11Ac1-1, certain vendors experienced delays in providing quotation information to their subscribers. However, pressures from vendor subscribers, the CTA, the Consolidated Quotation Plan participants and the Commission were apparently sufficient to cause these vendors to eliminate many of those problems within a very short time period.

In adopting the Rule without this Condition, the Commission is not suggesting that accuracy and reliability, which are explicit goals of the Act,[89] are unimportant. Rather, the Commission is deferring a decision on the necessity of such a Condition pending the submission of an actual plan amendment and a clear demonstration of a need for such standards.[90] If, in the future, the CTA determines that the level of accuracy and reliability is not sufficient to meet the purposes of the Act, the Commission is prepared to reconsider an Accuracy and Reliability Condition and an appropriate amendment to the CTA Plan. In addition, the Commission will continue to monitor vendor accuracy and reliability and is prepared to take appropriate regulatory actions to ensure achievement of the goals of the Act.

D. *Other Comments on Retransmission*

1. *Device Only Vendors*

One commentator expressed concern that, if the ticker networks are destroyed as a result of retransmission, those vendors which do not maintain any distribution system and who currently rely on the CTA to disseminate information to their display sites would not be able to obtain transaction information on reasonable terms.[91] In view of the Subscriber Charge Condition, the Commission does not believe that there is any substantial likelihood that the ticker networks would be destroyed as a result of retransmission. However, the Commission remains concerned that vendors providing only display services have a means of obtaining transaction information at potential display sites. While the CTA networks currently serve that function, in the event that the ticker networks are not available at some time in the future, the Commission expects vendors which maintain distribution systems to make available transaction information to other vendors on commercially reasonable terms. In the event that any vendor providing only display services finds it impossible to obtain information from other vendors on reasonable terms, the Commission will be prepared to exercise its authority under the Act to correct this situation.

2. *Discrimination Among Securities*

One commentator suggested that retransmitting vendors might seek to delete inactive stocks from their ticker displays.[92] The Commission shares this concern. However, given the current environment, in which vendors make available transaction information on all reported securities on their interrogation devices, the Commission sees no reason why vendors would choose to delete inactive stocks from a retransmitted ticker. Moreover, if this were to occur, the Commission would expect to take prompt action to correct the situation.[93]

3. *Date on which Retransmission Allowed*

One commentator argued that the Commission should delay the effective date of permitting retransmission for three years because not all vendors are presently capable of retransmission techniques and therefore certain vendors would be at a competitive advantage with respect to other vendors who have developed their systems to permit retransmission.[94] The Commission has had the prohibition on retransmission under active consideration since August 14, 1972,[95] and solicited

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[89]Section 11A(c)(1)(B).

[90]If the CTA determines to propose accuracy and reliability standards on vendors, the Commission would expect a submission describing, among other matters, (1) the reasonableness of such standards, (2) the ability of vendors to comply with such procedures, (3) the competitive implications of such conditions and (4) the consistency of such conditions with the purposes of the Act.

[91]1978 Trans-Lux Letter, *supra* note 44, at 7. *See* 1979 CTA Letter, *supra* note 43, at 18.

[92]1979 CTA Letter, *supra* note 43, at 14-15.

[93]It should be noted, that current vendor display devices permit subscribers to the CTA tickets to delete information with respect to particular securities. These so-called selective tickers do not raise the same concerns identified by CTA because vendor subscribers (not the vendor itself) make this selection.

[94]1978 Trans-Lux Letter, *supra* note 43, at 7.

[95]See Securities Exchange Act Release No. 9731 (August 14, 1972), 37 FR 19148. *Cf.* Letter from Richard Brandt, President, Trans-Lux, to SEC, dated May 8, 1972 ("1972 Trans-Lux Letter"), at 5-7, contained in File No. S7-433.

comment on the issue at that time and in 1976 in connection with the Reuters' request.[96] More recently, in its January Statement, the Commission indicated that it would be considering the retransmission issue during 1978[97] and on October 20, 1978,[98] in the Transactions Reports Release, the Commission published its current proposal. In light of this protracted consideration of the merits of retransmission, the Commission does not believe that any vendor has been unfairly disadvantaged. However, to provide vendors with some lead time to prepare the technical means to retransmit information, the Commission has delayed the effective date of permitting retransmission until July 5, 1980.

E. *Nationwide Availability and Uniform Pricing*

1. *Comments*

In reformulating the provisions of Rule 17a-15 into proposed Rule 11Aa3-1, the Commission retained the substantive provisions of paragraph (f) of Rule 17a-15 pursuant to which any exchange or association, jointly or separately, may itself impose uniform fees for receipt of transaction information and may "require any vendor which distributes or displays transaction information to make the information it distributes or displays available to all qualified subscribers throughout the continental United States and to impose uniform charges on its subscribers (irrespective of geographic location)."[99] One commentator, Reuters, objected to the retention of that portion of paragraph (f) which would permit the CTA to require vendors to make available their services throughout the continental United States because it, in effect, would in their view preclude the use of distribution systems incapable of nationwide service. In particular, Reuters noted that its Monitor system relies on the use of coaxial cable and/or microwave channels (broad band communications) to distribute its signal and that such broad band communications facilities are available only in limited areas of the United States. Therefore, Reuters argued that the nationwide availability provision of the Rule, if implemented by the CTA, would, as a practical matter, preclude Reuters' use of the Monitor system.[100]

2. *Commission Response*

The nationwide availability provision contained in Rule 11Aa3-1(f)(2) is substantially identical to a similar provision contained in paragraph (f)(2) of Rule 17a-15. However, several factors arising since adoption of Rule 17a-15, in addition to Reuters' comment, indicate that the provision as well as the corollary uniform pricing provision should no longer be retained.[101]

As initially proposed in 1972, Rule 17a-15 did not include nationwide availability or uniform pricing provisions. However, in response to the proposal of Rule 17a-15, the Commission received commentary and a recommendation of the Commission's Advisory Committee on Market Disclosure suggesting, among other matters, that nationwide uniformity of pricing was desirable.[102] In light of these comments and the considerable uncertainty at that time about who would distribute transaction information and in what manner, the Commission published a revised version of Rule 17a-15 which included the nationwide availability and uniform pricing provisions. The revised version of Rule 17a-15 contained those provisions "to make clear that the imposition by...vendors of reasonable, uniform

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[96]See text accompanying notes 25-36, *supra*.

[97]January Statement, *supra* note 5, at 44, 43 FR at 4360. *Cf.* Letter from Richard Brandt, President, Trans-Lux to George A. Fitzsimmons, Secretary, SEC, dated March 27, 1978, contained in File No. S7-735-A.

[98]See Transactions Reports Release, *supra* note 7.

[99]Rule 17a-15(f)(2), Proposed Rule 11Aa3-1(f)(2).

[100]See 1978 Reuters Letter, *supra* note 43, at 4-5; 1979 Reuters Letter, *supra* note 43, at 1. ("Reuters does not, and never has, intended to confine its broadband services to the New York City area, and in fact, is already paying substantial sums of money for [s]atellite capacity capable of transmitting these services to markets all across the country.")

[101]The nationwide availability and uniform pricing provisions are corollaries because each is necessary to ensure the efficacy of the other.

[102]*E.g.*, 1972 Trans-Lux Letter, *supra* note 95, at 4. See Advisory Committee on Market Disclosure, *Report to the SEC on a Composite Transaction Reporting System* 4 (July 17, 1972), and Securities Exchange Act Release No. 9731, at 2, (August 14, 1972), 37 FR 19148, 19148.

charges for distribution of...[transaction] information...will be permitted and that vendors may be required to make the information they distribute available throughout the continental United States to all qualified subscribers."[103]

Notwithstanding this authority, the CTA did not then and has not since imposed uniform pricing and nationwide availability requirements on vendors. Although the CTA and certain vendors have apparently created geographically uniform rates for certain of their services, installation and maintenance charges in connection with these services may vary in differing locations and other services are directly priced in a non-uniform manner. Similarly, while the Commission understands that the CTA and certain vendors currently make available transaction information substantially throughout the United States,[104] the CTA and other vendors have indicated that they will not service areas which are so remote that telephonic or telegraphic linkages are not available, and certain vendors have indicated that, even if lines are available, they may not furnish service if a subscriber is too remote from maintenance centers.

Notwithstanding the current lack of absolutely uniform pricing and nationwide availability, the Commission has no basis to believe that there is inadequate dissemination of transaction information throughout the continental United States or that the more remotely distributed services are at prices which create significant disincentives to remote use. To the contrary, the Commission understands that competitive pressures and the existence of the ticker networks ensure that this essential market information is available throughout the United States on commercially reasonable terms. Thus, the Commission questions whether it is necessary to retain the nationwide availability and uniform pricing provisions of the Rule. In addition, while it may be argued that the provisions of paragraph (f)(2) contemplate that the Commission would approve enabling provisions in the CTA Plan without additional inquiry, the Commission believes that such action on its part would not be appropriate, in light of the purposes of the Act, particularly the goals of the 1975 Amendments, including the competitive implications of such an amendment.[105]

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[103]*See* Securities Exchange Act Release No. 9731, at 2, (August 14, 1972), 37 FR 19148, 19148.

[104]The CTA provides service to approximately 1,081 cities throughout the United States. 1979 CTA Letter, *supra* note 43, at 7 n.7.

[105]*Cf. Bradford Nat'l Clearing Corp. v. SEC*, 509 F.2d 1085 (D.C. Cir. 1978), where the Court "remanded for further exploration" a Commission decision to conditionally register the National Securities Clearing Corporation ("NSCC") despite its use of a pricing structure, geographic price mutualization ("GPM"), which imposed charges in a manner similar to uniform pricing.

The *Bradford* Court specifically noted, 509 F.2d at 1099 n.22, that

[GPM] achieves the objective of expanding the securities market into a geographically nationalized operation, rather than one dominated by New York. This objective is served by allowing brokers outside New York to "compete" more effectively with those in side New York. Whether it also enhances competition in the stricter economic sense—*i.e.*, whether it allocates resources more efficiently—is a different question. It is conceivable that concentrating the securities market in one city, albeit to the disadvantage of securities operatives located elsewhere, allocates resources most efficiently. Such a situation may well have existed prior to the advent of modern communication and data processing technology, and may even continue today. If so, [GPM] is actually anticompetitive and essentially subsidizes regional brokers at the expense of those located in New York.

Pursuant to the direction of the Court in *Bradford*, the Commission has solicited comment on the issue of NSCC's use of GPM, among other matters. *See* Securities Exchange Act Release Nos. 15640 and 15882 (March 14 and May 30, 1979), 44 FR 17838 and 33198. The Commission's adoption of Rule 11Aa3-1 and the deletion of paragraph (f)(2) thereof should not be construed as indicating the Commission's ultimate position on the resolution of NSCC's use of GPM or any other issues in those proceedings.

In view of these concerns, the Commission has determined to remove the nationwide availability and uniform pricing provisions from paragraph (f)(2) of the Rule. The Commission emphasizes, however, that the elimination of these provisions is not meant to imply that the Commission would disapprove CTA Plan amendments requiring uniform pricing or nationwide availability. Rather, the Commission would review such a proposed amendment in light of the facts presented at that time and approve or disapprove such an amendment in accordance with the standards of the Act and the provisions of the Rule.

III. *Technical Comments*

In addition to the foregoing, the Commission has received a number of comments addressing technical aspects of the Rule.

A. The CTA noted that paragraph (b)(5) of Rule 11Aa3-1 as proposed provided that "[a]ny person or persons" may file with the Commission an amendment to an effective transaction reporting plan. The CTA objected to this language because it could be interpreted to permit one participant in the CTA Plan to propose an amendment to the Plan by filing the proposed amendment with the Commission notwithstanding detailed voting procedures in the Plan governing the manner in which amendments to the Plan must be approved.[106] The Rule has been changed to require "[a] person or persons" proposing an amendment to an effective transaction reporting plan to do so "in accordance with the terms of such plan...."[107]

B. Another commentator argued that the procedure for Commission consideration of transaction reporting plans and proposed amendments to an effective plan should more closely parallel the procedures set forth in Section 19 of the Act governing Commission review of proposed rule changes by self-regulatory organizations.[108] Specifically, this commentator suggested that the Rule should establish time limits for the Commission's consideration of plans and amendments[109] and provide that a technical amendment may become effective on filing with the Commission subject to the Commission's right summarily to abrogate such an amendment.[110]

The Commission has determined, at this time, that it should not specify time periods in Rule 11Aa3-1 which may have the effect of unduly restricting the Commission in its consideration of plans or amendments filed under the Rule and commentary thereon because of its direct responsibilities to facilitate the establishment of a national market system and the evolving nature of such a system.

Similarly, the Commission does not believe it is appropriate to allow plans or amendments to become effective upon their filing with the Commission subject to later abrogation. However, Rule 11Aa3-1(c)(3) does provide that certain plan amendments may become effective, on a temporary basis, upon their publication by the Commission. While these procedures provide the Commission with a greater degree of flexibility in dealing with transaction reporting plans, the Commission expects to exercise this responsibility in a reasonable manner, consistent with its mandate under Section 11A of the Act.[111] Moreover, the Commission has recently proposed Rule 11Aa3-2 under the Act to establish generic procedures for filing and amending a national market system plan.[112] The Commission has explicitly requested comment on this issue in the release proposing that rule and believes it would be more appropriate to consider these issues in the context of that proceeding.

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[106]1979 CTA Letter Appendix, *supra* note 43, at 5-6. *See* CTA Plan, *supra* note 9, §§ III(b) and III(c), at 4-5.

[107]Rule 11Aa3-1(b)(5). *See also* Rule 11Aa3-2 Release, *supra* note 16.

[108] *See* CBOE Letter, *supra* note 45, at 3.

[109]*Cf.* Section 19(b) of the Act.

[110]*See* CBOE Letter, *supra* note 45, 3-4.

[111]CBOE also argued that a plan amendment could be "effectively disapproved" by the Commission's failure to act and, therefore, constitute a "denial of due process." *Id.* at 3. Even assuming the Commission would pursue such a course of inaction, this conduct would be subject to normal judicial review.

[112]*See* Rule 11Aa3-2 Release, *supra* note 16. *See also* Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 [proposing amendments to and revisions of Rule 19b-4, 17 CFR § 240.19b-4, which governs, among other matters self-regulatory organizations' proposed rule change under Section 19(b)].

C. One commentator suggested that the appeal procedures pursuant to the Rule should be no "broader than those set forth" in Sections 11A(b)(5) and 19(d) of the Act.[113] The appeals procedures set forth in the Rule were designed to supplement the provisions of Sections 11A(b)(5) and 19(d) of the Act, not to be redundant with them. These sections of the Act govern appeals resulting from certain types of actions by securities information processors and self-regulatory organizations. There are other types of action which are not expressly governed by the provisions of the Act over which the Commission believes it appropriate to exercise its adjudicative authority. These types of action would be included within the appeals procedures of the Rule. Therefore, the provisions of paragraph (g) of the Rule have been retained.[114]

D. One commentator recommended that vendors should be permitted to select whatever display format "they choose, rather than the CTA-approved format...."[115] The Rule does not specifically permit CTA or any other transaction reporting association to approve the display format of a vendor. However, the CTA pursuant to its individual contracts with vendors has retained that right. The CTA has indicated that it has reserved this right in order to prevent vendors from implementing misleading display formats or providing displays in violation of the requirements of Rule 17a-15. To the Commission's knowledge, the CTA has never disapproved a proposed vendor display format.[116] The Commission believes that, in light of the appeal provisions contained in Section 11A(b)(5) of the Act and the Rule, and the apparent limited extent to which the CTA has exercised its contractual authority, no Commission action is necessary at this time.

E. In addition, the Commission has made certain drafting changes to the Rule:

1. The definition of the term "transaction report" has been limited to "one or more round lots" to make clear that odd-lot broker-dealers need not report their transactions, a similar conforming amendment also has been made in Rule 11Ac1-1.[117]

2. The definitions of the terms "interrogation device," "moving ticker" and "vendor" have been modified to refer to "last sale data" as well as "transaction reports" to make clear that those terms include interrogation devices and tickers which display, and vendors which disseminate, partial reports of transactions as well as more complete reports.[118]

3. A new term, "listed equity security," has been added to the Rule to eliminate a suggested circularity in the definition of the term "reported security."[119]

4. The term "vendor" has replaced the term "securities information processor" in paragraph (e) of the Rule because vendors were the only parties directly affected by paragraph (e).[120]

5. The definition of "vendor" has been conformed with Section 11A(a)(1)(C)(iii) of the Act[121] to include investors.[122] A similar conforming change has been made in Rule 11Ac1-1.

6. The use of the word "execute" in the Rule as adopted has been substituted for the use of the word

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[113]1979 CTA Letter Appendix, *supra* note 65, at 10-11.

[114]Furthermore, these types of issues would be better addressed in the generic Commission proceedings to consider the appeal procedures appropriate for a national market system plan. *See* Rule 11Aa3-2 Release, *supra* note 16.

[115]Instinet Letter, *supra* note 44, at 11.

[116]Transactions Reports Release, *supra* note 7, at 31 n.58, 43 FR at 50611 n.58.

[117]Rule 11Aa3-1(a)(1). *See* Kelley Letter, *supra* note 46, at 1-2.

[118]Rule 11Aa3-1(a)(9), (a)(10) and (a)(12). *See* 1979 CTA Letter Appendix, *supra* note 65, at 1-2.

[119]Rule 11Aa3-1(a)(5). *See* 1979 CTA Letter Appendix, *supra* note 65, at 2.

[120]Rule 11Aa3-1(e). *See* 1979 CTA Letter Appendix, *supra* note 65, at 9-10.

[121]Section 11A(a)(1)(C)(iii) states that it is important to ensure "the availability to brokers, dealers, and investors of information with respect to transactions in securities."

[122]Rule 11Aa3-1(a)(12). *See* CTA Letter, *supra* note 43, at 26-27.

"effect" in the Rule as proposed to avoid the implication that the Commission intended distinctions between these words, drawn in different contexts,[123] to apply to this Rule.[124]

7. The Commission has changed paragraphs (b)(4)(ii) and (iii) of the Rule to make clear the Commission's intent that paragraph (b)(4)(ii) refer to intra-plan coordination and paragraph (b)(4)(iii) refer to coordination among multiple plans.[125]

8. Another suggestion was that the language in paragraphs (d)(1)(i) and (ii) of the Rule apparently did not recognize that particular types of transactions are excluded from the reporting provisions of the CTA Plan.[126] Rather than trying to define all the possible transactions that might be excluded by an effective transaction reporting plan, the Commission has changed those paragraphs to recognize that a transaction reporting plan, approved by the Commission, may exclude certain types of transactions from its reporting provisions.[127]

9. One commentator also argued that the term "make available" as used in the Rule might be construed to require making publicly available various private communications (*e.g.*, confirmations to customers of sales or purchases), and that use of the term in the Rule was inconsistent with its use in Rule 11Ac1-1.[128] To eliminate such possible confusion in the Rule and for consistency with Rule 11Ac1-1, the use of the term "make available" has been conformed throughout the Rule with the use in Rule 11Ac1-1.[129]

10. One commentator[130] requested further Commission definition of the terms "selective ticker"[131] and "moving ticker"[132] and another requested further definition of the term "market-minder."[133] These commentators were apparently concerned about the manner by which charges might be imposed, pursuant to a transaction reporting plan, for use of such devices under the portion of the Rule which allows imposition of

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[123]See Section 11(a) of the Act; Rule 11a2-2(T) [17 CFR § 240.11A2-2(T)]; Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542.

[124]CTA Letter Appendix, *supra* note 65, at 3-4.

[125]Rule 11Aa3-1(b)(4)(ii) and (b)(4)(iii). 1979 CTA Letter Appendix, *supra* note 65, at 4-5.

[126]1979 CTA Letter Appendix, *supra* note 65, at 6-7. *See* CTA Plan, *supra* note 9, § V(c), at 14-15. *See also* Letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary SEC, dated January 12, 1979 ("NYSE Letter"), at 25-26, 28 contained in File No. S7-759.

[127]Rule 11Aa3-1(d)(i) and (d)(ii).

[128]1979 CTA Letter Appendix, at *supra* note 65, 7-8. *See* Rule 11Ac1-1(a)(7) [17 CFR § 240.11Ac1-1 (a)(7)] which states that

> [t]he term "make available," when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide curcuit connections at the premises of the exchange or association supplying such data, or at a common location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

See also NYSE Letter, *supra* note 126, at 28.

[129]A similar charge has been made in the use of the term "disseminate."

[130]*See Instinet Letter, supra* note 44, at 5-6.

[131]*See, e.g.*, Transactions Reports Release, *supra* note 7, at 20 (*quoting* Securities Exchange Act Release No. 10671 (March 8, 1974), at 10, 39 FR 10034, 10035), 29 n.55, 30 n.56, 32 n.59, 43 FR at 50609, 50611 n.56, 50611 n. 59; Vendor Display Release, *supra* note 12, 15-16 (*citing* Securities Exchange Act Release No. 11317 (March 28, 1975), at 6, 40 FR 15461, 15466), 43 FR 50615, 50617; notes 21 and 93, *supra*.

[132]The term "moving ticker" is defined in the Rule and used throughout the Transactions Reports Release. Rule 11Aa3-1(a)(10). *See, e.g.*, Transactions Reports Release, *supra* note 7, at 3, 21, 21 n.42, 22 n.46, 29 n.55, 43 FR at 50606, 50609, 50609 n.42, 50609 n.46, 50610 n.55. *See also* Sections 3(a)(2) and 3(a)(22)(A)(ii) of the Act; Proposed Rule 11Ac1-2(a)(1); Vendor Display Release, *supra* note 12, at 3, 18, 20, 54 n.71, 43 FR at 50615, 50617, 50618, 50623 n.71, NYSE Letter, *supra* note 126, at 27.

[133]1978 Trans-Lux Letter, *supra* note 44, at 7. *See, e.g.*, Proposed Rule 11Ac1-2(a)(18); Vendor Display Release, *supra* note 12, at 54 n. 71, 43 FR at 50623 n.71.

"charges for the distribution of transaction reports in moving tickers."[134]

The Commission has determined to provide such definitions. Rule 11Aa3-1(a)(10) defines a moving ticker as "any continuous real-time moving display of transaction reports or last sale data (other than a market minder) provided on an interrogation or other display device." Within the class of moving tickers, a "selective ticker" consists of a moving ticker which provides transaction information for only a limited number of securities and is not required to display at all times transaction information for all securities selected. In contrast to a moving ticker or selective ticker, Rule 11Aa3-1(a)(11) defines a market minder as

> any service provided by a vendor on an interrogation device or other display which (i) permits real-time monitoring, on a dynamic basis, of transaction reports or last sale data with respect to a particular security, and (ii) displays the most recent transaction report or last sale data with respect to that security until such report or data has been superseded or supplemented by the display of a new transaction report or last sale data reflecting the next reported transaction in that security.

While these definitions should provide guidance to the CTA and vendors in determining whether any particular service is a moving ticker or market minder, the Commission believes that the CTA should make the initial determination, subject to discretionary Commission review, of whether a particular device is, for example, a "moving ticker."[135] In reviewing any CTA determination, the Commission may consider, among other matters, customary usage of the term within the industry, the purposes of an effective transaction reporting plan, and the purposes of the Rule in using the term.[136]

IV. *Text of Amendments*[137]

Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising §240.17a-15 and redesignating it as §240.11Aa3-1 to read as follows:

§240.11Aa3-1 Dissemination of transaction reports

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[134]Rule 11Aa3-1(e).

[135]As the Commission stated in the Transactions Reports Release, if retransmission were permitted "vendors would be provided with improved competitive opportunities with respect to the provision of moving ticker displays by permitting increased communications flexibility and more varied ticker formats." Transactions Reports Release, *supra* note 7, at 31-32, 43 FR 50611 (footnote omitted).

[136]Thus, for example, the NYSE's factual observation NYSE Letter, *supra* note 126, at 27, that the numerals displayed on a cathode ray tube screen by some "moving tickers" do not actually move vertically or horizontally within the screen is not dispositive of whether the device is a moving ticker because the device would still perform the same function as other moving tickers. Similarly, the suggestion that a market minder capable of displaying more than 18 securities would constitute a moving ticker, 1978 Trans-Lux Letter, *supra* note 44, at 7, is a conclusion the Commission is not prepared to accept at this time. Rather, such questions should be left initially to the interested parties. However, it is clear, *see* Rule 11Aa3-1(a)(10) and (a)(11), that the terms "moving ticker" and "market minder" are mutually exclusive and that a selective ticker is a subset of the class of moving tickers. Thus, the definition of a moving ticker does set a limit on the scope of "charges for the distribution of transaction reports or last sale data in moving tickers." Rule 11Aa3-1(e).

[137]Because Rule 11Aa3-1 is substantially a restatement of Rule 17a-15, outstanding actions by the Commission pursuant to Rule 17a-15, *e.g.*, plan approvals, interpretations of Rule 17a-15 and exemptions from Rule 17a-15, remain effective, except to the extent particular provisions of Rule 11Aa3-1 directly alter the nature of prior Rule 17a-15, *e.g.* retransmission. Note 9 *supra;* Transactions Reports Release, *supra* note 7, at 2-3, 9, 35 n.68, 37 n. 75, 43 FR at 50607, 50611 n.68 and 50612 n.75; Securities Exchange Act Release No. 10851 (June 13, 1974), 39 FR 22194. *See* CBOE Letter, *supra* note 45, at 2-3. Thus, present transaction reporting plans appear to be in compliance with paragraph (b)(4) of the Rule. *See* 1979 CTA Letter Appendix, *supra* note 65, at 4-5.

and last sale data with respect to transactions in reported securities.

(a) *Definitions*. For purposes of this section:

(1) The term "transaction report" shall mean a report containing the price and volume associated with a transaction involving the purchase or sale of one or more round lots of a security ("transaction").

(2) The term "transaction reporting plan" shall mean any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.

(3) The term "effective transaction reporting plan" shall mean any transaction reporting plan approved by the Commission pursuant to this section.

(4) The term "reported security" shall mean any listed equity security or non-listed national market system security for which a transaction reporting plan with respect to transactions in such security is required to be filed pursuant to this section.

(5) The term "listed equity security" shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange").

(6) The term "non-listed national market system security" shall mean any security or class of securities which (i) is designated as qualified for trading in a national market system pursuant to Section 11A(a)(2) of the Act and the procedures established thereunder, and (ii) is not a listed equity security.

(7) The term "transaction reporting association" shall mean any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under paragraph (b) of this section.

(8) The term "plan processor" shall mean any exchange, national securities association ("association") or securities information processor acting as an exclusive processor with respect to any transaction reporting plan.

(9) The term "interrogation device" shall mean any securities information retrieval system capable of displaying transaction reports or last sale data, upon inquiry, on a current basis on a terminal or other device.

(10) The term "moving ticker" shall mean any continuous real-time moving display of transaction reports or last sale data (other than a market minder) provided on an interrogation or other display device.

(11) The term "market minder" shall mean any service provided by a vendor on an interrogation device or other display which (i) permits real-time monitoring, on a dynamic basis, of transaction reports or last sale data with respect to a particular security, and (ii) displays the most recent transaction report or last sale data with respect to that security until such report or data has been superseded or supplemented by the display of a new transaction report or last sale data reflecting the next reported transaction in that security.

(12) The term "vendor" shall mean any securities information processor engaged in the business of disseminating transaction reports or last sale data with respect to transactions in reported securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

(13) The term "last sale data" shall mean any price or volume data associated with a transaction.

(b) *Filing of transaction reporting plans.*

(1) Every exchange shall, with respect to transactions in listed equity securities executed through its facilities, and every association shall, with respect to transactions in listed equity securities executed by its members otherwise than on an exchange, file with the Commission a transaction reporting plan.

(2) Every broker or dealer who is not a member of an exchange or association and who executes transactions in any listed equity security (a "nonmember broker or dealer") shall file with the Commission a transaction reporting plan with respect to such transactions unless transaction reports with respect to such transactions are collected, processed, and made available by an exchange or association pursuant to an effective transaction reporting plan.

(3) All exchanges, associations, and nonmember brokers and dealers are authorized to act jointly in

filing a transaction reporting plan or any amendment thereto, or implementing or administering an effective transaction reporting plan.

(4) Every transaction reporting plan filed pursuant to this section shall include copies of all governing or constituent documents relating to any transaction reporting association or other entity which may be established to implement or administer the plan and shall specify, at a minimum:

(i) Reporting requirements with respect to transactions in listed equity securities for any broker or dealer subject to the plan;

(ii) The manner of collecting, processing, sequencing, making available and disseminating transaction reports and last sale data reported pursuant to such plan;

(iii) The manner such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from exchanges, associations, and nonmember brokers and dealers reported pursuant to any other effective transaction reporting plan;

(iv) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports;

(v) Any rules or procedures which may be adopted to ensure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner;

(vi) Specific terms of access to transaction reports made available or disseminated pursuant to the plan; and

(vii) That transaction reports or last sale data made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.

(5) Any person or persons who have filed a transaction reporting plan which has been approved by the Commission pursuant to this section may propose an amendment to such plan by filing, in accordance with the terms of such plan, the form of such proposed amendment with the Commission together with a statement of the purpose of, and the basis under the Act for, such amendment.

(c) *Effectiveness of transaction reporting plans.*

(1) The Commission shall publish notice of the filing of any transaction reporting plan, or any proposed amendment to any effective transaction reporting plan ("proposed amendment"), together with the terms of substance in the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments.

(2) No transaction reporting plan filed pursuant to this section, or amendment to an effective transaction reporting plan, shall become effective unless the Commission, having due regard for the purposes of the Act, including the public interest, the protection of investors, the maintenance of fair and orderly markets, and the need to remove impediments to, and perfect the mechanisms of, a national market system shall, after appropriate notice and opportunity for comment, by order approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate.

(3) Notwithstanding the provisions of paragraph (c)(2) of this section, a proposed amendment may be put into effect upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that (i) such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act, or (ii) the proposed amendment involves only technical or ministerial matters.

(d) *Prohibitions and reporting requirements.*

(1) No broker or dealer may execute any transaction in, or induce or attempt to induce the purchase or sale of, any reported security,

(i) On or through the facilities of an exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed on or through such exchange facilities; or

(ii) Otherwise than on an exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on an exchange by such broker or dealer.

(2) No exchange or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed through the facilities of such exchange except pursuant to an effective transaction reporting plan filed by such exchange (either individually or jointly with other persons).

(3) No association or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed by a member of such association otherwise than on an exchange except pursuant to an effective transaction reporting plan filed by such association (either individually or jointly with other persons).

(4) Every broker or dealer who is a member of an exchange or association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).

(e) *Retransmission of transaction reports or last sale data.* On and after July 5, 1980, notwithstanding any provision of any effective transaction reporting plan, no exchange or association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan; *Provided, however,* That an exchange or association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (f) of this section are collected.

(f) *Charges.* Nothing in this section shall preclude any exchange or association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.

(g) *Appeals.* The Commission may entertain appeals in connection with the operation of any effective transaction reporting plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective transaction reporting plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including but not limited to exchanges, associations, brokers, dealers, issuers, vendors, and other users of transaction reports or last sale data), filed within 30 days after such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing, and upon consideration of any proceedings conducted in connection with such action or failure to act and such other evidence as it deems relevant, determines that the action or failure to act is in accord with the applicable provisions of such plan and is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system, the Commission shall dismiss the proceeding. Otherwise, the Commission shall require such action with respect to the matter reviewed as the Commission deems appropriate in accordance with the public interest and the protection of investors and consistent with such plan, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(h) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, association, broker, dealer or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs., 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. §§78b, 78c, 78f, 78i, 78j, 78o, 78q and 78w); Sec. 15A, as added by sec. 1. Pub. L. No. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. §78-3); Sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. §78k-1).)

2. By amending paragraphs (a)(1) and (e)(5) of §240.10a-1 to read as follows:

§240.10a-1 Short sales

(a)(1) No person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an "effective transaction reporting plan" as defined in §240.11Aa3-1 (Rule 11Aa3-1 under the Act), and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information, (i) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (ii) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.

* * * * *

(e) * * *

(5) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with §240.10b-7) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a Qualified Third Market Maker which has filed a notice for such security with the Commission on Form X-17A-16(1) [§249.631 of this chapter] for its own account over-the-counter, effected at a price equal to or above the last sale reported for such security pursuant to an effective transaction reporting plan; *Provided, however,* That any exchange, by rule, may prohibit its registered specialists and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors;

* * * * *

(Secs., 10 and 23, Pub. L. No. 78-291, 48 Stat. 891 and 901, as amended by sec. 18, Pub. L. No. 94-29, 89 Stat. 155 (15 U.S.C. §§78j and 78w).)

3. By amending paragraphs (a)(4), (5), (8) and (15) and (b)(1)(ii) of §240.11Ac1-1 to read as follows:

§240.11Ac1-1 Dissemination of quotations for reported securities.

(a) * * *

(4) The term "quotation vendor" shall mean any securities information processor engaged in the business of disseminating to brokers, dealers or investors on a real-time or current and continuing basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(5) The terms "plan processor" and "effective transaction reporting plan" shall have the meaning provided in §240.11Aa3-1 (Rule 11Aa3-1 under the Act).

(6) The term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

* * * * *

(8) The terms "bid" and "offer" shall mean the bid price or the offer price most recently communicated by an exchange member or third market maker to any broker or dealer, or to any customer, at which he is willing to buy or sell one or more round lots of a reported security, as either principal or agent, but shall not include indications of interest.

* * * * *

(15) The term "specified persons," when used in connection with any notification required to be provided pursuant to paragraphs (b)(3)(i) and (b)(3)(ii) of this section, shall mean: (i) Each quotation vendor; (ii) Every plan processor and (iii) The processor for the Options Price Reporting Authority (in the case of a notification with respect to

a reported security which is a class of securities underlying options admitted to trading on any exchange).

(b) * * *

(1) * * *

(ii) Every association shall, at all times last sale information with respect to reported securities is reported pursuant to an effective transaction reporting plan, collect, process and make available to quotation vendors the highest bid and lowest offer communicated otherwise than on the floor of an exchange by each member of such association acting in the capacity of a third market maker for a reported security and the identity of that member (excluding any such bid or offer which is executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended; and

* * * * *

(Secs., 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. §§78b, 78c, 78f, 78i, 78j, 78o, 78q and 78w); Sec. 15A, as added by sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. §78o-3); Sec. 11A as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. §78k-1).)

4. By amending paragraph (a)(4) of §240.12f-1 to read as follows:

§240.12f-1 Applications for permission to extend unlisted trading privileges.

(a) * * *

(4) Whether transaction information concerning such security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (§240.11Aa3-1);

* * * * *

(Secs., 12 and 23,Pub. L. No. 78-291, 48 Stat. 894 and 901, as amended by secs. 8 and 18, Pub. L. No. 94-29, 89 Stat. 117 and 155 (15 U.S.C. §§78l and 78w).)

5. By amending paragraph (e) of §240.31-1 to read as follows:

§240.31-1 Securities transactions exempt from transaction fees.

* * * * *

The following shall be exempt from section 31 of the Act:

* * *

(e) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in §240.11Aa3-1 (Rule 11Aa3-1 under the Act) and any approved plan filed thereunder.

(Secs. 2, 3, 23 and 31, Pub. L. 78-291, 48 Stat. 881, 882, 901 and 904, as amended by secs. 2, 3, 18 and 22, 89 Stat. 97, 155 and 162 (15 U.S.C. §§78b, 78c, 78w and 78ee).)

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

6. By amending paragraph (a)(27) of §200.30-3 to read as follows:

§200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(27) To approve amendments to the joint industry plan governing the consolidated transaction reporting system declared effective by the Commission on May 10, 1974, pursuant to then Rule 17a-15, now §240.11Aa3-1 (Rule 11Aa3-1 under the Act).

* * * * *

(Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. §§78d-1, 78d-2).)

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. By amending paragraph (e)(1) of §230.144 to read as follows:

§230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(e) * * *

(1) *Sales by affiliates.* If restricted or other securities are sold for the account of an affiliate of the issuer, the amount of securities sold, together with all sales of restricted and other securities of the same class for the account of such person within the preceding three months, shall not exceed the greater of (i) one percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, or (ii) the average weekly reported volume of trading in such securities on all national securities exchanges and/or reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the filing of notice required by paragraph (h), or if no such notice is required the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker, or (iii) the average weekly volume of trading in such securities reported through the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Securities Exchange Act of 1934 (§240.11A3-1) during the four-week period specified in subdivision (ii) of this paragraph.

(Secs., 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 77, 85; Secs., 201, 203, 209, 210, 48 Stat. 904, 906, 908; Secs., 1-4, 6, 68 Stat. 683, 684; and Sec. 12, 78 Stat. 580, (15 U.S.C. §§77b(11), 77d(1), 77d(4), 77s(a)).)

8. By amending paragraph (b)(1) of §230.148 as follows:

§230.148 Persons deemed not to be underwriters of securities issued or sold in connection with bankruptcy proceedings.

* * * * *

(b) * * *

(1) *Volume limitation.* The amount of securities sold for the account of such person or entity during any three month period shall not exceed the greater of (i) one percent of the sum of the number of shares or other units of the class issued and outstanding and the number of shares or units of the class reserved for future issuance in respect of claims and interests filed and allowed under the plan, as shown by the most recent report or statement published by the issuer, or (ii) the average weekly reported volume of trading in such securities on all national securities exchanges and reported through the automated quotation system of a registered securities association during the four calendar weeks preceding the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker, or (iii) the average weekly volume of trading in such securities reported through the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Securities Exchange Act of 1934 (§240.11Aa3-1) during the four-week period specified in (ii) above. For the purpose of determining the limitation on the amount of securities sold, all securities of the same class sold under this rule by persons or entities acting in concert shall be aggregated.

* * * * *

(Secs., 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 77, 85; Secs. 201, 203, 209, 210, 48 Stat. 904, 906, 908; Secs. 1-4, 6, 68 Stat. 683, 684; and Sec. 12, 78 Stat. 580, (15 U.S.C. §§77b(11), 77d(1), 77d(4), 77s(a)).)

* * * * *

V. *Effects on Competition*

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such regulation and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has determined that the perceived anticompetitive effects of eliminating the prohibition are outweighed by the regulatory purposes to be achieved by the prohibition and has discussed in this release the competitive impact of the retransmission prohibition. The Commission's directive under Section 11A(a) of the Act to facilitate the establishment of a national market system and its authority granted under Section 11A(c) to ensure prompt, accurate, reliable and fair collection, processing, distribution and publication of transaction information in a fair and useful format would appear to be significantly furthered by the elimination of the prohibition. For the reasons expressed in this release, the Commission finds that

the rules do not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16571/February 13, 1980

The Commission gives notice that the national securities exchanges listed below have applied, pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934, for unlisted trading privileges in the following stocks that are listed on one or more national securities exchanges:

Boston Stock Exchange, Inc.:

American Stores Company, common stock, $1 Par Value (File No. 7-5133);

Burns (R.L.) Corp., common stock, $.10 Par Value (File No. 7-5153);

Executive Industries, Inc., common stock, $.125 Par Value (File No. 7-5154);

Federal Resources Corp., common stock, $.50 Par Value (File No. 7-5155);

Financial Federation Inc., capital stock, $1 Par Value (File No. 7-5156);

Frigitronics Inc., common stock, $.10 Par Value (File No. 7-5157);

Fuqua Industries Inc., common stock, $1 Par Value (File No. 7-5158);

GDV Inc., common stock, $1 Par Value (File No. 7-5159);

General American Oil Co. of Texas, common stock, $1 Par Value (File No. 7-5160);

General Exploration Co., common stock, $1 Par Value (File No. 7-5161);

Genstar Ltd., common stock, No Par Value (File No. 7-5162);

Gerber Products Co., common stock, $2.50 Par Value (File No. 7-5163);

Golden West Financial Corp., common stock, $.10 Par Value (File No. 7-5164).

Granger Associates, capital stock, $1 Par Value (File No. 7-5165);

Great Basins Petroleum Co., common stock, $.40 Par Value (File No. 7-5166);

Grow Group, Inc., common stock, $.10 Par Value (File No. 7-5167);

Guardian Industries Corp., common stock, $1 Par Value (File No. 7-5168);

Harrah's, common stock, $.50 Par Value (File No. 7-5169);

Hecla Mining Co., common stock, $.25 Par Value (File No. 7-5170);

Heileman (G) Brewing Co., Inc., common stock, $1 Par Value (File No. 7-5171);

House of Fabrics, Inc. (Del.), common stock, No Par Value (File No. 7-5172);

Humana Inc., common stock, $.16-2/3 Par Value (File No. 7-5173);

International Banknote Co., Inc., common stock, $1 Par Value (File No. 7-5174);

Interstate Power Co., common stock, $3.50 Par Value, (File No. 7-5175);

Iowa-Illinois Gas & Electric Co., common stock, $1 Par Value (File No. 7-5176);

IPCO Corp., common stock, $1 Par Value (File No. 7-5177);

Kaiser Steel Corp., common stock, $.66-2/3 Par Value (File No. 7-5178);

Keene Corp. (N.Y.), common stock, $.10 Par Value (File No. 7-5179);

Lehman Corp. (The), capital stock, $1 Par Value (File No. 7-5180);

Lennar Corp., common stock, $.10 Par Value (File No. 7-5181);

Macrodyne Industries, Inc., common stock, $.10 Par Value (File No. 7-5182);

Marshall Field & Co., common stock, $1 Par Value (File No. 7-5183);

Measurex Corp., common stock, No Par Value (File No. 7-5184);

Mesa Petroleum Co., common stock, $1 Par Value (File No. 7-5185);

Mission Investment Trust, shares of beneficial interest, $1 Par Value (File No. 7-5186);

Mitchell Energy & Development Corp., common stock, $.10 Par Value (File No. 7-5187);

Narco Scientific, Inc., common stock, $1 Par Value (File No. 7-5188);

New Idria, Inc., capital stock, $.50 Par Value (File No. 7-5189);

Nortek, Inc., common stock, $1 Par Value (File No. 7-5190);

Northwest Energy Co., common stock, $1 Par Value (File No. 7-5191);

Oklahoma Natural Gas Co., common stock, No Par Value (File No. 7-5192);

Pacific Lumber Co. (The), common stock, $1-1/9 Par Value (File No. 7-5193);

Pargas Inc., common stock, $1 Par Value (File No. 7-5194);

Piedmont Aviation, common stock, $1 Par Value (File No. 7-5195);

Presley Companies (The), common stock, $.25 Par Value (File No. 7-5196);

RLC Corp., common stock, $1 Par Value (File No. 7-5197);

Republic Corp., common stock, $2.50 Par Value (File No. 7-5198);

Royal Crown Companies Inc., common stock, $1 Par Value (File No. 7-5200);

Sabine Corp., common stock, No Par Value (File No. 7-5201);

Seatrain Lines Inc., capital stock, $1 Par Value (File No. 7-5202);

Shapell Industries Inc., common stock, $1 Par Value (File No. 7-5203);

Shearson Loeb Rhoades Inc., common stock, $.10 Par Value (File No. 7-5204);

Southeastern Public Service Co., common stock, $1 Par Value (File No. 7-5206);

Specialty Restaurants Corp., common stock, $1 Par Value (File No. 7-5205);

Standard-Pacific Corp., common stock, $.25 Par Value (File No. 7-5207);

Sterling Corp., common stock, $.10 Par Value (File No. 7-5208);

Transco Companies Inc., common stock, $.50 Par Value (File No. 7-5210);

Tubos de Acero de Mexico, S.A.,, ADR's common, 50 Mexican Pesos Par Value (File No. 7-5211);

Tyler Corp., common stock, $.10 Par Value (File No. 7-5212);

United Foods, Inc., common stock, $1 Par Value (File No. 7-5213);

Univar Corp., common stock, $.33-1/3 Par Value (File No. 7-5214);

Washington Gas Light Co., common stock, No Par Value (File No. 7-5215);

Westcoast Transmission Co., Ltd., common stock, No Par Value (File No. 7-5216);

Wheeling-Pittsburgh Steel Corp., common stock, $10 Par Value (File No. 7-5217); and

Zurn Industries, Inc., common stock, $.50 Par Value (File No. 7-5218).

Cincinnati Stock Exchange:

AMP Incorporated, common stock, No Par Value (File No. 7-5450);

Bally Manufacturing Corporation, common stock, $.66-2/3 Par Value (File No. 7-5451);

Black & Decker Manufacturing Company (The), common stock, $.50 Par Value (File No. 7-5452);

Fluor Corporation, common stock, $.62-1/2 Par Value (File No. 7-5453);

Hewlett-Packard Company, common stock, $1 Par Value (File No. 7-5454);

Homestake Mining Company, common stock, $1 Par Value (File No. 7-5455);

International Flavors & Fragrances Incorporated, common stock, $.12-1/2 Par Value (File No. 7-5456);

International Minerals & Chemical Corporation, common stock, $5 Par Value (File No. 7-5457);

Johnson & Johnson, common stock, $2.50 Par Value (File No. 7-5458);

Kerr-McGee Corporation, common stock, $1 Par Value (File No. 7-5459);

MGIC Investment Corporation, common stock, $1 Par Value (File No. 7-5460);

National Semiconductor Corporation, common stock, $.50 Par Value (File No. 7-5461);

Skyline Corporation, common stock, $.277 Par Value (File No. 7-5462);

Squibb Corporation, common stock, $1 Par Value (File No. 7-5463);

Storage Technology Corporation, common stock, $.10 Par Value (File No. 7-5464);

Tandy Corporation, common stock, $1 Par Value (File No. 7-5465);

Thompson (J. Walter) Company, common stock, $.10 Par Value (File No. 5466);

Williams Companies, common stock, $1 Par Value (File No. 7-5467);

Houston Oil & Mineral Corporation, common stock, $.10 Par Value (File No. 7-5468); and

Syntex Corporation, common stock, $1 Par Value (File No. 7-5469).

Midwest Stock Exchange, Inc.:

McDonnell Douglas Corp., common stock, $1 Par Value (File No. 7-5219);

TRE Corp., common stock, $1 Par Value (File No. 7-5220);

United Merchants & Manufacturers, Inc., common stock, $1 Par Value (File No. 7-5221);

Unarco Industries, Inc., common stock, $2.50 Par Value (File No. 7-5222);

Wometco Enterprises, Inc., Class A common stock, $1 Par Value (File No. 7-5223);

West Point-Pepperell, Inc., common stock, $5 Par Value (File No. 7-5224);

Warnaco Inc., common stock, No Par Value (File

No. 7-5225);

Westcoast Transmission Co. Ltd., capital stock, No Par Value (File No. 7-5226);

Advanced Micro Devices Inc. common stock, $.01 Par Value (File No. 7-5227);

Allergan Pharmaceuticals, Inc., common stock, No Par Value (File No. 7-5228);

American Century Mortgage Investors, Shs, Ben. Int., No Par Value (File No. 7-5229);

American Heritage Life Investment Corp., common stock, $1 Par Value (File No. 7-5230);

American Savings & Loan of Florida, common stock, $.50 Par Value (File No. 7-5231);

Amsted Industries Inc., common stock, $1 Par Value (File No. 7-5232);

Analog Devices Inc., common stock, $.16-2/3 Par Value (File No. 7-5233);

Appalachian Power Company, common stock, No Par Value (File No. 7-5234);

Armstrong Rubber Company, common stock, $1 Par Value (File No. 7-5235);

Arrow Electronics, Inc., common stock, $1 Par Value (File No. 7-5236);

Aydin Corporation, common stock, $1 Par Value (File No. 7-5237);

AVX Corporation, common stock, $1 Par Value (File No. 7-5238);

Baldor Electric Co., common stock, $.10 Par Value (File No. 7-5239);

Banner Industries, Inc., common stock, $.10 Par Value (File No. 7-5240);

Barry Wright Corporation, common stock, $1 Par Value (File No. 7-5241);

Barnett Banks of Florida, Inc., common stock, $2 Par Value (File No. 7-5242);

Bay Colony Properties Company, Shs. Ben. Int., No Par Value (File No. 7-5243);

Bearings, Inc., common stock, No Par Value (File No. 7-5244);

Beker Industries Corporation, common stock, $.3-1/3 Par Value (File No. 7-5245);

Bell Industries, common stock, No Par Value (File No. 7-5246);

Binney & Smith Inc., common stock, $2.50 Par Value (File No. 7-5247);

Biscayne Federal Savings & Loan Association, capital shs., $.01 Par Value (File No. 7-5248);

BT Mortgage Investors, Shs. Ben. Int., $.50 Par Value (File No. 7-5249);

R. L. Burns Corporation, common stock, $.10 Par Value (File No. 7-5250);

Butler International, Inc., common stock, $1 Par Value (File No. 7-5251);

Cannon Mills Company, common stock, $5 Par Value (File No. 7-5252);

Cameron-Brown Investment Group, Shs. Ben. Int., No Par Value (File No. 7-5253);

Carnation Company, common stock, $2 Par Value (File No. 7-5254);

Cenco Incorporated, common stock, $1 Par Value (File No. 7-5255);

Chelsea Industries, Inc., common stock, $1 Par Value (File No. 7-5256);

Century Telephone Enterprises, Inc., common stock, $1 Par Value (File No. 7-5257);

Cincinnati Bell, Inc., common stock, $25 Par Value (File No. 7-5258);

Citizens & Southern Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5259);

The Christiana Companies, Inc., common stock, $1 Par Value (File No. 7-5260);

CNA Income Shares, Inc., common stock, $1 Par Value (File No. 7-5261);

Coachmen Industries, Inc., common stock, No Par Value (File No. 7-5262);

Comdisco, Inc., common stock, $.10 Par Value (File No. 7-5263);

Computervision Corporation, common stock, $.05 Par Value (File No. 7-5264);

Community Psychiatric Centers, common stock, $1 Par Value (File No. 7-5265);

Community Public Service Company, common stock, $10 Par Value (File No. 7-5266);

Connecticut General Insurance Corporation, common stock, $2.50 Par Value (File No. 7-5267);

Connecticut General Mortgage & Realty Investments, Shs. Ben. Int., No Par Value (File No. 7-5268);

Connecticut Natural Gas Corporation, common stock, $6.25 Par Value (File No. 7-5269);

Conoco, Inc., common stock, $5 Par Value (File No. 7-5270);

Conwood Corporation, common stock, $8-1/3 Par Value (File No. 7-5271);

Cook United, Inc., common stock, $1 Par Value (File No. 7-5272);

Cooper Industries, Inc., common stock, $5 Par Value (File No. 7-5273);

Corroon & Black Corporation, common stock, $.25 Par Value (File No. 7-5274);

CP National Corporation, common stock, $5 Par Value (File No. 7-5275);

Cyclops Corporation, common stock, $1 Par Value (File No. 7-5276);

Daniel Industries, Inc., common stock, $2.50 Par Value (File No. 7-5277);

Datapoint Corporation, common stock, $.25 Par Value (File No. 7-5278);

Data Terminal Systems, Inc., common stock, $.20 Par Value (File No. 7-5279);

Deltec International Limited, ADR, $1 Par Value (File No. 7-5280).

Dennison Manufacturing Company, common stock, $5 Par Value (File No. 7-5281);

Dial Corporation, common stock, No Par Value (File No. 7-5282);

Documation Inc., common stock, $.01 Par Value (File No. 7-5283);

Diversified Mortgage Investors, Inc., common stock, $1 Par Value (File No. 7-5284);

Donaldson Company, Inc., common stock, $.10 Par Value (File No. 7-5285).

Dynamics Corporation of America, common stock, $.10 Par Value (File No. 7-5286);

Edwards (A. G.) & Sons, Inc., common stock, $1 Par Value (File No. 7-5287);

Elcor Corporation, common stock, $1 Par Value (File No. 7-5288);

Equitable Life Mortgage & Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5289);

Essex Chemical Corporation, common stock, $1 Par Value (File No. 7-5290);

Family Dollar Stores, Inc., common stock, $.10 Par Value (File No. 7-5291);

Federal Express Corporation, common stock, $.10 Par Value (File No. 7-5292);

Fleming Companies, Inc., common stock, $2.50 Par Value (File No. 7-5293);

Filmways, Inc., common stock, $.25 Par Value (File No. 7-5294);

Financial Corporation of America, common stock, $.50 Par Value (File No. 7-5295);

First Union Real Estate Equity & Mortgage Inv., Shs. Ben. Int., $1 Par Value (File No. 7-5296);

First Pennsylvania Mortage Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5297);

Foremost-McKesson, Inc., common stock, $2 Par Value (File No. 7-5298);

Fotomat Corporation, common stock, $.10 Par Value (File No. 7-5299);

Four-Phase Systems, Inc., common stock, $.04 Par Value (File No. 7-5300);

Fox-Stanley Photo Products, Inc., common stock, $1 Par Value (File No. 7-5301);

Galveston-Houston Company, common stock, $.33-1/3 Par Value (File No. 7-5303);

General Care Corporation, common stock, $.10 Par Value (File No. 7-5304);

Geosource, Inc., common stock, $1 Par Value (File No. 7-5305);

GK Technologies, Inc., common stock, $1 Par Value (File No. 7-5306);

GMR Properties, common stock, No Par Value (File No. 7-5307);

Gray Drug Stores, Inc., common stock, $1 Par Value (File No. 7-5308);

Great Lakes International, Inc., common stock, No Par Value (File No. 7-5309);

Great Northern Iron Ore Properties, Ctfs Ben. Int., No Par Value (File No. 7-5310);

Grow Group, Inc., common stock, $.10 Par Value (File No. 7-5311);

Growth Realty Companies, Shs. Ben. Int., $1 Par Value (File No. 7-5312);

Guardian Industries Corporation, common stock, $1 Par Value (File No. 7-5313);

Hajoca Corporation, common stock, $1 Par Value (File No. 7-5314);

Hartfield Zody's, Inc., common stock, $1 Par Value (File No. 7-5315);

Heath Tecna Corporation, common stock, No Par Value (File No. 7-5316);

Hoover Universal, Inc., common stock, $1 Par Value (File No. 7-5317);

Hi-Shear Industries, common stock, $.10 Par Value (File No. 7-5318);

Huffy Corporation, common stock, $1 Par Value (File No. 7-5319);

Hubbard Real Estate Investment, Shs. Ben. Int., No Par Value (File No. 7-5320);

Hudson Bay Mining & Smelting Co. Ltd., Class A common stock, No Par Value (File No. 7-5321);

INA Investment Securities, Inc., common stock, $.10 Par Value (File No. 7-5322);

Institutional Investors Trust, Shs. Ben. Int., No Par Value (File No. 7-5323);

International Aluminum Corporation, common stock, $1 Par Value (File No. 7-5324);

Jamesway Corporation, common stock, $1 Par Value (File No. 7-5325);

Kaiser Steel Corporation, common stock, $.66-2/3 Par Value (File No. 7-5326);

KLM Royal Dutch Airlines, common stock, 100 Dutch Gindens (File No. 7-5327);

Kollmorgen Corporation, common stock, $2.50 Par Value (File No. 7-5328);

Koger Properties, Inc., common stock, $.10 Par Value (File No. 7-5329);

Keystone International Inc., common stock, $1 Par Value (File No. 7-5330);

Kenilworth Realty Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5331);

Kuhlman Corporation, common stock, $1 Par Value (File No. 7-5332);

Lanier Business Products, Inc., common stock, $1 Par Value (File No. 7-5333);

La Quinta Motor Inns, Inc., common stock, $.10 Par Value (File No. 7-5334);

Lear Petroleum Corporation, common stock, $.10 Par Value (File No. 7-5335);

Lee Enterprises, Inc., common stock, $2 Par Value (File No. 7-5336);

Leggett & Platt, Inc., common stock, $1 Par Value (File No. 7-5337);

LITCO Bancorporation of New York, Inc., common stock, $5 Par Value (File No. 7-5338);

Lifemark Corporation, common stock, $.01 Par Value (File No. 7-5339);

Lomas & Nettleton Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5340);

Lowe's Companies, Inc., common stock, $.50 Par Value (File No. 7-5341);

Ludlow Corporation, common stock, No Par Value (File No. 7-5342);

MacMillian Bloedel Limited, common stock, No Par Value (File No. 7-5343);

Manhattan Life Corporation, common stock, $2 Par Value (File No. 7-5344);

Management Assistance, Inc., common stock, $.40 Par Value (File No. 7-5345);

Mark Controls Corporation, common stock, $1 Par Value (File No. 7-5346);

MassMutual Mortgage & Realty Investors, Shs. Ben. Int., No Par Value (File No. 7-5347);

McDonough Company, common stock, $1 Par Value (File No. 7-5348);

Measurex Corporation, common stock, No Par Value (File No. 7-5349);

Mesa Royalty Trust, Shs. Ben. Int., No Par Value (File No. 7-5350);

Medtronic, Inc., common stock, $.10 Par Value (File No. 7-5351);

Memorex Corporation, common stock, $1 Par Value (File No. 7-5352);

Mercantile Texas Corporation, common stock, $5 Par Value (File No. 7-5353);

Mesabi Trust, Ctfs. Ben. Int., No Par Value (File No. 7-5354);

Metro-Goldwyn-Mayer Inc., common stock, No Par Value (File No. 7-5355);

Midland Mortgage Investors Trust, Shs. Ben. Int., No Par Value (File No. 7-5356);

McMoRan Oil & Gas Co., common stock, $1 Par Value (File No. 7-5357);

Miller-Wohl Company, Inc., common stock, $.50 Par Value (File No. 7-5358);

Milton Roy Company, common stock, $1 Par Value (File No. 7-5359);

Minnesota Power & Light Company, common stock, No Par Value (File No. 7-5360);

MONY Mortgage Investors, common stock, $.50 Par Value (File No. 7-5361);

Mortgage Trust of America, Shs. Ben. Int., $1 Par Value (File No. 7-5362);

Napco Industries, Inc., common stock, $1 Par Value (File No. 7-5363);

National Liberty Corporation, common stock, $1 Par Value (File No. 7-5364);

Newell Companies, Inc., common stock, $1 Par Value (File No. 7-5365);

NCNB Corporation, common stock, $2.50 Par Value (File No. 7-5366);

Newcorp Inc., common stock, $1 Par Value (File No. 7-5367);

Newpark Resources, common stock, $1 Par Value (File No. 7-5368);

North America Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5369);

New England Nuclear Corporation, common stock, $1 Par Value (File No. 7-5370);

Northern California Savings & Loan Association, capital stock, No Par Value (File No. 7-5371);

Northrop Corporation, common stock, $1 Par Value (File No. 7-5372);

Orion Capital Corporation, common stock, $1 Par Value (File No. 7-5373);

Outlet Company, common stock, No Par Value (File No. 7-5374);

Overhead Door Corporation, common stock, $1 Par Value (File No. 7-5375);

Pacific Lumber Co., common stock, $1-1/9 Par Value (File No. 7-5376);

Pacific Northwest Bell Telephone Company, common stock, $11 Par Value (File No. 7-5377);

Pacific Scientific, common stock, $1 Par Value (File No. 7-5378);

Penn Central Corp., common stock, $1 Par Value (File No. 7-5379);

Pengo Industries, Inc., common stock, $.25 Par Value (File No. 7-5380);

Perkin-Elmer Corporation, common stock, $1 Par Value (File No. 7-5381);

Pertec Computer Corporation, common stock, $.10 Par Value (File No. 7-5382);

PennCorp Financial, Inc., common stock, $.50 Par Value (File No. 7-5383);

Petroleum & Resources Corporation, common stock, $1 Par Value (File No. 7-5384);

PHH Group, Inc., common stock, No Par Value (File No. 7-5385);

Prime Motor Inns, Inc., common stock, $.05 Par Value (File No. 7-5386);

Pogo Producing Company, common stock, $1 Par Value (File No. 7-5387);

Plantronics, Inc., common stock, $1 Par Value (File No. 7-5388);

PNB Mortgage & Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5389);

Prime Computer, Inc., common stock, $.0125 Par Value (File No. 7-5390);

Public Service Company of New Hampshire, common stock, $5 Par Value (File No. 7-5391);

Presley Companies, common stock, $.1875 Par Value (File No. 7-5392);

Puritan Fashions Corporation, common stock, $1 Par Value (File No. 7-5393);

RB Industries, Inc., common stock, No Par Value (File No. 7-5394);

Realty ReFund Trust, Shs. Ben. Int., No Par Value (File No. 7-5395);

RES Investment Corporation, common stock, $2.50 Par Value (File No. 7-5396);

Republic Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5397);

RLC Corporation, common stock, $1 Par Value (File No. 7-5398);

Rolm Corporation, common stock, $.085 Par Value (File No. 7-5399);

Ryan Homes, Inc., common stock, No Par Value (File No. 7-5400);

Saul (B. F.) Real Estate Investment Trust, Shs. Ben. Int., $10 Par Value (File No. 7-5401);

SCA Services, Inc., common stock, $1 Par Value (File No. 7-5402);

Scientific-Atlanta, Inc., common stock, $.50 Par Value (File No. 7-5403);

Sealed Air Corporation, common stock, $.01 Par Value (File No. 7-5404);

SEAFIRST Corporation, common stock, $5 Par Value (File No. 7-5405);

Security Pacific Corporation, common stock, $10 Par Value (File No. 7-5406);

Shaklee Corporation, common stock, No Par Value (File No. 7-5407);

Shell Transport & Trading Company, Ltd., NY Shs for 4 Ord. Shs., 5 S Sterling (File No. 7-5408);

Snap-on Tools Corporation, common stock, $1 Par Value (File No. 7-5409);

Southwest Gas Corp., common stock, $1 Par Value (File No. 7-5410);

South Atlantic Financial Corporation, common stock, No Par Value (File No. 7-5411);

Spectra-Physics, Inc., capital stock, $.20 Par Value (File No. 7-5412);

Southwest Airlines Company, common stock, $1 Par Value (File No. 7-5413);

Standard Motor Products, Inc., Class A capital stock, $2 Par Value (File No. 7-5414);

Standard Pacific Corporation, common stock, $.25 Par Value (File No. 7-5415);

Sta-Rite Industries, Inc., common stock, $2 Par Value (File No. 7-5416);

State Mutual Investors, Shs. Ben. Int., No Par Value (File No. 7-5417);

Sun Electric Corporation, common stock, $1 Par Value (File No. 7-5418);

TeleCom Corporation, common stock, $1 Par Value (File No. 7-5419);

Texas Industries, Inc., common stock, $1 Par Value (File No. 7-5420);

Teradyne, Inc., common stock, $1.25 Par Value (File No. 7-5421);

Texfi Industries, Inc., common stock, $1 Par Value (File No. 7-5422);

Thomas Industries, Inc., common stock, $1 Par Value (File No. 7-5423);

Tidewater Inc., common stock, $1 Par Value (File No. 7-5424);

Toys "R" Us, Inc., common stock, $1 Par Value (File No. 7-5425);

Transamerica Income Shares, Inc., common stock, $1 Par Value (File No. 7-5426);

Toro Company, common stock, $1 Par Value (File No. 7-5427);

Tokheim Corporation, common stock, $1 Par Value (File No. 7-5428);

Tri-South Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5429);

Trico Industries, Inc., common stock, $.50 Par Value (File No. 7-5430);

Twin Disc, Inc., common stock, No Par Value (File No. 7-5431);

Tymshare, Inc., common stock, No Par Value (File No. 7-5432);

Tosco Corporation, common stock, $.15 Par Value (File No. 7-5433);

UMET Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5434);

Unilever Limited, Am. Shs. Rep. Ord. Sh. (File No. 7-5435);

Unilever N.V., 20 Gilder Par Ord. Shs. (File No. 7-5436);

US Air, Inc., common stock, $1 Par Value (File No. 7-5437);

U.S. Realty Investments, Shs. Ben. Int., No Par Value (File No. 7-5438);

Veeco Instruments, Inc., common stock, $1 Par Value (File No. 7-5439);

Van Dorn Company, common stock, No Par Value (File No. 7-5440);

Vulcan, Inc., common stock, No Par Value (File No. 7-5441);

Wabash, Inc., common stock, No Par Value (File No. 7-5442);

Wachovia Realty Investments, Shs. Ben. Int., $1 Par Value (File No. 7-5443);

Walker (Hiram) Gooderham & Worts Limited, Class A & B common stock, No Par Value (File No. 7-5444);

Wells Fargo Mortgage & Equity Trust, Shs. Ben.

Int., No Par Value (File No. 7-5445);

Wisconsin Power & Light Company, common stock, $5 Par Value (File No. 7-5446);

Wyle Laboratories, common stock, No Par Value (File No. 7-5447);

Wyly Corporation, common stock, $.10 Par Value (File No. 7-5448); and

Zero Corporation, common stock, $1 Par Value (File No. 7-5449).

Comments and/or requests for hearing are to be submitted on or before March 13, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16572/February 14, 1980

Admin. Proc. File No. 3-5794

In the Matter of

ROYAL W. CARSON, JR.
3545 N. W. 58th Street
Oklahoma City, Oklahoma

NOTICE THAT INITIAL DECISION HAS BECOME FINAL

The time for filing a petition for review of the initial decision in these proceedings has expired. No such petition has been filed, and the Commission has not chosen to review the initial decision on its own initiative.

Accordingly, notice is hereby given, pursuant to Rule 17(f) of the Commission's Rules of Practice, that the initial decision of the administrative law judge has become the final decision of the Commission. The order contained in that decision suspending Royal W. Carson, Jr., from association with any broker or dealer for a period of four months is hereby declared effective as of the opening of business on March 10, 1980.[1]

George A. Fitzsimmons
Secretary

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[1]During the period of his suspension, Carson may retain his stock interest in and various offices with Royal W. Carson & Co., Inc., and may collect any dividends on his stock, but he may not collect any salary or bonus from that firm or participate in any way in the firm's activities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16573/February 14, 1980

A notice has been issued giving interested persons until March 13, 1980 to comment on STUDEBAKER-WORTINGTON, INC.'s application requesting withdrawal of its 9.35% Sinking Fund Debentures due November 15, 2003 from listing and registration on the *New York Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16574/February 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC CLEARING CORPORATION (File No. SR-PCC-80-1)

Pacific Clearing Corporation submitted on February 12, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, changing the definition of "block delivery," from securities having an aggregate value of $50,000 or more, to securities having an aggregate value of $25,000 or more.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 18, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-PCC-80-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITRIES EXCHANGE ACT OF 1934
Release No. 16575/February 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-AMEX-79-21

The American Stock Exchange, Inc. ("AMEX") submitted on December 4, 1979, a proposed rule change under Rule 19b-4 to amend AMEX Rule 471 dealing with business expansion restrictions and business reduction requirements. The amendment would allow five additional business days to members under certain circumstances before restrictions are imposed.

Publicatioin of the submission is expected to be made in the *Federal Register* during the week of February 18, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-AMEX-79-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16576/February 14, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street & Stock Exchange Place
Philadelphia, PA 19103

(SR-PHLX-80-2)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on February 5, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission copies of a proposed rule change which would allow a public governor on the Phlx's Board of Governors ("Board") to serve partial or full terms totaling six years before being required to rotate off the Board for at least one year. The present requirement that a governor who has served three years is ineligible for election to a further term except after an interval of one year shall continue in effect, however, with respect to those governors who are not public governors.[1] It is the view of the Phlx Board that a longer period of service for public governors would enhance the knowledge and leadership potential of the public governors who are not active in the securities industry and thereby provide greater use of their talents.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the

[1]The Phlx rules provide for a total of 27 governors, of whom 24 are broker governors and three are public governors.

Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6(b)(3) that one or more directors be representative of issuers and investors and not be associated with a member or the Exchange, broker or dealer and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in order that the proposal may go into effect by February 20, 1980, the date on which the ballots for the Phlx's 1980 annual meeting are to be mailed.

IT IS THEREFORE ODERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16577/February 14, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-79-18

The Midwest Stock Exchange, Incorporated ("MSE") submitted on February 13, 1980, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of February 18, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16578/February 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-2

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[1]Notice of filing of the proposed rule changes was given by publication of a Commission release (Securities Exchange Act Release No. 16254, October 5, 1979, and by publication in the Federal Register (44 FR 59974, October 14, 1979).

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on January 29, 1980, a proposed rule change under Rule 19b-4 to adopt a set of rules that would conform its present rules on arbitration[1] to the Uniform Code of Arbitration ("Code"),[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA"),[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

The proposal would revoke the present CBOE arbitration rules[4] and adopt the entire Code as new CBOE Rules 18.3-18.33. The proposal incorporates the simplified arbitration procedures drafted by SICA and adopted by the CBOE on June 23, 1978,[5] regarding small claims not exceeding $2500.[6] Additionally, the proposed rule change would apply to claims between members as well as to claims against members raised by customers and non-members.[7]

The purpose of the proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the CBOE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[8]

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[1]For the CBOE current arbitration rules, *see* CBOE Rules 18.1-18.12. CBOE Manuel (CCH) paragraphs 2512-2522, at pages 2231-2237.

[2]The Code was published on December 28, 1978, as the "Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.

[3]SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]The proposal would delete or amend old CBOE Rules 18.2-18.12. CBOE Manual (CCH) paragraphs 2512-2522, at pages 2231-2237.

[5]Securities Exchange Act Release No. 15390, 16 SEC Docket 425 (December 26, 1978), 43 FR 60681 (December 28, 1978).

[6]CBOE Rule 18.12. CBOE Manual (CCH) paragraph 2522, at page 2236.

[7]Proposed CBOE Rule 18.2.

[8]The Code has already been adopted by the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange ((Securities Exchange Act Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); the American Stock Exchange, Inc. ((Securities Exchange Act Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (January 29, 1980), 45 FR 5863 (January 24, 1980)); and the Midwest Stock Exchange, Incorporated ((Securities Exchange Act Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)).

Publication of the submission is expected to be made in the *Federal Register* during the week of February 18, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change which are filed with the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Divisioin of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16579/February 14, 1980

The Securities and Exchange Commission today granted the application of the American Stock Exchange, Inc. ("Amex"),[1] pursuant to the terms of the voluntary moratorium on expansion of standardized options trading[2] ("the voluntary moratorium") to begin trading call options on the common stock of Tosco Corporation ("Tosco") to replace call options on the common stock of Fleetwood Enterprises Inc., ("Fleetwood") which was delisted involuntarily by the Amex as a result of Fleetwood's failure to satisfy the listing maintenance standards of the Amex. The Amex intends to commence trading in Tosco options on February 19, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16580/February 15, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock (No Par Value) of TENNA CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16581/February 15, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-80-3)

National Securities Clearing Corporation (NSCC) submitted on February 8, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act, giving the Corporation the discretion to require settling members to provide appropriate staff in their offices during specified hours on non-clearing days.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or

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[1]See letter dated February 5, 1980 from Paul G. Stevens, Vice President, Options Division, Amex, to Gene Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[2]See Securities Exchange Act Release No. 15026 (August 3, 1978).

appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 19, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16582/February 15, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the call option contracts of FLEETWOOD ENTERPRISES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16583/February 19, 1980

ORDER INSTITUTING PROCEEDINGS

Public administrative proceedings have been ordered under Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 against William P. Crum, Jr. ("Crum"), chief executive officer of a registered broker-dealer ("Registrant"), and ETI Development Company ("ETI Development") an affiliate of Registrant, both of Dunwoody, Georgia. The proceedings against Crum are based upon allegations of willful violations of and/or willfully aiding and abetting violations of the Securities registration, antifraud, net capital, financial reporting, and books and records provisions of the federal securities laws. The proceedings against ETI Development are based upon violations of the securities registration and antifraud provisions of the federal securities laws.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16584/February 19, 1980

Administrative Proceeding File No. 3-5870

In the Matter of

ETI INVESTMENT CORPORATION (8-17206),
ETI CORPORATION,
ETI RESOURCES, INC.,
ETI MANAGEMENT COMPANY,
FRANK M. MILLER, and
JAMES A. DAVIS

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), be instituted with respect to ETI Investment Corporation ("Registrant"), a registered broker-dealer (File No. 8-17206) and a member of the National Association of Securities Dealers, Inc.; ETI Corporation, the parent of Registrant; ETI Resources, Inc. ("Resources"), an affiliate of Registrant; ETI Management Company ("ETI Management"), an affiliate of Registrant; Frank M. Miller ("Miller"), a former officer and director of Registrant, and James A. Davis ("Davis"), a former officer of another affiliate of Registrant and sales representative of Registrant (hereinafter sometimes collectively referred to as "Respondents").

In connection with the administrative proceedings, the Respondents have submitted Offers of Settlement which the Commission has determined

to accept. Solely for the purpose of these proceedings and any other proceedings brought by the Commission, the Respondents, without admitting or denying the findings, consent to the entry of an order which simultaneously institutes proceedings, makes findings of fact and conclusions of law, and imposes sanctions as set forth below.

Accordingly, it is ORDERED that administrative proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be and hereby are instituted.

On the basis of the Order for Proceedings and the Offers of Settlement, it is found that:

A. From about December, 1974 to date, Registrant, ETI Corporation, and Miller, and from about October, 1976 to date, Resources, ETI Management, and Davis willfully violated and willfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act of 1933 ("Securities Act") in the offer and sale of securities, namely limited partnership interests in oil and gas, real estate, and agricultural programs in that affiliates would purchase units not sold by a specified date, as stated in the offering materials, who would then immediately resell such units rather than hold them for investment as required by the terms of the offering; also, by failing to disclose that funds of one partnership were commingled with funds of other entities, and by failing to disclose that the funds of the partnerships would be used for purposes other than as represented, including making advances to affiliated entities of some of the respondents.

B. During the period from about October, 1976 to date, Registrant willfully violated and ETI Corporation, Miller, and Davis willfully aided and abetted violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-4 thereunder in that Registrant, aided and abetted by ETI Corporation, Miller, and Davis made use of the mails and means and instrumentalities of interstate commerce to effect transactions in "part or none" or "all or none" offerings without promptly depositing and maintaining investors funds in a separate bank account until the stated contingency had occurred.

C. During the period from about October, 1976 to date, Registrant, ETI Corporation, and Miller willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act by the use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer to sell and to sell unregistered securities, namely limited partnership interests in real estate and agricultural programs, for which no exemption from registration was available.

D. During the period from about November, 1976 to about December, 1977, Registrant willfully violated, and ETI Corporation, and Miller willfully aided and abetted violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, in that Registrant, aided and abetted by ETI Corporation, and Miller, made use of the mails and means and instrumentalities of interstate commerce to effect transactions when Registrant did not have and did not maintain net capital of $25,000.

E. During the period from about December, 1974 to date, Registrant willfully violated and ETI Corporation, and Miller willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that Registrant, aided and abetted by ETI Corporation and Miller, failed to make and to keep current and accurate (1) records reflecting all assets and liabilities, (2) records itemizing separately the cash and margin accounts of each customer, (3) records reflecting all "long" or "short" positions, and (4) trial balances.

F. Registrant willfully violated and ETI Corporation and Miller willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that Registrant failed to file with the Commission an audited financial statement containing the information required by Form X-17A-5 for its fiscal year-end July 30, 1977.

G. It is in the public interest to impose the sanctions contained in the Offers of Settlement and the sanctions specified in this Order shall be effective on the fourth Monday following the date of this Order.

ACCORDINGLY, it is ORDERED that:

A. The registration of Registrant be and hereby is revoked;

B. ETI Corporation be and hereby is barred from association with a broker-dealer or investment adviser; provided, however, that at the expiration of eighteen (18) months, ETI Corporation may apply to the Commission to become associated with a broker-dealer or investment adviser;

C. Resources be and hereby is barred from association with a broker-dealer or investment

adviser; provided, however, that at the expiration of eighteen (18) months, Resources may apply to the Commission to become associated with a broker-dealer or investment adviser;

D. ETI Management be and hereby is barred from association with a broker-dealer or investment adviser; provided, however, that at the expiration of eighteen (18) months, ETI Management may apply to the Commission to become associated with a broker-dealer or investment adviser;

E. Miller be and hereby is suspended from association with a broker-dealer or investment adviser for six (6) months and thereafter barred from association with a broker-dealer or investment adviser in a proprietary or supervisory capacity; provided, however, that at the expiration of eighteen (18) months from the date of this Order, Miller may apply to the Commission to become associated with a broker-dealer or investment adviser in a proprietary or supervisory capacity;

F. Davis be and hereby is suspended from association with a broker-dealer or investment adviser for thirty (30) days.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16585/February 19, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 713/February 19, 1980

Administrative Proceeding File No. 3-5872

In the Matter of

HENRY M. KLAUSMAN
d/b/a INSTITUTE FOR FINANCIAL PLANNING

File No. 801-12795

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"), be instituted against Henry M. Klausman ("Respondent Klausman"), d/b/a Institute for Financial Planning, a registered investment adviser, and a registered representative with a broker-dealer registered with the Commission and the National Association of Securities Dealers, Inc.

From about September 1973 to about October 1976, Respondent Klausman was president and chief executive officer of an investment adviser registered with the Commission. In addition, from about September 1973 to about February 1977, Respondent Klausman was a registered representative of a broker-dealer registered with the Commission and a member of the National Association of Securities Dealers, Inc.

In connection with the administrative proceedings, Respondent Klausman has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings or any other proceedings instituted by the Commission, Respondent Klausman, without admitting or denying the allegations or findings herein, consents to the entry of an order which simultaneously institutes proceedings, makes findings of fact and conclusions of law, and imposes sanctions as set forth below.

Accordingly, it is ORDERED that administrative proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act and Sections 203(e) and 203(f) of the Advisers Act be and hereby are instituted.

On the basis of the Order for Proceedings and the Offer of Settlement, it is found that:

A. During the period from about 1972 to 1974, Klausman willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") in that he made use of the means and instruments of transportation and communication in interstate commerce and of the mails in the offer and sale of unregistered securities, namely limited partnership interest in a real estate program.

B. During the period from about 1972 to 1974,

Klausman willfully violated and willfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a) of the Securities Act in the offer for sale and sale of securities, namely limited partnership interests in real estate programs, by misrepresenting that if a partnership did not acquire the property by a specified date, investors' funds would be returned, and by failing to disclose that he had marked up the price of the property being acquired by the partnership for his personal benefit.

C. It is in the public interest to impose the sanctions contained in the Offer of Settlement and the sanctions specified in this Order shall become effective on the second Monday following the date of this Order.

ACCORDINGLY, it is ORDERED that:

A. Respondent Klausman's registration as an investment adviser be and hereby is suspended for thirty (30) days;

B. Respondent Klausman be and hereby is suspended from association with a broker-dealer or investment adviser for thirty (30) days;

C. Respondent Klausman comply with his undertaking to provide each investor in the real estate limited partnerships syndicated by him between 1972 and 1974 with a document disclosing therein the price at which he acquired the property and the price that the partnership paid to acquire the property; and

D. Respondent Klausman comply with his undertaking that for a period of twelve (12) months, he will not offer for sale or otherwise participate in the distribution of unregistered securities offerings made in reliance on either Section 3(a)(11) or Section 4(2) of the Securities Act without obtaining advice of counsel regarding compliance with the exemption.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16586/February 19, 1980

The Securities and Exchange Commission ("Commission") has ordered the institution of public administrative proceedings against: (1) Verrilli, Altschuler, Schwartz, Inc. ("VAS"), a broker-dealer registered with the Commission with offices located in New York City, United Monetary Services, Inc. ("UMS") whose offices are located in Port Jefferson, New York, M. Richard Verrilli ("Verrilli") of Trumbell, Connecticut, Stanley S. Altschuler ("Altschuler") of New York City, Stephen Schwartz ("Schwartz") of New York City, Frank J. Giuffrida ("Giuffrida") of Port Jefferson, New York, Francis S. Casey ("Casey") of Wantagh, New York, Clifton J. Batson ("Batson") of Tenafly, New Jersey and Joseph T. Zappala ("Zappala") of Pennsville, New Jersey alleging willful violations and willfully aiding and abetting violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"); (2) VAS, UMS, Verrilli, Altschuler, Giuffrida and Batson alleging willful violations and willfully aiding and abetting violations of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; (3) VAS and UMS, for alleged willful violations and Verrilli, Altschuler, Schwartz and Giuffrida for willfully aiding and abetting violations of Section 15(a)(1) of the Exchange Act; and (4) VAS and UMS for alleged failure reasonably to supervise other persons under their supervision pursuant to Section 15(b)(4)(E) of the Exchange Act in order to prevent the violations referred to above.

The Order for Proceedings is based upon allegations by the staff that from in or about September, 1975 to August 1976, the respondents engaged in a distribution of unregistered securities in the form of notes and common stock of ATVA Enterprises, Inc., a New York corporation engaged in the business of closed circuit video advertising, with offices located in New York City. It was further alleged that certain of the respondents, in the course of the offer and sale of said securities, acted and conducted business as broker-dealers at a time when they were not registered with the Commission in accordance with Section 15(b) of the Exchange Act, and also made material misstatements and omissions to purchasers and prospective purchasers of the securities of ATVA.

A hearing will be scheduled by further order to take evidence on the staff's allegations and to afford the

Respondents an opportunity to establish any defenses thereto for the purpose of determining whether any action of a remedial nature should be ordered by the Commission.

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 16587/February 19, 1980

Administrative Proceedings File No. 3-5877

In the Matter of

FRANCIS S. CASEY

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these administrative proceedings ordered pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] respondent Francis S. Casey ("Casey") has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings, Casey has consented to the findings of willful violations and sanctions set forth below.

II.

On the basis of the Order for Public Proceedings and the Offer of Settlement submitted by Casey, it is found that Casey willfully violated and wilfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") in connection with the offer and sale of securities of ATVA Enterprises, Inc., and that on February 17, 1977 Casey was permanently enjoined pursuant to consent from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in *S.E.C. v. International Trade Development of Costa Rica, S.A., et al.*, 76 Civ. 2229 (S.D. Fla.), as alleged in the order for Public Proceedings.

[1] *In the Matter of Verilli, Altschuler, Schwartz, Inc., et al.*, Administrative Proceeding File No. 3-5877 (February 13, 1978).

III.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer of Settlement submitted by Casey.

Accordingly, IT IS ORDERED that effective as of the second Monday following the date of this Order:

(1) Casey is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer, for a period of 12 months except that he may continue to sell mutual funds provided that such sales are made under the supervision of a registered broker-dealer; and

(2) Casey is barred from association with any broker or dealer, investment company, investment adviser or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity provided that one year after the commencement of this sanction he may apply to the Commission for association in such capacities.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16588/February 19, 1980

In the Matter of

ELLIOT S. BLAIR
445 Park Avenue
New York, New York 10022

ORDER GRANTING REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION IN ACCORDANCE WITH RULE 2(e) OF THE COMMISSION'S RULES OF PRACTICE

By order dated October 12, 1971, the Commission instituted a private proceeding pursuant to Rule 2(e) of the Commission's Rules of Practice against respondent, Elliot S. Blair, an attorney. By order dated July 10, 1972, the Commission accepted respondent's stipulation of facts entered solely for the purpose of the proceedings, and his offer of

settlement in which he agreed to resign from appearing or practicing before the Commission at any time. Respondent now has applied to the Commission for reinstatement to appear and practice before the Commission and has represented that all securities matters with which he may become involved will be subject to the direction of the partners of his firm and of experienced securities counsel.

As no information has come to the attention of the Commission that would appear to be a basis for adverse action against Mr. Blair pursuant to Rule 2(e) of the Commission's Rules of Practice, and based upon his representation, it is accordingly ordered that:

As of the date of this Order, Elliot S. Blair may appear and practice before the Commission.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16589/February 19, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6189/February 19, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16590/February 19, 1980

Dissemination And Display Of Transaction Reports, Last Sale Data And Quotation Information

ACTION: Final rule.

SUMMARY: The Commission adopts a rule establishing minimum requirements governing the manner in which transaction, quotation and market information is displayed by vendors of securities information and which prohibits any broker or dealer from operating or maintaining any display of transaction, quotation or market information which a vendor would be prohibited from operating or maintaining.

EFFECTIVE DATE: April 5, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt, Division of Market Regulation, Securities and Exchange Commission, Room 390, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2883.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today the adoption of Rule 11Ac1-2[1] under the Securities Exchange Act of 1934 ("Act").[2] Rule 11Ac1-2 is designed to improve the manner in which vendors[3] display price and volume information with respect to completed transactions in reported securities[4] ("transaction information") and bids, offers and quotation sizes ("quotation information") in reported and other securities. Rule 11Ac1-2 achieves this goal by establishing certain minimum display requirements governing the manner in which vendors display transaction and quotation information. Certain of these requirements are currently contained in Rule 17a-15 under the Act, the Commission's rule governing the collection, processing and dissemination of transaction

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[1]17 CFR §240.11Ac1-2.

[2]15 U.S.C. §§78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97 ("1975 Amendments").

[3]Rule 11Ac1-2(a)(2) provides that the term "vendor" shall mean any securities information processor engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to subject securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

[4]Rule 11Ac1-2(a)(20) provides that the term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

information in listed securities.[5] In addition, Rule 11Ac1-2 imposes further requirements specifying the manner in which vendors must display transaction and quotation information. In particular, the Rule requires that (i) transaction reports or last sale data with respect to reported securities displayed on a continuous moving ticker display ("moving ticker")[6] either be reported without identification as to the market place of execution or include market identifiers, on a non-discriminatory basis, for all transaction reports with respect to a reported security (or an identifiable subset of all transaction reports for such security) from all reporting market centers in that security; (ii) transaction reports with respect to reported securities displayed on a securities information retrieval device ("interrogation device")[7] identify, on a non-discriminatory basis, the market place of execution; (iii) consolidated displays of transaction and quotation information with respect to reported securities available on interrogation devices be retrievable in response either to an inquiry consisting of fewer keystrokes than the inquiry used to retrieve individual market transaction and quotation information or to an inquiry consisting of the same number of key strokes as the inquiry used to retrieve individual market transaction and quotation information, provided that the information request or transmit key for recalling displays of consolidated transaction and quotation information is the more prominent; (iv) consolidated displays of transaction information with respect to reported securities available on interrogation devices contain (with a limited exception) all categories of market information included on any display of individual market transaction information; (v) vendors displaying quotation information with respect to reported securities and certain other securities on interrogation devices must display, at a minimum, a consolidated best bid and offer derived from quotations from all reporting market centers or a separate quotation montage;[8] and (vi) no vendor may provide any "representative" bid or offer with respect to reported securities and certain other securities.

I. INTRODUCTION

A. *Background*

Nationwide disclosure of market information, including transaction and quotation information, in a fair and useful form, has been an essential aspect of the Commission's efforts to facilitate the establishment of a national market system.[9] Such disclosure is necessary to assure the efficient pricing of securities, to maximize the depth and liquidity of the securities markets and to provide investors with the opportunity to receive the best possible execution of their orders.[10] As the first step in instituting a system for disclosure of transaction information, the Commission, in 1972, adopted Rule 17a-15.[11] That rule requires every national securities exchange ("exchange") and association ("association") and every broker-dealer not a member of an exchange or association to file with the Commission a plan providing for the collection, processing and dissemination of transaction reports

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[5]Simultaneously with the adoption of this Rule, the Commission is adopting amendments to Rule 17a-15, 17 CFR §240.17a-15, which, among other things, redesignates that rule as Rule 11Aa3-1 and deletes these display requirements from that rule. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), ("Rule 11Aa3-1 Release"), 45 FR _____

[6]Rule 11Ac1-2(a)(1) provides that the term "moving ticker" shall have the meaning provided in Rule 11Aa3-1. Rule 11Aa3-1(a)(10) defines that term to "mean any continuous real-time moving display of transaction reports or last sale data (other than a market minder) provided on an interrogation or other display device."

[7]Rule 11Ac1-2(a)(1) provides that the term "interrogation device" shall have the meaning provided in Rule 11Aa3-1. Rule 11Aa3-1(a)(9) defines that term to mean "any securities information retrieval system capable of displaying transaction reports or last sale data, upon inquiry, or on a current basis on a terminal or other device."

[8]Rule 11Ac1-2(a)(16) defines the term "quotation montage" to mean, "with respect to a particular subject security, a display on an interrogation device which disseminates simultaneously, includes quotations in that security from all reporting market centers."

[9]*See* Section 11A(c)(1)(B) of the Act, 15 U.S.C. §78k-1(c)(1)(B).

[10]*See* SEC, *Future Structure of the Securities Markets* at 6-7, (February 2, 1972), 37 FR 5286, 5287.

[11]*See* Securities Exchange Act Release No. 9850 (November 8, 1972), 37 FR 24172.

in securities listed or admitted to unlisted trading privileges on an exchange.[12] On May 10, 1974, the Commission approved a joint industry plan ("CTA Plan") filed by various exchanges and the National Association of Securities Dealers, Inc. ("NASD") pursuant to Rule 17a-15 which provided for the creation of a consolidated transaction reporting system ("consolidated transaction reporting system")[13] and, on April 30, 1976, that system became fully operational.[14]

Subsequently, on January 26, 1978, the Commission took steps to ensure the nationwide disclosure of quotation information by adopting Rule 11Ac1-1 under the Act,[15] which requires that every exchange and association establish and maintain procedures to collect, process and make available to vendors quotations, including size, in all reported securities, and that every "responsible broker or dealer" communicate promptly to his exchange or association his quotation, including size. In addition, the rule requires that every responsible broker or dealer be obligated to execute any order presented to him at a price which is no worse than his or her published bid or offer up to the size displayed. In order to implement Rule 11Ac1-1, various exchanges filed a joint plan ("CQ Plan") to create a consolidated quotation system ("consolidated quotation system"), and, on July 26, 1978, the Commission approved that plan on a temporary basis.[16]

Currently, several vendors disseminate transaction and quotation information received through the consolidated transaction reporting and quotation systems without, for the most part, any Commission regulation. The Commission has preferred and still would prefer to let competitive forces dictate the manner in which market information is displayed. However, the Commission has determined that it must take regulatory action to rectify deficiencies in the manner in which vendors operate their market information systems. On January 26, 1978, the Commission issued a statement on the development of a national market system ("January Statement"),[17] in which it indicated that, despite the success of the consolidated transaction reporting system, refinements in that system would be necessary to improve the way in which transaction information is distributed and recalled for display and in order to ensure that the system operates and is used in ways fully consistent with the purposes and objectives of a national market system.[18] Similarly, since the implementation of the

[12]See Rule 17a-15(a).

[13]See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799.

[14]See Securities Exchange Act Release No. 15250 at 4-7, (October 20, 1978) ("Rule 11Aa3-1 Proposal Release"), 43 FR 50606, 50606-07. For a complete description of the CTA Plan, see *id.* at 33 n. 63, 43 FR at 50611 n. 63.

[15]See Securities Exchange Act Release No. 14415 (January 26, 1978) ("Rule 11Ac1-1 Release"), 43 FR 4342.

[16]See Securities Exchange Act Release No. 15009 (July 28, 1978) ("Initial CQ Plan Release"), 43 FR 3485. The CQ Plan was initially approved for a 120 day period on a conditional basis (*id.*), which conditional approval was subsequently extended for an additional year. *See* Securities Exchange Act Release No. 15511 (January 24, 1979), 44 FR 6230. Recently, the Commission approved, on a permanent basis, the CQ Plan. *See*, Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521. For a summary description of the CQ Plan, *see* Initial CQ Plan Release, at 3-15, 43 FR 3485. Currently, all self-regulatory organizations collecting quotation information disseminate quotation information pursuant to the CQ Plan.

[17]See Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.

[18]*Id.* at 41-42, 43 FR at 4360. The January Statement further noted that

> [o]f particular concern to the Commission is the manner in which vendors currently provide for the recall of [transaction] information retrieval display devices. These vendors now permit information from the primary market by input of the letter (or combination of letters) used to identify the particular security involved in the consolidated system (the "consolidated system symbol") followed by depression of an information request key. In most cases, entry of additional letters or symbols (plus depression of the information request key) is required in order to recall consolidated [transaction information] from any particular market other than the primary market.

Id. at 41-42, 43 FR at 4360.

consolidated quotation system, the Commission has observed that some aspects of quotation information display may also be inconsistent with the purposes of the Act, including the objectives of a national market system. Initially, the Commission and its staff sought to correct these deficiencies by requesting that vendors voluntarily modify their procedures for recall of consolidated transaction and quotation information and the content of those information displays.[19] However, some vendors refused to make those modifications absent the imposition of mandatory industrywide criteria. Accordingly, in order to assure that market information for reported securities is displayed in a proper manner, the Commission proposed Rule 11Ac1-2.[20]

In formulating proposals designed to improve the manner in which quotation information for reported securities is displayed, the Commission also addressed the manner in which quotations in securities traded primarily over-the-counter are displayed.[21] Currently, the only person collecting and disseminating those quotations is NASDAQ, Inc., a subsidiary of the NASD. NASDAQ offers three types of quotation information services: "Level 1," "Level 2," and "Level 3."[22] Level 1 service, which generally displays only a single,[23] two-sided quotation (*i.e.*, a bid and an offer) for each security authorized for inclusion in the NASDAQ system, is the service most broker-dealer firms provide to their registered representatives.[24] The two-sided quotation appearing on a Level 1 service display is not the "inside" market for a particular security but rather is the "representative" bid price (which is the median of all bids entered into the NASDAQ system by registered NASDAQ market makers) and the "representative" offer price (which is the representative bid plus the median spread between the bid and asked prices so entered) for the particular security ("RBA"). Because, by and large, individual investors deal solely with registered representatives, most investors are exclusively aware of bids and offers appearing on the Level 1

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[19]At the time that Rule 11Ac1-1 was adopted, the Commission considered mandating the manner in which vendors displayed that information. In determining to defer such requirements, the Commission attempted to advise vendors of the minimum display requirements which it then felt were necessary to avoid creating similar deficiencies in the displays of quotation information as were present in displays of transaction information. Thus, the Rule 11Ac1-1 Release indicated that the Commission expected

that quotations will be displayed on a non-discriminatory basis (*i.e.*, from all market centers) and that access to composite quotations will be provided in a manner which will allow recall of these quotations as readily as quotations from a single market. For example, if the consolidated system stock symbol and a single request key are utilized to obtain quotations from a particular market center, consolidated quotations must be available by use of the consolidated symbol and a single request key. In addition to the display of quotations and quotation sizes based upon information from all market centers, the Commission expects that vendors will also indicate to users when these quotations are not firm due to the Unusual Market Exception.

Rule 11Ac1-1 Release, *supra* note 15, at 38 n. 48, 43 FR at 4347 n. 48.

For a summary of other Commission efforts at convincing vendors to modify voluntarily their market information systems to conform to the purposes and objectives of a national market system, *see* Securities Exchange Act Release No. 15251 (October 20, 1978), at 8-9, ("Rule 11Ac1-2 Proposal Release"), 43 FR 50615, 50616.

[20] *Id.*

[21]*See* proposed Rule 11Ac1-2(c)(v).

[22]Level 1 service is supplied to subscribers through interrogation devices available from other vendors. Level 2 and 3 services are supplied to subscribers on NASDAQ cathode ray tube devices.

[23]Certain broker-dealers supplement the Level 1 service by displaying their own quotations.

[24]Other than Level 1, only the Level 2 service is available for general use. Level 2 displays, with respect to each security quoted in the NASDAQ system, a montage of the bid and offer prices of each registered market maker who enters quotations for security into the NASDAQ system. Level 3 service, which is available only to registered market makers, displays the same information as Level 2 and also permits market makers to enter their quotations. *See* NASD Manual-By Laws, Schedule D at para. 1653A.

display. The Commission has been concerned that the display of "representative" quotations is misleading to investors and could give rise to opportunities for overreaching of customers by broker-dealers. Accordingly, the Commission included in proposed Rule 11Ac1-2 a provision requiring the display of the "inside" NASDAQ quotation on Level 1 displays and prohibiting the display of representative quotations.

B. *Description of Proposed Rule 11Ac1-2*

Proposed Rule 11Ac1-2, as published for comment, set forth comprehensive requirements with respect to the display of transaction information in reported securities and of quotation information in reported securities as well as any other equity security as to which transaction reports, last sale data or quotation information is disseminated through an electronic interdealer quotation system owned and operated, directly or indirectly, by an association (collectively, "subject securities").[25] The Rule, as proposed, would have applied to the display of market information by any vendor[26] with the limited exception that market information disseminated on the floor of an exchange would not be regulated by Rule 11Ac1-2, thereby permitting an exchange to make available to its members market information for trading and surveillance purposes which would otherwise be precluded by the Rule.[27] The proposal also would have prohibited any broker or dealer from operating or maintaining any display of market information which a vendor would be precluded from making available.[28]

1. *Transaction Information*

With respect to the display of transaction information, the proposal included certain display requirements that were then contained in Rule 17a-15.[29] The rule proposal also addressed the retrieval procedures used by vendors. The proposal would have required that consolidated transaction information provided on an interrogation device be retrievable either by an inquiry consisting of fewer key strokes than is necessary to retrieve individual market transaction information or by a retrieval procedure involving the same number of key strokes and employing a more prominent information request or transmit key to retrieve the display of consolidated transaction information.[30] Moremove, proposed Rule 11Ac1-2 would have required that all individual market center displays be retrievable in response to inquiries consisting of the same number of key strokes.[31] The rule proposal also would have required that vendors provide, on a consolidated basis, the same categories of information on their consolidated displays of transaction information as they provide on their individual market displays of transaction information,[32] and that any vendor providing a

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[25]See proposed Rule 11Ac1-2(a)(2). At present the only such interdealer quotation system is NASDAQ. See text accompanying notes 21-24, *supra*.

[26]See proposed Rule 11Ac-2(a)(12).

[27]Rule 11Ac1-2, as adopted, also excepts any display of transaction reports, last sale data, quotation information or market information operated or maintained by a self-regulatory organization solely for monitoring or surveillance purposes, Rule 11Ac1-2(f)(2).

[28]See proposed Rule 11Ac1-2(e).

[29]Specifically, the proposal would have retained various interpretations of Rule 17a-15 taken by the Commission in a release in 1975. See Securities Exchange Act Release No. 11317 at 6 (March 28, 1975), 40 FR 15461, 15463. The proposal would have required that no moving ticker display exclude transaction information on the basis of the market of execution. In addition, the proposal would have continued to require that any vendor providing a display on an interrogation device of transaction information with respect to a particular reported security also display on that device a consolidated display of transaction information with respect to that security, including the most recent transaction information for that security reported by any market center pursuant to an effective transaction reporting plan as well as the volume of that transaction information or the cumulative volume of all transaction information for that security reported by any market center pursuant to an effective transaction report plan. See proposed Rule 11Ac1-2(b)(2)(i) and (iv). Rule 11Ac1-2, as adopted, incorporates all of these requirements.

[30]See proposed Rule 11Ac1-2(b)(2)(i).

[31]See proposed Rule 11Ac1-2(b)(2)(ii).

[32]See proposed Rule 11Ac1-2(b)(2)(V).

market minder[33] of transaction information for an individual market also provide a market minder service of consolidated transaction information.[34] Finally, the proposal would have precluded vendors from identifying the market of execution associated with transaction information available on either moving tickers or on an interrogation device with respect to the display of consolidated transaction information.[35]

2. *Quotation Information*

With respect to the display of quotation information, the proposed rule set forth certain minimum display requirements designed to assure the dissemination of bids, offers, quotation sizes and aggregate sizes in subject securities. The rule would have required that any vendor which provides quotation information on an individual market basis with respect to a particular security must also provide a display of the highest bid and the lowest offer prices from all reporting market centers ("consolidated quotation") with respect to that security.[36] The proposal also set forth key stroke access requirements identical to those imposed for transaction information.[37] In addition, the proposal would have required (i) that the consolidated quotation display include an identifier indicating the market center responsible for the best bid and best offer, and (ii) that any display of quotation information with respect to reported securities include the quotation size or aggregate quotation size[38] associated with any displayed bid or offer.[39]

The rule proposal set forth two alternative formulas for determining the best bid or offer for reported securities.[40] Both formulas required the use of price as the first factor for determining the best bid or offer, *i.e.*, the best bid would be the bid which is highest in price and the best offer would be the offer which is lowest in price. However, the proposed formulas differed on the manner of selecting between two or more bids or offers at identical prices. One formula would have required selection of the best bid or offer first on the basis of time (*i.e.*, as between bids or offers at the same price the bid or offer received earliest in time by the vendor would be the best), then on the basis of size (*i.e.*, as between two bids or offers received simultaneously the bid or offer with the largest quotation size or aggregate quotation size would be the best). The other formula would rank bids or offers at identical prices first by size and then, as between bids or offers at identical prices with identical sizes, on the basis of time. The Commission indicated in the Rule 11Ac1-2 Proposal Release that it contemplated specifying in the Rule which of these formulas should be used, but solicited comment regarding the advisability of giving vendors the discretion to display the consolidated quotation in either fashion.[41]

The rule proposal also would have permitted vendors to display quotation information (including size) with respect to individual market centers on their interrogation devices either upon separate inquiry (provided that inquiry access routines for all market centers contain an equal number of key strokes) or in a montage.[42] If a vendor provided a quotation montage, the proposed rule would have required that the montage state separately the quotation of every market center except, in the case of a montage of quotations with respect to a reported security, the rule would have permitted all third market maker quotations to be condensed into a best third market bid with size and a best third market offer with size, each identified by the

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[33]Rule 11Aa3-1(a)(11) defines the term "market minder" to "mean any service provided by a vendor on an interrogation device or other display which (i) permits real-time monitoring, on a dynamic basis, of transaction reports or last sale data with respect to a particular security, and (ii) displays the most recent transaction report or last sale data with respect to that security until such report or data has been superceded or supplemented by the display of a new transaction report or last sale data reflecting the next reported transaction in that security."

[34]See proposed Rule 11Ac1-2(b)(2)(iii).

[35]See proposed Rule 11Ac1-2(c).

[36]See proposed Rule 11Ac1-2(c)(2)(i).

[37]See proposed Rule 11Ac1-2(c)(2)(ii).

[38]Rule 11Ac1-2(a)(7) provides that the term "aggregate quotation size" has the meaning provided in Rule 11Ac-1(a)(12).

[39]See proposed Rule 11Ac1-2(c)(2)(i).

[40]See proposed Rule 11Ac1-2(a)(15)(i).

[41]See Rule 11Ac1-2 Proposal Release, *supra* note *19*, at 35-36, 43 FR at 50620-21.

[42]See proposed Rule 11Ac1-2(c)(2)(ii).

particular third market maker responsible for the bid or offer.[43]

Finally, the rule proposal would have precluded any vendor from displaying with respect to a subject security any bid or offer which is, or is derived from, the mean, median, mode, or weighted average of two or more bids or offers, or which is calculated by adding to or subracting from an actual bid or offer a commission, commission equivalent, markup, or differential.[44]

3. *Joint Display of Transaction and Quotation Information*

Although the rule proposal specified separate minimum display requirements for transaction and quotation information, it permitted[45] a vendor to combine the consolidated transaction and quotation displays available on an interrogation device.[46] Moreover, if a vendor were to provide both the most recent transaction information and quotation for a security from a particular market center in a single display, paragraph (b)(2)(v) of the rule proposal would have required that vendor to combine the consolidated transaction information and quotation display with respect to that security. The proposal did not expressly prohibit a vendor from combining, on a single display, consolidated and individual market center infromation; however, displays combining individual and consolidated transaction or quotation information would have been precluded by the provisions of the proposed rule which would have required that consolidated market information be accessed by a simpler inquiry sequence than is necessary to retrieve individual market informatioin.[47]

II. DISCUSSION

In response to its proposal of Rule 11Ac1-2, the Commission received comments from 21 persons,[48]

[43]See proposed Rule 11Ac1-2(c)(2)(iii).

[44]See proposed Rule 11Ac1-2(a)(19) which defines the term "representative bid or offer."

[45]See proposed Rule 11Ac1-2(d).

[46]See proposed Rule 11Ac1-2(b)(2)(V).

[47]See proposed Rule 11Ac1-2(b)(2)(i) and (c)(2)(i).

[48]See Comments of Bunker Ramo Corporation ("Bunker Ramo"), dated December 15, 1979 ("Bunker Ramo Letter"); letter from Lawrence Entel, Assistant General Counsel, Reuters Limited ("Reuters"), to George A. Fitzsimmons, Secretary, Securities and Exchange Commission ("SEC"), dated December 21, 1979 ("Reuters Letter"); letter from Richard B. Walbert, President, Midwest Stock Exchange, Inc. ("MSE"), to Harold M. Williams, Chairman, SEC, dated November 24, 1978 ("MSE Letter"); letter from Nicholas A. Giordano, Executive Vice-President, Philadelphia Stock Exchange, Inc. ("Phlx"), to George A. Fitzsimmons, Secretary, SEC, dated December 13, 1978 ("Phlx Letter"); letter from Joseph S. Dimartino, Chairman, Institutional Traders Advisory Committee ("ITAC"), to George A. Fitzsimmons, Secretary, SEC, dated December 14, 1978 ("ITAC Letter"); letter from Joseph W. Sullivan, President, Chicago Board Options Exchange, Inc. ("CBOE"), to George A. Fitzsimmons, Secretary, SEC, dated December 14, 1978 ("CBOE Letter"); letter from James E. Dowd, President, Boston Stock Exchange, Inc. ("BSE"), to George A. Fitzsimmons, Secretary, SEC, dated December 15, 1978 ("BSE Letter"); letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE"), to George A. Fitzsimmons, Secretary, SEC, dated January 12, 1979 ('NYSE Letter"); letter from Charles J. Henry, President, Pacific Stock Exchange, Inc. ("PSE"), to George A. Fitzsimmons, Secretary, SEC, dated June 29, 1979 ("PSE Letter"); letter from Nicholas A. Giordano, Chairman, Operating Committee, Intermarket Trading System ("ITS") ("ITS Operating Committee') to George A. Fitzsimmons, Secretary, SEC, dated January 22, 1979 ("ITS Letter"); letter from Jerome M. Pustilnik, Chairman, Insititutional Networks Corporation ("Instinet"), to George A. Fitzsimmons, Secretary, SEC, dated December 28, 1978 ("Instinet Letter"); letter from D.H. Bodell, Financial Services Division, GTE Information Systems Incorporated ("GTE"), to George A. Fitzsimmons, Secretary, SEC, dated December 28, 1978 ("GTE Letter"); letter from Robert M. Steinberg, Executive Vice President, Quotron Systems, Inc. ("Quotron") to George A. Fitzsimmons, Secretary, SEC, dated December 19, 1978 ("Quotron Letter"); letter from William A. Schreyer, President, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), to George A. Fitzsimmons, Secretary, SEC, dated December 5, 1978 ("1978 Merrill Lynch Letter"); letter from William O. Sellers, Vice President, Merrill Lynch & Co., to Andrew M. Klein, Director, Division of Market Regulation, SEC, dated

including five vendors,[49] seven self-regulatory organizations[50], and four broker-dealer firms.[51] Most commentators, other than vendors, endorsed the general concept of a vendor display rule. The MSE indicated that they found the proposal to be "a carefully considered, appropriately measured and extremely important regulatory initiative to assure the accurate and fair publication of transactions in national market system securities."[52] The Phlx commended the Commission's efforts to resolve the anti-competitive effects of the current methods used by vendors to disseminate and display market information.[53] The CBOE also supported the proposed rule, indicating that it believed that a critical element of any national market system for stocks or options must be the availability of a means to access market information from all markets in a simple and nondiscriminatory fashion although it suggested that identical restrictions would not necessarily be applicable to standardized options.[54] Finally, the BSE was of the opinion that "the current state of the art in dissemination of market information" was clearly anticompetitive and "that improvement is urgently required and long overdue."[55]

However, four of the five vendors commenting on Rule 11Ac1-2, disapproved of the general concept of the Rule. Those commentators questioned the justification for and methodology of portions of the proposed rule, indicating that the release failed to establish that the secondary markets are at a competitive disadvantage vis-a-vis the primary markets or that such a disadvantage, if established, was a result of vendors' display techniques.[56]

Several vendors also argued that vendcr display systems were designed to appeal to the users of those systems, and that the proposed standards would not only cause unwarranted expense and stifle further innovations by vendors but would also create systems which were less efficient to subscribers.[57] Specifically, Reuters stated that: "[I]f restricted technical controls are imposed, the field of securities information communications would no longer be a fertile one for innovation and technological advance."[58] In addition, Reuters insisted that the significant expense involved in complying with the programming and systems changes contemplated by the rule would seriously hamper, if not entirely foreclose, Reuters' entry into the industry.[59] After careful consideration of these comments, and in particular the issues discussed below, the Commission has determined to adopt the rule in revised form.

January 29, 1979 ("1979 Merrill Lynch Letter"); letter from Edward I. O'Brien, President, Securities Industry Association ("SIA"), to George A. Fitzsimmons, Secretary, SEC, dated January 12, 1979 ("SIA Letter"); letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated December 6, 1978 ("NASD Letter"); letter from Lewis N. Dembitz, to George A. Fitzsimmons, Secretary, SEC, dated November 16, 1978 ("Dembitz Letter"); letter from H.C. Piper, Jr., President, Piper, Jaffray & Hopwood, Inc. ("Piper"), to George A. Fitzsimmons, Secretary, SEC, dated November 12, 1978 ("Piper Letter"); letter from Raymond B. Garcia, Daine, Kalman & Quail ("DKQ"), to George A. Fitzsimmons, Secretary, SEC, dated January 12, 1979 ("DKQ Letter"); letter from Boyd L. Jeffries, President, Jeffries & Company, Inc. ("Jeffries"), to George A. Fitzsimmons, Secretary, SEC, dated December 13, 1978 ("Jeffries Letter"); and letter from Fred Zimmerman, III, Vice-President and Trust Officer, Republic National Bank of Dallas ("Republic"), to George A. Fitzsimmons, Secretary, SEC, dated December 13, 1978 ("Republic Letter"). These letters are contained in File No. S7-759.

[49]Bunker Ramo, GTE, Instinet, Quotron and Reuters.

[50]BSE, CBOE, MSE, NASD, NYSE, Phlx and PSE.

[51]DKQ, Jeffries, Merrill Lynch, and Piper.

[52]MSE Letter, *supra* note 48, at 56.

[53]Phlx Letter, *supra* note 48, at 1.

[54]CBOE Letter, *supra* note 48, at 1.

[55]BSE Letter, *supra* note 48, at 1.

[56]See Bunker Ramo Letter, *supra* note 48, at 3-5, Quotron Letter, *supra* note 48, at 6-7; GTE Letter *supra* note 48, at 2; and Reuters Letter, *supra* note 48, at 5-6.

[57]See Quotron Letter, *supra* note 48, at 6-7; GTE Letter *supra* note 48, at 2; and Reuters Letter, *sura* note 48, at 5-6.

[58]Reuters Letter, *supra* note 48, at 7.

[59]Reuters Letter, *supra* note 48, at 8-9, 11-12.

A. *Statutory Authority and Constitutionality*

1. *Comments*

Two vendors disputed the Commission's authority to adopt a rule dictating the manner and content of market information displays.[60] Bunker Ramo contended that neither the text nor the legislative history of Section 11A of the Act authorizes the Commission, except under limited circumstances,[61] to substitute its judgment for that of vendors regarding the proper design and programming of interrogation devices. Reuters similarly argued that

> serious questions exist with respect to whether the Commission would be overstepping its bounds by prohibiting certain market information from being displayed or regulating the format in which vendors display certain market information. Specifically, proposed Rule 11Ac1-2 may have the effect of creating arbitrary and unreasonable guidelines from which few vendors may stray, superseding subscribers' demands for particular information, and constituting for all intents and purposes a new and substantive "federal market news law." This we believe was not the intent of Congress.[62]

Reuters further contended that Congress' purpose in enacting the 1975 Amendments was "that consumers should be the ones to decide what services are offered, what goods are produced, and that to this end, controls on prices, on market entry, on technological development, etc., should be limited to the extent necessary."[63]

In its comment letter, Reuters also argued that mandating display format and accessibility "impermissibly restrains Reuters' exercise of its First Amendment rights,"[64] and thus, the adoption of the Rule would violate Reuters' freedom of speech and press.[65]

2. *Commission Response*

a. *Statutory Authority*

Prior to the enactment of the 1975 Amendments there existed some controversy as to the Commission's authority under the Act to require and to regulate the dissemination of market information.[66] In considering the 1975 Amendments, the Senate Banking, Housing and Urban Affairs Committee stated, with respect to the Commission's responsibility on matters related to the dissemination of market information, that

> [i]n the securities markets, as in most other active markets, it is critical for those who trade to have access to accurate, up-to-the-second information as to prices at which transactions in particular securities are taking place (*i.e.*, last sales reports) and the prices at which other traders have expressed their willingness to buy and sell (*i.e.*, quotations). For this reason, communications systems designed to provide automated dissemination of last sale and quotation information with respect to securities will form the heart of the national market systems. The Committee has found, however, that there are significant questions as to the SEC's authority to regulate persons operating and administering those systems. As our trading markets shift from independent self-contained units to a single integrated system, clear regulatory control over the communications links among markets becomes imperative. [S. 249[67]] would greatly expand the SEC's regulatory authority over the processors and distributors of market information. The goals of this pervasive authority would be to ensure the availability of prompt and accurate trading information, to ensure that these

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[60]*See Bunker Ramo Letter, supra* note 48, and Reuters Letter, *supra* note 48, at 2, 3, 8.

[61]Bunker Ramo contended that the Commission is empowered to regulate securities information processors only under certain provisions of the 1975 Amendments [*see* Section 11A(c)(1)(A-F) of the Act, 15 U.S.C. 78k-1(c)(1)(A-F)] and that none of those provisions authorizes the Commission to adopt proposed Rule 11Ac1-2. *See* Bunker Ramo Letter, *supra* note 48, at 26-28.

[62]Reuters Letter, *supra* note 48, at 3.

[63]*Id.* at 8.

[64]*Id.* at 4.

[65]*Id.* at 3-4.

[66]*See* Rule 11Aa3-1 Proposal Release, *supra* note 14, at 10 n.19, 43 FR at 50607 no.19.

[67]The 1975 Amendments were based on S.249.

communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Exchange Act.[68]

The Senate Report further noted that "[e]xamples of the types of subjects as to which the SEC would have authority to promulgate rules include...*what and how information is displayed*...."[69] Section 11(A)(C)(1)(B) was enacted to reflect these views by authorizing the Commission to adopt rules to assure the prompt, accurate, reliable and fair collection, processing, distribution, and publication of transaction and quotation information. Thus, the 1975 Amendments explicitly provide the Commission with the authority to adopt rules governing vendor display techniques.

b. *Constitutionality*

The resolution of the issue of whether the Rule violates vendors' first amendment rights of the press and free speech depends on both the type of speech proposed to be regulated and the nature of that regulation.[70] Regulation of most categories of speech (*e.g.*, political speech), with few exceptions, constitute impermissible prior restraints or "chilling effects" on publication.[71] However, regulations of certain categories of speech, such as commercial speech, are subject to less stringent standards of review.[72]

Rule 11Ac1-2 regulates communications which are directed at providing investors with market information that is considered necessary to investment decisions, *i.e.*, communications that are essentially commercial in nature. The courts have only recently recognized the applicability of the first amendment to commercial speech,[73] and the United States Supreme Court has yet to enunciate a definitive test for determining the validity of regulations governing the publicatioin of commercial speech. However, recent cases suggest that, where a valid regulatory objective as well as a rational relationship between the regulation and the objective are demonstrated, the regulation would be upheld.[74] As is discussed at length below and in the release proposing Rule 11Ac1-2, the Commission believes that Rule 11Ac1-2 is rationally related to furthering the valid Congressional directive to establish a national market system and to provide added protections to investors by enhancing the availability and utility of consolidated market information. Rule 11Ac1-2, therefore, would not violate vendors' First Amendment rights of the press or free speech.

In this regard, the Commission should emphasize that the regulation provided in Rule 11Ac1-2 cannot be characterized as one of "prior restraint" since it generally does not require vendors to delete information from their displays.[75] Rather, the Rule

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[68]Senate Com. on Banking, Housing & Urb. Affs., *Report to Accompany S.249*, S. Rep. No. 94-75, ("Senate Report") 94th Cong., 1st Sess, at 9 (1975), *reprinted in*, [1975] U.S. Code Cong. & Ad., News 179, 181.

[69]*Id.* at 11, [1975] U.S. Code Cong. & Ad. News at 189 (emphasis supplied).

[70]*See e.g., Virginia State Bd. of Pharmacy* v. *Virginia Consumers Council*, 425 U.S. 748 (1976) and *Bigelow V. Virginia*, 421 U.S. 809 (1975). *See also* L. Tribe, *American Constitutional Law* 653-54 (1978).

[71]*See, e.g., Cohen* v. *California, 403 U.S. 15 (1971); Street* v. *New York*, 394 U.S. 576; and *Chaplinksy* v. *New Hampshire*, 315 U.S. 368 (1942).

[72]*See e.g., Friedman v. Rogers*, 99 S. Ct. 887 (1979).

[73]*See e.g., Valentine* v. *Chrestenson*, 316 U.S. 52 (1942), where the United States Supreme Court indicated that the first amendment imposed "no. . .restraint on government with respect to purely commercial advertising." *Id.* at 54. The leading Supreme Court decisions finding that a communication that proposes a commercial transaction is not "wholly outside the protection of the first amendment" were *Virginia State Bd. of Pharmacy* v. *Virginia Consumers Council* 425 U.S. 748 (1976), and *Bigelow* v. *Virginia*, 421 U.S. 809 (1975).

[74]*See e.g., Friedman* v. *Rogers*, 99 S.Ct. 887 (1979) and *Bates and O'Steen* v. *State Bar of Arizona*, 433 U.S. 350 (1977).

[75]Rule 11Ac1-2 does, however, prohibit the display of representative bid and asked quotation. The Commission believes that this prohibition is a necessary measure designed to curb possibilities of overreaching.

merely requires vendors to include additional information on interrogation device displays of market information and to revise the current method for retrieving consolidated information. This type of regulation would therefore appear to be less onerous than the type of regulations that have been found to infringe on the protections afforded commercial speech,[76] and consistent with those decisions which have upheld regulation of commercial speech.[77] In addition, the Commission has considered alternative means of ensuring widespread dissemination of consolidated market information[78] but has determined that the Rule being adopted today is the most appropriate means, at this juncture in the evolution of a national market system, of attaining this important goal. Finally if the application of Rule 11Ac1-2 has an onerous impact on any vendor and relief can be afforded without vitiating the purposes of the Rule, the Commission has reserved exemptive power under the Rule to ameliorate that impact.[79]

B. *Display and Retrieval of Consolidated Information*

1. *Comments*

All of the persons other than vendors that commented generally on Rule 11Ac1-2 endorsed the goal of simplifying access procedures to and improving the content of the display of consolidated market information.[80] Those commentators found the proposals to be an important initiative in assuring publication of market information,[81] and in resolving the discriminatory fashion in which market information is currently provided to the public by vendors.[82] The ITS Operating Committee considered the "relevant aspects of the Rule to be beneficial to the efficient operation of ITS."[83] In addition, some of the commentators that supported the adoption of proposed Rule 11Ac1-2 believed that the rule did not go far enough to ameliorate the deficiencies in the manner in which market information is disseminated. In responding to that part of the proposal which would require vendors to provide a consolidated quotation display, two commentators contended that such a display is an inadequate reference for informing subscribers of the depth of the market for a security and suggested, as an alternative, that the Commission require vendors to display a complete montage of quotations.[84] In addition, two commentators suggested that the Commission require that individual market transaction information be displayed on a montage.[85]

Four of the five vendors commenting on proposed Rule 11Ac1-2 disagreed, arguing that the expense of compliance with the Rule would be substantial and that adoption of the rule would fail to achieve the Commission's objectives of increasing the use of consolidated information.[86] For example, Quotron

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[76]*See e.g., Ohralik* v. *Ohio State Bar Assoc.* 98 S.Ct. 1912 (1978); and *In Re Primus* 98 S.Ct. 1893 (1978).

[77]*See e.g., Friedman* v. *Rogers, supra* note 74.

[78]*See* text accompanying notes 113-118, *infra.*

[79]*See* text accompanying note 96, *infra.*

[80]*See* MSE Letter, *supra* note 48, at 56, Phlx Letter, *supra* note 48, at 1; ITAC Letter, *supra* note 48, at 1; CBOE Letter, *supra* note 48, at 1; BSE Letter, *supra* note 48, at 1; and PSE Letter, *supra* note 48 at 1.

[81]*See* MSE Letter *supra* note 48, at 1.

[82]*See* Phlx Letter, *supra* note 48, at 1; CBOE Letter, *supra* note 48, at 4; and BSE Letter, *supra* note 48, at 1; and PSE Letter *supra* note 48, at 3-4.

[83]*See* ITS Letter, *supra* note 48, at 1. The ITS is an intermarket communications linkage system designed to permit orders for the purchase and sale of multiply traded securities to be routed between market centers for execution. *See* Securities Exchange Act Release No. 15871, at 9-13, (March 22, 1979), ("Status Report"), 44 FR 20360, 20360-61.

[84]*See* MSE Letter, *supra* note 48, at 57-58 and Phlx Letter, *supra* note 48, at 2-3. One commentator suggested that the Commission permit vendors displaying a quotation montage to do so in lieu of a best bid and offer display. *See* Instinet Letter, *supra* note 48, at 6.

[85]*See* BSE Letter, *supra* note 48, at 1-2; and Phlx Letter, *supra* note 48, at 4-5.

[86]*See* Bunker Ramo Letter, *supra* note 48, at 3-5; Quotron Letter, *supra* note 48, at 6-9, 21; Reuters Letter, *supra* note 48, at 5-9; and GTE Letter, *supra* note 48, at 2-3. Instinet was the only vendor commenting on proposed rule 11Ac1-2 that did not oppose the adoption of the rule. *See* Instinet Letter, *supra* note 48.

argued that the relative ease by which market information may be accessed will not determine the frequency with which that information will be recalled and that, therefore, the proposed provision requiring vendors to simplify the method of recalling consolidated information would not have its intended effect. In support of its contention, Quotron pointed out that, following the implementation of the high speed data stream for transmitting transaction information, Quotron voluntarily revised its access procedures to permit recall of consolidated transaction information by the easiest method but that it reverted to its original access procedures (*i.e.*, easiest method for retrieval of primary market information) shortly thereafter in response to subscribers' complaints. Quotron also indicated that the current method of access to and content of market information displays reflects the fact that 95% of all current subscriber requests are for primary market information.[87] Quotron argued that by mandating display techniques that are not responsive to public demand the adoption of the rule would "inhibit the prompt production of information to the public."[88] Quotron therefore suggested that the Commission restrict rulemaking in this area to prohibiting only such information as is shown to be clearly false, misleading or manipulative.[89]

With respect to the proposal that each vendor provide a consolidated quotation display, GTE similarly contended that such a display would rarely be used, indicating that it has been providing such a consolidated quotation display since 1975, but that subscribers rarely request that display.[90] Bunker Ramo also suggested that the Commission not specify a minimum consolidated quotation display because, under present conditions, order by order routing of other than institutional size orders on the basis of displayed quotations generally would only take place on the floor of an exchange via ITS.[91] Bunker Ramo argued that, because registered representatives have virtually no order routing authority, there is no need to provide registered representatives with quotation information from the secondary markets.[92]

Two vendors suggested that the most direct means of ensuring the use of consolidated information would be the adoption of a "best execution" or similar rule. Bunker Ramo recommended the adoption of a rule which would require any person making an order routing decision to check every market,[93] while GTE recommended that a rule be adopted which would require all orders to be sent to the market displaying the best quotation.[94]

Certain vendors also argued that the expense involved in complying with the Rule as well as the detailed specificity of its provisions would hamper innovation and technical advances in the field of securities information communication.[95] For example, Reuters insisted that the significant expense involved in complying with the programming and systems changes contemplated by the Rule would seriously hamper, if not foreclose, Reuters' entry into the securities information industry.[96]

2. *Commission response*

a. *Goals*

Notwithstanding the Commission's authority, granted in the 1975 Amendments, to regulate the display of market information, the Commission has

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[87]*See* Quotron Letter, *supra* note 48, at 6.

[88]*Id.* at 20.

[89]*Id.* at 22.

[90]*See GTE Letter, supra* note 48, at 2.

[91]*See* Bunder Ramo Letter, *supra* note 48, at 12.

[92]*Id.* at 4.

[93]*Id.* at 5, n *.

[94]*See* GTE Letter, *supra* note 48, at 2.

[95]*See* text accompanying notes 188-190, *infra*.

[96]*See* Reuters Letter, *supra* note 48, at 12. Reuters objected to the adoption of two provisons in the proposal. First, Reuters objected to the provision in the Rule which would require Reuters to place individual market and consolidated information on separate displays. *See* text accompanying notes 188-189, *infra*. Reuters indicated that it combines primary and consolidated information in one display and that requiring it to separate displays would not serve the purposes of the rule. Reuters Letter, *supra* note 48, at 10. In addition, Reuters indicated that it was unable to provide, without substantial reprogramming, a consolidated best bid and offer display. *Id.* at 11-12.

elected, until this time, to refrain from establishing minimum standards for those displays in order to determine whether competitive forces would ensure that market information display systems would develop in a manner consistent with the evolving national market system.[97] As market information systems have developed, it has become evident to the Commission that vendors have accorded displays of individual market information, particularly primary market information, greater prominence than displays of consolidated information.[98] The Commission recognizes that the current preference accorded displays of primary market information reflects vendors' perceptions of their subscribers' demands and not vendors' intentions to discriminate between the primary and secondary markets. The Commission is concerned, however, that, to some extent, subscriber preference for primary market information may be a product of market information systems which fail to adequately and fairly display consolidated market information. The Commission is also concerned that the failure by vendors to provide comprehensive and easily retrievable displays of consolidated information may impede progress toward a national market system by continuing to emphasize market information disseminated from the primary markets and may hamper the ability of investors to monitor whether their brokers are securing best execution of their customers' orders.

The Commission believes that the modifications in market information systems that are mandated by Rule 11Ac1-2 will enhance investor awareness of the presence of competing market centers, and, thus, alter the current pervasive preference for primary market information. These goals are fundamental to the development of a national market system. In this connection, the provision mandating a consolidated quotation display presents a particularly necessary improvement over the current method in which quotation information is displayed. Both the Congress and the Commission have long expressed the view that, given a consolidated quotation system, brokers and dealers should be able to determine, simply and directly, the best market for any security.[99] At present, that determination is made difficult by the display of individual market quotations on separate displays. Accordingly, the Commission believes that the availability of a single display of quotations for all markets should significantly improve the quality of executions of customer orders by broker-dealers. In addition, the knowledge by market makers in the secondary markets that quotations transmitted from their markets would be given an opportunity to be widely

[97]In the release announcing the adoption of Rule 11Ac1-1. the Commission indicated that several commentators had suggested that the Commission impose specific obligations on vendors of quotation information to display quotations from all market centers. *See* Rule 11Ac1-1 Release, *supra* note 15, at 37, 43 FR at 4347. The Commission stated that, although the general availability of quotation information from all market centers by such vendors is a necessary prerequisite to the use of that information, it appeared that adequate dissemination of quotation information would be achieved without regulation. In this connection, the Commission believed that the inauguration by one vendor of a montage quotation service should ensure that other vendors would, due to competitive pressures, develop a similar or, at least, a best bid and offer display. *Id.* at 37-38, 43 FR 4347. The Commission added, however, that it expected quotation displays to include certain features (see note 19, *supra*) and that it would continue to monitor vendor progress in providing quotation information in a comprehensive and nondiscriminatory manner. *Id.*

[98]Briefly, the prominence accorded displays of primary market information is evidenced by the availability of complete market information (including quotation information) on such displays and the relative ease by which such displays may be retrieved. *See* Rule 11Ac1-2 Proposal Release, *supra* note 19, at 38-39. 43 FR at 4347.

[99]In the Commission's 1973 Statement on the Structure of a Central Market System, the Commission indicated that in order for active competition to exist "brokers representing investors must be able to determine at any given time the lowest price at which a particular security can be bought and the highest price at which it can be sold." Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System (March 29, 1973), at 25, *reprinted in*, [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D-1, D-5. Similarly, the House of Representatives' Security Industry Study advocated that bid and offer quotations would be published "in such fashion as to permit a comparison between specialists and market makers, who would be in competition with one another." Report of the Subcomm. on Com. & Fin. of the Comm. on Interstate & For. Com., *Securities Industry Study*, H.R. Rep. No. 92-1519, at

disseminated may increase their willingness to compete for order flow.[100]

b. *Provisions Designed to Enhance Displays of Consolidated Information*

The Rule, as adopted, imposes three requirements designed to remedy current deficiencies in the manner of display of consolidated information.[101] First, the Rule retains the proposed requirement that vendors make displays of consolidated transaction and quotation information retrievable either by an inquiry consisting of fewer key strokes than is necessary to retrieve displays of individual market information or by an inquiry consisting of the same number of keystrokes as is necessary to retrieve displays of individual market information, if the information request or transmit key necessary to retrieve consolidated information displays is more prominent.[102]

The Rule, as adopted, also retains the provision requiring vendors to display the consolidated quotation for a reported security[103] if they display any

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xiv, (1972). Finally, the House Report on the 1975 Amendments indicated that the implementation of a composite quotation system would be necessary in order to "allow stock brokers to ascertain *at a glance* the market which offers the best price for their customers. . . ." (emphasis supplied). Comm. on Interstate & For. Com., *Report to Accompany H.R. 4111 Securities Reform Act of 1975*, H.R. Rep. No. 94-123, at 91 (1975).

[100]*But see* text accompanying note 187, *infra*.

[101]In an effort to minimize unintended effects on highly technical vendors systems the Rule addressess specific vendor systems at their current state of development and does not attempt to anticipate developments in a rapidly changing computer and communications technology. The Commission anticipates that, as vendors revise and enhance their systems, they will do so in a manner which is consistent with the policies underlying the Rule. However, the Commission is prepared to respond quickly to any action taken by vendors which may tend to circumvent the Rule.

[102]Rule 11Ac1-2(b)(2)(i) and (c)(2)(i). Although this requirement would require separate displays of consolidated and individual market information, the Commission will consider providing exemptive relief from this requirement for Reuters or any other vendor who wishes to combine primary and consolidated information in one display. *See* note 95, *supra*.

[103]Because of the difficulty of updating firm quotations in a large number of securities, many regional exchange specialists employ systems which automatically update their quotations in securities they are not actively trading each time the primary market bid or offer quotation for that security is revised ("Autoquote"). Presently, however, because each regional exchange independently generates, through its Autoquote equipment, a new quotation, there may be a period of up to 60 seconds after the primary market quotation change before all revised regional "Autoquote quotations" have been reported to the consolidated quotation system for dissemination to vendors. The Commission believes that it would be desirable to eliminate these delays, to the extent possible, and, therefore, to enhance the accuracy and timeliness of the consolidated quotation display. There would appear to be at least two ways in which this may be accomplished. Specialists on each regional exchange, when using Autoqote, could each regional exchange, when using Autoquote, could communicate to a central processor the their quotations and primary market quotations for a particular security. The central processor could then recompute all regional quotations based on the differentials supplied to it, and report those new quotations simultaneously to the consolidated quotation system. Alternatively, regional exchange specialists employing Autoquote could supply their quotation differentials to each vendor and each vendor, upon receiving through the consolidated system a report of a primary market quotation change, could compute the appropriate change for each regional exchange for dissemination through its interrogation network. The Commission urges the vendors and the participants in the CQ Plan to jointly agree on one procedure which would ameliorate the quotation reporting delays discussed above.

The present use of Autoquote by regional exchange specialists has also raised more general concerns regarding those specialists' compliance with Rule 11Ac1-1 under the Act. The Commission understands that on certain occasions specialists on regional exchanges, when disseminating quotations in an automated mode, have rejected commitments to trade at their displayed quotation. Amongst other

individual market quotation.[104] However, unlike the proposed rule, which would have mandated the display of a single consolidated quotation for each reported security, the Rule, as adopted, permits vendors to provide either a single consolidated display of the best bid and offer or a single screen montage display of quotations for each reported security from all reporting market centers.[105]

Finally, Rule 11Ac1-2, as adopted, retains the proposed provision requiring vendors to include the same categories of information on displays of consolidated information as are included on displays of individual market information.[106] This provision, however, has been modified in order to accommodate concerns raised by GTE that certain display screens, or the portion of these screens allotted to the display of specifically recalled market information,[107] contain a limited number of information fields.[108] Under the provisions of the Rule, interrogation device displays of transaction information must include one market identifier[109] and displays of consolidated quotation information must include two market identifiers.[110] As a result of these provisions, there could be as many as three fewer fields of information available for collateral market information on a combined display of consolidated transaction and quotation information than on any combined display of individual transaction and quotation information. The

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things, this practice has resulted in a general unwillingness of some users to send commitments to trade through ITS to any regional specialist whom they believe is employing Autoquote.

[104]Rule 11Ac1-2(c)(2)(A). The Commission is aware that some third market makers apparently make available quotations to the consolidated quotation system early in the day and rarely, if ever, change those quotations during that day.

As a result, frequently during the day, a "stale" third market bid or offer may become the best bid and offer and thereby possibly undermine the utility of the consolidated quotation display. The Commission reminds those market makers that insertion or maintenance of bid and offer prices which do not represent the actual prices at which the responsible broker or dealer is willing to effect transactions fails to comply with Rule 11Ac1-1 under the Act and violates the prohibition against fictitious quotations found in Section 15(c)(2) of the Act. The Commission expects the NASD to actively monitor the quotations of third market makers to assure compliance with Rule 11Ac1-1. *See* Rule 11Ac1-1 Release, *supra* note 15, at 35, 43 FR at 4347. *See also* NASD Manual—Rules of Fair Practice §6, at paragraph 2158, (1978).

[105]Although the Commission concurs with those commentators who suggested that a montage is more informative to investors and to their brokers than the consolidated quotation display, *see* text accompanying notes 84-85 *supra*, the Commission has determined not to require, at this time, that all vendors provide a montage. The Commission understands that the hardware, software and line costs inherent in providing a dynamic montage service on interrogation devices supplied to each registered representative would be far more significant than those associated with providing a best bid and offer display. In addition, the Commission recognizes that most users of interrogation devices are registered representatives who, for most practical purposes, do not possess either the authority or the means to route customer orders to the market displaying the best price. Accordingly, the Commission believes that the marginal benefit that may be provided to investors by a quotation montage, as compared to the best bid and offer display, would not warrant the expense involved in requiring that a montage be provided on all interrogation device displays. However, the Commission does expect that firms will provide their trading desks with a quotation montage service in order to provide officials responsible for order routing decisions with accurate and complete quotation information. For the same reasons, (*i.e.*, expense and the absence of a substantial benefit to be derived as a result) the Commission has also determined not to require a montage of transaction information.

[106]Rule 11Ac1-2(b)(V).

[107]Some interrogation devices display specifically recalled market information on an entire screen, while others allot only portions of the screen to the display of this information in order that other services may be provided on the remainder of the screen.

[108]See GTE Letter, *supra* note 48, at 5.

[109]See Rule 11Ac1-2(b)(i)(C).

[110]See Rule 11Ac1-2(c)(2)(i)(A)(1).

Commission understands that the addition of fields of information on the consolidated display to comply with a strict comparability requirement would entail costly reprogramming and, in some instances, hardware modification for at least one vendor. Accordingly, Rule 11Ac1-2, as adopted, has been modified to permit vendors to delete up to three categories of consolidated information in order to comply with the market identifier requirements of the Rule.[111]

[111]*See* Rule 11Ac1-2(b)(F). A vendor would be permitted to delete up to three categories of collateral market information if consolidated transaction and quotation information are combined into a single display. If a vendor provides no consolidated quotation information on its consolidated transaction display that vendor would be permitted to delete only one category of information from the display of consolidated transaction information. In addition, if a vendor is required to provide a combined display, he may not elect to delete either the consolidated quotation or transaction information in reliance upon the exception to the equal categories of information requirement. *Id.*

Bunker Ramo indicated that the same categories of information requirement also represented a costly burden to vendors because it entails the expansion of consolidated information storage capacities. *See* Bunker Ramo Letter, *supra* note 48, at 9-11. The modification of the equal categories of information provision does not address the storage capacity problem raised by Bunker Ramo because the Commission believes that the importance of ensuring the usefulness of displays of consolidated information and the fact that vendors have developed sufficient storage capacities to permit collateral information to be included on displays of individual market information outweigh the expense involved in the expansion of current storage facilities for consolidated transaction information.

The Commission has determined not to require vendors providing a market minder service[112] on an individual market basis to provide a similar service on a consolidated basis. Although the Commission believes that a consolidated market minder may be a useful tool to investors and would be consistent with the purposes of the Act, the adoption of a consolidated market minder requirement appears to be unwarranted given the supplementary function of market minders and the substantial expense that would be involved in providing that service universally. In addition, two of the three principal vendors already provide a market minder service on a consolidated basis, thus substantially negating the need for regulation. For these reasons the Commission believes that the development of market minders on a consolidated basis should be a function of competitive forces.

c. *Alternatives Considered*

In determining to adopt Rule 11Ac1-2, the Commission has considered a number of alternative regulatory measures, including those suggested by GTE and Bunker Ramo.[113] Initially, the Commission considered mandating minimum requirements that would specify the exact format of, and the precise inquiry sequence for recalling, displays of consolidated information. The Commission understood, however, that each vendor's market information system operates differently, and that a regulation that would prescribe display techniques unrelated to each vendor's capability might place some vendors at a competitive disadvantage. The Commission believed that, in order to avoid any substantial anticompetitive impact on certain vendors, it was necessary to design regulations that would permit each vendor to apply its own display techniques in complying with the regulation. The Commission therefore proposed flexible specifications for the display of consolidated information which would permit each vendor to apply its existing method of retrieving primary market information and require each to include the categories of market information that it already includes on its displays of individual market information to the retrieval and to the display of consolidated information.[114] The underlying premise of this approach is to ensure, at a minimum, that consolidated information would not be displayed in a fashion that would make that information appear to be less significant or less useful to investors than individual market information.

[112]*See* Rule 11Aa3-1(a)(11).

[113]*See* text accompanying notes *92-94, supra.*

[114]Accordingly, the proposal did not generally require vendors to provide specified categories of information unless that vendor already provided the same type of information on an individual market basis.

The Commission recognizes that it could ensure that investment decisions are based on nation-wide information by requiring that all orders be routed to the best displayed market, as suggested by GTE, or that all individual market displays be checked, as suggested by Bunker Ramo. In its recent status report on the development of a national market system,[115] the Commission stated that it had determined to defer proposal of a rule, such as the one suggested by GTE.[116] The Commission indicated that

> [i]n the current trading environment, in which quotations are not firm under all circumstances, and there are practical limitations on access for execution purposes and differences in clearing costs, it is questionable whether individualized routing of all orders on the basis of machine-displayed quotations should be required.[117]

The Commission has also determined not to pursue Bunker Ramo's suggestion that the Commission require brokers to survey each market prior to routing any order. The Commission believes that such requirement would be unenforceable and unnecessarily burdensome given the present limitations on the firmness of quotations and the manner in which most customer orders are currently routed.[118]

Finally, the Commission has also considered Bunker Ramo's suggestion that the Commission require deletion of all displays of individual market information as a means of ensuring use of consolidated information. The Commission has rejected this alternative in the belief that a reduction in the amount of information available to the public would be antithetical to the interests of investors and would impede the creation of a national market system.

C. *Formula for Determination of the Consolidated Quotation*

1. *Comments*

Seven commentators addressed the specific formula which would be used to determine the consolidated quotation when more than one market's quotation represents the highest bid or the lowest offer price. Three commentators, SIA, NASD and GTE, advocated permitting the vendor to determine whether the consolidated quotation under those circumstances would constitute the first bid or offer received by that vendor or the bid or offer with the greatest size. Those commentators indicated that, because investors could perceive a benefit from a consolidated quotation determined under either formula, vendors should be permitted to design their systems in a manner that would be

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[115]See Status Report, *supra* note 83.

[116]*Id.* at 43-44, 44 FR at 20366.

[117]*Id.* The Commission's statement concerning order routing on the basis of machine displayed quotations was intended only to explain the Commission's determination not to mandate order-by-order routing rather than to discourage individual industry efforts to experiment in this area. Recently, William A. Schreyer, President of Merrill Lynch, announced in testimony before the House of Representatives Subcommittees on Oversight and Investigation and on Consumer Protection and Finance of the House Committee on Interstate and Foreign Commerce that Merrill Lynch has developed a prototype of an electronic securities order routing system. This system is said to have the capability of scanning all quotations in the consolidated quotation system and sending customer orders to the best market. The Commission endorses this and similar experimental efforts directed at enhancing brokers' capabilities at achieving "best execution" on behalf of their customers and believes that the experience derived from such pilot programs will better enable the Commission to further explore the feasibility of systemwide order routing facilities.

[118]The Commission's determination to defer consideration of a "best execution" rule, given the current posture of the evolution of a national market system, is not intended to be an indication that the quality of individual markets (as reflected by transaction and quotation information disseminated from each market) should not be regarded as an important factor in determining to which market an order should be sent. In the release announcing the adoption of Rule 11Ac1-1, the Commission indicated that it expected that that rule would improve the quality of quotation information available from all market centers and that brokers would utilize that information in making informed order routing decisions. See Rule 11Ac1-1 Release, *supra* note 15, at 37-43, 43 FR 4346-47. Furthermore, the Commission has also indicated that it expects that those broker-dealers that automatically route retail customer orders in a particular security to a predesignated market, at a

responsive to their subscribers' needs.[119] GTE also suggested that the proposal be amended to permit it to display the aggregate size of the best quotations from all markets displaying the best bid or offer price.[120]

The four remaining commentators, NYSE, ITS Operating Committee Quotron and Merrill Lynch recommended that size be given priority over time in determining the consolidated quotation display.[121] The NYSE and the ITS Operating Committee based their recommendations on the advisability of having identical interrogation device and ITS displays.[122] Merrill Lynch advocated that size be the primary factor in determining the consolidated quotation since (i) determining the best bid and offer on the basis of time would be of no use to investors because strict time priority is not currently a feature of a national market system, and (ii) it is in the customer's best interest to have his order executed in one market and, therefore, customers should be aware of the best market in size.[123] Quotron recommended that size be considered before time because of concerns that vendors might compute the time of a quotation differently.[124]

2. *Commission Response*

The Rule, as adopted, requires that vendors provide a consolidated quotation which is determined first by reference to price (*i.e.*, the highest bid and the lowest offer), then, as to bids or offers at the same price, by reference to the bid or offer with the greatest size, and finally, as between bids or offers at identical price and size by reference to time of receipt.[125]

The Commission has determined not to grant vendors discretion to select size or time priority because, at present, orders are not routed on the basis of quotation time. Therefore, time receipt would appear to be a less useful factor in

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minimum, make periodic assessments as to the quality of such market. *See* Status Report, *supra* note 83, at 39, 44 FR at 20366. The Commission continues to believe that awareness of nationwide market information by brokers, dealers and investors is essential to improving the quality of order execution.

Furthermore, the Commission believes that broker-dealers who choose to automatically route their customer orders to a designated market should be alert for unusual market conditions in the designated market which would require brokers to take additional measures (such as disclosure of market conditions or special handling of customer orders). Examples of such unusual market conditions would include substantial price disparity betwen the designated market and other markets, extreme volatility of the market in the security and unusual trading patterns. In addition, the Commission notes that a broker's fiduciary responsibility to obtain the best execution of a customer's order under the circumstances may continue beyond the initial routing decision. In this regard, the Commission has proposed Rule 11Ac1-3 which would provide for nation-wide protection of certain displayed public limit orders. *See* Securities Exchange Act Release No. 15770 (April 26, 1979), 44 FR 26692.

[119]*See* SIA Letter, *supra* note 48, at 3; NASD Letter, *supra* note 48, at 3 and GTE Letter, *supra* note 48, at 6.

[120]*See* GTE Letter, *supra* note 48, at 6.

[121]*See* NYSE Letter, *supra* note 48, at 12-13; ITS letter, *supra* note 48 at 2; Quotron Letter, *supra* note 48, at 22; 1978 Merrill Lynch Letter *supra* note 48; and 1979 Merrill Lynch Letter *supra* note 48, at 2.

[122]*See* NYSE Letter, *supra* note 48, at 13; and ITS Letter, *supra* note 48, at 2.

[123]*See* Merrill Lynch Letter, *supra* note 48; and 1979 Merrill Lynch Letter, *supra* note 48, at 2. Merrill Lynch's prototype order routing system, described *supra* note 117, is designed to direct orders to the market displaying the best price with a size equalling or exceeding the order in question. If more than one market is displaying such a quotation, Merrill Lynch will route the order to the predetermined "primary" market.

[124]For example, Quotron questioned whether a change in quotation size would be deemed an entirely new quotation or whether a change in a market center's bid would also be deemed a change in its offer. Quotron also requested advice with respect to whether it would be necessary for the vendors to recompute the best bid and offer when an exchange closes and when an unusual market condition exists. *See* Quotron Letter, *supra* note 48, at 16.

determining the "best" market than size. Moreover, it may be that the quotation received first in time may be less valuable to investors than more recent quotations because there is a greater likelihood that the "oldest" quotation is stale. The size priority formulation, on the other hand, does provide investors with important information in the current trading environment and may further certain national market system objectives. The size priority formulation provides investors and their brokers seeking to execute orders in excess of 100 shares with information regarding the depth of the market displaying the best price. In addition, market centers may be encouraged to display quotations in greater size (*i.e.*, disclosing a more complete indication of the actual buying and selling interest in their market or creating a willingness to assume greater market making risk).[126]

D. *Display of Quotation Information in Non-Reported Securities*

1. *Comments*

Most commentators who address those provisions of the proposed rule regulating the manner of display of quotations in nonreported securities supported the rule's requirements. These commentators felt that NASDAQ Level 1 should display the best bid and offer rather than the RBA,[127] and indicated their belief that the trading in subject securities would be benefitted by the enhanced disclosure.[128] The SIA recommended, however, that the Commission request the NASD to monitor possible adverse effects of such a provision on market makers.[129]

On the other hand, the NSTA (on behalf of various of its members),[130] Piper,[131] and DKQ[132] opposed the elimination of the RBA. Those commentators noted that the "inside" quote could sometimes be misleading because NASDAQ market makers are not required to execute orders for greater than a single round lot at the displayed quotation and, thus the best bid or offer might not accurately reflect the price at which orders of greater size could be executed.[133] Moreover, these commentators suggested that, because investors expect their entire orders to be executed at the quoted price, dissemination of the best bid and offer quotation to public investors would act as a disincentive to market making by forcing OTC market makers to match nominal "inside markets" for orders in excess of 100 shares or be faced with substantial customer dissatisfaction.[134] In addition, the NSTA believed that the adoption of this provision would be untimely in view of the unknown effects of then recent amendments to Rule 10b-10 under the Act,[135] and the Commission's rule proposals relating to real-time reporting in national market system securities

[125]Rule 11Ac1-2(a)(15). The Commission has modified the proposed provision to exclude certain quotations if the market with the best quotation (in price and size) is reporting an unusual market condition. While under those circumstances the market's quotation should not be included in computing the best bid or offer price, the Commission urges that vendors include a symbol on the display notifying investors that one or more markets are reporting an unusual market condition.

[126]In this regard, the Commission would consider a request by GTE (or any other vendor with a similar display) to permit the aggregation of size of all markets displaying the best price if a significant number of those markets is identified. *See* text accompanying note 79, *supra*.

[127]*See* NYSE Letter, *supra* note 48, at 15-16; SIA Letter, *supra* note 48, at 3-4; NASD Letter, *supra* note 48, at 2-3; Instinet Letter, *supra* note 48, at 7-8; GTE Letter, *supra* note 48, at 7; and Dembitz Letter, *supra* note 48.

[128]*See* Instinet Letter, *supra* note 48, at 8.

[129]*See* SIA Letter, *supra* note 48, at 4-5.

[130]*See* NSTA Letter, *supra* note 48.

[131]*See* Piper Letter, *supra* note 48.

[132]*See* DKQ Letter, *supra* note 48.

[133]The NASD Rules of Fair Practice require a member firm to buy and sell a normal unit of trading at its then prevailing quotation.

[134]*See* NSTA Letter, *supra* note 48, at 2-3; and Piper Letter, *supra* note 48.

[135]Rule 10b-10 was amended on October 8, 1978 to require over-the-counter market makers to disclose their mark-up in riskless principal transactions. *See* Securities Exchange Act Release No. 15219 (October 6, 1978), 43 FR 47495.

and the removal of off-board trading restrictions for certain securities.[136]

2. *Commission Response*

Transaction information is not presently reported on a real time basis with respect to non-reported securities.[137] As a result, the only electronically displayed real-time market information in non-reported securities available to investors is the RBA. In proposing Rule 11Ac1-2, the Commission indicated its concern that the behavior of certain broker-dealers in executing their customers' transactions in non-reported securities may be affected by their knowledge that their customers are unaware of all current quotations or of the "inside" market.[138] For example, the Commission noted that some customer transactions are being effected by certain firms at the RBA notwithstanding that the firm executing those order on behalf of their customers may have published a bid or an offer superior to the RBA.[139]

The Commission acknowledges that, under certain circumstances, the fact that customers receive an execution at a price inferior to the best published bid or offer price may be justified. For example, executions at other than the best price may also be explained by the fact that the market maker displaying the best bid or offer may not have been willing to purchase the full amount of a customer's order, and that, therefore, the remainder of the order was executed at a less favorable price. In addition, broker-dealers may elect to refrain from routing their orders to certain market makers because either the cost of execution and clearing transactions effected through those market makers do not justify routing orders to them or because those broker-dealers have reason to believe that it may be imprudent to deal with certain market makers.[140]

None of the foregoing is a basis, however, for denying customers the knowledge of the "inside" quotation. Broker-dealers who are fulfilling their fiduciary obligations would have the additional responsibility of responding to customer requests to explain the manner in which their orders were executed. The Commission believes that this would be a beneficial result of the Rule. The effort and costs involved in educating customers with respect to their transactions are not so burdensome as to outweigh the benefits to be derived from disclosing the best quotes to investors which may lead to an improvement in the execution of orders, or at least permit investors the opportunity to police those executions.

In the Commission's view, the failure to display "inside" quotations to investors in non-reported securities potentially misleads customers into believing that they are receiving the best price available on their orders. In addition, even if customers are aware that the quotations displayed to them are the RBA, the quality of execution of their orders is diminished by brokerage firms' knowledge of their customers' inability to determine, at a minimum, the best bid or offer. The benefits to be achieved by requiring the display of the "inside" market and the prohibition against the display of the "representative bid and offer" outweigh any perceived adverse effects of requiring the display of the "inside" market. The Commission has, therefore, adopted the provision requiring the display of, at a minimum, the best bid and offer of a security[141] and

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[136]See NSTA Letter, *supra* note 48, at 3.

[137]The Commission has recently propsed Rule 11Aa2-1 under the Act, which, if adopted, would provide procedures for the designation of securities (including certain over-the-counter securities) as qualified for trading in a national market system. *See* Securities Exchange Act Release No. 15926 (June 15, 1979), 44 FR 36912. Although proposed Rule 11Aa2-1 does not address the timing or manner of inclusion of over-the-counter national market system securities in the facilities of that system, the Commission proposed in the release that certain over-the-counter securities (denoted as tier 1 securities) would be included in the consolidated transaction reporting and quotation systems shortly after the designation of those securities as tier 1 securities. *Id.* at 44-45, 44 FR at 36920-21.

[138]See Rule 11Ac1-2 Proposal Release, *supra* note 19, at 43, 43 FR at 50622.

[139]See Prepared Statement of the MSE, August 4, 1977, at 47, contained in File No. 4-180.

[140]The Commission has, in the past, been informed that certain market makers displaying quotes in NASDAQ are not even "firm" for a single round lot as is required by the NASD. The Commission expects the NASD to take appropriate measures to preclude this contravention of its rules. *See* Piper Letter, *supra* note 48, and NSTA Letter, *supra* note 48, at 1-2.

[141]See Rule 11Ac1-2(c)(2)(i).

prohibiting the display of any "representative" quotation.[142]

E. *Market Identifiers*

1. *Comments*

In response to its proposal to delete market identifiers from moving ticker displays and from interrogation devices, the Commission received numerous comments. Only one commentator, Bunker Ramo, supported the mandatory deletion of market identification from recall devices and from moving tickers. Bunker Ramo advocated this approach as a method of promoting the concept of a national market system and of shifting the focus of attention away from the display of transaction information to the display of quotation information in order to promote competitive market making.[143] On the other hand, one other commentator, Instinet, suggested that, to the contrary, the Commission mandate the inclusion of market identifiers. Instinet contended that market identifiers were necessary as a surveillance matter, to determine whether specialists were honoring their quotations, as is required by Rule 11Ac1-1.[144]

Most other persons commenting on this provision opposed any mandatory requirements regarding market identifiers. Three commentators suggested that market identifiers may be a useful investor tool and that vendors should be given discretion to determine whether to include market identifiers as part of transaction information.[145] One vendor indicated that it had relied on the Commission's earlier position requiring market identifiers to accompany the consolidated transaction information on interrogation devices and that it was unfair to require that vendor to expend funds to comply with the reversed position.[146] The MSE contended that while the removal of market identifiers from moving tickers was useful, the deletion from recall devices was unnecessary.[147]

Three commentators advocated the modification of the proposed provision to require inclusion on moving tickers of market identifiers for block trades.[148] In their views, market identifiers are essential for monitoring executions and trends in purchases and sales, as well as identifying potential sources of supply and demand,[149] and are particularly useful to institutional investors.[150] Two of these commentators suggested that the Commission define a block trade as 5,000 shares or more,[151] and one commentator suggested a transaction of at least 10,000 shares should be followed by a market identifier.[152] The NYSE indicated that it would support placing market identifiers on the consolidated tape for all or for at least block trades, (5,000 shares or more) if the other market centers agree.[153]

2. *Commission Response*

The Commission has consistently been of the belief that non-discriminatory market identifiers may be an important tool to investors and in encouraging competition among market centers.[154] For these

[142]See Rule 11Ac1-2(c)(2)(vi).

[143]See Bunker Ramo Letter, *supra* note 48, at 6.

[144]See Instinet Letter, *supra* note 48, at 4.

[145]See *GTE Letter, supra* note 48, 5-6, Quotron Letter, *supra* note 48, at 4-5, and NASD Letter, *supra* note 48, at 1. Although GTE's initial suggestion was to have all market identifiers not serving a regulatory purpose deleted, GTE indicated that if vendors were permitted to display separately transaction information on an individual market basis, inclusion of market identifiers on consolidated displays should be a matter of each vendor's discretion. See GTE Letter, *supra* note 48, at 6.

[146]See Reuters Letter, *supra* note 48, at 9.

[147]See MSE Letter, *supra* note 48, at 1-2.

[148]See ITAC Letter, *supra* note 48, Jeffries Letter, *supra* note 48, and Republic Letter, *supra* note 48.

[149]See ITAC Letter, *supra* note 48, at 1-2.

[150]See Jeffries Letter, *supra* note 48; and Republic Letter, *supra* note 48.

[151]See ITAC Letter, *supra* note 48, at 1; and Republic Letter, *supra* note 48.

[152]See Jeffries Letter, *supra* note 48.

[153]See NYSE Letter, *supra* note 48, at 10-11.

[154]In the Rule 11Ac1-2 Proposing Release, *supra* note 19, at 28-29, 43 FR 50619, the Commission indicated that the advent of Rule 11Ac1-1 may have diminished the importance of transaction information to investors and that market identifiers

reasons, the Commission included within Rule 17a-15 the requirement that transaction information be accompanied by market identifiers.[155] However, the CTA Plan required that all moving tickers be supplied only from the low speed data streams[156] which provide information to moving tickers at the rate of only 900 characters per minute.[157] Because of the limitations of low speed data transmission, it became obvious that transaction information appearing on moving tickers could not include market identifiers on a non-discriminatory basis without unreasonably delaying the display of transaction information. As a result, the CTA instituted a manner of identifying markets of execution on moving ticker displays which differentiated between transactions executed in the primary markets and in other market centers. Primary market transactions which comprise the majority of reported transactions were not followed by any symbol, while transactions in other market centers were followed by an ampersand and a single alphabetic character identifying the market of execution.[158] By utilizing this method of market identification excessive delays were avoided on moving tickers.

The regional exchanges and third market makers contended that this method of identification discriminated against their markets by differentiating the method of identifying transaction information emanating from their markets as compared to transaction information from primary markets.[159] In the course of discussions among various market centers negotiating with respect to the creation of the ITS, those market centers jointly requested that the Commission permit the deletion of market identifiers from the tape with respect to ITS participants by amending Rule 17a-15 or by granting an exemption from that rule.[160] In 1978, the Commission issued an exemptive order from Rule 17a-15 granting this request, conditioned on the prompt removal, as soon as technically possible, of all market identifiers.[161] The Commission stated in its order that such differentiated transaction reporting was inconsistent with the underlying purpose of a consolidated system.[162]

In adopting Rule 11Aa3-1 today, the Commission has created an opportunity to alter the environment in which transaction information is displayed. Specifically, Rule 11A3-1 permits the

Footnote 154 Continued

may not longer be a relevant tool to investors. Based on the nearly unanimous comment that transaction information and market identifiers continue to be essential sources from making investment decisions, the Commission has concluded that, absent other factors, transaction information, whether on moving tickers or interrogation devices, should include market identifiers.

[155]*See* Rule 17a-15(b)(4).

[156]*See* Rule 11Aa3-1 Release, *supra* note 5, at text accompanying note 22.

[157]*Id.* at note 21.

[158]*See* Rule 11Aa3-1 Release, *supra* note 5, at note 21.

[159]*See e.g.*, letter from Kenneth I. Rosenblum, Senior Vice-President and Counsel, MSE, to Douglas Scarff, Assistant Director, Division of Market Regulation, SEC, dated December 8, 1977; and Donald E. Weeden, President, Weeden & Co. to Harold M. Williams, Chairman, SEC, dated January 13, 1978. These letter are contained in File No. S7-759.

[160]*See* Rule 11Ac1-2, Proposal Release, *supra* note 19, at 21-22, 43 FR at 50618.

[161]*See* Securities Exchange Act Release No. 14662 (April 14, 1978) ("Exemptive Order), 43 FR 17422. On April 17, 1978, the ITS began operations, and, simultaneously, CTA deleted market identifiers from all moving ticker displays with respect to transactions effected on all market centers having agreed to participate in ITS. On April 24, 1978, the CTA removed all remaining market identifiers from moving tickers.

[162]*See* Exemptive Order, *supra* note 161, at 7, 43 FR at 17423. The Exemptive Order was extended on August 11, 1978, Securities Exchange Act Release No. 15059 (August 11, 1978), 43 FR 36736 and on September 21, 1979, Securities Exchange Act Release No. 16216 (September 21, 1979), 44 FR 56081. The most recent extension was until "January 31, 1983 or the date the Commission concludes its proceedings regarding proposed Rule 11Ac1-2. . . ." In concluding those proceedings today, the Commission has determined that after October 5, 1980, the effective date of paragraph (c)(2)(iv) of Rule 11Ac1-2, an exemption will no longer be necessary because the Rule does not require identifiers, but rather proscribes the manner in which identifiers may be employed.

retransmission of transaction information supplied by the high speed data stream via moving tickers.[163] Moving tickers so created might not be subject to excessive reporting delays engendered by non-discriminatory identification of markets.[164] Accordingly, the Commission has adopted the market identifier provision in modified form to reflect this changed environment. Thus, Rule 11Ac1-2 precludes only the use of market identifiers for some, but not all, market centers and would permit the non-discriminatory use of market identifiers.[165] Because the Commission believes that market identifiers provide useful information it urges vendors who are contemplating retransmitting transaction information to consider the feasibility of including market identifiers for all markets.

The Commission recognizes that market identifiers provide especially valuable information with respect to certain types of transactions, most particularly block trades and the opening transaction on each exchange. Accordingly, Rule 11Ac1-2, as adopted, would also permit the non-discriminatory use of market identifiers on a moving ticker for any definable sub-set of transactions. The Commission believes that tickers fed by either the low or high speed data streams could incorporate market identifiers for at least opening and block transactions without substantial delays and urges both the CTA and any other vendor who constructs a ticker network to provide market identifiers for such transactions.

Consolidated transaction information displayed on interrogation devices currently includes market identifiers on a nondiscrimnatory basis (*i.e.*, all markets are identified by a symbol) without incurring delays in reporting because interrogation devices are supplied with transaction information via the high speed data stream. Because market identification may be included on consolidated displays without delay and in a non-discriminatory fashion and on the basis of the unanimous comment that market identifiers remain relevant to investors, the Rule will continue to require inclusion of market identifiers on the consolidated display.

F. *Access Procedures for Individual Market Displays*

1. *Comments*

Three commentators supported the provision in the proposed Rule which would have required all individual market displays to be made available by access procedures involving an equal number of keystrokes. Those commentators contended that a non-discriminatory access procedure would diminish an unfair advantage provided to the primary markets.[166] Other commentators vigorously opposed this provision. Quotron objected to this provision on the same basis as it objected to the consolidated information access provision (*i.e.*, that ease of access would not dictate the frequency of recall of any display).[167] The NYSE expressed concern that this provision would entail substantial expense which would be passed on to customers.[168] Furthermore, the NYSE believed that the degree of perfection contemplated by the equal access provision could not be of major importance in "the overall scheme of things."[169]

Bunker Ramo questioned the necessity of an equal keystroke requirement to recall individual market centers, since, in its view, individual market information would not be widely used because of the greater utility of consolidated data.[170] In addition, Bunker Ramo argued that because there is no mandatory provision requiring the display of individual market information, vendors would elect to delete displays which could not be modified to economically achieve full compliance in accordance with the equal keystroke provision. The effect of that determination by certain vendors

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[163]See Rule 11Aa3-1(e).

[164]It would appear particularly likely that, if vendors choose to retransmit transaction information to create a selective moving ticker, such a display would not be delayed by non-discriminatory identification of markets.

[165]See Rule 11Ac1-2(b)(2)(iv).

[166]See CBOE Letter, *supra* note 48, at 5; GTE Letter, *supra* note 48, at 5; and PSE Letter, *supra* note 48, at 2.

[167]See Quotron Letter, *supra* note 48, at 21, and text accompanying notes 87-89, *supra*.

[168]See NYSE Letter, *supra* note 48, at 5.

[169]*Id.* at 6.

[170]See Bunker Ramo Letter, *supra* note 48, at 7.

would reduce the availability of market information and would place those vendors at a competitive disadvantage.[171] Bunker Ramo recommended that the Commission consider a "substantial compliance" standard whereby the equal keystroke provision would require equal access for only a majority of securities.[172]

2. *Commission Response*

The Commission understands that certain vendors would be forced to incur substantial costs in order to provide for equal access to each individual market display currently made available by those vendors. If the Commission were to adopt this requirement, the Commission is concerned that vendors may elect to delete certain individual market displays rather than to incur the expense of providing equal access to all individual market displays. The Commission is also aware that, under present market conditions, primary market information may be more valuable to investors than information with respect to secondary markets. Accordingly, while the Commission believes that an easily accessible and useful display of consolidated informtion is integral to a national market system, it does not believe it is appropriate, at this time, to mandate requirements for individual market displays. The Commission anticipates that as a national market system continues to evolve present burdens on fair competition will be reduced. Increased competition between market centers will increase the value of market information disseminated from markets other than the primary market and in turn should increase investor demand for that information Accordingly, in light of the costs which may be associated with an equal access requirement for all individual markets, the Commission believes that changes in these access procedures should result from the competitive demands of the marketplace rather than Commission rulemaking.

III. TECHNICAL COMMENTS

In addition to the foregoing, the Commission has received a number of comments addressing certain technical aspects of the Rule.

A. Quotron noted that the term "market information" as used in paragraph (b)(2)(v) of proposed Rule 11Ac1-2, which would require the inclusion of all categories of market information appearing on displays of individual transaction information on displays of consolidated transaction information, is not defined, and thus could be interpreted to include only transaction and quotation information and any information derived from such transaction and quotation information, but not such information as dividends, earnings, news alerts and net change.[173] The Commission has added a definition of the term market information to paragraph (a) of the Rule that includes all collateral information relating to a security including dividends, earnings, news alerts and time of most recent change.[174]

B. The NYSE noted that although the term "vendor" as defined in paragraph (a)(12) of proposed Rule 11Ac1-2 excepts securities information processors and exchanges with respect to the dissemination of transaction and quotation information on the trading floor of any exchange, paragraph (e) of the proposed rule, which applies to brokers and dealers, could be understood to regulate the maintenance of trading floor displays by specialists.[175] Rule 11Ac1-2, as adopted, has been clarified to except from its requirements all displays on the trading floor of an exchange and displays operated by self-regulatory organizations solely for surveillance and monitoring purposes.[176]

C. The NYSE also pointed out that paragraph (a)(16) of the proposed Rule, which defines the term "moving ticker," is superfluous since proposed Rule 11Ac1-2(a)(1) defines "moving ticker" as having the meaning provided in Rule 11Aa3-1.[177] Rule 11Ac1-2 has been revised to cross-reference all definitions of terms already defined in Rule 11Aa3-1.[178]

D. Both Quotron and the NYSE indicated that the definition of the term "vendor" in paragraph (a)(12)

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[171] *Id.* at 8.

[172] *Id.* at 8-9. By the phase "substantial compliance," Bunker Ramo intended that vendors should only be required to provide equal access to individual market displays for most reported securities. *Id.*

[173] See Quotron Letter, *supra* note 48, at 10.

[174] See Rule 11Ac1-2(a)(18).

[175] See NYSE Letter, *supra* note 48, at 25-27.

[176] See Rule 11Ac1-2(f).

[177] See NYSE Letter, *supra* note 48, at 217.

[178] See Rule 11Ac1-2(a)(1).

of the proposed Rule, which includes any securities information processor or self-regulatory organization engaged in the business of disseminating transaction and quotation information to brokers or dealers on a real-time or other current and continuing basis, would exclude the operation of press association and displays of information directly to investors.[179] With respect to the comment regarding the applicability of the Rule to press associations, the Commission notes that press associations which act as securities information processors are considered vendors for purposes of Rule 11Ac1-2. With respect to the applicability of Rule 11Ac1-2 to displays of market information shown to investors, the Commission has added to the definition of vendor distribution of information to investors.[180]

E. The NYSE indicated that the term "make available" in Rule 11Ac1-2 is assigned the definition in Rule 11Ac1-1(a)(7) but is not used in a manner consistent with that definition throughout Rule 11Ac1-2.[181] Rule 11Ac1-2 has been revised to use the term "make available" consistent with the definition in Rule 11Ac1-1.

F. The NYSE pointed out that the term "market center" is defined in proposed Rule 11Ac1-2(a)(14) to mean, with reference to the third market, an individual third market maker. As that term is used in proposed Rule 11Ac1-2(b)(2)(ii) vendors would have to identify transactions by individual third market makers, rather than merely as "third market transactions."[182] Rule 11Ac1-2 has been modified from its proposed form to permit identification of third market transactions as third market transactions without identifying the individual market maker responsible for the transaction.[183]

G. Quotron suggested that, as a policy matter, certain categories of information should not be required on the consolidated display. Quotron argued that the inclusion of net change on the consolidated display may be misleading because it is significantly affected by the disparate hours of trading of reporting market centers. For example, an unusual trade in the third market after 4:00 p.m. may become the basis for establishing net change the following day. In addition, in Quotron's view, the opening price should not be reported on the consolidated display because the opening price for the consolidated display would be arbitrarily determined by the first market to open. Finally, Quotron suggested that the existence of an unusual market condition, such as a regulatory halt in an individual market, would appear to be relevant only to the display of information from that market, not to the consolidated display.[184]

The Commission believes that none of the three categories of information discussed by Quotron should be excepted from the equal categories of information requirement. First, both net change and opening price are useful to investors in determining daily trends in market. Quotron's argument that these two categories are relevant only to individual market displays is based on the assumption that investors will only find valuable information regarding price trends on an individual market basis. However, the Commission believes that as current national market facilities are enhanced and new facilities are developed, subscribers to interrogation devices will choose to use consolidated transaction and quotation information to make their trading decisions. As a result, trends in the securities market after the close of the primary and most secondary exchanges and the opening price in any security in any one day on a system wide basis is important to investors and may become more important as a national market system evolves. Finally, although unusual market condition generally only relates to a single market, the Commission believes that this information is important to investors and is necessary to inform subscribers who recall the consolidated information display in their trading that there are markets not disseminating quotations or that quotations from certain markets may not be firm.[185]

IV. EFFECTS ON COMPETITION

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such

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[179] See Quotron Letter, *supra* note 48, at 11, and NYSE Letter, *supra* note 48, at 27-28.

[180] Rule 11Ac1-2(a)(2).

[181] *Id.* at 28.

[182] *Id.*

[183] See Rule 11Ac1-2(b)(2)(iv).

[184] See Quotron Letter, *supra* note 48, at 11-14.

[185] *Cf.* Rule 11Ac1-1 Release, *supra* note 15, at 38 n.48, 43 FR at 4347 n.48.

regulation and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act.

In the Rule 11Ac1-2 Proposal Release, the Commission requested that commentators should specifically address the competitive impact of Rule 11Ac1-2.[186]

A. *Comments*

Quotron contended that in order to determine whether the benefits sought to be achieved by the adoption of Rule 11Ac1-2 outweigh the anticompetitive effects of the Rule, it is necessary to identify the group to be benefitted. Quotron argued that current trading patterns make primary market information the most germane to investors and that the Rule would therefore be contrary to the interest of investors by making primary market information more difficult to retrieve.[187]

Reuters contended that the adoption of Rule 11Ac1-2 would hinder competition "by an aggressive firm trying to introduce a technologically more advanced and more efficient system to such industry."[188] In addition, Reuters argued that the expense that would be incurred in complying with the Rule could cause vendors to withdraw from the securities information industry, thus resulting in further concentration of that industry,[189] and deterring potential vendors from entering the industry.

GTE indicated that the current unregulated environment has fostered competition by vendors on the bsis of price, quality of service and product innovation. The imposition of the restrictions of Rule 11Ac1-2 would, according to GTE, "place a competitive straight jacket on vendors" and "leave price as the only viable method of competition, which would lead to technological stagnation, and make the industry an unattractive candidate for new investment."[190]

B. *Commission Response*

Rule 11Ac1-2 does not require vendors to apply novel techniques to the display of market information. Instead, the Rule merely requires that each vendor's existing methods of retrieval and mode of display of individual market information be applied to the method of retrieval and mode of display of consolidated market information.[191] In addition, the Rule does not impede competition in the types of services or products which may be offered by vendors, such as statistical data, monitoring and self-programming capabilities. Rule 11Ac1-2 does further the Congressional mandate under Section 11A(a) to establish a national market system and the Commission's authority under Section 11A(c) under the Act to assure prompt, accurate, reliable and fair publication of transaction and quotation information in a fair and useful format. For the reasons expressed in this release, the Commission finds that Rule 11Ac1-2 does not impose a burden on competition which is neither necessary nor appropriate in furtherance of the purposes of the Act.

V. EFFECTIVE DATE OF RULE 11Ac1-2

Rule 11Ac1-2, as proposed, was scheduled to become effective on March 1, 1979. A number of commentators argued that a March 1 effective date, assuming that there would be a two and one-half month period following adoption, was unrealistic.[192] In addition, Quotron argued for a phased implementation of the Rule so that the effective date of provisions of the Rule which could be easily complied with by vendors need not be held up by other provisions which might require more extensive changes in vendor systems.[193]

In light of these comments, the Commission has determined to implement the Rule on a phased

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[186]*See* Rule 11Ac1-2 Proposal Release, *supra* note *19*, at 81, 43 FR at 50627.

[187]*See* Quotron Letter, *supra* note *48*, at 19-22.

[188]*See* Reuters Letter, *supra* note 48, at 7.

[189]*Id.* at 12.

[190]*See* GTE Letter, *supra* note 48, at 3.

[191]*See* text accompanying notes 101-111, *supra*. With respect to Reuter's arguement that the Rule will deter its entry into the industry, as previously indicated, the Commission will consider providing exemptive relief to permit Reuters to combine primary and consolidated information in one display, see note 96, *infra*.

[192]*See e.g.*, Quotron Letter, *supra* note 48, at 2; and GTE Letter, *supra* note 48, at 3.

[193]Quotron Letter, *supra* note ....., at 2.

basis. Certain parts of the rule which incorporate certain display requirements contained in Rule 17a-15 and address the use of market identifiers do not require any changes in existing display systems and therefore those portions of the Rule shall be effective on April 5, 1980. The Rule's requirement that NASDAQ Level 1 display the best bid and offer rather than the RBA shall be effective on July 5, 1980.[194] Finally, the Commission has determined that the consolidated quotation, key stroke and equal categories requirements of the Rule shall not become effective until October 5, 1980.[195]

III. TEXT OF RULES

The Commission hereby amends Title 17, Chapter II, of the Code of Federal Regulations by adding §240.11Ac1-2 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.11Ac1-2 Display of transaction reports, last sale data and quotation information.

(a) *Definitions*. For purposes of this section,

(1) The terms "transaction report," "effective transaction reporting plan," "non-member broker or dealer," "moving ticker," "last sale data," "market minder" and "interrogation device" shall have the meaning provided in §240.11Aa3-1 (Rule 11Aa3-1 under the Act).

(2) The term "vendor" shall mean any securities information processor engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to subject securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

(3) The term "NASDAQ" shall mean the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(4) The term "subject security" shall mean

(i) any reported security; and

(ii) any other equity security as to which transaction reports, last sale data or quotation information is disseminated through NASDAQ.

(5) The terms "quotations" and "quotation information" shall mean bids, offers and, where applicable, quotation sizes and aggregate quotation sizes.

(6) The terms "bid" and "offer" shall,

(i) in the case of a reported security, have the meaning provided in §240.11Ac1-1 (Rule 11Ac1-1 under the Act); and

(ii) in the case of any subject security other than a reported security, mean the most recent bid price or offer price of an over-the-counter market maker disseminated through Level 2 or 3 of NASDAQ.

(7) The terms "quotation size," "aggregate quotation size," "third market maker" and "make available" shall have the meaning provided in §240.11Ac1-1 (Rule 11Ac1-1 under the Act).

(8) The term "consolidated display" shall mean, with respect to a particular reported security,

(i) any display (other than a moving ticker or market minder) of transaction reports for such security from all reporting market centers;

(ii) any display (other than a moving ticker or market minder) of last sale data for such security, or information derived therefrom, based on transaction reports from all reporting market centers; or

(iii) any display of quotation information for that security based on quotations from all reporting market centers.

(9) The term "consolidated price," when used with respect to a particular reported security, shall mean the price of the most recent transaction report for that security reported pursuant to any effective transaction reporting plan.

(10) The term "consolidated volume," when used with respect to a particular reported security, shall mean the volume of the most recent transaction

[194]The Commission has been informed by the NASD that it has completed any technical changes needed disseminate the best bid and offer on NASDAQ Level 1.

[195]See Rule 11Ac1-2(h).

report for that security reported pursuant to any effective transaction reporting plan.

(11) The term "cumulative consolidated volume," when used with respect to a particular reported security, shall mean the cumulative volume of all transaction reports for that security reported pursuant to any effective transaction reporting plan during a particular trading day.

(12) The term "individual market center display" shall mean, with respect to a particular reported security,

(i) any display (other than a moving ticker or market minder) of transaction reports for such security from a particular market center;

(ii) any display (other than a moving ticker or market minder) of last sale data for such security, or information derived therefrom, based on transaction reports from a particular reporting market center; or

(iii) any display of quotation information for that security based on quotations from a particular reporting market center.

(13) The term "over-the-counter market maker" shall mean, with respect to any subject security other than a reported security, any broker or dealer which holds itself out as being willing to buy and sell such security on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

(14) The term "reporting market center" shall mean,

(i) with respect to a reported security,

(A) any national securities exchange ("exchange") on which, or through whose facilities, transactions in such security are executed and which collects, processes and makes available transaction reports with respect to transactions in such security on a current basis pursuant to §240.11Aa3-1 (Rule 11Aa3-1 under the Act); and

(B) any person acting in the capacity of a third market maker with respect to such security which reports transactions in such security to a national securities association on a current basis pursuant to §240.11Aa3-1 (Rule 11Aa3-1 under the Act) and disseminates quotations in such security pursuant to §240.11Ac1-1 (Rule 11Ac1-1 under the Act); and

(ii) with respect to a subject security other than a reported security, any person acting in the capacity of an over-the-counter market maker who is authorized to disseminate quotations in such security, through NASDAQ, and who makes such quotations available through that system on a regular and continuous basis.

(15) The terms "best bid" and "best offer" shall mean,

(i) with respect to quotations for a reported security, the highest bid or lowest offer for that security made available by any reporting market center pursuant to §240.11Ac1-1 (Rule 11Ac1-1 under the Act) (excluding any bid or offer made available by an exchange during any period such exchange is relieved of its obligations under paragraphs (b)(1) and (2) of §240.11Ac1-1 by virtue of subparagraph (b)(3)(i) thereof); *Provided, however,* That in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or best offer (as the case may be) shall be computed by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), then by time (giving the highest ranking to the bid or offer received first in time); and

(ii) with respect to quotations for a subject security other than a reported security, the highest bid or lowest offer (as the case may be) for such security disseminated by an over-the-counter market maker in Level 2 or 3 of NASDAQ.

(16) The term "quotation montage" shall mean, with respect to a particular subject security, a display on an interrogation device which disseminates simultaneously quotations in that security from all reporting market centers.

(17) The term "representative bid or offer" shall mean any number representing a bid price or an offer price (as the case may be) for a particular subject security which is (i) the mean, median, mode or weighted average of two or more bids or offers of reporting market centers in such security, (ii) calculated with reference to or derived from any such mean, median, mode or weighted average, or (iii) calculated by adding to or subtracting from the bid or offer of any reporting market center in such security any number representing a commission, commission equivalent, mark-up or differential.

(18) The term "market information," when used with respect to an individual market center display or a consolidated display for a particular reported security, shall mean (i) any transaction reports or last sale data, or information derived therefrom, contained in any such display, (ii) any quotation information contained in any such display, and (iii) any other category of information contained in any such display which relates to the particular reported security involved, including, but not limited to, annual or periodic dividend, ex-dividend date, time of most recent trade and news dissemination.

(19) The term "market linkage system" shall mean any communications and data processing facility which permits orders for the purchase and sale of a subject security to be transmitted from one reporting market center to another such reporting market center.

(20) The term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(b) *Display requirements for transaction reports and last sale data.*

(1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, transaction reports, last sale data or market information in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of transaction reports, last sale data or market information with respect to reported securities:

(i) If transaction reports or last sale data with respect to a particular reported security are provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of transaction reports or last sale data for such security which shall include, at a minimum, (A) the consolidated price for such security, (B) the consolidated volume or cumulative consolidated volume for such security, and (C) an identifier indicating the reporting market center associated with such consolidated price and consolidated volume (the "consolidated last sale display").

(ii) The consolidated last sale display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center display of transaction reports or last sale data provided on that device for such security; *Provided, however,* That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated last sale display and any such individual market center displays made available for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated last sale display is the most prominent.

(iii) Subject to the provisions of subparagraph (b)(2)(ii) of this section, a vendor may provide on an interrogation device an individual market center display of transaction reports or last sale data for a particular reported security for any reporting market center in such security.

(iv) No moving ticker may include an identifier indicating the reporting market center associated with a particular transaction report with respect to a reported security unless such moving ticker includes identifiers for all transaction reports for such security (or an identifiable subset of all such transaction reports) from all reporting market centers in that security in a non-discriminatory manner.

(v) No moving ticker or consolidated last sale display may exclude any transaction report or last sale data based upon the market center in which a transaction has been executed.

(vi) No vendor may provide any category of market information in an individual market center display for a particular subject security unless that category of market information is also provided, on a consolidated basis, as part of the consolidated last sale display for that security; *Provided, however,* That a vendor may delete from such consolidated last sale display up to three categories of information if such deletion is necessary to accommodate the display of any market identifiers required by this section.

(vii) Transaction reports and last sale data from all reporting market centers which are third market makers may be identified in a consolidated last sale display or a moving ticker by a single identifier

without identification of the individual third market maker associated with such transaction report or last sale data.

(c) *Display requirements for quotation information.*

(1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, quotation information with respect to subject securities in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of quotation information with respect to subject securities:

(i) If quotation information with respect to a particular subject security is provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of quotation information for such security (the "consolidated quotation display") which shall include, at a minimum,

(A) the best bid and best offer for such security and, in the case of a reported security, (*1*) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer and (*2*) the quotation size or aggregate quotation size associated with such best bid and the quotation size or aggregate quotation size associated with such best offer, or

(B) a quotation montage for that security.

(ii) The consolidated quotation display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center quotation display provided on that device by such vendors for such security; *Provided, however,* That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated quotation display and any individual market center display of quotation information provided for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated quotation display is the most prominent.

(iii) Subject to the provisions of subparagraph (c)(2)(ii) of this section, a vendor may provide on an interrogation device

(A) an individual market center display of quotation information for a particular subject security for any reporting market center in such security; or

(B) either separately or as the consolidated quotation display, a quotation montage for that security.

(iv) No consolidated quotation display or separate quotation montage provided on an interrogation device may exclude any quotation information based upon the market center making available such information; *Provided, however,* That for purposes of providing the consolidated quotation display or a separate quotation montage for any reported security, quotation information from all reporting market centers which are third market makers may be consolidated to derive a best bid and offer for all such market centers if such interrogation device is capable of displaying, either separately or as part of the consolidated quotation display or separate quotation montage, (A) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer, and (B) the quotation size associated with both such best bid and best offer.

(v) Each individual market center display of quotation information or separate quotation montage for a particular reported security shall include the quotation size or aggregate quotation size associated with each bid or offer disseminated as part of such display or montage.

(vi) No vendor may provide on any interrogation device a representative bid or offer with respect to any subject security.

(d) *Joint display of transaction reports and quotation information.*

Subject to the provisions of paragraphs (b)(2)(ii) and (c)(2)(ii) of this section regarding the means of access to consolidated last sale displays and consolidated quotation displays, a vendor may combine the consolidated last sale display and the consolidated quotation display for a particular subject security.

(e) *Applicability to brokers and dealers.* Subject to the provisions of paragraph (f) of this section, no broker or dealer may operate or maintain any display

of transaction reports, last sale data, quotation information or market information which would not be permitted to be provided by a vendor under paragraph (b) or (c) or this section.

(f) *Exchange or market linkage system displays.*

The provisions of this section shall not apply to:

(1) the dissemination or display of transactions reports, last sale data, quotation information or market information on the trading floor or through the facilities of an exchange, (2) any display of transaction reports, last sale data, quotation information or market information operated or maintained by a self-regulatory organization for monitoring or surveillance purposes, or (3) any display of transaction reports, last sale data or quotation information in connection with the operation of a market linkage system implemented in accordance with a plan approved by the Commission pursuant to Section 11A(a)(3)(B) of the Act.

(g) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any securities information processor, self-regulatory organization, broker, dealer or specified subject security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(h) *Effective date.* The effective date of this section shall be April 5, 1980, and except for subparagraph (c)(2)(vi), which shall become effective on July 5, 1980, and subparagraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) which shall become effective on October 5, 1980.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by Secs. 2, 3, 4, 11, 14 and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. §§78b, 78c, 78f, 78i, 78j, 78o, 78g and 78w); Sec. 15A, as added by sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by sec. 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. §78-3); Sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. §78k-1).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16591/February 20, 1980

Program for Allocating Regulatory Responsibilities Pursuant to Rule 17d-2

Notice of Proposed Filing of Amendments to the NASD/BSE, NASD/CSE, NASD/MSE, and NASD/PSI Plans

(File Nos. 4-196, 4-273, 4-274, 4-267)

In Securities Exchange Act Release No. 15191 (September 26, 1978),[1] the Commission approved on provisional basis the plans for allocating regulatory responsibilities (the "allocation plans") filed pursuant to Rule 17d-2 (17 CFR 240.17d-2) by the National Association of Securities Dealers, Inc. ("NASD") in conjunction with the Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Midwest Stock Exchange, Inc. ("MSE"), and the Pacific Stock Exchange, Inc. ("PSE") (with the NASD, the "parties").[2] The Commission conditioned its further consideration of these plans on, among other things, the filing of certain amendments to them.

The amendments to the allocation plans filed by the NASD in conjunction with each of the exchanges will apply to each member of the applicable exchange which is now or is in the future designated to be inspected for compliance with applicable financial responsibility rules (a "designated member") by the NASD pursuant to Rule 17d-1 (17 CFR 240.17d-1) under the Securities Exchange Act of 1934.

The amendment to the allocation plan filed by the NASD and the BSE provides that, should a dispute

[1] 43 FR 46093 (October 5, 1978). Originally approved for 270 days, the Commission subsequently extended the period of provisional approval until January 1, 1980, in Securities Exchange Act Release No. 15941 (June 21, 1979). Because certain amendments to the plans and supplementary material had not been completed, the Division of Market Regulation, pursuant to delegated authority, extended the period of provisional approval until April 5, 1980, in Securities Exchange Act Release No. 16462 (January 2, 1980).

[2] The Commission has published notice of the terms of these plans in Securities Exchange Act Release No. 14094 (October 25, 1977), 42 FR 57197 (1977).

arise between the parties concerning their obligations under the plan, such dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association.

The amendment to the allocation plan filed by the NASD and the CSE provides the identical arbitration clause as that submitted by the NASD and the BSE as noted above.

The amendment to the alloction plan filed by the NASD and the MSE provides the following: 1) an explanation of certain terms used in the plan and a description of the regulatory responsibilities of the NASD under the plan; 2) the NASD shall be responsible for reviewing and taking action on customer complaints; 3) the NASD shall review the advertising of dual members in accordance with applicable NASD rules; 4) the NASD and MSE shall not be restricted in conducting special examinations of dual members; 5) should a dispute arise between the parties concerning their obligations under the plans, the parties shall submit to arbitration; and 6) the NASD will impose no charge for their responsibilities to the MSE under this plan for at least three years beginning September 16, 1977, without giving the MSE notice and opportunity to terminate the agreement.

The amendment to the allocation plan filed by the NASD and the MSE provides the following:

1) an explanation of certain terms used in the plans and a description of the regulatory responsibilities of the NASD under the plan; 2) the NASD shall be responsible for reviewing and taking action on customer complaints; 3) the NASD shall review the advertising of dual members in accordance with applicable NASD rules, provided that that portion of the PSE rules which requires that advertisments by PSE member firms refer to the PSE when reference is made to membership in any securities exchanges shall remain in effect as to dual members subject to the plan; 4) the NASD and PSE shall not be restricted in conducting special examinations of dual members; 5) should a dispute arise between the parties concerning their obligations under the plans, the parties shall submit to arbitration; and 6) the PSE agrees to pay the NASD a quarterly fee.

In order to assist the Commission in determining whether to approve these plans amended as described herein and to relieve the BSE, CSE, MSE and PSE of the responsibilities which would be assigned to the NASD, interested persons are invited to submit written data, views and arguments concerning the submissions within thirty (30) days of the date of publication of this notice in the Federal Register. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file Nos. 4-196, 4-273, 4-274, 4-267.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16592/February 20, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-77-5)

The National Securities Clearing Corporation ("NSCC") submitted on February 6, 1980, as an amendment to a proposed rule change filed pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, an interface agreement between NSCC and the Cincinnati Stock Exchange dated December 24, 1979.

Publication of the submission is expected to be made in the *Federal Register* during the week of February 25, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-77-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16593/February 21, 1980

Impact of the Antibribery Prohibitions in Section 30A of the Securities Exchange Act of 1934

ACTION: Request for public comment.

SUMMARY: The Securities and Exchange Commission is requesting public comment from issuers and other interested persons regarding the impact and operation of Section 30A of the Securities Exchange Act of 1934. That provision, which was enacted as part of the Foreign Corrupt Practices Act, prohibits registered issuers from using any means or instrumentality of interstate commerce in furtherance of any corrupt offer, payment, gift, promise to pay or give, or authorization of any payment of gift to foreign officials and certain other persons. The Commission is seeking to understand and evaluate any questions or concerns which may have arisen since the enactment of Section 30A.

DATE: Comments should be received by the Commission before the close of business on June 30, 1980.

ADDRESSES: Comments must be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-822. Unless confidential treatment is granted (see note 28, *infra*), all comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Nicholas Gimbel, Office of the General Counsel (202-272-2438), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Origin and Structure of Section 30A of the Securities Exchange Act

Two years ago, after extensive study of the issues surrounding illegal or improper payments emanating from American corporations in connection with their overseas business,[1] Congress enacted the Foreign Corrupt Practices Act of 1977.[2] The Senate Committee in which the legislation originated described the Act as a "strong antibribery law" and recommended its passage because of the need "to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system."[3] The legislative history makes clear that Congress viewed corporate bribery of foreign officials as unwise from a business

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[1]*See, e.g.*, S. Rep. No. 95-114, 95th Cong., 1st Sess. (1977); H.R. Rep. No. 95-640, 95th Cong., 1st Sess. (1977); H.R. Rep. No. 95-831, 95th Cong., 1st Sess. (1977); S. Rep. No. 94-1031, 94th Cong., 2d Sess. (1976); *Hearings on Political Contributions to Foreign Governments Before the Subcommittee on Multinational Corporations of the Senate Committee on Foreign Relations*, 94th Cong., 1st Sess., Pt. 12 (1975); *Hearings on the Activities of American Multinational Corporations Abroad Before the Subcommittee on International Economic Policy of the House Committee on International Relations*, 94th Cong., 1st Sess. (1975); *Prohibiting Bribes to Foreign Officials, Hearing Before the Committee on Banking, Housing and Urban Affairs*, U.S. Senate, 94th Cong. 2d Sess. (1976); *Foreign Payments Disclosure, Hearings Before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce*, House of Representatives, 94th Cong., 2d Sess. (1976); *Foreign Corrupt Practices and Domestic and Foreign Investment Disclosure, Hearing Before the Committee on Banking, Housing and Urban Affairs*, U.S. Senate, 95th Cong., 1st Sess. (Mar. 16, 1977); *Unlawful Corporate Payments Act of 1977, Hearings Before the Committee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce*, House of Representatives, 95th Cong., 1st Sess. (1977).

[2]Pub. L. 95-213, 91 Stat. 1494.

[3]S. Rep. No. 95-114, *supra* note 1, at 4; *accord* 13 Weekly Compilation of Presidential Documents 1909 (Dec. 21, 1977).

standpoint,[4] unethical, inimical to the principles of free and fair competition, and a threat to the conduct of the Nation's foreign policy.[5]

In contrast, the Commission's interest in improper corporate payments was premised on concerns grounded in the federal securities laws. From the Commission's perspective, the problem was analyzed principally as one of disclosure—whether questionable payments and related recordkeeping practices were appropriately disclosed to investors under existing law. The Commission's experience with these issues also served to focus attention on the broader question of whether improper payments were symptomatic of weaknesses in the corporate accountability mechanisms which undergird the disclosure requirements of the federal securities laws.[6]

The Foreign Corrupt Practices Act addressed both the issue of specific questionable foreign payments and the broader problem of strengthening corporate accountability mechanism. First, pursuant to the Commission's recommendations,[7] Section 102 of the Act amended Section 13(b) of the Securities Exchange Act of 1934 to require issuers subject to the registration and reporting provisions of that Act "to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer."[8] Further, the Act requires such issuers to "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances" that certain specified objectives are attained.[9] The Commission has implemented these "accounting provisions" through rulemaking designed to prohibit individuals from falsifying corporate records or misleading accountants[10] and the filing of several enforcement actions.[11] In addition, the Commission is considering a proposal which, if adopted, would require annual management reports to shareholders concerning the issuer's systems of internal accounting controls.[12]

Second, Sections 103 and 104 of the Foreign Corrupt Practices Act—provisions which the Commission recognized as raising broad national issues committed to Congress' judgment[13]—created direct prohibitions against certain payments to the officials of foreign governments. Section 30A of the Securities Exchange Act of 1934,[14] enacted by

[4]*See* S. Rep. No. 95-114, *supra* note 1, at 4-5; H.R. Rep. No. 95-640, *supra* note 1, at 4-5.

[5]*See* S. Rep. No. 95-114, *supra* note 1, at 4-5; H.R. Rep. No. 95-640, *supra* note 1, at 5.

[6]*See generally* Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices Submitted to the Committee on Banking, Housing and Urban Affairs, United States Senate (May 12, 1976), *reprinted in* 642 CCH Fed. Sec. L. Rep., Pt. II (May 19, 1976).

[7]*Id.* at 66.

[8]Section 13(b)(2)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(b)(2)(A).

[9]*Id.*, Section 13(b)(2)(B),15 U.S.C. 78m(b)(2)(B).

[10]See Securities Exchange Release No. 15570 (Feb. 15, 1979), 16 SEC Docket 1143, 44 FR 10964, adopting Securities Exchange Act Rules 13b2-1 and 13b2-2, 17 CFR 240.13b2-1 and 13b2-2.

[11]*SEC* v. *Wyoming Coal*, Civil Action No. C79-312 (D. Wyo., filed Oct. 15, 1979); *SEC* v. *Marlene Industries Corp.*, 79 Civ. 1959 (S.D.N.Y., filed Apr. 16, 1979); *SEC* v. *International Systems & Controls Corp.* Civil Action No. 79-1760 (D.D.C., filed July 9, 1979); *SEC* v. *Page Airways, Inc.*, Civil Action No. 78-0656 (D.D.C., filed Apr. 11, 1978); *SEC* v. *Aminex Resources Corp.*, Civil Action No. 78-0410 (D.D.C., filed Mar. 9, 1978).

[12]*See* Securities Exchange Act Release No. 15772 (Apr. 30, 1979), 17 SEC Docket 421 (May 15, 1979), 44 FR 26702.

[13]"The Commission believes that the question whether there should be a general statutory prohibition against the making of certain kinds of foreign payments presents a broad issue of national policy ***. In this context the purposes of the federal securities laws, while important, are not the only or even the overriding consideration, and we believe that the issue should be considered separately from the federal securities laws."

Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices, *supra* note 5, at 61-62.

[14]15 U.S.C. 78dd-1. The text of this prohibition and its companion penalty provisions are set forth in the Appendix to this release.

Section 103 of the Foreign Corrupt Practices Act, applied these prohibitions to any issuer which has a class of securities registered pursuant to Section 12 of the Securities Exchange Act, or is required to file reports under Section 15(d), and to any officer, director, employee, or agent of such issuer, or any shareholder acting on behalf of such issuer. These persons are prohibited from using the mails, or any means or instrumentality of interstate commerce, corruptly in furtherance of an offer, payment, or promise to give anything of value to any foreign official, any foreign political party or official thereof or any candidate for foreign political office, or any other person, where the reporting company has reason to know that the payment will accrue to any foreign official, foreign political party or official thereof, or any candidate for foreign political office.[15] Such payments are unlawful if made for the purpose of influencing any act, decision, or failure to act of a foreign official, foreign political party or official thereof, or candidate for foreign political office, or inducing such an official or party to influence any act or decision of such foreign government or instrumentality. In addition, the statue is applicable only if the payment was made in order to assist a reporting company in obtaining, retaining, or directing business to any person.

The Foreign Corrupt Practices Act also amended Section 32 of the Securities Exchange Act to create special penalties applicable to violations of this prohibition. Violations of Section 30A are punishable by a fine of up to $10,000, imprisonment for up to five years, or both, in the case of an individual, and a fine up to $1 million in the case of a corporation.[16] Amended Section 32 also provides that a fine levied upon any officer, director, stockholder, employee, or agent of an issuer shall not be paid, directly or indirectly, by such issuer.

Similarly, Section 104 of the Act, which is not part of the federal securities laws, enacted parallel prohibitions applicable to any "domestic concern," other than an entity covered by Section 30A, or any officer, director, employee, or agent of such domestic concern, or any stockholder thereof acting on its behalf.[17] This provision contains the same prohibitions and penalties as are applicable to reporting companies and their officers, employees, and agents under the Securities Exchange Act.

Section 30A is subject to Commission enforcement and implementation in the same manner as are other provisions of the Securities Exchange Act; like other sections of the Act, the Department of Justice is responsible for any criminal prosecutions under Section 30A. The prohibition in Section 104 of the Foreign Corrupt Practices Act is, on the other hand, enforced exclusively by the Department of Justice, which may bring either civil or criminal proceedings under that provision. Since the enactment of Section 30A, the Commission has filed one civil injunctive action to enjoin violations of the antibribery prohibitions.[18] The Department has brought civil[19] and criminal[20] actions alleging violations of Section 104.[21]

II. Nature of the Commission's Inquiry

During the two years that Section 103 and 104 of the Foreign Corrupt Practices Act have been in effect, it has been publicly reported that U.S. corporations are experiencing difficulty in conducting their operations as a result of questions concerning the applicability of the new antibribery prohibitions.[22] In

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[15]A foreign official is "any officer or employee of a foreign government or any department, agency or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agnecy or instrumentality." The term does not however, include employees "whose duties are essentially ministerial or clerical." Section 30A(b), 15 U.S.C. 78dd-1(b).

[16]Section 32(c) of the Securities Exchange Act of 1934, 15 U.S.C. 78ff(c).

[17]15 U.S.C. 78dd-1.

[18]*Securities and Exchange Commission* v. *Katy Industries*, Civil Action No. C78-3476 (N.D. Ill., filed Aug. 30, 1978).

[19]*See, e.g., United States* v. *Roy J. Carver, et ano.*, Civil Action No. 79-1768 (S.D. Fla., filed Apr. 9, 1979).

[20]*See, e.g., United States* v. *Kenny International Corp.*, Criminal No. 79-00372 (D.D.C., filed Aug. 2, 1979).

[21]In addition, the Department has, as noted below, instituted a business review procedure.

[22]*See generally*, Taubman, "Second Look at Bribery Law," New York Times, May 29, 1979, Section D. at p. 1, Landauer, "Antibribery Law Uncertainities Persist," Wall Street Journal, May 30, 1979, at 12.

that connection, some commentators have raised concerns about the meaning and scope of certain of the operative provisions of the statute, such as the requirement that payments be made "corruptly"; the effect of the phrase "obtaining or retaining business"; the scope of the definition of "foreign officials"; and exclusion "facilitating" or grease payments reflected in that definition.[23]

The Commission has no empirical evidence concerning the actual impact of the Act upon affected persons, the extent to which any uncertainty concerning its applicability has influenced the willingness or ability of Commission registrants to engage in foreign commerce, or whether issuers have refrained from specific conduct—despite a good faith belief in its legality—because of unwillingness to risk violating the federal securities laws. Section 30A is, of course, supported by an extensive legislative record which sheds light on many of the issues which have been raised.[24] Nonetheless, press comments indicate that registrants may believe that there are genuine areas of uncertainly and may therefore be reluctant to engage in some legitimate forms of foreign trade. The Commission is seeking through this release, to obtain information concerning thse matters.

In response to questions similar to the ones described about concerning the applicability of the new antibribery prohibition, the Department of Justice has proposed a new "business review procedure" pursuant to which companies engaged in foreign commerce may obtain advance advice from the Department.[25] In addition, Assistant Attorney General Philip B. Heymann has announced certain priorities which will guide the Department in selecting cases for prosecution under the Act.[26] Although the Commission is not participating in the Department's business review procedure,[27] the Commission is, of course, interested in reviewing the Department's experience with that procedure. The Commission is not, however, seeking comments concerning the business review procedure or other issues which relate solely to the Department's discharge of its responsibilities under the Act.

III. Request For Comment

The Commission is soliciting comment concerning the impact of Section 30A and any impediments which it presents to legitimate foreign commerce. The Commission is also interested in determining what steps issuers have taken to comply with the new Act, whether there are recurring questions or

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Footnote 22 Continued

See also Foreign Corrupt Practices Act, Hearing before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce. U.S. House of Representatives, 96th Cong., 1st Sess. (June 14, 1979).

[23]*See, e.g.,* Baruch, *The Foreign Corrupt Practices Act,* 57 Harv. Bus. Rev. 32 (1979); McCoy & Griffin, *Illegal Payments Abroad: Congress' Response,* Legal Times of Washingon, Oct. 30, 1978, at 8-10; Sprow & Benedict, *The Foreign Corrupt Practices Act of 1977: Some Practical Problems and Suggested Procedures,* 1 Corporation L. Rev. 357 (1978); Estey & Marston, *Pitfalls (Loopholes) in the Foreign Bribery Law,* Fortune, Oct. 9, 1978, at 182; Best, *The Foreign Corrupt Practices Act,* 11 Rev. of Securities Reg. 975 (1978); Jensen, *Antibribery Law Has Some Teeth,* New York Times, Dec. 25, 1977, Section 4 at p. 2.

[24]Some of the significant components of that record are cited in note 1, *supra.*

[25]See Heymann, "The Justice Department's Proposed Program to Provide Advice to Businesses in Connection with Foreign Payments," An Address Delivered at the Pierre Hotel. New York, New York (Nov. 8, 1979).

[26]*Id.*

[27]Although the Commission is sensitive to the need for law enforcement officials to consider the impact of newly enacted laws, such as Section 30A, on affected persons, the Commission is concerned that determinations as to the applicability of Section 30A toparticular fact patterns wold, in many cases, turn on judgments concerning motivation and intent. Since subjective questions of this nature do not easily lend themselves to guidance on the basis of a written description of the proposed transaction, the Commission statd, in Securities Exchange Act Release No. 14478 (Feb. 16, 1978), 14 SEC Docket 180, 183, 43 FR 7752, 7754, that it would not give advice concerning the applicability of the Foreign Corrupt Practices Act to particular transactions. That policy remains in force at the present time. The Commission invites comment, however, concerning its postion in this regard.

concerns with respect to the interpretation of Section 30A, and what impact, if any, uncertainty concerning the Act may be having on competition in foreign markets. The Commission wishes to understand the questions which some persons have raised and to determine whether there are any steps which the Commission should take, consonant with the public interest and the concerns of registrants, to better administer the elements of the antibribery prohibition which fall within its jurisdiction.

It must be stressed that the Commission is not inviting views concerning whether the underlying objective of the Act—to prohibit payment of bribes to foreign officials in connection with obtaining or retaining business for U.S. issuers—ought to be reconsidered; that is a matter which, of course, is exclusively within Congress' discretion. Rather, the objectives of the Commission's inquiry are to determine whether there is substance to the concerns which have been voiced regarding the impact and construction of Section 30A. After analyzing the comments received in this proceeding, the Commission will consider whether there is further action which it should take to address these matters.

The Commission invites public comment on the issues set forth in this release and on the experience of the business community and its professional advisors in applying Section 30A of the Securities Exchange Act to concrete facts. In order to be of maximum utility to the Commission, comments should be specific as possible and reflect actual experience under the Act. All comments should be received by June 30, 1980, and must be filed, in triplicate, with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Submissions should refer to file number S7-822 and, unless confidential treatment is authorized,[28] will be available for inspection and copying at the Commission's Public Reference Room 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX

FOREIGN CORRUPT PRACTICES BY ISSUERS

Sec. 30A. (a) It shall be unlawful for any issuer which has a class of securities registered pursuant to section 12 of this title or which is required to file reports under section 15(d) of this title, or for any officer, director, employee, or agent of such issuer or any stockholder thereof acting on behalf of such issuer, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to—

(1) any foreign official for purposes of—

(A) influencing any act or decision of such foreign official in his official capacity, including a decision to fail to perform his official functions; or

(B) inducing such foreign official to use his influence with a foreign govenment or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person;

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of—

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[28]The Commission recognizes that comments may, in some cases, reflect confidential business information not appropriate for public dissemination. Those wishing to make application for confidential treatment of any part of their submission should state that fact prominently on the first page or cover sheet thereof. *See* Section 23(a)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78w(a)(3); Rule 24b-2, 17 CFR 240.24b-2.

In addition, where issuers have informtion concerning specific experience in applying the Act to concrete fact situations, but are reluctant to identify themselves in a comment letter—even if confidential—the Commission will consider submission made by counsel relating the experiences of clients but without identifying the client involved.

(A) influencing any act or decision of such party, official, or candidate in its or his official capacity, including a decision to fail to perform its or his official functions; or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of—

(A) influencing any act or decision of such foreign official, political party, party offical, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

(b) As used in this section, the term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency, or instrumentality. Such term does not include any employee of a foreign government or any department, agency, or instrumentality thereof whose duties are essentially ministerial or clerical.

PENALTIES

Sec 32.***

(c)(1) Any issuer which violates section 30A(a) of this title shall, upon conviction, be fined not more that $1,000,000.

(2) Any officer or director of an issuer, or any stockholder acting on behalf of such issuer, who willfully violates section 30A(a) of this title shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(3) whenever an issuer is found to have violated section 30A(a) of this title, any employee or agent of such issuer who is a United States citizen, a national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder of such issuer), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, stockholder, employee, or agent of an issuer, such fine shall not be paid, directly or indirectly, by such issuer.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16594/February 21, 1980

A notice has been issued giving interested persons until March 10, 1980 to comment on the application of GROW GROUP, INC. to withdraw their common stock ($.10 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16595/February 21, 1980

Orders have been issued granting the applications of the following companies to withdraw their common stocks from listing and registration on the *American Stock Exchange Inc:* CARNATION COMPANY ($2 Par Value), BALDOR ELECTRIC COMPANY ($.10 Par Value), and AVX CORPORATION ($1 Par Value).

SECURITIES EXCHANGE ACT OF 1934
Release No. 19596/February 21, 1980

Administrative Proceedings, File No. 3-5862

In the Matter of

YASIN JAFFER
One South 220 Dillon
Villa Park, Illinois 60181
(8-22343)

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act,[1] Yasin Jaffer ("Respondent"), a registered broker-dealer, failed to answer the order that instituted these proceedings and is therefore in default.[2]

On the basis of the order instituting proceedings, it is found that respondent wilfully violated Section 17(a) of the Securities Act of 1933 and Sections 10(b), 15(b), 15(c)(1) and 17(a) of the Securities Exchange Act and Rules 10b-5, 10b-10, 15b1-2, 15b3-1, 15b10-6, 15c1-4, 17a-3, 17a-4, 17a-5 and 17a-11(c) thereunder.

In view of the foregoing, it is in the public interest to revoke respondent's broker-dealer registration and to bar respondent from association with any broker or dealer.

Accordingly, IT IS ORDERED that the registration as a broker or dealer of respondent be, and it hereby is, revoked; and it is further ORDERED that respondent be, and he hereby is, barred from being associated with any broker or dealer.

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]In the Matter of Yasin Jaffer instituted on January 9, 1980.

[2]Rule 7(e) of the Commission's Rules of Practice provides that the allegations in the order may be deemed true as to defaulting respondent.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16597/Febraury 21, 1980

Admin. Proc. File No. 3-5612

In the Matter of the Application of

RICHARD L. ROBINSON
2066 Westridge Road
Los Angeles, California

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Rules of Fair Practice

Failure to Inform Employer of Private Securities Transactions

Where registered representative of member firm of registered securities association engaged in private securities transactions without prior written notification to member, *held*, association's findings of violation *sustained*, but sanctions *reduced*, in light of applicant's prior oral disclosure to employer, and his written disclosure to employer, and his written disclosure to customers that employer was not involved in his sales.

APPEARANCES:

Frank W. Nemecek, of Nemecek, Gonzalez & Linsley, for Richard L. Robinson.

Frank J. Wilson, Andrew McR. Barnes and *Edward R. Venit*, for the National Association of Securities Dealers, Inc.

I.

Richard L. Robinson, a registered investment adviser who during the relevant period was also a registered representative of Westamerica Financial Corp., a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from NASD displinary action. The NASD found that Robinson engaged in private securities transactions

without giving Westamerica proper notification. It censured Robinson and fined him $3,000.[1] Our findings are based on an independent review of the record.

II.

The NASD Board of Governors' interpretation with respect to private securities transactions provides in relevant part as follows:

"It shall be deemed conduct inconsistent with just and equitable principles of trade for any person associated with a member to engage in a private securities transaction outside the regular course or scope of his association or employment with a member, for himself, or with or for any other person without prior written notification to the member."[2]

The NASD found that; in late November 1976, Robinson sold four customers interests in limited partnerships sponsored by Cal-Am Corporation without giving Westamerica prior written notification of those sales. Westamerica was not engaged in the sale of Cal-Am securities. Indeed, the record shows that it specifically determined not to participate in the offering of Cal-Am partnership interests.

Robinson argues that he did not violate the NASD's interpretation. He asserts that, with respect to the transactions in question, he simply acted as an investment adviser, dispensing advice to various clients with respect to the advisability of their investing in Cal-Am limited partnerships.

This contention is wholly lacking in merit. In his answer to the NASD's complaint and elsewhere in the record, Robinson admitted that he engaged in the sale of Cal-Am partnership units. In fact, the record shows that he obtained customers' signatures on subscription agreements which he countersigned as the agent receiving payment. Moreover, he did not charge customers any advisory fee in connection with these transactions. Rather, he received a 10% commission on each sale from Cal-Am or one of its affiliates.[3]

We accordingly affirm the NASD's findings of violation.

III.

Robinson, pointing to references in the District Committee's decision to an injunctive action brought against Cal-Am and others by this Commission,[4] claims that the Committee was prejudiced against him. We cannot agree. The Committee specifically noted that Robinson was not a defendant in the injunctive action, and we do not consider that the cited statements evidence any prejudice.

In any event, the District Committee's decision has been accorded *de novo* review, both by the NASD's Board of Governors and by this Commission.[5]

IV.

Applicant argues that the sanctions imposed by the NASD are to severe. He asserts that he orally notified Westamerica's president in advance of the Cal-Am sales, and points out that he made written disclosure to each investor that Westamerica was not involved in the Cal-Am offering.

As we have previously stated with regard to a salesman's "private" securities transactions:

"Where employees effect transactions for customers outside of the normal channels and without disclosure to the employer, the public is deprived of protection which it is entitled to expect. Moreover,

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[1]The NASD also assessed costs.

[2]NASD Manual paragraph 2177, p. 2109-3.

[3]Robinson also points to language in the introduction to the NASD's interpretation to the effect that the involvement of associated persons in private securities transactions "may raise serious questions regarding their need to register as broker/dealers and/or investment advisers under state and federal securities laws." We fail to see how this warning could reasonably be construed as authorizing Robinson to violate the clear terms of the NASD's interpretation because he was already registered as an investment adviser.

[4]*S.E.C.* v. *Cal-Am Corporation, et al.*, Civil Action No. CV-77-4586-AAH (C.D. Calif.).

[5]See *R.H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 244 U.S. 855; *Shultz* v. *S.E.C.*, F.2d (C.A. 7, January 7, 1980).

the employer may also thus be exposed to risks to which it should not be exposed. Thus, such conduct is not only potentially harmful to public investors, but inconsistent with the obligation of an employee to serve his employer faithfully."[6] (Footnote omitted).

The record is unclear as to the extent of the disclosure made by applicant to Westamerica in advance of his sales. Even construing Robinson's testimony most favorably to him, it appears that the information he gave his employer was not sufficiently explicit to comply with the spirit of the NASD's interpretation. Nor is it clear that Westamerica's president authorized applicant to proceed after being informed of applicant's proposed sales.

Nevertheless, the record shows that applicant made some effort to give his employer advance notice, and also tried to protect Westamerica from any liability that might arise from his sales. Under all the circumstances, we conclude that the penalty imposed by the NASD is excessive, and that a $1,000 fine and censure will adequately serve the public interest.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and POLLACK).

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 16597/February 21, 1980

Admin. Proc. File No. 3-5612

In the Matter of the Application of

RICHARD L. ROBINSON
2066 Westridge Road
Los Angeles, California

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER MODIFYING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanctions imposed by the National Asociation of Securities Dealers, Inc. on Richard L. Robinson be, and they hereby are, reduced to censure and a $1,000 fine; and it is further

ORDERED that the Association's assessment of costs be, and it hereby is, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 16598/February 21, 1980

Record Production Obligations of National Securities Exchanges and National Securities Associations

ACTION: Final rules.

SUMMARY: The Commission is adopting a proposed amendment to Rule 17a-1 [17 CFR 240.17a-1] under the Securities Exchange Act of 1934 ("Act") to conform the language of that rule to the language of Section 17(a) of the Act, amended by the Securities Acts Amendments of 1975. Rule 17a-1 authorizes the Commission staff, under Section 17(a), to obtain copies of any documents made or received by a national securities exchange ("exchange") or a national securities association ("association") in the course of its business as such or in the conduct of its self-regulatory activities.

EFFECTIVE DATE: March 31, 1980.

FOR FURTHER INFORMATION CONTACT: William S. Muller, Division of Market Regulation, Securities and Exchange Commission, Room 351, 500 North

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[6] *Anthony J. Amato*, Securities Exchange Act Release No. 10265 (June 29, 1973), 2 SEC Docket 90, 91.

Capitol Street, Washington, D.C. 20549, (202) 272-2415.

SUPPLEMENTARY INFORMATION: On November 14, 1979, the Commission issued a release proposing for comment a technical amendment to Rule 17-1 under the Act governing the record retention and record production obligations of exchanges and associations.[1] The Commission adopted Rule 17a-1 in 1974,[2] to implement the authority conferred by Section 17(a) of the Act.[3] Thus, paragraph (a) of the rule prescribes those documents which must be maintained by an exchange or association, paragraph (b) prescribes the period for which such documents must be maintained, and paragraph (c) sets forth the Commission's authority to examine any documents required to be maintained. In particular, paragraph (c) of the Rule 17a-1 provides that to facilitate the completion of such an examination, the Commission's representatives may temporarily remove documents for reproduction unless the exchange or association makes copies available.

The Securities Acts Amendments of 1975[4] restructured Section 17 of the Act by, among other things, adding a new subsection (b) specifically addressing the Commission's examination authority which was then removed from subsection (a).[5] As amended, Section 17(a)(1) provides (emphasis added):

Every national securities exchange [and] registered securities association***shall make and keep for prescribed periods *such records, furnish such copies thereof,* and make and disseminate such reports *as the Commission, by rule, prescribes* as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.[6]

Thus, Section 17(a)(1) provides the Commission with explicit statutory authority to require exchanges and associations to provide the Commission with copies of any documents which such organizations are required to maintain.

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[1]Securities Exchange Act Release No. 16340 (November 14, 1979), 44 FR 66607.

[2]*See* Securities Exchange Act Release No. 10809 (May 17, 1974), 39 FR 18765.

[3]At the time Rule 17a-1 was adopted by the Commission in 1974, Section 17(a) of the Act, 15 U.S.C. §78q(a) (1970), provided:

Every national securities exchange, *** [and] every registered securities association***shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

[4]Pub. L. No. 94-29 (June 4, 1975).

[5]Section 17(b) of the Act, 15 U.S.C. §78q(b), provides, in pertinent part:

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the title***.

The Senate Report accompanying the Securities Acts Amendments of 1975 made clear that the Commission's authority under Section 17(b) was self-executing and that "the authority to examine records would include the authority to make or require copies of such records." Report of the Committee on Banking, Housing and Urban Affairs to Accompany S. 249, 94th Cong. 1st Sess., Senate Report No. 75, at 119-120.

[6]15 U.S.C. §78q(a)(1) (1976).

The Commission has determined to amend Rule 17a-1 in conformity with the revised language of Section 17(a) and, thereby, to clarify that the Commission's authority under paragraph (c) of Rule 17a-1 to obtain copies of documents maintained by an exchange or association is independent of the Commission's examination authority under subsection (b) of Section 17. As amended, paragraph (c) of Rule 17a-1 provides that an exchange or association must, upon request, promptly furnish to a representative of the Commission copies of any documents made or received by such organization in the course of its business or in the conduct of its self-regulatory activities.

I. *Comments Received*

The Commission received letters of comment concerning the proposed amendment of Rule 17a-1 from the New York Stock Exchange ("NYSE")[7] AND The American Stock Exchange ("Amex").[8] Although the letters were received by the Commission after December 31, 1979, the deadline for comments on the proposed rule amendment, the Commission has reviewed the comments made by these exchanges.[9]

The Amex and the NYSE suggest that proposed paragraph (c) of Rule 17a-1 should specify that requests for copies of documents under the terms of that rule must be in writing. Such a requirement, it is claimed, would provide a permanent record of the Commission staff's request for copies, and would therefore avoid any misunderstandings concerning the identity of which documents had been requested. The Amex and the NYSE also suggest that proposed paragraph (c) of Rule 17a-1 should designate those Commission staff members who would be authorized to obtain copies of documents under the rule. The Amex suggests that the designation should include staff members of the Divisions of Market Regulation and Enforcement at a Civil Service level of GS-11 or above; the NYSE suggests that the designation include only those at the director level or the next subordinate level. The Amex believes that paragraph (c) of Rule 17a-1 should require that requests for copies of documents be reasonable and be deemed by the Commission to be necessary or appropriate in connection with the exercise of its oversight responsibilities respecting self-regulatory activities. And finally, the NYSE suggests that paragraph (c) of Rule 17a-1 should clarify that copies of documents which are maintained in a not easily accessible location need not be furnished "promptly" to a Commission representative.

II. *Discussion*

The Commission has considered each of the relevant suggestions made by the commentators, but has determined not to incorporate the suggested changes within paragraph (c) of Rule 17a-1.

Specifically, a provision in paragraph (c) of Rule 17a-1 requiring that requests for copies of documents be in writing and prescribing the level at which staff members may be authorized to make such requests would impede the effective discharge of the Commission's oversight responsibilities, particularly in the context of its inspections work. While the Commission staff makes every effort to make its request for copies of documents as specific as practicable and to present its requests in an organized fashion, the Commission does not believe that it is appropriate to require its staff to expend the time necessary to prepare formal written

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[7]Letter from Jame E. Buck, Secretary of the NYSE to George A. Fitzsimmons, Secretary of the Commission (January 8, 1980).

[8]Letter from Norman S. Poser, Executive Vice President of the Amex, to George A. Fitzsimmons, Secretary of the Commission (January 15, 1980).

[9]In addition to suggesting specific ways in which proposed paragraph (c) of Rule 17a-1 should be amended, both the NYSE and the Amex comment letters raise the issued of amending paragraph (a) of Rule 17a-1, which or received by an exchange or association in the course of its business as such or in the conduct of its self-regulatory activities. The record retention requirements, however, are outside the scope of the proposed amendment, the purpose of which is to assure that Commission staff members will be able to obtain prompt access to copies of documents maintained in the files of an exchange or association. The Commission notes that any exchange or association that feels it is unnecessarily burdened by the record retention requirements of Section 17a-1 may file with the Commission for its approval, pursuant to Rule 17a-6 [17 CFR 240.17a-6], a record destruction plan specifying those documents or types of documents which that organization believes it should be permitted to destroy prior to the end of the five-year retention period required by Rule 17a-1(b).

requests each time it may require copies of exchange or association documents. Exchanges and associations may, of course, develop their own internal records of documents produced for the Commission. Similarly, the Commission has determined not to specify the level at which Commission staff members are authorized to obtain copies.[10]

With respect to the NYSE's suggestion that paragraph (c) of the Rule should clarify that copies of documents kept in a location which is not readily accessible need not be furnished promptly, the Commission notes that whether an exchange or association has responded promptly to a request must be determined in relation to the circumstances surrounding the request. The Commission must assure at the same time, however, that unreasonable delay is avoided in the production of documents requested by the Commission's staff.

The Commission wishes to leave no doubt as to its interpretation of the record production obligations of exchanges and associations. The amendment of Rule 17a-1 adopted today is conforming in nature, implementing Commission authority under Section 17(a) of the Act, and reflects no change in the Commission's long-standing position that its staff members are independently authorized under Section 17(b) of the Act to obtain copies of exchange and association records for examination and removal.[11]

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[10]Neither the Amex nor the NYSE presented any instance of suggested staff abuse of the document request process, and the Commission is aware of none.

[11]See Securities Exchange Act Release No. 16340 (November 14, 1979) 44 FR 66607; Securities Exchange Act Release No. 16278 (October 12, 1979), 44 FR 60281. The Commission continues to adhere to the views set forth in these releases that its staff has authority under both Section 17(b) of the Act and Rule 17a-1 to obtain copies of any documents maintained by an exchange or association. While the association and the exchanges have generally cooperated in providing the Commission staff with copies of requested documents, the Commission is prepared to take immediate action to enforce those record production obligations where necessary.

III. *Findings*

The Commission believes that the proposed amendment to paragraph (c) of Rule 17a-1 will clarify the record production obligations of exchanges and associations. The ability of the staff promptly to obtain copies of any documents maintained by exchanges or associations is crucial to the performance of the Commission's oversight responsibilities with respect to such organizations. Therefore, the Commission finds, for the reasons stated above, that the proposed conforming amendment is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act.

Accordingly, the Commission, acting pursuant to the Act and in particular Sections 15A, 17 and 19, hereby amends Part 240 of Title 17 of the Code of Federal Regulations by revising paragraph (c) of §240.17a-1 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.17a-1 Recordkeeping rule for national securities exchanges and national securities associations.

* * * * *

(c) Every national securities exchange and registered securities association shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to the provisions of paragraphs (a) and (b) of this section.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16599/February 21, 1980

NOTICE OF WITHDRAWAL OF PROPOSED RULE CHANGES BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File Nos. SR-NASD-77-19 and SR-NASD-78-19

On November 18, 1977, and December 12, 1978, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes that were captioned, respectively, as File Nos. SR-NASD-77-19 and SR-NASD-78-19. The proposed rule changes were intended to amend the NASD's Code of Arbitration Procedures.

Notice of SR-NASD-77-19, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 14252 (December 12, 1977)) and by publication in the *Federal Register* (42 FR 63830 (December 20, 1977)). Because of deficiencies in SR-NASD-78-19, of which the NASD was informed by letter dated January 23, 1979, that proposal was never noticed.

The NASD, by letter dated October 18, 1979, advised the Commission that it wished to withdraw the two proposed rule changes from further consideration because they have been superseded by a subsequent NASD proposed rule change (File No. SR-NASD-79-11) that was filed with the Commission on October 18, 1979, and that proposed the adoption of the Uniform Code of Arbitration.[1] Accordingly, the proposed rule changes SR-NASD-77-19 and SR-NASD-78-19 are withdrawn.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21436/February 14, 1980

In the Matter of

THE SOUTHERN COMPANY
P.O. Box 720071
Atlanta, Georgia 30346

GEORGIA POWER COMPANY
P.O. Box 4545
Atlanta, Georgia 30302

GULF POWER COMPANY
P.O. Box 1151
Pensacola, Florida 32520

MISSISSIPPI POWER COMPANY
P.O. Box 4079
Gulfport, Mississippi 39501

(70-6414)

NOTICE OF PROPOSAL TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS; CAPITAL CONTRIBUTIONS BY PARENT TO SUBSIDIARIES

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, and three of its electric utility subsidiaries, Georgia Power Company ("Georgia"), Gulf Power Company ("Gulf") and Mississippi Power Company ("Mississippi") have filed a joint application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, and 12 of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The applicants-declarants propose to issue and sell from time to time, prior to April 1, 1981, short-term notes to banks and commercial paper to dealers up to the following aggregate principal amounts at any one time outstanding:

Southern	$100,000
Georgia	615,000
Gulf	104,000
Mississippi	65,000

Such notes will be issued until March 31, 1981 as funds are required from time to time.

[1]For notice of File No. SR-NASD-79-11, *see* Securities Exchange Act Release No. 16425 (December 14, 1979), 44 FR 75255 (December 19, 1979). The withdrawal of the above-captioned rule proposals was noted in the release.

Southern has obtained commitments from four international banks. Each commitment extends to December 31, 1980 and is subject to renewal in accordance with its terms. A commitment fee of 1/4% per annum on undrawn amounts is payable for each commitment. Borrowings will, at Southern's option, bear interest at an effective rate of (a) 1/2% per annum over lender's floating prime or (b) a margin over the London Interbank Offered Rate ("LIBOR"). Swiss Bank Corporation also offers borrowings 1/2% per annum over its prime rate on the date of the above, fixed for 90 days. The commitments, and the interest rates and periods under option (b) are:

Bank	*Commitment in millions*	*Margin Over LIBOR*	*Loans for Period of*
Barclays Bank Internatiol Limited	$40	3/4%	30 to 180 days
Credit Suisse	$20	3/4%	30, 60 or 90 days
Swiss Bank Corporation	$20	3/4%	10 to 180 days
Union Bank of Switzerland	$20	1/2%	one to six months

Advances under option (b) from Credit Suisse and the Union Bank of Switzerland are not prepayable and prepayment of advances from Barclays International Limited and the Swiss Bank Corporation is conditioned on a compensatory premium based on the differences between the interest to maturity and the interest the lenders can earn on the prepayment, and other costs. The maximum term for borrowings under option (a) is one year, 180 days for Swiss Bank Corporation, or if earlier, the expiration date of the commitment.

Assuming a prime interest rate and LIBOR rate of 15%, the effective cost of borrowings under these commitments would be as follows: Under option (a), the effective cost from each bank would be 15.50%. Under option (b) the effective cost of borrowing from Union Bank of Switzerland would be 15.50% and from the other facilities, 15.75%. Southern will borrow from these banks under the option which results in the lowest effective cost for the period the funds are required.

Georgia has obtained separate commitments from nine banks providing for revolving credits aggregating $400,000,000 for the period commencing January 1, 1980 through December 31, 1982, as tabulated below. It also intends to borrow from other banks, from time to time, within the maximum authorization requested.

Bank	*Commitment*
Bank of America National Trust and Savings Association	$16,000,000
Bankers Trust Company	52,000,000
The Chase Manhattan Bank (National Association)	72,000,000
Chemical Bank	52,000,000
Citibank, N.A.	100,000,000
Continental Illinois National Bank and Trust Company of Chicago	32,000,000
Irving Trust Company	16,000,000
Morgan Guaranty Trust Company of New York	40,000,000
The Bank of Nova Scotia	20,000,000
Total	$400,000,000

The commitment of each Bank is evidenced by a separate agreement with Georgia. Each borrowing by Georgia under a revolving credit will be evidenced by a promissory note to be dated the date of the borrowing, to mature not more than 270 days (but no later than the expiration of the lending Bank's commitment) after the date of the issue and will be prepayable, in whole or in part, at any time without penalty or premium. The revolving credits have been separately negotiated with each of the several Banks and consequently the pricing terms, interest rates and fees payable by Georgia in respect of each Bank's commitment vary.

Under each agreement Georgia is obligated to pay a commitment fee or fees. Such fees, calculated on an annualized basis, involve applying a defined rate to the Bank's total commitment, or under some agreements, the unborrowed portion thereof. The commitment rates are variously defined, some being fixed, others determined from time to time by reference to the lending banks prime rate, or a specified money market rate or some combination thereof. The individual effective commitment rates, computed in terms of a 15% prime rate, and assuming on credits for actual borrowings would range from .05% to 1.05%. The weighted average commitment fee for the entire $400 million would be 0.8% in the first year and 0.837% thereafter, the increase being due to certain agreements calling for slightly higher commitment fee after the first year. Some agreements allow credits against the fees for deposit balances of Georgia which have not been adjusted for in the sample computation.

The interest rates on borrowings are all variable and defined by reference to the lending bank's prime

rate or a money market rate, or some combination thereof. Some agreements include factors increasing the rate after the first year, or if aggregate borrowings exceed a threshold. The effective cost of money borrowed under each agreement computed on the basis of a 15% prime rate and maximum borrowings, would range from 15% to 17.13% in the first year, and from 15.75% to 17.70% thereafter, with a weighted average cost of 16.338% in the first year, increasing to 16.769% in the third year.

Georgia has the right, at any time without penalty, to reduce or terminate any commitment, except as to funds already borrowed. It expects that it will seek in the quarter before each anniversary date, extension of the present three year term for an additional year, on appropriate terms.

No other long term commitments have been sought, but applicants, including Georgia, but excluding Southern, propose, within the limits to be authorized, to borrow from other banks by notes to be dated as of the date of such borrowings and to mature in not more than nine months after the date of issue, and by sale of commercial paper. In general, such bank borrowings will be at the prime rate, based on maintenance of compensating balances of 20% of amounts borrowed and 10% of amounts committed, or comparable fees in lieu of such balances. The effective cost, based on a 15% prime rate, would be 18.75%.

The short term borrowing authorizations requested are predicated on 1980 budgets of the applicants, which include construction aggregating $675 million for Georgia, $147 million for Gulf and $68 million for Mississippi. Applicants do not rely on the short term borrowings to carry these investments. On the contrary, each forecasts long term financing, including equity investments by Southern in the operating subsidiaries, and pending sales of coownership interests in certain generating plants in the case of Georgia, to periodically retire accumulated short term borrowings. Applicants state, however, that the timing of the long term financing, and of the closing of the property sales, is subject to variation and that the maximum short term limits authorized should be sufficient to permit substitution of additional short term debt for the expected more permanent financing. Accordingly, they request authorizations approximating the budgeted gross requirements, and have obtained bank commitments for the bulk of that amount.

The commercial paper will be in the form of promissory notes of the applicants with varying maturities not to exceed 270 days and not prepayable. The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5,000,000. The discount rate, or the interest rate in the case of interest bearing notes, (including commissions if any) will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for prime commercial paper of comparable quality of the particular maturity sold by issuers thereof to commercial paper dealers, and no commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest cost at which the issuer could borrow an equal amount from banks.

The commercial paper will be sold by applicants directly or through a dealer. No commission or fee will be payable in connection with the issuance and sale of commercial paper, except that in sales through a dealer, the dealer will reoffer such commercial paper at a discount rate of 1/8 of 1% per annum less than the prevailing interest rate to the issuer or at an equivalent cost if sold on an interest bearing basis. The names of the dealer are: The First Boston Corporation for Southern; Salomon Brothers for Georgia; and A.G. Becker & Co. Incorporated for Gulf and Mississippi. The commercial paper of each applicant will be offered by the dealer to not more than 200 customers of the dealer identified and designated in a non-public list prepared in advance by the dealer. Such list includes commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universitiers, municipal and state benefit funds, elemosynary and non-financial corporations which invest surplus funds in commercial paper. No sale will be made to any such customer unless and until it has received from the dealer a current report as to the financial position of the issuer. No additions will be made to such list of customers. It is expected that the commercial paper of the applicants will be held by customers to maturity, but, if they wish to resell prior thereto, the dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others on the customer list.

Southern proposes to use the proceeds of its borrowings to the extent necessary, together with treasury funds and the proceeds for other external sources, primarily to make, from time to time,

additional equity investments in the form of capital contributions to its four utility company subsidiaries and to make loans to Southern Company Services, Inc.

A statement of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that the Florida Public Service Commission has jurisdiction over the issuance by Gulf of both its notes to banks and its commercial paper. It is further stated that no other state or federal regulatory authority has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21437/February 14, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
212 E. 6th Street
Tulsa, Oklahoma 74119

(70-6415)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

PSO proposes to issue and sell at competitive bidding up to $75,000,000 principal amount of its first mortgage bonds, Series Q, to be dated March 1, 1980 ("Bonds"), and to mature March 1, 2010. The annual interest rate and the redemption prices of the Bonds, and the price to be paid by PSO therefore (which will not be less than 99% nor more that 102.75%), will be determined through competitive bidding. The Bonds may not be refunded until March 1, 1985 and will be subject to a 1% sinking fund beginning in 1982. The Bonds will be issued under and secured by PSO's Indenture ("Indenture"), dated July 1, 1945, under which the First National Bank and Trust Company of Tulsa is Trustee, as amended by the indentures supplemental thereto heretofore executed, and to be further amended by a proposed Supplemental Indenture ("Supplemental Indenture") to be dated March 1, 1980.

The proceeds to be derived by PSO from the sale of the Bonds (exclusive of accrued interest and after deducting expenses of issue) will be used by PSO to repay in full short-term borrowings incurred or expected to be incurred to finance construction expenditures, approximately $80,000,000 of which are expected to be outstanding as of the date of issuance of the Bonds. No funds retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide

service to customers of PSO if it were not part of the CSW System. No expenditures will be made by PSO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of PSO if it were not part of the CSW System.

Estimated construction and fuel exploration and development expenditures (inclusive of allowance for funds used during construction) of PSO are estimated at $225,000,000 for 1980 and $311,000,000 for 1981.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $90,000, including legal fees of $20,000, accountants fees of $7,500, and charges of the system service company of $4,000. The fee and expenses of counsel for the successful bidders for the Bonds are estimated not to exceed $18,500 and $2,500, respectively. Such fee and expenses are to be paid by the successful bidders, as provided in the proposed Purchase Contract. It is stated that the Corporation Commission of Oklahoma has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21438/February 15, 1980

In the Matter of

KENTUCKY POWER COMPANY
Ashland, Kentucky

(70-6224)

SUPPLEMENTAL ORDER AUTHORIZING EXPANSION OF LIST OF BANKS FROM WHICH SHORT-TERM BORROWINGS MAY BE MADE

Kentucky Power Company ("Kentucky"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") concerning the following matter.

By orders dated December 26, 1978 and December 5, 1979 (HCAR Nos. 20843 and 21325), Kentucky was authorized to issue and sell short-term notes through December 31, 1980, in an aggregate amount not to exceed $35,000,000 outstanding at any one time, such indebtedness to mature not later than March 31, 1981.

By post-effective amendment, Kentucky proposes to increase by one the number of banks from which short-term borrowings may be made. Additionally, it proposes to increase the total amount available under all lines of credit from $265,900,000 to $286,900,000. The amount of short-term notes

previously authorized to be outstanding ($35,000,000) will not be changed.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $100. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21439/February 15, 1980

In the Matter of

MIDDLE SOUTH SERVICES, INC.
MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6417)

NOTICE OF PROPOSAL BY SERVICE COMPANY SUBSIDIARY TO MAKE SHORT-TERM BANK BORROWINGS; GUARANTEE OF REPAYMENT BY HOLDING COMPANY

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its service company subsidiary, Middle South Services, Inc. ("Services"), have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

In connection with the performance of its functions as a subsidiary service company for the Middle South Utilities System ("System"), Services has undertaken a project together with an outside consulting engineering firm leading to the development of a standard design, both conceptually and in detail, for future coal-fired electric generating stations for the System during the late 1980's. Expenditures for this project through 1981 are currently estimated to total approximately $28,500,000, including $25,400,000 allocable to consultant fees and $3,100,000 allocable to in-house costs. Through 1979, approximately $9,000,000 of costs have been incurred, including $7,200,000 and $1,700,000 allocable to consultant fees and in-house costs, respectively.

To provide Services with funds for continuing its work on the coal-fired project and for the repayment at or prior to maturity of up to $10,000,000 of bank borrowings previously incurred, primarily for this undertaking (HCAR No. 20536), Services will enter into a line of credit with First National Bank of Commerce, New Orleans Louisiana ("Bank"), under which Services proposes to borrow through December 31, 1981 up to an aggregate principal amount of $30,000,000 outstanding at any one time.

To effect the proposed borrowings under the line of credit, Services will deliver to the Bank an unsecured master promissory note ("Note"), which Note shall evidence the obligation of Services to pay the amount of the line of credit ($30,000,000) or, if less, the aggregate unpaid principal amount of all loans made to Services under the line of credit, plus interest thereon as set forth below. The date and amount of each loan made under the line of credit, and the date and amount of each payment of principal of the loans made thereunder, shall be recorded by the Bank on a schedule annexed to the Note. The Note will (i) be payable to the order of the Bank, (ii) be dated on or about the date of the Commission's order in this File ("Effective Date"), (iii) be stated to mature on December 31, 1981 and (iv) bear interest, payable quarterly and at maturity,

on the unpaid principal amount thereof at a rate per annum equal to one hundred two percent (102%) of the prime commercial rate (15-1/4 percent per annum on January 25, 1980) of The Chase Manhattan Bank (N.A.) in effect from time to time for 90-day unsecured commercial loans to corporate commercial customers of the highest credit rating, with adjustments in the interest rate to be made effective automatically on the effective date of any change in said prime rate. Services will have the right to prepay the unpaid principal amount of the Note, in whole or in part, at any time without penalty or premium.

In connection with the proposed borrowings, Services will agree to pay the Bank a fee for the period from the Effective Date to and include December 31, 1981 or earlier termination of the line of credit computed at the rate of 1/2 of 1% per annum on the average daily unused portion of the available line of credit. There is no requirement that Services maintain compensating balances with the Bank in connection with the proposed borrowings under the line of credit. Based upon the prime commercial rate of The Chase Manhattan Bank (N.A.) in effect on January 25, 1980, the cost of money to Services in respect of the proposed borrowings as of that date would be 15.56% per annum.

As sole stockholder of the outstanding common stock of Services and as an inducement to the Bank to arrange for Services this $30,000,000 line of credit, Middle South will guarantee the payment by Services of the unpaid principal amount of, and interest on, the Note and the performance by Services of its obligations under its line of credit with the Bank.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $6,000, including legal fees of $4,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 13, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21440/February 15, 1980

In the Matter of

THE HARTFORD ELECTRIC LIGHT COMPANY
Selden Street
Berlin, Connecticut 06109

(70-6423)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Hartford Electric Light Company ("HELCO"), a wholly-owned subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

HELCO proposes to issue and sell at private sale to institutional investors up to $20,000,000 principal amount of its % First Mortgage Bonds, 1980 Series, due March 1, 1990 ("Bonds"). The terms of the Bonds are being negotiated directly with the proposed purchasers. HELCO presently has a commitment from one institutional investor for the purchase of $10,000,000 principal amount of the Bonds and is presently attempting to obtain commitments from other institutional investors for the purchase of all or a portion of the remaining $10,000,000 uncommitted principal amount of Bonds. HELCO will file by amendment the exact principal amount of Bonds to be sold, a complete list of the purchasers thereof and the interest rate to be borne by the Bonds, which rate is being negotiated directly with prospective purchasers and will not be in excess of 13.875% or less than 13.35% per annum. The Bonds will be sold at 100% of the principal amount thereof.

The Bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of January 1, 1958, between HELCO and the First National Bank of Boston, Successor Trustee, as heretofore supplemented and amended by various indentures supplemental thereto, and as to be further supplemented by a Seventeenth Supplemental Mortgage Indenture to be dated as of March 1, 1980, setting out the terms of the Bonds. The terms are expected to include provisions that no Bond shall be redeemed (1) for any purpose prior to March 1, 1985; or (2) at any time on or after March 1, 1985 if such redemption is for the purpose of or in anticipation of refunding such Bond through the use, directly or indirectly, of borrowed funds or a preferred stock issue (a) at an effective cost to HELCO (computed in accordance with generally accepted financial principles) less than the interest rate of the bonds, or (b) having a weighted average life to maturity less than that of the bonds, except that on and after March 1, 1988 up to one-half of the initial aggregate principal amount of the Bonds may be redeemed pursuant to one or more such refundings. HELCO has stated that the purchaser is unwilling to purchase the Bonds in the absence of the aforesaid redemption and refunding protection.

The net proceeds from the sale of the Bonds will be used to repay an equal principal amount of short-term borrowings, estimated to total approximately $73,900,000 at the time of such sale, which were incurred to finance HELCO's construction program. HELCO's 1980 construction program expenditures are estimated to total $66,400,000, which includes $2,200,000 for nuclear fuel. In addition to the sale of the Bonds and internal cash generation, the Company expects to effect additional preferred stock (and possibly additional first mortgage bond) financing in 1980 to finance the completion of its 1980 construction program and to meet bond maturity and sinking fund requirements of $12,715,000 in 1980.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The proposed issuance and sale of Bonds by HELCO is subject to the jurisdiction of the Connecticut Division of Public Utility Control. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 14, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21441/February 15, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

NATIONAL FUEL GAS SUPPLY CORPORATION
308 Seneca Street
Oil City, Pennsylvania 16301

NATIONAL GAS STORAGE CORPORATION
10 Lafayette Square
Bufflao, New York 14203

(70-5961)

NOTICE OF PROPOSED TRANSACTIONS RELATED TO THE ORGANIZATION OF A NEW SUBSIDIARY COMPANY TO ENGAGE IN THE UNDERGROUND STORAGE OF GAS FOR NONAFFILIATED UTILITIES

NOTICE IS HEREBY GIVEN that National Fuel Gas Company ("National"), a registered holding company, and two of its subsidiary companies, National Fuel Gas Supply Corporation ("Supply Corporation") and National Gas Storage Corporation ("Storage Corporation"), have filed an amended application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 11, and 12 of the Act and Rules 43 and 45 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

National, the holding company, performs financing and administrative functions on behalf of its subsidiaries but is not engaged in the transmission or distribution of natural gas. It has no material assets except for the securities of its subsidiaries. Supply Corporation, a Pennsylvania corporation, is engaged in the interstate production, purchase, storage, transportation, and sale of natural gas at wholesale. It owns and operates an integrated gas pipeline supply network extending from the southwestern part of Pennsylvania to the New York-Canadian border. Approximately 98% of the natural gas produced and purchased by Supply is sold to National Fuel Gas Distribution Corporation ("Distribution Corporation"), a wholly owned public utility subsidiary of National. Supply Corporation also supplies natural gas at wholesale and renders gas storage service to certain nonaffiliated utilities. Storage Corporation was incorporated on June 9, 1976, under the Transportation Corporations Law of the State of New York. Storage Corporation has no assets or liabilities and no securities outstanding. It has been formed by National to engage in the storage of gas and related activities upon consumation of the transactions described below.

A notice was issued in this proceeding on February 14, 1977 (HCAR No. 19884); however, the filing was never completed and no order was issued. The companies have now filed an amendment to the application-declaration which restates entirely the original filing.

It is proposed that Storage Corporation will issue securities and acquire from Supply Corporation assets necessary to develop underground gas storage and related transportation facilities in Southwestern New York and adjoining northwestern Pennsylvania having an aggregate top gas storage capacity of approximately 23.5 billion cubic feet ("BCF"). Initial construction is being carried out by Supply Corp. in expectation of transferring partially completed facilities to Storage Corporation as of April 1, 1980. The total cost of development for Storage Corporation's facilities is estimated to exceed $68,000,000 over the period of preliminary development and the two to three-year construction period. Storage Corporation will render gas storage service to non-affliated utilities. These utilities will utilize Storage Corporation's service so that they may continue to deliver gas to high priority residential and commercial customers during the winter months when demand is high, from supplies stored over the summer months when gas is relatively more plentiful. Normally, gas is stored during the months of April through October, and withdrawn from storage for use during the months of November through March ("Storage Year").

It is stated that Supply Corporation has extensive experience in underground gas storage operations and owns rights in several areas which may be developed for gas storage purposes. Supply Corporation currently operates, independently or in conjunction with certain of its suppliers, 31 underground gas storage areas within the National Fuel Gas System. It is proposed that Storage Corporation will acquire from Supply Corporation (i)

best copy available

one of the existing developed storage areas and (ii) partially constructed facilities and leasehold interests at two undeveloped areas.

The developed area is known as the East Independence Pool and has an estimated top gas storage capacity capability of 3.3 BCF. This capacity is in excess of the system's internal needs for the foreseeable future and may therefore be transferred to Storage Corporation to serve non-affiliated utilities without adversely affecting existing customers of the System. The two partially constructed undeveloped areas are known as the West Independence and Beech Hill pools and have respective estimated top gas storage capacity capabilities of 8.2 and 12.0 BCF.

In order for Storage Corporation to complete development of the underground gas storage facilities and render storage service to customers, the applicants-declarants intend to capitalize Storage Corporation through the following transactions. The transactions would be consummated as of April 1, 1980, or as soon thereafter as possible ("Closing Date"), with the exception of transactions (A)(1) and (A)(2) below, which would be consummated in advance of the Closing Date.

A *Transactions taking place before the Closing Date:*

(1) National proposes to issue and sell from time to time during the period from the date of the Commission's order authorizing this transaction through the Closing Date, its unsecured short-term notes to The Chase Manhattan Bank, N.A. ("Chase"), pursuant to a Letter Agreement between Chase and National, in an aggregate principal amount not to exceed $4.7 million at any one time outstanding. The notes will mature within twelve months from their date of issue, will bear interest payable quarterly at the prime commercial rate of Chase in effect from time to time, and will be prepayable, in whole or in part, at any time without penalty.

National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20% were required, the effective cost of money, based on a 15.25% prime rate, would be 19.0625%. There will be no commitment fee nor any closing or related costs in connection with National's borrowings from Chase.

National proposes to use the proceeds of such short-term borrowings to acquire for cash from time to time, prior to the Closing Date, up to $4.7 million aggregate principal amount at any one time outstanding of short-term unsecured notes from Supply Corporation.

(2) In exchange for equal cash consideration, Supply Corporation will issue from time to time to National, during the period commencing with the authorization by the Commission of this transaction and ending with the Closing Date, up to $4.7 million aggregate principal amount of short-term unsecured notes. Each such note will be dated the date and bear the effective interest rate of related short-term notes of National issued to Chase, noted above. Each short-term note of Supply Corporation issued pursuant to this transaction will mature within twelve months of its date of issue with interest payable quarterly until the principal amount is paid in full. Supply Corporation will have the option to prepay any note issued pursuant to this transaction at any time, in whole or in part, without penalty or premium. Supply Corporation will use the proceeds of these notes for construction expenditures during 1980 for gas storage facilities which are proposed to be transferred to Storage Corporation. On the Closing Date, Storage Corporation will assume Supply Corporation's indebtedness to National represented by the aggregate amount of notes outstanding pursuant to this transaction, as partial consideration for the transfer by Supply Corporation to Storage Corporation of its interest in construction work in progress at the storage facilities, as described below under transaction (B)(1)(b).

B. *Transactions taking place on or after the Closing Date.*

(1) *Supply Corporation:* (B)(1)(a) In exchange for 25 shares of Storage Corporation common stock, no par value, Supply Corporation will convey to Storage Corporation all of the right, title, and interest of Supply Corporation existing as of June 1, 1976, in facilities at East Independence and unimproved leasehold interests at West Independence and Beech Hill. The 25 shares of common stock of Storage Corporation will be entered on the books of Supply Corporation at the net book value of the facilities and leasehold interests transferred as determined by original cost less accumulated depreciation, amortization, and depletion, if any, to the date of transfer, as they appear on the books of Supply Corporation. Assuming that the transfers

occur as of April 1, 1980, the facilities and leasehold interests at the respective storage areas are expected to have net book values approximating $2,965,000, $47,000, and $6,000, for an estimated total of $3,018,000.

(B)(1)(b) In exchange for the assumption by Storage Corporation of indebtedness to National represented by (i) Supply Corporation's $5 million 9.6% promissory note due December 31, 1980, (ii) Supply Corporation's $4.9 million prime interest rate promissory note due December 31, 1980, (iii) Supply Corporation's $17.5 million 8.7% promissory note due December 31, 1980, and (iv) up to $4.7 million aggregate principal amount of short-term unsecured notes described in transaction (A)(2) above, together in each case with accrued interest payable at the time of assumption, Supply Corporation will convey to Storage Corporation all of Supply Corporation's right, title, and interest in construction work in progress representing improvements, materials, and preliminary development at the three storage areas. As of April 1, 1980, such improvements, materials, and preliminary development are expected to aggregate approximately $32,100,000.

(b)(1)(c) Supply Corporation will transfer to National as a dividend, all of the 25 shares of common stock of Storage Corporation which it will receive pursuant to transaction (B)(1)(a) above.

2. *Storage Corporation:* (B)(2)(a) As consideration for the assets to be acquired from Supply Corporation indicated in transaction (B)(1)(a), Storage Corporation will issue 25 shares of its fully paid and non-assessable common stock, no par value, to Supply Corporation. The entire consideration received for such shares shall constitute stated capital of Storage Corporation and shall be valued at the net book value of the assets acquired as they appear on the books of Supply Corporation as determined by original cost less accumulated depreciation, amortization, and depletion, if any, to the date of transfer.

(B)(2)(b) As consideration for assets to be acquired from Supply Corporation indicated in transaction (B)(1)(b) above, Storage Corporation will assume the indebtedness of Supply Corporation to National represented by a $5.0 million 9.6% promissory note due December 31, 1980, a $4.9 million prime interest rate promissory note due December 31, 1980, a $17.5 million 8.7% promissory note due December 31, 1980, and up to $4.7 million aggregate principal amount of short-term unsecured notes described in transaction (A)(2) above, together in each case with accrued interest payable to the time of assumption of the indebtedness.

(B)(2)(c) As consideration for the cancellation by National of the $5.0 million 9.6% note, the $4.9 million prime interest rate note, and the $17.5 million 8.7% note assumed by Storage Corporation under transaction (B)(2)(b) above, Storage Corporation will issue to National the following: (i) 75 shares of its fully paid and non-assessable common stock, no par value. These shares will be entered on the books of Storage Corporation, representing $9.1 million of stated capital, and will be deemed to have been issued in return for cancellation of a $9.1 million portion of the Storage Corporation's indebtedness to National. (ii) 320,000 shares of its cumulative preferred stock, 9.6% Series ($25 par value). These shares will be entered on the books of National at $8.0 million and will be deemed to have been received in return for the cancellation of an $8.0 million portion of Storage Corporation's indebtedness to National. (iii) $10.3 million aggregate principal amount of its serial unsecured notes. These notes will bear interest at 8.7% which is equal to the effective cost of capital incurred by National in connection with the 1977 Debentures, rounded to the next highest 1/10 of 1%. The notes will have maturities corresponding to sinking fund payment dates for the 1977 Debentures and will have principal amounts equal to sinking fund requirements on the proportion of the proceeds of the 1977 Debentures which Storage Corporation receives. These notes will be deemed to have been received in return for the cancellation of a $10.3 million portion of Storage Corporation's indebtedness to National.

(B)(2)(d) In exchange for equal cash consideration, Storage Corporation will issue from time to time to National, during the period commencing with the Closing Date and ending December 31, 1980, up to $14 million aggregate principal amount of short-term unsecured notes. Each such note will be dated the date and bear the effective interest rate of related short-term notes of National issued to Chase, for which authorization is requested pursuant to transaction (B)(3)(d) below. Each short-term note of Storage Corporation issued pursuant to this transaction will mature within twelve months of its date of issue with interest payable quarterly until the principal amount is paid in full. Storage Corporation will have the option to prepay any note issued

pursuant to this transaction at any time, in whole or in part, without penalty or premium. Storage Corporation will use the proceeds of these notes for its construction program. Repayment of these notes is expected to be made from the proceeds of a financing to be done as soon as may be practicable.

3. *National:* (B)(3)(a) In consideration of the assumption by Storage Corporation of up to $32.1 million aggregate indebtedness of Supply Corporation to National as indicated in transaction (B)(2)(b) above, National will release Supply Corporation from all liability under such indebtedness.

(B)(3)(b) National will acquire 25 share of Storage Corporation common stock, no par value, as a dividend from Supply Corporation as described in transaction (1)(a) above. National will enter these shares on its its books at the same value as appears on the books of Supply Corporation at the time of transfer.

(B)(3)(c) As described in transaction (B)(2)(c) above, as consideration for the cancellation by National of the $5.0 million 9.6% note, the $4.9 million prime interest rate note, and the $17.5 million 8.7% note assumed by Storage Corporation under transaction (B)(2)(b) above, National will acquire from Storage Corporation the following: (i) 75 shares of Storage Corporation common stock, no par value. These shares will be valued at $9.1 million on the books of National and will be deemed to have been received in return for the cancellation of a $9.1 million portion of Storage Corporation's indebtedness to National. (ii) 320,000 shares of Storage Corporation's cumulative preferred Stock, 9.6% Series ($25 par value), having an aggregate par value of $8.0 million. This preferred stock will be entered on the books of National at $8.0 million and will be deemed to have been received in return for the cancellation of an $8.0 million portion of Storage Corporation's indebtedness to National. (iii) $10.3 million aggregate principal amount of the serial unsecured notes of Storage Corporation. These notes will be entered on the books of National at $10.3 million and will be deemed to have been received in return for the cancellation of a $10.3 million portion of Storage Corporation's indebtedness to National.

(B)(3)(d) National will issue and sell from time to time during the period from the Closing Date through December 31, 1980, its unsecured short-term notes to Chase in an aggregate principal amount not to exceed $14 million at any one time outstanding. These notes will be subject to the same terms and conditions as those applying to the notes which National proposes to issue and sell to Chase prior to the Closing Date, pursuant to transaction (A)(1) above.

(B)(3)(e) National will use the proceeds of the short-term borrowings to acquire for cash from time to time prior to December 31, 1980, up to $14 million aggregate principal amount at any one time outstanding of short-term notes from Storage Corporation, as described in transaction (B)(3)(d) above.

Applicants-declarants believe the proposed storage project is in the public interest, because, among other things, it will assist public utilities in their effort to minimize curtailments of gas deliveries to their high priority residential and commercial customers during periods of high demand. The project will also develop a valuable asset of the National Fuel Gas System and is expected to provide a stable source of income.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment.

It is represented that the requisite authorization of the proposed transactions has been or will be obtained from the Federal Energy Regulatory Commission and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The applicants-declarants have requested that, in order to alleviate excessive paper work, they be permitted to file Rule 24 certificates related to short-term borrowings as soon after each quarter as practicable and that the time for filing the certificate respecting transactions other than short-term borrowings be extended to 60 days after consummation of such transactions to permit preparation of financial statements and schedules of total fees and expenses.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 13, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if

the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21442/February 20, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

KENTUCKY POWER COMPANY
Ashland, Kentucky

KINGSPORT POWER COMPANY
Roanoke, Virginia

OHIO POWER COMPANY
Canton, Ohio

WHEELING ELECTRIC COMPANY
Wheeling, West Virginia

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6361)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling Electric"), AEP's subsidiary public utility companies, have filed with this Commission a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(b) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

By prior order in this proceeding (HCAR No. 21352, December 21, 1979), AEP was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper respectively, in an amount of up to $165,000,000, such notes maturing no later than June 30, 1981.

AEP now proposes to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of $229,000,000, subject to the previously ordered limit on outstanding notes. The banks and the line of credit which AEP has established at each such bank is as follows:

Name	*Amount*
Chemical Bank, New York, N.Y.	$50,000,000
The Chase Manhatten Bank (National Association), New York, N.Y.	50,000,000
Manufacturers Hanover Trust Company New York, N.Y.	25,000,000
Morgan Guaranty Trust Company of New York New York, N.Y.	18,000,000
Marine Midland Bank, New York, N.Y.	10,000,000
Bankers Trust Company, New York, N.Y.	9,000,000
The Bank of New York, New York, N.Y.	6,000,000
The Cleveland Trust Company, Cleveland, Ohio	7,000,000
First Pennsylvania Bank and Trust Company, Philadelphia, PA	9,000,000
Mellon Bank, N.A., Pittsburgh, PA	20,000,000
Credit Lyonnais, New York, N.Y.	25,000,000
	$229,000,000

In all other respects the previous order of this Commission remains unchanged.

No additional fees or expenses will be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21443/February 21, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

(70-6418)

NOTICE OF PROPOSED CHARTER AMENDMENT TO INCREASE AUTHORIZED COMMON STOCK; ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to amend its Restated Certificate of Incorporation, as heretofore amended, to increase its authorized common stock, par value $3.50, from 80,000,000 shares to 120,000,000 shares. Proceeds from the sale of such additional shares will be used to help finance planned construction requirements of approximately $3,693,000,000 for 1980-1984. As of December 31, 1979, CSW had 71,770,571 shares outstanding. CSW proposes to submit the amendment to its stockholders at its annual meeting to be held on April 17, 1980. CSW proposes to solicit proxies from its shareholders, through the use of proposed soliciting material, to obtain the required approval of the proposed amendment, to elect directors and to select auditors. An affirmative vote of the holders of a majority of the outstanding shares of common stock issued and entitled to vote at the annual meeting is required for adoption of the amendment.

Information regarding the fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the

declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appears to the Commission that the declaration, insofar as it proposes the solicitation of proxies from CSW's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration, regarding the proposed solicitation of proxies of CSW's stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21444/February 21, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6362)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to an application previously filed with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

By prior order in this proceeding (HCAR No. 21366, December 28, 1979), I&M was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper to banks and to a dealer in commercial paper respectively, in an amount of up to $150,000,000, such notes maturing no later than June 30, 1981.

By post-effective amendment I&M proposes to amend its application by: (1) adding the Marine Midland Bank, New York, N.Y. as one of the banks which is extending to I&M a line of credit, the line of credit established will be $10,000,000; (2) increasing the line of credit at Mellon Bank, N.A., Pittsburgh, P.A., (previously listed as Mellon National Bank and Trust Company) from $9,000,000 to $20,000,000 and; (3) changing its credit arrangements to total $329,655,000 with 43 banks. The previously ordered limit of $150,000,000 on outstanding notes will not be changed.

No additional fees will be incurred by I&M in connection with the proposed transactions. No state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby, is granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21445/February 21, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6363)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

Appalachian Power Company ("Appalachian"), an electric utility subsidiary company of American Electric Power Company, Inc., ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to an application previously filed with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transactions.

By prior order in this proceeding (HCAR No. 21353, December 21, 1979), Appalachian was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper to banks and to a dealer in commercial paper respectively, in an amount of up to $200,000,000, such notes maturing no later than June 30, 1981.

By post-effective amendment Appalachian proposes to amend its application by: (1) adding the Marine Midland Bank, New York, N.Y. as one of the banks which is extending to Appalachian a line of credit, the line of credit established will be $10,000,000; (2) increasing the line of credit at Mellon Bank N.A., Pittsburgh, PA, (previously listed as Mellon National Bank and Trust Company) from $9,000,000 to $20,000,000 and; (3) changing its credit arrangements to total $372,740,000 with 96 banks. The previously ordered limit of $200,000,000 on outstanding notes will not be changed.

No additional fees will be incurred by Appalachian in connection with the proposed transactions. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21446/February 21, 1980

In the Matter of

THE SOUTHERN COMPANY
64 Perimeter Center East
P.O. Box 720071
Atlanta, Georgia 30346

ALABAMA POWER COMPANY
ALABAMA PROPERTY COMPANY
SOUTHERN ELECTRIC GENERATING COMPANY
600 North 18th Street
P.O. Box 2641
Birmingham, Alabama 35291

GEORGIA POWER COMPANY
PIEDMONT-FORREST CORPORATION
270 Peachtree Street, N.W.
P.O. Box 4545
Atlanta, Georgia 30302

GULF POWER COMPANY
75 North Pace Boulevard
P.O. Box 1151
Pensacola, Florida 32520

MISSISSIPPI POWER COMPANY
2992 West Beach
P.O. Box 4079
Gulfport, Mississippi 39501

SOUTHERN COMPANY SERVICES, INC.
800 Shades Creek Parkway
P.O. Box 2625
Birmingham, Alabama 35202

(70-6407)

NOTICE OF PROPOSAL BY HOLDING COMPANY SYSTEM TO ALLOCATE ITS CONSOLIDATED INCOME TAX LIABILITY IN A MANNER DIFFERING FROM THAT EXCEPTED BY RULE 45(b)(6)

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, and its above-named wholly-owned subsidiary companies (collectively, with Southern, "The Southern System") have filed a joint declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction.

All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Southern and its subsidiaries join annually in the filing of consolidated Federal income tax returns. The consolidated Federal income tax liabilities are allocable among the members of The Southern System in accordance with the provisions of Section 1522 of the Internal Revenue Code of 1954 and other applicable requirements of Rule 45(b)(6) under the Act as modified by the Commission's orders of December 4, 1958, (HCAR No. 13876), March 2, 1961 (HCAR No. 14382), April 26, 1963 (HCAR No. 14860), March 15, 1976 (HCAR No. 19429), February 4, 1977 (HCAR No. 19873), June 7, 1978 (HCAR No. 20582), April 30, 1979 (HCAR No. 21033).

Under Section 1552(a)(1) as modified by orders of the Commission dated April 26, 1963, and March 15, 1976, (i) the tax (28%) on consolidated net long-term capital gain is apportioned among the group members in accordance with the ratio which that portion of the consolidated net long-term capital gain attributable to each member of the group having net long-term capital gain bears to the consolidated net long-term capital gain, (ii) the tax and surtax (46%) on ordinary income is apportioned in accordance with the ratio which that portion of the consolidated ordinary taxable income attributable to each member of the group having ordinary taxable income bears to the consolidated ordinary taxable income, and (iii) investment tax credits allowable to the group are allocated to those members whose investments generated the credits. Under the circumstances hereinafter described, certain inequities and distortions will result if the allocation of the group's consolidated income tax liabilities for 1979 is effected pursuant to the provisions of Rule 45(b)(6) as set forth above.

Set forth below are the estimated 1979 separate taxable incomes and losses of the members of The Southern System (adjusted to take into account the consolidation and, thus, comprising in the aggregate the consolidated net taxable income).

Company	*Estimated Taxable Income (Loss)*
The Southern Company	$(7,129,000)
Alabama Power Company	(43,651,466)
Alabama Property Company	—
Georgia Power Company	89,984,426
Piedmont-Forrest Corporation	306,422
Gulf Power Company	1,954,924
Mississippi Power Company	9,769,850
Southern Electric Generating Company	10,651,344
Southern Company Services, Inc.	(108,652)
Consolidated	$61,777,848

The estimated consolidated income tax before investment tax credits is $28,129,179 (excluding the estimated minimum tax). In order to allocate such consolidated tax liability equitably, The Southern System proposes as an exception from the provisions of Rule 45(a)(6), that (i) the reduction in the consolidated tax liabilities arising from the net operating losses contributed to the consolidated tax returns by Alabama Power Company ("Alabama") be allocated in their entirety to Alabama (but that each other operating company be allowed to offset its liability to Alabama by its full investment credits earned), and (ii) that in years when Alabama has taxable income and may be entitled to tax credits under the operating loss carryback and carryover provisions of Section 172(b) of the 1954 Internal Revenue Code, in order to comply with the separate return limitations required by Rule 45(b)(6), any tax credits remitted to Alabama as a result of the exception from the rule herein requested shall be applied to reduce any credits in future years to which Alabama may otherwise be entitled under any separate return limitations of Rule 45(b)(6). This method of allocation would, of course, continue to be

subject to the provision contained in sub-paragraph (6)(ii) of Rule 45(b) that the aggregate tax liability allocated to each subsidiary company should not exceed the amount of tax of such company based upon a separate return computed as if such company had always filed its tax return on a separate return basis.

A comparison of the taxes allocated under the method prescribed by Rule 45(b)(6) and under the proposed method is as follows:

	Under Rule 45	*Under Requested Method*
	(Before Investment Tax Credits)	
The Southern Company	$ —	$ —
Alabama Power Company	—	(20,079,674)
Alabama Property Company	—	—
Georgia Power Company	22,544,405	38,588,767
Piedmont-Forrest Corporation	—	—
Gulf Power Company	487,933	840,492
Mississippi Power Company	2,438,415	4,200,306
Southern Electric Generating Company	2,658,426	4,579,288
Southern Company Services, Inc.	—	—
	$28,129,179	$28,129,179

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $4,500, including legal fees of $1,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 552/February 20, 1980

The Securities and Exchange Commission has issued a notice giving interested persons until March 17, 1980 to request a hearing on an application by Chrysler Financial Corporation pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeship of United States Trust Company of New York under one indenture and successor trusteeship under five indentures of Chrysler Financial Corporation is not so likely to involve a material conflict of interest as to make it necessary to disqualify United States Trust Company of New York from acting as successor trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11048/February 14, 1980

In the Matter of

THE FINANCE COMPANY OF PENNSYLVANIA
7 East Lancaster Avenue
Ardmore, Pennsylvania 19003

(812-4523)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED TRANSACTION FROM THE PROHIBITIONS OF SECTION 17(a)

NOTICE IS HEREBY GIVEN that The Finance Company of Pennsylvania ("Applicant"), an open-end, non-diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 23, 1979, and an amendment thereto on January 30, 1980, for an order, pursuant to Section 17(b) of the Act, exempting from the prohibitions of Section 17(a) of the Act Applicant's sale 5,175 shares of Common Stock ("Shares") to South Chester Tube Company ("South Chester") for $5,806,350 in cash and a note. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that South Chester is a Pennsylvania corporation which conducts its operations through its two wholly-owned subsidiaries, principally through Southco, Inc., and to a much lesser extent through Tacony Industrial Park, Inc. Southco, Inc.'s principal business is the manufacture and sale of specialty industrial fasteners. Tacony Industrial Park, Inc.'s principal asset is an industrial park which it leases to other parties. South Chester's presently issued and outstanding Common Stock consists of 20,000 shares, $50 par value, each share having identical rights and privileges. There are no other classes of stock of South Chester issued and outstanding.

Applicant states that the Shares owned by it represent approximately 25.875% of South Chester's presently outstanding Common Stock and represent approximately 35.66% of Applicant's total assets as of June 30, 1979. Applicant admits that since it owns more than 5% of the presently outstanding shares of South Chester Common Stock, Applicant and South Chester are deemed to be affiliated persons of each other under Section 2(a)(3) of the Act. Furthermore, Applicant admits that since persons who own more than 5% of Applicant's outstanding Common Stock also own Common Stock of South Chester, the proposed transaction does not qualify for the exemption provided by Rule 17a-6 under the Act.

Applicant submits that in 1977, South Chester initially approached Applicant regarding a possible purchase by South Chester of up to 4,000 shares of South Chester's Common Stock for $735 per share, which shares South Chester proposed to transfer to a subsidiary's employee stock ownership plan. Because the Shares constituted such a significant percentage of Applicant's total assets and Applicant's investment policy contemplates that no more than 25% of the value of its portfolio shall be invested in the securities of one issuer, Applicant states that it seriously considered South Chester's proposal. However, no agreement between Applicant and South Chester regarding the sale of any of the Shares was concluded in 1977.

In 1978, Applicant submits that it attempted to interest a third party in purchasing the Shares and to enlist the aid of other South Chester stockholders in voting for the sale of South Chester's assets to a third party. Due to the opposition of other South Chester stockholders, Applicant states that it was not successful in these efforts. Also during 1978, Applicant states that it received preliminary inquiries from various parties concerning the purchase of the South Chester shares owned by Applicant, but no definitive offers were received. Applicant represents that at this time it first became apparent to Applicant that none of these potential purchasers was interested in any transaction other than one involving substantially all of South Chester's Common Stock or substantially all of its assets. Applicant submits that since it lacked the power to effect such a transaction and since the Board of Directors of South Chester was not willing to enter into such a transaction, for all practical purposes the only likely purchaser for the Shares was South Chester.

Because of Applicant's continuing belief that the sale of the Shares to South Chester was the only viable means for disposition of the Shares at a fair price, negotiations between Applicant and South

Chester resumed in the Spring of 1979, and resulted in the execution of a Stock Purchase Agreement ("Agreement") dated July 24, 1979. Applicant states that the Agreement was authorized and approved by the respective Boards of Directors of Applicant and South Chester.

The Agreement provides that Applicant will sell, and South Chester will purchase, the Shares for an aggregate consideration of $5,806,350, or $1,122 per share. The Agreement further provides for alternative payment terms. Under alternative (a) if Applicant receives an opinion from its investment adviser or an independent investment banking firm that the value of the South Chester note will not exceed 25% of the value of Applicant's total assets on the closing date, Applicant will obtain (i) a cash payment in the amount of $1,740,000 at closing (just under 30% of the total consideration in order that the transaction can qualify as an installment sale for federal income tax purposes), and (ii) the delivery of South Chester's promissory note in the principal amount of $4,066,350, with interest payable quarterly at the rate of 9-1/2% per annum on the principal amount from time to time outstanding and with the principal amount payable in an installment of $1,591,350 on January 15, 1981, and installments of $825,000 on January 15 of each of the years 1982, 1983 and 1984.

Under alternative (b) if Applicant's investment adviser or an independent investment banking firm is not able to furnish the opinion referred to in (a) above, Applicant will obtain (i) a cash payment of $2,506,350 at the closing (plus such additional amount but not in excess of $250,000 as is necessary to reduce the principal amount of the note hereinafter described to an amount not in excess of 25% of the value of Applicant's total assets on the date of closing), and (ii) the delivery of South Chester's promissory note in the principal amount of $3,300,000 (assuming no portion of the $250,000 is paid), with interest payable quarterly at the rate of 9-1/2% per annum on the principal amount from time to time outstanding and with the principal amount payable in four equal installments on January 15th of each of the years 1981, 1982, 1983 and 1984 (with provision for decrease in the first maturing installment by an amount equal to the amount of any increase in the initial cash payment).

Applicant states that consummation of the sale of the Shares is conditioned, among other things, upon receipt of (1) an order from the Commission exempting the sale from the provisions of Section 17(a) of the Act; (2) an opinion of special counsel to Applicant, or rulings from the Internal Revenue Service if deemed advisable by such special counsel, to the effect that (i) the sale will not adversely affect Applicant's present status and a regulated investment company for federal income tax purposes, (ii) the proceeds from the sale will qualify for capital gains treatment for federal income tax purposes, and (iii) if payment alternative (a) in the preceding paragraph becomes operative, the sale will be treated as an installment sale for federal income tax purposes; and (3) an opinion of counsel to South Chester as to certain other specified matters.

Applicant represents that since there is no trading market for the Shares, its Board of Directors has traditionally established a fair value for the Shares. Applicant states that as of June 30, 1979, this fair value was $5,516,550 or $1,066 per share. Likewise, Applicant states that its investment adviser, as of May 2, 1979, valued the Shares at $1,066 per share. Those valuations included a 25% reduction based on the illiquidity of the issue.

Applicant further represents that it retained Janney Montgomery Scott, an independent investment banking firm, to advise it on the possible sale and the fairness of any price negotiated for the Shares by Applicant and South Chester. Applicant states that by letter dated August 8, 1979, the investment banking firm stated its opinion that $1,122 per share represents a fair price for the Shares. Applicant also submits that Coopers & Lybrand arrived at a valuation of $1,122 per share, primarily based upon earnings multiples from the specialty fastener industry (South Chester's primary business).

Applicant admits that the valuation of securities is, of course, not an exact science. Applicant states that based upon (i) the limited opportunities for sale available to Applicant; (ii) the independent judgment of Applicant's Board of Directors; and (iii) the professional investment advice received by Applicant and South Chester, the price it will receive for the Shares and the terms upon which such price will be paid are fair.

Applicant states that because South Chester was willing to entertain the transaction only on the basis that all of the Shares would be sold at the Closing, it initially sought payment of the entire purchase price in cash at the time the Shares were to be sold.

Applicant states that South Chester refused this request, citing its need to conserve cash for anticipated expansion and its normal working capital requirements. Applicant believes that it was prudent to receive interest on the installments until paid at the rate of 9-1/2%, particularly since this interest income would be effectively replacing dividends on the Shares, which have been recently yielding approximately 5%. Applicant states that the interest rate was negotiated at the end of June, 1979 and the parties agreed to a rate equal to that paid by General Motors Acceptance Corporation ("GMAC") with respect to its notes having a three-to-five year maturity sold most recent to the end of the week preceding June 25, 1979. Both Applicant and South Chester believe that the interest rate selected was fair to both parties in that the GMAC rate was representative of interest rates then being paid for borrowings on a medium term basis by highly creditworthy borrowers. Applicant recognizes that although GMAC and South Chester are in different businesses (a finance company versus a manufacturing company), Applicant feels that the interest rate negotiated is an appropriate recognition of South Chester's ability to make the installment payments as and when they become due. Applicant represents that South Chester presently has no indebtedness outstanding. Nevertheless, Applicant submits that the note will become immediately due and payable if the retained earnings of South Chester as of the close of any calendar quarter are less than 200% of the unpaid principal balance of the note.

Applicant represents that the South Chester note will be carried in Appliant's financial statements at a fair value as determined by Applicant's Board of Directors. Applicant further represents that the Board of Directors expects to be advised on this question by its investment adviser or an independent investment banking firm selected by it, which will utilize accepted valuation techniques consistent with Applicant's policy for the valuation of securities. Such fair value will be determined as of the date of issuance of this note and from time to time in the future depending upon prevailing interest rates which cannot now be predicted.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, knowingly to sell any security or other property to, or knowingly to purchase any security or other property from, such registered company. Section 17(b) of the Act provides, however, that the Commission, upon application, shall exempt a transaction from such prohibition if evidence established that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Applicant asserts that the terms of the proposed transaction are fair and reasonable, and that the $1,122 per share purchase price for the Shares is a fair and reasonable price based on the appraisals of the Shares by Applicant's investment adviser, Janney Montgomery Scott, and Coopers & Lybrand. Furthermore, Applicant believes that the proposed transaction is consistent with the policy of Applicant and with the general purposes of the Act and is in Applicant's best interests in that it will enable Applicant to diversify its assets and more closely adhere to its stated investment policies. Accordingly, Applicant requests that an order of exemption be granted under Section 17(b) of the Act with respect to the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11049/February 15, 1980

EBERSTADT ASSET MANAGEMENT, INC.
and **EBERSTADT FUND MANAGEMENT, INC.**
61 Broadway
New York, New York 10006

File No. 812-4613

Investment Company Act of 1940

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 9(c) OF THE ACT AND ORDER OF TEMPORARY EXEMPTION PENDING DETERMINATION OF THE APPLICATION

NOTICE IS HEREBY GIVEN that Eberstadt Asset Management Inc. ("EAM") and Eberstadt Fund Management Inc. ("EFM"), their officers, directors and employees (hereafter also called "Applicants") have filed an application pursuant to Section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, as amended (the "Act") for an order exempting them from the provisions of Section 9(a) of the Act, to the extent such section is applicable, and have requested that the Commission grant a temporary exemption from Section 9(a) pending the Commission's determination of the application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicants are Delaware corporations engaged in the business of advising investment companies and corporate pension and profit sharing plans.

In March 1978, EAM (then called F. Eberstadt & Co., Inc. ("Eberstadt")) and EFM (then called F. Eberstadt & Co., Managers & Distributors, Inc. ("M&D")) were named as co-defendants in Civil Action No. 78-1055 brought by the Commission in the United States District Court for the Southern District of New York (the "action"). Eberstadt acted as financial advisers to Sun Company, Inc. in connection with the private purchases by LHIW, Inc., a wholly-owned subsidiary of Sun, of approximately 34% of the outstanding common stock of Becton, Dickinson and Company in January 1978. The Commission's complaint alleges, *inter alia*, that LHIW's purchases were not made in compliance with Section 14(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and that certain defendants constituted a "group" prior to January 1978 which violated Section 13(d) of the Exchange Act by failing to file a timely Schedule 13D in connection therewith. The trial on the issue of liability was completed and the court held, *inter alia*, that Eberstadt and M&D had violated Section 13(d), and that Eberstadt had aided and abetted violations of Section 14(d) of the Exchange Act, and that Eberstadt had violated and M&D had aided and abetted violation of Sections 17(d) and 17(e) of the Investment Company Act of 1940 (the "Act").

Applicants entered into a stipulation of settlement with the Commission and agreed to the entry by the court of an order terminating the action against them with prejudice and requiring them to comply with the stipulation of settlement (the "Order").

Section 9(a) of the Act, insofar as is pertinent here, disqualifies any person, or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company, if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. EAM and EFM do not concede that the Order would disqualify them under Section 9(a).

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

EAM and EFM have submitted pursuant to Section 9(c) that the prohibitions of Section 9(a) of the Act, to the extent they may be applicable to them by virtue of the entry of the Order, would be unduly and disproportionately severe as applied to them and that their conduct was not such as to make it against the public interest or protection of investors to grant this exemption. In support thereof, EAM and EFM represented that:

(i) The opinion of the court on liability dealt with complex and uncertain areas of the law and constituted in major respects a case of first impression. Applicants relied throughout the transactions at issue on the advice of independent and competent counse'.

(ii) Applicants have never been enjoined, permanently or temporarily, by order, judgment or decree of a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

(iii) EAM and EFM have never before applied for an exemption from the provisions of Section 9(a) of the Act.

(iv) Subsequent to the events and transactions which gave rise to Civil Action No. 78-1055, Eberstadt underwent a complete reorganization including a change in ownership and the divestiture of its brokerage and investment banking business. Eberstadt's investment advisory businesses, renamed EAM and EFM, were acquired by and are now controlled by Marsh & McLennan Asset Management Company, whose affiliates include other registered investment companies and advisers. Because of this sale and change of ownership, the prohibitions of Section 9(a) would operate against the financial interests of parties not involved in the events and transactions which gave rise to the Order.

(v) The prohibitions of Section 9(a) would unjustifiably deprive EAM & EFM and affiliated persons of their ability to act as investment advisers for investment companies, a line of business which EFM and affiliates have been successfully engaged in many years. Applicants and companies affiliated with them manage billions of dollars of funds. The prohibitions of Section 9(a) would cause extreme and undue hardship and disruptions to those persons and entities who have entrusted the management of their funds to Applicants and their affiliates.

(vi) EAM and EFM have relied on the Commission's staff's agreement to recommend a temporary exemption from the prohibitions of Section 9(a) in entering into a settlement of the action.

The Commission has considered the matter and finds that:

(1) the prohibitions of Section 9(a), to the extent they may be applicable, may be unduly or disproportionately severe as applied to EAM and EFM in that their conduct has been such as not to make it against the public interest or protection of investors to grant the application for a temporary exemption from Section 9(a) pending determination of the application; and

(2) in order to maintain the uninterrupted services provided by EAM and EFM and affiliated persons to regulated investment companies and other managed accounts, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order be issued forthwith.

Accordingly, IT IS ORDERED, pursuant to Section 9(c) of the Act, that EAM and EFM including their directors, officers, and employees, be and they are hereby temporarily exempted from the provisions of Section 9(a) of the Act pending final determination by the Commission of EAM's and EFM's application for an order exempting them from the provisions of Section 9(a) of the Act, to the extent they may be applicable.

NOTICE IS FURTHER GIVEN that any interested person may not later than March 17, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Willkie Farr & Gallagher, One Citicorp Center, 153 East 53rd Street, New York, New York 10022. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time

after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11050/February 15, 1980

SALOMON BROTHERS AND KENNETH LIPPER
One New York Plaza
New York, New York 10004

File No. 812-4614

Investment Company Act of 1940

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 9(c) OF THE ACT AND ORDER OF TEMPORARY EXEMPTION PENDING DETERMINATION OF THE APPLICATION

NOTICE IS HEREBY GIVEN that Salomon Brothers and its officers, partners, limited partners and employees ("Salomon") including Kenneth Lipper ("Lipper") have filed an application pursuant to Section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, as amended (the "Act") for an order exempting them from the provisions of Section 9(a) of the Act, to the extent that they may be applicable, and have requested that the Commission grant a temporary exemption from Section 9(a) pending the Commission's determination of the application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Salomon is a limited partnership engaged in the business of brokerage and investment banking and acts, among other things, as a principal underwriter and administrator for investment companies. Lipper is a general partner of Salomon.

In March, 1978, Salomon and Lipper were named as co-defendants in Civil Action No. 78-1055 brought by the Commission in the United States District Court for the Southern District of New York (the "action"). Salomon acted as financial adviser to Sun Company, Inc. ("Sun") in connection with the private purchases by LHIW, Inc., a wholly-owned subsidiary of Sun, of approximately 34% of the outstanding common stock of Becton, Dickinson and Company in January 1978. The Commission's complaint alleges, *inter alia*, that LHIW's purchases were not made in compliance with Section 14(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and that certain defendants constituted a "group" prior to January 1978 which violated Section 13(d) of the Exchange Act by failing to file a timely Schedule 13D in connection therewith. The trial on the issue of liability was completed and the court held, *inter alia*, that Lipper and Salomon aided and abetted violations of Sections 13(d) and 14(d) of the Exchange Act.

Salomon and Lipper represent that in order to avoid continued protracted litigation with the Commission which would have involved substantial inconvenience and expense to Salomon and Lipper, Salomon and Lipper entered into a stipulation of settlement with the Commission and agreed to the entry by the court of an order which constituted neither an admission nor a denial by Salomon or Lipper of any issue of law or fact in the action and terminated the action with prejudice against them and required them to comply with the stipulation of settlement (the "Order").

Section 9(a) of the Act, insofar as is pertinent here, disqualifies any person, or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Salomon

and Lipper do not concede that the Order would disqualify them under Section 9(a) of the Act.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Salomon and Lipper submit pursuant to Section 9(c) that the prohibitions of Section 9(a) of the Act, to the extent that they may be applicable by virtue of the entry of the Order, would be unduly and disproportionately severe as applied to them and that their conduct has not been such as to make it against the public interest or protection of investors to grant this exemption. In support thereof, Salomon and Lipper represent that:

(i) The activities of Salomon and Lipper in connection with acting as a financial adviser to Sun did not relate to Salomon's activities as a principal underwriter and administrator for investment companies.

(ii) The opinion of the court on liability dealt with complex and uncertain areas of the law and constituted in major respects a case of first impression. Salomon and Lipper relied on the advice of independent and competent counsel in the transactions at issue.

(iii) Prior to the court's opinion on liability, Salomon and Lipper have never been found by any court to have violated any state or federal securities laws and, except for an isolated instance in the case of Salomon, have never been the subject of a Commission enforcement proceeding or found by the Commission to have violated any federal securities laws.

(iv) The prohibitions of Section 9(a) would unjustifiably deprive Salomon of its ability to act as principal underwriter and administrator for investment companies, a line of business which Salomon has been successfully engaged in for the preceding 4 years.

(v) The prohibitions of Section 9(a) would unjustifiably disqualify any company with which Salomon or Lipper presently is or in the future may become an affiliated person.

(vi) Salomon and Lipper have never before applied for an exemption from the provisions of Section 9(a) of the Act.

(vii) Salomon and Lipper have relied on the Commission's Staff's indication of its intention to recommend and support a permanent exemption from the provisions of Section 9(a) of the Act and on its agreement to recommend that the Commission issue an order of temporary exemption from the provisions of Section 9(a) of the Act in entering into a settlement of the action.

The Commission has considered the matter and finds that:

(1) to the extent that they may be applicable, the prohibitions of Section 9(a) may be unduly or disproportionately severe as applied to Salomon and Lipper in that their conduct has been such as not to make it against the public interest or protection of investors to grant the application for a temporary exemption from Section 9(a) of the Act pending determination of the application; and

(2) in order to maintain the uninterrupted services provided by Salomon to the regulated investment companies involved, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order be issued forthwith.

Accordingly, IT IS ORDERED, pursuant to Section 9(c) of the Act, that Salomon and its partners, officers, limited partners and employees, including Lipper, are hereby temporarily exempted from the provisions of Section 9(a) of the Act, to the extent that they may be applicable, pending final determination by the Commission of Salomon's and Lipper's application for an order exempting them from the provisions of Section 9(a) of the Act, to the extent that they may be applicable.

NOTICE IS FURTHER GIVEN that any interested person may not later than March 17, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law

proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Cleary, Gottlieb, Steen & Hamilton, One State Street Plaza, New York, New York 10004. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11051/February 15, 1980

In the Matter of

BARCLAYS BANK INTERNATIONAL LIMITED
c/o Paul B. Ford, Jr., Esq.
Simpson Thacher & Bartlett
One Battery Park Plaza
New York, New York 1004

(812-4501)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Barclays Bank International Limited ("Applicant") filed an application on July 9, 1979, and amendments thereto on January 14, 1980, and February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a subsidiary of Barclays Bank Limited, one of the major United Kingdom commercial banks, and is a bank registered in England as a company limited by shares under the United Kingdom Companies Act of 1948. According to the application, Applicant and its subsidiaries had total assets of approximately $25.2 billion and deposits of approximately $21.5 billion as of September 30, 1978. Applicant states that the operating income of Applicant and its subsidiaries is derived principally from interest on loans, overdrafts and placing funds with banks in connection with Eurocurrency liquidity management, facilitation of international money transfer and documentary credit business with correspondent banks.

The application states that Applicant and its subsidiaries are principally engaged in retail and wholesale banking activities. According to the application, Applicant and its subsidiaries currently operate in seventy five countries throughout the world and form the largest United Kingdom-based international banking group. Applicant states that its registered business office is located at 54 Lombard Street, London, England EC3P 3AH.

Applicant represents that it is subject to regulatory supervision by the Bank of England, the government-owned central bank of England. Applicant also states that it files regular detailed reports with the Bank of England, which are designed in part to assess Applicant's liquidity and exposure to asset-related and other risks. According to the application, most of the operations of Applicant and its subsidiaries conducted in seventy five different countries are subject to reserve requirements and controls imposed by central banks and other authorities in those countries. Applicant also represents that it is registered as a bank holding company pursuant to the Bank Holding Company Act of 1956, under which the Board of Governors of the Federal Reserve System regulates the types of activities in which a foreign bank holding company may engage in the United States and requires the filing of annual reports. In addition, Applicant states that it is supervised and

examined pursuant to the laws of New York, Massachusetts, Illinois, Pennsylvania, California, and Georgia, and is subject to the laws of the Virgin Islands, because it conducts business in those jurisdictions.

According to the application, Applicant proposes to issue and sell unsecured r ne quality commercial paper notes in . minin.. denominations of $100,000 in the United States. Applicant represents that the notes will be offered and sold to institutional and other comparable investors and not to the general public. Applicant states that such commercial paper will provide an alternate source of supply of United States dollars which will supplement United States dollars currently obtained by Applicant from other sources. The application states that the notes will constitute a direct obligation of Applicant, ranking on a *pari passu* basis with all depositors and all other unsecured unsubordinated indebtedness of Applicant, and will be superior to rights of equity shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of its United States counsel that the offering will qualify for an exemption from the registration requirements of the 1933 Act provided for certain short term commercial paper by Section 3(a)(3) thereof. Applicant states that it will not proceed with its proposed offering until it has received such an opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future public issue of securities shall have received prior to issuance one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies, and that Applicant will advise in writing its United States counsel in connection with preparation of its opinion regarding exemption under the 1933 Act, that such rating has been received. Applicant undertakes to ensure that each offeree of the notes will be provided with a memorandum describing its business and containing its most recent publicly available financial statements. Applicant states that the memorandum will also include a description of material deifferences between United States and United Kingdom generally accepted accounting principles. Applicant represents that the memorandum will be at least as comprehensive as memoranda which are customarily used in connection with the issuance of commercial paper in the United States. In the event of subsequent offerings, Applicant states that such memorandum will be updated periodically and at least annually to reflect material changes in its financial position. Applicant further states that in the case of a future public offering of long-term debt securities in the United States, it will file a registration statement under the 1933 Act prior to offering such securities and will not sell such securities until the registration statement has been declared effective by the Commission. Applicant also undertakes that it will comply with the prospectus delivery requirements of 1933 Act in offering and selling such securities. In the case of any offering of long-term debt securities in the United States not requiring registration under the 1933 Act, Applicant undertakes to provide to any offeree to whom it offers such securities in the United States a memorandum at least as comprehensive in its description of Applicant as memoranda customarily used in such offerings of long-term debt securities in the United States. Applicant states that such memorandum will also include a description of material differences between United States and United Kingdom generally accepted accounting principles, and will be updated at the time of subsequent offering to reflect material changes in Applicant's financial position. Applicant states that any future offerings of securities in the United States will be debt securities. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertaking regarding disclosure memoranda.

Applicant represents that in connection with the issuance of the notes or any future securities, it will appoint an agent to accept service of process in any action based on the securities issued and instituted in any state or federal court by the holder thereof. Applicant further represents that it will accept jurisdiction in any state or federal court located in New York in any action based on the securities instituted by the holder. Applicant states that the appointment of agent for service of process and the acceptance of jurisdiction shall be irrevocable until the amounts due or to become due on the securities have been paid.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment

securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that it is subject to comprehensive supervision and regulation comparable in effect to the United States laws and regulations applicable to United States banking institutions. As a bank registered in the United Kingdom and subject to such regulations, Applicant argues that it is different from the type of institution Congress intended the Act to regulate. In addition, Applicant states that purchasers of its securities in the United States would have the benefit of United States securities laws and that such purchasers would be at no greater risk than purchasers of other large, well-regulated issuers. Applicant also asserts that if it were required to comply with the Act it would effectively be denied access to the United States capital market. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 11, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11052/February 15, 1980

In the Matter of

BARCLAYS BANK LIMITED
c/o Paul B. Ford, Jr., Esq.
Simpson Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004

(812-4502)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Barclays Bank Limited ("Applicant") filed an application on July 9, 1979, and amendments thereto on January 14, 1980 and February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a bank registered in England as a company limited by shares having been incorporated under the United Kingdom Companies Act of 1862 to 1890. According to the application, Applicant and its subsidiaries constitute the largest United Kingdom based banking group and one of the largest banking groups in the world, in terms of deposits and total assets. The application represents that Applicant and its subsidiaries had total assets of approximately $47.7 billion and deposits of approximately $41.2 billion as of December 31, 1978. Applicant states that it had issued and outstanding approximately 231 million ordinary shares converted into stock and held by 133,454 shareholders. The stock is listed for trading on The Stock Exchange, London.

According to the application, Applicant directly engages in retail and commercial banking, operates as one of four major United Kingdom clearing banks, and either directly or through United Kingdom subsidiaries, also engages in consumer finance, credit card operations, equipment leasing, merchant banking, factoring, trust activities and provides related financial services. The application also states that Applicant and its subsidiaries are principally engaged in retail and wholesale banking activities. The registered office of Applicant is located at 54 Lombard Street, London, England EC3P 3AH.

Applicant represents that it and its subsidiaries in the United Kingdom are subject to regulatory supervision by the Bank of England, the government-owned central bank of the United Kingdom. The application states that Applicant files regular detailed reports with the Bank of England, which are designed in part to assess Applicant's liquidity and exposure to asset-related and other risks. The application also represents that Applicant and its subsidiaries conduct commercial banking business in 75 different countries and most of its operations are subject to the reserve requirements and controls imposed by the central banks and other authorities in those countries. According to the application, Applicant is registered as a bank holding company pursuant to the Bank Holding Company Act of 1956, under which the Board of Governors of the Federal Reserve System regulates the types of activities in which a foreign bank holding company may engage in the United States and requires the filing of annual reports. In addition, Applicant states that the activities of its subsidiary operating in the United States are supervised and examined pursuant to the laws of New York, Massachusetts, Illinois, Pennsylvania, California and Georgia, and are subject to the laws of the Virgin Islands.

According to the application, Applicant proposes to issue and sell unsecured prime quality commercial paper notes in minimum denominations of $100,000 in the United States. Applicant represents that the notes will be offered and sold to institutional and other comparable investors and not to the general public. Applicant states that such commercial paper will provide an alternate source of supply of United States dollars which will supplement United States dollars currently obtained by Applicant from other sources. The application states that the notes will constitute a direct obligation of Applicant, ranking on a *pari passu* basis with all depositors and all other unsecured unsubordinated indebtedness of Applicant, and will be superior to rights of equity shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of its United States counsel that the offering will qualify for an exemption from the registration requirements of the 1933 Act provided for certain short term commercial paper by Section 3(a)(3) thereof. Applicant states that it will not proceed with its proposed offering until it has received such an opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future public issue of securities shall have received prior to issuance one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies, and that Applicant will advise in writing its United States counsel in connection with preparation of its opinion regarding exemption under the 1933 Act, that such rating has been received. Applicant undertakes to ensure that each offeree of the notes will be provided with a memorandum describing its business and containing its most recent publicly available financial statements. Applicant states that the memorandum will also include a description of material deifferences between United States and United Kingdom generally accepted accounting principles. Applicant represents that the memorandum will be at least as comprehensive as memoranda which are customarily used in connection with the issuance of commercial paper

in the United States. In the event of subsequent offerings, Applicant states that such memorandum will be updated periodically and at least annually to reflect material changes in its financial position. Applicant further states that in the case of a future public offering of long-term debt securities in the United States, it will file a registration statement under the 1933 Act prior to offering such securities and will not sell such securities until the registration statement has been declared effective by the Commission. Applicant also undertakes that it will comply with the prospectus delivery requirements of 1933 Act in offering and selling such securities. In the case of any offering of long-term debt securities in the United States not requiring registration under the 1933 Act, Applicant undertakes to provide to any offeree to whom it offers such securities in the United States a memorandum at least as comprehensive in its description of Applicant as memoranda customarily used in such offerings of long-term debt securities in the United States. Applicant states that such memorandum will also include a description of material differences between United States and United Kingdom generally accepted accounting principles, and will be updated at the time of subsequent offering to reflect material changes in Applicant's financial position. Applicant states that any future offerings of securities in the United States will be debt securities. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertaking regarding disclosure memoranda.

Applicant represents that in connection with the issuance of the notes or any future securities, it will appoint an agent to accept service of process in any action based on the securities issued and instituted in any state or federal court by the holder thereof. Applicant further represents that it will accept jurisdiction in any state or federal court located in New York in any action based on the securities instituted by the holder. Applicant states that the appointment of agent for service of process and the acceptance of jurisdiction shall be irrevocable until the amounts due or to become due on the securities have been paid.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that it is subject to comprehensive supervision and regulation comparable in effect to the United States laws and regulations applicable to United States banking institutions. As a bank registered in the United Kingdom and subject to such regulations, Applicant argues that it is different from the type of institution Congress intended the Act to regulate. In addition, Applicant states that purchasers of its securities in the United States would have the benefit of United States securities laws and that such purchasers would be at no greater risk than purchasers of other large, well-regulated issuers. Applicant also asserts that if it were required to comply with the Act it would effectively be denied access to the United States capital market. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 11, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail

upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11053/February 19, 1980

Mergers and Consolidations Involving Registered Investment Companies

ACTION: Final rules.

SUMMARY: The Commission today is adopting a series of rules and rule amendments which exempt specified mergers or consolidations of registered investment companies from certain prohibitions under the Investment Company Act of 1940. One rule among this series exempts certain mergers or consolidations of affiliated registered investment companies from that act's prohibition against sales and purchases of property between affiliated persons. Two rules permit the sale of redeemable securities at a price other than a current public offering price described in the prospectus, if the sale is in connection with specified mergers, consolidations or offers of exchange involving a registered investment company. A rule amendment in this series permits the sale of redeemable securities at a price based upon an adjusted current net asset value in certain transactions regarding which an investment company's directors have made certain findings protective of existing shareholders' interests. Finally, another rule permits an investment adviser to bear expenses of a merger or consolidation involving a registered investment company. These rules are intended to eliminate the need for parties' seeking exemptions for and the Commission's reviewing such transactions on a case-by-case basis through the application process.

EFFECTIVE DATE: February 19, 1980.

FOR FURTHER INFORMATION CONTACT:

Joseph F. Mazzella, Esq.
(202) 272-2033 or
Paul Goldman, Financial Analyst
(202) 272-2114
Investment Company Act Study Group
Division of Investment Management
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting a series of rules and amendments to rules under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("the Act") to permit specified mergers and consolidations involving registered investment companies without their having to obtain from the Commission exemptive orders under various provisions of the Act and rules promulgated thereunder. Among the rules, rule 17a-8 [17 CFR §270.17a-8] permits certain affiliated investment companies to merge or consolidate. Rule 22d-4 [17 CFR §270.22d-4] allows the sale of redeemable securities of a registered investment company at a price other than the current public offering price described in the prospectus in connection with a merger of the registered investment company with a "private investment company"—that is, a company which is excluded from the statutory definition of "investment company" by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)]. Rule 22d-5 [17 CFR §270.22d-5] extends to offers of exchange between a registered open-end investment company and a registered closed-end investment company the exemption from section 22(d) of the Act [15 U.S.C. 80a-22(d)] presently available only to such transactions between two registered open-end investment companies. An amendment to rule 22c-1 [17 CFR §270.22c-1] deems certain sales of redeemable shares made in connection with specified mergers or consolidations to comply with that rule. Finally, amended rule 17d-1(d)(8) [17 CFR §270.17d-1(d)(8)] allows an investment adviser to bear expenses associated with a merger or consolidation of investment companies. The

reasons for the Commission's proposing these rules were discussed thoroughly in Investment Company Act Release No. 10886 (Oct. 3, 1979), 44 FR 58521 (Oct. 10, 1979). Persons interested in a more detailed discussion of these rules should refer to that release.

In response to its request for comments regarding the proposed rules and rules amendments the Commission received seven letters of comment. All commentators appeared to generally endorse the proposed rule, although each commentator recommended modifications or otherwise expressed criticisms of certain aspects of the proposals.[1] After carefully considering these comments, the Commission has determined to adopt the rules and rule amendments as proposed.

FINAL RULES

Accordingly, rule 17a-8 exempts from the prohibitions of section 17(a) a purchase or sale of property pursuant to a merger or consolidation of registered investment companies which may be affiliated persons of each other solely by reason of having common officers, directors and/or investment adviser;[2] provided that the board of directors of each participating investment company, including a majority of the directors who are not interested persons of any participating investment company, find that the transaction (1) is in the best interests of the investment company and (2) will not result in dilution of existing shareholders' interests;[3] and further provided that such findings and the basis upon which they are made are recorded fully in

[1]Certain commentators questioned the propriety of the Commission's announcing its position regarding certain issues that may arise under section 36(a) of the Act [15 U.S.C. 80a-35(a)]. These commentators appeared to contend that section 36(a) is merely a jurisdictional provision which does not establish substantive stardards. To the contrary, section 36(a) imposes "minimum stardards of behavior of investment company directors and advisors [which apply to] decisions they may be called upon to make." Burks v. Lasker, Supreme Court Docket No. 79-5218, Slip Opinion dated Nov. 13, 1979 at n.10. In this regard, it has been long recognized "that section 36(a) is a reservoir of fiduciary obligations imposed upon affiliated persons to prevent gross misconduct or gross abuse of trust not otherwise specifically dealt with in the Act." Steadman v. SEC 603 F.2d 1126 at 1142 (5th Cir. 1979), quoting, Brown v. Bullock, 194 F. Supp. 207, 238-39 n.1 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961). Because the Commission specifically is authorized to bring an action under section 36(a), it believes that it is both desirable and appropriate to provide guidance as to activities or omissions which it may consider to breach those fiduciary obligations.

[2]The rule does not represent a Commission finding that investment companies having common officers, directors or investment advisers are always affiliated persons or affiliated persons of an affiliated person. They may or may not be, depending on the facts. The rule enables the parties to go forward without resolving that question if the requirements of the rule are met. Moreover, so long as the registered investment companies complied in good faith with rule 17a-8, a subsequent determination that such companies were not affiliated would not eliminate the basis for reliance on amended rule 22c-1(a)(2).

[3]The release proposing adoption of the rules recognized the board of directors' obligation to consider the direct and indirect costs of the transaction in determining whether it is in the investment company's best interests and in making its finding that the interests of existing shareholders would not be diluted. The release also suggested that this consideration include the extent to which these costs should be borne by the investment adviser where the adviser has significant self-interest in the merger transaction. This consideration, however, would not in all cases necessarily preclude the investment company from bearing certain expenses associated with the transaction, if, and so long as, those costs were justified by the anticipated benefits to shareholders and would also have been experienced in a transaction negotiated completely at arm's-length. If these benefits are questionable or unduly speculative, however, the board of directors would likely be unable to determine that no dilution existed unless these transaction costs were absorbed by a party other than the investment company itself.

the minute books of each registered investment company.[4]

Rule 22d-4 permits an investment company to sell redeemable securities pursuant to a merger with a private investment company at a price other than a price described in its prospectus; provided that the directors of the registered investment company, including a majority of its disinterested directors, determine that the merger transaction will not result in dilution of the interests of the company's existing shareholders, and, in the case of a company whose securities are sold at a price which includes a sales load, these directors find that any reduction or elimination in the price charged for such securities represents actual economies experienced in selling the securities; and further provided that these findings, and the basis upon which they were made, are recorded fully in the minute books of the registered investment company.

Rule 22d-5 permits redeemable securities to be sold by an investment company at a price which varies from the current public offering price described in the prospectus when such sale is in connection with an exchange offer which, except for the participation of a closed-end investment company, satisfies the provisions of section 11 of the Act [15 U.S.C. 80a-11].

Rule 22c-1, as amended, permits the sale of redeemable securities at a price other than a price based on current net asset value when such sale is effected pursuant to a merger which meets the requirements of rule 17a-8 or rule 22d-4.[5]

Rule 17d-1(d)(8), as amended, permits an investment adviser to bear expenses of a merger or consolidation involving a registered investment company.

AUTHORITY, EFFECTIVE DATE

The Commission, pursuant to section 6(c) [15 U.S.C. 80a-6(c)] and section 38(a) [15 U.S.C. 80a-37(a)] of the Act hereby amends 17 CFR Part 270 by adding new parts §270.17a-8, §270.22d-4 and §270.22d-5. Further, the Commission hereby amends rule 17d-1 pursuant to section 6(c), section 17(d) [15 U.S.C. 80a-17(d)] and section 38(a) of the Act and amends rule 22c-1 pursuant to section 6(c), section 22(c) [15 U.S.C. 80a-22(c)] and section 38(a) of the Act. Because those rules and rule amendments are exemptive, they are effective immediately.

TEXT OF RULES AND AMENDED RULES

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By adding §270.17a-8 to read as follows:

§270.17a-8 Mergers of certain affiliated investment companies.

A merger, consolidation, or purchase or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a) of the act; *Provided*, That:

(a) The board of directors of each such affiliated registered investment company participating in the transaction, including a majority of the directors of each registered investment company who are not interested persons of any registered investment company participating in the transaction, determine:

(1) That participation in the transaction is in the best interests of that registered investment company; and

(2) That the interests of existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction, and

(b) Such findings, and the basis upon which the findings were made, are recorded fully in the minute books of each registered investment company.

2. By amending §270.17d-1 by adding paragraph (d)(8) to read as follows:

§270.17d-1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

[4]As a technical modification of the rule, the requisite finding by the board of directors concerning dilution of shareholders' interests is modified to be consistent with the language of rule 22d-4(a)(1).

[5]As a technical modification of the rule, the term "securities" is used rather than the term "shares."

(d) * * *

(8) An investment adviser's bearing expenses in connection with a merger, consolidation or purchase or sale of substantially all of the assets of a company which involves a registered investment company of which it is an affiliated person.

3. By amending §270.22c-1 by adding paragraph (a)(2) to read as follows:

§270.22c-1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) * * *

(2) This paragraph shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company which meets the conditions specified in §270.17a-8 or in §270.22d-4.

4. By adding §270.22d-4 as follows:

§270.22d-4 Sale of redeemable securities pursuant to certain mergers with private investment companies.

A sale of redeemable securities by a registered investment company shall be exempt from the provisions of section 22(d) of the act to the extent necessary to effect a merger with, or purchase of substantially all of the assets of, a company which is described in section 3(c)(1) of the act; *Provided*, That:

(a) The board of directors of the registered investment company, including a majority of the directors of such investment company who are not interested persons thereof, determined:

(1) That the interests of existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction, and

(2) In respect of a sale of redeemable securities that are described in the prospectus as having a current offering price which includes a sales load, that any reduction or elimination of such sales load represents economies experienced in such sale that would not be present in a comparable sale effected through the normal channels of distributing such securities; and

(b) Such findings, and the basis upon which the findings were made, are recorded fully in the minute books of the registered investment company.

5. By adding §270.22d-5 as follows:

§270.22d-5 Exemption from section 22(d) for certain offers of exchange by certain registered investment companies.

A sale of redeemable securities pursuant to an offer of exchange which would be permitted under section 11 including any offer made pursuant to section 11(b), except that an offeree of the offer of exchange is a closed-end company, shall be exempt from the provisions of section 22(d).

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11054/February 20, 1980

In the Matter of

FIDELITY MONEY MARKET TRUST
82 Devonshire Street
Boston, Massachusetts 02109

(812-4352)

ORDER OF THE COMMISSION AMENDING A PREVIOUS ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

Fidelity Money Market Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on December 6, 1979, requesting an order of the Commission amending an earlier order of the Commission dated January 3, 1979 (Investment Company Act Release No.10540). This earlier order, pursuant to Section 6(c) of the Act, exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to

permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. The amended order, pursuant to Section 6(c) of the Act, would exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to utilize the amortized cost valuation method for purposes of pricing its shares for sale, redemption and repurchase.

On January 23, 1980, a notice (Investment Company Act Release No. 11027) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated January 3, 1979, contained in Investment Company Act Release No. 10540 to the extent requested, be and hereby is, granted effective forthwith, subject to the following conditions to which Applicant has consented:

(1) That Applicant's Board of Trustees in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-

[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

weighted average portfolio maturity in excess of 120 days.

(4) That Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) That Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Board of Trustees.

(6) That Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT COMPANY ACT OF 1940
Release No. 11055/February 21, 1980

In the Matter of

MFS MANAGED MUNICIPAL BOND TRUST

AND

MASSACHUSETTS FINANCIAL SERVICES COMPANY
200 Berkeley Street
Boston, Massachusetts 02116

(812-4482)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that MFS Managed Municipal Bond Trust ("Trust"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, and Massachusetts Financial Services Company ("Adviser"), the Trust's investment adviser and principal underwriter (hereinafter, the Trust and the Adviser are collectively referred to as "Applicants"), filed an application on May 29, 1979, and an amendment thereto on January 14, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act to permit the sale by Applicants of shares of the Trust to net asset value plus a reduced sales charge of 0.4%, pursuant to reinvestment programs to be offered to unitholders of past and future series of certain unit investment trusts registered under the Act with portfolios consisting of debt securities issued by or on behalf of states, territories and possessions of the United States, the District of Columbia, and their political subdivisions, agencies or instrumentalities, the interest on which is exempt from federal income tax ("municipal bonds") and whose sponsors agree to offer unitholders the proposed reinvestment programs (All such series of the unit investment trusts which may offer the proposed reinvestment program are hereinafter referred to as "Funds"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that the Trust's investment objective is to provide as high a level of current income exempt from federal income taxes as is considered consistent with prudent investing while seeking protection of shareholders' capital. The application further states that, in seeking this objective, the Trust, under normal market conditions, invests substantially all (at least 90%) of its portfolio assets in municipal bonds, but that as a defensive measure during times of adverse market conditions, up to 50% of the Trust's portfolio assets may be invested in various types of short-term debt obligations. Applicants state that the Trust's portfolio is fully managed. According to the application, shares of the Trust are offered for sale to the public at their net asset value plus a sales charge which varies from 4.75% (as a percentage of the offering price) on purchases of less than $10,000, to 1.50% on purchases of $1,000,000 or more. The application further states that the Trust has no minimum investment requirement and presently has no power to redeem any shareholder's shares without his consent.

According to the application and as noted above, each of the Funds will be a unit investment trust registered under the Act with a portfolio consisting of municipal bonds. Applicants assert that the investment objective of each Fund will be substantially the same as that of the Trust: interest income exempt from federal income taxation and preservation of capital. The application states that while the portfolios of the Funds and the Trust both will consist of municipal bonds, the portfolio of the Trust is managed, and therefore subject to change, while under ordinary circumstances the portfolio of each of the Funds will remain unchanged. Applicants state that, notwithstanding these differences between the Funds and the Trust, each is simply a different vehicle for an investor to achieve the same investment objective and that it is this common investment objective which enables the Trust to offer the proposed reinvestment programs to Fund unitholders at a reduced sales load.

According to the application, the Trust proposes to permit unitholders of the Funds to purchase shares of the Trust at net asset value per share plus a 0.4% sales charge solely by reinvesting their distributions of interest or other distributions, including capital gains and principal distributions, from the Funds. The application states that all unitholders of the Funds will be eligible to participate in the proposed reinvestment programs and will be required to reinvest the entire amount of all interest and other distributions from any series of the Funds. Applicants state that unitholders of outstanding and future series of the Funds will be notified of the existence of the reinvestment privilege and that unitholders indicating an interest in participating in the program will be sent a current prospectus of the Trust, together with an authorization form. Applicants further state that if the form is executed and returned it will entitle the unitholder to receive distributions from those series of the Funds designated by him in full and fractional shares of the Trust, purchased at the net asset value thereof in effect at the close of business on the distribution date of such unitholder's Fund, plus the 0.4% sales charge. Applicants state that participants will receive confirmations of all such transactions made for their respective accounts and will receive each year the current prospectus of the Trust. The application states that the authorization form will provide that any election to receive distributions from any series of the Funds in shares of the Trust will be effective until the unitholder revokes such election by written notice to the Trustee of such series.

Applicants state that expenses of offering the reinvestment programs to unitholders of the Funds will be borne by the Adviser and that, once a unitholder has elected to participate in the proposed reinvestment program, his account will be handled, and the expenses thereof will be borne, in the same manner as the account of any other shareholder of the Trust. Applicants believe that the sales charge of 0.4% will be sufficient to offset the expenses of the proposed reinvestment programs to the Adviser, and state that the Adviser will retain the entire charge. According to the application, once a unitholder of the Funds has elected to participate in the reinvestment program and becomes a shareholder in the Trust, he will be entitled to all rights of any shareholder of the Trust with regard to his interest.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price

described in the prospectus. Applicants request an exemption from the provisions of Section 22(d) of the Act to permit the sale by Applicants of shares of the Trust at net asset value per share plus a reduced sales charge of 0.4% to holders of units issued by past and future series of the Funds pursuant to the proposed reinvestment programs.

Section 6(c) of the Act provides that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the requested exemption from the provisions of Section 22(d) of the Act would be in the public interest, beneficial to the investors in the Trust and the Funds, and consistent with the purposes of Section 22(d). Applicants assert that the largest portion of the cost associated with sales of shares of an open-end, management investment company such as the Trust is attributable to soliciting an investor and ascertaining his financial requirements. Applicants state that in this case, unitholders of the Funds will already have made their initial investments, have had their financial requirements determined and have paid any applicable sales charges attributable to initial investments. Applicants submit that permitting such unitholders to reinvest their Fund distributions in shares of the Trust is little different from permitting existing shareholders of the Trust to reinvest their distributions, and that what slight sales cost exists will be offset by the 0.4% sales charge that will be imposed. Applicants submit that Fund investors, rather than the Adviser, should receive the benefit of the lower sales costs associated with the proposed reinvestment programs.

Applicants further submit that the proposed reinvestment programs will not result in any dilution in the equity of existing shareholders of the Trust because the Trust will receive the net asset value of the shares sold. They further submit that the proposed reinvestment programs will increase the Trust's asset base and, because its operating expenses will not increase concurrently with asset size, the per share cost of operations borne by the Trust's shareholders will be reduced. In addition, Applicants state that if a significant number of unitholders of the Funds participate in the proposed reinvestment programs, such unitholders will provide ready cash to be invested by the Trust and thereby help to assure the Trust of a positive cash flow, permitting it to meet redemptions without disturbing investments, to decrease assets held as cash reserves and to build-up its investment positions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11056/February 21, 1980

OPPENHEIMER & CO., INC.
One New York Plaza
New York, NY 10004

File No. 8-18333

Investment Company Act of 1940

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTION FROM SECTION 9(a) OF THE ACT

The Commission issued a Notice on July 5, 1979 of the filing of an application by Oppenheimer & Co., Inc. (the "Applicant") for an order of exemption pursuant to Section 9(c) of the Investment Company Act of 1940. Investment Company Act of 1940 Rel. No. 10757/July 5, 1979. The application seeks an exemption for Applicant, any person or company who is or in the future may become an affiliate of Applicant and any person or company of which it is or in the future may become an affiliated person, from the provisions of Section 9(a) of the Act to the extent that Section 9(a) is applicable by virtue of the entry of the Final Judgment of Permanent Injunction and Other Equitable Relief as to Ira J. Hechler. Such Judgment was entered on July 5, 1979 against Ira J Hechler, a person affiliated with Applicant, in an action entitled *Securities and Exchange Commission* v. *Ira J. Hechler, et al.* (United States District Court for the District of Columbia, Civil Action No. 79-1729). The Notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application may be issued by the Commission upon the basis of the information stated in the application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. No request for a hearing has been filed and the Commission has not ordered a hearing.

The Commission has considered the matter and finds that the prohibitions of Section 9(a), as applied to Applicant, are unduly or disproportionately severe and that the conduct of Applicant has been such as not to make it against the public interest or protection of investors to grant the exemption requested in the application.

Accordingly, IT IS ORDERED, pursuant to Section 9(c) of the Act that the application for exemption of Applicant, any person or company who is or in the future may become an affiliate of Applicant and any person or company of which it is or in the future may become an affiliated person, from the provisions of Section 9(a) of the Act, insofar as any ineligibility to serve or act in the capacities enumerated in Section 9(a) of the Act arises out of the Judgment entered against Ira J. Hechler, be and hereby is granted, effective forthwith.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 713/February 19, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16585/February 19, 1980

LITIGATION

Litigation Release No. 9004/February 14, 1980

UNITED STATES OF AMERICA v. RICHARD C. FLICK (United States District Court for the Eastern District of North Carolina) Action No. 79-20-CR-8.

Jule B. Greene, Administrator of the Atlanta Regional Office and George M. Anderson, United States Attorney for the Eastern District of North Carolina announced that on February 1, 1980, Richard C. Flick of Memphis, Tennessee was found guilty as charged in each count of a five count indictment by a jury in Raleigh, North Carolina. The indictment charged Flick with three counts of securities fraud and one count each of mail fraud and wire fraud in connection with his activities as an unregistered broker-dealer doing business as El Taco, Inc. and L.N.I.B. in 1977 and 1978. The indictment charged Flick with soliciting money from a resident of North Carolina for the purpose of purchasing municipal bonds for the customer and then not delivering the bonds. During a part of this period, from April to September 1978, Flick was suspended from association with any broker or dealer as a result of earlier activities at Shelby Bond Service Corp., a now-defunct Memphis, Tennessee bond dealer. Flick was also previously permanently enjoined from violations of the antifraud provisions of the federal securities laws in connection with his activities at Shelby Bond Service.

Immediately following the jury verdict, Judge F. T. Dupree, Jr. of the United States District Court for the Eastern District of North Carolina sentenced Flick to imprisonment for five years on Count I of the indictment, five years on Count II to run consecutively to the sentence imposed on Count I, and five years each on Counts III, IV and V, to rune concurrently with the sentences imposed on Counts I and II, and a $5,000 fine.

The indictment and conviction were the result of an investigation conducted by the Commission's Atlanta Regional Office.

For further information see Litigation Release Nos. 8878 and 7965, and Exchange Act Release No. 13777.

Litigation Release No. 9005/February 14, 1980

SEC v. MANUS, INC. and AARON ALBERT KLEINMAN (U.S.D.C. Central District of California, CA-79-3274-WPG)

Leonard H. Rossen, Administrator for the Los Angeles Regional Office of the Securities and Exchange Commission, announced that on January 29, 1980, the Honorable William P. Gray, U.S. District Judge, Los Angeles, entered an order of permanent injunction against Aaron Albert Kleinman from violations of the federal securities laws. More specifically, Kleinman was enjoined from further violations of the registration and antifraud provisions of the Securities Act of 1933, the broker-dealer registration provisions and antifraud provisions of the Securities Exchange Act of 1934 and the antifraud provisions of the Investment Advisers Act of 1940 in connection with the operations of Manus, Inc., a registered investment adviser of which Kleinman was president and sole shareholder. In addition, Kleinman was enjoined from disposing of any of Manus' assets and was ordered to deliver to the receiver for Manus any assets of Manus which he may be holding.

The complaint in this action was filed on August 24, 1979 and reported in Litigation Release No. 8887, which detailed the above-mentioned alleged violations. Kleinman consented to the entry of the injunction without admitting or denying the allegations of the complaint. Defendant Manus, Inc. had previously been enjoined on August 24, 1979, and in that order, entered pursuant to its consent, a receiver was appointed. (See Litigation Release No. 8887.)

Litigation Release No. 9006/February 14, 1980

SEC v. AEGEAN INDUSTRIES, INC., ET AL., 80 Civil 843 (S.D.N.Y.) (C.S.H.)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on February 13, 1980, the Commission filed a civil injunctive action seeking to enjoin the following defendants from future violations of the registration and antifraud provisions of the federal securities laws (Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder):

(1) Aegean Industries, Inc. ("Aegean"), a New York corporation formerly engaged in the development of vinyl cedar-shake siding products;

(2) Stanley J. Sanders ("Sanders"), an attorney, who has served as former president of Aegean, and is currently a director and shareholder of Aegean; Sanders resides in Roslyn, New York; and

(3) Vincent Fava ("Fava"), the inventor of Aegean's siding products, who has been a director and shareholder of Aegean since its inception; Fava resides in East Meadow, New York.

The Commission's Complaint alleges that since 1973, the defendants engaged in three unregistered distributions of Aegean securities, raising approximately $700,000 from approximately 100 investors. The three distributions consisted of: (a) the offer and sale by defendant Fava of investment contracts, in the form of royalty interests in Aegean's products; (b) the offer and sale of Aegean treasury shares; and (c) the secondary offer and sale of Aegean shares owned by defendants Sanders and Fava. In all three distributions, the defendants allegedly misrepresented material facts to investors, including, among other things, the facts that: (a) defendants Sanders and Fava had little business experience; (b) Aegean's books and records were in a chaotic condition; (c) Aegean had never successfully marketed its products (despite claims by the defendants that Aegean had "millions of dollars" of backlogged orders for its products); and (d) defendants Sanders and Fava converted the proceeds from the sale of certain Aegean securities for their personal use.

In addition to injunctive relief against the three defendants, the Complaint also seeks an order of disgorgement against defendants Sanders and Fava, requiring them to pay monies to Aegean.

Litigation Release No. 9007/February 14, 1980

UNITED STATES v. ENDEL PEEDO (Cr. No. CR-79-171, E.D. Va.)

Justin W. Williams, United States Attorney for the Eastern District of Virginia, and Paul F. Leonard, Administrator of the Washington Regional Office, announced that on February 8, 1980, Endel Peedo ("Peedo") of Alexandria, Virginia, was sentenced by the Honorable Albert V. Bryan, United States District Court Judge for the Eastern District of Virginia, Alexandria Division, to two years' imprisonment. The sentence was suspended, and Peedo was placed on three years' probation on the condition that he not directly or indirectly solicit investments in any enterprise. The sentencing followed Peedo's guilty plea on January 8, 1980, to one count of mail fraud in the execution of a fraudulent scheme concerning the publication and profitability of *Quinto Lingo* magazine. For further information, see Litigation Release Nos. 8916 and 8972.

Litigation Release No. 9008/February 14, 1980

SEC v. THOMAS J. BALL a/d/b/a TOM BALL & ASSOCIATES (U.S.D.C., E.D. Va. Alex. Div. C.A. No. 80-44-A)

Paul F. Leonard, Administrator of the Washington Regional Office, and Lewis W. Brothers, Jr. Director, Securities Division of the Virginia State Corporation Commission announced that on February 1, 1980, the Honorable Oren R. Lewis, United States District Court Judge for the Eastern District of Virginia, entered a final judgment permanently enjoining Thomas J. Ball a/d/b/a Tom Ball & Associates from violations of the securities registration and antifraud provisions of the federal securities laws in connection with the offer, purchase and sale of securities in the form of "Full Binding Contracts", "Land Development Investments" and other securities. The final judgment also permanently enjoins the defendant from violating the investment adviser registration and antifraud provisions of the federal securities laws. The order also provides for a freezing of the defendant's assets and for an accounting to be performed by the Commission of all investor funds paid to defendant.

The final judgment was entered with the consent of the defendant, who neither admitted nor denied the allegations of the complaint. The final judgment also provides that the Court shall retain jurisdiction over the defendant and the subject matter for the purpose of determining the appropriateness and amount, if any, of further equitable relief in the form of disgorgement.

For further information, see Litigation Release No. 8978.

Litigation Release No. 9009/February 15, 1980

SEC v. FUTURE COMMUNITIES, INC. (United States District Court for the District of Columbia, Civil Action No. 79-3147)

The Commission announced today that on February 14, 1980, the United States District Court for the District of Columbia entered a final Judgment of Permanent Injunction against Future Communities, Inc. of Long Beach, California, restraining and enjoining Future Communities, Inc. from failing to file timely periodic reports and ordered it to comply with certain undertakings. Future Communities, Inc. consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 16 separate occasions. The Commission's Complaint was filed on November 19, 1979.

The Complaint had alleged that Future Communities, Inc., as part of a continuing course of conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to be filed under the Securities Act of 1934.

Litigation Release No. 9010/February 15, 1980

SEC v. SUN CO., INC., ET AL. (S.D.N.Y.) Civil Action No. 78-1055

The Securities and Exchange Commission announced that on February 14, 1980, the Honorable Robert L. Carter, United States District Judge, Southern District of New York, signed orders relating to Salomon Brothers, Kenneth Lipper, Eberstadt Asset Management, Inc., Eberstadt Fund Management, Inc., and F. Eberstadt & Co., Inc. The orders require that each of the parties comply with a stipulation of settlement which they agreed to and do not constitute an admission or denial of any issue of law or fact in the proceedings.

The stipulations require, *inter alia*, that in the future each of the entities shall make the initial filings required under Sections 13(d) and 14(d) of the Securities Exchange Act of 1934. In addition, each of the entities agreed to have or continue in practice as the case may be certain procedures for certain transactions which relate to the filing requirements of Sections 13(d) and 14(d) of the Securities Exchange Act, and in the case of Eberstadt Asset Management and Eberstadt Fund Management, Sections 17(d) and 17(e) of the Investment Company Act of 1940, which they have also agreed to comply with.

Furthermore, Eberstadt Asset Management and Eberstadt Fund Management agreed that the fee received by the predecessor to Eberstadt Asset Management for rendering financial advice to Sun Co. shall be deemed to be the property of the

Chemical and Surveyor Funds. Subject to the approval of the Boards of Directors of such Funds and the Court, such moneys may be used to settle or pay any judgment against Eberstadt Asset Management or Eberstadt Fund Management that may arise out of related class actions.

In addition, the Court signed an order proposed by the Commission terminating the Commission's action against Fairleigh S. Dickinson, Jr.

The Commission filed its civil complaint on March 9, 1978, alleging violations of, *inter alia*, beneficial ownership and tender offer provisions of the Securities Exchange Act of 1934 and Sections 17(d) and 17(e) of the Investment Company Act of 1940. The Court in its opinion of July 9, 1979, reported in 475 F. Supp. 783 (S.D.N.Y. 1979), found violations of the federal securities laws as to these parties. The above orders conclude the Commission's case against these parties.

Litigation Release No. 9011/February 20, 1980

SEC v. SMITH W. BAGLEY, ET AL. (D.D.C., Civil Action No. 79-0812)

Paul F. Leonard, Administrator of the Washington Regional Office of the Securities and Exchange Commission, announced that on February 20, 1980, pursuant to a settlement, the United States District Court for the District of Columbia, entered a Final Judgment of Permanent Injunction against Smith W. Bagley ("Bagley"), James R. Gilley ("Gilley") and William F. Thomas ("Thomas"). The three defendants consented to the entry of the Judgment without admitting or denying the allegations of the Commission's complaint. The complaint in this matter was filed on March 15, 1979.

The judgment enjoins Bagley and Gilley from violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) and Rule 10b-5 thereunder of the Securities Exchange Act of 1934 ("Exchange Act") in connection with the offer, sale or purchase of the securities of any issuer subject to the reporting requirements of Section 13 of the Exchange Act of which the defendant is an officer or director or holds a certain percentage of the outstanding securities. Additionally, Bagley and Gilley are enjoined from failing to comply with the reporting provisions of Sections 13(d) and 16(a) of the Exchange Act and from causing to be filed with the Commission any annual or periodic report required to be filed pursuant to Section 13(a) of the Exchange Act which contains any misstatement of material fact or omits to state any material fact necessary to be made in order to make the statements made, not misleading. The Judgment enjoins Thomas from violations of Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 thereunder of the Exchange Act in connection with the offer, sale or purchase of any over-the-counter securities by effecting a series of transactions creating actual or apparent trading activity or raising or depressing the price of any such securities by others, or otherwise manipulating the market price of any such securities.

For further information, see Litigation Release Nos. 8691, 8709 and 8854, and SEA Release No. 15654.

Litigation Release No. 9012/February 20, 1980

UNITED STATES v. JOHN STERGE; AN-CAR OIL CO. INC.; AND FIRST FINANCIAL EQUITY CORPORATION (D. Mass.) Criminal No. 79-372-C)

Willis H. Riccio, Administrator of the Boston Regional Office, and the Honorable Edward F. Harrington, United States Attorney for the District of Massachusetts, today announced that the Honorable Andrew A. Caffrey, Chief Judge of the United States District Court for the District of Massachusetts, sentenced John C. Sterge of Boston, Massachusetts to concurrent jail terms of thirty (30) months. He received an additional sentence of one year, to be served on and after the thirty (30) month sentences; sentence suspended; and three years probation. First Financial Equity Corporation was sentenced to a $1,000 fine on a plea of guilty to one count of mail fraud.

Sterge, who from 1965 to 1976 was president of An-Car Oil Co., Inc. formerly located in Boston, and who was also president of First Financial Equity Corporation from 1976 to 1978, was sentenced on his plea of guilty to three counts of a nine count indictment charging him with violations of the antifraud provisions of the federal securities laws and mail fraud in connection with the sale of limited partnership interests and fractional undivided

working interests in oil and gas wells located in Ohio and Tennessee offered by An-Car, and in a Wyoming coal tax shelter program offered by First Financial.

The Court granted Sterge a stay of execution of sentence until February 29, 1980 at 10:00 A.M. The sentencing of An-Car was deferred until a later date.

For further information see Litigation Release No. 8980.

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19/11

sec docket

VOLUME 19, NO. 11 MARCH 18, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6191-95	796
Securities Exchange Act	16615-32	801
Public Utility Holding Company Act	21458-68	819
Trust Indenture Act	555-57	833
Investment Company Act	11062-72	834
Investment Adviser Act	714	846
Litigation	9024-31	846
Accounting Series	276	850
Freedom of Information Act	60	850

This listing covers releases issued from 2/29/80-3/6/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10	1/16/79
XVI	Vol. XVII, No. 7	5/15/79
XVII	Vol. XVIII, No. 6	9/13/79

SIGNIFICANT ITEMS ANNOUNCEMENT

34-16623 Interpretative release reflecting the views of the Division of Corporation Finance with respect to when certain tender offers commence under Regulation 14D and Regulation 14E.

RULES

The Following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16616	34-16619	34-16625
34-16617	34-16620	34-16630
34-16618	34-16624	

33-6191 Extension from February 29, 1980 to March 21, 1980 for Comments with respect to the reevaluation of the Guides for the Preparation and Reports [File No. S7-813]

33-6194 Extension to April 4, 1980 for Comments with respect to a proposed procedural rule relating to requests that records provided to or obtained by the Commission be treated in confidence [File No. 4-229].

33-6195 Adoption of amendments to Article 9 of Regulation S-X which relates to form and content of financial statements of bank holding companies and banks.

34-16628 Notice Obligations of Self Regulatory Organizations with respect to Final Disciplinary Actions, Denials Bars, or Limitations Respecting Membership, Association, Participation or Access to Services, and Summary Suspensions. [File No. S7-823—Comment Period Expires: April 18, 1980].

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SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6191/February 29, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16615/February 29, 1980

REVIEW OF GUIDES FOR THE PREPARATION AND FILING OF REGISTRATION STATEMENTS AND REPORTS

EXTENSION OF COMMENT PERIOD

ACTION: Extension of comment period.

SUMMARY: The Commission has extended from February 29, 1980, to March 21, 1980, the date by which comments must be submitted with respect to the re-evaluation of the Guides for the Preparation and Filing of Registration Statements and Reports.

DATE: Comments must be received on or before March 21, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-813. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Catherine Collins or Bruce S. Mendelsohn (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Release Nos. 33-6163, 34-16405 (December 5, 1979) [44 FR 72604], the Commission solicited public comment to assist in its overall re-evaluation of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. This review of the Guides is being undertaken to monitor their effectiveness and to identify obsolescence or inconsistency with existing rules, regulations and forms.

The Commission has received requests from interested members of the public for an extension of the Comment period. In view of these requests, the Commission has extended the comment period until March 21, 1980, to allow additional time for interested persons to complete their review of the Guides and the preparation of comments thereon.

Comment letters received after the termination of the comment period as extended may be considered in the discretion of the Commission. However, because of the timetable anticipated by the Commission, there can be no assurance that late comment letters will in fact be considered in this rulemaking procedure.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6192/March 4, 1980

In the Matter of

ROSS, HARDIES, O'KEEFE, BABCOCK & PARSONS PROFIT-SHARING RETIREMENT PLAN FOR LAWYERS
One IBM Plaza—Suite 3100
Chicago, Illinois 60611

(18-68)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE ROSS, HARDIES, O'KEEFE, BABCOCK & PARSONS PROFIT-SHARING RETIREMENT PLAN FOR LAWYERS

Ross, Hardies, O'Keefe, Babcock & Parsons ("Applicant"), a law firm organized as a partnership under the laws of the State of Illinois, filed an application by letters dated December 7, 1979, December 27, 1979 and January 16, 1980, requesting an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection

with the Ross, Hardies, O'Keefe, Babcock & Parsons Profit-Sharing Retirement Plan for Lawyers ("Plan").

On January 30, 1980, a notice was issued (Securities Act Release No. 6186) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6193/March 4, 1980

In the Matter of

PILLSBURY, MADISON & SUTRO RETIREMENT PLAN
P.O. Box 7880
San Francisco, CA 94120

(18-65)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE PILLSBURY, MADISON & SUTRO RETIREMENT PLAN

Pillsbury, Madison & Sutro ("Applicant"), a law firm organized as a partnership under the laws of the State of California, filed an application by letters dated November 16, 1979 and January 23, 1980, requesting an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Pillsbury, Madison & Sutro Retirement Plan ("Plan").

On January 30, 1980, a notice was issued (Securities Act Release No. 6185) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16627/March 5, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21466/March 5, 1980

TRUST INDENTURE ACT OF 1939
Release No. 557/March 5, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11068/March 5, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 714/March 5, 1980

FREEDOM OF INFORMATION ACT
Release No. 60/March 5, 1980

REQUESTS FOR CONFIDENTIAL TREATMENT OF RECORDS OBTAINED BY THE COMMISSION

ACTION: Extension of comment period.

SUMMARY: The Commission is inviting additional written comments and extending the period for submission of comments concerning a proposed procedural rule relating to requests that records provided to or obtained by the Commission be treated in confidence.

DATE: Comments should be received by April 4, 1980.

ADDRESS: All communications concerning this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such communications should refer to File No. 4-229, and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Harlan W. Penn, Office of the General Counsel
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549
(202) 272-2454

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission published for comment a proposed rule relating to requests for confidential treatment of records by the Commission in Release Nos. 33-6172, 34-16458, 35-21363, 39-548, IC-11003, IA-711, FI-59 (December 28, 1979) (45 FR 1627). To date some comments have been received but additional comments are invited because of the importance of the rule and the Supreme Court's actions on March 3, 1980 deciding *Forsham v. Harris, Secretary of Health, Education and Welfare*, No. 78-1118, and *Kissinger v. Reporters Committee for Freedom of the Press*, No. 78-1088. For detailed information and the text of the proposed rule, the reader is referred to 45 FR 1627.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6195/March 6, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16629/March 6, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21467/March 6, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11070/March 6, 1980

ACCOUNTING SERIES RELEASE
Release No. 276/March 6, 1980

BANK HOLDING COMPANIES AND BANKS—REQUIREMENTS FOR FORM AND CONTENT OF FINANCIAL STATEMENTS

ACTION: Final rules.

SUMMARY: The Commission is adopting amendments to Article 9 of Regulation S-X which relates to form and content of financial statements of bank holding companies and banks. The amendments reduce the detail required to be disclosed on a schedule reporting information about receivables from nonofficer directors and revise reporting of certificates of deposit and other time deposits in amount exceeding $100,000.

EFFECTIVE DATES: Financial statements for periods ending on or after December 15, 1980 as to amendments to §§210.9-02, 9-03 and 9-04. Financial statements for periods ending on or after December 15, 1979 as to amendment to §210.9-05.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Bloch, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2130).

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to its requirements as to form and content of financial statements of bank holding companies and banks known as Article 9 of Regulation S-X. These amendments were proposed in November 1979[1] and relate to disclosure of amounts due from nonofficer directors and reporting of certificates of deposit and other time deposits.

Thirty-eight letters were received commenting on the proposed amendments. Of these letters, thirty-three were from bank holding companies, banks or their counsel, two from banking associations, two from accounting firms and one from a law firm.

DISCLOSURE OF LOANS TO NONOFFICER DIRECTORS

In Release No. 33-6145 the Commission proposed amendment of Schedule I of Rule 9-05 to provide for aggregate reporting of amounts receivable from nonofficer directors incurred in the ordinary course of business. Schedule I as adopted in September 1978 in connection with a comprehensive revision of Article 9 of Regulation S-X[2] provides for detailed disclosure of indebtedness of directors, executive officers and principal holders of equity securities (and their associates) of the registrant bank holding company and its principal subsidiaries[3] which exceeds the lesser of $500,000 or 2-1/2 percent of stockholders' equity.

The Commission received requests from approximately 60 registrants and a banking industry association for reconsideration of that part of Schedule I which calls for disclosure of the names of nonofficer directors and their associates.

In view of those requests and the limitations in the Financial Institutions Regulatory and Interest Rate Control Act of 1978[4] on when banks can make loans to executive officers, directors and certain stockholders, the Commission requested comment in Release No. 33-6145 on whether the required detailed disclosure of loans to nonofficer directors in a schedule to the financial statements was useful in evaluating the financial condition and future prospects of bank holding companies and banks.

Thirty-seven of the letters of comment expressed support for the proposal to require aggregate in lieu of separate disclosure of nonofficer directors' loans.

Some commentators suggested further extension of the aggregate disclosure provision to loans to executive officers and major stockholders as well. The Commission has considered this suggestion and believes that it is inappropriate in light of the relationship of these persons to the bank holding company and its subsidiaries. Other commentators questioned whether even aggregate disclosure about loans to nonofficer directors is useful to investors. The Commission believes, however, that an investor should be aware of the extent, at least in the aggregate, to which a bank makes loans to insiders as against loans to the general public.

The proposed amendment to Schedule I is being adopted in substantially the form in which it was proposed.

REVISION OF REPORTING OF LARGE CERTIFICATES OF DEPOSIT AND TIME DEPOSITS

Release No. 33-6145 also proposed disclosure of the aggregate amount of time certificates of deposit (CD) and other time deposits (TD) in denominations of $100,000 or more in both domestic and foreign categories. Informative disclosure of such large denomination deposits appears necessary to show

---

[1] Release Nos. 33-6145, 34-16326, 35-21284, IC-10932 [44 FR 65774; November 15, 1979].

[2] Release Nos. 33-5973, 34-15135, 35-20699, IC-10389, AS-254 [43 FR 41022; September 14, 1978].

[3] For the purpose of this disclosure the term "principal subsidiaries" is defined to include the subsidiary with the greatest amount of deposits of all consolidated bank subsidiaries and any other consolidated subsidiary in which deposits exceed fifteen percent of consolidated deposits.

[4] Public Law 95-630, approved November 10, 1978.

the increasing significance of large CD's and TD's and in some banks the increasing reliance on large interest bearing deposits in foreign offices.

A number of banks commented that at least in the foreign area virtually all deposits are in large denominations. Consequently, we have revised the proposal for disclosure of large foreign CD's and TD's so that separate disclosure would not be necessary if the aggregate of such deposits is a majority of total foreign deposit liabilities. In such cases, a note should explain that the aggregate amount of deposits in excess of $100,000 is a majority of total foreign deposits.

The proposal for reporting large domestic CD's and other TD's has been adopted substantially as proposed. Interest income, however, is currently required by §210.9-03-7 to be detailed in the same categories as those specified for deposit liabilities. In view of the fact that interest related to large CD's is determinable relatively easily while interest related to large other TD's cannot be as easily determined because the deposits fluctuate in amount, §210.9-03-7 has been revised to continue the existing reporting of interest expense related to large CD's but not extended to interest related to large other TD's.[5]

EFFECTIVE DATE

The amendments to §§210.9-02, 03 and 04 shall be applicable to financial statements for fiscal periods ending on or after December 15, 1980. The amendment to §210.9-05 shall be applicable to financial statements for fiscal periods ending on or after December 15, 1979.

COMMISSION ACTION: The Commission hereby amends Part 210 of Title 17, Chapter II, of the Code of Federal Regulations (Regulation S-X) as follows:

[5] In recent years, there has been a significant change in the nature of deposit liabilities and related interest expense which is not reflected in reporting requirements of either the three Federal bank regulatory agencies or the SEC. Deposits include such accounts and instruments as large CD's and TD's, money market TD's, other fixed rate time CD's in amounts less than $100,000, NOW accounts and savings passbooks. Registrants should consider the relevance to investors of disclosures of such information as may be available about these categories of deposit liabilities and related interest expense.

Part 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

BANK HOLDING COMPANIES AND BANKS

1. In §210.9-02, paragraph 11(e) is revised to read as follows:

§210.9-02 Balance sheets.

* * * * *

11. * * *

(e) State separately in a note (1) the aggregate amount of time certificates of deposit in denominations of $100,000 or more in domestic bank offices and (2) the aggregate amount of other time deposits in amounts of $100,000 or more in domestic bank offices.

* * * * *

2. In §210.9-03, paragraph 7 is revised as follows:

§210.9-03 Income statements.

* * * * *

7. *Interest on deposits.* Include interest on all deposits. State separately on the income statement or in a note interest on deposits detailed in the same categories as those specified for deposits at §210.9-02-11(a) and §210.9-02-11(e)(1).

* * * * *

3. In §210.9-04, paragraph (f) is deleted and replace with the following:

§210.9-04 Foreign activities.

* * * * *

(f) *Deposit liabilities.* (1) State separately deposits of (i) banks in foreign countries (including balances of foreign branches of other United States banks), (ii) deposits of foreign governments and official institutions, (iii) other deposits of foreign demand

deposits and (iv) other foreign time and savings deposits.

(2) State also the amount of time certificates of deposit and other time deposits in amounts of $100,000 or more included in total deposit liabilities. If the aggregate of such certificates of deposit and time deposits in amounts exceeding $100,000 represents a majority of total deposit liabilities, the disclosure need not be given, provided that there is a statement that a majority of deposits were in amounts in excess of $100,000.

* * * * *

4. In §210.9-05, the last sentence under Schedule I is deleted and replaced with the following:

§210.9-05 What schedules are to be filed.

* * * * *

Schedule I. * * *

Notwithstanding the foregoing and the requirement of Column A of §210.12-03, indebtedness incurred in the ordinary course of business by directors (and related persons specified above) who are neither executive officers nor principal holders of equity securities may be stated in the aggregate in Columns B, C, D and E of §210.12-03 and need not be reported on an individual basis. The number of directors whose indebtedness is included in the aggregate amount shall be stated in Column A. It shall not be necessary to include in the individual or aggregate indebtedness reported those amounts related to installment loans as defined in §210.9-02-5(c)(3) made in the ordinary course of business. For the purpose of this schedule, loans or indebtedness made or incurred in the ordinary course of business shall be those which (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

* * * * *

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78o(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t(a)] of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)] of the Investment Company Act of 1940.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors and registrants.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16615/February 29, 1980

see

SECURITIES ACT OF 1933
Release No. 6191/February 29, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16616/February 29, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, MA 02109

(SR-BSE-79-3)

ORDER APPROVING PROPOSED RULE CHANGE

On December 26, 1979, the Boston Stock Exchange, Inc. ("BSE") filed with the Commission, pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would add a new Section 32 to Chapter II of the BSE rules, conforming those rules to the proprietary trading restrictions for exchange members under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) to thereunder. Under Section 32, orders for a member's account subject to the above provisions would have to bear an identifying notation on the order ticket allowing the executing broker to communicate to other members in the trading crowd that the order must yield priority, parity, and precedence to orders for the account of any person who is not a member, member organization, or an associated person thereof.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16513, January 17, 1980) and by publication in the *Federal Register* (45 FR 5859, January 24, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6, 11, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16617/February 29, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005

(SR-NYSE-79-49)

ORDER APPROVING PROPOSED RULE CHANGE

On December 5, 1979, the New York Stock Exchange Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which provides that the proceeds arising from the transfer of the membership of an equity member of the NYSE, who is associated with a member organization, will not be subject to claims of all creditors of such member organization, but will continue to be available for sums owed the NYSE and debts arising out of floor contracts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16507, January 16, 1980) and by publication in the *Federal Register* (45 FR 5868, January 24, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16618/March 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-3

The Chicago Board Options Exchange, Incorporated submitted on February 19, 1980, a proposed rule change under Rule 19b-4 to amend its rules regarding the procedures for the resolution of unmatched trades.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 10, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16619/March 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-5

The Phiadelphia Stock Exchange, Inc. submitted on February 25, 1980, a proposed rule change under Rule 19b-4 to define spread orders, straddle orders and combination orders and to accord to combination orders the same limited exception to book priority which is presently accorded to spread and straddle orders.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 10, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, view and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16620/March 4, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-AMEX-80-4

The American Stock Exchange, Inc. ("Amex") submitted on February 25, 1980, a proposed rule change under Rule 19b-4 to amend Rule 184(a) to remove the restrictions on the number of clerks an Amex specialist or specialist unit may employ. That portion of Amex Rule 184(a) that limits the number of clerks per specialist and per specialist unit would be rescinded, and specialists would be authorized to employ whatever number of clerks the Amex regards as reasonable in view of the anticipated volume in the specialists' registered securities.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 10, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-AMEX-80-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16621/March 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11064/March 4, 1980

FIRST MULTIFUND ADVISORY COPR, ET. AL.

The Securities and Exchange Commission has ordered public administrative proceedings pursuant to Section 9(b) of the Investment Company Act of 1940 and Section 15(b) of the Securities Exchange Act of 1934 against First Multifund Advisory Corp., Milton Mound, James F. Bender, Kurt I. Lewin, M. Lester Mendell, I.I. Rabi, Robert G. Stephens, Jr., Elliott B. Strauss, Aaron W. Warner and Norman D. Waters.

The proceedings are based upon allegations by the Commission's staff that the respondents violated antifraud, reporting, and other provisions of the federal securities laws in connection with the activities of First Multifund for Daily Income, Inc. ("FMDI") and First Multifund of American, Inc. ("FMA"). Prior to reorganizations which took place in 1979, FMDI was an open-end investment company which invested primarily in certificates of deposit issued by commercial banks, while FMA was an open-end investment company which invested in shares of other investment companies. Milton Mound, through First Multifund Advisory Corp., acted as investment adviser to and broker-dealer for both FMDI and FMA from their inception until 1979. The remaining respondents were directors of FMDI and FMA between 1974 and 1979.

With respect to FMDI, the Order alleges that the respondents improperly valued long-term certificates of deposit in FMDI's portfolio according to the amortized cost method of valuation. The Order further alleges that, as rising interest rates caused the fair market value of the securities in FMDI's portfolio to decline, the respondents' use of the amortized cost method of valuation resulted in overstatements of the fund's net asset value. In December 1979, FMDI liquidated its entire portfolio at a loss and reduced its net asset value per share from $1.00 to $.94.

With respect to FMA, the Order alleges that the advisory corporation and Mound adopted an investment strategy which caused that fund to engage in excessive portfolio transactions.

The Order further alleges that both FMA and FMDI filed registration statements and other disclosure documents which misrepresented or failed to disclose material facts concerning their operations.

A hearing will be scheduled to take evidence on the allegations of the staff and to afford the respondents an opportunity to present any defenses they may have. The purpose of the hearing is to determine whether the allegations are true and, if so, what if any remedial action would be appropriate.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16622/March 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11065/March 4, 1980

ADMINISTRATIVE PROCEEDING
File No. 3-5882

In the Matter of

PAUL BUCHBAUM
S. JAY LEVY

ORDER INSTITUTING AND DISPOSING OF PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

In connection with a proposed administrative proceeding, Paul Buchbaum ("Buchbaum") and S. Jay Levy ("Levy") have submitted Offers of Settlement, which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by the Commission, Buchbaum and Levy, without admitting or denying the findings, conclusions or allegations herein, consent to the entry of the findings of violations and the imposition of sanctions contained in this order.[1]

FACTS

First Multifund for Daily Income, Inc. ("FMDI") was an open-end diversified management investment company which invested substantially all of its assets in certificates of deposit issued by commercial banks. In November 1979, substantially all the assets of FMDI were exchanged for shares of Oppenheimer Monetary Bridge, Inc. in a reorganization.

First Multifund of America, Inc. ("FMA") was an open-end diversified management investment company which invested substantially all of its assets in shares of other investment companies. In November 1979, the assets of FMA were exchanged for shares of Oppenheimer Special Funds, Inc. in a reorganization.

First Multifund Advisory Corporation ("FMAC") acted as investment adviser to and broker-dealer for both FMA and FMDI from their inception until March 1979, when the advisory agreement with both funds was terminated.

Buchbaum, at one time a 10 percent owner of FMAC, served as vice-president and treasurer of FMAC from 1974 to 1978 and as an officer of both funds from 1974 until 1979.

Levy served as a director of FMA and FMDI between 1974 and 1979. Between 1974 and 1977, Levy acted as a consultant to FMAC and held approximately 6 percent of the stock of FMAC.

The FMDI prospectuses, annual and periodic reports, and sales literature disseminated by FMDI to shareholders or prospective shareholders and/or filed with the Commission were materially false and misleading. Certain of these documents, among other things, described FMDI as a money market fund offering "maximum safety" comparable to a savings account in a commercial bank. In fact, the fund invested in certificates of deposit with maturities considerably in excess of one year, and the value of its portfolio was extremely vulnerable to fluctuations in interest rates. As a result, FMDI's shareholders were subjected to substantial undisclosed market risks.

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[1]The findings made herein apply only to Respondents Buchbaum and Levy and are based upon their offers of settlement in which they consent without admitting or denying any of the statements findings, conclusions or allegations set forth herein, to the issuance of this Order. No hearing has been held by the Commission.

Although the weighted average maturity of FMDI's portfolio ranged as high as 825 days, the fund improperly valued its assets on an amortized cost basis and failed to reflect changes in their market value caused by fluctuating interest rates. In late 1978, as interest rates rose and FMDI investors switched to other investments offering a higher yield, FMDI was forced to borrow money to meet redemptions. Ultimately, in December 1978, FMAC liquidated the entire FMDI portfolio and reinvested its assets in short-term instruments. Because FMDI had continued to value its portfolio at amortized cost in the face of rising interest rates, the fund was forced by the liquidation to recognize a 6% ($508,000) decrease in its net asset value.[2]

In December 1978, Buchbaum redeemed 29,550 shares of FMDI on behalf of his parents, who used the funds to satisfy a preexisting commitment. Buchbaum effected this transaction five days after completing an analysis which demonstrated that FMDI's net asset value was overstated by approximately 6%.

Between 1974 and 1978, FMAC caused FMDI to sell previously sold and redeemed shares of FMDI without reregistering such shares, in violation of Section 5 of the Securities Act of 1933.

The prospectuses, annual and periodic reports and sales literature disseminated by FMA to shareholders and prospective shareholders and/or filed with the Commission were materially false and misleading. Certain of these documents, among other things, represented that FMA's investment policy was to pursue long-term growth of capital by investing in a managed portfolio of approximately twenty selected mutual funds. However, the actual investment strategy followed by FMAC was to buy and sell shares of other mutual funds based primarily upon an analysis of their performance over the previous four to thirteen weeks. This investment strategy resulted in annual portfolio turnover rates which ranged as high as 539%, and generated substantial commission revenues to FMAC as the fund's affiliated broker. Further, FMA failed to disclose that without these commission revenues, which greatly exceeded the revenues derived from FMAC's management fee, FMAC would not have been a viable entity.

FMAC caused FMA to make purchases which resulted in FMA owning more than 3% of the outstanding shares of three registered investment companies in violation of Section 12(d)(1)(A)(i) of the Investment Company Act of 1940.

While Buchbaum does not appear to have been responsible for establishing policies for the funds concerning portfolio strategy or valuation, he was an officer of FMAC. He acquiesced in these policies and supervised their implementation on a daily basis and assisted in the preparation of the disclosure documents.

Levy, as a director of FMA and FMDI, did not adequately fulfill his obligation in overseeing the funds. He failed to make an adequate review of the investment policies pursued by FMAC and the

[2]In connection with their examination of FMDI's 1977 financial statements, FMDI's auditors, Peat, Marwick, Mitchell & Co., were aware of and considered the accounting requirements imposed on FMDI by the Investment Company Act of 1940, Regulation S-X and Investment Company Act Releases Nos. 8757 ad 9786. The auditors concluded that there was no material difference between a valuation of the portfolio based upon amortized cost and a valuation based upon current realizable value of the portfolio. The analysis leading to this conclusion should have been documented in the audit workpapers, but was not. The auditor's conclusion did not relieve them of their responsibility to challenge whether FMDI's use of amortized cost was an appropriate accounting practice given the average 825-day maturity of the portfolio. The auditors knew, at the time they completed their audit, that the 1977 financial statements would be included in FMDI's 1978 prospectus. The auditors also knew that FMDI intended to continue using the amortized cost method of valuation for purposes of determining its net asset value per share. Due to the risk that this method could result in material inaccuracies, the auditors should have advised FMDI to change its accounting policy and make appropriate disclosure. If FMDI did not, the auditors should have modified their accountants' report on FMDI's financial statements with disclosure of FMDI's use of an inappropriate accounting practice, the risks involved in that practice, the significant impact which the practice could have on the calculated net asset value, and the fact that FMDI was engaged in litigation with the Commission over the issue. The accounting firm has taken corrective measures. Although the accounting firm is not a party to these proceedings, it has informed the Commission that it does not object to the Commission's expression of the foregoing views.

disclosure documents disseminated to shareholders and filed with the Commission. Further, Levy approved an increased management fee paid to FMAC by FMA and FMDI without requesting and evaluating such information as was necessary to evaluate the terms of the management contract.

OFFERS OF SETTLEMENT

The Respondents herein have submitted Offers of Settlement in which they waive the institution of formal administrative proceedings and, without admitting or denying any of the statements or conclusions set forth herein, agree to the issuance of this Order Instituting and Disposing of Proceedings and Imposing Remedial Sanctions.

Buchbaum, in submitting his Offer of Settlement, states that he followed the instructions of his superior and relied upon the advice of counsel for the funds in connection with the activities described herein.

Levy, in submitting his Offer of Settlement, states that he at all times conducted himself in accordance with what he believed to be the best interest of FMA, FMDI and their shareholders, in reliance upon advice of counsel of FMA and FMDI with respect to fulfillment of his legal responsibilities.

FINDINGS

On the basis of the staff's investigation and Buchbaum's and Levy's Offers of Settlement, the Commission finds:

(1) Buchbaum willfully[3] violated Sections 5 and 17 of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Sections 12(d)(1)(A)(i), 15(c), and 30(a), (b) and (d), of the Investment Company Act of 1940 and Rule 22c-1 promulgated thereunder, and Section 206 of the Investment Advisers Act of 1940; and

(2) Levy, by failing to perform adequately his oversight responsibilities as a director, willfully violated Section 15(c) of the Investment Company Act of 1940 and Rule 22c-1 promulgated thereunder, and willfully facilitated violations of Section 17 of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Section 30(a), (b) and (d) of the Investment Company Act of 1940.

ORDER

Accordingly, IT IS ORDERED that proceedings pursuant to Section 15(b) of the Exchange Act and Section 9(b) of the Investment Company Act of 1940 be, and they hereby are, instituted.

IT IS FURTHER ORDERED:

(1) That Respondent Buchbaum, for a period of 18 months from entry of this Order, is barred from acting as an employee, officer, or director of an investment adviser, registered investment company or broker-dealer; and shall thereafter comply with his undertaking not to serve in an unsupervised capacity for any investment adviser or registered investment company for a period of three years; and

(2) That Respondent Levy is hereby censured and shall hereafter comply with his undertakings that, with the exception of positions held with FMA and FMDI, which have adopted plans of reorganization and liquidation, he will not serve as an officer or director of a registered investment company for one year from entry of this Order.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16623/March 5, 1980

INTERPRETATIVE RELEASE RELATING TO TENDER OFFER RULES

ACTION: Publication of staff interpretations.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of this release reflecting the views of the Division of Corporation Finance (the "Division") with respect to when certain tender offers commence under

[3]"Willfully," for the purposes of administrative proceedings brought by the Commission does not require a finding, and none is made here, that a person intended to violate the law or otherwise engage in any wrongful act or omission. It merely requires a finding that a person was aware of his act or omission.

Regulation 14D [17 CFR §240.14d-1 through §240.14d-101] and Regulation 14E [17 CFR §240.14e-1 through §240.14e-2]. These views are being published in response to a number of requests for interpretive advice received by the Division.

FOR FURTHER INFORMATION CONTACT: Registrants with specific questions concerning the subject matter of this release or the operation of Regulations 14D and 14E should contact Herbert A. Einhorn at (202) 272-3097.

SUPPLEMENTARY INFORMATION: On December 6, 1979 the Commission issued Securities Exchange Act Release No. 16384, 44 FR 70376, which adopted new tender offer rules under the Williams Act. Since the adoption of these rules, certain interpretative questions have been addressed to the staff concerning the operation of certain aspects of these rules. In general, these questions relate to events which cause a tender offer to commence, the adequacy of the dissemination of the offer and the period of time when an offer must remain open.

Set forth below is a series of interpretations in question and answer format.[1] In conjunction with these interpretations, this release re-emphasizes certain concepts applicable to areas where compliance difficulties have arisen.

1. *Question:* Will a public announcement by the subject company or by another person having no relationship with a bidder of a bidder's intention to make a cash tender offer together with the information referred to in Rule 14d-2(c) commence the five business day period in Rule 14d-2(b)?

Response: No. Only a public announcement by the bidder or on the bidder's behalf will commence a tender offer pursuant to any of the provisions of Rule 14d-2.[2] As a practical matter, however, if a bidder's intention becomes generally known, the bidder may be unable to deny its intentions, and any affirmation of the information referred to in Rule 14d-2(c) by or on behalf of the bidder would cause the tender offer to start under Rule 14d-2(b).

2. *Question:* Will a public filing by the bidder with a state or federal agency which sets forth all of the information referred to in Rule 14d-2(c) with respect to a cash tender offer subject to Section 14(d) of the Exchange Act constitute a public announcement which would start the five business day period in Rule 14d-2(b) running?

Response: Yes. Any announcement of the information referred to in Rule 14d-2(c) relating to the identity of the parties and the price and amount of securities sought which would make that information available to the public would constitute a "public statement" within the meaning of Rule 14d-2(b), would be deemed to constitute the commencement of a tender offer and would commence the five business day period referred to in that rule.

3. *Question:* Assuming that a public announcement has been made which would require the bidder to file tender offer materials, need the bidder do anything more than file and deliver its tender offer materials in accordance with Rule 14d-3?

Response: Yes. The bidder must also make adequate dissemination of its offer to security holders. See Rule 14d-2(b)(2). Under the statutory scheme, tender offers commence on the date they are first published or sent or given to security holders. See Rule 14d-2(a). In the Division's view, adequate publication, sending or giving is always required in order to assure that the information required by Rule 14d-6 is disseminated to security holders who are confronted with an investment decision to tender, sell or hold the securities being sought by the bidder. Rules 14d-4 and 14d-5 set forth procedures which, if followed, will be deemed to constitute adequate publication. Recognizing, however, that some flexibility should be afforded, Rules 14d-4 and 14d-5 are not mandatory; and each bidder is left free to select those means of dissemination which, under the particular circumstances, will reasonably assure that the information referred to in Rule 14d-6 will be disseminated adequately to security holders. In this regard when dissemination is not made pursuant to Rules 14d-4 and 14d-5, Rule 14d-6(a)(4) specifically indicates that the materials which are published or sent or given to security holders on the

[1]These interpretations should be considered together with Release No. 34-16384.

[2]In certain situations where the bidder and subject company agree or arrange that the subject company will make the public announcement and such public announcement does not arise solely out of the subject company's disclosure duty, the public announcement will be viewed as being made on behalf of the bidder.

date of commencement must include specified information. See question seven with respect to the obligation of the bidder to accept shares of the target company for deposit.

4. *Question:* Once an offer has commenced, must the offer remain open continuously for 20 business days or may the offer be conditioned in such a way that it will not actually commence until a later date?

Response: Once commencement occurs (i.e. the offer is published or sent or given to security holders), the offer must remain open continuously from the date of commencement for at least the minimum twenty business day period referred to in Rule 14e-1, unless the tender offer is withdrawn by the bidder. The time periods set forth in the Williams Act and in the rules thereunder, including the time periods relating to proration and withdrawal rights, are generally computed from the date of commencement. These rights would be rendered ineffective if the offer were not concurrently open.

5. *Question:* Can a bidder's acceptance for payment of the securities tendered in response to a tender offer be conditioned upon the obtaining of a state or federal regulatory approval?

Response: Yes. Nothing in the rules prohibits offers under the terms of which the acceptance for payment is conditioned upon fulfillment of a condition requiring regulatory approval. The Commission recognized in Release No. 34-16384 that regulatory approvals may be required before a bidder will be permitted to actually purchase shares. The nature and extent of any such condition must be fully described in the bidder's tender offer materials.

6. *Question:* Is it permissible for a bidder to announce the specific terms of a cash tender offer which will be filed and disseminated immediately but will only be made if a state or federal regulatory approval is obtained?

Response: No. Under the rules once the information set forth in Rule 14d-2(c) has been publicly announced the offer has been made and the offer must be adequately disseminated. A mere commitment or other indication of an intent to make an offer at a future date is not permitted under the rule, if the information referred to in Rule 14d-2(c) has been disclosed by the bidder. Again, minimum periods, proration and withdrawal periods under the statute and the rules have been based on the assumption that an offer has been made and is outstanding.

7. *Question:* Must the bidder be prepared to receive shares for deposit immediately from and after the date of commencement or may the bidder indicate that no shares will be accepted for deposit until a state or federal regulatory approval has been obtained or some other condition has been fulfilled?

Response: The bidder must be willing at all times during its offer to accept shares for deposit. In order to have an offer, security holders must be in a position to accept the offer or tender for acceptance throughout the period of the offer. Again, many of the time periods relating to withdrawal, minimum offer periods and proration have been based upon this assumption. Notwithstanding the foregoing, however, if a bidder expects that a necessary regulatory approval will take a long period of time to obtain, the bidder should disclose that expectation and should give adequate notice when the approval has been obtained.

8. *Question:* When does the 20th business day end for purposes of computing the minimum tender offer period under Rule 14e-1?

Response: Pursuant to Rule 14d-1(b)(7), the 20th business day ends at twelve midnight eastern time on the 20th business day and the offer must remain open continuously until at least that time. Accordingly, bidders may not indicate that shares must be deposited prior to the close of business on the 20th business day, since at that time the minimum period has not run. Bidders who wish to avoid the inconvenience of providing facilities for the deposit of shares after normal business hours may extend their offers into the day following the 20th business day. Naturally, offers which extend more than 20 business days and which are not otherwise required to be open as a result of other provisions of the rules may be terminated at any time during the day, but the time and procedures relating to deposit of shares prior to termination must be clearly described in the bidder's tender offer materials.

9. *Question:* Assuming that a bidder has made a public announcement with respect to a cash tender offer which contains the information referred to in Rule 14d-2(c) and within five business days files and contemporaneously disseminates its tender offer materials in compliance with the other provisions of the rules, does the 20 business day minimum period

referred to in Rule 14e-1 run from the date of the public announcement or the later date of filing and dissemination?

Response: The 20 business day period commences on the later date of filing and dissemination. Under Rule 14d-2(b)(2)(i), the date of commencement is determined by the date information is filed and disseminated to security holders. Throughout the rules, the date of commencement and the date of first publication, sending or giving are synonymous. Accordingly, the reference to first publication, sending or giving referred to in Rule 14e-1 also refers to the date of commencement as determined under Rule 14d-2. See Rule 14d-1(a).

10. *Question:* If a subject company makes a recommendation which would require the filing of Schedule 14D-9 prior to the lapse of ten business days following commencement of the bidder's offer, must a response be given to Item 4(b) of Schedule 14D-9 even though the subject company is not yet required to take a position with respect to the offer under Rule 14e-2?

Response: Item 4(b) and all other items of Schedule 14D-9 must be fully answered. Rules 14d-9 and 14e-2 operate independently. If a subject company takes actions which invoke the provisions of Rule 14d-9, it must comply with all requirements of that rule, even though the ten business day period under Rule 14e-2 has not yet expired. If this compliance also satisfies the later requirements imposed by Rule 14e-2, a subsequent filing will not be required. In any event, however, it should be recognized that once a Schedule 14D-9 has been filed it must be updated to reflect material changes. See Rule 14d-9(b).

Accordingly, 17 CFR Part 241 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16624/March 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-4

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on March 3, 1980, a proposed rule change under Rule 19b-4 to amend Phlx Rule 1046 to provide additional exemptions to its "restricted option rule" for (1) Registered Options Traders, (2) the entry of orders which result in spread positions, and (3) opening purchases of puts which are offset by long positions in the underlying stock or a security convertible into the underlying stock.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16625/March 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-79-22

The American Stock Exchange, Inc. ("Amex") submitted on January 2, 1980, a proposed rule change under rule 19b-4 to amend Commentatory .01 to its Rule 958 to clarify that options transactions of Registered Options Traders ("ROT") must actually be initiated by the ROT while on the floor of the exchange in order to qualify for the specialist exemptions from Regulation T of the Federal Reserve Board (12 CFR 220) and Section 11(a) of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 10, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex 79-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16626/March 5, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten day suspension of exchange and over-the-counter trading for the period commencing at 2:30 p.m. (EST) on March 5, 1980 and terminating at midnight (EST) on March 14, 1980 of the securities of Alpha Energy and Gold, a Utah corporation with principal executive offices located at Ouray, Colorado.

The Commission suspended trading in the securities of Alpha Energy and Gold in light of questions which have been raised regarding the bases for statements concerning ore reserves at the company's mining properties located near Silverton and Naturita in Southwestern Colorado.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16627/March 5, 1980

see

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16628/March 5, 1980

Notice Obligations of Self Regulatory Organizations with respect to Final Disciplinary Actions, Denials, Bars, or Limitations Repecting Membership, Assocation, Participation or Access to Services, and Summary Suspensions

ACTION: Notice of proposed rule-making.

SUMMARY: The Commission is proposing an amendment to Rule 19d-1 [17 CFR §240.19d-1] under the Securities Exchange Act of 1934 ("Act") to exempt from the rule's reporting requirements notices of uncontested summary disciplinary sanctions (including summary fines not exceeding $500) imposed by a national securities exchange for violations of its regulations governing personal floor decorum.

DATES: Comments should be submitted on or before April 18, 1980.

ADDRESSES: Persons wishing to submit written views should file three copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-823 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Angela Desmond, Esq.,
Division of Market Regulation
Securities and Exchange Commission
Room 359
500 North Capitol Street
Washington, D.C. 20549
(202) 272-2396

SUPPLEMENTARY INFORMATION: Rule 19d-1 [17 CFR §240.19d-1] prescribes the content of notices by self regulatory organizations of final disciplinary actions, denials, bars or limitations respecting membership, association, participation or access to services, and summary suspensions. The rule was adopted in July 1977, pursuant to Section 19(d)(1) of the Securities Exchange Act ("Act")[1] which requires that self-regulatory organizations promptly report any of the above-noted actions to the Commission (or appropriate regulatory agency) in such form as the Commission (or appropriate regulatory agency) prescribes by rule.[2] Notices filed with the Commission pursuant to Section 19(d)(1) of the Act are subject to review by the Commission on

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[1]Section 19(d) was enacted as part of the Securities Acts Amendments of 1975, Pub. Law. 94-29 (June 4, 1975).

[2]19(d)(1) of the Act, 15 U.S.C. 78s(d)(1) provides:

If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member, or bars any person from becoming associated with a member, the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such for and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this title.

its own motion or upon application by any aggrieved person under Section 19(d)(2) of the Act.[3]

Subsection (c) of Rule 19d-1, which the Commission is proposing to amend, requires any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes "any final disciplinary action"[4] with respect to file promptly a notice thereof with the Commission.[5]

In adopting the rule, the Commission identified three objectives it hoped to achieve.[6] The first was to obtain from the self-regulatory organizations reports of disciplinary sanctions, denials of membership and similar actions, as required by the Act.[7] The second objective was to satisfy the requirement of Section 19(d)(1) that such actions be promptly reported to the Commission pursuant to Commission rule. The third objective was to ensure that such reports and notices supply sufficient information regarding the background, factual basis, and issues involved to enable the Commission to determine whether the case should be called up for review on the Commission's own motion, and to ascertain generally whether the self-regulatory organization is adequately carrying out its responsibilities under the Act. The Commission expressly considered self-regulatory organization comments that reporting minor disciplinary sanctions would be of limited value for purposes of Commission review or oversight, would not serve any significant regulatory purpose, and would entail excessive costs to the self-regulatory organizations in light of the *de minimis* nature of the violations and

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[3]Section 19(d)(2) of the Act, 15 U.S.C. 78s(d)(2), provides:

Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

[4]For the purposes of Rule 19d-1(c) a "final discimplinary action" means:

the imposition of any final disciplinary sanction pursuant to Section 6(b)(6), 15A(b)(7), or 17A(b)(3)(G) of the Act or other action of a self-regulatory organization which, after notice and opportunity for hearing, results in any final disposition of charges of:

(1) one or more violations of—

(i) the rules of such organization;

(ii) the provisions of the Act or rules thereunder; or

(iii) in the case of a municipal securities broker or dealer, the rules of the Municipal Securities Rulemaking Board;

(2) acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of Section 3(a)(39) of the Act; or

(3) in the case of a proceeding by a national securities exchange or registered securities association based on Section 6(c)(3)(A)(ii), 6(c)(3)(E)(ii), 15A(g)(3)(A)(ii), or 15A(g)(3)(B)(ii) of the Act, acts or practices inconsistent with just and equitable principles of trade.

[5]Rule 19d-1(c). Subsection (d) of Rule 19d-1 prescribes the content of notices of final disciplinary actions.

[6]Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36412 (July 14, 1977) at 1110 ('Release No. 13726").

[7]See Sections 6(c), (d), 15A(g), (h), and 17A(b)(4), (5) of the Act, 25 U.S.C. 78f(c), (d); 78a3(g), (h); and 78q-1(b)(4)(5).

sanctions. The Commission rejected these arguments on the grounds that the Act required self-regulatory organizations to give the Commission notice of all disciplinary sanctions and that the Commission needed certain minimum information regarding each matter covered by Rule 19d-1 in order to be informed of the matter and to take appropriate action on its own motion or take other remedial action in the exercise of its general oversight responsibilities.[8]

In March 1979, the American Stock Exchange ("Amex") petitioned the Commission to amend Rule 19d-1(c) to exempt from the reporting requirements notices of sanctions imposed for violations of regulations of national securities exchanges regarding trading floor decorum.[9] The grounds of the Amex petition are that infractions of these rules are "purely administrative" and the requirement that they be reported to the Commission "may impose unnecessary burdens, yet fail to yield any appreciable regulatory benefits."[10] The Amex also urges that Congress did not contemplate the reporting of these minor violations in adopting Section 19(d)(1). In support of its position the Amex suggests that Congress was concerned with providing regulatory checks over the exercise of "governmental-type powers" of self-regulatory organizations, whereas the imposition of minor sanctions for decorum rules violations is not unique to a self-regulatory organization or government agency but is a general characteristic of private-sector institutions.

The Commission believes that, while its prior construction of Section 19(d)(1) is not inconsistent with the legislative history of the Act, the legislative history of Section 19(d)(1) does not require such a broad construction. Moreover, in the two and one-half years the rule has been in effect, reports of summary uncontested sanctions, including fines not exceeding $500, for violations of trading floor decorum regulations have been of little, if any, value in discharging the Commission's oversight responsibilities over the exchanges. In light of their limited utility, the Commission believes that exempting them from the reporting requirements of the rule would remove an unnecessary regulatory burden on both the exchanges and the Commission staff.

The Commission, of course, reviews all rules, including those regarding trading floor decorum, at the time they are adopted by an exchange to determine whether they are consistent with the purposes of the Act.[11] Moreover, the Commission notes that exchanges are still required by the Commission rule 17a-1(a) [17 CFR 240.17a-1(a)] to keep a record of all disciplinary sanctions including those involving floor decorum.

The Commission believes it is appropriate to continue to require exchanges to file notices of (1) any contested summary decorum sanctions, and (2) decorum sanctions that are imposed at or as a result of a hearing. Reporting under these circumstances is consistent with the purposes of section 19(d) and will provide the Commission with information necessary to perform its oversite of the fairness of exchange enforcement and disciplinary activities. The Commission stresses that the proposed exemption to the reporting requirements of rule 19d-1(c) applies solely to uncontested summary decorum violations and would not be available for disciplinary sanction involving recordkeeping, the handling of orders, the execution of any securities transaction, or any other matter directly related to trading on a national securities exchange. Finally, the proposed exemption would not effect the requirement of subsection (i) of the rule that summary suspension of membership or summary limitations of access to services, for whatever reason, be reported to the Commission within 24 hours of the effectiveness of those sanctions. 17 CFR 240.19d-1(i).

In light of the foregoing, the Commission is proposing an amendment to Rule 19d-1(c) to provide that uncontested summary sanctions for violations of exchange rules governing decorum on a trading floor will not be considered "final" under the rule if the sanctioned person has not sought an

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[8] *Id.* at 1112. With respect to notices of final disciplinary actions taken for minor rule infractions, subsection (d) of the rule provides that notices need not include more detail than appropriate and thus affords self-regulatory organizations considerable latitude for keeping reporting burdens to a minimum. *Id.*

[9] These regulations generally set standards of appropriate dress and regulate such conduct of members while on the trading floor as running, eating, drinking and using abusive language.

[10] Amex petition at pp. 2, 1.

[11] Section 19(b) of the Act, 15 U.S.C. 78s(b).

adjudication, including a hearing, or otherwise exhausted his administrative remedies with the exchange with respect to the matter.[12]

Accordingly, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by revising paragraph (c) of §240.19d-1 as follows:[13]

§240.19d-1 Notices by self-regulatory organizations of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services, and summary suspensions.

* * * * *

(c) Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person shall promptly file a notice thereof with the Commission in accordance with paragraph (d) hereof. For the purposes of this rule, a "final disciplinary action" shall mean the imposition of any final disciplinary sanction pursuant to Section 6(b)(6), 15A(b)(7), or 17A(b)(3)(G) of the Act or other action of a self-regulatory organization which, after notice and opportunity for hearing, results in any final disposition of charges of:

(1) One or more violations of—

(i) The rules of such organization;

(ii) The provisions of the Act or rules thereunder; or

(iii) In the case of a municipal securities broker or dealer, the rules of the Municipal Securities Rulemaking Board;

(2) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of Section 3(a)(39) of the Act; or

(3) In the case of a proceeding by a national securities exchange or registered securities association based on Section 6(c)(3)(A)(ii), 6(c)(3)(B)(ii), 15A(g)(3)(A)(ii), or 15A(g)(3)(B)(ii) of the Act, acts or practices inconsistent with just and equitable principles of trade.

Provided, however, That in the case of a disciplinary action in which a national securities exchange summarily imposes a fine not exceeding $500 or suspends floor privileges of a clerical employee for not more than five days for violation of any of its regulations concerning personal decorum on a trading floor, the disposition shall not be considered "final" for purposes of this paragraph if the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the exchange with respect to the matter. Provided further, That this exemption from the notice requirement of this paragraph shall not be available where a decorum sanction is imposed at, or results from, a hearing on the matter.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16629/March 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6195/March 6, 1980

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[12]The proposed exemption is similar to an exemption in subsections (e) and (g) of Rule 19d-1 relating to notices or limitations of membership or access to services for nondisciplinary reasons. 17 CFR 240.19d-1(e), (g).

[13]In the text of the amended rule italics indicate new matter.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16630/March 6, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-77-12)

ORDER APPROVING AMENDED PROPOSED RULE CHANGE

On September 20, 1977, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change, proposed MSRB rule G-23, to establish standards of ethical conduct and certain other requirements for municipal securities brokers and municipal, securities dealers ("municipal securities professionals") that provide financial advisory services for compensation to issuers.[1] Proposed rule G-23 was amended previously on August 23, 1978, and August 28, 1979.[2] In addition to the previous amendments, on February 28, 1980, the MSRB submitted a technical amendment to the proposed rule to provide that, except as otherwise specified, the rule will take effect 30 days after the date of approval by the Commission. The purpose of the technical amendment is to provide municipal securities professionals with reasonable time to take such actions as may be necessary to comply with proposed rule G-23 upon Commission approval, and to avoid unduly disrupting financial advisory and underwriting activities which may be in progress at that time.

Amended proposed MSRB rule G-23 would define the term "financial advisory relationship" and require that a financial advisory relationship entered into by a municipal securities professional for the purpose of rendering financial advisory or consultant services to a municipal issuer with respect to a new issue of municipal securities be evidenced by a written agreement which sets forth the basis of compensation for such services.[3] The amended proposed rule also would require that a municipal securities professional acting as a paid financial advisor with respect to a new issue of municipal securities satisfy certain conditions specified in the proposed rule prior to purchasing the same issue. In a competitive sale, the financial advisor would be required to obtain the consent of the issuer prior to submitting a bid. Prior to purchasing securities on a negotiated basis, a financial advisor would be required to terminate the financial advisory relationship in writing and thereafter obtain the issuer's consent to the acquisition of the securities. In a negotiated sale, a financial advisor also would be required to disclose to the issuer that there may be a possible conflict of interest in changing capacity from financial advisor to underwriter, and to disclose in writing the source and anticipated profit with respect to underwriting the new issue. In addition to the requirements above, in the event a financial advisor underwrites a new issue of municipal securities, he would be required to disclose in writing to each customer the existence of the financial advisory relationship.

The text of proposed rule G-23, as amended, is as follows:

Rule G-23. Activities of Financial Advisors

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[1]Notice of that filing was published in Securities Exchange Act Release No. 13987 (Sept. 22, 1977) (42 FR 49856 (1977)). Proposed rule G-23 was originally filed as part of a series of rules referred to as the MSRB "fair practice" rules. The Commission approved the fair practice rules, with certain exceptions including proposed rule G-23, in Securities Exchange Act Release Nos. 15247 and 15248 (Oct. 19, 1978) (43 FR 50525 (1978)).

[2]Notice of those amendments was published in Securities Exchange Act Release No. 15138 (Sept. 7, 1978) (43 FR 41111 (1978)), and Securities Exchange Act Release No. 16152 (Aug. 30, 1979) (44 FR 52775 (1979)).

[3]The MSRB has indicated that the written agreement need not specify a fee at the outset of the financial advisory relationship, but must set forth, for example, whether the compensation to the financial advisor includes a depositary or fiduciary relationship with the issuer. The provision of the proposal requiring a written agreement would become effective 90 days after the date of Commission approval of the amended proposed rule in order to provide a suitable period within which existing oral agreements may be reduced to writing.

(a) Purpose. The purpose and intent of this rule is to establish ethical standards and disclosure requirements for brokers, dealers, and municipal securities dealers who act as financial advisors to issuers of municipal securities.

(b) Financial Advisory Relationship. For purposes of this rule, a financial advisory relationship shall be deemed to exist when a broker, dealer, or municipal securities dealer renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. Notwithstanding the foregoing, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

(c) Basis of Compensation. Each financial advisory relationship shall be evidenced by a writing entered into prior to, upon or promptly after the inception of the financial advisory relationship (or promptly after the creation or selection of the issuer if the issuer does not exist or has not been determined at the time the relationship commences). Such writing shall set forth the basis of compensation for the financial advisory services to be rendered, including provisions relating to the deposit of funds with or the utilization of fiduciary or agency services offered by such broker, dealer, or municipal securities dealer or by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer in connection with the rendering of such financial advisory services. The requirement for a writing shall become effective on June 4, 1980.

(d) Underwriting activities. No broker, dealer, or municipal securities dealer that has a financial advisory relationship with respect to a new issue of municipal securities shall acquire as principal either alone or as a participant in a syndicate or other similar account formed for the purpose of purchasing, directly or indirectly, from the issuer all or any portion of such issue, or arrange for such acquisition or participation by a person controlling, controlled by, or under common control with such broker, dealer, or municipal securities dealer, unless

(i) if such issue is to be sold by the issuer on a negotiated basis,

(A) the financial advisory relationship with respect to such issue has been terminated in writing and at or after such termination the issuer has expressly consented in writing to such acquisition or participation in the purchase of the securities on a negotiated basis;

(B) the broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer at or before such termination that there may be a conflict of interest in changing from the capacity of financial advisor to purchaser of the securities with respect to which the financial advisory relationship exists and the issuer has expressly acknowledged in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure; and

(C) the broker, dealer, or municipal securities dealer has expressly disclosed in writing to the issuer at or before such termination the source and anticipated amount of all remuneration to the broker, dealer, or municipal securities dealer with respect to such issue in addition to the compensation referred to in section (c) of this rule, and the issuer has expressly acknowledged in writing to the broker, dealer, or municipal securities dealer receipt of such disclosure; or

(ii) if such issue is to be sold by the issuer at competitive bid, the issuer has expressly consented in writing prior to the bid to such acquisition or participation.

The limitations and requirements set forth in this section (d) shall also apply to any broker, dealer, or municipal securities dealer controlling, controlled by, or under common control with the broker, dealer, or municipal securities dealer having a financial advisory relationship. The use of the term "indirectly" in this section (d) shall not preclude a broker, dealer, or municipal securities dealer who has a financial advisory relationship with respect to a new issue of municipal securities from purchasing such securities from an underwriter, either for its own trading account or for the account of customers, except to the extent that such purchase is made to contravene the purpose and intent of this rule. Each

broker, dealer, and municipal securities dealer subject to the provisions of this section (d) shall maintain a copy of the written disclosures, acknowledgements and consents required by this section in a separate file and in accordance with the provisions of rule G-9.

(e) Disclosure to Customers. If a broker, dealer, or municipal securities dealer acquires new issue municipal securities or participates in a syndicate or other account that acquires new issue municipal securities in accordance with section (d) of this rule, such broker, dealer, or municipal securities dealer shall disclose the existence of the financial advisory relationship in writing to each customer who purchases such securities from such broker, dealer, or municipal securities dealer, at or before the completion of the transaction with the customer.

(f) Applicability of State or Local Law. Nothing contained in this rule shall be deemed to supersede any more restrictive provision of state or local law applicable to the activities of financial advisors.

(g) Effective Date of Rule. Except as otherwise provided in this rule, the provisions of this rule shall take effect on April 5, 1980.

* * * * *

The Commission received 22 letters of comment on the initial filing of proposed MSRB rule G-23. Commenters expressed concern that the proposed rule's provisions, including its strict prohibition against a paid financial advisor acting as underwriter in a negotiated sale, could have serious adverse effects on financial advisory relationships between municipal securities professionals and issuers. Commenters suggested, among other things, that the MSRB clarify the types of financial advisory relationships the proposed rule was intended to address, and that the MSRB adopt a "disclosure" approach with respect to the dual role of a financial advisor-turned-underwriter, rather than prohibiting the dual capacity. Primarily in response to considerable concern about certain of the original provisions of the proposed rule, the MSRB subsequently amended the proposal to clarify the scope of proposed rule G-23 and to permit a paid financial advisor to act as underwriter in a negotiated sale, provided that certain conditions were met. In addition, the MSRB amended the proposal in response to staff concern that the original provision, which would have required a financial advisor prior to entering a competitive bid to provide to other interested bidders information concerning the issue or the issuer obtained as a result of the financial advisory relationship, could result in a strong disincentive for financial advisors to bid on an issuer's securities and, accordingly, might create an unjustifiable burden on competition.[4] All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and were made available to the public at the Commission's Public Reference Room.

The Commission finds that the amended proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned amended proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16631/March 6, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($.66-2/3 Par Value) of JANTZEN, INC. from listing and registration thereon.

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[4]The Commission received only one comment letter on the subsequent amendments to the proposed rule. That letter opposed the approval of MSRB rule G-23, since the proposed rule would permit a paid financial advisor to underwrite the securities of an issuer to which it furnished advice.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16632/March 6, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($5 Par Value) of THE FLINTKOTE COMPANY from listing and registration thereon.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21458/February 29, 1980

In the Matter of

GRANITE STATE ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEW ENGLAND ELECTRIC SYSTEM
25 Research Drive
Westborough, Massachusetts 01581

(70-6424)

NOTICE OF PROPOSED SHORT-TERM FINANCING ARRANGEMENTS AND REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiaries, Granite State Electric Company ("Granite"), The Narragansett Electric Company ("Narragansett"), and New England Power Company ("NEP"), have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 42, 45(b)(1), 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Applicants-declarants request authorization to make short-term borrowings from the period April 1, 1980 to March 31, 1981 pursuant to the agreements set forth below, in the following individual maximum aggregate amounts outstanding at any one time: Granite, $2,500,000; Narragansett, $25,000,000; NEP, $143,000,000. The borrowings will be made from the banks indicated below and/or from NEES. NEP also proposes to issue notes to dealers in commercial paper; the maximum amount of short-term borrowing authorized to be outstanding at any one time by NEP ($143,000,000) from banks and NEES will be reduced by the amount of its commercial paper outstanding at that time. The amounts shown below are the maximum face amounts of notes of each borrowing company to be held by the lenders at any one time pursuant to authority requested hereunder.

Borrowing Company	*Proposed Maximum Short-term Debt to be Outstanding at any One Time During Period* **Banks or NEES**
Granite	
The First National Bank of Boston, Boston, Mass.	$2,500,000
Narragansett	
Industrial National Bank of Rhode Island, Providence, R.I.	10,000,000
The First National Bank of Boston, Boston, Mass.	7,000,000
Rhode Island Hospital Trust National Bank, Providence, R.I.	6,000,000
Peoples Bank and Trust Company, Providence, R.I.	2,000,000
Total Narragansett	$25,000,000

	Banks or NEES or Commercial Paper
NEP	
Bank of America, North America Division, New York, N.Y.	$2,000,000
Bank of Montreal, New York, N.Y.	5,000,000
Bank of Nova Scotia, Boston, Mass.	2,000,000
Bankers Trust Company, New York, N.Y.	5,000,000
BayBank Middlesex, Burlington, Mass.	2,000,000
Brown Brothers Harriman and Company, Boston, Mass.	2,000,000
Chase Manhattan Bank, N.A., New York, N.Y.	10,000,000
Chemical Bank, New York, N.Y.	10,000,000
Citibank, N.A., New York, N.Y.	15,000,000
Continental Illinois National Bank and Trust Company, Chicago, Ill.	5,000,000
Credit Suisse, New York, N.Y.	2,000,000
The First National Bank of Boston, Boston, Mass.	20,000,000
The First National Bank of Chicago, Chicago, Ill.	2,000,000
Hartford National Bank and Trust Co., Hartford, Conn.	2,500,000
Irving Trust Company, New York, N.Y.	10,000,000
Lloyds Bank International, Ltd., New York, N.Y.	2,000,000
Manufacturers Hanover Trust, New York, N.Y.	10,000,000
Marine Midland Bank, New York, N.Y.	5,000,000
Morgan Guaranty Trust Company, New York, N.Y.	10,000,000
National Bank of North America, New York, N.Y.	2,000,000

New England Merchants National Bank, Boston, Mass.	5,000,000
Security Pacific National Bank, Los Angeles, CA.	4,000,000
Shawmut Bank of Boston, N.A., Boston, Mass.	5,000,000
State Street Bank and Trust Company, Boston, Mass.	3,000,000
Worcester County National Bank, Worcester, Mass.	2,500,000
Total NEP	$143,000,000

Depending upon market conditions, NEP tentatively plans to issue $40,000,000 of bonds and $35,000,000 of preferred stock during the second half of 1980. At such time as NEP issues either the bonds or the preferred stock, the $143,000,000 limit which it requests would be reduced by the amount of such issue.

The proposed borrowings from banks and/or NEES will be evidenced by notes payable maturing in less than one year from the date of issuance, and will provide for prior payment in whole or in part without premium. The borrowings from banks require compensating balances (or fees in lieu thereof) and will bear interest at a rate not in excess of the prime rate in effect at the time the borrowings are made.

The notes issued to NEES will bear interest at a rate not in excess of the prime rate in effect at the time the borrowings are made. Based on compensating balance requirements of about 10 to 20%, or fees equivalent thereto, the effective interest cost of bank borrowings would be approximately 18.33% to 20.62% per annum, based on a prime rate of 16-1/2%. The effective interest cost on borrowings from NEES would be the prime rate.

It is proposed that the borrowing companies may prepay their notes to NEES, in whole or in part, with borrowings from banks or from the sale of commercial paper, or that their borrowings from banks may be prepaid in whole or in part, with borrowings from NEES or from the sale of commercial paper. In the event bank borrowings or commercial paper sales are made at a higher interest cost, in order to prepay notes issued to NEES, NEES will credit the borrowers with the differential interest from the date of issuance of the new notes or commercial paper to the normal maturity date of the notes to NEES being prepaid. In the event of borrowings from NEES to prepay notes to banks, the interest rate of the notes issued to NEES will be the lower of (1) the interest rate on the notes being prepaid or (2) the prime interest rate in effect, but with respect to (1), only to the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

NEP proposes to issue and sell commercial paper during the period through March 31, 1981, directly to Lehman Commercial Paper Incorporated and/or A. G. Becker & Co., Incorporated and/or Salomon Brothers (collectively, the "Dealers") dealers in commercial paper. The Dealers, as principals, will reoffer such commercial paper to not more than 100 of their respective customers whose names appear on non-public lists prepared in advance by the Dealer. Prior to or concurrently with the offerings, the customers will be furnished current financial and other information with respect to the issuer. It is expected that such commercial paper will be held to maturity by the purchasers, but if a purchaser wishes to resell prior to maturity, the Dealer involved will repurchase the paper for resale to others on its list of customers. The commercial paper to be issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, will be in denominations of not less than $50,000 and will be purchased by the Dealers from the issuer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for the particular maturity at which prime commercial paper of comparable quality is sold by public utility issuers to commercial paper dealers. The Dealers will initially reoffer the commercial paper at a discount rate not more than 1/8 of 1% per annum less than the prevailing discount rate to the issuer. The effective interest cost to the issuer of such paper will not exceed the effective interest cost at the time of issue for borrowings from The First National Bank of Boston, except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of the effective interest cost from such bank.

The proceeds from the proposed borrowings will be used to finance various construction projects through March 1981 which are expected to total $2,125,000 for Granite, $18,100,000 for Narragansett and $256,700,000 for NEP.

It is stated that Narragansett and NEP have each been authorized by their preferred stockholders to issue short-term unsecured indebtedness up to 20% of the sum of their respective principal amounts of all bonds and other secured indebtedness plus capital, premium and retained earnings. Narragansett's authorization exists through September 26, 1984 (HCAR No. 21228, dated September 26, 1979). NEP's authorization exists through July 1, 1980 (HCAR No. 19595, dated June

30, 1976). It is expected that NEP will request continuation of its 20% limitation.

NEP requests an exemption from the competitive bidding requirements of Rule 50 for its proposed issuance and sale of commercial paper to Dealers pursuant to Rule 50(a)(5) on the ground that it is not practicable to sell commercial paper by competitive bidding.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $3,500, including $1,500 of services to be performed at cost by New England Power Service Company, an affiliate of applicants-declarants. It is stated that the New Hampshire Public Utilities Commission has jurisdiction over the issuance of short-term notes by Granite and NEP and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21459/February 29, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

ARKANSAS POWER & LIGHT COMPANY
Post Office Box 551
Little Rock, Arkansas 72203

(70-6416)

NOTICE OF PROPOSAL BY ELECTRIC UTILITY SUBSIDIARY TO SELL COMMON STOCK TO ITS PARENT HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary of Middle South, have filed a joint application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b), 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. Interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Arkansas proposes to issue and sell to Middle South, and Middle South proposes to acquire from Arkansas, from time to time during the 1980 calendar year, at the price of $12.50 per share, or $70,000,000 in the aggregate, 5,600,000 presently authorized but unissued shares of the common stock of Arkansas, $12.50 par value (New Common Stock). Arkansas presently has outstanding 34,236,773 shares of common stock, $12.50 par value, all of which shares are owned by Middle South. Arkansas had outstanding at November 30, 1979, 33,436,773 shares of Common Stock, $12.50 par value, with an aggregate par value on its books of $417,959,622.50. Arkansas and Middle South state that the sale of the New Common Stock will be timed to coincide with Arkansas' cash needs from time to time, which are primarily determined by the nature and pace of its construction program.

Upon the issuance and sale by Arkansas and the purchase by Middle South of the New Common

Stock, Arkansas proposes to credit its Common Stock Capital Account with the amount ($70,000,000) received by it for the New Common Stock, and Middle South proposes to debit its Investment Account with the amount ($70,000,000) of its cash investment in the New Common Stock. To the extent funds are required from external sources to acquire the New Common Stock, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 29, 1979, as amended, with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's orders dated June 7, 1979 (HCAR No. 21093) and December 6, 1979 (HCAR No. 21332).

Arkansas proposes to use the net proceeds derived from the issuance and sale of the New Common Stock for the payment of short-term indebtedness incurred or estimated to be incurred and for financing Arkansas' construction program, estimated to be $296,000,000 for the year 1980.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,000. The Arkansas Public Service Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21460/February 29, 1980

In the Matter of

MISSISSIPPI POWER & LIGHT COMPANY
P.O. Box 1640
Jackson, Mississippi 39205

(70-6408)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS IN COMMERCIAL PAPER; EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Mississippi Power & Light Company ("Mississippi"), a wholly-owned electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration which is summarized below for a complete statement of the proposed transactions.

Mississippi proposes to issue short-term notes to banks and to issue and sell commercial paper from time to time on or before June 30, 1981. The maximum aggregate principal amount of notes and commercial paper outstanding at any one time would not exceed the lesser of $45,000,000 or 10% of the capitalization of Mississippi.

It is expected that the bank borrowings will be made from the following banks up to the maximum amounts set forth below:

Bank	*Amount*
Deposit Guaranty National Bank, Jackson, Mississippi	$9,500,000
First National Bank of Jackson, Jackson, Mississippi	10,000,000
First National Bank of Vicksburg, Vicksburg, Mississippi	500,000
Manufacturers Hanover Trust Company New York, New York	14,000,000
	$34,000,000

Arrangements may be made with other banks with which Mississippi maintains accounts. Mississippi would file an amendment setting forth the names of the banks and amounts of such other borrowings. Mississippi will not effect such other borrowings until further authorization of this Commission.

The bank borrowings will be evidenced by unsecured promissory notes to be dated the date of the borrowing and to mature not more than nine months from the date of issue. The bank notes will bear interest at the prime rate in effect at the lending bank at the date of issue or from time to time, whichever, is the customary requirement of the lending bank, and will be prepayable, in whole or in part, without penalty or premium.

Mississippi maintains with the local banks from which borrowings will be made average daily operating balances adequate to meet the requirements of such banks in respect of certain services to Mississippi. It may reasonably be expected that non-Mississippi banks require the maintenance of balances and/or fees in lieu of balances in respect of any such borrowings. If balances were to be maintained solely for the purpose of satisfying a compensating balance requirement generally not in excess of 20%, the effective interest cost of the related borrowings, based on a prime rate of 16-1/2%, would be 20.625% per annum.

Mississippi also proposes from time to time on or before June 30, 1981, to issue and sell commercial paper in the form of short-term promissory notes to dealers in commercial paper. The commercial paper notes will have varying maturities of not more than 270 days after the date of issue, will be sold in varying denominations of not less than $50,000, and will not by their terms be prepayable prior to maturity. The commercial paper will be sold directly to Merrill Lynch, Pierce, Fenner & Smith Inc., ("Purchasing Dealer") at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturity. The Purchasing Dealer would reoffer the commercial paper to institutional investors at a discount of 1/8 of 1% per annum less than the prevailing discount rate to Mississippi. No commission or fee will be payable in connection with the issuance and sale of commercial paper. The commercial paper will be offered to not more than 200 customers of the Purchasing Dealer identified and designated in a nonpublic list prepared in advance by the Purchasing Dealer. No additions will be made to such list of customers. It is expected that the commercial paper will be held by customers to maturity, but, if they wish to resell prior thereto, the dealer may, pursuant to a verbal repurchase agreement, repurchase the commercial paper and reoffer it to others on the customer list.

Mississippi proposes to use the proceeds of the bank notes and commercial paper notes for construction and other corporate purposes. Construction expenditures for 1980 are expected to total $49,141,000.

The declarant requests exception from the competitive bidding requirements of Rule 50 in connection with the sale of commercial paper notes pursuant to clause (a)(5) thereof. It is stated, in this connection, that (a) all commercial paper which it proposes to issue and sell will have a maturity not in excess of 270 days, (b) current rates for commercial paper for prime borrowers, such as declarants, are published daily in financial publications, and (c) it is not practical to invite invitations for bids for commercial paper. It is also requested that authorization be granted to file certificates of notification under Rule 24 on a quarterly basis.

Fees and expenses to be incurred by Company in connection with the proposed transactions are estimated not to exceed $5,000. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request

should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such other rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21461/March 5, 1980

In the Matter of

VERMONT YANKEE NUCLEAR POWER CORPORATION
Rutland, Vermont

(70-6405)

ORDER AUTHORIZING SHORT-TERM BORROWING

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), an electric utility subsidiary company of both New England Electric System and Northeast Utilities, registered holding companies, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder regarding the following proposed transaction.

Vermont Yankee operates a 540 MW nuclear-powered generating plant in Vernon, Vermont. During 1980 and 1981, Vermont Yankee will be receiving shipments for uranium for ultimate fabrication into nuclear fuel for its reactor and will be making capital improvements which will necessitate payments in excess of Vermont Yankee's current lines of credit. Vermont Yankee currently maintains lines of credit in the principal amount of $6,000,000 each with the First National Bank of Boston and Chase Manhattan Bank (the "Banks"). As of November 30, 1979, Vermont Yankee had $4,000,000 in loans outstanding under those lines.

Vermont Yankee requests a short-term borrowing authorization through December 31, 1981 of up to $16,000,000 aggregate principal amount outstanding at any one time. It is anticipated that these borrowings will be repaid during such period by internally generated funds. The borrowings would be from the Banks pursuant to proposed increased lines of credit ($8,000,000 with each Bank) and would be evidenced by promissory notes having a maturity of up to three months from date of issuance and bearing interest at the Banks' prime rate. The Banks will require compensating balances equal to 7.5% of the lines and 7.5% of any borrowings thereunder. It is stated that assuming full borrowings under the lines and a prime rate of 16-1/2 per annum, the effective costs of borrowings would be 19.41%.

Vermont Yankee claims an exemption from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(2) since the short-term promissory notes mature in less than 10 years, will be issued to commercial banks not for resale to the public and provide for no finder's fee or similar fees to third persons for negotiating the transaction.

The fees and expenses to be incurred in connection with the proposed transaction are $3,250, including legal fees of $750. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21405), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21462/March 5, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
25 Research Drive
Westborough, Massachusetts 01581

(70-5543)

NOTICE OF REQUEST FOR EXCEPTION FROM THE CONSOLIDATED TAX ALLOCATION PROVISIONS OF RULE 45(b)(6).

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary New England Energy Incorporated ("NEEI"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43 and 45(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize, acquire the capital stock of, and make investments in NEEI, and NEEI was authorized to enter into a partnership with Samedan Oil Corporation ("Samedan") to explore for oil and gas. Said order included, among other things, the granting of applicants-declarants' request for an exception from the consolidated tax allocation provisions of Rule 45(b)(6) pursuant to Rule 45(a), on terms and conditions therein set forth. Said exception was granted for the tax years 1974, 1975 and 1976. By subsequent order dated June 18, 1976 (HCAR No. 19580), the exception was continued for the tax years 1977, 1978 and 1979. By order dated December 28, 1979 (HCAR No. 21365), NEEI was authorized to enter into an extension of its partnership with Samedan through December 31, 1984, and to invest $30,000,000 in said partnership during 1980.

By post-effective amendment applicants-declarants request that their Rule 45(a) exception be further continued for the tax years 1980, 1981 and 1982. The precise exception sought is as follows:

(1) NEEI would be credited with and receive the cash equivalent of reductions in consolidated tax liabilities arising from the inclusion of such tax losses in the consolidated tax returns for the tax years 1980, 1981 and 1982;

(2) in any year in which NEEI has taxable income, and, on a separate return basis would be entitled to tax credits under the net operating loss carryback and carryover provisions of the Internal Revenue Code, any credits previously received by NEEI under (1) would be applied to reduce any credits to which NEEI might otherwise be entitled under the separate return limitations of Rule 45(b)(6); and

(3) in no event will the tax allocated to any other subsidiary of NEES exceed the amount of its tax based upon a separate return computed as if it had always filed its tax returns on a separate return basis.

It is stated that through December 31, 1979, approximately $28,500,000 of capital has been provided to NEEI through payments of tax benefits by its associated companies under the previous orders under Rule 45(a) authorizing the NEES system to allocate consolidated federal income taxes otherwise than in accordance with Rule 45(b)(6).

There are no additional fees or expenses to be incurred in connection with the proposed transaction. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 31, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21463/March 5, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
320 Park Avenue
New York, New York 10022

(70-6403)

NOTICE OF PROPOSAL BY HOLDING COMPANY TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO A DEALER

NOTICE IS HEREBY GIVEN that Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Allegheny proposes to issue and sell from time to time through September 30, 1981 short-term notes to banks and commercial paper to a dealer in a maximum aggregate principal amount of $175,000,000 at any one time outstanding. As of March 31, 1980 it is expected that Allegheny will have $25,000,000 of short-term debt outstanding pursuant to Commission authorization which expires on that date.

Allegheny proposes to borrow short-term funds through the issuance, reissuance, sale and renewal of notes to banks and of commercial paper to a dealer or dealers in commercial paper as funds may be required in an amount not to exceed $175 million outstanding at any one time, including any notes to banks or commercial paper as may still be outstanding as of March 31, 1980. It is proposed that such notes and commercial paper will be issued from time to time and be renewed from time to time prior to September 30, 1981 provided that no such notes or commercial paper shall mature after March 31, 1982.

Each note payable to a bank will be dated as of the date of the borrowings which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at the prime or equivalent interest rate of the bank at which the borrowing is made in effect at the time of issuance, or in effect from time to time, and will be prepayable at any time without premium or penalty. The name or names of the banks from which such borrowings are proposed to be effected (maximum $240 million for all companies in the Allegheny Power System outstanding at any one time) and the maximum aggregate principal amount of loans which may be outstanding to any one or more of the companies in the Allegheny Power System including Allegheny from each bank at any one time are as follows:

Citibank, N.A., New York, New York	$40,000,000
The Chemical Bank, New York, New York	30,000,000
Mellon Bank, N.A., Pittsburgh, Pennsylvania	70,000,000
Pittsburgh National Bank, Pittsburgh, Pennsylvania	17,500,000
Manufacturers Hanover Trust Co., New York, New York	75,000,000
Irving Trust, New York, New York	5,000,000
Chase Manhattan Bank, N.A., New York, New York	2,500,000
	$240,000,000

provided that the maximum amount of such borrowings on behalf of Allegheny at any one time outstanding will not, when taken together with any commercial paper then outstanding, be in excess of $175 million.

Allegheny and its subsidiaries have established lines of credit with various banks for short-term borrowings. Balances are maintained to meet regular operating requirements at all of these banks as well as, when necessary, in connection with these lines of credit. Compensating cash balance requirements are generally either on the basis of a percentage of the line of credit extended by such bank, or a higher percentage of notes outstanding, whichever is greater, or a percentage of the line of credit plus a percentage of notes outstanding, in every case on an average annual basis. If such balances were maintained by Allegheny solely to fulfill compensating balance requirements for borrowings to be made by Allegheny the effective interest cost to Allegheny of issuing and selling the notes would be more than 18.75% on the basis of a prime commercial credit rate of 15.0%.

Certain of the banks listed above have offered to substitute fees for, or to be used in conjunction with lower compensating balances than those set forth above. The fee arrangements vary and would not be utilized unless the effective cost thereof is less than the compensating balance arrangement in effect at that bank at that time. The proposed fee arrangements produce an effective interest cost of issuing and selling the notes of between 17.04% and 17.94% on the basis of a prime commercial rate of 15% rather than the 18.75% effective cost resulting from meeting compensating balance requirements set forth above.

The commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000 and will be of varying maturities, with no maturity more than 270 days after the date of issue; none will be prepayable prior to maturity. Allegheny has designated A.G. Becker & Co., Incorporated as its commercial paper dealer. The commercial paper notes will be sold directly to the dealer, at a discount, not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commercial paper. The dealer may reoffer the commercial paper at a discount rate of 1/8 of 1% per annum less than the discount rate to Allegheny. Allegheny may issue commercial paper notes if (1) the interest cost thereof is equal to or less than the effective interest cost at which Allegheny could borrow the same amount from the banks named herein at that time or (2) Allegheny cannot at that time borrow the same amount for the same period of time from the banks named herein. The dealer will reoffer the commercial paper notes to not more than 200 of its customers, identified and designated in a non-public list prepared in advance. No sale of commercial paper of Allegheny will be made to any customer unless that customer has received up to date reports as to the Allegheny's credit position. No additions will be made which would incrrease the customer list or lists which will include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, financial companies and nonfinancial corporations which invest funds in commercial paper. It is expected that the commercial paper notes will be held by the dealer's customers to maturity, but if the customers wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the notes and reoffer them to others on said list.

Allegheny requests an exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commerical paper pursuant to paragraph (a)(5) thereof since it is not practicable to invite competitive bids for commercial paper and current rates for commercial paper for prime borrowers such as Allegheny are published daily in financial publications.

Allegheny will use the proceeds of the proposed short-term borrowings primarily to make advances to Allegheny Pittsburgh Coal Company and to make investments in its electric utility subsidiaries to assist them in operating their businesses as utilities, including paying or prepaying short-term debt incurred in part to finance their construction programs, such investments to be in the form of purchases of common stock. The investments by Allegheny in the subsidiaries will vary, depending on many factors, including the level of cost of senior

securities, the sufficiency of rate levels to provide internally generated funds and support the issuance of senior securities and the accuracy of current estimates of load requirements, and for costs of construction expenditures which are the subject of continuing review. The following table sets forth the presently projected investments by Allegheny in the subsidiaries through 1981 (in millions of dollars):

Investments	*1980*	*1981*	*Total*
Monongahela Power Company	$25.0	$10.0	$35.0
The Potomac Edison Company	25.0	20.0	45.0
West Penn Power Company	20.0	25.0	45.0
	$70.0	$55.0	$125.0

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $10,400, including fees of $8,000 for rating the commercial paper. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21464/March 5, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6420)

NOTICE OF PROPOSAL BY ELECTRIC UTILITY SUBSIDIARY TO ISSUE AND SELL COMMON STOCK TO PARENT HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana has outstanding 65,140,000 shares (of an authorized 150,000,000 shares) of common stock, without nominal or par value, stated on its books at $428,900,000, all of which shares are owned by Middle South. Louisiana now proposes to issue and sell to Middle South, and Middle South proposes to acquire, 15,152,000 additional shares of Louisiana's common stock ("New Common Stock") for an aggregate purchase price of $100,000,000 in cash.

Louisiana and Middle South believe it is preferable for sales of the New Common Stock to be timed to coincide with Louisiana's cash needs from time to time, which are primarily determined by the nature and pace of its construction program. Accordingly, Louisiana and Middle South propose that sales of the New Common Stock be effected from time to time through December 31, 1980, in increments to be determined by Louisiana and Middle South. Each such sale will be reported to the Commission by a Certificate filed pursuant to Rule 24. Upon completion of the proposed transaction, Louisiana will have issued and outstanding 80,292,000 shares of common stock stated in its Common Stock Account at an aggregate of $528,900,000. Upon consummation of its aforesaid stock acquisition, Middle South proposes to charge its Investment Account with the amount of its cash investment, $100,000,000.

Louisiana's construction program contemplates expenditures of approximately $285,000,000 in 1980, which will require funds in excess of the treasury funds available for that purpose. Louisiana intends to effect short-term borrowings in an aggregate principal amount not expected to exceed $150,000,000 at any one time outstanding during the remainder of 1980 pursuant to the Commission's orders dated December 15, 1978 (HCAR No. 20832), January 5, 1979 (HCAR No. 20873) and July 10, 1979 (HCAR No. 21141). It is proposed that the funds to be provided by the above-mentioned issuance and sale of the New Common Stock by Louisiana will be used primarily for the financing in part of Louisiana's construction program and for the payment in part of short-term borrowings.

To the extent funds are required from external sources to acquire the New Common Stock, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes under a revolving credit agreement dated as of June 29, 1979, as amended, with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's orders dated June 7, 1979 (HCAR No. 21093) and December 6, 1979 (HCAR No. 21332).

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commision, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21465/March 5, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

SYSTEM FUELS, INC.
Noro Plaza
666 Poydras
New Orleans, Louisiana 70130

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

MISSISSIPPI POWER & LIGHT COMPANY
Electric Building
Jackson, Mississippi 39205

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70112

(70-5415)

NOTICE OF POST-EFFECTIVE AMENDMENT REGARDING ISSUANCE AND SALE OF NOTES BY FUEL-SUPPLY SUBSIDIARY TO A BANK

NOTICE IS HEREBY GIVEN that System Fuels, Inc. ("SFI"), a jointly-owned, non-utility, fuel-supply subsidiary company of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively referred to as "Operating Companies"), each an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, and the above-named companies have filed with this Commission a further post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By supplemental orders in this proceeding dated April 15, 1974, April 13, 1976, April 13, 1977, and April 11, 1978 (HCAR Nos. 18378, 19484, 19982, and 20499), the Commission authorized SFI to issue and sell bank notes up to an aggregate amount of $40,000,000 outstanding at any one time pursuant to a loan agreement dated as of April 17, 1974, among SFI, the Operating Companies, and Citibank, N.A. The loan agreement terminates on April 17, 1980.

SFI now intends to extend the term of the loan agreement for one year through April 17, 1981, and proposes to issue and sell its notes to Citibank in accordance therewith up to an aggregate of $40,000,000 outstanding at any one time. The interest rate on borrowing by SFI under the loan arrangement will be one hundred three percent (103%) per annum of the base rate charged by Citibank on 90-day loans to substantial and responsible commercial borrowers. All of the other terms and conditions of the loan agreement are to remain unchanged. Compensating balances are not required. SFI will use the proceeds of the notes for the financing of a portion of its fuel-oil inventory and for other expenditures in connection with its fuel-supply program for the Middle South Utilities system.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. it is requested that authorization be granted to file certificates pursuant to Rule 24 on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 1, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21466/March 5, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21467/March 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6195/March 6, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21468/March 6, 1980

In the Matter of

CENTRAL AND SOUTH WEST FUELS, INC.
P.O. Box 10773
Golden, Colorado 80401

CENTRAL POWER AND LIGHT COMPANY
P.O. Box 2121
Corpus Christi, Texas 78403

PUBLIC SERVICE COMPANY OF OKLAHOMA
ASH CREEK MINING COMPANY
P.O. Box 201
Tulsa, Oklahoma 74102

SOUTHWESTERN ELECTRIC POWER COMPANY
P.O. Box 21106
Shreveport, Louisiana 71156

WEST TEXAS UTILITIES COMPANY
P.O. Box 841
Abilene, Texas 79604

(70-6235)

NOTICE OF PROPOSED FUEL EXPLORATION AND DEVELOPMENT BUDGET AUTHORIZATION

NOTICE IS HEREBY GIVEN that Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO") and West Texas Utilities Company ("WTU"), each an electric utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, together with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO, and WTU, and Ash Creek Mining Company, a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10, 12 and 13 of the Act and Rules 90-95 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By series of order dated December 28, 1978, March 30, 1979, May 11, 1979, May 31, 1979, June 28, 1979, July 31, 1979, and October 31, 1979 (HCAR Nos. 20864, 20983, 21046, 21071, 21124, 21165 and 21234), applicants-declarants were authorized fuel exploration and development budgets for the period January 1, 1979, through March 31, 1980.

By post-effective amendment applicants-declarants request fuel exploration and development expenditure authorizations for the period April 1, 1980, through March 31, 1981, in the following amounts:

CSWF	$18,846,000
CPL	21,740,000
PSO	29,019,000
SWEPCO	3,391,000
	$72,996,000

The CSWF $18,846,000 budget authorization is composed as follows: Lignite Projects, $13,810,000; Coal Projects, $3,605,000; Uranium Projects, $65,000; General and Administrative, $1,208,000; and Other Expenditures, $158,000. The Lignite Projects authorization includes allocations among its activities as follows: Cass-Morris Area (Texas), $90,000; Dolet Hills Area (Louisiana), $4,000,000; Karnack-Woodlawn Area (Texas), $1,920,000; South Hallsville Area (Texas), $3,500,000; Walker-Grimes Area (Texas), $2,750,000; and other lignite prospects, $1,550,000 (primarily for engineering studies, evaluation and verification of lignite areas which have been or may be offered to CSWF, including expenses necessary for analysis of drilling results and other submittals to CSWF).

At December 31, 1979, the Cass-Morris prospect involved 12,800 net acres. The only expenditure during the budget period will be $90,000 to maintain existing leases; no development, engineering or geological work will be undertaken.

At December 31, 1979, the Dolet Hills prospect involved 22,000 acres. The fuel from this prospect is planned to be used for a 640 MW unit to be owned in equal shares by SWEPCO and Central Louisiana Electric Company ("CLECO"), a non-affiliated utility. No lignite from this prospect will become available to CSW operating companies, and SWEPCO will reimburse CSWF for all exploration and development expenditures related thereto. SWEPCO will be reimbursed by CLECO for 50% of such expenditures. Of the budgeted amount it is expected that $2,335,000 will be expended on land acquisition and maintenance, $915,000 for engineering expenses and $750,000 for geological work.

At December 31, 1979, the Karnack-Woodlawn prospect involved 35,236 acres. Of the budgeted amount it is expected that $733,000 will be expended for new leases and $425,000 will be expended for collecting environmental data necessary to apply for a mine permit. CSWF also plans to continue its development drilling program in this prospect, to continue engineering work (including mapping and surveying) and to continue work on the preliminary mine plan.

At December 31, 1979, the South Hallsville prospect involved 40,395 acres. SWEPCO owns all CSW interests in this area and will reimburse CSWF for all exploration and development expenditures related thereto. The fuel from this prospect is planned to be used for a 640 MW unit to be owned solely by SWEPCO. Of the budgeted amount it is expected that $400,000 will be expended on continued work on the mine permit and work on selecting a mining contractor, and $3,100,000 will be expended on further land acquisition and relocating pipelines running through the prospect so that they will not interfere with surface mining.

At December 31, 1979, the Walker-Grimes prospect involved 50,748 acres. Of the budgeted amount it is estimated that $850,000 will be expended on further land acquisitions. The balance will be expended to complete drilling on the eastern half of the prospect, begin drilling on the western half thereof, and to do mapping, surveying and preliminary work for a mine plan.

The $3,605,000 CSWF Coal Projects budget includes $105,000 for engineering and feasibility studies related to coal projects which have been or may be offered to CSWF during the budget period. The remaining $3,500,000 is for the further acquisition of acreage ($2,000,000) in the New Castle-Crystal Falls Area (Texas), and the further development, drilling analyses, mapping, surveying and preparing a preliminary mine plan of said prospect ($1,500,000). The prospect at December 31, 1979, involved 34,762 acres, and preliminary analyses had indicated that coal may exist in the area in sufficient quantity to fuel a large generating plant.

The $65,000 CSWF Uranium Projects budget consists of $30,000 for state lease payments and $35,000 for assessment work on unpatented mining claims for PSO's uranium holdings. The $1,208,000 CSWF General and Administrative budget includes office rent and salaries for personnel for work which cannot be designated for a specific prospect. The $158,000 CSWF Other Expenditures budget consists of $127,000 for legal fees and other costs related to negotiating coal purchases for Oklaunion Unit No. 1, and $31,000 for legal fees and other work related to entering into a contract for uranium for PSO's Black Fox Station.

CPL, PSO and SWEPCO request expenditure authorizations of $21,740,000, $29,019,000 and $3,391,000, respectively (excluding any allowance for funds used during construction), for the 12-month period ending March 31, 1981, for oil and gas exploration and development activities to be conducted by them unilaterally or with non-affiliated entities. CPL, PSO and SWEPCO propose to continue severally to acquire leasehold interests and surface titles, to dispose of interests deemed not attractive or appropriate to their needs, to conduct geological evaluation and testing, to drill exploratory and development wells, to operate wells, to acquire and operate gathering and pipeline facilities in connection with gas or oil wells in which any of them has a participation, to arrange for any necessary treatment or processing and to make incidental sales of products or by-products where no use can feasibly be made of them. Activities may be entered into through joint ventures, partnerships or other non-affiliated entities and may involve farm-ins, farm-outs, bottom-hole or dry-hole contributions and other transactions.

At December 31, 1979, CPL had acquired leaseholds containing estimated proven reserves of

28,914,000 mcf of gas and 318,000 barrels of oil. Of the budgeted amount CPL expects to spend $20,990,000 for new exploration and development and $750,000 for exploration and development of old areas. Of its budgeted amount PSO plans to expend $25,250,000 for further exploration in its programs in the Anadarko and Arkoma areas in Oklahoma and $3,769,000 for new exploration. SWEPCO's budget contemplates the continued development of three of its prospect areas, and no new exploration is being budgeted.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $5,000, including legal fees of $2,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 555/March 3, 1980

The Securities and Exchange Commission has issued an order under the Trust Indenture Act (the "Act") on application by Shearson Loeb Rhoades, Inc. (the "Company") that the trusteeship of Marine Midland Bank under two indentures of the Company, one of which is qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary to disqualify Marine Midland Bank from acting as trustee under one of such indentures.

TRUST INDENTURE ACT OF 1939
Release No. 556/March 5, 1980

The Securities and Exchange Commission has issued a notice giving interested persons until March 31, 1980 to request a hearing on an application by Elizabethtown Water Company (the "Company") pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") declaring that the trusteeship of Citibank, N.A., under four indentures, three which were heretofore qualified under the Act and one which was not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary to disqualify Citibank from acting as trustee under any of the aforementioned indentures.

TRUST INDENTURE ACT OF 1939
Release No. 557/March 5, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11062/February 29, 1980

In the Matter of

OPPENHEIMER SPECIAL FUND, INC.
1 New York Plaza
New York, New York 10004

(812-4553)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING PROPOSED EXCHANGE OF SHARES FROM SECTIONS 22(c) NAD 22(d) OF THE ACT AND RULE 22c-1 THEREUNDER, AND PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING THE PROPOSED EXCHANGE OF SHARES FROM SECTION 17(a) OF THE ACT

Oppenheimer Special Fund, Inc. ("Fund"), a Maryland Corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 16, 1979, and an amendment thereto on December 17, 1979, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Fund from Section 22(c) of the Act and Rule 22c-1 thereunder to permit the issuance of Fund shares in exchange for substantially all the assets of Moneco, Inc., a Nevada corporation operating as an investment company without registration under the Act pursuant to Section 3(c)(1) of the Act, at a price based on the current net asset value of Fund shares as of the close trading on the New York Stock Exchange on the day preceding the exchange, and exempting the Fund from the provisions of Section 22(d) of the Act to permit the proposed exchange of Fund shares without a sales charge, and pursuant to Section 17(b) of the Act exempting the proposed exchange of Fund shares from the provisions of Section 17(a) of the Act.

On December 21, 1979, the Commission issued a notice of filing of said application (Investment Company Act Release No. 10992). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No such request has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found on the basis of the information stated in the application that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policies of the Fund and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Sections 22(c) and 22(d) of the Act and Rule 22c-1 thereunder be, and hereby is, granted.

IT IS FURTHER ORDERED, pursuant to Section 17(b) of the Act, that the proposed exchange of Fund shares be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11063/March 3, 1980

In the Matters of

FEDERATED MONEY MARKET TRUST
(812-4545)

and

TRUST FOR CASH RESERVES
(812-4582)

421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

NOTICE OF FILING OF APPLICATIONS FOR ORDERS PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Federated Money Market Trust and Trust for Cash Reserves ("Applicants"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed applications on October 1, 1979, and December 14, 1979, respectively, requesting orders of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicants' assets to be valued at amortized cost. All interested persons are referred to the applications on file with the Commission for statements of the representations contained therein, which are summarized below.

Applicants state that they are "money market" funds organized as Massachusetts business trusts and that Institutional Research Corp., and Cash Reserve Research Corp., respectively, wholly owned subsidiaries of Federated Investors, Inc., serve as their investment advisers. Applicants further state that they are designed as investment vehicles for investors with temporary cash balances or cash reserves seeking current income consistent with stability of principal, and that their portfolios may be invested in a variety of money market instruments. According to the application, Applicants do not invest in instruments issued by banks or savings and loan associations unless at the time of investment they have capital, surplus and undivided profits in excess of $100,000,000 at the date of their most recently published financial statements. The application states that Applicants' investments in commercial paper are limited to commercial paper rated A-1 by Standard and Poor's Corporation, Prime 1 by Moody's Investors Service, or F-1 by Fitch Investors Service.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the applications, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicants state that experience indicates that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicants assert that by maintaining portfolios of high quality, short-term money market instruments valued at amortized cost they can provide these features to investors. Applicants represent that their Trustees ("Management") have

properly determined in good faith under the provisions of the Act to value the portfolios of Applicants by use of the amortized cost method and that this method is in the best interest of their shareholders. According to the applications, experience has shown that, given the unique nature of Applicants' policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Each Applicant further represents that: (1) its Management has determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method, and (2) its Management has further determined to continuously monitor valuations indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors. Accordingly, Applicants request exemptions from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit their assets to be valued as set forth in the applications, and as described above, whether or not market quotations are available.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the exemptions they request satisfy these standards in view of their management policies and the conditions hereinafter set forth.

Each Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Management undertakes — as a particular responsibility within the overall duty of care owed to shareholders — to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Management shall be the following:

(a) Review by Management, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that Management will promptly consider what action, if any, should be initiated by Management.

(c) Where Management believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using market quotations.

3. Each Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted

[1]To fulfill this condition, each Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Management in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Each Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and each Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Management's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Each Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which Management determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by Management.

6. Each Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 26, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on any or all of these matters accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proosed to be controverted, or he may request that he be notified if the Commission shall order a hearing or hearings thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, orders disposing of the applications will be issued as of course following said date unless the Commission thereafter orders a hearing or hearings upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in these matters, including the date of any hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant as to whether a hearing is ordered, will receive any notices and orders issued in these matters, including the date of any hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11064/March 4, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16621/March 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11065/March 4, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16622/March 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11066/March 4, 1980

In the Matter of

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

AND

JOHN HANCOCK VARIABLE ACCOUNT A-1
John Hancock Place
Boston, MA 02117

(812-4581)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER GRANTING EXEMPTIONS FROM SECTION 14(a), 17(f) AND 27(c)(2) OF THE ACT AND RULE 17f-2 THEREUNDER

NOTICE IS HEREBY GIVEN that John Hancock Variable Account A-1 (the "Account"), a diversified, open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), and John Hancock Mutual Life Insurance Company ("John Hancock"), a mutual life insurance company incorporated under the laws of the State of Massachusetts (hereinafter collectively called "Applicants"), have filed an application on December 14, 1979 and an amendment thereto on February 25, 1980 for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 14(a), 17(f) and 27(c)(2) of the Act and Rule 17f-2 thereunder. All interested persons are referred to the application on file with the Commission for the facts and representations contained therein, which are summarized below.

John Hancock established the Account as an investment medium for variable annuity contracts (the "Contracts") to be issued by John Hancock in connection with certain tax-qualified pension, profit-sharing and annuity purchase plans. The Contracts offered for sale by John Hancock, as principal underwriter of Account A-1, may be Single Payment Immediate or Deferred Contracts (hereinafter collectively called "Single Payment Contracts") or Periodic Payment Deferred Contracts ("Periodic Payment Contracts"). In the case of all Contracts, John Hancock will make deductions from purchase payments for sales and administrative expenses, for taxes, if any, based on the amount of the purchase payment and, in the case of Deferred Contracts, for the undertaking of John Hancock to pay a minimum death benefit. Under Periodic Payment Deferred Contracts, total deductions from purchase payments for sales expenses will equal 4.5% of the first $5,000 of purchase payments, 3.5% the next $5,000 of purchase payments, 2.5% of the next $15,000 of purchase payments, and 2% of any purchase payments over $25,000. The deductions under Periodic Payment Deferred Contracts for administrative expenses are 1.5% of every purchase payment. Further, under Periodic Payment Deferred Contracts a maintenance charge equal to the lesser of $10 or 2% of the value of the Contract will be deducted from the Contract annually.

Under Single Payment Contracts, the maximum deduction from any purchase payment for sales expenses will be 3.5% for either a Deferred or Immediate Contract. Additionally, there is an administrative expense deduction of $50 plus a maximum of 0.5% of the first $25,000 of the purchase payment under either kind of Single Payment Contract and a deduction under the Single Payment Deferred Contract of 0.5% of the purchase payment for the minimum death benefit.

Section 14(a)

Section 14(a) of the Act provides, in pertinent part, that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless the investment company has a net worth of at least $100,000. An exemption from this requirement for a separate account funding only "tax-benefited variable annuity contracts" is set forth in Rule 14a-2. The Rule, promulgated in 1969, does not include within the definition of "tax benefited variable annuity contracts" contracts used in connection with plans satisfying the requirements of Sections 408 or 457 of the Internal Revenue Code of 1954, as amended ("Code").

Applicants seek an exemption from the provisions of Section 14(a) of the Act, subject to the same conditions as are currently set forth in Rule 14a-2, to permit the allocation to the Account of purchase payments under Contracts issued in accordance with the provisions of Sections 408 or 457 of the Code.

Applicants assert that a separate account funding contracts issued in connection with Section 408 or Section 457 plans, in addition to "tax-benefited

variable annuity contracts" as defined in Rule 14a-2, is entitled to precisely the same relief from Section 14(a) of the Act as a separate account funding only "tax-benefited variable annuity contracts." Applicants believe that the narrower definition found in Rule 14a-2 is due solely to the fact that Sections 408 and 457 of the Code did not exist at the time Rule 14a-2 was adopted and that the purpose of the Rule (as well as Rules 15a-3, 16a-1 and 32a-2), that of allowing the Account to avoid mingling monies received under "tax-benefited variable annuity contracts" with other funds, is equally served by allowing contracts issued in connection with Section 408 and 457 plans to be treated as "tax-benefited variable annuity contracts."

Section 27(c)(2)

Section 27(c)(2) of the Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank as trustee or custodian and held under an indenture or agreement containing, in substance, the provisions required by Section 26(a)(2) and (3) for trust indentures of a unit investment trust.

Applicants assert that all purchase payments received under the Contracts, after deductions for sales and administrative expenses, are to be applied or held for later application to the purchase of investments for the Account, of which John Hancock will have custody as owner and not as trustee. Exemption is requested from Section 27(c)(2) to permit all purchase payments received under the Contracts to be held and applied by John Hancock in the manner set forth in its Management Agreement which requires, in part, that moneys received for the Account be deposited in one or more cash accounts identified as assets of the Account maintained in one or more banks which will have the qualifications prescribed in paragraph (1) of Section 26(a) of the Act for trustees of unit investment trusts, but which banks will not act as trustee or custodian, or under an indenture or agreement meeting the requirements in Sections 26(a)(2) and (3).

Section 17(f)

Section 17(f) of the Act provides, in pertinent part, that every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank having the qualifications prescribed in Paragraph 1 of Section 26(a) for trustees of unit investment trusts; (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934; or (3) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Rule 17f-2 provides, among other things, that such assets be placed in a bank subject to the requirements of the rule, one of which limits the persons who shall have access to such assets to only certain specific individuals.

Applicants request an exemption from the provisions of Section 17(f) and Rule 17f-2 to the extent necessary to permit the securities and similar investments of Account A-1 to be placed and maintained in the custody of John Hancock in its vault located at its Home Office in Boston, Massachusetts or in a securities depository in accordance with the terms and conditions of Rule 17f-4 under the Act.

In support of their requested exemptions from Section 27(c)(2), Section 17(f) and Rule 17f-2 thereunder, Applicants state that John Hancock is subject to extensive supervision and regulation by the Commissioner of Insurance of Massachusetts, and to the applicable insurance laws in the other jurisdictions in which John Hancock does an insurance business. In addition, under Massachusetts law, John Hancock cannot abandon its obligations to owners or annuitants until they have been fully discharged, and the assets of the Account, equal to the reserves and other liabilities under the Contracts, are not chargeable with liabilities arising out of any other business that John Hancock may conduct.

Applicants further represent that John Hancock's vault is similar or superior in every respect to the vaults of most banks and that John Hancock maintains within it securities and other investments having a value in excess of $7,000,000,000. In addition, the supervisory functions of the Massachusetts Commissioner of Insurance include periodic inspections of John Hancock's operations. Applicants further state that the Account's investments will be physically segregated at all times, that its investments will at all times be subject to inspection by the Commission, that each person depositing or withdrawing investment will sign a notation in respect thereof, and that only certain designated persons will have access to the securities and other investments in the Account as follows: (1)

two or more jointly of the not more than 10 officers or responsible employees of the Account or of John Hancock designated pursuant to a resolution of the Board of Managers of the Account; (2) properly authorized officers and employees of John Hancock; (3) for the purposes of verification, audit and examination, independent public accountants jointly with any of the persons designated above; and (4) authorized employees or agents of the state insurance regulatory authorities.

Section 6(c) authorizes the Commission upon application to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act or the Rules and Regulations promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants have consented that any order granting the requested exemption from Section 27(c)(2) may be made subject to the conditions (1) that the charges under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved to the Commission for such purpose, and (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

NOTICE IS FURTHER GIVEN that any interested person may not later than March 31, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted; or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued as of course following March 31, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11067/March 5, 1980

In the Matter of

JOHN R. KENDALL
20241 S.W. 92nd Avenue
Miami, Florida 33189

(812-4621)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 9(c) FOR EXEMPTION FROM SECTION 9(a) OF THE INVESTMENT COMPANY ACT OF 1940 AND ORDER OF TEMPORARY EXEMPTION PENDING DETERMINATION OF THE APPLICATION

NOTICE IS HEREBY GIVEN that John R. Kendall ("Applicant") has filed an application pursuant to Section 9(c) of the Investment Company Act of 1940 (the "Act") for an order conditionally exempting Applicant and any company which he is or is in the future may become an affiliated person from the provisions of Section 9(a) of the Act and for an order of temporary exemption from 9(a) pending the Commission's determination of the application. Interested persons are directed to the application on file with the Commission for a statement of the representations summarized below.

Kendall intends to apply as a registered representative with the N. E. L. Equity Services Corp. Applicant states that from approximately March 1977 until his resignation on May 31, 1979, he was employed by Fundpack Management, Inc. ("Management") as operations officer for the Fundpack, Inc., Holding Trust and Holdings of U.S. Government Securities, Inc. (the "Funds"), three registered investment companies for which Management served as investment adviser.

On March 21, 1979, the Commission commenced a civil action in the United States District Court for the District of Columbia styled *Securities and Exchange Commission v. The Fundpack, Inc., et al.* The Commission's Complaint named as defendants of Management and its two broker-dealer subsidiaries, the Funds, and Applicant and eleven other officers and directors of the defendant entities. Among other things the Complaint alleged that Applicant aided and abetted violations by Management and others of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, Sections 5(a), 5(b) and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 36(a) of the Act and Section 206 of the Investment Advisers Act of 1940 ("Advisers Act"). On January 21, 1980, Applicant, without admitting or denying the allegations of the Commission's Complaint, consented to the entry against him of a Final Order prohibiting him from engaging in or aiding and abetting practices violative of Section 206 of the Advisers Act or Sections 5(a) and 5(b) of the Securities Act, or breaching the fiduciary duties incorporated in the Act by operation of Section 36(a) thereof ("Final Order"). The Final Order was entered by the Court on March 5, 1980.

Section 9(a) of the Act, insofar as is pertinent here, makes it unlawful for any person, or any company with which such person is affiliated, to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company, if such person is, by reason of any misconduct, permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker-dealer, or investment adviser, or as an affiliated person, salesman or employee of any investment company, bank or insurance company or from engaging in or continuing any conduct or practice in connection with any such activity.

Section 9(c) provides that upon application the Commission by order shall grant an exemption from provisions of Section 9(a), either unconditionally or on an appropriate temporary basis, if it is established that the prohibitions of Section 9(a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Applicant submits that for the following reasons the prohibition of Section 9(a), to the extent applicable by virtue of the Final Order, would be unduly and disproportionately severe as applied to Applicant and the conduct of Applicant has been such as not to make it against the public interest or protection of investors for the Commission, pursuant to Section 9(c), to enter an order granting Applicant and any company or person with which Applicant is or may become an affiliated person, a conditional exemption from the provisions of Section 9(a), and thereafter, after notice and opportunity for hearing, to enter an order granting a permanent conditional exemption from such provision:

1. Applicant intends to apply as a registered representative in a non-supervisory capacity as a registered representative dealing with individual accounts. He will have no role or authority in the determination of investment or marketing policies or strategies employed by any registered investment company or its affiliates nor is he otherwise involved in the management of any such entities. He is not an officer, director, investment adviser or principal underwriter of any registered investment company and has no present intention of serving or acting in any such capacity in the future.

2. The activities of Applicant with regard to the matters which form the basis of the Commission's Complaint have not resulted in direct pecuniary benefit to Applicant, and Applicant had no intention of violating any law.

3. Applicant has never before been required to apply for exemption from the provisions of Section 9(a) of the Act.

4. The possible application of the prohibitions of Section 9(a) to Applicant's intended employer in the absence of the requested exemptive relief would result in Applicant's inability to pursue such employment.

5. The relief sought by the Applicant is strictly limited to that necessary to permit Applicant to pursue his employment as described above. Such relief would not permit Applicant to become involved in a managerial or supervisory capacity with any registered investment company, and thus will not enable Applicant to engage in or aid or abet conduct of the type which formed the basis for the Commisson's Complaint.

Applicant also submits that issuance of the temporary exemption requested in the application is appropriate. The temporary exemption would enable Applicant to embark immediately upon his tended employment without interruption in his present employment and would thus avoid the loss of income which would occur if Applicant were forced to forego this employment pending the final determination of the application.

The Commission has considered the matter and finds that (1) the unqualified prohibitions of Section 9(a) might be unduly burdensome and disproportionately severe as applied to Applicant and (2) the conduct of Applicant has been such as not to make it against the public interest or protection of investors to grant temporary exemption from Section 9(a) prior to the determination of the application.

Accordingly, IT IS ORDERED pursuant to Section 9(c) of the Act that Applicant and any company with which he is or may become affiliated be and they hereby are temporarily exempted from the provisions of Section 9(a) of the Act on the condition that (a) Applicant will not become affiliated with any registered investment company, (b) Applicant will be fully supervised in any capacity in which he becomes affiliated with any affiliate of any registered investment company, and (c) Applicant's activities in any such capacity shall be entirely non-supervisory and Applicant shall take no part, directly or indirectly, in the formulation or development of any investment, marketing or other policy or strategy of any registered investment company or its investment adviser or principal underwriter, or in the management thereof.

NOTICE IS FURTHER GIVEN that any interested person may not later than March 31, 1980, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by first class mail upon Applicants at the address set forth above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application herein may be issued by the Commission upon the basis of the information stated in said Application, unless upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11068/March 5, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11069/March 5, 1980

CLARK JOSEPH WINSLOW
16 Bobolink Lane
Greenwich, Connecitcut

File No. 812-4587

Investment Company Act of 1940

ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTION FROM SECTION 9(a) OF THE ACT

The Commission issued a Notice on December 27, 1979 of the filing of an application by Clark Joseph Winslow (the "Applicant") for an order of exemption pursuant to Section 9(c) of the Investment Company Act of 1940. Investment Company Act of 1940 Rel. No. 11002/December 27, 1979. The application seeks an exemption for Applicant and any company with which he is presently or in the future may become an affiliated person from the provisions of Section 9(a) of the Act to the extent that Section 9(a) is applicable by virtue of the entry of a certain Final Order as to Applicant. Such Final Order was entered on December 27, 1979 against Applicant in an action entitled *Securities and Exchange Commission* v. *Clark Joseph Winslow* (United States District Court for the Southern District of New York, Civil Action No. 79-7012). The Notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application may be issued by the Commission upon the basis of the information stated in the application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. No request for a hearing has been filed and the Commission has not ordered a hearing.

The Commission has considered the matter and finds that the prohibitions of Section 9(a), as applied to Applicant, are unduly or disporportionately severe and that the conduct of Applicant has been such as not to make it against the public interest or protection of investors to grant the exemption requested in the application.

Accordingly, IT IS ORDERED, pursuant to Section 9(c) of the Act that the application for exemption of Applicant and any company with which he is presently or in the future may become an affiliated person from the provisions of Section 9(a) of the Act, insofar as any ineligibility to serve or act in the capacities enumerated in Section 9(a) of the Act arises out of the Final Order entered against Applicant, be and hereby is granted, effective forthwith.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11070/March 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6195/March 6, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11071/March 6, 1980

In the Matter of

CREDIT LYONNAIS NORTH AMERICA, INC.
c/o William F. Kroener, III, Esq.
Davis Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

(812-4566)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Credit Lyonnais North America, Inc. ("Applicant") filed an application on November 9, 1979, and amendments thereto on December 20, 1979, January 7, 1980, and February 5, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act.

On February 8, 1980, a notice was issued (Investment Company Act Release No. 11040) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order pursuant to Section 6(c) of the Act, disposing of the application, would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and on the basis of the representations in the application as amended, it is found that the granting of the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that, subject to the condition that Applicant comply with its undertakings: (1) to insure that the dealer will provide each offeree of the notes with a memorandum describing the business of Applicant and Credit Lyonnais and containing the most recently available audited financial statements of Credit Lyonnais, audited in accordance with French auditing practices, (2) to include in such memorandum a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by U.S. banks, (3) to update such memorandum, which will be at least as comprehensive as those customarily used in offering commercial paper in the United States, periodically to reflect material changes in the business or financial status of Applicant or Credit Lyonnais, and (4) to provide any person to which it offers its securities in any future offerings in the United States with disclosure documents that are at least as comprehensive in their description of Applicant and Credit Lyonnais, as those customarily used in United States offerings of such securities and which contain the financial statements of Credit Lyonnais, the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11072/March 6, 1980

In the Matter of

AMSTERDAM-ROTTERDAM BANK N.V.
c/o David Gruber, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

(812-4572)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Amsterdam-Rotterdam Bank N.V. ("Applicant") filed an application on November 13, 1979, and an amendment thereto on February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a commercial bank organized under the laws of the Netherlands. Based on deposits at December 31, 1978, Applicant was the 25th largest bank in the world. At that time, it had total assets of $36.8 billion and deposits of approximately $30.6 billon. Applicant represents that its shares are widely held by Dutch and foreign investors and are listed on the Amsterdam, Frankfurt, Paris and Zurich stock exchanges.

The application states that Applicant's principal business is the receipt of deposits and the making of loans. Applicant represents that retail deposits are received through its domestic network of approximately 850 branches and that wholesale deposits are obtained principally from Dutch corporations and banks throughout the world. Applicant's loans total approximately $20.3 billion, or about 55% of its total assets. In addition, Applicant states that it engages in fiduciary services, lease financing, foreign exchange and underwriting in the Eurobond market. At December 31, 1978 investment securities amounted to approximately $1 billion, or less than 3% of total assets, and over 90% consisted of Netherlands government securities.

Applicant represents that it is supervised by the Minister of Finance of the Netherlands and by De Nederlandsche Bank N.V., the central bank of the Netherlands. Applicant states that the regulatory structure under which it operates is generally equivalent to, and in certain respects more restrictive than, the structure imposed on United States banks. The application indicates that three of the most important regulatory tools governing Applicant relate to liquidity, capital requirements and loan diversification. According to the application, the central bank of the Netherlands regularly examines Dutch credit institutions and requires reports in a specified form on a monthly basis, as part of its regulatory and supervisory function.

Applicant proposes to issue and sell unsecured prime quality commercial paper notes in bearer form and denominated in United States dollars to a commercial paper dealer in the United States who will then reoffer the notes in minimum denominations of $100,000 to institutional investors, entities and individuals in the United States who normally purchase commercial paper notes. Applicant also represents that the notes will not be advertised or otherwise offered for sale to the general public. The application states that the notes will provide an alternate source of supply of United States dollars which will supplement United States dollars currently obtained by Applicant in the Eurodollar market. Applicant represents that it does not intend to sell the notes in the United States in excess of an aggregate of $300 million at any one time outstanding. The application states that the notes will rank *pari passu* among themselves and equally with all its other unsecured indebtedness, including liabilities to depositors, except that subordinated debt and the equity securities of the Applicant will rank below the notes. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of its United States counsel that the offering will qualify for the exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant states that it will not proceed with its proposed offering until it has received such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and all future issues of securities in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one of the national recognized statistical rating organizations and that its United States counsel shall have certified that such rating has been received.

Applicant undertakes to insure that the commercial paper dealer will provide each offeree of the notes prior to purchase with a memorandum describing Applicant's business and containing Applicant's most recent publicly available fiscal year-end balance sheet and income statement which shall have been audited. Applicant states that such memorandum will describe differences which are material to investors, if any, between the accounting principles applied by Applicant's Dutch auditors in preparation of its financial statements and generally accepted accounting principles employed by United States banks. Applicant represents that such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States. The application indicates that the memorandum will be updated periodically to reflect material changes in Applicant's financial condition. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with the foregoing undertakings. Applicant further represents that any future offering of its securities in the United States will be made on the basis of disclosure documents at least as comprehensive as those used in the presently proposed offering and each offeree will be provided with such disclosure documents.

Applicant represents that it will appoint a bank in the United States, the Commission or some other party which normally acts in such capacity, to accept service of process in any action based on the notes and instituted in any state or federal court by the holder of any of its notes. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the city and state of New York with respect to any such action. Applicant states that both its appointment of an authorized agent for service of process and its consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid by Applicant. Applicant similarly represents that it will consent to jurisdiction and will appoint an agent for service of process in suits arising from any other offerings of securities that it may make in the United States, which may include debt securities but not shares of its capital stock.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percentum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from

any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that it is extensively regulated by banking authorities in the Netherlands and therefore that application of the provisions of the Act to Applicant would be unnecessary and burdensome. Applicant also asserts that its capital structure and distribution of profits could not be conformed to the provisions of the Act. As a closely regulated banking entity, Applicant states that it is different from the type of institution that Congress intended the Act to regulate. It is asserted that the particular abuses against which the Act was directed are not present in this case. Applicant further submits that an exemptive order pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors because they would otherwise be precluded from purchasing Applicant's commercial paper notes. Moreover, the application contends that because of the development of the large Eurodollar market, the major foreign banks which deal in that market need a source of United States dollars in the event of even a short-term disruption in the market. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 31, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 714/March 5, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

LITIGATION

Litigation Release No. 9024/March 5, 1980

S.E.C. v. *COLECO INDUSTRIES, INC.* Civil Action No. 80-0591 (D.D.C.)

The Securities and Exchange Commission today announced the filing of a Civil Injunctive Action in the United States District Court for the District of Columbia against Coleco Industries, Inc. ("Coleco"), a corporation headquartered in Hartford, Connecticut. Coleco, whose stock is listed on the New York Stock Exchange, is engaged directly and through subsidiaries in the manufacture and sale of a variety of recreational products, including swimming pools, water accessories, and family leisure games and toys. The Commission's

Complaint alleges violations of the antifraud and reporting provisions of the securities laws. Simultaneously with the filing of the Complaint, Coleco consented, without admitting or denying the allegations of the Complaint, to the entry of an injunction prohibiting further violations of such provisions, and certain additional relief.

The Commission's Complaint alleges that in 1977 and 1978, Coleco filed with the Commission and disseminated to its shareholders and the investing public interim financial statements which materially understated expenses, overstated earnings, and failed to disclose material facts. The Complaint alleges that these violations stemmed from returns of video game products in 1977 and a large unsold inventory of such products in 1977 and 1978. The Complaint alleges that in 1977 Coleco understated its cost for the return of video games, failed to disclose the extent of such returns, and failed to disclose that it was using a different method of accounting for overhead in its interim reports than it was using in its year-end financial statements. The Complaint further alleges that in its Form 10-Q for the quarter ended March 31, 1978, Coleco failed to increase its reported loss on video game inventory despite the fact that Coleco's management had determined to begin selling certain of its video products below cost and had made internal estimates of a $2.5 million loss in 1978 on sales of its entire inventory of video products manufactured in 1977. The Complaint further alleges that in 1978 Coleco restated its first and second quarter 1977 earnings on account of, among other things, the matters referred to in the Commission's Complaint.

In addition to the injunctive relief referred to above, Coleco was ordered by the Court to abide by its undertaking that its Audit Committee, in conjunction with its independent accountants and outside counsel, will continue to study and review Coleco's system of internal control and accounting procedures, will report on such review at least annually to the board of directors, and that, within 60 days thereafter, Coleco will adopt and maintain such recommended improvements as it deems necessary.

Litigation Release No. 9025/March 5, 1980

SEC v. R. J. LOUIS & CO., INC., ET AL. Civ. No. 78 C 3314 (N.D. Ill.)

William D. Goldsberry, Administrator of the Commission's Chicago Regional Office, announced that Final Orders of Permanent Injunction by consent were issued against R. J. Louis & Co., Inc. (R. J. Louis), Louis J. Ragonese (Ragonese) and John P. Ollrogge (Ollrogge), on February 6, 1980, by Judge Bernard H. Decker of the U.S. District Court for the Northern District of Illinois. The defendants consented to the orders without admitting or denying the Commission's allegations of violations of the registration and antifraud provisions of the federal securities laws.

Judge Decker specifically ordered that the defendants, in conducting any future sales of securities, shall disclose material information regarding such securities to include, among other things: the financial condition of the issuer, the use of proceeds from sales, the liquidity or marketability, the current or future values, the risk associated with investing, and any conflicts of interest.

R. J. Louis, Ragonese and Ollrogge were sued by the Commission in connection with their offer and sale of securities to R. J. Louis' clients. R. J. Louis is registered with the Commission as an Investment Adviser. Ragonese is the President, Chairman of the Board and sole shareholder of R. J. Louis, and Ollrogge is the Vice-President, Secretary-Treasurer and a director of R. J. Louis.

Litigation Release No. 9026/March 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. THE FUNDPACK, INC., ET AL., (United States District Court for the District of Columbia, Civil Action No. 79-0859)

The Securities and Exchange Commission ("Commission") announced that Hon. June L. Green, United States District Judge for the District of Columbia, today entered in the above-captioned action Final Judgments of Permanent Injunction ("Final Judgments") against defendants Marshall L. Jastromb ("Jastromb") and Gene Moore ("Moore") and Final Orders against defendants Douglas Duke "Duke") and John R. Kendall ("Kendall") ("Final Orders"). Jastromb, Moore, Duke and Kendall are codefendants with The Fundpack, Inc. ("Fundpack"), Holding Trust and Holdings of U.S. Government Securities, Inc. ("Government"), a complex of mutual funds in Coral Gables, Florida (the "Funds"), Fundpack Management, Inc.

("Management") (the Funds' former investment adviser) and its two subsidiaries, and with seven of the Funds' other former officers and directors, in a Complaint filed by the Commission on March 21, 1979. *See*, Litigation Release No. 8698, March 22, 1979. Jastromb, a dentist, and Moore, a surgeon, were formerly vice-presidents and directors of each of the Funds and of Management and its subsidiaries. Duke, an astronomer, was formerly portfolio manager for Fundpack and a director of Government. Kendall was operations officer for the Funds and an employee of Management. The Commission's Complaint alleged that Jastromb, Moore, Duke and Kendall, as well as the other defendants in the action, violated numerous provisions of the antifraud, proxy, reporting, registration and fiduciary obligation provisions of the federal securities laws.

The Final Judgments permanently enjoin Jastromb and Moore from engaging in conduct violating certain of the antifraud, registration and fiduciary obligation provisions of the federal securities laws. The Final Orders prohibit Duke and Kendall from engaging in conduct violating certain of the antifraud, registration and fiduciary obligation provisions of the federal securities laws. Jastromb, Moore, Duke and Kendall consented to the entry of the Final Judgments and Orders without admitting or denying the allegations in the Commission's Complaint.

The entry of the Final Judgments and Orders, which marks the end of the Commission's litigation with Jastromb, Moore, Duke and Kendall, is the fourth major action taken by the Court in this litigation. On August 10, 1979, after a three day hearing, Judge Green entered a preliminary injunction against the Funds and Management. *See* Litigation Release No. 8838, August 13, 1979. Following the preliminary injunction the action was settled as to the Funds, Management and its subsidiaries and Victor H. Polk ("Polk"), former president and chairman of each of the defendant corporations. On September 29, 1979, the Court entered by consent a final order as to the Funds pursuant to which the Funds are required, among other things, to appoint and thereafter nominate and recommend for election to their respective boards of directors four individuals satisfactory to the Commission. *See*, Litigation Release No. 8880, October 1, 1979. On December 13, 1979, the Court entered a Final Judgment of Permanent Injunction against Polk and Management and its subsidiaries. *See*, Litigation Release No. 8949, December 13, 1979. The Commission's action continues against another former officer and director of Management and its subsidiaries and against five former disinterested directors of the Funds.

Litigation Release No. 9027/March 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *TRANS AMERICA PETROLEUM COMPANY, INC., DANIEL J. McCARTHY, AND GERALD LEON BLOOM,* (S.D. Fla., Civil Action No. 80-6107-CIV-NCR)

Jule B. Greene, Administrator, Atlanta Regional Office, and William Nortman, Associate Regional Administrator, Miami Branch Office of the Securities and Exchange Commission announced the filing of a Complaint in the United States District Court, Southern District of Florida, Ft. Lauderdale Division, on February 28, 1980, alleging violations of the registration and antifraud provisions of the federal securities laws by Trans American Petroleum Company, Inc. ("Trans America"), Daniel J. McCarthy ("McCarthy"), and Gerald Leon Bloom ("Bloom").

Trans America is a Florida corporation, with offices in Ft. Lauderdale. McCarthy is a resident of Miami Springs, Florida, and Bloom resides in Hollywood, Florida. McCarthy and Bloom are the sole officers and directors of Trans America.

The Commission's Complaint alleged that Trans America, McCarthy, and Bloom offered and sold investment contracts in the form of interests in limited partnerships engaged in the business of oil and gas exploration to the public. It was further alleged that the defendants offered and sold these securities without a registration statement being filed, or in effect, to over 40 investors throughout the United States, and collected approximately $400,000. The Commission further alleged that in connection with the offer and sale of these securities, the defendants failed to disclose, and made misleading statements regarding, among other things, the failure to maintain escrow accounts for investors' funds as represented, the lack of books and records of Trans America, the use of the proceeds of the offering, the existence of Cease and Desist Orders naming the defendants, and that McCarthy consented to being enjoined from further violations of the Florida consumer and securities laws.

The Commission sought a Temporary Restraining Order, and Preliminary and Permanent Injunctions, enjoining the defendants from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The Commission also sought the Appointment of a Receiver and an order freezing the assets of the defendants.

On the same day, the Honorable Norman C. Roettger, Judge, United States District Court, Southern District of Florida, signed the Temporary Restraining Order sought by the Commission.

Litigation Release No. 9028/March 5, 1980

SEC v. *W.D.L. ENTERPRISES, INC., ET AL* (W.D. La./Shreveport Div.) Civil Action No. CI 800131

Michael J. Stewart, Administrator of the Fort Worth Regional Office, announced that on February 27, 1980, the Honorable Tom Stagg of the United States District Court for the Western District of Louisiana, Shreveport Division, entered an order permanently enjoining W.D.L. Enterprises, Inc. (WDL), Jalyn, Inc. (Jalyn) and Robert L. Futrell (Futrell), all of Shreveport, Louisiana, from further violations of the registration and antifraud provisions of the federal securities laws. The Order also directed that the defendants file with the Court an accounting of all funds received and disbursed by them during the period from May 6, 1976, through the present. All defendants consented to the entry of the Order of Permanent Injunction and Accounting without admitting or denying the allegations of the complaint.

The Commission's complaint specifically alleged that the defendants have engaged in the offer and sale of unregistered securities in the form of fractional undivided working interests in oil and gas leases to investors throughout the United States. The Complaint further alleged that in connection with the offer and sale of these securities, the defendants made material misrepresentations and omitted to state material facts, concerning, among other things: Futrell's past history in the oil and gas business; the success of the past drilling operations of WDL and Futrell; the amount of production and return which investors could expect from investing with WDL and Jalyn; the escrowing of investor funds by WDL and Jalyn; the progress made on the drilling and completion of wells and the production obtained from them; and the use of investor funds by WDL, Jalyn and Futrell.

Litigation Release No. 9029/March 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HAROLD V. GLEASON, ET AL.*, 74 Civil 4557 (S.D.N.Y.) (DBB)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on February 8, 1980, a Final Judgment of Permanent Injunction was entered by consent of defendant Paul Luftig ("Luftig") of Larchmont, New York. The Order, signed by the Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, enjoined defendants Luftig from further violating the antifraud and reporting provisions of the federal securities laws.

Luftig, formerly the president of Franklin New York Corporation and Franklin National Bank, was convicted of violating several federal statutes including the federal securities laws in *United States of America* v. *Harold V. Gleason, et al.*, S. 78 Cr. 522 (S.D.N.Y.) (TPG). He was sentenced to three years imprisonment. On December 19, 1979, the United States Court of Appeals for the Second Circuit affirmed his conviction. *United States* v. *Harold V. Gleason, et al.*, No. 79-1147 (2d Cir. 1979). On February 19, 1980, his petition for a writ of certiorari was denied by the United States Supreme Court. *Harold V. Gleason, et al.* v. *United States*, (No. 79-1118, 1979 Term).

For further information, see Litigation Release Nos. 6551, 8495, and 8678.

Litigation Release No. 9030/March 5, 1980

SEC v. *LOUIS J. ROUSSEL, JR., ET AL.* (D. Kan., August 19, 1976) (CA 76-511-C6)

Michael J. Stewart, Administrator of the Fort Worth Regional Office, announced that on February 11, 1980, the Honorable Wesley E. Brown, United States

District Judge for the District of Kansas, entered a Judgment and Order of Permanent Injunction against Mick Stack Associates, Inc., a registered broker-dealer, Kenneth L. Mick, Richard E. Smith and Robert Adrian, all of Wichita, Kansas, enjoining them from further violations of the antifraud provisions of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-13 thereunder.

The Order of Permanent Injunction followed an order entered on January 25, 1980, whereby Judge Brown granted the Commission's motion for summary judgment against each of the four defendants. The Commission commenced this action on August 19, 1976, by filing a complaint which alleged that these defendants, among others, engaged in an unlawful scheme during a tender offer to gain control of Farm & Ranch Financial, Inc., a Wichita, Kansas based insurance holding company, in violation of the antifraud provisions of the Securities Exchange Act of 1934 and Rules 10b-5 and 10b-13 thereunder.

For further information, see Litigation Release No. 7529 (August 19, 1976).

Litigation Release No. 9031/March 6, 1980

S.E.C. v. *UNITED TECHNOLOGIES CORPORATION ET AL.* (U.S. District Court, Southern District of New York, 79 Civ. 6193 (HEW))

The Securities and Exchange Commission announced today that the defendants in a civil enforcement action filed on June 25, 1979, United Technologies Corporation ("United") and its wholly-owned subsidiary Carrier Corporation (formerly United Technologies Holding Corporaton), have entered into a settlement with the Commission. The Complaint alleged that United violated the tender offer and beneficial ownership reporting provisions of the William Acts (Sections 13(d), 14(d) an 14(e) of the Securities Exchange Act of 1934) in connection with a 1978 tender offer for Carrier securities, which were at that time listed for trading on the New York Stock Exchange. The Complaint charged that United discovered, after the conclusion of the tender offer, that fewer Carrier shares than it had previously announced had been tendered during the tender offer, and that, prior to publicly disclosing this fact, United purchased sufficient shares of Carrier to insure its control over Carrier and otherwise to compensate for the shortfall. The Complaint charged that these actions were contrary to the terms of the United tender offer.

The settlement, which has been approved by Judge Henry F. Werker, provides for the payment of more than $1.1 million by the defendants to persons tendering Carrier stock to United in the tender offer. This is the amount United has stated it saved by purchasing shares in the open market rather than at the tender offer price. This payment will be distributed pursuant to a stipulation and agreement of compromise and settlement entered into by United in connection with the settlement of private class action litigation initiated after Commission's investigation into United's tender offer for Carrier had become public. United has also filed a report with the Commission as a matter of public record describing certain events arising out of its tender offer for Carrier. United's report also sets forth procedures adopted by United in order to avoid a repetition of problems encountered in the Carrier tender offer in future tender offers.

See L.R. No. 8793—June 25, 1979

ACCOUNTING SERIES RELEASE

ACCOUNTING SERIES
Release No. 276/March 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6195/March 6, 1980

FREEDOM OF INFORMATION ACT

FREEDOM OF INFORMATION ACT
Release No. 60/March 5, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6194/March 5, 1980

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19/12

sec docket

VOLUME 19, NO. 12 MARCH 25, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6196-99	852
Securities Exchange Act	16633-50	860
Public Utility Holding Company Act	21447A, 21469-75	882
Investment Company Act	11073-85	889
Investment Adviser Act	715	905
Litigation	9032-33	905

This listing covers releases issued from 3/7/80-3/13/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16634 34-16649 34-16650

33-6196 Solicitation of comments on whether the current requirement to present historical and pro forma ratios of earnings to fixed charges in certain filings should be retained or deleted. [S7-824; comment period expires May 15, 1980.]

33-6197 Adoption of an amendment to Rule 10b-6 excepting from that Rule purchases of securities pursuant to a tender offer by an issuer or an affiliate of such issuer for securities of the issuer which is subject to and made in compliance with Rule 13e-4.

33-6198 Solicitation of comments on amendments which would except from the application distributions of securities pursuant to employee or shareholder plans sponsored by an issuer. [S7-826; comment period expires April 30, 1980.]

33-6199 Delegation of authority to the Director of the Division of Market Regulation to grant exemptions from Rule 13e-4.

34-16644 Solicitation of comments on an amendment to its recordkeeping requirements under Rule 17a-4. [S7-825; comment period expires April 18, 1980.]

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OPINIONS

34-16637 **DAVID R. LODGE**
Where registered principal of member firm of registered securities association withdrew funds for his personal use from firm's trading accounts without authorization, and failed to advise firm promptly of transactions and withdrawals in those accounts, *held*, association's findings of violation *sustained*, and sanctions *affirmed*, despite the fact that one of association's findings of violation set aside.

34-16638 **TODD AND COMPANY, INC. and THOMAS K. LANGBEIN**
Where Court of Appeals had affirmed Commission's finding that member firm of registered securities association and its president had engaged in manipulation, but had ordered proceedings remanded to association for dismissal of one cause of action and redetermination of sanctions on the basis of the other, *held*, sanctions imposed by association on remand *affirmed*.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6196/March 7, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16635/March 7, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21469/March 7, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11074/March 7, 1980

RATIO OF EARNINGS TO FIXED CHARGES

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is requesting comments on whether the current requirement to present historical and pro forma ratios of earnings to fixed charges in certain filings should be retained or deleted. Additionally, the Commission is requesting comments on specified concerns with the calculation of the ratio where retention is recommended. The Commission intends to consider these comments in connection with possible future rulemaking proposals.

DATE: Comments should be submitted on or before May 15, 1980.

ADDRESSES: Comments should refer to file S7-824 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All comments will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. (File No. S7-824).

FOR FURTHER INFORMATION CONTACT: Rita Gunter, Office of the Chief Accountant (202-272-2133), or Howard P. Hodges, Jr., Division of Corporate Finance (202-272-2553), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is considering the appropriateness of the present requirements for disclosure of historical and prc forma ratios of earnings to fixed charges and ratios of earnings to combined fixed charges and preferred dividends. In order to reach an informed decision on such requirements, the Commission is requesting comments on the usefulness of the ratios. Commentators are specifically requested to discuss approaches that they believe are more meaningful in assessing a company's ability to meet its fixed charge payments. Additionally, if retention of the ratios is recommended, specific comments are requested on their calculation. The Commission is not at this time proposing any amendments to the present requirements, but rather wishes to elicit comments to assist in the development of possible future rulemaking proposals. In that regard, this release discusses some of the criticisms and perceived problems related to the continued requirement to present these ratios.

Background

The requirement to present a ratio of earnings to fixed charges was first adopted in 1954 in connection with the then new Form S-9. A company was required to have a minimum coverage ratio

before it was permitted to use Form S-9. In order to demonstrate eligibility, a registrant was required to disclose the ratio in its filing. Since 1954 numerous changes have been made in the requirements governing the ratio, and such ratio (or a ratio of earnings to combined fixed charges and preferred dividends, in the case of a preferred stock offering) has become a disclosure requirement of other registration forms of the Commission.

At the present time the written instructions for the computation and presentation of the ratio of earnings to fixed charges[1] are contained in the summary of operations items in Form S-1, S-11, 10 and 10-K, and in the statements of income item of Form S-7. Related interpretations are set forth in Accounting Series Release Nos. 119 and 122. These instructions and interpretations are very brief and general; thus, certain additional interpretations and administrative practices have been followed by the staff and registrants. Specific questions with respect to the ratio have been raised and resolved on a case-by-case basis. Such decisions have never been incorporated into Commission requirements, but instead have been handled administratively.

Purpose of the ratio

The historical and pro forma ratios of earnings to fixed charges are intended as indicators of the registrant's ability to meet its future interest and preferred dividend requirements on outstanding debt and preferred stock and those amounts plus the amount applicable to debt or preferred stock being offered for sale, respectively. While an absolute ratio in a given period may provide useful information, a comparison of a succession of annual ratios is usually more meaningful. Thus, the most persuasive argument for the presentation of the ratio of earnings to fixed charges seems to be its usefulness as an analytical tool.

The Commission recognizes that the ratio of earnings to fixed charges is only one of the factors considered by security analysts, rating agencies, and potential investors and creditors; however, the ratio is intended to aid these persons in the assessment of a company's ability to timely meet required interest and preferred dividend payments. Since interest coverage may affect a company's bond rating, the ratio may have implications from the standpoint of determining the interest rate and thus the cost of raising capital. Bond rating agencies consider many factors in establishing bond ratings, one of which is a fixed-charge coverage. Other factors considered may include other ratios, conditions in the industry, management, product lines, indentures, and future operating plans.

Other ratios and financial relationships that may be used for analytical purposes include the working capital ratio, cash flow ratio, quick ratio, return on equity, and return on assets. In the usual case, the information necessary to compute these ratios is presented in the financial statements, whereas the ratio of earnings to fixed charges in most cases cannot be computed from only the information disclosed in the financial statements. Thus, disclosure of the ratio of earnings to fixed charges has been required even though it has been argued that too much emphasis has been placed on the ratio when presented alone.

Rating agencies and security analysts sometimes compute an "internal" ratio of earnings to fixed charges. Such ratios may be based on income after taxes and include all rentals, no rentals, or only certain rentals depending on the industry. In some cases, short-term interest may be ignored depending on the company's plans for future borrowings. In other cases, fixed charges may include an amount representative of the interest factor in pension expense which is applicable to unfunded past service costs. There seems to be a wide divergence of views concerning the usefulness of and necessity for the ratio of earnings to fixed charges; however, it appears that most agree that the trends of this and other ratios are significant.

The Corporate Information Committee of the Financial Analysts Federation, in a comment letter on the format and content of Part I of the present Form 10-K, suggested that the form be amended to require the disclosure of the ratio of earnings to fixed charges in the "Capsule Financial Data" part of Item 1. This Committee believes that the ratio "is not only of interest to bond analysts but to equity investors as well, since the ability of a company to cover debt payments and maintain these ratios has significance for the capital spending and financing potential of the organization."

[1]References hereinafter to the "ratio of earnings to fixed charges" or to "the ratio" should also be considered to encompass the ratio of earnings to combined fixed charges and preferred dividends.

Problems with presentation of the ratio

The Commission has heard many criticisms and complaints concerning its requirement to disclose the historical and pro forma ratios of earnings to fixed charges. The following discussion is intended to elicit specific comments useful in the development of future rulemaking proposals by the Commission.

With respect to the historical ratio, the criticism most often heard has been that the ratio may tend to be misleading when considered alone and that financial analysis should be left to analysts, and not included in financial reporting. The argument continues that no single ratio should be considered alone since by the presence of a single ratio a degree of exactness and accuracy is conveyed. Also readers may be tempted to use the ratio alone rather than as only one of several factors which are relevant to an investment decision.

The requirement that the ratio be presented on the face of the summary of operations or the income statement is said to have caused readers of financial statements to attach more importance to the ratio than is justified. With respect to public utilities, the ratio may be less relevant than the fixed charge coverage as computed under the indenture or charter because the bond indenture or the corporate charter may not allow the issuance of additional mortgage bonds or preferred stock if the indenture or charter computed fixed charge ratio is less than a specified amount during a certain period of time. Yet the indenture and/or charter ratios are presented only in the narrative portion of a filing. Also, some investment bankers and institutional investors contend that rating agencies' ratings are far more important than the historical ratio of earnings to fixed charges, yet these ratings are not disclosed in filings with the Commission.

Some critics of the ratio point out that the ratio would be more useful if it also measured a company's ability to meet principal payments on debt and lease obligations. In their opinion, the investor wants a reasonable measure of the company's ability to meet fixed cash obligations from its available cash flows. If commentators on this release agree with this criticism and would propose that these or other amounts be included in fixed charges in computing the ratio, specific comments are requested on the appropriate method of computation.

The most serious criticisms have been aimed at the current requirement for presenting pro forma ratios of earnings to fixed charges. A task force appointed by the AICPA Committee on SEC Regulations recommended in its report of September 1975 that the Commission eliminate its requirement to disclose a pro forma ratio of earnings to fixed charges. As an alternative, the Task Force proposed that the rules be amended to require the pro forma ratio only if the proceeds from the securities being registered are to be applied to the reduction of outstanding debt or preferred stock. The Task Force indicated that investors and analysts should be able to use the historical ratio of earnings to fixed charges and other available information to make their own predictions of what future coverage ratios might be, in much the same way that a common stockholder uses historical earnings trends for predictive purposes.

It has been pointed out that the pro forma ratio may be misleading since in most cases the actual ratio experienced in the succeeding year is often higher than the pro forma ratio previously reported. A conservative approach has been taken with respect to the computation of the ratio; that is, earnings that will be generated from the investment of the proceeds of the offering, as well as proceeds from other debt issuances, are not considered in computing the ratio. Just as investors expect to generate a return on an investment in a debt security or preferred stock, a company likewise ordinarily expects a return on the proceeds of an offering. Ignoring these expected earnings is one cause of differences between the pro forma ratio and the subsequent historical ratio. In the past, these estimated increases in earnings have not been considered due to their speculative nature and the fact that no precise method of computing such increases has been developed.

It is argued, on one hand, that forecasts are required in the ratio (that is, consideration of any issuance, retirement or redemption of securities proposed for the following year), but, on the other hand, forecasts are not allowed (that is, estimated increases in earnings from the investment of the proceeds). Thus, some believe that the ratio now required is not sound in that it takes into consideration projected changes with respect to only the denominator (fixed charges) of the ratio. It is also argued that such forecasts should not be required since the Commission has not required forecasts in other

aspects of filings. However, the Commission has not viewed the pro forma ratio as a forecast, but rather as a ratio based on current year income and fixed-charge amounts adjusted for the proposed transaction (including debt or stock being sold for which the registration statement is filed, as well as any issuances, retirements or redemptions proposed for the following twelve months). Rather than forecasting what the ratio will be in the future, the pro forma is intended to provide "as if" disclosure regarding a past period. Commentators are specifically requested to comment on this point and to provide suggested rules if they believe increased earnings from the use of proceeds should be considered in computing the ratio.

Some observers state the view that the objective of the pro forma ratio is not only to illustrate the impact of the proposed debt or preferred stock transaction(s) but also to give effect to operating changes or events during the year and other known changes after year end as though they had occurred earlier. Under this concept such items as discontinued operations, extraordinary items, and cumulative effects of accounting changes would not be included in the "earnings" amount used in computing the pro forma ratio. Comments are specifically requested on the merits of such an approach to the pro forma ratio.

Specific inquiries

The Commission specifically invites comments on the following questions:

1. What uses are made of the ratio in assessing the relative merits of a security?

2. Should the ratio be cash oriented as opposed to income oriented? If so, how would such a ratio be computed?

3. What additional items, if any, should be included in "fixed charges"?

4. Should "earnings" be increased for an amount expected to be generated from the investment of the proceeds of the offering? If so, how is the amount to be computed?

5. Should "earnings" include discontinued operations, extraordinary items, or cumulative effects of accounting changes? What consideration should be given to unusual or infrequently occurring items?

6. Should the requirement to disclose the ratio on the face of the summary of operations or income statement be changed? If so, where is the appropriate place for disclosure?

7. Since Statement of Financial Accounting Standards No. 13, "Accounting for Leases," now requires capitalization of leases meeting certain criteria, should rentals paid on operating leases have an "interest factor" of the kind requiring adjustment in the fixed-charge ratio? If the answer to this question is no, please specifically discuss how operating leases which miss the cut-off test for capital leases (e.g., less than 75% of estimated economic life or less than 90% of the fair value of the leased property) are different from capital leases for purposes of determining the interest factor in leases.

8. In calculating a pro forma ratio, what adjustments should be considered? How would the amount of the various adjustments be computed?

9. How should the following items be treated in computing the ratios: (1) earnings or losses of unconsolidated subsidiaries and 50% or less owned persons, (2) minority interests, and (3) capitalized interest?

10. Should the requirement to disclose the ratio be extended to all filings and reports made with the Commission rather than only those registration statements where debt or preferred stock is being registered?

11. What ratio requirement for interim periods is necessary?

All interested persons are invited to submit their written views and comments on the foregoing areas and on any other issues which might affect the revision of the ratio requirements.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6197/March 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16645/March 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11079/March 13, 1980

APPLICATION OF RULE 10b-6 TO PURCHASES PURSUANT TO CERTAIN TENDER OFFERS

ACTION: Final rule amendment.

SUMMARY: The Commission is adopting an amendment to Rule 10b-6 under the Securities Exchange Act of 1934 excepting from that Rule purchases of securities pursuant to a tender offer by an issuer or an affiliate of such issuer for securities of the issuer which is subject to and made in compliance with Rule 13e-4 where the issuer or affiliate making such offer is subject to Rule 10b-6 solely because the issuer has outstanding securities convertible into or exchangeable for the security for which the tender offer will be made ("subject security"). The exception also will apply to purchases pursuant to a tender offer by an affiliate for the issuer's securities where the tender offer is subject to and made in compliance with Section 14(d) [15 U.S.C. §78n(d)] and the rules thereunder. The Commission believes that adequate safeguards exist in the context of such offers and that additional regulation under Rule 10b-6 is not necessary.

EFFECTIVE DATE: March 13, 1980

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin (202-272-2828), Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 16, 1979, the Commission adopted Rule 13e-4 [17 CFR 240.13e-4] and related Schedule 13E-4 [17 CFR 240.13e-101] which impose certain filing and other requirements in the context of cash tender and exchange offers by issuers or their affiliates for equity securities of the issuer.[1] In the Adopting Release, the Commission noted its intent to amend Rule 10b-6 [17 CFR 240.10b-6] to provide that, if the provisions of that Rule would apply to bids for or purchases of ("purchases") the subject security solely because the issuer has outstanding a class of securities which is immediately convertible into or exchangeable for the subject security, such provisions shall not apply if the bids and purchases are made in accordance with Rule 13e-4.[2] The Commission continues to believe that Rule 13e-4 provides sufficient safeguards in the context of issuer tender offers and that additional regulation of such offers under Rule 10b-6 is not necessary. Accordingly, the Commission has adopted this amendment with certain modifications.[3]

New paragraph (f) provides that the provisions of Rule 10b-6 shall not apply to purchases pursuant to an issuer tender offer if the issuer is engaged in a distribution of the subject security solely because the issuer has outstanding securities which are immediately convertible into, or exchangeable or exercisable for, the subject security, provided that the offer is subject to and made in compliance with Rule 13e-4 or, as applicable, Section 14(d) of the Act

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[1]Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 ("Adopting Release"). Rule 13e-4 applies to tender offers by issuers for their own equity securities where the issuer has a class of equity securities registered under Section 12 of the Act or is required to file periodic reports with the Commission pursuant to Section 15(d) of the Act or is a closed-end investment company registered under the Investment Company Act of 1940.

[2]Adopting Release, 44 FR 49406 n.7.

[3]Several commentators on proposed Rule 13e-4 addressed the application of Rule 10b-6 to purchases by an issuer of its securities pursuant to a tender offer subject to Rule 13e-4 and suggested that the Commission adopt some form of an amendment to Rule 10b-6 and generally clarify the extent to which both rules would apply to such purchases. *See, e.g.*, Letter from Leonard M. Leiman, Chairman, Committee on Securities Regulation of the Association of the Bar of the City of New York, to George A. Fitzsimmons, Secretary, SEC, dated February 23, 1978, contained in File No. S7-731.

and the rules thereunder.[4] Thus, an issuer or an affiliate no longer will be required to seek exemptive relief under Rule 10b-6 to permit purchases pursuant to a tender offer for the issuer's common stock simply because the issuer has outstanding preferred stock, debentures or warrants which are convertible into, or exchangeable or exercisable for, common stock.[5]

The Commission finds, in accordance with 5 U.S.C. §553(b)(B) and §553(d) that, in view of the response by commentators on proposed Rule 13e-4 concerning the application of Rule 10b-6 to issuer tender offers and the Commission's notice of intent to amend Rule 10b-6 in the manner described above, notice and public procedures pursuant to 5 U.S.C. §533 are not necessary pursuant to subsection (b) thereof. Such amendment shall be adopted, effective immediately.

TEXT OF AMENDED RULE

Part 240 of Title 17 of the Code of Federal Regulations is amended by redesignating paragraph (f) of §240.10b-6 as paragraph (g), and adding a new paragraph (f) thereto, as follows:

§240.10b-6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(f) If the provisions of this section would apply to bids for or purchases of any equity security pursuant to an issuer tender offer, as that term is defined in Rule 13e-4(a)(2) under the Act, or to a tender offer subject to section 14(d) of the act and the rules applicable thereto, solely because the issuer has outstanding securities which are immediately convertible into, or exchangeable or exercisable for, the security for which the tender offer is to be made, such provisions shall not apply to such bids and purchases if such bids and purchases are subject to and made in accordance with the provisions of Rule 13e-4 or section 14(d) and the rules applicable thereto.

[Secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 23(a), 48 Stat. 882, 889, 891, 894, 895, 901, Sec. 8, 49 Stat. 1379, Sec. 5, 78 Stat. 569, 570, Secs. 2, 3, 82 Stat. 454, 455, Secs. 1, 2, 3-5, 84 Stat. 1497, Secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78o(c), 78w(a))]

By the Commission

George A. Fitzsimmons
Secretary

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[4]Paragraph (g)(5) of Rule 13e-4 excepts from the provisions of that Rule any tender offer subject to Section 14(d). Accordingly, as a general matter, a tender offer by an affiliate of an issuer for a class of the issuer's securities which is registered under Section 12 of the Act is subject to Section 14(d) rather than Rule 13e-4.

Concurrently with the adoption of this amendment, the Commission is publishing for comment amendments to Rule 10b-6 which would provide that the Rule shall not apply to distributions of securities by an issuer to its employees or shareholders pursuant to employee or shareholder plans sponsored by the issuer. *See* Securities Act Release No. 6198 in this issue.

[5]However, if the common stock is the subject of any other distribution for purposes of the Rule, by or attributable to the issuer (*e.g.*, a distribution in connection with a pending acquisition), Rule 10b-6 will continue to prohibit any purchases of common stock by the issuer or any affiliate, including purchases pursuant to an issuer tender offer, absent an exemption from that Rule.

SECURITIES ACT OF 1933
Release No. 6198/March 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16646/March 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11080/March 13, 1980

APPLICATION OF RULE 10b-6 TO CERTAIN DISTRIBUTIONS OF SECURITIES BY ISSUERS

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment amendments to Rule 10b-6 under the Securities Exchange Act of 1934 ("Act") which would except from the application of Rule 10b-6 distributions of securities pursuant to employee or shareholder plans sponsored by an issuer. The

Commission believes that such distributions generally do not appear to present the potential for the manipulative abuse Rule 10b-6 was designed to prohibit.

DATE: Comments should be submitted on or before April 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-826 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin (202-272-2828), Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Paragraph (e) of Rule 10b-6 [17 CFR 240.10b-6] currently provides that the provisions of that Rule do not apply to any distribution of securities by an issuer to its employees, or to employees of its subsidiaries, or to such securities for the account of such employees, pursuant to certain specified types of employee plans.[1] Since 1977, however, the staff consistently has taken the position that it would not recommend that the Commission take enforcement action under Rule 10b-6 with respect to purchases by an issuer of its securities where the issuer maintains employee or shareholder plans which may involve a distribution of such securities although the plans do not fall within the literal language and scope of paragraph (e).[2] As a general matter, such purchases do not present the potential for abuse which Rule 10b-6 was designed to prohibit. It is unlikely that an issuer would have an incentive to purchase for manipulative purposes to facilitate an offering of securities to its employees or shareholders pursuant to such plans. Accordingly, the staff has not viewed such offerings as distributions for purposes of paragraph (a) of the Rule.

The Commission is publishing for comment amendments to paragraph (e) of the Rule which would codify the staff's position regarding the applicability of the rule to employee and shareholder plans. If adopted, the amendments will exclude from the provisions of Rule 10b-6 any distribution of securities by an issuer to its employees or shareholders pursuant to a plan, as that term is proposed to be defined in new paragraph (c)(4) of the Rule.[3]

TEXT OF PROPOSALS

Part 240 of Title 17 of the Code of Federal Regulations is proposed to be amended by adding a new paragraph (c)(4) to §240.10b-6 and revising paragraph (e) thereof, as follows:

§240.10b-6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(c) * * *

(4) The term "plan" shall include any bonus, profit-sharing, pension, retirement, thrift, savings,incentive, stock purchase, stock ownership, dividend reinvestment or similar plan for employees or shareholders of an issuer.

* * * * *

(e) The provisions of this section shall not apply to any distributioin of securities by an issuer to its employees or shareholders, or to employees or shareholders of its subsidiaries, or to a trustee or other person acquiring such securities for the account of such employees or shareholders pursuant to a plan.

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[1]See Rule 10b-6(e)(1)-(2).

[2]*See, e.g., McDonald's Corporation* (June 6, 1977); *American Security Corporation* (June 29, 1977).

[3]The term "plan" would include any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, dividend reinvestment or similar plan for employees or shareholders of an issuer.

Concurrently with the proposed amendment to paragraph (e), the Commission has adopted an amendment to Rule 10b-6 which excepts from the Rule purchases pursuant to tender offers by issuers or affiliates for securities of the issuer which are subject to and conducted in compliance with Rule 13e-4 under the Act or, as applicable, with Section 14(d) of the Act and the rules thereunder. *See* Securities Act Release No. 6197 in this issue.

[Secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 23(a), 48 Stat. 882, 889, 891, 894, 895, 901, Sec. 8, 49 Stat. 1379, Sec. 5, 78 Stat. 569, 570, Secs. 2, 3, 82 Stat. 454, 455, Secs. 1, 2, 3-5, 84 Stat. 1497, Secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78o(c), 78w(a)]

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6199/March 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16647/March 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11081/March 13, 1980

DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE DIVISION OF MARKET REGULATION

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its regulations to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 13e-4 under the Securities Exchange Act of 1934 [17 C.F.R. §240.13e-4] pursuant to paragraph (g)(5) thereof.

EFFECTIVE DATE: March 13, 1980

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin (202-272-2828), Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Securities Exchange Act Rule 13e-4 [17 CFR §240.13e-4] and related Schedule 13E-4 [17 CFR §240.13e-101] impose certain filing and other requirements in the context of tender offers by issuers for their own equity securities. Paragraph (g)(5) of Rule 13e-4 provides that the Commission, upon written request or on its own motion, may exempt transactions from Rule 13e-4 as not constituting a fraudulent, deceptive or manipulative act or practice. The Commission believes that it would facilitate the timely review of exemptive requests if the authority to grant exemptions from rule 13e-4 were delegated to the Director of the Division of Market Regulation. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. §78d-1, 78d-2] hereby amends Section 200.30-3 [17 CFR 200.30-3] of the Commission's rules relating to general organization by adding a new paragraph (a)(35) to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 13e-4.

The Commission finds, in accordance with 5 U.S.C. §553(b)(A) and 5 U.S.C. §553(d) of the Administrative Procedure Act, that this amendment relates solely to agency organization and procedure and, therefore, that notice and public procedures pursuant to 5 U.S.C. §553 are not necessary pursuant to subsection (b) thereof. Such amendment shall be adopted, effective immediately.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding a new paragraph (a)(35) to §200.30-3, as follows:

§200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a)* * *

(35) To grant exemptions from Rule 13e-4 (§240.13e-4 of this chapter) pursuant to Rule 13e-4(g)(5) (§240.13e-4(g)(5) of this chapter).

(Pub. L. 87-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16633/March 7, 1980

The Commission gives notice that the *Pacific Stock Exchange, Inc.* has applied, pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934, for unlisted trading privileges in the following common stocks that are listed on one or more national securities exchanges:

Total Petroleum (N.A.) Ltd., $1 Par Value (File No. 7-5501), and

Jefferson-Pilot, $1.25 Par Value (File No. 7-5502).

Comments and/or request for hearing are to be submitted on or before April 1, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16634/March 7, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-6)

The National Securities Clearing Corporation (NSCC) has submitted a proposed rule change which has become effective on filing. As part of NSCC's automated stock borrow program, NSCC has established a formula which it will use to determine the order in which it will borrow securities made available by participants.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 10, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-6.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16635/March 7, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6196/March 7, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16636/March 10, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten day suspension of exchange and over-the-counter trading for the period commencing at 9:30 a.m. (EST) on March 10, 1980 and terminating at midnight (EST) on March 19, 1980 of the securities of Olympic Gas & Oil, Inc. ("Olympic"), a Washington corporation with principal executive offices located at 2420 First Avenue, Seattle, Washington 98121 and SNG & Oil Energy Company, ("SNG"), a Delaware corporation with principal executive offices located at 849 Delaware Avenue, Buffalo, New York, 14209.

The Commission ordered the suspension of trading in Olympic's and SNG's securities because of questions concerning the recent unusual and unexplained market activity in the companies' securities and because of the lack of adequate and accurate public information about the companies' operations and financial condition with respect to their methods of recognizing revenues and expenses and valuation of assets.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16637/March 10, 1980

Admin. Proc. File No. 3-5620

In the Matter of the Application of

DAVID R. LODGE
97 Mount Vernon Street
Boston, Massachusetts

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Unauthorized Use of Funds
Failure to Advise Member of Trading Activities

Where registered principal of member firm of registered securities association withdrew funds for his personal use from firm's trading accounts without authorization, and failed to advise firm promptly of transactions and withdrawals in those accounts, *held*, association's findings of violation *sustained*, and relatively lenient sanctions *affirmed*, despite the fact that one of association's findings of violation set aside.

APPEARANCES:

David R. Lodge, pro se.

Andrew McR. Barnes and *Peter J. Chepucavage*, for the National Association of Securities Dealers, Inc.

I.

David R. Lodge, who during the relevant period was a registered principal of Continental Equities, Inc., formerly a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from disciplinary action taken against him by the NASD. The NASD found that Lodge, without authorization, caused checks payable to Continental to be issued from trading accounts that Continental maintained with another member firm, and then cashed the checks for his own personal use. It also found that Lodge, who managed the accounts for Continental,

failed to maintain proper records in connection therewith, and failed to inform Continental of the daily activity in those accounts. For this misconduct, the Association censured Lodge and suspended him for ten business days from association with any member in any capacity.[1] Our findings are based on an independent review of the record.

II.

The trading accounts from which Lodge admittedly withdrew funds were opened at the local office of the other member firm on March 4, 1975.[2] Lodge, who had had no prior association with Continental, was given exclusive investment control over the accounts, in return for which he was to share equally with Continental in any profits or losses.[3] Transactions in the accounts for the month of March produced a loss of over $1,900, while those in April and May were quite profitable. By mid-June the balances had declined, and by month-end, the accounts again showed an overall loss.

The record shows that Lodge drew a total of 49 checks from the accounts during the period from March 17 to July 10, 1975, totaling almost $6,000. Lodge admitted that the first two or three checks were drawn and cashed in March without the prior approval of either Vincent Mancuso, Continental's president and 50% owner, or Bruce Eavenson, the firm's other 50% owner. Lodge also admits that he had no pre-existing arrangement with Continental authorizing him to withdraw funds from the firm's accounts. He contended, however, that, in preparing the firm's monthly financial statements in early April, Mancuso became aware of his three March withdrawals, totaling $250, and raised no objection to the continuance of this practice.

Despite Mancuso's denial of such knowledge, the NASD, after hearing the testimony of both individuals, found it impossible to believe that Mancuso, after preparing the April financial statements, was unaware of Lodge's withdrawals, and that Mancuso must have acquiesced in the continuation of that practice. It accordingly dismissed the charges against Lodge with respect to the bulk of the checks. However, the NASD found that, in mid-June, there was a meeting between Lodge, Mancuso and Eavenson at which it was agreed to close out the trading accounts. Yet Lodge improperly continued to draw checks from the accounts, without obtaining authorization from Continental. Four such checks totaling $290 were issued in July, at a time when the accounts again showed an overall loss.

We agree with the NASD that Lodge improperly withdrew funds from the trading accounts with respect to the seven checks in question. We accordingly affirm the NASD's findings of violation with respect to those withdrawals.

III.

The NASD found that Lodge, who used a desk at the other firm, did not keep Continental informed on a daily basis of transactions in its trading accounts. Lodge had requested that all order tickets and confirmations relating to such transactions be given directly to him rather than being sent to his firm. And he did not forward those records to Continental.

A broker-dealer may not transact business unless it is in compliance with net capital requirements. In order to ensure compliance, records must be kept current.[4] However, Lodge did not keep Continental informed of the daily trading activity in its accounts, or of his withdrawals from those accounts. Although the monthly account statements received by Continental showed this information, and Lodge claims to have informed the firm intermittently about the status of the accounts, his failure to make reports on a current basis prevented the firm from readily ascertaining at any given time whether or not it was in compliance with net capital requirements.

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[1]The NASD also assessed costs.

[2]Both a cash and a margin account were opened, with a combined cash investment of $10,000 provided by Continental.

[3]Lodge had no other role in the firm. There was an initial understanding that, with the profits he earned, Lodge could eventually purchase enough shares of Continental to acquire a controlling interest. But a disagreement over the purchase price of Continental's shares in mid-June 1975 resulted in Lodge's departure from the firm in early July, prior to his purchase of any shares.

[4]See *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, Securities Exchange Act Release No. 10756 (April 26, 1974), 4 SEC Docket 195, 196.

Lodge was aware that his transactions in Continental's trading accounts could adversely affect the firm's net capital position. We agree with the NASD that, as the registered principal in charge of the accounts, he had an obligation to make sure that the firm was aware of those transactions. We accordingly affirm the NASD's finding that his failure to do so was inconsistent with that obligation and in derogation of just and equitable principles of trade.[5]

IV.

While the amount of money that Lodge took without authorization was not large, he nevertheless engaged in serious misconduct. Despite the fact that we have set aside certain of the NASD's findings of violation, Lodge's unauthorized withdrawals of funds would alone be sufficient to justify the sanctions which the NASD imposed. The NASD further noted that Lodge had been involved in two prior NASD disciplinary actions.

Under the circumstances, we see no basis for concluding that the sanctions which the NASD imposed are excessive or oppressive.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS, and POLLACK); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

[5]The NASD also found that Lodge failed to prepare and maintain a memorandum of each purchase and sale and other records showing daily purchases and sales of securities and receipts and disbursements of cash. Lodge testified that he prepared and maintained the necessary records, and turned them over to Continental at the time he left the firm. In fact, Mancuso admitted that he had obtained Lodge's records in early July, two months prior to the NASD's inspection. Under the circumstances, we are unable to conclude that Lodge did not prepare and maintain the records in question, and we accordingly set aside the NASD's findings of violation.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16637/March 10, 1980

Admin. Proc. File No. 3-5620

In the Matter of the Application of

DAVID R. LODGE
97 Mount Vernon Street
Boston, Massachusetts

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc., against David R. Lodge, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16638/March 10, 1980

Admin. Proc. File No. 3-4524

In the Matter of the Application of

TODD AND COMPANY, INC.
192 Paterson Plank Road
Carlstadt, New Jersey

and

THOMAS K. LANGBEIN

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Redetermination of Sanctions Pursuant to Remand

Where Court of Appeals had affirmed Commission's finding that member firm of registered securities association and its president had engaged in manipulation, but had ordered proceedings remanded to association for dismissal of one cause of action and redetermination of sanctions on the basis of the other, *held*, sanctions imposed by association on remand *affirmed*.

APPEARANCES:

Lawrence E. Jaffe, for Todd and Company, Inc. and Thomas K. Langbein.

John F. Mylod, Jr., for the National Association of Securities Dealers, Inc.

I.

Todd and Company, Inc., a member of the National Association of Securities Dealers, Inc. ("NASD"), and Thomas K. Langbein, its president, appeal from disciplinary action taken against them by the NASD. The NASD found that applicants executed a series of principal transactions with retail customers at prices, and realized profits, which were unfair and excessive. It censured applicants; fined them $10,000, jointly and severally; prohibited the firm for 30 days from engaging in underwritings and acting as a NASDAQ market maker, permitting it to handle retail orders during that period only if no commissions, markups or markdowns are charged; and suspended Langbein for 30 days from being associated with any member in any capacity.[1]

This case is here for the second time. On the first occasion, we affirmed the NASD's findings of violation.[2] Our findings may be summarized as follows.

In 1972, respondents manipulated the market for common stock of Automated Medical Laboratories, Inc. At that time, Automated was a virtually unknown company. Todd was sole underwriter, on a "best efforts all or none basis," of an initial public offering of 250,000 shares of Automated stock at $2 per share, pursuant to Regulation A under the Securities Act.[3]

Todd took a full month, from March 14 to April 13, 1972, to dispose of the offering to over 1,500 of its customers. However, by limiting the number of shares that investors were allowed to buy, applicants deliberately fostered the impression that customers were "getting in on the ground floor" of a stock that would rise quickly and sharply. Todd settled with Automated on April 17.

Applicants then began trading Automated stock in the aftermarket. Langbein set Todd's opening bid at 4, double the public offering price, and its opening offer at 5. Todd's salesmen then began telling their customers that the market price of the stock they had just bought had risen sharply and, if they wished, Todd would repurchase their shares at $4 or sell them some more stock at $5. On April 19 and 20, Todd bought back and resold over 115,000 of the 250,000 shares it had just distributed. It paid at least double the public offering price for the shares it repurchased and charged up to triple that price for the shares it resold. Almost invariably, it resold the securities at $1 more than it paid for them. Throughout the two-day period, its purchases and sales were almost perfectly balanced. In those two days, the firm grossed over $112,000, compared with the $75,000 it received as compensation for the underwriting.

Based on the evidence, we found the inference of respondents' manipulative intent compelling. We concluded that respondents arbitrarily set Todd's opening quotations in order to produce the trading activity that followed, that they tampered with the market for the purpose of generating demand. While other brokers entered quotations in the pink sheets published by the National Quotation Bureau, Inc., we found that they had little demand and no real influence on the market.[4]

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[1]The NASD also assessed costs.

[2]*Todd and Company, Inc.*, Securities Exchange Act Release No. 12279 (March 29, 1976), 9 SEC Docket 311.

[3]Although Todd sold 6,850 shares of the offering to a selling group of seven broker-dealers, it soon repurchased almost all of the stock.

[4]Todd was the sole source of supply, so that the price at which it sold inevitably became the floor below which Automated could not trade.

Respondents appealed our decision to the United States Court of Appeals for the Third Circuit. On appeal the Court affirmed our conclusion that respondents had manipulated the market for Automated stock.[5] Nevertheless, the Court concluded that a remand was necessary so that the sanctions imposed on respondents could be reconsidered. The Court determined that, after the first allegation of the two related charges in the NASD's complaint had been dismissed by the NASD's District Committee, it was improperly reinstated by the Board of Governors. Since neither the Board nor this Commission had specified a separate penalty for each charge, the Court directed us to remand this case to the Board with instructions to dismiss the improperly reinstated cause of action, and to reconsider the sanctions against applicants solely on the basis of the remaining charge, which this Commission and the Court had sustained.

In accordance with the Court's instructions, we remanded this case to the Board.[6] On remand, the Board dismissed the first cause of action against applicants and, on the basis of the second, imposed the sanctions set forth above.[7]

II.

Applicants argue that the sanctions imposed by the NASD are too severe. They assert, among other things, that the length and expense of these proceedings, as well as the adverse publicity, have severely damaged their business and reputations. They further assert that their "two-day" violative conduct occurred many years ago, that lesser sanctions have been imposed in comparable cases, and that they relied on the advice of counsel.

In our view, the sanctions imposed by the NASD are fully justified. Originally, the NASD fined applicants $50,000, suspended Todd's NASD membership for one year, and suspended Langbein from association with any NASD member for the same period. On applicants' initial appeal, we reduced the suspensions to six months since it appeared that Langbein had been "influenced in some measure by erroneous legal advice."[8] When the case was remanded to the Board of Governors, it made a further substantial reduction in the sanctions imposed on applicants, as set forth above. The Board, while taking into account its dismissal of one of the two causes of action, based the reduction largely on factors that applicants now cite to us, including the adverse effect of these proceedings on their business, and the age of the violations.

Applicants' misconduct was extremely serious. We consider that a sufficient allowance has already been made for all of the mitigative factors they advance, and that any further reduction in sanctions

[5]*Todd and Company, Inc.* v. *S.E.C.*, 557 F.2d 1008 (C.A. 3, 1977). The Court stated at pp. 1013-14:

"The commission was within its competence in deciding that the petitioners manipulated the market to sell at unreasonable prices. The Commission found that petitioners deliberately created the impression of a 'hot issue' by artifically limiting the number of shares sold to each customer; intensively stimulating the market by contacting almost all purchasers; and carefully balancing purchases against sales. On this record, we cannot say that such findings were not supported by substantial evidence."

[6]*Todd and Company, Inc.*, Securities Exchange Act Release No. 13897 (August 26, 1977), 12 SEC Docket 1628.

[7]Applicants now seek to relitigate the findings of violation which were sustained by the Commission and the Court, although they admit that they litigated these matters previously in both forums. We see no reason why applicants should be permitted to reopen those issues. See, e.g., *Otten* v. *Stonewall Insurance Company*, 538 F.2d 210, 212 (C.A. 8, 1976); *Spock* v. *David*, 502 F.2d 953, 955 (C.A. 3, 1974), *rev'd on other grounds sub nom. Greer* v. *Spock*, 424 U.S. 828 (1976); *United States* v. *Dickinson*, 476 F.2d 373, 374 (C.A. 5, 1973); *Paull* v. *Archer-Daniels-Midland Company*, 313 F.2d 612, 616-618 (C.A. 8, 1963). Applicants also argue that the NASD failed to file proper notice of its action against them with this Commission, as required by Section 19(d)(1) of the Securities Exchange Act and the rules thereunder. Even assuming that applicants have standing to raise this issue, we fail to see how they were in any way prejudiced. Moreover, we consider that the notice filed by the NASD, including its letter of January 25, 1979, satisfied the requirements of the statute and rules.

[8]9 SEC Docket at 315.

would be unwarranted. Under the circumstances, we are unable to conclude that the sanctions imposed by the NASD are excessive or oppressive.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16638/March 10, 1980

Admin. Proc. File No. 3-4524

In the Matter of the Application of

TODD AND COMPANY, INC.
192 Paterson Plank Road
Carlstadt, New Jersey

and

THOMAS K. LANGBEIN

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Todd and Company, Inc. and Thomas K. Langbein, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16639/March 10, 1980

Administrative Proceeding File No. 3-5886

In the Matter of

ALM, KANE, ROGERS & CO.
LEE KORHUMEL

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate that administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") be instituted against Alm, Kane, Rogers & Co. ("Alm Kane"), a registered broker-dealer, and against Lee Korhumel, a registered representative working part-time with Alm Kane.

Respondents Alm Kane and Lee Korhumel, without admitting or denying the allegations or findings herein, have submitted offers of settlement which the Commission has deemed in the public interest to accept.

I. Facts

A.

Alm Kane, an Illinois corporation, became registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act in 1948, and is still so registered. Alm Kane is located at 39 S. La Salle Street, Chicago, Illinois, and is a member firm of the National Association of Securities Dealers, Inc. ("NASD"), a national securities association registered with the Commission pursuant to the Exchange Act.

Lee Korhumel, who has been a part-time registered representative of Alm Kane since 1974, performs such functions from his offices at Korhumel Industries, not on the premises of Alm Kane. Lee Korhumel is President of Korhumel Industries, a closely-held manufacturing company. Lee and Newton Korhumel share office space at the offices of Korhumel Industries. Lee Korhumel is Newton Korhumel's son.

Newton Korhumel is Chairman of the Board of Korhumel Industries. From 1964 to April 1979, he

was director (and from 1969 to April 1979 a member of the Executive Committee) of National Steel Corp. ("National Steel"), a publicly-held steel company.

B.

Newton Korhumel attended a meeting of the Board of Directors of National Steel on September 25, 1978. At the meeting, George Stinson, the Chairman of National Steel, presented to the National Steel Board a report prepared by National Steel's investment bankers on the possibility of national Steel's making an acquisition of a company in the savings and loan industry. At this meeting, the National Steel Board approved the commencement of purchases of stock of United Financial Corporation of California ("UFL"), a publicly-held savings and loan holding company listed on the New York Stock Exchange, with the view toward an eventual acquisition of UFL. Between October 1978 and December 1978, National Steel acquired 4.7 percent of UFL's outstanding stock.

In early January 1979, Stinson started discussions with UFL to explore the possibility of a friendly takeover. On January 17, 1979, the Executive Committee of National Steel (including Newton Korhumel) met, and Stinson reported that discussions with UFL had begun; the Executive Committee gave Stinson approval to continue the discussion with UFL and to seek a merger of UFL into National Steel. The discussions with UFL continued through January and February 1979. On February 21, 1979, National Steel's Board of Directors (including Newton Korhumel) met and authorized Stinson to seek an agreement in principle with UFL for an acquisition of UFL at a price in excess of market and book value.

On March 5, 1979, UFL and National Steel agreed to a merger whereby UFL would be merged into National Steel and UFL's shareholders would be paid $42 per share, almost twice UFL's then market price. An announcement to this effect was made on the morning of March 6, 1979, and when trading of UFL on the New York Stock Exchange began later that day, the price of UFL opened up approximately $13 per share from its March 5 close of 23 5/8.[1]

Within a week after the September 25, 1978 National Steel Board of Directors meeting, Newton Korhumel told Lee Korhumel that National Steel was considering acquiring shares of UFL in the open market with the view eventually towards a possible acquisition of UFL by National Steel. The two discussed the fact that the information was "privileged" and should not be used for their own benefit, but that Lee Korhumel might recommend to his brokerage customers purchases of UFL stock. In early October 1978, Lee Korhumel recommended UFL to two of his clients who then purchased 1380 shares of UFL at an average acquisition price of 24 1/2 per share.

Shortly after the January 17, 1979 National Steel Executive Committee meeting, Lee Korhumel learned from his father of the meeting between UFI and National Steel officials. Within a week thereafter, three of Lee Korhumel's customers purchased 2400 shares of UFL in transactions solicited by Lee Korhumel at an average acquisition price of 24 1/4 per share. After the February 21, 1979 National Steel Board meeting, Newton Korhumel told his son that the Board of National Steel had approved going ahead with an acquisition of UFL and that some premium over market would be involved. Thereafter, on February 27, 1979, one of Lee Korhumel's customers purchased an additional 1,025 shares of UFL on a solicited basis at an average acquisition price of 24 1/4 per share. On March 1, 1979, a principal of Alm Kane purchased 500 shares of UFL after a general discussion with Lee Korhumel about UFL. Lee Korhumel did not state his awareness of National Steel's plans to acquire UFL in either this conversation or his conversations with any of his customers.[2]

After the commencement of the Commission's investigation, Alm Kane's compliance officer asked Lee Korhumel the basis of his recommendations of UFL. Instead of informing the compliance officer that he had learned from his father of National

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[1]On June 18, 1979, the Commission filed a civil injunctive action in U.S. District Court for the District of Columbia, charging UFL with violations of the anti-fraud and proxy provisions of the Exchange Act and National Steel with violations of certain reporting provisions of the Exchange Act, in connection with the UFL-National Steel merger. The defendants consented to the entry of judgments of permanent injunction without admitting or denying the Commission's allegations. *See Lit. Rel.* No. 8785.

[2]As the following summary of Lee Korhumel's customers' trades shows, all but one of his customers held onto their UFL shares and sold them after the announcement of the UFL-National Steel merger at a significant profit.

Steel's interest in UFL, Lee Korhumel told the compliance officer that he had become interested in UFL upon overhearing some telephone conversations about that company. Lee Korhumel thus failed to inform the compliance officer about his knowledge of National Steel's interest in UFL.

Newton Korhumel[3] informed his son, a broker, of the details of National Steel's interest in, and activities concerning the acquisition of, UFL, even after being informed that his son might recommend UFL to his customers. As a result, purchases of UFL stock were effected without the market's being informed of material facts concerning National Steel's plans regarding UFL, and violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder occurred.[4]

Footnote 2 continued

Purchase date	# Shares	Price	Sale date	# Shares	Price
10-10-78	400	24 7/8	12-15-78	400	21
10-10-78	50	24 7/8	12-15-78	50	20 7/8
10-10-78	400	24 7/8			
10-10-78	100	24 3/4	12-21-78	500	19 3/4
10-12-78	400	25 1/4	5-7-79	400	37 1/8
10-13-78	30	25	5-7-79	30	37 1/8
1-19-79	365	24 1/4	5-15-79	365	37
1-19-79	200	24 1/4	4-20-79	200	37 5/8
1-19-79	335	24 1/4	4-30-79	335	37 5/8
1-19-79	700	24 1/4	4-20-79	700	37 5/8
1-22-79	500	24 1/2	5-2-79	500	37
1-25-79	300	25 1/4	4-20-79	300	37 3/4
2-27-79	200	21 1/4	4-20-79	200	37 5/8
2-27-79	325	21 1/4	4-20-79	325	37 5/8
2-27-79	500	21 1/4	4-20-79	500	37 5/8

(All calculations regarding sales after March 6, 1979, are adjusted to reflect the 5-for-4 stock split effected in UFL's stock in March of 1979.)

[3]Newton Korhumel, who is 74 years old, has informed the Commission that he has never served, nor does he anticipate serving, on the Board of any other public company than National Steel Board and Executive Committee in April 1979.

[4]The Commission reiterates its view that officers and directors of companies should not disclose to third persons confidential material information about planned market activities under the circumstances reasonably likely to result in trading on such non-public information.

[5]While the firm was aware of Lee Korhumel's association with National Steel, and while he was the only Alm Kane employee with such a close association with a public company, the firm took no effective precautions to ensure that Lee Korhumel was not misusing that relationship.

D.

During the time period covered by the investigation, Alm Kane's compliance procedures were informal and not reasonably designed to prevent or uncover the type of conduct described above. While the firm processed each "outside" salesman's trades (including those of Lee Korhumel), it had no formal procedures for ascertaining the basis for substantial solicitations by salesmen. The firm had no objective standards for determining the extent of solicited trades which would trigger an inquiry as to the basis for particular solicitations.

The firm's compliance manual was informally prepared, and was not systematically reviewed in light of developments in the securities laws or the professional literature. It did not deal adequately with the range of compliance problems the firm could normally expect to face in the regular course of business. Further, there was nothing in the compliance manual covering the basis upon which salesmen could solicit trades.

As to Lee Korhumel's solicited trades in UFL, while they constituted about 3% of his solicited trades from October 1978 through March 1979, and while he recommended UFL during that period more often than any other single stock, no one at Alm Kane questioned Lee Korhumel during this period concerning the circumstances of these solicitations, including the basis of his recommendations.[5] Moreover, because of Lee Korhumel's status as an outside, part-time salesman, the firm, in the absence of some special controls, was particularly limited in its ability to supervise his activities effectively. It was not until after the commencement of the investigation by the Commission that Alm Kane took any steps to ascertain the basis of these recommendations.

II. Findings

The Commission finds:

1. Respondent Lee Korhumel wilfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in that he recommended that his customers purchase shares of UFL stock at a time

when he was in possession of material, non-public information concerning National Steel's active interest in acquiring UFL, as set forth above.

2. Respondent Alm, Kane, Rogers & Co. failed reasonably to supervise Lee Korhumel and others subject to its supervision with a view toward preventing violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as set forth above.

III. Offers of Settlement and Mitigating Factors

The Respondents have submitted offers of settlement in which, without admitting or denying the facts or findings set forth herein, they consent to the issuance of this Order containing findings and imposing the remedial sanctions, hereinafter ordered.

Respondent Alm Kane also has undertaken to engage, within a period of twenty-one days, a person experienced in the field of securities matters (which persons shall not be unacceptable to the Commission), to undertake a review of the compliance procedures of Alm Kane (as to solicitation by its salesmen of purchases and sales of securities and as to other matters), and the matters set forth in this Order, and to render, within 45 days of the date of this Order, a report to Alm Kane containing recommendations for changes, if any, in Alm Kane compliance procedures, reasonably calculated to prevent a recurrence of the matters set forth in this Order and to effect appropriate supervision of Alm Kane's registered representatives; Alm Kane further undertakes to adopt, within fourteen days of the rendering of such report, and thereafter maintain, such recommended changes as it deems reasonable, and to provide the Commission with an affidavit of compliance upon the adoption of such changes; and Alm Kane further undertakes thereafter periodically to review its compliance procedures and make such changes as it deems necessary.

Respondents Alm Kane and Lee Korhumel offer as factors in mitigation that none of them has ever been the subject of any prior Commission investigation or proceeding and that they cooperated with the Commission's investigation.

IV. Order

In view of the foregoing, the Commission deems it in the public interest that administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 be instituted, and that the offers of settlement of the respondents be accepted.

Accordingly, IT IS ORDERED that proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 be, and they hereby are, instituted.

IT IS FURTHER ORDERED that:

A. Respondent Alm, Kane, Rogers Co., be and is hereby censured; and Alm Kane is required to comply with the terms of its undertakings set forth above and in its Offer of Settlement.

B. Respondent Lee Korhumel be, and he hereby is, censured and suspended from association with any broker or dealer for a period of sixty days from the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16640/March 10, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 715/March 10, 1980

Administrative Proceeding File No. 3-5887

In the Matter of

DONALD PHELPS MATHESON d/b/a
DON P. MATHESON & COMPANY

File No. 8-6251
801-1588

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate that administrative proceedings be instituted with respect to Donald Phelps Matheson (Matheson) formerly of Grand Rapids, Michigan, a registered investment adviser and broker-dealer, d/b/a Don P.

Matheson and Company (Company). Simultaneously with the institution of these proceedings, Matheson has submitted an offer of settlement which the Commission has determined to accept. Solely for the purpose of the instant proceeding and any other proceeding brought by the Commission or any other governmental or self-regulatory body pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act), Sections 8(b) and 8(d) of the Securities Act of 1933, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act), Section 9(b) of the Investment Company Act of 1940, and Section 14(b) of the Securities Investor Protection Act of 1970, and without admitting or denying the findings herein, Matheson hereby consents to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 203(e) and 203(f) of the Advisers Act and Section 15(b) of the Exchange Act be, and they hereby are, instituted.

On the basis of the Order for Proceedings and the offer of settlement, it is found that:

1. From on or about July 30, 1976 to on or about December 31, 1978, Matheson wilfully violated Sections 206(1) and 206(2) of the Advisers Act in that he:

(a) Made an unsuitable investment recommendation to an advisory client,

(b) Gave a moratorium on the repayment of a promissory note due an advisory client without the consent of such advisory client,

(c) Did not hold a security of an advisory client as directed,

(d) Deprived an advisory client of an opportunity to have her funds fully invested,

(e) Did not disclose that some advisory clients are charged lower advisory fees and brokerage commissions than other advisory clients.

2. From on or about July 30, 1976, to on or about September 15, 1976, Matheson wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-3(e)(3) thereunder in that Matheson did not at all times accurately make computations necessary to determine the amount required to be deposited as specified in Rule 15c3-3(e)(1) into the Special Reserve Bank Account.

3. From on or about July 30, 1976, to on or about September 15, 1976, Matheson violated Section 17(a)(1) of the Exchange Act and Rules 17a-3(a)(2) and 17a-3(a)(3) thereunder and Section 204 of the Advisers Act and Rules 204-2(a)(2) and 204-2(b)(2) thereunder, in that he failed to accurately make and keep current certain of the books and records of the Company.

4. During the period from on or about July 30, 1978, through November 30, 1978, Matheson wilfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1(d) thereunder in that he permitted the total of outstanding principal amounts of the Company's satisfactory subordination agreements to exceed 70% of its debt-equity total for a period in excess of 90 days.

5. On or about July 30, 1978, Matheson wilfully violated section 17(a)(1) of the Exchange Act and Rules 17a-11(a)(1) and 11(a)(2) thereunder in that he failed to give telegraphic notice on the first day upon which principal amounts of satisfactory subordination agreements exceeded the maximum allowable for a period in excess of 90 days and failed to file within 24 hours Part II of Form X-17A-5 within the principal office of the Commission in Washington, D.C. and with the regional office of the Commission for the region in which Matheson has his principal place of business.

6. During the period from in or about September 1977 to in or about September 1978, Matheson wilfully violated Section 204 of the Advisers Act and Rule 204-1(b) thereunder in that he failed to promptly file with the Commission an amendment on Form ADV causing information therein to become inaccurate.

7. During the period from in or about September 1977 to in or about September 1978, Matheson wilfully violated Section 15(b) of the Exchange Act and Rule 15b3-1(b) thereunder in that he failed to promptly file with the Commission an amendment on Form BD causing information therein to become inaccurate.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offer of settlement.

Accordingly, IT IS ORDERED that the Company be, and hereby is, suspended from conducting business as an investment adviser or broker-dealer and that Matheson be, and hereby is suspended from associating with any investment adviser or broker-dealer for a period of forty-five (45) days effective at the opening of business of the second Monday following the date of this Order.

IT IS FURTHER ORDERED that Matheson comply with his undertaking to file notice of his withdrawal from registration as an investment adviser and broker-dealer following the expiration of the suspension period.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16641/March 4, 1980

Administrative Proceeding File No. 3-5807

In the Matter of

W.A. PATTERSON, INC.,
WILLIAM A. PATTERSON,
JACK M. KEKICH

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these administrative proceedings ordered pursuant to the Securities Exchange Act of 1934 (Exchange Act),[1] Respondents W.A. Patterson, Inc., William A. Patterson, and Jack M. Kekich have submitted Offers of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings, W.A. Patterson, Inc., William A. Patterson, and Jack M. Kekich have consented to the findings of violations and sanctions set forth below.[2]

II.

On the basis of the Order for Proceedings and the Offers of Settlement it is found that: 1) W.A. Patterson, Inc. and William A. Patterson wilfully violated and wilfully aided and abetted violations of Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, and Sections 7(f)(1), 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3 and 17a-11 thereunder, and that W.A. Patterson, Inc., and William A. Patterson and failed reasonably to supervise other persons subject to their supervision, with the view to preventing violations of the Exchange Act as alleged is the Order for Proceedings; and 2) Jack M. Kekich wilfully violated and wilfully aided and abetted violations of Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, and Sections 15(c)(3) and 17(a) of the Exchange Act and rules 15c3-1, 17a-3 and 17a-11 thereunder and that Jack M. Kekich failed reasonably to supervise other persons subject to his supervision with a view to preventing violations of Section 7(c)(1) of the Exchange Act and Regulation T promulgated thereunder by the Governors of the Federal Reserve System.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement. Accordingly, IT IS ORDERED, that effective the date of this order;

A. The registration of W.A. Patterson, Inc., as a broker-dealer is revoked.

B. William A. Patterson:

1. Is barred from association with any broker or dealer, investment company, investment adviser, or transfer agent; and that after the expiration of a two-year period he may apply to the Commission to become associated with a broker or dealer as a supervised employee and not in a supervisory capacity.

2. Is ordered to comply with his undertakings in his Offer Settlement as follows:

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[1]In the Matter of W.A. Patterson, Inc., et al, instituted on August 29, 1979.

[2]The findings and order herein are not binding on any other respondent.

a. In the event he applies to the Commission to become associated with a broker or dealer as a supervised employee, he shall submit an affidavit with his application setting forth that he has complied with the provisions of the Commission's Order; and

b. In the event he becomes employed by or associated with a broker or dealer, he shall have such broker or dealer submit an affidavit to the Denver Regional Office of the Commission setting forth that he is not in a supervisory position and is not an officer or director and that such status will not change without prior consent of the Commission.

C. That Jack M. Kekich:

1. Is suspended from association with a broker or dealer, investment company, investment adviser, or transfer agent for a period of 60 days; and thereafter suspended for 30 days from such association other than as a supervised employee in a non-supervisory capacity.

2. Is ordered to comply with his undertakings in his Offer of Settlement as follows:

a. Submit an affidavit to the Denver Regional Office of the Commission at the end of the 60-day period setting forth that he has complied with the Commission's Order; and

b. Prior to the time that Kekich becomes employed by or associated with a broker or dealer following the conclusion of the first 60 days of the sanction period and before the end of the 90 day sanction period, he undertakes to have such broker or dealer submit an affidavit to the Denver Regional Office of the Commission to effect that he is employed in a supervised position and not in a supervisory position, and is not an officer or director and that such status will not change before the end of the 90 day sanction period without the prior consent of the Commission.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16642/March 10, 1980

Administrative Proceeding File No. 3-5888

In the Matter of

WILLIAM S. FLEISS

ORDER INSTITUTING PUBLIC PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate in the public interest that administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") be instituted against William S. Fleiss ("Fleiss"). The proceedings are instituted to determine whether Fleiss willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. Fleiss is a registered representative in a branch office in New York of Shearson Loeb Rhoades Inc., a registered broker-dealer. These proceedings arise out of certain purchases of securities and solicitations of purchases by Fleiss, and record-keeping violations.

Fleiss, simultaneously with the institution of these proceedings, and without admitting or denying the facts or findings herein has submitted an offer of settlement for the purpose of disposing of the issues raised in these proceedings. Under the terms of his offer of settlement, Fleiss, solely for the purpose of settling and terminating this matter, waives the institution of formal proceedings, consents to the Findings of the Commission and the issuance of this Order.

The Commission has deemed it appropriate and in the public interest to accept the offer of settlement and accordingly, is issuing this Order.

I. *FINDINGS AND CONCLUSIONS*

Fleiss had an individual client in the investment banking business ("Investment Banking Client") who regularly participated in a representative capacity in negotiating so-called sale-of-assets transactions with companies having publicly held

securities.[1] Through observation of Investment Banking Client's trading activities and discussions with a second client who had an independent relationship with Investment Banking Client, Fleiss was able to deduce that Investment Banking Client was buying securities of companies that might be candidates for such transactions.[2] Fleiss received information from the second client concerning the characteristics of a number of companies with whom the Investment Banking Client was negotiating. Fleiss purchased and solicited certain clients to purchase securities of the same companies that had been purchased in his Investment Banking Client's account. Fleiss made these solicitations and purchases based upon information supplied by the second client of the Investment Banking Client's activities, inferences drawn from the Investment Banking Client's purchases, or a combination of both of these factors. Moreover, Fleiss in soliciting clients to make purchases of these securities, advised the client of the trading done by the Investment Banking Client.

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require broker-dealers to maintain certain records including confirmations, notices of debits and credits for securities as well as memoranda of all brokerage orders. We find that Fleiss violated these provisions by marking order tickets for solicited transactions as "unsolicited" and failing to note on order tickets the exercise of discretion where applicable.

Based upon the foregoing, the Commission finds that Fleiss willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

Shearson's conduct

The Commission is concerned that Shearson's established supervisory procedures were not sufficiently applied to Fleiss. Shearson required its registered representatives to maintain certain books and records, including portfolio books, showing each customer's portfolio, and cross-reference books identifying customers holding particular securities, and required periodic examination of these books by branch office managers. The Shearson branch office managers assigned to Fleiss' office were aware that Fleiss was not maintaining these books on a current basis. This plus a significant turnover of branch managers in the branch office contributed to Shearson's failure to detect Fleiss' violative conduct.

II. *OFFERS OF SETTLEMENT*

Fleiss has submitted an offer of settlement in which he has undertaken to adopt certain procedures designed to assure future compliance with the Securities Act of 1933 and the Securities Exchange Act of 1934. Shearson, although not a respondent in these proceedings, has undertaken adequately to supervise Fleiss in order to monitor compliance with his undertakings.

III. *ORDER*

In view of the foregoing, the Commission deems it appropriate in the public interest that administrative proceedings pursuant to Section 15(b) of the Exchange Act be instituted and that the offer of settlement be accepted.

According, IT IS ORDERED that proceedings pursuant to Section 15(b) of the Exchange Act be, and they hereby are, instituted.

ITR IS FURTHER ORDERED that Fleiss is censured and ordered to fully comply with the undertakings contained in his offer of settlement.

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[1]Pursuant to the pertinent form of "sale of assets" transaction, substantially all of the assets of certain publicly held companies have been purchased by corporations organized for that purpose. As an integral part of the transactions, the public company whose assets are purchased makes a tender offer for all of its common stock at the same price per share as received from the sale of the assets. The tender offers have been at substantial premiums over the market prices prevailing prior to the initial announcements of agreement in principle concerning the transactions.

[2]On July 5, 1979 the United States District Court for the District of Columbia, in an action instituted by the Commission, permanently enjoined the two referenced clients of Fleiss, Ira J. Hechler and Murray Hirsch, from violating the antifraud provisions of the Exchange Act and ordered them to comply with their undertakings to disgorge certain profits from certain transactions in securities. See Litigation Release No. 8811/July 5, 1979. See also Exchange Act Release No. 15994/July 5, 1979.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16643/March 11, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten day suspension of exchange and over-the-counter trading for the period commencing at 9:30 a.m. (EST) on March 11, 1980 and terminating at midnight (EST) on March 20, 1980 of the securities of McDowell Enterprises, Inc. ("McDowell"), a Tennessee corporation with principal executive offices located at 301 Plus Park Boulevard, Nashville, Tennessee 37217.

The Commission ordered the suspension of trading in McDowell's securities because of questions which have been raised concerning an undisclosed accumulation of a significant block of the company's outstanding common stock by an undisclosed group of investors and unexplained market activity in the company's common stock.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16644/March 11, 1980

BROKER-DEALER RECORDKEEPING REQUIREMENTS

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment an amendment to its recordkeeping requirements under Rule 17a-4. There is now no Commission rule which governs the furnishing of copies of the records of brokers and dealers to Commission representatives. Despite the statutory authority of the Commission, some brokers and dealers have refused to supply copies of their records when so requested by Commission representatives. The proposed amendment would clarify the authority of the Commission staff to receive copies of documents required to be made or preserved by Rules 17a-3 or 17a-4.

DATE: Comments should be received by April 18, 1980.

ADDRESSES: All comments should be submitted in triplicate and directed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-825 and will be available for public inspection at the Commission's Public Reference Room, Room 6101 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: JoAnn Zuercher, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. (202) 272-3114.

SUPPLEMENTARY INFORMATION: Section 17(a)(1) of the Securities Exchange Act as amended by the Securities Acts Amendments of 1975 requires members of national securities exchanges and registered brokers and dealers to make and keep for prescribed periods such records and furnish such copies thereof as the Commission by rule prescribes.[1] Section 17(b) of the Act provides that all

[1] 15 U.S.C. 78q(a).

records required to be made or kept are subject at any time to reasonable examinations by representatives of the Commission.

Rules 17a-3 and 17a-4 adopted pursuant to Section 17 of the Act require that specified records be made and preserved by certain exchange members, brokers and dealers. There is now no Commission rule which governs the furnishing of copies of the records of brokers and dealers to Commission representatives. Despite the statutory authority of the Commission,[2] some brokers and dealers have refused to supply copies of their records when so requested by Commission representatives.

The proposed addition to Rule 17a-4 is intended to clarify the authority of the Commission staff to obtain copies of documents made or preserved under Rules 17a-3 or 17a-4.

STATUTORY BASIC AND COMPETITIVE CONSIDERATIONS

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934 and particularly Section 17, hereby proposes for public comment an amendment to Rule 17a-4 (17 CFR 240.17a-4) clarifying the entitlement of representatives of the Commission to receive true, complete and legible copies of documents required to be made or preserved under Rules 17a-3 and 17a-4.

It appears to the Commission that no burden will be imposed on competition by adoption of this amendment. If there is any burden on competition, it is necessary and appropriate in furtherance of the purposes of the Act, particularly in furtherance of the Commission's obligation to protect investors.

TEXT OF AMENDMENTS

Accordingly, it is proposed to amend 17 CFR 240 by adding paragraph (j) to §240.17a-4 to read as follows:

§240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(j) Every member, broker or dealer subject to this section shall furnish promptly to examiners or other representatives of the Commission such legible, true and complete copies of those records of the member, broker or dealer, required to be preserved under this section, as requested by such representatives.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16645/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6197/March 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16646/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6198/March 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16647/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6199/March 13, 1980

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[2]As the Commission stated in Securities Exchange Act Release No. 16278 (October 12, 1979), 18 SEC Docket 670, subsection 17(b) of the Securities Exchange Act makes clear that "the authority to examine records would include the authority to make or require copies of such records." (Report of the Committee on Banking, Housing and Urban Affairs, to accompany S.249, 94th Cong; 1st Sess., Senate Report No. 94-75, at p. 120, 18 SEC Docket at 671).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16648/March 13, 1980

Administrative Proceeding File No. 3-5890

In the Matter of the

PHILADELPHIA STOCK EXCHANGE, INC.

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate in the public interest and for the protection of investors that proceedings be instituted against the Philadelphia Stock Exchange, Inc. ("Phlx") pursuant to Section 19(h) of the Securities Exchange Act of 1934 ("Exchange Act")[1] to determine whether the Exchange violated Sections 11A(c)(1) and 19(g) of the Exchange Act and Rule 11Ac1-1 promulgated thereunder.

Simultaneously with the institution of these proceedings the Phlx has submitted an Offer of Settlement for the purpose of disposing of the issues raised in these proceedings. The Phlx, solely for the purpose of these proceedings, without admitting or denying the facts or findings set forth herein, consents to the findings contained herein and sanctions imposed by this Order.

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of the Phlx and, accordingly, issues this Order.

I.

The Phlx is a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act. The Phlx is a member-organization which exercises the powers granted to it and is required to meet the obligations imposed upon it as a self-regulatory organization by the Exchange Act. The Phlx operates a stock trading floor, an options trading floor and a clearing corporation in Philadelphia, Pennsylvania.

This proceeding concerns the failure of the Phlx to comply with the Commission's quotation rule and also its failure without reasonable justification or excuse, to enforce compliance by its members and persons associated with its members with (1) the Commissions's quotation rule and the exchange's own quotation reporting rule; (2) the exchange's options position limit rule; (3) the exchange's option spread parameter rules; and (4) the exchange's rules regarding registered options traders quarterly trading requirements.[2]

II.

Rule 11Ac1-1—The Quotation Rule

Rule 11Ac1-1[3] under the Exchange Act became effective August 1, 1978, and requires that every national securities exchange and national securities association establish and maintain procedures to collect, process and make available to vendors quotations (including size) in securities as to which last sale information is reported in the consolidated

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[1]Section 19(h) provides:

"The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provisions of this title, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance."

[2]Section 19(g) of the Exchange Act provides in relevant part that:

"Each self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 17(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—
(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members."

[3]Rule 11Ac1-1(b) of the Exchange Act. See 17 CFR 240.11Ac1-1(b).

transaction reporting system. The Rule also requires that every "responsible broker or dealer"[4] promptly communicate to his exchange or association, his bids, offers and quotation sizes.[5]

The Commission has repeatedly stressed that Rule 11Ac1-1 is an essential element of the national market system.[6] In its March 1979 report on the "Development of a National Market System," the Commission noted that one of the major national market system developments during 1978 was the:

> implementation of a Commission rule [Rule 11Ac1-1] requiring all market centers to collect and make available "firm" quotation information (including size) to securities information vendors for dissemination to market professionals and the investing public. . . [A] functioning consolidated quotation system, long considered a cornerstone of a national market system, has become operational and quotation information for reported securities is now an integral part of the nation's securities market.[7]

Rule 11Ac1-1, however, can only act as the foundation for other national market system facilities if the rule is scrupulously observed by all market participants and effectively enforced by the self-regulatory organizations. Accurate, complete and timely quotation information which is continuously collected and disseminated by each self-regulatory organization, is essential to assist public investors in achieving the best possible execution of their orders. Moreover, as the Commission has previously stated,[8] the effectiveness of any intermarket linkage system is dependent on the quality and reliability of the quotation information disseminated. Unless market participants are confident that the displayed quotation information is accurate, complete and timely, they will be unwilling to send orders through an intermarket linkage system for fear of missing the market if they fail to receive an execution at the displayed price.

The Phlx failed to establish and maintain adequate procedures and mechanisms necessary to collect, process, and make available quotations from its members and repeatedly failed to take appropriate actions to enforce compliance by its members with the Rule, as well as its own quotation reporting rule.[9] During the relevant time period, certain necessary quotation information concerning securities traded on the Phlx was unavailable to the investing public.

As early as August 1978, representatives of the Phlx were aware that quotations in a number of instances were not displayed by quotation vendors for certain of the stocks traded on that Exchange. Further monitoring by the Phlx staff of a sample of Phlx stock trading disclosed continuous instances of failure to disseminate quotations during 1978, ranging from as few as 42 instances in September 1978 to as many as 184 instances in December, 1978.

In January 1979, the Phlx staff began to review all stocks traded on the Phlx for quotation rule compliance. As a result the Phlx found the following number of missing quotations: 192 in January, 179 in February, 157 in March, and 167 in April. In addition, the Phlx staff began reviewing the Phlx equity trading reports and recording the number of transactions which occurred while quotations were absent. As a result of this process the Phlx found the following number of transactions: 484 in January, 69 in February, 499 in March and 731 in April.

While members of the Phlx staff assigned to monitor compliance repeatedly called the violations to the attention of the specialists involved, no systematic review of the number of violations of particular specialists were undertaken until January 1979, at

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[4]Paragraph (a)(3)(i) of the Rule 11Ac1-1 defines the term "responsible broker or dealers" to include any member of an exchange who communicates to another member of such exchange, at the location (or locations) designated by such exchange for trading in a reported security, a bid or offer for such reported security, as either principal or agent.

[5]Securities Exchange Act Release No. 15671 (March 22, 1979).

[6]Section 11A of the Exchange Act directed the Commission to facilitate the establishment of a national market system for securities.

[7]See Securities Exchange Act Release No. 16214 (September 21, 1979).

[8]Id. at 7.

[9]Phlx Rule 105, CCH PBW Stock Exchange, Inc. Guide 2105. Phlx Rule 105 was promulgated in order to implement the Commission's Rule 11Ac1-1.

which time the Commission staff was making inquiries into the subject. Substantial violations by several specialists continued until early June, 1979. Phlx staff members had engaged in efforts to bring about specialists' compliance earlier. However, these efforts were not pursued vigorously and nothing in the nature of formal disciplinary steps were initiated against specialists in default until late June 1979.[10]

III.

A. *Options Trading Rule Compliance*

Option Position Limits

Phlx Rule 1001 established a "same side of the market" position limit of 1000 option contracts for exchange members in option classes listed on the Phlx. This rule is administered by the Committee on Options[11] which may grant temporary exemptions whenever a "specialist reasonably anticipates that he may exceed such option limits in the performance of his function of assisting in the maintenance of a fair and orderly market. . ." Exemptions to Rule 1001 were usually granted in 250 contract increments for 2 to 10 trading days.

During 1978 and 1979, Phlx options specialists requested position limit exemptions by submitting a "Rule 1001 Exemption Form" to the surveillance staff of the Phlx. This form required that the specialist specify his position in each option series and in the underlying common stock for the class in which the exemption was requested. The form also required an explanation by the specialist of the reasons for the request.

The Committee on Options routinely approved exemption requests from specialists without exercising reasonable care to assure that the requested exemptions were warranted, and as a result minimized the effectiveness of the rule. Explanations provided were vague, *e.g.*, "to facilitate public order flow" or "to maintain a fair and orderly market." In one instance the Committee on Options both approved continuous extensions of exemptions from the limit and also increased the size of the limit exemption in one options class for a specialist member continuously from December 12, 1978 through October 10, 1979. Similar extensions ranging from 40 days to 80 days in duration were granted in all six option classes in which another member specializes. During the period of January 1, 1979 through June 12, 1979, four of the seven Phlx option specialists units received similar "rollover" exemptions from the position limit rule. One specialist was allowed to increase a position to 5000 contracts, five times the normal limit.[12]

B. *Option Quotation Spread Parameters*

Phlx Rule 1014(c) governs the maximum difference between the bid and offer of an option series. The size of the allowable quote spread varies with the price range of the option series involved. On October 26, 1978 and in each calendar quarter thereafter, the Exchange's surveillance department presented the Committee on Options of the Phlx with a list of numerous violations of spread rule violations accumulated for each option for each month of the preceding quarter.

The Committee on Options called the October 1978 report to the attention of all options specialists units since each unit had apparently violated the spread rule during August and September 1978. Several of the specialist units involved attributed these apparent violations to error or misunderstanding. On January 30, 1978 the Phlx amended the provisions of its Rule 1014(c) relating to allowable option quote spreads by requiring narrower quote spreads and thereby making the Rule more strict than it had been previously. In June 1979 the Rule was again amended and the original quote spread parameters were reinstated. On the basis of explanations offered by the specialists involved, a letter of caution was sent to each specialist unit.

Information that the Phlx staff presented to the Committee on Options indicated that numerous violations of the quote spread rule had occurred during the period August 1978 through April 1979. Despite the magnitude of these continued violations,

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[10]At various times during the relevant period, the Commission's staff expressed concern about the number of missing quotations and the fact that a large number of transactions had occurred absent current quotation information.

[11]The Committee on Options is composed of members of the Phlx and has the responsibility for administering exchange rules governing the options floor and disciplining members.

[12]Not until late 1979 did the Phlx take action to control the granting of position limit exemptions.

the Phlx took no further disciplinary action against the responsible members.

C. *Registered Option Traders-Quarterly Requirements*

Phlx Rule 1014 establishes certain performance requirements for Registered Options Traders which, in turn, assures the Phlx and the public of a minimum level of liquidity and price continuity. The Rule accomplishes this goal by requiring Registered Options Traders to be on the options trading floor, to engage in transactions, and to concentrate their transactions in certain assigned options classes. The performance of several Registered Options Traders did not meet the concentration standards established in the Rule. Furthermore, the Committee on Options routinely approved requests from Registered Options Traders to reassign their primary option classes without adequately analyzing the performance of the Registered Options Traders or the effect on the options market of the requested change.

IV.

Findings

As discussed herein, the Commission finds that the Phlx violated Sections 11A(c)(1) of the Exchange Act and Rule 11Ac1-1 promulgated thereunder. The Commission also finds that the Phlx violated Section 19(g) of the Exchange Act, in that, without reasonable justification or excuse, the exchange failed to enforce Rule 11Ac1-1, and Phlx Rules 105, 1001, and 1014.

V.

Offer of Settlement

In its Offer of Settlement the Phlx represents that it has made and has undertaken to make, extensive revisions in organizational structure, personnel, commitment of resources, programs, policies and procedures designed to strengthen its market surveillance and enforcement capabilities. These revisions include: transferring responsibility for all proceedings relating to disciplinary matters to a single committee, the Committee on Business Conduct; the creation of several new staff positions and the addition of personnel with market surveillance and enforcement responsibilities; the development of new guidelines, procedures and controls for the opening, closing and referral of inquiries and investigations; development of a number of new procedures for handling of requests for position limit exemptions; revision of standards for granting reassignment of Registered Options Traders and development of a number of new category reports to identify automatically trading infractions which were previously detected manually. The Phlx further undertakes to implement and maintain the foregoing procedures and policies. Phlx also undertakes to conduct its surveillance and enforcement activities in accordance with procedures already adopted or to be adopted, maintained and implemented pursuant to this Order.

VI.

Order

Based on the foregoing, and after due consideration of all the circumstances, the Commission has determined that it is appropriate in the public interest and for the protection of investors to institute these proceedings and accept the Offer of Settlement of the Phlx. Accordingly IT IS ORDERED that proceedings pursuant to Section 19(h) of the Exchange Act be and hereby are instituted:

IT IS FURTHER ORDERED that the Phlx be and hereby is censured; and that the Phlx fully comply with the undertakings contained in its Offer of Settlement.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16649/March 13, 1980

NOTICE OF FILING AND OF SUMMARY EFFECTIVENESS OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-9

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78s(b)(1) (the "Act"), notice is hereby given that on March 11, 1980, the New York Stock Exchange, Inc. ("NYSE")

filed with the Commission copies of a proposed rule change to implement, on a pilot basis, operational procedures for an Opening Automated Report Service ("OARS") designed to facilitate more efficient and accurate reporting of market orders in individual stocks received by the NYSE through DOT[1] prior to the opening of trading in those stocks. The pilot program is designed for the testing of OARS' five basic functions under actual trading conditions. These functions are:

1) OARS would store—but not deliver to the trading post—individual pre-opening market orders of 100 to 299 shares;

2) OARS would continuously tabulate these orders; matching buy and sell interest and calculating any remaining imbalance;

3) OARS would inform the specialist of the tabulated buy/sell interest and imbalance; both at pre-determined intervals and upon request;

4) OARS would electronically receive the opening price in a stock via a single mark-sense card from the specialist; at which point 100-299 share market orders transmitted to the NYSE no longer would be directed to OARS, but would be directed to the DOT printers on the Floor as usual; and,

5) OARS would automatically—upon receipt of the opening price—disburse machine-generated reports to member firms for each stored order in that stock within a matter of seconds.[2]

The OARS program, which is scheduled to commence on March 14, 1980, in 10 stocks, is designed to achieve important new systems efficiencies which would (i) materially assist specialists in arranging the opening transactions in their assigned stocks through effective automation of several clerical tasks at the trading post for the critical period just prior to the opening,[3] (ii) improve reporting of completed trades through immediate dissemination of execution reports upon the opening of trading, and (iii) result in fewer questioned trades at the opening and, thus, would promote more efficient and accurate clearing and settlement of securities transactions.

According to the NYSE, OARS should better enable the exchange to carry out the purposes of the Act, including the maintenance of fair and orderly markets, the fostering of competition and cooperation with persons engaged in settling and processing information with respect to transactions in securities and facilitating transactions in securities. In addition, the NYSE has stated that OARS will introduce new data processing and communications techniques which should result in a more efficient and effective market operation consistent with the objectives of Section 11A(a)(1)(B) of the Act. Finally, according to the NYSE, OARS is consistent with and should advance the purposes of Section 17A(a)(1) of the Act, including the prompt and accurate clearance and settlement of securities transactions and the introduction of more efficient procedures for the clearance and settlement operation.

The foregoing rule change has been put into effect summarily, pursuant to Section 19(b)(3)(B) of the Securities Exchange Act of 1934, as it appears to the Commission that summary effectiveness is necessary for the maintenance of fair and orderly markets and the protection of investors in that the increased efficiency and accuracy that should result from OARS may be critical should sustained periods of increased volume of trading continue to be experienced on the NYSE. Moreover, by decreasing the number of questionable trades, the OARS program should help to alleviate back office problems that may be generated by an increased volume in trading. For these reasons the Commission believes that the OARS program should be tested at the earliest possible date.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the proposed rule change if it appears to the Commission that such action is

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[1]"DOT" is the acronym for the NYSE's Designated Order Turnaround System, an application of the Common Message Switch which permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor.

[2]Machine-generated execution reports would use new universal contra sides—OPG (for specialists) and OPN (for all other members)—in comparing and clearing OARS assisted trades.

[3]In securities assigned to OARS, the system will be use for normal openings, delayed openings and reopenings.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16650/March 13, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-79-21)

ORDER APPROVING PROPOSED RULE CHANGE

On November 16, 1979,[1] the Midwest Stock Exchange, Incorporated ("MSE') filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would delete from the Rules and Practices for Trading on the MSE the requirement that specialists match at least one side of the primary market quotation for each stock in which they are registered as specialists. In addition, the proposal would delete from the MSE Rules current Article XX, Rule 34, pertaining to the MSE Agency Execution System ("MAX"), and would substitute a new Rule 34 governing the MSE Guaranteed Execution System ("BEST System"). The BEST System would require MSE specialists to guarantee execution, according to a prescribed formula, of all agency market and limit orders of between 100 and 399 shares for dually traded securities in which they are registered. Specifically, market orders entered into the system would be filled at the best consolidated quote system bid on a sell order, or the best consolidated quote system offer on a buy order.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16657, February 5, 1980) and by publication in the *Federal Register* (45 FR 9425, February 12, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the

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[1]This rule filing was amended by Amendment No. 1 to SR-MSE-79-21 filed with the Commission on January 24, 1980.

Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, specifically subsection (b)(5) thereof relating to the facilitation of transactions in securities and the removal of impediments to a national market system, and the rules and regulations thereunder.[2]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21447A/March 13, 1980

In SEC Docket Volume 19 No. 10 dated March 11, 1980 at page 765 the effective date of the rule and report form published in that release was given as January 1, 1980. The effective date should be January 1, 1981.

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[2]Approval of the proposed rule change would not alter the responsibility of the MSE and its specialists to comply with Rule 11Ac1-1 [17 CFR 240.11Ac1-1] under the Act, the Commission's "Quote Rule." Specifically the Commission has previously stated that if a market maker continuously communicates quotations which do not reflect its actual market, that activity would constitute a violation of Rule 11Ac1-1 and the issuance of fictitious quotations within the meaning of Section 15(c)(2) of the Act. See Securites Exchange Act Release No. 14415 (January 26, 1978) 43 FR 4342, 4347.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21469/March 7, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6196/March 7, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21470/March 10, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
320 Park Avenue
New York, New York 10022

MONONGAHELA POWER COMPANY
1310 Fairmont Avenue
Fairmont, West Virginia 26554

THE POTOMAC EDISON COMPANY
Downsville Pike
Hagerstown, Maryland 27140

WEST PENN POWER COMPANY
Cabin Hill
Greensburg, Pennsylvania 15601

(70-6396)

NOTICE OF PROPOSAL BY ELECTRIC UTILITY SUBSIDIARIES TO ISSUE AND SELL COMMON STOCK TO PARENT HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Allegheny Power System, Inc. ("Allegheny"), a registered holding company, and three of its electric utility subsidiaries, Monongahela Power Company ("Monongahela"), The Potomac Edison Company ("Potomac Edison") and West Penn Power Company ("West Penn") have filed a joint application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

At present all the outstanding common stock of Monongahela, Potomac Edison and West Penn is owned by Allegheny. Those subsidiaries propose to issue and sell to Allegheny from time to time through December 31, 1980, and Allegheny proposes to acquire, additional common shares of the subsidiaries. In order to make such sale to Allegheny, Potomac Edison will be required to increase the number of its authorized common shares from 9,625,000 shares to 10,375,000 shares. The number of shares to be issued by each subsidiary and the consideration to be received are as follows:

Subsidiary and Title of Issue	*Maximum No. of Shares*	*Cash Consideration*
Monongahela		
Common Stock—$50 par	500,000	$25,000,000
Potomac Edison		
Common Stock—no par	1,250,000	$25,000,000
West Penn		
Common Stock—no par	1,000,000	$20,000,000

The net proceeds of the issuance and sale of common stock by Monongahela, Potomac Edison and West Penn will be used by each of them to operate their businesses as utilities, including the payment or prepayment of short-term debt outstanding and the continuation of their construction programs. It is expected that Monongahela will have $17 million; Potomac Edison, $22 million; and West Penn, $50 million of short-term debt outstanding on April 30, 1980. For the year 1980 gross construction expenditures, are estimated to be approximately $71 million in the case of Monongahela, $68 million in the case of Potomac Edison, and $137 million in the case of West Penn.

Allegheny proposes to obtain the additional funds necessary to purchase the aforesaid common stock of Monongahela, Potomac Edison and West Penn from internal cash generation, short-term borrowings and the issuance and sale of other securities. As of November 30, 1979 Allegheny had no short-term debt outstanding.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,500. Various of proposed transactions are subject to the jurisdiction of the West Virginia Public Service Commission, the Ohio Public Utilities Commission, the Maryland Public Service Commission, the State Corporation Commission of Virginia, and the Pennsylvania Public Utility Commission. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21471/March 10, 1980

In the Matter of

GEORGIA POWER COMPANY
Atlanta, Georgia

(70-6401)

ORDER AUTHORIZING CHANGE IN UNSECURED DEBT LIMITATION AND SOLICITATION OF PROXIES IN CONNECTION THEREWITH

George Power Company ("Georgia"), an electric utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder regarding the following proposed transactions.

Georgia states that the terms of its preferred stock, as set forth in its Charter, provide that, except for limited specified purposes or except with the affirmative vote in favor thereof of the holders of at least a majority of the shares of the preferred stock at the time outstanding, the amount of securities representing unsecured indebedness having maturities of less than ten years as defined in the Charter ("short-term debt") which Georgia may issue or assume shall not exceed 10% of its other capitalization, namely the sum of (a) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by Georgia and then to be outstanding and (b) the capital and surplus of Georgia (paid-in, earned, and other, if any) as stated on its books of account.

Georgia states that on March 5, 1975, the holders of a majority of the outstanding preferred stock authorized Georgia, until July 1, 1980, to issue or assume unsecured short-term debt as above defined in excess of such 10% limitation, provided that (a) none of such additional short-term debt outstanding on July 1, 1980, shall mature on or after January 1, 1981, and (b) the company's total indebtedness represented by unsecured securities shall at no time exceed 20% of its other capitalization, as above defined. Such action was authorized by order of this Commission dated January 13, 1975 (HCAR No. 18765).

Georgia now intends to submit to the holders of its outstanding preferred stock a proposal that Georgia be authorized, for a further period of 5 years, until July 1, 1985, to issue or assume unsecured short-term debt in excess of the 10% limitation, provided that (a) none of such additional short-term debt outstanding on July 1, 1985, shall mature on or after January 1, 1986, and (b) the company's total indebtedness represented by unsecured securities shall at no time exceed 20% of its other capitalization, as above defined. The exercise by Georgia of any privilege altering the rights of its security holders is subject to the jurisdiction of this Commission.

Georgia plans to submit the proposed change in its unsecured debt limitation to the holders of its preferred stock for their approval at a special meeting to be held on April 30, 1980. Georgia additionally proposes to solicit proxies regarding such matter from the holders of its preferred stock. The affirmative vote of at least a majority of the shares of preferred stock at the time outstanding is required by Georgia's Charter to adopt the proposal.

Georgia expects to finance its construction program, to the extent possible, from the sales of first mortgage bonds and preferred stock, from the receipt of common equity contributions from The Southern Company, from asset sales, from arrangements with public authorities for the sale by them of revenue bonds, from leasing, and from internal sources. It is stated, however, that from time to time interim financing by means of short-term borrowings may be required during periods when Georgia is unable to satisfy the earnings coverage requirements contained in its mortgage and Charter for the issuance of additional first mortgage bonds and preferred stock; when The Southern Company is unable to make sufficient equity contributions; or when long-term securities rates are unattractive. Accordingly, Georgia believes it is desirable that it have maximum flexibility in respect of such borrowings, since borrowings in excess of the 10% Charter limitation may be required to avoid costly disruptions in the company's construction program.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21407), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said

declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 62 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21472/March 10, 1980

In the Matter of

NEW ORLEANS PUBLIC SERVICE INC.
MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-6404)

ORDER AUTHORIZING ISSUANCE AND SALE BY SUBSIDIARY OF COMMON STOCK TO HOLDING COMPANY AND OF PREFERRED STOCK AT COMPETITIVE BIDDING

New Orleans Public Service Inc. ("NOPSI"), an electric utility subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its public-utility subsidiary company, New Orleans Public Service Inc., have filed an application and amendments thereto with this Commission pursuant to Sections 6(b), 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transactions.

NOPSI proposes to issue and sell up to 150,000 shares of a new series of its preferred stock, $100 par value, subject to the competitive bidding requirements of Rule 50 under the Act. The new preferred stock will be created by appropriate corporate action and, except as to designation, dividend rate, redemption prices, and the terms and amount of sinking fund requirements for the purchase or redemption of shares of the new preferred stock, will have the same characteristics as, and rank *pari passu* with, the presently outstanding preferred stock of NOPSI.

The dividend rate of the new preferred stock (which will be a multiple of 1/25th of 1%), the price to be paid to NOPSI (which will be not less than $100 nor more than $102.75 per share, plus accrued dividends, if any), and the amount per share to be paid by the company to the successful bidder or bidders will be determined by competitive bidding. The terms of the new preferred stock will also include provisions for a sinking fund designed to redeem at $100 per share, plus accumulated dividends, 7,500 shares on each March 1 commencing in the year 1985, with NOPSI having a non-cumulative option to redeem an additional 7,500 shares on each March 1 during the sinking fund redemption period.

NOPSI also proposes to issue and sell to Middle South, and Middle South proposes to acquire, 1,000,000 shares of NOPSI's common stock having a par value of $10 per share ("additional common stock") at a cash purchase price of $10 per share, or $10,000,000 in the aggregate. NOPSI's Charter presently provides for 6,000,000 authorized shares of common stock having a par value of $10 per share, of which 5,935,900 shares, having an aggregate par value on the company's books of $59,359,000, are issued and outstanding and owned by Middle South. Accordingly, NOPSI further proposes, by appropriate corporate action and with the consent of Middle South, to amend its Charter, concurrently with the Charter amendment establishing the new preferred stock, so as to increase from 6,000,000 to 7,000,000 the number of authorized shares of its common stock, thereby providing the company with a sufficient number of authorized but unissued shares for purposes of consummating the proposed sale to Middle South of the additional common stock.

NOPSI and Middle South believe it is preferable for sales of the additional common stock to be timed to coincide with the company's cash needs from time to time, which are primarily determined by the nature and pace of its construction program. Therefore, NOPSI and Middle South have proposed that the sales of the additional common stock be effected from time to time at any time through and including December 31, 1980, in increments to be determined by the company and Middle South. Upon the consummation of the issuance and sale by NOPSI, and the acquisition by Middle South, of all the additional common stock, NOPSI intends to credit its Common Stock Account with the amount ($10,000,000) received by it for the additional common stock, and Middle South intends to debit its

Investment Account with the amount ($10,000,000) of its cash investment in the additional common stock.

NOPSI intends to apply the net proceeds derived from the issuance and sale of the new preferred stock and the additional common stock to the payment of short-term borrowings, estimated to total $4,000,000 at the time of the sale of the new preferred stock, to the financing in part of NOPSI's 1980 construction program, which provides for expenditures of approximately $30,400,000, and to other corporate purposes.

The Council of the City of New Orleans has authorized the proposed issuance and sale of securities by NOPSI. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21412), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21473/March 12, 1980

In the Matter

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

MIDDLE SOUTH ENERGY, INC.
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

ARKANSAS-MISSOURI POWER COMPANY
Blytheville, Arkansas

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

NEW ORLEANS PUBLIC SERVICE, INC.
New Orleans, Louisiana

(70-5399)

ORDER AUTHORIZING INCREASE IN AUTHORIZED BANK BORROWINGS, AND AMENDMENTS TO VARIOUS AGREEMENTS RELATING TO CONSTRUCTION PROGRAM

Middle South Utilities, Inc. ("MSU"), a registered holding company, its wholly-owned subsidiary, Middle South Energy, Inc. ("MSE"), which has been organized to construct and own electric generating facilities for the MSU system, and MSU's above-named principal operating subsidiaries have filed with this Commission post-effective amendments to the application-declaration in this proceeding pursuant to Sections 6(a), 7 and 12 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following transactions.

By order in this proceeding dated June 24, 1977 (HCAR No. 20090), MSE was authorized to enter into an Amended and Restated Bank Loan Agreement ("Bank Loan Agreement") with Manufacturers Hanover Trust Company, as agent, and a group of banks ("Banks") whereby MSE could borrow and reborrow on revolving credit basis up to $565,000,000 through and including December 31, 1982, all of such borrowings to be due and payable on such date. No repayments prior to such date are required. As security for loans under the Bank Loan Agreement, MSE assigned to the Banks certain of its rights under two agreements.

As of December 31, 1979, MSE has borrowed $547,000,000 under the Bank Loan Agreement. Proceeds of such borrowings have been applied to

the cost of construction of the Grand Gulf Nuclear Electric Generating Station ("Grand Gulf Project"), a two-unit station presently under construction in Grand Gulf, Mississippi, and currently estimated to cost $3,000,000,000. The first unit is scheduled for commercial operation in April, 1982, and the second unit is scheduled for commercial operation in April, 1985. Through December 31, 1979, approximately $1,400,000,000 has been expended on construction. To enable MSE to continue construction of the Grand Gulf Project and for the other purposes stated in the application-declaration, as amended, MSE proposes to amend the terms of the Bank Loan Agreement to modify the present amounts of the commitments of certain of the Banks thereunder. The two agreements assigning a security interest to the Banks will be amended accordingly, or new agreements may be entered into, to conform these agreements to the proposed changes. The total commitment of the Banks will be increased by $243,000,000 from $565,000,000 to not more than $808,000,000.

In addition to increasing the aggregate commitment, MSE has negotiated other changes in the Bank Loan Agreement and hereby requests authorization in order to: (1) extend the maturity of borrowings under the Bank Loan Agreement from December 31, 1982 to December 31, 1985 and borrow and reborrow any amounts committed on a revolving credit basis during such period; (2) agree that the aggregate commitment of the Banks can be reduced by $150,000,000 per year by the end of the years 1983 and 1984 and that any borrowings in excess of the reduced commitment be repaid at the time of the reduction; (3) agree that all unused commitments will terminate and that it will prepay all outstanding borrowings if it has not completed Grand Gulf Unit No. 1 by December 31, 1982; and (4) change the interest rate formula as follows:

Time Period	*Present Rate*	*Proposed Rate*
To March 31, 1980	110% x (3/4 of 1% plus MHT Rate*)	Same
April 1, 1980 to December 31, 1982	110% x (1% plus MHT Rate)	110% x (3/4 of 1% plus MHT Rate)
January 1, 1983 to December 31, 1985	None applicable	110% x (1% plus MHT Rate)

*Commercial loan rate of Manufacturers Hanover Trust Company in New York City on 90-day loans to its most responsible and substantial domestic corporate borrowers.

In all other respects the Bank Loan Agreement would remain unchanged from the form of agreement now in effect.

No finders fee or other similar fee, commission or renumeration is to be paid in connection with the negotiation of the terms of the proposed amendment to the Bank Loan Agreement or issuance of notes thereunder. The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated to total $65,000, including legal fees of $54,500 and miscellaneous expenses of $3,500. No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21426), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21474/March 12, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

OHIO POWER COMPANY
Canton, Ohio

(70-6015)
(as previously noticed in HCAR 20124, August 3, 1977)

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Pittsburgh, Pennsylvania

(70-6336)
(as previously noticed in HCAR 21177, August 7, 1979)

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

(70-6275)
(as previously noticed in HCAR 20962, March 5, 1979)

In the Matter of

NINEVEH WATER COMPANY
Johnstown, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

(70-6201)
(as previously noticed in HCAR 20695, September 6, 1978)

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Muhlenberg Township
Berks County, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-5709)
(as previously noticed in HCAR 19110, August 1, 1975)

In the Matter of

THE WISER OIL COMPANY
Sisterville, West Virginia

(31-769)
(as previously noticed in HCAR 21052, May 18, 1979)

NOTIFICATION OF WITHDRAWALS OF APPLICATIONS

The above-captioned companies have requested that their previously filed applications or the post-effective amendments thereto, specified in the caption, be withdrawn. Each respective application or amendment is hereby deemed withdrawn.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21475/March 13, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
New York, New York

(70-6410)

ORDER AUTHORIZING AMENDMENT OF CHARTER TO INCREASE AUTHORIZED SHARES OF COMMON STOCK AND SOLICITATION OR PROXIES IN CONNECTION THEREWITH

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed a declaration

and an amendment thereto with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder regarding the following proposed transactions.

Allegheny proposes to amend its charter to increase the number of shares of its common stock, par value $2 50, which Allegheny is authorized to issue from 40,000,000 to 55,000,000 shares. As of January 4, 1980, Allegheny has outstanding 39,828,556 shares of common stock. It is stated that, over the next three years, current projections indicate that Allegheny's subsidiaries will require common equity investments by Allegheny of $55 to $75 million per year for a total of about $200,000,000 in order to operate their electric utility business, including carrying on their construction programs. Most of such equity investments must be obtained through the issuance and sale by Allegheny of its common stock. Estimates of construction expenditures by Allegheny's subsidiaries for the years 1980 and 1981 are now projected to aggregate over $540 million.

The proposed amendment to the charter is to be submitted to Allegheny stockholders at their annual meeting to be held on May 8, 1980. Approval of the charter amendment requires the affirmative vote of the holders of a majority of the shares of common stock outstanding. Allegheny proposes to solicit proxies from its common stockholders to obtain the requisite approval of the proposed charter amendment.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21423), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 and 62 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11073/March 7, 1980

In the Matter of

MUTUAL INVESTING FOUNDATION
and
HERITAGE SECURITIES, INC.
One Nationwide Plaza
Columbus, Ohio 43216

(812-4549)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 22(d) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT APPROVING PROPOSED EXCHANGES

NOTICE IS HEREBY GIVEN that Mutual Investing Foundation ("Mutual"), registered under the Act as a diversified open-end, management investment company, and Heritage Securities, Inc. ("Heritage"), Mutual's principal underwriter and investment adviser (collectively referred to as "Applicants"), filed an application on October 5, 1979, and amendments thereto on February 8, 1980 and February 19, 1980, pursuant to Section 6(c) of the Act, for an order exempting certain transactions from the provisions of Section 22(d) of the Act and Rules 2a-4 and 22c-1 thereunder and, pursuant to Section 11(a) of the Act, for an order approving certain proposed exchanges. All interested persons are referred to the application on file with the

best copy available

Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Mutual is a common law trust which issues several classes of shares: MIF Fund, MIF Growth Fund ("Growth Fund"), MIF/Nationwide Bond Fund ("Bond Fund"), and MIF/Nationwide Money Market Fund ("Money Market Fund," collectively referred to with MIF Fund, Growth Fund and Bond Fund as the "Funds"). Applicants further state that shares of MIF Fund and Growth Fund are presently offered for sale to the public and that a registration statement to register shares of Bond Fund and Money Market Fund for sale to the public has not as yet been declared effective. They state that each of the Funds has its own investment requirements and that each is individually managed and distributed by Heritage.

Applicants state that the current public offering price of shares of MIF Fund and Growth Fund is, and that the current public offering price of shares of Bond fund will be, net asset value per share plus a sales charge which varies from 7-1/2% of the offering price on purchases of less than $2,500 to 1% on purchases in excess of $500,000. The application states that there is no minimum initial investment in MIF Fund, Growth Fund or Bond Fund. The application also states that at the time of an initial investment in Money Market Fund a one-time sales fee of $100 will be charged to the investor (regardless of the amount of the initial investment) and that because the minimum initial investment in Money Market Fund is $2500, this results in a maximum sales charge of 4% of the public offering price. Applicants state that once the $100 fee is paid, additional investments can be made without any further charge as long as the investor has not redeemed the entire account.

Applicants state that Heritage is a wholly-owned subsidiary of Nationwide Corporation, a holding company owned primarily by Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company. According to the application, Heritage's entire sales force is comprised of licensed insurance agents of the "Nationwide Group of Companies," as described in the application, and commissions paid to those agents from insurance premiums containing a sales charge are designed to compensate the agent for the effort put forth in making the customer contact, presenting his product, and securing the initial application.

Applicants propose to permit the application of amounts payable as benefits, proceeds or cash surrender values under certain contracts or policies of insurance issued by any of the Nationwide Group of Companies to purchase shares of either Bond Fund, Money Market Fund, or both, at net asset value per share plus a reduced sales charge equal to one-half the sales charge stated in the prospectus ("reduced price privilege"). Under Applicants' proposal, the privilege (1) must be exercised within 60 days of the receipt of the benefit check, (2) will apply to both group and individual policies, and (3) will be limited to monies received from the following types of insurance contracts issued by the Nationwide Group of Companies: life insurance policies, property and casualty insurance policies, accident and health insurance policies, disability income protection policies and liability insurance coverage. Applicants note that pursuant to an order of the Commission (Investment Company Act Release No. 10320, July 11, 1978), the reduced price privilege described above was offered to recipients of amounts payable under certain insurance contracts to permit the application of such proceeds toward the purchase of shares of MIF Fund and Growth Fund.

Applicants also propose to offer a transfer privilege to shareholders of Money Market Fund and to shareholders of the three other Funds ("transfer privilege") on the following basis: (1) Shares of Money Market Fund purchased directly or acquired through reinvestment of dividends and distributions may be exchanged for shares in the other three Funds only when the applicable sales charge is paid. The Money Market Fund investor will receive a one-time sales charge credit of up to $100 at the time of the first such exchange, and there is no credit unless the one-time sales charge had actually been paid. (2) With a minimum net asset value of $2500, shares of the other Funds may be exchanged at relative net asset value for Money Market Fund shares without the payment of a sales charge.

Applicants also propose to impose a $5.00 service fee on all transfers between Funds as to which no sales charge is otherwise applicable. Applicants state that Mutual offers its shareholders a transfer privilege permitting the investors of MIF Fund, Growth Fund, and upon its effective registration, of Bond Fund, to transfer shares between these Funds without a sales charge. Applicants state that in addition to this privilege, transfers of shares having a minimum net asset value of $2,500 may be made from MIF Fund, Growth Fund or Bond Fund into

Money Market Fund without a sales charge. Applicants further state that certain transfers from Money Market Fund to the other Funds may be made in which the sales charge is credited in full, and therefore these transfers in which no sales charge must be paid would also be subject to the $5.00 service fee.

Sections 22(d) and 11(a)

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter therefor shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus. Accordingly, Applicants request that an order permitting shares of the Funds to be sold at reducd sales charges pursuant to the proposed reduced price privilege and the proposed transfer privilege.

Applicants assert that the purpose of Section 22(d) of the Act is generally considered to be two-fold: preservation and strengthening of the system of distribution of mutual fund shares through properly licensed sales personnel under contract with principal underwriters and protection against unfair discrimination among buyers. Applicants further assert that the reduction of the sales charge on sales to Nationwide policyholders making their purchases with insurance proceeds would create no secondary market for the securities and would not thereby disrupt the orderly distribution pattern which has been established; moreover, that there is no danger that the proposed transactions would present an opportunity for unfair discrimination between purchasers due to inside information or unequal bargaining power.

The application states that the price reduction authority sought by Applicants is directly related to the reduced sales effort expended and lower cost incurred in connection with the sale of Bond Fund shares under the circumstances described in the application and that this same rationale applies to the price reduction sought for the sale of Money Market Fund shares. The application also states that the reduced effort and costs arise by reason of the previously established relationship between policyholder and insurance agent, and that the agent, upon delivery of the proceeds of the contract or policy of insurance, is merely offering an extension of services to an existing customer in his capacity as a registered representative of Heritage. Applicants contend that the sales effort required under the above-described circumstances would be significantly less than that which is involved in soliciting persons not having this relationship to the Applicants. Applicants state that the sales effort involved in subsequent solicitations is considerably less than that associated with first-time contacts because, once the customer-agent relationship has been satisfactorily established, the customer is more likely to turn to his or her agent for future needs. The application also states that this is true irrespective of the form of the insurance previously provided by the agent, whether life, health and accident, disability income, property and casualty, or liability, because in each case the agent makes his customer aware of his ability to make available any of the above insurance lines, as well as shares of the Funds.

Section 11(a) of the Act provides, in pertinent part, that it is unlawful for any registered open-end investment company or principal underwriter thereof to make an offer to the holders of its securities (or of the securities of any other open-end company) to exchange their shares for shares of the same or another such company on any basis other than the relative net asset values of the respective securities unless the terms of the offer have first been submitted to and approved by the Commission. Applicants request an order pursuant to Section 11(a) to the extent necessary and appropriate to permit Applicants to offer the proposed transfer privilege between the Funds and to charge a $5.00 service fee on transfers between Funds in which there is no sales charge.

Applicants state that with respect to the transfer privilege between Money Market Fund and the three other Funds, that such privilege would involve offers of exchange on a basis other than relative net asset value because of the restriction that shares of Money Market Fund may be exchanged for shares of the other three Funds only when the sales charge applicable to the present transaction (reduced by a one-time credit of up to $100) is paid. Applicants submit that an exercise of the transfer privilege as proposed would be consistent with the interests of protecting the investing public against unfair discrimination between classes of shareholders holding a beneficial interest in the same registered open-end investment company. Applicants believe that the availability of this transfer privilege on the terms described above would avoid inequities which would otherwise result if transfers were permitted between the Funds without regard to the sales

charges which the investor had paid in the initial purchase of the shares now sought to be exchanged.

With respect to the $5.00 service fee on all transfers between Funds in which there is no sales charge, Applicants assert that these exchanges require no additional sales effort because the persons redeeming these shares are and will be investors prior to the transfer and will remain investors after the transfer. Applicants state that no commissions are paid on these transfers which are handled by Heritage Financial Services, Inc. (the transfer and dividend disbursing agent for all of the Funds' shares), and that the purpose of the transfer privilege is thus to pass these cost savings on to the investing public. Applicants further assert that the imposition of a $5.00 service fee on no-load transfers will merely defray the administrative costs involved in the handling of each transfer. Applicants state that this service fee will not violate the spirit and purpose of the transfer privilege, and that Applicants believe that the imposition of the $5.00 service fee will enable the Applicants to continue to make this privilege available to investors. Applicants also believe that the imposition of the $5.00 service fee is in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Rules 2a-4 and 22c-1

As discussed above, Applicants state that a registration statement has been filed for Money Market Fund, but this registration has not been declared effective. Applicants further state that Money Market Fund has as its investment objective the achievement of the highest level of current income as is consistent with the preservation of capital and maintenance of liquidity through a diversified portfolio of high quality money market instruments maturing in one year or less; and that, to this end, Money Market Fund will seek to provide its investors with a convenient means of investing short-term funds where the direct purchase of money market instruments may be undesirable or impracticable.

The application states that the types of instruments in which Money Market Fund may invest include securities issued or guaranteed as to principal and interest by the United States government, its agencies or instrumentalities, certificates of deposit issued by major U.S., Canadian and foreign banks and savings associations, bankers' acceptances, documented discount notes and other commercial bank obligations, high-grade commercial paper and corporate obligations. Applicants state that repurchase agreements may be made by Money Market Fund with respect to any of these securities.

Applicants propose to compute net asset value per share of Money Market Fund to the nearest one cent on a share value of one dollar for purposes of effecting sales, redemptions and repurchases. Applicants state that Money Market Fund will use its best efforts to maintain a constant net asset value, or price, per share of $1.00; and that Money Market Fund will endeavor to reduce the amount of unrealized gains and losses which result, among other things, from interest rate changes by maintaining a dollar-weighted average portfolio maturity of 120 days or less.

As stated in the application, in Investment Company Act Release No. 9786 (May 31, 1977), the Commission, among other things, expressed its view that it would be inconsistent with the provisions of Rule 2a-4 for "money market" funds to "round off" calculations of their net asset value per share to the nearest one cent on share values of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and, therefore might not reflect properly the values of the underlying portfolio instruments as required by Rule 2a-4.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, *inter alia*, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company.

Applicants state that many investors desire an investment vehicle which offers a stable net asset value per share, and that the exemption sought in the application would enhance the ability of the Applicants to achieve such stability and the shareholders, under ordinary circumstances, could be assured that Money Market Fund shares could be purchased and redeemed at a constant net asset value per share. Applicants further submit that the relief requested would provide the shareholders of Money Market Fund the convenience of being able to determine the value of their shares simply by knowing the number of shares they own, thus facilitating recordkeeping. Applicants state that the Board of Directors of Heritage and the Board of Trustees of Mutual have determined in good faith that the proposed method of calculating net asset value per share under the circumstances described above, absent unusual circumstances, is appropriate and in the best interest of Money Market Fund shareholders.

Applicants submit that the requested exemptions from the provisions of Rules 2a-4 and 22c-1 under the Act are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the following conditions may be imposed in an order granting such exemptive relief:

(1) The Board of Trustees of Mutual has undertaken as a particular responsibility within the overall duty of care owed to the shareholders to assure to the extent reasonably practicable, taking into account current market conditions affecting the investment objectives of Money Market Fund, that the price per share in Money Market Fund as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicants will maintain a dollar-weighted average portfolio maturity appropriate to their objective of maintaining a stable price per share, and they will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Applicants' purchase of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments which the Board of Directors of Heritage and the Board of Trustees of Mutual determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors of Heritage and the Board of Trustees of Mutual.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions to the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 31, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11074/March 7, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6196/March 7, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11075/March 7, 1980

In the Matter of

COPENHAGEN HANDELSBANK
c/o John W. Erickson, Esq.
White & Case
289 Park Avenue
New York, New York 10017

(812-4603)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Copenhagen Handelsbank ("Applicant") filed an application on January 25, 1980, and an amendment thereto on February 8, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant states that it is a commercial bank and one of the two largest banks in Denmark, whose principal office is located at 2, Holmens Kanal, DK-1091, Copenhagen, Denmark. According to the application on December 31, 1978, Applicant's consolidated assets and deposits, amounted to $6,635,000,000 and $4,712,000,000, respectively. Applicant states that it had 8,500,000 shares of common stock outstanding as of December 31, 1978, which represented $208,700,000 in aggregate market value. Applicant further states that it has 392 branches in Denmark, a branch in the Cayman Islands and representative offices, including one wholly-owned subsidiary, in eight other countries. Applicant further represents that it owns minority interests in banks located in London, New York, Zurich and Paris.

According to the application, Applicant's principal business consists of financing Danish trade an industry by providing overdrafts, short and medium term-loans, acceptance credits, and discounting trade bills. As a commercial bank, Applicant represents that its customer base covers a wide spread of Denmark's industry and commerce, not one of which accounts for a significant proportion of Applicant's total loans or deposits. In addition to its commercial lending activities, Applicant provides other traditional banking services such as a check guarantee system and various payment services, savings plans and custodial and safekeeping services. Applicant further provides a full range of investment advisory services to its corporate and government clients. Applicant also provides a broad range of international banking services, and represents that it presently handles approximately 30 percent of the total Danish foreign exchange business. In addition, Applicant states it is involved in both the domestic and international capital markets by way of managing and underwriting securities issues of its customers, and that it acts as a securities broker in Denmark. However, Applicant represents such underwriting activities for the three years ended December 31, 1978, never were as much as one percent of its annual consolidated gross revenues.

Applicant states that on December 31, 1978, its total loans, advances and credits (including deposits with other banks) amounted to $3,823,000,00, representing 57.6% of consolidated assets. Interest income from such loans, advances and credits accounted for 69.9% of Applicant's total income for the year ending December 31, 1978. According to the application, 76.8% of Applicant's deposits are those of Danish citizens, companies and other Danish entities. Applicant further states that as of such date its investment securities amounted to $958,000,000 or 14.4% of Applicant's consolidated assets.

According to the application, Applicant is closely supervised and regulated by the Danish government. Under Danish banking legislation, all banks are supervised by the Supervisor of Banks ("Supervisor"), who is responsible to the Minister of Commerce. This supervision includes, among other things, a requirement that the banks submit monthly

reports to the Supervisor, which are supplemented by unannounced inspections on the premises of such banks. The banking legislation also sets minimum liquidity requirements to insure that the individual bank can meet its maturing obligations. In order to safeguard the interest of depositors, Applicant states that Danish banking legislation also establishes ceilings on individual commitments or specified transactions, expressed as a percentage of shareholders equity. Moreover, the net capital of every Danish bank must represent not less than 8% of its total debt (excluding subordinated loan capital and certain other items).

According to the application, Applicant proposes to issue and sell unsecured prime quality commercial paper, denominated in United States dollars, to a commercial paper dealer in the United States which will then reoffer the commercial paper in minimum denominations of $100,000 to institutional investors and other entities and individuals in the United States who normally purchase commercial paper. Applicant states that its purpose for making this offering is to provide an additional source of supply of United States dollars to supplement Applicant's existing sources of United States dollars. Applicant represents that its commercial paper will rank *pari passu* among themselves, equally with all its other unsecured, unsubordinated indebtedness, including Applicant's deposit liability, and ahead of its share capital. Applicant plans to sell the notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of its United States counsel that the offering will qualify for exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant will not proceed with its proposed offering until it has received such an opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the proposed issue of securities and all future issues of securities of Applicant in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and that its United States counsel shall have certified that such rating has been received; provided, however, that no such rating shall be required to be obtained, if in the opinion of United States counsel for Applicant, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act. Applicant undertakes to ensure that the dealer will provide each offeree who has indicated an interest in Applicant's securities, and prior to any sale of the commercial paper to such offeree, with (i) a memorandum describing the business of Applicant, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, and (iii) the most recent publicly available unaudited interim financial statements of Applicant. Applicant represents that the aforementioned financial statements will be accompanied by a brief paragraph highlighting the differences between Danish accounting principles and generally accepted accounting principles employed by United States companies. Applicant further represents that such memoranda will be at least as comprehensive as those customarily used in commercial paper offerings in the United States. Such memoranda will be updated periodically to reflect material changes in Applicant's financial status. Applicant further represent that any future offerings of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in the proposed offering. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by such Act and the rules and regulations thereunder. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Applicant represents that it will appoint its special United States counsel as its agent to accept service of process in any action based on the commercial paper and instituted in any State or Federal court by the holder of any of its commercial paper. Applicant further represents that Applicant will expressly accept the jurisdiction of any State or Federal court in the City and State of New York with respect of any such action and that both its appointment of an authorized agent and such consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the commercial paper

have been paid. Applicant represents that it will similarly consent to jurisdiction and appoint an agent for service of process in suits arising from any other offerings of securities that it may make in the United States, which offerings Applicant states may include debt securities but not shares of capital stock.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under that Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant states, among other things, that compliance by it with a number of substantive provisions of the Act would, as a practical matter, conflict with the banking policies and regulations of the Danish banking authorities; and that Applicant would thus be effectively precluded from selling securities in the United States if it was required to register as an investment company and comply with such provisions of the Act. Applicant asserts that it is a major commercial bank subject to extensive regulation by Danish banking authorities, and therefore that application of the requirements of the Act to Applicant would be unnecessary. As a Danish commercial bank subject to such regulation Applicant argues that it is significantly different from the type of institution that Congress intended the Act to regulate. Applicant concludes that granting its requested exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than March 31, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11076/March 10, 1980

In the Matter of

CAPITAL BOND FUND
2491 West Shaw Avenue
Fresno, California 93711

(811-2722)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY.

On February 11, 1980, a notice was issued (Investment Company Act Release No. 11042) stating the Capital Bond Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on December 21, 1979, and amendments thereto on December 28, 1979, and January 31, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Capital Bond Fund, under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11077/March 11, 1980

In the Matter of

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

AND

JOHN HANCOCK VARIABLE ACCOUNT A
John Hancock Place
Boston, MA 02117

(812-4589)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT FOR AN AMENDMENT OF AN EXISTING ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

John Hancock Mutual Life Insurance Company ("John Hancock"), a mutual life insurance company incorporated under the laws of the State of Massachusetts, and John Hancock Variable Account A, a diversified, open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), filed an application on December 19, 1979 for an order pursuant to Section 6(c) of the Act amending an existing order of exemption from the provisions of Section 22(d) of the Act (Investment Company Act Release No. 7430, October 17, 1972) to permit holders of fixed-dollar insurance policies and annuity contracts issued by John Hancock to apply amounts payable under such fixed-dollar policies and annuity contracts to the purchase of variable annuity contracts subject to a deduction for sales expense equal to one-half the normal amount.

On February 13, 1980 a notice was issued (Investment Company Act Release No. 11046) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No hearing has been requested and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested amendment of an order of exemption from Section 22(d) of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11078/March 12, 1980

Administrative Proceeding File No. 3-5889

In the Matter of

FIDELITY DAILY INCOME TRUST
82 Devonshire Street
Boston, Massachusetts 02109

and

WALTER UNTERMEYER, JR.
C/O SILVERMAN AND HARNES
75 Rockefeller Plaza
New York, New York 10019

(812-4593)

NOTICE AND ORDER FOR HEARING ON APPLICATION FOR ORDER PURSUANT TO SECTIONS 2(a)(9) AND 2(a)(19) OF THE ACT, AND NOTICE AND ORDER OF TEMPORARY EXEMPTION PURSUANT TO SECTION 6(c) OF THE ACT FROM THE PROVISIONS OF SECTION 2(a)(9) OF THE ACT

NOTICE IS HEREBY GIVEN that Walter Untermeyer, Jr. ("Applicant"), a shareholder of Fidelity Daily Income Trust ("the Fund"), filed an application on January 14, 1980, and an amendment thereto on February 19, 1980, for an order, pursuant to Sections 2(a)(9) and 2(a)(19) of the Investment Company Act of 1940 ("Act") or, alternatively, pursuant to Section 554(e) of the Administrative Procedure Act ("APA"), determining that Messrs. George K. McKenzie and William R. Spaulding, trustees of the Fund, are controlled and interested persons of Fidelity Management and Research Company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Fidelity Management and Research Company ("Adviser") is the Fund's investment adviser; FMR Corporation ("FMR Corp.") is the parent company of the Adviser; Fidelity Distributors Corporation ("Distributor") is the Fund's principal underwriter; and FMR Service Company ("Service") is the Fund's transfer agent. The application states that the Fund is a Massachusetts Business Trust, registered as a no-load diversified, open-end management investment company, and that the Fund is one of a relatively new breed of mutual funds commonly known as "liquid asset funds". Applicant alleges generally that the performance of Messrs. McKenzie and Spaulding as trustees of the Fund, and their compensation from other funds under contract with the same investment adviser ("the Fidelity Group"), indicates that they are controlled and interested persons of the Adviser. The application also states that the Applicant, Walter Untermeyer, Jr., is a plaintiff in a shareholder derivative action pending in the United States District Court for the District of Massachusetts, entitled *Walter Untermeyer, Jr.* v. *Fidelity Daily Income Trust*, Civil Action No. 76-1802-N. Applicant describes the complaint in that action as alleging three claims: one based on the alleged improper pricing of the Fund's portfolio; the second seeking to recover excessive compensation received by the Adviser contrary to the fiduciary duty of such Adviser under Section 36(b) of the Act; and the third asserting a claim for the alleged failure of the Fund's trustees to make an informed evaluation of the terms of the advisory contract, as required by Section 15(c) of the Act.

To support his request for Commission determinations of control and interested person status, Applicant alleges that: (1) the Fund, since its inception in 1974, has entered and renewed each year an advisory service contract with its Adviser, that such contract has been renewed annually by the vote of Messrs. McKenzie and Spaulding and that the Adviser performs little, if any, of the functions provided for in that contract; (2) each shareholder pays a monthly fee to Service, such fee is not in the Fund's reported yield, making that yield misleading; (3) Service, though designated transfer agent, dividend disbursing agent and shareholders' servicing agent in its contract with the Fund, merely performs an accounting function; (4) the designated principal underwriter of the Fund is a shell company with no income or employees, and performs no functions for the Fund; (5) although the Fund is advertised as a no-load fund, all selling expenses are borne directly and indirectly by the Fund and the Fund shareholders are charged a continuing load; and (6) fees charged to the Fund under contracts with the Adviser, Service and Distributor are generally unfair and the terms of such contracts are viewed in favor of FMR Corp.

Messrs. McKenzie and Spaulding have filed a Statement in Opposition to the Untermeyer request for relief requesting that the Commission: (1) decline to exercise jurisdiction over the application for a Commission order as a matter of comity because, they allege, the issues presented by such request are currently pending before a court of competent jurisdiction; (2) deny Applicant's request for a Commission order on its merits within sixty days after the filing thereof for failure to establish valid legal or factual grounds for an affirmative determination; or (3) in the absence of (1) or (2) above, grant an exemption pursuant to Section 6(c) of the Act from the provisions of Section 2(a)(9) of the Act, to the extent that such section provides that if an application filed thereunder is neither granted nor denied by the Commission within sixty days after the filing thereof, the determination sought by such application shall be deemed to have been temporarily granted pending the final determination of the Commission. Messrs. McKenzie and Spaulding state that such exemption would not adversely affect the interests of the Fund's

shareholders, but would only serve to maintain the status quo for the period it remains in effect.

Section 2(a)(9) of the Act defines "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company". Section 2(a)(9) also grants a presumption to a natural person not to be a controlled person, and states that such presumption shall continue until a determination to the contrary is made by the Commission by order on its own motion, or upon filing of an application by an interested person. Finally, Section 2(a)(9) states that if an application filed thereunder is not granted or denied by the Commission within sixty days after the filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination by the Commission.

Section 2(a)(19) of the Act defines "interested person of another person", with respect to an investment adviser of or principal underwriter for any investment company as, *inter alia*, "any affiliated person of such investment adviser or principal underwriter". Section 2(a)(3) of the Act defines "affiliated person of another person" to include "any person directly or indirectly controlling, controlled by, or under common control with, such other person." Section 2(a)(19) of the Act further defines "interested person of another person", with respect to an investment adviser of or principal underwriter for any investment company, as ". . .any natural person whom the Commission by order shall have determined to be an interested person by reason of having had. . .a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter". Finally, Section 2(a)(19) of the Act defines "interested person of another person", with respect to an investment company as, *inter alia*, "any interested person of any investment adviser of or principal underwriter for such company".

Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS HEREBY GIVEN that the Commission has determined that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to issue a temporary order exempting the trustees of the Fund, named in the application filed by Walter Untermeyer, Jr., from the provisions of Section 2(a)(9) of the Act to the extent that such section provides that if an application filed thereunder is not granted or denied by the Commission within 60 days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. In granting the requested temporary order the Commission takes no position on any issue raised by the Untermeyer application.

NOTICE IS FURTHER GIVEN that the Commission has determined that it is appropriate in the public interest and in the interest of investors that a hearing be held, limited to written briefs with respect to the application filed by Walter Untermeyer, Jr. requesting determinations of control and interested person status under Sections 2(a)(9) and 2(a)(19) of the Act, to resolve certain jurisdictional issues raised by such application. It appears that the jurisdictional issues raised in this matter are legal issues, and not factual issues, and therefore an evidentiary proceeding to consider them is not warranted. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act that, pending final determination of the Commission on the application filed by Walter Untermeyer, Jr., the trustees named in such application be, and they hereby are, exempted from the provisions of Section 2(a)(9) of the Act to the extent that such section provides that if an application filed thereunder is not granted or denied by the Commission within 60 days after filing thereof, the determinations sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon, provided that such temporary order is not intended nor should be construed to restrict the ability of the courts to take such action as they may deem appropriate on the above shareholder derivative action.

IT IS FURTHER ORDERED, pursuant to Section 40(a) of the Act, that a hearing, limited to written briefs on

the folowing jurisdictional issues, under the applicable provisions of the Act and the Rules of the Commission thereunder, be held pursuant to a schedule to be determined by the Secretary of the Commissioin.*

(1) Are the issues pending before the Commission in the Untermeyer application so closely related to those raised in the Untermeyer lawsuit that the Commission should decline to exercise its jurisdiction under the Act and defer to the federal district court on the basis of comity?

(2) Does the doctrine of primary jurisdiction require the Commission to exercise its jurisdiction over the Untermeyer application?

IT IS FURTHER ORDERED, that the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this Notice and Order by certified mail to Walter Untermeyer, Jr., at the address noted hereinabove, and to George K. McKenzie and William R. Spaulding, c/o Fidelity Daily Income Trust, at the address noted hereinabove, and that notice to all other persons be given by publication of this Notice and Order in the *Federal Register*, that a copy of the Notice and Order shall be published in the "SEC Docket", and that an announcement of the aforesaid hearing shall be included in the "SEC Digest."

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11079/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6197/March 13, 1980

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*Since the Commission is requesting the submission of briefs on certain jurisdictional issues raised by Applicant's request for an order pursuant to Sections 2(a)(9) and 2(a)(19) of the Act, there is no need for the Commission to consider this request under the APA.

INVESTMENT COMPANY ACT OF 1940
Release No. 11080/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6198/March 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11081/March 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6199/March 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11082/March 12, 1980

In the Matter of

REAL ESTATE ASSOCIATES LIMITED II,
SONNENBLICK-GOLDMAN CORP. OF CALIFORNIA,
and
NATIONAL PARTNERSHIP INVESTMENTS ASSOCIATES
1901 Avenue of the Stars
Los Angeles, California 90067

(812-4580)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Real Estate Associates Limited II ("REAL II"), a California limited partnership organized to invest through other limited partnerships in government-assisted low and moderate income rental housing, and its general partners, National Partnership Investments Corp. (formerly Sonneblick-Goldman Corp. of California) and National Partnership Investments Associates (collectively, "Applicants"), filed an application on December 11, 1979, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting REAL II from all provisions of the Act and the rules thereunder. Applicants filed amendments

to said application on February 4, 1980, and March 5, 1980. In the second amendment, Applicants noted the change in the name of Sonnenblick-Goldman Corp. of California to National Partnership Investments Corp.

On February 7, 1980, a notice was issued (Investment Company Act Release No. 11039) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing. The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that Real Estate Associates Limited II be, and hereby is, exempted from all provisions of the Act and rules thereunder, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11083/March 13, 1980

In the Matter of

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

AND

JOHN HANCOCK VARIABLE ACCOUNT C-1
John Hancock Place
Boston, Massachusetts 02117

(812-4583)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 17(f), AND 27(c)(2) OF THE ACT AND RULE 17f-2 THEREUNDER

NOTICE IS HEREBY GIVEN that John Hancock Variable Account C-1 (the "Account"), a diversified, open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), and John Hancock Mutual Life Insurance Company ("John Hancock"), a mutual life insurance company incorporated under the laws of the State of Massachusetts (hereinafter collectively called "Applicants"), have filed an application on December 14, 1979 and an amendment thereto on February 25, 1980 for an order pursuant to Sections 17(f), and 27(c)(2) of the Act and Rule 17f-2 thereunder. All interested persons are referred to the aplication on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

John Hancock established the Account as an investment medium for certain variable annuity contracts (the "Contracts") to be issued by John Hancock. The Contracts offered for sale by John Hancock, as principal underwriter of Account C-1, may be Single Payment Immediate or Deferred Contracts (hereinafter collectively called "Single Payment Contracts") or Periodic Payment Deferred Contracts ("Periodic Payment Contracts"). In the case of all Contracts, John Hancock will make deductions from purchase payments for sales and administrative expenses, for taxes, if any, based on the amount of the purchase payment and, in the case of Deferred Contracts, for the undertaking of John Hancock to pay a minimum death benefit. Under Periodic Payment Deferred Contracts, total deductions from purchase payments for sales expenses will equal 4.5% of the first $5000 of purchase payments, 3.5% the next $5000 of purchase payments, 2.5% of the next $15,000 of purchase payments, and 2% of any purchase payments over $25,000. The deductions under Periodic Payment Deferred Contracts for administrative expenses are 1.5% of purchase payments up to $25,000 and 1% of purchase payments over that amount. The deduction for the minimum death benefit is 0.5% of every purchase payment. Further, under Periodic Payment Deferred Contracts a maintenance charge equal to the lesser of $10 or 2% of the value of the Contract will be deducted from the Contract annually.

Under Single Payment Contracts, the maximum deduction from any purchase payment for sales expenses will be 3.5% for either a Deferred or Immediate Contract. Additionally, there is an administrative expense deduction of $50 plus a

maximum of 0.5% of the first $25,000 of the purchase payment under either kind of Single Payment Contract and a deduction under the Single Payment Deferred Contract of 0.5% of the purchase payment for the minimum death benefit.

Section 27(c)(2)

Section 27(c)(2) of the Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a bank as trustee or custodian and held under an indenture or agreement containing, in substance, the provisions required by Section 26(a)(2) and (3) for trust indentures of a unit investment trust.

Applicants assert that all purchase payments received under the Contracts, after deductions for sales and administrative expenses, are to be applied or held for later application to the purchase of investments for the Account, of which John Hancock will have custody as owner and not as trustee. Exemption is requested from Section 27(c)(2) to permit all purchase payments received under the Contracts to be held and applied by John Hancock in the manner set forth in its Management Agreement which requires, in part, that moneys received for the Account be deposited in one or more cash accounts identified as assets of the Account maintained in one or more banks which will have the qualifications prescribed in paragraph (1) of Section 26(a) of the Act for trustees of unit investment trusts, but which banks will not act as trustee or custodian, or under an indenture or agreement meeting the requirements in Sections 26(a)(2) and (3).

Section 17(f)

Section 17(f) of the Act provides, in pertinent part, that every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank having the qualifications prescribed in Paragraph 1 of Section 26(a) for trustees of unit investment trusts; (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934; or (3) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Rule 17f-2 provides, among other things, that such assets be placed in a bank subject to the requirements of the rule, one of which limits the persons who shall have access to such assets to only certain specific individuals.

Applicants request an exemption from the provisions of Section 17(f) and Rule 17f-2 to the extent necessary to permit the securities and similar investments of Account C-1 to be placed and maintained in the custody of John Hancock in its vault located at its Home Office in Boston, Massachusetts or in a securities depository in accordance with the terms and conditions of Rule 17f-4 under the Act.

In support of their requested exemptions from Section 27(c)(2), Section 17(f) and Rule 17f-2 thereunder, Applicants state that John Hancock is subject to extensive supervision and regulation by the Commission of Insurance of Massachusetts, and to the applicable insurance laws in the other jurisdictions in which John Hancock does an insurance business. In addition, under Massachusetts law, John Hancock cannot abandon its obligations to Owners or annuitants until they have been fully discharged, and the assets of the Account, equal to the reserves and other liabilities under the Contracts, are not chargeable with liabilities arising out of any other business that John Hancock may conduct. Applicants also represent that John Hancock's vault is similar or superior in every respect to the vaults of most banks and that John Hancock maintains within it securities and other investments having a value in excess of $7,000,000,000. In addition, the supervisory functions of the Massachusetts Commissioner of Insurance include periodic inspections of John Hancock's vault and examination of every aspect of John Hancock's operations. Applicants further state that the Account's investment will be physically segregated at all times, that its securities may be withdrawn only for certain purposes, that its investments will at all times be subject to inspection by the Commission, that each person depositing or withdrawing investments will sign a notation in respect thereof, and that only certain designated persons will have access to the securities and other investments in the Account as follows: (1) two or more jointly of the not more than 10 officers or responsible employees of the Account or of John Hancock designated pursuant to a resolution of the Board of Managers of the Account; (2) properly authorized officers and employees of John Hancock; (3) for the purposes of verification, audit and examination, independent public accountants jointly with any of the persons designated above; and

(4) authorized employees or agents of the state insurance regulatory authorities.

Section 6(c) authorizes the Commission upon application to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act or the Rules and Regulations promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants have consented that any order granting the requested exemption from Section 27(c)(2) be made subject to the conditions (1) that the charges under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved to the Commission for such purpose, and (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charge out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

NOTICE IS HEREBY GIVEN that any interested person may not later than April 9, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted; or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11084/March 13, 1980

In the Matter of

DON F. GASTON
43 Baldwin Farms Road North
Greenwich, Connecticut

ORDER PURSUANT TO SECTION 9(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 9(a) OF THE ACT

On February 11, 1980, the Commission issued a notice of filing of an application by Don F. Gaston pursuant to Section 9(c) of the Investment Company Act of 1940 for exemption from the provisions of Section 9(a) of the Act and an order of temporary exemption pending determination of the application. (Investment Company Act Release No. 11041.) The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application might be issued on the basis of the information stated therein unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the prohibitions of Section 9(a) of the Act, as applied to Don F. Gaston as a result of the entry of a Final Judgment of Permanent Injunction and Ancillary Relief against Mr. Gaston in *Securities and Exchange Commission* v. *Montauk Corp.* (D.D.C. Civil No. 78-1364), would be unduly or disproportionately severe.

WHEREFORE, IT IS ORDERED pursuant to Section 9(c) of the Act that Don F. Gaston be and he hereby is exempted from the provisions of Section 9(a) of the Act to the extent that said provisions would become operative as a result of the entry of the Final Judgment referred to above.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11085/March 13, 1980

In the Matter of

INTERCAPITAL TAX-EXEMPT SECURITIES INC.
and
INTERCAPITAL INDUSTRY-VALUED SECURITIES INC.
One Battery Park Plaza
New York, New York 10004

(812-4597)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM SECTION 2(a)(19)

NOTICE IS HEREBY GIVEN that InterCapital Tax-Exempt Securities Inc. and InterCapital Industry-Valued Securities Inc. ("Applicants"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management companies, filed an application on January 22, 1980, for an order of the Commission pursuant to Section 6(c) of the Act declaring that Dr. Irwin Friend, a director of both Applicants, shall not be deemed an interested person of either Applicant within the meaning of Section 2(a)(19) of the Act solely by reason of his position as director of PMI Securities Co. ("PMI"), which is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

PMI was originally organized in 1972 to be a holding company of two mortgage insurance companies ("insurance companies"). In 1973 PMI and the insurance companies were acquired by Allstate Insurance Company ("Allstate") and PMI commenced doing business as a "matchmaker," that is, bringing together buyers and sellers of whole mortgages and participations on residential properties without compensation. In 1978 PMI was sold by Allstate to the newly-formed PMI Mortgage Corporation, a company which is a wholly-owned subsidiary of Allstate Enterprises, Inc., which is, in turn, a wholly-owned subsidiary of Sears, Roebuck & Co.

Applicants state that PMI is not now and since its registration as a broker-dealer under the Exchange Act has not been engaged in the business of buying or selling any securities either as broker or dealer. However, PMI contemplates acting as a broker-dealer in the distribution of mortgage pass-through securities issued by its parent, PMI Mortgage Corporation. These securities may be registered pursuant to the Securities Act of 1933. Applicants state that non-registered private placements of securities are also contemplated. Dr. Friend is Edward J. Hopkinson Professor of Finance and Economics at The Wharton School of the University of Pennsylvania, and is also Director of the Rodney L. White Center for Financial Research at the University of Pennsylvania. Applicants state that Dr. Friend has no past employment, consulting, contractual, financial, or other relationship with PMI or any affiliated person of PMI, other than as a director of PMI, the insurance companies and PMI Mortgage Corporation.

InterCapital Tax-Exempt Securities Inc. represents that its investment policy requires it to invest all its assets in fixed-income securities, primarily tax-exempt securities or other short-term, fixed-income securities. InterCapital Industry-Valued Securities Inc. represents that its investment policy requires it to invest primarily in common stocks, with a portion of its assets invested, at times, in corporate debt securities or money market instruments. Applicants both represent that they are precluded from purchasing interests in real estate, except that they may, among other things, purchase securities which are secured by real estate or interests therein. Applicants state that they believe the mortgage pass-through securities proposed to be the subject of PMI's broker-dealer business are not securities which would generally be appropriate for investment by either Applicant. In any event, Applicants undertake that they will not, under any circumstances, do any business, directly or

indirectly, with PMI in any capacity, whether as broker, dealer, or otherwise so long as Dr. Friend is a director of Applicant and a director of PMI.

Section 2(a)(19) of the Act, in pertinent part, defines an "interested person" of an investment company to include any broker or dealer registered under the Exchange Act or any affiliated person of such broker or dealer. The term "affiliated person" of another person is defined by Section 2(a)(3)(D) of the Act to include a director of such other person. Dr. Friend is a director of PMI and is, therefore, an affiliated person of PMI. Applicants do not view Dr. Friend to be an interested person of either of the Applicants but seek to have Dr. Friend determined by order to be a disinterested director, notwithstanding his status as a director of PMI.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that it would be misleading to stockholders and unfair to Dr. Friend to identify him as an interested director of Applicant since such a label, they contend, implies the existence of a question of actual or potential conflict of interest which, Applicants claim, does not in fact exist. Applicants assert that because of Dr. Friend's personal stature and the removal of any possibility that Applicants will do business with PMI, Dr. Friend will be in a position to act independently on behalf of Applicants and their respective shareholders without any possible impairment arising out of his affiliation with PMI.

Accordingly, Applicants believe that it would be in their best interests to have Dr. Friend's status as a disinterested director clearly acknowledged and that the requested exemption is therefore appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 9, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 715/March 10, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16640/March 10, 1980

LITIGATION

Litigation Release No. 9032/March 11, 1980

SECURITIES AND EXCHANGE COMMISSION v. *WILLIAM R. LUMMIS, ET AL., AS ADMINISTRATORS OF THE ESTATE OF HOWARD R. HUGHES, JR., ET AL.* (United States District Court for the Northern District of California) Civil Action No. 75-0589 AJZ

The Securities and Exchange Commission today announced that Judge Alfonso J. Zirpoli of the United States District Court for the Northern District of California has entered the Final Order and Judgment in its action against Summa Corporation, Hughes Air Corp., and the Administrators of the Estate of Howard R. Hughes. A sum in excess of $40,000,000 has been disgorged and, pursuant to settlements in related private actions, is being distributed to former Air West stockholders. This is the largest recovery ever obtained in a Commission-related action.

The Judgment signed by Judge Zirpoli stated that, the Commission had engaged in extensive pretrial discovery, secured injunctions and disgorgement against several other defendants, and "through its efforts contributed significantly and substantially to the progress of the private related actions. . . .".

The allegations in the Commission's complaint arose from the Hughes Tool Co., now known as Summa Corporation, acquisition of Air West in the late 1960's. Only one defendant remains in the action, Hughes' former counsel Chester C. Davis. Trial of the charges against Davis, including fraud, stock manipulation and violation of proxy provisions, is set for May 19, 1980 in San Francisco.

Litigation Release No. 9033/March 12, 1980

SEC v. *SIMPSON, EMERY & COMPANY, INC.* (W.D. Pa., Civil Action No. 80-285)

Paul F. Leonard, Administrator, and Thomas H. Monahan, Assistant Administrator (Philadelphia), of the Washington Regional Office of the Securities and Exchange Commission, announced that on March 3, 1980, the Commission filed a complaint in the United States District Court for the Western District of Pennsylvania seeking to enjoin Simpson, Emery & Company, Inc. ("Simpson, Emery"), a registered broker-dealer located in Pittsburgh, Pennsylvania, from violations of the net capital, periodic reporting, and books and records provisions of the Securities & Exchange Act of 1934. Simultaneous with the filing of the Commission's complaint, the Securities Investor Protection Corporation ("SIPC") filed in the Commission's action an application for a protective decree and the appointment of a trustee for Simpson, Emery pursuant to the Securities Investor Protection Act. SIPC's application alleged that Simpson, Emery had failed to meet its obligations to its customers and it is unable to meet its obligations as they mature.

On March 3, 1980, U.S. District Court Judge Daniel P. Snyder entered an order of Preliminary Injunction against Simpson, Emery enjoining it from violations of the provisions of the federal securities laws set forth in the complaint. Judge Snyder also granted the application of SIPC for a protective decree and for the appointment of a trustee for the liquidation of the business of Simpson, Emery. Carl F. Barger, Esq., was appointed as trustee for Simpson, Emery and the law firm of Eckert, Seamans, Cherin & Mellott was appointed counsel for the trustee. The defendant, Simpson, Emery consented, without admitting or denying the allegations of the Commission's complaint and SIPC's application, to the entry of the preliminary injunction and the order appointing a trustee for the liquidation of the business of the defendant.

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19/13

sec docket

VOLUME 19, NO. 13 APRIL 1, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6200	908
Securities Exchange Act	16651-82	913
Public Utility Company Holding Company Act	214760-84	939
Trust Indenture Act	558	953
Investment Company Act	11086-95	U953
Litigation	9034-42	971

This listing covers releases issued from 3/14/80-3/20/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENT

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33-6200 General Statement of Policy concerning the implications under the federal securities laws of credit control regulations applicable to certain registered investment companies including "money market" funds

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16654	34-16660	34-16671
34-16655	34-16665	34-16672
34-16656	34-16667	34-16675
34-16657	34-16668	34-16676
34-16658	34-16669	34-16681
34-16659	34-16670	

IC-11086 Adoption of technical amendment to the form which provides the notice to periodic plan certificate holders of their right of withdrawal with respect to periodic payment plan certificates.

OPINION

34-16680 **Howard D. Gatliff and Earl Martinson**

Where registered representatives of member firms of registered securities association unlawfully sold unregistered securities, and failed to disclose extra sales compensation to investors, and one of them failed

SE 1.29:

to give proper notification of those sales to firm with which he was associated, *held*, association's findings of violation *sustained*, but proceedings *remanded* to association for reconsideration of the sanctions, and to provide association with opportunity to question one of the salesmen with respect to his receipt of written requests made by association for information.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6200/March 14, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11088/March 14, 1980

EFFECT OF CREDIT CONTROLS ON THE OPERATIONS OF CERTAIN REGISTERED INVESTMENT COMPANIES INCLUDING MONEY MARKET FUNDS

ACTION: General Statement of Policy

SUMMARY: The Securities and Exchange Commission announces a general statement of policy concerning the implications under the federal securities laws of credit control regulations applicable to certain registered investment companies, including "money market" funds, which were recently adopted by the Board of Governors of the Federal Reserve System pursuant to the Credit Control Act of 1969, as implemented by Executive Order of the President. The statement expresses the views of the Commission respecting certain disclosure requirements under the Securities Act of 1933 and certain regulatory requirements under the Investment Company Act of 1940 which should be considered by registered investment companies and the boards of directors or sponsors (in the case of unit investment trusts) of such companies in complying with the Board's regulations.

EFFECTIVE DATE: March 14, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth S. Gerstein, Special Counsel (202-272-3023), or Anthony A. Vertuno, Senior Legal Adviser for Disclosure (202-272-2107), with respect to legal questions, or Gene A. Gohlke, Senior Financial Analyst (202-272-2813), with respect to accounting and financial questions, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Pursuant to the Credit Control Act of 1969 [12 U.S.C. 1901 *et seq.*], as implemented by Executive Order 12201 of the President of the United States, the Board of Governors of the Federal Reserve System ("Board") has adopted regulations requiring certain registered investment companies, including "money market" funds and short-term unit investment trusts, to maintain special non-interest bearing deposits ("special deposits") with Federal Reserve Banks. The Board's regulations are generally applicable to any investment company registered with the Commission under the Investment Company Act of 1940 (the "Act") [15 U.S.C. 80a-1 *et seq.*], or any series of shares or units of such registered company, whose investment portfolio consists primarily of securities, deposits or other instruments having maturities of 13 months or less.

As specified in the Board's regulations [12 CFR 229.11-.15], and as described in its release announcing the adoption of the regulations, regulated investment companies subject thereto will henceforth each be required (1) to maintain a non-interest bearing special deposit with the Federal Reserve Bank in the district where such company has its principal place of business and (2) to file a "base report" and, except with respect to unit investment trusts, certain periodic reports with such bank. In the case of companies other than unit investment trusts, the amount of a company's special deposit will be determined monthly and will be equal to 15 percent of the amount by which the average of the daily amounts of its "covered credit" outstanding during each reporting period exceeds a specified "base" amount.[1]

[1]Under the regulations: (1) "covered credit" is defined to mean any extension of credit originated through the acquisition of a security, deposit or other instrument, including but not limited to domestic and Eurodollar certificates of deposit, U.S. Treasury bills, repurchase agreements, commercial paper, bankers acceptances, and state and local obligations and, except with respect to unit investment trusts, any interest accrued thereon, and (2) "base" is defined to mean the amount of covered credit held by a covered creditor as of the close of business on March 14, 1980 [12 CFR 229.12(b) and (c)].

Impact of Credit Controls

The major potential effect of the Board's regulations on the operations of companies covered by the regulations will be a negative effect on the dividends, or yields, of such companies. Because of this effect, many investment companies may find it appropriate to make changes in their policies relating to the sale of their securities, portfolio management, or other matters. Thus, as discussed in more detail below, the Commission believes that it is essential that companies subject to the regulations take steps immediately to make appropriate disclosure to shareholders and prospective investors.

This general statement of policy is designed to apprise registered investment companies (including those companies which are not now, but may in the future, be subject to the requirements of the Board's regulations), and their directors and sponsors (in the case of unit investment trusts), of the Commission's views regarding some of the disclosure and compliance responsibilities under the federal securities laws which may arise from the Board's regulations. The Commission is concerned not only that prompt and adequate disclosure be made by those registered investment companies which must maintain special deposits,[2] but also that the directors, investment advisers, and sponsors of such companies promptly consider, and if appropriate adopt, procedures to enable compliance with credit controls without disruption of operations or inequitable effects upon shareholders or unitholders.

This general statement of policy is not intended to address all of the issues which may arise from the Board's regulations, but rather is intended to provide general guidance respecting various disclosure obligations under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("1933 Act") and various regulatory matters under the 1940 Act, which the Commission believes should carefully be considered by registered investment companies. This approach should help to insure that compliance with the Board's regulations can be achieved without sacrificing important investor protections afforded by the operation of the federal securities laws.[3]

Investment Policies

The requirement to make the special deposit may appear to be inconsistent with the objectives and policies of some investment companies that are now selling securities pursuant to an effective 1933 Act registration statement. However, the Commission will not consider the making of the special deposit to be prohibited by the stated objectives and policies of such companies. On the other hand, issuers whose registration statements have not yet become effective or who may hereafter file registration statements should frame their policies and objectives so as to be consistent with the regulations.

The Commission anticipates that in some cases the

Footnote 1 continued

The first special deposits pursuant to the Board's regulation generally will be for the reporting period ending April 14, 1980, based on a report filed on April 21, 1980, and will be required to be made on May 1, 1980 [12 CFR 229.14]. Generally, the period for which each special deposit must be maintained begins on the first Thursday of the first calendar month following the reporting period and ends on the day prior to the first Thursday of the following calendar month. Unit investment trusts which acquire their assets after March 14, 1980, will each be required to maintain special deposits equal to 15 percent of their covered credit beginning on the date the trust acquires assets consisting of covered credit and ending on the day prior to the final distribution of trust assets pursuant to the terms of the trust agreement [12 CFR 229.14(b)]. Unit investment trusts holding assets as of March 14, 1980, need not file reports or maintain special deposits.

[2]In view of the fact that all shareholders of "money market" funds might ultimately be affected by the special deposit requirement, the Commission would expect that any disclosures made as a result of the requirement will be furnished as promptly as possible to existing shareholders.

[3]The issues discussed herein are, for the most part, addressed from the perspective of their applicability to registered, open-end, management investment companies investing in short-term debt securities which are often referred to herein as "money market" funds. However, certain unit investment trusts and closed-end management investment companies may also be subject to the Board's regulations. This general statement of policy should be considered also by such companies to the extent relevant.

boards of directors of "money market" funds may decide to modify certain investment policies or restrictions for the purpose of adapting such companies' operations: (1) to compensate for or otherwise take account of the requirement to make special deposits,[4] or (2) to avoid the requirement to make special deposits.[5] Before implementing any new policies, boards of directors should consider whether the adoption of any such revised policies are permissible without shareholder vote.

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[4]For example, a company might wish to broaden its permissible investments to enable the purchase of higher yielding types of securities in order to offset the effect of the special deposit on its net investment income.

[5]For example, directors of a company not now subject to the regulations because of the long-term maturities of its portfolio securities, but whose current policies permit a large enough "defensive" investment in short-term securities to bring it within the requirement, might choose to limit investment in such "defensive" securities. In this connection, it should be noted that should an existing investment company which is not now subject to the special deposit requirement become subject to it in the future, its base amount for purposes of the Board's regulations will be based on its covered credit as of March 14, 1980 [12 CFR 229.13].

[6]The Commission would expect that any company which is subject to the special deposit requirement and fails to comply therewith, will disclose such facts in its prospectus and disclose the possible penalties associated with non-compliance with the Board's regulations.

[7]See Investment Company Act Release Nos. 5847 (October 21, 1969), 7720 (June 9, 1972), and 7221 (June 9, 1972).

[8]Consideration should be given to the views expressed by the Commission in Investment Company Act Release No. 10666 (April 18, 1979), respecting the use of "reverse" repurchase agreements.

[9]Thus, any form of borrowing from an affiliated person of the registered investment company would generally be prohibited absent an order of the Commission.

[10]See n. 1, *supra*.

The Commission believes that, whether or not revised policies or the maintenance of the special deposit itself conflict with previously disclosed and established policies and objectives, prospectus disclosure of the special deposit requirements and any response thereto is imperative for those companies subject to the requirement.[6]

In reviewing existing policies in light of the Board's regulations, companies should also consider the Commission's previously articulated position that it is essential for open-end companies to maintain a high degree of liquidity to enable them to fulfill their obligations to meet redemptions.[7] In this regard, the necessity for a high degree of liquidity might be of particular importance in the case of "money market" funds, which typically undertake to satisfy redemption requests on the date of receipt.

Possible Sources of Funds For Special Deposits

In evaluating alternative means and arrangements to generate the funds necessary to make special deposits, boards of directors should consider fully: (1) the limitations of Section 18 of the 1940 Act [15 U.S.C. 80a-18] on borrowing by registered investment companies and on the issuance of "senior securities" by such companies;[8] (2) any applicable investment restrictions upon the company's activities; and (3) the prohibitions of Section 17(d) of the 1940 Act [15 U.S.C. 80a-17(d)] and Rule 17d-1 thereunder [17 CFR 270.17d-1], which, among other things, prohibit any affiliated person of a registered investment company from participating with the company in any arrangement to fund, directly or indirectly, the company's special deposit, unless an order of the Commission permitting the arrangement is granted.[9] Of course, the method of funding the special deposit should be disclosed to shareholders and prospective investors.

Sale of Fund Shares

Because the special deposit is required only with respect to covered credit in excess of the base,[10] sales of additional shares of a "money market" fund having the effect of increasing the amount of outstanding covered credit above the base will dilute the dividends payable to holders of previously issued shares. The extent of such dilution depends upon the relative growth of the company subsequent to March 14, 1980, the date prescribed for determination of the company's base. Nonetheless, continued growth of the company might benefit the

company's investment adviser (or administrator-distributor), to the extent that such growth would generally increase the fees payable by the company to the investment adviser (or its administrator-distributor). Accordingly, the Commission believes that it is essential that the investment adviser (and administrator-distributor, if any) and directors, particularly the directors who are not interested persons of the company,[11] of each "money market" fund, consistent with their fiduciary duties under the 1940 Act, consider immediately: (1) the appropriateness of new sales of fund shares which would increase covered credit above the base, and (2) the appropriateness of implementing various arrangements designed to protect the interests of shareholders.[12]

Pricing of Shares and Portfolio Valuation

Many "money market" funds seek to maintain stable net asset values per share by utilizing various pricing and valuation methods. Two of these methods, amortized cost valuation and "penny rounding" pricing, may be utilized only by companies that have obtained orders of exemption from the Commission, pursuant to certain conditions.[13] In effecting transitions to enable compliance with the Board's regulations, boards of directors of these companies should scrupulously fulfill their undertakings imposed as conditions in their orders to insure: (1) in the case of companies utilizing amortized cost valuation, that such companies' net asset values per share determined on a market basis do not deviate materially from such companies' $1.00 per share prices, and (2) in the case of companies utilizing "penny rounding" pricing, that such companies' prices per share not deviate from $1.00.[14]

Another condition imposed by the orders of exemption is that companies operating pursuant to such orders not maintain dollar weighted average portfolio maturities in excess of 120 days. In calculating their average portfolio maturities for purposes of compliance with the 120 day condition, companies should treat special deposits as a cash item with zero days remaining to maturity. This approach might also be utilized by other companies in calculating average portfolio maturity and disseminating such information.[15]

The Commission is also concerned that companies subject to the special deposit requirement might be tempted to engage in particular investment strategies to increase their net investment income in order to overcome the effect of the special deposit upon such companies' yields, and that companies might also seek to utilize various devices and valuation techniques to insulate the values of their assets from the additional volatility which might otherwise be associated with such investment strategies. The Commission and its staff intend to monitor closely the use of any such devices and valuation techniques, and will consider appropriate action against companies utilizing artificial or mechanical arrangements to stabilize net asset values. Such improper devices might include the use of prepayment or buy-back arrangements.

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[11]See Section 2(a)(19) of the 1940 Act [15 U.S.C. 80a-2(a)(19)] which specifies those persons who are interested persons of registered investment companies.

[12]For example, the management of a fund might take steps to establish a secondary market in the fund's shares. This might make it feasible to suspend sales of new shares, while avoiding the possibility that redemptions without offsetting sales would cause the fund to become so reduced in size that it is no longer viable. Any such arrangements, if implemented by the fund or if operated by any other company or person, should be fully disclosed to all shareholders and prospective investors.

[13]See, e.g., Investment Company Act Release Nos. 9786 (May 31, 1977), 10451 (October 26, 1978), and 10824 (August 8, 1979).

[14]One of the Commission's concerns is that the sale of shorter-term securities to fund the special deposit might magnify the impact of the unrealized depreciation of longer-term securities in a portfolio upon a company's market based net asset value per share. In view of the facts that the first special deposit will not be required until June 5, 1980, and that existing "money market" funds will be required to maintain a special deposit only on covered credit in excess of their bases, the Commission does not anticipate that such companies will experience difficulties in satisfying the special deposit requirement in a manner consistent with their exemptive orders.

[15]Any disclosure of average portfolio maturity calculated in this manner should include a reference to the fact that the special deposit is being treated as a cash item with a maturity of zero days.

Disclosure Responsibilities

Because implementation of the Board's regulations will have a significant impact on the operations of any registered investment company that is or becomes within the purview of the regulations, the Commission believes that it would be materially misleading for the securities of any investment company to be offered for sale by a prospectus, including a Rule 434d [17 CFR 230.434d] prospectus, which does not disclose:

1) The requirement of the Board's regulations to make the special deposit;

2) Either:

a) The short and long-term effect of the special deposits on yield, assuming the existence of conditions requiring such deposits, or

b) a statement that the investment company will not be required to make the special deposit;

3) In the case of an open-end management company, the investment company's policy with respect to the maintenance of a continuous offering of its securities and the potential effect of future sales on the yield to investors in view of the special deposits required by the Board's regulations; and

4) Any other material inconsistencies with policies or operations as disclosed in the current prospectus.

The Commission believes that affected investment companies should amend their prospectuses as soon as practicable, and would not object to amendment of the prospectus by the use of a Rule 424(c) [17 CFR 230.424(c)] "sticker." In addition, the Commission will not object to use of the current prospectus to sell securities during the time required to amend the prospectus as herein discussed provided that such time is no longer than necessary.

The Commission also will consider it to be materially misleading for any prospectus, or any sales literature containing yield information, to omit disclosure of the effect, if any, of the special deposit requirement on a company's yield (*e.g.*, the effect that new sales of shares or accrued interest income may have upon future yield to investors).

Investment Advisory Fees

To the extent a "money market" fund's assets are held by a Federal Reserve Bank as a special deposit, such assets need not be subject to investment supervision by the company's investment adviser to the same degree required with respect to other assets of the company. Although the percentage of a company's assets subject to the special deposit requirement may be relatively small, the dollar amount of the investment advisory fee attributable to such assets may be significant. While the Commission recognizes that investment advisory fees may often compensate an investment adviser for services other than investment advice, it nevertheless believes that the investment advisers and the boards of directors of "money market" funds, consistent with their fiduciary responsibilities under the Act, should consider the appropriateness of adjusting investment advisory fee schedules in recognition of the existence of the special deposit requirement. In this regard, the implications of the special deposit will be most significant to a new "money market" fund with a zero base. The necessity, in the Commission's view, for adjusting fee schedules will depend upon a consideration of all relevant facts and circumstances. However, at a minimum, the boards of directors of "money market" funds should give careful consideration to this matter.

Conclusion

The Commission has instructed its staff to monitor the manner in which companies subject to the special deposit requirement address the matters discussed herein, and to advise the Commission with respect to its findings.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16651/March 14, 1980

Orders have been issued, effective *nunc pro tunc* as of March 3, 1980, granting applications of the *Pacific Stock Exchange, Inc.* to strike the following companies' common stock from listing and registration thereon: HUNGRY TIGER, INC. ($.05 Par Value), and TRICO INDUSTRIES, INC. ($.50 Par Value).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16652/March 14, 1980

A notice has been issued giving interested persons until April 14, 1980 to comment on Electronics, Missiles & Communication, Inc.'s application to withdraw its common stock ($.01-2/3 Par Value) from listing and registration on the *Boston Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16653/March 14, 1980

An order has been issued granting the application of GROW GROUP, INC. requesting withdrawal of its common stock ($.10 Par Value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16654/March 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BRADFORD SECURITIES PROCESSING SERVICES, INC. (File No. SR-BSPS-80-3)

Bradford Securities Processing Services, Inc. submitted on February 25, 1980, a proposed rule change, pursuant to Rule 19b-4, establishing a Balance Order Service for the clearance of transactions in municipal and government securities. By netting participants' delivery and receive obligations in each security, the Balance Order Service will decrease the number of deliveries and receipts of securities that participants are required to make.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSPS-80-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16655/March 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BRADFORD SECURITIES PROCESSING SERVICES, INC. (File No. SR-BSPS-77-5, Amendment No. 1)

Bradford Securities Processing Services, Inc. ("BSPS") submitted on February 25, 1980, an amendment to SR-BSPS-77-5. The amendment, which supercedes and restates SR-BSPS-77-5, proposes a comprehensive comparison and reporting service for municipal and government securities. As initially filed, SR-BSPS-77-5 proposed to offer a trade comparison and reporting service for all securities transactions.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSPS-77-5, Amendment No. 1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16656/March 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY BOSTON STOCK EXCHANGE, INC.

File No. SR-BSE-79-4

The Boston Stock Exchange, Inc. ("BSE") submitted on February 13, 1980,[1] a proposed rule change under Rule 19b-4 to amend Chapter XI, Section 1 of the BSE Rules by establishing and defining some of the obligations of two classes of alternate specialists. Class A alternate specialists would be assigned to particular securities, while Class B alternate specialists would function as such in every security traded on the BSE. Class A and Class B alternate specialists would differ in that Class B alternates must establish any long or short positions only on the BSE floor. Alternate specialists of either class would be required to make a bid or offer at a floor broker's request, which must either improve the price or the depth of the existing quote in the stock to which it relates.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSE-79-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]This rule filing was amended by Amendment No. 1 to File No. SR-BSE-79-4 filed with the Commission on February 25, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16657/March 14, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE 80-1

The Midwest Stock Exchange, Incorporated, submitted, on February 25, 1980, a proposed rule change under Rule 19b-4 to provide standards[1] that will govern the assignment and re-assignment of securities to MSE specialist units or individual co-specialists.[2] The standards require that securities be assigned based on demonstrated ability, experience, and financial responsibility of the specialist unit or individual co-specialist.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]See new Article XXX, Rule 1.01, of MSE Rules.

[2]On the MSE, the term "specialist" refers to the person who has financial responsibility for a co-specialist or a specialist unit. The term "co-specialist" refers to the individual or unit that operates the limit order book for a security, maintains a market as a dealer in a security, and performs the other activities generally recognized as specialist functions.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16658/March 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-79-14

The Pacific Stock Exchange, Incorporated ("PSE") submitted on February 29, 1980, a proposed rule change under Rule 19b-4 to adopt, as PSE Rule XX, detailed rules for conducting disciplinary proceedings.

The proposal would extend the PSE's disciplinary jurisdiction over any PSE member, member organization, or any person associated with a member or member organization following termination of membership or association with a member, with respect to matters that occurred prior to such termination, provided that the PSE gives notice of its inquiry into the matter to the member or associated person within one year of such person's notice of termination.[1] The proposed rule change would permit the PSE to conduct investigations of possible violations upon the receipt of a complaint filed by a member or any other person[2] and would provide for the institution of disciplinary proceedings by the issuance of a statement of charges specifying the acts alleged to be in

[1]Proposed PSE Rule XX, Section 1.

[2]*Id.*, Section 2.

violation.[3] A respondent would have an opportunity to file an answer to the charges and to request a hearing by a panel of the PSE's Hearing Committee.[4] A decision by the Hearing Committee would be subject to review by an Appeals Committee,[5] and the Board of Governors could review a decision of the Hearing Committee or the Appeals Committee on its own initiative.[6] A member or associated person would be entitled to representation by counsel throughout any investigation and in any subsequent disciplinary proceeding.[7]

The proposed hearing and review procedures, however, would not apply to Floor Citations issued for violation of rules, policies, or procedures adopted by the PSE where the fines are $500 or less. Floor Citations, which are issued summarily, are governed by a different set of PSE rules.[8]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-79-14.

[3] *Id.*, Section 3. Proposed Section 6 would permit a respondent to submit an offer of settlement.

[4] *Id.*, Section 3, 4.

[5] *Id.*, Section 8(b).

[6] *Id.*, Sections 8(c), (d).

[7] *Id.*, Sections 2, 4.

[8] *Id.*, Section 10(b).02. *See* PSE Rule VI, Sections 39, 84 and PSE Equity Floor Procedure Advice 1-A for the review procedures that apply to Floor Citations. *See also* File No. SR-PSE-79-18, concerning PSE floor decorum, which was approved by the Commission on January 18, 1980 ((Securities Exchange Act Release No. 16515, 19 SEC Docket 366 (February 5, 1980), 45 FR 5870 (January 24, 1980)).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principle office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16659/March 17, 1980

NOTICE OF AMENDMENT TO FILING OF PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-77-8

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 29, 1980 Amendment No. 1 with respect to a proposed rule change previously filed under Rule 19b-4.[1] The proposal would amend Article III of the NASD's Rules of Fair Practice to include a Section 35, authorizing the NASD Board of Governors to adopt rules relating to the distribution of direct participation programs (programs with flow-through tax consequences) by members and associates of members and the sponsorship of such programs by members and affiliates of members.

Publication of the submission is expected to be made in the *Federal Register* during the week of

[1] Notice of the initial filing of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 13753, July 15, 1977) and by publication in the *Federal Register* (42 FR 37461, July 21, 1977).

March 17, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-77-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16660/March 17, 1980

NOTICE OF FILING OR AMENDMENT TO A PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS,INC.

File No. SR-NASD-79-16

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 6, 1980, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of filing of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 16460, December 31, 1979) and by publication in the *Federal Register* (45 FR 1954, January 9, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16661/March 17, 1980

In the Matter of

MISSOURI ACCELERATION CORPORATION
File No. 528

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE ACT

The Securities and Exchange Commission has issued an order granting the application of Missouri Acceleration Corporation ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an exemption from the reporting requirements of Sections 13 and 15(d) of the 1934 Act.

It appeared to the Commission that the granting of the requested exemption would not be inconsistent with the public interest or protection of investors because the securities issued that subjected the Company to the reporting provisions of the 1934 Act were owned by fewer than 300 shareholders on January 1, 1977.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16662/March 17, 1980

WENTWORTH MANUFACTURING COMPANY
File No. 81-597

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the application of Wentworth Manufacturing Company, a Delaware corporation, pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16663/March 17, 1980

File No. 81-580

In the Matter of

HYCEL, INC.

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Hycel, Inc. ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act") for an exemption from the reporting requirements of Sections 13 and 15(d) of the 1934 Act.

It appeared to the Commission that the granting of the requested exemption would not be inconsistent with the public interest or protection of investors because the Applicant has become privately owned by Boehringer Mannheim GmbH and is wholly-owned subsidiary of Boehringer Mannheim Corporation. There exists neither public investors nor any public trading market for Hycel securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16664/March 17, 1980

In the Matter of

ECONETICS, INC.
File No. 81-579

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order exempting Econetics, Inc. ("Applicant") from certain of the reporting requirements under Sections 13 and 15(d) of the 1934 Act, specifically, the requirement to file quarterly reports on Form 10-Q, and the requirement to file quarterly reports on Form 10-Q, and the requirement to include audited financial statements in its annual reports on Form 10-K.

It appears to the Commission that the exemption is not inconsistent with the public interest or the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16665/March 17, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INC.

File No. SR-MSE-80-2

The Midwest Stock Exchange, Inc. ("MSE") submitted, on March 5, 1980, a proposed rule change under Rule 19b-4 that would amend its rules to assign to the Chairman the duties and responsibilities of the Office of the Chief Executive, previously assigned to the President, and to make certain minor changes concerning the Vice Chairman's role as Chairman of the Executive Committee.

The proposed changes are necessary in order to make the by-laws consistent with the recent amendment to the MSE constitution in January 1980 to, among other things, designate the Chairman of the Board of Governors as the Chief Executive Officer of the exchange, a full-time paid position, and redesignate the President as the MSE's Chief Operating Officer.[1] The proposed rule change would amend Article I, Rules 11, 14, 15 and 16; Article II, Rule 11; Article III, Rule 11; Article IV, Rules 1 and 9; Article V, Rule 2; Article VI, Rules 1, 2 and 9; Article VII, Rules 1, 2 and 4; Article XI, Rules 3 and 9; Article XII, Rules 1, 2, 3, 4, 5 and 7; Article XIV, Rules 10, 11 and 13; Article XXII, Rule 2; Article XXVIII, Rules 2, 3, and 4; Article XXX, Rules 1, 4, 7 and 8; and, Article XXXI, Rules 12 and 15 of its by-laws.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 17, 1980. Interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Securities Exchange Release No. 16468 (January 4, 1980) (SR-MSE-79-25).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16666/March 17, 1980

Administrative Proceeding File No. 3-5891

In the Matter of

DAVID R. CRAIG

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

In anticipation of these administrative proceedings, David R. Craig ("Craig"), a securities salesman of a registered broker-dealer, has submitted an offer of settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings pursuant to Sections 15(b), 15A and 19(a) of the Securities Exchange Act of 1934 and without admitting or denying the allegations against him, Craig consents to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED that, proceedings pursuant to Section 15(b)(6) and 19(h) of the Securities Exchange Act of 1934 be, and they hereby are, instituted.

On the basis of the order for proceedings and the offer of settlement, it is found that during the period from April 1, 1978 to July 31, 1978 Craig wilfully violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder in that he directly or indirectly made use of the means and instruments of transportation and communication in interstate commerce and of the mails to offer, to sell, and deliver after sale, shares of the common stock of Weenie Machine International, Inc. ("WMI") when no registration statement had been filed or was in effect as to said securities under the Securities Act of 1933; and that he directly and indirectly, in offering, selling, effecting transactions in, and distributing said securities, employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts necessary, in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in acts, transactions, practices and a course of business which would and did operate as a fraud and deceit upon certain persons. As part of the aforesaid conduct and activities Craig would and did make untrue statements of material facts and omit to state material facts concerning, among other things:

(a) The investment quality and the anticipated market for shares of WMI;

(b) the prospects of WMI;

(c) the number of investors in WMI stock;

(d) the adequacy and accuracy of information then available regarding WMI;

(e) the existence of a temporary suspension order and underlying cause therefore; and

(f) the quality of the assets of WMI.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offer of settlement.

Accordingly, IT IS ORDERED that, Craig be, and he hereby is, suspended from being associated with a broker or dealer for a period of three (3) months effective at the opening of business on the second Monday following the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16667/March 17, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-79-13

The Pacific Stock Exchange, Incorporated ("PSE") submitted on March 5, 1980, amendments to proposed rule changes previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-79-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the

[1]Notice of filing of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 16234, October 2, 1979) and by publication in the *Federal Register* (44 FR 57543, October 5, 1979).

Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16668/March 17, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-PHLX-79-11)

ORDER APPROVING PROPOSED RULE CHANGE

On January 24, 1980, the Philadelphia Stock Exchange, Inc. ("PHLX") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would rescind By-Law Sections 18-15 and 18-21 which provide for summary disciplinary proceedings and prohibit representation by counsel at PHLX disciplinary proceedings, respectively, and would amend By-Law Section 18-14, to provide that, in responding to disciplinary charges, a member has the right to be represented by counsel.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Release No. 34-16553, Feb. 4, 1980) and publication in the *Federal Register* (45 FR 9424, Feb. 12, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6(b)(7) and 6(d) relating to national securities exchange disciplinary proceedings.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16669/March 17, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, NY 10006

(SR-AMEX-80-4)

ORDER APPROVING PROPOSED RULE CHANGE

On February 25, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Rule 184(a) to remove the restrictions on the number of clerks an Amex specialist or specialist unit may employ and authorizes specialists to employ whatever number of clerks the Amex regards as reasonable in view of the anticipated volume in the specialists' registered securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act No. 34-16620 (Feb. 27, 1980), 19 SEC Docket 761 (March 11, 1980)) and by publication in the *Federal Register* (45 FR 14729 (March 6, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16670/March 17, 1980

In the Matter of

CINCINNATI STOCK EXCHANGE
209 Dixie Terminal Building
Cincinnati, Ohio 45202

(SR-CSE-80-2)

ORDER APPROVING PROPOSED RULE CHANGE

On February 5, 1980, the Cincinnati Stock Exchange ("CSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which applies the Uniform Code of Arbitration ("Code") to disputes between members of that Exchange, allied members, and/or member organizations as well as to disputes involving investors.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 34-16608 (Feb. 25, 1980), 19 SEC Docket 760 (March 11, 1980)) and by publication in the *Federal Register* (45 FR 13857 (March 3, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16671/March 17, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INCORPORATED
53 State Street
Boston, MA 02109

(SR-BSE-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On February 13, 1980, the Boston Stock Exchange, Incorporated ("BSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its rules on arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the

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[1]On January 8, 1980, the CSE adopted the Code with respect to disputes involving investors. See Securities Exchange Act Release No. 16472, 19 SEC Docket 148 (January 22, 1980), 45 FR 2722 (January 14, 1980).

[1]For the BSE's former arbitration rules, see BSE Constitution, Article IX. BSE Manual (CCH) paras. 1201-1203), at pages 1060-1061.

[2]The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers. The proposal deletes or amends the existing BSE arbitration rules and adopts the entire Code as new Article XXXII of the Rules of the BSE Board of Governors. The proposal incorporates the simplified arbitration procedures that were drafted by the SICA regarding small claims not exceeding $2500.[4] Additionally, the new arbitration rules will apply to claims between BSE members as well as to claims against members raised by customers and non-members.[5]

The purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the BSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16610 (Feb. 27, 1980), and by publication in the *Federal Register* 45 FR 14729 (March 6, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and, in particular, the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade.[7]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[3]The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SIC members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]*See* (new) Rules of the BSE Board of Governors, Chapter XXXII, Section 2.

[5]*See* (new) Article IX, Section 3(a) of the BSE Constitution and (new) Chapter XXXII, Section 32, of the Rules of the BSE Board of Governors.

[6]The Code has already been adopted by: the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange (Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); the American Stock Exchange, Inc. (Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (Jan. 29, 1980), 45 FR 5863 (January 24, 1980)); the Midwest Stock Exchange, Incorporated (Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)); the Municipal Securities Rulemaking Board (Release No. 16606 (February 13, 1980), 19 SEC Docket 573 (February 26, 1980), 45 FR 11291 (February 20, 1980)); and the Chicago Board Options Exchange, Incorporated (Release No. 16606 (February 25, 1980), 19 SEC Docket 759 (March 11, 1980), 45 FR 15352 (March 10, 1980)).

[7]The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judicial determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16672/March 17, 1980

In the Matter of

CINCINNATI STOCK EXCHANGE
209 Dixie Terminal Building
Cincinnati, Ohio 45202

(SR-CSE-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On February 5, 1980, the Cincinnati Stock Exchange ("CSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which makes a security's ex-dividend date the day following its payable date with respect to stock splits and stock dividends that are 25% or greater, except for a security whose primary market is on another exchange that has a different rule or where the CSE Board of Trustees provides otherwise.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 34-16512 (Feb. 11, 1980), 19 SEC Docket 332 (Jan. 29, 1980)) and by publication in the *Federal Register* (45 FR 10496, (Feb. 11, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16673/March 17, 1980

An order has been issued granting the application of STUDEBAKER-WORTHINGTON, INC. requesting withdrawal of its 9.35% Sinking Fund Debentures due November 15, 2003 from listing and registration on the *New York Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16674/March 17, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($.10 Par Value) of E.T. BARWICK INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16675/March 18, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Plaza
Philadelphia, PA 19103

(SR-Phlx-79-10)

ORDER APPROVING PROPOSED RULE CHANGE

On November 14, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which sets forth detailed listing and delisting standards for securities listed or admitted to trading on the Phlx. The standards would not be mandatory but would be considered by the Exchange in judging the qualifications of each applicant.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16505 (Jan. 16, 1980), 19 SEC Docket 329 (Jan. 29, 1980)) and by publication in the *Federal Register* (45 FR

5861, (Jan. 24, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16676/March 18, 1980

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

(File No. SR-NYSE-79-45)

The New York Stock Exchange, Inc. ("NYSE") submitted on March 10, 1980, amendments to a proposed rule change previously filed under Rule 19b-4 in response to certain recommendations of the Commission's Special Study of the Options Markets.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-79-45.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16677/March 18, 1980

A notice has been issued giving interested persons until April 18, 1980 to comment on the Boston Stock Exchange's application for unlisted trading privileges in the common stock ($.01-2/3 Par Value) of ELECTRONICS, MISSILES, & COMMUNICATIONS, INC.

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[1]Notice of filing of the proposed rule change was given by publication of a Commission release (Securities Exchange Act Release No. 16359, November 21, 1979) and by publication in the *Federal Register* (44 FR 69388, December 3, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16678/March 18, 1980

In the Matter of Application of the

BOSTON STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

NOTICE OF APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Boston Stock Exchange, Inc. ("BSE") has filed an application with the Commission pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security:

Electronics, Missiles & Communications, Inc.
Common Stock, $.01-2/3 Par Value (File No. 7-5503).

The common stock of Electronics, Missiles & Communications, Inc. (the "Company") has been listed solely on the Boston Stock Exchange, Inc. ("BSE") since February 3, 1973. The Company has, however, filed an application to withdraw from listing and registration on the BSE, which application is pending before the Commission.[1] The BSE has asked that the Commission defer consideration of the delisting application until it has taken action with respect to the instant application for unlisted trading privileges.[2]

Interested persons are invited to submit on or before April 18, 1980, written data, views and arguments concerning the above-referenced application for unlisted trading privileges. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549.

Following this opportunity for hearing, the Commissioin will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Notice of the filing of such application was given in Securities Exchange Act Release No. 16652 (March 14, 1980).

[2]Letter from Walter E. Cummings, Secretary of the BSE to Sally Hamrick of the Commission's staff (March 3, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16679/March 19, 1980

REPORT OF INVESTIGATION IN THE MATTER OF INVESTMENT INFORMATION, INC. RELATING TO THE ACTIVITIES OF CERTAIN INVESTMENT ADVISERS, BANKS, AND BROKER-DEALERS

I. *Introduction*

As the result of a private investigation In the Matter of Investment Information, Inc. ("III"), the Commission deems it appropriate that this public report of investigation ("Report") be made pursuant to Section 21(a) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to the activities of certain investment advisers, banks, and broker-dealers that did business with III. The investigation on which this Report is based was in no sense an adjudicatory or disciplinary proceeding and no hearing has been conducted by the Commission, nor does this Report make any finding or determination with respect to the liabilities of any person. The individuals and entities named herein have consented to the issuance of this Report without admitting or denying the statements or conclusions contained herein.[1] In addition, they have undertaken to effect certain remedial actions which are described below.

[1]Simultaneously with the issuance of this Report, the Commission filed a civil injunctive action in the United States District Court for the District of Columbia against III and Frederick P. Oman ("Oman"), its chief executive officer and majority stockholder. III and Oman, without admitting or denying the allegations in the Commission's Complaint, consented to the entry of Judgments of Permanent Injunction.

In issuing this Report, the Commission addresses certain practices by which fiduciary money managers have obtained goods and services with brokerage commissions ("soft dollars") paid from client accounts. In particular, the Report focuses upon an arrangement established by III which enabled money managers to acquire goods and services by executing trades for their clients through brokers participating in the III arrangement. The participating brokers remitted 50%[2] of the commissions on such trades to III, which in turn paid for goods and services independently purchased by the money managers. The Report expresses the Commission's belief that the III and similar arrangements established by others in claimed reliance upon Section 28(e) of the Exchange Act ("Section 28(e)")[3] do not fall within the exemptive provisions of that section.

II. *Background: III Activities Prior to May 1975*

III, which was founded by Oman in 1969, originally engaged in the sale of goods and services to money managers and broker-dealers. III sold these products as a representative of the manufacturer or publisher, and did not assist in their preparation or selection. While most sales were for cash, III also offered to a limited number of money managers the option of paying for the goods and services with brokerage commissions on trades executed for their clients. A money manager who elected this option directed such brokerage transactions to a single registered broker-dealer, designated by III, who then paid for the services selected and rebated a portion of the commissions to III.

In August 1970, the arrangement between III and the broker-dealer referred to above was terminated. III then entered into an arrangement with approximately ten brokers that enabled it to continue offering a method by which money managers could obtain goods and services with commission dollars. Under this arrangement, a money manager could receive credit towards the purchase of goods and services by directing transactions on behalf of his clients to any of the brokers designated by III. The broker receiving such orders was then obligated to purchase from III an amount of goods and services which provided III with revenues, in excess of III's cost, equal to 50% of the commissions received by the broker.[4] III used from 66 to 80% of the excess amount to pay for the goods and services ordered by the money manager who directed the transaction.

III. *The III Arrangement After May 1975*

With the abolition of fixed commission rates and exchange anti-rebate rules in May 1975, III modified the "soft dollar" arrangement, which by that time accounted for 90% of its revenues. Under the revised arrangement, money managers who did business with participating brokers could either acquire goods and services with brokerage commissions or

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[2]In some instances the amount remitted was less than 50% of the commission.

[3]Section 28(e)(1) states, in part, that:

No person using the mails or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to the date of enactment of the Securities Acts Amendments in [sic] 1975 solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion.

[4]Most of the brokers satisfied this obligation by purchasing subscriptions to and advertisements in RESEARCH Magazine, a trade directory which listed institutional sources of information concerning approximately 1,500 issuers of securities. RESEARCH Magazine, which was published quarterly by III at a nominal cost, was discontinued in May 1975.

recapture in cash a portion of the brokerage commissions for the benefit of their clients.[5]

The revised arrangement was similar to its predecessor in that a money manager directly contacted a participating broker to place an order and to negotiate the commission without any participation by III and generally without any solicitation by the broker. The broker retained 50% of each commission and remitted the remaining 50% to III.[6] Of the portion remitted by the broker, III retained 20 to 34% as its fee and credited the remaining 66-80% to the money manager's account. The money manager could either recapture in cash the funds credited to his account, resulting in a return of 33 to 40% of each commission dollar to the person for whose benefit the trade had been made, or use the credit to purchase goods and services.

A money manager who chose the latter option selected the goods and services that he wished to acquire and placed an order directly with the supplier. Upon receipt of an invoice from the supplier, the money manager directed it to III for payment. The money manager thereafter had the option of reimbursing III directly with his own funds or indirectly with brokerage commissions.[7]

As indicated above, the role of a broker who participated in the III arrangement was limited to executing the transaction placed by a participating money manager and remitting 50% of the commission to III. The participating brokers did not select the goods and services acquired by the money managers. In fact, the participating brokers generally were not aware of the specific goods and services actually purchased through III by their money manager customers.

The staff's investigation has revealed that brokerage commissions aggregating more than $11,500,000 were paid to brokers, including those brokers whose activities are discussed herein, between January 1973 and June 1978. Approximately 33% to 40% of that amount was ultimately returned to money managers in the form of goods and services. The total amount includes commissions generated with respect to non-fiduciary accounts (which are not a subject of this Report) as well as those generated from fiduciary accounts. The amount of commissions received by participating brokers varied considerably.

IV. *Participating Money Managers*

During the course of its investigation, the staff examined the participation of, among others, the following money managers in the III arrangement:

Andrecom Advisers Corporation ("Andrecom"), a registered investment adviser located in Deerfield, Illinois, commenced its participation in the III arrangement in June 1976. Andrecom acquired goods and services worth approximately $14,000 as a result of its participation in the III arrangement. Andrecom has undertaken to make restitution of $84,000 to its clients, in connection with the III and other "soft dollar" arrangements,[8] and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

Investment & Capital Management, Inc. ("ICM"), a registered investment adviser located in Chicago, Illinois, commenced its participation in the III arrangement in September 1975 and thereby acquired goods and services worth approximately

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[5]The money managers and brokers whose activities are described in this Report testified that they were not aware that III offered the alternative of cash payments. Oman, however, testified that he generally informed money managers of the cash option, and that he would have paid cash whenever requested to do so provided the cash was given to the beneficial owner of the securities. Although it should have been apparent that there was no legal impediment to the recapture of cash for the beneficial owners of the securities, the money managers whose activities are discussed herein did not request that cash be returned.

[6]III mailed to each broker a monthly invoice which stated that it was for "services provided" by III to money managers on behalf of the broker. In fact, the amount billed to the broker was simply equal to 50% of the commissions received by the broker from money managers as part of the III arrangement.

[7]The acquisition of goods and services by a money manager could either precede or follow the placement of brokerage transactions with participating brokers. Thus, a money manager's account with III could have either a positive or a negative balance.

[8]Andrecom also participated in three other arrangements in which brokers receiving brokerage commissions paid invoices for approximately $200,000 in goods and services acquired by Andrecom.

$11,000. ICM has undertaken to make restitution of $13,300 to its clients, in connection with the III and other "soft dollar" arrangements,[9] and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

John H. Lee & Co. ("Lee"), a registered investment adviser located in Houston, Texas, commenced its participation in the III arrangement in January 1975 and thereby acquired goods and services worth approximately $6,266. Lee has undertaken to make restitution of $6,266 to its clients and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

Norris Perne & French ("NPF"), a registered investment adviser located in Grand Rapids, Michigan, commenced its participation in the III arrangement in November 1975 and thereby acquired goods and services worth approximately $24,000. NPF has undertaken to make restitution of $15,000 to its clients and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

John Edison Sloane, Inc. ("Sloane"), a registered investment adviser located in Westfield, New Jersey, commenced its participation in the III arrangement in August 1974 and thereby acquired goods and services worth approximately $7,800. Sloane has undertaken to offer restitution of $7,800 to its clients and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

Daniel H. Renberg & Associates, Inc. ("Renberg"), a registered investment adviser located in Los Angeles, California, commenced its participation in the III arrangement in December 1971 and thereby acquired goods and services worth approximately $6,600. Renberg has undertaken to make restitution of $6,600 to its clients and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

Towneley Capital Management, Inc. ("Towneley"), a registered investment adviser located in New York, New York, commenced its participation in the III arrangement in 1974 and thereby acquired goods and services worth approximately $120,000. Towneley has undertaken to make restitution of $75,000 to its clients, in connection with the III and other "soft dollar" arrangements,[10] and to refrain from soliciting or accepting any new advisory clients for a period of 45 days.

Beverly Bank ("Beverly"), a state chartered bank located in Chicago, Illinois, commenced its participation in the III arrangement in August 1976 and thereby acquired goods and services worth approximately $16,600. Beverly has undertaken to make restitution of $16,600 to its clients, to review existing procedures concerning its use of brokerage commissions paid by clients, and, if necessary, to implement and maintain new procedures designed to ensure compliance with the federal securities laws.

Eagle Management & Trust Co. ("Eagle"), a state chartered trust company located in Houston, Texas, commenced its participation in the III arrangement in December 1974 and thereby acquired goods and services worth approximately $35,300. Eagle has undertaken to make restitution of $28,730 to its clients, to review existing procedures concerning its use of brokerage commissions paid by clients, and, if necessary, to implement and maintain new procedures designed to ensure compliance with the federal securities laws.

First National Bank in Grand Junction ("FNBGJ") commenced its participation in the III arrangement in June 1974 and thereby acquired services worth approximately $45,000. FNBGJ has undertaken to make restitution of $45,000 to its clients, to review existing procedures concerning its use of brokerage commissions paid by clients, and, if necessary, to implement and maintain new procedures designed to ensure compliance with the federal securities laws.

First National Bank & Trust Company of Oklahoma

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[9]ICM also participated in two other arrangements in which brokers that received brokerage commissions paid invoices for approximately $22,500 in goods and services acquired by ICM.

[10]Towneley also participated in another soft dollar arrangement under which it acquired goods and services worth approximately $65,000. Pursuant to this arrangement, Towneley executed transactions for managed accounts through a broker, not one of the brokers named herein, who credited 40% of the commissions to a segregated bank account in the name of the broker for the benefit of Towneley. Towneley then submitted invoices to the broker for services which it had purchased, and the broker authorized payment of those invoices from the bank account.

City ("FNBOkla") commenced its participation in the III arrangement in January 1979 and thereby acquired goods and services worth approximately $32,581. FNBOkla has undertaken to make restitution of $32,581 to its clients, to review existing procedures concerning its use of brokerage commissions paid by clients, and, if necessary, to implement and maintain new procedures designed to ensure compliance with the federal securities laws.

Maryland National Bank ("MNB"), located in Baltimore, Maryland, commenced its participation in the III arrangement in January 1976 and thereby acquired goods and services worth approximately $24,000. MNB has undertaken to make restitution of $50,000 to its clients in connection with the III and other "soft dollar" arrangements,[11] to review existing procedures concerning its use of brokerage commissions paid by clients, and, if necessary, to implement and maintain new procedures designed to ensure compliance with the federal securities laws.

V. *Participating Brokers*

During the course of its investigation, the staff examined the participation of the following brokers in the III arrangement: Bateman Eichler, Hill Richards Inc. ("Bateman"); Cowen & Company ("Cowen"); Ernst & Company, Inc. ("Ernst"); Jefferies & Company, Inc. ("Jefferies");[12] Kelly Associates, Ltd. ("Kelly"); Mesirow & Company ("Mesirow"); Morgan, Olmstead, Kennedy & Gardner Incorporated ("Morgan"); Rauscher Pierce Refsnes, Inc. ("Rauscher"); Rotan Mosle Inc. ("Rotan"); Roulston & Company, Inc. ("Roulston"); Shumagco, formerly doing business as Shuman Agnew & Co., Inc. ("Shumagco");[13] and Sloate, Weisman, Murray & Company, Inc. ("Sloate").

Those firms which participated in the III arrangement as of May 1975 were Shumagco, Sloate, Jefferies, Rauscher, Cowen, Roulston, and Rotan. The following firms did not commence participation until the later dates indicated: Morgan (December 1976), Ernst (December 1976), Mesirow (December 1976), Kelly (July 1977) and Bateman (November 1977).

In connection with the issuance of this Report, the brokers listed above have undertaken to limit certain profits on brokerage transactions executed for certain fiduciary accounts over a period of ten days. The amount of reduction in profits effected by such limitation is $5,000 for each broker for all such profits during such period, and is to be disposed of in accordance with a plan satisfactory to the Commission.

VI. *Discussion*

A. *Section 28(e)*

The common law imposes a stringent fiduciary obligation upon a money manager, and requires that he exercise the utmost care to avoid improperly enriching himself at the expense of his client. The Investment Advisers Act of 1940 imposes a similar obligation upon investment advisers.[14] It is the responsibility of an investment adviser to assure that he does not breach this fiduciary obligation.

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[11]MNB participated in two other soft dollar arrangements which were similar to the III arrangement except that MNB submitted the invoices for goods and services acquired to the executing broker-dealers, who made payment in return for trust department brokerage transactions. MNB acquired goods and services worth approximately $26,000 as a result of its participation in such arrangements.

[12]In addition to participating in the arrangement with III, Jefferies commenced a soft dollar business of its own during 1974. All arrangements for acquiring the services were made by the money managers and the vendors of the services. The money managers independently selected and ordered goods and services and forwarded the suppliers' invoices to Jefferies for payment. Jefferies personnel testified that commissions negotiated with clients who participated in this arrangement were comparable to commissions negotiated with other clients, and that Jefferies relied on the advice of its outside securities counsel with respect to its arrangement and the III arrangement. It is the Commission's position that the Jefferies arrangement did not fall within the safe harbor of Section 28(e).

[13]Shumagco's participation in these activities ceased in mid-1977, at which time Shumagco sold substantially all of its assets. Thereafter, Shumagco withdrew its broker-dealer registration with the Commission.

[14]Section 206 of the Investment Advisers Act of 1940 ("Section 206"); *see, SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963).

Before the elimination of exchange-prescribed minimum rates of commissions on stock exchange transactions, money managers had developed the practice of purchasing, with commission dollars, services beyond those involving simply execution, clearance and settlement of a securities transaction. After the elimination of fixed commission rates in May 1975, the concern of money managers and research-oriented brokerage firms was that, in an environment of fully negotiated commission rates, a money manager would be subject to suit alleging breach of fiduciary duty if he effected securities transactions involving payment of commissions at rates in excess of the lowest rates available.[15]

In response to these concerns Congress added, as part of the Securities Acts Amendments of 1975[16], Section 28(e) of the Exchange Act. Section 28(e)(1) does not establish a legal standard the violation of which is a breach of fiduciary duty. Rather, Section 28(e) provides a "safe harbor" that applies in certain circumstances where money managers use brokerage commissions generated by client accounts to pay for brokerage and research services.

This Report deals with an arrangement whereby money managers received benefits through the use of brokerage commissions generated from clients' accounts, and the claim that the receipt of such benefits was permitted under Section 28(e). Since Section 28(e) involves a statutory exemption for conduct which might otherwise constitute a breach of fiduciary duty owed by a money manager to his client, the Commission believes that the section should be construed in light of its limited purposes. Particularly in view of otherwise applicable fiduciary law, a money manager who seeks to extend the safe harbor provided by Section 28(e) to its outer boundaries assumes the risk that his perception of those boundaries may be imperfect and that his conduct may not be within permissible limits.

After the enactment of Section 28(e), III represented that its arrangement came within the safe harbor provided by that section. The Commission believes that the facts of the III arrangement were such that those involved should have realized that the arrangement was not permitted by Section 28(e), regardless of whether the goods and services involved were or were not "brokerage and research services" within the meaning of Section 28(e)(3).[17]

As noted above, Section 28(e) was enacted to address certain fiduciary problems that were thought to arise from a continuation, after the elimination of fixed commissions, of the practice whereby brokers provided money managers with brokerage and research services. The section expressly states, however, that the services must be provided by a broker effecting the transaction.

The general legislative history of Section 28(e) emphasizes the requirement that such broker was to provide the research services:

> The conferees analyzed the possibility that the fiduciary provision would be asserted as a shield behind which the give-ups and reciprocal practices which were so notorious during the late 1960's could be reinstituted. The conferees believe the new language would not permit such a result. The provision agreed to provide [sic] that a money manager may pay a broker or dealer an amount of commission, for *that* broker or dealer's executing a transaction, if the money manager determines that the services it received from *that* broker or dealer justify the payment. The provisions have no application whatsoever to a situation in which payment is made by a money manager to one broker or dealer for service rendered by another broker or dealer. The give-up was a regrettable chapter in the history of the securities industry and the limited definition of fiduciary responsibility added to the law by this bill will in no way permit its return.[18] [Emphasis in original]

The brokers involved in the III arrangement in no

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[15]See, Securities Exchange Act Release No. 12251 (March 24, 1976).

[16]Pub. L. No. 94-29 (June 5, 1975).

[17]Certain of the services received by some participating money managers were not research services, or were readily and customarily available and offered to the general public on a commercial basis. These included such items as periodicals, newspapers, quotation equipment and general computer services. In the Commission's view, the provision of such goods and services was not protected by Section 28(e). *See*, Securities Exchange Act Release No. 12251.

[18]Securities Act Amendments of 1975, Conference Report to Accompany S. 249, Joint Explanatory Statement of the Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess. 108 (1975).

significant sense provided the money managers with research services. They only executed the transactions and paid 50% of the commissions to III. All arrangements for acquiring the services were made by the money managers and the vendors of the services. III simply held the money for the money managers and paid the bills as requested. The services were selected and ordered by the money managers. The money managers were obligated to pay the vendors for the services, and the brokers generally were not aware of the specific services which the managers acquired. Accordingly, the Commission believes that the brokers did not "provide" services within the meaning and intent of Section 28(e).

It is not necessary that a broker produce the research services "in house" in order to obtain the protection afforded by Section 28(e). As the Commission has previously stated:

> Section 28(e) might under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties. . .[19]

It is necessary, however, in order to satisfy the statutory requirement, that the research services be "provided by" the broker. While a broker may under appropriate circumstances arrange to have research materials or services produced by a third party, it is not "providing" such research services when it pays obligations incurred by the money manager to the third party.

B. *Disclosure*

With few exceptions, the money managers who participated in the III arrangement failed to disclose adequately to their clients the facts and circumstances surrounding that arrangement. The Commission believes that such inadequate disclosure constituted a violation of Section 10(b) of the Exchange Act ("Section 10(b)") and Rule 10b-5 promulgated thereunder. In the case of investment advisers the inadequate disclosure also violated Section 206 of the Investment Advisers Act of 1940 ("Section 206").[20]

A number of the money managers used a consent form suggested and distributed by III, which gave their clients the option of approving or disapproving the money managers' use of commissions to acquire goods and services. That consent form contained the following language:

> As you may or may not know, when we place buy and sell orders for your account, as a fiduciary and a registered investment advisor, we are obligated to obtain the best price and execution as well as to pass on to you, directly or indirectly, any additional benefits we might be able to receive from the broker who handles the orders for your account.

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[19]*See*, Securities Exchange Act Release No. 12251.

[20]Even assuming the III arrangement was within the safe harbor of Section 28(e), that Section does not eliminate whatever disclosure obligations may arise under other provisions of the federal securities laws. *See, e.g.*, Section 17 of the Securities Act of 1933, Section 10(b) and Section 206. Section 28(e)(2) also provides that the appropriate regulatory authority may adopt disclosure regulations relating to the exercise of investment discretion under Section 28(e)(1). Except for banks, which are regulated by the various banking authorities, the Commission is the appropriate regulatory authority with respect to other investment advisers exercising investment discretion under Section 28(e)(1).

Although they were not in effect during the period when the III arrangement was operating, the Commission has recently adopted certain brokerage placement disclosure regulations as part of its "brochure rule" for advisers registered under the Investment Advisers Act. *See generally*, Investment Advisers Act Release No. 664 (January 30, 1979) *adopting* Rule 204-3 *and amending* Form ADV. Registered advisers are now required to deliver a written disclosure statement to prospective clients when entering into an advisory contract. Part of the required disclosure relates to brokerage placement practices. In particular, if the registered adviser determines or suggests the broker or brokers through whom, or the commission rates at which, securities transactions for client accounts are executed, the adviser is required to describe how the broker or brokers will be selected to effect securities transactions and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including factors considered in these determinations. If the receipt of research services is such a factor, the adviser must describe the nature of the research services. The adviser must also describe any arrangement in effect during the preceding fiscal year whereby the adviser directed brokerage transactions to a broker or brokers because of research services provided.

> If the best price also happens to be the same price at more than one brokerage firm, then we will do business with the brokerage firm that offers additional benefits to us in the form of research or investment-related services, thereby obtaining these benefits at no cost to us or yourself.****

This consent form was deficient in at least three different ways. First, it stated that the money manager obtained benefits "at no cost" to the client and implied that the client had received the maximum benefits available from the broker. Those statements were erroneous, inasmuch as III was willing to return cash to the money manager's client instead of paying invoices for services acquired by the money manager, a fact which the consent form failed to disclose. The cost to the money manager's client was thus increased by every dollar the manager elected to use for the purchase of goods and services rather than recapture for his client's benefit. The money managers have stated that they were unaware of the recapture possibility, but it is the Commission's position that even if they were unaware, they had a duty to inquire and to ascertain that cash could be obtained for their clients' benefit. In the context of obtaining benefits which, through reduction of expenses, result in benefits to them, advisers are held to the high standards of inquiry and disclosure applicable to fiduciaries generally. The consent form also failed to describe how the specific arrangement was structured or to identify actual services that were received by the money manager. Further, it failed to disclose the value of the services and the amount of commissions subject to recapture through III.

Many of the participating money managers acted as advisers to pension or profit-sharing funds covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). Part 4 of Title 1 of ERISA imposes various duties and prohibitions on the persons managing and advising such funds. Specifically, Section 406(b)(3) of that statute prohibits a fiduciary from receiving any consideration for his own account from any party dealing with the fund in connection with a transaction involving the assets of the fund. It is the Commission's position that the III arrangement was not within the safe harbor provided by Section 28(e). Therefore any exemption from the obligations imposed by ERISA Section 406(b)(3) which Section 28(e) might otherwise offer would not have been available to the money managers participating in the III arrangement. In this regard, money managers should be sensitive to the fact that certain transactions between money managers and their clients may be prohibited by ERISA regardless of consent.

C. *Participation of the Brokers*

As the Commission stated in Exchange Act Release No. 12251, Section 28(e) was intended to apply to those situations where research was provided by the executing broker, including certain third party arrangements, and not to those arrangements in which brokers were paying other operating expenses of a money manager in return for commissions. The Commission went on to state that in its view such arrangements might constitute fraudulent acts and practices by fiduciaries and that:

> [B]rokers should recognize that compliance with any direction or suggestion by a fiduciary which would appear to involve a violation of the fiduciary's duty to its beneficiaries could implicate them in a course of conduct violating the antifraud provisions of the federal securities laws.

A similar admonition to brokers was included in Exchange Act Release No. 11629 (September 3, 1975), which stated:

> A broker which causes or assists an institution to violate a duty to the investor may be aiding or abetting a fraudulent or deceptive act or practice. Furthermore, a broker would have a duty to inquire with respect to his participation in a course of conduct which, to a reasonable person, would raise a question of fraudulent or deceptive acts or practices.

The participating brokers in this instance were aware that money managers were receiving benefits from III in return for directing brokerage transactions. The brokers were also aware of the limited extent of their own participation in the provision of those benefits. Accordingly, it is the Commission's view that the brokers should have been alerted to the possibility of conduct which contravened applicable fiduciary principles and the federal securities laws and that, under these circumstances, they should have ascertained whether there were provisions to insure that adequate disclosure was being made to clients of the money managers.

In addition, all brokers were required by then

applicable Rule 15c1-4[21] to disclose their compensation on confirmations of transactions. Under the III arrangement, the actual compensation retained by a participating broker for executing a transaction was 50% of the amount reflected on the confirmation, with the balance remitted for ultimate use by III and the money managers. Given the nature of the transaction it is the Commission's view that the confirmations should have reflected the fact that 50% of the commission had been remitted to III.

VII. *Conclusion*

The Commission notes that the money managers and brokers mentioned in this Report have cooperated with the Commission's investigation of this matter. In the course of the Commission's investigation the money managers and brokers testified that the commission rates charged to their III customers were actively negotiated and were comparable to those rates charged to other customers. The money managers further testified that the goods and services acquired through the III and other arrangements were used by them to service their clients' accounts. Finally the money managers and brokers testified that they relied upon advice from III and its outside securities counsel that the III arrangement did not violate the federal securities laws. The Commission believes that, in the circumstances, reliance on such advice was not justified.

Money managers, brokers and others who deal with them must at all times be attentive to the fiduciary obligations of money managers to their clients. Section 28(e) does not provide a general exemption from these fiduciary obligations; it provides only a limited exemption as to particular decisions concerning the purchase of brokerage services, and it should be relied on only after careful attention to its limited nature.

By the Commission.

George A. Fitzsimmons
Secretary

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[21]This Rule has been replaced by Rule 10b-10. The analysis is the same under either provision.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16680/March 20, 1980

Admin. Proc. File Nos. 3-5611 and 3-5613

In the Matter of the Applications of

HOWARD D. GATLIFF
Swenson Avenue
Las Vegas, Nevada

and

EARL MARTINSON
16727 Rinaldi Street
Granada Hills, California

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Sale of Unregistered Securities
Failure to Disclose Compensation
Failure to Inform Employer of Private Securities Transactions

Where registered representatives of member firms of registered securities association unlawfully sold unregistered securities, and failed to disclose extra sales compensation to investors, and one of them failed to give proper notification of those sales to firm with which he was associated, *held*, association's findings of violation *sustained*, but proceedings *remanded* to association for reconsideration of the sanctions, and to provide association with opportunity to question one of the salesmen with respect to his receipt of written requests made by association for information.

APPEARANCES:

Frank W. Nemecek, of Nemecek, Gonzalez & Linsley, for applicants.

Frank J. Wilson, Andrew McR. Barnes, Peter J. Chepucavage, and *Mary S. Head*, for the National Association of Securities Dealers, Inc.

I.

Howard D. Gatliff and Earl Martinson appeal from disciplinary action taken against them by the National Association of Securities Dealers, Inc. ("NASD").[1] The NASD found, among other things, that applicants unlawfully sold unregistered securities and failed to make material disclosures to investors. It censured applicants, fined each of them $25,000, and barred them from association with any NASD member.[2] Our findings are based on an independent review of the record.

II.

In 1976, although nominally associated with NASD member firms, Gatliff and Martinson had contracts with an affiliate of Cal-Am Corporation to sell interests in various limited partnerships whose general partners were Cal-Am and companies and persons affiliated therewith.[3] The partnerships, whose capitalization generally ranged from $75,000 to $300,000, were formed to acquire and operate various coal mining leases, and offered investors an attractive tax write-off. Interests in these ventures were sold pursuant to claimed private offering exemptions from the registration provisions of the Securities Act.[4] Gatliff sold units of 91 Cal-Am partnerships to a total of 321 customers, and Martinson, interests in 47 partnerships to a total of 88 customers.[5]

Applicants claim that the various Cal-Am offerings were entitled to private offering exemptions. They point out that the primary consideration in determining the availability of such an exemption is whether the offering is made to persons who have access to the same kind of information that registration would provide, and who are able to fend for themselves.[6] And they argue that the NASD did not show that the Cal-Am offerings failed to meet the applicable criteria.

Applicants' argument is without merit. The burden of establishing the availability of an exemption from registration rests upon those who claim it.[7] Applicants made no effort to shoulder that burden.[8] In fact, applicants' counsel stated that, in December 1976, Cal-Am sold partnership interests over the telephone to persons who called in seeking information about the units because they had heard of the tax advantages that would result from a purchase.[9]

We accordingly affirm the NASD's findings of violation with respect to applicants' sales of unregistered securities.

III.

The NASD found that applicants violated NASD rules by failing to disclose the following facts to investors.

In November 1976, Gatliff and Martinson received 15-year loans of $60,000 and $50,000, respectively, from Legal Mortgage Corporation ("LMC"), a company under common control with Cal-Am. The loans were made to finance each applicant's

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[1]Although applicants filed separate applications for review, their appeals have been consolidated for decision because of the similarity of the issues involved.

[2]The NASD also assessed costs.

[3]At that time, the firm with which Gatliff was registered was no longer in business. Martinson performed no functions for the firm with which he was registered.

[4]Section 4(2) of the Act exempts from registration "transactions by an issuer not involving any public offering."

[5]In an injunctive action brought by this Commission, Cal-Am and certain of its affiliates, without admitting or denying the allegations in the complaint, consented to the entry of a permanent injunction against violations of the Securities Act's registration provisions. *S.E.C.* v. *Cal-Am Corporation, et al.*, Civil Action No. CV-77-4586-AAH (C.D. Calif.).

[6]See Securities Act Release No. 5487 (April 23, 1974), 4 SEC Docket 154, 155.

[7]See *S.E.C.* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *United States* v. *Custer Channel Wing Corporation*, 376 F.2d 675, 678 (C.A. 4, 1967).

[8]As one court has stated, "The evidence must be... explicit, exact, and not built on conclusionary statements of the [respondents]." *Lively* v. *Hirschfeld*, 440 F.2d 631, 633 (C.A. 10, 1971).

[9]When asked if these persons received a prospectus, counsel stated, "Well, I assume they would. Come tax time there are a lot of people who are desperate enough to take a chance on anything as we all know."

investment in a Cal-Am limited partnership, and the purchased securities served as collateral for the loans. LMC had recourse only against the collateral, at the loans' maturity, to recover principal and accrued interest of 10% per annum. In the interim, 75% of total receipts from the collateral was to be applied to reduce the loan balances.

The NASD found that the loans which applicants received were of material significance to other investors. We agree. The record shows that Gatliff was paid more than $116,000 in commissions for his Cal-Am sales, and that Martinson received commissions in excess of $110,000. It is clear that the so-called "loans" which applicants received were in fact extra compensation, and an added incentive to sell customers interests in Cal-Am limited partnerships. As such, they should have been disclosed to investors.

We accordingly affirm the NASD's findings of violation.

IV.

The NASD found that Martinson failed to comply with the Board of Governors interpretation with respect to private securities transactions. That interpretation prohibits persons associated with NASD member firms from engaging in private transactions "outside the regular course or scope of [their] association. . .without prior written notification to the member."[10]

Although Martinson did notify the NASD member with which he was associated of his Cal-Am activities, he did not do so prior to engaging in those activities, and he did not give notification in writing. Accordingly, we affirm the NASD's finding of violation.[11]

V.

The NASD found that Gatliff violated its rules by failing to respond to two written requests for information. Gatliff did not appear at the hearings. However, his counsel stated that Gatliff had moved and apparently did not receive the NASD's requests. Counsel further noted that Gatliff's former street address was misspelled on both of the NASD's letters. The NASD pointed out, however, that the letters were not returned to the Association.

As noted below, we are remanding these proceedings to the NASD. On remand, we think that the Association may appropriately question Gatliff as to whether or not he received its requests for information.[12]

VI.

As noted above, the NASD fined Gatliff and Martinson $25,000 each, and barred them from association with any NASD member. We do not think that the NASD has spelled out its reasons for imposing these sanctions in sufficient detail to enable us to determine whether or not they are excessive or oppressive.

Under the circumstances, we have determined to remand these proceedings to the NASD so that it may reconsider the sanctions which it imposed. Should the Association determine to reaffirm its actions, we think that "a fuller explanation of the need for these sanctions is required."[13]

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

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[10]NASD Manual para. 2177, p. 2109-3.

[11]Applicants accuse the NASD District Committee of prejudgment. This charge is based on references in the Committee's decisions to the injunctive action brought against Cal-Am and others by this Commission. See n. 5, *supra*. Gatliff also refers to a remark made by the Committee linking applicants' counsel to that action. We do not consider that the cited statements evidence prejudgment. In any event, the District Committee's decisions have been accorded *de novo* review, both by the NASD's Board of Governors and by this Commission. See *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855; *Sumner B. Cotzin*, Securities Exchange Act Release No. 10850 (June 12, 1974), 4 SEC Docket 420, 422.

[12]Article IV, Section 5 of the NASD's Rules of Fair Practice provides that the NASD's "Board of Governors. . .shall have the right (1) to require any . . .person associated with a member to report orally . . .with regard to any matter involved in any. . .hearing. . . ."

[13]See *Steadman* v. *S.E.C.*, 603 F.2d 1126, 1140 (C.A. 5, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16680/March 20, 1980

Admin. Proc. File Nos. 3-5611 and 3-5613

In the Matter of the Applications of

HOWARD D. GATLIFF
Swenson Avenue
Las Vegas, Nevada

and

EARL MARTINSON
16727 Rinaldi Street
Granada Hills, California

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that these proceedings be, and they hereby are, remanded to the Board of Governors of the National Association of Securities Dealers, Inc. for further action in accordance with such opinion.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16681/March 20, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005

(SR-NYSE-80-6)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on February 27, 1980, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission copies of a proposed rule change which would modify NYSE Rule 123A.32, to require that specialists make a more timely response to members' inquiries regarding the status of orders left with them for execution. In responding to inquiries, specialists would be able to use the Exchange's pneumatic tube system.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comment should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and subsection (b)(5) thereof relating to the facilitation of transactions in securities, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Immediate implementation of the proposed rule change will promote greater efficiency in the handling and execution of orders, which is particularly appropriate in light of the recent increase in trading volume on the NYSE.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16682/March 20, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), a ten day suspension of exchange and over-the-counter trading for the period commencing at 12:00 midnight (EST) on March 20, 1980 and terminating at midnight (EST) on March 30, 1980 of the securities of McDowell Enterprises, Inc. ("McDowell"), a Tennessee corporation with principal executive offices located at 301 Plus Park Boulevard, Nashville, Tennessee 37217.

The Commission on March 11, 1980 ordered a suspension of trading in McDowell securities, which will expire at midnight March 20, 1980 (see Release No. 16643/March 20, 1980). At that time, the Commission announced its concerns about an undisclosed accumulation of a block of McDowell stock by an undisclosed group of investors and unexplained trading in McDowell stock.

The Commission ordered the second suspension of trading in McDowell's securities as a result of serious additional and separate questions which have been raised concerning the possible impact upon the trading market of the stock of McDowell due to the availability for sale of a substantial block of such stock resulting from a failure by customers to meet margin calls. Information has been provided to the Commission that customers of a broker-dealer have been requested by the broker-dealer to make full payment for the shares of McDowell in their accounts and that customers owning approximately 500,000 shares of McDowell are currently unable to make such payment. The sale of such McDowell shares representing approximately 21% of the market in McDowell stock would result in an extreme disruption to the trading market in McDowell stock. The suspension of trading also was ordered because the Commission, as well as the American Stock Exchange, believes that a fair and orderly market in the securities could not otherwise be maintained and that a suspension was required to permit plans to be made for the commencement of an orderly trading market in the securities.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21476/March 14, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
Westborough, Massachusetts

(70-6398)

ORDER AUTHORIZING TRANSACTIONS RELATED TO FINANCING CONSTRUCTION OF POLLUTION CONTROL FACILITIES AND GRANTING EXEMPTION FROM COMPETITIVE BIDDING

New England Power Company ("NEPCO"), an electric utility subsidiary company of New England Electric System, a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50 promulgated thereunder concerning the following matter.

NEPCO proposes to enter into a Loan Agreement ("Agreement") with the Massachusetts Industrial Finance Agency ("MIFA"), an independent public corporation empowered to issue tax-exempt pollution control bonds for the benefit of industrial enterprises, concerning the financing of certain pollution control facilities being constructed at NEPCO's Brayton Point generating station in Somerset, Massachusetts. NEPCO is converting three of the four generating units at Brayton Point from oil burning to coal and must construct pollution control facilities in order to comply with federal and Massachusetts environmental standards. It is currently estimated that the total cost of coal conversion will be approximately $180 million. NEPCO believes that about $90 million will be eligible for tax-exempt pollution control financing.

Under the Agreement, MIFA will issue bonds to the public and loan the proceeds to NEPCO, which, in turn, will issue general and refunding bonds (G & R Bonds) to MIFA in equivalent amounts with payments to be made to MIFA at such times and in such amounts as will correspond to the payments for principal, premiums and interest on MIFA's bonds. The vehicle for making payments to MIFA will be the Series C and D G & R Bonds. The proceeds of the MIFA bond sale will be deposited with a corporate trustee (the "MIFA Trustee") and will be released to NEPCO for the payment of costs, as they are incurred, of pollution control expenditures relating to the coal conversion project. The managing underwriters for the 3 year MIFA Bonds are expected to be Goldman, Sachs & Co., Dillion, Read & Co., and Shearson Loeb Rhodes, Inc. NEPCO will not be a party to the underwriting agreement between MIFA and the underwriters but that agreement will provide that the terms of the bonds and their sale by MIFA shall be satisfactory to NEPCO.

In light of current high interest rates, NEPCO proposes to complete this financing in two phases. The first phase will be the issue of 3 year MIFA Bonds. The principal amount of these bonds will be $90 million. The interest rate, form and maturity of these bonds will be approved by the board of directors of MIFA. The 3 year MIFA Bonds will be redeemable during the last year.

The second phase will be the refinancing of the 3 year MIFA Bonds with long-term bonds having maturity of not to exceed 30 years. The structure of the 30 year financing will be similar to the 3 year financing, except for interest and redemption provisions. The 30 year MIFA Bonds will be redeemable as a whole or in part at the option of MIFA, upon 30 days notice, after the expiration of 10 years from the date of the bonds, or at any time upon the occurrence of certain events such as loss of tax-free status or destruction of the pollution control facilities. The Agreement will provide that MIFA will exercise its redemption option at NEPCO's request. The bonds will be subject to mandatory redemption through operation of a sinking fund as may be agreed upon prior to the 30 year issue. If the 30 year MIFA Bonds are issued prior to the date when the 3 year MIFA Bonds mature or are to be redeemed, the proceeds from the long-term issue will be deposited with the MIFA Trustee who will hold the proceeds or investments thereof in trust for the benefit of the bondholders. The MIFA Trustee will, upon receipt of the proceeds, deliver an equivalent amount of the 3 year G & R Bonds to NEPCO.

NEPCO will evidence its obligations to MIFA by the delivery of G & R Bonds in principal amount equal to the principal amount of the MIFA Bonds. There will be a separate issue of G & R Bonds as part of both MIFA Bond issues in order that the interest rate, maturity and redemption provisions may be

equivalent to that of the MIFA issues which they support. The first NEPCO issue will be $90 million of General and Refunding Mortgage Bonds, Series C, 9-1/2%, due 1983. The Series C Bonds will be the third issue under NEPCO's General and Refunding Mortgage Indenture and Deed of Trust (G & R Indenture) dated as of January 1, 1977 as amended and supplemented. The managing underwriters will purchase the 3 year MIFA Bonds at a price of 99% of the principal amount with an interest rate of 9-1/2%. The Series C Bonds will be sold at a price of 99% of the principal amount thereof, in conformity with the terms of the 3 year MIFA Bonds, resulting in an effective cost of money to NEPCO of 9.89% per annum to maturity. The second issue will be $90 million of General and Refunding Mortgage Bonds, Series D.

At the time Series C Bonds are issued, NEPCO will issue and pledge Series X First Mortgage Bonds, in an amount of $15 million, to the trustee under the G & R Indenture ("G & R Trustee"). This represents a first mortgage claim for the holders of G & R Bonds, including the Series C Bonds. The exact amount of the Series X bond issue will be determined at the time the Series C Bonds are issued. The Series X Bonds will not pay interest as long as interest payments are made on the Series C Bonds, and to the extent payments of principal are made on the Series X Bonds, the debt due from NEPCO to the holders of the Series C Bonds will be reduced so there will be no double recovery.

At the time the Series D Bonds are issued, NEPCO will issue and pledge Series Y First Mortgage Bonds in an amount not to exceed $90 million. The Series Y Bonds will be pledged to the G & R Trustee as security for holders of all G & R Bonds. The provisions of these bonds, except for interest rates, maturity, redemption provisions and a sinking fund, will be essentially the same as those for the Series X Bonds. The exact amount of these bonds will depend upon the property then available. The record is incomplete regarding the issuance of the Series D and Y bonds.

When the amount of the pledged first mortgage bonds equals the amount of G & R Bonds, the security will be equivalent to that of first mortgage bonds. No new first mortgage bonds will be issued to the public under the first mortgage indenture, however, the other provisions of the first mortgage indenture, including the improvement fund, maintenance obligations and similar protections will remain in full force. When there are no more publicly held first mortgage bonds, the first mortgage indenture will be discharged and the G & R Bonds will have a first mortgage lien.

NEPCO requests that the issuance of Series C and D Bonds be exempted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof, and requests exemption from such requirements for the proposed issue and pledge of Series X and Y Bonds pursuant to paragraph (a)(4) thereof.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $360,000 including legal fees of $70,000, printing expenses of $30,000, trustee's fees of $58,000 and service fees of New England Power Service Company, an affiliate, of $71,000. The Massachusetts Department of Public Utilities and the New Hampshire Public Utilities Commission have authorized the proposed transactions; the Connecticut Division of Public Utility Control has issued an order waiving jurisdiction; the Vermont Public Service Board has issued an order finding that it does not have jurisdiction. No other state or federal commission, other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21406), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, and subject further to the reservation of jurisdiction ordered below.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the issuance of the Series D and Series Y bonds.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21477/March 14, 1980

In the Matter of

MIDDLE SOUTH SERVICES, INC.
MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-6417)

ORDER AUTHORIZING SERVICE COMPANY SUBSIDIARY TO MAKE SHORT-TERM BANK BORROWINGS; GUARANTEE OF REPAYMENT BY HOLDING COMPANY

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its service company subsidiary, Middle South Services, Inc. ("Services"), have filed a joint declaration with this Commission pursuant to Sections 6(a), 7 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(2) promulgated thereunder regarding the proposed transaction.

In connection with the performance of its functions as a subsidiary service company for the Middle South Utilities System ("System"), Services has undertaken a project together with an outside consulting engineering firm leading to the development of a standard design, both conceptually and in detail, for future coal-fired electric generating stations for the System during the late 1980's. Expenditures for this project through 1981 are currently estimated to total approximately $28,500,000, including $25,400,000 allocable to consultant fees and $3,100,000 allocable to in-house costs. Through 1979, approximately $9,000,000 of the costs have been incurred, including $7,200,000 and $1,700,000 allocable to consultant fees and in-house costs, respectively.

To provide Services with funds for continuing its work on the coal-fired project and for the payment at or prior to maturity of up to $10,000,000 of bank borrowings previously incurred, primarily for this undertaking (HCAR No. 20536), Services will enter into a line of credit with First National Bank of Commerce, New Orleans Louisiana ("Bank"), under which Services proposes to borrow through December 31, 1981 up to an aggregate principal amount of $30,000,000 outstanding at any one time.

To effect the proposed borrowings under the line of credit, Services will deliver to the Bank an unsecured master promissory note ("Note"), which Note shall evidence the obligation of Services to pay the amount of the line of credit ($30,000,000) or, if less, the aggregate unpaid principal amount of all loans made to Services under the line of credit, plus interest thereon as set forth below.

The Note will (i) be payable to the order of the Bank, (ii) be dated on or about the date of the Commission's order in this file ("Effective Date"), (iii) be stated to mature on December 31, 1981 and (iv) bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to one hundred two percent (102%) of the prime commercial rate of the Chase Manhattan Bank (N.A.) in effect from time to time for 90-day unsecured commercial loans to corporate commercial customers of the highest credit rating, with adjustments in the interest rate to be made effective automatically on the effective date of any change in said prime rate. Services will have the right to prepay the unpaid principal amount of the Note, in whole or in part, at any time without penalty or premium.

In connection with the proposed borrowings, Services will agree to pay the Bank a fee for the period from the Effective Date to and including December 31, 1981 or earlier termination of the line of credit computed at the rate of 1/2 of 1% per annum on the average daily unused portion of the available line of credit. There is no requirement that Services maintain compensating balances with the Bank in connection with the proposed borrowings under the line of credit. Based upon the present prime commercial rate of 17.75%, the effective cost of money to Services in respect of the proposed borrowings would be 18.61% per annum.

As sole stockholder of the outstanding common stock of Services and as an inducement to the Bank to arrange for Services this $30,000,000 line of credit, Middle South will guarantee the payment by Services of the unpaid principal amount of, and interest on, the Note and the performance by Services of its obligations under its line of credit with the Bank.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $6,000, including legal fees of $4,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21439), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED, that jurisdiction be, and it hereby is, reserved with respect to the accounting and allocations for the accumulated costs of the aforementioned engineering studies by Services.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21478/March 17, 1980

In the Matter of

THE SOUTHERN COMPANY
Perimeter Center East
P.O. Box 720071
Atlanta, Georgia 30346

(70-6426)

NOTICE OF PROPOSED ISSUANCE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN AND EMPLOYEE SAVINGS PLAN

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern proposes to issue and sell from time to time through April 30, 1982, up to 8,500,000 shares of its authorized but unissued common stock, par value $5 per share ("Additional Common Stock"), pursuant to a Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan"). Such shares herein proposed to be issued and sold would be in addition to the balance of 1,958,731 shares at December 31, 1979, remaining under the authorization granted by the Commission by order dated March 2, 1979 (HCAR No. 20941). Southern intends to apply the proceeds estimated not to exceed $106,250,000, from the sale for further equity investments in its operating subsidiaries as may be authorized by this Commission in separate filings (File No. 70-6414) and for other corporate purposes.

The Additional Common Stock will be offered to all holders of Southern's common stock pursuant to the Dividend Plan, a voluntary plan whereby shareholders may elect to (1) have cash dividends on all of their shares of Southern common stock automatically reinvested in shares of such common stock at a price equal to 95% of the average ("Market Price Average") of the high and low sales prices of Southern's common stock, as published in The Wall

Street Journal in its NYSE Composite Transactions, on the dividend payment date, or (2) reinvest less than all their cash dividends in shares of Southern's common stock at a price equal to 95% of the Market Price Average, or (3) reinvest all or less than all of their cash dividends as described above and, in addition, make optional cash payments (not less than $25 per payment nor more than a total of $3,000 per quarter) to invest in shares of Southern's common stock at a price equal to 100% of the Market Price Average, or (4) continue to receive cash dividends on all shares held and invest only optional cash payments.

Cash dividends on shares credited to a participant's account under the Dividend Plan will be reinvested in shares of Southern's common stock at a price equal to 95% of the Market Price Average. No shares will be sold under the Dividend Plan at less than the par value of such shares. The First National Bank of Atlanta currently administers the Dividend Plan and purchases the shares of Southern's common stock under the Dividend Plan as agent for the participants. No service charge or commission will be paid by participant in connection with purchases under the Dividend Plan.

Participants will retain all voting rights relating to shares purchased under the Dividend Plan and credited to their accounts, and shares will be voted in accordance with the instructions of the participant to whose account they are credited. A participant will be able to withdraw from the Dividend Plan at any time upon written notice. Upon withdrawal, the participant will be issued without charge, a certificate for the number of shares credited to his account and will receive a cash payment for the value of any fractional share. Without withdrawing from the Dividend Plan, a participant will be entitled to demand and receive a certificate representing the full shares of common stock credited to his account. Southern reserves the right to suspend, modify (subject to Commission approval), or terminate the Dividend Plan at any time.

Southern also proposes to issue and sell from time to time through April 30, 1982 a maximum of 1,500,000 shares of its authorized but unissued common stock, par value $5 per share, ("New Stock") pursuant to the Employee Savings Plan for The Southern Company System (the "Savings Plan"). Southern proposes to apply the proceeds from the sale of the New Stock (estimated not to exceed approximately $18,750,000) to such further equity investments in its operating subsidiaries as may be authorized by this Commission in separate filings (See File No. 70-6414) and for other corporate purposes.

The New Stock will be offered to employees of Southern's subsidiaries pursuant to the Savings Plan, a voluntary plan under which employees may contribute, through payroll deductions, not less than 2% nor more than 12% of their compensation (base salary or wages). Each employing company will contribute, on behalf of each of the Savings Plan members in its employ, an amount equal to 50% of such of the member's contributions as are not in excess of 6% of the member's compensation. The First National Bank of Atlanta acts as Trustee for the trust which is part of the Savings Plan, and the Savings Plan is administered by the Savings Plan Committee, the members of which are appointed by the Board of Directors of Southern Company Services, Inc.

An employee is eligible to participate in the Savings Plan if: (a) he is at least 21 years of age and (b) he has completed at least one year of service (in which he has completed at least 1,000 hours of service) with one or more Southern subsidiaries. Any employee represented by a collective bargaining agent may not participate in the Savings Plan unless the representatives of his bargaining unit and the employing company mutually agree to participation in the Savings Plan by members of the bargaining unit.

Each Savings Plan member must direct that his contributions be invested in one or more of three funds: (1) Company Stock Fund—consisting of Southern's common stock; (2) Equity Fund—consisting of common or capital stocks and securities convertible into common or capital stock (other than securities issued by or convertible into securities issued by Southern or any of its subsidiaries), short-term investments, and investments in certain commingled trust funds; (3) Fixed Income Fund—consisting of direct obligations of the U.S. Government and its agencies, corporate bonds, debentures, notes, certificates of indebtedness, evidence of indebtedness of Southern or its subsidiaries or affiliates, savings account deposits, and investments in certain commingled trust funds All employing company contributions are invested in the Company Stock Fund.

The amount to the credit of a member's account

attributable to his own contributions is fully vested in the member at all times. Amounts attributable to employing company contributions are fully vested in the member upon his death or retirement pursuant to the pension plan of his employing company. Prior to those events, the amount to the credit of a member's account attributable to employing company contributions is vested in the member in accordance with a schedule which begins with a 50% vesting after five years of service and increases by 5% with each year of service thereafter, until after 15 years of service, these amounts are fully vested. Any amounts not vested upon a member's termination of employment are forfeited and will be applied as a credit to reduce subsequent contributions of the employing company.

The Trustee will vote the shares of common stock of Southern held by it in accordance with written directions received from the individual members on whose behalf such shares are held and will not vote any such shares for which voting instructions are not received. The Trustee has the authority to vote all other securities in its discretion.

The Board of Directors of Southern Company Services, Inc. has the right to amend or terminate the Savings Plan in whole or in part. Any employing company may, by action of its board of directors and approval by the Board of Directors of Southern Company Services, Inc., suspend or terminate the making of contributions of members in the employ of such employing company and of contributions by such employing company. In the event of termination or partial termination or upon complete discontinuance of contributions under the Savings Plan by all employing companies or by any one employing company, the amount to the credit of the accounts of each member whose employing company shall be affected by such termination or discontinuance shall become nonforfeitable and will be distributed to the member as soon as practicable after such termination or discontinuance.

Fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21479/March 19, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-6421)

NOTICE OF PROPOSED CHARTER AMENDMENT TO INCREASE AUTHORIZED COMMON STOCK; ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All

interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP proposes to amend its Restated Articles of Incorporation ("Charter"), as heretofore amended, to increase its authorized common stock, par value $6.50 per share, from 150,000,000 shares to 175,000,000 shares. As of December 31, 1979, AEP had 121,340,747 common shares outstanding. The proposed Charter amendment will be submitted to its shareholders at its annual meeting scheduled to be held on April 23, 1980. AEP proposes to solicit proxies from its shareholders, through the use of proposed soliciting material, to obtain the required approval of the proposed Charter amendment, to elect directors and to select auditors. An affirmative vote of the holders of a majority of the outstanding shares of common stock issued and entitled to vote at the annual meeting is required for adoption of the amendment.

It is stated that the proposed increase in authorized shares is necessary to meet AEP's requirements for new capital and other corporate purposes. The current estimated costs of the construction program for the AEP system for 1980 and 1981 is approximately $1,900,000,000. It is estimated that AEP will have to invest approximately $400,000,000 in the equity of its subsidiaries during the same period, a substantial part of which may ultimately have to be obtained by AEP through the issuance and sale of additional shares of its common stock. In addition, this Commission authorized AEP to acquire by tender offer the common stock of Columbus and Southern Ohio Electric Company ("CSOE") by order dated February 13, 1980 (HCAR No. 21433), on the basis of 1.3 common shares of AEP for each share of CSOE. CSOE had outstanding 16,345,951 common shares as of December 31, 1979; successful consummation of the tender offer would thus require the issuance of approximately 21,250,000 common shares of AEP.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $508,000, including transfer agent fees of $330,000, printing expenses of $88,000 and New York state fees and taxes of $81,280. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than April 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration, as amended, insofar as it proposes the solicitation of proxies from AEP's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED, pursuant to Rule 62, that the declaration, as amended, regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21480/March 19, 1980

In the Matter of

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44701

(70-6397)

NOTICE OF PROPOSED SALE AND LEASEBACK OF RIVER TRANSPORTATION HEADQUARTERS AND REPAIR FACILITY

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9 and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transactions.

Franklin Real Estate Company ("Franklin"), a real estate subsidiary of AEP, has caused the construction of a river transportation headquarters and repair facility ("Facility"), completed in 1977 on the northeastern bank of the Ohio River near Lakin, West Virginia, with funds furnished by Ohio Power. The Facility replaced a smaller AEP system river transportation operating headquarters and maintenance facilities, constructed in 1958, which were located on the Kanawha River at Cedar Grove, West Virginia. The Cedar Grove facilities were felt to be inadequate to handle the AEP system's expanded towing fleet for coal transportation, which fleet was augmented by the acquisition of 11 towboats and 248 river barges in 1973 and of 16 towboats and 260 river barges in 1976 and 1977. The Facility is designed to handle the increased supervision, operating personnel, maintenance and storeroom requirements of the expanded river transportation system.

It is proposed that Franklin sell the Facility to Mosley Associates Limited Partnership ("Mosley"), and that Franklin lease to Mosley the surface land thereunder. Mosley will then immediately lease the Facility and sublease the surface land thereunder to Ohio Power. The principal components of the Facility to be sold and leased back include the following: a shore based service building and related equipment; a water supply and fire protection system; roadways and parking area; piling dock cells, including mooring rings and hardware; two access bridges to the dock facilities; a floating service building and related equipment; a 2,000 ton floating dry dock; a 50 ton barge-mounted floating derrick; a tug-converted towboat; and a fender barge.

The surface land underlying the Facility (two tracts comprising approximately 14.71 acres) and certain easements relating thereto ("Land and Easements") would be leased by Franklin to Mosley pursuant to a net ground lease ("Ground Lease") for a primary term of 25 years, with up to four 5-year extended terms at lessee's option, at a basic annual rent of $30,000 per year, payable quarterly. The Facility would be sold by Franklin to Mosley for a price of $4,100,000. The original cost of the Facility (exclusive of the Land and Easements) was approximately $3,661,000. The proceeds of the sale will be used by Franklin to repay Ohio Power for funds advanced for construction and other costs.

The Facility and Land and Easements would then be respectively leased and subleased by Mosley to Ohio Power pursuant to a Lease and Sublease Agreement for a primary term of 25 years, with up to four 5-year extended terms at lessee's option. There would be an initial term from the closing date to the end of the calendar quarter in which the closing occurs at a rent of $1,167.36 per day (based on a purchase price of $4,100,000 for the Facility). The basic annual rental during the primary term, payable quarterly in arrears, would be an annual constant amount equal to the following applicable percentage of the purchase price of the Facility: 5.966% for years one through five; 10.43% for years six through ten; 12.36% for years eleven through fifteen; and 13.11% for years sixteen through twenty-five. On a present value basis, the implicit annual equivalent interest cost to Ohio Power of its rental payments during the 25 year primary term is approximately 8.31%.

Under the Lease and Sublease Agreement the lessee will retain any investment tax credit. If the lessee exercises any option to extend, the rent will be the annual fair rental value as of the date of commencement of the extended term, payable quarterly, except that the annual rental during the first 5-year extended term will not exceed 11.37% of the purchase price of the Facility. If the lessee exercises its option for such first extended term, lessor may require lessee to prepay a certain portion

of such five years rent. The lease will be a net lease, under which Ohio Power will also be responsible for the performance of all obligations of Mosley under the Ground Lease. Ohio Power may, at the end of the primary term or any extended term, purchase the Facility and Mosley's leasehold estate under the Ground Lease at a price equal to their fair market value, except that if such option is exercised at the end of the primary term, the minimum price would be 15% of the Lessor's cost of the Facility. The Lease and Sublease Agreement also contains provisions related to termination by reason of uneconomical use, defaults and other matters.

Approximately 95% of the purchase price of the Facility will be loaned to Mosley by Bankers Life Company, whose loan will be secured by a deed of trust encumbering the interests of Mosley in the Facility and in the leases.

It is stated that since the Facility and underlying land provide essential support for barge coal deliveries to AEP system plants to which coal deliveries are made in part or completely by barge, the lease costs will be allocated to the AEP system operating companies which benefit from such operations. The costs of operating the Facility, including leasing charges, will be allocated in proportion to the direct costs of barging movements (mainly the costs of leasing, operating, and maintaining the river towboats and barges used in specific coal deliveries). Ohio Power consents to a reservation of jurisdiction with respect to the accounting for and allocation of transportation charges to its affiliates in connection with the Facility.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than April 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21481/March 20, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

(70-6418)

ORDER AUTHORIZING CHARTER AMENDMENT TO INCREASE AUTHORIZED COMMON STOCK

Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission a declaration and an amendment thereto pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 and Rules 62 and 65 promulgated thereunder concerning the following transaction.

CSW proposes to amend its Restated Certificate of Incorporation, as heretofore amended, to increase its authorized common stock, par value $3.50, from 80,000,000 shares to 120,000,000 shares. Proceeds from the sale of such additional shares will be used to help finance planned construction requirements of approximately $3,693,000,000 for 1980-1984. As of December 31, 1979, CSW had 71,770,571 shares outstanding. CSW proposes to

submit the amendment to its stockholders at its annual meeting to be held on April 17, 1980. In connection therewith, CSW has previously been authorized (HCAR No. 21443) to solicit proxies from the holders of its common stock. An affirmative vote of the holders of a majority of the outstanding shares of common stock issued and entitled to vote at the annual meeting is required for adoption of the amendment.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $89,000, including printing fees of $13,500, transfer agent fees of $22,170, legal fees of $3,500, and solicitation and forwarding expenses of banks and brokers of $33,000. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21443), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21482/March 20, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

WEST TEXAS UTILITIES COMPANY
Abilene, Texas

CENTRAL AND SOUTH WEST SERVICES, INC.
Dallas, Texas

(70-6163)

ORDER AUTHORIZING INCREASES IN SHORT-TERM BORROWING AUTHORIZATIONS AND EXTENSIONS THEREOF

Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), Southwest Electric Power Company ("SWEPCO"), Public Service Company of Oklahoma ("PSO"), West Texas Utilities Company ("WTU"), and Central and South West Services, Inc. ("CSWS"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 and Rules 43, 45 and 50 promulgated thereunder concerning the following matter.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 14, 1979, July 19, 1979, July 31, 1979, October 24, 1979 and February 5, 1980 in this matter (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166, 21269 and 21421), CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1980 in a maximum aggregate collective amount of $200,000,000 and in the following individual amounts: CSW, $200,000,000; CPL, $100,000,000; SWEPCO, $75,000,000; PSO, $90,000,000; WTU, $15,000,000; and CSWS, $2,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks through the issuance of commercial paper. The money pool consists of

funds from the following sources: (i) surplus funds of CSW; (ii) surplus funds of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, CSW is authorized to issue and sell its commercial paper to commercial paper dealers and to certain approved financial institutions, and to borrow from banks.

By post-effective amendment, CSW and its subsidiaries propose (i) to extend the short-term borrowing authorization to December 31, 1981, (ii) to increase the aggregate borrowing limitations for CSW and CSWS and (iii) to increase a master note borrowing limitation.

Applicants-declarants request that the short-term debt limits of CSW be increased to $250,000,000. Such funds would be added to the money pool and loaned to subsidiaries for the interim financing of their capital programs through 1981 and to provide for other temporary working capital needs. It further is requested that the short-term debt limit of CSWS be increased to $4,000,000 due to the expanded activities and corresponding increase in expenditure levels of CSWS. The aggregate of all CSW system short-term borrowings at any one time outstanding will not exceed the $250,000,000 limitation for CSW.

With regard to the proposed change in a master note limitation, CSW currently has authority to borrow under such an agreement with Mercantile National Bank of Dallas ("Mercantile") for up to $5,000,000. Interest on CSW's master notes is at a rate equal to the highest annual interest rate on 30 to 179 day commercial paper placed by a major finance company as reported in *The Wall Street Journal.* Mercantile has indicated a willingness to increase this agreement to $8,000,000. Due to the advantageous cost of this type of borrowing, CSW requests authority to increase its maximum master note borrowing level with Mercantile to $8,000,000.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $150. No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21452), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21483/March 20, 1980

In the Matter of

THE SOUTHERN COMPANY
GEORGIA POWER COMPANY
PIEDMONT-FORREST CORPORATION
Atlanta, Georgia

ALABAMA POWER COMPANY
ALABAMA PROPERTY COMPANY
SOUTHERN ELECTRIC GENERATING COMPANY
SOUTHERN COMPANY SERVICES, INC.
Birmingham, Alabama

GULF POWER COMPANY
Pensacola, Florida

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-6407)

ORDER AUTHORIZING HOLDING COMPANY SYSTEM TO ALLOCATE ITS CONSOLIDATED INCOME TAX LIABILITY IN A MANNER DIFFERING FROM THAT EXCEPTED BY RULE 45

The Southern Company ("Southern"), a registered holding company, and its above-named wholly-owned subsidiary companies (collectively, with Southern, "The Southern System") have filed a joint declaration and an amendment thereto with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder as applicable to the proposed transaction.

Southern and its subsidiaries join annually in the filing of consolidated Federal Income tax returns. The consolidated Federal income tax liabilities are allocable among the members of The Southern System in accordance with the provisions of Section 1522 of the Internal Revenue Code of 1954 and other applicable requirements of Rule 45 under the Act as modified by the Commission's orders of December 4, 1958, (HCAR No. 13876), March 2, 1961 (HCAR No. 14382), April 26, 1963 (HCAR No. 14860), March 15, 1976 (HCAR No. 19429), February 4, 1977 (HCAR No. 19873), June 7, 1978 (HCAR No. 20582), April 30, 1979 (HCAR No. 21033).

Under Section 1552(a)(1) as modified by orders of the Commission dated April 26, 1963, and March 15, 1976, (i) the tax (28%) on consolidated net long-term capital gain is apportioned among the group members in accordance with the ratio which that portion of the consolidated net long-term capital gain attributable to each member of the group having net long-term capital gain bears to the consolidated net long-term capital gain, (ii) the tax and surtax (46%) on ordinary income is apportioned in accordance with the ratio which that portion of the consolidated ordinary taxable income attributable to each member of the group having ordinary taxable income bears to the consolidated ordinary taxable income, and (iii) investment tax credits allowable to the group are allocated to those members whose investments generated the credits. Under the circumstances hereinafter described, certain inequities and distortions will result if the allocation of the group's consolidated income tax liabilities for 1979 is effected pursuant to the provisions of Rule 45 as set forth above.

Set forth below are the estimated 1979 separate taxable incomes and losses of the members of The Southern System (adjusted to take into account the consolidation and, thus, comprising in the aggregate the consolidated net taxable income).

Company	*Estimated Taxable Income (Loss)*
The Southern Company	$ (7,129,000)
Alabama Power Company	(43,651,466)
Alabama Property Company	—
Georgia Power Company	89,984,426
Piedmont-Forrest Corporation	306,422
Gulf Power Company	1,954,924
Mississippi Power Company	9,769,850
Southern Electric Generating Company	10,651,344
Southern Company Services, Inc.	(108,652)
Consolidated	$61,777,848

The estimated consolidated income tax before investment tax credits is $28,129,179 (excluding the estimated minimum tax). In order to allocate such consolidated tax liability equitably, the Southern System proposes as an exception from the provisions of Rule 45, that (i) the reduction in the consolidated tax liabilities arising from the net operating losses contributed to the consolidated tax returns by Alabama Power Company ("Alabama") be allocated in their entirety to Alabama (but that each other operating company be allowed to offset its liability to Alabama by its full investment credits earned), and (ii) that in years when Alabama has taxable income and may be entitled to tax credits

under the operating loss carryback and carryover provisions of Section 172(b) of the 1954 Internal Revenue Code, in order to comply with the separate return limitations required by Rule 45, any tax credits remitted to Alabama as a result of the exception from the rule herein requested shall be applied to reduce any credits in future years to which Alabama may otherwise be entitled under any separate return limitations of Rule 45. This method of allocation would, of course, continue to be subject to the provision contained in sub-paragraph (6)(ii) of Rule 45(b) that the aggregate tax liability allocated to each subsidiary company should not exceed the amount of tax of such company based upon a separate return computed as if such company had always filed its tax return on a separate return basis.

A comparison of the taxes allocated under the method prescribed by Rule 45 and under the proposed method is as follows:

	Under Rule 45	*Under Requested Method*
	(Before Investment Tax Credits)	
The Southern Company	$ —	$ —
Alabama Power Company	—	(20,079,674)
Alabama Property Company	—	—
Georgia Power Company	22,544,405	38,588,767
Piedmont-Forrest Corporation	—	—
Gulf Power Company	487,933	840,492
Mississippi Power Company	2,438,415	4,200,306
Southern Electric Generating Company	2,658,426	4,579,288
Southern Company Services, Inc.	—	—
	$28,129,179	$28,129,179

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $4,500, including legal fees of $1,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21446), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21484/March 20, 1980

In the Matter of

THE HARTFORD ELECTRIC LIGHT COMPANY
Berlin, Connecticut

(70-6423)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND EXCEPTION FROM COMPETITIVE BIDDING

The Hartford Electric Light Company ("HELCO") a wholly-owned subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(2) promulgated thereunder as applicable to the following transaction.

HELCO proposes to issue and sell at private sale to institutional investors up to $10,000,000 principal amount of its 13.35% First Mortgage Bonds, 1980 Series, due March 1, 1990 ("Bonds"). The terms of the Bonds have been negotiated directly with the proposed purchasers; HELCO states that the issue and sale of the Bonds will be exempt from the competitive bidding requirements of Rule 50 pursuant to clause (a)(2) thereof. The Bonds will be sold at 100% of the principal amount thereof, will mature on March 1, 1990, and shall bear interest from the date of issuance, payable semiannually of the first day of September and the first day of March

in each year beginning September 1, 1980, at the rate of 13.35% per annum until the principal amount thereof shall be due and payable, and thereafter at a rate equal to the lesser of the highest rate allowed by applicable law or 14.35% per annum.

The Bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of January 1, 1958, between HELCO and the First National Bank of Boston, Successor Trustee, as heretofore supplemented and amended by various indentures supplemental thereto, and as to be further supplemented by a Seventeenth Supplemental Mortgage Indenture dated as of March 1, 1980, setting out the terms of the Bonds. The terms will include provisions that no Bond shall be redeemed (1) for any purpose prior to March 1, 1985; or (2) at any time on or after March 1, 1985 prior to March 1, 1988, if such redemption is for the purpose of or in anticipation of refunding such Bond through the use directly or indirectly, of borrowed funds or a preferred stock issue (a) at an effective cost to HELCO (computed in accordance with generally accepted financial principles) less than the interest rate of the Bonds, or (b) having a weighted average life to maturity less than that of the Bonds; and (3) that on and after March 1, 1988 up to one-half of the initial aggregate principal amount of the Bonds may be redeemed by HELCO in multiples of $50,000 pursuant to one or more such refundings. HELCO has stated that the purchaser is unwilling to purchase the Bonds in the absence of the aforesaid redemption and refunding protection.

The net proceeds from the sale of the Bonds will be used to repay an equal principal amount of short-term borrowings, estimated to total approximately $56,500,000 at the time of such sale, which were incurred to finance HELCO's construction program. HELCO's 1980 construction program expenditures are estimated to total $66,400,000, which includes $2,200,000 for nuclear fuel. In addition to the sale of the Bonds and internal cash generation, the Company expects to effect additional preferred stock (and possibly additional first mortgage bond) financing in 1980 to finance the completion of its 1980 construction program and to meet bond maturity and sinking fund requirements of $12,715,000 in 1980.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated to total $75,000, including legal fees of $45,000, trustee's fees of $14,000, and miscellaneous expenses of $10,000. The proposed issuance and sale of Bonds by HELCO has been approved by the Connecticut Division of Public Utility Control. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21440), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 558/March 18, 1980

The Securities and Exchange Commission has issued an order under the Trust Indenture Act on application of Chrysler Financial Corporation that the trusteeship of United States Trust Company of New York ("U.S. Trust") under one indenture and successor trusteeship under five indentures of Chrysler Financial Corporation is not so likely to involve a material conflict of interest as to make it necessary to disqualify U.S. Trust from acting as trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11086

NOTICE TO PERIODIC PAYMENT PLAN CERTIFICATE HOLDERS OF RIGHT OF WITHDRAWAL

ACTION: Final rule.

SUMMARY: The Commission today is adopting a technical amendment to the form which provides the notice to periodic plan certificate holders of their right of withdrawal with respect to periodic payment plan certificates. The revised notice permits clearer disclosure of the various charges which have been deducted prior to the sending of the notice when the certificate holder has made a number of monthly payments or their equivalent as an initial investment.

EFFECTIVE DATE: April 23, 1980.

FOR FURTHER INFORMATION CONTACT:

Mark Mackey, Esq.
Marsha Gilman
Investment Company Act Study Group
Division of Investment Management
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

SUPPLEMENTARY INFORMATION: The Commission today adopted a technical amendment to form N-27F-1 [17 CFR 274.127f-1] contained in rule 27f-1 [17 CFR 270.27f-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), which is the notice required to be sent to periodic payment plan certificate holders informing them of their right to withdraw from such plan within 45 days from the date of such notice. The amendment clarifies the charges which have been deducted prior to the sending of the notice when the certificate holder has made a number of payments as an initial investment. This amendment was developed by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

DISCUSSION

Contractual plans are periodic payment plans for accumulating particular securities in which purchasers agree to invest a specific sum of money, usually monthly, for a period of years.[1] Generally, one-half of these certificate holders' first 12 monthly payments or their equivalent are deducted as a "front-end" sales load.

In 1970, Congress—having found that "over half of all contractual plan investors fail to complete their payments on schedule and thus usually pay excessive sales charges"[2]—adopted section 27(f) [15 U.S.C. 80a-27(f)], in part, to establish a period of 45 days in which a certificate holder may surrender his certificate and receive a specified refund. Section 27(f), in part, requires that notice of this right of withdrawal and a statement of charges to be deducted from the projected payments on the certificate must be mailed to each certificate holder by the custodian bank for such plan within 60 days of the certificate's issuance. That section, in part, also authorizes the Commission to make rules specifying the method, form, and contents of such notice.

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[1]The term "periodic payment plan certificate" is defined in section 2(a)(27) [15 U.S.C. 80a-2(a)(27)].

[2]Sen. Rep. No. 184, 91st Cong., 1st Sess. 9 (1969).

Accordingly, in 1971 the Commission promulgated form N-27F-1 under the Act, the notice to periodic payment plan certificate holders of the 45-day withdrawal right with respect to periodic payment plan certificates.[3] Having reviewed the form, the Commission has determined to make a technical modification of its text.

The Commission recognizes that the form's existing language may be confusing to a certificate holder who has made the equivalent of more than one monthly payment as an initial investment in the plan. Accordingly, it hereby amends the second paragraph of the form and certain related instructions thereto. The Commission believes that no other modifications of form N-27F-1 are necessary or appropriate at this time.[4]

AUTHORITY, EFFECTIVE DATE

The Commission amends form N-27F-1 pursuant to sections 6(c) and 38(a) of the Act [15 U.S.C. 80a-6(c) and 80a-37(a)] and section 27(f) of the Act. The Commission considers this amendment to be technical, rather than substantive, modification. Accordingly, it finds that notice and procedures specified under 5 U.S.C. 553 are unnecessary.

The amendment shall be effective April 23, 1980.

TEXT OF AMENDED RULE

The Commission hereby amends 17 CFR Chapter II as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By revising Form N-27F-1 in paragraph (d) of §270.27f-1 to read as follows:

[3]Investment Company Act Release No. 6600 (Jul. 2, 1971), 36 FR 13134 (Jul. 15, 1971), which was technically amended in Investment Company Act Release No. 7152 (May 2, 1972), 37 FR 9900 (May 18, 1972).

[4]In view of the obvious significance of an investor's decision of whether to withdraw from a plan, and the lack of any express anti-fraud provisions in section 27(f) of the Act, the Commission will consider any deviation from the exact text mandated by amended form N-27F-1 as a very serious matter warranting appropriate enforcement action.

§270.27f-1 Notice of right of withdrawal required to be mailed to periodic payment plan certificate holders and exemption from section 27(f) for certain periodic payment plan certificates.

* * * * *

(d) * * *

Form N-27F-1 NOTICE TO PERIODIC PAYMENT PLAN CERTIFICATE HOLDERS OF 45-DAY WITHDRAWAL RIGHT WITH RESPECT TO PERIODIC PAYMENT PLAN CERTIFICATES

IMPORTANT

(Date of mailing)

Re: — (1) —

Dear —— (2) ——: This notice is required to be sent to all purchasers of plan certificates pursuant to laws administered by the U.S. Securities and Exchange Commission. You should read it carefully and retain it with your financial records.

Of the $——(3)—— you have paid on your —— (4) —— plan, representing —— (5) —— regular monthly payments, $—— (6) —— or —— (7) —— percent has been deducted for various charges.

[The following sentence is to be included when any periodic payment remains outstanding in which the sales load charges exceed 9 percent of such payment.] A total of $—— (8) —— or ——(9)—— percent of your first —— (10) —— monthly payments will be deducted from those payments for similar charges.

Charges of $——(11)—— or ——(12)—— percent will be deducted from each subsequent payment. You have until ——(13)—— to surrender your certificate for any reason and receive a refund of all of the charges which have been deducted from your payments, and, in addition, the value of your account on the date your certificate is received.

In determining whether or not to exercise your right you should consider, among other things, the projected cost of your investment and your ability to make the scheduled payments over the life of your plan as they become due. Your plan provides for —— (14) —— payments of $ —— (15) —— per —— (16)——, or total payments of $ —— (17) ——. If you made all of the scheduled payments over the full

term of your plan, the total deductions would be $——(18)—— or an effective charge of ——(19)—— percent of your total payments. However, if you do not complete your program, the deduction of various charges from your initial payments will result in your paying effective charges in excess of that rate. For a more complete description of the charges deducted under your plan, carefully review your prospectus.

If you wish to exercise your right of withdrawal, return your plan certificate to —— (20) —— by —— (21) —— in accordance with the enclosed instructions.

Very truly yours,

—— (22) ——

INSTRUCTIONS FOR USE OF FORM N-27F-1

General instructions. A. The notice shall be legible and shall be printed or typed on letter-size paper. It shall be in modern type at least as large as 10-point modern type. All type shall be leaded at least 2 points. Parenthetical references should be completed in accordance with the Itemized Instructions below and need not be underlined or boldfaced.

B. The notice shall bear the letterhead of the sender and the mailing date. An inconspicuous reference to the form number may appear on the notice.

Itemized instructions. Insert the following in the corresponding numbered spaces on Form N-27F-1.

(1) The name of the plan and the account number of the certificate holder. An additional internal record keeping reference may also be included at the option of the sender.

(2) The name of certificate holder or an identification such as "Investor" or "Planholder."

(3) The total amount paid by the certificate holder as of the date of the mailing.

(4) The name of the plan.

(5) The number of regular monthly payments or their equivalent made by the certificate holder as of the date of mailing.

(6) The total amount deducted for all charges from the amount paid by the certificate holder as of the date of the mailing.

(7) The percentage that the total charges set forth in Item (6) are of the total payments included under Item (3) above.

(8) The total dollar amount of all charges scheduled to be deducted from the payments made by the certificate holder before the first regular payment upon which there would be a reduction in the rate of the applicable sales charge below 9 percent of the certificate holder's gross payment.

(9) The percentage that the total charges set forth in Item 8 are of the total payments included under Instruction 8 above.

(10) The number of regular monthly payments required to be made before the rate of the sales charges deducted from such regular payment is reduced to less than 9 percent of the certificate holder's gross payment.

(11) The dollar amount of the charges to be deducted from each payment made by the certificate holder after the first regular payment upon which there would be a reduction in the rate of the applicable sales charge below 9 percent of the certificate holder's gross amount. If a portion of the payments is used for the purchase of completion insurance, the amount attributable thereto shall not be included as a charge and the following phrase shall be added: "Apart from insurance premiums based upon the amount of coverage in effect at the time of payment."

(12) The percentage that the amount of the charges set forth in Item 11 are of the amount of the payment included under Instruction 11 above.

(13) The date which is 45 days from the date on which the notice will be mailed.

(14) The number of monthly or quarterly payments provided for under the plan.

(15) The dollar amount of each scheduled periodic payment to be made by the certificate holder.

(16) The periodic (e.g., month, quarter) for which payments are scheduled to be made under the plan.

(17) The dollar amount of total payments scheduled

to be made over the full term of the plan by the certificate holder.

(18) The total dollar amount of all charges scheduled to be deducted over the full term of the plan.

(19) The percentage that the total charges as set forth in Item 18 are of the total payments scheduled to be made by the certificate holder over the full term of the plan.

(20) The name and address of the custodian bank or other person authorized to accept surrendered certificates.

(21) The date which is 45 days from the date on which the notice will be mailed.

(22) The name of a responsible officer of the sender with his title.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. By amending §274.127f-1 to read as follows:

§274.127f-1 Form N-27F-1, notice to periodic payment plan certificate holders of 45-day withdrawal right with respect to periodic payment plan certificates.

This form is to be reproduced by the issuer or any depositor of or underwriter for such issuer and will not be available at the Securities and Exchange Commission. For required text of the form see paragraph (d) of §270.27f-1 of this chapter.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11087/March 14, 1980

In the Matter of

D. L. BABSON MONEY MARKET FUND, INC.
2440 Pershing Road
Kansas City, Missouri 64108

(812-4578)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that D. L. Babson Money Market Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on December 5, 1979, and an amendment thereto on February 14, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation incorporated under the laws of the State of Maryland on October 19, 1979. Applicant states that its investment objective is to invest in high quality short term debt instruments for the purpose of maximizing income to the extent consistent with the safety of principal and the maintenance of liquidity. Applicant intends to invest exclusively in marketable securities issued or guaranteed by the United States Government or its agencies or instrumentalities, certificates of deposit, bankers' acceptances and other commercial bank short-term obligations, commercial paper, including variable rate master demand notes, short-term corporate debt securities, savings and loan association obligations, and repurchase agreements. Applicant is permitted to invest in a diversified portfolio of money market securities, 90% of which will have a stated maturity of not more

than one year from the date of settlement for the security.

Applicant states that, except as provided in the application, its portfolio securities will be valued in accordance with the views of the Commission as set forth in IC-9786. In calculating its total net assets to determine the offering price of its shares each day, Applicant indicates that it intends to value all of its portfolio securities which, on the date of valuation, have sixty days or less to maturity, on the basis of the amortized cost valuation technique. Applicant further states that portfolio securities which on the date of valuation have remaining maturities in excess of sixty days and for which market quotations are readily available are valued at the mean between the most recent bid and asked prices as obtained from one or more major market makers for such securities. If market quotations are not readily available, Applicant will value such securities at their value as determined in good faith in accordance with consistently applied procedures established by and under the general supervision of Applicant's Board of Directors.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act and the Rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it wishes to attract individual and institutional investors. Applicant alleges that it understands that many of these investors require a money market fund which maintains a constant net asset value per share and pays dividends which do not fluctuate on account of daily changes in the values of its portfolio securities. Applicant states that computing the net asset value per share to the nearest one cent on a share value of $1.00 will eliminate the periodic fluctuation in Applicant's net asset value per share which may occur and which may well cause Applicant's shareholders at the appropriate time to realize unwanted nominal capital gains and losses upon redemption of their shares. Applicant further provides that its Board of Directors have determined in good faith that this method of calculating the net asset value per share under such circumstances is appropriate and will be in the best interests of Applicant's shareholders.

Applicant represents that, to the extent necessary, Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a $1.00 price per share, if the net asset value per share declines to a value below $.996 or rises to a value of above $1.004, respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average

portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 7, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11088/March 14, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6200/March 14, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11089/March 14, 1980

In the Matter of

BARCLAYS BANK INTERNATIONAL LIMITED
c/o Paul B. Ford, Jr., Esq.
Simpson Thacher and Bartlett
One Battery Park Plaza
New York, New York 10004

(812-4501)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Barclays Bank International Limited ("Applicant") filed an application on July 9, 1979, and amendments thereto on January 14, 1980, and February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act.

On February 15, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11051). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted,

effective forthwith, subject to the following conditions: 1) Applicant will ensure that each offeree of its presently proposed offering of commercial paper notes will be provided with a memorandum describing its business and containing its most recent publicly available financial statements and will also include a description of material differences between United States and United Kingdom generally accepted accounting principles; such memorandum will be at least as comprehensive as memoranda which are customarily used in connection with the issuance of commercial paper in the United States; such memorandum will be updated periodically and at least annually to reflect material changes in Applicant's financial position, and 2) Applicant will provide each offeree of any future offering of its long-term debt securities in the United States not requiring registration under the Securities Act of 1933 with a memorandum at least as comprehensive in its description of Applicant as memoranda customarily used in such offerings of long-term debt securities in the United States.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11090/March 14, 1980

In the Matter of

BARCLAYS BANK LIMITED
c/o Paul B. Ford, Jr., Esq.
Simpson Thacher and Bartlett
One Battery Park Plaza
New York, New York 10004

(812-4502)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Barclays Bank Limited ("Applicant") filed an application on July 9, 1979, and amendments thereto on January 14, 1980, and February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisioins of the Act.

On February 15, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11052). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following conditions: 1) Applicant will ensure that each offeree of its presently proposed offering of commercial paper notes will be provided with a memorandum describing its business and containing its most recent publicly available financial statements and will also include a description of material differences between United States and United Kingdom generally accepted accounting principles; such memorandum will be at least as comprehensive as memoranda which are customarily used in connection with the issuance of commercial paper in the United States; such memorandum will be updated periodically and at least annually to reflect material changes in Applicant's financial position, and 2) Applicant will provide each offeree of any future offering of its long-term debt securities in the United States not requiring registration under the Securities Act of 1933 with a memorandum at least as comprehensive in its description of Applicant as memoranda customarily used in such offerings of long-term debt securities in the United States.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11091/March 14, 1980

In the Matter of

INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS SELECTIVE FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
IDS NEW DIMENSIONS FUND, INC.
IDS PROGRESSIVE FUND, INC.
IDS BOND FUND, INC.
IDS CASH MANAGEMENT FUND, INC.
IDS TAX-EXEMPT BOND FUND, INC.
IDS HIGH YIELD TAX-EXEMPT FUND, INC.
IDS GROWTH FUND, INC.
1000 Roanoke Building
Minneapolis, Minnesota 55402

and

INVESTORS DIVERSIFIED SERVICES, INC.
IDS Tower
Minneapolis, Minnesota 55402

(812-4403)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) AND RULE 22d-1 THEREUNDER PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING OFFERS OF EXCHANGE PURSUANT TO SECTION 11(a) OF THE ACT

NOTICE IS HEREBY GIVEN that Investors Mutual, Inc. ("Mutual"), Investors Stock Fund, Inc. ("Stock"), Investors Selective Fund, Inc. ("Selective"), Investors Variable Payment Fund, Inc. ("Variable"), IDS New Dimensions Fund, Inc. ("New Dimensions"), IDS Progressive Fund, Inc. ("Progressive"), IDS Bond Fund, Inc. ("Bond"), IDS Cash Management Fund, Inc. ("Cash Management"), IDS Tax-Exempt Bond Fund, Inc. ("Tax-Exempt"), IDS High Yield Tax-Exempt Bond Fund, Inc. ("High Yield") and IDS Growth Fund Inc. ("Growth") (collectively referred to as "the Funds"), open-end management investment companies registered under the Investment Company Act of 1940 ("Act"), and Investors Diversified Services, Inc. ("IDS"), each Fund's investment adviser and principal underwriter (collectively referred to with the Funds as "Applicants"), filed an application on February 11, 1980, and an amendment thereto on March 3, 1980, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated November 27, 1979 (Investment Company Act Release No. 10954). This earlier amended order, pursuant to Section 11(a) of the Act, permitted certain transfers among the Funds on a basis other than their relative net asset value per share at the time of transfer and, pursuant to Section 6(c) of the Act, exempted such transfers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

IDS, as principal underwriter for the Funds, maintains a continuous public offering of shares of each of the Funds at their respective net asset value plus a sales charge. On purchases of less than $15,000, the sales charge is 3-1/2% for Bond, 7% for Selective, and 8% for Mutual, Stock, Variable, New Dimensions, Progressive and Growth. Tax-Exempt and High Yield have a 4% sales charge on purchases of less than $50,000. For each of the Funds, the sales charge is reduced on larger purchases, except Bond which has a level 3-1/2% sales charge. There is no sales charge for purchases of Cash Management. All of the Funds, except Bond, permit reinvestment of dividends and capital gains distributions without payment of a sales charge.

Applicants state that on June 20, 1979, and November 27, 1979, the Commission entered orders pursuant to Section 11(a) of the Act permitting transfers among the Funds on a basis other than their relative net asset values and, pursuant to Section 6(c) of the Act, exempting such transfers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder (Investment Company Act Release Nos. 10742 and 10954, respectively). According to the application, the shareholders of Mutual, Stock, Variable, Progressive, New Dimensions and Growth currently have the privilege of transferring their shares into shares of each of the Funds, except Bond, at net asset value without paying a sales charge. Applicants further state that the shareholders of Selective, Bond, Tax-Exempt and High Yield who have held their shares for eight months or more have the same transfer privilege described above, except that shareholders of High Yield, Selective and Tax-Exempt may transfer their shares at net asset value into Tax-Exempt or High Yield at any time.

Applicants further represent that the shareholders

of each of the Funds, except Cash Management, who have held their shares for less than eight months may transfer into Bond upon paying an additional sales charge. Shareholders of Bond, Tax-Exempt and High Yield who have held their shares for less than eight months have the privilege of transferring into Mutual, Stock, Variable, Progressive, New Dimensions, Tax-Exempt, Selective and High Yield upon paying an additional sales charge. Applicants further state that shareholders of Selective who have held their shares for less than eight months may transfer into Mutual, Stock, Variable, Progressive and New Dimensions upon paying an additional sales charge. In each instance the additional sales charge, if any, assessed on these transfers will be equal to the difference between the sales charge actually paid and the sales charge that would have been paid had the original investment been in the Fund into which the subsequent transfer was made. No transfers are presently permitted into Cash Management and Growth by shareholders of Selective, Bond, Tax-Exempt and High Yield who have held their shares less than eight months.

Shareholders of Cash Management who acquire their shares with redemption proceeds from one of the other Funds may transfer their shares into shares of each of the Funds at net asset value without paying a sales charge. Applicant further states, however, that those shareholders of Cash Management seeking to transfer into Bond who acquired their shares: (1) with proceeds redeemed from one of the other Funds where the sales charge assessed by the other Fund is less than the charge that would have been assessed had the investment been in Bond originally; and (2) with proceeds redeemed from one of the other Funds where the time span invested in Cash Management plus the time span of any prior investment in such Fund is less than eight months must pay an additional sales charge upon transferring into Bond. Applicants represent that in all instances, the additional sales charge assessed by Bond on these transfers will be equal to the difference between the sales charge actually paid and the sales charge that would have been paid had the investment been made in Bond originally. Shares of Cash Management that were purchased directly may be redeemed and the redemption proceeds invested in shares of each of the Funds by paying the applicable sales charge. Shares of Cash Management that were acquired with the redemption proceeds from one of the other Funds will be transferred first.

Applicants now propose to permit shareholders of Selective, Tax-Exempt, High Yield and Bond who have held their shares for less than eight months to transfer into Growth upon paying an additional sales charge. Applicants state that the purpose of the transfer privileges and the eight-month holding restriction, where applicable, is to discourage attempts to circumvent the higher sales charges that could occur were an investor to purchase shares of Selective, Tax-Exempt, High Yield, and Bond, which have a lower sales charge and, subsequently, transfer such shares at net asset value for shares in Growth, which imposes a higher sales charge than the Fund originally purchased. Applicants represent that in all instances, the additional sales charge, if any, assessed by Growth on these transfers will be equal to the difference between the sales charge actually paid and the sales charge that would have been paid had the investment been made in Growth originally. Appropriate disclosure of the terms of the proposed transfer privileges will be made in the prospectuses of each of the Funds.

Applicants further represent that pursuant to the distribution agreements between IDS and each of the Funds, except Cash Management, IDS receives a sales charge equal to the difference between the total amount received upon each sale of shares and the net asset value of such shares at the time of sale, a portion of which is paid to IDS sales representatives as commissions. With respect to those transfers described above which involve the payment of any additional sales charge, Applicants state that IDS will pay to the applicable sales representative that portion of the additional sales charge which he would have received if the sale of shares of the higher load Fund had been made initially. Applicants further note that Bond imposes a sales charge for reinvested dividends by shareholders of Bond, which could result in the payment of an additional commission to the IDS sales representative who helped with the transfer. Applicants assert, however, that since the dividend reinvestment is a new sale which, technically, is not included in the original transfer, and that in many cases the customer calls the IDS sales representative to help with such dividend reinvestment, it is appropriate to reimburse such sale representative for his effort. Applicants further state that they believe that there is not sufficient financial incentive for an IDS sales representative to initiate such transfers for his own benefit. Applicants represent that IDS has established sufficient internal monitoring and review procedures to ensure that such transfers are made at the request of the customer and not for the IDS sales representative's

personal gain (including monitoring the frequency of transfers handled by individual representatives.)

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such company to make, or cause to be made, an offer to the shareholder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus. The sales charge described in the prospectus of each of the Funds is normally greater than the sales charge which would be applicable to a proposed transfer. Rule 22d-1 permits certain variations in sales load, none of which it is alleged are applicable to the proposed transfer privileges.

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

On the basis of the foregoing, Applicants submit that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 7, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons, who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11092/March 17, 1980

In the Matter of

SOCIETE GENERALE NORTH AMERICA, INC.
c/o William F. Kroener, III, Esq.
Davis Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

(812-4608)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING THE APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Societe Generale North America, Inc. ("Applicant"), filed an application on February 1, 1980, and an amendment thereto on March 3, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the

representations contained therein, which are summarized below.

Applicant states that it was organized under the laws of the state of Delaware on January 25, 1980, solely for the purposes described more fully below. According to the application, all of Applicant's outstanding shares of capital stock were purchased for $10,000 by Societe Generale pour favoriser le developpement du Commerce et de l'Industrie en France ("Societe Generale"), a French commercial bank. It is further stated that no other common or capital stock will be issued, and that to the extent Applicant's capital is not needed to meet expenses, it will be placed on deposit with, or loaned to Societe Generale. In connection with a proposed issuance of commercial paper in the United States, Societe Generale filed an application for an order of the Commission pursuant to Section 6(c) of the Act exempting Societe Generale from all provisions of the Act, which was granted on August 7, 1979 (Investment Company Act Release No. 10815). The pending application states that if commercial paper were issued directly by Societe Generale, a French withholding tax could be imposed on payments constituting interest on the commercial paper notes. It is further stated that if a French withholding tax were imposed, Societe Generale's commercial paper, to be marketable, would have to bear a higher interest rate than commercial paper of similar maturities with a similar credit rating, the interest payments on which were not subject to withholding tax.

Applicant asserts that many potential investors would be reluctant to purchase commercial paper subject to withholding tax because of the uncertainties and paperwork involved to claim a refund of the tax withheld. The application states that, unlike Societe Generale, certain other foreign bank commercial paper issuers may issue commercial paper not subject to the above withholding tax. Thus, Societe Generale has organized Applicant to act solely as a vehicle through which Societe Generale could obtain funds in the United States through the sale by Applicant of commercial paper unconditionally guaranteed by Societe Generale by means of a guaranty, keep-well arrangement, back to back loan or otherwise. Applicant contemplates that substantially all of its assets (other than cash) in the future will be deposits with or loans to Societe Generale. The application states that the holders of the notes could be considered holders of obligations of Societe Generale. Certain information with respect to Societe Generale, including a description of its business and French banking regulation, is included in Societe Generale's application for an exemption from all provisions of the Act, and is summarized in Investment Company Act Rel. No. 10769.

According to the application, upon full implementation of the International Banking Act of 1978, it is expected that Societe Generale will be required to file with the Board of Governors of the Federal Reserve System ("Federal Reserve Board") an annual report containing information with respect to Societe Generale and its United States subsidiaries, including Applicant. The application states further that in the view of the staffs of the Federal Reserve Bank of New York and the Federal Reserve Board, Applicant is a service company, ownership of which by Societe Generale is permitted by the Bank Holding Company Act of 1956 ("1956 Act"). Applicant asserts that as a non-bank subsidiary of a foreign bank having United States branches, Applicant is generally restricted to furnishing services to or performing services for Societe Generale. Applicant also states that the 1956 Act provides that, under certain circumstances, the Federal Reserve Board may terminate certain United States activities by Applicant or Societe Generale's control of Applicant.

According to the application, Applicant proposes to issue and sell prime quality commercial paper notes in minimum denominations of $100,000 through United States commercial paper dealers. Applicant represents that it will secure an undertaking from each such dealer that the notes will be sold to institutional investors and other entities and individuals that ordinarily purchase commercial paper notes. Applicant states that it expects the average amount of commercial paper outstanding during the year after the program commences to be approximately $500,000,000. The application states that the proceeds of the sale of the notes would be placed on short-term deposit with, or loaned to, Societe Generale and thus made available to it for current transactions. The application states further that the deposits, or loans, with interest, as the case may be, would be withdrawn by, or repaid to Applicant, as required to pay commercial paper notes at maturity.

Applicant plans to sell the notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of its special counsel in the United States that the offering will qualify for an exemption from the registration requirements of the

1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant will not proceed with its proposed offering until it has received such opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future issue of its debt securities in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and that its American counsel shall have certified that such rating has been received; provided however, that no such rating shall be required to be obtained, if in the opinion of American counsel for Applicant, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act. Applicant represents that the notes will rank *pari passu* among themselves and equally with all other unsecured unsubordinated indebtedness of Applicant and superior to rights of shareholders. The application states that the guaranty of Societe Generale will rank *pari passu* with all other unsecured unsubordinated indebtedness of Societe Generale, including its deposit liabilities, and superior to rights of shareholders.

Applicant undertakes to ensure that the dealer will provide each offeree, prior to any sale of the commercial paper to such offeree, with a memorandum describing the business of Applicant and Societe Generale and containing the most recently available audited financial statements of Societe Generale, audited in accordance with French auditing practices. Applicant states that the offering memorandum will include a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by U.S. banks. Applicant represents that such memoranda will be at least as comprehensive as those customarily used in offering commercial paper in the United States, and will be updated periodically to reflect material changes in the business or financial status of Applicant or Societe Generale. Applicant further represents that any future offering of its debt securities in the United States will be done on the basis of disclosure documents which are at least as comprehensive in their description of Applicant and Societe Generale, and the businesses of Applicant and Societe Generale, as those customarily used in United States offerings of such securities and which contain the financial statements of Societe Generale. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its and Societe Generale's compliance with the foregoing undertakings concerning disclosure documents.

Applicant and Societe Generale represent that they will appoint a bank or trust company, the Commission or a corporation providing corporate services for lawyers as agent to accept service of process in any suit, action, or proceeding, brought on, respectively, the short-term notes or the guaranty or with respect to the offer and sale of short-term notes by means of the offering memorandum and instituted in any state or federal court by the holder of any short-term note. The application states that Applicant and Societe Generale will expressly submit to the jurisdiction of state or federal courts in the City and State of New York in respect of any such suit, action or proceeding. The application states further that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the notes have been paid. The application also states that Applicant and Societe Generale will similarly consent to jurisdiction and appoint an agent for service of process in any such suit, action, or proceeding arising from any future offerings of such debt securities that it may make in the United States.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Applicant states that it may be considered to be an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such

exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that the purchase of its notes will be the equivalent of purchasing obligations of Societe Generale because of Societe Generale's unconditional guaranty. Applicant also states that Societe Generale, by Commission order, has been granted an exemption under Section 6(c) of the Act but has decided not to sell commercial paper in the United States because of the tax questions outlined above that have arisen under French law. Applicant states that it will serve as a vehicle to facilitate Societe Generale's obtaining of funds through Applicant's sale of its debt securities in the United States, and its only business will be to sell its commercial paper in the United States and to deposit with or lend to Societe Generale the proceeds of such sales. Applicant asserts further that under present Federal banking laws, there is no advantage to a foreign bank in issuing securities through a wholly-owned domestic subsidiary rather than issuing such securities directly. Finally, Applicant argues that as a result of the disclosure memoranda that offerees of its commercial paper will receive investors will be adequately protected, and it would therefore not be in the public interest to treat the Applicant as an investment company under the Act. Applicant submits that granting its requested exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 10, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11093/March 18, 1980

In the Matter of

TRANSAMERICA CASH RESERVE, INC.
1150 South Olive Street
Los Angeles, California 90051

(812-4596)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

On February 22, 1980, a notice was issued (Investment Company Act Release No. 11057) of an application filed on January 22, 1980, with an amendment thereto filed on February 5, 1980, by Transamerica Cash Reserve, Inc. ("Applicant"), an open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act for an order of exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1.00 per share.

2. Included with the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by the board of directors as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share, as determined by using available market quotations, from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year (the securities underlying repurchase agreements are not included in this restriction), or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve in the minutes of the board of directors' meetings for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the board of directors in the exercise of its discretion to be appropriate indicators of value, which may include among others (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as is reasonably practicable.

Applicant's board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11094/March 20, 1980

In the Matter of

BANQUE EUROPEENNE de CREDIT S.A.

and

BEC FINANCE N.V.
c/o Peter H. Darrow, Esq.
Cleary, Gottlieb, Steen & Hamilton
1 State Street Plaza, New York, New York 10004

(812-4535)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Banque Europeenne de Credit S.A. ("BEC") and BEC Finance N.V. ("BEC Finance," together with BEC, "Applicants") filed an application on September 10, 1979, and an amendment thereto on February 28, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that BEC is a joint venture commercial bank whose seven shareholders are among the largest European commercial banks. They further represent that at December 31, 1978, BEC had total assets of approximately $3.098 billion and capital reserves of $130 million. (All dollar amounts are computed using the exchange rate as of December 29, 1978 of 29.29 Belgian Francs per United States dollar.) The application states that BEC's principal office is located at Boulevard du Souverain 100, 1170 Brussels, Belgium. Applicants state that BEC Finance, a wholly-owned subsidiary of BEC, was established as a financing vehicle for BEC's activities outside Belgium, where operations through a Dutch subsidiary have enabled BEC to obtain more favorable European withholding tax treatment, and that it has its principal office at 595 Herengracht, 1000 Amsterdam, Netherlands. Applicants represent that the principal area of activity of BEC is short-, medium-, and long-term Eurocurrency lending to major companies and banks; that at year-end 1978, BEC's outstanding short-term credits amounted to approximately 28% of its total assets and its medium- and long-term loans amounted to approximately 61% of its total assets; and that for 1978 interest income from its lending activities amounted to approximately 96% of BEC's gross revenues.

Applicants further represent that at the end of 1978 approximately 3% of BEC's outstanding loans were to Belgian borrowers and 54% were to other Western European borrowers. Applicants state that BEC's lending in North, Central and South America has expanded recently as a result of the growing activities of its customers there.

According to the application, BEC's sources of financing traditionally have consisted in significant part of short- and medium-term Eurocurrency deposits from banks, institutional investors and industrial companies, rather than ordinary deposits and that, at December 31, 1978, ordinary deposits equaled approximately 2.7% of total liabilities and equity while funding from banks equaled approximately 89.2% of total liabilities and equity. Applicants state that, on that date, 11.79% of BEC's deposits were from Belgian sources. The application states that BEC does not engage in any securities underwriting or investment advisory services; that its trading activities are confined to trading for its

own account in connection with the acquisition or disposition principally of Belgian government securities in accordance with Belgian banking regulation; and that it owns no securities as portfolio investments. It is further represented that BEC maintains no banking branches and has no subsidiaries other than BEC Finance.

Applicants represent that the principal business of BEC Finance has been to act as a financing vehicle for BEC and that BEC Finance has made two offerings of securities, the proceeds of which were relent to BEC for use in its lending operations. Applicants further represent that the proceeds of any borrowings made by BEC Finance will continue to be relent to BEC. It is also represented that BEC Finance does not and will not deal with its rights relating to its loans to BEC nor does it or will it deal with or trade in securities.

Applicants state that BEC's activities are subject to a variety of regulatory measures, principally administered by the Belgian Banking Commission, with which all Belgian banks must be registered, and the Belgian National Bank, which supervises national monetary and credit policies. According to the application, the Banking Commission is authorized to issue regulations concerning the solvency and liquidity of banks and has introduced capital adequacy tests which must be observed by Belgian banks in their financial operations. Applicants represent that the Banking Commission's regulations apply to BEC as extensively as to banks which conduct their business principally within Belgium. The application also states that banks are required to file monthly reports containing detailed financial information prepared according to accounting rules approved by the Banking Commission. Applicants represent that the authority of the Banking Commission was obtained in connection with the incorporation of BEC Finance and the previous issuance of its debt securities. Applicants state that the external audit of banks is conducted by independent auditors selected from a list of special auditors approved by the Banking Commission and that the auditors conduct a physical examination of BEC's records twice a month and issue a detailed, semiannual report to the Banking Commission. Applicants represent that BEC Finance is subject to regulation by the Dutch central bank and regularly files reports with that body.

Applicants currently propose to have BEC Finance issue and sell in the United States short-term negotiable promissory notes of the type generally referred to as commercial paper (the "Notes"). According to the application, BEC Finance will relend the proceeds of the United States offering to BEC, for use in its lending operations and that payment of the Notes will be unconditionally guaranteed by BEC. The application states that, in the alternative to the above arrangement, BEC may issue the Notes directly if changes in the Belgian tax laws are effected that would eliminate the tax advantages of having BEC Finance issue the Notes.

According to the application, the Notes will be in minimum denominations of $100,000, will rank *pari passu* among themselves and equally with all other unsecured indebtedness issued by BEC or BEC Finance, as the case may be, and will be sold through a major United States commercial paper dealer to traditional types of commercial paper purchasers and will not be offered to the general public. Applicants state that while BEC cannot predict with certainty the aggregate amount of the Notes which will be outstanding, it currently believes that during the first year of sale the aggregate amount of Notes outstanding will average $120 million to $170 million. Applicants undertake to ensure that each dealer in the Notes will provide offerees with a memorandum, updated as necessary, which describes the business of BEC and BEC Finance, contains their financial statements, includes a paragraph describing any material differences between Belgian accounting principles applicable to BEC and generally accepted accounting principles in the United States, and is comparable to memoranda customarily used in offering commercial paper in the United States.

Applicants do not intend to register their offering under the Securities Act of 1933 ("1933 Act"). In this regard, they undertake not to market any Notes prior to receiving an opinion of special United States legal counsel to the effect that, under the circumstances described in the application, the proposed offering of commercial paper is entitled to the exemption from registration requirements contained in Section 3(a)(3) of the 1933 Act. Applicants further undertake that in respect of any future offerings of securities in the United States they will obtain an opinion of legal counsel in the United States as to compliance with, or the availability of an exemption from, the 1933 Act. Applicants do not request Commission review or approval of counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act.

The application contains undertakings that in connection with the sale of the Notes, Applicants will appoint a United States banking institution as authorized issuing agent of the Notes and that, both as to the Notes and any other securities which may be issued in the future, they will authorize such banking institution or the Commission to accept any process served in any state or federal court action by a holder as to any such security. Applicants undertake to accept the jurisdiction of any state or federal court in New York City in respect of any such action and to continue such appointment of an agent for service and such consent to jurisdicton until payment in full of all amounts relating to the respective security. Applicants state that the authorized agent will not be a trustee for the holders of the Notes or otherwise obliged to act for them. Applicants consent that any order granting their application may include the express condition that they comply with the undertaking summarized in this and the prior paragraph. Applicants state that BEC or BEC Finance may offer other debt securities for sale in the United States and that any such securities issued by BEC Finance would be unconditionally guaranteed by BEC. Applicants represent that in connection with any such offering they will cause distribution to offerees of disclosure documents at least as comprehensive as the dealer's memorandum referred to above.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicants state that they may be considered to be investment companies as defined under the Act.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants assert that approval of their application would be appropriate in the public interest for several reasons. They represent that if BEC and BEC Finance were deemed investment companies and if their application were denied, then they would be precluded from publicly offering securities in the United States. Applicants assert that this effect would disadvantage them vis-a-vis the major American banks with which they compete throughout the world. Applicants assert that such inequality of treatment of domestic and foreign banks appears to be inconsistent with the United States public interest regarding equal treatment of foreign and domestic banks in like circumstances, an interest explicitly reinforced by the United States Congress in enacting the International Banking Act of 1978. Finally, Applicants assert that the public interest would be served by permitting the kind of sophisticated United States investors which purchase commercial paper the opportunity to acquire paper issued by BEC and BEC Finance.

Applicants further assert that the requested exemption would be consistent with the protection of investors. Applicants cite as support for this assertion, the extensive regulatory and other measures to which Applicants are subject, the fact that the commercial paper would be short-term and of prime quality and the fact that certain antifraud provisions of the federal securities laws will apply to the offering of the Notes.

Applicants also assert that the specific exemption of American commercial banks from the provisions of the Act indicates a Congressional recognition that the dangers to investors to which the Act was directed are not present in the case of commercial banks subject to examination and supervision by banking authorities. Applicants assert that there are close similarities between BEC and large American banks, that they are subject to substantial and varied regulation, and that the risks to investors in connection with purchases of securities of BEC Finance guaranteed by BEC would not be greater than those in connection with purchases of securities of large domestic banks. Applicants assert that from the point of view of protection of investors, exemption of the Applicants would appear to be as appropriate as the statutory exemption for domestic banks.

Applicants assert that the legislative history of the Act is devoid of any reference to foreign banks. Applicants further assert that the exemptive power of the Commission pursuant to Section 6(c) of the Act was intended to avoid inadvertent imposition of the Act's requirements on "persons who are not

within the intent of the [Act]." S. Rep. No. 1775, 76th Cong., 3d Sess. 13 (1940).

Applicants assert that the rationale for granting an exemption under Section 6(c) to BEC applies equally to BEC Finance since the sole business of BEC Finance is and will continue to be to operate as a financing vehicle for BEC. Applicants represent that BEC Finance does not and will not deal with its rights relating to loans to BEC nor will it deal with or trade in securities. They state that in light of the unconditional guaranty of the Notes by BEC, the purchase thereof will be equivalent to the purchase of obligations of BEC.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 14, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11095/March 20, 1980

In the Matter of

PIONEER FUND, INC.
PIONEER II, INC.
PIONEER BOND FUND, INC.
PIONEERING MANAGEMENT CORPORATION
THE PIONEER GROUP, INC.
60 State Street
Boston, Massachusetts 02109

(812-4610)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(19) OF THE ACT

Pioneer Fund, Inc., Pioneer II, Inc., and Pioneer Bond Fund, Inc. (the "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, Pioneering Management Corporation ("Management"), investment adviser to the Funds, and The Pioneer Group, Inc. ("Group"), the principal underwriter for the Funds, filed an application on February 6, 1980, and an amendment thereto on March 20, 1980, pursuant to Section 6(c) of the Act, for an order of exemption from the definition of "interested person" contained in Section 2(a)(19) of the Act so that Ms. Marguerite Piret Rosen ("Ms. Rosen") shall not be deemed to be an "interested person" of the Funds, Management or Group by reason of her status as an officer, director and shareholder of Kridel Securities Corporation ("Kridel").

On February 28, 1980, a notice was issued (Investment Company Act Release No. 11060) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act,

that the requested exemption from the provisions of Section 2(a)(19) of the Act be, and hereby is, granted, effective forthwith, subject to the undertakings set forth in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9034/March 14, 1980

UNITED STATES OF AMERICA v. *DOUGLAS P. FIELDS, ET AL.*, 76 Cr. 1022 (S.D.N.Y.)

Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office, announced that on February 28, 1980, defendant Peter S. Davis, Esq. ("Davis"), formerly General Counsel of TDA Industries, Inc., was fined $5,000, by the Honorable Charles S. Haight, Jr., United States District Judge for the Southern District of New York, based on Davis' plea of guilty to one count of conspiracy and one count of securities fraud.

For further information, see Litigation Release Nos. 8994, 8981, 8976, 8921, 7692, 7369 and 7088.

Litigation Release No. 9035/March 14, 1980

UNITED STATES OF AMERICA v. *FREDERICK M. FRIEDMAN AND ALAN E. SANDBERG*, 76 Cr. 1022 (S.D.N.Y.)

William Tendy, Acting United States Attorney for the Southern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on March 6, 1980, defendant Alan E. Sandberg ("Sandberg") of East Northport, New York, a former officer and director of TDA Industries, Inc. ("TDA"), was sentenced by the Honorable Inzer B. Wyatt, United States District Judge for the Southern District of New York, following his conviction on January 22, 1980 on two counts of mail fraud and one count of wire fraud in the above-captioned matter. Defendant Sandberg was sentenced to six weeks imprisonment on each of three counts, to run concurrently, and to be served on 14 weekends. Defendant Sandberg was also fined $1,000 on each of three counts.

The criminal trial arose out of a related Commission injunctive action, *SEC* v. *TDA Industries, Inc., et al.*, 75 Civil 4519 (S.D.N.Y. 1975).

For further information, see Litigation Release Nos. 9034, 8994, 8981, 8976, 8921, 7692, 7369, and 7088.

Litigation Release No. 9036/March 17, 1980

SEC v. *AEGEAN INDUSTRIES, INC., ET AL.*, 80 Civil 843 (S.D.N.Y.) (C.S.H.)

Stelphen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on February 20, 1980, the Honorable Charles S. Haight, Jr., United States District Judge for the Southern District of New York, issued a final judgment of permanent injunction and order for disgorgement and other relief, upon consent, against defendants Aegean Industries, Inc., Stanley J. Sanders and Vincent Fava. The injunction prohibits the defendants from future violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder (the antifraud provisions), and Sections 5(a) and 5(c) of the Securities Act (the registration provisions).

In addition, defendant Sanders consented to pay $50,000, and defendant Fava consented to pay $5,000, to a Special Escrow Agent, who is to hold such monies for the benefit of Aegean and its shareholders. The monies are to be distributed pursuant to a plan of distribution, which plan is to be prepared by the Special Escrow Agent, and to be proposed within ninety days after entry of the judgment for consideration by the Court.

For further information, see Litigation Release No. 9006.

Litigation Release No. 9037/March 17, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GENERAL RESOURCES CORPORATION, ET AL.* (United States District Court for the Northern District of Georgia) Civil Action No. 79-2026A.

Jule B. Greene, Administrator of the Atlanta Regional Office of the Securities and Exchange Commission, announced that on March 6, 1980, the Honorable Orinda D. Evans, U.S. District Judge for the Northern District of Georgia, issued a Final Judgment of Permanent Injunction enjoining Roy E. Stephens of Atlanta, Georgia from violations of the antifraud provisions of the federal securities laws. Stephens was also enjoined from aiding and abetting violations of the reporting and proxy provisions in connection with filings made with the Commission on behalf of General Resources Corporation and Atla National Investments Corporation. The Final Judgment was entered with the consent of Stephens in which he neither admitted nor denied the Commission's allegations.

The Complaint, which was filed on October 31, 1979 and named six individual and ten corporate defendants, alleged, among other things, that Stephens and the individual defendants embarked on an acquisition program to acquire companies with substantial liquid assets, such as insurance companies, which assets were then used to sustain the operation of insolvent and nearly insolvent companies through a complex series of inter-company transactions in which cash was exchanged for mortgages and other property of dubious value. Stephens, an officer and director of General resources, was alleged to have violated the antifraud provisions and to have aided and abetted violations of the proxy and reporting provisions of the federal securities laws. The other defendants consented to the relief requested at the time of the filing of the Complaint.

For further information, see Litigation Release No. 8934, dated November 27, 1979.

Litigation Release No. 9038/March 17, 1980

SEC v. *PRICE & COMPANY, ET AL.* (United States District Court for the Northern District of Illinois; Eastern Division, Civil Action No. 80-C-269)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on March 7, 1980, the Honorable Marvin E. Aspen, Judge of the United States District Court for the Northern District of Illinois, accepted a stipulation of dismissal, agreed to by all the parties therein, which provided for a voluntary dismissal of the Commission's action pursuant to Rule 41 of the Federal Rules of Civil Procedure. The Commission's complaint, filed on January 17, 1980, had sought, *inter alia*, a court order directing the defendants to make Price and Company's books and records available for examination by the Commission's staff. Prior to the submission of the stipulation to the Court, the defendants took those steps which would permit representatives of the Commission to review Price and Company's books and records. For further information see Litigation Release No. 8992.

Litigation Release No. 9039/March 19, 1980

SECURITIES AND EXCHANGE COMMISSION v. *INVESTMENT INFORMATION, INC. ET AL.*, (United States Court for the District of Columbia, Civil Action No. 80-0701)

SECURITIES AND EXCHANGE COMMISSION v. *AMERICAN NATIONAL BANK & TRUST OF NEW JERSEY* (United States District Court for the District of New Jersey, Civil Action No. 80-745)

SECURITIES AND EXCHANGE COMMISSION v. *SECURITY FIRST NATIONAL BANK IN SHEBOYGAN* (United States District Court for the Eastern District of Wisconsin, Civil Action No. 80C-264)

The Commission announced today a series of related actions, all of which involved an arrangement under which money managers utilized a portion of the brokerage commissions paid by their clients in order to purchase, through a third party, goods and services for their own use.

All of the actions announced today stem from an arrangement offered by a Dallas, Texas firm, Investment Information, Inc. ("III"), and its president and majority stockholder, Frederick P. Oman. These actions consisted of the following:

— a complaint against III and Oman filed in U.S. District Court in Washington, D.C. and Final

Judgment of Permanent Injunction, to which III and Oman consented;

— a Report of Investigation pursuant to Section 21(a) of the Securities Exchange Act of 1934, detailing the conduct of seven investment advisers, five banks and 12 broker-dealers, all of whom undertook to take remedial actions. The investment advisers and banks agreed to make certain payments to their clients and the broker agreed to reduce commission on certain transactions for a period of time.

— complaints, filed in U.S. District Court in New Jersey and Wisconsin, against two banks, which the defendants are contesting.

The Commission said that III brought money managers—investment advisers and bank trust departments—together with participating broker-dealers. The money managers directed transactions in behalf of their clients to the brokers. The brokers then remitted 50 percent of the commissions to III, which used a majority of the money to pay for goods and services purchased elsewhere by the money managers. Some $11.7 million in commission were paid under this arrangement between January 1973 and June 1978, with about half—$5.8 million—remitted to III for the credit of the money managers' accounts. III retained a fee of between 10 and 17 percent of the gross commissions paid.

INVESTMENT INFORMATION, INC. ("III")

The Final Order of Permanent Injunction, signed today by the Hon. Charles Richey, United States District Court Judge for the District of Columbia, enjoins III and Oman from violating the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act"). The defendants consented to entry of the Final Judgment without admitting or denying the allegations in the Commissions's Complaint.

The complaint alleges that III and Oman violated Section 10(b) of the Exchange Act and the Commission's Rule 10b-5, and aided and abetted violations of Section 206 of the Advisers Act, in connection with the arrangement described above.

Pursuant to the arrangement established by III, money managers obtained goods and services by executing trades for their clients through brokers participating in the III arrangement. The participating brokers remitted 50 percent of the commission on such trades to III, which in turn paid for goods and services independently purchased by the money managers. The Complaint alleges that the money managers also had the option, however, of directing III to pay the related portion of the commission to the beneficial owner of the securities whose account paid the original commission instead of paying for goods and services purchased by the money manager.

The complaint further alleges that III prepared and sent to money managers, a suggested consent form which made inadequate and incomplete disclosure concerning the arrangement. Among other things, the Complaint alleges that the consent form erroneously stated that the arrangement operated at "no cost" to the client, and that it failed to disclose that III in some cases returned cash to the beneficial owner of the Securities rather than pay for goods and services acquired by money managers.

The Court ordered III and Oman to comply with their undertakings to refrain from engaging in any business activity which involves the provision of cash, goods or services to fiduciary money managers in return for directing brokerage transactions for accounts under their management to any particular brokers, unless such business activity specifically conforms with a general Commission rule or release, or a specific Commission interpretive letter to Oman or III. III may, however, arrange for a partial return in cash of commissions charged on directed brokerage transactions, provided that such rebate is directly returned to the account of the beneficial owner of the securities involved in the transaction, and provided that adequate disclosure is made to the beneficial owner of securities.

In addition, III and Oman undertook to register with the Commission as a broker or dealer if they continue to solicit brokerage and receive compensation based on the brokerage business, or if they become associated with a registered broker-dealer.

REPORT OF INVESTIGATION RELATING TO THE ACTIVITIES OF CERTAIN INVESTMENT ADVISERS, BANKS AND BROKER-DEALERS

In issuing this Report, the Commission addresses certain practices by which fiduciary money managers have obtained goods and services with brokerage commission ("soft dollars") paid from

client accounts. In particular, the Report focuses upon the arrangement established by III. The Report expresses the Commission's belief that the III and similar arrangements established by others in claimed reliance upon Section 28(e) of the Exchange Act, do not fall within the exemptive provisions of that section.

The Report expresses the view that Section 28(e) involves a statutory exemption for conduct which might otherwise constitute a breach of fiduciary duty owed by a money manager to his client, and should therefore be construed in light of its limited purposes. Particularly in light of otherwise applicable fiduciary law, the Report states, a money manager who seeks to extend the safe harbor provided by Section 28(e) to its outer boundaries assumes the risk that his perception of those boundaries may be imperfect and that his conduct may not be within permissible limits.

The entities whose activities are discussed in the Report consented to its issuance and made undertakings to effect certain remedial actions. The seven investment advisers undertook to make restitution to clients of $215,000, and to refrain from soliciting or accepting any new advisory clients for a period of 45 days. The five banks undertook to make restitution of $170,000, to review existing procedures concerning their use of brokerage commission paid by clients, and if necessary to implement and maintain new procedures designed to ensure compliance with the federal securities laws. The brokers undertook to limit certain profits on brokerage transactions executed for certain fiduciary accounts over a period of ten days. The amount of reduction in profits effected by such limitation is $5,000 for each broker.

The Report further expresses the Commission's view that the money managers who participated in the III arrangement failed to disclose adequately to their clients the facts and circumstances surrounding that arrangement, and that such inadequate disclosure constituted violations of the antifraud provisions of the Exchange Act and the Advisers Act.

The Report also notes that certain provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") prohibit the fiduciary of a pension or profit-sharing fund subject to ERISA from receiving any consideration for his own account from any party dealing with the fund in connection with a transaction involving the assets of the fund. In this regard, the Report states that money managers should be sensitive to the fact that certain transactions between money managers and their clients may be prohibited by ERISA regardless of consent.

With respect to brokers who participated at various times in the III arrangement, the Report expresses the view that they should have been alerted to the possibility of conduct which contravened applicable fiduciary principles and the federal securities laws and that, under these circumstances, they should have ascertained whether there were provisions to insure that adequate disclosure was being made to clients of the money managers. The report further concludes that confirmations of transactions issued by brokers participating in the III arrangement should have reflected the remission of 50 percent of the commissions to III.

AMERICAN NATIONAL BANK & TRUST OF NEW JERSEY ("AMNAT") AND SECURITY FIRST NATIONAL BANK IN SHEBYOGAN ("SECURITY FIRST")

On March 18, 1980 the Commission filed civil injunctive actions alleging that AmNat and Security First violated Section 10(b) of the Exchange Act and Rule 10(b)-5 promulgated thereunder by failing to make adequate disclosure to their trust clients concerning their bank's participation in the III arrangement. The Complaints allege that AmNat acquired goods and services worth more than $155,000 and that Security First acquired goods and services worth more than $68,000 by directing securities transactions for their fiduciary accounts through particular brokers designated by III. The AmNat Complaint further alleges that AmNat participated in similar arrangements which resulted in the acquisition of an additional $64,000 in goods and services in exchange for commissions on trust accounts.

The Complaints allege that the banks failed to adequately disclose material facts concerning their participation in the III arrangement, including, among other things: the transaction costs charged to trust customers; the use of clients assets for the benefit of the banks, and the extent to which the banks could have recaptured the funds for their trust clients.

Litigation Release No. 9040/March 20, 1980

SECURITIES AND EXCHANGE COMMISSION v. *TEMPLET INDUSTRIES, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-0324)

The Commission announced today that on March 19, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Templet Industries, Inc. of Nutley, New Jersey, restraining and enjoining Templet Industries Inc. from failing to file timely periodic reports and ordered it to comply with certain undertakings. Templet Industries, Inc., consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 12 separate occasions. The Commission's Complaint was filed on January 30, 1980.

The Complaint had alleged that Templet Industries, Inc. as part of a continuing course of conduct extending over several years, failed to file timely with Commission certain Annual Reports and Quarterly Reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9041/March 20, 1980

SEC v. *RELIANCE MORTGAGE CORPORATION AND EUGENE J. CAHILL* (USDC District of Colorado, Civil Action No. 80-312)

Robert H. Davenport, Regional Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on March 11, 1980 a final judgment of permanent injunction was issued against Reliance Mortgage Corporation, a Colorado corporation, and Eugene J. Cahill, a resident of Colorado, by the Honorable John L. Kane, Jr., United States District Court for the District of Colorado, enjoining the defendants from violating Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder. The defendants consented to the final judgment of permanent injunction without admitting or denying the allegations in the Commission's complaint.

The Commission's complaint, which was filed on March 10, 1980, alleged, among other things, that the defendants engaged in a course of business wherein they made false statements to securities dealers, in connection with the purchase of Government National Mortgage Association (GNMA) pass-through certificates or commitments which relate to GNMA's, to the effect that (a) Reliance is net short or has an equal number of short commitments to offset its long commitments in the GNMA forward market; (b) Reliance has adequate Federal National Mortgage Association (FNMA) commitments to offset its long commitments n the GNMA forward market; (c) Reliance is "speculating" only with a few securities dealers; and (d) Reliance is ready and able to meet its existing financial commitments and proposed commitments.

Litigation Release No. 9042/March 20, 1980

SEC v. *PHILIP R. COHN AND DAVID E. LYON* (Civil Action No. 80-0052-F)

Willis H. Riccio, Administrator of the Commission's Boston Regional Office, announced that on March 12, 1980, the Commission filed a Complaint in the United States District Court for the District of Massachusetts, naming Philip R. Cohn and David E. Lyon both of Longmeadow, Massachusetts, as defendants. The Commission, in its Complaint and supporting papers, seeks a temporary restraining order, as well as preliminary and permanent injunctive relief against further violations of the registration and antifraud of the Federal securities laws. The Commission's papers also request a temporary order freezing the assets of defendants, Cohn and Lyon, as well as an order for an accounting from the defendants.

The Commission's Complaint and supporting papers allege that since on or about March 1, 1976, to the present, defendant Cohn singly and jointly with defendant Lyon offered for sale and sold over $8,000,000 in unregistered securities in the form of evidences of indebtedness and "buy back" agreements and promissory notes in connection with certain real estate transactions, as well as investment contracts in the form of interests and participations in multi-family housing projects. The securities were offered and sold in Massachusetts, Connecticut, New York and New Jersey, as well as other jurisdictions. The Commission's papers allege that the offers and sales were in violation of Sections 5(a) and 5(c) of the Securities Act of 1933

("Securities Act") the so-called registration provisions of that statute.

Additionally, the Commission's complaint and supporting papers allege that, in connection with the offer and sale of the securities in question, the defendants made misrepresentations of material facts and omitted to state material facts concerning, among other things, commingling, conversion and diversion of proceeds, the source of funds used to pay off investors, profits to be realized by investors, the guaranteed return of investors' funds and the placing of proceeds in escrow, all in violation of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder.

Finally, the Complaint alleges that in furtherance of the conduct described therein, defendants, Cohn and Lyon, engaged in transactions, practices and a course of business which operated or would operate as a fraud, including, but not limited to, paying off prior investors with the proceeds of the sale of securities to subsequent investors, and soliciting new investors by citing the profits realized by earlier investors without informing them that such profits were paid from the proceeds of sales of securities to subsequent investors.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6201	977
Securities Exchange Act	16683-03	982
Public Utility Holding Company Act	21485-97	1012
Trust Indenture Act	559-60	1033
Investment Company Act	11096-06	1033
Litigation	9043-47	1051

This listing covers releases issued from 3/21/80-3/27/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENT

34-16701 Announcement of the Commission's determination to terminate the voluntary options moratorium and discussion of general policies regarding further expansion of the standardized options markets.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16686	34-16694	34-16697
34-16689	34-16695	34-16698
34-16690	34-16696	34-16699

33-6201 Reporting of Supplementary Information on the Effects of Changing Prices (Regulation S-K) [File No. S7-827—Comment Period Expires May 30, 1980].

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6201/March 27, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16702/March 27, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21496/March 27, 1980

SE 1.29:

INVESTMENT CO. ACT OF 1940
Release No. 11105/March 27, 1980

REPORTING OF SUPPLEMENTARY INFORMATION ON THE EFFECTS OF CHANGING PRICES

ACTION: Proposed rules.

SUMMARY: The Commission is proposing amendments to Regulation S-K, the standard instructions for filing forms under the Securities Act of 1933 and the Securities Exchange Act of 1934, and to various registration and reporting forms which would require that certain companies include supplementary information on the effects of changing prices (as specified by Statement No. 33, "Financial Reporting and Changing Prices," of the Financial Accounting Standards Board) in filings with the Commission. In addition, the Commission is proposing an expansion to its safe harbor rule for projections to cover the changing prices information.

DATE: Comments should be received by the Commission on or before May 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-827. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: James L. Russell or Clarence M. Staubs, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices" ("FAS 33"), issued by the Financial Accounting Standards Board ("FASB") in September 1979, establishes standards applicable to certain large, publicly held enterprises for the reporting of information relating to certain effects of price changes on such business enterprises. The information called for by FAS 33 is to be presented as supplementary information in any published annual report that contains the primary financial statements of the enterprise. Thus the information is required in annual reports to shareholders and in annual reports on Form 10-K.

Rule 3-17 of Regulation S-X, adopted by the Commission in Accounting Series Release ("ASR") No. 190 (March 23, 1976) (41 FR 13596), requires the disclosure of certain replacement cost information. Subsequent to the FASB's issuance of FAS 33, the Commission announced in ASR No. 271 (October 23, 1979) (44 FR 62888) the deletion of Rule 3-17 with respect to filings containing financial statements for fiscal years ending on or after December 25, 1980, at which time the requirements of FAS 33 will be fully operational. The Commission also announced that, until that time, it would waive the replacement cost requirement with respect to registrants who present current cost information pursuant to FAS 33. In ASR No. 271, the Commission also stated its intention to propose amendments to Regulation S-K[1] that would require registrants subject to the disclosure requirements of FAS 33 to include the specified supplementary information on the effects of changing prices in filings with the Commission under the securities acts. In addition, that release indicated that the Commission intended to propose a safe harbor provision applicable to such disclosures, in recognition of the fact that some of the data is not subject to precise calculation and because various approaches may be taken in its preparation and disclosure. A safe harbor, similar to that provided for replacement cost disclosures, would protect registrants from the imposition of liability for such disclosures unless prepared without a reasonable basis or disclosed other than in good faith.

I. DISCUSSION OF PROPOSED AMENDMENTS

The Commission is proposing to amend various reporting provisions to require disclosure by certain registrants of supplementary information on the effects of changing prices pursuant to the provisions of FAS 33 and to provide a safe harbor with respect to changing prices disclosure. Although specific amendments to these reporting provisions are not set forth in this release,[2] the Commission proposes

[1]Regulations S-K (17 CFR Part 229) states the requirements applicable to the non-financial statement portions of registration statements under the Securities Act of 1933 and registration statements, annual or other reports under sections 13 and 15(d) and proxy and information statements under section 14 of the Securities Exchange Act of 1934.

[2]This release contains only the proposed amendments to Regulation S-K and to the general rules and regulations. Final rules, if adopted, would include individual amendments to Schedule 14A and to each of the registration forms listed above.

to amend Item 15 of Schedule 14A [17 CFR 240.14a-101] and the following registration forms so as to require changing prices information: Forms S-1 [17 CFR 239.11], S-7 [17 CFR 239.26], S-8 [17 CFR 239.16b], S-11 [17 CFR 239.18], and S-14 [17 CFR 239.23] under the Securities Act of 1933 and Form 10 [17 CFR 249.210] under the Securities Exchange Act of 1934. The amendments specifically proposed in this release are: (1) an addition to proposed Item 12, "Supplementary financial information," of §229.20 of Regulation S-K[3] and (2) amendments to the general rules and regulations adopted under the various securities acts in order to provide a safe harbor from the applicable liability provisions of these laws for disclosure of information on the effects of changing prices.

The proposed amendments to Regulation S-K would affect only those registrants subject to the reporting requirements of FAS 33, i.e., public enterprises that prepare their primary financial statements in U.S. dollars and in accordance with U.S. generally accepted accounting principles and that have, at the beginning of the fiscal year for which financial statements are being presented, either (1) inventories and gross property, plant and equipment amounting in the aggregate to more than $125 million, or (2) total assets amounting to more than $1 billion (after deducting accumulated depreciation). The supplementary information would be required on a consolidated basis for registrants who present consolidated financial statements; it would not need to be presented separately for a parent company, an investee company, or other enterprise whose results are included in consolidated financial statements. Furthermore, the information would not be required to be presented for segments of a business enterprise, although such presentations are encouraged by the FASB in FAS 33.

The Commission is not proposing to extend the disclosure requirements of FAS 33 to foreign registrants who prepare their financial statements in accordance with generally accepted accounting principles in their country and/or in local currency, even though they have previously been reporting replacement cost information pursuant to ASR No. 190. This is in recognition of the active consideration being given by accounting standard-setting groups in a number of other countries to the development of standards for reporting the effects of changing prices on business enterprises.

The Commission continues to be concerned about the adequacy of disclosures with respect to the impact of inflation and changing prices on an individual registrant's business. The disclosures specified by FAS 33 should be viewed as minimum requirements, and registrants should provide such additional information as may be appropriate for achieving the most relevant reporting in the particular circumstances. Furthermore, the Commission believes that all registrants, including those not required to present FAS 33 information, should provide some discussion of these matters. Accordingly, the Commission recently proposed amendments[4] to Regulation S-K which would require the inclusion of a description of the effects of changing prices on the registrant's business activities within the management's discussion and analysis of the registrant's financial condition and results of operations.

The other amendments proposed in this release are intended to extend a safe harbor rule to the changing prices information presented by registrants pursuant to either FAS 33 or the above-mentioned proposed amendments to the management's discussion and analysis, as well as to changing prices information of the type required by FAS 33 presented voluntarily by registrants. This safe harbor would be provided by amending the existing safe harbor rule for projections[5] (adopted as a part of the rules and regulations under the various securities acts) to extend its coverage to the changing prices information and by adopting a safe harbor rule under the Investment Company Act of 1940, in view of the absence of a safe harbor rule for projections under that Act.

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[3]Item 12 has been proposed to be added to Regulation S-K as part of the Commission's development of an integrated reporting system under the securities acts. See Release No. 33-6178, "General Revision of Regulation S-X," January 15, 1980 (45 FR 5943).

[4]Release No. 33-6176, "Proposed Amendments to Form 10-K, Regulation S-K, and Related Forms, Rules and Guides" (January 15, 1980) (45 FR 5972).

[5]Although the format of the safe harbor rule for projections will be modified to accommodate this extension, its existing provisions will not be affected by the amendment.

II. TEXT OF PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Chapter II as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. By adding a new paragraph (b) to Item 12 of §229.20 to read as follows:

§229.20 Information required in document.

* * * * *

Item 12. Supplementary financial information.

* * * * *

(b) *Supplementary information on the effects of changing prices.* Information on the effects of changing prices on business enterprises shall be presented by registrants subject to the reporting provisions of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," in accordance with the provisions of that Statement. (Disclosures made pursuant to this paragraph are expressly covered by the safe harbor provisions of the general rules and regulations adopted pursuant to the various securities acts.)

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By revising §220.175 to read as follows:

§230.175 Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) below which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) below), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward looking statement (as defined in paragraph (c) below) made in a document filed with the Commission or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward looking statement; *Provided*, that

(i) At the time such statements are made or reaffirmed, the issuer is subject to the reporting requirements of the Securities Exchange Act of 1934 and has filed its most recent annual report on Form 10-K, or, if the issuer is not subject to the reporting requirements of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information relating to the effects of changing prices on the business enterprise, presented in accordance with the provisions of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," or pursuant to Item 11 of Regulation S-K (§229.20), "Management's discussion and analysis of financial condition and results of operations," and disclosed in a document filed with the Commission or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule the term "forward looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings (as called for by Guides 22 and 1 under the Securities Act of 1933 and the

Securities Exchange Act of 1934 and by instruction 5 to the Quarterly Report on Form 10-Q); or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in (1), (2), or (3) above.

(d) For the purpose of this rule the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. By revising §240.3b-6 to read as follows:

§240.3b-6 Liability for certain statements by issuers.

(The text of the proposed revision is identical to that above except that reference to the Securities Act of 1933 in paragraph (d) should read "Securities Exchange Act of 1934.")

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

4. By revising §250.103A to read as follows:

§250.103A Liability for certain statements by issuers.

(The text of the proposed revision is identical to that above except that reference to the Securities Act of 1933 in paragraph (d) should read "Public Utility Holding Company Act of 1935 and other acts referred to in Section 16(b) thereof.")

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

5. By adding §270.0-9 to read as follows:

§270.0-9 Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) below which is made by an issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (c) below), unless it is shown that such statement was made without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to information relating to the effects of changing prices on the business enterprise, presented in accordance with the provisions of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," or pursuant to Item 11 of Regulation S-K (§229.20), "Management's discussion and analysis of financial condition and results of operations," and disclosed in a document filed with the Commission or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Investment Company Act of 1940 or the rules or regulations promulgated thereunder.

* * * * *

These amendments are proposed to be effective for filings that include financial statements for fiscal years ending on or after December 25, 1980.

These amendments are being proposed pursuant to authority in sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; section 20 [15 U.S.C. 79t] of the Public Utility Holding Company Act of 1935; and section 38(a) [15 U.S.C. 80a-37(a)] of the Investment Company Act of 1940.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposed amendments on competition and is not aware at this time of any burden that such rule amendments, if adopted, would impose on competition.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16683/March 21, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the common stock (No Par Value) of MOREHOUSE INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16684/March 21, 1980

In the Matter of Applications of the

CINCINNATI STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Cincinnati Stock Exchange, Inc. ("CSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed and registered on one or more other national securities exchanges:

AMP Incorporated, common stock, No Par Value (File No. 7-5450);

Bally Manufacturing Corporation, common stock, $.66-2/3 Par Value (File No. 7-5451);

Black & Decker Manufacturing Company (The), common stock, $.50 Par Value (File No. 7-5452);

Fluor Corporation, common stock, $.62-1/2 Par Value (File No. 7-5453);

Hewlett-Packard Company, common stock, $1 Par Value (File No. 7-5454);

Homestake Mining Company, common stock, $1 Par Value (File No. 7-5455);

International Flavors & Fragrances Incorporated, common stock, $.12-1/2 Par Value (File No. 7-5456);

International Minerals & Chemical Corporation, common stock, $5 Par Value (File No. 7-5457);

Johnson & Johnson, common stock, $2.50 Par Value (File No. 7-5458);

Kerr-McGee Corporation, common stock, $1 Par Value (File No. 7-5459);

MGIC Investment Corporation, common stock, $1 Par Value (File No. 7-5460);

National Semiconductor Corporation, common stock, $.50 Par Value (File No. 7-5461);

Skyline Corporation, common stock, $.277 Par Value (File No. 7-5462);

Squibb Corporation, common stock, $1 Par Value (File No. 7-5463);

Storage Technology Corporation, common stock, $.10 Par Value (File No. 7-5464);

Tandy Corporation, common stock, $1 Par Value (File No. 7-5465);

Thompson (J. Walter) Company, common stock, $.10 Par Value (File No. 7-5466);

Williams Companies, common stock, $1 Par Value (File No. 7-5467);

Houston Oil & Mineral Corporation, common stock, $.10 Par Value (File No. 7-5468); and

Syntex Corporation, common stock, $1 Par Value (File No. 7-5469).[1]

The Commission finds that approval of the CSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the CSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject

[1]Notice of these applications were given by publication in the *Federal Register*. 45 FR 11639 (February 21, 1980). The Commission has received no comments with respect to these applications.

securities should contribute to pricing efficiency and to ensuring that transactions on the CSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the CSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Cincinnati Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16685/March 21, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange, Inc. ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed and registered on one or more other national securities exchanges:

McDonnell Douglas Corp., common stock, $1 Par Value (File No. 7-5219);

TRE Corp., common stock, $1 Par Value (File No. 7-5220);

United Merchants & Manufacturers, Inc., common stock, $1 Par Value (File No. 7-5221);

Unarco Industries, Inc., common stock, $2.50 Par Value (File No. 7-5222);

Wometco Enterprises, Inc., Class A common stock, $1 Par Value (File No. 7-5223);

West Point-Pepperell, Inc., common stock, $5 Par Value (File No. 7-5224);

Warnaco Inc., common stock, No Par Value (File No. 7-5225);

Westcoast Transmission Co. Ltd., capital stock, No Par Value (File No. 7-5226);

Advanced Micro Devices Inc. common stock, $.01 Par Value (File No. 7-5227);

Allergan Pharmaceuticals, Inc., common stock, No Par Value (File No. 7-5228);

American Century Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5229);

American Heritage Life Investment Corp., common stock, $1 Par Value (File No. 7-5230);

American Savings & Loan of Florida, common stock, $.50 Par Value (File No. 7-5231);

Amsted Industries Inc., common stock, $1 Par Value (File No. 7-5232);

Analog Devices Inc., common stock, $.16-2/3 Par Value (File No. 7-5233);

Appalachian Power Company, common stock, No Par Value (File No. 7-5234);

Armstrong Rubber Company, common stock, $1 Par Value (File No. 7-5235);

Arrow Electronics, Inc., common stock, $1 Par Value (File No. 7-5236);

Aydin Corporation, common stock, $1 Par Value (File No. 7-5237);

AVX Corporation, common stock, $1 Par Value (File No. 7-5238);

Baldor Electric Co., common stock, $.10 Par Value (File No. 7-5239);

Banner Industries, Inc., common stock, $.10 Par Value (File No. 7-5240);

Barry Wright Corporation, common stock, $1 Par Value (File No. 7-5241);

Barnett Banks of Florida, Inc., common stock, $2 Par Value (File No. 7-5242);

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Bay Colony Properties Company, Shs. Ben. Int., No Par Value (File No. 7-5243);

Bearings, Inc., common stock, No Par Value (File No. 7-5244);

Beker Industries Corporation, common stock, $.3-1/3 Par Value (File No. 7-5245);

Bell Industries, common stock, No Par Value (File No. 7-5246);

Binney & Smith Inc., common stock, $2.50 Par Value (File No. 7-5247);

Biscayne Federal Savings & Loan Association, capital shs., $.01 Par Value (File No. 7-5248);

BT Mortgage Investors, Shs. Ben. Int., $.50 Par Value (File No. 7-5249);

R. L. Burns Corporation, common stock, $.10 Par Value (File No. 7-5250);

Butler International, Inc., common stock, $1 Par Value (File No. 7-5251);

Cannon Mills Company, common stock, $5 Par Value (File No. 7-5252);

Cameron-Brown Investment Group, Shs. Ben. Int., No Par Value (File No. 7-5253);

Carnation Company, common stock, $2 Par Value (File No. 7-5254);

Cenco Incorporated, common stock, $1 Par Value (File No. 7-5255);

Chelsea Industries, Inc., common stock, $1 Par Value (File No. 7-5256);

Century Telephone Enterprises, Inc., common stock, $1 Par Value (File No. 7-5257);

Cincinnati Bell, Inc., common stock, $25 Par Value (File No. 7-5258);

Citizens & Southern Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5259);

The Christiana Companies, Inc., common stock, $1 Par Value (File No. 7-5260);

CNA Income Shares, Inc., common stock, $1 Par Value (File No. 7-5261);

Coachmen Industries, Inc., common stock, No Par Value (File No. 7-5262);

Comdisco, Inc., common stock, $.10 Par Value (File No. 7-5263);

Computervision Corporation, common stock, $.05 Par Value (File No. 7-5264);

Community Psychiatric Centers, common stock, $1 Par Value (File No. 7-5265);

Community Public Service Company, common stock, $10 Par Value (File No. 7-5266);

Connecticut General Insurance Corporation, common stock, $2.50 Par Value (File No. 7-5267);

Connecticut General Mortgage & Realty Investments, Shs. Ben. Int., No Par Value (File No. 7-5268);

Connecticut Natural Gas Corporation, common stock, $6.25 Par Value (File No. 7-5269);

Conoco, Inc., common stock, $5 Par Value (File No. 7-5270);

Conwood Corporation, common stock, $8-1/3 Par Value (File No. 7-5271);

Cook United, Inc., common stock, $1 Par Value (File No. 7-5272);

Cooper Industries, Inc., common stock, $5 Par Value (File No. 7-5273);

Corroon & Black Corporation, common stock, $.25 Par Value (File No. 7-5274);

CP National Corporation, common stock, $5 Par Value (File No. 7-5275);

Cyclops Corporation, common stock, $1 Par Value (File No. 7-5276);

Daniel Industries, Inc., common stock, $2.50 Par Value (File No. 7-5277);

Datapoint Corporation, common stock, $.25 Par Value (File No. 7-5278);

Data Terminal Systems, Inc., common stock, $.20 Par Value (File No. 7-5279);

Deltec International Limited, ADR, $1 Par Value (File No. 7-5280);

Dennison Manufacturing Company, common stock, $5 Par Value (File No. 7-5281);

Dial Corporation, common stock, No Par Value (File No. 7-5282);

Documation Inc., common stock, $.01 Par Value (File No. 7-5283);

Diversified Mortgage Investors, Inc., common stock, $1 Par Value (File No. 7-5284);

Donaldson Company, Inc., common stock, $.10 Par Value (File No. 7-5285);

Dynamics Corporation of America, common stock, $.10 Par Value (File No. 7-5286);

Edwards (A. G.) & Sons, Inc., common stock, $1 Par Value (File No. 7-5287);

Elcor Corporation, common stock, $1 Par Value (File No. 7-5288);

Equitable Life Mortgage & Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5289);

Essex Chemical Corporation, common stock, $1 Par Value (File No. 7-5290);

Family Dollar Stores, Inc. common stock, $.10 Par Value (File No. 7-5291);

Federal Express Corporation, common stock, $.10 Par Value (File No. 7-5292);

Fleming Companies, Inc., common stock, $2.50 Par Value (File No. 7-5293);

Filmways, Inc., common stock, $.25 Par Value (File No. 7-5294);

Financial Corporation of America, common stock, $.50 Par Value (File No. 7-5295);

First Union Real Estate Equity & Mortgage Inv., Shs. Ben. Int., $1 Par Value (File No. 7-5296);

First Pennsylvania Mortgage Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5297);

Foremost-McKesson, Inc., common stock, $2 Par Value (File No. 7-5298);

Fotomat Corporation, common stock, $.10 Par Value (File No. 7-5299);

Four-Phase Systems, Inc., common stock, $.04 Par Value (File No. 7-5300);

Fox-Stanley Photo Products, Inc., common stock, $1 Par Value (File No. 7-5301);

Galveston-Houston Company, common stock, $.33-1/3 Par Value (File No. 7-5302);

General Growth Properties, Shs. Ben. Int., $1 Par Value (File No. 7-5303);

General Care Corporation, common stock, $.10 Par Value (File No. 7-5304);

Geosource, Inc., common stock, $1 Par Value (File No. 7-5305);

GK Technologies, Inc., common stock, $1 Par Value (File No. 7-5306);

GMR Properties, common stock, No Par Value (File No. 7-5307);

Gray Drug Stores, Inc., common stock, $1 Par Value (File No. 7-5308);

Great Lakes International, Inc., common stock, No Par Value (File No. 7-5309);

Great Northern Iron Ore Properties, Ctfs Ben. Int., No Par Value (File No. 7-5310);

Grow Group, Inc., common stock, $.10 Par Value (File No. 7-5311);

Growth Realty Companies, Shs. Ben. Int., $1 Par Value (File No. 7-5312);

Guardian Industries Corporation, common stock, $1 Par Value (File No. 7-5313);

Hajoca Corporation, common stock, $1 Par Value (File No. 7-5314);

Hartfield Zody's, Inc., common stock, $1 Par Value (File No. 7-5315);

Heath Tecna Corporation, common stock, No Par Value (File No. 7-5316);

Hoover Universal, Inc., common stock, $1 Par Value (File No. 7-5317);

Hi-Shear Industries, common stock, $.10 Par Value (File No. 7-5318);

Huffy Corporation, common stock, $1 Par Value (File No. 7-5319);

Hubbard Real Estate Investment, Shs. Ben. Int., No Par Value (File No. 7-5320);

Hudson Bay Mining & Smelting Co. Ltd., Class A common stock, No Par Value (File No. 7-5321);

INA Investment Securities, Inc., common stock, $.10 Par Value (File No. 7-5322);

Institutional Investors Trust, Shs. Ben. Int., No Par Value (File No. 7-5323);

International Aluminum Corporation, common stock, $1 Par Value (File No. 7-5324);

Jamesway Corporaton, common stock, $1 Par Value (File No. 7-5325);

Kaiser Steel Corporation, common stock, $.66-2/3 Par Value (File No. 7-5326);

KLM Royal Dutch Airlines, common stock, 100 Dutch Gildens (File No. 7-5327);

Kollmorgen Corporation, common stock, $2.50 Par Value (File No. 7-5328);

Koger Properties, Inc., common stock, $.10 Par Value (File No. 7-5329);

Keystone International Inc., common stock, $1 Par Value (File No. 7-5330);

Kenilworth Realty Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5331);

Kuhlman Corporation, common stock, $1 Par Value (File No. 7-5332);

Lanier Business Products, Inc., common stock, $1 Par Value (File No. 7-5333);

La Quinta Motor Inns, Inc., common stock, $.10 Par Value (File No. 7-5334);

Lear Petroleum Corporation, common stock, $.10 Par Value (File No. 7-5335);

Lee Enterprises, Inc., common stock, $2 Par Value (File No. 7-5336);

Leggett & Platt, Inc., common stock, $1 Par Value (File No. 7-5337);

LITCO Bancorporation of New York, Inc., common stock, $5 Par Value (File No. 7-5338);

Lifemark Corporation, common stock, $.01 Par Value (File No. 7-5339);

Lomas & Nettleton Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5340);

Lowe's Companies, Inc., common stock, $.50 Par Value (File No. 7-5341);

Ludlow Corporation, common stock, No Par Value (File No. 7-5342);

MacMillian Bloedel Limited, common stock, No Par Value (File No. 7-5343);

Manhattan Life Corporation, common stock, $2 Par Value (File No. 7-5344);

Management Assistance, Inc., common stock, $.40 Par Value (File No. 7-5345);

Mark Controls Corporation, common stock, $1 Par Value (File No. 7-5346);

MassMutual Mortgage & Realty Investors, Shs. Ben. Int., No Par Value (File No. 7-5347);

McDonough Company, common stock, $1 Par Value (File No. 7-5348);

Measurex Corporation, common stock, No Par Value (File No. 7-5349);

Mesa Royalty Trust, Shs. Ben. Int., No Par Value (File No. 7-5350);

Medtronic, Inc., common stock, $.10 Par Value (File No. 7-5351);

Memorex Corporation, common stock, $1 Par Value (File No. 7-5352);

Mercantile Texas Corporation, common stock, $5 Par Value (File No. 7-5353);

Mesabi Trust, Ctfs. Ben. Int., No Par Value (File No. 7-5354);

Metro-Goldwyn-Mayer Inc., common stock, No Par Value (File No. 7-5355);

Midland Mortgage Investors Trust, Shs. Ben. Int., No Par Value (File No. 7-5356);

McMoRan Oil & Gas Co., common stock, $1 Par Value (File No. 7-5357);

Miller-Wohl Company, Inc., common stock, $.50 Par Value (File No. 7-5358);

Milton Roy Company, common stock, $1 Par Value (File No. 7-5359);

Minnesota Power & Light Company, common stock, No Par Value (File No. 7-5360);

MONY Mortgage Investors, common stock, $.50 Par Value (File No. 7-5361);

Mortgage Trust of America, Shs. Ben. Int., $1 Par Value (File No. 7-5362);

Napco Industries, Inc., common stock, $1 Par Value (File No. 7-5363);

National Liberty Corporation, common stock, $1 Par Value (File No. 7-5364);

Newell Companies, Inc., common stock, $1 Par Value (File No. 7-5365);

NCNB Corporation, common stock, $2.50 Par Value (File No. 7-5366);

Newcorp Inc., common stock, $1 Par Value (File No. 7-5367);

Newpark Resources, common stock, $1 Par Value (File No. 7-5368);

North America Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5369);

New England Nuclear Corporation, common stock, $1 Par Value (File No. 7-5370);

Northern California Savings & Loan Association, capital stock, No Par Value (File No. 7-5371);

Northrop Corporation, common stock, $1 Par Value (File No. 7-5372);

Orion Capital Corporation, common stock, $1 Par Value (File No. 7-5373);

Outlet Company, common stock, No Par Value (File No. 7-5374);

Overhead Door Corporation, common stock, $1 Par Value (File No. 7-5375);

Pacific Lumber Co., common stock, $1-1/9 Par Value (File No. 7-5376);

Pacific Northwest Bell Telephone Company, common stock, $11 Par Value (File No. 7-5377);

Pacific Scientific, common stock, $1 Par Value (File No. 7-5378);

Penn Central Corp., common stock, $1 Par Value (File No. 7-5379);

Pengo Industries, Inc., common stock, $.25 Par Value (File No. 7-5380);

Perkin-Elmer Corporation, common stock, $1 Par Value (File No. 7-5381);

Pertec Computer Corporation, common stock, $.10 Par Value (File No. 7-5382);

PennCorp Financial, Inc., common stock, $.50 Par Value (File No. 7-5383);

Petroleum & Resources Corporation, common stock, $1 Par Value (File No. 7-5384);

PHH Group, Inc., common stock, No Par Value (File No. 7-5385);

Prime Motor Inns, Inc., common stock, $.05 Par Value (File No. 7-5386);

Pogo Producing Company, common stock, $1 Par Value (File No. 7-5387);

Plantronics, Inc., common stock, $1 Par Value (File No. 7-5388);

PNB Mortgage & Realty Investors, Shs. Ben. Int., $1 Par Value (File No. 7-5389);

Prime Computer, Inc., common stock, $.0125 Par Value (File No. 7-5390);

Public Service Company of New Hampshire, common stock, $5 Par Value (File No. 7-5391);

Presley Companies, common stock, $.1875 Par Value (File No. 7-5392);

Puritan Fashions Corporation, common stock, $1 Par Value (File No. 7-5393);

RB Industries, Inc., common stock, No Par Value (File No. 7-5394);

Realty ReFund Trust, Shs. Ben. Int., No Par Value (File No. 7-5395);

RES Investment Corporation, common stock, $2.50 Par Value (File No. 7-5396);

Republic Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5397);

RLC Corporation, common stock, $1 Par Value (File No. 7-5398);

Rolm Corporation, common stock, $.085 Par Value (File No. 7-5399);

Ryan Homes, Inc., common stock, No Par Value (File No. 7-5400);

Saul (B. F.) Real Estate Investment Trust, Shs. Ben. Int., $10 Par Value (File No. 7-5401);

SCA Services, Inc., common stock, $1 Par Value (File No. 7-5402);

Scientific-Atlanta, Inc., common stock, $.50 Par Value (File No. 7-5403);

Sealed Air Corporation, common stock, $.01 Par Value (File No. 7-5404);

SEAFIRST Corporation, common stock, $5 Par Value (File No. 7-5405);

Security Pacific Corporation, common stock, $10 Par Value (File No. 7-5406);

Shaklee Corporation, common stock, No Par Value (File No. 7-5407);

Shell Transport & Trading Company, Ltd., NY Shs. for 4 Ord. Shs., 5 S Sterling (File No. 7-5408);

Snap-on Tools Corporation, common stock, $1 Par Value (File No. 7-5409);

Southwest Gas Corp., common stock, $1 Par Value (File No. 7-5410);

South Atlantic Financial Corporation, common stock, No Par Value (File No. 7-5411);

Spectra-Physics, Inc., capital stock, $.20 Par Value (File No. 7-5412);

Southwest Airlines Company, common stock, $1 Par Value (File No. 7-5413);

Standard Motor Products, Inc., Class A capital stock, $2 Par Value (File No. 7-5414);

Standard Pacific Corporation, common stock, $.25 Par Value (File No. 7-5415);

Sta-Rite Industries, Inc., common stock, $2 Par Value (File No. 7-5416);

State Mutual Investors, Shs. Ben. Int., No Par Value (File No. 7-5417);

Sun Electric Corporation, common stock, $1 Par Value (File No. 7-5418);

TeleCom Corporation, common stock, $1 Par Value (File No. 7-5419);

Texas Industries, Inc., common stock, $1 Par Value (File No. 7-5420);

Teradyne, Inc., common stock, $1.25 Par Value (File No. 7-5421);

Texfi Industries, Inc., common stock, $1 Par Value (File No. 7-5422);

Thomas Industries, Inc., common stock, $1 Par Value (File No. 7-5423);

Tidewater Inc., common stock, $1 Par Value (File No. 7-5424);

Toys "R" Us, Inc., common stock, $1 Par Value (File No. 7-5425);

Transamerica Income Shares, Inc., common stock, $1 Par Value (File No. 7-5426);

Toro Company, common stock, $1 Par Value (File No. 7-5427);

Tokheim Corporation, common stock, $1 Par Value (File No. 7-5428);

Tri-South Mortgage Investors, Shs. Ben. Int., No Par Value (File No. 7-5429);

Trico Industries, Inc., common stock, $.50 Par Value (File No. 7-5430);

Twin Disc, Inc., common stock, No Par Value (File No. 7-5431);

Tymshare, Inc., common stock, No Par Value (File No. 7-5432);

Tosco Corporation, common stock, $.15 Par Value (File No. 7-5433);

UMET Trust, Shs. Ben. Int., $1 Par Value (File No. 7-5434);

Unilever Limited, Am. Shs. Rep. Ord. Sh. (File No. 7-5435);

Unilever N.V., 20 Gilder Par Ord. Shs. (File No. 7-5436);

US Air, Inc., common stock, $1 Par Value (File No. 7-5437);

U.S. Realty Investments, Shs. Ben. Int., No Par Value (File No. 7-5438);

Veeco Instruments, Inc., common stock, $1 Par Value (File No. 7-5439);

Van Dorn Company, common stock, No Par Value (File No. 7-5440);

Vulcan, Inc., common stock, No Par Value (File No. 7-5441);

Wabash, Inc., common stock, No Par Value (File No. 7-5442);

Wachovia Realty Investments, Shs. Ben. Int., $1 Par Value (File No. 7-5443);

Walker (Hiram) Gooderham & Worts Limited, Class A & B common stock, No Par Value (File No. 7-5444);

Wells Fargo Mortgage & Equity Trust, Shs. Ben. Int., No Par Value (File No. 7-5445);

Wisconsin Power & Light Company, common stock, $5 Par Value (File No. 7-5446);

Wyle Laboratories, common stock, No Par Value (File No. 7-5447);

Wyly Corporation, common stock, $.10 Par Value (File No. 7-5448); and

Zero Corporation, common stock, $1 Par Value (File No. 7-5449).[1]

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE's applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of

[1]Notice of these applications were given by publication in the *Federal Register*. 45 FR 11646 (February 21, 1980). The Commission has received no comments with respect to these applications.

the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16686/March 21, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
File No. SR-NASD-80-3

The National Association of Securities Dealers, Inc. (the "NASD" or the "Association") submitted on March 17, 1980, a proposed rule change under Securities Exchange Act Rule 19b-4 to amend Section 1(a)(2) and Section 1(b)(2) of Schedule G under Article XVIII of the Association's By-Laws. Schedule G sets forth the procedures for reporting over-the-counter transactions in listed securities that are required to be reported to the Consolidated Tape (the "Tape"). The proposed rule change is designed to implement a uniform procedure for reporting over-the-counter transactions in listed securities to the Tape by excluding any commission, mark-up, mark-down or other charge in the reported transaction price. The transaction report, therefore, is intended to reflect the wholesale price of the security. While the current filing is independent from that submitted on October 19, 1979, (File No. SR-NASD-79-12) the two are interrelated and should be viewed accordingly.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal

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[1]The NASD's proposed rule change SR-NASD-79-12 would simplify and revise the format of the NASD's current reporting requirements and would expand the exceptions to real-time reporting requirements for members which effect only occasional transactions in eligible securities. In addition, the proposal would retain the existing general requirement that principal transactions be reported at a price *including* any mark-up or mark-down but would provide for certain exceptions from this provision. First, members would be required to report principal transactions excluding any commission differential or equivalent which was separately disclosed on the confirmation. Second, "riskless" principal transactions in which the member was not a market maker in the security would be reported as a single transaction excluding the mark-up or mark-down. Finally, offsetting principal transactions involving a block of 5,000 or more shares executed within a five minute period would be reported as one transaction at the average price rather than as a series of separate transactions.

The current proposed rule change (SR-NASD-80-3) differs from the above in that it would require all principal transactions to be reported *excluding* any commission, mark-up, mark-down or other charge. The NASD has requested expedited treatment with respect to the current proposal and, consequently, the Commission will consider SR-NASD-80-3 prior to its evaluation of SR-NASD-79-12.

office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16687/March 21, 1980

The Securities and Exchange Commission today granted the application of the Midwest Stock Exchange Incorporated ("MSE"),[1] pursuant to the terms of the voluntary moratorium on expansion of standardized options trading[2] ("the voluntary moratorium") to begin trading put and call options on the common stock of Superior Oil Company ("Superior") to replace put and call options on the common stock of Carrier Corporation ("Carrier") which was delisted involuntarily by the MSE as a result of Carrier's merger into United Technologies. The MSE intends to commence trading in Superior put and call options on March 24, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16688/March 21, 1980

An order has been issued granting the application of the *Midwest Stock Exchange, Inc.* to strike the call and put option contracts of CARRIER CORPORATION from listing and registration thereon.

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[1]See letter dated February 19, 1980 from Kenneth I. Rosenblum, Senior Vice President and General Counsel, to Gene Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[2]See Securities Exchange Act Release No. 15026 (August 3, 1978).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16689/March 24, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-11

The New York Stock Exchange, Inc. ("NYSE") submitted on March 17, 1980, a proposed rule change under Rule 19b-4 to delete from NYSE Rule 107 governing Registered Competitive Market Makers ("RCMMs"), the provision under which the rule would expire on April 30, 1980. Members of the NYSE registered as RCMMs under Rule 107 are authorized to trade for their own account on the floor of the exchange pursuant to the market maker exemption from the proprietary trading restrictions of Section 11(a)(1) of the Securities Exchange Act. Deletion of the April 30, 1980 "sunset" provision would make RCMM a permanent market maker category of the NYSE.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16690/March 24, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-AMEX-80-6

The American Stock Exchange, Inc. ("Amex") submitted on March 18, 1980, a proposed rule change under Rule 19b-4 to delete from Amex Rule 114, governing Registered Equity Market Makers ("REMMs"), the provision under which the rule would expire on April 30, 1980. REMMs trading in accordance with Rule 114 are authorized to execute on-floor proprietary transactions under the exemption for market maker transactions contained in Section 11(a)(1)(A) of the Securities Exchange Act. Deletion of the "sunset" provision would make Rule 114 a permanent rule of the exchange.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16691/March 24, 1980

In the Matter of Applications of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange, Inc. ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed and registered on one or more other national securities exchanges:

American Sterilizer Company, common stock, $.83 Par Value (File No. 7-5035);

United Energy Resources, Inc., common stock, $1 Par Value (File No. 7-5036);

Buttes Gas & Oil Company (DE), common stock, $.10 Par Value (File No. 7-5051);

Allegheny Ludlum Industries, Inc., $2.19 Cumulative Preference Stock, No Par Value (File No. 7-5052);

J. Ray McDermott Company, Inc., Series A, $2.20 Cum. Conv. Pref. Stock, $1 Par Value (File No. 7-5054);

J. Ray McDermott Company, Inc., Series B, $2.60 Cum. Pref. Stock, $1 Par Value (File No. 7-5055);

Greyhound Corporation (Arizona), common stock, $1.50 Par Value (File No. 7-5057);

Greyhound Corporation (Arizona), Warrants (Expiring May 14, 1980) (File No. 7-5058);

Pepper (Dr.) Company, common stock, No Par Value (File No. 7-5059);

Humana Inc., $2.50 Cumulative Preferred Stock, $1 Par Value (File No. 7-5063);[1]

Trans World Corporation, common, $5.00 Par Value (File No. 7-5130);

Fluor Corporation (Delaware), common, $.625 Par Value (File No. 7-5129);

Purex Industries, Inc., common, $1.00 Par Value (File No. 7-5126);

Chrysler Corporation, $2.75 Cum. Prf. Stock, No Par Value (File No. 7-5127);

Chrysler Corporation, Warrants (expiring 6/15/85) (File No. 7-5128);[2]

Beatrice Foods Company, $3.38 Series A Cumulative Convertible Preference Stock, No Par Value (File No. 7-5073);

UNC Resources, Inc. (Virginia), common stock, $.20 Par Value (File No. 7-5075);

Savin Corporation (Delaware), common stock, $.10 Par Value (File No. 7-5076);[3]

Levitz Furniture Corp., common stock, $.40 Par Value (File No. 7-5014);[4]

Amdahl Corp., common stock, $.05 Par Value (File No. 7-5018);[5]

Marshall Field & Co., common stock, $1 Par Value (File No. 7-5024); and

Fleetwood Enterprises, Inc., common stock, $1 Par Value (File No. 7-5029).[6]

The Commission finds that approval of Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensure that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of Phlx's applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of these applications was given by publication in the *Federal Register*, 43 FR 60688 (December 28, 1978). The Commission has received no comments with respect to these applications.

[2]Notice of these applications was given by publication in the *Federal Register*, 44 FR 71926 (December 12, 1979). The Commission has received no comments with respect to these applications.

[3]Notice of these applications was given by publication in the *Federal Register*, 44 FR 10166 (February 16, 1979). The Commission has received no comments with respect to these applications.

[4]Notice of this application was given by publication in the *Federal Register*, 42 FR 62239 (December 9, 1977). The Commission has received no comments with respect to this application.

[5]Notice of this application was given by publication in the *Federal Register*, 42 FR 63837 (December 20, 1977). The Commission has received no comments with respect to this application.

[6]Notice of these applications was given by publication in the *Federal Register*, 43 FR 20286 (May 11, 1978). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16692/March 24, 1980

The Securities and Exchange Commission announced pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act") the single ten day suspension of exchange and over-the-counter trading for the period commencing at 9:00 a.m. (EST) on March 25, 1980 and terminating at midnight (EST) on April 3, 1980 of the securities of Lilac, Inc. ("Lilac"), a Minnesota corporation located at 5001 West 80th Street, Suite 710, South Gate Office Plaza, Bloomington, Minnesota 55437.

The Commission suspended trading in the securities of Lilac in view of the recent unusual and unexplained price rise and market activity in that security between March 3, 1980 and March 17, 1980, when the price of Lilac's securities increased from 10 cents asked per share to $1.88 per share. During that period, there was no publicly available information which would appear to justify this market activity inasmuch as a recent Lilac financial statement indicates that it has no assets, no liabilities and no ongoing business operations.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16693/March 25, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($.10 Par Value) of THE WHIPPANY PAPER COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16694/March 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-6

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on March 24, 1980, a proposed rule change under Rule 19b-4 to amend Commentary .01 and add Commentary .15 to its Rule 1014 to clarify that options transactions of Registered Options Traders ("ROT") must actually be initiated by the ROT while on the floor of the exchange in order to qualify for the specialist exemptions from Regulation T of the Federal Reserve Board (12 CFR 220) and Section 11(a) of the Securities Exchange Act of 1934 (the "Act").

Publication of the submission is expected to be made in the *Federal Register* during the week of March 31, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent

amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16695/March 25, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, NY 10005

(SR-NYSE-80-4)

ORDER APPROVING PROPOSED RULE CHANGE

On February 20, 1980, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change rescinding NYSE Rules 318(a) and 318.22 requiring that the primary purpose of every NYSE member organization be the transaction of business as a broker or dealer of securities and presumes that the "primary purpose" test is met only if at least 50% of a member organization's gross income is derived from such activities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16612 (Feb. 27, 1980, 19 SEC Docket 763 (March 11, 1980)) and by publication in the *Federal Register* (45 FR 14734, (March 6, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16696/March 26, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005

File Nos.
SR-CBOE-79-9
SR-Amex-79-11
SR-MSE-79-18
SR-PSE-79-13
SR-Phlx-79-7
SR-NYSE-79-45

ORDER APPROVING PROPOSED RULE CHANGES

The self-regulatory organizations ("SROs") listed above have each filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes to amend their rules in response to certain recommendations of the

Commission's Special Study of the Options Markets.[1]

Notice of each proposed rule change together with the terms of substance of each proposed rule change was given by publication of a Commission release and by publication in the *Federal Register*.[2] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the PSE and NYSE rule proposals prior to the thirtieth day after the date of publication of the final amendments thereto since those amendments are substantially identical to amendments filed by the other SROs noted above which were published for public comment for the requisite period of time. In addition, the Commission believes that simultaneous approval of all of the SROs proposals is necessary and appropriate in order to achieve a consistent and equal regulatory scheme for standardized options.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]The proposed rule changes were filed and amended on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE"), filed August 16, 1979, amended December 19, 1979; (2) American Stock Exchange, Inc. ("Amex"), filed August 27, 1979, amended January 7, 1980; (3) Midwest Stock Exchange, Incorporated ("MSE"), filed September 4, 1979, amended September 18, 1979, September 26, 1979, October 2, 1979, November 26, 1979, January 21, 1980, February 4, 1980, and February 13, 1980; (4) Pacific Stock Exchange Incorporated ("PSE"), filed September 11, 1979, amended December 12, 1979, and March 5, 1980; (5) Philadelphia Stock Exchange, Inc. ("Phlx"), filed September 13, 1979, amended October 25, 1979, January 21, 1980, and January 25, 1980; and (6) New York Stock Exchange, Inc. ("NYSE"), filed November 2, 1979, amended March 11, 1980.

[2]Notice of each proposed rule change and amendments thereto was given by publication of a Commission release and by publication in the *Federal Register*, as follows: (1) CBOE, original filing published in Securities Exchange Act Release No. 34-16127, August 21, 1979, 44 FR 50111, amendment published in Securities Exchange Act Release No. 34-16466, January 3, 1980, 45 FR 2122; (2) Amex, original filing published in Securities Exchange Act Release No. 34-16145, August 29, 1979, 44 FR 52763, amendment published in Securities Exchange Act Release No. 34-16477, January 7, 1980, 45 FR 8407; (3) MSE, original filing published in Securities Exchange Act Release No. 34-16245, October 5, 1979, 44 FR 59974, amendments published in Securities Exchange Act Release No. 34-16577, February 14, 1980, 45 FR 11642; (4) PSE, original filing published in Securities Exchange Act Release No. 34-16234, October 2, 1979, 44 FR 57543, amendments published in Securities Exchange Act Release No. 34-16667, March 17, 1980; (5) Phlx, original filing published in Securities Exchange Act Release No. 34-16253, October 5, 1979, 44 FR 59692, amendments published in Securities Exchange Act Release No. 34-16539, January 28, 1980, 45 FR 7661; and (6) NYSE, original filing published in Securities Exchange Act Release No. 34-16359, November 21, 1979, 44 FR 69388, amendment published in Securities Exchange Act Release No. 34-16676, March 18, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16697/March 26, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pa. 19103

(SR-Phlx-79-8)

ORDER APPROVING PROPOSED RULE CHANGE

On October 25, 1979, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which deletes Phlx Rules 1024.04, 1024.05, 1024.06, regarding options fiduciary accounts, third party discretionary accounts, and investment partnership and investment club accounts; and Rule 1027.01, regarding options discretionary accounts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16349, November 16, 1979) and by publication in the *Federal Register* (44 FR 67260, November 23, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16698/March 26, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-79-12)

ORDER APPROVING PROPOSED RULE CHANGE

On August 21, 1979, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which deletes Amex Rules 921.05, 921.06, regarding options third party discretionary accounts, and investment partnership and investment club accounts; and Rule 924.01 regarding options discretionary accounts.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16151, August 30, 1979) and the publication in the *Federal Register* (44 FR 53825, September 17, 1979). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16699/March 26, 1980

PACIFIC CLEARING CORPORATION ("PCC")

(SR-PCC-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On February 12, 1980 PCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change changing the definition of "block delivery," from securities having an aggregate value of $50,000 or more, to securities having an aggregate value of $25,000 or more.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16579, February 14, 1980) and by publication in the *Federal Register* (45 FR 11649, February 21, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16700/March 26, 1980

In the Matter of

REMIT SECURITIES, LTD., ET AL.

ORDER INSTITUTING PROCEEDINGS AGAINST REMIT SECURITIES, LTD., DENNIS S. TINSKY AND HYMAN SUTNICK

The Securities and Exchange Commission ("Commission") has ordered the institution of public administrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against Remit Securities, Ltd. ("Registrant"), a New Jersey corporation registered with the Commission as a broker-dealer, Dennis S. Tinsky ("Tinsky"), and Hyman Sutnick ("Sutnick"), respectively Registrant's president, vice president, and its principal shareholders. The proceedings are based on allegations by the Commission's staff that:

(a) Registrant and Tinsky wilfully violated and aided and abetted violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Order for Proceedings alleges that Registrant and Tinsky made misstatements and omitted to state material facts to purchasers of the common stocks of Anglo American Properties, Inc. ("Anglo") and Sunny Land Tours, Inc. ("Sunny Land"), traded in the over-the-counter market, concerning, among other things, the operations and business activities of the two companies; and

(b) Registrant wilfully violated, and Tinsky and Sutnick wilfully aided and abetted violations of:

(1) Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder, by failing to promptly amend its Form BD to reflect, among other things, the fact that, on January 23, 1978, Tinsky was permanently enjoined from future violations of the registration and antifraud provisions of the federal securities laws;

(2) Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-11 thereunder, in tnat Registrant failed to accurately make, and keep current, certain required books and records, and failed to promptly notify the Commission of its failure to maintain current and accurate books and records; and

(3) Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, by impermissibly granting extensions of credit to certain cash customers of Registrant.

The proceedings are also based on a final judgment of permanent injunction entered, by consent,

against Tinsky on January 23, 1978, enjoining him from future violations of the registration and antifraud provisions of the federal securities laws in *SEC v. John P. Galanis, et al.*, 78 Civil 0259 (MEF) (S.D.N.Y. 1978).

A hearing will be scheduled by further order to take evidence on the staff's allegations and to afford the respondents an opportunity to offer any defenses thereto for the purpose of determining whether the allegations are true, and if so, what, if any, action of a remedial nature should be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16701/March 26, 1980

TERMINATION OF THE OPTIONS MORATORIUM

ACTION: Policy Statement.

SUMMARY: The Commission announces its determination to terminate the voluntary options moratorium and discusses general policies regarding further expansion of the standardized options markets.

DATES: Not applicable.

ADDRESSES: Interested persons are invited to provide written comments regarding this policy statement and the issues discussed herein. Commentators should file six copies of their submissions with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-772 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Gene E. Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Room 346, 500 North Capitol Street, Washington, D.C. 20549 (202) 272-2409.

SUPPLEMENTARY INFORMATION:

I. *Introduction*

The Securities and Exchange Commission ("Commission") today announced its determination to terminate the voluntary options moratorium and to begin to permit further expansion of the standardized options markets. In order to provide guidance to those self-regulatory organizations ("SROs") which currently trade, or contemplate trading, standardized options regarding the manner in which the Commission plans to permit expansion of the options markets following termination of the moratorium, the Commission is issuing this general statement of policy regarding the listing of additional put and call options classes, the expansion of multiple trading[1] and the filing of expansionary rule proposals.

II. *Background*

Pursuant to Section 9(b) of the Securities Exchange Act of 1934 ("Act"), the Commission has been granted plenary authority to regulate all aspects of options trading on exchanges and to assure that such trading occurs in a manner calculated to eliminate the manipulative and fraudulent uses of options.[2] In 1973, the Commission adopted former

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[1]Multiple trading refers to the trading of the same security in more than one marketplace.

[2]See H.R. Rep. No. 1383, 73d Cong., 2nd Sess. 15 (1934). Section 9 of the Act prohibits the trading of options by use of any facility of a national securities exchange "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. 78i(b).

Section 9 of the Act was enacted in large part as a result of widespread manipulative and fraudulent practices in the securities industry involving the concurrent trading of options and their underlying securities, exposed by a series of Congressional and private studies in the early 1930's. *See, e.g.*, Senate Comm. on Banking and Currency, "Stock Exchange Practices," S. Rep. No. 1455, 73d Cong., 2d Sess. (1934).

Securities Exchange Act Rule 9b-1[3], which authorized establishment of pilot programs for exchange trading of standardized options[4] and granted the application of the Chicago Board Options Exchange, Incorporated ("CBOE") to register as a national securities exchange in order to permit the CBOE to "test the market" for listed options "within a controlled environment."[5] The Commission noted in its approval order that it intended "to maintain a close surveillance over the progress of the CBOE's 'pilot program' " and to "maintain flexibility in regulating this new type of exchange market." The Commission emphasized the particular need for close surveillance of pilot options programs, which the Commission stated "may involve complex problems and special risks to investors and to the integrity of the marketplace." Subsequently, the Commission approved pilot options trading programs for the American Stock Exchange, Inc. ("Amex"),[6] the Philadelphia Stock Exchange, Inc. ("Phlx"),[7] the Pacific Stock Exchange Incorporated ("PSE")[8] and the Midwest Stock Exchange, Incorporated ("MSE").[9]

The rapid growth in standardized options trading volume after 1973 and the appearance of abuses in the trading and selling of standardized options generated Commission concern about the adequacy of the regulatory framework within which standardized options trading occurred. Consequently, in July, 1977, the Commission requested each national securities exchange that listed options (the "options exchanges") to refrain voluntarily from listing any options classes in addition to those listed on Juy 15, 1977, and announced it would commence a general review of standardized options trading. At that time, the Commission also announced that it did not expect to approve any SRO rule proposals designed to initiate new programs for the trading of standardized options or to expand existing programs.[10]

Subsequently, the Commission announced the commencement of its comprehensive investigation and study of the standardized options markets (the "Options Study"), in order to "determine whether standardized options trading is occurring in a manner and in an environment which is consistent with fair and orderly markets, the public interest, the protection of investors, and other objectives of the Act," and to ascertain "what, if any, additional action is necessary and proper to aid in the enforcement of the Act and the rules thereunder to protect investors and to ensure fair dealing in the trading of standardized options and their underlying securities."[11] In announcing the Options Study, the Commission expressed concerns regarding, among other things, (1) the ability of SRO surveillance

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[3]17 CFR 240.9b-1 (1974). Rule 9b-1 prohibited transactions in options through the facilities of national securities exchanges except in accordance with plans filed by the exchanges and approved by the Commission, designed to regulate such transactions. Rule 9b-1 was rescinded by the Commission upon adoption of Rule 19b-4 under the Act (17 CFR 240.19b-4), which provides procedures for Commission review of rule proposals filed by self-regulatory organizations pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)). *See* Securities Exchange Act Release No. 11604 (August 19, 1975), 40 FR 40512.

[4]Securities Exchange Act Release No. 10552 (December 13, 1973), 38 FR 34665.

[5]Securities Exchange Act Release No. 9985 (February 1, 1973), 1 SEC Docket 11 (February 13, 1973).

[6]Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258.

[7]Securities Exchange Act Release No. 11423 (May 15, 1975), 6 SEC Docket 894 (May 28, 1975).

[8]Securities Exchange Act Release No. 12283 (March 30, 1976), 41 FR 14454.

[9]Securities Exchange Act Release No. 13045 (December 8, 1976), 41 FR 54783.

[10]See Securities Exchange Act Release No. 13760 (July 18, 1977), 42 FR 38035. In addition to the options exchanges, the SROs participating in the voluntary moratorium included the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"). *See also* Securities Exchange Act Release Nos. 14878 (June 22, 1978), 43 FR 35770, and 15026 (August 3, 1978), 43 FR 35772.

[11]Securities Exchange Act Release No. 14056 (October 17, 1977), 42 FR 56706. The Commission also announced and invited comment on proposed Rule 9b-1(T), which, if adopted, would have deferred temporarily the expansion of existing standardized options trading programs and the initiation of new programs. Commission action on the proposed rule

systems to detect and prevent fraudulent, deceptive, and manipulative activity, both in options and in underlying securities; (2) the adequacy of existing Commission and SRO rules to prevent fraudulent, deceptive and manipulative acts, practices, devices and contrivances in connection with options trading; and (3) the development of the standardized options markets in a manner which is consistent with the public interest and the perfection of the mechanisms of a national market system.

The Options Study Report was released to the public on February 15, 1979.[12] In general, the Options Study found that

> [t]o those who understand. . .[options], they may offer an alternative to short term stock trading at lower commission costs and a smaller commitment of capital. . .[and] also provide a means for shifting the risk of unfavorable short term stock price movements from owners of stock who have, but do not wish to bear, those risks, to others who are willing to assume such risks in anticipation of possible rewards from favorable price movements.[13]

The Options Study also concluded, however, that the purchase and sale of standardized options involves a high degree of financial risk, and that only investors who understand the risks and are able to sustain the costs and financial losses associated with options should trade in standardized options. In this regard, the Options Study found that too often public investors had been encouraged to use standardized options without regard to the suitability of options for their investment needs. The Options Study also found other regulatory inadequacies in the options markets. Accordingly, the Options Study recommended certain steps that the SROs, their members and the Commission should take to improve the regulatory framework within which standardized options trading occurs and to increase the protection of investors.

On February 22, 1979, the Commission issued a release announcing its plan for implementing certain of the Options Study recommendations and for terminating the options expansion moratorium.[14] In that release, the Commission requested the SROs to address the Options Study recommendations contained in Category I of the release before the Commission would permit further expansion of the standardized options markets. The Category I recommendations generally called either for SRO rule proposals or for improvements in SRO compliance and surveillance procedures. In addition, those recommendations called for Commission inspections of the SROs' compliance and surveillance programs.

The Commission today has approved rule change proposals submitted by each of the options exchanges and the NYSE which are designed to address most of the Category I Options Study recommendations.[15] The Commission has determined that, for the most part, the proposals responsibly address the objectives of the Category I Options Study recommendations that called for SRO rule proposals and, to the extent the new rules are adhered to by the broker-dealer community and enforced by the SROs, should provide significant additional protections for public investors.[16]

Footnote 11 continued

was deferred pending implementation of the recommendations of the Options Study. The Commission also announced at that time the initiation of a disapproval proceeding for all expansionary rule proposals relating to standardized options, including proposals by the NYSE and the NASD to initiate programs for the trading of standardized options. (*See* Securities Exchange Act Release No. 14057, October 17, 1977; 42 FR 56706). The expansionary proposals subsequently were withdrawn at the Commission's request, and the disapproval proceeding was dismissed. (*See* Securities Exchange Act Release No. 15027, August 3, 1978; 43 FR 35766).

[12]Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print 1978). ("Options Study Report").

[13]Options Study Report, *supra* note 12, at 1.

[14]Securities Exchange Act Release No. 15575, (February 22, 1979), 44 FR 11876.

[15]Securities Exchange Act Release No. 16696 (March 26, 1980). The filing of corresponding rule change proposals by the NASD has not been completed. The Commission expects to consider the NASD proposals in due course.

[16]With regard to those few recommendations which, in the Commission's view, have not been addressed adequately by the options exchanges, the Commission intends to initiate formal rulemaking proceedings to determine whether Commission rules mandating compliance with such recommendations would be appropriate.

The Commission also has received undertakings from the options exchanges to revise their broker-dealer examination and compliance procedures in response to the Options Study recommendations. The Commission's review of these responses indicates that the options exchanges have undertaken to implement procedures generally responsive to the Options Study recommendations. The Commission intends later this year to inspect each options exchange to verify that these procedural enhancements have been implemented. Finally, the Commission has conducted oversight inspections of the surveillance systems of each of the options exchanges and has concluded that, if effectively utilized by each options exchange and if systems improvements are made in the normal course of business or in response to requests from the Commission's staff, these surveillance systems will be adequate to detect most currently recognized trading abuses involving options.[17]

The Commission believes that the regulatory framework that has been established in response to the Options Study recommendations improves the likelihood that effective regulation can be achieved for the options markets. Of course, in order to achieve effective regulation, the SROs must rigorously enforce their rules and fully utilize their surveillance systems and compliance and examination procedures, as well as continuously enhance these systems and procedures in order to provide the most effective means available for fulfilling their regulatory responsibilities. Similarly, broker-dealer firms must establish and exercise adequate internal controls over the activities of their employees.

In summary, the Commission believes that the major regulatory deficiencies identified by the Options Study have been addressed responsibly by the SROs. The Commission therefore has determined that it is appropriate at this time to terminate the voluntary options moratorium and to begin to permit further expansion of the standardized options markets. In connection with this determination, the Commission is issuing the following general statement of policy regarding the listing of additional put and call options classes, the expansion of multiple trading and the filing of expansionary rule proposals. In general, the Commission believes it would be appropriate for the existing options exchanges to begin to list additional put and call options classes in an orderly manner, taking into consideration each exchange's operational and surveillance capabilities, as well as the capacity of member firm back offices to accommodate the increased options trading volume associated with the addition of new put and call classes. The Commission also has determined to defer any expansion of multiple trading at this time for the reasons set forth below.

III. *Puts Expansion*

In 1977, the Commission authorized each of the options exchanges to list and trade put options on five underlying securities. At that time, the Commission indicated that it would consider further expansion of puts trading after reviewing the options exchanges' experience with puts trading and the exchanges' progress in resolving the Commission's concerns regarding their options surveillance and regulatory efforts.[18] As a result of the moratorium, each options exchange has been limited since mid-1977 to the listing and trading of five put classes.

The Commission has not identified any surveillance or compliance problems unique to puts trading and perceives certain benefits with respect to the listing of puts and calls on the same underlying security. The Commission believes the expansion of listed puts will provide investors with an additional investment vehicle to complement call options in the formulation of trading strategies. In addition, simultaneous listing may improve the markets for both the puts and calls, since market professionals will be able to utilize both puts and calls concurrently in hedging and arbitrage transactions and may also reduce the need for options marketmakers to use underlying securities in connection with hedging strategies. Accordingly, the Commission believes that the options exchanges, limited only by their operational and surveillance capabilities and the ability of member firm back office operations to handle the increased volume resulting from listing additional puts, should be permitted to list puts on

[17]Additional work also is necessary to reduce the number of position adjustments at the Options Clearing Corporation and to assure adequate surveillance of such adjustments by the SROs.

[18]Securities Exchange Act Release No. 13401 (March 23, 1977), 42 FR 17547.

securities underlying their respective call classes, including those few multiply traded call classes.[19]

In order to assure that puts expansion occurs in an orderly manner, with due regard for exchange operational and surveillance capabilities and member firm back office capacity, the Commission is requesting each options exchange to furnish the Commission with a proposed schedule for its puts expansion program. Concurrently, or at a subsequent date, each exchange should file rule proposals pursuant to Section 19(b) of the Act to increase the number of its authorized puts classes in accordance with that schedule. In the absence of significant operational or surveillance problems encountered by the filing exchange or back office difficulties experienced by the member firms in handling current or anticipated trading volume, the Commission anticipates giving expedited treatment to puts expansion submissions made by the options exchanges.

IV. *Call Expansion*

As discussed in more detail below,[20] the Commission has reserved for further consideration a decision on general expansion of multiple trading. Nonetheless, the Commission believes that it is appropriate at this time to permit the options exchanges to begin to list additional call options classes. However, in view of the continuing restriction on multiple trading expansion and in view of the limited number of attractive new stocks which the Commission understands meet the current options listing standards,[21] a fair method of allocating additional call options among the existing options exchanges must be formulated. The Commission, therefore, requests the options exchanges to formulate and jointly submit to the Commission an appropriate plan to allocate additional call options.

In this regard, the Commission already has received a proposal from the options exchanges, other than the Amex, which, in the absence of additional multiple trading, would provide for a lottery to select additional call listings.[22] The proposal provides that each existing options exchange[23] would participate in the lottery. The proposal also provides that, if an options exchange voluntarily delists an options class, the exchange could participate in a second lottery in order to replace the delisted class.[24] While the Commission believes that the formulation of this plan is a positive step towards an acceptable call allocation plan, for the reasons set forth below the plan does not meet certain of the Commission's concerns.

First, the plan has not been agreed to by all of the options exchanges. Second, in view of the sixteen additional call classes that the CBOE will list as a result of the combination of its options program with that of the MSE,[25] the Commission has concluded that, in order to assure fair and equitable treatment

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[19]While the Commission recognizes that its intention to permit exchanges to list puts on multiply traded call classes will result in some expansion of multiple trading, the Commission believes that the benefits derived from puts trading on these securities outweigh the marginal fragmentation and fair competition concerns arising from that action. *See* discussion *infra* accompanying notes 43-48.

[20]*See* discussion *infra*, accompanying notes 41-53.

[21]*See, e.g.*, letter dated August 8, 1979, to Chairman Harold M. Williams, SEC, from Walter E. Auch, Chairman and Chief Executive Officer, CBOE, at 2, contained in File No. S7-772.

[22]"Each participating SRO would be assigned, by lot or another random selection method, a number of 1 through 4. The SROs would then select qualified underlying securities in the order of 1-2-3-4-4-3-2-1-2-3-4-1-1-4-3-2-3-4-1-2-2-1-4-3-4-1-2-3-3-2-1-4. At that point those SROs which had voluntarily delisted one or more classes of options would have the right, in an order to be chosen by lot, to select next." *Id.*

[23]Due to the combination of the CBOE and MSE options programs, described in note 25 *infra*, these two exchanges would participate in the proposed lottery as one exchange.

[24]Since the Commission does not propose to place a ceiling on the number of call classes each options exchange may select, it does not believe it is necessary to conduct the second phase of the lottery, as proposed.

[25]On April 24, 1979, the Commission approved the combination of the options markets of the CBOE and the MSE to be consummated upon the termination of the moratorium (Securities Exchange Act Release No. 15762 (April 24, 1979), 44 FR 25538). Upon consummation of the combination, the MSE would cease to provide a market for those options listed on the MSE, and the CBOE would list the previously listed MSE classes. The consummation of the combination was delayed by the Commission pending termination of the moratorium because the

for all the options exchanges,[26] those MSE classes must be taken into account in formulating the call expansion plan by deferring CBOE participation in the selection process until the other options exchanges have each selected sixteen additional call listings. Thus, the Commission believes that an appropriate call expansion plan must be agreed to by all the options exchanges and must provide for the equitable allocation of the limited number of new call options among the existing options exchanges, including accounting for the sixteen call classes the CBOE will list as a result of the MSE combination as the CBOE's initial sixteen selections. The plan should also provide that, in order for an exchange to retain the right to list options allocated pursuant to the plan, trading must commence within a specified period of time.

Since the plan currently before the Commission appears to be inadequate, the Commission does not intend to consider permitting any of the options exchanges to list new call classes (including CBOE listing of the MSE's classes), until the options exchanges formulate and submit jointly an appropriate call expansion plan to the Commission. Provided the Commission is satisfied that such plan is fair and equitable, the Commission, as it has in the past, will consider rule proposals by the options exchanges, pursuant to Section 19(b) of the Act, to increase the number of authorized call classes to accommodate the additional classes. The Commission also will consider at that time a CBOE rule proposal to increase the number of its authorized call classes in order to consummate the combination and accommodate the MSE classes. The Commission intends to consider the call expansion rule proposals of all of the options exchanges together and to give them expedited treatment. As with put expansion, call expansion would be limited only by SRO operational and surveillance capabilities and the ability of member firm back office operations to handle the increased volume resulting from the additional call classes.

While the NYSE and the NASD have filed proposals to initiate standardized options trading programs,[27] the call expansion plan outlined above does not contemplate their participation. The initiation of standardized options trading programs by either the NYSE or the NASD raises certain discrete issues that must be resolved before such programs may be permitted. The Commission does not believe that expansion of current standardized options trading programs should be delayed pending resolution of these issues, some of which are discussed below.

The NYSE's standardized options plan, submitted to the Commission in 1977, provided that no option would be traded in the same room as its underlying security.[28] The plan did not, however, restrict physical access by NYSE options marketmakers and NYSE stock specialists, or by their affiliates, to the other trading floor, which was to be physically adjacent under the NYSE plan.[29] Thus, the proposal raised the prospect of having options trading in close physical proximity to the trading of the underlying stock in the market center which is the "primary market" for that stock. The Commission is concerned that such market integration may raise significant questions regarding, among other things, misuse of market information and potential for stock/options manipulation. Moreover, the Commission is concerned about the ability of both the NYSE and the Commission to conduct adequate trading surveillance in such an environment.[30]

Footnote 25 continued

Commission determined that it was not appropriate to permit the CBOE to obtain the additional MSE options listings which would result from the consummation of the combination at a time when the other options exchanges were precluded by the moratorium from listing additional classes. The Commission, however, permitted the MSE to relocate its options trading floor to the CBOE floor in order to alleviate certain cost burdens, but the MSE options program remains a separate entity until consummation of the combination. The relocation was effected in May, 1979.

[26]MSE volume in its current sixteen call classes, in 1979, accounted for more than 3% of the total volume of calls traded on the options exchanges.

[27]These proposals were withdrawn at the Commission's request pending termination of the moratorium.

[28]Options Study Report, *supra* note 12, at 985.

[29]In addition, it should be noted that a contemporaneous NYSE rule filing would have eliminated current NYSE prohibitions on specialist options trading and would have permitted NYSE stock specialists to trade options on their specialty stocks.

[30]For a detailed discussion of these concerns, *see* Options Study Report, *supra* note 12, at 983-1028.

In addition, the NYSE has stated its intention to trade options classes already traded on other options exchanges. Because of the NYSE's dominant market position in trading stocks eligible for options trading, the issue of NYSE entry into the options market presents the Commission with a number of special concerns in carrying out its statutory responsibility to assure the "maintenance of fair and orderly markets" for listed options, including, particularly, assuring "fair competition" among exchange markets for those securities.[31] These concerns may extend beyond those raised by a general expansion of multiple trading in the absence of NYSE entry.[32] In view of these unresolved questions, the Commission believes it is premature to permit the NYSE to participate in the call allocation process contemplated above.

The NASD proposal contemplated the trading of standardized options in the NASDAQ system, which would establish an over-the-counter market for standardized options trading. The NASD proposed to trade standardized options with respect to both underlying securities traded exclusively in the over-the-counter markets and underlying securities listed on the stock exchanges. In addition, the NASD proposed to allow registered NASDAQ marketmakers to make simultaneous markets in NASDAQ options and their underlying securities. Accordingly, the NASD proposal to trade standardized options raises significant internalization, market information and market surveillance questions, in addition to those posed by options trading on exchanges, which must be resolved before the NASD could initiate a standardized options trading program.[33]

V. *Multiple Trading*

Introduction and Background

The Commission's determination to end the voluntary options moratorium and permit limited expansion of the trading of put and call options raises certain fundamental market structure issues which were addressed, but not resolved, by the Options Study. In particular, the Commission must consider whether to continue its current policy of restricting multiple trading in exchange-traded options or whether to permit a more unfettered competitive environment in which an options exchange would be free to trade any eligible options class, subject to the adequacy of its surveillance and other self-regulatory capabilities.[34]

The Securities Acts Amendments of 1975 ("1975 Amendments")[35] charged the Commission "with an explicit and pervasive obligation to eliminate all present and future competitive restraints that [can]not be justified by the purposes of the Exchange Act,"[36] and directed the Commission "to remove existing burdens on competition and to refrain from imposing, or permitting to be imposed, any new regulatory burden on competition 'not necessary or appropriate in furtherance of the purposes' of the Exchange Act."[37] However, while the Congress recognized the benefits which might result from increased competition in the securities markets, it did not choose to elevate competition above the other goals or purposes of the Act. To the contrary, while the Congress has explicitly required the Commission to consider the competitive effects of its regulatory policies, the Congress has also

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[31]*See, e.g.*, Sections 3(a)(36), 11(a)(2), 11A(a)(1)(C)(ii), 11A(c)(1)(F), 15(c)(5), and 17A(a)(2), [15 U.S.C. 78c(a)(36), k(a)(2), k-1(a)(1)(C)(ii), k-1(c)(1)(F), o(c)(5)]. *See also* discussion *infra* accompanying notes 43-48.

[32]Options Study Report, *supra* note 12, at 991-1007.

[33]*Id.* at 945-972. In addition, the absence of real-time reporting in underlying securities traded exclusively in the OTC market raises other concerns. *Id.* at 930-945.

[34]There has been limited experience, to date, with multiple trading of options. In February, 1976, the CBOE became the first options exchange to permit trading in an options class which was already traded on another exchange. Subsequently, other options exchanges engaged in multiple trading. However, in aggregate only 22 classes have been traded simultaneously on more than one options exchange and, at present, only 15 options classes are multiply traded.

[35]Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

[36]Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 13 (Comm. Print 1975) ("Senate Report"), reprinted in [1975] U.S. Code Cong. & Ad. News 179, 191.

[37]Committee of Conference, H. Conference Rep. No. 94-229, H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 94 (1975) ("Conference Report") reprinted in [1975] U.S. Code Cong. & Ad. News 321, 324.

indicated that competition would not thereby become "paramount to the great purposes of the Exchange Act,"[38] such as the protection of investors and the maintenance of fair and orderly markets.

Moreover, despite the pervasive changes made in the Act directing the Commission to consider the competitive consequences of its actions, the 1975 Amendments do not require adoption of the least anti-competitive alternative available.[39] Rather, the legislative history of the 1975 Amendments describes the interaction of the statutory purposes as follows:

> This explicit obligation to balance, against other regulatory criteria and considerations, the competitive implications of self-regulatory and Commission action should not be viewed as requiring the Commission to justify that such actions be the least anti-competitive manner of achieving a regulatory objective. Rather, the Commission's obligation is to weigh competitive impact in reaching regulatory conclusions.[40]

Thus, in considering whether to permit an expansion of multiple trading in the options markets, the Commission must balance the benefits of increased competition against any adverse consequences, including any deterioration of competition in the options markets over the long term, which might result from that action.

Discussion

The Commission believes that multiple trading may have a number of positive effects on the options markets. Data gathered by the Options Study suggests that multiple trading may improve the quality of the markets for multiply-traded options classes, at least in the short term.[41] Moreover, while the Commission recognizes that multiple trading in options often does not reflect direct competition for orders on the basis of securities price, the existence of alternate marketplaces have to a limited extent operated to discipline the quotations of marketmakers on the primary market and has contributed to the depth and liquidity of the market for a particular options class.

The Options Study also noted a number of additional concrete benefits resulting from multiple trading. Specifically, the Options Study found that multiple trading resulted in increased competition among options exchanges in the types of services offered to the brokerage and investor community. For example, multiple trading occasionally resulted in options floor members reducing their brokerage charges to attract more orders. Similarly, a desire to attract order flow in multiply-traded options classes has encouraged the CBOE to make certain enhancements to its floor operations and both the CBOE and Amex to develop automated systems intended to reduce the costs of executing orders on their exchanges.[42]

In summary, the Commission believes that an expansion of multiple trading in options may be beneficial to public investors and market professionals. In addition to the direct effects of intermarket competition in terms of increased depth and liquidity, multiple markets provide brokers and dealers with alternative markets in which to execute orders for a particular options class, thereby assuring that securities market participants are given an effective means of influencing market centers to provide more efficient pricing, execution and clearing services. Moreover, without the discipline provided through competition among marketmakers and among market centers resulting from multiple trading, the Commission would have to assume an undesirable oversight role in the allocation of securities to particular markets.

Notwithstanding the possible benefits that may be obtained from multiple trading, the Commission recognizes that the expansion of options multiple trading in the current market environment

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[38]Senate Report, *supra* note 36, at 14, [1975] U.S. Code Cong. & Ad. News at 192.

[39]In this connection, it should be noted that the 1975 Amendments do not require the Commission to pursue competition *per se*, but instead stress the need to assure "*fair* competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets." Section 11A(a)(1)(C)(ii) [15 U.S.C. 78k-1(a)(1)(C)(ii)] (emphasis added).

[40]Senate Report, *supra* note 36, at 13, [1975] U.S. Code Cong. & Ad. News at 191.

[41]Options Study Report, *supra* note 12, at 809-824.

[42]Options Study Report, *supra* note 12, at 805.

may have certain adverse effects. Specifically, to the extent that an expansion of multiple trading results in a significant dispersion of order flow among competing options exchanges, it may raise concerns regarding market fragmentation and may create difficulties for brokers attempting to route their customer orders to the best available market. For example, options prices in a fragmented market may be less likely to reflect a complete assessment of all buying and selling interest than would be possible if all orders for a given option were brought together and permitted to interact. Furthermore, because the mix of buy and sell orders in a particular market may differ significantly from the mix in other markets, multiple trading may result in pricing disparities among markets trading the same options class, particularly at the opening, which may create difficulties for brokers in obtaining the best execution for their orders.[43]

Perhaps even more significantly, expansion of multiple trading, in the present environment, may impede "fair competition" among market centers and among marketmakers. Most large brokerage firms do not route orders on an individual basis to the market displaying the best quotation. Instead, these firms use their order routing systems to automatically transmit small customer orders to a designated market center. Although the factors on which designation is based may vary from firm to firm, the Options Study found that a principal factor that firms consider is the volume of orders which are executed on each exchange.[44] Because of the importance placed on volume by many firms,[45] the designation decisions of a few large firms may cause virtually all retail order flow to be routed to a single exchange.[46] Accordingly, the Commission is concerned that, in the current market environment, meaningful competition among market centers resulting from an expansion of multiple trading may be, at best, a transitory phenomenon lasting only until one exchange is designated as the "primary

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[43]For example, on September 1, 1978, a number of Bally option series opened on the CBOE and Amex at widely disparate prices. *See* Options Study Report, *supra* note 12, at 840-841. However, despite these few instances of significant pricing disparities resulting from unusual market conditions on one, or both, competing exchanges and more frequent (but still unusual) limited pricing disparities in the normal course of trading (particularly at the opening), the Commission believes that the markets for multiply-traded options classes have generally been fair and orderly. Accordingly, the Commission does not believe, on the basis of existing information, that the potential for pricing disparities alone is sufficient to outweigh the benefits which would be obtained from an expansion of multiple trading.

[44]As the Options Study noted

. . .the exchange with the most volume in a multiply traded class will receive all automatically routed customer orders and more volume. As a result, exchanges other than the exchange designated as primary are effectively precluded from competing for automatically routed customer orders. Without exposure to customer orders it may be unlikely that an exchange will be able to improve the quality of its market and thereby to attract more orders in the future. Such improvements may be unlikely because marketmakers on the secondary exchanges will not be able to assess accurately the supply of and demand for, or to adjust their positions easily with respect to, multiply traded classes if they do not have an opportunity to be exposed to, and trade with, customer orders. Options Study Report, *supra* note 12, at 854.

[45]The Options Study found that brokerage firms also consider, albeit to a lesser extent, (i) the experience of their traders regarding the depth and liquidity of the competing markets, (ii) the speed with which executions can be obtained and reported in each market center and (iii) the operational efficiency at each exchange. *Id.* at 831.

[46]Brokerage firm automated order routing techniques have had a dramatic effect on the ability of other options exchanges to compete with the primary market for order flow in multiply-traded option classes. Data generated by the Options Study indicated that the PSE, Phlx and MSE have been unable to maintain any continuous market in classes which are traded both on their floors and by either the CBOE or Amex. While at least some option classes which are multiply-traded on CBOE and Amex remain actively traded in both markets, in each case, either the CBOE or Amex has emerged as clearly predominant in a particular multiply-traded option class. While the remaining exchange may continue to be successful in attracting some firm proprietary and institutional orders which are individually routed by the firm's "upstairs" trading desk, it has been unable to attract a significant percentage of the automatically routed retail order flow. *See* Options Study Report, *supra* note 12, at 829-838 and Table 12.

market" for a particular options class.[47] Moreover, this phenomenon may only be exacerbated in the event the NYSE were permitted to multiply trade options.[48]

While the Commission remains concerned over the fragmentation and fair competition concerns discussed above, it presently is of the view that, under appropriate circumstances, the benefits of expansion of multiple trading appear to outweigh any adverse consequences. To the extent that fragmentation and fair competition concerns are exacerbated by an expansion of multiple trading, Congress has indicated that the solution should lie not in centralizing all trading of a particular options class in one market center,[49] but instead, to the extent possible, in the development and implementation of communications and data processing equipment to create a single "integrated [securities trading] system."[50]

In this regard, the Commission believes that certain of the concerns arising from expanded options multiple trading might be alleviated through the development of technical facilities to integrate the options markets ("market integration facilities"). Accordingly, while the Commission, at this time, is inclined toward expansion of multiple trading, it believes that the near term development of market integration facilities might create a fairer, more efficient market structure within which multiple trading would occur. As a result, the Commission is deferring further action on the general expansion of multiple trading at this time[51] in order to afford the SROs an opportunity to consider whether, and to what extent, the development of market integration facilities would minimize concerns regarding market fragmentation and maximize competitive opportunities in the options markets. The Commission requests that the SROs jointly discuss the desirability of implementing these types of facilities in connection with multiple trading expansion. If the SROs determine that the development of market integration facilities for the options markets may alleviate such concerns, the Commission requests the SROs to submit within six

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[47]It should also be noted that, to the extent that the profitability of the Phlx and PSE is significantly related to their options programs, an expansion of multiple trading, under present market conditions, might adversely affect, to a material degree, the financial condition of these regional exchanges. While the Commission has consistently stated that the preservation of any particular market cannot alone be considered the controlling factor in weighing the competitive consequences of any particular action, the Commission is nevertheless concerned that immediate expansion of multiple trading might jeopardize the ability of those regional exchanges to participate as meaningful competitors in the continuing development of a national market system for stocks. *See* Options Study Report, *supra* note 12, at 864-870.

[48]See discussion *supra* accompanying notes 43-48.

[49]In an analogous situation, Congress specifically refused to resolve concerns regarding fragmentation in the stock market by requiring all trading for a security to occur in one market. The Senate Committee on Banking and Currency perhaps best explained this position two years prior to the passage of the 1975 Amendments when it stated

. . .There appears to be general agreement that the success and quality of an auction market depend on a concentration of public buying and selling orders in the market. . . .Therefore, looking at [the question] solely from this point of view any "diversion" of orders away from the primary market would be inimical to the public interest. It does not, however, follow from this that all orders should be "brought back" to the NYSE. What does follow is that all steps possible should be taken to develop promptly a national market system within which the full interplay of supply and demand can properly be reflected.

Report of the Senate Committee on Banking and Currency Pursuant to S. Res. 109, 92nd Congress, 2nd Sess. at 44. *See also* Conference Report, *supra* note 37, at 92, [1975] U.S. Code Cong. & Ad. News at 323.

[50]Conference Report, *supra* note 37, at 92, [1975] U.S. Code Cong. & Ad. News at 323.

[51]The Commission has determined, however, to permit options exchanges to list (and multiply trade) puts on securities which underlie those few existing multiply-traded call classes. *See* discussion *supra, accompanying notes 18-19.*

months of the date of this release[52] a description of the facilities needed and a plan (including projected timetable) for the implementation of these facilities.[53] Thereafter, the Commission will consider what further action should be taken, in light of the SRO response and any comments received on this release, with respect to the expansion of multiple trading.

Market Integration Facilities

In order to expedite the deliberations of the SROs, the Commission believes that it would be useful to provide a preliminary discussion regarding possible market integration facilities or systems for the options markets. As a conceptual matter, the Commission believes that the perceived adverse effects of multiple trading in the options markets might be ameliorated by three complementary or alternative approaches. First, a market linkage system similar to the Intermarket Trading System ("ITS")[54] implemented by various stock exchanges might be developed which would provide a prompt and efficient means of sending and receiving orders to purchase or sell multiply-traded options among all market centers that permit the trading of those options. Second, brokerage firms handling retail options order flow might route those orders on an individual basis to the market center disseminating the best quotation accompanied by a quotation size equalling or exceeding the order in question. Finally, an order exposure system for options public limit orders might be developed which would provide for simultaneous representation of public limit orders in all options exchanges and give floor participants on those exchanges access to these public limit orders.

While either of the first two approaches (an intermarket linkage system or the individualized routing of retail orders) might theoretically ameliorate certain of the concerns raised by multiple trading, commentary submitted by various options exchanges raises questions as to whether either approach is feasible at this time. The successful implementation of either a market linkage system or individualized routing of retail orders is virtually entirely dependent upon the quality and reliability of quotation information disseminated by each market center (i.e., the extent to which published quotations from options exchanges can be considered "firm"). However, the Commission has received significant commentary that a firm quotation rule (such as that currently in place for stocks) could not be applied to options.[55] First, it has been argued that, because options are derivative securities, a change in the price of the underlying stock may require adjustments in quotations for some, if not all, of the options series related to the stock. Accordingly, the argument has been made that it would be physically impossible for a marketmaker on an options exchange floor to monitor the market in the underlying stock and numerous related options series in order to update quotations in these options on a timely basis.[56]

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[52]If the SROs determine that implementation of such facilities is unnecessary, not feasible or otherwise inappropriate, the Commission requests the SROs to so advise the Commission, together with the reasons therefor.

[53]Any submission made by the SROs should contain more than a generalized policy discussion of the issues raised by the development of market integration facilities for the options markets.

[54]The ITS was developed jointly by several exchanges and is designed to permit orders for the purchase and sale of multiply-traded securities to be routed among market centers. The Commission in 1979 extended its approval of ITS for an additional three years to permit observation of the effects of that system on the markets and to better evaluate the possible role of ITS in a national market system for stocks. *See* Securities Exchange Release No. 16214 (September 21, 1979), 44 FR 56069.

[55]In addition to concerns raised by the accuracy and reliability of options quotations, a market linkage system such as the ITS might prove too slow and cumbersome a mechanism to provide for coordinated openings among options market centers. Because options are derivative securities, the price at which an options series should be opened cannot be determined until the underlying stock has opened. Since only one series at a time may be traded at the opening, coordinated openings for all related options series would have to be accomplished very quickly in order to avoid significant delays in the commencement of open trading of all options series. Thus, any market linkage system which, like ITS, depends on the sending of administrative messages among market centers might cause unacceptable delays in completing a coordinated opening rotation.

[56]See letter to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, from Joseph W. Sullivan, President, CBOE, dated August 1, 1977 at 4-5.

Second, the competing marketmaker system currently employed by the CBOE, MSE and PSE results in substantially larger trading crowds for options than in stocks. Accordingly, the CBOE has strenuously argued that a firm quotation rule would create extreme operational problems on its floor since it would be difficult to quickly and accurately report all quotation changes in price and size. Finally, the CBOE has argued that enforcement of a firm quotation rule would be problematic because of the difficulties in identifying the particular member of a large crowd who was responsible for a displayed quotation.[57]

In summary, it would appear that, if a firm quotation rule similar to the one currently applicable to stocks were applied to the options markets, it might impede the orderliness of the market, significantly increase risks for options marketmakers and create unwarranted disincentives to the continued maintenance of competing marketmaker systems. Moreover, if a firm quotation rule were devised which would not subject options marketmakers to inappropriate risks, perhaps by providing an exception to firmness for a period of time after a change in the price of the underlying stock long enough to permit options marketmakers to revise, where needed, their options quotations, the additional exceptions to firmness might effectively emasculate the rule.

Thus, the Commission has serious concerns whether a market linkage system such as the ITS[58] or individualized order routing of retail orders will, due to the dependence of each alternative on accurate quotation information, provide a basis for alleviating the problems arising from options multiple trading. However, as a preliminary matter, an order exposure system would not appear to have similar limitations.[59] An order exposure system would not be dependent on the accuracy and reliability of quotation information. Instead, the system's effectiveness would be based on the display of public limit orders which are, by their nature, revised less often than quotations and therefore may be considered firm until actually withdrawn from the

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[57] *Id.* at 2-4.

[58] The Commission recognizes that an intermarket linkage system, perhaps modeled after ITS, might prove useful even if no firmness requirement for options quotations were in place. For example, in cases in which substantial pricing disparities exist between two exchanges trading the same options class, floor members on one exchange might more easily engage in arbitrage activity by routing orders to the second exchange, and by so doing reduce the pricing disparities between the two exchanges. Similarly, in cases where there is an imbalance of supply and demand for a particular multiply-traded options series on one exchange, a linkage system which provided a prompt and efficient means for marketmakers to "lay-off" that imbalance on another exchange might enhance the price continuity and liquidity of the options markets. However, the implementation of such a system without firm quotations would do little to enable brokers to execute their customers' orders in the best market and may therefore be ineffectual in achieving best execution of customer orders or in achieving a fair field of competition.

[59] The Commission anticipates that an order exposure system would consist of an electronic facility which (1) permits brokers to directly enter and retrieve public limit orders from the system from either an exchange floor or from the brokers' upstairs offices; (2) queues those orders for execution on the basis of price and, with respect to orders at the same price, on the basis of time; (3) provides a display summary of those orders on each options exchange; (4) provides floor members on each options exchange an equal opportunity to automatically execute against orders contained in the system; and (5) provides the floor member executing against the limit order and the broker who inserted the order an immediate report of the execution obtained.

The Commission believes that, in order to minimize any disruptive effects an order exposure system may have on the manner in which options are currently traded, only public limit orders should be included in the system. However, there would appear to be no technical impediments to also including other types of orders in the system and therefore the Commission believes that the SROs should consider whether it would be more desirable to include all limit orders in an order exposure system.

system.[60] Moreover, while a market linkage system and individualized routing of retail orders force users, because of exceptions to firmness and relatively long response time, to assume risks if the quotation sought to be executed against is no longer available by the time an order is routed to it, an order exposure system does not require users to assume similar risks because floor members on each options exchange would be able to automatically execute against orders contained in the system.[61] Accordingly, the Commission believes that, in an options trading environment, an order exposure system may have certain operational advantages over other types of market integration facilities.[62]

The Commission also believes that the concerns which have been raised over the proposal of analogous facilities for stocks[63] (namely that the preference for public limit orders contained in such a facility would create disincentives to marketmaking and would force virtually all trading to be centralized in that facility)[64] may not be equally applicable to an order exposure system for options. First, three of the five existing options exchanges

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[60]The Commission would anticipate that the options exchanges would each adopt rules which would provide, with no exceptions, that all public limit orders contained in the system may be executed against by any floor member on any options exchange until they are executed or cancelled.

[61]In addition, due to the short response time of an order exposure system, it would appear that it might be an efficient mechanism for providing openings among all markets that permit the trading of an options class.

[62]The CBOE is presently implementing, on a phased basis, an order support system ("OSS") which when completed will consist of an automated limit order book and order routing system for its options market. The OSS will, among other things, provide CBOE member firms with the ability to electronically route public limit orders to, and retrieve those orders from, an automated book. In addition, when a transaction occurs involving a public limit order, the OSS will automatically provide a report of that execution to the member firm. Because the characteristics of OSS appear to correspond to the minimum characteristics necessary for an order exposure system, it may be that OSS, or a similar system, could be adapted to serve as an order exposure system.

The Commission recognizes, however, that the adaptation of OSS to an order exposure system would, in certain respects, change the manner of trading on the floor. Under current CBOE rules, which would continue to apply even after full implementation of OSS as presently contemplated, an execution involving the book occurs the moment a floor participant indicates to the Order Book Official that he wants to execute against a particular limit order. If an order exposure system were implemented, however, it would be necessary to provide all competing market centers with an equal opportunity to execute against limit orders contained in that system. Accordingly, all executions against booked public limit orders would have to occur within the system with marketmakers on any exchange required to wait for an execution report before being assured that their transaction was effected.

[63]On January 26, 1978, the Commission issued a policy statement which set forth its views as to those steps which it believed should be taken to facilitate development of a national market system for stocks. Among the steps proposed by the Commission in that statement was the development of a central limit order file ("Central File") into which public limit orders could be entered, queued for execution by price and, with respect to orders at the same price, by time, and providing a preference for those orders over all other orders at the same price. Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354. *But see* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360.

[64]A number of commentators argued that the existence of a central depository for limit orders, accessible to all markets, as well as the proposed preference provided public limit orders through the Central File, would provide a major trading advantage for those orders which would result in investors almost exclusively employing limit orders. In their views, as the percentage of public orders routed directly to the Central File increased, the incentives for marketmaking on an exchange floor would correspondingly decrease, resulting in many exchange specialists relinquishing their exchange memberships and choosing instead to make markets upstairs. As a result, commentators argued that the final result of a Central File for stocks would be elimination of traditional exchange markets and an inexorable movement to an automated trading system. *See* letters from Richard B. Walbert, President, MSE, to George A. Fitzsimmons,

currently permit only public orders on their books and generally provide those orders with a preference over other orders (with certain exceptions). Despite the "trading advantages" currently provided public limit orders on these options exchanges, the Commission has observed no tendency for all or most orders routed to those exchanges to be designated as limit orders. The Commission believes that this result is caused, at least in part, by the fact that a significant percentage of public trading activity in options involves spreads and other combination orders which cannot be readily entered into the limit order book.

Second, because the order exposure system could be limited to public orders, there should continue to be substantial professional trading on option exchanges. This professional trading in options involves a larger percentage of total transactions than is the case in stocks because of the heavy reliance by options marketmakers on spreading strategies to reduce their marketmaking risks and because of the large professional trading crowds which exist on most options changes.

For these reasons, the Commission believes that an order exposure system could be implemented by the options exchanges without the potential for unnecessary disruptive effects on the current options markets.[65]

The foregoing discussion is not intended as a Commission mandate for implementation of any order exposure system or to indicate a Commission judgment that other types of market integration facilities would not be appropriate for the options markets. To the contrary, it may be feasible for the SROs to develop more traditional market linkages, similar to the ITS. However, in the event that the SROs determine that market integration facilities should be developed which are, in large part, dependent on the reliability of displayed options quotation information, the SROs should specifically discuss in their submission the manner in which they would establish firm quotations for options.

VI. *Expansionary Rule Filings*

In connection with the termination of the moratorium, the Commission has determined to begin to consider, pursuant to Section 19(b) of the Act, expansionary SRO rule proposals relating to options, including the NYSE and NASD proposals to initiate standardized options trading programs if the NYSE and NASD wish to resubmit those proposals. Expansionary options rule proposals will be considered by the Commission on a case-by-case basis. In view of the Commission's limited resources, however, the Commission requests the SROs to stagger the filing of such rule proposals and, to the extent feasible and appropriate, to establish priorities jointly with the Commission.

VII. *Solicitation of Comment*

The Commission solicits comments on any of the issues associated with matters addressed in this release. Commentators should file six copies of their submission with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and should refer to File No. S7-772. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

Footnote 64 continued

Secretary, SEC (May 30, 1978) at 34-38 and from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC (May 31, 1978), contained in File No. S7-735-A.

[65]If the SROs remain concerned, however, over the effects that an order exposure system might have on the trading environment, they might wish to consider providing public limit orders placed in that system with only nation-wide price protection rather than a preference over other orders at the same price. Limiting the "trading advantages" of public limit orders might eliminate any disincentive to marketmaking stemming from the creation of an order exposure system and might further assure that a substantial percentage of public order flow continues to be routed to the floors of the various exchanges. The Commission is concerned, however, that a determination to only require inter-market price protection for options public limit orders held in the order exposure system would probably cause those options exchanges presently providing a trading preference in their own market to public limit orders to eliminate that preference. Accordingly, if the SROs choose not to grant public limit orders inserted into the system a trading preference, they should specifically discuss in their submission to the Commission the basis for their decision.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16702/March 27, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6201/March 27, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16703/March 27, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten day suspension of exchange and over-the-counter trading for the period commencing at 2:15 p.m. (EST) on March 27, 1980 and terminating at Midnight (EST) on April 5, 1980 of the securities of Bache Group, Inc. ("Bache"), Bache Building, 100 Gold Street, New York, NY 10038.

The Commission ordered the suspension of trading in Bache securities in view of certain undisclosed material corporate events relating to commodities futures trading accounts maintained by customers with the firm. The Commission notes that the New York Stock Exchange today has halted trading in Bache securities.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action. The Commission notes that it may determine to terminate the suspension of Bache securities before the ten day suspension period expires, if appropriate.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21485/March 21, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

(70-6412)

ORDER AUTHORIZING INCREASE IN NUMBER OF AUTHORIZED COMMON SHARES; SOLICITATION OF PROXIES

The Southern Company ("Southern"), a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder regarding the proposed transaction.

Southern proposes to amend its Certificate of Incorporation so as to increase the total number of shares of common stock, par value $5.00 per share, which Southern shall have authority to issue from 185,000,000 to 225,000,000. Of the 185,000,000 shares which Southern presently is authorized to issue, 148,744,837 shares were outstanding as of December 31, 1979. During the three-year period 1977 through 1979, Southern issued and sold 25,938,204 shares of common stock in order to provide its operating subsidiaries the additional common equity portion of the capital needed to finance their construction programs. In light of the current construction program estimates of Southern's subsidiary companies, it is expected that their requirements for receipts of common stock capital from Southern will continue in future years

and that in the period 1980 through 1982 Southern will be required for such purposes to sell additional shares of its common stock approaching, if not exceeding, the number of its presently authorized but unissued shares.

Accordingly, the proposed amendment is considered necessary to provide a reasonable amount of authorized but unissued shares of common stock to be used for financing additional common equity capital requirements of Southern's subsidiaries and for other purposes, such as The Employee Stock Ownership Plan of The Southern Company System and investments by stockholders under Southern's Dividend Reinvestment and Stock Purchase Plan and by employees under the Employee Savings Plan. The proposed amendment to the Certificate of Incorporation has been proposed and declared advisable by the Board of Directors of Southern and its adoption requires the favorable vote of the holders of a majority of the outstanding shares of common stock of Southern. Accordingly, Southern proposes to submit the amendment for consideration and action by its stockholders at the annual meeting of such stockholders to be held on May 28, 1980 and, in connection therewith, to solicit proxies from its stockholders.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $11,500, including legal fees of $5,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21454), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21486/March 21, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
ASH CREEK MINING COMPANY
Tulsa, Oklahoma

(70-5868)

SUPPLEMENTAL ORDER AUTHORIZING EXTENSION OF SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any one time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos.

20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926, 20975, 21049 and 21364). In the latest such supplemental order dated December 28, 1979 (HCAR No. 21364), PSO was authorized to continue its financing of Ash Creek through March 31, 1980, in the maximum principal amount of $1,117,500 outstanding at any one time.

By post-effective amendment applicants-declarants request an extension of PSO's authorization to finance Ash Creek through June 30, 1980, in the maximum principal amount of $1,050,000 outstanding at any one time. Said amount includes approximately $900,000 of such loans expected to be outstanding at March 31, 1980, and $150,000 to cover budgeted expenditures through June 30, 1980.

The reason for such loans is the continued and indefinite suspension of mining operations at Ash Creek, pending the securing of permission from the Wyoming Department of Environmental Quality for coal trucks to use the state highway serving Ash Creek's proposed coal outloading facility for PSO mine No. 1 near Sheridan, Wyoming, and the availability of federal coal leasing on PSO's States Ranch property. Accordingly, Ash Creek has not budgeted expenditures for further coal exploration and mine development activities or for construction of a coal outloading facility. Expenditures are needed, however, for maintenance and administrative costs required to maintain the interests of Ash Creek and PSO.

It is stated that PSO and Ash Creek do not contemplate further development of the coal interests described in this filing, and that they continue to hold and maintain them until they can negotiate a satisfactory sale of the interests to a non-affiliate. Such sale is contemplated irrespective of any actions taken by the Wyoming Department of Environmental Quality with respect to the coal outloading facility and irrespective of any possible future availability of a federal coal leasing program on PSO's States Ranch property.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $300. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that PSO be, and it hereby is, authorized forthwith to continue its financing of Ash Creek through June 30, 1980, in the maximum principal amount of $1,050,000 outstanding at any one time (said amount representing the $900,000 expected to be outstanding at March 31, 1980, and $150,000 of budgeted expenditures for Ash Creek through June 30, 1980), subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to any further extension of time and any expenditures to be made after June 30, 1980.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21487/March 21, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

NATIONAL GAS STORAGE CORPORATION
Buffalo, New York

(70-5961)

ORDER AUTHORIZING TRANSACTIONS RELATED TO THE ORGANIZATION OF A NEW SUBSIDIARY COMPANY TO ENGAGE IN THE UNDERGROUND STORAGE OF GAS FOR NONAFFILIATED UTILITIES

National Fuel Gas Company ("National"), a registered holding company, and two of its subsidiary companies, National Fuel Gas Supply Corporation ("Supply Corporation") and National Gas Storage Corporation ("Storage Corporation"), have filed an amended application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder regarding the following proposed transactions.

National, the holding company, performs financing and administrative functions on behalf of its subsidiaries but is not engaged in the transmission or distribution of natural gas. It has no material assets except for the securities of its subsidiaries. Supply Corporation, a Pennsylvania corporation, is engaged in the interstate production, purchase, storage, transportation, and sale of natural gas at wholesale. It owns and operates an intergrated gas pipeline supply network extending from the southwestern part of Pennsylvania to the New York-Canadian border. Approximately 98% of the natural gas produced and purchased by Supply is sold to National Fuel Gas Distribution Corporation ("Distribution Corporation"), a wholly owned public-utility subsidiary of National. Supply Corporation also supplies natural gas at wholesale and renders gas storage service to certain nonaffiliated utilities. Storage Corporation was incorporated on June 9, 1976, under the Transportation Corporations Law of the State of New York. Storage Corporation has no assets or liabilities and no securities outstanding. It has been formed by National to engage in the storage of gas and related activities upon consummation of the transactions described below.

A notice was issued in this proceeding on February 14, 1977 (HCAR No. 19884); however, the filing was never completed and no order was issued. The companies have now filed amendments to the application-declaration which restate entirely the original filing.

It is proposed that Storage Corporation will issue securities and acquire from Supply Corporation assets necessary to develop underground gas storage and related transportation facilities in Southwestern New York and adjoining northwestern Pennsylvania having an aggregate top gas storage capacity of approximately 23.5 billion cubic feet ("BCF"). Initial construction is being carried out by Supply Corporation in expectation of transferring partially completed facilities to Storage Corporation as of April 1, 1980. The total cost of development for Storage Corporation's facilities is estimated to exceed $68,000,000 over the period of preliminary development and the two to three-year construction period. Storage Corporation will render gas storage service to non-affiliated utilities. These utilities will utilize Storage Corporation's service so that they may continue to deliver gas to high priority residential and commercial customers during the winter months when demand is high, from supplies stored over the summer months when gas is relatively more plentiful. Normally, gas is stored during the months of April through October and withdrawn from storage for use during the months of November through March ("Storage Year").

It is stated that Supply Corporation has extensive experience in underground gas storage operations and owns rights in several areas which may be developed for gas storage purposes. Supply Corporation currently operates, independently or in conjunction with certain of its suppliers, 31 underground gas storage areas within the National Fuel Gas System. It is proposed that Storage Corporation will acquire from Supply Corporation (i) one of the existing developed storage areas and (ii) partially constructed facilities and leasehold interests at two undeveloped areas.

The developed area is known as the East Independence Pool and has an estimated top gas storage capacity capability of 3.3 BCF. This capacity is in excess of the system's internal needs for the foreseeable future and may therefore be transferred to Storage Corporation to serve non-affiliated utilities without adversely affecting existing customers of the System. The two partially constructed undeveloped areas are known as the West Independence and Beech Hill pools and have respective estimated top gas storage capacity capabilities of 8.2 and 12.0 BCF.

In order for Storage Corporation to complete development of the underground gas storage facilities and render storage service to customers, the applicants-declarants propose to capitalize Storage Corporation through the following transactions. The transactions would be consummated as of April 1, 1980, or as soon thereafter as possible ("Closing Date"), with the exception of transactions (A)(1), (A)(2), and (A)(3), below, which would be consummated in advance of the Closing Date.

A. *Transactions taking place before the Closing Date:*

(A)(1) National proposes to issue and sell from time to time during the period from the date of the Commission's order authorizing this transaction through the Closing Date, its unsecured short-term notes to The Chase Manhattan Bank, N.A. ("Chase"), pursuant to a Letter Agreement between Chase and National, in an aggregate principal amount not to exceed $4.7 million at any one time outstanding. The notes will mature within twelve months from their date of issue, will bear interest payable quarterly at the prime commercial rate of Chase in effect from time to time, and will be prepayable, in whole or in part, at any time without penalty.

National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20% were required, the effective cost of money, based on a 19.0% prime rate, would be 23.75%. There will be no commitment fee nor any closing or related costs in connection with National's borrowings from Chase.

National proposes to use the proceeds of such short-term borrowings to acquire for cash from time to time, prior to the Closing Date, up to $4.7 million aggregate principal amount at any one time outstanding of short-term unsecured notes from Supply Corporation.

(A)(2) In exchange for equal cash consideration, Supply Corporation will issue from time to time to National, during the period commencing with the authorization by the Commission of this transaction and ending with the Closing Date, up to $4.7 million aggregate principal amount of short-term unsecured notes. Each such note will be dated the date and bear the effective interest rate of related short-term notes of National issued to Chase, described above. Each short-term note of Supply Corporation issued pursuant to this transaction will mature within twelve months of its date of issue with interest payable quarterly until the principal amount is paid in full. Supply Corporation will have the option to prepay any note issued pursuant to this transaction at any time, in whole or in part, without penalty or premium. Supply Corporation will use the proceeds of these notes for construction expenditures during 1980 for gas storage facilities which are proposed to be transferred to Storage Corporation. On the Closing Date, Storage Corporation will assume Supply Corporation's indebtedness to National represented by the aggregate amount of notes outstanding pursuant to this transaction, as partial consideration for the transfer by Supply Corporation to Storage Corporation of its interest in construction work in progress at the storage facilities, as described below under transaction (B)(1)(b).

(A)(3) As consideration for the sum of $10.00 to be paid by National, Storage Corporation will issue 1 share of its fully paid nonassessable common stock, no par value, to National, and National will acquire such share, thereby causing Storage Corporation to become a wholly-owned subsidiary of National. The entire consideration received for the share shall constitute stated capital of Storage Corporation.

B. *Transactions taking place on or after the Closing Date:*

1. *Supply Corporation:* (B)(1)(a) In exchange for 24 shares of Storage Corporation common stock, no par value, Supply Corporation will convey to Storage Corporation all of the right, title, and interest of Supply Corporation existing as of June 1, 1976, in facilities at East Independence and unimproved leasehold interests at West Independence and Beech Hill. The 24 shares of common stock of Storage Corporation will be entered on the books of Supply Corporation at the net book value of the facilities and leasehold interests transfered as determined by original cost less accumulated depreciation, amortization, and depletion, if any, to the date of transfer, as they appear on the books of Supply Corporation. Assuming that the transfers occur as of April 1, 1980, the facilities and leasehold interests at the respective storage areas are expected to have net book values approximating $2,965,000, $47,000, and $6,000, for an estimated total of $3,018,000.

(B)(1)(b) In exchange for (i) the assumption by Storage Corporation of indebtedness to National represented by a $10.3 million portion of Supply Corporation's $17.5 million 8.7% promissory note due December 31, 1980, (ii) the assumption by Storage Corporation of up to $4.7 million aggregate principal amount of short-term unsecured notes payable to National described in transaction (A)(2) above, together in each case with accrued interest payable at the time of assumption, (iii) 75 shares of common stock, no par value, of Storage Corporation, (iv) 320,000 shares of the Cumulative Preferred Stock, 9.6% Series ($25 par value), of Storage Corporation, Supply Corporation will convey to Storage Corporation all of Supply Corporation's right,

title, and interest in construction work in progress representing improvements, materials, and preliminary development at the three storage areas. As of April 1, 1980, such improvements, materials, and preliminary development are expected to aggregate approximately $32,100,000. The $10.3 million and up to $4.7 million of indebtedness will be assumed by Storage Corporation in return for the conveyance to Storage Corporation of real property having a net book value equal to such indebtedness assumed. The remainder of the construction work in progress, including all personalty, will be conveyed to Storage Corporation in exchange for the 75 shares of common stock and 320,000 shares of preferred stock of Storage Corporation. These shares will be valued on the books of Supply Corporation at $9.1 million and $8.0 million, respectively.

(B)(1)(c) Supply Corporation will transfer to National, as a dividend, all of the 24 shares of common stock of Storage Corporation which it will receive pursuant to transaction (B)(1)(a) above.

(B)(1)(d) As consideration for the cancellation by National of the $5.0 million 9.6% note, the $4.9 million prime interest rate note, and a $7.2 million portion of the $17.5 million 8.7% note, Supply Corporation will convey to National the 75 shares of common stock and 320,000 shares of preferred stock received from Storage Corporation pursuant to transaction (B)(1)(b) above.

2. *Storage Corporation:* (B)(2)(a) As consideration for the assets to be acquired from Supply Corporation indicated in transaction (B)(1)(a), Storage Corporation will issue 24 shares of its fully paid non-assessable common stock, no par value, to Supply Corporation. The entire consideration received for such shares shall constitute stated capital of Storage Corporation and shall be valued at the net book value of the assets acquired as they appear on the books of Supply Corporation as determined by original cost less accumulated depreciation, amortization, and depletion, if any, to the date of transfer.

(B)(2)(b) As consideration for assets to be acquired from Supply Corporation indicated in transaction (B)(1)(b) above, Storage Corporation will (i) assume the indebtedness of Supply Corporation to National represented by a $10.3 million portion of the $17.5 million 8.7% promissory note due December 31, 1980, (ii) assume up to $4.7 million aggregate principal amount of short-term unsecured notes payable to National described in transaction (A)(2) above, together in each case with accrued interest payable to the time of assumption of the indebtedness, (iii) issue to Supply Corporation 75 shares of Storage Corporation's common stock, no par value, and (iv) issue to Supply Corporation 320,000 shares of the Cumulative Preferred Stock, 9.6% Series ($25 par value), of Storage Corporation. Consideration consisting of $9.1 million and $8.0 million of Supply Corporation's right, title, and interest in construction work in progress at the three storage areas shall constitute, respectively, stated capital and preferred stock capital of Storage Corporation.

The terms and conditions governing all series of Storage Corporation's Preferred Stock are identical to the terms and conditions set forth in the charter of National with respect to its preferred stock, with exceptions where Storage Corporation's proposed status as a wholly-owned subsidiary requires alternations. The terms and conditions of the initial series of preferred stock to be issued in this transaction, which will be specified by the Board of Directors of Storage Corporation, are substantially identical to the terms and conditions of National's Cumulative Preferred Stock, 9.20% Series ($25 par value), except that the dividend rate of the Storage Corporation security is sufficiently greater than that of National to equal National's amortization over the life of its issue of the underwriting commissions incurred in the public offering.

(B)(2)(c) As consideration for the cancellation by National of the $10.3 million portion of the $17.5 million 8.7% note assumed by Storage Corporation under transaction (B)(2)(b) above, Storage Corporation will issue to National $10.3 million aggregate principal amount of its serial unsecured notes. These notes will bear interest at 8.7% which is equal to the effective cost of capital incurred by National in connection with its 1977 Debentures, rounded to the next highest 1/10 of 1%. The notes will have maturities corresponding to sinking fund payment dates for the 1977 Debentures and will have principal amounts equal to sinking fund requirements on the proportion of the proceeds of the 1977 Debentures which Storage Corporation receives.

(B)(2)(d) In exchange for equal cash consideration, Storage Corporation will issue from time to time to National, during the period commencing with the Closing Date and ending December 31, 1980, up to $14 million aggregate principal amount of short-term unsecured notes. Each such note will be dated the date and bear the effective interest rate of related

short-term notes of National issued to Chase, for which authorization is requested pursuant to transaction (B)(3)(d) below. Each short-term note of Storage Corporation issued pursuant to this transaction will mature within twelve months of its date of issue with interest payable quarterly until the principal amount is paid in full. Storage Corporation will have the option to prepay any note issued pursuant to this transaction at any time, in whole or in part, without penalty or premium. Storage Corporation will use the proceeds of these notes for its construction program. Repayment of these notes is expected to be made from the proceeds of a financing to be done as soon as may be practicable.

3. *National:* (B)(3)(a) In consideration of the assumption by Storage Corporation of up to $15 million aggregate indebtedness of Supply Corporation to National as indicated in transaction (B)(2)(b) above, National will release Supply Corporation from all liability under such indebtedness.

(B)(3)(b) National will acquire 24 shares of Storage Corporation common stock, no par value, as a dividend from Supply Corporation as described in transaction (B)(1)(a) above. National will enter these shares on its books at the same value as appears on the books of Supply Corporation at the time of transfer.

(B)(3)(c) As described in transaction (B)(2)(c) above, as consideration for the cancellation by National of a $10.3 million portion of the $17.5 million 8.7% note assumed by Storage Corporation under transaction (B)(2)(b), above, National will acquire from Storage Corporation $10.3 million aggregate principal amount of serial unsecured notes of Storage Corporation. These notes will be entered on the books of National at $10.3 million.

(B)(3)(d) As described in transaction (B)(1)(d) above, as consideration for the cancellation by National of the $5.0 million 9.6% note, the $4.9 million prime interest rate note, and a $7.2 million portion of the $17.5 million 8.7% note, Supply Corporation will convey to National the 75 shares of common stock and 320,000 shares of preferred stock received from Storage Corporation pursuant to transaction (B)(1)(b) above.

(B)(3)(e) National will issue and sell from time to time during the period from the Closing Date through December 31, 1980, its unsecured short-term notes to Chase in an aggregate principal amount not to exceed $14 million at any one time outstanding. These notes will be subject to the same terms and conditions as those applying to the notes which National proposes to issue and sell to Chase prior to the Closing Date, pursuant to transaction (A)(1) above.

(B)(3)(f) National will use the proceeds of the short-term borrowings to acquire for cash from time to time, prior to December 31, 1980, up to $14 million aggregate principal amount at any one time outstanding of short-term notes from Storage Corporation, as described in transaction (B)(2)(d) above.

Applicants-declarants believe the proposed storage project is in the public interest, because, among other things, it will assist public utilities in their effort to minimize curtailments of gas deliveries to their high priority residential and commercial customers during periods of high demand. The project will also develop a valuable asset of the National Fuel Gas System and is expected to provide a stable source of income.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $345,000, including counsel fees and expenses of $53,000. It is stated that other fees and expenses incurred and to be incurred by such counsel in relation to the total Storage Corporation project are predominantly related to proceedings before the Federal Energy Regulatory Commission and amount to approximately $752,000.

It is represented that the requisite authorization of the proposed transactions has been or will be obtained from the Federal Energy Regulatory Commission and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

The applicants-declarants have requested that they be permitted to file Rule 24 certificates related to short-term borrowings as soon after each quarter as practicable and that the time for filing the certificate respecting transactions other than short-term borrowings be extended to 60 days after consummation of such transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21441), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules

thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing as requested.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21488/March 25, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

KENTUCKY POWER COMPANY
Ashland, Kentucky

KINGSPORT POWER COMPANY
Roanoke, Virginia

MICHIGAN POWER COMPANY
Three Rivers, Michigan

OHIO POWER COMPANY
Canton, Ohio

WHEELING ELECTRIC COMPANY
Wheeling, West Virginia

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6361)

ORDER AUTHORIZING PROPOSED CASH CAPITAL CONTRIBUTION BY HOLDING COMPANY TO SUBSIDIARY

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Michigan Power Company ("Michigan"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling Electric"), AEP's subsidiary public utility companies have filed a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to Section 12 of the Public Utility Holding Company Act of 1935 ("Act") concerning the following proposed transaction.

By prior order in this proceeding (HCAR No. 21352, December 21, 1979), AEP was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper respectively, in an amount of up to $165,000,000, such notes maturing no later than June 30, 1981. AEP was also authorized to make cash capital contributions prior to January 1, 1981 to certain of its subsidiaries. By supplemental order in this proceeding (HCAR No. 21442, February 20, 1980), AEP was authorized to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of $229,000,000, subject to the previously ordered limit on outstanding notes.

By post-effective amendment AEP requests authority to make cash capital contributions to Michigan from time to time prior to January 1, 1981 in an aggregate amount of $10,000,000. It is stated that the investment by AEP in Michigan will be an addition to the general funds of Michigan to enable Michigan to declare a dividend in a like amount to its parent, AEP, concurrent with the cash capital contribution.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction will not exceed $100. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration as amended by said post-effective amendment, has been given in the manner prescribed in Rule 23 promulgated under the Act

(HCAR No. 21453), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, as amended by said post-effective amendment, be granted, and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21489/March 25, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6362)

NOTICE OF PROPOSED CHANGES IN SHORT-TERM BORROWING AUTHORIZATION

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By prior order in this proceeding (HCAR No. 21247, October 12, 1979), I&M was authorized to issue and sell notes to banks and commercial paper to a dealer in an aggregate amount not to exceed $150,000,000, such notes and commercial paper maturing no later than June 30, 1981. By supplemental order in this proceeding (HCAR No. 21444, February 21, 1980), I&M was authorized to (1) add the Marine Midland Bank, New York, N.Y. as one of the banks which is extending to I&M a line of credit; (2) increase the line of credit at Mellon Bank, N.A., Pittsburgh, P.A. from $9,000,000 to $20,000,000 and (3) change its credit arrangements to total $329,655,000 with 43 banks. The previously ordered limit of $150,000,000 on outstanding notes was not changed.

By post-effective amendment I&M proposes to amend its application by: (1) increasing its credit arrangements with 43 banks to total $344,655,000; (2) increasing the line of credit at Irving Trust Company from $10,000,000 to $25,000,000 and; (3) incurring short-term indebtedness in an aggregate amount not to exceed $200,000,000. It is stated that the authorization for an increase in the maximum amount of short-term debt outstanding from $150,000,000 to $200,000,000 is necessary because it appears that Kentucky Power Company, an affiliate of I&M, will not be authorized to acquire an interest in the Rockport Plant before the end of 1980 (see File No. 70-6198). An increase in the maximum amount of short-term debt outstanding will allow for greater financing flexibility.

For purposes of borrowing, the 43 banks are of three classes. Each note to be issued to a Class I bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without penalty. I&M's credit arrangements with these banks require it to maintain compensating balances equal to a percentage of the line of credit made available by the bank plus a percentage of any amount actually borrowed, generally not in excess of 10% of the line of credit and 10% of the amount borrowed. Borrowings from a Class I bank would generally bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time.

Each note to be issued to a Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable by I&M at

any time without premium or penalty. I&M's credit arrangements with these banks require it to maintain compensating balances of 5% of the line of credit and to pay a fee, which is equal to 4% of the bank's prime commercial rate then in effect times the size of the line. The combination of 5% compensating balances and the fee is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. In addition, I&M must pay interest on the borrowings at the rate of up to 108.5% of the bank's prime commercial rate then in effect. In the case of one bank, borrowings may be made in Eurodollars; the interest rate on such borrowings will be a designated percent of the London Interbank Offering Rate. The total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. It is stated that if the balances maintained and the fees paid by I&M with and to the Class I and II banks were maintained and paid solely to fulfill requirements for borrowings by I&M, the effective annual interest cost under either such arrangement, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 23.75% on the basis of a prime commercial rate of 19%.

With respect to the Class III banks, I&M has money market facilities at each of two named banks in an aggregate amount of $20,000,000. These money market facilities do not represent a formal commitment or engagement by these banks to I&M, but represent merely the ability of I&M to request unsecured borrowings in the form of promissory notes, on a case-by-case basis. These money market facilities are available for unsecured borrowings in domestic dollars and/or in Eurodollars for periods of up to 180 days after the date of issuance, and any such borrowings will be prepayable by I&M at any time without premium or penalty. No compensating balances are required. The interest rate which is presently to be negotiated on a case-by-case basis (using a 360 day year), is pegged to either the London Interbank Offering Rate plus a designated percent, if the borrowings are made in Eurodollars, or to a designated percent of the bank's prime rate, if the borrowings are made in domestic dollars. It is stated that interest rates on these notes will be lower than the effective interest rates for bank borrowings made from Class I and II banks, including the effect of any compensating balances and fees paid.

I&M also proposed to issue commercial paper, in the form of promissory notes, in denominations of not less than $50,000 nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after the date of issue; such notes will not be prepayable prior to maturity. The commercial paper notes will be sold directly by I&M to Lehman Commercial Paper Incorporated (the "Dealer") at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. No commercial paper will be issued having a maturity of more than 90 days if such commercial paper would have an effective interest cost which exceeds the effective interest cost at which I&M could borrow from commercial banks. The Dealer will reoffer the commercial paper notes to not more than 200 of the Dealer's customers identified and designated in a nonpublic list prepared by the Dealer in advance, at a discount rate of 1/8 of 1% less than the discount rate at which such notes were purchased from I&M. It is expected that such customers will hold such commercial paper notes to maturity, but if any such customers wishes to resell such commercial paper prior to maturity, the Dealer, pursuant to a verbal repurchase agreement, will repurchase such commercial paper and reoffer it to other customers on its nonpublic list.

I&M claims exemption from competitive bidding requirements of Rule 50 for the proposed issuance of notes to banks pursuant to paragraph (a)(2) thereof and requests exemption from such requirements for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5)(ii) thereof.

The fees and expenses to be incurred in connection with the proposed transaction will not exceed $100. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A

copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21490/March 25, 1980

In the Matter of

EASTERN UTILITIES ASSOCIATES
EUA SERVICE COMPANY
P.O. Box 2333
Boston, Massachusetts 02107

BLACKSTONE VALLEY ELECTRIC COMPANY
P.O. Box 1111
Lincoln, Rhode Island 02865

EASTERN EDISON COMPANY
36 Main Street
Brockton, Massachusetts 02403

MONTAUP ELECTRIC COMPANY
P.O. Box 391
Fall River, Massachusetts 02722

(70-6431)

NOTICE OF REQUEST FOR EXCEPTION FROM THE CONSOLIDATED TAX ALLOCATION PROVISIONS OF RULE 45(b)(6)

NOTICE IS HEREBY GIVEN that Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiaries Blackstone Valley Electric Company ("Blackstone"), Eastern Edison Company ("Eastern Edison") and Montaup Electric Company ("Montaup"), together with its service company subsidiary EUA Service Corporation ("Service Company"), have filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

EUA and its subsidiaries join annually in the filing of consolidated federal income tax returns. The consolidated federal income tax liabilities are allocable among the members of the consolidated group in accordance with the provisions of Section 1552 of the Internal Revenue Code of 1954 ("Code") and other applicable requirements of Rule 45(b)(6) under the Act, subject to modification for years subsequent to 1962 as authorized by Commission order dated May 28, 1963 (HCAR No. 14880). Under Section 1552(a)(1) of the Code, as modified by said order, (i) the tax and surtax (46%) on consolidated taxable income is apportioned in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income, and (ii) each of the subsidiaries included in the consolidated tax return is given the full investment credit that it contributes to the total investment credit allowed on the consolidated return. It is stated that under the circumstances hereinafter described, certain inequities and distortions will result if the allocation of the group's consolidated federal income tax liabilities for 1979 is effected pursuant to the provisions of Rule 45(b)(6) set forth above.

The estimated 1979 separate taxable income and losses (i.e., income or loss as determined solely for the purpose of computing federal income tax liability, and not for purposes of financial reporting) of the members of the EUA system (adjusted to take into account the consolidation and, thus, comprising in the aggregate the consolidated net taxable income) are as follows:

Company	Estimated Taxable Income (Loss)
EUA	$(2,629,466)
Service Company	—
Blackstone	(949,200)
Eastern Edison	4,516,305
Montaup	(1,297,323)
Consolidated	$(357,684)

The estimated consolidated federal income tax refund before investment tax credits is $171,688. In order to allocate such consolidated tax refund equitably, declarants request the following exception from the provisions of Rule 45(b)(6) for the tax year 1979:

(i) that the reduction in the consolidated tax liabilities arising from the net operating losses contributed to the consolidated tax return by Blackstone and Montaup be allocated in their entirety to Blackstone and Montaup (but that each other operating company be allowed to offset its liability to Blackstone and Montaup by its full investment credits earned); and

(ii) that in years in which Blackstone and Montaup have taxable income and may be entitled to tax credits under the operating loss carryback and carryover provisions of Section 172(b) of the Code, in order to comply with the separate return limitations of Rule 45(b)(6), any tax credits remitted to Blackstone and Montaup as a result of the exception from said rule herein requested shall be applied to reduce any credits in future years to which Blackstone and Montaup may otherwise be entitled under any separate return limitations of Rule 45(b)(6).

The proposed method of allocation would continue to be subject to the provision of Rule 45(b)(6)(ii) that the aggregate tax liability allocated to each subsidiary should not exceed the amount of such subsidiary's tax based upon a separate return computed as if such subsidiary had always filed its tax return on a separate return basis.

A comparison of the taxes allocated under the method prescribed by Rule 45(b)(6) and under the proposed method is as follows (all figures before investment tax credits):

Company	Under Rule 45	Under Proposed Method
EUA	$ —	$ —
Service Company	—	—
Blackstone	—	(566,602)
Eastern Edison	(171,688)	1,035,315
Montaup	—	(640,401)
	$(171,688)	$(171,688)

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,500, including legal fees of $1,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21491/March 25, 1980

In the Matter of

OHIO POWER COMPANY
Canton, Ohio

CENTRAL OHIO COAL COMPANY
Cumberland, Ohio

(70-6157)

ORDER AUTHORIZING SALE AND LEASEBACK OF MINING MACHINERY AND GUARANTEE OF LEASE

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") concerning the following proposed transactions.

By order dated August 7, 1978 (HCAR No. 20660), applicants-declarants were authorized to enter into a series of transactions concerning the financing of a dragline, a shovel and in certain related contracts and equipment (collectively the "Equipment") for use by COCO in its mining operations. Said authorization basically provided for the following: (1) the assignment of the Equipment to Girard Bank (the "Lessor"), as trustee for C.I.T. Leasing Corporation (the "Owner Participant"); (2) the lease of the Equipment to COCO, the lease of the shovel to commence at an initial closing in August 1978 and the lease of the rest of the Equipment to commence at a final closing, which is to occur upon completion of the dragline (then estimated to take place in September 1979); and (3) the guarantee of COCO's lease obligations by Ohio Power. The purchase price for all the Equipment, which includes all overhead and indirect costs, was estimated to be $30,000,000, such amount to be financed 50% by the Owner Participant and 50% by John Hancock Mutual Life Insurance Company (the "Loan Participant"). The Owner Participant and the Loan Participant issued commitments extending through March 31, 1980, in the aggregate amount of $30,000,000, plus or minus 10%; approximately $2,000,000 of such amount was provided at the initial closing in August 1978 and the balance was to be provided at the final closing. Interim financing in an amount of $30,000,000 was provided to COCO by a credit agreement with Irving Trust Company, such financing being authorized by Commission order dated November 1, 1978 (HCAR No. 20758), in File No. 70-6181.

The lease is a net lease under which COCO is responsible for all maintenance, insurance, taxes (with certain exceptions) and other costs with respect to operation of the Equipment. Basic rent is payable in forty equal semiannual installments (the shovel and the dragline each have a base rental term of 20 years, but the shovel's term began in August 1978 and that for the dragline will commence on the date of acceptance of its construction by COCO) at an annual rate of 3.89% of the cost of the Equipment, such rate resulting in an effective interest cost to COCO of approximately 4.72% per annum. Such rate reflects the fact that Owner Participant will retain a 10% investment tax credit and that the rent will service the long-term loan from the Loan Participant at a rate of 9.50% per annum. COCO has certain renewal and purchase options under the lease.

By post-effective amendments it is stated that construction of the dragline has been delayed (completion is now estimated to occur on or about March 25, 1980), and that the estimated cost of the dragline portion of the Equipment has increased from $28,000,000 to $36,500,000. Such increase is attributed to higher than anticipated assembly costs and interest costs on money borrowed to finance its construction. Applicants-declarants now propose that (1) the total dollar amount of Equipment to be transferred to Lessor and leased to COCO be increased to $41,000,000 from the $30,000,000 amount previously authorized, and (2) Ohio Power guarantee such increased lease obligations. The $41,000,000 amount represents approximately $2,000,000 for the shovel (which is presently under lease to COCO), $36,500,000 for the dragline, and an additional $2,500,000 for a second shovel (the "New Shovel"). The Owner Participant and the Loan Participant have increased their commitments from $15,000,000 (plus or minus 10%) each to $20,500,000 each to cover the new total estimated cost of the Equipment (including the New Shovel), and agreed to extend such commitments to June 30, 1980.

The New Shovel will be used primarily to prepare benching for the dragline, and will be acquired by Lessor from COCO with money supplied by Owner Participant and Loan Participant. The basic rent on

the Equipment (including the New Shovel but excluding the first shovel) will be payable in 40 semiannual installments at an annual rate of 4.152% of such Equipment's cost, resulting in an effective interest cost to COCO of approximately 5.50% per annum. The basic rent on the first shovel, at a rate of 3.89% of its cost per annum, will remain unchanged.

The fees and expenses to be incurred in connection with the proposed transactions include a commitment fee payable to the Loan Participant at a rate of 1/2 of 1% per annum from December 12, 1979, until takedown on the $4,000,000 of its increased commitment. The record is incomplete with respect to other fees and expenses to be incurred. The Public Utilities Commission of Ohio has authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21417), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the fees and expenses to be incurred in connection with the proposed transactions other than the commitment fee to the Loan Participant.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21492/March 25, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

(70-6427)

ORDER AUTHORIZING CAPITAL CONTRIBUTIONS BY HOLDING COMPANY TO SUBSIDIARIES

Central and South West Corporation ("CSW"), a registered holding company, and three of its subsidiaries, Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), and Southwestern Electric Power Company ("SWEPCO"), have filed with this Commission an application-declaration pursuant to Sections 6(a), 7, 9, 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following transaction.

CSW proposes to make capital contributions during 1980 of $30,000,000 to CPL, $40,000,000 to PSO and $45,000,000 to SWEPCO. The capital contributions will, in each case, be added to the respective operating companies' common equity and will be used to repay short-term debt to be incurred in connection with 1980 construction expenditures which are shown in the table below. It is anticipated that equity contributions would be made in the time periods and in the amounts shown below:

Company	Month	Amount	Anticipated Short-Term Debt Outstanding at time of Contribution	Anticipated 1980 Construction Program
PSO	March	Up to $40,000,000	$90,000,000	$197,000,000
CPL	August	$30,000,000	$75,000,000	$198,000,000
PSO	August	Amount, if any, not contributed in March	$80,000,000	$197,000,000
SWEPCO	June	$45,000,000	$75,000,000	$172,000,000

By an order dated October 25, 1979 (HCAR No. 21269), this Commission authorized CPL, PSO and SWEPCO to incur short-term borrowings not to exceed $100,000,000, $90,000,000 and $75,000,000, respectively, through December 31, 1980.

CSW presently anticipates a sale of 5,000,000 shares of its common equity in August or September of 1980 which ultimately would finance the proposed equity contribution together with proceeds from the sale of new issue common stock under dividend reinvestment, employee share ownership and thrift plans, all of which were previously approved by this Commission (HCAR Nos. 19850, 19710, 20675 and 20742). CSW proposes to finance any of the capital contributions that are made prior to its issuance of common stock to the public from the sale of its commercial paper or other short-term borrowings authorized in HCAR No. 21150 or as may be further authorized in the future.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,550, including legal fees of $500.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21455), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21493/March 25, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

(70-6416)

ORDER AUTHORIZING ELECTRIC UTILITY SUBSIDIARY TO SELL COMMON STOCK TO ITS PARENT HOLDING COMPANY

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary of Middle South, have filed a joint application-declaration and an amendment thereto with this Commission pursuant to Sections 6(b), 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 promulgated thereunder regarding the proposed transaction.

Arkansas proposes to issue and sell to Middle South, and Middle South proposes to acquire from Arkansas, from time to time during the 1980 calendar year, at the price of $12.50 per share, or $70,000,000 in the aggregate, 5,600,000 presently authorized but unissued shares of the common stock of Arkansas, $12.50 par value (New Common Stock). Arkansas presently has outstanding 34,236,773 shares of common stock, $12.50 par value, all of which shares are owned by Middle South. Arkansas had outstanding at November 30, 1979, 33,436,773 shares of Common Stock, $12.50 par value, with an aggregate par value on its books of $417,959,622.50. Arkansas and Middle South state that the sale of the New Common Stock will be timed to coincide with Arkansas' cash needs from time to time, which are primarily determined by the nature and pace of its construction program.

Upon the issuance and sale by Arkansas and the purchase by Middle South of the New Common Stock, Arkansas proposes to credit its Common Stock Capital Account with the amount ($70,000,000) received by it for the New Common Stock, and Middle South proposes to debit its Investment Account with the amount ($70,000,000) of its cash investment in the New Common Stock. To the extent funds are required from external sources to acquire the New Common Stock, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 29, 1979, as amended, with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's orders dated June 7, 1979 (HCAR No. 21093) and December 6, 1979 (HCAR No. 21332).

Arkansas proposes to use the net proceeds derived from the issuance and sale of the New Common Stock for the payment of short-term indebtedness incurred or estimated to be incurred and for financing Arkansas' construction program, estimated to be $296,000,000 for the year 1980.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,000. The Arkansas Public Service Commission and the Tennessee Public Service Commission have authorized the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21459), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21494/March 26, 1980

In the Matter of

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

(70-6408)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS IN COMMERCIAL PAPER; EXCEPTION FROM COMPETITIVE BIDDING

Mississippi Power & Light Company ("Mississippi"), a wholly-owned electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder, regarding the following proposed transactions.

Mississippi proposes to issue short-term notes to banks and to issue and sell commercial paper from time to time on or before June 30, 1981. The maximum aggregate principal amount of notes and commercial paper outstanding at any one time would not exceed the lesser of $45,000,000 or 10% of the capitalization of Mississippi.

It is expected that the bank borrowings will be made from the following banks up to the maximum amounts set forth below:

Bank	*Amount*
Deposit Guaranty National Bank Jackson, Mississippi	$9,500,000
First National Bank of Jackson Jackson, Mississippi	10,000,000
First National Bank of Vicksburg Vicksburg, Mississippi	500,000
Manufacturers Hanover Trust Company New York, New York	14,000,000
	$34,000,000

Arrangements may be made with other banks with which Mississippi maintains accounts. Mississippi would file an amendment setting forth the names of the banks and amounts of such other borrowings. Mississippi will not effect such other borrowings until further authorization of this Commission.

The bank borrowings will be evidenced by unsecured promissory notes to be dated the date of the borrowing and to mature not more than nine months from the date of issue. The bank notes will bear interest at the prime rate in effect at the lending bank at the date of issue or from time to time, whichever is the customary requirement of the lending bank, and will be prepayable, in whole or in part, without penalty or premium.

Mississippi maintains with the local banks from which borrowings will be made average daily operating balances adequate to meet the requirements of such banks in respect of certain services to Mississippi. It may reasonably be expected that non-Mississippi banks require the maintenance of balances and/or fees in lieu of balances in respect of any such borrowings. If balances were to be maintained solely for the purpose of satisfying a compensating balance requirement generally not in excess of 20%, the effective interest cost of the related borrowings, based on a prime rate of 19%, would be 23.75% per annum.

Mississippi also proposes from time to time on or before June 30, 1981, to issue and sell commercial paper in the form of short-term promissory notes to dealers in commercial paper. The commercial paper notes will have varying maturities of not more than 270 days after the date of issue, will be sold in varying denominations of not less than $50,000, and will not by their terms be prepayable prior to maturity. The commercial paper will be sold directly to Merrill Lynch, Pierce, Fenner & Smith, Inc., ("Purchasing Dealer") at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturity. The Purchasing Dealer would reoffer the commercial paper to institutional investors at a discount of 1/8 of 1% per annum less than the prevailing discount rate to Mississippi. No commission or fee will be payable in connection with the issuance and sale of commercial paper. The commercial paper will be offered to not more than 200 customers of the Purchasing Dealer identified and designated in a nonpublic list prepared in advance by the Purchasing Dealer. No additions will be made to such list of customers. It is expected that the commercial paper will be held by customers to maturity, but, if they wish to resell prior thereto, the dealer may, pursuant to a verbal repurchase agreement, repurchase the commercial paper and reoffer it to others on the customer list.

Mississippi proposes to use the proceeds of the bank notes and commercial paper notes for construction and other corporate purposes. Construction expenditures for 1980 are expected to total $49,141,000.

The declarant requests exception from the competitive bidding requirements of Rule 50 in connection with the sale of commercial paper notes pursuant to clause (a)(5) thereof. It is stated, in this connection, that (a) all commercial paper which it proposes to issue and sell will have a maturity not in excess of 270 days, (b) current rates for commercial paper for prime borrowers, such as declarants, are published daily in financial publications, and (c) it is not practical to invite invitations for bids for commercial paper. It is also requested that authorization be granted to file certificates of notification under Rule 24 on a quarterly basis.

Fees and expenses to be incurred by Company in connection with the proposed transactions are estimated not to exceed $5,000. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21460), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21495/March 27, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND POWER SERVICE COMPANY
Westborough, Massachusetts

(70-6353)

ORDER AUTHORIZING EXTENSION OF SHORT-TERM BORROWING AUTHORIZATION FOR SUBSIDIARY SERVICE COMPANY

New England Electric System ("NEES"), a registered holding company, and its service company subsidiary, New England Power Service Company ("NEPSCO"), have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6(a), 7, 9(a), 10, 12 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45, 90 and 91 promulgated thereunder concerning the following proposed transaction.

By order dated December 21, 1979 (HCAR No. 21354), NEPSCO was authorized, among other things, to issue and sell from time to time through March 31, 1980, its short-term notes ("Notes") to banks and/or NEES up to a maximum amount of $4,000,000 outstanding. By post-effective amendment it is requested that the period within which NEPSCO may make such borrowings, to the maximum of $4,000,000 outstanding, be extended until March 31, 1981.

The Notes would be issued to banks and/or to NEES, would mature in less than one year from date of issuance and would provide for prepayment in whole or in part without penalty. The Notes issued to banks would bear interest at a rate not exceeding the prime rate in effect at the time of issuance (not including any fees in lieu of compensating balances), and those issued to NEES would bear interest at a rate not in excess of the prime rate in effect at the time of issuance. Assuming a prime rate of 19% and compensating balance requirements of 20%, or fees equivalent thereto, the effective interest cost of bank borrowings would be 23.7%, and the effective interest cost of borrowings from NEES would be 19%.

It is proposed that NEPSCO may prepay its Notes issued to NEES, in whole or in part, with borrowings from banks and that NEPSCO may prepay its Notes issued to banks, in whole or in part, with borrowings from NEES. In the event of borrowings from banks at a higher interest rate than the rate on the Notes issued to NEES being prepaid with such bank borrowings, NEES will credit NEPSCO with the interest differential from the date of issuance of the new Notes to the normal maturity date of the Notes to NEES being prepaid. In the event of borrowings from NEES to prepay Notes to banks, the interest rate on the Notes to NEES will be the lower of (1) the interest rate on the Notes issued to banks being prepaid (but only until the maturity date of the Notes so prepaid, and thereafter at the prime rate), or (2) the prime rate.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21430), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable

standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that NEPSCO shall file Rule 24 certificates within 45 days of the end of each calendar quarter setting forth concerning its activities during such quarter the following: (a) a balance sheet and statement of income for NEPSCO, including a statement of retained earnings; (b) a computation of the cost of capital for the quarter included in its service charges to customers; and (c) a report of any borrowings by NEPSCO from banks and/or receipt of capital contributions from NEES.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21496/March 27, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6201/March 27, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21497/March 27, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6402)

NOTICE OF PROPOSAL BY UTILITY TO OBTAIN A SIXTY YEAR FRANCHISE TO OPERATE A MUNICIPAL ELECTRIC SYSTEM AND AN OPTION TO ACQUIRE THAT SYSTEM

NOTICE IS HEREBY GIVEN that Louisiana Power & Light Company ("LP&L"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7, 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

LP&L is engaged in the business of generating, transmitting, distributing and selling electric power and energy. It operates in 46 of the 64 parishes in the State of Louisiana, including the Parish of Jackson.

The Town of Jonesboro ("Town") is a municipal corporation of the State of Louisiana, located in the Parish of Jackson, in the north central part of the State. Its population is approximately 5,500 people. The Town owns, operates and maintains a system for the generation, distribution and sale of electric power and energy to customers within and outside its corporate limits ("Electric System"). As of October 31, 1979 the Town had 2,857 electric customers, of which 2,382 were classified as residential (1,590 inside the corporate limits and 792 outside the corporate limits), 433 were classified as commercial (368 inside the corporate limits and 65 outside the corporate limits), and 42 were classified as government and municipal customers (all inside the corporate limits). The Electric System immediately adjoins and is connected to the LP&L system and facilities. LP&L proposes to enter into an agreement with the Town whereby LP&L will be granted a sixty-year franchise to operate the Electric System and given an option to acquire the Electric System.

The Electric System has a generating capability of 17.440 megawatts and served a peak load for 1979 of 10.6 megawatts. It is estimated that such load will grow at a rate of 6% per year over the next five years, amounting to 14.4 megawatts in 1984. During that period LP&L's service margin is expected to be at least 1,035 megawatts. The existing connection between the Electric System and the LP&L System has a capability of 28 megawatts. LP&L states that it

intends to shift the Town's load to its own transmission system as the fuel supply for and the capability and reliability of the Town's generating facilities require or make desirable.

Modifications costing approximately $50,000 will be made to LP&L's facilities and to the Town's distribution system in preparation for such load shift. At June 30, 1979 the undepreciated original cost of the Electric System was $6,472,791. LP&L estimates that the depreciation value of the Electric System at that date was $4,363,000. For the year ended June 30, 1979, the Electric System had operating revenues of $1,949,840 and operating expenses, exclusive of depreciation expense and interest of debt, of $1,658,811.

The Town presently has outstanding bonds in the aggregate principal amount of $4,239,000 which are payable from the income and revenues of its waterworks, sewerage and electric systems and plants ("Bonds"), consisting of the principal amounts presently outstanding of eight different series of such bonds issued during the years 1955 through 1977, maturing on September 1st of the years 1980 through 2002, and bearing interest at rates from 3-1/2% to 6-3/4% per annum. Further, $670,000 principal amount of a series of such bond bearing interest rates from 6% to 6-3/4% per annum bear additional interest at the rate of 3/4% per annum to March 1, 1980; and $495,000 principal amount of series of such bonds bearing interest at rates from 5-3/4% to 6-1/4% per annum bear additional interest at the rate of 3/4% per annum to September 1, 1982 or to the maturity date thereof, whichever is earlier. The average rate of the Bonds is 5.62% per annum.

LP&L states that, for financial and other reasons, including difficulty in obtaining assured quantities of fuel, and reasonably or acceptably priced fuel, the Town has been encountering increasing difficulty in the operation and maintenance of the Electric System on a profitable basis and has concluded that these problems would continue to become worse in the future.

It is further stated that, after negotiating with the Town, LP&L extended an offer for the operation and possible ultimate ownership of the Electric System. The Town, at LP&L's request, called a special election on whether LP&L's offer should be accepted. On December 8, 1979, the electorate voted to accept the offer.

Under the terms of the Operating Agreement between the Town and LP&L, the utility will be obligated, at its own expense, to operate, maintain and make necessary additions and improvements to the entirety of the Electric System exclusive of the generating facilities ("Distributioin System"), providing for the entirety of the electric power supply requirements of the Distribution System and its customers, and LP&L may, but will not be obligated to, operate and maintain the Electric System's generating facilities ("Generating Facilities") or any part thereof; to read the meters and bill the customers of the Distribution System; and to maintain in effect certain insurance coverages with respect to the Electric System. Additions, improvements, replacements and extensions so made shall be and shall remain the property of LP&L, but provision is made for the acquisition thereof by the Town, exclusive of extensions of the Distributions System located outside of its corporate limits, in the event the Operating Agreement is terminated or nullified without LP&L acquiring ownership of the Electric System. The rates to be charged by LP&L to the various classes or categories of customers of the Distribution System shall be the same rates which LP&L charges its customers of the same classes or categories elsewhere in Louisiana.

LP&L will retain revenues collected for the electric service rendered by it under the Operation Agreement. However, in addition to meeting the expenses mentioned above, the Company is obligated to make certain payments as hereinafter set forth: (a) LP&L will meet a schedule of payments to be made to a designated fiscal agent of amounts necessary to pay the principal of and interest on the Bonds as such principal and interest become due. The aggregate annual amounts of such payments vary from a high of $349,277.25 in 1980 to a low of $5,265.00 in 2002, averaging out to $314,659 per year over the period 1980 through 2002, (b) As long as the Operating Agreement or the franchise to be granted to LP&L remains in effect, LP&L is also obligated to pay the Town 2% of the revenues from residential and commercial customers within the corporate limits of the Town, but if the aggregate of such 2% payments and LP&L's ad valorem taxes in the Town for any calendar year total less than $95,000, LP&L will pay the Town the difference within 30 days after the end of such calendar year, and if residential and commercial revenues within the corporate limits exceed $1,600,000 in any calendar year, the $95,000 will be increased for such calendar year by an amount equal to 1% of

such excess. It is also provided that if the cost of LP&L's electric service to municipal facilities exceeds the aggregate of the annual payments set forth in this item (b), LP&L will add to such payments an amount equal to that part of the difference resulting from increases in electric rates (including fuel adjustment charges). LP&L will not assume or be liable for any contracts, accounts payable or financial obligations or liabilities of the Town. LP&L will have the right, under the Operating Agreement to pay and refund any or all of the bonds, and to pre-refund any of the Bonds which may not then be callable.

The Operating Agreement will give LP&L the further right, at any time that LP&L considers it economically feasible to do so, to require the Town to issue and sell refunding bonds in an amount sufficient to pay and refund and/or pre-refund all of the Bonds then outstanding, either (a) on the basis of the replacement of the Operating Agreement with a lease-purchase agreement whereunder LP&L would become the lessee of the Electric System, the lease payments made by LP&L would be sufficient to assure the payment of the refunding bonds, and LP&L would have the right to acquire the Electric System on the same basis as provided for in the Operating Agreement, or (b) on the basis of the replacement of the Operating Agreement with a new operating agreement reflecting such changes as necessarily result from such refunding but otherwise having substantially the same terms, conditions and provisions as the Operating Agreement. The Town may require LP&L to participate in such a refunding provided that the last maturing refunding bonds mature no later than the last maturity date of any of the Bonds and that the annual debt service on the refunding bonds is no greater for any year than the amount of the Sinking Fund Deposit for such year.

The Operating Agreement will further provide that at such time as no Bonds or refunding bonds are outstanding (pre-refunded Bonds and pre-refunded refunding bonds being considered as no longer outstanding), LP&L will have the right and option, for no further consideration, to acquire from the Town the entirety of the Electric System.

In the event that the Operating Agreement is terminated or nullified without LP&L acquiring the ownership of the Electric System and LP&L's franchise is still effective, the Offer also provides that LP&L will, on demand, release and relinquish such franchise.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $11,000, including legal fees of $9,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 559/March 24, 1980

The Securities and Exchange Commission issued on March 24, 1980, an order under the Trust Indenture Act of 1939 ("Act") on the application (File No. 22-10248) of ITEL CORPORATION, that the successor trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder") under (i) an indenture, dated as of December 1, 1978, between The Northern Trust Company and Itel Corporation, heretofore qualified under the Act (File No. 2-63018), among Itel Corporation, Itel-Finance International N.V., a wholly-owned subsidiary, and Chemical Bank, which are not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as successor trustee under any of these indentures.

TRUST INDENTURE ACT OF 1939
Release No. 560/March 24, 1980

The Securities and Exchange Commission has issued a notice giving interested persons until April 19, 1980 to request a hearing on an application by Chrysler Corporation pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the successor trusteeship of the J. Henry Schroder Bank and Trust Company under two indentures of Chrysler Corporation is not so likely to involve a material conflict of interest as to make it necessary to disqualify the J. Henry Schroder Bank and Trust Company from acting as successor trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11096/March 21, 1980

In the Matter of

564 SOUTHERN BOULEVARD CORPORATION
110 Poplar Drive
Roslyn, New York 11576

(811-2937)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER OF THE COMMISSION DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that 564 Southern Boulevard Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, filed an application on February 19, 1980, and an amendment thereto on March 6, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, registered under the Act on July 3, 1979. Prior to its becoming an investment company Applicant and its subsidiaries had been engaged in the operation of a supermarket chain and a wholesale food packing business under the name E & B Supermarkets, Inc. The application states that on June 30, 1979, Applicant sold substantially all of its assets to MM Supermarkets of New York, Inc. and Tropical Brands Packing Corp. ("Buyer") for $4,239,900, payable partly in cash and partly in 6% installment notes issued by the Buyer due in 1984. The sale of assets of Applicant and certain other transactions incident thereto, including the change of Applicant's name to 564 Southern Boulevard Corporation, were approved by Applicant's shareholders at a special meeting of shareholders held on June 28, 1979.

After the sale of its assets, Applicant on July 27, 1979, made an offer, which expired on January 28, 1980, to purchase its outstanding shares of common stock at the price of $4.20 per share. Of the 1,009,500 common shares then outstanding, held by 418 shareholders, 416,789 shares were tendered pursuant to the offer.

As of the date of the filing of this application the remaining common shares outstanding were held by

68 persons. The application states that Applicant will retain certain assets and continue to engage in business as a personal holding company at least until June 30, 1984, and hold and invest in securities. The assets retained include (1) $24,000 in cash; (2) Joint 6% Non-Negotiable Installment Notes ("Installment Notes") of E&B Supermarkets Merchandise Corporation and Tropical Brands Packing Corporation, due June 27, 1984, in the principal amount of $2,212,000, (3) Recoverable state franchise and local corporation taxes of $455,000 and (4) Prepaid expenses and other current assets of $19,000. As the Installment Notes are repaid and the Tax Refund Claims are received, Applicant intends to reinvest the proceeds in securities to the extent that such funds are not required to meet its debt obligations, liabilities and expenses.

Applicant currently has $9,000 in accrued expenses; it owes a former officer and director of Applicant a balance of $170,000 for 70,000 shares of Applicant's common stock which he tendered pursuant to Applicant's offer to repurchase its outstanding common shares, and Applicant remains contingently liable on certain obligations, principally long-term real estate rental obligations, that were assumed by the Buyer of substantially all of its assets.

Applicant represents that as of the date of the filing of this application the outstanding securities of Applicant are beneficially owned by not more than 100 persons. Applicant also represents that it is not making and does not presently propose to make a public offering of its securities, and that none of its shareholders is a company that owns 10% or more of Applicant's outstanding voting securities. Applicant states that it is not a party to any pending litigation, or administrative proceedings. On the basis of the foregoing information Applicant maintains that it is not an "investment company" as that term is defined in the Act.

Section 3(c)(1) of the Act provides, in pertinent part, that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities is not an investment company within the meaning of the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and, upon the effectiveness of such order, the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11097/March 21, 1980

In the Matter of

JET CAPITAL CORPORATION
One Allen Center
Houston, Texas 77002

(812-4627)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTIONS 6(c) AND 6(e) OF THE ACT FOR AN ORDER OF TEMPORARY EXEMPTION FROM SECTIONS 7 AND 8 OF THE ACT

NOTICE IS HEREBY GIVEN that Jet Capital Corporation ("Applicant"), a Delaware corporation, has filed an application on March 17, 1980, pursuant to Sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for an order of temporary exemption declaring Applicant exempt from Sections 7 and 8 of the Act until one year from the date of the application. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant states that it was incorporated in 1969 and that it began a jet aircraft leasing business following a public offering of its common stock and warrants to purchase common stock. According to the application, the aircraft leasing business later became unattractive and Applicant obtained shareholder approval to explore other business opportunities in the airline field. Applicant represents that it acquired control of Texas International Airlines, Inc. ("TXIA"), in 1972 as part of a comprehensive refinancing of TXIA designed by Appliant. Applicant states that it had the right to cast more than 50% of the votes at any meeting of TXIA stockholders from 1972 until TXIA issued additional shares of common stock on April 19, 1978, after which Applicant's voting percentage declined to approximately 43.9%, and Applicant's investment securities, as defined in Section 3(a) of the Act, exceeded 40% of the value of its total assets. Based on TXIA's capitalization at December 31, 1979, Jet Capital is entitled to cast approximately 30% of the votes for directors at metings of TXIA stockholders.

On April 19, 1978, Applicant filed an application for an order pursuant to Section 3(b)(2) of the Act declaring that Applicant was primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Applicant amended its Section 3(b)(2) application on July 7, 1978, and a notice of the Section 3(b)(2) application was issued on July 13, 1978 (Investment Company Act Release No. 10322).

Applicant filed additional amendments to its Section 3(b)(2) application on August 30 and October 30, 1978, setting forth, among other things, information concerning purchases of the stock of National by TXIA, and the means by which TXIA financed these purchases. TXIA owned approximately 23% of the outstanding stock of National as of the close of business on October 30, 1978, and Applicant stated that TXIA intended to purchase up to 25% of the National common stock. In its Section 3(b)(2) application, Applicant submitted that it was entitled to an order of exemption under Section 3(b)(2) of the Act because it was primarily engaged and had been primarily engaged since 1972 in the air transportation business through a controlled subsidiary, TXIA. On November 17, 1978, a second notice of the application pursuant to Section 3(b)(2) of the Act was issued (Investment Company Act Release No. 10484).

Subsequently, on March 17, 1980, Applicant filed another amendment to its 3(b)(2) application. According to the amendment, TXIA entered into a stock purchase agreement with Pan American World Airways, Inc. ("Pan Am"), on July 28, 1979. Applicant represents that, pursuant to that agreement, TXIA sold Pan Am 790,700 shares of National common stock on July 30, 1979, and 1,309,300 shares of National common stock on December 31, 1979, which constituted all the be shares of National common stock beneficially owned by TXIA on that date. In the event Applicant obtains an order of exemption pursuant to its Section 3(b)(2) application, the instant application will become unnecessary, and any order issued hereon will be terminated.

Applicant states that the proceeds from TXIA's sale of National stock may be temporarily held in cash, cash equivalents or money market instruments for an indefinite period of time, but will not be held permanently in that manner. The amended application states that the proceeds from the sale of National stock also may be used for operating or capital purposes of TXIA or of a corporation which may be formed to hold all of TXIA's voting stock, and that the proceeds may also be used to purchase stock or other securities of operating companies, except that TXIA does not intend to employ more

than 20% of its assets in making such investments which are not made with a view to obtaining operating control.

In requesting an order of temporary exemption from Section 7 and 8 of the Act, Applicant has agreed to have its order conditioned upon compliance with Sections 9, 17(a), 17(d), 17(e), 36 and 37 of the Act, and, to the extent that their terms may apply to Applicant's agreement to comply with certain sections of the Act, Sections 38 through 52 of the Act; except insofar as Section 17 might prohibit:

(i) employee benefit plans or other employee benefits of TXIA (which, for purposes of the application are defined to include any corporation which may be formed to own all of TXIA's voting stock) extended to affiliated persons of Applicant, provided, however, that during the pendency of such exemption TXIA will not grant to affiliates of Applicant, in the aggregate, options to purchase in excess of 140,000 shares (constituting less than 2% of the outstanding common stock on a fully diluted basis) of TXIA, and that all options so granted to affiliates of Applicant will not be exercisable for at least one year from the date of grant and will have an exercise price of at least 100% of the market price of TXIA common stock on the date of grant;

(ii) transactions between TXIA and any other affiliated company of Applicant or TXIA (or an affiliate of such affiliated company except for an officer, director, 5% shareholder or controlling person of Applicant) on the ground that an affiliated person of Applicant might be deemed to have an interest in the transaction or in a party to the transaction by reason of being a stockholder, officer or director of TXIA;

(iii) transactions which (a) are approved by a majority of the votes of stockholders of TXIA cast at a meeting of stockholders of TXIA, and (b) are approved by a majority of the shares of TXIA common stock voted with respect to the transactions which are held by persons other than Applicant or any affiliated person of Applicant;

(iv) transactions in which the sole economic interests of Applicant and persons affiliated with Applicant are the same as the interests of other holders of TXIA securities of the same class or classes and Applicant and its affiliates participate only as holders of TXIA securities in the same way as all other holders of the same class or classes of TXIA securities;

(v) the sale, under a registration statement filed by TXIA at its expense, of TXIA securities by Applicant or an affiliated person of Applicant to a person or persons who are not affiliated persons of Applicant or TXIA or affiliated persons of any affiliated person of either of them, including such a transaction where Applicant and affiliated persons of Applicant may be deemed to be joint sellers, provided that (a) any joint sales by Applicant and its affiliates be effected either at the same price or on a national securities exchange, (b) no sales be effected by an affiliate of Applicant in a manner which would disadvantage Applicant, and (c) the only TXIA securities which would be sold by Applicant in such transaction be warrants to purchase common stock of TXIA or common stock obtained upon the exercise of such warrants, and (d) any such sales by Applicant be made for the purpose of obtaining funds in order to exercise other TXIA warrants or purchase TXIA common stock or to cover current operating expenses;

(vi) any transaction by reason of an affiliated person of Applicant or TXIA owning an interest of less than 1% of the outstanding securities of any class of another party to the transaction, which interest was purchased prior to January 1, 1978, provided that the market value of such person's holdings of securities of Applicant and TXIA is at least equal to twice the market value of such person's holding of securities of such other party at the time of the transaction; and

(vii) any transaction between or among TXIA (holding company or subsidiary) and a corporation or corporations of which either owns all of the voting stock.

Applicant submits that the foregoing exceptions to its undertaking to comply with Section 17 are appropriate because they permit the ordinary operations of TXIA and possible future corporate transactions and asserts that they are appropriate for the protection of investors.

Applicant asserts that it would be unduly burdensome to comply with Sections 10, 12, 13, 15, 16, 17(f), 17(g), 17(h), 18, 19, 20, 21, 23, 25, 30, 31, and 32 because Applicant is seeing a temporary exemption. Applicant also submits that at the expiration of the temporary exemption, the Commission will have sufficient opportunity to require Applicant to furnish information pursuant to Sections 20(a), 30 and 33. Lastly, Applicant states that the proposed Rule 3a-1 under the Act

(Investment Company Act Release No. 10937, November 13, 1979) would exempt Applicant from the Act and obviate the necessity for the application if promulgated in final form as proposed. In that event, or if another rule of similar import is adopted by the Commission, any temporary exemption and the agreements of Applicant made therein will terminate and the Section 3(b)(2) amended application, described above, will be deemed moot, provided counsel for Applicant renders a written opinion to the effect that, based upon such rule, such counsel is of the opinion that Applicant is not an investment company.

Section 6(c) provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 6(e) of the Act provides that, if, in connection with any order under Section 6 exempting any investment company from Section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 16, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11098/March 21, 1980

In the Matter of

JET CAPITAL CORPORATION
One Allen Center
Houston, Texas 77002

(812-4293)

RE-NOTICE OF APPLICATION PURSUANT TO SECTION 3(b)(2) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT IS NOT AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Jet Capital Corporation ("Applicant"), a Delaware corporation, filed an application on April 19, 1978, and an amendment thereto on July 7, 1978, pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), declaring that the Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. On July 13, 1978, a notice of the application was issued (Investment Company Act Release No. 10322). Subsequently, on August 30 and October 30, 1978, the Applicant filed additional amendments to its application setting forth, among other things, information concerning purchases of the stock of National Airlines, Inc. ("National"), by Texas International Airlines, Inc. ("TXIA", the securities of which are Applicant's principal assets), and the means by which TXIA financed these purchases. On November 17, 1978, a second notice of the application pursuant to Section 3(b)(2) of the Act was issued (Investment Company Act Release No. 10484). On March 17, 1980, Applicant filed an

additional amendment to its application, stating, among other things, that TXIA had sold to Pan American World Airways, Inc. ("Pan Am"), all the shares of National common stock that it beneficially owned as of December 31, 1979, and providing updated financial information of the Applicant. All interested persons are referred to the application and amendments thereto on file with the Commission for a statement of the representations made therein, which are summarized below.

Section 3(a)(3) of the Act defines an investment company as any issuer which is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Applicant states that it was incorporated in 1969 and that it began a jet aircraft leasing business following a public offering of its common stock and warrants to purchase common stock. According to the application, the aircraft leasing business later became unattractive and Applicant obtained shareholder approval to explore other business opportunities in the airline field. Applicant represents that it acquired control of TXIA in 1972 as part of a comprehensive refining of TXIA designed by Applicant. According to the application, TXIA is a scheduled airline which operates primarily in the Southwest as well as in the Republic of Mexico. Applicant states that it had the right to cast more than 50% of the votes at any meeting of TXIA shareholders from 1972 until TXIA issued additional shares of common stock on April 19, 1978. After that date, Applicant's voting percentage declined to approximately 43.9%, and Applicant's investment securities, as defined in Section 3(a)(3) of the Act, exceeded 40% of the value of its total assets. Applicant further states that it is entitled to cast approximately 30% of the votes for directors at meetings of TXIA shareholders, based on TXIA's capitalization at December 31, 1979, and that Applicant does not believe that there has been any significant change in its voting percentage since that date.

According to the application, TXIA's business had included the purchases of the stock of National, and that as of August 21, 1978, TXIA held an aggregate of 790,700 shares of National common stock or approximately 9.2% of the outstanding shares. From August 22 to October 30, 1978, TXIA purchased an additional 1,178,300 shares of National common stock, and as of the close of business on October 30, 1978, TXIA held 23% of National's outstanding common stock and intended to purchase up to 25% of National's common stock. According to the application, TXIA subsequently entered into a stock purchase agreement with Pan Am on July 28, 1979. Applicant represents that pursuant to that agreement, TXIA sold Pan Am 790,700 shares of National common stock on July 30, 1979, and 1,309,300 shares of National common stock on December 31, 1979, which constituted all the shares of National common stock beneficially owned by TXIA on that date. Applicant states that the proceeds from TXIA's sale of National stock may be temporarily held in cash, cash equivalents or money market instruments for an indefinite period of time, but will not be held permanently in that manner. The amended application states that the proceeds from the sale of National stock may be used for operating or capital purposes of TXIA or of a corporation which may be formed to hold all of TXIA's voting stock, and that the proceeds may also be used to purchase stock or securities of operating companies, except that TXIA does not intend to employ more than 20% of its assets in making such investments which are not made with a view to obtaining operating control.

Section 3(b)(2) of the Act exempts from the definition of an investment company in Section 3(a)(3) of the Act any issuer which the Commission finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, either directly or (a) through majority-owned subsidiaries or (b) through controlled companies conducting similar types of businesses. Section 2(a)(9) of the Act defines control as the power to exercise a controlling interest over the management or policies of a company, unless such power is solely the result of an official position with such company. In addition, Section 2(a)(9) of the Act states that any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company, but any such presumption may be rebutted by evidence.

Applicant submits that it is entitled to an order of exemption pursuant to Section 3(b)(2) of the Act

because it is primarily engaged and has been primarily engaged since 1972 in the air transportation business through its controlled subsidiary, TXIA. Applicant represents that there has been no material change in the nature of its business since April 18, 1978. Applicant states that, since the date of the last amendment to the application, TXIA has filed a registration statement on Form S-16 which became effective November 30, 1979 (No. 2-65776), under which persons, including certain affiliates of Applicant or TXIA, may sell common stock of TXIA. Applicant represents that based on its unaudited 1979 year-end financial statements, securities of TXIA comprised 79.5% of Applicant's assets on a book value basis and contributed 83.2% of Applicant's income. Applicant states that if its TXIA securities were valued at market value (based on an average market price of $9 per share of TXIA common stock), such securities would comprise approximately 97.5% of Applicant's assets. Furthermore, Applicant contends that the proposed Rule 3a-1 under the Act (Investment Company Act Release No. 10937, November 13, 1979) would exempt Applicant from the Act and obviate the necessity for the application if promulgated in final form as proposed.

Applicant states that as a condition to an order pursuant to Section 3(b)(2) of the Act, the exemptive order will terminate 30 days after it is determined that at the end of any calendar quarter more than 40% of TXIA's total assets consist of investment securities as defined by Section 3(a)(3) of the Act, unless:

(1) Applicant has received an opinion of counsel to the effect that TXIA is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities within the meaning of Section 3(b)(1) of the Act, or

(2) Applicant or TXIA has filed a request for a no-action letter pursuant to Section 3(b)(1) of the Act and, alternatively, an order pursuant to Section 3(b)(2) of the Act, or

(3) Applicant or TXIA has filed a request for an order pursuant to Section 3(b)(2) of the Act.

Applicant states that in the event that Applicant or TXIA shall proceed under either item (2) or item (3) above, Applicant's exemption shall cease, and it shall register in the event that the Commission shall have finally denied the request for exemption and the time to appeal therefrom shall have run.

Section 3(b)(2) provides, in part, that whenever the Commission finds, upon its own motion, that the circumstances which gave rise to the issuance of an order granting an application thereunder no longer exist, the Commission shall by order revoke such order.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 16, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11099/March 24, 1980

In the Matter of

OPPENHEIMER MONETARY BRIDGE, INC.
One New York Plaza
New York, New York 10004

(812-4425)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER AMENDING PRIOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Oppenheimer Monetary Bridge, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a no-load, open-end, diversified management investment company, filed an application on November 2, 1979 and an amendment thereto on March 11, 1980, for an order of the Commission pursuant to Section 6(c) of the Act amending in the manner described below a prior order (the "Prior Order") which exempted Applicant from the provisioins of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. The Prior Order was issued in Investment Company Act Release No. 10776 (July 13, 1979). Applicant represents that in all other respects its portfolio securities are valued in accordance with Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment objective is seeking the maximum current income that is consistent with stability of principal and that its portfolio may, as a matter of fundamental investment policy, be invested only in bank or corporate debt obligations, commercial paper, U.S. treasury bills and other short-term debt instruments issued by the U.S. government or its agencies, maturing in or called for redemption in one year or less.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC-9786, the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

In the application for the Prior Order, Applicant represented that, to the extent necessary, its Board of Directors would consider the advisability of temporarily suspending the payment of dividends or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declined to a value below $0.997 or rose to a value of above $1.003, respectively; such representation is repeated as part of this application. Applicant also, in such prior application, consented that in order to attempt to assure the stability of its net asset value per share, it would adhere to the following conditions (which are set forth in the Prior Order):

(1) Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted

average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not purchase a portfolio security unless it matures in one year or less or is subject to a repurchase agreement, the delivery under which does not exceed one year, or has been called for redemption within one year where Applicant's investment adviser shall have determined that the risk that such redemption will not take place is minimal; nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Applicant will invest only in debt obligations payable in dollars issued or guaranteed by the federal government, federal governmental agencies, or certain banks, savings and loan associations, and corporations. Investments in banking obligations will be limited to certificates of deposit issued by domestic banks or savings and loan associations which have total assets in excess of $1 billion and bankers acceptances or letters of credit guaranteed by U.S. commercial banks having total assets in excess of $1 billion. The commercial paper purchases by Applicant shall be (i) rated Prime-1 or Prime-2 by Moody's Investors Service, Inc., or A-1 or A-2 by Standard & Poor's Corporation, or (ii) issued by companies having an outstanding debt issue rated at least Aa by Moody's Investors Service, Inc. or at least AA by Standard & Poor's Corporation. Other obligations purchased by Applicant will be either debt instruments issued by domestic corporations rated Aa or better by Moody's Investor Services, Inc., or AA or better by Standard & Poor's Corporation or obligations issued by other entities accompanied by a guarantee or principal and interest by a bank or corporation whose certificates of deposit or commercial paper may otherwise be purchased by Applicant. Investments in repurchase agreements will be limited to transactions with a financial instruction believed by Applicant's investment adviser to present minimal credit risks.

Applicant requests that the Commission issue an order amending the Prior Order by deleting condition (3) of the Prior Order as set forth above and substituting in place thereof the following condition (3):

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors of Applicant determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

Applicant submits that the detailed "quality" restrictions of condition (3) of the Prior Order are not necessary if there is substituted therefor the responsibility for quality determinations by the Board of Directors of Applicant as set forth above in the proposed new condition (3). Applicant also submits that the quality control restrictions which are contained in condition (3) of the Prior Order in substance embody the present fundamental policies of Applicant except that the conditions, but not the policies, prohibit investment in the obligations of foreign banks or in the obligations of domestic banks having total assets of less than U.S. $1 billion while the policies permit investment in the obligation of domestic or foreign banks having total assets in excess of U.S. $500 million and that, because of the Prior Order, the shareholders of Applicant are unable to change many fundamental policies of Applicant, as they are entitled to do under Section 13(a)(3) of the Act, without the possibility of loss of the exemption contained in the Prior Order. Applicant further submits that exemption orders issued by the Commission in related areas after the issuance of the Prior Order (for example, Investment Company Act Release No. 10824, August 8, 1979) have contained quality restrictions similar to that applied for rather than the detailed quality restrictions contained in the Prior Order.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail

upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11100/March 24, 1980

In the Matter of

CENTENNIAL CAPITAL CASH MANAGEMENT TRUST
One New York Plaza
New York, New York 10004

(812-4426)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER AMENDING PRIOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Centennial Capital Cash Management Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a no-load, open-end, diversified management investment company, filed an application on November 2, 1979, and an amendment thereto on March 11, 1980, for an order of the Commission pursuant to Section 6(c) of the Act amending in the manner described below a prior order (the "Prior Order") which exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. The Prior Order was issued in Investment Company Act Release No. 10777 (July 13, 1979). Applicant represents that in all other respects its portfolio securities are valued in accordance with Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money-market" fund whose investment objective is seeking the best obtainable yields on "money-market" securities consistent with low capital risk and that its portfolio may, as a matter of fundamental investment policy, be invested only in U.S. government or agency obligations, bank obligations and instruments secured thereby, commercial paper and certain debt obligations and certain other obligations meeting specified tests; all portfolio securities must mature in twelve months or less from the date of purchase or be subject to repurchase agreements so maturing.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC-9786, the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

In the application for the Prior Order, Applicant represented that, to the extent necessary, its

Trustees (who perform the functions of a board of directors of a corporation) would consider the advisability of temporarily suspending the payment of dividends or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declined to a value below $0.997 or rose to a value of above $1.003, respectively; such representation is repeated as part of this application. Applicant also, in such prior application, consented that in order to attempt to assure the stability of its net asset value per share, it would adhere to the following conditions (which are set forth in the Prior Order):

(1) Applicant's Trustees, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not purchase a portfolio security unless it matures in twelve months or less from the date of purchase or is subject to a repurchase agreement so maturing, or has been called for redemption within twelve months where Applicant's investment adviser shall have determined that the risk that such redemption will not take place is minimal; nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Applicant will invest only in obligations issued or guaranteed by the U.S. government or its agencies or instrumentalities; bank time deposits, certificates of deposit, bankers acceptances and other bank obligations; high-grade commercial paper and other debt obligations rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Service, Inc. or issued by companies having an outstanding debt issue rated at least "AA" by Standard & Poor's Corporation or at least "Aa" by Moody's Investors Service, Inc.; other obligations accompanied by a guarantee of principal and interest issued by a bank or corporation whose certificates of deposit or commercial paper may otherwise be purchased; such obligations and guarantees must be due within twelve months or less from the date of purchase; and repurchase agreements for the obligations of the types listed above. Investments in bank time deposits, certificates of deposit, bankers acceptances, and other bank obligations are limited to domestic banks or savings and loan associations subject to regulation by the U.S. government having in excess of U.S. $1 billion in total assets. Investments in repurchase agreements are limited to transactions with a financial institution believed by Applicant's investment adviser to present minimal credit risks.

Applicant requests that the Commission issue an order amending the Prior Order by deleting condition (3) of the Prior Order as set forth above and substituting in place thereof the following condition (3):

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Trustees of Applicant determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

Applicant submits that the detailed "quality" restrictions of condition (3) of the Prior Order are not necessary if there is substituted therefor the responsibility for quality determinations by the Trustees of Applicant as set forth above in the proposed new condition (3). Applicant also submits that the quality control restrictions which are contained in condition (3) of the Prior Order in substance embody the present fundamental policies of Applicant (except to the extent that the conditions, but not the policies, prohibit investment in the obligations of foreign banks or in the obligations of domestic banks having total assets of less than U.S. $1 billion) and that, because of the Prior Order, the shareholders of Applicant are unable to change many fundamental policies of Applicant, as they are entitled to do under Section 13(a)(3) of the Act, without the possibility of loss of the exemption contained in the Prior Order. Applicant further submits that exemtpion orders issued by the Commission in related areas after the issuance of the Prior Order (for example, Investment Company Act Release No. 10824, August 8, 1979) have contained quality restrictions similar to that applied for rather than the detailed quality restrictions contained in the Prior Order.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certficate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11101/March 25, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

THE DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, NY 10016

and

DREYFUS LIQUID ASSETS, INC.
DREYFUS A BONDS PLUS, INC.
767 Fifth Avenue
New York, NY 10022

(812-4532)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 26(a)(2)(C) AND 27(c)(2) OF THE ACT

NOTICE IS HEREBY GIVEN that Beneficial National Life Insurance Company ("Beneficial"), a stock life insurance company organized under the laws of the State of New York, The Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial's registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, Dreyfus Liquid Assets, Inc. ("DLA") and Dreyfus A Bonds Plus, Inc. ("A Bonds") (collectively referred to as the "Funds"), diversified, open-end management companies registered under the Act (hereinafter Beneficial, the Separate Account and the Funds are collectively referred to as "Applicants"), filed an application on September 6, 1979, and amendments thereto on November 13, November 26, and December 7, 1979, and March 3, and March 21, 1980, pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act for an order of exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

The Separate Account was established by Beneficial pursuant to the laws of the State of New York in connection with the issuance of individual, single purchase payment, variable annuity contracts (the "Contracts") offered by Beneficial. Contract owners make purchase payments to Beneficial which are invested in one or both of the underlying Funds.

Section 11

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end investment

company or any principal underwriter therefor to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants propose to permit shareholders of the Funds to exchange their shares for the Contracts. Such shareholders will be notified of the offer of exchange and will be permitted to make such an exchange without payment of a fee, sales load or transfer charge. Only purchase payments for the Contracts in the form of shares of DLA will be invested by the Separate Account in DLA. Purchase payments for the Contracts in the form of cash or shares of A Bonds will be invested by the Separate Account in A Bonds. In addition, Contract owners who have DLA as the investment underlying their Contracts may reallocate such underlying investment to A Bonds. However, Contract owners who have A Bonds as the investment underlying their Contracts may not reallocate such underlying investment to DLA. Applicants state that the exchange privilege is proposed to be so limited because of a recent regulation of the Federal Reserve Board placing reserve requirements on any increase in average assets of money market funds subsequent to March 14, 1980. As a result of this regulation, the Board of Directors of DLA has decided to limit future sales of additional shares of DLA.

Applicants submit that the proposed exchange privilege allowing Fund shareholders to exchange their shares for Contracts is consistent with the policy of Section 11 of the Act since any exchange would be made at net asset value and would not be subject to a fee, sales load or transfer charge. Applicants state that any such exchange would be solely at the election of existing shareholders of the Funds. Appliants further state that such an exchange privilege will permit Fund shareholders to add annuity features to their financial plans while retaining the investment orientation they already possess. In addition, DLA shareholders may change their investment orientation while adding the annuity features. Similarly, Applicants believe that it is in the best interest of Contract owners to permit the investments underlying their contracts to be reallocated from DLA to A Bonds. Such an exchange privilege would be of benefit to those Contract owners whose changing personal economic needs make it desirable for them to change their investment vehicle.

Sections 26(a) and 27(c)(2)

Sections 26(a) and 27(c)(2), as here pertinent, provide in substance that a registered unit investment trust and any depositor of or underwriter for such trust are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than amounts deducted for sales load, are deposited with a qualified bank as trustee or custodian. Section 26(a)(2)(C) provides that a payment to the depositor shall not be allowed as an expense to the custodian of a unit investment trust except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself. Section 27(c)(2) applies the same restrictions to periodic payment plan certificates.

Applicants have requested an exemption pursuant to Section 6(c) of the Act from Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit the custodian, Bradford Trust Company of Boston (the "Custodian"), to be allowed as an expense payments to the Company (A) to reimburse the Company for Development Allowances advanced by the Company to the Custodian (B) for Contract Expense Reimbursement, and (C) for insurance commissions indirectly paid by Contract owners.

Reimbursement of Advances to Custodian

Beneficial will advance $55,000 to the Custodian to reimburse the Custodian for expenses ("Development Allowance") in developing computer systems and making operational preparations associated with the annuity program. The Custodian will repay this amount to Beneficial, without interest, in stages as Contracts are issued with the full amount to be repaid after 50,000 Contracts have been issued. This amount will be repaid to Beneficial out of the Custodian's share of the Contract Administrative Charge. In the event the Custodian has not reimbursed Beneficial for the full amount of the Development Allowance by December 31, 1980,

Beneficial will treat the unreimbursed amount as an expense to which the Contract Expense Reimbursement (described below) applies. Any Development Allowance thereafter repaid by the Custodian will be credited against the Contract Expense Reimbursement.

Contract Expense Reimbursement

Applicants state that on December 31 of each year each Contract then in effect for at least 60 days will be charged a pro rata portion (based on the total number of such Contracts in effect on December 31 of such year) of Beneficial's accumulated expenses for performing services through such date which are not covered by the Contract Administrative Charge (currently $30 a year). The maximum amount of this "Contract Expense Reimbursement" for any year is $5.00 per Contract. To the extent any actual expenses are not reimbursed during any year or years as a result of the $5.00 limitation, these expenses will be carried over to the next year or years. The types of expenses for which reimbursement will be made include start-up and maintenance costs which Beneficial has and will incur in establishing and maintaining the Dreyfus annuity program; annual regulatory costs, and outside legal, actuarial, accounting and other outside professional costs in establishing and maintaining the Dreyfus annuity In program; compensation and fringe benefits to Beneficial's employees whose duties are limited to performing services relating to the variable annuity program; and all other out-of-pocket costs directly allocable to the Dreyfus annuity program. Beneficial will be entitled to reimbursement only for expenses which are verified by its independent accountants. Beneficial will not be entitled to reimbursement for distribution expenses. The Contract Expense Reimbursement will be deducted by the Custodian from the Contract values of the respective Contracts, and will be paid by the Custodian to Beneficial.

Insurance Commissions

Applicants state that the Contracts will be distributed through Dreyfus Service Organization, Inc. ("DSO"), which is affiliated with the investment adviser for the Funds. Beneficial has agreed to pay insurance commissions to DSO for its services as an insurance general agent in distributing the Contracts. The insurance commissions payable to DSO range between zero and .675% of annuity business in force on each anniversary of the effective date of the offering.

Contract owners pay no sales load upon purchase of the Contracts. However, Beneficial will deduct from the Separate Account an amount which is equal on an annual basis to 1% of the daily net asset value of the Separate Account. The 1% amount is an insurance charge and will be retained by Beneficial to compensate it for mortality risks which inhere in the annuity tables forming a part of the Contracts, and to provide a profit to Beneficial. Beneficial will profit from the insurance premium to the extent that actual mortality experience is more favorable than expected and to the extent that it is not required to bear unreimbursed expenses. Since Beneficial will not be reimbursed for insurance commissions paid to DSO, its profit will be reduced to the extent of these commissions.

Applicants state that Beneficial will pay insurance commissions out of its general funds, and not directly "out of" the insurance premium. To the extent that Beneficial's unreimbursed expenses and mortality experience are such that it realizes a profit from the 1% insurance premium, this profit will increase the pool of general company surplus which is available to pay commissions. Such profit may not in fact occur, in which case Beneficial must still pay the commissions and represents that it will not seek reimbursement from the Contract owners. In order to remove any possible uncertainty that the Custodian is, in effect, being allowed as an expense amounts which are indirectly paid towards distribution expenses, Applicants seek an exemption from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit such payments. Applicants acknowledge the Commission policy against investment companies bearing distribution expenses. However, Applicants submit that the Contract charges are consistent with the industry norm and argue that charging an additional sales load would not be in the best interest of the Contract owners.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes thereof, from any provision of the Act or its Rules and Regulations, if and to the extent necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants have consented that any order granting

the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act be made subject to the conditions that (1) the charges under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved to the Commission for such purpose, and (2) the payment of sums and charges out of the assets of the Separate Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges. In addition, Applicants agree that if the requested exemptions are granted, the exemptive order shall remain in effect only so long as there is no increase in the Contract Administrative Charge.

NOTICE IS FURTHER GIVEN that any interested persons may, not later than April 21, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11102/March 25, 1980

In the Matter of

THE FINANCE COMPANY OF PENNSYLVANIA
7 East Lancaster Avenue
Ardmore, Pennsylvania 19003

(812-4523)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING A PROPOSED TRANSACTION FROM THE PROHIBITIONS OF SECTION 17(a)

The Finance Company of Pennsylvania ("Applicant"), an open-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 23, 1979, and an amendment thereto on January 30, 1980, for an order pursuant to Section 17(b) of the Act, exempting from the prohibitions of Section 17(a) of the Act Applicant's sale of 5,175 shares of Common Stock of South Chester Tube Company ("South Chester") to South Chester for $5,806,350 in cash and a note.

On February 14, 1980, the Commission issued a notice (Investment Company Act Release No. 11048) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of Applicant and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed transaction be, and hereby is,

exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11103/March 26, 1980

In the Matter of

STATE MUTUAL LIFE ASSURANCE COMPANY OF AMERICA
440 Lincoln Street
Worcester, Massachusetts 01605

(812-4569)

ORDER PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING THE PROPOSED ACQUISITION OF CERTAIN NOTES

On February 28, 1980, a notice was issued (Investment Company Act Release No. 11061) of an application by State Mutual Life Assurance Company of America ("Applicant"), a mutual life insurance company organized under the laws of Massachusetts, filed on November 13, 1979, and amended on January 9 and February 27, 1980, for an order of the Commission pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting Applicant to acquire at direct placement $1,800,000 principal amount of a new issue of 11% Senior Notes due 1995 of Gulf Resources & Chemical Corporation ("GRCC"). Applicant and State Mutual Securities, Inc. ("Fund"), a closed-end investment company registered under the Act and advised by Applicant, each currently own $1,249,980 principal amount of 9-1/4% Senior Notes of GRCC due 1989 (with 24,000 warrants to purchase GRCC common stock at $10 per share until December 31, 1983).

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the non-participation of the Fund in the proposed acquisition by Applicant is consistent with the provisions, policies and purposes of the Act, and is not on a basis less advantageous than that of Applicant. Accordingly,

IT IS ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the application to permit the proposed acquisition be, and hereby is, granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11104/March 27, 1980

In the Matter of

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY

AND

JOHN HANCOCK VARIABLE ACCOUNT A-1
John Hancock Place
Boston, Massachusetts 02117

(812-4581)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 14(a), 17(f) AND 27(c)(2) OF THE ACT AND RULE 17f-2 THEREUNDER

John Hancock Variable Account A-1, a diversified, open-end management investment company registered under the Investment Company Act of 1940 (the "Act"), and John Hancock Mutual Life Insurance Company, a mutual life insurance company incorporated under the laws of the State of Massachusetts (collectively referred to as "Applicants") filed an application on December 14, 1979 and an amendment thereto on February 25, 1980 for an order of the Commission pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 14(a), 17(f) and 27(c)(2) of the Act and Rule 17f-2 thereunder.

On March 4, 1980 a notice was issued (Investment Company Act Release No. 11066) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemptions from Sections 14(a), 17(f), and 27(c)(2) of the Act and Rule 17f-2 thereunder be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11105/March 27, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6201/March 27, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11106/March 27, 1980

In the Matters of

FEDERATED MONEY MARKET TRUST
(812-4545)

and

TRUST FOR CASH RESERVES
(812-4582)

421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

ORDERS PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Federated Money Market Trust and Trust for Cash Reserves ("Applicants"), each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed applications on October 1, 1979, and December 14, 1979, respectively, pursuant to Section 6(c) of the Act, for orders of the Commission exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicants' assets to be valued at amortized cost.

On March 3, 1980, a notice was issued (Investment Company Act Release No. 11063) of the filing of the applications. The notice gave interested persons an opportunity to request a hearing or hearings and stated that orders disposing of the applications would be issued as of course unless a hearing or hearings should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matters have been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the applications for orders of exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicants' assets to be valued at amortized cost, be, and hereby are, granted, effective forthwith, subject to the following conditions agreed to by each of the Applicants:

1. In supervising Applicant's operations and delegating special responsibilities involved portfolio management to Applicant's investment adviser, Applicant's Trustees ("Management") undertake—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Management shall be the following:

(a) Review by Management, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that Management will promptly consider what action, if any, should be initiated by Management.

(c) Where Management believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems for appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and each Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Management's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of Management's meetings. The documents preserve pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which Management determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by Management.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]To fulfill this condition, each Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Management in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

LITIGATION

Litigation Release No. 9043/March 24, 1980

SECURITIES AND EXCHANGE COMMISSION v. *PENN PACIFIC CORPORATION* (United States District Court for the District of Columbia, Civil Action No. 80-0519)

The Commission announced today that on March 24, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Penn Pacific Corporation (Penn Pacific) of Calabas Park, California, restraining and enjoining Penn Pacific from failing to file timely periodic reports with certain undertakings. Penn Pacific, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 5 separate occasions. The Commission's Complaint was filed on February 25, 1980.

The Complaint had alleged that Penn Pacific, as part of a continuing course of conduct, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Penn Pacific has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9044/March 24, 1980

UNITED STATES v. *SHELDON MOSS, ET AL.* (Middle District North Carolina) Criminal Action No. 80-176

Jule B. Greene, Administrator of the Atlanta Regional Office and H. M. Michaux, Jr., United States Attorney for the Middle District of North Carolina, announced that on March 4, 1980, Sheldon S. Moss ("Moss") of Chicago, Illinois, entered a plea of guilty to eighteen counts of mail fraud before the Honorable Eugene A. Gordon, United States District Judge for the Middle District of North Carolina. Judge Gordon postponed sentencing Moss pending receipt of a pre-sentencing report.

Moss had been charged in a nineteen-count indictment with eighteen counts of mail fraud in connection with the offer and sale of securities, namely evidences of indebtedness of Moss d/b/a Television Marketing and Correlated Equities Corp. ("TVM evidences of indebtedness"), and with one count of making a false statement in a report required to be filed with the Commission. The indictment, which was returned on January 28, 1980, alleged that Moss and others prepared and caused to be prepared false Financing Statements which purported to show an assignment by Television Marketing Corporation to each investor of a percentage of a commercial invoice for various products sold to Sears Roebuck & Co. and other corporations when, in fact, there existed no invoice or debt from Sears to TVM. The indictment also charged that Moss and others made a false statement in a Form BD, a report required to be filed with the Commission, in an attempt to conceal Moss' beneficial interest in a broker-dealer registered with the Commission, and, thus, avoid disclosing that said firm had a person associated with it who had been enjoined from violating the antifraud provisions of the federal securities laws.

Moss was named as a defendant in a civil injunctive action instituted by the Commission in November, 1978, which is based on violations of the federal securities laws which occurred in connection with the offer and sale of the TVM evidences of indebtedness. In that action, pursuant to a consent in which he neither admitted nor denied the allegations, Moss was enjoined from violating the securities registration and antifraud provisions of the federal securities laws and ordered to disgorge Four Million Five Hundred Thousand Dollars ($4,500,000).

For further information see Litigation Release Nos. 8617, 8665, and 9015.

Litigation Release No. 9045/March 24, 1980

UNITED STATES v. *RUSSELL REED, ALSO KNOWN AS "STEPHEN WHITNEY", JAMES S. DOYLE AND THOMAS FRANCIS RYAN*, 79 Crim. 515(S) (E.D.N.Y.)

Edward R. Korman, United States Attorney for the Eastern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on March 13, 1980, a jury, before the Honorable George C. Pratt, United States District Judge for the Eastern District of New York, returned a verdict of guilty against Russell Reed, also known as Stephen Whitney ("Reed"), of Clinton Corners, New York, James S. Doyle ("Doyle"), of Brentwood, New York, and Thomas Francis Ryan ("Ryan"), of Kings Park, New York, on all five counts of an indictment which charged violations of the antifraud provisions of the federal securities laws and the Mail Fraud statute, along with conspiracy to violate the above-mentioned statutes. A sentencing date has not been set.

Defendant Reed did not appear at the trial and was convicted in absentia. A warrant for his arrest has been issued by the United States Attorney's Office. Denfendants Doyle and Ryan have indicated that they will appeal the jury's verdict.

Defendants Reed, Doyle, and Ryan were each found guilty of conspiracy, securities fraud, and mail fraud in connection with the purchase of approximately $2 million in securities in three brokerage accounts, between August and October 1978, at the Huntington, New York branch office of Shearson Hayden Stone, Inc. (now known as Shearson Loeb Rhoades Inc.), where defendants Doyle and Ryan were then employed.

Defendant Reed paid for these securities with checks drawn on out-of-state and foreign bank accounts where he had insufficient funds to pay the stated amounts, resulting in a loss to Shearson when the accounts were eventually liquidated.

In a related Commission civil injunctive action, Final Judgments of Permanent Injunction by Consent were issued bv the Honorable Henry F. Werker against defendants Reed, Doyle and Ryan in *SEC* v. *Russell Reed, et al.*, 78 Civil 5581 (S.D.N.Y.)

For additional information, see Litigation Release Nos. 8881 and 8677.

Litigation Release No. 9046/March 25, 1980

SECURITIES AND EXCHANGE COMMISSION v. *COM/LINK INTERNATIONAL CORP., ET AL.*, 79 Civil 5337 (TPG) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office, announced that on February 13, 1980, the Honorable Thomas P. Griesa, United States District Judge for the Southern District of New York, isued a Judgment of Permanent Injunction by Consent and Order for Other Relief against Com/Link International Corporation ("Com/Link") and its President, Frank J. Landi, both of New Rochelle, New York. The orders enjoin Com/Link and Mr. Landi from violating the registration and antifraud provisions of the federal securities laws. Landi and Com/Link consented to the permanent injunctions and other relief without admitting or denying the allegations of the Commission's complaint.

The Court also ordered Com/Link to file a bankruptcy petition under 11 U.S.C. 301 with the United States Bankruptcy Court for the Southern District of New York for liquidation under Chapter 7 of the Bankruptcy Act, 11 U.S.C. §§701 et sec., 90 days from the entry of the judgment unless Com/Link demonstrates good cause why it should not be required to do so by: obtaining financing or credit sufficient to resume business; engaging independent certified public accountants to prepare audited financial statements for fiscal years 1978 to date; employing a bookkeeper/comptroller and establishing a system of internal accounting controls; and, consenting to the appointment of a Special Fiscal Agent to monitor its operations, financial condition and compliance with the Order.

In other relief, the Court restrained Com/Link from offering and selling securities and obtaining funds from any source other than commercial or institutional investors without leave of court, until the company has been audited and is in compliance with the periodic reporting provisions of the Securities Exchange Act of 1934. Previously imposed restraints upon transferring or dissipating assets, destroying records or communicating with shareholders will remain in effect until Com/Link is under the control of a bankruptcy trustee or subject to the Special Fiscal Agent.

For further information, see Litigation Release Nos. 8888, 8912.

Litigation Release No. 9047/March 26, 1980

SECURITIES AND EXCHANGE COMMISSION v. *FIRST FINANCIAL GROUP OF TEXAS, INC., WILLIAM H. HOWTON, VINING TOWNER REYNOLDS, JR.* (U.S.D.C./S.D. TX/Houston Div.) (CA No. H-79-1772)

Michael J. Stewart, Administrator of the Commission's Fort Worth Regional Office, and Thomas Allen Moon, Assistant Regional Administrator, Houston Branch Office, announced that on March 10, 1980, the Honorable Ross N. Sterling, United States District Judge in the Southern District of Texas, issued an Order holding William H. Howton (Howton) and Vining Towner Reynolds, Jr. (Reynolds), both of Houston, Texas, in contempt of court for their failure to comply with the Court's Order of February 15, 1980. The Court sentenced Howton and Reynolds to ten days imprisonment, issued bench warrants for their arrest, and set bail at $5,000.

The February 15, 1980, Order had directed Howton and Reynolds to appear for depositions before the Honorable Frank G. Waltermire, United States Magistrate, on March 3, 1980, and to produce certain books and records of defendant First Financial Group of Texas, Inc. (First Financial). Howton failed to appear at the deposition, and although Reynolds appeared, he refused to testify or assert a privilege, and failed to produce any records.

The Commission commenced this action by filing a complaint on August 24, 1979, seeking to temporarily restrain and preliminarily and permanently enjoin defendants First Financial, Howton and Reynolds from further violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, in connection with the offer and sale of United States Government guaranteed student loans and repurchase agreements. The Court entered Orders temporarily restraining and preliminarily enjoining each of the defendants on August 24, 1979, and September 28, 1979, respectively. In addition, on October 10, 1979, the Court appointed a Temporary Receiver for defendant First Financial.

For further information, see Litigation Releases Nos. 8862 and 8914.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	06202-05	1056
Securities Exchange Act	16704-22, 16730-32	1088
Public Utility Holding Company Act	21498-11	1110
Trust Indenture Act	00561-00	1132
Investment Company Act	11107-16	1132
Investment Advisers Act	00716-00	1148
Litigation	09048-51	1152

This listing covers releases issued from 3/28/80-4/3/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16706	34-16709	34-16719
34-16707	34-16711	34-16721
34-16708	34-16712	34-16722

33-6202 Adoption of amendments to Form S-8 and to Form 11-K to make disclosure and updating features utilizing filings made under the Securities Exchange Act available to issuers with certain types of employee plans.

33-6203 Adoption of amendments to Rule 12b-25 and related Form 12b-25 which will eliminate the present extension application procedure and, in lieu thereof, institute a system requiring notification of a registrant's inability to file timely all or any portion of an annual report.

33-6204 Extension of comment period, for 15 days, on four related releases re proposed new Form S-15 revisions to Form 10-K and financial statement requirements. [File No. S7-816, 817—Comment Period Expires April 30, 1980; S7-818, 819—Comment Period Expires May 15, 1980].

33-6205 Proposal for public comment of revised procedures for processing post-effective amendments. [File No. S7-829—Comment Period Expires June 2, 1980].

SE 1.29:

34-16730 Proposal for public comment of amendments which would require persons filing applications for extension, suspension, or termination of unlisted trading privileges to certify that notice of such applications has been given to certain persons. [File No. S7-828—Comment Period Expires May 1, 1980].

OPINIONS

34-16705 **COOK & CO., INC.**

Where member firm of registered securities association and its president and vice president concealed from the seller the fact that the firm was seeking to purchase certain hard-to-obtain bonds because of the seller's known animosity to president, *held*, association's finding that applicants violated antifraud provisions of the Securities Exchange Act, and its assessment of sanctions and costs, *set aside*, since no material fraud was practiced on the seller. Personal prejudice is not within the protective net of the antifraud provisions.

IA-716 **POTOMAC INVESTMENT ADVISORS, LTD.**

Where registered investment adviser and its president misappropriated clients' funds and, together with firm's vice president, failed to comply with recordkeeping requirements, *held*, in public interest to revoke registrant's investment adviser registration and bar president and vice president from association with any investment adviser, with the proviso that, after six months, vice president could apply for permission to become so associated in a nonsupervisory capacity, upon an appropriate showing of adequate supervision.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6202/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16717/April 2, 1980

AMENDMENT TO REGISTRATION STATEMENT FORM S-8 AND ANNUAL REPORT FORM 11-K

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Form S-8, the form for registration of securities to be offered to employees pursuant to certain plans, and to Form 11-K, the form for annual reports of employee stock purchase, savings and similar plans. The purpose of the amendments is to make disclosure and updating features utilizing filings made under the Securities Exchange Act of 1934 available to issuers with certain types of employee plans.

EFFECTIVE DATE: June 1, 1980.

FOR FURTHER INFORMATION CONTACT: William E. Toomey, Office of the Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain amendments to Form S-8 (17 CFR 239.16b), the form for registration under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] of securities to be offered to employees pursuant to certain plans, and to Form 11-K (17 CFR 249.31), the form for annual reports of employee stock purchase, savings and similar plans pursuant to Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. The amendments will make the disclosure and up-dating features of Form S-16 (17 CFR 239.27) available to many issuers using Form S-8. In particular it will allow updating generally to be accomplished by means of periodic reports, such as Forms 10-K, 11-K, 8-K and 10-Q made under the Securities Exchange Act of 1934, thereby eliminating the necessity, in many situations, of filing a post-effective amendment. The proposed changes are being made in furtherance of the Commission's efforts to reduce or eliminate

unnecessary or duplicative disclosure without reducing the quality of information available to plan participants and others.

GENERAL BACKGROUND

On November 19, 1979 the Commission issued a release requesting public comments on proposed amendments to Form S-8 and proposed related rules under the Securities Act of 1933.[1] That release requested comments on three distinct subjects: (1) form amendments and new rules to provide a means whereby all filings on Form S-8 would become effective automatically without affirmative action on the part of the Commission or its staff; (2) proposals to allow issuers with employee benefit plans to utilize disclosure techniques comparable to those available with respect to Form S-16; and (3) a request for comments on the feasibility of incorporating one or more Employee Retirement Income Security Act ("ERISA") filings to register or update registration statements covering securities issued under ERISA qualified employee benefit plans. The proposals concerning automatic effectiveness were adopted by the Commission on February 22, 1980.[2] At that time the Commission announced that amendments to Form S-8 to permit updating through the use of Exchange Act reports would shortly follow and that additional study would be needed to determine how the duplication with ERISA filings might be eliminated. The amendments adopted today provide, in large measure, a means whereby the Form S-16 format and up-dating procedures will be available to many users of Form S-8. These changes complete the efforts to update Form S-8 filings through the use of Exchange Act reports.

Sixty-one commentators addressed various aspects of the general subject of utilizing Exchange Act reports to up-date Securities Act registration forms for employee benefit plans. While a number of various approaches to the problem were suggested, there was overwhelming agreement that some method of using Exchange Act reports to solve the updating problem should be implemented as soon as possible.

[1]Securities Act of 1933 Release No. 6151 (November 19, 1979) [44 FR 67671].

[2]Securities Act of 1933 Release No. 6190 (February 22, 1980) [45 FR 13438].

EFFECTIVE DATE

To prevent these amendments from constituting a burden on those registrants who have already commenced the preparation of their Form S-8 filings in accordance with existing requirements or on other registrants for whom the changes would otherwise be onerous if made at this time, the effective date of the amendments has been deferred until June 1, 1980. While the amendments will not be effective until such date, in view of the cost and other savings the amended form may provide to certain registrants the Commission will accept filings on the new form beginning immediately for those wishing to utilize it. It should be noted that the first filing on Form S-8 (pre-effective or post-effective) which complies with the amended form, whether done so voluntarily prior to June 1, 1980 or as required on or after June 1, 1980, commences the integrated disclosure process whereby all Exchange Act filings made thereafter (pursuant to Sections 13, 14 and 15(d)) by an issuer (and a plan) are incorporated into and up-date the associated Form S-8. For example, if registrant A, a calendar year company, files a post-effective amendment on Form S-8 on April 30 which complies with the Form S-8 requirements as in effect prior to June 1, Exchange Act filings made subsequent thereto, but prior to any future post-effective amendment filed after June 1, will not constitute part of that Form S-8. A post-effective amendment or a new filing on Form S-8 made on July 15, however, would result in the next Form 10-Q of the issuer being incorporated into the Form S-8.

DISCUSSION OF THE AMENDMENTS

Outline—Previous Form

The following table presents, in outline form, the Form S-8 as it existed until amended by this release and the changes (if any) made in each item or part thereof.

Item and Status
General Instructions—Revised
Information Required in the Prospectus

Item 1. General Information Regarding the Plan—Revised

Item 2. Securities to be Offered and Employees Who May Participate in the Plan—Unchanged

Item 3. Purchase of Securities Offered—Revised

Item 4. Payment for Securities Offered—Unchanged

Item 5. Contributions Under the Plan—Revised

Item 6. Withdrawal from the Plan—Assignment of Interest—Unchanged

Item 7. Defaults Under the Plan—Unchanged

Item 8. Administration of the Plan—Revised

Item 9. Investment of Funds—Revised

Item 10. Charges and Deductions and Liens Therefor—Unchanged

Item 11. Financial Statements of the Plan—Deleted

Item 12. Capital Stock to be Registered—Renumbered and Revised

Item 13. Other Securities to be Registered—Renumbered and Revised

Item 14. Summary of Operations of the Issuer—Deleted

Item 15. Market Prices of the Issuer's Securities and Dividend Policy—Deleted

Item 16. Description of Certain Significant Developments in the Last Three Years—Deleted

Item 17. Financial Statement of the Issuer—Deleted

Item 18. The Issuer's Business and Management—Deleted

Item 19. Parents of Registrant—Deleted

Part II. Information Not Required In Prospectus Undertakings—Revised

Signatures—Unchanged

Instructions As To Exhibits—Revised

Outline—New Form

The following is an outline of the new Form S-8:

General Instructions

Part I. Information Required In The Prospectus

Item 1. General Information Regarding the Plan

Item 2. Securities to be Offered and Employees Who May Participate in the Plan

Item 3. Purchase of Securities Pursuant to the Plan

Item 4. Payment for Securities Offered

Item 5. Contributions Under the Plan

Item 6. Withdrawal From the Plan—Assignment of Interest

Item 7. Defaults Under the Plan

Item 8. Administration of the Plan

Item 9. Investment of Funds

Item 10. Charges and Deductions and Liens Therefor

Item 11. Securities to be Registered

Item 12. Incorporation of Certain Documents by Reference

Item 13. Additional Information

Part II. Undertakings and Other Information Not Required In Prospectus

Signatures

Instructions As To Exhibits

Discussion of Items Which are Deleted from Previous Form S-8.

Former Item 11, "Financial Statements of Plan," has been deleted. In general, Form S-8 has been used to register stock option, stock purchase and certain employee benefit plans. Typically only employee benefit plans, such as pension, profit sharing or other retirement plans are separate entities with separate financial statements. The revised form contemplates that the financial statements for such entities will appear in an Exchange Act report filed with the Commission or in the issuer's annual report to shareholders, will be expressly incorporated by reference into the amended Form S-8 (New Item 12(a)), and will be made available to any plan participant, without cost, upon written request (Revised Item A(1) of Part II of amended Form S-8).

Former Items 14, 15, 17 and 18, "Summary of Operations of the Issuer," "Market Prices of the Issuer's Securities and Dividend Policy," "Financial Statements of the Issuer," and "The Issuer's Business and Management," have all been deleted because they are in the issuer's annual report to shareholders which is supplied to plan participants and are also included for the most part in the issuer's annual report on Form 10-K filed with the Commission which is incorporated by reference.[3]

Former Items 16 and 19, "Description of Certain Significant Developments in the Last Three Years" and "Parents of the Registrant," have been deleted, but the substance of the disclosure required by these items is contained in the issuer's annual report to shareholders or in the issuer's Form 10-K.

Discussion of Items in New Form S-8 Which Are Revised

From Previous Form S-8 or Are New.

Instruction A of the General Instruction has been revised to make it clear that a prerequisite to the use of Form S-8 is that the issuer, whether a registered company reporting under Section 13 of the Exchange Act or a company reporting under Section 15(d) of the Exchange Act, must supply its security holders with an annual report for its last fiscal year containing substantially the information required by Rule 14a-3 (17 CFR 240.14a-3) under the Exchange Act. This change is necessary because of the increased reliance the revised Form S-8 places on the disclosures contained in the annual report to security holders. Additionally, the instruction has also been amended to require plans with separate financial statements to have those financial statements and other plan annual report information on file at least concurrently with the filing of the registration statement or any post-effective amendment with respect thereto. This change is required since the new Form incorporates financial information from the Form 11-K annual report.

Item 1(d) pertains to disclosure of the number of employees participating in the plan and of the number eligible to participate. Unlike the former sub-item, revised Item 1(d) provides a procedure under which this information need not be included in filings on Form S-8 made by the registrant. Under the proviso to Item 1(d), this information may be omitted if it is otherwise delivered, no less frequently than annually, to employees participating in the plan.

Instruction 3 to Item 3, which imposes a requirement to provide a table of outstanding options, has been revised to indicate that the issuer may omit the table and thereby avoid the necessity to file post-effective amendments pursuant to Section 10(a)(3) of the Securities Act or otherwise to update the table if this information is contained either in the issuer's annual report to shareholders or proxy statement. Since the information called for in the table may or may not be considerably more extensive than that required in footnotes to financial statements or in proxy statements, it is believed that the choice as to where the information should be set forth should be left to the issuer. The issuer ordinarily would be in the best position to determine which form of presentation will involve the least duplication or expense.

The requirements to provide a five year history of the employer's discretionary contributions previously contained in Item 5(a) and to provide a three year history and description of brokerage commissions paid by the plan previously contained in Item 9(d) and in related instructions have both been moved to become requirements in Form 11-K. Again, as is indicated in Forms 10-K and 11-K and in Rule 15d-21 [17 CFR 240.15d-21], issuers are encouraged to combine this information and other information required by Forms 10-K and 11-K with the issuer's annual report to shareholders. It is anticipated that by moving these informational requirements to Form 11-K some issuers and plans will be relieved of the obligation to file updating post-effective amendments on an annual or other periodic basis. At the same time, however, information as to discretionary contributions and brokerage commissions will remain available to plan participants.

Paragraph (c) of Item 8, requiring the disclosure of the annual amount of compensation to plan administrators, has been deleted because it duplicates a requirement in Form 11-K.

New Item 11, "Securities to be Registered," combines Items 12 and 13 of the previous Form S-8,

[3]The Commission recently has proposed revisions to Form 10-K which, if adopted, would revise all of these items and would reduce present differences in the disclosure required in the annual report to shareholders and in the Form 10-K. (Securities Act of 1933 Release No. 6176 (January 15, 1980) [45 FR 5972].

"Capital Stock to be Registered" and "Other Securities to be Registered". This new combined item also permits incorporation by reference of the description of any such security registered under Section 12 of the Exchange Act.

New Items 12 and 13, "Incorporation of Certain Documents by Reference" and "Additional Information," are based upon Items 7 and 8 of Form S-16 (17 CFR 239.27) and have as their purpose establishing the Form S-16 format in the Form S-8. The only changes from Form S-16 are such technical ones as were necessary to coordinate the items with Form S-8.

A new subparagraph (3) has been added to subpart A of Part II, "Undertakings and Other Information Not Required In Prospectus," to provide an undertaking to deliver a Form 11-K or other document filed in lieu of a Form 11-K upon request. This undertaking is necessary to provide information to interested parties which would otherwise not be available to them, such as the financial statements of the plan, and is also necessary if certain disclosures, such as the financial statements of the plan, are to be up-dated by Exchange Act filings and not by post-effective amendments. It should be noted, however, that this requirement, in the case of new filings on Form S-8 registering interests in certain plans, will necessitate the filing of a Form 11-K at least concurrently with the Form S-8. To effect this result a new Instruction A(2) has been inserted limiting the use of the new form.

The undertaking in Subpart B of Part II, now entitled "Undertaking to Update Annually," has been expanded to reflect the anticipated updating of Form S-8 by Exchange Act annual reports rather than by post-effective amendments. The new undertaking deems annual reports (but not interim or other Exchange Act reports) filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and used for up-dating purposes to constitute a new registration statement for statute of limitation purposes. This change is necessary to prevent the statute of limitations from tolling in situations where sales continue to be made under a prospectus updated by Exchange Act reports, an incongruous result.

The "Instructions As to Exhibits" have been revised to delete the reference to copies of waivers or undertakings required by Note (a) to Rule 460 (17 CFR 230.460), which is now inappropriate as a result of the automatic effectiveness of all filings on Form S-8.[4]

Discussion of Items Added to Form 11-K

New Items 3 and 8, relating to a five year history of the employer's discretionary contributions and to information concerning brokerage commissions, have been added to Form 11-K. In moving these items from Form S-8, no substantive change is intended.

Need for Post-Effective Amendments

Although the Commission expects that the changes in Form S-8 will permit most stock purchase and stock option plans registering issuer's shares on Form S-8 to update their registration statements through Exchange Act filings, the Commission is aware that despite the simplifications of the form and the readjustment of items many employee pension and profit sharing plans will continue to require annual post-effective amendments because of the requirement in Item 9(a) to provide data to evaluate alternative investment media. The Commission invites suggestions from interested parties as to how this updating requirement might be avoided, while still providing this highly relevant information to plan participants. In this regard persons providing suggestions should be aware that the Commission believes that information as to the performance of investment media should be delivered to participants on a reasonably current basis at or within a short time prior to the time when a participant makes a choice or election to change or continue the investment of his or her account. Informal suggestions as to appropriate alternative means of dissemination of performance data should be submitted in writing to the attention of the Chief of the Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

Certain Technical Amendments

In the course of reorganizing Form S-8 to facilitate integration with Exchange Act reports and automatic updating, the Commission has adopted a number of technical amendments designed to clarify the form.

Although the Commission does not believe that any of the technical amendments involve substantive

[4]Securities Act of 1933 Release No. 6190 (February 22, 1980) [45 FR 13438].

change, it does believe that the technical amendments dealing with the use of reoffer and resale prospectuses deserve mention. The notes relating to reoffer prospectuses following the General Instructions have been relocated to follow Instruction E, the instruction dealing with reoffers and resales. Additionally these notes have been expanded and revised in several respects. First, the administratively imposed requirement that shares may not be registered unless there is an intention to offer and sell has been added as a new Note 1. Second, Note 2 to Instruction E of the General Instructions has been amended to correct an existing error and to clarify some confusing language. The existing reference to Item 5 of Form S-16, "Use of Proceeds to Issuers," is erroneous and has been corrected to refer to Item 4, "Securities to be Offered and Identity of Offeror(s)." Moreover, the language in the last sentence of the note has been revised to make it clear that "additional amounts of securities" refers only to those previously registered on this Form S-8. Third, the Commission's policies as to the inclusion of unregistered shares has been added to Note 3 (formerly Note 2).

TEXT OF THE AMENDMENTS TO FORM S-8

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Section 239.16b is amended as follows:

§239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

The entire form is amended to read as follows:

FORM S-8

REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

.....
(Exact name of issuer as specified in its charter)

.....
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

.....
(Address of Principal Executive Offices) (Zip Code)

.....
(Full title of the plan)

.....
(Name and address of agent for service)

.....
Telephone number, including area code, of agent for service

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee

GENERAL INSTRUCTIONS

A. Rule as to Use of Form S-8

(1) Any issuer which at the time of filing a registration statement on this Form has been subject to the requirement to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the prior 90 days, has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), and has furnished or will furnish an annual report to security holders for its last fiscal year containing substantially the information required by Rule 14a-3 [17 CFR 240.14a-3] under the Securities Exchange Act of 1934, may use this Form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such issuer to be offered to its employees, or to employees of its subsidiaries or parents, pursuant to any employee benefit plan. (See General Instruction B defining "plan").

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. [See Securities Act Release No. 6188 (February 1, 1980) and Section 3(a)(2) of the Act.]

(2) Where interests in a plan are being registered and the plan's latest annual report filed pursuant to Section 15(d) of the Securities Exchange Act is to be incorporated by reference pursuant to the requirements of Form S-8, the Plan shall either: (i) have been subject to the requirement to file reports pursuant to Section 15(d) for the prior 90 days and shall have filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports and materials) or, (ii), if the plan has not previously been subject to the reporting requirements of Section 15(d), concurrently with the filing of the registration statement on Form S-8 the plan shall file an annual report in the form required under Section 15(d) for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing date). [See instructions to Form 11-K and Rule 15d-21 (17 CFR 240.15d-21)]

B. Application of General Rules and Regulations.

Before undertaking the preparation of the registration statement, reference should be made to the General Rules and Regulations under the Act, particularly Regulation C [17 CFR 230.400-494]. Regulation C contains general requirements regarding the preparation and filing of the registration statements. The definitions contained in Rule 405 [17 CFR 230.405] of Regulation C should be especially noted. For purposes of this Form the term "employee" is defined as any director, trustee, officer or other employee. The term "issuer" as used in this Form means the person whose securities are to be offered pursuant to the plan. As used in General Instruction A to this Form, the term "plan" shall include any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan.

C. Documents Comprising the Registration Statement.

The registration statement shall consist of the facing sheet of the Form, the prospectus, the required undertakings, signatures, consents of experts, exhibits and any other information or documents filed as part of the registration statement. There shall be no need to file copies of any documents incorporated by reference pursuant to Item 12 hereunder.

D. Preparation of Prospectus.

The prospectus shall contain the information called for by all of the items of the Form, and negative answers to any items may be omitted.

The information required should be presented in a clear, concise and understandable fashion. Avoid unnecessary and irrelevant details, repetition or the use of unnecessary technical language.

E. Unavailability of the Form S-8 Prospectus for Reoffers or Resales.

The Form S-8 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer, as defined in Rule 405 under the Act. However, such affiliates may reoffer or resell such securities pursuant to a separate prospectus, filed with the registration statement on this Form S-8, prepared in the following manner:

(1) Such prospectus may be prepared in accordance with the requirements of Form S-16 if:

(a) The issuer, at the time of filing such prospectus, satisfies the conditions set forth in the Rule as to the Use of Form S-7; or

(b) The amount of securities proposed to be reoffered or resold pursuant to the prospectus, by each person affiliated with the issuer, and any other persons with whom he is acting in concert for the purpose of selling securities of the issuer, does not exceed, during any three month period, the amount specified in Rule 144(e) (17 CFR 239.144(e)), calculated as of the date of filing such prospectus.

(2) If subparagraph (1), above, does not permit the use of a prospectus on Form S-16, registered reoffers or resales must be made by means of a separate registration statement utilizing whichever form is applicable.

NOTES:

1. Each of the persons named as a selling shareholder in a prospectus used for reoffers or resales shall have an intent to make such offers and sales within not more than sixteen months following the effective date of the prospectus. If after the effective date a person acquires an intent to reoffer or resell and the issuer wishes to add such person to the list of selling shareholders the issuer may do so by filing a post-effective amendment. Selling shareholder letters required by Guide 43 shall be filed as an exhibit at the time a person is named as a selling shareholder in the prospectus.

2. The information in a prospectus used for reoffers or resales shall be updated through an amended prospectus filed in accordance with Section 10(a)(3) of the Act. The information responding to Item 4 of Form S-16 may be updated more frequently through the filing of a post-effective amendment, or through a supplement to the prospectus filed pursuant to Rule 424(c) [17 CFR 230.424(c)] under the Act, to reflect new volume limitations and additional amounts of securities previously registered on this Form S-8 which are proposed to be reoffered.

3. Registered securities may be included in a reoffer prospectus if they have been acquired by the selling security holder pursuant to the plan, or if it is reasonably expected that they will be so acquired within 16 months after the effective date of the prospectus. Unregistered securities issued pursuant to the plan prior to the effective date of the first registration statement covering securities issued by the plan may be included in a reoffer prospectus, if each of the following conditions has been met:

(a) Such securities were issued in accordance with a lawful exemption from registration, and the issuer files as an exhibit a statement indicating the section of the Securities Act or Rule of the Commission under which exemption from registration was claimed, which statement shall set forth briefly the facts relied upon to make the exemption available.

(b) The prospectus indicates the number of previously unregistered shares being reoffered and such number does not exceed ten percent of the total number of shares issuable under the plan.

(c) All persons (including non-affiliates) holding unregistered shares to be reoffered pursuant to the prospectus are named as selling shareholders in the prospectus; *Provided, however,* That any non-affiliate who holds less than the lesser of 400 shares or 1% of the shares issuable under the plan need not be named if the prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to 400 shares, may use the prospectus for reoffers and resales.

4. The term "person" as used in General Instruction E shall be the same as is set forth in Rule 144(a)(2) under the Act.

F. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies.

Original registration statements on this Form S-8 will become effective automatically on the twentieth day after the date of filing (Rule 456, 17 CFR 230.456), pursuant to the provisions of Section 8(a) of the Act (Rule 459, 17 CFR 230.459). Pre-effective amendments may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, 17 CFR 230.475a). Accordingly, the filing of a pre-effective amendment will not commence a new twenty-day period. Post-effective amendments on this form shall become effective upon the date of filing (Rule 464, 17 CFR 230.464). Delaying amendments are not permitted in connection with either original filings or amendments (Rule 473(d), 17 CFR 239.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As

a result, requests for confidential treatment made under Rule 485 (17 CFR 230.485) must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (17 CFR 230.402, 230.472) shall be filed with the Commission; *Provided, however,* That the number of additional copies referred to in Rule 402(a)(2) may be reduced from ten to two and the number of additional copies referred to in Rule 472(a) may be reduced from eight to two, each of which shall be marked to clearly and precisely indicate changes.

Part I. INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. General Information Regarding the Plan.

(a) Give the title of the plan, the name, address of the principal executive office and phone number of the issuer whose securities are to be offered pursuant to the plan, and the name of each company whose employees are entitled to participate in the plan.

Instruction. If employees of all subsidiaries and parents of the issuer are entitled to participate in the plan, a statement to that effect will suffice without naming each. However, if each such employer is not named in the prospectus, an exhibit should be filed naming them.

(b) State the general purpose of the plan, when it was created, the parties thereto, the manner of its creation, its duration, and any provisions for its modification, earlier termination or extension.

(c) Describe briefly any tax effects which may accrue to employees as a result of participation in the plan, the tax effects, if any, upon the issuer, and state whether or not the plan is qualified under Section 401(a) of the Internal Revenue Code.

NOTE: If the plan is not qualified under Section 401 of the Internal Revenue Code of 1954, as amended, consideration should be given to the applicability of the Investment Company Act of 1940. See Securities Act Release No. 4790 (July 13, 1965).

(d) State, as of the latest practicable date, the approximate number of employees participating in the plan and the number eligible to participate; *Provided, however,* That no response to this sub-item need be furnished if such information is otherwise delivered to employees participating in the plan no less frequently than annually.

(e) Briefly indicate whether the plan is subject to any provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), and identify those provisions to which it is subject. If the plan is subject to some but not all of the principal protective provisions of Titles I and IV of that Act, briefly describe the protective provisions not applicable and state whether such protections will be extended to participants of the subject plan by the registrant.

(f) In situations in which participation in the plan may involve unusual risks to the participant, as, for example, when the plan imposes a substantial restriction on the ability of a participant to withdraw his contributions, or when participation in the plan may obligate the participant's general credit in connection with purchases on a margin basis, prominent disclosure of such risks should be set forth in the prospectus.

Item 2. Securities to Be Offered and Employees Who May Participate in the Plan.

(a) State the title and total amount of securities to be offered pursuant to the plan. Indicate the source of any limitation on the amount of securities to be offered.

(b) Describe briefly any restrictions on resale of the securities purchased under the plan which may be imposed upon the employee purchaser.

(c) Indicate each class or group of employees who may participate in the plan and state the basis upon which the eligibility of employees to participate therein is to be determined.

(d) With respect to the plan, state either (1) the maximum and minimum amounts of securities which may be purchased by or issued to, or options which may be granted to, any director or executive officer, any other officer, and any employee, or (2) the basis for determining such amounts.

Instruction. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other officer who performs similar policy-making functions for the registrant.

Item 3. Purchase of Securities Pursuant to the Plan.

State the period of time within which employees may elect to participate in the plan, the price at which the securities may be purchased or the basis upon which such price is to be determined.

Instructions. 1. If the securities are to be offered pursuant to options, state when the options become exercisable, the exercise price, the basis for determining such price, whether and under what circumstances such price may be modified and by whom, the maximum amount which may be exercised in any year, whether such amounts are cumulative, and the period during which all options must be exercised.

2. Indicate whether adjustment will be made for changes in the securities resulting from stock dividends, stock splits and similar changes.

3. In case a number of options are outstanding having different prices and expiration dates, the options may be grouped by prices and dates. If this produces more than five separate groups, then there may be shown only the range of the expiration dates and the average purchase prices, i.e., the aggregate purchase price of all securities of the same class called for by all outstanding options to purchase securities of that class divided by the number of securities of such class so called for.

4. Notwithstanding the provisions of the preceding instructions, if the information as to options, including the amounts outstanding, exercises, prices and expiration dates, is included in the issuer's annual report to shareholders containing the information required by Rule 14a-3 or in the issuer's proxy statement meeting the requirements of Section 14(a) of the Securities Exchange Act of 1934 (or information statement meeting the requirements of Section 14(c) of the Securities Exchange Act of 1934) and rules promulgated thereunder, which has or will be delivered to participants pursuant to an undertaking in Part II of this form, then such information may be incorporated by reference to the document where it appears. Issuers electing to incorporate information pursuant to the preceding sentence should be aware that the information required hereunder is more extensive than that otherwise called for in annual reports or proxy statements (or information statements) and that the information incorporated by reference must be updated no less frequently than is required by Section 10(a)(3) of the Securities Act of 1933.

Item 4. Payment for Securities Offered.

(a) State when and the manner in which employees are to pay for the securities purchased pursuant to the plan. If payment is to be made by payroll deductions or other installment payments, state the percentage of wages or salaries or other basis for computing such payments, and the time and manner in which an employee may alter the amount of such deduction or payment.

(b) State the nature and frequency of any reports to be made to participating employees as to the amount and status of their accounts.

Instruction. If the plan is one under which credit is extended to finance the acquisition of securities and Regulation G [12 CFR 207] or T [12 CFR 220] is applicable, it should be noted whether the respective requirements of Regulation G or T have been met.

Item 5. Contributions Under the Plan.

(a) If contributions are to be made under the plan by the issuer or any employer, state who is to make such contributions, when they are to be made and the nature and amount of each contribution. If such contributions are not a fixed amount, state the basis for computing contributions.

(b) State the amount each employee is required or permitted to contribute or, if not a fixed amount, the percentage of wages or salaries or other basis of computing contributions.

Item 6. Withdrawal from the Plan—Assignment of Interest.

(a) Describe the terms and conditions under which a participating employee may (1) withdraw from the plan and terminate his interest therein, or (2) withdraw funds or investments held for his account without terminating his interest in the plan.

(b) State whether, and the terms and conditions upon which, the plan permits an employee to assign or hypothecate his interest in the plan.

Item 7. Defaults Under the Plan.

State separately every event of default under the plan with which a participating employee or employer may be charged and describe fully the

consequences thereof, including any forfeiture or penalty which may be thereby incurred.

Item 8. Administration of the Plan.

(a) Give the name and complete address of the persons who administer the plan and state the capacity in which they act (such as trustee or managers) and the functions which they perform. State the nature of any material relationship between the administrators and the employees, the issuer or its affiliates.

(b) Describe the manner in which the administrators of the plan are selected, their term of office and the manner in which they may be removed from office.

Item 9. Investment of Funds.

(a) If participating employees may direct all or any part of the assets under the plan to two or more investment media, describe the provisions of the plan with respect thereto and set forth in tabular form, where appropriate, for each of the past five years (or such lesser period as each such investment medium has been available) financial data which, in the opinion of the issuer, will enable such employees to make informed investment decisions concerning such investment media.

(b) If any person other than a participating employee has discretion with respect to the investment of all or any part of the assets of the plan in one or more investment media, name such person and describe the policies followed and to be followed with respect to the type and proportion of securities or other property in which the funds of the plan may be invested.

(c) State whether assets are to be purchased under the plan in the open market or otherwise. If they are not to be purchased in the open market, then state from whom they are to be purchased and describe the fees, commissions or other charges paid. If the employer or any of its affiliates, or any person having a material relationship with the employer of any of its affiliates, directly or indirectly, receives any part of the aggregate purchase price (including fees, commissions or other charges), explain.

(d) If a substantial part of the assets of the plan is invested in securities other than those of the employer, its parents or subsidiaries, describe how brokers will be selected to effect securities transactions for the plan and how evaluations will be made of the overall reasonableness of brokerage commissions paid, including the factors considered in these determinations.

Instructions to Item 9(d). (i) If the receipt of products or services other than brokerage or research services is such a factor, this description should specify them.

(ii) If the receipt of research services is such a factor in selecting brokers, this description should identify the nature of such research services.

(iii) State whether persons acting on behalf of the plan are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of (a) brokerage or (b) research services provided by the broker.

(iv) If applicable, explain that research services furnished by brokers through whom the plan effects securities transactions may be used by the plan's investment manager in servicing all of its accounts, and that not all such services may be used by such investment adviser in connection with the plan; or, if other policies or practices are applicable to the plan with respect to the allocation of research services provided by brokers, explain such policies and practices.

Item 10. Charges and Deductions and Liens Therefor.

(a) Describe all charges and deductions, (other than deductions described in Item 4(a) and taxes) which may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part therefor. Such description should include charges and deductions which may be made upon the termination of an employee's interest in the plan, or upon partial withdrawals from the employee's account thereunder.

(b) State whether or not under the plan, or pursuant to any contract in connection therewith, any person has or may create a lien on any funds, securities or other property held under the plan. If so, describe fully the circumstances under which the lien was or may be created.

Item 11. Securities to be Registered.

(a) If capital stock is to be registered hereunder, and such class of stock is already registered under Section 12 of the Securities Exchange Act of 1934, comply with Item 12(d).

(b) If capital stock is to be registered hereunder, and such class of stock is not registered under Section 12 of the Securities Exchange Act of 1934, state the title of the class and furnish the following information:

(1) Outline briefly (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) pre-emptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority of the shares outstanding voting as a class, so state and explain briefly.

(3) Outline briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

Instructions. 1. Only a brief summary of the pertinent provisions from an investment standpoint is required. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions of the government instruments verbatim; only a succinct resume is required.

2. If the rights evidenced by the securities to be registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by securities to be registered.

(c) If securities other than capital stock are to be registered, outline briefly the rights evidenced thereby.

Instruction. Information comparable to that called for by paragraph (b) above and the instructions thereto shall be furnished.

Item 12. Incorporation of Certain Documents by Reference.

The issuer and, where interests in the plan are being registered, the plan, shall incorporate by reference into the prospectus the documents listed in (a) through (d) below and shall state that all documents subsequently filed by them pursuant to Sections 13, 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the prospectus and to be a part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) The issuer's and, where interests in the plan are being registered, the plan's latest annual report filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 or, in the case of the issuer, the latest prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933, which contains, either directly or by incorporation by reference, certified financial statements for the issuer's latest fiscal year for which such statements have been filed.

(b) All other reports filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 since the end of the fiscal year covered by the annual reports or the prospectus referred to in (a) above.

(c) The issuer's definitive proxy statement or information statement, if any, filed pursuant to Section 14 of the Securities Exchange Act of 1934 in connection with the latest annual meeting of its stockholders, and any definitive proxy or information statements so filed in connection with any subsequent special meetings of its stockholders.

(d) If the class of securities to be offered is registered under Section 12 of the Securities Exchange Act of 1934, the description of such class of securities which is contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Instruction. If any accountant, engineer, or any person whose profession gives authority to a statement made by him is named as having prepared or certified any part of the material incorporated by reference or is named as having prepared or certified a report or valuation for use in connection with any of the material so incorporated, the written consent of such person shall be included in the registration statement unless express consent to the incorporation by reference is contained in the

material incorporated by reference. The written consent of persons so named in future material incorporated by reference shall be filed by amendment to the registration statement no later than the date on which such material is filed with the Commission unless express consent to such incorporation by reference is contained in the material incorporated by reference. Attention is directed to Rule 439.

Item 13. Additional Information.

(a) Describe any material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in an annual report or prospectus incorporated by reference in response to Item 12(a) and which have not been, nor will be, described in a timely-filed report on Form 8-K or 10-Q (17 CFR 249.308 and 249.308a) or in a proxy or information statement filed under the Securities Exchange Act of 1934.

(b) State that reports, proxy statements and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C. and at certain of its Regional Offices, stating the current address of each such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates. In addition, name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements and other information concerning the registrant can be inspected at such exchanges.

PART II. UNDERTAKINGS AND OTHER INFORMATION NOT REQUIRED IN PROSPECTUS

A. To Transmit Certain Material.

(1) The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each employee to whom the prospectus is sent or given, a copy of the issuer's annual report to stockholders for its last fiscal year, unless such employee otherwise has received a copy of such report in which case the issuer shall state in the prospectus that it will promptly furnish, without charge, a copy of such report on written request of the employee. If the last fiscal year of the issuer has ended within 120 days prior to the use of the prospectus, the annual report of the issuer for the preceding fiscal year may be so delivered, but within such 120 day period the annual report for the last fiscal year will be furnished to each such employee.

(2) The undersigned issuer hereby undertakes to transmit or cause to be transmitted to all employees participating in the plan, who do not otherwise receive such material as stockholders of the issuer, at the time and in the manner such material is sent to its stockholders, copies of all reports, proxy statements and other communications distributed to its stockholders generally.

(3) Where interests in a plan are registered herewith, the undersigned issuer and plan hereby undertaken to transmit or cause to be transmitted promptly, without charge, to any participant in the plan who makes a written request, a copy of the then latest annual report of the plan filed pursuant to Section 15(d) of the Securities Exchange Act of 1934 (Form 11-K). If such report is filed separately on Form 11-K, such form shall be delivered upon written request. If such report is filed as a part of the issuer's annual report on Form 10-K, that entire report (excluding exhibits) shall be delivered upon written request. If such report is filed as a part of the issuer's annual report to shareholders delivered pursuant to paragraph (1) or (2) of this undertaking additional delivery shall not be required.

B. Undertaking to Update Annually.

The undersigned issuer hereby undertakes: (1) to file any prospectus required by Section 10(a)(3) as a post-effective amendment to this registration statement; (2) that for the purpose of determining any liability under the Act each such post-effective amendment and each filing of the issuer's annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (or, where applicable, each filing of the plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; (3) that all such new registration statements will comply with the applicable forms, rules and regulations of the Commission in effect at the time such post-effective amendments or annual reports are filed; and (4) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the plan.

SIGNATURES

The Issuer. Pursuant to the requirements of the Securities Act of 1933, the issuer certifies that it meets all of the requirements for filing on Form S-8, undertakes to comply with the requirements of Part II of Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, and the State of_____, on this_____ day of_____, 19____.

_____
(Issuer)

BY_____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated. Moreover, the undersigned hereby also certify that to the best of their knowledge and belief the issuer meets all of the requirements for filing on Form S-8.

(Signature)	(Title)	(Date)

The Plan. Pursuant to the requirements of the Securities Act of 1933, the plan has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of_____, and State of_____, on the_____ day of_____, 19____.

_____
(The Plan)

BY_____
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature)	(Title)	(Date)

Instruction. 1. The registration statement shall be signed by the issuer, (and where interests in the plan are being registered, by the plan), their respective principal executive officers, principal financial officers, controllers or principal accounting officers, and by at least the majority of the respective boards of directors or persons performing similar functions (or, in the event there is no board of directors or persons performing similar functions, by the majority of the persons having the power of management).

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

NOTE: Reference is made to the provisions concerning power of attorney and resolutions of the board of directors contained in Rule 402(c) of Regulation C.

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules as to incorporation by reference, the exhibits specified below shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing.

1. Copies of the plan as presently in effect.

2. Copies of all constituent instruments (other than the plan itself) defining the rights of employees who participate in the plan.

3. An opinion of counsel as to the legality of the interests and the securities to be registered, indicating whether they will when sold be legally issued, fully paid and non-assessable. If the plan is subject to the requirements of ERISA, either (i) an opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions, or (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code, or (iii) an opinion of counsel, attaching a copy of the determination letter that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of that Act pertaining to such provisions.

4. Copies of all summaries of the plan or other

written communication intended to be used in connection with the offer or sale of securities to be registered.

5. Copies of the issuer's annual report to security holders for its last fiscal year. Such report, except for any portions thereof which are incorporated by reference is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the registration statement. If the financial statements in the report have been incorporated by reference in the registration statement, the accountant's certificate shall be manually signed in one copy.

6. Copies of the exhibit called for by the Instructions to Item 1(a), if applicable.

TEXT OF THE AMENDMENTS TO FORM 11-K

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Section 249.311 is amended as follows:

§249.311 Form 11-K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

The form is amended to read as follows:

FORM 11-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

GENERAL INSTRUCTIONS

* * * * *

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 11-K

ANNUAL REPORT

Pursuant to Section 15(d) of the
Securities Exchange Act of 1934

For the fiscal year ended _____

A. Full title of the plan and the address of the plan, if different from that of the issuer named below:

B. Name of issuer of the securities held pursuant to the plan and the address of its principal executive office:

ITEMS TO BE ANSWERED

Item 1. Changes in the Plan.

Describe briefly any material changes in the provisions of the plan during the fiscal year.

Item 2. Changes in Investment Policy.

Describe briefly any material changes during the fiscal year in the policy with respect to the kind of securities or other investments in which funds held under the plan may be invested.

Item 3. Contributions Under the Plan.

If contributioins are to be made under the plan by the issuer, and (a) if the issuer has discretion concerning such distributions or (b) if contributions are measured other than by reference to the employee's contributions, provide information for the past five fiscal years describing the amount of the issuer's contributions.

Item. 4. Participating Employees.

State the approximate number of employees who were participants in the plan at the end of its fiscal year.

Item 5. Administration of the Plan.

(a) Give the names and addresses of the persons who administer the plan, the capacity in which they act (such as trustees or managers) and list all positions or offices held with the issuer or any of its affiliates.

(b) State the total amount of compensation received from the plan by each of the administrators for services in all capacities during the fiscal year.

Item 6. Custodian of Investments.

(a) Give the name, address and nature of the business of each person who acts as custodian of any of the securities or other investments of the plan.

(b) State the total amount of compensation received from the plan by each person for services in all capacities during the fiscal year.

(c) State the nature and amount of the coverage of any bond furnished by any such custodian or its officers or employees in connection with the custody of the security investments or other assets of the plan.

Item 7. Reports to Participating Employees.

State the nature of the reports made to participating employees during the fiscal year in regard to the operations of the plan or the status of the employees' accounts under the plan.

Item 8. Investment of Funds.

(a) If a substantial part of the assets of the plan is invested in securities other than those of the employer, its parents or subsidiaries, state:

(1) The aggregate dollar amount of brokerage commissions paid by the plan during the three most recent fiscal years;

(2)(i) The aggregate dollar amount, if any, of brokerage commissions paid by the plan during the three most recent fiscal years to any broker (A) which is an affiliated person of the plan, (B) which is an affiliated person of such person or (C) an affiliated person of which is an affiliated person of the plan, or its investment adviser or principal underwriter, and the identity of each such broker and the relationships that cause the broker to be included in the statement; (ii) the percentage of the plan's aggregate brokerage commissions paid to each such broker during the most recent fiscal year; (iii) the percentage of the plan's aggregate dollar amount of transactions involving the payment of commissions effected through each such broker during the most recent fiscal year; and (iv) when there is a material difference in the percentage of brokerage commissions paid to, and the percentage of brokerage transactions effected through, any such broker, the reasons therefor.

Instruction. For the purpose of this Item, "affiliated person", "principal underwriter" and "investment adviser" shall have the same meaning as in the Investment Company Act of 1940. These definitions shall be read as if the plan were an investment company within the meaning of that Act.

(b) If, during the last fiscal year, the plan or its investment manager, pursuant to an agreement or understanding with a broker or otherwise through an internal allocation procedure, directed the plan's brokerage transactions to a broker or brokers because of research services provided, state the amount of such transactions and related commissions.

Item 9. Financial Statements and Exhibits.

List below all financial statements and exhibits filed as a part of the annual report:

(a) Financial statements.

(b) Exhibits.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the trustees (or other persons who administer the plan) have duly caused this annual report to be signed by the undersigned thereunto duly authorized.

_____

(Name of Plan)

DATE_____ BY_____

*Print name and title of the signing official under his signature.

INSTRUCTIONS AS TO FINANCIAL STATEMENTS

The following financial statements shall be furnished for the plan.

(a) An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

(b) An audited statement of income and changes in plan equity for each of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

Instructions

1. The statements required by this item shall be prepared and audited in accordance with the applicable provisions of Article 6C, Regulation S-X [17 CFR Part 210] and shall be accompanied by the schedule specified in that Regulation.

2. Notwithstanding Rule 6.34(a) of Regulation S-X, Schedule 1 need be filed only for the most recent period for which each statement of financial condition is filed.

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the report:

(a) Copies of all amendments or modifications, not previously filed, to all exhibits previously filed (or copies of such exhibits as amended or modified).

(b) Copies of all documents relating to the plan which are of a character required to be filed as an exhibit to a registration statement and which have been executed or otherwise put into effect and not previously filed.

STATUTORY AUTHORITY AND FINDINGS

The Commission hereby adopts the amendments to Form S-8 pursuant to the Securities Act of 1933, particularly Sections 7, 10 and 19 thereof, and the amendments to Form 11-K pursuant to the Securities Exchange Act of 1934, particularly Sections 12, 13, 15(d) and 23(a) thereof.

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they would impose no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by and is necessary and appropriate to achieve the benefits of these amendments to investors and registrants.

[Secs. 7, 10, 19, 48 Sat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908, sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 2, 52 Stat. 1075; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 10, 78 Stat. 565-568, 569, 570-574, 580; secs. 1, 2, 82 Stat. 454; secs. 28(c), 1, 2, 7(d), 84 Stat. 1435, 1497, 1653; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57 secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77g, 77j, 77s, 78*l*, 78m, 78o(d), 78w(a).]

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6203/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16718/April 2, 1980

TIMELY REPORTING—FINAL AMENDMENT OF RULE AND FORM

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Rule 12b-25 and related Form 12b-25 which will eliminate the present extension application procedure and, in lieu thereof, institute a system requiring notification of a registrant's inability to file timely all or any portion of an annual report on Form 10-K, 20-F or 11-K or a quarterly report on Form 10-Q. In addition, the amended rule provides a procedure whereby a late annual report or portion thereof filed on or before the fifteenth day after the prescribed due date or a late quarterly report or portion thereof filed on or before the fifth day after the prescribed due date will be deemed to have been filed timely. The rule will provide disclosure with respect to non-timely filing and will alleviate the burdens attendant to the application procedure while, at the same time, allowing for appropriate relief.

EFFECTIVE DATE: 30 days after publication in the Federal Register.

FOR FURTHER INFORMATION: Prior to the effective date of the amendments contact Bruce S. Mendelsohn at (202) 272-2589, thereafter contact Stephen W. Hamilton at (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted amendments to Rule 12b-25 (17 CFR 240.12b-25) under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)] which will eliminate the extension of time to file procedure and, in lieu thereof, will require notification on revised Form 12b-25 (17 CFR 249.322) when an issuer is unable to file on a timely basis all or any required portion of an annual report on Form 10-K (17 CFR 249.310), 11-K (17 CFR 249.311) or 20-F (17 CFR 249.220f) or a quarterly report on Form 10-Q (17 CFR 249.308a) required by Section 13 or 15(d) of the Exchange Act and rules thereunder. In addition, the Commission is adopting a procedure that will provide relief with respect to reports that are not timely filed because of unreasonable effort or expense. Under this provision a report will be deemed to have been filed timely if: (1) the required notification on Form 12b-25 (a) discloses that the reasons causing the inability to file timely could not be eliminated without unreasonable effort or expense, and (b) undertakes that either the subject annual report or portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or portion thereof will be filed no later than the fifth calendar day following the prescribed due date; (2) the exhibit (statement from expert) required by Rule 12b-25(c) is attached when applicable; and (3), in fact, the report is filed within the represented time period. Concurrently, the Commission is adopting a revision to Form 8-K which will retain a procedure for extensions of time to file audited financial statements required for certain acquired businesses.

BACKGROUND

On September 6, 1979, the Commission published for comment proposed amendments to Rule 12b-25 and its related form, proposed Rule 12b-26 and a proposed revision to Form 8-K.[1] The proposal would have eliminated the present extension procedure under Rule 12b-25 and substituted a new procedure which would have required notification when an issuer or reporting person was unable to file on a timely basis any report or portion thereof required by Section 13 or 15(d) of the Exchange Act. Proposed Rule 12b-26 would have required prominent disclosure on the cover page of a periodic report if a required portion of such report was omitted.[2]

Amendment of Rule 12b-25

All of the eight public comment letters received recommended that the Commission retain some provision for extensions of time because there are cases when a report cannot be timely filed without unreasonable effort or expense. With regard to the Commission's specific inquiry concerning automatic extensions of time, three of the commentators suggested that if amended Rule 12b-25 were adopted provisions for an automatic extension should be incorporated therein. The commentators generally believed that the proposed notification system should not be implemented without a corresponding automatic extension of time procedure.

In adopting these amendments to Rule 12b-25, the Commission affirms its position that required reports should be filed when due. The purposes of the Exchange Act "to insure the maintenance of fair and honest markets in securities transactions. . ."[3] may be better served without an extension application procedure. Presently, Form 12b-25 is a voluntary filing and, therefore, disclosure with regard to the timeliness of the filing of required information to which the marketplace is entitled is not always available. Because the limited benefits of the present system in terms of extension procedures are outweighed by the detriment to informed markets resulting from the lack of disclosure regarding the timeliness of the filings and by the burden imposed on the staff, the Commission believes that the system should be revised. Accordingly, the Commission is adopting the amendments essentially in the form of the proposal. However, in response to the public comment and the Commission's experience, certain revisions have been made, i.e., notifications are required only for specified forms and a relief procedure has been provided in rule 12b-25(b) (see detailed discussion *infra*).

As with the proposal, under amended Rule 12b-25,

[1]Release No. 34-16162 (September 6, 1979) [44 FR 53430].

[2]While not adopting proposed Rule 12b-26 as a separate rule, the substance thereof has been adopted in Rule 12b-25(e). Therefore, proposed Rule 12b-26, to the extent it is not adopted in Rule 12b-25, is withdrawn.

[3]Section 2 of the Securities Exchange Act of 1934, 15 U.S.C. 78b.

with one exception,[4] there will no longer be applications for extensions of time that necessitate action by the Commission or its staff. By eliminating the review requirement for extension of time requests, the Commission will be able to redeploy some resources toward the review of Exchange Act filings. As a result, this action should serve to implement one of the recommendations of the Advisory Committee on Corporate Disclosure, which noted that a substantive review of periodic reports consistent with the quality of information sought in registration statements is essential to the end product of a high quality disclosure document.[5] Finally, the amended rule will have limited consequences to registrants and will facilitate the system of continuous disclosure to investors envisioned by the Exchange Act.

Notification Requirement

Concurrent with the elimination of the extension application procedure, the Commission has adopted a new notification procedure under the rule which, unlike the proposal, relates only to annual reports on Forms 10-K, 20-F and 11-K and quarterly reports on Form 10-Q. The new procedure requires that, no later than one business day after the end of the specified period when the subject report is due, the registrant file with the Commission a notification on revised Form 12b-25 which identifies the report or portion thereof in question and gives reasons why the filing cannot be made on time. Since Form 12b-25 is intended to serve as a disclosure mechanism, it will be placed in the public files. In this manner, disclosure will be available to the public with regard to the reasons that a report or portion thereof cannot be filed within the prescribed time period.

Rule 12b-25(b)

Although an automatic extension procedure has not been incorporated into the amendment, the revision is meant to be responsive to the concerns of the commentators. The Commission believes that the rule will provide relief in those areas where it is necessary. In this regard, Rule 12b-25(b) provides that with respect to an annual or quarterly report or portion thereof which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if: (1) the required notification on Form 12b-25 (a) discloses that the reasons causing the inability to file timely could not be eliminated without unreasonable effort or expense, and (b) undertakes that either the subject annual report or portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or portion thereof will be filed no later than the fifth calendar day following the prescribed due date; (2) the registrant attaches as an exhibit to the Form 12b-25 a statement from any person, other than the registrant (such as the independent auditors), whose inability to furnish any required opinion, report or certification was the reason the report could not be timely filed without unreasonable effort or expense; and (3), the report is filed within the represented time period.

The Commission believes that this procedure will afford appropriate relief in case of unexpected circumstances that may prevent the timely filing of annual and quarterly reports. In addition, this procedure will require no responsive or affirmative action by the Commission or its staff.

It should be noted that registrants utilizing the Rule 12b-25(b) relief will not be eligible to use any registration statement form under the Securities Act of 1933 (the "Securities Act") the use of which is predicated on timely filed reports until the subject report is actually filed. Therefore, if a registrant uses Rule 12b-25(b) and complies with all of its terms, *including* the actual filing of the report within the represented time frame, Form S-7 and its counterpart registration statement forms may be available.

Timely Reporting

It should be emphasized that the new notification and relief procedures should not be taken as an excuse for non-timely reporting. Failure by public companies to observe the periodic reporting requirements presents an obstacle to the maintenance of fair and informed trading markets in the securities of publicly-held companies. The pricing mechanism of the market is dependent on timely information and, thus, late reporting may adversely affect the quality of this process. In this

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[4]The Commission has retained an extension of time to file procedure for audited financial statements required by Items 2 and 7 of Form 8-K for certain acquired businesses. See revised Instruction 4 to Item 7(a) of Form 8-K, *infra*.

[5]Report of the Advisory Committee on Corporate Disclosure, Chapter XIV, Page 427 (1977).

regard, the Commission will, of course, continue to consider enforcement actions in connection with delinquent reporting. In addition, as stated in the proposing release, the applicability of various rules and availability of certain disclosure forms under the Securities Act of 1933 is predicated upon full compliance with the periodic reporting requirements. For example, the use of Form S-7 or S-16 for registration of certain public offerings of securities depends in part upon a company having filed *timely* reports pursuant to Section 13 or 15(d) of the Exchange Act for at least the twelve calendar months preceding the filing of the registration statement. Rule 15c2-11 under the Exchange Act requires a dealer to have certain information concerning an issuer before its securities may be quoted by that dealer. Rule 144 under the Securities Act requires the filing of all Exchange Act reports required to be filed for the 12 months immediately preceding a sale.

Certain Findings

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they impose no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors and registrants.

Text of Amended Rule and Forms

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By revising General Instruction A(b)(2) of §239.26 to read as follows:

§239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form S-7

* * * * *

(b) * * *

(2) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and if the registrant has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has *actually* been filed within the time period prescribed by that rule.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By revising §240.12b-25 to read as follows:

§240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K or 10-Q.

(a) If all or any required portion of an annual report on Form 10-K, 20-F or 11-K or a quarterly report on Form 10-Q required to be filed pursuant to sections 13 or 15(d) of the Act and rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of the inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The registrant files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The registrant represents in the Form 12b-25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the registrant without unreasonable effort or expense; and

(ii) Either the subject annual report/portion thereof will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report/portion thereof will be filed no later

than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certificate, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) Notwithstanding paragraph (b) of this section, a registrant will not be eligible to use any registration statement form under the Securities Act of 1933 the use of which is predicated on timely filed reports until the subject report is actually filed pursuant to paragraph (b)(3) of this section.

(e) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the registrant shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report (required to be filed on Form 8) which includes the previously omitted information, the following statement:

> The following items were the subject of a Form 12b-25 and are included herein: (*List Item Numbers*)

(f) The provisions of this section shall not apply to:

(1) Financial statements to be filed by amendment in accordance with Instruction 3(b) of Instructions as to Financial Statements of Form 10-K or schedules to be filed by amendment in accordance with General Instruction A to Form 10-K; or

(2) Reports required to be filed by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a et seq.] pursuant to the provisions of that Act or the rules provided thereunder, notwithstanding the fact that such reports are also required to be filed by the Securities Exchange Act of 1934 or the rules adopted thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By revising Instruction 4 to Item 7(a) of Form 8-K to read as follows:

§249.308 Form 8-K, for current reports.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) Financial statements of business acquired

Instructions
[Instructions 1 through 3 remain unchanged.]

4. Filing of Other Financial Information in Certain Cases.

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, extend the time for filing the financial statements herein required or permit the omission of one or more of such financial statements or the filing in substitution therefor of appropriate statements of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practical difficulties. A written request for such relief should be submitted separately from the subject report or the cover letter to the report. The request other than a request for an extension of time to file (except where necessary for a determination of the request) shall set forth the following information:

* * * * *

4. By revising §249.322 to read as follows:

§249.322 Form 12b-25 Notification of late filing.

This form shall be filed pursuant to §240.12b-25 of this chapter by issuers who are unable to timely file all or any required portion of an annual report on Form 10-K, 20-F or 11-K or a quarterly report on

Form 10-Q required by sections 13 or 15(d) of the Act. The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, D.C. 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from "Publications," Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-272-2960.

[Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 658; sec. 1, 79 Stat. 1051. Secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 469, 570-574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500. 15 U.S.C. 77f, 77g, 77j, 77s(a), 78m, 78o(d), 78w(a)]

The Commission is adopting these amendments pursuant to the Securities Act of 1933, particularly sections 6, 7, 10 and 19(a) thereof, and the Securities Exchange Act of 1934, particularly sections 13, 15(d) and 23(a).

The Commission finds that any changes in the amended rule and forms adopted from those published in Securities Exchange Act Release No. 16162 have already been generally subject to comment so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

George A. Fitzsimmons
Secretary

Form 12b-25 has been filed in the Office of Federal Register as part of the original document. Copies may be obtained from "Publications," Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-272-2960.

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 12b-25

NOTIFICATION OF LATE FILING

SEC FILE NUMBER
CUSIP NUMBER

(Check One):

☐ Form 10-K ☐ Form 11-K ☐ Form 20-F ☐ Form 10-Q

For Period Ended: _____

Read Attached Instruction Sheet Before Preparing Form. Please Print or Type.

Nothing in this Form Shall be construed to imply that the Commission has verified any information contained herein.

If the notification relates to a portion of the filing checked above, identify the Item(s) to which the notification relates: _____

Part I — Registrant Information

Full Name of Registrant

Former Name if Applicable

Address of Principal Executive Office *(Street and Number)*

City, State and Zip Code

Part II — Rules 12b-25 (b) and (c)

If the subject report could not be filed without unreasonable effort or expense and the registrant seeks relief pursuant to Rule 12b-25(b), the following should be completed. (Check box if appropriate)

☐

(a) The reasons described in reasonable detail in Part III of this form could not be eliminated without unreasonable effort or expense;

(b) The subject annual report/portion thereof will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report/portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and

(c) The accountant's statement or other exhibit required by Rule 12b-25(c) has been attached if applicable.

Part III — Narrative

State below in reasonable detail the reasons why the Form 10-K, 11-K, 20-F or 10-Q, or portion thereof, could not be filed within the prescribed time period.

(Attach Extra Sheets if Needed)

Part IV — Other Information

(1) Name and telephone number of person to contact in regard to this notification

(NAME) (AREA CODE) (TELEPHONE NUMBER)

(2) Have all other periodic reports required (under Section 13 or 15(d) of the Securities Exchange Act of 1934) during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) been filed? If answer is no, identify report(s)

☐ YES ☐ NO

(3) Is it anticipated that any significant change in results of operations from the corresponding period for the last fiscal year will be reflected by the earnings statements to be included in the subject report or portion thereof?

☐ YES ☐ NO

If so, attach an explanation of the anticipated change, both narratively and quantitatively, and, if appropriate, state the reasons why a reasonable estimate of the results can not be made.

(NAME OF REGISTRANT AS SPECIFIED IN CHARTER)

has caused this notification to be signed on its behalf by the undersigned thereunto duly authorized.

DATE _____ BY _____

INSTRUCTION: The form may be signed by an executive officer of the registrant or by any other duly authorized representative. The name and title of the person signing the form shall be typed or printed beneath the signature. If the statement is signed on behalf of the registrant by an authorized representative (other than an executive officer), evidence of the representative's authority to sign on behalf of the registrant shall be filed with the form.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (See 18 U.S.C. 1001).

GENERAL INSTRUCTIONS

1. This Form is required by Rule 12b-25 (17 CFR 240. 12b-25) of the General Rules and Regulations under the Securities Exchange Act of 1934.
2. One signed original and four conformed copies of this Form and amendments thereto must be completed and filed with the Securities and Exchange Commission, Washington, D.C. 20549, in accordance with Rule 0-3 of the General Rules and Regulations under the Act. The information contained in or filed with the Form will be made a matter of the public record in the Commission files.
3. A manual signed copy of the form and amendments thereto shall be filed with each national securities exchange on which any class of securities of the registrant is registered.
4. Amendments to the notifications must also be filed on Form 12b-25 but need not restate information that has been correctly furnished. The Form shall be clearly identified as an amended notification.
5. These general instructions are not to be filed with the notification. Please detach before mailing the Form.

SECURITIES ACT OF 1933
Release No. 6204/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16720/April 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21510/April 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11113/April 2, 1980

(1) Proposed Amendments to Annual Report Form; Integration of Securities Acts Disclosure Systems

(2) Business Combination Transactions; Proposed Short Form for Registration and Proposed Amendment of Related Rules

(3) General Revision of Regulation S-X

(4) Uniform Instructions as to Financial Statements—Regulation S-X

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission announced today that it has extended, by 15 days, the dates by which comments on four related releases issued on January 15, 1980, which were published in Part II of the Federal Register of January 24, 1980, must be submitted. The Commission has received requests that the comment periods be extended and believes that 15 day extensions will be beneficial because they will result in the receipt of additional useful comments.

DATES: Comments must be received on or before April 30, 1980 or May 15, 1980, respectively.

ADDRESSES: All communications on the matters discussed in this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File S7-816, S7-817, S7-818, or S7-819, as appropriate, and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: The following persons, all at the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549: (1) as to the first release, William H. Carter (202-272-2604), Division of Corporation Finance; (2) as to the second release, Catherine Collins (202-272-2589), Division of Corporation Finance; (3) as to the third release, Arthur J. Schmeiser or Rita Gunter (202-272-2133), Office of the Chief Accountant; and (4) as to the fourth release, Lawrence C. Best (202-272-2130), Office of the Chief Accountant.

SUPPLEMENTARY INFORMATION: The four releases enumerated below were originally issued for comment on January 15, 1980. In order to receive the benefit of the comments of the greatest number of interested persons and in view of the requests received by the Commission for additional time in which to comment, the Commission has extended the comment periods for the four releases by 15 days, until April 30 or May 15, 1980. In this regard the attention of interested parties is directed to the Commission's "Rules of Practice" (17 CFR 201.27, 201.28) and "Informal and Other Procedures" (17 CFR 202.6), which provides that the Commission may, in its discretion, accept and include in the public record written comments filed with the Commission after the closing date.

The first release,[1] entitled "Proposed Amendments to Annual Report Form; Integration of Securities Act Disclosure Systems," originally had a comment period ending April 15, 1980. This period has now been extended until April 30, 1980. The second release,[2] entitled "Business Combination Transactions—Proposed Short Form for Registration and Proposed Amendments of Related Rules," also originally had a comment period ending April 15, 1980. This period has now been extended until April 30, 1980. The third release,[3] entitled "General Revision of Regulation S-X," originally had a comment period ending April 30, 1980. This period is now extended until May 15, 1980. The fourth release,[4] entitled "Uniform Instructions as to

[1]Securities Act of 1933 Release No. 6176, File No. S7-816 (January 15, 1980) [45 FR 5972].

[2]Securities Act of 1933 Release No. 6177, File No. S7-817 (January 15, 1980) [45 FR 5934].

[3]Securities Act of 1933 Release No. 6178, File No. S7-818 (January 15, 1980) [45 FR 5943].

[4]Securities Act of 1933 Release No. 6179, File No. S7-819 (January 15, 1980) [45 FR 5963].

Financial Statements—Regulation S-X," as with the third release, had a comment period ending April 30, 1980 which has now been extended to end May 15, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6205/April 3, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11114/April 3, 1980

REVISED PROCEDURES FOR PROCESSING POST-EFFECTIVE AMENDMENTS FILED BY INVESTMENT COMPANIES

ACTION: Proposed rulemaking and amendments to forms.

SUMMARY: The Securities and Exchange Commission is proposing for public comment a rule which would permit most post-effective amendments to registration statements filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, without affirmative action on the part of the Commission or its staff. The Commission is also proposing amendments to the registration statement forms for open-end management investment companies and unit investment trusts to require such registrants to specify the provision of the rule pursuant to which their amendments would become effective. Under the proposed rule, post-effective amendments filed for certain purposes would become effective immediately upon filing, while others would become effective on the sixtieth day after filing.

DATE: Comments must be received on or before June 2, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-829. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2115 or Kathleen A. Jackson, Attorney, (202) 272-2118, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today publishing for comment a new proposed rule under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a *et seq.*] and related amendments to Form S-6, the registration statement form for unit investment trusts under the 1933 Act [17 CFR 239.16], and Form N-1, the registration statement form for open-end management investment companies under the 1933 Act and Investment Company Act of 1940 ("1940 Act") [17 CFR 239.15, 17 CFR 274.11]. The new rule and related form amendments would result in elimination of routine staff review of, and comment on, certain post-effective amendments filed by investment company registrants on Form S-6 or Form N-1. These amendments would become effective upon filing with the Commission. Other post-effective amendments filed by investment company registrants, including those which contain disclosure relating to material events occurring since the effective date of the issuer's registration statement or its most recent post-effective amendment which included a prospectus, would still be subject to staff review and comment, but would normally become effective automatically 60 days after filing.

Some of the events which the Commission deems material and which, therefore, would trigger staff review of an amendment are listed in the rule. These events include changes in the registrant's investment objectives or fundamental policies, suspension of sales or redemptions of registrant's shares, termination of an investment advisory contract, and, in certain circumstances, resignation of the registrant's independent public accountant or of one of its directors. However, the list set forth in the rule is not intended to be exhaustive, and any other event which in the judgment of the registrant is material would trigger staff review.

Where the staff's review reveals circumstances suggesting that the post-effective amendment should not become effective after the 60-day period, the proposed rule provides that the operation of its

best copy available

automatic effectiveness provision may be suspended upon written notice to the registrant. Should the automatic effectiveness provision of the rule be suspended with respect to a particular post-effective amendment, the amendment would not become effective until it was so declared by the Commission in accordance with section 8(c) of the 1933 Act [15 U.S.C. 77h(c)]. A hearing would be held if the registrant so requested. The proposed rule also provides that the Commission can declare an amendment effective before the 60-day period has elapsed. However, it is contemplated that this power would be exercised only in the most unusual circumstances.

If the proposed rule and form amendments are adopted, the Commission will adopt an amendment to its Rules of Organization and Program Management [17 CFR 200.1 et seq.] delegating to the staff the authority to suspend automatic effectiveness and declare amendments effective pursuant to the rule.

General Background

Investment companies which issue redeemable securities file post-effective amendments to their 1933 Act registration statements for a number of reasons associated with the continuous offering and sale of securities to the public. For example, section 24(e)(1) of the 1940 Act [15 U.S.C. 80a-24(e)(1)] permits investment companies which issue redeemable securities to increase the amount of their securities registered under the 1933 Act by post-effective amendment to their registration statements. Moreover, pursuant to section 24(f) of the 1940 Act [15 U.S.C. 80a-24(f)] and rule 24f-2 [17 CFR 270.24f-2] thereunder, such investment companies are permitted to register an indefinite number or amount of securities by post-effective amendment. In addition, because an investment company that continuously offers and sells securities to the public must also maintain a current prospectus, such companies must bring their prospectuses up to date at approximately yearly intervals. The necessity of updating prospectuses at intervals of approximately one year results from the requirement of section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)], that "when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use." Pursuant to section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)], any prospectus relating to a redeemable security issued by an investment company which is updated to meet the requirements of section 10(a)(3) must be filed as a post-effective amendment to the issuer's registration statement.

Accordingly, most open-end management investment companies and unit investment trusts annually file post-effective amendments with the Commission in order to update the financial and narrative disclosures contained in their prospectuses, to register additional securities, or both. Post-effective amendments might also be filed by such registrants to correct deficiencies in their registration statements discovered after the registration statements have become effective, or to incorporate in the prospectus any important changes or developments in the business, operations or services of the company. Pursuant to section 8(c) of the 1933 Act, post-effective amendments are declared effective by the Commission or its staff pursuant to delegated authority. There is presently no procedure for such amendments to become effective through lapse of time.

The number of registered investment companies, and thus the number of post-effective amendments filed by such companies, has increased over the years. In an effort to maintain expeditious processing of filings in the face of this increase, the Commission's Division of Investment Management has previously implemented several procedures. The first of these procedures was the two-part filing procedure, adopted in 1976. Under this procedure registrants are requested to file, two months before the end of their fiscal year, a post-effective amendment containing only the narrative portion of the prospectus, marked to indicate any differences between that filing and the registrant's most recently effective prospectus. The "part-two" filing, which registrants are asked to file following the close of the fiscal year, contains financial statements for the year and any changes made as the result of comments on the narrative. The two-part filing procedure was instituted to help ensure that any problems regarding disclosure in a post-effective amendment could be resolved in advance of its requested effective date.[1] In 1978, a procedure for "redline" review of post-effective filings by investment

[1]See Securities Act Release Nos. 5738 (Sept. 3, 1976) [41 FR 39013, Sept. 14, 1976]; 5439 (Nov. 14, 1973) [38 FR 32613, Nov. 27, 1973] and 5305 (Sept. 21, 1972) [32 FR 20317, Sept. 29, 1972].

company registrants was instituted.[2] Although the two-part filing procedure remains in effect, review of annual updating post-effective amendments is now ordinarily limited to financial statements, narrative material which is marked to indicate textual changes, and areas in which recent developments suggest that changes in disclosure are likely to be appropriate.

While these changes have helped the Commission to make efficient use of its resources, the total number of post-effective filings made by investment company registrants under the 1933 Act has continued to increase. For this and other reasons there appears to be a need for further changes in review procedures in order to assure that the Commission's resources are concentrated on those areas where review is necessary, and that such review is accomplished thoroughly, timely, and in a manner fair to registrants.

Under proposed rule 465, certain routine filings would become effective automatically upon filing without prior staff review. Post-effective amendments which discuss material changes in investment company operations would continue to be reviewed by the staff in advance of effectiveness and would be the subject of staff comments. In most cases, however, such filings would become effective automatically on the sixtieth day after filing. If such a filing presented serious disclosure problems, the provisions of the rule providing for automatic effectiveness might be suspended, and the amendment would not become effective until it was so declared by the Commission or the staff in accordance with section 8(c). The Commission anticipates that the automatic effectiveness provisions of the rule normally would not be suspended unless the Commission had authorized an injunctive action or administrative proceeding against the registrant or persons associated therewith. Thus, the fact that automatic effectiveness was not suspended, and the amendment was permitted to become effective after 60 days in accordance with the rule, could not properly be construed to mean that matters relating to the amendment would not be the subject of Commission action in the future.

As proposed, the rule applies only to open-end management investment companies and unit investment trusts, provided that they are not registered separate accounts of insurance companies as defined in section 2(a)(37) of the 1940 Act [15 U.S.C. 80a-2(a)(37)]. Insurance company separate accounts have been excluded from the coverage of the proposed rule because their post-effective filings frequently contain disclosure about material changes in their products or about aspects of their operations requiring exemptive relief under the 1940 Act before such filings can become effective. Such disclosure would appear to require close scrutiny in the review process, which might not be susceptible of completion within 60 days. Nonetheless, if the proposed rule is adopted and provides beneficial to registrants and the Commission, the Commission may later consider the feasibility of making it applicable to other types of investment company registrants.

PROPOSED RULE AND RELATED AMENDMENTS

The proposed rule provides that three types of post-effective amendments, specified in paragraph (b) of the rule, will become effective immediately upon filing with the Commission. The post-effective amendments which would become effective upon filing are those which are filed for no purpose except: (1) registering additional securities pursuant to section 24(e)(1) of the 1940 Act; (2) registering an indefinite number or amount of securities pursuant to section 24(f) of the 1940 Act and rule 24f-2 thereunder; and (3) if certain conditions are met, updating the financial and other disclosure contained in the registrant's prospectus in accordance with section 10(a)(3) of the 1933 Act ("annual updating amendment"). Under paragraph (b)(3) of the rule, when a registrant proposes that its annual updating amendment is to become effective upon filing, the amendment must be accompanied by the registrant's representation that none of the events specified in paragraph (b)(2) of the rule and discussed below, and no other material events requiring disclosure in the prospectus, have occurred since the effective date of the registrant's most recently effective registration statement or post-effective amendment containing a prospectus. Pursuant to paragraph (f) of the rule, these representations must be supported by an opinion of registrant's counsel, if the post-effective amendment was prepared or reviewed by counsel, that no facts have come to counsel's attention which would lead counsel to believe that the amendment could not properly be filed pursuant to paragraph (b).

[2]See Securities Act Release No. 5988 (Oct. 19, 1978) [43 FR 49886, Oct. 25, 1978].

Paragraph (b)(2) of the rule lists six events which would cause an amendment to become subject to staff review during the 60 days after filing pursuant to paragraph (a) of the proposed rule, rather than becoming effective immediately pursuant to paragraph (b). As part of its review process, the staff would make comments concerning post-effective amendments in this category, as it does now with respect to all types of post-effective amendments. As indicated above, the list set forth in paragraph (b)(2) is not intended to be exhaustive. A post-effective amendment containing disclosure about any other event which the registrant represents to be material and requiring disclosure in the prospectus would be subject to staff review pursuant to paragraph (a) of the rule. The events listed in paragraph (b)(2) are those which the Commission views as clearly material to the investing public, or likely to present complex legal or factual problems requiring close scrutiny, and possible comments, as a matter of course. The Commission believes that in such cases the review process is necessary even though disclosure regarding some of these events may have been reviewed in the context of proxy solicitation material. These events are as follows: (1) a termination of an investment advisory contract; (2) a change in the registrant's investment objectives, in any of the policies listed in section 8(b)(1) of the 1940 Act [15 U.S.C. 80a-8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the 1940 Act [15 U.S.C. 80a-13], is changeable only by shareholder vote; (3) a suspension of sales or redemptions of securities issued by the registrant; (4) the resignation of any of the registrant's directors, unless the registrant represents that the resignation was not due to disagreement with the registrant on any matter relating to the registrant's operation, policies or practices; (5) a change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles, practices or financial statement disclosures; and (6) if the registrant is a unit investment trust (other than one whose assets consist only of securities issued by a management investment comnpany), any substitution by the depositor or trustee of securities held by the trust with a value of 5% or more of the trust's net assets.

As stated above, the staff would review and comment upon those amendments which are within the purview of paragraph (a). As a result of comments, it might be appropriate for a registrant to file additional amendments to reflect changes in disclosure suggested by the staff before the amendment becomes effective. It is anticipated that this refiling normally would occur before the 60-day period specified in paragraph (b) has elapsed. Paragraph (e) of the proposed rule provides that if a post-effective amendment is filed before a previously filed amendment has become effective, only the most recently filed post-effective amendment will become effective. Pursuant to paragraph (a), if the effective date is not advanced, the effective date of the latest amendment would be the sixtieth day after its filing.

When a registrant has filed an additional amendment solely to make changes in disclosure suggested by the staff, the staff would normally employ the provisions of paragraph (a) of the rule to advance the effective date of the modified amendment so as to enable it to become effective on the sixtieth day after the original amendment was filed. In addition, the power to set an earlier effective date would be employed for filings (other than annual updating amendments) that are necessitated by changes in the registrant's business, operations or services, where the changes are such that it would be inappropriate for the registrant to continue to sell shares pending effectiveness of the amendment containing the revised prospectus. In order to ensure fair and orderly processing, the power to set an earlier effective date would not be used for any other purpose, except in the most unusual circumstances. Thus, the fact that a registrant's prospectus is, or is about to become, stale would not be considered sufficient reason for the Commission or staff to exercise its power to set an effective date earlier than 60 days after filing. Therefore, it would be imperative that registrants file their post-effective amendments at least 60 days before their prospectuses are due to become stale, if the amendment is of the type that will not become effective immediately upon filing.

Paragraph (d) of the proposed rule provides that where a post-effective amendment is filed in accordance with the terms of paragraph (a) of the rule, and it appears to the Commission that the amendment may be incomplete or inaccurate in any material respect, the operation of paragraph (a) of the rule may be suspended. Automatic effectiveness of an amendment would not be suspended except on written notice furnished to the registrant before the amendment would have become effective under that section.

Paragraph (d) of the proposed rule also provides that, should the operation of paragraph (a) be suspended with respect to a post-effective filing, the registrant would be entitled to file at any time a petition for review of the suspension of automatic effectiveness. Such petition could be in the form of a letter or other statement, but should set forth with particularity the facts upon which the petitioner relies. If the registrant so requested in the petition, the opportunity would be provided for presentation of all material facts at a hearing on the matter. The purpose of the hearing would be to determine whether suspension of the operation of paragraph (a) is in the public interest and required for the protection of investors, and whether the amendment should be declared effective pursuant to section 8(c) of the 1933 Act. Once automatic effectiveness had been suspended with respect to a post-effective amendment, the amendment would thereafter become effective only when declared effective on a date determined by the Commission or the staff in accordance with section 8(c) of the 1933 Act (as is the case now for all post-effective amendments). As noted earlier, this power to delay effectiveness beyond 60 days would usually be exercised only where the Commission had authorized injunctive action or administrative proceedings against the registrant or persons associated with it. If a post-effective amendment appears to raise the possibility of being materially incomplete or inaccurate, but the Commission was not prepared at that time to take action against the registrant, the amendment normally would be allowed to become effective. If the Commission later determined that the amendment was materially incomplete or inaccurate, of course it would reserve the right to pursue available remedies when that determination was made.

If rule 465 is adopted, the staff would prepare notifications of effectiveness only for those amendments as to which the effective date had been advanced and those which were made effective following suspension of effectiveness. Thus, notifications of effectiveness would not be prepared for amendments which become effective automatically on the sixtieth day after filing pursuant to paragraph (a) or immediately upon filing pursuant to paragraph (b) of the proposed rule. Rule 474 under the 1933 Act [17 CFR 230.474] states that the date on which amendments are actually received by the Commission shall be the filing date. Since registrants would be responsible for determining the effective dates of their post-effective amendments, they should take into account whatever time might be required for the amendments to be delivered to the Commission. Registrants which file amendments in person might wish to provide an extra copy of the amendment or the cover letter to be date-stamped and returned to the registrant. Registrants which do not file their amendments in person at the Commission might choose to send their amendments by certified mail so that they would receive a receipt. As an alternative, a stamped self-addressed envelope should be sent as part of the filing together with a duplicate of the cover letter so that the duplicate could be date-stamped and returned to the registrant.

To facilitate implementation of the proposed rule, it is proposed to amend the facing pages of Forms S-6 and N-1 to include a question as to the provision of rule 465 under which the registrant intends its amendment to become effective. Paragraph (c) of the proposed rule makes such a recitation a condition to effectiveness under the rule. Because the proposed rule, if adopted, would provide the exclusive procedure for the review and processing of all post-effective amendments filed by open-end management investment companies and unit investment trusts other than registered separate accounts, an amendment which did not make such a recitation would not be reviewed and declared effective by the staff as heretofore. Rather, it would be deemed not to have been filed and would be returned to the registrant.

Registrants are reminded that, regardless of whether the proposed rule is adopted, the statutory burden of full disclosure is on the issuer, its affiliates, the underwriter, the accountants and others responsible for the filing. As a matter of law, this burden cannot be shifted to the Commission or its staff.

TEXT OF THE PROPOSED RULE AND PROPOSED AMENDMENTS TO FORM N-1 AND FORM S-6

I. It is proposed to amend Part 230 of Chapter II of Title 17 of the Code of Federal Regulations by adding a new §230.465 as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.465 Effective date of post-effective amendments filed by certain registered investment companies.

(a) Except as otherwise provided in this section, a post-effective amendment to a registration

statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the sixtieth day after the filing thereof, unless the Commission, having due regard to the public interest and the protection of investors, declares such amendment effective on an earlier date.

(b) A post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the date upon which it is filed with the Commission, provided that the following conditions are met:

(1) It is filed for no purpose other than:

(i) Increasing the number or amount of securities proposed to be offered pursuant to section 24(e)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(e)(1)];

(ii) Registering an indefinite number or amount of securities pursuant to section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(f)]; and

(iii) Bring the financial statements and other information up to date pursuant to section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)];

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 [15 U.S.C. 80a-13], is changeable only by shareholder vote;

(iii) Suspension of sales or redemptions of securities issued by the registrant;

(iv) Resignation of any of the registrant's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the registrant's operations, policies or practices;

(v) A change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountants on any matter of accounting principles or practices or financial statement disclosures; or

(vi) If registrant is a unit investment trust the assets of which do not consist solely of securities issued by a management investment company, any substitution by the depositor or trustee of the trust of securities held by the trust with a value of 5% or more of the trust's net assets; and

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later.

(c) A post-effective amendment of a registered open-end management company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall be deemed filed only if it recites on the facing page thereof the provision of this section pursuant to which the registrant proposes that the amendment will become effective.

(d) No amendment shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the operation of paragraph (a) of this section is to be suspended with respect to the amendment. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review for the

suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the operation of paragraph (a) of this section with respect to an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(e) A post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(f) The representations of the registrant referred to in paragraphs (b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be supported by an opinion of counsel to the registrant, if counsel prepared or reviewed the post-effective amendment, that no facts have come to counsel's attention which would lead counsel to believe that the amendment may not properly be filed pursuant to paragraph (b) of this section.

II. It is proposed to amend Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations by:

1. Amending the facing sheet of Form N-1 as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

§274.11 Form N-1, registration statement of open-end management investment companies.

Insert the following after "Approximate Date of Proposed Public Offering":

☐Check box if it is proposed that this filing will become effective 60 days after filing pursuant to paragraph (a) of Rule 465.

☐Check box if it is proposed that this filing will become effective immediately upon filing pursuant to paragraph (b) of Rule 465.

2. Amending the facing sheet of Form S-6 as follows:

§239.16 Form S-6, for unit investment trusts registered on Form N-8B-2.

Insert the following after "Name and Complete address of agent for service":

☐Check box if it is proposed that this filing will become effective 60 days after filing pursuant to paragraph (a) of Rule 465.

☐Check box if it is proposed that this filing will become effective immediately upon filing pursuant to paragraph (b) of Rule 465.

STATUTORY AUTHORITY: The Commission hereby publishes for comment proposed rule 465 and proposed amendments to Form S-6 and Form N-1, pursuant to the provisions of Sections 7, 8, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77a, 77h and 7s(a)], Sections 8 and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-8 and 80a-37(a)].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16704/March 28, 1980

The Securities and Exchange Commission announced pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act") a ten day suspension of exchange and over-the-counter trading for the period commencing at 12:00 midnight (EST) on March 30, 1980 and terminating at midnight (EST) on April 9, 1980 unless sooner ordered by the Commission, of the securities of McDowell Enterprises, Inc. ("McDowell"), a Tennessee corporation with its principal executive offices located at 301 Plus Park Boulevard, Nashville, Tennessee 37217.

The Commission on March 11, 1980 ordered a ten day suspension of trading in McDowell securities to expire at midnight (EST) March 20, 1980 (See Release No. 16643/March 11, 1980). At the time of the order the Commission announced its concerns about an undisclosed accumulation of a block of McDowell stock by an undisclosed group of investors and unexplained trading in McDowell stock.

The Commission on March 20, 1980 ordered a ten day suspension of trading in McDowell securities which will expire at midnight (EST) March 30, 1980 (See Release No. 16682/March 20, 1980). In announcing that suspension, the Commission expressed concern over serious additional and separate questions concerning the possible disruptive impact on the trading market for McDowell securities resulting from the availability for sale of substantial block of such securities due to the failure of customers owning 500,000 shares of McDowell or 21% of the outstanding shares of McDowell to meet a margin call from their broker-dealer.

The Commission has ordered this ten day trading suspension in the securities of McDowell in view of a contemplated Commission enforcement action to be filed within the suspension period which will, among other things, involve a plan which will provide for the orderly disposition of approximately 500,000 shares of McDowell securities. Moreover, the Commission ordered the trading suspension at the request of McDowell in order that it enable the company to make disclosure and dissemination of information concerning its business operations.

The Commission notes that it may determine to terminate the suspension of trading in McDowell securities before the ten day suspension period expires, if appropriate.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16705/March 28, 1980

Admin. Proc. File No. 3-5561

In the Matter of the Applications of

COOK & CO., INC.
130 Merchant Street
Honolulu, Hawaii

and

L. HOWARD COOK
EDMUND C. H. HYUN

FOR REVIEW OF DISCIPLINARY ACTION TAKE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Antifraud Provisions

Concealment of Identity of Purchaser

Where member firm of registered securities association and its president and vice president concealed from the seller the fact that the firm was seeking to purchase certain hard-to-obtain bonds because of the seller's known animosity to president, *held,* association's finding that applicants violated antifraud provisions of the Securities Exchange Act, and its assessment of sanctions and costs, *set aside,* since no material fraud was practiced on the seller. Personal prejudice is not within the protective net of the antifraud provisions.

APPEARANCES:

Lawrence I. Weisman, for applicants.

Frank J. Wilson, Andrew McR. Barnes, and *Peter J. Chepucavage,* for the National Association of Securities Dealers, Inc.

I.

Cook & Co., Inc. ("the firm"), a member of the National Association of Securities Dealers, Inc. ("NASD"), appeals from two related NASD disciplinary actions. L. Howard Cook ("Cook"), the firm's president, and Edmund C. H. Hyun, its vice president, are parties to the second appeal. The NASD found that applicants violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder by using nominee accounts in an effort to purchase certain municipal bonds from another NASD member, Donald Sheldon & Co., Inc.[1] It censured applicants, suspended each of them for five business days, and fined the firm $3,500 and Cook and Hyun $500 each.[2]

II.

The NASD's findings may be summarized as follows. Prior to forming his own firm, Cook was manager of Sheldon's Honolulu branch office. In 1975, both Sheldon and Cook were involved in a lawsuit in which Sheldon alleged that Cook illegally conspired to use Sheldon's customer lists and lure away Sheldon's personnel in order to set up his own firm. The court found in favor of Cook and denied Sheldon's request for an injunction.

In 1976, the firm wished to purchase certain hard-to-obtain municipal bonds which Sheldon was advertising in the newspapers.[3] Cook and Hyun both knew that, in light of the antagonism between Sheldon and Cook, Sheldon would not sell the bonds to Cook & Co. They accordingly arranged for the purchases to be made by Virginia Krosevic, the wife of one of the firm's registered representatives.

Using her maiden name of Virginia Herman, Krosevic opened an account at Sheldon and purchased 235 of the bonds on September 10 and 14, 1976.[4] Sheldon was instructed to deliver the bonds to the First Hawaii Bank on a delivery against payment basis. However, due to the size of the order, Sheldon's branch manager checked with the bank and discovered that payment arrangements had been made by Michael Krosevic. Sheldon also ascertained that Krosevic was a registered representative of Cook & Co. It thereupon cancelled the purchases and refused to deliver the bonds.

Cook & Co. had already resold the bonds to its customers so that Sheldon's cancellation created a short position that had to be covered. In a renewed effort to obtain the bonds, Hyun, identifying himself as Isao Yamashiro, his brother-in-law, telephoned Sheldon and opened an account in Yamashiro's name. On September 22, Hyun purchased 25 bonds in the Yamashiro account and, from November 18 through November 26, made four more purchases totalling 25 additional bonds. On December 1, Sheldon discovered that Hyun was the real purchaser of the bonds, and cancelled the last four transactions.

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[1]The NASD's Rules of Fair Practice do not apply to transactions in exempted securities such as municipal bonds. NASD Manual para 2004, p. 2011. Section 19(g)(1)(B) of the Exchange Act empowers the NASD to enforce compliance with the Act and the rules thereunder.

[2]The NASD also assessed costs.

[3]The bonds in question were Hawaiian Department of Transportation Special Facility Revenue Bonds, Pan American Airlines, 8%, due April 1, 2002.

[4]The total purchase price was $247,666.71.

III.

Applicants dispute the NASD's findings of fact. But, even assuming the accuracy of those findings, we are unable to conclude that the NASD's findings of violation should be sustained. In our view, while the facts set forth above might justify a determination that applicants failed to observe "high standards of commercial honor and just and equitable principles of trade," they are not a sufficient basis for concluding that applicants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

There are, of course, situations in which concealment of a purchaser's true identity may constitute a material misstatement or omission.[5] But where, as here, applicants concealed their identities merely because of the seller's animosity, we are unable to conclude that a material deception was practiced on Sheldon. In our view, personal prejudice does not fall within the protective net of Rule 10b-5.[6]

Under the circumstances, we conclude that that the NASD's findings of violation, and the sanctions and costs it assessed, must be set aside.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and POLLACK).

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16705/March 28, 1980

Admin. Proc. File No. 3-5561

In the Matter of the Applications of

COOK & CO., INC.
130 Merchant Street
Honolulu, Hawaii

and

L. HOWARD COOK
EDMUND C. H. HYUN

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER SETTING ASIDE DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Cook & Co., Inc., L. Howard Cook and Edmund C. H. Hyun, and the Association's assessment of costs, be, and they hereby are, set aside.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16706/March 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-1

The Pacific Stock Exchange Incorporated ("PSE") submitted on March 12, 1980, a proposed rule change under Rule 19b-4 to adopt a set of rules that would conform its rules on arbitration[1] to the Uniform Code of Arbitration ("Code"),[2] which was

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[5]See, e.g., *Strong* v. *Repide*, 213 U.S. 419, 431-434 (1909). See also 5 Jacobs, The Impact of Rule 10b-5, §61.04(c)(i) (1979), and the authorities cited therein.

[6]See *Barnett* v. *Kirshner*, 527 F.2d 781, 785 (C.A. 2, 1975). See also *Niederhoffer, Cross & Zeckhauser, Inc.* v. *Telstat Systems, Inc.*, 436 F. Supp. 180, 187 (S.D.N.Y., 1977).

[1]For the PSE's current arbitration rules, see PSE Rule XII. PSE Manual (CCH) paras 5300-5345, at pages 3127-3127.7.

[2]The Code was published on December 28, 1978, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

drafted by the Securities Industry Conference on Arbitration ("SICA"),[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

The proposal would revoke the present PSE arbitration rules[4] and adopt the entire Code as PSE Rule XII. The proposal incorporates simplified arbitration procedures regarding small claims not exceeding $2500.[5] Additionally, the proposed rule change would apply to claims between members as well as to claims against members raised by customers and non-members.[6]

The purpose of the proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the PSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[7]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 31, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change which are filed with the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[3]SIC was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]The proposal would revoke in its entirety the existing PSE Rule XII, containing the procedural rules governing arbitration. *See, supra*, note 1.

[5]*See* proposed PSE Rule XII, Section 2.

[6]*See* proposed PSE Rule 1(a).

[7]The Code has already been adopted by the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange ((Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); the American Stock Exchange, Inc. ((Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (January 29, 1980), 45 FR 5863 (January 24, 1980)); the Midwest Stock Exchange, Incorporated ((Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)); the Municipal Securities Rulemaking Board ((Release No. 16570 (February 13, 1980), 19 SEC Docket 573 (February 26, 1980), 45 FR 11291 (February 20, 1980)) and the Chicago Board Options Exchange, Incorporated ((Release No. 16606 (February 25, 1980), 19 SEC Docket 759 (March 11, 1980), 45 FR 15352 (March 10, 1980)).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16707/March 28, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-79-6)

ORDER APPROVING PROPOSED RULE CHANGE

On June 6, 1979, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to modify certain provisions of its customer confirmation rule, MSRB rule G-15.[1] The proposed rule change would require a municipal securities broker or municipal securities dealer, when confirming transactions involving callable securities, to include on the confirmation a statement indicating that the yield shown may be affected by the exercise of a call provision, and that information concerning call provisions will be provided upon request. In addition, the proposed rule change would provide that a confirmation of a transaction effected on the basis of dollar price, including a transaction in "dollar bonds," would be required to include not only the dollar price at which the transaction was effected, but also the lowest of the resulting yield to premium call, par option, or maturity. Currently, transactions effected at a dollar price are exempted from the requirements in MSRB rule G-15 to show yield information on confirmations.

The text of the proposed rule change is as follows:

Rule G-15. Customer Confirmations

(a)(i) through (vii) No change.

(viii) yield and dollar price, as follows:

(A) for transactions effected on a yield basis, the yield at which transaction was effected and the resulting dollar price shall be shown. Such dollar price shall be calculated to the lowest of price to premium call, price to par option, or price to maturity. In cases in which the dollar price is calculated to premium call or par option, this must be stated.

(B) for transactions effected on the basis of dollar price, the dollar price at which transaction was effected, and the lowest of the resulting yield to premium call, yield to par option, or yield to maturity shall be shown.

(C) for transactions at par, the dollar price shall be shown;

(ix) through (xiii) No change.

(b) No change.

(c) In addition to the information required by paragraphs (a) and (b) above, each confirmation to a customer shall contain the following information, if applicable:

(i) through (iii) No change.

(iv) If the securities are callable, a statement that the yield set forth pursuant to subparagraph (viii) of paragraph (a) may be affected by the exercise of a call provision, and that information relating to call provisions is available upon request. A statement to the following effect will be deemed to satisfy this requirement:

> "Call features may exist which could affect yield; complete information will be provided upon request";

(v) denominations of notes and, if other than the following, denominations of bonds;

(A) for bearer bonds, denominations of $1,000 or $5,000 par value, and

(B) for registered bonds, denominations which are multiples of $1,000 par value, up to $100,000 par value;

(vi) any special instructions or qualifications, or factors affecting payment of principal or interest, such as (A) "ex legal," or (B), if the securities are traded without interest, "flat," or (C) if the securities are in default as to the payment of interest or principal, "in default," and

(vii) such other information as may be necessary to

[1]Notice of that filing was published in Securities Exchange Act Release No. 15938 (June 19, 1979) 44 FR 39673 (1979)).

ensure that the parties agree to the details of the transaction.

(d) through (h) No change.

The Commission received four letters of comment on the proposed rule change. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and were made available to the public at the Commission's public reference room. The comments received focused on the proposed amendment which would require yield information on confirmations of transactions effected at a dollar price, which was opposed as inappropriate or meaningless. In addition, commenters indicated that a requirement to include yield information on confirmations of such transactions would be burdensome or expensive.[2]

It appears, nevertheless, that increased yield information on customer confirmations of transactions effected at a dollar price would be beneficial. For example, the comment letters received by the MSRB on its exposure draft of the proposed amendment to rule G-15, and those received by the Commission on the proposed rule change, indicated that the current exemption from the rule's yield disclosure requirements for transactions effected at a dollar price has been read as not requiring yield information for purchases of securities from customers, since such transactions may be viewed as effected on the basis of dollar price. Under the proposed amendment, a confirmation would be required to show yield information as well as the dollar price paid for purchases of securities. It appears that providing such yield information to customers will permit them, among other things, to compare the merits of securities being sold with those which they contemplate purchasing.

The MSRB requested a delay effective date for the proposed amendments in order to reduce any costs associated with the proposed yield disclosure requirement. Accordingly, the proposed rule change will become effective six months from the date of Commission approval. This will allow municipal securities professionals sufficient time to reprogram computers or redesign confirmation forms, as necessary. In addition, the MSRB has stated its belief that calculation of approximate yield to the nearest five-hundredths of a percentage point would be sufficient to satisfy the rule's requirement to show resulting yield.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved, effective with respect to transactions occurring on or after September 24, 1980.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16708/March 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-10

The New York Stock Exchange, Inc. ("NYSE") submitted on March 18, 1980, a proposed rule change under Rule 19b-4 to amend Rules 13 and 123A.30, relating to percentage orders. The proposed amendments would enable a specialist to convert percentage orders into regular limited price orders to participate in trades on "zero plus" (in the case of buy percentage orders) and "zero minus" ticks (in the case of sell percentage orders) but would prohibit him, except in the case of ITS stocks, from taking on behalf of the buy percentage orders more than 50% of all the stock offered, or supplying, on behalf of the sell percentage orders, more than 50% of all the stock bid for.

[2]Currently, many computer-generated confirmations do not calculate or print yield information from dollar prices, while computer programs to calculate dollar prices from specified yields are standard.

Publication of the submission is expected to be made in the *Federal Register* during the week of March 31, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16709/March 28, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-5)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on March 14, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change which would amend Article IV, Section 1(a)(1) of the Amex Constitution to increase the number of regular memberships from 650 to 675. Under the Amex's Membership Offering Plan ("Plan"), the 25 additional memberships would be offered for sale to members and member organizations for a period of 30 days on a first-come first-served basis. The price of the memberships would be an amount equal to the average price of the last four regular membership transfers (other than private sales), immediately preceding the date of Commission approval of the proposed rule change.

Under the Plan a member or member organization would be able to apply for more than one membership. All rights and obligations currently applicable to existing regular members would be extended to the additional memberships.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(2) and 6(b)(5), in that it would increase access by eligible persons to the exchange, and would further the objective of a free and open market and a national market system.

The Commission finds good cause for approving the

proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that additional memberships will aid in the maintenance of fair and orderly markets by enhancing the ability of the Amex to accommodate the increased volume the exchange has been experiencing recently and may experience in the future.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16710/March 28, 1980

A notice has been issued giving interested persons until April 21, 1980, to comment on the application of the Pacific Stock Exchange Incorporated ("PSE") to withdraw the McCarthy Co., 7-1/2% convertible subordinated debentures due 9/1/91 from listing and registration on the PSE.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16711/March 31, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-4

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 27, 1980, a proposed rule change under Rule 19b-4 to provide plans and specifications for its Qualification Examination for Direct Participation Programs Representatives.[1] The examination would be taken by individuals seeking to qualify as Limited Representatives—Direct Participation Programs, a category of limited representative registration that would be authorized by a related pending proposed rule change (SR-NASD-80-1).[2]

Publication of the submission is expected to be made in the *Federal Register* during the week of March 31, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. Section 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]The filing received from the NASD included the following materials: a copy of a letter from Frank J. McAuliffe, Director of the NASD's Qualification Department, to Janet R. Zimmer, Chief of the Branch of Over-the-Counter Regulation of the Division of Market Regulation, dated March 26, 1980, concerning the proposed limited representative examination; a study outline prepared by the NASD for the limited representative examination; and specifications describing the examination's areas and sectional weightings.

[2]Notice of SR-NASD-80-1 was given by publication of a Commission Release (Securities Exchange Act Release No. 16563, February 11, 1980, and by publication in the *Federal Register* (45 FR 10496, February 15, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16712/March 31, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGES BY THE MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-1

The Municipal Securities Rulemaking Board (the "MSRB") submitted on March 25, 1980, proposed rule changes under Rule 19b-4 to modify the requirements of MSRB rule G-12, applicable to interdealer confirmations, and of MSRB rule G-15, concerning customer confirmations, with respect to information to be shown on confirmations of transactions in callable securities. The rules currently provide, among other things, that if the dollar price is calculated to premium call or par option, this information must be stated on the confirmation. The proposed rule changes would provide that, in the case of transactions in callable securities effected on the basis of yield, where the price is calculated to premium call or par option, confirmations must set forth the date of the premium call or par option and the price at which a security called on that date would be redeemed by the issuer.

Publication of the submission is expected to be made in the *Federal Register* during the week of April 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or to institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-1.

Copies of the submission and all subsequent amendments and copies of all written statements with respect to the proposed rule changes which are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16713/March 31, 1980

A notice has been issued giving interested persons until April 21, 1980 to comment on the application of EMERSON RADIO CORPORATION to withdraw their common stock ($.10 Par Value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16714/April 1, 1980

Admin. Proc. File No. 3-5895

In the Matter of

AMARILLO INVESTMENTS, INC.
(File No. 8-22504)
DEAN EDWARD LIVELY

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted pursuant to Section 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934 (Exchange Act), with respect to Amarillo Investments, Inc. (AII), a registered broker-dealer located in Amarillo, Texas, and Dean Edward Lively (Lively), AII's president, chairman of its board of directors, and controlling stockholder.

Solely for the purpose of these proceedings and without admitting or denying any allegations, or the findings contained herein, AII and Lively have consented to the findings and sanctions set forth below.

II.

Accordingly, IT IS ORDERED that proceedings pursuant to Section 15(b)(4) and 15(b)(6) of the Exchange Act be, and they hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings and Imposing Remedial Sanctions (Order) and the Offer of Settlement (Offer), it is found that:

A. From in or about July, 1978, to in or about October, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated by the Board of Governors of the Federal Reserve System, in that All arranged for the extension and maintenance of credit for its customers, which credit was used to purchase securities.

B. All and Lively wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with the offer, purchase and sale of securities. As part of the aforementioned conduct, All and Lively:

(1) From in or about December, 1978 to in or about October 1979, failed to disclose that All charged both a mark-up and a commission in certain AEI common stock transactions;

(2) From in or about May, 1978 to in or about October, 1979, failed to properly escrow the proceeds representing the sales of limited partnership interests when the offering circular represented that such proceeds would be properly escrowed; and

(3) Other misrepresentations and omissions of similar purport and object.

C. From on or about October 4, 1978 to on or about December 12, 1978, All and Lively wilfully violated and wilfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder, in that All, the underwriter of a distribution of AEI common stock, and Lively, bid for, purchased, and attempted to induce persons to purchase such stock prior to the completion of the distribution.

D. From on or about December 20, 1978 to on or about October 5, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-10 thereunder, in that All effected transactions for accounts of customers without giving them certain written confirmation disclosures.

E. From on or about October 4, 1978 to on or about December 12, 1978, and from in or about September, 1979 to in or about October, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 11(d) of the Exchange Act, in that All effected transactions in which its extended credit to customers on securities which were part of a new issue and which All had distributed as a selling group member.

F. From on or about June 30, 1979 to on or about October 5, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder, in that All effected transactions in securities, when its aggregate indebtedness to all other persons exceeded 1500 percentum of its net capital and it did not have and did not maintain minimum net capital of $25,000.

G. From in or about May, 1978 to in or about October, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder, in that All effected transactions in securities, and while carrying margin accounts and holding customer funds and securities, failed to establish and maintain a "Special Reserve Bank Account for the Exclusive Benefit of Customers."

H. From on or about March 23, 1978 to on or about October 5, 1979, All wilfully violated and Lively wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, in that All failed to accurately make and keep current certain books and records.

I. All wilfully violated and Lively wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-11 thereunder, in that All failed to give telegraphic notification to the Commission and the Fort Worth Regional Office that:

(1) From on or about March 23, 1978 to on or about October 5, 1979, it failed to make and keep current certain books and records; and

(2) From on or about June 30, 1978 to on or about

October 5, 1979, it failed to maintain the required minimum net capital.

J. In connection with the transactions set forth in paragraph B, the mails and means of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce were used.

K. In connection with the transactions set forth in paragraphs C, D, E, F and G, the mails and means and instrumentalities of interstate commerce were used.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer. Accordingly, IT IS ORDERED that upon the effective date of this Order (which shall be the first Monday following the entry of this Order) that:

1. The broker-dealer registration of All is revoked;

2. Lively is suspended from association with a broker or dealer, investment adviser or investment company for a period of 180 days;

3. For two years after the 180-day period mentioned above, Lively is barred from becoming associated with a broker or dealer, investment adviser or investment company in a supervisory or proprietary capacity, provided however, that at the expiration of the two-year period he may become so associated upon the approval of the Commission;

4. Lively will reimburse $12,576 to certain customers of All; and

5. Lively will file an affidavit with the Fort Worth Regional Office stating that he has complied with paragraph 4 above.[1]

By the Commission.

George A. Fitzsimmons
Secretary

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[1]Lively has heretofore filed an affidavit stating that All has delivered out all customers' funds and securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16715/April 1, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the termination at midnight on Tuesday, April 1, 1980 of the suspension of exchange and over-the-counter trading of the securities of Bache Group, Inc. ("Bache"), Bache Building, 100 Gold Street, New York, New York 10038 which was commenced at 2:15 p.m. (EST) on March 27, 1980.

The Commission previously suspended trading in Bache securities on March 27, 1980 for one ten-day period. The Commission today ordered the termination of the suspension of trading in Bache securities in view of various disclosures made by Bache with respect to the impact of recent developments in the commodities markets on the financial condition of Bache.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16716/April 1, 1980

An order has been issued, effective *nunc pro tunc* as of December 31, 1979, granting the application of the *Inter mountain Stock Exchange, Inc.* to strike the common stock ($1 Par Value) of MIDWEST ENERGY CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16717/April 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6202/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16718/April 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6203/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16719/April 2, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, Massachusetts 02109

CINCINNATI STOCK EXCHANGE, INC.
209 Dixie Terminal Building
Cincinnati, Ohio 45202

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60604

PACIFIC STOCK EXCHANGE, INC.
618 South Spring Street
Los Angeles, California 90014

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

PLANS FILED PURSUANT TO 17 CFR §240.17d-2.

(File Nos. 4-196, 4-273, 4-274, 4-267)

ORDER GRANTING TEMPORARY APPROVAL

By this Order, issued pursuant to Sections 17(d)(1) and 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. §§78q(d)(1) and 78k-1(a)(3)(B)), the Securities and Exchange Commission (the "Commission") is hereby approving for a period of sixty-four (64) days the plans for allocating regulatory responsibilities (the "allocation plans") filed pursuant to 17 CFR §240.17d-2 ("Section 240.17d-2") by the National Association of Securities Dealers, Inc. ("NASD") in conjunction with the Boston Stock Exchange, Inc. ("BSE"), Cincinnati Stock Exchange, Inc. ("CSE"), Midwest Stock Exchange, Inc. ("MSE"), and Pacific Stock Exchange, Inc. ("PSE") (with the NASD, the "parties"). The period of approval will thus expire on June 7, 1980. The responsibilities of the parties to the plans during this period of temporary approval shall be controlled by the terms of the Commission's September 26, 1978 order, Securities Exchange Act Release No. 15191 (the "September order"), provisionally approving the plans until June 23, 1979. The approval period was subsequently extended by Securities Exchange Act Release No. 15491 (June 21, 1979) until January 1, 1980, and by Securities Exchange Act Release No. 16461 (January 2, 1980) until April 5, 1980.

The September order conditioned further Commission consideration of the plans upon the filing of specified amendments to the plans and of certain supplementary materials which are necessary in order to identify with precision the responsibilities of the parties under the plans and to facilitate evaluation of the adequacy of the regulatory programs of the parties. A number of these required submissions were not completed in time to meet the filing deadline set by the staff in Release No. 16461. Extension of the approval period will permit the Commission to thoroughly analyze the supplementary material submitted during the past 30 days.

The Commission will not consider approving these allocation plans without conditions until such time

as it is satisfied that they articulate accurately and completely the agreements reached by the parties and until such time as the supplementary materials identify with precision both the examination and enforcement responsibilities of the parties.

During the period of provisional approval, the Commission will continue its on-going review of the performance of the parties under the plans. It may consider alternative allocations of responsibilities to those proposed, including termination of the approval period. In addition, the Commission may at any time consider alternative allocations if its review of the regulatory capabilities and procedures and staffing of the parties, or other germane factors which the Commission may consider under Section 17(d) of the Act, indicates that the parties are unable to fulfill their responsibilities under the Act or the allocations plans or if the allocation of responsibilities in the plans becomes inconsistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Sections 17(d) and 11A(a)(3)(B) of the Act (15 U.S.C. §§78q(d) and 78k-1(a)(3)(B)) that, for a period ending June 7, 1980, unless such period is otherwise extended by the Commission, the plans between the NASD and BSE, the NASD and CSE, the NASD and MSE, and the NASD and PSE filed pursuant to Section 240.17d-2 are approved subject to the terms and conditions set forth in this Order and the Commission's September Order.

IT IS FURTHER ORDERED that the BSE, CSE, MSE and PSE are relieved of those responsibilities allocated to the NASD by such plans as approved subject to the terms and conditions set forth in the above Commission Orders.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16720/April 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6204/April 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16721/April 3, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
Eleven Wall Street
New York, New York 10005

File No. SR-NYSE-80-2

ORDER INSTITUTING PROCEEDINGS TO DETERMINE WHETHER TO DISAPPROVE PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

Background

Physical access annual membership was one of several means adopted by the New York Stock Exchange, Inc. ("NYSE") to increase access to that exchange following the enactment of the Securities Act Amendments of 1975.[1] In approving the creation of annual memberships on March 7, 1978, the Commission found that the establishment of annual physical presence memberships was consistent with the provisions of the Securities Exchange Act of 1934 ("Act")[2] and the rules and regulations thereunder, particularly Section 6(b)(5) of the Act, and stated that in making available electronic access and physical presence annual memberships, the NYSE was providing a "means of increasing access to most or all of the range of benefits (and obligations) attendant upon ownership of a NYSE seat (historically limited in number)."[3]

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[1]In December 1976, the NYSE Committee on Access, *Report on Achieving Greater Access to the New York Stock Exchange* (December 1976) recommended, among other things, that the NYSE create both electronic and physical access annual memberships, and permit equity members to lease seats in order to enhance "the NYSE's ability to compete within the emerging national market system. . ." *Id.* at 8.

[2]15 U.S.C. §78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97 [1975] U.S. Code Cong. and Ad. News 97.

[3]Securities Exchange Act Release No. 14535 (March 7, 1978), 14 SEC Docket 383, 384 (March 21, 1978). At the same time, the Commission approved amendments to Article IX, Section (c) of the NYSE

Physical access members pay annual dues of $35,000, which entitles them to go on the trading floor to carry out business in any of the capacities available to equity members (seat-holders).[4] Presently physical access membership provides the only means, other than by NYSE constitutional amendment, by which the number of NYSE members permitted to maintain physical presence and facilities on the NYSE trading floor can be increased beyond the traditional 1,366 equity members.

On January 7, 1980, the NYSE filed, pursuant to Section 19(b)(1) of the Act,[5] a proposed rule change (SR-NYSE-80-2) to amend Article IX, Section 1(b) of the NYSE constitution[6] to limit the number of physical access annual memberships to no more than two, the number in effect on August 31, 1979. This resulted from a petition presented by 315 floor members, pursuant to Article XX, Section 3b of the NYSE constitution, to obtain a membership vote on the proposed limitation.[7] The NYSE Board of Directors opposed the proposed constitutional amendment on the grounds that new forms of membership, including physical access annual membership, enhanced the public credibility of the NYSE and contributed significantly to the ability of the NYSE to take a position of initiative and leadership in the evolving national market system mandated by the Congress.[8] The proposed limitation was approved by a special membership vote on November 16, 1979, and on December 16, 1979, the NYSE Board of Directors authorized the filing of the proposed constitutional amendment with the Commission as required by Section 19(b)(1) of the Act.[9]

Summary of Comments Received

In filing the proposed rule change the NYSE Board of Directors ("Board") determined not to take any position in its Form 19b-4A (the required form for self-regulatory organization proposed rule changes) as to the basis under the Act of the proposal or its burden on competition.[10] Extensive comments were filed on a Form 19b-4A by the major proponents of the proposed rule change, the Alliance of Floor Brokers, Inc. ("Alliance"), an organization of NYSE

Footnote 3 continued
constitution to make a second form of annual membership, electronic access membership, available. There are currently 10 electronic access members. The NYSE's rule filing (SR-NYSE-77-21) also proposed to establish an "options market maker" annual membership and to permit equity members to lease their seats. The Commission approved the seat leasing proposal in Securities Exchange Act Release No. 14256 (December 12, 1977), 42 FR 63974 (December 22, 1977). The options market maker proposal subsequently was withdrawn. Securities Exchange Act Release No. 15026 (August 3, 1978).

[4]NYSE Constitution, Article X, Section 1(a). The dues were raised from $25,000 (the original rate) to $35,000 on October 4, 1979, pursuant to Section 19(b)(3)(A)(ii) of the Act (SR-NYSE-79-43). Securities Exchange Act Release No. 16279 (October 15, 1979) 44 FR 60463 (October 19, 1979).

[5]15 U.S.C. §78s(b)(1) (1975).

[6]Article IX, Section 1(b) of the NYSE constitution provides that the exchange's membership shall include:

such number of members of the Exchange, as the Board of Directors may from time to time determine, consistent with available physical floor space and facilities, each of whom shall have paid an annual dues, which shall entitle such member, during the period for which dues have been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

[7]Since August 31, 1979, the NYSE has approved two additional applications for physical access membership. The two additional members each signed an agreement acknowledging that they had been informed by the exchange of the pending membership vote on the proposed constitutional amendment and that if the amendment were approved by the Commission it could result in their losing all privileges as physical access members.

[8]NYSE Form 19b-4A, Exhibit B (Special Membership Bulletin at 3-4, October 5, 1979); Exhibit C (Special Membership Bulletin at 2, November 1, 1979).

[9]Notice of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16538) and by notice in the *Federal Register* (45 FR 7022 (January 31, 1980)).

[10]NYSE Form 19b-4A, Exhibit O, P.

members. The NYSE incorporated substantial portions of those comments into item 3 (purpose of the proposed rule change), item 4 (basis under the Act), and item 6 (burden on competition) of its Form 19b-4A by an amendment to the Form filed with the Commission on January 25, 1980. Although no formal comments were received other than by the Alliance, the NYSE filed a number of attachments to its Form 19b-4A from which the Board's position can be ascertained.[11] The position of the Board of Directors as well as the position of the proponents of the proposed rule change as set forth in those documents are summarized below.

a. *The position of the Alliance of Floor Brokers*

The Alliance states that physical access membership is not required by the Act[12] and that elimination of physical access membership would bring the NYSE in line with other exchanges which do not permit this form of membership.[13] It further states that the proposal would not impose a burden on competition not necessary or appropriate in furtherance of the Act because other forms of access to the NYSE are available through the Intermarket Trading System ("ITS"),[14] electronic access annual membership, leases by equity members and economic access through negotiated commission rates.[15] The Alliance suggests that the physical access program, which is comprised of only four members, has not increased order flow to the

[11]These attachments are documents issued in connection with the membership vote or filed in the litigation, *Higgins* v. *Hall* (N.Y. Sup. Ct.) brought by certain members of the NYSE floor community in July 1979, to enjoin the NYSE from granting additional physical access memberships. The suit, which alleged, among other things, that physical access memberships were being approved despite the absence of sufficient space on the NYSE trading floor to accommodate them in contravention of Article IX, Section 1(b) of the NYSE constitution, was dismissed and summary judgment granted in favor of the NYSE on January 24, 1980.

[12]NYSE Form 19b-4, Exhibits K, L, M and O.

[13]NYSE Form 19b-4A, Amendment No. 1 at 15.

[14]The ITS is an intermarket linkage system developed by several exchanges which links participating market centers and provides facilities and procedures for (1) routing of commitments to trade and administrative messages between and among the participants, and (2) participation, under certain conditions, by members of all participant markets in opening transactions in those markets. The ITS contemplates the display of composite quotation information on the floors of each of the participants (at the designated trading area) so that members of each participant will be able to determine readily the best bid and offer for a particular multiply-traded security available from any participant. Currently, the participants in the ITS are the American Stock Exchange, Inc., Boston Stock Exchange, Inc., Midwest Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc. Approximately 750 securities listed on the New York Stock Exchange or American Stock Exchange and traded on one or more regional exchanges are traded in the ITS. *See* Securities Exchange Act Release Nos. 14661 (April 14, 1978), 15058 (August 11, 1978) and 16214 (September 21, 1979), 43 FR 17419 and 36732, 44 FR 56069.

[15]NYSE Form 19b-4A, Amendment No. 1 at 13. With respect to economic access, the Alliance states:

> If one reviews the types of access available, it becomes quite clear that given present competition, additional physical access is neither a necessary nor effective ingredient to the successful operation of the [NYSE] nor to the rights of non-members. Economic access is presently available to both members and non-members. This is available through the ITS, through the right to negotiate commissions, and through the right of non-member brokers to retain a portion of commissions on business they introduce to members or member organizations.

Id. at 18. *See also id.* at 18-23. The Alliance states that it is these innovative business approaches, and not physical access membership, that attract additional order flow to the NYSE floor. *Id.* at 29.

exchange in any material respect.[16] In the Alliance's view, the large number of equity members on the NYSE floor at any given time demonstrates competition among members and assures a fair and competitive price for clients and customers.[17] The Alliance states that it is impossible to compute an equitable allocation of dues charged to physical access members and dues and other fees charged to equity members,[18] because of the differences between the memberships.[19] Thus, the Alliance believes that the proposed constitutional amendment would eliminate a type of membership which has proven a failure and which has been unfair in its application.[20] The Alliance also suggests that the availability of physical access membership would decrease the value of equity seats. Finally, the Alliance urges that the NYSE trading floor is already overcrowded and cannot accommodate additional personnel.[21]

b. *The position of the NYSE Board of Directors*

The NYSE Board of Directors opposes the proposed constitutional amendment on the grounds that, as part of a comprehensive effort to provide various forms of membership, the physical access membership program has enhanced the credibility of the exchange as a public institution, and that the proposal would not promote the best interests of the exchange, the membership or the investing public.[22] The exchange believes that the questions raised by granting physical access to the NYSE trading facilities to qualified broker-dealers are closely related to, and impact upon, the resolution of much larger issues regarding the national market system.[23] Contrary to the claim of the Alliance that there was insufficient space on the NYSE to accommodate additional physical access members, in October 1979, the NYSE Board of Directors determined that the NYSE floor had space and facilities to accommodate as many as 20 additional physical access members in the near term, based upon, among other things, its facilities upgrade program.[24]

Just prior to the special member election in November 1979, John J. Phelan, Vice Chairman of the NYSE, issued a letter to the membership stating that, in his view, the proposed constitutional amendment would be viewed as a reactionist and regressive step away from the NYSE's current image as a modern, progressive strongly competitive

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[16] *Id.* at 29.

[17] *Id.* at 15. The Alliance also states that exchange equity members have consistently proven their ability to handle any increased volume. *Id.* at 30.

[18] *Id.* at 31-32.

[19] For example, annual members obtain no equity or other transferable interest in the NYSE and are not permitted to lease their memberships. *Id.* at 32-33.

[20] NYSE Form 19b-4A, Amendment No. 1 at 8, 26-27. The Alliance notes that presently there are only four physical access memberships and suggests that physical access membership has been a source of controversy and friction among members. NYSE Form 19b-4A, Amendment No. 1 at 31, 36.

[21] NYSE Form 19b-4A, Exhibit D.

[22] In creating physical access memberships in 1978, the NYSE Board stated that annual membership would increase the potential for access to the NYSE and encourage greater participation therein. The exchange urged that the creation of physical access membership was consistent with Section 6(b)(2) of the Act in enabling any qualified person to become a member of the exchange, and with Section 6(b)(5) in that the existence of various forms of membership tended to remove impediments to the mechanism of a free and open market. File No. SR-NYSE-77-21.

[23] NYSE Form 19b-4A, Exhibit B at 3-4 (Special Membership Bulletin; October 5, 1979). The exchange notes the continuing relevance of the key factors which prompted it to create physical access membership in 1978: (i) new forms of membership are essential if the exchange is to implement new products and meet increasing competition for order flow; (ii) order flow and its impact on volume are the major factors determining the exchange's future and, therefore, will exert the major influence in determining the prices of regular memberships; (iii) easier access to the exchange should provide an economic incentive for new members to bring capital, expertise and additional business to the NYSE; and, (iv) easier and broader access will improve credibility of the exchange as a public institution.

See also NYSE Form 19b-4A, Exhibit C (Special Membership Bulletin, November 1, 1979).

[24] NYSE Form 19b-4A, Exhibit B at 1-2 (Special Membership Bulletin, October 5, 1979). Earlier, in

component of the capital raising mechanism of the country.[25]

3. *Proceedings to Determine Whether to Disapprove SR-NYSE-80-2 and Grounds for Disapproval Under Consideration*

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be disapproved. Institution of disapproval proceedings appears appropriate at this time in view of the legal and policy issues under the Act summarized below raised by the proposal and does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved.

Section 19(b)(2) of the Act provides that the Commission must approve a proposed rule change of a self-regulatory organization if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization, and must disapprove a proposed rule change if it does not make these findings. In the present case, the applicable provision is Section 6(b) of the Act[26] which establishes substantive requirements governing the rules of exchanges. The requirements of Section 6(b) of the Act that are particularly relevant to consideration of the NYSE's physical access proposal are Section 6(b)(5), which requires that exchange rules be designed to, among other things, remove impediments to and perfect the mechanism of a free and open market and a national market system, and Section 6(b)(8), which requires that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

1. While the Act does not expressly require the creation of new types of memberships (including annual memberships with physical access privileges), an exchange may limit or eliminate existing forms of membership by rule only if such action would not impose any burden on competition not necessary or appropriate under Section 6(b)(8) of the Act.[27] It appears that the proposed rule change, by placing an arbitrary limit on the number of persons entitled to physical access under its annual membership program, if approved, would result in a burden on competition by restricting existing and potential competition for floor brokerage and other business requiring physical presence on the NYSE floor. Although alternative means of access to the NYSE exist, leasing of sets from equity members is the only alternative means of access which provides both the ability to effect transactions in the NYSE and the right of physical presence on the NYSE trading floor.[28] Leasing, however, does not provide the potential for

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Footnote 24 continued

July 1979, the NYSE completed an eight month study of its facilities and concluded that, although the facilities required continued improvement, the exchange had facilities and services available for additional people on the floor. NYSE Form 19b-4A, Exhibit G at 5-6 (Affidavit of William M. Batten). These conclusions were based upon, among other things, the range of population on the trading floor over the prior 10 years; the number of available booths and telephone lines; the completion of recent safety measures which permitted a 10-20 percent increase in the floor population; and the NYSE's facilities upgrade program which would expand usable floor space by approximately 20 percent. *Id.* at 6-7. The NYSE study and a concurrent moratorium on granting physical access memberships were prompted by member complaints that the floor could not physically accommodate additional personnel.

[25]NYSE Form 19b-4A, Exhibit I (Special Membership Bulletin, November 9, 1979).

[26]15 U.S.C. §78f(b) (1975). *See also* Section 19(g) of the Act, 15 U.S.C. §78s(g) (1975).

[27]*See also* Section 6(c)(4) of the Act. While that section permits an exchange to limit the number of members of the exchange (but not to decrease the number below that in effect on May 1, 1975), the Commission is empowered to amend the rules of an exchange (pursuant to Section 19(c) of the Act) to increase or remove any limitation on the number of memberships in such exchange if the Commission finds that the limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[28]The other alternatives—routing orders on an intermarket basis through the ITS, obtaining electronic access annual membership and negotiative access through reduced commission charges—generally affect only the costs of executing transactions on the NYSE and are not substitutes for the right of physical presence on the floor.

increasing the number of members entitled to compete on the trading floor beyond the traditional 1,366, and, therefore, is not a substitute for physical access membership.

To the extent the proposed rule change does impose a burden on competition, the proponents of the proposal argue that such a burden is justified by space limitations on the floor of the NYSE. While the Act permits an exchange, subject to Commission action pursuant to Section 19(c), to limit the number of memberships and the number of personnel permitted on its trading floor in order, among other things, to assure the comfort and safety of its members and employees, the proposed rule change, by placing a permanent limitation on physical access membership, seems to be wholly unrelated to space considerations on the NYSE. It, thus, does not appear that the perceived burden on competition which would result from approval of the proposed rule change could be justified on that basis.[29] For these reasons, whether the proposed rule change would impose a burden on competition inconsistent with the requirements of Section 6(b)(8) of the Act is a ground for disapproval under consideration.

2. The proposed rule change, by permanently limiting the number of physical access memberships to two, irrespective of the availability of space and facilities on the NYSE floor, would appear to restrict access to the NYSE, the nation's principal stock market. Thus, whether the proposed rule would be inconsistent with the requirements of Section 6(b)(5) of the Act, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, also is a ground for disapproval under consideration.

Procedure; requests for written comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, arguments and data, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[30] In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with the provisions of the Act and the rules and regulations thereunder, specifically Sections 6(b)(5), (8) discussed above.

Interested persons are invited to submit written data, views and arguments regarding the proposed rule change by May 15, 1980.[31] Any person who wishes to file a rebuttal to any other person's submission must file their rebuttal by May 30, 1980. Persons desiring to submit written data, views and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent

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[29]The existing rule on physical access membership appears to be more responsive to these concerns in that it permits the NYSE Board of Directors to determine the number of physical access members "consistent with available physical floor space and facilities."

[30]Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975 (Pub. Law. 94-29, June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral hearing or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 75, 94th Cong. 1st Sess. 30 (1975).

[31]Section 19(b)(2) requires that proceedings to determine whether to disapprove a proposed rule change be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change, unless the Commission finds good cause to extend the time for the conclusion of such proceedings.

amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16722/April 3, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-AMEX-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On January 17, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. §78s(b)(1) ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, copies of a proposed rule change which would amend Section 122 of the Amex Company Guide relating to independent directors. The rule would recommend that every listed company have at least two "independent directors," *i.e.*, one who is not an officer of the company, who is neither related to its officers nor represents concentrated or family holdings of its shares and who, in the view of the company's board of directors, is free of any relationship that would interfere with the exercise of independent judgment. The rule would further recommend that every listed company establish and maintain an audit committee composed solely of independent directors ("independent audit committee").

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16542, January 29, 1980) and by publication in the *Federal Register* (45 FR 8171, February 6, 1980). No comments were received. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission has long advocated the establishment of independent audit committees as a means of ensuring the effective corporate accountability of public companies.[1] The Commission believes that independent audit committees serve the important function of enhancing corporate accountability, thereby promoting public confidence in the integrity of the markets.[2] In particular, the Commission has urged strengthening the independence and vitality of corporate boards of directors and has suggested that, at least initially, those objectives could be achieved by amending the listing requirements of the self-regulatory organizations, rather than by direct Commission action.[3] Professional

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[1]The discovery in the mid 1970's, of questionable and illegal corporate payments causing breaches in the operation of the securities laws' system of corporate disclosure dramatically illustrated the continuing need for developing mechanisms responsive to the problems of corporate accountability, and led to the enactment of the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, Tit. 1, §§102-103 (December 19, 1977)).

[2]In 1940, the Commission recommended establishing committees composed of non-officer members of boards of directors who would be responsible for nominating and arranging the details of engaging auditors. Accounting Series Release No. 19 (Dec. 5, 1940). The Commission reiterated its position in 1972, by endorsing the establishment by all publicly-held companies of audit committees composed of outside directors, Securities Exchange Act Release No. 9548 (March 23, 1972) 37 FR 6850 (April 5, 1972), and, in 1974, by amending the proxy rules to require disclosure of the existence and composition of audit committees. Accounting Series Release No. 165 (December 20, 1974). *See also* Securities Exchange Act Release No. 13346 (March 9, 1977); and "Report to Congress on the Accounting Profession and the Commission's Oversight Role" (July 5, 1978).

[3]Securities Exchange Act Release No. 13346 (March 9, 1977), 44 FR 14793 (March 16, 1977).

organizations such as the American Institute of Certified Public Accountants ("AICPA") also have endorsed the establishment of independent audit committees.[4]

In March 1977, the New York Stock Exchange, Inc. ("NYSE") amended its rules to require that all domestic companies listed on the Exchange create and maintain audit committees composed of directors independent of management.[5] Shortly thereafter, the Commission wrote to the national securities exchanges and the National Association of Securities Dealers, Inc. to apprise them of the NYSE rule and suggest that they consider the feasibility of adopting a similar policy.[6] In response, the Amex Board of Directors appointed a Special Advisory Committee on Audit Committees ("Advisory Committee") in November 1978. The Advisory Committee submitted its recommendations to the Amex Board in September 1979. Among other things, the Advisory Committee recommended that the Amex adopt a rule requiring domestic listed companies to establish audit committees composed of a majority of independent directors.[7]

The recommendations of the Advisory Committee were considered by the Amex in formulating the proposed rule change. However, the proposed rule differs from the recommendations in two major respects.[8] First, the proposed rule would recommend rather than require the establishment of audit committees. And, second, the proposed rule would recommend that audit committees be composed entirely of independent directors rather than a majority of independent directors.

While the proposed rule change would not ensure the establishment of independent audit committees by all companies listed on the Amex, it does represent a positive step towards attainment of that objective. The Amex has undertaken to evaluate the success of the proposed rule within one year to determine whether there is a need for further action. If the recommendation of the proposed rule is not embraced by a significant majority of Amex listed companies who currently do not have completely independent audit committees, the Commission would expect the Amex to amend its rule appropriately. The Commission encourages the other self-regulatory organizations to determine whether to adopt a rule requiring the establishment of audit committees composed entirely of members independent of management.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(5) and the rules and regulations thereunder requiring, among other things, that exchange rules be designed to remove impediments to and perfect the mechanism of a free and open market, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons
Secretary

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[4]On December 7, 1978, the AICPA Board of Directors received and approved a written report from the Institute's Special Committee on Audit Committees which concluded that the AICPA should not establish a requirement for audit committees despite its belief that audit committees are helpful to corporate directors and independent auditors. The Executive Committee of the AICPA recommended the establishment of audit committees by publicly-owned corporations generally. *See* AICPA "Executive Committee Statement on Audit Committees of Board of Directors" (July 1967).

[5]Securities Exchange Act Release No. 13346 (March 9, 1977) (SR-NYSE-77-3).

[6]*See, e.g.*, letter from George Fitzsimmons to Paul Kolton, Amex Chairman, March 11, 1977.

[7]The Advisory Committee also recommended that such a rule provide an exemption procedure for certain smaller companies.

[8]For a discussion of the Commission's endorsement of independent audit committees, *see* Securities Exchange Act Release No. 14970 (July 18, 1978).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16730/April 3, 1980

APPLICATIONS FOR EXTENSION, SUSPENSION, OR TERMINATION OF UNLISTED TRADING PRIVILEGES

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to Rules 12f-1 and 12f-3 [17 CFR §§240.12f-1, f-3] under the Securities Exchange Act of 1934 ("Act"). If adopted, the amendments would require persons filing applications for extension, suspension, or termination of unlisted trading privileges to certify that notice of such applications has been given to certain persons specified by Section 12(f)(5) of the Act. This procedure would ensure that the notice requirements of Section 12(f)(5) are fully satisfied.

DATE: Comments should be submitted on or before May 1, 1980.

ADDRESSES: Persons wishing to submit written views should file three copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-828 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William S. Muller, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549. (202) 272-2415.

SUPPLEMENTARY INFORMATION: Section 12(f)(2) of the Act[1] provides that the Commission may approve an application by a national securities exchange for the extension of unlisted trading privileges in a particular security if, after appropriate notice and opportunity for hearing, it finds that such extension is consistent with the maintenance of fair and orderly markets and the protection of investors. Rule 12f-1 under the Act [17 CFR 240.12f-1] governs the information which must be included in an application for the extension of unlisted trading privileges. Similarly, Section 12(f)(4) of the Act[2] provides that, upon application by the issuer of any security for which unlisted trading privileges have been extended, or by any other interested person, the Commission may terminate or suspend unlisted trading privileges if, after appropriate notice and opportunity for hearing, the Commission finds that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors. Rule 12f-3 under the Act [17 CFR 240.12f-3] prescribes the information which must be included in an application for the termination or suspension of unlisted trading privileges.[3]

Section 12(f)(5) of the Act[4] governs the notice requirements for applications for the extension, suspension or termination of unlisted trading privileges filed under the above provisions. Section 12(f)(5) provides:

> In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

Upon the filing of an application for the extension, suspension or termination, of unlisted trading privileges, the Commission publishes notice thereof by the issuance of a Commission release and by publication in the *Federal Register* at least 10 days prior to making a determination on the application. Constructive notice of applications filed under Rules 12f-1 and 12f-3, thus, is provided to all persons. The Commission does not, however, provide personal notice to the persons described in Section 12(f)(5) as entitled to notice.

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[1] 15 U.S.C. §78l(f)(2) (1975).

[2] 15 U.S.C. §78l(f)(4) (1975).

[3] Rules 12f-1 and 12f-3 recently were amended by the Commission to conform the text of those rules to Section 12(f) of the Act, as amended by the Securities Acts Amendments of 1975. *See* Securities Exchange Act Release No. 16421 (December 12, 1979), 44 FR 75133.

[4] 15 U.S.C. §78l(f)(5) (1975).

In order to ensure that the notice requirements of Section 12(f)(5) are fully satisfied and that interested persons are provided the opportunity to comment upon any application for the extension or termination of unlisted trading privileges, the Commission is proposing to amend Rules 12f-1 and 12f-3 under the Act to require that exchanges, when applying for the extension of unlisted trading privileges pursuant to Section 12(f)(2) of the Act, and issuers, when applying for the suspension or termination of unlisted trading privileges pursuant to Section 12(f)(4) of the Act, certify in their application that a copy of such application has been mailed or otherwise given to the persons required by Section 12(f)(5).

Accordingly, the Commission, acting pursuant to its authority under Section 23(a)(1) of the Act,[5] proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1940

1. By amending paragraph (a)(5) of §240.12f-1 and adding paragraph (a)(6) to read as follows:

§240.12f-1 Applications for permission to extend unlisted trading privileges.

(a) * * *

(5) Any other information which is deemed pertinent to the question of whether the continuation or extension of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

(6) That a copy of the instant application has been mailed, or otherwise personally provided, to the issuer of the securities for which unlisted trading privileges are sought and to each exchange listed in item (3) of this section.

2. By amending paragraph (a)(8) of §240.12f-3 and adding paragraph (a)(9) to read as follows:

§240.12f-3: Termination or suspension of unlisted trading privileges.

(a) * * *

(8) A brief statement of the information in the applicant's possession, and the sources thereof, with respect to (i) the extent of public trading in such security on such exchange, and (ii) the character of trading in such security on such exchange; and

(9) A brief statement that a copy of the instant application has been mailed, or otherwise personally provided, to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which such security is listed or traded pursuant to unlisted trading privileges.

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By the Commission

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16731/April 3, 1980

A notice has been issued giving interested persons until April 30, 1980 to comment on the *Cincinnati Stock Exchange's* application for unlisted trading privileges in the common stocks of: Caesar's World, Inc., $.10 Par Value, and LTV Corporation (The), $.50 Par Value.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16732/April 3, 1980

In the Matter of Applications of the

PACIFIC STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange, Inc. ("PSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the

[5] 15 U.S.C. §78(w)(a)(1).

following securities which are listed on one or more national securities exchanges:

Total Petroleum (N.A.) Ltd.
Common Stock, $1 Par Value (File No. 7-5501); and

Jefferson-Pilot
Common Stock, $1.25 Par Value (File No. 7-5502).[1]

The Commission finds that approval of the PSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Pacific Stock Exchange, Inc. in the above-named securities are hereby approved.

[1]Notice of these applications was given by publication in the *Federal Register*, 45 FR 16382 (March 13, 1980). The Commission has received no comments with respect to these applications.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21498/March 28, 1980

Administrative Proceeding File No. 3-1476

In the Matter of
AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York
(70-4596)

SUPPLEMENTAL ORDER AUTHORIZING SOLICITATION UNDER TENDER OFFER

By Supplemental Memorandum and Order dated February 13, 1980 (HCAR No. 21433), this Commission authorized the acquisition by American Electric Power Company, Inc. ("AEP"), a registered holding company, of the common stock of Columbus and Southern Ohio Electric Company ("CSOE") under Sections 9(a)(1) and 10 of the Public Utility Holding Company Act of 1935 ("Act"). Jurisdiction was reserved in said order with respect to, *inter alia*, the solicitation of CSOE common stockholders under the tender offer. AEP has now completed the record concerning said solicitation, and has requested that the jurisdiction reserved with respect thereto be released.

It appearing that the solicitation complies with the requirements of the Act and the rules promulgated thereunder:

IT IS ORDERED that the jurisdiction heretofore reserved with respect to AEP's solicitation of CSOE's common shareholders under the tender offer be, and the same hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21499/March 28, 1980

In the Matter of

SOUTHERN OHIO COAL COMPANY
Post Office Box K
Moundsville, West Virginia 26401

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

(70-6409)

NOTICE OF PROPOSED FINANCING FOR COAL MINING SUBSIDIARY

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Company, Inc. ("AEP"), a registered holding company, and Southern Ohio Coal Company ("SOCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

SOCO is engaged in the development and mining of coal reserves for use at Ohio Power's Mitchell Plant located in Captina, West Virginia, and at its General James M. Gavin Plant, located in Cheshire, Ohio. The transaction proposed herein involves the installation by SOCO of additional coal preparation facilities at its Meigs Mine Complex located in Gallia and Meigs Counties in southeastern Ohio. SOCO proposes to 1) install at Meigs Mine No. 1 a heavy-medium cyclone and a froth flotation system to augment the heavy-medium bath preparation; 2) install at Racoon Mine No. 3 a froth flotation system; and 3) modify the Baum jig plant at Racoon Mine No. 3. These additions and modifications are estimated to cost approximately $40,600,000.

Ohio Power and SOCO believe that the cost of the proposed project is justifiable on the basis of the anticipated savings in the cost of coal delivered to Ohio Power. In the case of Meigs Mine No. 1, the preparation plant additions will lead to improved quality of the coal and to a relative reduction in the cost per million British thermal units ("MBtu") of delivered coal. It is estimated that such cost in present-day dollars will be reduced from 181.75¢ per MBtu to 175.61¢ per MBtu. The Racoon Mine No. 3 addition will cause an increase in Btu recovery and an estimated decline in relative delivered cost per MBtu in present-day dollars from 170.98¢ to 157.77¢. The annual savings in delivered fuel costs alone upon completion of the proposed projects are estimated to be approximately $16,674,000 at capacity or planned output. Additional savings will accrue annually to Ohio Power through improved availability and lower maintenance expense of the Gavin Plant boilers. Although these savings are difficult to quantify precisely, they are conservatively estimated at $10 million annually. It is proposed that these projects will be financed through a combination of long-term loans and cash capital contributions by Ohio Power to SOCO of approximately $40,600,000. It is expected that Ohio Power will make its investment in SOCO in two increments, one to be made in 1980 and the second to be made sometime in 1981. In return for the loans, SOCO will issue to Ohio Power long-term promissory notes. Each of the notes will mature and become payable on December 31, 2009.

The price at which SOCO's coal will be sold to AEP system companies will not exceed the cost thereof to the seller. For this purpose, cost will include reasonable compensation for necessary capital.

The investments made by Ohio Power in SOCO will be assumed to be made in the same proportion as the debt-equity ratio of Ohio Power at the end of the year prior to the investment. As of December 31, 1979, the debt-equity ratios of Ohio Power were 56.3% long-term debt, 11.9% preferred stock, and 31.8% common equity. The interest rate on long-term debt will be equal to the effective interest cost of Ohio Power's last issue of First Mortgage Bonds prior to the investment, the preferred dividend rate will be equal to the dividend rate of Ohio Power's last issue of preferred stock prior to the investment, and the return on common equity will not exceed the rate of return on common equity specified by the Federal Energy Regulatory Commission (FERC) in the most recent wholesale rate proceeding involving Ohio Power. In the absence of such a determination at this time, it is proposed that the cost of common equity capital of SOCO be set at 13% until such time as FERC should take action specifying a rate of return in a wholesale rate proceeding involving Ohio Power in which case the rate then established by FERC shall then become applicable on a prospective basis to

the then total common equity investment of Ohio Power in SOCO. The allowed rate of return on common equity shall not be applied to any of SOCO's retained earnings. No return allowance will be applied to such retained earnings.

It is stated that the issuance of such securities is excepted from the competitive bidding requirements of Rule 50 by reason of paragraph (a)(3) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21500/March 28, 1980

In the Matter of

GRANITE STATE ELECTRIC COMPANY
THE NARRAGANSETT ELECTRIC COMPANY
NEW ENGLAND POWER COMPANY
NEW ENGLAND ELECTRIC SYSTEM
Westborough, Massachusetts

(70-6424)

ORDER AUTHORIZING SHORT-TERM FINANCING ARRANGEMENTS AND EXEMPTION FROM COMPETITIVE BIDDING

New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiaries, Granite State Electric Company ("Granite"), The Narragansett Electric Company ("Narragansett"), and New England Power Company ("NEP"), have filed with this Commission an application-declaration and an amendment thereto pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45(b)(1), 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder concerning the following transactions.

Applicants-declarants request authorization to make short-term borrowings from the period April 1, 1980 to March 31, 1981 pursuant to the agreements set forth below, in the following individual maximum aggregate amounts outstanding at any one time: Granite, $2,500,000; Narragansett, $25,000,000; NEP, $143,000,000. The borrowings will be made from the banks indicated below and or from NEES. NEP also proposes to issue notes to dealers in commercial paper; the maximum amount of short-term borrowing authorized to be outstanding at any one time by NEP ($143,000,000) from banks and NEES will be reduced by the amount of its commercial paper outstanding at that time. The amounts shown below are the maximum face amounts of notes of each borrowing company to be held by the lenders at any one time pursuant to authority requested hereunder.

Borrowing Company	Proposed Maximum Short-term Debt to be Outstanding at any One Time During Period
	Banks or NEES
Granite	
The First National Bank of Boston, Boston, Mass.	$2,500,000
Narragansett	
Industrial National Bank of Rhode Island, Providence, R.I.	10,000,000
The First National Bank of Boston, Boston, Mass.	7,000,000
Rhode Island Hospital Trust National Bank, Providence, R.I.	6,000,000
Peoples Bank and Trust Company, Providence, R.I.	2,000,000
Total Narragansett	$25,000,000

	Banks or NEES or Commercial Paper
NEP	
Bank of America, North America Division, New York, N.Y.	$2,000,000
Bank of Montreal, New York, N.Y.	5,000,000
Bank of Nova Scotia, Boston, Mass.	2,000,000
Bankers Trust Company, New York, N.Y.	5,000,000
BayBank Middlesex, Burlington, Mass.	2,000,000
Brown Brothers Harriman and Company, Boston, Mass.	2,000,000
Chase Manhattan Bank, N.A., New York, N.Y.	10,000,000
Chemical Bank, New York, N.Y.	10,000,000
Citibank, N.A., New York, N.Y.	15,000,000
Continental Illinois National Bank and Trust Company, Chicago, Ill.	5,000,000
Credit Suisse, New York, N.Y.	2,000,000
The First National Bank of Boston, Boston, Mass.	20,000,000
The First National Bank of Chicago, Chicago, Ill.	2,000,000
Hartford National Bank and Trust Co., Hartford, Conn.	2,500,000
Irving Trust Company, New York, N.Y.	10,000,000
Lloyds Bank International, Ltd., New York, N.Y.	2,000,000
Manufacturers Hanover Trust, New York, N.Y.	10,000,000
Marine Midland Bank, New York, N.Y.	5,000,000
Morgan Guaranty Trust Company, New York, N.Y.	10,000,000
National Bank of North America, New York, N.Y.	2,000,000
New England Merchants National Bank, Boston, Mass.	5,000,000
Security Pacific National Bank, Los Angeles, CA	4,000,000
Shawmut Bank of Boston, N.A., Boston, Mass.	5,000,000
State Street Bank and Trust Company, Boston, Mass.	3,000,000
Worcester County National Bank, Worcester, Mass.	2,500,000
Total NEP	$143,000,000

Depending upon market conditions, NEP tentatively plans to issue $40,000,000 of bonds and $35,000,000 of preferred stock during the second half of 1980. At such time as NEP issues either the bonds or the preferred stock, the $143,000,000 limit which it requests would be reduced by the amount of such issue.

The proposed borrowings from banks and/or NEES will be evidenced by notes payable maturing in less than one year from the date of issuance, and will provide for prior payment in whole or in part without premium. The borrowings from banks require compensating balances (or fees in lieu thereof) and will bear interest at a rate not in excess of the prime rate in effect at the time the borrowings are made.

The notes issued to NEES will bear interest at a rate not in excess of the prime rate in effect at the time the borrowings are made. Based on compensating balance requirements of about 10 to 20%, or fees equivalent thereto, the effective interest cost of bank borrowings would be approximately 21.11% to 23.75% per annum, based on a prime rate of 19%. The effective interest cost on borrowings from NEES would be the prime rate.

It is proposed that the borrowing companies may prepay their notes to NEES, in whole or in part, with borrowings from banks or from the sale of commercial paper, or that their borrowings from banks may be prepaid in whole or in part, with borrowings from NEES or from the sale of commercial paper. In the event bank borrowings or commercial paper sales are made at a higher interest cost, in order to prepay notes issued to NEES, NEES will credit the borrowers with the differential interest from the date of issuance of the new notes or commercial paper to the normal maturity date of the notes to NEES being prepaid. In the event of borrowings from NEES to prepay notes to banks, the interest rate of the notes issued to NEES will be the lower of (1) the interest rate on the notes

being prepaid or (2) the prime interest rate in effect, but with respect to (1), only to the maturity date of the notes so prepaid, and thereafter at the prime interest rate in effect at the time the new notes are issued.

NEP proposes to issue and sell commercial paper during the period through March 31, 1981, directly to Lehman Commercial Paper Incorporated and/or A. G. Becker & Co., Incorporated and/or Salomon Brothers (collectively, the "Dealers") dealers in commercial paper. The Dealers, as principals, will reoffer such commercial paper to not more than 100 of their respective customers whose names appear on non-public lists prepared in advance by the Dealer. Prior to or concurrently with the offerings, the customers will be furnished current financial and other information with respect to the issuer. It is expected that such commercial paper will be held to maturity by the purchasers, but if a purchaser wishes to resell prior to maturity, the Dealer involved will repurchase the paper for resale to others on its list of customers. The commercial paper to be issued and sold will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, will be in denominations of not less than $50,000 and will be purchased by the Dealers from the issuer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for the particular maturity at which prime commercial paper of comparable quality is sold by public utility issuers to commercial paper dealers. The Dealers will initially reoffer the commercial paper at a discount rate not more than 1/8 of 1% per annum less than the prevailing discount rate to the issuer. The effective interest cost to the issuer of such paper will not exceed the effective interest cost at the time of issue for borrowings from The First National Bank of Boston, except that, in order to obtain maximum flexibility, commercial paper may be issued with a maturity of not more than 90 days from the date of issue with an effective cost in excess of the effective interest cost from such bank.

The proceeds from the proposed borrowings will be used to finance various construction projects through March 1981 which are expected to total $2,125,000 for Granite, $18,100,000 for Narragansett and $256,700,000 for NEP.

It is stated that Narragansett and NEP have each been authorized by their preferred stockholders to issue short-term unsecured indebtedness up to 20% of the sum of their respective principal amounts of all bonds and other secured indebtedness plus capital, premium and retained earnings. Narragansett's authorization exists through September 26, 1984 (HCAR No. 21228, dated September 26, 1979). NEP's authorization exists through July 1, 1980 (HCAR No. 19595, dated June 30, 1976). It is expected that NEP will request continuation of its 20% limitation.

NEP requests an exemption from the competitive bidding requirements of Rule 50 for its proposed issuance and sale of commercial paper to Dealers pursuant to Rule 50(a)(5) on the ground that it is not practicable to sell commercial paper by competitive bidding.

The Fees and expenses to be incurred in connection with the proposed transactions are estimated at $3,500, including $1,500 of services to be performed at cost by New England Power Service Company, an affiliate of applicants-declarants. The New Hampshire Public Utilities Commission has authorized the proposed transactions with respect to Granite and NEP. No other federal or state commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the application-declaration, as amended, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21458), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21501/March 28, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

GEORGIA POWER COMPANY
Atlanta, Georgia

GULF POWER COMPANY
Pensacola, Florida

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-6414)

ORDER AUTHORIZING ISSUANCE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS; CAPITAL CONTRIBUTIONS BY PARENT TO SUBSIDIARIES; RESERVATION OF JURISDICTION

The Southern Company ("Southern"), a registered holding company, and three of its subsidiaries, Georgia Power Company ("Georgia"), Gulf Power Company ("Gulf") and Mississippi Power Company ("Mississippi") have filed a joint application-declaration and amendments thereto with this Commission pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 promulgated thereunder regarding the proposed transactions.

The applicants-declarants propose to issue and sell from time to time, prior to April 1, 1981, short-term notes to banks and commercial paper to dealers up to the following aggregate principal amounts at any one time outstanding:

Southern	$100,000,000
Georgia	615,000,000
Gulf	104,000,000
Mississippi	65,000,000

Such notes will be issued until March 31, 1981 as funds are required from time to time.

Southern has obtained commitments from four international banks. Each commitment extends to December 31, 1980 and is subject to renewal in accordance with its terms. A commitment fee of 1/4% per annum on undrawn amounts is payable for each commitment. Borrowings will, at Southern's option, bear interest at an effective rate of (a) 1/2% per annum over lender's floating prime or (b) a margin over the London Interbank Offered Rate ("LIBOR"). Swiss Bank Corporation also offers borrowings 1/2% per annum over its prime rate on the date of the advance, fixed for 90 days. The commitments, and the interest rates and periods under option (b) are:

Bank	*Commitment in millions*	*Margin Over LIBOR*	*Loans for Period of*
Barclays Bank International Limited	$40	3/4%	30 to 180 days
Credit Suisse	$20	3/4%	30,60 or 90 days
Swiss Bank Corporation	$20	3/4%	30 to 180 days
Union Bank of Switzerland	$20	1/2%	one to six months

Advances under option (b) from Credit Suisse and the Union Bank of Switzerland are not prepayable and prepayment of advances from Barclays International Limited and the Swiss Bank Corporation is conditioned on a compensatory premium based on the differences between the interest to maturity and the interest the lenders can earn on the prepayment, and other costs. The maximum term for borrowings under option (a) is one year, 180 days for Swiss Bank Corporation, or if earlier, the expiration date of the commitment.

Assuming a prime interest rate and LIBOR rate of 19%, the effective cost of borrowings under these commitments would be as follows: Under option (a), the effective cost from each bank would be 19.50%. Under option (b) the effective cost of borrowing from Union Bank of Switzerland would be 19.50% and from the other facilities, 19.75%. Southern will borrow from these banks under the option which results in the lowest effective cost for the period the funds are required.

Georgia has obtained separate commitments from nine banks providing for revolving credits aggregating $400,000,000 for the period commencing January 1, 1980 through December 31, 1982, as tabulated below. It also intends to borrow from other banks, from time to time, within the maximum authorization requested.

Bank	*Commitment*
Bank of America National Trust and Savings Association	$16,000,000
Bankers Trust Company	52,000,000
The Chase Manhattan Bank (National Association)	72,000,000
Chemical Bank	52,000,000
Citibank, N.A.	100,000,000
Continental Illinois National Bank and Trust Company of Chicago	32,000,000
Irving Trust Company	16,000,000
Morgan Guaranty Trust Company of New York	40,000,000
The Bank of Nova Scotia	20,000,000
Total	$400,000,000

The commitment of each Bank is evidenced by a separate agreement with Georgia. Each borrowing by Georgia under a revolving credit will be evidenced by a promissory note to be dated the date of the borrowing, to mature not more than 270 days (but no later than the expiration of the lending Bank's commitment) after the date of the issue and will be prepayable, in whole or in part, at any time without penalty or premium. The revolving credits have been separately negotiated with each of the several Banks and consequently the pricing terms, interest rates and fees payable by Georgia in respect of each Bank's commitment vary.

Under each agreement Georgia is obligated to pay a commitment fee or fees. Such fees, calculated on an annualized basis, involve applying a defined rate to the Bank's total commitment, or under some agreements, the unborrowed portion thereof. The commitment rates are variously defined, some being fixed, others determined from time to time by reference to the lending banks prime rate, or a specified money market rate or some combination thereof. The individual effective commitment rates, computed in terms of a 19% prime rate, and assuming no credits for actual borrowings would range from .05% to 1.05%. The weighted average commitment fee for the entire $400 million would be 0.8% in the first year and 0.837% thereafter, the increase being due to certain agreements calling for slightly higher commitment fee after the first year. Some agreements allow credits against the fees for deposit balances of Georgia which have not been adjusted for in the sample computation.

The interest rates on borrowings are all variable and defined by reference to the lending bank's prime rate or a money market rate, or some combination thereof. Some agreements include factors increasing the rate after the first year, or if aggregate borrowings exceed a threshold. The effective cost of money borrowed under each agreement computed on the basis of a 19% prime rate and maximum borrowings, would range from 19% to 21.6% in the first year, and from 19.75% to 22.4% thereafter, with a weighted average cost of 20.7% in the first year, increasing to 21.2% in the third year.

Georgia has the right, at any time without penalty, to reduce or terminate any commitment, except as to funds already borrowed. It expects that it will seek in the quarter before each anniversary date, extension of the present three year term for an additional year, on appropriate terms.

No other long term commitments have been sought, but applicants, including Georgia, but excluding Southern, propose, within the limits to be authorized, to borrow from other banks by notes to be dated as of the date of such borrowings and to mature in not more than nine months after the date of issue, and by sale of commercial paper. In general, such bank borrowings will be at the prime rate, based on maintenance of compensating balances of 20% of amounts borrowed and 10% of amounts committed, or comparable fees in lieu of such balances. The effective cost, based on a 19% prime rate, would be 23.75%.

The short term borrowing authorizations requested are predicated on 1980 budgets of the applicants, which include construction aggregating $675 million for Georgia, $147 million for Gulf and $68 million for Mississippi. Applicants do not rely on the short term borrowings to carry these investments. On the contrary, each forecasts long term financing, including equity investments by Southern in the operating subsidiaries, and pending sales of co-ownership interests in certain generating plants in the case of Georgia, to periodically retire accumulated short term borrowings. Applicants state, however, that the time of the long term financing, and of the closing of the property sales is subject to variation and that the maximum short term limits authorized should be sufficient to permit substitution of additional short term debt for the expected more permanent financing. Accordingly, they request authorizations approximating the budgeted gross requirements, and have obtained bank commitments for the bulk of that amount.

The commercial paper will be in the form of promissory notes of the applicants with varying maturities not to exceed 270 days and not

prepayable. The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5,000,000. The discount rate, or the interest rate in the case of interest bearing notes, (including commissions if any) will not be in excess of the discount rate per annum (or equivalent interest rate) prevailing at the date of issuance for prime commercial paper of comparable quality of the particular maturity sold by issuers thereof to commercial paper dealers, and no commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest cost at which the issuer could borrow an equal amount from banks.

The commercial paper will be sold by applicants directly or through a dealer. No commission or fee will be payable in connection with the issuance and sale of commercial paper, except that in sales through a dealer, the dealer will reoffer such commercial paper at a discount rate of 1/8 of 1% per annum less than the prevailing interest rate to the issuer or at an equivalent cost if sold on an interest bearing basis. The names of the dealer are: The First Boston Corporation for Southern; Salomon Brothers for Georgia; and A. G. Becker & Co. Incorporated for Gulf and Mississippi. The commercial paper of each applicant will be offered by the dealer to not more than 200 customers of the dealer identified and designated in a non-public list prepared in advance by the dealer. Such list includes commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, elemosynary and non-financial corporations which invest surplus funds in commercial paper. No sale will be made to any such customer unless and until it has received from the dealer a current report as to the financial position of the issuer. No additions will be made to such list of customers. It is expected that the commercial paper of the applicants will be held by customers to maturity, but, if they wish to resell prior thereto, the dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others on the customer list.

Southern proposes to use the proceeds of its borrowings to the extent necessary, together with treasury funds and the proceeds for other external sources, primarily to make, from time to time, additional equity investments in the form of capital contributions to its four utility company subsidiaries and to make loans to Southern Company Services, Inc.

The applicants-declarants, except Southern, have not demonstrated immediate need to borrow the full amounts for which authorization has been sought; accordingly, the applicants-declarants, except Southern, will be authorized to borrow lesser amounts at the present time, jurisdiction being reserved over the remaining amounts for which authorization is sought. The applicants-declarants will be authorized to issue and sell notes to banks and commercial paper dealers from time to time through March 31, 1981 in the following maximum aggregate principal amounts at any one time outstanding:

Southern	$100,000,000
Georgia	450,000,000
Gulf	50,000,000
Mississippi	50,000,000

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated at $3,400 in the case of Southern, $5,900 in the case of Georgia, $1,400 in the case of Gulf and $1,400 in the case of Mississippi. The issuance of bank notes and commercial paper by Gulf has been authorized by the Florida Public Service Commission. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR Nos. 21436 and 21451), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the issuance of notes to banks and commercial paper to dealers in maximum aggregate principal amounts at any one time outstanding of $100,000,000 in the case of Southern, $450,000,000 in the case of Georgia, $50,000,000 in the case of Gulf and $50,000,000 in the case of Mississippi and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the issuance of notes to banks and commercial paper to dealers in maximum aggregate principal amounts at any one time outstanding of $100,000,000 in the case of Southern, $450,000,000 in the case of Georgia, $50,000,000 in the case of Gulf and $50,000,000 in the case of Mississippi.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the issuance of notes to banks and commercial paper to dealers in maximum aggregate principal amounts at any one time outstanding of $100,000,000 in the case of Southern, $450,000,000 in the case of Georgia, $50,000,000 in the case of Gulf and $50,000,000 in the case of Mississippi, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis:

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the issuance of notes to banks and commercial paper to dealers in maximum aggregate principal amounts at any one time outstanding in excess of $450,000,000 in the case of Georgia, $50,000,000 in the case of Gulf and $50,000,000 in the case of Mississippi pending a showing of need to make such borrowings.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21502/March 28, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6429)

NOTICE OF PROPOSAL TO ISSUE AND SELL COMMON STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Middle South proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to 7,000,000 authorized but unissued shares of its common stock, $5 par value, to underwriters or investment bankers who will promptly make a public offering thereof. If market conditions at the time of the offering of the securities are unfavorable, Middle South may request an exception from the competitive bidding requirements of Rule 50, so that the common stock may be offered pursuant to a negotiated underwriting.

The net proceeds to be derived from the sale of the common stock (presently estimated to be approximately $91,000,000) will be applied toward the reduction of Middle South's then outstanding bank loans, pursuant to the credit agreement between Middle South and various commercial banks, dated as of June 29, 1979. The amount then to be outstanding is estimated to be $224,000,000. Proceeds derived from bank borrowings are used to make investments in certain of Middle South's subsidiary companies which apply such funds to construction, acquisition of property or retirement of short-term indebtedness.

The consolidated capitalization of Middle South and its subsidiaries as of December 31, 1979, was as follows:

Common Stock	$452,165,000
Paid-in surplus	630,450,000
Retained earnings	581,445,000
Subsidiaries preferred stock	524,474,000
Subsidiaries long-term debt	3,017,816,000
	$5,206,350,000

These amounts include term bank notes and first mortgage bonds issued by Middle South Energy, Inc. ("MSEI"), a wholly-owned subsidiary of Middle South whose sole function, at present, is to construct Grand Gulf Electric Generating Units No. 1 and No. 2 near Port Gibson, Mississippi. As of December 31, 1979 such bank notes due December 31, 1985 amounted to $547 million under an $808 million revolving loan agreement. MSEI then also had outstanding $400 million principal amount of its first series of first mortgage bonds due 1989. Such bonds

are held by a group of insurance companies. In January, 1980 MSEI entered into an agreement with a group of insurance companies under which it will issue and sell on or prior to July 1, 1980 an additional $98.5 million principal amount of first mortgage bonds due 2000. Its common equity, supplied by Middle South, was about $385 million. Under a Capital Funds Agreement, Middle South is obligated to supply MSEI's capital requirements, except to the extent it is obtained by MSEI from other sources.

MSEI has covenanted with its bondholders and with the holders of its bank notes that Grand Gulf Unit No. 1 will be placed in commercial operation no later than December 31, 1982, and, with the bondholders, that Grand Gulf Unit No. 2 will be placed in commercial operation no later than December 31, 1986. If either of these covenants is not fulfilled or if MSEI defaults with respect to either the bonds or the bank borrowings, MSEI's outstanding obligations will become due and payable by MSEI and by Middle South under its Capital Funds Agreement, unless extensions of time can be arranged. MSEI has assigned, as security, to the banks and to the trustee for the bondholders its rights under its Availability Agreement with Middle South's five electric utility subsidiaries. It provides that no later than December 31, 1982, the operating companies will begin paying MSEI such amounts as will be at least equal to MSEI's operating expenses or an equivalent amount if Unit No. 1 is not in operation, including MSEI's interest charges and depreciation expense.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21503/March 31, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Four Gateway Center
Pittsburgh, Pennsylvania 15222

CNG PRODUCING COMPANY
1800 Bank of New Orleans Building
1010 Common Street
New Orleans, Louisiana 70112

(70-6391)

NOTICE OF PROPOSED ACQUISITION OF OIL AND GAS LEASEHOLDS AND MINERAL RIGHTS FROM NON-AFFILIATE

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and CNG Producing Company ("CNG Producing"), a wholly-owned gas exploration and development subsidiary of Consolidated have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration,

which is summarized below, for a complete statement of the proposed transaction.

By order dated February 6, 1980 (HCAR No. 21425) CNG Producing was authorized to acquire certain properties ("Properties") from Hidalgo-Willacy Oil Company ("Hidalgo") and further authorized Consolidated to deliver to CNG such number of shares of its authorized but unissued common stock whose market value would, in the aggregate, have equaled $7,000,000. CNG Producing, in turn, would have: (i) delivered such shares to Hidalgo for distribution to the shareholders of Hidalgo, in exchange for the Properties and (ii) delivered to Consolidated in consideration for the Consolidated stock 70,000 shares of its own common stock, $100 par value, at the par value thereof.

Since the issuance of the Commission's order, the terms and conditions proposed for the acquisition of the properties have, at the instance of Hidalgo and its shareholders, been renegotiated. Under the revised terms of the contract, CNG Producing would acquire all of the authorized and outstanding stock of Hidalgo in exchange for an aggregate of $7.6 million in cash and CNG Producing promissory installment notes. Consolidated is not a party to the contract. The notes will be payable in four equal annual installments, and bear interest equal to the prime commercial lending rate at Chase Manhattan Bank, N.A., New York, N.Y., in effect from time to time. At least 50% of such consideration is expected to be in cash; however, under the terms of the renegotiated contract, the exact amount of cash and notes required to be delivered will not be known to CNG Producing until a date not less than 15 days prior to closing. Any cash required by CNG Producing to purchase the Hidalgo stock will be advanced to it by Consolidated. Since the Hidalgo stockholders now have a taxable transaction, a new purchase price of $7,600,000 was negotiated, an increase of $600,000.

Despite the increase in the purchase price, the acquisition becomes even more attractive than before as a result of substantial additional federal income tax deductions which will become available to CNG Producing. These deductions arise through the depreciation and amortization of the much larger tax basis acquired for the properties as a result of the purchase of Hidalgo stock for cash and notes. The tax benefit from these deductions will more than offset the $600,000 in additional purchase price. Under the former agreement, the tax-free nature of the transaction gave CNG Producing a minimal carry-over basis from Hidalgo in the properties.

Inasmuch as the revised contract calls for CNG Producing to acquire the stock of Hidalgo, Hidalgo will, prior to closing, have disposed of all of its properties other than those intended to be acquired by CNG under the original proposed contract. Simultaneously with the closing or promptly thereafter, Hidalgo will be merged into CNG Producing, CNG Producing being the surviving corporation, and the outstanding Hidalgo stock cancelled. Through this vehicle, CNG Producing will become owner of all the properties originally sought.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $164,600, including mineral consultant's fee of $80,000, service charge of Consolidated Natural Gas Service Company of $30,000 for services performed at cost, and legal fees of $13,100. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 23, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21504/March 31, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
New York, New York

(70-6403)

ORDER AUTHORIZING HOLDING COMPANY TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO A DEALER; ADVANCES BY HOLDING COMPANY TO SUBSIDIARIES

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder regarding the proposed transactions.

Allegheny proposes to issue and sell from time to time through September 30, 1981 short-term notes to banks and commercial paper to a dealer in a maximum aggregate principal amount of $175,000,000 at any one time outstanding. As of March 31, 1980 it is expected that Allegheny will have $25,000,000 of short-term debt outstanding pursuant to Commission authority which expires on that date.

Allegheny proposes to borrow short-term funds through the issuance, reissuance, sale and renewal of notes to banks and commercial paper to a dealer or dealers in commercial paper as funds may be required in an amount not to exceed $175 million outstanding at any one time, including any notes to banks or commercial paper as may still be outstanding as of March 31, 1980. It is proposed that such notes and commercial paper will be issued from time to time and be renewed from time to time prior to September 30, 1981 provided that no such notes or commercial paper shall mature after March 31, 1982.

Each note payable to a bank will be dated as of the date of the borrowings which it evidences, will mature not more than 270 days after the date of the issuance or renewal thereof, will bear interest at the prime or equivalent interest rate of the bank at which the borrowing is made in effect at the time of issuance, or in effect from time to time, and will be prepayable at any time without premium or penalty. The name or names of the banks from which such borrowings are proposed to be effected (maximum $240 million for all companies in the Allegheny Power System outstanding at any one time) and the maximum aggregate principal amount of loans which may be outstanding to any one or more of the companies in the Allegheny Power System including Allegheny from each bank at any one time are as follows:

Citibank, N.A., New York, New York	$40,000,000
The Chemical Bank, New York, New York	30,000,000
Mellon Bank, N.A., Pittsburgh, Pennsylvania	70,000,000
Pittsburgh National Bank, Pittsburgh, Pennsylvania	17,500,000
Manufacturers Hanover Trust Co., New York, New York	75,000,000
Irving Trust, New York, New York	5,000,000
Chase Manhattan Bank, N.A., New York, New York	2,500,000
	$240,000,000

provided that the maximum amount of such borrowings on behalf of Allegheny at any one time outstanding will not, when taken together with any commercial paper then outstanding, be in excess of $175 million.

Allegheny and its subsidiaries have established lines of credit with various banks for short-term borrowings. Balances are maintained to meet regular operating requirements at all of these banks as well as, when necessary, in connection with these lines of credit. Compensating cash balance requirements are generally either on the basis of a percentage of the line of credit extended by such bank, or a higher percentage of notes outstanding, whichever is greater, or a percentage of the line of credit plus a percentage of notes outstanding, in every case on an average annual basis. If such balances were maintained by Allegheny solely to fulfill compensating balance requirements for borrowings to be made by Allegheny the effective interest cost to Allegheny of issuing and selling the notes would be more than 23.75% on the basis of a prime commercial credit rate of 19.0%.

Certain of the banks listed above have offered to substitute fees for, or to be used in conjunction with lower compensating balances than those set forth above. The fee arrangements vary and would not be utilized unless the effective cost thereof is less than the compensating balance arrangement in effect at that bank at that time. The proposed fee arrangements produce an effective interest cost of issuing and selling the notes of between 21.59% and 22.73% on the basis of a prime commercial rate of 19% rather than the 23.75% effective cost resulting from meeting compensating balance requirements set forth above.

The commercial paper will be in the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000 and will be of varying maturities, with no maturity more than 270 days after the date of issue; none will be prepayable prior to maturity. Allegheny has designated A. G. Becker & Co., Incorporated as its commercial paper dealer. The commercial paper notes will be sold directly to the dealer, at a discount, not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commercial paper. The dealer may reoffer the commercial paper at a discount rate of 1/8 of 1% per annum less than the discount rate to Allegheny. Allegheny may issue commercial paper notes if (1) the interest cost thereof is equal to or less than the effective interest cost at which Allegheny could borrow the same amount from the banks named herein at that time or (2) Allegheny cannot at that time borrow the same amount for the same period of time from the banks named herein. The dealer will reoffer the commercial paper notes to not more than 200 of its customers, identified and designated in a non-public list prepared in advance. No sale of commercial paper of Allegheny will be made to any customer unless that customer has received up to date reports as to the Allegheny's credit position. No additions will be made which would increase the customer list or lists which will include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, financial companies and nonfinancial corporations which invest funds in commercial paper. It is expected that the commercial paper notes will be held by the dealer's customers to maturity, but if the customers wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the notes and reoffer them to others on said list.

Allegheny requests an exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof since it is not practicable to invite competitive bids for commercial paper and current rates for commercial paper for prime borrowers such as Allegheny are published daily in financial publications.

Allegheny will use the proceeds of the proposed short-term borrowings primarily to make advances to Allegheny Pittsburgh Coal Company and to make investments in its electric utility subsidiaries to assist them in operating their businesses as utilities, including paying or prepaying short-term debt incurred in part to finance their construction programs, such investments to be in the form of purchases of common stock. The investments by Allegheny in the subsidiaries will vary, depending on many factors, including the level of the cost of senior securities, the sufficiency of rate levels to provide internally generated funds and support the issuance of senior securities and the accuracy of current estimates of load requirements, and for costs of construction expenditures which are the subject of continuing review. The following table sets forth the presently projected investments by Allegheny in the subsidiaries through 1981 (in millions of dollars):

Investments	*1980*	*1981*	*Total*
Monongahela Power Company	$25.0	$10.0	$35.0
The Potomac Edison Company	25.0	20.0	45.0
West Penn Power Company	20.0	25.0	45.0
	$70.0	$55.0	$125.0

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $10,400, including fees of $8,000 for rating the commercial paper. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21463), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable

standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21505/March 31, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

(70-6420)

ORDER AUTHORIZING ELECTRIC UTILITY SUBSIDIARY TO ISSUE AND SELL COMMON STOCK TO PARENT HOLDING COMPANY

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its electric utility subsidiary company, Louisiana Power & Light Company ("LP&L"), have filed an application-declaration with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 43 promulgated thereunder regarding the proposed transaction.

Louisiana has outstanding 65,140,000 shares (of an authorized 150,000,000 shares) of common stock, without nominal or par value, stated on its books at $428,900,000, all of which shares are owned by Middle South. Louisiana now proposes to issue and sell to Middle South, and Middle South proposes to acquire, 15,152,000 additional shares of Louisiana's common stock ("New Common Stock") for an aggregate purchase price of $100,000,000 in cash.

Louisiana and Middle South believe it is preferable for sales of the New Common Stock to be timed to coincide with Louisiana's cash needs from time to time, which are primarily determined by the nature and pace of its construction program. Accordingly, Louisiana and Middle South propose that sales of the New Common Stock be effected from time to time through December 31, 1980, in increments to be determined by Louisiana and Middle South. Each such sale will be reported to the Commission by a certificate filed pursuant to Rule 24. Upon completion of the proposed transaction, Louisiana will have issued and outstanding 80,292,000 shares of common stock stated in its Common Stock Account at an aggregate of $528,900,000. Upon consummation of its aforesaid stock acquisition, Middle South proposes to charge its Investment Account with the amount of its cash investment, $100,000,000.

Louisiana's construction program contemplates expenditures of approximately $285,000,000 in 1980, which will require funds in excess of the treasury funds available for that purpose. Louisiana intends to effect short-term borrowings in an aggregate principal amount not expected to exceed $150,000,000 at any one time outstanding during the remainder of 1980 pursuant to the Commission's orders dated December 15, 1978 (HCAR No. 20832), January 5, 1979 (HCAR No. 20873) and July 10, 1979 (HCAR No. 21141). It is proposed that the funds to be provided by the above-mentioned issuance and sale of the New Common Stock by Louisiana will be used primarily for the financing in part of Louisiana's construction program and for the payment in part of short-term borrowings.

To the extent funds are required from external sources to acquire the New Common Stock, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes under a revolving credit agreement dated as of June 29, 1979, as amended, with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's orders dated June 7, 1979 (HCAR No. 21093) and December 6, 1979 (HCAR No. 21332).

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $5,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21464), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21506/April 1, 1980

In the Matter of

CENTRAL AND SOUTH WEST FUELS, INC.
Golden, Colorado

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

PUBLIC SERVICE COMPANY OF OKLAHOMA
ASH CREEK MINING COMPANY
Tulsa, Oklahoma

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

WEST TEXAS UTILITIES COMPANY
Abilene, Texas

(70-6235)

ORDER AUTHORIZING FUEL EXPLORATION AND DEVELOPMENT BUDGETS

Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO") and West Texas Utilities Company ("WTU"), each an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, together with Central and South West Fuels, Inc. ("CSWF"), a fuel subsidiary of CPL, PSO, SWEPCO and WTU, and Ash Creek Mining Company, a mining subsidiary of PSO, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 9(a), 10, 12 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 90-95 promulgated thereunder concerning the following proposed transactions.

By series of order dated December 28, 1978, March 30, 1979, May 11, 1979, May 31, 1979, June 28, 1979, July 31, 1979, and October 31, 1979 (HCAR Nos. 20864, 20983, 21046, 21071, 21124, 21165 and 21234), applicants-declarants were authorized fuel exploration and development budgets for the period January 1, 1979, through March 31, 1980.

By post-effective amendment applicants-declarants request fuel exploration and development expenditure authorizations for the period April 1, 1980, through March 31, 1981, in the following amounts:

CSWF	$18,846,000
CPL	21,740,000
PSO	29,019,000
SWEPCO	3,391,000
	$72,996,000

The CSWF $18,846,000 budget authorization is composed as follows: Lignite Projects, $13,810,000; Coal Projects, $3,605,000; Uranium Projects, $65,000; General and Administrative, $1,208,000; and Other Expenditures, $158,000. The Lignite Projects authorization includes allocations among its activities as follows: Cass-Morris Area (Texas), $90,000; Dolet Hills Area (Louisiana), $4,000,000; Karnack-Woodlawn Area (Texas), $1,920,000; South Hallsville Area (Texas), $3,500,000; Walker-Grimes Area (Texas), $2,750,000; and other lignite prospects, $1,550,000 (primarily for engineering studies, evaluation and verification of lignite areas which have been or may be offered to CSWF,

including expenses necessary for analysis of drilling results and other submittals to CSWF).

At December 31, 1979, the Cass-Morris prospect involved 12,800 net acres. The only expenditure during the budget period will be $90,000 to maintain existing leases; no development, engineering or geological work will be undertaken.

At December 31, 1979, the Dolet Hills prospect involved 22,000 acres. The fuel from this prospect is planned to be used for a 640 MW unit to be owned in equal shares by SWEPCO and Central Louisiana Electric Company ("CLECO"), a non-affiliated utility. No lignite from this prospect will become available to CSW operating companies, and SWEPCO will reimburse CSWF for all exploration and development expenditures related thereto. SWEPCO will be reimbursed by CLECO for 50% of such expenditures. Of the budgeted amount it is expected that $2,335,000 will be expended on land acquisition and maintenance, $915,000 for engineering expenses and $750,000 for geological work.

At December 31, 1979, the Karnack-Woodlawn prospect involved 35,236 acres. Of the budgeted amount it is expected that $733,000 will be expended for new leases and $425,000 will be expended for collecting environmental data necessary to apply for a mine permit. CSWF also plans to continue its development drilling program in this prospect, to continue engineering work (including mapping and surveying) and to continue work on the preliminary mine plan.

At December 31, 1979, the South Hallsville prospect involved 40,395 acres. SWEPCO owns all CSW interests in this area and will reimburse CSWF for all exploration and development expenditures related thereto. The fuel from this prospect is planned to be used for a 640 MW unit to be owned solely by SWEPCO. Of the budgeted amount it is expected that $400,000 will be expended on continued work on the mine permit and work on selecting a mining contractor, and $3,100,000 will be expended on further land acquisition and relocating pipelines running through the prospect so that they will not interfere with surface mining.

At December 31, 1979, the Walker-Grimes prospect involved 50,748 acres. Of the budgeted amount it is estimated that $850,000 will be expended on further land acquisitions. The balance will be expended to complete drilling on the eastern half of the prospect, begin drilling on the western half thereof, and to do mapping, surveying and preliminary work for a mine plan.

The $3,605,000 CSWF Coal Projects budget includes $105,000 for engineering and feasibility studies related to coal projects which have been or may be offered to CSWF during the budget period. The remaining $3,500,000 is for the further acquisition of acreage ($2,000,000) in the New Castle-Crystal Falls Area (Texas), and the further development, drilling analyses, mapping, surveying and preparing a preliminary mine plan of said prospect ($1,500,000). The prospect at December 31, 1979, involved 34,762 acres, and preliminary analyses had indicated that coal may exist in the area in sufficient quantity to fuel a large generating plant.

The $65,000 CSWF Uranium Projects budget consists of $30,000 for state lease payments and $35,000 for assessment work on unpatented mining claims for PSO's uranium holdings. The $1,208,000 CSWF General and Administrative budget includes office rent and salaries for personnel for work which cannot be designated for a specific prospect. The $158,000 CSWF Other Expenditures budget consists of $127,000 for legal fees and other costs related to negotiating coal purchases for Oklaunion Unit No. 1, and $31,000 for legal fees and other work related to entering into a contract for uranium for PSO's Black Fox Station.

CPL, PSO and SWEPCO request expenditure authorizations of $21,740,000, $29,019,000 and $3,391,000, respectively (excluding any allowance for funds used during construction), for the 12-month period ending March 31, 1981, for oil and gas exploration and development activities to be conducted by them unilaterally or with non-affiliated entities. CPL, PSO and SWEPCO propose to continue severally to acquire leasehold interests and surface titles, to dispose of interests deemed not attractive or appropriate to their needs, to conduct geological evaluation and testing, to drill exploratory and development wells, to operate wells, to acquire and operate gathering and pipeline facilities in connection with gas or oil wells in which any of them has a participation, to arrange for any necessary treatment or processing and to make incidental sales of products or by-products where no use can feasibly be made of them. Activities may be entered into through joint ventures, partnerships or other non-affiliated entities and may involve farm-ins, farm-outs, bottom-hole or dry-hole contributions and other transactions.

At December 31, 1979, CPL had acquired leaseholds containing estimated proven reserves of 28,914,000 mcf of gas and 318,000 barrels of oil. Of the budgeted amount CPL expects to spend $20,990,000 for new exploration and development and $750,000 for exploration and development of old areas. Of its budgeted amount PSO plans to expend $25,250,000 for further exploration in its programs in the Anadarko and Arkoma areas in Oklahoma and $3,769,000 for new exploration. SWEPCO's budget contemplates the continued development of three of its prospect areas, and no new exploration is being budgeted.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $5,000, including legal fees of $2,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21468), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21507/April 2, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-5943)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 as promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By orders dated February 8, 1977, April 19, 1978, March 29, 1979 and August 8, 1979 (HCAR Nos. 19879, 20506, 20979 and 21180) AEP was authorized to issue and sell, from time to time through April 30, 1980, up to 7,000,000 shares of its authorized but unissued common stock pursuant to its dividend reinvestment and stock purchase plan ("Plan"). AEP states that through March 11, 1980, a total of 5,695,467 shares had been issued and sold, leaving a balance of 1,304,533 shares available for issuance and sale.

The Plan basically provides that a participant may (1) purchase shares of common stock from AEP quarterly by automatically reinvesting cash dividends on all or less than all (a specified number) of shares of common stock registered in his name, or (2) purchase shares of common stock from AEP as often as once a month by making optional cash payments up to a maximum of $5,000 per calendar quarter, or (3) do both. The price of shares repurchased with reinvested cash dividends is 95% of the average of the daily high and low sales prices of AEP's common stock for the five trading days ending on the day of purchase. All full-time employees of AEP system companies may enroll in the Plan to purchase shares of common stock with optional cash payments even though they are not

registered holders of any shares of AEP common stock, and, if they wish, may arrange to make optional cash payments through regular payroll deductions. The minimum monthly deduction is $5 and the maximum is 10% of regular salary or wages or $1,000, whichever is less. No brokerage commissions or service charges are paid by participants in connection with purchases in the Plan. All costs of administration of the Plan are paid by AEP. A participant may change his option under the Plan at any time and may withdraw from the Plan at any time by giving written notice to the Morgan Guaranty Trust Company of New York (the "Agent"). Unless the Agent is otherwise directed, the participant, upon withdrawal, receives a certificate for all whole shares credited to his account and a cash payment for the value of any fractional share.

By post-effective amendment, AEP proposes to issue and sell, from time to time through June 30, 1981, up to an additional 5,000,000 shares of its autorized unissued common stock, $6.50 par value.

It is stated that the amounts of dividends reinvested each quarter under the Plan have grown continuously. The following table shows the actual amounts of dividends reinvested each quarter under the Plan during 1978, 1979 and the first quarter of 1980, and the amounts of dividends that may be reinvested (assuming continuation of the trend and without giving effect to the possible acquisition by AEP of Columbus and Southern Ohio Electric Company (CSOE)) during the remainder of 1980 and the first two quarters of 1981, based on a straight-line projection of the 1978-1980 data:

Quarter Ended	*Actual 1978*	*Actual 1979*	*Projected 1980*	*Projected 1981*
		(In thousands)		
Mar.	$4,840	$6,517	$9,951*	$12,100
June	$5,031	$7,246	$10,100	$12,700
Sept.	$5,198	$7,700	$10,800	—
Dec.	$5,866	$9,176	$11,400	—

**Actual*

Although the actual amount of reinvested dividends may vary from the above projections, approximately $57,100,000 of dividends may be reinvested during such period, requiring the issuance of up to 3,700,000 shares of common stock (based on 95% of the March 20, 1980 closing price of $16-1/4).

Optional cash payments by participants totalled approximately $15,077,000 in 1979 and $13,409,000 in 1978. Based on its estimates of future shareholder participation, AEP feels that the proposed additional 5,000,000 shares of common stock, together with the remaining shares already authorized, is necessary to meet its anticipated requirements and provide a sufficient margin to meet unexpected contingencies, such as an extraordinary increase in participation in the Plan or extraordinary decrease in the market price of the common stock.

AEP requests an exemption from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction, exclusive of Agent fees estimated at $300,000, are estimated at $100,750, including printing expenses of $40,000, legal fees of $5,000 and accountant's fees of $5,000. It is stated that no federal or state commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IF FURTHER GIVEN that any interested person may, not later than April 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21508/April 2, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA GAS DEVELOPMENT OF CANADA, LTD.
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

COLUMBIA COAL GASIFICATION CORPORATION
COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
Ashland, Kentucky

(70-6389)

SUPPLEMENTAL ORDER AUTHORIZING INTRASYSTEM PREPAYMENT OF PROMISSORY NOTES

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly-owned subsidiary companies listed above, have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 6(b), 9, 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b(2) and 45 promulgated thereunder as applicable to the following transaction.

During the winter heating season Columbia's distribution subsidiary companies generate substantial amounts of cash in excess of current requirements. During the same period, however, the transmission subsidiary companies generate less amounts of cash and have generally larger construction expenditures, requiring Columbia to advance funds to such subsidiary companies. In recent years, the Commission has authorized open account advances by Columbia to subsidiary companies and certain related transactions which are designed to alleviate this situation.

By order dated December 31, 1979 (HCAR No. 21373) the Commission authorized the subsidiary companies listed below to prepay from time to time prior to the end of 1980, with excess cash, in aggregate amounts not to exceed the amounts set forth below, a portion of their outstanding installment promissory notes ("Notes") held by Columbia. The following amounts represent the estimated aggregate maximum excess funds that such companies are expected to accumulate at any one time during the year 1980.

COLUMBIA GAS SYSTEM SERVICE CORPORATION	$5,000,000
COLUMBIA GAS TRANSMISSION CORPORATION	270,000,000
COLUMBIA GAS OF PENNSYLVANIA, INC.	55,000,000
COLUMBIA GAS OF NEW YORK, INC.	7,500,000
COLUMBIA GAS OF MARYLAND, INC.	4,000,000
COLUMBIA GAS OF KENTUCKY, INC.	12,000,000
COLUMBIA GAS OF VIRGINIA, INC.	5,000,000
COLUMBIA GAS OF WEST VIRGINIA, INC.	20,000,000
COLUMBIA GAS OF OHIO, INC.	125,000,000
COLUMBIA GULF TRANSMISSION COMPANY	100,000,000
COLUMBIA HYDROCARBON CORPORATION	3,158,000
THE INLAND GAS COMPANY, INC.	4,500,000
COLUMBIA LNG CORPORATION	104,000,000
COLUMBIA GAS DEVELOPMENT CORPORATION	20,000,000
COLUMBIA COAL GASIFICATION CORPORATION	4,000,000
TOTAL	$739,158,000

The Notes ("Indebtedness") prepaid by the individual companies are those bearing the highest interest rate or rates outstanding at the time of each prepayment. Interest on such Indebtedness ceases upon prepayment and recommences upon reissuance. As any of such companies require funds for construction and other corporate purposes after prepayment, advances are made to them on open account by Columbia, provided that at no time does the amount of such advances to any subsidiary exceed the amount of Indebtedness theretofore prepaid by it, less any current maturities applicable to Notes which have matured subsequent to the date of prepayment.

It is requested that Columbia Gas of Virginia, Inc.'s ("Columbia of Virginia") authorization to prepay its Notes be increased to $6,500,000, an increase of $1,500,000. This increase is requested because a revised cash flow forecast indicates Columbia of

Virginia will generate additional cash temporarily in excess of its current requirements.

The fees, commissions and expenses to be incurred by Columbia and its subsidiaries in connection with the proposed transaction are estimated at $2,250.

In all other respects the proposed transaction remains the same. The State Corporation Commission of Virginia has authorized Columbia Gas of Virginia to make such increased prepayments. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21509/April 2, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
320 Park Avenue
New York, New York 10022

(70-6413)

NOTICE OF PROPOSAL TO ISSUE AND SELL COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT PLAN AND TAX REDUCTION ACT STOCK OWNERSHIP PLAN

NOTICE IS HEREBY GIVEN that Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Allegheny proposes to issue and sell from time to time up to 2,000,000 shares of its authorized but unissued common stock, par value $2.50 per share, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") and its Tax Reduction Act Stock Ownership Plan ("TRASOP"). By an order dated August 5, 1977 the Commission authorized Allegheny to issue up to 1,000,000 shares under these plans, and as of January 15, 1980, 443,705 shares had been issued pursuant to the Dividend Plan and 392,680 pursuant to the TRASOP.

The Dividend Plan allows all holders of record of Allegheny common stock, on a voluntary basis to: (a) invest cash dividends automatically, on each quarterly dividend payment date in additional common stock and/or (b) make optional cash purchases of not less than $50 nor more than $5,000 per quarter of additional common stock, provided that in each quarter the maximum aggregate amount of additional common stock to be made available for purchase should not exceed the number of shares which have been offered to, but not purchased by, the holders of shares of common stock with cash dividends. In each case the price of the additional common stock will be equal to the average of the daily high and low market prices of Allegheny common stock for the 10 trading days prior to the dividend payment date. All costs and charges of participation in the Dividend Plan are paid by Allegheny. A shareholder may withdraw from the Dividend Reinvestment part of the Dividend Plan at any time by giving appropriate written notice, and such withdrawal will have no effect on such shareholder's right to continue to make optional cash purchases. Allegheny reserves the right to direct the administrator of the Dividend Plan to purchase shares in the open market, subject to any applicable regulatory requirements, with funds provided from participants' cash dividends and optional cash payments. In such event the price of any such shares to the participant will be the average cost of the shares excluding any related brokerage

fees or commissions, which will be paid by Allegheny. In the event optional cash payments exceed the number of shares available for optional cash purchases the available shares will be allotted among those who have made optional cash payments, in proportion to the amount of their optional cash payments, and any excess cash remaining will be refunded to participants without interest. Allegheny reserves the right to amend, suspend, modify or terminate the Dividend Plan at any time, and upon such termination or upon withdrawal from the Dividend Plan by any shareholder, certificates for whole shares in the participant's account will be issued to the participant and a cash payment will be made for any fraction of a share.

Allegheny proposes to issue the additional common stock to a trust created for the benefit of qualified employees of all system companies pursuant to the requirements of the Tax Reduction Act of 1975, as amended by the Tax Reform Act of 1976. The value of shares of additional common stock issued to the trust currently equals 10% of the prior year's investment tax credit and will be funded (estimated to be $2.3 million for 1979) by the amount by which Allegheny's income taxes are reduced as a result of the additional 1% investment tax credit available to Allegheny pursuant to the Internal Revenue Code. The number of shares of additional common stock to which each qualified employee shall be entitled will be computed in proportion to the compensation of each of them (maximum $100,000 a year) to the total compensation of all such qualified employees in that year and the price of the shares will be equal to the daily average of the closing prices for the 20 business days preceding the day the stock is issued to the trust. All costs of administration of the TRASOP, in excess of those allowed by the Tax Reduction Act to be paid from contributions to the trust will be paid by Allegheny.

The proceeds from the issuance of the additional common stock under the Dividend Plan and the tax savings which will be realized as a result of the TRASOP, the total amount of which cannot be determined, will be added to Allegheny's general funds and are expected to be used to carry on its business as an electric utility holding company including the pre-payment, or payment at maturity of short-term debt then outstanding, and to acquire common stock and make capital contributions to and other investments in Allegheny system companies. On January 15, 1980 APS had $26.6 million of short-term debt outstanding and it is expected that on May 31, 1980, $40 million of short-term debt will be outstanding.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The Maryland Public Service Commission has jurisdiction over the proposed transactions and the TRASOP has been qualified by the Internal Revenue Service. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21510/April 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6204/April 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21511/April 3, 1980

In the Matter of

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-6411)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Mississippi Power Company ("Mississippi"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sectins 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder as applicable to the following transaction.

Mississippi proposes to issue up to $25,000,000 aggregate principal amount of its first mortgage bonds ("Bonds"). The new Bonds will have a term of not less than five years nor more than 30 years and will be sold at competitive bidding for a price to Mississippi of not less than 98% nor more than 101-3/4% of the principal amount thereof, plus accrued interest. The new Bonds will be issued under the Indenture dated as of September 1, 1941, between Mississippi and Morgan Guaranty Trust Company of New York, as Trustee, as heretofore supplemented by various indentures supplemental thereto and as to be further supplemented by a Supplemental Indenture to be dated as of April 1, 1980.

It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Mississippi to sell new Bonds having a 30-year or some shorter maturity, and that it is in the public interest for Mississippi to be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate and maturity for the new Bonds. Mississippi intends, therefore, to decide on the maturity of the new Bonds after the date of public invitation for proposals and then notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of the bidding. The terms of the new Bonds will include a provision that no Bond shall be redeemed for any purpose prior to April 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such Bond through the use, directly or indirectly, of borrowed funds at an effective cost to Mississippi (computed in accordance with generally accepted financial principles) of less than the effective interest cost to Mississippi of the Bonds.

Mississippi proposes to use the proceeds from the sale of the new Bonds, along with other funds, to finance its business as an electric utility company, including the payment of costs incurred in its on-going construction program, estimated in 1980 to total $67,748,000, and the discharge of other general corporate obligations.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated to total $144,000, including printing costs of $40,000, legal fees of $30,500, accountant's fees of $21,000, trustee's charges of $18,000, rating fees of $12,500, services of Southern Company Services, Inc. of $7,000, and miscellaneous expenses of $2,400. In addition, the fee of counsel for the successful bidders is estimated at $18,000, and is to be paid by the successful bidders. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21422), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable

provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 561/April 1, 1980

The Securities and Exchange Commission has issued an order under the Trust Indenture Act of 1939 (the "Act") on the application of Elizabethtown Water Company that the trusteeship of Citibank, N.A., under four indentures, three which were heretofore qualified under the Act and one which was not qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary to disqualify Citibank from acting as trustee under any of the aforementioned indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11107/March 28, 1980

In the Matter of

FIDELITY FUND, PURITAN FUND
FIDELITY TREND FUND, SALEM FUND
FIDELITY EQUITY-INCOME FUND
CONTRAFUND, CONGRESS STREET FUND
MAGELLAN FUND, FIDELITY DESTINY FUND
FIDELITY CORPORATE BOND FUND
FIDELITY DAILY INCOME TRUST
FIDELITY THRIFT TRUST
FIDELITY LIMITED TERM MUNICIPALS
FIDELITY MUNICIPAL BOND FUND
FIDELITY AGGRESSIVE INCOME FUND
FIDELITY HIGH YIELD MUNICIPALS
FIDELITY ASSET INVESTMENT TRUST
FIDELITY MONEY MARKET TRUST
FIDELITY GOVERNMENT SECURITIES FUND
FIDELITY CASH RESERVES
FIDELITY TAX-EXEMPT MONEY MARKET TRUST
FIDELITY TRIAD FUND
82 Devonshire Street
Boston, Massachusetts 02109

(812-4565)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM SECTION 2(a)(19) OF THE ACT AND PURSUANT TO SECTION 10(f) OF THE ACT FOR AN ORDER EXEMPTING CERTAIN TRANSACTIONS FROM THE PROVISIONS OF SECTION 10(f) OF THE ACT

NOTICE IS HEREBY GIVEN that Fidelity Fund, Puritan Fund, Fidelity Trend Fund, Salem Fund, Fidelity Equity-Income Fund, Contrafund, Congress Street Fund, Magellan Fund, Fidelity Destiny Fund, Fidelity Corporate Bond Fund, Fidelity Daily Income Trust, Fidelity Thrift Trust, Fidelity Limited Term Municipals, Fidelity Municipal Bond Fund, Fidelity Aggressive Income Fund, Fidelity High Yield Municipals, Fidelity Asset Investment Trust, Fidelity Money Market Trust, Fidelity Government Securities Fund, Fidelity Cash Reserves, Fidelity Tax-Exempt Money Market Trust and Fidelity Triad Fund ("Applicants"), each an open-end investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on November 9, 1979, and amendments thereto on January 21, 1980, and February 29, 1980, pursuant to Section 6(c) of the Act, for an order of the Commission declaring that Bertram H. Witham, Jr., a director, trustee or general partner of Applicants, shall not be deemed to be an interested person of Applicants within the meaning of Section 2(a)(19) of the Act solely by reason of his status as a consultant to Merrill Lynch International Incorporated ("MLI") and, pursuant to Section 10(f) of the Act, for an order exempting certain transactions of Applicants from the provisions of Section 10(f) of the Act so as to permit Applicants to purchase securities in public offerings in which Merrill Lynch, Pierce, Fenner & Smith, Inc., which may be deemed to be an affiliated person of Mr. Witham, participates as a principal underwriter. All interested persons are referred to

the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicants represent that Mr. Witham presently serves as either a director, trustee or general partner, as the case may be, of each of the Applicants, each of which has entered into an Advisory and Service Contract with Fidelity Management and Research Company. Applicants further state that Mr. Witham proposes to become a consultant to MLI, a holding and management company all of whose stock is held by Merrill Lynch & Co. ("Merrill Lynch"). Merrill Lynch further holds all the stock of Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Broker"), a broker-dealer registered with the Commission under the Securities Exchange Act of 1934. According to the application, MLI owns through MLI subsidiaries, 95% of the stock of Merrill Lynch International Bank ("Bank") whose activities are currently primarily making loans to non-U.S. borrowers, accepting interbank and individual deposits and trading in foreign exchange, in addition to managing both foreign and domestic syndicated loans, and underwritten offers of floating rate notes of off-shore companies, the majority of which are Japanese banks. Applicants further state that the Bank intends to engage in transactions traditional for merchant banks in London where its principal office is located. Although most of the Bank's business activities are outside of the United States, Applicants state that the Bank also has a representative office in New York. Applicants further state that MLI owns the stock of all of the corporate partners of Merrill Lynch International & Co. C.V. ("International"), a Netherlands Antilles Limited Partnership, which is an off-shore broker-dealer that distributes new issues of Eurodollar bonds to non-U.S. purchasers and trades seasoned Eurodollar issues.

Section 2(a)(19)(A)(v) and (B)(v) of the Act define an "interested person" of an investment company, an investment adviser of an investment company, or a principal underwriter for an investment company to include any broker or dealer registered under the 1934 Act or any affiliated person of such broker or dealer.

Section 10(f) of the Act further provides, in pertinent part, that no registered investment company shall knowingly purchase or acquire, during the existence of any underwriting or selling syndicate, any security a principal underwriter of which is an officer, director, investment adviser or employee of such investment company, or is a person of which any such officer, director, investment adviser or employee is an affiliated person. Rule 10f-3, adopted by the Commission pursuant to rule-making authority granted by Section 10(f) of the Act, permits certain conditional underwriting transactions prohibited by Section 10(f) of the Act, none of which are asserted by Applicants to be applicable to existing or future purchases of securities between Applicants and the Broker.

An "affiliated person" under Section 2(a)(3) of the Act includes any person directly or indirectly controlled, controlled by or under common control with such other person. Section 2(a)(9) of the Act provides that "control" means the power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with such company.

The application states that, while there is a statutory presumption in Section 2(a)(9) of the Act that a natural person is not a control person, that presumption may be rebutted by evidence and upon a contrary determination made by a Commission order an employee of one subsidiary may be determined to be under common control with another subsidiary. Assuming that Mr. Witham, in his status as consultant to MLI, could be termed an employee of MLI, Mr. Witham would be deemed an affiliated person of an affiliated person of the Broker by virtue of the Broker and MLI being under the common control of Merrill Lynch. Under such an interpretation, Mr. Witham could also be deemed to be an interested person of Applicants and of their investment adviser and principal underwriter within the meaning of Section 2(a)(19)A)(v) and (B)(v) of the Act. Mr. Witham could further be considered an affiliated person of the Broker for purposes of determining the applicability of the prohibitions contained in Section 10(f) of the Act. The application states that, while the Applicants do not necessary agree with such an interpretation, they have deemed it advisable to clarify the status of Mr. Witham by requesting the Commission to exercise its exemptive authority under Section 6(c) and Section 10(f) of the Act.

In support of the relief requested, Applicants assert that Mr. Witham's consulting services for MLI would be performed pursuant to a consulting contract pursuant to which Mr. Witham will be an independent contractor rather than an employee since, among other things, he will not be entitled to participate in any plan providing pension, profit

sharing or other benefits to the employees of MLI or its affiliates. Applicants further assert that Mr. Witham's duties under the proposed consulting contract will consist of consulting with MLI regarding international financing and the financial management of MLI as a company, with initial emphasis on the development of more efficient financial reporting and control systems and the coordination of MLI's financial operations with those of the Broker, and will not affect the domestic activities of MLI, the Broker or the Bank. While these consulting responsibilities may require that Mr. Witham consult with employees and directors of the Broker itself, Applicants contemplate that any such consultations would be for the purpose of assisting in the foregoing activities and not with respect to either the brokerage or the investment banking business of the Broker, and that Mr. Witham would not otherwise be involved with the Broker.

Applicants further represent that under the proposed consulting contract, neither Merrill Lynch, MLI, International, the Bank or the Broker will have the right to control the specific way in which Mr. Witham's consulting services are to be performed. According to the application, the proposed consulting contract provides that Mr. Witham's work thereunder may be performed to the extent reasonably possible in places and time convenient to Mr. Witham, and that such work would not ordinarily require more than 25 hours per month of his time. The proposed consulting contract further provides that in consideration for his services MLI will pay Mr. Witham a substantial retainer and provide Mr. Witham with office space and part-time secretarial assistance, if he wishes, and that the proposed consulting contract will be automatically renewable each year but is subject to termination upon 30 days' prior written notice by either MLI or Mr. Witham.

On the basis of the foregoing, Applicants submit that Mr. Witham should not be considered an employee of MLI, and thus possibly an affiliated person of the Broker for purposes of determining the appropriateness of granting exemptive relief from the provisions of Section 2(a)(19) and Section 10(f) of the Act.

Applicants represent that none of the Applicants invest in the normal course of their investment activities in the securities distributed or traded in the active market by International, nor in the floating rate notes of off-shore companies placed by the Bank. Applicants further state that even if one or more of the Applicants desired to purchase these types of securities there are sufficient alternate sources for such securities so that Applicants would suffer no loss of investment freedom by reason of being unable to transact business with International or the Bank. Moreover, each Applicant has specifically undertaken in the application not to transact any business with MLI, International or with the Bank. Applicants further represent that no material business relationship exists between Mr. Witham and the Broker. Moreover, the Applicants allege that even though they expect to engage in transactions with the Broker, since Mr. Witham's consulting activities will be solely those of a consultant to MLI for purposes of financial management, no potential for conflict of interest on Mr. Witham's part will be created. Finally, according to the application, each Applicant desires Mr. Witham to be a member of its Board of Directors or Board of Trustees or to be a Managing General Partner, as the case may be, because he is a person of recognized integrity, judgment, independence and competence in the business world and has proven himself in the past to be a truly disinterested director, trustee or managing general partner, as the case may be.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 10(f) of the Act further provides that the Commission by rules or regulations upon its own motion, or by order upon application may conditionally or unconditionally, exempt any transaction or classes of transactions from the restrictions contained therein to the extent such exemption is consistent with the protection of investors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that

he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed; Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11108/March 28, 1980

In the Matter of

INA CAPITAL BOND TRUST
Three Parkway
Philadelphia, Pennsylvania 19101

(811-2760)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that INA Capital Bond Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 29, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Applicant is a trust organized and existing under the laws of the Commonwealth of Pennsylvania. On August 16, 1977, the Applicant registered under the Act by filing its Notification of Registration on Form N-8A and, on the same date, it filed Registration Statements under the Act on Form N-8B-1 and under the Securities Act of 1933 on Form S-5. Applicant's Registration Statement on Form S-5 was ordered effective on January 31, 1978. Thereafter, the Applicant made a continuous offering of its units until September 28, 1979.

The application indicates that on September 28, 1979, both unitholders of the Applicant redeemed all of their units of beneficial interest. Thus, Applicant has no outstanding securities or security holders. In addition, Applicant disposed of all of its portfolio securities in connection with the redemption of their units by both unitholders.

On November 19, 1979, the Board of Trustees of Applicant authorized the filing of the present application, payment of the outstanding debts and liabilities of the Applicant, and distribution of any remaining assets after such payment ratably among the holders of the outstanding units of the Applicant as of September 27, 1979. Upon completion of the foregoing, Applicant shall terminate and the right, title and interest of all trustees in the assets of the Applicant shall be cancelled and discharged.

The application states that Applicant has retained assets of less than $7,000.00 to cover miscellaneous expenses connected with its liquidation. Such assets consist entirely of cash and receivables based on expense reimbursement provisions under the investment management agreement between Applicant and INA Capital Management Corporation, Applicant's investment adviser. The outstanding debt and liabilities of the Applicant consist entirely of accrued expenses for professional fees and fees and expenses for the Applicant's Trustees which have not yet been paid or which are expected to be incurred in the course of the liquidation of the Applicant.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the

registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11109/March 28, 1980

In the Matter of

GOLDEN GATE INCOME SECURITIES, INC.
44 Montgomery Street, 21st Floor
San Francisco, California 94104

(811-2427)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Golden Gate Income Securities, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on February 11, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant was incorporated under the laws of the State of Maryland on October 17, 1973. It registered under the Act on October 19, 1973, and on the same date it filed a registration statement under the Securities Act of 1933 ("1933 Act") covering 2,400,000 shares of Common Stock. Such registration statement under the 1933 Act has not become effective nor has any public offering commenced. Thus, Applicant has no assets, outstanding securities or shareholders

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices

and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11110/March 31, 1980

In the Matter of

AMERICAN VARIABLE ANNUITY LIFE ASSURANCE COMPANY

AND

AMERICAN VARIABLE ANNUITY LIFE ASSURANCE COMPANY SEPARATE ACCOUNTS D, E AND F
440 Lincoln Street
Worcester, Massachusetts 01605

(812-4641)

NOTICE OF APPLICATION PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM THE PROVISIONS OF SECTIONS 26(a) AND 27(c)(2) OF THE ACT

NOTICE IS HEREBY GIVEN THAT American Variable Annuity Life Assurance Company (the "Company") and American Variable Annuity Life Assurance Company Separate Accounts D, E and F (the "Separate Accounts") as issuers of the Company's individual non-qualified, variable annuity contracts funded by the Separate Accounts (the "Contracts") filed an application on March 25, 1980 for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Company and the Separate Accounts (collectively referred to as "Applicants") from Sections 26(a) and 27(c)(2) of the Act and pursuant to Sections 11(a) and 11(c) of the Act approving certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein which are summarized below.

The Company is a stock life insurance company organized under the provisions of the Delaware Insurance Code in July 1974. It is the successor in interest by virtue of merger to the stock life insurance company of the same name which was incorporated in the State of Arkansas in January 1967. The Company is a wholly-owned subsidiary of State Mutual Life Assurance Company of America ("State Mutual"), a mutual life insurance company incorporated under the laws of the Commonwealth of Massachusetts in 1844. The Company's principal operational office is in Worcester, Massachusetts. As of December 31, 1979, the Company had total assets in excess of $87 million and capital and surplus in excess of $4 million.

The Separate Accounts are separate accounts of the Company established by vote of the Board of Directors of the Company, pursuant to Section 2933 of the Delaware Insurance Code, to fund certain of the Company's variable annuity contracts. The Separate Accounts are registered collectively as a unit investment trust under the Act. The assets of Separate Account D are invested entirely in shares of Colonial Option Income Fund, Inc. (COIF); the assets of Separate Account E are invested entirely in shares of Colonial Income Fund, Inc. (CIF). Subject to the receipt of the requested order and to the effectiveness of an amendment to a registration statement filed on behalf of the Company and the Separate Accounts, the assets of Separate Account F will be invested entirely in shares of Colonial High Yield Securities, Inc. (CHYS).

The Company issues a series of individual, single payment, deferred, variable annuity contracts currently funded through Separate Accounts D and E. Net purchase payments, in a minimum amount of $10,000, may be allocated to either or both Separate Accounts, subject to a minimum of $1,000 allocated to each Separate Account to which net purchase payments are allocated. Purchase payments under the Contracts may be allocated to accumulate in either or both Separate Accounts.

From the single purchase payment the Company deducts a charge for sales and administrative expenses and for a minimum pre-retirement death benefit ranging from a minimum of 2.50% to a maximum of 7.75%. A charge is also made for applicable state premium taxes, if any.

COIF, CIF and CHYS (hereinafter known as the "Funds") are registered with the Commission as open-end, diversified, management investment

companies under the Act. The Funds are managed and distributed by Colonial Management Associates, Inc. ("Colonial") which is indirectly a wholly-owned subsidiary of State Mutual. Colonial is registered with the SEC as an investment adviser under the Investment Adviser's Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. Colonial also serves as principal underwriter for the Contracts.

The minimum initial investment in shares of CIF, COIF and CHYS is $250 (except for a $25 minimum in connection with a Colonial Fundamatic Program or a Colonial Retirement Plan). Sales charges on purchases of shares of CIF, COIF and CHYS range from a minimum of 1.25% to a maximum of 8.50% of the offering price.

On December 28, 1978, the Commission issued an order ("1978 Order"), to the Company and Separate Accounts D and E pursuant to Section 11 of the Act approving certain offers of exchange and providing an exemption from the provisions of Sections 26(a) and 27(c)(2) of the Act, pursuant to Section 6(c) of the Act. The 1978 Order approved the transfer of accumulated value under the Contracts between Separate Accounts D and E prior to the annuity commencement date, subject to certain non-discriminatory restrictions on transfer imposed by the Company, without imposition of any charge for sales and administrative expense.

The 1978 Order also provided an exemption from Sections 26(a) and 27(c)(2) of the Act to permit State Mutual to serve as custodian of the assets of the Separate Accounts.

In addition to the 1978 Order, on April 16, 1979, the Commission issued an order ("1979 Order") to the Company and Separate Accounts D and E pursuant to Section 11 of the Act approving an offer of exchange to shareholders of CIF and COIF to exchange shares of CIF and COIF for a Contract for a $50 fee for contract issue and conversion expense but with no deduction for sales and administrative expenses or the pre-retirement minimum death benefit.

The Company proposes to amend the Contracts to permit purchase payments to be allocated to newly organized Separate Account F. The assets of Separate Account F will be invested as described above.

The Company proposes to operate Separate Account F in an identical manner with Separate Accounts D and E, and has requested exemptions similar to those issued to Separate Accounts D and E in the 1978 and 1979 Orders.

Section 11

Transfers Among the Separate Accounts

The Contracts permit, subject to consent of the Company, a Contract owner to transfer, prior to the annuity commencement date, all or a portion of the accumulated value in one Separate Account to another Separate Account without imposition of any charge for sales and administrative expense, subject to certain non-discriminatory restrictions on the amount and timing of such transfer imposed by the Company.

Applicants state that the purpose of the transfer provisions of the Contracts is to provide the Contract owners the flexibility to redirect their investments as they deem appropriate from time to time.

Section 11(a) of the Act makes it unlawful for any registered open-end investment company to make an offer to the holder of a security of such company to exchange that security for a security in the same or any other investment company on any basis other than the net asset value of such securities, unless the terms of the offer have been first submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants state that the transfer provision of the Company's Contracts would permit a transfer of accumulated values among Separate Accounts D, E and F, all three Separate Accounts being registered collectively as a unit investment trust. Thus, the transfer would involve an "exchange" from one "division" of the unit investment trust to another "division" of the same unit investment trust. Applicants state that there would be no change in, or exchange of, the variable annuity Contract for which the Separate Accounts serve as funding vehicles. However, in the event Section 11(a) may be considered applicable by virtue of Section 11(c), Applicants are seeking, to the extent necessary, approval of the Commission pursuant to Section 11 of the Act so that the transfer privilege described above may include transfers to and from Separate

Account F in addition to the transfers between Separate Accounts D and E previously exempted by the 1978 Order. All such transfers would be subject to the right of the Company to change the non-discriminatory restrictions on such transfers described above by reducing or increasing the minimums and/or time period between transfers.

Applicants argue that the transfer privilege proposed by Applicants can in no way be deemed to be inequitable to any such Contract owners. Applicants state that the transfer provision is undertaken on an entirely no-load basis. The transfers will be effected at the current unit values of the Separate Accounts as described above which is equivalent to an exchange at net asset value per share. Neither the Company nor the Separate Accounts will receive any charge or load in connection with the exercise of the transfer provision. Applicants state that current prospectuses of the Separate Accounts and the Fund requested by the investor will be provided to any such Contract owner, as required by law, in connection with the exercise of this transfer provision. The terms of the Contract will remain the same. Applicants assert that extending the transfer privilege to include Separate Account F will provide Contract owners with an opportunity to transfer accumulated values to a Separate Account which operates under investment objectives more closely aligned to such Contract owner's current financial objectives and will provide such Contract owner greater flexibility in planning for his or her financial future. Applicants further assert that approving such exchange privilege is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Exchange Offer to Fund Shareholders

Pursuant to the 1979 Order, the Company permits shareholders of CIF and COIF to exchange shares of such Funds for a Contract. Applicants propose to extend this privilege to shareholders of CHYS. Applicants state that in such cases purchase payments for the Contract will be amounts which result from the redemption of shares of a Fund by a shareholder who has elected to purchase a Contract. The amount of the purchase payment will be the net asset value of the Fund shares redeemed for the purpose of purchasing a Contract at the time the election to purchase is made. The minimum single purchase payment in connection with an exchange is $5,000. At the time an initial purchase payment for a Contract is receiveo by the Company in connection with an exchange for Fund shares, a $50 fee will be deducted to reimburse the Company for Contract issue and conversion expense. Other than such fee, no deduction for sales and administrative expense or the pre-retirement minimum death benefit will be made from the purchase payment. A charge will be made for state premium taxes, if applicable.

Applicants state that the proposed exchange would occur on the application of the individual, and any issued Fund share certificates would be tendered to the Fund transfer agent for this purpose. The exchange would be on the basis of the net asset values of the securities to be exchanged, except for the $50 exchange fee and state premium taxes, if any, deducted at the time of exchange. Applicants assert that the exchange fee is deducted as reimbursement for the cost of establishing the variable annuity account, for the cost of issuing the Contract, and to cover expected expenses which result from the exchange of Fund shares for the Contracts. The amounts received from the exchange fee are not used to pay sales commissions but are devoted to costs related to initial administrative and conversion expenses.

Sections 26(a) and 27(c)(2)

Sections 26(a) and 27(c)(2) of the Act provide, in substance, that a registered unit investment trust or issuer of a periodic payment plan certificate and any depositor and underwriter for such investment company are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a qualified bank as trustee and are held under an indenture or agreement containing the following provisions: (1) That the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them; (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept and notice given to securities holders in the event of substitution of the trust's securities.

Applicants state that the provisions of Sections 26(a) and 27(c)(2) were designed to assure performance of contractual obligations under periodic payment plans, to minimize the opportunities for misuse of the assets of unit investment trusts and to prevent sponsors from reaping hidden profits.

Applicants further state that under the provisions of

the Delaware Insurance Laws, the Company is not permitted to hold itself out as a trustee of the property of a Separate Account (and cannot place such property in trust in the hands of another). However, Internal Revenue Service regulations require use of a custodian for the purpose of establishing certain tax records which will permit the Company to minimize the impact of capital gains taxes on the Separate Accounts. Applicants are seeking an exemption from Section 26(a) and Section 27(c)(2) to the extent necessary to permit State Mutual to serve as custodian of the assets of Separate Account F, as well as for Separate Accounts D and E pursuant to the 1978 Order, on the ground that State Mutual's and the Company's status as regulated insurance companies and the Company's obligations as an insurance company to the Contract owners provide substantially the protection contemplated by the requirements of Sections 26(a) and 27(c)(2).

Applicants state that Fund shares owned by the Separate Account will be held on an open account basis and will not be represented by any transferable stock certificates.

The record of the Separate Account will reflect its ownership of Fund shares and Fund records will reflect Separate Account ownership as indicated above. The records of the Fund and of the Separate Account will be cross-verified to insure accuracy. The Company will perform all accounting functions relating to the Separate Accounts. The accounting systems for the Separate Accounts will incorporate internal controls existing in the Company's Accounting Department, and will be subject to audit by the Internal Auditing Department of the Company and a firm of independent accountants. Applicants assert that under the foregoing circumstances, the danger against which Sections 26(a) and 27(c)(2) are directed are not present.

The Applicants consent to this requested exemption being made subject to the conditions (a) that deductions under the Contracts for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, the Commission reserving jurisdiction for such purpose, and (b) that the payment of sums and charges out of the assets of the Separate Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the requested order: provided, the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and the Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums and charges.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 28, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following April 28, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11111/April 1, 1980

In the Matter of

MUTUAL INVESTING FOUNDATION
and
HERITAGE SECURITIES, INC.
One Nationwide Plaza
Columbus, Ohio 43216

(812-4549)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 22(d) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT APPROVING CERTAIN PROPOSED EXCHANGES

Mutual Investing Foundation ("Mutual"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Heritage Securities, Inc. ("Heritage"), Mutual's principal underwriter and investment adviser, filed an application on October 5, 1979, and amendments thereto on February 8, February 19, and March 10, 1980: (1) pursuant to Section 6(c) of the Act, for an order exempting certain transactions from the provisions of Section 22(d) of the Act and exempting Mutual from Rules 2a-4 and 22c-1 under the Act to permit it to calculate the price per share of one of its classes of shares, the MIF/Nationwide Money Market Fund ("Money Market Fund"), to the nearest one cent on a share value of one dollar, and (2) pursuant to Section 11(a) of the Act approving certain proposed exchanges.

On March 7, 1980, a notice was issued (Investment Company Act Release No. 11073) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the proposed exchange of shares and the granting of the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the proposed exchange offers be, and hereby are, approved.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 22(d) of the Act be, and hereby is, granted, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Rules 2a-4 and 22c-1 under the Act be, and hereby is, granted effective forthwith, subject to the following conditions:

(1) The Board of Trustees of Mutual has undertaken as a particular responsibility within the overall duty of care owed to the shareholders to assure to the extent reasonably practicable, taking into account current market conditions affecting the investment objectives of Money Market Fund, that the price per share in Money Market Fund as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Money Market Fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Money Market Fund's purchase of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments which the Board of Trustees of Mutual determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Board of Trustees of Mutual.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11112/April 2, 1980

In the Matter of

COPENHAGEN HANDELSBANK
c/o John W. Erickson, Esq.
289 Park Avenue
New York, New York 10017

(812-4603)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Copenhagen Handelsbank ("Applicant") filed an application on January 25, 1980, and an amendment thereto on February 8, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act.

On March 7, 1980, a notice was issued (Investment Company Act Release No. 11075) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and on the basis of the representations in the application as amended, it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the condition of Applicant's compliance with the following undertakings to which Applicant has consented:

(1) That Applicant will ensure that the commercial paper dealer through whom its commercial paper will be offered to the public will provide each offeree who has indicated an interest in Applicant's securities, and prior to any sale of the commercial paper to such offeree, with (i) a memorandum describing the business of Applicant, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, and (iii) the most recent publicly available unaudited interim financial statements of Applicant. The aforementioned financial statements will be accompanied by a brief paragraph highlighting the differences between Danish accounting principles and generally accepted accounting principles employed by United States companies, and such memoranda will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated periodically to reflect material changes in Applicant's financial status.

(2) That any future offerings of Applicant's securities in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in the proposed offering. Such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the Securities Act of 1933, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11113/April 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6204/April 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11114/April 3, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6205/April 3, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11115/April 3, 1980

In the Matter of

FEDERATED CONVERTIBLE INCOME SECURITIES, INC.
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(811-2947)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Federated Convertible Income Securities, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 25, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act on August 13, 1979, and on or about that date it also filed a registration statement (File No. 2-65243) on Form N-1 under the Securities Act of 1933 covering 100,000 shares of its common stock in connection with a proposed public offering of its shares. This registration statement did not become effective, and will be withdrawn pursuant to Applicant's request dated March 26, 1980. Thus, Applicant has never engaged in a public offering of shares of its common stock.

The application states that Applicant does not have any assets, or debts or other liabilities currently outstanding, and that it is not a party to any litigation or administrative proceeding. The application further states that Applicant is presently an inactive corporation under Maryland law, and is not engaged in and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are affiliated persons of its sole shareholder, Federated Asset Management Corporation.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11116/April 3, 1980

In the Matter of

PAINE, WEBBER MUNICIPAL BOND FUND, FIRST SERIES
PAINE, WEBBER MUNICIPAL BOND FUND, SECOND SERIES
PAINE, WEBBER MUNICIPAL BOND FUND, THIRD SERIES
THE MUNICIPAL BOND FUND, SERIES 1 THROUGH SERIES 43
THE MUNICIPAL BOND TRUST, SERIES 44 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, MULTI-STATE PROGRAM, SERIES 1 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, MULTIPLE MATURITY SERIES 1 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, PUERTO RICO SERIES 1 AND SUBSEQUENT SERIES

AND

THE CORPORATE BOND TRUST, SERIES 1 AND SUBSEQUENT SERIES

c/o Paine, Webber, Jackson & Curtis Incorporated
1221 Avenue of the Americas
New York, New York 10020

(812-4558)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS' REINVESTMENT PLAN FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Paine, Webber Municipal Bond Fund, First Series, Paine, Webber Municipal Bond Fund, Second Series, and Paine, Webber Municipal Bond Fund, Third Series ("Paine, Webber Series"), The Municipal Bond Fund, Series 1 through Series 43 and The Municipal Bond Trust, Series 44 and subsequent series ("National Series"), The Municipal Bond Trust, Multi-State Program, Series 1 and subsequent series ("Multi-State Series"), The Municipal Bond Trust, Multiple Maturity Series 1 and subsequent series ("Multiple Maturity Series"), The Municipal Bond Trust, Puerto Rico Series 1 and subsequent series ("Puerto Rico Series") and The Corporate Bond Trust, Series 1 and subsequent series ("Corporate Series") (collectively referred to as the "Trusts" or "Applicants"), filed an application on October 29, 1979, and amendments thereto on February 29 and March 17, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicants from the provisions of Section 22(d) of the Act to permit Applicants to offer a reinvestment plan pursuant to which holders of units of the Trusts may elect to have distributions with respect to their units reinvested in units of future series of their respective Trusts, or in existing series of the Trusts, without imposition of a sales charge.

All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, each Paine, Webber Series and each National Series is registered under the Act and is a separate unit investment trust created under the laws of the State of New York by a separate trust indenture and agreement ("Trust Agreement") among Paine, Webber, Jackson & Curtis Incorporated as sponsor ("Sponsor"), United States Trust Company of New York as trustee ("Trustee"), and Standard & Poor's Corporation as evaluator ("Evaluator"). Applicants state that the investment objectives of each of the Paine, Webber Series and each National Series are federally tax exempt income and conservation of capital through investment in a fixed portfolio of interest-bearing municipal bonds. In addition, Applicants state that each Multi-State Series consists of two or more separate unit investment trusts created under the laws of the State of New York by a separate Trust Agreement among the Sponsor, the Trustee and the Evaluator. Applicants represent that the portfolios of the Multi-State Series contain interest-bearing municipal bonds issued by governmental entities located within the state for which each Trust is named and that the investment objectives of each Trust constituting a Multi-State Series are conservation of capital and interest income that is exempt from federal, state and local income taxation for residents of the states for which such Trust is named. Applicants state that units representing fractional undivided interests in the portfolio of each Paine, Webber Series, National Series and Multi-State Series are registered with the Commission pursuant to the Securities Act of 1933.

Applicants state that the Puerto Rico Series and the Multiple Maturity Series are not currently in existence. Applicants represent, however, that they anticipate those Trusts will be organized and

registered under the Act. Applicants state that the portfolio of each Puerto Rico Series is expected to consist solely of interest-bearing municipal obligations issued by governmental entities located within the Commonwealth of Puerto Rico and that the investment objectives of each Puerto Rico Series will be conservation of capital and interest income exempt from federal, state and local income taxation. Applicants also represent that each Multiple Maturity Series will consist of two separate unit investment trusts. Applicants state that the portfolio of one trust will contain interest-bearing municipal obligations with long-term maturities which are not less than fifteen years and that the portfolio of the second trust will contain municipal obligations with intermediate-term maturities which will not exceed fifteen years.

According to the application, each Corporate Series consists of a separate unit investment trust created under the laws of the State of Massachusetts by a separate Trust Agreement among the Sponsor, the Trustee and Interactive Data Corporation as evaluator. Applicants state that the portfolio of each Corporate Series contains primarily bonds, debentures, notes and other debt securities issued by corporations and that a limited portion of the portfolios may, under certain circumstances, contain long-term obligations issued or guaranteed by the United States of America or agencies or instrumentalities thereof or corporate obligations which have been privately placed. Applicants represent that the investment objective of each Corporate Series is to provide interest income consistent with the preservation of capital and that units representing fractional undivided interests in the portfolios of existing Corporate Series are registered with the Commission pursuant to the Securities Act of 1933.

Applicants state that purchasers of units of each Trust ("Certificateholders") will receive interest and principal distributions representing their proportionate share of interest and principal received in the respective Trusts net of expenses and amounts required to meet redemptions of units. Applicants represent that such distributions will be made on a monthly, quarterly or semi-annual basis (on the fifteenth day of the month in which the distribution occurs) depending on the plan of distribution selected by the Certificateholder (except for the Paine, Webber Series, which only make semi-annual distributions). Applicants also state that, while the Sponsor is not obligated to do so, it is the Sponsor's present intention to maintain a market for units of each Trust and continuously to offer to purchase such units at prices in excess of the redemption prices as described in the prospectus of each respective Trust.

According to the application, the Sponsor intends to offer Certificateholders of existing and future series of the Trusts an opportunity to participate in a reinvestment plan ("Plan"). Under the Plan Certificateholders may elect to reinvest interest and principal distributions with respect to their units in fractional units of corresponding new Trusts of the Paine, Webber Series, The National Series, The Multi-State Series, The Multiple Maturity Series, The Puerto Rico Series, or The Corporate Series ("Reinvestment Series"), as well as in fractional units of corresponding existing series of the Trusts ("Secondary Units"). Fractional units in a Reinvestment Series or Secondary Units acquired by the Sponsor for the accounts of participants in the Plan are herein referred to as the reinvestment units ("Reinvestment Units").

Applicants state that the Sponsor proposes to offer Reinvestment Units in denominations of hundredths of a unit to Certificateholders participating in the Plan at a price equal to the aggregate offering price of the bonds in the portfolio of the Reinvestment Series (or, in the case of Secondary Units, the existing series of the Trust) divided by the product of 100 times the number of units outstanding plus accrued interest (the "Aggregate Offering Price"). Consequently, Applicants state that each Reinvestment Unit will have a price of approximately $10.

Applicants represent that each Reinvestment Series will be a unit investment trust similar to the existing Trusts except that the Reinvestment Series will be comprised of units to be offered to the general public as well as Reinvestment Units. Applicants state that if (1) the Sponsor decides it is inadvisable to offer a Reinvestment Series at any time when such Series is to be offered under the Plan or (2) the Reinvestment Series, in the opinion of the Sponsor, materially differs from its corresponding Trust, then distributions will be reinvested in Secondary Units which have been purchased in the secondary market by the Sponsor. In such case, Applicants state that fractional undivided interests in the Secondary Units will be offered as Reinvestment Units. Applicants state that the use of the Secondary Units is intended only as an alternative to be used when adverse market situations develop, such as a subsantial change in interest rates or a decline in

demand for units of the Trusts and, accordingly, that the Sponsor anticipates that the use of Secondary Units will rarely occur. Applicants represent that Reinvestment Units will be purchased by the Trustee from the Sponsor for the accounts of the participants in the Plan. Applicants also represent that when Secondary Units are offered as Reinvestment Units, such units, which were acquired by the Sponsor at the then current offering price plus accrued interest, will be units purchased by the Sponsor as market maker and not units remaining unsold from the original distribution. In addition, Applicants state that the series of the Trusts represented by such Secondary Units will have an anticipated remaining maturity of at least ten years and that the obligations in the portfolio of the series so used will include only bonds of investment grade security ratings, that is, "BBB" or better by Standard & Poor's Corporation or "Baa" or better by Moody's Investors Service, Inc. Applicants further represent that the Sponsor will maintain a secondary market in the Secondary Units involved so that the prospectus distributed in connection with them will be current.

Under the Plan, the Trustee will hold for each participating Certificateholder's account distributions of interest and principal, if any, made with respect to units and will purchase Reinvestment Units and, to the extent necessary, fractions thereof, from the Sponsor at the Aggregate Offering Price during the last fifteen days ("Transportation Date") in each January, April, July and October ("Transaction Months"). Applicants state that such distributions will be held by the Trustee in accounts which are non-interest bearing to the participant and that such moneys will be segregated by separate recordation on the trust ledger of the Trustee so long as such practice preserves a valid preference under applicable law. Applicants state that, if such preference is not so preserved, the Trustee will handle such moneys in a manner which constitutes the segregation and holding thereof in trust within the meaning of the Act. Applicants represent that the maximum period during which the Trustee will hold such distributions for the participating Certificateholder's account is three months. Applicants also represent that, if the distributions were held by the Trustee in interest bearing accounts, the Trustee would charge a fee higher than the fee described in the application. Applicants state that, to the extent permitted by the Trust Agreement and applicable banking regulations, the distributions held by the Trustee in non-interest bearing accounts are available for use by the Trustee pursuant to normal banking procedures.

According to the application, a Certificateholder may join the Plan when he invests in units of any series of the Trust, or at any time thereafter, by delivering an authorization form to the Trustee.

Similarly, Applicants state that a Certificateholder may withdraw from the Plan at any time by notifying the Trustee. Applicants state that, unless written notification of withdrawal is given to the Trustee at least five days prior to the first day of the Transaction Month, a Certificateholder who has elected to participate in the Plan will be deemed to have elected to participate in the particular transaction effected in that Transaction Month and that his withdrawal would become effective for the next succeeding distribution after the end of that Transaction Month. Applicants represent that if, in the opinion of the Sponsor, any Reinvestment Series should differ materially from the corresponding prior Trusts, the authorization will be treated as void for that Reinvestment Series and the distributions will be reinvested in Secondary Units which will not differ materially from the corresponding prior Trusts. According to the application, the Sponsor anticipates that a material change that would result in a voided authorization would include facts such as (1) the inclusion of bonds in the portfolio of the Reinvestment Series the interest income on which was not in the opinion of counsel to the issuer exempt from all federal income tax; or (2) the inclusion of bonds in the portfolio of a Reinvestment Series which were not rated "BBB" or better by Standard & Poor's Corporation or "Baa" or better by Moody's Investors Service, Inc. In this regard, Applicants represent that there is no assurance that the quality and diversification of the bonds in the portfolio of any Reinvestment Series or the estimated current return thereon will be similar to that of existing series.

Applicants state that when a Certificateholder indicates that he will participate in the Plan, the Trustee will open an account for the participant and the participant will receive a confirmation of the opening of such account. Applicants represent that, thereafter, whenever a transaction takes place in a participant's account, he will receive a confirmation statement giving complete details of the transaction. Applicants also state that a final prospectus relating to the Reinvestment Units will be mailed within four business days following the Transaction Date or, if such day is not a business day for the Trustee, within four business days following the first such business day thereafter, to each participant along with a confirmation which will indicate to each participant

that Reinvestment Units have been purchased on his behalf. Applicants state that such transaction will become final unless the participant notifies the Trustee within twelve days from the date of the confirmation that he does not wish to participate in that transaction. In such case, Applicants state that the Sponsor will rescind the transaction, take back the Reinvestment Units purchased for the participant's account, and remit moneys to the participant in an amount equal to the amount paid for the Reinvestment Units. Applicants further state that a participant also will have the option to withdraw from the Plan entirely by notifying the Trustee. To aid a participant who might desire to withdraw either from the Plan or from a particular transaction, Applicants state that a toll-free telephone number will be established for participants to use for notification of withdrawal.

According to the application, the Trustee will charge each account under the Plan a quarterly fee of 1% of the amount reinvested in such quarter to a maximum fee of $2.50 per quarter. Applicants represent that such fee is based on the costs incurred by the Trustee in administering the Plan and shall be payable quarterly on the Transaction date. Applicants state that the maximum fee may be increased by the Trustee without the approval of the participants by amounts not exceeding proportionate increases in consumer prices for services as measured by the United States Department of Labor's Consumer Price Index entitled "All Services Less Rent," or if such index is no longer published, then by a similar index. Applicants also assert that such a provisions for fee increases is common and has rarely been used in the past. Applicants represent that the Trustee's fee will be the only charge to the participants under the Plan.

Applicants state that the Sponsor intends to maintain a market for Reinvestment Units and continuously to offer to purchase Reinvestment Units at prices based upon the aggregate offering prices of the underlying bonds plus accrued interest. Applicants also state that the Sponsor may discontinue such purchases at any time. In that event, Applicants represent that the Sponsor may nonetheless purchase Reinvestment Units at a price based on the current redemption price of those units. Applicants further represent that, if the Sponsor repurchases Reinvestment Units in the second market at prices below the aggregate offering prices of bonds in the appropriate series, then it will not resell those Reinvestment Units in the secondary market or pursuant to the Plan, but will hold them for eventual tender to the Trustee for redemption. Applicants state that, if the Sponsor does not maintain a market for Reinvestment Units, then a participant desiring to dispose of his Reinvestment Units may be able to do so only by tendering such Reinvestment Units to the Trustee for redemption at the redemption price, which is based upon the aggregate bid prices of the underlying bonds. Applicants state that the aggregate bid prices of the underlying bonds may be expected to be less than the aggregate offering prices. Applicants also state that the description of the Plan will state that, if a participant wishes to dispose of his Reinvestment Units, he should inquire with the Sponsor concerning the current market price prior to making a tender for redemption to the Trustee.

Applicants represent that the Trustee is required to notify the Sponsor of the tender of any Reinvestment Units (or fractions thereof) for redemption. Applicants state that so long as the Sponsor is maintaining a bid in the second market at a price in excess of the redemption price, the Sponsor will purchase any Reinvestment Units (or fractions thereof) tendered to the Trustee for redemption at the then current market price, which in no event will be less than the redemption price on the date of tender, by making payment to the Certificateholder not later than the day on which such Reinvestment Units would otherwise have been redeemed by the Trustee. Applicants also state that the Sponsor may tender Reinvestment Units (or fractions thereof) to the Trustee for redemption provided that the Sponsor shall not receive a greater amount on such redemption than the then applicable redemption price plus accrued interest.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, upon application, conditionally or unconditionally exempt any person,

security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order, pursuant to Section 6(c) of the Act, exempting them from the provisions of Section 22(d) of the Act to the extent necessary to permit the sale of Reinvestment Units under the Plan without imposition of a sales charge.

In support of the requested exemption, Applicants assert that the sales charge on units of the Trusts, which presently is 4% of the net amount invested, is primarily attributable to the efforts to make a customer aware of the Sponsor's investment product and to ascertain the customer s financial requirements and suitability for such investment. Applicants maintain, however, that with regard to the reinvestment of distributions from the Trusts, the customer is already aware of the investment product and his financial requirements have been determined and that, accordingly, little or no additional sales effort is necessary. Consequently, Applicants assert that the sales cost attendant to the purchase of Reinvestment Units is substantially less than the sales cost related to the initial purchase of units of the Trusts. Applicants state that the Sponsor believes that Certificateholders participating in the Plan should receive the benefit of the lower sales cost to the Sponsor through reinvestment of distributions in Reinvestment Units without payment of a sales charge. Applicants state that the increased costs relating to the implementation of the Plan resulting from additional recordkeeping and other administrative functions for which the Trustee will be responsible will be borne directly by participants in the Plan in the form of the quarterly charge payable to the Trustee.

NOTICE IS FURTHER GIVEN that any interested person may, not later than April 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 716/March 28, 1980

Admin. Proc. File No. 3-5492

In the Matter of

POTOMAC INVESTMENT ADVISERS, LTD.
7900 West Park Drive
McLean, Virginia
(801-8969)

WILLARD JOHN MILLER
JOHN SCOTT MILLER

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDINGS

Grounds for Remedial Sanctions

Misappropriation of Clients' Funds
Failure to Comply with Recordkeeping Requirements

Where registered investment adviser and its president misappropriated clients' funds and,

together with firm's vice president, failed to comply with recordkeeping requirements, *held*, in public interest to revoke registrant's investment adviser registration and bar president and vice president from association with any investment adviser, with the proviso that, after six months, vice president could apply for permission to become so associated in a non-supervisory capacity, upon an appropriate showing of adequate supervision.

APPEARANCES:

Thomas A. Rothwell and *Randy K. Dix*, of Rothwell, Cappello & Berndtson, for respondents.

Paul F. Leonard, John R. Kiefner, Jr. and *Lynda L. Cole*, for the Commission's Division of Enforcement.

I.

Potomac Investment Advisors, Ltd. ("registrant"), a registered investment adviser, Willard John Miller ("W. Miller"), its president and principal stockholder,[1] and John Scott Miller ("J. Miller"), W. Miller's son and registrant's vice president and secretary, appeal from the adverse decision of an administrative law judge. The law judge found that registrant and W. Miller violated antifraud provisions[2] and, together with J. Miller, failed to comply with recordkeeping requirements.[3] He also found that respondents had been enjoined from violating those provisions. The law judge concluded that registrant's investment adviser registration should be revoked, that W. Miller should be barred from association with any investment adviser, and that J. Miller should also be barred from any such association with the proviso that, after six months, he could apply for permission to become so associated in a non-supervisory capacity, upon a showing of proper supervision.

[1]W. Miller owns about 50% of registrant's stock.

[2]Sections 206(1), (2) and (4) of the Investment Advisers Act and Rule 206(4)-2 thereunder, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

[3]Section 204 of the Advisers Act and Rule 204-2 thereunder.

II.

Respondents do not challenge the law judge's findings with respect to their violations and the injunction entered against them. Those findings may be summarized as follows.

A. *Violations of Antifraud Provisions*

During the period from May 1974 to April 1978, W. Miller converted clients' funds to his own use. In addition, he improperly used certain clients' funds for the benefit of others. The pertinent facts are as follows.

Registrant had about 140 clients, most of whom had given it discretionary authority to effect securities transactions for their accounts. Funds obtained from clients for investment purposes were deposited in a single bank account, the "Potomac Investment Advisors, Ltd. Special Account." When registrant bought securities for clients, it used funds in the Special Account to pay for them. When it sold clients' securities, the proceeds were deposited in the Special Account.

Registrant's client ledger showed that, as of March 31, 1978, some 90 clients had credit balances aggregating $199,530. However, an examination conducted by our staff disclosed that the credit balance in the Special Account as of that date was only $15,793. The discrepancy was due to the fact that more than 40 accounts had debit balances totaling almost $184,000. And almost $135,000 of that amount was owed by "Wilmil & Co." and "Willard J. Miller," accounts which were used by W. Miller for his personal trading. The debit balances in those two accounts were the result of W. Miller's misappropriation of funds from the Special Account to cover losses on his personal securities transactions. The remaining debit balances of about $49,000 in the accounts of some 40 clients resulted from payments which registrant made to or for these clients in amounts exceeding their cash balances, using the funds of other clients in the Special Account.

Beginning in May 1974, W. Miller used clients' funds to effect personal transactions in the Wilmil account. When transactions in that account produced profits, W. Miller withdrew them. In an effort to conceal these profits, he employed an elaborate scheme involving his son's friend, Miss L. The scheme operated as follows. The proceeds of a profitable sale by Wilmil were deposited in the Special Account, and a check

for the same amount was issued to Miss L. Miss L would then issue two personal checks, one to registrant for the cost of the securities and the other to W. Miller for the profit realized on the sale. Between December 1975 and August 1977, W. Miller "siphoned off" profits of more than $44,000.

Around September 1977, J. Miller finally protested against the continued involvement of Miss L "in what he recognized to be an illegal practice," and his father stopped using her as a conduit for the withdrawal of profits. In November 1977, W. Miller opened an account in his own name in which he again used clients' funds to effect personal securities transactions. Apparently, profits from transactions in this account were also withdrawn.

In addition to the misconduct set forth above, registrant and W. Miller failed to comply with certain specific requirements imposed on investment advisers having custody of clients' funds.[4] Contrary to those requirements, the Special Account in which such funds were deposited was not maintained in registrant's name as agent or trustee, and clients' funds were commingled with those of persons who were not clients. In addition, the required quarterly statements to clients showing the amount of their funds in registrant's custody falsely indicated that those funds were on hand.

B. *Recordkeeping Violations*

J. Miller's chief function was to maintain registrant's records. Registrant, W. Miller and J. Miller failed to comply with recordkeeping requirements as follows.

The firm's general ledger was not currently posted. Order memoranda were destroyed after receipt of the confirmations from the executing broker. Registrant did not maintain required records with respect to accounts in which it had custody or possession of clients' funds or securities. And no record was maintained reflecting required information with respect to W. Miller's personal transactions.

C. *The Injunction*

On May 10, 1978, in an action brought by this Commission on the basis of allegations substantially the same as those in this case, the United States District Court for the Eastern District of Virginia permanently enjoined registrant and W. Miller from violating antifraud provisions of the securities acts and, together with J. Miller, the recordkeeping provisions of the Investment Advisers Act.[5]

III.

Respondents argue that the sanctions which the administrative law judge imposed are too severe. They point out that registrant is no longer in business. In addition, they assert, among other things, that the Millers have suffered substantial losses and that, since they made full restitution, no client has been injured.

While it is true that no client suffered a loss, it is clear that, as found by the administrative law judge, "the restitution that was made occurred only after [W.] Miller was caught red-handed" by our staff.[6] W. Miller now claims that, prior to the staff's examination, he had already made arrangements to secure the necessary loans to repay the funds he had taken.[7] However, the record does not support that claim. W. Miller himself admitted that he contacted the lenders only after our staff began its examination. His son corroborated that admission. J. Miller testified that, when our staff discovered the deficit in the Wilmil account, it became clear to his father and him that "[it] had to be made good," and

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[4]Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

[5]*S.E.C. v. Potomac Investment Advisors, Ltd., et al.*, Civil Action File No. 78-300-A. Respondents consented to the injunction without admitting or denying the charges against them.

[6]Respondents assert that registrant's records show a reduction in the debit balance of the Willard J. Miller account prior to our staff's examination. However, that account had a history of fluctuating debit balances. On March 31, 1978, just prior to the examination, the debit balance in the account reached an all-time high of $23,364. While the balance dropped to $15,818 on April 10, it rose again to $18,989 on April 12. On April 17, the day of the examination, the debit balance dropped sharply to $10,432.

[7]It is undisputed that the loans in question were not actually made until after our staff's visit on April 17. The promissory notes securing the loans are dated April 22, 1978.

they attempted to borrow the money they needed from relatives and friends.[8]

W. Miller further asserts that, although registrant advanced funds from the Special Account to certain clients in excess of their credit balances, these clients had securities "under [registrant's] control" which were worth far more than the advances made to them. He therefore argues that the advances did not jeopardize the cash positions of other clients. The record does not clearly establish the validity of this claim. In any event, no protection was provided against the losses resulting from W. Miller's misappropriation of clients' funds for his own use, which accounted for the bulk of the shortages in the Special Account.

W. Miller also asserts that, after the examination by our staff, he cooperated fully and disclosed all of his misconduct. However, he did not advise our staff of the scheme he employed to withdraw profits from the Wilmil account through Miss L. He testified that he did not make this disclosure because he wanted to protect Miss L. However, as the law judge pointed out, his concern "is strangely at odds with his use of Miss L in his scheme over an extended period." W. Miller further asserted that registrant's books recorded all of the transactions in the Wilmil account, including "the mechanism involving [Miss L]." but those records do not show that W. Miller received profits through Miss L. In fact, he admitted that Miss L was used as a conduit because he did not want his name on registrant's records in the event they were examined.

The violations by registrant and W. Miller could hardly be more serious. The various factors they raise, which we have fully considered, afford no basis for leniency. There can be no justification for the deliberate misappropriation of clients' funds. Moreover, the misconduct at issue was not an isolated indiscretion. Rather, it encompassed a large number of clients over an extended period of time. The fact that clients were ultimately repaid does little to alleviate our concern about these respondents' fitness for the advisory business,[9] particularly since restitution was made only *after* respondents' misconduct was discovered. An investment adviser is a fiduciary whose actions must be governed by the highest standards of conduct.[10] It is apparent that the actions of registrant and W. Miller reflect a callous disregard for those standards. Although we recognize the serious effect of the sanctions which the law judge imposed, we are convinced that lesser remedies will not suffice. We do not seek to punish these respondents but, in light of their egregious misconduct, we must protect clients from future harm at their hands.

Finally, when we deal with the public interest requirements in a particular case, we must also weigh the effect of our decision on the welfare of advisory clients as a class and on standards of conduct in the securities business generally. If these proceedings are to be truly remedial, they must have a deterrent effect not only on the respondents before us, but also on others who may be tempted to engage in similar misconduct.[11]

Under all the circumstances, we are convinced that the public interest requires the revocation of registrant's investment adviser registration, and a bar of W. Miller from association with any investment adviser.

As noted above, J. Miller was only involved in recordkeeping violations. He asserts that these violations did not involve any breach of fiduciary duty. But he was admittedly aware of his father's

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[8]Respondents assert that the sanctions which the law judge imposed on the Millers would seriously impair their ability to repay these loans. While we have no wish to see the lenders suffer losses, we must nevertheless give paramount consideration to the protection of advisory clients from future harm at respondents' hands.

[9]See *International Research & Management Corp.*, Investment Advisers Act Release No. 617 (March 6, 1978), 14 SEC Docket 410, 414, *aff'd without opinion*, 588 F.2d 821 (C.A. 3, 1978); *Benjamin Levy Securities, Inc.*, Securities Exchange Act Release No. 14368 (January 12, 1978), 13 SEC Docket 1348, 1349.

[10]See *S.E.C. v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-192 (1963); *Rosenfeld v. Black*, 445 F.2d 1337, 1342-1344 (C.A. 2, 1971); *Joseph P. D'Angelo*, Investment Advisers Act Release No. 562 (December 16, 1976), 11 SEC Docket 1263, 1264, *aff'd without opinion*, 559 F.2d 1202 (C.A. 2, 1977).

[11]See *Arthur Lipper Corporation v. S.E.C.*, 547 F.2d 171, 184 (C.A. 2, 1976), *cert. denied*, 434 U.S. 1009: "The purpose of such severe sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases."

misappropriation of clients' funds. Yet he prepared the quarterly statements sent to clients which falsely indicated that their funds were in registrant's custody. His actions were patently inconsistent with the fiduciary obligation borne by those in the advisory business. Under the circumstances, we are unable to conclude that any reduction is warranted in the lesser sanction imposed on him by the administrative law judge.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and POLLACK).

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940
Release No. 716/March 28, 1980

Admin. Proc. File No. 3-5492

In the Matter of

POTOMAC INVESTMENT ADVISORS, LTD.
7900 West Park Drive
McLean, Virginia
(801-8969)

WILLARD JOHN MILLER
JOHN SCOTT MILLER

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the registration of Potomac Investment Advisors, Ltd. as an investment adviser be, and it hereby is, revoked; and it is further

ORDERED that Willard John Miller and John Scott Miller be, and they hereby are, barred from association with any investment adviser with the proviso that, after six months, John Scott Miller may apply to the Commission for permission to become so associated in a non-supervisory position, upon an adequate showing of proper supervision.

By the Commission.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9048/March 31, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MAXA CORPORATION* United States District Court for the District of Columbia, Civil Action No. 80-0804

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Maxa Corporation ("Maxa"), 220 East 42nd Street, New York, New York 10022. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Maxa as part of a continuing course of violative conduct, has failed to file its Annual Reports on Form 10-K for its fiscal years ended October 31, 1979, 1978 and 1977, required to have been filed with the Commission by January 29, 1980, 1979 and 1978, respectively, and its Quarterly Reports on Form 10-Q for each of its fiscal quarters ended from July 31, 1977 through January 31, 1980.

The Complaint requests that the Court order Maxa to file forthwith, with the Commission, its Annual Reports on Form 10-K for its fiscal years ended October 31, 1979, 1978 and 1977, and its Quarterly Reports on Form 10-Q for its fiscal quarters ended January 31, 1980, July 31, 1979, April 30, 1979, January 31, 1979, July 31, 1978, April 30, 1978, January 31, 1978, and July 31, 1977. In addition, the Commission requests that the Court enjoin Maxa from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9049/April 2, 1980

SECURITIES AND EXCHANGE COMMISSION v. LERNER, DAVID, LITTENBERG & SAMUEL, DONALD R. McGREGOR, JOEL SILVERMAN, STANLEY SILVERMAN, IRWIN SUTTON, JOSEPH MEZRAHI AND SOLOMON TAWIL (United States District Court for the District of Columbia, Civil Action No. 80-0845)

The Securities and Exchange Commission announced today the filing of a Complaint in the United States District Court for the District of Columbia against the Westfield, New Jersey, patent law firm of Lerner, David, Littenberg & Samuel ("LDL&S"), Donald R. McGregor ("McGregor"), Joel Silverman, Stanley Silverman, Irwin Sutton, Joseph Mezrahi ("Mezrahi") and Solomon Tawil ("Tawil"), alleging violations of the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act"). Simultaneous with the filing of the Complaint, the Court entered Consent Orders against the defendants which, among other things, require them to comply with the antifraud provisions of the Exchange Act. The Court also ordered certain other equitable relief, including disgorgement of profits in the amount of approximately $91,897 by various persons. LDL&S, McGregor, Joel Silverman, Stanley Silverman, Irwin Sutton, Mezrahi and Tawil each consented to the entry of the Court's Order without admitting or denying the allegations in the Commission's Complaint.

The Commission's Complaint alleged that in May 1977, all of the partners and one associate at LDL&S and various members of their families, certain persons associated with clients of LDL&S and friends of members of LDL&S made substantial purchases of Refac Technology Development Corporation ("Refac") common stock while in possession of material, non-public information concerning the allowance by the U.S. Patent Office of certain principal claims in an application for the basic patent on the laser, being prosecuted by LDL&S under a joint royalty arrangement with Refac and the inventor of the laser. The Commission's Complaint also charged that McGregor, Joel Silverman, Stanley Silverman, Irwin Sutton, Mezrahi and Tawil purchased Refac common stock after learning material, non-public information, directly or indirectly, from partners or associates of LDL&S. All of the transactions discussed in the Complaint occurred prior to public dissemination of the information relating to the patent application and without disclosure of such information by the defendants.

In addition to the entry of the Court's Consent Orders with respect to further violations, certain equitable relief was ordered by the Court. In this regard, certain partners and associates of LDL&S and certain other persons who purchased Refac common stock undertook to make disgorgement of approximately $62,812 in profits derived from these securities transactions pursuant to Plans of Disgorgement which were filed with the Court.

Further, the other defendants in this action undertook as follows to make disgorgement in the aggregate amount of approximately $29,085 of profits derived from their transactions in the common stock of Refac:

Donald R. McGregor	$2,552.30
Joel Silverman	$8,321.14
Stanley Silverman	$5,182.80
Irwin Sutton	$5,042.23
Joseph Mezrahi	$2,500.00
Solomon Tawil	$5,487.00

In additioin, LDL&S was ordered to comply with its undertaking to adopt, implement and maintain policies and procedures designed to prevent the use or dissemination of any material non-public information received by any member or employee of LDL&S by virtue of, or during the course of, their employment. The Statement of Policy and Procedures of LDL&S, which was adopted by LDL&S, was filed with the Court.

The Commission wishes again to emphasize its concern with respect to the use of material non-public information by partners, associates and employees of law firms. The antifraud provisions of the federal securities laws, as well as the high ethical standards required of those engaged in the practice of law, mandate that the confidentiality of non-public information be preserved and in particular that such information not be used as a basis for trading in securities. As the Commission has previously stated,[1]

> "Law firms, like others which have confidential information in their possession that may affect

[1]Securities Exchange Act Release No. 13437 (April 8, 1977).

the securities trading markets, have an affirmative obligation to safeguard such information.

While. . .no procedures can guarantee that individual employees will not take unfair advantage of their position, law firms are encouraged to establish policies and procedures regarding confidential information and take steps to ensure that all firm personnel are familiar with those policies, including the serious consequences that may result from conduct violating such policies."

The trading activities involved in this matter were referred to the Commission by the National Association of Securities Dealers.

Litigation Release No. 9050/April 2, 1980

SECURITIES AND EXCHANGE COMMISSION v. *IRVING COHEN, HALAJEN MINERAL DEVELOPMENT CORP., MOUNTAINVIEW ASSOCIATES, ALPHA ASSOCIATES, KENTUCKY COAL RESOURCES, LTD., WEST HILLS ASSOCIATIONS, SUNNYHILLS ASSOCIATES, SEWANEE RIDGE ASSOCIATES, AND WEISS ROSENTHAL & SCHWARTZMAN, P.C., AS SUCCESSOR TO WEISS ROSENTHAL HELLER SCHWARTZMAN & LAZAR,* Civil Action No. 80-0853 (United States District Court for the District of Columbia)

The Securities and Exchange Commission today announced the filing of a civil injunctive action in the United States District Court for the District of Columbia seeking to enjoin Irving Cohen, ("Cohen"), a New York promoter of tax shelter investments, Halajen Mineral Development Corp. ("Halajen"), a company wholly owned by Cohen, and Mountainview Associates, Alpha Associates, Kentucky Coal Resources, Ltd., West Hills Associates, Sunnyhills Associates, and Sewanee Ridge Associates, six coal limited partnerships, from further violations of Sections 5(a), 5(c) (registration) and 17(a) (antifraud) of the Securities Act of 1933 and Section 10(b) (antifraud) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The Commission's action also seeks to enjoin Weiss Rosenthal & Schwartzman, P.C. ("WRS"), a New York law firm, as successor to Weiss Rosenthal Heller Schwartzman & Lazar, concerning conduct as counsel to the above-named defendants, from violations of the above-enumerated statutory and rule provisions. WRS simultaneously with the filing of this action entered into an Undertaking and Stipulation to be ordered by the Court, as described below.

The Commission's complaint alleges a scheme to defraud the public from September 1976 to the present through the sale of approximately $7,925,000 of unregistered securities, i.e., interests in the six defendant coal mining limited partnerships, Mountainview Associates, Alpha Associates, Kentucky Coal Resources, Ltd., West Hills Associates, Sunnyhills Associates and Sewanee Ridge Associates. Defendant Cohen created, managed and controlled these partnerships in his capacity as president of defendant Halajen, the general partner to all the partnerships. Defendants Cohen, Halajen and the six coal limited partnerships represented to prospective investors that economic and tax benefits would accrue to purchasers of partnership interests. In fact, little, if any, mining has occurred on the partnerships' properties and the tax benefits represented to the purchasers may not have been available.

Specifically, the Commission's complaint alleges that the interests in the partnerships were offered and sold to the public by Cohen and Halajen principally by means of offering circulars which contained material misrepresentations and omitted material facts concerning, among other things, leasehold interests in the properties (the leases and/or subleases with respect to at least two partnerships were backdated), the purported tax benefits to investors, engineering reports (in certain instances reports were of questionable authenticity and/or contradictory reports existed for the same properties), the experience and background of the persons rendering services to or transacting with the partnerships, including Alexander Guterma, a convicted securities violator, and use of proceeds.

The Commission's complaint further alleges that WRS primarily prepared five of the six partnership offering memoranda which, due, in part, to the firm's failure, among other things, adequately to perform its due diligence investigation to ascertain the accuracy of certain matters and its failure to disclose those and other facts, contained material misrepresentations and omitted material facts as described above. WRS also rendered the legal opinion contained in the offering circulars detailing the purported federal income tax consequences of the investments made in the partnerships, which

opinions were based on the same false and misleading factual assumptions. Without admitting or denying the allegations contained in the Commission's complaint, for the purpose of settling this matter, defendant WRS has agreed to an Undertaking and Stipulation to be ordered by the Court in which WRS undertakes that, in the future, in acting as counsel with respect to tax shelter private offerings, its members, acting in their capacity as such, will take reasonable care to assure themselves: (1) that any offering circulars they prepare contain full and fair disclosure of all material facts and risks so that the offering document is not materially false and misleading; and (2) that any tax opinions they prepare will contain full and fair disclosure of all facts which bear upon the tax conclusions and that WRS will have a reasonable basis for relying upon the disclosed facts in issuing such tax opinions. Further, WRS will within 45 days adopt and maintain procedures to implement the above-described undertakings.

With respect to defendants Cohen, Halajen and the six coal limited partnerships, the Commission, in addition to seeking injunctive relief, is seeking an Order requiring them to send each limited partner a report describing the true nature of the transactions undertaken by the partnerships and the parties involved therein, with an offer of rescission made available to each limited partner for a period of sixty (60) days from the date of said report. Further, the Commission is seeking an Order requiring Cohen and Halajen to disgorge any and all illegally gained profits or benefits from the offer and sale of the limited partnership interests.

Litigation Release No. 9051/April 3, 1980

U.S. v. AARON A. KLEINMAN (U.S.D.C., Central District of California, CR-80-229)

Andrea Sheridan Ordin, United States Attorney for the Central District of California and Leonard H. Rossen, Regional Administrator, Los Angeles Regional Office, announced that on March 12, 1980, a federal grand jury sitting in Los Angeles, California returned a 23-count indictment against Aaron A. Kleinman ("Kleinman"), of Downey, California, the principal controlling person of Manus, Inc. ("Manus"), a registered investment adviser.

The indictment charges Kleinman with 11 counts of mail fraud, 8 counts of fraud by an investment adviser, two counts of securities fraud, one count of making false statements in an investment adviser registration application, and one count of bank fraud, arising from his operation of Manus.

The indictment alleges that between September 1972 and August 1979, Kleinman purported to sell to Manus clients and others Bureau of Indian Affairs promissory notes, "special situation" securities, and interests in limited partnerships which were to purchase specified properties, while not purchasing such notes, securities or properties as represented. Instead, the indictment alleges, Kleinman used the monies to pay pretended earnings and returns to other investors, and otherwise diverted and misappropriated these funds for his own and Manus' benefit. With regard to the limited partnership investments, the indictment alleges that Kleinman provided false reports and tax returns on behalf of the partnerships.

In addition, the indictment alleges that Kleinman made false statements regarding his educational and professional background in Manus' application for registration as an investment adviser. The indictment also alleges that Kleinman made false statements to a bank in order to obtain a line of credit for Manus.

On August 24, 1979, the Los Angeles Regional Office filed a civil injunctive action against Kleinman and Manus in the federal court in Los Angeles. Defendants Manus and Kleinman consented to injunctive relief on August 24, 1979 and January 29, 1980, respectively. Thereafter, United States District Judge William P. Gray entered orders permanently enjoining Manus and Kleinman from future violations of the antifraud and registration provisions of the federal securities laws and appointing a receiver for Manus.

For further information see Litigation Release Nos. 8887 and 9005.

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VOLUME 19, NUMBER 17 APRIL 29, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6206-07	1206
Securities Exchange Act	16738-54	1213
Public Utility Holding Company Act	21423-28	1235
Investment Company Act	11127-33	1242
Accounting Series	277	1247
Litigation	9062-63	1247

This listing covers releases issued from 4/11/80-4/17/80. This listing does not affect the legal status of any document published in this issue.

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SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16739	34-16742	34-16754
34-16740	34-16744	
34-16741	34-16746	

33-6206 Solicitation of comments on an amendment to Rule 13d-2(a) pertaining to the requirements for the filing of amendments to Schedule 13D [File No. S7-831—Comment Period Expires May 26, 1980].

33-6207 Amendment of Rules regarding Oil and Gas Reserve Information—Postponement of Audit Requirement—Effective Date April 17, 1980.

OPINIONS

34-16749 **APEX FINANCIAL CORPORATION, ET AL.**
Where member of registered securities association and its officers were responsible for unlawful sale of unregistered securities, *held*, association's findings of violation *sustained*, and sanctions imposed *affirmed*.

34-16750 **LOWELL H. LISTROM COMPANY, INC. AND LOWELL H. LISTROM**
Where member of registered securities association and its president prepared inaccurate computations of member's aggregate indebtedness and net capital, made inaccurate computations of the balance

SE 1.29

required in member's special reserve account for the benefit of customers, and failed to make proper reports of certain transactions to NASDAQ, *held*, association's findings of violation *sustained*, but association's findings that deficiencies resulted in member's special reserve account *set aside*, and sanctions imposed on applicants *reduced*.

34-16751 **LEONARD L. GOOCH**
Where branch manager and registered principal of member firm of registered securities association engaged in private securities transactions without prior written notification to the member and, in effecting such transactions, improperly engaged in business as an unregistered broker-dealer, *held*, association's findings of violation and sanctions imposed *sustained*.

34-16753 **ROBERT BERKSON**
Where secretary of registered broker-dealer had been convicted twice, once for securities-related crimes and once for filing a fraudulent income tax return, *held*, in public interest to sustain the administrative law judge's imposition of a qualified bar from association with a broker-dealer.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6206/April 16, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16748/April 16, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11132/April 16, 1980

FILING AND DISCLOSURE REQUIREMENTS RELATING TO BENEFICIAL OWNERSHIP

ACTION: Proposed amendment to rule.

SUMMARY: The Commission is publishing for comment an amendment to Rule 13d-2(a) pertaining to the requirements for the filing of amendments to Schedule 13D. Schedule 13D specifies the information required to be included in reports of beneficial ownership filed pursuant to Rule 13d-1(a). The proposal would delete an exception to the requirement for filing an amendment under Rule 13d-2(a), which provided that an amendment would not be required if the acquisition of shares of a class, together with all other acquisitions during the preceding 12 months, did not exceed 2% of the class. The proposed amendment is necessary to close a disclosure gap in the beneficial ownership reporting requirements.

DATE: Comments must be received on or before May 26, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-831. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: W. Scott Cooper (202-272-2589), Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment a proposed amendment to Rule 13d-2(a) (17 CFR 240.13d-2(a)) under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. If adopted, this proposal would remove the availability of an exception to the requirement for the filing of amendments to Schedule 13D (17 CFR 240.13d-101). The present exception provides that the requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition, together with all other acquisitions during the preceding 12 months, does not exceed 2% of the class. The proposal is a result, in part, of the Commission's ongoing examination of the beneficial ownership reporting requirements which is being conducted in connection with the Commission's report to Congress pursuant to Section 13(h) of the Exchange Act.

Pursuant to Sections 13(d) and 13(g) of the Exchange Act, and the rules adopted thereunder, persons who beneficially own five percent or more of the equity securities of certain publicly held companies are required to report their beneficial ownership. During the course of preparation of the Commission's report to Congress on beneficial ownership, which is now in the early draft stage, a gap in the general reporting system has been identified. As a result of this anomaly, certain persons filing under Rule 13d-1(a) (17 CFR 240.13d-1(a)) are exempted from reporting certain material changes in beneficial ownership, while similarly situated persons filing under Rule 13d-1(b)[1] (17 CFR 240.13d-1(b)) or Rule 13d-1(c)[2] (17 CFR 240.13d-1(c)) are afforded no exemption. The proposed amendment, if adopted, would eliminate this inconsistency.

In general, persons who make their first filing pursuant to Rule 13d-1(a) on Schedule 13D have been exempted from filing duplicative reports under Rule 13d-1(b) or Rule 13d-1(c) on Schedule 13G (17 CFR 240.13d-102). All changes in their holdings are reported pursuant to the provisions of Rule 13d-2(a) governing the filing of amendments to Schedule 13D.

Persons who first file on Schedule 13G remain under the requirements governing the filing of Schedule 13G and amendments thereto as long as they continue to qualify under the provisions of Rules 13d-1(b) or 13d-1(c).

Both rules governing the filing of amendments to Schedule 13D and Schedule 13G require the reporting of material changes in holdings.[3] However, Rule 13d-2(a) excepts the reporting of acquisitions of less than two percent of the issuer's outstanding securities in any twelve month period.[4] The two percent measure based upon the number of the issuer's outstanding securities could be material in relation to the holdings of a shareholder who held only five percent of the total amount outstanding. Moreover, it would be material in other situations, *e.g.*, for the person who goes from 49 percent to 50.01 percent.

The Commission now believes that the two percent exemption in Rule 13d-2(a) is neither required nor appropriate. Sections 13(g)(1)(B) and 13(g)(2) of the Exchange Act[5] grant adequate authority to require the reporting of any increase in ownership,

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[1]Rule 13d-1(b), in general, permits certain institutional investors, who have acquired the securities in the ordinary course of business and not with the purpose or effect of changing or influencing control of the issuer of such securities, to file Schedule 13G when they would otherwise be obligated to file Schedule 13D under Rule 13d-1(a).

[2]Rule 13d-1(c) requires any person who, at the end of any calendar year, is the beneficial owner of more than five percent of certain publicly held companies and who is not required to file under Rule 13d-1(a) to file Schedule 13G.

[3]Rule 13d-2(b) governing the filing of amendments to Schedule 13G also requires the reporting of any change.

[4]This exception is based on the exemption in Section 13(d)(6)(B) which provides that the provisions of Section 13(d) shall not apply to any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of the securities of the same class during the preceding twelve months, does not exceed two percent of that class.

[5]Section 13(g)(1) provides authority for the Commission to require that any person who is the beneficial owner of more than five percent of certain classes of equity securities send to the issuer and file with the Commission a brief statement concerning the beneficial ownership and the identity of that person. Section 13(g)(2) provides that if a material change occurs in the information set forth in such statement, an amendment shall be transmitted to the issuer and file with the Commission, in accordance with such rules as the Commission may prescribe. Although Section 13(g)(1) would require disclosure of information prescribed regardless of whether the person was required to report under other sections of the Exchange Act, Section 13(g)(5) directs the Commission to take steps to develop a comprehensive, non-duplicative reporting system for beneficial ownership.

whether above or below the two percent level.[6] To require this reporting by amendment to Schedule 13D rather than on Schedule 13G prevents confusion and duplicative reporting and is permitted by Section 13(g)(5)(B) of the Exchange Act.[7]

TEXT OF PROPOSAL

(Attention—The text of the following proposed amendment uses [ ] brackets to indicate the deletion.)

It is proposed to amend paragraph (a) of 17 CFR 240.13d-2 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.13d-2 Filing of amendments to Schedule 13D or 13G.

(a) Schedule 13D—If any material change occurs in the facts set forth in the statement required by Rule 13d-1(a), (§240.13d-1(a)) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission and send or cause to be sent to the issuer at its principal executive office, by registered or certified mail, and to each exchange on which the security is traded an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. [The requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition is exempted by Section 13(d)(6)(B) of the Act.] Six copies of each such amendment shall be filed with the Commission.

* * * * *

[Sec. 2, 82 Stat. 454; §1, 84 Stat. 1497; §§ 202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(d), 78m(g).]

Specific Inquiry

Mindful of its responsibilities to weigh with care the costs and benefits which result from its rules and

[6]The reporting of a material increase or decrease in the number of shares beneficially owned is all that is involved in the proposed amendment to Rule 13d-2(a), and Section 13(g)(2) of the Exchange Act is relied upon only with respect to this kind of a material change. Other material changes in facts set forth in a schedule filed pursuant to Section 13(d)(1) of the Exchange Act may be reportable under Section 13(d)(2) and the rules promulgated pursuant to that section. The proposed change would not alter any obligations relating to the filing of such amendments.

[7]In the past, the staff of the Commission has taken the position that the provisions of Section 13(d)(6)(B) of the Exchange Act, exempting purchases aggregating not more than 2 percent of a class, apply both with respect to original filings under Section 13(d)(1) of the Exchange Act and to amendments to those filings made pursuant to Section 13(d)(2) of the Exchange Act. Even though it may not be necessary to do so in order to make the proposed change since the Commission is relying principally upon the authority granted under Section 13(g) of the Exchange Act, the Commission is changing its position and now believes that Section 13(d)(6)(B) does not apply to amendments of Schedule 13D. The change in position is premised on the conflict between the exemption under Section 13(d)(6)(B) and Section 13(d)(2) which requires a person who has already filed a Scheduled 13D to file an amendment if a material change occurs in the facts set forth in the Schedule 13D. The conflict occurs when a person has an obligation to file an amendment pursuant to Section 13(d)(2) to disclose a material change in the number of securities beneficially owned and Section 13(d)(6)(B) exempts the acquisition of such beneficial ownership from the reporting system. The legislative history of the Williams Act, H.R. Rep. No. 1711, 90th Cong. 2nd Sess. 9 (1968), S. Rep. No. 550, 90th Cong. 1st Sess. 8 (1967), and the Congressional purpose in passing Section 13(d), H.R. Rep. No. 1711 at 8, S. Rep. No. 550 at 7, appear to resolve this conflict by viewing Section 13(d)(6)(B) as only applying to the duty to file an initial Schedule 13D and not amendments thereto. The proposal would be consistent with this approach.

form requirements, the Commission specifically invites comments on the cost to registrants and others of this proposal. In light of Section 23(a)(2) of the Exchange Act, the Commission also specifically invites comments as to any competitive impact of any changes in the disclosure requirements.

Statutory Authority

The Commission hereby proposes for comment an amendment to Rule 13d-2(a) pursuant to Section 13(d) and Section 13(g) of the Exchange Act.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6207/April 17, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16752/April 17, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21526/April 17, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11133/April 17, 1980

ACCOUNTING SERIES
Release No. 277/April 17, 1980

OIL AND GAS RESERVE INFORMATION—POSTPONEMENT OF AUDIT REQUIREMENT

ACTION: Amendment of rules.

SUMMARY: Regulation S-X contains rules for financial accounting and reporting practices for oil and gas producing activities. These rules include requirements for the disclosure of certain oil and gas reserve information, including reserve quantities, estimated future net revenues, the present value of future net revenues and changes therein, and a summary of oil and gas activities prepared on the basis of reserve recognition accounting ("supplemental RRA summary"). These disclosure requirements were adopted pursuant to the Commission's decision, announced in Accounting Series Release No. 253, to evaluate the feasibility of reserve recognition accounting as a uniform method of accounting by oil and gas producers.

In Accounting Series Release No. 270, the Commission amended the disclosure requirements of Regulation S-X to permit oil and gas reserve information to be presented as "unaudited" for fiscal years ending before December 26, 1980. Although the Commission strongly believes in the importance of these disclosures, there continues to be uncertainty concerning the costs and related benefits of requiring reserve information to be audited as long as the information remains outside the primary financial statements. Accordingly, the Commission is amending Regulation S-X to postpone the audit requirement for reserve information until a decision is reached on adopting reserve recognition accounting as a uniform method of accounting in the primary financial statements. The amendments also permit registrants to present the reserve information disclosures as supplementary information outside the financial statements until the above determination is made.

EFFECTIVE DATE: April 17, 1980.

FOR FURTHER INFORMATION CONTACT: James L. Russell or Rita J. Gunter, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: In Accounting Series Release ("ASR") No. 253, August 31, 1978 (43 FR 40688), the Commission adopted requirements for the disclosure of oil and gas reserve information (estimated reserve quantities, future net revenues, and present value of future net revenues) as part of audited financial statements for fiscal years ending after December 25, 1979. In ASR No. 269 (September 24, 1979) (44 FR 57030), the Commission added requirements for a supplemental RRA summary and a reconciliation of beginning and ending present value amounts. ASR No. 270, issued concurrently with ASR No. 269, permitted these financial statement disclosures to be presented as an "unaudited" note or schedule to the financial statements for fiscal years ending before December 26, 1980.

The postponement of the audit requirement, which had been proposed in June 1979 in Securities Act Release No. 6079 (44 FR 36068), was intended to provide additional time for the establishment and implementation of uniform guidelines and

standards for reserve estimation and reporting by petroleum engineers and independent accountants. In December 1979 the Society of Petroleum Engineers published its "Standards Pertaining to the Estimating and Auditing of Oil and Gas Information." These standards, while voluntary, make available a set of guidelines for reserve work, including minimum professional qualifications and standards of independence and objectivity. Meanwhile, the AICPA's Auditing Standards Board is considering comments received on its proposed industry audit and accounting guide, "Oil and Gas Reserve Information." This guide would specify the procedures to be followed in order for an auditor to obtain sufficient competent evidential matter on reserve information included in financial statements. Unless the financial auditor possesses the knowledge and experience necessary to examine oil and gas reserve estimates, the proposed guide would require use of the work of a consulting reservoir engineer who is unrelated to the entity whose financial statements are being examined. The auditor would be responsible for testing certain data obtained from the entity's financial records and for evaluating the professional qualifications, reputation and objectivity of the consulting reservoir engineer.

When oil and gas reserve information is presented as supplementary information pursuant to Statement of Financial Accounting Standards ("SFAS") No. 25, "Suspension of Certain Accounting Requirements for Oil and Gas Producing Companies," of the Financial Accounting Standards Board ("FASB") or in an unaudited footnote pursuant to Regulation S-X (for fiscal years ending before December 26, 1980), the limited review procedures to be followed are specified in Statement on Auditing Standards ("SAS") No. 27, "Supplementary Information Required by the Financial Accounting Standards Board," and a related proposed SAS, "Supplementary Oil and Gas Reserve Quantity Information." These procedures are limited in scope and consist primarily of inquiry and analytical comparison.

Audit Requirement

The Commission has continued to monitor developments related to the financial reporting of oil and gas reserve information and has given further consideration to the concerns that have been raised regarding the requirement that reserve information be audited. It has been argued by some persons that the cost of an audit would outweigh the potential benefits because of the lack of precision inherent in reserve estimates. These persons believe that, as long as the Commission continues to consider whether reserve valuations have sufficient reliability to be included in formal financial statements, the costs associated with requiring the data to be audited are not justified. Therefore, such a requirement during the interim period of evaluation would only serve to demonstrate that reserve information can, in fact, be audited. Yet the auditing procedures and standards now in place or under development indicate that an audit requirement is feasible.

The Commission also recognizes that additional work is necessary to make disclosures of reserve information as meaningful as possible and that experimentation with alternative valuation methodologies may be appropriate. However, an audit requirement could serve to restrict experimentation if registrants are reluctant to depart from a literal application of the Commission's rules in spite of specific statements permitting additional disclosures based on differing assumptions. In addition, the FASB has indicated that it will issue in the near future an exposure draft of a supplement to SFAS No. 33, "Financial Reporting and Changing Prices," that will specify the application of current cost disclosures to natural resource assets and income producing real estate. This exposure draft is expected to provide for the disclosure of supplementary information of the "fair value" of proved oil and gas reserves. The notion of fair value differs from the valuation prescribed by Regulation S-X by encompassing expectations of future prices and costs and permitting the use of varying discount rates believed to be appropriate by the reporting entity. Although the Commission continues to believe that strong arguments exist for the use of uniform assumptions in the preparation of reserve valuations, it recognizes that the disclosures contemplated by the FASB could result in useful experimentation aimed at enhancing the relevance of the information. The development of meaningful disclosure standards would likely be enhanced if the information is subject to similar levels of auditor association during this evolutionary period.

Accordingly, the Commission has concluded that maximum benefit would result from a further postponement of the requirement that reserve information be audited, until a final decision is reached on the appropriateness of incorporating reserve information into the formal financial statements.

Supplementary Information

In Statement of Financial Accounting Concepts No. 1, "Objectives of Financial Reporting by Business Enterprises," the FASB indicated its intention to establish standards for the reporting of financial information outside the financial statements. As part of its conceptual framework project, the FASB is currently preparing a discussion paper that addresses, among other questions, where information that meets the objectives of financial reporting should be disclosed—within or outside of financial statements. In view of the evolutionary and experimental nature of deciding where information should be disclosed (which includes consideration of such qualitative characteristics as relevance and reliability as well as the appropriate degree of independent verification), the Board in SFAS Nos. 25 and 33 has permitted the prescribed disclosures of oil and gas reserve quantity data and information on certain effects of changing prices to be reported as supplementary information accompanying, but outside, the financial statements.

The Commission has recognized this trend in financial reporting by proposing in Securities Act Release No. 6178 (January 15, 1980) (45 FR 5943), "General Revision of Regulation S-X," to remove from Regulation S-X the requirement relating to unaudited selected quarterly financial data and to place this requirement in Regulation S-K (i.e., outside the financial statements). With the deletion of the Commission's replacement cost rule in December 1980 as announced in ASR No. 271 (October 23, 1979) (44 FR 62888), this would eliminate all other requirements for unaudited footnotes.

Several benefits may be realized by permitting oil and gas reserve information, as long as it remains unaudited, to be reported as supplementary information. Such an approach would achieve consistency with the reporting of similar unaudited information, thereby reducing possible confusion on the part of users of financial reports with respect to the nature of the data and the degree of auditor verification. It would also facilitate coordination on the part of registrants of disclosures required by the Commission with the reserve quantity and value information specified by the FASB.

A further consideration is the ongoing development of auditor review and reporting standards for supplementary information. SAS No. 27 provides for exception reporting, i.e., the auditor is required to expand his standard report only to call attention to the omission of required supplementary information, material departures from FASB guidelines on its measurement or presentation, or the inability to complete the prescribed review procedures. The Auditing Standards Board indicated in SAS No. 27 that it has under consideration the issue of explicit reporting on supplementary information. Such reporting would permit the auditor to state, based on the limited procedures prescribed by SAS No. 27, that he is not aware of any material modifications that should be made to the information for it to conform with established guidelines. Further action will depend upon resolution of uncertainties concerning (1) implications that the location of the information may have on explicit versus exception reporting, (2) application of Section 11(a) of the Securities Act of 1933 to such reports when included in a Securities Act filing,[1] and (3) the nature of information that may become required supplementary information. Disclosure of oil and gas reserve information as supplementary information should lead to explicit auditor reporting on the data, when the issues discussed above are resolved.

The amendments to Rule 3-18(k) of Regulation S-X contained in this release permit unaudited reserve information to be reported as supplementary information accompanying the financial statements. However, the disclosure requirements are being kept as part of Regulation S-X because of the Commission's ongoing study and evaluation of reserve recognition accounting.

The Commission emphasizes that it considers reserve quantity and value information to be extremely important to an understanding of the financial position and operations of an oil and gas producing company. Considerable progress has been made in the development of these disclosures. However, additional experience in the preparation and use of reserve information is necessary in order to achieve the maximum degree of relevance and reliability. The accompanying rule amendments, by postponing the audit requirement and permitting

[1]The Commission expects to consider the issuance of a release proposing rule amendments that would exclude accountants from potential liability under Section 11 for reports on reviews of unaudited supplementary information on the effects of changing prices as well as supplementary oil and gas reserve information.

reserve information to be reported as supplementary information until a final determination is reached on requiring this information in the primary financial statements, are intended to promote this process by minimizing the cost of compliance and by encouraging useful experimentation. The amendments do not represent any conclusions on the part of the Commission as to the feasibility of reserve recognition accounting as a uniform method of accounting in the primary financial statements. As indicated in ASR No. 253, several years' experience with the disclosure of reserve information will be necessary before such a determination can be made.

COMMISSION ACTION: The Commission hereby amends 17 CFR Part 210 by revising the two introductory sentences to §210.3-18(k) to read as follows:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975.

* * * * *

§210.3-18 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(k) *Disclosure of oil and gas reserve information and historical financial data.* The information specified by subparagraphs (1) through (4) of this paragraph shall be disclosed in the body of the financial statements, in the notes thereto, or in a separate schedule or other presentation that is an integral part of the financial statements. The information in subparagraphs (5) through (8) is not required to be audited and may be reported as supplementary information accompanying, but outside, the financial statements.

* * * * *

These amendments are adopted pursuant to authority in sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78l, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; sections 5(b), 14 and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)] of the Investment Company Act of 1940; and section 503 [42 U.S.C. 6383] of the Energy Policy and Conservation Act of 1975.

Inasmuch as these amendments do not involve any additional reporting requirements, and in recognition of the need for timely notification to registrants of the postponement of the audit requirement for oil and gas reserve information, the Commission has determined that issuance for public comment of proposed amendments would serve no useful purpose. Accordingly, the amendments are being adopted as final rules and will be effective immediately.

Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that such rule amendments would impose on competition.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16738/April 11, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten-day suspension of exchange and over-the-counter trading for the period commencing at 10:00 a.m. on April 11, 1980 and terminating at midnight on April 20, 1980 of the securities of Olympic Gas & Oil, Inc. ("Olympic"), a Washington corporation with principal executive offices located at 2420 First Avenue, Seattle, Washington 98121 and SNG & Oil Energy Company ("SNG"), a Delaware corporation with principal executive offices located at 849 Delaware Avenue, Buffalo, New York 14209.

The Commission ordered the suspension of trading in Olympic's and SNG's securities because of questions concerning the ownership of assets listed in the most recently published balance sheets of both companies. The Commission has learned that certain real estate constituting the majority of the reported assets of both companies was never conveyed to such companies notwithstanding representations to the contrary contained in filings of these companies with the Commission. The Commission has also been informed that questions have arisen with respect to the extent of gas, oil and mineral rights, if any, conveyed to Olympic. The Commission previously ordered a suspension of trading in Olympic's and SNG's securities from March 10, 1980 through March 19, 1980. The Commission ordered that suspension because of (1) unusual and unexplained market activity in the companies' securities and (2) questions concerning each companies' operations and financial condition with respect to the method of recognizing revenues and expenses and the valuation of assets.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16739/April 11, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-4

The Municipal Securities Rulemaking Board (the "MSRB") submitted on April 9, 1980, a proposed rule change under Rule 19b-4 to consolidate the MSRB's three advertising rules into a single rule, rule G-21, to define the term "advertisement" for purposes of the proposed rule, and to modify the current requirements applicable to advertisements of new issues of municipal securities.

Publication of the submission is expected to be made in the *Federal Register* during the week of April 21, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-4.

Copies of the submission and all subsequent amendments and copies of all written statements

with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16740/April 14, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-3)

ORDER APPROVING PROPOSED RULE CHANGE

On February 19, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends CBOE rules regarding the procedures for the resolution of unmatched trades.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16618, March 3, 1980) and by publication in the *Federal Register* (45 FR 15352, March 10, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16741/April 14, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-4)

ORDER APPROVING PROPOSED RULE CHANGE

On March 3, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Phlx Rule 1046 to provide additional exemptions to its "restricted option rule" for (1) Registered Options Traders, (2) the entry of orders which result in spread positions, and (3) opening purchases of puts which are offset by long positions in the underlying stock or a security convertible into the underlying stock.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16624, March 5, 1980) and by publication in the *Federal Register* (45 FR 16067, March 12, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the

Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(1) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16742/April 14, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On February 25, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which defines spread orders, straddle orders and combination orders and accords to combination orders the same limited exception to book priority which is presently accorded to spread and straddle orders.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16619, March 3, 1980) and by publication in the *Federal Register* (45 FR 15357, March 10, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16743/April 15, 1980

The Commission today determined to issue the following statement by G.L. Corporation through Refco-Consolidated, Inc. and Barry W. Blank. The statement was submitted to the Commission pursuant to Section 21(a) of the Securities Exchange Act of 1934[1] in connection with a non-public inquiry by the staff of the Commission concerning a purchase by Refco-Consolidated, Inc. of the common stock of Salem Corporation on January 17, 1978. Included in the statement are certain factual assertions regarding the circumstances of the transaction and certain undertakings by Refco-Consolidated, Inc., G.L. Corporation through Refco and Barry W. Blank.

George A. Fitzsimmons, Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Fitzsimmons:

This statement is submitted by G.L. Corporation, through Refco-Consolidated, Inc. ("Refco"), and Barry W. Blank ("Blank") pursuant to Section 21(a) of the Securities Exchange Act of 1934. Certain of

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[1]Section 21(a) of the Securities Exchange Act of 1934 provides in part that:

"The Commission may. . .permit any person to file with it a statement in writing or under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. . ."

the facts described herein are only known to Blank while others are known only to Refco. Neither Blank nor Refco adopts the facts related by the other. The submission arises from an informal inquiry by the Commission's Division of Enforcement concerning an acquisition by Refco of the common stock of Salem Corporation ("Salem") on January 17, 1978.

Salem, a Pennsylvania corporation with headquarters in Carnegie, Pennsylvania, is engaged in the business of designing, engineering and constructing heavy industrial equipment for the metal and coal industries. Its common stock is listed for trading on the American and Pacific Stock Exchanges. The purposes in addressing this statement to the Commission are to inform the Commission concerning certain of the circumstances relating to the transaction to assure the Commission that there was never any intention by the parties to violate any provision of the federal securities laws in connection with the conduct described below and of the intentions of the undersigned to refrain from conduct which may violate the tender offer provisions of the Securities Exchange Act of 1934 and the applicable rules thereunder and to make certain undertakings concerning the future conduct of the undersigned.

Refco is a wholly owned subsidiary of G.L. Corporation, a holding company, which is owned beneficially by certain members of the Pritzker family, including Jay and Robert Pritzker. At the time of the events described below, Blank was a registered representative and Vice President in the Phoenix, Arizona office of the brokerage firm Wedbush, Noble, Cooke, Inc. ("WNC").

The events investigated by the Commission staff began during February 1977 when Mr. Seymour Lazar ("Lazar"), an acquaintance of Jay Pritzker, met with Blank, without Pritzker's knowledge. Following this meeting Mr. Lazar called Jay Pritzker and told him that he had been informed by Blank that a large amount, approximately 25%, of the outstanding shares of Salem's common stock might be available for purchase if Jay Pritzker was interested. At that time, after performing limited research, Jay Pritzker expressed an interest to Mr. Lazar in exploring a possible purchase of the Salem securities, principally because Salem was engaged in businesses similar, although not identical, to those companies previously owned and operated by G.L. Corporation.

In February, 1977, Robert Pritzker, Jay Pritzker's brother, and Mr. Lazar met with senior executives of Salem to further acquaint themselves with the nature of the company's business and its management. Robert Pritzker returned from that meeting with a favorable impression of the management and the company but was concerned about a contingent liability of Salem arising from a then pending litigation in which damages were sought in excess of Salem's net worth. After discussing the merits of a possible investment, Robert Pritzker expressed his concern over the pending litigation to Jay Pritzker and they both agreed that they would not seek to purchase the stock; the subject was dropped as far as the Pritzkers were concerned.

Subsequently, in November, 1977, Jay Pritzker's interest in Salem stock was revived when, after the pending litigation was settled on favorable terms, a friend of Jay Pritzker told him that a large amount of Salem stock was available and that Blank was the person with whom to negotiate if Pritzker wanted to purchase the stock. The market price was approximately $11-3/4.

Jay Pritzker spoke to Blank who confirmed that his customers owned approximately 25% of the outstanding stock, and that this stock might be available at $18 per share. Jay Pritzker on behalf of Refco indicated an interest in purchasing the stock and requested that Blank forward certain publicly available documents containing information about Salem to Jay Pritzker for his review.

Jay and Robert Pritzker decided to update their knowledge of the company, and Robert Pritzker met with Salem's management on January 13, 1978. At that meeting, Robert Pritzker's earlier favorable impression regarding the Company and its management was reinforced.

Over the January 14 and 15, 1978 weekend, Jay and Robert Pritzker on behalf of Refco decided to acquire the Salem common stock at a price not to exceed $16 per share.

The closing price of Salem common stock on the American Stock Exchange on January 16, 1978 was $13-5/8. At approximately 6:00 p.m. on that day Jay Pritzker called Mr. Lazar and authorized him to contact Blank to determine the availability of the Salem stock and the price at which such securities could be purchased. Mr. Lazar was instructed to inform Blank that the Pritzkers were interested in purchasing 400,000 shares of Salem common stock

at a price between $15 and $15-1/2 per share. Accordingly, Mr. Lazar contacted Blank. Thereafter, Mr. Lazar reported back to Jay Pritzker that Blank did not think his customers would sell for less than $18 per share. After receiving the report from Lazar concerning his conversation with Blank, Jay Pritzker then authorized Mr. Lazar to offer $16 per share, on an "all or none" basis. Mr. Lazar called Blank and advised him of the instructions from Jay Pritzker. Blank told Mr. Lazar that he thought $16 per share was too low but that he would call some customers and get their reaction.

Thereafter, Blank telephoned approximately five of his customers who owned Salem stock and asked if they would be willing to sell their stock at $16 per share. All but one indicated a willingness to sell at that price, and the other asked Blank to attempt to raise the bid to $16-1/4 per share. Shortly thereafter Blank reported to Mr. Lazar that, based upon his telephone calls, Jay Pritzker on behalf of Refco probably could buy 300,000 to 400,000 shares at $16 per share, and that he would have to speak to Jay Pritzker directly.

After receiving the report from Lazar concerning his conversation with Blank, at approximately 9:00 p.m. on January 16th, Jay Pritzker called Blank and indicated to him that he on behalf of Refco would purchase 400,000 shares, on an "all or none" basis, at $16 per share. Blank advised Jay Pritzker that he was not certain that he could find enough customers to fill the 400,000 share order and suggested a 200,000 share order. Blank also requested that Jay Pritzker personally call one Salem shareholder who was known to want more than $16 per share. Jay Pritzker refused to call that shareholder but, at Blank's request, decreased the size of the order to 350,000 shares of Salem common stock on an "all or none" basis.

During the same conversation, which lasted 23 minutes, Blank told Jay Pritzker that he would have to call a lot of his customers and that he would proceed to do so. Jay Pritzker did not know how many customers of Blank would be called. Jay Pritzker was not sure whether Blank was going to be able to deliver the 350,000 shares. The reason was that he had phone calls to make to his customers and that led Pritzker to conclude that he (Blank) wasn't positive that his customers were prepared to sell at the $16 per share price. Pritzker understood that Blank might have difficulty reaching Salem shareholders at night. Jay Pritzker did not speak to any Salem shareholders and told Blank that he was not interested in discussing Blank's problems. Jay Pritzker on behalf of Refco agreed to pay $.11 per share commission and to deposit $250,000 with WNC. It was anticipated that the transaction would be completed the following day.

Following his conversation with Blank, Jay Pritzker called his counsel to inquire whether there were any legal impediments to Refco purchasing 350,000 shares of Salem common stock from Blank's customers. Jay Pritzker's counsel responded that he could proceed with the stock purchase.

Blank immediately notified WNC's senior vice president for retail operations about Jay Pritzker's order, and began soliciting Salem shareholders. He used WNC's computer list of customers' positions to determine who owned Salem stock, and he also used his personal list of former customers who had previously purchased Salem stock. Blank telephoned all night beginning at 10:00 p.m. with married customers who lived on the east coast through the west coast and then began calling unmarried customers on the east coast through the west coast. Except for a short break at approximately 5:00 a.m., he was constantly on the telephone attempting to call approximately 200 potential customers, of which 68 decided to sell all or part of their Salem stock.

Blank's telephone calls were short, lasting about two or three minutes each. He told his customers, among other things, that he had been approached by an interested party who wanted to buy 350,000 shares of Salem common stock at $16, which represented a premium of $2-3/8 per share; that he did not know what this party's future plans were for Salem; that he was contacting other shareholders and that he was selling all of his personal holdings of Salem stock. In addition he told some customers that $16 was a good price and that his other customers were selling their stock. His customers were then asked to decide whether to sell their stock. Blank did not disclose to his customers that he was receiving a commission from the buyer, although the confirmations subsequently sent to each customer contained a number code which indicated that WNC as acting as the agent for both the buyer and seller.

Certain Salem shareholders were solicited by other registered representatives who indirectly learned about Refco's order. For example, other WNC registered representatives in its Phoenix, Los Angeles and Seattle offices solicited approximately 17 customers who owned Salem stock. In addition,

Blank told William H. Strauther ("Strauther"), President of Continental American Securities ("CAS") that there would be a large bid for Salem shares the next day at $16 per share. During the night of January 16, 1978, CAS registered representatives solicited 33 individual nondiscretionary accounts, and Strauther placed orders to sell 36,800 shares for 8 discretionary accounts of CAS. Individuals that Blank called had accounts at other brokerage firms from which they sold Salem stock. To complete the order, WNC asked the specialist for Salem on the American Stock Exchange to sell 25,600 shares of Salem at $16 per share.

Blank never disclosed to Jay Pritzker the activities he engaged in in order to put together the block of 350,000 shares.

On January 17, 1978, at approximately 2:55 p.m., the transaction was completed through purchases of 248,900 shares of Salem common stock on the Pacific Stock Exchange and 42,700 shares on the American Stock Exchange. Those shares were purchased by Refco.

The staff of the Commission has expressed concern that the activities discussed herein may have constituted a tender offer or request or invitation to tender securities within the meaning of the tender offer provisions of the Securities Exchange Act of 1934 and applicable rules thereunder. The undersigned did not make a filing with the Commission in connection with the transaction nor were persons who were solicited to sell advised of the information to which they may have been entitled pursuant to the foregoing provisions and rules.

To resolve this matter, the undersigned hereby undertake the following:

Refco undertakes, on behalf of itself and its shareholders whether direct or indirect (including Jay and Robert Pritzker), not to purchase any additional Salem common stock before January 1, 1981, except through a tender offer for all such common stock at a price of $16 per share or more. Refco further undertakes, on behalf of itself and such shareholders, that in the event that, prior to January 1, 1981, it sells the Salem common stock which it purchased on January 17, 1978 for cash or other consideration of a fair value in excess of such costs of such purchase as have been mutually agreed upon by the Commission and Refco, then Refco shall promptly thereafter pay an amount equivalent in value to such excess to a person, satisfactory to the Commission, who shall dispose thereof in accordance with a plan mutually agreed to by the Commission and Refco, except that neither Refco nor such shareholders shall directly or indirectly receive any part thereof. G.L. Corporation through Refco undertakes that it will take appropriate steps to comply with Section 14(d) of the Securities Exchange Act of 1934 and the Rules and Regulations thereunder.

Blank undertakes that he will take appropriate steps to comply with Sections 14(d) and 14(e) of the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. Blank further undertakes that prior to making a tender offer for, a request or invitation for tenders of, or soliciting shareholders to sell, 5% or more of any class of equity securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934, he will obtain an opinion of counsel that such solicitation or request or invitation for tenders will be accomplished in compliance with the applicable Sections of the federal securities laws and the Rules and Regulations promulgated thereunder. Blank also undertakes that while acting as agent for any person or group of persons in connection with such person's or group's acquisition of securities from, or sale of securities to, his customers, he will disclose to such customers the existence of the agency relationship.

Respectfully submitted,

Refco-Consolidated, Inc.
by_____

G.L. Corporation
by_____

_____
Barry W. Blank

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16744/April 15, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-79-22)

ORDER APPROVING PROPOSED RULE CHANGE

On January 2, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Commentary .01 to its Rule 958 to clarify that options transactions of Registered Options Traders ("ROT") must actually be initiated by the ROT while on the floor of the exchange in order to qualify for the specialist exemptions from Regulation T of the Federal Reserve Board (12 CFR 220) and Secton 11(a) of the Securities Exchange Act of 1934.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16625, March 5, 1980) and by publication in the *Federal Register* (45 FR 16058, March 12, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16745/April 15, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the Class A common stock ($5 Par Value) of THE WESTERN PACIFIC RAILROAD COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16746/April 16, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE DEPOSITORY TRUST COMPANY ("DTC")

(File No. SR-DTC-80-1)

Depository Trust Company (DTC) submitted on April 8, 1980, a proposed rule change adjusting the method of refunding to participants certain investment income earned by the depository.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of April 21, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-DTC-80-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the

filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16747/April 16, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of American Technical Resources, Inc. ("ATR") a Utah corporation located at 8515 Greenvale Avenue, Dallas, Texas 75321 for the ten day period commencing April 16th, 1980 and terminating at midnight (EST) on April 25th, 1980.

The Commission suspended trading in the securities of ATR at the request of the corporation which cited the recent unusual and unexplained market activity that involved the raise in the price of ATR stock from $.20 to $1.25 per share between December 1979 and mid-March 1980. During that period, there was no publicly available information which would have justified this market activity.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other current available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

If any broker-dealer or other person has any information which may relate to this matter, the Division of Enforcement of the Securities and Exchange Commission should be telephoned at (212) 264-1607.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16748/April 16, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6206/April 16, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16749/April 16, 1980

Admin. Proc. File No. 3-5718

In the Matter of the Applications of

APEX FINANCIAL CORPORATION
360 S. San Antonio Road
Los Altos, California

and

WAYNE H. WERNIMONT
CHARLES B. GODFREY

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Rules of Fair Practice

Sale of Unregistered Securities

Where member of registered securities association and its officers were responsible for unlawful sale of unregistered securities, *held*, association's findings of violation *sustained*, and sanctions imposed *affirmed*.

APPEARANCES:

Wayne H. Wernimont, for Apex Financial Corporation and *pro se*.

Charles B. Godfrey, pro se.

Andrew McR. Barnes and *Mary S. Head*, for the National Association of Securities Dealers, Inc.

I.

Apex Financial Corporation ("registrant"), a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"), Wayne H. Wernimont, its president, and Charles B. Godfrey, a former vice president, appeal from NASD disciplinary action. The NASD found applicants responsible for the unlawful sale of unregistered securities. It censured them and fined each of them $3,750.[1] Our findings are based on an independent review of the record.

II.

In November and December 1976, registrant, which signed a selling agreement with an affiliate of Cal-Am Corporation, sold 20 customers interests in nine limited partnerships whose general partners were Cal-Am and companies and persons affiliated therewith. The partnerships were formed to acquire and operate certain coal mining leases, and offered investors an attractive tax write-off. Interests in these ventures were offered and sold pursuant to claimed private offering exemptions from the registration requirements of the Securities Act, purportedly in compliance with the "safe harbor" provisions of Rule 146 under the Act.[2]

Applicants do not appear to contest the NASD's finding that Apex unlawfully sold unregistered securities. It is well settled that the burden of establishing the availability of an exemption from registration rests upon those who claim it.[3] And applicants failed to meet that burden. As one court has stated, "The evidence must be. . .explicit, exact, and not built on conclusionary statements of the [respondents]."[4] No such evidence was presented here.

Rule 146 places a limit of 35 on the number of persons who may purchase a single offering.[5] As the NASD found, it appears that all of the purportedly separate offerings of Cal-Am coal partnerships

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[1]The NASD also assessed costs.

[2]Section 4(2) of the Act exempts from registration "transactions by an issuer not involving any public offering." Rule 146 prescribes a non-exclusive method for obtaining the exemption provided by Section 4(2).

[3]See *S.E.C.* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *United States* v. *Custer Channel Wing Corporation*, 376 F.2d 675, 678 (C.A. 4, 1967); *Hill York Corporation* v. *American International Franchises, Inc.*, 448 F.2d 680, 690 (C.A. 5, 1971).

[4]*Lively* v. *Hirschfeld*, 440 F.2d 631, 633 (C.A. 10, 1971).

[5]Rule 146(g).

constituted a single integrated offering. Whether a series of securities offerings should be integrated is a question of fact to be determined by the consideration of various criteria, any one or more of which may be determinative.[6] Here, all of the offerings involved the same class of security; they were all made at the same period of time; they were all offered for the same type of consideration; and they all had the same general purpose. In fact, the record shows that registrant's salesmen treated the various Cal-Am offerings interchangeably. Investors were shown the prospectus of one coal partnership but were told that the particular offering might be "closed" by the time Cal-Am received their money, in which case they would be receiving units of another coal partnership. The record shows that at least six investors were "switched" in this manner.

Applicants point out that they obtained financial statements, tax opinions and other information from Cal-Am, and argue that they had a right to rely on that company's representations and assurances that each Cal-Am partnership qualified as a private placement under the provisions of Rule 146. In his testimony before the NASD's District Committee, Wernimont expressed doubt "whether a small broker-dealer such as ours really has the competency to pass on issues such as this. . . ." We cannot accept these contentions. As one court has stated:

> "The purpose of the Securities Act is the protection of the investing public, whether the stock is acquired directly from the issuer or through an intermediary. . . .Petitioners, as professionals in the securities business and as persons dealing closely with the investing public, are expected to secure compliance with the requirements of the Act to protect the public from illegal offerings."[7] (Footnote omitted)

Godfrey further asserts that, in May 1976, Apex was inspected both by the NASD and the California Corporations Commissioner whose examiners were furnished with pertinent information concerning the Cal-Am offerings which Apex had sold prior to that time. He states that, although he asked for these agencies' comments on the offerings, none were forthcoming, and he therefore assumed that no regulatory provisions were being violated. However, applicants were not justified in relying on the agencies' silence. We have repeatedly held that a broker-dealer cannot shift its responsibility for compliance with applicable requirements to regulatory authorities.[8]

Finally, Wernimont and Godfrey argue that they cannot be held responsible for any violations that occurred since full responsibility for handling Cal-Am "products," which prior to that time had not included any coal offerings, had been delegated to Leonard L. Gooch, a registered principal and director of Apex who was in charge of the branch office where all of the sales in question were made.[9] This contention is without merit.

Apex's original decision to market Cal-Am offerings, a decision in which both Wernimont and Godfrey participated, was made in November 1975, prior to the time that Gooch became a director and officer of the firm. Wernimont, who testified he lacked "the depth of knowledge to really analyze what constitutes a valid exemption [from registration requirements]," stated that he delegated primary responsibility in that respect to Godfrey, the firm's compliance officer. Wernimont asserted, however, that he did not delegate "one hundred percent" since he was "obviously. . .interested in what's going

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[6]See *Mark E. O'Leary*, 43 S.E.C. 842, 847 (1968), *aff'd*, 424 F.2d 908 (C.A.D.C., 1970), and authorities there cited; Securities Act Release No. 4552 (November 6, 1962).

[7]*Quinn and Company, Inc.* v. *S.E.C.*, 452 F.2d 943, 946-947 (C.A. 10, 1971), *cert. denied*, 406 U.S. 957 (1972). See also *Merrill Lynch, Pierce, Fenner & Smith Incorporated*, 45 S.E.C. 185, 188 (1973); *Stone Summers & Company*, 45 S.E.C. 105, 108 (1972); *M. V. Gray Investments, Inc.*, 44 S.E.C. 567, 569 (1971).

[8]See, e.g., *Don D. Anderson & Co., Inc.*, 43 S.E.C. 989, 991 (1968), *aff'd* 423 F.2d 813 (C.A. 10, 1970); *Melvin Y. Zucker*, Securities Exchange Act Release No. 13076 (December 16, 1976), 11 SEC Docket 1216, 1217; *First Philadelphia Corporation*, Securities Exchange Act Release No. 13194 (January 21, 1977), 11 SEC Docket 1549, 1551.

[9]Gooch, a respondent in these proceedings, was also found responsible for registrant's sales of unregistered securities, and received the same sanction as that imposed on applicants. He did not appeal from the NASD's decision.

on in the firm, and [tried] to keep close tabs on everything like that." He stated that he reviewed Godfrey's work and, in fact, questioned a Cal-Am official concerning the possible integration of the various Cal-Am offerings. He was told that, although at least 10 and possibly as many as 15 coal partnerships were to be formed, "they would not be considered an integrated offering." Wernimont was content to rely on the official's oral assurances.

Godfrey admittedly served as the firm's compliance officer and conducted an investigation of Cal-Am. He testified that "we were assuming" that the Cal-Am offerings were private since Cal-Am had stated that in no case would an offering be made to more than 25 persons or sold to more than 10. Godfrey was concerned about the problem of limiting the number of offerees and purchasers and asked the above Cal-Am official for a letter confirming Cal-Am's oral statements. However, the letter Godfrey received admittedly did not address the problem, and merely stated that, if Cal-Am offerings were "found to be in violation of the securities laws," Cal-Am "shall indemnify you and hold you harmless against any action that may be brought against you because of such finding." Godfrey telephoned the official and complained that the letter was not what he had requested. However, after receiving additional oral assurances, he took no further action.

At a June 1976 meeting of the Apex board of directors, of which Gooch was by then a member, the subject of Apex's relationship with Cal-Am was discussed. Both Wernimont and Godfrey were concerned about the validity of the tax benefits purportedly conferred by a Cal-Am investment, but it was finally agreed by all concerned that Gooch could continue to handle Cal-Am at his branch office since, according to Godfrey, "we felt that it complied as a private offering."

While primary control over the offer and sale of Cal-Am products was thereafter transferred to Gooch; Wernimont and Godfrey, who were aware of the branch office's subsequent sales of Cal-Am coal partnerships, cannot divest themselves of responsibility for the activity they had authorized and set in motion. Moreover, Wernimont admits that "due diligence from [June 1976] on was performed by Mr. Godfrey and myself by following upon the activity of Mr. Gooch and the sales representatives under his supervision. . . ." Wernimont testified that "we kept close tabs" on Gooch's operations, but "could really see no legal problem at that time." Although Godfrey claims that he "felt" that his responsibility as compliance officer with respect to Cal-Am ended when control over Cal-Am sales was transferred to Gooch, the record does not show that Godfrey was relieved of that responsibility. And Godfrey conceded at the hearings that he "might have been acting improperly" by allowing materials with respect to the Cal-Am coal offerings to be sent directly to Gooch rather than being reviewed in the home office.

We think it is clear from the foregoing that both Wernimont and Godfrey, as well as registrant, must share in the responsibility for the offer and sale of the Cal-Am partnership interests in question. We accordingly affirm the NASD's findings of violation.

III.

The registration provisions that were violated by applicants set forth basic requirements for the protection of investors. We have stressed the responsibility of broker-dealers to prevent their firms from being used as conduits for illegal distributions, such use having frequently been a major factor in the success of such unlawful activity.[10] While applicants did make some investigation of Cal-Am, for the most part they simply relied on that company's assurances that its offerings complied with registration requirements.

We further note that the NASD, in two other disciplinary actions, found Apex and Wernimont responsible for net capital, reporting and recordkeeping violations, and that Godfrey was held responsible for net capital violations in one of those actions.

Under all the circumstances, we are unable to conclude that the sanctions imposed by the NASD are excessive or oppressive.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS and Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

[10]See, e.g. Securities Act Release No. 5168 (July 7, 1971).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16749/April 16, 1980

Admin. Proc. File No. 3-5718

In the Matter of the Applications of

APEX FINANCIAL CORPORATION
360 S. San Antonio Road
Los Altos, California

and

WAYNE H. WERNIMONT
CHARLES B. GODFREY

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Apex Financial Corporation, Wayne H. Wernimont and Charles B. Godfrey, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16750/April 16, 1980

Admin. Proc. File No. 3-5520

In the Matter of the Application of

LOWELL H. LISTROM COMPANY, INC.
101 West 11th Street
Kansas City, Missouri

and

LOWELL H. LISTROM

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Inaccurate Computations of Aggregate Indebtedness and Net Capital

Inaccurate Customer Reserve Computations

Failure to Make Proper Reports to NASDAQ

Where member of registered securities association and its president prepared inaccurate computations of member's aggregate indebtedness and net capital, made inaccurate computations of the balance required in member's special reserve account for the benefit of customers, and failed to make proper reports of certain transactions to NASDAQ, *held*, association's findings of violation *sustained*, but association's finding that deficiencies resulted in member's special reserve account *set aside*, and sanctions imposed on applicants *reduced*.

APPEARANCES:

Lowell H. Listrom, for Lowell H. Listrom Company, Inc. and *pro se*.

Andrew McR. Barnes and *Marshall Lichtenstein*, for the National Association of Securities Dealers, Inc.

I.

Lowell H. Listrom Company, Inc. ("the firm"), a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD"), and Lowell H. Listrom, its president, appeal from disciplinary action taken against them by the NASD. The NASD found that applicants prepared inaccurate computations of aggregate indebtedness and net capital,[1] causing inaccurate financial reports to be filed,[2] and inaccurate computations of the balance required to be maintained in the firm's Special Reserve Bank Account for the Exclusive Benefit of Customers ("Special Reserve Account"), causing deficiencies in that account.[3] It also found that, in four instances, applicants failed to report third market transactions to the Automated Quotations Systems, Inc. ("NASDAQ") and that, in four other instances, the firm's reports were late. The NASD censured applicants and fined them $500, jointly and severally.[4] Our findings are based on an independent review of the record.

II.

A. The NASD found that applicants prepared inaccurate computations of the firm's aggregate indebtedness for month-end dates from July 31 through October 31, 1976.

For the month ended July 31, 1976, the firm's aggregate indebtedness was understated by $28,216. This resulted from Listrom's netting a bank overdraft of $5,823 with balances which the firm had on deposit in other bank accounts, and from netting a $248 dividend payable with dividend and interest receivables. In addition, Listrom inadvertently deducted a $22,145 item twice from the amount the firm owed its customers.

For the months ended August 31, September 30 and October 31, 1976, Listrom netted bank overdrafts with balances in other bank accounts and, in the October 31 computation, inadvertently omitted a $17,895 item owed by the firm in an account it maintained with another broker.[5]

Listrom contends that the net capital rule is silent on the question of netting liabilities and assets. However, the net capital rule defines aggregate indebtedness as the "total money liabilities of a broker or dealer arising in connection with any transaction whatsoever."[6] The only exclusions from this blanket prescription are those enumerated in the rule. To assess the firm's ability to meet all of its obligations, each existing liability must be fully reflected in the computation of aggregate indebtedness.[7] Reducing outstanding liabilities by netting them with assets in other accounts distorts that assessment.

B. The NASD found that, for month-end dates from February through October 1976, the firm's net capital was overstated because Listrom added to the firm's net worth amounts which were improperly characterized as deferred income tax adjustments under the net capital rule.

The net capital rule permits certain additions to a broker-dealer's net worth related to the income tax consequences of recognizing unrealized gains and losses.[8] The rule requires a broker-dealer to record each security it owns at market value, reflecting such gains or losses.[9] And, to provide a cushion of liquidity, the rule also requires that the market value of the firm's securities be reduced by certain specified percentages called "haircuts."[10]

If an unrealized gain on securities is taken into account, so must the corresponding income tax liability, even though the tax on such gain is

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[1]The requirements for computing net capital and aggregate indebtedness are set forth in Rule 15c3-1 under the Securities Exchange Act.

[2]Rule 17a-5(a) under the Exchange Act.

[3]Rule 15c3-3 under the Exchange Act.

[4]It also assessed costs.

[5]The firm's aggregate indebtedness was understated by $631 on August 31; $89 on September 30; and $23,856 on October 31.

[6]Rule 15c3-1(c)(1).

[7]See *Midland Securities Corporation*, Securities Exchange Act Release No. 13139 (January 6, 1977), 11 SEC Docket 1361, 1365 n. 24.

[8]Rules 15c3-1(c)(2)(i)(C) and (D).

[9]Rules 15c3-1(c)(2)(i)(A) and (B).

[10]Rule 15c3-1(c)(2)(vi).

deferred. Accounting for that liability reduces a firm's computed net worth. However, the net capital rule's deferred tax adjustment permits the broker-dealer to add back the tax liability applicable to the haircut or to the unrealized gain, whichever is lower.[11] Another adjustment arises from the possible prospective tax benefit from unrealized losses. A broker-dealer may add back to its net worth the amount of any such benefit to the extent it reduces accrued tax liability.[12]

The adjustments applicants made did not conform to those described above. Rather, Listrom assumed that, because the net capital rule requires that the value of certain illiquid assets be deducted from a firm's net worth in computing its net capital,[13] such deductions result in unrealized losses for net capital purposes, entitling a firm to add back offsetting tax benefits. Listrom applied this concept to such assets as unsecured notes receivable, commission advances to salesmen, unsecured customer receivables, and dividend receivables outstanding over 30 days.[14] He contends that, because these items were unsecured, they could be "written off" as losses, thereby creating income tax benefits.[15]

Listrom's argument misconceives the basic purpose of the net capital rule. We have often pointed out that the basic concept behind our net capital rule is liquidity.[16] The rule's purpose is to make certain that a broker-dealer has sufficient liquid assets on hand at all times to cover its current indebtedness.[17] Consequently, assets which are not immediately convertible into cash must be deducted from a firm's net worth in computing its net capital. But the exclusion of an asset from net capital because of its illiquidity does not mean that the asset has no value and can be written off as a loss, unrealized or otherwise. Thus applicants' additions to net worth of purported tax benefits from such "losses" were clearly improper.

We accordingly affirm the NASD's findings that applicants prepared inaccurate computations of the firm's aggregate indebtedness and net capital, which resulted in the filing of inaccurate financial reports with the NASD and this Commission.

III.

The NASD found that, on nine occasions between July 9 and October 29, 1976, Listrom prepared inaccurate weekly computations of the balance which the firm was required to maintain in its Special Reserve Account. The NASD also found that, on five occasions, the inaccurate computations resulted in deficiencies in that account.

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[11]Rule 15c3-1(c)(2)(i)(C)(1).

[12]Rule 15c3-1(c)(2)(i)(D). An additional adjustment is permitted for a broker-dealer which does not record income for tax purposes until it is received but, because of the net capital rule, must record such income and a corresponding unsecured receivable as having already been earned on the date the net capital computation is made. Under the rule, such unsecured receivables are deducted from net worth, but the broker-dealer may add back the imputed tax liability applicable to that receivable. Rule 15c3-1(c)(2)(i)(C)(2).

[13]Rule 15c3-1(c)(2)(iv).

[14]He also applied the same concept to fixed assets such as furniture. In addition, from February through July, he improperly added to the firm's net worth an assumed tax benefit on haircuts taken on securities which did not have unrealized gains.

[15]As Listrom correctly points out, reserve accounts for uncollectible items could have been set up on the firm's books, and would have produced a tax benefit from the related expense. But the firm had no such accounts during the relevant period.

[16]See e.g., *Frank DeFelice, Ph.D. & Associates Inc.*, Securities Exchange Act Release No. 16206 (September 14, 1979), 18 SEC Docket 394, 396.

[17]Securities Exchange Act Release No. 8024, pp. 1-2 (January 18, 1967). In *Guy D. Marianette*, 11 S.E.C. 967, 970-971 (1942), we stated:

"Customers do not open accounts with a broker relying on suit, judgment and execution to collect their claims—they are opened in the belief that a customer can, on reasonable demand, liquidate his cash or securities position."

See also *John W. Yeaman, Inc.*, 42 S.E.C. 500, 503 (1965).

Rule 15c3-3 under the Securities Exchange Act was adopted as part of a comprehensive program to provide greater financial protection for the customers of brokers and dealers. In specified circumstances, it requires a broker-dealer to set up a "Special Reserve Bank Account for the Exclusive Benefit of Customers" to safeguard customers' funds and the cash realized through the utilization of customers' securities from the hazards of the broker-dealer's business. A broker-dealer subject to the rule is, with certain exceptions not relevant here, required to compute, as of the last business day of each week, the amounts he owes customers ("credit balances") and the amounts customers owe him ("debit balances"). If the computation shows a net credit balance, the broker-dealer must make a deposit in the Special Reserve Account which, when added to the existing balance, will equal that credit balance.

At issue here is the proper treatment of "free shipments" of securities for purposes of computing the required reserve balance. Typically, a broker-dealer selling a customer's securities will deliver them to its bank together with a draft payable to the bank drawn on the buyer. The bank will proceed to collect the money due from the buyer through a correspondent bank. Shipments with drafts attached are secured since the bank will not deliver the securities unless payment is made. On the other hand, a free shipment of securities is one that is mailed by one broker-dealer to another without requiring the buyer to pay for the securities before receiving them. In such a case, the seller has only an unsecured receivable.

Item 12 of the formula for computing the balance that a broker must maintain in its Special Reserve Account permits the deduction of an amount representing customers' securities failed to deliver not older than 30 calendar days.[18] However, a broker may not include free shipments of securities in the deduction permitted by Item 12. The purpose of the special account is to assure an adequate reserve of funds to meet a broker's obligations to customers. Thus it would be wholly inappropriate to permit a broker's unsecured receivables to be deducted from the required balance.

Listrom's computations included free shipments as part of Item 12. But almost all of those free shipments were mutual fund shares or related stock powers that were forwarded to the fund's agent for the purpose of redeeming shares. These were not ordinary free shipments, since the fund, through its redemption agent, is required by statute to make payment for properly tendered shares within seven days.[19] Thus, such shipments may appropriately be deducted as fails to deliver under Item 12. They were sent to the authorized redemption agent, and their receipt was confirmed.

Since the alleged deficiencies in the firm's Special Reserve Account were attributable to the NASD's improper treatment of applicants' free shipments of mutual fund shares and related stock powers, the NASD's findings of deficiencies must be set aside. However, applicants did include small free shipments of other securities in the firm's Item 12 deductions. While this made at least some of applicants' weekly computations inaccurate, the errors were insufficient to create any deficiency in the firm's special account.

We accordingly affirm the NASD's finding that applicants made inaccurate computations of the balance required to be maintained in the firm's Special Reserve Account. However, we set aside the NASD's finding that, as a result thereof, there were deficiencies in that account.

IV.

The NASD found that, during the period from May 5 through July 15, 1976, applicants failed to report four third market transactions to NASDAQ and that, in four other instances, the reports were between 2-1/2 to 8-1/2 minutes late.[20] Applicants do not contest the NASD's findings of violation, and we affirm those findings.

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[18]Rule 15c3-3a. A fail to deliver arises when a broker-dealer sells a customer's securities to another broker-dealer and fails to make delivery of those securities on the settlement date.

[19]Section 22(e) of the Investment Company Act.

[20]Schedule G of Article XVIII of the NASD's By-Laws sets forth members' reporting requirements for over the counter transactions in securities listed on an exchange. Except for certain transactions not relevant here, a member is obligated to report to NASDAQ within one and one-half minutes after execution each purchase and sale of a listed security executed during the trading hours of the consolidated tape. Transactions executed after trading hours must be reported weekly. NASD Manual para 1681, pp. 1155, 1157.

V.

Applicants contend that the sanctions imposed by the NASD are unwarranted. They assert that the net capital and customer protection rules are complex and do not explicitly deal with the matters at issue here. They also point out that they changed their methods of computation to conform with the NASD's interpretations even before the NASD issued its complaint.

We note that the NASD expressly found that, despite the inaccuracy of applicants' net capital computations, the firm's net capital was never deficient, nor did its aggregate indebtedness ever exceed the prescribed limit. Moreover, we have set aside the NASD's finding that there were deficiencies in the firm's Special Reserve Account.

Under all of the circumstances, including applicants' previously unblemished records, we think that the assessment of a fine against applicants is excessive, and that the imposition of censure will adequately serve the public interest.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS and Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16750/April 16, 1980

Admin. Proc. File No. 3-5520

In the Matter of the Application of

LOWELL H. LISTROM COMPANY, INC.
101 West 11th Street
Kansas City, Missouri

and

LOWELL H. LISTROM

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER MODIFYING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the $500 fine assessed by the National Association of Securities Dealers, Inc. against Lowell H. Listrom Company, Inc. and Lowell H. Listrom be, and it hereby is, set aside; and it is further

ORDERED that the Association's imposition of censure on applicants, and its assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16751/April 16, 1980

Admin. Proc. File No. 3-5731

In the Matter of the Application of

LEONARD L. GOOCH
3911 Stevens Creek Boulevard
Santa Clara, California

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Failure to Inform Employer of Private Securities Transactions

Failure to Register as a Broker-Dealer

Where branch manager and registered principal of member firm of registered securities association engaged in private securities transactions without prior written notification to the member and, in effecting such transactions, improperly engaged in business as an unregistered broker-dealer, *held*, association's findings of violation and sanctions imposed *sustained*.

APPEARANCES:

Marc A. White, for Leonard L. Gooch.

Andrew McR. Barnes and *Mary S. Head*, for the National Association of Securities Dealers, Inc.

I.

Leonard L. Gooch, formerly a registered principal of Gardiner, Godfrey & Kahan, Inc., a member firm of the National Association of Securities Dealers, Inc. ("NASD"),[1] appeals from NASD disciplinary action. The NASD found that Gooch engaged in private securities transactions without giving his firm proper notification and, in effecting such transactions, improperly engaged in business as an unregistered broker-dealer. It censured Gooch, fined him $1,000, and suspended him for one year from association with any NASD member as a principal, with the proviso that he must requalify by examination before re-entering the securities industry in that capacity.[2] Our findings are based on an independent review of the record.

II.

Gooch was manager of the firm's Santa Clara, California branch office. In May 1977, he purchased 11 bonds of Westminster Foundation, Inc. from Rovinsky & Co., Inc., an Arizona broker-dealer, and resold them to four customers. Since Rovinsky would not sell the bonds to him personally, Gooch purchased them through the firm. However, sales confirmations were sent to Gooch at the branch office.

Gooch paid Rovinsky for the bonds with personal checks drawn on the account of "L. L. Gooch and Associates." He confirmed sales to customers by sending them copies of the confirmations he received from Rovinsky, adding markups to the prices that Rovinsky had charged. Customers paid for the bonds with checks made payable to L. L. Gooch and Associates.

It is clear, as the NASD found, that Gooch engaged in private securities transactions without giving his firm prior written notification as required.[3] Moreover, in effecting those transactions, he improperly engaged in business as an unregistered broker-dealer. Gooch admitted the NASD's charges at the hearing before the NASD's District Committee, and

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[1]During the period of Gooch's association, the firm was known as Gardiner, Godfrey, Gooch & Kahan, Inc.

[2]The NASD also assessed costs.

[3]The NASD Board of Governors' interpretation with respect to private securities transactions (NASD Manual para 2177, p. 2109-3) provides in relevant part as follows:

"It shall be deemed conduct inconsistent with just and equitable principles of trade for any person associated with a member to engage in a private securities transaction outside the regular course or scope of his association or employment with a member, for himself, or with or for any other person without prior written notification to the member."

he does not contest the Association's findings of violation here.[4] We affirm those findings.

III.

Gooch argues that the sanctions imposed by the NASD are excessive. Initially he complains that the NASD's Board of Governors was unduly influenced by the "inflammatory language" used by the District Committee and the severe penalties it imposed, both in this case and in another proceeding which the Committee decided against Gooch on the same day.

These contentions are wholly lacking in merit. We find no unfairness in the District Committee's findings.[5] Moreover, the record fails to show that those findings "unduly influenced" the Board of Governors. On the contrary, the Board, finding substantial mitigative factors in Gooch's favor, reduced the Committee's bar of Gooch as a principal to a one-year suspension, and the Committee's $10,000 fine to a fine of $1,000.[6] Finally, we note that the District Committee's decision has been accorded *de novo* review by this Commission, as well as by the Board.[7]

Gooch also points to the various mitigative factors cited by the Board in reducing his sanctions, including its findings that he acted in good faith, that his violations resulted from the misconceptions of Gooch and his fellow principals concerning the sale of bonds, and that Gooch "had no intent to defraud his partners or public customers." He argues that, in light of the Board's findings, the sanctions it imposed are excessive, since such penalties are only appropriate in cases involving deliberate misconduct or injury to the public.

We cannot agree. While the Board of Governors did take into account the factors which Gooch cites, it also pointed out that his misconduct displayed "an ignorance of the fundamental concepts of the securities laws," and that it was necessary to impress upon Gooch "the importance of fully understanding applicable securities regulations and complying with them." We further note that, in the other disciplinary proceeding to which Gooch refers, the NASD found that, as branch manager for another firm, Gooch shared responsibility for the unlawful sale of unregistered securities, and failed to disclose to his then employer the extra compensation that he received for those sales from an affiliate of the issuer.

We think that Gooch's professed ignorance of applicable requirements does not excuse his serious failure to comply with the high standards which are required of those in the securities business. Even if Gooch did not know that his conduct was improper, it is clear that he should have known. An individual, such as Gooch, who occupies a position of responsibility in a securities firm must be aware of established principles of securities law and practice, such as the requirements that a firm be given prior written notification of participation in private securities transactions, and that an individual not engage in transactions such as those that occurred here without being registered as a broker-dealer. Accordingly, in light of all the circumstances of this case, we conclude that the sanctions imposed by the NASD are neither excessive nor oppressive.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS and Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

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[4]Gooch testified that he "didn't know anything about bonds," and that he "was dumb and stupid" about the transactions at issue.

[5]The District Committee, in effect, imposed one set of sanctions for the misconduct it found against Gooch in both proceedings. It censured Gooch, fined him $10,000, and barred him from association with any NASD member as a principal.

[6]In the second NASD proceeding against Gooch, the Board reduced the sanctions imposed by the District Committee to censure and a fine of $3,750. Gooch did not appeal from the NASD's action in that case.

[7]See *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855, *Shultz* v. *S.E.C.*, f.2d, (C.A. 7, January 7, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16751/April 16, 1980

Admin. Proc. File No. 3-5731

In the Matter of the Application of

LEONARD L. GOOCH
3911 Stevens Creek Boulevard
Santa Clara, California

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Leonard L. Gooch, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16752/April 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6207/April 17, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16753/April 17, 1980

Admin. Proc. File No. 3-5208

In the Matter of

ROBERT BERKSON
50 Georgian Court
East Hills, New York

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Criminal Convictions

Where secretary of registered broker-dealer had been convicted twice, once for securities-related crimes and once for filing a fraudulent income tax return, *held*, in public interest to sustain the administrative law judge's imposition of a qualified bar from association with a broker-dealer.

APPEARANCES:

Jacob W. Heller, Richard F. Horowitz, Howard L. Mann and *Benjamin Geizhals*, of Heller, Horowitz and Feit, for respondents.

William D. Moran, Donald N. Malawsky, Douglas P. Jacobs, Andrew E. Goldstein and *Connie B. Smith*, for the Commission's Division of Enforcement.

I.

In this case, the administrative law judge found that Robert Berkson, who was secretary and a stockholder of the brokerage firm of Packer, Wilbur & Co., Inc. ("registrant"),[1] had been convicted twice, once for securities-related crimes and once for filing a false federal income tax return. The law judge concluded that Berkson should be barred from association with any broker-dealer with the proviso that, after 18 months, he could become so associated in a non-proprietary and non-supervisory capacity, upon an appropriate showing of adequate

[1]In June 1971, a trustee was appointed to liquidate registrant under the Securities Investor Protection Act. *S.E.C. v. Packer, Wilbur & Co., Inc., et al.*, 71 Civil Action File No. 1385 (S.D.N.Y.).

supervision. Berkson appeals from certain aspects of the law judge's decision, and our staff appeals from the portion of that decision relating to the sanction imposed on Berkson.

II.

Berkson admits the criminal convictions found by the administrative law judge. The pertinent facts with respect to them are as follows.

In 1976, Berkson was convicted by a jury of violations of antifraud provisions of the securities laws, mail fraud, transporting forged securities, and conspiracy to commit those offenses.[2] The indictment charges, among other things, that during 1970 and 1971 Berkson participated in a fraudulent scheme in which he instructed registrant's cashier to forge the signatures of registrant's customers on stock transfer powers, sold and pledged customers' securities without their consent, used the proceeds for the benefit of registrant and himself, and falsely informed customers that registrant was holding their securities.[3]

In 1976, Berkson was also convicted, on his plea of guilty, of filing a false federal income tax return.[4] The indictment alleged that, in order to obtain a deduction on his 1969 return, Berkson falsely stated that he made certain charitable contributions during that year when, in fact, they were made in 1970.[5]

III.

Berkson argues that his securities conviction did not entail any finding that he played an active role in the fraudulent scheme. He claims that the court instructed the jury that it could find him guilty merely for closing his eyes to the fraud. Thus he asserts that, since the jury returned a general verdict, no further degree of culpability can be ascribed to him.

We consider Berkson's reading of the judge's charge to the jury unduly restrictive. Berkson seizes on the judge's statement at one point in his lengthy charge that, "[i]n determining whether a defendant acted knowingly," the jury could consider "whether the defendant deliberately closed his eyes in order to deliberately avoid knowing what otherwise would have been obvious to him." Our reading of the entire charge leads us to conclude that, taken as a whole, it required knowing participation in the fraud practiced on registrant's customers.[6] But even

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[2]*U.S.* v. *Berkson, et al.*, 75 Crim. 608 (S.D.N.Y.), *aff'd without opinion*, 551 F.2d 302 (C.A. 2, 1976), *cert. denied*, 432 U.S. 906.

[3]Berkson admitted at the hearings before the administrative law judge that he was guilty of the charges against him.

[4]*U.S.* v. *Berkson*, 76 Crim. 499 (S.D.N.Y.).

[5]The administrative law judge found Berkson responsible for certain net capital violations by registrant. However, we are unable to conclude that the record warrants findings against Berkson in that regard.

[6]We set forth below relevant portions of the judge's charge to the jury.

"In determining whether a defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes in order to deliberately avoid knowing what otherwise would have been obvious to him. All [the] crimes charged in [the] indictment require specific intent. . . .To establish specific intent, the Government must prove that the defendant knowingly did an act which the law forbids, and he purposely intended to violate the law. . . .

"To determine whether a defendant was a member of the conspiracy, you ask yourself whether a particular defendant acted willfully and with knowledge that his acts were an integral part of the alleged unlawful enterprise, and helped to carry it forward as an associate in it with a desire to see it succeed. You must find that the defendant knew what the unlawful purpose was and had a stake or personal interest in it. . . .In short, a person becomes a member of the conspiracy by associating himself, even though informally, with the common plan or scheme, knowing the central aim or purpose, and intending to aid in bringing about the success of such plan or scheme. . . .

"[Under the mail fraud statute], [t]he Government must prove that the defendant participated in [a scheme to defraud], and that. . .representations were made by him or his agents knowing [that] they were false and with intent to defraud. . . .

"[To establish antifraud violations, the Government must prove] that a person. . .engaged in a scheme to defraud or obtain money and property by means of

assuming that the jury found that Berkson did no more than "deliberately" close his eyes to the fraud, he is no less culpable.[7]

IV.

Berkson argues that no sanction should be imposed on him. Our staff, on the other hand, insists that nothing less than an unqualified bar will suffice. After a careful consideration of all the relevant factors, we conclude that imposition of the qualified bar imposed by the administrative law judge will satisfy the requirements of the public interest.

Berkson asserts that registrant's president was "the real culprit" in the firm's fraudulent scheme. He claims that he was unable to challenge the president's actions because, as shown by the testimony of a psychologist, he was suffering from a personality disorder that made him assume a subservient position when dealing with an "authority figure." However, the record does not establish the validity of respondent's contention. Registrant's president was acquitted of the same charges on which Berkson was convicted. And the psychologist did not treat Berkson until some two years after the misconduct in question occurred. Finally, the law judge, who heard the witnesses and observed their demeanor, concluded that Berkson's alleged psychological problems were "no more than a smokescreen. . .to detract from the egregious nature of his violations." We find no basis for disagreeing with the law judge's conclusion.[8]

Berkson further asserts, among other things, that he merely received a suspended sentence and a fine for his conviction of securities fraud, and that, despite that conviction, he enjoys an excellent reputation in the securities business. As we have seen, the misconduct resulting in Berkson's conviction could hardly be more serious. Even assuming that Berkson did no more than "deliberately" close his eyes to fraudulent conduct, we see no basis for reducing his sanction. However, in view of the fact that all of the misconduct that led to Berkson's convictions occurred nearly 10 years ago, we do not deem it necessary to impose the unqualified bar sought by our staff.

An appropriate order will issue.[9]

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioners POLLACK and FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

Footnote 6 continued

untrue statements of material facts. . . .[and] [t]hat the person did so willfully and knowingly and unlawfully. . . .

"[To establish the offense of transporting forged securities], the Government does have to prove. . . that the defendant knew that the stock transfer power was forged, and that he acted with an unlawful or fraudulent intent, that is to say, with a bad motive . . . .Knowledge and intent may be inferred from all the surrounding circumstances."

[7]See *U.S.* v. *Benjamin*, 328 F.2d 854, 862-63 (C.A. 2, 1964), *cert. denied*, 377 U.S. 953. See also *Kamen & Company*, 43 S.E.C. 97, 108 (1966).

Berkson argues that the law judge improperly invoked the doctrine of collateral estoppel against him with respect to separate charges in these proceedings that he violated antifraud provisions in connection with the activities that led to his criminal conviction. But neither we nor the law judge have found any violations based on those charges.

[8]Under the circumstances, Berkson's further claim that he has now been cured of his psychological problems is of no consequence.

[9]We have fully considered the contentions of Berkson and our staff. Their exceptions to the initial decision are overruled or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

Berkson has requested that the decision in these proceedings be deferred pending the determination of other administrative proceedings which this Commission has brought against him. We see no basis for granting that request, and it is accordingly denied.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16,753/April 17, 1980

Admin. Proc. File No. 3-5208

In the Matter of

ROBERT BERKSON
50 Georgian Court
East Hills, New York

ORDER IMPOSING REMEDIAL SANCTION

On the basis of the Commisison's opinion issued this day, it is

ORDERED that Robert Berkson be, and he hereby is, barred from association with any broker or dealer with the proviso that, after 18 months, he may become so associated in a non-proprietary and non-supervisory capacity, upon an appropriate showing to the Commission of adequate supervision.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16754/April 17, 1980

In the Matter of

THE OPTIONS CLEARING CORPORATION ("OCC")
5950 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606

(SR-OCC-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On January 3, 1980, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change deleting obsolete provisions from OCC rules that deal with the assignment and allocation of exercise notices and adding a provision that exempts from the assignment of exercise notices short positions for which closing transactions have been executed.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16512, January 17, 1980) and by publication in the *Federal Register* (45 FR 5869, January 24, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to clearing agencies and, in particular, the requirements of Section 17A and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above mentioned rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21523/April 11, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
YANKEE ATOMIC ELECTRIC COMPANY
20 Turnpike Road
Westborough, Massachusetts 01581

(70-6430)

NOTICE OF PROPOSED ISSUE AND SALE OF COMMON STOCK PURSUANT TO EMPLOYEE'S SHARE OWNERSHIP PLAN AND REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that New England Electric System, ("NEES"), a registered holding company, and Yankee Atomic Electric Company, ("Yankee Atomic"), an electric utility subsidiary company of NEES and Northeast Utilities, a registered holding company, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Yankee Atomic proposes to establish the Yankee Atomic Electric Company Thirft Plan ("Plan"). The purpose of the Plan is to encourage employee thrift through a regular savings plan. Pursuant to the Plan, NEES proposes to issue and sell through December 31, 1984, a maximum of 100,000 shares of its authorized but unissued common shares, $1 par value. Under the Plan, employee contributions will be supplemented by employer contributions. The proceeds from the sale of common shares will be added to the general funds of NEES and be used for any of the following purposes: (1) investment in subsidiaries (excluding Yankee Atomic) through loans to these subsidiaries, purchases of additional shares of their capital stocks, or capital contributions; (2) payment of indebtedness of NEES; or (3) corporate purposes of NEES.

Each employee of Yankee Atomic who is not included in a unit of employees covered by a collective bargaining agreement and who has completed one year of service as of the Plan's effective date, is eligible to join the Plan during an initial enrollment period, or on the first day of any month thereafter. (Directors are not employees merely by virtue of that office.) Each employee who has not completed one year of service but is otherwise eligible may, after completion of one year of service, join on the first day of any month.

Participants may contribute from 1% to 11%, in whole percentages, of their compensation to the Plan. Each participant's contribution up to 3% will be a Basic Contribution. Each participant's contribution in excess of 3% will be a Supplemental Contribution. Participants may change the percentage of their contributions on the first day of any month.

Yankee Atomic shall contribute monthly on behalf of each participant an amount equal to 100% of the participant's Basic Contribution. There will be no matching of a participant's Supplemental Contribution by Yankee Atomic.

All contributions shall be invested in a Trust Fund administered pursuant to a Trust Agreement containing such provisions as the Board of Directors of Yankee Atomic deems appropriate. The identity of the Trustee for the Plan shall be supplied by amendment. The Trust Fund shall consist of the following three separate Investment Funds: (a) the Fixed Income Fund, which will consist of fixed income investments and earn a guaranteed minimum rate of return; (b) the Equities Fund, consisting primarily of stocks (or bonds or other securities convertible into stocks) and similar types of equity investments which will be purchased on the open market and (c) the NEES Share Fund, consisting of NEES common shares purchased from NEES and on the open market.

Upon enrollment, participants may elect to invest their contributions in one or more of the Funds in multiples of 25%. The Participant Account shall be 100% vested upon contribution. The Employer Account shall be 25% vested after two years of vesting service, 50% vested after three years of vesting service, 75% vested after four years of vesting service and 100% vested after five years of vesting service. Notwithstanding the foregoing, the Employer Account shall be 100% vested upon retirement, death, collection of benefits under long-

term disability, or termination by Yankee Atomic without cause.

Participants may withdraw all (but not less than all) of their Supplemental Contributions and all (but not less than all) accumulated earnings thereon. After withdrawal of Supplemental Contributions and earnings thereon, participants may withdraw all (but not less than all) of their Basic Contributions and all (but not less than all) accumulated earnings thereon. In the case of retirement, participants may elect one of several methods of distribution.

At the discretion of the Trust Committee, the responsibility for the investment management of the Plan assets held in each fund may be divided among one or more investment managers or investment vehicles. The Thrift Plan Committee shall be the named fiduciary which shall have authority to control and manage the operation and administration of the Plan.

No amendment of the Plan may be made which will (1) deprive any participant or beneficiary of any part of an account existing on the date of such amendment; (2) result in the reversion to Yankee Atomic of any part of the funds contrary to the provisions of the Plan; or (3) increase the duties or liabilities of the Trustee without its written consent. Yankee Atomic may terminate the Plan at any time. The Plan has no definite termination date. The Thrift Committee shall seek a determination from the Internal Revenue Service that the Plan is qualified under the Internal Revenue Code of 1954, as amended. If the Thirft Committee does not receive such a ruling by the time Yankee Atomic files its tax return for 1980, the Plan will be termianted as of that time.

NEES requests an exemption from the competitive bidding requirements of Rule 50 for such issuance and sale pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 7, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21524/April 11, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Four Gateway Center
Pittsburgh, Pennsylvania 15222

(70-6438)

NOTICE OF PROPOSAL BY HOLDING COMPANY TO ACT AS SURETY ON BOND OF PUBLIC UTILITY SUBSIDIARY COMPANY

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

On January 2, 1980, Hope Natural Gas Company, a division of Consolidated Gas Supply Corporation ("Supply Corporation"), a wholly-owned subsidiary of Consolidated and a public utility operating within the State of West Virginia, filed revisions in its tariff calling for increased rates and charges amounting to approximately $10,475,340 per year for providing natural gas service to its customers in the State of West Virginia. Such increased rates were to have become effective for gas furnished on and after February 1, 1980; however, pursuant to the Public Service Law of West Virginia, the Public Service Commission of that state suspended the effectiveness of said rates (as revised) until May 31, 1980. Under the Public Service Law, the Public Service Commission has required Supply Corporation to file a bond in the amount of $10,500,000, with satisfactory surety, for the due and proper payment of any refunds. Consolidated proposes, without fee or other consideration, to act as surety on the bond of Supply Corporation to save the cost of securing an outside corporate surety.

The fees and expenses incurred by Supply Corporation in connection with the proposed transaction are estimated not to exceed $2,500. The declaration states that no state commission and no federal commission, other than the West Virginia Public Service Commission and this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21525/April 11, 1980

In the Matter of

MIDDLE SOUTH SERVICES, INC.
MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6433)

NOTICE OF PROPOSED SALE AND LEASEBACK BY SERVICE COMPANY OF REAL PROPERTY AND GUARANTEE OF SERVICE COMPANY'S LEASE OBLIGATIONS BY PARENT

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc., ("Middle South"), a registered holding company, and its subsidiary service company, Middle South Services, Inc. ("Services"), have filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Section 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration which is summarized below, for a complete statement of the proposed transaction.

Services intends to enter into a sale-leaseback transaction with a limited partnership ("Lessor") to be formed by Integrated Resources, Inc., pursuant to which Services will sell to and concurrently lease back from the Lessor under a long-term net lease ("Lease") a parcel of real property situated in Pine Bluff, Arkansas, and all improvements thereon, together constituting Services' System Operations Center ("Operations Center"). Neither Integrated Resources, Inc. (or any corporation or person affiliated with it) nor the Lessor (or any corporation or person which will be affiliated with it) is or will be affiliated with Services or any of its affiliated companies. In order to effectuate these transactions, Middle South proposes to guarantee the performance by Services of its Lease obligations without recourse to Services first being required.

The Operations Center, which house facilities providing economic dispatch and power system security for the Middle South System, is located at 5201 W. Barraque Street, Pine Bluff, Arkansas, and consists of two buildings having an aggregate of 26,800 square feet situated on 2.56 acres of land. The original cost to Services of the Operations Center, including the land, was $1,594,859 and the current book value is $1,491,924. As soon as practicable after the receipt of the Commission's order in this proceeding ("Closing Date"), Services will sell and convey the Operations Center to the Lessor for an amount equal to the fair market value thereof, estimated at approximately $2,000,000, and certain capitalized transactional costs, fees and expenses ("Rental Base"). It is expected that the Lessor will purchase the Operations Center initially with funds to be borrowed by the Lessor on an interim basis from a bank or other institutional lender ("Interim Loan"). The Interim Loan will bear interest at the prime commercial loan rate of Citibank, N.A., in effect as of the Closing Date and will mature on or about October 15, 1980. At maturity, the Interim Loan will be repaid from the proceeds of a permanent mortgage loan ("Permanent Loan") to be made to the Lessor by American United Life Insurance Company of Indianapolis. The Permanent Loan will bear interest at the rate of 13.75% per annum and will mature on or about October 15, 2005. The Interim Loan and the Permanent Loan will be secured by a mortgage on the Operations Center and by an assignment of the Lease and the Guaranty.

Concurrently with the purchase by the Lessor of the Operations Center, the Lessor will lease the Operations Center to Services. The Lease will have a basic term ("Basic Term") of 25 years, commencing on or about October 15, 1980, and an interim term ("Interim Term"), for the period from the Closing Date to the commencement of the Basic Term. At the end of the Basic Term, Services will have the option to purchase the Operations Center at the then fair market value of the Operations Center, as encumbered by the Lease, and will also have the right to renew the Lease for up to five successive five-year renewal terms ("Renewal Term(s)"). The Lease will be noncancellable except in the event of total loss, destruction, condemnation or confiscation of the Operations Center to the extent that it cannot be economically repaired or replaced.

The Lease will be a net lease in all respects, conferring responsibility for maintenance, insurance, certain taxes and other expenses upon Services. Services will be obligated to maintain the Operations Center in good condition, normal wear and tear expected. In the event that Services desires, from time to time, improvements costing at least $250,000 to be constructed at the Operations Center during the Basic Term or any Renewal Term, the Lessor will be obligated at the request of Services to make a reasonable effort to arrange for the

construction and the financing of such additional improvements and the leasing thereof to Services on a satisfactory basis, having regard to the then existing economic, financial and money market conditions.

Lease payments by Services over the term of the Lease will be as follows: (1) during the Interim Term, in an amount equal to the specified rate of interest on the Interim Loan as applied to the Rental Base; (2) during the Basic Term, in annual amounts equal to the following percentages of the Rental Base: years 1-5, 9.16%; years 6-10, 13.82%; years 11-15, 14.70%; and years 16-25, 18.49%; and (3) during any Renewal Term, in an annual amount equal to 9.6% of the Rental Base. It is Services' understanding that the Lease rates during the Basic Term are equivalent to the level annual rental constant of 12.37% or to an effective annual interest rate of 11.7% per annum. Services intends to charge the payments under the Lease to operating expense. The Lease payments are such that Services will not acquire any equity in the Operations Center and consequently the Lease will be accounted for by Services as a lease.

It is stated that no federal or state commission, other than this Commission, has jurisdiction over the proposed transaction. The fees or expenses to be incurred in connection with the proposed transaction will be filed by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such further action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21526/April 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6207/April 17, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21527/April 17, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
212 E. 6th Street
Tulsa, Oklahoma 74119

(70-6446)

NOTICE OF PROPOSAL TO ISSUE AND SELL NON-NEGOTIABLE NOTES TO BANKS

NOTICE IS HEREBY GIVEN that Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary company of Central and South West Corporation, ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

PSO proposes to issue ten year non-negotiable notes ("Notes") in the amount of up to $90,000,000 to up to six banks: Chase Manhatten (up to $50,000,000), California First Bank (up to $10,000,000), Chemical Bank (up to $10,000,000), Irving Trust (up to

$8,000,000), American Security Bank, NA (up to $7,000,000), and Marine Midland (up to $5,000,000). The principal amount of the Notes will be payable exactly ten years from the date of issuance. The interest rate for the years one through three will be equal to the higher of (i) 100% of the prime rate of interest as published by the Chase Manhatten Bank from time to time or (ii) the interest rate on certificates of deposits (resale, 90 days) plus 1%. In the years four through ten the interest rate will be equal to the higher of (i) 125% of such prime rate or (ii) such secondary certificate of deposit rate plus 1% multiplied by 125%. The interest rate on the Notes will be adjusted whenever the foregoing interest rates require a change. Pursuant to a loan agreement, PSO will be obligated to pay either an annual fee equal to the amount of outstanding Notes multiplied by the prime interest rate multiplied by five or to maintain compensating balances with the banks equal to five percent of the outstanding Notes. Assuming that the prime interest rate is 20% and the amount of the outstanding Notes is $75,000,000, this would result in an annual fee of $750,000 or a compensating balance requirement of $3,750,000. Based on a 20% prime rate this would result in an effective interest expense of 21.05%. Interest and fees are payable to the banks quarterly. PSO will be obligated to pay a commitment fee equal to one-half of 1% of the principal amount committed by the banks beginning on the 36th day after the commitment date, estimated to be approximately April 16, 1980. The Notes may be prepaid at any time by PSO without penalty.

PSO is entering into the proposed transaction because of its inability to issue sufficient amounts of first mortgage bonds because of earning restrictions under its first mortgage indenture and because it is approaching the $90,000,000 limit on its short-term borrowing required by its charter. In addition, PSO has sought authorization from the Corporation Commission of Oklahoma to issue and sell $75,000,000 of its first mortgage bonds (File No. 70-6415). By Final Order dated April 3, 1980, said authorization was denied.

The amount of Notes and short-term borrowing PSO can issue is a total of 20% of its total capitalization, approximately $180,000,000. PSO will not issue ten year Notes in excess of 10% of its capitalization, $90,000,000. The issuance of the Notes will not effect the amount or availability of PSO's short-term borrowing.

It is stated that the proceeds from the sale of the Notes (exclusive of accrued interest and after deducting expenses of issue) will be used by PSO to repay in full short-term borrowings incurred or expected to be incurred to finance construction expenditures, approximately $90,000,000 of which are expected to be outstanding as of the date of issuance of the Notes. No funds retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of PSO if it were not part of the CSW System. No expenditures will be made by PSO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this Declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of PSO if it were not part of the CSW System.

Estimated construction and fuel exploration and development expenditures of PSO (inclusive of allowance for funds used during construction) total $225,000,000 for 1980 and $311,000,000 for 1981.

The fees and expenses to be incurred in connection with this transaction are estimated at $19,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or

advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21528/April 17, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6421)

ORDER AUTHORIZING CHARTER AMENDMENT TO INCREASE AUTHORIZED COMMON STOCK

American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration and an amendment thereto pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder concerning the following proposed transaction.

AEP proposes to amend its Restated Articles of Incorporation ("Charter"), as heretofore amended, to increase its authorized common stock, par value $6.50 per share, from 150,000,000 shares to 175,000,000 shares. As of December 31, 1979, AEP had 121,340,747 common shares outstanding. The proposed Charter amendment will be submitted to its shareholders at its annual meeting scheduled to be held on April 23, 1980. By order dated March 19, 1980 (HCAR No. 21479), AEP was authorized to solicit proxies from its shareholders for use at said annual meeting. An affirmative vote of the holders of a majority of the outstanding shares of common stock issued and entitled to vote at the annual meeting is required for adoption of the amendment.

It is stated that the proposed increase in authorized shares is necessary to meet AEP's requirements for new capital and other corporate purposes. The current estimated costs of the construction program for the AEP system for 1980 and 1981 is approximately $1,900,000,000. It is estimated that AEP will have to invest approximately $400,000,000 in the equity of its subsidiaries during the same period, a substantial part of which may ultimately have to be obtained by AEP through the issuance and sale of additional shares of its common stock. In addition, this Commission authorized AEP to acquire by tender offer the common stock of Columbus and Southern Ohio Electric Company ("CSOE") by order dated February 13, 1980 (HCAR No. 21433), on the basis of 1.3 common shares of AEP for each share of CSOE. CSOE had outstanding 16,345,951 common shares as of December 31, 1979; successful consummation of the tender offer would thus require the issuance of approximately 21,250,000 common shares of AEP.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $508,000, including transfer agent fees of $330,000, printing expenses of $88,000 and New York state fees and taxes of $81,280. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21479), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11127/April 11, 1980

In the Matter of

DEVONSHIRE STREET FUND, INC.
1 Winthrop Square
Boston, Massachusetts 02110

(811-999)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Devonshire Street Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 20, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant, a Massachusetts corporation, registered under the Act on October 29, 1960; and on November 1, 1960, it filed a registration statement (File No. 2-17264) under the Securities Act of 1933 covering 4,000,000 shares of its capital stock in connection with a proposed public offering of its shares. This registration statement was declared effective by the Commission on February 14, 1961, and Applicant commenced a public offering of shares of its capital stock on that date.

On August 16, 1979, at a meeting of shareholders, holders of a majority of the issued and outstanding shares of capital stock of Applicant approved an Agreement and Plan of Reorganization which provided that Applicant would transfer substantially all of its assets to Investment Trust of Boston ("ITB") in exchange for shares of beneficial interest of ITB. The application further states that the transfer of assets became effective on August 20, 1979, and that the approximately 824,656 ITB shares received by Applicant have been distributed to the accounts of Applicant's shareholders in proportion to their ownership of Applicant's shares. The ITB shares distributed to the Applicant's shareholders are subject to stop orders preventing redemption and dividend payments until certificates for the corresponding Applicant shares are surrendered. As of January 29, 1980, all but 69 Applicant shareholders had surrendered their certificates.

As of February 25, 1980, Applicant had assets consisting of $13,585.26 in cash, of which it intends to deliver $8,815, representing unclaimed dividends on portfolio securities, to the Commonwealth of Massachusetts as abandoned property and to retain the balance to liquidate final liabilities. Applicant states that adequate provision has been made for its debts and other liabilities that remain outstanding, which consist of unclaimed portfolio dividends and custodian, transfer agent, printing, auditor and legal fees and expenses and other costs associated with filing final regulatory reports and winding up its business. In addition, Applicant states that it is not a party to any pending litigation or administrative proceeding, and that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant. The application finally states that on February 8, 1980, Applicant filed Articles of Dissolution with the Commonwealth of Massachusetts and, under Massachusetts law, the existence of the corporation has ceased except for such purposes as are necessary to close its affairs. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 5, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a

hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11128/April 11, 1980

In the Matter of

INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS SELECTIVE FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
IDS NEW DIMENSIONS FUND, INC.
IDS PROGRESSIVE FUND, INC.
IDS BOND FUND, INC.
IDS CASH MANAGEMENT FUND, INC.
IDS TAX-EXEMPT BOND FUND, INC.
IDS HIGH YIELD TAX-EXEMPT FUND, INC.
IDS GROWTH FUND, INC.
1000 Roanoke Building
Minneapolis, Minnesota 55402

and

INVESTORS DIVERSIFIED SERVICES, INC.
IDS Tower
Minneapolis, Minnesota 55402

(812-4403)

ORDER AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) AND RULE 22d-1 THEREUNDER PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING OFFERS OF EXCHANGE PURSUANT TO SECTION 11(a) OF THE ACT

Investors Mutual, Inc., Investors Stock Fund, Inc., Investors Selective Fund, Inc. ("Selective"), Investors Variable Payment Fund, Inc., IDS New Dimensions Fund, Inc., IDS Progressive Fund, Inc., IDS Bond Fund, Inc. ("Bond"), IDS Cash Management Fund, Inc., IDS Tax-Exempt Bond Fund, Inc. ("Tax-Exempt"), IDS High Yield Tax-Exempt Fund, Inc. ("High Yield") and IDS Growth Fund, Inc. ("Growth") (collectively referred to as "the Funds"), open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Investors Diversified Services, Inc., each Fund's investment adviser and principal underwriter (collectively referred to with the Funds as "Applicants"), filed an application on February 11, 1980, and an amendment thereto on March 3, 1980, requesting an order of the Commission amending an earlier order of the Commission dated November 27, 1979 (Investment Company Act Release No. 10954). This earlier amended order, pursuant to Section 11(a) of the Act, permitted certain transfers among the Funds, on a basis other than their net asset value per share at the time of transfer and, pursuant to Section 6(c) of the Act, exempted such transfers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. The amended order permits shareholders of Selective, Tax-Exempt, High Yield and Bond who have held their shares for less than eight months to transfer into Growth upon paying on additional sales charge equal to the difference between the sales charge actually paid and the sales charge that would have been paid had the investment been made in Growth originally.

On March 14, 1980, a notice (Investment Company Act Release No. 11091) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Sections 6(c) and 11 of the Act, that the application for amendment of the Commission's order dated November 27, 1979, contained in Investment Company Act Release No. 10954 to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11129/April 11, 1980

In the Matter of

AMSTERDAM-ROTTERDAM BANK N.V.
c/o David Gruber, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

(812-4572)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Amsterdam-Rotterdam Bank N.V. ("Applicant"), filed an application on November 13, 1979, and an amendment thereto on February 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act.

On March 6, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11072). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following conditions:

(1) Applicant will ensure that the United States commercial paper dealer in its presently proposed offering will provide each offeree of the Applicant's commercial paper notes prior to purchase with a memorandum describing Applicant's business and containing Applicant's most recent publicly available fiscal year-end balance sheet and income statement which shall have been audited; such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States; such memorandum will be updated periodically to reflect material changes in Applicant's financial condition; and

(2) any future offering of Applicant's securities in the United States will be done on the basis of disclosure documents which are at least as comprehensive in their description of the Applicant as those used in the presently proposed offering.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11130/April 15, 1980

In the Matter of

SOCIETE GENERALE NORTH AMERICA, INC.
c/o William F. Kroener, III, Esq.
Davis Polk & Wardwell
One Chase Manhatten Plaza
New York, New York 10005

(812-4608)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On March 17, 1980, a notice was issued (Investment Company Act Release No. 11092) of an application filed on February 1, 1980, and an amendment thereto on March 3, 1980, by Societe Generale North America, Inc. ("Applicant"), a Delaware corporation and a wholly-owned subsidiary of Societe Generale pour favoriser le developpement du Commerce et de l'Industrie en France ("Societe Generale"), a French commercial bank, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from all provisions of the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and on the basis of the representations in the application as amended, it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act that the application for exemption from all the provisions of the Act be, and hereby is granted, effective forthwith, subject to the condition that Applicant comply with the following undertakings to which Applicant has consented:

(1) That Applicant will ensure that the commercial paper dealer through whom its commercial paper notes will be offered to the public will provide each offeree prior to any sale of the commercial paper to such offeree with a memorandum describing the business of Applicant and Societe Generale and containing the most recently available audited financial statements of Societe Generale, audited in accordance with French auditing practices. This memorandum will include a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by U.S. banks; and such memorandum will be at least as comprehensive as that customarily used in offering commercial paper in the United States, and will be updated periodically to reflect material changes in the business or financial status of Applicant or Societe Generale.

(2) That any future offering of Applicant's debt securities in the United States will be done on the basis of disclosure documents that are at least as comprehensive in their description of Applicant and Societe Generale, and the businesses of Applicant and Societe Generale, as those customarily used in United States offerings of such securities and which contain the financial statements of Societe Generale.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11131/April 15, 1980

In the Matter of

MONTANA TAX EXEMPT INCOME TRUST, SERIES 1
c/o D.A. Davidson & Co.
Davidson Building
P.O. Box 5015
Great Falls, Montana 59403

(811-2994)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Montana Tax Exempt Income Trust, Series 1 ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on March 17, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, created upon the execution of a Trust Agreement between the Sponsor, D. A. Davidson & Co., and the Trustee, Bradford Trust Company, registered under the Act on January 17, 1980 and on that date it also filed a registration statement (File No. 2-66442) under the Securities Act of 1933 ("1933 Act") covering 5,500 units of beneficial interest in connection with a proposed public offering of such securities. The application states that the 1933 Act registration statement was not declared effective and that no public offering of Applicant's securities was ever effected. The Commission on March 26, 1980, ordered the withdrawal of the 1933 Act registration statement. The application further states that Applicant currently has no securityholders, no assets and no liabilities, and that it was not engaged in any business other than winding-up of its affairs. Finally, Applicant states that, since it has never had any assets, it has not transferred any assets to a separate trust the beneficiaries of which were or are securityholders of Applicant, and it is not a party to any pending litigation or administrative proceeding.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 8, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11132/April 16, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6206/April 16, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11133/April 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6207/April 17, 1980

ACCOUNTING SERIES RELEASE

ACCOUNTING SERIES
Release No. 277/April 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6207/April 17, 1980

LITIGATION

Litigation Release No. 9062/April 16, 1980

SEC v. DANIEL R. HOAK AND COMMERCIAL INTERNATIONAL CORPORATION (U.S.D.C. E.D. CA.) Civil Action No. CV 80-67 EDP

Leonard H. Rossen, Administrator of the Los Angeles Regional Office, and Bobby C. Lawyer, Associate Regional Administrator, San Francisco Branch Office today announced the filing of a complaint in the United States District Court for the Eastern District of California in Fresno, seeking injunctive relief against Daniel R. Hoak ("Hoak") of Clovis and equitable relief against Commercial International Corporation ("CIC") of Selma, which Hoak serves as president and chairman of the board of directors. The complaint alleges that Hoak violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in connection with his misappropriation of approximately $250,000 properly accruing to a subsidiary of CIC from the sale of off-grade raisins. The complaint further alleges that defendants vi ·ted Sections 13(a) and 14(a) of the Exchange A and Rules 12b-20 and 14a-9 thereunder by failing to disclose Hoak's misappropriations in proxy materials and other filings with the Commission during the period that they occurred. Simultaneously with the filing of the complaint, the District Court entered final judgments against the defendants, who consented to entry of the judgments without admitting or denying the allegations in the Commission's complaint.

Under the terms of the final order governing Hoak, Hoak is permanently enjoined from violating the antifraud, registration, and proxy provisions of the Exchange Act. The order as to CIC directs CIC to refrain from violating the registration and proxy provisions of the Exchange Act, and to amend proxies and filings made with the Commission from 1973 to the present in order to disclose fully Hoak's receipt of payments, the investigation of such conduct, the impact of the payments on CIC's financial condition, and remedial steps taken in the matter. In addition, CIC must attempt to insure that no less than forty percent of its board of directors and two thirds of its audit committee be composed of persons who are neither employees of CIC nor related to any corporate officers or directors. Finally, the order requires CIC to direct its outside auditors to report to the board of directors on the sufficiency of the company's internal controls relating to the sale of off-grade raisins, which the order requires be supervised by a management committee which excludes Hoak.

Litigation Release No. 9063/April 17, 1980

SEC v. *SCA SERVICES, INC., ET AL.*, Civil Action No. 77-0037-T (D. Mass.)

The Commission announced today that the Honorable Joseph L. Tauro of the United States District Court for the District of Massachusetts has entered Final Judgments of Permanent Injunction against Berton Steir and Nicholas V. Liakas, the remaining defendants in the above captioned litigation. The orders were entered on March 6, 1980 and June 22, 1979 respectively. Both defendants consented to the entry of the judgments without admitting or denying the allegations of the Commission's Complaint. The orders restrain and enjoin future violations of the antifraud, reporting, and proxy solicitation provisions of the federal securities laws.

In connection with the settlement Steir represented that he would not serve in any new position with SCA Services, Inc., without first petitioning the Court. For further information see Litigation Release No. 8059.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6208-09	1289
Securities Exchange Act	16766-77	1297
Public Utility Holding Company Act	21437-47	1309
Trust Indenture Act	564-65	1328
Investment Company Act	11122A, 11140-50	1328
Litigation	9068-75	1346

This listing covers releases issued from 4/25/80-5/1/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

34-16769 Denial of Petition for Rulemaking Concerning Disclosure of Relationships Between Attorneys and Registrants.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16767 34-16771
34-16768 34-16772

33-6208 Accountants' liability under Securities Act of 1933 for reports on certain unaudited supplementary financial information [File No. S7-834—Comment Period Expires June 30, 1980].

34-16770 Proposed amendment to rule 16b-3 under the 1934 act that would exempt from the short-swing profit recovery provisions of section 16(b) the delivery of stock by an officer or director upon the exercise of an employee stock option [File No. S7-833—Comment Period Expires June 9, 1980].

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6208/April 30, 1980

SE 1.29:

ACCOUNTANTS' LIABILITY UNDER SECURITIES ACT OF 1933 FOR REPORTS ON CERTAIN UNAUDITED SUPPLEMENTARY FINANCIAL INFORMATION

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment amendments to a rule which would provide that a "report" prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Securities Act of 1933 shall not include a report by an independent accountant on two types of unaudited supplementary financial information included in a document containing financial statements. The amendments, if adopted, would have the effect of excluding accountants from Section 11(a) liability for reports on unaudited supplementary information as to the effects of changing prices and as to oil and gas reserves.

DATE: Comments should be received by the Commission on or before June 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-834. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Linda L. Griggs (202-272-2130), Office of the Chief Accountant; Steven Hamilton (202-272-2573), Division of Corporation Finance; or Robert Chira (202-272-2437), Office of the General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for public comment amendments to 17 CFR 230.436 which would exclude from the definition of a "report" for purposes of Sections 7 and 11 of the Securities Act of 1933 ("Securities Act") reports by independent accountants on unaudited supplementary information as to the effects of changing prices and as to oil and gas reserves. Adoption of these amendments would mean that accountants would not be required by Section 7 of the Securities Act to consent to the inclusion of such reports in registration statements and that accountants would not be liable for such reports under Section 11(a). In Accounting Series Release No. 274 ("ASR No. 274")[1] issued in December, 1979, the Commission announced the adoption of similar amendments regarding reports by independent accountants on reviews of unaudited interim financial information pursuant to Statement on Auditing Standards No. 24 ("SAS No. 24").[2]

I. BACKGROUND

As part of its Conceptual Framework project, the Financial Accounting Standards Board ("FASB") intends to develop criteria for distinguishing information to be included in financial statements from that which should be provided by other means of financial reporting. Statement of Financial Accounting Concepts No. 1, *Objectives of Financial Reporting by Business Enterprises,* issued by the FASB in November 1978, states:

> Although financial reporting and financial statements have essentially the same objectives, some useful information is better provided by financial statements and some is better provided, or can only be provided, by means of financial reporting other than financial statements.

At its Spring 1979 meeting, the Council of the American Institute of Certified Public Accountants ("AICPA") approved a resolution designating the FASB as the body under Rule 204 of the AICPA Rules of Conduct to establish standards for the disclosure of financial information outside of financial statements in published financial reports. As a result of that resolution, the Auditing Standards Board ("ASB") of the AICPA added to its agenda a project to develop general standards for the involvement of auditors with all types of supplementary information measured and presented within guidelines established by the FASB. On October 1, 1979, the ASB issued for comment a proposed Statement on Auditing Standards ("the proposed SAS") relating to

[1]Securities Act Release No. 6173, December 28, 1979 (45 FR 1601).

[2]Statement on Auditing Standards No. 24. "Review of Interim Financial Information," AICPA, March 1979.

such general standards.[3] After considering the comments, the ASB issued Statement on Auditing Standards No. 27 ("SAS No. 27").[4]

SAS No. 27 requires an independent accountant to follow certain limited review procedures, which are substantially less extensive than an audit, when supplementary information is required to be presented pursuant to FASB pronouncements. Instead of requiring an accountant to report explicitly on such information, SAS No. 27 requires an accountant to expand his report on the audited financial statements only to call attention to his inability to complete the prescribed procedures, the omission of supplementary information required by the FASB or material departures from FASB guidelines on the measurement or presentation of such information.[5]

The ASB stated in SAS No. 27 that additional procedures to be followed by auditors reviewing specific types of supplementary information might be specified in other Statements on Auditing Standards. Thus far, the ASB has issued for comment proposed Statements on Auditing Standards which relate specifically to the two types of supplementary information now required: information about the effects of changing prices[6] and information about oil and gas reserves.[7]

Certain public companies are required by Statement of Financial Accounting Standards No. 33[8] of the FASB to include in their published annual reports for years ending on or after December 25, 1979 certain supplementary information on the effects of changing prices.[9]

Oil and gas producing companies are permitted by Statement of Financial Accounting Standards No. 25[10] to include as supplementary information in documents containing their financial statements disclosure of the estimated quantities of proved oil and gas reserves required by Statement of Financial Accounting Standards No. 19.[11] Rule 3-18 of Regulation S-X requires disclosure of the estimated future net revenues from production of proved reserves, the present value of the estimated future net revenues and annual changes therein, and a

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[3]Proposed Statement on Auditing Standards, "Reporting on Required Supplemental Information," AICPA, October 1, 1979.

[4]Statement on Auditing Standards No. 27, "Supplementary Information Required by the Financial Accounting Standards Board," AICPA, December 1979.

[5]The "exception" reporting standard contained in SAS No. 27 represents a significant change from the proposed SAS, which would have required the accountant to explicitly report whether or not he was aware of any material modifications that should be made to the supplementary information for it to conform with the FASB guidelines.

[6]Proposed Statement on Auditing Standards, "Supplementary Information on the Effects of Changing Prices," AICPA, December 31, 1979. Rather than prescribing additional review procedures for the accountant to follow beyond those specified in SAS No. 27, the proposed statement provides additional guidance on the nature of the auditor's inquiries of management concerning the information on changing prices.

[7]Proposed Statement on Auditing Standards, "Supplementary Oil and Gas Reserve Quantity Information," AICPA, December 31, 1979. The proposed statement relates to information required by the Commission as well as by the FASB. See note 14 infra.

[8]Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," FASB, September 1979.

[9]In March 1980, the Commission proposed amendments to Regulation S-K and to various reporting provisions which would require companies subject to FAS 33 to include supplementary information on the effects of changing prices in various registration statements and certain proxy statements filed with the Commission. Securities Act Release No. 6201, March 27, 1980 (45 FR 23470).

[10]Statement of Financial Accounting Standards No. 25, "Suspension of Certain Accounting Requirements for Oil and Gas Producing Companies," FASB, February 1979.

[11]Statement of Financial Accounting Standards No. 19, "Financial Accounting and Reporting by Oil and Gas Producing Companies," FASB, December 1977.

summary of oil and gas producing activities prepared on the basis of reserve recognition accounting as well as disclosure of the estimated quantities of oil and gas reserves. (All of this information is collectively referred to herein as "oil and gas reserve information" or "reserve information.") In Accounting Series Release No. 270,[12] the Commission delayed until fiscal years ending after December 25, 1980 the requirement that these oil and gas reserve disclosures be audited. Recently, in Accounting Series Release No. 277 ("ASR No. 277"),[13] the Commission amended Rule 3-18 to extend the postponement of the audit requirement until a decision is reached on requiring reserve information in the primary financial statements.[14] The rule amendments in ASR No. 277 also permit this unaudited reserve information to be reported as supplementary information accompanying, but outside, the financial statement.[15]

As noted above, SAS No. 27 does not require auditors to report explicitly on either of these types of supplementary financial information. The ASB stated in SAS No. 27:

> The Auditing Standards Board has under consideration the issue of whether the auditor should report explicitly on such information, that is, whether the auditor should issue a report, based on the limited procedures prescribed by this Statement, that states he is not aware of any material modifications that should be made to the information for it to conform with guidelines established by the FASB. This issue has not been resolved because of uncertainties concerning (a) the implications that the location of the information (outside or inside the basic financial statements) may have on explicit versus exception reporting, (b) whether Section 11(a) of the Securities Act of 1933 would apply to an auditor's explicit report on supplementary information included in a securities act filing, and (c) the nature of information that may become required supplementary information. The board intends to decide whether explicit reporting is appropriate when sufficient knowledge is obtained to clarify these matters.[16]

The Commission believes that, by excluding accountants from potential liability under Section 11(a) of the Securities Act for their reports on supplementary information as to the effects of changing prices and as to oil and gas reserves included in Securities Act filings, the proposed amendments, if adopted, will encourage the ASB to require explicit reporting by auditors for the year 1980. The proposed amendments, if adopted, would be inoperable unless auditors are required to state in explicit reports on this supplementary information whether or not they are aware of any material modification that should be made to the information for it to conform with guidelines established by the FASB or the Commission.

II. PROPOSED AMENDMENTS

The Commission has encouraged the FASB to look beyond the reporting of financial information in financial statements to a broader concept of financial reporting[17] and has supported the expansion of auditors' responsibilities beyond audits of financial statements to reports containing limited statements of assurance concerning unaudited financial information.[18] Thus far, accountants' reports on unaudited interim financial information pursuant to SAS No. 24 are the only reports which accountants may give after undertaking reviews which are less extensive than audits.

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[12]Securities Act Release No. 6128, September 24, 1979 (44 FR 57037).

[13]Securities Act Release No. 6207, April 17, 1980 (45 FR 27747).

[14]In ASR No. 253, August 31, 1978 (43 FR 40688), the Commission discussed its decision to seek the development of reserve recognition accounting, which would involve recognition of valuations of proved oil and gas reserves in the primary financial statements.

[15]The Commission notes that the ASB's proposed SAS on "Supplementary Oil and Gas Reserve Quantity Information" (see note 7 supra) would apply to, and would extend the provisions of SAS No. 27 generally to, the reserve information required by Regulation S-X when such information is included in an unaudited note to the financial statements. The Commission expects that the final SAS will reflect the action taken in ASR No. 277 and, accordingly, be made applicable to reserve information required by Rule 3-18 of Regulation S-X and reported as supplementary information.

[16]SAS No. 27, paragraph 11.

The Commission believes that adoption of the proposed amendments will encourage the development of explicit reporting on supplementary financial information. In addition, the Commission expects that, if the proposed amendments are adopted and if explicit reports on unaudited supplementary information as to the effects of changing prices and as to oil and gas reserves are included in registration statements, directors and underwriters will continue to exercise due diligence in a vigorous manner with respect to such supplementary information. Directors and underwriters should not be able to claim in defense to a suit for damages under Section 11(a) that these accountants' reports were statements "purporting to be made on the authority of an expert. . .which they had no reasonable ground to believe were untrue. . ." under Section 11(b)(3)(C).[19] Directors and underwriters should be required, as has historically been the case with respect to unaudited information included in a registration statement, to demonstrate affirmatively under Section 11(b)(3)(A) that, after conducting a reasonable investigation, they had reasonable ground to believe, and did believe, that the supplementary information was true.[20]

Adoption of these amendments would foreclose both private actions and actions by the Commission against accountants pursuant to Section 11(a) of the Securities Act for their reports on required supplementary information as to the effects of changing prices and as to oil and gas reserves used in connection with registration statements; however, the Commission could still take action against accountants for such reports pursuant to Section 17(a) of the Securities Act.[21] The Commission has utilized Section 17(a) as an alternate vehicle for securing many of the protections afforded under

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[17]See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role, U.S. Government Printing Office, July 1979, pages 188-193.

[18]See, e.g., id., pages 241-243.

[19]Section 11(b)(3)(C) provides a defense to Section 11(a) liability to every person named in Section 11(a), other than an issuer, if such person sustains the burden of proof that

as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe, and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert. . . .

[20]Section 11(b)(3)(A) provides a defense to Section 11(a) liability to every person named in Section 11(a), other than an issuer, if such person shall sustain the burden of proof that

as regards any part of the registration statement not purporting to be made on the authority of an expert and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading. . . .

[21]Section 17(a) of the Securities Act provides in its entirety:

It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Section 11 of the Securities Act,[22] although there are significant differences between the two sections. Furthermore, accountants could be liable to investors and shareholders for their reports on this supplementary information under common law, state statutes, and the general antifraud provisions of the federal securities statutes. For example, a shareholder could bring an action under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, although the plaintiff will have the burden of proving scienter in that case.[23] Directors and underwriters who relied on the accountants' reports on changing prices or oil and gas reserve information could bring actions under other applicable laws.

III. ACCOUNTANTS' ACKNOWLEDGEMENTS AND ADDITIONAL DISCLOSURE

While the proposed amendments would eliminate the requirement of Section 7 of the Act that accountants consent to the use of their reports on required supplementary information as to the effects of changing prices and as to oil and gas reserves, the Commission believes that independent accountants should acknowledge their awareness that such reports are being included in a registration statement. The Commission intends to adopt an amendment to the exhibit requirements applicable to appropriate forms for the registration of securities which would require issuers to file as an exhibit to a registration statement a letter from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which are not subject to the consent requirement of Section 7. If the proposed amendments are adopted, this amended exhibit requirement would therefore require an acknowledgement whenever an issuer makes use in a registration statement of a report on required supplementary information as to the effects of changing prices or as to oil and gas reserves.[24]

If the proposed amendments are adopted and accountants' reports on supplementary information are included in registration statements, the Commission believes that disclosure which clarifies the distinction between the role of accountants in preparing such reports as opposed to their role in certifying financial statements is needed in order to fully inform investors. Such disclosure would correct any misleading implication about the extent of accountants' involvement which might otherwise arise from the inclusion of both a report on the required supplementary information and a certification in a registration statement and thus satisfy the requirements of Rule 408 of Regulation C under the Securities Act. Accordingly, the Commission expects that, if the proposed amendments are adopted, a prospectus which

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[22]With respect to Commission enforcement actions, Section 17(a) has generally been interpreted by the courts to impose civil liability without *scienter*. *Securities and Exchange Commission* v. *World Radio Mission*, 544 F.2d. 535 (1st Cir. 1976); *Securities and Exchange Commission* v. *Coven*, 581 F.2d 1020 (2d Cir. 1978), *cert. denied*, 47 U.S.L.W. 3568 (1979); *Securities and Exchange Commission* v. *Aaron*, CCH Fed. Sec. L. Rep. para 96,800 (2d Cir. 1979), *cert. granted*, October 15, 1979, Docket Number 79-66; *Securities and Exchange Commission* v. *American Realty Trust*, (1978) CCH Fed. Sec. L. Rep. para 96,605 (4th Cir. 1978). Therefore, insofar as material misstatements or omissions are made by accountants in reports on required supplementary information used in registration statements, the Commission may take appropriate enforcement action against such accountants under Section 17(a). Of course, where an accountant's report is found to be fraudulent, and the fraud has occurred in connection with the purchase or sale of a security, civil liability would also arise pursuant to Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5. See, e.g., *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723 723 (1975).

[23]*See Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185 (1976).

[24]The Commission has proposed amendments to Regulation S-K and certain forms for the registration of securities under the Securities Act of 1933 in order to integrate the exhibit filing requirements and eliminate certain exhibit filing requirements. Securities Act Release No. 6149, November 16, 1979 (44 FR 67143). The exhibit filing requirement discussed above will be adopted at the same time as final action is taken on the amendments to the exhibit requirements proposed in Securities Act Release No. 6149.

includes a discussion about the accountants' involvement in a registration statement should clarify that reports on required supplementary information as to the effects of changing prices or as to oil and gas reserves included in such registration statement are not "reports" or "parts" of the registration statement within the meaning of Sections 7 and 11 of the Securities Act. In addition, the prospectus should state specifically that the independent accountants' Section 11 liability does not extend to such reports.

IV. GENERAL RULE REGARDING SUPPLEMENTARY INFORMATION

The Commission understands that the establishment by the ASB of a general explicit reporting requirement may be desirable in promoting consistency in reporting on new types of supplementary financial information and in ensuring timeliness of reporting requirements as new types of supplementary information are required. Furthermore, the Commission recognizes that the ASB may be encouraged to establish a general standard for explicit reporting on supplementary financial information if the Commission establishes a general rule concerning liability.

The Commission, thus, is looking toward the possibility of a general framework which provides a proper link between auditor liability and responsibility. The inclusion by public companies of supplementary unaudited financial information within their annual reports and other public documents is a new and evolving area of disclosure and one which the Commission has been encouraging. The accounting profession is participating in the development of meaningful supplementary financial information through the establishment of standards by the FASB and through limited reviews of the supplementary information conducted by companies' independent auditors. The Commission believes that accountants should report explicitly on the supplementary information, but also recognizes that their exposure to liability for such reports must be consistent with responsibilities which they assume.

Accordingly, in the near future, the Commission intends to issue a concept release which invites comments on whether the Commission should develop such a general rule. In addition, comment will be invited on the appropriate approach to the liability issue if a general rule should be developed. Two alternate approaches may be discussed: (i) a general exemptive rule, similar to the amendments proposed herein, which would exclude from the definition of a "report" for purposes of Sections 7 and 11 of the Securities Act all reports on supplementary financial information; and (ii) a general definitional rule which would define "reasonable investigation" for purposes of an accountant's defense to liability for such reports under Section 11 of the Securities Act and "reasonable grounds for belief" for purposes of the defense of other persons to liability for such reports under Section 11.

V. AUTHORITY FOR PROPOSED AMENDMENTS

The proposed amendments would be promulgated pursuant to Section 19(a) of the Securities Act of 1933 which grants the Commission authority to define "accounting, technical and trade terms used in this title."

VI. REQUEST FOR COMMENTS

All interested persons are invited to submit their views and comments on the foregoing in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before June 30, 1980. Such communications should refer to File S7-834 and will be available for public inspection.

In ASR No. 274, the Commission emphasized that adoption of the rule excluding accountants from potential liability under Section 11 of the Securities Act with respect to unaudited interim financial information is not its final view as to the proper resolution of the issue of Section 11 liability for reports by accountants containing limited assurances based on procedures less extensive than audits. The Commission, accordingly, specifically solicits the views of registered companies, shareholders, directors, underwriters, accountants and their respective counsel, as well as other interested parties, as to whether exclusion of potential Section 11 liability for reports issued by accountants based upon reviews less extensive than audits is appropriate and desirable in these circumstances. In addition, the Commission invites comments on whether this proposed action may affect the ability of directors and underwriters to meet their due diligence defense under Section 11(b)(3)(A) and whether more appropriate alternative approaches to this issue exist.

READEX FICHE

VII. TEXT OF PROPOSED RULE

In consideration of the foregoing, it is proposed to amend 17 CFR Chapter II as follows:

Part 230 of Chapter II of the Title 17 of the Code of Federal Regulations is proposed to be amended by revising paragraph (c) and adding paragraphs (e) and (f) to §230.436 as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.436 Consents required in special cases.

* * * * *

(c) Notwithstanding the provisions of paragraph (b), the following reports issued by independent accountants shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act:

(1) A report on unaudited interim financial information as defined in paragraph (d) below,

(2) A report on unaudited supplementary information as to the effects of changing prices as defined in paragraph (e) below; and

(3) A report on unaudited supplementary oil and gas reserve information as defined in paragraph (f) below.

(d) (No Change)

(e) The term "report on unaudited supplementary information as to the effects of changing prices" shall mean a report which consists of the following:

(1) An identification of the specific supplementary information as to the effects of changing prices to which procedures have been applied;

(2) A brief description of the procedures;

(3) A statement that the information is not part of the financial statements and is not audited; and

(4) A statement about whether the accountant is aware of any material modifications that should be made to the information for it to conform with guidelines established by the Financial Accounting Standards Board.

(f) The term "report on unaudited supplementary oil and gas reserve information" shall mean a report which consists of the following:

(1) An identification of the specific supplementary oil and gas reserve information to which procedures have been applied;

(2) A brief description of the procedures;

(3) A statement that the information is not part of the financial statements and is not audited; and

(4) A statement about whether the accountant is aware of any material modifications that should be made to the information for it to conform with guidelines established by the Financial Accounting Standards Board or with reporting requirements established by the Commission in Rule 3-18 of Regulation S-X.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6209/April 30, 1980

TEMPORARY SUSPENSION OF THE REGULATION A EXEMPTION OF ELECTRONIC CONTROL SYSTEMS, INC.

The Securities and Exchange Commission has issued an order temporarily suspending the Regulation A exemption from registration under the Securities Act of 1933 with respect to a proposed merger between Electronic Control Systems, Inc. ("issuer") of Fairmont, West Virginia and Fairmont Building and Investment Company ("FB&I"), Fairmont, West Virginia.

According to the order, the Commission has reason to believe that: (a) the issuer's offering circular contains misleading statements and omits to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading,

particularly with respect to the basis upon which the exchange ratio for the proposed merger was determined, the occupancy rate during 1978 and 1979 of the properties owned by FB&I and the cost per share of a controlling block of FB&I stock which the issuer purchased in May, 1978; and (b) the offering, if made, would be in violation of Section 17 of the Securities Act of 1933, as amended.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16766/April 25, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten-day suspension of exchange and over-the-counter trading for the period commencing at 9:45 a.m. April 25th, 1980 and terminating at midnight on May 4th, 1980 of the securities of Itel Corporation ("Itel"), a Delaware corporation located at One Embarcadero Center, San Francisco, California 94111.

The Commission initiated the suspension of trading in the securities of Itel because of the lack of current adequate and accurate public information about the company's operations and financial condition in that Itel has failed to file with the Commission its Annual Report on Form 10-K for its fiscal year ended December 31, 1979.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16767/April 28, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, CA 94104

(SR-PSE-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On March 12, 1980, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its rules on arbitration[1] to the Uniform Code of Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers. The proposal deletes

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[1]For the PSE's former arbitration rules, *see* PSE Rule XII. PSE Manual (CCH) paras 5300-5345, at pages 3127-3127.7.

[2]The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3]The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket

or amends the existing PSE arbitration rules and adopts the entire Code as new PSE Rule XII. The proposal incorporates the simplified arbitration procedures that were drafted by the SICA and adopted by the PSE on June 22, 1978,[4] regarding small claims not exceeding $2500.[5] Additionally, the new arbitration rules will apply to claims between PSE members as well as to claims against members raised by customers and non-members.[6]

The purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the PSE. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[7]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release ((Securities Exchange Act Release No. 16706 (March 28, 1980), 19 SEC Docket 1090 (April 15, 1980)), and by publication in the *Federal Register* 45 FR 23563 (April 7, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade.[8]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

Footnote 3 continued

833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]Securities Exchange Act Release No. 14881, 15 SEC Docket 103 (July 5, 1978), 43 FR 28278 (June 29, 1978).

[5]See new PSE Rule XII, Section 2.

[6]See new PSE Rule XII, Section 1(a).

[7]The Code has already been adopted by the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange ((Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); the American Stock Exchange, Inc. ((Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (January 29, 1980), 45 FR 5863 (January 24, 1980)); the Midwest Stock Exchange, Incorporated ((Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)); the Municipal Securities Rulemaking Board ((Release No. 16570 (February 13, 1980), 19 SEC Docket 573 (February 26, 1980), 45 FR 11291 (February 20, 1980)); the Chicago Board Options Exchange, Incorporated ((Release No. 16606 (February 25, 1980), 19 SEC Docket 759 (March 11, 1980), 45 FR 15352 (March 10, 1980)); and the Boston Stock Exchange, Incorporated ((Release No. 16671 (March 17, 1980), 19 SEC Docket 922 (April 1, 1980), 45 FR 19705 (March 26, 1980)).

[8]The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judicial determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16768/April 29, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, CA 94104
(SR-PSE-79-14)

ORDER APPROVING PROPOSED RULE CHANGE

On February 25, 1980, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would adopt, as PSE Rule XX, detailed rules for conducting its disciplinary proceedings.[1]

The proposed rule change would extend the PSE's disciplinary jurisdiction over any PSE member, member organization, or any persons associated with a member or member organization following termination of membership or association with a member, with respect to matters that occurred prior to such termination, provided that the PSE gives notice of its inquiry into the matter to the member or associated person within one year of such person's notice of termination.[2] The proposed rule change would permit the PSE to conduct investigations of possible violations upon the receipt of a complaint filed by a member or any other person[3] and would provide for the institution of disciplinary proceedings by the issuance of a statement of charges specifying the acts alleged to be in violation.[4] A respondent would have an opportunity to file an answer to the charges and to request a hearing by a panel of the PSE's Hearing Committee.[5] A decision by the Hearing Committee would be subject to review by an Appeals Committee,[6] and the PSE's Board of Governors could review a decision of the Hearing Committee or the Appeals Committee on its own initiative.[7] A member or associated person would be entitled to representation by counsel throughout any investigation and in any subsequent disciplinary proceeding.[8]

The proposed hearing and review procedures, however, would not apply to Floor Citations issued for violation of rules, policies, or procedures adopted by the PSE where the fines are $500 or less. Floor Citations, which are issued summarily, are governed by a different set of PSE rules.[9]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16658 (March 14, 1980), 19 SEC Docket 915 (April 1, 1980)) and by publication in the *Federal Register* (45 FR 18542 (March 21, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Such rules are required by the Securities Acts Amendments of 1975. *See* Section 6(b) of the Act, 17 U.S.C. 78f(b).

[2]Proposed PSE Rule XX, Section 1.

[3]*Id.*, Section 2.

[4]*Id.*, Section 3. Proposed Section 6 would permit a respondent to submit an offer of settlement.

[5]*Id.*, Section 3, 4.

[6]*Id.*, Section 8(b)

[7]*Id.*, Sections 8(c), (d).

[8]*Id.*, Sections 2, 4.

[9]*Id.*, Section 10(b).02. *See* PSE Rule VI, Sections 39, 84 and PSE Equity Floor Procedure Advice 1-A for the review procedures that apply to Floor Citations. *See also*, File No. SR-PSE-79-18, concerning PSE floor decorum, which was approved by the Commission on January 18, 1980 ((Securities Exchange Act Release No. 16515, 19 SEC Docket 366 (February 5, 1980), 45 FR 5870 (January 24, 1980)).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16769/April 30, 1980

DENIAL OF PETITION FOR RULEMAKING CONCERNING DISCLOSURE OF RELATIONSHIPS BETWEEN ATTORNEYS AND REGISTRANTS

ACTION: Denial of Petition.

SUMMARY: The Commission today issued a release announcing its denial of a rulemaking petition submitted by the Institute for Public Representation which would have required disclosure of certain information concerning the relationships between registrants and their counsel as well as disclosure concerning resignations and dismissals of registrant's general counsel or any securities counsel.

FOR FURTHER INFORMATION CONTACT: Amy L. Goodman (202) 272-2597 or Gregory H. Mathews (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today issued a release announcing its denial of the Petition for Rulemaking submitted by the Institute for Public Representation (the "Institute") published in Release No. 34-16045, July 25, 1979 [44 FR 44881, July 31, 1979]. The proposed rules would have required disclosure of certain information concerning the relationships between registrants and their counsel as well as disclosure concerning resignations or dismissals of a registrant's general counsel or any securities counsel.

The Commission's Secretary today has transmitted a letter to the Institute setting forth the reasons the Commission determined to deny the Institute's petition for rulemaking. In view of the extensive interest and concern engendered by the Institute's petition, a copy of the letter is attached.

Although the Commission has determined to deny the petition, it believes that the public comment process has served several worthwhile purposes. First, there were a large number of comments about the broader issues and concerns related to the Institute's petition for rulemaking. Second, although critical of a government imposed requirement, the corporate commentators seemed to agree that establishing some kind of information system related to corporate legal compliance is desirable. In this connection, commentators viewed experimentation with alternative approaches as the best way to discover the most effective information systems. The descriptions of existing information systems submitted by several corporate commentators may be instructive to others. Finally, there was considerable support for the proposition that the board of directors should obtain and use this type of information to monitor corporate conduct effectively.

The comments of attorneys and bar organizations makes it clear that the legal profession also is devoting a great deal of attention to the complex relationship between attorneys and their corporate clients. Revision of the Code of Professional Responsibility, which is currently underway, may provide further guidance concerning the professional responsibilities of corporate counsel.

The Commission will continue to monitor developments in this area. If the Commission determines to consider rulemaking in this area in the future, it will have benefited from the information generated by this comment process. Therefore, the Commission wishes to thank all those who went to considerable effort and expense in sharing their experiences, insights and concerns.

By the Commission.

George A. Fitzsimmons
Secretary

Attachment

April 30, 1980

Mr. Charles R. Halpern
Director
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

RE: Petition For Rulemaking dated November 22, 1978

Dear Mr. Halpern:

This is in response to your petition for rulemaking of

November 22, 1978, (the "petition") requesting that the Commission adopt rules concerning disclosure of certain information about relationships between attorneys and registrants.

The proposed rules would (1) require all registrants to include in their Form 10-K a certificate stating that the board of directors has received and taken appropriate action on reports from all employed or retained attorneys of violations or probable violations of law; (2) require all registrants to file copies with the Commission of written agreements delineating the relationships between the company and attorneys which it retains, and (3) require that in the event a registrant's general counsel or securities counsel resigns or is dismissed the company must report the resignation on Form 8-K, including, if requested, the attorney's comment(s). The Commission has determined to deny your petition. This letter shall constitute a brief statement of the grounds for such denial.

As you know, the Commission published the petition for public comment on July 25, 1979 (Securities Exchange Act Release No. 16045). In doing so, the Commission stated that it took no position, tentative or otherwise, with respect to the proposals. However, the Commission indicated that, whatever its final determination as to the proper disposition of the petition, "the publication of these proposals may increase awareness by attorneys of their responsibilities and may encourage boards of directors to continue to review carefully the proper role of attorneys." Approximately 300 individuals and organizations submitted written comments, including several groups that traditionally have not participated in the public comment process. While most commentators opposed the Institute's specific suggestions and any rulemaking by the Commission in this area, they discussed various ways in which corporations are dealing with the problems raised in the petition.

The commentators expressed substantial misgivings with respect to the timing, substance and operation of the rules. First, many commentators stated that there was no showing that existing information systems are inadequate. In this regard, it was argued that boards of directors can obtain this type of information today if they want to; in fact, a number of corporate commentators described existing information systems relating to legal compliance.

Second, a majority of commentators opined that it would be inopportune to promulgate any rule at this time which might affect the nature of the obligations of attorneys to make appropriate disclosure of corporate illegalities they discover. These commentators observed that many of the questions apparently giving rise to the Institute's proposals already are being addressed in a variety of forums in the private sector. In particular, they stated that the outcome of the consideration currently being given to revision of the Code of Professional Responsibility could further clarify the nature of an attorney's responsibilities in this area, thereby eliminating any need for the Commission to adopt rules designed to achieve the same purpose.[1]

Third, a majority of the commentators believed that adoption of the proposed rules at this time would be counterproductive because of their detrimental effects upon the attorney-client relationship. It was argued that requiring attorneys to report directly to the board of directors would stifle the flow of communication between attorneys and corporations' employees, thereby diminishing the quality of resulting legal opinions and actually increasing the possibility of illegal corporate activity.

Fourth, the commentators put forth numerous objections with respect to the unworkability of each section of the proposed rules.[2] Commentators considered Section 1 to be ambiguous and impractical. Certain phrases contained in the proposed rules were not defined and were viewed by commentators as susceptible to varying, inconsistent interpretations. Yet comprehension of each phrase appears to be essential to effective implementation of Section 1. Even some who supported the general thrust of the section acknowledged these interpretive problems and

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[1]See, Section 1.13 of the January 30, 1980 draft, American Bar Association, Committee on the Evaluation of Professional Standards, *Model Rules of Professional Conduct* 40-46.

[2]With the commitment of extensive resources, it might be possible to redraft some parts of the proposals in a manner that would eliminate or minimize many of the interpretive problems. Nevertheless, given the inherent ambiguity of several of the terms it would likely be impossible to resolve all the difficulties without abandoning substantial portions of your proposals.

proposed alternative language which, although helpful, would not eliminate all of the difficulties. In addition, many questioned the feasibility of requiring the board to review and act upon numerous attorney reports given its many other responsibilities, the extensive study some reports might require, the uncertain state of the law in some areas of corporate activity,[3] and the responsibilities of the corporation's chief legal officer.

With regard to Section 2, commentators stated that agreements with outside attorneys are rarely in written form and that it would be exceedingly difficult to compose an agreement, as required by Section 2, that would describe meaningfully every aspect of the relationship between the corporation and each outside counsel. Moreover, they asserted it would be inappropriate to specify in advance counsel's obligations upon discovering illegal or probably illegal corporate conduct without knowing the exact nature of the conduct in question. Some argued that these problems would induce corporations to use "boilerplate" language in agreements which would not be helpful to anyone.

A majority of those commenting on Section 3 believed the requirement that issuers disclose the circumstances surrounding every resignation or termination of designated attorneys would produce a flood of irrelevant information that might further discredit terminated attorneys while masking the material disagreements between registrant and attorney which arise infrequently. Several commentators compared the section to the Commission's rule concerning disclosure of a change in independent accountants which requires disclosure of the surrounding circumstances only where the change involved a disagreement, which, if not resolved to the satisfaction of the former accountant, would have called for a reference to the disagreement in the accountant's report. Commentators also contended that Section 3 might compel public disclosure of privileged communications and might inhibit needed changes in counsel.

The Commission specifically invited comments on the costs to registrants and others of compliance with the Institute's proposed rules. A number of commentators noted the uncertainties involved in any attempt to predict the additional costs associated with the generation and review of annual reports from each retained counsel, the preparation of the required written agreements between the corporation and each outside attorney and the preparation and filing of a Form 8-K for each separation of a designated attorney. Nevertheless, many commentators believed the proposals, if adopted, would impose costs well in excess of any benefits, particularly in light of the practical problems they identified. One large public company estimated that the minimum first year cost of compliance with Sections 1 and 2 would be over $250,000. Although the costs might decline in subsequent years, the proposed rules might impose a significant additional regulatory burden on reporting corporations.

The Commission believes that companies and the legal profession currently are devoting considerable attention to many of the issues raised in the Institute's petition. The business community is focusing on the role and responsibilities of the board of directors, including problems relating to information flow to the board. Moreover, the American Bar Association and its Commission on Evaluation of Professional Standards is addressing issues of professional responsibility related to the petition. For example, that Commission is holding public hearings on its Discussion Draft of *Model Rules of Professional Conduct* which deals with the issue of when a lawyer in, or for, an organization should refer a matter to a higher authority.

In light of the concerns expressed by the commentators, particularly with respect to the impracticability of the proposal and its effect on attorney-client relationships, and the initiatives in this area being taken by the legal profession and the business community, the Commission does not believe it would be appropriate, at this time, to

[3]During the comment period the Institute suggested an alternative, two-tiered information system to channel attorney reports through the registrant's general counsel to the board. This might relieve some of the burdens the proposed rules would otherwise impose on the board. However, because of the highly structured, formalized nature of the proposed rules, it seems that many new administrative burdens merely would be shifted from the board to the general counsel, while the most intractable questions would still be considered by the board.

consider further the rules proposed by the Institute.[4] Moreover, to modify the proposals sufficiently to meet the practical problems identified above, assuming it is possible, would require a significant amount of staff time and effort. As you know, the Commission's staff resources are greatly limited and are being devoted at present to other projects. The Commission will continue to monitor developments in this area and will, of course, bring enforcement actions or disciplinary proceedings in appropriate cases.

If the Commission determines to consider rulemaking in this area in the future, it will certainly have benefited from the information generated by this comment process. Therefore, the Commission wishes to thank the Institute for its concern and efforts in this important area.

For the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16770/April 30, 1980

STOCK OPTIONS

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposed amendment to Rule 16b-3 under the Securities Exchange Act of 1934 that would exempt from the short-swing profit recovery provisions of Section 16(b) of the Act the delivery of stock by an officer or director upon the exercise of an employee stock option. In addition, the Commission is proposing to amend the caption for rule 16b-3 to reflect the broadened coverage of the rule. The proposed changes are being published as a result of several requests from the public that the Commission provide relief from Section 16(b) for the use of stock as payment for the exercise of employee stock options.

DATE: Comments should be submitted on or before June 9, 1980.

ADDRESS: Comments should refer to File No. S7-833 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Michael R. Kargula or Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: On April 27, 1979, the Internal Revenue Service issued a ruling which held that an employee could deliver stock already owned by him as payment for the exercise of an employee stock option without recognizing any taxable gain on the unrealized appreciation of the delivered shares.[1] Pursuant to this ruling, the optionee is not taxed on the difference between his cost basis for the old shares and their market value on the date of delivery, even though the delivered shares are valued at their current market price for purposes of paying all or part of the option price.

In essence, the IRS ruling in many instances permits an employee who uses stock to exercise a stock option to acquire, without any cash outlay, not only a number of shares equal in all respects to the surrendered shares but also additional shares equal to the difference between the option price and the market price at the time of exercise.[2] The tax and other advantages flowing from this ruling, however, are for all practical purposes not presently available to officers and directors of issuers which have a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.]. Such persons are subject to

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[4]In view of the Commission's determination to deny the petition for the reasons set forth herein, the Commission expresses no conclusions with respect to its authority to adopt this type of rule.

[1]CCH Standard Federal Tax Reporter, para 6979. The ruling dealt with non-qualified stock options.

[2]For example, if a person who holds an option for 200 shares at an exercise price of $10 per share decided to exercise the option when the stock was trading at $20 a share, he could do so by delivering 100 shares previously acquired by him (with a value of $2,000) for the 200 shares under the option.

Section 16(b) of the 1934 Act, which allows an issuer to recover any profits realized by its officers and directors on any purchase and sale, or sale and purchase, of the issuer's equity securities occurring in a period of less than six months. Since the delivery of stock upon exercise of an option could be considered a "sale" to the issuer, and the acquisition of stock as a result of exercising the option could be deemed a "purchase," the profit on the combined sale and purchase would be recoverable by the issuer under Section 16(b) because it occurred in a period of less than six months.

In recent months, the Commission and its staff have received a number of informal requests, as well as a formal rulemaking petition,[3] that it provide exemptive relief from Section 16(b) for the delivery of stock upon the exercise of a stock option. In this regard, Section 16(b) grants authority to the Commission to exempt by rules and regulations any transaction or transactions which it believes are not comprehended within the purpose of that section. The Commission has exercised its exemptive authority under Section 16(b) on numerous occasions in the past, as evidenced by the various rules it has adopted under that section.

Those persons who have requested exemptive relief have stated that the use of already-owned stock to exercise a stock option does not present an opportunity for the abuses which Section 16(b) is designed to prevent.[4] The Commission, to some extent, has previously recognized this view by its prior adoption of amendments to Rule 16b-3 [17 CFR 240.16b-3] exempting from Section 16(b) certain transactions involving stock appreciation rights.[5] The use of already-owned stock to exercise a stock option is in substance another form of stock appreciation right[6] and does not appear to present any more opportunity for speculative abuse than stock appreciation rights payable in securities.

Under the circumstances, the Commission believes it is appropriate to propose the adoption of an amendment to Rule 16b-3 that would provide the requested exemptive relief. Rule 16b-3 exempts from Section 16(b) certain transactions occurring under specified type sof employee benefit plans. It reflects the Commission's recognition that without such an exemption the legitimate use of the types of plans covered by it as a means of executive compensation would be largely frustrated. Because of the safeguards inherent in the rule, such as the requirements for shareholder approval of the plan and disinterested plan administrators, the opportunities for abuse under it are slight.

The proposed amendment would appear in the first sentence of Rule 16b-3 and would exempt "any surrender or delivery to the issuer of securities of the issuer pursuant to the exercise of an option for securities of the same class." It should be noted that the amendment would exempt only the stock delivered to the issuer upon the exercise of an option. Stock acquired by the optionee upon such an exercise would not be exempt from Section 16(b) just as stock acquired upon the exercise of a stock appreciation right is not exempt under the rule. This is generally due to the fact that insiders usually can control the timing of the exercise of an option (or a stock appreciation right, for that matter) and thus can take unfair advantage of inside information if they are allowed to acquire stock pursuant to an option and then immediately resell it to the public without Section 16(b) consequences. Thus, stock acquired in a transaction covered by the proposed amendment could be matched under Section 16(b) against any sales of such stock occurring within less than six months before or after the acquisition.

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[3]The rulemaking petition was submitted under Rule 4(a) of the Commission's rules of Practice [17 CFR 201.4(a)] by the firm of Rodden and Marshall on March 4, 1980 on behalf of Consolidated Oil & Gas, Inc. Requests of a similar nature were received in writing from Messrs. Jesse Brill, Warren Grienenberger, John Bitner, and Monty Barber. Moreover, many members of the public have expressed the view in telephone conversations with the staff that the Commission should provide the type of relief being proposed herein.

[4]Generally, the purpose of Section 16(b) is to prevent insiders from unfairly utilizing confidential information to profit from short-term trading transactions in an issuer's securities.

[5]Release Nos. 34-13097 (December 22, 1976) [42 FR 755] and 34-13659 (June 22, 1977) [42 FR 33283].

[6]Both the use of stock to exercise an option and the exercise of a stock appreciation right for securities result in the acquisition of additional stock without any out-of-pocket expense on the basis of a pre-selected measure of appreciation.

OTHER MATTERS

The caption for Rule 16b-3 indicates that the rule covers "acquisitions of shares of stock and stock options and stock appreciation rights under certain stock incentive, stock option or similar plans." Because the proposed amendment described above would expand the rule to cover certain dispositions of stock, the caption would no longer reflect the contents of the rule if the amendment were adopted. Accordingly, as a related matter, the Commission is proposing to change the caption for Rule 16b-3 to state that the rule exempts from Section 16(b) "certain transactions occurring under employee benefit plans."

In addition to the foregoing, the Commission is aware that the proposed amendment to Rule 16b-3 described herein would, if adopted, raise the question whether an amendment to an existing stock option plan allowing the delivery of already-owned stock upon exercise of an option would be a material amendment requiring shareholder approval under paragraph (a) of the rule.[7] The Commission is of the view that such an amendment would not be material and therefore would not necessitate shareholder approval, since it would not result in any additional remuneration for directors and officers not already contemplated by such a plan. Instead, it would simply allow issuers to revise the form of consideration acceptable for the exercise of options. The Commission welcomes any comments on this view that interested persons may wish to submit.

TEXT OF PROPOSED AMENDMENTS

17 CFR Part 240 is proposed to be amended by revising the introductory paragraph of §240.16b-3 to read as follows:

§240.16b-3 Exemption from section 16(b) of certain transactions occurring under employee benefit plans.

Any acquisition of shares of stock (other than stock acquired upon the exercise of an option, warrant or right) pursuant to a plan as defined in paragraph (d)(1) hereof, or any acquisition, expiration, cancellation or surrender to the issuer of a stock option or stock appreciation right pursuant to such a plan, or any surrender or delivery to the issuer of securities of the issuer pursuant to the exercise of an option for securities of the same class under such a plan by a director or officer of the issuer shall be exempt from the operation of section 16(b) of the Act if the plan meets the following conditions:

* * * * *

(Secs. 16(b), 23(a), 48 Stat. 896, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379, sec. 18, 89 Stat. 155; 15 U.S.C. 78; (b), 78w(a).

AUTHORITY

The Commission hereby publishes for comment the amendments to Rule 16b-3 described herein pursuant to the Securities Exchange Act of 1934, particularly Sections 16(b) and 23(a) thereof.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16771/April 30, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-10)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on April 30, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change to amend its Rule 114 governing registered equity market makers. Amex Rule 114 currently contains a

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[7]Rule 16b-3(a) states at the end thereof that any amendment to a plan must be approved by shareholders "if the amendment would: (A) materially increase the benefits accruing to participants under the plan. . . ."

"sunset" provision under which the rule would expire on April 30, 1980, unless extended by a rule of the exchange approved by the Commission. The Amex previously filed a proposed rule change to remove the sunset provision and thereby make Rule 114 permanent. The Commission, however, has determined to institute proceedings to determine whether that rule change should be disapproved. The purpose of the instant rule proposal is to extend the effectiveness of Rule 114 until 30 days after those proceedings are concluded.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that unless extended by the Commission, Amex Rule 114 would expire on April 30, 1980. Accelerated approval of the rule change will preserve the status quo pending a final resolution of the Commission's proceedings to determine whether Amex Rule 114 should be disapproved.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16772/April 30, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005

(SR-NYSE-80-20)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), notice is hereby given that on April 30, 1980, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission copies of a proposed rule change to amend its Rule 107 governing registered competitive market makers. NYSE Rule 107 currently contains a "sunset" provision under which the rule would expire on April 30, 1980, unless extended by a rule of the exchange approved by the Commission. The NYSE previously filed a proposed rule change (File No. SR-NYSE-80-11) to remove the sunset provision and thereby make Rule 107 permanent. The Commission, however, has determined to institute proceedings to determine whether that rule change should be disapproved. The purpose of the instant rule proposal is to extend the effectiveness of Rule 107 until 30 days after those proceedings are concluded.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that unless extended by the Commission, NYSE Rule 107 would expire on April 30, 1980. Accelerated approval of the rule change will preserve the status quo pending a final resolution of the Commission's proceedings to determine whether NYSE Rule 107 should be disapproved.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16773/May 1, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of Oceania Resources, Inc. ("Oceania"), formerly known as Pitchblende Properties, Inc., a Nevada corporation located at 9200 Sunset Boulevard, Suite 612, Los Angeles, California 90069 for the ten day period commencing at 11:30 a.m. May 1, 1980 and terminating at midnight (EDT) on May 10, 1980.

The Commission suspended trading in the securities of Oceania in view of questions concerning recent market activity in its securities and because of the lack of current accurate and adequate information concerning the company's announced refinery project in the Fiji Islands, its potential drilling ventures and the status of the company's most recent audit.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not it has complied with said rule, it should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, it should refrain from entering quotations relating to the securities in question until such time as it has familiarized itself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

If any broker-dealer or other person has any information which may relate to this matter, the Division of Enforcement of the Securities and Exchange Commission should be telephoned at (212) 264-1600.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16774/May 1, 1980

In the Matter of

CHARLES E. PURDY III

The Securities and Exchange Commission has ordered public administrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against Charles E. Purdy III ("Purdy"), a registered representative employed with a registered broker-dealer in its Minneapolis, Minnesota office.

The Order for Proceedings alleges that Purdy wilfully violated the antifraud provisions of the Securities Act of 1933 ("Securities Act") and of the Exchange Act in connection with soliciting and transacting option business with public investors.

The Order further alleges that at various times during the period from January 1, 1974 to the present, Purdy, in inducing customers to trade in options and maintain option accounts with them, made false and misleading statements of material facts and omitted to state material facts about the risks inherent in option trading strategies, potential profits and rates of return realizable from option trading strategies, and the suitability of these trading strategies to his customers' financial situations, investment sophistication and investment objectives.

The Order also alleges that Purdy caused customers who could not afford the risk and did not sufficiently understand the risk, margin requirements, mechanics and other fundamental aspects of option trading strategies to repose trust and confidence in Purdy in connection with all purchases and sales of options. As a result of such transactions, investors incurred substantial financial harm.

The Order further alleges that Purdy effected purchase and sale transactions in options which were not suited to the financial situations, investment sophistication and investment objectives of such customers.

The Order also alleges that Purdy represented to certain customers that their accounts were profitable when in fact they were not, in order to induce them to continue to engage in option trading.

A hearing will be scheduled to determine whether the allegations against Purdy are true, and if so, to decide what, if any, remedial sanctions would be appropriate.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16775/May 1, 1980

A notice has been issued giving interested persons until May 29, 1980 to comment on the application of the *Philadelphia Stock Exchange* for unlisted trading privileges in CENTRAL JERSEY INDUSTRIES, INC. (File No. 7-5519) following issues: common stock, $1 Par Value; 8% Series F Contingent Notes; 8% Series H Contingent Notes & Certificates of Contingent Interest.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16776/May 1, 1980

A notice has been issued giving interested persons until May 21, 1980 to comment on the application of U.S. HOME CORPORATION to withdraw their common stock ($.10 Par Value) and 5½% Convertible Subordinate debentures due 1996 from listing and registration on the *Pacific Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16777/May 1, 1980

An order has been issued granting the application of EMERSON RADIO CORPORATION to withdraw their common stock ($.10 Par Value) from listing and registration on the *American Stock Exchange, Inc.*

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21537/April 25, 1980

In the Matter of

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

OHIO POWER COMPANY
Canton, Ohio

(70-6409)

ORDER AUTHORIZING PROPOSED FINANCING FOR COAL MINING SUBSIDIARY

Ohio Power Company ("Ohio Power"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Southern Ohio Coal Company ("SOCO"), a coal mining subsidiary of Ohio Power, have filed an application-declaration and amendments thereto with this Commission, pursuant to Sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transactions.

SOCO is engaged in the development and mining of coal reserves for use at Ohio Power's Mitchell Plant located in Captina, West Virginia, and at its General James M. Gavin Plant, located in Cheshire, Ohio. The transaction proposed herein involves the installation by SOCO of additional coal preparation facilities at its Meigs Mine Complex located in Gallia and Meigs Counties in southeastern Ohio. SOCO proposes to 1) install at Meigs Mine No. 1 a heavy-medium cyclone and a froth flotation system to augment the heavy-medium bath preparation; 2) install at Racoon Mine No. 3 a froth flotation system; and 3) modify the Baum jig plant at Racoon Mine No. 3. These additions and modifications are estimated to cost approximately $40,600,000.

Ohio Power and SOCO believe that the cost of the proposed project is justifiable on the basis of the anticipated savings in the cost of coal delivered to Ohio Power. In the case of Meigs Mine No. 1, the preparation plant additions will lead to improved quality of the coal and to a relative reduction in the cost per million British thermal units ("MBtu") of delivered coal. It is estimated that such cost in present-day dollars will be reduced from $181.75 per MBtu to $175.61 per MBtu. The Racoon Mine No. 3 addition will cause an increase in Btu recovery and an estimated decline in relative delivered cost per MBtu in present-day dollars from $170.98 to $157.77. The annual savings in delivered fuel costs alone upon completion of the proposed projects are estimated to be approximately $16,674,000 at capacity or planned output. Additional savings will accrue annually to Ohio Power through improved availability and lower maintenance expense of the Gavin Plant boilers. Although these savings are difficult to quantify precisely, they are conservatively estimated at $10 million annually. It is proposed that these projects will be financed through a combination of long-term loans and cash capital contributions by Ohio Power to SOCO of $40,600,000. It is expected that Ohio Power will make its investment in SOCO in two increments, one to be made in 1980 and the second to be made sometime in 1981. In return for the loans, SOCO will issue to Ohio Power long-term promissory notes. Each of the notes will mature and become payable on December 31, 2009.

The price at which SOCO's coal will be sold to AEP system companies will not exceed the cost thereof to the seller. For this purpose, cost will include reasonable compensation for necessary capital.

The investments made by Ohio Power in SOCO will be assumed to be made in the same proportion as the debt-equity ratio of Ohio Power at the end of the year prior to the investment. As of December 31, 1979, the debt-equity ratios of Ohio Power were 56.3% long-term debt, 11.9% preferred stock, and 31.8% common equity. The interest rate on long-term debt will be equal to the effective interest cost of Ohio Power's last issue of First Mortgage Bonds prior to the investment, the preferred dividend rate will be equal to the dividend rate of Ohio Power's last issue of preferred stock prior to the investment, and the return on common equity will not exceed the rate of return on common equity specified by the Federal Energy Regulatory Commission (FERC) in the most recent wholesale rate proceeding involving Ohio Power. In the absence of such a determination at this time, it is proposed that the cost of common equity capital of SOCO be set at 13% until such time as FERC should take action specifying a rate of return in

a wholesale rate proceeding involving Ohio Power in which case the rate then established by FERC shall then become applicable on a prospective basis to the then total common equity investment of Ohio Power in SOCO. The allowed rate of return on common equity shall not be applied to any of SOCO's retained earnings. No return allowance will be applied to such retained earnings.

It is stated that the issuance of such securities is excepted from the competitive bidding requirements of Rule 50 by reason of paragraph (a)(3) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21499), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21538/April 25, 1980

In the Matter of

NORTHEAST UTILITIES
174 Brush Hill Avenue
West Springfield, Massachusetts

(70-6449)

NOTICE OF PROPOSED INCREASE IN AUTHORIZED SHARES OF COMMON STOCK AND ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Northeast Utilities ("Northeast"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rule 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Northeast proposes to increase its authorized common stock from 75,000,000 to 100,000,000 shares. Of the presently authorized shares, 66,977,511 shares are issued and outstanding.

Although the Declaration of Trust of Northeast, which serves as the company's charter and by-laws, sets out Northeast's powers and the rules which govern the administration of its affairs, it does not set out the authorized number of Northeast's common shares which number is fixed by resolution of the company's shareholders. Northeast proposes to submit the proposal to increase the authorized shares to its shareholders for their approval at its Annual Meeting of Shareholders to be held on May 27, 1980. The proposal must be approved by the affirmative vote of the holders of a majority of the outstanding common shares, the company's sole class of capital stock. Proxies are being solicited from Northeast's common shareholders. Northeast has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

It is stated that no state or federal commission, other

than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 20, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that Northeast's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective forthwith pursuant to Rule 62.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21539/April 28, 1980

In the Matter of

GEORGIA POWER COMPANY
Atlanta, Georgia

(70-6350)

ORDER AUTHORIZING SALE OF INTEREST IN AN ELECTRIC GENERATING FACILITY

Georgia Power Company ("Georgia"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder regarding the proposed transaction.

Georgia is currently the owner of an 83.5% undivided ownership interest in two 810 MW nominally rated coal-fired generating units currently under construction in Monroe County, Georgia to be known as the Robert W. Scherer Units Numbers One and Two (collectively, the "Units"). Georgia owns such interest in the Units as a tenant in common with the Municipal Electric Authority of Georgia ("MEAG") and the City of Dalton, Georgia ("Dalton"), which own 15.1% and 1.4% undivided ownership interests, respectively, in the Units.

Georgia proposes to sell to Oglethorpe Power Corporation ("OPC"), an electric membership corporation organized and existing under the laws of the State of Georgia, a 60% undivided ownership interest in the Units, pursuant to a proposed Purchase and Ownership Participation Agreement among Georgia and OPC, MEAG and Dalton ("Ownership Agreement"). As a result of such sale, Georgia, OPC, MEAG and Dalton will own 23.5%, 60%, 15.1% and 1.4% undivided ownership interests, respectively, as tenants in common in the Units. Georgia will obtain a release of such undivided ownership interest in the Units to be sold to OPC from the lien of Georgia's First Mortgage Indenture. Included in the Units is a 50% undivided ownership interest in substantially all the property and facilities to be used in common by, or in connection with, all four generating units currently planned to be constructed at the Plant Scherer site ("Common Facilities"). Accordingly, upon completion of the

proposed sale to OPC, OPC will also own a 30% undivided ownership interest in the Common Facilities.

At the closing, in consideration for the sale of said property, OPC is to pay to Georgia an amount equal to 60% of the cost incurred in the construction of the Units prior to the closing plus Georgia's cost of long-term borrowings incurred to finance such construction and Georgia's cost of short-term borrowings incurred after February 1, 1980 to finance such construction. Assuming the closing of such sale were to take place on April 30, 1980 Georgia will receive approximately $342,000,000 from OPC. Georgia expects to apply the proceeds of such sales towards the cost of its construction program and the repayment of short-term borrowings incurred to finance such construction program.

After the closing, Georgia is to complete the construction of the Units on its own behalf and as agent for OPC and the other co-owners, and Georgia, OPC, MEAG and Dalton are to make monthly payments in advance into a separate construction account in respect of 23.5%, 60%, 15.1% and 1.4%, respectively, of all additional costs to be incurred in the construction and completion of the Units. The Ownership Agreement will provide for interest to be paid on any overdue payments, as well as certain other remedies in the event of a prolonged default by any of the co-owners in the payment of amounts due from it. The Ownership Agreement will supersede similar separate agreements Georgia currently has with MEAG and Dalton concerning the Units and Common Facilities.

Georgia will enter into a separate Operating Agreement with OPC, MEAG and Dalton ("Operating Agreement") providing for the sole operation and maintenance of the Units by Georgia and for payment by Georgia, OPC, MEAG and Dalton of that portion of all costs of operation and maintenance of the Units equal to their respective entitlements to the energy from each of the Units. The Operating Agreement will terminate with respect to each of the Units on the fortieth anniversary of the commencement of commercial operation of such Unit. The Operating Agreement will supersede similar separate agreements Georgia currently has with MEAG and Dalton concerning the operation of the Units and the Common Facilities.

The Operating Agreement will require Georgia to purchase from OPC declining percentages (beginning with 100% and declining to 10%) of OPC's capacity and energy from each of the Units during the first ten years of its commercial operation, at a cost which is a function of OPC's and Georgia's carrying costs and the operating costs attributable to each Unit. Such purchases from OPC must be made regardless of the availability of capacity and energy from the Units and Georgia's requirements for such capacity and energy.

The fees, commissions and expenses to be incurred by Georgia in connection with the proposed transaction are estimated at $123,500, including legal fees of $120,000. Georgia will file with the Department of Justice and the Federal Trade Commission a pre-merger notification in connection with the proposed sale. It is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21254), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21540/April 28, 1980

In the Matter of

SYSTEM FUELS, INC.
666 Poydras, Noro Plaza
New Orleans, Louisiana 70130

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

MISSISSIPPI POWER & LIGHT COMPANY
Electric Building
Jackson, Mississippi 39205

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70112

(70-6428)

NOTICE OF FINANCING ARRANGEMENTS RELATED TO THE PURCHASE OF FUEL BY A NONUTILITY SUBSIDIARY FOR USE BY OPERATING COMPANIES

NOTICE IS HEREBY GIVEN that Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. ("Middle South"), a registered holding company, together with System Fuels, Inc. ("SFI"), a jointly-owned nonutility subsidiary company of the Operating Companies, have filed a declaration and amendments thereto in this proceeding pursuant to Sections 6(a), 7, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

The Operating Companies and Arkansas-Missouri Power Company ("Ark-Mo") obtain their fuel oil requirements from SFI pursuant to the terms of the Liquid Fuel Purchase Contract, as amended, among them. Pursuant to Commission authorization in File Nos. 70-5259, 70-5415 and 70-6055, SFI has financed its acquisition of fuel oil for resale to the Operating Companies and Ark-Mo by the sale of up to $75,000,000 of its notes to Hibernia National Bank in New Orleans ("Hibernia") and up to $40,000,000 of its notes to Citibank, N.A. ("Citibank") under amended loan agreements, and through the execution and delivery by SFI and the acceptance by Citibank of SFI's drafts in amounts up to $50,000,000 pursuant to an acceptance facility line of credit agreement, as amended, with Citibank.

To assure the availability of an adequate supply of fuel oil through May 31, 1981 to the Operating Companies and Ark-Mo, SFI presently estimates that it will be necessary to maintain oil inventory of approximately 4.9 million bbls., valued at as much as $133 million. In order to consolidate its financing of its fuel oil inventory, to lower the costs of such financing and to meet its commitment (set forth in File No. 70-6097) to endeavor to obtain funds for its corporate purposes from external sources under advantageous arrangements in lieu of borrowing from the Operating Companies, SFI proposes to enter into a loan agreement ("Loan Agreement") with a nonaffiliated company ("Finance Company") to be created for that purpose.

Finance Company will, upon request, make loans to SFI in amounts not to exceed $100,000,000 at any one time outstanding out of the proceeds of commercial paper notes ("Notes") issued and sold by Finance Company and revolving credit loans ("Bank Borrowings") obtained by Finance Company under a credit agreement ("Credit Agreement") with Bank of America National Trust and Savings Association ("Bank"). The aggregate amount of Finance Company's Notes and Bank Borrowings at any time outstanding may not exceed $100,000,000. All loans to SFI will be from the proceeds of Notes ("A Loans"), unless Finance Company is advised by its commercial paper dealer, The First Boston Corporation ("Dealer"), to seek a financing alternative to the sale of Notes, or Notes may no longer be issued under the Credit Agreement for regulatory reasons. Upon the occurrence of these events, Finance Company will make loans from the proceeds of Bank Borrowings ("B Loans") to SFI If no funds are available to pay a maturing A Loan and as a result a drawing under the Letter of Credit described below is made and is not reimbursed on the date when made, such A Loan automatically becomes a B Loan.

A Loans will be evidenced by a Master A Note and will bear the same discount and maturities as the Notes from which they are derived. Finance Company will issue its Notes to Dealer and the Notes will be sold at a discount not in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturity. Notes will be unsecured with varying maturities not to exceed 270 days. The Notes will not be prepayable prior to maturity and will be payable at maturity at the office of Irving Trust Company ("Depositary"), as issuing and paying agent under a Depository Agreement. Bank will issue an irrevocable Letter of Credit to Depositary pursuant to the Credit Agreement as a standby source of funds for the repayment of the Notes in the event they are not repaid by Finance Company at maturity. It is anticipated that the Notes will be held by the buyers to maturity. Dealer may, if desired by a buyer, repurchase the Notes for resale to others.

B Loans will be evidenced by a Master B Note and will bear the same interest rate and have the same maturity as the Bank Borrowings from which they are derived. Bank Borrowings will bear interest from the date thereof on the unpaid principal amount thereof at an interest rate per annum equal to 3/8% plus 107% of the Base Rate. The Base Rate is the greater of (a) Bank's prime rate determined on a daily basis, for 90-day commercial loans to its largest most credit-worthy commercial borrowers or (b) the latest 3-week moving average interest rate payable on 90-day secondary certificates of deposit as published weekly by the Board of Governors of the Federal Reserve System plus actual costs of reserves to Bank. Bank borrowings will be due and payable on May 31, 1981 or one year from the date of closing, whichever is earlier ("Credit Expiration Date"). The Credit Expiration Date may be extended for one year periods. Bank borrowings not paid when due or arising after the Credit Expiration Date will bear interest at 3/8% plus 120% of the Base Rate.

The effective cost to SFI based upon the interest rates for commercial paper of comparable quality and like maturity together with all fees to be paid by SFI to Finance Company to secure A Loans and B Loans would be approximately 18.576%. The composite effective cost of borrowing pursuant to the two arrangements with Citibank is approximately 20.305%.

Upon consummation of the arrangements with Finance Company, SFI may terminate either or both of its arrangements with Citibank. Upon five days written notice, Finance Company may terminate the Credit Agreement and SFI may terminate the Loan Agreement. SFI may prepay all loans in whole or in part without penalty or premium.

SFI will maintain an account ("SFI Account") with Irving Trust Company, among other things, for receipt of loans from Finance Company. Funds in the SFI Account may be used (1) to retire a portion of SFI's indebtedness to Hibernia and all or a portion of its indebtedness to Citibank, (2) to finance acquisition and storage of fuel oil, (3) to pay maturing debt and other obligations under the Loan Agreement, and (4) to make temporary investments pending use of funds for aforesaid purposes.

Pursuant to the terms of the Loan Agreement and as security for the performance by SFI of its obligations to Finance Company thereunder, SFI will enter into a Security Agreement with Finance Company ("Security Agreement") whereby it will grant Finance Company a security interest in SFI's fuel oil inventory in storage at specified locations in the States of Arkansas and Mississippi, together with the proceeds thereof, and in SFI's accounts receivable arising out of the sale of such fuel oil inventory and fuel oil inventory in storage at specified locations in the State of Louisiana. SFI will enter into an Act of Collateral Chattel Mortgage ("Chattel Mortgage") and execute and deliver in pledge to Finance Company a demand Louisiana Collateral Mortgage Note ("Louisiana Note") in the principal amount of $125,000,000 pursuant to a Pledge Agreement ("Pledge Agreement") in order to grant Finance Company a security interest in SFI's fuel oil inventory in storage at specified locations in the State of Louisiana. SFI will also enter into a Statement of Assignment of Accounts Receivable ("Assignment of Accounts Receivable") in furtherance of the grant of the security interest in the accounts receivable. SFI will be required to prepay A Loans or B Loans if the value of the fuel oil inventory and accounts receivable arising out of sales of the fuel oil inventory under the Purchase Contract fails to exceed the aggregate outstanding principal amounts of A Loans and B Loans. It is also contemplated that Finance Company will be granted a security interest in all funds on deposit in the SFI Account and that payments under the Purchase Contract among Operating Companies, Ark-Mo and SFI will be paid into the SFI Account.

To secure the obligations of Finance Company to

Bank under the Credit Agreement and its performance of and compliance with the terms of the Credit Agreement, Finance Company will enter into an Assignment Agreement ("Assignment Agreement") with Bank whereby Finance Company will irrevocably assign, transfer and set over to Bank and grant Bank a security interest in, (a) the full principal amount of the A Note and the B Note, together with all interest and interest penalty payments thereon, all accounts in which Finance Company has an interest under the Loan Agreement, including the SFI Account and all other amounts which Finance Company may be entitled to receive pursuant to the Loan Agreement; (b) all other amounts payable by SFI to Finance Company pursuant to the Security Agreement; and (c) all rights, claims, powers, privileges and remedies of Finance Company consequent on any failure on the part of SFI to perform or comply with any term of the Loan Agreement, the A Note or B Note and the Security Agreement.

SFI will execute an Acknowledgment of Assignment ("Acknowledgment of Assignment") to Bank and Finance Company which provides that SFI will pay, or cause to be paid, all amounts assigned pursuant to the Assignment Agreement directly to the SFI Account so long as no event of default under the Credit Agreement, or an event which with lapse of time or the giving of notice or both would constitute an event of default, has occurred and is continuing. If such an event of default or other event has occurred and is continuing, all such amounts will be paid, or caused to be paid, by SFI, into a General Account maintained with Depositary. Under the Acknowledgment of Assignment, SFI will agree to indemnify Bank under certain circumstances.

SFI will enter into an Assignment Agreement with Finance Company ("Finance Company Assignment") which provides for the irrevocable assignment by Finance Company to SFI of all rights, claims, powers, privileges and remedies of Finance Company under the Credit Agreement, consequent on any failure by Bank to perform or comply with any term of the Credit Agreement.

As an inducement to Finance Company to enter into the Loan Agreement with SFI, each of the Operating Companies proposes to join with SFI as a party to the Loan Agreement and to severally covenant and agree for the benefit of Finance Company and Bank that, (a) the aggregate amounts of the Operating Companies' investments, as defined in the Loan Agreement ("Investments"), in SFI will at all times during the term of the Loan Agreement be equal to at least 35% of the sum of investments and other indebtedness for borrowed money of SFI maturing after one year, and (b) it will not (i) create, incur, assume or suffer to exist any indebtedness, as defined in the Loan Agreement ("Indebtedness"), of SFI to such Operating Company which, by its terms, matures or is required to be prepaid or repaid, in whole or in part, on or before 75 days after the Loan Agreement Credit Expiration Date, (ii) accelerate or permit the acceleration of any Indebtedness of SFI to such Operating Company during the term of the Loan Agreement and (iii) during the term of the Loan Agreement request or permit the prepayment of any Indebtedness of SFI to such Operating Company if an event of default under the Loan Agreement, or other event which with lapse of time or notice or both would become such an event of default, has occurred and is continuing, or if the prepayment of such Indebtedness would result in such an event of default or other event. SFI may at any time prepay any Indebtedness to any Operating Company, provided no such event of default or other event has occurred and is then continuing, and provided further that the prepayment of such Indebtedness would not thereby create such an event of default or other event. Each of the Operating Companies will also severally covenant and agree (in proportion to its percentage ownership of SFI common stock on the date of the Loan Agreement) that it will take any and all action necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations under the Loan Agreement, the A Note, the B Note, the Depositary Agreement, the Security Agreement and the Acknowledgment of Assignment.

Concurrently with the execution and delivery of the Loan Agreement and the Credit Agreement, SFI, the Operating Companies, Ark-Mo, Bank, Depositary and Dealer, will enter into a Bankruptcy No Petition Agreement, in which the parties will agree that none of them will institute any Federal or State bankruptcy, reorganization, liquidation or similar proceeding against Finance Company or join in or be a party to any such proceeding for a specified period of time after the date on which all Notes have been paid in full.

The companies request exemption from the competitive bidding requirements of Rule 50(b) pursuant to paragraph (a)(5) thereof with respect to

the execution and delivery by SFI of its notes. The companies propose to file the requisite certificates of notification under Rule 24 covering the proposed transactions on a quarterly basis.

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $65,000, including charges for services, at cost, of Middle South Services, Inc. estimated at $13,000, and legal fees incurred by SFI estimated not to exceed $50,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Arkansas Power & Light Company must file pertinent information relating to its participation with the Arkansas Public Service Commission.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21541/April 28, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
99 North Front Street
Columbus, Ohio 43215

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
340-17th Street
Ashland, Kentucky 41101

COLUMBIA GULF TRANSMISSION COMPANY
3805 West Alabama Avenue
Houston, Texas 77027

COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
20 Montchanin Road
Wilmington, Delaware 19807

(70-6435)

NOTICE OF PROPOSED INTRASYSTEM FINANCING

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(b), 9, 10, 12(b), and 12(f) of the Act and Rules 43 and 45 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration,

which is summarized below, for a complete statement of the proposed transactions.

It is proposed that certain subsidiaries of Columbia listed below issue and sell to Columbia prior to April 1, 1981, common stock and installment promissory notes up to the amounts indicated:

	No. of Shares	Equity Par Value $	Aggregate Amount $	Installment Notes Aggregate Amount $	Total $
Columbia of Kentucky	—	—	—	3,100,000	3,100,000
Columbia of Ohio	—	—	—	37,100,000	37,100,000
Columbia of Maryland	52,000	25	1,300,000	700,000	2,000,000
Columbia of New York	—	—	—	1,300,000	1,300,000
Columbia of Pennsylvania	184,000	25	4,600,000	10,500,000	15,100,000
Columbia of Virginia	—	—	—	2,000,000	2,000,000
Columbia of West Virginia	—	—	—	7,900,000	7,900,000
Columbia Gulf	—	—	—	45,000,000	45,000,000
Development U.S.	—	—	—	13,500,000	13,500,000
Hydrocarbon	26,000	25	650,000	3,450,000	4,100,000
Inland	—	—	—	700,000	700,000
Coal Gasification	552,000	25	13,800,000	12,100,000	25,900,000
Service	—	—	—	4,200,000	4,200,000
Total			20,350,000	141,550,000	161,900,000

The installment notes will be unsecured and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on March 31st of each of the years 1982 and 2001, inclusive. Interest on all installment notes will accrue from the date of issuance and is to be paid semi-annually on the unpaid principal thereof until fully paid. The interest rate will be the actual cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%. Columbia sold $100,000,000 principal amount of debentures on October 17, 1979 (File No. 70-6343) at a cost of money of 11.947%, and may sell additional long-term securities during the financing period. The installment notes to be issued initially will, therefore, bear an interest rate of 11.9% and installment notes to be issued subsequent to Columbia's future financings will carry an interest rate related to the last sale of debentures prior to the issuance of said notes. Should Columbia utilize any interim alternate financing, the interest rate of the subsidiaries' installment notes will be related to the effective cost of the last takedown of the facility; thereafter, such notes will bear interest related to the permanent financing specifically replacing such interim financing.

It is stated that the proceeds from the issuance and sale of the common stock and installment notes, together with funds generated from internal sources, will be used to finance these subsidiaries' capital expenditure programs and other corporate needs. Columbia Transmission and Columbia LNG plan to finance the entire amount of their capital expenditure programs and other corporate needs with funds generated from internal sources. The projected aggregate of net capital expenditures for all of the subsidiaries is estimated at $418,352,000.

It is also proposed that Columbia advance on open account to certain subsidiaries, and have outstanding from time to time, up to an aggregate amount of $454,700,000 to finance the purchase by such subsidiaries of underground storage gas inventories and miscellaneous other inventories and to use for short-term seasonal purposes. Substantially, all of such advances are expected to be taken down by December 31, 1980; however, a portion may be taken down during the period January 1, 1981, through May 31, 1981. All such advances are to be repaid on or before May 31, 1981. The open account advances will initially bear interest at the rate in effect from time to time at the agent bank for Columbia's short-term loan line of credit. Interest charges to these subsidiaries subsequently will be adjusted, after the storage financing period, to the effective cost of money Columbia achieves on its short-term borrowing for this purpose.

The proposed advances will be limited to the amount of each subsidiary's estimated short-term financing requirements as shown below:

Columbia of Kentucky	$15,400,000
Columbia of Ohio	94,200,000
Columbia of Maryland	1,800,000
Columbia of New York	2,700,000
Columbia of Pennsylvania	31,400,000
Columbia of Virginia	2,900,000
Columbia of West Virginia	33,700,000
Columbia Transmission	145,000,000
Columbia Gulf	45,000,000
Development U.S.	5,100,000
Columbia LNG	70,000,000
Hydrocarbon	2,000,000
Inland	1,000,000

Coal Gasification	3,500,000
Service	1,000,000
Total	$454,700,000

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $14,100, including charges for services of Columbia Gas System Service Corporation estimated at $7,260. It is stated that authorization for the sale of securities is required from the various state public-utility regulatory commissions for Columbia of Kentucky, Columbia of Ohio, Columbia of New York, Columbia of Pennsylvania, Columbia of Virginia, and Columbia of West Virginia.

It is requested that the companies be authorized to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21542/April 29, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
New York, New York

(70-6413)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT PLAN AND TAX REDUCTION ACT STOCK OWNERSHIP PLAN

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder regarding the proposed transactions.

Allegheny proposes to issue and sell from time to time up to 2,000,000 shares of its authorized but unissued common stock, par value $2.50 per share, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") and its Tax Reduction Act Stock Ownership Plan ("TRASOP"). By an order dated August 5, 1977 the Commission authorized Allegheny to issue up to 1,000,000 shares under these plans, and as of January 15, 1980, 443,705 shares had been issued pursuant to the Dividend Plan and 392,680 pursuant to the TRASOP.

The Dividend Plan allows all holders of record of Allegheny common stock, on a voluntary basis to: (a) invest cash dividends automatically, on each quarterly dividend payment date in additional common stock and/or (b) make optional cash purchases of not less than $50 nor more than $5,000 per quarter of additional common stock, provided that in each quarter the maximum aggregate amount of additional common stock to be made available for purchase should not exceed the number of shares which have been offered to, but not purchased by, the holders of shares of common stock with cash dividends. In each case the price of the additional common stock will be equal to the average of the daily high and low market prices of Allegheny common stock for the 10 trading days prior to the dividend payment date. All costs and charges of participation in the Dividend Plan are

paid by Allegheny. A shareholder may withdraw from the Dividend Reinvestment part of the Dividend Plan at any time by giving appropriate written notice, and such withdrawal will have no effect on such shareholder's right to continue to make optional cash purchases. Allegheny reserves the right to direct the administrator of the Dividend Plan to purchase shares in the open market, subject to any applicable regulatory requirements, with funds provided from participants' cash dividends and optional cash payments. In such event the price of any such shares to the participant will be the average cost of the shares excluding any related brokerage fees or commissions, which will be paid by Allegheny. In the event optional cash payments exceed the number of shares available for optional cash purchases the available shares will be allotted among those who have made optional cash payments, in proportion to the amount of their optional cash payments, and any excess cash remaining will be refunded to participants without interest. Allegheny reserves the right to amend, suspend, modify or terminate the Dividend Plan at any time, and upon such termination or upon withdrawal from the Dividend Plan by any shareholder, certificates for whole sales in the participant's account will be issued to the participant and a cash payment will be made for any fraction of a share.

Allegheny proposes to issue the additional common stock to a trust created for the benefit of qualified employees of all system companies pursuant to the requirements of the Tax Reduction Act of 1975, as amended by the Tax Reform Act of 1976. The value of shares of additional common stock issued to the trust currently equals 10% of the prior year's investment tax credit and will be funded (estimated to be $2.3 million for 1979) by the amount by which Allegheny's income taxes are reduced as a result of the additional 1% investment tax credit available to Allegheny pursuant to the Internal Revenue Code. The number of shares of additional common stock to which each qualified employee shall be entitled will be computed in proportion to the compensation of each of them (maximum $100,000 a year) to the total compensation of all such qualified employees in that year and the price of the shares will be equal to the daily average of the closing prices for the 20 business days preceding the day the stock is issued to the trust. All costs of administration of the TRASOP, in excess of those allowed by the Tax Reduction Act to be paid from contributions to the trust will be paid by Allegheny.

The proceeds from the issuance of the additional common stock under the Dividend Plan and the tax savings which will be realized as a result of the TRASOP, the total amount of which cannot be determined, will be added to Allegheny's general funds and are expected to be used to carry on its business as an electric utility holding company including the pre-payment, or payment at maturity of short-term debt then outstanding, and to acquire common stock and make capital contributions to and other investments in Allegheny system companies. On January 15, 1980 APS had $26.6 million of short-term debt outstanding and it is expected that on May 31, 1980, $40 million of short-term debt will be outstanding.

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated at $52,000, including legal fees of $5,000 and accounting fees of $4,000. The Maryland Public Service Commission has authorized the proposed transactions and the TRASOP has been qualified by the Internal Revenue Service. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21509), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21543/April 30, 1980

In the Matter of

MAINE YANKEE ATOMIC POWER COMPANY
9 Green Street
Augusta, Maine 04330

(70-5805)

NOTICE OF PROPOSED ISSUE AND SALE OF NOTES AND ISSUE OF GUARANTEES BY JOINTLY-OWNED SUBSIDIARY COMPANY, REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Maine Yankee Atomic Power Company ("Maine Yankee"), an electric utility and indirect subsidiary company of both New England Electric System and Northeast Utilities, both registered holding companies, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By prior order in this proceeding (HCAR No. 19657, August 23, 1976), Maine Yankee was authorized to issue and sell up to $35,000,000 aggregate principal amount of promissory notes to MYA Fuel Company ("Fuel Company"), a subsidiary of BSC Holdings Inc. ("BSC").

By post-effective amendment Maine Yankee requests authority to enter into a proposed First Amendment to the loan agreement between Maine Yankee and the Fuel Company dated as of August 26, 1976. Said First Amendment will increase the aggregate principal amount of loans which Fuel Company will make to Maine Yankee from $35,000,000 to $50,000,000 and the guarantee by Maine Yankee of certain obligations to be incurred by Fuel Company in connection with said additional amount of promissory notes. As of December 31, 1979, $33,450,000 of such loans were outstanding. It is stated that the purpose of the increase in the loan commitment is to make additional funds available in order to finance the acquisition of a part of the nuclear fuel which will be required to operate the plant and to repay bank indebtedness used to finance the acquisition of nuclear fuel used in the plant since it commenced operation. In connection with the First Amendment to the loan agreement, the Fuel Company and Manufacturers Hanover Trust Company will enter into a First Amendment to their credit agreement dated as of August 26, 1976 to increase the bank's commitment under said credit agreement from $35,000,000 to $50,000,000 and to reduce the fee charged by the bank for outstanding letters of credit from 1-1/4% to .95%.

The notes will be issued pursuant to a loan agreement ("loan agreement") between the Fuel Company and Maine Yankee. The period during which Fuel Company may make such loans will be extended beyond the initial five year period until 2002, unless three years' notice of a desire to have the obligation of Fuel Company to make loans under the loan agreement terminate at an earlier date is given by one party to the other. The notes will bear a stated maturity of 2002, but the notes will also become due and payable (i) upon the expiration of the term of the loan agreement, or (ii) 270 days after termination of the loan agreement by reason of certain events specified in the loan agreement. The notes may be prepaid at any time in whole or in part without premium or penalty.

Maine Yankee has also entered into a security agreement ("security agreement") with the Fuel Company concurrently with execution of the loan agreement. The security agreement provides that Maine Yankee mortgages, pledges and assigns a continuing security interest to Fuel Company in (i) certain nuclear fuel, as defined in the loan agreement, (ii) Maine Yankee's rights to receive and collect certain monthly payments under certain Capital Funds Agreements, as defined in the loan agreement. The security agreement states that such security interest is to be collateral security for the payment by Maine Yankee of all obligations incurred by Maine Yankee under the loan agreement.

The notes will bear interest in an amount equal to the Fuel Company's interest costs and other costs and expenses incurred by Fuel Company in connection with its loans to Maine Yankee plus 1/8 of 1% per annum of the aggregate principal amount of notes outstanding from time to time. The Fuel Company will finance its loans to Maine Yankee by the sale of the Fuel Company's commercial paper through Goldman, Sachs & Co., for which service the latter

will receive a discount of 1/8 of 1% per annum. Such commercial paper will be supported by letters of credit under a credit agreement ("credit agreement") between Fuel Company and Manufacturers Hanover Trust Company ("bank"). The initial term of the credit agreement will be 5 years, but it may be extended until 2002 under provisions similar to those governing the loan agreement. It is stated that the effective cost of the notes to Maine Yankee would be approximately 18.70% per annum, assuming Fuel Company finances the purchase of the notes entirely by the sale of commercial paper yielding 17.5%.

The credit agreement also authorizes Fuel Company to make direct borrowings from the bank so long as the aggregate principal amount of the outstanding letters of credit and direct borrowings does not exceed $50,000,000. The bank will charge a commitment fee of 1/8 of 1% per annum on the excess of the maximum credit available under the credit agreement over the aggregate of (i) the amount of commercial paper outstanding and (ii) the amount of direct borrowings by Fuel Company. The annual interest rate on direct borrowings will be 125% of the base rate ("base rate") in effect at the bank from time to time. The base rate will be the higher of the rate of interest charged by the bank on certain commercial loans ("prime rate") or the average rate for certain commercial paper. Assuming Fuel Company financed purchase of $50,000,000 in notes entirely through bank borrowings based on a prime rate of 19%, the effective cost of the notes would be 23.75%.

Maine Yankee further proposes to execute a guarantee of (i) the obligations of Fuel Company to make payments under the credit agreement and (ii) the payment of commercial paper which Fuel Company issues pursuant to the loan agreement.

Maine Yankee has sinking fund provisions applicable to its Series A, B and C First Mortgage Bonds. These sinking fund payments will aggregate $4,775,000 annually through the year 2001. Maine Yankee has only one nuclear generating plant and no additional generating facilities are planned by Maine Yankee.

It is requested that the issuance of such additional notes be exempt from the competitive bidding requirements of Rule 50 by virtue of paragraph (a)(5) thereof. The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Maine Public Utilities Commission has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 23, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21544/May 1, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York 10004

(70-5943)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN

American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder concerning the following transaction.

By orders dated February 8, 1977, April 19, 1978, March 29, 1979 and August 8, 1979 (HCAR Nos. 19879, 20506, 20979 and 21180) AEP was authorized to issue and sell, from time to time through April 30, 1980, up to 7,000,000 shares of its authorized but unissued common stock pursuant to its dividend reinvestment and stock purchase plan ("Plan"). AEP states that through March 11, 1980, a total of 5,695,467 shares had been issued and sold, leaving a balance of 1,304,533 shares available for issuance and sale.

The Plan basically provides that a participant may (1) purchase shares of common stock from AEP quarterly by automatically reinvesting cash dividends on all or less than all (a specified number) of shares of common stock registered in his name, or (2) purchase shares of common stock from AEP as often as once a month by making optional cash payments up to a maximum of $5,000 per calendar quarter, or (3) do both. The price of shares repurchased with reinvested cash dividends is 95% of the average of the daily high and low sales prices of AEP's common stock for the five trading days ending on the day of purchase. All full-time employees of AEP system companies may enroll in the Plan to purchase shares of common stock with optional cash payments even though they are not registered holders of any shares of AEP common stock, and, if they wish, may arrange to make optional cash payments through regular payroll deductions The minimum monthly deduction is $5 and the maximum is 10% of regular salary or wages or $1,000, whichever is less. No brokerage commissions or service charges are paid by participants in connection with purchases in the Plan. All costs of administration of the Plan are paid by AEP. A participant may change his option under the Plan at any time and may withdraw from the Plan at any time by giving written notice to the Morgan Guaranty Trust Company of New York (the "Agent"). Unless the Agent is otherwise directed, the participant, upon withdrawal receives a certificate for all whole shares credited to his account and cash payment for the value of any fractional share.

By post-effective amendment, AEP proposes to issue and sell, from time to time through June 30, 1981, up to an additional 5,000,000 shares of its authorized unissued common stock, $6.50 par value.

It is stated that the amounts of dividends reinvested each quarter under the Plan have grown continuously. The following table shows the actual amounts of dividends reinvested each quarter under the Plan during 1978, 1979 and the first quarter of 1980, and the amounts of dividends that may be reinvested (assuming continuation of the trend and without giving effect to the possible acquisition by AEP of Columbus and Southern Ohio Electric Company (CSOE)) during the remainder of 1980 and the first two quarters of 1981, based on a straight-line projection of the 1978-1980 data:

Quarter Ended	*Actual 1978*	*Actual 1979*	*Projected 1980*	*Projected 1981*
	(In thousands)			
Mar.	$4,840	$6,517	$9,951*	$12,100
June	5,031	7,246	10,100	12,700
Sep.	5,198	7,700	10,800	—
Dec.	5,866	9,176	11,400	—

**Actual*

Although the actual amount of reinvested dividends may vary from the above projections, approximately $57,100,000 of dividends may be reinvested during such period, requiring the issuance of up to 3,700,000 shares of common stock (based on 95% of the March 20, 1980 closing price of $16-1/4).

Optional cash payments by participants totalled approximately $15,077,000 in 1979 and $13,409,000 in 1978. Based on its estimates of future shareholder participation, AEP feels that the

proposed additional 5,000,000 shares of common stock, together with the remaining shares already authorized, is necessary to meet its anticipated requirements and provide a sufficient margin to meet unexpected contingencies, such as an extraordinary increase in participation in the Plan or extraordinary decrease in the market price of the common stock.

AEP requests an exemption from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction, exclusive of Agent fees estimated at $300,000, are estimated at $100,750, including printing expenses of $40,000, legal fees of $5,000 and accountant's fees of $5,000. No federal or state commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21507), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration be and hereby is granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) certificates thereunder shall be filed quarterly and shall disclose (a) for original issue shares, a summary of the number of shares issued to plan participants and the total net proceeds realized thereby, and (b) for market purchased shares (if any), the number of such shares sold to plan participants and the amount of any debits or credits to administrative costs of the plan which result from differences between the price at which such shares were purchased in the market and the price at which they are sold to plan participants, and (2) the certificate reporting the results of the last quarter of the calendar year shall also disclose a summary of the total expenses incurred, directly or indirectly, including the separate detail of any aggregate credits or debits discussed in (1)(a) above, by AEP for operating the Plan during the preceding calendar year.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21545/May 1, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
212 East Sixth Street
Tulsa, Oklahoma 74119

(70-6453)

NOTICE OF PROPOSED CHARTER AMENDMENTS AND ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

PSO proposes to amend its Amended Articles of Incorporation, as amended (the "Articles"), to authorize an increase in the proportion of permitted unsecured debt of PSO that may mature in less than 10 years. PSO proposes that the Articles be amended to allow it to incur unsecured obligations maturing in less than ten years ("short-term debt") up to an amount not to exceed 20% of the sum of PSO's total secured debt, capital stock and surplus ("total capitalization"), provided that after June 30, 1985, short-term debt outstanding and not maturing

prior to July 1, 1986 could not exceed 10% of total capitalization without the approval of the holders of a majority of the Preferred Stock outstanding. The proposed amendment would reinstate that restriction on incurring short-term debt after June 30, 1985. The purpose of the proposed amendment is to increase the alternatives available to PSO in meeting its financing needs. As of March 31, 1980, the existing short-term debt limitations of the Articles restricted the amount of short-term debt that PSO could have outstanding to a total of approximately $91,000,000.

PSO's estimated construction and fuel exploration and development expenditures (inclusive of allowance for funds used during construction) total $197,000,000 for 1980 and $185,000,000 for 1981, respectively. In order to continue to pay ongoing construction expenditures PSO has secured a ten year $90,000,000 non-negotiable loan from six major banks. The principal amount of the notes is due May 15, 1990 and interest is payable quarterly. This loan along with PSO's currently outstanding short-term borrowings of $90,000,000 is the maximum amount of unsecured debt PSO may issue. The bank notes are prepayable at any time without penalty. The amendment will still limit PSO's unsecured obligations to a total of $180,000,000, but as a result of the amendment, all such borrowings could be short-term debt. The proposed amendment would give PSO the ability to prepay the bank notes at any time with short-term debt. Such prepayment would occur if in PSO's opinion it were economically in PSO's best interest.

PSO proposes to call a special meeting of its shareholders (both Preferred Stock and Common Stock) to be held on or about June 9, 1980 to consider and vote upon the adoption of the proposed amendment. PSO proposes to mail the Notice and Proxy Statement, together with Proxy, on or about May 9, 1980, to all shareholders of record on the books of PSO at the close of business on April 30, 1980.

Each share of Common Stock is entitled to one vote with respect to the amendment and each share of Preferred Stock is entitled to ten votes with respect to the amendment. Under Oklahoma law and the terms of the Articles, the proposed amendment requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of Preferred Stock (voting as a class) entitled to vote at the meeting and the affirmative vote of the holders of at least a majority of the votes of the outstanding shares of Preferred Stock and Common Stock (voting together) entitled to vote at the meeting. CSW is the holder of all 10,482,000 outstanding shares of PSO's Common Stock and had indicated its intention to vote such shares in favor of the proposed amendment.

Fees and expenses to be incurred in connection with the proposed transaction are estimated at $11,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed, or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes to solicitation of proxies from PSO's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration regarding the proposed solicitation of proxies of PSO's stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21546/May 1, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

(70-6436)

ORDER AUTHORIZING HOLDING COMPANY TO ISSUE UNSECURED NOTES TO BANKS; EXCEPTION FROM COMPETITIVE BIDDING

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder regarding the following proposed transactions.

Columbia's operating subsidiaries are principally engaged in one or more phases of the natural gas business, including: exploration and development of hydrocarbon reserves (principally natural gas), production, purchase storage, transmission, distribution and wholesale and retail sale of natural gas, production of synthetic gas from hydrocarbon feedstock, importation and regasification of liquified natural gas, research and development of coal gasification and production and sale of propane and other extracted hydrocarbon products. It is presently estimated that up to $200,000,000 of long-term capital will be required during 1980 in order to finance the 1980 capital expenditures programs of Columbia's subsidiaries. (See File 70-6435)

Columbia seeks authorization to issue up to an aggregate principal amount of $200,000,000 of unsecured subordinated promissory notes to a group of commercial banks under a Revolving Credit and Term Loan Agreement ("Agreement"). This Agreement would provide a "back up" line of credit. Columbia states that in view of the current disarray in the bond markets, such a line of credit is necessary in the event it becomes impractical or uneconomic to sell its debentures and to provide flexibility as to the timing of any such sales. The net proceeds from the borrowings will be added to the general funds of Columbia, which, together with funds then available and funds subsequently generated from operations, will be used to provide the necessary capital for the programs of its subsidiaries.

The bank borrowings will be made from the following banks up to the maximum amounts set forth below:

Bank	*Amount*
Morgan Guaranty Trust Company of New York	$75,000,000
Bankers Trust Company	40,000,000
Manufacturers Hanover Trust Company	25,000,000
Chemical Bank	20,000,000
Bank of Montreal Trust Company	10,000,000
First City Bank of Houston	10,000,000
BancOhio National Bank	10,000,000
Continental Illinois National Bank and Trust Company of Chicago	10,000,000
Total	$200,000,000

The Agreement will provide for two forms of notes: a Revolving Credit Note and a Term Note (collectively, the "Notes"). The Revolving Credit Note for each participating bank will be the lesser of the aggregate amount of its Commitment or the aggregate unpaid principal amount of all loans made by such bank, will mature April 1, 1985, and will provide for prepayment and reborrowing throughout the revolving period. Under the Agreement, each bank agrees to lend on April 1, 1985, an amount not to exceed its commitment; however, to the extent necessary, each bank shall apply any portion of the proceeds to repay any outstanding balance on the Revolving Credit Notes. The Term Notes will be dated April 1, 1985, and will mature on March 31, 1987. The Revolving Credit Note will bear interest at the Fluctuating Prime Commercial Lending Rate of Morgan Guaranty Trust Company of New York ("Prime") during the first three years, and at 103% times Prime during the fourth and fifth years. The Term Note will bear interest at 105% times Prime. Under the terms of the Agreement, Columbia would pay a fee of 2% per annum of the Prime times the aggregate amount of the line plus 1/2 of 1% per annum of the unused portion of the line. If half the line of credit were borrowed, the effective cost of borrowing would be 19.74% during the first three

years, 20.295% during the fourth and fifth years and 20.665% during the sixth and seventh years, based upon a prime commercial rate of 18½%.

No amortization will be required on the Notes and they may be prepaid in whole or in part at any time without penalty. The Notes will be subordinated to the debentures of Columbia presently outstanding or to be outstanding under the Indenture dated as of June 1, 1961, between Columbia and Morgan Guaranty Trust Company of New York, Trustee.

Columbia requests exception from the competitive bidding requirements of Rule 50 pursuant to clause (a)(2) thereof. In this connection, Columbia states that the Notes will have a maturity of ten years or less, will be issued to a commercial bank and no fee or remuneration is to be paid to any third person for negotiating the arrangement.

The fees and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $22,000, including services of Columbia Gas System Service Corporation of $10,000 and estimated legal fees of $10,000 to be paid by Columbia to counsel for the banks. No state commission and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21516), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21547/May 1, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

(70-6437)

NOTICE OF PROPOSAL TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to issue notes to banks and commercial paper to dealers from time to time through May 31, 1981. The aggregate amount of bank borrowings and commercial paper will not exceed $335,000,000 at any one time outstanding. At present Columbia is authorized to make short-term borrowings in a maximum aggregate principal amount of $270,000,000 through May 31, 1980 pursuant to the Commission's order of August 22, 1979 (HCAR No. 21196). Columbia has no short-term notes outstanding pursuant to such authorization.

The proposed transaction is designed to enable Columbia to furnish funds to its subsidiary companies for purchase of gas for underground storage and liquid hydrocarbon inventories and for other short-term requirements. A separate application (File No. 70-6435) has been filed with this Commission seeking authorization to furnish such funds to its subsidiaries. The short-term gas and liquid hydrocarbon requirements of approximately $346,100,000 may make it necessary to have outstanding at any one time through May 31, 1981, short-term notes in the aggregate amount of $335,000,000.

Columbia may sell commercial paper to one or more

commercial paper dealers and continue to do so as long as the effective interest rate on such commercial paper is less than the effective interest cost which Columbia would have to pay to the banks for an equivalent amount of funds as of the date of borrowing except that, in order to obtain greater flexibility, commercial paper may be issued with a maturity of not more than 60 days from the date of issue with an effective interest cost in excess of the effective interest cost on bank borrowings.

Commercial paper will be issued by Columbia in denominations of not less than $50,000 nor more than $5,000,000 and will be reoffered by the dealer or dealers in such a manner as not to constitute a public offering. Such commercial paper will be sold by Columbia to the dealer or dealers at a discount rate which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of that particular maturity and rating, sold by issuers thereof to commercial paper dealers. No commission or fee will be payable by Columbia in connection with the issuance and sale of such commercial paper. The purchasing dealer, however, will reoffer such notes at a discount rate of 1/10 of 1% per annum less than such discount rate to the issuer.

The commercial paper will be reoffered by the commercial paper dealer or dealers to not more than 200 of their customers (a total of 200 customers if more than one dealer) identified and designated in non-public lists of institutional investors prepared in advance by each of them for this purpose. It is expected that Columbia's commercial paper will be held by customers to maturity, but if they wish to resell prior thereto, the commercial paper dealer, pursuant to repurchase agreement, will repurchase the notes and reoffer the same to others in this designated list of customers.

The commercial paper shall be in the form of a promissory note with maturities to be determined by market conditions, effective interest cost to Columbia and Columbia's anticipated cash requirements at the time of issuance. The commercial paper to be issued by Columbia, in accordance with the established custom and practices in the market, would not be payable prior to maturity.

For short-term purposes, Columbia intends to secure credit lines from banks in an aggregate amount of up to $335,000,000. Borrowings under these lines of credit will be repaid by May 31, 1981. Columbia will also have the right to prepay any or all of such bank notes, in whole or in part, without penalty. Columbia is currently negotiating credit line terms with banks and the results of such negotiations, credit line terms and a list of participating banks will be filed by amendment.

The fees, commissions and expenses to be incurred by Columbia in connection with the proposed transaction are estimated at $25,000, including rating fees of $21,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939
Release No. 564/April 25, 1980

An order has been issued under the Trust Indenture Act of 1939 on an application of Chrysler Corporation and Chrysler Overseas Capital Corporation that the trusteeship of J. Henry Schroder Bank and Trust Company under two indentures qualified under the Act and under two indentures not so qualified are not so likely to involve a material conflict of interest as to make it necessary to disqualify the J. Henry Schroder Bank and Trust Company from acting as trustee.

TRUST INDENTURE ACT OF 1939
Release No. 565/May 1, 1980

In the Matter of

TRANS WORLD AIRLINES, INC.

File No. 22-10302

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until May 23, 1980 to request a hearing on an application by Trans World Airlines, Inc. ("Applicant") pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") declaring that the trusteeships of The Bank of New York (the "Bank") under (1) an existing Trust Indenture, which is qualified under the Act, (2) an Equipment Trust Agreement, and (3) an Indenture of Mortgage, neither of which is qualified under the Act, and the agency of the Bank under a Pledge Agreement, which is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Trust Indenture.

INVESTMENT COMPANY ACT OF 1940
Release No. 11122A/May 1, 1980

In the Matter of

D. L. BABSON MONEY MARKET FUND, INC.
2440 Pershing Road
Kansas City, Missouri 64108

(812-4578)

ERRATA:

This is to correct an error made in Investment Company Act Release No. 11122, issued on April 8, 1980, In the Matter of D. L. Babson Money Market Fund, Inc. (812-4578). The first condition in paragraph four of the release reads as follows:

"1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's shares as computed for purposes of distribution, redemption and repurchases, rounded to the nearest one cent, will not deviate from $1.00;"

This condition in paragraph four of the release should be changed to read as follows (changes italicized):

"1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's *investment objective, that the price per share of Applicant's* shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;"

The above change in paragraph four of the release is hereby incorporated into said release.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11140/April 25, 1980

In the Matter of

CENTENNIAL CAPITAL CASH MANAGEMENT TRUST
One New York Plaza
New York, New York 10004

(812-4426)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING PRIOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

Centennial Capital Cash Management Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on November 2, 1979, and an amendment thereto on March 11, 1980, requesting an order of the Commission amending a prior order of the Commission dated July 13, 1979 (Investment Company Act Release No. 10777) which exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. Applicant, in such prior order, consented that in order to attempt to assure the stability of its net asset value per share it would adhere to the following conditions:

(1) Applicant's Trustees, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not purchase a portfolio security unless it matures in twelve months or less from the date of purchase or is subject to a repurchase agreement so maturing, or has been called for redemption within twelve months where Applicant's investment adviser shall have determined that the risk that such redemption will not take place is minimal; nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Applicant will invest only in obligations issued or guaranteed by the U.S. government or its agencies or instrumentalities; bank time deposits, certificates of deposit, bankers acceptances and other bank obligations; high-grade commercial paper and other debt obligations rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Service, Inc. or issued by companies having an outstanding debt issue rated at least "AA" by Standard & Poor's Corporation or at least "Aa" by Moody's Investors Service, Inc.; other obligations accompanied by a guarantee of principal and interest issued by a bank or corporation whose certificates of deposit or commercial paper may otherwise be purchased; such obligations and guarantees must be due within twelve months or less from the date of purchase; and repurchase agreements for the obligations of the types listed above. Investments in bank time deposits, certificates of deposit, bankers acceptances and other bank obligations are limited to domestic banks or savings and loan associations subject to regulation by the U.S. government having in excess of U.S. $1 billion in total assets. Investments in repurchase agreements are limited to transactions with a financial institution believed by Applicant's investment adviser to present minimal credit risks.

The amended order would delete condition (3) of the prior order as set forth above and substitute in its place the following condition (3):

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars

and which the Trustees of Applicant determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

On March 24, 1980, a notice (Investment Company Act Release No. 11100) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated July 13, 1979, contained in Investment Company Act Release No. 10777 to the extent requested, be and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11141/April 25, 1980

In the Matter of

OPPENHEIMER MONETARY BRIDGE, INC.
One New York Plaza
New York, New York 10004

(812-4425)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING PRIOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

Oppenheimer Monetary Bridge, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on November 2, 1979, and an amendment thereto on March 11, 1980, requesting an order of the Commission amending a prior order of the Commission dated July 13, 1979 (Investment Company Act Release No. 10776) which exempted Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. Applicant, in such prior order, consented that in order to attempt to assure the stability of its net asset value per share it would adhere to the following conditions:

(1) Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

(2) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not purchase a portfolio security unless it matures in one year or less or is subject to a repurchase agreement, the delivery under which does not exceed one year, or has been called for redemption within one year where Applicant's investment adviser shall have determined that the risk that such redemption will not take place is minimal; nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

(3) Applicant will invest only in debt obligations payable in dollars issued or guaranteed by the federal government, federal governmental agencies, or certain banks, savings and loan associations, and corporations. Investments in banking obligations will be limited to certificates of deposit issued by domestic banks or savings and loan associations which have total assets in excess of $1 billion and bankers acceptances or letters of credit guaranteed by U.S. commercial banks having total assets in

excess of $1 billion. The commercial paper purchased by Applicant shall be (i) rated Prime-1 or Prime-2 by Moody's Investors Service, Inc., or A-1 or A-2 by Standard & Poor's Corporation, or (ii) issued by companies having an outstanding debt issued rated at least Aa by Moody's Investors Service, Inc. or at least AA by Standard & Poor's Corporation. Other obligations purchased by Applicant will be either debt instruments issued by domestic corporations rated Aa or better by Moody's Investor Services, Inc., or AA or better by Standard & Poor's Corporation or obligations issued by other entities accompanied by a guarantee of principal and interest by a bank or corporation whose certificates of deposit or commercial paper may otherwise be purchased by Applicant. Investments in repurchase agreements will be limited to transactions with a financial institution believed by Applicant's investment adviser to present minimal credit risks.

The amended order would delete condition (3) of the prior order as set forth above and substitute in its place the following condition (3):

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors of Applicant determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

On March 24, 1980, a notice (Investment Company Act Release No. 11099) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated July 13, 1979, contained in Investment Company Act Release No. 10776 to the extent requested, be and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11142/April 25, 1980

In the Matter of

FIDELITY FUND, PURITAN FUND
FIDELITY TREND FUND, SALEM FUND
FIDELITY EQUITY-INCOME FUND
CONTRAFUND, CONGRESS STREET FUND
MAGELLAN FUND, FIDELITY DESTINY FUND
FIDELITY CORPORATE BOND FUND
FIDELITY DAILY INCOME TRUST
FIDELITY THRIFT TRUST
FIDELITY LIMITED TERM MUNICIPALS
FIDELITY MUNICIPAL BOND FUND
FIDELITY AGGRESSIVE INCOME FUND
FIDELITY HIGH YIELD MUNICIPALS
FIDELITY ASSET INVESTMENT TRUST
FIDELITY MONEY MARKET TRUST
FIDELITY GOVERNMENT SECURITIES FUND
FIDELITY CASH RESERVES
FIDELITY TAX-EXEMPT MONEY MARKET TRUST
FIDELITY TRIAD FUND

82 Devonshire Street
Boston, Massachusetts 02109

(812-4565)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 2(a)(19) OF THE ACT AND PURSUANT TO SECTION 10(f) OF THE ACT EXEMPTING CERTAIN TRANSACTIONS FROM THE PROVISIONS OF SECTION 10(f) OF THE ACT

Fidelity Fund, Puritan Fund, Fidelity Trend Fund, Salem Fund, Fidelity Equity-Income Fund, Contrafund, Congress Street Fund, Magellan Fund, Fidelity Destiny Fund, Fidelity Corporate Bond Fund, Fidelity Daily Income Trust, Fidelity Thrift Trust, Fidelity Limited Term Municipals, Fidelity Municipal

Bond Fund, Fidelity Aggressive Income Fund, Fidelity High Yield Municipals, Fidelity Asset Investment Trust, Fidelity Money Market Trust, Fidelity Government Securities Fund, Fidelity Cash Reserves, Fidelity Tax-Exempt Money Market Trust and Fidelity Triad Fund ("Applicants"), each an open-end investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on November 9, 1979, and amendments thereto on January 21, 1980, and February 29, 1980, pursuant to Section 6(c) of the Act, for an order of the Commission declaring that Bertram H. Witham, Jr., a director, trustee or general partner of Applicants, shall not be deemed to be an interested person of Applicants within the meaning of Section 2(a)(19) of the Act solely by reason of his status as a consultant to Merrill Lynch International Incorporated, a holding and management company all of whose stock is held by Merrill Lynch & Co., and, pursuant to Section 10(f) of the Act, for an order exempting certain transactions of Applicants from the provisions of Section 10(f) of the Act so as to permit Applicants to purchase securities in public offerings in which Merrill Lynch, Pierce, Fenner & Smith, Inc., which may be deemed to be an affiliated person of Mr. Witham, participates as a principal underwriter.

On March 28, 1980, a notice (Investment Company Act Release No. 11107) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(19) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 10(f) of the Act, that the application for exemption from the provisions of Section 10(f) of the Act, to the extent requested, be, and hereby is granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11143/April 29, 1980

In the Matter of

BEAR, STEARNS & CO.
NEW YORK MUNICIPAL TRUST,
(Series 1 and Subsequent Series)
MUNICIPAL SECURITIES TRUST
(Series 1 and Subsequent Series)

and

A CORPORATE TRUST
(Series 1 and Subsequent Series)
55 Water Street
New York, New York 10041

(812-4542)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 22(d) OF THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT APPROVING PROPOSED EXCHANGE OF SHARES

NOTICE IS HEREBY GIVEN that Bear, Stearns & Co. ("Bear, Stearns"), a partnership formed under the laws of New York, Municipal Securities Trust, Series 1 and subsequent series ("Municipal"), New York Municipal Trust, Series 1 and subsequent series ("New York Municipal"), and A Corporate Trust, Series 1 and subsequent series ("Corporate") (Municipal, New York Municipal and Corporate, as well as unit investment trusts organized and sponsored by Bear, Stearns in the future, are collectively referred to as the "Trusts"), each registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (Trusts and Bear, Stearns are collectively referred to as "Applicants"), filed an application on October 1, 1979, and amendments thereto on December 13, 1979, and February 1, 1980, pursuant to Section 6(c) of the Act, for an order of the Commission

exempting certain transactions from the provisions of Section 22(d) of the Act and pursuant to Section 11(a) of the Act, for an order approving certain exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Bear, Stearns is the sponsor of successive series of Municipal, New York Municipal and Corporate, each series being a separate unit investment trust. According to the application, the underlying portfolios of Municipal consist of general market tax exempt bonds; the underlying portfolios of New York Municipal consist of New York and Puerto Rico tax exempt bonds; and the underlying portfolio of Corporate consists of taxable bonds of corporations and governmental entities. Additionally, the application states that units of each Trust are distributed to the public through an underwriting syndicate (with Bear, Stearns accounting for the largest distribution to retail customers), with a sales charge of 4½% (approximately $45 per unit), which is modified by a volume discount of $5 per unit on purchases of 100 to 499 units, $10 per unit on purchases of 500 to 999 units and $20 per unit on purchases of 1,000 units or more by the same person during the initial public offering period. Moreover, Applicants state that although not obligated to do so, Bear, Stearns has maintained and intends to maintain in the future a secondary market in units of each Trust based upon the aggregate offering price of the underlying bonds in each Trust. As stated by Applicants, units purchased by Bear, Stearns in the secondary market may be reoffered to the public at the then current aggregate offering price of the underlying bonds plus the applicable sales charge or Bear, Stearns may tender the shares to the Trustee for redemption; absent the maintenance of a secondary market by Bear, Stearns, units of the Trust could be tendered to the Trustee for redemption at any time, but the redemption price is based on the aggregate bid price of the underlying bonds which is generally 1½ to 2% below the aggregate offering price of the bonds.

Applicants have requested an exemption from the provisions of Section 22(d) of the Act and approval under Section 11(a) of the Act to permit unit owners of "Redemption Trust" to participate in a proposed "Conversion Offer." As stated in the application, Redemption Trusts are registered unit investment trusts for which no active secondary markets in units of such trusts exist. According to the application, all unit owners of all Redemption Trusts will be eligible to participate in the Conversion Offer, regardless of whether any such unit owners are or were retail customers of Bear, Stearns or whether or not Bear, Stearns participated as an underwriter or selling dealer in the original public offering of any units of such Redemption Trust. Applicants state that under the Conversion Offer unit owners of Redemption Trusts, following a redemption of such units, will be permitted to apply the redemption proceeds toward the purchase of units of any of the Trusts at the net offering side evaluation of such units, plus a fixed sales charge of $15 per unit.

The proposed Conversion Offer, as stated by Applicants, will be effected in the following manner. The Conversion Offer will be made by means of the current prospectus for each Trust. When a unit owner of a Redemption Trust indicates interest in the Conversion Offer, either directly to Bear, Stearns or indirectly through a retail broker, the unit owner will be furnished a current prospectus of the Trust describing the Conversion Offer. The unit owner who elects to participate in the Conversion Offer will then place two orders with his retail broker: (1) an order to redeem the Redemption Trust units (the customer must then deliver his Redemption Trust unit certificates to his broker to be turned in to the trustee for redemption) and (2) an order to purchase units of any of the Trusts. The broker, in effecting this purchase, must certify to Bear, Stearns that the purchase is made pursuant to the Conversion Offer, thereby entitling the customer to the $15 per unit fixed sales charge rather than the full sales load charged on Trust units sold in regular transactions. Applicants also state that under the Conversion Offer, units of the Trusts will be sold at the current per unit offering side evaluation; that such trust units may be from either a current primary distribution or from Bear, Stearns's secondary market; and that Redemption Trust unit owners participating in the Conversion Offer may purchase only up to the nearest whole number of units of any Trust that is equal to but not more in value than, the redemption proceeds.

Applicants have also requested an exemption from the provisions of Section 22(d) of the Act and approval under Section 11(a) of the Act to permit Applicants to offer to unit owners of any of the Trusts in which Bear, Stearns is maintaining an active secondary market an "Exchange Privilege." Applicants state that pursuant to this Exchange Privilege, Trust unit owners would be entitled to sell

units of a Trust to Bear, Stearns and simultaneously purchase from Bear, Stearns units of another Trust at a fixed, reduced sales charge of $15, provided that: (1) Bear, Stearns is maintaining a secondary market in the units of the Trust held by the unit owner, and (2) units of the "Exchange Trust" (the Trust into which the unit owner wishes to convert) are available for sale, either from the initial public offering or in the secondary market. Applicants also state that the price of both the repurchase of the original units and the purchase of the Exchange Trust units will be based on the aggregate offering side evaluation of the units in the respective Trust. Applicants state that although Bear, Stearns has indicated that it intends to maintain a secondary market for the units of all Trusts sponsored by it, it is under no obligation to continue the maintenance of such a market and expressly reserves the right to discontinue the secondary market for any Trust or series thereof.

According to the application, the Exchange Privilege will operate in the following manner: (1) the unit owner must notify Bear, Stearns of his desire to sell his units and to apply the proceeds from the sale to the purchase of units of an Exchange Trust; (2) if units of one or more Exchange Trusts are available for sale at that time, the unit owner will be provided a current prospectus relating to each Exchange Trust in which he indicates interest; (3) if the unit owner elects to exercise the Exchange Privilege, his units will be repurchased at a price based on the aggregate offering side evaluation of the underlying bonds of the Trust, and units of the Exchange Trust will be sold at a price based on the aggregate offering side evaluation of the underlying bonds in the Exchange Trust, plus accrued interest and a $15 sale charge. Applicants state that transactions effected pursuant to this Exchange Offer will be effected only in whole units; that any proceeds not used to acquire whole units will be remitted to the selling unit owner.

As stated in the application, Bear, Stearns reserves the right to increase the sales charge on both the Conversion Offer and the Exchange Privilege in the future if the proposed charge should prove to be inadequate. Applicants state, however, that any such increase will only be made to reflect actual cost increases and expenses of administering the program and in no event will the sales charge be increased from $15 a unit to more than $20 per unit.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered open-end investment company or any principal underwriter for such company to make, or to cause to be made, an offer to the holder of a security of such company or of any other open-end investment company, to exchange such security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides, among other things, that the provisions of Section 11(a) shall be applicable, irrespective of the basis of the exchange, to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current public offering price described in the prospectus.

Applicants submit that the proposed $15 per unit sales charge will fairly and adequately compensate Bear, Stearns and the participating underwriters and brokers for their services and expenses and will be apportioned as follows: Bear, Stearns will retain $10 per unit on each transaction and pass on a broker's allowance of $5. Applicants indicate that this is approximately the same net return to Bear, Stearns as it realizes from sales of units in the primary distribution of a newly organized Trust at a 4½ percent full sales charge (approximately $45) after deducting the broker's discount of $30 and absorbing the organizational, advertising and selling expenses incurred in connection with the organization, registration and public offering of each new Trust. Applicants also submit that the $5 allowed the broker fairly compensates the broker for its advice and services, as unit owners of existing trusts are customers whose essential investment needs have been identified and who have been educated regarding the nature of an investment in a unit investment trust. Thus, it is expected that: (1) they will require less advice than an investor acquiring an interest in an entirely different kind of investment and (2) there may be no need to prepare special advertising or sales literature.

Applicants submit that the Conversion Offer and Exchange Privilege would benefit the unit owners by enabling investors whose investment needs or tax situation may have changed to convert their

investments at a reduced sales charge. Applicants also submit that allowing investors to purchase units of a Trust at a reduced sales charge is fair also to investors who purchase or have purchased units of the Trusts in regular transactions subject to the full sales charge, as participants in the Conversion Offer or Exchange Privilege already have paid a full sales load on their original purchase of units.

Applicants further submit that the Conversion Offer will have a minimal, if any, competitive effect on the unit trust market and will not cause a significant acceleration in the redemption rate of Redemption Trust units for the following reasons: (1) the Conversion Offer will be available only to a very limited class of people (those holding units of Redemption Trusts); (2) those persons will not be induced or encouraged to participate in the Conversion Offer through an active advertising or sales campaign; rather, Bear, Stearns anticipates that eligible investors will be made aware of the program through their retail brokers in response to customers' inquiries as to an opportunity to convert their investment to an active, ongoing unit trust without having to suffer the economic loss of redeeming units at the bid side and, in addition, having to pay a full sales load on the purchase of units of an active trust; and (3) the Conversion Offer program is, thus, more in the nature of a service to investors.

Moreover, Applicants submit that the Conversion Offer program will not have the effect of encouraging competing sponsors of unit trusts to go after the customers of other active unit trusts because, by definition of the Conversion Offer, the sponsors of Redemption Trusts are no longer maintaining a service that is vital to the continued existence of the trusts (by discontinuing the secondary market, they have insured that the size of the trusts will be reduced to meet redemptions and that eventually, when each trust drops below the minimum liquidation amount, it may be liquidated in total by the sponsor and the trustee). Applicants contend that if a sponsor is concerned about any loss of customers through the Conversion Offer, it merely has to reinstitute a secondary market in the trust and the unit holders will no longer be in the class eligible to participate in the Conversion Offer.

Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11144/April 29, 1980

In the Matter of

AMERICAN VARIABLE ANNUITY LIFE ASSURANCE COMPANY

AND

AMERICAN VARIABLE ANNUITY LIFE ASSURANCE COMPANY SEPARATE ACCOUNTS D, E AND F
440 Lincoln Street
Worcester, MA 01605

(812-4641)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 26(a) AND 27(c)(2) OF THE ACT

American Variable Annuity Life Assurance Company (the "Company"), and American Variable Annuity Life Assurance Company Separate Accounts D, E and F (the "Separate Accounts"), separate accounts of the Company registered collectively as a unit investment trust under the Investment Company Act of 1940 (the "Act") filed an application on March 25, 1980 for an order of the Commission pursuant to Section 6(c) of the Act exempting the Company and the Separate Accounts (collectively referred to as "Applicants") from Sections 26(a) and 27(c)(2) of the Act and pursuant to Section 11 of the Act approving certain offers of exchange.

On March 31, 1980 a notice was issued (Investment Company Act Release No. 11110) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, and, pursuant to Section 6(c) of the Act, that the exemptions from Sections 26(a)(2) and 27(c)(2) be, and hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11145/April 29, 1980

In the Matter of

NARRAGANSETT CAPITAL CORPORATION
40 Westminster Street
Providence, Rhode Island 02903

and

PHOTO SYSTEMS, INC.
7200 West Huron River Drive
Dexter, Michigan 48130

(812-4499)

NOTICE OF FILING OF APPLICATION FOR AMENDMENT OF PRIOR ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING JOINT TRANSACTION

NOTICE IS HEREBY GIVEN that Narragansett Capital Corporation ("Narragansett"), a closed-end, non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act") and a licensed small business investment company under the Small Business Act of 1958, and Photo Systems, Inc. ("Photo Systems"), a company presumed to be controlled by Narragansett (hereinafter Narragansett and Photo Systems are collectively referred to as "Applicants") filed an application on March 13, 1980, and an amendment thereto on April 28, 1980 ("Application"), for an order of the Commission pursuant to Sections 17(b) and 17(d) of the Act and

Rule 17d-1 thereunder amending a prior order dated February 11, 1980 (Investment Company Act Release No. 11043). This prior order exempted from the provisions of Section 17(a) of the Act and permitted under Section 17(d) of the Act and Rule 17d-1 thereunder certain proposed transactions to be made in connection with the proposed restructuring of Narragansett's investment in Photo Systems. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On June 26, 1979, Applicants filed an application ("Original Application") pursuant to Sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder for an order exempting from the provisions of Section 17(a) and permitting under Section 17(d) and Rule 17d-1 the proposed restructuring of Narragansett's investment in Photo Systems. According to the Original Application, on June 15, 1979, the Applicants entered into a Redemption and Refinancing Agreement ("Agreement") which would have resulted in the restructuring of Narragansett's investments in Photo Systems by (a) the redemption of a portion of the Photo Systems common stock held by Narragansett, with the effect of reducing Narragansett's percentage ownership of outstanding voting stock from approximately 77% to 52%, and (b) the refinancing of the balance of the outstanding indebtedness of Photo Systems to Narranganset, plus the financing of substantially all of the purchase price of the stock to be redeemed. As set forth in the Original Application, Photo Systems would be restructured and refinanced in the following manner. Photo Systems would purchase 550,000 of the 800,000 shares of Photo Systems Class B Common Stock held by Narragansett for an aggregate purchase price of $550,000. The purchase price would be payable by delivery to Narragansett of a cash payment of $5,000 and a promissory note of Photo Systems ("Redemption Note") for the remaining $545,000, plus the currently outstanding balance on the promissory note issued by Photo Systems in 1976. Applicants stated that such Redemption Note would be due August 1, 1984, would carry an interest rate of 12% per annum, would be payable during each fiscal year in an amount equal to 20% of Photo Systems' after-tax earnings for the preceding fiscal year, and would be subordinated, with respect to principal and interest, to Photo Systems' indebtedness to Industrial National Bank of Rhode Island ("Bank").

On February 11, 1980, an order was issued ("Order") (Investment Company Act Release No. 11043) pursuant to Sections 17(b) and 17(d) of the Act exempting from the provisions of Section 17(a) of the Act and permitting pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder the proposed restructuring and refinancing of Photo Systems. However, Applicants state that Narragansett determined not to consummate the proposed transactions as contemplated for the following reasons. First it became clear that the proposed redemption transaction would probably be treated for federal income tax purposes as a dividend to Narragansett of a substantial sum, notwithstanding the fact that Narragansett would receive very little of the redemption price in cash, thereby requiring Narragansett, since it intends to continue to qualify as a "regulated investment company" under the Internal Revenue Code of 1954 (which means that Narragansett must distribute on a current basis no less than 90% of its operating income), to make a substantial distribution to shareholders as a result of the Photo Systems transaction. Applicants state that in such an event the taxable income of Narragansett during 1980 might exceed its cash income by a material amount and that the distribution would have to be made from other sources of cash. Secondly, the tax basis and other tax attributes of the remaining investment in Photo Systems would vary materially from that which was originally intended.

Applicants state that following Narragansett's decision not to consummate the proposed transactions as set forth in the Original Application, Narragansett approached Photo Systems with a proposal to amend the terms of the proposed restructuring. Applicants further state that on February 11, 1980, Narragansett and Photo Systems entered into an amendment to the Agreement ("Amendment") which provided for the following amendments and/or modifications: (1) the number of shares subject to the redemption transaction was increased by 20,000 shares ("Additional Shares"), from 550,000 to 570,000 shares, with the price remaining fixed at $1.00 per share; (2) the purchase price of the additional shares was to be paid by increasing the principal amount of the Redemption Note by $20,000; (3) the amortization schedule annexed to the Redemption Note to be delivered at closing was revised to reflect the delay in consummating the transactions and to revise the monthly allocations of principal payments due; (4) the Redemption Note was to be made subordinate, additionally, to any short-term indebtedness of

Photo Systems to the Bank up to $200,000 (plus any interest, expenses and fees payable in connection therewith); (5) the obligations of the parties were to be expressly conditioned upon the issuance of the amended order sought in the Application; (6) the obligations of Narragansett were conditioned upon the entering into by Narragansett and the principal management stockholders of Photo Systems ("Individual Stockholders") of a "Voting Agreement," the terms of which are described below; (7) the effective date of the redemption transaction was to be fixed at February 11, 1980, which is the date of the issuance of the Order and the date upon which the transactions covered by this Application would have been effective had they been consummated on the terms set forth in the Original Application; and (8) the Voting Agreement will not become effective until this order is issued. Applicants indicate that in all other respects the terms of the Agreement were ratified and confirmed.

As set forth in the Application, the Voting Agreement specifies the composition and method of selection of the Photo Systems Board of Directors ("Board") through the following provisions: (1) The number of members of the Board is to be fixed at five, of whom two are to be designees of Narragansett and two are to be designees of the Individual Stockholders, with the remaining director to be selected by the majority in interest of the holders of all Photo Systems voting stock; (2) In the event that no person is able to obtain the votes of a majority in interest of the voting stock, the Board is to be reduced to four with two each to be designees of Narragansett and the Individual Stockholders; and (3) In the event of default under the Redemption Note, Narragansett may, at its option so long as such default remains uncured, require that the number of members of the Board be fixed at five, of whom three are to be designees of Narragansett and the remaining two are to be designees of the Individual Stockholders.

Section 2(a)(3) of the Act includes within the definition of "affiliated person" of another person: (1) any person owning five percent or more of the outstanding voting securities of such other person; (2) any person five percent or more of whose outstanding voting securities are owned by such other person; (3) any officer, director or employee of such other person; and (4) any person controlled by such other person. Section 2(a)(9) of the Act provides, in part, that any person owning, directly or indirectly, more than 25 percent of the voting securities of a company shall be presumed to control such company. Accordingly, Applicants stated in the Original Application that: (1) Photo Systems is an affiliate of and, by virtue of Narragansett's ownership of 77.7% of Photo Systems' outstanding voting securities, presumed to be controlled by Narragansett; and (2) Narragansett is an affiliate of Photo Systems. In addition, the Application states that the Individual Stockholders are all affiliated persons of an affiliated person (Photo Systems) of Narragansett by virtue of their being the principal management employees of Photo Systems.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to purchase from or sell to such registered company or any company controlled by such registered company, any security or other property except securities of which the seller is the issuer. Section 17(b) of the Act generally provides that, upon application, the Commission may exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Consequently, Applicants request an order, pursuant to Section 17(b) of the Act, amending the prior order to exempt from the provisions of Section 17(a) of the Act the amended redemption and refinancing arrangement described above.

Since Applicants have already received an order exempting the redemption and refinancing agreement as originally proposed, the order requested, if issued, would be based upon the conclusion that the redemption of the additional 20,000 shares at $1.00 per share will not materially affect the original redemption and refinancing arrangement which was determined to be fair at the time the Order was issued.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to participate in or effect any transaction in which such investment company is a joint participant without the permission of the

Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission the Commission will consider (i) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (ii) the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants stated in the Original Application that the proposed transaction may be said to involve a joint arrangement, in which Narragansett and Photo Systems are participants, and thus could be deemed to be prohibited under Rule 17d-1 unless the Commission issues an exemptive order or the transaction is otherwise exempt under the provisions of Rule 17d-1. Therefore, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, amending the prior order to permit the amended redemption and refinancing arrangement described above. In addition, the Applicant states that entering into the Voting Agreement by Narragansett and the Individual Stockholders could be deemed to constitute a joint enterprise or other joint arrangement subject to the prohibitions of Rule 17d-1. Therefore, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, amending the prior order to permit entry into the Voting Agreement as part of the amended redemption and refinancing arrangement.

Since Applicants have already received an order permitting as a joint transaction the redemption and refinancing arrangement as originally proposed, the order requested, if issued, would be based upon the conclusion that the modifications and amendments do not materially alter the participation of Narragansett in the joint transaction, which was considered to be consistent with the provisions, policies and purposes of the Act when the Order was granted.

Applicants state that the effects of the Amendment on the Agreement will be two-fold. First, such Amendment will increase the number of shares to be redeemed by 20,000, thereby reducing Narragansett's percentage ownership of Photo Systems from 77% to 50%, rather than 52%. However, Applicants state that since the Redemption Note requires principal payments to be made to the extent of 20% of after-tax earnings, with all unpaid principal due on August 1, 1984, there will be very little impact on the amortization of the Redemption Note and the principal balance due at final maturity will likely be increased by approximately $20,000. Secondly, since Narragansett currently has the ability to elect a majority of the Board by reason of its majority ownership of Photo Systems voting stock, the effect of the Voting Agreement will be to preserve that right in the event that Photo Systems is in default under the Redemption Note and to provide a mechanism for adequate representation on the Board of the interests of the Individual Stockholders.

As set forth in the Application, consummation of the proposed restructuring according to the terms of the Amendment would result in a variety of benefits. Applicants state that Narragansett believes that the redemption transaction, as proposed in the Amendment, would be treated not as a dividend, but as an exchange of the stock, thus avoiding the possible necessity of distributing as much as $400,000 to its stockholders in 1980 as a result of the redemption against realized cash proceeds during the same period of only approximately $25,000. Applicants also state that in addition to avoiding the adverse tax consequences of the redemption transaction as originally structured, the proposed transaction will: (1) provide additional incentives to the management shareholders to increase the profitability of Photo Systems, in which Narragansett will continue to have a substantial interest; (2) further Narragansett's program for relinquishing control of Photo Systems by the current deadline of 1983 (as required by the Small Business Investment Act of 1958); and (3) increase the current yield on Narragansett's total investment in Photo Systems by converting an additional $20,000 from an equity investment with no current return to indebtedness bearing interest at 12% per annum. Applicants further state that under the proposed restructuring Narragansett will retain 50% of the voting stock and the Voting Agreement gives Narragansett control of the Photo Systems Board of Directors in event of default on the Redemption Note. Applicants state that the effects of the Amendment on the Agreement are deemed by the Narragansett Board of Directors to be in the best interests of Narragansett's shareholders and Narragansett's business and financial condition. Accordingly, Applicants submit that: the terms of the proposed trasactions as set forth in the Amendment to the Agreement are reasonable and fair and do not involve overreaching on the part of any person involved; the proposed transaction would be consistent with the policy of Narragansett and the other participants in the amended redemption and

refinancing arrangement to the extent it constitutes a joint enterprise or other joint arrangement would not be on a basis less advantageous than that of the other participants. Finally, Applicants contend that to the extent that the Voting Agreement constitutes a joint enterprise or other joint arrangement, since Narragansett and the Individual Stockholders will be able to participate in the designation of the members of the Photo Systems Board of Directors based on their respective percentage ownership interests in Photo Systems, the interests of all parties to the Voting Agreement are equitably reflected and none of the parties are disadvantaged by the terms of that agreement.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 22, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11146/April 30, 1980

In the Matter of

FEDERATED CONVERTIBLE INCOME SECURITIES, INC.
421 Seventh Street
Pittsburgh, Pennsylvania 15219

(811-2947)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT THE APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Federated Convertible Income Securities, Inc. ("Applicant"), a Maryland corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 25, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On April 3, 1980, a notice was issued (Investment Company Act Release No. 11115) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Federated Convertible Income Securities, Inc. under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11147/April 30, 1980

In the Matter of

PAINE, WEBBER MUNICIPAL BOND FUND, FIRST SERIES
PAINE, WEBBER MUNICIPAL BOND FUND, SECOND SERIES
PAINE, WEBBER MUNICIPAL BOND FUND, THIRD SERIES
THE MUNICIPAL BOND FUND, SERIES 1 THROUGH SERIES 43
THE MUNICIPAL BOND TRUST, SERIES 44 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, MULTI-STATE PROGRAM, SERIES 1 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, MULTIPLE MATURITY SERIES 1 AND SUBSEQUENT SERIES
THE MUNICIPAL BOND TRUST, PUERTO RICO SERIES 1 AND SUBSEQUENT SERIES

AND

THE CORPORATE BOND TRUST, SERIES 1 AND SUBSEQUENT SERIES
c/o Paine, Webber, Jackson & Curtis Incorporated
1221 Avenue of the Americas
New York, New York 10020

(812-4558)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS' REINVESTMENT PLAN FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

Paine, Webber Municipal Bond Fund, First Series, Paine, Webber Municipal Bond Fund, Second Series, Paine, Webber Municipal Bond Fund, Third Series, The Municipal Bond Fund, Series 1 through Series 43, The Municipal Bond Trust, Series 44 and subsequent series, The Municipal Bond Trust, Multi-State Program, Series 1 and subsequent series, The Municipal Bond Trust, Multiple Maturity Series 1 and subsequent series, The Municipal Bond Trust, Puerto Rico Series 1 and subsequent series and The Corporate Bond Trust, Series 1 and subsequent series (collectively referred to as the "Trusts" or "Applicants"), filed an application on October 29, 1979, and amendments thereto on February 29 and March 17, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicants from the provisions of Section 22(d) of the Act to permit Applicants to offer a reinvestment plan pursuant to which holders of units of the Trusts may elect to have distributions with respect to their units reinvested in units of future series of their respective Trusts, or in existing series of the Trusts, without imposition of a sales charge.

On April 3, 1980, a notice was issued of the filing of the application (Investment Company Act Release No. 11116). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and the granting of the requested order has been found to be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from Section 22(d) of the Act, to the extent requested, be and hereby is, granted effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11148/April 30, 1980

In the Matter of

LIQUID CAPITAL INCOME, INC.
831 National City Bank Building
Cleveland, Ohio 44114

(812-4648)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Liquid Capital Income, Inc. ("Applicant"), an open-end, non-diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on April 3, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuing its portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund and that it invests exclusively in various high-grade money market instruments maturing in one year or less, including securities issued or guaranteed by the United States Government or its agencies and instrumentalities, obligations of qualifying banks and savings and loans, high-grade commercial paper, certain corporate debt obligations, and instruments (including repurchase agreements) secured by such obligations.

Applicant states that experience indicates that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant asserts that by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost it can provide those features to investors. Applicant maintains that experience has shown that, given the unique nature of Applicant's policies and operations there should be a negligible discrepancy between prices obtained using the amortized cost method and those obtained using a market valuation method. Applicant represents that its Board of Directors has determined that, in light of the characteristics of Applicant, the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method and that use of such method is in the best interests of its shareholders.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by Applicant's Board of Directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) provides, in pertinent part, that the Commission, upon application may conditionally or

unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order, pursuant to Section 6(c) of the Act, exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit it to value its assets using the amortized cost method of valuation.

Applicant submits that issuance of the requested order is consistent with the exemptive standards of Section 6(c) of the Act. In addition, Application has agreed to the imposition of the following conditions to any order granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with

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[1]To fulfil this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which its Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Appliant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 27, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11149/May 1, 1980

In the Matter of

THE JOHNSTON MUTUAL FUND
One Boston Place
Boston, Massachusetts 02109

(812-4487)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT

The Johnston Mutual Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company and organized as a "series company," filed an application on March 7, 1980, and an amendment thereto on April 23, 1980, requesting an order of the Commission amending a prior order of the Commission dated August 1, 1979 (Investment Company Act Release No. 10801) to exempt the Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute the net asset value per share of one of its series, the Johnston Cash Management Fund ("CMF"), according to the amortized cost method of valuing portfolio securities.

On April 8, 1980, a notice (Investment Company Act Release No. 11121) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated August 1, 1979 contained in Investment Company Act Release No. 10801 to

the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

(1) In supervising CMF's operations and delegating special responsibilities involving management of CMF's portfolio to Applicant's investment adviser, Applicant's Trustees undertake—as a particular responsibility within the overall duty of care owed to their shareholders—to establish procedures reasonably designed, taking into account current market conditions and CMF's investment objectives, to stabilize CMF's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included with the procedures to be adopted by the Trustees shall be the following:

(a) Review by the Applicant's Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of CMF as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share of CMF exceeds 1/2 of 1%, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where Applicant's Trustees believe the extent of any deviation from CMF's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten CMF's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will cause CMF to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share for CMF; provided, however, that CMF will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustee's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit the portfolio investments of CMF, including repurchase agreements, to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Applicant's Trustees.

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Trustees in the exercise of their discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of portfolio instruments results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce CMF's dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11150/May 1, 1980

In the Matter of

INA CAPITAL BOND TRUST
Three Parkway
Philadelphia, Pennsylvania 19101

(811-2760)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

INA Capital Bond Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 29, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On March 28, 1980, a notice (Investment Company Act Release No. 11108) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of INA Capital Bond Trust shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9068/April 25, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HETRA COMPUTER AND COMMUNICATIONS INDUSTRIES, INC.* United States District Court for the District of Columbia, Civil Action No. 80-1051

The Commission announced today that it filed a civil injunctive action against Hetra Computer and Communications Industries, Inc., ("Hetra"), 1151 South Eddie Allen Road, Melbourne, Florida, 32901, in the United States District Court for the District of Columbia. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Hetra as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980, and requests that the Court order Hetra to file that report forthwith, with the Commission. In addition, the Commission requests that the Court enjoin Hetra from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9069/April 28, 1980

SEC v. JOHN E. MARQUSEE AND SHELDON LUBITZ 80 Civil 2289 (GLG) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on April 24, 1980, a complaint was filed in the United States District Court for the Southern District of New York seeking to enjoin John E. Marqusee ("Marqusee") of New York, New York, and Sheldon Lubitz ("Lubitz") of East Meadow, New York, from further violations of the antifraud, reporting and foreign corrupt practices provisions of the Securities Exchange Act of 1934, Sections 10(b), 13(b)(2) and 15(d), and Rules 10b-5, 12b-20, 13b2-1, 13b2-2, 15d-1, 15d-11 and 15d-13 thereunder, and for other equitable relief.

The Commission's complaint alleged, among other things, that Marqusee and Lubitz, officers of Atlantic Improvement Corporation ("Atlantic"), diverted $170,000, $1,500,000, $850,000 and $750,000 in years 1976, 1977, 1978 and 1979, respectively, from Atlantic to a corporation owned by Marqusec and his family, Paddington Press Limited ("Paddington"). In furtherance of this scheme, the complaint alleged that the defendants falsified Atlantic's books and records to reflect that the transfers of funds related to the purchase of commercial paper. By falsifying the books and records, the diversion of Atlantic's funds was not discovered by its outside auditors. All of Atlantic's funds were repaid, with interest, by Paddington in 1976, 1977 and 1978. As of the date of the complaint, however, a substantial amount of the $750,000 diverted in 1979 has not been repaid. Additionally, the complaint alleged that during the relevant period, Marqusee and Lubitz caused Atlantic to file with the Commission false and misleading annual, quarterly and current reports which failed to reflect the above-described transactions.

Simultaneously with the filing of the Commission's complaint, Marqusee and Lubitz consented to the entry of final judgments of permanent injunction, without admitting or denying the allegations set forth in the complaint. In addition, the court ordered defendant Marqusee to use his best efforts to return to Atlantic the funds diverted from Atlantic in 1979.

Litigation Release No. 9070/April 28, 1980

SECURITIES AND EXCHANGE COMMISSION v. RAYMOND E. SHEA (United States District Court for the District of Columbia, Civil Action No. 79-3275)

The Securities and Exchange Commission announced today that Judge Joyce Hens Green of the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Raymond E. Shea ("Shea") of Worcester, Massachusetts, from violations of Sections 10(b) and 14(e) of the Securities Exchange act of 1934 and Rule 10b-13 thereunder. Shea consented to the entry of the Final Judgment without admitting or denying the allegations in the Commission's Complaint.

Previously, the other two defendants in the Commission's action, Sam Wyly and Eldon Vaughan, consented to the entry of Final Judgments of Permanent Injunction without admitting or denying the allegations in the Commission's Complaint and Final Judgments were entered against them on December 6, 1979. Litigation Release No. 8943 (Dec. 6, 1979).

Litigation Release No. 9071/April 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. LIBCO CORPORATION AND CLYDE WM. ENGLE (D.D.C. 1979) Civil Action No. 79-1828

SECURITIES AND EXCHANGE COMMISSION v. TELCO MARKETING SERVICES, INC. (D.D.C. 1979) Civil Action No. 79-1827

The Securities and Exchange Commission ("Commission") today announced that the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction ("Final Judgment") against Libco Corporation ("Libco") of Chicago, Illinois, restraining and enjoining Libco from failing to timely file annual, quarterly and current reports with the Commission as required by the federal securities laws. Libco consented to the entry of the Final Judgment without admitting or denying the allegations of the Commission's Complaint except that Libco admitted that it did not timely file certain reports set forth in the Commission's Complaint. The Commission's

Complaint which was filed on July 12, 1979 alleged that from 1977 through 1979 Libco failed to timely file in proper form certain annual and periodic reports in violation of Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act") and the Commission's rules and regulations thereunder.[1]

In addition to the Final Judgment entered against it, Libco undertook to maintain procedures designed to reasonably assure that it will make all required filings on a timely basis and to require its president or chief executive officer to notify the Commission's staff of any future failure by Libco to timely file required reports. Further, Engle, the Chairman of the Board of Directors and controlling shareholder of Libco, entered a Stipulation, pursuant to which he has agreed to use his best efforts to cause Libco to timely comply with the Commission's filing requirements and to take no action or fail to take action which causes Libco to fail to timely comply with those requirements. Engle also stipulated that he will use his best efforts to cause the Board of Directors of Libco to maintain procedures designed to reasonably assure that Libco will make all required filings on a timely basis. In all other respects, the action as to Engle was terminated with prejudice.

The Commission also announced today that, in a separate action, the United States District Court for the Northern District of Illinois had entered an Order against Telco Marketing Services, Inc. ("Telco"), a subsidiary of Libco pursuant to which the Court retained jurisdiction over Telco and the action for the purpose of enforcing the Consent and Undertaking entered by Telco but not incorporated by reference into the Court's Order. In all other respects, however, the action was terminated with prejudice. The Commission's Complaint alleged that Telco, in connection with a cash tender offer for shares of common stock in Outdoor Sports Industries ("OSI"), violated certain provisions of the Exchange Act by failing to properly state the purpose of the tender offer, and its effect on the voting rights of tendering OSI shareholders. Telco consented to the entry of the Order without admitting or denying the allegations of the Commission's Complaint.

As part of the settlement, Telco undertook to purchase all shares tendered to it in any tender offer made by it for any class of an equity security registered with the Commission pursuant to Section 12 of the Exchange Act, within sixty days of a previously scheduled and publicly announced meeting of shareholders, where, as a condition of such tender offer, Telco requires tendering shareholders to submit irrevocable proxies; provided however, that Telco is permitted to terminate its tender offer without purchasing certain or all of the shares tendered, in accordance with certain procedures set forth in the Consent and Undertaking which provide for notice to tendering shareholders and a method for voting proxies for shares which it does not purchase.

Telco also undertook to file all tender offer materials, when required, which are complete and accurate and contain all statements of material fact necessary to present fully, fairly and accurately the statements contained and required to be contained therein. Telco's undertaking also provides that while it is not required to do so, that it shall disclose the institution and settlement of the Commission's action as well as certain of its undertakings in any Schedule 13D which it files with the Commission and in which it states that it is seeking control of the issuer. Telco also undertook that the Court could enter a Final Order of Permanent Injunction against it, or order such other relief as the Court deems appropriate, without further hearing, except on the issue of non-compliance, should it fail to comply with its undertaking with respect to the conduct of a tender offer in which it seeks irrevocable proxies. The Commission's Complaint in this action was filed on July 12, 1979.[2]

The Commission's Chicago Regional Office simultaneously announced today the settlement of a civil injunctive action against GSC Enterprises, and others. See *SEC v. GSC Enterprises, Clyde Wm. Engle, Roger L. Weston, Sierra Capital Group* (N.D. Ill 1978) Civil Action No. 78-C-915.

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[1]See Litigation Release No. 8820/July 12, 1979.

[2]See Litigation Release No. 8821/July 12, 1979.

Litigation Release No. 9072/April 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GSC ENTERPRISES, INC., CLYDE WILLIAM ENGLE, ROGER L. WESTON, SIERRA CAPITAL GROUP* (N.D. Illinois, Civil No. 78-C-915)

William D. Goldsberry, Administrator of the Chicago Regional Office, today announced that a Final Judgment of Permanent Injunction was entered against GSC Enterprises, Inc. ("GSC"), by the District Court for the Northern District of Illinois. The Final Judgment enjoins GSC from future violations of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 13d-1(a), 14c-2 and 14c-5 thereunder. GSC consented to the entry of the Final Judgment without admitting or denying the allegations of the Commission's March 1978 Complaint.

In addition, as a part of the Final Judgment, the Court ordered that at the time of the final disposition of the last private lawsuit currently pending against GSC, relating to the allegations made in the Commission's Complaint, GSC shall pay to those private plaintiffs, $200,000 plus 11% interest thereon. Such interest shall be paid from the date of the entry of the Final Judgment in the Commission's suit. The $200,000 however, is to be reduced by any amount paid to such private plaintiff's exclusive of attorney's fees, court costs or administrative expenses, in settlement of, or awarded in those private lawsuits.

Finally, the Commission agreed to a termination with prejudice of its March 1978 Complaint, as amended, as to Clyde William Engle, Roger L. Weston, Sierra Capital Group, in all respects and GSC in all respects other than as set forth above.

The Final Judgment was entered in connection with the Commission's March 1978 Complaint, as amended, which alleged that the above named defendants violated Section 17(a) of the Securities Act of 1933 and Section 10(b), 13(d) and 14(c) of the Exchange Act and Rules 10b-5, 13d-1, 13d-2, 14c-2 and 14c-5 thereunder, in connection with an October 1977 going private merger. The Complaint also alleged that GSC violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder, by filing a false and misleading Form 8-K.

The Commission also announced that on April 30, 1980, two other actions brought by the Commission were settled. In that regard, the District Court for the District of Columbia, entered a Final Judgment of Permanent Injunction against Libco Corporation, (*SEC* v. *Libco Corporation and Clyde William Engle*, Civil No. 79-1828) and entered an Order against Telco Marketing Services, Inc., a subsidiary of Libco (*SEC* v. *Telco Marketing Services, Inc.*, Civil No. 79-1827). See, Litigation Release No. 9071 dated April 30, 1980.

Litigation Release No. 9073/May 1, 1980

SEC v. *PERRY, ADAMS & LEWIS SECURITIES, INC.* (W.D. Mo. 80-0336-CV-W-6)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on April 3, 1980, the Commission filed a civil injunctive action in the United States District Court for the Western District of Missouri against Perry, Adams & Lewis Securities, Inc. of 1012 Baltimore Avenue, Kansas City, Missouri. Perry, Adams & Lewis Securities, Inc. is a registered municipal securities dealer. The Commission's complaint alleged violations of the Commission's books and records and financial responsibility provisions under the federal securities laws.

The Commission requests that the Court enjoin Perry, Adams & Lewis Securities, Inc. from further violations of the books and records and financial responsibility provisions of the federal securities laws.

At the request of the Securities Investor Protection Corporation, Judge Howard Sachs entered a consent order on April 11, 1980, declaring the customers of Perry, Adams & Lewis Securities, Inc. to be in need of the protection afforded by the Securities Investors Protection Act and appointing a trustee and counsel to proceed with the liquidation of the firm. A temporary receiver had been appointed by the Court on April 3, 1980.

Litigation Release No. 9074/May 1, 1980

SECURITIES AND EXCHANGE COMMISSION v. *OMEGA SECURITIES, INC. AND MEREDITH K. M. SMITH,* Civil Action No. 80-426 (D. Ore.)

Jack H. Bookey, Regional Administrator of the Seattle Regional Office announced the filing of a complaint in U.S. District Court for the District of Oregon on April 22, 1980 against Omega Securities, Inc., a Portland, Oregon broker-dealer, and Meredith K. M. Smith, its president and chief operating officer of Lake Oswego, Oregon. The Commission's complaint alleges that defendant Omega, aided and abetted by Smith, has been and is continuing to violate Section 15(c)(3) of the Securities Exchange Act of 1934 and Rules 15c3-1 (17 CFR 240.15c3-1) (net capital rule) and 15c3-3 (17 CFR 240.15c3-3) (customer protection rule) thereunder.

The complaint also seeks the appointment of a temporary receiver pending a determination by the Securities Investor Protection Corporation of the need to apply to the Court for a decree adjudicating Omega's customers in need of protection.

Defendants consented to the entry of a decree of permanent injunction against them enjoining them from further violations of the Commission's financial responsibility provisions and stipulating to the appointment of a temporary receiver if defendants are unable to demonstrate compliance with Rules 15c3-1 and 15c3-3 on or before May 5, 1980.

Litigation Release No. 9075/May 1, 1980

SECURITIES AND EXCHANGE COMMISSION v. *JOSEPH F. SAIA AND AAA RECORDING STUDIOS, INC.* Civil Action No. 80-636-S

Willis H. Riccio, Administrator for the Boston Regional Office of the United States Securities and Exchange Commission, today announced that the Honorable Walter Jay Skinner, United States District Judge for the District of Massachusetts, entered an order permanently enjoining Joseh F. Saia and AAA Recording Studios, Inc. from further violations of the securities registration and antifraud provisions of the federal securities laws in connection with the offer, purchase and sale of $735,000 of unregistered securities, in the form of limited partnership interests entered into by Saia with investors, to produce, tape and market televisions pilot shows. Sales were made to residents of Massachusetts, New York and Rhode Island.

The Commission commenced this action on April 3, 1980, by filing a complaint which alleged, among other things, that the defendants violated the securities registration and antifraud provisions of the federal securities laws in that the defendants offered for sale and sold unregistered securities and engaged in fraudulent conduct in connection with the offer, purchase and sale of securities; namely, limited partnership interests to produce, tape and market television pilot shows. Included among the shows to have been produced and marketed were *The Frank Gorshin Show, The Kenny Roberts Show Production, Ltd., The Myles Marsden Show Production, Ltd.,* and *The Gus Saunders' Gourmet Kitchen Production.* The defendants consented to the Judgment of Permanent Injunction without admitting or denying the allegations of the Complaint and to a further order of the Court requiring the defendants to file a certified accounting setting forth, among other things, their assets and net worth; assets of the limited partnerships in their possession; and the disbursement or disposition of funds received by them in connection with the above securities offering.

For further information, see Litigation Release No. 8980.

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19/20

sec docket

VOLUME 19, NUMBER 20 MAY 20, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6210	1351
Securities Exchange Act	16778-93	1370
Public Utility Holding Company Act	21448-60	1386
Trust Indenture Act	566	1404
Investment Company Act	11151-63	1405
Investment Advisers Act	719-20	1429
Litigation	9076-79	1429

This listing covers releases issued from 5/1/80-5/8/80. This listing does not affect the legal status of any document published in this issue.

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SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

CR-323 Advisory Report of the Securities and Exchange Commission on Proposed Plan of Reorganization in the Matter of Duplan Corporation and Duplan Fabrics, Inc.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16779 34-16788 34-16792
34-16781 34-16789 34-16793
34-16786

33-6210 Proposed Amendments to Item 4 of Regulation S-K dealing with pension, option and stock appreciation right plans, the definition of an executive officer, compensation relating to the termination of employment, indebtedness of management and certain other technical amendments [File No. S7-835—Comment Period Expires June 30, 1980].

34-16780 Withdrawal of proposed Rule 9b-1(T) which, if adopted, would have prohibited temporarily any further expansion of the standardized options markets.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6210/May 6, 1980

SE 1.29:

SECURITIES EXCHANGE ACT OF 1934
Release No. 16785/May 6, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21550/May 6, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11156/May 6, 1980

UNIFORM AND INTEGRATED REPORTING REQUIREMENTS: MANAGEMENT REMUNERATION

PROPOSED AMENDMENTS TO ITEM 4 OF REGULATION S-K

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for public comment proposed amendments to Item 4 of Regulation S-K (17 CFR 229.20.4). In general, the proposed amendments deal with pension, option and stock appreciation right plans, the definition of an executive officer, compensation relating to the termination of employment, indebtedness of management and certain other technical amendments. These proposals are in response to concerns that have come to the Commission's attention during the administration of new requirements with respect to disclosure of remuneration adopted in December 1978.

DATES: Comments should be submitted on or before June 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-835. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Bruce S. Mendelsohn (202-272-2589), or Joseph G. Connolly, Jr. (202-272-3208), Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Item 4 of Regulation S-K pursuant to Sections 6, 7, 8, 19, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)] and Sections 12, 13, 14 15(d) and 23(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)]. These proposals involve the disclosure of management remuneration and specifically address pension, option and stock appreciation rights plans, the definition of an executive officer, compensation relating to the termination of employment, indebtedness of management and certain other technical amendments. These proposals are in response to concerns that have come to the Commission's attention during the administration of the amended management remuneration disclosure requirements discussed below.

On December 4, 1978, the Commission adopted amendments to Item 4 of Regulation S-K which represented a substantial revision of the disclosure requirements relating to management remuneration.[1] The amendments require tabular and other forms of disclosure as to all remuneration from the registrant and its subsidiaries for services during the latest fiscal year by certain specified directors, executive officers and officers of the registrant.[2] The amendments to remuneration

[1]Securities Act Release No. 6003 (December 4, 1978) [43 FR 58151].

[2]Item 4(a) of Regulation S-K requires tabular disclosure (the "remuneration table") of total aggregate remuneration for the five most highly compensated executive officers and directors of reporting entities, naming such persons, and for all officers and directors as a group. The remuneration table consists of 4 main columns. Columns A and B call for the name of the individual or the number of persons in the group and the capacities in which such persons serve during the year. Column C reports cash and cash-equivalent forms of remuneration ("current remuneration") and is separated into 2 subcolumns. Instruction 2 to Item 4(a) provides for the inclusion in Column C1 of all salaries and fees paid with respect to services rendered during the registrant's last fiscal year and the inclusion in Column C2 of other cash or cash-equivalent amounts. Column D includes remuneration for which the distribution, the unconditional vesting or the measurement thereof is subject to future events ("contingent remuneration").

disclosure resulted in part from a recognition by the Commission that remuneration packages had become more diverse and complex and, as a result, disclosure had become less uniform.[3] Many forms of remuneration were not being included in the then required table[4] but instead were being disclosed through narrative discussions set forth in footnotes or paragraphs following the table which, in many cases, obscured the total remuneration received. Therefore, it was the Commission's intention that the Item 4(a) remuneration table reflect all remuneration which can be quantified and related to services performed by individual members of management during the fiscal year.

Since the adoption of the amendments, the Commission has monitored the efficacy of the remuneration requirements and has issued written[5] and oral interpretations. As a result of this substantial experience, the Commission believes that, while the remuneration table has generally worked well, certain modifications are necessary. In this regard, the Commission recognizes that there are forms of remuneration that are difficult to quantify and relate to a particular year's services and, accordingly, the Commission believes that remuneration resulting from stock option, pension and stock appreciation right plans may be better suited to uniform disclosure outside the parameters of the Item 4(a) table.[6]

The amendments are being proposed at this time in order that any subsequently adopted rule changes can be in effect for the 1981 proxy season. Because the Commission desires to allow ample time to comply with any new rules, all comments on these proposals should be submitted by the June 15, 1980 date and it is not anticipated that any extension of the comment period will be made.

The following discussion summarizes the proposed amendments and generally compares them with the existing provisions. However, for a more complete understanding of the new requirements reference should be made to the Text of the Proposed Amendments set forth herein.

Clarification of Remuneration Included in Column C

Allocation of amounts to the proper tabular columns continues to create some confusion. In particular, Instructions 3(a), 3(b) and 3(c) to Item 4(a), which list forms of compensation that may require reporting in Column D, have been the subject of many interpretive questions. It appears that some registrants have had the misconception that amounts attributable to the remuneration plans specified in these instructions should always be reported in Column D rather than Column C. This is not the case. Column D is to be used for remuneration amounts that have been expensed for

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[3]See Securities Act Release No. 5950 (July 28, 1978) [43 FR 34415] which proposed the Item 4 amendments for comment.

[4]Required by old Item 7(a) of Schedule 14A.

[5]In Release Nos. 33-6027 (February 22, 1979) [44 FR 16368] and 33-6166 (December 12, 1979), the Commission authorized the Division of Corporate Finance to publish its views with regard to certain interpretations of Item 4. Registrants are advised that, with the exception of Interpretive Responses 4 through 11 of Release No. 33-6166 which will be rendered irrelevant if these proposals are adopted, the staff positions expressed in these releases are still in effect.

Prior to these amendments, the Commission had also issued two interpretive releases in the area of management remuneration. In Securities Act Release No. 5856 (August 18, 1977) [42 FR 43058], the Commission expressed the view that the existing remuneration reporting provisions required registrants to report as remuneration certain personal benefits or "perquisites." These views were codified in Instruction 2(d) to Item 4(a) of Regulation S-K. In Release No. 33-5904 (February 6, 1978) [43 FR 6060], the Commission's Division of Corporation Finance was authorized to publish its interpretive views regarding specific aspects of personal benefits disclosure. Although the adoption of the amendments to Item 4 did not alter the majority of the interpretive responses expressed in that release, several interpretations were modified or superseded by certain provisions of the new Item and by subsequent staff interpretation. See Release 33-6166 (December 12, 1979) [44 FR 74808], Part V, "Personal Benefits."

[6]The Commission is of the view that management should be permitted a measure of flexibility in determining the placement of the various remuneration disclosure tables in its proxy or

financial reporting purposes but as to which the distribution, unconditional vesting or measurement of benefits is contingent upon future events. Therefore, if an amount under a specified plan is not subject to a contingency, a Column C entry may be proper.[7]

Accordingly, the Commission is proposing to add a parenthetical note in Instruction 2 to Item 4(a) which would state that the specific forms of remuneration referred to in Instruction 3 are properly reported in Column C if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is not subject to future events.

The proposal will not change the substance of the item and is intended only as assistance to the reader. Indeed, staff interpretations have always been consistent with the proposed note.[8]

Instruction 1(b) to Item 4(a)

Instruction 1(b) which defines the term "executive officer"[9] is proposed to be amended by adding the following sentence:

"Executive officers" of subsidiaries may be deemed "executive officers" of the registrant if they perform policy-making functions for the registrant.

This proposal reflects the initial intention of the instruction. In the adopting release, the Commission advised registrants that they should give careful consideration to the question of who are the appropriate persons to be included in the table, and to whether certain highly compensated directors or employees of subsidiaries are in fact "executive officers" of the registrant.[10] Additionally, the Commission stated that it would monitor the disclosure practices in this area to determine whether further actions were appropriate. Because misconceptions appear to have persisted, the Commission believes that the proposal would provide an appropriate guide to registrants.

Item 4(b), Proposed Remuneration[11]

Item 4(b) requires a brief description of all remuneration payments proposed to be made in the future pursuant to any plan or arrangement to the

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Footnote 6 continued

information statement and accordingly has not proposed specific requirements in this area. In this regard, the Commission notes that since the adoption of the amendments to Item 4 registrants have generally presented all remuneration disclosure together in their material. The revisions proposed today envision that this practice will continue and that all tables relating to the various components of remuneration will remain concentrated in one section of the proxy or information statement.

[7]Column C is to be used for remuneration that has been (1) distributed to or for the account of the specified person or group or (2) accrued and with reasonable certainty will be distributed or unconditionally vested in the future. See Instruction 2 to Item 4(a). For example, if amounts relating to a deferred compensation plan are vested, reporting of such amounts would be in Column C even though "deferred compensation plans" are specifically addressed in Instructions 3(a)(i) respecting Column D1.

[8]In Interpretive Response 17 of Release No. 33-6166, the Division of Corporation Finance stated that with regard to deferred compensation plans (an enumerated plan under Instruction 3(a)) for which amounts are *expensed*, Column D is to be used only if the distribution of remuneration under the plan or the unconditional vesting or measurement of benefits under the plan is subject to future events which represent true contingencies.

[9]Instruction 1(b) states, "An 'executive officer' of a person includes its president, secretary, treasurer, any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance), and any other person who performs similar policy-making functions."

[10]In Release No. 33-6027, the Division of Corporate Finance issued its interpretive views regarding certain aspects of the management remuneration disclosure requirements of Item 4, including that Division's views on the determination of which members of management comprise the five most highly compensated officers or directors. As set forth in that Release, Item 4(a) requires disclosure of the five most highly compensated, key policy making executive officers or directors of the registrant.

[11]It should be noted that this item is proposed to be renumbered and stylistically reworded.

persons and groups specified in the remuneration table. The disclosure required by this provision is parallel to that which had been required for some time by Item 7 of Schedule 14A. (17 CFR 14a-101.7).

Because of numerous public inquiries, the Commission believes that it is necessary to add an instruction which would make clear that disclosure is necessary for any remunerative plan or arrangement which is operable for more than the latest fiscal year, *notwithstanding* the fact that amounts attributable to such plan or arrangement are included in the latest remuneration table. This proposed instruction would reflect the intent of the item and staff interpretations.[12] In this regard, Release No. 33-5950 indicated that ". . . Item 4(b) would require a narrative description of plans under which remuneration is proposed to be made in the future. This requirement would reach plans for which amounts are included in the table specified by Item 4(a). . ."[13] In this manner, the Commission contemplated that the shareholders would be provided a full appreciation of the types of remuneration to be paid to management in the future.[14]

Pension Plan Disclosure—Item 4(a) and Item 4(b)

Many questions have arisen with regard to the disclosure of amounts relating to defined benefit or actuarial plans. In Release No. 33-6166, the staff discussed this area in detail and offered an alternate format of disclosure by way of interpretation. The purpose of this proposal is to codify the staff's suggested alternative as a uniform mandatory requirement.

The treatment of pension and retirement plans under the present rule is set forth in Instruction 3(a)(i) to Item 4(a) which requires that the amount expensed for financial reporting purposes by a registrant or its subsidiaries for the year representing the contribution, payment or accrual for the account of the specified persons or group is to be included in Column D if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.[15] However, in the case of the overwhelming majority of defined benefit or actuarial plans, the same Instruction 3(a)(i) provides that if the "amount of the contribution, payment or accrual [with] respect [to] a specified person is not and cannot readily be separately or individually calculated by the regular actuaries of the plan" then such amounts may be omitted from the remuneration table provided a footnote is included.[16] The footnote requires disclosure of the excluded amounts, indicating the percentage which the aggregate contributions to the plan bears to the total covered remuneration of the plan participants, and a brief description of the remuneration covered by the plan. In turn, Item 4(b) requires that, with respect to amounts so excluded under Instructions 3(a)(i) and (ii), a separate table is to be included showing estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

Because of the apparent difficulty in calculating the amount of contribution attributable to each participant under most subject plans, the footnote disclosure required by Instruction 3(a)(ii) and the Item 4(b) pension table is extensively utilized. When

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[12]See Interpretive Response 41, Securities Act Release No. 6166.

[13]By way of illustration, consider the situation where amounts attributable to an ongoing bonus plan have been disclosed in Column C1 of the table. Since the bonus plan will be operable in future years a description of the plan is necessary and, in this case, should include, among other things, brief disclosure with regard to the payment formula and general payment schedule. See Interpretive Response 40 of Securities Act Release No. 6166.

[14]By way of illustration, the registrant may have an ongoing performance incentive or bonus plan under which amounts have been included in Column C1 for the latest fiscal year and, since the plan will be operable in future years, Item 4(b) would require a brief description of the plan terms.

[15]It should be noted that certain plans may involve arrangements to which this condition does not apply and, instead, there is accrued or distributed for the account of the participant a cash or cash-equivalent amount. In this situation, Instruction 2 to Item 4(a) which pertains to Column C, would govern and the relevant amount reflecting the contribution for the year should be included in Column C2. See Securities Act Release No. 6027.

[16]Instruction 3(a)(ii) to Item 4(a).

this has not been the case, the Commission has reason to believe that there has been an inconsistency regarding the inclusion of amounts relating to these plans in the remuneration table. In any event, the Commission perceives little reason to continue requiring different disclosure for the same form of remuneration and, accordingly, the proposal deals with *all* defined benefit and acturial pension plans.

The proposal would exclude amounts relating to defined benefit or actuarial plans from the remuneration table by amending Instruction 3(a)(i) and deleting the footnote requirement of Instruction 3(a)(ii). Proposed Item 4(b)(2) would require with regard to these plans (1) a pension table; (2) a description of the compensation covered by the plan (e.g. salary, salary and bonus, etc.);[17] and (3) disclosure of the expected years of service at normal retirement of the individuals named in the remuneration table. Unlike the current provision, the proposal would not require disclosure of the percentage which aggregate remuneration bears to the total covered remuneration of plan participants. Because of past service costs respecting such plans and other factors, it has been the Commission's experience that such information is not a significant indicator of management remuneration.

The Commission believes that the proposed approach would combine the best of the past and present rules.[18] In order to ascertain the "estimated annual benefits upon retirement" as required by the old rules, the company would have had to use a table similar to that required by present Item 4(b) and proposed Item 4(b)(2). Instead of relying on static assumptions, however, the pension table would contain information as to potential benefits reflecting increases in remuneration and years of service. Furthermore, the disclosure of individual years of service would make the pension table more meaningful.

The Commission invites specific comment as to whether there are other types of retirement or pension plans that should receive similar treatment, i.e., separate disclosure outside of the remuneration table. In this regard, commentators are asked to furnish the rationale and proposed methodology relating to any additional types of plans addressed.

Proposed Revisions to the Disclosure Requirements for Option, Stock Appreciation Rights and Phantom Stock Plans

The Commission is proposing certain revisions to the instructions to Item 4(a) of Regulation S-K which, if adopted, would remove from the Item 4(a) table the remuneration disclosure relating to option, stock appreciation right and phantom stock plans. The Commission is further proposing that all disclosure relating to such plans, previously included in the remuneration table, be set forth in an expanded option table pursuant to Item 4(d) of the Regulation.[19]

A. *Option Disclosure*

Currently, Instruction 2(b) to Item 4(a) requires that with regard to stock options the spread, if any, between the acquisition price and the fair market price of the underlying security on the date of exercise be reported in Column C2 (less any amount that may have been previously reported with respect to such option prior to exercise). The Commission is concerned that the present method of option disclosure may not be meaningful and may tend to distort the remuneration reported in Column C2 for a particular officer or director for that period. While option plans may represent a significant element in many compensation packages, the calculation of remuneration thereunder is not easily attributable to a given year's services. Accordingly, such information may bear no relationship whatsoever to the executive remuneration for services rendered to the registrant during the fiscal year. For example, there have been instances where an officer has exercised during the latest fiscal year, either because of the state of the stock market or other factors, numerous options received over a number of years. Under existing rules, the spread between the acquisition price and the fair market value of the underlying securities with regard to *all* options on the date of exercise would be reported in Column C2 in the remuneration table for the year of exercise.

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[17]Such is presently required in the footnote disclosure of Instruction 3(a)(ii).

[18]In doing so, the Commission agrees with the position taken by its Division of Corporation Finance in Securities Act Release No. 33-6166.

[19]If adopted, these proposals would render moot Interpretive Responses 4 through 11 of Securities Act Release 6166 relating to the reporting in the remuneration table of amounts attributable to stock options, stock appreciation rights and phantom stock plans.

Since option plans present such disclosure problems, the Commission proposes to exclude the "spread" resulting from the exercise of stock options from disclosure in the remuneration table. This would be accomplished by amending Instruction 2(b) of Item 4(a) to exclude the fair market value of the securities received upon the exercise of stock options. All option information, however, would be disclosed pursuant to an expanded Item 4(d) requirement.[20] In order that tis purpose can be accomplished, the Commission is also proposing that Instruction 3 to Item 4(d) providing an exclusion for de minimus option information be deleted. The Commission questions whether the thresholds that are present in Instruction 3 are appropriate since Item 4(d) will contain the sole requirement in Item 4 with regard to options. However, the Commission solicits comments on whether some *de minimus* exclusion for options information should be incorporated into Item 4(d) and, if so, whether the threshold should be (1) an absolute dollar amount, (2) a percentage of compensation reported in the remuneration table or (3), a combination of (1) and (2) above.

A new Instruction 3 to Item 4(d) is being proposed. This instruction would allow, but would not require, option information to be reported separately for (1) option transactions during the past fiscal year; and (2) option transactions since the close of the fiscal year to the latest practicable date. This instruction is being proposed to permit registrants to reflect their option information in accordance with the time period covered by the remuneration table.[21]

The Commission is also proposing the addition of a new category for the option disclosure requirements of Item 4(d). Proposed Item 4(d)(3) would call for option disclosure, currently required for only officers and directors, for all employees of the registrant. The revision is being proposed to facilitate further the integration of the disclosure provisions of the Securities Act of 1933[22] and the Securities Exchange Act of 1934.[23] In this regard, reference is made to Instruction 4 to Item 3, "Purchase of Securities Pursuant to the Plan," of the recently amended Form S-8[24] which permits the incorporation by reference of the option information appearing in an issuer's proxy statement meeting the requirements of Section 14(a) (or information statement meeting the requirements of Section 14(c)) of the Securities Exchange Act and the rules promulgated thereunder. As noted in that instruction, the information regarding options required under Item 3 of the Form S-8 is more extensive than presently called for by Item 4(d) of Regulation S-K.[25] If adopted, this proposal will satisfy the requirements of Item 3 and the Commission believes that it will further reduce or eliminate unnecessary or duplicative disclosure in the Commission's disclosure documents.

The Commission believes that these proposals will allow the remuneration table to more closely reflect the registrant's remunerative arrangements for services rendered by its officers and directors during the fiscal year[26] while at the same time affording full disclosure pursuant to Item 4(d) of the relationship between the aggregate option price and the aggregate market value of stock acquired by an officer or director upon the exercise of stock options since the beginning of the last fiscal year.

The Commission specifically invites comment with regard to the period covered by Item 4(d) with regard to options. Currently, and under the proposed Item

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[20]Instruction 5 to Item 4(d), which will remain unchanged, in pertinent part states that the information called for by the Item may be furnished in the form of the table set forth in Appendix A to Schedule 14A.

[21]Unlike the Item 4(a) remuneration table which calls for information relating to the last fiscal year, the time period covered by Item 4(d) is "since the beginning of the registrant's last fiscal year."

[22]15 U.S.C. 77a et seq.

[23]15 U.S.C. 78a et seq.

[24]Securities Act of 1933 Release No. 6202 (April 2, 1980) [45 FR 23653].

[25]Item 4 of Regulation S-K is incorporated into Item 7 of Schedule 14A (17 CFR 240.14a-101.7).

[26]In Securities Act Release 6166, the Division of Corporation Finance set forth the basic disclosure concepts involved in the remuneration table. As noted in that release, the purpose of the remuneration disclosure is to match all services rendered in a given year with all remunerative amounts attributable to employees received for performing those services.

4(d), the period for which information must be disclosed with regard to options is since the beginning of the last fiscal year. However, as discussed below, the proposed stock appreciation rights information would cover only the last fiscal year. In this regard, commentators are requested to address the issue of whether stock option information should be geared to a fiscal year period.

B. *Stock Appreciation Rights*[27] *and Phantom Stock Plans*

The Commission is also concerned that the inclusion of the remuneration table of amounts expensed for financial reporting purposes for stock appreciation rights ("SARs") as well as interests in phantom stock plans may tend to confuse the shareholder as to the nature of the registrant's compensation arrangements for the fiscal year. The Commission has been advised that this is particularly true for unexercised rights under such market based award plans since these rights are subject to the unpredictable fluctuations of the marketplace and the amount reported in the remuneration table may bear no resemblance to what the officer or director actually realizes. Furthermore, like options, the attribution of remuneration under these plans to a given year's services is difficult.

At present, Instruction 3(b)(i) to Item 4 requires that Column D reflect the annual market change that is expensed for financial reporting purposes with regard to SAR's and phantom stock plans.[28] Furthermore, Instruction 3(b)(ii) permits a credit to be taken against any amounts previously reported in Column D, if, in a subsequent fiscal year, the registrant, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes. As a result of these provisions, the reporting of stock appreciation rights may consist of positive entries in one year followed by a series of negative entries in subsequent years depending on the movement of the market price of the underlying security.

Because of the above mentioned concerns, as well as the fact that stock appreciation and phantom stock plans appear to contribute a significant percentage of the negative amounts reflected in Column D, the Commission believes that the present reporting requirements may not serve the purpose of the remuneration table which is to reflect remuneration attributed to service rendered in the latest year.

In response to these considerations, the Commission is proposing certain revisions to Instructions 2(b) and 3(b) to Item 4(a) and to Item 4(d) of Regulation S-K. Generally, the proposals would exclude amounts relating to stock appreciation rights and interests in phantom stock plans for inclusion in the remuneration table while requiring certain disclosure regarding awards under such plans pursuant to an expanded Item 4(d) requirement. In this regard, Item 4(d) is proposed to be amended by adding two new subparts which would require separate disclosure with respect to stock appreciation rights and interests in phantom stock plans. Proposed Item 4(d)(iv) would require that the following information be disclosed with regard to all such plans: (1) the number of SARs granted during the last fiscal year; (2) the number of SARs exercised during the last fiscal year; and (3) the number of SARs outstanding as of the end of the fiscal year. Likewise, proposed Item 4(d)(v) would require disclosure of: (1) the unrealized gain relating to all SARs held under these plans as of the beginning of the last fiscal year; (2) the unrealized gain with respect to SARs granted during the year; (3) the value of cash or securities received upon exercise during the last fiscal year; and (4) the unrealized gain relating to all SARs held at the end of the last fiscal year. It should be noted that for purposes of proposed Item 4(d)(iv), "unrealized gain" for SARs and similar rights would not be a net figure, but rather would be calculated only as to those rights with respect to which base prices were below the current market price.[29] In this manner, the

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[27]Stock appreciation rights represent the right to receive an amount equal to the spread between the market price of a number of shares of an employer's common stock credited to the participant's account on the date the right is granted and/or the date of exercise.

[28]For a further discussion of this area, see Interpretive Responses 8 through 11 in Release No. 33-6166.

[29]For example, if the fair market price of the underlying stock is $25/share and the SAR was granted at $30, no loss would be reported for such SAR.

amounts realizable if exercise occurred on the reporting date would be disclosed.[30]

The Commission is also proposing Item 4(d)(vi) which would require disclosure of the value of all SARs held at the end of the fiscal year by all employees other than officers and directors. This requirement would provide shareholders with an understanding of the scope of such plans.

A proposed amendment to Instruction 1 to Item 4(d) would define the term "stock appreciation rights" as including interests in phantom stock plans. It should be noted that Item 4(b), Proposed Remuneration, would still call for a description of such plans including the number of shares upon which the interests are based.

Appendix A of Schedule 14A[31] is proposed to be expanded to accommodate the above information in a table separate from the option disclosure. As with options, use of the Appendix A format would not be mandatory. In addition, unlike the option disclosure requirement which requires information for the period since the beginning of the last fiscal year, proposed Items 4(d)(iv), (v) and (vi) would require information only as to the last fiscal year.

The Commission believes that this method of disclosure when coupled with the removal of stock options from the remuneration table will provide meaningful information to stockholders in a more easily understandable manner. Furthermore, the proposed disclosure requirements concerning SARs and phantom stock plans will afford the shareholder an appreciation of the full extent of these compensation arrangements.

In the past, questions have arisen concerning the reporting under Item 4(d) of stock options that are granted in tandem with SARs. Since the holder, in most cases, may exercise either the SAR or the option but not both, the Commission requests specific comment on whether an instruction should be included in Item 4(d) which would address possible double reporting and, if so, what reporting the instruction should permit.

As with options, the Commission is soliciting specific comment concerning whether a *de minimus* exception should be included in the proposed stock appreciation rights disclosure requirements and, if so, whether the threshold should be (1) an absolute dollar amount, (2) a percentage of compensation reported in the remuneration table or (3), a combination of (1) and (2) above.

Item 4(e)—Indebtedness of Management

The Commission is proposing to include savings and loan associations and broker-dealers extending credit under Federal Reserve Regulation T[32] within the exception in Item 4(e) which currently relates only to banks. Under the proposal, the specified entities would not have to furnish detailed disclosure with regard to loans extended to management if a statement is included that the loans to such persons (1) were made in the ordinary course of business; (2) were made on substantially the same terms, including interests and collateral, as those prevailing at the time for comparable transactions with unaffiliated persons; and (3) did not involve more than the normal risk of collectibility or present other unfavorable features.

In the Commission's view, the same policy considerations regarding bank loans to management should apply to these other regulated industries. In addition, the proposal reflects current interpretations and administrative practice.[33]

Proposed Item 4(h)—Termination of Employment

In its administration of the remuneration disclosure requirements, the Commission has become aware of situations where no disclosure has been presented with regard to remunerative plans or arrangements resulting from the termination of employment. The Commission believes that such arrangements are significant to an assessment of the company's compensation policy and should be disclosed. Accordingly, a new Item 4(h) is being proposed which will require a description of any remunerative plans or arrangements that result or

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[30]Proposed Instruction 8 to Item 4(d) would allow registrants to disclose, at their option, the amount of unrealized gain that relates to SARs that are not currently exercisable.

[31]17 CFR 240.14a-103.

[32]12 CFR Part 220.

[33]See Interpretive Response 53, Securities Act Release No. 6166.

will result from the termination of employment of any individual named in the remuneration table in any of the last three years.

Proposed Renumbering

The Commission is also proposing the renumbering of certain paragraphs of Item 4 to conform these paragraphs and their subparts to the other sections of the Item.[34] The Commission believes that the elimination of the present inconsistent numbering scheme will improve the readability of the Item. If the proposals, as renumbered, are adopted, corresponding changes will be made throughout Schedule 14A of the Commission's proxy rules wherever reference to the renumbered paragraphs may appear.

General and Specific Inquiries

Any interested person wishing to submit written comments on the proposed amendments to Item 4 of Regulation S-K, as well as on other matters which might have an impact upon the proposals contained herein, is invited to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in resolving the disclosure problems set forth in this release.

The Commission also solicits comment as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

Specific Inquiry

The Commission solicits comment as to whether the amendment of Item 4 of Regulation S-K would have an adverse effect on competition or would impose a burden on competition.

TEXT OF PROPOSALS

The text of the proposals is set forth below:

(Attention—The text of the following proposed amendments uses ★ ★ stars to indicate additions and [ ] brackets to indicate deletions.)

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. 17 CFR 229.20 is proposed to be amended by revising Item 4 as follows:

§229.20 Information required in document.

* * * * *

Item 4. Management remuneration.

(a) *Current remuneration.* Furnish the information required in the table below, in substantially the tabular form as specified, concerning all remuneration, except remuneration resulting from any pension, ★stock option or stock appreciation right plan,★ of the following persons and groups for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year, or, in specified instances, certain prior fiscal years:

(1) *Five executive officers or directors.* Each of the five most highly compensated executive officers or directors of the registrant as to whom the total remuneration required to be disclosed in Columns C1 and C2, below would exceed $50,000, naming each such person; and

(2) *All officers and directors.* All officers and directors of the registrant as a group, stating the number of persons in the group without naming them.

(3) *Specified Tabular Format:*

Remuneration Table

(A)	(B)	(C) Cash and cash-equivalent forms of remuneration		(D)
		(C1)	(C2)	
Name of individual or number of persons in group	Capacities in which served	Salaries, fees, directors fees, commissions, and bonuses	Securities or property insurance benefits or reimbursement, personal benefits	Aggregate of contingent forms of remuneration

[34]The Commission is proposing renumbering paragraphs (d) and (e) of Item 4 as well as certain subparts in Instruction 2 of Item 4(a) and Instruction 3 of Item 4(f).

Instructions to Item 4(a). 1. *Columns A and B, Persons subject to this item.*

(a) This item applies to any person who was an executive officer, officer, or director of the registrant at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not an executive officer, officer, or director of the registrant, provided a statement to that effect is made. Item 4(a)(1) applies to "executive officers" and directors. Item 4(a)(2) applies to "executive officers," other officers, and directors.

(b) An "executive officer" of a [person] ★registrant★ includes its president, secretary, treasurer, any vice president in charge of a principal business unit, division, or function (such as sales, administration or finance), and any other [person] ★employee★ who performs similar policy-making functions. ★Executive officers of subsidiaries may be deemed "executive officers" of the registrant if they perform policy-making functions for the registrant.★

2. *Column C.* Column C shall include remuneration for services rendered during the fiscal year distributed to or for the account of the specified person or group, or which is accrued and with reasonable certainty will be distributed or unconditionally vested in the future. Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan, or arrangement previously included in the remuneration table for a prior fiscal year. However, if this calculation results in a credit, any such credit should be reflected in Column D and not Column C2. See Instruction 3(b)(2). Column C should be segregated into two subcolumns; the first, C1, should include the forms of remuneration described in Instruction 2(a), below; the second, C2, should include the forms of remuneration described in Instruction 2(b), (c) and (d), below. Column C shall include cash or cash-equivalent amounts distributed or accrued, including but not limited to the following:

★(The specific forms of remuneration referred to in Instructions 3(a), 3(b) and 3(c) to this item are properly reported in Column C if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is *not* subject to future events.)★

(a) *Salaries.* All cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses.

(b) *Securities or property.* The spread between the acquisition price, if any, and the fair market price of all securities or property acquired, under any contract, agreement, plan or arrangement, [including securities issued on exercise of options] ★excluding any spread relating to securities issued on the exercise of options, or cash or securities issued on the exercise of options, or cash or securities received pursuant to the exercise of a stock appreciation right or interest in a phantom stock plan for which disclosure is called for by Item 4(d),★ for the benefit of any of the specified persons or groups, less any amount previously reported in the remuneration table for a prior fiscal year with respect to the same contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the following events occurs; or if the plan or arrangement contemplates that both such events may occur, the fair market price shall be determined as of the date during the fiscal year that the later event occurs:

(1) The recipient exercises [any option, right or similar] ★an★ election ★(similar to the exercise of an option or right)★ in connection with the contract, agreement, plan or arrangement; or

(2) The recipient becomes entitled without further contingencies to retain the securities or property.

(c) *Life or health insurance; medical reimbursement plans.*

The cost of premiums paid by the registrant or any of its subsidiaries on life insurance policies insuring any such person or group, unless the sole beneficiary under the policy is the registrant or its subsidiaries. Also, the cost of any premium for health insurance and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified persons and groups shall be allocated to such persons and groups and reflected in Column C. Information need not be furnished pursuant to this Instruction 2(c) for any costs under group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the registrant and which are available generally to all salaried employees.

(d) *Personal benefits.* The value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified persons and groups, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified persons.

[(i)] ★(1)★ *Valuation.* Such benefits shall be valued on the basis of the registrant's and subsidiaries' aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, should be made in a footnote to the table.

[(ii)] ★(2)★ *Conditional exclusion of personal benefits.* If the registrant cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table provided the following condition is met:

[A.] ★(i)★ *Inquiry.* After reasonable inquiry, the registrant has concluded that the aggregate amounts of such personal benefits which cannot be specifically or precisely ascertained do not in any event exceed $10,000 as to each person or, in the case of a group, $10,000 for each person in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

[(iii)] ★(3)★ *Footnote disclosure.* If as to a person named in the table an amount representing personal benefits included in Column C2 exceeds 10 percent of the aggregate amount disclosed in Columns C1 and C2 or $25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of Column C2 represented by such personal benefits and briefly describing the kinds of such benefits.

3. *Column D.* Column D shall include remuneration of the specified persons and groups in whole or in part for services rendered during the fiscal year, including but not limited to the forms of remuneration described in paragraphs (a) through (c) below, if the distribution of such remuneration or the unconditional vesting or measurement of benefits thereunder is subject to future events.

NOTE: Registrants need only report remuneration in accordance with Column D as it relates to the latest fiscal year. They need not for example, report amounts accrued in previous periods.

(a) *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* [i] As to each of the specified persons and groups, the amount expensed for financial reporting purposes by the registrant and its subsidiaries for the year which represents the contribution, payment, or accrual for the account of any such person or group under any existing pension or retirement plans ★(except the amount of contribution, payment, or accrual relating to a defined benefit or actuarial plan for which information is required by Item 4(b)(2)),★ annuity contracts, deferred compensation plans, or any other similar arrangements. Such amounts should be reflected as remuneration for the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code. [unless, in the case of a defined benefit or actuarial plan, the amount of the contribution, payment, or accrual in respect of a specified person is not and cannot readily be separately or individually calculated by the regular actuaries of the plan.

(ii) If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table: (A) stating such fact; (B) disclosing the percentage which the aggregate contributions to the plan bears to the total remuneration of plan participants covered by such plan; and (C) briefly describing the remuneration covered by the plan.]

(b) *Incentive and compensation plans and arrangements.*

(1) With respect to [stock options, stock appreciation right plans, phantom stock plans and any other] incentive or compensation plans or arrangements, ★other than stock option, stock appreciation appreciation right and phantom stock plans,★ pursuant to which the measure of benefits is based on objective standards or on the value of securities of the registrant or another person, granted, awarded or entered into at any time in connection with services, to the registrant or its

subsidiaries, include as remuneration of each of the specified persons and groups any amount expensed by the registrant and its subsidiaries for financial reporting purposes for the fiscal year as remuneration for any such specified person or group attributable to an interest in any such plan or arrangement.

(2) If the registrant has expensed amounts for financial reporting purposes and reported such amounts in the remuneration table and in a subsequent year, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes, for any proper reason, including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited pursuant to this instruction are so reflected in the table, include a footnote stating the amount of such credit and briefly describing such treatment.

[(3) The term "options" as used in this item includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis.]

(c) *Stock purchase plans; profit sharing and thrift plans.* Include the amount of any contribution, payment or accrual for the account of each of the specified persons and groups under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the registrant and its subsidiaries for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

4. *Transactions with third parties.* Item 4(a), among other things, includes transactions between the registrant and a third party when the primary purpose of the transaction is to furnish remuneration to the persons specified in Item 4(a). Other transactions between the registrant and third parties in which persons specified in Item 4(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 4(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to Item 4(a).

5. *Other permitted disclosure.* The registrant may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

6. *Definition of "plan".* The term "plan" as used in this item includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

(b) *Proposed remuneration.*

(1) Briefly describe all remuneration payments proposed to be made in the future, pursuant to any [existing] *ongoing* plan or arrangement to the persons and groups specified in Item 4(a). [As to defined benefit or actuarial plans with respect to which amounts are not included in the table pursuant to Instruction 3(a) to Item 4(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.] Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the registrant and which are available generally to all salaried employees.

(2) As to defined benefit and actuarial plans with respect to which amounts are not included in the remuneration table pursuant to Instruction 3(a) to Item 4(a), include a separate table showing estimated annual benefits payable upon normal retirement to persons in specified remuneration and years-of-service classifications. In addition the registrant shall (i) describe the compensation covered by the plan; and (ii) state the years of service at normal retirement of the individuals named in the table required by Item 4(a).

**Example of Tabular Format:*

REMUNERATION	YEARS OF SERVICE				
	15	*20*	*25*	*30*	*35*
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

NOTE: Remuneration levels should reflect reasonably expected increases in compensation.

Instruction to Item 4(b). Paragraph (1) of this item requires a brief description of the operation of any remuneration plan or arrangement which is operable for more than the latest fiscal year, notwithstanding the fact that amounts attributable to such plan were reported pursuant to Item 4(a) or 4(d) of this regulation.*

(c) *Remuneration of directors.* 1. *Standard arrangements.* Describe any standard arrangement, stating amounts, by which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

2. *Other arrangements.* If a director of the registrant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state the name of such directors and the amount of such remuneration earned by each; if this information is given as to a person named in the table required by Item 4(a), a cross-reference may be used.

(d) *Options, warrants, or rights.* Furnish the following information as to all *stock appreciation rights* and options to purchase securities from the registrant or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the registrant's last fiscal year *with regard to options and during the last fiscal year with regard to stock appreciation rights*, and as to all options held by such persons as of the latest practicable date *and stock appreciation rights held at the end of the last fiscal year*: [(i)] *(1)* each director or officer named in answer to paragraph (a)(1), naming each such person; [(ii)] *(2)* all directors and officers of the registrant as a group, without naming them; and *(3)* all other employees.

[(1)] *(i)* As to options granted during the period specified, state [(i)] *(A)* the title and aggregate amount of securities called for; [(ii)] *(B)* the average option price per share; and [(iii)] *(C)* if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed.

[(2)] *(ii)* As to options exercised during the period specified, state [(i)] *(A)* the title and aggregate amount of securities purchased; [(ii)] *(B)* the aggregate purchase price; and [(iii)] *(C)* the aggregate market value of the securities purchased on the date of purchase.

[(3)] *(iii)* As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state [(i)] *(A)* the title and aggregate amount of securities called for, and [(ii)] *(B)* the average option price per share.

*(iv) As to stock appreciation rights state the number (A) granted during the last fiscal year; (B) exercised during the last fiscal year; and (C) outstanding at the end of the last fiscal year.

(v) As to stock appreciation rights state the value of (A) the unrealized gain on the outstanding rights at the beginning of the last fiscal year; (B) the cash or securities received upon exercise of the rights during the last fiscal year; (C) the unrealized gain at the end of the fiscal year on rights granted during the last fiscal year; and (D) the unrealized gain on outstanding rights at the end of the last fiscal year.

(vi) As to stock appreciation rights, information with regard to all other employees shall only consist of the value of the unrealized gain on all rights outstanding at the end of the fiscal year.*

Instructions. 1. The term "options" as used in this paragraph (d) includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given. *The term "stock appreciation right" includes interests in phantom stock plans.*

2. The extension, regranting or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

[3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group.

(ii) Where the total market value on the dates of purchase of all securities purchased through the exercise of options during the period specified does

not exceed $10,000 for any such period or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group.

(iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.]

3. *The information called for by this paragraph with regard to options may, but need not, be reported separately for option transactions during the past fiscal year and option transactions since the close of the last fiscal year to the latest practicable date. Additionally, it should be noted the information with regard to stock appreciation rights need only be reported on a fiscal year basis rather than since the beginning of the last fiscal year.*

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

5. The information called for by this paragraph may be furnished in the form of the table set forth in Appendix A to Schedule 14A wherever it is required.

6. If the information called for by Item 4(d)[(3)] *(iii)* is being presented in a registration statement filed pursuant to the Securities Act of 1933, the information required by that subparagraph shall be reported for all options outstanding (regardless of who holds them) as of a period 30 days prior to the date of filing of the registration statement Instructions 1 through 5 do apply.

7. In calculating the unrealized gain on outstanding stock appreciation rights, issuers should report the realizable value had the rights been exercised at the end of the fiscal year. All outstanding rights granted at prices currently above present market should be disregarded in determining this calculation.

*8. If securities rather than cash are received upon the exercise of a stock appreciation right, the fair market value of said securities on the date of exercise should be reported pursuant to this Item.

9. With regard to Item 4(d)(v), registrants may disclose, at their option, that portion of the total unrealized gain reported which relates to rights that are not currently exercisable.*

(e) *Indebtedness of management.* State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, [(i)] *(1)* the largest aggregate amount of indebtedness outstanding at any time during such period, [(ii)] *(2)* the nature of the indebtedness and of the transaction in which it was incurred, [(iii)] *(3)* the amount thereof outstanding as of the latest practicable date, and [(iv)] *(4)* the rate of interest paid or charged thereon:

[(1)] *(i)* Each director or officer of the registrant;

[(2)] *(ii)* Each nominee for election as a director; and

[(3)] *(iii)* Each associate of any such director, officer or nominee.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed $10,000 or 1 percent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

3. Notwithstanding Instruction 2, if the registrant or any of its subsidiaries is engaged primarily in the business of making loans and loans to any of the specified persons in excess of $10,000 or one percent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However, if the lender is a bank, *savings and loan association, or a broker-dealer extending credit under Federal Reserve Regulation T (12 CFR Part 220),* such disclosure may consist of a statement, if such is the case, that the loans to such persons [(i)] *(a)* were made in the ordinary course of business, [(ii)] *(b)* were made on substantially the same terms, including

interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and [(iii)] ★(c)★ did not involve more than normal risk of collectibility or present other unfavorable features.

4. If any indebtedness required to be described arose under Section 16(b) of the Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the issuer or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

5. If the information called for by Item 4(e) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the information called for by that paragraph shall be presented for the last three years.

(f) *Transactions with management.* Describe briefly any transaction since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of registrant's voting securities; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant.

Instructions 1. No information need be given in response to this item Item 4(f) as to any remuneration or other transaction reported in response to Item 4(a), (b), (c), (d) or (e), or as to any transaction with respect to which information may be omitted pursuant to Instruction 2 to Item 4(b), the instruction to Item 4(c), Instruction 3 to Item 4(d) or Instruction 2 or 3 to Item 4(c). Instruction 2 to Item 4(a) applies to this Item 4(f).

2. No information need be given in answer to this Item 4(f) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item 4(f) where:

(a) The interest arises only [(i)] ★(1)★ from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or [(ii)] ★(2)★ from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10-percent equity interest in another person (other than a partnership) which is a party to the transaction, or [(iii)] ★(3)★ from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a credit interest in another person which is a party to the transaction with the registrant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. If the information prescribed by this instruction is to be included in a registration statement filed on Form S-11, disclose the aggregate depreciation claimed by the seller for federal income tax purposes, if acquired by the seller within five years prior to the transaction. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. If the information called for by Item 4(f) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the period for which the information called for shall be reported is the previous three years.

7. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

8. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10% of any class of equity securities of another corporate furnishing the services to the registrant or its subsidiaries.

9. If the filing to which this item relates is a registration statement under the Securities Act, information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

10. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction, is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(g) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which any pension, retirement, savings or similar plan provided by the registrant, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature

of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than 5 percent of the outstanding voting securities of the registrant;

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or

(5) The registrant or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4 and 5 to Item 4(f) shall apply to this Item 4(g).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (g) with respect to:

(a) payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) payment of remuneration for services not in excess of 5 percent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or

(c) any interest of the registrant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

*(h) *Termination of employment.* If any person named in the Item 4(a) table in any of the last three fiscal years resigns, retired or had his employment with the registrant terminated since the beginning of the last year, describe, unless previously disclosed, any remunerative plans or arrangements with such persons, including payments to be received from the registrant, which result or will result from the termination of employment.

Instructions. 1. No information need be given in response to this item as to any remuneration or other transactions reported in response to Item 4(a), (b), (c), (d) or (e).*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. 17 CFR 240.14a-103 is proposed to be amended by revising Appendix A as follows:

§240.14a-103 Appendix A (to Schedule 14A (§240.14a-101)).

The table *s* set forth below *are* [is an] illustration *s* of the presentation in tabular form of the information required by Item [7] *4* (d) *of Regulation S-K (17 CFR 229.20.4(d))* and Instruction 3(c) to Item 9(d) of Schedule 14A, which also applies to Items 10(d) and 11(c). If only Item [7] *4(d) of Regulation S-K* applies and Items 9, 10 and 11 are inapplicable, information need only be furnished for the period specified in Item [7] *4* (d), information called for in Table I as to shares sold may be omitted. [and the reference at the foot of the table to options granted to employees may be omitted] See Instruction [4] *5* to Item [7] *4* (d) *of Regulation S-K.* Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presented may not be needed if only a very few options *or stock appreciation rights* have been granted.

TABLE I—STOCK OPTIONS

"The following tabulation shows as to certain directors and officers and as to all directors and officers as a group *and all other employees* (i) the amount of options granted since the beginning of the fifth previous full fiscal year, (ii) the amount of shares acquired since that date through the exercise of options granted since that date or prior thereto, (iii) the amount of shares sold during such period of the same class as those so acquired, and (iv) the amount of shares subject to all unexercised options held as of (Insert Date)."

	John Jones	James Smith	Richard Roe	All directors and officers as a group	*All other employees*
COMMON SHARES (1)					
Granted—19-to-date:					
Number of shares	.....	.....	.....	.....	.....
Average per share option price	$	$	$	$	$ .....
Exercised—19-to-date:					
Number of shares	.....	.....	.....	.....	.....
Aggregate option price of options exercised	$	$	$	$	$ .....
Aggregate market value of shares on date options exercised	$	$	$	$	$ .....
Sales—19-to-date:					
Number of shares	.....	.....	.....	.....(2)	.....(3)
Unexercised at 19__					
Number of shares	.....	.....	.....	.....	.....
Average per share option price	$	$	$	$	$ .....

[In addition, during the period employees were granted options for shares at an average option price per share of $.....]

1. All common share figures have been adjusted in accordance with the terms of the options to reflect the stock split in 19 and, where applicable, to give effect to share dividends.

2. Sales by directors and officers who exercise options during the period 19 to date.

3. Registrants may but need not provide this information for all other employees.

*TABLE II—STOCK APPRECIATION RIGHTS

The following tabulation shows as to certain directors and officers and as to all directors and officers as a group information with regard to (1) the number of stock appreciation rights (or interests in phantom stock plans) (i) granted since the beginning of the fifth full fiscal year, (ii) exercised during that period and (iii) outstanding at the end of that period and (2) the value of the stock appreciation rights (or interests in phantom stock plans) (i) at the beginning of the fifth full fiscal year period (ii) received upon exercise during this period (iii) granted during the period but unexercised at end of period, and (iv) outstanding at the end of the period.*

	Number of Stock Appreciation Rights From (date) to (date)*			*Value of Stock Appreciation Rights From (date) to (date)*			
	Granted During Period	Exercised During Period	Outstanding End of Period	Unrealized Gain at Beginning of Period**	Unrealized Gain With Respect to Unexercised Grants During Period**	Amounts Received As a Result of Exercise During Period	Unrealized Gain at End of Period** ***
John Jones							
James Smith							
Richard Roe							
All directors and officers as a group							

All other employees held SARs at the end of the period with unrealized gain of $ _____

*All stock appreciation right figures have been adjusted in accordance with the terms of the stock appreciation rights and where applicable to reflect the stock split in 19____

**Based upon a closing price of $_____ per common share on the New York Stock Exchange on _____ 19____

***Of the unrealized gain at the end of period _____% relates to exercisable SARs and _____% relates to unexercisable SARs.

[Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78o(d), 78w(a)]

Authority

These amendments are being proposed pursuant to the authority in Sections 6, 7, 8, 19, and 19(a) of the Securities Act of 1933 and Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16778/May 2, 1980

In the Matter of Applications of the

CINCINNATI STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Cincinnati Stock Exchange, Inc. ("CSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following common stocks which are listed on another national securities exchange:

Caesar's World, Inc., $.10 Par Value
File No. 7-5504);
LTV Corporation (The), $.50 Par Value
(File No. 7-5505).[1]

The Commission finds that approval of the CSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the CSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the CSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the CSE's applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Cincinnati Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 24749 (April 10, 1980). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16779/May 2, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE OPTIONS CLEARING CORPORATION ("OCC") (File No. SR-OCC-80-3)

The Options Clearing Corporation submitted on April 24, 1980, a proposed rule change under Rule 19b-4 to reduce the fee for all Exchange transactions cleared through OCC (other than market-maker scratch transactions) from $0.085 per contract to $0.075 per contract.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 5, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-OCC-80-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16780/May 2, 1980

TERMINATION OF OPTIONS EXPANSION MORATORIUM

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission announces the withdrawal of proposed Securities Exchange Act Rule 9b-1(T) which, if adopted, would have prohibited temporarily any further expansion of the standardized options markets.

FOR FURTHER INFORMATION CONTACT: Stuart Strauss, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2406.

SUPPLEMENTARY INFORMATION: Temporary Rule 9b-1(T), proposed by the Commission on October 17, 1977, would have formalized the options expansion moratorium by temporarily deferring the expansion of any existing program or the initiation of any new program for standardized options trading.[1] Because the self-regulatory organizations ("SROs") which traded or planned to trade standardized options voluntarily agreed to continue the moratorium pending the completion and evaluation of the Commission's Special Study of the Options Markets ("Options Study"), the Commission on August 3, 1978, postponed final action on the proposed rule.[2] The report of the Options Study was released in February 1979, and on February 22, 1979, the Commission requested the SROs participating in the moratorium to address certain of the recommendations of the Options Study before further expansion of the standardized options markets would be permitted.[3]

In view of the responses to the Options Study recommendations submitted by the SROs, the Commission, on March 26, 1980, announced its determination to terminate the options expansion

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[1]See Securities Exchange Act Release No. 14056 October 17, 1977) [42 FR 56706].

[2]Securities Exchange Act Release No. 15026 (August 3, 1978).

[3]Securities Exchange Act Release No. 15575 (February 22, 1979) [44 FR 11876].

moratorium and to begin to permit further expansion of the standardized options markets.[4] In view of this action, Rule 9b-1(T) is no longer necessary and, accordingly, is hereby withdrawn.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16781/May 5, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005
(SR-NYSE-80-11)

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006
(SR-Amex-80-6)

ORDER INSTITUTING PROCEEDINGS TO DETERMINE WHETHER TO DISAPPROVE PROPOSED RULE CHANGES

I. *Introduction*

The New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex"), have filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act")[1] and Rule 19b-4 thereunder,[2] proposed rule changes[3] to make permanent their respective supplemental equity market maker programs, which otherwise would have expired on April 30, 1980. The programs are intended to allow members who previously had functioned principally as floor traders on the NYSE and Amex, to qualify for the market maker exemption from the proprietary trading restrictions of Section 11(a)(1) of the Act. Under the NYSE and Amex programs, registered competitive market makers ("RCMMs") on the NYSE and registered equity market makers ("REMMs") on the Amex are permitted to trade for their own accounts pursuant to the exemption contained in Section 11(a)(1)(A) of the Act for any "transaction by a dealer acting in the capacity of a market maker" ("market maker exemption").

II. *Background*

On May 1, 1978, the Commission approved the RCMM (NYSE Rule 107) and REMM (Amex Rule 114) programs on a 15-month pilot basis.[4] The rules permit members of the NYSE and Amex to engage in on-floor proprietary trading subject to a number of requirements that are intended to cause them to function as market makers.[5] For example, a NYSE or Amex member registered as an RCMM or REMM is subject to an "affirmative" obligation to respond when "called-in" by a floor official, or a floor broker holding an unexecuted customer order, and to

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[4]Securities Exchange Act Release No. 16701 (March 26, 1980) [45 FR 21426].

[1]15 U.S.C. §78s(b)(1).

[2]17 CFR 240.19b-4.

[3]File Nos. SR-NYSE-80-11 (NYSE Rule 107) and SR-Amex-80-6 (Amex Rule 114). Notice of the filings was given by issuance of a Commission release and by publication in the *Federal Register*. Securities Exchange Act Release No. 16689 (March 24, 1980). 45 FR 21068; Securities Exchange Act Release No. 16690 (March 24, 1980), 45 FR 21067. No comments have been received with respect to these proposals.

[4]Securities Exchange Act Release No. 14718 (May 1, 1978), 45 FR 19738 (File Nos. SR-NYSE-78-24, and SR-Amex-78-10).

Both rules provided for expiration on July 31, 1979, unless extended by a rule amendment approved by the Commission.

[5]Section 3(a)(38) of the Act, 15 U.S.C. 78c(a)(38), defines a market maker as

any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

improve the market in a particular stock.[6] RCMMs and REMMs also are subject to a "negative" obligation requiring that, whenever they make bids or offers or effect transactions, their activity must be conducted in a manner consistent with the maintenance of a fair and orderly market in the subject security.[7]

When the Commission initially approved the RCMM and REMM rules on a temporary basis, it stated that the Amex and the NYSE would have to present specific data and statistics demonstrating that RCMMs and REMMs perform a *bona fide* market making function to support permanent approval of the rules.[8] On July 27, 1979, the Commission, approved a nine-month extension of the rules[9] but it noted that the information available to it at that time[10] was not sufficient to support a determination that RCMMs and REMMs in fact were performing a *bona fide* market making function as contemplated by Section 11(a)(1)(A) of the Act. Specifically, the Commission was concerned with the generally low incidence of RCMM and REMM call-ins and the tendency of RCMMs and REMMs to trade only in the most active stocks. It also was concerned with the practice of RCMMs and REMMs using agents to execute their trades.[11] The Commission granted the extension in order to provide the exchanges with additional time to submit statistics demonstrating that RCMMs and REMMs perform a *bona fide* market making function, and to implement certain changes in their respective rules which the Commission believed were necessary to clarify the responsibilities of RCMMs and REMMs.[12]

Summary of NYSE and Amex statistics

The NYSE has submitted statistics in support of its present proposal to make permanent the RCMM program that are designed to demonstrate the contribution of RCMMs to the NYSE market. The statistics indicate that as of January 10, 1980, RCMMs had been called in a total of 2,514 times in 498 different stocks and that the average number of shares traded pursuant to call-ins was 714. Between July 1979 and January 1980, the number of RCMM call-ins increased substantially from a total of five for the entire month of July 1979, to an average of over 250 call-ins per week during January 1980. During this period the average weekly volume of trading per

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[6]RCMMs are obligated to respond to call-ins by floor officials or floor brokers by either (1) bidding or offering so as to narrow the spread by at least 1/8 of a point, or (2) improving depth by at least one unit of trading (100 shares) at the current bid or offer.

REMMs on the Amex are subject to the same general obligations only if the bid or offer was quoted by the Amex specialist for his own account.

[7]In addition, RCMMs and REMMs generally are prohibited from reaching across the market to engage in destabilizing transactions. *See* NYSE Rule 107B.10(ii) and Amex Rule 119.02(C).

[8]Securities Exchange Act Release No. 14718 at 12 (May 1, 1978), 45 FR 19738.

[9]Securities Exchange Act Release No. 16049 (July 27, 1979), 17 SEC Docket 1475.

[10]This information consisted of data and statistics submitted by the exchanges, as well as information gathered by the staff during an inspection of the NYSE's RCMM program.

[11]The Commission questioned whether the practices of RCMMs and REMMs using agents to execute their transactions and placing limit orders on a specialist's book where consistent with the market making obligations of RCMMs and REMMs since they would not be available to buy or sell additional shares in the stock in which such orders had been placed.

[12]In October 1979, the Commission approved, on an accelerated basis, proposed rule changes filed by the NYSE and the Amex to implement a number of the specific rule changes requested by the Commission. Securities Exchange Act Release Nos. 16277 (October 12, 1979), 44 FR 60465; 16276 (October 12, 1979), 44 FR 60452. Both the NYSE and Amex expressly declined to amend their rules to prohibit RCMMs and REMMs from entering limit orders "away" from the market, *i.e.*, outside of the existing quotation spread. In addition, the NYSE declined to remove from its rules the prohibition against an RCMM executing transactions as broker on a discretionary basis.

RCMM was 28,498 shares.[13] During the first 85 weeks of the RCMM program, the NYSE statistics indicate that approximately 60 percent of RCMM transactions added size to the bid or offer and approximately 27 percent of their transactions bettered the bid or offer.

To demonstrate the contribution of RCMMs in a "difficult market situation," the NYSE submitted statistics summarizing the trading of RCMMs on October 10, 1979, when the Dow Jones Industrial Average closed down 8.27 points on volume of 81,620,000 shares. On that day, RCMMs traded 703,300 shares in 122 different stocks in 991 transactions; 86.3 percent of their transactions added size to, or bettered the existing quotation. One hundred and twenty-five of the 991 trades effected by RCMMs on October 10 were effected pursuant to call-ins in 67 different stocks, with an average of 797 shares traded per call-in.

The Amex also submitted statistics on REMM trading during October 1979 and January 1980.[14] The statistics show that during October 1979, REMMs traded a total of 369,400 shares out of the 125,260,000 shares traded on the exchange. Only six of the 14 REMMs traded during the month, and their trading volume ranged from a high of 175,900 shares to a low of 10,100 shares. Their aggregate stabilization percentage was 91.4 percent. No REMM call-ins were recorded during October. In January 1980, REMMs traded 525,050 shares of total exchange volume of 205,980,000 shares. Five of the 14 REMMs traded during that month, with one individual accounting for approximately 90 percent of the aggregate REMM volume. The REMM stabilization percentage for the month was 90.1 percent. The statistics show 6 REMM call-ins for the month, accounting for a total of 20,500 shares.

III. *Proceedings to Determine Whether to Disapprove SR-NYSE-80-11 and/or Amex-80-6*

The Commission hereby institutes proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule changes should be disapproved. Institution of these proceedings is required in view of the legal and policy issues raised under the Act, summarized below, and does not indicate that the Commission has formulated any final conclusions with respect to any of the issues involved.

Section 19(b)(2) of the Act provides that the Commission must approve a proposed rule change of a self-regulatory organization if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization and must disapprove a proposed rule change if it does not make such finding. The provisions applicable to the instant proposed rule changes are Section 11(a)(1)(A) of the Act, which provides an exemption from the general proprietary trading prohibition for a dealer acting in the capacity of a market maker, and Section 6(b) of the Act, which establishes substantive requirements governing the rules of exchanges.

In order to approve the RCMM and REMM rule filings the Commission must be able to find that RCMMs and REMMs trading in conformance with NYSE Rule 107 and Amex Rule 114 respectively are "acting in the capacity of a market maker" within the meaning of Section 11(a)(1)(A) of the Act.[15] In its original order approving the pilot programs, the Commission recognized that RCMMs and REMMs, under appropriate circumstances, possibly could be deemed to satisfy the definition of market maker set forth in Section 3(a)(38) of the Act, as dealers who, with respect to a security (every security in the case of an RCMM and registered securities in the case of an REMM), hold themselves out (by virtue of their registration) as being willing to buy and sell that security on a regular basis (by making competitive

[13]Seventeen of the 41 RCMMs traded an average of between 20,000 and 30,000 shares per week, while three RCMMs traded an average of less than 1000 shares per week and one RCMM traded an average of over 100,000 shares per week.

[14]The Amex admits that the REMM program has not generated a broad following, that most REMMs have been inactive in their registered securities, and that the instances of REMM call-ins have been negligible.

[15]Members of an exchange who do not qualify for the market maker exemption can effect on-floor proprietary trades pursuant to the Section 11(a)(1)(G) exemption which requires that a member be primarily engaged in a public securities business and that such members' transactions yield priority, parity and precedence to public orders. 15 U.S.C. 78k(a)(1)(G). *See also* Commission Rule 11a1-1(T), 17 CFR 240.11a1-1(T), relating to transactions yielding priority, parity and precedence.

bids and offers whenever called-in by a floor official or floor broker).[16]

As noted above, the NYSE and Amex submitted statistics in response to the Commission's July 27, request. The NYSE statistics indicate that since the Commission's nine-month extension of the RCMM program, there has been a steady increase in the number of RCMM call-ins per week, and that, in responding to call-ins, RCMMs generally trade in excess of their minimum obligations under Rule 107.

The Amex statistics indicate that the number of REMM call-ins, as well as their overall trading activity, continues to be negligible.[17] The statistics do show, however, that in the few instances in which REMMs have been called-in, they have participated in a meaningful way. For example, during January 1980, the average REMM volume traded in response to call-ins was 3,416 shares, substantially in excess of the 100 shares minimum requirement.

The Commission notes, however, that the extent to which RCMMs and REMMs are called-in is still extremely limited[18] and the vast majority of their trading volume occurs in situations where they have not been called-in to participate.[19] During the week in which there was the greatest number of call-ins on the NYSE, the average daily number of call-ins per RCMM was only 1.5 (and, in fact, some RCMMs had no call-ins).[20] Moreover, when trading on their own initiative, RCMMs and REMMs are free, consistent with their rules, to engage in trading not constituting the kind of "regular" or "continuous" course of dealings in a particular security normally associated with market making.[21]

While RCMMs and REMMs may provide some benefit to their respective markets when trading in response to call-ins, the Commission is unable to conclude, in light of the factors discussed above, that, on balance, RCMMs or REMMs act as market makers for purposes of the Section 11(a)(1)(A) exemption. For these reasons, a ground for disapproval under consideration is that the proposed rule changes are not consistent with the requirements of Section 11(a)(1)(A).[22]

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[16]Securities Exchange Act Release No. 14718 (May 1, 1978), 45 FR 19738.

[17]During October 1979, there were no instances of REMMs being called-in to participate, while during January 1980, REMMs were called-in only 6 times.

[18]Nevertheless, both exchanges continue to reject the Commission's July 1979, suggestions that RCMMs and REMMs be assigned to securities located within specific zones on the trading floor in order to increase their availability to respond to call-ins, and that RCMMs' and REMMs' ability to engage in remote control trading be circumscribed. The Commission continues to be concerned about these aspects of the programs.

[19]The statistics submitted by the NYSE show that in excess of 90 percent of the average weekly RCMM share volume between July 2, 1979 and January 11, 1980 was self-initiated.

Similarly Amex statistics show that 100 percent of REMM volume for October 1979, and 96 percent of REMM volume for January 1980 was self-initiated. Amex REMMs are required to yield priority to off-floor orders in establishing or increasing a position when initiating trades.

[20]Even on October 10, 1979, the highest volume day in NYSE history and a day on which RCMMs responded to 125 calls (approximately 3 per RCMM), 86 percent of RCMM trading volume represented trading on their own initiative.

On March 27, 1980, a day on which the Dow Jones Average dropped 25 points due to the silver crisis before recovering 22 points, 23 of the 41 RCMMs responded to 76 call-ins and traded an average of only 380 shares per call-in.

[21]While NYSE RCMMs are permitted to trade as market makers in every security listed on the NYSE (approximately 2,100), Amex REMMs are permitted to trade as market makers only in the stocks in which they are registered (typically 10-15).

The ability of RCMMs and REMMs to engage in this type of isolated trading is enhanced by their use of other floor brokers to execute their transactions.

[22]In addition to the threshold question of whether members trading under the RCMM and REMM programs as currently constituted are *bona fide* market makers for purposes of Section 11(a) of the Act, the Commission is concerned that one aspect of the NYSE program—the prohibition in NYSE Rule

IV. *Procedure: Request for Written Comments*

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the potential grounds for disapproval identified above. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, arguments and data, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[23] In particular, the Commission invites the written views of interested persons concerning whether the proposed rule changes are inconsistent with the provisions of the Act and the rules and regulations thereunder, specifically Section 11(a)(1)(A) and 6(b).

Interested persons are invited to submit written data, views and arguments regarding the proposed rule changes by June 15, 1980.[24] Any person who wishes to file a rebuttal to any other person's submission must file their rebuttal by July 6, 1980. Persons desiring to submit written data, views and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Reference should be made to File Nos. SR-NYSE-80-11 and SR-Amex-80-6.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filings and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organizations.

By the Commission.

George A. Fitzsimmons
Secretary

107B(1) against RCMMs handling "not held" orders—appears to impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. That prohibition effectively precludes floor brokers who handle discretionary orders for institutional and other customers from registering as RCMMs and competing in that capacity with NYSE members who do not handle such orders. The prohibition does not appear to have any regulatory justification since any potential for conflict of interest or manipulative conduct appears to be minimized by the fact that Rule 107B.40 already prohibits an RCMM from acting in the capacity of an RCMM and a floor broker in the same stock on the same day.

[23]Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975 (Pub. Law. 94-29, June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral hearing or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 75, 94th Cong. 1st Sess. 30 (1975).

[24]Section 19(b)(2) requires that proceedings to determine whether to disapprove a proposed rule change be concluded within 180 days of the date of publication of notice of filing of the proposed rule change, unless the Commission finds good cause to extend the time for the conclusion of such proceedings.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16782/May 5, 1980

Admin. Proc. File No. 3-5869

In the Matter of

RONDO J. ZIEGLER

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934,[1] Respondent Rondo J. Ziegler ("Ziegler") has submitted an offer of settlement which the Commission has determined to accept. Without admitting or denying the allegations in the Order for Proceedings, Ziegler consents to the findings and sanction set forth below.

On the basis of the Order for Proceedings and the offer of settlement, the Commission finds[2] that Ziegler wilfully violated and wilfully aided and abetted the violation of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as alleged in the Order for Proceedings.

In view of the above, it is in the public interest to impose the sanction specified in Ziegler's offer of settlement.

Accordingly, IT IS ORDERED that:

Rondo J. Ziegler be, and he hereby is, censured.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]In the Matter of Olde & Co., Inc., et al., Administrative Proceeding File No. 3-5869, instituted on January 30, 1980.

[2]The findings herein are not binding upon any other respondent named in these proceedings.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16783/May 5, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 719/May 5, 1980

Admin. Proc. File No. 3-5914

In the Matter of

T. E. SLANKER COMPANY
(8-14938; 801-10316)
and **TED E. SLANKER, JR.**

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted with respect to T. E. Slanker Company, a registered broker-dealer and investment adviser located in Portland, Oregon and Ted E. Slanker, Jr., sole proprietor of T. E. Slanker Company, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 ("Advisers Act").

In anticipation of the institution of these proceedings, respondents have submitted an offer of settlement which the Commission has determined to accept.

Solely for the purpose of settling these proceedings and without admitting or denying the allegations or findings contained herein, respondents consent to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED THAT such proceedings be, and they hereby are, instituted.

On the basis of the Order for Proceedings and the Offer of Settlement submitted by respondents, the Commission makes the following findings:

1. During the period from about August 1, 1977 to the present, T. E. Slanker Company wilfully violated and Ted E. Slanker, Jr. wilfully aided and abetted violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, Rule 10b-5 thereunder and Section 206(2) of the Advisers Act in that said persons in connection with transactions in

the securities of Canadian Barranca Corp., Ltd. ("CBR") omitted to disclose that Ted E. Slanker, Jr. received an option to purchase CBR from one of T. E. Slanker Company's brokerage customers, recommended that brokerage customers and/or advisory clients buy CBR, then executed the option to purchase shares of CBR at a price below that paid by brokerage customers and/or advisory clients.

2. During the period from about August 1, 1977 to the present, T. E. Slanker Company wilfully violated and Ted E. Slanker, Jr. wilfully aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that said persons in connection with transactions in CBR securities represented to customers that trades in CBR would be executed on a first come, first served basis when, in fact, trades would not be and were not executed in that manner.

3. During the period from on or about September 1977 to date, T. E. Slanker Company wilfully violated and Ted E. Slanker, Jr. wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder with respect to the sale of 40,000 shares of CBR stock on December 7, 1977 from one of T. E. Slanker Company's customers to Ted E. Slanker, Jr. in that T. E. Slanker Company failed to accurately make and keep current its books and records with respect to this transaction.

Respondents have undertaken the following:

1. Respondents undertake to publish with each International Investors Viewpoint recommendation the aggregate positions of International Investors Viewpoint's principals, employees assuming responsibility for recommendations and any related businesses in the security being recommended, as of publication date, which exceed $10,000 in value. The nature of such positions (e.g., share ownership, options) will be specified.

2. Respondent T. E. Slanker Company undertakes to review its records from July 1 through December 31, 1978 and to ascertain each CBR trade involving a customer order executed out of sequence in favor of the T. E. Slanker Company or another broker-dealer. In each such case, T. E. Slanker Company will refund to the customer the difference between the price paid or received by the customer and the price paid or received by T. E. Slanker Company or the broker-dealer. Commissions will be taken into account as appropriate. This undertaking will be discharged within 180 days of the date of this Order.

3. Respondent T. E. Slanker Company undertakes to retain an individual acceptable to the Commission's Seattle Regional Office as a full-time consultant (or on such other time basis as may be acceptable to the Commission's Seattle Regional Office) for a period of six months, to examine its recordkeeping procedures and trading practices, to recommend improvements, to train and evaluate its personnel and at the end of such period, to prepare a written evaluation, a copy of which will be submitted to the Commission's Seattle Regional Office.

In view of the foregoing, the Commission finds that it is in the public interest to impose the sanctions specified in the Offer of Settlement and, accordingly,

IT IS ORDERED that:

1. T. E. Slanker Company be censured.

2. Ted E. Slanker, Jr. be censured.

3. T. E. Slanker Company and Ted E. Slanker, Jr. comply with their undertakings as described above.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16784/May 5, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 720/May 5, 1980

Admin. Proc. File No. 3-5915

In the Matter of

ROBERT K. WORTON
219 Country Gate Road
Wayne, Pennsylvania 19087

JOHN J. REAVY
248 Hemlock Road
Springfield, Pennsylvania 19064

BRIAN D. BARRABEE
311 French Road
Newtown Square, Pennsylvania 19073

JOHN P. ROSE
1033 Croton Road
Wayne, Pennsylvania 19087

STEPHEN C. SCHWARTZ
1366 Revelation Road
Meadowbrook, Pennsylvania 19046

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SACTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted with respect to Robert K. Worton ("Worton"), John J. Reavy ("Reavy"), Brian D. Barrabee ("Barrabee"), John P. Rose ("Rose"), and Stephen C. Schwartz ("Schwartz"), formerly vice-presidents and financial principals of The IES Management Group, Inc. ("Registrant"), a registered broker-dealer and investment adviser located in Irvington, New Jersey whose dual registrations will be revoked as of the date of dismissal of the SIPC trustee appointed to liquidate Registrant.[1] Simultaneous with the institution of these proceedings, respondents Worton, Reavy, Schwartz, Barrabee and Rose have submitted Offers of Settlement. Without admitting or denying the findings herein, respondents consent to the findings and sanctions set forth below.

II.

After due consideration of the Offers of Settlement and upon the recommendation of its staff, the Commission has determined that it is in the public interest to accept such Offers and, accordingly, IT IS ORDERED that such proceedings pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203 of the Investment Advisers Act of 1940, be, and hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings and the Offers of Settlement, it is found that:

1. Respondents Worton, Reavy, Barrabee, Rose and Schwartz wilfully violated and wilfully aided and abetted violations of Section 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with their offer and sale of securities in the form of interests in limited partnerships syndicated by Registrant from January 1, 1974 to December 31, 1976.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, that:

1. Robert K. Worton and John J. Reavy be, and hereby are, suspended from association with any broker, dealer, investment adviser or investment company for a period of four (4) months and thereafter barred from association in a supervisory or proprietary capacity with any broker, dealer, investment adviser or investment company; provided, however, that after a period of eighteen (18) months from the effective date of this Order, they may apply to the Commission to become associated in a supervisory or proprietary capacity. Furthermore, Worton and Reavy undertake to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the eighteen-month period.

[1] *In the Matter of The IES Management Group, Inc., et al.*, Administrative Proceeding File No. 3-5401 (March 15, 1978).

2. Brian D. Barrabee and John P. Rose be, and hereby are, suspended: (i) from association with any broker, dealer, investment adviser or investment company for period of thirty (30) days; and upon expiration of this period (ii) from engaging in transactions in any securities other than those for which a registration statement has been filed or is in effect pursuant to the Securities Act of 1933 for a period of twelve (12) months, and (iii) from association with any broker, dealer, investment adviser and investment company in a supervisory or proprietary capacity for a period of twelve (12) months. Furthermore, Barrabee and Rose undertake to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the thirteen-month period.

3. Stephen C. Schwartz be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company for a period of three (3) months and thereafter suspended from association with any broker, dealer, investment adviser or investment company in a supervisory capacity for an additional period of six (6) months. Furthermore, Schwartz undertakes to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the nine-month period.

IT IS FURTHER ORDERED that the sanctions specified above shall commence from the date of the entry of this Order, except for respondent Rose, whose sanction shall commence at the opening of business on the second Monday following the date of the entry of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16785/May 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6210/May 6, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16786/May 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-5

The Municipal Securities Rulemaking Board (the "MSRB") submitted on April 25, 1980, a proposed rule change under Rule 19b-4 to modify the reclamation provisions of MSRB rule G-12. Rule G-12 currently provides, among other things, that a reclamation may be made by either party, within 18 months of the delivery date, if there is either an irregularity in delivery or a refusal to transfer or deregister by a transfer agent due to lack of certain specified documentation. The proposed rule change would expand the circumstances under which reclamation within 18 months would be permitted to include situations where descriptive information concerning a security, as contained in a confirmation, was inaccurate either because required information was omitted or erroneously noted, or because information not required by Rule G-12, but material to the transaction, was erroneously noted.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-5.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L

Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16787/May 5, 1980

A notice has been issued giving interested persons until June 6, 1980 to comment on the *Pacific Stock Exchange, Inc.* application for unlisted trading privileges in the common stock of VALERO ENERGY CORPORATION, $1 Par Value (File No. 7-5520).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16788/May 6, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

File Nos.
SR-CBOE-80-4
SR-Amex-80-7
SR-MSE-80-3
SR-PSE-80-4
SR-Phlx-80-10

NOTICE OF FILING OF PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that the self-regulatory organizations listed above ("SROs") have filed with the Commission copies of proposed rule changes[1] to implement the first phase of the expansion of authorized put options classes.[2] The proposals were filed in accordance with the puts expansion schedules described below submitted by each of the SROs in response to a Commission request in its March 26, 1980, release announcing the termination of the options expansion moratorium (the "March 26 release").[3] Each of the SROs has represented that it has sufficient operational and surveillance capabilities to handle any increased volume that may result from the listing of additional put classes.

A. *CBOE*

The CBOE proposes to implement the first phase of its puts expansion program by listing put options on 27 additional securities on which it currently lists call options, in groups of 15 and 12, approximately two weeks apart. According to its puts expansion schedule, the CBOE intends to make subsequent filings monthly to add additional put classes at a rate not to exceed 12 classes per month. The CBOE has indicated that it may revise its projected schedule

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[1]The proposed rule changes were filed on the following dates: Chicago Board Options Exchange, Incorporated ("CBOE"), April 15, 1980; American Stock Exchange, Inc. ("Amex"), April 18, 1980; Midwest Stock Exchange, Incorporated ("MSE"), April 16, 1980; Pacific Stock Exchange Incorporated ("PSE"), April 23, 1980; and Philadelphia Stock Exchange, Inc. ("Phlx"), April 21, 1980.

[2]As a result of the options expansion moratorium, each of these SROs has been limited since mid-1977 to the listing and trading of five put classes.

[3]Securities Exchange Act Release No. 16701.

downward if it determines that such a modification is dictated by its own operational or regulatory capabilities, the operational capabilities of its member firms, or market conditions.[4]

B. *Amex*

The Amex proposes initially to list puts on six additional securities underlying its non-multiply traded call options classes, as well as on any underlying security on which Amex calls are multiply traded, if another SRO intends to list such puts. According to its puts expansion schedule, the Amex intends in subsequent filings to request Commission approval to add up to 10 put classes monthly and, in the event another SRO elects to list puts on securities on which Amex calls are multiply traded, the Amex intends to list the corresponding put option, notwithstanding the expansion schedule.

C. *MSE*

As the first phase of its puts expansion program, the MSE proposes to list puts on up to six underlying securities on which it currently lists call options. In accordance with its puts expansion schedule, approximately one month following the approval of the initial filing, the MSE intends to file a request to list puts on the remaining underlying securities on which it currently trades call options.

D. *PSE*

The PSE, as the first phase of its puts expansion program, proposes to list 13 additional put classes. According to its puts expansion schedule, the PSE intends, upon Commission approval of a subsequent filing, to list puts on its remaining eight securities currently subject to call option trading.

E. *Phlx*

The Phlx proposes initially to list up to 11 additional put classes. In accordance with its puts expansion schedule the Phlx intends to make subsequent filings to add up to ten more classes during a second phase followed by its remaining classes during a third phase.

[4]The CBOE has also stated in its filing that its proposed puts expansion schedule is exclusive of the listing of any additional put classes that may result from the consummation of its combination with the MSE options program.

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to the file numbers captioned above.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes before the thirtieth day after the date of publication of notice of filing thereof. As the Commission observed in the March 26 release, it perceives certain benefits with respect to the listing of both puts and calls on the same underlying security. For example, expanded puts trading will provide investors with an additional investment vehicle to complement call options in the formulation of trading strategies, and may improve the markets for both puts and calls through their concurrent use by market professionals in hedging and arbitrage transactions. In addition, as the Commission also noted in the March 26 release, the major regulatory deficiencies identified by the Commission's Special Study of the Options Markets have been addressed responsibly by the SROs, and the Commission has not identified any regulatory problems unique to puts trading. Each SRO has represented that its surveillance and operational capabilities are sufficient to handle the increased volume resulting from the additional puts listings. Further, it appears at this time that puts expansion in the manner contemplated by the SROs would not adversely affect member firm back office

operations. Accordingly, the Commission believes that further delay in the commencement of expansion of put option classes is not necessary or appropriate in furtherance of the purposes of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16789/May 6, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-6)

ORDER APPROVING PROPOSED RULE CHANGE

On March 24, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Commentary .01 and adds Commentary .15 to its Rule 1014 to clarify that options transactions of a Registered Options Trader ("ROT") must actually be initiated by the ROT while on the floor of the exchange in order to qualify for the specialist exemptions from Regulation T of the Federal Reserve Board (12 CFR 220) and Section 11(a) of the Act.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16694, April 1, 1980) and by publication in the *Federal Register* (45 FR 21425, April 1, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16790/May 6, 1980

A notice has been issued giving interested persons until June 5, 1980 to comment on the *Pacific Stock Exchange's* application for unlisted trading privileges in the common stock of: Tandy Corporation, $1 Par Value.

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SECURITIES EXCHANGE ACT OF 1934
Release No. 16791/May 7, 1980

In the Matter of

CHARLES E. PURDY III

The Securities and Exchange Commission has ordered public administrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against Charles E. Purdy III ("Purdy"), a registered representative employed with a registered broker-dealer in its Minneapolis, Minnesota office.

The Order for Proceedings alleges that Purdy wilfully violated the antifraud provisions of the Securities Act of 1933 ("Securities Act") and of the Exchange Act in connection with soliciting and transacting option business with public investors.

The Order further alleges that at various times during the period from January 1, 1974 to the present, Purdy, in inducing customers to trade in options and maintain option accounts with them, made false and misleading statements of material facts and omitted to state material facts about the risks inherent in option trading strategies, potential profits and rates of return realizable from option trading strategies, and the suitability of these trading strategies to his customers' financial situations, investment sophistication and investment objectives.

The Order also alleges that Purdy caused customers who could not afford the risk and did not sufficiently understand the risk, margin requirements, mechanics and other fundamental aspects of option trading strategies to repose trust and confidence in Purdy in connection with all purchases and sales of options. As a result of such transactions, investors incurred substantial financial harm.

The Order further alleges that Purdy effected purchase and sale transactions in options which were not suited to the financial situations, investment sophistication and investment objectives of such customers.

The Order also alleges that Purdy represented to certain customers that their accounts were profitable when in fact they were not, in order to induce them to continue to engage in option trading.

A hearing will be scheduled to determine whether the allegations against Purdy are true, and if so, to decide what, if any, remedial sanctions would be appropriate.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16792/May 8, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE OPTIONS CLEARING CORPORATION (File No. SR-OCC-80-4)

Options Clearing Corporation ("OCC") submitted on May 1, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, which authorizes OCC to disapprove an application for clearing membership if the applicant or person associated with the applicant is subject to a statutory disqualification.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-OCC-80-4.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16793/May 8, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

File Nos.
SR-CBOE-80-9
SR-Amex-80-12
SR-MSE-80-9
SR-PSE-80-6
SR-Phlx-80-11

NOTICE OF FILING OF PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the self-regulatory organizations listed above ("SROs") have each filed with the Commission copies of proposed rule changes[1] to add interpretations to their respective rules governing the opening of new options series.[2] The interpretations would provide that when either put option contracts or put and call option contracts are first opened for trading on an underlying security, the respective SROs may open a series of put option contracts corresponding to each series of call option contracts open or to be opened for trading on the same underlying security. Accordingly, when initiating put options on an underlying security regarding which calls already are traded, the SROs would not be limited to listing series with exercise prices generally surrounding the current primary market price of the underlying security, as the current rules would require.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to the file numbers captioned above.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

On May 6, 1980, the Commission approved rule proposals by the SROs listed above to list put classes on a number of underlying securities regarding which calls currently are traded.[3] The Commission previously had noted in its release announcing the termination of the options expansion moratorium

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[1]The proposed rule changes were filed on the following dates: Chicago Board Options Exchange, Incorporated ("CBOE"), May 8, 1980; American Stock Exchange, Inc. ("Amex"), May 8, 1980; Midwest Stock Exchange, Incorporated ("MSE"), May 8, 1980; Pacific Stock Exchange Incorporated ("PSE"), May 8, 1980; and Philadelphia Stock Exchange, Inc. ("Phlx"), May 7, 1980.

[2]See CBOE Rule 5.6; Amex Rule 903; MSE Article XLI, Rule 6; PSE Rule VI, Sec. 4; and Phlx Rule 1012.

[3]Securities Exchange Act Release No. 16788.

that the listing of puts and calls on the same underlying security would provide investors with an additional investment vehicle in the formulation of trading strategies, and may improve the markets for both puts and calls through their concurrent use by market professionals in hedging and arbitrage transactions.[4] In order to achieve the full benefits of expanded puts trading, the Commission believes that the SROs should be permitted immediately the flexibility to list puts classes corresponding to existing call classes. For the reasons set forth above, and because the SROs intend to begin their puts expansion programs on May 9, the Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[4]Securities Exchange Act Release No. 16701, (March 26, 1980).

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21548/May 2, 1980

In the Matter of

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
215 North Front Street
Columbus, Ohio 43215
(70-6451)

NOTICE OF PROPOSED SHORT-TERM BORROWINGS AUTHORIZATION

NOTICE IS HEREBY GIVEN that Columbus and Southern Ohio Electric Company ("CSOE"), a prospective electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

By Supplemental Memorandum and Order dated February 13, 1980 (HCAR No. 21433), AEP was authorized to acquire the common stock of CSOE, and by Supplemental Order dated March 28, 1980 (HCAR No. 21498), AEP was authorized to solicit CSOE stockholders under the tender offer related to such acquisition. As a prospective subsidiary of AEP, CSOE has requested a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $210,000,000. As of March 31, 1980, CSOE had $74,578,000 aggregate principal amount of short-term debt outstanding. Such borrowings would be evidenced by notes, to be issued and sold from time to time under arrangements further described below, with no such note having a maturity later than March 31, 1982.

Concerning its credit arrangements, CSOE states that it has (1) lines of credit totaling $113,066,00 with 38 banks; (2) a loan agreement ("Loan Agreement") with certain banks for up to

$80,000,000 of loans for use in retiring certain of its preferred shares; (3) a credit agreement ("Credit Agreement") with Prulease, Inc. ("Prulease"), for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments.

With respect to CSOE's lines of credit, the borrowings will be from banks of two classes. Each note to be issued to a Class I and Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. CSOE's credit arrangements with the Class I banks generally require it to maintain compensating balances equal to a percentage of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10% of the line of credit and 10% of the amount borrowed). CSOE's credit arrangements with the Class II banks generally require it to maintain compensating balances equal to a percentage of one-half of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10% of one-half of the line of credit and 10% of the amount borrowed) and to pay a fee (equal to a percentage (not in excess of 9%) of the bank's prime rate or 10% of the prior quarter's average Treasury Bill rate times one-half the amount of the line) for the availability of the remaining half of the line of credit. It is stated that the combination of the compensating balances and the fees is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. Borrowings from both Class I and Class II banks will bear interest at an annual rate not greater than then bank's prime rate in effect from time to time. The effective interest cost of borrowings from either Class I or Class II banks would not exceed 125% of the bank's prime rate, or not more than 23.125% on the basis of a prime rate of 18.5%.

With respect to the Loan Agreement for borrowings of up to $80,000,000, it is stated that such borrowings may only be used to purchase for retirement certain of CSOE's cumulative preferred shares, par value $25 and $100, in connection with a transaction separate from but related to AEP's acquisition of CSOE's common shares. The details concerning the retirement of the preferred shares are set forth in the Supplemental Memorandum and Order dated February 13, 1980 (HCAR No. 21433). The Loan Agreement provides for the issuance of short-term notes to the lending banks, each such note (1) being payable six months from the date of issuance, with provisions for issuing new short-term notes in payment of the maturing short-term notes on dates six, twelve and eighteen months after the initial drawdown; (2) bearing interest at an annual rate of 102% of the alternate base rate (the higher of (a) the prime rate in effect from time to time of Citibank, N.A., on 90 day loans to substantial commercial borrowers, or (b) 1/2 of one percent above the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, as determined weekly by Citibank, N.A., on the basis of certain reports, such average adjusted to the nearest 1/4 of one percent, or, if there is no nearest 1/4 of one percent, then to the next higher 1/4 of one percent); (3) being prepayable in whole or in part (not less than $5,000,000) at any time.

The Loan Agreement also contains a provision for the repayment of the short-term notes on the second anniversary of the drawdown by the issuance to the banks of CSOE's term notes, payable in four substantially equal semiannual installments of principal and bearing interest at an annual rate of 104% of the alternate base rate. CSOE is not now seeking authorization to issue such term notes, which will be the subject of a future filing should CSOE desire to issue them. Under the Loan Agreement CSOE is required to use the net proceeds of any sale of preferred shares to prepay the short-term notes or the term notes, as the case may be. Any amounts prepaid, whether optionally or mandatorily, may not be reborrowed. CSOE is required to pay a commitment fee at the rate of 1/2 of one percent per annum on the banks' commitment under the Loan Agreement, commencing December 1, 1979, until the drawdown or September 30, 1980, whichever is earlier. The effective interest cost of borrowings under the Loan Agreement, assuming a prime rate of 18.5%, would be 18.87% for the short-term notes and 19.24% for the term notes.

With respect to the Credit Agreement borrowings, CSOE's arrangements with Prulease provide for loans of up to $30,000,000. Each loan is to be an amount equal to or less than CSOE's estimated average inventory value of coal and oil for the month in which the loan is made, is to be evidenced by a note, and is to be secured by a security interest in CSOE's supply of coal and fuel oil at its generating stations. Each note matures at the end of the month

for which the loan is made, except for the note which will be issued the first day of the month in which CSOE becomes a subsidiary of AEP, which note will mature on September 30, 1980, the date of termination of the Credit Agreement. Each note will bear interest at an annual rate equal to 1.125% plus .1% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. No compensating balances are required. The Credit Agreement may be renewed annually for one year at a time, by Prulease, with CSOE's consent, by Prulease's giving notice to CSOE on or before July 1 of each year. The effective interest cost of borrowings under the Credit Agreement, based on the 17% interest rate for commercial paper issued by Prulease on April 15, 1980, would be 18.225% through September 30, 1980.

With respect to CSOE's arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments, it is stated that such borrowings will be evidenced by notes which will (1) mature 180 days from date of issuance, (2) be payable on demand in whole or in part by the holder, and be prepayable in whole or in part by CSOE, and (3) bear interest, payable monthly, at the discount rate then in effect with respect to short-term notes of Sears Roebuck Acceptance Corporation (which rate was 14.75% on April 5, 1980).

The proceeds from the short-term borrowings (exclusive of the proceeds from borrowings under the $80,000,000 Loan Agreement, which will be used exclusively to purchase and retire CSOE preferred stock, and exclusive of borrowings under the Credit Agreement, which will be used to purchase fuel), will be added to CSOE's general funds and used to pay for construction expenditures (estimated at $125,000,000 for 1980) and for other corporate purposes.

CSOE claims exemption from the competitive bidding requirements of Rule 50 for its issuance of short-term notes pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $168,400, including commitment fees of $165,000 and legal fees of $1,400. It is stated that no state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than May 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21549/May 5, 1980

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

(70-6098)

NOTICE OF PROPOSED INCREASE IN SHORT-TERM BORROWING AUTHORIZATION

NOTICE IS HEREBY GIVEN that Jersey Central Power & Light Company ("Jersey Central"), an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

By an order dated December 28, 1979 in this matter (HCAR No. 21369) Jersey Central was authorized to issue or renew its unsecured promissory notes from time to time through December 31, 1980, provided that such borrowings, when added to Jersey Central's borrowings outstanding under a separate loan agreement (as authorized in the Commission's orders of June 19, 1979, HCAR No. 21107) would not in the aggregate exceed the lesser of $139,000,000 or the amount permitted by Jersey Central's charter. It is now proposed that Jersey Central be permitted to issue, sell and renew its unsecured promissory notes from time to time through December 31, 1980, provided that such borrowings, when added to Jersey Central's borrowings under the loan agreement would not in the aggregate exceed the lesser of $160,000,000 or the amount permitted by Jersey Central's charter. Jersey Central states that this flexibility is sought because from time to time it may be less costly and more expeditious to borrow under unsecured credit lines then under the loan agreement. In all other respects the transactions as heretofore authorized by the Commission will remain unchanged.

A statement of the fees, commissions and expenses to be incurred by Jersey Central in connection with the proposed transaction will be filed by further post-effective amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction will be filed by further post-effective amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1934
Release No. 21550/May 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6210/May 6, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21551/May 6, 1980

In the Matter of

CONNECTICUT YANKEE ATOMIC POWER COMPANY
Hartford, Connecticut

(70-6444)

ORDER AUTHORIZING PRIVATE PLACEMENT OF LONG-TERM DEBENTURES; EXCEPTION FROM COMPETITIVE BIDDING; RESERVATION OF JURISDICTION

Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), a subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 50 and 100 promulgated thereunder regarding the proposed transaction.

Connecticut Yankee is the owner of only one generating facility, a 575,000 KW nuclear electric generating plant in Haddam, Connecticut, which has been in operation since January, 1968. Outstanding shares of its common stock are owned by eleven New England Electric Utilities ("Sponsors"). Primarily as a result of requirements imposed by the Nuclear Regulatory Commission and its own studies undertaken after the nuclear accident at Three Mile Island ("TMI"), Connecticut Yankee has proposed that its 1980 construction program shall include expenditures for modifications to the plant totalling approximately $32,700,000. Additional construction expenditures of approximately $25,000,000 are expected in each of the years 1981 and 1982. In order to repay short-term borrowings or to finance other portions of its capital requirements, and possibly to repay certain outstanding term loans totalling $20,000,000, Connecticut Yankee proposes to issue and sell in 1980, at private sale, to institutional investors its medium or long-term debt. The aggregate amount of securities to be sold in 1980 will be up to $60,000,000 if the term loans are to be repaid and up to $40,000,000 if the term loans are to remain outstanding.

Since Connecticut Yankee's Mortgage Indenture effectively precludes the issuance of additional First Mortgage Bonds to finance plant modifications, the securities will not be secured by a mortgage on the plant. Connecticut Yankee presently expects that the securities to be offered will have a term of up to 17 or 18 years and a level sinking fund, which will retire the entire issue by maturity. The 17 or 18 year period is approximately equal to the remaining depreciable life of the plant. The ultimate choice as to the kind or kinds of securities to be issued, the timing of the issue or issues and the exact amount and terms of the securities will be fixed after a preliminary exploration of the market for which purpose Connecticut Yankee will utilize the services of an investment banker.

Connecticut Yankee presently intends to effect the sale of the securities in the third or fourth quarter of 1980, but has been advised by its financial advisor that prospective purchasers of the securities may not have investment funds available then unless commitments are obtained promptly. Accordingly, Connecticut Yankee has requested an exception from the competitive bidding requirements of Rule 50 under the Act so that the securities may be sold privately to institutional investors, with whom the terms of their issue will be negotiated.

Connecticut Yankee states that such an exception is necessary because, since the accident at TMI, investors are wary of investing in utilities with substantial nuclear generating capacity. Connecticut Yankee has no other capacity and no additions are planned. It also states that since the securities cannot be first mortgage bonds, it is probable that special and complex terms will be required to support whatever type of securities it is determined are best suited to the needs of Connecticut Yankee. It is stated that such negotiations will provide the parties with the flexibility required to determine the appropriate terms for the securities in light of Connecticut Yankee's circumstances and the needs of the purchasers and will enhance Connecticut Yankee's ability to consummate the proposed transaction.

The net proceeds, from the sales of the securities will be used to repay short-term borrowings, to finance construction expenses and possibly to repay the outstanding term loans. Such short-term borrowings are presently estimated to total somewhat more than $40,000,000 at December 31, 1980, assuming no external financing prior to that date.

The fees, commissions and expenses to be incurred

in connection with the proposed transaction are estimated at $5,000, including legal fees of $2,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21522), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the terms and conditions of the securities to be issued by Connecticut Yankee.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21552/May 6, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
MIDDLE SOUTH SERVICES, INC.
New Orleans, Louisiana

(70-6433)

ORDER AUTHORIZING GUARANTEE BY PARENT OF SERVICE COMPANY'S LEASE OBLIGATIONS RELATED TO SALE AND LEASEBACK BY SERVICE COMPANY OF REAL PROPERTY

Middle South Utilities, Inc., ("Middle South"), a registered holding company, and its subsidiary service company, Middle South Services, Inc. ("Services"), have filed a declaration and an amendment thereto pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transaction.

Services intends to enter into a sale-leaseback transaction with a limited partnership ("Lessor") to be formed by Integrated Resources, Inc., pursuant to which Services will sell to and concurrently lease back from the Lessor under a long-term net lease ("Lease") a parcel of real property situated in Pine Bluff, Arkansas, and all improvements thereon, together constituting Services' System Operations Center ("Operations Center"). Neither Integrated Resources, Inc. (or any corporate or person affiliated with it) nor the Lessor (or any corporation or person which will be affiliated with it) is or will be affiliated with Services or any of its affiliated companies. In order to effectuate these transactions, Middle South proposes to guarantee the performance by Services of its Lease Obligations without recourse to Services first being required.

The Operations Center, which house facilities providing economic dispatch and power system security for the Middle South System, is located at 5201 W. Barraque Street, Pine Bluff, Arkansas, and consists of two buildings having an aggregate of 26,800 square feet situated on 2.56 acres of land. The original cost to Services of the Operations Center, including the land, was $1,594,859 and the current book value is $1,491,924. As soon as practicable after the receipt of the Commission's order in this proceeding ("Closing Date"), Services will sell and convey the Operations Center to the Lessor for an amount equal to the fair market value thereof, estimated at approximately $2,000,000, and certain capitalized transactional costs, fees and expenses ("Rental Base"). It is expected that the Lessor will purchase the Operations Center initially with funds (representing approximately 1% of the Rental Base) to be supplied by it as an investment in the ownership of the Operations Center and with funds (representing the remainder) to be borrowed by the Lessor on an interim basis from Simmons First National Bank, Pine Bluff, Arkansas ("Interim Loan"). The Interim Loan will bear interest at the

prime commercial loan rate of Citibank, N.A., in effect as of the Closing Date and will mature on or about October 15, 1980. At maturity, the Interim Loan will be repaid from the proceeds of a permanent mortgage loan ("Permanent Loan") to be made to the Lessor by American United Life Insurance Company, Indianapolis, Indiana. The Permanent Loan will bear interest at the rate of 13.75% per annum and will mature on or about October 15, 2005. The Interim Loan and the Permanent Loan will be secured by a mortgage on the Operations Center and by an assignment of the Lease and the Guaranty.

Concurrently with the purchase by the Lessor of the Operations Center, the Lessor will lease the Operations Center to Services. The Lease will have a basic term ("Basic Term") of 25 years, commencing on or about October 25, 1980, and an interim term ("Interim Term"), for the period from the Closing Date to the commencement of the Basic Term. At the end of the Basic Term, Services will have the option to purchase the Operations Center at the then fair market value of the Operations Center, as encumbered by the Lease, and will also have the right to renew the Lease for up to five successive five-year renewal terms ("Renewal Term(s)"). The Lease will be noncancellable except in the event of total loss, destruction, condemnation or confiscation of the Operations Center to the extent that it cannot be economically repaired or replaced.

The Lease will be a net lease in all respects, conferring responsibility for maintenance, insurance, certain taxes and other expenses upon Services. Services will be obligated to maintain the Operations Center in good condition, normal wear and tear expected. In the event that Services desires, from time to time, improvements costing at least $250,000 to be constructed at the Operations Center during the Basic Term or any Renewal Term, the Lessor will be obligated at the request of Services to make a reasonable effort to arrange for the construction and the financing of such additional improvements and the leasing thereof to Services on a satisfactory basis, having regard to the then existing economic, financial and money market conditions.

Lease payments by Services over the term of the Lease will be as follows: (1) during the Interim Term, in an amount equal to the specified rate of interest on the Interim Loan as applied to the Rental Base; (2) during the Basic Term, in annual amounts equal to the following percentages of the Rental Base: years 1-5, 9.16%; years 6-10, 13.82%; years 11-15, 14.70%; and years 16-25, 18.49%; and (3) during any Renewal Term, in an annual amount equal to 9.5% of the Rental Base. It is Services' understanding that the Lease rates during the Basic Term are equivalent to the level annual rental constant of 12.37% or to an effective annual interest rate of 11.7% per annum. Services intends to charge the payments under the Lease to operating expense. The Lease payments are such that Services will not acquire any equity in the Operations Center and consequently the Lease will be accounted for by Services as a lease.

It is stated that no federal or state commission, other than this Commission, has jurisdiction over the proposed transaction. The fees or expenses to be incurred in connection with the proposed transaction are expected not to exceed $6,000, including legal fees not to exceed $4,000 payable by Middle South.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21525), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21553/May 6, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

CNG COAL COMPANY
CNG DEVELOPMENT COMPANY LTD.
CNG PRODUCING COMPANY
CNG RESEARCH COMPANY
CONSOLIDATED GAS SUPPLY CORPORATION
CONSOLIDATED NATURAL GAS SERVICE COMPANY, INC.
CONSOLIDATED SYSTEM LNG COMPANY
THE EAST OHIO GAS COMPANY
THE PEOPLES NATURAL GAS COMPANY
THE RIVER GAS COMPANY
WEST OHIO GAS COMPANY

(70-6452)

NOTICE OF PROPOSED INTRASYSTEM FINANCING, ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER BY HOLDING COMPANY; ISSUANCE AND SALE OF SUBSIDIARY COMMON STOCK TO HOLDING COMPANY; EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company ("Coal Company"), CNG Development Company Ltd., CNG Producing Company ("Producing Company"), CNG Research Company ("Research Company"), Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), The River Gas Company ("River") and West Ohio Gas Company ("West Ohio") have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43, 45, and 50(a)(5) and 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Consolidated proposes to issue up to $125,000,000 of short-term notes to a group of banks during 1980. Such notes will bear variable interest at the prime commercial rate in effect from time to time at Chase Manhattan Bank, N.A. ("Chase Manhattan"). Prepayments may be made in whole or in part, from time to time, upon five days' notice without penalty or premium. There will be no closing or related charges or commitment fee, and the notes will mature not more than twelve months from the date of the first borrowing. No compensating balance requirements will be imposed. The average of deposits regularly maintained by the Consolidated companies in the participating banks for normal operating purposes amounted to approximately $25,700,000 for 1979. It is stated that based on a requirement of 10% of the proposed credit line and 10% of average borrowings thereunder, the average compensating balances would have amounted to approximately $26,600,000 for the year 1979.

Consolidated proposes to use the proceeds from said bank borrowings and from part of the proceeds of Consolidated's proposed issuance and sale of up to $100,000,000 of commercial paper and/or back up bank borrowings as hereinafter described, to make open account advances to its subsidiary companies for the seasonal increase in gas storage inventories, payable as gas is withdrawn and sold during the 1980-81 heating season, and to provide the necessary flexibility for day to day working capital requirements. The total open account advances made by Consolidated through May 31, 1981 shall not exceed $260,000,000. At any one time, however, the aggregate amount of advances to subsidiaries outstanding shall not exceed $225,000,000. Such advances to the subsidiaries will be made up to the amounts set forth in the table below. All advances will be repaid not more than one year from the date of the first advance to each subsidiary with interest at substantially the same effective rate as incurred by Consolidated on the related gas storage bank loan, commercial paper sale and/or bank borrowings.

Subsidiary Company	*Amounts*
Producing Company	$20,000,000
Gas Supply	105,000,000
LNG Company	30,000,000
East Ohio	50,000,000
Peoples	50,000,000
River	2,000,000
West Ohio	3,000,000
	$260,000,000

Consolidated further proposes to acquire, and the subsidiary companies set forth below propose to issue and sell to Consolidated from time to time up to May 31, 1981, capital stock up to the following amounts at the par value thereof:

	Number of Shares	*Aggregate Par Value*
Coal Company	20,000 ($100 par)	$2,000,000
Producing Company	725,000 ($100 par)	72,500,000
Research Company	35,000 ($100 par)	3,500,000
Gas Supply	300,000 ($100 par)	30,000,000
River	10,000 ($100 par)	1,000,000
West Ohio	200,000 ($5 par)	1,000,000
	1,290,000 (shares)	$110,000,000

The proceeds derived from the proposed sale of stock will be used to finance, in part, the subsidiaries' capital expenditures. The purchase of such stock will be made principally with funds from internal cash generation, and from the sale of common stock pursuant to Consolidated's stockholder and employee stock plans.

The authorized capital stock of CNG Producing Company, CNG Research Company, Consolidated Gas Supply Corporation and The River Gas Company is not sufficient to cover the additional shares they proposed to issue, as stated above. Consolidated as of the date hereof holds 1,081,080 shares of Producing capital stock, 92,500 shares of Research capital stock, 1,761,000 shares of Supply capital stock and 25,500 shares of River capital stock. Therefore, in order to accommodate the proposed transactions and to provide for future issues, the companies listed below propose to amend their certificates of incorporation.

	From	*To*
Producing Company	1,250,000	2,000,000
Research Company	100,000	140,000
Gas Supply	2,000,000	2,500,000
River Company	35,000	50,000

As indicated above, Consolidated proposes to issue and sell from time to time up to May 31, 1980 commercial paper, in the form of short-term promissory notes payable to bearer, in the aggregate face amount not to exceed $100,000,000 outstanding at any one time to Salomon Brothers ("Salomon"). The commercial paper will have varying maturities of not more than 270 days after the date of issue and will be issued and sold in varying denominations of not less than $50,000 and not more than $5,000,000 directly to Salomon at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturities. Consolidated proposes to sell commercial paper only so long as its discount rate or effective interest cost on the date of sale does not exceed the equivalent cost of borrowings from a commercial bank.

No commission or fee will be payable by Consolidated in connection with the issue and sale of such commercial paper notes. Salomon as principal, will reoffer such notes at a discount not to exceed one-eighth of one percent per annum less than the prevailing discount rate to Consolidated. Such notes will be reoffered to not more than 200 identified and designated customers on a nonpublic list prepared in advance by Salomon and furnished to the Commission. It is anticipated that the commercial paper will be held by customers to maturity; however, if any commercial paper is repurchased by the dealer pursuant to a repurchase agreement, such paper will be reoffered only to others in the group of 200 customers. The issuance and sale of commercial paper is to meet working capital requirements.

Consolidated proposes to the extent that it becomes impracticable due to market conditions to issue such commercial paper, to borrow, repay, and reborrow from Chase Manhattan, from time to time up to May 31, 1981, an aggregate principal amount not to exceed $50,000,000 outstanding at any one time, on an unsecured basis and without a commitment fee, at the prime commercial rate of interest in effect on the date of each borrowing. In such event, it would also borrow, repay and reborrow from Citibank, N.A. from time to time up to May 31, 1981, an aggregate principal amount not to exceed $50,000,000 outstanding at any one time on an unsecured basis and with a commitment fee of .375% on said principal amount, at the base rate of interest of Citibank in effect on the date of each borrowing. The borrowings will be evidenced by the note or notes of Consolidated having a maturity date not more than 90 days from the date of each borrowing. The notes may be prepayed, in whole or in part at any time, without prior notice and without premium. There will be no closing or related charges with respect to the bank loans.

Consolidated requests that, for the period commencing upon the date of the granting of this application-declaration and ending May 31, 1981,

an exemption be allowed from the provisions of Section 6(a) of the Act pursuant to the first sentence of Section 6(b), relating to the issuance and sale of short-term notes, by increasing the 5% limitation on such notes to a maximum of 12% in order to permit Consolidated to have outstanding at any one time up to $100,000,000 principal amount of short-term notes during such period as proposed herein.

Consolidated requests exception from the competitive bidding requirements of Rule 50(b) with respect to the sale of commercial paper pursuant to paragraph (a)(5). It states that such commercial paper will have maturities of nine months or less, that current rates for commercial paper for prime borrowers, such as Consolidated, are published daily in financial publications, and that it is not practical to invite competitive bids for commercial paper. Consolidated also proposes that the Rule 24 certificates of notification regarding the proposed transactions be filed on a quarterly basis.

It is stated that CNG Development Company Ltd. and Consolidated Natural Gas Service Company, Inc., have no new financing requirements for 1980 at the time of filing and that if such requirements should arise, an amendment to that effect will be filed as part of this proceeding.

The application-declaration states that the Public Service Commission of West Virginia has jurisdiction over the proposed short-term borrowings and stock issuances of Gas Supply, that the Public Utilities Commission of Ohio has jurisdiction over the stock issuances proposed by River and West Ohio. It is further stated that no other state or federal commission, other than this Commission has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $12,500, including $10,000 for the system service company charges, at cost. All of such fees and expenses are to be paid by Consolidated.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 30, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21554/May 7, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6454)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc., has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

I&M proposes to issue and sell up to $80,000,000

aggregate principal amount of its first mortgage bonds of a new series, having a maturity of not less than 5 years and not more than 30 years. The interest rate, which will be expressed in a multiple of 1/8 of 1%, and the price to be paid to I&M for the bonds, which shall not be less than 99% and shall not exceed 102-3/4%, will be determined by competitive bidding. The bonds will be issued under and secured by I&M's Mortgage and Deed of Trust, dated June 1, 1939, between it and Irving Trust Company and D.W. May, Trustees, as previously amended and supplemented, and as to be further amended by a Supplemental Indenture to be dated June 1, 1980. None of the bonds may be redeemed prior to a date five years subsequent to the first day of the month in which the bonds are first authenticated and delivered, if such redemption is for the purpose of refunding such bonds through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to the company of such bonds.

The proposed sale of the bonds is part of an overall financing program of I&M which also contemplates that American Electric Power Company, Inc., I&M's parent, will make cash capital contributions in an aggregate amount of up to $50,000,000 during 1980, as previously authorized on October 12, 1979 (HCAR No. 21248). As of March 30, 1980, I&M had received cash capital contributions in an aggregate amount of $25,000,000.

The proceeds from the sale of the bonds will be used to repay unsecured short-term indebtedness of I&M consisting of notes payable to banks and commercial paper. As of March 31, 1980, approximately $128,330,000 principal amount of such unsecured short-term debt was outstanding and it is anticipated that, at the time of the sale of the new bonds and following receipt of the cash capital contributions, not less than $150,000,000 aggregate principal amount of such unsecured short-term debt will be outstanding.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that the Public Service Commission of Indiana and the Michigan Public Service Commission have jurisdiction over the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than June 2, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21555/May 7, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

(70-5892)

ORDER AUTHORIZING ISSUE AND SALE OF COMMON STOCK PURSUANT TO EMPLOYEE SHARE OWNERSHIP PLAN AND GRANTING REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING

Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission a post-effective amendment to its

application-declaration, previously filed and amended in this matter pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder concerning the following transaction.

By orders dated October 8, 1976 and August 18, 1978 (HCAR Nos. 19710 and 20675), CSW was authorized to issue and sell up to 2,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, through its employee share ownership plan ("Plan"). The Plan was established for the benefit of CSW and its direct and indirect subsidiaries; Central Power and Light Company, Central and South West Services, Inc., Public Service Company of Oklahoma, Transok Pipe Line Company, Southwestern Electric Power Company and West Texas Utilities Company. As of March 15, 1980, 648,045 shares remain unsold.

CSW now requests authorization to issue and sell 2,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, in addition to the 2,000,000 shares previously authorized. Under the Plan, a trust has been established to hold the stock shares for the benefit of the participating employees. The proposed 2,000,000 shares ("Additional Shares") are to be issued to or sold to the trustee of the Plan.

The Additional Shares are estimated to be sufficient to account for the total CSW and employee contributions to be made for the 1979 and 1980 tax years and also for other purchases by the trustee through December 31, 1981. The exact number of Additional Shares to be issued and sold to the trust will be determined by dividing the amount of the additional 1% of investment tax credit and the total 1% credit pursuant to the employee and matching employer contributions for the years 1979 and 1980, respectively, by the average closing price of CSW's common stock as reported on the New York Stock Exchange Composite Transactions for the twenty consecutive trading days immediately preceding the date of issuance of such additional shares.

Based on CSW System's estimated qualifying property additions for 1979 and 1980 and assuming maximum participation by employees, CSW estimates that the additional investment tax credit for both years would be approximately $20,800,000. In addition, $6,700,000 of dividends applicable to the shares held by the trustee will be used for the purchase of Additional Shares, resulting in a total of $27,500,000. Assuming that the purchase price for the CSW stock was $11.00 per share, a total of approximately 2,500,000 Additional Shares would be issued. The 2,500,000 shares added to the 1,351,955 shares which have been issued under the Plan results in a total of 3,851,955 shares. The total of 4,000,000 shares which will be authorized if the present post-effective amendment is approved is said to be necessary to afford adequate leeway for the purchase of shares by the trust in accordance with the Plan and for periodic purchases of shares with funds generated from dividends paid on shares held by the trust. It is stated that the Additional Shares also are necessary to meet unexpected contingencies such as a decrease in the market price of the common stock.

CSW requests exemption from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(5) thereof.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $7,000, including printing fees of $5,000 and legal fees of $1,000. No federal or state commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21517), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) certificates thereunder shall be filed quarterly, including a summary of the total shares issued and total net proceeds realized, and (2) the certificate reporting the results of the first quarter of the calendar year shall also include a summary of the

total expenses incurred, directly or indirectly, by CSW for operating the Savings Plan during the preceding calendar year.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21556/May 7, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
Ash Creek Mining Company
Tulsa, Oklahoma

(70-5868)

SUPPLEMENTAL ORDER AUTHORIZING INCREASE IN SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the cost interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any one time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos. 20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926, 20975, 21049, 21364 and 21486). In the latest such supplemental order dated March 21, 1980 (HCAR No. 21486), PSO was authorized to continue its financing of Ash Creek through June 30, 1980, in the maximum principal amount of $1,050,000 outstanding at any one time.

By post-effective amendment applicants-declarants request an increase in the amount of authorized short-term loans for the period ending June 30, 1980, from $1,050,000 to $1,235,000. It is stated that the additional $185,000 is needed in order to satisfy a tax deficiency of that amount which was recently announced by the Internal Revenue Service ("IRS") in connection with their audit of the CSW system. This tax deficiency, which was not foreseen in the making of the budget for loans to Ash Creek, resulted from an IRS determination that certain items expensed in 1975 and 1976 should have been capitalized for federal income tax purposes.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $200. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary, and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that PSO be, and it hereby is, authorized forthwith to continue its financing of Ash Creek through June 30, 1980, in the maximum principal amount of $1,235,000 outstanding at any one time, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it

hereby is, continued with respect to any further extension of time and any expenditures to be made after June 30, 1980.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21557/May 7, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6225)

NOTICE OF POST-EFFECTIVE AMENDMENT REGARDING INCREASE OF SHORT-TERM BORROWINGS

NOTICE IS HEREBY GIVEN that Louisiana Power and Light Company ("Louisiana"), an electric subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders in this proceeding dated December 15, 1978, January 5, 1979, and July 10, 1979 (HCAR Nos. 20832, 20873, and 21141), Louisiana was authorized to issue and sell, from time to time until December 31, 1980, notes to banks and commercial paper to a dealer in an aggregate principal amount of all such borrowings at any one time outstanding not exceeding $150,000,000. The presently effective loan commitments from such banks terminate on December 31, 1980, with loans thereunder maturing not later than December 31, 1980. Louisiana presently has an aggregate principal amount of short-term borrowings by means of bank loans and the sale of its commercial paper of $107,700,000.

Louisiana now proposes that the aggregate principal amount of all such borrowings that it is permitted to have outstanding at any one time be increased to the lesser (from time to time) of $165,000,000 or ten per centum (10%) of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by Louisiana and then outstanding and (b) the capital and surplus of Louisiana as then stated on its books of account. Set forth below are the respective maximum amounts which the banks from which such bank loans are to be made have committed themselves to lend during the period through December 31, 1980, and the names of such banks:

	Maximum Amount
The Chase Manhattan Bank, N.A., New York, N.Y.	$59,000,000
Irving Trust Company, New York, N.Y.	15,000,000
Chemical Bank, New York, N.Y.	10,000,000
Citibank, N.A., New York, N.Y.	10,000,000
Manufacturers Hanover Trust Company, New York, N.Y.	10,000,000
Whitney National Bank of New Orleans, LA.	8,000,000
First National Bank of Louisville, Kentucky	8,000,000
First National Bank of Commerce, New Orleans, LA.	6,000,000
Bank of the Southwest, Houston, Texas	5,000,000
Bank of Virginia, Richmond, VA.	5,000,000
Hibernia National Bank, New Orleans, LA.	5,000,000
Security Pacific National Bank, Los Angeles, CA.	5,000,000
National American Bank of New Orleans, LA.	2,800,000
Jefferson Bank & Trust Company, Metairie, LA.	1,000,000
The Bank of New Orleans and Trust Company, New Orleans, LA.	750,000
The National Bank of Commerce in Jefferson Parish, LA.	750,000
First State Bank & Trust Company, Bogalusa, LA.	640,000
Central Bank, Monroe, LA.	500,000
First National Bank of West Monroe, La.	500,000
First National Bank of Jefferson Parish, Gretna, LA.	400,000
Bastrop National Bank, Bastrop, LA.	250,000
The First National Bank of Delhi, LA.	250,000
Assumption Bank and Trust Company, Napoleonville, LA.	240,000
American Bank & Trust Company in Monroe, LA.	100,000
Bank of Louisiana in New Orleans, LA.	100,000
Bank of the South, Gretna, LA.	100,000
Guaranty Bank & Trust Company, Gretna, LA.	100,000
Metairie Bank & Trust Co., Metairie, LA.	100,000
Ouachita National Bank, Monroe, LA.	100,000

Terrebonne Bank & Trust Company, Houma, LA	100,000a
First Guaranty Bank, Hammond, LA	75,000
Franklin State Bank & Trust Company, Winnsboro, LA	50,000
Winnsboro State Bank & Trust Company, Winnsboro, LA	50,000
Bank of Morehourse, Bastrop, LA	25,000
Citizens Bank & Trust Company, Thibodaux, LA	20,000
TOTAL AMOUNT	$155,000,000

The proposed transactions remain unchanged in all other respects, including the maturity date of December 31, 1980. Louisiana's construction program contemplates expenditures of approximately $285,000,000 in 1980, and the company now estimates that it will require approximately $257,000,000 of funds from external sources in 1980.

It is stated that no special or separate expenses are anticipated in connection with the proposed transactions except legal fees not exceeding $1,000, and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21558/May 8, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6458)

NOTICE OF PROPOSED FINANCING OF POLLUTION CONTROL FACILITIES

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12(d) of the Act and Rule 44(b)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

I&M is in the process of constructing certain high efficiency electrostatic precipitators, ash disposal systems, a stack, cooling towers and other water pollution control systems ("Project") at its Rockport Generating Station ("Plant"), currently under construction near the City of Rockport ("City") in Spencer County, Indiana. It is estimated that the Plant will in the aggregate cost approximately $1,600,000,000. By resolution of June 2, 1977, the City determined that, pursuant to the Act, it would authorize and issue one or more series of its pollution control revenue bonds ("Bonds") to finance the cost of engineering, design, acquisition and construction of the Project, including reimbursement or repayment to I&M of monies expended by I&M for planning, engineering, acquisition and construction of the Project.

I&M proposes to enter into an Agreement of Sale ("Agreement") with the City which will provide for the construction and installation of facilities comprising the Project by the City, and the issuance by the City of Bonds (i) in an initial principal amount of up to $50,000,000 ("Series A Bonds"), and (ii) additional Bonds in principal amounts which, when added to the principal amount of the Series A Bonds, are sufficient to cover the cost of construction of the Project. The proceeds of the sale of the Series A Bonds will be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as Trustee ("Trustee"), under an Indenture ("Indenture") to be entered into between the City and Trustee pursuant to which the Series A Bonds are to be issued and secured. Such proceeds will be applied to payment of the cost of construction of the Project. The Agreement also will provide for the sale of the Project to I&M, the payment by I&M of the purchase price of the Project in semi-annual installments over a term of years, and the assignment and pledge to the Trustee of the City's interest in, and of the monies receivable by the City under, the Agreement.

Proceeds received by I&M in reimbursement of its cost of construction of the Project will be applied to the payment of unsecured short-term indebtedness of I&M and for other corporate purposes. As of March 31, 1980, such short-term indebtedness of I&M amounted to $128,330,000.

The Agreement will provide that each installment of the purchase price for the Project payable by I&M will be in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as will enable the City to pay, when due, (i) the interest on the Series A Bonds, any additional bonds and any refunding bonds, (ii) the principal amount of the Series A Bonds, any additional bonds and any refunding bonds payable at the time of their respective stated maturities and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series A Bonds, any additional bonds or any refunding bonds. The Agreement will also obligate I&M to pay the fees and charges of the Trustee, as well as certain administrative expenses of the City.

I&M shall have the option to prepay the purchase price of the Project in whole (i) upon the occurrence of certain events by paying amounts sufficient to redeem all Bonds then outstanding, the fees and expenses of the Trustee, and all other amounts payable under the Indenture, or (ii) at any time by depositing monies in the Bond Fund or delivering to the Trustee governmental obligations sufficient in either case to provide for the release of the Indenture in accordance with its terms. Upon prepayment of the entire purchase price of the Project, I&M may terminate the Agreement.

I&M may also prepay the purchase price of the Project in part, such payments to be paid to the Trustee for deposit in the Bond Fund and credited against the purchase price and used for the redemption or purchase of outstanding Bonds in the manner and to the extent the outstanding Bonds are redeemable or subject to purchase as provided in the Indenture.

I&M will convey the pollution control facilities, to the extent that they have already been constructed and are then in place at the plant site, subject to the lien of the I&M first mortgage, and I&M will be entitled under the Agreement to be reimbursed from the proceeds of the Bonds for its costs of construction. The existing facilities will thereupon become a part of the Project which I&M will repurchase from the City pursuant to the Agreement.

It is contemplated that the Series A Bonds will be sold by the City pursuant to arrangements with a group of underwriters. In accordance with the laws of the State of Indiana, the interest rate to be borne by the Series A Bonds will be fixed by or on behalf of the common council of the City. I&M has been advised that the annual interest rates on obligations, interest on which is tax exempt, can be expected at the time of issuance of the Series A Bonds to be 1/2% to 2-1/2% lower than the rates of obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

The Series A Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series A Bonds will not be redeemable at the option of the City within 10 years from their issue date except under certain circumstances. Series A Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Indenture.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by

amendment. It is stated that the Michigan Public Service Commission and the Public Service Commission of Indiana have jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21559/May 8, 1980

In the Matter of

BLACKSTONE VALLEY ELECTRIC COMPANY
Lincoln, Rhode Island

(70-6378)

ORDER AUTHORIZING INCREASE IN SHORT-TERM BORROWING

Blackstone Valley Electric Company ("Blackstone"), an electric utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed with this Commission a post-effective amendment to its declaration, previously filed and amended in this matter pursuant to Sections 6(a)(1), 7 and 12(c) of the Public Utility Holding Company Act of 1935 and Rule 50 promulgated thereunder concerning the following transaction.

By order dated December 10, 1979 (HCAR No. 21336), Blackstone was authorized to borrow funds during the period ending December 31, 1980, through the issuance and sale of short-term notes to banks in a maximum amount outstanding at any one time not to exceed $3,200,000.

By post-effective amendment, Blackstone proposes to increase its short-term debt authorization to $4,700,000. It is stated that such increase is necessary due to the rising level of interest that must be paid on Blackstone's $25,000,000 note to Chase Manhattan Bank, N.A. which, as last extended pursuant to authorization granted on January 28, 1980 (HCAR No. 21409), is due January 27, 1981. It is stated that the increased interest expense as well as the continuing escalation of other costs have substantially reduced Blackstone's available cash. The $4,700,000 amount requested is the maximum currently permitted under Blackstone's Preferred Stock Provisions.

Rhode Island Hospital Trust National Bank presently has extended separate lines of credit to Blackstone and Montaup Electric Company ("Montaup"), an affiliate. The separate lines will be merged into one line which will be available to either Blackstone or Montaup. No other change will be made in the terms of the line.

Blackstone has credit lines with a number of banks subject to the following arrangement: (1) borrowing at the prime rate with no formal compensating balance; (2) borrowing at the prime rate with compensating balances not exceeding 20%; and (3) borrowing at the prime rate or the prime times a percentage thereof together with a commitment fee based on a fraction of the prime rate. Assuming a prime rate of 18-1/2% and the maximum balance requirements of 20%, the effective interest rate would be 23.125%.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No federal or state commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21518), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21560/May 8, 1980

In the Matter of

EASTERN UTILITIES ASSOCIATES
Boston, Massachusetts

(70-6439)

ORDER AUTHORIZING ACQUISITION OF STOCK OF INACTIVE COMPANY

Eastern Utilities Associates ("EUA"), a registered holding company, has filed with this Commission an application pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") concerning the following transaction.

EUA proposes to purchase 100 shares of capital stock of Eastern Edison Electric Company ("Eastern") at their par value of $10 per share. This stock constitutes all the authorized and issued capital stock of Eastern.

Eastern was incorporated in Massachusetts on February 16, 1951 under the name Eastern Edison Electric Company, Inc. The name of the company was changed pursuant to a special act of the Massachusetts Legislature, Chapter 339 of the Acts of 1951 (the "1951 Act"), to Eastern Edison Company. Such special authorization was necessary because electric companies incorporated under the Massachusetts laws are otherwise required to include the word "electric" in their names. Eastern was organized to participate in a plan of reorganization of EUA and its subsidiaries (the "First Plan") submitted to this Commission to comply with a Commission order dated April 4, 1950 issued in proceedings under Section 11(b) of the Act (File No. 59-89). Among other provisions of the First Plan, Eastern was to acquire the stock of EUA's Rhode Island subsidiary, Blackstone Valley Gas and Electric Company, now Blackstone Valley Electric Company ("Blackstone"). The 1951 Act made it clear that Eastern would have corporate power to acquire the stock of Blackstone, a matter which was not clear under the general statutes of Massachusetts.

The Massachusetts Department of Public Utilities ("MDPU") authorized the issuance of the full amount of Eastern's authorized stock, 100 shares of capital stock of the par value of $10 per share, in an order dated December 14, 1951. However, the final version of the First Plan which was approved by the Commission and ordered enforced by the United States District Court for the District of Massachusetts did not provide for the participation of Eastern in the reorganization and, consequently, its stock was not issued. Although Eastern never owned assets, it has been continued in existence by its board of directors for its possible value in any future structural changes.

EUA recently submitted to this Commission another plan pursuant to Section 11(e) of the Act which the Commission approved on February 23, 1979 (HCAR No. 20931) and which became effective on July 31, 1979 pursuant to an order of the United States

District Court for the District of Massachusetts resulting in the merger of Fall River Electric Light Company into Brockton Edison Company.

By Chapter 233 of the Massachusetts Acts of 1978, Brockton Edison Company was authorized to change its name to Eastern Edison Company and did so effective August 1, 1979 in conjunction with the merger. EUA now wishes to change the name of Eastern in order to avoid confusion. Massachusetts law requires that a corporate name change be approved by the shareholders of the corporation; if there are no shareholders, then the incorporators have the power of the shareholders. Since Eastern never issued its shares, there are no shareholders to authorize the change and EUA states that the incorporators are no longer available.

In order to effect the name change, Eastern's board of directors decided to issue the company's stock. Mr. Charles Jackson, Jr., a partner in the law firm of Gaston Snow & Ely Bartlett, counsel to EUA, agreed to purchase the stock to facilitate the name change. Eastern thereupon issued and sold the stock to Mr. Jackson for $1,000, which is the aggregate par value and price approved by the MDPU. EUA now desires to purchase the stock from Mr. Jackson for $1,000. EUA has no present plans for making Eastern active but would like to obtain control because of the special authority conferred by the 1951 Act which could conceivably be useful to EUA in the future.

The record is incomplete with respect to fees and expenses to be incurred with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21514), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interests of investors and consumers that said application be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that said application be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to fees and expenses to be incurred in connection with the proposed transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 566/May 5, 1980

In the Matter of

TRAILER TRAIN COMPANY
File No. 22-10311

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an Order under the Trust Indenture Act of 1939 (the "Act") on the application pursuant to Section 310(b)(1)(ii) by Trailer Train Company (the "Applicant") that the trusteeships of Continental Illinois National Bank and Trust Company of Chicago ("Continental Bank") under an existing and a proposed Equipment Trust Agreement (the "Agreements") is not so likely to involve a material conflict of interest as to make it necessary to disqualify Continental Bank from acting as trustee under one of the Agreements.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11151/May 2, 1980

In the Matter of

NARRAGANSETT CAPITAL CORPORATION
40 Westminster Street
Providence, Rhode Island 02903

CHARTER SUPPLY CO., INC.
and
GARY B. JACOBSEN
4562 Martindale Road
Philmont, New York 12565

(812-4351)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING JOINT TRANSACTION

NOTICE IS HEREBY GIVEN that Narragansett Capital Corporation ("Narragansett"), a non-diversified, closed-end, management investment company registered under the Investment Company Act of 1940 ("Act") and a licensed small business investment company under the Small Business Investment Act of 1958, Charter Supply Co., Inc ("Charter"), a company in which Narragansett has a substantial financial interest, and Gary B. Jacobsen ("Jacobsen"), a prior employee of Narragansett (hereinafter Narragansett, Charter and Jacobsen are collectively referred to as "Applicants"), filed an application on August 18, 1978, and an amendment thereto on December 7, 1979, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the joint investment by Narragansett and Jacobsen in Charter. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application,the proposed joint investment in Charter by Narragansett and Jacobsen was one part of a larger endeavor by Narragansett whereby Narragansett would form and finance separate corporations to purchase the assets of six divisions of Consolidated Foods Corporation ("Consolidated"). Applicants state that in February and March of 1978, the management of Narragansett entered into negotiations with representatives of Consolidated and reached an agreement of principle which contemplated the sale of the assets of the six Consolidated divisions, including Charter Supply Division ("Charter Division"), to new corporations formed by Narragansett. Applicants further state that Narragansett envisioned that these new corporations would be financed through the typical format used by Narragansett: a bank term loan, a subordinated loan from Narragansett and equity participation shared by Narragansett and the management of the division being acquired. Applicants additionally stated, however, that under the terms of the agreement, Narragansett was not permitted to discuss such investment possibilities with the management employees of the several Consolidated divisions until binding purchase and sale agreements had been entered into between Consolidated and, in each case, a corporation formed by Narragansett to effect the purchase.

Applicants state that during the period of April through July of 1978, the assets of the six divisions of Consolidated, including Charter Division, were acquired by corporations formed by Narragansett. All the divisions, except Charter Division, were acquired in the manner envisioned by Narragansett.

As stated in the application, Narragansett intended to finance the acquisition of the Chater Division in the customary manner, but the transaction did not proceed as planned. According to the application, the following steps were taken to effect the acquisition of Charter. Following the original discussions with Consolidated, Narragansett obtained a commitment in principle from Industrial Capital Corporation ("ICC"), a wholly-owned subsidiary of Industrial National Bank of Rhode Island, to invest in Charter. Subsequently, on March 14, 1978, Narragansett caused the incorporation of Charter under the laws of the State of Rhode Island. As of March 30, 1978, Charter and Consolidated entered into an Asset Purchase Agreement. Under such agreement, Charter acquired all the operating assets of Charter Division (accounts receivable, cash, other current assets, inventories and fixed assets) and assumed specific liabilities only (accounts payable, accrued expenses, some pension liabilities and executory liabilities under existing operating contracts) for a total purchase

price of $3,727,125; of which $3,159,000 was paid at the closing of the transaction on April 24, 1978, and the balance was paid on July 20, 1978.

Applicants state that on March 28, 1978, Narragansett first approached, with Consolidated's consent, the President of Charter Division, Raymond C. Beck ("Beck"), regarding the investment opportunity in Charter. Applicants further state that although Narragansett would not have been adverse to having other members of Charter Division invest, they felt the participation of Beck was the key to management equity participation. According to the application, management of Narragansett was informed by April 10, 1978, that Beck might not be interested in investing in Charter and on that or the following day held staff meetings to discuss the problem of Beck's hesitancy. Applicants state that, by virtue of SBA regulations and Narragansett's general investment policy, the Charter acquisition transaction could not be consummated without entrepreneurial investors and that none of the Consolidated divisions could be acquired if the Charter Division was not acquired. As set forth in the application, Jacobsen, a Vice President of Narragansett, suggested at the staff meeting of April 10 or 11 that he might become the principal voting shareholder and chief executive officer of Charter and at that meeting, Arthur D. Little ("Little"), President and Chief Executive Officer of Narragansett, agreed to consider such a proposal if Beck ultimately chose not to invest. Applicants state that when Jacobsen was originally employed by Narragansett on May 13, 1975, he had made it clear that he had an ultimate goal of becoming involved in the ownership and operation of an operating concern, but that Narragansett had made no offers to Jacobsen of any kind with respect to equity participation in any portfolio concern and that he did not know any of the details of the Charter business or the proposed transaction when he made his offer.

According to the application, the following events occurred prior to the closing of the acquisition of Charter Division. On April 18, 1978, Beck indicated strongly that he would probably not participate in the equity ownership of Charter. Subsequently, on April 21, 1978, Little made the decision that Jacobsen would be allowed to invest in Charter if Beck finally decided not to participate. On April 24, 1978, Narragansett decided that it would be willing to give up 35 shares, out of its planned purchase of 245 shares in the event Jacobsen committed to purchase and Beck decided at some later date to participate after rejecting the opportunity before closing on the acquisition. Jacobsen completed his review of the private placement memorandum describing the investment opportunity at or about this time.

Applicants state that at the closing on the acquisition of the assets of Charter Division on April 24, 1978, Beck did not make the proposed equity investment, but that Jacobsen agreed to acquire 70 shares of Class A Voting Common Stock of Charter for $70,000 and to become Charter's Chief Executive Officer. Applicants also state that at the closing Industrial National Bank of Rhode Island ("In Bank") loaned Charter $1,500,000 on a term loan basis, and Narragansett advanced Charter $1,755,000 on a long-term subordinated loan basis. Additionally, Applicants state that at closing Narragansett purchased 10 of the 210 shares of its equity commitment while ICC purchased none of its commitment of 23 shares of Class A Voting Common Stock and 12 shares of Class B Non-Voting Common Stock, as additional equity funds were not then needed, but that July 14, 1978, was set as the date for final closing on all the financial arrangements.

According to the application, Jacobsen met with Beck on April 25, 1978, the day after closing, and offered him an opportunity to purchase 35 shares of Class A Voting Common Stock and to become an equity participant for $35,000. As set out in the application, Beck accepted the offer on April 28, 1978, and purchased one share of Class A Stock on June 30, 1978. Applicants state that on July 14, 1978, the final closing occurred, with Narragansett purchasing 200 shares of Class B Stock, ICC purchasing 23 shares of Class A Stock and 12 shares of Class B Stock, Beck purchasing 34 shares of Class A Stock, and Jacobsen depositing $70,000 into an escrow account for release to Charter in return for 70 shares of Class A Common Stock only upon entry of a favorable order of the Commission pursuant to this application. Applicants further state that on July 14, 1978, these same persons executed a Shareholders' Agreement. Applicants state that until Jacobsen becomes a shareholder after the entry of a favorable order by the Commission, he does not benefit from, nor is he obligated under the Shareholders' Agreement which, generally, provides: (i) rights of first refusal in favor of shareholders and Charter in the event of the sale or transfer of Charter shares by a shareholder; (ii) an option to employee shareholders to sell their shares to other Charter shareholders at book value if their employment is terminated; (iii) an

option to Charter to purchase, at book value, shares of an employee shareholder whose employment is terminated; (iv) special provisions for Beck to sell his shares to other shareholders or Charter if his employment is terminated; and (v) that Charter will have a four-man Board of Directors, one of whose members is to be approved by ICC.

As stated in the application, when the assets of Charter Division were acquired on April 24, 1978, Charter's Board of Directors and officers consisted of Little, Robert Manchester and William P. Lane, all officers of Narragansett. Applicants further state that on June 2, 1978, a new board was elected, consisting of: Harvey J. Sarles (a director of Narragansett); William P. Considine (a director of Narragansett); Beck; and Jacobsen, and the following new officers were elected: President and Chief Operating Officer, Beck; Treasurer and Chief Executive Officer, Jacobsen; and Secretary, Benjamin P. Harris, III. Applicants additionally state that Sarles receives $2,000 a year in directors' fees; Beck receives an annual salary of $60,000; Jacobsen received an annual salary of $30,000 up until May 15, 1979, and now receives an annual salary of $45,000; Considine is not compensated; and Harris, a partner in the law firm which serves as counsel to Charter, is not compensated except to the extent that he shares in legal fees billed to Charter by the law firm.

Section 2(a)(3) of the Act, in pertinent part, defines an affiliated person of another person as any officer, director, partner, copartner, or employee of such other person. Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provides, in part, that it is unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (i) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (ii) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants acknowledge that because of Jacobsen's employment with Narragansett at the time he committed himself to purchase Charter shares, he was an affiliated person of Narragansett and, therefore, his participation with Narragansett in the financing requires Commission approval under Rule 17d-1. Applicants state that as of April 1978, Jacobsen was a vice president of Narragansett, earning an annual salary of $35,000 and participating in Narragansett's pension plan and medical and disability program. Applicants further state that on May 15, 1978, Jacobsen terminated his employment with Narragansett, and thus forewent participation in a planned management incentive compensation plan being instituted by Narragansett for the fiscal year beginning April 1, 1978, under which it is estimated that Jacobsen would have received between $10,000 and $20,000 for the first year if he had continued his employment. Additionally, Applicants state that during Jacobsen's employment at Narragansett, he was granted qualified employee stock options for 10,000 shares of Narragansett Common Stock; all of such options were exercised by Jacobsen. Applicants further state that on May 16, 1978, Jacobsen became an employee of Charter and was compensated with an annual salary of $30,000, which was raised to $45,000 on May 15, 1979, and the regular employee benefits of Charter, including group insurance, hospitalization plans and pension plan. As stated in the application, Jacobsen also entered into a consulting agreement with Narragansett, pursuant to which he received a fee of $30,000 for advising certain of Narragansett's portfolio companies during the year ending May 15, 1979, and is expected to receive 15,000 for the year ending May 15, 1980.

Applicants assert that the proposed investment by Narragansett and Jacobsen in Charter is consistent with the provisions, policies and purposes of the Act for the following reasons: (1) no insiders or special classes of security holders of Narragansett or Charter are being given preferential treatment by virtue of the proposed transactions, as all shareholders will own shares of Common Stock purchased at the same price with identical rights and obligations, except that Jacobsen, Beck, and, in part, ICC will hold voting shares; this difference, however, results not from the desire to give affiliates preferential treatment, but from restrictions imposed by the Internal Revenue Code of 1954 which have impelled Narragansett not to purchase voting securities in all recently effected investments, except in those limited instances where management of Narragansett feels that the nature of the company warrants the maintenance of a voting position; (2) the Shareholders' Agreement provides

that if Narragansett sells its Class B Non-Voting Common Stock to an unaffiliated party such stock may be converted into Class A (voting) Common Stock, thus giving Narragansett the equivalent of voting stock in terms of its value upon disposition; (3) Jacobsen is not being given preferential treatment as against Beck and ICC; he would end up with a majority of the voting stock only because he was the only individual willing to invest the substantial dollars needed to assume voting control; and (4) the proposed transactions do not involve the issuance of securities by Charter with inequitable provisions.

Applicants further assert that Narragansett's participation in the equity investment in Charter is on a basis identical to the participation of others, with one exception: the fact that Narragansett will not own any voting securities. As set forth above, Applicants state that such difference is needed for tax reasons and that such difference does not cause the participation to be on a basis less advantageous than that of any other participant since Narragansett is the largest single stockholder of Charter and will share in its good fortunes on a pro-rata basis with other shareholders. Applicants further state that, as a substantial lender to Charter, Narragansett maintains considerable protection over its investment through the covenants set forth in the investment agreement between Narragansett and Charter, and that Jacobsen's participation resulted from arms-length negotiations between Jacobsen and Narragansett, with the acquiescence of ICC, and in no circumstances did Jacobsen use (or have the power to use) his position with Narragansett to place Narragansett in a disadvantageous position or to place himself in an advantageous position, as Jacobsen purchased into an investment opportunity which Narragansett was ready, willing and able to offer to a non-affiliate.

As stated above, Section 17(d) of the Act and Rule 17d-1 thereunder, prohibit an affiliated person, acting as principal, to effect any transaction in which such investment company is a joint participant, without the permission of the Commission. Applicants have stated that none of the transactions occurring in connection with the acquisition of the assets of Charter Division, other than the investment by Jacobsen, are subject to Section 17(d) or Rule 17d-1. Thus, the application does not seek relief from such other transactions. Accordingly, an order granting the relief requested by Applicants shall not be deemed to constitute approval by the Commission of such other transactions nor be determinative of their appropriateness.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 27, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11152/May 2, 1980

Admin. Proc. File Nos. 3-5431 and 3-5525

In the Matter of

FIRST MULTIFUND FOR DAILY INCOME, INC.
32 East 57th Street
New York, New York

(812-4323)

ORDER DENYING APPLICATION FOR EXEMPTION AND DISCONTINUING PROCEEDINGS

First Multifund for Daily Income, Inc. ("FMDI"), a registered investment company, seeks review of rulings of an administrative law judge denying its application for an exemption from certain provisions of the Investment Company Act, and discontinuing these proceedings. FMDI sought exemptions that would enable it to value its assets on an amortized cost basis.[1]

After hearings in this matter had been concluded, FMDI, a money market fund, sold substantially all of its assets to another investment company in exchange for the buyer's stock, distributed that stock to its shareholders in redemption of their shares, and ceased operations. The law judge, on motion of our Division of Investment, concluded that, under the circumstances, a ruling on FMDI's application would serve no useful purpose, and that continuation of these proceedings would be improvident. He rejected FMDI's contention that its application should be determined because it might benefit certain FMDI directors, who have been named as respondents in another Commission proceeding.[2] We agree with the law judge that, under the circumstances, continuation of these proceedings is unwarranted, and that FMDI's application should be denied and these proceedings discontinued.

All applications by other investment companies in these consolidated proceedings have been disposed of pursuant to offers of settlement.[3] FMDI contends that acceptance of those offers without adjudicating *its* application is a denial of due process. This contention is wholly lacking in merit. Not only have the other funds remained in business, but their offers of settlement contained significant restrictions and conditions to which FMDI did not consent.[4]

Equally lacking in merit is FMDI's argument that the law judge's order should be vacated because he failed to rule on the constitutionality of our interpretive release relating to the term "current net asset value" of a redeemable security, as defined in

[1]These are consolidated proceedings which were instituted to determine applications by other registered investment companies, so called "money market" funds, seeking similar exemptions. *Intercapital Liquid Asset Fund, Inc., et al.*, Investment Company Act Release No. 10201 (April 12, 1978), 14 SEC Docket 750. On August 18, 1978, we ordered a hearing on FMDI's separate application, and further ordered that the proceedings be consolidated with those involving the other funds. *First Multifund for Daily Income, Inc.*, Investment Company Act Release No. 10366, 15 SEC Docket 703.

[2]On March 5, 1980, we instituted disciplinary proceedings against various FMDI directors and a firm which had served as FMDI's investment adviser and broker. *First Multifund Advisory Corp., et al.*, Administrative Proceeding File No. 3-5881. It is alleged in that proceeding, *inter alia*, that respondents improperly valued securities in FMDI's portfolio by employing the amortized cost method of valuation.

[3]*Daily Income Fund, Inc., et al.*, Investment Company Act Release No. 10451 (October 26, 1978), 15 SEC Docket 1423; *Money Market Management, Inc., et al.*, Investment Company Act Release No. 10824 (August 8, 1979), 18 SEC Docket 52.

[4]FMDI also contends that we improperly granted the other applicants temporary exemptions, without granting one to FMDI. However, such exemptions were only granted to those applicants who agreed to certain conditions. Moreover, since FMDI is no longer in business, this issue is moot.

Rule 2a-4 under the Act.[5] FMDI is no longer in business, and it has failed to show that adjudication of that issue would affect its interests.

Accordingly, IT IS ORDERED that the application by First Multifund for Daily Income, Inc. for an exemption be, and it hereby is, denied, and that these proceedings be, and they hereby are, discontinued.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11153/May 2, 1980

In the Matter of

GOLDEN GATE INCOME SECURITIES, INC.
44 Montgomery Street, 21st Floor
San Francisco, California 94104

(811-2427)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Golden Gate Income Securities, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on February 11, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On March 28, 1980, a notice (Investment Company Act Release No. 11109) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Golden Gate Income Securities, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11154/May 5, 1980

In the Matter of

LIFE INSURANCE COMPANY OF NORTH AMERICA

AND

LIFE INSURANCE COMPANY OF NORTH AMERICA SEPARATE ACCOUNT A
1600 Arch Street
Philadelphia, PA 19101

(812-4424)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM SECTION 27(a)(3) OF THE ACT AND AMENDING A PREVIOUS ORDER PERMITTING OFFERS OF EXCHANGE PURSUANT TO SECTION 11 OF THE ACT

Life Insurance Company of North America ("LINA"), a stock life insurance company organized under the laws of the State of Pennsylvania, and Life Insurance Company of North America Separate Account A ("Separate Account"), a separate account of LINA registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, (hereinafter referred to as "Applicants"), filed an application on March 7, 1980, and an amendment

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[5]Investment Company Act Release No. 9786 (May 31, 1977), 12 SEC Docket 715. We stated that, after November 30, 1977, we would "consider it inconsistent with the provisions of Rule 2a-4 for a money market fund to determine the fair value of debt securities which mature at a date more than 60 days subsequent to the valuation date on an amortized cost basis." 12 SEC Docket at 718.

thereto on April 30, 1980, for an order pursuant to Section 6(c) exempting Applicants from the provisions of Section 27(a)(3) of the Act and amending an earlier order of the Commission dated May 1, 1979 (Investment Company Act Release No. 10678). This earlier order, pursuant to Sections 11(a) and 11(c) of the Act, permits certain offers of exchange within divisions of Separate Account or between Applicants on a basis other than net asset value per share at the time of transfer.

On April 10, 1980, a notice was issued (Investment Company Act Release No. 11126) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from Section 27(a)(3) of the Act be, and hereby is, granted, effective forthwith and, pursuant to Section 11 of the Act, that the Commission's order, dated May 1, 1979, contained in Investment Company Act Release No. 10678 be amended to the extent requested.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11155/May 5, 1980

In the Matter of

CARDINAL GOVERNMENT SECURITIES TRUST
155 East Broad Street
Columbus, Ohio 43215

(812-4654)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Cardinal Government Securities Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on April 7, 1980, requesting an order of the Commission to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it has filed a registration statement on Form N-1 to register under the Act as an open-end, diversified investment company. Applicant will be a "money market" fund designed primarily as an investment vehicle for institutions and individuals with cash reserves or temporary cash balances with the objective of maximizing current income while preserving capital and maintaining liquidity.

Applicant represents that it will invest exclusively in various high-grade money market instruments maturing in one year or less, including U.S. Treasury bills, notes and bonds, other securities issued or guaranteed by the U.S. government, its agencies and instrumentalities and repurchase agreements relating to such permitted investments.

Applicant states that the experience of money market funds to date indicate that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant represents that it can provide these features to investors by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost. Under the amortized cost method of valuation, a portfolio security is valued at its historic cost (purchase price) and the interest to be earned on the security (plus any discount received or less any premium paid upon purchase)

is accrued ratably over the remaining maturity of the security. According to the application, by declaring these accruals to Applicant's shareholders as a daily dividend, the value of Applicant's assets and thus, its net asset value per share, will generally remain constant.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, in pertinent part, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors. Section 2(a)(41) defines, in pertinent part, the term "value" in a similar manner.

In Investment Company Act Release No. 9786, dated May 31, 1977, the Commission expressed the view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" fund to value its portfolio instruments (except those having maturities of 60 days or less) on an amortized cost basis.

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, Applicant's Board has determined in good faith that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method and that the amortized cost method is in the best interests of the Applicant's shareholders. The Board has further determined to monitor continuously valuation indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Board undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the precedures to be adopted by the Board shall be the following:

(a) Review by the Board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a

[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board in the exercise of its discretion to be appropriate indicators of value. In addition, the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

requirement that the Board will promptly consider what action, if any, should be initiated.

(c) Where the Board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which actions may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any action was taken will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 27, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT COMPANY ACT OF 1940
Release No. 11156/May 6, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6210/May 6, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11157/May 6, 1980

In the Matter of

SWISS BANK CORPORATION
and
SBC OVERSEAS FINANCE N.V.
c/o John W. Erickson, Esq.
White & Case
280 Park Avenue
New York, New York 10017

(812-4576)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM ALL PROVISIONS OF THE ACT

Swiss Bank Corporation ("Swiss Bank") and SBC Overseas Finance N.V. ("SBC') (collectively "Applicants") filed an application on November 28, 1979, and amendments thereto on March 5, 1980, and April 2, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act.

On April 9, 1980, a notice was issued (Investment Company Act Release No. 11125) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order pursuant to Section 6(c) of the Act, disposing of the application, would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and on the basis of the representations in the application as amended, it is found that the granting of the exemption is appropriate in the public interest and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that, subject to the condition that Applicants comply with their undertakings: (1) to ensure that the dealer will provide to each offeree who has indicated an interest in the notes, and prior to any sale of notes to such offeree, (i) a memorandum which describes the business of Swiss Bank and SBC, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Swiss Bank and SBC, which in the case of Swiss Bank shall have been audited by Swiss auditors, and (iii) the most recent publicly available unaudited quarterly financial statements of Swiss Bank and SBC, (2) to include in such memorandum a paragraph highlighting the material differences between Swiss accounting standards applicable to Swiss Banks and generally accepted accounting principles employed by United States banks, (3) that such memorandum and financial statements will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated periodically to reflect material changes in Applicants' financial status to the extent not previously reflected in the memorandum or financial statements, (4) that any future offerings of debt securities in the United States will be done on the basis of disclosure documents at least as comprehensive as those used in the presently proposed offering, and (5) to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered, prior to any sale of such securities to such offerees, except that in the case of an offering made pursuant to a registration statement under the Securities Act of 1933 ("1933 Act"), such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder, the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11158/May 7, 1980

In the Matter of

CARNEGIE LIQUID ASSETS, INC.
831 National City Bank Building
Cleveland, Ohio 44114

(812-4650)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Carnegie Liquid Assets, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company filed an application on April 4, 1980, requesting an order of the Commission to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act, to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing its portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant has filed a registration statement on Form N-1 to register under the Act. Applicant will be a "money market" fund designed primarily as an investment vehicle for investors with cash reserves or temporary cash balances with the objective of obtaining as high a level of current income as is consistent with prudent investment management, the preservation of capital and liquidity.

Applicant indicates that it will invest exclusively in various high-grade money market instruments maturing in one year or less, including securities issued or guaranteed by the U.S. government, its agencies and instrumentalities, obligations of qualifying banks and savings and loans, high-grade commercial paper, certain corporate debt obligations, and instruments (including repurchase agreements) secured by such obligations.

Applicant states that the experience of "money market" funds to date indicates that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant represents that it can provide these features to investors by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost. Under the amortized cost method of valuation, a portfolio security is valued at its historic cost (purchase price) and the interest to be earned on the security (plus any discount received or less any premium paid upon purchase) is accrued ratably over the remaining maturity of the security. Applicant indicates that by declaring these accruals to its shareholders as a daily dividend, the value of Applicant's assets and, thus, its net asset value per share, will generally remain constant.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the act provides, in pertinent part, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and other securities shall be valued at fair value as determined in good faith by the board of directors. Section 2(a)(41) defines, in pertinent part, the term "value" in a similar manner.

In Investment Company Act Release No. 9786, dated May 31, 1977, the Commission expressed the view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) if would be inconsistent with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments (except those having maturities of 60 days or less) on an amortized cost basis.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application,

may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

According to the application, Applicant's Board of Directors has determined in good faith that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method and that the amortized cost method is in the best interest of the Applicant's stockholders. Applicant's Board has further determined to monitor continuously valuation indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Board undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board shall be the following:

(a) Review by the Board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board will promptly consider what action, if any, should be initiated.

(c) Where the Board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity, withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in

[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board in the exercise of its discretion to be appropriate indicators of value. In addition, the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board determines present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any was taken will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 30, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11159/May 7, 1980

In the Matter of

WESTERN DAILY INCOME FUND, INC.
28041 South Hawthorne Boulevard
Suite 213
Rancho Palos Verdes, California 90274
(812-4639)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Western Daily Income Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 25, 1980, and an amendment thereto on May 1, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects, its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("Release No. 9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation newly organized and existing under the laws of the State of California. Applicant has filed with the Commission a Registration Statement on Form N-1 pursuant to Section 8(b) of the Act and the Securities Act of 1933, as amended. The 1933 Act Registration Statement on Form N-1 has not yet been declared

effective. Thus, Applicant has not yet commenced a public distribution of its shares.

Applicant states that it is a "money market" fund, designed to act as an investment medium for investors having idle cash reserve assets. Applicant's investment objective is to provide high current income to the extent consistent with liquidity and the preservation of principal. According to the application, Applicant proposes to invest exclusively in the following high grade money market instruments: (a) obligations issued or guaranteed as to principal or interest by the United States Government, or any agency, instrumentality or authority established, controlled or supervised by the United States Government pursuant to authority granted by Congress; (b) certificates of deposit of United States banks and savings and loan associations which, at the date of the investment have total assets in excess of $500,000,000; and (c) repurchase agreements with any member bank of the Federal Reserve System or primary dealer in United States Government securities. Applicant states that such investments will be limited to transactions with financial institutions believed by its investment adviser to present minimal credit risks.

Applicant further states that it's investment adviser will be Western Capital Management Co., Inc. ("Western Capital"), a California corporation wholly-owned by Messrs. John J. Chavanne, Chairman of the Board and Secretary of Applicant, and James E. McMurray, Jr., President, Treasurer and a Director of Applicant. Western Capital filed an Application for Registration on Form ADV under the Investment Advisers Act of 1940 with the Commission on March 14, 1980, which application is presently pending before the Commission.

According to the application, Applicant proposes to value each of its portfolio securities having remaining maturities in excess of 60 days by utilizing the mark-to-market method of valuation. Under this method of valuation portfolio securities for which a market quotation is readily available will be valued at the mean between the most recent bid and asked prices. Those securities for which market quotations are not readily available will be valued at their fair value as determined in good faith by or under the direction of the Board of Directors of Applicant. Securities with a remaining maturity of 60 days or less will be valued on an amortized cost basis, that is, the securities will initially be valued at cost on the date purchased (or, in the case of securities purchased with more than 60 days remaining to maturity, the market value on the 61st day prior to maturity), thereafter, Applicant will assume a constant proportionate amortization in value until maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of the securities.

Applicant further proposes to effect sales, redemptions and repurchases of its shares at prices calculated to the nearest one cent on a share net asset value of $1.00. Applicant will determine its net asset value per share for purposes of effecting sales, redemptions and repurchases of its shares as of the close of trading on each day the New York Stock Exchange is open for trading, or at such other times, not inconsistent with the requirements of the Act and the Commission's Rules and Regulations thereunder, as its Board of Directors shall prescribe.

Rule 22c-1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for purposes of distribution, redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company.

In Release No. 9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that (1) it is inconsistent with the provisions of Rule 2a-4 for money market funds to value their assets on an amortized cost basis except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation method is determined to be appropriate by each respective fund's board of directors, and (2) it is inconsistent with the provisions of Rule 2a-4 for money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might

have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" such funds' proper portfolio valuation as required by Rule 2a-4. On the basis of the foregoing, Applicant requests an exemption, from the provisions of Rules 2a-4 and 22c-1 under the Act, to permit its net asset value to be determined in the manner set forth above.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant represents that it believes potential investors in its shares are not concerned with the theoretical differences which might occur between the yield achieved through "market" pricing and the yield computed by using the "penny rounding" valuation method described above. Applicant further believes that such potential investors are vitally concerned with the net asset value of their shares remaining stable and with the daily net income declared on their investment not exhibiting the volatility which can often occur when changes in market prices cause changes in yield on a daily or weekly basis. Applicant contends that such investors might forgo investing in a money market fund which did not alleviate these concerns. In addition, Applicant submits that granting the relief requested would not only provide its shareholders with the convenience of being able to determine the value of their holdings merely by knowing the number of Applicant's shares they own, but would also make the task of maintaining an investment record easier.

Applicant further states that it believes that computing its net asset value per share to the nearest one cent on a share value of $1.00 will allow Applicant to maintain a constant net asset value per share under usual or ordinary circumstances. According to application, such method of calculation would enable Applicant to better serve the needs of its shareholders, given its use of the mark-to-market method, as opposed to the amortized cost method, of valuing its portfolio instruments having remaining maturities in excess of 60 days. Applicant further represents that its Board of Directors has determined in good faith that this method of calculating its net asset value per share under such circumstances is appropriate and in the best interest of Applicant's future shareholders. Applicant states that its Board of Directors, in making that determination specifically considered the credit control regulations recently adopted by the Board of Governors of the Federal Reserve System which impose a 15 percent reserve requirement on certain investment companies, including "money market" funds such as Applicant.

Applicant further states that its request for exemption is based upon its existing management policies and has agreed that the following conditions may be imposed in any order granting the requested exemptions.

1. That Applicant's Board of Directors, in supervising operations and delegating special responsibilities involving Applicant's portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for purposes of effecting sales, redemptions and repurchases, rounded to the nearest one cent, will not deviate from $1.00.[1]

2. That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Applicant will neither (a) purchase an instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

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[1]Applicant believes that its Board of Directors can fully carry out this undertaking by (a) requiring Applicant's investment adviser to adopt policies calculated to prevent such price, as so rounded, from deviating from $1.00 except under unusual or extraordinary circumstances, and (b) periodically reviewing the investment adviser's management of Applicant in accordance with such policies at regularly scheduled meetings of Applicant's Board of Directors.

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the Board.

NOTICE IS FURTHER GIVEN that any interested person may, not later than May 30, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11160/May 7, 1980

In the Matter of

THE CHASE FUND OF BOSTON
535 Boylston Street
Boston, Massachusetts 02116

(812-4649)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that The Chase Fund of Boston ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 4, 1980, and an amendment thereto on April 29, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the proposed money-market series of the Applicant, Phoenix-Chase Money Market Fund Series (the "Series") from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit the Series to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that it was organized as a Massachusetts business trust on April 7, 1958. The Applicant further states that its investment adviser is Phoenix Investment Counsel of Boston, Inc. and that all of the outstanding stock of the adviser is owned by Phoenix Equity Planning Corporation, the national distributor for the Applicant and a wholly-owned subsidiary of Phoenix Mutual Life Insurance Company.

Applicant states that on December 20, 1979, a plan of recapitalization was approved by its Trustees and that this plan of recapitalization is expected to be submitted to the Fund's shareholders for approval in June, 1980.

Applicant states that under the terms of the proposed plan of recapitalization, its name would be changed to Phoenix-Chase Series Fund and that its shares of beneficial ownership would be divided into several series of shares. Applicant further states that the Series would have as its investment objective that of seeking as high a level of current income as is consistent with the preservation of capital and the maintenance of liquidity by investing in money market instruments having a maturity date of generally less than one year. Applicant also states

that it is expected that Phoenix Mutual Life Insurance Company will make an initial investment of $3,000,000 to $5,000,000 in shares of the Series.

According to the application, Applicant will declare and pay its net income as a dividend to its shareholders on a daily basis. Applicant presently defines "net income" for this purpose to consist of (i) all accrued interest income and discounts earned on its portfolio assets, (ii) minus amortized premiums, (iii) plus or minus all realized gains or losses on the portfolio assets and (iv) less all expenses of the Series. Applicant states that, as a result of these policies, a sudden rise in interest rates or other factors could cause the Series' net income to be a negative amount, in which case Applicant would offset dividends accrued during the month for shareholders accounts by such negative amount. Applicant further states that in the event such negative amount exceeded accrued dividends the Applicant would reduce the number of its outstanding shares in order to maintain a constant net asset value of $1.00 per share.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its portfolio securities by means of the amortized cost method of valuation (i.e., valuing securities at cost, adjusted for amortization of premium or accretion of discount).

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that in order for the Series to be competitive with other "money market funds," it is essential for the Series to maintain a constant net asset value per share. Applicant further states that maintenance of a constant net asset value per share will afford investors in the Series the convenience of being able to determine the value of their share holdings in the Series simply by knowing the number of shares which they own. In addition, Applicant states that amortized cost valuation, absent unusual circumstances, represents the fair value of the Series' portfolio securities and reduces the possibility of forced redemptions triggered automatically by minor fluctuations in the net asset value of the portfolio securities of the Series causing the realization of negative income. Finally, the application states that Applicant's Trustees after giving consideration to the special reserve requirements adopted by the Board of Governors for the Federal Reserve System as to what effect those requirements would have on the Series or its valuation procedure, have concluded that it would be in the best interests of the shareholders of the Series to value its portfolio securities using the amortized cost method of valuation.

Applicant consents to the following conditions being contained in any order of the Commission granting the exemptive relief requested:

(1) In supervising the Series' operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to its shareholders to establish procedures reasonably designed, taking into account current market conditions and the Series' investment objective, to stabilize the Series' net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Series' $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the Series' $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Board of Trustees believes the extent of any deviation from the Series' $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Series' average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) The Series will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Series will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) The Series will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was

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[1]Applicant states that to fulfill this condition, the Series intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Series will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Applicant represents that its Trustees have determined in good faith that in light of the characteristics of the Series as described above and, subject to compliance with the above conditions, absent usual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and reflects fair value of such securities. Applicant further represents that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 2, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11161/May 7, 1980

In the Matter of

AMERICAN MUSIC STORES, INC.
P.O. Box 126
Bloomfield Hills, Michigan 48013

and

NATIONAL BANK OF DETROIT
as Co-Executor of the Will of
Jack J. Wainger, Deceased
Trust Division
Box 222A
Detroit, Michigan 48232

(812-4541)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM SECTION 17(a) OF THE ACT

NOTICE IS HEREBY GIVEN that American Music Stores, Inc. ("Company"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company, and National Bank of Detroit ("Bank") as Co-Executor of the Will of Jack J. Wainger, Deceased, filed an application on September 24, 1979, and an amendment thereto on February 21, 1980, for an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act the proposed sale of a promissory note by the Company to Ruth Wainger and the Bank, as Co-Executors of the Will of Jack J. Wainger, Deceased ("Estate"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

As stated in the application, on August 1, 1973, Andrews Music Company ("Andrews"), a wholly-owned subsidiary of the Company, purchased the assets of Stephenson Music Company and issued a promissory note ("Andrews Note"), guaranteed by the Company, in the principal amount of $80,000 as a part of the purchase payment. Applicants state that the Stephenson Music Company assigned the Andrews Note to Charles A. Stephenson, Jr., and that upon his death on May 13, 1976, the Wachovia Bank

& Trust Company, N.A. ("Wachovia") was appointed administrator of his estate.

Applicants state that pursuant to a purchase agreement dated December 17, 1975, the Company sold on June 8, 1976, substantially all of its assets to GBI, Inc. (which subsequently changed its name to Grinnell Brothers, Inc. ["Grinnell"]).

Applicants also state that under the terms of the purchase agreement, Grinnell assumed and agreed to pay all of the debts and obligations of the Company, which included the Andrews Note; however, notwithstanding the assumption by Grinnell of the Company's liabilities, the Company remained contingently liable on the Andrews Note because it was not released from its obligations under the guarantee.

According to the application, a lawsuit entitled *Galdi* v. *Wainger* was commenced in August 1976, against the Company and certain individual defendants by certain stockholders of the Company alleging violations of the Securities Exchange Act of 1934 ("1934 Act"), the Act and the rules and regulations thereunder, as well as breaches of common law fiduciary trust owed to the Company. The suit, according to Applicants, sought to compel the Company to adopt a plan of liquidation, among other things. Applicants state that a second lawsuit against the Company was filed on June 6, 1977, by Grinnell, who soon thereafter came under the jurisdiction of the Bankruptcy Court; alleging certain violations of the Securities Act of 1933, the 1934 Act, the Michigan Uniform Securities Act, the Uniform Commercial Code and common law, arising out of the sale of the Company's assets to Grinnell.

Applicants state that as a part of the settlement of the *Galdi* v. *Wainger* lawsuit, the Board of Directors of the Company adopted a Plan of Liquidation ("Plan") in December 1977, pursuant to which the first liquidating distribution of $10.95 per share was made to each stockholder that year. Applicants also state that on June 22, 1978, the Grinnell lawsuit was settled. Applicants state that in conformance with the settlement agreement, Grinnell paid to Wachovia $11,640, representing the amount in default plus interest on the Andrews Note, and issued a promissory note ("Grinnell Note") to Wachovia in the amount of $44,000, representing the amount then outstanding on the Andrews Note, with the following features: the note was dated June 7, 1978, payable at the rate of $4,000 semi-annually and the last payment was due in 1984, with interest at 7% per annum on the unpaid balance. Notwithstanding the issuance of the Grinnell Note, Applicants state that the Andrews Note was not cancelled or paid, and the Company remained contingently liable for the amount owed Wachovia.

As indicated in the application, the Company purchased the Grinnell Note on June 22, 1978, from Wachovia for the discounted price of $38,000. The application states that the Grinnell Note was purchased in order to facilitate the settlement of the Grinnell lawsuit and to eliminate the Company's contingent liability to Wachovia. Since purchasing the Grinnell Note, the Company has received payments from Grinnell totaling $16,000, according to the application.

According to the application, subsequent to the settlement of the lawsuits the Company took the following steps to effect liquidation according to the Plan. (1) On November 28, 1978, the stockholders of the Company met at a special meeting and approved the dissolution of the Company. (2) On December 11, 1978, a Certificate of Dissolution of the Company was filed with the State of Delaware; thereafter, a liquidating trust, consisting of all the undistributed assets of the Company, was formed and a trustee appointed. Applicants state that as of December 18, 1978, there were approximately $435,000 in net assets in the liquidating trust and approximately 520 holders of record of the Company's stock. (3) On November 21, 1979, the Company informed its stockholders, with the advice of independent accountants, and after setting aside such amounts necessary for the payment of unascertained or contingent liabilities, that the trustee had arranged to make the final liquidating distribution. Applicants state that in connection with this announcement the Estate consented to the deferral of $24,500 of the final liquidating dividend due the Estate upon the understanding that upon approval of this application and receipt by the trustee of the purchase price of the Grinnell Note, the trustee will pay the deferred portion of the final liquidating dividend due the Estate. Applicants further state that as of January 11, 1980, there were approximately $159,500 in assets (including cash, investments and the Grinnell Note) and $152,500 in liabilities (including, among other payables, distributions still to be made from the first and the final liquidating distributions) in the liquidating trust, the net assets of the trust having been reduced from the December 1978 figure by expenditures on, among other things, final

liquidating distributions, disbursing agent fees, and mailing and printing costs.

Applicants have requested an order pursuant to Section 17(b) of the Act to permit the Company to sell the Grinnell Note to the Estate. Applicants state that in order to allow the trustee to pay the deferred portion of the final liquidation dividend due the Estate as soon as possible and to avoid incurring the cost of maintaining the liquidating trust until the last payment is received on the Grinnell Note in 1984, the Estate has offered to purchase the Grinnell Note for $24,500, which is $2,500 more than the difference between the $38,000 price paid by the Company for the Grinnell Note and the $16,000 received to date as payments from Grinnell on the note. Applicants also state that the Board of Directors of the Company approved a resolution authorizing the proposed sale of the Grinnell Note for $24,500, determining that the proposed transaction was fair and in the interest of the Company.

Section 2(a)(3) of the Act includes within the definition of "affiliated person" of another person any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person.

Applicants state that Ruth Wainger owns 136,750 shares or 27.9% of the Company's outstanding common stock and that the Estate, for which she serves as co-executor along with the Bank, owns 110,056 shares or 22.7% of the Company's outstanding common stock, and acknowledge that the Estate, by virtue of its stock ownership of the Company, is an affiliated person of the Company.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company or any affiliated person of such person, acting as principal, knowingly to purchase from such registered investment company any security or other property except securities of which the seller is the issuer. Section 17(b) of the Act generally provides that, upon application, the Commission shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

Applicants submit that an order of exemption pursuant to Section 17(b) is appropriate for the reasons which follow. (1) The Company in its registration statement of October 28, 1976, clearly set forth its intention to propose a plan of liquidation and the stockholders approved the dissolution of the Company at a special meeting held on November 28, 1978. Therefore, it is consistent with the policy of the Company to sell the Grinnell Note for cash, which would then be available for distribution as the final liquidating dividend due the Estate. (2) The terms of the proposed transactions, including the consideration to be paid or received are reasonable and fair and do not involve overreaching on the part of any person concerned. The sale of the Grinnell Note to the Estate for $24,500 will, when added to the $16,000 in payments previously received by the Company from Grinnell, result in a return of $2,500 more than the $38,000 purchase price paid by the Company. (3) The purchase of the Grinnell Note by the Estate is consistent with the general purposes and policy of the Act for, if the Company is not permitted to make the proposed sale, the Estate will have to wait until 1984 to receive the deferred portion of the final liquidating dividend and the Company will not be able to finish winding up its affairs until 1984, and thus, will absorb the costs associated with continued existence. These costs would include accounting and audit fees, legal fees, trustee services, fidelity bond premium (approximately $840) and directors fees ($100 per director for a total of $500 for each time the directors meet).

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 2, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated

under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11162/May 7, 1980

In the Matter of

EDWARD D. JONES & CO. DAILY PASSPORT CASH TRUST
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4599)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Edward D. Jones & Co. Daily Passport Cash Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on January 24, 1980, and an amendment thereto on April 4, 1980, requesting an order pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost. All interested persons are referred to the application on file with the Commission for statements of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund organized as a Massachusetts business trust and that Daily Cash Research Corp. ("Daily Cash"), serves as its investment adviser. According to the application, Federated Investors, Inc., owns all of the outstanding voting stock and one-half of the non-voting stock of Daily Cash. Edward D. Jones & Co., distributor of shares of Applicant, owns the remainder of Daily Cash's non-voting stock. Applicant further states that it is designed as an investment vehicle for investors with temporary cash balances or cash reserves seeking current income consistent with stability of principal, and that its portfolio may be invested in money market instruments that mature in one year or less.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that experience indicates that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant asserts that by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost it can provide these features to investors. Applicant represents that its trustees ("Management") have properly determined in good faith under the provisions of the Act to value its portfolio by use of the amortized cost method and that this method is in the best interest of its shareholders. According to the application, experience has shown that, given the unique nature of Applicant's policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method. Applicant further represents that: (1) its Management has determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method, and (2) its Management has further determined to monitor continuously valuations by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors. Accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit its assets to be valued on an amortized cost basis.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemption it requests satisfied these standards in view of its management policies and the conditions hereinafter set forth.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Management undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Management shall be the following:

(a) Review by Management, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that Management will promptly consider what action, if any, should be initiated by Management.

(c) Where Management believes the extent of any deviation from Appliant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using market quotations.

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Management in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that it will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Management's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of Management's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which Management determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Management.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 2, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11163/May 8, 1980

In the Matter of

DEVONSHIRE STREET FUND, INC.
1 Winthrop Square
Boston, Massachusetts 02110

(811-999)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On April 11, 1980, a notice was issued (Investment Company Act Release No. 11127) stating that Devonshire Street Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 20, 1980, pursuant to Section 8(f) of the Act for an order of the Commission

declaring that Applicant has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Devonshire Street Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISER ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 719/May 5, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16783/May 5, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 720/May 5, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16784/May 5, 1980

LITIGATION

Litigation Release No. 9076/May 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CARDIFF INDUSTRIES, INC.* United States District Court for the District of Columbia, Civil Action No. 80-1117

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Cardiff Industries, Inc. ("Cardiff"), 3900 South Wadsworth Boulevard, Suite 560, Denver, Colorado 80235. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Cardiff, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed at the Commission by March 30, 1980.

The Complaint requests that the Court order Cardiff to file forthwith, with the Commission, its Annual Report on Form 10-K for its fiscal year ended December 31, 1979. In addition, the Commission requests that the Court enjoin Cardiff from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9077/May 7, 1980

UNITED STATES v. *HARRY J. BINDER* (CR-79-276-1, E.D. Pa.)

Peter F. Vaira, United States Attorney for the Eastern District of Pennsylvania, and Paul F. Leonard, Administrator of the Washington Regional Office of the Securities and Exchange Commission, announced that on April 16, 1980, the Honorable Alfred Luongo, Judge, United States District Court for the Eastern District of Pennsylvania, granted a motion for a judgment of acquittal on all four counts of a criminal indictment returned on December 12, 1979.

The indictment had charged Harry J. Binder of Jenkintown, Pennsylvania, with wire fraud in connection with transfers of funds to cover insufficient funds checks used in securities transactions. (For further information see Litigation Release No. 8951).

Litigation Release No. 9078/May 7, 1980

SEC v. BOOKKEEPERS, LTD., ET AL. (Southern District of California, CV 79-1715-N)

Leonard H. Rossen, Regional Administrator for the Securities and Exchange Commission in Los Angeles, announced that United States District Judge Leland C. Nielsen, in the Southern District of California in San Diego has issued a final judgment against Bookkeepers, Ltd. of Ontario, California. Bookkeepers, Ltd. provides bookkeeping services for small businesses. The company operates approximately 100 branch offices throughout the country. Under the terms of the final judgment, the company is enjoined from violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934. It also was enjoined from further violations of Section 12(g) of the Securities Exchange Act of 1934, which requires the company to register its stock with the Commission. Judge Nielsen also appointed Mr. R. N. Gould of San Diego as trustee of the company to serve until further order of the court. The trustee is to manage the company, to cause its securities to be registered with the Commission and to restore the original public shareholders of the company to the ownership position they occupied prior to April, 1974, the date the company engaged in a series of transactions the Commission charged were fraudulent. Bookkeepers consented to the final judgment without admitting or denying the allegations of the complaint.

The Commission's complaint, filed in 1978, charged Bookkeepers, together with Walter Wencke, its controlling stockholder, and Joseph Margala and Jerry Whitley, its president and vice president respectively, with various violations of the antifraud and registration provisions of the Federal Securities Laws arrising out of the issuance in 1974 of approximately 2,000,000 shares of stock to themselves and a series of reverse stock splits. The Commission charged that these acts, constituting a 1,000 to 1 reverse stock split, reduced the number of stockholders from over 1,000 to approximately 25 and increased the ownership of Wencke, Margala and Whitley to approximately 90% of the company.

Under the terms of the judgment, those shareholders who were deprived their interest in the company by these transactions will be reinstated as shareholders.

In November 1979, final judgment was entered against Wencke, barring him from further violations of the Securities Laws and ordered him to disgorge certain property obtained by him. The case remains pending against Margala and Whitley, with a trial scheduled to begin on May 20.

Litigation Release No. 9079/May 8, 1980

SECURITIES AND EXCHANGE COMMISSION v. OMEGA SECURITIES, INC. AND MEREDITH K. M. SMITH Civil Action No. 80-476 (D. Ore.)

Jack H. Bookey, Regional Administrator of the Seattle Regional Office announced the filing of a complaint in U.S. District Court for the District of Oregon on April 22, 1980 against Omega Securities, Inc., a Portland, Oregon broker-dealer, and Meredith K. M. Smith, its president and chief operating officer of Lake Oswego, Oregon. The Commission's complaint alleges that defendant Omega, aided and abetted by Smith, has been and is continuing to violate Section 15(c)(3) of the Securities Exchange Act of 1934 and Rules 15c3-1 (17 CFR 240.15c3-1) (net capital rule) and 15c3-3 (17 CFR 240.15c3-3) (customer protection rule) thereunder.

The complaint also seeks the appointment of a temporary receiver pending a determination by the Securities Investor Protection Corporation of the need to apply to the Court for a decree adjudicating Omega's customers in need of protection.

Defendants consented to the entry of a decree of permanent injunction against them enjoining them from further violations of the Commission's financial responsibility provisions and stipulating to the appointment of a temporary receiver if defendants are unable to demonstrate compliance with Rules 15c3-1 and 15c3-3 on or before May 5, 1980.

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sec docket

VOLUME 20, NO. 1 MAY 27, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6211	1
Securities Exchange Act	16794-10	2
Public Utility Holding Company Act	21561-75	17
Investment Company Act	11164-72	37
Litigation	9080-87	48

This listing covers releases issued from 5/9/80-5/15/80. This listing does not affect the legal status of any document published in this issue.

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SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16795	34-16800	34-16807
34-16797	34-16801	34-16809
34-16798	34-16803	34-16810
34-16799		

33-6211 Extension of Comment Period on the concept release dealing with the ratio of earnings to fixed charges [File No. S7-824—Comment Period Expires June 15, 1980]

34-16806 Exemption from Section 16 of the 1934 Act for the Acquisition of Equity Securities Pursuant to Dividend Reinvestment Plans.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6211/May 9, 1980

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 16796/May 9, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21562/May 9, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11164/May 9, 1980

RATIO OF EARNINGS TO FIXED CHARGES

ACTION: Extension of time for comment.

SE 1.29:

SUMMARY: The Securities and Exchange Commission announced today that it has extended, by one month, the date by which comments on the concept release dealing with the ratio of earnings to fixed charges (issued on March 7, 1980, and published in the Federal Register of March 14, 1980) must be submitted. The Commission has received requests that the comment period be extended and believes that the one month extension will be beneficial because it will result in the receipt of additional useful comments.

DATE: Comments must be received on or before June 15, 1980.

ADDRESSES: All communications on the matters discussed in this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File S7-824 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Rita Gunter, Office of the Chief Accountant (202-272-2133), Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The release entitled "Ratio of Earnings to Fixed Charges" (Securities Act Release No. 6196 [45 FR 16498] was originally issued for comment on March 7, 1980, with comments due on or before May 15, 1980. In view of the requests received by the Commission for additional time in which to comment and in order to receive the benefit of the comments of the greatest number of interested persons, the Commission has extended the comment period by one month, until June 15, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16794/May 9, 1980

A notice has been issued giving interested persons until June 5, 1980 to comment on the applications of the Midwest Stock Exchange, Inc. for unlisted trading privileges in 21 companies' common stock and shares of beneficial interest. These securities are listed and registered on another national securities exchange.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16795/May 9, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE, INC.

File No. SR-BSE-80-3

The Boston Stock Exchange, Inc. ("BSE") submitted on April 30, 1980, a proposed rule change under Rule 19b-4 to establish a Guaranteed Execution System available to member firms for orders from 100 up to and including 399 shares of ITS traded issues.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSE-80-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications

relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16796/May 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6211/May 9, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16797/May 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE, INC.

File No. SR-BSE-80-4

The Boston Stock Exchange, Inc. ("BSE") submitted on May 2, 1980, a proposed rule change under Rule 19b-4 to provide that trading through superior ITS markets would be inconsistent with just and equitable principles of trade, and to require that the best ITS bid or offer must be satisfied.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSE-80-4.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organizations.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16798/May 12, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-18

The New York Stock Exchange, Inc. submitted, on May 6, 1980, a proposed rule change under Rule 19b-4 to prohibit use of carbon paper in machine order forms used on the trading floor after May 1, 1980.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16799/May 12, 1980

NOTICE OF AMENDMENT TO FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-78-8

The National Association of Securities Dealers, Inc. (the 'NASD") submitted on May 9, 1980, an amendment to a proposed rule change under Rule 19b-4 of the Securities Exchange Act of 1934 which would permit NASD members who are not NASDAQ Level III subscribers to gain access to the NASDAQ System through an existing subscriber for purposes of making a market in one or more NASDAQ securities. The amendment would reduce the fees required to be paid by the access market maker to NASDAQ for the service from $100 per month for the first security and $75 per month for each additional security to $70 a month for the first security and $52.50 per month for each additional security. This revision reflects the general reduction in NASDAQ rates approved by the Commission on August 28, 1979. In addition, the filing would commit the NASD's Board of Governors to review the program after one year of operation.

Publication of the terms of substance of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views, and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-78-8.

Copies of the submission and all subsequent amendments, and copies of all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of Section 552 of Title 5, United States Code, will be available for inspection and copying at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16800/May 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-16

The New York Stock Exchange, Inc. ("NYSE") submitted on April 18, 1980, a proposed rule change under Rule 19b-4 to modify NYSE Rules 109, 110 and 112 as they apply to Competitive Traders. The proposed amendments also would change the reference "Registered Trader" to "Competitive Trader" wherever it appears in those rules.

Rule 109, which prohibits a member from accepting "stops" in any account where the member has an interest, would be rescinded in its entirety and the use of "stops" in such cases would be governed solely by Section 11(a) of the Act, the rules thereunder, and NYSE rules dealing with a member's proprietary trading.[1]

Section 2 of Rule 110, which states that Competitive Traders shall not effect transactions for their own accounts except in a manner that is reasonable, orderly, and not conspicuous, would be rescinded as redundant in view of Section 1 and Paragraph .10 of present Rule 110, which contain similar prohibitions.

Paragraph .20 of Rule 110, which provides that Rule 110 applies to transactions in stocks by members acting as Competitive Traders but not to transactions in bonds by members acting as Competitive traders, would be rescinded as unnecessary.[2]

Paragraph .30 of Rule 110, which provides that Rule 110 does not apply to specialists, would be rescinded as redundant since Rule 110 would apply to a member acting as a Competitive Trader and Rule 111 already prohibits a specialist from acting as a Competitive Trader.

Paragraph (b) of Rule 112 would be modified to state that a member may not act as both a Competitive Trader and a Floor Broker in the same stock in the same trading session.

Paragraph (d) of Rule 112, which provides that 75 percent of a Competitive Trader's transactions must be stabilizing transactions (purchases on "minus" or "zero minus" ticks or sales on "plus" or "zero plus" ticks), would be modified. The modifications would exempt from the calculations (1) non-stabilizing purchases effected as part of the initial sale of a newly listed security and (2) non-stabilizing transactions effected to liquidate a position which had been acquired as a result of a Floor Official's express invitation to participate in a difficult market situation.

Paragraph .21 of Rule 112, which governs a Competitive Trader's ability to compete with quotations made on the floor by odd-lot dealers, would be rescinded since specialists have assumed the responsibilities once held by odd-lot dealers.

Paragraph .25 of Rule 112, which allows a Competitive Trader to acquire stock via a "stop" if all off-floor bids at the price in question are filled, would be rescinded and the use of a "stop" in such cases would be governed solely by Section 11(a) of the Act, the rules thereunder, and NYSE rules governing proprietary trading.[3]

Paragraph .26 of Rule 112, which requires specialists upon request to provide Competitive Traders with information concerning the previous transactions of other Competitive Traders, would be rescinded as an unnecessary vestige from an earlier set of floor rules applying to Floor Traders.

Paragraph .30 of Rule 112, which requires Competitive Traders to submit daily trading reports to the NYSE in duplicate, would be amended to require only a single copy of the trading reports as the Exchange no longer needs duplicate copies. Certain additional modifications to Paragraph .30 of a "housekeeping" nature would be made to reflect

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[1]NYSE Rule 90(c) prohibits an order for the account of any NYSE member or member organization subject to Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder from obtaining priority over, parity with, or precedence based on order size over any order for the account of a non-member. *See also* NYSE Rule 108.

[2]Rule 11a1-4(T) under the Act provides that bond transactions executed on a national securities exchange for the account of an exchange member or associated person shall be deemed consistent with Section 11(a)(1) of the Act.

[3]*See* NYSE Rules 90(c), 108.

READEX FICHE

changes of names, addresses, and telephone numbers within the NYSE's departments.

Paragraph .40(B) of Rule 112 would be rescinded as no longer necessary. It provides that any transaction for a member's account that is initiated off the trading floor by any member who is not a Competitive Trader and who was on the floor during the same day must be reported weekly to the NYSE on its Form 82-0. The same information would continue to be available to the Exchange on its Form 82-P, pursuant to Rule 112.10, but such forms would be submitted only if specifically requested by the Exchange.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16801/May 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-7

The Chicago Board Options Exchange, Incorporated submitted on April 17, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 to modify its rules to provide for exchange-based trading of option contracts on Government National Mortgage Association modified pass-through certificates ("GNMAs").

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission by July 15, 1980. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16802/May 12, 1980

NOTICE OF RECEIPT OF AMENDMENTS TO CONSOLIDATED TAPE PLAN

On March 31, 1980, the Consolidated Tape Association ("CTA") submitted to the Commission a proposed restatement and amendment of the joint industry plan (the "Plan") filed with and declared effective pursuant to the predecessor to Rule 11Aa3-1 [17 CFR §240.11Aa3-1] under the Securities Exchange Act of 1934 ("Act") governing the consolidated transaction reporting system.[1] On April 23, 1980, the CTA submitted to the Commission a further proposed amendment to the Plan. The proposed amendments would effect numerous technical changes to the Plan. In addition, the proposed amendments would effect certain substantive changes to the Plan.

First, a proposed amendment to Section II(a) of the Plan would reflect the subscription of the Boston Stock Exchange, Inc. and the Cincinnati Stock Exchange, Inc. to the Plan.

Second, the proposed amendments would revise certain aspects of the voting arrangements under the Plan. Currently, the Articles of Association of the Plan provide for two voting members of the CTA to be appointed each by the signatory which reported the greatest number of last sale reports included over Network A and Network B and one voting member to be appointed each by the other four signatories. The amendments propose that each signatory may appoint one individual as a voting member of the CTA. In addition, Section III(a) of the Plan provides that the vote of a majority of the eight voting members of the CTA shall be required for any action taken by the CTA and Section III(b) currently provides that no proposed amendment to the Plan may be filed with the Commission if it is objected to by any Plan participant which, during the preceding twelve months, reported 51% or more of the transactions reported over either Network A or Network B. The proposed amendment would continue the requirement of majority voting in Section III(a),[2] but would amend Section III(b) to provide that no amendment to the Plan could be effective unless executed by each of the Plan participants.

Third, a proposed amendment to Section V(e) of the Plan would provide that transactions reported over moving tickers shall not be accompanied by market identifiers.[3] Currently, Section V(e) provides that transaction reports emanating from markets other than the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange, Inc. ("Amex") shall be identified by an ampersand followed by a single alphabetic character identifying the market of execution, and that transactions occurring on the NYSE and Amex shall not be accompanied by any market identifier.

Fourth, a proposed amendment to Section VII(b) of the Plan would eliminate the requirement that the NASD's rules governing the reporting of transactions executed in the over-the-counter market by NASD members be filed as an amendment to the Plan. The proposed amendment would continue to require that the NASD develop and adopt rules governing the reporting of transactions by its members, which rules would (1) specify the NASD member having responsibility for reporting each particular transaction, (2) be designed to avoid duplicate reporting of transactions on the consolidated tape, and (3) specify procedures for determining the price to be reported with respect to each particular transaction.

Finally, a proposed amendment to Section V(c) of the Plan would eliminate the current exception from reporting for transactions involving purchases by an issuer of its own securities off the floor of an exchange at a time when bids or purchases on an

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[1]See Securities Exchange Act Release No. 16589 (February 26, 1980), 45 FR 12378.

[2]As indicated, the proposed amendment to the Plan would increase the number of participants from six to eight. As a result, the number of voting members under the Plan would continue to be eight.

[3]The Commission recently adopted Rule 11Ac1-2 under the Act which, among other things, provides that, effective April 5, 1980, transaction reports with respect to reported securities displayed on a moving ticker either be reported without market identifiers or include market identifiers on a non-discriminatory basis. *See* Securities Exchange Act Release No. 16590 (February 26, 1980), 45 FR 12391.

exchange would not be permitted under proposed Rule 13e-2 under the Act.[4]

In order to assist the Commission in determining whether to approve the proposed amendments,[5] interested persons are invited to submit their views and comments on the proposal in writing to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, within 30 days from the date of publication in the *Federal Register*. The amendments to the Plan will be available for public inspection in the Commission's public reference room. All such communications should refer to File No. S7-433.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[4]See Securities Exchange Act Release No. 10539 (December 13, 1973), 38 FR 34341.

[5]The Commission notes that the Plan continues to provide that vendors are not permitted to retransmit transaction information disseminated over the "high" speed data stream for purposes of creating a moving ticker display. As a result, the Plan will shortly be in conflict with Rule 11Aa3-1 under the Act which will provide, as of July 5, 1980, that no national securities exchange or association may prohibit retransmission of the entire data stream of transaction reports on a current continuing basis for purposes of creating a moving ticker display.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16803/May 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-3

The Pacific Stock Exchange Incorporated ("PSE") submitted on April 10, 1980, a proposed rule change under Rule 19b-4 to amend PSE Rule IV, Section 64 to clarify the prohibition against floor brokers' use of discretion and to limit marketmakers' exercise of discretion to accounts in which they have a direct interest. Additionally, the proposed rule change would adopt new Options Floor Procedures Advices (1) to interpret the phrase "direct interest in an account" in Rule VI, Section 64, (2) to delineate the responsibility of floor brokers with respect to orders "print throughs," (3) to clarify that marketmakers may not effect opening transactions in their marketmaker accounts from off the floor of the Exchange, and (4) to explain the term "marking" and to inform members that "marking" is considered by the PSE to be a serious violation of the PSE rules. Finally, the proposed rule change would amend a current Options Floor Procedure Advice to extend to all marketmakers supplemental appointments to all securities admitted to trading on the PSE options floor.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 12, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with

the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16804/May 14, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Tosco Corporation
Common Stock, $.15 Par Value (File No. 7-5508);
Simplicity Pattern Co., Inc.
Common Stock, $.08-1/3 Par Value (File No. 7-5509);
Schlitz (Jos.) Brewing Company
Common Stock, $2.50 Par Value (File No. 7-5510);
Sav-A-Stop, Inc.
Common Stock, $.10 Par Value (File No. 7-5511);
Pogo Producing Company
Common Stock, $1 Par Value (File No. 7-5512);
Penn Central Corporation (The)
$5.27 Convertible Special Preference Stock, First Series, No Par Value (File No. 7-5513);
Hutton Group, Inc. (E.F.) (The)
Common Stock, $1 Par Value (File No. 7-5514);
Pantepec International, Inc.
Capital Stock, $.14 Par Value (File No. 7-5515);
Bache Group, Inc.
Common Stock, $2 Par Value (File No. 7-5516);
Dean Witter Reynolds Organization Inc.
Common Stock, $1 Par Value (File No. 7-5517); and
Coastal Caribbean Oil & Minerals Ltd.
Capital Stock, $.12 Par Value (File No. 7-5518).[1]

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities is hereby approved.

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 27860 (April 24, 1980). The Commission has received no comments with respect to this application.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16805/May 14, 1980

In the Matter of Application of the

MIDWEST STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange, Inc. ("MSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the common stock of the following security which is listed on another national securities exchange:

Anheuser-Busch, Inc.
$1 Par Value (File No. 7-5506)[1]

The Commission finds that approval of the MSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Midwest Stock Exchange, Inc. in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register* 45 FR 27860 (April 24, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16806/May 14, 1980

EXEMPTION FROM SECTION 16 OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE ACQUISITION OF EQUITY SECURITIES PURSUANT TO DIVIDEND REINVESTMENT PLANS

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule which exempts from the reporting and liability provisions of Section 16 of the Securities Exchange Act of 1934 the acquisition of equity securities by officers, directors, and ten percent beneficial owners pursuant to dividend reinvestment plans. The new Rule 16a-11 will enable statutory insiders to participate in such dividend reinvestment plans on the same basis as other shareholders.

EFFECTIVE DATE: (30 days after publication in the *Federal Register*).

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the rule contact Mary A. Binno at (202) 272-2604; thereafter contact William E. Toomey at (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted Rule 16a-11 (17 CFR 240.16a-11) under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)] which exempts from the reporting and liability provisions of Section 16 of the Exchange Act the acquisition of equity securities by officers, directors, and ten percent beneficial owners pursuant to dividend reinvestment plans.

Proposed Rule 16a-11 was published for comment in Securities Exchange Act Release No. 34-16221 (September 26, 1979) (44 FR 56953). The proposed rule was the result of a petition by American Telephone and Telegraph Company pursuant to Section 4(a) of the Commission's Rules of Practice (17 CFR 201.4(a)) requesting an amendment to the exemptive rules promulgated under Section 16(a) of the Exchange Act which would permit officers, directors, and other persons subject to the short swing profit provisions of Section 16(a) to reinvest dividends and/or interest pursuant to a dividend reinvestment plan. The adopted rule has modified the proposed rule to indicate that purchases made as a result of cash contributions over and above the amount of dividends reinvested would not be exempted. Thus the final rule exempts from Section 16 under the Exchange Act only those acquisitions of equity securities resulting from the reinvestment of dividends and/or interest.

BACKGROUND

Under Section 4(a) of the Commission's Rules of Practice, American Telephone and Telegraph Company ("AT&T"), in July, 1978, petitioned the Commission to adopt a rule providing for the exemption from Section 16 under the Exchange Act of equity securities acquired by officers, directors, and ten percent beneficial owners through dividend reinvestment plans.[1] AT&T was concerned that its officers, directors, and ten percent beneficial owners could incur liability under Section 16 of the Act for imputed short-term trading profits if these persons participated in the company's dividend reinvestment plan and they sold any securities within a six month period before or after. Consequently, proposed Rule 16a-11 was published for comment in Release No. 34-16221 and the Commission received 110 letters of comment.

The unanimous opinion of the commentators was favorable. The commentators supported adoption of the rule because in their opinion there would be no opportunity for abuse of Section 16; it would promote equity participation in the company by officers, directors, and ten percent beneficial owners; and it would provide these persons with the same rights as other participants in the plan. A number of commentators questioned whether cash contributions were covered by the proposed rule. In response thereto, the Commission has revised the proposed rule to indicate that such contributions would not be covered.

DISCUSSION

In recent years, many corporations have instituted dividend reinvestment plans for their shareholders. As was described in Release No. 34-16221, the plans are often administered by banks and, although differences may exist in administrative detail, the plans are substantively comparable.

Typically, dividend reinvestment plans contain the following features:

[1]Panhandle Eastern Pipeline Company filed a similar request.

a) All stockholders of record are eligible to participate;

b) Cash dividends on a participant's shares are automatically reinvested in additional shares on a quarterly or semi-annual basis;

c) The price of additional shares purchased for participants may be discounted as an incentive for participation;

d) A participant may withdraw from the plan at any time;

e) No brokerage commission or service fee is charged to the participant.

Directors, officers, and ten percent beneficial owners are often confronted with the dilemma of being "locked" into such plans because as long as they acquire shares under the plan on a quarterly or semiannual basis they can never sell any shares of the company stock (whether acquired under the plan or otherwise) without incurring liability for imputed short-term trading profits under Section 16(b) of the Exchange Act.[2] That section provides that any profit resulting from a purchase and a sale or a sale and a purchase by any officer, director, or ten percent beneficial owner within a six month period shall inure to the benefit of the issuer. The imputed short-term trading profit could be realized in two ways: as a result of the purchase at a discount below prevailing market prices or through market fluctuations which could potentially occur within six months before or after the sale.

Courts have interpreted Section 16(b) so that a sale price must be matched against the lowest purchase price occurring within six months before or after the date in order to determine the recoverable profit.[3] Consequently, unless the market price is absolutely stable for a period of twelve months, or the director or officer sells at a time when the market price is lower than any acquisition price during the twelve month period, in all likelihood at least one dividend reinvestment will exist based on a market price lower than that price at which the director of officer sold. Thus, officers and directors who sell securities acquired through a dividend reinvestment plan at a profit must tender to the issuer the difference between the market price at the time of sale and the acquisition price, which would include the discount. Proposed Rule 16a-11 was intended to alleviate such problems. After reviewing the comment letters received in connection with the proposed rule the Commission has determined to adopt Rule 16a-11.

Rule 16a-11 exempts acquisitions of securities under dividend reinvestment plans purchased only through the reinvestment of dividends and/or interest from the reporting requirements of Section 16(a)[4] and the liability provisions of Section 16(b). Securities acquired through individual cash contributions which may be permitted under the

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[2]Section 16(b) provides in pertinent part:

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer, by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months.

[3]See *Smolowe* v. *Delendo*, 136 F.2d 231, 239 (2d Cir. 1943).

[4]Section 16(a) reads in pertinent part:

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national security exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission. . .of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission. . .a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

plan are not covered by the rule and must therefore be reported under Section 16(a) and would be subject to Section 16(b)'s liability provisions. In addition, the final rule is restricted to dividend reinvestment plans whose terms are available to all security holders in the class for which the dividends or interest are being paid.

Certain Findings

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the new rule would have on competition and has concluded that it imposes no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefit of this rule to investors and registrants.

TEXT OF AMENDMENT

Accordingly, 17 CFR Part 240 is amended by adding a new §240.16a-11 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.16a-11 Exemption for acquisitions under dividend reinvestment plans.

Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same issuer, *Provided* That the plan is made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

[Secs. 16, 23(a), 48 Stat. 896, 901; 15 U.S.C. 78p, 78w(a)]

The Commission is adopting this rule pursuant to the Securities Exchange Act of 1934, particularly sections 16 and 23(a).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16807/May 15, 1980

In the Matter of the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street
Washington, D.C. 20006

(SR-NASD-79-16)

NOTICE OF FILING OF AMENDMENTS TO PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 9, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of amendments to proposed rule changes which the NASD previously had filed in response to certain recommendations of the Commission's Special Study of the Options Markets.[1] As amended, the NASD's proposals are substantially identical to rule proposals filed by the Chicago Board Options Exchange, American Stock Exchange, Midwest Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and New York Stock Exchange which were approved by the Commission in Securities Exchange Act Release No. 16696 (March 26, 1980).[2]

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[1]Notice of the original filing was published in Securities Exchange Act Release No. 16460 (December 31, 1979), 45 FR 1954; the first amendment thereto was published in Securities Exchange Act Release No. 16660 (March 17, 1980), 45 FR 18537. All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

[2]Unlike these exchanges, the NASD has not yet filed with the Commission proposed rule changes in response to the Options Study's recommendations

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the subject rule proposals prior to the thirtieth day after the date of publication of the final amendments thereto since the rule proposals, as amended, are substantially identical to rule proposals filed by the exchanges noted above which were previously approved by the Commission. In addition, the Commission believes that accelerated approval of the subject proposals is necessary and appropriate in order to achieve a consistent and equal regulatory scheme for standardized options.

Footnote 2 continued

with respect to options sales communications and retention of jurisdiction over terminated members and their associated persons. By letter dated May 9, 1980, from Frank J. Wilson, Senior Vice President, NASD, to Douglas S. Scarff, Director, Division of Market Regulation, the NASD, however, has undertaken to submit for membership vote proposed rule changes in response to these recommendations and thereafter, if membership approval is obtained, to file these rule changes with the Commission.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16808/May 15, 1980

Admin. Proc. File No. 3-5917

In the Matter of

DEAN WITTER REYNOLDS INC.

(8-14172)

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate in the public interest that proceedings be instituted against Dean Witter Reynolds Inc. ("DWR") pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act").

DWR simultaneously with the institution of this proceeding has submitted its Offer of Settlement for the purpose of disposing of the issues raised in this proceeding and without admitting or denying the acts or findings set forth herein, consents to the issuance of this Order.

The Commission has deemed it appropriate and in the public interest to accept the Offer of Settlement and, accordingly, is issuing this Order.

I.

FACTS

DWR is a broker-dealer registered with the Commission pursuant to Section 15(b)(1) of the Exchange Act. DWR engages in retail brokerage, investment banking and other securities related businesses. DWR operates an equity specialist unit

on the trading floor of the Philadelphia Stock Exchange, Inc. ("Phlx") and, at all times relevant herein, that unit's specialists made markets in 118 stocks.

Rule 11Ac1-1 promulgated by the Commission pursuant to Section 11A(c)(1) of the Exchange Act (the "firm quote" rule) imposes on exchanges and their members requirements for the collection and dissemination of market quotation information.[1] The Rule also requires that every "responsible broker or dealer" promptly communicate to its exchange or association, his bids, offers and quotation sizes. The Commission has repeatedly stressed that Rule 11Ac1-1 is the touchstone of the national market system.[2] Simultaneously with the effective date of the Rule on August 1, 1978, the Phlx adopted Rule 105 to comply with the standards set forth in and to implement the Commission's Rule.

From January 1, 1979 through April 30, 1979 the DWR specialist unit failed at certain times to report as required its quotations in its specialty stocks to the Phlx and engaged in a substantial number of transactions while no quotation was reported.[3]

During the relevant period, the DWR specialists knew that they were required to enter quotations into the Phlx computerized quotation system. Furthermore, the senior specialists of the DWR unit were personally notified by the Phlx that the unit had not entered the required quotations.[4]

II.

FINDINGS

As a result of the foregoing, the Commission finds that DWR willfully violated Section 11A(c)(1) of the Exchange Act and Rule 11Ac1-1 promulgated thereunder.

The purpose of the Commission's firm quote rule is to increase competition among market makers located on various securities exchanges to make available to investors the best possible execution at any given time. Strict compliance with the firm quote rule by all concerned is thus necessary if this important purpose is to be achieved.

III.

OFFER OF SETTLEMENT

As part of its Offer of Settlement, DWR has undertaken that it will fully comply with the procedures set forth in Exhibit A to its Offer of Settlement with respect to its specialist unit's operations on the Phlx.

IV.

ORDER

Based on the foregoing, and after due consideration of all the circumstances, the Commission has determined that it is in the public interest to institute these proceedings and accept DWR's Offer of Settlement. Accordingly, IT IS ORDERED that proceedings pursuant to Section 15(b)(4) of the Exchange Act be and hereby are instituted and findings that DWR violated Section 11A of the Exchange Act and Rule 11Ac1-1 are made.

IT IS FURTHER ORDERED that DWR place the following limitations on the activities of the DWR specialist unit on the Phlx pursuant to Section 15(b)(4) of the Exchange Act, to wit: the DWR unit shall limit the number of equity issues in which it makes markets to an average of 25 issues per specialist (as to which the specialist has primary responsibility) for the period of one (1) year from the date of the entry of this Order.

IT IS FURTHER ORDERED that DWR fully comply

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[1]Rule 11Ac1-1 paragraph (c)(1) states,

"Every responsible broker or dealer shall promptly communicate to his exchange or association (as the case may be), pursuant to procedures established by that exchange or association, his bids, offers and quotation sizes."

[2]Release No. 34-15761 (March 22, 1979), 17 SEC Docket 26 (April 3, 1979); Release No. 34-14415 (February 1, 1978), 14 SEC Docket 15 (February 7, 1978); and Securities and Exchange Commission, *42 Annual Report*, (1976).

[3]These transactions represent a relatively small number of all DWR transactions on the Phlx.

[4]DWR management was not notified by the Phlx of these matters.

with the undertakings contained in its Offer of Settlement.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16809/May 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGES BY THE

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
AMERICAN STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INCORPORATED
PACIFIC STOCK EXCHANGE INCORPORATED
PHILADELPHIA STOCK EXCHANGE, INC.

File Nos.
SR-CBOE-80-5
SR-Amex-80-8
SR-MSE-80-4
SR-PSE-80-5
SR-Phlx-80-9

The self-regulatory organizations listed above each have submitted a proposed rule change[1] pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 to delete their respective "restricted options" rules.[2] In general, the restricted options rules, subject to several exceptions, prohibit individuals (other than marketmakers) from entering an order for an opening options transaction if (1) the exercise price is more than $5.00 out-of-the-money based upon the closing price of the underlying stock in the primary market on the last previous day on which the underlying stock was traded and (2) the closing price of the option was less than $.50 per share on the last previous day on which the option was traded.

Publication of the submissions is expected to be made in the *Federal Register* during the week of May 19, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to the file numbers captioned above.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filings and of any subsequent amendments will also be available at the principal offices of the above-mentioned self-regulatory organizations.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]The exchanges filed their proposed rule changes with the Commission on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE"), filed April 4, 1980; (2) American Stock Exchange, Inc. ("Amex"), filed April 23, 1980; (3) Midwest Stock Exchange, Incorporated ("MSE"), filed April 30, 1980, amended May 13, 1980; (4) Pacific Stock Exchange Incorporated ("PSE"), filed May 13, 1980; (5) Philadelphia Stock Exchange, Inc. ("Phlx"), filed April 23, 1980.

[2]CBOE Rule 4.17; Amex Rule 910; MSE Article XL, Rule 7; PSE Rule VI, Section 11; Phlx Rule 1046.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16810/May 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE, INCORPORATED

File No. SR-BSE-80-5

The Boston Stock Exchange, Incorporated ("BSE") submitted on May 5, 1980, a proposed rule change under Rule 19b-4 to rescind subsections (e), (f), and (g) of Article I, Section 3, of the BSE Constitution and Article XXII of the BSE Constitution regarding BSE Associate Membership, which is available to members of the Philadelphia and Montreal Stock Exchanges. The BSE states that the business objectives of its Associate Membership arrangements with other exchanges are now being achieved through the Intermarket Trading System ("ITS").

Publication of the submission is expected to be made in the *Federal Register* during the week of May 19, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSE-80-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21561/May 9, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6457)

NOTICE OF PROPOSED ISSUANCE OF UNSECURED PROMISSORY NOTES

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

I&M proposes to issue, from time to time through June 30, 1983, not in excess of $100,000,000 principal amount of unsecured promissory notes outstanding at any time. The notes will be issued to seven banks pursuant to a revolving credit agreement ("Agreement"); the banks and the amounts of their proposed commitments are as follows:

Bank	
The Chase Manhattan Bank, N.A.	$10,000,000
Chemical Bank	20,000,000
Citibank, N.A.	15,000,000
Continental Illinois National Bank and Trust Company of Chicago	15,000,000
The Fidelty Bank	10,000,000
Manufacturers Hanover Trust Company	20,000,000
National Bank of Detroit	10,000,000
	$100,000,000

The proposed Agreement provides that I&M will pay to each bank, quarterly, a commitment fee of 1/2 of 1% per annum on the average daily unused amount of such bank's commitment, computed from the effective date of the Agreement. I&M would have the right at any time to terminate in whole, or from time to time to reduce in part, the unused commitments of the banks.

Borrowings will be evidenced by a note of I&M which will be due and payable not less than 90 days from the date of such note nor later than June 30, 1983, the exact maturity to be determined by I&M at the time of each borrowing. The notes will bear interest from the date of issuance and will be payable on the last day of March, June, September and December in each year, at maturity (whether by acceleration or otherwise), and after maturity on demand. Such interest will be: (i) prior to maturity, at a fluctuating rate per annum equal at all times to 107% of the highest published prime commercial lending rate of any of the banks for 90 day unsecured domestic loans; and (ii) from maturity, whether by acceleration or otherwise, at a fluctuating rate per annum equal at all times to 1% plus 107% of such prime rate. No compensating balances will be required and the notes will be prepayable at any time without premium or penalty.

The proceeds from the issuance of the notes will be used to pay outstanding short-term debt. At April 15, 1980, I&M had approximately $135,000,000 of short-term debt outstanding.

I&M claims exemption from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(2) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $8,500, including estimated legal fees and miscellaneous expenses of $5,000. It is stated that the Public Service Commission of Indiana and the Michigan Public Service Commission have jurisdiction over the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21562/May 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6211/May 9, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21563/May 9, 1980

In the Matter of

WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

(70-6455)

NOTICE OF PROPOSED ISSUANCE AND SALE OF PREFERRED STOCK AND FIRST MORTGAGE BONDS

NOTICE IS HEREBY GIVEN that West Penn Power Company ("West Penn"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

West Penn proposes to issue and sell an aggregate amount of its cumulative preferred stock not to exceed $30 million in par value in one or more series, each such series to have such par value as may be designated but not less than $25 per share and not more than $100 per share. West Penn proposes to sell the preferred stock pursuant to the competitive bidding requirements of Rule 50 under the Act, unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable. In such event, West Penn proposes, subject to further authorization by the Commission either to place the preferred stock privately with institutional investors or to negotiate with underwriters for the sale of the stock.

Each series of the preferred stock may have a sinking fund if required under the circumstances. In the event any series has a par value of less than $100 per share, the voting power of such series will be proportionately less than it would be for a share with a par value of $100 where all series of preferred stock vote together. Each series of the preferred stock will be redeemable at any time at the option of West Penn, except that prior to 5 years after the first day of the month in which the stock is issued (or such other date as the Commission may authorize) no series of the stock shall be redeemable directly or indirectly with, or in anticipation of, monies borrowed or the proceeds of the sale of preferred stock at a cost of money less than the cost of money to West Penn in respect of such series. The annual dividend rate to be borne by each series (which will be a multiple of $0.04) and the price to be paid to West Penn (which shall not be less than 98% and not more than 102-3/4% of par) will be determined (1) by competitive bidding, (2) by negotiations between West Penn and private investors, or (3) by negotiations with underwriters for the sale of such series. It is expected that the successful bidders or, in the event of a negotiated transaction, the underwriters will make a public offering of the preferred stock, unless the size of any series offered makes such public offering impracticable.

West Penn states that under present market conditions for preferred stock it is difficult to determine what par value and sinking fund provisions, if any, would result in the most advantageous terms and conditions for the sale of the stock and also difficult to determine what the most advantageous timing of the sale of the stock would be. Therefore, West Penn intends to decide on the par value of any series and the sinking fund provisions to be applicable to any series at a later time, which may be before or after the date on which an invitation for bids, in the event of competitive bidding, is issued, or the date on which negotiations for a private placement or a negotiated sale to underwriters is commenced.

West Penn also proposes to issue and sell an aggregate amount of not more than $30 million aggregate principal amount of first mortgage bonds in one or more series, each such series to have a single maturity of not less than 5 and not more than 30 years. West Penn proposes to sell the bonds pursuant to the competitive bidding requirements of Rule 50 under the Act, unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable. In such event, West Penn proposes, subject to further authorization by the Commission, either to place the bonds privately with institutional investors or to negotiate with underwriters for the sale of the bonds.

Each series of bonds will be redeemable at any time at the option of West Penn, except that prior to 5 years after the first day of the month in which the

bonds are issued (or such other date as the Commission may authorize) no series of the bonds shall be redeemable directly or indirectly with, or in anticipation of, monies borrowed at an interest cost to West Penn of less than the cost of money to West Penn in respect of such series. The interest rate (which will be a multiple of 1/8 of 1%) and the price to be paid to West Penn (which will not be less than 100%, unless the company shall have authorized a lower percentage [not less than 98%], and not more than 102-3/4% of the principal amount of the bonds) in each case will be determined by competitive bidding or, if authorized by the Commission, (a) by negotiations between West Penn and such private investors with whom the series of bonds is being privately placed or (b) by negotiations with underwriters for the sale of such series. It is expected that successful bidders, in the event of competitive bidding, or the purchasing underwriters, in the event of a negotiated transaction, will make a public offering of the bonds, unless the size of any series offered makes such public offering impracticable. The bonds will be issued under and secured by the Indenture dated as of March 1, 1916, between West Penn and the Chase Manhattan Bank, N.A., Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a supplemental indenture to be dated as of the first day of the month in which the bonds are issued.

West Penn states that under bond market conditions it is difficult to determine whether it would be more advantageous for West Penn to sell bonds having a 30-year or some shorter maturity. West Penn desires to have available sufficient flexibility to adjust the timing of the sale and the terms of any series of bonds to developments in the market for such securities when and as they occur in order to obtain the best possible price and interest rate for the bonds.

West Penn will attempt to sell the bonds and preferred stock in June 1980; however, in the event that either the bonds or the preferred stock or any series thereof is not sold on or about June 24, 1980, because of market conditions, West Penn will so notify this Commission and will seek, subject to further order of this Commission, to sell such securities on or before December 31, 1980.

West Penn proposes to use the proceeds from the sale of the preferred stock and bonds, together with other funds of the company, to pay or pre-pay, to the extent desirable, short-term debt and to operate its utility business, including the financing of its construction program. On March 31, 1980, West Penn had no short-term debt outstanding, but it expects that approximately $27 million of short-term debt will be outstanding on May 31, 1980, and $40 million on September 30, 1980, assuming that the bonds and stock have not been sold in June. West Penn's gross construction expenditures for 1979 were $99.7 million, and the two-year total for 1980 and 1981 is estimated at between $265 and $285 million.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that registration by the Pennsylvania Public Utility Commission of a securities certificate with respect to the bonds and preferred stock is required for their issue and sale. It is further stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 6, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21564/May 9, 1980

In the Matter of

ALABAMA POWER COMPANY
Birmingham, Alabama

GULF POWER COMPANY
Pensacola, Florida

GEORGIA POWER COMPANY
Atlanta, Georgia

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-6367)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS FOR SINKING FUND PURPOSES

Alabama Power Company ("Alabama"), Gulf Power Company ("Gulf"), Georgia Power Company ("Georgia"), and Mississippi Power Company ("Mississippi"), all of which are public-utility subsidiaries of The Southern Company, a registered holding company, have filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions.

By order in this proceeding dated January 21, 1980 (HCAR No. 21403), Alabama, Gulf, and Mississippi were authorized to issue their respective first mortgage bonds and to surrender such bonds to the trustees under their respective indentures for the purpose of satisfying the sinking fund (improvement fund, in the case of Alabama) requirements thereunder to be satisfied on or prior to June 1, 1980. Jurisdiction was reserved over the issuance of such sinking fund bonds by Georgia.

Georgia proposes to issue $24,513,000 of its first mortgage bonds, 3-1/8% series due 1984, and to surrender such bonds to the trustee under its indenture to satisfy the sinking fund requirements thereunder. The sinking fund bonds are to be issued on the basis of unfunded net property additions, thus making available for general corporate purposes cash which would otherwise be needed to satisfy the sinking fund requirements or to purchase bonds to be used for such purpose. It is stated that the issuance of the sinking fund bonds is exempt from the competitive bidding requirements of Rule 50 by reason of clause (a)(5) thereof inasmuch as such bonds will not constitute obligations of the companies for the payment of money.

The issuance of the sinking fund bonds by Georgia has been expressly authorized by the Georgia Public Service Commission. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21258), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the issuance of sinking fund bonds by Georgia and that no adverse findings are necessary with respect to that transaction; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective with respect to the issuance of sinking fund bonds by Georgia:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith with respect to the issuance of sinking fund bonds by Georgia, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction heretofore reserved in this proceeding be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21565/May 12, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
AND ITS SUBSIDIARY COMPANIES
225 Barronne Street
New Orleans, Louisiana 70161

(70-6432)

NOTICE OF PROPOSED ALLOCATION OF CONSOLIDATED TAX LIABILITIES BY METHOD OTHER THAN PRESCRIBED BY RULE 45(b)(6)

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiary companies named above have filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Middle South and its subsidiary companies join annually in the filing of consolidated Federal income tax returns. By Order dated May 23, 1963 (HCAR No. 14877), the Commission permitted a deviation from the tax-allocation provisions of Rule 45(b)(6) whereby each of the companies included in the consolidated tax returns of the Middle South System would be given full investment tax credit contributed by it to the total investment credit allowed in the consolidated returns. Subsequent to the date of that Order, Middle South acquired or created several additional subsidiaries, including System Fuels, Inc. ("SFI"), and Middle South Energy, Inc. ("MSE"). By Order dated February 11, 1975 (HCAR No. 18807), the Commission authorized Middle South to allocate consolidated tax liability by a method whereby each year's reduction of consolidated tax resulting from exploration and development costs, would be allocated in its entirety to SFI which was then engaged in oil and gas exploration. Such reduction would be placed in a deferred income tax account against which would subsequently be charged taxes payable by SFI on taxable income arising from recovery of exploration and development costs. This would permit SFI to sell fuel to the operating companies at a cost price unaffected by fluctuations in tax components caused by timing variations between book and tax treatment of capitalized costs. That Order also authorized the system to allocate to MSE a then newly organized company, which was to serve as a future generating company of the system, the reduction in consolidated liability resulting from net operating losses contributed by MSE. Such losses resulted primarily from deduction of interest expense on borrowed funds during the period of construction of generating plants.

Further modifications of the system of allocation is now requested, as follows:

(a) Allocation through 1980 of tax benefits of deductions to SFI with respect to uranium and coal development and exploration activities in the same manner as the treatment allowed SFI for oil and gas exploration and development activities by Order dated February 11, 1975.

(b) Allocation to System operating utilities of the tax benefits of their net operating loss contributions to the consolidated group. Arkansas Power & Light Company ("AP&L") and Arkansas Missouri Power Company ("Ark-Mo") experienced net operating losses in 1979. These losses will offset the taxable income of profitable System companies in the 1979 Federal consolidated tax return. A modification providing for the allocation of the benefits of the net operating losses of operating utilities to the utilities incurring such tax losses is sought in order to equitably allocate the tax deductions generated thereby in the interests of investors and consumers. Any tax credits remitted to loss operating utilities as a result of such modification would be applied to reduce credits in future years to which such operating utilities might otherwise be entitled under the separate return limitations of Rule 45(b)(6).

(c) Allocation of consolidated minimum Federal income tax among the members of the consolidated group in accordance with the ratio that the portion of the total preference items on which such tax is based bears to the total preference items of all of the members of the consolidated group.

(d) Separate allocation of the portion of the consolidated Federal income tax liability applicable to long term capital gains, which is taxed at a lower rate than the rate applicable to the ordinary income, in accordance with the proportion of the net long-term capital gain of each member having long-term capital gains to consolidated net long-term capital

gain. Net long term capital gains would be excluded from the taxable income base for allocation of ordinary income tax.

(e) Modification of the Commission's Order of May 23, 1963 to provide that as a minimum each company shall be allocated investment tax credit which would be allowable on the basis of its allocated consolidated tax liability and that the remaining consolidated investment tax credit be allocated in accordance with the Order of May 23, 1963 on the basis of remaining available investment tax credit of each member.

Each requested modification would be subject to the limitation in Rule 45(b)(6)(i) that the aggregate tax liability allocated to a subsidiary should not exceed the amount of tax of such subsidiary based upon a separate return computed as if such subsidiary had always filed its tax return on a separate return basis. With the exception of (a) above, each modification is requested for 1979 and future years.

The table below sets forth the tax allocation under existing authorization and the tax allocation under the methods now proposed:

	Present Allocation (000)	*Proposed Allocation (000)*
MSE	$(8,691)	$(2,802)
SFI	(433)	(140)
AP&L	—	(2,520)
ARK-MO	—	(34)
Associated Natural Gas Company	427	329
Louisiana Power & Light Company	33	8
Mississippi Power & Light Company	6,177	4,414
New Orleans Public Service Inc.	2,487	744
Net Consolidated Tax	$ 0	$ 0

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $7,000, including legal fees and disbursements estimated not to exceed $5,000.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21566/May 12, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-5840)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF ADDITIONAL COMMON STOCK PURSUANT TO A DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN

Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions.

By orders in this proceeding dated May 20, 1976, April 3, 1978, and April 4, 1979 (HCAR Nos. 19538, 20480, and 20993), Middle South was authorized to issue and sell from time to time through June 30, 1981, a maximum of 2,500,000 shares of its authorized but unissued common stock, $5 par

value, pursuant to a Dividend Reinvestment and Stock Purchase Plan ("Plan"), Middle South has issued and sold 1,430,540 of the 2,500,000 shares so authorized and expects to sell the balance in the near future.

Middle South now proposes to issue and sell, under the terms of the Plan, an additional 2,000,000 shares of its common stock ("Additional Common Stock") through June 30, 1981. Middle South intends to apply the proceeds from the sale of the Additional Common Stock toward the payment of any short-term bank notes outstanding from time to time and to other corporate purposes.

Middle South intends to amend the Plan with respect to the price to be paid for shares of the common stock to be purchased through the reinvestment of cash dividends. Under the terms of the Plan, as it is to be amended, all holders of record of shares of common stock of Middle South may elect to invest their regular cash dividends and/or optional cash payments in the Additional Common Stock. The price of shares of common stock purchased from the company on any Dividend or Cash Payment Investment Date by participants in the Plan will be (1) in the case of purchases made through investment of optional cash payments, the average of the daily high and low sale prices of the common stock, based on consolidated trading of the common stock as defined by the Consolidated Tape Association and reported as a part of the consolidated trading prices of New York Stock Exchange listed securities, for the period of the last three days on which the common stock was traded immediately preceding the applicable Dividend or Cash Payment Investment Date and (2) in the case of a purchase made through reinvestment of common stock cash dividends, ninety-five percent (95%) of such average. No shares will be sold under the Plan at less than the par value of such shares. The Plan will also be amended to conform to recently adopted proxy rules.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Middle South has requested that the issuance and sale of the Additional Common Stock be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21521), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21567/May 12, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
Westborough, Massachusetts

(70-5543)

ORDER GRANTING REQUEST FOR EXCEPTION FROM THE CONSOLIDATED TAX ALLOCATION PROVISIONS OF RULE 45(b)(6)

New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary New England Energy Incorporated ("NEEI"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45(a) promulgated thereunder concerning the following proposed transaction.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize, acquire the capital stock of, and make investments in NEEI, and NEEI was authorized to enter into a partnership with Samedan Oil Corporation ("Samedan") to explore for oil and gas. Said order included, among other things, the granting of applicants-declarants' request for an exception from the consolidated tax allocation provisions of Rule 45(b)(6) pursuant to Rule 45(a), on terms and conditions therein set forth. Said exception was granted for the tax years 1974, 1975 and 1976. By subsequent order dated June 18, 1976 (HCAR No. 19580), the exception was continued for the tax years 1977, 1978 and 1979. By order dated December 28 1979 (HCAR No. 21365), NEEI was authorized to enter into an extension of its partnership with Samedan through December 31, 1984, and to invest $30,000,000 in said partnership during 1980.

By post-effective amendment applicants-declarants request that their Rule 45(a) exception be further continued for the tax years 1980 and 1981. The precise exception sought is as follows:

(1) NEEI would be credited with and receive the cash equivalent of reductions in consolidated tax liabilities arising from the inclusion of such tax losses in the consolidated tax returns for the tax years 1980 and 1981;

(2) in any year in which NEEI has taxable income, and, on a separate return basis would be entitled to tax credits under the net operating loss carryback and carryover provisions of the Internal Revenue Code, any credits previously received by NEEI under (1) would be applied to reduce any credits to which NEEI might otherwise be entitled under the separate return limitations of Rule 45(b)(6); and

(3) in no event will the tax allocated to any other subsidiary of NEES exceed the amount of its tax based upon a separate return computed as if it had always filed its tax returns on a separate return basis.

It is stated that through December 31, 1979, approximately $28,500,000 of capital has been provided to NEEI through payments of tax benefits by its associated companies under the previous orders under Rule 45(a) authorizing the NEES system to allocate consolidated federal income taxes otherwise than in accordance with Rule 45(b)(6).

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21462), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21568/May 12, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
YANKEE ATOMIC ELECTRIC COMPANY
Westborough, Massachusetts

(70-6430)

ORDER AUTHORIZING PROPOSED ISSUE AND SALE OF COMMON STOCK PURSUANT TO EMPLOYEE'S SHARE OWNERSHIP PLAN AND GRANTING REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING

New England Electric Systems, ("NEES"), a registered holding company, and Yankee Atomic Electric Company, ("Yankee Atomic"), an electric utility subsidiary company of NEES and Northeast Utilities, a registered holding company, have filed an application-declaration and amendments thereto with this Commission, pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

Yankee Atomic proposes to establish the Yankee Atomic Electric Company Thrift Plan ("Plan"). The purpose of the Plan is to encourage employee thrift through a regular savings plan. Pursuant to the Plan, NEES proposes to issue and sell through December 31, 1984, a maximum of 100,000 shares of its authorized but unissued common shares, $1 par value. Under the Plan, employee contributions will be supplemented by employer contributions. The proceeds from the sale of common shares will be added to the general funds of NEES and be used for any of the following purposes: (1) investment in subsidiaries (excluding Yankee Atomic) through loans to these subsidiaries, purchases of additional shares of their capital stocks, or capital contributions; (2) payment of indebtedness of NEES; or (3) corporate purposes of NEES.

Each employee of Yankee Atomic who is not included in a unit of employees covered by a collective bargaining agreement and who has completed one year of service as of the Plan's effective date, is eligible to join the Plan during an initial enrollment period, or on the first day of any month thereafter. (Directors are not employees merely by virtue of that office.) Each employee who has not completed one year of service but is otherwise eligible may, after completion of one year of service, join on the first day of any month.

Participants may contribute from 1% to 11%, in whole percentages, of their compensation to the Plan. Each participant's contribution up to 3% will be a Basic Contribution. Each participant's contribution in excess of 3% will be a Supplemental Contribution. Participants may change the percentage of their contributions on the first day of any month.

Yankee Atomic shall contribute monthly on behalf of each participant an amount equal to 100% of the participant's Basic Contribution. There will be no matching of a participant's Supplemental Contribution by Yankee Atomic.

All contributions shall be invested in a Trust Fund administered pursuant to a Trust Agreement containing such provisions as the Board of Directors of Yankee Atomic deems appropriate. The First National Bank of Boston will act as the Trustee for the Plan. The Trust Fund shall consist of the following three separate Investment Funds: (a) the Fixed Income Fund, which will consist of fixed income investments and earn a guaranteed minimum rate of return; (b) the Equities Fund, consisting primarily of stocks (or bonds or other securities convertible into stocks) and similar types of equity investments which will be purchased on the open market and (c) the NEES Share Fund, consisting of NEES common shares purchased on the open market and from authorized but unissued common shares.

Upon enrollment, participants may elect to invest their contributions in one or more of the Funds in multiples of 25%. The Participant Account shall be 100% vested upon contribution. The Employer Account shall be 25% vested after two years of vesting service, 50% vested after three years of vesting service, 75% vested after four years of vesting service and 100% vested after five years of vesting service. Notwithstanding the foregoing, the Employer Account shall be 100% vested upon retirement, death, collection of benefits under long-term disability, or termination by Yankee Atomic without cause.

Participants may withdraw all (but not less than all) of their Supplemental Contributions and all (but not less than all) accumulated earnings thereon. After withdrawal of Supplemental Contributions and earnings thereon, participants may withdraw all (but not less than all) of their Basic Contributions and all (but not less than all) accumulated earnings thereon. In the case of retirement, participants may elect one of several methods of distribution.

At the discretion of the Trust Committee, the responsibility for the investment management of the Plan assets held in each fund may be divided among one or more investment managers or investment vehicles. The Thrift Plan Committee shall be the named fiduciary which shall have authority to control and manage the operation and administration of the Plan.

No amendment of the Plan may be made which will (1) deprive any participant or beneficiary of any part of an account existing on the date of such

amendment; (2) result in the reversion to Yankee Atomic of any part of the funds contrary to the provisions of the Plan; or (3) increase the duties or liabilities of the Trustee without its written consent. Yankee Atomic may terminate the Plan at any time. The Plan has no definite termination date. The Thrift Committee shall seek a determination from the Internal Revenue Service that the Plan is qualified under the Internal Revenue Code of 1954, as amended. If the Thrift Committee does not receive such a ruling by the time Yankee Atomic files its tax return for 1980, the Plan will be terminated as of that time.

NEES requests an exemption from the competitive bidding requirements of Rule 50 for such issuance and sale pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated to be $50,000 through 1984. No state commission or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21523), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21569/May 12, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

(70-6461)

NOTICE OF PROPOSED ISSUANCE OF UNSECURED PROMISSORY NOTES

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Appalachian proposes to issue, from time to time through June 30, 1983, not in excess of $100,000,000 principal amount of unsecured promissory notes outstanding at any time. The notes will be issued to four banks pursuant to a revolving credit agreement ("Agreement"); the banks and the amounts of their proposed commitments are as follows:

Bank	
The Chase Manhattan Bank, N.A.	$25,000,000
Citibank, N.A.	25,000,000
Continental Illinois National Bank and Trust Company of Chicago	25,000,000
Manufacturers Hanover Trust Company	25,000,000
	$100,000,000

The proposed Agreement, provides that Appalachian will pay to each bank, quarterly, a commitment fee of 1/2 of 1% per annum on the average daily unused amount of such bank's commitment, computed from the effective date of the Agreement. Appalachian would have the right at any time to terminate in whole, or from time to time to reduce in part, the unused commitments of the banks.

Borrowings will be evidenced by a note of Appalachian which will be due and payable not less than 90 days from the date of such note nor later than June 30, 1983, the exact maturity to be determined by Appalachian at the time of each borrowing. The notes will bear interest from the date of issuance and will be payable on the last day of March, June, September and December in each year, at maturity (whether by acceleration or otherwise), and after maturity on demand. Such interest will be: (i) prior to maturity, at a fluctuating rate per annum equal at all times to 105% of the highest published prime commercial lending rate of any of the banks for 90 day unsecured domestic loans; and (ii) from maturity, whether by acceleration or otherwise, at a fluctuating rate per annum equal at all times to the sum of 1% plus 105% of such prime rate. No compensating balances will be required and the notes will be prepayable at any time without premium or penalty.

The proceeds from the issuance of the notes will be used to pay outstanding short-term debt. At April 15, 1980, Appalachian had approximately $147,000,000 of short-term debt outstanding.

Appalachian claims exemption from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(2) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $8,500, including $5,000 of estimated legal fees and miscellaneous expenses. It is stated that the Virginia State Corporation Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than June 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulations, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21570/May 12, 1980

In the Matter of

COOL WATER COAL GASIFICATION PROGRAM
2224 Walnut Grove Avenue
Rosemead, California 91770

(31-773)

APPLICATION FOR EXEMPTION PURSUANT TO SECTION 2(a)(3)(A)

NOTICE IS HEREBY GIVEN that Southern California Edison Company ("SoCal Ed"), an electric utility company which is organized and provides electric utility service in California, and Texaco, Inc. ("Texaco"), a Delaware corporation, have filed an application under Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935 ("Act") on behalf of the Cool Water Coal Gasification Program ("Coal Gas"), an unincorporated venture in which SoCal Ed and Texaco are participating, for an order declaring Coal Gas not to be an "electric utility company" under the Act. All interested persons are referred to the application, which is summarized below, for a description of Coal Gas and a statement as to the basis upon which the exemption is sought.

Texaco and SoCal Ed have entered into an agreement, to which other persons may hereafter

become parties as "participants" or "sponsors", to test and demonstrate the feasibility of integrating a commercial-size coal gasifier utilizing a gasification process developed by Texaco with a conventional combined cycle electric generating plant. Under the agreement, which establishes Coal Gas, Texaco and SoCal Ed propose to design, build, test, and demonstrate the coal gasification/combined cycle generating plant ("Plant") at a generating plant site owned by SoCal Ed near Daggett, California. The Plan will be designed to produce carbon monoxide and hydrogen (*i.e.*, synthesis gas) from coal to be supplied by SoCal Ed. SoCal Ed will pay a fee to Coal Gas for processing its coal, and will own all of the resulting synthesis gas. The gas will be supplied to a new generating unit which will have a 90-100 megawatt net capacity, or, in the event of any interruptions in its operation, to an existing SoCal Ed owned generating unit at the Plant site.

At the present time, Texaco, SoCal Ed and Energy Power Research Institute have expressed an intent to become participants in Coal Gas. It is expected that other persons will become participants or sponsors. A participant will be required to commit a minimum of $25 million to Coal Gas and agree to assume a proportionate share of its costs. A sponsor will be required to commit a minimum of $5 million but not more than $25 million to Coal Gas and agree to assume a proportionate share of its costs up to the amount of each sponsor's contribution. Coal Gas will require no funding other than the funding provided by the participants and sponsors. Each participant will have one vote on Coal Gas' board of control and on a management committee. Sponsors will have no management responsibilities. The agreement further provides that at the end of the estimated duration of the Coal Gas program (seven years), or upon earlier termination, Coal Gas will dispose of the Plant. SoCal Ed will, in that event, have a right of first refusal to purchase all or parts of the Plant.

Section 2(a)(3)(A) provides that the Commission may declare a company which owns or operates facilities for the generation, transmission or distribution of electric energy for sale not to be an electric utility company if "such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company. . . ." Rule 10(a)(1) provides, in pertinent part, that a company is exempt from the duties, liabilities, and obligations imposed upon it as a holding company with respect to a subsidiary which, insofar as it is a public utility company is declared not to be an electric utility company under Section 2(a)(3).

The application states that Coal Gas will be primarily engaged in the business of developing and testing a coal gasificatioin process and that, by reason of the experimental nature of the Plant and the limited duration of the project, it is uncertain whether any significant amount of electricity will be sold by Coal Gas. The objective of the venture is to develop a process for producing synthesis gas from coal for use by electric utilities. The power generation equipment is intended only to demonstrate the commercial feasibility of that process. In this regard, it is noted that less than one-third of the total cost of the Plan, estimated at $292 million, is allocated to the electric generation equipment and related facilities. All power produced by Coal Gas will be sold by SoCal Ed to its customers at rates set by the California Public Utilities Commission and the Federal Energy Regulatory Commission.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it deems appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulations, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21571/May 13, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

CENTRAL POWER AND LIGHT COMPANY
P.O. Box 2121
Corpus Christi, Texas 78403

SOUTHWESTERN ELECTRIC POWER COMPANY
P.O. Box 21106
Shreveport, Louisiana 71156

PUBLIC SERVICE COMPANY OF OKLAHOMA
P.O. Box 201
Tulsa, Oklahoma 74102

WEST TEXAS UTILITIES COMPANY
P.O. Box 841
Abilene, Texas 79604

CENTRAL AND SOUTH WEST SERVICES, INC.
2700 One Main Place
Dallas, Texas 75250

(70-6163)

NOTICE OF PROPOSED INCREASE IN SHORT-TERM BORROWING AUTHORIZATION OF SUBSIDIARY

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), Southwestern Electric Power Company ("SWEPCO"), Public Service Company of Oklahoma ("PSO"), West Texas Utilities Company ("WTU"), and Central and South West Services, Inc. ("CSWS") have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 14, 1979, July 19, 1979, July 31, 1979, October 24, 1979, February 5, 1980 and March 20, 1980 in this matter (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166, 21269, 21421 and 21482), CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1981 in a maximum aggregate collective amount of $250,000,000 and in the following individual amounts: CSW, $200,000,000; CPL $100,000,000; SWEPCO, $75,000,000; PSO, $90,000,000; WTU $15,000,000; and CSWS, $4,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus of funds of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, CSW is authorized to issue and sell its commercial paper to commercial paper dealers and to certain approved financial institutions, and to borrow from banks.

By post-effective amendment, CSW and PSO request that PSO's short-term borrowing limit be increased to $180,000,000 through December 31, 1981 subject to the passage of the amendment to PSO's Restated Articles of Incorporation, as amended ("Articles") by its preferred shareholders (see File No. 70-6453), provided in no event shall short-term debt exceed 20% of capitalization. It is stated that CSW is not requesting an increase in the CSW System limit of $250,000,000. It is further stated that PSO's ability to sell first mortgage bonds and preferred stock has been limited. In view of PSO's continuing need for funds it is securing a $90,000,000 non-negotiable bank loan (see File No. 70-6446). The proposed increase in short-term borrowing authorization will give PSO the ability to prepay the bank notes at any time with short-term

debt. Such prepayment would occur if in PSO's opinion it were economically in PSO's best interest. While the bank notes will be beneficial to PSO in meeting its current needs, PSO will not be able to increase or decrease at will the amount of the notes outstanding. If a note is prepaid, the prepaid amount cannot be borrowed in the future. Short-term debt has the advantage of being able to be changed based on the daily needs of PSO.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $150. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 6, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21572/May 13, 1980

In the Matter of

THE SOUTHERN COMPANY
64 Perimeter Center East
P.O. Box 720071
Atlanta, Georgia 30346

ALABAMA POWER COMPANY
600 North 18th Street
P.O. Box 2641
Birmingham, Alabama 35291

GEORGIA POWER COMPANY
270 Peachtree Street, N.W.
P.O. Box 4545
Atlanta, Georgia 30303

GULF POWER COMPANY
75 North Pace Boulevard
P.O. Box 1151
Pensacola, Florida 32520

MISSISSIPPI POWER COMPANY
2992 West Beach
P.O. Box 4079
Gulfport, Mississippi 39501

SOUTHERN COMPANY SERVICES, INC.
800 Shades Creek Parkway
P.O. Box 2625
Birmingham, Alabama 35202

SOUTHERN ELECTRIC GENERATING COMPANY
600 North 18th Street
P.O. Box 2641
Birmingham, Alabama 35291

(70-6426)

NOTICE OF PROPOSED ISSUANCE OF COMMON STOCK TO FUND EMPLOYEE STOCK OWNERSHIP PLAN

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, and its subsidiaries named above have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9, and 10 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the

following proposed transactions. All interested persons are referred to the application-declaration which is summarized below, for a complete statement of the proposed transactions.

Southern proposes to issue through October 15, 1981 up to a maximum of $40,000,000 in value of its authorized but unissued shares of common stock, par value $5 per share (the "Additional Common Stock"), in order to provide common stock to fund The Employee Stock Ownership Plan of The Southern Company System (the "Plan") for the Plan years 1979 and 1980, including any reinvestment of cash dividends on such stock by direct purchases of common stock from Southern. The exact number of shares to be issued by Southern will be determined in each case by the aggregate amount of contributions to be invested by the Trust in respect of the Plan year and the purchase price per share of Southern's common stock determined as set forth below. Southern proposes to apply the proceeds it receives from the sale of the Additional Common Stock for further equity investments as authorized by this Commission by Order dated March 28, 1980 (HCAR No. 21501) and as may be hereafter so authorized and for other corporate purposes.

In order to encourage and assist employees of Southern's subsidiaries to acquire ownership of Southern's common stock and thereby promote in the employees a strong interest in the successful operation of The Southern Company system, the subsidiaries named above (the "Employing Companies") have adopted the Plan, effective as of January 1, 1976, in accordance with Section 301(d) of the Tax Reduction Act of 1975, as amended ("Tax Act"), and Section 401(a) of the Internal Revenue Code of 1954, as amended (the "Code"). (See HCAR No. 20165). The Internal Revenue Service has issued determinations that the Plan and its Trust (the "Trust") qualify as a stock bonus plan and employee stock ownership plan under Sections 401(a) and 501(a) of the Code and Section 301(d) of the Tax Act.

Under the Plan, the Employing Companies have agreed to contribute to the Trust with respect to each calendar year common stock of Southern (or cash to be used to purchase such common stock) having an aggregate value equal to 1% of the amount of their qualified investment ("Qualified Investment") in property in respect of which investment tax credit has been claimed by the Employing Companies in their consolidated federal income tax return for that year. Contributions with respect to any Plan year may be reduced by limited amounts equal to certain expenses incurred in establishing and administering the Plan. In addition, as a result of an amendment to the Plan, the Employing Companies may elect, commencing with the 1979 tax year, to make further contributions of common stock or cash in an annual amount of up to 1/2 of 1% of their Qualified Investment to the extent that such contributions are matched for that year by voluntary contributions to the Trust by Plan Participants for their own accounts. The Plan, as so amended, has not yet been ruled upon by the Internal Revenue Service as being in compliance with the applicable sections of the Code and the Tax Act. Should the Service refuse to so rule or otherwise issue an unfavorable determination of the Plan, this feature of the Plan may be deleted.

The purchase price per share of Additional Common Stock purchased directly from Southern by the Employing Companies for contribution to the Trust or by the Trust (with contributed cash) will be an amount to be determined by Southern equal to (1) the closing price of Southern's common stock based on consolidated trading as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities for the trading day immediately preceding the date of purchase, or (2) the average of such closing prices for the twenty consecutive trading days immediately preceding the date of purchase or (3) such other amount, if any, as may be prescribed by statute or required by the Internal Revenue Service in rules or regulations relating to plans similar to the Plan.

Under the Plan, the Trust is required to reinvest cash dividends paid on shares of Southern's common stock allocated to a participant's account in additional shares of common stock, unless the participant elects to have such cash dividends distributed to him currently. In reinvesting these cash dividends, the Trust may purchase common stock under Southern's Dividend Reinvestment and Stock Purchase Plan (at the price provided for in such plan), on the open market or by private purchase, including purchases directly from Southern (at the stock's fair market value).

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $34,000, including legal fees of $20,000, charges of Southern Company Services, Inc. of

$2,000 and New York Stock Exchange listing fees of $9,500. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than June 9, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, stating the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21573/May 14, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
100 Interpace Parkway
Parsippany, New Jersey 07054

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

METROPOLITAN EDISON COMPANY
2800 Pottsville Pike, Muhlenberg Township
Berks County, Pennsylvania 19605

PENNSYLVANIA ELECTRIC COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

(70-6311)

NOTICE OF PROPOSED INCREASE IN SHORT-TERM NOTES TO BANKS

NOTICE IS HEREBY GIVEN that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Metropolitan Edison Company ("Met'Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a post-effective amendment to their application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated June 19, 1979, (HCAR No. 21107), this Commission authorized GPU, JCP&L, Met-Ed, and Penelec to issue, sell, and renew from time to time through October 1, 1981, their respective promissory notes (the "Notes") having a maturity of not more than six months from the date of issue, pursuant to a revolving credit agreement with a syndicate of commercial banks (the "loan agreement"). Aggregate borrowings under the loan agreement are limited to $500,000,000 and JCP&L's borrowings thereunder are limited to $139,000,000. At the date of filing, JCP&L had $110,000,000 in borrowings outstanding under the loan agreement. The indebtedness under the loan agreement is secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of JCP&L, Met-Ed, Penelec, and GPU Service Corporation, and, in the cases of JCP&L and Met-Ed, certain other collateral.

The order further provided, among other things, that the aggregate principal amount of Notes representing indebtedness under the loan agreement which JCP&L could have outstanding at any one time could not exceed the lesser of (a)

$139,000,000 or (b) the limit imposed by JCP&L's charter. JCP&L now requests that the maximum amount of such indebtedness be increased to the lesser of (a) $160,000,000 or (b) the amount permitted by JCP&L's charter. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. The proceeds of such loans will be used to finance JCP&L's business as a public utility.

The fees and expenses to be incurred in connection with the proposed increase are to be filed by amendment. It is stated that the New Jersey Board of Public Utilities has jurisdiction over JCP&L's proposed issuance and sale of Notes. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 9, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21574/May 14, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

(70-6446)

ORDER AUTHORIZING ISSUANCE AND SALE OF NON-NEGOTIABLE NOTES TO BANKS

Public Service Company of Oklahoma, ("PSO"), an electric utility subsidiary company of Central and South West Corporation, ("CSW"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

PSO proposes to issue ten year non-negotiable notes ("Notes") in the amount of up to $90,000,000 to up to six banks: Chase Manhatten (up to $50,000,000), California First Bank (up to $10,000,000), Chemical Bank (up to $10,000,000), Irving Trust (up to $8,000,000), American Security Bank, NA (up to $7,000,000), and Marine Midland (up to $5,000,000). The principal amount of the Notes will be payable exactly ten years from the date of issuance. The interest rate for the years one through three will be equal to the higher of (i) 100% of the prime rate of interest as published by the Chase Manhatten Bank from time to time or (ii) the interest rate on certificates of deposits (resale, 90 days) plus 1%. In the years four through ten the interest rate will be equal to the higher of (i) 125% of such prime rate or (ii) such secondary certificate of deposit rate plus 1% multiplied by 125%. The interest rate on the Notes will be adjusted whenever the foregoing interest rates require a change. Pursuant to a loan agreement, PSO will be obligated to pay either an annual fee equal to the amount of outstanding Notes multiplied by the prime interest rate multiplied by 5% or to maintain compensating balances with the banks equal to 5% of the outstanding Notes. Assuming that the prime interest rate is 17-1/2% and the amount of the outstanding Notes is $75,000,000, this would result in an annual fee of $656,250 or a compensating balance requirement of $3,750,000. Based on 17-1/2% prime rate this would result in an effective interest expense of 18.42%. Interest and fees are payable to the banks

quarterly. PSO will be obligated to pay a commitment fee equal to one-half of 1% of the principal amount committed by the banks beginning on the 36th day after the commitment date, estimated to be approximately April 7, 1980. The Notes may be prepaid at any time by PSO without penalty.

PSO is entering into the proposed transaction because of its inability to issue sufficient amounts of first mortgage bonds because of earning restrictions under its first mortgage indenture and because it is approaching the $90,000,000 limit on its short-term borrowing required by its charter. In addition, PSO has sought authorization from the Corporation Commission of Oklahoma to issue and sell $75,000,000 of its first mortgage bonds (File No. 70-6415). By Final Order dated April 3, 1980, said authorization was denied.

The amount of Notes and short-term borrowing PSO can issue is a total of 20% of its total capitalization, approximately $180,000,000. PSO will not issue ten year Notes in excess of 10% of its capitalization, $90,000,000. The issuance of the Notes will not effect the amount or availability of PSO's short-term borrowing.

It is stated that the proceeds from the sale of the Notes (exclusive of accrued interest and after deducting expenses of issue) will be used by PSO to repay in full short-term borrowings incurred or expected to be incurred to finance construction expenditures, approximately $90,000,000 of which are expected to be outstanding as of the date of issuance of the Notes. No funds retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of PSO if it were not part of the CSW System. No expenditures will be made by PSO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this Declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of PSO if it were not part of the CSW System.

Estimated construction and fuel exploration and development expenditures of PSO (inclusive of allowance for funds used during construction) total $197,000,000 for 1980 and $185,000,000 for 1981.

The fees and expenses to be incurred in connection with this transaction are estimated at $19,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21527), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21575/May 15, 1980

In the Matter of

SHO-ME POWER CORPORATION
P.O. Draw D
Marshfield, Missouri 65706

CRAWFORD ELECTRIC COOPERATIVE, INC.
P.O. Box 10
Bourbon, Missouri 65441

GASCOSAGE ELECTRIC COOPERATIVE
P.O. Drawer G
Dixon, Missouri 65459

HOWELL-OREGON ELECTRIC COOPERATIVE, INC.
P.O. Box 649
West Plains, Missouri 65775

INTERCOUNTY ELECTRIC COOPERATIVE
P.O. Box 209
Licking, Missouri 65542

LACLEDE ELECTRIC COOPERATIVE
P.O. Drawer M
Lebanon, Missouri 65536

SE-MA-NO ELECTRIC COOPERATIVE
P.O. Box 318
Mansfield, Missouri 65704

SOUTHWEST ELECTRIC COOPERATIVE
P.O. Box 150
Bolivar, Missouri 65613

WEBSTER ELECTRIC COOPERATIVE
P.O. Box 87
Marshfield, Missouri 65706

WHITE RIVER VALLEY ELECTRIC COOPERATIVE
P.O. Box 969
Branson, Missouri 65616

(31-774)

NOTICE OF APPLICATION FOR EXEMPTION PURSUANT TO SECTION 3(a)(1) OR 3(a)(2)

NOTICE IS HEREBY GIVEN that Sho-Me Power Corporation ("Sho-Me"), an electric utility company organized under the laws of Missouri, and each of the nine rural electric distribution cooperative corporations ("the Distribution Cooperatives") which own all of the issued and outstanding capital stock of Sho-Me, have filed an application for exemption pursuant to Section 3(a)(1) and (a)(2) of the Public Utility Holding Company Act of 1935 ("Act"). All interested persons are referred to the application, which is summarized below, for a complete statement as to the basis upon which the exemption is sought.

Sho-Me is the wholesale power supplier for the Distribution Cooperatives and for eighteen municipalities in Missouri, and serves approximately 8000 retail customers in rural Missouri. Sho-Me has 24,993 shares of common stock issued and outstanding which are owned equally by the nine Distribution Cooperatives. At December 31, 1979, Sho-Me reported total assets of $54,042,765, and, for the year then ended, gross operating revenues of $40,592,173.

Each of the Distribution Cooperatives is organized under the laws of and operates exclusively within Missouri. The Distribution Cooperatives are subject to regulation by the Rural Electrification Administration. They are not engaged in any business other than the business of supplying electric energy to their respective consumer members, and have no subsidiary companies other than Sho-Me. At December 31, 1979, and for the year ended, the Distribution Cooperatives reported total assets and operating revenues and patronage capital as follows:

Distribution Cooperative	*Total Assets*	*Operating Revenues and Patronage Capital*
1. Crawford Electric Coop. Inc.	$12,203,453	$4,815,103
2. Gascosage Electric Coop.	3,858,079	2,247,549
3. Howell-Oregon Electric Coop. Inc.	14,157,955	6,340,855
4. Intercounty Electric Coop., Ass'n.	17,792,378	8,918,459
5. Laclede Electric Coop.	14,898,639	7,204,687
6. Se-Ma-No Electric Coop.	3,890,203*	**
7. Southwest Electric Coop.	15,124,479	7,779,556
8. Webster Electric Coop.	5,887,719	3,209,057
9. White River Valley Electric Coop., Inc.	20,257,315	8,986,304

* at August 31, 1979.
** to be supplied by amendment.

Section 3(a) provides, in part, that the Commission may exempt a holding company and its subsidiaries, as such, if:

(1) such holding company, and every subsidiary company thereof which is a public-utility company

from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized; (or)

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.

On the basis of the facts in the application, the Distribution Cooperatives state that they are entitled to an exemption under Section 3(a)(1) on (a)(2), and that the exemption would be in the public interest and interest of investors and consumers.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 9, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it deems appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11164/May 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6211/May 9, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11165/May 9, 1980

In the Matter of

MONTANA TAX EXEMPT INCOME TRUST, SERIES 1
c/o D. A. Davidson & Co.
Davidson Building
P.O. Box 5015
Great Falls, Montana 59403

(811-2994)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARINC THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On April 15, 1980, a notice was issued (Investment Company Act Release No. 11131) stating that Montana Tax Exempt Income Trust, Series 1 ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on March 17, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Montana Tax Exempt Income Trust, Series 1 under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to elegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11166/May 13, 1980

In the Matter of

DREYFUS TAX EXEMPT MONEY MARKET FUND, INC.
600 Madison Avenue
New York, New York 10022

(812-4605)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Dreyfus Tax Exempt Money Market Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 31, 1980, and amendments thereto on April 4, 1980, and May 6, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation.

On April 18, 1980, a notice was issued of the filing of the application (Investment Company Act Release No. 11134). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation, be, and hereby is, granted, effective forthwith, subject to the following conditions:

(1) In supervising the Fund's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed taking into account current market conditions and the Applicant's investment objectives, to stabilize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Fund's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%,

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[1]To fulfill this condition Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Applicant's board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, if any, to those United States dollar-denominated instruments which Applicant's board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Applicant's board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11167/May 13, 1980

In the Matter of

HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY;
HARTFORD EQUITY SALES COMPANY, INC;
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY QP VARIABLE ACCOUNT;
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY DC VARIABLE ACCOUNT-I;
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY DC VARIABLE ACCOUNT-II;
HARTFORD FUND, INCORPORATED
Hartford Plaza
Hartford, CT 06115

(812-4607)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 11 OF THE ACT FOR AN ORDER APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3) AND 27(c)(2)

NOTICE IS HEREBY GIVEN that Hartford Variable

Annuity Life Insurance Company ("HVA"), a stock life insurance company organized under the laws of the state of Connecticut; Hartford Variable Annuity Life Insurance QP Variable Account ("HVA-QP-VA") and Hartford Variable Annuity Life Insurance Company DC Variable Account-I ("DC-I") and Account-II ("DC-II"), each of which is a unit investment trust registered under the Investment Company Act of 1940 ("Act"); Hartford Equity Sales Company, Inc. ("HESCO"), a broker-dealer registered under the Securities Exchange Act of 1934; and Hartford Fund, Inc. ("Hartford Fund") a diversified open-end management investment company registered under the Act (collectively "Applicants") filed an Application on February 4, 1980, and amendments thereto on April 11, 1980 and May 1, 1980, pursuant to Section 6(c) of the Act for an Order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3) and 27(c)(2) of the Act to the extent requested and for approval of an offer of exchange pursuant to Section 11 of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Background

DC-I, DC-II and HVA-QP-VA are separate accounts within HVA which are registered as unit investment trusts with the Securities and Exchange Commission ("Commission"). The underlying investment media of each of the trusts are shares of Hartford Fund, a series fund which offers three classes or series of stock; a Bond Series, a Stock Series and a proposed Money Market Series. Accounts to hold investments in the Shares of the Bond Series, the Stock Series and the Money Market Series have been created within DC-I and HVA-QP-VA. These Accounts are designated Bond Account, Stock Account and Money Market Account, respectively.

HESCO serves as the principal underwriter of the Variable Annuity Contracts issued by HVA-QP-VA and DC-I.

A Contract Owner under an HVA-QP-VA or DC-I Contract and a Contract Participant under an HVA-QP-VA Contract has the right to direct that purchase payments made pursuant to the terms of the contract shall be allocated entirely to the appropriate unit trust Stock Account, Bond Account or Money Market Account or any combination thereof provided that the amount thus invested in any one Account shall be at least $10 and shall be amounts equal to at least 10% of each purchase payment.

Purchase payments or the parts thereof that are invested at the direction of the Contract Owners or Contract Participants in the Bond Account or Stock Account are subject to a sales charge deduction of a maximum of 4.25% declining with the amount(s) invested, whereas purchase payments or the parts thereof that are invested in the Money Market Account are not subject to a sales charge deduction.

In addition to having the right to distribute purchase payments among the three Accounts in varying amounts, the Contract Owner or Contract Participant, where appropriate, shall also have the right to transfer or exchange part or all of his interest in one Account to either or both of the other Accounts. However, a Contract Owner or Contract Participant whose purchase payments had been invested entirely in the Money Market Account and who wished to transfer the value of his interest in the Money Market Account to the Stock Account or Bond Account could by this means acquire an interest in the Bond Account or Stock Account without ever having paid a sales charge. In order to avoid discriminating against those Contract Owners and Contract Participants whose purchase payments had been subjected to sales charges because they were invested originally in the Stock and/or Bond Accounts, a sales charge will be made on the portion of the value of the amount transferred from the Money Market Account to either or both of the other Accounts up to an amount equal to the amount(s) initially invested in the Money Market Account and not subject to a sales charge.

Sections 22(d) and 27(a)(3)

In pertinent part, Section 22(d) of the Act provides that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person, except at a current offering price described in the prospectus.

Section 27(a)(3) provides, in substance, that it shall be unlawful for any registered investment company issuing periodic payment plan certificates or for any depositor of or underwriter for such company to sell any such certificates if the amount of sales load deducted from any one of the first payments

exceeds proportionately the amount deducted from any other such payment or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment.

Because the Hartford Fund is a series fund, with the Contract Owner or Contract Participant, as appropriate, having the right to vary the allocation of the purchase payments, from time to time, among the Bond Account, Stock Account, and the Money Market Account, the purchase payments may be subject to varying amounts of sales charges depending on the amounts that may be invested, from time to time, in the Money Market Account. This may result in a violation of Sections 22(d) and 27(a)(3) of the Act. Section 27(a)(3) of the Act may also be deemed to be violated because of the possibility of variations in sales charges that could occur as a result of the above described exchanges.

Applicants allege that Sections 22(d) and 27(a)(3) were designed to protect against discrimination and confusion in the minds of investors about the amounts of sales charges, and that such difficulties will not be present under the present contract arrangement.

Nevertheless, Applicants have requested the Commission to issue an order exempting them and each of them from the provisions of Sections 22(d) and 27(a)(3) in order that they might offer and sell group variable annuity contracts issued with respect to HVA-QP-VA and DC-I which authorize the purchaser to direct that the contract purchase payments made (subject to the 10% minimum) be allocated among and invested in the Bond Account, Stock Account and Money Market Account subject or not to a deduction for sales charge depending upon the Account(s) to which allocated and in order that a sales charge may be deducted from amounts initially invested in the Money Market Account without a deduction for sales charge being made and then transferred from the Money Market Account to the Stock and/or Bond Account.

Section 11

Section 11(a) of the Act provides, as pertinent, that no registered, open-end company or any principal underwriter for such a company shall make an offer to the holder of a security of such company to exchange his security for a security in the same or another such company on any basis other than relative net asset values unless the terms of the offer have been approved by the Commission.

Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

As hereinabove described, a transfer by a Contract Owner or Contract Participant of part or all of the value of his interest in the Money Market Account to the Bond and/or Stock Account in HVA-QP-VA or DC-I will result in a payment of a sales charge on the amount that has not theretofore been subject to a sales charge. Such exchange will therefore be made at other than net asset value. Applicants have requested an Order of the Commission pursuant to Section 11 in order that the Contract Purchaser or Contract Participant may make transfers of interests from one Account to another under the circumstances described.

Sections 2(a)(32) and 2(a)(35)

Section 2(a)(32), as pertinent, defines "Redeemable Security" as any security under the terms of which the holder, upon its presentation to the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Because a transfer of a Contract Owner's or Contract Participant's initial investment in the Money Market Account (which has not theretofore been subject to a sales charge deduction) to the Stock Account and/or Bond Account will be subject to a sales charge deduction upon any such transfer, it may be said that the securities issued with respect to HVA-QP-VA and DC-I are not in fact redeemable securities. If the withdrawal and reinvestment are considered as a single transaction, the Contract Owner or Contract Participant did not receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof because the redemption value has been reduced by a sales charge. Accordingly, HVA-QP-VA and DC-I as unit investment trusts may be said to be not issuing redeemable securities.

Section 2(a)(35) defines "Sales Load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for

investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

The definition of sales load presumes that any such deduction will be made from the public offering price to the investor; that is, it will be deducted when the investment is initially made and not some time later. Because a sales charge deduction will be made upon a transfer of monies, which represent amounts initially invested in the Money Market Account to the Bond and/or Stock Account, such deduction would not fall within the definition of sales load.

Applicants do not believe that any exemption from Section 2(a)(32) or Section 2(a)(35) is necessary or appropriate under the circumstances. However, to the extent that an exemption or exemptions may be deemed necessary, Applicants have requested exemptions from Section 2(a)(32) and Section 2(a)(35) of the Act in order that exchanges may be made from the Moey Market Account to the Bond and Stock Accounts as hereinabove described.

Section 26(a)(2) and Section 27(c)(2)

Section 26(a)(2) of the Act requires that the trustee or custodian segregate and hold in trust all securities, cash, and other trust property; places restrictions on charges which may be made against the trust income and corpus and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter or any affiliated person thereof, other than a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services, delegated by the trustee or custodian.

Section 27(c)(2) of the Act provides in pertinent part that the proceeds, after deduction of sales load of all payments on a periodic payment plan certificate issued by a registered investment company are to be held by a bank as trustee or custodian under an indenture or agreement containing in substance, the provisions required by paragraphs (2) and (3) of Section 26(a) for trust indentures of unit investment trusts.

As noted above, purchases of group contracts issued with respect to HVA-QP-VA and DC-I that allocate part or all of their purchase payments to the Money Market Account will be able to do so without any sales charge deduction being made from the amount thus allocated. Purchasers of the group contracts will have the right to transfer monies invested and held in the Money Market Account to the Bond Account and/or Stock Account and *vice versa*. However, again as noted above, a contract purchaser who desires to transfer monies held in the Money Market Account to the Bond Account or Stock Account must pay a sales charge on that portion of the amount transferred equal to the amount initially invested which was not subject to a sales charge deduction. However, the payment of such a sales charge will not qualify as an allowable expense within the meaning of Section 26(a)(2).

Applicants have requested an Order of the Commission exempting them and each of them from the provisions of Sections 26(a)(2) and 27(c) in order that a sales charge might be deducted and paid from the amounts transferred from the Money Market Account based on the amounts initially invested therein and not theretofore subject to a sales charge.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of HVA-QP-VA or DC-I shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of

persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 5, 1980 at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request.

As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following June 5, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11168/May 13, 1980

In the Matter of

TRUST FUND SPONSORED BY THE EPISCOPAL SCHOOL FOUNDATION COLLEGE AWARD PROGRAM, INC.
3100 East Oakland Park Boulevard
Fort Lauderdale, Florida 33308

(811-1538)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that the Trust Fund Sponsored By The Episcopal School Foundation College Award Program, Inc. ("Fund"), registered under the Act as a closed-end, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that on September 26, 1967, the Fund registered as an investment company under the Act. It did not file a registration statement under the Securities Act of 1933. Prior to registering under the Act, the Fund offered scholarship plans for sale to the public from October, 1965, until September, 1967. Due to certain problems which developed in the management and administration of the Fund, the Department of Insurance of the State of Florida took action to have the Fund liquidated. A proceeding entitled *State of Florida, ex rel. The Department of Insurance (Realtor)* v. *Episcopal School Foundation College Award Program, Inc. (Respondent)*, was filed in the Circuit Court, Second Judicial Circuit for Leon County, Florida, Civil Action No. 71-1574. That Court issued an order on December 6, 1971, appointing the Florida Department of Insurance as Receiver of the Fund's property and affairs for the purpose of supervising the liquidation of the Fund. On February 14, 1973, the Court issued an Order of Final Distribution causing the Fund to be liquidated and its assets to be distributed. The Division of Rehabilitation and Liquidation of the State of Florida, by a letter dated March 4, 1980, has advised the Commission that the Order of Final Distribution was implemented on March 19, 1973, and therefore the Fund ceased to exist on that date. On June 16, 1976, the Court issued an Order of Final Discharge and Approval of Final Accounting. Specifically, the staff of the Commission has been advised that the Fund had no assets or liabilities on the date of final discharge.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company

it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 9, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11169/May 13, 1980

In the Matter of

NATIONAL WESTMINSTER BANK LIMITED
c/o Bruce W. Nichols, Esq.
Davis, Polk & Wardwell
One Chase Manhattan Plaza
New York, N.Y. 10005

(812-4617)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that National Westminster Bank Limited ("Applicant") filed an application on February 20, 1980, and an amendment thereto on April 16, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant and its subsidiaries are one of the largest international banking groups in the United Kingdom and among the largest banking groups of the world in terms of deposits, assets and profits. According to the application, Applicant and its subsidiaries on a consolidated basis had assets of approximately 28.9 billion pounds sterling, deposits of approximately 26.5 billion pounds sterling and ordinary shareholders' funds and preference share capital of approximately 1.6 billion pounds sterling at December 31, 1979. The application indicates that the principal business of Applicant and its subsidiaries consists of receiving deposits and making loans. In addition, Applicant states that it engages in merchant banking, retail installment financing, leasing and factoring through subsidiaries and affiliated companies. The application states that the operating revenue of Applicant and its subsidiaries is derived principally from interest on loans and overdrafts, which constituted 83% of total gross income of Applicant and its subsidiaries for the fiscal year ended December 31, 1979. Applicant represents that it is an English company limited by shares with its registered and principal office located at 41 Lothbury, London EC2P 2BP, England.

Applicant represents that it is subject to the regulation of the Bank of England, the central bank of the United Kingdom. Applicant also states that it files regular detailed reports and periodic statistical returns with the Bank of England, which are designed to analyze liquidity and exposure to asset-related and other risks. According to the application, Applicant is registered as a bank holding company pursuant to the Bank Holding Company Act of 1956, under which the Board of Governors of the Federal

Reserve System regulates the types of activities in which a foreign bank holding company may engage and requires the filing of annual reports.

According to the application, Applicant proposes to issue and sell prime quality commercial paper notes in minimum denominations of $100,000 in the United States. Applicant represents that the notes will be sold through major United States commercial paper dealers to institutional investors, other entities and individuals who normally purchase commercial paper, and will not be offered for sale to the general public. Applicant states that it seeks to broaden its sources of finance by selling commercial paper in the United States, which would provide the Applicant with an additional source of United States dollars. Applicant states that it presently expects that the average amount of its commercial paper outstanding to be approximately $500,000,000 during the year after it begins selling its notes, and $750,000,000 in the succeeding year. The application states that the notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness, including deposit liabilities of the Applicant, and superior to the rights of shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of its special counsel in the United States that the notes will qualify for the exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant states that it will not issue or sell any of its notes until it has received such opinion letter. The Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future issue of its debt securities in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one of the nationally recognized investment rating organizations and that its special counsel in the United States shall have certified that such rating has been received.

Applicant undertakes to insure that the commercial paper dealer will provide each offeree of its notes with a memorandum describing the business of Applicant and its subsidiaries and containing the most recently published financial statements of Applicant and its subsidiaries, which will be audited in accordance with United Kingdom auditing practices. Applicant also states that the memorandum will include a brief paragraph highlighting the material differences between United Kingdom accounting principles applicable to United Kingdom clearing banks, as used by Applicant, and generally accepted accounting principles employed by United States banks. Applicant represents that such memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material changes in the financial status or business of Applicant and its subsidiaries.

Applicant further represents that any future offering of its debt securities will be done on the basis of disclosure documents which are at least as comprehensive as those used by United States issuers of such securities in the United States and will contain the financial statements of Applicant and its subsidiaries. Applicant consents to having any order granting the relief requested under Section 6(c) expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will appoint a bank or trust company having an office in New York City, the Commission, or a corporation with an office in New York City engaged in providing corporate services, as agent to accept service of process in any action based on the notes or with respect to the offer and sale of the notes through the offering memorandum, and instituted in any state or federal court by the holder of any of its notes. Applicant further represents that it will expressly submit to the jurisdiction of any state or federal court in the City and State of New York in any such action and that both its appointment of an authorized agent for service of process and its consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes shall have been paid. Applicant states that in the future it may offer debt securities other than short-term notes in the United States, but it will not offer or sell, except to employees, its equity securities in the United States. Applicant represents that no such securities shall be offered or sold unless such securities are registered under the 1933 Act or in the opinion of Applicant's United States counsel an exemption from registration under the 1933 Act is available with respect to the offer and sale of such securities, or the staff of the Commission states that they would not recommend that the Commission take any action

under the 1933 Act if such securities are not registered. Applicant represents that it will similarly consent to jurisdiction and appoint an agent for service of process in any action arising from any other offering of debt securities that it may make in the United States in the future.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that as a commercial bank whose operations are controlled and overseen by United Kingdom banking authorities, it is different from the type of institution Congress intended the Act to regulate. Applicant also submits that an exemption pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States because without such an exemption Applicant would be precluded from publicly offering its securities in the United States. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 9, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated autority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11170/May 14, 1980

In the Matter of

JET CAPITAL CORPORATION
One Allen Center
Houston, Texas 77002

(812-4293)

ORDER PURSUANT TO SECTION 3(b)(2) OF THE ACT DECLARING THAT APPLICANT IS NOT AN INVESTMENT COMPANY

Jet Capital Corporation ("Applicant"), a Delaware corporation, filed an application on April 19, 1978, and amendments thereto on July 7, 1978, August 30, 1978, October 30, 1978, March 17, 1980, and May 14, 1980, pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act") for an order declaring that Applicant is primarily engaged

in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities.

On July 13, 1978, a notice of the filing of said application was originally issued (Investment Company Act Release No. 10322). On November 17 1978, a second notice of the application pursuant to Section 3(b)(2) of the Act was issued (Investment Company Act Release No. 10484). National Airlines Incorporated ("National"), filed a request for a hearing on the application prior to the expiration of the notice period on both occasions. By letter dated March 10, 1980, however, Counsel for National advised the Commission that National was acquired through merger by Pan American World Airways, Inc., on January 7, 1980, and that, accordingly, National no longer has an interest in the application. On March 21, 1980, a third notice of the filing of the application was issued (Investment Company Act Release No. 11098). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing on the application as renoticed on March 21, 1980, has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that Applicant is primarily engaged, through a controlled company, in a business other than that of investing, reinvesting, owning, holding, or trading in securities. Accordingly,

IT IS ORDERED, pursuant to Section 3(b)(2) of the Act, that Jet Capital Corporation is hereby declared to be primarily engaged in a business other that that of investing, reinvesting, owning, holding, or trading in securities, subject to the following condition: Jet Capital Corporation's order pursuant to Section 3(b)(2) of the Act will terminate 30 days after it is determined that at the end of any calendar quarter more than 40% of the assets of Texas International Airlines, Inc. ("TXIA"), consist of investment securities as defined in Section 3(a)(3) of the Act unless:

(1) Jet Capital Corporation has received an opinion of counsel to the effect that TXIA is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities within the meaning of Section 3(b)(1) of the Act, or

(2) Jet Capital Corporation or TXIA has filed a request for an order pursuant to Section 3(b)(2) of the Act.

In the event that Jet Capital Corporation or TXIA shall proceed under item (2) above, Jet Capital Corporation's order shall terminate, and Jet Capital Corporation shall register in the event that the Commission shall have finally denied the request for exemption and the time to appeal therefrom shall have run.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11171/May 14, 1980

In the Matter of

JET CAPITAL CORPORATION
One Allen Center
Houston, Texas 77002

(812-4627)

ORDER PERMITTING WITHDRAWAL OF APPLICATION PURSUANT TO SECTIONS 6(c) AND 6(e) OF THE ACT FOR ORDER OF TEMPORARY EXEMPTION FROM SECTIONS 7 AND 8 OF THE ACT

Jet Capital Corporation ("Applicant") filed an application on March 17, 1980, pursuant to Sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for an order of temporary exemption from Sections 7 and 8 of the Act until one year after the filing of the application.

On March 21, 1980, a notice was issued of the filing of the application (Investment Company Act Release No. 11097). By letter dated April 17, 1980, counsel for Applicant requested that the application for temporary exemption be withdrawn if Applicant received an order pursuant to Section 3(b)(2) of the Act declaring that Applicant was primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. An order granting the application pursuant to Section 3(b)(2) of the Act is being issued simultaneously herewith. Accordingly,

IT IS ORDERED that the application by Jet Capital Corporation pursuant to Sections 6(c) and (e) of the Act is hereby withdrawn, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11172/May 15, 1980

In the Matter of

FEDERATED MONEY MARKET, INC.
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4517)

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 NAD 22c-1 THEREUNDER

On September 21, 1979, a notice was issued (Investment Company Act Release No. 10872) of the filing of an application by Federated Money Market, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant's assets to be valued at amortized cost. By letters dated September 26, 1979, and October 2, 1979, Applicant requested that the application be withdrawn in view of the fact that a contemplated merger of Applicant into Money Market Management, Inc., also registered under the Act as an open-end, diversified, management investment company, would render the application moot.

The matter has been considered, and it is found appropriate to permit the withdrawal of the pending application. Accordingly,

IT IS ORDERED that the aforementioned application be, and hereby is, withdrawn, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9080/May 9, 1980

S.E.C. v. *SHELDON L. HART, ET AL.*, C.A. No. 78-0065 (D.D.C.)

The Commission announced that on May 9, 1980, the Hon. Thomas A. Flannery, Jr., United States District Judge for the District of Columbia, entered a Final Judgment of Permanent Injunction and Other Relief as to Sheldon L. Hart, the sole remaining defendant in the Commission's injunctive action charging Hart and four other defendants with violations of various provisions of the federal securities laws.

The Judgment enjoins Mr. Hart from violating the antifraud and reporting provisions of the federal securities laws, and from making misrepresentations to accountants in connection with the preparation of filings with the Commission, and also bars Mr. Hart from being a director or, under certain circumstances, an officer, of a public company, unless such company has and maintains an Audit Committee composed of unaffiliated directors with certain defined responsibilities with regard to company filings, disclosures, and accounting matters. The Judgment was entered pursuant to a settlement as to which Mr. Hart consented without admitting or denying the allegations in the Commission's Complaint.

The Commission's Complaint, filed in January 1978, charged that Mr. Hart, Chairman, President and Treasurer of the Connecticut-based National Telephone Co., Inc., three other corporate officials, and the company's independent accountants had violated federal securities laws in connection with

the filing of false and misleading financial statements between 1973 and 1975. The Complaint also charged that Mr. Hart and the other officers made false and misleading disclosures of the company's deteriorating financial condition in 1974 and 1975, as well as of the provisions of a credit agreement the company entered into in late 1974 which severely restricted the company's operations.

National entered Chapter XI Bankruptcy proceedings in the summer of 1975, entered Chapter X Bankruptcy proceedings in 1976, and is currently being liquidated under the direction of the Chapter X Trustee.

See Litigation Release No. 8256/January 16, 1978.

Litigation Release No. 9081/May 12, 1980

UNITED STATES v. *DANIEL KING BRAINARD* (Middle District North Carolina) Criminal Action No. 80-176

Jule B. Greene, Administrator of the Atlanta Regional Office, and H. M. Michaux, Jr., United States Attorney for the Middle District of North Carolina, announced that on April 24, 1980, a jury, before the Honorable Eugene A. Gordon, United States District Judge for the Middle District of North Carolina, returned a verdict of guilty against Daniel King Brainard ("Brainard") of Greensboro, North Carolina on thirteen counts of mail fraud in connection with the offer and sale of securities, and against Halton Q. Bittick ("Bittick") of Greensboro, North Carolina, on thirteen counts of mail fraud in connection with the offer and sale of securities and on one count of making a false statement in a report required to be filed with the Commission. Sentencing is scheduled for May 8, 1980.

Brainard and Bittick were found to have engaged in a scheme to defraud investors by making false and fraudulent representations to purchasers of securities, namely evidences of indebtedness of Sheldon S. Moss d/b/a Television Marketing and Correlated Equities Corporation ("TVM evidences of indebtedness"). As part of the scheme to defraud Brainard and Bittick were found to have prepared and caused to be prepared false Financial Statements—Form UCC-2 which purported to show an assignment by Television Marketing Corporation ("TVM") to each investor of a percentage of a commercial invoice for various products sold to Sears Roebuck & Co. and other corporations when, in fact, there existed no invoice or debt from Sears to TVM. As a further part of the scheme and artifice to defraud, Brainard and Bittick were found to have falsely represented to investors, among other things, that investors' funds would be used by TVM to produce and market products previously ordered by Sears or other large retail corporations, and that investments in the TVM evidences of indebtedness would be collateralized by an assignment of a Sears' or other large merchandising firm invoice with a value twenty percent (20%) greater than the investment. Bittick was also found to have made a false statement in a Form BD, a report required to be filed with the Commission, in an attempt to conceal Sheldon Moss' (Moss) beneficial interest in a broker-dealer registered with the Commission and, thus, avoid disclosing that the registered broker-dealer had a person associated with it who had been permanently enjoined from violating the antifraud provisions of the federal securities laws. Previously, Moss plead guilty to eighteen counts of mail fraud in connection with the offer and sale of the TVM evidences of indebtedness.

In a related civil injunctive action, Brainard consented to the entry of an order preliminarily enjoining him from violating securities registration and antifraud provisions, and from aiding and abetting violations of broker-dealer registration and investment adviser registration provisions of the federal securities laws. Litigation in this matter is continuing.

For further information, see Litigation Release Nos. 8617, 8665 and 9044.

Litigation Release No. 9082/May 12, 1980

SEC v. *TELTRONICS SERVICES, INC., EDWARD BEAGAN, RANDOLPH PIECHOCKI AND ROBERT CHANDA*, 80 Civil 2472 (RJW) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on May 2, 1980, a complaint was filed in the United States District Court for the Southern District of New York seeking

injunctive and other equitable relief against the following defendants for violating the antifraud and reporting provisions of the Securities Exchange Act of 1934:

(1) Teltronics Services, Inc. ("TSI"), a New York corporation with its principal place of business in New York, New York;

(2) Edward Beagan, the president of TSI and the chairman of its board of directors, who resides in Brooklyn, New York;

(3) Randolph Piechocki, a vice-president of TSI, who resides in Forest Hills, New York; and

(4) Robert Chanda ("Chanda"), a TSI vice-president from November 1978 until March 1979 when he ceased to be associated with TSI, who resides in Plainfield, New Jersey.

The Commission's complaint alleged, among other things, that since August 1978, TSI failed to disclose, in various quarterly, annual and current reports required to be filed with the Commission, or otherwise, its seriously deteriorating financial conditions, including the company's inability to:

(1) make timely payments of principal and interest to lending banks, (2) obtain necessary debt financing, (3) comply with standard credit terms of its principal equipment suppliers, (4) maintain required cash balances in bank accounts located in a creditor bank, and (5) make a required interest payment to a creditor bank, which, on March 5, 1979, declared TSI to be in default of its loan agreement.

The Commission's complaint further alleged that TSI filed with the Commission a quarterly report on Form 10-Q for the period ended September 30, 1978 which was false and misleading and contained omissions and misstatements of material facts. Specifically, it was charged that the Form 10-Q report overstated TSI's receivables by at least $500,000 and failed to disclose the serious fiscal difficulties being experienced by TSI.

In addition, the complaint alleged that during the period from January 1, 1979 to the present, TSI failed to file with the Commission annual reports on Form 10-K for the fiscal years ending December 31, 1978 and 1979 and all quarterly reports on Form 10-Q for fiscal year 1979.

Finally, the complaint alleged that during January 1979, Chanda sold 2,400 shares of TSI common stock without disclosing material non-public information concerning TSI's precarious financial condition.

Simultaneously with the filing of the complaint, Chanda consented, without admitting or denying the allegations contained in the Commission's complaint, to the entry of a final judgment of permanent injunction and an order directing him to disgorge the sum of $18,000 representing the profits which resulted from his alleged violative conduct.

Litigation Release No. 9083/May 12, 1980

SECURITIES AND EXCHANGE COMMISSION v. WILLIAM R. LUMMIS, ET AL., AS ADMINISTRATORS OF THE ESTATE OF HOWARD R. HUGHES, JR., ET AL., (United States District Court for the Northern District of California) Civil Action No. 75-0589 AJZ

The Securities and Exchange Commission announced today that on May 12, 1980, the Honorable Alfonse J. Zirpoli, United States District Judge for the Northern District of California approved and entered a Stipulation and Final Order ordering defendant Chester C. Davis of New York City, to comply with Section 10(b) of the Securities Exchange act of 1934 and Rule 10b-5 promulgated thereunder, thus terminating the Commission's five year action arising from the Howard Hughes acquisition of Air West.

In its complaint the Commission alleged that Mr. Davis, in connection with the acquisition of the assets of Air West, Inc. by the late Howard R. Hughes, Jr., had engaged in a fraudulent course of conduct and violated the proxy solicitation rules.

Mr. Davis stipulated to the Court's order without admitting or denying the substantive allegations in the Commission's complaint.

For further information, see Litigation Releases Nos. 6802, 8650, and 9032.

Litigation Release No. 9084/May 13, 1980

U.S. v. *JOHN F. ARENS* (U.S.D.C., E.D. of Pa., Criminal No. 79-154)

Peter Vaira, United States Attorney for the Eastern District of Pennsylvania, and Paul F. Leonard, Administrator of the Washington Regional Office, announced that on April 29, 1980, after a three week trial, a iury in Philadelphia, Pennsylvania acquitted John F. Arens of Fayetteville, Arkansas, of charges of mail fraud and securities fraud in connection with his offer and sale of Harbinger Oil Corp. oil and gas well interests.

For further information see Litigation Release Nos. 7020, 7024, 7213, 8804, and SEA Release Nos. 13000, 13494 and 13838.

Litigation Release No. 9085/May 13, 1980

SECURITIES AND EXCHANGE COMMISSION v. *DIGITAL SWITCH CORPORATION, ET AL.*, (C.A. No. 80-0296-A, E.D. Va.)

Paul F. Leonard, Administrator of the Washington Regional Office, announced that on April 4, 1980, a complaint for a permanent injunction was filed in the United States District Court for the Eastern District of Virginia, Alexandria Division, naming as defendants Digital Switch Corporation (DSC) of McLean, Virginia, and two former officers of DSC, Charles W. Marmon (Marmon) and Harry E. Hagerty (Hagerty).

The Complaint alleged that beginning in at least November, 1976 and continuing through at least August of 1979, defendants violated the securities laws in the offer and sale of common stock and other unregistered securities of DSC by means of untrue statements of material fact and omissions of material facts pertaining to, among other things, the use of investor funds to pay ten percent commissions on stock sales, and projections of DSC's revenues from product sales.

Simultaneously with the filing of the Complaint, DSC undertook and United States District Judge Albert V. Bryan ordered that all offers or sales of securities by DSC will be made in compliance with the securities registration provisions of the Securities Act of 1933; and that all offers, sales or purchases of securities by DSC will be made in compliance with the antifraud provisions of the federal securities laws. The order specified certain actions by DSC of which the Commission was informed. These include:

1. That an agreement for a firm underwriting of 2 million shares of DSC common stock has been reached with John Muir and Company, which will include an offer of rescission to all purchasers of DSC common stock during the period from November 19, 1976 to August 7, 1979, that their stock be rescinded in exchange for $3 per share in cash with interest from the date of purchase;

2. That Marmon and Hagerty have resigned from DSC's Board of Directors;

3. That Marmon is no longer a DSC employee;

4. That Marmon will have no contact, either direct or indirect, with DSC's shareholders other than as authorized by DSC's Board of Directors;

5. That Marmon and Hagerty have deposited 200,000 of the shares of DSC common stock held in their names under a stock indemnification agreement dated March 26, 1980; and

6. That DSC's Escrow Agent shall vote all the escrowed shares of Marmon's stock until DSC has a public offering resulting in at least $5 million of proceeds, but until no later than October 1, 1980.

Litigation Release No. 9086/May 15, 1980

SECURITIES AND EXCHANGE COMMISSION v. *FLORIDA BANK FUND, INC., ET AL.* (Middle District of Florida, Tampa Division, Civil Action No. 78-759-CIV-TH)

Jule B. Greene, Administrator, Atlanta Regional Office, and William Nortman, Associate Regional Administrator, Miami Branch Office of the Securities and Exchange Commission, announced that on February 14, 1980, the Honorable William Terrell Hodges, United States District Court Judge, at Tampa, Florida, entered a Judgment of Permanent Injunction against Florida Bank Fund, Inc. ("FBF"). The defendant consented to the Judgment, without admitting or denying the allegations in the

Commission's Complaint filed on September 14, 1978.

FBF is a registered open-end management investment company whose assets are presently under the control of a Court appointed receiver, Frank N. Fleischer, Esquire, of Tampa. The consent to the injunction was entered by the receiver.

Previously the Court permanently enjoined Lancer Management Corporation, Frank J. Brennan, Marjorie S. Stewart and LaMar M. Silver from violations of the antifraud provisions of the Investment Advisers Act of 1940 and the bonding, contracting, lending, redemption, reporting, record keeping and obstruction provisions of the Investment Company Act of 1940. The defendants were enjoined based on their consent without admitting or denying the allegations in the Complaint. Further, the individual defendants were permanently enjoined from acting, directly or indirectly, as officers, directors, or members of any advisory board, investment adviser, depositor, or principal underwriter of any registered investment company.

For further information see: Litigation Release No. 8710, April, 1979 and In the Matter of Lancer Management Corporation et al., Release No. 34-15679 (March 26, 1979). Also, for the Court's opinion granting the Commission's motion for preliminary injunction, see *Securities and Exchange Commission* v. *Florida Bank, Fund, Inc. et al.*, [Current] CCH Fed. Sec. L. Rep. para 96,707 (M.D. Fla. 1978).

Litigation Release No. 9087/May 15, 1980

UNITED STATES v. *MICHAEL J. FITZPATRICK* (E.D. Wa., Criminal Action No. CR-80-50-1)

James J. Gillespie, United States Attorney for the Eastern District of Washington and Jack H. Bookey, Regional Administrator, Seattle Regional Office, announced that on March 31, 1980, Judge Robert J. McNichols accepted a plea of guilty by Michael J. Fitzpatrick ("Fitzpatrick") to a three count information charging him with violations of the securities fraud laws.

Fitzpatrick of Coeur d'Alene, Idaho was charged with bilking an elderly Spokane, Washington woman of $250,000 by selling stock in McDonald's Corporation, the hamburger chain, and Republic of Biafra bearer bonds. The information charged that from time to time since 1970, Fitzpatrick purchased blank stock certificates in Spokane, filled in the names of the appropriate companies and forged signatures on the certificates. Further, he stole some of the forged certificates from the victim and resold them to her.

Judge McNichols sentenced Fitzpatrick to two years in the federal penitentiary, with commitment to be deferred until October 1, 1980.

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sec docket

VOLUME 20, NO. 2 JUNE 3, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	16797A, 16811-22	54
Public Utility Holding Company Act	21576-85	64
Investment Company Act	11173-79	77
Investment Advisers Act	721	89
Litigation	9088-90	91

This listing covers releases issued from 5/16/80-5/21/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

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SIGNIFICANT ITEMS ANNOUNCEMENT

IA-721 Announcement of the interpretive views of the Division of Investment Management as to the application of the performance fee prohibitions to investment advisory compensation arrangements which are contingent on the investment performance of the funds of advisory clients.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16812 34-16814 34-16818
34-16813 34-16815

OPINIONS

34-16817 **OPPENHEIMER & COMPANY, INC.**
Where registered broker-dealer was about 9½ months late in filing required reports of acquisition of more than 5% of outstanding stock of issuer, but charges of Rule 10b-6 violations dismissed because broker-dealer was not engaged in a distribution of securities within the meaning of that rule, *held*, in the public interest to censure respondent.

34-16821 **PETER PAUL GLAGOLA**
Where registered representative of exchange member firm wrongfully inserted his name as payee on his customers' check, commingled

S E 1.29:

their funds with those of his wife, and converted the funds to his own use, *held*, exchange's findings of violation *sustained*, and sanction affirmed.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 16797A/May 19, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, Massachusetts 02109

(SR-BSE-80-4)

NOTICE OF FILING OF PROPOSED RULE CHANGE

On May 12, 1980, Securities Exchange Act Release No. 16797 was issued providing notice of a proposed rule change by the Boston Stock Exchange, Inc. (SR-BSE-80-4) to provide that trading through superior Intermarket Trading System ("ITS") markets would be inconsistent with just and equitable principles of trade, and to require that the best ITS bid or offer must be satisfied. The Release failed to state that the proposed rule pertains only to trading of Boston Free List Stocks traded on the ITS, in which no dealer is registered on the Exchange.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16811/May 16, 1980

The Securities and Exchange Commission today granted the application of the Philadelphia Stock Exchange, Inc. ("Phlx")[1] pursuant to the terms of the voluntary moratorium on expansion of standardized options trading[2] to begin trading put and call options on Caesar's World Inc. common stock to replace call options on the common stock on Braniff International Corp. ("Braniff"). Braniff has been delisted involuntarily by the Phlx because of Braniff's failure to satisfy the terms of Phlx Rule 1010, Commentary .01(c), which provides for the withdrawal of approval of underlying stocks if the market price per share closes below $10 as measured by the highest closing price in any market on a majority of the business days of any six-month period.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16812/May 16, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-5

The National Association of Securities Dealers, Inc. (the "Association") submitted on May 5, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") to revise Schedule D of the Association's By-Laws to require that NASDAQ Level 1 service provide subscribers with inside quotations for each authorized security for which a minimum of two registered market makers are entering quotations

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[1]See letter dated May 9, 1980 from Murray L. Ross, Assistant Vice President, Market Surveillance/Securities, Phlx to Gene E. Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[2]See Securities Exchange Act Release No. 15026 (August 3, 1978). The options exchanges have informally agreed that until such time as they have devised and implemented a mutually acceptable plan for allocation of additional call options classes, they will continue to follow the procedure set forth in Release No. 15026 for the replacement of involuntarily delisted options classes.

during the day, except in the case of a locked or crossed market where only the highest bid would be displayed. The proposed rule change would also require that, when quotations are released to the news media, Level 1 quotations be used in the case of NASDAQ Securities and bid and ask quotations representative of the inter-dealer market be used in the case of issues not included in NASDAQ. The proposal would also amend the footnote to Section A of Part XI of Schedule D to reflect a technical change in the average weekly volume ranking formula. The rule is intended to conform Schedule D to the dissemination of inside quotation requirements contained in Rule 11Ac1-2 under the Act, which becomes effective on July 5, 1980.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 19, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16813/May 16, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-7)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of a proposed rule change. The following is the full text of the proposed amendments to Appendix E under Article III, Section 33 of the NASD's Rules of Fair Practice. Deleted language is indicated by brackets.

Article III, Section 33, Appendix E[1]

Sec. 17

Opening of Accounts

(b) Diligence in Opening of Accounts

[(3) Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, a member shall obtain written evidence that the instruments under which the fiduciary is acting permit options trading.

(4) Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the member for options tradings, the member shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

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[1]This filing reflects changes to the NASD's existing rules. Additional amendments to Appendix E are contained in a separate rule change proposal which is currently on file with the SEC (SR-NASD-79-16). Approval of that filing will result in a renumbering of certain rule provisions covered in this submission.

(5) Before approving an account of an investment partnership or an investment club for options trading, the member shall obtain written evidence of the authority of the person signing the agreement required by this Section to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or members of the partnership or investment club.]

Sec. 18

Discretionary Accounts

[(c) Prohibited Transactions—No transactions shall be executed in a discretionary account which would result in an uncovered short position in option contracts or in the uncovering of any existing short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of Section 19 of this Appendix E.]

* * * * *

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the Commission approved identical proposals by the Philadelphia Stock Exchange and the American Stock Exchange which were published for comment for the requisite period of time.[2] Accordingly, the Commission believes that accelerated approval of the NASD proposal is necessary and appropriate in order to achieve a consistent and equal regulatory scheme for standardized options.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16814/May 16, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INCORPORATED

File No. SR-Amex-80-9

The American Stock Exchange, Inc. ("Amex") submitted, on May 2, 1980, a proposed rule change under Rule 19b-4 to amend its Rules 576 and 585 to increase the suggested reimbursement rate to member organizations for transmission of follow-up proxy solicitation mailings, proxy materials and interim reports to shareholders; and to modify the invoice form used by member organizations to specify charges.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within

[2]See Securities Exchange Act Release Nos. 16697 and 16698 (March 26, 1980).

sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rate change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 19, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 Reference should be made to File No. SR-Amex-80-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16815/May 16, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY BOSTON STOCK EXCHANGE, INC.

File No. SR-BSE-80-2

The Boston Stock Exchange, Inc. ("BSE") submitted on April 14, 1980, a proposed rule change under Rule 19b-4 to amend Chapter XII-A of its rules, concerning odd-lot dealers in securities, the primary market for which is on another market. The proposed rule change would require odd-lot orders to be filled on the basis of the last reported round-lot transaction, regular way, on the primary market and would eliminate the current requirement that specialists wait two-minutes after an odd-lot order is received before executing it on the basis of the next round lot transaction. The proposed rule also would state that specialists may charge a reasonable differential, although the proposed rule would not require differentials to be charged, and they would be specifically prohibited on odd-lot market orders received before the opening of trading for execution at the opening.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 19, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSE-80-2.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16816/May 19, 1980

An order has been issued granting the application of the American Stock Exchange, Inc. to strike the common stock ($.10 Par Value) of the RICHTON INTERNATIONAL CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16817/May 19, 1980

Admin. Proc. File Nos. 3-5244 and 3-5248

In the Matter of

OPPENHEIMER & COMPANY, INC.
One New York Plaza
New York, New York
(8-18333)

OPINION OF THE COMMISSION

BROKER-DEALER AND REPORTING COMPLIANCE PROCEEDINGS

Ground for Remedial Action

Late Filing of Schedule 13D Statements

Where registered broker-dealer was about 9½ months late in filing required reports of acquisition of more than 5% of outstanding stock of issuer, but charges of Rule 10b-6 violations dismissed because broker-dealer was not engaged in a distribution of securities within the meaning of that rule, *held*, in the public interest to censure respondent.

Willfulness

The failure to make a required report, even though inadvertent, constitutes a willful violation.

APPEARANCES:

Alfred Berman and *Jeffrey Rubin*, of Guggenheimer & Untermyer, for respondent.

Richard T. Sharp, Kenneth G. Lay, Robert F. Adams and *Rachel L. Arfa*, for the Commission's Division of Enforcement.

Andrew M. Klein, Lloyd H. Feller and *Richard G. Ketchum*, for the Commission's Division of Market Regulation.

Richard O. Scribner, Edmund P. Bergan, Jr. and *Carol A. Lieb*, for the Securities Industry Association.

I.

In these consolidated proceedings, Oppenheimer & Company, Inc. ("registrant"), a registered broker-dealer, and our Division of Enforcement ("Division") appeal from the initial decision of an administrative law judge.[1] Oppenheimer appeals from the law judge's finding that it willfully violated Section 13(d) of the Securities Exchange Act and Rule 13d-1 thereunder. The Division appeals from the law judge's dismissal of charges that Oppenheimer violated the anti-manipulative provisions of Section 10(b) of the Exchange Act and Rule 10b-6 thereunder.[2] The law judge concluded that Oppenheimer should be censured. On the basis of an independent review of the record, we make the following findings.

II.

During the relevant period, Section 13(d) of the Exchange Act and Rule 13d-1 required any person acquiring more than 5% of any equity security registered under Section 12 of the Exchange Act to file with this Commission and send to the issuer, within 10 days, a statement containing the information required by Schedule 13D.

On May 17, 1974, Oppenheimer acquired from an institutional client 125,000 shares of the common stock of Medcom, Inc., which was more than 5% of that company's outstanding common.[3] However, Oppenheimer did not send the required statement to

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[1]Disciplinary proceedings against Oppenheimer were consolidated with proceedings instituted against the firm under Section 15(c)(4) of the Securities Exchange Act.

[2]We granted our Division of Market Regulation and the Securities Industry Association leave to be heard on the Rule 10b-6 issue.

[3]During the relevant period, Medcom had outstanding 2,157,000 shares of common stock which were traded in the over-the-counter market.

Medcom or file it with this Commission until March 14, 1975, some ten months later.

Oppenheimer admits its failure to comply with Section 13(d) and Rule 13d-1 within the required 10 days, but contends that its action was not willful. It asserts that, until some time in September 1974, it was not even aware that it owned more than 5% of Medcom's stock, and that, thereafter, the delay was due primarily to a misunderstanding between in-house counsel and one of registrant's officials over who was preparing the necessary reports. It claims that it had no intention of seeking control of Medcom, that its attention was diverted by the press of other significant matters, and that it did not realize that the data necessary to complete the required statements had not been assembled. It argues that mere inadvertence cannot constitute willfulness.

We disagree. The duty to file with this Commission and to notify the issuer was not dependent on any intention by registrant to gain control of Medcom, but on a mechanical 5% ownership test. Respondent knew or should have known of that requirement. In fact, it admits that its officials had previously been advised by counsel of the necessity of making reports like the ones in question.

We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation.[4] We accordingly affirm the law judge's conclusion that respondent willfully violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.[5]

III.

Rule 10b-6 under the Exchange Act, with certain exceptions not relevant here, prohibits any person who is participating in the distribution of a security to bid for or purchase that security until he has completed his participation in the distribution. The rule defines such conduct as manipulative *per se*. Indeed, our purpose in adopting the rule was to obviate the necessity of proving a manipulation in a situation we had found inherently subject to the likelihood of abuse.[6]

From May 17, 1974, when it purchased the 125,000-share block of Medcom, until February 28, 1975, Oppenheimer made a market in the stock in the course of which it bid for and purchased Medcom shares. By February 28, when it terminated its marketmaking activities, registrant had increased its Medcom holdings to a total of 203,422 shares. The law judge, after considering the testimony and reviewing the documentary evidence, concluded that registrant had not engaged in a distribution of Medcom within the meaning of Rule 10b-6. And, after reviewing the record, we find no basis for disagreeing with the law judge's conclusion.[7] We accordingly affirm his dismissal of charges that registrant violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder.

IV.

Oppenheimer contends that no sanction should be imposed. It points to our subsequent modification of the reporting requirements under Section 13(d) to permit annual reports in certain instances on

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[4]See e.g., *Haight & Company, Inc.*, 44 S.E.C. 481, 507 (1971), *aff'd*, (C.A.D.C., June 30, 1971).

[5]In the Section 15(c)(4) proceedings, the law judge ordered Oppenheimer to amend its Schedule 13D filing. Oppenheimer did not seek review of that determination.

[6]See Securities Exchange Act Release No. 5194 (July 15, 1955); *Jaffee & Company* v. *S.E.C.*, 446 F.2d 387, 391 (1971); *S.E.C.* v. *Resch-Cassin & Co., Inc.*, 362 F. Supp. 964, 980 (S.D.N.Y., 1973).

[7]As we stated in *Bruns, Nordeman & Company*, 40 S.E.C. 652, 660 (1961):

"The term 'distribution' as used in Rule 10b-6 is to be interpreted in the light of the rule's purposes as covering offerings of such a nature or magnitude as to require restrictions upon open market purchases by participants in order to prevent manipulative practices. For these purposes a distribution is to be distinguished from ordinary trading transactions and other normal conduct of a securities business upon the basis of the magnitude of the offering and particularly upon the basis of the selling efforts and selling methods utilized." (Footnote omitted)

Our decision in *Collins Securities Corporation*, Securities Exchange Act Release No. 11766 (October 23, 1975), 8 SEC Docket 250, 256, *rev'd and remanded on other grounds*, 562 F.2d 820 (C.A.D.C., 1977), did not alter the tests laid down in *Bruns, Nordeman*.

Schedule 13G.[8] Oppenheimer points out that the amendment reflects our recognition of the burden placed on institutions such as respondent in meeting a 10-day deadline. However, even if the amendment had been in effect during the relevant period, Oppenheimer's report would still have been a month late.[9] Moreover, the subsequent amendment of applicable requirements cannot justify respondent's prolonged delay in meeting the 10-day limit that was in effect during the period in question.

Under the circumstances, we agree with the law judge that the imposition of censure is in the public interest.

An appropriate order will issue reflecting the determinations made herein and those made by the administrative law judge as to which no exceptions were taken.[10]

By the Commission (Commissioners LOOMIS, EVANS and POLLACK); Chairman WILLIAMS and Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16817/May 19, 1980

Admin. Proc. File Nos. 3-5244 and 3-5248

In the Matter of

OPPENHEIMER & COMPANY, INC.
One New York Plaza
New York, New York

(8-18333)

ORDER IMPOSING REMEDIAL SANCTION AND REQUIRING AMENDMENT OF SCHEDULE 13D STATEMENT

On the basis of the Commission's opinion issued this day, it is

ORDERED that Oppenheimer & Company, Inc. be, and it hereby is, censured; and it is further

ORDERED that, within 10 days, Oppenheimer & Company, Inc. amend Item 5 of the Schedule 13D statement it filed on March 14, 1975, to reflect the acquisition of 125,000 shares of Medcom, Inc. common stock on May 17, 1974; and it is further

ORDERED that, within 10 days, Oppenheimer & Company, Inc. file an appropriate amendment to its Schedule 13D statement reflecting material changes in its beneficial ownership of Medcom, Inc. common stock between May 17, 1974 and March 1, 1975.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16818/May 20, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE CHICAGO BOARD OPTIONS EXCHANGE, INC.

File No. SR-CBOE-1980-6

The Chicago Board Options Exchange, Inc. (the "CBOE") submitted on April 21, 1980, a proposed rule change under Rule 19b-4 to amend CBOE Rules 13.1, 13.2, 13.3 and 13.4 in order to incorporate by reference the Net Capital requirements of Rule 15c3-1 (17 CFR 240.15c3-1) and the early warning provisions of Rule 17a-11 (17 CFR 240.17a-11) promulgated under the Securities Exchange Act of 1934 and the business restriction or business reduction rules of other self-regulatory organizations. The proposed rule change is intended to ensure that the Net Capital requirements of the CBOE are consistent with the Commission's requirements and definitions.

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[8]Securities Act Release No. 5925 (April 21, 1978), 14 SEC Docket 861.

[9]Schedule 13G must be filed within 45 days after the end of the calendar year in which the obligation to file arose.

[10]See n. 5, *supra*.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or to institute proceeding to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-1980-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16819/May 20, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($5 Par Value) of LEESONA CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16820/May 20, 1980

In the Matter of

CHURCHILL PROPERTIES, LTD.
File No. 81-546

ORDER DENYING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order denying the Application of Churchill Properties, Ltd., a California limited partnership, pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Section 13 of that Act.

It appears to the Commission that the granting of the requested exemption would not be consistent with the public interest or the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16821/May 21, 1980

Admin. Proc. File No. 3-5735

In the Matter of the Application of

PETER PAUL GLAGOLA
512 South Fann Street
Anaheim, California

For Review of Disciplinary Action Taken by the New York Stock Exchange, Inc.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE—REVIEW OF DISCIPLINARY PROCEEDINGS

Conduct Inconsistent with Just and Equitable Principles of Trade

Where registered representative of exchange member firm wrongfully inserted his name as payee on his customers' check, commingled their funds with those of his wife, and converted the funds to his own use, *held*, exchange's findings of violation *sustained*, and sanction *affirmed*.

APPEARANCES:

E. Day Carman, of Carman & Mansfield, for Peter Paul Glagola.

Michael Krevor, for the New York Stock Exchange, Inc.

I.

Peter Paul Glagola, a former registered representative of Paine Webber, Jackson & Custis Incorporated ("Paine Webber"), appeals from disciplinary action taken against him by the New York Stock Exchange. The Exchange found that Glagola engaged in conduct inconsistent with just and equitable principles of trade by wrongfully inserting his name as payee on his customers' check, commingling the customers' funds with those of his wife, and converting the customers' funds to his own use. It barred Glagola from employment in any capacity with a member or member organization. On the basis of an independent review of the record, we affirm the Exchange's findings of violation and the sanction it imposed.

II.

At the hearings in these proceedings, Glagola substantially admitted the charges against him, and he does not challenge the Exchange's findings of misconduct here. The pertinent facts may be summarized as follows:

In mid-August 1977, Mr. and Mrs. K. customers of Glagola, placed an order with him at Paine Webber for $60,000 worth of municipal bonds on a "when issued" basis. The Ks were unsophisticated investors, and Glagola admitted that they placed "quite a bit of trust" in him.

On August 24, prior to the time that payment for the bonds was due, Glagola went to the Ks' home and requested a check for the bonds in the amount of $58,550. He told the Ks to leave the name of the payee blank, since he was leaving on a trip and might be able to obtain a better price on the bonds from someone other than Paine Webber. The Ks agreed, and Mrs. K gave Glagola a check made out as he requested.

After leaving the Ks, Glagola inserted his own name as payee on the check. He took it to the Ks' bank, exchanged it for a cashier's check payable to his wife, and deposited the cashier's check in his wife's checking account which at that time had a balance of about $3,000. Before leaving on his trip, Glagola wrote checks on his wife's account totaling more than $6,000 to pay various personal debts and expenses.[1]

On September 8, after he had returned from his trip, Glagola was informed by Paine Webber that payment for the Ks' bonds was due. He again went to the Ks' home where he spoke with Mrs. K. Glagola told her that he needed a check for $58,549.70 made out to Paine Webber, and that, in return, he would give her a check for the same amount drawn on his wife's account. Mrs. K agreed to the exchange, and Glagola gave Mrs. K's check to the cashier at his firm.

When Mrs. K tried to negotiate the check given to her by Glagola, she discovered that there were insufficient funds in his wife's account to cover it. She then telephoned Glagola and demanded her money back. However, Glagola told her that part of it had already been spent. Mrs. K then reported what had happened to her husband who complained to Paine Webber. The firm's branch office manager questioned Glagola, and Glagola admitted that he had deposited the Ks' first check in his wife's account, and that he no longer had some of their money.

Paine Webber credited the Ks' account for the bonds. On demand, Glagola turned over to the firm the $36,000 in cash he still possessed, and gave the firm a promissory note secured by a lien on his home for the rest of the money he had misappropriated. He repaid the balance due Paine Webber on November 18. The firm suspended Glagola when his misconduct was discovered, and he was subsequently discharged.

III.

Glagola argues that, although his misconduct was "admittedly a serious violation of regulations," the sanction imposed by the Exchange is excessive. He stated, among other things, that during the period in question he was under "extreme emotional distress" due chiefly to the severe illness of his father, that his sixteen-year record in the securities business is otherwise unblemished, that witnesses testified to

[1]Glagola used blank checks which his wife had signed and given to him.

his good reputation, and that he made full restitution within a matter of weeks.[2]

We are unable to conclude that any reduction in sanction is warranted. Glagola's misconduct could hardly be more serious. In our opinion, the various factors he raises, which we have fully considered, afford no basis for leniency. There can be no justification for the deception he practiced on his customers or for his misappropriation of their funds, particularly in light of the trust they placed in him.

Glagola has demonstrated a callous disregard for the most basic tenets of "just and equitable principles of trade." Although we recognize the serious effect of the sanction which the Exchange imposed, we consider that a lesser remedy would be contrary to the public interest. The securities business depends very heavily on candor and fidelity to one's word. In light of Glagola's egregious misconduct, and the fact that the securities industry presents so many opportunities for abuse and overreaching, we think that the sanction assessed by the Exchange is necessary to protect public investors from further harm at Glagola's hands. Thus we cannot find that sanction excessive or oppressive.[3]

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[2]Glagola's further contention that the Exchange was required to make findings with respect to all of the mitigative factors he cites is without merit. Contrary to Glagola's claim, the lack of such findings did not impair our review of the evidence relating to those factors or of the sanction which the Exchange imposed. See *Harold C. Allan*, Securities Exchange Act Release No. 14763 (May 16, 1978), 14 SEC Docket 1097, 1100, *aff'd without opinion*, 607 F.2d 493 (C.A.D.C., 1979).

[3]We do not consider that the case of *Ripp* v. *S.E.C.*, No. 77-1756 (C.A. 9, February 5, 1979), cited by Glagola, calls for a different result. In that matter, Ripp appealed from our affirmance of disciplinary action taken against him by the National Association of Securities Dealers, Inc. ("NASD"). The NASD's Board of Governors had increased to a bar the 60-day suspension from association with any NASD member imposed by the NASD's District Committee. The Court concluded that, under the circumstances there presented, it would remand the matter to this Commission to consider whether the sanctions imposed by the District Committee "might be more appropriate and better serve the public interest." In the present case, the Exchange's board of directors affirmed the sanction imposed by the Exchange's hearing panel.

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS, POLLACK and FRIEDMAN); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16821/May 21, 1980

Admin. Proc. File No. 3-5735

In the Matter of the Application of

PETER PAUL GLAGOLA
512 South Fann Street
Anaheim, California

For Review of Disciplinary Action Taken by the New York Stock Exchange, Inc.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY NATIONAL SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the New York Stock Exchange, Inc. against Peter Paul Glagola be, and it hereby is, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16822/May 21, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($1 Par Value) of the LAFAYETTE RADIO ELECTRONICS CORPORATION from listing and registration thereon.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21576/May 16, 1980

In the Matter of

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana
(70-6448)

ORDER AUTHORIZING ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

Southwestern Electric Power Company, ("SWEPCO"), an electric utility subsidiary company of Central and South West Corporation, ("CSW"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder regarding the following proposed transaction.

SWEPCO proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50, 400,000 shares of its _____% Preferred Stock ("New Preferred Stock"), par value $100 per share, at not less than $100 per share nor more than $102.75 per share, with dividends to accrue thereon only from the date of issue. The annual dividend rate to be borne by the New Preferred Stock, the redemption prices thereof and the price to be paid to SWEPCO therefore will be determined through competitive bidding. It is proposed that the New Preferred Stock will enjoy protection against refunding for a five-year period through issuance of prior or parity securities at a lower cost of money to SWEPCO.

The New Preferred Stock will be entitled to a mandatory sinking fund sufficient to retire 12,000 shares on or prior to July 1 in each year beginning in 1986 at the sinking fund redemption price of $100 per share and unpaid accrued dividends. SWEPCO shall have a non-cumulative option to retire an additional 12,000 shares each year beginning in 1986 at the sinking fund redemption price.

The redemption of such additional shares through the sinking fund will not reduce the sinking fund requirement in any subsequent year. Shares of the New Preferred Stock redeemed otherwise than through sinking fund or purchased by SWEPCO may be applied to satisfy the sinking fund of one or more of the July 1 dates. Shares redeemed through or applied to the sinking fund shall become authorized but unissued shares of undesignated preferred stock but may not be reissued as shares of the New Preferred Stock.

The net proceeds to be derived by SWEPCO from the issue and sale of the New Preferred Stock, after deducting expenses of issue, will be used by SWEPCO to pay a portion of the outstanding short-term borrowings incurred to finance construction expenditures. SWEPCO will have approximately $70,000,000 of short-term borrowings outstanding at the date of issuance of the New Preferred Stock. No funds generated from the New Preferred Stock nor any of the borrowings retired thereby will be or have been utilized to pay the cost of facilities which would not be needed to provide service to customers of SWEPCO if it were not part of the CSW System, nor will any expenditures be made by SWEPCO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et. al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of SWEPCO if it were not part of the CSW System.

Estimated construction and fuel exploration and development expenditures of SWEPCO total $172,000,000 for 1980, $204,000,000 for 1981, and $281,000,000 for 1982, respectively.

The fees and expenses to be incurred in connection with proposed transaction are approximately $75,000. The legal fees and expenses of counsel for the successful bidders of the New Preferred Stock are estimated at not to exceed $19,000 and $3,000, respectively. Such fees and expenses are to be paid by the successful bidders. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21530), and no hearing has been requested of or ordered by the

Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21577/May 16, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

(70-6426)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN AND RELEASING JURISDICTION

The Southern Company ("Southern"), a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transactions.

By Order dated April 22, 1980 (HCAR No. 21531), the Commission authorized Southern to issue and sell from time to time through April 30, 1982 a maximum of 1,500,000 shares of its authorized but unissued common stock, par value $5 per share pursuant to the Employee Savings Plan for The Southern Company System. Jurisdiction was reserved with respect to the issuance and sale of up to 8,500,000 shares of Southern's common stock pursuant to Southern's Dividend Reinvestment and Stock Purchase Plan ("Dividend Plan") pending completion of the record. The record is now complete with respect to the issuance and sale of common stock pursuant to the Dividend Plan.

Southern proposes to issue and sell from time to time through April 30, 1982, up to 8,500,000 shares of its authorized but unissued common stock, par value $5 per share ("Additional Common Stock"), pursuant to the Dividend Plan. Such shares herein proposed to be issued and sold would be in addition to the balance of 1,958,731 shares at December 31, 1979, remaining under the authorization granted by the Commission by Order dated March 2, 1979 (HCAR No. 20941). Southern intends to apply the proceeds estimated not to exceed $106,250,000, from the sale for further equity investments in its operating subsidiaries as may be authorized by this Commission in separate filings (File No. 70-6414) and for other corporate purposes.

The Additional Common stock will be offered to all holders of Southern's common stock pursuant to the Dividend Plan, a voluntary plan whereby shareholders may elect to (1) have cash dividends on all of their shares of Southern common stock automatically reinvested in shares of such common stock at price equal to 95% of the average ("Market Price Average"), of the high and low sales prices of Southern's common stock, as published in The Wall Street Journal in its NYSE Composite Transactions, on the dividend payment date, or (2) reinvest less than all of their cash dividends as described above and, in addition, make optional cash payments (not less than $25 per payment nor more than a total of $3,000 per quarter) to invest in shares of Southern's common stock at a price equal to 100% of the Market Price Average, or (4) continue to receive cash dividends on all shares held and invest only optional cash payments.

Cash dividends on shares credited to a participant's account under the Dividend Plan will be reinvested in shares of Southern's common stock at a price equal to 95% of the Market Price Average. No shares will be sold under the Dividend Plan at less than the par value of such shares. The First National Bank of Atlanta currently administers the Dividend Plan and purchases the shares of Southern's common stock under the Dividend Plan as agent for the

participants. No service charge or commission will be paid by participant in connection with purchases under the Dividend Plan.

Participants will retain all voting rights relating to shares purchased under the Dividend Plan and credited to their accounts, and shares will be voted in accordance with the instructions of the participants to whose account they are credited. A participant will be able to withdraw from the Dividend Plan at any time upon written notice. Upon withdrawal, the participant will be issued without charge, a certificate for the number of shares credited to his account and will receive a cash payment for the value of any fractional share. Without withdrawing from the Dividend Plan, a participant will be entitled to demand and receive a certificate representing the full shares of common stock credited to his account. Southern reserves the right to suspend, modify (subject to Commission approval), or terminate the Dividend Plan at any time.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21478) and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as now amended, be permitted to become effective with respect to the proposed transactions:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as now amended, be, and it hereby is, permitted to become effective forthwith with respect to the proposed transaction, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction previously reserved in this proceeding be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21578/May 16, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
Pittsburgh, Pennsylvania

(70-6438)

ORDER AUTHORIZING HOLDING COMPANY TO ACT AS SURETY ON BOND OF PUBLIC-UTILITY SUBSIDIARY COMPANY

Consolidated Natural Gas Company (Consolidated"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transaction.

On January 2, 1980, Hope Natural Gas Company, a division of Consolidated Gas Supply Corporation ("Supply Corporation"), a wholly-owned subsidiary of Consolidated and a public utility operating within the State of West Virginia, filed revisions in its tariff calling for increased rates and charges amounting to approximately $10,475,340 per year for providing natural gas service to its customers in the State of West Virginia. Such increased rates were to have become effective for gas furnished on and after February 1, 1980; however, pursuant to the Public Service Law of West Virginia, the Public Service Commission of that state suspended the effectiveness of said rates (as revised) until May 31, 1980. Under the Public Service Law, the Public Service Commission has required Supply Corporation to file a bond in the amount of $10,500,000, with satisfactory surety, for the due and proper payment of any refunds. Consolidated proposes, without fee or other consideration, to act as surety on the bond of Supply Corporation to save the cost of securing an outside corporate surety.

The surety must be approved by the West Virginia Public Service Commission. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21524), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21579/May 16, 1980

In the Matter of

ALABAMA POWER COMPANY
600 North 18th Street
Birmingham, Alabama 35291

(70-6434)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN tnat Alabama Power Company ("Alabama"), a public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to $100,000,000 principal amount of its First Mortgage Bonds of a new series having a term of not less than five nor more than 30 years. Alabama will determine and give notice to prospective bidders of the amount and the term of the new bonds not less than 24 hours prior to the time of bidding. The interest rate of the bonds and the price, exclusive of accrued interest, to be paid to Alabama, which will be not less than 98% nor more than 101-3/4% of the principal amount thereof, will be determined by competitive bidding. It is stated that bidding requirements of Rule 50 should circumstances develop which, in the opinion of Alabama's management, make such exception in the best interest of Alabama and its investors and consumers.

The new bonds will be issued under the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto and as to be further supplemented by a Supplemental Indenture to be dated as of June 1, 1980. The supplemental indenture will include a prohibition, for a period of not more than five years, against refunding the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

Alabama intends to use the proceeds from the sale of the new bonds, along with other funds, principally in financing its construction costs, estimated for 1980 to be $459,165,000, and in paying outstanding short-term unsecured indebtedness.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $338,000, including legal fees of $38,000, accountants' fee of $12,000, and charges of the system service company, at cost, of $7,000. It is stated that the issuance and sale of the new bonds have been expressly authorized by the Alabama Public Service Commission and that no other state or

federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 2, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21580/May 16, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

(70-6459)

NOTICE OF PROPOSAL TO ISSUE AND SELL AUTHORIZED AND UNISSUED COMMON STOCK

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the Act, 6,000,000 shares of its authorized and unissued common stock par value $3.50 per share ("additional shares").

The net proceeds, estimated at approximately $87,000,000, to be derived by CSW from the sale of the additional shares (after deducting expenses of issue), will be used to retire a like amount of short-term borrowings and commercial paper by CSW (see File No. 70-6163) which were incurred to finance in part capital contributions aggregating $30,000,000 to Central Power and Light Company and $45,000,000 to Southwest Electric Power Company, each of which is a wholly owned subsidiary company of CSW. The capital contributions were, in each case, added to the respective subsidiary companies' common equity and will be used to repay short-term debt incurred in connection with 1980 construction expenditures.

CSW will issue and sell the additional shares whenever it feels market conditions are most advantageous. Based on current conditions, they will be issued and sold no later than August 31, 1980. No funds generated from the additional shares, any of the borrowings retired thereby nor any of the subsidiary companies' expenditures, will be or have been utilized to pay the cost of facilities which would not be needed to provide service to customers of the subsidiary companies if they were not part of the Central and South West System, nor will any expenditures be made for the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et. al.* (Admin. Proc. File No. 3-4951) would be needed to provide services to customers of the subsidiary companies if they were not part of the Central and South West System.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and

expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 9, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21581/May 19, 1980

In the Matter of

LOWELL GAS COMPANY
95 East Merrimack Street
Lowell, Massachusetts 01853

CAPE COD GAS COMPANY
P.O. Box 1360
Hyannis, Massachusetts 02601
(70-6170)

NOTICE OF POST-EFFECTIVE AMENDMENT RELATING TO SHORT-TERM FINANCING

NOTICE IS HEREBY GIVEN that Lowell Gas Company ("Lowell") and Cape Code Gas Company ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, has filed with this Commission a post-effective amendment to the joint declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the amended declaration for a complete statement of the proposed transaction.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) of the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Lowell and Cape Code each have revolving lines of credit pursuant to separate credit agreements (collectively, the "Credit Agreements") dated January 1, 1976, as amended, with Chase Manhattan Bank (N.A.), Union National Bank, Shawmut Bank of Boston, N.A., State Street Bank and Trust Company, and BayBank Middlesex, N.A. By order in this proceeding dated June 30, 1978 (HCAR No. 20185), Lowell and Cape Code were authorized to extend the term of the Credit Agreements to June 30, 1980, and to borrow up to $11,800,000 for Lowell and $7,000,000 for Cape Code.

The Credit Agreements were subsequently amended and now provide for borrowings up to the indicated amounts from the following banks:

Bank	*Lowell*	*Cape Cod*
The Chase Manhattan Bank (National Association)	$5,450,000	$2,112,000
Union National Bank	1,050,000	1,158,000
Shawmut Bank of Boston, N.A.	2,412,500	1,158,000
State Street Bank and Trust Company	2,312,500	744,000
BayBank Middlesex, N.A.	1,275,000	828,000
	$12,500,000	$6,000,000

Lowell and Cape Code have outstanding loans of $7,250,000 and $6,000,000, respectively, evidenced by notes maturing June 30, 1980.

Lowell and Cape Cod are seeking authorization to extend their respective Credit Agreements for one year. The extended Credit Agreements will terminate June 30, 1981.

Lowell and Cape Cod's cost of borrowings under the Credit Agreements is: (a) 1/2 of a percent per annum of the unborrowed funds plus (b) 3/4 percent above the Chase Manhattan Bank's prime rate from time to time. Lowell and Cape Cod, have informally agreed with the banks to either (1) maintain compensating balances of 10% of the banks' total commitment and additional compensating balances of 10% of the amount of any loans outstanding or (2) pay a fee equal to the prime rate plus 3/4 of a percent times the amount by which the average bank balances are less than 10% of the banks' total commitment plus 10% of the amount of any loans outstanding. If the full amount were borrowed from the banks and the required compensating balances were not maintained, the effective interest cost would be 17.1%, based on a prime commercial rate of 14.5%.

It is stated that no state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction. The fees and expenses incurred or to be incurred in connection with the proposed transaction will be filed by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21582/May 20, 1980

In the Matter of

GEORGIA POWER COMPANY
Atlanta, Georgia

(70-6350)

SUPPLEMENTAL ORDER AUTHORIZING SALE OF INTEREST IN ELECTRIC GENERATING FACILITY

Georgia Power Company ("Georgia"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder regarding the proposed transaction.

By an order dated April 28, 1980 in this matter (HCAR No. 21539) Georgia was authorized to sell a portion of its interest in an electric generating facility. That order incorrectly described the proposed transaction. The following description of the proposed transaction supersedes that contained in the order of April 28, 1980.

Georgia is currently the owner of an 83.5% undivided ownership interest in two 810 MW nominally rated coal-fired generating units currently under construction in Monroe County, Georgia to be known as the Robert W. Scherer Units Numbers One and Two (collectively, the "Units") and in certain

property and facilities to be used in common by, or in connection with, the Units and two other generating units currently planned to be constructed at the Plant Scherer Site ("Common Facilities"). Georgia owns such interest in the Units and the Common Facilities as a tenant in common with the Municipal Electric Authority of Georgia ("MEAG") and the City of Dalton, Georgia ("Dalton"), which own 15.1% and 1.4% undivided ownership interests, respectively, in the Units and the Common Facilities.

Georgia proposes to sell to Oglethorpe Power Corporation, an electric membership corporation organized and existing under the laws of the State of Georgia ("OPC"), a 60% undivided ownership interest in the Units and the Common Facilities, pursuant to a proposed Purchase and Ownership Participation Agreement among Georgia, OPC, MEAG and Dalton ("Ownership Agreement"). As a result of such sale, Georgia, OPC, MEAG and Dalton will own 23.5%, 60%, 15.1% and 1.4% undivided ownership interests, respectively, as tenants in common in the Units and the Common Facilities. Georgia will obtain a release of such undivided ownership interests in the Units and the Common Facilities to be sold to OPC from the lien of Georgia's First Mortgage Indenture.

At the closing, in consideration for the sale of said property, OPC is to pay to Georgia an amount equal to 60% of the cost incurred in the construction of the Units and the Common Facilities prior to the closing plus an amount in respect of Georgia's cost of long-term borrowings incurred to finance such construction and Georgia's cost of short-term borrowings incurred after February 1, 1980 to finance such construction. Assuming the closing of such sale were to take place on April 30, 1980 Georgia will receive approximately $342,000,000 from OPC. Georgia expects to apply the proceeds of such sales towards the cost of its construction program and the repayment of short-term borrowings incurred to finance such construction program.

After the closing, Georgia is to complete the construction of the Units and the Common Facilities on its own behalf and as agent for OPC and the other co-owners, and Georgia, OPC, MEAG and Dalton are to make monthly payments in advance into a separate construction account in respect of 23.5%, 60%, 15.1% and 1.4%, respectively, of all additional costs to be incurred in the construction and completion of the Units and the Common Facilities. The Ownership Agreement will provide for interest to be paid on any overdue payments, as well as certain other remedies in the event of a prolonged default by any of the co-owners in the payment of amounts due from it. The Ownership Agreement will supersede similar separate agreements Georgia currently has with MEAG and Dalton concerning the Units and Common Facilities.

Georgia will enter into a separate Operating Agreement with OPC, MEAG and Dalton ("Operating Agreement") providing for the sole operation and maintenance of the Units and the Common Facilities by Georgia and for payment by Georgia, OPC, MEAG and Dalton of that portion of all costs of operation and maintenance of the Units and the Common Facilities equal to their respective entitlements to the energy from each of the Units. The Operating Agreement will terminate with respect to each of the Units on the fortieth anniversary of the commencement of commercial operation of such Unit. The Operating Agreement will supersede similar separate agreements Georgia currently has with MEAG and Dalton concerning the operation of the Units and the Common Facilities.

The Operating Agreement will require Georgia to purchase from OPC declining percentages (beginning with 100% and declining to 10%) of OPC's capacity and energy from each of the Units during the first ten years of its commercial operation, at a cost which is a function of OPC's and Georgia's carrying costs and the operating costs attributable to each Unit. Such purchases from OPC must be made regardless of the availability of capacity and energy from the Units and Georgia's requirements for such capacity and energy.

The fees, commissions and expenses to be incurred by Georgia in connection with the proposed transaction are estimated at $123,500, including legal fees of $120,000. Georgia will file with the Department of Justice and the Federal Trade Commission a pre-merger notification in connection with the proposed sale. It is stated that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21254), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable

standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21583/May 20, 1980

In the Matter of

THE HARTFORD ELECTRIC LIGHT COMPANY
Selden Street
Berlin, Connecticut 06037

(70-6462)

NOTICE OF PROPOSED ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Hartford Electric Light Company ("HELCO"), an electric and gas subsidiary of Northeast Utilities, a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

HELCO proposes to issue and sell from the best price obtainable, subject to the competitive bidding requirements of Rule 50, 500,000 shares of its Preferred Stock, 1980 Series, with a par value of $50 per share. The dividend rate of the Preferred Stock, 1980 Series (which shall be a multiple of 0.08%) and the price to be paid to HELCO (which shall not be less than $50 nor more than $51.375 per share) will be determined by the competitive bidding. HELCO will publicly invite written proposals for the purchase of the Preferred Stock, 1980 Series, at least six days prior to entering into any contract or agreement for the sale of such stock.

The special terms of the Preferred Stock, 1980 Series, will be established by a resolution of the company's Board of Directors amending HELCO's Certificate of Incorporation to reflect the provisions of such preferred stock. The terms shall include a provision that none of the Preferred Stock, 1980 Series, shall be redeemed prior to July 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such preferred stock through the use, directly or indirectly, of funds borrowed by the company or of the proceeds of the issue by the company of shares of any stock ranking prior to or on a parity with the Preferred Stock, 1980 Series, as to dividends or assets, if such borrowed funds or such shares have an effective interest cost or effective dividend cost to the company, as the case may be, of less than the effective dividend cost to the company of the Preferred Stock, 1980 Series. The Preferred Stock, 1980 Series, will also be entitled to the benefit of a cumulative sinking fund requiring the company, to the extent any funds of the company are legally available therefor, to redeem or purchase on July 1 in each year commencing July 1, 1986, 20,000 shares of such preferred stock. The company has the noncumulative option to purchase or redeem for said sinking fund up to an additional 20,000 shares of the preferred stock in any such year. The Preferred Stock, 1980 Series, will be redeemable for the sinking fund at $50 per share, plus accrued dividends to the date of redemption.

The net proceeds from the sale of the Preferred Stock, 1980 Series, will be used to repay a portion of HELCO's short-term borrowings, estimated to total $44,000,000 at the time of such sale. Such short-term borrowings were applied to finance the company's construction program. As of March 31, 1980, HELCO's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, were expected to total about $152,200,000 ($66,300,000 in 1980 and $85,900,000 in 1981) of which $16,000,000 had been expended as of that date.

The fees and expenses paid or to be incurred in connection with the proposed transaction are to be filed by amendment. It is stated that the Connecticut Division of Public Utility Control has jurisdiction over the issue of the new preferred stock by HELCO. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 16, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21584/May 21, 1980

In the Matter of

SYSTEM FUELS, INC.
New Orleans, Louisiana

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

NEW ORLEANS PUBLIC SERVICE INC.
New Orleans, Louisiana

(70-6428)

ORDER AUTHORIZING FINANCING RELATED TO THE PURCHASE OF FUEL BY A NONUTILITY SUBSIDIARY FOR USE BY OPERATING COMPANIES

Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (collectively, the "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. ("Middle South"), a registered holding company, together with System Fuels, Inc. ("SFI"), a jointly owned nonutility subsidiary company of the Operating Companies, have filed a declaration and amendments thereto in this proceeding pursuant to Sections 6(a), 7, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) promulgated thereunder as applicable to the following proposed transactions.

The Operating Companies and Arkansas-Missouri Power Company ("Ark-Mo") obtain their fuel oil requirements from SFI pursuant to the terms of the Liquid Fuel Purchase Contract, as amended, among them. Pursuant to Commission authorization in File Nos. 70-5259, 70-5415 and 70-6055, SFI has financed its acquisition of fuel oil for resale to the Operating Companies and Ark-Mo by the sale of up to $75,000,000 of its notes to Hibernia National Bank in New Orleans ("Hibernia") and up to $40,000,000 of its notes to Citibank, N.A. ("Citibank") under amended loan agreements, and through the execution and delivery by SFI and the acceptance by Citibank of SFI's drafts in amounts up to $50,000,000 pursuant to an acceptance facility line of credit agreement, as amended, with Citibank.

To assure the availability of an adequate supply of fuel oil through May 31, 1981 to the Operating Companies and Ark-Mo, SFI presently estimates that it will be necessary to maintain oil inventory of approximately 4.9 million bbls., valued at as much as $133 million. In order to consolidate its financing of its fuel oil inventory, to lower the costs of such

financing and to meet its commitment (set forth in File No. 70-6097) to endeavor to obtain funds for its corporate purposes from external sources under advantageous arrangements in lieu of borrowing from the Operating Companies, SFI proposes to enter into a loan agreement ("Loan Agreement") with a nonaffiliated company ("Finance Company") to be created for that purpose.

Finance Company will, upon request, make loans to SFI in amounts not to exceed $100,000,000 at any one time outstanding out of the proceeds of commercial paper notes ("Notes") issued and sold by Finance Company and revolving credit loans ("Bank Borrowings") obtained by Finance Company under a credit agreement ("Credit Agreement") with Bank of America National Trust and Savings Association ("Bank"). The aggregate amount of Finance Company's Notes and Bank Borrowings at any time outstanding may not exceed $100,000,000. All loans to SFI will be from the proceeds of Notes ("A Loans"), unless Finance Company is advised by its commercial paper dealer, The First Boston Corporation ("Dealer"), to seek a financing alternative to the sale of Notes, or Notes may no longer be issued under the Credit Agreement for regulatory reasons. Upon the occurrence of these events, Finance Company will make loans from the proceeds of Bank Borrowings ("B Loans") to SFI. If no funds are available to pay a maturing note and as a result a drawing under the Letter of Credit described below is made and is not reimbursed on the date when made, the A Loan with respect to such note automatically becomes a B Loan.

A Loans will be evidenced by a Master A Note and will bear the same discount and maturities as the Notes from which they are derived. Finance Company will issue its Notes to Dealer and the Notes will be sold at a discount not in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturity. Notes will be unsecured with varying maturities not to exceed 270 days. The Notes will not be prepayable prior to maturity and will be payable at maturity at the Office of Irving Trust Company ("Depositary"), as issuing and paying agent under a Depository Agreement. Bank will issue an irrevocable Letter of Credit to Depositary pursuant to the Credit Agreement as a standby source of funds for the repayment of the Notes in the event they are not repaid by Finance Company at maturity. It is anticipated that the Notes will be held by the buyers to maturity. Dealer may, if desired by a buyer, repurchase the Notes for resale to others.

B Loans will be evidenced by a Master B Note and will bear the same interest rate and have the same maturity as the Bank Borrowings from which they are derived. Bank Borrowings will bear interest from the date thereof on the unpaid principal amount thereof at an interest rate per annum equal to 3/8% plus 107% of the Base Rate. The Base Rate is the greater of (a) Bank's prime rate determined on a daily basis, for 90-day commercial loans to its largest most credit-worthy commercial borrowers or (b) the latest 3-week moving average interest rate payable on 90-day secondary certificates of deposit as published weekly by the Board of Governors of the Federal Reserve System plus actual costs of reserves to Bank. Bank borrowings will be due and payable on May 31, 1981 or one year from the date of closing, whichever is earlier ("Credit Expiration Date"). The Credit Expiration Date may be extended for one-year periods. Bank borrowings not paid when due or arising after the Credit Expiration Date will bear interest at 3/8% plus 120% of the Base Rate.

The effective cost to SFI based upon the interest rates for commercial paper of comparable quality and like maturity together with all fees to be paid by SFI to Finance Company to secure A Loans and B Loans would be approximately 18.576%. The composite effective cost of borrowing pursuant to the two arrangements with Citibank is approximately 20.305%.

Upon consummation of the arrangements with Finance Company, SFI may terminate either or both of its arrangements with Citibank. Upon five days written notice, Finance Company may terminate the Credit Agreement and SFI may terminate the Loan Agreement. SFI may prepay all loans in whole or in part without penalty or premium.

SFI will maintain an account ("SFI Account") with Irving Trust Company, among other things, for receipt of loans from Finance Company. Funds in the SFI Account may be used (1) to retire a portion of SFI's indebtedness to Hibernia and all or a portion of its indebtedness to Citibank, (2) to finance acquisition and storage of fuel oil, (3) to pay maturing debt and other obligations under the Loan Agreement, and (4) to make temporary investments pending use of funds for aforesaid purposes.

Pursuant to the terms of the Loan Agreement and as security for the performance by SFI of its obligations to Finance Company thereunder, SFI will enter into a Security Agreement with Finance Company

("Security Agreement") whereby it will grant Finance Company a security interest in SFI's fuel oil inventory in storage at specified locations in the States of Arkansas and Mississippi, together with the proceeds thereof, and in SFI's accounts receivable arising out of the sale of such fuel oil inventory and fuel oil inventory in storage at specified locations in the State of Louisiana. SFI will enter into an Act of Collateral Chattel Mortgage ("Chattel Mortgage") and execute and deliver in pledge to Finance Company a demand Louisiana Collateral Mortgage Note ("Louisiana Note") in the principal amount of $125,000,000 pursuant to a Pledge Agreement ("Pledge Agreement") in order to grant Finance Company a security interest in SFI's fuel oil inventory in storage at specified locations in the State of Louisiana. SFI will also enter into a Statement of Assignment of Accounts Receivable ("Assignment of Accounts Receivable") in furtherance of the grant of the security interest in the accounts receivable. SFI will be required to prepay A Loans or B Loans if the value of the fuel oil inventory and accounts receivable arising out of sales of the fuel oil inventory under the Purchase Contract fails to exceed the aggregate outstanding principal amounts of A Loans and B Loans. It is also contemplated that Finance Company will be granted a security interest in all funds on deposit in the SFI Account and that payments under the Purchase Contract among Operating Companies, Ark-Mo and SFI will be paid into the SFI Account.

To secure the obligations of Finance Company to Bank under the Credit Agreement and its performance of and compliance with the terms of the Credit Agreement, Finance Company will enter into an Assignment and Pledge Agreement ("Assignment Agreement") with Bank whereby Finance Company will irrevocably assign, transfer and set over to Bank (a) all rights in accounts in which Finance Company has an interest under the Loan Agreement, including the SFI Account and all other amounts which Finance Company may be entitled to receive pursuant to the Loan Agreement; (b) all amounts payable by SFI to Finance Company pursuant to the Security Agreement; and (c) all rights, claims, powers, privileges and remedies of Finance Company consequent on any failure on the part of SFI to perform or comply with any term of the Loan Agreement, the A Note or B Note and the Security Agreement. Finance Company will also pledge and grant a security interest to the Bank in the A Note, the B Note and the Louisiana Note.

SFI will execute an Acknowledgement of Assignment ("Acknowledgement of Assignment") to Bank and Finance Company which provides that SFI will pay, or cause to be paid, all amounts assigned pursuant to the Assignment Agreement and all amounts payable on the A Note and the B Note directly to the SFI Account so long as no event of default under the Credit Agreement has occurred and is continuing. If such an event of default has occurred and is continuing, all such amounts and amounts payable on the Louisiana Note will be paid, or caused to be paid, by SFI, into a General Account maintained by Finance Company with Depositary. Under the Acknowledgement of Assignment, SFI will agree to indemnify Bank under certain circumstances.

SFI will enter into an Assignment Agreement with Finance Company ("Finance Company Assignment") which provides for the irrevocable assignment by Finance Company to SFI of all rights, claims, powers, privileges and remedies of Finance Company under the Credit Agreement, consequent on any failure by Bank to perform or comply with any term of the Credit Agreement.

As an inducement to Finance Company to enter into the Loan Agreement with SFI, each of the Operating Companies proposes to join with SFI as a party to the Loan Agreement and to severally covenant and agree for the benefit of Finance Company and Bank that, (a) the aggregate amounts of the Operating Companies' investments, as defined in the Loan Agreement ("Investments"), in SFI will at all times during the term of the Loan Agreement be equal to at least 35% of the sum of investments and other indebtedness for borrowed money of SFI maturing after one year, and (b) it will not (i) create, incur, assume or suffer to exist any indebtedness, as defined in the Loan Agreement ("Indebtedness"), of SFI to such Operating Company which, by its terms, matures or is required to be prepaid or repaid, in whole or in part, on or before 75 days after the Loan Agreement Credit Expiration Date, (ii) accelerate or permit the acceleration of any Indebtedness of SFI to such Operating Company during the term of the Loan Agreement and (iii) during the term of the Loan Agreement request or permit the prepayment of any indebtedness of SFI to such Operating Company if an event of default under the Loan Agreement, or other event which with lapse of time or notice or both would become such an event of default, has occurred and is continuing, or if the prepayment of such Indebtedness would result in such an event of default or other event. SFI may at any time prepay

any Indebtedness to any Operating Company, provided no such event of default or other event has occurred and is then continuing, and provided further that the prepayment of such Indebtedness would not thereby create such an event of default or other event. Each of the Operating Companies will also severally covenant and agree (in proportion to its percentage ownership of SFI common stock on the date of the Loan Agreement) that it will take any and all action necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations under the Loan Agreement, the A Note, the B Note, the Depositary Agreement, the Security Agreement and the Acknowledgement of Assignment.

Concurrently with the execution and delivery of the Loan Agreement and the Credit Agreement, the parties to the transaction including SFI, the Operating Companies, Ark-Mo, Bank, Depositary and Dealer, will enter into a Bankruptcy No Petition Agreement, in which the parties will agree that none of them will institute any Federal or State bankruptcy, reorganization, liquidation or similar proceeding against Finance Company or join in or be a party to any such proceeding for a specified period of time after the date on which all Notes have been paid in full.

The companies request exemption from the competitive bidding requirements of Rule 50(b) pursuant to paragraph (a)(5) thereof with respect to the execution and delivery by SFI of its notes. The companies propose to file the requisite certificates of notification under Rule 24 covering the proposed transactions on a quarterly basis.

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $65,000, including charges for services, at cost, of Middle South Services, Inc. estimated at $13,000 and legal fees incurred by SFI estimated not to exceed $50,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. Arkansas Power and Light Company has filed pertinent information relating to its participation with the Arkansas Public Service Commission.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21540), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21585/May 21, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

(70-6440)

ORDER AUTHORIZING THE SUBMISSION OF A PROPOSAL TO PREFERRED SHAREHOLDERS RELATING TO ISSUANCE OR ASSUMPTION OF UNSECURED DEBT FOR A FIVE YEAR PERIOD IN EXCESS OF PRESENT CHARTER LIMITATIONS

NOTICE IS HEREBY GIVEN that National Fuel Gas Company ("National"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder regarding the following proposed transactions.

National proposes to submit to the holders of its preferred stock at a special meeting of such holders to be held May 29, 1980, a proposal to authorize

National and its subsidiaries, for a five year period, to issue or assume unsecured debt having maturities of less than ten years in excess of the present limitation thereon contained in National's Restated Certificate of Incorporation ("Certificate").

The pertinent restrictions in National's Certificate provide that, except with the consent of the holders of a majority of the preferred stock then outstanding, National will not issue or assume, nor permit any subsidiary to issue or assume, any unsecured debt, if, after giving effect to such issue or assumption, (a) unsecured debt of National and its subsidiaries would exceed 20% of the aggregate of all existing secured debt (including debentures) and the capital stock, premiums thereon, and surplus of National and its subsidiaries consolidated or (b) unsecured debt of National and its subsidiaries having maturities of less than ten years would exceed 10% of such amount. National proposes to request authority from the holders of its preferred stock to remove the 10% limitation for a five year period. National would remain subject to the 20% limitation.

The continued application of the 10% limitation during the next few years may inhibit the continued orderly financing of the Company's construction and exploration and development programs. Expenditures for these programs for the years 1978 and 1979 amounted to $46,630,000 and $51,400,000, respectively. The 1980 programs contemplate expenditures of approximately $93,000,000. It is expected that the level of expenditures in subsequent years will also be in excess of the 1979 level. The Company expects to raise most of the funds required to finance its construction and exploration and development programs through the sale of additional debentures and preferred stock, with the balance being provided from internal sources. Interim financing and working capital will be provided through short-term borrowings.

The principal effect of the 10% limitation on National's financing program is on the timing and nature of long-term financing. With the limitation in effect National would normally be forced to refund its short-term borrowings with additional debentures or preferred stock each time that the amount of these borrowings approaches 10% of the Company's capitalization. Adoption of the proposal would eliminate the 10% limitation on short-term borrowings for a five year period.

Adoption of the proposal requires the affirmative vote of a majority of the total number of outstanding shares of preferred stock voting as a class.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $27,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21515), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11173/May 19, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

THE DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, New York 10016

AND

DREYFUS LIQUID ASSETS, INC.
DREYFUS A BONDS PLUS, INC.
767 Fifth Avenue
New York, New York 10022

(812-4532)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 26(a)(2)(C) AND 27(c)(2) OF THE ACT

Beneficial National Life Insurance Company ("Beneficial"), a stock life insurance company organized under the laws of the State of New York, the Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial's registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, Dreyfus Liquid Assets, Inc., and Dreyfus A Bonds Plus Inc., diversified, open-end management companies registered under the Act (hereinafter Beneficial, the Separate Account and the Funds are collectively referred to as "Applicants") filed an application on September 6, 1979, and amendments thereto on November 13, November 26, and December 7, 1979, and March 3 and March 21, 1980 pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act for an order of exemption from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the Separate Account indirectly to bear distribution expenses through potential profits derived from a mortality risk asset charge and to permit the custodian of the trust assets to make certain payments to the insurance company.

On March 25, 1980 a notice was issued (Investment Company Act Release No. 11101) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offer be, and hereby is, approved, and pursuant to Section 6(c) of the Act, that the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act be, and hereby are, granted, effective forthwith.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11174/May 19, 1980

In the Matter of

CONTRARION OPTION FUND, INC.
12955 Biscayne Blvd. #406
North Miami, Florida 33181

(811-2883)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Contrarion Option Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 31, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant is incorporated under the laws of the State of Maryland. It registered under the Act on November 30, 1978, and on the same date it filed a registration statement under the Securities Act of

1933 ("1933 Act") covering 50,000 shares of common stock. Such registration statement under the 1933 Act has not become effective nor has any public offering commenced. Thus, Applicant has no assets, outstanding securities or shareholders.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 13, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11175/May 19, 1980

In the Matter of

ENERGY FUND INCORPORATED
GUARDIAN MUTUAL FUND, INC.
THE PARTNERS FUND, INC.

and

NEUBERGER & BERMAN
522 Fifth Avenue
New York, New York 10036

(812-4154)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 17(b) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER FOR AN ORDER PERMITTING JOINT TRANSACTIONS AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER GRANTING EXEMPTION FROM SECTION 18(f)(1) OF THE ACT

NOTICE IS HEREBY GIVEN that Energy Fund Incorporated ("Energy Fund"), Guardian Mutual Fund, Inc. ("Guardian Fund"), and The Partners Fund, Inc. ("Partners Fund") (collectively "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Neuberger and Berman ("N&B"), which serves as sub-adviser and principal broker for each of the Funds (the Funds and N&B are hereinafter referred to collectively as "Applicants"), filed an application on July 11, 1977, and amendments thereto on December 22, 1978, June 27, 1979, and November 21, 1979, for an order pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act proposed portfolio securities loans by the Funds to N&B, for an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the Funds and N&B to enter into a joint arrangement with respect to certain portfolio securities loans, and for an order pursuant to Section 6(c) of the Act, exempting the Funds' portfolio securities loans from the provisions of Section 18(f) of the Act to the extent that such loans might be deemed to result in the creation of a "senior security." All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that N&B is a broker-dealer partnership registered under the Securities

Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc., as well as a member firm of the New York Stock Exchange and other principal exchanges. Applicants further state that N&B and its partners directly or indirectly own all of the stock of Neuberger and Berman Management Incorporated ("Management"), the investment adviser to each of the Funds.

The application states that on January 18, 1977, January 25, 1977 and November 1, 1977, respectively, the stockholders of Energy Fund, Guardian Fund and Partners Fund approved the making of portfolio securities loans by the Funds under the following conditions: (1) at the time of the loan, the Fund will receive from the borrower collateral, consisting of cash or securities issued or guaranteed by the United States Government or its agencies, or any combination thereof, at least equal to 100% of the market value of the securities loaned; (2) the borrower must agree to add to the collateral to cover increases in the market value of loaned securities; (3) the borrower must agree (a) that the Fund is to receive all dividends, interest or other distributions on loaned securities and (b) to pay the Fund a reasonable return on such loan either in the form of a loan fee or premium which gives proper weight to prevailing interest rates or from the retention by the Fund of part or all of the earnings and profits realized by the Fund from the investment of the cash collateral; (4) the Fund will not be required to pay any fees in connection with a loan, except (a) reasonable fees to a custodian, and (b) fees to a loan broker (other than N&B) provided: (i) the broker has disclosed to the Fund that it is possible to loan portfolio securities without incurring such fees, (ii) the Fund's Board of Directors, or either a committee thereof or an investment officer of the Fund, acting within the general guidelines established by the Fund's Board of Directors, has determined that such fee is reasonable and is based solely on the services rendered by such loan broker and (iii) if under the terms of a specific loan transaction there is to be a Collateral Fee (discussed below), such fee will be determined by a formula described below for transactions in which N&B is involved, or the Fund's Board of Directors, or either a committee thereof or an investment officer of the Fund, acting within general guidelines established by the Fund's Board of Directors, shall separately consider (before making such a payment to comply with the terms governing the transaction) the reasonableness of any such payment and the reasonableness of the return to the Fund after giving effect to such a payment; (5) in the event the management of a Fund has knowledge that a material event will occur affecting an investment on loan and in respect of which the holder of such investment will be entitled to vote or consent, the Fund will call the loan in time to vote or consent or will otherwise obtain rights to vote or consent; (6) a Fund will not make a portfolio securities loan when, immediately thereafter and as a result of the loan, portfolio securities with a market value of 10% or more of the Fund's total net assets would be subject to such loans; and (7) the Fund will make appropriate disclosure regarding portfolio securities loans in any prospectus it may be required to provide under the Securities Act of 1933, and effect such loan only in accordance with the policies set forth in the proxy statement utilized in connection with the annual meeting of shareholders, unless otherwise authorized by vote of the shareholders.

Applicants represent that in making such portfolio securities loans, the Funds seek to realize additional income by lending a portion of the securities in their portfolios to brokerage firms and financial institutions which may wish to borrow securities to complete transactions for which they have contracted. According to the application, brokerage firms and financial institutions, which from time to time may wish to borrow securities, will normally prefer to borrow securities from other brokerage firms and, therefore, the supply of securities available from institutions generally exceeds the borrowing demand from brokerage firms. The application states that institutions desiring to make portfolio securities loans generally apprise those brokerage firms to which they are willing to make such loans of the securities in their portfolio available for loan and the amount which they are willing to pay a borrower of securities ("Collateral Fees") out of the interest that the institution expects to earn on the cash collateral put up by the borrower for the portfolio securities loan. Applicants state that, as a general rule, it is not possible for institutions to obtain competitive bids from brokerage firms as to the Collateral Fees for their borrowings. Therefore, loans by an institution will normally be on the terms posted by the institution which attempts to set a posted rate which will maximize its income from portfolio securities loans.

The application states that a brokerage firm that wishes to borrow securities will often use the services of another brokerage firm which acts as a

finder rather than contact the lender directly, and that the finder may sometimes assume a principal function, borrowing from a lending institution and relending to the borrowing brokerage firm. According to the application, (i) if the finder acts as agent, it will receive compensation from the borrowing broker out of the Collateral Fee received by the borrowing broker, and (ii) if the finder acts as principal in performing its function as a finder, it will receive a markup by paying the borrowing broker a lower Collateral Fee than it receives from the lending institution. Applicants state that whether the finder acts as a principal or as an agent, the net interest income retained by the lender would be unaffected.

Sections 17(a), and 17(d); Rule 17d-1

Section 17(a) of the Act provides, in pertinent part, that it shall be unalwful for any affiliated person of a registered investment company or any affiliated person of such person to borrow money or other property from such registered company, with certain exceptions, not relevant here. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 2(a)(3) of the Act provides, in part, that an affiliated person of another person means, if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to effect any transaction in which such investment company is a joint participant, unless an application respecting such joint transaction has been filed and granted by the Commission. Rule 17d-1 provides, in part, that in passing upon such applications, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants state that because of the relationships between the Funds and N&B, N&B is an affiliated person of each of the Funds and that Applicants therefore have requested an order pursuant to Section 17(b) of the Act exempting the proposed portfolio securities loans to N&B from the provisions of Section 17(a) of the Act. Applicants further state that where N&B acts as finder in connection with a portfolio securities loan by a Fund, it might be considered to be a joint and several participant with the Fund and that such transaction may be prohibited by Section 17(d) of the Act.

Applicants submit that the terms of the proposed portfolio securities loans are consistent with the provisions of Sections 17(b) and 17(d) of the Act and Rule 17d-1. According to the application, the Funds believe they will be disadvantaged in maximizing the potential of their portfolio securities loans if they are not permitted to take advantage of opportunities to lend their portfolio securities to N&B and in loans arranged by N&B as finder. The application states that it is the belief of N&B that among New York Stock Exchange firms, which constitute the principal borrowers of securities, it is the largest such borrower. The application further states that the Funds have noted the competition among an increasing number of institutions to lend their portfolio securities to the relatively limited number of brokerage firms which are substantial borrowers of securities and believe that their relatively small size and concentration in securities which are widely held and easily borrowed may place them at a disadvantage in attempting to establish lending relationships with other major borrowers of securities. Applicants state that the Funds have advised a group of large New York Stock Exchange firms which meet the criteria established by the Funds' Boards of Directors of their willingness to make portfolio securities loans, but that this has resulted in almost no loans actually being made. Applicants further state that N&B, on the other hand, has indicated its willingness to give the Funds "most favored nation" treatment as described below.

Applicants state the Funds' Boards of Directors have considered the possibility of employing one or more persons to pursue increasing the Funds' portfolio securities loan business but that the Boards have decided, as a business judgment, that such action would not be desirable. Applicants also state that the

Funds' Boards of Directors have deemed it unreasonable that N&B should regularly borrow securities from the Funds without any Collateral Fee or act as a finder without any compensation and thereby forego the compensation it could obtain by doing business with other parties. According to the application, the Boards of Directors have concluded that the plan proposed would materially benefit the Funds, that the participation of the Funds in portfolio securities loans with N&B is fair and reasonable and will not involve overreaching on the part of any person, that the consideration which would be received by N&B would represent fair compensation for the services provided, and that such compensation when viewed together with other compensation paid by the Funds to Management and N&B would not result in an unreasonable level of compensation.

The application states that the Funds believe that the ability to engage in portfolio securities loans with N&B would operate to the benefit of the Funds, and therefore the Boards of Directors of the Funds have approved a plan which would permit N&B to borrow portfolio securities from the Funds and act as a finder in arranging portfolio securities loans for the Funds. According to the application the provisions of the proposed plan are as follows:

(1) Management of each of the Funds will continue to maintain a group of brokerage firms other than N&B to which that Fund is willing to make portfolio securities loans, using criteria approved by the Fund's Board of Directors. The continued eligibility of N&B as a borrower would be subject to its continuing to meet such criteria. Firms to which the Funds are willing to make portfolio securities loans will be provided with information on the Funds' portfolio securities available for loan and the Collateral Fees which the Funds are willing to pay such firms (hereinafter referred to as "Posted Rates").

(2) All brokerage firms to which portfolio securities loans are made, including N&B, will be required to execute a loan agreement.

(3) Each day the Funds will establish their Posted Rates in the following manner: at the beginning of each day, N&B will advise the Funds of names of three registered investment companies (other than the Funds) which as of the close of business the preceding day had the largest market value of securities on loan to N&B as well as the Collateral Fees currently being paid by such investment companies on securities loans to N&B. The Funds' Posted Rate for such day would be fixed by averaging such three Collateral Fee rates and rounding to the nearest 1/8th percent. N&B represents that in determining the registered investment companies from which it will borrow securities, the Collateral Fee is only one factor considered and that the Collateral Fees charged on outstanding loans are revised when appropriate to reflect changes in interest rates. The application states that such investment companies will not be selected with a view to influencing the Funds' Posted Rates, and that the formula or method for setting the Posted Rate may be changed to produce a lower Posted Rate, but that under no circumstances will the Funds pay N&B a Collateral Fee greater than their Posted Rate.

(4) When N&B desires to borrow a security which a Fund has indicated a willingness to lend, N&B will offer to borrow such security from the Fund at the Fund's Posted Rate before attempting to borrow the security from any other institution or firm unless such other institution or firm has indicated a willingness to and will in fact lend the security on terms which provide for the payment of a Collateral Fee which is 1/8 of 1 percent or more higher than the Posted Rate of the Fund.

(5) In situations where N&B borrows securities from a Fund in order to relend them to others, or acts as a finder in connection with a securities loan by a Fund, the compensation to N&B will not exceed that which is customary for performing such functions and any excess over the customary compensation will be turned over to the Fund (such compensation presently is at the rate of 1 percent, expressed as a percentage on an annual basis). In addition: (a) N&B will provide the Funds with relevant information as to the prevailing customary rate; (b) if at any time the customary rate declines below 1 percent, N&B would apply such lower rate to transactions with the Funds; and (c) N&B would not increase the applicable rate without the prior approval and concurrence of a majority of the disinterested directors of the Funds.

(6) If, during any month, a Fund is involved in a securities loan transaction with or through N&B where, because of the shortness of the period during which the loan is outstanding, or similar circumstances, the Fund's expenses exceed its income from the transaction, N&B would reimburse the Fund for such loss.

(7) In all securities loan transactions involving N&B, the collateral posted by N&B will be in the form of cash.

(8) Each of the Funds would maintain a committee of disinterested directors which would meet on approximately a quarterly basis to review information relating to securities loans by their Fund in which N&B has been involved to determine whether there has been compliance by N&B with the above terms and conditions and whether such terms continue to be fair and equitable. The Funds will also have the right to have their auditors examine the records of N&B relating to its stock loan transactions.

Section 18(f)

Section 18(f)(1) of the Act, generally, makes it unlawful for any registered open-end investment company to issue any class of senior security or to sell any senior security of which it is the issuer, except under certain circumstances not here relevant. Section 18(g) of the Act, in pertinent part, defines the term "senior security" to include any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and states that "senior security representing indebtedness" means any senior security other than stock.

According to the application, the obligation of the Funds to return collateral deposited with them in connection with portfolio securities loans may be deemed to constitute a senior security. Therefore, Applicants request an order of exemption from Section 18(f)(1) of the Act, pursuant to Section 6(c) of the Act, to permit the Funds to make portfolio securities loans in accordance with the terms and conditions set forth in the application. Applicants submit that, because a Fund may not make any portfolio securities loan if immediately thereafter and as a result of such loan portfolio securities with a market value of 10% or more of its total net assets would be subject to such loans, there is no danger of excessive leveraging of investments as a result of portfolio securities loans.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any of the provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that: (i) the requested exemption from Section 18(f) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (ii) the terms and conditions of the portfolio securities loans transactions between the Funds and N&B are reasonable and fair and do not involve overreaching on the part of any person concerned; and (iii) participation by the Funds in portfolio securities loans to N&B will enable the Funds to maximize the potential of their portfolio securities loan activity and thereby work to the benefit of the Funds' stockholders.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 13, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11176/May 19, 1980

In the Matter of

SIGMA GOVERNMENT SECURITIES FUND, INC.
Greenville Center
3801 Kennett Pike
Wilmington, DE 19807

(812-4666)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Sigma Government Securities Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on April 21, 1980 for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation incorporated under the laws of the State of Delaware on April 9, 1980. Applicant states that its investment objective is to seek as high a level of current income as is consistent with the principle of preservation of capital and maintenance of liquidity. Applicant intends to limit its investments to short-term United States Government securities, including United States Treasury bills, notes and other obligations issued, or guaranteed, by the United States Government, its agencies or instrumentalities, or repurchase agreements pertaining to such securities. Applicant will not invest in any security the maturity of which is more than one year from the date of its acquisition by Applicant.

In calculating its total net assets to determine the offering price of its shares each day, Applicant indicates that all securities for which market quotations are readily available will be valued at the most recent bid price or yield equivalent as obtained from one or more market makers for such securities, except that any such securities maturing within sixty days from the date of acquisition, or which subsequently are within sixty days of maturity may be valued at cost, plus or minus any amortized discount or premium. All other securities and assets will be valued at fair value as determined in good faith in accordance with consistently applied procedures established by and under the general supervision of Applicant's Board of Directors.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it wishes to attract individual and institutional investors. Applicant alleges that it understands that many of these investors require a money market fund which maintains a constant net asset value per share and pays dividends which do not fluctuate on account of daily changes in the values of its portfolio securities. Applicant states that computing the net asset value per share to the nearest one cent on a share value of $1.00 will eliminate the periodic fluctuation in Applicant's net asset value per share which may occur and which may well cause Applicant's shareholders at the appropriate time to realize unwanted nominal capital gains and losses upon redemption of their shares. Applicant further states that its Board of Directors have determined in good faith that this method of calculating the net asset value per share under such circumstances is appropriate and will be in the best interests of Applicant's shareholders.

Applicant represents that, to the extent necessary, Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a $1.00 price per share, if the net asset value per share declines to a value below $.996 or rises to a value of above $1.004, respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase rounded to the nearest one cent, will not deviate from $1.00;

2 Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 13, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11177/May 19, 1980

In the Matter of

SIGMA MONEY MARKET FUND, INC.
Greenville Center
3801 Kennett Pike
Wilmington, DE 19807

(812-4665)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Sigma Money Market Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, filed an application on April 21, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation incorporated under the laws of the State of Delaware on April 9, 1980. Applicant states that its investment objective is to seek as high a level of current income as is consistent with the principle of preservation of capital and maintenance of liquidity. Applicant intends to invest exclusively in marketable securities issued or guaranteed by the United States Government or its agencies or instrumentalities, certificates of deposit, bankers' acceptances, commercial paper, short-term corporate obligations and repurchase agreements. Applicant indicates that it will not invest in any security the maturity of which is more than one year from the date of its acquisition by Applicant.

In calculating its total net assets to determine the offering price of its shares each day, Applicant indicates that it intends to value all of its portfolio securities for which market quotations are readily available at the most recent bid price or yield equivalent as obtained from one or more market makers for such securities except that any such securities maturing within sixty days from the date of acquisition or which subsequently are within sixty days of maturity, may be valued at cost, plus or minus any amortized discount or premium. All other securities and assets will be valued at fair value as determined in good faith in accordance with consistently applied procedures established by and under the general supervision of Applicant's Board of Directors.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it wishes to attract individual and institutional investors. Applicant alleges that it understands that many of these investors require a money market fund which maintains a constant net asset value per share and pays dividends which do not fluctuate on account of daily changes in the values of its portfolio securities. Applicant states that computing the net asset value per share to the nearest one cent on a share value of $1.00 will eliminate the periodic fluctuation in Applicant's net asset value per share which may occur and which

may well cause Applicant's shareholders at the appropriate time to realize unwanted nominal capital gains and losses upon redemption of their shares. Applicant further states that its Board of Directors have determined in good faith that this method of calculating the net asset value per share under such circumstances is appropriate and will be in the best interests of Applicant's shareholders.

Applicant represents that, to the extent necessary, Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a $1.00 price per share, if the net asset value per share declines to a value below $.996 or rises to a value of above $1.004, respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 13, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 1178/May 19, 1980

In the Matter of

VARIFUND, INC.
7911 Herschel Avenue #401
La Jolla, California 92037

(811-2048)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that VariFund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified management investment company, filed an application on January 7, 1980, pursuant to Section 8(f) of the Act, for an order of the

Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant registered under the Act on March 20, 1970, but did not file a registration statement under the Securities Act of 1933 and has therefore never engaged in a public offering of shares of its common stock.

The application states that Applicant does not have any assets or debts or other liabilities currently outstanding, and that it is not a party to any litigation or administrative proceeding. The application further states that Applicant was dissolved as a corporation under applicable state law in 1978, and that it is not engaged in and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Finally, Applicant states that it did not within the last eighteen months transfer any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant since it never had any assets or operations.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 12, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11179/May 20, 1980

In the Matter of

INVESTORS SYNDICATE OF AMERICA, INC.
IDS Tower
Minneapolis, Minnesota 55402

(812-4640)

ORDER PURSUANT TO SECTION 11(a) OF THE ACT PERMITTING AN OFFER OF EXCHANGE

On April 23, 1980, a notice was issued (Investment Company Act Release No. 11139) of an application filed on March 21, 1980, and an amendment thereto on April 7, 1980, by Investors Syndicate of America, Inc., registered under the Investment Company Act of 1940 ("Act") as a face-amount certificate company, requesting an order of the Commission, pursuant to Section 11(a) of the Act, to permit an offer of exchange of single-payment face-amount certificates SP-79 purchased after February 12, 1980, for single-payment face-amount certificates SP-80.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that granting of the requested order is appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the proposed exchange offer be, and hereby is, approved.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 721/May 16, 1980

CONTINGENT ADVISORY COMPENSATION ARRANGEMENTS

ACTION: Statement of staff interpretive position.

SUMMARY: The Commission is announcing the interpretive views of its Division of Investment Management ("staff") as to the application of the performance fee prohibitions of the Investment Advisers Act of 1940 ("Advisers Act") to investment advisory compensation arrangements which are contingent on the investment performance of the funds of advisory clients. The purpose of this release is to provide general interpretive guidance to the public regarding the application of the Advisers Act to the variety of contingent advisory compensation arrangements which have come to the staff's attention, and thereby to obviate the need for further requests for staff interpretive or no action advise concerning such compensation arrangements where the requests do not present any novel factual or interpretive issues.

FOR FURTHER INFORMATION CONTACT:

Michael J. Eizelman, Esq. (202) 272-2079
Office of Investment Adviser Regulation
Division of Investment Management
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 205(1)[1] of the Advisers Act,[2] with certain exceptions, prohibits an investment adviser, unless exempt from registration pursuant to Section 203(b) of the Advisers Act,[3] from entering into, extending, renewing or performing any investment advisory contract which "provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client." The staff's position, as previously articulated in a number of no action and interpretive letters, is that Section 205(1) generally prohibits an investment adviser from being a party to any advisory contract which provides that advisory fees will be waived or refunded, in whole or in part, if a client's account does not meet a specified level of performance or which otherwise makes receipt of advisory fees contingent on the investment performance of the funds of advisory clients.[4] In the view of the staff, the realization of "contingent" fees is dependent on a client's account achieving a specified level of capital gains or appreciation. Thus, such fees, in effect, are based on a share of capital gains or appreciation of the funds of a client within the meaning of Section 205(1), and are therefore proscribed by that section.[5]

Section 205(1) of the Advisers Act was intended "to prohibit arrangements for contingent compensation

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[1]15 U.S.C. 80b-5(1).

[2]15 U.S.C. 80b-1 *et seq.*

[3]15 U.S.C. 80b-3(b).

[4]*See, e.g.*, McCuen & Russell, Inc. (avail. Apr. 27, 1979); Tessco Management Corporation (avail. Apr. 24, 1979); V. L. McKenzie (avail. Sept. 29, 1975); Bruce Bennett (avail. May 10, 1973); and Robert Reinhart, Jr. (avail. Sept. 21, 1971), reprinted in [71-72 Transfer Binder] Fed. Sec. L. Rep. (CCH) para 78,464.

[5]Section 205(1), by its express terms, applies only to compensation arrangements based upon a share of capital gains or appreciation of the funds of an advisory client. Thus, the Advisers Act does not prohibit, for example, a fee arrangement based upon the interest income (exclusive of capital gains or appreciation) derived from the funds of a client, assuming, of course, compliance with the antifraud provisions of Section 206 thereof. *See, e.g.*, Welch & Forbes, Inc. (avail. Jan. 26, 1974).

to investment advisers based on profit-sharing arrangements with clients which encourage advisers to take undue risks with the funds of clients."[6] The concerns about undue speculation[7] which prompted the Congress to adopt Section 205(1) are as apposite to advisory fees which are contingent upon an advisory account obtained a certain level of performance as they are to fees which vary directly with capital gains or appreciation. For example, an investment adviser whose compensation was contingent on a discretionary account achieving a certain level of performance might be inclined to purchase for the account speculative securities, involving a high potential reward and a high risk, if the account's value was below that necessary for the adviser to earn his fee. In this regard, the Commission report which helped form the basis for the Advisers Act contained the following views of industry representatives:

> Arrangements for contingent compensation to investment counselors, such as percentage of profits, [were] strongly condemned [by industry representatives] as inimical to the interest of the client, for. . . , aside from the 'heads I win, tails you lose' aspect of such arrangements, such a basis for compensation 'encouraged the advisor to recommend a degree of risk that the investor himself would not knowingly undertake, inasmuch as the advisor has everything to gain if he is successful and nothing to lose if he is wrong' and may have been a strong temptation to take unusual risks, to speculate or to over-trade.[8]

To the extent there is any question as to whether Section 205(1) directly prohibits contingent advisory compensation arrangements, the staff believes that such arrangements are prohibited by Section 208(d) of the Advisers Act.[9] Section 208(d) provides, among other things, that it shall be unlawful for any person indirectly to do any act or thing which it would be unlawful to do directly under the provisions of the Advisers Act. If Section 208(d), together with Section 205(1), were not construed to prohibit contingent advisory compensation arrangements, an investment adviser who was subject to Section 205(1) could employ indirectly a compensation arrangement which was the practical equivalent of a fee structure directly proscribed by Section 205(1) and thereby frustrate the prophylactic purposes of that section. For example, rather than charging a fee which was a direct share of the capital appreciation of a client's account, and which was thus expressly prohibited by Section 205(1), a registered investment adviser might choose to approximate such a fee by charging a fixed fee which it would agree to waive or refund, in whole or in part, if the client's account did not achieve a specified level of appreciation.

Among the proposed contingent advisory compensation arrangements that have come to the attention of the staff are those in which (i) fees are waived or refunded, in whole or in part, by an adviser if a specified level of investment performance in a client's account is not achieved,[10] (ii) fees are contingent upon an advisory account having sufficient capital gains or appreciation during a specified period to pay the fees,[11] (iii) fees are waived if recommended securities do not appreciate in value within a designated period of time,[12] and (iv) fees are contingent upon an account either not decreasing in value or avoiding a specified amount of capital depreciation.[13] For the reasons discussed

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[6]H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940).

[7]*Id. See also* Hearings on S. 3580 before Subcomm. of Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., pt. 1, at 252 (1940). For a discussion of the legislative history of the prohibition against profit-sharing and other contingent fee arrangements, see SEC Institutional Investor Study Report, H.R. Doc. No. 64, 92d Cong., 1st Sess., pt. 1, 259-263 (1971).

[8]*See* Securities and Exchange Commission, *Investment Counsel, Investment Management, Investment Supervisor and Investment Advisory Services*, H.R. Doc. No. 477, 76th Cong., 2d Sess. at 30 (1939).

[9]15 U.S.C. 80b-8(d).

[10]*See, e.g.*, McCuen & Russell, Inc., (avail. Apr. 27, 1979).

[11]*See e.g.*, Stanley F. Raczynski, (avail. Dec. 5, 1973).

[12]*See, e.g.*, V. L. McKenzie, (avail. Sept. 20, 1975).

[13]*See, e.g.*, Pension Investment Associates of America, (avail. Jan. 25, 1977). Although an argument could be made that Section 205(1) literally does ot extend to fees based upon "negative" capital gains or appreciation, the staff believes that, for the reasons discussed above regarding

above, the staff believes that the foregoing contingent advisory compensation arrangements, which each pose the inherent conflicts of interest that Section 205(1) was intended to prevent, are properly characterized as involving a fee based upon a share of capital gains or appreciation of the funds of a client and, thus, are proscribed by Section 205(1).

The general interpretive guidance provided in this release should obviate the need, in most instances, for further requests for no action or interpretive advice from the staff relating to contingent advisory compensation arrangements. Accordingly, the staff will not respond to such requests unless they present novel factual or interpretive issues, such as departures from the specific contingent compensation arrangements described above.

Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. IA-721—Statement of the staff as to the application of the Investment Advisers Act to contingent advisory compensation arrangements.

By the Commission.

George A. Fitzsimmons
Secretary

Footnote 13 continued

contingent fees in general, such fees come within the purview of Section 205(1). As one commentator has observed,

It seems. . .clear that, in a falling market, an adviser may not [under Section 205(1)] compensate himself on the basis of a percentage of the saving of capital loss or depreciation which he has effected by selling out certain securities and buying others whose market price did not fall as much; such a scheme of compensation, which is in effect based on a share of 'negative gains,' involves the same temptations as a profit-sharing scheme which comes within the letter of the statutory provision.

2 Loss, Securities Regulation 1411 (2d Ed. 1961).

LITIGATION

Litigation Release No. 9088/May 19, 1980

SEC v. *ALLEN R. GLICK, ARGENT CORPORATION* (United States District Court for the District of Nevada, Civil Action No. LV-78-11, HEC)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office, announced that, on May 12, 1980 the Honorable Harry E. Claiborne signed an Order adopting a stipulation which concludes the Commission's injunctive action against Argent Corporation. The order has no effect upon the Commission's continuing action against Allen R. Glick.

Pursuant to the stipulation and order, the Commission has agreed to dismiss its case against Argent. Argent has agreed not to retain Allen R. Glick as an officer, director, employee or consultant. In addition, Argent has undertaken to take no action which would impair its financial condition in a manner which would preclude timely satisfaction of its obligations to the holders of Argent's 1984 debentures. Argent has affirmatively undertaken to accumulate funds in order to meet its obligations to the debenture holders. Argent will notify the Commission immediately if it is unable to comply with these undertakings.

Among other things, the stipulation recites that this settlement was entered into because Argent was recently purchased by Trans-Sterling, Inc. and the new owners and management of Argent had no involvement in, or knowledge of the alleged unlawful conduct which is the subject of the Commission's complaint in this action.

Litigation Release No. 9089/May 19, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HOWARD STORES CORPORATION* (United States District Court for the District of Columbia, Civil Action No. 80-1260)

The Commission announced today that it filed in the United States District Court for the District of

Columbia a civil injunctive action against Howard Stores Corporation ("Howard"), 40 Flatbush Avenue Extension, Brooklyn, New York 11201. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Howard as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980.

The Complaint requests that the Court order Howard to file forthwith, with the Commission, its Annual Report on Form 10-K for its fiscal year ended December 31, 1979. In addition, the Commission requests that the Court enjoin Howard from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9090/May 20, 1980

S.E.C. v. *GEODYNAMICS OIL AND GAS, INC. ET AL.*, C.A. No. 76-0957 (D.D.C.)

The Commission announced that on May 20, 1980, the Hon. Aubrey Robinson, Jr., United States District Judge in the District of Columbia, entered a Judgment against Fortune Enterprises, Inc. ("Fortune"), an Ohio Corporation, enjoining Fortune from effecting transactions in non-exempt securities without first being registered with the Commission as a broker or dealer, and from failing to disclose its entitlement to commissions or other compensation in connection with advice or recommendations given with regard to tax-shelter securities. Fortune consented to the entry of the Judgment without admitting or denying the truth of the Commission's allegations. At the same time; Judge Robinson approved the dismissal of the case against William J. Kraus of Cleveland, Ohio with prejudice. The court's action was the final disposition of the last defendants in the case. See L.R. 7423 (June 1, 1976) and L.R. 8969 (May 31, 1979).

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VOLUME 20, NO. 3 JUNE 10, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6212-13	94
Securities Exchange Act	16823-57	116
Public Utility Holding Company Act	21586-98	146
Trust Indenture Act	567-70	164
Investment Company Act	11180-91	165
Investment Advisers Act	722	186
Litigation	9091-95	186
Corporate Reorganization	323	189

This listing covers releases issued from 5/22/80-5/29/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	10/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

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SIGNIFICANT ITEMS ANNOUNCEMENT

34-16833 Interpretative release reflecting the views of the Division of Corporation Finance with respect to the disclosure in proxy contests where a principal issue in contention is the liquidation of all or a part of the equity of an issuer.

34-16840 Publication of final statement concerning Commission Consumer Affairs Activities.

CR-323 Advisory report of the Securities and Exchange Commission on proposed plan of reorganization re the Duplan Corporation.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16825	34-16842	34-16851
34-16832	34-16844	34-16854
34-16836	34-16845	34-16855
34-16837	34-16846	34-16857
34-16841	34-16848	

33-6212 Comprehensive revision of regulation concerning conduct of members and employees and former members and employees.

34-16831 Adoption of amendments to Rules 12f-1 and 12f-3 to require persons filing applications for an extension, suspension, or termination of unlisted trading privileges to certify that notice of such applications has

best copy available

SE 1.29:

	been given to certain persons specified by Section 12(f)(5) of the Act.
34-16847	Amendment of paragraph (i) of Rule 15c3-3 to eliminate the requirement that the Securities Investor Protection Corporation be notified of a broker's or dealer's failure to make a required deposit to his Reserve Bank Account or Special Account.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16829/May 22, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21586/May 22, 1980

TRUST INDENTURE ACT OF 1939
Release No. 567/May 22, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11181/May 22, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 722/May 22, 1980

COMPREHENSIVE REVISION OF REGULATION CONCERNING CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES

ACTION: Final rule.

SUMMARY: The Commission is revising its Conduct Regulation. A number of changes have been made in the current rules to reflect changes in federal regulations; to reflect changes in Commission policy; and to make existing rules more specific.

EFFECTIVE DATE: June 2, 1980.

FOR FURTHER INFORMATION CONTACT: Myrna Siegel, Ethics Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2430.

SUPPLEMENTARY INFORMATION: During the past two years the Commission's Conduct Regulation has been undergoing a thorough review. While the Regulation has been amended several times[1] since its adoption on April 7, 1966, it has remained essentially the same for the last fourteen years. Although the Commission has consistently acted to maintain high standards of ethical conduct within the agency, the current Conduct Regulation has not always provided sufficient guidance.

The Commission's Conduct Regulation as it now exists presents a broad framework of ethical standards,[2] followed by specific rules dealing with such areas as outside or private employment[3] and securities transactions.[4] Although this broad approach provides the flexibility required for ethical rules, the current Regulation appears to be deficient in several areas. Specifically, it does not include interpretations of various rules which are currently adhered to; it is not sufficiently specific in some areas; it does not provide sufficient guidance with respect to procedures that members and employees should follow when faced with ethical conduct questions; and certain provisions are inappropriate in the face of changing federal statutes.

To remedy these problems the Commission is adopting a comprehensive revision of its Conduct Regulation. Each rule has been reviewed both individually and as part of the entire structure and changes have been made to make the Regulation more readable and more effective as a guide to acceptable conduct by Commission employees.

[1]See 33 FR 2631 (Feb. 7, 1968); 42 FR 30834 (June 17, 1977); 43 FR 36900 (Aug. 21, 1978).

[2]17 CFR 200.735-3 General Provisions.

[3]17 CFR 200.735-4.

[4]17 CFR 200.735-7.

The reader is referred to the entire Conduct Regulation, set forth below.

The following is a synopsis only of the major changes in the various rules.

§200.735-1 Policy.

Minor changes.

§200.735-2 Purpose.

Minor changes.

§200.735-3 General provisions.

The major changes in this rule are

(1) The possibility of additional restrictions on the conduct of employees in certain Offices, Divisions or Regions.

(2) More specific restrictions on the acceptance of free meals.

(3) The addition of rules applicable to the acceptance of meals or gifts when one is a participant in a conference or meeting.

(4) The requirement of disclosure to a supervisor under certain circumstances when one is negotiating for employment with another government agency.

§200.735-4 Outside employment and activities.

The major changes in this rule are:

(1) Additions to the list of types of entities with whom employment would be incompatible with concurrent Commission employment.

(2) Narrowing of the focus of the rule dealing with incompatible employment of a spouse or member of a Commission employee's household so that such employment would only be incompatible if the spouse or "member of the employee's household" is employed (a) by an entity subject to regulation by the Commission; *or* (b) where the actual job is directly related to the issuance, sale, purchase or investment of securities; *and* (c) in a capacity which relates *directly* to the Commission employee's official duties and activities.

(3) Allowing acceptance of reimbursement for travel expenses from an association or other group predominantly composed of persons regulated by the Commission if authorized by the Chairman.

(4) Allowing, in connection with attendance at conferences or meetings, the acceptance of reimbursement for expenses personally incurred from non-governmental entities, from which reimbursement may be accepted, when an employee is on administrative leave or annual leave. Administrative leave must be authorized by the employee's Division Director, Office Head or Regional Administrator and have the concurrence of the Executive Director.

(5) A clearer articulation of the prohibitions applicable to members, employees, and former members and employees when dealing with nonpublic or confidential information.

(6) Allowing the use of Commission facilities in connection with teaching or writing activities under certain circumstances, when approved by the employee's Division Director, Office Head or Regional Administrator.

(7) Allowing, in appropriate circumstances, a waiver from the prohibition on the acceptance of payment for expenses of a spouse or traveling companion in connection with a member or employee's attendance at conferences or meetings.

(8) Allowing employees to represent other employees in administrative proceedings in connection with allegations arising with respect to official duties.

(9) More specific procedures are provided for the review of speeches and articles written by Commission employees.

§200.735-5 Securities transactions.

The major changes are:

(1) The holding period for securities is changed from one year to eleven months.

(2) Members and employees are prohibited from purchasing or selling options. Spouses or other members of a member or employee's household may purchase or sell options or future contracts for commodities.

(3) Subject to certain restrictions, employees, except Senior Executive Service members in the Division of Investment Management, are no longer prohibited from purchasing securities which are registered under the Investment Company Act of 1940. (For the most part these are mutual funds or money market funds.)

(4) The rule relating to blind trusts is made more specific.

§200.735-6 Action in case of personal interest.

Minor changes.

§200.735-7 Negotiation for employment.

Major change in this rule is a requirement that an employee who is representing the Commission in a particular matter in which another government agency is taking a position adverse to the Commission and who wishes to negotiate for employment with the other government agency must disclose that intention to his or her supervisor.

§200.735-8 Practice by former members and employees of the Commission.

This rule has been altered to conform to the requirements of the Ethics in Government Act of 1978.

§200.735-9 Indebtedness.

Minor changes.

§200.735-10 Miscellaneous statutory provisions.

Minor change.

§200.735-11 Statement of employment and financial interests.

The list of persons from whom such statements are required has been revised and procedures applicable to submission of the statements are made more specific.

§200.735-12 Special Government employees.

The rule relating to restrictions on special Government employees has been made more specific.

§200.735-13 Disciplinary and other remedial action.

The changes in this rule are:

(1) Minor changes making the rule more specific.

(2) Inclusion of a provision which specifies the procedure to be used in implementing the administrative enforcement proceedings for violations of post-employment restrictions of the Ethics in Government Act of 1978.

§200.735-15 Interpretive and advisory service.

The major changes in this rule are:

(1) Designation of the General Counsel as "Counselor for the Commission."

(2) More specific provisions dealing with the availability of interpretive and advisory services in connection with these rules.

§200.735-16 Delegation.

New section providing for the delegation of certain functions and responsibilities.

§200.735-17 Administration of the Conduct Regulation.

New section.

§200.735-18 Requests for waiver, modification or postponement.

New section.

REVISION OF CONDUCT REGULATION

Accordingly, 17 CFR 200 is amended by revising Subpart M to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

§200.735-1 Purpose.

This subpart sets forth the standards of ethical conduct required of members, employees and special Government employees, and former members and employees of the Securities and Exchange Commission. It is a further revision of a

comprehensive conduct regulation first adopted by the Commission in 1953 "to restate the ethical principles which it believes should govern and have governed the conduct of members and employees and former members and employees of the Commission."[1] This revision is necessary to provide members, employees, special Government employees and former Commission members and employees with a comprehensive statement of standards of conduct which are dictated by applicable Federal law, Executive orders, and the Commission's own requirements.

§200.735-2 Policy.

(a) The Securities and Exchange Commission has been entrusted by Congress with the protection of the public interest in a highly significant area of our national economy. In view of the effect which Commission action frequently has on the general public, it is important that members, employees and special Government employees maintain unusually high standards of honesty, integrity, impartiality and conduct. They must be constantly aware of the need to avoid situations which might result either in actual or apparent misconduct or conflicts of interest and to conduct themselves in their official relationships in a manner which commands the respect and confidence of their fellow citizens.

(b) For these reasons, members, employees and special Government employees should at all times abide by the standards of conduct set forth in this subpart, the canons of ethics for members of the Securities and Exchange Commission (Subpart C of this Part 200) and, in the case of a professional person, the ethical standards applicable to the profession of such person.

§200.735-3 General provisions.

(a)(1) In considering the prohibitions of this section, members and employees must constantly be aware that the provisions here enumerated set forth standards of conduct which are broader than the specific applications stated in the rules which follow. Therefore, members and employees should look to these general prohibitions when assessing the advisability of a particular course of conduct. The broadly stated provisions of this rule are aimed at eliminating the appearance of impropriety as well as any actual wrongdoing.

(2) Accordingly, a member or employee should avoid any action, whether or not specifically prohibited by law or regulation (including the provisions of this subpart), which would result in or might create appearance of, among other things:

(i) Using public office for private gain;

(ii) Giving preferential treatment to any organization or person;

(iii) Losing complete independence or impartiality;

(iv) Making a Government decision outside official channels; or

(v) Affecting adversely the confidence of the public in the integrity of the Government.

(3) While provisions applicable to all employees of the Commission are outlined in this Regulation, certain offices or Divisions for management reasons may require more stringent regulations in certain areas. These may be imposed by Division Directors, Office Heads or Regional Administrators with the consent of the Chairman and the approval of the Office of Government Ethics. Should such additional regulations be imposed, all employees affected must be notified ten days before the effective date of the restriction or at the time of their employment.

(b) A member or employee of the Commission shall not:

(1) Engage, directly or indirectly, in any personal business transaction or private arrangement for personal profit the opportunity for which arises because of his or her official position or authority, or that is based upon confidential or nonpublic

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[1]The last major revision of the Conduct Regulation was done in 1966 to implement Executive Order 11222, May 8, 1965, and Part 735 of the Civil Service Commission regulations (5 CFR Part 735) adopted pursuant thereto. It also contains references to the several applicable statutes governing employee conduct, particularly Pub. L. 87-849 (76 Stat. 1119, 18 U.S.C. 201 *et seq.*), and the "Code of Ethics for Government Service," House Concurrent Resolution 175, 85th Congress, 2d session (72 Stat. B 12.)

information which he or she gains by reason of such position or authority.[2]

(2) Solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, service, or any other thing of monetary value from any person with whom he or she transacts business on behalf of the United States; who has, or is seeking to obtain, contractual or other business or financial relations with the Commission; who conducts operations or activities regulated by the Commission; or who has interests that may be substantially affected by the performance or non-performance of his or her official duty. This paragraph does not apply (i) when the circumstances make it clear that it is obvious family or personal relationships rather than the business of the persons concerned which govern and are the motivating factors; (ii) when, on infrequent occasions, food and refreshments of modest value are offered free in the course of a luncheon or dinner meeting, or other meeting not connected with an inspection or investigation where attendance is official and proper and the circumstances make individual payment difficult; (iii) when unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of modest intrinsic value are offered; (iv) when one is participating as panelist or speaker in an educational program and meals or refreshments are provided to all panelists; or (v) when the employee's Division Director, Office Head or Regional Administrator determines in writing that an exception is warranted and appropriate in a particular situation.

(A) Gifts given for participation in an educational program may be accepted when they are of modest value; or provided to all participants in the program; or are in the nature of a remembrance traditional to the particular sponsor institution.

(B) For purposes of this subpart, "person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company; or any other organization or institution,[3] or anyone who acts for such person in a representative capacity.

(3) Solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself or herself. An employee shall not make a donation as a gift to an employee in a superior official position (5 U.S.C. 7351). However, this paragraph does not prohibit the occasional giving of gifts of modest value to an employee in a superior position or the receipt of such gifts by a superior or the use of completely voluntary contributions of nominal amounts by employees within the Commission to establish funds for the limited purpose of providing token remembrances or gifts of modest value to an employee in a superior position on special occasions.

(4) Accept from a foreign government a gift, decoration or other thing of more than minimal value

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[2]Detailed provisions regarding outside or private employment and transactions in securities and commodities are set forth in §§200.735-4 and 200.735-5, respectively. Further provisions regarding use and disclosure of confidential information are set forth in paragraph (b) of this section and in the note appended thereto.

Members of the Commission are subject also to the following prohibition in section 4(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(a)): "* * * No Commissioner shall engage in any other business, vocation, or employment than that of serving as Commissioner, nor shall any Commissioner participate, directly or indirectly, in any stock market operations or transactions of a character subject to regulation by the Commission pursuant to this title * * *." This does not preclude Commissioners from engaging in securities transactions. *See* Opinion letter dated February 11, 1975, sent by the Office of the General Counsel to David Reich, Ethics Counselor at the Civil Service Commission. In addition, members of the Commission are subject to the requirements of Executive Order 11222 of May 8, 1965.

[3]Members and employees of the Commission are subject also to provisions of the Federal Criminal Code which prohibits any officer or employee of the United States from asking, accepting or receiving any money or other thing of value in connection with any matter before him or her in his or her official capacity, (18 U.S.C. 203); and which prohibits the compensation of Government employees for services to the Government by entities other than the United States (18 U.S.C. 209).

except in accordance with the provisions of 5 U.S.C. 7342.

(5) Discuss or entertain a proposal for future employment by any person outside the Government with whom he or she is personally and substantially involved in transacting business on behalf of the United States.[4]

(i) If an employee wishes to discuss future employment with another Government agency, this fact should be disclosed to the employee's Division Director, Office Head or Regional Administrator prior to any discussion regarding employment, if at that time the employee is representing the Commission in a particular matter in which the other agency is taking a position adverse to the Commission.

(6)(i) Divulge to any unauthorized person or release in advance of authorization for its release[5] any nonpublic Commission document, or any information contained in any such document or any confidential information: (A) in contravention of the rules and regulations of the Commission promulgated under 5 U.S.C. 552, 552a and 552b; or (B) in circumstances where the Commission has determined to accord such information confidential treatment.

(ii) Except where the Commission has previously granted approval or in relation to a Commission administrative proceeding or a judicial proceeding in which the Commission, or a present or former Commissioner, or present or former member of the staff, represented by Commission counsel, is a party, any officer, employee or former officer or employee who is served with a subpoena requiring the disclosure of confidential or nonpublic information or documents shall, unless the Commission authorizes the disclosure of such information or documents, respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this paragraph.

(iii) Any member, employee or former member or employee who is served with such a subpoena not covered by the exceptions in (2) above shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability in the public interest of making available such information or documents.[6] The General Counsel shall seek authorization from the Commission to disclose information or documents.

(7) Act in any official matter with respect to which there exists a personal interest incompatible with an unbiased exercise of official judgment.[7]

(8) Have direct or indirect personal, business or financial affairs which conflict or appear to conflict with his or her official duties and responsibilities.

(9)(i) Use, or allow the use of, directly or indirectly, Government property of any kind, including property leased to the Government, for other than officially approved activities. "Officially approved activities" for the purpose of this section are those activities which are part of an employee's official duties or are approved by the employee's Division Director, Office Head or Regional Administrator as being sufficiently related to the employee's official duties, or important to the interests of the Commission to warrant the use

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[4]Detailed provisions regarding negotiations for future employment are set forth in §200.735-7.

[5]In Section 171 of the Commission's Manual of Administrative Regulations the Commission's policy on making available nonpublic information to federal, state and foreign government authorities, national securities exchanges and national securities associations is outlined.

[6]Detailed prohibitions regarding disclosure or use of confidential or nonpublic information are set forth in Rule 122 (17 CFR 230.122) under the Securities Act of 1933; section 24(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78x) and Rule 0-4 (17 CFR 240.0-4); and Rule 24(b)(2) (17 CFR 240.24b-2), thereunder; section 22(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79y) and Rule 104 thereunder (17 CFR 250.104); section 45(a)(1) of the Investment Company Act, and section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10). *But see*, §171 of the Administrative Manual which authorizes the staff to divulge certain nonpublic information without Commission approval (n. 5, *supra*).

[7]Section 200.735-6 of this subpart provides a procedure for relieving employees from assignments in certain cases, including those covered by paragraph (f) of this section.

of Commission facilities for their accomplishment. Division Directors, Office Heads and Regional Administrators may, for their own activities meeting the same criteria, obtain the concurrence of the Executive Director.

(ii) An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(10) Participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(11) Engage in unlawful or unethical conduct, or other conduct prejudicial to the Government.

§200.735-4 Outside employment and activities.

(a) No member or employee shall permit his or her name to be associated in any way with any legal, accounting or other professional firm or office.[8]

(b)(1) No employee shall have any outside or private employment, activity, or affiliation incompatible with concurrent employment by the Commission. Incompatible activities include but are not limited to

(i) Employment or association with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved with the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the facts relating to a particular employment would create an appearance of impropriety, because the employment is directly or indirectly related to the issuance, sale, purchase or investment of securities;

(ii) Legal, accounting, or engineering work for compensation involving matters in which the Federal government may be significantly interested;

(iii) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in or create the appearance of conflicts of interest;

(iv) Outside employment or activity which impairs the employee's mental or physical capacity to perform his or her Commission duties and responsibilities in an acceptable manner;

(2) For the purposes of this paragraph (b), the private employment of an employee's spouse, or other member of his or her immediate household with any securities exchange, association of securities dealers, or other self-regulatory organization either registered under the Securities Exchange Act of 1934 or otherwise involved in the securities industry, any registered broker, dealer, registered municipal securities dealer, public utility holding company, investment company, investment adviser, securities information processor, transfer agent, clearing agency or other persons who are subject to regulation by the Commission, or where the particular employment is directly related to the issuance, sale, purchase or investment of securities is deemed to be incompatible with the employee's concurrent employment by the Commission if the duties and activities incident to such employment relate directly to the official activities of the Commission employee, except as determined otherwise by the Commission in a specific case.

(i) "Member of his or her immediate household" is defined for the purposes of this paragraph as a resident of the employee's household who is related to the employee by blood or marriage.

(3) No employee shall accept or perform outside employment prohibited by law, regulations of the Office of Personnel Management or the rules in this subpart.

(4) No employee shall receive any salary or anything of monetary value from a private source as compensation for his or her services to the

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[8]With respect to members, this paragraph supplements the statutory prohibition against outside employment contained in Section 4(a) of the Securities Exchange Act of 1934, quoted in footnote 2. Except as otherwise indicated, the remaining provisions of this section are not made applicable to members in view of the provisions of Section 4(a) of the Securities Exchange Act of 1934.

Government (18 U.S.C. 209), except as otherwise provided by law.

(5) The Commission encourages employees to engage in teaching, lecturing, and writing activities with or without compensation.[9] In participating in such activities, employees should be guided by the following:

(i) No teaching, lecturing, or writing should be engaged in if prohibited by law, Executive order, Office of Personnel Management regulations, or the rules in this subpart.

(ii) No teaching, lecturing, or writing should be engaged in (including for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information filed with the Commission, or obtained by the Commission in an investigation or otherwise, or generated within the Commission which is nonpublic, unless the Commission gives formal approval for the use of such nonpublic information on the basis that the use thereof is in the public interest.[10]

(6)(i) A Member or employee may accept reimbursement for travel or subsistence expenses and any expenses may be paid on his or her behalf only if reimbursement is authorized by paragraphs (b)(6)(iv) or (v) of this section. No member or employee may, under any circumstances, accept reimbursement for travel or subsistence expenses incurred in connection with attendance at a seminar, meeting, conference, etc., sponsored in whole or in part by any person from whom the acceptance of reimbursement is prohibited by paragraph (b)(6)(ii) of this section.

(ii) No member or employee shall accept reimbursement for travel or subsistence expenses from:

(A) Any person[11] directly required to file reports or registration statements with the Commission;

(B) Any person[11] directly or indirectly regulated by the Commission; or

(C) Unless authorized by the Chairman, any association or other group predominantly composed of persons regulated by the Commission.

(iii) For purposes of this section, the phrase "person regulated by the Commission" means all persons whose activities are directly regulated by, or who are required to register with, the Commission, including, but not limited to, such persons as brokers or dealers in securities, national securities exchanges, national securities associations, investment companies, investment advisers, public utility holding companies, and any self-regulatory organization, as that term is defined in Section 3 of the Securities Exchange Act of 1934, 15 U.S.C. 78(c).

(iv) Subject to the general prohibition set forth in paragraph (b)(6)(ii) of this section, members or employees may, pursuant to 5 U.S.C. 4111, while on official duty status, accept bona fide reimbursement for actual expenses for travel or necessary subsistence incident to attendance at meetings from a person determined by the Secretary of the Treasury to be a tax-exempt organization of the type described in 26 U.S.C. 501(c)(3), *Provided, however,* That no Government payment or reimbursement is made for the expense so reimbursed, *And provided further* That the member or employee is not reimbursed, nor payment made on his or her behalf, for those personal living benefits which are unreasonable or lavish.

(v) Consistent with the general prohibition set forth in paragraph (b)(6)(ii) of this section and the Commission's regulations governing conflicts of interest, employees (but not members) of the Commission appropriately on either administrative leave or annual leave may accept bona fide reimbursement for actual expenses personally

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[9]As to employees, while the receipt of honoraria is discouraged (*See* 17 CFR 200.735-4(b)(7)), that rule is not applicable to the receipt of compensation for teaching.

[10]Since members of the Commission are covered by section 401(a) of Executive Order 11222, they are prohibited by Civil Service Regulations (5 CFR 735.203(c)) from receiving compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of their agencies, or which draws substantially on official data or ideas which have not become part of the body of public information.

[11]As defined in paragraph b(2)(ii) of §200.735-3.

incurred for travel or necessary subsistence from persons in addition to organizations described in paragraph (b)(6)(iv) above, *Provided* That the employee is not reimbursed, nor payment made on his or her behalf, for those personal living expenses, gifts, entertainment or other personal benefits which are unreasonable or lavish.

(vi)(A) In instances in which a Commission employee has an expertise in a particular area, and it is in the interest of the Commission for such employee to participate in a particular program, the employee's Division Director, Office Head or Regional Administrator may, with the concurrence of the Executive Director, approve administrative leave for such appearance for themselves or their subordinates.

(B) In those instances in which administrative leave is not granted pursuant to paragraph (A), annual leave may be taken.

(vii) Nothing in this section or otherwise shall be considered as permitting the acceptance from any person of reimbursement to a member or employee of the Commission, directly or indirectly, for the travel or subsistence expenses of the member's or employee's spouse or traveling companion. Under appropriate circumstances, such as programs where participants are expected to engage in social activities, exceptions to this section may be obtained upon application to the General Counsel.

(7) The provisions of this paragraph (b) and §200.735-3(b)(2) do not preclude a member or employee from:

(i) Participation in the activities of national or State political parties not proscribed by law;

(ii) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service, or civic organization.

(8)(i) As a matter of general policy, the Commission discourages the acceptance of honoraria or similar fees and payments which are given for publications, speeches or lectures based on the official duties of the employee. In accord with this policy, no member or employee may accept such an honorarium unless written approval is obtained in advance from the Commission's General Counsel, subject to the general review of the Commission. Requests for such approval should be submitted to the General Counsel in writing and should include a statement in support of the request.

(ii) Honoraria which are most likely to be deemed acceptable are those which appear to be remuneration for teaching. An employee may not, under any circumstances, accept an honorarium from any person from whom reimbursement for travel expenses is prohibited by paragraph (b)(6)(ii) of this section. In any event an employee may not accept an excessive honorarium as described in 2 U.S.C. 441(i). This section does not preclude the acceptance of a modest gift for participation as a speaker, as provided in Rule 3.

(c) No employee shall appear in court or on a brief in a representative capacity (with or without compensation) or otherwise accept or perform legal, accounting, engineering, or similar professional work, unless specifically authorized to do so by the Commission. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition. As a matter of general policy, outside or private professional work or practice by the staff is discouraged and only in unusual cases or circumstances will it be authorized. However, the Commission encourages its employees, in off-duty hours and consistent with official responsibilities, to participate, without compensation, in programs to provide legal or other appropriate assistance and representation to indigents.[12] Such participation may include limited appearances in court and on briefs when required in connection with such programs. However, such participation may not involve any activities which are prohibited by law, Executive Orders, Office of Personnel Management regulations, or this Subpart M.[13] For example, 18

[12]As a matter of policy, the Commission encourages members of its staff to participate in matters involving improvement to their communities and service to indigent persons, provided that the necessary approval is obtained in advance. However, in no case will approval be given to participate in matters involving securities.

[13]Attention is called to Title 18, United States Code, sections 201 through 209 which provide, among other things, that Federal employees are prohibited from acting as agent or attorney in prosecuting any claim against the United States or from aiding and assisting in any way, except as otherwise permitted

U.S.C. 205 prohibits a federal employee from appearing in court in a matter in which the United States has an interest (other than on behalf of the United States), without regard to compensation.

(1) The provisions of this paragraph (c) and §200.735-3(b)(2) do not preclude an employee from:

(i) Acting without compensation as agent or attorney (A) for a Commission employee who is sued or is under investigation in connection with his or her official duties; (B) for any Commission employee who is the subject of disciplinary, loyalty or other personnel administrative proceedings in connection with those proceedings; or (C) for any Commission employee who raises claims or against whom allegations of wrongdoing are made pursuant to the Commission's Equal Opportunity regulations, if such representation is not inconsistent with the faithful performance of the employee's duties.[14]

(d) No member or employee shall hold office in or be a director of any company which has public security holders, except not for profit corporations, savings and loan associations, and similar institutions, whose securities are exempted under Section 3(a)(4) or 3(a)(5) of the Securities Act of 1933 (15 U.S.C. 77c(a)(4), 77c(a)(5)).

(e)(1) As paragraph (b)(5) of this section indicates, the Commission encourages employees to engage in teaching, lecturing and writing activities.[15] It is understood, however, that Commission employees in their teaching, writing and lecturing shall not

(i) Use confidential or non-public information;

(ii) Make comments on pending litigation in which the Commission is participating as a party or *amicus curiae*; or

(iii) Make comments on rulemaking proceedings pending before the Commission which would adversely affect the operations of the Commission.

(2) To assist employees in conforming to these requirements the following procedure for reviewing writings prior to publication, or prepared speeches prior to delivery, has been established:

(i) Employees must submit proposed publications or prepared speeches relating to the Commission, or the statutes or rules it administers, to the General Counsel for review. Employees will be notified as promptly as possible, with due regard to publication deadlines, but in any event within 30 days of receipt of the written document, whether such document conforms to the requirements of this Rule.

(ii) A determination by the General Counsel that a proposed publication conforms to the requirements of the Rule will not involve adoption of, or concurrence in, the views expressed. Therefore, such publication or speech shall include at an appropriate place or by way of footnote, or otherwise, the following disclaimer of responsibility:

> The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the author and do not necessarily reflect the views of the Commission or of the author's colleagues upon the staff of the Commission.

Footnote 13 continued

in the discharge of official duties, in the prosecution or support of any such claim, or from receiving any gratuity, or any share of an interest in any claim from any claimant against the United States; and from directly or indirectly receiving or agreeing to receive any compensation whatever for services rendered or to be rendered to any persons in relation to any matter in which the United States is a party or directly or indirectly interested. 18 U.S.C. 205 contains an exception from the foregoing restrictions for acting as agent or attorney, without compensation, for government employees who are the subject of disciplinary, loyalty or other personnel-type proceedings, in connection with these proceedings.

[14]This is adapted from the provision in 18 U.S.C. 205 and expresses the Commission's general policy which favors the representation of fellow employees without compensation. However, it may be necessary to look to other regulations for specific provisions regarding such representation.

[15]This paragraph (e), requiring review of prepared speeches or writings relating to the Commission, does not apply to teaching activities.

In appropriate cases, the above disclaimer may be modified by the General Counsel or the Commission to reflect the circumstances of an individual case. In addition, any publication or speech which reflects positions taken by the Commission shall set forth those positions accurately and, if it contains differences with Commission positions, it shall clearly state that such positions are those of the employee.

(f) An employee who intends to accept or perform any outside or private employment or professional work shall obtain necessary authorization in advance of such acceptance or performance. A request for such autorization shall be submitted to the Division Director, Office Head or Regional Administrator concerned, together with all pertinent facts regarding the proposed employment, such as the name of the employer, the nature of the work to be performed, its estimated duration, and the fee or compensation to be received. Division Directors, Office Heads and Regional Administrators have been delegated the authority to approve routine requests for outside employment. The approving official shall forward to the Director of Personnel a copy of each request showing the date of approval. Requests of a non-routine nature shall be forwarded to the Director of Personnel.

(g) The Director of Personnel, or his designee, is authorized to approve or disapprove requests for outside or private employment under this rule, except as to those cases which, in his judgment, should be considered and decided by the Commission. An employee may appeal a disapproved request to the Commission. The written appeal, submitted through the Director of Personnel, shall give reasons why the proposed outside or private employment is consistent with this rule. The Director of Personnel may not approve proposed outside or private employment which is absolutely prohibited by these rules. The Commission may, in a particular case, approve such employment.[16]

§200.735-5 Securities transactions.

(a)(1) This section applies to all transactions effected by or on behalf of a member or employee, including transactions for the accounts of other persons effected by the member or employee, directly or indirectly, under a power of attorney or otherwise. A member or employee is considered to have sufficient interest in the securities transactions of his or her spouse or unemancipated minor child or other member of his or her immediate household so that such transactions must be reported and are subject to all the terms of this section. For purposes of this section, "member of his or her immediate household" means a resident of the member's or employee's household who is related to the employee by blood or marriage or who is in the legal care and/or custody of the employee by reason of adoption, prospective adoption or guardianship.

(2) No securities which a member or employee could not purchase because of a restriction under this Rule shall be recommended or suggested by the employee for purchase by any person over whom the employee has control or substantial influence with respect to investments, by reason of (i) monetary payments made by the employee to or on behalf of the person; or (ii) the age or mental condition of the person.

(b)(1) No member or employee shall effect or cause to be effected any transaction in a security except for bona fide investment purposes. Unless otherwise determined by the Commission for cause shown, any purchase except of money market fund shares[17] which is held for less than 11 months will be presumed not to be for investment purposes. This 11 month holding period is not applicable to securities purchased by a member or employee prior to entrance on duty with the Commission, and such securities may, therefore, be disposed of at any time. Nor is it applicable to debt securities with an initial term of less than one year which are held to term, or shares of a unit investment trust having a term of less than one year.

(2) Any member or employee who believes the requirement of paragraph (a) of this section as to spouse, child or "member of his or her household" or the application of this paragraph (b) will result in undue hardship in a particular case may make written application to the Commission (through the Director of Personnel) setting out, in detail, the reasons for that belief and requesting a waiver.

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[16]The Commission does not favor the granting of waivers from the provision of this subsection.

[17]For purposes of this rule a "money market fund" is defined as an open-end investment company whose investment policy calls for investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

(c) No member or employee shall effect any purchase or sale of an option or future contract for any commodity or involving a security. The prohibition on the purchase or sale of options or future contracts for commodities shall not apply to spouses or other members of a member's or employee's household.

(d) No member or employee shall carry securities on margin. Also no member or employee shall borrow funds or securities, with or without collateral, for the purpose of purchasing or carrying securities with the proceeds unless prior approval of the Commission has been secured.

(e) No member or employee shall sell a security which he or she does not own, or the sale of which is consummated by the delivery of a security borrowed by or for such member's or employee's account.

(f) No member or employee shall purchase any security which is the subject of a registration statement filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or of a letter of notification filed under Regulation A (§§230.251-230.263 of this chapter), or any other security of the same issuer, while such a registration statement or letter of notification is pending or during the first sixty days after its effective date. This prohibition applies even though the registration statement or Regulation A filing covers a so-called limited offering such as to officers and employees of the company under a bonus plan. However, with respect to securities issued by an investment company, other than a closed-end investment company, this provision shall not apply except during the pendency of an initial offering of shares to the public or during the first sixty days after the effective date of such initial offering.

(g) No member or employee shall purchase any security which to his or her knowledge is involved in any pending investigation by the Commission, or in any proceeding before the Commission, or to which the Commission is a party.

(h) No member or employee shall purchase any securities of any company which is in a receivership proceeding in which the Commission is participating, or which arose out of a Commission action which is the subject of a proceeding under the Bankruptcy Act, in which the Commission is a party.

(i) The restrictions imposed in paragraphs (f), (g), (h), and (j) of this section do not apply:

(1) To the exercise of a privilege to convert or exchange securities;

(2) To the exercise of rights accruing unconditionally by virtue of ownership of other securities (as distinguished from a contingent right to acquire securities not subscribed for by others);

(3) To the acquisition and exercise of rights in order to round out fractional shares; or

(4) To the acceptance of stock dividends on securities already owned; to the reinvestment of cash dividends on a security already owned under a reinvestment program; or the participation in a monthly investment plan for the purchase of a security when the original purchase was consistent with the provisions of this Rule.

(j) No member or employee shall purchase securities of (1) any holding company registered under Section 5 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79e), or any subsidiary thereof, or (2) any company if its status under such Act or the applicability of any provision of the Act to it is known by the employee to be under consideration.

(k) No member or employee holding a Senior Executive Service position in the Division of Investment Management shall purchase any securities issued by any investment company *prima facie* subject to the jurisdiction of the Commission under the provisions of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*). Capital or income dividends received by persons subject to this Rule from securities acquired prior to entrance on duty may not be reinvested but must be accepted in cash if this option is available.

(l) No member or employee shall have a beneficial interest in any broker, dealer or investment adviser through ownership of securities or otherwise. Beneficial interest for the purpose of this paragraph (1) does not include ownership of a life insurance policy in a mutual insurance company; nor does beneficial interest exist by virtue of ownership of a life insurance contract, variable annuity contract or guaranteed investment contract issued by a life insurance company which is affiliated with a broker, dealer or investment adviser.

(m)(1) Except with respect to changes in money market fund holdings, members and employees shall report every purchase or sale of any security within 5 business days of the transaction date. (Reports submitted by employees in field offices must be placed in the mails within 5 business days of the date of each transaction.) Other changes in holdings resulting from inheritance or from reclassifications, gifts, stock dividends, dividend reinvestments or splitups, for example, shall be reported within 5 days of the receipt of the notice of a change in holdings. In addition, every employee owning securities shall furnish the Director of Personnel with a complete list of all securities held by him or her by May 15 of each year. Any required report shall be prepared on the official form provided for this purpose, copies of which may be procured from the Office of Personnel or the Publications Unit. These reports shall be transmitted to the Director of Personnel. The envelope should be marked "Confidential—Securities Transactions."

(2) Employees shall report changes of $2,500 or more in money market funds within 5 days of such change. Reports of total money market fund holdings shall be reported on the form and according to the schedule provided by the Office of Personnel.

(n) At the time of taking the oath of office, or prior thereto for prospective employees if requested by the Director of Personnel, a new member or employee shall fill in the information required, on the form provided by the Office of Personnel, (1) relating to securities owned by him or her, or his or her spouse or unemancipated minor child, or a member of his or her immediate household or by any trust or estate of which he or she is a trustee or other fiduciary or beneficiary or by any person for whom he or she effects transactions under a power of attorney or otherwise; (2) relating to accounts with securities firms; (3) relating to close relatives, (*i.e.* parents, grandparents, siblings, aunts, uncles, parents or grandparents, or like relations of a spouse), who are partners or officers of securities firms, investment advisers, or registered public utility holding companies or their affiliates; (4) relating to the holding of office in or being a director of any company which has public security holders; and (5) such other information as may be required by the form.

(o) Paragraphs (b), (m) and (n) of this section do not apply to personal notes, individual real estate mortgages, securities issued by the U.S. Government or its agencies, and securities issued by building and loan associations or cooperatives.

(p) Any member or employee who is a trustee or other fiduciary or a beneficiary of a trust or estate holding securities not exempted by paragraph (o) of this section shall report the existence and nature of such trust or estate to the Director of Personnel. The transactions of such trust or estate which is not a "qualified blind trust" shall be subject to all the provisions of this section except in situations where the member or employee did not create the trust, is solely a beneficiary, and has no power to control, and does not in fact control or advise with respect to the investments of the trust or estate, and except to the extent that the Commission shall otherwise direct in view of the circumstances of the particular case.

(q) In those instances where members or employees have blind trusts, such trusts must conform to the requirements for qualified blind trusts established by Public Law No. 95-521 (Ethics in Government Act of 1978). The holdings and transactions of such trusts, to the extent that they hold securities not exempted by paragraph (o) of this section, shall only be subject to provisions (h), (j), (k) and (l) of this section.

(r) The Director of Personnel, or his designee, is authorized to require the disposition of securities acquired as a result of the unintentional violation of the provisions of this section. Repeated violations shall be reported to the Commission for appropriate action.

§200.735-6 Action in case of personal interest.

Any employee assigned to work on any application, filing or matter of a company (a) in which he or she or his or her spouse or his or her minor unemancipated child then owns any securities or has a personal interest, including a continuing financial interest in a pension or retirement plan, shared income, or other arrangement, as a result of any current or prior employment or business or professional association; or (b) with which he or she has been employed or associated in the past 5 years; or (c) which was a client of a firm with which he or she had been associated, shall immediately advise his or her Division Director or other Office Head or Regional Administrator of the fact. Division Directors, Office Heads and Regional Administrators are authorized to direct the reporting employee to continue with the

assignment in question where this appears in the interest of the Government, taking into account (1) the prohibitions stated in §200.735-3(e) and (f); (2) the general desirability of avoiding situations that require a question of conflict of interest to be resolved; (3) the extent to which the employee's activities will be supervised; and (4) the difficulty of assigning the matter to some other employee. Where the employee in question is not relieved of the assignment, his or her written report concerning the nature of his or her interest shall be forwarded to the Director of Personnel with a notation that he or she has been directed to continue the assignment, together with such explanation, if any, as may seem appropriate. In the event that a Division Director, Office Head or Regional Administrator deems that he or she has, himself or herself, such a personal interest in an application, filing or matter of a company as may raise a question as to his or her disinterestedness, he or she may delegate his or her responsibility with regard thereto to a subordinate, but in that event shall submit a brief memorandum of the circumstances to the Director of Personnel.[18]

§200.735-7 Negotiation for employment.

(a) An employee may not negotiate employment with anyone outside the Commission with whom he or she is personally transacting business in any matter on behalf of the Commission or the United States, or while he or she is immediately or personally engaged in representing the Commission in any matter in which the prospective employer is a participant or witness or counsel for such a person, whether or not such a person takes a substantive position in an adversary proceeding in opposition to the Commission's position.

(b) An employee who wishes to negotiate employment with another Government agency at a time when he or she is representing the Commission in a particular matter in which the other Government agency is taking a position adverse to the Commission should disclose this intention to his or her Division Director, Office Head or Regional Administrator prior to taking any action.

(c) No employee shall undertake to act personally on behalf of the Commission in any capacity in a matter[19] that, to his or her knowledge, affects even indirectly any person or organization outside the Commission with whom he or she is discussing or entertaining any proposal for future employment, except pursuant to the direction of the Commission, his or her Division Director, Office Head, or Regional Administrator, as provided in §200.735-6. See footnote 18.

§200.735-8 Practice by former members and employees of the Commission.

(a)(1) No person shall appear in a representative capacity before the Commission in a particular matter if such person, or one participating with him or her in the particular matter, participated personally and substantially in that matter while he or she was a member or employee of the Commission.[20] As used in this Rule, a "matter"

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[18]18 U.S.C. 208, provides, among other things, that a member or employee is prohibited from participating personally and substantially in any matter in which to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as an officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This section (of the Criminal Code) does not apply if the employee has received a written determination made by an authorized official that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's service. Note: Members of the Commission may follow the procedural provision contained in Part V, section 503 of the Executive Order 11222.

[19]Employees should bear in mind that in this connection the word "matter" is construed very broadly. See 200.735-8 and footnote 20, thereto, *infra*.

[20]As used in this paragraph, a single investigation or formal proceeding, or both if they are related, shall be presumed to constitute a particular matter for at least 2 years irrespective of changes in the issues. However, in cases of proceedings in which the issues change from time to time, such as proceedings involving compliance with section 11 of the Public Utility Holding Company Act (15 U.S.C. 79k), this paragraph shall not be construed as prohibiting appearance in such a proceeding, more than two years after ceasing to be a member or employee of the Commission, unless it appears to the Commission that there is such an identity of particular issues or pertinent facts as to make it

means a discrete and isolatable transaction or set of transactions between identifiable parties.[21]

(2) No person who has been a member or employee shall, within 2 years after his or her employment has ceased, assist, by personal presence, a person appearing in a representative capacity before the Commission in any matter in which he or she participated personally and substantially while a member or employee of the Commission at any time within a period of 1 year prior to the termination of such responsibility.

(3) No person who has been a member or an employee shall, within 2 years after his or her employment has ceased, appear in a representative capacity before the Commission in any matter which was under his or her official responsibility as a member or employee of the Commission at any time within a period of 1 year prior to the termination of such responsibility. The term "official responsibility" as defined in 18 U.S.C. 202 means the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

(4) No employee in a position which is designated by the Director of the Office of Government Ethics shall, within one year after his or her employment has ceased, appear in a representative capacity before the Commission or communicate with the Commission or its employees with the intent to influence.[22] This restriction does not apply to members who ceased employment before July 1, 1979, or to employees who ceased employment prior to February 28, 1980.

(b) Any former member or employee of the Commission who, within 2 years after ceasing to be such, is employed or retained as the representative of any person outside the Government in any matter in which it is contemplated that he or she will appear before the Commission shall, within ten days of such retainer or employment, or of the time when appearance before the Commission is first contemplated, file with the Secretary of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirements of this paragraph do not apply to communications incidental to court appearances in litigation involving the Commission.

(c) As used in this section, the term "appear before the Commission" means physical presence before the Commission or its employees in either a formal or informal setting or the conveyance of material in connection with a formal appearance or application to the Commission. As used in this section the term "communication with intent to influence" does not encompass communications which are not for the purpose of influencing the Commission or any of its employees or which, at the time of the filings, are reasonably believed not to involve any potential controversy. As used in this section, the term "representative" or "representative capacity" shall include not only the usual type of representation by an attorney, etc., but also representation of a corporation in the capacity of an officer, director or controlling stockholder thereof.

(d)(1) Partners or associates of any person disqualified from appearing or practicing before the Commission in a particular matter by paragraph (a)(1) of this section are also disqualified. Such partners or associates (the "firm") may request a

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Footnote 20 continued

likely that confidential information, derived while a member or employee of the Commission, would have continuing relevance to the proceeding, so as to make participation therein by the former member or employee of the Commission unethical or prejudicial to the interests of the Commission.

[21]This definition is taken from Formal Opinion 342 of the ABA Ethics Committee. The opinion states that "work as a government employee in drafting, enforcing or interpreting government or agency procedures, regulations or laws, or in briefing abstract principles of law, does not disqualify the lawyer under DR9-101B (which states 'a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee') from subsequent private employment involving the same regulation procedures, or points of law* * *."

[22]This prohibition appears in the Ethics in Government Act of 1978. Pub. L. 95-521.

waiver of this prohibition from the Commission by writing a letter to the General Counsel of the Commission setting forth the facts of the proposed representation and the individual's disqualification. In appropriate situations, a firm may request a generic waiver with respect to a number of different matters. Upon the advice of the Office of the General Counsel, the Commission, or the General Counsel exercising delegated authority, will advise the requestor of the Commission's response.

(2) Waivers ordinarily will be granted where the firm makes a satisfactory representation that it has adopted screening measures which will effectively isolate the individual lawyer disqualified under paragraph (a)(1) from participating in the particular matter or matters and from sharing in any fees attributable to it. It will be considered significant for purposes of this determination that:

(i) The firm had a pre-existing securities law practice prior to the arrival of the disqualified attorney;

(ii) The matter was previously the subject of consideration by the firm or the client was already advised by the firm;

(iii) In cases where the matter or client became the subject of consideration by the firm subsequent to the firm's employment of the lawyer individually disqualified, that the matter was not brought to the firm because of the disqualified attorney.

(3) Notwithstanding the existence or non-existence of any of these factors, no waiver will be issued if the proposed representation would create a significant appearance of impropriety or would otherwise adversely affect the interests of the government.[23] All proceedings with respect to waivers shall be a matter of public record except to the extent that such public disclosure might violate attorney-client privilege or breach the attorney's obligation to preserve the confidences and secrets of his or her clients, reveal the existence of ongoing private investigations, interfere with law enforcement proceedings, or otherwise be inconsistent with the public interest.

(e) Persons in doubt as to the applicability of any portion of this section may apply for an advisory ruling of the Commission.[24]

§200.735-9 Indebtedness.

(a) The Securities and Exchange Commission considers the indebtedness of its members and employees to be essentially a matter of their own concern and will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by him or her to be valid, or reduced to judgment by a court, or to make or to adhere to satisfactory arrangements for the settlement thereof, may be a cause for disciplinary action. In this connection each member and employee is expected to meet his or her responsibilities for payment of Federal, State and local taxes. For purposes of this section, "in a proper and timely manner" means in a manner which the agency determines does not, under the circumstances, reflect adversely on the Government as his or her employer.

(b) Compensation due members and employees is subject to garnishment for child support and alimony obligations. (42 U.S.C. 659).

§200.735-10 Miscellaneous statutory provisions.

Each member and employee is responsible for acquainting himself or herself with each statute that relates to his or her ethical and other conduct as a member or employee of the Commission and of the Government, including the statutory provisions listed below. Violations of any of these statutes are deemed to be violations of the rules in this Subpart M as well.

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[23]For example, no waiver will be granted if, during the course of representing a client who has an interest with respect to a matter before the Commission, a firm employs, or accepts as a partner, a member of the staff or of the Commission who at any time during the course of that representation had direct and substantial responsibility for the same matter, and whose departure would result in a significant adverse impact upon that matter at the Commission.

[24]Attention of former members and employees is directed to Formal Opinion 342 of the Committee on Ethics of the American Bar Association, 62 A.B.A.J. 517 (1975) and to 18 U.S.C. 207.

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibition against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(f) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(g) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(h) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(i) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(j) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(k) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(l) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(m) The prohibition against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(n) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(o) The prohibition against political activities in subchapter III of Chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(p) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

§200.735-11 Statement of employment and financial interests.

(a) Members and employees in the Senior Executive Service or Grades GS-16 through GS-18 are required to file a financial disclosure report as provided by Title II of the Ethics in Government Act of 1978, Pub. L. 95-521. Members and such employees need not also file the statement of employment and financial interests required by the following provisions.

(b) Prior to the time of entry on duty, or upon designation to a position set forth in paragraph (c) of this section, such employee shall submit to the Director of Personnel a statement, on the official form made available for this purpose through the Office of Personnel, setting forth the following information:[25]

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which the employee, his or her spouse, unemancipated minor child or other member of his or her immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association.

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

(2) A list of the names of the employee's creditors and the creditors of his or her spouse,

[25]In addition to the information required by this Rule, all employees are required by Rule 3(n) to file annually with the Director of Personnel a listing of their securities holdings.

unemancipated minor child or other member of his or her immediate household, other than those creditors to whom any such person may be indebted by reason of a mortgage on property which he or she occupies as a personal residence, or to whom such person may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, vacations, an automobile, education, or the like.

(3) A list of the employee's interests and those of his or her spouse, unemancipated minor child, or other member of his or her immediate household in real property or rights in lands, other than property which he or she occupies as a personal residence.

(4) For the purpose of this section, "member of his or her immediate household" means a resident of the employee's household who is related to the employee by blood or marriage.

(5) In the instance where a spouse is not a "member of the employee's immediate household," and the employee certifies he or she neither derives nor expects to derive any economic benefit from the holdings of the spouse, the Director of Personnel may waive the requirement of reporting the interests of such spouse.

(c) Except as to employees noted in paragraph (a), statements of employment and financial interests are required of the following:

(1) All employees in grade GS-15.

(2) Incumbents of the following positions, regardless of grade:

(i) Executive Staff. (A) Legal Assistants to the Chairman and to each Commissioner; (B) Special Counsels to the Chairman.

(ii) Employees serving under SEC Fellowship Programs.

(iii) All employees engaged in any aspect of Government contracting or procurement activities.

(iv) Division, Office, Directorate

(A) Directors
(B) Deputies
(C) Associates
(D) Assistants
(E) Chief Counsels

(v) Regional Offices

(A) Administrators
(B) Associate Administrators
(C) Assistant Administrators
(D) Attorneys-in-Charge of Branch Offices
(E) Chief Enforcement Attorneys

(d) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this paragraph, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of Section 208 of Title 18, United States Code, or of this Conduct Regulation.

(e) If any information required to be included on a statement of employment and financial interest or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his or her behalf.

(f) Paragraph (c) of this section does not require an employee to submit any information relating to his or her connection with, or interest in, a non-profit educational, charitable, religious, professional, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(g) Statements of employment and financial interests filed pursuant to paragraph (c) shall be sent to the Director of Personnel in a sealed envelope marked "Confidential Employment and Financial Interests." They shall be maintained in a confidential file. Only those officials of the Commission whose participation is necessary for the carrying out of the purpose of this Conduct Regulation may have access

to such statements and no information may be disclosed from them except as the Commission or the Office of Personnel Management may determine for good cause shown.

(h) In accordance with the requirements of the Ethics in Government Act of 1978, Pub. L. 95-521, the Director of Personnel or the Assistant Director of Personnel shall review the financial disclosure reports filed pursuant to that Act.

(i) The Director of Personnel or the Assistant Director of Personnel shall examine the statements of employment and financial interests filed pursuant to paragraph (c) to determine whether conflicts of interest or apparent conflicts of interest on the part of employees exist. An employee shall be afforded the opportunity to explain any conflict or appearance of conflict. When the Director or Assistant Director of Personnel, in consultation with appropriate superiors of the employee involved, is unable to resolve a conflict or appearance of conflict, he or she shall report the matter to the Commission through the Counselor for the Commission designated under §200.735-15(a).

(j) The Counselor for the Commission shall examine statements filed by the Director of Personnel and the Assistant Director of Personnel.

(k) Except as otherwise provided in paragraph (a) the statement of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order or regulation. The submission of a statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or the other person's participation is prohibited by law, order or regulation.

(l) An employee has the right to ask for a review through the Commission's grievance procedure outlined in section 771, Part II, Manual of Administrative Regulations, of a complaint that his or her position has been improperly included under the provisions of this section as one requiring the submission of a statement of employment and financial interests.

§200.735-12 Special Government employees.

(a) Special Government employee means a person defined in section 18 U.S.C. 202 as a "special Government employee." All of the provisions of this Conduct Regulation are applicable to special Government employees, except that in specific appropriate cases the Commission may exempt such employees from, or modify the applicability of, any portion of any provision of the Conduct Regulation.

(b) In no event will the Commission waive a provision of the Conduct Regulation which would permit a special Government employee to:

(1) Use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he or she has family, business, or financial ties.

(2) Use inside information obtained as a result of his or her Government employment for private gain for himself or herself or another person either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For purposes of this paragraph, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(3) Use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

(4) Receive or solicit from a person having business with the Commission anything of value as a gift, gratuity, loan, entertainment, or favor for himself or herself or another person, particularly one with whom he or she has family, business or financial ties.

(c) Prior to entrance on duty, each special Government employee shall submit to the Director of Personnel a statement of employment and financial interests which contains such information as the Director of Personnel determines is relevant in the light of the duties the special Government employee is to perform and, if appropriate, the financial disclosure report as provided by Title II of the Ethics in Government Act of 1978, Pub. L. 95-521. It shall be kept current throughout the period of employment by the filing of supplementary statements in accordance with the requirements of

§200.735-11(d). Statements shall be on the official form made available for this purpose through the Office of Personnel.

(d) The Commission may waive the requirement of paragraph (c) of this section in the case of a special Government employee who is not a "consultant" or an "expert," as those terms are defined in Chapter 304 of the Federal Personnel Manual (5 CFR 735.304), if the duties of the position are determined to be at a level of responsibility which does not require the submission of such statement to protect the integrity of the Commission.

§200.735-13 Disciplinary and other remedial action.

(a) Knowing participation in a violation of this subpart by persons not within the scope of the foregoing rules in this subpart shall likewise be deemed improper conduct and in contravention of Commission rules. Departure from any of the rules in this subpart by employees or special Government employees without specific approval may be cause for appropriate remedial and/or disciplinary action or, in the case of former members, employees, and special Government employees, for disqualification from appearing and practicing before the Commission, which may be in addition to any penalty prescribed by law.

(b) When there has been a departure from any of the rules of this subpart without specific approval or when a conflict of interest or an apparent conflict of interest on the part of an employee or special Government employee arises, the Director of Personnel may order immediate action to end such conflict or appearance of conflict of interest. Remedial action may include, but is not limited to (1) changes in assigned duties; (2) divestment by the employee or special Government employee of his conflicting interest; (3) disciplinary action; or (4) disqualification for a particular assignment. Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations. The Director of Personnel may refer any recommended action to the Commission. The employee may obtain review by the Commission of any action ordered to be taken by the Director of Personnel. During the period of review, unless otherwise directed by the Commission, the action ordered by the Director of Personnel is stayed.

(c) Former members or employees who violate the post-employment restriction provisions of 18 U.S.C. 207(a), (b) or (c), which parallel the provisions of Rule 8(a), *supra*, will be subject to an administrative enforcement proceeding as set forth in Rule 2(e) of the Commission's Rules of Practice, 17 CFR 201.2(e), except that, when proceedings are brought to determine if violations of post-employment restrictions have occurred, denial of the privilege of appearing and practicing before the Commission will be based on a finding of violation of the provisions of Rule 8(a) and 18 U.S.C. 207(a), (b) and (c). Procedures applicable to such administrative proceedings are to be found in the Commission's Rules of Practice, 17 CFR 201.1 *et seq*.

§200.735-14 Employees on leave of absence.

The provisions of the rules in this subpart relative to employees of the Commission are applicable to employees on a leave with pay or a leave without pay status other than extended military service.

§200.735-15 Interpretive and advisory service.

(a) The General Counsel shall be designated "Counselor for the Commission" and shall serve as the Commission's delegate to the Office of Personnel Management on matters covered by the rules in this subpart. The General Counsel shall be responsible for coordinating the Commission's counseling services provided under this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by the rules in this subpart are available to all members and employees.

(b) There shall be designated as Deputy Counselors the Director of Personnel, the Administrator of each regional office, and the person in charge of each branch office. The General Counsel or his or her designee shall provide guidance to the Deputy Counselors for the purpose of achieving uniform interpretations of this subpart.

(c) A member, employee, or former member or employee may obtain advice or guidance on the application of the rules in this subpart from any Deputy Counselor or the General Counsel. In addition, any former member or employee seeking advice or an interpretation relating to the Ethics in Government Act shall submit his or her request to the General Counsel.

(d) The General Counsel and Deputy Counselors will treat information they receive pursuant to requests for advice or guidance under this Rule on a confidential basis, except that information they receive indicating a possible past violation of any provision of this Conduct Regulation or of the law will be brought to the attention of appropriate persons.

(e) The Director of Personnel shall furnish a copy of this Conduct Regulation (Subpart M) to each member, employee and special Government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member, employee and special Government employee this Conduct Regulation (Subpart M) and all revisions thereof.

(f) The Director of Personnel shall notify each member, employee and special Government employee at the time of entrance on duty, and from time to time thereafter, of the availability of counseling services and of how and where these services are available.

§200.735-16 Delegation.

Any official responsibility assigned to a person in a particular position pursuant to this subpart may be delegated by such person to any other person.

§200.735-17 Administration of the Conduct Regulation.

Under the general direction of the Executive Director, the Director of Personnel is responsible for the day-to-day administration of this Conduct Regulation except where otherwise provided.

§200.735-18 Requests for Waivers.

Unless a different procedure is specifically prescribed in a rule of this part, an employee may submit a request for a waiver, modification or postponement of a requirement included in this part to the Chairman. Such waiver, modification or postponement may be granted if it is determined by the Chairman that such waiver, modification or postponement would not adversely affect the interest of the Commission or the United States. Any such waiver, modification or postponement granted by the Chairman shall be made available to the public. The Chairman may submit any request made pursuant to this rule to the Commission for its consideration. Any Commission action on such request shall be made public only in the discretion of the Commission. Requirements included in this part which implement any provision of federal law, regulation or Executive Order generally applicable to the Executive Branch shall not be waived under this provision.

* * * * *

The Commission finds that the foregoing action relates solely to rules of agency procedure or practice and, accordingly, that notice and prior publication for comments under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, are unnecessary. See 5 U.S.C. 553(b).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6213/May 29, 1980

In the Matter of

WILLKIE, FARR & GALLAGHER PENSION PLAN FOR PARTNERS AND ASSOCIATES
One Citicorp Center
153 East 53rd Street
New York, NY 10022

(18-73)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE WILLKIE, FARR & GALLAGHER PENSION PLAN FOR PARTNERS AND ASSOCIATES

NOTICE IS HEREBY GIVEN that Willkie, Farr & Gallagher (hereinafter the "Firm" or "Applicant"), a law firm organized as a partnership under the laws of the State of New York has, by letter dated February 29, 1980, filed an application for exemption from the registration requirements of the Securities Act of

1933 (the "Act") for participations or interests issued in connection with the Willkie, Farr & Gallagher Pension Plan for Partners and Associates (the "Plan"). All interested persons are referred to the application which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. *Introduction*

The Plan covers the Firm's attorneys, of whom 48 partners and 50 associates were participants in the Plan as of January 1, 1980. In addition, 10 non-legal employees of the Firm are entitled to benefits under the Plan because they were participating in the Plan immediately prior to January 1, 1977, the effective date of an amendment to the Plan, and had an amount credited to their individual Firm contribution accounts on such date.

Applicant states that the Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case partners, associates and certain vested employees of the Firm) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended, (the "Code"), and therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers.

In relevant part Section 3(a)(2) of the Act provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. *Description and Administration of the Plan*

Applicant states that the Plan was originally adopted as of January 1, 1974 and was most recently amended as of January 1, 1980. The Plan is subject to the Employee Retirement Income Act of 1974 ("ERISA") including the fiduciary responsibility and reporting and disclosure provisions of that statute. The Firm states that the Internal Revenue Service (the "IRS") has issued a determination letter to the effect that the Plan, as in effect through December 31, 1979, is a qualified plan under Section 401(a) of the Code. The Firm will seek a new determination letter from the IRS with respect to the qualification of the Plan, as amended, under Section 401(a) of the Code.

The Applicant submits that the Plan is not a master or prototype plan designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons.

The Plan has a mandatory Firm contribution feature and a voluntary participant contribution feature, both of which are based on a percentage of compensation. In general, the Firm's annual contribution on behalf of a participant who is a partner or associate may not exceed $7,500. In addition, each of such participants may elect to make voluntary contributions not in excess of 10% of their annual earnings. The Firm makes no contribution on behalf of vested Employees as they are covered by another retirement plan of the Firm. Similarly, voluntary contributions cannot be made by the vested Employees.

The Firm represents that it exercises substantial administrative responsibility with respect to the Plan. Complete authority to control and manage the operation and administration of the Plan is possessed by the Firm's Pension Committee. The Plan is administered through a single trust with three of the Firm's partners acting as trustees (the "Trustees"). Under the Plan the Trustees have the power in their sole discretion to select appropriate investment media or investment managers for the Plan.

Applicant represents that the Plan is divided into two funds for investment purposes. The first fund is an "equity fund" managed by an investment adviser registered with the Commission under the Investment Advisers Act of 1940 and appointed by the Trustees. The second fund is a "fixed income fund." The Trustees have under consideration and expect to enter into a guaranteed investment contract (the "Contract") with a major insurance company (the "Insurer"), pursuant to which the assets of the fixed income fund will be invested in the Insurer's General Account, subject to certain limitations. Each participant may elect the fund or funds into which the Firm's contribution or any voluntary contributions will be invested.

The Firm represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan and has not made and does not intend to make any solicitations of voluntary contributions under the Plan. The Firm makes copies of the Plan available to Plan participants and furnishes each participant with other descriptive material and financial information relating to the Plan.

Applicant contends that the primary reason for denying a blanket exemption to pension and profit-sharing plans covering self-employed persons was a concern on the part of Congress that such plans constitute complex investment vehicles, interests in which could be sold by sponsoring financial institutions to self-employed persons who might not be sophisticated in the securities field or who might be unable to protect adequately their interests and those of their participating employees. However, Applicant urges that the plan covers its partners and associates who are themselves engaged in furnishing legal services of a type which necessarily involve financial sophisticated and complex matters and therefore are able to protect their interests adequately without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participates.

Finally, Applicant maintains that the possible need for an exemptive order arises only because the Firm does business as a partnership. The Applicant believes that were it incorporated, its attorneys would not be self-employed persons and there would be no question as to the availability of the exemption.

The Firm concludes that, for the foregoing reasons, granting the requested exemptive order would be appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 23, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Firm at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following June 23, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16823/May 22, 1980

Admin. Proc. File No. 3-5920

In the Matter of

LOEB, RHOADES, HORNBLOWER & CO.
R. JACK BERNHARDT
PETER DAPUZZO
WILLIAM FITZPATRICK
RICHARD A. POLLACK
PETER K. LOEB
CARL MUELLER
DONALD B. MOTHNER
THOMAS KEMPNER
ANDREW MCLAUGHLIN
WALTER WALZ
HOWARD G. BERG

SWIFT, HENKE & CO., INC.
RICHARD J. BERTOLDI

The Securities and Exchange Commission has ordered public administrative proceedings against R. Jack Bernhardt ("Bernhardt"), a registered representative with Loeb, Rhoades & Co., Inc. ("Loeb Rhoades") from November, 1974 until February 11, 1977, and a registered representative with Swift, Henke & Co. ("Swift Henke") from February 14 until March 14, 1977, and against certain other respondents, including Loeb, Rhoades, Hornblower & Co. ("Loeb Rhoades Hornblower"), successor firm to Loeb Rhoades, and certain former officers of Loeb Rhoades, and Swift Henke and its former president.

The Order Instituting Proceedings alleges that Bernhardt violated the antifraud, antimanipulative, credit, beneficial ownership reporting, record-keeping and net capital provisions of the federal securities laws. The Order alleges that, from in or about December, 1975, until on or about March 14, 1977, Bernhardt engaged in a scheme to manipulate, dominate and control the market price and supply of the securities of Olympia Brewing Company; Lawrys Foods, Inc.; Stange Co. and Fays Drug Company. It is charged that, as part of Bernhardt's scheme, he solicited trades in the accounts of certain of his customers, and placed orders for the purpose of raising the prices of the securities, sustaining the prices he had established and absorbing shares of the securities being sold into the market. It is further charged that Bernhardt devised a check-exchange scheme involving certain customers in order to create the appearance of payments for purchases of securities, arranged illegal bank loans and loans from individuals for certain customers to purchase securities and caused his employer firms to file false Regulation T requests. It is also alleged that Bernhardt accumulated in the accounts of his customers more than 5% of the outstanding stock in each security for the purpose of acquiring, holding and disposing of the shares of each security as a block.

The Order Instituting Proceedings further charges that Bernhardt's employer, Loeb Rhoades, violated certain provisions of the federal securities laws, including the antifraud and credit provisions, and that certain officers of Loeb Rhoades failed reasonably to supervise persons subject to their supervision with a view to preventing those violations. It further charges that Swift Henke violated the credit, net capital and record-keeping provisions of the federal securities laws and that Swift Henke and its president failed reasonably to supervise persons subject to their supervision with a view toward preventing those violations and preventing violations of the antifraud provisions.

Simultaneously with the issuance of the Order Instituting Proceedings, all respondents except Bernhardt submitted Offers of Settlement in which they consented to the issuance of the Commission's Findings and Order Imposing Remedial Sanctions without admitting or denying any of the allegations or findings. Accordingly, the Commission issued its Findings and Order Imposing Remedial Sanctions against all of the respondents except Bernhardt, without factual findings and based solely upon the allegations of the Division of Enforcement and the consents of those respondents. Securities Exchange Act Release No. 16824/May 22, 1980.

A hearing will be scheduled to determine whether the allegations against Bernhardt are true, and if so, to decide what, if any, remedial sanctions would be appropriate.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16824/May 22, 1980

Admin. Proc. File No. 3-5920

In the Matter of

LOEB, RHOADES, HORNBLOWER & CO.
R. JACK BERNHARDT
PETER DaPUZZO
WILLIAM FITZPATRICK
RICHARD A. POLLACK
PETER K. LOEB
CARL MUELLER
DONALD B. MOTHNER
THOMAS KEMPNER
ANDREW McLAUGHLIN
WALTER WALZ
HOWARD G. BERG

SWIFT, HENKE & CO., INC.
RICHARD J. BERTOLDI

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

Each of the respondents named below and named in the Commission's Order Instituting Proceedings

issued this day[1] has submitted an Offer of Settlement simultaneously with the institution of these proceedings. Under and subject to the terms of the Offer of Settlement, each of the Respondents named herein, solely for the purpose of disposing of these proceedings, without admitting or denying as to them respectively any of the matters set forth herein or in the Order Instituting Proceedings, and, on the understanding that nothing contained in the Order Instituting Proceedings or in this Order constitutes an adjudication or may be used in any way for any purpose, as evidence or otherwise, in any action or proceeding, other than Commission proceedings, nor shall any future order or findings which the Commission may issue in these proceedings against any non-consenting respondent constitute an adjudication or finding against, or be used in any way for any purpose, as evidence or otherwise, in any action or proceeding as to any consenting respondent, consents to the issuance of this Order.

This Order is being issued with the consent of the respondents, without a hearing, without factual findings and is based solely upon the allegations of the Division of Enforcement contained in the Order Instituting Proceedings herein and the Offers of Settlement submitted by the settling respondents. Nothing in this Order is intended to apply to any non-consenting respondent.

Findings

Based upon the above, the Commission finds:

1. Loeb Rhoades & Co., Inc., predecessor to Loeb, Rhoades, Hornblower & Co., willfully* violated Sections 7(c) and 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and Regulation T promulgated by the Board of Governors of the Federal Reserve System ("Federal Reserve Board").

2. Peter DaPuzzo ("DaPuzzo"), William Fitzpatrick ("Fitzpatrick"), Richard A. Pollack ("Pollack"), Peter K. Loeb ("P. Loeb"), Carl Mueller ("Mueller"), Donald B. Mothner ("Mothner"), Thomas Kempner ("Kempner"), Andrew McLaughlan ("McLaughlin"), Walter Walz ("Walz"), and Howard G. Berg ("Berg"), failed reasonably to supervise persons subject to their supervision with a view toward preventing violations of the Federal Securities Laws found against Loeb Rhoades & Co., Inc., above.

3. Swift Henke & Co., Inc. ("Swift Henke") willfully violated Sections 7(c), 15(c) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-3 thereunder and Regulation T of the Federal Reserve Board, and Swift Henke and Richard J. Bertoldi ("Bertoldi") failed reasonably to supervise persons subject to their supervision with a view toward preventing the above violations and violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The Order Instituting Proceedings is intended to, and does, contain allegations limited to the Commission's statutory functions in a broker-dealer administrative proceeding. It does not purport to be a report of investigation. The respondents are involved in a number of private civil actions which include, among other parties, respondents to these proceedings and defendants in the injunctive action today filed by the Commission. Nothing in the Order Instituting Proceedings or in this Order is intended to reflect, or should be construed as reflecting, any view of the Commission or the Division of Enforcement as to the relative culpability or civil responsibility of any party to any private action in such action. The Order Instituting Proceedings does not refer to all the matters which may have a bearing upon the issues involved in private civil actions. These are matters for determination and consideration in the pending litigation and are not within the scope of the Commission's proceedings.

[1]Securities Exchange Act of 1934 Release No. 16823/May 22, 1980.

*The settling respondents have stated that they acted in good faith and had no intent to violate the law or to defraud. As stated in the Order Instituting Proceedings, the Division of Enforcement need not, and therefore does not, allege that the respondents engaged in conduct with intent to violate the law or to defraud. The term "willfully", for the purpose of an administrative proceeding, does not require a finding that the respondent engaged in conduct with intent to violate the law or with the knowledge that the law was being violated. Accordingly, no such finding is made. The term "willfully", for the purpose of an administrative proceeding, means only that the respondent's actions were voluntarily performed in the sense that the respondent was aware of what it was doing.

ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers of Settlement of the respondents named below. Accordingly, the Commission hereby issues this Order Imposing the Remedial Sanctions set forth below:

A. *Order as to Loeb, Rhoades, Hornblower & Co.*

IT IS ORDERED that Loeb, Rhoades, Hornblower & Co. (referred to in this Section A as "Registrant") is hereby censured.

IT IS FURTHER ORDERED THAT:

1. Registrant and its wholly-owned subsidiary, First Wall Street Settlement Corporation, will not continue to engage in the business of a retail broker-dealer of securities to the public except as incidental to the completion of the transfer of its assets and business relating to its public retail securities brokerage business to Shearson Hayden Stone, Inc. and the liquidation of residual broker-dealer activities which are in the process of transfer and liquidation and to the termination or liquidation of the Loeb, Rhoades, Hornblower & Co. partnership. The liquidation of residual accounts and termination or liquidation of the Loeb, Rhoades, Hornblower & Co. partnership shall be completed as soon as practicable. For purposes of this paragraph 1, the Registrant and First Wall Street Settlement Corporation shall not be considered to be engaging in the business of a retail broker in securities to the public by virtue of any direct or indirect ownership interest in Shearson Hayden Stone, Inc.

2. Within 90 days from the date hereof, Registrant will place or cause its predecessor, Loeb Rhoades & Co., Inc. to place into an escrow fund money or securities valued at $600,000, which sum approximately represents proceeds derived by Registrants's predecessor from trading in the stocks that are the subject of this proceeding. The fund shall be used only in satisfaction of claims against the Registrant and Loeb Rhoades & Co., Inc., or its predecessors, subsidiaries, successors and/or affiliates arising from the acts and courses of conduct forming the basis for these proceedings, and as provided in paragraphs 2a-c, below. Securities or government bills or notes may be substituted for assets in the fund, provided that if the value of the fund shall decline below $600,000 less any amounts paid pursuant to this paragraph 2, additional money or securities shall be deposited within 15 days to make up the deficiency. Registrant or Loeb Rhoades & Co., Inc. shall have the right to withdraw currently any increases in the value of the fund over $600,000 less any amounts paid against claims, and any interest or dividends accruing with respect to the securities or monies in said fund. The fund shall be used only as follows:

a. Registrant or its predecessor, Loeb Rhoades & Co., Inc., shall notify the Commission of the settlement or disposition by judgment of any claim in connection with any acts and courses of conduct forming the basis of these proceedings and shall make a distribution of assets from the escrow fund in payment of such settlements or judgments in accordance with the date upon which they are made or entered; provided, however, that no entity or individual who a court may have determined not to be entitled to recovery shall be entitled to participate in such a distribution.

b. Notwithstanding the foregoing limitation on the use of the fund, the Commission may, upon request of the Registrant or Loeb Rhoades & Co., Inc., approve the use of the fund to satisfy any claims against the Registrant or Loeb Rhoades & Co., Inc. arising from the acts and courses of conduct forming the basis for the proceedings.

c. Any balance of said $600,000 not paid in settlement or satisfaction of claims or judgments pursuant to paragraphs a and b, above, shall be promptly distributed in accordance with a plan submitted by Registrant or Loeb Rhoades & Co., Inc. and satisfactory to the Commission, but such plan shall not provide for return of any part of said $600,000 to Registrant or Loeb Rhoades & Co., Inc. In the event the Commission and Registrant or Loeb Rhoades & Co., Inc. cannot agree upon a plan for distribution of any amount remaining in the fund, such remaining amount shall be paid to the Securities Investor Protection Corporation. No part of said $600,000 committed under this paragraph 2 shall be considered as an asset of Registrant or First Wall Street Settlement Corp. for purposes of computing the net capital of the Registrant under Rule 15c3-1.

B. *Order as to DaPuzzo, Fitzpatrick, Pollack, P. Loeb, Mueller and Mothner*

IT IS FURTHER ORDERED that DaPuzzo, Fitzpatrick, Pollack and P. Loeb are suspended for a period of 30 days from association with any broker, dealer, investment advisor or investment company; and Mueller and Mothner are suspended for a period of 20 business days from association with any broker, dealer, investment advisor or investment company. The suspension of DaPuzzo shall commence upon August 16, 1980; the suspension of Pollack shall commence upon June 28, 1980; and the suspension of P. Loeb, in view of his serious personal needs, shall be served in accordance with a plan submitted to the Division of Enforcement and shall be completed by August 30, 1980.

C. *Order as to Kempner, McLaughlin, Walz and Berg*

IT IS FURTHER ORDERED that Kempner, McLaughlin, Walz and Berg are hereby censured.

D. *Order as to Swift Henke*

IT IS FURTHER ORDERED that Swift Henke is hereby censured.

E. *Order as to Bertoldi*

IT IS FURTHER ORDERED that Bertoldi shall not serve in any supervisory or proprietary position with a broker-dealer for a period of 30 days.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16825/May 22, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-80-16)

The National Securities Clearing Corporation submitted on May 21, 1980 a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act, establishing a "Demand As Of" service to assist in the resolution of uncompared trades in the over-the-counter market.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-16.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16826/May 22, 1980

In the Matter of

PMI MORTGAGE CORPORATION, AS PACKAGER AND MASTER SERVICER

File No. 81-600

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued an order granting the application of PMI Mortgage Corporation, for an exemption from certain reporting requirements under Section 13 and from the operation of Section 16 of the Securities Exchange Act of 1934.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16827/May 22, 1980

In the Matter of

THE ANACONDA COMPANY

File No. 81-618

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission issued an order granting the application of The Anaconda Company pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the reporting requirements of Section 13 and 15(d) of the 1934 Act.

On April 16, 1980 a notice was issued on the filing of said application giving interested persons an opportunity to request a hearing and stating that an order granting the application might be issued upon the basis of the information stated therein unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16828/May 22, 1980

In the Matter of

HARTER BANCORP

ORDER PURSUANT TO SECTION 12(h) GRANTING AN EXEMPTION FROM REPORTING REQUIREMENTS UNDER SECTIONS 13 AND 15(d)

The Securities and Exchange Commission has issued an order exempting Harter BanCorp ("Applicant") from the reporting requirements under Sections 13 and 15(d) of the Securities Exchange Act of 1934 (the "1934 Act"). On July 9, 1979, Applicant was merged into Society Corporation ("Society") and all of Applicant's outstanding shares of common stock were converted into common shares of Society. Society is a reporting company under the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16829/May 22, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16830/May 22, 1980

In the Matter of

BDM INTERNATIONAL, INC.

File No. 81-611

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of BDM International, Inc. ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

It appeared to the Commission that the requested exemption would not be inconsistent with the public interest or the protection of investors, inasmuch as Applicant's stock is held by fewer than 300 persons and is not publicly traded.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16831/May 22, 1980

APPLICATIONS FOR EXTENSION, SUSPENSION, OR TERMINATION OF UNLISTED TRADING PRIVILEGES

ACTION: Final rules.

SUMMARY: The Commission is adopting proposed amendments to Rules 12f-1 and 12f-3 [17 CFR 240.12f-1, 12f-3] under the Securities Exchange Act of 1934 ("Act") to require persons filing applications for an extension, suspension, or termination of unlisted trading privileges to certify that notice of such applications has been given to certain persons specified by Section 12(f)(5) of the Act. This will more fully satisfy the purposes of the notice provisions of Section 12(f)(5) by giving interested persons a better opportunity to comment upon these applications.

EFFECTIVE DATE: July 1, 1980.

FOR FURTHER INFORMATION CONTACT: Susan Wilk, Division of Market Regulation, Securities and Exchange Commission, Room 341, 500 North Capitol Street, Washington, D.C. 20549. (202) 272-2824.

SUPPLEMENTARY INFORMATION: On April 3, 1980, the Commission issued a release proposing for comment amendments to Rules 12f-1 and 12f-3 under the Act which would require applicants for an extension, suspension or termination of unlisted trading privileges to give notice to certain persons specified in Section 12(f)(5) of the Act.[1]

Rule 12f-1 [17 CFR 240.12f-1] governs the information which must be included in an application by a national securities exchange for extension of unlisted trading privileges. Such an application is made under Section 12(f)(2) of the Act,[2] and may be approved by the Commission if, after appropriate notice and opportunity for hearing, it finds that such extension is consistent with the maintenance of fair and orderly markets and the protection of investors.

Similarly, Rule 12f-3 under the Act [17 CFR 240.12f-3] prescribes the information which must be included in an application for the termination or suspension of unlisted trading privileges. Under Section 12(f)(4) of the Act,[3] the Commission may terminate or suspend unlisted trading privileges if, after appropriate notice and opportunity for hearing, the Commission finds that such action is necessary or appropriate in the public interest or for the protection of investors.

Section 12(f)(5) of the Act[4] provides that "appropriate notice" of not less than 10 days of applications for extension, suspension or termination of unlisted trading privileges should be given to "* * *the issuer of the security involved, to the exchange which is seeking to continue or extend unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered* * *"

Upon the filing of an application for extension, suspension or termination of unlisted trading privileges the Commission publishes notice by the issuance of a Commission release and by publication in the *Federal Register* at least 10 days prior to making a determination on the application. Constructive notice of applications filed under Rules 12f-1 and 12f-3, thus, is provided to all persons. The Commission does not provide personal notice to the parties delineated in Section 12(f)(5) as being entitled to notice.

The Commission has determined to amend Rules 12f-1 and 12f-3 to ensure that notice requirements of Section 12(f)(5) are fully satisfied and that interested persons are provided the opportunity to comment upon any application for the extension, suspension or termination of unlisted trading privileges. The amended rules will require that exchanges, when applying for the extension of unlisted trading privileges pursuant to Section 12(f)(2) of the Act, and issuers, when applying for the suspension or termination of unlisted trading privileges pursuant to Section 12(f)(4) of the Act,

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[1]Securities Exchange Act Release No. 16730 (April 3, 1980), 45 FR 24505. No comments on the proposal were received.

[2]15 U.S.C. §78*l*(f)(2)(1975).

[3]15 U.S.C. §78*l*(f)(4)(1975). The issuer of any security for which unlisted trading privileges have been extended, or any other interested person, may make an application to terminate or suspend unlisted trading privileges.

[4]15 U.S.C. §78*l*(f)(5) (1975).

certify in their application that a copy of such application has been mailed or otherwise given to the persons required by Section 12(f)(5).

The Commission believes that the amendments to Rules 12f-1 and 12f-3 will more fully satisfy the purposes of the notice provisions of Section 12(f)(5) by providing interested persons a better opportunity to comment upon applications relating to unlisted trading privileges. Further, the Commission believes that the amendments will facilitate the efficient processing of such applications by this agency.

For the reasons stated above, the Commission finds that the proposed amendments are appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act. Accordingly, the Commission acting pursuant to its authority under Section 23(a)(1) of the Act,[5] hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By amending paragraph (a)(5) of §240.12f-1 and adding paragraph (a)(6) to read as follows:

§240.12f-1 Applications for permission to extend unlisted trading privileges.

(a) * * *

(5) Any other information which is deemed pertinent to the question of whether the continuation or extension of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

(6) That a copy of the instant application has been mailed, or otherwise personally provided, to the issuer of the securities for which unlisted trading privileges are sought and to each exchange listed in item (3) of this section.

2. By amending paragraph (a)(8) of §240.12f-3 and adding paragraph (a)(9) to read as follows:

§240.12f-3: Termination or suspension of unlisted trading privileges.

(a) * * *

(8) A brief statement of the information in the applicant's possession, and the source thereof, with respect to (i) the extent of public trading in such security on such exchange, and (ii) the character of trading in such security on such exchange; and

(9) A brief statement that a copy of the instant application has been mailed, or otherwise personally provided, to the exchange from which the suspension or termination of unlisted trading privileges is sought, and to any other exchange on which such security is listed or traded pursuant to unlisted trading privileges.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16832/May 22, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INC.

File No. SR-MSE-80-7

The Midwest Stock Exchange, Inc. ("MSE") submitted on May 9, 1980, a proposed rule change under Rule 19b-4 to provide that a member of either the MSE equity or options floor who appeals from the imposition of a summary fine or censure must, in writing, specifically state the actions complained of, the reasons for the appeal and the relief sought. A member appealing from a summary censure or fine must, in writing, specifically admit or deny each charge complained of in addition to the information stated above. The proposed rule change would provide that the reviewing committee may affirm, reverse, modify, increase or decrease a penalty.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine

[5] 15 U.S.C. §78w(a)(1).

whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16833/May 23, 1980

INTERPRETATIVE RELEASE RELATING TO PROXY RULES

ACTION: Publication of staff interpretation.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of this release reflecting the views of the Division of Corporation Finance (the "Division") with respect to the disclosure in proxy contests where a principal issue in contention is the liquidation of all or a part of the equity of an issuer. These views are being published because of serious concerns regarding the appropriateness and adequacy of the disclosure in this area.

FOR FURTHER INFORMATION CONTACT: Linda C. Quinn, (202) 272-3208, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In the past year, a number of proxy contests have been undertaken in which a principal issue in contention, either as the platform of one party's nominees or as a separate shareholder proposal, has been the disposition of some or all of an issuer's assets or outstanding stock with the proceeds to be made available to shareholders. While the proposals have run the gamut from a mere promise to seek a buyer for the issuer's assets or outstanding stock to a commitment to undertake a program of disposition of assets and distribution of the proceeds realized, each has been based on the premise that the market price of the issuer's securities did not reflect the value that could be realized by its shareholders upon liquidation of all or a part of their investment in the issuer. Whatever form of disposition proposed, the focus has been on the proceeds to be made available to the shareholders, whether by dividend, tender offer, merger, exchange or liquidation distribution. In a number of instances, those sponsoring the proposal have projected the dollar amount per share to be available to shareholders if such proposal is effected.

The Division is concerned that, even when such valuations are the major factor in the solicitation, the usual expectation that the interests of the opposing parties in a contest will generally assure a full airing of the principal issues may not be warranted for reasons peculiar to this arena. Parties to these contests may not engage in a thorough debate of the merits of such valuations for a number of reasons, not the least of which are perceptions of serious risks of liability in attempting to forecast an alternative valuation, and, even if willing to run such risk, the limited time actually available for the opposing party to consider and make its own estimate of the realizable value likely upon execution of the proposal.

The Division recognizes that the factors constituting a basis for such valuations can, and probably will, vary from case to case, depending on the circumstances and the information available to the

person making the valuation.[1] However, the Division wishes to emphasize that the inclusion by the management or opposition of such valuation in its proxy soliciting material is only appropriate and consonant with Rule 14a-9 under the Securities Exchange Act of 1934 when made in good faith and on a reasonable basis and where accompanied by disclosure which facilitates shareholders' understanding of the basis for and the limitations on the projected realizable values.[2] The Division is also concerned that, where the valuations are so qualified and subject to such material limitations and contingencies, inclusion in proxy soliciting material of specific realizable values may be unreasonable.

Further, where material has been prepared and published by an independent party for purposes other than use in connection with the proxy contest and is offered as support for the valuation, reliance on such material must be reasonable and made in good faith. The context and purpose of the original publication of such information, as well as its currency and the qualifications of the original author to publish the material, are among the factors bearing on the reasonableness of such reliance. Care should be taken that information extracted from such material and used in the proxy solicitation document not be extracted out of context. For example, inclusion, where appropriate, of current cost values to support projected net realizable values, without disclosure of the particular nature of this information as reported in the issuer's financial reports, may raise serious questions.[3] The Division also reminds those proposing to use such material that proxy soliciting material consisting of reprints or quotations from previously published articles is subject to the same scrutiny and the same standards of disclosure as any other proxy soliciting material subject to the proxy rules.

The Division is particularly concerned that shareholders be afforded the opportunity to fully understand and evaluate any material limitations on or qualifications of the opinion of any expert, *i.e.*, investment banker, appraiser or other similar advisor, whose opinion has been sought and is being used to support the projected realizable value of the issuer's assets or outstanding stock or the estimated amount of the proceeds the issuer actually would be able to make available to shareholders in view of its cash needs, etc. Particular care needs to be taken in those instances where there has been limited access to the type of information thought necessary by such expert for the formulation of such an opinion. W such expertise is relied upon, the proxy solic material should detail clearly those inquiries advisor otherwise normally would have underta in formulating such an opinion had it unfett access to all the information necessary in its vie render such an opinion and should explain effects of the advisor's inability to make s inquiries on the substance of the opinion rende When these explanations constitute a signifi qualification of the opinion, the use of such opinion, or reference to it, outside the context complete discussion of the limitations of the re and consequent effect on the opinion, would r substantial questions under Rule 14a-9. Furt those proffering such opinions as support f valuation, as well as those rendering them, cautioned that there could be circumstances w

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[1]Where applicable, consideration should also given to the provisions of Securities Exchange Release Nos. 16075 (Going private transaction public companies or their affiliates) and 15 (Disclosure in proxy statements containing cer sale of assets transactions).

[2]Guidance may be found in the discussions projections and other forward looking informa contained in Securities Exchange Act Release N 15305 (Guides for disclosure of projections of fut economic performance) and 15944 (Safe ha rule for projections).

[3]Replacement cost or current cost values, w supported by the Commission as being relev information to an assessment of an enti economic value, will not necessarily coincide v future realizable value in the context of a given p for the disposition of assets. Depending on program of disposition, various factors, other t those considered in the computation of replacem cost or current cost, may enter into determination of projected realizable val Accordingly, values previously disclosed replacement cost or current cost in an issu published financial report should not be usec relied upon indiscriminately for the purpose projecting realizable value in connection wit proposed program for disposition or liquidati Substantial care must be taken in determining propriety of using such values in connection with discussion or display of amounts purporting represent estimated realizable value.

valuation is so qualified or subject to such ations as to raise questions as to the onableness of such reliance on the opinion.

ordingly, 17 CFR Part 241 is amended by adding release thereto.

he Commission.

George A. Fitzsimmons
Secretary

URITIES EXCHANGE ACT OF 1934
ase No. 16834/May 23, 1980

otice has been issued giving interested persons l June 13, 1980 to comment on the *Midwest k Exchange's* application for unlisted trading ileges in the common stock of: Dome Petroleum, , $2.50 Par Value.

URITIES EXCHANGE ACT OF 1934
ase No. 16835/May 23, 1980

order has been issued granting the application of HOME CORPORATION to withdraw their mon stock ($.10 Par Value and 5-1/2% vertible Subordinated Debentures due 1996) n listing and registration on the *Pacific Stock hange, Inc.*

URITIES EXCHANGE ACT OF 1934
ase No. 16836/May 23, 1980

TICE OF EFFECTIVENESS OF A PROPOSED RULE ANGE BY THE DEPOSITORY TRUST COMPANY

e No. SR-DTC-80-2)

Depository Trust Company submitted on May 1980 a proposed rule change that would require ticipants to accept proceeds from the emption of government securities in clearing ise funds.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-DTC-80-2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16837/May 23, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-17)

The National Securities Clearing Corporation filed on May 12, 1980, a proposed rule change requiring participants that submit "As Of," "Withhold" and "Demand As Of" instructions for over-the-counter trades to identify the executing brokers for those transactions.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-17.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16838/May 23, 1980

In the Matter of

WAGNER ELECTRIC CORPORATION
File No. 81-621

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until June 16, 1980 to request a hearing on an application by Wagner Electric Corporation ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting Applicant from the periodic reporting requirements of Sections 13 and 15(d) of that Act.

The Applicant's outstanding 6-7/8% Subordinated Debentures due 1977-1986 are unconditionally guaranteed by its parent corporation, McGraw-Edison Company, a reporting company. Applicant has no other publicly-held securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16839/May 23, 1980

In the Matter of

TISHMAN LIQUIDATING CORPORATION
File No. 81-613

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until June 16, 1980 to request a hearing on an application by Tishman Liquidating Corporation (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Sections 13 and 15(d) of the 1934 Act.

As the result of a plan of liquidation adopted on November 7, 1977, Applicant's only remaining asset is a liability reserve fund and there is no trading market in its securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16840/May 23, 1980

ACTION: Publication of Final Statement Concerning Commission Consumer Affairs Activities.

SUMMARY: In Securities Exchange Act Release No. 16399 (November 26, 1979) the Securities and Exchange Commission published a statement to inform the public about its consumer affairs activities, and to solicit public comment concerning the effectiveness of its consumer affairs efforts. The Commission is issuing this release to discuss the comments received and to set forth a revised statement clarifying certain points in the prior release.

FOR FURTHER INFORMATION CONTACT: Ann C. Stansbury, Special Counsel, Office of Consumer Affairs, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, Telephone: 202-523-3952.

SUPPLEMENTARY INFORMATION: In Securities Exchange Act Release No. 16399 (November 26, 1979) the Securities and Exchange Commission published a statement concerning its consumer affairs activities in order to inform the public about such activities and to solicit public comment thereon. Executive Order No. 12160, entitled "Providing for Enhancement and Coordination of Federal Consumer Programs," requires all executive departments and agencies to publish draft and final consumer programs. Although the Commission as an independent regulatory agency is not subject to the Executive Order, the Commission elected to respond to its objectives by issuing a description of its consumer affairs program, especially of its Office of Consumer Affairs (OCA), according to the five elements of the Executive Order—consumer perspective, consumer participation in agency decision-making, information, education, and complaint-handling. The Commission has received and reviewed public comments on the statement of its program and is publishing a summary of those comments as well as a revised statement clarifying certain points in its earlier statement.

Summary of Comments

The Commission received a total of seven comments on its consumer affairs program: one from an individual; five from public interest or consumer organizations; and one from members of the Federal Regulation of Securities Committee, Section of Corporation, Banking, and Business Law of the American Bar Association (ABA members).

Those comments that were addressed to the Commission's program, rather than to all of the programs collectively, in general expressed satisfaction with the Commission's program. The comment by ABA members expressed approval of the working relationship of OCA with other offices and of its authority to participate in the decision-making process without prior review by any intermediate program manager. On the other hand, the members expressed doubt that OCA is necessary to increase public participation in decision-making. The ABA members commended OCA educational materials for investors as well as OCA's program to improve dispute resolution procedures for investor-broker disputes. They noted that OCA's complaint handling system received an excellent rating from Technical Assistance Research Programs, Inc. (TARP) in 1978. The ABA members recommended that OCA keep in mind the distinctions between investors and consumers in the ordinary sense,* that is, users of services and products, as well as between individual and professional investors such as institutions. They also recommended that OCA not be expanded because of budgetary considerations.

One comment criticized the Commission for not affording more opportunities for speeches addressed to groups of individual investors.

Other comments, not addressed specifically to the Commission's program, focused on enhanced citizen participation in decision-making, independence of the consumer affairs office within each agency, and training of consumer affairs staff to analyze trends and to advocate solutions.

Based on the analysis of comments received, the Commission has decided to issue a revised statement regarding its consumer affairs functions. The statement clarifies certain points in the previous release.

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*In the context of the Commission's activities, the word "consumer" is used to refer to individual investors.

I. *Consumer Affairs Perspective*

The Commission's basic mandate under the federal securities laws is to protect investors. In order to fulfill this mandate it is important that the Commission have information about the needs and interests of investors, particularly individual investors who are relatively unsophisticated. In order to enhance its awareness of and responsiveness to such needs and interests, the Commission in May of 1976 established an Office of Consumer Affairs ("OCA"). OCA represents the viewpoint of individual investors as a class in matters before the Commission and develops its perspective primarily through analysis of complaints and inquiries received by the Commission. OCA reports administratively to the Executive Director and works closely with the Executive Director in formulating its views and recommendations. OCA may submit its recommendations directly to the Commission. The Commission's OCA staff includes attorneys, consumer affairs specialists, and support staff.

OCA is apprised of opportunities for participation in policy and program development through regular contact with the staff members of other offices and divisions. OCA routinely receives copies of items scheduled for Commission consideration, which are reviewed for the potential effect on individual investors of proposed Commission action. OCA may then formulate its position on such matters and make recommendations accordingly.

OCA may participate at every level of agency decisionmaking. Such participation may be through informal discussion, exchange of memoranda, membership on agency task forces and working groups where appropriate, meetings with Commission members and their staffs, and memoranda to the Commission. Memoranda submitted to the Commission by OCA are considered together with those of other offices in decisionmaking. The staff of OCA is autorized to participate in Commission meetings in order to present recommendations and to articulate its views on matters before the Commission.

OCA is responsible for overall coordination of the Commission's complaint processing program. OCA uses material obtained primarily from analysis of complaints to carry out its role of advising the Commission and staff about the concerns and interests of investors. Other offices, including the regional offices of the Commission, have staff members who respond to investor complaints and inquiries, and OCA frequently refers complaints to staff members who are most familiar with the subjects of complaints. OCA maintains close liaison with the Divisions to monitor those instances in which investor complaints suggest the need for further inquiry or regulatory action.

OCA's participation in programs is not limited to review of other staff proposals. When OCA was created in 1976, the Commission directed it to develop recommendations for improved dispute resolution procedures for investor-broker disputes. A group known as the Securities Industry Conference on Arbitration (Conference) was organized in 1977 for that purpose and includes three representatives of the public in addition to representatives of securities industry organizations. OCA is the staff liaison with the Conference members. The Conference developed a series of uniform arbitration rules for adoption by the securities industry organizations, upon Commission approval, and prepared informational materials for investors about arbitration.

OCA reviews the arbitration procedures of the self-regulatory organizations, reports to the Commission any deficiencies and recommends any necessary action pursuant to the Commission's oversight responsibilities. OCA also reviews the complaint-handling systems of self-regulatory organizations and broker-dealers, in coordination with other staff offices having oversight functions.

II. *Consumer Participation*

Investors may participate in Commission decisionmaking through the regular public comment process. Comment may be solicited through advance notices of proposed rulemaking, proposed rules and announcements of applications, in accordance with the Administrative Procedures Act. In addition, public hearings occasionally are held at various locations throughout the country in order to obtain a broad range of viewpoints on subjects of Commission rulemaking.

Participation in decisionmaking by individual investors also may take place indirectly through the Office of Consumer Affairs, which considers letters from the public to be valuable sources of information about investor interests and needs. Participation by OCA in staff discussions facilitates representation of

investor interests at earlier stages of decisionmaking than the public comment periods.

In the releases announcing final actions on matters for which public comment has been sought, the Commission undertakes to respond to all comments received, including those from individual investors. In this connection, the Commission may ask OCA to prepare separate analyses of investor comments for Commission consideration, as appropriate.

The Commission, through its OCA and Office of Public Affairs, strives to provide meaningful information to individual investors about opportunities for participation in agency decisionmaking for the purpose of soliciting the views of those persons who may be affected by the implementation of Commission proposals. In general, the Commission has an ongoing system for informing the press about Commission actions, including those matters on which comment is solicited. The Commission provides information to a broad range of publications, as well as the broadcast media, which may be more accessible to individual investors than the *Federal Register*. In addition, the Commission has a system for mailing proposals to interested persons to encourage submission of comments for inclusion in the public record.

Organizations concerned with the interests of individual investors, who wish to receive regular information about matters published by the Commission for public comment, should contact OCA or the Office of Public Affairs.

III. *Information Materials*

The Commission recognizes that individual investors must be informed about the functions and responsibilities of the Commission in order to respond to proposed agency actions. In addition, the Commission believes that investors should be better informed about the services offered by the Commission, particularly the complaint handling functions of OCA.

The Commission has published several brochures and audiovisual materials to educate investors about aspects of the marketplace, the work of the Commission, and types of fraudulent schemes of which investors ought to be aware.

The Commission plans to revise and upgrade its informational materials for the public to include more practical advice and information. With respect to services offered by the Commission, the Commission plans to update its booklet *The Work of the SEC* to include additional information about its services, including public information and complaint handling. In addition, a new pamphlet will be published to serve as a general guide to persons who are investing for the first time, and to explain the type and degree of assistance that the Commission can render to individuals.

Pamphlets will be distributed by the Commission's staff upon request and through the Federal Information Center in Pueblo, Colorado.

The Commission also furnishes materials to the press from time to time for the purpose of educating investors. The Commission's OCA and Office of Public Affairs recently began to distribute to newspapers a series of brief columns entitled "Information for Investors." The columns are to include general information about topics of concern to investors, as well as about items for which the Commission is soliciting public comment.

With respect to information about matters to be considered at public Commission meetings, the agendas for such Commission meetings are published in advance in the *SEC News Digest* as well as the *Federal Register*. The names and telephone numbers of persons to contact for further information are also provided. Persons who attend public meetings receive summaries of the agenda items to be considered at such meetings. The office responsible for each agenda item submits a clear, concise summary to the Office of the Secretary prior to the Commission meeting at which the item will be considered. The summaries are required to be easily comprehendible, listing the issues expected to be considered by the Commission during the course of the discussion. An announcement is made at the opening of each public meeting that the summaries are available at the entrance to the meeting room.

Public hearings and forums are held on subjects of Commission rulemaking and other matters that are of general public interest. For example, two public forums were held in connection with development of plans for uniform investor-broker dispute resolution procedures, and the Commission held hearings throughout the country on the subject of corporate governance.

IV. *Education and Training*

The Commission's OCA is responsible for educating other Commission staff members about the Executive Order and the Commission's consumer program. For example, OCA will participate in any orientation programs for new personnel, for the purpose of explaining the purposes and role of OCA in the work of the Commission. In addition, information about the Executive Order and programs concerned with individual investors has been circulated to Commission members and senior Commission staff members by memorandum.

Personnel who process complaints currently receive on-the-job training by responding to investor complaints of increasing degrees of difficulty. In addition, they are encouraged to participate in training programs on technical subjects both within and outside the Commission in order to provide more informative responses to investor inquiries and complaints.

V. *Complaint Handling*

The Commission views investor complaints as an important source of information about investor concerns and about possible violations of the federal securities laws. The Commission therefore seeks to heighten public awareness of the Commission's complaint handling facilities in a number of ways. For example, the Commission has a number of educational brochures for public distribution. Each brochure contains a list of regional and branch offices of the Commission, including the addresses, telephone numbers and states covered by each regional office. The brochures also provide the address and telephone numbers of the Commission's OCA and Office of Public Affairs.

From time to time the Commission issues releases regarding securities industry practices that may be harmful to investors. At the end of each such release, we advise the public to contact OCA if they have any inquiries or complaints, giving the address of the office. *See*, for example, Securities Exchange Act Release No. 15194 (September 28, 1978) [43 FR 46397] regarding certain practices of broker-dealers.

In addition, writers of financial columns sometimes advise investors with inquiries and complaints to contact the Commission's OCA. Any informational materials on topics of interest to individual investors which are distributed to the press will include the address of the Commission's OCA, to which complaints and inquiries may be addressed.

OCA's procedures for complaint processing are as follows: OCA requests that most complaints be in writing and be sent directly to OCA. OCA's system for logging in complaints and inquiries in standard format, including telephone complaints, is computerized. Each complaint or inquiry is assigned its own unique number and certain information is extracted from each complaint or inquiry for retention in the computer. The information includes the name of the complainant, the name of the entity involved, the type of complaint and the dates of correspondence.

Certain complaints received by OCA are forwarded to other offices, divisions or regional or branch offices of the Commission for investigation and analysis where appropriate. OCA has a system for tracking all complaints handled by the office and forwarded to other divisions and offices, including regional and branch offices, for responses. This system advises the receiving office of an expected due date (generally two to three weeks from the date of referral). A monthly computer printout advises the receiving office of all outstanding complaints.

OCA has a format for acknowledging complaints and inquiries which are forwarded to another office or division, including regional and branch offices, for responses. In most cases acknowledgements are sent within 5 days from the receipt of a complaint or inquiry. Acknowledgements are signed by a senior OCA staff member. OCA has a format for responding to complaints and inquiries which it handles. In general, it is OCA's goal to handle such correspondence within three weeks from the date received. In those matters in which a report is requested from the entity involved, OCA requests an expected date of return from the entity and, if it is not obliged, OCA sends follow-up requests. Responses are signed by either the person handling the complaint or a senior OCA staff member.

OCA receives monthly computer reports of statistics on complaints and inquiries, which are used for agency policymaking. Such reports reflect the number and types of complaints received against an entity. Other computer reports also are available to the staff.

OCA reports to the Chairman and division directors

regarding the number and types of complaints received involving registered entities, and the pattern and policy implications of such complaints.

OCA has an ongoing program for assessing its own procedures. OCA has conducted three surveys to determine if complainants were satisfied or not satisfied with the promptness and quality of handling of their complaints. We plan to continue these surveys in the future. OCA can also evaluate the promptness of agency responses from its computer system for complaint handling. Certain computer reports reflect the number of days between the date on which a letter is received and the date on which a matter is closed. In addition, the system has a code for "thank you" letters, which are letters from correspondents indicating that their complaint has been satisfactorily resolved by us on their behalf.

The Commission's complaint handling system was evaluated in 1975 and reevaluated in 1978 by Technical Assistance Research Programs, Inc. (TARP) contracted by the United States Office of Consumer Affairs. In 1978, the Commission received an excellent rating on all categories involved in this study.

The Commission's programs that provide technical assistance to consumers are as follows. In addition to handling complaints, the Commission's OCA responds to inquiries about matters of concern to individual investors, including securities industry and corporate practices, the rules applicable thereto, and entities registered with the Commission. OCA, however, does not provide legal or investment advice. OCA may refer investors to the Commission's Public Reference Section, which maintains the Commission's public files, for more detailed information about registered entities. As noted above, OCA and the Office of Public Affairs cooperate in the preparation of educational materials for investors, another form of technical assistance to investors.

Persons having questions about complaint-handling and investor participation in decision-making may contact OCA at 500 North Capitol Street, Washington, D.C. 20549, telephone 202-523-5516. Persons requesting informational materials may contact OCA or the Office of Public Affairs at the same address, telephone 202-272-2650. Addresses and telephone numbers of the Commission's regional and branch offices are as follows:

Atlanta Regional Office
1375 Peachtree Street, N.E.
Suite 788
Atlanta, GA 30367
404-881-4768

Boston Regional Office
150 Causeway Street
Boston, MA 02114
617-223-2721

Detroit Branch Office
1044 Federal Bldg.
Detroit, MI 48226
313-226-6070

Fort Worth Regional Office
411 W. Seventh St.
Fort Worth, TX 76102
817-334-3821

Houston Branch Office
Federal Office & Courts Bldg.
515 Rusk Ave., Rm. 5615
Houston, TX 77002
713-226-4986

Los Angeles Regional Office
10960 Wilshire Blvd.
Suite 1710
Los Angeles, CA 90024
213-473-4511

Miami Branch Office
Dupont Plaza Center
300 Biscayne Blvd. Way
Suite 1114
Miami, FL 33131
305-350-5765

Chicago Regional Office
Everett McKinley Dirksen Bldg.
219 South Dearborn Street
Rm. 1204
Chicago, Illinois 60604
312-353-7390

Denver Regional Office
410 17th Street, Suite 700
Denver, CO 80202
303-837-7390

New York Regional Office
26 Federal Plaza Center
New York, NY 10007
212-264-1636

Philadelphia Branch Office
William J. Green Jr., Federal Bldg.
600 Arch Street, Room 2204
Philadelphia, PA 19106
215-597-2278

San Francisco Branch Office
450 Golden Gate Ave.
Box 36042
San Francisco, CA 94102
415-556-5264

Seattle Regional Office
3040 Federal Bldg.
915 Second Ave.
Seattle, WA 94174
206-442-7990

Washington Regional Office
Ballston Center Tower 3
4015 Wilson Blvd.
Arlington, VA 22203
703-577-8201

Public Reference Rooms are located in Chicago, Illinois; Los Angeles, California; New York, New York; and Washington, D.C.

Oversight

The Director of the Commission's OCA reports to the Commission as described in Part I. The Director is compensated at the GS-14/15 level. The Director is responsible for coordination of all consumer affairs functions within the agency, including complaint handling and representation of consumer interests in development of agency programs. The Director interacts with other senior level staff members to see that the interests of individual investors are adequately considered in decisionmaking.

Conclusion

On November 26, 1979, in Securities Exchange Act Release No. 16399 the Commission published a statement regarding its consumer affairs program, and solicited public comment thereon. The

Commission has considered the comments received. The Commission is issuing a summary of those comments and a revised statement clarifying certain points in its previous release.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 16841/May 23, 1980

NOTICE OF FILING OF AMENDMENT TO PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. File No. SR-NASD-80-1

The National Association of Securities Dealers, Inc. (the "NASD") submitted on May 20, 1980, an amendment to a proposed rule change under Rule 19b-4 to amend Schedule C under Article I, Section 2(d) of its By-Laws to create two new classes of limited representatives. Notice of this proposed rule change was given in Securities Exchange Act Release No. 16563 (February 11, 1980) and in the *Federal Register*, 45 FR 10469 (February 15, 1980). This amendment was filed to make certain technical revisions in the proposed rule change and to delete a provision that would have permitted "Limited Representatives—Investment Company and Variable Contracts Products" to effect occasional, unsolicited general securities transactions for the accounts of public customers.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 14 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16842/May 23, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-8

The National Association of Securities Dealers, Inc. (the "Association") submitted on May 21, 1980, a proposed rule change pursuant to Securities Exchange Act Rule 19b-4 to revise Schedule D under Section XVI of the Association's By-Laws regarding qualification of securities for inclusion in NASDAQ. The proposed rule change would require that a security which has been terminated is required, prior to reinclusion, to comply with the requirements of a security which has never been authorized. The proposal would also clarify procedures to be followed by applicants in aggrievement proceedings.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments

concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16843/May 27, 1980

Admin. Proc. File No. 3-5922

In the Matter of

R. G. DICKINSON & CO.
(File No. 8-7503)
JOHN C. STELZER
JOHN E. WAGGONER
DONALD J. RENIER
JOHN PHILIP BOESEL, JR.
WILLIAM N. GOODWIN
RAYMOND D. DUVE, JR.

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public proceedings pursuant to Section 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) be instituted against R. G. Dickinson & Co. (Registrant), a registered broker-dealer located in Des Moines, Iowa; John C. Stelzer (Stelzer) formerly associated with Registrant as a registered representative; John E. Waggoner (Waggoner), vice president and registered options principal of Registrant; Donald J. Renier (Renier), vice president, secretary, and director of Registrant, as well as manager of Registrant's Des Moines, Iowa branch office; Raymond D. Duve, Jr. (Duve), vice president, treasurer, and director of Registrant; John Philip Boesel, Jr. (Boesel), president and director of Registrant; and William N. Goodwin, director and chairman of the Board of Directors of Registrant. In anticipation of the institution of these proceedings, the Registrant and all of the above-named individuals have submitted offers of settlement which the Commission has determined to accept. Without admitting or denying the findings herein, the Respondents hereby consent to the findings and sanctions set forth below.

II

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be, and they hereby are, instituted.

On the basis of this Order for Proceedings and the offers of settlement, it is found that:

1. During the period from in or about September, 1978 to in or about January, 1979, Stelzer and Registrant wilfully violated Section 17(a) of the Securities Act of 1933 (Securities Act), and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by making untrue statements of material facts and omitting to state material facts in connection with the offer and sale of exchange listed options. As part of the aforesaid conduct and activities, Registrant and Stelzer, among other things:

a. guaranteed against loss by Stelzer from options transactions executed by Stelzer in certain customer accounts;

b. executed transactions in various customer accounts without Stelzer having either prior authorization from the customer or discretionary authority over the account;

c. failed to follow customer directions to Stelzer to buy or sell certain options; and

d. represented to certain customers, through Stelzer, that margin calls had been issued in error or had been met; and

e. effected transactions in customers' accounts whereby:

(i) listed options were purchased or sold, or customers were induced to purchase and sell listed options notwithstanding that such transactions were not suited to the financial situation, investment sophistication and investment objectives of certain of these customers; and

(ii) listed options were purchased or sold, or customers induced to purchase and sell listed options, in order to meet maintenance margin calls on existing option positions notwithstanding that such transactions were not suited to the financial situations, investment sophistication and investment objectives of certain of these customers.

2. During the period from in or about September, 1978 to in or about January, 1979, Registrant, Waggoner, Renier, Boesel, and Goodwin failed reasonably to supervise Stelzer with a view toward preventing the violations set forth in paragraph 1(e) above.

3. During the period from in or about March, 1978 to in or about January, 1979, the Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System.

4. During the period from in or about January 10 to January 26, 1979, the Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-11 thereunder in that the Registrant failed to maintain the required net capital and failed to give the required telegraphic notice and to file the required report.

5. The Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder in that from January 10 to January 26, 1979, the Registrant failed to maintain the required deposits in its Special Reserve Bank Account, failed to give the required telegraphic notice, and failed to maintain the physical possession or control of fully paid and excess margin securities for the benefit of its customers.

6. The Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-11 thereunder in that from June 1978, to January 1979, the Registrant failed to accurately make and keep current certain of its books and records, failed to give the Commission telegraphic notice thereof, and failed to file a report of steps to correct its deficiencies.

7. The Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that the Registrant filed a quarterly financial report for the quarter ending December 31, 1978, which was inaccurate and filed its annual audit report for the fiscal year ending September 29, 1978, late.

8. During the period from in or about June 28, 1978 to in or about September 29, 1978 and from in or about December 29, 1978 to in or about January 26, 1979, the Registrant wilfully violated, and Duve wilfully aided and abetted the violations of, Section 17(a) of the Exchange Act and Rule 17a-13 thereunder in that the Registrant failed to record on its books and records all unresolved differences in a security count difference account within the required seven business days and failed to provide for an examination, court, verification and comparison of securities within the required period.

9. The Registrant and Duve failed reasonably to supervise, with a view to preventing the violations set forth in paragraphs 3 through 8 above, persons who were subject to their supervision and who committed such violations.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offers of settlement.

Accordingly, IT IS ORDERED that:

1. R. G. Dickinson & Co. be, and hereby is, censured.

2. The Des Moines, Iowa branch office of R. G. Dickinson & Co. is suspended from all options trading, except customers' unsolicited liquidating

transactions, for a period of sixty (60) days, effective the second Monday following the date of this Order.[1]

3. R. G. Dickinson & Co. comply with its undertakings to:

a. Write-off or offer to write-off $335,000 in debit balances due and owing from certain customers due to options trading in those accounts;

b. Make restitution or offer to make restitution of $5,227.29 representing cash and/or the value of securities liquidated from certain customers' accounts in connection with options trading in those accounts;

c. Expand its current option training programs for the purpose of further increasing its employees' knowledge of the Options Markets and stress their responsibilities with respect to the concepts and application of customer suitability and risk disclosure;

d. Implement new and expanded procedures and documentation relating to the opening and monitoring of customer option accounts;

e. Employ an independent person, who may be an attorney, to review new and existing compliance procedures and to review and monitor their implementation;

f. Implement new and expanded procedures and documentation relating to the extension of credit, computation of net capital, and the possession and control of customer securities; and,

g. File an affidavit with the Chicago Regional Office affirming compliance with each of the undertakings enumerated above and with the sanction set forth in paragraph 2 above as soon as reasonably possible after full compliance with such.

4. Stelzer be, and hereby is, barred from association with any broker, dealer, investment adviser, or investment company or affiliate thereof.

5. Waggoner be, and hereby is:

a. Suspended for a period of thirty (30) days, effective the second Monday following the date of this Order, from being associated with any broker, dealer, investment adviser, or investment company or any affiliate thereof;

b. Suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser or investment company or any affiliate thereof for a period of one (1) year effective the second Monday following the date of this Order; and,

c. Required to be re-examined and re-certified as a Registered Options Principal by appropriate regulatory authorities prior to serving in any Registered Options Principal capacity in association with any broker, dealer, investment adviser, or investment company or affiliate thereof after completion of the suspension period in (b) above.

6. Renier be, and hereby is:

a. Suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser or investment company or affiliate thereof for a period of sixty (60) days effective the second Monday following the date of this Order; and,

b. Required to be examined and certified as a Branch Manager by appropriate regulatory authorities prior to serving in any branch manager capacity in association with any broker, dealer, investment adviser, or investment company or affiliate thereof after completion of the suspension period in (a) above.

7. Duve be, and hereby is:

a. Suspended for a period of fifteen (15) days, effective the second Monday following the date of this Order, from being associated with any broker, dealer, investment adviser or investment company or affiliate thereof; and

b. Suspended from serving in a supervisory capacity over the operations of a broker, dealer, investment adviser or investment company or affiliate thereof for a period of one (1) year effective the second Monday following the date of this Order.

8. Boesel be, and hereby is, suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser or investment

[1]Existing customers of salesmen hired by R. G. Dickinson & Co. during the suspension period may continue their option activities at R. G. Dickinson & Co.

company or affiliate thereof for a period of thirty (30) days effective the second Monday following the date of this Order.

9. Goodwin be, and hereby is, suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser or investment company or affiliate thereof for a period of fifteen (15) days, effective beginning thirty (30) days after the second Monday following the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16844/May 27, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-1)

ORDER APPROVING PROPOSED RULE CHANGES

On March 25, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes to modify the requirements of MSRB rule G-12, applicable to interdealer confirmations, and of MSRB rule G-15, concerning customer confirmations, with respect to information to be shown on confirmations of transactions in callable securities. The rules currently provide, among other things, that if the dollar price is calculated to premium call or par option, this information must be stated on the confirmation. The proposed rule changes would provide that, in the case of transactions in callable securities effected on the basis of yield, where the price is calculated to premium call or par option, confirmations must set forth the date of the premium call or par option and the price at which a security called on that date would be redeemed by the issuer.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release (Securities Exchange Act Release No. 16712, March 31, 1980) and by publication in the *Federal Register* (45 FR 23571 (1980)). No comments with respect to the proposed rule changes have been received by the Commission.

The MSRB has requested a delayed effective date for the proposed rule changes to make the changes effective on the same date, September 24, 1980, as an amendment to MSRB rule G-15 recently approved by the Commission.* The MSRB believes a simultaneous effective date would permit municipal securities brokers and municipal securities dealers to make necessary changes in confirmation forms and to make any required computer programming changes at one time, reducing the costs associated with the proposed rule changes.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved, effective with respect to transactions occurring on or after September 24, 1980.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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*Notice of approval of the recent amendment to rule G-15 (which requires, among other things, that customer confirmations indicate that call provisions may affect the yield shown, and that information concerning call provisions is available upon request) was published in Securities Exchange Act Release No. 16707 (March 28, 1980) (45 FR 23561 (1980)).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16845/May 27, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-80-10

The Midwest Stock Exchange, Incorporated ("MSE") submitted on May 19, 1980, a proposed rule change under Rule 19b-4 to amend Article XXXIV, Rule 17 of the MSE Rules governing registered market makers. If approved, the proposed rule change would require registered market makers to guarantee execution on all 100 share agency orders in accordance with the procedures set forth in Article XX, Rule 34 of the MSE Rules relating to the "BEST" System.[1] In addition, the proposal would delete the prohibition on a registered market maker receiving exempt credit for transactions in his assigned securities effected in other markets, and, instead, would require registered market makers to effect on the MSE at least 50 percent of their total quarterly share volume which creates or increases positions in their market maker account.

Publication of the submission is expected to be made in the *Federal Register* during the week of May 26, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-10.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Under the BEST System, MSE specialists in dually traded securities must guarantee the execution of market orders for up to 399 shares at the best consolidated quote system bid, in the case of a sell order, or offer, in the case of a buy order.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16846/May 27, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-79-13)

NOTICE OF FILING OF AMENDMENT TO PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1980, the Philadelphia Stock Exchange Inc. ("Phlx") filed with the Commission copies of an amendment to a proposed rule change previously filed with the Commission.[1] The text of proposed Rule 1059, as amended, is set forth below. *Italics* indicate new language.

Rule 1059. Cabinet trading shall be available for each series of options open for trading on the Exchange under the following terms and conditions:

[1]Notice of the original filing was published in Securities Exchange Act Release No. 34-16464 (January 3, 1980) 45 FR 2131. No comments were received.

(i) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein or unless the context otherwise requires.

(ii) The specialist registered in each class of option contracts shall supervise the operation of the cabinet for that class.

(iii) Only closing limit orders at a price of $1 per option contract may be placed in the cabinet.

(iv) All orders placed in the cabinet shall be assigned priority based upon the sequence in which such orders are received by the specialist.

(v) All bids and offers must be submitted to the specialist in writing, and the specialist shall effect all cabinet transactions by matching such orders placed with him.

(vi) Orders may be placed in the cabinet for customer and firm accounts and for the accounts of specialists and Registered Options Traders, but only in connection with closing transactions.

(vii) Specialists and Registered Options Traders shall not be subject to the requirements of Rule 1014 in respect of orders placed pursuant to this Rule. The provisions of Rule 1033(b) and (c), Rule 1034 and Rule 1038 shall not apply to orders placed in the cabinet. Cabinet transactions shall not be reported on the ticker.

(viii) All cabinet transactions shall be reported to the Exchange following the close each business day.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-79-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission any any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552 will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of an amendment thereof, in that the proposed rule change, as amended, reduces to writing, for the first time, the procedures for cabinet trading on the Phlx. In addition, the Phlx procedures are substantially identical to the procedures set forth in Rule 959 of the American Stock Exchange, Inc.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16847/May 28, 1980

RULE 15c3-3—CUSTOMER PROTECTION—RESERVES AND CUSTODY OF SECURITIES

ACTION: Final rule.

SUMMARY: The Commission is amending paragraph (i) of Rule 15c3-3 (17 CFR 240.15c3-3) to eliminate the requirement that the Securities Investor Protection Corporation ("SIPC") be notified of a broker's or dealer's failure to make a required deposit to his Reserve Bank Account or Special Account. Since the time the requirement to notify SIPC was instituted, the Commission and the self-regulatory organizations have established more comprehensive surveillance and reporting procedures. Due to these changes, SIPC has stated it no longer requires such notification. The elimination

of the necessity to notify SIPC is intended to reduce reporting burdens on brokers and dealers.

EFFECTIVE DATE: Immediately upon publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: JoAnn Zuercher, 202-272-2368.

SUPPLEMENTARY INFORMATION: Paragraph (i) of Rule 15c3-3 presently provides that should a broker or dealer fail to make a deposit in his Reserve Bank Account or Special Account, as required by the Rule, he must immediately notify by telegram the Commission, SIPC and the regulatory authority which examines the broker or dealer as to financial responsibility and promptly thereafter confirm the notification in writing.

When Rule 15c3-3 was being developed, SIPC was in its formative stage and was concentrating on developing procedures necessary to carry out its responsibilities under the Securities Investor Protection Act. However, because since that time the Commission and the self-regulatory organizations have established more comprehensive surveillance and reporting procedures, SIPC has informed the Commission that it no longer has the same urgency with respect to receipt of these notifications. Further, with a view to reducing reporting burdens on brokers and dealers, wherever advisable, SIPC has concluded that the need for telegraphic notification does not justify the burden of the reporting requirement.

Accordingly, the Commission is hereby eliminating the requirement that SIPC be notified by telegram and sent confirmation in writing of the failure on the part of a broker or dealer to make a deposit as required by Rule 15c3-3 to his reserve bank account or special account. However, it should be noted that this amendment does not affect any other reporting provision in the Rule. Thus the Commission and the relevant self-regulatory organization must continue to be notified by telegram of any such failure and such notification must continue to be confirmed in writing.

In view of the foregoing, the Commission finds that it is unnecessary to publish the above described action for notice and public comment. Under the Administrative Procedure Act, 5 U.S.C. Section 553, the amendment described in the Text of the Amendments will be effective upon publication in the *Federal Register*.

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, and particularly Sections 3 and 15(c)(3) thereof (15 U.S.C. 78c and 78o), hereby deletes a portion of paragraph (i) of Rule 15c3-3 (17 CFR 240.15c3-3(i)) as set forth below.

The Commission finds that the amendment will not impose any burden on competition.

TEXT OF AMENDMENTS

Accordingly, 17 CFR Part 240 is amended by amending paragraph (i) of §240.15c3-3 to read as follows:

§240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(i) *Notification in the event of failure to make a required deposit.*

If a broker or dealer shall fail to make in his reserve bank account or special account a deposit, as required by this section, the broker or dealer shall by telegram immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and shall promptly thereafter confirm such notification in writing.

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By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16848/May 28, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

(SR-Phlx-80-12)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 21, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission copies of a proposed rule change to implement the second phase of its puts expansion program.[1] During the second phase, which is scheduled to commence on May 30, 1980, Phlx intends to list and institute trading in up to nineteen new puts classes on underlying securities subject to call option trading on the Phlx. Implementation of phase two will extend puts trading to all underlying securities on which calls currently are traded on the Phlx.

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission previously has stated that it perceives certain benefits with respect to the listing of both puts and calls on the same underlying security.[2] Phlx has indicated that the first phase of its puts expansion program has proceeded without any apparent adverse effect on the exchange's surveillance or operational capabilities or on member firm back office operations. In addition, Phlx has represented that its surveillance and operational capabilities and the back office capacity of its member firms are adequate to handle any increased volume that may result from the implementation of the second phase of its puts expansion program.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]The first phase of the Phlx's puts expansion program, during which Phlx added eleven new puts classes, was approved by the Commission on May 6, 1980, in Securities Exchange Release No. 16788.

[2]See Securities Exchange Act Release Nos. 16710 (March 26, 1980), and 16788 (May 6, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16849/May 28, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($1 Par Value) of THE COLWELL COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16850/May 28, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock (warrants due 5-1-83) of PENN-DIXIE INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16851/May 28, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-15)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 23, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change to implement the second phase of its puts expansion program.[1] During the second phase, Amex intends to list and institute trading in ten new puts classes on securities underlying its non-multiply traded call options classes, as well as in puts classes on any underlying security on which Amex calls are multiply traded, if another options exchange also intends to list such puts.[2]

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission previously has stated that it perceives certain benefits with respect to the listing of both puts and calls on the same underlying security.[3] In addition, Amex has indicated that the first phase of its puts expansion program has proceeded without any apparent adverse effect on the exchange's surveillance or operational capabilities or on member firm back office operations. Finally, Amex has represented that its surveillance and operational capabilities and the back office capacity of its

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[1]The first phase of Amex's puts expansion program, during which Amex added ten new puts classes, was approved by the Commission on May 6, 1980, in Securities Exchange Release No. 16788.

[2]Amex intends to implement the second phase in two stages, with trading commencing in the first five non-multiply traded puts classes on May 30, 1980, followed by the remaining five classes on June 6, 1980.

[3]*See* Securities Exchange Act Release Nos. 16710 (March 26, 1980) and 16788 (May 6, 1980).

member firms are adequate to handle any increased volume that may result from the implementation of the second phase of its puts expansion program.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16852/May 29, 1980

A notice has been issued giving interested persons until June 18, 1980 to comment on the *Philadelphia Stock Exchange's* applications for unlisted trading privileges in the below listed issues:

Imperial Oil Ltd.
Class A Convertible Common (File No. 7-5545)
Gulf Canada Ltd.
Common Stock, No Par Value (File No. 7-5546)
Chieftain Development Co., Ltd.
Common Stock, $.50 Par Value (File No. 7-5547)
Canadian Marconi Company
Common Stock, $1 Par Value (File No. 7-5548)
East Utah Mining Company
Common Stock, $.10 Par Value (File No. 7-5549)
Columbia Chase Corporation
Common Stock, $.10 Par Value (File No. 7-5550)
Kaneb Services, Inc.
Common Stock, No Par Value (File No. 7-5551)
AIC Photo, Incorporated
Common Stock, $1 Par Value (File No. 7-5552)
Anheuser Busch Companies Inc.
Common Stock, $1 Par Value (File No. 7-5553)
Francana Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7-5554)
Penn Central Corporation
Series A Preference Stock, $20 Par Value (File No. 7-5555)
Penn Central Corporation
Series B Preference Stock, $20 Par Value (File No. 7-5556)
Common Stock, No Par Value (File No. 7-5557)
Western Mortgage Investors
Shares of Beneficial Interest, $1 Par Value (File No. 7-5558)
Yardney Electric Corporation
Common Stock, $.25 Par Value (File No. 7-5559)

SECURITIES EXCHANGE ACT OF 1934
Release No. 16853/May 29, 1980

A notice has been issued giving interested persons until June 18, 1980 to comment on the *Midwest Stock Exchange's* application for unlisted trading privileges in the common stock of Northwest Energy Company (Utah), $1 Par Value.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16854/May 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-8

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on May 13, 1980, a proposed rule change under Rule 19b-4 to adopt a set of rules that would conform its rules on arbitration[1] to the Uniform Code of Arbitration ("Code"),[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA"),[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

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[1]For the Phlx's current arbitration rules, see Phlx By-Laws, Section 10.7. Phlx Manual (CCH) para 1232, at pages 1072-1073.

[2]The Code was published on December 28, 1978, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3]SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. See Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The proposal would amend the present Phlx arbitration rules and adopt the entire Code as Phlx Rule 950. The proposal incorporates simplified arbitration procedures regarding small claims not exceeding $2500.[4]

The purpose of the proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the Phlx. The Code has been adopted by numerous other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[5]

Footnote 3 continued

The SICA members consist of: the American Stock Exchange Inc.; the Boston Stock Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]*See* proposed Phlx Rule 950, Section 2.

[5]The following self-regulatory organizations already have adopted the Code: the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange ((Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); the American Stock Exchange, Inc. ((Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (January 29, 1980), 45 FR 5863 (January 24, 1980)); the Midwest Stock Exchange, Incorporated ((Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)); the Municipal Securities Rulemaking Board ((Release No. 16570 (February 13, 1980), 19 SEC Docket 573 (February 26, 1980), 45 FR 11291 (February 20, 1980)); the Chicago Board Options Exchange, Incorporated ((Release No. 16606 (February 25, 1980), 19 SEC Docket 759 (March 11, 1980), 45 FR 15352 (March 10, 1980)); the Boston Stock Exchange, Incorporated ((Release No. 16671 (March 17, 1980), 19 SEC Docket 922 (April 1, 1980), 45 FR 19705 (March 26, 1980)); and the Pacific Stock Exchange, Incorporated ((Release No. 16767), 19 SEC Docket 1297 (May 13, 1980), 45 FR 29950 (May 6, 1980)).

Publication of the submission is expected to be made in the *Federal Register* during the week of June 2, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change which are filed with the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16855/May 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-7

The Pacific Stock Exchange Incorporated ("PSE") submitted on May 27, 1980, a proposed rule change under Rule 19b-4 to amend its Options Floor Procedure Advice B-5 to establish attendance

requirements for Market Makers and specify disciplinary procedures and specific sanctions that may be imposed for failure to satisfy the attendance requirements. The proposed amendment also would establish rules governing the granting of leaves of absence to Market Makers.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 2, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16856/May 29, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the common stock ($1 Par Value) of THE COLWELL COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16857/May 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INC.

(File No. SR-MSE-80-5)

Midwest Stock Exchange, Inc. submitted on May 2, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, extending the time period within which claims for reports must be made concerning the terms of trades executed on the Midwest Stock Exchange.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 2, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21586/May 22, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21587/May 22, 1980

In the Matter of

OHIO POWER COMPANY
Canton, Ohio

CENTRAL OHIO COAL COMPANY
Cumberland, Ohio

(70-6157)

SUPPLEMENTAL ORDER CORRECTING ERROR

The order of March 25, 1980 (HCAR No. 21491), issued in this proceeding is hereby corrected in the following respect.

The second sentence of the second paragraph is corrected to read in full as follows:

"Said authorization basically provided for the following: (1) the assignment of the Equipment to Girard Bank (the "Lessor"), as trustee for C.I.T. Corporation (the "Owner Participant"); (2) the lease of the Equipment to COCO, the lease of the shovel to commence at an initial closing in August 1978 and the lease of the rest of the Equipment to commence at a final closing, which is to occur upon completion of the dragline (then estimated to take place in September 1979); and (3) the guarantee of COCO's lease obligations by Ohio Power."

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21588/May 22, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6450)

NOTICE OF PROPOSAL TO ISSUE NOTES TO BANKS PURSUANT TO A REVOLVING CREDIT AGREEMENT

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Middle South proposes to enter into a revolving credit agreement ("Credit Agreement") providing for the issuance and sale by Middle South of up to $230,000,000 of its unsecured promissory notes to a group of commercial banks.

Under the terms of the Credit Agreement, Middle South may effect borrowings and reborrowings until December 31, 1984 by issuing to the participating banks its unsecured promissory notes payable on December 31, 1984. The names of the participating banks and the maximum amounts of their respective original participations (collectively, the 'Commitments') in the proposed borrowings by Middle South are as follows:

Name of Bank	*Maximum Principal Amount to be Borrowed*
Manufacturers Hanover Trust Company	$40,000,000
Continental Illinois National Bank and Trust Company of Chicago	40,000,000
The First National Bank of Chicago	40,000,000
Bank of America National Trust and Savings Association	25,000,000
The First National Bank of Boston	17,000,000
Irving Trust Company	15,000,000
Morgan Guaranty Trust Company of New York	13,000,000
The Northern Trust Company	10,000,000;
The Fidelity Bank	10,000,000
Crocker National Bank	10,000,000
Chemical Bank	10,000,000
Total	$230,000,000

Each borrowing and each payment by Middle South will be made pro rata among the participating banks according to their respective original Commitments. Subject to the right of Middle South at any time on three business days' notice to terminate the Commitments or from time to time to reduce the Commitments then in effect: (1) the original Commitments will remain in effect until December 31, 1982, at which time they will be ratably reduced to an aggregate principal amount of $172,500,000 (or 75% of the original Commitments); and (2) thereafter, these reduced Commitments will remain in effect until December 31, 1983, at which time they will be further ratably reduced to an aggregate principal amount of $115,000,000 (or 50% of the original Commitments) for the remaining term of the Credit Agreement.

Any such reduction of the Commitments will be accompanied by prepayment of the Notes and accrued interest thereon to the extent that the aggregate principal amount thereof then outstanding exceeds the Commitments of the participating banks as so reduced.

The Notes issued will bear interest from the date thereof on their unpaid principal amount at a rate per annum which (a) to and including December 30, 1980, shall be a percentage equal to the sum of 1/2 of 1% and the product of 105% multiplied by the Base Rate (as defined below), (b) thereafter, to and including December 30, 1982, shall be a percentage equal to the sum of 3/4 of 1% and the product of 105% multiplied by the Base Rate, and (c) thereafter, shall be a percentage equal to the sum of 3/4 of 1% and the product of 107% multiplied by the Base Rate. As used herein, the Base Rate means, at any time of determination thereof, the greater of (i) the prime commercial loan rate of Manufacturers Hanover Trust Company (the 'MHTC Rate') then in effect or (ii) the sum of 1/2 of 1% per annum and the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major United States money market banks ("C/D Rate").

Interest on the notes will be payable quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, or upon payment of the unpaid principal amount thereof.

Middle South will agree to pay to each participating bank a commitment fee for the period from June 27, 1980 to and including December 31, 1984 (or any earlier date of termination of the Commitments) computed at the rate of 1/2 of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made. Such commitment fee will be payable to each participating bank quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, and on the date upon which Middle South shall terminate the Commitments. Based upon the MHTC Rate (19.5%) and the C/D Rate (17.25%) in effect as of April 25, 1980, the effective interest cost to Middle South of the proposed borrowings as of that date would be 20.975% per annum. Middle South presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock. The notes will be prepayable at any time on two business days' notice in whole or in part without premium.

The initial borrowing under the Credit Agreement will be used for the payment of short-term notes issued by Middle South to various commercial banks under an existing credit agreement dated as of June 29, 1979, as amended. As of February 29, 1980, $145,900,000 aggregate principal amount of notes were outstanding under the existing credit agreement, and it is estimated that at the time the initial borrowing is made under the Credit Agreement the aggregate principal amount of such notes payable will amount to approximately $150,000,000. The proceeds of the borrowings under the existing credit agreement were or will have been, utilized by Middle South to purchase, at various times, the common stocks of certain of its subsidiary companies. Subsequent borrowings under the Credit Agreement will be used by Middle

South to purchase additional common stock of its subsidiaries.

A statement of the fees, commissions and expenses to be incurred by Middle South in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 16, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 there or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21589/May 23, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
GPU SERVICE CORPORATION
100 Interpace Parkway
Parsippany, New Jersey 07054

(70-6151)

NOTICE OF PROPOSED ISSUANCE AND SALE OF LONG-TERM, SECURED NOTE

NOTICE IS HEREBY GIVEN that General Public Utilities Corporation ("GPU"), a registered holding company, and its service company subsidiary, GPU Service Corporation ("Service Company"), have filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder regarding the following proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

By orders dated May 18, 1978 (HCAR No. 20550) and July 31, 1978 (HCAR No. 20652), this Commission authorized (a) Service Company to issue its unsecured promissory notes maturing on December 31, 1979, evidencing borrowings of up to $13,000,000 from Hartford National Bank and Trust Company ("Hartford") and Citibank, N.A., and (b) GPU to guarantee the payment of principal and interest on such borrowings. Such promissory notes were to bear interest at 105% of the banks' prime rate for commercial borrowings in effect from time to time. The proceeds from such borrowings were to be used to finance the construction and partial equipping of a 125,000 sq. ft. headquarters office building to be constructed by Service Company on a 25 acre site in Parsippany, New Jersey, or to reimburse Service Company's treasury for funds previously expended therefrom for such purposes. By order dated June 5, 1979 (HCAR No. 21082), the Commission authorized Service Company further to secure such borrowings by granting Hartford a first mortgage on the 25 acre site and office building.

Thereafter, and pending the making by GPU and Service Company of more permanent financing arrangements for the building, by order dated December 31, 1979 (HCAR No. 21372), the Commission (a) extended the time during which Service Company could issue, and GPU could guarantee, notes evidencing borrowings from

Hartford and Citibank, as well as the maturity date of such notes, to December 31, 1980, and (b) permitted such notes to bear interest at 108% of the prime rate, in effect from time to time.

GPU and Service Company have conducted discussions with Teachers Insurance and Annuity Association of America ("TIAA"), regarding permanent mortgage financing for Service Company's headquarters office building and the related real estate. As a result of these discussions, GPU and Service Company now propose that Service Company issue and sell to TIAA Service Company's first mortgage note due 2005 in the principal amount of up to $15,500,000 ("Note"). The Note would bear interest at 13.25% per annum and would be secured by a first mortgage lien on the headquarters office building, land, and improvements. In addition, GPU proposes unconditionally to guarantee Service Company's payment of principal and interest on the Note.

The Note will provide for level monthly payments of principal and interest designed to retire the Note at maturity. In addition, the Note would be redeemable beginning in 1987 at specified redemption prices; provided that prior to 10 years following the date of issuance, the Note could not be redeemed by Service Company from certain indebtedness or preferred stock, including indebtedness or preferred stock obtained at an interest cost or dividend rate of less than 13.25% per annum.

Service Company will apply $13,000,000 of the proceeds of the sale of the Note to repay all its outstanding indebtedness to Hartford and the balance for general working capital purposes or to repay outstanding indebtedness to GPU. No further short-term notes will be issued pursuant to the authorization in this proceeding.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 19, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of this interest, the reasons for such request, and the issues of fact of law raised by said post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21590/May 23, 1980

In the Matter of

COLONIAL GAS ENERGY SYSTEM
73 East Merrimack Street
Lowell, Massachusetts 01853

LOWELL GAS COMPANY
95 East Merrimack Street
Lowell, Massachusetts 01853

CAPE CODE GAS COMPANY
P.O. Box 1360
Hyannis, Massachusetts 02601

(70-6466)

NOTICE OF REDUCTION OF NUMBER OF OUTSTANDING SHARES OF COMMON STOCK AND TERMINATION OF DIVIDEND WAIVER; ISSUANCE

AND SALE OF HOLDING COMPANY COMMON STOCK AND REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING; ISSUANCE AND SALE OF SUBSIDIARY COMMON STOCK TO PARENT

NOTICE IS HEREBY GIVEN that Colonial Gas Energy System ("Colonial"), a holding company, Lowell Gas Company ("Lowell"), and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial, have filed a declaration designating Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration for a complete statement of the proposed transactions.

The declaration deals with a proposed offer to holders of approximately 58-1/2% of the outstanding common stock of Colonial, which are subject to a dividend restriction ("Restricted Stock") of release from that restriction in consideration of substitution of 4.5 shares of unrestricted stock for each 7 shares of Restricted Stock. Such an offer must be authorized by a vote of at least two-thirds of the holders of the presently unrestricted common shares as well as by a majority of the holders of all outstanding shares of common stock. The shareholders' authorization would terminate one year from the date of shareholder approval. Colonial is seeking authorization from this Commission to solicit approval of the proposed offer or such other offer as may be appropriate from the holders of the unrestricted common shares and to make such offer to the holders of the restricted shares.

In 1975, Colonial had its initial public offering of 495,000 shares of common stock at $12 per share. Prior to that time, all of Colonial's outstanding 709,000 shares of common stock were closely held. In connection with the public issuance of common stock, the six existing shareholders agreed to a restriction through the year 1980 on dividends paid upon their shares. The dividend restriction was extended through calendar year 1988 in connection with a public offering in 1978 of 370,000 shares of $1.80 Cumulative Convertible Preferred Stock of Colonial. Colonial has 1,204,000 shares of common stock outstanding which is presently held by approximately 1600 shareholders.

The dividend restriction, relates to the $.87 a share, in each fiscal year, of common dividends between $.45 a share and $1.32 a share. The Restricted Stock shares on a parity with the other common stock in the first $.45 of common dividends and in dividends above the $1.32 level. The other common stock receives all common dividends in a fiscal year exceeding $.45 until it has received $1.32 a share. The effect of the restriction has been to give the unrestricted common shares a preference of about $600,000 a year which permitted payment of $1.32 per share each year to the unrestricted common shares.

There are several limitations on the restrictions. The restricted shareholders reserved the right to sell up to 10% of the restricted shares free of the restriction. Only 5,100 of the shares have been so sold, leaving 703,900 restricted shares, of which 65,800 may be sold.

The restriction is relaxed in any fiscal year in which annual earnings available for common stock exceed the following amounts and $1.32 in dividends has been paid the other shares:

Earnings	*Authorized additional dividend*
$2,250,000-$2,499,000	$.29
$2,500,000-$2,750,000	$.58
over $2,750,000	$.87

The restriction expires December 31, 1988.

Upon consummation of the proposed exchange or an exchange on such other terms as are considered appropriate, Colonial will seek to raise approximately $7,000,000 by a public offering of additional common stock. The net proceeds from such sale would be invested in new common stock of Lowell and Cape Cod. Authorization of such transactions is also sought. The terms of such transactions will be supplied by amendment. With respect to the issuance and sale of Colonial's common stock, Colonial requests exception from the competitive bidding requirements of Rule 50(b) pursuant to paragraph (a)(5).

The fees and expenses to be incurred in connection with this proposal will be filed by amendment. No state or federal commission, other than this Commission, has jurisdiction over the proposed exchange. The Massachusetts Department of Public Utilities has jurisdiction over the issuance and sale of common stock to Colonial by Lowell and Cape Cod. No other state or federal commission, other than this Commission, has jurisdiction over the

issuance and sale of common stock by the utility subsidiaries.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants, at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof, may order a hearing thereon or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Colonial shall enclose a copy of this notice with the notice of its annual meeting to be mailed to shareholders.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21591/May 23, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6460)

NOTICE OF PROPOSED CHARTER AMENDMENT TO EXTEND SHORT-TERM DEBT AUTHORIZATION AND TO INCREASE AUTHORIZED PREFERRED STOCK; ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that New England Power Company ("NEP"), a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7(e), and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

The terms of the Cumulative Preferred Stock as set forth in the Articles of Organization and By-Laws provide that, except as voted by the holders of such stock, the short-term unsecured indebtedness of NEP shall not exceed 10% of the sum of the principal amount of all bonds and other secured indebtedness and the capital, premium and surplus of NEP (the "capitalization"), and that all unsecured indebtedness of NEP shall not exceed 20% of such sum. By votes in 1970, 1973, 1975 and 1976 pursuant to Commission approval (HCAR Nos. 16653, 17853, 19095 and 19595), preferred stockholders authorized the issue by NEP of short-term unsecured indebtedness in excess of the 10% limitation, provided that all unsecured indebtedness would not exceed 20% of the capitalization of NEP and that such short-term indebtedness would be issued within limited periods after said votes. The current authority expires July 1, 1980.

In the instant filing, NEP proposes to submit two Board of Director's proposals to its stockholders at a special meeting in lieu of the annual meeting to be held June 25, 1980. The first proposal is to obtain authority from stockholders for the continued issue by NEP of short-term unsecured indebtedness in excess of the 10% limitation provided (i) such indebtedness shall be issued not later than July 31, 1985, (ii) such indebtedness shall have a maturity not later than July 31, 1986, and (iii) the 20% limitation on all unsecured indebtedness of NEP shall remain in effect. This proposal requires the favorable vote, at a meeting called for that purpose, of a majority of the Cumulative Preferred stockholders. On April 30, 1980, NEP had

$27,800,000 of short-term debt outstanding. NEP estimates that short-term debt requirements during 1980 will reach a maximum of about $141,000,000, which amount may be reduced by permanent financing.

The second proposal seeks to amend the Articles of Organization and By-Laws to increase from $150,000,000 to $250,000,000 the aggregate outstanding par value of cumulative preferred stock that may be issued without a vote of two-thirds of the total number of shares of said stock then outstanding. This amendment will require the affirmative vote of at least two-thirds of the Cumulative Preferred Stock, the 6% Cumulative Preferred Stock and Common Stock, each voting as one class.

NEP proposes to solicit proxies from its shareholders, through the use of proposed soliciting material, to obtain the required approval for the proposed amendments. Proceeds from the issuance of short-term debt and preferred stock will be used for planned construction projects, cash sinking fund requirements and payment of maturing bonds. NEP's 1980-1984 construction program is expected to cost approximately $1,018,000,000, including allowance for funds used during construction. Included in the construction program are $948,000,000 for generation facilities, $66,000,000 for transmission lines and substations and $4,000,000 for other facilities. In addition, NEP will have $132,000,000 of maturing bonds and $6,250,000 of cash sinking fund requirements between now and July 1985.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,525, including $5,000 in printing fees and $4,000 of services to be performed at cost by New England Power Service Company, an affiliate of NEP. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of proxies from NEP's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration, regarding the proposed solicitation of proxies of NEP's stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21592/May 27, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY
2 Broadway
New York, New York 10004

(70-6126)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK TO TRUSTEE FOR EMPLOYEES SAVINGS PLAN

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding

company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction.

By orders dated April 25, 1978 and April 27, 1979 (HCAR Nos. 20516 and 21022), AEP was authorized to issue and sell, from time to time through June 30, 1980, up to 1,000,000 shares of authorized unissued common stock, par value $6.50, to Bankers Trust Company, the Trustee for the AEP Employees Savings Plan ("Savings Plan"). Through May 2, 1980, a total of 647,200 of such shares had been sold to the Trustee for a total price of $12,529,231, leaving a balance of 352,800 shares.

The Savings Plan is a defined contribution, individual account plan, under which a participant's benefits are based solely upon the amount contributed to his account and any income and gains or losses which may be allocated to it. The Savings Plan meets the requirements of the Employer Retirement Income Security Act of 1974 ("ERISA") and qualifies under Section 401(a) of the Internal Revenue Code. Any employee who has attained age 20 and been employed one year with one or more of AEP's subsidiaries ("Employers") is eligible to participate, except employees covered by the National Bituminous Coal Wage Agreement and employees who are covered by collective bargaining agreements if their Employer and their union have not agreed that their collective bargaining unit is to be covered by the Savings Plan. A participant may contribute to the Savings Plan, through regular payroll deductions, from 1% to 10% of his regular compensation, may change the rate of his contribution not more than twice in a 12-month period and may suspend his contribution for a minimum of three months. Each Employer contributes to the Savings Plan each month on behalf of each employee participant an amount equal to 50% of such participant's contribution up to 6% of his regular compensation (subject to applicable maximum contributions under ERISA) in each calendar year.

The monthly contributions made by participants and Employers are remitted to the Trustee, and credited to the individual accounts of participants. Each participant's contribution is invested by the Trustee, as directed by the participant, in one, or in equal portions in any two or all, of the following three funds: (a) the AEP Stock Fund, which consists entirely of shares of AEP common stock; (b) the Equity Fund, which consists of an index fund of common stocks selected by the Trustee (and may include shares of AEP common stock); or (c) the Fixed Income Fund, the contributions to which are invested by the Trustee pursuant to a contract with the Equitable Life Assurance Society of the United States ("Equitable") under which contract Equitable guarantees repayment of principal amounts invested with it and interest at an effective annual rate of 7.85% through December 31, 1987. Employer contributions on behalf of participants are invested entirely in the AEP Stock Fund. Participants' contributions are fully vested at all times. Employer contributions become vested at the earlier of (a) the end of the third year following the year for which the contributions were made, or (b) the participant's retirement, permanent and total disability, death or termination of employment after age 60 in certain cases.

Participants, while employed, may elect to receive a distribution of all or a portion of the value of the vested contributions credited to their accounts by either (i) during November of each year, commencing with November 1981, electing to receive a distribution of the value of all contributions to his account for the third calendar year preceding the year in which the election is made, such distribution to be made in cash and shares of AEP common stock or entirely in cash, and such election not resulting in any forfeiture or other penalty; or (ii) electing to withdraw, once in any twelve-month period, the value of all or part of the contributions credited to his account that have vested, such distribution to be made entirely in cash, and such election resulting in a full or partial suspension of the participant's right to contribute to the Savings Plan for periods up to nine months. Upon the retirement (or other termination of employment) or death of a participant, the entire vested amount in his account is distributed to him or his designated beneficiaries, in cash and shares of stock, or entirely in cash if the distributee so elects.

The administrative expenses of the Savings Plan are paid by the Employers. Direct charges and expenses arising from the purchase or sale of securities for the funds are paid by the Trustee from the funds involved. The price to the Trustee of such shares on any date of sale will be the average of the high and low sale prices of AEP's common stock on the New

York Stock Exchange on such date (determined after the close of trading for the day), but in no event less than the par value thereof.)

By post-effective amendment, AEP requests that it be authorized to issue and sell to the Trustee for the Savings Plan, through June 30, 1981, up to an additional 500,000 shares of its authorized unissued common stock, $6.50 par value, plus the unsold balance of the shares previously authorized but not heretofore issued and sold.

AEP requests an exemption from the competitive bidding requirements of Rule 50 under the Act for such issuance and sale pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,250. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21593/May 28, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
Ashland, Kentucky

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

(70-6435)

ORDER AUTHORIZING INTRASYSTEM FINANCING AND RESERVING JURISDICTION

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed an application-declaration and an amendment thereto with this Commission pursuant to Sections 6(b), 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

It is proposed that certain subsidiaries of Columbia listed below issue and sell to Columbia prior to April 1, 1981, common stock and installment promissory notes up to the amounts indicated:

	Equity			Installment and/or Term Notes	
	No. of Shares	Par Value $	Aggregate Amount $	Aggregate Amount $	Total $
Columbia of Kentucky	—	—	—	3,100,000	3,100,000
Columbia of Ohio	—	—	—	37,100,000	37,100,000
Columbia of Maryland	52,000	25	1,300,000	700,000	2,000,000
Columbia of New York	—	—	—	1,300,000	1,300,000
Columbia of Pennsylvania	184,000	25	4,600,000	10,500,000	15,100,000
Columbia of Virginia	—	—	—	2,000,000	2,000,000
Columbia of West Virginia	—	—	—	7,900,000	7,900,000
Columbia Gulf	—	—	—	45,000,000	45,000,000
Development U.S.	—	—	—	13,500,000	13,500,000
Hydrocarbon	26,000	25	650,000	3,450,000	4,100,000
Inland	—	—	—	700,000	700,000
Coal Gasification	552,000	25	13,800,000	12,100,000	25,900,000
Service	—	—	—	4,200,000	4,200,000
Total			20,350,000	141,550,000	161,900,000

The installment notes will be unsecured and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on March 31st of each of the years 1982 and 2001, inclusive. Interest on all installment notes will accrue from the date of issuance and is to be paid semi-annually on the unpaid principal thereof until fully paid. The interest rate will be the actual cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%. Columbia sold $100,000,000 principal amount of debentures on October 17, 1979 (File No. 70-6343) at a cost of money of 11.947%, and may sell additional long-term securities during the financing period. The installment notes to be issued initially will, therefore, bear an interest rate of 11.9% and installment notes to be issued subsequent to Columbia's future financings will carry an interest rate related to the last sale of debentures prior to the issuance of said notes. However, should Columbia issue any notes under its Revolving Credit and Term Loan Agreement dated as of April 1, 1980, among Columbia and certain banks named therein, then notes issued by the subsidiaries subsequent to such financing may be Floating Rate Term Notes due March 31, 1987. Interest on the Floating Rate Term Notes will be at a floating rate equal to the effective cost of money to Columbia under the Term Agreement.

It is stated that the proceeds from the issuance and sale of the common stock and installment notes, together with funds generated from internal sources, will be used to finance these subsidiaries' capital expenditure programs and other corporate needs. Columbia Transmission and Columbia LNG plan to finance the entire amount of their capital expenditure programs and other corporate needs with funds generated from internal sources. The projected aggregate of net capital expenditures for all of the subsidiaries is estimated at $418,352,000.

It is also proposed that Columbia advance on open account to certain subsidiaries, and have outstanding from time to time, up to an aggregate amount of $454,700,000 to finance the purchase by such subsidiaries of underground storage gas inventories and miscellaneous other inventories and to use for short-term seasonal purposes. Substantially, all of such advances are expected to be taken down by December 31, 1980; however, a portion may be taken down during the period January 1, 1981, through May 31, 1981. All such advances are to be repaid on or before May 31, 1981. The open account advances will initially bear interest at the rate in effect from time to time at the agent bank for Columbia's short-term loan line of credit. Interest charges to these subsidiaries subsequently will be adjusted, after the storage financing period, to the effective cost of money Columbia achieves on its short-term borrowing for this purpose.

The proposed advances will be limited to the amount of each subsidiary's estimated short-term financing requirements as shown below:

Columbia of Kentucky	$15,400,000
Columbia of Ohio	94,200,000
Columbia of Maryland	1,800,000
Columbia of New York	2,700,000
Columbia of Pennsylvania	31,400,000
Columbia of Virginia	2,900,000
Columbia of West Virginia	33,700,000
Columbia Transmission	145,000,000
Columbia Gulf	45,000,000
Development U.S.	5,100,000
Columbia LNG	70,000,000
Hydrocarbon	2,000,000
Inland	1,000,000
Coal Gasification	3,500,000
Service	1,000,000
Total	$454,700,000

It has been requested that the companies be authorized to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

The requisite authorization for certain of the proposed transactions has not been obtained from the various state public-utility regulatory commissions for Columbia of Kentucky, Columbia of Ohio, Columbia of New York, Columbia of Pennsylvania, Columbia of Virginia, and Columbia of West Virginia. Accordingly, jurisdiction will be reserved over the transactions as to which the record is not yet complete; such transactions are as follows:

Company	No. of Shares	Equity Par Value	Equity Aggregate Amount	Installment and/or Term Notes Aggregate Amount	Short-Term Advances
		$	$	$	$
Columbia of Ohio	—	—	—	37,100,000	—
Columbia of Kentucky	—	—	—	3,100,000	—
Columbia of West Virginia	—	—	—	*	—
Columbia of Virginia	—	—	—	2,000,000	2,900,000
Columbia of Pennsylvania	184,000	25	4,600,000	10,500,000	—
Columbia of New York	—	—	—	1,300,000	—
Total			4,600,000	54,000,000	2,900,000

*Further state commission authorization will be required if floating Rate Term Notes are to be issued by Columbia of West Virginia.

Due notice of the filing of said application-declaration has been given in the manner prescribed by Rule 23 promulgated under the Act (HCAR No. 21541), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found, with respect to the above-described transactions as to which the record is complete, that the applicable provisions of the Act and rules promulgated thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the amended application-declaration in respect of said transactions be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the proposed transactions as to which the record has been completed, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended as requested so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved over the proposed transactions as to which the record is not yet complete.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21594/May 28, 1980

In the Matter of

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

(70-6451)

ORDER AUTHORIZING SHORT-TERM BORROWING LEVEL

Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application and amendments thereto pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following proposed transactions.

By Supplemental Memorandum and Order dated February 13, 1980 (HCAR No. 21433), AEP was authorized to acquire the common stock of CSOE, and by Supplemental Order dated March 28, 1980 (HCAR No. 21498), AEP was authorized to solicit CSOE stockholders under the tender offer related to such acquisition.

On May 9, 1980, having received tenders of a

sufficient amount of CSOE common shares, AEP declared its tender offer effective. As a subsidiary of AEP, CSOE has requested a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $210,000,000. As of March 31, 1980, CSOE had $74,578,000 aggregate principal amount of short-term debt outstanding. Such borrowings would be evidenced by notes, to be issued and sold from time to time under arrangements further described below, with no such note having a maturity later than March 31, 1982.

Concerning its credit arrangements, CSOE states that it has (1) lines of credit totaling $113,066,000 with 38 banks; (2) a loan agreement ("Loan Agreement") with certain banks for up to $80,000,000 of loans for use in retiring certain of its preferred shares; (3) a credit agreement ("Credit Agreement") with Prulease, Inc. ("Prulease"), for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments.

With respect to CSOE's lines of credit, the borrowings will be from banks of two classes. Each note to be issued to a Class I and Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. CSOE's credit arrangements with the Class I banks generally require it to maintain compensating balances equal to a percentage of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10% of the line of credit and 10% of the amount borrowed). CSOE's credit arrangements with the Class II banks generally require it to maintain compensating balances equal to a percentage of one-half of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10% of one-half of the line of credit and 10% of the amount borrowed) and to pay a fee (equal to a percentage (not in excess of 9%) of the bank's prime rate or 10% of the prior quarter's average Treasury Bill rate times one-half the amount of the line) for the availability of the remaining half of the line of credit. It is stated that the combination of the compensating balances and the fees is generally equivalent to compensating balances not in excess of 10% of the line of credit made available. Borrowings from both Class I and Class II banks will bear interest at an annual rate not greater than the bank's prime rate in effect from time to time. The effective interest cost of borrowings from either Class I or Class II banks would not exceed 125% of the bank's prime rate, or not more than 18.125% on the basis of a prime rate of 14.5%.

With respect to the Loan Agreement for borrowings of up to $80,000,000, it is stated that such borrowings may only be used to purchase for retirement certain of CSOE's cumulative preferred shares, par value $25 and $100, in connection with a transaction separate from but related to AEP's acquisition of CSOE's common shares. The details concerning the retirement of the preferred shares are set forth in the Supplemental Memorandum and Order dated February 13, 1980 (HCAR No. 21433). The Loan Agreement provides for the issuance of short-term notes to the lending banks, each such note (1) being payable six months from the date of issuance, with provisions for issuing new short-term notes in payment of the maturing short-term notes on dates six, twelve and eighteen months after the initial drawdown; (2) bearing interest at an annual rate of 102% of the alternate base rate (the higher of (a) the prime rate in effect from time to time of Citibank, N.A., on 90 day loans to substantial commercial borrowers, or (b) 1/2 of one percent above the latest three-week moving average of secondary market morning offering rates in the United States for three-month certificates of deposit of major United States money market banks, as determined weekly by Citibank, N.A., on the basis of certain reports, such average adjusted to the nearest 1/4 of one percent, or, if there is no nearest 1/4 of one percent, then to the next higher 1/4 of one percent); (3) being prepayable in whole or in part (not less than $5,000,000) at any time.

The Loan Agreement also contains a provision for the repayment of the short-term notes on the second anniversary of the drawdown by the issuance to the banks of CSOE's term notes, payable in four substantially equal semiannual installments of principal and bearing interest at an annual rate of 104% of the alternate base rate. CSOE is not now seeking authorization to issue such term notes, which will be the subject of a future filing should CSOE desire to issue them. Under the Loan Agreement CSOE is required to use the net proceeds of any sale of preferred shares to prepay the short-term notes or the term notes, as the case may be. Any amounts prepaid, whether optionally or mandatorily, may not be reborrowed. CSOE is required to pay a commitment fee at the rate of 1/2 of one percent per annum on the banks' commitment under the Loan Agreement,

commencing December 1, 1979, until the drawdown or September 30, 1980, whichever is earlier. The effective interest cost of borrowings under the Loan Agreement, assuming a prime rate of 14.5% would be 14.79% for the short-term notes and 15.08% for the term notes.

With respect to the Credit Agreement borrowings, CSOE's arrangements with Prulease provide for loans of up to $30,000,000. Each loan is to be an amount equal to or less than CSOE's estimated average inventory value of coal and oil for the month in which the loan is made, is to be evidenced by a note, and is to be secured by a security interest in CSOE's supply of coal and fuel oil at its generating stations. Each note matures at the end of the month for which the loan is made, except for the note which will be issued the first day of the month in which CSOE becomes a subsidiary of AEP, which note will mature on September 30, 1980, the date of termination of the Credit Agreement. Each note will bear interest at an annual rate equal to 1.125% plus .1% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. No compensating balances are required. The Credit Agreement may be renewed annually for one year at a time, by Prulease, with CSOE's consent, by Prulease's giving notice to CSOE on or before July 1 of each year. The effective interest cost of borrowings under the Credit Agreement, based on the 17% interest rate for commercial paper issued by Prulease on April 15, 1980, would be 18.225% through September 30, 1980.

With respect to CSOE's arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments, it is stated that such borrowings will be evidenced by notes which will (1) mature 180 days from date of issuance, (2) be payable on demand in whole or in part by the holder, and be prepayable in whole or in part by CSOE, and (3) bear interest, payable monthly, at the discount rate then in effect with respect to short-term notes of Sears Roebuck Acceptance Corporation (which rate was 14.75% on April 5, 1980).

The proceeds from the short-term borrowings (exclusive of the proceeds from borrowings under the $80,000,000 Loan Agreement, which will be used exclusively to purchase and retire CSOE preferred stock, and exclusive of borrowings under the Credit Agreement, which will be used to purchase fuel), will be added to CSOE's general funds and used to pay for construction expenditures (estimated at $125,000,000 for 1980) and for other corporate purposes.

CSOE claims exemption from the competitive bidding requirements of Rule 50 for its issuance of short-term notes pursuant to Rule 50(a)(2).

Of the $210,000,000 short-term borrowing authorization requested, CSOE has demonstrated a need for borrowings of $200,000,000.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $168,400, including commitment fees of $165,000 and legal fees of $1,400. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21548), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that CSOE be, and it hereby is, granted effective forthwith a short-term borrowing authorization of up to $200,000,000 through July 1, 1981, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved to grant further relief in whole or in part upon a showing of further need.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21595/May 29, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6362)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to an application previously filed with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transaction.

By prior order in this proceeding (HCAR No. 21366, December 28, 1979), I&M was authorized to issue and sell notes to banks and commercial paper to a dealer in an aggregate amount not to exceed $150,000,000, such notes and commercial paper maturing no later than June 30, 1981. By supplemental order in this proceeding (HCAR No. 21444, February 21, 1980), I&M was authorized to (1) add the Marine Midland Bank, New York, N.Y. as one of the banks which is extending to I&M a line of credit; (2) increase the line of credit at Mellon Bank, N.A., Pittsburgh, P.A. from $9,000,000 to $20,000,000 and (3) change its credit arrangements to total $329,655,000 with 43 banks. The previously ordered limit of $150,000,000 on outstanding notes was not changed. By further prior order in this proceeding (HCAR No. 21537, April 24, 1980), I&M was authorized to (1) increase its credit arrangements with 43 banks to total $344,655,000; (2) increase the line of credit at Irving Trust Company from $10,000,000 to $25,000,000 and; (3) incur short-term indebtedness in an aggregate amount not to exceed $200,000,000.

By post-effective amendment I&M proposes to amend its application by: (1) increasing its credit arrangements with 47 banks to total $404,655,000; (2) adding the following banks which will extend to I&M a line of credit in the following amounts:

Name	*Amount*
BancOhio, Columbus, Ohio	$20,000,000
Bank One, Columbus, Ohio	$15,000,000
Huntington National Bank, Columbus, Ohio	$15,000,000
National Bank of Detroit, Detroit, Michigan	$10,000,000

The previously ordered limit of $200,000,000 on outstanding notes will not be changed.

The fees and expenses to be incurred in connection with the proposed transaction will not exceed $100. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21596/May 29, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

KENTUCKY POWER COMPANY
Ashland, Kentucky

KINGSPORT POWER COMPANY
Roanoke, Virginia

MICHIGAN POWER COMPANY
Three Rivers, Michigan

OHIO POWER COMPANY
Canton, Ohio

WHEELING ELECTRIC COMPANY
Wheeling, West Virginia

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6361)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Michigan Power Company ("Michigan"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling Electric"), AEP's subsidiary public utility companies, have filed with this Commission a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(b) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transaction.

By prior order in this proceeding (HCAR No. 21352, December 21, 1979), AEP was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper respectively, in an amount of up to $165,000,000, such notes maturing no later than June 30, 1981. AEP was also authorized to make cash capital contributions prior to January 1, 1981 to certain of its subsidiaries. By supplemental order in this proceeding (HCAR No. 21442, February 20, 1980), AEP was authorized to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of $229,000,000, subject to the previously ordered limit on outstanding notes. By further supplemental order in this proceeding (HCAR No. 21488, March 25, 1980), AEP was authorized to make cash capital contributions to Michigan from time to time prior to January 1, 1981 in an aggregate amount of $10,000,000.

By post-effective amendment AEP proposes to issue and sell short-term notes to 14 banks with lines of credit in an aggregate amount of $274,000,000, subject to the previously ordered limit on outstanding notes. The banks and the line of credit which AEP has established at each such bank is as follows:

Name	*Amount*
Chemical Bank, New York, N.Y.	$50,000,000
The Chase Manhattan Bank (National Association), New York, N.Y.	50,000,000
Manufacturers Hanover Trust Company New York, N.Y.	25,000,000
Marine Midland Bank, New York, N.Y.	10,000,000
Morgan Guaranty Trust Company of New York, New York, N.Y.	18,000,000
Bankers Trust Company, New York, N.Y.	9,000,000
The Bank of New York, New York, N.Y.	6,000,000
The Cleveland Trust Company, Cleveland, Ohio	7,000,000
BancOhio, Columbus, Ohio	20,000,000
Bank One, Columbus, Ohio	15,000,000
National Bank of Detroit, Detroit, Michigan	10,000,000
First Pennsylvania Bank and Trust Company, Philadelphia, Pa.	9,000,000
Mellon Bank, N.A., Pittsburgh, Pa.	20,000,000
Credit Lyonnais, New York, N.Y.	25,000,000
Total	$274,000,000

In all other respects the previous order of this Commission remains unchanged.

The fees and expenses to be incurred in connection with the proposed transaction will not exceed $100. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder that said

application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21597/May 29, 1980

In the Matter of

KENTUCKY POWER COMPANY
Ashland, Kentucky

(70-6224)

SUPPLEMENTAL ORDER AUTHORIZING CHANGES IN LINES OF CREDIT WITH BANKS

Kentucky Power Company ("Kentucky"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") concerning the following matter.

By orders dated December 26, 1978 and December 5, 1979 (HCAR Nos. 20843 and 21325), Kentucky was authorized to issue and sell short-term notes through December 31, 1980, in an aggregate amount not to exceed $35,000,000 outstanding at any one time, such indebtedness to mature not later than March 31, 1981. By supplemental order in this proceeding (HCAR No. 21438, February 15, 1980), Kentucky was authorized to increase by one the number of banks from which short-term borrowings were made. Additionally, it was authorized to increase the total amount available under all lines of credit from $265,900,000 to $286,900,000. The previously ordered limit of $35,000,000 on outstanding notes was not changed.

By post-effective amendment Kentucky proposes to amend its application by: (1) increasing its credit arrangements with 20 banks to total $346,900,000 and; (2) adding the following banks which will extend to it lines of credit in the following amounts:

Name	*Amount*
BancOhio, Columbus, Ohio	$20,000,000
Bank One, Columbus, Ohio	15,000,000
Huntington National Bank, Columbus, Ohio	15,000,000
National Bank of Detroit, Detroit, Michigan	10,000,000

The previously ordered limit of $35,000,000 on outstanding notes will not be changed.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $100. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21598/May 29, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6402)

ORDER AUTHORIZING ACQUISITION OF FRANCHISE AND ELECTRIC SYSTEM BY OPERATING AGREEMENT WITH OPTION TO PURCHASE

Louisiana Power & Light Company ("LP&L"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a) and 10 of the Act as applicable to the proposed transaction.

LP&L has entered into an agreement, subject to approval of the Commission, to serve at retail the consumers now served by the electric system of the Town of Jonesboro, Louisiana ("Town") and to operate, for its own account, the electric system of the Town.

Service will be rendered under a franchise concurrently granted by the Town, at the rates charged by LP&L in the state of Louisiana, as authorized from time to time by the Louisiana Public Service Commission. It is stated that LP&L's rates are substantially lower than those of the Town, and that as an immediate effect, the substitution of LP&L's rate schedules will reduce the charges to consumers by more than half in most rate categories.

LP&L is engaged in the generation, transmission and distribution of electricity in 46 of the 64 parishes of the state of Louisiana, including the Parish of Jackson in which the Town is located. It is connected with the Town's electric system by a 115 kv transmission line. For the past two years, the Town has relied on baseload energy purchased from the City of Lafayette, under a contract expiring on June 12, 1980, supplemented by energy purchased from LP&L under its surplus energy rate schedule. The Lafayette energy is delivered over transmission lines of Gulf States Utilities Company, a non affiliated utility, from Lafayette to the lines of LP&L, and over LP&L transmission lines to the Jonesboro system. The Town also owns nine small gas fueled generators which were originally the primary source of its supply. Escalating costs of natural gas has made these generators uneconomic except for limited peaking use.

The Town has a population of about 5,500, but also serves adjoining areas outside its corporate limits. It has slightly under 3,000 electric customers, about two-thirds of whom are in the Town. About 83% of its customers are residential, the others are commercial or governmental. It has financed its utility system, including water and sewer services that are excluded from the acquisition, with revenue bonds.

The undepreciated cost of the electric facilities to the Town at June 30, 1979 was $6,472,791, and that of the excluded water and sewer utility $1,983,788. The Town does not account for depreciation, but the contract equates the depreciated original cost of the electric facilities only, to the entire $4,363,000 of revenue bonds outstanding at that date, and subsequent depreciation of the electric facilities to the scheduled retirements of revenue bonds.

Under the operating agreement LP&L will operate the electric system for its own account from the transfer date. It will pay the sinking fund, covering principal and interest on the revenue bonds. The sinking fund payments average about $344,000 a year from 1980 to 1997, but are sharply reduced in the next five years, and end in 2002. They will total, including interest, about $6.7 million.

Provision is made for possible refunding or prepayment of the revenue bonds, but require maturity of all obligations by September 1, 2002. Upon retirement of the revenue bonds, including any refunding bonds, the electric system will become the property of LP&L. During the term of the operating agreement, title to the present system will remain in the Town, which will continue to be the obligor on the revenue bonds. However, LP&L is assuming the obligations and appropriate provisions are made for contingencies, such as defaults, or premature termination of the agreements.

LP&L is obligated to maintain the distribution system, but is granted discretion as to the extent the generating facilities will be maintained or used. In

addition to the sinking fund payments, it will pay the Town 2% of revenues from residential and commercial customers in the Town. The agreement fixes a minimum of $95,000 per annum for the total of the 2% payment and the Town's property taxes on LP&L. This summary omits a number of contingencies and adjustment which may be found in the agreements on file.

The record indicates that the increasing cost of gas fired generation in the early 1970's led the Town to seek other sources of energy. This necessitated the construction of a new transmission line with LP&L to receive outside energy. The interconnection agreement with LP&L, dated June 5, 1978, permits the Town to purchase power from LP&L under LP&L's wholesale rate schedules, all of which are based on LP&L's incremental fuel costs. The Town has concluded that its energy costs and other expenses preclude it from rendering economical electric service to its customers.

The Town states that it considered acquiring interests in generating plants and discussed this possibility with Cajun Electric Cooperative, Inc., and the Louisiana Energy and Power Authority, as well as LP&L and Gulf States Utilities Company. It concluded that the new investment required would involve prohibitive debt service burdens. It also sought other purchasers of the system, including two cooperatives and one other utility company, but found them not interested.

The Town requested, on June 18, 1979, an offer from LP&L. The agreements described above were submitted after negotiations, on September 11, 1979. They were approved at an election on December 8, 1979 by a margin of 1,536 to 161.

The Town states that one of its problems was maintaining a qualified staff for its relatively small operation. It reports that, following the election, its key employees have found other work and is not able to maintain service.

LP&L states that it will apply for further authorization from the Commission before exercising the optional rights granted it by the operating agreement to arrange for refunding or prepayment of the Town's revenue bonds or to acquire the electric system by lease. The acquisition of the electric system through completion of the sinking fund payments is an integral part of the agreements considered herein.

No other state or federal commission has jurisdiction over the transactions which are the subject of the application. The exemption from this Commission's jurisdiction provided by Section 9(b)(1) of the Act is accordingly not available to LP&L.

The fees, commissions and expenses to be incurred in connection with the transactions are estimated at $11,000, including $9,000 of legal fees.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21496), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 567/May 22, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

TRUST INDENTURE ACT OF 1939
Release No. 568/May 22, 1980

In the Matter of

WORLD AIRWAYS, INC.
File No. 22-10330

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until June 16, 1980 to request a hearing on an application by World Airways, Inc. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Manufacturers Hanover Trust Company under (a) an existing indenture qualified under the Act in 1977 and (b) an existing indenture that is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover from acting as trustee under the qualified indenture.

TRUST INDENTURE ACT OF 1939
Release No. 569/May 28, 1980

In the Matter of

TRANS WORLD AIRLINES, INC.
File No. 22-10302

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by Trans World Airlines, Inc. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of the Bank of New York (the "Bank") under (1) an existing Trust Indenture, which is qualified under the Act, (2) an Equipment Trust Agreement, and (3) an Indenture of Mortgage, neither of which is qualified under the Act, and the agency of the Bank under a Pledge Agreement, which is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Trust Indenture.

TRUST INDENTURE ACT OF 1939
Release No. 570/May 28, 1980

ATLANTIC RICHFIELD COMPANY

File No. 22-10369

The Securities and Exchange Commission has issued a notice giving interested persons until June 23, 1980 to request a hearing on an application by Atlantic Richfield Company ("ARCO") for a determination by the Commission that the trusteeship of Chase Manhatten Bank, N.A. ("Chase") under two existing indentures of ARCO and one of ARCO Pipeline Company and ARCO as Guarantor, and the trusteeship of Chase under an existing indenture of The Anaconda Company ("Anaconda"), a wholly-owned subsidiary of ARCO, are not so likely to involve a material conflict of interest as to make it necessary to disqualify Chase from acting as trustee.

INVESTMENT COMPANY ACT OF 1940
Release No. 11180/May 22, 1980

In the Matter of

NATIONWIDE LIFE INSURANCE COMPANY

AND

NATIONWIDE DC VARIABLE ACCOUNT
One Nationwide Plaza
Columbus, OH 43216

(812-4518)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) AND RULE 22c-1

NOTICE IS HEREBY GIVEN that Nationwide Life Insurance Company ("Nationwide"), a stock life insurance company organized under the laws of the State of Ohio, and Nationwide DC Variable Account ("DCVA"), a separate account of Nationwide registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on August 14, 1979, and an amendment thereto on May 14, 1980, pursuant to Section 6(c) of the Act, for an order exempting from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) and Rule 22c-1 of the Act, to the extent necessary, a proposed change in the pricing of one of their existing variable annuity contracts. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

DCVA, a separate account of Nationwide, was organized as a unit investment trust pursuant to a custodian agreement between Nationwide, as sponsor-depositor, and The Huntington National Bank of Columbus ("Huntington"), as custodian, and registered under the Act. DCVA was established for the purpose of funding Group Flexible Fund Retirement Contracts ("Contracts") issued by Nationwide. Purchase payments under the Contracts are allocated to the DCVA and invested in shares of one or more of five mutual funds which are registered under the Investment Company Act of 1940.

The Contracts are designed for use in connection with supplemental retirement plans for public employees established by their employers. Contracts will be issued to employers who are exempt from taxation to fund plans for which the employee is exempt from tax on purchase payments until income is received. The employer, as owner of the Contract, makes purchase payments representing the income deferrals of all employee-participants who have designated the Contract as a funding index. The Contracts provide for the accumulation of such purchase payments with any accrued earnings until the annuity commencement date requested by a participant, at which time annuity payments begin as directed by the contract owner.

As currently structured, gross purchase payments designated to DCVA are assessed a sales charge which compensates the depositor, Nationwide, for its sales related expenses, prior to allocation of the net purchase payment to the requested series (one of five mutual funds) comprising the DCVA. Presently the sales charge deducted from purchase payments is not more than 5%. On contracts for which a sales charge of less than 5% is negotiated and assessed, such reduced charge will reflect actual variations in sales expenses, which will usually result from reduced agents' commissions.

Applicants seek this exemption to permit the implementation of a change in the pricing of the Contracts. Applicants propose to eliminate the assessment of sales charges from the gross purchase payments under the Contracts. Instead, the Applicants propose to assess a contingent deferred sales charge, which will be applied in the case of certain withdrawals from contract value by the contract owners or those made on behalf of participants. The contingent deferred sales charge will be imposed against the withdrawal of contract value representing participant accounts that have been established under the Contract and held in the DCVA for less than sixteen (16) years. No contingent deferred sales charge will be imposed against the withdrawal of contract value representing participant accounts that have been established under the Contract and held in the DCVA for sixteen (16) years or more.

The contingent deferred sales charge will equal not more than 5% of the *lesser of*: (1) the amount surrendered; or (2) all purchase payments received on behalf of the surrendering participant or the withdrawing contract owner prior to the date on which the surrender is requested. The cumulative sum of all such charges, per participant, will never exceed 5% (or such lesser percentage, if applicable) of the total purchase payments made on behalf of such participant during the period of up to sixteen years prior to the date on which the surrender is requested. On Contracts for which a contingent deferred sales charge of less than 5% is negotiated, such reduced charge will reflect actual variations in sales expense, which will usually result from reduced agents' commissions.

No contingent deferred sales charge will be imposed on contract value that is annuitized under any life-contingent payment option or, if the participant's account has been established in the DCVA for five years or more, a period—certain payment option of five or more years.

When a redemption is requested to effect a cash withdrawal, Nationwide would then surrender accumulation units equal in value to the amount of the cash withdrawal requested by the contract owner or on behalf of a participant, plus the applicable contingent deferred sales charge. The requested cash withdrawal would then be remitted to the contract owner or, upon instructions from the owner, to the participant. The contingent deferred sales charge would be retained by Nationwide to reimburse it for the expenses incurred in connection with the sale of the Contracts. These expenses include commissions, promotional costs, sales administration, and similar sales-related expenses.

Other charges which would be assessed by Nationwide under the Contracts include an annual administrative charge of $12 per participant and an asset charge equal, on an annual basis, to 0.95% of the daily net asset value of the assets of the DCVA. The asset charge is composed of a mortality risk premium, equal to approximately 0.35%, an expense risk charge, equal to approximately 0.15%, and a charge equal to approximately 0.45% for administration of the DCVA. Applicants state that these charges are calculated to reimburse Nationwide for costs related to administration of the DCVA and the Contracts and the assumption of mortality and expense risks.

Applicants submit that the proposed pricing change in the Contracts is consistent with all provisions of the Act and that no exemptive relief is required in order to implement the transaction. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act, Applicants have requested an order of the Commission exempting the proposed transaction, to the extent necessary, from the provisions of the Act detailed below.

Section 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants assert that the proposed contingent deferred sales charge is consistent with the intent of the definition of "sales load" contained in the Act. While eliminating the usual initial sales load deduction from purchase payments, Nationwide would continue to incur expenses related to the sale of the Contracts, including commissions paid to sales personnel and the costs of promotion and sales administration. The contingent deferred sales charge would be retained by Nationwide to reimburse it solely for expenses related to the sale of the Contracts, which Applicants maintain is within the Section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants assert that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicants have requested an exemption from the provisions of Section 2(a)(35), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Sections 27(c)(2) and 26(a)(2)(C)

Section 27(c)(2) of the Act, in pertinent part, makes it unlawful to sell any periodic payment plan certificate unless the proceeds of all payments on such certificate are deposited with a custodian having the qualifications described in Section 26(a)(1), and are held by such custodian under an

agreement containing substantially the provisions required in Sections 26(a)(2) and (3) of the Act. Section 26(a)(2)(C) provides essentially that no payment to the depositor of, or a principal underwriter for, a registered unit investment trust shall be allowed the trustee or the custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative duties normally performed by the custodian.

Applicants assert that the proposed contingent deferred sales charge is not the typical kind of expense contemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to: (1) designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; and (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to preclude the depositor of a unit investment trust from taking a sales load. They assert that the contingent deferred sales charge is intended specifically and solely to reimburse Applicants for sales related expenses. Applicants maintain that the deferral of the imposition of this charge, and its contingency upon an event which may never occur, do not change the basic nature of this charge as a sales charge to which Section 26(a)(2)(C) was not intended to apply. Furthermore, Applicants contend that Section 27(c)(2) excepts deductions for sales load from the requirement that the proceeds be deposited with a custodian. Applicants assert that the contingent deferred sales charge is a sales load to which this exception should apply, and that deferring the imposition of the charge and making it contingent upon an event which might never occur should in no way be construed as violative of Section 27(c)(2). However, Applicants have requested an exemption from the provisions of Sections 27(c)(2) and 26(a)(2)(C), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of the DCVA shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain initial sales charges. Applicants submit that the imposition of the contingent deferred sales charge does not violate Section 2(a)(32) or Section 27(d). Applicants assert that Sections 2(a)(32) and 27(d) both contemplate the assessment of an initial sales load. However, Applicants assert that, with a contingent deferred sales charge, the entire purchase payment is invested. Thus, the owner's proportionate share or account value would be the gross purchase payments, plus or minus any increase or decrease in value, less the contingent deferred sales charge. Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner or participant from receiving his proportionate share or the value of his account on redemption. Rather, Applicants maintain that the contingent deferred sales charge will merely be deducted at the time of redemption in determning that proportionate share, instead of being deducted from purchase payments. Applicants contend that the contingent deferred sales charge merely defers the timing of the imposition of the sales charge and makes the charge contingent upon an event which might never occur. Applicants submit that this method of assessing sales charges permits the purchaser's net amount invested to be increased, thus providing a benefit to

the purchaser. However, Applicants have requested an exemption from the provisions of Sections 2(a)(32) and 27(d), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless such certificate is a redeemable security. Applicants submit that the assessment of a contingent deferred sales charge upon certain redemptions, which is fully disclosed in the prospectus, should not be construed as such a restriction on redemption. Applicants assert that the Contracts are still redeemable securities, whether the sales charge is imposed against the purchase payment at the time of purchase, or whether such charge is deferred and made contingent upon an occurrence at a later instant during the contract period. Applicants assert that this is particularly true where the deferral of the contingent deferred sales charge until a redemption is effected has the general effect of increasing the contract value that is available for redemption, as compared with the contract value that would be available for redemption were the sales charge deducted from the purchase payment before investment on behalf of a participant. However, Applicants have requested an exemption from the provisions of Section 27(c)(1), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that implementation of the contingent deferred sales charge is in no way violative of Section 22(c) or Rule 22c-1 promulgated thereunder. When a redemption is requested to effect a cash withdrawal, the price on redemption will be based on the current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in arriving at the contract owner's or participant's proportionate share or account value. However, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder, to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 16, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following June 16, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11181/May 22, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11182/May 23, 1980

In the Matter of

NEUBERGER & BERMAN MANAGEMENT INCORPORATED
and
NEUBERGER & BERMAN
522 Fifth Avenue
New York, New York 10036

(812-4636)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER EXEMPTING APPLICANTS FROM SECTION 15(a) OF THE ACT

NOTICE IS HEREBY GIVEN that Neuberger & Berman Management Incorporated ("Management"), a New York corporation, and Neuberger & Berman ("N&B"), a New York limited partnership (Management and N&B are hereinafter referred to collectively as "Applicants"), filed an application on March 21, 1980, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 15(a) of the Act to the extent that certain transactions in the shares of Management might result in (1) the termination of the investment advisory contracts between Management and the investment companies it advises ("Investment Companies"), and (2) the termination of sub-advisory contracts between Management and N&B for the benefit of the Investment Companies (the investment advisory contracts and sub-advisory contracts are hereinafter referred to collectively as "Advisory Contracts"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants are both investment advisers registered under the Investment Advisers Act of 1940. Management and N&B serve as investment adviser and sub-adviser, respectively, to the following Investment Companies: Guardian Mutual Fund, Inc., Energy Fund Incorporated, The Partners Fund, Inc., Schuster Fund, Inc., Fundex, Inc., Hemisphere Fund, Inc. ("Hemisphere"), and CL Assets, Inc. ("CL Assets"). All of the Investment Companies are registered under the Act as diversified, open-end, management investment companies except Hemisphere and CL Assets which are registered under the Act as diversified, closed-end, management investment companies.

Applicants state that in January 1975, as a result of a restructuring of the stock ownership of Management: (1) N&B, through a wholly owned subsidiary, held approximately 52% of Management's outstanding common stock; (2) Mr. Bernard Stein ("Mr. Stein"), a general partner of N&B, held approximately 19% of Management's common stock; and (3) Mr. Donald C. Samuel ("Mr. Samuel"), also a general partner of N&B, held approximately 29% of Management's common stock. At the time of the restructuring, the shareholders of the Investment Companies voted on and approved the Advisory Contracts between Management and the Investment Companies.

According to the application, an agreement among the three shareholders of Management provided that upon Mr. Samuel's death his shares of Management would convert from voting shares into non-voting shares. Thus, upon Mr. Samuels death on February 20, 1980, N&B's, percentage ownership of Management's voting stock increased to approximately 73% and Mr. Stein's percentage ownership of Management's voting stock increased to approximately 27%. Applicants state that Mr. Stein intends to convert his voting shares of Management to non-voting shares and that such action would further increase N&B's ownership of Management's voting stock to 100%. Mr. Stein and Mr. Samuel's estate each plan to sell their stock of Management either to Management or to N&B.

Section 15(a) of the Act provides, in part, that it shall be unlawful for any person to serve or to act as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by a vote of a majority of the outstanding voting securities of such registered investment company, and unless such contract

provides for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor but does not include an assignment of partnersip interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business. Section 2(a)(9) of the Act defines "control" to mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company, and creates a presumption that any person who owns beneficially more than 25% of the voting securities of a company controls that company.

Applicants assert that the conversion into non-voting interests of Mr. Samuel's and Mr. Stein's voting interests in Management, and the contemplateu sale of such stock to N&B or Management, has not and will not result in assignments of the Advisory Contracts. However, Applicants note that because Mr. Samuel held approximately 29% of the voting stock of Management and because Mr. Stein's ownership of the voting stock of Management increased to approximately 27% upon Mr. Samuel's death, the transactions described above could be deemed to result in the transfer of controlling interests in Management and thereby constitute assignments under Section 2(a)(4) of the Act.

Applicants assert that the usual presumption of control created by Section 2(a)(9) of the Act is, in this case, rebutted by N&B's continued ownership of a majority of the voting stock of Management and that, therefore, no assignment of a controlling block of voting stock occurred or will occur as a result of the transactions described above. In support of this position, Applicants state that: (1) N&B continues to exert actual control of Management; (2) the transactions arising in this case in a corporate context are analogous to the types of partnership transactions excluded from the definition of "assignment" by Section 2(a)(4) of the Act; (3) no significant changes with regard to officers, directors, portfolio managers or employees have occurred other than changes that have occurred directly from the need to fill positions previously held by Mr. Samuel; and (4) subsequent to Mr. Samuel's death, the Board of Directors of each of the Investment Companies confirmed the continuance of the Advisory Contracts. The Boards of Directors also approved new provisional contracts on identical terms to be submitted to shareholders of the investment Companies in the event that the requested exemptive order is not granted.

Applicants state that although the uncertainty created by the above transactions could be removed by conductng special shareholder meetings of each of the Investment Companies to vote on new advisory contracts, the costs and expenses of such meetings would be burdensome to the Investment Companies. Applicants further state that they are unable to rely upon Rule 2a-6 under the Act with respect to the transaction. Rule 2a-6 provides, in part, that a transaction which does not result in a change of actual control or management of the investment adviser to an investment company is deemed not to be an assignment for purposes of Section 15(a) of the Act. Because Mr. Samuel was active in the management of the Investment Companies' investment adviser, Applicants believe that it might be argued that a change of actual management of the investment adviser has occurred. Although to the extent that an assignment has occurred Rule 15a-4 under the Act would provide a temporary exemption of 120 days from the requirement that new investment advisory contracts be approved by shareholders, Applicants state that they have applied for an exemption to obviate the need for special meetings of shareholders of the Investment Companies.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants assert that the granting of the requested exemption from the provisions of Section 15(a) of the Act would be consistent with Section 6(c) of the Act because, in their view, there has been no actual assignment of the Advisory Contracts, and because the granting of an exemptive order would avoid incurring the expenses inherent in treating the Advisory Contracts as terminated and securing shareholder approval of new advisory contracts.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11183/May 23, 1980

In the Matter of

PAUL R. DUPEE, JR.
151 Central Park West
New York, New York

(812-4670)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING AN EXEMPTION FROM SECTION 9(a) OF THE ACT

NOTICE IS HEREBY GIVEN that Paul R. Dupee, Jr. ("Dupee"), has filed an application for an Order pursuant to Section 9(c) of the Investment Company Act of 1940 (the "Act") exempting him from the provisions of Section 9(a) of the Act.

Applicant Dupee is a member of the Board of Directors of the Capitol Life Insurance Company ("Capitol Life") having been elected to such position on February 18, 1977. Capitol Life is a stock life insurance company organized under the laws of the State of Colorado with its home office located at 1600 Sherman Street, Denver, Colorado 80203. Capitol Life is an indirect wholly-owned subsidiary of Gulf & Western Industries, Inc. Among other things, Capitol Life is the depositor of the Capitol Life Separate Account A and Capitol Life Separate Account M (the "Separate Accounts") which Separate Accounts are engaged in the business of issuing Variable Annuity Contracts and as such they are registered investment companies under the Act.

On May 11, 1971, the Commission commenced an action in the United States District Court for the Southern District of New York pursuant to Section 21(e) and (f) of the Securities Exchange Act of 1934, Section 20(b) of the Securities Act of 1933, Section 209 of the Investment Advisers Act of 1940 and 42(e) of the Act. In the action entitled *Securities and Exchange Commission v. Everest Management Corporation, et al.*, C.A. No. 71-4932, Dupee was one of the 44 named defendants. The complaint alleged that the defendants engaged in acts and practices which constituted violations of various sections of the securities laws and the rules and regulations promulgated thereunder.

On November 6, 1973, Dupee executed a Consent to the entry of a Final Judgment of Permanent Injunction by the United States District Court for the Southern District of New York in connection with C.A. 71-4932, without admitting or denying any of the allegations in the complaint, without trial or adjudication of, or finding on, any issue of fact or law or any wrongdoing or liability on the part of Dupee and without the Final Judgment constituting evidence or admission with respect to any such issue. The final Judgment, as entered on March 19, 1974, prohibits Dupee from, directly or indirectly, using the mails or any means or instrumentalities of interstate commerce, in connection with purchase or sale of securities to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person by (1) causing or attempting to cause the purchase or sale of any security by any investment adviser on behalf of any

client of such investment adviser on the basis of factors other than the investment merits of such security; or (2) causing or attempting to cause the purchase or sale of any security by any investment adviser on behalf of any client of such investment adviser without first adequately investigating the investment merits of such security. The Final Judgment also prohibits Dupee from, directly or indirectly, using the mails or any means or instrumentalities of interstate commerce, while acting as an investment adviser, to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon any client or prospective client of such investment adviser with respect to the transactions, practices and courses of business described in such Judgment of Permanent Injunction, and transactions or practices of similar purport of object. Neither the Commission's complaint nor the Final Judgment cited violations of the Act by Dupee.

Dupee was not a member of the Board of Directors of Capitol Life during the period of activities alleged in the Commission's complaint, nor was he a Director of Capitol Life as of the date the Final Judgment was entered in C.A. 71-4932.

Section 9(a) of the Act, insofar as here relevant, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a) as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Dupee submits that the prohibitions of Section 9(a) of the Act to the extent applicable by virtue of the entry of the Final Judgment and the execution of the Consent in C.A. 71-4932 should not apply to Dupee as they would be unduly and disproportionately severe as applied to Dupee and his conduct has not been such as to make it against the public interest or protection of investors to grant the exemption for which application has been made. In support of the Application, Dupee represents that:

(a) The prohibitions of Section 9(a) would deprive Capitol Life of the services of Dupee as a director of Capitol Life;

(b) The allegations of the complaint in no way relate to any activities of Capitol Life or the Separate Accounts nor to any of Dupee's activities on behalf of Capitol Life or the Separate Accounts;

(c) Capitol Life has no investment responsibility for the Separate Accounts, and under the particular circumstances in which Capitol Life acts as depositor to the Separate Accounts, the type of activities mentioned in the 1971 complaint could not occur;

(d) Other than in the complaint noted hereinabove, Dupee has never been the subject of an SEC enforcement proceeding, either judicial or administrative;

(e) Dupee has never been required to apply for an exemption from the provisions of Section 9(a) of the Act; and

(f) The entry of the Final Judgment did not constitute an adjudication of any liability or wrongdoing by Dupee and was entered into with his consent for purposes of the action only, without admitting or denying the allegations of the complaint.

The Application states that applicant understands that the granting of this Application would not preclude the Commission from commencing a proceeding under Section 9(b) of the Act on the basis of conduct other that the giving rise to this Application, nor would it preclude the Commission, in any such proceeding, from taking such conduct into consideration.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 20, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason

for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549.

A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11184/May 23, 1980

In the Matter of

BEAR, STEARNS & CO.
NEW YORK MUNICIPAL TRUST
(Series 1 and Subsequent Series)
MUNICIPAL SECURITIES TRUST
(Series 1 and Subsequent Series)
A CORPORATE TRUST
(Series 1 and Subsequent Series)
55 Water Street
New York, New York 10041

(812-4542)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 22(d) OF THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT APPROVING PROPOSED EXCHANGES

Bear, Stearns & Co., a partnership formed under the laws of New York, and Municipal Securities Trust, Series 1 and subsequent series, New York Municipal Trust, Series 1 and subsequent series, and A Corporate Trust, Series 1 and subsequent series, each registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on October 1, 1979, and amendments thereto on December 13, 1979, and February 1, 1980: (1) pursuant to Section 6(c) of the Act, for an order exempting certain proposed transactions from the provisions of Section 22(d) of the Act and (2) pursuant to Section 11(a) of the Act, for an order approving certain proposed exchanges.

On April 29, 1980, a notice was issued (Investment Company Act Release No. 11143) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the proposed exchange of shares and the granting of the requested exemption are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the proposed exchange offers be, and hereby are, approved.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 22(d) of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11185/May 23, 1980

In the Matter of

BERKSHIRE CAPITAL FUND, INC.
700 South Street
Pittsfield, MA 01201

(811-1656)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Berkshire Capital Fund, Inc. ("Applicant"), a Massachusetts corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, has filed an application on January 7, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 22, 1968, and that the registration statement for 1,000,000 of its common shares became effective under the Securities Act of 1933 on December 12, 1968, at which time public offering of these shares commenced.

According to application, on December 4, 1979, pursuant to an Agreement of Merger and Plan of Reorganization ("Plan"), Massachusetts Financial Development Fund, Inc. ("MFD"), an investment company registered under the Act, acquired all portfolio securities and other assets of Applicant in exchange for shares of capital stock of MFD. Applicant states that its board of directors authorized the merger and related events at meetings held on July 23, August 20 and October 22, 1979, and that the Plan was approved by a majority vote of the shareholders of Applicant on December 4, 1979. The application states that the shares of Applicant were converted into shares of MFD at relative net asset values. A total of 297,158,994 shares of MFD, with an aggregated value of $5,143,855.01 was issued to shareholders of Applicant. The application further states that all expenses incurred by Applicant in connection with effectuating the Plan are being reimbursed to Applicant by Berkshire Management & Research Corporation, Inc., its investment adviser.

The cost of preparation of the proxy materials was borne by Massachusetts Financial Services Company, MFD's investment adviser, and MFD bore the expenses it incurred in connection with the Plan.

The application further states that, as of the date of the application, Applicant had no assets, debts or other liabilities, was not a party to any litigation or administrative proceeding, and had no securities holdings. The Applicant further represents that it is not now engaged in any business activities other than those necessary for the winding up of its affairs and that a distribution to all shareholders of Applicant has been made in complete liquidation of their interests in Applicant. The application states that Applicant's legal existence has ceased pursuant to the Business Corporation Law of the Commonwealth of Massachusetts under which Applicant was created.

Section 8(f) of the act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 16, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon

request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11186/May 22, 1980

In the Matter of

VARIABLE ANNUITY ACCOUNT B OF AETNA LIFE INSURANCE AND ANNUITY COMPANY,

VARIABLE ANNUITY ACCOUNT C OF AETNA LIFE INSURANCE AND ANNUITY COMPANY

VARIABLE ANNUITY ACCOUNT E OF AETNA LIFE INSURANCE AND ANNUITY COMPANY

AND

AETNA LIFE INSURANCE AND ANNUITY COMPANY
151 Farmington Avenue
Hartford, Connecticut 06156

(812-4604)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) AND 27(d) OF THE ACT, PURSUANT TO SECTION 11 OF THE ACT FOR AN ORDER APPROVING AN OFFER OF EXCHANGE

NOTICE IS HEREBY GIVEN that Variable Annuity Accounts B, C, and E of AEtna Life Insurance and Annuity Company (the "Accounts"), each of which is registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and AEtna Life Insurance and Annuity Company (the "Company"), the principal underwriter therefor (sometimes hereinafter referred to as "Applicants"), filed an application on January 25, 1980, and an amendment thereto on April 23, 1980 pursuant to Section 6(c) of the Act for an order of the Commission granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c) (and Rule 22c-1 thereunder), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and pursuant to Section 11 of the Act for an order approving an offer of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Company, a stock life insurance company domiciled in Connecticut, is a wholly-owned subsidiary of AEtna Life and Casualty Company. Variable Annuity Accounts B, C, and E are separate accounts of the Company established pursuant to the insurance laws of Connecticut for the purpose of holding reserves attributable to certain of the Company's variable annuity contracts. The assets of the Accounts are invested in the shares of AEtna Variable Fund, Inc., AEtna Income Shares, Inc., AEtna Variable Encore Fund, Inc., (the "Funds"), open-end management investment companies registered under the Act. The Company is registered as an investment adviser under the Investment Advisers Act of 1940 and, as such, acts as investment adviser to the Funds.

Under variable annuity contracts currently offered by Applicants, sales charges are deducted from contract purchase payments as they are made. By this application Applicants seek the necessary exemptions which will permit the offering of new variable annuity contracts (the "Contracts") on which sales loads will be imposed only when, and if, contract values are withdrawn. Contract values will vary with the investment performance of the full purchase payments (less periodic deductions from those values) until the selected annuity commencement date, at which time annuity payments will begin as designated by the Contract owner or participant, as appropriate. The Contract owner may, at any time prior to the annuity commencement date, withdraw some or all of the accumulated contract value. At that time, a deduction for sales charges ("Deferred Sales Charge") would be made. Such charge would vary in amount according to the length of time for which purchase payments had been made under the contract. The Deferred Sales Charge will not be imposed on withdrawals due to the death of a

participant nor will it be imposed upon election of an annuity option involving life contingencies.

The Company proposes to make both single premium and periodic payment Deferred Sales Charge Contracts available through each of the Accounts. The Deferred Sales Charge which would be imposed on single premium Contracts would equal the lesser of: (1) 9% of the original purchase payment, or (2) 5% of the amount surrendered if the contract is surrendered in the first five contract years, 4% in the sixth contract year, 3% in the seventh year, 2% in the eight year, 1% in the ninth year and zero thereafter.

Two types of periodic payments Deferred Sales Charge Contract are proposed. One (the "Small Group Contract") would be available to individual and small group purchasers. The other (the "Large Group Contract") would be available to large group plans involving at least $100,000 of annual purchase payments and mass solicitation of plan participants. Under the proposed Small Group Contracts, Deferred Sales Charges would be imposed on withdrawals from contract values which would equal the lesser of: (1) 9% of all purchase payments made on the Contract, or (2) 5% of the amount surrendered in the first five purchase payment years, 4% in years six and seven, 3% in years eight and nine, and 2% thereafter. Under the proposed Large Group Contract, the Deferred Sales Charges would be the same as the Small Group Contract, except that the Deferred Sales Charge would equal 2% in years ten through nineteen, and zero thereafter.

Applicants seek, in addition, an order pursuant to Section 11 of the Act approving an offer of exchange which may be deemed to be made in connection with all contracts offered through the Accounts. Under each such contract, the Company will (in the absence of contrary instructions from the contract owner or participant, as appropriate) transfer any contract values accumulating in AEtna Variable Encore Fund, immediately prior to the commencement of annuity payments, to AEtna Variable fund, since AEtna Variable Encore Fund is not available as a funding vehicle for the contracts once annuity payments are to begin.

Section 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or "administrative expenses or fees which are not properly chargeable to sales or promotional activities." Section 2(a)(35) appears to contemplate that a "sales load" will be charged at the time purchase payments are made. The Deferred Sales Charge that would be deducted only upon the surrender of a Contract would be retained by the Company to reimburse it solely for the costs associated with "sales" and "promotional activities." Applicants assert that, but for the timing of the imposition of such charges, the Deferred Sales Charges fall within the statutory definition of "sales load." Applicants have requested an exemption from the operation of the provisions of Section 2(a)(35), to the extent necessary, to offer the Contracts.

Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. For purposes of the Act, the Company is the depositor and the principal underwriter with respect to the subject unit investment trusts and acts as its own custodian.

Section 26(a)(2)(C) provides that no payment to the depositor of or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an "expense." Applicants submit that the proposed Deferred Sales Charge is not the kind of expense contemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to: (1)

designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to prevent the depositor of a unit investment trust from imposing a sales load. They assert that the Deferred Sales Charge to be imposed upon the withdrawal of Contract values is designed to recover costs related solely to the sale of the Contracts. Section 27(c)(2) expressly provides for the deduction of sales loads from purchase payments before the proceeds are deposited with a custodian under the requirements of Section 26. Applicants submit that the Deferred Sales Charges are sales loads to which Section 27(c)(2) applies, and that the deferral of the imposition of the sales charge until withdrawal of Contract value, an event which may never occur, should not be construed in any way as in violation of Section 27(c)(2). Applicants have requested an exemption from the provisions of Section 26(a)(2)(C) and Section 27(c)(2), to the extent necessary, to offer the Contracts.

Applicants have consented to the exemptions requested herein from Sections 26(a) and 27(c)(2) being made subject to the following conditions: (1) that the charges to variable annuity contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services; and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums or charges.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that Sections 2(a)(32) and 27(d) contemplate the deduction of sales charges from purchase payments at the time they are made. Applicants assert that under a Contract, the net amount invested would be the gross purchase payments, and therefore, the holder's "proportionate share" would be the gross purchase payment(s), plus or minus any increase or decrease in value, less the Deferred Sales Charge. Applicants maintain the deferral of the sales charge does not restrict in any way the Contract owner from receiving his or her proportionate share or the value of his or her account on redemption. The Deferred Sales Charge would be deducted upon redemption in determining the proportionate share or account value, as opposed to being deducted from initial purchase payments. Applicants submit that the deferral of sales charges permits the Contract owner's net amount invested to be increased, to the benefit of the Purchaser. Applicants have requested an exemption from the provisions of Sections 2(a)(32) and 27(d), to the extent necessary to permit the imposition of the Deferred Sales Charge.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless it is a redeemable security. Applicants submit that a Deferred Sales Charge imposed on redemption of the Contracts is not a restriction on redemption under Section 27(c)(1). Applicants assert that this is particularly true where the deferral of sales charge until the Contract is redeemed has the effect of increasing the Contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit sales charges to be imposed only upon withdrawal of Contract values.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing redeemable securities from selling, redeemng, or repurchasing any such

security except at a price based on the current net asset value of such security. When a Contract owner surrenders all or part of the value of the Contract, the price on redemption will be based on the current net asset value. The Deferred Sales Charge will merely be deducted at the time of redemption in arriving at the Contract owner's proportionate share or account value. While Applicants do not believe that the imposition of the Deferred Sales Charge is violative of Section 22(c) or Rule 22c-1, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder, to the extent necessary, to offer the Contracts.

Section 11

Section 11 of the Act requires approval by the Commission of any exchange of a security of a unit investment trust for the security of any other investment company. In Applicants' view, the transfers described herein involve either an exchange of one mutual fund for another at net asset value, specifically permitted by Section 11, or an exchange of one security of a unit investment trust for another security of the same trust not requiring Section 11 approval; nevertheless, in order to remove any doubt in this regard, and because it might be argued that there is a potential change in the economic interest of participants in the Accounts other than through affirmative voluntary action on their part, Applicants request an order under Section 11 approving such transfers from AEtna Variable Encore Fund to AEtna Variable Fund when annuity payments are about to commence.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following June 17, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11187/May 23, 1980

In the Matter of

NARRAGANSETT CAPITAL CORPORATION
40 Westminster Street
Providence, Rhode Island 02903

and

PHOTO SYSTEMS, INC.
7200 West Huron River Drive
Dexter, Michigan 48130

(812-4499)

ORDER AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT PURSUANT TO SECTION 17(b) OF THE ACT AND PERMITTING CERTAIN PROPOSED JOINT TRANSACTIONS PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER

Narragansett Capital Corporation ("Narragansett"),

a closed-end non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act") and a licensed small business investment company under the Small Business Act of 1958, and Photo Systems, Inc. ("Photo Systems"), a company presumed to be controlled by Narragansett, filed an application on March 13, 1980, and an amendment thereto on April 28, 1980, requesting an order of the Commission amending a prior order of the Commission dated February 11, 1980 (Investment Company Act Release No. 11043). This prior order pursuant to Section 17(b) of the Act exempted from the provisions of 17(a) of the Act, and permitted under Section 17(d) of the Act and Rule 17d-1 thereunder, certain proposed transactions to be made in connection with the proposed restructuring of Narragansett's investment in Photo Systems. The amended order permits such restructuring to take place according to the terms of an Amended Redemption and Refinancing Agreement dated February 11, 1980, between those entities.

On April 29, 1980, a notice was issued (Investment Company Act Release No. 11145) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found, on the basis of the information stated in the application, that the proposed modifications and amendments of the proposed transactions, including adjustments in the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed modifications and amendments are consistent with the policies of Narragansett and with the general purposes of the Act. It is further found, on the basis of such information, that the participation of Narragansett in the proposed transactions, as amended, will be consistent with the provisions, policies and purposes of the Act, and that neither Narragansett's nor Photo Systems' participation will be on a basis less advantageous than that of the other participants. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, and Section 17(d) of the Act and Rule 17d-1, that the application for amendment of the Commission's order dated February 11, 1980, contained in Investment Company Act Release No. 11043 to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11188/May 23, 1980

In the Matter of

DEN DANSKE BANK
af 1871 Aktieselskab
c/o H. Rodgin Cohen, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

(812-4616)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Den Danske Bank af 1871 Aktieselskab ("Applicant") filed an application on February 21, 1980, and amendments thereto on May 9, 1980 and May 20, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that as of December 31, 1979, it was the largest commercial bank in Denmark and the third largest privately held bank in Scandinavia. Applicant's shares are held by an estimated 25,000 investors and are listed on the Copenhagen stock exchange. As of December 31, 1979, its total assets, deposits and capital funds amounted to approximately $5.9 billion, $5 billion and $540 million, respectively. Applicant's net profit for 1979 was $62.8 million. Applicant, which was chartered in

1871, presently has approximately 290 branches in Denmark, and its non-Danish interests include one subsidiary, one branch, two representative offices and seven affiliated banks. In the United States Applicant has one representative office and one affiliated bank, both located in New York. The principal office of Applicant is located at 12, Holmens Kanal, Copenhagen, Denmark.

Applicant's principal business activities are the receipt of deposits and making of loans. Other business activities of Applicant include fiduciary activities, foreign exchange and underwriting. As of December 31, 1979, Applicant's loans, debt instruments, and cash on hand and balances with other banks consisted of approximately 49%, 16%, and 24% of its total assets, respectively. As of that date, deposits represented approximately 66% of Applicant's liabilities.

Applicant is organized and regulated under the Commercial Banks and Savings Banks Act of 2nd April, 1974 ("Bank Act") and is supervised by the Inspectorate of Commercial Banks and Savings Banks ("Inspectorate"), under the auspices of the Danish Ministry of Commerce. Among other things, the Bank Act regulates net capital and liquidity requirements and diversification tests for commercial banks such as Applicant. Applicant is required to provide the Inspectorate with monthly balance sheets and annual financial statements, audited by at least two auditors, one of whom is a government-authorized public accountant. Applicant submits that the Inspectorate conducts regular examinations of commercial banks, which are required to make such reports to the Inspectorate as it requires.

Applicant proposes to issue and sell unsecured prime quality commercial paper denominated in United States dollars to a United States commercial paper dealer which will then reoffer the commercial paper in minimum denominations of $100,000 to institutional investors and other persons who normally purchase commercial paper. The notes will provide Applicant with an alternative source of supply of United States dollars which will supplement United States dollars it currently obtains in the Eurodollar market. Applicant does not currently intend to sell the commercial paper in the United States in excess of an aggregate of $100 million at any one time outstanding.

Applicant plans to sell the notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of its special counsel in the United States that the offering will qualify for an exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) of that act. Applicant will not proceed with the proposed offering until it has received such opinion of special counsel. Applicant does not request Commission review or approval of the opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant represents that the presently proposed issue of securities and all future issues of securities will have received, prior to issuance, one of the three highest investment grades from at least one nationally recognized statistical rating organization, and that its United States counsel will have certified that such rating has been received. The notes will rank *pari passu* among themselves, equally with all other unsecured indebtedness of Applicant, including liabilities to depositors, and superior to Applicant's equity securities and subordinated debt.

Applicant undertakes to ensure that, prior to purchase, the dealer will provide each offeree of the notes with a memorandum which briefly describes the business of Applicant, and with Applicant's most recent publicly available fiscal year-end balance sheet and income statement, audited in such manner as is customarily done for Applicant by Danish auditors. The memorandum will describe material differences, if any, between the accounting principles applied by Applicant in the preparation of such financial statements and generally accepted accounting principles as employed by banks in the United States. The memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States, and will be updated promptly to reflect material changes in Applicant's financial condition. In the future, Applicant may offer other debt securities, such as bankers' acceptances and letters of credit, for sale in the United States, and any such future offerings will be accompanied by disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as the documents to be used in the presently proposed offering (but, in any event, no less comprehensive than required by applicable federal and state law). Applicant undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Any such

future offerings will be made with due regard to the provisions of rule 146 and the doctrine of integration referred to in various releases and no-action letters made public by the Commission. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Applicant will appoint a bank in the United States, the Commission, or some other person in the United States which normally acts in such capacity, to accept service of process in any state or federal court action based on the commercial paper it proposes to issue instituted by a holder of a note. Applicant will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid by Applicant. Applicant will similarly consent to jurisdiction and appoint a United States agent to accept service of process in any action based on any other offerings of debt securities that it may make in the United States.

Section 3(a)(3) of the Act defines the term investment company to mean any issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant argues that, as a Danish commercial bank, it is subject to extensive regulation by Danish banking law which affords sufficient protection to investors. Applicant asserts further that it is significantly different from the type of institutions that Congress intended the Act to regulate. Applicant states that an exemption pursuant to Section 6(c) of the Act would benefit institutional and other investors, since otherwise they would be precluded from purchasing Applicant's commercial paper. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 17, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11189/May 27, 1980

In the Matter of

LIQUID CAPITAL INCOME, INC.
831 National City Bank Building
Cleveland, Ohio 44114

(812-4655)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT

Liquid Capital Income, Inc. ("Applicant"), an open-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on April 3, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuing its portfolio securities.

On April 30, 1980 a notice was issued (Investment Company Act Release No. 11148) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested be, and hereby is, granted, effective forthwith, subject to the following conditions agreed to by Applicant:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicates of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of the action.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11190/May 28, 1980

In the Matter of

NARRAGANSETT CAPITAL CORPORATION
40 Westminster Street
Providence, Rhode Island 02903

CHARTER SUPPLY CO., INC.
and
GARY B. JACOBSEN
4562 Martindale Road
Philmont, New York 12565

(812-4351)

ORDER PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING JOINT TRANSACTION

Narragansett Capital Corporation ("Narragansett"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company and licensed as a small business investment company under the Small Business Investment Act of 1958, Gary B. Jacobsen ("Jacobsen"), a former employee of Narragansett, and Charter Supply Co., Inc. ("Charter"), a company formed by Narragansett to purchase the assets of a division of Consolidated Foods Corporation and in which Narragansett has a financial interest, filed an application on August 18, 1978, and an amendment thereto on December 7, 1979, for an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the joint investment by Narragansett and Jacobsen in Charter.

On May 2, 1980, a notice was issued (Investment Company Act Release No. 11151) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an

order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found, on the basis of the information stated in the application, that the participation of Narragansett and Jacobsen in the proposed transaction will be consistent with the provisions, policies, and purposes of the Act, and that the participation of Narragansett will be on a basis not less advantageous than that of other participants. Accordingly,

IT IS ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the joint investment by Narragansett and Jacobsen in Charter as proposed in the application be, and hereby is, permitted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11191/May 29, 1980

In the Matter of

CARDINAL GOVERNMENT SECURITIES TRUST
155 East Broad Street
Columbus, Ohio 43215

(812-4654)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

On May 5, 1980, a notice was issued (Investment Company Act Release No. 11155) of an application filed on April 7, 1980, by Cardinal Government Securities Trust ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act to exempt the Applicant from the provisions of Section 2(a)(41) of the Act and rule 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included within the procedures to be adopted by the Board shall be the following:

(a) Review by the Board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost

price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board will promptly consider what action, if any, should be initiated.

(c) Where the Board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of the action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board in the exercise of its discretion to be appropriate indicators of value. In addition, the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 722/May 22, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6212/May 22, 1980

LITIGATION

Litigation Release No. 9091/May 22, 1980

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced today that the Commission filed a Complaint in the United States District Court for the Northern District of Illinois, Eastern Division, against R. Jack Bernhardt ("Bernhardt"), a former registered representative at Loeb, Rhoades & Co., Inc. ("Loeb Rhoades") from November, 1974 until February 11, 1977, and a registered representative at Swift, Henke & Co. ("Swift Henke") from February 14 until March 14, 1977, alleging that Bernhardt violated the antifraud, antimanipulative, credit and beneficial ownership reporting provisions of the federal securities laws and seeking to enjoin Bernhardt from further violations of those provisions. The Complaint charges that, from in or about December, 1975, until on or about March 14, 1977, Bernhardt engaged in a scheme to manipulate, dominate and control the market in four securities: Olympia Brewing Company; Stange Co.; Lawrys Foods, Inc. and Fays Drug Company. The Complaint alleges that, as part of Bernhardt's scheme, he solicited purchases on the basis of assurances of takeovers, made unauthorized trades in the accounts of certain of his customers, and placed orders for the purpose of raising the prices of the securities, sustaining the prices he had established and absorbing shares being sold into the market. It further charges that Bernhardt devised a check-exchange scheme involving certain customers in order to create the appearance of payments for securities, arranged illegal bank loans and loans from individuals for certain customers to purchase securities, and caused his employer firms to file false Regulation T requests. It also alleges that Bernhardt accumulated in the accounts of customers more than 5% of the outstanding stock in each security for the purpose of acquiring, holding and disposing of the shares of each security as a block.

The Commission's Complaint also charges Thomas P. Danis ("Danis"), a former bank vice-president and loan officer who was also a customer of Bernhardt's, alleging that Danis aided and abetted Bernhardt's antifraud violations, violated the beneficial ownership reporting provisions of the securities laws and violated certain credit provisions by, among other things, arranging illegal bank loans for customers of Bernhardt's to purchase securities.

The Commission's Complaint also names Turnkey Enterprises ("Turnkey"), a partnership, and Andrew C. Papas ("Andrew Papas"), A. Patrick Papas ("Patrick Papas"), John R. Powell ("Powell"), Richard M. Shure ("Shure") and Paul B. Smithson ("Smithson"), all former customers of Bernhardt's, alleging that they violated the credit and beneficial ownership reporting provisions of the securities laws. It is alleged that the defendants gave insufficient funds checks to broker-dealers for the purchase of securities and that two of the defendants, Shure and Smithson, wrote a series of insufficient funds checks to Loeb Rhoades for the purchase of securities, which were later covered by deposits to their bank accounts of checks from Loeb Rhoades for the proceeds of sales of those same securities. It is further alleged that defendants Turnkey, Andrew Papas, Patrick Papas, Powell and Smithson obtained bank loans to purchase securities in violation of the credit provisions. It is further alleged that the defendants failed to report on Schedule 13D certain of their holdings of the shares of the securities.

Simultaneously with the filing of the Commission's Complaint, defendants Danis, Turnkey, Andrew Papas and Patrick Papas, without admitting or denying any of the allegations of the Complaint, consented to the entry of a final judgment of permanent injunction.

In a related proceeding, the Commission today released an Order Instituting Proceedings against Bernhardt, Loeb, Rhoades, Hornblower & Co. ("Loeb

Rhoades Hornblower"), the successor firm to Loeb Rhoades, and certain former officers of Loeb Rhoades and Swift Henke and its former president. All of the respondents, except Bernhardt, submitted Offers of Settlement and, without admitting or denying any of the allegations or findings, consented to the issuance of the Commission's Findings and Order Imposing Remedial Sanctions released this same day. Securities Exchange Act Release Nos. 16823/ 16824/May 22, 1980.

Litigation Release No. 9092/May 23, 1980

U.S. v. F. GAYLORD NANCE AND RICHARD T. FOGLE

Thomas P. Sullivan, U.S. Attorney for the Northern District of Illinois and William D. Goldsberry, Administrator of the Chicago Regional Office announce that on April 22, 1980, Judge Prentice M. Marshall sentenced F. Gaylord Nance (Nance) to thirty months incarceration and fined Nance $10,000, and sentenced Richard T. Fogel to eighteen months and fined him $5,000. Both Defendants had entered guilty pleas to one court of mail fraud and one count of fraud by wire. Nance, Fogle, two oil companies they wholly-owned, Arrow Oil Corporation (Arrow), and Texoil Exploration Company (Texoil), and others were previously enjoined from violations of the antifraud provisions of federal securities laws in September of 1978. *SEC v. F. Gaylord Nance, et al.* Civ. No. 78 C 1024 (N.D. Ill.).

Nance and Fogle were indicted for mail and bank fraud in connection with their activities while trust officers of the Continental Illinois National Bank and Trust Company (Continental). They were in charge of Continental's Oil and Gas Mineral Section which invested customers' funds in fractional undivided interests in oil and gas leases (mineral interests). Nance and Fogle were also indicted for operating racketeer influenced and corrupt organizations, i.e. Arrow and Texoil.

The fourteen count indictment included allegations, among others, of Nance's and Fogle's: receipt of payments and mineral interests from oil companies in return for their investing Continental's customers' funds with such companies; misrepresentation of the actual value of mineral interests to Continental's customers; sales of mineral interests to the Continental and Continental's customers at considerable profits; conversion of mineral interests from the Continental and its customers; and use of Arrow and Texoil to disguise their activities.

Litigation Release No. 9093/May 23, 1980

SEC v. CENCO INCORPORATED, ET AL. No. 76C 3258 (N.D. Ill. 1976)

William D. Goldsberry, Administrator of the Chicago Regional Office announced that on April 7, 1980, Brendan Casey was enjoined by the Honorable John Powers Crowley from violation of the antifraud provisions of the Securities Exchange Act. Casey consented to the injunction without admitting or denying allegations in the Commission's complaint.

The injunction was issued in connection with Casey's participation in a $25 million inventory and profit inflation scheme at Cenco, Incorporated (Cenco), while Casey was employed as controller of the Central Scientific Division of Cenco.

For further information, see Litigation Release Nos. 7538, 8509, 8747, 8786, 8919, 8970, 8975, 8989, and 9055 and, Securities Exchange Act of 1934 Release No. 11495.

Litigation Release No. 9094/May 28, 1980

SECURITIES AND EXCHANGE COMMISSION v. ALLEN F. LEGEL, ET AL. (S.D. Fla., Ft. Lauderdale, Civil Action No. 80-6248-CIV-EPS)

Jule B. Greene, Administrator, Atlanta Regional Office, and William Nortman, Associate Regional Administrator, Miami Branch Office, of the Securities and Exchange Commission, announced that on May 21, 1980 the Commission filed a Complaint in the United States District Court, Southern District of Florida, Ft. Lauderdale Division, alleging violations and the aiding and abetting of violations of the antifraud and broker-dealer financial responsibility provisions of the federal securities laws by Allen F. Legel ("A. Legel"), Harry B. Braswell ("Braswell"), John W. Roberts, Jr. ("Roberts"), Lawrence L. McGowan ("McGowan"),

Lawrence W. Legel ("L. Legel"), and Daniel J. Jones ("Jones").

In its Complaint the Commission alleged that, among other things: A. Legel, Braswell, Roberts, McGowan, L. Legel, and Jones were all principals and/or control persons of Legel Braswell Government Securities Corp. ("LBG"), and Legel Braswell Securities Corp. ("LBS"). LBG was a broker-dealer effecting transactions in exempt government securities, including GNMA securities, which ceased doing business in January, 1979. LBS was a broker-dealer registered with the Commission which effected transactions in municipals, as well as other securities, and also ceased doing business in January, 1979. Both LBG and LBS were adjudicated bankrupt on June 6, 1979. As of January, 1980, the Trustee in Bankruptcy had identified liabilities of $16.8 million, cash on hand of approximately $1 million, and unliquidated claims in litigation of approximately $500,000.

The Commission further alleged in its Complaint that A. Legel, Braswell, Roberts, McGowan, L. Legel, and Jones caused LBG and LBS to engage in the business of buying and selling various government securities, including GNMAs for immediate and delayed delivery; sell and buy standby commitments and enter into repurchase ("repo") and reverse repurchase agreements ("reverse repo") with customers and other broker-dealers while and at a time when LBG and LBS could not meet their financial obligations.

It was further alleged that the defendants violated the antifraud provisions of the federal securities laws in that they failed to disclose, and made misleading statements regarding, among other things, that LBG was operating at a loss; had losses in excess of $500,000; lacked working capital and was in danger of losing its credit which would necessitate that all outstanding transactions be closed out; and was using customer funds and securities as working capital.

The Commission also alleged that the defendants aided and abetted violations of the "Net Capital Rule" in that LBS, which guaranteed certain of LBG's loans, transacted business at a time when the aggregate indebtedness of LBS to all other persons exceeded 1,500 percentum of its net capital.

Further, the Commission alleged that the defendants aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-16 thereunder, in that the defendants permitted and caused LBG, a broker-dealer, to extend credit in "repo" and "reverse repo" transactions involving GNMA securities without establishing procedures to assure that customers of LBG received disclosure of the credit terms involved in said transactions.

The Commission requested that the Court enter an injunction to enjoin the defendants from further violations and the aiding and abetting of violations of the antifraud and financial responsibility provisions of the federal securities laws.

Litigation Release No. 9095/May 29, 1980

SECURITIES AND EXCHANGE COMMISSION v. *ASSOCIATED FOOD STORES, INC.* United States District Court for the District of Columbia, Civil Action No. 80-1338

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against Associated Food Stores, Inc. ("Associated"), operator of a wholesale grocery, with offices at 179-45 Brinkerhoff Avenue, Jamaica, New York, 11433. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Associated as part of a continuing course of violative conduct, has failed to file its Annual Reports on Form 10-K for its fiscal years ended July 28, 1979, 1978 and 1977, required to have been filed with the Commission by October 27, 1979, 1978 and 1977, respectively, and its Quarterly Reports on Form 10-Q for each of its fiscal quarters ended January 31, 1977 through January 31, 1980.

The Complaint requests that the Court order Associated to file forthwith, with the Commission, its Annual Reports on Form 10-K for its fiscal years ended July 28, 1979, 1978 and 1977, and its Quarterly Reports on Form 10-Q for its fiscal quarters ended January 31, 1977 through January 31, 1980. In addition, the Commission requests that the Court enjoin Associated from further violations of the reporting provisions of the federal securities laws.

CORPORATE REORGANIZATION
Release No. 323/May 2, 1980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re

THE DUPLAN CORPORATION,
DUPLAN FABRICS, INC.,
Debtors
76 B 1967 (KTD)
76 B 1968

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

ADVISORY REPORT OF THE SECURITIES AND EXCHANGE COMMISSION ON PROPOSED PLAN OF REORGANIZATION

This advisory report is submitted by the Securities and Exchange Commission ("Commission") pursuant to Section 173 of Chapter X of the Bankruptcy Act (11 U.S.C. §573)[1] and Bankruptcy Rule 10-303(b) with respect to the Trustee's plan of reorganization ("plan") of The Duplan Corporation ("Duplan") and Duplan Fabrics, Inc. ("Fabrics").[2]

We conclude that the Trustee's plan is feasible but it is not fair and equitable to Duplan's creditors. The plan can be made fair and equitable by relatively modest amendments.

On August 31, 1976, Duplan and Fabrics filed original petitions under Chapter XI of the Act in the United States District Court for the Southern District of New York. On October 5, 1976, the Bankruptcy Court granted the Commission's motion to transfer the cases to Chapter X, and on the following day, Alfred P. Slaner was appointed Reorganization Trustee ("Trustee").

The Trustee duly filed and served his report of investigation dated May 22, 1978. He filed a plan on August 15, 1979, subsequently amended on October 2, 1979, and further amended by a letter agreement dated January 17, 1980, embodying a proposed settlement of claims of the four bank creditors and counterclaims asserted by the Trustee and the present Indenture Trustee for the 5-1/2% convertible subordinated debentures.

Hearings were held on October 22-26 and November 26-27 in 1979 and January 14-17, 1980. The court found the plan worthy of consideration and referred it to the Commission for report pursuant to Section 172 of Chapter X and Bankruptcy Rule 10-303(b).

I. *THE DEBTORS*

Duplan was incorporated in 1917 in Delaware, succeeding predecessors originating in 1898. The present name, The Duplan Corporation, was adopted in 1941. Its common stock and debentures were traded on the New York Stock Exchange.[3] In December 1965, 44% of Duplan's common stock was acquired by Robert A. Levinson through a company controlled by him, and a new management was installed, which undertook an extensive program of modernization. In 1970, the holding company distributed the Duplan shares to its stockholders, giving Levinson a direct ownership of 21.2%.

Until the mid-1970's, Duplan was generally profitable and was an innovator and leader in the development of new textile products and in the use of new yarns. The 1965 acquisition followed a

[1]Since these cases were filed prior to the effective date of the Bankruptcy Code of 1978, they are governed in all respects by the Bankruptcy Act as in effect at the time of the filing of the petitions herein. Pub. L. 95-598, Title IV, §403(a).

[2]Our references to "Duplan" or "Debtors" include The Duplan Corporation and all of its subsidiaries, except where a distinction among entities is expressly indicated.

[3]As of 12/5/79, there were 5,712 holders of record of common stock and 1,156 holders of record of the convertible debentures. These convertible debentures and common shares were suspended from trading on the New York Stock Exchange at the close of trading on August 16, 1976, and subsequently delisted. Trading has continued on the over-the-counter market.

decline in Duplan's profits.[4] At that time, the company was engaged in the texturing of synthetic yarns and conventional yarn throwing.

In 1967, Duplan embarked on a program of diversification and acquisition. Between April 1967 and June 1970, 17 acquisitions were made at a total cost of approximately $64 million for cash, and securities.[5] In 1969 Duplan sold publicly $15 million of 5-1/2% convertible subordinated debentures, due February 1, 1994; and 400,000 shares of common stock were sold in 1970 for $10.3 million. More securities were issued in acquisitions. Additional funds were borrowed from institutional lenders. During the years 1967 through 1971, Duplan also spent approximately $40 million for new equipment, additional manufacturing plants, improvement and expansion of existing facilities and internal diversification.

These investments provided Duplan with increased capabilities in its existing operations, and gave it entree into the apparel and apparel components markets. New lines of yarn, production of bonded fabrics, dyeing of yarns and piece goods, carpet manufacturing, manufacturing of textile machinery, wholesaling of men's medium priced double knit suits, and the retailing of home crafts items and fabrics, were among the items added to Duplan's operations. By 1969, Duplan plants increased from 3 in 1965 to 43, and it had increased its employees from 1,200 to 6,000. Sales had grown from $25 million in 1965 to $113 million in 1969.

4

Fiscal Year:	In Millions Reported Net Income (loss)
1962	$1.5
1963	$1.4
1964	$2.5
1965	(0.041)
1966	0.242

Duplan's fiscal year ended September 30. In 1976, it shifted to a 52 week year ending on approximately September 30. Unless otherwise indicated, all references to years herein refer to the fiscal year.

[5]All of the stock of Barbet Sales Inc., was purchased in July 1969. Its subsidiary Barbet Fabrics, Inc., renamed Duplan Knits Inc., and then Duplan Fabrics, Inc., is the other debtor in this case.

As indicated by the number of plants acquired, Duplan still faced a major task of consolidation and integration. Over the next years, it liquidated or sold parts of its acquisitions and of new projects of its own that did not succeed. Duplan's earnings and credit drastically deteriorated, as the following Table I shows:

TABLE I
THE DUPLAN CORPORATION
Summary of Consolidated Income
Fiscal Years Ended September 30
(in millions)

	1970	*1971*	*1972*	*1973*	*1974*	*1975*
Sales	$107	$128	$131	$147	$151	$116
Cost of sales	84	103	109	121	130	106
Selling, general and admin.	10	13	18	19	19	17
*Profit (loss)	$13	$12	$4	$7	$2	$(7)
Discontinued operations	(1)	(1)	(1)	(1)	(2)	1
Other income—net	1	1	1	1	1	—
Interest	(4)	(2)	(3)	(4)	(6)	(6)
Income tax provision	(4)	(4)	—	(1)	1	—
	$5	$6	$1	$2	$(4)	$(12)
Write-offs[1]					(14)	
Losses on assets sold					(1)	(1)
Net income	$5	$6	$1	$2	$(19)	$(13)

*As restated through 1975 to eliminate operations of divisions discontinued.

[1]During the years 1971-1972 gains of $10 million from sales of two yarn plants and two divisions, were offset by $9.1 million of reserves for losses on other properties. After allowance for related income tax effects, only a nominal balance appeared in the income statement. The tax computations were revised in 1973, with similarly offsetting effects. These adjustments minimized the losses recognized in 1974.

In retrospect, this dramatic turn in the fortunes of the Debtors can be attributed primarily to losses incurred in its textile operations as a result of the collapse of the double knit textile boom. Prior to the 1960's, the double knit industry was small. By the end of 1968, double knitting was an industry in its own right. However, its dynamic growth capacity proved vulnerable. By early 1974, when capacity had reached its highest point, a recession was in progress in the United States. The recession and the Arab oil embargo had a severe adverse effect on the double knit industry. The petroleum based raw materials rose in price. Knitters were forced to sell their goods, which had been produced at all time high costs, at record low prices. By early 1975, the industry which had approximately 25,000 machines available for production, was able to operate only one-half that number and fabric prices often failed to

cover much more than variable costs. As the double knit boom collapsed, Duplan also suffered severe operating losses in the textile segment of its business. These losses, and the write-off of intangibles relating to the acquisition of certain of the company's knitting and yarn texturing operations, led to the results tabulated in Table I above and ultimately to this case.

Duplan had, at this time, National Credit Organization's ("NCO") highest rating. But in January 1975, NCO withdrew that rating and at the same time recommended to its subscribers that the extension of trade credit to Duplan be reduced to a limit of $250,000. Shortly thereafter, Dun and Bradstreet refused to rate the credit worthiness of Duplan and NCO withdrew the qualified rating as a result of "the magnitude of the recent past losses coupled with projected unfavorable results".

Duplan relied heavily on bank financing, which grew from $5 million under its 1967 credit agreement to $34.5 million under its 1972 credit agreement. At the end of 1974, the present credit agreement, on a secured basis, was substituted. Duplan was unable to meet the terms of these loans and the agreement was repeatedly amended. The March 31, 1975, amendment authorized borrowing another $10 million on accounts receivable, and was implemented by a factoring agreement with Chemical Bank New York Trust Company, ("Chemical Bank"), one of the lending banks. During this period, Duplan was discussing recapitalization with the lending banks.

In June 1976, management submitted a formal proposal to its bank creditors for a recapitalization. Discussions continued through July 1976 during which time the payment of subordinated indebtedness was delayed. Subordinated notes in the principal sum of $861,000 came due on August 4, 1976. Management negotiated an extension with about half of the noteholders, but paid $450,000 to Athlone Indutries, Inc.[6]

The interest payment on Duplan's 5-1/2% convertible subordinated debentures due on August 1, 1976, was not paid. This constituted an event of default under the indenture as well as other loan agreements. Duplan was unable to cure the default within the permissible 30 day period, and this case was commenced on August 31, 1976.

II. *THE TRUSTEE'S ADMINISTRATION*

When the petition was filed, Duplan included, as divisions, the Rochester Button Company ("RBD") and Duplan Yarn, and the following wholly-owned subsidiaries: Fabrics, Andrex Industries Corp. (which also owned 50% of Complex Industries Corp.), an apparel manufacturer, Laga Industries, Ltd., Wundies, Inc., Kickaway Corporation, Kitchener Button Industries, Ltd. and Lady Suzanne Foundations, Inc. The operations of Fabrics were conducted through three divisions, Knits West, Duplan Warp Knits and Duplan Prints, and a wholly-owned subsidiary, Naomi Knitting Mills Inc.[7]

The product lines as at August 31, 1976, were broadly classifiable into four categories: fabrics, yarn, apparel and apparel components. The fabric business consisted of the design, manufacture and sale of fabrics knitted from synthetic yarn and from blends of synthetic and natural fibers. The manufacturing processes encompassed single, double or warp knitting, dyeing and finishing. Contract knitters were relied on for part of Duplan's production. The fabric business also included the operation of fifteen retail stores engaged in the sale of fabrics and sewing notions and the design and distribution of printed fabrics. The printing was done by contract printers.

The yarn operation consisted of the mechanical texturing of synthetic bulk yarns which produce a stable woven or knitted fabric used throughout the apparel industry. The apparel business consisted of the manufacture and sale of ladies' and children's underwear and children's sleepwear. The apparel component business consisted principally of the manufacture and sale of a wide variety of plastic buttons for use on apparel.

The Trustee undertook a comprehensive analysis of the textile operations and instituted programs to eliminate duplicate functions and to reduce overhead and, through centralized marketing efforts, to eliminate overlapping lines and to explore alternative markets. Convinced that the textile

[6]The Trustee has brought an action to recover this payment as preferential.

[7]Laga and Kitchener were organized in the Virgin Islands and Canada, respectively. The subsidiaries, except Fabrics, are not parties to this case, although owned by the estate.

best copy available

Table II summarizes the Trustee's operations.[8]

TABLE II
THE DUPLAN CORPORATION
Summary of Consolidated Income
Fiscal Years 1976-1979
(000 omitted)

	10-03-76	10-02-77	10-01-78	09-30-79
Sales—discontinued operations	$75,512	$22,759	$19,200	$13,753
Continuing Operations:				
Net sales	$37,739	$32,686	$37,361	$41,833
Cost of sales	$26,495	$25,671	$27,334	$30,416
Selling, general & administrative	8,659	7,558	7,199	7,831
Total	$2,585	$(543)	$2,828	$3,586
Income tax provision[1]	(195)	28	(2,515)	(2,649)
Current interest	(200)[2]	(203)	(151)	(139)
Net	$2,190	$(718)	$162	$798
Interest on long-term debt[2]	(4,764)	—	—	—
Interest income	416	609	994	2,203
Other adjustments	1,446[3]	—	1,200[4]	—
Discontinued operations	(9,225)	(540)	(794)	1,483
Write-downs & sales	(24,353)	1,200	(662)	(291)
Operating loss adjustment	—	—	2,220	3,189
Net income (loss)	$(34,290)	$551	$3,100	$7,382

[1]Current income taxes:

Discontinued operations	$4	$(507)	$(194)	$4[illegible]
Continuing operations	195	(28)	2,515	2,6[illegible]
Total	$199	$(535)	$2,321	$3,1[illegible]
Operating loss adjustment	—	—	(2,200)	(3,189)
Net	$199	$(535)	$121	$(52)

[2]Accrual of interest on most debt ceased on filing this case. We have estimated the comparable portion of 1976 interest.
[3]Gain on repurchase of debentures, December 1975.
[4]In 1977 Duplan terminated a contributory pension plan. Annuities were purchased to satisfy all liabilities thereunder. After audit by the Pension Benefit Guaranty Corp. and the Internal Revenue Service in 1978, the fund was dissolved and a recovery of $1.2 million by Duplan was recorded.

segment could not be salvaged, all components of the textile and yarn operations were discontinued or liquidated, and the plant and equipment used therein has been disposed of pursuant to court order.

I.I. *ASSETS AND LIABILITIES*

Appendix A sets forth the Debtor's assets and liabilities as reflected in its September 30, 1979, audited consolidated balance sheet, summarizes the effect of the liquidations completed after that date, and of the proposed settlement and plan to identify the pro forma assets and liabilities of the reorganized company.

About half of the $61.6 million of September 30, 1979, consolidated assets is cash or equivalent which will be distributed to creditors. The balance consists of about $26.3 million of assets of the two operating divisions, Wundies and RBD, $2.2 million of deferred payments for properties sold, and not reflected on the balance sheet, related tax benefits and causes of action.

The principal cause of action is a lawsuit Duplan began in 1969 against Deering Milliken, Inc., and against a French company, and subsidiaries of each, manufacturers of textile machinery. About 36 other suits, involving related controversies between the

[8]Fiscal year 1976, with 11 months of pre-filing operations, is included for continuity. The table is based on the latest restatements, which retroactively reclassify the textile and yarn divisions as discontinued operations. Their sales are shown but not included in the ongoing business computation.

defendants and other textile companies, were consolidated for trial in the United States District Court for the District of South Carolina (No. 71-306). The disputes related to machinery used to process synthetic yarn by plaintiffs, called "throwsters". Plaintiffs charged a conspiracy in violation of the antitrust laws. A large part of the case involved extension of patent monopolies originally held by defendants in order to collect royalties on invalid or inapplicable patents. The plaintiffs were successful on the issue of liability, the court finding that plaintiffs had proven a horizontal antitrust conspiracy. It also found that seven patents were invalid and that the antitrust violation precluded recovery of royalties on others.[9] The issue of damages remains to be tried. Duplan relies primarily on about $4 million of royalty payments it made to defendants. It asserts triple damages and attorney fees under the antitrust laws, estimated at about $14 million. Defendants deny that there are recoverable damages.[10]

The major liabilities are represented by the term bank loans amounting to $38.4 million principal. The subordinated notes, which are privately held, total $6.1 million. They were issued by Duplan in connection with acquisitions.[11] The subordinated debentures, publicly held, amounted to $19.2 million. Total funded debt was as follows:

	000 omitted		
	Principal	*Pre-bankruptcy Interest*	*Book Total*
Term bank loans	$38,500	$614	$39,114*
Subordinated notes	6,045	60	6,105
5-1/2% convertible subordinated debentures	19,198	616	19,814
	$63,743	$1,290	$65,033

*Reduced to $38,385,000 by allowance of $728,987 of setoffs under the settlement.

The subordinated notes are subordinated to the bank debt. The debentures are subordinated to both. Claims of trade creditors are estimated at $2.6 million, of which an estimated $500,000 are classified as small claims. The notes and debentures are not subordinated to the trade claims, and the trade claims are not subordinated to anyone.

Duplan has outstanding 2,653,551 shares of common stock. It also has outstanding 8,319 shares of $4 convertible preferred stock, with a liquidation preference of $831,900. As the debtor is insolvent, the plan makes no provision for the preferred and common shares.

In addition to the setoffs, the banks claim that their loans are secured by a security interest through a pledge of all the stock of Wundies, Kitchener, Fabrics, Andrex, Laga, and Lady Suzanne[12] and security interests in specified real estate and equipment. The $5,021,000 of restricted certificates of deposit, included as cash in Appendix A represent net proceeds of property sold prior to the balance sheet date, and substituted for the claimed liens.

The banks commenced an adversary proceeding in this case to establish these security interests. Objections were filed by the Reorganization Trustee and the Indenture Trustee for the subordinated debentures. Aside from questions of detail, they charged that security interests were invalid or fraudulent conveyances, challenged the banks' status on equitable grounds, and asserted counterclaims. The case has not been tried, and the parties have proposed a compromise, which is included in the Trustee's plan.

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[9] *Duplan Corp.* v. *Deering Milliken, Inc.*, 444 F. Supp. 648-779 (D.S.C. 1977), *aff'd* 594 F.2d 979 (4th Cir. 1979), *cert. denied* 100 S.C t. 666. The trial court had dismissed two foreign defendants, but the Court of Appeals held them also liable.

[10] A case of this complexity defies summarization. The description in the text does not purport to state the claims and defenses exhaustively or even to identify the significant legal issues. It merely indicates the magnitude of the case.

[11] Subordinated Notes:

	Principal	Interest Unpaid to 8/31/76	Total
4% note*	$150,000	$2,000	$152,000
5% notes*	4,999k000	41,658	5,040,658
6% notes	461,600	8,731	470,331
9% notes	11,256	3,039	14,295
Note at prime rate	422,968	5,111	428,079
Total	$6,044,824	$60,539	$6,105,363

*4% notes and $4 million of the 5% notes were convertible into Duplan stock.

[12] Wundies and Kitchener are part of the continuing business. The other four have been liquidated or sold and the security now relates to the proceeds.

Consolidated liabilities include claims of trade creditors of Fabrics, which has been liquidated. Its reported assets, which are negligible, and consist mainly of the disputed bank setoffs, are about 9% of its liabilities.[13] Fabrics will be consolidated with Duplan under the plan.

IV. *SUMMARY OF PLAN*

Duplan, as reorganized, will consist, as it is now constituted, of the apparel business (Wundies and Kickaway) and of apparel components (RBD and Kitchener). The reorganized company will be managed by a board of directors consisting of seven members designated by the trustee and subject to court approval pursuant to Section 221(5) of Chapter X.

The liabilities of the subsidiaries, including RBD, whose current operating liabilities as a Duplan division are technically administrative expenses, will be paid in the ordinary course of business.

Administrative costs, principally allowances of compensation to be determined by the court, and tax claims are to be paid in cash from $30 million in cash available for distribution. The balance of the cash, estimated at about $27.6 million, will be distributed to creditors, along with all the common stock valued for purposes of the plan at $27.2 million, at $10 per share. Since assets are valued at substantially less than $69 million of allowable debt,[14] no participation is provided for the stock.

Trade creditors with allowed claims of $3,000 or less, including those who elect to reduce their claims to that amount are to be paid in cash. All other trade creditors will receive cash and stock, as indicated below. Trade creditors of Fabrics are treated as Duplan creditors. That is commonly known as "substantive consolidation", which generally calls for specific findings to support such a result.[15] But that is not necessary in this case. Since they were guaranteed by Duplan, the Fabrics trade claims are contractual claims against Duplan, and are so classified by the plan.

The plan incorporates the proposed settlement of the adversary proceeding. The salient features of the compromise are a release of the claimed security interests, and an offer of $6 million (about one-third in cash and two-thirds in new stock), from the banks' agreed share of the estate, to those debenture holders who release their claims against the banks. The banks will retain the pro rata share of the $6 million of those debenture holders who do not execute a release.

Table III below shows the distribution of cash and stock to the creditors. It reflects also the settlement with the banks.

V. *FAIRNESS AND FEASIBILITY*

Sections 174 and 221(2) of Chapter X require that to approve or confirm a plan the court must find the plan "fair, equitable and feasible." There is no question of feasibility in this case. Fairness in this case requires a comparison of the rights of creditors as measured by their claims and what they receive in cash and new securities in exchange for their claims.

Consideration of value is usually an essential part of the issue of fairness. The scope of the necessary valuation depends on the specific issue of fairness that must be resolved. In this case, about half of the estate is cash available for distribution which does not require valuation. It is the stock of the reorganized company, valued at $10 per share, that is being used to meet the conflicting claims of four creditor subclasses.

The noteholders have claims totaling about $6.1

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[13]Fabrics' audited balance sheet at September 30, 1979 was:

(000 omitted)

Cash	$33*	Reserve for phaseout	$91*
Receivables	251*	Pre-bankruptcy debt:	
Prepayments	25*	Trade creditors	866
Bank setoffs	2,447	Parent	$29,337
Assets	$2,756	Liabilities	$30,294
		Stock	25
		Retained earnings (deficit)	(27,563)
			$2,756

*Net liquidation value $200,000.

[14]Post-bankruptcy interest has not been included. About four years of post-bankruptcy interest is involved. For solvency purposes about $100 million in value would be required to provide an equity for the stock. *Consolidated Rock Products Co.* v. *DuBois*, 312 U.S. 510, 527 (1941).

[15]*Consolidated Rock Products Co.* v. *DuBois*, *supra* at 520-525; *Gulfco Investment Corp.* 593 F.2d 921 (10th Cir. 1979), *Flora Mir Candy Corporation*, 432 F.2d 1060 (2d Cir. 1969).

TABLE III
THE DUPLAN CORPORATION
DISTRIBUTION PURSUANT TO TRUSTEE'S PLAN

(000 omitted)

			Cash		Stock—$10/share		Total	
	No. of Creditors	Allowed Claims	Amount	Percent of Claim	Amount	Percent of Claim	Amount	Percent of Claim
Bank term loan	4	$38,385	$24,261[1]	63.2	$9,124	23.8	$33,385	87.0
Less: Chemical Bank cession[2]					(1,000)	(2.6)	(1,000)	(2.6)
Net		$38,385	$24,261	63.2	$8,124	21.2	$32,385	84.4
Trade creditors	125*	2,100*	858	40.8	860	41.0	1,718	81.8
Small claims	1,200*	500*	500	100.0	—	—	500	100.0
Subordinated notes	24	6,104	—	—	6,104	100.0	6,104	100.0
Subordinated debentures	1,200	19,814	—	—	8,093	40.8	combined below	
Settlement[2]		—	1,981	10.0	4,019	20.3	14,093	71.1
Total		$66,903	$27,600	41.3	$27,200	40.6	$54,800	81.9
Reserve for costs			2,200					
Tax claims			200					
Total			$30,000					

*Estimate
[1]Includes $1,773,000 held by Chemical Bank as a claimed setoff.
[2]See text.

million, and under the plan they are to receive common stock valued at that amount, at $10 per share and no cash. It is their contention that the stock is worth less and that a larger percentage of the stock would be required to satisfy their claims. Any additional stock would be necessarily obtained from the debenture holders who are subordinate to them. The noteholders also contend that as paramount or senior creditors they should receive, in lieu of an equivalent amount of stock, $1.98 million in cash that the plan provides for the debenture holders.

A. *Valuation*

The "value" of a business or property is based on expectations of profit. As the late Judge Frank of the United States Court of Appeals for the Second Circuit observed, "Value is the present worth of future anticipated earnings. It is not directly dependent on past earnings; these latter are important only as a guide in the prediction of future earnings."[16] Thus, to arrive at the value of a debtor's business, prospective earnings are capitalized at a rate derived from market yields on comparable businesses. The Supreme Court has stated that the application of this standard:

> "requires a prediction as to what will occur in the future, an estimate, as distinguished from mathematical certitude is all that can be made. But that estimate must be based on an informed judgment which embraces all facts relevant to future earning capacity and hence to present worth, including, of course, the nature and condition of the properties, the past earnings record, and all circumstances which indicate whether or not that record is a reliable criterion of future performance."[17]

Bear Stearns & Co. ("Bear Sterns"), an investment banking firm, was employed by the estate in valuing the debtors. The First Manhattan Company, another investment banker, was retained by a group of subordinated noteholders to review Bear Stearns' report and to form an opinion as to the fair market value of the proposed new common stock. Babian, Coyle & Company ("Coyle"), an accounting firm, was employed by the same group to examine the management forecasts on which Bear Stearns relied, and the tax loss carryover. Irving L. Schwartz, a retired partner of an accounting firm, presently a corporate advisor, was the third expert employed by this group, assigned to value the continuing operations.

All of the testimony relating to going concern value and tax loss was based on forecasts, discussed in Appendix B, of the two operating divisions, Wundies and RBD, prepared by their respective managements. The consolidated forecasts, which

[16]Frank, *Epithetical Jurisprudence and the Work of the Securities and Exchange Commission*, 18 N.Y.U.L.Q. Rev. 317, 342, n.68 (1941), cited with approval in *Protective Committee* v. *Anderson*, 390 U.S. 414, 442, n.20 (1968).

[17]*Consolidated Rock Products Co.* v. *Dubois, supra*, 312 U.S. at 526.

exclude nonoperating assets and other extraordinary items, such as costs of this case, may be summarized as follows:

(000's omitted)

12 months ended about Sept. 30	Projected Sales	Projected Income before Tax	Projected Income after Tax*
1980	$44,775	$3,695	$1,995
1981	$51,700	$5,095	$2,750
1982	$58,000	$5,910	$3,190
1983	$64,500	$6,705	$3,620

*Federal income tax.

Bear Stearns concluded that the four-year average of management's projected after-tax earnings of $2,890,000, would be a reasonable estimate of reorganized company's earning power. The forecast for 1980 allows for an anticipated recession, 1981 is treated as a normal year, and 1982 and 1983 reflect Wundies' expectations of entry into new products. Bear Stearns was impressed by the market positions of both divisions and by the business strategy and merchandising concepts of the present operating management of both companies.

To determine the appropriate multiplier, Bear Stearns analyzed the financial and operating results of 15 selected textile/apparel companies for the years 1974-1978. Several are very large diversified textile companies; others are medium sized and engaged only in a few segments of the textile/apparel industry. It characterized the selected companies as having been generally profitable but with volatile earnings, with modest growth in most cases and all in sound financial condition.

The companies selected did not include a company principally engaged in button manufacturing,[18] since there appears to be no significant public company of this character. Diversified textile companies manufacture many products, including apparel components, like buttons, sold primarily to apparel manufacturers. The expert's overriding consideration was the selection of a broad range of textile and apparel companies whose historical performance would be relevant to an investor considering an investment in a reorganized Duplan.

For each of the years 1974-1978, Bear Stearns divided the average of the annual high and low market prices of the common shares by the annual earnings per share for each of the 15 companies. For 1979, market quotations through August 31, 1979, and the latest available twelve months earnings were used. A spot ratio was also computed for the September 10, 1979, market price. The result, as tabulated in the Bear Stearns' report, (excluding six dificits and four very high ratios representing nominal earnings[19]) produced 80 annual ratios, three of which exceeded ten and two of which were less than three. The average ratios of all companies for each year ranged from 5.1 to 6.3.

At the hearing, Bear Stearns' representative testified that he made allowance for the fact that several of the companies were larger and stronger, with more assets, more efficient plants, and greater diversity and fewer things to go wrong that would affect them as a whole. He stated that the House of Ronnie, with an average ratio of 4.9, a direct competitor of Wundies, was more comparable to Duplan. It was Bear Stearns' judgment that a reasonable range of a multiple for Duplan would be four to five times earnings. Applying a multiplier of five to the estimate of annual foreseeable earnings of $2,890,000, Bear Stearns determined that the continuing operations of Duplan had a value of $14,450,000.

The three witnesses for the subordinated noteholders took somewhat different approaches to going-concern valuation. Coyle limited its attention to the earnings projections. It concluded that total after tax earnings for the five years 1979-1983 would be in excess of $3 million less than the projections. The $3 million was apparently based on recomputing the income for both divisions on the assumption that rates of sales growth and ratios of gross profit and overhead expenses to sales, would correspond to historical patterns for 1974-1978, producing pre-tax income reductions of about $3 million for Wundies and $3.2 million for RBD.

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[18]Belding Heminway, one of the selected companies, reported "Buttons and Notions" as 35% of its sales in 1978, without segregating buttons from notions. RBD's portion of the forecast consolidated sales used by Bear Stearns, are about 45% of the total.

[19]Price/earnings ratios can be computed only if there are earnings, and the computation is misleading if the earnings are negligible. Our exclusions reflect three consecutive bad years for two of the companies examined, two unprofitable years for one company and one bad year for two others.

Coyle also questioned whether the forecasts for 1980 correctly gauged the duration of the recession and pointed out that costs for the additional facilities which Wundies will require to meet its expected enlarged business after 1981, have not been allowed for. Coyle similarly criticized the omission of interest costs for Wundies recurrent inventory loans.[20] First Manhattan was of the view that the forecasts should not be considered. It valued the going businesses by multiplying 1979 projected earnings, $2,120,000 by five, producing a value of $10.6 million rather than $14.4 million.

Schwartz revised the forecast consolidated sales by using the 1980 combined sales of $44,775,000 minus $2,400,000.[21] He used the adjusted 1980 sales—$42,375,000 as the base for a sales forecast, involving an annual increase of approximately 9.6%.[22] His aggregate sales for the four years were $195 million compared to about $240 million forecast by Duplan. His pretax income of $19.5 million was computed as 10% of revised sales of $195 million. After adjusting for the forecast corporate expenses and a 46% tax rate, he reached an average annual net income of $2,507,000. Although he accepted in principle the five times multiplier used by Bear Stearns, he also accepted First Manhattan's objection to applying this multiple to future income. He tried a multiple of four, producing a value of $10,030,000, but concluded that $10.5 million was the most appropriate value.

B. *Tax Loss Carryover and Lawsuit*

The tax loss carryover, the subject of an Internal Revenue Service letter ruling, dated January 11, 1980, is estimated at $28,355,000. Duplan also has an investment tax credit carry forward of $448,000.[23] These tax benefits produce value only to the extent that taxable income is realized. The actual saving from operating loss deductions is a percentage of the deduction, i.e., the applicable statutory tax rate at the time it is used, assumed to be 46%. The investment tax credit produces a 100% savings when used.

The Trustee's forecast of the reorganized company's income and income taxes for the years 1980-1983 are:

Year	Income before Taxes	Federal Taxes (46%)	Carry-over Used	Tax Saving
1980	$3,695	$1,700	$3,695	$1,700
1981	5,095	2,345	5,095	2,345
1982	5,910	2,720	5,910	2,720
1983	6,705	3,085	4,117	1,900
Total	$21,405	$9,850	$18,817	$8,655
Extraordinary items:				
Laga dividend—1980	4,100		4,100	
Deering Milliken recovery	6,500		6,500	
Total	$32,005		$29,417	

Bear Stearns applied a 15% annual discount rate to value $8,655,000 of tax savings at $6,130,000.

Bear Stearns assumed a recovery of $8 million after two years in the Deering Milliken suit less $1.5 million for counsel fees, or a net of $6.5 million

[20]These operating matters are discussed in Appendix B.

[21]This is 10% of Wundies 1980 forecast, the adjustment being based on the 1979 testimony of its president, Gerson Banner, that a recession might call for a 10% reduction in Wundies sales estimates. Banner subsequently testified, on the basis of experience in this fiscal year, that no such revision was necessary.

[22]*For the two divisions separately, he projected about* 13% per annum for Wundies and 5-1/2% for RBD.

[23]The expiration dates of the carryovers, under present law, are:

(000 omitted)

Fiscal Year	Operating Loss Carryover	Investment Tax Credit		
1980	$6,622	1980-1982		$294*
1983	9,475	1983	$50	
1984	6,651	1984	13	
1985	5,607	1985	16	
	$28,355	1986	75	154
				$448

*This credit can be used only if there is a tax, so the $294,000 will probably be lost. A tax savings of $154,000 would be available in 1983 under the forecasts

before taxes.[24] It used $6.5 million of Duplan's tax loss carry forward to eliminate income taxes on the assumed recovery. At a 15% discount, the present value of that recovery is $5 million.[25]

Since the amount of the loss carry forward was subsequently revised to $28,355,000, an adjustment of Bear Stearns' computation is needed.

	(000 omitted)			
Bear Stearns	Income Fore-cast	Carry-over Used	Tax Saving	Present Value
Litigation—1982	$6,500	$6,500	$2,990	$2,261
1980-1983 income	21,405	18,817	8,655	6,130
Revision of carryover		(1,062)	(489)	(280)
Investment tax credit			154	101
Total	$27,905	$24,255	$11,310	$8,212
Laga Dividend—1980	4,100	4,100		
Total carryover	$32,005	$28,355		

The foregoing table also reclassifies the tax effect of the litigation recovery. The change does not change Bear Stearns' results, but it does make the significance of Bear Stearns' assumptions clearer. The full tax savings would be realized, regardless of the recovery in the litigation. The $6.5 million carryover that Bear Stearns applied against the assumed recovery in 1982 would, absent any recovery in part or in whole, be applied to Duplan's taxable income in 1983 and 1984. The tax savings are thus not dependent on the success of the lawsuit. While no tax would be paid on the $6.5 million recovery, the use of the carryover against the entire $6.5 million means payment of equivalent taxes on future operating income of Duplan. Hence the actual benefit to the reorganized company of a taxable litigation recovery is the amount after deduction of taxes.

The $6.5 million assumed to be recovered in 1982 would produce $3,510,000 after taxes. The present value of $3,510,000 is $2,654,000, which we will round to $2.7 million.

The trial on damages in the antitrust suit has already been ordered, so Bear Stearns' assumption that it will be resolved by 1982 is not unrealistic. The effect of any delay or reduction in recovery would be to make the realization of the tax savings depend more on operating income. This would not change the amount of the saving, except for the possible loss of $50,000 of the investment tax credit expiring in 1983. It would increase the discount as to the present value by up to $700,000 if no recovery occurred until 1984. Conversely, a settlement in 1980 or 1981 would accelerate realization of the savings and reduce the discount. Valuation of a pending law suit is not amenable to analytical techniques. It is usually avoided by plan provisions for a separate distribution of the recovery, when realized.[26] In this case, we see no particular advantage to that technique.

A case in which a final judgment on liability has already been entered against substantial defendants cannot be dismissed as to speculative or contingent to consider. Debtor's asserted actual damages of about $4 million seem to be germane to the legal theories which led to the affirmed finding that defendants were guilty of an unlawful conspiracy involving misuse of patents. It would be rash to leap to the conclusion that $12 million of treble damages are practically money in the bank. Another trial lies ahead involving inevitable delay and possible surprises. But inclusion of a tax adjusted and discounted $2.7 million in the assets expected to accrue to the new stockholders appears to be a sufficient allowance for the remaining contingencies.

C. *Value of Duplan (Reorganized)*

The following table shows the value of the reorganized company as arrived at by Bear Stearns and First Manhattan.

[24]The $8 million was really the Trustee's valuation of the case, as shown by his offer to settle for that sum. Defendants did not accept that offer, which was made before the Court of Appeals decision affirming Duplan's initial victory in the trial court. The unaccepted offer itself, of course, has no real significance, except as evidence of the Trustee's opinion.

[25]The calculated present value is $4,915,000, which Bear Stearns rounded off to $5 million. Rounding avoids the impression of mathematical precision in the estimate.

[26]*Cf. Spitzer* v. *Stichman*, 278 F.2d 402 (2d Cir. 1960); *In re Plaza Towers, Inc.*, 294 F. Supp. 714, 725-26, (E.D. La. 1967).

(000 omitted)	Bear Stearns	Adjusted	First Manhattan
Capitalized Earnings	$14,450	$14,450	$10,600
Tax Savings	6,130	8,212*	5,000
Long-term receivables	1,610	1,610	1,300
	$22,190	$24,272	$16,900
Deering Milliken suit	5,000	2,700*	zero to
	$27,190	$26,972	$2.5 million

*Our corrections are explained in the prior two tables.

The valuation of the ongoing business and of the prospective tax savings must be considered together, since both depend on the income forecasts. We discuss those forecasts in some detail in Appendix B, and our conclusion as to the reorganized company's consolidated earnings potential does not differ significantly from that of Bear Stearns. We accept Bear Stearns' conclusion as to both an annual after tax earnings of about $2.9 million and its computation of the related tax savings, as stated above.

The capital value of Duplan's common stock is expressed as a times-earnings multiple of income. A multiple of five, for example, means a 20% annual return or yield on the investment. The expected yield differs according to the kind and quality of the investment, since it reflects the risks and uncertainties as to what the actual earnings will be.

The times-earnings multiplier is linked to actual market values by looking to the relationship between market price and earnings of comparable investments, as Bear Stearns did. Here again, the reorganization valuation process conforms to standard methods of investment decision making. Prices actually being paid for equivalent commodities are the best evidence of the yield that should be employed in determining current capital values of projected income.

We do not agree with Bear Stearns' choice of a multiple of five for the reorganized company. Of the 15 companies surveyed, only three indicated price/earnings ratios persistently below that level,[27] and nine were above during the six years examined. Bear Stearns' conclusion that this table, which showed a 1974-1978 industry range of 5.4 to 6.3, "indicates a remarkably stable price/earnings ratio for the textile/apparel companies of about five times earnings," is correct as to the stability but, on its face, the words "about five times" are used rather loosely.

Its qualitative comments about the reorganized company are not in harmony with its decision to place it close to the bottom. Bear Stearns testified:

> "You have a comparison of textile companies which suggest that five times would be that for a normal textile company, but this isn't a normal textile company. First it is a company with no debt; secondly, it's a company that is going to generate a lot of cash because it does not have any capital expenditures to make; it is going to generate a lot of cash because it has non-operating assets, which is going to bring cash back over the next few years."

Its report stated, (p. 6):

> "We were impressed by the market positions of both Rochester Button and Wundies, the business strategy and merchandising concepts of the present operating managements of both companies, and based on their continuation the achievement of the projections appear reasonable."[28]

Another factor to which Bear Stearns refers, is the essentially debt free capital structure of the reorganized company. Price/earnings ratios for common stock assign a market value to a company's common equity. If its capital structure includes a significant amount of senior securities, the value of the enterprise is not identical with the value of its common stock. The senior securities obviously have to be taken into account in determining how much the business is worth, and the amount and kind of senior securities have a direct effect on the quality of the common stock and on its price/earnings ratio.

Careful attention to capital structure is, therefore, an elementary part of valuation technique in industries, such as railroads, utilities, real estate, where senior

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[27]Fab Industries, Guilford Mills and House of Ronnie. The recurrent deficits of Concord, Lowenstein and National Spinning distort their record too much to justify giving them weight in this respect, but even their sporadic price/earnings ratios were predominantly five or better.

[28]Appendix B hereto discusses more fully the market position and statistics of these companies.

financing is a significant feature of the business.[29] Bear Stearns reviewed the structure of each of the comparable companies, and found varying levels of funded debt. Eight had debt in the 24-34% range, four in the 13-19% range and only two below 10%. Bear Stearns' qualitative conclusion that this is one of the strengths of reorganized Duplan is firmly based on the record.[30] But it failed to implement that conclusion in its choice of the multiple.

First Manhattan, as witness for the subordinated noteholders, has taken an entirely different view of valuation by shifting the focus to the market value of the Duplan new stock. It would apply a multiple of five, not to prospective earnings but only to 1979 historical income. If the reorganization occurs in 1980, only the 1979 income will be available to the market. First Manhattan states that, if values are to reflect prospective earnings in subsequent years, then such future earnings should be discounted to their present worth.

This approach, which would make historical income and its reflection in the market place the foundation of reorganization values, is contrary to established criteria, under which, as announced by the Supreme Court, reorganization values rest on prospective earnings.[31] A debtor, by definition, enters the bankruptcy court in distressed condition. Drastic changes are often made, as in the case of Duplan, and the plan of reorganization is the promise of its financial rehabilitation. The value of its new securities, in this case Duplan's common stock, must be based on its prospective income as a reorganized company.

In bankruptcy reorganization, if a creditor is offered new securities, fairness "requires a comparison of the new securities allotted to him with the old securities which he exchanges to determine whether the new are the equitable equivalent of the old."[32] When a creditor exchanges his claim for stock, whose equivalence in value reflects current yields, the capitalized value of the stock represents the investment value of an income stream that the reorganized company may be expected to produce. It is not meant to be the cash equivalent to be measured by the market price of the stock which has yet to be issued by a debtor about to take its leave of the bankruptcy court.[33] The policy of Chapter X which abandons the classic sale on the courthouse steps as a means for paying debts of a debtor in financial distress also requires that we do not substitute faceless bidders in the auction of the public market place.

The bias in favor of market prices also appears in First Manhattan's valuation of the non-operating assets. It concludes that market value of the new stock will reflect the following percentages of the value of these assets:

Tax loss carryover	20%
Deering Milliken suit	0-18%
Long-term receivables	60%

First Manhattan's belief that the tax loss carry forward will be "recognized" only to the extent of 20%, necessarily applies only to the immediate post-reorganization period. The tax loss is valuable because the full undiscounted $11.3 million in tax

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[29] *Ecker* v. *Western Pacific R. Corp.*, 318 U.S. 448, 482-483 (1943); *Imperial 400 National, Inc.* 374 F. Supp 949, 952-953 (D. N.J. 1974); *Cf. Central States Electric Corp.* v. *Austrian*, 183 F.2d 879, 885 (4th Cir. 1950) *cert. den.* 340 U.S. 917 (1951); *Associated Gas & Electric Co.*, 149 F.2d 996, 1009-1010 (2d Cir. 1945), *cert. den.* 327 U.S. 736 (1945).

[30] One method of assessing the effect of senior securities is to add debt and common stock price, and express this sum as a multiple of interest and net income, and then compare this multiple with the common stock price/earnings ratio. Our computation (Appendix C) indicates a reasonably consistent company by company variation when senior capital is taken into account:

	Average		
	1976	1977	1978
Multiple	7.2	7.2	6.5
Price/earnings	6.1	5.7	5.4

It is not necessary to explore this comparison. When, as here, industry reliance on senior financing is limited and variable, a qualitative assessment is sufficient.

[31] *Protective Committee* v. *Anderson* 390 U.S. 414, 452-453 (1968); *Consolidated Rock Products Co.* v. *DuBois*, 312 U.S. 510, 526(1941).

[32] *Group of Institutional Investors, etc.* v. *Milwaukee R. Co.* 318 U.S. 523, 566 (1943).

[33] *Equity Funding Corp. of America*, 391 F. Supp. 768, 772-773, (C.D. Cal. 1975).

savings will appear and be recognized, under the forecasts which First Manhattan accepted, as actual current income and cash, year by year over a five year period. This is $4.15 a new share for the creditors. First Manhattan urges that it should be deemed to be only $1.84. Bear Stearns recognizes $3.02 a share, allowing a 15% compound annual discount for the delay in realization. In effect, First Manhattan would double that discount.

Similarly, the Deering Milliken suit recovery will be cash and income for the new stock when it is received. Since both the amount and time of recovery are uncertain, it is not now the kind of asset that can be readily translated into stock market prices. But the recovery itself, whatever the amount, will present no such difficulties. Bear Stearns made very liberal allowances for the contingency and delay and valued it, after taxes, at $1 a new share. First Manhattan's analysis accepted $0.92 a new share as a maximum under its approach, but urged its preference that no value be assigned to this asset.

The additional reductions in the value assigned to these non-operating assets, as proposed by First Manhattan, is merely another version of its contention that valuations in Chapter X should be based on short range market considerations. Market prices for the kind of non-operating assets we are here considering, assuming they can be isolated and identified, are as irrelevant to the value of these assets as they are to valuation of operating income.

In light of the foregoing, we are satisfied that Bear Stearns' valuation of the reorganized company except its earnings multiplier, gave adequate weight to all relevant factors. The record supports a multiplier of six rather than five, a change which would increase the value of the new stock to about $30 million.

As we said, the issue before the court is the fairness and equity of the plan and of the proposed settlement it embodies. The substantive significance of the value of the reorganized company in this case arises in a complicated way from the interrelationships of the various groups of creditors. Those relationships in turn are affected by the proposed settlement, which is expressly conditioned on a specific assumption of $10 per share. We conclude, as indicated below, that two features of the proposed settlement require revision. The necessary amendments to the plan will have to be negotiated and presumably will take the form of a revision of the proposed distributions of both the cash and the stock. It is the substantive fairness of such distributions, not the method of computation, on which the court is required to rule.

The Supreme Court has rejected "a requirement that dollar values be placed on what each security holder surrenders and what he receives." It held—

> "It is sufficient that each security holder in the order of his priority receives from that which is available for the satisfaction of his claim the equitable equivalent of the rights surrendered. That requires a comparison of the new securities allotted to him with the old securities which he exchanges to determine whether the new are the equitable equivalent of the old. But that determination cannot be made by the use of any mathematical formula. Whether in a given case senior creditors have been made whole or received "full compensatory treatment" rests in the informed judgment of... the District Court on consideration of all relevant facts."[34]

Accordingly, our following discussion will focus on showing the practical effect of alternative findings on the principal issues in dispute.

D. *Settlements and Distribution under the Plan*

The plan allocates available cash and the new stock for distribution to creditors. After payment of estimated costs of administration, tax claims and small claims ($2.9 million), the proposed net distribution to creditors is $27.1 million in cash and 2,720,000 shares of stock, valued at $10 per share, or $27.2 million.[35] This total distribution of $54.3 million to creditors is for allowed and settled claims of $66.4 million. The distribution in cash and stock, as a percentage of allowed and settled claims, is as follows:

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[34] *Group of Institutional Investors* v. *Milwaukee R. Co.*, 318 U.S. 523, 565-566 (1943).

[35] See Table III, *supra*.

	Percent		
	Cash	Stock	Total
Banks	63.2	21.2	84.4
Trade creditors	40.8	41.0	81.8
Subordinated note-holders	—	100.0	100.0
Subordinated debenture holders	10.0	61.1	71.1

The overall distribution amounts to 41.3% of the claims in cash and 40.6% in new stock.

The plan, as noted, assumes $27.1 million cash will be available for the four groups of unsecured creditors. The record indicates the availability of about $2 million in additional cash. This, among other things, should permit, as discussed below, eliminating unfairness of the settlement by substitution of some cash for stock allotted to the subordinated noteholders.

The Trustee has accumulated, largely as a result of the liquidation of several divisions, over $30 million in cash. This sum includes about $6.8 million, including the factoring account held by Chemical Bank, in which security interests are claimed by the banks but which are made available for unsecured creditors under the proposed compromise. The pro forma cash at September 30, 1979, is $30,643,000, including the factoring account.[36] The working balances of the operating divisions were $1,227,000, leaving $29,416,000 available for distribution.[37] All of the available cash is in interest bearing accounts or certificates, at rates ranging in January 1980 from 10% to 14-1/4%.

Since, as shown in Appendix B, the operating divisions are self supporting, none of the accumulated cash is required as working capital for these divisions. This includes the interest income which will be earned on the deposits before consummation. Interest income for the 6 months ended March 31, 1980 is forecast at $1,677,000. Earnings on the January balances were estimated at the rate of $300,000 a month. Allowing for compounding and the interest on the installment receivables,[38] about $2.6 million will be added from this source by June 30, 1980. Adding the $2.6 million of post September 30, 1979 interest to the $29.4 million of September 30, 1979, cash and equivalent, produces $32 million of available cash, rather than $30 million proposed by the plan.

E. *Disputed Claims and Proposed Settlements*

Compromises are a normal and essential part of the reorganization process, and as such also require an informed, independent determination by the District Judge that each compromise is fair and equitable.[39] In this context, fairness and equity require the exercise of judgment as to the strengths and weaknesses of the claims being compromised, the probabilities of success, and the benefits and risks flowing to all affected interests from the proposed settlement. But, although the court must apprise itself of the probabilities of ultimate success should disputed issues be litigated, the court is not required to pass on the ultimate merit of those issues.[40]

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[36]For details see Appendix A, fn. "a" regarding composition of cash balances as of September 30, 1979, and the subsequent transactions.

[37]The comparable figure on Trustee's Exhibit 6 was $29,272,000, which omitted $200,000 from the liquidation of Fabrics' Knit West Division. The $29,479,000 on SEC Exhibit 7 omits the $1,773,000 of factoring accounts, but includes $1,836,000 of interest income and minor collections, so it is equivalent to the $29,416,000 developed in Appendix A. The January 14, 1980, actual balance, including the factoring accounts, but excluding the operating division, was $29,885,669.92. All collections anticipated on Appendix A had been made, with trivial variations. This balance would also include some post September 30, 1979 interest, and current collections of the installment obligations valued by Bear Stearns as of September 30, 1979, so we use the pro forma in Appendix A as the base for further computations in order to avoid duplication.

[38]There are also some principal payments on installment receivables, the largest being $70,000 on the Complex note due December 31, 1979, and about $100,000 of cash deposits, to be released upon reorganization. It will be convenient to treat these resources as providing about $200,000 of cash working capital for the reorganized company, since they are included in Bear Stearns' valuation of "other" assets and should not be counted twice.

[39]See *Protective Committee* v. *Anderson*, 390 U.S 414, 424-425 (1968); *on remand, TMT Trailer Ferry Inc.* v. *Kirkland*, 471 F.2d 10 (5th Cir. 1972).

[40]*Florida Trailer & Equipment Co.* v. *Deal*, 284 F.2d 567 (5th Cir. 1960).

It must be noted that of the parties affected by the proposed compromise, only the four members of the bank group have actually assented to the terms. The trade creditors and debenture holders are numerous and unanimous consensual agreement by them is most unlikely, and the noteholders have, so far, actively opposed the settlement. Judicial review of the issues is essential.[41]

The proposed compromises would lay to rest a bewildering variety of claims and counterclaims. It will be useful, because of their different effects on the various classes involved, to distinguish among three kinds of disputes: (1) those affecting the size of the estate available for general creditors, (2) those arising under the subordination clauses of the subordinated notes and debentures, and (3) those involving rights available to debenture holders directly, not derivatively through Duplan.[42]

F. Claims and Counterclaims Affecting the Size of the Estate

The bank creditors are prima facie secured creditors. They claim a security interest or title to (a) about $5.1 million, (at September 30, 1979) of escrowed proceeds from sale of property encumbered by their claimed liens; (b) the $1.77 million of factored accounts, now liquidated and available as cash for distribution under the plan; (c) fixed assets, valued by the Trustee at about $3 million to be used in the continuing operations;[43] (d) all the stock of Wundies and Kitchener, included in the continuing operations; and (e) the stock of Laga, which is the source of the $2.4 million dividend included in the calculation of cash available for distribution. They also claim, on the basis of these liens, a right to an accounting estimated by the Trustee at about $4.4 million for depreciation or use and occupancy of the pledged fixed assets. Their aggregate claims to cash or equivalent amount to about one-half of the available cash, and their claims to liens on he assets of the reorganized company cover a greater proportion of the ongoing businesses.

In his defenses and counterclaims, the Reorganization Trustee denies the validity of the security interests granted the banks about the end of 1974, as revised from time to time. They rest on assertions that debtor was known to be in financial distress and that the financing arrangements made then, and their subsequent administration, involved improprieties which, on various legal and equitable grounds, require that the liens be declared invalid. A consequence of the basic relief sought would be recovery of certain pre-bankruptcy payments of about $900,000 as statutory preferences. The Trustee's claim to about $2.5 million of setoffs including the $1.77 million made available to the estate under the proposed settlement has independent legal grounds.[44] The asserted defenses and counterclaims would also lead to remedies affecting the banks' rank as unsecured creditors or as senior creditors under the subordination agreements. Setting aside the banks' security interest, recovery of the alleged preferences and success on the setoff case would increase the total estate by about $1.6 million in cash over that created by the proposed settlement, but would add the same amount to the banks' adjusted claims as unsecured creditors for a total of about $40 million out of $68.5 million.

Defeat of all of the defenses and counterclaims in the adversary suit would give the bank creditors secured creditor status sufficient to cover the bulk of their claims and would also eliminate any realistic challenge to their right to participate as unsecured creditors for any deficiency. The defenses against

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[41] *Protective Committee* v. *Anderson supra; American Employers' Insurance Co.* v. *King Resources Co.*, 556 F.2d 471 (10th Cir. 1977); *In re Equity Funding Corporation of America*, 519 F.2d 1274 (9th Cir. 1975). See also *City of Detroit* v. *Grinnell Corp.*, 495 F.2d 448, 462-64 (2d Cir. 1974).

[42] This refers principally to the relationship between the debenture holders and their Indenture Trustees. Any recovery to them, by litigation or settlement, does not flow to them through the estate. *Caplin* v. *Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 428-431, (1972). *Dabney* v. *Chase National Bank*, 201 F.2d 635, 639-641 (2d Cir. 1953); *Clarke* v. *Chase Nat. Bank*, 137 F.2d 797, 801 (2d Cir. 1943).

[43] The estimates of the value of pledged fixed assets and of use and occupancy claims are derived from the Trustee's Reply Memorandum vis-a-vis the settlement, pp. 25-26. The property claimed is identified in the record.

[44] See e.g. *Baker* v. *Gold Seal Liquors, Inc.* 417 U.S. 467 (1974); *Yale Express System, Inc.*, 362 F.2d 111 (2d Cir. 1966).

enforcement of the subordination agreements are based largely on the same facts, and would be seriously affected by an adverse decision on the merits of the Trustee's case. A bank victory on what we have described as the Trustee's basic case, however, would not necessarily be determinative of the setoff case and the $2.5 million at stake there.

Although the settlement proposes to cancel the claimed liens, itself an important and essential predicate to the reorganization, this is not a gift. It is part of the consideration for the other terms in the settlement. Recognition of the banks' security interest would have been at the expense of all other creditors, including the trade creditors. The waiver of the lien claims has advanced these other creditors to a participation otherwise available only by success on the merits in the controversy. Since success is not, on the record, to be taken for granted, it is consideration for other concessions.

G. *Subordination Effects*

Both the subordinated notes and the subordinated debentures contain subordination clauses which provide, in the present context, that the bank creditors are entitled to receive the distributions to which the subordinated creditors would otherwise be entitled from the estate, to the extent necessary to pay the bank claims in full. The clauses in the debenture indenture would create a second level of subordination, at the debenture holders' expense, for the benefit of the subordinated noteholders.

The effect of such subordination clauses, which come into operation only in case of financial distress, is complicated, but well established. As far as the debtor or its estate is concerned, $1,000 owed to a subordinated debenture holder, $1,000 owed to a trade creditor, and $1,000 owed to a bank are all unsecured contractual obligations, representing claims of the same rank. If debtor has $3,000, each is entitled to and would receive his $1,000. But if debtor has only $1,800, and can only pay 60% of each claim, the subordination relationship between the debenture holder and the bank become significant in computing the actual dividend.[45] The trade creditor is not affected, one way or the other, by the special agreement, so his right to receive one-third of the estate, $600, is unchanged. The right of the other creditors to two-thirds of the estate is not affected either, since the subordination agreement neither diminishes nor increases the debtor's liability for the two loans, $1,000 each. But the subordination agreement divides their combined distribution of $1,200 by directing that the bank receive its full $1,000, leaving only $200 for the debenture holder.

In short, the mechanics of applying such subordination in allocating distributions involves two steps.[46] The first is computation of a pro rata distribution without regard to the subordination. This step determines directly the share of the trade creditors in this case. Their $2.1 million in claims would represent 3.16% of the $66.4 million of general unsecured claims under the settlement.

Under an uncontested subordination, the senior creditors would be entitled to the share allocable to their own claims, and to all those subordinated to them, up to the amount of their claim.[47] In this case, this would be 96.84% of the estate but not more than $38,385,000. Since the estate is clearly worth more, the subordinated noteholders would come next for $6.1 million and the subordinated debenture holders would share the balance.

The controversy over the banks' lien claims discussed above complicates the exposition. As secured creditors, the banks would collect their

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[45]The subordination is part of the contract between debtor and the subordinate party, so its enforcement is the responsibility of the debtor or its trustee. While the "senior" creditor, the banks in this case, is the beneficiary of that agreement, the banks have no contractual relationship at all, in this respect, with the individual debenture holders.

[46]*Imperial '400' National Inc.*, 45 SEC 338, 347-50 (1973), adopted in *Imperial 400 National Inc.*, 374 F. Supp. 949 (D. N.J. 1974); *Yuba Consolidated Industries, Inc.*, 42 SEC 591, 608-609 (1965), adopted in *Yuba Consolidated Industries, Inc.*, 242 F. Supp. 561 (N.D. Cal. 1965); *In re Associated Gas & Electric Co.*, 53 F. Supp. 107, 113-14 (S.D.N.Y. 1943). This phase of the decision was affirmed, *Elias* v. *Clarke*, 143 F.2d 640, 647 (2d Cir.) *cert. den.* 323 U.S. 778 (1944); *Bird & Sons Sales Corp.* v. *Tobin*, 78 F.2d 371 (8th Cir. 1935).

[47]In an insolvent estate, post-bankruptcy interest does not enter into the calculation. *In the Matter of King Resources Co.*, 528 F.2d 789 (10th Cir. 1976); *In re Time Sales Finance Corp.*, 491 F.2d 841 (3d Cir. 1974); *In re Kingsboro Mortgage Corp.*, 514 F.2d 400 (2d Cir. 1975).

claims from the collateral, independently of the subordination, up to the value of the security. Such collections would reduce both the estate and the banks' claims by an equal amount. Using an illustrative $28.4 million of liens and a $10 million unsecured deficiency, the estate available for general creditors would shrink to $25.9 million and unsecured claims to $38.0 million.[48]

The trade claims would then be 5.53% of the adjusted total, but receive only $1.4 million, or 67% of trade claims. The banks' remaining $10 million and the subordinated noteholders with $6.1 million in claims would be fully covered by the $24.5 million balance, leaving $8.4 million for the debenture holders. Allowance of the secured claims would, surprisingly enough, enhance the share of the debenture holders a little, since its net effect is to satisfy some of the bank secured debt at the expense of the trade creditors, and thereby reduce pro tanto the banks' need to resort to the subordination.

We have noted that the charges in the adversary proceeding were alleged as a basis for equitable subordination of the banks' claims. This remedy, if established, might in effect cancel the benefits to the banks of the subordination agreements. Without the aid of either the claimed liens or the subordination agreements, the banks' claims would be about 58% of the total claims (all unsecured), and would be covered to the extent of 81.8%, creating a possible deficiency for them of about $7.0 million. But if the claim to equitable subordination were extended to subordinate the banks to all other claims, that would cost the banks' another $5.1 million, representing the 18.2% deficiency on the other $28 million of claims to which the banks would be subordinated.

These calculations were made without considering the merits or probabilities of such extreme results, in order to determine the outer limits of the litigation to be settled. These limits indicate a recovery of between 68% and 100% for the banks. The range for trade creditors is about the same, but could be reduced below 81.8%, as provided in the plan, only through allowance of the lien claims and could increase significantly only by equitable subordination of the banks.[49] The subordinated noteholders would receive 100% in any event, since their rights under the debenture subordination have not been questioned. It is the debenture holders that are the direct competitors of the banks for any changes in the distribution.

H. *Independent Claims of Debenture Holders*

Chemical Bank, one of the four lending banks was also Indenture Trustee for the subordinated debentures. It was replaced in April 1976 by United States Trust Company of New York, a co-plaintiff in the adversary proceeding, after the events which are the subject of that litigation. An Indenture Trustee, as a fiduciary, has a direct relationship with the holders of the debentures and responsibilities to them which are independent of and distinguished from its status as lender to the debtor's estate.[50]

Although an Indenture Trustee is not prohibited from doing business with the issuer and commercial banks frequently are major lenders to companies for whom they are indenture trustees, their concurrent responsibility to represent the interest of the debenture holders against the same debtor, in circumstances of financial distress, are obviously troublesome. The claims made on behalf of the debenture holders in the adversary proceeding turn on essentially the same facts as relied on by the Reorganization Trustee. But the legal basis for relief differs, the Reorganization Trustee depending on legal and equitable restrictions on the powers of a creditor dealing with a defaulting debtor, while the successor Indenture Trustee relies on the express fiduciary relationship of the same creditor, directly or indirectly involving the participating banks, to the

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[48]Various assumptions as to the outcome of the setoff and preference phases of the litigation would change the numbers for total claims and estate size, but with limited net effects. In the interest of relative simplicity, we have ignored this aspect and use throughout the balances established by the proposed settlement of those issues. Accordingly, we use a net state of $54.3 million and total claims of $66.4 million.

[49]The setoff claims would also affect the trade creditors, but the effect is too small to justify elaboration.

[50]*Caplin* v. *Marine Midland Grace Trust Co., supra; Dabney* v. *Chase Nat. Bank, supra; Clarke* v. *Chase Nat. Bank, supra; Dudley* v. *Mealey*, 147 F.2d 268, 272-273 (2d Cir. 1945).

debenture holders. Conduct permissible in one capacity may still create liability in the other.[51]

Settlement of complex litigation so interrelated factually, but legally distinct, almost necessarily involves a joint settlement, since it would be improvident for the settling party to make meaningful concessions while leaving the door open for most of his opponents to renew the attack in a slightly different form. The proposed settlement here deals, as explained previously, with both claims affecting the debtor and its property, within the jurisdiction of this court (Section 111 of Chapter X) in which all other creditors have a derivative interest in the sense that it will affect their respective shares of the estate, and an offer to settle the claims of the debenture holders, over which this court does not have jurisdiction.

Such settlements are frequently encountered in these cases which tend to involve the kind of interrelationships which make them necessary.[52] The issue of fairness for purposes of the plan turns on the allocation of the settlement benefits. To the extent that consideration is paid to satisfy potential liabilities that the recipients could, as a matter of law, assert and enforce in their own right, that consideration is not part of the debtor's estate. It belongs to the individuals surrendering or releasing such rights. It is only claims based on asserted injury to the debtor, whether for recovery of assets or damages or for reduction of its liabilities, that are property of the estate and the benefits of such settlement must be dealt with as such.

The four participating banks have divided the cost of their offer among themselves, and their decision does not in itself require review or approval of this court. But it has been fallaciously suggested that their agreement is evidence that the banks really gave little weight to the direct claims on behalf of the debenture holders, and that the $1 million in stock, added by Chemical Bank, the original Indenture Trustee, is all that debenture holders are really offered for their direct claims. The noteholders contend that the cash of about $2 million under the settlement agreement is part of the estate and must be paid to them, rather than the debenture holders, pursuant to the subordination agreement. Although the offer is unequivocally drawn as being solely for settlement of direct claims against the banks, the noteholders consider this a sham.

The fallacy of their contention is the tacit assumption that only Chemical Bank, the original Indenture Trustee, needs to settle personal claims of the debenture holders. Actually all the banks were joint participants in a single loan and as such shared in the fruits of anything gained by the alleged misconduct. All banks, of course, strenuously deny that any improprieties occurred, but a judicial finding that Chemical Bank had violated its duties to the debenture holders in order to improve the position of the four lending banks under the Credit Agreement would call for recovery of the gains shared by its co-participants.

The release of all four banks was an integral part of the offer in the first stage of the negotiations when it was a joint $5 million offer by all four banks. The subsequent addition of $1 million in stock by Chemical Bank did not make it a settlement of $1 million in stock of all the personal claims of the debenture holders. Such a change would require a withdrawal of the original demand for release of the other banks. In any event in view of the nature of the claims, and the unique significance of the fiduciary relationship, the personal claims of the debenture holders are at least as strong as the estate claims and would lead, if successful, to cash recovery from the banks. The provision of about $2 million in cash to settle those claims is wholly consistent with the relative rights of the parties and an integral feature of a joint settlement.

The banks' source of the consideration for the settlement with the debenture holders is immaterial for this purpose. If, as here, the banks are entitled to a substantial distribution from the estate, they are free to use part of that distribution to pay for their settled obligation to debenture holders. The plan accomplishes the same result by directing the Reorganization Trustee to pay on their behalf, and out of their distribution, what they agree to pay the debenture holders.[53]

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[51]See also *Warner Sugar Corp.*, 17 SEC 355, 373-391 (1944).

[52]*In re Four Seasons Nursing Centers, Inc.*, 472 F.2d 747 (10th Cir. 1973); *In re Equity Funding Corp.* 416 F. Supp. 132 (C.D. Cal. 1975).

[53]*In re Pittsburgh Railways Co.*, 31 SEC 432, 444 (1950); *Cf., In re Midland United Co.*, 58 F. Supp. 667, 679-80 (D. Del. 1944).

I. *Effect of the Settlement*

The settlement extends to all issues in the case. The range of recovery or distribution for the banks, as noted, was between 68% and 100%, depending on their total victory or defeat in the controversies raised by their claims. The settlement proposes a compromise at about midway between these limits, at 84.4%. The banks waive their security interests. The Trustee abandons the preference claims and counterclaims and recognizes the banks' setoffs for $728,987 out of $2.5 million claimed by the banks, and Chemical Bank waives its claims to setoff $1,773,000 held in the factoring accounts.[54] The banks, including Chemical Bank, are offering the debenture holders $6 million in settlement of their claims for breach of trust to them. The subordination agreements relating to the status of the bank claims remain in effect and are recognized for determining the distribution under the plan.

The overall distribution proposed by the plan, giving effect to the settlement, is as follows:

In Millions

	Bank Claims	Trade Claims	Subordinated Notes	Subordinated Debentures	Total
Allowed Claim	$38.4	$2.1	$6.1	$19.8	$66.4
%	57.83	3.16	9.19	29.82	100.0
Pro rata distribution	$31.4	$1.7	$5.0	$16.2	$54.3
Subordination Adjustment	7.0	—	1.1	(8.1)	—
	$38.4	$1.7	$6.1	$8.1	$54.3
Proposed Offer to debenture holders	(6.0)			6.0	—
	$32.4	$1.7	$6.1	$14.1	$54.3

The subordination clauses do not affect the trade creditors. The subordinated noteholders, with claims of $6.1 million, are compensated in full. Since the debenture holders are subordinated to them as well as to the banks, the debenture holders' pro rata distribution is reduced by amounts necessary to pay them in full. The offer by the banks to the debenture holders reduces the net distribution to the banks from $38.4 million to $32.4 million.

The plan in this case provides for distribution of cash and common stock, so subordination has special effects upon the distribution. When the value of the estate is sufficient to provide a participation for subordinated creditors, the effect of that subordination is to capture for the senior or paramount creditors the cash distribution that, without subordination, creditors would share, pro rata, as equals.[55] The senior creditors retain so much of the stock as is required for full compensation. Any excess is reallocated to the subordinated creditors, in this case to the subordinated noteholders, to whom the debenture holders are subordinated.

The previous table of distribution under the plan is here restated to reflect the distribution in terms of cash and stock:

In Millions

	Bank Claims	Trade Claims	Subordinated Notes	Subordinated Debentures	Total Distribution
Cash pro rata	$15.7	$0.8	$2.5	$8.1	$27.1
Subordination	10.6		(2.5)	(8.1)	—
Total	$26.3	0.8	—	—	$27.1
Stock pro rata	15.7	0.9	2.5	8.1	27.2
Excess over claim	(3.6)		3.6	—	
	$38.4	$1.7	$6.1	$8.1	$54.3
% of claim	100.0	81.8	100.0	40.9	81.8
Settlement:					
Total distribution	$38.4	$1.7	$6.1	$8.1	$54.3
Offer to debentures	(6.0)			6.0	—
	32.4	1.7	6.1	14.1	54.3
% of claim	84.4	81.8	100.0	71.2	81.7

The banks are the largest group of creditors. In the settlement they have made major concessions by their waiver of liens and setoffs and concessions to the debenture holders consisting of $2 million in cash and $4 million in stock (as shown in Table III). The settlement agreement, as noted, is an offer by the banks for a release of the personal claims asserted against them by the successor Indenture Trustee on behalf of the debenture holders. We note only that the debenture holders would receive the $4 million in stock even if some of the stock was treated as part of a settlement of the estate's claims against the banks.

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[54]Chemical Bank will actually retain this sum but it will be applied not as a setoff but as a credit to its cash distribution under the plan. Since the banks will receive 63.2% of their claims in cash. Chemical Bank's cash recovery is reduced by 36.8% of the $1,773,000, or $652,000.

[55]See cases cited in footnote 46, *supra*.

The banks are allotted $7 million of the debenture holders pro rata share of the new stock by virtue of the debenture holders' subordination, as tabulated above. Assuming arguendo that their return of $4 million of that stock to the debenture holders should be attributed solely to the defenses asserted by the Reorganization Trustee, neither the subordinated noteholders nor the trade creditors would have any basis for sharing therein. The noteholders were not adversely affected by the enforcement of the subordination. On the contrary, they receive and keep $1.1 million of stock from the debenture holders on the same basis to cover their full deficiency. And the trade creditors receive their full pro rata share of the estate, not being involved in any phase of the subordination.

The treatment of the subordinated noteholders under the settlement is nonetheless unfair. As shown above, (p. 35 *supra*) their subordination had no effect on their total distribution. But it had a radical effect on their interest in the available cash, reducing their pro rata share of $2.5 million, 41% of their claims, to zero. The proposed settlement is based on continued full enforcement of the subordination by the banks against the noteholders. As to them it is tantamount to total abandonment of the estate's claims, rather than a settlement.[56]

In fairness to the subordinated noteholders, the settlement should be renegotiated to provide for some appropriate cash distribution to them. As we have noted, there is about $2 million in cash available for distribution in addition to the $30 million for which the plan provides. The effect of the additional $2 million upon the distribution is discussed later on.

We have examined the proposed method of securing the releases from individual debenture holders. Acceptance of the plan, which provides for participation by debenture holders as creditors of Duplan, shall also be deemed a release of their claims against the banks. There is no way under this procedure for a debenture holder to vote for the plan with respect to his claims against the debtors and to decline the settlement and preserve his claim against the banks.

Generally, plans do not, and should not, couple claims against a debtor with the releases of personal claims against third parties, and the procedure in this case is really not an exception. This case involves a single adversary proceeding, and a joint settlement of claims based on substantially the same facts and asserted against the same banks. The plan only translates this interdependence into an appropriate procedure designed effectively to secure acceptance of both. The banks cannot be expected to offer to pay for a settlement but remain exposed to suit on essentially the same transactions in another form.

The plan, however, should be amended as it relates to dissenters. Under Section 179 of Chapter X, if debenture holders holding two-thirds in amount of the claims vote for the plan, the plan is binding upon the entire class, including those who did not vote or voted against the plan. These dissenters will receive only their share of the $8.1 million in common stock that the plan provides for them as creditors of Duplan, but, their share of the $6 million settlement would be kept by the banks. This in effect would be a forefeiture of the recovery by anyone who fails to sign an acceptance for whatever reason.

Such a forefeiture is not necessary or justified. The banks are entitled to protection against suit. But when a substantial majority votes for the plan, suit by a minority of dissenters is highly unlikely. Nonetheless, they are entitled to be free from mischief and nuisance, against which a release provides immediate immunity. Deferral of distribution to those who fail to supply the release is proper until that protection is otherwise supplied. For that purpose, forfeiture is too strong a remedy. Distribution to dissenters when the time for bringing suit is legally at an end should be sufficient.[57]

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[56]It has been suggested that the failure of the subordinated noteholders to join in the adversary proceedings precludes them from complaining of a settlement which ignored the benefits which would flow to them from successful prosecution of that case. We do not agree. The Reorganization Trustee acts in litigation to represent all interests in the case. *Chemical Bank* v. *Slaner*, 444 F. Supp. at 952, 955, (S.D.N.Y. 1978), *appeal dismissed* 578 F.2d 1367 (2d Cir.). A class cannot be excluded from sharing in a recovery, by settlement or otherwise, on claims belonging to the estate.

[57]An action in equity to discharge the indenture trustees when the indenture is terminated incident to substantial consummation of the plan might serve that purpose. Otherwise the applicable statute of limitations would govern.

J. *Effect of Valuation Adjustments*

We have shown that available cash will be $32 million rather than $30 million. This change has tax effects which require a $700,000 reduction in the value of the tax loss.[58] The value of the new stock should also be reconsidered in terms that give considerable weight to the propriety of an earnings multiplier of six rather than five. An earnings multiplier of six means that capitalized earnings would be increased by $2.9 million. All these effects are shown in the following table:

In Millions

	Proposal	Adjusted	Multiplier of Six
Capitalized earnings	$14.5	$14.5	$17.4
Tax savings	8.2*	7.5	7.5
Long-term receivables	1.6	1.6	1.6
Litigation	2.7	2.7	2.7
Total	$27.0*	$26.3	$29.2

*After $200,000 of corrections, (Page 18, *supra*)

The effect of distributing the additional cash will be to pay a larger part of the debt in cash and reduce, by $2 million, the deficiency to be satisfied in stock. The following table deals with that aspect, incorporating for purposes of illustration, a 20% cash distribution to the subordinated noteholders. The additional cash to the trade creditors flows from their right to a pro rata share of 3.162% of the cash. The balance of the $2 million is assigned to the banks by virtue of the subordination agreements.

(000 omitted)

	Bank Claims	Trade Claims	Subordinated Notes	Subordinated Debentures	Total
Claim:					
% of Total	57.83	3.16	9.19	29.82	100.00
Amount	$38,385	$2,100	$6,104	$19,814	$66,403
Allocation of cash	26,959	920	1,221	—	29,100
Balance in stock	$11,426	$1,180	$4,883	$19,814	$37,303
Proposed Settlement					
Cash	(1,981)			1,981	
Stock	(4,019)			4,019	
	$(6,000)			$6,000	
Balance of claims					
Cash	$24,978			1,981	
Stock	7,407			*	
	$32,385				

*The total amount received by the debenture holders is not shown, because it also depends on the value of the stock of the reorganized company.

The additional $2 million in cash would increase the cash distribution from $27.1 million to $29.1 million. In principle, the trade creditors will receive 3.162% of the new stock, regardless of value. The banks and noteholders will receive respectively $7,407,000 and $4,883,000 of stock and the debenture holders will receive the balance.

The significant effect of the value of the stock of the reorganized company is in the percentage of the stock to be received by each creditor group. To illustrate that effect, we calculate the stock allocation under three bases, all assuming an additional cash distribution of $2 million. (a) The first takes the settlement value of $27.2 million for common stock and substitutes $2 million in cash for 200,000 shares ($10 per share), leaving a net of $25.2 million, (b) the second reflects the Bear Stearns' valuation, adjusted for tax savings as noted; (c) the last is the Bear Stearns' valuation as so adjusted and reflecting also the additional value derived by applying an earnings multiplier of six.

(000 omitted)

Allocation of dollar value of stock	(a)	(b)	(c)
Bank loans	$7,407	$7,407	$7,407
Trade creditors	797	832	923
Subordinated notes	4,883	4,883	4,883
Subordinated debentures	12,113	13,178	15,987
Valuation	$25,200	$26,300	$29,200
% of Stock			
Bank loans	29.39	28.16	25.37
Trade creditors	3.16	3.16	3.16
Subordinated notes	19.38	18.57	16.72
Subordinated debentures	48.07	50.11	54.75
Total	100.00	100.00	100.00

[58]The cash increase is derived from $2.6 million of taxable interest income in fiscal 1980, of which $600,000 was already allowed for in the settlement agreement. That agreement rounded off the $29.4 million of September 30, 1979, available cash to $30 million. This $2.6 million of income uses up $2.6 million of the tax loss carry forward. Since Bear Stearns did not allow for this non-operating income in computing how long it would take to use up the tax loss, the accelerated use, in 1980, displaces savings of $1,196,000 attributed by Bear Stearns to 1983 income and valued, after four years' discount, at $684,000. That is the amount by which Bear Stearns' value of the tax savings must be reduced to allow for the additional cash distribution of $2 million.

A chance in our illustrative provision for a 20% cash payment to noteholders would involve a reciprocal shift of cash and stock between the banks and noteholders, but would not otherwise change the results. A change in the $6 million settlement offer, which underlies the foregoing calculations, would affect the banks and debenture holders.

We conclude that the plan and the underlying settlement, are unfair. In view of the character of the defects discussed above, and their relationship to the substantive terms of the settlement itself, there appears to be no alternative to further negotiations. The issues have been sufficiently clarified that such negotiations ought not to be difficult.

VI. *OTHER MATTERS*

Section 64 of the Bankruptcy Act, which established a statutory classification of unsecured claims in bankruptcy liquidation is not applicable to Chapter X (Section 102). It is replaced by Section 197 directing that: "For purposes of the plan and its acceptance, the judge shall fix the division of creditors. . .into classes according to the nature of their respective claims. . ."[59] The nature of the creditor's claims establishes his rights vis-a-vis other creditors and is an integral part of the fair and equitable standard. This is particularly true when the plan embodies a compromise as to rank or lien. It is the settlement which identifies the bank creditors as unsecured creditors for the purposes of this plan, despite their vigorous assertion of entitlement, in principle, to secured status.

The second stated purpose of classification is to implement the acceptance procedure specified by Section 179. That requires, for each class, acceptance by creditors holding two-thirds in amount of the claims filed and allowed. The flexibility provided by Section 197 recognizes the complexity of interests normally found in reorganization cases and plans, and authorizes the court to classify as the needs of the particular case requires.[60]

The plan, Article IV, creates a class of general creditors who are defined, in Article II, as consisting of four distinct groups. Section 6.4 (Article VI), provides different treatment for each of the four groups so defined. It is agreed that all four of the groups are unsecured creditors, the banks by virtue of the settlement, and the others by the nature of the obligations they hold. If the plan provided for a pro rata distribution to all unsecured creditors, no further classification would be necessary.

The Trustee's suggestion that the difference in treatment is irrelevant to the classification has been repeatedly rejected. Since the Trustee apparently seeks to assert a special rule for subordination agreements, we will focus on subordination cases. The legal context of several precedents involved a mortgage bond issue and a pre-bankruptcy voluntary extension agreement, accepted by some, but not all bondholders. The bond indentures provided that bondholders so waiving a default would be subordinate in lien to those who refused. In each case the debtor subsequently sought reorganization and the plan modified bondholders' rights. The non-assenting bondholders asserted that the priority granted them under the subordination agreement contained in the indenture should be recognized by the plan and that classifying all bondholders in a single class was erroneous, even though debtor's obligation on the debts represented by the bonds, and the security interest under the mortgage, was identical. It was so held. *St. Louis Union Trust Co.* v. *Champion Shoe Machinery Co.*, 109 F.2d 313, 316-317 (8th Cir. 1940).[61]

The same analysis applies to unsecured obligations

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[59]We have deleted the references to classification of stock interests in the same manner, and omitted the second sentence dealing with certain aspects of secured claims, all irrelevant here. Bankruptcy Rule 10-302(a) is identical, except for incorporating the requirement that the order be on notice and hearing. That requirement was met, as usual, by the hearing on the plan, since classification and the plan are expressly linked by Section 197.

[60]6 Collier on Bankruptcy, (14th ed., 1978), para 9.10 p. 1595-1596.

[61]*Cf. In re Allied Properties, Inc.*, 118 F.2d 773 (6th Cir. 1941) affirming an order separately classifying non-assenting bondholders, and *Scherk* v. *Newton*, 152 F.2d 747, 750 (10th Cir. 1945) which held that the particular subordination clause did not apply to the kind of extension involved, so the assenting and non-assenting bondholders did have the same rights and were properly treated as a single class. The subtle interrelationship of classification, legal rights and equality of treatment is neatly illustrated by these three subordination cases.

containing subordination agreements. In *Elias* v. *Clarke*, 143 F.2d 640 (2d Cir. 1944), *cert. den.* 323 U.S. 728, the appellate court affirmed a very complex classification order, separating not only debt instruments containing subordination clauses from those not subordinated, but also distinguishing between identical securities on the basis of availability of personal defenses of some of the holders to enforcement of the subordination.[62]

It is superfluous to multiply instances. If the rights of two groups of creditors are different enough to require or justify materially different treatment for them by a plan, the difference identifies them as different classes for the purposes of that plan and its acceptance. This is true even if the difference arises solely from the plan itself. For example, if a plan proposes that some members of a class buy out other members of the same class, that necessarily creates two sub-classes.[63]

In *Interstate Stores, Inc.*, 15 CBC 634, 643-648 (S.D.N.Y. 1978), the court noted that the general unsecured unsubordinated creditors, equivalent to the trade creditors here, and the subordinated debenture creditors had the same legal status, except that the debenture holders distribution was altered because of subordination to different and separately classified creditors.[64] There were no conflicts between the interests of the trade creditors and debenture holders. The court's statement, on which the trustee relies, that "Enforcement of subordination provisions effect creditors *inter se*, it does not effect the proper classification of creditors" if read as the trustee proposes, would overrule *Elias* v. *Clarke* and the other precedents cited herein. The enforcement or adjustment of rights and obligations under a subordination agreement is as significant a part of the measurement of the shares of various kinds of creditors in the estate being divided, as any of the other issues the court must deal with. The differences between the two kinds of claims dealt with in *Interstate* may well have been too insubstantial to justify separate classification. Since that plan was overwhelmingly accepted, the finer points of classification became moot.

As already stated, the plan in this case does adequately identify, define and distinguish among creditors. We recommend that the court adopt the plan's definition and classification, but direct that acceptances of the four groups of the general creditors be counted separately.

Under the plan, any person who fails to collect any cash or securities within six years from the date such cash or securities are distributed shall forfeit all rights thereto. This is not consistent with Section 205 of Chapter X and Rule 10-405(b) which require a bar date of not less than 5 years after entry of the final decree closing the estate. The plan should be amended accordingly.

The settlement agreement provides that:

> "(b) the Banks will, so long as they hold any new Common Stock, receive, by a separate agreement, the equivalent of preemptive rights in respect to the new Common Stock held by them from time to time. . ."

It specifies that it would relate to stock sold for cash, excluding employees stock options.

This provision would appear to exclude the other new stockholders from this protection. There is no basis for such discrimination. Preemptive rights protect existing stockholders from the risk that their interests in the company will be materially diluted by the issue of new stock on terms and to persons

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[62]The opinion below, 53 F. Supp. 107 (S.D.N.Y. 1943), describes the distinction more fully than the Court of Appeals needed to. The many questions reserved by the Second Circuit were resolved by a compromise plan mentioned in this opinion, and affirmed *In re Associated Gas & Electric Company*, 149 F.2d 996, 1004-1009 (2d Cir. 1945), *cert. den.* 326 U.S. 736.

[63]*Continental Ins. Co.* v. *Louisiana Oil Refining Corp.*, 89 F.2d 333, 338-339, (5th Cir. 1937), *cert. den.* 305 U.S. 622 (1938); *Boston Metropolitan Buildings, Inc.* 92 F. Supp. 843 (D. Mass. 1950); *Cf. Mokava Corp.* v. *Dolan*, 147 F.2d 340, 344 (2d Cir. 1945), in which other errors were also relied on.

[64]The alteration was minor. Both groups were fully provided for, trade creditors receiving about 6% in cash and 94% in stock, and debenture holders 100% in stock. The debt to which the debentureholders were subordinate, i.e., institutional claims and senior subordinated noteholders, were separately classified. Although that classification turned on other aspects of those claims, we do not take it for granted that they would, otherwise, have been thrown into the hotchpot.

selected by the board of directors. Preemptive rights also create restrictions and complications in financing.[65] If, in this case, the banks feel the need for protection, the privilege should be extended to all new stockholders, who are equally at risk.

The settlement agreement also deals at some length with rights to require the reorganized company to register under the Securities Act of 1933 the new stock held by the banks. This is not objectionable in principle, but the terms specified were also drawn so as to confer an exclusive privilege on the stock held by the banks.

Clause (d) of the agreement, which requires that any primary registration by reorganized company within five years "shall provide for appropriate "piggyback" rights for the banks" should not and need not be so limited. There would be no significant burden in extending these "piggyback" rights to any other creditor who needs such registration. The same is true with respect to the registration which the agreement entitles the banks to demand.

Most of the creditors receiving stock under the plan would neither need nor gain any benefit from participating in the kind of registration provided for by the agreement. Only a handful of large creditors would have any concern about their status in this respect.[66] The usefulness of a full registration, in view of the costs involved, depends on the amount of stock to be offered. The provision requiring the demand of at least three of the four banks to impose this obligation on the reorganized company is appropriate and furthers the interest of the other stockholders, who must share the costs of registration.

Duplan is a reporting company under the Securities Exchange Act of 1934, and the reorganized company will continue to be such pursuant to Section 12(g) of that Act (15 U.S.C. 781(g)). We recommend that, as soon as practicable after confirmation, appropriate pro forma financial statements of the reorganized company be submitted to our Division of Corporation Finance for examination and review.

By the Commission.

George A. Fitzsimmons
Secretary

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[65]The risk is in the private placement of a large block of stock, which can adversely affect both control and proportionate ownership. It is now common to exclude public offerings which give existing stockholders an alternative opportunity to preserve their position but the agreement does not make the exception. *Parker Petroleum Co., Inc.*, 39 SEC 549, 571 (1959); *In the Matter of Four Seasons Nursing Centers of America, Inc.*, 44 SEC 821, 858 (1972); *Yale Express System, Inc.*, 44 SEC 772, 789 (1972).

[66]As registrants under the Securities Exchange Act of 1934, Duplan and its successor meet the public information requirements of Rule 148 under the Securities Act of 1933. The 1% volume limitation under the rule means in this case more than 25,000 shares, representing a claim of more than $250,000, sold in a three month period, by a single holder or a group acting in concert.

Appendix A
THE DUPLAN CORPORATION
Consolidated Balance Sheet
September 30, 1979
(000 omitted)

	Consolidated	Liquidations[1]	Adjustments[2]	Cash Distribution	Unpaid Claims	New Stock	Pro forma
Cash & equivalent	$27,547[1]	$1,323	$1,773[2]	$(30,000)			$643
Receivables	8,876						8,876
Inventories	9,527						9,527
Pre-paid expenses	253						253
Continuing operations	$46,203						$19,299
Current assets—discontinued	1,483	(1,483)	—				—
Property held for sale	732	(732)	—				—
Other receivables & deposits[3]	2,269	—	—				—
Plant & equipment—net	5,103	—	—				2,269
Other assets	235	(4)	—				5,103
Bank setoffs	2,502	—	(2,502)[2]				—
Acquisition adjustments	1,586	—	—				1,586
Deferred costs of case	1,263	—	(1,263)				—
Debenture discount	249		(249)				—
Total assets	$61,625	$(896)	$(2,241)	$(30,000)			$28,488
Current liabilities	$3,496	$(307)	$ —	$ —			$3,189
Reserves:							
Administrative costs	500	—	1,700	(2,200)			—
Discontinued operations	161	(161)	—	—			—
Long-term debt—Wundies	1,909	—	—	—			1,909
Unaffected liabilities	$6,066	$(468)	$1,700	$(2,200)			$5,098
Liabilities deferred by case:							
Taxes	143		57	(200)			
Small claims	—		500	(500)			
Other trade creditors	2,567		(467)	(858)	$(1,242)	860	
Term bank loans	39,114		(729)[2]	(24,261)	(14,124)	8,124	
Subordinated notes	6,105		—	—	(6,105)	6,104	
Subordinated debentures	19,814			(1,981)	(17,833)	12,112	
Inter-company	—		—	—	—	—	
Total liabilities	$73,809	$(468)	$1,061	$(30,000)	$(39,304)	$27,200	
Equity (deficit)	$(12,184)	(428)	(3,302)	—	39,304	—	
	$61,625	$(896)	$(2,241)	$(30,000)	$ 0	$27,200	

[1]Cash composition 9/30/79:

	Dillon	Laga	Fabrics	Duplan Corporate	Continuing Business	Consolidated
Cash	$422	$184	$33	$8,499	$1,227	$10,365
Matured funds	—	1,515	—	6,329	—	7,844
Restricted	—	—	—	5,021	—	5,021
Due from purchasers	925	—	—	2,608	—	3,533
Pension settlement	—	—	—	784	—	784
Cash equivalent	$1,347	$1,699	$33	$23,241	—	$27,547
Net liquidation*	455	701	167	—	—	1,323
Distributions	(1,802)	(2,400)	(200)	4,402	—	—
Pro forma	$ 0	$ 0	$ 0	$27,643	$1,227	$28,870
Liquidations:						
Receivables	$621	$354	$251			$1,226
Prepayments	230	2	25			257
Current	$851	$356	$276			$1,483
Plant	—	732	—			732
Other	—	4	—			4
Liabilities	(307)	—	—			(307)
Reserve	—	(30)	(91)	$(40)		(161)
Net	$544	$1,062	$185	$(40)		$1,751
Distribution*	(455)	(701)	(167)	—		(1,323)
Deficiency	$89	$361	$18	$(40)		$428

The scheduled liquidations have been substantially completed. We have used the estimated net realizations testified to at the hearing, ignoring subsequent variations, which seem to have been minor. The goal of this presentation is to relate the testimony as to cash availability, which was presented in terms Duplan's "corporate" division's cash balance, to the consolidated balance sheet, and to eliminate the assets and liabilities involved in the liquidation from the continuing operations. For tax purposes, the Laga liquidating dividend was about $4.1 million, including a $1.8 million debt of Duplan to its subsidiary.

[2]The term loan banks setoff about $2.5 million of Duplan deposits. The Trustee declined to recognize these setoffs. Under the bank settlement agreement embodied in the plan, setoff of $728,987 of demand deposit accounts will be recognized, reducing the term loan balance. Chemical Bank will in effect, waive its setoff claim as to the remaining $1,773,007, held in factoring accounts, by crediting that sum in full against the cash position of its distribution under the plan. It is convenient to treat this as additional cash available. Other adjustments shown in the same column write-off debt discounts, adjust the book balances of pre-bankruptcy tax and trade liabilities to the estimated claims allowable, write-off prior administration costs, and provide an additional $1.7 million for administration costs.

[3]Includes a 10-1/4% $1.8 million mortgage on a plant of Andrex Industries Corp. Payment of interest only — $8,333.33 a month — are required for the first two years commencing August 1, 1979. Level payments of $17,010 a month commence August 1, 1981, leaving a balance of $795,600 to be paid on July 1, 1999.

Complex Industries Corp. has a fixed obligation of $210,000, to be paid in three $70,000 installments at the end of 1979, 1980 and 1981 with 15% interest. It is also to pay 10% of its pretax profits for the three years ending October 1, 1981, with a remaining $33,750 minimum, payable in quarterly installments of $3,750. Four other installment purchase receivables aggregate $122,000. The total also includes $103,000 of cash deposits, mostly refundable on or before the closing of this case.

Appendix B
Description of Continuing Operations

I. *Wundies Inc. and Kickaway Corporation*

Wundies, founded in 1948, and acquired by Duplan in 1968, manufactures women's[67] and children's panties and children's sleepwear, and has recently begun to produce a line of thermal undergarments for women and children. Wundies' products are manufactured for approximately 500 retailers located throughout the United States. Customers are primarily discount stores, chain stores, department stores and mail order houses. K-Mart is the largest customer and accounted for 12% of the consolidatred sales for fiscal 1979. Management believes that Wundies is one of the largest domestic manufacturers of children's underwear and sleepwear, and that it is the largest single supplier of girls' underwear to the discount stores.

Its executive and sales offices are in New York City, with regional sales offices in Dallas, Texas and Los Angeles, California. Manufacturing operations are conducted in three plants located in Pennsylvania, at Williamsport, Liberty and Wellsboro.

Location	Square Feet	September 30, 1979 Debt	Annual Rent
Williamsport[1]	186,000	$1,844,280	$236,841
Liberty[2]	15,000	64,500	mortgage
Wellsboro[3]	15,000	126,840	14,420
Subsidiary long-term debt[4]		$2,035,620	

[1]Leased from Lycoming County Industrial Development Authority under three net leases to July 31, 1986, for two and May 1, 1994, for the third. The rent covers interest and principal on industrial revenue bonds, and Wundies has an option to purchase, when the bonds are paid, for $1 and transfer costs. Wundies also pays real estate taxes on the property.

[2]First mortgage, payable in installments to January 25, 1985.

[3]Leased from Growth Resources of Wellsboro, under lease expiring November 1993. Wundies has an option to purchase at any time during the lease for the unpaid principal of lessor's mortgage notes, plus transfer costs. A 15,000 square foot addition is scheduled for completion March 1980.

[4]Current portion classified as a current liability on balance sheet, Appendix A. Noncurrent portion $1,909,000.

Historical Results of Operations

As shown below, Wundies sales have consistently increased, except in 1975, and operations have been profitable.

(000 omitted)

Fiscal Year	Net Sales	Pre-Tax Income[1]
1968	$4,594	$319
1969	6,769	578
1970	7,346	733
1971	7,745	652
1972	8,473	814
1973	9,349	595
1974	11,409	797
1975	11,346	617
1976	14,186	784
1977	15,142	900
1978	18,272	1,466
1979	21,014	2,043

[1]After corporate charges, but before state and federal income taxes.

Current and Projected Operations

There are presently approximately 770 employees. Although there is relatively little seasonality to the manufacturing operation, inventories of finished goods reach a peak prior to the back-to-school season.

Competition is keen and comes from both domestic and foreign sources, although the latter is not considered a serious threat primarily because the imported garments are limited as to choice of fabrics and trim utilized. Management believes that its recently expanded manufacturing facilities and anticipated expansion to meet production goals beyond 1981, will enable Wundies to maintain or increase its position in its established lines, and to substantially expand its production and sales in the women's and children's thermal underwear market.

The following table shows actual results of operations for the four years ended September 30, 1979, and projected results for the four years ended September 30, 1983, as prepared by Duplan. The historical data was adjusted to eliminate an intercompany charge based on a percentage of net assets. We have computed the percentages shown.

[67]Marketed by Kickaway.,

WUNDIES AND KICKAWAY
SALES AND INCOME
(000 omitted)

Fiscal Year	Net Sales	Gross Profit Amount	Gross Profit Percent	Selling General & Administrative Expenses Amount	Selling General & Administrative Expenses Percent	Interest, Income & Expenses—Net	State Income Tax	Income before Federal Taxes[3] Amount	Income before Federal Taxes[3] Percent
Actual									
1976	$14,186	$2,905	20.5	$1,663	11.7	$6	$(79)	$1,169	8.2
1977	15,142	3,019	19.9	1,767	11.7	33	(77)	1,208	8.0
1978	18,272	4,178	22.9	2,362	12.9	84	(104)	1,796	9.8
1979[1]	21,014	4,707	22.4	2,211	10.5[2]	105	(101)	2,500	11.9
Projected									
1980	$24,000	$4,926	20.5	$2,331	9.7		$(160)	$2,435	10.1
1981	27,000	5,541	20.5	2,594	9.6		(180)	2,767	10.2
1982	31,000	6,373	20.6	2,859	9.2		(215)	3,299	10.6
1983	35,000	7,193	20.6	3,158	9.0		(250)	3,785	10.8

[1]The budgeted fiscal 1979 data, used by Bear Stearns, before the end of the year was based on sales of $20.5 million and pre-tax income of $2,125,000.

[2]A change was made in Wundies' incentive bonus system which contributed significantly to the sharp increase in profitability in 1979 and the improved earnings forecast. Until the end of 1978, when the old contract expired, the principal bonus was 30% of adjusted pre-tax income. The adjustment allowed deduction of 20% of Duplan's original purchase price in lieu of annual intercompany charges. The new contract reduced the percentage from 30% to 10% and changed the adjustment to 10% of the assets used in Wundies business.

	1976	*1977*	*1978*	*1979*	*1980*	*1981*	*1982*	*1983*
Incentive bonuses	$377	$413	$763	$274	$257	$294	$358	$416
Other expenses	1,286	1,354	1,599	1,937	2,074	2,300	2,501	2,742
Total expenses	$1,663	$1,767	$2,362	$2,211	$2,331	$2,594	$2,859	$3,158
Bonus as percent of sales	2.66	2.73	4.18	1.30	1.07	1.09	1.15	1.19

[3]Charges by Duplan to Wundies have been eliminated. The corporate expenses of the reorganized parent company will continue, as in the past, to be deducted from consolidated income and, are allowed for there. But circumstances have changed too much for the historical allocation to be meaningful.

Management projected annual results assuming compound inflation factors of 6% for sales and 7% for selling, general and administrative expenses. Projected gross profit margins of approximately 20.5% were assumed based on experience prior to 1978. Reduced percentages for selling, general and administrative expenses during the projected period, compared to historical percentages, are primarily due to reductions during the projected period of incentive bonuses.

During the plan hearings in October 1979, Banner, Wundies' chief executive, testified that, considering the possibility of a recession, he felt that the projected sales of $24 million for 1980 might be reduced by 10% and that as a result net income for that year would be reduced 20%. He said, however, he would reassess his opinions during January. During the hearing in January, he stated that for the first quarter of fiscal 1980 actual sales were 8% above the original budget and 15% above the like quarter of the prior year. Based on those results, he felt that the original projected sales of $24 million would be achieved.

After the close of the plan hearings, the results for the first quarter of the current fiscal year were reported:

(000 omitted)	Fiscal Year			
	1980	%	1979	%
Net Sales	$4,628	100.0	$3,782	(100.0)
Gross Profit	$954	20.6	$791	20.9
Selling, General and Administrative Expenses	(562)	(12.1)	(460)	(12.2)
Operating Income	$392	8.4	$331	8.7
Other Income	47		18	
State Income Taxes	(48)		(29)	—
Income before Federal Income Taxes	$391	8.4	$320	8.5

For the first three months of the current fiscal year, reported sales were 22.4% above the like period of the prior year. Net income for the 1980 period was 22.2% higher than the prior year period, due primarily to the increased sales.

The composition of Wundies working capital is highly cyclical, with receivables accumulating for the first three quarters of each calendar year and turning into cash in the final quarter, following the back to school session. The foregoing table traces this cycle in detail. Typically at September 30, 1979, the balance sheet date used for valuation purposes, Wundies had $5.1 million of accounts receivable and $653,000 in cash. Three months later, at December 31, 1979, it had $3.8 million in cash and $2.2 million in receivables. Its 1980 budget follows the same pattern. It needs to borrow, as its president testified, during 4 months of each year. But it has cash for short-term investments during other parts of the year.

The record was supplemented to show the details of the interest items. Wundies' accounting system

WUNDIES AND KICKAWAY
CURRENT ASSETS

(000 Omitted)

Fiscal Year	Sales	Percent of Annual Sales	Cash and Equivalent	Receivables	Percent of Prior Quarter's Sales	Inventories	Percent of Following Quarter Sales
1978							
12/31/77	3,138	17.2	2,583	1,702	31.3[1]	3,950	109.6
3/31/78	3,603	19.7	1,050	2,446	77.9	4,53391.4	
6/30/78	4,959	27.1	182	3,943	109.4	5,188	78.9
9/30/78	6,572	36.0	607	4,679	94.4	4,288	113.4
	18,272						
1979							
12/31/78	3,782	18.0	2,608	1,885	28.7	4,957	119.2
3/31/79	4,157	19.8	335	3,099	81.9	6,055	103.3
6/30/79	5,861	27.9	54	4,774	114.8	6,401	88.7
9/30/79	7,214	34.3	653	5,111	87.2	5,219	122.3
	21,014						
1980							
12/31/79[2]	4,268	17.8	3,852	2,157	29.9	5,436	114.4
Projected							
3/31/80	4,752	19.8					
6/30/80	6,600	27.5					
9/30/80	8,380	34.9					
	24,000						
1981							
12/31/80	4,985	17.8					
3/31/81	5,546	19.8					
6/30/81	7,702	27.5					
9/30/81	9,775	34.9					
	28,008						

[1]Sales for quarter ended 9/30/77 were $5,470,000.
[2]Actual sales and cash at December 31, 1979.

classifies purchase and sales discounts as interest.[68] Its income from cash investments and net discounts have historically substantially exceeded, as shown in the income table, the interest on the long-term debt. But its temporary borrowings, during this case, were advanced by the Duplan estate and are not reflected in the computation.[69] Allowance for substitute bank borrowings, produced an approximate balance between $260,000 of interest income and $250,000 of interest expense, reduction in long-term debt interest from the $154,000 level in 1980 through amortization being balanced by increases in temporary borrowings for increased volume of sales.

Wundies' current assets at September 30, 1979, were $11.0 million, and its current liabilities, including the $132,000 balance with Duplan, were $1.7 million. This data demonstrates that Wundies has ample working capital and credit. Following reorganization, we would not assume continued cash accumulation from income, since dividend payments would be expected. But the addition of $1.8 million of 1980 forecast pretax income[70] to the $9.3 million of 1979 net working capital would endow Wundies with $11.1 million of net working capital.

At present interest rates, the policy of self financing is probably the most effective and productive use of the funds. The strong current position shown also justifies the assumption that any additional plant required can and should be financed. The revenue bond option Wundies has relied on offers important advantages to a strong company in its industry. Wundies properly has considered other sources of additional products. The actual choice among such alternatives can be made only in the light of conditions at the time action is required.

It is necessary, in this context, only to eliminate a misunderstanding. The omission of interest expense for a new plant from the projected income statements is not inconsistent with the testimony that a plant may well be added. The basic assumption is that additional merchandise will be produced or acquired for resale. For bookkeeping purposes, merchandise bought from a third party whether by contracting out or importing, is recorded as a purchase. Manufacturing internally involves a variety of expenses for labor, materials and for the factory cost, such as depreciation and interest, or rent in the case of a lease. For economic and cost accounting purposes, all of these costs are part of the cost of manufactured merchandise, the equivalent of the price paid to others for merchandise purchased. The forecasts allowed 79.5% of the selling price for cost of goods sold, and that allowance applies to both purchased and manufactured goods.

Whether interest on a factory would appear on a different line of an income statement is irrelevant to actual costs or profits. Banner's testimony that the profit margin would not be reduced by financing a new factory not only reflects an accurate understanding of the economics of his business, but also states the truism that a decision to add a factory must be based on a conviction that it would improve the company's profits.

II. *Rochester Button Division*

Rochester Button Company, founded in 1926, was acquired by Duplan in 1968. Kitchener Button Industries, Ltd. operates in Canada and is included in this discussion. A wide variety of plastic buttons and a patented air operated sewing machine attachment for affixing belt loops to jeans are manufactured, but the latter constitutes only a small portion of the business.

RBD's products are sold throughout the United States and Canada to approximately 2,900 apparel manufacturers and wholesalers. The major

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[68]Wundies both buys and sells on open account on terms which allow a period between shipment and payment. Typically a 2% discount would be allowed if a 30 day account is paid in 10 days. The economic effect of this trade practice is similar to that of an interest charge for use of the full credit period, although the discount is not prorated and is well above normal interest rates. The status of the discounts is ambivalent enough, that treating them as interest or treating them as a reduction of the merchandise price are alternatives, each of which had always had substantial support.

[69]Duplan collected from Wundies a "corporate interest charge", $558,000 for 1979, to cover its own administrative costs. The charge is based on Duplan's total investment, of which short-term loans are only a minor part.

[70]After a $650,000 provision for payment to the parent, which will more than cover Duplan's corporate requirements for the year.

customers are the branded shirt and clothing manufacturers. One customer accounted for just under 6% of 1979 sales. No other single customer accounted for more than 3%. RBD is not engaged in material operations in foreign countries other than Canada.

The button industry is highly competitive. No single manufacturer dominates any portion of the market but RBD believes that it is the largest manufacturer of buttons and button blanks in the United States.[71]

Bear Stearns described the button industry as having limited potential for real growth. Public statistics suggest that the industry actually has been in a long-term decline.

Button Plants[72]

	1963	1972	1977
Total number of establishments*	290	186	159
Number of establishments with more than 19 employees	69	51	47
Total number of employees	5,600	4,000	3,200
Production workers employed	4,700	3,200	2,600
Value of Shipments (millions)	$81.8	$93.7	$95.3

*Identifies plants rather than companies.

Buttons Shipped[73]

	1972	1977
Total value all buttons (millions)	$103.1	$106.2
Total value of plastic buttons (millions)	$41.6	$44.5
Millions gross of plastic buttons*	114.2	60.8

*Quantities of other kinds of buttons not available.

There have been declines in every statistic except the dollar value of buttons shipped. In the latter category the increases in terms of compound annual rates of growth are negligible and far below concurrent inflation rates.[74] RBD's performance has been far superior to that of the industry as a whole.[75]

RBD's executive and primary sales office is in New York City. Sales offices are maintained in Los Angeles, Atlanta, Philadelphia, Baltimore and Chicago.

RBD's main manufacturing operations are conducted in a facility of 135,000 square feet in Rochester, New York which also serves as administrative headquarters. Finishing is also done in plants located in Kenbridge and McKenney, Virginia (37,000 and 29,000 square feet, respectively) and, for the Canadian market, in a plant of 36,000 square feet located in Kitchener, Ontario, Canada. Button blanks are produced in facilities located in Wellsville, New York and South Boston, Virginia (34,000 and 41,000 square feet, respectively). A plant of 29,000 square feet located in Akron, New York formerly produced button blanks but has recently been shut down and is being offered for sale. Consideration is being given to further consolidation. All of these properties are owned. None are encumbered.

Since its acquisition by Duplan, RBD has operated substantially on an autonomous basis. With the exception of one year, operations have been profitable, albeit in an erratic pattern.

---

[71]The testimony in October (Tr. 175) and that in January (Tr. 1187) disagree as to whether its market share is 20% or 30%.

[72]Abstracted from Table 1, Industry Statistics: 1977 and Earlier Years. U.S. Department of Commerce, Bureau of Census, 1977 Census of Manufacturers, Preliminary Report, Buttons (SIC 3963) issued May 1979. Statistics pertain to establishments classified in the button industry.

[73]Abstracted from Table 3, Products and Product Classes—Quantity and Value of Shipments by All Producers: 1977 and 1972. U.S. Department of Commerce, Bureau of Census of Manufacturers, Preliminary Report, Buttons (SIC 3963) issued May 1979. Statistics pertain to production by all establishments, whether or not classified in the button industry. Transfers of buttons from one establishment of a company to another establishment of the same company are included.

[74]Value of buttons shipped: Compound annual growth rates:

Button companies 1963-1972 1.5%
Button companies 1963-1977 1.1%
Button companies 1972-1977 .34%
All producers—plastic buttons 1972-1977 1.4%
All producers—all buttons 1972-1977 .59%

[75]RBD claimed a market share of 10.6% in 1960, 16.2% in 1975 and now 20% or 30%. The current market share cannot be verified until industry statistics are available, but significant improvement is indicated.

ROCHESTER BUTTON COMPANY
(000 Omitted)

Fiscal Year	Net Sales	Gross Profit Amount	Gross Profit Percent	Selling General & Administrative Expense	Selling General & Administrative Percent of Sales	Income before Taxes[1]	Pre-tax Percent of Sales
ACTUAL							
1976	$23,533	$8,339	35.4	$4,359	18.5	$3,980	16.9
1977	17,544	3,996	22.8	4,681	26.7	(685)[2]	(3.9)
1978	19,089	5,849	30.6	4,563	23.9	1,286	6.7
1979[3]	20,819	6,710	32.2	4,804	23.1	1,941	9.3
PROJECTED							
1980	$20,774	$6,410	30.9	$4,950	23.8	$1,460	7.0
1981	24,700	8,151	33.0	5,607	22.7	2,544	10.3
1982	27,000	8,910	33.0	6,062	22.5	2,848	10.5
1983	29,500	9,735	33.0	6,554	22.2	3,181	10.8

[1]State taxes are nominal due to State tax loss carryovers.
[2]Loss.
[3]The budgeted fiscal data used by Bear Stearns before the end of the year was based on sales of $20.9 million and pre-tax income of $2 million.

(000 omitted)

Fiscal Year	Net Sales[1]	Pre-Tax Income[2]
1969	$10,810	$862
1970	11,873	1,362
1971	11,247	922
1972	12,343	1,115
1973	14,618	1,469
1974	18,985	2,559
1975	18,369	1,518
1976	23,555	3,314
1977	17,545	(685)
1978	19,089	1,286
1979	20,819	1,941

[1]Includes Kitchener results.
[2]After corporate charges through 1976. There were no corporate charges in 1977-1979.

In the ten year period, sales have increased 92.6%. This compares very favorably with industry statistics which disclose that the value of shipments for the industry as a whole actually declined 1.5% between 1969 and 1977.[76] The long term trend of RBD's growth reflects, in large part, an increasing share of the button market. The surge in sales beginning in 1974 and culminating in 1976 was attributable, in large part, to the boom in leisure suits. The sharp drop in sales for 1977 has been attributed to loss of key personnel. The fact that inventory markdowns accounted for a substantial part of the 1977 loss, suggests that other reasons cited by management i.e., reduced demand due to imports and new styles, were the direct causes of the 1977 decline.

Current and Projected Operations

RBD has approximately 523 employees. Sales do not appear to be markedly influenced by seasonality although third quarter sales are generally higher than in other quarters. Management has testified that it is not aware that RBD has ever been adversely affected by imports but this appears to be inconsistent with the reasons reported for the poor results of the year 1977.

Shown below are summaries of the actual results of operations for the four years ending September 30, 1979, and projected results for the four years ending September 30, 1983, as prepared by management. The actual result for 1976 has been adjusted to eliminate the previously reported Duplan corporate charge. There were no such charges for the subsequent years.

[76]1977 Census of Manufacturers, Preliminary Report issued May 1979 for the Button Industry by Bureau of the Census, U.S. Department of Commerce. Table I, Value of Shipments per 1977 Census, $95.3 million. Value of Shipments per 1969 Annual Survey of Manufacturers, $96.8 million. Data for years subsequent to 1977 is not available.

Management had prepared projects which assumed a 2% annual growth in sales over and above a 7.5% inflation rate. They projected sales for 1980 of $22.6 million. However, in the face of sales reports [from the field] indicating a slow down in orders, management prepared a revised projection for the year 1980 forecasting sales of $20,774,000, a slight decline from the then estimated 1979 level. Management testified that the projections for 1981-1983 remained valid notwithstanding the revision of 1980.

Sales projections did not make any provision for diversification plans currently under analysis. In arriving at gross profit, management used a fixed gross profit percentage of sales. Plans under review for plant consolidation, expansion and processing efficiencies were not incorporated into the projections. There are no plans with respect to present facilities to increase personnel or for the expansion or relocation of sales offices. Selling and administrative expenses are planned to stay within the increase in inflation. No amounts are provided for interest income or expense since these have historically netted out to negligible amounts.

After the close of the plan hearings, the results for the first quarter of 1980 were reported.

(000 omitted)

	First Quarter Fiscal Year			
	1980	%	1979	%
Net Sales	$4,773	100.0	$5,418	100.0
Gross Profit	$1,237	25.9	$1,837	33.9
Selling, General and Administrative Expenses	(1,085)	(22.7)	(1,161)	(21.4)
Operating Income	$152	3.2	$676	12.5
Other Income, Net[1]	3	—	34	—
Pre-tax income[2]	$155	3.2	$710	13.1

[1]Principally interest.

[2]No provision is shown for state taxes due to state loss carryovers which reduce such taxes to nominal amounts.

For the first three months of the current fiscal year, reported sales were 12% below the like period of the prior year. Net income for the 1980 period was 78% lower than the prior period.

The president of RBD testified at the January 1980 hearing, that he still expected to meet the 1980 forecast, citing a turn around in December 1979. This improvement is attributed in large part to the rebuilding of customer's inventories which had been kept at lower than usual levels because of apprehensions regarding the economic environment expected during this year. It is also stated that there has been a strong flow of orders extending into third quarter delivery dates.[77]

III. *Analysis of Forecasts*

Banner, Wundies' president, testified

> "We are by nature conservative in the figures that we do. I think if you examine the figures going back for a long time, you will notice in most cases, with the possible exception of the depression year, we exceeded our projections and I think our mark-ups also improved.
>
> We were conservative in our estimates for '80 to '83. They are honest and we hope to do better. At this point I can't guarantee that we will come in with 22.4 again."[78]

This is good management, but it skews the income data relied on in computing the valuation. Similarly, Mr. Banner had just completed an explanation of the objective factors that had increased Wundies' gross profit margin from 20.5% in 1976 to 22.4% in 1979.

The thermal underwear, carrying a higher mark-up was introduced in 1978 and proved successful. The Kickaway panties, also with a higher mark-up, are beginning to assume a greater significance. And "we were also getting to be much more efficient." These are all factors of continuing significance. Assumption of continuance at the 1979 gross profit level may well have been overly optimistic, but total elimination of the effect of the improvements identified would seem to err in the other direction.

[77]RBD has persistently underestimated the apparent effect of its vacation closing in July on its fourth quarter's operations. In 1978 a 1.9% decline in fourth quarter sales was allowed for. The actual reduction was 16.6%. The 7.2% allowance in 1979 was actually 25.6%. We are skeptical about the adequacy of the 8.1% allowance in the 1980 budget.

[78]Tr. p. 1023. This was in response to Commission counsel's request for an explanation of the use of a 20.5% gross profit in the forecasts, in light of the 22.4% gross profit in 1979. The record shows that Mr. Banner's memory was accurate. Actual sales significantly exceeded budget every year, except 1975, from 1974-1979, and in the completed part of 1980.

APPENDIX C
COMPARISON OF HISTORICAL PRICE/EARNINGS RATIOS[1] AND ENTERPRISE MULTIPLIERS[2] OF SELECTED TEXTILE/APPAREL COMPANIES[3]: 1976-1978

	Debt Ratio Percent	1976 P/E Ratio	1976 Enterprise Multiplier	1977 P/E Ratio	1977 Enterprise Multiplier	1978 P/E Ratio	1978 Enterprise Multiplier
Adams Millis	13	8.2	9.7	5.1	6.4	8.6	9.2
Belding Hemingway	25	9.1	9.7	10.1	10.5	6.3	7.1
Collins & Aikman	10	7.9	7.6	6.2	8.6	5.6	7.2
Dan River	32	4.5	7.0	6.2	8.5	5.6	7.4
Fab Industries	4	4.0	4.7	3.4	3.8	3.8	3.5
Guilford Mills	28	3.4	5.0	3.9	5.2	3.0	3.1
House of Ronnie	8	6.1	7.1	4.8	6.1	4.4	5.4
Riegel Textile	26	4.6	5.3	5.9	6.8	6.0	7.2
Spring Mills	15	6.9	9.0	6.1	8.9	5.1	8.1
Average P/E Ratios, Multipliers		6.1	7.2	5.7	7.2	5.4	6.5

[1]As computed by Bear Stearns.
[2]As computed by the Commission.
[3]Bear Stearns' selection consisted of 15 companies. For the purpose of this schedule the following have been excluded for lack of comparability:

Burlington Industries, Stevens (J.P.) and West Point-Pepperell (huge size and brand diversification); Concord Fabrics, M. Lowenstein and National Spinning (record of losses during test period).

Our review above of Wundies' working capital also, we think, identifies the assumption that Wundies would merely break even on interest income as somewhat more conservative than the record justifies.

The relationship between Wundies current assets—cash, receivables and inventory, has improved significantly during this case. We use calendar years because January is the approximate low point of the cycle:

(In Millions)

Calendar Year	Beginning of Calendar Year Cash	Receivables and inventory	Total	Sales	%
1978	$2.6	$5.6	$8.2	$18.9	43.4
1979	2.6	6.8	9.4	21.5	43.7
1980	3.8	7.6	11.4	24.7	46.2

The amount of receivables and inventory required is directly related to the sales, quarter by quarter. The cash balance is the primary source for financing additions to inventory and receivables, as required, and borrowing the source to cover cash deficiencies.

The fact that Wundies starts 1980 with a significantly improved working capital ratio, represented by an additional $1.2 million of cash reserves, would point to sharp reduction in the amounts previously borrowed from Duplan. The further accumulation of working capital from pre consummation 1980 profits would reinforce that effect.

We noted above the volatility of RBD's experience. It achieved high growth rates in the period 1970-1976, suffered severely in 1977, but has made a good recovery in the last two years.[79]

In short, we do not regard RBD's estimates as overly conservative. But the reservations indicated should

[79]Its best recent four year period, 1972-1976 involved an annual compounded sales growth rate of 17.5%, but the four year rate for the 1974-1978 period, due primarily to inclusion of 1977, was 0.14%. The 9% rate in 1978 and 1979 represents a new start from a relatively low base. Nevertheless, the 1977 debacle reflected in part at least, the failure of Duplan, in which RBD was particularly involved, since it is merely a Duplan division.

not be overemphasized. RBD's forecasts essentially are predicated on continuance of improvements achieved during this case. They are based on its demonstrated strong position in its industry. And RBD's business is combined with Wundies in both valuing and operating the reorganized company.

The present record would suggest a more favorable impression of Wundies and a less favorable impression of RBD than the raw data used indicates. The consolidated earnings of both, after allowance for the parent's post-reorganization corporate expense are, we think, fairly supported by the evidence.

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VOLUME 20, NO. 5 JUNE 24, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	- 16877-91	310
Public Utility Holding Company Act	- 21607-22	355
Investment Company Act	- 11204-11	377
Litigation	- 9101-06	386

This listing covers releases issued from 6/6/80-6/12/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16878	34-16882	34-16890
34-16879	34-16883	34-16891

34-16877 Announcement of the withdrawal of rule proposals which, if adopted, would have required inclusions of a statement of management on internal accounting control in annual reports on Form 10-K filed with the Commission. Invitation for further comments. [File No. S7-839; Ongoing Comment Period]

34-16888 Adoption of a rule which amends the rules of national securities exchanges which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange in securities which are traded on those exchanges.

34-16889 Withdrawal of a proposed rule which would have eliminated all remaining exchange off-board trading restrictions on off-board principal transactions and off-board agency transactions.

35-21613 A minor technical amendment of single account in its Uniform System of Accounts which will eliminate a requirement which is clearly inappropriate.

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SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16877/June 6, 1980

ACCOUNTING SERIES
Release No. 278/June 6, 1980

STATEMENT OF MANAGEMENT ON INTERNAL ACCOUNTING CONTROL

ACTION: Withdrawal of proposed rules; invitation for further comment.

SUMMARY: The Commission today announces the withdrawal of rule proposals which, if adopted, would have required inclusion of a statement of management on internal accounting control in annual reports on Form 10-K filed with the Commission under the Securities Exchange Act of 1934 and in annual reports to security holders furnished pursuant to the proxy rules. The rule proposals would also have required that the management statement be examined and reported on by an independent accountant.

This Commission's decision to withdraw the rule proposals at this time is based, in part, on a determination that the private-sector initiatives for public reporting on internal accounting control have been significant and should be allowed to continue. The Commission believes that the action announced today will encourage further voluntary initiatives and permit public companies a maximum of flexibility in experimenting with various approaches to public reporting on internal accounting control. Further, the Commission urges similar experimentation concerning auditor association with such statements.

The Commission intends to give further consideration to rule proposals concerning management reports, and auditor association with them, based upon three years' experience. In order to supplement the information which the Commission obtained in the course of the instant rulemaking proceeding and through its analysis of reports for 1979, the Commission intends to continue a monitoring program through the spring of 1982. As a part of that program, the Commission will monitor carefully private-sector initiatives in this area, as well as issuer practice in voluntarily providing management statements on internal accounting control and in engaging independent accountants to report on such statements. Although particular emphasis will be given to management statements on systems of internal accounting control and related efforts to develop professional standards for conducting examinations of such systems, the Commission will also monitor efforts to implement the broader recommendations of the Commission on Auditors' Responsibilities concerning comprehensive management reports.

In conjunction with its monitoring effort, the Commission is again inviting public comment both on the progress being made by the private sector, as well as on what regulatory action the Commission might consider in this area. In addition, the Commission is also encouraging comments on other issues and matters discussed in this release.

Should the Commission's monitoring effort or the comments which it receives identify a specific need for further Commission action, the Commission stands ready to take whatever appropriate regulatory action may be indicated. In any event, however, a more comprehensive reconsideration of this area by the Commission can be expected after the Commission has had the benefit of its analysis of three years' experience with voluntary management reporting and auditor involvement.

DATE: June 6, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-839. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: James J. Doyle or John W. Albert, Office of the Chief Accountant (202-272-2130), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is withdrawing proposed amendments to Form 10-K (17 CFR 249.310); Regulation 14A (17 CFR 240.14a-1 et seq.) and Regulation S-K (17 CFR 229.20 et seq.) which would have required inclusion of a statement of management on internal accounting control in Forms 10-K and in annual reports to security holders

furnished pursuant to Rule 14a-3 (17 CFR 240.14a-3). The proposed amendments would also have required that the statement of management on internal accounting control be examined and reported on by an independent accountant. The amendments were proposed for public comment in Securities Exchange Act Release No. 15772, April 30, 1979 (44 FR 26702).[1]

The withdrawal of these proposals at this time should not be interpreted as a change in the Commission's views concerning the importance of effective systems of internal accounting control and of management reporting on and auditor examination of such controls. Indeed, the Commission continues to believe that such systems are essential to sound business management for reasons wholly apart from legal requirements, and that its action in proposing management statements on internal accounting control and auditor involvement with such statements should be viewed in that context.

Moreover, some assurance concerning the existence of an effective system of internal accounting control is important to investors because it is that system which provides the basis for the preparation of reliable financial statements and, more broadly, for the overall corporate system of accountability. Further, without effective internal accounting control, management — and investors — cannot be assured that unaudited financial statements and other unaudited financial information prepared and disseminated by the issuer are reliable. Finally, without effective internal accounting control, management cannot be reasonably assured that it is appropriately fulfilling its other statutory responsibilities for accountability to investors — to safeguard the company's assets from unauthorized use or disposition, to determine that the company's transactions are appropriately authorized, and to compare actual assets with the related records and act on any differences.[2]

The Commission's rule proposals concerning internal control reporting met substantial opposition. Many commentators viewed the proposals as having the effect of requiring a report on compliance with the law,[3] rather than as providing a medium for meaningful disclosure to investors. Objections were also raised concerning the costs of compliance with the proposed rules and the scope and content of the proposed management statement. Commentators also pointed to the significant voluntary and private-sector initiatives which have been undertaken in this area and urged the Commission not to preempt such efforts through the promulgation of formal legal requirements at this time. While the Commission does not agree with all of the concerns expressed by commentators, it has decided nevertheless not to proceed with rulemaking at this time based upon a determination to allow existing voluntary and private-sector initiatives for public reporting on internal accounting control — by both registrants and accountants — to continue to develop.

Thus, although the Commission is withdrawing its rulemaking proposals at this time, it continues to believe that a report containing management's assessment of the effectiveness of the issuer's system of internal accounting control would provide information important to investors, and that auditor involvement with such a report may be needed. Accordingly, the Commission intends to monitor closely the results of voluntary efforts and private-sector initiatives in this area and will consider the need to require:

1. Management statements on internal accounting control;

2. Comprehensive management reports in general; and

3. Public reporting by independent accountants on internal accounting control.

I. *BACKGROUND*

A. *Enactment of the Foreign Corrupt Practices Act*

Management reporting on internal accounting control has received a substantial amount of attention since the enactment of the accounting provisions of the Foreign Corrupt Practices Act of

[1]Hereinafter referred to as the "proposing release."

[2]See Section 13(b)(2)(B) of the Securities Exchange Act, 15 U.S.C. 78m(b)(2)(B), discussed *infra*.

[3]See id.

1977 (the "FCPA").[4] These provisions require[5] that certain issuers (a) "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer"; and (b) "devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that —

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences."

These statutory objectives of a system of internal accounting control were taken almost verbatim from Section 320.28 of *Statement on Auditing Standards No. 1* ("SAS No. 1").[6] Thus, the enactment of the FCPA has transformed these objectives from professional auditing standards into explicit statutory requirements applicable to corporate management — a change that has important implications for reporting companies.

The statutory objectives do not simply require that transactions be recorded in a manner that will permit preparation of reliable financial statements. The system of internal accounting control must also provide reasonable assurances that "transactions are executed in accordance with management's general or specific authorization"; that "transactions are recorded as necessary * * * to maintain accountability for assets"; that "access to [and use of] assets is permitted only in accordance with management's general or specific authorization"; and that "recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences." These latter goals are designed to improve the system of corporate accountability in response to evidence that some boards of directors and even corporate officers were unaware of, and hence unable to prevent, allegedly improper use of corporate assets, and that shareholders were also unaware and, thus, unable to remedy this situation.

The Senate Report concerning the FCPA reflects the fact that the accounting provisions are designed to codify a "fundamental aspect of management's stewardship responsibility" — the obligation to provide shareholders "with reasonable assurances that the business is adequately controlled."[7] In sum, as one observer has stated, Section 13(b)(2)(B) is

> aimed at management, boards of directors and audit committees. Its aim, much broader than the integrity of financial statements, is to insure a responsible level of corporate governance and an effective discharge of management's stewardship responsibility. This requires a more intensive study of internal controls and a far greater involvement by management in order to establish that a system of internal control exists, that it is well documented, that it is adequately maintained and regularly reviewed and modified to meet changing requirements.[8]

---

[4]Title I of Public Law No. 95-213 (December 19, 1977), *codified as* 15 U.S.C. 78m(b)(2). The FCPA also prohibits corporate bribery of foreign officials, foreign political parties, and candidates for foreign political office for the purpose of obtaining, retaining, or directing business to any person. *See* Section 30A of the Securities Exchange Act, 15 U.S.C. 78dd-1 and 78dd-2. *See generally* Securities Exchange Act Release No. 16593, February 21, 1980 (45 FR 12574).

[5]Section 13(b)(2) of the Securities Exchange Act, 15 U.S.C. 78m(b)(2).

[6]Section 320.28 of SAS No. 1 defines a system of accounting control as "the plan of organization and procedures and records that are concerned with the safeguarding of assets and the reliability of financial records * * *."

[7]S. Rep. No. 95-114, 95th Cong., 1st Sess. (1977), at 8.

[8]See Schiff & Sorter, "An Accountant is not a Chairman," New York Times (April 1, 1979).

Since the FCPA became effective on December 19, 1977, the Commission has taken the position that "it is important that issuers * * * review their accounting procedures, systems of internal accounting controls and business practices in order that they may take any actions necessary to comply with the requirements contained in the Act."[9] In addition, the Commission set forth its views concerning evaluations of internal accounting control systems at the time it published the rule proposals for public comment.[10]

B. *Private-Sector Initiatives*

1. *The Cohen Commission*

In 1978, the Commission on Auditors' Responsibilities, which is also known as the "Cohen Commission,"[11] issued its "Reports, Conclusions and Recommendations" concerning the appropriate responsibilities of independent auditors. The Report concluded, among other things, that "many users [of financial statements] appear to misunderstand the role of the auditor and the nature of the services that he offers."[12]

In this context, the Cohen Commission recommended "a new approach to reporting" that calls for, among other things, an annual management report to shareholders which would be designed to acknowledge management's responsibility for the representations set forth in the company's financial statements.[13] The Cohen Commission recommended that such a report include management's assurances that (a) "the information [in the financial statements] is presented in conformity with generally accepted accounting principles"; (b) "all material uncertainties have been appropriately accounted for or disclosed"; and (c) "legal counsel has been consulted regarding the accounting for or disclosure of legal matters and that those matters have been appropriately disclosed * * *."[14] The Cohen Commission also recommended that such a report "describe the work of the company's audit committee and its internal auditors," and that it contain a management statement concerning the company's system of internal accounting control.[15]

With respect to the proposed management statement concerning the company's system of internal accounting control, the Cohen Commission recommended that the report contain "management's *assessment* of the company's accounting system and controls over it, including a description of the inherent limitations of control systems and a description of the company's response to material weaknesses identified by the independent auditor."[16] The rationale for such a statement was stated as follows:

Footnote 8 continued

In contrast, as the AICPA's Special Advisory Committee on Internal Accounting Control pointed out, the objectives set forth in Section 320.28 of SAS No. 1.

were originally developed to provide broad professional guidance on the independent auditor's study and evaluation of internal accounting control, which is made for the *limited purpose* of serving as a basis for setting the scope of the examination of financial statements. The auditor tests only those controls on which he intends to reply.

"Report of the Special Advisory Committee on Internal Accounting Control," April 1979, issued by the American Institute of Certified Public Accountants, at 8 (emphasis added).

[9]See Securities Exchange Act Release No. 14478 (Feb. 16, 1978); 43 FR 7752 (Feb. 24, 1978).

[10]See Securities Exchange Act Release No. 15772, *supra*, note 1.

[11]The reference is to the late Manuel F. Cohen, a former Chairman of the Commission, who served as Chairman of the Commission on Auditors' Responsibilities. The Cohen Commission was an independent commission established by the AICPA to develop conclusions and recommendations regarding the appropriate responsibilities of independent auditors. Its other members included public accountants, an academic, a financial analyst, and an executive officer of a registrant.

[12]The Commission on Auditor's Responsibilities: Report, Conclusions and Recommendations (1978) at xii.

[13]*Id.* at 75-76.

[14]*Id.* at 76.

[15]*Id.* at 76-77.

[16]*Id.* at 76-77 (emphasis added).

> Users of financial information have a legitimate interest in the *condition* of the [system of internal accounting] controls and management's response to the suggestions of the auditor for corrections of weaknesses. The [Cohen] Commission believes those matters should be disclosed [to shareholders] in the proposed report by management.[17]

The Cohen Commission also recommended an expansion of the audit function through increased involvement in a company's financial reporting process. As a major step in that direction, to be implemented "as soon as possible," the Cohen Commission recommended an expansion of the auditor's "study and evaluation of the controls over the accounting system [in order to permit the auditor] to form a conclusion on the functioning of the internal accounting control system."[18] In this context, the Cohen Commission specifically recommended that "the auditor's study and evaluation of the internal accounting control system should be expanded beyond what is now required by generally accepted auditing standards * * *" to include review and testing of the "entire accounting control system * * * [in order] to enable the auditor to reach a conclusion on whether controls over each significant part of the accounting system provide reasonable, though not absolute, assurance that the system is free of material weaknesses."[19]

The Cohen Commission declared its belief that "the condition of the controls over the accounting system and management's response to the suggestions of the auditors for correction of weaknesses," are matters that "should be disclosed in the proposed report by management."[20] In this context, the Cohen Commission concluded, "[i]t is consistent with the normal responsibilities for financial reporting that primary reporting responsibility be assigned to management with a report by the auditor on management's representations."[21]

The Cohen Commission also stated its view that the auditor "should report on whether he agrees with management's description of the company's accounting controls and should describe material uncorrected weaknesses not disclosed in that report."[22] Illustrative examples of the auditor's report contemplated by the Cohen Commission include the following: "Based on our study and evaluation of the accounting system and related controls," we: (a) "concur with the description of the system and controls in the report by management"; or (b) "believe the system and controls have the following uncorrected material weaknesses not described in the report by management * * *"; or (c) have certain "other disagreements with the description of the system and controls in the report by management * * *."[23] In addition, the Cohen Commission suggested that the auditor's report might include certain other explanatory information in addition to that set forth above.[24]

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[17] *Id.* at 62 (emphasis added). As part of its report, the Cohen Commission set forth an illustration of a report by management that would be consistent with its recommendations, but added a *caveat* that the example was not intended to prescribe "the precise wording that management should use":

> The company maintains an accounting system and related controls to provide reasonable assurance that assets are safeguarded against loss from unauthorized use or disposition and that financial records are reliable for preparing financial statements and maintaining accountability for assets. There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. The concept of reasonable assurance is based on the recognition that the evaluation of those factors requires estimates and judgments by management. *The company's system provides such reasonable assurance* * * *.

Id. at 79 (emphasis added).

[18] *Id* at 60.

[19] *Id.* at 61.

[20] *Id.* at 62.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 78.

[24] *Id.*

2. *The Financial Executives Institute*

In June of 1978, the Chairman of the Financial Executives Institute ("FEI") wrote a memorandum to members of the FEI which informed them that the FEI Committee on Corporate Reporting had endorsed the concept of a management report. The memorandum explained:

> We believe that such "reports" will further public understanding of the respective roles of management and the outside auditor, and that the "report" should emphasize that the primary responsibility for financial statements and representations related thereto rests with management. * * * Such a "report" would also provide a convenient vehicle for management to discuss the company's policies, internal accounting controls, and other matters which bear on the quality of financial information.

The Chairman of the FEI strongly urged "all FEI members to take leadership roles in encouraging inclusion of 'management reports' in your company's next annual report." His memorandum concluded:

> Widespread implementation of this management report concept, tailored to fit individual company circumstances, will represent a significant step in improved communication to users of financial statements as to the nature of financial information and the processes which surround its preparation and presentation.

The Chairman of the FEI also sent members a set of "Guidelines for Preparation of a Statement of Management Responsibility for Financial Statements," which set forth several areas that management should consider in preparing a management report. These Guidelines agreed with the conclusion of the Cohen Commission that management reports should include statements concerning management's responsibility for the "preparation and presentation of the financial statements in conformity with general accepted accounting principles * * *" and for "maintaining a system of internal accounting controls designed to provide reasonable assurances as to the integrity of financial records and the protection of assets." In addition, the FEI's Chairman stated that consideration should be given to including "management's *assessment* of the effectiveness of the internal accounting control system" in such a management report.[25]

3. *The Special Advisory Committee on Reports by Management*

In response to the recommendations of the Cohen Commission, the American Institute of Certified Public Accountants ("AICPA") formed a Special Advisory Committee to consider the subject of reports by management. The Report of the AICPA Special Advisory Committee on Reports by Management concurred in the Cohen Commission's basic conclusion that annual reports should include a report by management on a company's financial statements.[26] The AICPA Report explains that such a report would provide a means of informing financial statement users "of management's responsibility for those statements, the various means by which it is fulfilled, and the roles of others with respect to those statements."[27]

The AICPA Report proposed that management's report should reflect that it "is responsible for all the information, whether audited or unaudited, in the annual report * * *," and that this responsibility "includes making judgments and estimates and selecting accounting principles that are in accordance with generally accepted accounting principles appropriate in the circumstances."[28] The AICPA Report also recommended that management's report should describe "the composition and duties of the audit committee," the role of the independent auditor, and, if there has been a change in auditors, "whether the decision to change was recommended or approved by the audit committee."[29]

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[25]Emphasis added. The FEI Guidelines also indicated that "members should consult legal counsel regarding the provisions of the Foreign Corrupt Practices Act of 1977."

[26]Conclusions and Recommendations of the Special Advisory Committee on Reports by Management, AICPA, 1979, at 2 (hereinafter referred to as the "AICPA Report").

[27]*Id.* at 1.

[28]*Id.*

[29]*Id.*

READEX FICHE

In addition, the AICPA Report declared that management's report "should include a *representation* on internal accounting control."[30] It also suggested the type of "representation" that might be appropriate:

> Because of cost-benefit considerations as well as the inherent limitations of the effectiveness of internal accounting control, management's representation should be phrased in terms of reasonable, rather than absolute, assurance that the objectives of internal accounting control are met.[31]

Appendix C to the Advisory Committee Report presents several examples of management statements that have been published in recent annual reports. These examples were intended "to illustrate the [Advisory Committee's] recommendations and to give management general guidance for the development of * * *" management reports.[32] Seven of these illustrations expressed management's opinion that the company's system of internal accounting control "provides reasonable assurances" that certain objectives of such a system are met.[33] Six of the examples state that the system of internal control was "designed" to provide such "reasonable assurances."[34]

4. *Voluntary Inclusion of Management Reports On Internal Accounting Control in Annual Reports to Shareholders*

A number of the comments submitted in response to the proposing release supported the concept of a management report. In this context, many companies indicated that they had voluntarily included a management assessment of the effectiveness of their internal accounting control system in their annual reports for 1978.

For example, 65 companies among those that submitted comments in response to the proposing release indicated that they had included a management report in their annual report to shareholders.[35] In addition, the FEI conducted a review of 410 annual reports for 1978 which found that 106 companies had included a management statement in their annual reports, and that 100 of these statements had discussed management's responsibility for internal accounting control.[36]

5. *The Special Advisory Committee on Internal Accounting Control*

In 1979, the AICPA Special Advisory Committee on Internal Accounting Control issued its Final Report.[37] That Committee was formed to develop criteria to aid management in its evaluation of its system of internal accounting control.

As discussed in some detail below, the Committee Report emphasized the importance of management's consideration of the overall control environment to its design and assessment of a system of internal accounting control and, while cautioning that it was impossible to prescribe detailed rules of general applicability, provided useful guidance to issuers on possible methods and

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[30] *Id.* (emphasis added).

[31] *Id.*

[32] *Id.* at 3.

[33] These examples had been published in the annual reports of Dun & Bradstreet Companies, Inc., Cobe Laboratories, Inc., Eaton Corporation, H. J. Heinz Co., Interlake, Inc., Manufacturers Hanover Corporation, and Safeway Stores, Inc.

[34] These reports were set forth by American Telephone and Telegraph Company, Clark Equipment Company, General Electric Company, Kollmorgen Corporation, McGraw-Edison Company and Owens-Illinois, Inc.

[35] In this regard, the comment letter submitted by Borg-Warner Corporation stated:

> [O]ur [management] statement indicates that the company's comprehensive system of internal accounting controls provides reasonable assurance that assets are protected from improper use, that material errors are prevented or detected within a timely period, and that records are sufficient to produce reliable financial reports.

[36] Preliminary Commission analysis of reporting for 1979 indicates that the trend towards such reports is continuing.

[37] Report of the Special Advisory Committee on Internal Accounting Control, AICPA. 1979.

procedures for evaluating internal accounting control systems. The Commission views the Committee's work as a meaningful contribution towards enhancing the ability of issuers to design, implement, review, and maintain systems of internal accounting control fully appropriate to their circumstances.

6. *The Auditing Standards Board*

Finally, at the time the Commission issued the proposing release, a task force of the AICPA's Auditing Standards Board was considering the general issue of public reporting by auditors on internal accounting control. Subsequently, the Auditing Standards Board issued, for public comment, a proposed Statement on Auditing Standards on "Reporting on Internal Accounting Control."[38] The proposed Statement on Auditing Standards would provide standards for an auditor's examination of, and public report on, an issuer's overall system of internal accounting control.

The Commission notes that, under the proposed Statement on Auditing Standards, the auditor's opinion on the system of internal accounting control would not be limited to controls relating to preparation of financial statements. Rather, it would also extend to the corporate accountability objectives of internal accounting control — safeguarding of assets, authorization of transactions, and comparison of actual assets with related records and acting upon any differences. However, it should be emphasized that such an opinion will not necessarily indicate whether an issuer is in compliance with the internal accounting control provisions of the FCPA since, for purposes of limiting the costs of the examination, the auditor's opinion would not extend to the sufficiency of accounting controls relating to the safeguarding of assets and authorization of transactions which would not be material.

C. *The Commission's Rule Proposals*

Based upon the enactment of the FCPA and the events which gave rise to that legislation, as well as on the broad-based private-sector recommendations for disclosure of management assessments of systems of internal accounting control, and for auditor association with such disclosure, the Commission determined that rules requiring information about the effectiveness of an issuer's system of internal accounting control and auditor association with it might be necessary to enable investors to better evaluate management's performance of its stewardship responsibilities and the reliability of interim financial statements and other unaudited financial information generated from the accounting system. Therefore, on April 30, 1979, the Commission issued for public comment the rule proposals contained in its proposing release and discussed herein.

In the proposing release, the Commission emphasized that the proposed rules did not involve matters other than internal accounting control that might be included in a management report, and that the Commission intended to follow closely the further initiatives of the private sector and consider the need to propose additional rules relating to such other matters. In the meantime, the Commission encouraged issuers to provide meaningful disclosure regarding management responsibilities generally.

The proposals evoked substantial public response. Over 950 individuals and organizations submitted letters in response to the Commission's request for public comments. After careful analysis of the comments, the Commission has determined at this time to withdraw the rule proposals for the reasons discussed below.

II. *MANAGEMENT STATEMENTS CONCERNING INTERNAL ACCOUNTING CONTROL*

Proposed Item 7(a) of Regulation S-K would have required a statement of management's opinion as to whether, as of any date after December 15, 1979 and prior to December 16, 1980 for which an audited balance sheet is required, and for periods ending after December 15, 1980 for which audited statements of income are required, the systems of internal accounting control of the registrant and its subsidiaries provided reasonable assurances that

1. transactions were executed in accordance with management's general or specific authorization;

2. transactions were recorded as necessary (a) to permit preparation of financial statements in

[38]Proposed Statement on Auditing Standards, "Reporting on Internal Accounting Control," AICPA, December 31, 1979. The comment period ended April 15, 1980.

conformity with generally accepted accounting principles (or other applicable criteria), and (b) to maintain accountability for assets;

3. access to assets was permitted only in accordance with management's general or specific authorization; and

4. the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

Probably the most controversial aspect of the proposals was the correlation of proposed Item 7(a) of Regulation S-K and the internal accounting control provisions of the FCPA. As a result of that correlation, many commentators viewed the proposals as essentially a requirement for a statement of compliance with the law. Many of these commentators, therefore, suggested that the rule proposals were apparently intended not to provide useful information to shareholders, but rather to establish the existence of violations of the FCPA for enforcement purposes and to influence corporate conduct; questioned whether the proposals violated Constitutional protections against self-incrimination; and contended that they were beyond the Commission's statutory authority.[39]

On the other hand, many commentators supported the concept of public reporting on internal accounting control. Many of these commentators endorsed the recommendations of the Cohen Commission and the FEI and the voluntary initiatives by many companies to provide management reports. Nonetheless, most of these commentators also recommended that the Commission not adopt the proposed rules, at least at the present time. These recommendations were based, not only on the perceived legal compliance aspects of the proposals, but also on the belief that the private-sector initiatives for voluntary reporting have been substantial and should be allowed to continue to develop.[40]

In addition, approximately 100 commentators suggested that a comprehensive management report — such as that recommended by the Cohen Commission, the FEI, and the AICPA's Special Advisory Committee on Reports by Management — which includes, but is not limited to, an assessment of the effectiveness of the issuer's system of internal accounting control would contain more of the information needed by financial statement users than would the limited statement of management on internal accounting control proposed by the Commission. Many of those commentators also expressed their belief that an assessment by management of the effectiveness of internal accounting control would be more informative in that broader context.

The Commission continues to believe that information about the effectiveness of an issuer's system of internal accounting control would enable investors to better evaluate the reliability of interim financial statements and other unaudited financial information, as well as management's performance of its responsibilities to control the assets and transactions of the business. Additionally, it recognizes the ongoing voluntary private-sector initiatives that have been undertaken by registrants to evaluate and document their systems of internal accounting control so as to be in a position to provide such information, and it believes that voluntary development by issuers of management reports which include such information would be preferable to a Commission requirement.

Accordingly, the Commission intends to monitor the results of voluntary efforts to provide such reports. The Commission will evaluate on an ongoing basis the progress that has been made in reports filed in 1980 through 1982 and will consider whether it is necessary or desirable to require statements of management on internal accounting control and to propose more comprehensive management reports.

The Commission's determination in that regard will depend not only upon the extent to which issuers voluntarily provide such management statements or

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[39]Approximately 550 commentators viewed the Commission's rule proposals as an attempt to require management to report on its compliance with the FCPA as distinguished from a medium for meaningful disclosure to investors. In addition, approximately 225 commentators expressed the view that the Congress neither required nor intended that such a report be provided.

[40]Approximately 260 commentators suggested that there have been significant voluntary initiatives with respect to management reporting, and that they should be allowed to continue with a maximum of flexibility.

management reports, but also on the appropriateness and usefulness of the information included and the procedures used to develop such reports. As discussed above, in determining to withdraw the instant rule proposals at this time, the Commission has been influenced by the significant constructive attention which the private sector has given to both management reports and related evaluations of internal accounting control. In addition, many commentators on the Commission's rule proposals addressed the content of a management report, as well as the procedures necessary to maintain an effective system of internal accounting control, and urged that the Commission not preempt private-sector initiatives in this area. In an effort to further encourage such voluntary initiatives, while permitting public companies a maximum of flexibility in experimenting with various approaches to public reporting on internal accounting control, the Commission believes that it would be helpful to take this opportunity to provide some guidance regarding these developing matters.

A. *Evaluations of Internal Accounting Control*

1. *Conceptual Elements*[41]

In the proposing release, the Commission stated its belief that specific methods of approaching and implementing evaluations of systems of internal accounting control will vary from company to company. Accordingly, the proposed rules did not specify the method of or procedures to be performed in an evaluation of internal accounting control.

The Commission continues to believe that the determination of whether a system of internal accounting control provides reasonable assurances that the broad objectives of internal accounting control are achieved generally will involve the following:

•First, consideration of the overall control environment;

•Second, translation of the broad objectives of internal accounting control into specific control objectives applicable to the particular business, organizational, and other characteristics of the individual company;

•Third, consideration of the specific control procedures and individual environmental factors which should contribute to achievement of the specific control objectives;

•Fourth, monitoring of control procedures and consideration of whether they are functioning as intended; and

•Finally, consideration of the benefits (consisting of reductions in the risk of failing to achieve the objectives) and costs of additional or alternative controls.

The first element of such a determination might be characterized as evaluation of the overall control environment. The Commission recognizes that such evaluations depend upon a careful exercise of management's judgment, generally involving consideration of matters such as the organizational structure — including the role of the board of directors; communication of corporate procedures, policies, and related codes of conduct; assignment of authority and responsibility; competence and integrity of personnel; accountability for performance and for compliance with policies and procedures; and the objectivity and effectiveness of the internal audit function. The role of the board of

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[41]The Commission believes that the conceptual elements discussed herein also are reflected in the Report of the AICPA's Special Advisory Committee on Internal Accounting Control (*see* note 37, *supra*) as well as in virtually all of the other private publications intended to give guidance on methods of and procedures for evaluating internal accounting control of which it is aware. The Commission believes that the Report of the Special Advisory Committee should be very useful to management by providing a framework which will be helpful in establishing an approach, or appraising the effectiveness of an existing approach, to evaluate whether the broad objectives of internal accounting control are achieved. However, the Special Advisory Committee's Report does not represent a manual that can be followed by companies in evaluating their accounting control systems. This was recognized by the Special Advisory Committee (at p. 8 of the Report):

[T]he approach to an evaluation suggested in this report is not the only way an evaluation can be performed, and the criteria included. . .are not and cannot be detailed rules. However, the committee believes that the recommendations in this report should help management in its continuing evaluation and monitoring of internal accounting control.

directors in overseeing the establishment and maintenance of a strong control environment, and in overseeing the procedures for evaluating a system of internal accounting control, may be particularly important. Similarly, the Commission has repeatedly stressed the importance of audit committees to enable boards of directors to better fulfill their oversight responsibilities with respect to an issuer's accounting, financial reporting, and control obligations.[42]

A strong control environment will not, in and of itself, provide a basis for reasonable assurance that the broad objectives of internal accounting control are achieved. However, the Commission agrees with the AICPA's Special Advisory Committee on Internal Accounting Control that

> [i]t is unlikely that management can have reasonable assurance that the broad objectives of internal accounting control are being met unless the company has an environment that establishes an appropriate level of control consciousness.[43]

For that reason, an evaluation of the overall control environment may be a particularly important step in evaluating a system of internal accounting control.

The second and third conceptual elements of an evaluation of a system of internal accounting control might be characterized as review of the system. Evaluation of the effectiveness of the design of control procedures in place should relate the broad objectives of internal accounting control to the particular circumstances of a company. The AICPA's Special Advisory Committee on Internal Accounting Control found a transaction cycle approach a convenient way to develop illustrative specific control objectives and examples of specific control procedures and techniques.[44] Some companies might use a transaction cycle approach in reviewing the system; others might organize a review of the system by functional area within the organization or use some other approach or combination of approaches. Regardless of the way in which the review of the system is organized, however, the specific control objectives which are appropriate for the company, and the specific control procedures and individual environmental factors which should contribute to achievement of those specific objectives, should be identified and considered.

The fourth conceptual element of an evaluation of a system of internal accounting control might be characterized as monitoring compliance with control procedures. Management should have reasonable assurance not only that the system of internal accounting control is appropriately designed, but also that it is functioning as designed. Such a monitoring system is itself an integral part of the overall internal accounting control system of the company.

In addition, employee knowledge that adherence to company policies and procedures will be monitored is an important element of the control environment. Monitoring compliance with control procedures may take place through observation and supervision, as well as through the testing of controls in effect. An objective, effective internal audit function can play an important role in monitoring compliance.

The final conceptual element of an evaluation of a system of internal accounting control might be characterized as determination of reasonable assurance. Determining whether reasonable assurance of achievement of control objectives is provided often will depend in part upon information estimates and judgments by management, a process which may depend in large measure on adequate documentation of the system of internal accounting control and of management reviews of it.

2. *Documentation*

The Commission continues to believe — as set forth in the proposing release — that appropriate documentation is important to an evaluation of internal accounting control. However, a number of commentators interpreted the Commission's discussion of documentation as effectively prescribing minimum documentation standards. That was not, and is not, the Commission's intent. The appropriate scope and nature of documentation must be determined in the context of the

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[42]See Securities Exchange Act Release No. 14970 (43 FR 31945), July 18, 1978, which includes a discussion of previous Commission actions regarding audit committees.

[43]Report of the Special Advisory Committee on Internal Accounting Control, AICPA, 1979, p. 8.

[44]See Report of the Special Advisory Committee on Internal Accounting Control, AICPA, 1979, p. 12.

circumstances of each issuer. Those determinations are themselves among the cost-benefit judgments involved in the concept of reasonable assurance.

The overall control environment often will be enhanced by written policies and procedures, formalized reporting responsibilities within the organization, and written descriptions of authority and responsibility. Documentation of specific control objectives and of the control elements in place which should contribute to achieving those objectives may often be necessary to perform an effective review of a system of internal accounting control; documentation of tests of controls in effect may be necessary to determine that the tests were appropriately planned and performed, that the results of the tests were appropriately considered, and that appropriate action was taken by management in response to that consideration.

In addition, because of the judgmental aspects of cost-benefit analyses, documentation of the bases for management's conclusions with respect to reasonable assurance considerations may be particularly important in some instances. As the Commission has repeatedly recognized, no system of internal accounting control can be made fail-safe; the test of "reasonable assurance" does not call for absolute assurance. Nevertheless, management also must recognize that it is typically only after the fact of system failure or circumvention that the question of whether the system provided reasonable assurance will most likely come under scrutiny, and that management would be in the best position to have the business, accounting, and legal judgments previously made by itself and its professional advisors afforded some presumption of regularity and reasonableness if the reasoning of its cost-benefit analysis was supported by full information as evidenced by appropriate and persuasive documentation not only of the system of internal accounting control, but also of management's ongoing review and evaluation of it.

3. *Performance of Ongoing Evaluation Procedures*

Because of the interaction of numerous factors both within and outside the organization which affect the choice of control procedures necessary to obtain reasonable assurance that the broad objectives of internal accounting control have been achieved, control systems are necessarily dynamic. As a result of this dynamic nature, as well as the possibilities that controls may be circumvented or overridden and that compliance with control procedures may deteriorate, evaluation of any system of internal accounting control requires ongoing review of the system and monitoring compliance with control procedures.

The Commission recognizes that many registrants may conclude that maintenance of review and monitoring procedures which will be sufficient to obtain reasonable assurance that the objectives of internal accounting control are achieved does not require performance of all such procedures at all locations in each reporting period. Because of the dynamic nature of internal accounting control and the resultant continuing nature of the evaluation process, the extent and timing of the review and monitoring of a system of internal accounting control are among the cost-benefit judgments involved in the concept of reasonable assurance by which an overall system of internal accounting control must be assessed.

B. *Content of Management Statements*

1. *Assessment of the Effectiveness of Internal Accounting Control*

The Commission's rule proposal to require a management statement on internal accounting control was based on the premise — articulated by the Cohen Commission, the FEI, and the AICPA's Special Advisory Committee on Reports by Management — that a management report should contain management's *assessment* of the effectiveness of its system of internal accounting control. The rule proposal reflected the Commission's agreement with the conclusion of the Cohen Commission and the FEI that such an assessment is likely to provide useful information to users of financial information. The Commission continues to believe that it would be difficult to conclude that a management statement provides useful information about a company's system of internal accounting control in the absence of a management's opinion on the system's effectiveness.

In proposing to require a statement of management on internal accounting control, the Commission emphasized that the management statement which would be required would extend to reasonable assurances of achievement of the broad objectives of internal accounting control, witout regard to traditional notions of materiality. Many

commentators, including many who expressed general support for a required statement of management on internal accounting control, suggested that the disclosure value of the management statement would be enhanced if its focus were limited to material matters. They contended that the requirements of the FCPA — which contains no materiality limitation — should not dictate the scope of a disclosure rule; rather, they suggested that the management statement should be limited to material information since disclosure of nonmaterial weaknesses in internal accounting control could be confusing and possibly misleading.

The Commission wishes to reemphasize the fact that the internal accounting control provisions of the PCPA are not limited by a standard of materiality. Those provisions require the design and maintenance of a system of internal accounting control which provides reasonable assurance of achievement of the objectives of internal accounting control. However, the Commission does recognize that certain weaknesses in internal accounting control are more significant than others. Therefore, the Commission believes that, for disclosure purposes, the focus of such a management statement should encompass, at a minimum, the adequacy of the issuer's controls over matters about which shareholders reasonably should be informed.[45]

2. *The Concept of Reasonable Assurance*

A number of commentators apparently assumed that the proposed rules would have required an opinion by management as to whether internal accounting controls were perfect or "fail-safe." As noted above, such a standard of absolute assurance is not required by the FCPA and was not intended by the rule proposal. Rather, the criterion of reasonable assurance contemplates that controls will be devised and maintained to the extent that their benefits (consisting of reductions in the risks of not achieving the objectives of internal accounting control) exceed their costs.

As discussed in the proposing release, the rule proposals were based upon a criterion of "reasonable assurance":

> The concept of reasonable, as opposed to absolute, assurance is incorporated in the proposed rules in recognition that it is not in the interest of shareholders for the cost of internal accounting control to exceed the benefits thereof. Such benefits, and in many cases such costs, are not likely to be precisely quantifiable. Therefore, many decisions on reasonable assurance will necessarily depend in part on estimates and judgments by management which are reasonable under the circumstances.[46]

As the Commission also recognized, decisions on reasonable assurance will necessarily depend in part on estimates and the exercise of informed judgment by management.[47] Consideration of the benefits of internal accounting control generally will involve some degree of estimation of the possible effects and the likelihood of occurrence of various future conditions and events. In addition, the benefits to be considered often may include not only quantitative benefits, such as reduction in exposure to theft of assets, but also qualitative benefits, such as the preservation of the reputation of the company and its management.

For example, the benefits to be considered in connection with evaluating controls intended to prevent bribes and other illegal or questionable payments cannot be measured solely by the amounts of such payments which might be prevented. Rather, the relationship between illegal payments and other questionable activities — whether or not the amounts are significant—and the

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[45]This is not, of course, to say that existing reporting requirements under the federal securities laws might not call for mandatory disclosure of internal accounting control difficulties in certain circumstances. For example, under appropriate circumstances, in the course of making required disclosure concerning significant and unexpected occurrences — such as an extraordinary end of year loss or inventory adjustment — the issuer should consider the need to discuss the state of its internal accounting control system in describing and explaining the nature and causes of the otherwise disclosable event. *See also* note 48, *infra*.

[46]Securities Exchange Act Release No. 15772 at 26704, 44 FR.

[47]See discussion of documentation, *supra*.

reputation of the company and the integrity of its management is a significant benefit to be considered.[48]

The Commission recognizes that placing a value on such qualitative factors will almost invariably involve judgments by management. The Commission also believes that it may be appropriate for management statements on internal accounting control to discuss and explain the concept of "reasonable assurance" and its limitations in the context of communicating management's assessment of its system of internal accounting control.

3. *Objectives of Internal Accounting Control and Control Procedures and Techniques*

The proposed management statement on internal accounting control was based upon the broad objectives stated in the FCPA. In this regard, the Commission notes that the Cohen Commission, the AICPA's Special Advisory Committee on Reports by Management, the AICPA's Special Advisory Committee on Internal Accounting Control, and a substantial majority of private publications on internal accounting control, and of voluntary management reports which discuss the objectives of internal accounting control, all paraphrase the same broad objectives which were adopted in the FCPA — often in terms of authorization of transactions, safeguarding of assets, and accounting or preparation of reliable financial statements. Similarly, the Commission encourages registrants to describe the objectives of internal accounting control in terms they believe will be most informative to users of their management statements. It should, however, be emphasized that each of the objectives of internal accounting control is equally important under the FCPA, and that the Commission believes that each should be addressed in management statements.

Control procedures and techniques which will provide reasonable assurances of achievement of the broad objectives of internal accounting control must be determined in the context of the circumstances of each issuer. In this connection, it is important to emphasize that the scope of internal accounting control cannot be defined in terms of types of control procedures or in terms of organizational or functional departments. Factors within an organization which affect the achievement of the objectives of internal accounting control should be considered in evaluating the effectiveness of a system of internal accounting control and may often include factors which also are concerned with what the authoritative auditing literature defines as "administrative control."[49]

The AICPA's Special Advisory Committee on Internal Accounting Control emphasized the importance of factors in addition to specific internal accounting control procedures:

> Internal accounting controls cannot be evaluated in a vacuum. Several factors have a significant impact on the selection and effectiveness of a company's accounting control procedures and techniques.
>
> The committee has found the term "internal accounting control environment" to be a convenient way to describe these factors. Some are clearly visible, like a formal corporate conduct policy statement or an internal audit function. Some are intangible, like the competence and integrity of personnel. Some, like organizational structure and the way in which management communicates, enforces and reinforces policy, vary so widely among companies that they can be contrasted more easily than they can be compared.
>
> Although it is difficult to measure the significance of each factor, it is generally possible to make an overall evaluation. The committee believes that an overall evaluation of a company's internal accounting control environment is a necessary prelude to the evaluation of control procedures and techniques.
>
> A poor control environment would make some accounting controls inoperative for all intents and purposes because, for example,

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[48]See *generally* Report of the Securities and Exchange Commission on Questionable and Illegal Payments and Practices Submitted to the Committee on Banking, Housing and Urban Affairs, United States Senate (May 12, 1976).

[49]See Statement on Auditing Standards No. 1, AICPA, Section 320.27, for the definition of "administrative control." That Statement also recognizes, in Section 320.29, that administrative controls and accounting controls are not mutually exclusive.

individuals would hesitate to challenge a management override of a specific control procedure. On the other hand, a strong control environment, for example, one with tight budgetary controls and an effective internal audit function, can significantly complement specific accounting control procedures and techniques.[50]

The Commission concurs with the foregoing statements of the Special Advisory Committee regarding the importance of the control environment to the effectiveness of a system of internal accounting control. The Commission also agrees that, in addition to the overall importance of the control environment, individual environmental factors, such as strong budgetary controls and an effective, objective internal audit function, can contribute directly to achievement of internal accounting control objectives and should be considered in evaluating whether reasonable assurances of achievement of such objectives are provided.

4. *Period Covered by Management Statement*

The proposed rules would have required that, for periods ending after December 15, 1980 for which audited statements of income are required, the management opinion extend to conditions which existed throughout the period. This parallels the requirement under the FCPA to "devise and *maintain*" an effective system of internal accounting control (emphasis added).

Many commentators, including those who expressed general support for a required statement of management on internal accounting control, recommended that the management opinion be limited to conditions existing as of a point in time, such as the date of the most recent balance sheet or the date the report containing the management statement is issued or filed. They questioned the disclosure value of weaknesses in internal accounting control which had been corrected, maintaining that disclosure of corrected weaknesses would be confusing and possibly misleading.

It is important to distinguish the merits of these comments, as they relate to disclosure, from the necessity to maintain an effective system of internal accounting control. In order both to comply with the FCPA, and as a matter of sound management, effective internal accounting control is essential on an ongoing basis. In addition, ongoing review of the system of internal accounting control and monitoring compliance with control procedures are necessary to the maintenance of an effective system of internal accounting control as well as to provide an adequate basis for any management statement about such effectiveness — whether that statement relates to conditions existing as of a point in time or during a period. Indeed, an integral part of any system of internal accounting control is the capacity and determination to monitor, evaluate, and assess the system on an ongoing basis as well as to take appropriate action concerning it where indicated.

The Commission recognizes, however, that some issuers may prefer, at least initially, to report only as of a point in time. For disclosure purposes, the Commission believes that there is value in providing management statements which address the effectiveness of internal accounting control systems only as of a recent date. Such reporting, moreover, would not share the disincentive to prompt correction of internal accounting control weaknesses, or to making necessary control improvements which come to light as a result of an issuer's ongoing review and monitoring of its control system, that many commentators argued would be presented by the Commission's proposed requirement for a management statement which covered the entire period and discussed all internal accounting control weaknesses which existed during the period, including corrected ones.[51]

5. *Other Matters to be Discussed in a Management Report*

As noted above, a number of commentators supported the concept of a comprehensive management report—such as that recommended by the Cohen Commission, the FEI, and the AICPA's Special Advisory Committee on Reports by Management — which includes but is not limited to, an assessment of the effectiveness of the system of internal accounting control. They suggested that a

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[50]Report of the Special Advisory Committee on Internal Accounting Control, AICPA, 1979, p. 12. *See generally* pp. 12-19 for a discussion of the control environment.

[51]*See also* note 45, *supra*.

comprehensive management report would contain more of the information needed by financial statement users than would the limited statement of management on internal accounting control proposed by the Commission, and that an assessment of the effectiveness of internal accounting control would be more informative when discussed in this broader context.

A major reason for the Commission's determination not to require a statement of management on internal accounting control at this time is to promote innovation and experimentation in disclosure — trends which the Commission has encouraged in various other areas and with respect to disclosure in general. The Commission encourages registrants to provide management reports which include, in addition to an assessment of the effectiveness of internal accounting control, whatever information and discussion of related matters which they believe will make such an assessment most informative.

The Commission notes that the recommendations of the Cohen Commission, the FEI, and the AICPA's Special Advisory Committee on Reports by Management for the content of a management report include, in addition to an assessment of the effectiveness of internal accounting control, many matters which may be very directly related to such effectiveness, including:

•Description of management's responsibility for preparation of financial statements and other reported financial information;

•Description of the work of the company's audit committee of the board of directors;

•Description of the work of the company's internal auditors; and

•Description of codes of conduct and assessment of compliance therewith.

Additionally, published management reports have included discussions of other related matters, such as:

•The importance of other elements of the control environment, including the organizational structure, communication of corporate policies and procedures and authority and responsibility, the competence and training of personnel, and accountability for performance and for compliance with policies and procedures;

•The general approach applied in reviewing and evaluating internal accounting controls; and

•The extent to which internal control review and monitoring procedures are performed.

In addition, the Commission encourages registrants to provide comprehensive management reports concerning management responsibilities for accounting, control and financial reporting in general. In the course of such reports, in addition to explaining the respective responsibilities of management and the corporation's independent public accountant in relation to the issuer's financial statements, management should also consider discussing the role which independent accountants play or have played in the internal accounting control system of the issuer.

III. *INVOLVEMENT OF INDEPENDENT ACCOUNTANTS*

Proposed Item 7(b) of Regulation S-K would have required that the public statements of management on internal accounting control as of dates after December 15, 1979 and prior to December 16, 1980 include a description of any "material weaknesses" in internal accounting control which had been communicated by the independent accountants of the registrant or its subsidiaries and which had not been corrected and a statement of the reasons why they had not been corrected. Under present auditing standards,[52] the responsibility of an independent public accountant for reporting on the results of the review and evaluation of internal accounting control performed in connection with an examination of financial statements is limited to reporting to management and the board of directors or audit committee "material weaknesses" which came to the accountant's attention.[53]

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[52]See Statement on Auditing Standards No. 20, AICPA.

[53]A "material weakness" is defined in Statement on Auditing Standards No. 1, AICPA, Section 320.68, as

[a] condition in which the auditor believes the prescribed procedures or the degree of compliance with them does not provide reasonable assurance that errors or irregularities in amounts that would be material in the financial statements being audited would be prevented or detected within a timely period by employees in the normal course of performing their assigned functions.

This approach was to be required only for the initial year since it was also proposed that an examination and public report by an independent public accountant of the statement of management on internal accounting control would be required for periods ending after December 15, 1980. That latter proposal is, of course, also being withdrawn by the Commission at this time.

The Commission's decision to withdraw, at this time, the proposals for such management descriptions of auditor-communicated material weaknesses and for an examination and public report by an independent public accountant of the statement of management on internal accounting control is based in part on the extent of auditors' present involvement with internal accounting control in connection with audits of financial statements — through both their responsibilities under Statement on Auditing Standards No. 20 to report "material weaknesses" in internal accounting control and their responsibilities under Statement on Auditing Standards No. 8[54] to read other information in a document containing audited financial statements and to inform their clients of any such information which they believe is a material inconsistency or material misstatement of fact — and on the Commission's expectation of enhanced voluntary or private-sector initiated auditor association with internal accounting control in the near future.

A. *Existing Auditor Involvement*

SAS No. 20 presently requires independent public accountants to communicate to management and any audit committee "material weaknesses" in the issuer's internal accounting control system which come to their attention in the course of their audit of the issuers' financial statements. Proposed Item 7(b) would have required management to describe publicly such material weaknesses which were communicated to it and which remained uncorrected.

Moreover, under SAS No. 8, auditors are presently required to read, among other things, a management statement or management report included in a document containing audited financial statements and to inform the registrant of anything therein which the auditor concludes is a material inconsistency or material misstatement of fact.[55] Where a management statement includes an assessment of the effectiveness of internal accounting control, the auditor is required to inform the registrant of any information of which he is aware — including weaknesses in internal accounting control — which would render such information in the management statement materially misstated.[56] Similarly, when a management statement includes a discussion of matters in support of or in addition to management's assessment of the effectiveness of internal accounting controls, the auditor is again required to inform the registrant of any material inconsistencies or material misstatements of fact contained therein. In the event that the issuer fails to correct such misstatements when informed of them, SAS No. 8 requires the auditor to take appropriate steps to ensure disclosure, or, failing that, to consider other action, including withdrawing from the engagement.[57]

Footnote 53 continued

The Auditing Standards Board has proposed (*see* note 38, *supra*) to amend this definition, to read as follows:

A material weakness in internal accounting control is a condition in which the specific control procedures or the degree of compliance with them does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

[54]Statement on Auditing Standards No. 8, AICPA.

[55]Certain commentators suggested that it is not clear that Statement on Auditing Standards No. 8 would apply to an *omission* (as opposed to a misstatement) of disclosure of an internal accounting control weakness in a statement of management on internal accounting control. The Commission encourages the Auditing Standards Board to take whatever action is necessary to make clear that the provisions of the Statement are applicable to such omissions.

[56]*See* notes 45 and 48, *supra*, for guidance in determining whether or not a particular fact is material.

[57]Auditor withdrawal from an engagement would, of course, call for appropriate disclosure by the issuer on Form 8-K.

B. *Examinations by Independent Public Accountants*

Proposed Item 7(c) of Regulation S-K would have required that, for periods ending after December 15, 1980, the statement of management on internal accounting control be examined and reported on by an independent public accountant. Proposed Item 7(c) specified that the examination be sufficient to enable the independent public accountant to express an opinion as to (1) whether the representations of management in response to proposed Item 7(a) are consistent with the results of management's evaluation of the systems of internal accounting control, and (2) whether such management representations are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the registrant's financial statements. The proposed examination by an independent public accountant of the statement of management on internal accounting control would, therefore, have required expansion of the independent public accountant's present responsibilities with respect to internal accounting control.

The Commission indicated in the proposing release that it was aware that requiring such an expansion of responsibilities at this time would probably result in additional costs to registrants, but that it believed that any additional costs of the proposed examination by an independent public accountant would be outweighed by the increased reliability of the statement of management which would result from such examination. Since the benefits of the proposed examination by an independent public accountant are not subject to quantification, and the measurement of costs includes many variables which are highly uncertain, the Commission specifically requested comments on the costs and benefits involved, including possible alternatives to the proposed scope of such examination.

Commentators were almost unanimously opposed to the requirement contained in proposed Item 7(c). Virtually all who provided specific comments believed that the costs of requiring the proposed examination by an independent public accountant at this time would be very substantial and would far exceed the possible benefits of such a requirement. Many of these commentators maintained that, although the auditor's purpose in reviewing and evaluating internal accounting control in connection with an examination of financial statements is not to determine whether the broad objectives of internal accounting control have been achieved, but rather to form a basis for determining the scope of such examination, registrants' auditors are typically very knowledgeable about the effectiveness of registrants' systems of internal accounting control. They also maintain that, based on that knowledge and the auditor's existing responsibilities under SAS No. 20[58] and under SAS No. 8,[59] the incremental benefits of the proposed examination would not be significant. Similarly, many suggested that the additional costs which would result from the proposed examination, while resulting in little or no benefit, would be substantial. Specifically, they maintained that significant costs would result from the necessity to review management's procedures for reviewing, monitoring, and evaluating the system of internal accounting control, and the results thereof, as they relate to nonmaterial matters, and from the necessity to duplicate review and testing performed by the registrant.

Finally, a number of commentators maintained that, considering the subjective nature of the benefits of an examination by an independent accountant of the statement of management on internal accounting control, the present lack of any empirical base for estimating the costs thereof, and the current consideration by the AICPA's Auditing Standards Board of standards for voluntary public reports by independent accountants on internal accounting control, consideration of a requirement for an examination is premature. They argued for deferral of Commission action pending evaluation of the results of voluntary engagements and private-sector initiatives.

The Commission continues to believe, however, that significant involvement of independent accountants in the process of evaluating and reporting on internal accounting control systems is important. The Commission's decision not to require, at this time, such public auditor involvement has been influenced by commentator indications that the costs of such involvement would be substantial and would outweigh the benefits of reliability and user confidence which the Commission cited as possible justification for such a requirement.

The Commission also believes, however, that monitoring over a three-year period of private-sector

[58]See notes 52 and 53, *supra*.

[59]See note 54, *supra*.

initiatives and voluntary auditing engagements to evaluate and publicly report on systems of internal accounting control would better enable it to assess, at that time, both the costs and benefits of such examinations, as well as the need for a Commission requirement concerning such involvement. As presented by the commentators, the costs of auditor examinations of and reports on issuer systems of internal accounting control are presently uncertain but substantial. Adoption by the Auditing Standards Board of its proposed Statement on Auditing Standards on "Reporting on Internal Accounting Control"[60] should, however, provide a framework in which the Commission can monitor and evaluate not only the voluntary efforts of registrants to engage independent accountants to examine and publicly report on their systems of internal accounting control, but also the costs of such examinations. Such an ongoing Commission effort could, thus, provide it with more reliable current cost data reflecting, over time, both the developing theory and practice of internal accounting control, as well as the growing auditor experience with examinations of internal accounting control systems. Similarly, to the extent that future system failures evidence the possibility that benefits may accrue from enhanced auditor involvement over and above those which were presently anticipated by commentators, the Commission would have a further basis on which to reassess its decision on independent auditor involvement in light of the then indicated need for additional measures to ensure the credibility and assurances intended to be provided by issuers' systems of internal accounting control. Accordingly, the Commission believes that its monitoring effort will make it possible for it to revisit this issue on the basis of greater certainty concerning costs and benefits than that which commentators asserted exists today, and the Commission can be expected to reevaluate its decision concerning independent auditor involvement with internal accounting control systems in light of the extent to which private-sector initiatives and voluntary auditor engagements have satisfied those Commission concerns which presently exist or which may exist at that time.

IV. *CONCLUSION AND REQUEST FOR FURTHER COMMENT*

The Commission is taking today's action in response to commentators' encouraging assurances of developing voluntary and private-sector initiatives concerning management statements on internal accounting control and enhanced auditor involvement with such statements. Indeed, the Commission continues to believe that management disclosure concerning, and auditor involvement with, issuers' systems of internal accounting control have important values that can be achieved without undue cost or other burdens.

Accordingly, in withdrawing these rule proposals at this time, the Commission stresses that it will monitor carefully voluntary and private-sector developments in this area, and that it fully expects those initiatives to continue. Based upon the assurances of further voluntary initiatives communicated by so many commentators and others, the Commission expects that significant progress will be made in 1980 and over the next couple of years, and it presently intends to formally revisit these questions by the spring of 1982 based upon three years of analysis of such voluntary efforts.

In that regard, the Commission hereby invites additional public comment on the issues discussed in this withdrawing release. In order to supplement the Commission's own monitoring and analysis of the voluntary progress being made and the need for Commission action in this area, the Commission specifically encourages commentators to provide it with any additional views and data which would be of use to the Commission over the course of the monitoring period. In addition, the Commission is also interested in hearing from issuers, accountants, and their counsel not only about questions relating to management statements on internal accounting control and auditor involvement with such statements, but also about the guidance which the Commission has set forth in this release concerning the design, implementation and monitoring of internal accounting control systems, including the need for documentation, the importance of a proper control environment, and the concept of reasonable assurance, as well as data on actual costs incurred by issuers.

By the Commission.

George A. Fitzsimmons
Secretary

[60]See note 38, *supra*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16878/June 6, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-80-15)

National Securities Clearing Corporation ("NSCC") submitted a proposed rule change on May 19, 1980, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, that would enable participants to satisfy their open account indebtedness to NSCC (Clearing Fund Requirement) by depositing with NSCC Letters of Credit in favor of NSCC in such form and drawn on such domestic or foreign banks and trust companies as are acceptable to NSCC.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 9, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-15.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16879/June 6, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-AMEX-80-13

The American Stock Exchange, Inc. ("Amex") submitted on May 30, 1980, a proposed rule change under Rule 19b-4 to amend the Amex Constitution and rules to delete the requirement that the principal purpose of every member and member organization be the transaction of business as a broker or dealer in securities.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 9, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16880/June 6, 1980

A notice has been issued giving interested persons until June 27, 1980 to comment on Plessey Incorporated's application for withdrawal of its 4½% Subordinated Convertible Debentures due June 1, 1993 from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16881/June 6, 1980

In the Matter of Application of the

PACIFIC STOCK EXCHANGE, INCORPORATED

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange ("PSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Tandy Corporation
Common Stock, $1 Par Value (File No. 7-5542)[1]

The Commission finds that approval of the PSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Pacific Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16882/June 9, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-AMEX-80-14

The American Stock Exchange, Inc. ("Amex") submitted on June 2, 1980, a proposed rule change under Rule 19b-4 to amend Amex Rule 444 to eliminate the requirement that members report to the Amex unsecured, non-capital borrowings aggregating $20,000 or more, and the requirement that such borrowings be supervised by a designated senior member of the member organization.

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 31565 (May 13, 1980). The Commission has received no comments with respect to this application.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 9, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16883/June 10, 1980

NATIONAL SECURITIES CLEARING CORPORATION ("NSCC") (SR-NSCC-77-5)

ORDER APPROVING PROPOSED RULE CHANGE

On August 7, 1979, NSCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder an amendment to a proposed rule change, consisting of an interface agreement between NSCC and the Cincinnati Stock Exchange.

Notice of the amendment to the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16592 (February 20, 1980)) and by publication in the *Federal Register* (45 FR 12513 February 26, 1980). No written comments were received by the Commission.

The Commission finds that the amendment to the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17a of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the amendment to the proposed rule change be approved. The Commission does not, however, approve the remainder of the proposed rule change.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16884/June 10, 1980

In the Matter of Application of the

PACIFIC STOCK EXCHANGE INCORPORATED

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange ("PSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Volero Energy Corporation
Common Stock, $1 Par Value (File No. 7-5520)[1]

The Commission finds that approval of the PSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act, the PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Pacific Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 31565 (May 13, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16885/June 10, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Emerson Radio Corp.
Common Stock, $.10 Par Value (File No. 7-5521)
Hexel Corporation
Common Stock, No Par Value (File No. 7-5522)
Bay Financial Corp. (Del.)
Common Stock, No Par Value (File No. 7-5523)
Sunshine Mining Co. (Del.)
Common Stock, $.50 Par Value (File No. 7-5524)
Ocean Drilling & Exploration Co.
Common Stock, $.50 Par Value (File No. 7-5525)
International Rectifier Corp. (Del.)
Common Stock, $1.00 Par Value (File No. 7-5526)
Southmark Properties
Common Stock, $1.00 Par Value (File No. 7-5527)
Bell Industries
Common Stock, No Par Value (File No. 7-5528)
Hiram Walker Consumers Home, Ltd.
Common Stock, $1.00 Par Value (File No. 7-5529)
State Mutual Investors (Del.)
Shares of Beneficial Interest, No Par Value (File No. 7-5530)
Patrick Petroleum Company (new)
Common Stock, $.10 Par Value (File No. 7-5531)
Realty & Mortgage Investors of the Pacific
Shares of Beneficial Interest, No Par Value (File No. 7-5532)
Combined International Corporation
Common Stock, $1.00 Par Value (File No. 7-5533)
Kyoto Ceramic Co., Ltd.
ADR representing 2 shares of Common, $0.208 Par Value (File No. 7-5534)
Houston Oil Royalty Trust
Shares of Beneficial Interest, No Par Value (File No. 7-5535)

Northwest Energy Co. (Utah)
Common Stock, $1.00 Par Value (File No. 7-5536)
Deluxe Check Printers, Inc.
Common Stock, $1.00 Par Value (File No. 7-5537)
WICOR Inc.
Common Stock, $1.00 Par Value (File No. 7-5538)
Keene Corp. (Del.)
Common Stock, $.10 Par Value (File No. 7-5539)
SFN Companies
Common Stock, $.50 Par Value (File No. 7-5540)
House of Fabrics, Inc. (Del.)
Common Stock, No Par Value (File No. 7-5541)[1]

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 32471 (May 16, 1980). The Commission has received no comments with respect to these applications.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16886/June 10, 1980

A notice has been issued giving interested persons until June 30, 1980 to comment on the *Philadelphia Stock Exchange's* applications for unlisted trading privileges in the below listed issues:

RCA CORPORATION
$3.65 Preference Stock, $1.00 Par Value
$2.125 Cumulative Convertible Preference Stock, $1 Par Value

SECURITIES EXCHANGE ACT OF 1934
Release No. 16887/June 10, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($1 Par Value) of the GENERAL MEDICAL CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16888/June 11, 1980

OFF-BOARD TRADING RESTRICTIONS

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of a rule which amends the rules of national securities exchanges which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange in securities which are traded on those exchanges. The adopted rule will prevent those exchange rules from applying to certain securities which were not traded on an exchange on April 26, 1979, or which were traded on an exchange on April 26, 1979, but fail to remain traded on an exchange for any period of time thereafter. In conjunction with the adoption of this rule, the Commission also announces implementation of a program to monitor the operation and effects of the rule and its intention to publish periodic reports of the findings of such a monitoring program in order to provide an empirical basis for public comment on the advisability of further regulatory action.

EFFECTIVE DATE: Thirty days after publication of this release in the *Federal Register*.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 19c-3 ("Rule")[1] under the Securities Exchange Act of 1934 ("Act"),[2] which amends existing rules of national securities exchanges ("exchanges") which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange in securities which are listed or admitted to unlisted trading privileges on those exchanges ("off-board trading restrictions"). Specifically, Rule 19c-3 will preclude off-board trading restrictions from applying, with certain exceptions, to any reported security[3] (1) which was not traded on an exchange on April 26, 1979, or (2) which was traded on an exchange on April 26, 1979, but which ceases to be traded on an exchange for any period of time thereafter.

In view of the adoption of Rule 19c-3, the Commission does not expect to take further action in the near future with respect to off-board trading restrictions generally.

Accordingly, the Commission has also determined to withdraw an earlier Commission proposal still outstanding with respect to off-board trading rules, proposed Rule 19c-2 under the Act.[4] That proposal, which was published in June 1977, would have eliminated all remaining exchange restrictions on (1) off-board principal transactions and (2) "in-house agency crosses," *i.e.*, off-board agency transactions in which a member acts as agent for both buyer and seller in the same transaction, with respect to reported securities.[5] The Commission has determined not to withdraw the alternative

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[1] 17 CFR §240.19c-3.

[2] 15 U.S.C. §§78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] The Rule defines the term "reported security" to mean "any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan." Rule 19c-3(b)(4). Transaction reports and last sale data for reported securities are reported in the consolidated transaction reporting system ("consolidated system") contemplated by Rule 11Aa3-1 under the Act [17 CFR §240.11Aa3-1].

[4] *See* Securities Exchange Act Release No. 16889 (June 11, 1980).

[5] *See* Securities Exchange Act Release No. 13662 (June 23, 1977) ("June Release"), 42 FR 33510. In January 1978, the Commission deferred a final decision on Rule 19c-2 pending evaluation of industry and self-regulatory responses to national market system initiatives announced by the Commission. *See* Securities Exchange Act Releasse No. 14416 (January 26, 1978), at 38-41, 43 FR 4354, 4359-60. *See also* Securities Exchange Act Release Nos. 15376 (December 1, 1978) and 15671 (March 22, 1979), 43 FR 58664, 44 FR 20360.

overreaching rules, proposed Rules 15c5-1[A], 15c5-1[B], 15c5-1[C] and 15c5-1[D], published in connection with proposed Rule 19c-2.[6]

Rule 19c-3 will become effective thirty days following publication of this release in the *Federal Register*. Because of the significance of concerns raised in connection with the Rule, the Commission expects the self-regulatory organizations, particularly the National Association of Securities Dealers, Inc. ("NASD"), to scrutinize closely the behavior of market participants in securities subject to the Rule. In addition, the Commission itself intends to conduct a comprehensive monitoring program with respect to the operation of the Rule and to issue periodic reports describing the results of that program.[7] Further, and in addition to its periodic review of the impact of Rule 19c-3, the Commission expects to reexamine the issues associated with Rule 19c-3 and exchange off-board trading restrictions generally, to the extent and at such times as appears appropriate in the light of developments in the markets.

I. *Introduction*

On April 26, 1979, the Commission published a release ("Release") announcing the instant proceeding, including public hearings, to consider rulemaking to amend off-board trading restrictions.[8] In the Release, the Commission proposed for comment Rule 19c-3, which would prevent off-board trading restrictions from applying to any equity security or class of equity securities, or, alternatively, to any reported security,[9] (1) which was not traded on an exchange on April 26, 1979,[10] or (2) which was traded on an exchange on April 26, 1979, but which ceases to be traded on any exchange for any period of time thereafter ("Rule 19c-3 Securities").

In the Release, the Commission reiterated the conclusion it had reached in prior proceedings[11] that off-board trading restrictions impose burdens on competition. In addition, the Commission indicated its belief that, although it had not yet completed its deliberations with respect to whether the anticompetitive effects of remaining off-board trading restrictions as a general matter are outweighed by the purposes served by those restrictions, it was concerned that, as a consequence of new listings, off-board trading restrictions were continuously being extended to an ever-increasing number of securities (most of which were traded exclusively in the over-the-counter market), thereby precluding the possibility of competition between the over-the-counter market and exchange markets. The proposal of the Rule was therefore designed to preserve existing competition and maintain the status quo regarding the effects of off-board trading restrictions pending a final determination with respect to off-board trading restrictions generally, as contemplated by proposed Rule 19c-2.

In announcing its proposal of the Rule, the Commission took care to distinguish the potential impact of the adoption of Rule 19c-3 from that of proposed Rule 19c-2. In particular, the Commission observed that Rule 19c-3 would apply primarily to securities for which there was a preexisting over-the-counter market; since a significant percentage of the over-the-counter market making activity in those

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[6]As noted *infra*, adoption of one or more of those alternative proposals may prove necessary to counter adverse consequences of Rule 19c-3 or otherwise in furtherance of the purposes of the Act. *See* notes 54 and 89, *infra*.

[7]For a complete description of the scope and content of the Commission's monitoring program, *see* text accompanying notes 82-83, *infra*.

[8]*See* Securities Exchange Act Release No. 15769 (April 26, 1979), 44 FR 26688. In the Release, the Commission reviewed prior Commission action concerning off-board trading restrictions and the concerns which led the Commission to initiate a proceeding. *See id.* at 5-8, 44 FR at 26688-89.

[9]For a discussion of the Commission's determination to limit the scope of the Rule to reported securities, *see* text accompanying notes 73-76 *infra*.

[10]The Commission specifically requested comment on the propriety of making the Rule applicable as of the date of the proposal of the Rule. *See* Release, *supra* note 8, at 3 n.2, 44 FR at 26688 n.2. However, the Commission did not receive any comment in response to this request.

[11]*See* Securities Exchange Act Release No. 11942 (December 19, 1975) ("December Release"), at 5-7, 41 FR 4507, 4509; June Release, *supra* note 5, at 36-38, 42 FR at 33514.

securities is accounted for by firms which are also exchange members, the effect of listing these securities would be the virtual extinction of this over-the-counter market. In contrast, proposed Rule 19c-2 would have applied primarily to securities which were already traded in an exchange environment and, in part because of the effects of off-board trading restrictions, for which there is currently only an insignificant over-the-counter market. Similarly, the Commission observed that Rule 19c-3, since it would apply to only a limited number of securities, would not appear to have the potential for a signficiant effect on the existing structure of the securities markets. In contrast, proposed Rule 19c-2, since it would have applied to virtually all exchange traded securities, might possibly have had dramatic and radical effects on those markets.[12]

In addition to limiting the anticompetitive effects of off-board trading restrictions, the Commission indicated its belief that the adoption of the Rule might provide a valuable learning experience to the Commission and the securities industry.[13] The Commission indicated that adoption of the Rule would permit over-the-counter market makers to experience a trading environment in which transaction and quotation information is made available on a real-time basis. Further, the Commission indicated that the adoption of the Rule would provide the opportunity, in a limited context, to observe the dynamics of a competitive environment between over-the-counter and exchange market makers in exchange traded securities.

In response to the Commission's solicitation of comment on the Rule, the Commission received, and included in the record of the proceeding, written comments from approximately 60 individuals, principally persons associated with the securities industry.[14] The Commission also held six days of oral hearings, beginning June 20, 1979, and concluding July 2, 1979, during which the Commission received testimony from many of the individuals who submitted written comments.

After consideration of the record of the proceeding (which has incorporated the records of prior Commission proceedings)[15] and for the reasons enunciated below, the Commission has determined to adopt Rule 19c-3, effective thirty days following publication of this release in the *Federal Register*.[16]

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[12]See text accompanying notes 21-30, *infra*.

[13]See Release, *supra* note 8, at 14-15, 44 FR at 26690.

[14]In the Release, the Commission indicated that, in order to be fair to all interested persons, comments received after July 22, 1979, the final date for submitting comments, would not be accepted as a part of the record of the proceeding or considered by the Commission unless the comment period was formally extended. However, the Commission received a number of comments after July 22, 1979. The Commission thereafter issued a release giving notice that comments on the Rule received after July 22, 1979, would not form part of the official record of the proceeding but would be placed in a separate subfile in which they would be available for public review. *See* Securities Exchange Act Release No. 16166 (September 7, 1979), 44 FR 54068.

[15]In the Release, the Commission invited the attention of interested persons to materials contained in other Commission files (see File Nos. 4-180, SR-Amex-77-3, SR-Amex-77-18 and S7-735-A), and incorporated the information contained in those files into the record of the proceeding. *See* Release, *supra* note 8, at 4-5, 44 FR at 26688.

[16]As proposed and adopted, the Rule would be applicable, with certain exceptions, to securities which became or become exchange traded after April 26, 1979. Thus, the Rule would be applicable to certain securities which became exchange traded for the first time after April 26, 1979, the date on which the Rule was proposed for comment, and before the effective date of the Rule, and for which the existing over-the-counter market has therefore been substantially extinguished. However, as discussed below (*see* text accompanying note 20, *infra*), the purpose of the Rule was not merely to preserve the opportunity for the existing over-the-counter market to compete, but also to maintain the status quo by precluding the expansion of off-board trading restrictions to additional securities. Moreover, the application of the Rule as of April 26, 1979, was designed to avoid any artificial timing incentives to listing based solely on the possible adoption of the Rule.

II. *Discussion*

A. *Benefits Resulting from Adoption of the Rule*

As the Commission has found in its earlier proceedings,[17] off-board trading restrictions have anticompetitive effects, in that they effectively confine trading in listed securities to exchange markets by precluding exchange members from trading as principal in the over-the-counter market. Having reached that conclusion, the Commission must determine whether the continued expansion of these anticompetitive effects can be justified by the purposes of the Act or whether the potential benefits to be achieved by adoption of this limited proposal are outweighed by the possibility of adverse consequences. In reaching its findings, the Commission has noted a number of possible benefits which might be derived from the adoption of this limited proposal.[18] First, adoption of the Rule will provide the opportunity for competition between the over-the-counter and exchange markets with concomitant benefits to investors. For example, the presence of additional (and, in some cases, highly capitalized) market makers may (1) operate to discipline the quotations of primary market specialists, thereby possibly resulting in narrower quotation spreads in Rule 19c-3 Securities, and (2) create incentives for markets to disseminate quotations of greater size and add to the depth, liquidity and continuity of the markets for those securities.

The adoption of Rule 19c-3 may also result in cost savings for brokers, dealers and investors in connection with transactions in Rule 19c-3 Securities. The ability of exchange members to effect transactions in-house may provide them with certain execution and operational efficiencies by (1) reducing the order-handling workload of their floor personnel on the exchange floors and the use of other facilities of exchanges, and (2) reducing errors and the costs associated therewith. Moreover, the presence of alternative markets may provide an incentive for markets to continue to compete aggressively in the types and costs of services offered to brokers and investors.[19]

In addition, adoption of the Rule will limit the expansion of the anticompetitive effects of off-board trading restrictions which, absent Commission action, would otherwise apply over time to ever-increasing numbers of securities. Thus, the Commission perceives benefits from Rule 19c-3 as a regulatory measure designed to maintain the status quo pending resolution of the broader issues associated with removal of off-board trading rules generally.[20]

The Commission also believes that the Rule is justified by its experimental value which will further the purposes of the Act by providing actual experience with the effects of concurrent over-the-counter and exchange trading. While adoption of the Rule could not be expected to yield empirical data sufficient to support definitive conclusions regarding the removal of remaining off-board

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[17]See note 11, *supra*.

[18]A decision of the possible adverse consequences of adoption is contained in the text accompanying notes 31-81. *infra*.

[19]Indeed, competition would appear to have had a substantial role in the development of recent order routing and execution innovations by both the regional and primary exchanges. For example, the American Stock Exchange, Inc. ("Amex") and New York Stock Exchange, Inc. ("NYSE") have developed a "common message switch," which provides an interface between the computerized order handling systems of certain Amex and NYSE firms and the booths of those firms on the floors of the Amex and NYSE. In addition, the Amex and NYSE offer automated order routing systems (named Post Execution Report ("PER") and Designated Order Turnaround System ("DOT"), respectively) which permit Amex and NYSE member firms to route small market and limit orders directly to the specialist's post. Further, the Pacific Stock Exchange, Inc. ("PSE") and Philadelphia Stock Exchange, Inc. ("Phlx") provide systems (named "SCOREX" and "PACE," respectively) similar to PER and DOT which, in addition, provide for automatic execution based on a derivative pricing model.

[20]See Securities Exchange Act Release No. 15376 (December 1, 1978), at 18 n.42 (Commissioners Evans and Pollack dissenting), 44 FR 58664, 58669 n.42.

trading restrictions,[21] the Commission does believe that experience under the Rule will yield data which will enable the Commission to analyze the direct effects of the Rule on the trading markets for Rule 19c-3 Securities. In addition, experience under the Rule may prove useful in providing an opportunity to boserve for the first time a trading environment in which exchange members may engage in competitive over-the-counter trading in securities which are listed on the primary exchange. In particular, the Rule may provide insight into the ability of exchanges to continue to compete for order flow in the absence of off-board trading restrictions and may provide insight into whether the absence of off-board trading restrictions has any significant effects on pricing efficiency.[22]

In addition, since the Rule will provide the securities industry with an opportunity to experience an environment involving competitive over-the-counter and exchange trading, it may be helpful in evaluating the effectiveness of current efforts to facilitate the development of a national market system. Among other matters, experience under the Rule should enable the Commission to observe the effectiveness of existing systems, particularly the Intermarket Trading System ("ITS")[23] and the Cincinnati Stock Exchange's ("CSE") automated National Securities Trading Systemn ("NSTS"),[24] in addressing the needs of an environment characterized by concurrent exchange and over-the-counter trading, and may provide incentives to improve those systems or develop new systems to accommodate any changes in trading patterns which occur.[25]

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[21]Various commentators apparently understood, mistakenly, that the Commission was proposing the Rule as an "experiment" which would yield data from which the Commission could extrapolate in order to reach definitive conclusions regarding the further removal of off-board trading restrictions. These commentators criticized the "experiment" as inherently invalid for a variety of reasons including, for example, the limited number and unrepresentative nature of the securities to which the Rule would be applicable. *See, e.g., In re* Off-Board Trading Restrictions, File No. 4-220 ("Proceding Transcript"), at 149-50, 212, 273-74, 634-35, 694-95, 777, 1001-02. As indicated, *see* text accompanying notes 82, 87-89, *infra*, these comments misconstrued the Commission's attitude toward the experiential value of the Rule. The Commission never intended (nor could it have intended) the type of proposal represented by Rule 19c-3 as a scientific experiment designed to resolve fully all of the issues raised by the continuation or removal of off-board trading restrictions as a general matter. Nonetheless, the Commission believes that useful data can be derived from observation of the trading environment in Rule 19c-3 Securities both before and after the effective date of the Rule, and that it will be able to study the effects of the Rule using statistical evaluation techniques.

[22]Examination of these issues will be part of the Commission's monitoring program. *See* text accompanying notes 82-83, *infra*.

[23]*See* Securities Exchange Act Release Nos. 14661 (April 14, 1978), 15058 (August 11, 1978), 16074 (August 2, 1979) and 16214 (September 21, 1979), 43 FR 17419 and 36732, 44 FR 47419 and 56069.

[24]*See* Securities Exchange Act Release Nos. 14674 (April 18, 1978), 15413 (December 15, 1978) and 16215 (September 21, 1979), 43 FR 17894, 44 FR 129 and 56074.

[25]Indeed, the Commission notes that the proposal of the Rule has been followed by various initiatives applicable to intermarket competition. Thus, the NASD has announced technical enhancements to the NASDAQ system which would provide an order routing facility, the opportunity for automatic execution of orders and a linkage with exchanges. *See* Proceeding Transcript, *supra* note 21, at 9-10, 24-34. In a different approach to intermarket competition, the NYSE has proposed to create facilities which would permit NYSE member firms to enter electronically dealer bids and offers into the NYSE market trading crowd without maintaining a physical presence on the NYSE floor. *See id.* at 779-80, 817-22.

In this regard, the Commission views as a significant step in that direction the determination by the NASD to upgrade and enhance its NASDAQ system to provide a more efficient mechanism for over-the-counter market making in listed securities. the NASD's commitment to such an effort was an important consideration in the Commission's determination to adopt Rule 19-3 at this time.

The Commission believes that prompt implementation by the NASD of the enhanced NASDAQ system will further significantly the objectives of a national market system. The Commission urges the NASD to accelerate its efforts to achieve the NASDAQ system upgrade and requests the NASD to provide the Commission with a formal status report on the project (including a timetable for implementation) not later than September 1, 1980.

Of equal importance is the need to achieve effective linkages between traditional exchange trading floors and markets conducted either over-the-counter or through electronic trading systems. Such linkages, in the Commission's view, are essential to achieving the maximum degree of order interaction between the various types of markets.[26] The Commission therefore expects that the NASD and the ITS participants will promptly conclude their negotiations and begin work on consummating an automated linkage between the ITS and the NASDAQ system. The Commission also expects that the NSTS and ITS participants will implement a linkage betwen their systems in the near future.[27] The Commission requests the interested parties to these proposed linkages to provide the Commssion with formal status reports (including timetables for implementation) on the ITS-NASDAQ and ITS-NSTS linkages not later than September 1, 1980.[28]

Observation of trading in an environment free of off-board trading restrictions may also enable the Commission to consider the appropriateness of existing Commission and exchange rules which apply to exchange specialists and provide insight regarding whether some or all of the requirements and principles embodied in those rules should be extended to over-the-counter market makers in order to ensure "equal regulation."[29] Finally, experience under the Rule may enable the Commission to obtain data with which to monitor the effects of reporting transaction information on the willingness of over-the-counter market makers to engage in market making in securities traded in an integrated trading environment.[30]

B. *Discussion of Arguments Raised in Opposition to Adoption of the Rule*

Balanced against the foregoing benefits, the Commission has carefully considered the criticisms of the Rule raised by commentators and the possible adverse consequences of its adoption.

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[26]See Securities Exchange Act Release No. 16214, at 14 (September 21, 1979), 44 FR 56069, 56072.

[27]The Commission has stated that "it will be necessary to. . .establish computerized interfaces between the ITS and over-the-counter market makers regulated by the NASD and between the ITS and the CSE System (and such other systems as may emerge in the future) permitting two-way communication." *See id.*

[28]See Letter from Douglas Scarff, Director, Division of Market Regulation, to John J. Phelan, Jr., Vice Chairman, NYSE, dated May 20, 1980.

[29]See text accompanying notes 63-72, *infra*.

[30]*See also* proposed Rule 11A2-1 which, if adopted, would provide procedures by which securities would be designated as national market system securities. *See* Securities Exchange Act Release No. 15920 (June 15, 1979), 44 FR 26912. That rule, together with related amendments to Rule 11Aa3-1, would require a limited number of actively traded securities traded solely in the over-the-counter market to be subject to transaction reporting. Rule 19c-3 and proposed Rule 11Aa2-1 are related proposals which may enable the Commission to consider the concern raised by over-the-counter market makers that transaction reporting would discourage over-the-market making activities because of the increased risks and pressures on spreads which might result from disclosure of transaction information.

1. *Internalization*

The most frequent criticism of the Rule was that, if adopted, it would permit "internalization" by broker-dealer firms with large retail order flow or sizable correspondent networks who chose to make markets over-the-counter in Rule 19c-3 Securities ("integrated firms").[31] Some commentators argued that internalization by such firms would have three principal adverse effects. First, internalization would have anticompetitive effects with respect to both exchange specialists (who generally do not have initial access to retail order flow) and small broker-dealers without the market making capacity of larger, integrated firms. Second, internalization might result in "fragmented" markets in Rule 19c-3 Securities [32] and lead to a decrease in pricing efficiency and a deterioration in the depth, liquidity and continuity of the markets for those securities. Finally, internalization might provide an increased opportunity for overreaching of customers, particularly by integrated firms.[33]

(a) *Fragmentation and Competitive Impact*

(i) *Comments*

With respect to the perceived anticompetitive effects of internalization, various commentators asserted that large integrated firms would find it in their economic self-interest to execute their retail order flow "in-house," and that, as a result, specialists and other market makers would not have the opportunity to compete for that order flow. It was therefore argued that the only way to rectify this competitive disadvantage was to require integrated firms, through intermarket linkage systems, to "expose" their retail order flow to other competing market makers.[34] Commentators also asserted that the opportunity to internalize retail order flow would place smaller broker-dealers at a competitive disadvantage because they would no longer be able to provide executions equivalent to those provided by larger integrated firms.[35] It was argued that, in the current environment, in which off-board trading restrictions result in most retail firms directing their order flow as agent to either the Amex or NYSE, all retail broker-dealers (regardless of size) are able to provide the same quality of execution because each may provide retail customers orders with an equal opportunity to be exposed to the vast majority of order flow in listed securities. However, in the absence of off-board restrictions, the Amex and NYSE might no longer attract sufficient order flow to be the "primary" markets for Rule 19c-3 Securities. In that event, smaller broker-dealers would no longer be able to compete effectively with large integrated firms on the basis of quality of execution because, it was argued, the public would perceive that larger firms would provide better executions and would therefore direct most order flow to those firms. In addition, it was argued that larger firms would have a competitive advantage since they would more effectively be able to integrate market making and retail business in order to provide lower cost executions than could be provided by smaller firms.

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[31]In the Release, the Commission stated that the term "internalization,"

when used with respect to the activities of an integrated broker-dealer making markets over-the-counter refers to the withholding of retail orders from other market centers for the purpose of executing them "in-house," as principal, without exposing those orders to buying and selling interest in those other market centers.

See Release, *supra* note 8, at 12 n.20, 44 FR at 26690 n.20. *See also* June Release, *supra* note 5, at 49-66, 42 FR at 33516-21.

In general, commentators agreed with this definition of the term. *See, e.g.*, Proceeding Transcript, *supra* note 21, at 774.

[32]In the Release, the Commission stated that the term "fragmentation" refers to the dispersion of order flow among market centers." *See* Release, *supra* note 8, at 12 n.20, 44 FR at 26690 n.20. *See also* June Release, *supra* note 5, at 49-66, 42 FR at 33516-21.

[33]The term "overreaching" refers to the possibility that broker-dealer firms may take advantage of their customers by executing retail transactions as principal at prices less favorable to those customers than could have been obtained had those firms acted as agent. *See generally* June Release, *supra* note 5, at 70-84, 42 FR at 33519-21.

[34]Proceeding Transcript, *supra* note 21, at 219, 309-14, 630, 653-54, 684-91, 726-29, 732-33, 740-41, 798-803, 830-31, 848-51, 857-60, 871-77, 998-99.

[35] *Id.* at 173, 1053.

This might further the public perception that, in order to obtain a quality execution, they should deal directly with firms which are market makers rather than with firms which provide only brokerage services.[36]

Other commentators argued that internalization was perfectly appropriate if conducted on the basis of "quote matching," *i.e.*, providing an execution in one market center at a price equal to the best price displayed in the consolidated quotation system.[37] Those commentators argued that retention of order flow by a market center did not raise competitive concerns if there is no overreaching[38] and the customer is given a price which is equal to or better than the best price available in any other market (as evidenced by the best quotation then disseminated pursuant to Rule 11Ac1-1 under the Act).[39]

With respect to the concern that internalization would result in additional fragmentation which would adversely affect market efficiency and liquidity, commentators asserted[40] that, as a result of the internalization of retail firm customers' orders, order flow in Rule 19c-3 Securities no longer would be directed to the Amex and NYSE as "primary" markets, and that, in the absence of intermarket linkages or other types of systems which would permit the effective interaction of orders originating in geographically diverse market centers, such a dispersion of order flow would make the markets in Rule 19c-3 Securities less efficient than currently is the case today in exchange traded securities where one market has a dominant share of order flow.[41] In addition, commentators argued that increased fragmentation might diminish limit order protection and create difficulties for brokers attempting to route their customers' orders to the best available market.

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[36]Other commentators, however, argued that those firms which chose to make markets upstairs would be under a competitive disadvantage. (*Id.*, at 21-22, 58-60, 424-26). Those commentators contended that, at least with respect to those firms which did not have adequate in-house order flow to support their market making activities, the existence of automated order routing systems permitting most broker-dealers to efficiently send orders to exchanges (*see* note 19, *supra*) and the absence of similar systems for routing orders to over-the-counter market makers would provide competitive advantages to specialists (particularly specialists in the "primary" market). However, even if order routing systems currently provide a competitive advantage to "primary" exchange specialists, it may be questioned whether in an environment permitting off-board principal trading, these order routing systems would continue to provide a competitive advantage to exchange specialists since it is unclear whether retail firms would avail themselves of such systems to route orders to specialists (as opposed to executing those orders "in-house"). In this connection, the Commission understands that currently retail firms competing as market makers in securities traded solely in the over-the-counter market generally do not route to other market makers who quote a better quotation but instead match that better quotation and retain the retail execution.

[37]*See, e.g.*, Proceeding Transcript, *supra* note 21, at 728.

[38]*See*, note 33, *supra*.

[39]Rule 11Ac1-1 [17 CRF §240.11Ac1-1] requires every exchange and national securities association to establish and maintain procedures to collect, process and make available to vendors quotations (including size) in reported securities. *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342.

[40]Proceeding Transcript, *supra note 21, at 222-24*, 220-300, 630, 684-91, 775-76, 791-98, 998-1001.

[41]For example, commentators suggested that prices in a fragmented market will be less likely to reflect a complete assessment of all buying and selling interest than is presently possible. In addition, they suggested that directing most order flow to the "primary" markets provides the opportunity for orders to be executed at a price between the current best bid and offer quotations.

Other commentators, however, did not view fragmentation as a significant problem in connection with the Rule.[42] These commentators argued that fragmentation concerns would be minimized because Rule 19c-3 Securities, upon becoming exchange traded, would be the subject of real-time transaction and firm quotation information which should reduce pricing disparities among market centers and enhance the ability of brokers to find the best markets for their customers' orders. In addition, they anticipated that the development of intermarket linkages would both enhance the protection of limit orders and permit brokers to route orders more easily to another market center displaying a superior quotation.

(ii) *Discussion*

In its prior releases regarding off-board trading restrictions, the Commission has expressed its view that an ideal configuration of a national market system would effectively preclude internalization by exposing orders, to the greatest extent practicable, to all buying and selling interest wherever located in the system. Such a displacement mechanism would permit brokers and dealers, regardless of geographic location, to intercept order flow by bettering existing bid and offer quotations. Specifically, the Commission has indicated that inter-market exposure of orders in a national market system should (1) maximize competition between and among markets and market participants and (2) further the efficiency and fairness of the securities markets.[43]

While the Commission recognizes that a significant degree of order exposure may be present today in certain securities within the "primary" markets, the Commission also recognizes that most trading in listed securities is conducted in a manner which does not result in routine exposure of order flow to other competing market centers.[44] To the contrary, internalization (*i.e.*, failure to expose orders to potential buying and selling interest in other markets) is present in the trading of listed securities on exchanges as well as the over-the-counter market. For example, orders sent to regional exchanges or the third market are often executed in those markets without any intermarket exposure, either because they are executed there as a result of previously negotiated price protection against transactions in the "primary" market or because they are executed, on an automated basis,[45] based on a derivative pricing formula. Moreover, the development of systems such as the ITS[46] and the NSTS[47] has not significantly ameliorated this situation.[48]

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[42]Proceeding Transcript, *supra* note 21, at 43-44, 407-08.

[43]See December Release, *supra* note 11, at 48-49, 41 FR at 4519; June Release, *supra* note 5, at 57-60, 42 FR at 33517.

[44]See June Release, *supra* note 5, at 57-58, 42 FR at 33517.

[45]Thus, the PSE's SCOREX system, member firm market orders of up to 300 shares in approximately 200 Amex and 800 NYSE listed securities are automatically priced and executed based on the best quotation disseminated by a participant in the ITS. Similarly, in the Phlx's PACE system, member firm market orders of up to 399 shares in approximately 300 NYSE listed securities are automatically priced and executed based on the better of the quotations available in the Phlx and NYSE markets (*see* note 19, *supra*). As a result of the operation of SCOREX and PACE, certain market orders sent to the PSE and Phlx do not interact with each other and are effectively precluded from interacting with orders in other markets.

[46]As discussed below, ITS is not generally used to expose orders to other markets. *See* text accompanying note 49, *infra*.

[47]Although NSTS terminals are present on certain regional exchanges, the System has not been used with any frequency by brokers and dealers in those markets.

[48]As discussed below, the NSTS and ITS are not currently linked to third market makers, thereby precluding intermarket exposure. *See* text accompanying note 49, *infra*.

Similarly, despite the implementation of ITS, orders sent to the primary market will not necessarily be exposed to trading interest represented in other markets even when there is a better published quotation in another market. First, a specialist or other broker-dealer on the floor of the primary market may choose to match a better bid or offer displayed by a regional exchange and execute an order himself rather than send a commitment to the other participant through ITS. As a result, ITS may serve only to encourage price matching rather than intermarket order exposure. Further, use of the ITS, while encouraged by the ITS participants, is not mandatory when a better bid or offer is available from an ITS participant. Finally, a linkage has not yet been established between the ITS and the over-the-counter market and between the ITS and the NSTS.[49]

The Commission recognizes that the adoption of Rule 19c-3 may result in internalization by member firms, particularly those firms with large retail order flow. While the Commission is concerned about increasing the opportunity for internalization, it has nevertheless on balance decided to adopt the Rule, given its limited scope. First, the problems resulting from internalization are generic in nature. Rather than deprive the securities markets of an opportunity to benefit from increased market maker competition, the Commission believes that the Rule should be put into effect and that any adverse effects which may result from internalization should be dealt with directly through other measures. For example, the Commission could require that all trading by integrated firms occurring otherwise than on a physical exchange trading floor be conducted through a trading system which provides an opportunity for interaction of order flow and exposure to other over-the-counter and exchange market makers. In addition, it may be necessary to go further and require integrated firms to "hold out" agency retail orders to other buying and selling interest for a minimum period of time prior to executing against that order as principal.[50] Finally, it may be necessary to consider prohibiting firms from acting in both a broker and dealer capacity (either over-the-counter or both over-the-counter and on exchange floors) in the same security.[51]

In addition, the risks relating to internalization in the context of adoption of the Rule do not appear to raise concerns of the magnitude raised with respect to proposed Rule 19c-2. An overriding concern raised by commentators was that the adoption of Rule 19c-2 would result in substantial losses in order flow to the primary exchanges in a large number of securities which might ultimately lead to the demise of exchanges. In contrast, whatever the effects of internalization in the context of Rule 19c-2, those effects, which would be applicable only to a relatively limited number of securities, do not appear to have the potential to reduce the total amount of trading occurring on exchanges to the point where the existence of these trading mechanisms would be undermined. Similarly, the limited scope of Rule 19c-3 would seem to indicate that adoption of the Rule should not significantly impact the existence, as viable competitors, of smaller broker-dealers. Moreover, as noted above, should internalization prove to have significant adverse effects in the context of Rule 19c-3, those effects can be eliminated at any time.

Finally, the Commission believes that the Rule presents the Commission with a unique opportunity to consider[52] concerns relating to the effects of internalization in a limited context. First, adoption of the Rule may provide the Commission and industry with an opportunity to learn the extent to which retail firms will determine to make over-the-counter markets in reported securities and the degree to which these firms will internalize their own retail order flow. In addition, the Rule might enable the securities industry to experiment with systems which would provide an opportunity for greater interaction of exchange and over-the-counter

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[49]*See* text accompanying notes 26-28, *supra*.

[50]Systems like the NSTS or the enhanced NASDAQ System, if appropriately linked to conventional exchange markets through the ITS, could be employed for this purpose.

[51]*Cf.* Securities Exchange Act Release No. 16214, at 10 n.18 (September 21, 1979), 44 FR 56069, 56071 n.18.

[52]*See* text accompanying notes 21-22, *supra*.

markets, thereby eliminating most of the potential adverse effects of this practice.[53]

Notwithstanding the Commission's decision to adopt the Rule, the Commission recognizes that internalization raises significant regulatory concerns. Therefore, as part of its monitoring program, the Commission intends to examine closely the markets in Rule 19c-3 Securities to determine the extent to which internalization develops and its effects on the securities markets. In addition, the Commission expects the NASD to oversee carefully the activities of integrated firms in this trading environment and to provide the Commission with quarterly reports (beginning September 30, 1980) of the results of its oversight program. The Commission will be alert to the need to take appropriate regulatory action if any internalization which may occur has undesirable effects on the markets for Rule 19c-3 Securities.

(b) *Overreaching and Surveillance*

(i) *Comments*

In general, commentators in the current proceeding did not focus substantial attention on overreaching and the adequacy of surveillance to detect overreaching and other questionable trading activity by integrated firms.[54] The NASD strongly disagreed with suggestions by certain commentators[55] that its surveillance would be inferior to that provided by exchanges and indicated that, in response to the proposal of the Rule, it was developing appropriate enhancements to existing regulatory and surveillance programs.[56] Among other matters, the NASD indicated that it would provide sufficient surveillance and inspection personnel to ensure that over-the-counter market makers are meeting their responsibilities with respect to the prompt reporting of trades in the consolidated system.[57]

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[53]For example, integrated firms may wish to consider voluntarily entering their order flow in Rule 19c-3 Securities in the NSTS. In addition, the CSE may wish to consider the addition of a "hold-out" requirement to its rules applicable to the NSTS. Similarly, in response to the NASD's anticipated enhancements to the NASDAQ system, integrated firms may wish to consider trading Rule 19c-3 Securities through the NASDAQ system. Further, the NYSE may wish to implement its proposal to create facilities which would permit NYSE member firms to electronically enter dealer bids and offers into the NYSE market trading crowd.

[54]In the proceeding relating to proposed Rule 19c-2, the Commission indicated its concerns regarding overreaching and the adequacy of surveillance, and proposed four alternative overreaching rules to deal with overreaching concerns. *See id.* The Commission wishes to point out that, although the Commission has determined to withdraw proposed Rule 19c-2, the alternative overreaching rules published in connection with proposed Rule 19c-2 are still outstanding and that the Commission may, in response to trading activities and patterns which develop in Rule 19c-3 Securities, adopt one or more of those alternative rules if necessary or appropriate to counter adverse consequences of Rule 19c-3 or otherwise in furtherance of the purposes of the Act. For the text and a description of these proposals, see June Relese, *supra* note 5, at 11-46, 42 FR at 33525-29.

[55]*See, e.g.*, Proceeding Transcript, *supra* note 21, at 999-1003.

[56]*Id.* at 17-18.

[57]The Commission, in proposing Rule 19c-2, had indicated that reporting of transaction information in the consolidated system and dissemination of firm quotation information pursuant to then proposed Rule 11Ac1-1 should reduce the risks of overreaching. However, various commentators discounted the significance of reporting of transaction information to ameliorate this concern. First, commentators suggested that the usefulness of transaction information as a surveillance or informational tool would be drastically reduced because integrated firms would generally fail to report transactions promptly and that as a result trades executed in various markets would be reported out-of-sequence on the consolidated tape. Commentators asserted that on a primary exchange prompt reporting was ensured by the use of reports to collect transaction information and the presence of a crowd to discipline the behavior of floor members, while, in contrast, trades executed in the over-the-counter market are reported from brokers' offices without any crowd or equivalent discipline. Second, commentators suggested that trades reported in the over-the-counter market could not be compared with trades reported on an exchange in order to surveil for possible overreaching or other

(ii) *Discussion*

Notwithstanding the absence of substantial comment, the Commission continues to believe that conflicts of interest inherent in integrated firms present significant concerns with respect to overreaching. The Commission believes that to some extent these concerns will be ameliorated by the existence of accurate transaction reporting and quotation information, particularly in view of the NASD's recent rule filing designed to ensure that, to the greatest extent practicable, over-the-counter transactions in reported securities are reported in a manner substantially comparable to exchange transactions in such securities.[58] Moreover, as the Commission has noted on prior occasions,[59] when an integrated firm functions as dealer with a retail customer and, by a course of conduct, has placed itself in a position of trust and confidence with respect to that customer, the firm has assumed a fiduciary relationship in all of its securities transactions with that customer, regardless of whether the firm is acting as a broker or dealer in particular transactions.[60] The Commission believes that the existence of this fiduciary relationship should, as a legal matter, reduce the risks of overreaching in connection with over-the-counter trading by integrated firms in Rule 19c-3 Securities.

The Commission remains concerned, however, that, in an off-board trading environment, the potential for overreaching may still exist. Therefore, in light of the substantial harm to investors if overreaching were to occur, the Commission expects the NASD to conduct a rigorous monitoring and enforcement effort, including evaluation of individual over-the-counter transactions in Rule 19c-3 Securities, taking into account (1) the net transaction price to customers; (2) the amount of mark-up or mark-down; (3) the price reported to the consolidated system; and (4) the price obtainable if the customer's order were executed on an agency basis in another market. The Commission requests the NASD to provide quarterly reports (beginning September 30, 1980) regarding NASD member compliance with the Act and NASD rules in connection with trading in Rule 19c-3 Securities.[61] The Commission will evaluate carefully the results of the NASD's surveillance programs in order to determine whether additional regulatory action is necessary, such as adoption of any of the four overreaching rules proposed in 1977 in connection with the proposal of Rule 19c-2.[62]

Footnote 57 continued

regulatory concerns because, while trades effected on an exchange are reported on a "gross" basis (*i.e.*, exclusive of any commission which may be charged to the actual customer in connection with a transaction), trades effected over-the-counter (other than with respect to so-called "riskless principal transactions"), are reported to include any retail mark-up or mark-down, which may be deemed equivalent to a commission. These concerns are responded to below.

[58]The NASD has recently filed amendments to its rules which contemplate requiring the reporting of over-the-counter transactions on a "gross" basis. *See* Securities Exchange Act Release No. 16686 (March 21, 1980), 45 FR 20604. Specifically, the NASD proposal contemplates that transactions will be reported exclusive of any mark-up or mark-down.

[59]*See, e.g.*, June release, *supra* note 5, at 77-80, 42 FR at 33520.

[60]*See* Arleen W. Hughes, 27 SEC 629 (1948), *aff'd sub nom. Arleen W. Hughes* v. *SEC*, 174 F.2d 969 (D.C. Cir. 1949). For a discussion of the standards of conduct applicable to a firm in a fiduciary relationship with a customer, *see* June Release, *supra* note 5, at 79-82, 42 FR at 33520-21. The fiduciary obligation duties, which may arise out of a broker-customer relationship as well as a dealer-customer relationship, are in addition to the general duty of all dealers, under the so-called "shingle theory," to deal fairly with the public and to effect transactions as dealer with customers at prices reasonably related to the current market for such securities. *See* Charles Hughes & Co., 13 SEC 676 (1943), *aff'd sub nom. Charles Hughes* v. *SEC, 139 F.2d 434 (2d Cir.), cert. denied,* 321 U.S. 786 (1944); Duker & Duker, 6 SEC 386 (1939).

[61]In addition, if the Commission approves the NASD's proposed reporting rule, it expects that the NASD will monitor the operation of this rule and include in its report an analysis of the accuracy of trade reports communicated pursuant to the rule. As a part of that report, the Commission expects that the NASD will review whether integrated firms are reporting transactions promptly to the consolidated system.

[62]*See* text accompanying note 6 *supra*; June Release, *supra* note 5, at 111-31, 43 FR at 33525-27.

2. *Equal Regulation*

a. *Comments*

In the Release, the Commission specifically requested comment on whether, as a prerequisite to adoption of the Rule, "any Commission or self-regulatory rules regulating the activities of market makers should be eliminated or modified or whether they should be expanded to apply to all market participants performing similar functions."[63] The issue of "equal regulation" raises the question whether a trading environment characterized by the absence of off-board trading restrictions would, in the absence of uniform (or at least similar) regulation of all market makers, afford a fair field of competition among market makers.[64]

Certain commentators criticized the proposal because it was not accompanied by additional regulatory action to ensure similar regulation between exchange specialists and over-the-counter market makers.[65] These commentators argued that the absence of similar regulation of specialists and over-the-counter market makers trading in Rule 19c-3 Securities would place specialists at an unfair competitive disadvantage. Thus, they urged the Commission to require that various Commission and exchange rules applicable to specialists, particularly primary market specialists, be made applicable to over-the-counter market makers.

Other commentators did not perceive the need for additional regulation of over-the-counter market makers in connection with the adoption of the Rule.[66] These commentators argued that, until experience was obtained under the Rule, it would not be possible to determine the extent to which Commission or self-regulatory rules should be applied to all market makers. In addition, commentators argued that the obligations imposed on primary exchange specialists involved exchange decisions which reflected competitive considerations. In this connection, they noted that those obligations are required because of specialists' virtual monopoly position, and that those obligations are a competitive advantage to specialists since, by advertising the quality of regulation applicable to the exchange market, they assist in attracting order flow.

b. *Discussion*

The Commission has long recognized that removal of off-board principal restrictions in any context requires the Commission to consider certain "equal regulation" concerns.[67] However, the Commission does not view the concept of "equal regulation"[68] as necessarily requiring uniform regulation of all market makers.[69] Rather, uniform regulation is appropriate only when applied in the context of persons who enjoy similar privileges, perform similar functions and have the potential for similar market impact. Moreover, the Commission believes that the differences between regulation of exchange and over-the-counter market makers have been emphasized without recognizing the many similarities in that regulation, at least with respect to the trading of listed securities. For example, exchange and over-the-counter market makers are both subject to the Commission's rules, Rules 11Aa3-1 and 11Ac1-1 under the Act,[70] requiring the reporting of transaction and quotation information. In addition, the Commission's short sale rule, Rule 10a-1 under the Act,[71] applies to transactions in reported securities effected both on exchanges and in the over-the-counter market. Furthermore, as discussed above,[72] retail integrated firms, in many instances, in fact occupy a fiduciary position of trust and confidence with their customers.

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[63]See Release, *supra* note 8, at 16, 44 FR at 26690.

[64]See June Release *supra* note 5, at 85-90, 42 FR at 33521; December Release, *supra* note 11, at 24-25, 41 FR at 4514.

[65]Proceeding Transcript, *supra* note 21, at 224-26, 629-30, 649-51, 685-88, 724-25, 784-85, 1005-06.

[66]*Id.* at 10, 19-23, 397-403, 418-24.

[67]See December Release, *supra* note 11, at 25-26, 41 FR at 4514; June Release, *supra* note 5, at 85-87, 42 FR at 33521. For a description of Commission and self-regulatory rules regarding market makers, see June Release, *supra* note 5, at 88-90, 42 FR at 22521-22.

[68]See Section 3(a)(36) of the Act, 15 U.S.C. §78c(a)(36).

[69]See Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S.249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 14-16 (1975) *reprinted in*, [1975] U.S. Code Cong. & Ad. News 179, 192-94.

[70]17 CFR §§240.11Aa3-1 and 240.11Ac1-1.

[71]17 CFR §240.10a-1.

[72]See text accompanying notes 59-60, *supra*.

The Commission has determined not to consider modification of any Commission or exchange rules prior to the adoption of Rule 19c-3. The Commission agrees with those commentators who stated that, until experience was obtained under the Rule, it would be extremely difficult, if not impossible, to determine the extent to which any type of market maker regulation should be universally applied.

Similarly, in view of the limited scope of Rule 19c-3, the Commission is not inclined to approve, prior to implementation of the Rule, any alteration of existing rules of the "primary" exchanges which impose "affirmative" and "negative" obligations upon specialists and which prohibit specialists on such exchanges from accepting orders directly from institutional customers. In view of the unique trading position of the primary market specialist generally (particularly in light of his control of the limit order book), retention of such rules appears to be appropriate pending experience under the Rule with concurrent exchange and over-the-counter trading.

The Commission wishes to emphasize that its determination not to require at this time uniform regulation of all market makers trading in Rule 19c-3 Securities should not be construed as a determination that changes in existing regulations governing market making (including the possible imposition of market making obligations on persons making markets over-the-counter in Rule 19c-3 Securities) would not be appropriate in the future either based on the nature of experience under the Rule or developments in the evolution of a national market system. In this connection, the Commission intends to analyze carefully the effects of the absence of uniform regulation on the ability of specialists and over-the-counter market makers to compete fairly for order flow in Rule 19c-3 Securities. In particular, the Commission will focus on any changes in competitive position of various market participants which may occur as the result of shifts in order flow, the willingness of over-the-counter participants to make markets under varying market and economic conditions and the quality of executions provided by the various markets.

3. *Scope of the Rule*

a. *Comments*

The Commission proposed the Rule in alternative forms, one of which would be applicable to all equity securities which became exchange traded after April 26, 1979, and one of which would be applicable only to reported securities which became exchange traded after April 26, 1979.[73] As indicated in the Release, adoption of a rule applicable to all equity securities would possibly result in off-board trading in a small number of securities listed on regional exchanges which are not subject to transaction or quotation reporting.[74] The Commission specifically requested comment on whether the absence of transaction information would justify the continuing application of off-board trading restrictions notwithstanding the perceived anticompetitive effects of those rules.

The regional exchanges opposed application of the Rule to equity securities which are not reported securities.[75] They argued that the availability of transaction information with respect to Rule 19c-3 Securities was necessary in order to reduce concerns regarding fragmentation and overreaching and to enable regional exchanges to advertise the existence of their markets as a means of competing with integrated firms for order flow. Other commentators favored the application of the Rule to all equity securities, arguing that the anticompetitive effects of off-board trading restrictions are of greater significance in connection with securities which are not reported securities because those securities are generally thinly traded and therefore would particularly benefit from the additional market making competition which would result from elimination of existing off-board restrictions.[76]

b. *Discussion*

The Commission recognizes that, as indicated by the comments described above, there are reasonable arguments both in favor of and opposing the application of the Rule to securities which are not reported securities. For several reasons, however, the Commission has determined to limit the scope of the Rule to securities which are reported securities.

[73]See Release, *supra* note 8, at 18, 44 FR at 2669.

[74] *See id.*

[75]Proceeding Transcript, *supra* note 21, at 632-34, 668-70, 1006-07, 1038-09.

[76]*See, e.g., id.* at 11-12.

First, the Commission believes that it should proceed in a manner which minimizes the concerns which have been expressed with respect to effects of the rule on the markets in Rule 19c-3 Securities. Thus, as noted by commentators, limiting application of the Rule to securities which are reported securities should minimize, to the maximum extent practicable, concerns over fragmentation and overreaching resulting from the absence of current and continuous transaction reporting and the availability of up-to-date quotation information. In addition, application of the Rule to securities which are not reported securities might impede the ability of the Commission and the self-regulatory organizations to conduct surveillance concerning the effects of removal of off-board trading restrictions since reports of transactions effected in the over-the-counter market in such securities would not otherwise be collected and made publicly available.

4. *Effect on Particular Exchanges*

a. *Comments*

In requesting comment on the competitive implications of the Rule, the Commission noted that the Rule is generally limited to securities currently traded exclusively in the over-the-counter market, and that, as a result, there was a possible competitive concern that specialists on exchanges which derive most of their new listings from other exchanges would be less affected by the Rule than specialists on exchanges which derive most of their new listings from the over-the-counter market.[77] One commentator addressed this issue, arguing that the Rule would have a more adverse competitive impact on the Amex, and its specialists, than other exchanges because of the significant proportion of Amex new listings derived from the over-the-counter market.[78]

b. *Discussion*

While the Commission of course remains concerned over any disproportionate effect its regulatory action may have on particular exchanges, the Commission does not believe that these concerns, in this limited context, should preclude adoption of the Rule or require a modification of its terms. The Commission notes that recent trends in exchange listings indicate that all exchanges currently receive a large proportion of their listings directly from the over-the-counter market. Further, since all exchanges are ultimately dependent on the over-the-counter market for future growth in terms of new listings, any differing effect on specialists located on different exchanges may only be transitional.

5. *Technical Comments and Amendments*

a. The Commission received comments from the NYSE addressing certain technical aspects of the Rule.[79]

(1) The NYSE recommended that the Rule should be amended to restrict its application to those equity securities which, immediately prior to their first becoming listed and registered on an exchange, have been traded in the over-the-counter market. In this regard, it was argued that such an amendment would be consistent with the primary purpose of the Rule, which the NYSE perceived as the need to preserve "existing" competition between the over-the-counter market and the exchange markets. As discussed above, however,[80] the Rule was designed to maintain the status quo with respect to the application of off-board trading restrictions pending any further action with respect to off-board trading rules generally. In this regard, the Rule is necessary not only to preserve existing competition between the over-the-counter market and the exchange

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[77]See Release, *supra* note 8, at 16-17, 44 FR at 22691.

[78]Proceeding Transcript, *supra* note 21, at 230. In the Release, the Commission also requested comment on whether the Rule, if adopted, would or would not provide any incentives for exchange listings. Relese, *supra* note 8, at 18-19, 44 FR at 26691. The Commission received little comment on this issue, and commentators were either divided on the question or unsure as to whether the Rule would have any impact on exchange listings. *See, e.g.*, Proceeding Transcript, *supra* note 21, at 285-87, 831-32. As a result, it appears that the possible effects of the Rule in this area are uncertain.

[79]Proceeding Transcript, *supra* note 21, at 803-10.

[80]See text accompanying note 20, *supra*.

markets but also to preserve the possibility of competition between such markets with respect to a newly-issued security. As a result, the Commission has determined not to confine the Rule to the more limited scope proposed by the NYSE.

(2) The Rule provides that, with certain exceptions, any security which, after April 26, 1979, becomes delisted on an exchange and subsequently becomes exchange traded would no longer be a "covered security" and that, therefore, off-board trading restrictions would no longer apply with respect to that security. The NYSE suggests, however, that certain types of new listings are essentially "technical" in nature, or may be designed to prevent avoidance of exchange listing requirements, including the payment of appropriate listing fees. For example, the NYSE indicates that it may require a new listing because of material changes in the features of a particular security, *e.g.*, changes which alter its rights, privileges or terms in a material way, or as a result of application of its so-called "back door" listing policy.[81] The NYSE argues that such new listings are, in effect, continuations of trading of previously listed securities and that, as a result, the Rule should be amended such that off-board trading restrictions would continue to apply to such securities after listing.

The Commission shares the concerns expressed by the NYSE and recognizes that there may be certain, relatively infrequent, types of corporate changes which currently result in new listings but which do not fundamentally change the investment or trading characteristics of a particular security and may appropriately be considered, for purposes of the continued application of off-board trading restrictions, as a continued listing of a security. However, because the Rule could not address every possible instance in which off-board trading restrictions should arguably continue to apply, it seems more appropriate for each exchange to address any such matters in the context of its own listing requirements and fee schedules, consistent with the requirements of Section 19(b) of the Act.

(3) The NYSE expressed its concern that the issuance of additional shares of a "covered security" may be subject to the Rule, *e.g.*, where additional shares of a covered security are issued pursuant to a stock dividend or stock split. The Commission believes that the Rule is clear on this point—if additional shares of a covered security are issued those shares would also be covered securities for purposes of the Rule and therefore would continue to be subject to any off-board trading restrictions then in effect, provided that the other requirements are met with respect to the definition of a covered security.

b. In addition, the Commission believes that it would be appropriate to make one technical change to the Rule. Paragraph (b)(3)(iii) of the Rule defines "covered security" to include, as an exception to the Rule, securities listed and registered on an exchange *after* April 26, 1979, provided those securities are issued in connection with a statutory merger, consolidation or similar plan of reorganization in exchange for other securities which are covered securities. The Commission has modified the paragraph to make clear its intent that this exception shall apply to such securities only if they remain listed and registered on at least one exchange continuously thereafter.

III. *Monitoring Program and Public Comment*

Resolution of many of the issues raised by commentators may be significantly aided through empirical observation and evaluation. Accordingly, the Commission has developed a program to monitor the operation and effects of the Rule on an ongoing basis. The essential elements of this program are data collection, data analysis (including the use of econometric methodologies) and review of empirical findings in the context of the policy issues raised by the Rule's operation.[82]

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[81]The Commission understands that the "back door" listing policy generally requires a company to delist its securities in the event that a large unlisted company is combined with the listed company and the listed company continues as the surviving entity.

[82]It is important to note at the outset that this monitoring program is subject to all the caveats applicable to empirical research. More specifically, the methods of statistical analysis employed in this program may introduce a margin of error which will limit the Commission's ability to draw definitive conclusions. Nevertheless, the Commission believes that its monitoring program will contribute to the clarification of some of the policy issues presented by the Rule.

The primary focus of the Commission's monitoring program will be upon the impact of the Rule on (1) market quality, (2) quality of executions, and (3) market structure. The Commission's monitoring effort will collect and produce data which will be used to describe the composition of the Rule's trading environment. For example, data on the number of market makers in rule 19c-3 Securities and the distribution of volume among such market makers will be generated by the monitoring program. The following are examples of the types of methodology which will be used in the monitoring program.

A. *Impact on Market Quality*

Assessment of the impact on the quality of the market of trading resulting from the adoption of the Rule will be based primarily on three measures — the bid-ask spread, the quoted depth and the volatility of price. The methodology which will be employed to evaluate the impact of the Rule on these measures of market quality will be based primarily on published research and internally developed models which have been previously tested. Control groups of non-Rule 19c-3 Securities will be used in the testing process in order to better isolate the Rule's impact. All analyses of the impact of the Rule on market quality will be based on samples of securities for sample time periods, *e.g.*, non-Rule 19c-3 Securities, Rule 19c-3 Securities listed before the effective date of the rule and Rule 19c-3 Securities listed after the effective date of the Rule.

B. *Impact on Quality of Execution*

The impact of Rule 19c-3 on the quality of executions will be monitored in order to determine the extent of overreaching in connection with the execution of internalized orders by retail broker-dealers. In addition, the quality of executions with respect to non-internalized agency orders will also be monitored.

The quality of executions in Rule 19c-3 Securities will be monitored utilizing a sampling methodology by comparing the prices of agency orders to the quoted market at the time the order was executed.[83] In addition, control groups of non-Rule 19c-3 Securities will be established to enable comparison of market characteristics such as the percent of orders executed within the bid-ask spread and the percent of orders executed at the quoted market.

C. *Impact on Market Structure*

A fundamental characteristic of all markets is the number of competitors. Empirical date will be gathered which will indicate the impact of the Rule on the number of market markers entering quotes in Rule 19c-3 Securities. In addition, the monitoring program will include an analysis of trading patterns that develop in the new trading environment in order to assess the Rule's impact on the distribution of volume among participants.

In addition to obtaining empirical data on the number of market makers and on the distribution of volume, the monitoring program will evaluate the Rule's impact on smaller broker-dealers by observing the degree to which such broker-dealers continue to make markets in Rule 19c-3 Securities. Data will also be gathered with respect to market maker quotations in Rule 19c-3 Securities, as well as the size of the quotes being offered by market makers.

Finally, as experience is gained under the Rule, the Commission may determine to alter or expand the scope of the monitoring program in order to evaluate the economic impacts of the Rule on various market participants and on the market structure as a whole.

D. *Public Comment*

It is anticipated that the results of the Commission's monitoring program will be publicly reported on a periodic basis. The first report will be issued approximately May 31, 1981. Two additional reports will be issued at twelve month intervals thereafter. The Commission believes that these public releases will facilitate informed comment on the advisibility of further regulatory action concerning the Rule. In this regard, following the issuance of the first monitoring report, the Commission expects to hold a public meeting in which interested persons may comment on that report (including suggesting improvements in format or content) and generally on Rule 19c-3 and the market environment for Rule 19c-3 Securities.

In addition to comments regarding the periodic reports issued as part of the monitoring program, the

[83] It should be noted that there are problems in both exchange and over-the-counter markets in determining the precise time at which an execution occurs or a quotation is made.

Commission also solicits the views of interested persons on a continuing basis with respect to any aspect of Rule 19c-3. Moreover, because of the importance of the issues associated with the retention or elimination of off-board trading restrictions and the relationship of those issues to the evolving national market system, the Commission expects to reexamine the issues associated with exchange off-board trading restrictions generally, to the extent and at such times as appears appropriate in light of developments in the markets.

IV. *Conclusion*

As discussed above,[84] the Commission has found that off-board trading restrictions impose burdens on competition by limiting over-the-counter market making by exchange member firms. The adoption of the Rule will prevent the application of these burdens on competition to Rule 19c-3 Securities and may provide benefits in terms of preserving (and possibly enhancing) competition between and among markets. The adoption of the rule may also provide a trading environment which may permit both the securities industry and Commission to make useful observations about the utility of an integrated trading environment in which both exchange and over-the-counter market makers are free to compete. The Commission recognizes that, as indicated by commentators, there are significant regulatory concerns with respect to the possible adverse consequences of adoption of this proposal. However, on balance, in the Commission's judgment, in light of the limited scope of the Rule, and the Commission's ability to take additional regulatory action, including rescission of the Rule if significant adverse consequences do occur, the potential benefits of adoption appear to outweigh the potential adverse impacts of the Rule.

Accordingly, based on the record of this proceeding, the Commission has determined, pursuant to Section 19(c) of the Act, that the adoption of Rule 19c-3 is necessary or appropriate to conform the rules of exchanges to the requirements of the Act, or is otherwise in furtherance of the purposes of the Act.

In taking this regulatory action under the Act, Section 23(a)[85] requires the Commission to consider "the impact that rule or regulation may have on competition" and precludes the Commission from adopting any rule or regulation "which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act." Based on the foregoing analysis[86] the Commission also finds that Rule 19c-3 does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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In view of the considerable concern which has been expressed by commentators with respect to the significance of Rule 19c-3 as a precursor to eliminating all remaining off-board trading restrictions, the Commission believes it is important to indicate the significant limitations it perceives regarding the predictive value of the experience which may be obtained under the Rule. As indicated above,[87] the Commission recognizes that the Rule may not yield results permitting extrapolation beyond the limited scope of the Rule. As a consequence, the Rule should not be viewed as a "first step" which, absent substantial negative effects, would inexorably lead to the elimination of off-board trading restrictions with respect to all reported securities. Similarly, with respect to the possible adverse consequences of adoption of Rule 19c-3 which have been advanced by opponents of the Rule, the Commission's adoption of the Rule should not be construed as indicating that these concerns might not be of greater significance in the context of a more general elimination of off-board trading restrictions, or that the Commission has definitively resolved the issues associated with any such action.

The Commission has determined that adoption of Rule 19c-3 is an appropriate vehicle for beginning to address the complex and difficult market structure and investor protection issues involved in off-board trading by exchange member firms (particularly where such firms are permitted to act as both broker and dealer in the same security). The limited nature of the proposal and the Commission's commitment to a comprehensive monitoring effort, in our view, minimize any potential adverse effects and enhance the learning potential of this "experiment." In light of the Commission's determination to adopt Rule 19c-3, the Commission does not expect to take further action in the near future regarding off-board trading

[84]*See* text accompanying notes 11 and 17, *supra*.

[85]15 U.S.C. §78w(a).

[86]*See* text accompanying notes 17-81. *supra*.

[87]*See* text accompanying notes 21 and 82, *supra*.

restrictions generally.[88] Accordingly, the Commission has determined to withdraw proposed Rule 19c-2 simultaneously with the effective date of Rule 19c-3.[89]

V. *Statutory Basis and Text of Rule*

The Securities and Exchange Commission hereby amends Title 17, Chapter II, of the Code of Federal Regulations, pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. §§78a et seq., as amended by Pub. L. 94-29 (June 4, 1975)], and particularly Sections 2, 3, 6, 11, 11A, 17, 19 and 23 thereof [15 U.S.C. §§78b, 78c, 78f, 78k, 78k-1, 78q, 78s and 78w], by adding §240.19c-3 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.19c-3 Governing off-board trading by members of national securities exchanges.

The rules of each national securities exchange shall provide as follows:

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended (other than a put option or call option issued by the Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule,

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "exchange" shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act.

(3) The term "covered security" shall mean

(i) any equity security or class of equity securities which

(A) was listed and registered on an exchange on April 26, 1979, and

(B) remains listed and registered on at least one exchange continuously thereafter;

(ii) any equity security or class of equity securities which

(A) was traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by section 12(f)(1)(A) of the Act, and

(B) remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter; and

(iii) any equity security or class of equity securities which

(A) is issued in connection with a statutory merger, consolidation or similar plan or reorganization (including a reincorporation or change of domicile) in exchange for an equity security or class of equity securities described in paragraphs (b)(3)(i) or (b)(3)(ii) of this rule,

(B) is listed and registered on an exchange after April 26, 1979, and

(C) remains listed and registered on at least one exchange continuously thereafter.

(4) The term "reported security" shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term "effective transaction reporting plan"

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[88]As indicated above, however, the Commission will consider immediate regulatory action to eliminate any adverse consequences of Rule 19c-3.

[89]See Securities Exchange Act Release No. 16889 (June 11, 1980). As indicated above, the Commission has determined not to withdraw proposed Rules 15c5-1[A], 15c5-1[B], 15c5-1[C] and 15c5-1[D]. See note 6, *supra*.

shall mean any plan approved by the Commission pursuant to §240.11Aa3-1 (Rule 11Aa3-1 under the Act) for collecting, processing and making available transaction reports with respect to transactions in an equity security or class of equity securities.

(Secs. 2, 3, 6, 11, 17, 19 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 891, 897, and 898 and 901, as amended by Secs. 2, 3, 4, 6, 14, 16 and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 110, 137, 146 and 155 (15 U.S.C. §§78b, 78c, 78f, 78k, 78q, 78s and 78w); Sec. 11A, as added by sec. 7, Pub. L. No. 94-29, 89 Stat 111 (15 U.S.C. §78k-1).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16889/June 11, 1980

OFF-BOARD TRADING RESTRICTIONS

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission has withdrawn a proposed rule which would have eliminated all remaining exchange off-board trading restrictions on (1) off-board principal transactions and (2) off-board agency transactions in which an exchange member acts as agent for both buyer and seller in the same transaction, with respect to reported securities.

EFFECTIVE DATE: Thirty days after publication of this release in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt (202-272-2888), Room 390, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the withdrawal of proposed Rule 19c-2 [17 CFR §240.19c-2] under the Securities Exchange Act of 1934 ("Act"),[1] which, if adopted, would have amended existing rules of national securities exchanges ("exchanges") which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange in securities which are listed or admitted to unlisted trading privileges on those exchanges ("off-board trading restrictions"). Specifically, Rule 19c-2 would have eliminated all remaining exchange restrictions on (1) off-board principal transactions and (2) off-board agency transactions in which an exchange member acts as agent for both buyer and seller in the same transaction, with respect to reported securities.[2]

The Commission today announced the adoption of Rule 19c-3 under the Act [17 CFR §240.19c-3], which will preclude off-board trading restrictions from applying, with certain exceptions, to any reported security (1) which was not traded on an exchange on April 26, 1979, or (2) which was traded on an exchange on April 26, 1979, but which ceases to be traded on an exchange for any period of time thereafter.[3] In view of the adoption of Rule 19c-3, the Commission does not expect to take further action in the near future with respect to off-board trading restrictions generally. Accordingly, the Commission

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[1] 15 U.S.C. §§78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975), 89 Stat, 97, [1975] U.S. Code Cong. & Ad. News 97.

[2] *See* Securities Exchange Act Release No. 13662 (June 23, 1977) ("19c-2 Release"), 42 FR 33510. In January 1978, the Commission deferred a final decision on rule 19c-2 pending evaluation of industry and self-regulatory responses to national market system initiatives announced by the Commission. *See* Securities Exchange Act Release No. 14416 (January 26, 1978), at 38-41, 43 FR 4354, 4359-60. *See also* Securities Exchange Act Release Nos. 15376 (December 1, 1978) and 15671 (March 2, 1979), 43 FR 58664, 44 FR 20360.

[3] *See* Securities Exchange Act Release No. 16888 (June 11, 1978).

has also determined to withdraw proposed Rule 19c-2 thirty days after publication of this release in the *Federal Register*.[4]

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16890/June 11, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGES BY THE PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-80-8

The Pacific Stock Exchange, Incorporated ("PSE") submitted on May 27, 1980, a proposed rule change under Rule 19b-4 to clarify the obligations of Order Book Officials for executing orders, to base maximum Market Maker spreads on the current bid rather than last sale price, and to adopt or amend several Options Floor Procedure Advices.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 16, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16891/June 12, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-7

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on April 21, 1980, a proposed rule change under Rule 19b-4 to increase its service charge for processing requests for extensions of time pursuant to Regulation T and Rule 15c3-3 from its present fee of $1.50 to $2.0 per request.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rate change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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[4]In the proceeding relating to proposed Rule 19c-2 the Commission proposed four alternative rules to deal with overreaching concerns. *See* 19c-2 Release, at 111-31, 42 FR at 33525-27. The Commission wishes to point out that, although the Commission has determined to withdraw proposed Rule 19c-2, the alternative overreaching rules published in connection with proposed Rule 19c-2 are still outstanding.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 16, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21607/June 9, 1980

In the Matter of

NORTHEAST UTILITIES
WESTERN MASSACHUSETTS ELECTRIC COMPANY
174 Brush Hill Avenue
West Springfield, Massachusetts 01089

THE CONNECTICUT LIGHT & POWER COMPANY
THE HARTFORD ELECTRIC LIGHT COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY
Selden Street
Berlin, Connecticut 06037

HOLYOKE WATER POWER COMPANY
One Canal Street
Holyoke, Massachusetts 01040

(70-6465)

NOTICE OF PROPOSALS TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS AND TO ENTER INTO A MULTIBANK REVOLVING CREDIT AGREEMENT; CAPITAL CONTRIBUTIONS TO SUBSIDIARIES

NOTICE IS HEREBY GIVEN that Northeast Utilities ("NU"), a registered holding company, and five of its wholly owned subsidiary companies, The Connecticut Light & Power Company ("CL&L"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP") and Northeast Nuclear Energy Company ("NNECO"), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, and 12(b) of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

The applicants propose 1) to make short-term borrowings through the issuance of notes to banks and, with the exception of HWP and NNECO, the issuance of commercial paper to a dealer from time to time through June 30, 1981, and 2) to enter into a multibank revolving credit and term loan agreement under the terms of which CL&P, HELCO and WMECO may borrow up to an aggregate of $140,000,000. The aggregate amount of all such notes at any time outstanding, whether issued to banks ("Bank Notes") or to a dealer in commercial paper ("Commercial Paper") or to banks under the revolving credit/term loan agreement ("Revolving Credit/Term Notes") will not exceed $55,000,000 in the case of NU, $185,000,000 in the case of CL&P, $100,000,000 in the case of HELCO, $55,000,000 in the case of WMECO, $8,000,000 in the case of HWP and $30,000,000 in the case of NNECO. The applicants propose to renew and extend any notes so issued or to refund them with other similar notes issued to banks or to a dealer in commercial paper and to issue and sell additional short-term notes (and to renew such notes) from time to time to meet portions of their capital requirements, subject to the applicable maximum limitations.

The Bank Notes will each be dated the date of issue, will have maximum maturity dates of nine months with right of renewal, will bear interest at the prime rate or at the prime rate plus a fraction thereof, will be issued no later than June 30, 1981 and will be subject to prepayment at any time at the applicant's option without premium.

With respect to the issuance of Bank Notes, the applicants have credit lines with a number of banks subject in some cases to commitment fees and/or compensating balance requirements. The effective cost of borrowings under such credit lines, based on a prime rate of 12%, ranges from 12.72% to 15.36%. The bank credit lines expire at various times in 1980 and 1981 and their continued availability is subject to continuing review by the banks involved. Bank credit lines of the applicants may be changed and additional lines may be obtained from other banks.

Commercial Paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue and will not be repayable prior to maturity. The Commercial Paper will be sold directly to a dealer in commercial paper, Lehman Commercial Paper, Incorporated, at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by public utility issuers thereof to commercial paper dealers. No Commercial Paper shall be issued giving a maturity of more than 90 days at an effective interest cost to the applicant in excess of the effective bank interest rate at which the applicant could obtain loans from banks in an amount at least equal to the principal amount of such Commercial Paper. No commission or fee will be payable in connection with the issuance and sale of the Commercial Paper. The purchasing dealer, as principal, will reoffer the Commercial Paper to institutional investors at a discount of not more than 1/8 of 1% per annum less than the prevailing discount rate to the applicant in such manner as not to constitute a public offering.

The Commercial Paper will be reoffered to not more than 200 identified and designated customers in a nonpublic list prepared for each applicant in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the Commercial Paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the Commercial Paper and reoffer the same to others in the group of 200 customers.

The revolving credit/term loan agreement ("Agreement") will provide that during the revolving period, CL&P, HELCO and WMECO may borrow, on a first-come, first-served basis, up to the maximum amount committed, $80,000,000, $60,000,000 and $45,000,000, respectively. The revolving period would end June 30, 1983 or such earlier date as CL&P, HELCO and WMECO individually elect, and in either event the then outstanding borrowings will be converted to term loans maturing no later than June 30, 1987 and amortized in eight semiannual installments commencing December 31, 1983. Borrowings may be repaid in whole or in part without penalty during the revolving period or during the term of the term notes and may be reborrowed during the revolving period. The borrowings outstanding shall bear interest, payable quarterly in arrears, at the following rates:

YEAR	RATE
1	100% Base Rate
2	100% Base Rate
3	102% Base Rate
4	104% Base Rate
5	104% Base Rate
6	105% Base Rate
7	106% Base Rate

Base Rate is the higher of (a) Continental Illinois National Bank floating prime rate (b) ½ of 1 percent per annum above the latest three week moving average of secondary market offering rates in the United States for three months certificates of deposit as published weekly by the Federal Reserve Bank of New York. Subject to requisite regulatory approval, the applicants will pay a commitment fee of ½ of 1 percent per annum, commencing not later than April 15, 1980, on the average unused portion of the commitment during the revolving period, payable quarterly in arrears.

The proceedings derived by NU from the issuance and sale of the Bank Notes and the Commercial Paper will be applied during the period from July 1, 1980 to June 30, 1981 (1) to make capital contributions to CL&P and to WMECO in amounts not to exceed $40,000,000 and $15,000,000, respectively, (2) to make capital contributions or open account advances to NNEC in an amount not to exceed in the aggregate $7,000,000, and (3) to make open account advances to the Quinnehtuk Company, a wholly-owned real estate subsidiary of NU, in amounts not to exceed the aggregate

$500,000, and (4) to supply funds as needed to other subsidiary companies as heretofore or hereafter authorized by the Commission. All capital contributions to subsidiaries will be credited to their capital surplus accounts. NNEC will apply such contributions or open account advances, together with short-term borrowings and other funds available to it, for nuclear fuel financing during 1980 and 1981. NNECO's total expenditures for nuclear fuel in 1980 and 1981 are estimated to be $41,000,000.

The funds to be derived by CL&P, HELCO and WMECO from the issuance and sale of the Bank Notes, Commercial Paper and Revolving Credit/Term Notes will be applied, together with other funds available to these companies, to provide working capital and to finance their respective construction expenditures in 1980 and 1981, which are estimated to be $323,000,000, $154,000,000 and $83,000,000, respectively. Funds derived by HWP from the sale of Bank Notes will be applied to the installation of a second hydro unit at its facility at Hadley Falls on the Connecticut River. It is anticipated that construction will commence in 1980 and the total estimated construction costs for the unit are $17,000,000.

It is presently contemplated that any Bank Notes or Commercial Paper of NU, CL&P, HELCO, WMECO, HWP and NNECO outstanding at June 30, 1981, or any Revolving Credit/Term Notes of CL&P, HELCO and WMECO, outstanding at June 30, 1987 will be repaid from internal cash resources or from the proceeds of long-term debt or equity financing.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The issue of the Revolving Credit/Term Notes by CL&P, HELCO and WMECO is subject to the jurisdiction of the Connecticut Division of Public Utility Control and the Massachusetts Department of Public Utilities. No other state or federal regulatory authority has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than June 30, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21608/June 9, 1980

In the Matter of

COOL WATER COAL GASIFICATION PROGRAM
Rosemead, California

(31-773)

ORDER GRANTING EXEMPTION PURSUANT TO SECTION 2(a)(3)(A)

Southern California Edison Company ("So Cal Ed"), an electric utility company which is organized and provides electric utility service in California, and Texaco, Inc. ("Texaco"), a Delaware corporation, have filed an application under Section 2(a)(3)(A) of the Public Utility Holding Company Act of 1935 ("Act") on behalf of the Cool Water Coal Gasification Program ("Coal Gas"), an unincorporated venture in which So Cal Ed and Texaco are participating, for an order declaring Coal Gas not to be an "electric utility company" under the Act.

Texaco and So Cal Ed have entered into an agreement, to which other persons may hereafter become parties as "participants" or "sponsors", to test and demonstrate the feasibility of integrating a commercial-size coal gasifier utilizing a gasification process developed by Texaco with a conventional combined cycle electric generating plant. Under the agreement, which establishes Coal Gas, Texaco and So Cal Ed propose to design, build, test, and demonstrate the coal gasification/combined cycle generating plant ("Plant") at a generating plant site owned by So Cal Ed near Daggett, California. The Plant will be designed to produce carbon monoxide and hydrogen (*i.e.*, synthesis gas) from coal to be supplied by So Cal Ed. So Cal Ed will pay a fee to Coal Gas for processing its coal, and will own all of the resulting synthesis gas. The gas will be supplied to a new generating unit which will have a 90-100 megawatt net capacity, or, in the event of any interruptions in its operation, to an existing So Cal Ed owned generating unit at the Plant site.

At the present time, Texaco, So Cal Ed and Energy Power Research Institute have expressed an intent to become participants in Coal Gas. It is expected that other persons will become participants or sponsors. A participant will be required to commit a minimum of $25 million to Coal Gas and agree to assume a proportionate share of its costs. A sponsor will be required to commit a minimum of $5 million but not more than $25 million to Coal Gas and agree to assume a proportionate share of its costs up to the amount of each sponsor's contribution. Coal Gas will require no funding other than the funding provided by the participants and sponsors. Each participant will have one vote on Coal Gas' board of control and on a management committee. Sponsors will have no management responsibilities. The agreement further provides that at the end of the estimated duration of the Coal Gas program (seven years), or upon earlier termination, Coal Gas will dispose of the Plant. So Cal Ed will, in that event, have a right of first refusal to purchase all or parts of the Plant.

Section 2(a)(3)(A) provides that the Commission may declare a company which owns or operates facilities for the generation, transmission or distribution of electric energy for sale not to be an electric utility company if "such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the samll amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company. . . ." Rule 10(a)(1) provides, in pertinent part, that a company is exempt from the duties, liabilities, and obligations imposed upon it as a holding company with respect to a subsidiary which, insofar as it is a public utility company, is declared not to be an electric utility company under Section 2(a)(3).

Coal Gas will be primarily engaged in the business of developing and testing a coal gasification process. The project is experimental only and is limited in duration. At no time will Coal Gas engage primarily in the business of an electric utility, and it is uncertain whether any significant amount of electricity will be sold by Coal Gas. The objective of the venture is to develop a process for producing synthesis gas from coal for use by electric utilities. The power generation equipment in intended only to demonstrate the commercial feasibility of that process. All power produced by Coal Gas will be sold by So Cal Ed to its customers at rates set by the California Public Utilities Commission and the Federal Energy Regulatory Commission.

Due notice of the filing of said application has been given (HCAR No. 21570) and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that Coal Gas is primarily engaged in a non-utility business and that, by reason of the small amount of electric energy which Coal Gas expects to sell, it is not necessary in the public interest or for the protection of investors or consumers that Coal Gas be considered an electric utility company.

IT IS DECLARED, accordingly, that Coal Gas is not deemed to be an electric utility company for purposes of the Act, and the application filed herein is ORDERED effective forthwith.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21609/June 9, 1980

In the Matter of

ALLEGHENY POWER SYSTEM, INC.
New York, New York

(70-6442)

ORDER AUTHORIZING HOLDING COMPANY TO BECOME BONDED AS SURETY FOR PUBLIC-UTILITY SUBSIDIARY COMPANY

Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transaction.

Allegheny proposes to become bonded as surety to the State of West Virginia in such an amount as shall be determined by the West Virginia Public Service Commission for prompt refund by Allegheny's wholly-owned subsidiary, Monongahela Power Company ("Monongahela"), of all amounts Monongahela, under certain tariffs filed with said Commission on February 11, 1980, may collect or receive in excess of such rates and charges as may be finally fixed by said state commission, plus interest at such annual rate as such commission may determine by order to be necessary and appropriate. The purpose of the proposed transaction is to enable Monongahela, as permitted by West Virginia law, to begin applying the new increased rates prior to completion of the state commission's investigation, hearing, and decision with respect thereto. It is expected that the amount of the bond will not exceed $51,500,000, which is the estimated additional annual revenue that the new rates will provide.

No state commission and no federal commission, other than this Commission has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21529), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21610/June 9, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
100 Interpace Parkway
Parsippany, New Jersey 07054

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

METROPOLITAN EDISON COMPANY
P.O. Box 542
Reading, Pennsylvania 19640

PENNSYLVANIA ELECTRIC COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

(70-6443)

NOTICE OF PROPOSAL TO ORGANIZE A WHOLLY OWNED SUBSIDIARY FOR THE MANAGEMENT AND OPERATION OF NUCLEAR STATIONS

NOTICE IS HEREBY GIVEN that General Public Utilities Corporation ("GPU"), a registered holding company, and its subsidiary companies named above have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections

9(a), 10, 12(b), and 13(b) thereof and Rules 45, 50(a)(3), and 86-95 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration which is summarized below for a complete statement of the proposed transactions.

GPU proposes to organize a new wholly owned subsidiary company to be known as GPU Nuclear Corporation ("NC"). NC will issue and GPU will purchase for cash 2,500 shares of NC's common stock, at a price of $20 per share or an aggregate consideration of $50,000. If necessary, GPU will make open account advances to NC from time to time; the aggregate amount of such advances by GPU to NC outstanding at any time will be not more than $500,000. Interest on such open account advances will accrue at a rate equal to the current interest cost on GPU's bank borrowings. Based on the current prime rate of 14%, the effective cost of such bank borrowings would be 14.89%.

NC will be a service company and will not own or finance any nuclear or other utility assets. It is intended that NC will become responsible, on behalf of the owners and through contract with them, as and when necessary regulatory authorizations are received, for the safe operation, maintenance, rehabilitation, design, construction, start-up and testing of all nuclear generating facilities owned by GPU System companies and related research and development. The purpose is to consolidate all resources of the GPU companies relating to nuclear matters in a single organization. GPU cites the Report of the President's Commission on the Accident at Three Mile Island and the Report of the NCR/TMI Special Inquiry which have stated that integration into one organization of management and operating responsibility for nuclear generating stations is desirable so that there will be a single accountable organization with the requisite expertise to take responsibility for the integrated operation and maintenance of such stations.

NC proposes to apply to the Nuclear Regulatory Commission ("NRC") for operating licenses for the Oyster Creek Nuclear Generating Station ("Oyster Creek") owned and operated by Jersey Central Power & Light Company ("JCP&L") and for the Three Mile Island Nuclear Plants, ("TMI") jointly owned, but not presently operated and for which Metropolitan Edison Company ("Met-Ed") is the present licensee and the operator under the existing TMI Operating Agreement among JCP&L, Met Ed and Pennsylvania Electric Company ("TMI Operating Agreement"). An amendment of the TMI Operating Agreement would be proposed in the NRC proceeding, which would, among other things, make NC a party to the agreement and the operator of TMI. The NRC has broad jurisdiction over the operation of nuclear facilities. Both the timing and the scope of NC's activities will be governed by the terms and conditions of any licenses granted by the NRC and by its other regulatory requirements. Any such license will also be implemented by a specific operating agreement between NC and the owner or owners of the subject facility. And licensing will be for specific plants, so that NC's functions may commence in stages.

Shortly after the March 28, 1979 accident at Unit No. 2 of TMI, the GPU System combined the technical staffs from Met Ed and GPU Service Corporation ("Service") to form the TMI Generation Group consisting of approximately 250 professionals assigned exclusively to activities at Units Nos. 1 and 2 of TMI. This group, together with the technical staff of JCP&L that is presently responsible for the operation and maintenance of Oyster Creek, and approximately 800 of the non-professional employees of the various GPU System companies will ultimately be transferred to NC, if and when it receives the necessary authorizations. The salaries and other costs of the present GPU System employees including pension and other employee benefits for such employees, will be included in NC's operating costs. The aggregate salaries and costs of such employees to the GPU System during 1979 amounted to approximately $25,000,000. NC may also engage consultants and contractors as needed for the discharge of its functions.

NC will render service at cost, pursuant to Section 13(b) of the Act. The costs will be accounted for and billed to the owners of the subject facilities as prescribed by Rules 91 and 93 and the system of accounts prescribed thereunder. In the case of NC services rendered for the TMI units, these costs will be determined and accumulated and allocated among the owners of TMI in proportion to ownership interests in TMI.

NC's initial function will be to seek from other regulatory agencies the licenses and authorizations required. It is proposed that it will report its progress and activities under Rule 24, including the undertaking of any of the intended functions

summarized above, as its authority to do so is established. Variations would be reported under the 60 day letter procedure established for service companies.

The fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that amendment of the TMI Operating Agreement is subject to the jurisdiction of the Pennsylvania Public Utility Commission and will require amendment of the TMI Operating licenses issued by the Nuclear Regulatory Commission ("NRC"). Implementation of the Oyster Creek Operating Agreement requires the issuance of an operating license by the NRC. It is also stated that JCP&L does not believe that the operating agreements for TMI and Oyster Creek are subject to the jurisdiction of the New Jersey Board of Public Utilities ("BPU") although the question is before the BPU. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than June 30, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21611/June 9, 1980

In the Matter of

CONNECTICUT YANKEE ATOMIC POWER COMPANY
P.O. Box 270
Hartford, Connecticut 06101

(70-6464)

NOTICE OF PROPOSAL TO ISSUE SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO A DEALER

NOTICE IS HEREBY GIVEN that Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), a subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Connecticut Yankee is the owner of 575,000 kW nuclear electric generating plant (the Plant) in Haddam, Connecticut, which has been in operation since January 1968. Outstanding shares of Connecticut Yankee's common stock are owned by eleven New England electric utilities.

Connecticut Yankee proposes to issue and sell notes to banks and commercial paper to a dealer from time to time on or before June 30, 1981. The aggregate amount of all such notes at any time outstanding, whether issued to banks or to a dealer in commercial paper, will not exceed $35,000,000. As of March 31, 1980, Connecticut Yankee's

outstanding short-term debt was $11,050,000. The short-term debt to be outstanding at June 30, 1980 is estimated at $30,000,000. The proceeds of the sale bank notes and commercial paper will be applied by Connecticut Yankee to repay $9,825,000 of commercial paper presently outstanding, to provide funds for construction and for the purchase of additional nuclear fuel through June 30, 1981. Connecticut Yankee's estimated construction and nuclear fuel programs for 1980 and 1981 are:

	1980	1981
Construction	$33,000,000	$26,000,000
Nuclear Fuel	-0-	$34,000,000

The bank notes issued by Connecticut Yankee will each be dated the date of issue, will have a maximum maturity date of nine months, and will bear interest at the prime rate and will be subject to compensating balance requirements. The bank notes will be issued no later than June 30, 1981, and will be subject to prepayment at any time at Connecticut Yankee's option without premium. Assuming a prime rate of 12% the effective cost of such borrowings would be 14.4% per annum.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue and will not be repayable prior to maturity. The commercial paper will be sold directly to Lehman Commercial Paper, Incorporated, at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity, sold by the public utility issuers thereof of commercial paper dealers. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to Connecticut Yankee in excess of the effective bank interest rate at which Connecticut Yankee could obtain loans from banks in an amount at least equal to the principal amount of such Commercial Paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institutional investors at a discount of not more than 1/8 of 1% per annum less than the prevailing discount rate to Connecticut Yankee in such manner as not to constitute a public offering.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for Connecticut Yankee in advance by the purchasing dealer. No additions will be made to this customer list.

It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than June 30, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21612/June 9, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

MIDDLE SOUTH SERVICES, INC.
ARKANSAS-MISSOURI POWER COMPANY
ARKANSAS POWER & LIGHT COMPANY
ASSOCIATED NATURAL GAS COMPANY
LOUISIANA POWER & LIGHT COMPANY
MISSISSIPPI POWER & LIGHT COMPANY
NEW ORLEANS PUBLIC SERVICE INC.
SYSTEM FUELS, INC.
MIDDLE SOUTH ENERGY, INC.

(70-6432)

ORDER AUTHORIZING ALLOCATION OF CONSOLIDATED TAX LIABILITIES BY METHOD OTHER THAN PRESCRIBED BY RULE 45(b)(6)

Middle South Utilities, Inc., ("Middle South"), a registered holding company, and its subsidiary companies named above, have filed a declaration and an amendment thereto pursuant to Sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

Middle South and its subsidiary companies join annually in the filing of consolidated Federal income tax returns. By Order dated May 23, 1963 (HCAR No. 14877), the Commission permitted a deviation from the tax allocation provisions of Rule 45(b)(6) whereby each of the companies included in the consolidated tax returns of the Middle South System would be given full investment tax credit contributed by it to the total investment credit allowed in the consolidated returns. Subsequent to the date of that Order, Middle South acquired or created several additional subsidiaries, including System Fuels, Inc., ("SFI") and Middle South Energy, Inc. ("MSE"). By Order dated February 11, 1975 (HCAR No. 18807), the Commission authorized Middle South to allocate consolidated tax liability by a method whereby each year's reduction of consolidated tax resulting from exploration and development costs, would be allocated in its entirety to SFI which was then engaged in oil and gas exploration. Such reduction would be placed in a deferred income tax account against which would subsequently be charged taxes payable by SFI on taxable income arising from recovery of exploration and development costs. This would permit SFI to sell fuel to the operating companies at a cost price unaffected by fluctuations in tax components caused by timing variations between book and tax treatment of capitalized costs. That Order also authorized the system to allocate to MSE a then newly organized company, which was to serve as a future generating company for the system, the reduction in consolidated liability resulting from net operating losses contributed by MSE. Such losses resulted primarily from deduction of interest expense on borrowed funds during the period of construction of generating plants.

Further modifications of the system of allocation is now requested, as follows:

(a) Allocation through 1980 of tax benefits of deductions to SFI with respect to uranium and coal development and exploration activities in the same manner as the treatment allowed SFI for oil and gas exploration and development activities by Order dated February 11, 1975.

(b) Allocation to System operating utilities of the tax benefits of their net operating loss contributions to the consolidated group. Arkansas Power & Light Company ("AP&L") and Arkansas Missouri Power Company ("Ark-Mo") experienced net operating losses in 1979. These losses will offset the taxable income of profitable System companies in the 1979 Federal consolidated tax return. A modification providing for the allocation of the benefits of the net operating losses of operating utilities to the utilities incurring such tax losses is sought in order to equitably allocate the tax deductions generated thereby in the interests of investors and consumers. Any tax credits remitted to loss operating utilities as a result of such modification would be applied to reduce credits in future years to which such operating utilities might otherwise be entitled under the separate return limitations of Rule 45(b)(6).

(c) Allocation of consolidated minimum Federal income tax among the members of the consolidated group in accordance with the ratio that the portion of the total preference items on which such tax is based bears to the total preference items of all of the members of the consolidated group.

(d) Separate allocation of the portion of the

consolidated Federal income tax liability applicable to long term capital gains, which is taxed at a lower rate than the rate applicable to the ordinary income, in accordance with the proportion of the net long-term capital gain of each member having long-term capital gains to consolidated net long-term capital gain. Net long term capital gains would be excluded from the taxable income base for allocation of ordinary income tax.

(e) Modification of the Commission's Order of May 23, 1963 to provide that as a minimum each company shall be allocated investment tax credit which would be allowable on the basis of its allocated consolidated tax liability and that the remaining consolidated investment tax credit be allocated in accordance with the Order of May 23, 1963 on the basis of remaining available investment tax credit of each member.

Each requested modification would be subject to the limitation in Rule 45(b)(6)(i) that the aggregate tax liability allocated to a subsidiary should not exceed the amount of tax of such subsidiary based upon a separate return computed as if such subsidiary had always filed its tax return on a separate return basis. With the exception of (a) above, each modification is requested for 1979 and future years.

The table below sets forth the tax allocation under existing authorization and the tax allocation under the methods now proposed:

	Present Allocation (000)	Proposed Allocation (000)
MSE	$(8,691)	$(2,802)
SFI	(433)	(140)
AP&L	—	(2,520)
ARK-MO	—	(34)
Associated Natural Gas Company	427	329
Louisiana Power & Light Company	33	8
Mississippi Power & Light Company	6,177	4,414
New Orleans Public Service Inc.	2,487	744
Net Consolidated Tax	$ -0-	$ -0-

The fees, commissions and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $7,000, including legal fees and disbursements estimated not to exceed $5,000. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21565), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21613/June 10, 1980

INCOME AND EXPENSE ACCOUNTS—MUTUAL SERVICE AND SUBSIDIARY SERVICE COMPANIES

ACTION: Final rule.

SUMMARY: The Commission is making a minor technical amendment of a single account in its Uniform System of Accounts for Mutual and Subsidiary Service Companies which will eliminate a requirement which is clearly inappropriate.

EFFECTIVE DATE: June 10, 1980.

FOR FURTHER INFORMATION CONTACT: Robert P. Wason (202-523-5159), Division of Corporate Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The

Commission revised its Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies under the Public Utility Holding Company Act of 1935 in Release No. 35-20910, 44 FR 8247, February 9, 1979. Upon implementation of the revised system of accounts, it was realized that gains or losses on disposition of operating equipment would be recorded in Account 421, Miscellaneous Income or Loss, and would, in fact, be the kind of transaction, arising repeatedly in the ordinary course of a service company's business, for which this account was most likely to be used.

The allocation prescribed by Account 421 was wholly unsuitable for gains or losses on disposition of operating equipment. Such gains or losses are directly associated with the cost of using the equipment. It is also clear that the allocation of gains or losses on any other kind of casual or extraordinary transaction should depend on the nature of the particular transaction and cannot reasonably be prescribed by a general directive.

Section 256.421, Miscellaneous income or loss, is being amended to eliminate the requirement that in all cases all income items in this account shall be credited to the associate companies on the ratio of total direct and indirect charges billed and all loss items billed to the parent holding company. Unusual and sporadic transactions involved will be governed by Instruction .01-11, Methods of allocation, and Instruction .01-13, Submission of questions, in the context of relevant accounting principles.

The Commission finds that the amendment is minor and technical in nature and that publication for comment pursuant to Section 553(b) of the Administrative Procedure Act and related procedures are unnecessary.

Accordingly, 17 CFR 256 is amended by revising §256.421 to read as follows:

PART 256—UNIFORM SYSTEM OF ACCOUNTS FOR MUTUAL SERVICE COMPANIES AND SUBSIDIARY SERVICE COMPANIES, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§256.421 Miscellaneous income or loss.

This account shall include all income or loss items not provided for elsewhere.

(Secs. 13, 15, 20, 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79o, 79t)

The amendment is effective immediately and applies to all transactions of service companies during the current fiscal year, including transactions occurring prior to the date hereof. Since the revised Uniform System of Accounts was not effective until January 1, 1980, the deleted requirement will have no application.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21614/June 10, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6454)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

I&M proposes to issue and sell up to $80,000,000 aggregate principal amount of its first mortgage bonds of a new series, having a maturity of not less than 5 years and not more than 30 years. The interest rate, which will be expressed in a multiple of 1/8 of 1%, and the price to be paid to I&M for the bonds, which shall not be less than 99% and shall not exceed 102-3/4%, will be issued under and secured by I&M's Mortgage and Deed of Trust, dated June 1, 1939, between it and Irving Trust Company and D.W. May, Trustees, as previously amended and supplemented, and as to be further amended by a Supplemental Indenture to be dated June 1, 1980. None of the bonds may be redeemed prior to a date

five years subsequent to the first day of the month in which the bonds are first authenticated and delivered, if such redemption is for the purpose of refunding such bonds through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to the company of such bonds.

The proposed sale of the bonds is part of an overall financing program of I&M which also contemplates that AEP, I&M's parent, will make cash capital contributions in an aggregate amount of up to $50,000,000 during 1980, as previously authorized on December 21, 1979 (HCAR No. 21352). As of March 30, 1980, I&M had received cash capital contributions in an aggregate amount of $25,000,000.

The proceeds from the sale of the bonds will be used to repay unsecured short-term indebtedness of I&M consisting of notes payable to banks and commercial paper. As of March 31, 1980, approximately $128,330,000 principal amount of such unsecured short-term debt was outstanding and it is anticipated that, at the time of the sale of the new bonds and following receipt of the cash capital contributions, not less than $150,000,000 aggregate principal amount of such unsecured short-term debt will be outstanding.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $245,060, including legal fees of $45,000, printing fees of $105,000, accountant's fees of $15,000 and trustee fees of $24,000. The Public Service Commission of Indiana and the Michigan Public Service Commission have authorized the proposed transaction. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21554), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21615/June 10, 1980

In the Matter of

SHO-ME POWER CORPORATION
Marshfield, Missouri

CRAWFORD ELECTRIC COOPERATIVE, INC.
Bourbon, Missouri

GASCOSAGE ELECTRIC COOPERATIVE
Dixon, Missouri

HOWELL-OREGON ELECTRIC COOPERATIVE, INC.
West Plains, Missouri

INTERCOUNTY ELECTRIC COOPERATIVE
Licking, Missouri

LACLEDE ELECTRIC COOPERATIVE
Lebanon, Missouri

SE-MA-NO ELECTRIC COOPERATIVE
Mansfield, Missouri

WEBSTER ELECTRIC COOPERATIVE
Marshfield, Missouri

SOUTHWEST ELECTRIC COOPRATIVE
Bolivar, Missouri

WHITE RIVER VALLEY ELECTRIC COOPERATIVE
Branson, Missouri

(31-774)

ORDER GRANTING APPLICATION FOR EXEMPTION PURSUANT TO SECTION 3(a)(1)

Sho-Me Power Corporation ("Sho-Me"), an electric utility company organized under the laws of Missouri, and each of the nine rural electric distribution cooperative corporations ("the Distribution Cooperatives") which own all of the issued and outstanding capital stock of Sho-Me, have filed an application for exemption, and an amendment thereto, pursuant to Section 3(a)(1) or (a)(2) of the Public Utility Holding Company Act of 1935 ("Act").

Sho-Me is the wholesale power supplier for the Distribution Cooperatives and for eighteen municipalities in Missouri, and serves approximately 8000 retail customers in rural Missouri. Sho-Me has 24,993 shares of common stock issued and outstanding which are owned equally by the nine Distribution Cooperatives. At December 31, 1979, Sho-Me reported total assets of $54,042,765, and, for the year then ended, gross operating revenues of $40,592,173.

Each of the Distribution Cooperatives is organized under the laws of and operates exclusively within Missouri. The Distribution Cooperatives are subject to regulation by the Rural Electrification Administration. They are not engaged in any business other than the business of supplying electric energy to their respective consumer members, and have no subsidiary companies other than Sho-Me. At December 31, 1979, and for the year then ended, the Distribution Cooperatives reported total assets and operating revenues and patronage capital as follows:

Distribution Cooperative	Total Assets	Operating Revenues and Patronage Capital
1. Crawford Electric Coop. Inc.	$12,203,453	$4,815,103
2. Gascosage Electric Coop.	3,858,079	2,247,549
3. Howell-Oregon Electric Coop. Inc.	14,157,995	6,340,855
4. Intercounty Electric Coop., Ass'n.	17,792,378	8,918,459
5. Laclede Electric Coop.	14,898,639	7,204,687
6. Se-Ma-No Electric Coop.*	3,890,203	1,475,247
7. Southwest Electric Coop.	15,124,479	7,779,556
8. Webster Electric Coop.	5,887,719	3,209,057
9. White River Valley Electric Coop., Inc.	20,257,315	8,986,304

* at August 31, 1979

Section 3(a)(1) provides that the Commission may exempt a holding company and its subsidiaries, as such, if:

> such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized.

On the basis of the facts in the application, it appears that each of the Distribution Cooperatives is entitled to an exemption under Section 3(a)(1) and that the exemption is in the public interest and interest of investors and consumers. The exemption extends to each Distribution Cooperative, as a holding company, and to its subsidiary electric utility company, Sho-Me. It does not relieve the Distribution Cooperatives from Section 9(a)(2) of the Act, or from any other provision of the Act which would apply to any one of them as an "affiliate" of any other public utility or holding company, nor does it extend to any other company which may hereafter become a "holding company" with respect to Sho-Me. The application, as amended, will be granted under Section 3(a)(1), only, and no findings are included herein with respect to Section 3(a)(2) as an alternative basis for exemption.

Due notice of the filing of said application, as amended, has been given (HCAR No. 21575), and no hearing has been requested of or ordered by the Commissioin. Upon the basis of the facts in the record, it is hereby found that the Distribution Cooperatives and Sho-Me are entitled to an exemption from all provisions of the Act, except Section 9(a)(2); and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, accordingly, that said application, as amended, be, and it hereby is, granted forthwith.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21616/June 10, 1980

In the Matter of

TRANSOK PIPE LINE COMPANY
P.O. Box 3008
Tulsa, Oklahoma 74101

PUBLIC SERVICE COMPANY OF OKLAHOMA
212 East 6th Street
Tulsa, Oklahoma 74119

(70-6467)

NOTICE OF PROPOSED CAPITAL CONTRIBUTION BY PARENT COMPANY TO SUBSIDIARY PIPELINE COMPANY

NOTICE IS HEREBY GIVEN that Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and Transok Pipe Line Company ("Transok"), a subsidiary pipeline company of PSO, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9, 10 and 12 of the Act and Rules 43 and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Transok is an intrastate pipeline company with operations limited to its state of incorporation, Oklahoma. All of its common stock is owned by PSO. Transok is engaged in the purchase, transportation and sale to PSO of natural gas pursuant to a contractual arrangement to supply PSO's electric generating stations with boiler fuel on a long-term basis.

PSO proposes to make a capital contribution of $10,000,000 to Transok. The full amount of the capital contribution will be used to increase Transok's equity base primarily to support refinancing of $27,000,000 of Transok bonds due in November, 1980.

The proceeds of the capital contribution will be used to repay short-term debt incurred in connection with Transok's 1979 and 1980 construction programs. At July 15, 1980, short-term borrowings will approximate $11,000,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,250. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21617/June 10, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

WEST TEXAS UTILITIES COMPANY
Abilene, Texas

CENTRAL AND SOUTH WEST SERVICES, INC.
Dallas, Texas

(70-6163)

ORDER AUTHORIZING PROPOSED INCREASE IN SHORT-TERM BORROWING AUTHORIZATION OF SUBSIDIARY

Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), Southwest Electric Power Company ("SWEPCO"), Public Service Company of Oklahoma ("PSO"), West Texas Utilities Company ("WTU"), and Central and South West Services, Inc. ("CSWS") have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended with this Commission pursuant to Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 promulgated thereunder concerning the following proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 14, 1979, July 19, 1979, July 31, 1979, October 24, 1979, February 5, 1980 and March 20, 1980 in this matter (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166, 21269, 21421 and 21482), CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1981 in a maximum aggregate collective amount of $250,000,000 and in the following individual amounts: CSW, $200,000,000; CPL, $100,000,000; SWEPCO, $75,000,000; PSO, $90,000,000; WTU, $15,000,000; and CSWS, $4,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus of funds of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet and sell its commercial paper to commercial paper dealers and to certain approved financial institutions, and to borrow from banks.

By post-effective amendment, CSW and PSO request that PSO's short-term borrowing limit be increased to $180,000,000 through December 31, 1981 subject to the passage of the amendment to PSO's Restated Articles of Incorporation, as amended ("Articles") by its preferred shareholders (see File No. 70-6453), provided in no event shall short-term debt exceed 20% of capitalization. It is stated that CSW is not requesting an increase in the CSW System limit of $250,000,000. It is further stated that PSO's ability to sell first mortgage bonds and preferred stock has been limited. In view of PSO's continuing need for funds it is securing a $90,000,000 non-negotiable bank loan (see File No. 70-6446). The proposed increase in short-term borrowing authorization will give PSO the ability to prepay the bank notes at any time with short-term debt. Such prepayment would occur if in PSO's opinion it were economically in PSO's best interest. While the bank notes will be beneficial to PSO in meeting its current needs, PSO will not be able to increase or decrease at will the amount of the notes outstanding. If a note is prepaid, the prepaid amount cannot be borrowed in the future. Short-term debt has the advantage of being able to be changed based on the daily needs of PSO.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $150. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21618/June 11, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6458)

ORDER AUTHORIZING PROPOSED FINANCING OF POLLUTION CONTROL FACILITIES

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application-declaration and amendments thereto pursuant to Section 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) promulgated thereunder regarding the following proposed transactions.

&M is in the process of constructing certain high efficiency electrostatic precipitators, ash disposal systems, a stack, cooling towers and other water pollution control systems ("Project") at its Rockport Generating Station ("Plant"), currently under construction near the City of Rockport ("City") in Spencer County, Indiana. It is estimated that the Plant will in the aggregate cost approximately $1,600,000,000. By resolution of June 2, 1977, the City determined that, pursuant to the Act, it would authorize and issue one or more series of its pollution control revenue bonds ("Bonds") to finance the cost of engineering, design, acquisition and construction of the Project, including reimbursement or repayment to I&M of monies expended by I&M for planning, engineering, acquisition and construction of the Project.

I&M proposes to enter into an Agreement of Sale ("Agreement") with the City which will provide for the construction and installation of facilities comprising the Project by the City, and the issuance by the City of Bonds (i) in an initial principal amount of up to $50,000,000 ("Series A Bonds"), and (ii) additional Bonds in principal amounts which, when added to the principal amount of the Series A Bonds, are sufficient to cover the cost of construction of the Project. The proceeds of the sale of the Series A Bonds will be deposited by the City with Lincoln National Bank and Trust Company of Fort Wayne, as Trustee ("Trustee"), under an Indenture ("Indenture") to be entered into between the City and Trustee pursuant to which the Series A Bonds are to be issued and secured. Such proceeds will be applied to payment of the cost of construction of the Project. The Agreement also will provide for the sale of the Project to I&M, the payment by I&M of the purchase price of the Project in semi-annual installments over a term of years, and the assignment and pledge to the Trustee of the City's interest in, and of the monies receivable by the City under, the Agreement.

Proceeds received by I&M in reimbursement of its cost of construction of the Project will be applied to the payment of unsecured short-term indebtedness of I&M and for other corporate purposes. As of March 31, 1980, such short-term indebtedness of I&M amounted to $128,330,000.

The Agreement will provide that each installment of the purchase price for the Project payable by I&M will be in such an amount (together with other monies held by the Trustee under the Indenture for

that purpose) as will enable the City to pay, when due, (i) the interest on the Series A Bonds, any additional bonds and any refunding bonds, (ii) the principal amount of the Series A Bonds, any additional bonds and any refunding bonds payable at the time of their respective stated maturities and (iii) amounts, including any accrued interest, payable in connection with any mandatory redemption of the Series A Bonds, any additional bonds or any refunding bonds. The Agreement will also obligate I&M to pay the fees and charges of the Trustee, as well as certain administrative expenses of the City.

I&M shall have the option to prepay the purchase price of the Project in whole (i) upon the occurrence of certain events by paying amounts sufficient to redeem all Bonds then outstanding, the fees and expenses of the Trustee, and all other amounts payable under the Indenture, or (ii) at any time by depositing monies in the Bond Fund or delivering to the Trustee governmental obligations sufficient in either case to provide for the release of the Indenture in accordance with its terms. Upon prepayment of the entire purchase price of the Project, I&M may terminate the Agreement.

I&M may also prepay the purchase price of the Project in part, such payments to be paid to the Trustee for deposit in the Bond Fund and credited against the purchase price and used for the redemption or purchase of outstanding Bonds in the manner and to the extent the outstanding Bonds are redeemable or subject to purchase as provided in the Indenture.

I&M will convey the pollution control facilities, to the extent that they have already been constructed and are then in place at the plant site, subject to the lien of the I&M first mortgage, and I&M will be entitled under the Agreement to be reimbursed from the proceeds of the Bonds for its costs of construction. The existing facilities will thereupon become a part of the Project which I&M will repurchase from the City pursuant to the Agreement.

It is contemplated that the Series A Bonds will be sold by the City pursuant to arrangements with a group of underwriters represented by E.F. Hutton & Company, Inc. The record is incomplete with respect to the commissions to be received by the respective underwriters, the interest rate to be borne by the Series A Bonds, the price at which such bonds will be offered to the public and the effective interest cost to complete the transaction.

The Series A Bonds will be dated on or about the first day of the month in which they are issued, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. It is expected that the Series A Bonds will not be redeemable at the option of the City within 10 years from their issue date except under certain circumstances. Series A Bonds will be subject to mandatory redemption under the circumstances and terms specified in the Indenture.

The fees and expenses to be incurred by I&M in connection with the proposed transaction are estimated at $52,000 including legal fees of $40,000. The Public Service Commission of Indiana and the Michigan Public Service Commission have authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21558), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act and subject to the reservation of jurisdiction ordered below.

IT IS FURTHER ORDERED that the Commission hereby reserves jurisdiction with respect to the commissions to be received by the respective underwriters, the interest rate to be borne by the Series A Bonds, the price at which such bonds will be offered to the public, and the effective interest cost to complete the transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21619/June 11, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6461)

ORDER AUTHORIZING ISSUANCE OF UNSECURED PROMISSORY NOTES

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company ("AEP"), a registered holding company, has filed with this Commission a declaration pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder regarding the following proposed transaction.

Appalachian proposes to issue, from time to time through June 30, 1983, not in excess of $100,000,000 principal amount of unsecured promissory notes outstanding at any time. The notes will be issued to four banks pursuant to a revolving credit agreement ("Agreement"); the banks and the amounts of their proposed commitments are as follows:

The Chase Manhattan Bank, N.A.	$25,000,000
Citibank, N.A.	25,000,000
Continental Illinois National Bank and Trust Company of Chicago	25,000,000
Manufacturers Hanover Trust Company	25,000,000
	$100,000,000

The proposed Agreement provides that Appalachian will pay to each bank, quarterly, a commitment fee of 1/2 of 1% per annum on the average daily unused amount of such bank's commitment, computed from the effective date of the Agreement. Appalachian would have the right at any time to terminate in whole, or from time to time to reduce in part, the unused commitments of the banks.

Borrowings will be evidenced by a note of Appalachian which will be due and payable not less than 90 days from the date of such note nor later than June 30, 1983, the exact maturity to be determined by Appalachian at the time of each borrowing. The notes will bear interest from the date of issuance and will be payable on the last day of March, June, September and December in each year, at maturity (whether by acceleration or otherwise), and after maturity on demand. Such interest will be: (i) prior to maturity, at a fluctuating rate per annum equal at all times to 105% of the highest published prime commercial lending rate of any of the banks for 90 days unsecured domestic loans; and (ii) from maturity, whether by acceleration or otherwise, at a fluctuating rate per annum equal at all times to the sum of 1% plus 105% of such prime rate. No compensating balances will be required and the notes will be prepayable at any time without premium or penalty.

The proceeds from the issuance of the notes will be used to pay outstanding short-term debt. At April 15, 1980, Appalachian had approximately $147,000,000 of short-term debt outstanding.

Appalachian claims exemption from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(2) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $8,500, including $5,000 of estimated legal fees and miscellaneous expenses. The Virginia State Corporation Commission and the Tennessee Public Service Commission have authorized the proposed transactions. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21569), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, granted, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21620/June 12, 1980

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6463)

NOTICE OF PROPOSED INCREASE IN RATE OF RETURN ON INVESTMENT IN WORKING CAPITAL OF SERVICE DIVISION OF NUCLEAR POWER GENERATING COMPANY

NOTICE IS HEREBY GIVEN that Yankee Atomic Electric Company ("Yankee Atomic"), a generating subsidiary of Northeast Utilities and of New England Electric System, both registered holding companies, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 13 of the Act and Rules 90 and 91 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

All of the outstanding capital stock of Yankee Atomic was acquired by its eleven sponsoring electric utilities pursuant to Commission orders dated November 25, 1955, and December 24, 1958 (HCAR Nos. 13048 and 13900). It was organized to construct and operate New England's first atomic power plant, located at Rowe, Massachusetts.

By order dated August 20, 1968 (HCAR No. 16141), Yankee Atomic was authorized to establish the Nuclear Service Division ("NSD"), which was organized to provide support services to Yankee Atomic's plant in Rowe and to various individual nuclear power projects undertaken by one or more of Yankee Atomic's sponsoring utilities and their associates and affiliates. The terms of organization, conduct of business and method of cost allocation of NSD are set forth in said order. Also contained in the order of August 20, 1968, was a provision authorizing Yankee Atomic to allocate to NSD initial working capital of about $200,000, equivalent to approximately 45 days' expenses plus investment in office equipment, and to receive a return of 6% per annum on such investment in working capital, said return to be included in the costs of services rendered by NSD.

In the instant filing Yankee Atomic requests that it be authorized to increase the rate of return on its investment in NSD's working capital (which is included in the costs of services rendered by NSD) from the currently authorized 6% to the overall rate of return (including related federal and state income tax allowances) most recently ordered (or accepted) by the Federal Energy Regulatory Commission ("FERC") in rate proceedings involving Yankee Atomic. It is stated that use of the present 6% rate of return has resulted in those using NSD's services not paying a fair return to Yankee Atomic for the working capital supplied to NSD by Yankee Atomic. Yankee Atomic allocated average working capital to NSD of $1,741,000 in 1979, which amount was the equivalent of approximately 45 days' expenses.

Declarant states that the most recent overall rate of return allowed it in FERC proceedings is 9.72% after income taxes (FERC Order Docket Nos. E-9420 and E-9421, July 20, 1977). Yankee Atomic also requests that any new rate allowed by FERC with respect to it become effective for NSD upon the later of (a) the filing with this Commission of the FERC order authorizing such new rate for Yankee Atomic, or (b) the effective date of such order.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than July 8, 1980, request in

writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21621/June 12, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
AMERICAN ELECTRIC POWER SERVICE CORPORATION
2 Broadway
New York, New York 10004

(70-6162)

NOTICE OF PROPOSED INCREASE IN BANK BORROWINGS BY SERVICE COMPANY SUBSIDIARY AND GUARANTY THEREOF BY HOLDING COMPANY

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, and its service company subsidiary American Electric Power Service Corporation ("Service Company") have filed with this Commission a post-effective amendment to their declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated June 9, 1978 (HCAR No. 20585), declarants were authorized to enter into a loan agreement ("Agreement") with the Chase Manhattan Bank, N.A. ("Chase"), concerning borrowings by Service Company from Chase of up to $10,000,000 and a guaranty of such indebtedness by AEP. The Agreement provides, among other things, that the notes issued thereunder will mature on May 1, 1985; that borrowings will bear interest at an annual rate of 105% of the Chase's prime rate until May 31, 1979, and at an annual rate of 108% of its prime rate from May 31, 1979, until maturity; and that Service Company will pay quarterly each year a substitute interest at the rate of 1/2% per annum on the daily average unused portion of the $10,000,000 of credit made available. At present Service Company has outstanding $8,500,000 of such borrowings.

By post-effective amendment declarants request authorization to enter into an amendment ("Amendment") to the Agreement, pursuant to which Chase would agree to lend Service Company up to an additional $5,000,000 from time to time through May 31, 1985, thus making Chase's total commitment $15,000,000. AEP would guarantee the borrowings by Service Company under the Amendment, and confirm its guarantee of borrowings under the Agreement.

Borrowings under Chase's additional $5,000,000 commitment under the Amendment would be evidenced by unsecured promissory notes (1) which mature May 31, 1985; (2) which bear interest payable quarterly at an annual rate equal to (a) 108% of the higher of Chase's prime rate or its Base Rate (the rate for three-month negotiable certificates of deposit published weekly by the Federal Reserve Bank of New York plus 1/2 of 1%) until May 31, 1981, and (b) 108% of Chase's prime rate from May 31, 1981, until maturity; and (c) which are

prepayable in whole or in part without penalty. The Amendment will also provide for the quarterly payment of substitute interest (computed from the date of the Commission's order authorizing the transaction) at the rate of 1/2% per annum on the average daily unused portion of the $5,000,000 additional credit made available under the Agreement. Borrowings under the original Agreement will continue to bear interest as therein provided.

It is stated that borrowings by Service Company under the Amendment, together with further borrowings under the original Agreement, will be used to provide working capital and to provide funds for the acquisition of real estate for the construction of a new office building for Service Company in Columbus, Ohio.

Declarants claim exemption from the competitive bidding requirements of Rule 50 for Service Company's issuance of notes to Chase pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,100. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 7, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended by said post-effective amendment or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21622/June 12, 1980

In the Matter of

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

(70-6445)

NOTICE OF PROPOSED ACQUISITION OF COAL BARGES

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission an application pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9 and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Ohio Power proposes to acquire by lease sixty-five open hopper barges, having dimensions of approximately 175 feet by 26 feet. The barges will be operated by Indiana & Michigan Electric Company ("I&M"), another electric utility subsidiary of AEP, which is experienced in the operation of barges. I&M will use the barges to provide transportation services to Ohio Power and other AEP System operating utilities. The sixty-five barges which are the subject of the instant application are needed to replace barges which are being retired from service (all of which are presently leased by I&M) due to age and deteriorated condition.

I&M became involved in the barging of coal on its own behalf when it acquired on September 4, 1973, the assets of a barge line which was disposing of its business. These assets included, among other things, 11 towboats, 175 standard barges, 73 jumbo barges and 2 dry docks; these cited items were subsequently sold to and leased back by I&M from GATX Corporation or GATX Aircraft Corporation.

I&M also leased 20 standard barges in 1975. In 1976, pursuant to Commission order dated July 23, 1976 (HCAR No. 19623), I&M entered into an agreement to operate on behalf of Ohio Power 8 towboats, 140 jumbo barges and 20 standard barges that were leased by Ohio Power. By order dated April 14, 1977 (HCAR No. 19986), I&M was authorized to acquire by lease an additional 8 towboats and 100 jumbo barges.

I&M currently uses 179 standard barges and 304 jumbo barges to transport coal to AEP system plants which receive coal by barge. Based on the estimated volume of coal to be consumed at such plants during the early 1980's, it is estimated that the AEP system's coal transportation requirements could best be met by having constantly available a fleet of 242 standard barges and 234 jumbo barges, together with an allowance for 13 standard barges and 10 jumbo barges in periodic maintenance, or a total fleet of 499 barges (255 standard and 244 jumbo). It is stated that of the 179 standard barges available, only 114 are economically usable and the remaining 65 must be replaced. In order to meet, in part, the need for standard barges, I&M plans to place temporarily 60 jumbo barges in movements which would be more economical to perform with standard barges, and to replace 65 standard barges. The 65 standard barges to be retired will be returned to GATX, the lessor, on November 1, 1980, the end of the current lease term. There is no penalty associated with such return at the end of the lease period.

Concerning the company which should acquire the 65 new barges in replacement of those to be retired, it is stated that Ohio Power should be the entity for the reason that Ohio Power is expected to use approximately 60% of the AEP System's standard barges during the 1980's, yet owns no such barges and leases only 20 such barges. The barges would be operated by I&M for Ohio Power pursuant to an operating agreement which is a subject in a filing pending with this Commission (File No. 70-6161).

The 65 new barges to be acquired by Ohio Power are expected to be delivered as soon as is commercially practicable after November 1980. It is anticipated that their purchase price will be approximately $11,500,000 and that their construction will begin after execution of a Barge Purchase Agreement.

It is presently contemplated that such agreement may be assigned to a lessor or his designee who will take title to the barges as they are completed by the manufacturer. Thereafter the barges will be leased to Ohio Power. The terms and conditions of the contemplated leasing transaction will be the subject of a further filing with this Commission.

It is stated that I&M, the operator, intends to use the 65 barges to provide coal deliveries to AEP system plants, and that it intends to include the lease charges in the operating expenses allocated to the affiliated companies benefitting from barge services. The method of charging these barging expenses is a subject in the above-mentioned pending filing concerning the operating agreement between Ohio Power and I&M (File No. 70-6161).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than July 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said applicatioin which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices

and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11204/June 6, 1980

In the Matter of

AMERICAN MUISIC STORES, INC.
P.O. Box 126
Bloomfield Hills, Michigan 48013

and

NATIONAL BANK OF DETRIOT
as Co-Executor of the Will of Jack J. Wainger, Deceased
Trust Division
Box 222A
Detroit, MIchigan 48232

(812-4541)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM SECTION 17(a) OF THE ACT

American Music Stores, Inc. ("Company"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company, and National Bank of Detroit, as co-executor of the will of Jack J. Wainger, deceased ("Estate"), filed an application on September 24, 1979, and an amendment thereto on February 21, 1980, for an order of the Commission, pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act the proposed sale of a promissory note by the Company to the Estate.

On May 7, 1980, a nctice was issued (Investment Company Act Release No. 11161) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of the Company and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed sale of the promissory note by the Company to the Estate be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11205/June 6 1980

In the Matter of

EDWARD D. JONES & CO. DAILY PASSPORT CASH TRUST
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4602)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Edward D. Jones & Co. Daily Passport Cash Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on January 24, 1980, and an amendment thereto on April 4, 1980, requesting an order pursuant to Section 6(c) of the Act, exempting applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On May 7, 1980, a notice was issued (Investment Company Act Release No. 11162) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposed fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested be, and hereby is, granted, effective forthwith, subject to the following conditions agreed to by Applicant:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's trustees ("Trustees") undertake—as a particular responsibility within the overall duty of care owed to Applicant's stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included within the procedures to be adopted by the Trustees shall be the following:

(a) Review by the Trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees believe the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding

[1]To fullfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Trustees in the exercise of their discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

dividends; or utilizing a net asset value per share as determined by using market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity approriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and perserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the act as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its Trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of the action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11206/June 6, 1980

In the Matter of

COLONIAL TAX EXEMPT INCOME FUND, INC.

75 Federal Street
Boston, Massachusetts 02110

(811-2707)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Colonial Tax Exempt Income Fund, Inc. ("Applicant"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on Form N-8F on April 18, 1980, for an order pursuant to Section 8(f) of the Act declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant registered under the Act on November 18, 1976, and filed a registration statement on Form N-8B-1 pursuant to Section 8(b) of the Act on the same date. Applicant also filed a registration statement on Form S-5 pursuant to the Securities Act of 1933 (File No. 2-57686) on November 18, 1976, with respect to 500,000 shares of Applicant's common stock, $1 par value. Said registration statement has not become effective and no public offering of Applicant's common stock has commenced.

Applicant represents that it never issued any securities and has no security-holders at the time of the filing of the application. Applicant further represents that it has no assets and that it has not transferred any assets at any time since ints inception to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

Applicant states that it is currently incorporated pursuant to the laws of the Commonwealth of Massachusetts, that it is not now engaged and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs, and that its board of directors has authorized its dissolution and the filing of the application. Applicant further states that no distributions have been or will be made by it in connection with the winding-up of its affairs pursuant to its dissolution.

According to the application, Applicant is not party to any litigation or administration proceeding and has no liabilities, except for 1980 Massachusetts corporate excise tax, which Applicant represents will be paid by Colonial Management Associates, Inc.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 3, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the applicatin accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11207/June 9, 1980

In the Matter of

THE CHASE FUND OF BOSTON
535 Boylston Street
Boston, Mssachusetts 02116

(812-4649)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a) (41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER.

The Chase Fund of Boston ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, filed an application on April 4, 1980, and an amendment thereto on April 29, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the proposed money-market fund series of the Applcant, Phoenix-Chase Money Market Fund Series (the "Series") from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, subject to conditions, to the extent necessary to permit the Series to value its portfolio securities using the amortized cost method of valuation.

On May 7, 1980, a notice was issued (Investment Company Act Release No. 11160) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is granted, effective forthwith, subject to the following conditions agreed to by Applicant:

1. In supervising the Series' operations and delegating special responsibilities involving portfolio management to the Appicant's investment adviser, the Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Series' investment objective, to stabilize the Series' net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Series' $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the Series' $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the Board of Trustees will promptly consider what action, if any, should initiated.

(c) where the Board of Trustees believes the extent of any deviation from the Series' $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Series' average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Series will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Series will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The series will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of

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[1]Applicant states that to fulfil this condition, the Series intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Trustees in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Series will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

comparable quality as determined by the Board of Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the proceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11208/June 9, 1980

In the Matter of

HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY
HARTFORD EQUITY SALES COMPANY, INC.
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY QP VARIABLE ACCOUNT
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY DC VARIABLE ACCOUNT-I
HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY DC VARIABLE ACCOUNT-II
HARTFORD FUND, INCORPORATED
Hartford Plaza
Hartford, CT 06115

(812-4607)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3) and 27(c)(2).

Hartford Variable Annuity Life Insurance Company, a stock life insurance company organized under the laws of the State of Connecticut; Hartford Variable Annuity Life Insurance QP Variable Account and Hartford Variable Annuity Life Insurance Company DC Variable Account-I and Account-II, each of which is a unit investment trust registered under the Investment Company Act of 1940 ("Act"); Hartford Equity Sales Company, Inc., a broker-dealer registered uner the Securities Exchange Act of 1934; nd Hartford Fund, Inc. a diversified open-end management investment company registered under the Act (collectively "Applicants") filed an application on February 4, 1980, and amendments thereto on April 11, 1980 and May 1, 1980, pursuant to Section 6(c) of the Act for an Order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3) and 27(c)(2) of the Act to the extent requested and for approval of an offer of exchange pursuant to Section 11 of the Act.

On May 13, 1980 a notice was issued (Investment Company Act Release No. 11167) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, and, pursuant to Section 6(c) of the Act, that the exemptions from Sections 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3), and 27(c)(2) be, and they hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11209/June 10, 1980

In the Matter of

AMERICAN GENERAL LIFE INSURANCE COMPANY OF NEW YORK

AND

AMERICAN GENERAL LIFE INSURANCE COMPANY OF NEW YORK SEPARATE ACCOUNT E

90 Presidental Plaza
Syracuse, NY 13202

(812-4668)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 11 OF THE ACT FOR AN ORDER APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTIONS 26(a) AND 27(c)(2)

NOTICE IS HEREBY GIVEN that American General Life Insurance Company of New York Separate Account E ("Separate Account E"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"), and American General Life Insurance Company of New York (the "Company") (hereinafter collectively referred to as "Applicants"), have filed an application on April 14, 1980, pursuant to Section 6(c) of the Act for an Order exemting Applicants from the provisions of Sections 26(a) and 27(c)(2) to the extent requested and for approval of certain offers of exchang pursuant to Section 11 of the Act. All intereted persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Background

The Company is a life insurance company organized under the laws of Delaware. On February 15, 1979, the company created Separate Account E under New York law as a separate account for the purpose of investing the net purchase payments received by th Company for certain variable anuity contracts (the "Contracts").

Net purchase payments deposited in the Company's Separate Account are applied to one of three Divisions of the Separate Account. Each Division applies net purchase payments to purchase shares in different open-end investment company, the investment advisor of each of which is a wholly owned subsidiary of the Company's parent.

A Contract owner may elect to have purchase payments for a Contract invested in the American General Capital Bond Fund, with respect to Division 1, in the American General Money Market Fund, Inc. with respect to Division 2 and in American General High Yield Investments, Inc. with respect to Division 3 of the Separate Account. In addition, subject to receipt of the order requested hereby, Contract owners will have the right to transfer accumulated purchase payments from one Division of the Separate Account to another Division of the Separate Account. Such right may be exercised atany time after the first seven days after the issuance of a Contract provided that a transfer may not be made if a previous transfer has been made within seven days. The Company reserves the right to impose a longer holding period requirement between transfers if circumstances dictate the need for imposition of any such limitation.

If the order requested hereby is granted, holders of shares in ceretain investment companies, the investment advisor of which is a subsidiary of the Company's ultimate parent, who have paid a sales charge upon the purchase of such shares, will be offered the right to exchange the net asset value of shares toward the purchase of a Contract without any sales or administrative charges; however, a $5.00 fee to cover the Distributor's costs in processing each transfer will be imposed.

Section 11

Section 11(a) of the Act provides, in pertinent part, that no registered, open-end company or any principal underwriter for such a company shall make an offer to the holder of a security of such company to exchange his security for a security in the same or another such company on any basis other than relative net asset values unless the terms of the offer have been approved by the Commission.

Section 11(c) provides that, irrespective of the basis of exchange, the provision of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

As hereinabove described, holders of shares in certain investment companies who have paid a sales charge upon the purchase of such shares will be offered the right to exchange the net asset value of shares toward the purchase of a contract without any sales charges; however, a $5.00 administrative fee will be imposed to cover the Distributor's costs in processing each such transfer.

In addition, subject to receipt of the order requested hereby, Contract owners will have the right to transfer accumulated purchase payments from one Division of the Separate Account to another Division of the same. Similarly, a $5.00 administrative fee will be imposed on such transfers. Applicants have requested an Order of the Commission pursuant to Section 11 in order that the Contract purchaser or participant may make such exchanges or transfers under the circumstances described.

Section 26(a) and Section 27(c)(2)

Sections 26(a) and 27(c)(2) of the Act provide, in substance, that a registered unit investment trust or issuer of a periodic payment plan certificate and any depositor and underwriter for such investment company are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a qualified bank as trustee and are held under an indenture or agreement containing the following provisions: (1) that the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them; (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept and notice given to securities holders in the event of substitution of the trust's securities.

Applicants hereby request an exemption from Sections 26(a) and 27(c)(2) to permit them to sell Contracts without need of an independent trustee or custodian. Ownership of Fund shares by Separate Account E will be held in an open account so that such ownership will only be indicated on the books of the Fund and Separate Account E and will not be evidenced by transferable stock certificates.

Applicants further state that the Company is subject to extensive supervision and control by the New York Superintendent of Insurance, and the Insurance Commissioners of each state in which the Contracts will be sold. In addition, Applicants state that under New York law and the terms of the Contracts, the assets of Separate Account I are not chargeable with liabilities arising out of any other business conducted by the Company. Obligations arising under the Contracts as general obligations of the Company cannot be abrogated without violating the New York insurance law. Therefore, Applicants assert that such existing regulation of the Company affords substantially the same protection contemplated by the provisions of Sections 26(a) and 27(c)(2) of the Act.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amounts as the Commissionshall prescribe, the Commission reserving jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of Separate Account E shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, transaction, or any class or classes of the same from any provision of the Act, if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 3, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should

be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following July 3, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11210/June 11, 1980

In the Matter of

NATIONAL WESTMINSTER BANK LIMITED
c/o Bruce W. Nichols, Esq.
Davis, Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

(812-4617)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

National Westminster Bank Limited ("Applicant") filed an application on February 20, 1980, and an amendment thereto on April 16, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act.

On May 13, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11169). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following conditions: 1) Applicant will insure that the commercial paper dealer will provide each offeree of its notes with a memorandum describing the business of Applicant and its subsidiaries and containing the most recently published financial statements of Applicant and its subsidiaries, which will be audited in accordance with United Kingdom auditing practices; such memorandum will include a brief paragraph highlighting the material differences between United Kingdom accounting principles applicable to United Kingdom clearing banks, as used by Applicant, and generally accepted accounting principles employed by United States banks; such memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material changes in the financial status or business of Applicant or its subsidiaries, and 2) any future offering of Applicant's debt securities will be done on the basis of disclosure documents which are at least as comprehensive as those customarily used by United States issuers of such securities in the United States and will contain the financial statements of Applicant and its subsidiaries.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11211/June 12, 1980

In the Matter of

TRUST FUND SPONSORED BY THE EPISCOPAL SCHOOL FOUNDATION COLLEGE AWARD PROGRAM, INC.
3100 East Oakland Park Boulevard
Fort Lauderdale, Florida 33308

(811-1538)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On May 13, 1980, a notice was issued (Investment Company Act Release No. 11168) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order upon its own motion that Trust Fund Sponsored By The Episcopal School Foundation College Award Program, Inc. ("Fund"), registered under the Act as a closed-end, management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of the Trust Fund Sponsored By The Episcopal School Foundation College Award Program, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9101/June 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GENERAL HOBBIES CORP.* United States District Court for the District of Columbia, Civil Action No. 80-1415

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against General Hobbies Corp. ("Hobbies") with offices at 451 E. Tioga Street, Philadelphia, Pennsylvania 19134. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Hobbies as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980, and its Quarterly Report on Form 10-Q for its fiscal quarter ended March 31, 1980.

The Complaint requests that the Court order Hobbies to file forthwith, with the Commission, its delinquent Annual and Quarterly Reports on Forms 10-K and 10-Q. In addition, the Commission requests that the Court enjoin Hobbies from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9102/June 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HETRA COMPUTER AND COMMUNICATIONS INDUSTRIES, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-1051)

The Commission announced today that on June 9, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Hetra Computer and Communications Industries, Inc. ("Hetra") of Melbourne, Florida, restraining and enjoining Hetra

from failing to file timely periodic reports and ordering it to comply with certain undertakings. Hetra, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 17 separate occasions. The Commission's Complaint was filed on April 25, 1980.

The Complaint had alleged that Hetra, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Hetra has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9103/June 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *UNITED RESOURCES, INC.* United States District Court for the District of Columbia, Civil Action No. 80-1416

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against United Resources, Inc. ("Resources"), One Biscayne Tower, Miami, Florida. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Resources, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980.

The Complaint requests that the Court order Resources to file forthwith, with the Commission, its Annual Report on Form 10-K for its fiscal year ended December 31, 1979. In addition, the Commission requests that the Court enjoin Howard Stores, Inc. from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9104/June 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MOVIEMATIC INDUSTRIES CORP.* United States District Court for the District of Columbia, Civil Action No. 80-1417

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Moviematic Industries Corp. ("Moviematic"), 444 Brickell Avenue, Miami, Florida 33131. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Moviematic as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980.

The Complaint requests that the Court order Moviematic to file forthwith, with the Commission, its Annual Report on Form 10-K for its fiscal year ended December 31, 1979. In addition, the Commission requests that the Court enjoin Moviematic from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9105/June 10, 1980

SEC v. *J. DANIEL BELL & COMPANY, INC., ET AL.* (USDC Colorado, Civil Action No. 80-HC695)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on May 28, 1980, the Commission filed a civil complaint in the United States District Court for the District of Colorado against J. Daniel Bell & Company, Inc., a Denver broker-dealer, and J. Daniel Bell, the company's chief executive and financial officer, seeking to enjoin them from violating, among other things, the net capital and record keeping provisions of the Securities Exchange Act of 1934 while J. Daniel Bell & Company, Inc. is registered with the Commission as a broker and/or dealer.

On May 29, 1980, the Honorable Hatfield Chilson, Senior Judge of the United States District Court for the District of Colorado, entered a final judgment of permanent injunction enjoining the defendants as prayed for in the complaint. The judgment was entered pursuant to the consent of the defendants in which they neither admitted nor denied the allegations of the complaint other than the jurisdictional allegations. The judgment also requires the defendants, in substance, among other things, to appoint and retain certain operational personnel, institute certain internal reporting procedures, furnish the plaintiff with certain written certifications with respect to the firm's books and records and net capital computations, retain independent accountants to oversee net capital computation and accuracy of the firm's books and records, file delinquent reports with the plaintiff, institute certain procedures with respect to existing and contemplated underwritings, and to correct certain statements in a semi-annual report previously published dated March 28, 1980.

Litigation Release No. 9106/June 10, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GENERAL PRACTITIONERS INDEMNITY LIMITED; PIETRO JOHN MUSCARI, JR.* (U.S.D.C., E.D. of Mich., S. Div., Civil Action No. 80-72078)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on June 6, 1980, a complaint for a permanent injunction was filed in the Federal Court at Detroit, Michigan, naming as defendants General Practitioners Indemnity Limited, a Grand Cayman corporation, and Petro John Muscari, Jr., sole beneficial shareholder of General Practitioners.

The complaint alleged that the defendants violated the registration provisions of the Securities Act of 1933 and the antifraud provisions of the Securities Act and the Securities Exchange Act of 1934 in connection with the offer and sale of debentures issued by General Practitioners. According to the complaint, the defendants misrepresented material facts and omitted to state material facts concerning, among other things, application and use of proceeds from the sales of the securities; rate of return to be received by purchasers; the prior experience of Muscari in the establishment and operation of a business venture specializing in the medical malpractice insurance business; the financial condition of General Practitioners; and the actual operating fund established to conduct the business of General Practitioners.

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sec docket

VOLUME 20, NO. 6 JULY 1, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6214	390
Securities Exchange Act	16892-13	398
Public Utility Holding Company Act	21623-32	444
Investment Company Act	11212-27	461
Investment Advisers Act	723	482
Litigation	9107-10	482

This listing covers releases issued from 6/13/80-6/19/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

34-16900 Standards to be used by the Division of Market Regulation in connection with the registration of clearing agencies.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16892	34-16906	34-16911
34-16893	34-16907	34-16913
34-16905	34-16908	

33-6214 Proposed Amendments to Rules 242 and 252 under Section 3(b) of the 1933 Act dealing with unavailability of exemption for Limited Offers and Sales of Securities of Certain Issuers [File No. S7-840—Comment Period Expires August 30, 1980].

OPINIONS

34-16897 **FIRST PITTSBURGH SECURITIES CORPORATION, et al.**

Where registered broker-dealer, its president and salesmen unlawfully sold unregistered securities, made false and misleading representations in the sale of such securities, and were enjoined from violating antifraud and registration provisions; and registrant and its president charged customers excessive markups and, together with firm's secretary-treasurer, failed to comply with recordkeeping requirements,

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held, in public interest to revoke registrant's registration, expel registrant from self-regulatory organization, bar president and salesmen from association with any broker-dealer or organization member, and to suspend secretary-treasurer from any such association for 30 days.

34-16898 **PRINCE, LANGHEINRICH & GREER, INC.**

Where member of registered securities association and its treasurer failed to comply with association's margin rules and, together with a salesman, improperly effected transactions in a special omnibus account for the exclusive benefit of customers, and president failed to exercise proper supervision with respect to the margin violations, *held*, association's findings of violation *sustained*, but sanction imposed on treasurer *reduced*.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6214/June 19, 1980

UNAVAILABILITY OF EXEMPTION FOR LIMITED OFFERS AND SALES OF SECURITIES OF CERTAIN ISSUERS

ACTION: Proposed amendments to rules.

SUMMARY: The Commission is proposing for comment amendments to Rules 242 and 252 under Section 3(b) of the Securities Act of 1933. Rule 252 provides that a Regulation A exemption from registration for small public offerings of an issuer's securities shall not be available if the issuer or any person in a specified relationship with the issuer is subject to one of the disqualifications described in the rule. The Commission solicits comments on amendments to the rule which would make disqualifications which now last indefinitely terminate automatically after five years. In addition, the Commission proposes certain changes in the list of disqualifications. The amendments to Rule 242, another small issue exemptive rule, would conform the disqualifying provisions of that rule to amended Rule 252.

DATE: Comments must be received on or before August 30, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-840. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Gail Gordon Alkire, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for public comment proposed amendments to Rule 252 [17 CFR 230.252] of Regulation A [17 CFR 230.251 et seq.] under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq., as amended]. The Commission also proposes conforming amendments to Rule 242 [17 CFR 230.242] under the Securities Act.

Regulation A provides a limited offering exemption under Section 3(b) of the Securities Act.[1] It permits primary or secondary public offerings of as much as $1,500,000 of an issuer's securities to be made every twelve months without registration under Section 5 of the Securities Act. Rule 252 raises certain bars to the availability of a Regulation A exemption. The Regulation A exemption is unavailable for the securities of an issuer while a disqualification described in paragraph (c), (d), or (e) of Rule 252 exists.[2] The existence of a

[1]Section 3(b) of the Securities Act authorizes the Commission to adopt rules and regulations to exempt $2,000,000 of securities per issue from registration, subject to appropriate conditions, if it finds that registration is not necessary in the public interest or for the protection of investors by reason of the small amount involved or the limited character of the offering.

[2]The complete text of Rule 252(c), (d), (e), and (f) appears at the conclusion of this release. The rule is marked to show proposed additions and deletions to the current text. Note that paragraph (f) of Rule 252 would be redesignated as paragraph (g).

disqualification under Rule 252 does not preclude an issuer or its affiliates from registering the issuer's securities on Form S-1 [17 CFR 239.11] or any other appropriate registration statement.

Paragraph (c) of Rule 252 operates against the issuer, any of its predecessors, and any affiliated issuer; paragraph (d) operates against any officer, director, or principal security holder of the issuer or any of the issuer's promoters still connected with it in any capacity; and paragraphs (d) and (e) operate against any underwriter of the issuer's securities and any partner, director, or officer of such underwriter. A disqualification may attach upon the initiation or disposition of certain disciplinary, administrative, civil, or criminal proceedings involving any of the enumerated persons.

Currently Rule 252 disqualifications attributable to pending proceedings against the issuer or other person covered by the rule last only as long as the subject proceedings; other disqualifications generally last for a fixed period of five or ten yars after the entry of a final order, judgment, or decree concludes the proceedings; and other disqualifications last indefinitely absent affirmative Commission action to terminate their effect.

For example, in the last category is a permanent injunction proscribing any conduct or practice involving the purchase or sale of any security or arising out of conduct as an underwriter, broker, dealer, or investment adviser. Such an injunction raises a disqualification under paragraph (d)(2) which lasts as long as the injunction is in effect.[3] In the same category is a Post Office fraud order which raises a disqualification for as long as a person is subject to it.

The person subject to the disqualification, or the issuer for whose securities an exemption is sought, may petition the Commission under Rule 252(f) for relief. The applicant may seek relief which is general in nature or specific to a particular offering of securities. To grant a Rule 252(f) application, the Commission must determine "upon a showing of good cause, that it is not necessary under the circumstances that the [Regulation A] exemption be denied."[4] The amendments proposed are intended primarily to reduce the necessity for applications under Rule 252(f) by including within the rule the time periods generally considered appropriate for the granting of relief under the rule.

The proposed amendments also would add new disqualifications to Rule 252. Under the principal addition, an issuer which is a reporting company under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq., as amended] would be disqualified for failure during the preceding year to file required reports with the Commission. No comparable provision now exists under Rule 252.

In conjunction with the publication of its Rule 252 proposals the Commission is proposing conforming amendments to Rule 252. Rule 242 provides another limited offering exemption under Section 3(b) of the Securities Act. It permits a qualified issuer to sell without registration as much as $2,000,000 of its securities in any six-month period to an unlimited number of accredited persons, as defined in the rule, and thirty-five other persons. Rule 242(a)(5) defines "qualified issuer" to include certain domestic and Canadian corporations. Rule 242(a)(5)(v), however, incorporates by reference the provisions of paragraphs (c), (d), and (e) of Rule 252. Accordingly, if a disqualification makes a Regulation A exemption unavailable for an issuer's securities under any of those paragraphs, the issuer cannot be a qualified issuer for purposes of Rule 242. If the issuer is not a qualified issuer, it may not claim a Rule 242 exemption for an unregistered offering of its securities.[5] Like Rule 252(f), Rule 242(a)(5)(v) authorizes the Commission to grant applications for relief from its disqualifying provisions.

Background

The number of Regulation A offerings has increased substantially over the past year. In fiscal year 1979 there were 347 notifications filed on Form 1-A [17

[3]This also is the case with temporary restraining orders and preliminary injunctions, but since they are temporary in nature, disqualifications based upon them would not last indefinitely.

[4]Rule 252(f), 17 CFR 230.252(f).

[5]The existence of a disqualification under Rule 242(a)(5)(v) does not affect the availability of the registration process for public offerings of an issuer's securities.

CFR 239.90][6] for a total dollar volume of approximately $278,000,000 compared to only 242 notifications filed on Form 1-A in 1978 for approximately $87,000,000. In the first eight months of fiscal year 1980, alone, there were 260 Form 1-A notifications filed covering approximately $217,000,000 of securities. The upsurge in filings and dollar volume may be partially attributable to two recent amendments by the Commission made to Regulation A. First, in September 1978, the Commission tripled the annual dollar ceiling on the aggregate offering price of an issuer's securities for which a Regulation A exemption is available.[7] Almost 59 percent, or 203, of the 347 notifications filed on Form 1-A in 1979 were for offerings of between $500,000 and $1,500,000. Second, in June 1979, the Commission authorized the use of preliminary offering circulars in connection with underwritten Regulation A offerings,[8] thus permitting an underwriter to solicit indications of interest prior to clearance of the issuer's offering materials by the Commission.

The number of Rule 252(f) applications recently filed with the Commission reflects the increased interest in Regulation A which a higher dollar ceiling and the opportunity to use preliminary offering circulars has produced. Whereas the Commission received two applications in calendar year 1977 and three in 1978, twelve Rule 252(f) applications were filed in 1979, and seven in the first five months of 1980. If this trend continues, the Commission must expect to process an increasing volume of Rule 252(f) applications. These may be augmented by applications for relief under new Rule 242(a)(5)(v).

Discussion

While the Commission has not yet received any applications for relief under Rule 242(a)(5)(v), the majority of Rule 252(f) applications the Commission receives concern disqualifications which last indefinitely. The Commission proposes to make the disqualification provisions in Rule 252, and thus Rule 242, largely self-operating by fixing a time after which each disqualification automatically would terminate. As a general matter, criminal convictions of certain offenses would disqualify the issuer, any of its predecessors, or any affiliated issuer for five years. Certain criminal convictions would disqualify other persons covered by Rule 252 for ten years. Any disqualification arising from non-criminal proceedings would terminate after no more than five years.

The amendments would eliminate the need in many instances to file Rule 252(f) or Rule 242(a)(5)(v) applications for relief. Additionally, the Commission anticipates that the number of applications granted pursuant to Rule 252(f) or Rule 242(a)(5)(v) would be minimal, since the duration fixed for each disqualification would represent the minimum time period the Commission had determined to be consistent, absent extraordinary circumstances, with the protection of investors.

Synopsis

A discussion of the proposed amendments follows. The reader's attention, however, is directed to the text of the amendments for a complete understanding.

Persons Covered. Paragraph (c) of Rule 252 applies to the issuer, any of its predecessors, and any affiliated issuer. The Commission, however, proposes to codify one basis on which it has granted relief from a disqualification of an affiliated issuer.[9] Where the affiliation arises after the entry of the order, judgment, or decree on which the affiliated issuer's disqualification is based, a Regulation A exemption for the issuer's securities nevertheless would be available under the amended rule if both of two conditions were met. First, the affiliated issuer must not be in control of the issuer. Second, if the affiliation is based upon common control of the

[6]Rule 255 of Regulation A [17 CFR 230.255] requires four copies of a notification on Form 1-A to be filed with the appropriate Regional Office of the Commission at least ten days prior to the date on which the initial offering or sale of any securities is to be made under Regulation A. See, however, Rule 256(a) [17 CFR 230.256(a)] regarding the use of a preliminary offering circular prior to the clearance date of an underwriter offering.

[7]Securities Act Release No. 5977 (September 18, 1978) [43 FR 55254].

[8]Securities Act Release No. 6075 (June 1, 1979) [44 FR 33362].

[9]See Application of Xerxes Futures Syndicate, File No. 96-323 (Filed June 6, 1977).

affiliated issuer and the issuer by a third party, that third party must not be a person who controlled the affiliated issuer when the order, judgment, or decree which triggered the disqualification was entered. The Commission believes this relaxation in Rule 252(c) would result in more equitable treatment of issuers without any offsetting loss of investor protection.

If adopted, the amendments also would add general partners of the issuer to the list of persons to whom paragraph (d) applies. The Commission believes that paragraph (d) should not distinguish the general partners of a limited partnership from the directors or officers of a corporate issuer, since they perform similar policy- and decision-making functions.

Paragraph (d) currently applies to, among others, the issuer's principal security holders. For clarity, the Commission proposes to define this term to mean beneficial owners of more than ten percent of any class of the issuer's equity securities.

Finally, the Commission proposes to delete the reference in paragraph (e) to directors, officers, and partners of an underwriter. According to the rule's current language, such a director, officer, or partner who was, or was named as, an underwriter of securities described in paragraphs (e)(1) or (e)(2) would be disqualified. Since a director, officer, or partner ordinarily would not be, or be named as, an underwriter as contemplated by Rule 252(e), the Commission proposes to strike the reference therein to any director, officer, or partner.

Convictions. A criminal conviction for an offense involving the purchase or sale of a security currently raises a five-year disqualification under Rule 252(c)(3) and a ten-year disqualification under Rule 252(d)(1)[10]. A conviction for making a false filing with the Commission, however, does not raise a disqualification if it does not involve the purchase or sale of a security. The Commission believes that a disqualification resulting from a conviction for making false Commission filings is consistent with the purposes of Rule 252. Therefore, the Commission proposes to add such a conviction to the list of convictions which will disqualify a person under paragraphs (c)(3) and (d)(1).

In order to make the language of paragraphs (c)(3) and (d)(1) consistent with the language of paragraphs (c)(4) and (d)(2), the Commission proposes to make conviction of a felony or misdemeanor "in connection with," as opposed to "involving," the purchase or sale of any security a disqualifying event.

Paragraph (d)(1) also disqualifies any of the enumerated persons if convicted of a crime arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser. If adopted, the amendment to this provision would parallel comparable language in Section 15(b)(4) under the Exchange Act which states the factors for which registration as a broker or dealer may be denied, suspended, or revoked. In light of the Securities Acts Amendments of 1975 [Pub. L. 94-29, 89 Stat. 97] which provide for the registration and disciplining of municipal securities dealers by the Commission,[11] the Commission proposes to create a disqualification under Rule 252(d)(1) for a criminal conviction arising out of the conduct of the business of a municipal securities dealer.

Injunctions. The Commission proposes a five-year time limit on any disqualification based on the results of a non-criminal proceeding. Paragraph

[10]The Commission is not proposing to reconcile the time periods for disqualifications under paragraphs (c)(3) and (d)(1). Paragraph (c)(3) affects legal entities whereas paragraph (d)(1) ordinarily affects natural persons. Since the legal entity ordinarily can be convicted only for the omissions or commissions of its principals, the Commission believes that different treatment under paragraphs (c) and (d) is warranted. If an issuer, whether or not convicted itself, allows any relationship specified in paragraph (d) to continue to exist between itself and a person disqualified under paragraph (d)(1), the issuer itself may be barred from using Regulation A for ten years rather than five.

[11]See Pub. L. 94-29, §13, 89 Stat. 131-137.

(c)(4)[12] already fixes a maximum of five years as the duration of any disqualification which attaches under that paragraph. If adopted, amendments to paragraph (d)(2) would fix five years from the entry of a permanent injunction as the time during which the injunction would disqualify its subject. A five-year duration is consistent with past Commission practice concerning Rule 252(f) applications.[13]

The Commission recognizes that an injunction may not be entered until a substantial amount of time after the underlying conduct occurred. The Commission believes, however, that the date the order, judgment, or decree is entered, rather than the date the underlying conduct occurred, is the appropriate date from which the five years should begin to run. The date of entry may be easily identified and will lend greater certainty to the operation of the rule. In light, however, of the time which may elapse between the entry of the order, judgment, or decree and the precipitating conduct, the Commission specifically solicits comments as to whether five years is an appropriate time for Rule 252(d)(2) disqualifications to last.

Proposed amendments would augment the list of injunctions which would raise a disqualification under paragraphs (c)(4) and (d)(2) of Rule 252. The amendments to those paragraphs would parallel the amendments discussed above regarding convictions.

Commission Administrative Proceedings. Rule 252(d)(3) currently disqualifies any enumerated person who is subject to a disciplinary or other order entered by the Commission under Section 15(b) of the Exchange Act or Section 203(d) or (e) of the Investment Advisers Act of 1940 (the "Advisers Act") [17 U.S.C. 80b-1 et seq., as amended]. Orders entered pursuant to Section 15B(a) or 15B(c) of the Exchange Act and still in effect would be added to those which will raise a disqualification under Rule 252(d)(3). These proposed additions reflect the addition of Section 15B to the Exchange Act by the Securities Acts Amendments of 1975. Paragraphs (a) and (c) of Section 15B direct the Commision respectively to deny registration as, and to take disciplinary action against, a municipal securities dealer under specified circumstances. The provisions of those paragraphs are similar both procedurally and substantively to Section 15(b) of the Exchange Act.

Two additional changes are designed to update Rule 252(d)(3) in light of statutory amendments to the Exchange and Advisers Acts. First, the Commission proposes to eliminate language disqualifying any of the enumerated persons found by the Commission to "be a cause of" an order entered under Section 15(b) of the Exchange Act. This language reflects the Commission's former inability to proceed directly under Section 15(b) against any person other than a broker or dealer and is now obsolete. Under authority first granted in 1964[14] and subsequently modified in 1975,[15] the Commission may censure or sanction a person associated, or seeking to become associated, with a broker or dealer under Section 15(b)(6) of the Exchange Act for willfully aiding, abetting, counseling, commanding, inducing, or procuring certain federal securities law violations by another person or for failing reasonably to supervise another person subject to his supervision who commits such a violation. Section 15B(c)(4) authorizes comparable action by the Commission against a person associated, or seeking to become associated, with a municipal securities dealer.

Finally, Rule 252(d)(3) would be amended to correct the reference to persons subject to an order entered by the Commission under Section 203(d) or (e) of the Advisers Act. The appropriate reference should be to paragraphs (e) and (f) of Section 203 which direct the Commission to take disciplinary action under certain circumstances against investment advisers and against persons associated, or seeking

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[12]Paragraphs (c)(4) and (d)(2) of Rule 252 address court orders, judgments, or decrees temporarily or permanently restraining or enjoining any covered person from engaging in or continuing any conduct or practice in connection with the purchase or sale of securities. Paragraph (d)(2) also addresses such injunctive or restraining orders, judgments, or decrees which prohibit conduct arising from a covered person's conduct as an underwriter, broker, dealer, or investment adviser.

[13]See, e.g., Application of Joseph Kipness, File No. 96-318 (filed August 26, 1976).

[14]Pub. L. 88-467, §6(b), 78 Stat. 572.

[15]Pub. L. 94-29, §11(2), 89 Stat. 124.

to become associated, with investment advisers, respectively.[16]

Proceedings by a Securities Exchange or Association. The proposed amendments to Rule 252(d)(4) are designed to eliminate any ambiguity in the meaning of "[h]as been and is suspended or expelled" from membership in a securities exchange or association. The relevant inquiry regards a person's current membership status, or, if the proposed amendments are adopted, a person's current status as an associated person of a member. The Commission, therefore, would eliminate the words "[h]as been and" in the beginning of Rule 252(d)(4). Other proposed changes in paragraph (d)(4) are designed simply to conform its language to Exchange Act terminology added to that Act by the Securities Act Amendments of 1975.

Postal Service False Representation Orders. Proposed amendments to paragraphs (c)(5) and (d)(5) of Rule 252 would change the current references to "Post Office fraud orders" in those paragraphs to "Postal Service false representation orders," consistent with new terminology in the statutes which provide for the entry of such orders. If amended, paragraphs (c)(5) and (d)(5) of Rule 252 also would cite the statutes to which they refer. Thus, the entry of an order by the Postal Service under 39 U.S.C. 3005 or the entry of a temporary restraining order or preliminary injunction by a United States District Court under 39 U.S.C. 3007 for conduct allegedly actionable under Section 3005 would result in a disqualification. A Section 3007 order is entered on only an interim basis; it ceases to be effective when the Section 3005 proceeding finally is concluded. Under the proposed amendments, a Section 3007 order would raise a disqualification only as long as a party was subject to it. A Section 3005 order, on the other hand, may last indefinitely. Since the Postal Service order is entered in the context of an administrative, as opposed to a criminal, proceeding, the Commission proposes that a person subject to such an order be disqualified for only five years.

Underwriters. As previously mentioned, the proposed amendments to Rule 252(e) would eliminate directors, officers, and partners of an underwriter from its coverage. Otherwise, the amendments to Rule 252(e) are technical in nature.

Reporting Companies. The Commission proposes to redesignate paragraph (f) as paragraph (g) and add new paragraph (f) to Rule 252. New paragraph (f) would disqualify an issuer which is subject to the periodic reporting requirements of the Exchange Act if that issuer had not filed all reports required to be filed with the Commission during the year preceding the date on which it files its notification on Form 1-A. The Commission believes that Regulation A should be unavailable to a reporting company which is not current in its reports because current information, adequate internal controls, or both are lacking. The fact that an issuer is not up-to-date in its Exchange Act filings casts doubt on its ability to meet its obligations to make full and fair disclosure in its Regulation A offering materials.

Moreover, Regulation A is intended primarily as an alternative and less costly mode of capital formation for issuers for which full registration otherwise is allowed. Under current administrative practice, the Commission usually will not allow a Securities Act registration statement covering securities of a reporting company which is delinquent in making Exchange Act filings to become effective.[17] Therefore, an issuer described by proposed new paragraph (f) of Rule 252 ordinarily could not make a registered offering of its securities. Such an issuer should not be permitted to make an exempt offering of its securities under Regulation A, since Regulation A offers fewer protections to the investing public than full registration.[18]

Amendments to Rule 242. The proposed amendments to Rule 242 would account for the redesignation of paragraph (f) of Rule 252 as paragraph (g) and the addition of a new paragraph (f). Also, the reference to Rule 252(c) in Rule 242(a)(5)(v)(B) to Rule 252(c) would be stricken, since the term "underwriter" is not used in Rule 252(c).

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[16]In 1970, the paragraph (d) of Advisers Act Section 203 to which Rule 252(d)(3) refers was redesignated paragraph (e). Pub. L. 91-547, §24, 84 Stat. 1431. Old paragraph (e) was redesignated paragraph (g) and a new paragraph (f) was added. *Id.*, 84 Stat. 1430-31. In 1975, paragraph (g) was stricken, and paragraph (f) was amended. Pub. L. 94-29, §29 (3)-(4), 89 Stat. 167-168.

[17]*See*, Securities Act Release No. 5196 (September 27, 1971) [36 FR 19362].

[18]Liability does not attach under Section 11 of the Securities Act for an offering which is exempt from registration under Regulation A.

TEXT OF PROPOSED RULES

Accordingly, the Commission proposes to amend 17 CFR Part 230 as follows (additions appear between stars ("★★"); deletions appear between brackets ("[ ]")):

PART 230-GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By amending paragraphs (c), (d), and (e) of §230.252; adding a new paragraph (f) thereto; redesignating present paragraph (f) as paragraph (g) and amending it as follows:

§230.252 Securities exempted.

* * * * *

(c) No exemption under §§230.251 to 230.262 shall be available for the securities of any issuer if such issuer, any of its predecessors ★,★ or any affiliated issuer—

(1) Has filed a registration statement which is the subject of any ★pending★ proceeding or examination under section 8 of the act, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the notification required by §230.255;

(2) Is subject to ★any★ pending proceeding[s] under §230.261 or any similar rule adopted under section 3(b) of the act, or to an order entered thereunder within five years prior to the filing of such notification;

(3) Has been convicted within five years prior to the filing of such notification of any [crime or offense involving] ★felony or misdemeanor in connection with★ the purchase or sale of ★any★ securit★y★ [ies] ★or involving the making of any false filing with the Commission★;

(4) Is subject to any order, judgment ★,★ or decree of any court of competent jurisdiction [, entered within five years prior to the filing of such notification,] temporarily or [permanently] ★preliminarily★ restraining or enjoining ★, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the filing of such notification, permanently restraining or enjoining,★ such person from engaging in or continuing any conduct or practice in connection with the purchse or sale of ★any★ securit★y★ [ies] ★or involving the making of any false filing with the Commission★; or

(5) Is subject to a United States [Post Office fraud] ★Postal Service false representation★ order ★entered under section 3005 of title 39, United States Code, within five years prior to the filing of the notification required by §230.255; or is subject to a temporary restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.

This paragraph (c) of §230.252 shall not apply to any order, judgment, or decree contemplated by paragraphs (1) through (5) hereunder because of its entry against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time the order, judgment, or decree was entered against it.★

(d) No exemption under §§230.251 to 230.262 shall be available for the securities of any issuer, if any of its directors, officers ★, general partners,★ or [principal security holders] ★beneficial owners of ten percent or more of any class of its equity securities,★ any of its promoters presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director ★,★ or officer of any such underwriter—

(1) Has been convicted within ten years prior to the filing of the notification required by §230.255 of any [crime or offense involving] ★felony or misdemeanor in connection with★ the purchase or sale of any security ★, involving the making of a false filing with the Commission,★ or arising out of [such person's] ★the★ conduct ★of the business of★ [as] an underwriter, broker, dealer ★, municipal securities dealer,★ or investment adviser;

(2) Is subject to any order, judgment ★,★ or decree of any court of competent jurisdiction temporarily or [permanently] ★preliminarily★ enjoining or restraining ★, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five years prior to the filing of such notification, permanently enjoining or restraining,★ such person from engaging in or continuing any

conduct or practice in connection with the purchase or sale of any security ★, involving the making of a false filing with the Commission,★ or arising out of [such person's] ★the★ conduct ★of the business of★ [as] an underwriter, broker, dealer ★, municipal securities dealer,★ or investment adviser;

(3) Is subject to an order of the Commission entered pursuant to section 15(b) ★, 15B(a), or 15B(c)★ of the Securities Exchange Act of 1934; [has been found by the Commission to be a cause of any such order which is still in effect;] or is subject to an order of the Commission entered pursuant to section 203 [(d) or] (e) ★or (f)★ of the Investment [Company] ★Advisers★ Act of 1940;

(4) [Has been and] Is suspended or expelled from membership in ★, or suspended or barred from association with a member of,★ [a national or provincial security dealers association or a national securities] ★an★ exchange ★registered as a national securities exchange pursuant to section 6 of the Securities Exchange Act of 1934, an association registered as a national securities association under section 15A of the Securities Exchange Act of 1934,★ or a Canadian securities exchange ★or association★ for ★any act or omission to act constituting★ conduct inconsistent with just and equitable principles of trade; or

(5) Is subject to a United States [Post Office fraud] ★Postal Service false representation★ order ★entered under section 3005 of title 39, United States Code, within five years prior to the filing of the notification required by §230.255; or is subject to a restraining order or preliminary injunction entered under section 3007 of title 39, United States Code, with respect to conduct alleged to have violated section 3005 of title 39, United States Code.★

(e) No exemption under §§230.251 to 230.262 shall be available for the securities of any issuer if any underwriter of such securities [, or any director, officer or partner of any such underwriter] was, or was named as, an underwriter of any securities:

(1) Covered by any registration statement which is the subject of any ★pending★ proceeding or examination under section 8 of the act, or is the subject of any refusal order or stop order entered thereunder within five years prior to the filing of the notification required by §230.255; or

(2) Covered by any filing which is subject to ★any★ pending proceeding[s] under §230.261 or any similar rule adopted under section 3(b) of the act, or to an order entered thereunder within five years prior to the filing of such notification.

★(f) No exemption under this regulation shall be available for the securities of an issuer which is subject to the requirements of section 12 or 15(d) of the Securities Exchange Act of 1934, unless such issuer has filed all reports required by those sections to be filed during the 12 calendar months preceding the filing of the notification required by §230.255 (or for such shorter period that the issuer was required to file such reports).★

[f] ★(g)★ Paragraph (c), (d), [or] (e) ★, or (f)★ of this section shall not apply to the securities of any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

(Secs. 3(b), 19(a), Pub. L. 73-22, sec. 3(b), 19(a), 48 Stat. 76, 85; Pub. L. 73-291, sec. 209, 48 Stat. 908; Pub. L. 79-55, 59 Stat. 167; Pub. L. 91-565, 84 Stat. 1480; Pub. L. 94-210, sec. 308(a)(2), 90 Stat. 57; Pub. L. 95-283, sec. 18, 92 Stat. 275; Pub. L. 95-425, sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a))

2. By amending paragraph (a)(5)(v) of §230.242 as follows:

§230.242 Exemption of limited offers and sales by qualified issuers.

* * * * *

(a) * * *

(5) * * *

(v) Is not an issuer described in §230.252(c), (d), [or] (e), ★or (f)★ under the act; *Provided, however,* That for purposes of this section only:

(A) The term "filing of the notification required by §230.255" as used in §230.252(c), (d) ★,★ [and] (e) ★, or (f)★ under the act shall mean the first sale of securities in any issue in reliance on this section; and

(B) The term "underwriter" as used in §230.252 [(c),] (d) or (e) under the act shall mean a person which has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in any issue offered in reliance on this section;

Provided, further, That paragraph (a)(5)(v) of this section shall not apply to any issuer if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption under this section be denied. Any such determination by the Commission shall be without prejudice to any other action by the Commission in any other proceeding or matter with respect to the issuer or any other person.

(Secs. 3(b), 4(1), 19(a), Pub. L. 73-22, sec. 3(b), 4(1), 19(a), 48 Stat. 76, 77, 85; Pub. L. 73-291, sec. 209, 48 Stat. 908; Pub. L. 79-55, 59 Stat. 167; Pub. L. 83-577, sec. 6, 68 Stat. 684; Pub. L. 88-467, sec. 12, 78 Stat. 580; Pub. L. 91-565, 84 Stat. 1480; Pub. L. 94-210, sec. 308(a)(2), 90 Stat, 57; Pub. L. 95-283, sec. 18, 92 Stat. 275; Pub. L. 94-425, sec. 2, 92 Stat. 962; (15 U.S.C. 77c(b), 77d(1), 77s(a)))

The Commission hereby proposes for comment amendments to Rules 242 and 252 pursuant to sections 3(b), 4(1), and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16892/June 13, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94014

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

File Nos.
SR-CBOE-80-13
SR-Amex-80-17
SR-PSE-80-10
SR-Phlx-80-15

NOTICE OF FILING OF PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that the self-regulatory organizations listed above ("options exchanges") have filed with the Commission copies of proposed rule changes[1] to increase the number of call classes

[1]The proposed rule changes were filed on the following dates: Chicago Board Options Exchange, Incorporated ("CBOE"), May 28, 1980; American Stock Exchange, Inc. ("Amex"), May 29, 1980; Pacific Stock Exchange Incorporated ("PSE"), May 30, 1980; and Philadelphia Stock Exchange, Inc. ("Phlx"), May 29, 1980.

they are authorized to trade in order to accommodate the listing of call options on the underlying securities selected by the respective options exchanges pursuant to the initial phase of the options exchanges' call expansion plan.[2] Phlx also proposes to increase the number of puts classes it is authorized to trade to enable it to list puts on the underlying securities selected pursuant to the initial phase of the call expansion plan.[3]

In a March 26, 1980 policy statement announcing the termination of the moratorium on the expansion of standardized options trading, the Commission requested that the options exchanges formulate and jointly submit to the Commission a plan for allocating additional options classes among the options exchanges.[4] In accordance with this request the options exchanges formulated a call expansion plan which was approved by the Commission on May 30, 1980.[5] According to the allocation formula set forth in the call expansion plan, 60 underlying securities are to be selected in the initial phase, with the CBOE entitled to select 9 underlying securities and each of the other options exchanges entitled to select 17. In order to list call options on these additional underlying securities, the options exchanges are seeking Commission authority to increase the number of call classes they currently are authorized to trade by the following amounts: CBOE by nine, Amex by one, PSE by 13 and Phlx by 12.[6] The Phlx also requests authority to trade 17 additional put classes.

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[2]Securities Exchange Act Release No. 16863 (May 30, 1980) ("Release No. 16863").

[3]Phlx previously received authority from the Commission to trade puts on all underlying securities on which it currently trades calls. Securities Exchange Act Release No. 16848 (May 28, 1980).

[4]Securities Exchange Act Release No. 16701 ("March 1980 policy statement").

[5]Release No. 16863.

[6]CBOE currently is authorized to list call classes on 111 underlying securities and currently lists call options on 111 underlying securities. Amex has 80 authorized call classes and currently lists 64 classes. PSE has 30 authorized classes and currently lists 26 classes. Phlx has 40 authorized classes and currently lists 35 classes.

Interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. In the March 1980 policy statement the Commission stated that in the absence of significant operational or surveillance problems encountered by the options exchanges or difficulties experienced by member firms in handling current or anticipated trade volume, the Commission anticipated giving expedited treatment to put and call expansion rule proposals submitted by the options exchanges. No comments were received by the Commission concerning this aspect of the March 1980 policy statement. Each of the options exchanges has represented that its operational and surveillance capabilities and the back office capacity of its member firms are adequate to handle any increased volume that may result from the listing of new put and call options classes and the Commission has no information currently before it which is contrary to that representation. Accordingly, the Commission believes that the options exchanges should be permitted to continue without delay the implementation of their options expansion programs by listing the new call classes obtained

pursuant to the initial phase of the call expansion plan.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16893/June 13, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-11

The Pacific Stock Exchange Incorporated ("PSE") submitted on June 9, 1980, a proposed rule change under Rule 19b-4 to adopt new Options Procedure Advice D-9 to specify disciplinary sanctions that may be imposed on Market Makers for failure to satisfy the trading activity requirements set forth in PSE Rule VI Section 79(.04).

Publication of the submission is expected to be made in the *Federal Register* during the week of June 16, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16894/June 13, 1980

A notice has been issued giving interested persons until July 2, 1980 to comment on the *Boston Stock Exchange's* applications for unlisted trading privileges in the common stocks of NATOMAS COMPANY (New Holding Company), $1 Par Value and IPM TECHNOLOGY, INC., $.25 Par Value.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16895/June 13, 1980

An order has been issued granting the application of the *Boston Stock Exchange, Inc.* to strike the common stock ($.25 Par Value) of ALPHA INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16896/June 13, 1980

A notice has been issued giving interested persons until July 4, 1980 to comment on Sambo's Restaurant, Inc. application to withdraw its common stock (no par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16897/June 16, 1980

Admin. Proc. File No. 3-5435

In the Matter of

FIRST PITTSBURGH SECURITIES CORPORATION
Centre City Tower
7th & Smithfield Streets
Pittsburgh, Pennsylvania

(8-17069)

SALVATORE F. GESWALDO
CARL B. BENSON
BERNARD H. GOLLING
DONALD R. KOHL
CHARLES KRAZYWICKI

OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Sale of Unregistered Securities
Fraud in Offer and Sale of Securities
Injunction
Unfair Markups
Failure to Comply with Recordkeeping Requirements

Where registered broker-dealer, its president and salesmen unlawfully sold unregistered securities, made false and misleading representations in the sale of such securities, and were enjoined from violating antifraud and registration provisions; and registrant and its president charged customers excessive markups and, together with firm's secretary-treasurer, failed to comply with recordkeeping requirements, *held*, in public interest to revoke registrant's registration, expel registrant from self-regulatory organization, bar president and salesmen from association with any broker-dealer or organization member, and to suspend secretary-treasurer from any such association for 30 days.

APPEARANCES:

Gerald N. Ziskind, for First Pittsburgh Securities Corporation, Salvatore F. Geswaldo and Charles Krzywicki.

David R. Cashman, of Cauley, Birsic & Conflenti, for Carl B. Benson and Donald R. Kohl.

Anthony P. Picadio, of Tucker, Arensberg, Very & Ferguson, for Bernard H. Golling.

Paul F. Leonard, James C. Kennedy, John L. Hunter, Stanley M. Hecht and *Therese L. Miller*, for the Commission's Division of Enforcement.

I.

In these broker-dealer proceedings, the administrative law judge found that First Pittsburgh Securities Corporation ("registrant"), a registered broker-dealer and a member of the Philadelphia Stock Exchange, Inc. ("PSE") and the National Association of Securities Dealers, Inc. ("NASD"), Salvatore F. Geswaldo, registrant's president, and Carl B. Benson, Bernard H. Golling and Donald R. Kohl, salesmen of registrant, violated registration and antifraud provisions of the securities acts. The law judge also found that respondents had been enjoined from violating those provisions. He concluded that registrant's broker-dealer registration should be revoked, that registrant should be expelled from membership in the PSE[1] and the NASD, and that Geswaldo, Benson, Golling and Kohl should be barred from association with any broker-dealer or member of the PSE or NASD.

The law judge dismissed charges of recordkeeping violations by registrant, Geswaldo and Charles Krzywicki, registrant's secretary-treasurer. Since Krzywicki was not charged with any other violation, the law judge concluded that the proceedings with respect to him should be dismissed.

Respondents other than Krzywicki appeal from the findings against them. Our Division of Enforcement appeals from the dismissal of the recordkeeping charges and the proceedings against Krzywicki. It also excepts to the law judge's conclusion that registrant only aided and abetted certain violations. On the basis of an independent review of the record, we make the following findings.[2]

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[1]Registrant is no longer a PSE member.

[2]Our findings are based on a clear and convincing standard of proof.

II.

This case is largely concerned with the transactions of respondents other than Krzywicki in certain debt securities of Fidelity Loan and Investment Corporation.

Until February 1975, when registrant's stock was spun off to stockholders of GEBCO Investment Corporation, registrant was a wholly-owned subsidiary of GEBCO. During most of the relevant period, Edward Boyer was GEBCO's president, and Geswaldo, vice president.[3] GEBCO also owned all of the stock of Plaza Development Corporation, Creative Development Corporation and Fidelity. Plaza was the general partner and 49% owner of Meadowlands Inn Limited Partnership, which held a long-term lease on certain Pennsylvania land and owned a Hilton Inn motor hotel situated thereon which Creative operated.[4] Initially, Fidelity was in the business of making high interest loans to finance policyholders' payments of insurance premiums. However, after September 1975, it served largely as a conduit for making unsecured, interest-free loans to GEBCO, Creative and Meadowlands. In February 1977, the GEBCO companies and Meadowlands filed a petition for reorganization under the Bankruptcy Act.

III.

During the period from July 1974 to October 1976, Geswaldo, Benson, Golling and Kohl sold customers Fidelity debt securities. It is undisputed that no registration statement under the Securities Act had been filed or was in effect as to those securities. And it is well settled that the burden of establishing an exception from registration requirements rests upon those who claim it.[5] None of the respondents has met that burden.[6]

Geswaldo does not claim that the securities were exempt from registration. Rather, he asserts that, since he knew that the securities were registered with the Pennsylvania Securities Commission and had been sold for some years prior to his own sales, he had no reason to question their "propriety." Benson, Golling and Kohl argue that they relied on the representations of their superiors that the securities could properly be sold. We cannot accept these contentions. As one court has stated:

> "The purpose of the Securities Act is the protection of the investing public. . . . Petitioners, as professionals in the securities business and as persons dealing closely with the investing public, are expected to secure compliance with the requirements of the Act to protect the public from illegal offerings. . . . Brokers and securities salesmen are under a duty to investigate, and a violation of that duty brings them within the term 'willful' of the Securities Act."[7] (Footnotes omitted.)

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[3]Boyer, who was also vice president of registrant, was a respondent in these proceedings. Pursuant to his consent, he was barred from association with any broker or dealer. *Edward B. Boyer,* Securities Exchange Act Release No. 14968, 15 SEC Docket 290 (July 17, 1978).

[4]Meadowlands had an option to buy the land on which the hotel was situated. It had leased the land and hotel to Creative, which was obligated to pay the costs of operating the hotel and to pay Meadowlands a specified rental.

[5]*S.E.C.* v. *Ralston Purina Co.,* 346 U.S. 119, 126 (1953); *Gilligan, Will & Co.* v. *S.E.C.,* 267 F.2d 461, 466 (C.A. 2, 1959), *cert. denied,* 361 U.S. 896; *S.E.C.* v. *Culpepper,* 270 F.2d 241, 246 (C.A. 2, 1959).

Golling argues that, in light of *Collins Securities Corporation* v. *S.E.C.,* 562 F.2d 820 (C.A.D.C., 1977), the burden of establishing an exemption from registration in a proceeding of this sort does not shift to the person claiming it. However, *Collins* had nothing to do with allocating the burden of proof. It merely holds that clear and convincing evidence is required to establish violations of the securities acts' antifraud provisions when a severe sanction is imposed.

[6]As one court has stated, "The evidence must be. . . explicit, exact, and not built on conclusionary statements of the [respondents]." *Lively* v. *Hirschfeld,* 440 F.2d 631, 633 (C.A. 10, 1971).

[7]*Quinn and Company, Inc.* v. *S.E.C.,* 452 F.2d 943, 946-947 (C.A. 10, 1971), *cert. denied,* 406 U.S. 957 (1972).

While salesmen have a lesser responsibility for compliance with registration requirements than their superiors, we have repeatedly pointed out that salesmen cannot absolve themselves of all responsibility simply by relying on senior officials of their firm.[8]

The law judge concluded that, although registrant aided and abetted the violations of the individual respondents, the Fidelity transactions were not transactions of the firm. Registrant did not receive compensation for the transactions, did not issue confirmations, and did not record the transactions in its books. However, registrant's president and salesmen sold Fidelity securities to registrant's customers, and used registrant's facilities to make those sales. Moreover, customers of the firm were led to believe that they were purchasing the securities from registrant in the ordinary course of business. Under these circumstances, we think that the offers and sales of Fidelity securities by registrant's personnel must be treated as offers and sales by registrant.[9]

We accordingly conclude that respondents other than Krzywicki willfully violated Sections 5(a) and 5(c) of the Securities Act.[10]

IV.

The administrative law judge found that Geswaldo, Benson, Golling and Kohl made fraudulent representations to customers in connection with their offer and sale of Fidelity securities. The relevant facts are as follows.

Each of the individual respondents recommended Fidelity securities to customers. Geswaldo, Benson and Kohl represented that the securities were a safe investment. Geswaldo and Golling told customers that the securities were backed by GEBCO's real estate holdings. In connection with a sale in November 1975, Golling stated that Fidelity was in good financial condition, and that one of its assets was the Hilton Inn.[11]

In the spring of 1976, Benson told one investor that Fidelity was "a good, substantial company" whose assets included the Hilton Inn, and a second investor that Fidelity's securities were "guaranteed." Kohl stated that a $25,000 Fidelity certificate was backed by the Hilton Inn property. Respondents did not supply customers with any specific financial information.

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[8]See *Willard G. Berge*, Securities Exchange Act Release No. 12846 (September 30, 1976), 10 SEC Docket 600, 602, *aff'd sub nom. Feeney* v. *S.E.C.*, 564 F.2d 260 (C.A. 8, 1977), *cert. denied*, 435 U.S. 969 (1978), and cases there cited.

Although Golling now claims that his superiors told him that the offering of Fidelity securities qualified for an intrastate exemption, he previously admitted that he "was not relying on any specific exemptions *per se*" when he offered and sold those securities, and simply relied on Boyer's statement that registration was not required, although Boyer did not say why. The record shows that at least two of the respondents sold Fidelity securities to out-of-state residents.

[9]See *WCBA Investments, Inc.*, 43 S.E.C. 1136, 1140-1141 (1969); *Strathmore Securities, Inc.*, 43 S.E.C. 575, 587-588 (1967), *aff'd sub nom. Strathmore Securities, Inc.* v. *S.E.C.*, 407 F.2d 722 (C.A.D.C., 1969).

[10]For purposes of these provisions, willfullness does not require an intent to violate the law, but merely to commit the act which constitutes the violation. See *Tager* v. *S.E.C.*, 344 F.2d 5, 8 (C.A. 2, 1965).

[11]Golling points out that only two of his customers testified in these proceedings. He claims that one was a sophisticated investor, and that the other did not rely on him in making his purchase. But the fact that a customer is sophisticated cannot excuse fraudulent representations made to him. And it is unnecessary to show that a customer relied on such representations in order to establish violations of the antifraud provisions. *Hamilton Waters & Co., Inc.*, 42 S.E.C. 784, 790 (1965).

Geswaldo asserts that he did not sell Fidelity to the only customer who testified as to her dealings with him. However, the record shows that, in September 1974, the customer purchased Fidelity for her elderly mother who was "interested in safety," and that the customer dealt with Geswaldo. Geswaldo assured the customer that an investment in Fidelity was safe.

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All of respondents' statements were false or misleading. Fidelity's securities were not backed by GEBCO's holdings, and the Hilton Inn was not one of Fidelity's assets. After September 1975, Fidelity did little more than service its debt and make unsecured, interest-free loans to GEBCO, Creative, and Meadowlands. By then, Fidelity was in severe financial straits.[12] For the fiscal years ended June 30, 1975 and June 30, 1976, it suffered respective net losses of $78,807 and $112,076.[13]

Every professional who recommends securities, particularly those of little known issuers, is under a duty to investigate in order to make sure that his recommendations have a reasonable basis.[14] As we have previously pointed out:

> "Each salesman has an obligation to deal fairly with his customers. Hence no salesman can recommend an unknown or little known security unless he has himself seen reliable financial data that supply him with a reasonable basis for his recommendation. *This is especially true of debt securities.*"[15] (Emphasis supplied.)

Respondents saw no financial data with respect to Fidelity. Thus they had no reasonable basis for recommending its securities, or for representing that the securities were a safe investment, that Fidelity was in good financial condition, or that Fidelity was "a good, substantial company." Nor could be oral statements of Boyer or Geswaldo provide an adequate basis for the other representations which respondents made to customers.[16]

Moreover, respondents had clear indications that all was not well with Fidelity. As early as May 1975, Boyer told Geswaldo that "the present financial situation of the GEBCO companies [was] such that the only area that may be in existence next year is First Pittsburgh." And, in September 1975, Boyer informed Geswaldo, Benson, Golling and Kohl that construction creditors of the Hilton Inn had agreed not to press for payment provided they were given $2,000 a week until the full $140,000 due them was paid. Boyer stated that, if the agreement with the creditors was not honored, they "would likely file suit and bring the entire company down." He further stated that, while it appeared that the inn would be able to meet the weekly payments, it was imperative that additional capital be raised to ensure GEBCO's successful future.[17] Nevertheless, respondents continued to recommend and sell Fidelity securities.

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[12]As of June 30, 1975 and June 30, 1976, Fidelity's liabilities exceeded its assets.

[13]Fidelity's gross income for fiscal 1976 was only $4,082. As of June 30, 1976, its assets of some $1 million consisted for the most part of interest-free loans receivable from GEBCO, Creative and Meadowlands.

[14]In *Hanly* v. *S.E.C.*, 415 F.2d 589 (C.A. 2, 1969), the Court of Appeals for the Second Circuit stated, at p. 597:

"In summary, the standards. . .are strict. [A salesman] cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. He must disclose facts which he knows and those which are reasonably ascertainable. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation. Where the salesman lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information."

[15]*Willard G. Berge, supra*, 10 SEC Docket at 602. See also *Richard C. Spangler, Inc.*, Securities Exchange Act Release No. 12104 (February 12, 1976), 8 SEC Docket 1257, 1264; *Cortlandt Investing Corporation*, 44 S.E.C. 45, 52 (1969); *Crow, Brourman & Chatkin, Inc.*, 42 S.E.C. 938, 947-948 (1966).

[16]See *Willard G. Berge, supra*, 10 SEC Docket at 602: "Compliance with the antifraud provisions cannot be shifted *entirely* to a salesman's superior." (Emphasis in original.)

[17]Boyer stated that he thought it necessary to put $40,000 immediately into the inn's account and, over the next 16 months, to raise a sum at least equal to the monthly obligation to the construction creditors or $8,000 a month.

We accordingly conclude that registrant,[18] Geswaldo, Benson, Golling and Kohl willfully violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.[19]

V.

In September 1978, in an action brought by this Commission on the basis of allegations substantially similar to those in this case, the United States District Court for the Western District of Pennsylvania, after a trial on the merits, permanently enjoined respondents other than Krzywicki from unlawfully selling unregistered securities and engaging in fraudulent activities in connection with securities transactions. Registrant was also enjoined from violations of recordkeeping provisions.[20]

VI.

The law judge dismissed charges that registrant, Geswaldo and Krzywicki failed to make required records reflecting transactions in Fidelity. His dismissal was based on his conclusion that the transactions in question were not effected by the firm. However, since we have concluded that the sales of Fidelity securities must be treated as sales by registrant, it follows that registrant was required to record them.[21] We note that, in the above injunctive action, the court concluded that registrant violated recordkeeping provisions by failing to record the transactions in question. The court stated that registrant's failure to keep proper books and records "served to shield the aforementioned transactions from review by the SEC or other regulatory agencies."

As previously noted, Geswaldo was president of registrant, and he personally effected a substantial number of the unrecorded sales. Krzywicki was in charge of registrant's back office under Geswaldo's supervision. He admits that he was responsible for making entries in registrant's records but asserts that his responsibility was confined to "recording what was given to him by the salesmen." Krzywicki states that, since he received no instructions from the salesmen with respect to transactions in Fidelity, he had no reason to make any entries.

We cannot agree. Krzywicki knew that registrant's president and salesmen were selling Fidelity certificates. Thus he had a duty to ascertain why these transactions were not being recorded in registrant's books. In any event, Krzywicki admitted that the sales were not reflected in registrant's records because he did not think that Fidelity's certificates were securities.

We accordingly conclude that registrant, willfully aided and abetted by Geswaldo and Krzywicki, willfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

VII.

The administrative law judge found that registrant and Geswaldo charged customers excessive markups in the sale of various securities. In 101 transactions effected by registrant during 1975, the markups ranged from 11.1% to 37.5% over the contemporaneous prices that registrant paid other dealers for the securities in question. In four of the

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[18]The law judge found that registrant merely aided and abetted the violations of antifraud provisions by the individual respondents. For the reasons stated above with respect to the violations of registration provisions, we conclude that registrant was also a principal violator here.

[19]We find that respondents acted with scienter. Hence their violations were clearly willful. We note, however, that scienter is not necessary to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, and all of our findings of fraud are made under both those sections. Our findings that respondents also violated Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder are merely cumulative, and the sanctions we are imposing would be the same even if we had made no findings under those provisions and had made findings solely under either Section 17(a)(2) or Section 17(a)(3). We further note that, for purposes of the latter provisions, willfulness means no more than intentionally committing the act which constitutes the violation. See *Tager* v. *S.E.C.*, 344 F.2d 5, 8 (C.A. 2, 1965).

[20]*S.E.C.* v. *First Pittsburgh Securities Corporation, et al.*, Civil Action File No. 77-102. Krzywicki was not a respondent in this action.

[21]See *WCBA Investments, Inc., supra*, 43 S.E.C. at 1140-1141; *Strathmore Securities, Inc., supra* 43 S.E.C. at 587-588.

transactions, the purchases and sales were effected on the same day. In the remaining transactions, the sales took place on the following business day. The law judge found that registrant's contemporaneous costs were reflective of prevailing market prices.

We have repeatedly pointed out that, in the absence of countervailing evidence, a dealer's contemporaneous cost is the best evidence of current market price,[22] a standard that has been accorded judicial approval.[23] Respondents nevertheless argue that it was improper to compute registrant's markups on the basis of the prices it paid. They assert that where, as here, most of registrant's purchases did not occur on the same day as its sales, registrant's costs were not contemporaneous, and thus were not indicative of current market price.

This contention is without merit. Contemporaneous cost is not limited to same-day cost. It is sufficient if the prices paid by a dealer in actual transactions are "closely related in time" to its sales.[24] Here, registrant's sales were made within one business day of its purchases from other dealers. In these circumstances, the burden was on respondents to establish that registrant's costs were not representative of the market at the time of its sales,[25] a burden respondents failed to meet.

Respondents argue that registrant's markups should be computed on the basis of the asked quotations in NASDAQ at the time of its sales. However, registrant generally purchased the securities in question at or around the quoted bids and sold them to retail customers at prices below the quoted offers. Since registrant was not a marketmaker in the securities at issue, it is clear that the asked quotations were regularly subject to negotiation, and therefore not a reliable guide to the prevailing market price.[26]

Respondents further argue that registrant had positions in the securities in question, and was therefore entitled to a higher markup to compensate for the risk. But, as we have previously pointed out, a broker-dealer is not entitled to charge customers excessive markups because it is in a risk position.[27]

Finally, respondents point to the fact that the transactions in question involved low-priced securities ranging from 1-3/8 to 5-1/4 per share. However, at the least, markups of more than 10% are fraudulent even in the sale of low-priced securities such as these.[28]

It is clear that, in 101 transactions, registrant charged customers unfair markups ranging from 11.1% to 37.5%. Geswaldo was responsible for registrant's pricing policies. Accordingly, we conclude that registrant and Geswaldo willfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[29]

VII.

Respondents other than Krzywicki argue that the sanctions imposed on them by the law judge are too severe. We cannot agree. Any professional in the securities business should have realized that debt securities cannot be recommended to customers without first obtaining the most basic and important information about the issuer—its current financial

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[22]See, e.g., *Charles Michael West,* Securities Exchange Act Release No. 15454 (January 2, 1979), 16 SEC Docket 592, 594; *Gateway Stock and Bond, Inc.*, 43 S.E.C. 191, 193 (1966); *Naftalin & Co., Inc.*, 41 S.E.C. 823, 826-27 (1964).

[23]*Barnett* v. *S.E.C.*, 319 F.2d 340, 344 (C.A. 8, 1963).

[24]See *DMR Securities, Inc.*, Securities Exchange Act Release No. 16322 (November 6, 1979), 18 SEC Docket 873, 875; *Charles Michael West, supra,* 16 SEC Docket at 594.

[25]See *DMR Securities, Inc., supra; Charles Michael West, supra.*

[26]See *Charles Michael West, supra.*

[27]See *Naftalin & Co., Inc., supra,* 41 S.E.C. at 826-827; *Waldron & Co., Inc.*, Securities Exchange Act Release No. 12872 (October 6, 1976), 10 SEC Docket 663, 664; *Financial Estate Planning,* Securities Exchange Act Release No. 14984 (July 21, 1978), 15 SEC Docket 352, 354.

[28]See *J. A. Winston & Co., Inc.*, 42 S.E.C. 62, 69 (1964).

[29]Our discussion in n. 19, *supra,* is also applicable to our findings of antifraud violations in connection with the unfair markups that registrant and Geswaldo charged customers.

situation. To have made such recommendations, and to have made representations about the safety of the investment and the good financial condition of the issuer without that information, were egregious violations. Moreover, respondents were not deterred from recommending Fidelity by the adverse information they received from Boyer. In addition, the registration provisions they violated contain basic protections for the benefit of investors.

Registrant and Geswaldo could hardly have been oblivious to the fraudulent nature of markups that ranged as high as 37.5% above the contemporaneous prices that registrant paid for the securities it sold to customers.

The actions of these respondents manifest a blatant indifference to the obligation of fair dealing borne by those in the securities business. We recognize the serious effect of the sanctions we are imposing. Yet we are convinced that lesser remedies will not suffice. We do not seek to punish respondents, but to protect the public from further harm at their hands. On the basis of their callous disregard of the securities laws, there is little reason to expect that they will refrain from future misconduct.

Finally, when we deal with the public interest requirements in a particular case, we must also weigh the effect of our decision on the welfare of investors as a class and on standards of conduct in the securities business generally. If these proceedings are to be truly remedial, they must have a deterrent effect not only on the respondents before us but also on others who may be tempted to engage in similar misconduct.[30]

As previously noted, Krzywicki was only involved in violations of recordkeeping requirements, and it appears that his record is otherwise unblemished. While strict compliance with those requirements is essential for the effective regulation of brokers and dealers,[31] we consider that the public interest will be adequately served by suspending Krzywicki for 30 days from association with any broker-dealer or member of the PSE or NASD.

An appropriate order will issue.[32]

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16897/June 16, 1980

Admin. Proc. File No. 3-5435

In the Matter of

FIRST PITTSBURGH SECURITIES CORPORATION
Centre City Tower
7th & Smithfield Streets
Pittsburgh, Pennsylvania

(8-17069)

SALVATORE F. GESWALDO
CARL B. BENSON
BERNARD H. GOLLING
DONALD R. KOHL
CHARLES KRZYWICKI

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the registration of First Pittsburgh Securities Corporation as a broker and dealer be, and it hereby is, revoked; and it is further

ORDERED that First Pittsburgh Securities

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[30]See *Arthur Lipper Corporation* v. *S.E.C.*, 547 F.2d 171, 184 (C.A. 2, 1976): "The purpose of such severe sanctions must be to demonstrate not only to petitioners but to others that the Commission will deal harshly with egregious cases."

[31]See *Wanda O. Olds*, 37 S.E.C. 23, 26-27 (1956); *Midas Management Corporation*, 40 S.E.C. 707, 709 (1961).

[32]We have fully considered all of the contentions raised by respondents and our staff. Their exceptions to the initial decision are overruled or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

Corporation be, and it hereby is, expelled from membership in the National Association of Securities Dealers, Inc. ("NASD"); and it is further

ORDERED that Salvatore F. Geswaldo, Carl B. Benson, Bernard H. Golling and Donald R. Kohl be, and they hereby are, barred from association with any broker, dealer, or member of the Philadelphia Stock Exchange, Inc. or the NASD; and it is further

ORDERED that Charles Krzywicki be, and he hereby is, suspended from any such association for a period of 30 days, effective as of the opening of business on July 7, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16898/June 16, 1980

Admin. Proc. File No. 3-5721

In the Matter of the Application of

PRINCE, LANGHEINRICH & GREER, INC.
Salt Lake City, Utah

and

SPENCER B. GREER
FRANK A. LANGHEINRICH
WARREN M. KETCHAM

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Failure to Comply with Association's Margin Rules
Improper Use of Special Omnibus Account
Inadequate Supervision

Where member of registered securities association and its treasurer failed to comply with association's margin rules and, together with a salesman, improperly effected transactions in a special omnibus account for the exclusive benefit of customers, and president failed to exercise proper supervision with respect to the margin violations, *held*, association's findings of violation *sustained*, but sanction imposed on treasurer *reduced*.

APPEARANCES:

Frank A. Langheinrich, for Prince, Langheinrich & Greer, Inc., Spencer B. Greer, Warren M. Ketcham, and *pro se*.

Frank J. Wilson, Andrew McR. Barnes and *C. Jean Ivey*, for the National Association of Securities Dealers, Inc.

I.

Prince, Langheinrich & Greer, Inc. ("PLG"), a member of the National Association of Securities Dealers, Inc. ("NASD"), Spencer B. Greer and Frank A. Langheinrich, who during the relevant period were, respectively, president and treasurer of PLG, and Warren M. Ketcham, a former PLG salesman, appeal from disciplinary action taken against them by the NASD. The NASD found that PLG and Langheinrich failed to comply with margin rules and net capital provisions, that PLG, Langheinrich and Ketcham improperly executed transactions through a Special Omnibus Account, and that PLG and Greer failed to exercise proper supervision over Langheinrich in connection with the margin violations.

The NASD censured applicants, suspended Langheinrich for six months from association with any member in a principal capacity, and fined PLG $1,000 and Greer $500.[1] On the basis of an independent review of the record, we make the following findings.

II.

In order to enable customers to purchase securities on credit, a broker-dealer is permitted to lend them a certain percentage of the securities' market price.

[1]The NASD also assessed costs.

The remainder is the required "margin" which a customer must deposit, or have on deposit in his account. Margin requirements also apply to short sales by a customer.[2] Regulation T, promulgated by the Board of Governors of the Federal Reserve System, prescribes the minimum margin required from a customer to effect a security transaction on credit.[3]

In addition to the requirements of Regulation T, various self-regulatory organizations, including the NASD, have supplementary regulations applicable to customers' margin accounts carried by a member.[4] These regulations relate principally to two separate areas—the minimum dollar amount of equity a customer must have on deposit to effect securities transactions in his margin account,[5] referred to as initial margin,[6] and the minimum margin which must be maintained in the account, referred to as maintenance margin.[7]

The NASD's initial margin rule provides that "[f]or the purpose of effecting and carrying new securities transactions. . .[e]very margin account shall have a minimum equity deposit. . .of $2,000, except that cash need not be deposited in excess of the cost of any security purchased."[8] The NASD found that, during the month of December 1976, PLG effected securities transactions in four customers' margin accounts when those accounts lacked the requisite $2,000 minimum equity.[9]

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[2]A short sale is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller." Rule 3b-3 under the Securities Exchange Act. Here the broker-dealer is lending securities instead of money. Because of the risk that the market price will have risen when delivery is due, margin requirements typically require that a customer selling short keep on deposit a certain percentage of the current market price of the security, in addition to the proceeds of the short sale.

[3]Regulation T, promulgated under Section 7 of the Exchange Act, also deals with a number of related matters, including the various types of accounts which a broker-dealer may carry, the time periods within which payment must be obtained for various transactions, and the types of securities that can serve as collateral for a loan, i.e., "marginable" securities. 12 C.F.R. §220.

[4]Article III, Section 30, of the NASD's Rules of Fair Practice prohibits a member from effecting a securities transaction in a customer's margin account in a manner contrary to the requirements adopted by the NASD's Board of Governors, or otherwise acting in connection with such a transaction in a manner inconsistent with the Board's requirements. NASD Manual para. 2180, p. 2109-7.

[5]In this context, the equity in a customer's margin account is determined by ascertaining the aggregate current market value of all securities marginable under Regulation T and either subtracting the customer's debit balance (i.e., the amount of money the customer owes the broker on all transactions), or adding the customer's credit balance (i.e., the money the broker owes the customer). Where short sales have been made in the account, a further deduction is made for the current market value of the securities sold short.

[6]NASD Manual para. 2180A, Section 2.

[7]NASD Manual para. 2180A, Section 4.

[8]NASD Manual para. 2180A, Section 2(a).

[9]The NASD's complaint originally charged violations of the initial margin requirements of Regulation T. The District Committee permitted the NASD's staff to amend those allegations during the course of the hearings to charge that the NASD's initial margin rule had been violated. Although applicants initially objected to the amendment, they accepted the Committee's proposal allowing them to supplement the record with respect to the amended charges after the close of the District hearings. Applicants availed themselves of that opportunity, and did not review their objection before the NASD's Board of Governors. We find no merit in their attempt to do so now.

Langheinrich argues that, because all of the transactions which created the margin deficiencies were completions of favorable call option spreads which involved no risk to PLG, no additional margin was required. We cannot agree. The NASD's rule clearly requires a $2,000 minimum equity for *all* securities transactions effected in a margin account. It contains no exception for spreads, even if they involve little or no risk of loss.

The record shows that securities transactions were effected in only three of the four accounts in question during the month of December. We accordingly affirm the NASD's findings of violation by the firm and Langheinrich[10] with respect to three customer accounts, and set aside its finding of violation as to the fourth.

The NASD also found that, during December 1976, PLG and Langheinrich failed to make proper computations of the margin required to be maintained in five other accounts, and failed to issue the necessary margin calls. After PLG terminated its Chicago Board Options Exchange ("CBOE") membership in the spring of 1976, it became subject to the NASD's margin rules.[11] At that time, the margin required by the NASD for uncovered short positions in exchange-listed call options was greater than that required by the CBOE and other exchanges.[12] But, in December 1976, Langheinrich was still computing margin requirements for those items on the basis of CBOE requirements.

Langheinrich contends that he was misled by an NASD examiner into believing that he could apply CBOE requirements to the positions in question. He asserts that there is no evidence that, upon leaving the CBOE, PLG did not conform to NASD rules. He states that the NASD had proposed amendments to its margin rules which essentially brought them into line with CBOE requirements;[13] that he was in doubt as to which set of rules to apply; and that, in December 1976, an NASD examiner led him to believe that the lower margin required by the NASD's proposed amendments was sufficient.

We cannot credit these assertions. As Langheinrich admits, he received a letter in July 1976 from the assistant director of his NASD district specifically advising him that, since PLG was no longer a CBOE member, it must compy with NASD margin rules. Despite that admonition and contrary to Langheinrich's assertion, the record shows that PLG continued to apply the CBOE's requirements. Indeed, Langheinrich admittedly told an NASD examiner, "That's how the computer is programmed."

The NASD examiner who spoke to Langheinrich in December testified that he could not recall ever telling Langheinrich anything except "the fact that our rules were up for consideration to be changed . . . ." And the NASD's decision, to which Langheinrich points, merely found that Langheinrich "may have been confused by the staff's statements about the Association's pending rule changes," not that the staff misinformed or misled Langheinrich.

We accordingly affirm the NASD's findings of violation by the firm and Langheinrich with respect to margin requirements for the five accounts in question.

III.

The NASD found that, as of December 31, 1976, the

[10]Langheinrich was responsible for the firm's compliance with margin requirements.

[11]Although PLG had also previously been an NASD member, the NASD exempts members of the CBOE, as well as members of other specified exchanges, from the NASD's margin rules. NASD Manual para. 2180A, Section 1.

[12]An uncovered short position in call options, sometimes referred to as a "naked" position, arises when a customer sells calls for blocks of a certain stock but does not have a corresponding long position in that stock to make delivery in case the calls are exercised. For a given short position in a listed call option, the CBOE's rules basically required maintenance margin of 30% of the market value of equivalent units of the underlying security. The NASD rules then in effect required one-half of the greater of (a) the options' exercise price or (b) the market price of the underlying securities. The CBOE and NASD rules also provided for certain adjustments which are not at issue here.

[13]We approved the proposed amendments on May 11, 1977. Securities Exchange Act Release No. 13529, 12 SEC Docket 382.

firm had a net capital deficiency. The Association's finding was based on its deduction from the firm's net worth of both the aggregate amount of customers' maintenance margin deficiencies, and the deficiencies in the $2,000 minimum equity required by the NASD's initial margin rule. Our net capital rule, however, only requires the deduction of deficiencies in maintenance margin.[14] And, on the basis of our examination of the record, we find no deficiency in the firm's net capital.

We accordingly set aside the NASD's finding that the firm and Langheinrich failed to comply with net capital requirements.

IV.

From December 16 through December 20, 1976, PLG effected transactions for Arbeit Investment Group, a nominee account beneficially owned by Langheinrich and Ketcham. Certain Arbeit purchases were effected through a Special Omnibus Account maintained by PLG with B Co., a member of a national securities exchange. As required by Regulation T, PLG had given B Co. written notice in the form of an omnibus account agreement that all securities in the account would be carried solely for the accounts of individual PLG customers, and not for the benefit of any officer of the firm.[15] In violation of that agreement, PLG purchased for Arbeit over $19,000 worth of call options which were posted to and carried in the omnibus account. The NASD found that this use of the account not only caused PLG to breach its agreement, but improperly enabled Langheinrich and Ketcham to make their purchases on credit.[16]

Langheinrich and Ketcham claim that they did not intend to purchase Arbeit's calls through the omnibus account, and that the use of that account was the fault of B Co. They concede that they did not intend to pay cash for the calls. But they state that they had been led to believe by a margin clerk at B Co. that the purchases could properly be financed through a "special arbitrage account,"[17] and that they assumed that the calls they purchased would be posted to the PLG firm account together with their nearly-simultaneous short sales of the underlying stock as part of their arbitrage strategy.[18] Ketcham testified that, when he placed the orders, he telephoned the B Co. "arbitrage desk" and, designating Arbeit's transactions as arbitrage, requested that the purchase and sale orders be executed accordingly.[19]

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[14]Rule 15c3-1(c)(2)(xii) under the Exchange Act.

[15]Section 4(b) of Regulation T permits a member of a national securities exchange to effect and finance transactions for a registered broker-dealer in a special omnibus account upon receipt of written notice that all securities therein will be carried solely for the account of the broker-dealer's customers in accordance with the provisions of Rules 8c-1 and 15c2-1 under the Exchange Act. Those rules define "customer" to exclude any officer of the broker-dealer or any participant in an account in which the officer has an interest.

[16]Applicants describe as vague the NASD's allegation that their conduct "was tantamount to an evasion of. . .[Regulation T]." We think that the complaint clearly spelled out a valid charge.

[17]Section 4(d) of Regulation T permits a member of a national securities exchange to effect and finance for any customer, in a special arbitrage account, bona fide arbitrage transactions, which include the purchase of a security exchangeable or convertible within 90 days into a second security together with an offsetting sale at or about the same time of such second security for the purpose of taking advantage of a disparity in the prices of the two securities. As noted below, however, the Federal Reserve Board has determined that call options do not qualify as "exchangeable or convertible" securities for purposes of Section 4(d).

[18]Langheinrich and Ketcham sought to purchase calls whose exercise price was sufficiently below the price at which they sold the underlying securities short so that, at the least, the purchase price of the calls would be covered.

[19]As evidence that B Co. was notified that these transactions were arbitrage, applicants placed order tickets in evidence which Ketcham had prepared for his own purposes. However, the tickets were never seen by anyone at B Co.

We cannot credit applicants' assertions. There is no evidence that PLG had a special arbitrage account at B Co. Moreover, we find it difficult to believe that a margin clerk at that firm, which specialized in options transactions[20], would not have known that, some three years previously, the Board of Governors of the Federal Reserve System had determined that purchases of call options could not be financed through such an account.[21] In addition, applicants do not claim that, in placing their orders, they specifically advised the B Co. order clerk that their purchases should be posted to a firm account rather than the omnibus account.[22] They argued that, customarily, such "paired transactions" were only carried in a firm account and that the clerk should have known this. However, we agree with the NASD that applicants could not shift responsibility for the proper allocation of their orders to the clerk at the carrying firm. As the NASD stated:

> "In this type of relationship, the identify of the [individuals]. . .who are trading through the introducing firm are not made known to the corresponding firm. In the absence of clear and concise instructions regarding the essence of the transactions from the introducing member, it is not unreasonable to assume that the transactions would be channelled to a customer account by the carrying firm when orders are received from an introducing firm primarily engaged in retail activities."[23]

Moreover, the record shows that, in connection with applicants' first purchase of calls through the omnibus account on December 16, there was no offsetting short sale in any PLG account at B Co. Thus it could hardly have been evident to the B Co. order clerk that the purchase was a "paired transaction" which should be posted to a firm account. Finally, it does not seem likely that the order clerk at B Co. would accidentally mishandle the three subsequent orders from Ketcham.

We accordingly affirm the NASD's finding that, in the foregoing respects, PLG, Langheinrich and Ketcham failed to comply with high standards of commercial honor and just and equitable principles of trade.[24]

V.

The NASD found that PLG and Greer failed to exercise proper supervision over Langheinrich with respect to the margin violations.

Greer, PLG's president, was admittedly concerned about the firm's continued use of CBOE margin rules although it was no longer a CBOE member. Nevertheless, he was content to rely on Langheinrich's interpretation of his conversations with an NASD examiner rather than seeking a definite resolution of that issue from the NASD.

Under the circumstances, we affirm the NASD's finding of inadequate supervision on the part of Greer.[25]

VI.

Applicants allege that in various respects they were denied due process. They claim that the District Committee panel which heard their case lacked the necessary expertise to understand the issues presented; that the full Committee had no opportunity to review the record; and that it was

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[20]Langheinrich described B Co. as a large and "sophisticated" firm.

[21]12 C.F.R. §220.126. See n. 17, *supra*.

[22]Langheinrich testified, "I don't know if we can remember whether we did that or not."

[23]The NASD found that 85 percent of PLG's income was derived from retailing listed options to approximately 1,500 active customer accounts.

[24]The NASD also found that applicants' conduct violated Section 19 of the Association's Rules of Fair Practice. However, on the basis of the record before us, we are unable to sustain that finding.

[25]The NASD also found PLG responsible for deficient supervision in connection with the margin violations. However, since findings of substantive violations were made against the firm, it is unnecessary to find the firm responsible for a failure of supervision with respect to the same misconduct. See *Management Financial, Inc.*, Securities Exchange Act Release No. 12098 (February 11, 1976), 8 SEC Docket 1248, 1252 n. 20.

improper for members of the District staff to be present during the Committee's deliberations.[26]

Applicants' contentions are without merit. The District panel members were chosen in accordance with the NASD's By-Laws which were approved by this Commission as meeting the standards of Section 15A of the Securities Exchange Act. The individual applicants certified that they had read and understood those By-Laws when they became registered with the NASD.[27] Moreover, applicants have not shown that the panel members were unqualified to deal with the issues in this case. The hearing transcript, and all exhibits thereto, were available to the full Committee during its deliberations, and applicants were not denied due process by the presence of NASD staff members during those deliberations.[28]

In any event, applicants have not suffered any prejudice by reason of any alleged error on the part of the District Committee. Following the Committee's decision, *de novo* findings were made both by the NASD's Board of Governors and by this Commission. The alleged errors by the Committee did not infect the Board's processes or our own.[29]

VII.

Applicants argue that the sanctions imposed by the NASD are too severe. They assert, among other things, that they took prompt corrective action once the NASD notified them of the various irregularities, that they committed no similar violations before or since, that no customer was harmed, and that any violations were unintentional.

Although Langheinrich's conduct did not comport with the standards required of a principal in a broker-dealer firm, we conclude that the sanctions imposed on him are excessive. As noted above, we have set aside certain of the NASD's findings of violation. In addition, the margin violations were limited in number, and the improper use of the omnibus account only extended over two business days. Under all the circumstances, we consider that censure and a 30-day suspension of Langheinrich from association with any NASD member in a principal capacity will adequately serve the public interest.

As to the other applicants, we are unable to conclude that the relatively lenient sanctions which the NASD imposed are excessive or oppressive.

An appropriate order will issue.[30]

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16898/June 16, 1980

Admin. Proc. File No. 3-5721

In the Matter of the Application of

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[26]Applicant also complain that the NASD improperly refused to provide them with the minutes of the Committee's deliberations. However, applicants were not entitled to probe the NASD's decision-making process. See, e.g., *Norris & Hirschberg, Inc.* v. *S.E.C.*, 163 F.2d 689, 693 (C.A.D.C. 1947), *cert. denied*, 333 U.S. 867 (1948); *Montrose Chemical Corporation of California* v. *Train*, 491 F.2d 63, 68-71 (C.A.D.C., 1974).

[27]See *Langley-Howard, Inc.*, 43 S.E.C. 155, 159-160 (1966).

[28]See *Sumner B. Cotzin*, 45 S.E.C. 575, 578-581 (1974). Equally lacking in merit is applicants' contention that the District Committee's decision contains "libelous comments" about Langheinrich. The Committee's remarks merely represented the District panel's assessment, based on listening to Langheinrich's testimony and observing his demeanor, of Langheinrich's sincerity in attempting to comply with applicable requirements.

[29]See *Shultz* v. *S.E.C.*, 614 F.2d 561, 568 (C.A. 7, 1980); *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855.

[30]We have fully considered all of applicants' contentions. They are overruled or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

PRINCE, LANGHEINRICH & GREER, INC.
Salt Lake City, Utah

and

SPENCER B. GREER
FRANK A. LANGHEINRICH
WARREN M. KETCHAM

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER MODIFYING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanctions imposed by the National Association of Securities Dealers, Inc. ("NASD") on Frank A. Langheinrich be, and they hereby are, reduced to censure and a 30-day suspension from association with any NASD member in a principal capacity; and it is further

ORDERED that the sanctions imposed by the NASD on Prince, Langheinrich and Greer, Inc., Spencer B. Greer and Warren M. Ketcham, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16899/June 16, 1980

In the Matter of Application of the

MIDWEST STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Dome Petroleum, Ltd.
Common Stock, $2.50 Par Value (File No. 7-5543)[1]

The Commission finds that approval of the MSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Midwest Stock Exchange in the above named security is hereby approved.

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 36244 (May 29, 1980). The Commission has received no comments with respect to this application.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16900/June 17, 1980

REGULATION OF CLEARING AGENCIES

ACTION: Announcement of Standards for the Registration of Clearing Agencies.

SUMMARY: The Securities and Exchange Commission today announced standards to be used by the Division of Market Regulation in connection with the registration of clearing agencies. The standards are intended to serve as staff guidelines to assist clearing agencies in modifying their organizations, capacities and rules to comply with the clearing agency registration provisions of the Securities Exchange Act of 1934.

EFFECTIVE DATE: June 17, 1980.

FOR FURTHER INFORMATION CONTACT: JoAnn Carpenter, Esq., Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2913.

SUPPLEMENTARY INFORMATION: The Commission today announced standards that the Division of Market Regulation (the "Division") will use in reviewing the organizations, capacities and rules of clearing agencies that currently are registered temporarily with the Commission and of clearing agencies that may apply for registration in the future. The Division intends to apply these standards in making its recommendations to the Commission regarding the grant or denial of registration. The standards announced herein are not Commission standards, but rather a statement of the views and positions of the Division regarding the manner in which clearing agencies should comply with provisions of the Securities Exchange Act of 1934 (the "Act") applicable to registration.

BACKGROUND

Section 17A(b) of the Act, which was added by the Securities Acts Amendments of 1975,[1] makes it unlawful for a clearing agency[2] to perform clearing agency functions with respect to any security (other than an exempted security, as defined in Section 3(a)(12) of the Act) on December 1, 1975 and thereafter unless the clearing agency is registered with the Commission. Section 17A(b)(3) of the Act requires the Commission, before granting registration, to make a number of determinations with respect to a clearing agency's organization, capacity and rules.[3]

On November 3, 1975, the Commission adopted Rule 17Ab2-1, 17 CFR §240.17Ab2-1, and related Form CA-1, 17 CFR §249b.200, for the registration of clearing agencies.[4] Paragraph (c)(1) of Rule 17Ab2-1 provides that, if requested by an applicant, the Commission may grant registration for 18 months or such longer period as it may provide by order without making all of the determinations called for by Section 17A(b)(3). This approach to registration was intended to permit clearing agencies in operation at that time to be registered in compliance with the Act by December 1, 1975 upon a finding that their operations were safe, while affording the Commission sufficient time to make the other determinations called for by Subparagraphs (A)-(I) of Section 17A(b)(3). This approach to registration also was used for the registration of three clearing agencies that began operating after December 1, 1975.

Each of the thirteen clearing agencies currently registered with the Commission has been granted temporary registration in accordance with

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[1]Pub. L. No. 94-29 (June 4, 1975).

[2]The term "clearing agency" is defined in Section 3(a)(23) of the Act.

[3]The determinations are contained in Subparagraphs (A) through (I) of Section 17A(b)(3) of the Act.

[4]Securities Exchange Act Release No. 11787 (November 3, 1975), 40 FR 52356 (November 10, 1975).

paragraph (c)(1) of Rule 17Ab2-1.[5] The Commission, by order, has extended until March 31, 1981 the temporary registrations of the clearing agencies that have been in operation for more than 18 months since the initial grant of registration. As required by Rule 17Ab2-1, the Commission also has instituted proceedings to determine whether to grant or deny registration at the expiration of the temporary registrations.[6]

On June 1, 1977, the Commission published proposed standards for determining whether clearing agencies' organizations, capacities and rules satisfy the Act's criteria.[7] Thirteen comment letters were received. After reviewing those letters, the Commission substantially revised the proposed standards and republished them for public comment on March 6, 1978.[8] Fourteen letters of comment were received. The fourteen comment letters were considered and certain changes, as indicated in this release, were made to the revised proposed standards in response to some of the commenters' suggestions.

It should be noted that the standards previously were proposed as Commission standards. The Commission has decided, however, not to adopt Commission standards at this time, but instead to publish standards that the Division will use in evaluating clearing agencies' organizations, capacities and rules. This decision is based on the fact that, in connection with its review of the various clearing agency applications for registration, the Commission will be presented with a number of important substantive issues concerning the application of the relevant statutory provisions. In addition, this review will be the first occasion, other than for the temporary purposes previously noted, on which the Commission will apply those statutory provisions to particular clearing agencies. Under these circumstances and in view of differences in the operation and organization of the thirteen clearing agencies, the Commission has concluded that it would be preferable to reach judgments about the application of the Section 17A(b)(3) provisions in the context of passing upon the individual applications of the clearing agencies.

At the same time, the Commission recognizes the desirability of providing guidance to the clearing agencies in amending their organizations, capacities and rules to comply with the provisions of Section 17A(b)(3). The Commission has determined, therefore, that it would be useful for clearing agencies to be apprised of the views and positions of the Division that will evaluate the clearing agencies' organizations, capacities and rules and thereafter make recommendations to the Commission regarding the registration of such entities.[9]

REGISTRATION STANDARDS

In Subparagraphs (A)-(I) of Section 17A(b)(3) ("Subparagraphs (A)-(I)"), Congress set forth general criteria which clearing agencies must satisfy in order to be registered. Congress, however, reserved to the Commission the task of making the specific determinations as to whether the organizations, capacities and rules of clearing agencies satisfy the general criteria. The standards as set forth in this release represent the views and positions of the Division concerning certain approaches which it believes would satisfy the criteria set forth in

[5]The Depository Trust Company, Bradford Securities Processing Services, Inc., Stock Clearing Corporation of Philadelphia, Boston Stock Exchange Clearing Corporation, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository Trust Company, Pacific Clearing Corporation, TAD Depository Corporation, New England Securities Depository Trust Company, National Securities Clearing Corporation and Philadelphia Depository Trust Company.

[6]General background information concerning the temporary registrations, the extensions of the registrations and the institution of proceedings is contained in Securities Exchange Act Release Nos. 13584 (June 1, 1977), 42 FR 30065 (June 10, 1977); 13664 (June 23, 1977), 42 FR 33394 (June 30, 1977); 13911 (August 31, 1977); 14531 (March 6, 1978), 43 FR 10288 (March 10, 1978); and 16294 (October 24, 1979).

[7]See Securities Exchange Act Release No. 13584.

[8]See Securities Exchange Act Release No. 14531.

[9]It should be noted that the Commission retains the flexibility to determine that, despite compliance with a particular Division standard, a clearing agency may have to meet more stringent measures in order to comply with the statutory requirements.

Subparagraphs (A)-(I).[10] If a clearing agency believes that the application of a particular standard to it is inappropriate, the clearing agency should submit a detailed description of (i) the reasons why the standard is inappropriate, (ii) the alternative approach suggested by the clearing agency and (iii) the reasons why the clearing agency believes its alternative approach satisfies the statutory criteria. The Division would then make recommendations to the Commission regarding the alternative approach.

Section 17A of the Act directs the Commission to use its authority under the Act to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions ("national system") in accordance with the findings in Section 17A(a)(1). In using its authority, the Commission is to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers and dealers, clearing agencies and transfer agents. In general, the standards are designed to be flexible and therefore should provide latitude to each clearing agency and the Commission in accomplishing the objectives of the Act.

In addition, Sections 17A(b)(3)(F) and (I) of the Act provide, in part, that the Commission shall not grant registration as a clearing agency to an applicant unless the Commission determines that (i) the applicant's rules are designed to foster cooperation and coordination with persons engaged in securities processing and to remove impediments to and perfect the mechanisms of the national system and (ii) the applicant's rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The remainder of this release is prefaced by an index which lists the caption of each standard followed by its statutory basis. In the text of the release, each of the standards, which are italicized, is followed by a summary of the Division's intended application of the standard. Therefore, in order to comply fully with the standards, the clearing agency should seek guidance from the explanatory material.

I. Participation Standards—Section 17A(b)(3)(B)

A. Statutory Background
B. Minimum Participation Requirements
C. Financial and Operational Requirements
D. Clearing Agency Interfaces
E. Other Categories of Participants

II. Fair Representation—Section 17A(b)(3)(C)

A. Statutory Background
B. Governance Procedures
C. Notice of Proposed Rule Changes
D. Public Directors

III. Capacity to Enforce Rules and to Discipline Participants in Accordance with Fair Procedures—Sections 17A(b)(3)(A), (G) and (H)

IV. Safeguarding of Securities and Funds and Prompt and Accurate Clearance and Settlement of Securities Transactions—Sections 17A(b)(3)(A) and (F)

A. Statutory Background
B. General Discussion
C. Organization and Processing Capacity
D. Audit Committee
E. Internal Audit Department
F. Financial Reports
G. Internal Accounting Control Reports
H. Securities, Funds and Data Controls
1. Prevention
2. Recovery

V. Obligations to Participants—Sections 17A(b)(3)(A) and (F)

A. Clearing Funds
B. Standard of Care

VI. Participant Charges—Section 17A(b)(3)(E)

VII. Equitable Allocation of Reasonable Dues, Fees and Other Clearing Agency Charges—Section 17A(b)(3)(D)

[10]Although the Subparagraph (A)-(I) determinations are similar in many respects to those which the Commission is required to make in connection with the registration of national securities exchanges and securities associations pursuant to Sections 6(b) and 15A(b) of the Act, the clearing agency standards have been formulated in light of the purposes of Section 17A of the Act and are intended to apply only to the determinations required by Section 17A(b)(3) of the Act.

VIII. Limitation on a Clearing Agency's Scope of Regulation—Section 17A(b)(3)(F)

IX. The National Clearance and Settlement System

X. Other Matters

I. *Participation Standards*

The rules of a clearing agency concerning eligibility to become a participant should (i) provide the statutory categories of participants access to the clearing agency and its services on a basis which does not discriminate unnecessarily or unfairly, (ii) protect the clearing agency's financial and operational integrity and (iii) carry out the purposes of Section 17A of the Act, including facilitating the establishment of a national clearance and settlement system.

A. *Statutory Background*

Section 17A(b)(3)(B) of the Act states that a clearing agency shall not be registered unless the Commission determines that,

> [s]ubject to the provisions of [Section 17A(b)(4) of the Act], the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

Section 17A(b)(4)(B) of the Act provides that a registered clearing agency may deny or condition the participation of any person who does not meet the standards of financial responsibility, operational capacity, experience and competence prescribed by the rules of the clearing agency.[11] A registered clearing agency also is empowered by the Act to examine and verify the qualifications of an applicant in accordance with procedures established by the rules of the clearing agency. This authority, however, must be viewed in the context of Section 17A(b)(3)(F) of the Act, which provides, among other things, that the rules of a clearing agency may not be "designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. . .," and Section 17A(b)(3)(I) of the Act, which provides that the rules of a clearing agency may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Together, the Act's provisions recognize that a clearing agency may discriminate among persons in the admission to, or the use of, the clearing agency if such discrimination is based on standards of financial responsibility, operational capability, experience and competence. In addition, the Act requires that the discriminations it sanctions must not be unfair. The Commission must find that clearing agency rules embodying any discriminations are in the public interest and are consistent with the requirements of the Act applicable to clearing agencies.[12]

B. *Minimum Participation Requirements*

The participant categories as enumerated in Section 17A(b)(3)(B) include entities already subject to regulation by various federal and state authorities and by other self-regulatory organizations. The Division does not believe, however, that the requirements of those regulatory authorities necessarily qualify an applicant for participation in a clearing agency. The Division believes that a clearing agency may impose such additional or higher standards as it deems necessary to protect the clearing agency and its participants from

[11]The Section 17A(b)(3)(B) requirement is also subject to Section 17A(b)(4)(A) of the Act which provides that a registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification.

It has been suggested that the participation standards should provide for rejection of an applicant on the basis of "moral" or "character" grounds. The Division believes that it is neither necessary nor appropriate at this time to allow a clearing agency to reject an applicant based on undefined subjective terms such as "character."

[12]Sections 17A(a)(2) and 17A(b)(3)(A), (F) and (I) of the Act.

unreasonable risks.[13] Of course, the Commission would have to determine that such standards are consistent with the requirements of the Act and the clearing agency would have the obligation to justify any anticompetitive effect of such standards. Any anticompetitive effect would be judged in light of such factors as the essential nature of the service; the number and type of potential participants denied access to clearance and settlement services; the number of entities providing comparable clearance, settlement and depository services; and the availability of correspondent arrangements to provide indirect access to a clearing agency's services.

C. *Financial and Operational Requirements*

In response to the revised proposed standards, some commenters again expressed their view that certain categories of participants such as banks and insurance companies should not be required to comply fully with clearing agency rules establishing internal financial and operational safeguards such as clearing fund deposits. Some commenters disagreed with the view expressed in Securities Exchange Act Release No. 14531 that the risk of loss to a clearing agency from participant default is the same for all categories of participants which avail themselves of similar clearing agency services. They expressed the belief that the risk of loss from bank and insurance company participants may be different from that of broker-dealer participants. Those commenters suggested that the internal financial and operational requirements of clearing agencies should be flexible so that the requirements applicable to such bank and insurance company participants may vary from the requirements applicable to broker-dealer participants. Those commenters, however, did not present any analysis or evidence to support their conclusions.

Therefore, the Division is unwilling to conclude at this time that the risk of a loss to a clearing agency resulting from default by a bank, insurance company or broker-dealer is different assuming similar clearing agency services are utilized. Accordingly, all participants utilizing similar clearing agency services, except registered clearing agencies for which specialized requirements are appropriate as discussed below, should be required to comply fully with the clearing agency's internal financial and operational rules such as clearing fund deposits, mark-to-the-market payments and margin deposits related to the service used.

D. *Clearing Agency Interfaces*

The Division believes that a clearing agency's registration in general should qualify it for participation in (or interface with) other registered clearing agencies. The Division recognizes, however, that the contra clearing agency has an interest in assuring itself that the participant clearing agency will be able to meet its obligations. For this reason, the Division has determined that clearing agencies may require reasonable assurance of another clearing agency's ability to meet its obligations or the obligations of its participants. Any such requirement, of course, must be designed and administered in a manner that facilitates the establishment of a national clearance and settlement system and that does not unfairly discriminate among clearing agencies or inappropriately burden competition among them.[14]

Comment was markedly divergent concerning the extent to which one clearing agency that is a participant in another should be required to comply with the financial and operational requirements and other rules of the contra clearing agency. One commenter suggested that the only condition on interfaces should be the right of a clearing agency delivering securities to another clearing agency to be paid on the day of delivery by a certified or cashier's check. Some commenters urged that the participant clearing agency should meet all the contra agency's rules; other commenters believed that clearing agencies should be permitted to establish arrangements satisfactory to themselves, and other commenters suggested that such arrangements need not be approved by the Commission.

[13]The standards of financial responsibility applicable to each category of participant might vary on the basis of the historical methods of measuring the financial responsibility of participants in each category. For example, the requirements applicable to broker-dealer participants might be stated in terms of net capital as defined in Rule 15c3-1 (17 CFR §240.15c3-1) under the Act.

[14]For example, in an interface between two clearing agencies which use a continuous net settlement system and require mark-to-the-market payments, the mark-to-the-market payments should be made to each other as appropriate.

Interfaces among clearing agencies are important to the development of a national clearance and settlement system composed of multiple autonomous clearing agencies. Differences in the operations of, and functions conducted by, clearing agencies, however, make it difficult to prescribe precise standards for each existing or potential interface. Furthermore, each clearing agency would appear to be well situated to propose safeguards necessary and appropriate to minimize its exposure to the particular risks presented by another clearing agency in an interface arrangement. The Division believes, therefore, that clearing agencies should be permitted to devise suitable arrangements in this area on the basis of the particular type of participation or interface and the applicable facts, but that such arrangements also should be submitted to the Commission for approval pursuant to Rule 19b-4 under the Act. This will enable the Commission to determine whether the specific arrangements meet the requirements of the Act.

E. *Other Categories of Participants*

Section 17A(b)(3)(B) of the Act enumerates the categories of entities entitled to participate in the clearing agency upon compliance with the requirements of such clearing agency. The section further provides that the Commission may from time to time by rule designated as appropriate to the development of a national clearance and settlement system any other persons or class of persons. As indicated in Securities Exchange Act Release No. 14531, the Commission is not proposing to exercise that rulemaking authority to make such designations at this time.

The Division believes, however, that a clearing agency may accept as participants specific categories of persons other than those enumerated in Section 17A(b)(3)(B) of the Act. In determining whether to add other specific categories of participants, however, a clearing agency should be particularly cognizant of the impact that the participation of those categories may have on the safety of the clearing agency and should provide safeguards to protect against that risk.

II. *Fair Representation*

The rules of the clearing agency should (i) provide participants with a meaningful opportunity to be represented in the selection of the clearing agency's directors and the administration of its affairs and (ii) provide that participants shall be apprised of proposed rule changes in order to facilitate their comment on such changes to the Commission.

A. *Statutory Background*

Section 17A(b)(3)(C) of the Act states that a clearing agency shall not be registered unless the Commission determines that

> [t]he rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

The Act does not define fair representation but reserves to the Commission the authority to determine whether the rules of the clearing agency give fair voice to participants, as well as to shareholders (or members), in the selection of directors and the administration of its affairs.[15]

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[15]The fair representation requirement was adopted verbatim from S. 249, the Senate bill that preceded the Securities Acts Amendments of 1975. The report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 249 states:

> The rules of the clearing agency must assure fair representation of its shareholders (or members) and participants in the decision making process of the clearing agency. . . . The reference to shareholders of members makes it clear that the bill establishes no norm as to whether clearing agencies should or should not be operated for profit. The bill makes no attempt to set up particular standards of representation or participation. Rather, it provides that the Commission must assure itself that the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders or members. Fair representation of participants may be found if they are afforded an opportunity to acquire voting stock of the clearing agency in proportion to their use of its facilities.

Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. 94-75, 94th Cong., 1st Sess. 123-24 (1975).

B. *Governance Procedures*

The Division recognizes that the owners of an organization (including a clearing agency) usually have complete voting power which includes the authority to select the board of directors. The Act, however, provides that a clearing agency must assure a fair representation of its shareholders (or members) and participants in the selection of its directors and the administration of its affairs.

The clearing agencies currently in existence are profit making entities, user cooperatives and affiliates of exchanges, and the owners of clearing agencies generally are not identical to their participants. Therefore, rather than prescribing a single method for providing fair representation, the Division has determined that it will be necessary to evaluate each clearing agency's procedures in this area on a case-by-case basis. In addition to the methods described in Securities Exchange Act Release No. 14531,[16] the Division believes that a number of other methods could comply with the fair representation standard. For example, a number of the directors could be chosen by, and from among, the users.

One commenter suggested that a for-profit clearing agency should not be required to allocate representation on its board of directors to participants, since the affairs of such an agency are governed by a board of directors responsible to its shareholders. The commenter observed that the interests of participants, whether or not they are shareholders, are inconsistent with the duties of directors of such a clearing agency, since the participants are interested in increasing services at the least cost to themselves, whereas the directors are interested in providing services at prices which will produce a fair profit to the shareholders. That commenter suggested that a participant advisory committee meeting periodically with the management and the board of a for-profit clearing agency would satisfy the requirements for fair representation in the governance of the affairs of a clearing agency.

The Division believes that, while a participant advisory committee which has a meaningful opportunity to influence the decisions made by the clearing agency's board of directors might satisfy the requirement regarding fair representation of participants in the administration of the affairs of the clearing agency, it does not satisfy the other requirement of Section 17A(b)(3)(C), *i.e.*, fair representation of participants in the selection of the clearing agency's directors.

C. *Notice of Proposed Rule Changes*

The Division believes that participants should have sufficient information concerning a clearing agency's affairs to participate meaningfully in its administration. Accordingly, the Divisioin believes that clearing agencies should furnish participants with annual financial statements[17] and an annual report on internal accounting control prepared by an independent public accountant.[18] The Division also believes that participants should be kept adequately informed of clearing agencies' proposed rule changes. For this reason, and for the reasons discussed below, the Division believes that clearing agencies prior to, or as soon as possible after, filing a proposed rule change with the Commission should provide participants and other registered clearing agencies with the text or description of the proposed rule change, its purpose and its effect on the clearing agency's participants.

One commenter suggested that it is not necessary to notify participants of proposed rule changes before the Commission acts upon them in the case of a clearing agency governed by a "user" board (*i.e.*, a board consisting of participants or persons selected by participants) that formulates rules because the user board could be relied upon to represent the interests of their participants. Another commenter expressed the hope that its current practice of

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[16]These methods include: (1) solicitation of board of directors nominations from all participants; (2) selection of candidates for election to the board of directors by a nominating committee which would be composed of, and selected by, the participants or representatives chosen by participants; (3) direct participation of participants in the election of directors through the allocation of voting stock to all participants based on their usage of the clearing agency; or (4) selection by participants of a slate of nominees for which stockholders of the clearing agency would be required to vote their shares.

[17]The Division is not suggesting, at this time, that quarterly financial statements be provided to participants, except upon request. See Section IV.F.

[18]See Section IV.G.

including proposed rule changes in a monthly bulletin sent to all participants would comply with the proposed notice standards.

The Division believes that a clearing agency's user board, which represents the various interests and needs of the participants, may not assure that each interest and need will be represented because of limitations on the size of the board. Exposing proposed rule changes to participants, therefore, can secure the benefits of widespread comment on proposed clearing agency rules and assure that each participant has the opportunity to express its particular needs or concerns.

Nevertheless, the Division does not believe that a clearing agency generally should be required to secure participant comment before filing a proposed rule change with the Commission. Such a requirement may delay the rule change process and may be unnecessary since participants may comment directly to the Commission. Clearing agencies, however, should incorporate in their rules a procedure pursuant to which participants and other registered clearing agencies will normally receive the text or a brief description of the proposed rule and its purpose and effect in sufficient time, in view of the date by which the Commission may be expected to act upon the filing, to permit the participants and other registered clearing agencies to comment to the Commission. While this notice should be provided by all clearing agencies for all proposed rule changes, the opportunity for prompt comment to the Commission generally will not be available if the Commission is expected to take accelerated action under Section 19(b) of the Act or if the proposed rule change will become effective under Section 19(b)(3)(A) or (B) of the Act. In the latter case, comments received during the 60 day period following the filing of these rule changes would be considered by the Commission in determining whether to exercise its authority to abrogate the rule change.

D. *Public Directors*

In Securities Exchange Act Release No. 13584 announcing the proposed standards, the Commission requested comment as to whether it would be in the public interest to require that clearing agencies have one or more directors who would be representatives of issuers or investors and who would not be associated with any participant or self-regulatory organization. The Division does not believe that such a requirement is currently needed. A clearing agency, however, may include such a person or persons on its board if it wishes.

III. *Capacity to Enforce Rules and to Discipline Participants in Accordance with Fair Procedures*

A clearing agency should have (i) the organization and capacity to enforce compliance by its participants with its rules, (ii) rules providing that infractions of clearing agency rules will be appropriately disciplined and (iii) rules establishing fair procedures that the clearing agency will adhere to in processings relating to discipline, denial of participation, limitation of access to services and summary suspension.

Section 17A(b)(3)(A) of the Act, in pertinent part, provides that a clearing agency shall not be registered unless the Commission determines that

> [the] clearing agency is so organized and has the capacity. . .to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) compliance by its participants with the rules of the clearing agency. . . .

In reviewing the organization and capacity of a clearing agency, the Division intends to evaluate, among other things, its procedures for determining whether a participant is experiencing financial or operational difficulties, its arrangements for exchanging information with other self-regulatory organizations and the adequacy of its examining staff to enforce compliance by participants with the clearing agency's rules.

Section 17(d)(1) of the Act, among other things, authorizes the Commission, by rule or order, to relieve self-regulatory organizations[19] of regulatory responsibilities for persons who are members of, or participants in, more than one self-regulatory organization. On October 28, 1976, the Commission adopted Rule 17d-2 under the Act, 17 CFR §240.17d-2.[20] That rule allows self-regulatory organizations to file with the Commission for

[19]The term "self-regulatory organization" in this context refers to any national securities exchange, registered securities association or registered clearing agency. *See* Section 3(a)(26) of the Act.

[20]Securities Exchange Act Release No. 12935, 41 FR 49091 (November 8, 1976).

approval plans allocating specified self-regulatory responsibilities among themselves with respect to members or participants which they have in common. Pursuant to Rule 17d-2(d), Commission approval of a plan relieves a self-regulatory organization of those regulatory responsibilities allocated by the plan to another self-regulatory organization.

To date, the Commission has not declared effective any plan submitted by a registered clearing agency pursuant to Rule 17d-2, and therefore clearing agencies have not been relieved of their responsibilities to enforce compliance with their rules.[21] Unless and until such authority is exercised in the future, the Division will not recommend to the Commission that a clearing agency be registered unless it has the organization and capacity to determine whether its rules are being complied with and to discipline non-complying participants.

The Division, however, supports the concept of avoiding duplication of regulatory effort wherever possible so long as it is consistent with the purposes of the Act and so long as the financial and operational integrity of the clearing agency and its participants is not endangered as a result. In this regard, one commenter stated that a registered clearing agency should be required to make its own determination as to whether its participants are in compliance with its own rules but that, in order to avoid unnecessary regulatory duplication, a clearing agency should be able to obtain financial information about a participant from the participant's designated examining authority under Rule 17d-1 of the Act, 17 CFR §240.17d-1. Another commenter suggested that a clearing agency should determine compliance with any of its rules which do not require a visit to the participant, but that the designated examining authority should determine compliance with those rules which do require visitation.

The Division believes that, subject to Commission approval under Rule 17d-2, 17 CFR §240.17d-2, clearing agencies may enter into agreements with other self-regulatory organizations for such other self-regulators to perform examination and surveillance activities respecting clearing agency participants who are also members of, or participants in, those self-regulatory organizations. Such agreements may provide for the other self-regulatory organization to determine compliance with rules which require visitation, while the registered clearing agency could determine compliance with rules which do not require visitation. Any registered clearing agency may agree with any other self-regulatory organization to file, in accordance with the provisions of Section 17(d) of the Act and Rule 17d-2 thereunder, a plan regarding the performance of these responsibilities by the other self-regulatory organization.[22] The Division is prepared, in appropriate circumstances, to recommend to the Commission that registered clearing agencies be relieved of certain of their self-regulatory responsibilities if those responsibilities are assumed by other self-regulatory organizations.

The requirement of Section 17A(b)(3)(A) of the Act concerning enforcement of clearing agency rules is complemented by Sections 17A(b)(3)(G) and (H) which require the rules of a clearing agency to provide that its participants shall be appropriately disciplined for violations of any provision of those rules and to provide fair procedures for disciplining participants, denying participation in the clearing agency to any person, prohibiting or limiting access to the clearing agency's services and reviewing summary suspensions.[23]

The Act contemplates that a clearing agency may "appropriately" discipline its participants by "expulsion, suspension, limitation of activities, functions, and operations, fines, censure, or any other fitting sanction."[24] A clearing agency should have available and should employ an array of

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[21]To date four such plans, none of which involve clearing agencies, have been declared effective by the Commission.

[22]Regardless of whether a clearing agency files a plan pursuant to Rule 17d-2, the Division strongly urges clearing agencies and other self-regulatory organizations to expand existing arrangements for exchanging relevant information with each other regarding a participant who belongs to more than one entity.

[23]Section 17A(b)(5)(C) sets forth the specific circumstances under which a clearing agency may summarily suspend a participant and the minimum procedural requirements which must be observed in effecting a summary suspension.

[24]Section 17A(b)(3)(G) of the Act.

sanctions appropriate to the violations the clearing agency may encounter. Also, the clearing agency's rules should establish the agency's authority and procedures respecting interpretation of its rules and the bringing of charges where rule violations appear to have occurred, and the rules should describe the manner in which disciplinary authority is to be exercised.[25] The fair procedure requirements of Section 17A(b)(3)(H) of the Act mandate that a clearing agency's rules comply with Section 17A(b)(5) of the Act, which outlines the procedures to be followed by a clearing agency in disciplining participants.[26]

IV. *Safeguarding of Securities and Funds and Prompt and Accurate Clearance and Settlement of Securities Transactions*

In order to assure the safeguarding of securities and funds and the prompt and accurate clearance and settlement of securities transactions, a clearing agency should (i) perform periodic risk assessments of its operations and its automatic data processing systems and facilities, (ii) have an audit committee of its board of directors composed of non-management directors which would select, or participate in the selection of, the clearing agency's independent public accountant and which would review the nature and scope of the work to be performed by the independent public accountant and the results thereof with the independent public accountant, (iii) have an adequately and competently staffed internal audit department which reviews, monitors and evaluates the clearing agency's system of internal accounting control, (iv) furnish annually to participants audited financial statements and furnish quarterly to participants on request unaudited financial statements, (v) furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting control for the period since the last such report and (vi) have detailed plans to assure (1) the physical safeguarding of securities and funds, (2) the integrity of the automatic data processing system and (3) the recovery under a variety of contingencies from loss or destruction of securities, funds or data.

A. *Statutory Background*

In determining whether to register a clearing agency, the Commission must consider whether

> [the] clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is

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[25]The Division believes that any plan filed jointly by a clearing agency with any other self-regulatory organization pursuant to Rule 17d-2 may provide for the performance of disciplinary functions by the other self-regulatory organization with respect to participants who are members of, or participants in, the clearing agency and the other self-regulatory organization.

[26]In connection with the imposition of final disciplinary sanctions, denial of participation, prohibition or limitation with respect to access and summary suspension by a registered clearing agency, the Act requires a registered clearing agency to give notice of the action to the appropriate regulatory agency for the clearing agency and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for the participant or applicant. The Act also provides for review of the action by the appropriate regulatory agency for the participant or applicant. *See* Sections 19(d), (e) and (f) of the Act and Rules 19d-1, 2 and 3 adopted thereunder (17 CFR §§240.19d-1, 240.19d-2, 240.19d-3), Securities Exchange Act Release No. 13726 (July 7, 1977), 42 FR 36409 (July 14, 1977). Rules 19d-1, 2 and 3 prescribe the form and content of notices to be filed with the Commission by certain self-regulatory organizations concerning disciplinary sanctions and procedures for certain aggrieved parties to follow in obtaining stays or appeals of such actions.

The Federal bank regulatory agencies (the Board of Governors of the Federal Reserve System, the Comptroller of the Currency and the Federal Deposit Insurance Corporation), which under Sections 3(a)(34)(B) and (C) of the Act are the appropriate regulatory agencies for certain registered clearing agencies and certain clearing agency participants, have adopted rules similar to the Commission's Rules 19d-1, 2 and 3.

responsible [and] to safeguard securities and funds in its custody or control or for which it is responsible. . . .[27]

and whether:

[t]he rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions [and] to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. . . .[28]

B. *General Discussion*

As used in this discussion, the term "safeguards" comprises (i) the organization and capacity to safeguard securities and funds and clear and settle transactions promptly and accurately and (ii) the rules designed to achieve those objectives. Moreover, because significant segments of securities clearance and settlement are carried out and controlled through automatic data processing ("ADP"), the term "safeguards" also includes the overall management responsibility of assuring the integrity and accuracy of its ADP operations.

Clearing agency safeguards should anticipate, and be designed to provide protection against, the possibility of theft, accidental or malicious destruction or loss of securities or funds and the possibility of accidental or intentional, but unauthorized, modification, disclosure or destruction of data.[29]

Although the Commission has previously evaluated clearing agency safeguards in connection with granting temporary registrations to clearing agencies pursuant to paragraph (c) of Rule 17Ab2-1, the Commission finds it appropriate in light of the standards that those determinations be re-examined during the registration proceedings. The ensuing discussion describes the requisite standards applicable to clearing agency safeguards.[30]

C. *Organization and Processing Capacity*

Clearing agencies should be organized in a manner that effectively establishes operational and audit controls while fostering director independence. For example, the clearing agency's board of directors must be informed by management about the clearing agency's operations. This flow of information is necessary in order for the board to discharge its oversight responsibility over management's performance of its on-going duties to assure both the operational capability and the integrity of the clearing agency.

The Division believes that management, among other things, should perform periodic risk assessments of the clearing agency's operations and

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[27]Section 17A(b)(3)(A) of the Act.

[28]Section 17A(b)(3)(F) of the Act.

[29]A number of studies of security measures in computer systems have been undertaken. *See, e.g.*, National Bureau of Standards Special Publication 500-19, *Audit and Evaluation of Computer Security* (October 1977) [available from Sup. of Doc. U.S. Government Printing Office, Washington, D.C. 20402, Stock No. 003-003-01848-1 ($4.00)]; Courtney, "A Systematic Approach to Data Security," National Bureau of Standards Special Publication 404, *Approaches to Privacy and Security in Computer Systems*, 29 (September 1974) [available from Sup. of Doc. U.S. Government Printing Office, Washington, D.C. 20402, SD Cat. No. C13.10:404 ($1.45)]

[30]To the extent that any of the clearing agency's processing or ADP functions are carried out by a facilities manager or "service center," the clearing agency should assure itself that the facilities manager or "service center" complies with all of the safeguards, as appropriate, set forth in the section on "Safeguarding of Securities and Funds and Prompt and Accurate Clearance and Settlement of Securities Transactions" and that these operations will be subject to examination by its independent public accountant, the Commission and the appropriate regulatory agency to the same extent as in the case of a clearing agency which carries out its own processing or ADP functions.

its ADP systems and facilities[31] and provide the board or its designee, such as a board committee, with the risk assessment reports. Management must supervise the establishment, maintenance and updating of safeguards and report periodically to the board or its designee concerning strengths and weaknesses in the clearing agency's system of safeguards. Clearing agency management also must continually consider, and advise the board of directors of, the impact that new or expanded services or volume increases would have on the clearing agency's processing capacity, both physical, including personnel, and systemic.

D. *Audit Committee*

Clearing agencies should have an audit committee[32] which either selects, or makes a recommendation to the board of directors of the clearing agency regarding the selection of, the clearing agency's independent public accountant.[33] The audit committee should be composed of non-management directors[34] who will devote sufficient time to the work of the committee and who are

[31]Risk assessment has been discussed in a number of publications. *See, e.g.*, S. Reed, *Automatic Data Processing Risk Assessment* (Interim Document—March 1977) [prepared by the Systems Architecture Section, Systems and Software Division, Institute for Computer Sciences & Technology, National Bureau of Standards, Washington, D.C. 20234, available from the National Technical Information Service, Springfield, Virginia 22151 ($4.00)]; R. Courtney, *Security Risk Assessment in Electronic Data Processing Systems* (Revised ed. December 1975) [available from IBM Corporation, P.O. Box 390, Poughkeepsie, N.Y. 12602], reprinted in Committee on Government Operations, United States Senate, *Problems Associated with Computer Technology in Federal Programs and Private Industry*, 181 (June 1976).

[32]The Commission has long urged the formation of audit committees to participate in arranging corporate audits. *See, e.g.*, Accounting Series Release No. 19 (December 5, 1940), Accounting Series Release No. 123 (March 23, 1972), "Standing Audit Committees Composed of Outside Directors." In addition, the desirability of audit committees has been formally recognized by the American Bar Association in its *Guidebook for Corporate Directors*.

On March 9, 1977, the Board of Directors of the New York Stock Exchange, Inc. ("NYSE") adopted Paragraph 2495H, entitled "Audit Committee Policy," which is contained in the *NYSE Company Manual*. The listing policy requires issuers of securities to establish no later than June 30, 1978, and thereafter to maintain, an audit committee composed of directors independent of management as a condition to listing or continued listing of the issuers' securities on the NYSE.

[33]In accordance with comments received, the Division believes that a publicly-held company or a national securities exchange should be permitted to choose the independent public accountant for its clearing agency subsidiary, provided that the selection, or recommendation for such selection, is made by an audit committee of the parent composed of non-management directors. The audit committee of the subsidiary clearing agency also should meet with the independent public accountant to review, independently of the parent company or exchange, the nature and scope of the work to be performed and the results thereof.

In response to comments received that a parent audit committee could perform all the functions of the registered clearing agency's audit committee, the Division believes that a registered clearing agency should have its own audit committee for the following reasons: The focus of the parent's audit committee would not necessarily be identical to the focus of an audit committee of its clearing agency subsidiary. The parent's audit committee also may not be able to devote as much time and attention to the operation and financial activity of the subsidiary clearing agency as would the clearing agency's own audit committee. Finally, the use of a separate audit committee would strengthen the accountability of the clearing agency's board of directors and that of its management to its participants.

[34]A director is non-management for the purpose of serving on a clearing agency audit committee if the director (i) is not associated with the clearing agency (other than in a user capacity), any self-regulatory organization or other entity affiliated with the clearing agency (other than in a non-management capacity) or any entity which furnishes securities

qualified to discharge effectively the committee's responsibilities.[35]

The Division believes that the audit committee should review the nature and scope of the work to be performed by the independent public accountant and the results thereof. There should be open and free-following communication between the audit committee and the independent public accountant as to the results of the work. The Division therefore expects that meetings will take place as often as may be necessary between the clearing agency's audit committee and its independent public accountant to accomplish these objectives.

E. *Internal Audit Department*

The clearing agency also should have an internal audit department which is adequately staffed with qualified personnel.[36] The department must maintain objectivity in the performance of its duties and should report periodically to the audit committe, in addition to performing its on-going responsibilities to management. The internal audit department's degree of independence varies according to its ability to act independently of the functions being audited and of the individual(s) responsible for those functions. An internal audit department's effectiveness depends on its ability to act as a separate level of control in reviewing and evaluating the clearing agency's internal accounting controls during development and, thereafter, in studying and evaluating them and the operation of the entire system of internal accounting control.[37]

F. *Financial Reports*

Participants who have made clearing fund contributions and/or have money and/or securities in the clearing agency's system should receive timely, audited annual financial statements. Accordingly, a clearing agency should undertake in its rules to furnish to participants, within 60 days following the close of the clearing agency's fiscal year, unconsolidated[38] audited comparative financial statements which are prepared in accordance with generally accepted accounting principles and are covered by a report prepared by its independent public accountant.[39]

Footnote 34 continued

processing services to the clearing agency and (ii) is free from any other relationship that, in the opinion of the clearing agency's board of directors, would interfere with the director's exercise of independent judgment.

The Division generally believes that a clearing agency board member who is also an officer of an entity which is affiliated with the clearing agency is in a management-related role and should not serve on a clearing agency's audit committee. The Division, however, agrees with a commenter who suggested that a director of a parent exchange or other affiliated entity may serve on a clearing agency's audit committee provided he is not in a management position with respect to the parent exchange, the clearing agency or any other entity affiliated with the clearing agency.

[35]A clearing agency's audit committee may form an advisory committee to assist it. This committee could be composed of participants or other appropriate persons who would meet the non-management criteria described in footnote 34 *supra*, who posses the necessary technical expertise and who could devote the necessary time.

[36]The Division believes that the widespread use of ADP by clearing agencies dictates that an internal audit department's staff possess, in addition to sufficient technical training and proficiency in accounting and auditing, expertise in the ADP application of accounting and auditing necessary to perform the internal audit functions. The growing significance of ADP operations to the internal audit function has received attention in a number of publications. *See, e.g.*, Institute of Internal Auditors, Inc. (the "IIA") research project report, *Systems Auditability and Control* (April 1977), which is contained in 3 volumes — *Executive Report, Data Processing Control Practices* and *Data Processing Audit Practices Report* — [available from Director of ADP and Research, IIA, Altamonte Springs, Florida 32701 ($30.00)].

[37]The department should seek assurance that, in the development of new services or change in operations of the clearing agency, the accounting controls are adequate and appropriate under the circumstances.

[38]*See* discussion *infra* as to those circumstances in which consolidated financial statements would also be appropriate.

[39]Among other things, the financial statements

Securities Exchange Act Release No. 14531, which announced the revised proposed standards, stated that, to the extent that there is adequate disclosure in clearing agency financial statements, a separate statement of changes in the balance and composition of the clearing agency's participants' fund is unnecessary. Adequate disclosure in the financial statements would include, although may not be limited to, (i) the balance of the fund and the breakdown of the fund balance between the various forms of contributions to the fund, *e.g.*, cash and secured open account indebtedness, (ii) the types and amounts of investments made of the cash balance, (iii) the amounts charged to the fund during the year in excess of a defaulting participant's fund contribution and (iv) any other charges to the fund during the year not directly related and chargeable to a specific participant's fund contribution.[40] If the rules of the clearing agency permit it to charge either current earnings or the participants' fund for losses incurred which are in excess of a defaulting participant's clearing fund contribution, disclosure of this option should be made in addition to disclosure of any amounts charged to current earnings during the year.

In deciding that annual financial statements should be furnished to participants within 60 days, the Division believed that a clearing agency's operations are more analogous to that of a broker-dealer rather than a non-broker-dealer issuer. Therefore, the 60-day period applicable to broker-dealers in Rule 17a-5(d)(5) under the Act, 17 CFR §240.17a-5(d)(5), was used as a guideline.

The Division believes a clearing agency should furnish to its participants separate financial statements, rather than financial statements consolidated with its parent, since unconsolidated statements provide the participants with specific information regarding the assets, liabilities and financial activities of the clearing agency. The Division agrees with commenters that in certain instances consolidated financial statements also would be meaningful to participants and should be provided to participants as soon as practical after, if not simultaneously with, the unconsolidated financial statements.[41]

The Division believes that it would be appropriate for clearing agencies to provide in their rules that unaudited quarterly financial statements will be available to participants within 30 days following the close of each fiscal quarter. The quarterly financial statements should, at a minimum, consist of: (i) a statement of financial position as of the end of the most recent fiscal quarter and as of the end of the corresponding period of the preceding fiscal year; (ii) a statement of changes in financial position for the period between the end of the last fiscal year and the end of the most recent fiscal quarter and for the corresponding period of the preceding fiscal year; and (iii) a statement of results of operations, which may be condensed, for the most recent fiscal quarter and for the period between the end of the last fiscal year and the end of the most recent fiscal quarter and for corresponding periods of the preceding fiscal year.

The Division believes that quarterly financial statements should be made available on as timely a basis as practicable. Currently, registered broker-dealers are required to file financial data within 17 business days of the end of each calendar quarter[42]; the Division believes that it is reasonable to expect clearing agencies to have their financial data available within 30 days of the end of each calendar quarter. Because participants have clearing fund deposits, cash and securities in the clearing agency system, the Division believes that a clearing agency, at a minimum, should advise its participants when

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Footnote 39 continued

should disclose "clearing system balances and positions." This phrase is meant to refer to both the long valued positions (participants' rights to receive securities from the system against payment) and short valued positions (participants' obligations to deliver securities to the system against payment) in a continuous net settlement system. For purposes of the financial statements, long and short values should be stated separately, rather than netted.

[40]See Clearing Fund discussion *infra*.

[41]For example, consolidated statements of a parent company and subsidiary clearing agency would be meaningful if the subsidiary entity's assets could be reached for satisfying the parent's creditors or if the subsidiary's creditors could attach any of the parent's assets.

[42]Rule 17a-5(a)(2)(ii) and (iii) under the Act, 17 CFR §240.17a-5(a)(2)(ii) and (iii).

quarterly statements are available and that they will be furnished on request.

In the opinion of the Division, information disclosed in financial statements is essential to the ability of a clearing agency's board of directors and participants to remain apprised of the clearing agency's financial condition and the adequacy and accuracy of its records. The availability of financial statements also will assist the Commission and the other appropriate regulatory agencies[43] in the discharge of their regulatory responsibilities with respect to clearing agencies.

In contrast to a commenter's suggestion, the Division believes that the 60 and 30 day time frames for annual and quarterly financial statements should apply in the case of a clearing agency subsidiary of a publicly-held company which is not required to file with the Commission its annual and quarterly parent and subsidiary consolidated financial statements until 90 and 45 days after the end of the respective periods.

The Division believes that the 60 and 30 day time frames should apply to all clearing agencies for the following reasons: First, clearing agencies balance their operations on a daily basis and therefore should have readily available the information necessary to file their financial reports within the 60 and 30 day time frames. Second, a clearing agency's operations are more analogous to those of a broker-dealer than to those of an issuer. Broker-dealers are required to file annual and quarterly reports with the Commission within 60 and 17 (business) days, respectively. Finally, and most importantly, securities professionals and institutional investors are expanding their use of clearing agencies. This expanded use has resulted in a concentration of participants' assets in clearing agencies, as well as in an increase in the number of transactions processed through the facilities of clearing agencies. Accordingly, we believe clearing agency participants should be apprised at an early date of the financial status of the clearing agency in which they participate.

The Division notes that a publicly-held corporation with a clearing agency subsidiary raised the concern that the release of the clearing agency's financial information to the clearing agency's participants prior to the filing of the parent corporation's financial information with the Commission could create questions under Rule 10b-5, 17 CFR §240.10b-5, of the Act. The Division notes that the responsibility for not violating Rule 10b-5 under the Act lies with the registrant. Consequently, the registrant should take whatever steps are necessary to ensure that it is not violating Rule 10b-5.

G. *Internal Accounting Control Reports*

The Division believes that the establishment and maintenance of an adequate system of internal accounting control is critical to the security and accuracy of clearing agency operations. The American Institute of Certified Public Accountants (AICPA) defines accounting control as comprising "the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records. . . ."[44] The Division believes that in a clearing agency the safeguarding of participants' securities and funds moving through or held by the clearing agency and the reliability of related records are primary objectives of a system of internal accounting control.

The Division presumes that the objectives of internal accounting control will be viewed by a clearing agency's directors as a fundamental aspect of management's responsibilities.[45] As part of the

[43]See Section 3(a)(34)(B) of the Act for a definition of "appropriate regulatory agency" for a clearing agency.

[44]AICPA Professional Standards, AU Section 320.28.

[45]The AICPA's expression of the objectives of accounting control was incorporated almost verbatim into The Foreign Corrupt Practices Act of 1977. Title I of The Foreign Corrupt Practices Act (Pub. Law No. 95-213, December 19, 1977) added a new Section 13(b)(2) to the Securities Exchange Act of 1934. This new section requires every issuer that has a class of securities registered pursuant to Section 12 of the Act and every issuer that is required to file reports pursuant to Section 15(d) of the Act to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary: (a) to permit preparation of financial statements in conformity with generally accepted accounting

exercise of its responsibilities, the clearing agency's board of directors should obtain annually an opinion report on the clearing agency's system of internal accounting control. This report, in addition to providing an essential tool for a clearing agency's management and board of directors, will assist the Commission and other appropriate regulatory agencies. The report should be prepared by an independent public accountant and should be based on a study,[46] including a review of the system and tests of compliance, and an evaluation which was made for the purpose of reporting on the entity's overall system of internal accounting control.[47]

At a minimum, the scope of the study and evaluation shall be sufficient to provide reasonable assurance that any material weakness existing during the period would be discovered. The accountant's report shall describe any material weaknesses discovered and any corrective action taken or proposed to be taken.

For purposes of this report, a material weakness is a condition for which the auditor believes that the prescribed procedures (or lack thereof) or the degree of compliance with them does not provide reasonable assurance[48] that errors or irregularities in amounts that would materially affect the clearing agency or other clearing agencies would be prevented, or detected[49] within a timely period by employees in the normal course of performing their assigned functions.[50]

Footnote 45 continued

principles or other applicable criteria; and (b) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's authorization; and

(iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

[46]The purpose and scope of this study and evaluation would be broader than that normally made in an examination of financial statements performed in accordance with generally accepted auditing standards.

[47]The Auditing Standards Board of the AICPA has issued, for comment, a proposed SAS on "Reporting on Internal Accounting Control." This statement, if adopted, would accomplish much in providing guidance in the performance of this type of study and evaluation. The scope set forth *infra* is broader, however, than in the proposed statement in that it covers the entire period being studied and evaluated.

[48]The concept of reasonable, as opposed to absolute, assurance recognizes that it is not in the interest of the entity involved for the cost of internal accounting control to exceed the benefit thereof. Such benefits, and in many cases such costs, are not likely to be precisely quantifiable. Therefore, many decisions on reasonable assurance will necessarily depend in part on estimates and judgments which are reasonable under the circumstances.

[49]In any system, errors or irregularities may occur in isolated instances which either individually or in the aggregate may be material. Detection of these isolated instances is important to a system of internal accounting control. Further, if such errors or irregularities occur more frequently than in isolated instances, consideration should be given to whether the system has a material weakness and needs to be improved.

[50]As examples of particular areas of concern, a material weakness in internal accounting control in a clearing agency includes, among other things, any condition individually, or taken as a whole, which could reasonably be expected to (i) inhibit a clearing agency from promptly and accurately completing securities transactions or promptly discharging its responsibilities to its participants, other clearing agencies, debtors or creditors, (ii) result in material financial loss to the clearing agency or other clearing agencies, (iii) result in a material charge to the clearing agency participants' fund resulting from other than the default of a participant, (iv) result in material misstatements in the clearing agency's financial statements, or (v) result in inaccurate books and records maintained by the clearing agency to an extent that could reasonably be expected to result in the conditions described in (i)-(iv) above. The foregoing examples are not intended to be comprehensive in scope or exhaustive in treatment but only illustrative.

The Division believes that the annual report on internal accounting control should be furnished to all participants promptly after it becomes available to the clearing agency and in any event not later than 60 days after the period covered by the report.[51] The report will apprise the participants of any material weaknesses in the system and whether prompt corrective action was taken or is proposed to be taken. The availability to participants of the information in a report of the scope described above is important because clearing agencies are an integral component in a national system for the clearance and settlement of securities transactions, and the Division believes that an audit of the scope described above will be important in assessing the safety and integrity of clearing agency operations. The Division also believes that an audit of this scope will promote confidence and increased participation in the national clearance and settlement system.

H. *Securities, Funds and Data Controls*

Based on the Division's experience, it is useful to analyze safeguards in terms of the two principal objectives: (i) prevention of loss assured by adequate internal accounting control including data and software integrity, and physical security including data and software integrity, and physical security including organizational structure, procedures and physical safeguards and (ii) recovery of funds, securities, data and operational capacity. Contingency planning and insurance are both useful in achieving the recovery objective.

1. *Prevention*

The securities industry has had substantial experience with security measures for the safeguarding of securities and funds in vaults, in funds handling areas and in-transit. In the area of ADP operations, experience with necessary components of security is less extensive.[52] While the Division recognizes the need for flexibility in the design and implementation of security systems, on a more general level the Division expects each clearing agency's plan for security to include such traditional measures as: (i) access control on-site, off-site and in-transit; (ii) written procedures detailing steps involved in handling funds and securities; (iii) maintenance of an orderly and secure working environment and (iv) early warning systems and procedures responsive to fire, natural disasters and intrusion.

The application of conventional preventive measures to ADP operations should be augmented by measures designed to assure software integrity, such as stringent quality assurance procedures (including pre-implementation review and testing of new applications, operating systems and components), full documentation of systems design and modifications, requirements for executive approval to modify or update software and periodic post-implementation systems testing to determine (i) conformity to latest system design specifications, (ii) data accuracy and (iii) the adequacy of accounting controls. In addition, the accuracy of data files should be verified periodically.

The Division believes that these preventive measures are appropriate as minimum guidelines for clearing agencies to follow in establishing comprehensive preventive safeguards for securities and funds.

2. *Recovery*

The recovery objective of securities, funds and data controls, in the Division's opinion, calls for a written cotingency plan, which at a minimum covers (i) preparation for contingencies through such devices as appropriate remote and on-site hardware back-up and periodic duplication and off-site storage of data files; (ii) off-site storage of up-to-date, duplicative software, files and critical forms and supplies needed for processing operations; (iii) immediate availability of software modifications, detailed

[51]The study and evaluation may be made separate from the annual examination of the clearing agency's financial statements or may be an extension thereof, provided the scope of the study and evaluation conforms with that set forth above. *See also* footnote 46 *supra*. The report may be issued on any predetermined annual basis which the clearing agency may select.

[52]*See, e.g.*, the discussion of ADP physical security contained in the National Bureau of Standards Federal Information Processing Standards Publication 31, *Guidelines for Automatic Data Processing, Physical Security and Risk Management*, June 1974, [available from National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 ($3.50)].

procedures, organizational charts, job descriptions and personnel for the conduct of operations under a variety of possible contingencies; and (iv) emergency mechanisms for establishing and maintaining communications with participants and other entities involved in the national clearance and settlement system. Contingency plans should be tested periodically to assure their effectiveness and adequacy.

The recovery component of clearing agency safeguards should include adequate insurance coverage, and the clearing agency management and board of directors should periodically review the kinds of risks involved in its business and the types and amounts of insurance coverage available. There should be adequate insurance in both coverage and amount for both the clearing agency's operations and the operations of any sub-custodian, delivery service or other agent used by the clearing agency.[53]

V. *Obligations to Participants*

A clearing agency should have a clearing fund which (i) is composed of contributions based on a formula applicable to all users, (ii) is in cash or highly liquid securities and (iii) is limited in the purposes for which it may be used.

Since the clearing agency is an important component of the national system for the clearance and settlement of securities transactions, it should be held to a uniform standard in its obligations to participants. Accordingly, a clearing agency is responsible for delivering securities in its custody to, or as directed by, the participants for whom such securities are held.

A. *Clearing Funds*

The Division believes that it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject.[54] Contributions to the clearing fund should be based on a formula which applies to all users on a uniform, non-discriminatory basis. The forms of contributions should be in cash or open account indebtedness secured by United States Government obligations, highly rated municipal bonds or such other investments as the rules of the clearing agency may provide which assure safety and liquidity.

Because contributions to clearing funds protect clearing agencies against specified contingencies and are returned when participants withdraw from clearing agencies, the rules of clearing agencies should limit the use that they may make of clearing fund contributions. A clearing agency should not use the fund in a manner that exposes it to unreasonable risks. Therefore, the rules of the clearing agency should limit the investments which it can make with the cash portion of its clearing fund to United States government obligations or any other investments which provide safety and liquidity of the principal invested. In summary, the cash portion of the fund should be invested in light of the clearing agency's fiduciary responsibilities and as provided for in the rules of the clearing agency.

Except as discussed below, the rules of the clearing agency should limit the purposes for which the clearing fund may be used to protecting participants and the clearing agency (i) from the defaults of participants and (ii) from clearing agency losses (not including day-to-day operating expenses) such as losses of securities not covered by insurance or other resources of the clearing agency. In addition, whenever the clearing fund is charged for any reason other than to satisfy a clearing loss attributable to a participant solely from that participant's clearing fund deposit[55], each participant should promptly be given notice of both the amount of, and the reasons for, the charge. The amount should be promptly assessed pro rata against each participant who must thereafter make good the charge against its clearing fund deposit.

With respect to further assessing a clearing agency participant to cover losses other than losses solely attributable to the participant, the Division believes that a clearing agency's rules should provide for a maximum assessment which is fixed by the clearing agency's rules in order that, at any given time, a

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[53]See *also* discussion *supra* and footnote 31 *supra* with regard to analysis of risks.

[54]The terms "clearing fund" and "participants' fund" are used interchangeably in this release.

[55]If the clearing fund deposit of a particular participant is charged as a result of a clearing loss solely attributable to that participant, the clearing agency's rules should provide that the participant must promptly replenish the deficiency in its clearing fund deposit.

participant can ascertain its maximum potential liability. These limitations must be determined in light of factors such as the clearing agency's risks in its operations and the size of its clearing fund.

Some commenters did not endorse the proposed standard that would limit the use of clearing funds to covering participants' defaults and other losses resulting from clearing agency operations (not including day-to-day operating expenses). One commenter stated that clearing funds should be available when needed to supply operating funds for the clearing agency when, for example, a necessary fee increase could not be implemented in time to make up for a sudden decrease in revenues resulting from lower securities volume. It was argued that clearing agencies should not have to go out of business in that case or other cases such as a temporary delay in payment of funds by a participant resulting from circumstances beyond its control. One commenter maintained that, so long as the funds are properly protected, they should be available for use for certain purposes that facilitate the process of clearing.

The Division appreciates a clearing agency's possible need for temporary applications of a clearing fund in limited amounts to meet unexpected and unusual requirements for funds. The regular or substantial use of a clearing fund for such purposes, however, would be inappropriate. The Division believes that the rules of the clearing agency may permit the clearing agency to use a small percentage of the clearing fund for a short period of time to cover unexpected and unusual requirements for funds.[56] If any such monies are not returned expeditiously to the clearing fund, the clearing fund should be charged and the participants should make good the charge against their clearing fund deposits.

As to the forms of securities which may secure an open-account indebtedness to a participants' fund, some commenters suggested that letters of credit should be allowed. The Division believes that it is not necessary at this time to determine whether letters of credit may be permissible or appropriate to secure a participant's open-account indebtedness to a clearing agency. Such determinations are possible upon a specific application in the form of a proposed rule change pursuant to Rule 19b-4 under the Act, 17 CFR §240.19b-4, that includes a complete description of the kinds of letters of credit and the relationship of their issuers to the participants and an explanation of how the letters of credit and any conditions attached to their use as security for open-account indebtedness are consistent with the safeguarding of funds and securities and the protection of investors.

B. *Standard of Care*

The Division believes that the rules of every clearing agency should provide that, except for securities delivered through the clearing agency to a participant for which the participant has not made payment to the clearing agency, or securities pledged by a participant through the clearing agency, the clearing agency must promptly deliver securities in its custody or control to, or as directed by, the participant for whom they are held. The Division believes that a clearing agency should assure that any sub-custodian holding the clearing agency's securities would deliver the securities to, or as directed by, the clearing agency and otherwise would have the financial and operational capability to perform its functions. However, neither a clearing agency nor its sub-custodian would be required to deliver securities in contravention of any notice of levy, seizure, or similar notice, or order or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such clearing agency or sub-custodian, which on its face affects the securities held for the clearing agency's participants or, in the case of a sub-custodian, for the clearing agency.[57]

The rules of a clearing agency should also provide that it is liable to a participant for the failure to deliver the participant's securities resulting from: (i) the

[56]The Division believes that there may be legitimate purposes for which a clearing fund may be utilized for a longer period of time so long as (i) the funds are properly protected, (ii) the funds are utilized to facilitate the process of clearance and settlement and (iii) the participants and the Commission specifically approve such use during the registration proceedings.

[57]The clearing agency's organization, capacity, rules, procedures and agreements should be designed and implemented so that broker-dealers can comply with applicable requirements under the federal securities laws such as Rules 8c-1, 15c2-1 and 15c3-3 under the Act, 17 CFR §240.8c-1, 17 CFR §240.15c2-1, and 17 CFR §240.15c3-3.

negligence or misconduct of the clearing agency, the clearing agency's sub-custodian or agent, or any of their respective agents or employees; (ii) the placement, on fully-paid-for participant's securities held by the clearing agency, of any lien, claim, right, or charge of any kind in favor of the clearing agency, the clearing agency's sub-custodian or agent or any person claiming through any one or more of them; (iii) larceny; (iv) mysterious disappearance or (v) any other cause for which the clearing agency has assumed responsibility.

A number of commenters stated that the clearing agency's liability would be higher under this proposal than under the common law standard of a bailee for hire. One of the commenters believed that the standard of care currently applicable was that of a bailee for hire and noted that clearing agency participants had not suffered losses under that standard.

The Division is of the view that clearing agencies should undertake to perform their obligations with a high degree of care. The clearing agencies registered with the Commission are essential to Congressional policy which includes a national clearance and settlement system for securities and the encouragement of broad scale participant therein by securities professionals so as to reduce the physical movement of securities certificates. Such broad scale participation will result in the concentration of securities in a limited number of entities. Since a loss of securities by just one entity could have a significant effect on its participants suffering the loss, the clearing agency should perform its obligations with a high degree of care. In case of loss, the clearing agency, rather than the participants whose securities are missing or lost, should bear the loss. Pursuant to the rules of most clearing agencies, if the clearing agency is liable for a loss not covered by insurance, the loss may be spread among all the participants via charges against the participants' fund on a pro rata basis.

Another factor that favors a high uniform standard of care is the possible difference among state laws governing the liability of a bailee for hire or other forms of bailment. Clearing agencies currently are located in five states, and a much larger number of states may have some jurisdictional nexus. Clearing agency participants may deal with one or more clearing agencies, in circumstances in which the standard of liability changes as their securities move through various clearing agencies.

In view of these circumstances, the Division believes it is necessary and appropriate that clearing agencies assume the standard of liability for the delivery and return of participant securities as set forth in the first two paragraphs of this section. This standard should be reflected in the rules of the clearing agency.

VI. *Participant Charges*

Section 17A(b)(3)(E) of the Act requires a determination that

> [t]he rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

This provision precludes a clearing agency from imposing schedules of prices or fixing minimum rates or charges for services which its participants render to others. The Division believes that no further guidance regarding compliance with this provision is necessary at this time.

VII. *Equitable Allocation of Reasonable Dues, Fees and Other Clearing Agency Charges*

Section 17A(b)(3)(D) of the Act requires a determination that

> [t]he rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

With respect to fee schedules in general, as indicated in Securities Exchange Act Release No. 14531, the Commission has a duty to ensure that fees charged by clearing agencies are reasonable and are allocated among participants on an equitable basis. In addition, rules providing for dues, fees or other charges must be designed to meet the other objectives of Section 17A(b)(3) of the Act.[58] The Division anticipates that in instances of significant fee change proposals a clearing agency will apprise its participants of such proposals and the underlying reasons therefor and that participants will be allowed to give their views to the clearing agency regarding the determinations affecting fees prior to the filing of the proposals pursuant to Rule 19b-4 under the Act.

[58]The matter of fees charged by a clearing agency to an interfacing or participant clearing agency will be considered in a separate proceeding.

VIII. *Limitation on a Clearing Agency's Scope of Regulation*

Section 17A(b)(3)(F) of the Act provides that the rules of the clearing agency must not be designed "to regulate by virtue of any authority conferred by [the Act] matters not related to the purposes of [Section 17A of the Act] or the administration of the clearing agency." In connection with the registration of clearing agencies, the Division intends to review all clearing agency rules to assure that they are in accord with the foregoing objective.

IX. *The National Clearance and Settlement System*

The standards in this release must be viewed in the context of the Commission's responsibilities, among other things, to facilitate the establishment of a national market system and a national clearing system and to use its authority to end the physical movement of certificates in connection with settlements among broker-dealers.[59] The Commission intends to facilitate the development of a national system by using its authority, if and when deemed appropriate, to, among other things, (i) increase the number of securities eligible for the national clearance and settlement system, (ii) encourage institutional and broker-dealer settlement of their transactions in a clearing agency environment and (iii) facilitate interfaces between clearing agencies in a national clearance and settlement system.

In proposing the revised standards (Securities Exchange Act Release No. 14531), the Commission stated:

> It is possible that accomplishment of the Commission's responsibilities may be impeded if a dominant entity or entities has an access or other requirement which prevents potential participants from using the entity's [or entities'] facilities. Some commenters suggested that dominant entities should be subject to different standards from those applied to other clearing agencies. The Commission requests comments on whether, and how, the standards for a dominant entity or entities should differ from the standards applied to other entities.

In response to that inquiry, certain commenters suggested that the registration standards be uniform for all registered clearing agencies, while other commenters urged that there are valid considerations and real differences between large and small clearing agencies which should be reflected in the standards. The Division recognizes the differences in size and operations that exist among clearing agencies but has determined that the general or broad policy objectives of the standards should be initially formulated on a uniform basis for all clearing agencies.

If a clearing agency believes that its organization, capacity and rules provide appropriate alternatives to the standards, the clearing agency should describe such alternatives in a separate statement(s) accompanying its Form CA-1 application.[60] Of course, the alternatives must be designed to assure the achievement of the objectives of the Act.

As an alternative, the clearing agency may wish to request an exemption from any of the statutory criteria listed in Section 17A(b)(3) of the Act. In such case, the request for exemption may not be granted by the Commission unless, as provided in Section 17A(b)(1) under the Act,

> the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

X. *Other Matters*

A number of specific matters have been raised by individual clearing agencies which are not addressed in this Release but will be handled with ach clearing agency on a case-by-case basis.

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[59]See Section 17A(e) of the Act.

[60]*See infra* for a description of the information which must be submitted in connection with the proposed alternative.

In order to facilitate the registration of clearing agencies, the Commission requests that by October 31, 1980, each registrant submit a new Form CA-1 which includes, among other things, a complete set of the registrant's current rules[61] as defined in Section 3(a)(27) and Rule 19b-4 under the Act.[62] By that date each registrant also should submit amendments to its rules to comply with the standards set forth in this release, appropriate alternatives to such standards, or exemptive requests if the registrant desires exemptions.

The Commission has consulted and requested the views of the other appropriate regulatory agencies involved in the regulation of clearing agencies before publishing the standards for the registration of clearing agencies.

Accordingly, 17 CFR Part 241 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons
Secretary

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[61]The rules should be submitted in loose-leaf form.

[62]Item 7(b) of Form CA-1, which requests the dollar amount of the potential exposure of the registrant as a result of differences in its clearing agency activities not resolved after 20 business days, should be responded to as of August 31, 1980.

It should be noted that, with respect to a clearing agency for which the Commission is not the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act, Section 17(c)(1) of the Act requires such clearing agency to file with the appropriate regulatory agency for such clearing agency a signed copy of any application, document or report filed with the Commission. *See* Instruction 2 for use of Form CA-1.

For guidance in requesting confidential treatment of any portion of Form CA-1, the clearing agency should consult Rule 24b-2 under the Act (17 CFR §240.24b-2).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16901/June 17, 1980

The Securities and Exchange Commission today granted the applicatioin of the Philadelphia Stock Exchange ("Phlx")[1] pursuant to the terms of the voluntary moratorium on expansion of standardized options trading[2] to begin trading put and call options on the common stock of Anheuser Bush Co., Inc. to replace call options on the common stock of Howard Johnson Co. ("HJ"). HJ has been delisted involuntarily by the Phlx because, effective June 17, 1980, HJ will be acquired by Imperial Group, Ltd. for $28 per share. It will then be liquidated and cease to exist as a separate corporate entity.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16902/June 17, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the Class A Common Stock ($1 Par Value) of the GARLAND CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16903/June 17, 1980

An order has been issued granting the application of the *Philadelphia Stock Exchange, Inc.* to strike the call and put option contracts of HOWARD JOHNSON CO. from listing and registration thereon.

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[1]See letter dated June 6, 1980 from Murray L. Ross, Esq., Assistant Vice President, Market Surveillance/Securities, Phlx, to Gene E. Carasick, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[2]See Securities Exchange Act Release No. 14991 (July 25, 1978). Although the voluntary moratorium has ended, the options exchanges have agreed to continue to follow the procedure set forth in Release No. 14991 for the replacement of involuntary delisted options classes. *See* Securities Exchange Act Release No. 16863 (May 30, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16904/June 18, 1980

A notice has been issued giving interested persons until July 9, 1980 to comment on the *Boston Stock Exchange's* applications for unlisted trading privileges in 78 issues which are listed and registered on other national securities exchanges.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16905/June 19, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE CHICAGO BOARD OPTIONS EXCHANGE INCORPORATED

File No. SR-CBOE-80-17

The Chicago Board Options Exchange Incorporated ("CBOE") submitted on June 13, 1980, an interpretive memorandum from the CBOE Business Conduct Committee which the CBOE elected to treat as a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"). The interpretive memorandum provides notice to the membership that certain uses of undisclosed order information by a floor broker are violative of CBOE Rule 4.1 which prohibits members from engaging in acts or practices inconsistent with just and equitable principles of trade.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 23, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16906/June 19, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street and Stock Exchange Plaza
Philadelphia, PA 19103

(SR-PHLX-80-8)

ORDER APPROVING PROPOSED RULE CHANGE

On May 13, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), and Rule 19b-4 thereunder, copies of a proposed rule change which adopts a set of rules that would conform its present rules on arbitration[1] to the Uniform Code of

[1]For the Phlx's former arbitration rules, see Phlx By-Laws, Section 10.7. Phlx Manual (CCH) para. 1232, at pages 1072-1973.

Arbitration ("Code")[2] which was drafted by the Securities Industry Conference on Arbitration ("SICA")[3] and which provides arbitration procedures for the settlement of disputes arising between customers and broker-dealers.

The proposal would amend the existing Phlx arbitration rules and adopt the entire Code as new Phlix Rule 950. The proposal incorporates the simplified arbitration procedures that were drafted by the SICA and adopted by the Phlx on June 26, 1978,[4] regarding small claims not exceeding $2500.[5]

A purpose of this proposal is to provide investors with a simple and inexpensive procedure for resolution of their controversies with broker-dealers who are members of the Phlx. Further, the proposal anticipates that the Code will be adopted by other self-regulatory organizations thereby providing a uniform system of arbitration throughout the securities industry.[6]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16706 (March 28, 1980), 19 SEC Docket 1090 (April 15, 1980)), and by publication in the *Federal Register* (45 FR 23563 (April 7, 1980)). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges and in particular, the requirements of Section 6(b)(5) of the Act that

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[2]The Code was published on December 28, 1979, as the *Second Report of the Securities Industry Conference on Arbitration to the Securities and Exchange Commission.*

[3]The SICA was organized on April 5, 1977, pursuant to the Commission's stated position that there was a need to implement a nationwide investor dispute resolution system. *See* Securities Exchange Act Release No. 12528 (June 9, 1976), 9 SEC Docket 833 (June 23, 1976), 41 FR 23803 (June 11, 1976); Securities Exchange Act Release No. 13470 (April 26, 1977), 12 SEC Docket 186 (May 10, 1977), 42 FR 23892 (May 11, 1977).

The SICA members consist of: the American Stock Exchange, Inc.; the Boston Stock Exchange, Incorporated; the Chicago Board Options Exchange, Incorporated; the Cincinnati Stock Exchange; the Midwest Stock Exchange, Incorporated; the Municipal Securities Rulemaking Board; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Incorporated; the Philadelphia Stock Exchange, Inc., as well as the Securities Industry Association and three public representatives.

[4]Securities Exchange Act Release No. 14896, 15 SEC Docket 146 (July 12, 1978), 43 FR 29202 (July 6, 1978).

[5]*See* new Phlx Rule 950, Section 2.

[6]The following self-regulatory organizations already have adopted the Code: the New York Stock Exchange, Inc. ((Securities Exchange Act Release No. 16290 (November 30, 1979), 18 SEC Docket 1197 (December 18, 1979)); the Cincinnati Stock Exchange ((Release No. 16472 (January 22, 1980), 45 FR 2722 (January 14, 1980)); American Stock Exchange, Inc. ((Release No. 16502 (January 16, 1980), 19 SEC Docket 326 (January 29, 1980), 45 FR 5863 (January 24, 1980)); Midwest Stock Exchange, Incorporated ((Release No. 16503 (January 16, 1980), 19 SEC Docket 327 (January 29, 1980), 45 FR 5860 (January 24, 1980)); the Municipal Securities Rulemaking Board ((Release No. 16570 (February 13, 1980), 19 SEC Docket 573 (February 26, 1980), 45 FR 11291 (February 20, 1980)); the Chicago Board Options Exchange, Incorporated ((Release No. 16606 (February 25, 1980), 19 SEC Docket 759 (March 11, 1980), 45 FR 15352 (March 10, 1980)); Boston Stock Exchange, Incorporated ((Release No. 16671 (March 17, 1980), 19 SEC Docket 922 (April 1, 1980), 45 FR 19705 (March 26, 1980)); and the Pacific Stock Exchange, Incorporated ((Release No. 16767), 19 SEC Docket 1297 (May 13, 1980), 45 FR 29950 (May 6, 1980)).

the rules of an exchange be designed to promote just and equitable principles of trade.[7]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16907/June 19, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INCORPORATED
53 State Street
Boston, Massachusetts 02109

(SR-BSE-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On May 5, 1980, the Boston Stock Exchange, Incorporated ("BSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which rescinds subsections (e), (f), and (g) of Article I, Section 3, of the BSE Constitution regarding BSE Associate Membership, which is available to members of the Philadelphia and Montreal Stock Exchanges. The business objectives of the BSE's Associate Membership are now being achieved through the Intermarket Trading System.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16810, May 19, 1980) and by publication in the *Federal Register* (45 FR 34488, May 22, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16908/June 19, 1980

In the Matter of

BOSTON STOCK EXCHANGE
53 State Street
Boston, Massachusetts 02109

(SR-BSE-80-4)

ORDER APPROVING PROPOSED RULE CHANGE

On May 2, 1980, the Boston Stock Exchange, Inc filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change which would provide that it would be inconsistent with just and equitable principles of trade to trade Boston Free List Stocks (in which no dealer is registered on the exchange) that are traded in the Intermarket Trading System ("ITS") through superior ITS markets.

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[7]The Commission emphasizes, however, that notwithstanding the proposed rule change, arbitration clauses contained in customers' agreements that purport to bind customers to arbitrate all future disputes raising claims under the federal securities laws cannot be enforced against those customers who choose to obtain a judicial determination of such claims. *See* Securities Exchange Act Release No. 15984 (July 2, 1979), 17 SEC Docket 1167 (July 17, 1979), 44 FR 40462 (July 10, 1979).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16797, May 12, 1980) and by publication in the *Federal Register* (45 FR 32457, May 16, 1980). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national stock exchange, and in particular, th requirements of Sections 6(b)(5) and 11(a)(1) and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16909/Ju;ne 19, 1980

In the Matter of Applications of the

PHILADELPHIA STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATIONS
UNLISTED TRADING

FINDINGS AND ORDER GRANTING APPLICATIONS
FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Imperial Oil Ltd.
Class A Convertible Common (File No. 7-5545)
Gulf Canada Ltd.
Common Stock, No Par Value (File No. 7-5546)
Chieftain Development Co., Ltd.
Common Stock, $.50 Par Value (File No. 7-5547)
Canadian Marconi Company
Common Stock, $1 Par Value (File No. 7-5548)
Columbia Chase Corporation
Common Stock, $.10 Par Value (File No. 7-5550)
Kaneb Services, Inc.
Common Stock, No Par Value (File No. 7-5551)
AIC Photo, Incorporated
Common Stock, $1 Par Value (File No. 7-5552)
Anheuser Busch Companies Inc.
Common Stock, $1 Par Value (File No. 7-5553)
Francana Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7-5554)
Penn Central Corporation
Series A Preference Stock, $20 Par Value (File No. 7-5555)
Penn Central Corporation
Series B Preference Stock, $20 Par Value (File No. 7-5556)
Sargent Industries, Inc.
Common Stock, No Par Value (File No. 7-5557)[1]

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Section 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 37796 (June 4, 1980). The Commission has received no comments with respect to these applications.

that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16910/June 19, 1980

In the Matter of Application of the

MIDWEST STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Northwest Energy Company (Utah)
Common Stock, $1 Par Value (File No. 7-5544)[1]

The Commission finds that approval of the MSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably realted to those occuring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Midwest Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 37796 (June 4, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16911/June 19, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE BRADFORD SECURITIES PROCESSING SERVICES, INC.

(File No. SR-BSPS-80-4)

Bradford Securities Processing Services, Inc. submitted on June 11, 1980 a proposed rule change that would change the status of the Boston, Massachusetts and Little Rock, Arkansas facilities from correspondent to branch offices.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 23, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSPS-80-4.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16912/June 19, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 723/June 19, 1980

Admin. Proc. File No. 3-5929

In the Matter of

NEAL R. SINCLAIR
4 Ashgrove Court
East Brunswick, New Jersey 08816

GALE W. WALLACE
1828 Narrows Lane
Silver Spring, Maryland 20906

ROBERT L. SMITH
307 Yoakum Parkway, Apt. 1611
Alexandria, Virginia 22304

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted with respect to Neal R. Sinclair ("Sinclair"), Gale W. Wallace ("Wallace"), and Robert L. Smith ("Smith"), formerly registered representatives of The IES Management Group, Inc. ("Registrant"), a registered broker-dealer and investment adviser located in Irvington, New Jersey, whose dual registrations will be revoked as of the date of dismissal of the SIPC trustee appointed to liquidate Registrant.[1] Simultaneous with the institution of these proceedings, respondents Sinclair, Wallace, and Smith have submitted Offers of Settlement. Without admitting or denying the findings herein, respondents consent to the findings and sanctions set forth below.

II.

After due consideration of the Offers of Settlement

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[1] *In the Matter of The IES Management Group, Inc., et al.*, Administrative Proceeding File No. 3-5401 (March 15, 1978).

and upon the recommendation of its staff, the Commission has determined that it is in the public interest to accept such Offers and, accordingly, IT IS ORDERED that such proceedings pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203 of the Investment Advisers Act of 1940, be, and hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings and the Offers of Settlement, it is found that:

Respondents Sinclair and Wallace, from January 1, 1974, to December 31, 1976, and respondent Smith, from August 1975 to December 31, 1976, willfully violated and willfully aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with their offer and sale of securities in the form of interests in limited partnerships syndicated by Registrant.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, that:

1. Neal R. Sinclair be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company for a period of twenty (20) business days; and upon expiration of this period of suspension: (i) from engaging in transactions in any securities other than those for which a registration statement has been filed or is in effect pursuant to the Securities Act of 1933 for a period of three months, and (ii) from association with any broker, dealer, investment adviser or investment company in a supervisory or proprietary capacity for a period of twelve (12) months. Furthermore, Sinclair undertakes, and he is hereby ordered to comply with his undertaking, to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the thirteen-month period.

2. Gale W. Wallace be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company for a period of ten (10) business days. Furthermore, Wallace undertakes, and he is hereby ordered to comply with his undertaking, to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the ten-day period.

3. Robert L. Smith be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company for a period of five (5) business days. Furthermore, Smith undertakes, and he is hereby ordered to comply with his undertaking, to file an affidavit with the Commission's Washington Regional Office affirming compliance with the sanction as soon as reasonably possible after termination of the five-day period.

IT IS FURTHER ORDERED that the sanctions imposed upon Sinclair and Wallace shall commence on July 7, 1980; and the sanction imposed upon Smith shall commence on June 23, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934;
Release No. 16913/June 19, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALER, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-78-8)

ORDER APPROVING AMENDED PROPOSED RULE CHANGE

On May 29, 1980, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of an amendment to a proposed rule change which was filed on August 23, 1978. The amended proposed rule change permits NASD members who

are not NASDAQ Level III subscribers to gain access to the NASDAQ System through an existing subscriber for purposes of making a market in one or more NASDAQ securities. Under the rule, the access market maker will be required to pay a fee to NASDAQ of $70 per month for the first security and $52.50 per month for each additional security. The NASD's Board of Governors will review the access market maker program after one year of operation.

Notice of the amended proposed rule change together with the terms of substance of the amended proposed rule change was given by publication of Commission Releases (Securities Exchange Act Release No. 15131, September 6, 1978, and Securities Exchange Act Release No. 16799, May 12, 1980) and by publication in the *Federal Register* (43 FR 41115, September 14, 1978, and 45 FR 32462, May 16, 1980). No comments were received. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change betwen the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were available to the public at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of Section 15A, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21623/June 13, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6457)

ORDER AUTHORIZING ISSUANCE OF UNSECURED PROMISSORY NOTES

Indiana & Michigan Electric Company (I&M"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a declaration pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following transaction.

I&M proposes to issue, from time to time through June 30, 1983, not in excess of $100,000,000 principal amount of unsecured promissory notes outstanding at any time. The notes will be issued to seven banks pursuant to a revolving credit agreement ("Agreement"); the banks and the amounts of their proposed commitments are as follows:

Bank	*Amount*
The Chase Manhattan Bank, N.A.	$10,000,000
Chemical Bank	20,000,000
Citibank, N.A.	15,000,000
Continental Illinois National Bank and Trust Company of Chicago	15,000,000
The Fidelty Bank	10,000,000
Manufacturers Hanover Trust Company	20,000,000
National Bank of Detroit	10,000,000
	$100,000,000

The proposed Agreement provides that I&M will pay to each bank, quarterly, a commitment of 1/2 of 1% per annum on the average daily unused amount of such bank's commitment, computed from the effective date of the Agreement. I&M would have the right at any time to terminate in whole, or from time

to time to reduce in part, the unused commitments of the banks.

Borrowings will be evidenced by a note of I&M which will be due and payable not less than 90 days from the date of such note nor later than June 30, 1983, the exact maturity to be determined by I&M at the time of each borrowing. The notes will bear interest from the date of issuance and will be payable on the last day of March, June, September and December in each year, at maturity (whether by acceleration or otherwise), and after maturity on demand. Such interest will be: (i) prior to maturity, at a fluctuating rate per annum equal at all times to 107% of the highest published prime commercial lending rate of any of the banks for 90 day unsecured domestic loans; and (ii) from maturity, whether by acceleration or otherwise, at a fluctuating rate per annum equal at all times to 1% plus 107% of such prime rate. No compensating balances will be required and the notes will be prepayable at any time without premium or penalty. Prior to maturity, the effective annual interest cost would be 13.91% on the basis of a prime commercial rate of 13%.

The proceeds from the issuance of the notes will be used to pay outstanding short-term debt. At April 15, 1980, I&M had approximately $135,000,000 of short-term debt outstanding.

I&M claims exemption from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(2) thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $8,500, including estimated legal fees and miscellaneous expenses of $5,000. The Public Service Commission of Indiana and the Michigan Public Service Commission have authorized the proposed transaction. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21561), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, granted, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Divisioin of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21624/June 13, 1980

In the Matter of

LOWELL GAS COMPANY
Lowell, Massachusetts

CAPE CODE GAS COMPANY
Hyannis, Massachusetts

(70-6170)

ORDER AUTHORIZING EXTENSION OF SHORT-TERM FINANCING AGREEMENT

Lowell Gas Company ("Lowell") and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this Commission post-effective amendments to the joint declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1),

Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7, and 12(b) of the Act.

Lowell and Cape Cod each have revolving lines of credit pursuant to separate credit agreements (collectively, the "Credit Agreements") dated January 1, 1976, as amended, with Chase Manhattan Bank (N.A.), Union National Bank, Shawmut Bank of Boston, N.A., State Street Bank and Trut Company, and BayBank Middlesex, N.A. By order in this proceeding dated June 30, 1978 (HCAR No. 20185), Lowell and Cape Cod were authorized to extend the term of the Credit Agreements to June 30, 1980, and to borrow up to $11,800,000 for Lowell and $7,000,000 for Cape Cod.

The Credit Agreements were subsequently amended and now provide for borrowings up to the indicated amounts from the following banks:

Bank	*Lowell*	*Cape Cod*
The Chase Manhattan Bank (National Association)	$5,450,000	$2,112,000
Union National Bank	1,050,000	1,158,000
Shawmut Bank of Boston, N.A.	2,412,500	1,158,000
State Street Bank and Trust Company	2,312,500	744,000
BayBank Middlesex, N.A.	1,275,000	828,000
	$12,500,000	$6,000,000

Lowell and Cape Cod have outstanding loans of $7,250,000 and $6,000,000, respectively, evidenced by notes maturing June 30, 1980.

Lowell and Cape Cod are seeking authorization to extend their respective Credit Agreements for one year. The extended Credit Agreements will terminate June 30, 1981.

Lowell and Cape Cod's cost of borrowings under the Credit Agreements is: (a) 1/2 of a percent per annum of the unborrowed funds plus (b) 3/4 percent above the Chase Manhattan Bank's prime rate from time to time. Lowell and Cape Cod, have informally agreed with the banks to either (1) maintain compensating balances of 10% of the banks' total commitment and additional compensating balances of 10% of the amount of any loans outstanding or (2) pay a fee equal to the prime rate plus 3/4 of a percent times the amount by which the average bank balances are less than 10% of the banks' total commitment plus 10% of the amount of any loans outstanding. If the full amount were borrowed from the banks and the required compensating balances were not maintained, the effective interest cost would be 16.5%, based on a prime commercial rate of 13%.

The amended Credit Agreements also provide for relaxation on the restriction on capital expenditures. The limitations on capital expenditures will be increased from no more than $3,300,000 in a twelve month period to no more than $3,500,000 in a twelve month period in the case of Lowell and from no more than $1,800,000 in a twelve month period to no more than $2,500,000 in a twelve month period in the case of Cape Cod. Restrictions on the payment of cash dividends on the common stock of Lowell and Cape Cod have also been relaxed. The Lowell Agreement will provide that, upon receipt by Lowell of not less than $3,000,000 as cash proceeds of the issuance and sale of additional common stock of Lowell, the restriction on common stock dividends will be amended to allow Lowell to pay cash dividends upon any shares of its common stock to the extent that the amount of such cash dividend, together with all other cash dividends declared or paid since January 1, 1980, does not exceed the excess of the net income of Lowell for the period subsequent to said date over dividends on preferred stock paid during such period. The amendment will, in effect, eliminate the deficit of $980,000 under the existing Lowell Credit Agreement formula which would have to be made up before 1980 earnings available for common stock dividends could be used to actually pay such dividends. The Cape Cod Agreement will provide that, upon the receipt by Cape Cod of not less than $2,000,000 as cash proceeds of the issuance and sale of additional common stock of Cape Cod, the restriction on common stock dividends will be amended to allow Cape Cod to pay cash dividends upon any shares of its common stock to the extent that the amount of such cash dividend, together with all other such cash dividends declared or paid since January 1, 1980, does not exceed the excess of the net income of Cape Cod for the period subsequent to said date over dividends on preferred stock paid during such period. The amendment will, in effect, eliminate the deficit of $19,000 under the existing Cape Cod Credit Agreement formula which would have to be made up before 1980 earnings available for common stock dividends could be used to actually pay such dividends.

It is stated that no state commission and no federal

commission, other than this Commission has jurisdiction over the proposed transaction. The fees and expenses incurred in connection with the proposed transaction are estimated at $3,000.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21581), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendments, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21625/June 13, 1980

In the Matter of

WEST PENN POWER COMPANY
Greensburg, Pennsylvania

(70-6455)

ORDER AUTHORIZING ISSUANCE AND SALE OF PREFERRED STOCK AND FIRST MORTGAGE BONDS

West Penn Power Company ("West Penn"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder as applicable to the following proposed transactions.

West Penn proposes to issue and sell an aggregate amount of its cumulative preferred stock not to exceed $30 million in par value in one or more series, each such series to have such par value as may be designated but not less than $25 per share and not more than $100 per share. West Penn proposes to sell the preferred stock pursuant to the competitive bidding requirements of Rul 50 under the Act, unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable. In such event, West Penn proposes, subject to further authorization by the Commission, either to place the preferred stock privately with institutional investors or to negotiate with underwriters for the sale of the stock.

Each series of the preferred stock may have a sinking fund if required under the circumstances. In the event any series has a par value of less than $100 per share, the voting power of such series will be proportionately less than it would be for a share with a par value of $100 where all series of preferred stock vote together. Each series of the preferred stock will be redeemable at any time at the option of West Penn, except that prior to 5 years after the first day of the month in which the stock is issued (or such other date as the Commission may authorize) no series of the stock shall be redeemable directly or indirectly with, or in anticipation of, monies borrowed or the proceeds of the sale of preferred stock at a cost of money less than the cost of money to West Penn in respect of such series. The annual dividend rate to be borne by each series (which will be a multiple of $0.04) and the price to be paid to West Penn (which shall not be less than 98% and not more than 102-3/4% of par) will be determined (1) by competitive bidding, (2) by negotiations between West Penn and private investors, or (3) by negotiations with underwriters for the sale of such series. It is expected that the successful bidders or, in the event of a negotiated transaction, the underwriters will make a public offering of the preferred stock, unless the size of any series offered makes such public offering impracticable.

West Penn states that under present market conditions for preferred stock it is difficult to determine what par value and sinking fund provisions, if any, would result in the most

advantageous terms and conditions for the sale of the stock and also difficult to determine what the most advantageous timing of the sale of the stock would be. Therefore, West Penn intends to decide on the par value of any series and the sinking fund provisions to be applicable to any series at a later time, which may be before or after the date on which an invitation for bids, in the event of competitive bidding, is issued, or the date on which negotiations for a private placement or a negotiated sale to underwriters is commenced. If the terms of any series of preferred stock include sinking fund provisions, it is contemplated that such sinking fund provisions will not commence until after 1985 and will not require the redemption of more than 5% of the stock in any year, and that West Penn will acquire on the open market or redeem the necessary amounts of the stock in each year to fulfill the sinking fund provisions. In the event West Penn determines that the preferred stock will have a par value of $25 per share, West Penn proposes to amend its Charter at an appropriate time prior to the taking of competitive bids (or the commencing of negotiations) for the stock to increase the number of shares of capital stock that it is authorized to issue by 2 million shares.

West Penn also proposes to issue and sell an aggregate amount of not more than $30 million aggregate principal amount of first mortgage bonds in one or more series, each such series to have a single maturity of not less than 5 and not more than 30 years. West Penn proposes to sell the bonds pursuant to the competitive bidding requirements of Rule 50 under the Act, unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable. In such event, West Penn proposes, subject to further authorization by the Commission, either to place the bonds privately with institutional investors or to negotiate with underwriters for the sale of the bonds.

Each series of bonds will be redeemable at any time at the option of West Penn, except that prior to 5 years after the first day of the month in which the bonds are issued (or such other date as the Commission may authorize) no series of the bonds shall be redeemable directly or indirectly with, or in anticipation of, monies borrowed at an interest cost to West Penn of less than the cost of money to West Penn in respect of such series. The interest rate (which will be a multiple of 1/8 of 1%) and the price to be paid to West Penn (which will not be less than 100%, unless the company shall have authorized a lower percentage [not less than 98%], and not more than 102-3/4% of the principal amount of the bonds) in each case will be determined by competitive bidding or, if authorized by the Commission, (a) by negotiations between West Penn and such private investors with whom the series of bonds is being privately placed or (b) by negotiations with underwriters for the sale of such series. It is expected that successful bidders, in the event of competitive bidding, or the purchasing underwriters, in the event of a negotiated transaction, will make a public offering of the bonds, unless the size of any series offered makes such public offering impracticable. The bonds will be issued under and secured by the Indenture dated as of March 1, 1916, between West Penn and The Chase Manhattan Bank, N.A., Trustee, as heretofore supplemented and amended as to be further supplemented and amended by a supplemental indenture to be date as of the first day of the month in which the bonds are issued.

West Penn states that under bond market conditions it is difficult to determine whether it would be more advantageous for West Penn to sell bonds having a 30-year or some shorter maturity. West Penn desires to have available sufficient flexibility to adjust the timing of the sale and the terms of any series of bonds to developments in the market for such securities when and as they occur in order to obtain the best possible price and interest rate for the bonds.

West Penn will attempt to sell the bonds and preferred stock in June 1980; however, in the event that either the bonds or the preferred stock or any series thereof is not sold on or about June 24, 1980, because of market conditions, West Penn will so notify this Commission and will seek, subject to further order of this Commission, to sell such securities on or before December 31, 1980.

West Penn proposes to use the proceeds from the sale of the preferred stock and bonds, together with other funds of the company, to pay or pre-pay, to the extent desirable, short-term debt and to operate its utility business, including the financing of its construction program. On March 31, 1980, West Penn had no short-term debt outstanding, but it expected that approximately $27,000,000 of short-term debt would be outstanding on May 31, 1980, and $40 million on September 30, 1980, assuming

that the bonds and stock have not been sold in June. West Penn's gross construction expenditures for 1979 were $99.7 million, and the two-year total for 1980 and 1981 is estimated at between $265 and $285 million.

The Pennsylvania Public Utility Commission has authorized the issuance of the proposed preferred stock and bonds. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21563), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21626/June 16, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

(70-6459)

ORDER AUTHORIZING PROPOSAL TO ISSUE AND SELL AUTHORIZED AND UNISSUED COMMON STOCK AT COMPETITIVE BIDDING

Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

CSW proposes to issue and sell, pursuant to the competitive bidding requirements of Rule 50 under the Act, 6,000,000 shares of its authorized and unissued common stock par value $3.50 per share ("additional shares").

The net proceeds, estimated at approximately $87,000,000, to be derived by CSW from the sale of the additional shares (after deducting expenses of issue), will be used to retire a like amount of short-term borrowings and commercial paper by CSW (HCAR No. 21571) which were incurred to finance in part capital contributions aggregating $30,000,000 to Central Power and Light Company and $45,000,000 to Southwestern Electric Power Company, each of which is a wholly owned subsidiary company of CSW. The capital contributions were, in each case, added to the respective subsidiary companies' common equity and will be used to repay short-term debt incurred in connection with 1980 construction expenditures.

CSW will issue and sell the additional shares no later than August 31, 1980. No funds generated from the additional shares, any of the borrowings retired thereby nor any of the subsidiary companies' expenditures, will be or have been utilized to pay the cost of facilities which would not be needed to provide service to customers of the subsidiary companies if they were not part of the Central and South West System, nor will any expenditures be made for the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et. al.* (Admin. Proc. File No. 3-4951) would be needed to provide services to customers of the subsidiary companies if they were not part of the Central and South West System.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction are estimated to be $105,000.

Due notice of the filing of said declaration has been

given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21580), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21627/June 17, 1980

In the Matter of

THE HARTFORD ELECTRIC LIGHT COMPANY
Berlin, Connecticut

(70-6462)

ORDER AUTHORIZING ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

The Hartford Electric Light Company ("HELCO"), an electric and gas subsidiary of Northeast Utilities, a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

HELCO proposes to issue and sell for the best price obtainable, subject to the competitive bidding requirements of Rule 50, 500,000 shares of its Preferred Stock, 1980 Series, with a par value of $50 per share. The dividend rate of the Preferred Stock, 1980 Series (which shall be a multiple of 0.08%) and the price to be paid to HELCO (which shall not be less than $50 nor more than $51.375 per share) will be determined by the competitive bidding. HELCO will publicly invite written proposals for the purchase of the Preferred Stock, 1980 Series, at least six days prior to entering into any contract or agreement for the sale of such stock.

The special terms of the Preferred Stock, 1980 Series, will be established by a resolution of the company's Board of Directors amending HELCO's Certificate of Incorporation to reflect the provisions of such preferred stock. The terms shall include a provision that none of the Preferred Stock, 1980 Series, shall be redeemed prior to July 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such preferred stock through the use, directly or indirectly, of funds borrowed by the company or of the proceeds of the issue by the company of shares of any stock ranking prior to or on a parity with the Preferred Stock, 1980 Series, as to dividends or assets, if such borrowed funds or such shares have an effective interest cost or effective dividend cost to the company, as the case may be, of less than the effective dividend cost to the company of the Preferred Stock, 1980 Series. The Preferred Stock, 1980 Series, will also be entitled to the benefit of a cumulative sinking fund requiring the company, to the extent any funds of the company are legally available therefor, to redeem or purchase on July 1 in each year commencing July 1, 1986, 20,000 shares of such preferred stock. The company has the noncumulative option to purchase or redeem for said sinking fund up to an additional 20,000 shares of the preferred stock in any such year. The Preferred Stock, 1980 Series, will be redeemable for the sinking fund at $50 per share, plus accrued dividends to the date of redemption.

The net proceeds from the sale of the Preferred Stock, 1980 Series, will be used to repay a portion of HELCO's short-term borrowings, estimated to total $44,000,000 at the time of such sale. Such short-term borrowings were applied to finance the company's construction program. As of March 31, 1980, HELCO's 1930-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, were expected to total about $152,200,000 ($66,300,000 in 1980 and $85,900,000 in 1981) of which $16,000,000 had been expended as of that date.

The Connecticut Division of Public Utility Control has authorized the issuance of the new preferred stock by HELCO. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21583), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21628/June 17, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-6450)

ORDER AUTHORIZING ISSUANCE OF NOTES TO BANKS PURSUANT TO A REVOLVING CREDIT AGREEMENT

Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder regarding the proposed transaction.

Middle South proposes to enter into a revolving credit agreement ("Credit Agreement") providing for the issuance and sale by Middle South of up to $230,000,000 of its unsecured promissory notes to a group of commercial banks.

Under the terms of the Credit Agreement, Middle South may effect borrowings and reborrowings until December 31, 1984 by issuing to the participating banks its unsecured promissory notes payable on December 31, 1984. The names of the participating banks and the maximum amounts of their respective original participations (collectively, the 'Commitments') in the proposed borrowings by Middle South are as follows:

Name of Bank	*Maximum Principal Amount to be Borrowed*
Manufacturers Hanover Trust Company	$40,000,000
Continental Illinois National Bank and Trust Company of Chicago	40,000,000
The First National Bank of Chicago	40,000,000
Bank of America National Trust and Savings Association	25,000,000
The First National Bank of Boston	17,000,000
Irving Trust Company	15,000,000
Morgan Guaranty Trust Company of New York	13,000,000
The Northern Trust Company	10,000,000
The Fidelity Bank	10,000,000
Crocker National Bank	10,000,000
Chemical Bank	10,000,000
Total	$230,000,000

Each borrowing and each payment by Middle South will be made pro rata among the participating banks according to their respective original Commitments. Subject to the right of Middle South at any time on three business days' notice to terminate the Commitments or from time to time to reduce the Commitments then in effect: (1) the original Commitments will remain in effect until December 31, 1982, at which time they will be ratably reduced to an aggregate principal amount of $172,500,000 (or 75% of the original Commitments); and (2) thereafter, these reduced Commitments will remain in effect until December 31, 1983, at which time they will be further ratably reduced to an aggregate principal amount of $115,000,000 (or 50% of the original Commitments) for the remaining term of the Credit Agreement.

Any such reduction of the Commitments will be accompanied by prepayment of the Notes and accrued interest thereon to the extent that the

aggregate principal amount thereof then outstanding exceeds the Commitments of the participating banks as so reduced.

The Notes issued will bear interest from the date thereof on their unpaid principal amount at a rate per annum which (a) to and including December 30, 1980, shall be a percentage equal to the sum of 1/2 of 1% and the product of 105% multiplied by the Base Rate (as defined below), (b) thereafter, to and including December 30, 1982, shall be a percentage equal to the sum of 3/4 of 1% and the product of 105% multiplied by the Base Rate, and (c) thereafter, shall be a percentage equal to the sum of 3/4 of 1% and the product of 107% multiplied by the Base Rate. As used herein, the Base Rate means, at any time of determination thereof, the greater of (i) the prime commercial loan rate of Manufacturers Hanover Trust Company (the 'MHTC Rate') then in effect or (ii) the sum of 1/2 of 1% per annum and the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major United States money market bank ("C/D Rate").

Interest on the notes will be payable quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, or upon payment of the unpaid principal amount thereof.

Middle South will agree to pay to each participating bank a commitment fee for the period from June 27, 1980 to and including December 31, 1984 (or any earlier date of termination of the Commitments) computed at the rate of 1/2 of 1% per annum on the average daily unused portion of the Commitments in effect during the period for which payment is made. Such commitment fee will be payable to each participating bank quarterly on the last business day of each September, December, March and June, commencing September 30, 1980, and on the date upon which Middle South shall terminate the Commitments. Based upon the MHTC Rate (12.5%) and the C/D Rate (8.75%) in effect as of April 25, 1980, the effective interest cost to Middle South of the proposed borrowings as of that date would be 13.625% per annum. Middle South presently intends to repay the Notes out of the proceeds of the sale of additional shares of its common stock. The notes will be prepayable at any time on two business days' notice in whole or in part without premium.

The initial borrowing under the Credit Agreement will be used for the payment of short-term notes issued by Middle South to various commercial banks under an existing credit agreement dated as of June 29, 1979, as amended. As of February 29, 1980, $145,900,000 aggregate principal amount of notes were outstanding under the existing credit agreement, and it is estimated that at the time the initial borrowing is made under the Credit Agreement the aggregate principal amount of such notes payable will amount to approximately $150,000,000. The proceeds of the borrowings under the existing credit agreement were or will have been, utilized by Middle South to purchase, at various times, the common stocks of certain of its subsidiary companies. Subsequent borrowings under the Credit Agreement will be used by Middle South to purchase additional common stock of its subsidiaries.

The fees, commissions and expenses to be incurred by Middle South in connection with the proposed transaction are estimated at $19,000, including legal fees of $15,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21588), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21629/June 18, 1980

In the Matter of

CENTRAL POWER AND LIGHT COMPANY
120 North Chaparral Street
Corpus Christi, Texas 78401

(70-6468)

NOTICE OF PROPOSED ISSUANCE AND SALE OF PREFERRED STOCK

NOTICE IS HEREBY GIVEN that Central Power and Light Company ("CPL"), an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

CPL proposes to issue and sell 400,000 shares of its _____% preferred stock, par value $100 per share (the "New Preferred"), at not less than $100 per share nor more than $102.75 per share, with dividends to accrue only from the date of issue. The annual dividend rate, the redemption prices, and the price to be paid CPL will be determined by competitive bidding. It is proposed that the New Preferred will be protected against refunding, through issuance of prior or parity securities at a lower cost of money to CPL, for a five year period. The New Preferred Stock will be entitled to a mandatory sinking fund sufficient to retire up to a maximum of 20,000 shares (not to exceed 5% of the number of shares originally issued) of the New Preferred Stock on or prior to August 1 in each year beginning in 1985 at the sinking fund redemption price of $100 per share and unpaid accrued dividends. The Company shall have a non-cumulative option to redeem through the sinking fund on or prior to August 1 in each year beginning in 1985 not more than the number of shares subject to the annual mandatory sinking fund requirement (not to exceed 5% of the number of shares originally issued). The redemption of such additional shares through the sinking fund will not reduce the sinking fund requirement in any subsequent year. Shares of the New Preferred Stock redeemed otherwise than through sinking fund or purchased by the Company may be applied to satisfy the sinking fund or one or more of August 1 dates. Shares redeemed through or applied to the sinking fund shall become authorized but unissued shares of undesignated preferred stock but may not be reissued as shares of the New Preferred Stock. At least six days prior to entering into any contract or agreement for the sale of the New Preferred, CPL will publicly invite written proposals for the purchase or underwriting thereof.

The net proceeds to be derived by the Company from the issue and sale of the New Preferred will be used by CPL to repay a portion of the outstanding short-term borrowings incurred or expected to be incurred to finance construction expenditures. CPL will have approximately $70,000,000 of short-term borrowings outstanding at the date of the issuance of the New Preferred. No funds generated from the New Preferred nor any of the borrowings retired thereby will be or have been utilized to pay the cost of facilities which would not be needed to provide service to customers of the Company if it were not part of the Central and South West System, nor will any expenditures be made by the Company for the construction or acquisition of any facility not so needed prior to the time all funds covered by this application-declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) would be needed to provide service to customers of the Company if it were not part of the Central and South West System.

Estimated construction and fuel exploration and development expenditures (including allowance for funds used during construction ('AFUDC") in the amounts set forth in (a) below) of the Company for 1980 through 1982 are as follows:

	1980	1981	1982	Total
	(Millions)			
Generation (b)	$118	$120	$128	$336
Transmission	19	21	84	124
Distribution	26	27	30	83
Nuclear Fuel	16	5	6	27
Fuel exploration and development	13	19	22	54
Other	6	6	8	20
TOTAL	$198	$198	$278	$674

(a) Total expenditures include AFUDC in the following amounts: 1908-$22,000,000; 1981-$29,000,000; 1982-$42,000,000.

(b) Total generation estimates include expenditures for pollution control facilities in the following amounts: 1980-$5,000,000; 1981-none; 1982-none.

The Company will need to sell additional securities during the period 1980-1982 to finance further portions of this program.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $72,000, including rating agency fees of $10,000, printing expenses of $13,000 and legal fees of $19,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than July 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, and the reasons for such request, and the issues of facto or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21630/June 18, 1980

In the Matter of

EASTERN UTILITIES ASSOCIATES
EUA SERVICE COMPANY
Boston, Massachusetts

BLACKSTONE VALLEY ELECTRIC COMPANY
Lincoln, Rhode Island

EASTERN EDISON COMPANY
Brockton, Massachusetts

MONTAUP ELECTRIC COMPANY
Fall River, Massachusetts

(70-6431)

ORDER GRANTING REQUEST FOR EXCEPTION FROM THE CONSOLIDATED TAX ALLOCATION PROVISIONS OF RULE 45(b)(6)

Eastern Utilities Associates ("EUA"), a registered holding company, and its electric utility subsidiaries Blackstone Valley Electric Company ("Blackstone"), Eastern Edison Company ("Eastern Edison") and Montaup Electric Company ("Montaup"), together with its service company subsidiary EUA Service Corporation ("Service Company"), have filed with this Commission a declaration and an amendment thereto pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder concerning the following proposed transaction.

EUA and its subsidiaries join annually in the filing of consolidated federal income tax returns. The consolidated federal income tax liabilities are allocable among the members of the consolidated group in accordance with the provisions of Section

1552 of the Internal Revenue Code of 1954 ("Code") and other applicable requirements of Rule 45(b)(6) under the Act, subject to modification for years subsequent to 1962 as authorized by Commission order dated May 28, 1963 (HCAR No. 14880). Under Section 1552(a)(1) of the Code, as modified by said order, (i) the tax and surtax (46%) on consolidated taxable income is apportioned in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income, and (ii) each of the subsidiaries included in the consolidated tax return is given the full investment credit that it contributes to the total investment credit allowed on the consolidated return. It is stated that under the circumstances hereinafter described, certain inequities and distortions will result if the allocation of the group's consolidated federal income tax liabilities for 1979 is effected pursuant to the provisions of Rule 45(b)(6) set forth above.

The estimated 1979 separate taxable income and losses (i.e., income or loss as determined solely for the purpose of computing federal income tax liability, and not for purposes of financial reporting) of the members of the EUA system (adjusted to take into account the consolidation and, thus, comprising in the aggregate the consolidated net taxable income) are as follows:

Company	*Estimated Taxable Income (Loss)*
EUA	$(2,629,466)
Service Company	—
Blackstone	(949,200)
Eastern Edison	4,516,305
Montaup	(1,297,323)
Consolidated	$(357,684)

The estimated consolidated federal income tax refund before investment tax credits is $171,688. In order to allocate such consolidated tax refund equitably, declarants request the following exception from the provisions of Rule 45(b)(6) for the tax year 1979:

(i) that the reduction in the consolidated tax liabilities arising from the net operating losses contributed to the consolidated tax return by Blackstone and Montaup be allocated in their entirety to Blackstone and Montaup (but that each other operating company be allowed to offset its liability to Blackstone and Montaup by its full investment credits earned); and

(ii) that in years in which Blackstone and Montaup have taxable income and may be entitled to tax credits under the operating loss carryback and carryover provisions of Section 172(b) of the Code, in order to comply with the separate return limitations of Rule 45(b)(6), any tax credits remitted to Blackstone and Montaup as a result of the exception from said rule herein requested shall be applied to reduce any credits in future years to which Blackstone and Montaup may otherwise be entitled under any separate return limitations of Rule 45(b)(6).

The proposed method of allocation would continue to be subject to the provision of Rule 45(b)(6)(ii) that the aggregate tax liability allocated to each subsidiary should not exceed the amount of such subsidiary's tax based upon a separate return computed as if such subsidiary had always filed its tax return on a separate return basis.

A comparison of the taxes allocated under the method prescribed by Rule 45(b)(6) and under the proposed method is as follows (all figures before investment tax credits):

Company	*Under Rule 45*	*Under Proposed Method*
EUA	$—	$—
Service Company	—	—
Blackstone	—	(566,602)
Eastern Edison	(171,688)	1,035,315
Montaup	—	(640,401)
	$(171,688)	$(171,688)

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,500, including legal fees of $1,500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21490), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are

satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21631/June 18, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

(70-6473)

NOTICE OF PROPOSED ISSUANCE AND SALE OF DEBENTURES AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $100,000,000 principal amount of ____% Debentures, Series Due August, 2000 (New Debentures). The interest rate is to be specified in the bids for the purchase of the New Debentures. The New Debentures will be issued under a Twenty-eighth Supplemental Indenture to the 1961 Indenture between Columbia and Morgan Guaranty Trust Company of New York, Trustee. The proposed Twenty-eighth Supplemental Indenture is to be dated as of August 1, 1980.

It is contemplated that the formula for the calculation of the regular redemption prices of the New Debentures will provide that the regular redemption price for the twelve-month period commencing August 1, 1980 will be the initial public offering price of the New Debentures (exclusive of accrued interest) plus a premium equal to the interest rate of the New Debentures. For each twelve month period thereafter, the regular redemption price shall be scaled down by 1/19th of the amount by which the regular redemption price for the twelve-month period commencing August 1, 1980 exceeds the principal amount of the New Debentures, except that on and after August 1, 1999 the regular redemption price shall be the principal amount of the New Debentures, without premium. In instances where the regular redemption prices would be applicable, Columbia shall not have the right to redeem any of the New Debentures prior to August 1, 1985 directly or indirectly, with borrowed funds, or in anticipation of funds to be borrowed, having an effective annual interest cost to Columbia of less than the effective annual interest cost to Columbia of the New Debentures.

A mandatory sinking fund for the New Debentures will be provided to retire $93,750,000 principal amount (representing 93.75%) prior to maturity through annual retirements of $6,250,000 principal amount beginning in 1985. In addition to such mandatory sinking fund obligation, Columbia shall have the non-cumulative option to redeem on any sinking fund date, at the then current sinking fund redemption price, up to an additional $9,375,000 principal amount of the New Debentures, but no redemption made pursuant to such option shall reduce any sinking fund requirement.

It is stated that the net proceeds from the sale of the New Debentures will be used for general corporate purposes including the 1980 capital expenditure program of Columbia's subsidiaries, which is presently estimated at $450,000,000.

It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. A statement of the fees, commissions, and expenses related to the proposed transaction is to be filed by

amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 16, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21632/June 19, 1980

In the Matter of

CORAL PETROLEUM, INC.
Houston, Texas 77024

(70-6360)

MEMORANDUM RELATING TO APPLICATION FOR APPROVAL OF ACQUISITION OF SECURITIES OR, IN THE ALTERNATIVE, FOR DISMISSAL OF APPLICATION

I.

Coral Petroleum Inc. ("Coral"), a Texas corporation, has filed with us an application, pursuant to Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act"), for approval of its acquisition of approximately 8.58% of the outstanding shares of common stock of Pacific Resources, Inc. ("PRI").[1] PRI has several nonutility subsidiaries. It is a statutory holding company because it owns the common stock of Gasco, Inc. ("Gasco").[2] Gasco renders utility service in Hawaii, and as PRI and Gasco are Hawaii corporations, PRI claims an exemption under Section 3(a)(1) as an "intrastate" holding company pursuant to Rule 2 promulgated thereunder (File No. 69-213). Coral is not a public utility company or an affiliate of any holding company, other than PRI, as defined in clause (A) of Section 2(a)(11).[3] Coral has only one stockholder, a natural person.

Coral does not concede that its acquisition of over 5% of the PRI tock is forbidden by Section 9(a)(2), so that our approval is required under the standards of Section 10. It claims that its affiliate acquisition is not subject to Section 9(a)(2) and that, as a first alternative, its application should be dismissed for lack of jurisdiction.[4] PRI, by our leave, has filed a

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[1]Coral's holdings, according to its Schedule 13D, dated April 28, 1980, now amount to 8.77%.

[2]Section 2(a)(7)(A) defines a "holding company" as

"any company that directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the voting securities of a public utility company. . .",

which Section 2(a)(5) defines as an electric or gas utility company, in turn defined in Sections 2(a)(3) and 2(a)(4), respectively.

[3]Clause (A) of Section 2(a)(11) defines an "affiliate" of a "specified company" as any person, defined in Section 2(a)(1) as an individual or company, "that directly or indirectly owns, constrols, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company."

[4]*Central Illinois Public Service Company, et. al.*, 32 SEC 202, 204 n. 4 (1951), *Yankee Atomic Electric Company, et al.* 36 SEC 552, 560-561 n.7 (1955).

brief opposing Coral's claims that we lack jurisdiction and requests to be heard on Coral's application for approval under Section 10.

There are four other statutory affiliates of PRI, in addition to Coral. The largest of all is Alexander & Baldwin, Inc. ("A&B"), a publicly held company.[5] It owns about 22% of PRI common stock, and under an agreement, dated April 1, 1974, when PRI issues additional common stock, A&B may purchase additional shares, at prices determined in the agreement, in order to maintain its proportionate interest in PRI.[6] Another is the Employees Retirement System of the State of Hawaii, with a 9.1% stock interest. The other two hold 6.2% and 5.1% of PRI stock, respectively. PRI has not protested these statutory affiliations. No applications for their approval under Section 10 have been filed with us, and none has joined or supported Coral's application to us. The issue presented by Coral's application extends to them as well, and our decision today declaring Section 9(a)(2) inapplicable to Coral's acquisition will also determine the status of theirs. The exemptions claimed under Rule 2 by PRI and A&B are not at issue here.

II.

Honolulu Gas Co., Ltd., Gasco's predecessor in service, was organized in 1904, and remained an independent gas utility company until 1971. In that year, under a plan of reorganization permitted by the Hawaii Public Utilities Commission,[7] Honolulu Gas (merged into Gasco) became a subsidiary of PRI, which some of its stockholders organized in 1970. By exchange, share for share, Gasco shareholders became stockholders of PRI, and PRI became a holding company. At the end of 1979, PRI had outstanding about 6.8 million shares held by about 3,700 shareholders, including its five affiliates that together own about 51% of its common stock. The common stock is traded in the over-the-counter market.

Gasco, as a public utility company, is essentially engaged in the retail distribution of gas.[8] Its utility rates and service and long-term financing are subject to regulation by the Hawaii Commission. Gasco provides gas service through a system of underground mains to an estimated 85,200 users. Synthetic natural gas is distributed in Honolulu, and through an underground system propane is distributed in suburban Oahu and on the islands of Hawaii, Maui and Kauai. These sales are also regulated by the Hawaii Commission. Through its Isle Gas Division, it conducts a non-utility business, which furnishes propane (in containerized form) to about 30,000 customers. The Hawaii Commission has under consideration whether this Division should be incorporated as a separate subsidiary. In 1979, sales to all utility customers amounted to about 35.3 million Therms, mostly for water heating and cooking, and because of Hawaii's mild weather, not for home heating.[9]

PRI, not a utility company, is engaged mostly through subsidiaries in various phases of the petroleum industry. Its largest subsidiary is Hawaiian Independent Refinery, Inc. ("HIRI"), which commenced operations in 1972. It is the larger of the two refineries located in Hawaii. It produces a wide range of petroleum products, including naphtha, gasoline and aviation fuels, diesel and residual fuel oils. Naphtha is sold to Enerco, Inc., a wholly-owned subsidiary of PRI, to produce synthetic natural gas which in turn is sold to Gasco for distribution to its Honolulu customers. HIRI's two largest customers are San Diego Gas Electric Co. and the United States military in Hawaii. HIRI does not have its own sources of crude oil, for which it is dependent mostly upon foreign suppliers.

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[5]A&B files annual and other periodic reports with the Commission (File No. 0-565).

[6]See PRI Proxy Statement, March 28, 1980, pp. 4, 8, and 9.

[7]See *Honolulu Gas Company, Ltd.*, Docket No. 1861 (May 27, 1971).

[8]Section 2(a)(4) of the Act defines a "gas utility company" as a

"company which owns or operates facilities used for the distribution *at retail*. . .of natural or manufactured gas for heat, light, or power. . ." other than "distribution only in enclosed portable containers" (emphasis added).

[9]A fuller summary of operating data for Gasco and PRI is included in the 10-K report for PRI for 1979 (File No. 1-6884), pp. 23-29.

In January 1979, PRI acquired by lease, subject to a purchase option, the business of a company engaged in the sale and distribution of fuel oil, with terminal facilities located in Washington, Oregon, Idaho and Utah. It is operated by a wholly-owned subsidiary of PRI. Sales in 1979 amounted to about $26.5 million. In that year, PRI conducted unsuccessful negotiations for a merger with A&B, its largest stockholder, and charged $440,000 to its corporate expense for that aborted effort. A&B is an Hawaiian corporation with investments in energy related and agricultural and real estate enterprises. At its last annual meeting, PRI stockholders considered but rejected a proposal to increase PRI's preferred stock to 5,000,000 shares, no par value.[10] It seems that the 1971 reorganization substantially confined Gasco to its gas utility business, save for the unresolved status of its Isle Gas Division. But for PRI as a holding company, the reorganization opened the way to diversification, which, so far, has been confined to what in current parlance is generally designated as energy related enterprises.

The pertinent provision here is Section 9(a)(2), which applies to any person, including a company.[11] It declares unlawful, unless approved under Section 10, for any person to acquire 5% or more of the voting securities of a public-utility company, and thereby become an "affiliate" of such utility company under clause (A) of Section 2(a)(11),[12] if it is an affiliate, as so defined, of another public utility or holding company, or will by a single or concurrent acquisition create the affiliations forbidden by Section 9(a)(2). While Section 9(a)(2) was amended in Conference, its general purpose is to inhibit growth of holding companies, which Section 9(a)(2) would aid by limiting even the influence that may result from affiliated acquisitions.[13]

An earlier draft of the Senate bill, S. 2796, imposed more severe limitations. Section 9(a)(3) of that bill prohibited, without approval under Section 10, any person to acquire, directly or indirectly, any security of a public-utility company if such person is an affiliate thereof or will by such acquisition become an affiliate of such public utility company.[14] There was no such provision in the House bill, and in Conference the Senate provision was revised and included as Section 9(a)(2) of the Act. Section 9(a)(2) as enacted thus applies only in case of a person who is or becomes an affiliate, as defined in clause (A) of Section 2(a)(11), "of more than one public utility or holding company."[15] Unlike its predecessor, Section 9(a)(2) permits, directly or indirectly, an affiliate acquisition, as defined, with respect to one public utility company. Such an acquisition, not subject to Section 9(a)(2), does not call for approval under Section 10.

Section 9(a)(2), as enacted, is aimed at dual or multiple affiliations through stock acquisitions of public utilities. It thus declares unlawful such an affiliated acquisition if the acquiring person is already an affiliate "of any other public utility or holding company. . . ." The reference to affiliation with a holding company as the second or other affiliation

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[10]In support of this proposal the Proxy Statement said (p. 8):

"The Company (PRI) is currently and will continue to discuss with third parties, from time to time, business combinations involving possible issuance of the Company's preferred shares and/or other Company securities. These discussions are part of an ongoing program to seek business opportunities. . ."

PRI disclaimed that it then had any particular business opportunity or combination in mind, concluding that it "has no intention to issue additional preferred shares as a device to create voting or other impediments to frustrate the efforts of third parties to merge with or control the Company."

[11]Section 9(a)(2) provides that unless approved under the standards of Section 10, it is unlawful

". . .for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public utility company, if such person is an affiliate, under clause (A) of paragraph (11) of subsection (a) of section 2, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate."

[12]See note 3, *supra*.

[13]See S. Rep. No. 621 on S. 2796, 74th Cong. 1st Sess. (1935), p. 30.

[14]*Ibid.*

[15]See Conference Report No. 1903 on S. 2796, 74th Cong., 1st Sess.

that makes Section 9(a)(2) applicable is not to be found in the predecessor provision in the Senate bill. It is a statutory declaration that for purposes of Section 9(a)(2) appropriate ownership of the stock of a holding company has the same effect as an affiliation with the subsidiary public utility itself, which the holding company, by definition, controls.

So read, a statutory affiliate acquisition under Section 9(a)(2) is really defined alternatively. It includes an acquisition, directly or indirectly, made by a person who acquires either 5 percent or more of the voting securities of a public utility company or a like percentage of the voting stock of a holding company.[16] The words "directly or indirectly" in Section 9(a)(2) are more appropriately, if not exclusively, addressed to the form or manner of the acquisition. Their main though not the sole purpose is to prevent evasion of Section 9(a)(2) by dividing the prohibited acquisitions among several persons or companies with common or mutual interests on the false assumption that each acquisition, independently of the orders, is not within the requirements of Section 9(a)(2).[17]

Affiliate acquisitions within Section 9(a)(2) may occur in sequence or concurrently. Hence, Section 9(a)(2) applies to an affiliate acquisition of a public utility company by a person that is already an affiliate of another utility or holding company.[18] It also applies to a single or contemporaneous acquisition of stock of a holding company that has two subsidiary utilities.[19] No such dual affiliations are involved here in the case of Coral and PRI.

When Coral acquired 5% of PRI's common stock, it became an affiliate of PRI, a holding company owning the common stock of Gasco, which is its sole utility subsidiary. Coral was not then or now an affiliate of any other public utility either directly or through a holding company. Section 9(a)(2) would not apply if Coral had acquired the stock of Gasco. Two affiliate acquisitions are not created by Coral's acquisition of the stock of PRI unless we count the Gasco affiliation twice, one to establish PRI as a holding company whose stock Coral acquired directly, and the other to treat the acquisition of the PRI stock as an indirect acquisition of the stock in Coral. That is not a proper reading of Section 9(a)(2), nor is it good arithmetic. A person affected by diplopia or double vision does not see two objects but two images of one and only one object. In scanning Section 9(a)(2), a lawyer's eye can do no more or better.

In its brief PRI states that its construction of Section 9(a)(2) as applied to Coral is supported by our decision in *Community Gas and Power Company*, 15 SEC 492 (1944). In that case Alpha Associates ("Alpha") filed an application to acquire all of the outstanding shares of American Utilities Associates ("Associates"), an exempt holding company that owned almost all the voting securities of a single public utility, Lowell Gas Light Company ("Lowell"). Alpha was not an affiliate of another public utility or holding company. Nonetheless, we determined that Section 9(a)(2) applied since by acquiring the stock of Associates "Alpha would become an affiliate both of Lowell, a public utility company, and of Associates, a holding company." (15 SEC 503).[20]

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[16]In this respect, Section 9(a)(2) is not unique. There is a close parallel in clause (A) of section 2(a)(7) which defines a "holding company" as a company which owns, directly or indirectly, 10 percent of the outstanding voting securities "of a public-utility company" or of a "holding company" as defined in clause (A) (or in clause (B) which is not here material). There is no redundancy in this definition. The comprehensive definition eliminates as irrelevant and meaningless such semantic questions as to whether a company is a holding company if it owns 10% of the stock of a holding company that owns not all but only 10% of the stock of a utility company.

[17]See *Eastern Gas and Fuel Associates et al.*, 43 SEC 524, 542-544 (1967).

[18]See *Eastern Gas and Fuel Associates, et al.*, 43 SEC 524 (1967); *Union Electric Company*, 45 SEC 489 (1974), *aff'd* 521 F.2d 324 (D.C. Cir. 1975); *Illinois Power Company*, 44 SEC 140 (1970); *Hawaiian Electric Company Inc.*, 44 SEC 189 (1970).

[19]*Peoples Gas Light & Coke Company, et al.*, 43 SEC 624 (1967); *North Penn Gas Company et al.*, ___ SEC ___, HCAR No. 19254 (November 25, 1975); *Estacado, Inc.*, HCAR No. 21106 (June 19, 1979).

[20]The same interpretation of Section 9(a)(2) is reflected in the following orders in three other uncontested cases without any discussion of the Commission's jurisdiction: *C. Bascom Slemp, II*, HCAR No. 12637 (August 30, 1954); *Lester Martin*, HCAR No. 12856 (April 26, 1955); *Robert R. Young*, HCAR No. 13071 (December 22, 1955).

The ruling or interpretation of Section 9(a)(2) was not necessary to the decision in that case. Alpha had been organized to acquire the Associates shares on behalf of a small group of investors, including an exempt holding company which was to acquire up to 24% of the shares. The Commission also found that Section 9(a)(2) applied to the acquisition by that holding company, and analyzed the statutory requirements of Section 10 in terms of its effect on the three gas utility companies being brought under common control. (15 SEC at 503-504).

We think that Section 9(a)(2) as applied to Alpha alone was not currectly interpreted. It is inconsistent with the interpretation of Section 9(a)(2) we have extensively developed in the case before us. That inconsistent interpretation, really a dictum in effect, is hereby expressly overruled.

It appears that PRI is not so much troubled with Coral's present holdings. It is far more concerned with the consequences if Coral, with the intent to secure control, should increase its holdings to 10% or more of the stock of PRI and thus become a holding company. Coral, a Texas corporation, would not be in a position to claim the "intrastate" exemption now relied on by PRI. Further, were Coral to become a holding company over PRI, itself a holding company, that would raise the question whether the two-tiered holding-company system so created had become unduly complex under Section 11(b)(2) of the Act.

Coral states in its application that if it obtains effective control or influence over PRI it would urge the sale of Gasco, and that would end all holding company relationships to Gasco. Under the 1971 reorganization, however, PRI has agreed that it will not sell or divest itself of the Gasco common stock without the approval of the Hawaii Commission, and the divestiture would also affect PRI's other stockholders. An alternative means of complying with Section 11(b)(2) would be to require Coral to divest its PRI stock, but we do not undertake here to consider the merits of this or other possible solutions. The issues we have here outlined should provide guidance as to some issues which a tender offer by Coral or any others for the PRI stock might present under the Act.

In view of the foregoing discussion, since Section 9(a)(2) is not applicable, we do not have authority to approve or to disapprove the Coral acquisition of the PRI stock. But we do not consider it necessary to dismiss its application. Section 10(d) expressly permits an applicant to withdraw its application, and we shall afford Coral the opportunity to do so. If within ten days of receipt of our decision, Coral files a notification of withdrawal, this proceeding shall be deemed terminated effective forthwith, without any further action by us.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11212/June 13, 1980

In the Matter of

VARIFUND, INC.
79011 Herschel Avenue #401
La Jolla, California 92037

(811-2048)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT THE APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

VariFund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified management investment company, filed an application on January 7, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act.

On May 5, 1980, a notice was issued (Investment Company Act Release No. 11178) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of VariFund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11213/June 13, 1980

In the Matter of

TRUSTEES' EQUITY FUND, INC.
1250 Drummers Lane
(P.O. Box 1100)
Valley Forge, Pennsylvania 19482

(811-1420)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Trustees' Equity Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 31, 1979, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized under the laws of the State of Maryland on March 3, 1966. On August 24, 1966, Applicant registered under the Act and filed a registration statement under the Securities Act of 1933 with respect to 200,000 shares of its common stock, $1.00 par value. Such registration statement was declared effective on February 17, 1967, and Applicant commenced offering its shares to the public on that date.

Applicant represents that on April 20, 1978, its board of directors approved and recommended to shareholders an agreement and plan of reorganization dated April 20, 1978 (the "Agreement") providing for (1) the acquisition by Windsor Fund, Inc. ("Windsor"), an open-end, diversified management investment company registered under the Act which, like Applicant, is a member of the Vanguard Group of investment companies, of substantially all the assets of Applicant in exchange for shares of Windsor; (2) the pro rata distribution of such shares to shareholders of Applicant according to their respective interests; and (3) the dissolution and deregistration of Applicant as an investment company. Applicant represents that on September 29, 1978, after obtaining shareholder approval, substantially all its assets were acquired by Windsor in exchange for shares of common stock of Windsor under the terms of the Agreement. Applicant states that the Commission issued an order (Investment Company Act Release No. 10418) on September 27, 1978, permitting such transaction.

Applicant represents that as of the date of filing of the application, it has no assets, no debt or other liability outstanding and no security holders. In addition, Applicant represents that it is not currently a party to any litigation. Applicant states, however, that technically it is still a party to the application filed jointly by the Vanguard Group of investment companies and the Vanguard Group, Inc., pursuant to Sections 6(c), 17(b) of the Act and Rule 17d-1 under the Act (File No. 812-4094), Admin. Proc. File No. 3-5281) for an order of the Commission permitting the Vanguard Group of investment companies to internalize their distribution activities. Finally, Applicant represents that it is not now engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such Company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 8, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons

for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11214/June 16, 1980

In the Matter of

NEA INCOME FUND, INC.
Three Parkway
Philadelphia, PA 19101

(811-2678)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that NEA Income Fund, Inc. ("Applicant"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 21, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commision for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Maryland corporation. On September 16, 1976, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 with respect to 1,000,000 shares of its common stock, par value $.50 per share. Such registration statement was declared effective on December 29, 1976, and Applicant commenced the initial public offering of its shares on January 3, 1977.

On December 12, 1979, Applicant's board of directors, by unanimous vote, adopted resolutions authorizing the liquidation and dissolution of Applicant. Shareholders approved such resolutions on March 14, 1980. Pursuant to a plan of liquidation and dissolution, on March 27, 1980, Applicant distributed to all shareholders not holding stock certificates a liquidating distribution equal to the shareholder's proportionate interest in Applicant's net assets. At the same time, Applicant mailed to each shareholder holding a stock certificate a confirmation showing such shareholder's proportionate interest in Applicant's net assets together with a statement that the shareholder would be paid in cash upon return of his stock certificate. Subsequently, stock certificates were returned and appropriate distributions were paid to shareholders. On May 1, 1980, Applicant filed articles of dissolution with the State of Maryland and, accordingly, Applicant has been dissolved under Maryland law.

Applicant represents that it has no assets and liabilities, that it is not a party to any litigation or administrative proceeding, and that it has no security holders. Applicant states that to the extent fes and costs for legal, accounting and other services are outstanding, such fees and costs will be borne entirely by INA Capital Management Corporation, Applicant's investment adviser. Finally, Applicant states that it is not now engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in

effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 11, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11215/June 16, 1980

In the Matter of

VANGUARD MUNICIPAL BOND FUND, INC.
1250 Drummers Lane
Valley Forge, PA 19482

(812-4647)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that Vanguard Municipal Bond Fund, Inc. (formerly Warwick Municipal Bond Fund, Inc.) ("Applicant"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on March 31, 1980, and an amendment thereto on June 5, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant's Money Market Portfolio to compute its net asset value per share using the amortized cost method of valuing its portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a "series" mutual fund which currently offers five separate and diversified portfolios of municipal bonds. Citibank, N.A. acts as the investment adviser for each of the five portfolios. Applicant's investment objective is to provide investors with the highest available level of interest income that is exempt from federal income tax and is consistent with both conservation of capital and the maturity and quality standards prescribed for each portfolio. On March 12, 1980, Applicant's board of directors approved amendments to its articles of incorporation providing for a change in its name from "Warwick Municipal Bond Fund, Inc." to "Vanguard Municipal Bond Fund, Inc." and for the addition of a new class of shares (hereinafter referred to as the "Money Market Portfolio"). Those amendments were approved by shareholders on April 25, 1980.

The Money Market Portfolio invests in short-term municipal obligations whose interest payments are exempt from federal income tax. Those obligations, which are issued by cities, municipalities, and municipal agencies, include tax anticipation notes, revenue anticipation notes, tax and revenue anticipation notes, bond anticipation notes, grant anticipation notes and construction loan notes. The Money Market Portfolio also invests in project notes, which are obligations of a state or local public housing agency, but guaranteed by the federal government through the Department of Housing and Urban Development.

The municipal bonds held by the Money Market Portfolio will be rated at the time of purchase within

the two highest grades assigned by Moody's Investors Services, Inc. (Aaa and Aa) or Standard & Poor's Corporation (AAA and AA), or of comparable quality as determined by Applicant's board of directors.

As here pertinent, Section 2(a)(41) of the Act defines value to mean (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company, used in computing its price for the purposes of distribution, redemption and repurchase, shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order, pursuant to Section 6(c) of the Act, exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Money Market Portfolio to value its assets using the amortized cost method of valuation.

Applicant states that it wishes to attract sophisticated individual and institutional investors and that many of those investors require a short-term municipal bond fund which maintains a constant net asset value per share and pays dividends which do not fluctuate due to daily changes in the values of its portfolio securities. Applicant believes that in order to attract such investors and retain them as shareholders, the Money Market Portfolio must have a stable net asset value, preferably at $1.00 per share, and a steady flow of investment income.

Applicant believes that the valuation of the Money Market Portfolio's investment securities on the amortized cost basis will benefit its shareholders by enabling the Money Market Portfolio to maintain more effectively its $1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities. Applicant's board of directors has determined that the amortized cost method of calculating the net asset value per share of the Money Market Portfolio under such circumstances is appropriate and in the best interests of shareholders. In addition, Applicant has agreed to the imposition of the following conditions to any order granting the exemptive relief requested.

(1) In supervising the operations of the Money Market Portfolio and delegating special responsibilities involving management of the Money Market Portfolio to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and the Money Market Portfolio's investment objectives, to stabilize the Money Market Portfolio's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Money Market Portfolio's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Money Market Portfolio's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Money Market Portfolio's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) The Money Market Portfolio will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Money Market Portfolio will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) The Money Market Portfolio will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which Applicant's board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 11, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of

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[1]To fulfill this condition, Applicant intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Money Market Portfolio will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11216/June 17, 1980

In the Matter of

SIGMA GOVERNMENT SECURITIES FUND, INC.
Greenville Center
3801 Kennett Pike
Wilmington, Delaware 19807

(812-4666)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

On May 19, 1980, a notice was issued (Investment Company Act Release No. 11176) of an application filed on April 21, 1980, by Sigma Government Securities Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act for an order of exemption from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value for the purpose of sales, redemptions and repurchases of its share to the nearest one cent on a share value of one dollar.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares are computed for purposes of distribution, redemption and repurchase rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11217/June 17, 1980

In the Matter of

SIGMA MONEY MARKET FUND, INC.
Greenville Center
3801 Kennett Pike
Wilmington, Delaware 19807

(812-4665)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

On May 19, 1980, a notice was issued (Investment Company Act Release No. 11177) of an application filed on April 21, 1980, by Sigma Money Market Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act for an order of exemption from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value for the purpose of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares are computed for purposes of distribution, redemption and repurchase rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11218/June 17, 1980

In the Matter of

NATIONWIDE LIFE INSURANCE COMPANY

AND

NATIONWIDE DC VARIABLE ACCOUNT
One Nationwide Plaza
Columbus, OH 43216

(812-4518)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) AND RULE 22c-1

Nationwide Life Insurance Company, a stock life insurance company organized under the laws of the State of Ohio, and Nationwide DC Variable Account, a separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on August 14, 1979, and an amendment thereto on May 14, 1980, pursuant to Section 6(c) of the Act, for an order exempting from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) and Rule 22c-1 of the Act, to the extent necessary, a proposed change in the pricing of one of their existing variable annuity contracts.

On May 22, 1980 a notice was issued (Investment Company Act Release No. 11180) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not order a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) and Rule 22c-1 be, and they hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11219/June 17, 1980

In the Matter of

BERKSHIRE CAPITAL FUND, INC.
700 South Street
Pittsfield, MA 01201

(811-1656)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On May 23, 1980, a notice was issued (Investment Company Act Release No. 11185) of an application filed on January 7, 1980, by Berkshire Capital Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, requesting an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company as defined by the Act. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration under the Act of Berkshire Capital Fund, Inc., shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11220/June 17, 1980

In the Matter of

CONTRARIAN OPTION FUND, INC.
12955 Biscayne Blvd. #406
North Miami, Florida 33181

(811-2883)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Contrarian Option Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on March 31, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On May 19, 1980, a notice (Investment Company Act Release No. 11174) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Contrarian Option Fund, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11221/June 17, 1980

In the Matter of

FIDUCIARIES FUND FOR CASH RESERVES
c/o William J. Nutt, Esq.
Ballard, Spahr, Andrews & Ingersoll
30 South 17th Street
Philadelphia, Pennsylvania 19103

(811-2617)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE ACT

NOTICE IS HEREBY GIVEN that the Commission proposes to declare, by order on its own motion pursuant to Section 8(f) of the Investment Company Act of 1940 (the "Act"), that Fiduciaries Fund for a Cash Reserves (the "Fund"), registered under the Act as a diversified, open-end, management investment company, has ceased to be an investment company as defined by the Act.

The Fund registered under the Act on January 5, 1976. However, the Fund's registration statement under the Securities Act of 1933 has never become effective. By letter dated February 12, 1980, counsel for the Fund advised the staff of the Commission that the Fund has neither sold any of its shares nor commenced investment activities, and that the Fund's management has no intention of pursuing the investment activities described in the registration statement.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the taking effect of such order, the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 16, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of facto or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date

of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11222/June 18, 1980

In the Matter of

VARIABLE ANNUITY ACCOUNT B OF AETNA LIFE INSURANCE AND ANNUITY COMPANY,

VARIABLE ANNUITY ACCOUNT C OF AETNA LIFE INSURANCE AND ANNUITY COMPANY,

VARIABLE ANNUITY ACCOUNT E OF AETNA LIFE INSURANCE AND ANNUITY COMPANY

AND

AETNA LIFE INSURANCE AND ANNUITY COMPANY
151 Farmington Avenue
Hartford, Connecticut 06156

(812-4604)

ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) OF THE ACT AND RULE 22c-1 THEREUNDER, AND PURSUANT TO SECTION 11 OF THE ACT APPROVING AN OFFER OF EXCHANGE

Variable Annuity Accounts B, C, and E of AEtna Life Insurance and Annuity Company each of which is registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and AEtna Life Insurance and Annuity Company, the principal underwriter therefor, filed an application on January 25, 1980, and an amendment thereto on April 23, 1980 pursuant to Section 6(c) of the Act for an order of the Commission granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c) (and Rule 22c-1 thereunder), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act, and pursuant to Section 11 of the Act for an order approving an offer of exchange.

On May 23, 1980 a notice was issued (Investment Company Act Release No. 11186) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offer be, and hereby is, approved, and, pursuant to Section 6(c) of the Act, that the exemptions from Sections 2(a)(32), 2(a)(35), 22(c) (and Rule 22c-1 thereunder), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d), be, and they hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11223/June 18, 1980

In the Matter of

NEUBERGER & BERMAN
522 Fifth Avenue
New York, New York 10036

(812-4636)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 15(a) OF THE ACT

Neuberger & Berman Management Incorporated ("Management"), a New York corporation, and Neuberger & Berman ("N&B"), a New York limited partnership (Management and N&B are hereinafter referred to collectively as "Applicants"), filed an application on March 21, 1980, for an order

pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of Section 15(a) of the Act to the extent that certain transactions in the shares of Management might result in (1) the termination of the investment advisory contracts between Management and the investment companies it advises ("Investment Companies"), and (2) the termination of sub-advisory contracts between Management and N&B for the benefit of the Investment Companies.

On May 23, 1980, a notice was issued (Investment Company Act Release No. 11182) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 15(a) of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11224/June 18, 1980

In the Matter of

RETIREMENT PLANNING FUNDS OF AMERICA, INC.
111 West Washington Street
Chicago, Illinois 60602

(812-4682)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Retirement Planning Funds of America, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on May 15, 1980, requesting an order of the Commission pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder and LNC Equity Sales Corporation ("LNC"), Applicant's principal underwriter, from Rule 22c-1, to the extent necessary to permit Applicant to calculate the net asset value per share of its Money Market Fund using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was formed to serve as a vehicle for the collective investment of the assets of retirement plans. Except as noted below, individuals and others, not purchasing through a retirement plan, are ineligible to purchase Applicant's shares. Applicant offers three classes of shares; Equity Fund Common Stock, Bond Fund Common Stock and Money Market Fund Common Stock. The assets attributable to each are maintained separately and are invested in accordance with the investment objectives and policies applicable to the particular class.

According to the application, the investment objective of Applicant's Money Market Fund is maximum current income to the extent consistent with the preservation of capital and the maintenance of liquidity through investment exclusively in short term securities issued or guaranteed as to principal and interest by the United States government or issued or guaranteed by agencies or instrumentalities thereof, bank and savings and loan association certificates of deposit or the like and bankers' acceptances, commercial paper (including master demand notes) and repurchase agreements with banks pertaining to the foregoing. In no event may the Money Market Fund's portfolio contain any securities maturing more than one year from the date of acquisition.

Applicant indicates that when it commenced operations on November 9, 1977 the net asset value per share of Money Market Fund Common Stock was $10.00. As of February 29, 1980, such asset value per share was $10.46. Applicant further indicates that the excess of the actual net asset value per share of Money Market Fund over $10 is attributable to (i) accrued net investment income and realized net short term capital gains, if any, not yet declared as dividends, (ii) additions to capital surplus represented by that portion of the purchase price of shares of Money Market Fund sold between quarterly dividend dates which is attributable to accrued net investment income and realized net short term capital gains and (iii) unrealized net appreciation, if any, of portfolio securities. Applicant represents that at the time Applicant implements the requested exemptive order, it intends to reduce the net asset value per share of its Money Market Fund to $10.00 either by declaring a stock dividend or effecting a stock split, immediately following the declaration of the usual dividend, in an amount sufficient to effect such reduction.

Applicant states that its Board of Directors has concluded that its existing and potential Money Market Fund shareholders desires to invest their cash balances in a vehicle which offers stability of principal and a steady flow of investment income commensurate with prevailing money market yields and that its management has determined that the only practicable way to achieve such desire is to determine the net asset value of Money Market Fund on the amortized cost basis.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security. Rule 2a-4 adopted under the Act provides, in pertinent part, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of the rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and other securities shall be valued at fair value as determined in good faith by the board of directors. Section 2(a)(41) defines, in pertinent part, the term "value" in a similar manner.

In Investment Company Act Release No. 9786, dated May 31, 1977, the Commission expressed the view that, among other things, (i) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (ii) it would be inconsistent with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments (except those having maturities of 60 days or less) on an amortized cost basis.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts its belief that the requested exemptions are consistent with the standards of Section 6(c) of the Act in that they are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that its directors believe that the amortized cost method of valuation of Money Market Fund's portfolio securities is appropriate and preferable to the mark-to-market valuation method in light of the perceived desires of Applicant's shareholders and potential shareholders and in light of competitive conditions encountered by Applicant in the marketplace.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising the operations of Applicant's Money Market Fund and delegating special responsibilities involving its portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures

reasonably designed, taking into account current market conditions and the investment objectives of Applicant's Money Market Fund, to stabilize the net asset value per share of Money Market Fund, as computed for the purpose of distribution, redemption and repurchase, at $10.00 per share.

2. Included within the procedures to be adopted by Applicant's Board of Directors shall be the following:

(a) Review by the Applicant's Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of Money Market Fund as determined by using available market quotations from the $10.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $10.00 amortized cost price per share of Money Market Fund exceeds 1/2 of 1%, a requirement that Applicant's Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's Board of Directors believe the extent of any deviation from the $10.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing Money Market Fund shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Money Market Fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average Money Market Fund portfolio maturity appropriate to its objective of maintaining a stable net asset value per share for Money Market Fund; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average Money Market Fund portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Director's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of its Board of Director's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its Money Market Fund portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which its Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested

[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Applicant's Board of Directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest Money Market Fund's available cash in such a manner as to reduce its dollar-weighted average Money Market Fund portfolio maturity to 120 days or less as soon as reasonably practicable.

person may, not later than July 14, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11225/June 19, 1980

In the Matter of

EQUITABLE MONEY MARKET ACCOUNT, INC.
100 West 52nd Street
P.O. Box 581
New York, New York 10001

(812-4678)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICATION FROM THE PROVISIONS OF SECTION 2(a)(41) AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Equitable Money Market Account, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 7, 1980, and an amendment thereto on June 9, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(4) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant states that a registration statement on Form N-1 under the Act and the Securities Act of 1933 has been filed with the Commission. Applicant represents that it will operate as a "money market" fund designed for use by individual investors or organizations such as corporations, partnerships and trusts. Applicant states that its investment objective is the maximization of current income to the extent consistent with the preservation of capital and the maintenance of liquidity.

According to the application, Applicant's portfolio is limited to the following instruments: (i) obligations issued or guaranteed by the United States Government or its agencies or instrumentalities; (ii) negotiable certificates of deposit and bankers' acceptances if they are obligations of a domestic bank having total assets at least equal to $1,000,000,000 and which is a member of the Federal Deposit Insurance Corporation; (iii) commercial paper rated at least "A-1 by Standard & Poor's Corporation or at least "Prime-1" by Moody's Investors Services, Inc. or, if not rated, issued by companies which have an outstanding debt issue rated at least "AA" by Standard & Poor's Corporation, or at least "Aa" by Moody's Investors Services, Inc.; and (iv) repurchase agreements covering securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities or certificates of deposit described in (ii) thereunder.

Applicant states that it may not purchase any security which has a maturity date more than one year from the date of purchase, unless purchased subject to a repurchase agreement requiring repurchase from Applicant in one year or less. According to the application, Applicant will enter into repurchase agreements only with those financial institutions which are believed by Applicant's investment adviser to present minimal credit risks.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of the rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that if it is permitted to compute its net asset value per share using the amortized cost method of valuation, it expects to exclude unrealized gains and losses from its daily computation of net asset value and from its computation of daily net income dividends to shareholders. Applicant states that experience indicates that these policies will benefit Applicant and its shareholders. According to the application, Applicant believes that the type of investor it seeks to attract prefers that the daily income dividends declared by Applicant reflect income as earned, and that its sales and redemption price remain fixed. Applicant represents that its directors have determined in good faith, that in light of the characteristics of the Applicant, the amortized cost method of valuation is appropriate and preferable for the Applicant and reflects the fair value of the Applicant's portfolio securities.

Accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant expressly consents to the imposition of the following conditions in any order granting the relief it requests:

1. In supervising the Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser and sub-investment adviser, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objective, to stabilize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

[1]To fulfill this condition, the Applicant intends to use actual quotations or estimate of market value

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action if any should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors of existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares of kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses or to shorten the Applicant's average portfolio maturity; withholding dividends, or utilizing a net asset value per share as determined by using available market quotations.

3. The Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and the Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meeting. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 14, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

Footnote 1 Continued

reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, the Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11226/June 19, 1980

In the Matter of

ISRAEL DEVELOPMENT CORPORATION
10 Rockefeller Plaza
New York, N.Y. 10020

(811-619)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Israel Development Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on January 14, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, organized on April 10, 1951 under the laws of the State of New York as "Israel Industrial Development Corporation", registered under the Act on December 31, 1952. Applicant states that on June 27, 1952 its name was changed to "Israel Industrial & Mineral Development Corporation", and on May 17, 1956 its named was changed to "Israel Development Corporation." On December 31, 1952, Applicant's registration statement on Form S-4 under the Securities Act of 1933, filed in connection with a proposed initial public offering of its shares, was declared effective. Applicant further states that on October 5, 1979 there were 5,045 shareholders of record of its 1,426,675 outstanding shares of common stock, its only class of equity security, and that its aggregate net asset value was $16,350,890, or $11.46 per share. Applicant's common stock was, prior to October 5, 1979, listed on the American Stock Exchange. Applicant further states that as of October 5, 1979 it had outstanding $1,381,500 principal amount of ten-year 7% Sinking Fund Debentures, Series D, due 1986 ("Series D Debentures").

Applicant represents that, pursuant to resolutions duly adopted by its board of directors on September 13, 1978 and July 17, 1979, Applicant entered into an Agreement and Plan of Reorganization and Merger ("Merger Agreement"), dated as of August 3, 1979, with Ampal-American Israel Corporation ("Ampal"), a corporation organized February 6, 1942 under the laws of the State of New York. Ampal is not, and intends to conduct its business so that it will not be, an investment company. It is principally engaged in the business of financing industrial, financial, commercial and agricultural enterprises in Israel and assisting Israeli business enterprises and individuals in establishing operations outside of Israel which Ampal's management believes may benefit Israel. At a special meeting of Applicant's shareholders held on October 5, 1979, the shareholders duly approved the Merger Agreement and the termination of Applicant's status as an investment company under the Act. The Commission issued an order (Investment Company Act Release No. 10850) on August 29, 1979 permitting such merger. Applicant further states that all documents necessary to effect the Merger Agreement and terminate Applicant's corporate existence were duly filed with the Secretary of State of New York, and that the merger of Applicant with and into Ampal became effective in accordance with New York law on October 5, 1979.

Applicant states that under the terms of the Merger Agreement each share of Applicant's common stock, except Ampal's, was converted into a proportionate number of shares of a new series of Ampal 6-1/2% cumulative convertible preferred stock and, in lieu of any fractional Ampal shares, a cash amount based on the net asset value of shares not converted. Applicant states that four of its shareholders, claiming to own an aggregate of 441 common shares, exercised rights of appraisal under the New York Business Corporation Law, and that such shareholders have accepted a cash payment for their shares from Ampal. All of Applicant's indebtedness outstanding at the time of the merger, including the Series D Debentures, was assumed by Ampal in accordance with the terms of the Merger

Agreement. Accordingly, Applicant states that it is not a party to any litigation or administrative proceeding, has no assets, outstanding indebtedness, or security holders, has conducted no business since October 5, 1979, and that its corporate existence has terminated under applicable state law. Applicant states that it intends to, and as a condition to the issuance of the order requested agrees to, file an annual report on Form N-1R under the Act for the period ended October 5, 1979, as soon as practicable.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 21, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11227/June 19, 1980

In the Matter of

ASSET INVESTORS FUND, INC.
67 Wall Street
New York, New York, 10005

(812-4586)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTIONS 17(g), 30(a), 30(b), 30(d) AND 30(e) OF THE ACT AND APPLICABLE RULES THEREUNDER

NOTICE IS HEREBY GIVEN that Asset Investors Fund, Inc. ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, closed-end, management investment company, filed an application on December 21, 1979, and an amendment thereto on May 29, 1980, requesting an order pursuant to Section 6(c) of the Act, exempting Applicant, to the extent requested, from the provisions of Sections 17(g), 30(a), 30(b), 30(d) and 30(e) of the Act and Rules 17g-1, 30a-1, 30a-2, 30b1-1, 30b2-1 and 30d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

The application states that on September 25, 1979, Applicant's shareholders approved a plan for the liquidation and dissolution of Applicant (the "Plan"); and that, on the same date, the advisory agreement between Applicant and its investment adviser Tweedy Browne, Inc. ("TBI"), a registered broker-dealer and investment adviser, was terminated because investment advisory services were no longer necessary once implementation of the Plan had begun. Applicant states that TBI and its predecessor had acted as Applicant's investment adviser since April 8, 1974. The application also states that on December 20, 1979, a Certificate of Dissolution was filed with the Secretary of State of Delaware, and that, as of that date, Applicant's corporate existence terminated under the laws of Delaware except to the extent necessary to consummate the Plan.

The application states that on December 4, 1979, Applicant paid in addition to its regular dividend which in this case amounted to $.17 per share of Applicant's outstanding Common Stock ("Shares"), an initial liquidating distribution of $7.33 per Share, or $3,743,452 in the aggregate, to shareholders of record as of the close of business on December 3, 1979. The application states that this initial liquidating distribution consisted entirely of cash. The application represents that on February 8, 1980, Applicant made a second liquidating distribution and that this distribution consisted of cash or, in the case of certain shareholders who so elected, partly in cash and partly in portfolio securities. Applicant states that in that regard, holders of fewer than 100 Shares, and those holders of 100 Shares or more who elected not to receive portfolio securities, received $1 per Share in cash plus cash in lieu of securities in the aggregate amount of $297,394.

Applicant states that since its second distribution in February, 1980, Applicant's only remaining assets (the "Remaining Assets") consist of certain portfolio securities and cash and cash equivalents. Applicant represents that included in the Remaining Assets are "liquidating stubs" representing non-transferable interests in businesses which themselves are being liquidated. Applicant further represents that it has held these interests since prior to September 25, 1979. The application states that on September 25, 1979, Applicant's net assets exceeded $6 million; and that as of May 20, 1980, less than 10% in value of Applicant's net assets as of Septembr 25, 1979, the date on which Applicant shareholders approved the Plan, remained for distribution to the stockholders.

The application states that subsequent to September 24, 1980 (*i.e.*, after one year has elapsed from the date Applicant's stockholders approved the Plan) Applicant's assets will consist of the Reserve Fund, as that term is defined in the application. The Reserve Fund will consist of cash and certain securities currently held in Applicant's portfolio, all of which will be liquidating stubs, having a value of approximately (and not less than) $300,000, which will be less than 5% in value of Applicant's net assets as of September 25, 1979. Accordingly, between May 20, 1980, and September 24, 1980, certain securities will either be sold for cash or distributed pro rata to the Fund's stockholders; additionally, on or before September 24, 1980, any cash and cash equivalents held by Applicant which exceed the amount required by Applicant for the Reserve Fund will be distributed pro rata to Applicant's stockholders. As is customary in connection with corporate liquidations and dissolutions, the Reserve Fund has been approved and will be established on September 25, 1980, to meet any obligations of Applicant as they become due after that date. Applicant believes the amount of the Reserve Fund will be sufficient to meet such obligations. In accordance with the Plan, Applicant's liquidation and dissolution will be completed and all its net assets will have been distributed pro rata to its stockholders by December 31, 1984.

Section 17(g) of the Act and Rule 17g-1 thereunder provide that, for the protection of investors, any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities, be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

The application states that prior to the initial liquidating distribution to shareholders on December 4, 1979, Applicant had gross assets of approximately $6.5 million, and that in accordance with Rule 17g-1, Applicant maintained an individual indemnity bond against larceny and embezzlement providing total coverage up to $150,000. The application states that TBI maintains a blanket indemnity bond which also insures Applicant against larceny and embezzlement. The application states that Applicant is a named insured under TBI's blanket Bond, and that each officer and employee of Applicant who may singly, or jointly with others, have access to the securities or monies of Applicant, is covered by TBI's bond to the extent of $1 million; and that all of Applicant's officers and directors have been and are also officers or employees of TBI. The application states that TBI will maintain this, or a comparable, blanket bond until the liquidation and dissolution of Applicant has been completed.

Applicant states that it seeks an exemption from Section 17(g) of the Act and Rule 17g-1 thereunder which, in the absence of an exemption, would require Applicant to maintain an indemnity bond separate from TBI's blanket bond with respect to the Remaining Assets, including the Reserve Fund. Applicant states that an exemption from Section

17(g) and Rule 17g-1 is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes and policies of the Act because all of the officers and employees of Applicant who will have access to the Remaining Assets will be covered by TBI's blanket bond, the $1 million coverage of TBI's blanket bond far exceeds the coverage that Rule 17g-1 would require for the Remaining Assets, and Applicant's shareholders would obtain no additional benefit or coverage from the maintenance of a separate bond but would be compelled to bear the associated premium cost of between $750 and $1000 of maintaining a separate bond, legal and insurance brokerage costs associated with the maintenance of such a bond and the time and expense annually devoted by Applicant's officers and directors to review and select an appropriate bond. The application states that it is expected that the TBI blanket bond, or a comparable bond, will be in effect until the liquidation and dissolution is completed. Applicant represents that should the blanket bond be terminated, cancelled or otherwise materially modified, TBI will immediately notify Applicant and Applicant and TBI will immediately notify the Commission and take steps to assure that a separate bond complying with Section 17(g) and Rule 17g-1 is provided for Applicant.

Sections 30(a), 30(b), 30(d), 30(e) of the Act and Rules 30a-1, 30a-2, 30b1-1, 30b2-1, and 30d-1 thereunder generally require that registered investment companies prepare and file with the Commission and prepare and mail to their shareholders certain periodic reports and financial statements, some of which are required to include audited financial data.

Applicant states that it would file an annual report on form N-1R with the Commission for the fiscal year ended December 31, 1979, as required by Section 30(a) of the Act and Rules 30a-1 and 30a-2 thereunder. Applicant states that it would also send to each shareholder and file with the Commission, as required by Sections 30(b) and 30(d) of the Act and Rules 30b2-1 and 30d-1 thereunder, an annual report for the twelve months ended December 31, 1979; and that Applicant would include in these annual reports complete information concerning the 32-day period ending at the close of business on February 8, 1980, the date on which the second liquidating distribution was made and approximately 90% of Applicant's assets were distributed to its shareholders. The application states that because Applicant, at the close of business on February 8, 1980, liquidated and distributed to its shareholders approximately 90% of its assets, the annual reports provided the Commission and the shareholders would provide complete financial and other information concerning the implementation of the Plan through the liquidation of all assets other than the Remaining Assets.

Applicant argues that Sections 30(a), 30(b), 30(d) and 30(e) of the Act and Rules 30a-1, 30a-2, 30b1-1, 30b2-1 and 30d-1 would, absent an exemption, require Applicant to file annual and periodic reports with the Commission and send to shareholders and file with the Commission annual and semi-annual reports until the liquidation and dissolution is completed, a period which may extend for five years. Applicant asserts that since the Reserve Fund will contain approximately $300,000 and has the limited purpose of covering the proper debts, liabilities, obligations, and commitments and any contingent liabilities of Applicant, as determined by its Board of Directors, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes and policies of the Act to exempt Applicant from the above-cited reporting provisions of the Act. Applicant further states that the granting of the requested exemption would allow Applicant's shareholders to realize significant savings in the form of reduced accounting and auditing fees, legal fees and printing and mailing costs. Additionally, Applicant states that if the requested exemption is granted, it will send to its shareholders and file with the Commission within forty-five days after the end of each six-month period beginning June 30, 1980, a report which will include an unaudited balance sheet and income statement for the period covered, a list of Applicant's portfolio securities and a brief discussion of any significant events which occurred during the period. Applicant also states that at least once each calendar year beginning with 1980, an independent public accountant will also conduct an examination of Applicant's assets without prior notice to Applicant and will file with the Commission a certificate of the accountant's statement stating the results of the examination.

Applicant concludes that the information that it will provide to its shareholders and to the Commission until the liquidation is completed will assure that investors are protected and that the policies and purposes of the Act are carried out.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 14, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 723/June 19, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16912/June 19, 1980

LITIGATION

Litigation Release No. 9107/June 13, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MISTER DISCOUNT STOCKBROKERS, INC.* (United States District Court for the Northern District of Illinois, Civil Action No. 80 C 2795)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on June 3, 1980, the Commission filed a civil injunctive action in Federal Court at Chicago, Illinois, naming as a defendant Mister Discount Stockbrokers, Inc. (Mr. Discount). The defendant firm is a broker-dealer in securities registered with the Commission since July 15, 1977, with its place of business located in Chicago, Illinois.

The complaint alleged that Mr. Discount was insolvent and that it had violated the financial responsibility (net capital), customer protection and books and records provisions of the Federal securities laws.

The Commission was joined in the action by the Securities Investor Protection Corporation (SIPC), which simultaneously filed an application with the court requesting the entry of a protective decree adjudicating that the customers of Mr. Discount are in need of protection under the provisions of the Securities Investor Protection Act of 1970 (SIPA) and that the court appoint a SIPC trustee to liquidate the defendant brokerage firm.

On the same date Federal Judge Prentice H. Marshall entered an order pursuant to the provisions of SIPA appointing Robert E. Ginsberg, Esq., De Paul University College of Law, 25 East Jackson Blvd., Chicago, Illinois 60604, as trustee to proceed with the liquidation of Mr. Discount. The defndant brokerage firm consented to the appointment of the trustee without admitting or denying the allegations contained in the SIPC application.

Litigation Release No. 9108/June 13, 1980

SEC v. *TELTRONICS SERVICES, INC., EDWARD BEAGAN, RANDOLPH PIECHOCKI AND ROBERT CHANDA*, 80 Civil 2472 (RJW) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on May 22, 1980 the Honorable Robert J. Ward, United States District Judge for the Southern District of New York, signed a Final Judgment of Permanent Injunction against Edward Beagan, a former officer and director of Teltronics Services, Inc. ("TSI"). Beagan was enjoined from violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder in connection with the purchase and sale of securities of TSI, or any other issuer. Beagan was also enjoined from aiding and abetting violations of the reporting provisions of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated thereunder in connection with TSI or any other issuer subject to the reporting provisions.

Beagan consented to the entry of the judgment without admitting or denying the allegations contained in the Commission's Complaint which was filed on May 2, 1980. The judgment was entered on May 23, 1980.

For further information, see Litigation Release No. 9082.

Litigation Release No. 9109/June 16, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MAXA CORPORATION* (United States District Court for the District of Columbia, Civil Action No. 80-804)

The Commission announced today that on June 12, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Maxa Corporation ("Maxa") of New York, New York, restraining and enjoining Maxa from failing to file timely periodic reports and ordering it to comply with certain undertakings. Maxa, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 13 separate occasions. The Commission's Complaint was filed on March 31, 1980.

The Complaint alleged that Maxa, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual and Quarterly Reports required to have been filed. Maxa has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9110/June 17, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HAROLD V. GLEASON, ET AL.*, 74 Civil 4557 (S.D.N.Y.) (DBB)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on March 14, 1980, a Final Judgment of Permanent Injunction was entered by consent of defendant Harold V. Gleason of Old Westbury, New York. The Order, signed by the Honorable Dudley B. Bonsal, United States District Judge for the Southern District of New York, enjoined defendant Gleason from further violating the antifraud and reporting provisions of the federal securities laws.

Gleason, formerly the Chairman of the Board of Franklin New York Corporation and Franklin National Bank, was convicted of violating several federal statutes including the federal securities laws in *United States of America* v. *Harold V. Gleason, et al.*, S 78 Cr. 522 (S.D.N.Y.) (TPG). He was sentenced to three years imprisonment. On December 19, 1979, the United States Court of Appeals for the Second Circuit affirmed his conviction. *United States* v. *Harold V. Gleason, et al.*, No. 79-1147 (2d Cir. 1979). On February 19, 1980, his petition for a writ of certiorari was denied by the United States Supreme Court. *Harold V. Gleason, et. al.* v. *United States*, (No. 79-1118, 1979 Term).

For further information, see Litigation Release Nos. 6551, 8495, 8678, and 9029.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6215-17	486
Securities Exchange Act	16914-37	491
Public Utility Holding Company Act	21633-42	516
Trust Indenture Act	572-73	527
Investment Company Act	11228-33	528
Investment Advisers Act	724	540
Litigation	9111-16	540
Securities Investor Protection Act	92	543

This listing covers releases issued from 6/20/80-6/26/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

JUL 15 1980

34-16924 Extension of the effective date of portions of the Commission's rule governing the Dissemination and display of market information.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16914	34-16918	34-16928
34-16915	34-16919	34-16929
34-16916	34-16926	34-16930
34-16917	34-16927	34-16936

OPINIONS

34-16934 **IRWIN SCHLOSS**

Where president of exchange member firm failed to exercise proper supervision over his firm's specialist activities, thereby permitting his firm to effect transactions in securities in which it specialized which were not reasonably necessary for the maintenance of fair and orderly markets in those securities, *held*, exchange's finding of violation *sustained* and sanction *affirmed*.

34-16935 **STEPHEN C. COKER**

Where officer of registered broker-dealer and registered investment

SE 1.29:

adviser participated in fraudulent activities, and shared responsibility for recordkeeping and net capital violations; and where officer had been enjoined from violating anti-fraud provisions and a SIPC trustee had been appointed for his broker-dealer firm, *held*, in public interest to bar officer from association with broker, dealer, or investment adviser.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6215/June 23, 1980

In the Matter of

NYEMASTER, GOODE, McLAUGHLIN, EMERY & O'BRIEN PARTNERSHIP EMPLOYEES PROFIT SHARING PLAN
Tenth Floor Hubbell Building
Des Moines, Iowa 50309

(18-75)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE ACT FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE NYEMASTER, GOODE, McLAUGHLIN, EMERY & O'BRIEN PARTNERSHIP EMPLOYEES PROFIT SHARING PLAN

NOTICE IS HEREBY GIVEN that the law firm of Nyemaster, Goode, McLaughlin, Emery & O'Brien (the "Applicant" or "Firm" hereinafter), an Iowa partnership, has by letter dated March 20, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for any participations or interests issued in connection with the Nyemaster, Goode, McLaughlin, Emery & O'Brien Partnership Employees Profit Sharing Plan ("Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. *INTRODUCTION*

The Plan covers all employees and partners, other than owner-employees as defined in Section 401(c)(3) of the Internal Revenue Code of 1954 as amended ("Code"), who have reached age 25, and completed 3 years of service. Participation in the Plan is automatic and each person becomes a Plan participant on July 1 or January 1 following his or her satisfaction of the eligibility requirements.

Applicant states that the Plan is operated exclusively for the benefit of Plan participants and their beneficiaries. Applicant states further that participation in the Plan ends upon a participant's termination of employment for whatever reason or upon his or her becoming an owner-employee of the Firm. There are presently 28 Plan participants.

Applicant represents that the Plan is a profit-sharing plan of the type commonly referred to as a "Keogh" plan, which covers persons, (in this case, certain partners of the Firm) who are "employees" within the meaning of Section 401(c)(1) of the Code. Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan, absent an order of the Commission.

In relevant part, Section 3(a)(2) of the Act provides that the Commission may exempt from the provisions of Section 5 of the Act any interests or participations issued in connection with the profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act.

II. *DESCRIPTION AND ADMINISTRATION OF THE PLAN*

Applicant states that the Plan was originally adopted on December 9, 1975, and made effective January 1, 1975. On March 14, 1978, the Plan was amended and restated in its entirety, effective January 1, 1978, to comply with final regulations issued under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA") and to make certain other changes in the operational format of the Plan. On July 11, 1978, the Internal Revenue Service

issued a favorable determination letter as to the qualified status of the restated Plan, and its related trust, under Sections 401(a) and 501(a) of the Code. On June 22, 1979, a First Amendment to the amended and restated Plan was adopted, the purpose of which was to comply with final regulations regarding "Hours of Service" and "Joint and Survivor Annuities" adopted by the Internal Revenue Service and Department of Labor.

The Plan is a profit-sharing plan, the assets of which are administered through a Trust Fund by at least five Trustees ("Trustees"), all of whom are appointed by the Applicant and serve at the Applicant's pleasure. Currently approximately one-half of the trust fund is invested under a Group Annuity Contract with Bankers Life Company, Des Moines, Iowa which consists of fixed income investments such as mortgages and bonds; and one-half under a Repurchase Agreement with Central National Bank and Trust Company, Des Moines, Iowa, which pays daily interest and is secured by long-term government securities.

Applicant states that the Plan is subject to the reporting, disclosure, participation, vesting, and fiduciary responsibility requirements of Title I of ERISA.

There are currently five Trustees, all of whom are partners of the Firm and Plan participants. The Trustees have the authority to control, manage and invest the assets of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager or with respect to a Plan asset subject to Employer, Participant or Advisory Committee direction of investment. Currently, no investment Manager has been appointed and there are no Plan assets subject to Employer or Advisory Committee direction of investment. However, the Plan provides that unless otherwise directed by a Plan participant, the Trustee will deposit all contributions by or on behalf of such participant under the Group Annuity Contract between the Trustee and Bankers Life Company, so long as it remains in effect.

The Plan has an Advisory Committee consisting of five members, all of whom are appointed by the Firm and serve at the Applicant's pleasure. The Advisory Committee has over-all responsibility and authority for the administration of the Plan, including the interpretation of Plan provisions, the establishment and enforcement of Plan rules and regulations, the determination and authorization of Plan benefits, and the payment of proper expenses of Plan administration. The Applicant is the Plan Administrator and has the responsibilities assigned by ERISA to the Administrator of an employee benefit plan.

Applicant states that all employer contributions to the Plan are made by the Firm out of its net profits. In addition, voluntary contributions by participants are permitted, but not required. Participant voluntary contributions to the Plan may be made at any time and in any amount or amounts which, in the aggregate for each plan year, do not exceed 10% of his or her compensation (which includes salary, bonuses, overtime payments, and, in the case of a partner, his or her distributive share of the Firm's net income) for that year. Catch-up voluntary contributions are permitted based upon plan years during which a participant failed to make the maximum allowable voluntary contribution.

Applicant states that an employer account is maintained under the Plan on behalf of each Plan participant, to which the Applicant's contributions to the Trust Fund on his or her behalf are credited. As of the close of each plan year, the Firm contributes to the Trust Fund, an amount equal to 4% of its current net profits plus such additional amount from its current net profits as the Firm may, from time to time, deem advisable; provided, however, in the absence of a determination, the Firm shall contribute an additional amount which, when added to 4% of its current net profits, will produce a maximum deductible contributioin on behalf of the partner who is not an owner-employee with the highest Earned Income during the taxable year. Each annual Applicant contribution is first allocated and credited to each participant's account in an amount equal to that percent of the Firm contribution which is in the same proportion that each participant's compensation in excess of $17,700 for the plan year bears to the total compensation in excess of $17,700 of all participants for the plan year; provided, however, the maximum amount of the Applicant's annual contribution allocated to the account of a participant for any plan year will not exceed 7% of his or her compensation in excess of $17,700 for that plan year. The balance, if any, of the Applicant's annual contribution in excess of the amount allocated as indicated above, is allocated to each Plan participant's account in the same proportion that the ratio of his or her compensation for the plan year

bears to the compensation of all participants for the plan year. Applicant states that its contributions are comingled in the Trust Fund, the earnings and losses of which are allocated proportionately to each employer account unless any participant has directed that all or any portion of his or her account balance be invested in a specific asset, in which event the earnings relating to that specific investment are allocated to the directing participant's account.

Applicant states that a voluntary account is maintained on behalf of each Plan participant to which his or her voluntary contributions, if any, to the Trust Fund, are credited. Voluntary contributions are comingled with other assets of the Plan and a participant's voluntary account shares proportionately in the earnings and losses of the Trust Fund unless, as described above, the participant directs otherwise. A participant is at all times 100% vested in his or her voluntary account in an amount not exceeding the less of (i) the aggregate of his or her voluntary contributions not previously withdrawn, or (ii) the balance in such account.

Applicant represents that it has provided and will continue to provide participants with adequate disclosure of all material facts prior to the making of voluntary contributions. Such disclosure is accomplished by the distribution of Summary Plan Descriptions, summaries of material modifications, if any, to the Plan and Summary Annual Reports which include a summary of the investment performance of the trust fund. Each participant is provided with an annual statement of his or her employee account, his or her vested interest therein, and his or her voluntary account.

Applicant also represents that it has not distributed, and does not intend to distribute any type of promotional material relating to the Plan (other than material required to be distributed by ERISA) and has not solicited and does not intend to solicit voluntary contributions.

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant suggests that Congress excepted interests and participations issued in connection with plans covering self-employed individuals from the express exemption provided by Section 3(a)(2) of the Act primarily out of concern over interests in comingled or collective Trust Funds which might be marketed by sponsoring financial institutions to self-employed persons unsophisticated in financial matters and that its Plan is not a master or prototype plan marketed to the public by a sponsoring financial institution. Applicant states that it is engaged in furnishing legal services of the type which necessarily involve financially sophisticated and complex matters, and for that reason, as well as the extensive administrative control over the Plan maintained by the Firm, the interests of the partners of the Firm who are plan participants, as well as the interests of all plan participants, are adequately protected.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interest or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 18, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication shall be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 18, 1980 unless the Commission thereafter orders a hearing upon request, or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices

or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6216/June 23, 1980

In the Matter of

MORRISON & FOERSTER RETIREMENT PLAN
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

(18-72)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE MORRISON & FOERSTER RETIREMENT PLAN

NOTICE IS HEREBY GIVEN that the law firm of Morrison & Foerster (the "Applicant" or the "Firm"), a California partnership has, by letter dated February 20, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with the Morrison & Foerster Retirement Plan (the "Plan"). All interested persons are referred to that document which is on file with the Commission for the facts and representations contained therein, which are summarized below.

I. *INTRODUCTION*

The plan covers only partners in the Firm. All partners enter the plan on the date they become partners. At the present time there are 58 participants in the Plan.

Applicant states that the Plan is of a type, commonly referred to as a "Keogh" or "H.R. 10" Plan, which covers persons (in this case the Firm's partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954 as amended ("Code"), and therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers. Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) is inapplicable to the interests in the Plan, absent an order of the Commission.

In relevant part, Section 3(a)(2) provides that the Commission by rules and regulations or order, may exempt from the provisions of Section 5 of the Act any interest or participations issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Plan has been determined by the United States Internal Revenue Service to be a qualified plan under Section 401(a) of the Code.

II. *DESCRIPTION AND ADMINISTRATION OF THE PLAN*

Administration of the Plan is in the following persons: the Management Committee of the Firm; the Benefits Committee appointed by the Management Committee of the Applicant (the "Plan Committee"); the Trustees of Trust A, all of whom are members of the Firm; and the Custodian, Crocker National Bank. The Management Committee has the duty and authority to appoint and remove trustees and members of the Plan Committee. The Plan Committee interprets the Plan, administers the Plan in separate accounts for each participant and makes decisions with respect to distribution of Plan funds within the terms of the Plan. The Trustees of Trust A have responsibility for the investment of the trust funds upon the instructions of the Plan Committee and instructions from an investment manager appointed by the Plan Committee. The current investment manager, Harris, Bretail & McEldowney, Inc., is registered under the Investment Advisers Act of 1940.

The Plan provides that for each Plan Year the

partners shall contribute an amount equal to six percent (6%) of the partner's annual compensation plus seven percent (7%) of the partner's annual compensation in excess of the Social Security taxable wage base for the year. In no event shall any contribution for a participating partner exceed $7,500 for any year or be made with respect to compensation in excess of $100,000 for a Plan Year. No contribution shall be made with respect to the aggregate compensation paid to or for any partner owning more than ten percent (10%) of either the capital or profits interest of the Firm for any Plan Year. (There are presently no partners in this category).

Each participant may make voluntary contributions to the Plan of an amount up to ten percent (10%) of his or her aggregate compensation for the Plan Year for which the contribution is made. Voluntary contributions may be withdrawn in whole or in part, but only at such times as the Plan Committee may prescribe. No part of any such withdrawals shall be from income while a member of the partnership.

Required contributions are invested by the Plan Committee in a fund designed to provide for relative safety of principal. The fund may consist of bank certificates of deposit, savings accounts, money market instruments, Treasury bills, insurance company contracts, a pooled fixed income fund such as the fixed income fund of the American Bar Retirement Association Master Partnership Trust, or similar investments. Voluntary contributions may be divided by the partner between the fixed income fund and an equity fund managed by the investment manager. All assets of the Trust are held by the Custodian.

The Applicant contends that if the Firm were a corporation, interests and participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Only because the partners are employees within the meaning of Section 401(c)(1) of the Code is registration under the Act required. The Applicant submits that the mere fact that the Firm conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

The Applicant further submits that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Rather, the intent of Congress is excluding from the exemption plans in which self-employed persons were participants was to prevent the sale without registration of interests or participations in comingled or collective Keogh funds offered by financial institutions to self-employed persons who lack the sophistication in the securities field to protect themselves and their employees. The Applicant argues that the Plan is distinguishable from such funds. The Applicant states that the Plan covers employees of a single firm and is not a uniform prototype plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons. The applicant argues that the Plan does not present the risks associated with the sale of interests or participations with which Congress was primarily concerned when it drafted Section 3(a)(2).

The Applicant further submits that the provision permitting the Commission to issue an order of exemption pursuant to Section 3(a)(2) of the Act was included in order to make available an exemption for partnership retirement plans such as the Firm's where the plan and the entity involved are comparable to corporate plans which are exempted by the same Section of the Act.

The Applicant states that the Firm is engaged in providing legal services which necessarily involve sophisticated and complex financial matters and, for that reason as well as the extensive administrative control over the Plan maintained by the Firm, is able to represent adequately its own interests and those of its partners. The Applicant represents that no solicitation of voluntary contributions has or will be made, although a simple notice has been supplied to all participants stating that any participant may make voluntary contributions.

The Firm does not request any exemption from the provisions of Section 17 of the Act, any other applicable antifraud provisions contained in the securities laws or any rules adopted pursuant thereto.

For all of the foregoing reasons, Applicant believes

that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issue, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication shall be addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 18, 1980 unless the Commission thereafter orders a hearing upon request, or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6217/June 24, 1980

In the Matter of

WILLKIE, FARR & GALLAGHER PENSION PLAN FOR PARTNERS AND ASSOCIATES
One Citicorp Center
153 East 53rd Street
New York, NY 10022

(18-73)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE WILLKIE, FARR & GALLAGHER PENSION PLAN FOR PARTNERS AND ASSOCIATES

Willkie, Farr & Gallagher, a law firm organized as a partnership under New York law, filed an application on February 29, 1980, for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Willkie, Farr & Gallagher Pension Plan for Partners and Associates ("Plan").

On May 29, 1980, a notice was issued (Securities Act Release No. 6213) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16914/June 20, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-15

The Chicago Board Options Exchange, Incorporated submitted on May 30, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") to provide for the termination within six months of leases of special (*i.e.*, former Midwest Stock Exchange options) memberships entered into after July 18, 1978.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 23, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16915/June 20, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-19)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on June 17, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change to further implement its puts expansion program.[1] During this phase, Amex intends to list and institute trading in ten new puts classes on securities underlying its non-multiply traded call options classes, as well as in puts classes on any underlying security on which Amex calls are multiply traded, if another options exchange also intends to list such puts.[2]

Interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-19.

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[1]Prior phases of Amex's puts expansion program, during which Amex added twenty new puts classes, were approved by the Commission on May 6 and 28, 1980, in Securities Exchange Act Release Nos. 16788 and 16851.

[2]Amex intends to implement this phase in two stages, with trading commencing in the first five non-multiply traded puts classes on June 27, 1980, followed by the remaining five classes on July 11, 1980.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof In the March 26, 1980 policy statement announcing the termination of the moratorium on the expansion of standardized options trading, the Commission stated that it perceives certain benefits with respect to the listing of both puts and calls on the same underlying security.[3] In the March 1980 policy statement the Commission also indicated that in the absence of significant operational or surveillance problems encountered by the options exchanges or difficulties experienced by member firms in handling current or anticipated trade volume, it anticipated giving expedited treatment to puts expansion rule proposals. No comments were received by the Commission concerning this aspect of the March 1980 policy statement. Amex has indicated that the prior phases of its puts expansion program have proceeded without any apparent adverse effect on the exchange's surveillance or operational capabilities or on member firm back office operations. Amex has also represented that its surveillance and operational capabilities and the back office capacity of its member firms are adequate to handle any increased volume that may result from the further implementation of its puts expansion program. The Commission has no information currently before it which is contrary to these representations.

[3]Securities Exchange Act Release No. 16710 (March 26, 1980) ("March 1980 policy statement).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16916/June 20, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-80-12

The Pacific Stock Exchange, Incorporated submitted on June 9, 1980, a proposed rule change under Rule 19b-4 to define combination orders and extend to such orders a limited exception to book priority and to clarify the definitions of spread orders and straddle orders.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 23, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent

amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16917/June 23, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-77-12 and SR-MSRB-79-4)

NOTICE OF WITHDRAWAL OF PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

The Municipal Securities Rulemaking Board (the "MSRB") submitted on September 20, 1977, a proposed rule change to MSRB rule D-8, which defines the term "bank dealer" for purposes of the MSRB's rules.[1] The proposed amendment would modify the current definition of "bank dealer" to exclude from MSRB regulation, except as otherwise provided by MSRB rule, the fiduciary activities of bank municipal securities dealers. The proposed amendment to rule D-8 was subsequently amended on June 30, 1978, to specify the fiduciary activities which would be excluded from the scope of MSRB regulation.[2] On May 24, 1979, the MSRB filed with the Commission under Rule 19b-4, 17 CFR 240.19b-4, proposed rule changes to modify MSRB rules D-11, G-13, and G-19.[3] The proposed amendments would modify the definition of "associated persons" in rule D-11, reorder subsections of rule G-13 without textual change, and modify rule G-19 with respect to suitability of recommendations concerning municipal securities.

The Commission received two comment letters on the proposed amendment to rule D-8, expressing differing views on the appropriateness of the proposal.[4] The Commission did not receive any comments on the proposed amendments to rules D-11, G-13, and G-19. By letter dated May 27, 1980, the MSRB advised the Commission that it wished to withdraw the proposed amendments to rules D-8 and D-11 from further consideration. In the letter, the MSRB stated that it no longer believes the proposals are necessary to clarify the focus of certain definitional rules. All written statements with respect to the proposed rule change to MSRB rule D-8 which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and were made available to the public at the Commission's public reference room.

The Commission has considered the above-mentioned letter from the MSRB as a request for consent to the withdrawal of the proposed amendments to MSRB rules D-8 and D-11. Accordingly, the proposed amendments to these rules in the reference submissions are withdrawn.

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[1]Notice of that filing was published in Securities Exchange Act Release No. 13987 (Sept. 22, 1977), 42 FR 49856 (1977). The proposed amendment to rule D-8 was originally filed as part of a series of rules referred to as the MSRB "fair practice" rules. The Commission approved the fair practice rules, with certain exceptions including proposed rule G-23 and the proposed amendment to rule D-8, in Securities Exchange Act Release Nos. 15247 and 15248 (Oct. 19, 1978), 43 FR 50525 (1978). The Commission approved proposed MSRB rule G-23, to establish standards of ethical conduct and certain other requirements applicable to municipal securities brokers and municipal securities dealers providing financial advisory services to issuers of municipal securities, in Securities Exchange Act Release No. 16630 (Mar. 6, 1980), 45 FR 16065 (1980).

[2]Notice of that filing was published in Securities Exchange Act Release No. 14943 (July 7, 1978), 43 FR 30379 (1978).

[3]Notice of that filing was published in Securities Exchange Act Release No. 15900 (June 6, 1979), 44 FR 33995 (1979).

[4]The Commission received no comments on the subsequent amendments to the proposal.

The Commission finds that the proposed amendments to MSRB rules G-13 and G-19 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the proposed rule changes to MSRB rules G-13 and G-19 mentioned above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16918/June 23, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-80-11

The Midwest Stock Exchange, Incorporated ("MSE") submitted on June 10, 1980, a proposed rule change under Rule 19b-4 to delete from its rules all references and rules pertaining to MSE's organization, operation and regulation of an options market, while retaining its rules applicable to the handling of orders and the conduct of accounts relating to options trading.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 23, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16919/June 24, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGES BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-1980-16

The Chicago Board Options Exchange, Incorporated submitted on June 9, 1980, proposed rules changes under Rule 19b-4 to modify certain participation requirements for market makers and to establish an exchange committee which is responsible for evaluation of the performance of market makers.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 30, 1980. In order to assist the Commission to determine whether to approve the proposed rules changes or institute proceedings to determine whether the proposed rules changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-1980-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes which are filed with the Commission, and of all written communications relating to the proposed rules changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16920/June 24, 1980

In the Matter of

WAGNER ELECTRIC CORPORATION

File No. 81-621

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Wagner Electric Corporation (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

It appeared to the Commission that the requested exemption would not be inconsistent with the public interest or the protection of investors, inasmuch as Applicant's only publicly-held securities, 6-7/8% Subordinated Debentures, are unconditionally guaranteed by Applicant's parent corporation, McGraw-Edison Company, and investors will, therefore, be primarily interested in the reports of McGraw-Edison Company.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16921/June 24, 1980

In the Matter of

TISHMAN LIQUIDATING CORPORATION

File No. 81-613

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Tishman Liquidating Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the provisions of Sections 13 and 15(d) of the 1934 Act.

As the result of a plan of liquidation adopted on November 7, 1977, the Applicant's only remaining asset is a liability reserve fund and there is no trading market in its securities. It appeared to the Commission that granting the requested exemption would not be inconsistent with the public interest or the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16922/June 24, 1980

In the Matter of

HARLEYSVILLE MUTUAL INSURANCE COMPANY

File No. 81-623

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until July 14, 1980 to request a hearing on an application by Harleysville Mutual Insurance Company ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting Applicant from the periodic reporting requirements of Sections 13 and 15(d) of that Act.

As the result of a determination to discontinue the offer and sale of insurance under Applicant's Insured Mutual Fund Value Redemption Program,

remaining participants in such plan no longer have any investment decision to make.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16923/June 24, 1980

In the Matter of

CONGENERIC CORPORATION

File No. 81-627

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until July 14, 1980 to request a hearing on an application by Congeneric Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Section 13 and 14 of the 1934 Act.

As the result of a plan of liquidation adopted on March 28, 1979, Applicant's remaining assets have been transferred to a liquidating trust as a liability reserve fund and there is virtually no trading activity in its securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16924/June 24, 1980

DISSEMINATION AND DISPLAY OF TRANSACTION REPORTS, LAST SALE DATA AND QUOTATION INFORMATION

ACTION: Rule amendment.

SUMMARY: In order to allow time for development of certain quotation processing facilities, the Commission extends the effective date of portions of its rule governing the dissemination and display of market information.

EFFECTIVE DATE: On publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt, Division of Market Regulation, Securities and Exchange Commission, Room 390, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2883.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Commission announced the adoption of Rule 11Ac1-2 (the "Rule") under the Securities Exchange Act of 1934, as amended (the "Act").[1] Among other things, the Rule requires that (1) vendors providing quotation information provide, at a minimum, either a best bid and offer, including market identifier and size ("BBO"), derived from quotations from all reporting market centers, including third market makers, or a montage of such quotations (the "BBO Requirement"); (2) vendors provide a consolidated last sale and quotation display by means of a stroke sequence involving either a fewer number of key strokes than is used to retrieve displays of individual market center information or by an equal number of key strokes if the transmit key to recall consolidated displays is more prominent (the "Key Stroke Requirement"); and (3) vendors provide a display of consolidated transaction information which contains, subject to limited exceptions, all categories of information available in individual market center displays (the "Equal Categories Requirement"). These requirements are due to be effective on October 5, 1980.

Subsequent to the adoption of the Rule, the Commission has received indications from a number of vendors that the costs which they would have to incur to comply with the BBO Requirement might be reduced if a central facility was developed which could calculate and disseminate the BBO to all vendors. The Commission understands that calculating the BBO, without the use of a central processor, would require storage by each vendor of all exchange and third market quotations and development of software to select and disseminate the BBO each time any quotation changes. Thus, a central processor may save vendors some storage, processing and communications costs. In addition, the Commission believes that the implementation of a central processor would enhance the usefulness of consolidated quotation displays provided by vendors by assuring that all vendors receive identical consolidated quotation information.

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[1]Securities Exchange Release No. 16590 (February 19, 1980), 45 FR 12391 ("Vendor Display Release").

In addition to problems and costs associated with a BBO, each of the vendors and the Commission have noted that the existence of systems which automatically generate quotation information from certain regional exchanges ("Autoquote Systems"), based on the quotation of the primary market, causes additional problems which should be resolved prior to the effective date of the Rule.[2] Most important of these problems is the length of time necessary to generate new quotations after receipt of a primary market quotation. The Commission understands that currently Autoquote Systems have reaction times varying from a few seconds to approximately sixty seconds. The result of this delay is the generation of up to four additional BBO calculations and messages (with resulting increased demands on vendor systems) and the possibility that investors inquiring for the BBO will be misled by a stale quotation from a regional exchange employing an Autoquote System.

The Commission understands that the self-regulatory organizations participating in the Consolidated Quotation Plan ("CQ Plan") and the Securities Industry Automation Corporation ("SIAC"), as CQ Plan Processor, are presently considering the feasibility of creating a central processor to calculate and disseminate the BBO. In addition, the Commission has been informed that both SIAC, at the request of the CQ Plan participants, and Quotron, as processor for the Autoquote Systems of three regional exchanges, are examining alternative ways to alleviate the problems caused by Autoquote Systems.

The Commission believes that the portions of the Rule regulating vendor displays should not become effective until there is assurance that any best bid and offer display which is made available is not misleading because of time lags in updating Autoquote bids and offers and until the exchange and the vendors have had an opportunity to explore appropriate methods of providing for more efficient and less costly methods of calculating the best bid and offer. Therefore, the Commission has determined to defer effectiveness of the BBO, Key Stroke and Equal Categories Requirements to January 3, 1981 to permit vendors, the self-regulatory organizations participating in the CQ Plan and SIAC, as CQ Plan Processor, the time necessary to develop a new central facility to calculate and disseminate the best bid and offer efficiently and accurately and for the regional exchanges to solve certain problems inherent in the automatic quotation systems employed by those exchanges. However, the Commission is concerned by delays to date in addressing both these problem areas notwithstanding their early identification by the Commission and subsequent informal efforts by the staff to speed their resolution.[3] Accordingly, the Commission requests that the CQ Plan participants submit to the Commission no later than September 1, 1980, a joint written report regarding their willingness to develop a BBO central processor and the steps the regional exchanges intend to take to alleviate the problems with Autoquote Systems. The Commission wishes to emphasize that the report should include a detailed description of the alternatives (and associated costs) considered and a timetable for implementation of the alternatives chosen.

For the reasons stated above and pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Commission finds for good cause that notice and public procedure on this amendment to the Rule are impracticable, unnecessary and contrary to the public interest and that there is good cause for making this amendment effective immediately. The Commission also finds that adoption of this amendment to the Rule does not impose any burdens on competition that are not necessary or appropriate in furtherance of the purpose of the Act.

The Securities and Exchange Commission, acting pursuant to the Act, and particularly Sections 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by Sections 2, 3, 4, 11, 14, and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. §§78b, 78c, 78f, 78i, 78j, 78o, 78g and 78w); Section 15A, as added by Section 1, Pub. L. No. 75-219, 52 Stat. 1070, as amended by Section 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. §78-3); Section 11A, as added by Section 7, Pub. L. No. 94-29, 89 Stat. 111 (15 U.S.C. §78k-1), hereby amends Paragraph (h) of Section 240.11Ac1-2 of Title 17 of the Code of Federal Regulations to postpone to

[2]Vendor Display Release, supra note 1, at note 103, 45 FR 12391.

[3]See Vendor Display Release, *supra* note *2* at note 103, 45 FR 12391 and Letters from George T. Simon, Assistant Director, to each of the CQ Plan Participants and vendors dated February 20, 1980 in Public File No. S7-759.

January 3, 1981, the effective date of paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) of said Section 240.11Ac1-2. The text of the amendment is as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.11Ac1-2 Display of transaction reports, last sale data and quotation information.

* * * * *

(h) *Effective date.* The effective date of this section shall be April 5, 1980, except for paragraph (c)(2)(vi), which shall become effective on July 5, 1980, and paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) which shall become effective on January 3, 1981.

By the Commission.

George A. Fitzsimmons
Secretary

June 24, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16925/June 24, 1980

Admin. Proc. File No. 3-5933

In the Matter of

INVESTMENT RESEARCH GROUP, INC.
(File No. 801-09495)
22634 Second St., Suite 200
Hayward, California 94541

CALIFORNIA CAPITAL PLANNING SERVICES, INC.
22634 Second St., Suite 200
Hayward, California 94541

N. WILLIAM VERTREES
18547 Carleton Ave.
Castro Valley, California 94546

K. WAYNE RICE
165 Havenhill Court
Danville, California 94526

KARL J. GERLACH
2566 Greenleaves Ct.
Castro Valley, California 94546

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these proceedings ordered today pursuant to the Investment Advisers Act of 1940 ("Advisers Act"), respondents Investment Research Group, Inc. ("IRG"), California Capital Planning Services, Inc. ("Cal Cap"), N. William Vertrees ("Vertrees"), K. Wayne Rice ("Rice"), and Karl J. Gerlach ("Gerlach") have submitted Offers of Settlement which the Commission has determined to accept. Solely for the purposes of settling these proceedings and without admitting or denying the findings herein, IRG, Cal Cap, Vertrees, Rice, and Gerlach consent to the findings and sanctions set forth below.

On the basis of the Order for Proceedings and the Offers of Settlement it is found that IRG, Cal Cap, Vertrees, Rice, and Gerlach willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5] and Section 206 of the Advisers Act.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, effective at the opening of business on the first Monday after the date of this Order:

1. That respondents IRG and Cal Cap are suspended for a period of six months from offering or otherwise soliciting the purchase of interests in any limited partnership in which IRG and Cal Cap, or any of their affiliates, are general partner, provided that this suspension shall not apply to any limited partnership offering commenced prior to the effective date of this Order, or to any supplemental offering for a limited partnership formed prior to such effective date;

2. That respondent Vertrees is suspended for a period of three months from soliciting, advising, or otherwise counseling persons who are not clients of respondent Investment Research Group, Inc. at the date of suspension, such suspension to commence

upon the expiration of the three-month period within which respondent Karl J. Gerlach is suspended from association with any investment adviser;

3. That respondent Rice is:

(a) suspended for a period of six months from association with any investment adviser, provided that such suspension shall not preclude Rice from responding to unsolicited inquiries from a successor investment adviser on a non-compensatory basis concerning clients acquired prior to the effective date of this Order; and

(b) suspended for a period of six months from the management of any limited partnership in which respondents Investment Research Group, Inc. or California Capital Planning Services, Inc., or any of their affiliates, are general partner, provided that such suspension shall not preclude Rice from responding to unsolicited inquiries on a non-compensatory basis concerning the management of such limited partnerships; and

4. That respondent Gerlach is suspended for a period of three months from association with any investment adviser, provided that such suspension shall not preclude Gerlach from responding to unsolicited inquiries from a successor investment adviser on a non-compensatory basis concerning clients acquired prior to the effective date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16926/June 24, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INCORPORATED
86 Trinity Place
New York, NY 10006

(SR-AMEX-77-16)

PACIFIC STOCK EXCHANGE, INCORPORATED
618 South Spring Street
Los Angeles, CA 90014

(SR-PSE-77-28)

ORDER APPROVING PROPOSED RULE CHANGES

On June 24, 1977 and September 16, 1977, the American and Pacific Stock Exchanges, respectively, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes which will amend their "reportable position requirements," changing the present reporting threshold from 100 contracts of the same option class to 200 contracts on the same side of the market in the same underlying securities. The two filings are substantively identical.

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of Commission Releases (Securities Exchange Act Releases No. 34-14025, October 4, 1977 (Amex) and 34-14024, October 4, 1977 (PSE)) and by publication in the *Federal Register* (42 F.R. 37262, July 20, 1977 (Amex) and 42 F.R. 54971, October 12, 1977 (PSE)). All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16927/June 24, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INC.
LaSalle at Jackson
Chicago, Ill. 60604

(SR-CBOE-77-17)

PHILADELPHIA STOCK EXCHANGE, INC.
17th & Exchange Place
Philadelpia, PA 19103

(SR-PHLX-80-17)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on May 11, 1979, the Chicago Board Options Exchange, Incorporated (CBOE) filed with the Commission copies of an amendment to a proposed rule change which would amend its "reportable position requirement," changing the present reporting threshold from 100 contracts of the same option class to 200 contracts on the same side of the market in the same underlying security.[1] Notice is also given that on June 20, 1980, the Philadelphia Stock Exchange, Incorporated (Phlx) filed a substantively identical proposed rule change, raising its reporting threshold from 100 contracts of the same options class to 200 contracts on the same side of the market for the same underlying security.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D..C. 20549. Reference should be made to File Nos. SR-CBOE-77-17 and SR-PHLX-80-17.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, in that the original proposed rule change of the CBOE was previously noticed and this amendment merely makes the CBOE filing consistent with the proposed rule changes of the other options exchanges, which have been previously noticed and which are also being approved today.[2] The Phlx filing is being similarly treated because it also is in substance identical to the proposed rule changes of the other options exchanges. As a result of these rule changes, the same reporting requirements will apply regardless of the exchange on which an option is traded, and the Commission desires this change to occur contemporaneously. Accelerated approval of the CBOE and Phlx rule changes will permit implementation by all four options exchanges at the same time, without detriment to any party or the investing public.

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[1]The proposed CBOE rule change was originally filed on September 12, 1977, and it would have raised the threshold to 400 contracts. *See*, Securities Exchange Act Release No. 14023, October 4, 1977.

[2]*See*, Release No. 16926, June 24, 1980.

best copy available

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and they thereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16928/June 24, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-3)

ORDER APPROVING PROPOSED RULE CHANGE

On April 10, 1980, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend PSE Rule IV, Section 64 to clarify the prohibition against floor brokers' use of discretion and to limit marketmakers' exercise of discretion to accounts in which they have a direct interest. Additionally, the proposed rule change will adopt new Options Floor Procedures Advices (1) to interpret the phrase "direct interest in an account" in Rule VI, Section 64, (2) to delineate the responsibility of floor brokers with respect to orders that "print through," (3) to clarify that marketmakers may not effect opening transactions in their marketmaker accounts from off the floor of the Exchange, and (4) to explain the term "marking" and to inform members that "marking" is considered by the PSE to be a serious violation of the PSE rules. Finally, the proposed rule change will amend a current Options Floor Procedure Advice to extend to all marketmakers supplemental appointments to all securities admitted to trading on the PSE options floor.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16803, May 12, 1980) and by publication in the *Federal Register* (45 FR 33755, May 20, 1980). No written statements with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16929/June 24, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, MA 02109

(SR-BSE-80-2)

ORDER APPROVING PROPOSED RULE CHANGE

On April 14, 1980, the Boston Stock Exchange, Inc. ("BSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act"), and Rule 19b-4 thereunder, copies of a proposed rule change to amend Chapter XII-A of its rules, concerning odd-lot dealers in securities, the primary market for which is on another market. The proposed rule change would require odd-lot orders to be filled on the basis of the last reported round-lot transaction, regular way, on the primary market and would eliminate the current requirement that specialists wait two minutes after an odd-lot order is received before executing it on the basis of the next round-lot transaction. The

proposed rule also would state that specialists may charge a reasonable differential, if any, and such differentials would be specifically prohibited on odd-lot market orders received before the opening of trading for execution at the opening.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16815, May 16, 1980) and by publication in the *Federal Register* (45 FR 34489, May 22, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

One comment was received. The commentator objected to approval of the proposed rule change until the BSE establishes a book entry system that is interfaced with other exchanges, due to the high clearing costs presently associated with executing odd-lot transactions on the BSE. The Commission understands that the BSE has begun implementing a book entry clearing system which should be in place by September 1980. As a result, the higher clearing costs experienced on the BSE should be reduced in the future.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(5), and 11A of the Act, and the rules and regulations thereunder, in that it would facilitate implementation of an effective and uniform method for the execution of odd-lots, thereby protecting investors and the public and providing a means of determing the accuracy of executions for surveillance purposes.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16930/June 25, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE STOCK CLEARING CORPORATION OF PHILADELPHIA

(File No. SR-SCCP-80-3)

The Stock Clearing Corporation of Philadelphia (SCCP) submitted on June 23, 1980, a proposed rule change establishing a fee of $.10 per line item for pledges to a SCCP margin account from positions in a participant's Philadelphia Depository Trust Company account.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 30, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-SCCP-80-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market

Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16931/June 25, 1980

A notice has been issued giving interested persons until July 17, 1980 to comment on the *Boston Stock Exchange's* applications for unlisted trading privileges in 13 issues which are listed and registered on other national securities exchanges.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16932/June 25, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($2 Par Value) of INTERCONTINENTAL DIVERSIFIED CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16933/June 25, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the 10.52% Series, Cumulative Preferred Stock ($100 Par Value) of COLUMBUS & SOUTHERN OHIO ELECTRIC COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16934/June 26, 1980

Admin. Proc. File No. 3-5728

In the Matter of the Application of

IRWIN SCHLOSS
One Whitehall Street
New York, New York

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NEW YORK STOCK EXCHANGE, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE—REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Exchange Rules

Where president of exchange member firm failed to exercise proper supervision over his firm's specialist activities, thereby permitting his firm to effect transactions in securities in which it specialized which were not reasonably necessary for the maintenance of fair and orderly markets in those securities, *held*, exchange's finding of violation *sustained*, and sanction *affirmed*.

APPEARANCES:

Marvin Schwartz and *Michael Scher*, of Sullivan and Cromwell, and *Morton L. Kimmelman* and *David Warmflash*, of Kimmelman, Sexter & Sobel, for Irwin Schloss.

George Brunelle and *Richard M. Drew*, for the New York Stock Exchange, Inc.

I.

Irwin Schloss, a member of the New York Stock Exchange, Inc. ("NYSE") and president of Marcus, Schloss & Co., Inc. ("MSC"), a NYSE member firm, appeals from disciplinary action taken against him by the Exchange. From 1971 through 1974, MSC was the NYSE specialist in the securities of APL Corporation.[1] Three APL issues were listed on the Exchange: its common stock, and two series of convertible preferred, Series B and Series C. The NYSE found that Schloss, as chief executive officer of MSC,[2] failed to exercise proper supervision and

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[1]Only Exchange members may register as specialists. All of the Exchange members affiliated with MSC were registered with the NYSE as specialists in APL, and collectively constituted the "specialist unit."

[2]Schloss also owned a 36% interest in MSC.

control over MSC's specialist activities with a view to preventing violations of Exchange Rule 104.10(3)[3], thereby permitting MSC to effect transactions in both series of APL preferred which were not reasonably necessary for the maintenance of fair and orderly markets in those securities.[4] It suspended Schloss for one year from membership, allied membership, approved person status, and employment in any capacity with any NYSE member or member organization. Our findings are based on an independent review of the record.

II.

Exchange Rule 342 obligates each member organization to designate a principal executive officer to assume overall responsibility for supervision of the organization and compliance with securities laws and regulations. The rule authorizes that officer to delegate responsibility for each business activity to a qualified principal, provided that appropriate procedures are established to determine whether the delegated responsibility is being properly exercised.

Schloss admits that, during the relevant period, he was MSC's principal executive officer. He asserts, however, that in September 1973 he delegated responsibility for the supervision of floor operations to Paul Ross, another MSC officer and NYSE member, and compliance responsibility to Paul Zuckerberg, a third MSC officer.[5]

We have repeatedly held that, even though the president of a broker-dealer firm reasonably delegates authority over a particular area of his firm's business, he is not relieved of responsibility if he is aware or has reason to be aware of improper conduct.[6] The Exchange found that, although Schloss was aware of trading irregularities in APL preferred during the period November 13-15, 1974, he failed to take corrective action. To place the events of those three days in proper perspective, we must first examine the prior trading in APL common.

III.

On September 23, 1974, APL announced a tender offer, through October 23, for 500,000 shares of its common stock at a price of 6-1/2, the stock having previously closed at 4-3/8. At that time, MSC held over 10% of the outstanding shares of each of the three APL issues in which it was the specialist. MSC had previously been advised by the Exchange to reduce its APL positions. However, on the day after APL announced its offer, Schloss told Harold Schwartz, APL's chairman, that MSC, would not tender any of its APL common because it felt that the offering price was too low. Although APL succeeded in obtaining some 400,000 shares as a result of its offer, MSC increased its holdings of APL common during October to a total of 174,600 shares, or 16% of APL's outstanding common stock.[7]

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[3]Rule 104.10(3) provides in pertinent part:

"No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, . . .unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market. . . .

"Transactions on the Exchange for his own account effected by a member acting as specialist must constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth, and to the minimizing of the effects of temporary disparity between supply and demand, immediate or reasonably to be anticipated. Transactions not part of such a course of dealings. . .are not to be effected." 2 NYSE Guide para 2104, pp. 2703-04.

[4]The Exchange also found that Schloss failed to exercise proper supervision over MSC by permitting it to acquire and retain over 10% of each of the three APL issues in which MSC specialized, in violation of Subsection .10 of Exchange Rule 460. But the record indicates that Subsection .10 was never validly adopted as a rule by the Exchange's Board of Directors. We accordingly set aside the Exchange's findings of violation in that regard.

[5]According to Schloss, Zuckerberg's duties included the obligation to review, follow up, and report to Schloss what was occurring on the floor.

[6]See, e.g., *Steven C. Pruette*, Securities Exchange Act Release No. 14359 (January 9, 1978), 13 SEC Docket 1341, 1343-44.

[7]MSC's records for the tender offer period show that it purchased 12,500 shares in 23 separate transactions, mostly at 6-1/2. In the same period, it sold only 1,000 shares in two transactions, the price of the last sale being 6-7/8. On October 23, the day the tender offer expired, APL common closed at 6-3/4.

Before the tender offer expired, Schloss suggested to an investment adviser friend, James Harpel, that he "ought to look at" APL because it was "his kind of stock." On October 23, Harpel instructed his broker to buy 5,000 shares of APL common "at the market, not held,"[8] with special instructions to "give the order to Irwin Schloss and tell him it's for Jimmy."[9] The order was partially executed the next day for 1,300 shares at 7. The floor order ticket of Harpel's broker, found in MSC's records, had 5,000 crossed out and 3,700 written below it. The ticket bore the notation "nh."[10]

Schloss admitted that, in early November, he was aware that Harpel's brcker was buying APL common. In fact, Harpel explicitly told Schloss that he was buying APL and that Schloss "should know it because the order was directed to [him]."[11] Also in early November, MSC directed Schloss actively to solicit a buyer for its APL holdings.[12] Schloss told potential buyers that he wanted between 8-1/2 and 10 for MSC's APL common.[13]

On either November 6 or 7, Schloss contacted Schwartz and told him that MSC was attempting to sell its APL common and had recently rejected a bid of 8-1/2.[14] On the morning of November 11, while Schloss was on the floor, the stock rose 7/8 of a point to 8-5/8 within a 2-hour period, solely on the basis of purchase orders from Harpel's broker.[15] As soon as the price rose to 8-5/8, Schloss left the floor to call Schwartz and renew his offer to sell. After being advised that the current market was 8-5/8, Schwartz told Schloss that if MSC offered its block below the last sale price, APL's broker would purchase it. Within nine minutes of Harpel's last purchase, APL bought substantially all of MSC's APL common for 8-1/2.

We now turn to the events of November 13-15.

IV.

The Exchange found that, during the three-day period November 13-15, 1974, MSC effected transactions as specialist for its own account which were not reasonably necessary to maintain a fair and orderly market. Exchange Rule 104 provides that "the maintenance of a fair and orderly market implies the maintenance of price continuity with

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[8]Such an order gives the broker discretion with respect to the price and time of execution. Once accepted, a broker can split the execution of the order into as many parts and for as many shares at one time as he deems appropriate. A specialist is prohibited from accepting an order permitting him to use such discretion in execution. NYSE Rule 123.44, 2 NYSE Guide para 2123A.44, p. 2737-4.

[9]NYSE Rule 113(b) prohibits orders given to a specialist, except those from members of that specialist's organization or their families, from indicating in any way the accounts for which they are entered. 2 NYSE Guide para 2113, p. 2720.

[10]See n. 8, *supra*.

[11]On October 24, the day of Harpel's first purchase, the market price of APL common rose to 7-1/2. During the remainder of the week, the price declined to 7-1/8, rising to 7-1/2 on November 1. It fluctuated around the 7-1/2 level until November 8, when MSC sold 600 shares at 8.

[12]Schloss testified that MSC was concerned about the regulatory implications of holding more than 10% of APL's securities, the possibility that APL might seek to delist its stocks, and the effect that such a delisting would have on the value of MSC's holdings.

[13]APL was then trading between 7-1/4 and 7-1/2.

[14]APL common closed at 7-1/2 on November 7. Schloss admitted that Schwartz, who he knew was interested in purchasing more APL shares, possibly felt that "I was casting bread on the water to see if he would rise to the bait."

[15]The broker testified that an order to purchase 6,500 shares for Harpel "at the market, not held" was forwarded to the floor on the morning of November 11. In fact, he testified that all of Harpel's orders in the common and preferreds were forwarded "the same way," i.e., "at the market, not held." APL common had closed at 8 on Friday, November 8. At 10:05 on the morning of November 11, MSC executed a 100 share buy order for Harpel at 7-3/4. One hour later, it executed another Harpel buy order at 8 for 500 shares. Forty minutes later, a third Harpel buy order was executed at 8-1/4 for only 100 shares. Five minutes later, a fourth Harpel order, this time for 500 shares, was executed at 8-1/2. A final Harpel order, for 200 shares, was executed just three minutes later at 8-5/8. Thus, on five orders totaling only 1,400 shares, MSC allowed the market to rise 7/8 of a point.

reasonable depth."[16] During the three days in question the market price of the Series B preferred rose 2-7/8 (from 6-3/4 to 9-5/8) on the basis of only nine transactions, none of which exceeded 300 shares, while the price of the Series C rose 3 points (from 9-5/8 to 12-5/8) in seven transactions, the largest of which involved only 500 shares. Significantly, almost every rise in price occurred in a transaction in which MSC was selling for its own account, setting the prices at which those trades were executed. Moreover, the purchaser in most of the transactions was Harpel, whose orders had been entered "at the market, not held."[17] In addition, except for the last price rise in each series, the market prices in both preferreds were not rising in minimum increments of 1/8 of a point, but 1/4 of a point or higher in each transaction, sometimes in transactions involving only 100 shares. Clearly, as illustrated by the following table, the pattern of trading did not demonstrate "price continuity with reasonable depth."[18]

Not only was Schloss present on the Exchange floor on November 14 and 15, but he knew that Harpel's broker was buying the preferreds. Schloss admitted that "they mentioned to me that it was his order that was moving the stock up. And Mr. Ross had spoken to me about the fact that he [Harpel] was our buyer

APL SERIES B PREFERRED

Date	Time	Volume	Price	Increase Over Last Sale	Buyer	Seller
11/11/74	Prev. close	300	6-3/4			
11/13/74	10:48 am	200	7-1/2	+ 3/4	Harpel	MSC
11/13/74	10:54 am	300	7-3/4	+ 1/4	Harpel	MSC
11/13/74	11:45 am	200	8	+ 1/4	Harpel	MSC
11/14/74	10:05 am	300	8-1/2	+ 1/2	Harpel	MSC
11/14/74	11:57 am	100	8-3/4	+ 1/4	Other[19]	MSC
11/15/74	10:07 am	200	8-3/4	0	Harpel	Other
11/15/74	10:57 am	300	9	+ 1/4	Harpel	Other (100) MSC (200)
11/15/74	11:26 am	100	9-1/2	+ 1/2	Other	Other
11/15/74	11:30 am	200	9-5/8	+ 1/8	Other	MSC

APL SERIES C PREFERRED

11/12/74	Prev. close	100	9-5/8			
11/13/74	10:53 am	200	10-1/4	+ 5/8	Harpel	MSC
11/13/74	10:57 am	200	10-1/2	+ 1/4	Harpel	MSC
11/13/74	11:46 am	500	11	+ 1/2	Harpel	MSC
11/14/74	12:05 pm	500	11-1/2	+ 1/2	Harpel	MSC
11/15/74	10:10 am	300	12	+ 1/2	Harpel	MSC
11/15/74	11:28 am	100	12-1/2	+ 1/2	Other	MSC
11/15/74	11:30 am	200	12-5/8	+ 1/8	Other	MSC

[16]Rule 104.10(1). "Continuity" means that the price of each transaction in a given stock should bear a close relationship to the preceding transaction. "Depth" means that the price of the stock should not change without reasonable volume. In other words, the price of a stock should not move in successive eighths or more on very small volume. See Wolfson, Phillips & Russo, *Regulation of Brokers, Dealers and Securities Markets*, para 11.03, pp. 11-7, 11-9 - 11-11 (1977).

[17]See n. 15, *supra*.

[18]Wolfson, Phillips & Russo, *supra*, at p. 11-10, gives the following illustration:

"An example of good continuity is 200 shares at $40; 300 shares at $40; 300 shares at $40-1/8; 400 shares at $40-1/8; 300 at $40-1/8. Poor continuity is illustrated by 200 shares at $40; 300 shares at $40-1/2; 300 shares at $40-3/4, 400 shares at $40; 300 shares at $41. Continuity without depth is reflected in the following example: 100 shares at $39-3/4; 100 shares at $39-7/8; 100 shares at $40; 100 shares at $40-1/8; 100 shares at $40-1/4; 100 shares at $40-3/8; 100 shares at $40-1/2; 100 shares at $40-5/8; 100 shares at $40-3/4. Here the price moved in eighths, in what might be termed reasonable continuity, but there was no depth. . . ."

Ross testified, "I think if you single them [the trades in the Series B and Series C preferreds] out and look at the raw numbers, you would have to say that was an awful job. I mean, the man who is making this market. . .did not make a good market." When asked if the Series C market was the worst he had seen in the last 10 years, John Lesniewski, Director of the NYSE's Special Surveillance and Specialists Operation Area in 1974 and a witness for Schloss, stated, ". . .I probably would feel that [the market in the Series C] was one of the worst, if not the worst. C was a little worse than the B, so I would probably have to answer yes, probably]the Series C preferred market] is one of the worst I have seen in recent years, ten years or whatever you say."

[19]The term "other" is used to designate a buyer or seller other than MSC or Harpel.

and we were the only seller." But, despite his knowledge of Harpel's role in the rapid rise in the price of APL common, Schloss made no effort to investigate. He testified, "I really had no interest in the preferreds. . .I had no interest in APL after I sold my common." However, as noted below, the record shows the contrary.

On the morning of November 15, with the price of each series continuing to rise, Schloss made two important telephone calls, one to Harpel and one to Schwartz. When Ross informed Schloss that the two series had reached the levels at which Schloss had previously stated he would sell, Schloss left the floor and called Harpel. He told Harpel that he planned to offer MSC's holdings in both series to APL in a manner similar to MSC's sale of the common and asked Harpel if he also wanted to sell his preferred holdings to APL. When questioned as to why he only called Harpel, Schloss stated that Harpel "was the only buyer." Thus it is clear that Schloss knew that Harpel's purchase order, which were executed at prices set by MSC,[20] were chiefly responsible for the rise in price of the preferreds.

After receiving an affirmative response from Harpel, Schloss called Schwartz to ask if APL wished to buy MSC's holdings of the APL preferreds at 1/8 of a point below the last sale.[21] When Schwartz agreed, Schloss returned to the floor and directed Ross to offer MSC's entire preferred holdings, together with those of Harpel, at the prices APL had agreed to pay. Within minutes, Harpel's broker put in the necessary orders to sell, and APL's broker the necessary orders to buy. At 11:38 a.m., APL purchased 22,900 shares of the Series B preferred at a price of 9-1/2.[22] At 11:39 a.m., it purchased 19,000 shares of the Series C at a price of 12-1/2.[23]

Particularly in light of the prior trading in APL common, in which Harpel played so prominent a role, we think it clear that Schloss was either fully aware of the trading irregularities in the APL preferreds during the period in question or, at the least, sufficiently alerted to the necessity of making an immediate investigation. However, instead of doing so, he was content to stand by and reap the resulting benefits for MSC and his friend Harpel.

We accordingly affirm the Exchange's finding of violation.

V.

Schloss contends that the NYSE's hearing procedures violated due process. He argues that because those procedures required that a NYSE officer or employee selected by the Exchange's Board of Directors serve as chairman of the hearing panel, the chairman in this proceeding may well have been biased. He further asserts that, if permitted, he would have shown that the chairman, who had been a NYSE staff attorney for several years, had worked on other cases with the staff attorneys prosecuting this case, and that no NYSE rule forbids communication between a hearing officer and other members of the NYSE staff concerning the subject matter of a pending hearing. Finally, he claims that, at the hearing, the panel improperly denied his request to question its members concerning their interest or bias.[24]

Schloss's contentions are without merit. The mere fact that the chairman of the hearing panel was a NYSE employee and a former staff attorney was not a

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[20]MSC was the seller in every trade of Series C, and in almost every trade of Series B which involved a price rise.

[21]We note that the last sale prices, set by MSC, raised the price of each of the preferreds exactly 1/8, the lowest increments during the three-day period in question.

[22]Harpel sold 1,500 of these shares.

[23]Harpel sold 1,700 of these shares.

[24]Citing *Collins Securities Corp.* v. *S.E.C.*, 526 F.2d 820 (C.A.D.C., 1977), Schloss also contends that the Exchange was required to dismiss the charges against him unless they were supported by clear and convincing evidence. However, although the NYSE rejected the *Collins* standard, it stated that its conclusion would have been the same even if it had applied that standard. Moreover, even apart from the question of whether *Collins* applies to NYSE proceedings, the clear and convincing standard is only applicable to cases of fraud. *Whitney* v. *S.E.C.*, 604 F.2d 676 (C.A.D.C., 1979). This proceeding does not involve any charges of fraud. In any event, we also find the evidence against Schloss clear and convincing.

sufficient basis to disqualify him for bias.[25] Schloss does not contend, nor does the record show, that the chairman participated in *this* case as a staff attorney. And there is no evidence to support Schloss's claims concerning the possible bias of the other panel members or improper communications between the panel chairman and the NYSE staff.

Moreover, Schloss does not challenge the Exchange's representation that, prior to the hearing before the panel, the NYSE's Hearing Board screened each prospective panelist, offered Schloss and his counsel the opportunity to object to any panelist whom they thought might be biased, and honored all of Schloss's objections. In any event, Schloss has not been prejudiced since the panel's decision has been accorded *de novo* review both by the NYSE's Board of Directors and by this Commission.[26]

VI.

Schloss argues that the one-year suspension imposed by the Exchange is excessive and oppressive.[27] He asserts that it is far too severe in light of the nature of his alleged violation, and the sanctions imposed in other cases for similar violations.[28]

We cannot agree. Schloss's deficient supervision cannot be treated as an insignificant oversight. The obligation to maintain fair and orderly markets goes to the very heat of the specialist's responsibility. Yet, although Schloss was clearly alerted to the necessity of investigating his firm's trading in the APL preferreds, he failed to take any action.

As a specialist on the largest exchange in the nation, Schloss occupies a position charged with maintaining the highest standards of fair dealing.[29] The record clearly shows that Schloss failed to meet the responsibilities imposed on him. Instead, he permitted a pattern of trading to occur that was in direct conflict with the basic obligations of a specialist. Under the circumstances, we are unable to find the sanction assessed by the NYSE excessive or oppressive.[30]

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and FRIEDMAN); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

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[25]Cf. *Villani* v. *New York Stock Exchange, Inc.*, 348 F. Supp. 1185, 1190 n. 3, *aff'd sub nom. Sloan* v. *New York Stock Exchange*, 489 F.2d 1 (C.A. 2, 1973).

[26]See *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855; *Shultz* v. *S.E.C.*, 614 F.2d 561, 568 (C.A. 7, 1980).

[27]As noted earlier, we have set aside one of the two violations found by the NYSE. See n. 4, *supra*. However, the Exchange imposed a one-year suspension for *each* violation, with the suspensions to run concurrently.

[28]We have repeatedly held that the remedial action appropriate in the public interest depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings. See, e.g., *Hinkle Northwest, Inc.*, Securities Exchange Act Release 15338 (November 18, 1978), 16 SEC Docket 173, 177.

[29]"It has long been recognized that the unique position of the specialist in the center of the exchange markets carries with it correlative responsibility. The specialist is permitted and even expected to trade for his own account and risk in the securities in which he is registered as specialist. He also functions as a broker executing orders entrusted to him by other brokers on behalf of their customers in the securities in which he specializes. Thus, he is in a position of trust and confidence with his customers and obligated within the terms of his agency to the strict standards of loyalty, disclosure and fair dealing required of fiduciaries." *Re, Re & Sagarese*, 41 S.E.C. 230, 231 (1962).

[30]We note that, in 1961, the NYSE fined Schloss $5,000 and cancelled his registration as a specialist in another stock because Schloss held an option in that stock.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16934/June 26, 1980

Admin. Proc. File No. 3-5728

In the Matter of the Application of

IRWIN SCHLOSS
One Whitehall Street
New York, New York

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NEW YORK STOCK EXCHANGE, INC.

ORDER AFFIRMING DISCIPLINARY SANCTION IMPOSED BY NATIONAL SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the one-year suspension from membership, allied membership, approved person status, and employment in any capacity with a member or member organization imposed by the New York Stock Exchange, Inc. on Irwin Schloss be, and it hereby is, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16935/June 26, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 724/June 26, 1980

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 92/June 26, 1980

Admin. Proc. File No. 3-5439

In the Matter of

STEPHEN C. COKER
932 North Shem Drive
Mount Pleasant, South Carolina

OPINION OF THE COMMISSION

BROKER-DEALER AND INVESTMENT ADVISER PROCEEDINGS

Grounds for Remedial Action

Fraud
Failure to Comply with Recordkeeping and Net Capital Requirements
Injunction
Appointment of SIPC Trustee

Where officer of registered broker-dealer and registered investment adviser participated in fraudulent activities, and shared responsibility for recordkeeping and net capital violations; and where officer had been enjoined from violating antifraud provisions and a SIPC trustee had been appointed for his broker-dealer firm, *held*, in public interest to bar officer from association with broker, dealer, or investment adviser.

APPEARANCES:

Daniel I. MacIntyre, for Stephen C. Coker.

Joseph L. Grant and *Nancy J. Van Sant*, for the Commission's Division of Enforcement.

I.

Stephen C. Coker, who was executive vice president and secretary of Stilwell, Coker & Company, Inc. ("Stilco"), formerly a registered broker-dealer,[1] and president and treasurer of S. C. Associates, Inc. ("SCA"), formerly a registered investment adviser,[2] appeals from the adverse decision of an administrative law judge. The law judge found, among other things, that Coker engaged in violations of antifraud, recordkeeping and net capital provisions of the securities laws. He concluded that Coker should be barred from association with any broker-dealer or investment adviser.

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[1]Stilco's registration was revoked in these proceedings on the basis of its default. *Stilwell, Coker & Co., Inc.*, Securities Exchange Act Release No. 14979 (July 19, 1978), 15 SEC Docket 313.

[2]SCA did not appeal from the order of the administrative law judge revoking its registration, and that order has become final. *S. C. Associates, Inc.*, Investment Advisers Act Release No. 699 (September 11, 1979), 18 SEC Docket 343.

Although he excepts to certain of the law judge's findings, Coker states that "the crux" of his petition for review is the sanction which the law judge imposed. Based on the unchallenged portions of the law judge's initial decision, and our own independent review of the record, we make the following findings.[3]

II.

A. Stilco was organized in June 1975 as successor to a brokerage partnership between Coker and Charles D. Stilwell, who became Stilco's president.[4] By the end of 1975, Stilco had sold 100,000 shares of its convertible preferred stock at $1.00 per share to seven persons, who paid for their stock, in whole or in part, with notes secured by various securities which they gave to Stilco as collateral. The preferred stockholders were assured that their collateral would not be sold without their consent. Yet the securities furnished by at least five of these investors were soon liquidated to meet Stilco's need for capital. However, the stockholders were not informed of that fact.

Although Coker denies that he personally made any representations to shareholders concerning the sale of their collateral, he was admittedly aware that such representations had been made by Stilwell. In fact, Coker admitted that "the assumption behind the whole offering [was] that the securities would be held and. . .could just be used to maintain capital . . . ." Yet, at Stilwell's direction, he executed sales of the collateral with full knowledge that shareholders had not agreed to, or been told about, the sale of their securities. Moreover, Coker was also aware that Stilco continued to pay preferred stockholders regular dividends and interest on collateral that had been liquidated, thus concealing the fact that Stilco no longer held their securities.[5]

Coker further admitted that he was asked by one of the shareholders whose securities had been liquidated "how his collateral was doing." Coker stated that he "was a bit embarrassed that I had to be talking with him," but did not inform the investor that his securities had been sold. In another instance, Coker was admittedly aware that Stilco had sold another investor's collateral for an amount more than $15,000 in excess of the note she had given Stilco. Yet he admitted that the excess was not remitted to the shareholder. When Coker was directed by the investor's son to exchange his mother's collateral for another security, Coker attempted to purchase it, without informing the son that his mother's collateral had already been sold. However, Coker was unable to buy the new security since Stilco lacked the necessary funds.

B. On April 10, 1976, Vincent P. Kane became president of Stilco,[6] and Stilwell was elected chairman and chief executive officer. From March through August 1976, Stilco continued to face serious financial difficulties. During that period, its capital deficits ranged from about $31,000 to as much as $189,000.

From its inception, Stilco had cleared its transactions on a fully disclosed basis through Elkins, Stroud, Suplee & Co., a New York Stock Exchange member firm. In August 1976, Elkins terminated its clearing arrangement with Stilco and, in September, began delivering to Stilco the fully paid securities Elkins had been holding for the accounts of Stilco's customers. The deliveries began on September 15 and ended by October 21.

In late September, Stilco was faced with a number of debts and financial obligations, primarily to banks, which it was unable to pay. On September 29, 1976, Coker met with Kane and Stilwell. Stilwell stated that the firm faced a financial crisis, and that the only thing that could be done was to convert the customers' securities that were being returned by

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[3]Our findings pertaining to the antifraud charges, like those of the administrative law judge, are based on a clear and convincing standard of proof.

[4]Stilwell did not appeal from the law judge's order barring him from association with any broker-dealer or investment adviser. That order has become final. See *S. C. Associates, Inc., supra.*

[5]Coker points out that the preferred shareholders' *written* agreements with Stilco contained no restriction on Stilco's right to sell their collateral. However, that circumstance is no defense to the admitted fraud that was practiced on these investors. See 5A Jacobs, *The Impact of Rule 10b-5*, §240, p. 10-71 (1979): "[T]he parol evidence rule cannot defeat a 10b-5 claim."

[6]The bar order entered against Kane by the law judge has become final. See *S. C. Associates, Inc., supra.*

Elkins. According to Coker, he "remorsefully" acquiesced in Stilwell's plan. From September 29 through about December 8, 1976, Stilco sold nearly $150,000 worth of securities belonging to 18 customers, and misappropriated the proceeds. Most of those sales were effected by Coker.

In light of the foregoing, it is abundantly clear that Coker willfully violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder. It is clear that Coker had the requisite scienter.

III.

The law judge found that Coker aided and abetted Stilco's violations of recordkeeping and net capital provisions.

Coker argues that he had no responsibility for Stilco's books and records. However, as the law judge points out, Coker must have been aware that Stilco was maintaining false records as a result of its conversion of customers' securities. In fact, Coker admitted as much.

Coker does not challenge the law judge's finding that Stilco operated with net capital deficiencies from at least March 1, 1976 until the time it ceased operations in December. Although he asserts that he had "no knowledge of and no responsibility for" Stilco's "financial side," he was admittedly aware of the financial crisis that led Stilco to misappropriate customers' assets. By virtue of his participation in the massive conversions that were undertaken to keep the firm in business, it should have been obvious to Coker that Stilco was not operating in compliance with net capital requirements.[7]

We conclude that Coker willfully aided and abetted Stilco's willful violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-3 thereunder.

IV.

Coker does not challenge the law judge's findings that he aided and abetted SCA's violations of antifraud and recordkeeping provisions of the Investment Advisers Act.

The law judge found that, in October 1976, Coker aided and abetted SCA's unauthorized sale of part of a client's portfolio, and that, in an obvious effort to conceal that sale, the client was subsequently sent a statement indicating that the securities were still in his account. The law judge also found that SCA, aided and abetted by Coker, admittedly failed to maintain required books and records.

V.

On December 17, 1976, Coker was permanently enjoined, with his consent, from further violations of antifraud provisions of the securities acts. In the same action, at a time when Coker was still an officer of Stilco, a trustee was appointed for the firm pursuant to the provisions of the Securities Investor Protection Act.[8]

VI.

Coker admits that he is not "faultless," and does not contend "that he. . .committed no wrong." However, he argues that the bar order imposed by the administrative law judge is unduly severe. He asserts, among other things, that Stilwell controlled the firm and was largely responsible for Stilco's fraudulent operations; that he (Coker) was only "tangentially involved" in most of the misconduct that occurred; and that, when he acquiesced in the conversion of customers' securities, he thought it would only be a "temporary expedient" since he had been assured that a certain individual was investing $250,000 to $300,000 in Stilco. He also points to favorable character testimony in the record from customers and others with whom he dealt.

We are unable to conclude that any reduction in sanction is warranted. Even assuming that Stilwell played a dominant role in the misconduct we have found, Coker's willing acquiescence in Stilwell's fraudulent schemes clearly mandates the bar order which the law judge imposed. The conversion of customers' securities can hardly be justified as a "temporary expedient." Moreover, Coker admitted that he continued to convert customers' securities after all hope for the expected investment in Stilco

[7]Moreover, Coker was admittedly aware that, in an effort to deceive the firm's auditors, certain securities were improperly shown on the firm's books as part of its capital.

[8]S.E.C. v. *Stilwell, Coker & Co., Inc., et al.*, Civil Action No. 76-2405 (D.S.C.).

had vanished.

Coker has demonstrated a callous disregard for the most basic obligations of fair dealing borne by those in the securities business. Although we recognize the serious effect of a bar, we consider that a lesser remedy would be contrary to the public interest. In light of Coker's egregious misconduct, we think that the sanction assessed by the law judge is necessary to protect public investors from further harm at Coker's hands.[9]

An appropriate order will issue.

By the Commission (Commissioners LOOMIS, EVANS and FRIEDMAN); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16935/June 26, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 724/June 26, 1980

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 92/June 26, 1980

Admin. Proc. File No. 3-5439

In the Matter of

STEPHEN C. COKER
932 North Shem Drive
Mount Pleasant, South Carolina

ORDER IMPOSING REMEDIAL SANCTION

On the basis of the Commission's opinion issued this day, it is

ORDERED that Stephen C. Coker be, and he hereby is, barred from association with any broker, dealer, or investment adviser.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16936/June 26, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20546

(File No. SR-NASD-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On January 7, 1980, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, copies of a proposal to amend Schedule C under Article I, Section 2 of its By-Laws to revise its requirements for registration and qualification of representatives associated with member broker-dealer firms (File No. SR-NASD-80-1).[1] In particular, the proposal would create several new categories of "limited

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[9]We note that, on the basis of his plea of guilty, Coker was recently convicted of fraud in connection with two instances in which customers' securities were misappropriated by Stilco. *U.S.* v. *Charles D. Stilwell, et. al.*, Criminal Action No. 80-1 (D.S.C., February 25, 1980). See Litigation Release No. 9022 (February 27, 1980), 19 SEC Docket 792.

[1]The proposed rule change defines a "representative" as a person associated with a member, including an assistant officer other than a principal, who is engaged in the investment banking or securities business for the member including supervision, solicitation or conduct of business in securities, or training of persons associated with a member for any of these functions.

representative" registration,[2] clarify the registration requirements for specified categories of principals, establish procedures for persons wishing to transfer registration from the SECO program[3] to the NASD, and make certain technical and stylistic changes to Schedule C. The revisions to the registration requirements for representatives and principals are an interim measure, pending Commission action on proposed Rule 15b7-1, and will expire on May 31, 1981.[4]

Notice of the filing together with its terms of substance, was given by publication of a Commission Release (Securities Exchange Act Release No. 16563, February 11, 1980) and by publication in the *Federal Register* (45 FR 10496, February 15, 1980). The proposed rule change was amended on May 20, 1980. Notice of the amendment was given by publication of a Commission Release (Securities Exchange Act Release No. 16841, May 23, 1980) and by publication in the *Federal Register* (45 FR 37789, June 4, 1980). No comments were received on either the original filing or the amendment.

Currently, Schedule C of the NASD By-Laws specifies that representatives shall qualify as "Registered Representatives." Schedule C also contains another category of registration, "Registered Options Representative," for representatives whose activities include the solicitation and/or sale of option contracts. The proposed amendment to Schedule C would retain these categories, with certain modifications, and would create two new limited representative categories: Limited Representative—Investment Company and Variable Contracts Products and Limited Representative—Direct Participation Programs.

Under the proposed rule change, the existing "Registered Representative" category would be redesignated "General Securities Representative" and qualification requirements would remain unchanged. In addition, the proposal would establish certain "grandfathering" provisions for persons previously qualified as Registered Representatives.

The new "Limited Representative—Investment Company and Variable Contracts Products" category would permit an individual whose activities are limited to the solicitation, purchase and/or sale of redeemable securities of companies registered pursuant to the Investment Company Act of 1940, securities of closed-end companies registered pursuant to the Investment Company Act of 1940 during the period of original distribution only, and variable contracts and insurance premium funding programs registered pursuant to the Securities Act of 1933 to register as a limited representative after passing a specialized qualification examination. The new "Limited Representative—Direct Participation Programs" would permit an individual whose activities are limited to the solicitation, purchase and/or sale of programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and other programs of a similar nature to register as a limited representative after passing a specialized qualification examination.[5]

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[2]Under the proposal, a limited representative is an individual whose activities would be limited to certain specialized types of business and who could register to function as a representative in only those areas after passing a specialized qualification examination.

[3]SECO broker-dealers are registered broker-dealers who are not members of the NASD. Rule 15b8-1 under the Act requires persons associated with SECO broker-dealers to pass a qualification examination prior to engaging directly or indirectly in securities transactions.

[4]Proposed Rule 15b7-1 would establish uniform minimum qualification requirements for broker-dealers and their associated persons and would permanently establish categories of limited registration for principals and representatives. Securities Exchange Act Release No. 13679 (June 27, 1977), 43 FR 34328 (July 5, 1977).

[5]The NASD has filed two proposed rule changes to provide plans and specifications for its Investment Company Products/Variable Contracts and Direct Participation Programs Representative Examinations (SR-NASD-80-2, SR-NASD-80-4). Notice of the proposals were given in Securities Exchange Act Release Nos. 16563 (February 11, 1980) and 16711 (March 31, 1980), 45 FR 10496 (February 15, 1980) and 45 FR 23841 (April 8, 1980).

The rule proposal also would clarify the requirements for registration as Limited Principal—Investment Company and Variable Contracts Products and Limited Principal—Direct Participation Programs to indicate that, before registering as such, a limited principal in either category must first be registered in the analogous category of limited representative or as a General Securities Representative. Registered Options Principals would first be required to be or become qualified as General Securities Representatives and as Registered Options Representatives.

Furthermore, the proposed rule change would establish new procedures for persons qualified under the SECO program who wish to become registered with the NASD. Under the proposed rule change, the President of the NASD would have the discretion to grant a grace period, not to exceed one year, to persons associated with applicants for membership to the NASD also registered under the SECO program to permit the associated persons to continue to function as representatives or principals pending their qualification with the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to registered national securities associations, and in particular, with the requirements of Section 15(b) and 15A of the Act and the rules and regulations thereunder. The Commission believes the activities of limited representatives in the proposed categories are sufficiently specialized to make it unnecessary for them to qualify as representatives in unrelated areas of the securities industry. By providing for the registration of limited representatives, the Commission believes that the NASD may provide greater opportunities for persons to register as brokers and dealers and become associated with a member firm. In addition, the Commission believes the NASD's proposal accomplishes these results in a manner which is not designed to permit unfair discrimination between brokers and dealers and which will assist the NASD in enforcing compliance by its members, and persons associated with its members, with the provisions of the Act, rules thereunder, and the rules of the NASD. The Commission also finds that the proposal enables the NASD to implement appropriate qualification standards for its members, consistent with the NASD's responsibilities under the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of amendment thereof. The proposed rule change imposes no additional restrictions on brokers and dealers or their associated persons. Further, by enabling such persons, to the extent their activities are limited solely to transactions involving securities in a limited category, to register with the NASD and qualify by taking a limited representative examination in lieu of a general securities examination, the proposed rule change may relieve a substantive regulatory burden. The Commission believes that the public interest would be served by the NASD's prompt implementation of the proposed new limited representative categories.

Copies of the proposed rule change, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, which were filed with the Commission, and of all written communications relating to the proposed rule change as amended between the Commission and any persons were considered and are available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. (File No. SR-NASD-80-1).[6]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons
Secretary

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[6]The Commission also considered public comments on proposed Securities Exchange Act Rule 15b7-1 (File No. S7-709) and public information submitted in connection with a pending rule change proposal of the NASD to amend Schedule C of its By-laws (File No. SR-NASD-75-6).

SECURITIES EXCHANGE ACT OF 1934
Release No. 16937/June 26, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the Common Stock ($1 Par Value) of ATALANTA CORPORATION from listing and registration thereon.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21633/June 20, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

SENECA RESOURCES CORPORATION
Buffalo, New York

(70-6241)

SUPPLEMENTAL ORDER REGARDING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANK BY SUBSIDIARY COMPANY AND GUARANTY THEREOF BY HOLDING COMPANY

National Fuel Gas Company ("National"), a registered holding company, and one of its wholly-owned subsidiary companies, Seneca Resources Corporation ("Seneca"), have filed with this Commission a further post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

By orders in this proceeding dated February 2, 1979, and January 30, 1980 (HCAR Nos. 20911 and 21415), Seneca was authorized to issue and sell not to exceed $20,000,000 of short-term notes outstanding at any one time to Houston National Bank, such notes to be unconditionally guaranteed by National. In accordance therewith, Seneca currently has $19,100,000 short-term borrowings outstanding pursuant to a note issued under a loan agreement, which note becomes due on October 31, 1980. Payment of principal and interest on the note is unconditionally guaranteed by National.

Seneca and National now request that the amount of the proposed notes be increased to $25,000,000 and that authorization for the issuance and sale of the notes, and the guarantee by National, be extended for a period of 7-1/2 months. Any new note issued, or any outstanding note of which the maturity date is extended, shall mature not later than June 15, 1981. The other terms and conditions with respect to the increased line of credit will remain the same, except as the loan agreement is amended as proposed below. The interest rate on any note issued pursuant to the loan agreement will continue to be the prime rate of interest at the bank, and National will continue to unconditionally guarantee payment of principal and interest on any such notes issued.

Effective as of March 1, 1980, the bank has agreed to amend the loan agreement so that Seneca will be required to maintain an Average Daily Available Balance equal to 10% of the amount of funds available under the loan agreement. The change will reduce the effective cost of borrowing for Seneca. Seneca also intends to amend the loan agreement so that any outstanding note, plus any new notes issued pursuant to the loan agreement, would be secured with a portion of Seneca's hardwood timber acreage located in the State of Pennsylvania. The reason for this change relates to Seneca's 20% unsecured borrowing limitation. Finally, the loan agreement is to be amended to change the procedure for calculating the interest rate because of the maximum allowable interest rate under Texas law.

It is stated that the increase in the line of credit to $25,000,000 is needed to provide working capital for Seneca and that the extension of the period of borrowings is necessary because the issuance of long-term notes under present market conditions would not be in Seneca's or National's best interest.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21534), and no hearing has been

requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21634/June 20, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
Westborough, Massachusetts

(70-6460)

ORDER AUTHORIZING CHARTER AMENDMENT TO EXTEND SHORT-TERM DEBT AUTHORIZATION AND TO INCREASE AUTHORIZED PREFERRED STOCK

New England Power Company ("NEP"), a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed a declaration and an amendment thereto pursuant to Sections 6(a), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder concerning the following transaction.

The terms of the Cumulative Preferred Stock as set forth in the Articles of Organization and By-Laws provide that, except as voted by the holders of such stock, the short-term unsecured indebtedness of NEP shall not exceed 10% of the sum of the principal amount of all bonds and other secured indebtedness and the capital, premium and surplus of NEP (the "capitalization"), and that all unsecured indebtedness of NEP shall not exceed 20% of such sum. By votes in 1970, 1973, 1975 and 1976 pursuant to Commission approval (HCAR Nos. 16653, 17853, 19095 and 19595), preferred stockholders authorized the issue by NEP of short-term unsecured indebtedness in excess of the 10% limitation, provided that all unsecured indebtedness would not exceed 20% of the capitalization of NEP and that such short-term indebtedness would be issued within limited periods after said votes. The current authority expires July 1, 1980.

In the instant filing, NEP proposes to submit two Board of Director's proposals to its stockholders at a special meeting in lieu of the annual meeting to be held June 25, 1980. In connection therewith, NEP has previously been authorized (HCAR 21591) to solicit proxies from its shareholders. The first proposal is to obtain authority from stockholders for the continued issue by NEP of short-term unsecured indebtedness in excess of the 10% limitation provided (i) such indebtedness shall be issued not later than July 1, 1985, (ii) such indebtedness shall have a maturity not later than July 1, 1986, and (iii) the 20% limitation on all unsecured indebtedness of NEP shall remain in effect. This proposal requires the favorable vote, at a meeting called for that purpose, of a majority of the Cumulative Preferred stockholders. On April 30, 1980, NEP had $27,800,000 of short-term debt outstanding. NEP estimates that short-term debt requirements during 1980 will reach a maximum of about $141,000,000, which amount may be reduced by permanent financing.

The Second proposal seeks to amend the Articles of Organization and By-Laws to increase from $150,000,000 to $250,000,000 the aggregate outstanding par value of cumulative preferred stock that may be issued without a majority vote of the total number of shares of said stock then outstanding. This amendment will require the affirmative vote of at least two thirds of the 6% Cumulative Preferred Stock and Common stock, voting as one class, and two thirds of the now outstanding Cumulative Preferred Stock voting as a class.

NEP proposes to solicit proxies from its shareholders, through the use of proposed soliciting

material, to obtain the required approval for the proposed amendments. Proceeds from the issuance of short-term debt and preferred stock will be used for planned construction projects, cash sinking fund requirements and payment of maturing bonds. NEP's 1980-1984 construction program is expected to cost approximately $1,018,000,000, including allowance for funds used during construction. Included in the construction program are $948,000,000 for generation facilities, $66,000,000 for transmission lines and substations and $4,000,000 for other facilities. In addition, NEP will have $132,000,000 of maturing bonds and $6,250,000 of cash sinking fund requirements between now and July 1985.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $12,525, including $5,000 in printing fees and $4,000 of services to be performed at cost by New England Power Service Company, an affiliate of NEP. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21591), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21635/June 23, 1980

In the Matter of

MASSACHUSETTS ELECTRIC COMPANY
20 Turnpike Road
Westborough, Massachusetts 01581

(70-6471)

NOTICE OF PROPOSED INCREASE OF AUTHORIZED SHORT-TERM BORROWING AND ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Massachusetts Electric Company ("Mass Electric"), an electric utility subsidiary company of New England Electric System ("NEES"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7(e), and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

The terms of Mass Electric's Preferred Stock, as set forth in the Articles of Organization and By-Laws, provide that, except as voted by holders of said stock, the short-term unsecured indebtedness of Mass Electric shall not exceed 10% of total capitalization. By order dated July 2, 1975 (HCAR No. 19076), Mass Electric was authorized to solicit proxies from its preferred stockholders to obtain their approval for the issuance of unsecured indebtedness in excess of the 10% limitation. By order dated July 29, 1975 (HCAR No. 19097), the Commission authorized the proposed increase in unsecured indebtedness, and such proposal was approved by a majority of the preferred shareholders at a special meeting held on August 1, 1975. The authorizations by the preferred stockholders and the Commission expires on July 1, 1980.

Mass Electric proposes to submit to the preferred stockholders at a special meeting to be held August 1, 1980, a proposal to extend its authority to issue short-term debt up to 20% of Mass Electric's total capitalization. The continuation of the 20% permitted amount of short-term unsecured debt requires the favorable vote at a meeting called for

that purpose of a majority of the Preferred Stock. In connection therewith, Mass Electric proposes to solicit proxies from the holders of its Preferred Stock. The vote would renew the authorization for Mass Electric to issue unsecured indebtedness in excess of the 10% limitation provided (i) such indebtedness shall be issued not later than July 31, 1985, (ii) such indebtedness shall have a maturity not later than July 31, 1986, and (iii) the 20% limitation on all unsecured indebtedness of Mass Electric shall remain in effect.

Mass Electric states that it is seeking this authorization so that it may have latitude as to the amount of short-term unsecured debt outstanding in order to use market opportunities for long-term financing at favorable rates.

The fees and expenses to be paid by Mass Electric are estimated at $11,000 including service fees, at cost, of New England Power Service Company, a wholly owned subsidiary of NEES, of $3,600. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may not later than July 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of proxies of Mass Electric's preferred stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the declaration regarding the proposed solicitation of proxies of Mass Electric's preferred stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21636/June 24, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
GPU SERVICE CORPORATION
Parsippany, New Jersey

(70-6151)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF LONG-TERM, SECURED NOTE BY SUBSIDIARY AND GUARANTY BY HOLDING COMPANY

General Public Utilities Corporation ("GPU"), a registered holding company, and its service company subsidiary, GPU Service Corporation ("Service Company"), have filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder regarding the following proposed transactions.

By orders dated May 18, 1978 (HCAR No. 20550) and July 31, 1978 (HCAR No. 20652), this Commission authorized (a) Service Company to issue its unsecured promissory notes maturing on December 31, 1979, evidencing borrowings of up to $13,000,000 from Hartford National Bank and Trust

Company ("Hartford") and Citibank, N.A., and (b) GPU to guarantee the payment of principal and interest on such borrowings. Such promissory notes were to bear interest at 105% of the banks' prime rate for commercial borrowings in effect from time to time. The proceeds from such borrowings were to be used to finance the construction and partial equipping of a 125,000 sq. ft. headquarters office building to be constructed by Service Company on a 25 acre site in Parsippany, New Jersey, or to reimburse Service Company's treasury for funds previously expended therefrom for such purposes. By order dated June 5, 1979 (HCAR No. 21082), the Commission authorized Service Company further to secure such borrowings by granting Hartford a first mortgage on the 25 acre site and office building.

Thereafter, and pending the making by GPU and Service Company of more permanent financing arrangements for the building, by order dated December 31, 1979 (HCAR No. 21372), the Commission (a) extended the time during which Service Company could issue, and GPU could guarantee, notes evidencing borrowings from Hartford and Citibank, as well as the maturity date of such notes, to December 13, 1980, and (b) permitted such notes to bear interest at 108% of the prime rate, in effect from time to time.

GPU and Service Company have conducted discussions with Teachers Insurance and Annuity Association of America ("TIAA"), regarding permanent mortgage financing for Service Company's headquarters office building and the related real estate. As a result of these discussions, GPU and Service Company now propose that Service Company issue and sell to TIAA Service Company's first mortgage note due 2005 in the principal amount of up to $15,500,000 ("Note"). The Note would bear interest at 13.25% per annum and would be secured by a first mortgage lien on the headquarters office building, land, and improvements. In addition, GPU proposes unconditionally to guarantee Service Company's payment of principal and interest on the Note.

The Note will provide for level monthly payments of principal and interest designed to retire the Note at maturity. In addition, the Note would be redeemable beginning 1987 at specified redemption prices; provided that prior to 10 years following the date of issuance, the Note could not be redeemed by Service Company from certain indebtedness or preferred stock, including indebtedness or preferred stock obtained at an interest cost or dividend rate of less than 13.25% per annum.

Service Company will apply $13,000,000 of the proceeds of the sale of the Note to repay all its outstanding indebtedness to Hartford and the balance for general working capital purposes or to repay outstanding indebtedness to GPU. No further short-term notes will be issued pursuant to the authorization in this proceeding.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21589), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary, and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21637/June 24, 1980

In the Matter of

WEST PENN POWER COMPANY
Greensburg, Pennsylvania

(70-6455)

SUPPLEMENTAL ORDER AUTHORIZING CHANGE IN TERMS OF BIDDING IN CONNECTION WITH THE ISSUANCE AND SALE OF PREFERRED STOCK

West Penn Power Company ("West Penn"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

By order in this proceeding dated June 13, 1980 (HCAR No. 21625), West Penn was, among other things, authorized to issue and sell up to $30 million in par value of its cumulative preferred stock. The bidding papers previously filed provided for the bidders to bid a price to be paid to West Penn of not less than 100% and not more than 102-3/4% of the par value of the preferred stock, which indicates that the lowest cost of money to the company will be determined by dividing the dividend bid by the price bid. It has come to the attention of West Penn that the bidding process would be enhanced and the final results to the company should be more advantageous if a compensation bid were to be permitted. As a result, West Penn has determined that the price to the company for the preferred stock and the initial price to the public should be $100 per share and that a compensation per share and a dividend rate should be bid. Under those circumstances, the lowest cost of money to the company will be determined by subtracting the amount of the compensation from $100 and dividing into the dividend.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration as amended by the post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as now amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21638/June 24, 1980

In the Matter of

THE NARRAGANSETT ELECTRIC COMPANY
280 Melrose Street
Providence, Rhode Island 02901

(70-6470)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS

NOTICE IS HEREBY GIVEN that the Narragansett Electric Company ("Narragansett"), a subsidiary of New England Electric System ("NEES"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Narragansett proposes to issue and sell not exceeding $20,000,000 principal amount of First Mortgage Bonds ("Bonds"), to bear interest at such rate and to be issued at such price as shall be determined by competitive bidding. The terms and conditions relating to bids provide that each bid shall specify the interest rate (which shall be a multiple of 1/8 of 1%) to be borne by the Series M Bonds, and

the price to be paid to Narragansett, which shall be not less than 98% of the principal amount nor more than 101-3/4%. The Series M Bonds will bear interest from the date on which bonds of the series are first certified. Interest will be paid semi-annually on February 1 and August 1. Narragansett will publicly invite sealed, written bids for the purchase of the Series M Bonds at least six days prior to entering into any contract or agreement for the issuance or sale.

The Series M Bonds will be issued under a First Mortgage Indenture and Deed of Trust dated as of September 1, 1944, as amended and supplemented, and will be secured, along with all other bonds issued under the Indenture, by a first mortgage on substantially all properties now owned and, to the extent permitted by law, thereafter acquired by Narragansett, except for the properties specifically excepted from the lien of the Indenture.

The proceeds from the sale of Series M Bonds, estimated at approximately $20,000,000 will be applied (a) to the payment in part of short-term debt incurred to retire $22,750,000 of Series K Bonds, 10-1/2%, maturing August 1, 1980, (b) retirement of short-term indebtedness incurred or to be incurred for capitalizable expenditures, (c) to pay for such expenditures or to reimburse the treasury therefor, or (d) to any combination thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $200,000, including $50,000 for printing costs, $25,000 for trustee fees, $14,000 for accountant's fees and $80,000 for services performed at cost by New England Power Service Company, an affiliate.

The Division of Public Utilities and Carriers, Department of Business Regulation, of the State of Rhode Island has jurisdiction over the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than July 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, and the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21639/June 24, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY
New York, New York

(70-6126)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK TO TRUSTEE FOR EMPLOYEE SAVINGS PLAN

American Electric Power, Inc. ("AEP"), a registered holding company, has filed with this Commission, a post-effective amendment to its application-declaration previously filed and amended in this matter pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder concerning the following transactions.

By orders dated April 25, 1978 and April 27, 1979 (HCAR Nos. 20516 and 21022), AEP was authorized to issue and sell, from time to time through June 30, 1980, up to 1,000,000 shares of authorized unissued common stock, par value $6.50, to Bankers Trust Company, the Trustee for the AEP

Employees Savings Plan ("Savings Plan"). Through May 2, 1980, a total of 647,200 of such shares had been sold to the Trustee for a total price of $12,529,231, leaving a balance of 352,800 shares.

The Savings Plan is a defined contribution, individual account plan, under which a participant's benefits are based solely upon the amount contributed to his account and any income and gains or losses which may be allocated to it. The Savings Plan meets the requirements of the Employer Retirement Income Security Act of 1974 ("ERISA") and qualifies under Section 401(a) of the Internal Revenue Code. Any employee who has attained age 20 and been employed one year with one or more of AEP's subsidiaries ("Employers") is eligible to participate, except employees covered by the National Bituminous Coal Wage Agreement and employees who are covered by collective bargaining agreements if their Employer and their union have agreed that their collective bargaining unit is to be covered by the Savings Plan. A participant may contribute to the Savings Plan, through regular payroll deductions, from 1% to 10% of his regular compensation, may change the rate of his contribution not more than twice in a 12-month period and may suspend his contribution for a minimum of three months. Each Employer contributes to the Savings Plan each month on behalf of each employee participant an amount equal to 50% of such participant's contribution up to 6% of his regular compensation (subject to applicable maximum contributions under ERISA) in each calendar year.

The monthly contributions made by participants and Employers are remitted to the Trustee, and credited to the individual accounts of participants. Each participant's contribution is invested by the Trustee, as directed by the participant, in one, or in equal portions in any two or all, of the following three funds: (a) the AEP Stock Fund, which consists entirely of shares of AEP common stock; (b) the Equity Fund, which consists of an index fund of common stocks selected by the Trustee (and may include shares of AEP common stock); or (c) the Fixed Income Fund, the contributions to which are invested by the Trustee pursuant to a contract with the Equitable Life Assurance Society of the United States ("Equitable") under which contract Equitable guarantees repayment of principal amounts invested with it and interest at an effective annual rate of 7.85% through December 31, 1987. Employer contributions on behalf of participants are invested entirely in the AEP Stock Fund. Participants' contributions are fully vested at all times. Employer contributions become vested at the earlier of (a) the end of the third year following the year for which the contributions were made, or (b) the participant's retirement, permanent and total disability, death or termination of employment after age 60 in certain cases.

Participants, while employed, may elect to receive a distribution of all or a portion of the value of the vested contributions credited to their accounts by either (i) during November of each year, commencing with November 1981, electing to receive a distribution of the value of all contributions to his account for the third calendar year preceding the year in which the election is made, such distribution to be made in cash and shares of AEP common stock or entirely in cash, and such election not resulting in any forfeiture or other penalty; or (ii) electing to withdraw, once in any twelve-month period, the value of all or part of the contributions credited to his account that have vested, such distribution to be made entirely in cash, and such election resulting in a full or partial suspension of the participant's right to contribute to the Savings Plan for periods up to nine months. Upon the retirement (or other termination of employment) or death of a participant, the entire vested amount in his account is distributed to him or his designated beneficiaries, in cash and shares of stock, or entirely in cash if the distributee so elects.

The administrative expenses of the Savings Plan are paid by the Employers. Direct charges and expenses arising from the purchase or sale of securities for the funds are paid by the Trustee from the funds involved. The price to the Trustee of such shares on any date of sale will be the average of the high and low sales prices of AEP's common stock on the New York Stock Exchange on such date (determined after the close of trading for the day), but in no event less than the par value thereof).

By post-effective amendment, AEP requests that it be authorized to issue and sell to the Trustee for the Savings Plan, through June 30, 1981, up to an additional 500,000 shares of its authorized unissued common stock, $6.50 par value, plus the unsold balance of the shares previously authorized but not heretofore issued and sold.

AEP requests an exemption from the competitive bidding requirements of Rule 50 under the Act for

such issuance and sale pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,250. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21592), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) certificates thereunder shall be filed quarterly, including a summary of the total shares issued and total net proceeds realized, and (2) the certificate reporting the results of the first quarter of the calendar year shall also include a summary of the total expenses incurred, directly or indirectly, by AEP for operating the Plan during the preceding calendar year.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21640/June 24, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
ASH CREEK MINING COMPANY
Tulsa, Oklahoma

(70-5868)

SUPPLEMENTAL ORDER AUTHORIZING EXTENSION OF AND INCREASE IN SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10.00 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any one time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos. 20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926, 20975, 21049, 21364, 21486 and 21556). In the latest such supplemental order dated May 7, 1980 (HCAR No. 21556), PSO was authorized to continue its financing of Ash Creek through June 30, 1980, in the maximum principal amount of $1,235,000

outstanding at any one time.

By post-effective amendment applicants-declarants request an extension of PSO's authorization to finance Ash Creek through September 30, 1980, in the maximum principal amount of $1,350,000 outstanding at any one time. Said amount includes approximately $1,150,000 of such loans expected to be outstanding at March 31, 1980, and $200,000 to cover budgeted expenditures through September 30, 1980.

The reason for such loans is the continued and indefinite suspension of mining operations at Ash Creek, pending the securing of permission from the Wyoming Department of Environment Quality for coal trucks to use the state highway serving Ash Creek's proposed coal outloading facility for PSO mine No. 1 near Sheridan, Wyoming, and the availability of federal coal leasing on PSO's States Ranch property. Accordingly, Ash Creek has not budgeted expenditures for further coal exploration and mine development activities or for construction of a coal outloading facility. Expenditures are needed, however, for maintenance and administrative costs required to maintain the interests of Ash Creek and PSO.

It is stated that PSO and Ash Creek do not contemplate further development of the coal interests described in this filing, and that they continue to hold and maintain them until they can negotiate a satisfactory sale of the interests to a non-affiliate. Such sale is contemplated irrespective of any actions taken by the Wyoming Department of Environmental Quality with respect to the coal outloading facility and irrespective of any possible future availability of a federal coal leasing program on PSO's States Ranch property.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $300. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that PSO be, and it hereby is, authorized forthwith to continue its financing of Ash Creek through September 30, 1980, in the maximum principal amount of $1,350,000 outstanding at any one time, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, continued with respect to any further extension of time and any expenditures to be made after September 30, 1980.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21641/June 25, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-6047)

ORDER AUTHORIZING AMENDMENTS TO EMPLOYEE STOCK OWNERSHIP PLAN

Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transactions.

By order dated September 20, 1977 in this matter (HCAR No. 20183), the Commission authorized Middle South to make available, for acquisition by First National Bank of Commerce, New Orleans, Louisiana, as trustee under its Employee Stock Ownership Plan ("Plan"), directly from Middle South,

through January 31, 1979, up to 300,000 authorized but unissued shares of Common Stock, $5 par value ("Additional Stock"). By order of January 30, 1979 (HCAR No. 20904), the Commission authorized extension of the period during which Additional Stock may be issued to the trustee to January 31, 1982.

Pursuant to the terms of the Plan, Middle South and its subsidiaries contribute to the trustee, for participating employees, an amount equal to the additional investment tax credit allowed to Middle South on its consolidated federal income tax return under the Internal Revenue Code of 1954, as amended. The trustee must invest and reinvest the cash contributions, and any income thereon, exclusively in Common Stock, $5 par value ("Common Stock"), which it acquires, at its discretion, through open market or private purchases or directly from Middle South. Where Middle South offers Additional Stock and the trustee accepts such offer rather than acquire Common Stock in the open market or elsewhere, then it is presently provided that the Additional Stock will be acquired for an amount equal to the value equivalent to the average of the closing prices of the Common Stock based on Consolidated trading as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of the New York Stock Exchange listed Securities for twenty consecutive trading days immediately preceding the acquisition ("Market Value").

The Internal Revenue Service has recently promulgated a regulation that requires the use of Market Value only in those situations where an employer contributes stock to a plan. The regulation further provides that the twenty-day average rule does not apply to securities acquired with cash contributed to a plan.

Due to the recent development, it is proposed that the Plan be amended to reflect permissible changes in the pricing of Common Stock that may be acquired by the trustee, as follows: (1) if a contribution to the Plan is in Common Stock, the number of shares contributed will be determined by the average of the closing prices of the Common Stock based on consolidated trading as defined by the Consolidated Tape Association and reported as part of the consolidated trading prices of New York Stock Exchange listed securities for twenty consecutive trading days immediately preceding the due date for filing Middle South's consolidated federal income tax return; (2) with respect to cash contributions to the Plan, if Middle South offers Additional Stock to the Trustee and the trustee chooses to accept such offer rather than to acquire Middle South's Common Stock in the open market or elsewhere, the Additional Stock will be acquired for an amount equal to its fair market value at the time of acquisition (rather than an amount determined by reference to the twenty-day average); and (3) if dividends are reinvested by the trustee in Additional Stock, such Stock will be acquired for an amount equal to its fair market value at the time of acquisition. Amendments to the Plan will also clarify that the trustee may effect purchases of Common Stock from Middle South under its Dividend Reinvestment and Stock Purchase Plan or any other similar plan made available to all record holders of Common Stock which may be in effect from time to time, at the purchase price provided for in such plan.

It is stated that no special or severable fees, commissions or expenses will be incurred by Middle South in connection with the proposed transaction. It is further stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21600), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21642/June 25, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6458)

ORDER RELEASING JURISDICTION OVER UNDERWRITER'S COMMISSIONS, BOND INTEREST RATES, BOND PRICE AND EFFECTIVE INTEREST COST

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc., ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended in this matter pursuant to Sections 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) promulgated thereunder concerning the following matter.

By order dated June 11, 1980 (HCAR No. 21618), I&M was authorized to enter into a transaction concerning the financing of up to $50,000,000 of pollution control facilities. Jurisdiction was reserved with respect to the commissions to be received by the respective underwriters, the interest rate to be born by the Series A Bonds, the price at which such bonds will be offered to the public, and the effective interest cost to complete the transaction.

By post-effective amendment, it is stated that, provided the Common Council of the City of Rockport ("City") adopt the requisite ordinance, the City and E.F. Hutton & Company, Inc., as representative of the several underwriters ("underwriters"), plan to enter into a Bond Purchase Agreement on June 19, 1980 which will provide for the issuance of $40,000,000 principal amount of the City's Series A Bonds which will be dated as of June 1, 1980; that $6,500,000 principal amount of the Series A Bonds will bear interest payable semi-annually at the rate of 9-1/8% per annum, and will mature on June 1, 2005; that $33,500,000 principal amount of the Series A Bonds will bear interest payable semi-annually at the rate of 9-1/4% per annum and will mature on June 1, 2010; that the price at which the Series A bonds will initially be offered to the public will be 100% of the principal amount plus accrued interest from June 1, 1980; and that the underwriters will pay to the City 97-1/2% of the principal amount, resulting in an effective interest cost of approximately 9-1/2% per annum to the company.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective and that the jurisdiction heretofore reserved be released:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective under the Act, and that the reservation of jurisdiction previously ordered be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 572/June 20, 1980

In the Matter of

WORLD AIRWAYS, INC.

File No. 22-10330

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by World Airways, Inc. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Manufacturers Hanover Trust

Company under (a) an existing indenture qualified under the Act in 1977 and (b) an existing indenture that is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover from acting as trustee under the qualified indenture.

TRUST INDENTURE ACT OF 1939
Release No. 573/June 25, 1980

An order has been issued under the Trust Indenture Act of 1939 on an application of Atlantic Richfield Company ("ARCO") that the trusteeship of Chase Manhatten Bank, N.A. ("Chase") under two existing indentures of ARCO and one of ARCO Pipeline Company and ARCO as Guarantor, and the trusteeship of Chase under an existing indenture of The Anaconda Company ("Anaconda"), a wholly-owned subsidiary of ARCO, are not so likely to involve a material conflict of interest as to make it necessary to disqualify Chase from acting as trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11228/June 20, 1980

In the Matter of

TAX EXEMPT BOND FUND FOR MINNESOTANS, INCORPORATED
1414 Soo Line Building
Minneapolis, Minnesota 55402

(811-2816)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Tax Exempt Bond Fund For Minnesotans, Incorporated ("Applicant"), registered as an open-end, diversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application pursuant to Section 8(f) of the Act on May 19, 1980, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant states that it was incorporated under the laws of the state of Minnesota on January 25, 1978. According to the application, Applicant failed to receive enough subscriptions to meet the minimum capitalization requirements of the state of Minnesota. Applicant represents that it had no security holders and that subscription amounts were refunded in full to subscribers by First National Bank of Minneapolis on or about May 15, 1980. The application states that all expenses of the Applicant, including liquidation expenses, were paid by Minnesota Fund Management, Incorporated, the Applicant's investment adviser. Applicant states that there were no expenses deducted from subscription amounts. Applicant states that it had no portfolio securities nor any other assets. Finally, Applicant states that it intends to file a certificate of dissolution with the state of Minnesota.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 15, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated

under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11229/June 20, 1980

In the Matter of

NASSAU PHYSICIANS' FUND, INC.
1200 Stewart Avenue
Garden City, New York 11530

(811-920)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Nassau Physicians' Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 7, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation organized under the laws of the State of Maryland. Applicant filed its initial Registration Statement under the Act on December 23, 1959, which first became effective on March 8, 1960.

Effective October 31, 1979, Applicant sold substantially all of its property and assets to Smith, Barney Equity Fund, Inc. ("Smith, Barney") without the assumption by Smith Barney of any liabilities of Applicant in exchange for shares of Smith, Barney at net asset value, pursuant to an Agreement and Plan of Reorganization ("Agreement") approved by Applicant's Board of Directors February 15, 1979 and August 21, 1979. In accordance with Maryland law the Agreement was approved by an affirmative vote of the holders of not less than two-thirds of the outstanding common stock of Applicant. The assets of Applicant transferred to Smith, Barney consisted of all of the investments, properties, rights and other assets of Applicant, free and clear of all liens, encumbrances and claims, whatsoever, excluding a cash reserve in the amount of $5,000 which was retained by Applicant for the payment of its expenses in connection with the Agreement, its liquidation, dissolution and its other liabilities. The shares of Smith, Barney received by Applicant were distributed pro rata, to the shareholders of Applicant. According to the application, the Applicant as of October 30, 1979, had 259,860 shares of common stock with a net asset value of $11.14 and an aggregate net asset value of $2,894,661.

Applicant represents that it intends to take appropriate steps to file a certificate of dissolution under the laws of the State of Maryland. Applicant indicates that it is indebted for legal and accounting fees and expenses relating to its liquidation and dissolution in an indeterminable amount. Further, Applicant asserts that it no longer has any security holders, is not a party to any litigation or administrative proceeding and does not propose to engage in any activity other than that necessary for winding up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 15, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason

for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11230/June 24, 1980

In the Matter of

SPARBANKERNAS BANK
Brunkebergstorg 8
S-105 34 Stockholm, Sweden

(812-4679)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Sparbankernas Bank ("Applicant") filed an application on May 12, 1980 for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its principal office is located at Brunkebergstorg 8, Stockholm, Sweden, and that it is the parent of a bank group which, at the end of 1979, ranked on the basis of consolidated total assets as the fourth largest bank in Sweden. Applicant's assets are stated to have totaled $2,758,000,000 at December 31, 1979, of which loans and advances (including interbank lending) accounted for approximately 50%. Applicant states that since it was founded in 1942 it has been totally owned by Swedish savings banks and that its share capital at the end of 1979 amounted to $22,000,000. Applicant represents that it has no domestic branches and no foreign subsidiaries, branches or agencies, though it owns a minority interest in a Luxembourg consortium bank.

Applicant represents that it functions principally as a central and commercial bank for Swedish savings banks and as a full service commercial bank. Applicant's business activities are said to include accepting deposits, extending credit through loan agreements, discounting bills and providing overdraft facilities, acting as a securities broker and underwriter and performing clearing, accounting, trust, financial advisory and securities administration services. Applicant states that it provides international banking services to customers through its worldwide correspondent banking network and participates in underwriting and selling groups for international bond issues in the international capital market. Through its three principal subsidiaries, Applicant states, it is a major home mortgage lender and engages to a lesser extent in municipal finance, factoring and leasing. Applicant represents that, during the three fiscal years ended December 31, 1979, Applicant's revenues from brokerage, trading and underwriting activities never constituted more than 22% of its annual gross revenues.

Applicant states that at December 31, 1979 its total loans and advances amounted to $1,366,000,000 (50% of total assets) and customer deposits represented 80% of total liabilities, and for the year then ended interest income accounted for 54% of gross revenues. Applicant states further that at the end of 1979 investment securities constituted 37% of its total assets, primarily due to the 45% liquidity ratio imposed upon Applicant by the Central Bank of Sweden ("Central Bank"). It is stated that, at December 31, 1979, 98% of its deposits represented deposits from, and 97% of Applicant's loans and advances constituted credits extended to, Swedish

customers of Applicant. Applicant states that the largest portion of its funding has traditionally been based on interest-accruing demand deposits, which at December 31, 1979 represented approximately 27% of its total deposits, and that it has approximately 5,500 separate depositors.

Applicant represents that it is extensively regulated by Swedish governmental authorities, operates, as do all Swedish commercial banks, under a government charter which is granted for a period not exceeding ten years and which upon application may be extended for subsequent periods of up to ten years (Applicant's current charter extends to December 31, 1984), and is supervised by the Swedish Bank Inspection Board ("Inspection Board") and the Central Bank. Applicant states its administration and financial operations are subject to regular supervision by five auditors, four of whom are elected by shareholders at an annual meeting. One of those four elected auditors must be a qualified, full-time professional accountant, authorized by the Swedish Board of Commerce. The fifth auditor is an independent accountant appointed annually by the Inspection Board. The Inspection Board periodically examines each bank's loan portfolio, requires monthly statements of financial condition and may intervene in management if deemed necessary to enforce the Swedish Banking Companies Act of 1955, as amended ("Bank Act"), or preserve the solvency of a bank. Applicant states that the Central Bank regulates Swedish banking and credit markets as well as monetary and foreign exchange matters, imposing reserve requirements and liquidity ratios on banks and cash or Central Bank deposit requirements on commercial banks and recommending bank credit and interest rate ceilings. Applicant further states that the Bank Act imposes lending limits as well as capital coverage and legal reserve fund requirements, forbids Swedish banks to hold for their own account shares in other corporations without government approval, limits insider transactions, permits no more than one in every five directors of a bank to be an official of the bank and prohibits senior bank officers from serving as directors of securities dealers or underwriters.

Applicant states that it proposes to issue and sell unsecured prime quality commercial paper notes denominated in United States dollars to a commercial paper dealer in the United States, which will then reoffer the notes in the minimum denomination of $100,000 to the types of investors which normally purchase commercial paper. Applicant states that the notes will provide a source of funds for it to finance or refinance its short-term U.S. dollar and other non-Swedish currency credits. According to Applicant, its commercial paper notes will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness of Applicant, including Applicant's deposit liabilities, and ahead of its share capital.

Applicant plans to sell the notes without registration under the Securities Act of 1933, as amended (the "1933 Act"), in reliance upon an opinion of its United States special counsel that the offering will qualify for exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant will not proceed with its proposed offering until it has received such an opinion letter. Applicant does not request Commission review or approval of such opinion letter, and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the proposed issue of securities and all future issues of securities of Applicant in the United States will have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations and that its counsel shall have certified that such rating has been received; provided, however, that no such rating will be required to be obtained with respect to any such issue if in the opinion of Applicant's counsel, having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act. Applicant undertakes to ensure that the dealer will provide each offeree who has indicated an interest in Applicant's commercial paper notes, prior to any sale of the notes to such offeree, with a memorandum describing the business of Applicant together with the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, which shall have been audited in such manner as is customarily done for the Bank by Swedish auditors. Applicant represents that the aforementioned memorandum will be accompanied by a brief paragraph highlighting material differences between Swedish and United States generally accepted accounting principles applicable to banks. Applicant also represents that

such memorandum will be at least as comprehensive as those customarily used in commercial paper offerings in the United States. Such memorandum will be updated periodically to reflect material changes in Applicant's financial status. Applicant also states that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements as a result of the issuance and sale of its notes.

Applicant further represents that, although it has no present intention of doing so, it may in the future offer other securities (other than shares of its capital stock) in the United States pursuant to a registration statement under the 1933 Act, or pursuant to an applicable exemption from registration under the 1933 Act, and any such offerings will be made on the basis of disclosure documents at least as comprehensive as those used in the proposed offering. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Applicant represents that it will appoint a United States corporation as its agent to accept service of process in any action based on any of its commercial paper and instituted in any State or Federal court by a holder of its commercial paper. Applicant further represents that it will expressly accept the jurisdiction of any State or Federal court in the City and State of New York with respect to any action and that both its appointment of an authorized agent and such acceptance of jurisdiction will be irrevocable until all amounts due and to become due with respect to the commercial paper have been paid. Applicant represents that it will similarly appoint an agent for service of process and accept jurisdiction in suits arising from any other offerings of securities that it may make in the United States.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant states that, among other things, compliance by it with a number of substantive provisions of the Act would, as a practical matter, conflict with its operation as a commercial bank and that Applicant would thus be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with such provisions of the Act. Moreover, Applicant states, approval of the application would facilitate Applicant's access to the United States capital market and would thus implement a broad objective of the International Banking Act of 1978, which is to place United States banks and foreign banks on a basis of competitive equality in their United States transactions. Applicant asserts that it is a major commercial bank subject to extensive regulation by Swedish banking authorities and therefore that imposition of the requirements of the Act upon Applicant would be unnecessary. As a Swedish commercial bank subject to such regulation, Applicant argues that it is significantly different from the type of institution that Congress intended the Act to regulate. Applicant concludes that granting its requested exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 24, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date

of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11231/June 25, 1980

In the Matter of

INTERCAPITAL TAX-EXEMPT SECURITIES INC.
and
INTERCAPITAL INDUSTRY-VALUED SECURITIES, INC.
One Battery Park Plaza
New York, N.Y. 10004

(812-4597)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 2(a)(19)

InterCapital Tax-Exempt Securities Inc. and InterCapital Industry-Valued Securities Inc. ("Applicants"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management companies, filed an application on January 22, 1980 for an order of the Commission pursuant to Section 6(c) of the Act declaring that Dr. Irwin Friend, a director of both Applicants, shall not be deemed an interested person of either Applicant within the meaning of Section 2(a)(19) of the Act solely by reason of his position as director of PMI Securities Co., a registered broker-dealer under the Securities Exchange Act of 1934.

On March 13, 1980, a notice (Investment Company Act Release No. 11085) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing. The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(19) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11232/June 25, 1980

In the Matter of

CONSOLIDATED RAIL CORPORATION
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

(812-4662)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING CONRAIL EQUITY CORPORATION FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Consolidated Rail Corporation ("Applicant"), a Pennsylvania corporation created pursuant to the provisions of the Regional Rail Reorganization Act of 1973, as amended ("Rail Act"), filed an application on April 11, 1980, and an amendment thereto on June 5, 1980, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Conrail Equity Corporation ("CEC"), a proposed subsidiary of Applicant which will be incorporated to facilitate the establishment of a noncontributory employee stock ownership plan, from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, following the crisis in

rail transportation in the northeastern United States which resulted from the bankruptcy of several railroads, the Rail Act was enacted. Pursuant to its terms, on April 1, 1976, Applicant received rail related assets from various transferors, including the railroads in reorganization in the northeast. In payment for these assets, Applicant issued 25,000 shares of its common stock, par value $1 per share ("Conrail Common") and 31,740,373 shares of its Series B preferred stock, par value $1 per share ("Conrail Series B"), all of which shares were deposited with a special court pending determination of the appropriate distribution to the transferors. In March 1980, that court ordered that one share of Conrail Series B be issued in the name of one of the transferors. The Rail Act also provided for investments in Applicant of up to $3.3 billion by the federal government through the United States Railway Association ("USRA"), a corporation comprised of representatives of the federal government, railroad and labor management, state and local governments, railway shippers and financial institutions. The responsibilities of USRA include: providing federal financing for Applicant, monitoring Applicant's performance and making recommendations to Congress. In consideratioin of USRA's investments to date, Applicant has issued to USRA $1 billion in principal amount of 7.5% convertible debentures and approximately 18 million shares of Series A preferred stock, par value $1 per share ("Conrail Series A").

Applicant represents that the Rail Act conditions USRA's investment of the final $345 million of the currently authorized federal investment in Applicant upon Applicant's creating and having in effect an employee stock ownership plan which meets certain requirements set forth in Section 216(f) of the Rail Act. Applicant states that in order to obtain those final funds it intends to put into effect on or about July 1, 1980, an employee stock ownership plan ("Plan") meeting those requirements. One of the requirements of Section 216(f) of the Rail Act is that the Plan must contain a provision for its termination, and the defeasence of the employees' interests, if Applicant has not attained certain specified financial and operational levels ("Benchmarks") within approximately 10 years after Applicant's initial contribution to the Plan ("Benchmark Period"). Applicant states that it determined that such a provision might conflict with Section 403(c) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as well as with the tax qualification requirements of Section 401(a) of the Internal Revenue Code of 1954 ("Code"), which, in general, prohibit the assets of an employee stock ownership plan from inuring to the benefit of the sponsoring employer. Applicant further states that the Rail Act also requires that the Plan must contain any provisions that USRA, with the concurrence of its Finance Committee (a quasi-independent committee of USRA's board of directors consisting of the Secretaries of the Departments of Transportation and the Treasury and the Chairman of USRA), deem reasonably necessary to protect the interests of the United States in certain specified respects.

In order to meet the various statutory requirements of the Rail Act, ERISA and the Code, Applicant intends to establish the Plan and fund it with securities of a newly formed subsidiary, CEC, created by Applicant solely to implement the Plan. Applicant proposes to issue Conrail Common to its subsidiary, CEC, and in exchange, receive securities issued by CEC. During the Benchmark Period, CEC would continue to hold the Conrail Common while Applicant used its holdings of CEC securities to fund the Plan through yearly contributions of CEC securities to the Plan. Following the Benchmark Period, the CEC securities then held by the Plan could be redeemed with CEC for varying amounts, depending upon whether the Benchmarks had been attained. According to the application, on April 16, 1980, Applicant's Board of Directors approved the Plan and authorized its chief executive officer to execute the necessary documents to form CEC, and to adopt the Plan. The Plan, including the use of the CEC format, was endorsed by the USRA and the Departments of the Treasury and Transportation.

Applicant states that CEC will be a corporation organized under the laws of Pennsylvania, with a business purpose limited to: (1) owning and holding the Conrail Common contributed to it and (2) investing securities or any other property received in substitution for or in addition to its ownership of the Conrail Common. In addition, Applicant states that CEC will be specifically prohibited from incurring any indebtedness; that Applicant will enter into an agreement to pay CEC's operational expenses; and that Applicant's employees will serve, without additional compensation, as officers and directors of CEC. All of CEC's assets, which will consist of approximately 4.412 million shares of Conrail Common (without exercisable voting rights) and $44,200 in cash, will be contributed to CEC by Applicant in order to implement the Plan, in

exchange for which CEC will issue all of its authorized stock to Applicant, consisting of one share of common stock, par value $1 per share ("CEC Common"), and 4.412 million shares of preferred stock, par value $0.01 per share ("CEC Preferred"). Only the one share of CEC Common, to be continuously held by Applicant, will carry voting rights (except, the CEC Preferred will be entitled to vote in situations involving certain amendments to the CEC Articles of Incorporation), and no dividends will be paid on shares of CEC Common or CEC Preferred.

According to the application the CEC Preferred will have a liquidation preference and will be either subject to mandatory redemption or redeemable at the option of the holder, as described below. If the Benchmarks are met during the prescribed Benchmark Period (anticipated to be January 1, 1981 to December 31, 1990), the CEC Preferred would have a per share liquidation preference equal to one share of Conrail Common or a proportionate amount of any substituted or supplementary assets, and would be subject to mandatory redemption by CEC for Conrail Common or other stock and assets held by CEC in substitution for the Conrail Common. If the Benchmarks are not met during the Benchmark Period, the CEC Preferred would be redeemable at the option of the holder at the redemption price of $0.01 per share, which would be the per share liquidation preference under those circumstances.

According to the application, the Plan is a noncontributory, employee stock ownership plan, which Applicant expects to be qualified under Section 401(a) of the Code. Participation by all employees of Applicant in the Plan will be mandatory, except that employees who are members of certain collective bargaining units may, under some circumstances, waive their rights to participate in the Plan. Applicant will contribute to the Plan 441,200 shares of CEC Preferred on or as of December 31, 1980, and again on or as of December 31 of each of the next nine years thereafter. Applicant states that no distribution of such CEC Preferred will be made by the Plan during the Benchmark Period. If the Benchmarks are met and the CEC Preferred shares are redeemed by the Plan for the Conrail Common, or other assets then held by CEC, the trustee administering the Plan ("Trustee") would distribute to all participants in the Plan who had retired or otherwise terminated their employment relationships with Applicant during the Benchmark Period, or to a deceased participant's designated beneficiary or estate, the Conrail Common or substituted assets allocable to their accounts. The Trustee would distribute to each remaining participant (or his beneficiary or estate) the Plan assets allocable to his account when such participant retired or otherwise terminated his employment relationship. However, if the Benchmarks are not met, the Plan would be terminated and the Trustee would distribute to all participants (or their beneficiaries or estates) the CEC Preferred shares allocable to their accounts, which shares could be redeemed at the option of the holder for $0.01 per share. Alternatively, prior to any such distribution of CEC Preferred shares, the Plan might be amended to permit the Plan to redeem the CEC Preferred shares at $0.01 per share so that cash rather than stock could be distributed by the Trustee to the participants.

Applicant states that it expects that the Plan will be considered by the Internal Revenue Service ("IRS") as meeting the requirements for qualification under Section 401(a) of the Code. Thus, pursuant to Section 3(c)(11) of the Act, Applicant would be excluded from the Act's definition of an "investment company." However, Applicant states that CEC might be considered to fall within the definition of an "investment company" under the Act. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant states that because CEC will be an issuer (of the CEC Preferred and CEC Common) in the business of owning or holding securities (Conrail Common) and because the Conrail Common is not a Government security, but rather would be an investment security, CEC may fall within the Act's definition of an "investment company." However, Applicant submits that CEC is not an appropriate subject for regulation under the Act.

Applicant asserts that the substantial involvement of federal departments in the planning of the structure of CEC and the Plan, and the continual oversight of Applicant, CEC and the Plan by federal representatives, obviates the need for further regulation of CEC under the Act. Applicant states

that the Plan will be subject to direct regulation by the Department of Labor under ERISA and the IRS pursuant to the Code, and that, although CEC will not be directly subject to regulation under ERISA or the Code, its organization and operations will be scrutinized by several federal agencies, including: (1) USRA, which was involved in the structuring of CEC and its relationship to the Plan, reviewed the CEC Articles of Incorporation ("CEC Articles") and has the power to monitor CEC, and to monitor any amendment of the CEC Articles, and (2) representatives of the Departments of the Treasury and Transportation, which were active participants in the process of planning CEC. In view of the foregoing, Applicant submits that the interests of the federal government and the employee participants are sufficiently protected, in a manner consistent with the Act's purposes, so that further regulation by the Commission would not be necessary in the public interest.

Applicant asserts that CEC should also be exempted from all of the provisions of the Act because CEC satisfies the intent and spirit of certain statutory exclusions from the Act. Section 3(b)(3) of the Act excepts from the definition of "investment company" any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by Sections 3(b)(1) or (2) of the Act. Applicant recognizes that CEC does not meet the technical requirements of Section 3(b)(3) because: (1) after December 31, 1980, its securities will be held by two entities, Applicant and the Plan, and (2) Applicant, as one of the entities owning CEC securities, is not a company excepted from the definition of an "investment company" by Section 3(b)(1) or Section 3(b)(2). Nevertheless, Applicant submits that the requested exemption for CEC would be consistent with the statutory intent of Section 3(b)(3) because CEC will have no public shareholders (unless and until the CEC Preferred is distributed in 1991) and because its corporate parents, Applicant and the Plan, may be considered not to be investment companies.

Applicant also asserts that CEC satisfies the spirit of Section 3(c)(1) of the Act, which excludes from the definition of "investment company" any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. That section further provides that, for purposes of that section, beneficial ownership by a company shall be deemed to be ownership by one person, except that if such company owns 10 per centum or more of the outstanding voting securities of the issuer, beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper). Applicant acknowledges that, because it owns more than ten percent of CEC's voting securities and because it has more than 100 holders of its securities, CEC cannot rely on Section 3(c)(1). However, Applicant submits that the purpose of the attribution rule of Section 3(c)(1) is to prevent public companies from establishing subsidiary investment companies in order to bypass regulation under the Act. Applicant states that because its equity securities are presently not publicly traded securities and its debentures are not and will not be acquired by the public with an intent to obtain an interest in Applicant's holdings of CEC securities, the intent of Section 3(c)(1) of the Act would not be served by attributing Applicant's CEC ownership to its own security holders. In this regard, Applicant notes that CEC would be able to rely on Section 3(c)(1) of the Act if proposed amended Rule 3c-2 were adopted. That proposed rule, in pertinent part, would provide that for the purpose of Section 3(c)(1) of the Act, beneficial ownership by a company owning 10 percent or more of the outstanding voting securities of any issuer shall be deemed to be beneficial ownership by one person if and so long as the value of all securities of all issuers who are excluded from the definition of investment company by Section 3(c)(1) of the Act owned by such company does not exceed 5 percent of the value of the company's total assets. Applicant states that, although it is difficult to ascertain the value of the CEC stock, having assets of its own in excess of $4 billion, its investment in CEC would meet the requirements of proposed amended Rule 3c-2.

In view of the foregoing, Applicant requests that the Commission, pursuant to Section 6(c) of the Act, grant an unconditional exemption for CEC from all provisions of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the

policy and provisions of the Act. Applicant submits that exemption of CEC from the provisions of the Act is consistent with the purposes of the Act because CEC is not affected with a national public interest of the type intended to be regulated under the Act and because CEC does not present the dangers against which the Act was designed to protect.

As noted above, Applicant expects that the Plan will be considered by the IRS as meeting the requirements for qualification under Section 401(a) of the Code and consequently, does not seek exemptive relief from the Act for the Plan. Accordingly, the requested order pursuant to Section 6(c) of the Act will not be issued until such time as Applicant files an amendment to its application advising the Commission that the Plan has received a determination from the IRS stating that it is qualified.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 17, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. After the filing of the aforementioned amendment to the application, and as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11233/June 26, 1980

In the Matter of

BNP U.S. FINANCE CORPORATION
c/o Peter H. Darrow, Esq.
Cleary, Gottlieb, Steen & Hamilton
1 State Street Plaza
New York, New York 10004

(812-4658)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that BNP U.S. Finance Corporation ("Applicant") filed an application on April 10, 1980, and amendments thereto on June 4, 1980, and June 20, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized under the laws of Delaware on April 3, 1980, solely for the purposes described more fully below. All the outstanding shares of capital stock of Applicant, when issued, will be purchased by Banque Nationale de Paris ("BNP"), a French commercial bank, or by a wholly-owned subsidiary of BNP.

In connection with a proposed issuance of commercial paper in the United States, BNP filed an application for an order of the Commission pursuant to Section 6(c) of the Act exempting it from all provisions of the Act, which was granted on August 7, 1979 (Investment Company Act Release No. 10813). The pending application states that if such commercial paper were issued directly by BNP, the payments constituting interest on the commercial paper notes could be subject to French withholding tax. BNP has been informed that, if such a tax were imposed, its commercial paper would have to bear a higher interest rate than other commercial paper of similar maturities with a similar credit rating. BNP states that potential investors might be reluctant to purchase commercial paper subject to withholding tax because of the uncertainties and paper work

involved to claim the credit. The sole business of Applicant will be to deposit with, or loan to, BNP the proceeds of the sale of commercial paper or other securities, and substantially all of its assets will consist of amounts receivable from BNP. BNP will unconditionally guarantee payment on any security issued by Applicant.

BNP is a foreign bank holding company registered with the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and is subject to the provisions of the Bank Holding Company Act of 1956 ("1956 Act"). Since 1974, BNP has filed with the Federal Reserve Board an annual report containing detailed information with respect to BNP and its subsidiaries. In the future such annual reports by BNP will include information concerning Applicant. Applicant states that the scope of BNP's activities in the United States is limited by and regulated under the 1956 Act, which provides, in part, that the Federal Reserve Board has the power under certain circumstances to terminate certain United States activities of BNP or to terminate BNP's control of Applicant.

Applicant proposes to issue and sell commercial paper notes in minimum denominations of $100,000 in the United States through commercial paper dealers to the types of investors that ordinarily participate in the United States commercial paper market. In the alternative, BNP may issue the commercial paper directly. BNP and Applicant believe that the aggregate amount of commercial paper that will be outstanding in the first year will average $150-200 million. Applicant will lend to or deposit with BNP the proceeds of sales of commercial paper made by Applicant except for amounts needed to repay maturing securities issued by Applicant and to meet its expenses.

Applicant plans to sell the notes without registration under the Securities Act of 1933 ("1933 Act"), in reliance upon an opinion of its special legal counsel in the United States that, under the circumstances of the proposed offering, the commercial paper would be entitled to the exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant will not proceed with its proposal offering until it has received such opinion letter. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future issue of its debt securities in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized investment rating organizations and that its United States counsel shall certify to the Commission, if requested, that such rating has been received; provided, however, that no such rating shall be required to be obtained, if in the opinion of United States counsel for Applicant, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act. Applicant represents that the commercial paper notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and with all other unsecured debt of Applicant. The guarantee of BNP will rank *pari passu* with all other unsecured debt of BNP, including its deposit liabilities.

Applicant undertakes to ensure that each dealer in the commercial paper will provide each offeree with a memorandum describing the business of BNP and Applicant and containing BNP's most recent publicly available financial statements, audited in accordance with French auditing practices. Applicant states that the offering memorandum will include a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by United States banks. Applicant represents that the memorandum will be updated as promptly as practicable to reflect material adverse changes in BNP's financial status and will be at least as comprehensive as those customarily used in offering commercial paper in the United States. Applicant states that it may make future offerings of its debt securities in the United States, and that such debt securities will be unconditionally guaranteed by BNP. Applicant undertakes further to ensure that, in connection with any such offerings, offerees will be provided with disclosure documents at least as comprehensive in their description of BNP and its business and financial statements as the memorandum in the presently proposed offering. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with the foregoing undertakings concerning disclosure documents.

The applicant states that Morgan Guaranty Trust Company of New York or the Commission will be authorized to accept service of process in any action against Applicant or BNP based on the commercial paper or the guarantees relating thereto and instituted in any state or federal court by the holder of any commercial paper note. Applicant and BNP expressly submit to the jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the commercial paper notes have been paid. Applicant and BNP will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the commercial paper or otherwise. The application also states that Applicant and BNP will similarly consent to jurisdiction and appoint a United States agent for service of process in any action based on any future offerings of debt securities that it may make in the United States.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuers total assets (exclusive of government securities and cash items) on an unconsolidated basis." Applicant states that it may be considered to be an investment company as defined under the Act.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that the rationale for the exemption granted to BNP extends to Applicant because of the close relationship between the two companies and because the obligations of Applicant will be guaranteed unconditionally by BNP. The sole business of Applicant will be to operate as a financing vehicle for BNP. Applicant states that its revenues will be adequate to service fully its obligations under the commercial paper notes because its charges or its loans to BNP will be fixed to ensure an adequate income flow. Applicant concludes that the purpose of the commercial paper notes will be the equivalent of purchasing obligations of BNP. BNP has been granted an exemption from the provisions of the Act pursuant to Section 6(c) of the Act and Applicant argues that, if, instead, it is used as a financing vehicle, the same policy considerations should apply and Applicant should be granted an exemption. Applicant also asserts that the public policy concerns which led to the enactment of the Act are not applicable to Applicant and that the holders of Applicant's securities do not require the protection afforded by the Act.

NOTICE IS FURTHER GIVEN, that any interested person may, not later than July 21, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 724/June 26, 1980

AND

SECURITIES EXCHANGE ACT OF 1934
Release No. 16935/June 26, 1980

LITIGATION

Litigation Release No. 9111/June 20, 1980

SECURITIES AND EXCHANGE COMMISSION v. *ROBINEX INTERNATIONAL, LTD.* United States District Court for the District of Columbia, Civil Action No. 80-1530

The Commission announced today that it filed in the United States District Court for the District of Columbia a civil injunctive action against Robinex International, Ltd. ("Robinex"), Hollywood, Florida. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Robinex as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended January 31, 1980, required to have been filed with the Commission by April 30, 1980.

The Complaint requests that the Court order Robinex to file forthwith, with the Commission, its Annual Report on Form 10-K for its fiscal year ended January 31, 1980. In addition, the Commission requests that the Court enjoin Robinex from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9112/June 23, 1980

UNITED STATES v. *J. LYELL GINTER* (D. Ore. No. CR 79-57)

Sidney I. Lezak, United States Attorney for the District of Oregon, and Jack H. Bookey, Administrator of the Seattle Regional Office of the Securities and Exchange Commission announced that on May 27, 1980 the Ninth Circuit of the United States Court of Appeals issued a memorandum opinion affirming J. Lyell Ginter's two year prison sentence for violating the federal securities laws.

Ginter of Bridal Veil, Oregon had pleaded *nolo contendere* to one count of unlawfully selling unregistered securities. His appeal, after receiving a two year prison sentence, was based on an argument that the district court based the sentence on unreliable information contained in the presentence report. The charges against Ginter stemmed from an investigation into his sale of personal promissory notes to persons in Oregon and California.

(For further information please see Litigation Releases 7730, 7593, 8727, and 8839.)

Litigation Release No. 9113/June 24, 1980

SEC v. *ALLEN R. GLICK*, (United States District Court for the District of Nevada, Civil Action No. LV-78-11, HEC)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office of the Commission, announced that, on June 12, 1980, the Honorable Harry E. Claiborne granted the Commission's motion for leave to amend its complaint against Allen R. Glick.

In the original complaint, the Commission alleged that Glick caused Argent Corporation to make false and misleading statements and to omit to state material facts regarding the advance of millions of dollars from Argent to Glick and regarding certain real estate transactions entered into by Argent. The Commission charges that this conduct constituted violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder.

The amended complaint reasserts the original allegations and adds several new charges. The Commission alleges in the amended complaint that

Glick made false statements about a finder's fee paid to Todd Derlachter in connection with Glick's acquisition of Recrion in 1974. It is also alleged that Glick failed to disclose that Derlachter never performed any services for the $10,000 monthly fee he received from Argent for over five years pursuant to a consulting agreement. The amended complaint further charges that Glick failed to disclose that he had an arrangement and understanding with Tamara Rand whereby she was to receive 5% of Argent upon its acquisition of Recrion. The amended complaint states that this conduct constitutes violations of Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder.

The Commission also alleges that Glick made false statements about the impact upon Argent of a renovation program undertaken during 1975-1976, thereby violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The Commission seeks a permanent injunction against Glick. For further information, see Litigation Releases No. 9088 and 8187.

Litigation Release No. 9114/June 24, 1980

SEC v. *BOOKKEEPERS, LTD., ET AL.* (Southern District of California, CV-79-1715-N)

Leonard H. Rossen, Regional Administrator of the Securities and Exchange Commission in Los Angeles, announced that on June 17, 1980, United States District Judge Leland C. Nielsen issued a final judgment and permanent injunction against Joseph Margala of Upland, California, and Jerry Whitley of Whittier, California, former president and vice president, respectively, of Bookkeepers, Ltd. Bookkeepers, located in Ontario, California, provides services to small businesses and operates approximately 100 branch offices throughout the country.

Under the terms of the judgment, Margala and Whitley are enjoined from violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934. They were also enjoined from violating Section 12(g) of the Securities Exchange Act of 1934, which requires the registration of stock with the Commission. In addition, Margala and Whitley were ordered to return to Bookkeepers the shares of stock they acquired in 1974 in a transaction which the Commission alleged was fraudulent. Margala and Whitley consented to the entry of the judgment against them without admitting or denying the allegations of the complaint.

The final judgment came in an action filed in 1978 by the Commission against Bookkeepers, Margala, Whitley and Walter Wencke, Chairman of the Board and controlling shareholders. The Commission recently obtained final judgments against Wencke and Bookkeepers.

The Commission's complaint charged the defendants with fraudulently issuing 2,000,000 shares of stock to themselves in April 1974, and with effecting a reverse stock split thereafter. According to the complaint, this amounted to 1000 to 1 reverse stock split and reduced the number of shareholders from over 1000 to approximately 25. It also increased the ownership of Wencke, Margala and Whitley to approximately 90% of the company.

Under the judgments obtained by the Commission, the former shareholders of Bookkeepers will be restored to the ownership position they occupied before the April 1974 transactions at no cost to themselves. In addition, Bookkeepers will register its stock with the Commission.

As a result of a previous order issued by Judge Nielsen, Bookkeepers is under the management and control of a court appointed trustee, Mr. R. N. Gould of San Diego.

Last month, in a related criminal action in San Diego federal court arising from the same transactions, Margala was convicted of 15 counts of securities and mail fraud and Whitley pleaded guilty to one count of being an accessory after the fact. Wencke, who was indicted along with Margala and Whitley, has not appeared for his trial and remains a fugitive. Wencke failed to appear late last year to begin serving a five year prison sentence resulting from his conviction in a previous fraud case. A warrant for his arrest has been issued and authorities are continuing their search for him. For further information See Litigation Release Nos. 8328 - March 14, 1978; 8937 - December 3, 1979; 8865 - December 31, 1979; and 9078 - May 7, 1980.

Litigation Release No. 9115/June 25, 1980

UNITED STATES OF AMERICA v. *RUSSELL REED, ALSO KNOWN AS "STEPHEN WHITNEY", JAMES S. DOYLE AND THOMAS FRANCIS RYAN,* 79 Crim. 515(S) (E.D.N.Y.)

Edward R. Korman, United States Attorney for the Eastern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on June 10, 1980, defendants Russell Reed, also known as Stephen Whitney ("Reed"), of Clinton Corners, New York, James S. Doyle ("Doyle"), of Brentwood, New York, and Thomas Francis Ryan ("Ryan"), of Kings Park, New York were sentenced by the Honorable George C. Pratt, United States District Judge for the Eastern District of New York, following their convictions by a jury. Defendant Reed was sentenced to (1) five years imprisonment on each of three counts (one of which was suspended), to run concurrently; (2) two years imprisonment on each of two counts, to run concurrently, however, consecutive to the five year terms; (3) five years probation; and (4) a $23,000 fine. Defendants Doyle and Ryan were each sentenced to two years imprisonment on each of five counts, to run concurrently, and three years probation. All but three months of defendants Doyle and Ryan's terms of imprisonment were suspended.

Prior to sentencing, Judge Pratt ruled against defendant Reed's motion to be released from jail on the ground that he had been illegally extradited from outside the United States. Defendant Reed did not appear at the trial and was convicted in absentia.

Defendants Reed, Doyle, and Ryan were each convicted of five counts of conspiracy, securities fraud, and mail fraud in connection with the purchase of approximately $2 million in securities at the Huntington, New York branch office of Shearson Hayden Stone, Inc. (now known as Shearson Loeb Rhoades, Inc.), where defendants Doyle and Ryan were then employed. In a related civil injunctive action, Final Judgments of Permanent Injunction by Consent were issued by the Honorable Henry F. Werker against defendants Reed, Doyle, and Ryan in *SEC* v. *Russell Reed, et al.*, 78 Civil 5581 (S.D.N.Y.).

For further information, see Litigation Release Nos. 9052, 8881, and 8677.

Litigation Release No. 9116/June 25, 1980

SEC v. *JOHN P. HUBERTY* (District of Minn., Civil Action File No. 4-80-330)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on June 13, 1980, U.S. Magistrate J. Earl Cudd entered a Temporary Restraining Order restraining and enjoining John P. Huberty of Minnetonka, Minnesota, from violations of the antifraud provisions of the Federal securities laws. In addition, the Order restrained Huberty from disposing of any assets and destroying any of his books and records. The Order further froze Huberty's assets, except that he was allowed $750.00 for subsistence expenses until June 19, 1980, at which time a hearing will be held to show cause why a preliminary injunction should not be granted. Upon Huberty's consent, a receiver (as yet unnamed) was appointed to take possession of Huberty's assets and property, and to hold them subject to further order of the court.

The Commission's Complaint, which was filed on June 13, 1980, alleged that Huberty had violated the antifraud provisions in obtaining approximately $1.3 million from at least 35 individuals and entities purportedly for the purchase of securities. The Complaint further alleged that instead of purchasing securities, Huberty used the funds to purchase commodities for his own account, speculate in interest rate futures, and buy real estate for himself.

In addition to seeking a freeze on Huberty's assets and the appointment of a receiver, the Complaint further requested that Huberty disgorge any and all funds received in connection with the above-described securities transactions.

SECURITIES INVESTOR PROTECTION ACT OF 1970

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 92/June 26, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16935/June 26, 1980

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sec docket

VOLUME 20, NO. 8 JULY 15, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6218-20	545
Securities Exchange Act	16938-55	559
Public Utility Holding Company Act	21643-48	580
Trust Indenture Act	574-75	586
Investment Company Act	11234-42	586
Investment Advisers Act	725-27	595
Litigation	9117-24	595

This listing covers releases issued from 6/27/80-7/2/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

33-6219 Publication of a listing of pending rulemaking and related regulatory matters which the Commission is likely to consider during the balance of calendar year 1980.

33-6220 Establishment of a Counsel for Professional Responsibility to oversee compliance with the Commission's Conduct Regulations.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16939	34-16941	34-16944
34-16940	34-16942	34-16945

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933

Release No. 6218/June 27, 1980

In the Matter of

THE PROFIT-SHARING PLAN OF KADISON, PFAELZER, WOODARD, QUINN & ROSSI
707 Wilshire Boulevard
Los Angeles, CA 90017

(18-74)

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NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 PARTICIPATIONS OR INTERESTS ISSUED IN CONNECTION WITH THE PROFIT-SHARING PLAN OF KADISON, PFAELZER, WOODARD, QUINN & ROSSI.

NOTICE IS HEREBY GIVEN that the law firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi ("Applicant" or the "Firm"), a California partnership, by letter dated March 31, 1980, has applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with The Profit-Sharing Plan of Kadison, Pfaelzer, Woodard, Quinn & Rossi (the "Plan"). All interested persons are referred to that document which is on file with the Commission for the facts and representations contained therein, which are summarized below.

I. *Introduction*

The Plan covers the Applicant's partners and full time employees, of whom approximately 22 partners and 31 employees were eligible to participate as of March 31, 1980. Full time employees or partners of the Firm who have completed three years of service (as defined) become participants of the Plan at intervals provided in the Plan.

The Plan covers persons (in this case, Applicant's partners) who are employees within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). Such a plan is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in employee benefit plans of corporate employers. Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. *Description and Administration of the Plan*

Applicant states that the Plan has received a determination letter from the United States Internal Revenue Service that it is qualified under Section 401(a) of the Code. The Plan is also an employee pension benefit plan which is subject to all of the fiduciary standards of the Employee Retirement Income Security Act of 1974 ("ERISA"), and to the rules, regulations and standards of the Department of Labor adopted thereunder. The Plan is funded through a single trust for which United California Bank currently acts as trustee under a trust agreement.

All required contributions to the Plan on behalf of employees or partners are made by the Firm, without contribution by the participant, in an amount equal to the lesser of $7,500 or 7-1/2% of the participant's compensation in each Plan year. In addition, under the Plan each participant is permitted to make voluntary additional contributions to his account in the Plan, in a lump sum or through withholding, of up to an additional 10% of his annual compensation, currently limited by Plan rules to the first $100,000 of such compensation. All Firm and voluntary contributions are at all times fully vested and nonforfeitable, but withdrawal of Firm contributions and earnings on voluntary contributions by a participant is restricted in accordance with applicable tax laws.

Contributions are held in four funds, the first two of which are commingled and invested in real property, personal property, and a portfolio of equity and debt securities. Specified Firm contributions for the account of participating personnel and partners are invested in the first fund. The second fund consists of funds directed to it by contributions from the individual participants. These funds are managed by Everett Harris & Co., an independent investment counseling firm registered under the Investment Advisers Act of 1940. The third fund includes only contributions by the Firm directed to such fund by a participant, and the fourth fund includes only voluntary contributions by the individual participant. These funds are managed and invested by the Trustee at the direction of each participant in real property, personal property, a portfolio of equity and debt securities, and life insurance or annuity policies. All investment discretion with respect to the third and fourth funds is exercised by each participant as to his individual account within that fund subject to the approval of the administrator. Assets invested in the funds are held by United California Bank, as trustee and custodian.

Any participant may at any time withdraw all or any part of the aggregate of his voluntary contributions, but may not withdraw earnings thereon without certain penalties as required by applicable tax laws. Upon termination of a participant's employment for any reason, or in the event of permanent disability, the participant or his designated beneficiary is entitled to receive the entire amount of the Firm's and his personal contributions to his account under the Plan, adjusted for gains and losses thereon. The participant or his beneficiary may elect to receive such distribution in either a lump sum payment in cash or through payment of installments for a set term.

The Plan is administered by the Partnership of the Firm acting through its HR-10 Plan Committee (the "Committee"). The Committee has general authority to control the operation of the Plan and to supervise its administration, including interpreting the Plan, determining eligibility for participation under the Plan, adopting rules with respect to the Plan, and conducting claims procedures under the Plan. All costs of administration of the Plan are paid by the Firm.

III. *Discussion*

Applicant contends that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers which are exempt under Section 3(a)(2) of the Act, as well as those of many partnerships which have previously received exemptive orders under Section 3(a)(2). Applicant maintains that there appears to be no sound policy basis for treating the Plan differently

from such similar plans. Applicant points out that Congress did not exclude interests in Keogh-type plans from the exemption of Section 3(a)(2) because of any perceived differences between corporate plans and partnership plans, but rather out of a concern for the marketing of interests or participations in commingled or collective investment funds by sponsoring financial institutions through offerings of prototype Keogh plans to unrelated self-employed persons unsophisticated in the securities field. Applicant represents that its Plan is not a master or prototype plan marketed to the public by a sponsoring financial institution, and that Plan assets are not invested in any such master or prototype plan or commingled with assets of any other plans or collective funds of any manager.

Applicant also maintains that the disclosure requirements of ERISA and other disclosures to be made to Plan participants provide additional grounds for granting the Section 3(a)(2) exemption in this case.

Finally, Applicant states that it is engaged in furnishing legal services of a type which necessarily involve financially sophisticated and complex matters, and for that reason, as well as the extensive administrative control over the Plan maintained by the Firm, is able to represent adequately its interests and the interests of its employees who are participants in the Plan.

Applicant concludes for the foregoing reasons that granting the request for the exemptive order would be appropriate in the public interest, consistent with the protection of investors and the purposes, policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 22, 1980, submit to the Commission in writing a request for a hearing on the application, accompanied by a statement of the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communications should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of any attorney at law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following July 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6219/June 30, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16943/June 30, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21644/June 30, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11237/June 30, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 725/June 30, 1980

LISTING OF CERTAIN REGULATORY MATTERS AND RELATED INFORMATION

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Listing of Certain Regulatory Matters and Related Information.

SUMMARY: The Securities and Exchange Commission has determined to publish a listing of pending rulemaking and related regulatory matters which it is likely to consider during the balance of calendar year 1980. This release supersedes the listing which appears in Securities Act Release No. 6117 (Aug. 31, 1979)(44 FR 52810). In addition, this release contains a more generic analysis of the staff's current regulatory reform and review initiatives, along with a discussion of certain areas in which the Commission is seeking to further particular statutory goals without resort to direct regulation. Further, the release also describes certain regulatory review projects which the Commission's staff may commence during 1981. With respect to these longer range initiatives, the Commission is seeking public comment on the staff's priorities.

DATE: Comments on Part III of this release must be received on or before October 1, 1980.

ADDRESSES: All communications on matters discussed in Part III of this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Correspondence should refer to file number S7-841 and will be available for public inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Comments with respect to specific initiatives discussed in Partsl and II of this release should be submitted to the Commission in accordance with the terms of the particular Commission releases announcing or proposing those actions. In some cases, the comment periods with respect to these matters are closed. The Commission, in its discretion, may accept and include in the public file written comments received by the Commission after the closing date. *See* Rule 6(b) of the Commission's Informal and Other Procedures, 17 CFR 202.6(b).

FOR FURTHER INFORMATION CONTACT: Christine Delaney, Office of the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Wasington, D.C.

20549 (telephone 202/272-2600).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission has traditionally been sensitive to the need to broaden public participation in the Commission's regulatory processes and to promote public understanding of the Commission's work. Consistent with that philosophy, during the past 18 months the Commission has published two listings of certain regulatory matters pending before the Commission. See Securities Act Release No. 6040 (Mar. 22, 1979) (44 FR 20354) and Securities Act Release No. 6117 (Aug. 31, 1979) (44 FR 52810). In furtherance of that policy, Part I of this release sets forth anticipated major rulemaking and related regulatory matters likely to be considered by the Commission during the balance of calendar year 1980.

The Commission constantly seeks to identify opportunities to reform and restructure regulation, consistent with changes in the market-place and the business community. Public awareness of the Commission's goals and progress, and public participation in its regulatory reform activities, are essential to the success of those processes. In order to promote that participation, this release also includes certain additional information, not presented in the Commission's earlier listing of regulatory matters, concerning anticipated Commission regulatory priorities.

In this regard, Part II of this release contains a brief generic discussion of the Commission's regulatory reform and revision activities. This general description of initiatives is designed to promote public comprehension of the Commission's regulatory reform approach and direction. Part II also describes particular proposals of this nature which the Commission is likely to consider during the balance of 1980. As that listing demonstrates, the Commission continues to be aggressive in reviewing and reshaping its regulatory structure in response to the needs of the investing public. The final section of Part II also describes briefly some of the areas in which the Commission is seeking to discharge its statutory goals without resort to direct regulation.

Part III of this release sets forth certain regulatory reform and revision projects which the Commission's staff is contemplating initiating during 1981. With respect to these longer-range matters, the Commission invites public comment on its proposed staff priorities and also invites suggestions as to other initiatives which it should consider in addition or as alternatives. Part III also contains specific conceptual inquiries respecting certain major proposed reform projects.

The Commission's objective in requesting comments on the matters set forth in Part III is to increase its sensitivity to the facets of its regulation which merit reconsideration or review and to ensure that it has the benefit of the public's thinking at the formative stages of such projects with respect to the specific issues which should be considered.

I. LISTING OF CERTAIN REGULATORY MATTERS

This listing sets forth certain significant regulatory matters likely to come before the Commission during the balance of 1980. It is based upon Commission priorities at the time of publication. Because the Commission must respond to developments in the capital markets, changes in economic conditions, new Congressional priorities, and similar circumstances not easily predictable, no such listing can be definitive. Additionally, this listing does not include matters which, although under active consideration, have not yet evolved to a point in the deliberative process where public Commission action is certain.[1] Accordingly, while the Commission believes that the information contained herein will be of use to interested persons, those affected by Commission action should not rely solely on this document.

A. *Significant Initiatives in the Areas of Capital Formation and Corporate Disclosure.*

1. *Proposed Revision of Form 10-K.* In its November 1977 report to the Commission, the Advisory Committee on Corporate Disclosure recommended revisions to the present annual report filed on Form 10-K. On August 16, 1978, the Commission issued a concept release requesting comment on the present Form 10-K and the revisions which the Advisory committee had recommended. In January 1980, after reviewing the resulting comments and examining existing filings, the Commission proposed amendments to Form 10-K, Regulation S-K, Rule 14a-3, Rule 14c-3, and a number of related rules, forms, and guides under both the Securities Act of 1933 and the Securities Exchange Act of 1934. This rulemaking seeks to facilitate the integration of filings under the Securities Act and the Exchange Act; facilitate the integration of Form 10-K and the annual report to shareholders; and eliminate disclosure which is duplicative or otherwise of little value to investors or analysts. The staff anticipates recommending further action to the Commission on the outstanding rule proposals in the third quarter of 1980. For further information, see Securities Exchange Act Releases Nos. 15068 (Aug. 16, 1978) and 16496 (Jan. 15, 1980) (43 FR 37460 and 45 FR 5972).

2. *Proposed Amendments to the Commission's Exhibit Requirements.* On November 16, 1979, the Commission published proposals in Securities Act Release No. 5149 which would standardize and improve the Commission's requirements relating to the filing of exhibits. The proposed amendments would delete certain exhibits formerly required to be filed, revise and make uniform the requirements relating to certain other exhibits, consolidate most exhibit requirements in a new Regulation S-K item, and require an exhibit index to be included with each filed form or report. The comment period on this proposal expired December 31, 1979, and the staff expects to complete its review of the comments and recommend final action to the Commission in the third quarter of 1980. For further information, see Securities Act Release No. 6149 (Nov. 16, 1979) (44 FR 67143).

[1] In contrast, Parts II and III of this release set forth various matters which are under staff consideration but which have not yet been presented to the Commission for approval.

3. *Publication for Comment of Existing Guides for Statistical Disclosure by Bank Holding Companies.* The Commission has requested comments on the quality and desirability of disclosure pursuant to Guides 61 and 3 which govern statistical disclosure by bank holding companies. This initiative fulfills the Commission's undertaking expressed at the time these guides were promulgated to review the experience of registrants and users to determine whether the new disclosures are necessary and appropriate. Staff proposals based on the comments will be submitted to the Commission in the third quarter of 1980. For further information, see Securities Act Release No. 6115 (Aug. 30, 1979) (44 FR 52820).

4. *Proposed Form S-15.* The Commission published proposed Form S-15 for comment on January 15, 1980. This form would provide an abbreviated vehicle for Securities Act registration of securities issued in certain corporate reorganizations and business combination transactions, if specified criteria were met. The public comment period closed on April 30, 1980, and the staff is analyzing the comments received and will prepare final proposals for Commission consideration in the third quarter of 1980. For further information, see Securities Act Release No. 6177 (Jan. 15, 1980) (45 FR 5934).

5. *Re-evaluation of the Guides.* As part of a long-term program to review all of its disclosure requirements, the Commission has published a concept release soliciting public comment on the "Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933" and the "Guides for Preparation and Filing of Reports and Proxy and Registration Statements under the Securities Exchange Act of 1934." The purpose of this re-evaluation is to monitor the effectiveness of the Guides and to identify those which have become obsolete or inconsistent with particular rules, regulations, or forms. The staff anticipates that the Commission will consider recommendations based on the comment process during the third quarter of 1980. For further information, see Securities Act Release No. 6163 (Dec. 5, 1979) (44 FR 72604).

6. *Management Remuneration.* On May 6, 1980, the Commission proposed for public comment amendments to Item 4 of Regulation S-K. These proposals involve the disclosure of management remuneration and specifically address pension, option, and stock appreciation rights plans, the definition of an executive officer, compensation relating to the termination of employment, indebtedness of management, and certain other technical amendments. The proposals are a result of the Commission's monitoring of the disclosure provisions adopted in Securities Act Release No. 6003 (Dec. 4, 1978) (43 FR 58151). The staff anticipates recommending further action to the Commission on these proposals following its review of the comments received. For further information, see Securities Act Release No. 6210 (May 6, 1980) (45 FR 31733).

7. *Proposed Amendments to Tender Offer Rules.* The Commission has proposed a series of amendments to the various rules governing tender offers. Among the chief features of these proposals are a definition of the term "tender offer"; certain antifraud provisions concerning trading by persons on the basis of material nonpublic information relating to a tender offer; provisions requiring equal treatment of security holders in the context of a tender offer; and a prohibition of certain purchases not made by means of a tender offer. The comment period expired on February 15, 1980, and the staff expects that recommendations will be considered by the Commission during the third quarter of 1980. For further information, see Securities Act Release No. 6159 (Nov. 29, 1979) (44 FR 70349).

8. *Corporate Governance.* In April 1977, the Commission announced a comprehensive study of the difficult issues relating to shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally. During 1977, the Commission conducted hearings in four cities concerning these basic issues. In 1978, as a result of this proceeding, the Commission adopted rules to expand the disclosures concerning board structure and director qualifications in proxy statements, and, in 1979, the Commission adopted rules revising the form of the proxy card in order to increase the opportunity for shareholders to participate in the corporate electoral and decision-making process.

The Commission anticipates that a staff report on corporate governance issues will be completed during 1980. Following publication of this report, the Commission will consider what further action, if any, is appropriate, based on the recommendations in that report. For further information, see Securities Exchange Act Releases Nos. 16356 (Nov. 21, 1979), 15384 (Dec. 6, 1978), 13482 (Apr. 28, 1977), and 13901 (August 29, 1977) (44 FR 68764, 43 FR 58522, 42 FR 23901, and 44860).

9. *Classification of Issuers.* On June 2, 1980, the Commission published a release which solicits comments on the feasibility of establishing defined classes of small issuers for purposes of modifying certain reporting and other obligations under the Securities Exchange Act. The Commission also released statistical data with respect to those companies that are subject to the Securities Exchange Act pursuant to Section 12 and 15(d) thereof, for the purpose of evaluating potential classification criteria. Based on the public comments, the staff will consider whether to recommend that the Commission propose reduced or streamlined disclosure obligations either with respect to the frequency of reports or the type of information reported, or both, for one or two additional classes of issuers.

The comment period on this concept release closes on September 15, 1980, and the staff anticipates presenting recommendations to the Commission concerning these matters before the end of 1980. For further information, see Securities Exchange Act Release No. 16866 (June 2, 1980) (45 FR 40145).

B. *Significant Initiatives Affecting Regulation of the Securities Markets and the Securities Industry*

1. *National Market System.* The Securities Act Amendments of 1975 directed the Commission to facilitate the establishment of a national market system

for securities. As part of its implementation of that mandate, the staff anticipates presenting recommendations to the Commission concerning a number of initiatives during the third and fourth quarters of 1980. In particular, the Commission may consider whether to adopt, withdraw, or republish for comment pending rule proposals in four major areas:

(1) A proposal to require nationwide price protection for displayed public limit orders for certain securities. For further information, see Securities Exchange Act Release No. 15770 (Apr. 26, 1979) (44 FR 26692).

(2) Proposals to establish procedures by which securities or classes of securities would be designated as qualified for trading in a national market system. For further information, see Securities Exchange Act Release No. 15926 (June 15, 1979) (44 FR 36912).

(3) Proposed procedures and requirements for plans governing the development, operation, or regulation of a national market system or the facilities thereof. For further information, see Securities Exchange Act Release No. 16410 (Dec. 7, 1979) (44 FR 72607).

For a general discussion of the Commission's national market system initiatives, see Securities Exchange Act Release Nos. 14416 (Jan. 26, 1978) and 15671 (Mar. 22, 1979) (43 FR 4354 and 44 FR 20360).

2. *Options Study Recommendations.* During 1980, the Commission will consider whether, in response to the recommendations of the Commission's Special Study of the Options Markets, to propose rules (1) to require self-regulatory organizations to establish a central investor complaint file; (2) to require the disclosure on customer account statements of information on commission charges; and (3) to establish minimum training requirements for registered representatives who recommend options transactions to customers. For further information, see Securities Exchange Act Release No. 16701 (Mar. 26, 1980) (45 FR 21426).

3. *Underwriting Practices.* In 1978, the National Association of Securities Dealers, Inc., filed a proposed rule change governing the payment and receipt of selling concessions, discounts, and other allowances in connection with fixed price securities offerings. The initial impetus for the proposed rule change was the federal district court decision in *Papilsky* v. *Berndt* [1976-77 Transfer Binder] Fed. Sec. L. Rep. (CCH) para. 95,627 (S.D.N.Y., 1976). The public hearings on issues raised by the proposed rule change were concluded on November 30, 1979. The staff is presently analyzing the record of this proceeding, and the Commission has announced that it will consider what further action to take concerning the NASD's rule proposal at an open meeting on July 3, 1980. For further information, see Securities Exchange Act Release No. 15807 (May 9, 1979) (44 FR 28574).

4. *Rules 10b-10 and 15c2-12.* The Commission has proposed amendments to Rules 10b-10 and 15c2-12 under the Securities Exchange Act which would require brokers, dealers, and municipal securities dealers to disclose on customer confirmations the amount of remuneration received in certain transactions in debt securities. The staff is reviewing the public comments received and anticipates presenting its recommendations to the Commission during the third or fourth quarters of 1980. For further information, see Securities Exchange Act Release Nos. 15219 and 15220 (Oct. 6, 1978) (43 FR 47495 and 47333).

5. *Proposed Rule 13e-2.* In 1970 and 1973, the Commission published for comment proposed Rule 13e-2 which would impose restrictions on an issuer's repurchases of its own securities. During the third quarter of 1980, the staff anticipates presenting recommendations to the Commission concerning whether to adopt or withdraw proposed Rule 13e-2 or publish for comment a revised version. For further information, see Securities Exchange Act Release No. 10539 (Dec. 6, 1973) (38 FR 34341).

6. *Proposed Rule 15b7-1.* In 1977, the Commission published proposed Rule 15b7-1 under the Securities Exchange Act which would establish minimum qualification requirements for brokers and dealers and their associated persons. During the fourth quarter of 1980, the staff may recommend to the Commission that it consider whether to adopt or withdraw proposed Rule 15b7-1 or publish for comment a revised version. For further information, see Securities Exchange Act Release No. 13679 (June 27, 1977) (43 FR 34328).

7. *Rule 19b-4.* In 1979, the Commission published proposed amendments to Rule 19b-4 under the Securities Exchange Act. That rule specifies the procedures that self-regulatory organizations must follow in filing proposed rule changes with the Commission. The proposed amendments are intended to enhance the efficiency of the Commission's oversight of self-regulatory organizations. During the third quarter of 1980, the staff anticipates recommending that the Commission consider whether to adopt these amendments. For further information, see Securities Exchange Act Release No. 15838 (May 18, 1979) (44 FR 30924).

C. *Significant Initiatives Affecting Investment Companies And Investment Advisers*

1. *Status of Certain Issuers.* The Commission has proposed three Investment Company Act rules—Rules 3a-1, 3a-2, 3a-3—and an amendment to existing Rule 3c-2—all relating to whether certain issuers which have the characteristics of investment companies will be regulated under the Investment Company Act of 1940. The comment periods closed January 8, 1980. The staff anticipates that the Commission will consider these proposals further during 1980 upon completion of the staff review of the public comments. On June 3, 1980, the Commission transmitted to Congress a legislative proposal relating to business development companies, one part of which, if adopted, would make the proposed amendment to Rule 3c-2 unnecessary. For further information, see Investment Company Act Release Nos. 10937 (Nov. 15, 1979), 10938 (Nov. 13, 1979), 10943 (Nov. 16, 1979), and 10944 (Nov. 16, 1979) (44 FR 66608, 66612, 67152, and 67150).

2. *Proposed Amendments to Rule 17j-1.* At an open meeting on September 2, 1979, the Commission adopted Rule 17j-1 under the Investment Company Act requiring investment companies and their investment advisers and principal underwriters to develop codes of ethics governing purchases or sales by investment company insiders of the same securities held or to be acquired by the investment company. However, the Commission has not published the rule as adopted because it wished to consider whether to propose simultaneously certain amendments to the rule which would give guidance to those entities required to adopt codes of ethics as to some of the activities which would constitute fraudulent, deceptive, or manipulative acts, practices or courses of business. During the third or fourth quarters of 1980, the Commission anticipates considering whether to publish notice of the adoption of the rule and propose such amendments. For further information, see Investment Company Act Release Nos. 10162 (Mar. 20, 1978) and 10222 (Apr. 28, 1978) (43 FR 19669 and 12721).

3. *Revision of Procedures for Processing Post-Effective Amendments.* The Commission has proposed for comment a rule under the Securities Act, and related amendments to registration statement forms, which would cause most post-effective amendments to registration statements filed by investment companies to become effective automatically, without affirmative action by the Commission or its staff. Post-effective amendments would become effective either immediately upon filing or 60 days thereafter, depending upon their nature. The staff anticipates completing its review of the public comments and recommending further action to the Commission during 1980. For further information, see Securities Act Release No. 6205 (Apr. 3, 1980) (45 FR 24500).

4. *Disclosure of Money Market Fund Yields.* The Commission has published for comment a proposed amendment to the registration statement form for open-end management investment companies to require the inclusion in the prospectuses of money market funds of a yield figure computed according to a standardized method. The Commission also proposed an amendment to Rule 434d under the Securities Act, relating to advertisements by investment companies in the form of an "omitting prospectus," which would require money market funds to compute any yield quotations used in Rule 434d advertisements according to that standardized method. The staff anticipates completing its review of the public comments and recommending further action to the Commission during 1980. For further information, see Securities Act Release No. 6183 (Jan. 28, 1980) (45 FR 7578).

5. *Mutual Fund Distribution Expenses.* The Commission has proposed two rules under the Investment Company Act relating to the bearing of distribution expenses by mutual funds. The first, Rule 12b-1, would permit mutual funds to finance the distribution of its shares if certain conditions were met; the second, Rule 19d-3, would provide a limited exemption from the requirement of prior Commission approval for certain transactions involving affiliated persons, if the transactions complied with Rule 12b-1. The Commission also proposed related form amendments regarding disclosure of distribution expenses. Further Commission action on this matter is anticipated in the third quarter of 1980. For further information, see Investment Company Act Release No. 10862 (Sept. 7, 1979) (44 FR 54014).

D. *Significant Accounting Related Initiatives*

1. *General Revision of Regulation S-X.* In January 1980, the Commission proposed certain amendments to Regulation S-X, which governs the form and content of financial statements filed with the Commission. These proposals were responsive to the recommendation of the Commission's Advisory Committee on Corporate Disclosure that a continuing goal of the Commission should be the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S-X and those prepared in accordance with generally accepted accounting principles. The staff is reviewing the public comments received on this proposal and anticipates recommending that the Commission consider further action during the third quarter of 1980. For further information, see Securities Act Releases No. 6178 (Jan. 15, 1980) and No. 6204 (Apr. 2, 1980) (45 FR 5943 and 24499).

2. *Form and Content of Financial Statements.* Simultaneously with the publication of the foregoing item, the Commission proposed amendments to Regulation S-X intended to establish uniform instructions governing the periods to be covered in financial statements included in annual reports to shareholders and in most filings with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934. The staff is now reviewing the public comments and anticipates recommending that the Commission consider further action with respect to the proposals during the third quarter of 1980. For further information, see Securities Act Release No. 6179 (Jan. 15, 1980) (45 FR 5963).

3. *Accountants' Liability for Reports on Certain Unaudited Information Under the Securities Act of 1933.* In December 1979, the Commission adopted rules which provide that a "report" prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Securities Act of 1933 shall not include a review of unaudited interim financial information. In April 1980, the Commission proposed similar amendments which would exclude (1) reports on unaudited supplementary information concerning the effects of changing prices, and (2) reports on unaudited oil and gas reserve information from the ambit of Sections 7 and 11. The purpose of these proposals is to encourage the expansion of auditors' responsibilities to include limited assurances concerning matters for which a full audit has not been undertaken. Following staff review of the public comments received, which is anticipated to be completed in the third quarter of 1980, the Commission will determine what further action to take on these proposals.

In this connection, the Commission's release publishing these proposals also stated that, in the near future, the Commission intends to request comments also on whether it should develop a general rule which addresses

the issue of accountants' liability with respect to any reports issued by accountants, after conducting reviews less extensive than an audit. The Commission expects to consider whether such a general approach to the liability issue should be formulated during the second half of 1980. For further information, see Securities Act Release No. 6208, (Apr. 30, 1980) (45 FR 29849).

4. *Ratio of Earnings to Fixed Charges.* The Commission has issued a concept release requesting comments on the usefulness of the requirement that registrants present a ratio of earnings to fixed charges in filings with the Commission. The staff will review comments and recommend further Commission action during the third quarter of 1980. For further information, see Securities Act Releases No. 6196 (Mar. 7, 1980) and No. 6211 (May 9, 1980) (45 FR 16498 and 33650).

5. *Report on the Accounting Profession.* In 1977, the Commission indicated to Congress that the Commission would report periodically on the response of the accounting profession to the challenges which Congress and others had placed before it and on the Commission's own initiatives concerning the profession. The Commission submitted such reports to Congress in 1978 and 1979, and intends to submit a further report by the end of July, 1980.

E. *Miscellaneous*

1. *Confidential Treatment Requests.* On December 28, 1979, the Commission issued a proposed rule setting forth procedures to be followed by persons seeking confidential treatment of material submitted to the Commission. The staff is studying the public comments and expects to make recommendations to the Commission in the near future. For further information, see Securities Act Release No. 6172 (Dec. 28, 1979) (45 FR 1627).

II. REGULATORY REVIEW AND REFORM INITIATIVES

A. *General Policy*

In addition to the regulatory initiatives described above, the Commission is engaged in several significant efforts directed at the revision, simplification, and reform of various categories of its rules under the federal securities laws. In general, each of these efforts reflects one or more of three themes. First, the Commission seeks to review its rules continuously with a view toward maximizing investor protection while minimizing the costs and complexity of compliance and the level of federal intervention in business activity. Examples of this type of review include the Commission's proposals concerning the integration of disclosure requirements under the Securities Act and the Securities Exchange Act and the Commission's ongoing studies under the Investment Company Act and Investment Advisers Act. See Items 1, 4, and 5 of Part IIB, *infra*.

Second, as a result of the impetus provided by the work of the Advisory Committee on Corporate Disclosure,[2] the Commission has initiated systematic measures to review all disclosure-related rules, forms, and guides on a regular basis. The Commission's objective is to eliminate out-of-date requirements, remove inconsistencies, and, in general, to adjust its disclosure requirements to the ever-changing economic and business environment. A current example of this facet of the Commission's regulatory review program is the review of the guides for filing registration statements and reports. *See generally* Items 2 and 6 of Part IIB, *infra*.

Third, the Commission has been particularly attentive to the effect of its requirements on small business and has taken a number of steps to reduce burdens on such entities consistent with investor protection. For example, in Securities Act Release No. 6049 (Apr. 3, 1979) (44 FR 21562), the Commission adopted Form S-18, a simplified registration form available to certain issuers not subject to the Commission's continuous reporting requirements. Form S-18 may be utilized for the registration of up to $5 million of securities. Similarly, in Securities Act Release No. 6180 (Jan. 10, 1980) (45 FR 6362), the Commission adopted Securities Act Rule 242, 17 CFR 230.242, which allows certain issuers to sell up to $2 million of securities in any six-month period to an unlimited number of "accredited persons," including specified institutions, purchasers of $100,000 or more, and executive officers and directors of the issuer, as well as to 35 other purchasers. Further current Commission initiatives of this nature are listed in Item 3 of Part IIB, *infra*.

In addition to these three areas, another important facet of the Commission's efforts to review existing regulatory requirements is monitoring of the operation and consequences of rules after they are adopted. In this connection, the Commission has instituted a number of monitoring programs with the goal of assessing, on an empirical basis, the impact of particular regulations on issuers, securities markets, and securities markets participants. The objective of such a program is to provide the Commission with the empirical predicate for the continuing examination of its regulatory framework. These programs utilize existing Commission data, as well as field research and surveys, in conjunction with established economic and statistical methodologies. In addition, the Commission's Directorate of Economic and Policy Analysis is seeking to develop new analytic techniques to assess the impact of regulatory actions.

The Commission's sensitivity to the importance of monitoring has already generated several examples of the scope and impact of studies of this nature. First, the Commission recently released a monitoring report on Form S-18, a shortened registration form utilized by first-time securities issuers.[3] That report examined the use of Form S-18 during 1979, with particular emphasis on the characteristics of issuers utilizing the form, as well as the

[2] *Report of the Advisory Committee on Corporate Disclosure to the SEC,* Committee Print No. 95-29, 95th Cong., 1st Sess. (1977).

[3] Securities and Exchange Commission, *Form S-18: A Monitoring Report on Its Use in 1979* (March, 1980).

result cost savings. In addition, the Commission has prepared a study of the market impact of securities sales pursuant to Rule 144, a regulation governing the distribution of certain securities, as a prelude to consideration of further liberalization of that rule.[4] Further, concurrently with the adoption of new Rule 242, an exemptive provision designed to facilitate sales of securities by certain issuers, the Commission announced that it will closely monitor the operation of the rule in order to assess its continuing impact.[5] Finally, the Commission has initiated a monitoring program which will assist it in studying the consequences of Commission Rule 19c-3 which precludes national securities exchanges from limiting off-board trading by their members in certain listed securities.[6] The Commission intends to remain alert for opportunities to implement monitoring programs in conjunction with new rules as they are adopted.

The Commission believes that ongoing review, evaluation, and monitoring of regulatory requirements are essential components of its responsibilities in administering the federal securities laws. These processes benefit from public commentary, and the Commission encourages all interested segments of the public and business community to submit comments on these programs in accordance with the terms of the various releases announcing these projects.

B. *Specific Initiatives*

Listed below are the major efforts in which the staff is currently engaged to review existing Commission regulations. In those instances where the Commission has issued a formal statement concerning the matter, the relevant release is cited. In some cases, however, the staff has not yet developed the specific initiatives discussed to the point of formal Commission consideration. In these instances, while the staff anticipates Commission action consideration during 1980, the matters involved may, of course, be substantially revised or rejected by the Commission.

1. *Integration and Improvement of Registration and Reporting Requirements.* In response to the recommendations of the Disclosure Advisory Committee, the Commission is engaged in a project to integrate the registration and reporting requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934. The Commission believes that integration of these disclosure requirements will benefit registrants by reducing duplicative reporting and will produce a more coherent reporting structure.

In this connection, the Commission has focused principally on improving and simplifying the registration and reporting processes. Initiatives to date have resulted in four separate proposals.

a. *Integration of Form 10-K and the Annual Report to Shareholders.* The Commission has published a proposal directed toward developing the fundamental blueprint for a system of integration using the annual report to shareholders as the key disclosure document. *See* Securities Act Release No. 6176 (Jan. 15, 1980) (45 FR 5974). This intiative is described in more detail in Item 1 of Part IA, *supra.*

b. *Form and Content of Financial Statements.* The Commission is re-evaluating requirements for financial statements focusing on issues such as the periods covered, the entities separately reported upon, and the requirement that pro forma financial statements be presented. *See* Securities Act Release No. 6179 (Jan. 15, 1980) (45 FR 5963). This initiative is described in part in Item 2 of Part ID, *supra.*

c. *Review of Regulation S-X.* The Commission has solicited comment on those requirements in its rules which are unnecessary or duplicative in light of generally accepted accounting principles. *See* Securities Act Release No. 6178 (Jan. 15, 1980) (45 FR 5943). This initiative is described in more detail in Item 1 of Part ID, *supra.*

d. *Proposed Form S-15.* The Commission has proposed a short form for registration of securities issued in certain merger and reorganization transactions. *See* Securities Act Release No. 6177 (Jan. 15, 1980) (45 FR 5934). This initiative is described in more detail under Item 4 of Part IA, *supra.*

2. *Review of Disclosure Requirements.* As described in Item 5 of Part IA, the Commission has commenced a review of all of its disclosure requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934. As part of this process, in Securities Act Release No. 6163 (Dec. 5, 1979) (44 FR 72604), the Commission solicited comments on the various Guides which have been issued under both Acts.

3. *Small Issuer Capital Formation.* The Commission has for some time been examining steps that might be taken to facilitate small business capital formation and to reduce undue regulatory burdens on smaller registrants arising from administration of the federal securities laws. *See* Securities Act Release No. 5914 (Mar. 15, 1978) (43 FR 10876). While the Commission's primary responsibility is to protect investors and the integrity of the securities markets, compliance with Commission regulations should not operate unnecessarily to impair capital formation or to impose undue obligations on smaller issuers or broker-dealers. Accordingly, the Commission's staff is considering several new initiatives designed to accommodate the needs of small business in a manner consistent with its statutory responsibilities.

a. *Regulation A.* Regulation A, 17 CFR 230.251-264, contains an exemption from the full registration requirements of the Securities Act of 1933 for certain

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[4]Securities and Exchange Commission, *Rule 144 Sales in the OTC Market* (January, 1980).

[5]Securities Act Release No. 62180 (Jan. 10, 1980) (45 FR 6362).

[6]Securities Exchange Act Release No. 16888 (June 11, 1980) (45 FR 41125).

small offerings of securities.[7] The Office of Small Business Policy is preparing proposals which would amend Regulation A to update and consolidate the disclosure which Form 1-A and Schedule I require. In addition, the Commission has proposed amendments to Rule 252 of Regulation A. Rule 252 disqualifies certain issuers from utilizing Regulation A unless the Commission finds good cause to grant relief. The Commission's proposals would cause disqualifications to lapse automatically after a specified period of time or upon satisfaction of certain objective criteria. For further information, see Securities Act Release No. 6214 (June 19, 1980) (45 FR 42642).

b. *Rule 240.* The Office of Small Business Policy is also considering whether to recommend that the Commission propose amendments to Rule 240, 17 CFR 230.240, which exempts certain limited offers and sales by closely held issuers. The staff is examining the merits of increasing the $100,000 ceiling on the aggregate price of securities which may be offered pursuant to Rule 240 and excluding from that figure the dollar amount of sales of equity securities to defined institutional investors. In addition, the staff is considering whether to eliminate the present requirement that the amount of securities which may be offered pursuant to Regulation A be reduced by the amount of securities offered during the previous year under Rule 240.

c. *Wrap-Around Offering Circular.* The Office of Small Business Policy currently is considering development of a "wrap-around" offering circular for Regulation A offerings by companies which have been subject for at least two years to the continuous reporting requirements of the Securities Exchange Act. The contemplated offering circular would be annexed to certain periodic reports which a registration statement on Form S-16 incorporates by reference.

d. *Rule 146.* The Office of Small Business Policy is considering amendments to Rule 146, 17 CFR 230.146, the Commission's safe harbor rule for private offerings,[8] which would more closely conform that provision to Rule 242, *supra*, which exempts certain limited offerings from the registration requirements of the Securities Act of 1933. Among the questions under review are whether to add to Rule 146(e) an express materiality standard with respect to the information which must be received by, or be accessible to, each offeree or his representative. The staff also is considering whether to exclude defined institutional investors from the 35-purchaser limitation in Rule 146 and whether to expand the permissible means of payment under Rule 146(g).

e. *Rule 147.* The Office of Small Business is considering the feasibility of amending Rule 147, 17 CFR 230.147, the Commission's safe harbor rule for intrastate offerings, to address problems raised by commentators at the Commission's small business hearings in 1978. To be eligible to use Rule 147, an issuer must be doing business within the state or territory in which its securities will be offered and sold. This "doing business" test requires not only that the issuer's principal office be located in the state in question, but also that 80 percent of the issuer's gross revenues have been derived in-state, 80 percent of its assets be located in-state, and 80 percent of the net proceeds of the offering be applied in-state. The staff will consider whether to relax these standards. Alternatively, the staff will consider whether to replace or augment Rule 147 with a new limited offering exemption under Subsection 3(b) of the Securities Act of 1933 for securities offerings within defined multi-state geographic regions by issuers resident and doing business therein.

f. *Compliance Cost Study.* The Office of Small Business Policy, in conjunction with the Directorate of Economic and Policy Analysis, is studying the feasibility of conducting a voluntary survey of issuers to determine the cost of complying with the continuous reporting provisions of the Securities Exchange Act of 1934. In 1977, the Advisory Committee on Corporate Disclosure conducted a very limited study of this nature. The information obtained through any new cost survey would augment existing data on which a proposed classification of issuers (Item g, *infra*) for purposes of flexible reporting requirements might be based.

g. *Classification of Issuers.* In Securities Exchange Act Release No. 16866 (June 2, 1980) (56 FR 40145), the Commission invited public comments on the concept of classifying issuers by size and adjusting periodic disclosure requirements with respect to certain smaller categories of issuers. Depending on the comments received, the staff anticipates formulating recommendations in this area before the end of 1980. This initiative is discussed in more detail in Item 9 of Part IA, *supra*.

4. *Investment Company Act Study.* In 1978, the Commission established the Investment Company Act Study Group. The mandate of this group is to recommend

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[7]In Securities Act Release No. 5977 (Sept. 11, 1978) (43 FR 41383), the Commission adopted an amendment to Regulation A to increase the aggregate offering price of securities which may be sold thereunder during a 12-month period from $500,000 to $1,500,000. This amendment followed Congressional action amending Section 3(b) of the Securities Act to raise the ceiling on the Commission's authority to create a small offering exemption.

[8]In Securities Act Release No. 5975 (Sept. 8, 1978) (43 FR 41193), the Commission adopted an amendment to Rule 146 which modifies the disclosure requirements applicable to an offering which does not exceed $1,500,000 to allow disclosure of the information prescribed by Schedule I of Regulation A. Similarly, in Securities Act Release No. 5079 (Sept. 19, 1978) (43 FR 43709), the Commission amended Rule 144, 17 CFR 239.144, which sets forth guidelines for the resale of certain securities acquired in a private placement, to relax certain limitations on the manner of sale and of the amount of securities that can be sold under the rule. Securities Act Release No. 6032 (Mar. 5, 1979) (44 FR 15610) further amended Rule 144 to permit certain nonaffiliates to disregard the volume limitation provisions of Rule 144 after a defined holding period.

to the Commission ways of resolving problems that have arisen during the four decades of Commission experience in regulating the investment company industry under the Investment Company Act of 1940. Accordingly, the group is reviewing the current state of Investment Company Act administration with the goal of developing a simpler, more efficient regulatory system that enhances the oversight responsibilities of investment company directors and minimize direct Commission involvement.

As a result of this study, the Commission has proposed or adopted approximately 25 rules and amendments to rules regarding such matters as transactions with affiliated persons, investment advisory contracts, mergers and acquisitions, and routinely-granted applications. During the balance of 1980, the staff anticipates recommending that the Commission consider additional rules regarding:

a. *Subsection 22(d).* The staff is examining Subsection 22(d) of the Investment Company Act and the rules thereunder, which mandate the price at which redeemable investment securities are sold, to determine whether to recommend that the Commission propose new or amended rules or issue an interpretive release modifying the manner of compliance therewith.

b. *Valuation of Certain Debt Securities.* The staff is considering recommending that the Commission issue an interpretive release reflecting concerns about valuation procedures for certain debt securities and stating the Commission's position about proper valuation practices.

c. *Mini-accounts.* The staff is considering whether to recommend that the Commission propose a rule defining mini-account services or otherwise clarifying the status under the Investment Company Act of various investment advisory programs.

d. *Service Contracts.* The staff is considering whether to recommend that the Commission propose a rule permitting, under conditions designed for the protection of investors, affiliated persons of investment companies to provide administrative and other services to such companies.

e. *Money Market Fund Reporting Requirements.* The staff is considering whether to recommend that the Commission propose a rule requiring money market funds to file reports with the staff concerning the performance of various administrative operations.

f. *Processing of Post-Effective Amendments.* The Commission has proposed for comment a rule under the Securities Act, and related amendments to registration statement forms, which would cause most post-effective amendments to registration statements filed by investment companies to become effective automatically, without affirmative action by the Commission or its staff. This proposal is described in more detail in Item 3 of Part IC, *supra*.

5. *Investment Adviser Regulation.* For some time, the Commission has been aware of a need to reevaluate its Investment Advisers Act of 1940 regulatory program in light of the increasing volume of services provided by investment advisers. In December of 1978, the Commission established within its Division of Investment Management a new Office of Investment Adviser Regulation. This Office is conducting a comprehensive study to determine what, if any, changes should be made in its regulatory program with respect to investment advisers. For further information, see Investment Advisers Act Releaase No. 717 (Apr. 4, 1980) (45 FR 25080).

6. *Investment Company Disclosure Requirements.* Consistent with its policy of systematically reviewing all disclosure requirements, the Commission has established a study group in the Division of Investment Management to undertake a thorough review of the disclosure requirements imposed on investment companies by the Securities Act of 1933 and Investment Company Act of 1940. The disclosure study is exploring ways to reduce duplicative and unnecessary burdens on both the investment company industry and the Commission staff which result from present disclosure requirements.

7. *Broker-Dealer Financial Responsibility Requirements.* The Commission's staff is presently considering a broadly focused re-examination of the Commission's financial responsibility rules applicable to securities broker-dealers—Securities Exchange Act Rule 15c3-1, the net capital rule, and Rule 15c3-3, 17 CFR 240.15c3-1 and 240.15c3-3. The staff anticipates recommending that the Commission publish a concept release on this issue during the third quarter of 1980. In this connection, the staff also has under consideration certain recommendations from the Securities Industry Association for changes in the net capital requirements.

8. *Broker-Dealer Financial and Operational Reporting.* During the third quarter 1980, the Commission's staff will address the need to propose amendments to Rule 17a-5 under the Securities Exchange Act, 17 CFR 240.17a-5, the financial and operational reporting requirements for brokers and dealers collectively known as the FOCUS reporting system. Any such amendments would be designed to revise the FOCUS reporting system to reflect changed conditions in the industry and to eliminate unwarranted reporting requirements.

9. *Broker-Dealer Third Market Volume Reporting.* The staff is considering whether to recommend that the Commission terminate the requirement, currently imposed pursuant to Securities Exchange Act Rule 17a-9, 17 CFR 240.17a-9, that broker-dealers periodically report their third market trading volume. Comparable information presently is retrievable from the NASDAQ reporting system maintained by the National Association of Securities Dealers and, in conjunction with the redesign of the FOCUS reporting system described in Item 8, *supra*, the staff will explore the possibility of eliminating this reporting obligation.

10. *Public Utility Holding Act Exemptive Relief.* The staff is considering recommending that the Commission publish for comment rules which would exempt certain electric utility company acquisitions of interests in generating companies from the application requirements of Section 10 of the Public Utility Holding Company Act. Rules of this nature would provide a basis for exempting the parent

electric company from the definition of a holding company under Section 3(a) of the Act. Similarly, the staff is also considering recommending that the Commission publish for comment a rule which would exempt certain less than 50 percent owned subsidiaries of registered holding companies from the duties, obligations, and liabilities imposed on subsidiaries under the Act.

C. *Nonregulatory Initiatives*

In enacting the federal securities laws, Congress chose to place an important measure of its reliance on disclosure and self-regulation—rather than direct Commission regulation—as the means to accomplish the goals on which the securities laws are premised. In that vein, the Commission has traditionally sought to avoid the application of regulatory requirements where less formal alternatives can suffice. The Commission currently has underway, or is considering, a number of initiatives to reduce, or avoid the imposition of, regulatory burdens through the use of flexible and cost-effective methods which will not entail direct regulation of the private sector. Where it is appropriate, this type of approach can provide for the necessary protection of public investors while diminishing the costs of regulatory compliance and the degree of governmental intrusion into private decision-making.

The application of this philosophy may involve such measures as requiring the disclosure of information which, in addition to providing a better basis for investment and corporate suffrage decision-making, will also allow the discipline of the marketplace to encourage changes in behaviorial norms; enhancing the role and responsibility of corporate directors as a substitute for specific regulatory standard-setting; and encouraging voluntary private sector self-regulation. The lines between areas in which the public interest demands that the Commission act in a formal regulatory mode, those in which the Commission can rely on the more flexible approach described above, and those in which the Commission chooses to refrain from any involvement are not always easy to draw. Nonetheless, in certain circumstances "nonregulatory" Commission facilitation of private sector initiatives may obviate the need for direct regulation or additional legislation.

The Commission has adopted, or may consider employing, these nontraditional regulatory methods in the following contexts:

1. *The Investment Company Act Study.* The study has adopted rules which seek to shift responsibility for some categories of investment company decision-making onto investment company directors and away from the application and regulatory approval mode. Examples of this approach include new Commission rules which allow directors to establish, and monitor compliance with, voluntary standards and procedures which are designed to provide for the fair treatment of the investment company in certain transactions. The study is described in more detail in Item 4 of Part IIB, *supra*, and Item 7 of Part IIIB, *infra*.

2. *Self-Regulation of Investment Advisers.* At present, all facets of investment adviser regulation are administered directly by the Commission. The staff is presently considering the feasibility of a self-regulatory system applicable to investment advisers. The Investment Advisers Act study is described in Item 5 of Part IIB, *supra*, and Item 8 of Part IIIB, *infra*.

3. *Self-Regulation of Accountants.* The Commission has traditionally permitted the accounting profession to take the lead, subject to Commission oversight, in establishing appropriate accounting principles and auditing standards. More recently, the Commission has similarly supported the establishment of a voluntary self-regulatory organization for accountants to satisfy the public's expectation of professional quality control. These matters have been discussed in detail in the Commission's annual reports on the accounting profession as described in Item 5 of Part ID, *supra*.

4. *Corporate Accountability.* The form and effectiveness of the mechanisms of corporate accountability are intertwined with the level of public trust and confidence in the securities markets. For this reason, the Commission as an entity, and its individual members, have traditionally played an important role in encouraging voluntary private sector initiatives to enhance accountability. Similarly, the Commission has not been hesitant to use its disclosure authority and its authority over the proxy solicitation process to ensure that investors are fully informed concerning material information bearing on issuer accountability and to promote fair corporate suffrage. As discussed in more detail in Item 8 of Part IA, the Commission's staff is currently preparing a comprehensive report on these issues.

5. *National Market System.* Section 11A(a)(2) of the Securities Exchange Act of 1934, as amended in 1975, directs the Commission to use its authority "to facilitate establishment of a national market system for securities * * *." While the discharge of this mandate has necessarily demanded formal Commission regulatory action of various kinds, the Commission endeavors, insofar as possible, to look to private sector initiatives in the reshaping of the securities market. Current Commission national market system initiatives are described in Item 1 of Part IB, *supra*. For a general discussion of the Commission's national market system priorities and philosophy, see Securities Exchange Act Releases No. 14416 (Jan. 26, 1978) and 15671 (Mar. 22, 1979) (43 FR 4354 and 44 FR 20360).

III. CONTEMPLATED REGULATORY REVIEW AND REFORM INITIATIVES IN 1981

A. *Scope and Purpose*

The following is a listing of regulatory review initiatives which the staff is now considering but which would not commence until 1981. These initiatives illustrate the staff's current priorities with respect to regulatory revision and reform; proposals in these areas have not, however, as yet been presented to the Commission, and the discussion in this section should not be interpreted as necessarily reflecting Commission endorsement of the concepts described. By publishing this listing, the Commission

seeks public comment on whether these items would be appropriate areas for it to address and whether there are other facets of its existing rules which the Commission should consider subjecting to review or possible revision.

B. *Specific Matters Under Consideration*

1. *Sunset Review of Regulation C.* In Securities Act Release No. 6163, which is described in Item 3 of Part IA, *supra*, and Item 2 of Part IIB, *supra*, the Commission indicated that it contemplated conducting a comprehensive analysis of Regulation C under the Securities Act of 1933[9] as the next integral element in its ongoing review of disclosure requirements. Moreover, a review of Regulation C is consistent with the Commission's goal of interpreting the disclosure requirements of the Securities Act and the Securities Exchange Act. The rules which comprise Regulation C were developed over a long period of time and without a comprehensive framework. Therefore, since this regulation has never been re-examined as a whole, certain of the rules may be obsolete, and some of the policies reflected in these rules may conflict with those contained in other rules, guides, or forms. In this regard, the Division intends to review Regulation C particularly in light of the creation and growth of Regulation S-K;[10] developments resulting from the Guides project review (Item 5 of Part IA, *supra*); case law and current administrative practices; and the operation of particular concepts in Regulation C, such as the summary prospectus, which may merit expansion.

2. *Categorization of Regulation S-K Items.* Regulation S-K, the initial step towards integrated disclosure, has been developed without regard to structure. In order to avoid the organizational problems of Regulation C, and to create a useful body of readily accessible disclosure requirements with adequate room for further development, the staff is contemplating a review of Regulation S-K with the objective of developing a useful framework. This project would entail the creation of sections of the regulation dealing with specific disclosure topics, such as business information and accounting and financial data.

3. *Proxy Contests.* Inasmuch as there have been indications that the number of election contests is on the rise, it may be advisable and timely to review the proxy rules in relation to contest situations, particularly Rules 14a-7 and 14a-11, as well as Schedule 14B. Such a study would encompass an analysis of the existing rules and their relationship to case law developments, current policy considerations, and present issuer practice.

4. *Commercial Paper.* The exemption relating to commercial paper in Section 3(a)(3) of the Securities Act of 1933 has received many interpretations over the years. The staff is considering proposing that the Commission commence a rulemaking proceeding, or issue an interpretative release, to clarify the scope of this exemption.

5. *Beneficial Ownership.* Subsection 13(g) of the Securities Exchange Act of 1934 requires that the Commission "take such steps as it deems necessary or appropriate in the public interest and for the protection of investors to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report" beneficial ownership. Although the purposes of Subsections 13(d), 13(g), and 16(a) of the Securities Exchange Act are somewhat different, the Commission requires similar disclosure pursuant to each. Accordingly, the staff is considering a project designed to reconcile and standardize the reporting requirements applicable to securities ownership in such a way as to lessen the burden on the reporting person while facilitating meaningful disclosure to the public.

Set forth below are some of the issues with which an initiative of this nature would deal:

(1) Although Subsections 13(d) and (g) and Subsection 16(a) of the Securities Exchange Act have differing purposes, should the definitions of "beneficial ownership" applicable to each be reconciled, and, if so, how?

(2) Is there a need to standardize the filing deadlines and the periods which the various reports cover? If so, how might this be accomplished?

(3) Should the nature of the disclosure required under Subsections 13(d), 13(g), and 16(a) be harmonized and, if so, how might this be accomplished? In general, how might duplicative disclosure be eliminated consistent with the underlying statutory goals? Could the purposes of these sections be accomplished by the filing of a common reporting form?

(4) Would a common form be more cost efficient than the present system?

(5) What are the liability issues attendant upon the creation of a common beneficial ownership reporting form under the Securities Exchange Act?

In order to aid the staff in determining whether to commence such a review, and what its scope should be, the Commission particularly invites comment from interested persons on these questions.

6. *Financial Responsibility Requirements for Brokers and Dealers.* The Commission staff is considering extending its review of the financial responsibility rules (see Item 7, Part IIB, *supra*) to encompass other financial responsibility requirements for securities brokers and dealers, such as the minimum standards governing the handling and hypothecation by firms of funds and securities of their customers set forth in Rules 15c3-3, 8c-1, and 15c2-1 under the Securities Exchange Act, 17 CFR 240.15c3-3,

[9]Regulation C consists of Securities Act Rules 400 through 493, 17 CFR 230.400 through 493. These rules govern the registration of securities under that Act and the related disclosure requirements.

[10]Regulation S-K, 17 CFR Part 229.20, is entitled "Standard Instructions For Filing Forms Under Securities Act of 1933 and Securities Exchange Act of 1934."

240.8c-1, and 240.15c2-1. The staff may also evaluate the operation of the Commission's fidelity bonding rule (Rule 15b10-11, 17 CFR 240.15b10-11) for firms that are not members of a self-regulatory organization.

The provisions of these rules are lengthy and complex, were adopted at various times over a period of many years, and have never been subject to a comprehensive reassessment. Important changes in the nature of the securities business and markets have, however, occurred, since these rules were adopted; these changes are, for the most part, related to the emergence and growth of markets for new securities products and the development of the national market and clearance systems mandated in the Securities Acts Amendments of 1975.

In the course of any examination of the financial responsibility rules, the staff would seek to determine—

(1) Are these provisions unnecessarily complex or inconsistent with one another? If so, can they be better integrated and simplified?

(2) Do the costs and burdens of compliance fall equitably on the various sizes and types of firms? If not, could the rules be appropriately restructured?

(3) Would less burdensome alternative approaches to the various requirements achieve the objective of protecting customer funds and securities? If so, what are these alternatives?

The Commission particularly invites the views of interested members of the public concerning whether these issues would be the appropriate focus for such a study and whether additional avenues of inquiry might fruitfully be pursued.

7. *Investment Company Act Study.* In the later phases of its work, the Investment Company Act Study Group (see Item 4 of Part IIB, *supra*) will consider whether to recommend legislative changes in certain fundamental concepts underlying the Act. For example, the Act contemplates that management investment companies generally be organized in a corporate or business trust form which provides for shareholder voting. This requirement is not present in the regulatory schemes of other countries, particularly in Europe, where a nonvoting trust structure predominates. The staff intends to examine the operations of such nonvoting trusts which may provide useful insights and new areas of analysis within which to address the efficacy of our regulatory scheme and to consider alternatives which would lessen regulatory burdens while maintaining a high level of investor protection.

8. *Investment Advisers Act Study.* In addition, as the review of the Investment Advisers Act (see Item 5 of Part IIB, *supra*) continues, additional rulemaking under that statute will take place. The staff will also consider certain issues which might result in recommendations which could be implemented only if Congress amends the Act. These issues include minimum professional qualifications, financial integrity requirements, and self-regulatory organizations for investment advisers. Investment Advisers Act Release No. 717 (Apr. 4, 1980) (45 FR 25080) invited comment with respect to various matters which the Commission may consider in connection with its evaluation of whether to recommend legislation in this area.

9. *Investment Company Disclosure Study.* As discussed earlier (see Item 6 of Part IIB), the staff is considering a revision of the investment company prospectus to enable reports to shareholders to be combined with that document. In addition, the staff is considering a more fundamental reexamination of the contents of investment company prospectuses. No examination of the substantive content of investment company prospectuses has been conducted for many years. As part of this examination, the staff might consider whether the prospectuses at present are too lengthy and detailed, and whether some information which is now required to be included can be omitted or presented in an abbreviated form.

IV. CONCLUSION

The Commission believes that this release will serve two purposes with respect to improving public understanding of, and participation in, Commission regulatory processes. First, Parts I and II alert interested persons to certain significant Commission regulatory decisions likely to be made during the balance of 1980. More broadly, however, Parts II and III serve to inform the public of the scope and priorities of the Commission's staff with respect to reviewing the purpose, impact, and efficacy of existing Commission rules. That review process, especially when it is illuminated by meaningful public participation, is the most effective means by which the Commission can ensure that its rules remain flexible and realistic in the face of changes in the business environment and the securities and financial communities.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16953/July 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21648/July 2, 1980

TRUST INDENTURE ACT OF 1939
Release No. 575/July 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11241/July 2, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 727/July 2, 1980

GENERAL ORGANIZATION; ESTABLISHMENT OF COUNSEL FOR PROFESSIONAL RESPONSIBILITY

ACTION: Final rule.

SUMMARY: The Commission is amending its rules respecting its general organization to establish a new position, the Counsel for Professional Responsibility, to oversee compliance with the Commission's Conduct Regulation.

EFFECTIVE DATE: Immediately upon publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Theodore S. Bloch, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2454.

SUPPLEMENTARY INFORMATION: Accordingly, 17 CFR Part 200 is amended by adding §200.21a to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§200.21a Counsel for Professional Responsibility.

(a) The Counsel for Professional Responsibility within the Office of the General Counsel of the Commission shall oversee compliance with the Regulation Concerning Conduct of Members and Employees and Former Members and Employees, §§200.735-1-200.735-18 of this chapter and shall, when appropriate, investigate allegations of violation of that Regulation and the Commission's Canons of Ethics, §§200.50-200.72 of this chapter and the Code of Behavior Concerning Ex Parte Communications Between Persons Outside the Commission and Decisional Employees, §§200.110 - 114 of this chapter.

(b) The Counsel's responsibilities, subject to the oversight of the General Counsel or his or her delegate, shall include: (1) receiving and reviewing information containing allegations of misconduct by a Commission employee; (2) referring those matters which involve management questions to Division Directors, Office Heads or Regional Administrators; (3) investigating or overseeing investigations into those allegations of misconduct which, in the judgment of Counsel, require investigation; (4) referring complaints which appear to involve a violation of federal criminal statutes, after a preliminary investigation has determined that the complaint is not frivolous, to the Chairman or most senior Commissioner who would be proper, for transmission to the Department of Justice in accordance with the provisions of 28 U.S.C. 535; (5) acting as liaison with the Department of Justice with respect to such matters as have been referred; or with state or local authorities to whom matters may on occasion be referred; (6) preparing for submission to the General Counsel reports of completed investigations with recommendations for disposition; (7) arranging for the review of articles and speeches as required by §220.735-4(e) of this chapter; (8) giving counseling under, and preparing interpretations or opinions with respect to, provisions of the Commission's regulations governing the conduct of employees; and (9) referring findings of professional misconduct to the appropriate state professional boards or societies.

* * * * *

The Commission finds that this amendment relates solely to rules of agency procedure or practice and accordingly, that notice and prior publication for comments under the Administrative Procedure Act 5 U.S.C. 551 *et seq.*, are unnecessary. *See* 5 U.S.C. 553(b).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16938/June 27, 1980

Admin. Proc. File No. 3-5935

In the Matter of

PEABODY INTERNATIONAL CORPORATION
4 Landmark Square
Stamford, Connecticut

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND FINDINGS AND ORDER OF THE COMMISSION

The Commission deems it appropriate and in the public interest following an investigation by its Division of Enforcement that proceedings be instituted against Peabody International Corp. ("Peabody") pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (the "Exchange Act")[1] to determine whether Peabody failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder with respect to certain filings made with the Commission by Peabody.

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[1]Section 15(c)(4) of the Exchange Act provides:

If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of Section 12, 13 or subsection (d) of Section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person to comply with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

Simultaneously with the institution of these proceedings, Peabody submitted an Offer of Settlement solely for the purpose of disposing of the issues raised in these proceedings. Under the Terms of its Offer of Settlement, Peabody, solely for the purpose of these proceedings and without admitting or denying any of the findings set forth herein, consents to the issuance of this Order by the Commission. In its Offer of Settlement, Peabody has made certain undertakings as detailed herein with which the Commission has ordered Peabody to comply.

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of Peabody and accordingly is issuing this Order.

I.
Facts

Peabody is a Delaware corporation with headquarters in Stamford, Connecticut. It produces pollution control equipment, manufactures solid waste and material handling equipment and provides services related to the energy industry. Peabody's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. For its fiscal year ended September 30, 1979, Peabody reported total assets of $380 million, net sales of $593 million and net income of $25.9 million.

The Colorado-Ute Contract

On May 17, 1977, Peabody Process Systems, Inc. ("PPSI"), a Peabody subsidiary, entered into a contract with the Colorado-Ute Electrical Association, Inc.[2] for the construction of a sulphur dioxide air pollution control system for an electrical power plant in Craig, Colorado. This was the first such contract that PPSI had undertaken for an entire project, although PPSI had provided the engineering, equipment procurement and erection of other similar systems.[3] The project was scheduled to commence in May, 1977 and was to be completed in April, 1979.

PPSI subcontracted all of the field work on a fixed price or unit price with maximum cost basis for this contract, relying on subcontractors to perform the site preparation, concrete work, steel erection, equipment erection, electrical installation and other work. Peabody subcontracted the electrical work to Kennedy Electric ("Kennedy") of Denver, Colorado, a subsidiary of Dynalectron Corporation, for $3.4 million. From the onset of the contract work and even prior to the construction start-up date, PPSI and Kennedy had disputes concerning, among other things, contract terms, engineering design, the type of wire to be utilized in the project, manpower requirements and scheduling. Subsequently, PPSI terminated Kennedy's responsibility for electrical engineering and subcontracted separately for it. This resulted in a reduction in the contract price on the Kennedy subcontract to $2.9 million.

As the contract work progressed, problems became exacerbated and, as a result, PPSI terminated Kennedy's subcontract on February 14, 1979. PPSI took the position that Kennedy breached the subcontract based, among other things, on its failure to employ such additional workmen on the site as PPSI interpreted the manpower schedule to require. Thereafter, PPSI hired another contractor to complete the contract on a cost plus basis.

PPSI and Kennedy thereafter began negotiations to resolve the financial ramifications of this termination through a settlement. These negotiations proceeded without resolution over several months.

Peabody became aware of the cost problems and cost evaluation problems with the Colorado-Ute Project as a whole and, in particular, with the electrical costs, at least by the third quarter (ended June 30, 1979) of the 1979 fiscal year. As a result, Peabody initiated a complete cost evaluation of this project at that time and completed this evaluation in the latter part of 1979.

In November, 1979, this evaluation revealed that the cost of this contract would be dramatically higher than anticipated and, in particular, that the electrical costs would increase nearly threefold. The cost of the project would increase from approximately $54 million to approximately $64 million according to the evaluation. The electrical costs were expected to increase from the adjusted Kennedy contract price of $2.9 million to approximately $8.9 million. If absorbed as project costs, this would result in a loss being incurred on the contract.

The settlement negotiations between PPSI and Kennedy terminated because the parties could not resolve their respective claims against each other. PPSI, in early August 1979, instituted a suit, alleging breach of contract, against Kennedy. Kennedy counterclaimed for damages.

The Deferral of Costs

Peabody accounted for the Colorado-Ute contract using the percentage of completion method.[4] Peabody deferred additional costs of approximately $5.9 million to complete electrical work originally subcontracted to Kennedy.

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[2]The Colorado-Ute Electrical Association, Inc. is a Colorado corporation owned by three regional power companies.

[3]This contract for $61 million undertaken by PPSI was, at the time of contracting, the largest of its kind. The next largest contract was for about half that amount.

[4]The percentage of completion method of accounting for long-term fixed-price contracts allows the contractor to recognize profits on the contract during the progress of work under the contract. It is preferable when estimates of costs to complete and extent of progress toward completion of long-term contracts are reasonably dependable. The income to be recognized by a contractor can be determined by two different methods. The method which Peabody utilized in connection with the Colorado-Ute contract was to recognize that percentage of estimated total income that incurred costs to date bore to

On November 20, 1979, Peabody's Vice President and General Counsel issued a legal opinion on the Kennedy litigation predicting a favorable outcome of the litigation for Peabody.[5] The General Counsel based his opinion upon his inquiry concerning the merits of the litigation. Peabody's independent auditors agreed with the deferral and considered such deferral an acceptable method of accounting. The purported basis for this deferral was management's opinion that the entire amount of the estimated electrical subcontract cost overrun ($5.9 million) would be recovered in the litigation against Kennedy and, accordingly, that no recognition of anticipated losses was necessary.[6] Had Peabody recorded the deferred costs of approximately $5.9 million as additional costs to complete, the contract would have shown a loss of approximately $2.6 million and reversal of profit of approximately $3.1 million for a total charge to operating income of approximately $5.7 million.[7]

On December 28, 1979, Peabody filed with the Commission its Annual Report on Form 10-K for its fiscal year ended September 30, 1979 ("1979 Form 10-K"). The 1979 Form 10-K contained financial statements for the 1979 fiscal year, including an income statement in which Peabody reported net income of $25.9 million or $2.70 per share of common stock. For the fourth quarter, Peabody reported net income of $6.9 million or $.71 per share, which amount was identical to the per share figure reported for the fourth quarter of the 1978 fiscal year.

Peabody had an inadequate basis, under the circumstances, upon which to defer the costs and avoid recognition of anticipated losses. Facts available at the time of management's decision on the accounting treatment indicated that substantial recovery in the litigation was uncertain.

As noted above, at the time of contracting Peabody had never handled a contract of such magnitude. This contract at the time of signing was the largest of its kind. The construction time provided for the contract, less than two years, was considered a short time for a project of this size. Further, the field work, i.e., the concrete work, electrical work, etc., was entirely subcontracted on a fixed price or unit price with maximum cost basis. While this limited the financial exposure of Peabody, it placed strict requirements on Peabody to coordinate the work of the subcontractors. Detailed designs and plans did not exist for this project at the time of signing. Rapid development of designs and plans was a prerequisite for a successful and timely completion of the project. Problems developed first in the design area and then in scheduling, which, among other things, led to cost overruns.

Prior to the issuance of the fiscal 1979 financial statements and filing of the 1979 Form 10-K with the Commission, Peabody knew of the serious cost overruns incurred and anticipated on the project. It also knew of inadequacies in its coordination of the work of subcontractors, design problems and delays caused by Peabody, and inadequacies in its cost projection methods. This information came from Peabody's internal audit staff, Peabody personnel assigned to the project and from the subcontractors. Moreover, as a result of pre-litigation conferences with Kennedy, Peabody knew what defenses would be advanced by Kennedy and that the litigation would be vigorously defended. Subsequent to the issuance of the November 20, 1979 opinion of its Vice President and General Counsel, Peabody was made aware of the difficulties which it would face in the litigation by an attorney representing an insurance company which had issued a contract errors and omissions insurance policy to Peabody.

Peabody's outside counsel handling the litigation had been requested by management to express an opinion as to the likelihood of recovery. That law firm, in a letter to management issued prior to the release of the financial statements and filing of the 1979 Form 10-K, stated that it was unable to render an opinion, citing its recent entry into the case (four months) and the lack of adequate discovery as the factors hampering its ability to render an opinion.[8]

Footnote 4 Continued

estimated total costs to complete, as revised from time-to-time. The other method is to use such other measure of progress toward completion as may be appropriate having due regard to work performed (i.e. units of progress or engineering estimates of completion). As with all methods of accounting for long-term contracts, when current estimates of total contract costs indicate a loss, provision should be made in the current period for the entire loss on the contract.

[5]In May, 1980, Peabody's Vice President and General Counsel withdrew his opinion.

[6]Peabody did eliminate in the fourth quarter of fiscal 1979 $3.6 million of the $6.6 million in profits already recognized on the contract through the end of the third quarter of fiscal 1979.

[7]Peabody isolated the additional costs which it had incurred and expected to incur in excess of the adjusted $2.9 million subcontract, which had been expensed during the fiscal year. Such additional costs totalled $5.9 million, of which the remaining $3.2 million of costs were incurred and deferred in the first quarter of the 1980 fiscal year. As the costs were incurred, they were not included in the percentage of completion calculation (see note 4) as incurred costs to date, but were recorded as a deferred asset, subject to future recovery. They were also excluded from the estimated total cost to complete the contract.

[8]Paragraph 8 of Statement on Auditing Standards No. 12 states, in part: "A letter of audit inquiry to the client's lawyer is the auditor's primary means of obtaining corroboration of the information furnished by management concerning litigation, claims, and assessments."

Peabody's Failure to Disclose Material Information

Peabody's 1979 Form 10-K contained the following disclosure concerning the accounting treatment and litigation:

ITEM 5. *PENDING LEGAL PROCEEDINGS*

A subsidiary of the Company, Peabody Process Systems, Inc. ("PPSI"), is both a plaintiff and defendant in two lawsuits in Colorado, one pending in the U.S. District Court for the District of Colorado (Peabody Processing Systems, Inc. v. Dynalectric Company and Dynamech Systems, Inc.) and the other in the District Court, County of Moffat, State of Colorado (Peabody Process Systems, Inc. v. Inseco, Inc.). The suits were instituted in August, 1979, and principally involve allegations of breach of contract by and against PPSI and former subcontractors of PPSI in connection with the installation of a scrubber and system by PPSI for a Colorado utility company. PPSI's claims and the counterclaims against it are for monetary damages.

Although the outcome of such suits and claims cannot be predicted with certainty, the disposition thereof will not, in the opinion of the management of the Company, result in a material adverse effect on the consolidated financial position or the results of operations of the Company and its subsidiaries.

There was no disclosure in the fiscal 1979 Form 10-K concerning the deferral of costs, the failure to recognize anticipated losses, the effect on net income or the likelihood of recovery in the litigation.[9] Moreover, certain disclosures made in the 1979 Form 10-K and in Peabody's Annual Report to Shareholders were incomplete and misleading.

By failing to recognize the costs incurred and expected to be incurred in connection with the contract, the operating income of the Company as disclosed in various places in the 1979 Form 10-K, including the financial statements, was overstated by approximately $5.7 million, or 11%, and the operating income of Peabody's Air Group division was overstated by approximately 90%. As a result, Peabody reported a continuation of its favorable annual earnings trend and avoided reporting lower income for the fourth quarter of the 1979 fiscal year than it had in the fourth quarter of the prior fiscal year.[10]

In a discussion in the segment on Peabody's Air Group division in the Annual Report to Shareholders, which was incorporated by reference in the 1979 Form 10-K, the Company made the statement that "if results of this project (Colorado-Ute) were excluded from 1978 and 1979 figures, Air Group operating income would have increased 24 percent." Air Group operating income actually decreased 41.7% (as is disclosed elsewhere in the Report) and would have decreased by approximately 90% had Peabody fully recognized the costs incurred and anticipated.

Various ratios and percentages, including annual growth in net income, return on shareholder's equity, and profit margins, were disclosed and discussed by the company in various places in the 1979 Form 10-K, including the Eleven Year Financial Summary and the management's discussion section. These ratios, percentages and discussions would have changed significantly had the costs not been deferred.

The financial information for the fourth quarter, in the 1979 Form 10-K, which is contained in an unaudited note to the financial statements, failed to disclose the $3.9 million operating loss on the Colorado-Ute contract, which actually was recognized by the Company in the fourth quarter. Such disclosure would have assumed even greater importance had the Company correctly recorded an additional operating loss of approximately $5.9 million by expensing the costs which were deferred.[11]

On February 14, 1980 Peabody filed its Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 1979. In the quarter, Peabody incurred and deferred additional costs related to the Colorado-Ute contract in the amount of $3.2 million, bringing the total costs deferred in connection with the contract to $5.9 million. No disclosure was made of the amount or the nature of the deferred costs in the financial statements, notes or management's discussion section.[12]

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[9]Rule 5-02-3(g) of Regulation S-X requires disclosure of the amount of claims receivable included on the balance sheet which are subject to uncertainty concerning their ultimate realization, to include a description of the nature and status of the principal items comprising such amount.

[10]The following is a summary of earnings per share as reported for the past three fiscal years:

Quarter:	1979	1978	1977
December	0.58	0.53	0.41
March	0.61	0.51	0.43
June	0.80	0.69	0.54
September	0.71	0.71	0.55
	2.70	2.44	1.93

[11]Rule 3-16(5)(4) requires the disclosure of any "...extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter."

[12]The following comment was included in the management's discussion section in comparing the quarter ended December 31, 1979 with the quarter ended September 30, 1979: "Cost of goods sold declined 5% principally due to lower volume and also due to the fact that the preceding quarter included the recognition of significant additional costs for the completion of a major air pollution project." The "significant additional costs" refer to the elimination of $3.6 million of previously recognized profits, related to the Colorado-Ute contract, in the fiscal quarter ended September 30, 1979, referred to previously in Note 5.

In its First Quarterly Report to shareholders dated March 12, 1980, and in its Form 8-K dated March 18, 1980, Peabody disclosed that increased costs amounting to $5.9 million, or approximately 30 cents per share of net income, were believed to be recoverable through litigation and had been deferred.

II.
Findings and Conclusions

For the reasons discussed above, the Commission finds that Peabody failed to comply in several material respects with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder. In this regard Peabody did not have a sufficient basis upon which to defer the costs attributed to Kennedy's alleged breach of contract or avoid recognition of the anticipated future costs, and, by reason of the accounting treatment employed, overstated its income in filings with the Commission. Accordingly, Peabody's disclosures concerning these matters in filings with the Commission were misleading and Peabody omitted to disclose material matters, as discussed above.

III.
Offer of Settlement

Peabody has submitted an Offer of Settlement in which, without admitting or denying the findings herein, consents to the issuance of this Order. Peabody has made certain undertakings in its Offer of Settlement designed to prevent a recurrence of the violations referred to above.

Peabody represents and undertakes to:

1. Restate its certified financial statements as of and for the quarter and year ended September 30, 1979 and as of the quarter ended December 31, 1979 and amend its filings accordingly.

2. Release immediately a restatement release disclosing the existence and nature of this proceeding and setting out the restated figures.

3. Develop appropriate procedures and policies concerning the deferral of costs on contracts for work performed by it or its subsidiaries because of the probability that such costs will be recovered through litigation and concerning appropriate disclosure of such matters. Any such deferral shall be in accordance with generally accepted accounting principles and shall be approved by its audit committee and by its independent auditors and shall be disclosed in the 10-Q Report for the quarter in which the deferral is taken and in the quarterly report to stockholders for such quarter.

IV.
Order

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of Peabody and, accordingly,

IT IS HEREBY ORDERED that proceedings pursuant to Section 15(c)(4) of the Exchange Act be and they are hereby instituted;

IT IS FURTHER ORDERED that Peabody:

1. Comply with the reporting requirements of the Exchange Act;

2. Amend its reports currently on file with the Commission to reflect the matters set forth in this Order; and

3. Comply with its undertakings.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16939/June 27, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE BRADFORD SECURITIES PROCESSING SERVICE, INC. (File No. SR--BSPS-80-5)

Bradford Securities Processing Services, Inc. submitted on June 16, 1980, a proposed rule change describing its Mutual Fund Redemption Service and amending SR-BSPS-78-5 to include a fee for each mutual fund redemption transaction.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 30, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSPS-80-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16940/June 27, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-2)
(SR-NASD-80-4)

ORDER APPROVING PROPOSED RULE CHANGES

On January 29, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 7E(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to provide plans and specifications for its Investment Company Products/Variable Contracts Representative Examination (File No. SR-NASD-80-2).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16563, February 11, 1980) and by publication in the *Federal Register* (45 FR 10496, February 15, 1980).

On March 27, 1980, the NASD filed with the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, copies of a proposed rule change to provide plans and specifications for its Direct Participation Programs Representative Examination (File No. SR-NASD-80-4).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16711, March 31, 1980) and by publication in the *Federal Register* (45 FR 23841, April 8, 1980).

The two examinations would be taken by individuals seeking to qualify either as Limited Representatives—Investment Company/Variable Contracts Products or Limited Representatives—Direct Participation Programs, two categories of limited representative registration that would be authorized by a related proposed rule change (SR-NASD-80-1).[1]

All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities associations, and in particular, the requirements of Sections 15A and 15(b), and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16941/June 27, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-12)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on June 19, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of a proposed rule change to revise the specifications for the Registered Options Principal examination.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-12.

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[1]Proposed NASD Rule SR-NASD-80-1 was approved by the Commission today. Securities Exchange Act Release No. 34-16936 (June 26, 1980).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities associations and in particular, the requirements of Section 15A, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the revised examination will incorporate questions on the new options rules which have been adopted by the options exchanges, the New York Stock Exchange, and the NASD in response to the recommendations made by the Commission's Special Study of the Options Markets and thereby represents an improvement over the currently administered examination. Therefore, the revised examination's immediate implementation is in furtherance of the NASD's responsibility under Section 15A of the Act to ensure minimum standards of competence on the part of its members.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16942/June 27, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE OPTIONS CLEARING CORPORATION (File No. SR-OCC-80-5)

The Options Clearing Corporation submitted on June 20, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, amending its disciplinary rules and procedures.

Publication of the submission is expected to be made in the *Federal Register* during the week of June 30, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-OCC-80-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16943/June 30, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6219/June 30, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16944/June 30, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST CLEARING CORPORATION (File No. SR-MCC-80-1)

Midwest Clearing Corporation submitted a proposed rule change on June 26, 1980, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, that would permit the chairman of the board of directors to set the salary of the president of the corporation and that would designate the chairman as the chief executive officer of the corporation.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 7, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MCC-80-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16945/July 1, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED (File No. SR-CBOE-80-18)

The Chicago Board Options Exchange, Incorporated submitted on June 23, 1980, a proposed rule change under Rule 19b-4 to make permanent the rule permitting members of a joint account to trade with each other but not with the joint account.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16946/June 27, 1980

A notice has been issued giving interested persons until July 18, 1980 to comment on the application of the *Boston Stock Exchange Inc.* for unlisted trading privileges in five issues.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16947/July 1, 1980

An order has been issued granting the application of PLESSEY INCORPORATED to withdraw its 4-1/2% Subordinated Convertible Debentures (due 6-1-93) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16948/July 1, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

FOR UNLISTED TRADING PRIVILEGES
SECURITIES EXCHANGE ACT OF 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

RCA Corporation
- $3.65 Preference Stock, $1 Par Value (File No. 7-5569)
- $2.125 Cumulative Convertible Preference Stock, $1 Par Value (File No. 7-5570)[1]

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject

[1]Notice of these applications were given by publication in the *Federal Register*. 45 FR 41106 (June 17, 1980). The Commission has received no comments with respect to these applications.

securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16949/July 1, 1980

Admin. Proc. File No. 3-5938

In the Matter of

HARRY E. HAGERTY

ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In anticipation of these proceedings, Harry E. Hagerty (Hagerty) a securities salesman of a broker-dealer registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act), has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other Commission proceedings and without admitting or denying the finding herein, respondent Hagerty consents to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED that public administrative proceedings pursuant to Section 15(b) and 19(h) of the Exchange Act be, and they hereby are, instituted.

On the basis of the staff's investigation, the allegations in the Complaint filed by the Commission in *Securities and Exchange Commission* v. *Digital Switch Corporation, et al.*, C.A. No. 800296-A (E.D. Va.),[1] and the Offer of Settlement, it is found that respondent Hagerty willfully violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with offer and sale of unregistered common stock of Digital Switch Corporation (DSC) by failing to disclose, among other things, the use of investor funds to pay commissions on stock sales.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offer of settlement.

Accordingly, IT IS ORDERED that: Harry E. Hagerty be, and he hereby is, suspended as of the opening of business on the second Monday following the date of this Order, from association in any capacity with any broker or dealer for a period of six business days; and thereafter his activities in connection with association with any broker or dealer shall be limited to those of a non-supervisory nature, provided that he may apply to the Commission to remove such limitation after a period of two years from the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16950/July 2, 1980

Admin. Proc. File No. 3-5936

In the Matter of

OCCIDENTAL PETROLEUM CORPORATION
10889 Wilshire Boulevard
Los Angeles, California

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, OPINION AND ORDER OF THE COMMISSION

The Commission deems it appropriate in the public interest following an investigation by its Division of Enforcement that pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (the "Exchange Act") proceedings be instituted with respect to Occidental Petroleum Corporation ("Oxy") to determine whether, during the period January 1, 1973 to the present, Oxy failed to make certain required disclosures in various filings submitted to the Commission pursuant to Section 13 of the Exchange Act and the Rules and Regulations promulgated thereunder.

Simultaneously with the institution of these proceedings, Oxy has submitted an Offer of Settlement for the purpose

[1]See Litigation Release Nos. 9085, 9100.

of disposing of the issues raised in these proceedings. Under the terms of its Offer of Settlement, incorporated herein by reference, Oxy, solely for the purpose of these proceedings, without trial or any adjudication, makes certain undertakings, and without admitting or denying any of the matters set forth herein, consents to the issuance of this Order of the Commission. In its Offer of Settlement to dispose of these proceedings, Oxy has made certain undertakings which are accepted by the Commission as detailed herein.

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of Oxy and the undertakings contained in the Offer of Settlement, and, accordingly, issues this Order.

I.
STATEMENT

A. *INTRODUCTION*

Oxy, a California corporation organized in 1920 with headquarters in Los Angeles, California, is engaged in exploring for and developing and producing natural resources, principally oil and gas outside of the United States and coal within the United States; marketing and transporting petroleum and petroleum products; and manufacturing and distributing chemicals of various types. Its securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and are traded on the New York Stock Exchange and other exchanges. Throughout all times relevant herein Oxy has filed annual and other periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and the Rules and Regulations promulgated thereunder. For the year ended December 31, 1979, Oxy reported net sales of approximately $9.55 billion and net income of approximately $561.7 million.

Oxy's oil and gas exploration and production operations are conducted throughout the world with the principal operations in Libya, the United Kingdom sector of the North Sea, Peru, Bolivia, the United States and Canada. For the year ended December 31, 1979, as reflected in Oxy's 1979 Annual Report on Form 10-K, all its oil and gas exploration and production operations, including the sale of its shares of oil production in these countries and additional crude oil purchased from Libya, accounted for approximately 42% of Oxy's total revenues, approximately 87% of its operating profit after Libyan taxes but before other income taxes and unallocated interest and corporate expenses, and approximately 39% of identifiable assets.

Oxy's chemical operations are conducted through Hooker Chemical Corporation ("Hooker"), a wholly-owned subsidiary, and its subsidiaries, including Hooker Chemicals & Plastics Corp., acquired by Oxy in 1968. Hooker, with over 18,400 employees, is a major producer of industrial chemicals, plastics, metal finishing chemicals and equipment, and agricultural chemicals and fertilizers. For the year ended December 31, 1979, as reflected in Oxy's 1979 Annual Report on Form 10-K, Oxy's chemical operations accounted for approximately 21% of Oxy's total revenues, approximately 7% of its operating profit and approximately 25% of identifiable assets.

As discussed below, various filings by Oxy and the Commission since January 1, 1975[1] did not contain certain required disclosures relating to: (1) Oxy's discharge of chemical or toxic wastes ("waste") into the environment; (2) the status of the proposed construction of a hydro-skimming refinery on Canvey Island; (3) the status of Oxy's negotiations with Libya concerning the financial arrangement pursuant to which Oxy operated in Libya; and (4) signed, undated letters of resignation which were submitted by certain nominees to Oxy's Board of Directors at the request of Dr. Armand Hammer, the Chairman of the Board.

B. *ENVIRONMENTAL MATTERS*

As a major chemical company with facilities throughout the United States, Oxy's wholly owned subsidiary, Hooker, is subject to compliance with various federal, state and local environmental protection laws and regulations restricting the discharge of pollutants in the environment. Such regulatory restraints have had and have a significant financial impact on Hooker with respect to increased expenditures attributable to compliance with environmental laws and actual or potential liabilities arising from its discharge of pollutants.

Set forth below is a description of the three areas of non-disclosure in Oxy's filings with the Commission with respect to matters regulating the discharge of waste into the environment, or otherwise relating to the protection of the environment, which the Commission, as a result of its investigation, believes should have been disclosed. Oxy did not disclose, in numerous instances, the required information concerning pending or contemplated administrative or judicial proceedings by governmental authorities arising under federal, state, or local law relating to the protection of the environment. In addition, as set forth below, Oxy did not make adequate disclosures in filings with the Commission concerning the effects that compliance with environmental regulations would have upon its capital expenditures and earnings.[2] Finally, Oxy did not disclose certain potential material liabilities resulting from the leaching of wastes into the environment from various chemical disposal sites.

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[1]This proceeding and order concern Oxy's annual and periodic reports over the time period relevant herein.

[2]The Commission regulations specifically require disclosure of information related to capital expenditures, earnings and competitive position of registrants. See, Securities Act Release No. 5170 (July 19, 1971 at 1), Exchange Act Release No. 9252. See also, Securities Act Release No. 5704 (May 6, 1976 at 1), Exchange Act Release No. 12414; *In the Matter of United States Steel Corporation*, Exchange Act Release No. 16233 (September 27, 1979) which was issued by the Commission during the pendency of othe Commission's private investigation in this matter.

1. *Disclosure of Environmental Proceedings Involving Oxy*

In 1973, the Commission adopted amendments to its registration and reporting forms with respect to environmental matters which were designed to promote investor protection and at the same time promote the purposes of the National Environmental Policy Act of 1969.[3] One such rule required reporting companies to disclose information relating to administrative or judicial proceedings arising under provisions relating to the protection of the environment and pending or known to be contemplated by governmental authorities.

Since at least 1974, Oxy has been the subject of numerous proceedings instituted by governmental authorities pursuant to federal, state or local governmental regulatory provisions and has frequently been involved in various types of proceedings relating to the environment. From April 1974 through December 1976, Oxy was involved in at least 90 legal proceedings with governmental units relating to the protection of the environment. Approximately three-quarters of these proceedings between 1974 and 1976 were administrative in nature and related to excessive emissions into the air, or the improper discharge of effluents into waterways, or violations of National Pollutant Discharge Elimination System ("NPDES") permits issued to various Oxy facilities. Corrective actions were undertaken by Oxy, and in most cases civil penalties ranging from $250 to $2500 per violation were imposed. Other proceedings between 1974 and 1976 involved administrative and criminal misdemeanor actions against Island Creek Coal Company, a wholly-owned subsidiary of Oxy, principally for the discharge of pollutants into streams in violation of West Virginia pollution control laws, all of which were terminated by settlement or, in the misdemeanor actions, by pleas of *nolo contendere*, resulting in the aggregate in fines or penalties of $19,736.00.

Prior to May 1977, Oxy did not disclose, as required, in any filing with the Commission the existence and nature of these 90 pending or contemplated proceedings relating to discharge of waste into the environment or otherwise relating to the protection of the environment.

Subsequent to Oxy's initial disclosures of the existence of proceedings in May 1977 in a Report on Form 10-Q for the period ending March 31, 1977, Oxy did not disclose on several occasions the existence of other contemplated legal proceedings relating to discharge of materials into the environment or otherwise relating to the protection of the environment. On other occasions, Oxy did not timely make certain required disclosures in filings with the Commission and the period of the non-disclosure was, in many cases, substantial.

The following discussion concerning the Occidental Chemical Company ("Oxychem") facility at White Springs, Florida, provides an example of Oxy's failure to disclose timely, during 1978, a legal proceeding contemplated by the EPA.

White Springs

Officials of Oxychem, a wholly-owned subsidiary of Hooker, were informed on February 22, 1978 at a meeting with the staff of EPA in Atlanta, Georgia that allegations had been made as to its compliance with certain environmental regulations at the White Springs facility with respect to discharges into the Suwannee River.

On May 5, 1978, Oxychem informed EPA that a diammonium phosphate ("DAP" plant #2 or "Z" Train) unit[4] had been operated since September 1975, in violation of the applicable fluoride emission limiting regulations and that, as a result, certain "Air Pollution Emissions Report" forms previously submitted inaccurately reflected Oxychem's level of compliance at the DAP plant #2.[5]

As a result, on or about June 8, 1978, Oxychem management was informed by the United States Attorney for the Middle District of Florida, that a criminal action would be likely against Oxychem. Oxychem agreed that if documentation for the contemplated charge was forthcoming, Oxychem would plead *nolo contendere* to the charge. On June 29, 1978, Oxychem presented to the U.S. Attorney facts documenting the proposed charge. By mid-July 1978, previous efforts by Oxychem counsel to dissuade prosecution by the U.S. Attorney, on jurisdictional and other grounds, proved unsuccessful. Thereafter, on September 1, 1978, Oxychem entered a plea of *nolo contendere* to a single-count misdemeanor information of knowingly submitting a false statement to the EPA under Section 113(i)(2) of the Clean Air Act, 42 U.S.C. §7413(i)(2) in a federal district court in Florida. Although Oxychem knew by June 30, 1978, that criminal litigation was contemplated by the federal authorities, no disclosure was made in Oxy's Quarterly Report on Form 10-Q for the period April 1, 1978 through June 30, 1978.[6]

2. *Disclosure of the effects of compliance upon Oxy's capital expenditures and earnings*

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[3]See Securities Act Release No. 5386 (Apr. 20, 1973.)

[4]The Oxychem facility at White Springs in 1978 involved 34 buildings, 1,235 personnel and 4,500 acres used directly for 16 processes related to the mining, processing and shipment of phosphate and gypsum.

[5]Oxychem did not have in place procedures by which this non-compliance, known to Oxychem plant management, came to the attention of senior management of Oxy.

[6]The federal criminal information and *nolo contendere* plea were disclosed in Oxy's Quarterly Report on Form 10-Q for the period July 1, 1978 through September 30, 1978 and in other filings thereafter. On March 28, 1979, Oxychem entered a *nolo contendere* plea to a Florida state court misdemeanor prosecution for related violations and paid a fine of $28,000 which was disclosed in Oxy's 1979 Quarterly Report on Form 10-Q for the period ended March 31, 1979. The State of Florida commenced a civil action seeking approximately $9,000,000 in penalties for violations of state pollution control statutes on May 3, 1979. The civil action was disclosed in Oxy's Quarterly Report on Form 10-Q for the period ended June 30, 1979.

As part of the Commission's 1973 amendments to its registration and reporting forms,[7] the Commission required disclosure of "the material effects that compliance with federal, state and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries."

During the period from 1973 until 1977, as set forth below, Oxy did not make required disclosure in filings with the Commission concerning the effects that compliance with provisions relating to the protection of the environment may have upon Oxy's capital expenditures and earnings.

Subsequent to May 1977, in various filings with the Commission, Oxy disclosed the amounts of capital expenditures relating to compliance with environmental regulations it had incurred for the current year[8] and included estimates of environmentally related capital expenditures Oxy projected that it would incur in the succeeding two years. However, Oxy did not describe, or include within reported expenditures estimates of, the costs that it believed it would be required to incur in connection with possible remedial activities necessary to compensate for previous non-compliance with environmental regulations at certain Hooker facilities. Set forth below is a discussion of the Lathrop, California and Montague, Michigan matters which provides examples of these disclosure issues.

(a) *Lathrop, California*

In 1968, the California Regional Water Quality Control Board—Central Valley Region ("the California Region") issued a resolution ("Resolution 69-19") which regulated the amount of contaminants which could be discharged from a plant of Oxy's Oxychem subsidiary located in Lathrop, California into usable groundwater.[9] Resolution 69-19 also included specific limitations of the concentrations of certain chemicals which could be allowed to accumulate in the usable local groundwater.

As early as 1975, at least two Oxychem employees concluded that waste disposal practices at the Lathrop facility's agricultural chemical plant created a potential for violation of Resolution 69-19 and of state water pollution laws. The employees raised this concern with plant management. Other plant personnel disagreed with such legal conclusions. Thereafter, capital expenditures earlier proposed for the facility to install a storage tank pesticide waste disposal system were authorized by Oxychem. The system became operational on May 24, 1976.[10]

By late 1978, internal Lathrop memoranda identifying problems with respect to leaching of certain wastes to the groundwater, unacceptable levels of groundwater contamination and non-compliance with waste disposal regulations, had come to the attention of Oxychem management. One such memorandum expressed the writer's view that the leaching of wastes could potentially pose a health problem.

On March 23, 1979, the California Region issued an order in which it found that Oxychem had discharged certain wastes beyond limits allowed by Resolution 69-19. The order further instructed Oxychem to cease discharging certain wastes, to submit a plan to study the extent of pesticide contamination and to remove and dispose of such contamination as directed. The issuance of this order was disclosed by a Form 10-K for its fiscal year ending December 31, 1978 which Oxy filed with the Commission on March 30, 1979.

On December 18, 1979, the State of California and the United States filed a suit which presented allegations that Oxychem continuously violated Resolution 69-19, applicable Federal and State law and sought injunctive relief. The governmental plantiffs further claimed that Oxychem failed fully to apprise them of the agricultural chemical operations undertaken at Lathrop, and also of the nature and quantity of the Lathrop facility's liquid and solid waste discharges. Oxychem has denied these allegations.

Oxychem may incur substantial expenditures at its Lathrop facility including those for remedial action and any related personal injury or personal property damage. Consistent with the March 23, 1979 Cease and Desist Order issued by the California Region, on February 15, 1980, Oxychem committed itself to undertake a comprehensive plan of study at an estimated cost of $1,000,000 to "determine the extent of pesticide, chemical and radiological contamination in the groundwater and soils in and around the vicinity of" the Lathrop facility. While no determination has been made as to any specific remedial work which may be required and until the plan of study is completed, it is not possible to estimate definitively the costs of any potential remedial work, one governmental attorney has opined that such costs may total approximately $15,000,000. Further, the State of California is seeking civil penalties of $6,000 per

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[7]See, Note 2, *spura*.

[8]Oxy disclosed at one time or another in various documents that it had environmentally related capital expenditures in 1976, 1977, 1978, and 1979 of $14,000,000, $22,000,000, $21,000,000, and $45,000,000, respectively.

[9]Resolution 69-19 was a successor resolution to Resolution 60-6, adopted February 18, 1960, when the Lathrop facility was owned by Best Fertilizer Company. Oxy acquired Best Fertilizer Company in 1963. Resolution 60-6 similarly regulated the amount of contaminants which could be discharged from that facility.

[10]On August 13, 1977, the State of California ordered all agricultural chemical companies to cease the sale, delivery and use of DBCP, a pesticide formulated at the Lathrop facility. Two days earlier, Oxychem suspended its formulation and California sales of the product. This suspension by Oxychem followed reports that some DBCP workers had experienced reduced fertility or sterility and that the state was considering imposing such a ban.

day for certain alleged violations and either $5,000 or $25,000 for each of the other alleged violations, all of which are being contested by Oxychem.

Prior to March 1980, Oxy did not disclose in its filings with the Commission any estimates of costs of such remedial efforts at the Lathrop site.

(b) *Montague, Michigan*

Hooker's Montague, Michigan plant[11] has been the subject of various proceedings by the State of Michigan's Department of Natural Resources ("DNR") with respect to noncompliance with its NPDES permit.

In June 1976, the DNR advised Montague plant management that DNR chemical analyses indicated the presence of certain chemicals in the effluent from the Montague facility and asked Hooker to take immediate action, to cease discharging HCP, HCB and HCBD into the water environment surrounding the Montague plant.[12] In September 1976, DNR instituted an enforcement action with respect to Hooker's NPDES permit and simultaneously a consent order was executed by Hooker and the DNR ("September 1976 order"), which required Hooker to expend and improve wastewater treatment, and to perform a groundwater study to determine the extent of groundwater contamination in the vicinity surrounding the Montague facility. The September 1976 order also found that Hooker had violated a state statute by continuing to discharge chlorinated hydrocarbons into White Lake. As part of the September 1976 order, for the first time, a specific numerical limitation was established with respect to discharge of such hydrocarbons.

On February 25, 1977, Hooker voluntarily closed its C-56 plant and related processes because it was not economically feasible to operate them without producing C-56 and Hooker could not produce C-56 in compliance with DNR's interpretation of Hooker's then-existing permit. The C-56 operations at the Montague plant have remained closed ever since.

A new NPDES permit was issued on June 24, 1977, which required that final effluent limitations be reached on or before July 1, 1977, for certain effluents, and on or before December 31, 1977 for others. The permit also prohibited the resumption of the production of certain chemicals until Hooker was able to demonstrate that such production could be accomplished in an environmentally safe manner. Hooker was unable to comply with the schedules of compliance set forth in that permit.

A "Final Order of Abatement" was adopted by the DNR on September 15, 1977, predicated in part on Hooker's failure to meet the compliance schedules of the June 24, 1977 permit. The order further required Hooker to conduct a series of investigations to locate any hazardous materials previously disposed of, in accordance with a specified plan and time schedule. A study was also required under the terms of the June 24, 1977 permit to determine the extent of groundwater contamination and the contamination of White Lake.[13]

Oxy disclosed in its Annual Report on Form 10-K for the fiscal year ending December 31, 1977, that it was the subject of an action by the State of Michigan, and that the September 1977 order emanating from the action required the construction of environmental control facilities at an estimated capital cost of $4,600,000. However, Oxy did not disclose that it was ordered by the DNR to conduct a study of possible contamination of groundwater and White Lake.

3. *Disclosure of Potential Liabilities Resulting From Disposal of Wastes*

Significant property damage and personal injury has occurred near various waste disposal sites of Hooker. By at least 1977, the time varying with respect to specific sites, as discussed herein, Hooker was exposed to material potential liabilities as a result of its ownership and use of these sites. Nevertheless, Oxy only disclosed in certain documents filed with the Commission including, for example, its Annual Report on form 10-K for the period ending December 31, 1977, that "[i]n light of the expansion of corporate liability in the environmental area in recent years. . ., there can be no assurance that Occidental will not incur material liabilities in the future as a consequence of the impact of its operations upon the environment." Oxy did not specifically disclose the amount, or describe the nature or extent, of the potential liabilities of Hooker due to its discharge of substantial amounts of wastes, as set forth below.

From the 1940's to the early 1970's, Hooker utilized

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[11]Hooker's Montague, Michigan plant is located approximately a quarter of a mile north of White Lake (a recreational lake) and about 2-1/2 miles east of Lake Michigan.

[12]1976 samplings indicated the presence of Hexachlorocyclopentadiene (HCP, HCCP, C-56), Hexachlorobenzene (HCB), and Hexachlorobutadiene (HCBD). HCP is a major constituent in the production of the insecticides Mirex and Kepone.

[13]On April 13, 1978, the DNR publicly asserted that contaminated groundwater from Hooker was entering White Lake and that it had informed Hooker that it expected the entire site to be cleaned up in order to prevent further harm to the environment. On December 22, 1978, DNR issued a Notice of Non-compliance and Order to Comply to Hooker for non-compliance with the terms and conditions of the NPDES permit issued on June 24, 1977, and of the Final Order entered on September 15, 1977. On February 21, 1979, the State of Michigan filed a civil complaint for an injunction, civil penalties and damages against Hooker. In its Annual Report on Form 10-K for the fiscal year ended December 31, 1978, Oxy disclosed that it had accrued $11,500,000 in 1978 to meet estimated environmental remedial costs for the Montague site and the civil action filed by the State of Michigan. In October 1979, Hooker, in settling pending proceedings with the State of Michigan, agreed to do certain things to clean up the Montague site which Oxy estimated would cost at least $15 million.

essentially four sites in the Niagara Falls area of western New York State for the disposal of certain hazardous chemical wastes. As discussed below, the Niagara Falls disposal sites are the source of potential significant financial claims against Oxy. Claims have been made in presently existing lawsuits in excess of hundreds of millions of dollars as a result of the alleged leaching of wastes from dump sites and into the homes surrounding Love Canal and the waters of the Niagara River, which is a source of drinking water for the Niagara Falls area.[14]

(a) *Love Canal*

Love Canal[15] was used by Hooker as a landfill for the disposal of residues from Hooker's chemical manufacturing processes from 1942 until 1952 prior to the time Oxy acquired Hooker. During that period, Hooker estimates that it may have dumped more than 21,000 tons of various chemical wastes in the site. In 1953, at the request of the Board of Education of the School District of the City of Niagara Falls, Hooker deeded the landfill site to the Board for $1.00. Hooker's deed to the Board[16] contains language with respect to a release from liability and a general description of the prior use of the landfill site.[17]

The environmental problems at Love Canal received substantial media attention in 1977 and 1978. In April 1977, the City of Niagara Falls engaged the Calspan Corporation to conduct an examination designed to quantify the leaching of waste which was suspected at the site without identifying the chemicals that might be involved or assessing potential health impact. Calspan's report, which was issued in August 1977, without discussing the question of potential liability or giving any precise explication of the magnitude of likely problems, indicated the presence of waste in the sewer and sump water near the Love Canal area, giving reason to believe that chemicals were migrating from the site and that further study would be appropriate. In response to these findings, Calspan recommended to the City of Niagara Falls corrective measures and monitoring activities for immediate implementation. The consultant did not address the issue of potential liability of Oxy.

By 1977, as a result of Hooker's prior ownership and use of the Love Canal site and problems relating thereto, Oxy was potentially exposed to substantial financial risk. There was no disclosure of the potential liability in Oxy's Annual Report on Form 10-K for the fiscal year ended December 31, 1977. In December 1979, the EPA and Department of Justice commenced an action against Hooker seeking security for remedial action at Love Canal estimated to cost approximately $45 million.[18] In April 1980, the State of New York commenced an action against Hooker and Oxy seeking injunctive relief to abate migration of wastes from the Love Canal site, $250 million damages for environmental injury, $95 million for restitution costs, $270 million in punitive damages, and $20 million actual damages.

(b) *Hyde Park Landfill*

The Hyde Park Landfill was used by Hooker from 1953 to 1974 as a disposal site for certain drummed wastes which, but for the closing of the Love Canal site, would have been deposited in the Love Canal site. During the period, Hooker estimates that it may have dumped more than 80,000 tons of wastes in the landfill. The site is located within the Town of Niagara and drains to Bloody Run Creek, a natural drainage basin. At times, the site drains into Bloody Run and from there by open culvert into the Niagara River.

After samples showing chemical residue in sediment north of the Hyde Park Landfill and from Bloody Run Creek were noted, Hooker was informed by the New York State Department of Environmental Conservation ("NYSDEC") that if a satisfactory remedial program to bring the site into legal compliance was not submitted by April 21, 1977, legal action could be instituted.

Hooker spent $500,000 for closure of the site in accordance with NYSDEC and Niagara County Health Department-approved plans in August of 1977. Environmental issues continue to be raised,[19] concerning trace amounts of waste in bottom sediments in Bloody Run Creek, the presence of waste in groundwater under the site, possible migration of waste adjacent to the site and the

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[14]On December 20, 1979 the United States Department of Justice filed four complaints seeking orders which would require Oxy to clean up the various sites and make restitution to the Federal government for Federal monies expended on the sites ("December 1979 Litigation"). Requests for security to insure clean up costs total $117,000,000 and restitution claims total at least $7,000,000. The suits also seek to impose penalties on Hooker of $10,000 a day for each day of non-compliance for each site. These penalties could total approximately $54,000,000. Oxy disclosed these proceedings in its Annual Report on Form 10-K for the year ended December 31, 1979 and in its filings thereafter.

[15]Love Canal was dug originally as part of an industrial development project to connect the upper and lower segments of the Niagara River, creating a waterfall to generate hydroelectric power.

[16]The deed advised the Board that the premises had been "filled, in whole or in part, to the present grade level thereof with waste products resulting from the manufacturing of chemicals" and provided that "the grantee [Board of Education] assumes all risk and liability in use thereof" and that "no claim, suit, action or demand of any nature whatsoever shall ever be made by the grantee, its successor or assigns. . .for injury to a person or persons including death. . .or loss of or damage to property caused by. . .the presence of said industrial wastes. . . (E)ach subsequent conveyance of the aforesaid lands shall be made subject to the foregoing provisions and conditions."

[17]The 16 acre landfill site is now bordered by single-family residences but was not at that time.

[18]This sum is included within the $117 million total referred to in note 14, *supra*.

[19]These are aspects of the claims in the December 1979 Litigation noted above at note 14, *supra*.

migration of waste in soils outside the area covered by the existing collection systems.[20] In January 1979, the Town of Niagara filed an action against Hooker in the New York Supreme Court claiming $15,000,000 in civil damages, $10,000,000 in punitive damages, $892,000 in civil penalties; and requesting injunctive relief requiring the removal of the Hyde Park landfill, and seeking permit cancellation.[21] Prior to its Annual Report on Form 10-K for the year ending December 31, 1978,[22] there was no disclosure in Oxy's filings with the Commission of potential substantial financial exposure for personal injury or property damage related to the Hyde Park landfill site.

In its Annual Report on Form 10-K for the year ending December 31, 1978, filed with the Commission in March 1979, Oxy disclosed that Hooker anticipated that civil lawsuits for personal injury and property damage would be commenced against Hooker arising from Hyde Park disposal seeking at least $3.8 million. The same Report also disclosed the action brought by the Town of Niagara against Hooker. In the Quarterly Report on Form 10-Q for the quarter ending September 30, 1979, Oxy disclosed that it anticipated that civil lawsuits would be seeking at least $4.9 million, that Oxy "now believes that corrective action is necessary at several Niagara sites," and that both EPA and state agencies had subpoenaed documents concerning the Niagara sites.

(c) *S-Area Landfill*

The S-Area Landfill is another Hooker chemical waste landfill site. Wastes have been and are believed to be leaching into and migrating from the Niagara River and present the possibility of contaminating the City of Niagara Falls Municipal Water Treatment Plant located 200 yards east of the pertinent westerly boundary of the Hooker Niagara facility. During the period from approximately 1947 until 1967, Hooker used the S-Area Landfill for the disposition of wastes. Thereafter, until 1975, it used the site for equipment washing. Hooker estimates that during the period 1947 until 1975, at most 63,100 tons of waste were deposited at the site.

In September 1976, a joint EPA/NYSDEC/Hooker sampling program of all Niagara plant wastewater discharge was undertaken to determine the source of chemical contamination of Lake Ontario (85% of the inflow of which Lake comes from the Niagara River).

Contemporaneously with the sampling program, the New York Commissioner of the Department of Environmental Conservation prohibited the possession and consumption of certain fish caught in Lake Ontario and its tributaries. The ban was lifted on March 31, 1978 and the New York State Department of Health has determined that no health hazard exists. The site may, however, still be the source of waste leachate.[23]

Oxy has made no disclosure in its filings with the Commission of any potential liability with respect to matters set forth above related to the S-Area Landfill.[24]

C. *OTHER DISCLOSURE MATTERS*

Oxy failed in various filings with the Commission to disclose the full facts and circumstances surrounding the reasons for the halting of construction in 1975 of a proposed major hydroskimming refinery at Canvey Island, England and the risks and uncertainties concerning its investment there. Moreover, it did not disclose certain matters and risks related to Oxy's dispute with the Libyan government over the interpretation and implementation of the "fair remuneration" arrangements concerning certain operations in Libya. Finally, Oxy did not disclose that signed undated letters of resignation were submitted by certain nominees to Oxy's Board of Directors at the request of Dr. Armand Hammer.

1. *Canvey Island Refinery*

In 1970, Oxy sought a permit from the British government to build a 125,000 barrel-per-day hydroskimming refinery, approximately 30 miles east of London, at Canvey Island, England. A permit was obtained in 1971 and construction commenced in 1973.

Subsequent to the commencement of construction, dramatic increases in petroleum prices triggered radical changes in the international petroleum market, including, by 1974, the development of a surplus of hydroskimming refinery capacity in Europe. For a number of reasons, this caused concern within Oxy's management that the Canvey Island refinery, if completed as originally designed, would be unprofitable or marginally profitable. Since the project was financed directly by Oxy, and since Oxy was unsuccessful in diluting its investment in 1974, Oxy alone bore the risk that the project might be unprofitable.

In late 1974 and early 1975, Oxy undertook internal studies and engaged outside consultants to evaluate the alternatives to proceeding with construction as originally planned. Outside consultants were also engaged to study, among other things, possible alternative types of refinery operations for the Canvey Island project given the changing refinery requirements in Europe.

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[20]On several occasions before closure of the site in 1977, contaminants migrated off-site due to berm breakage.

[21]The December 1979 Litigation (note 14, *supra*) seeks security for remedial costs to clean up the Hyde Park landfill amounting to approximately $6,080,000 of the $117 million total.

[22]Oxy disclosed in the Quarterly Report on Form 10-Q for the quarter ended September 30, 1978 that while the extent and cost of the corrective action which may be required at Hooker's chemical waste disposal sites, other than Love Canal, could not then be determined, "such cost may be substantial."

[23]The December 1979 Litigation (notes 14 and 18, *supra*) alleges that leachate migrates from S-Area and requests security of approximately $50 million, of the total $117 million, for S-Area remedial costs.

[24]See Note 22, *supra*.

In a February 26, 1975 meeting, Oxy management re-examined its capital spending program for the Canvey Island refinery in light of various factors, including the January 1974 OPEC oil price increase, the depressed demand for lower grade petroleum products from hydroskimming facilities, the surplus hydroskimming refinery capacity in Europe, and the announced policy of the British government to obtain production in England of certain higher grade petroleum products rather than lower grade products produced by hydroskimming facilities. This re-examination indicated to Oxy that the originally planned hydroskimming refinery for Canvey was no longer "economically viable" at that time.[25]

While construction of the major processing components of the Canvey Island refinery was effectively halted in February of 1975 because of the economic outlook and considerations identified above,[26] Oxy was concerned with how a construction halt would be viewed by the British government, the financial community and the public.

On March 10, 1975 Oxy issued a press release which "announced a major revision in its construction plans for the Canvey Island refinery near London in the light of long-term United Kingdom government energy policies for the utilization of North Sea crude oil." The March 10, 1975 release omitted any discussion of the project's lack of economic viability, as a hydroskimming facility, and attendant financial risk to Oxy as being reasons for the construction halt.[27]

Between 1975 and 1978, Oxy undertook economic analyses, studies and preparatory work relating to the Canvey Island site, including analyses of precisely what refinery configuration would be most economically viable in connection with a determination whether, or under what conditions, to proceed with construction.[28] In July 1978, Oxy wrote down the book value of its investment in the Canvey Island refinery from $110 million to $20 million.[29]

Oxy's Annual Reports on Form 10-K for the 1975, 1976 and 1977 fiscal years and other filings did not adequately disclose certain risks and uncertainties concerning its investment and the facts and circumstances surrounding the reasons for the suspension of construction of the refinery.

2. *Libya*

In 1966, the Libyan government awarded to Occidental of Libya Inc. ("Oxylibya"), a wholly-owned subsidiary of Oxy, concessions for the exploration and production of crude oil, gas liquids and natural gas in certain areas of the Sirte Basin of Libya. In August 1973, the Libyan government unilaterally nationalized 51% of the assets of Oxylibya, including 51% of Oxylibya's interest in those concessions, as well as in a gas liquids plant, pipelines and marine terminal facilities.

In August 1975, Libya cut back the allowable level of production from concession acreage and sought to change certain provisions in Oxylibya's exploration and production sharing agreement with the Libyan National Oil Corporation ("NOC"). This dispute was settled in early December of 1975, when Oxylibya and the Libyan government entered into an agreement which, among other matters, set forth the intention of the Libyan government to assure a "fair remuneration" to Oxylibya from the concessions.

The meaning of "fair remuneration" was discussed in a separate letter, dated December 3, 1975, which by its terms was made part of the principal agreement. This letter agreement provided that Oxy's fair remuneration "shall be no less than" an aggregate sum which was determined from specified margins and was to be "determined on a cumulative monthly basis commencing on December 3, 1975". Libya, in effect, was providing Oxy with a specified minimum return on its Libyan investment.

From December 1975, when the fair remuneration agreement was entered into through June 1977, Oxylibya's operating income was sufficient not to require any relief under the "fair remuneration" clause of the Agreement. Beginning in July 1977, however, various factors including a softening in the oil market resulted in decreasing margins which caused Oxy to receive less than its specified minimum return from its operations. By a letter dated November 2, 1977, Oxylibya submitted its first claim for fair remuneration to the Libyan Secretary of Petroleum ("SOP") for July 1977, and for the first time suggested a procedure or mechanism for payment, since no such mechanism had been set forth in the December 3, 1975 letter agreement. By letters dated November 15, 1977 and December 14, 1977, Oxylibya submitted its claims for fair remuneration for the months of August, September and October. As of November 1977 and continuing thereafter, a refusal by the Libyan government to recognize Occidental's interpretation of the fair remuneration clause posed a risk to Oxylibya's earnings.

Prior to February 1978, Oxy did not recognize any income from its fair remuneration claims for the period from July 1977 through February 1978, since the Libyan government had not yet acknowledged or paid them.

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[25]The phrase "economically viable" was first used publicly by Oxy to disclose a reason for the halt of construction of the Canvey project in Amendment No. 3 to Oxy's registration statement filed with the Commission on November 24, 1978 after the Commission instituted an investigation of Oxy's disclosure.

[26]Certain construction, including tankage and jetties, continued after February 26, 1975.

[27]It did report that the delay in construction of processing units was "to allow for new engineering and economic decisions to be made concerning the most efficient design for the completed refinery."

[28]In or about October 1977, Oxy undertook certain other studies and design work with respect to the Canvey site.

[29]In making this determination, the Company reviewed the situation at that time.

On March 17, 1978, Oxylibya submitted a letter to the SOP which presented fair remuneration claims for November and December 1977, bringing the aggregate fair remuneration claims for the period July through December 1977 to approximately $10,119,000. This March 17, 1978 letter to the SOP stated Oxylibya's position that the failure of the Libyan government to respond to "prior statements for fair remuneration may no longer be overlooked as it is considered to be a material and substantial breach of the agreements of December 1975." Oxy considered the positions taken by the Libyan government to have been a breach of the December 1975 fair remuneration agreement, although Oxy had received interim assurances from the SOP and NOC that the fair remuneration clause would be honored and implemented.[30]

Oxy's Annual Report on Form 10-K for the fiscal year ended December 31, 1977, disclosed that:

> "As a result of the December 1975 Agreement, Oxylibya expects to be able to operate in Libya on a profitable basis. Nevertheless, in light of Oxylibya's prior difficulties with the Libyan government and the government's nationalization of the entire interest of several other oil companies, no assurance can be given as to future actions of the Libyan government or as to whether Oxylibya will be able to operate profitably in Libya in the future."

The Annual Report on Form 10-K omitted to disclose, however, the various facts and significant risks concerning Oxy's dispute with the Libyan government over the interpretation and implementation of the fair remuneration clause of the December 1975 agreement.

3. *Signed, Undated Resignation Letters*

During the period from approximately 1957 until the present, Dr. Armand Hammer for the most part recommended nominees for election to Oxy's Board of Directors.

Beginning at least as early as 1962, Hammer requested signed but undated letters[31] from certain nominees to Oxy's Board of Directors in which each signator stated that he was tendering his resignation effective immediately ("undated resignation letters"). All of those persons who were requested to sign undated resignation letters did in fact sign the letters and returned them to Hammer who placed them in Oxy's personnel files where they remained.[32]

During the period from 1962 through 1972, Hammer requested and received undated resignation letters from approximately ten persons who became directors of Oxy. With the exception of one director, who was a substantial shareholder of Oxy, the other persons who submitted the undated resignation letters were officers of the Company.[33] None of the incumbent directors serving on Oxy's Board has signed such a letter, the last signatory director having left the Board in 1978.

During the period from approximately January 1, 1963 through 1978, Oxy filed with the Commission Annual Reports on Form 10-K, which did not disclose the existence of the undated resignation letters or the facts and circumstances surrounding the letters, including their purpose or the effects, if any, that such letters may have had.

II.
CONCLUSIONS

The Commission finds that certain of Oxy's periodic reports filed with the Commission from 1973 through 1978 did not contain material disclosures as required by Section 13 of the Exchange Act and the Rules and Regulations promulgated thereunder.

As discussed above, Oxy did not make certain required disclosures concerning pending or contemplated judicial and administrative proceedings as to which it was a party, and arising under federal, state and local provisions which regulate the discharge of materials into the environment. Further, Oxy did not adequately disclose the effect upon its business of compliance with federal, state and local laws relating to the protection of the environment. The total cost of compliance with environmental regulations includes not only those costs to bring facilities into full compliance with environmental regulations but also includes costs associated with past non-compliance with environmental regulations. Such costs may include fines, penalties and other amounts associated with plant shut-downs occasioned by environmental violations and clean up and other costs to remedy past violations.

Moreover, as discussed above, since at least 1977, varying with respect to specific sites, Oxy has been confronted with significant potential liabilities for damages and injuries resulting from Oxy's environmentally related operations. Under the circumstances involved, the Commission believes Oxy should timely have disclosed these potential liabilities and reasonably ascertainable

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[30]Although not relevant to Oxy's disclosure obligations in its Annual Report on Form 10-K for the year ending December 31, 1977, later in 1978 the dispute over the fair remuneration claims was resolved and thereafter all fair remuneration claims as audited were paid.

[31]The letters, most of which were given prior to the respective nominees' initial elections to the Board, were addressed either to Hammer as Chairman of the Board of Directors and/or as President of Oxy or to the corporation, but apparently no other directors or officers of Oxy were aware that the letters were requested or received.

[32]Neither the company nor Hammer utilized any of the unsigned letters to effect a resignation and those directors who ultimately did resign utilized their own letters, executed contemporaneously with their resignations, for that purpose.

[33]During such time period, there were fifteen additional directors—five nonmanagement and ten management—who were not asked to submit undated letters of resignation.

amounts of potential exposure and costs associated therewith and other facts in several of Oxy's filings with the Commission. During time periods discussed herein, Oxy did not have in place adequate company-wide methods or procedures which, when used to determine the nature and facts of the company's environmental compliance or to facilitate the development of compliance costs, would have assisted it in meeting its disclosure obligations.[34]

The Commission's general reporting rules require disclosure of any additional material information, beyond that for which disclosure is required by specific Commission rule, necessary to make required statements not misleading.[35] In the context of its environmental releases, the Commission has interpreted these rules as requiring disclosure of "all other environmental information of which the average prudent investor might reasonably be informed".[36]

As indicated above, certain persons standing for election as directors of Oxy signed undated letters of resignation as directors of Oxy, which Oxy did not disclose in filings with the Commission. Full disclosure of the conditions under which persons stand for election to the Board of Directors of a corporation is important in order to enable shareholders and the investing public to understand the present circumstances under which a corporation is directed and the potential for changes in such direction in the future. Shareholders expect that the directors they elect will serve and function for the full elected term. Accordingly, any understandings or arrangements, whether oral or written, under which a director may not be able to do so, or pursuant to which the director's functions or term may be limited, should be fully disclosed.

III.
OFFER OF SETTLEMENT

Oxy has submitted an Offer of Settlement to the Commission in which it undertakes that:

A. It will designate a director ("the director") satisfactory to the Commission, who shall:

i. Be responsible for preparing an environmental report (the "report") in which he shall:

a. Recommend procedures to the full Board of Directors to ensure that Oxy will be in a position to disclose, in accordance with the federal securities laws on a complete, timely and accurate basis, all required information relating to environmental matters.

b. Reasonably determine the potential costs which Oxy will be required to incur within the next three years to bring its facilities into compliance with present federal, state and local environmental requirements at its Hooker Chemical Corporation and Island Creek Coal Company domestic facilities.

c. Determine the maximum civil penalties that may be imposed on Oxy pursuant to relevant environmental provisions and identify the factors which may mitigate the risk that the maximum amount of such penalties are likely to be imposed.

d. Describe third party claims, proceedings or litigations regarding the impact of Oxy's operations on the environment and the amount sought thereunder based on alleged claims against the Company.

ii. Assure that any potential liabilities regarding the impact of Oxy's operations on the environment have been identified to the Board of Directors of Oxy and that appropriate disclosure has been made in filings with the Commission as required by the federal securities laws. In the event that the required disclosure concerning such potential liabilities has not been made in such filings, as of the date of the filing of the report with the Commission, pursuant to this Order, the director shall append to the report a list identifying such liabilities, not then the subject of litigation.

iii. Describe the relevant legal, interpretative and/or technological problems in those instances, if any, in which the director is unable to ascertain or determine the matters specified above.

B. The Commission may consult with the director and be provided access to documents received, used or generated in the preparation of the report described above in a manner and with such limitations as are satisfactory to the Commission and Oxy.

C. The director will utilize Oxy's newly elected senior environmental official ("the environmental officer") and an independent consulting firm ("independent consultant"), each of whom will be satisfactory to the Commission, to assist with the development of information for, and the preparation of, the report described above.

D. The environmental officer and the independent consultant, prior to completion and submission of the report as provided in Paragraph G below, can only be dismissed by the director or by a majority vote of the Board of Directors of Oxy upon the recommendation of the director.

E. Oxy will cooperate fully with the director by permitting him to review such documents and interview such employees of Oxy as he deems relevant to the preparation

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[34]The absence of an adequate company-wide method or procedure to monitor a company's environmental matters may contribute to disclosure problems of a type referred to herein.

[35]See, Securities Act Rule 408, 17 C.F.R. 230.408; Securities Exchange Act Rules 12b-20 and 14a-9, 17 C.F.R. 240.12b-20 and 240.14a-9.

[36]See, Securities Act Release No. 5170; Securities Act Release No. 5704. See also, Securities Act Release No. 5627, Exchange Act Release No. 11733 (Oct. 14, 1975); Securities Act Release No. 6130, Exchange Act Release No. 16224 (October 3, 1979).

of the report. Furthermore, the director will have authority to retain experts whom he determines are reasonably necessary to complete the Report.

F. It will make appropriate disclosure of a change in its policy that neither Oxy nor any officer, director or employee of the company will request or receive any written or oral agreement, assurance or promise of any kind from any nominee to, or member of, Oxy's Board of Directors as it now is or may in the future be constituted, that such member would resign from the Board of Directors prior to the expiration of the term for which the director was nominated or elected by Oxy, in a filing with the Commission on Form 8-K in advance of requesting or receiving any such agreement, assurance or promise. This provision does not apply to a resignation initiated by a director or a resignation of a director sought or received in connection with the termination of his status as an officer of Oxy, provided that such resignation occurs within ninety (90) days of a request for or receipt of his agreement, assurance or promise to resign. In connection with this undertaking, Oxy has represented that no Oxy director, officer or employee has either sought or received any such agreement, assurance or promise from any current member of Oxy's Board of Directors.

G. Within 10 months of the date of the issuance of this Order, or such later date as the staff of the Commission and Oxy may agree, the director shall complete the report and submit it to the Board of Directors of Oxy.

H. Within 10 days of the submission of the report, to the Board of Directors, Oxy will transmit copies thereof to the Commission and, within 30 days of such submission, to file with the Commission on Form 8-K a description thereof and a summary of the principal conclusions and recommendations.

I. In connection with the recommendations of the director, the Board of Directors of Oxy will review them within 45 days of their receipt and adopt and implement such of the recommendations as it reasonably believes necessary or appropriate.

J. Within 60 days of the submission of the report to the Board of Directors, Oxy will file with the Commission on Form 8-K a description of the actions taken by the Board of Directors, if any, with respect to the recommendations of the director.

IV.
ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of Oxy and accordingly, IT IS HEREBY ORDERED that such procedings be, and they hereby are instituted.

IT IS FURTHER ORDERED THAT Oxy:

1. Comply with the reporting requirements of the Exchange Act.

2. Amend its reports currently on file with the Commission by filing this Order on a Form 8 within 30 days after the date of entry of this Order.

3. Include in its next quarterly report to shareholders a summary of the contents of this Order.

4. Upon Oxy becoming aware of non-compliance with its undertakings set forth herein, Oxy shall immediately notify the Commission of that fact and unless the Commission otherwise agrees, Oxy shall disclose such non-compliance in a Current Report on Form 8-K within 10 days.

5. Upon the entry of this Order, these proceedings are terminated, provided however, the Commission specifically reserves the right to reopen these proceedings solely to enforce the Commission's Order or if Oxy fails to comply with its undertakings set forth in this Order. If these proceedings are reopened, the only issues in such proceedings shall be Oxy's failure to comply with its undertakings as set forth in this Order or its failure to comply with this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16951/July 2, 1980

Admin. Proc. File No. 30-5873

In the Matter of

MARCEL H. ARONHEIM

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act") respondent Marcel H. Aronheim has submitted an Offer of Settlement without admitting or denying the allegations in the Order for Proceedings[1] in this matter and the findings herein, which the Commission has determined to accept.

On the basis of the Order for Proceedings and the Offer of Settlement, it is found[2] that:

Marcel H. Aronheim wilfully violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

ACCORDINGLY, IT IS ORDERED that Marcel H. Aronheim be:

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[1]The Commission issued the Order for Proceedings in this matter on February 5, 1980.

[2]Findings in this Order are not binding on any other respondents to this administrative proceeding.

(1) suspended from association with any broker or dealer for a period of fourteen (14) calendar days; and thereafter,

(2) barred from association with any broker or dealer in any capacity other than as a supervised employee in a non-proprietary, non-supervisory capacity, provided that two (2) years after the entry of this Order, he may apply to become reassociated in a proprietary and/or supervisory capacity.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16952/July 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11239/July 2, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 726/July 2, 1980

Admin. Proc. File No. 3-5939

In the Matter of:

WEDNESDAY CORPORATION
(File No. 801-11018)

L. A. CAUNTER & COMPANY
(File No. 8-2921)

LEE A. CAUNTER
ROBERT F. PLUMMER
KENNETH A. HONROTH
JULIUS ALLT
JOSEPH T. BOMBELLES

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that administrative proceedings be instituted with respect to Wednesday Corporation ("Wednesday"), a registered investment adviser located in Cleveland, Ohio; L. A. Caunter & Company ("Caunter & Company"), a registered broker/dealer also located in Cleveland, Ohio; Lee A. Caunter ("Caunter"); Kenneth A. Honroth ("Honroth"); Robert F. Plummer ("Plummer"); Julius Allt ("Allt"); and Joseph T. Bombelles ("Bombelles"). In anticipation of the institution of these proceedings, Wednesday, Caunter & Company, Caunter, Honroth, Plummer, Allt and Bombelles have submitted offers of settlement which the Commission has determined to accept. Without admitting or denying the findings herein, the respondents hereby consent to the findings and sanctions set forth below.

II.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") and Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 be and they hereby are, instituted.

III.

On the basis of this Order for Proceedings and the offers of settlement, it is found that:

1. Wednesday has been the investment adviser to the Wednesday Alpha Corporation (Wednesday Alpha), a registered investment company, since 1975.

2. Caunter & Company has been the principal underwriter of Wednesday Alpha since 1975.

3. Caunter is the president and a director of Caunter & Company, an officer and director of Wednesday and an officer and director of Wednesday Alpha.

4. Honroth is the president and a director of Wednesday and the president and a director of Wednesday Alpha.

5. Plummer is an officer and director of Wednesday, an officer and director of Wednesday Alpha and an employee of Caunter & Company.

6. Allt and Bombelles are directors of Wednesday Alpha.

7. From on or about June 30, 1975, to on or about December 1, 1978, Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully aided and abetted violations of Sections 30(a) and 30(b) of the Investment Company Act and Rules 30a-1 and 30b1-1 thereunder by causing Wednesday Alpha to fail to file annual and quarterly reports with the Commission.

8. From on or about December 15, 1975, to on or about December 1, 1978, Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully aided and abetted violations of Sections 30(d) and Rule 30d-1 thereunder by causing Wednesday Alpha to fail to transmit semi-annual reports to shareholders.

9. Caunter, Honroth, Plummer, Allt and Bombelles wilfully violated and Wednesday wilfully aided and abetted violations of Section 20(a) of the Investment Company Act and Rule 20a-1 thereunder by soliciting proxies in connection with Wednesday Alpha's November 23, 1977, Special Meeting of Shareholders and its February 15, 1978, Annual Meeting of Shareholders by means of proxy statements which:

a. omitted substantially all of the information specified in Rules 14a-101 and 14a-4 adopted pursuant to Section 14(a) of the Exchange Act and Rule 20a-2 adopted pursuant to Section 20(a) of the Investment Company Act;

b. were not filed in preliminary or definitive form with the Commission in accordance with the requirements of Rule 14a-6 adopted pursuant to Section 14(a) of the Exchange Act;

c. with respect to the solicitation for the Annual Meeting, were not preceded or accompanied by an annual report to shareholders in accordance with the requirements of Rule 14a-3 adopted pursuant to Section 14(a) of the Exchange Act;

d. with respect to the solicitation for the Special Meeting, conferred discretionary authority to vote for the election of a person to office when bona fide nominees for those offices had not been named in the proxy statement in contravention of the requirements of Rule 14a-4(d) adopted pursuant to Section 14(a) of the Exchange Act; and

e. contained untrue statements of material facts and which omitted to state material facts concerning, among other things:

i. the election of directors at the Special Meeting of shareholders;

ii. the independence of the accounting firm selected by the directors; and

iii. Wednesday Alpha's failure to file reports with the Commission and transmit reports to shareholders.

10. Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully aided and abetted the violation of Section 13(a) of the Investment Company Act when Wednesday Alpha, without the required authorization by the vote of a majority of its outstanding voting securities, deviated from its investment policy of making venture investments primarily in Ohio companies or companies doing business in Ohio with respect to projects at least partially carried on in Ohio.

11. From on or about May 19, 1975, to on or about June 15, 1978, Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully aided and abetted violations of Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder by causing Wednesday Alpha to fail to secure a bond of sufficient amount against larceny and embezzlement.

12. Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully aided and abetted violations of Section 32(a) of the Investment Company Act by causing Wednesday Alpha to file financial statements in connection with its registration as an investment company and the registration of its securities which were not signed or certified by an independent public accountant selected and ratified in accordance with the requirements of that subsection.

13. From on or about June 2, 1977, to on or about June 13, 1978, Caunter & Company, Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by offering and selling Wednesday Alpha's securities by means of a prospectus which contained untrue statements of material facts and which omitted to state material facts concerning, among other things:

a. Wednesday Alpha's failure to file reports with the Commission and transmit reports to shareholders;

b. Wednesday Alpha's deviation from its investment policy;

c. The lack of independence of the public accounting firm that certified the financial statements in the prospectus; and

d. The omission of requisite financial statements in the prospectus.

14. From on or about June 2, 1977, to on or about June 13, 1978, Caunter & Company, Wednesday, Caunter, Honroth, Plummer, Allt and Bombelles wilfully violated and wilfully aided and abetted violations of Section 5(b) of the Securities Act by carrying or causing to be carried through the mails and in interstate commerce Wednesday Alpha's securities for the purposes of sale and delivery after sale, for which a registration statement under the Securities Act had been filed, without such securities being preceded or accompanied by a prospectus meeting the requirements of subsection (a) of Section 10 of the Securities Act which requires, among other things, a balance sheet and a profit and loss statement certified by an independent public or certified accountant.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offers of settlement.

Accordingly, IT IS ORDERED that:

1. Wednesday's registration as an investment adviser be, and hereby is, revoked.

2. Caunter & Company be, and hereby is, permanently prohibited from acting or serving as a member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal underwriter.

3. Caunter be, and hereby is, permanently prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal underwriter; barred from being associated with an investment adviser; and suspended for five business days from being associated with a broker or dealer.

4. Honroth be, and hereby is, prohibited for nine months from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal underwriter and suspended for nine months from being associated with an investment adviser.

5. Plummer be, and hereby is, prohibited for twelve

months and from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal and underwriter; suspended for twelve months from being associated with an investment adviser and suspended for five business days from being associated with a broker or dealer.

6. Allt be, and hereby is, prohibited for nine months from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal underwriter.

7. Bombelles be, and hereby is, prohibited for six months from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or an affiliated person of such investment adviser, depositor or principal underwriter.

The sanctions imposed by paragraphs 2 through 7 of this Order shall become effective on the opening of business on the second Monday following the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16953/July 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16954/July 2, 1980

An order has been issued granting the application of the *American Stock Exchange Inc.* to strike the Convertible Special Preference Stock (Par Value $25) of FRONTIER AIRLINES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16955/July 2, 1980

In the Matter of

CORTERRA CORPORATION
File No. 81-625

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until July 14, 1980 to request a hearing on an application by CorTerra Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting the Applicant from filing periodic reports pursuant to Section 13 of the Securities Exchange Act of 1934, other than reports on Form 8-K, and an abbreviated unaudited Annual Report on Form 10-K for fiscal year ending June 30, 1980. The Applicant has adopted a Plan of Complete Liquidation and Dissolution.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21643/June 27, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

(70-6225)

SUPPLEMENTAL ORDER AUTHORIZING INCREASE OF SHORT-TERM BORROWINGS

Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By orders in this proceeding dated December 15, 1978, January 5, 1979, and July 10, 1979 (HCAR Nos. 20832, 20873, and 21141), Louisiana was authorized to issue and sell, from time to time until December 31, 1980, notes to banks and commercial paper to a dealer in an aggregate principal amount of all such borrowings at any one time outstanding not exceeding $150,000,000. The presently effective loan commitments from such banks terminate on December 31, 1980, with loans thereunder maturing not later than December 31, 1980. Louisiana presently has an aggregate principal amount of short-term borrowings by means of bank loans and the sale of its commercial paper of $107,700,000.

Louisiana now proposes that the aggregate principal amount of all such borrowings that it is permitted to have outstanding at any one time be increased to the lesser (from time to time) of $165,000,000 or ten per centum (10%) of the aggregate of (a) the total principal amount of

all bonds or other securities representing secured indebtedness issued or assumed by Louisiana and then outstanding and (b) the capital and surplus of Louisiana as then stated on its books of account. Set forth below are the respective maximum amounts which the banks from which such bank loans are to be made have committed themselves to lend during the period through December 31, 1980, and the names of such banks:

	Maximum Amount
The Chase Manhattan Bank, N.A., New York, N.Y.	$59,000,000
Irving Trust Company, New York, N.Y.	15,000,000
Chemical Bank, New York, N.Y.	10,000,000
Citibank, N.A., New York, N.Y.	10,000,000
Manufacturers Hanover Trust Company, New York, N.Y.	10,000,000
Whitney National Bank of New Orleans, LA.	8,000,000
First National Bank of Louisville, Kentucky	8,000,000
First National Bank of Commerce, New Orleans, LA.	6,000,000
Bank of the Southwest, Houston, Texas	5,000,000
Bank of Virginia, Richmond, VA	5,000,000
Hibernia National Bank, New Orleans, LA.	5,000,000
Security Pacific National Bank, Los Angeles, CA.	5,000,000
National American Bank of New Orleans, LA.	2,800,000
Jefferson Bank & Trust Company, Metairie, LA.	1,000,000
The Bank of New Orleans and Trust Company, New Orleans, LA.	750,000
The National Bank of Commerce in Jefferson Parish, LA.	750,000
First State Bank & Trust Company, Bogalusa, LA.	640,000
Central Bank, Monroe, LA.	500,000
First National Bank of West Monroe, LA.	500,000
First National Bank of Jefferson Parish, Gretna, LA.	400,000
Bastrop National Bank, Bastrop, LA.	250,000
The First National Bank of Delhi, LA.	250,000
Assu;mption Bank and Trust Company, Napoleonville, LA.	240,000
American Bank & Trust Company in Monroe, LA.	100,000
Bank of Louisiana in New Orleans, LA.	100,000
Bank of the South, Gretna, LA.	100,000
Guaranty Bank & Trust Company, Gretna, LA.	100,000
Metairie Bank & Trust Co., Metairie, LA.	100,000
Ouachita National Bank, Monroe, LA.	100,000
Terrebonne Bank & Trust Company, Houma, LA.	100,000
First Guaranty Bank, Hammond, LA.	75,000
Franklin State Bank & Trust Company, Winnsboro, LA.	50,000
Winnsboro State Bank & Trust Company, Winnsboro, LA.	50,000
Bank of Morehouse, Bastrop, LA.	25,000
Citizens Bank & Trust Company, Thibodaux, LA.	20,000
TOTAL AMOUNT	$155,000,000

The proposed transactions remain unchanged in all other respects, including the maturity date of December 31, 1980. Louisiana's construction program contemplates expenditures of approximately $285,000,000 in 1980, and the company now estimates that it will require approximately $257,000,000 of funds from external sources in 1980.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21557), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21644/June 30, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6219/June 30, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21645/June 30, 1980

In the Matter of

LOWELL GAS COMPANY
Lowell, Massachusetts

CAPE CODE GAS COMPANY
Hyannis, Massachusetts

(70-6170)

SUPPLEMENTAL ORDER CLARIFYING TERMS OF SHORT-TERM FINANCING AGREEMENT

Lowell Gas Company ("Lowell") and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial Gas Energy System ("Colonial"), a registered holding company, have filed with this Commission a post-effective amendment to the joint declaration in this proceeding pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial

simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7, and 12(b) of the Act.

Lowell and Cape Cod each have revolving lines of credit pursuant to separate credit agreements (collectively, the "Credit Agreements") dated January 1, 1976, as amended, with Chase Manhattan Bank (N.A.), Union National Bank, Shawmut Bank of Boston, N.A., State Street Bank and Trust Company, and BayBank Middlesex, N.A. By order in this proceeding dated June 30, 1978 (HCAR No. 20185), Lowell and Cape Cod were authorized to extend the term of the Credit Agreements to June 30, 1980, and to borrow up to $11,800,000 for Lowell and $7,000,000 for Cape Cod.

The Credit Agreements were subsequently amended and now provide for borrowings up to the indicated amounts from the following banks:

Bank	*Lowell*	*Cape Cod*
The Chase Manhattan Bank (National Association)	$5,450,000	$2,112,000
Union National Bank	1,050,000	1,158,000
Shawmut Bank of Boston, N.A.	2,412,500	1,158,000
State Street Bank and Trust Company	2,312,500	744,000
BayBank Middlesex, N.A.	1,275,000	828,000
	$12,500,000	$6,000,000

By order dated June 13, 1980 (HCAR No. 20992), the Commission authorized an extension of the Credit Agreements to June 30, 1981. The amended Lowell and Cape Cod Credit Agreements then proposed would also have provided for relaxation of the restrictions on the payment of cash dividends on the common stock of Lowell and Cape Cod upon receipt of $3,500,000 in cash proceeds on the issuance and sale of additional Lowell common stock and upon receipt of $2,000,000 in cash proceeds from the issuance and sale of additional Cape Cod common stock, respectively. It was stated that the proposed amended Lowell Credit Agreement would have had the effect of eliminating the deficit of $980,000 under the existing Lowell Credit Agreement formula which would have to be made up before 1980 earnings available for common stock dividends could be used to actually pay such dividends. The then proposed amended Cape Cod Agreement would have had the effect of eliminating the deficit of $19,000 under the existing Cape Cod Credit Agreement formula which would have to be made up before 1980 earnings available for common stock dividends could be used to actually pay such dividends.

The companies have filed a post-effective amendment to inform the Commission that the amendments to the Credit Agreements now proposed would harmonize the dividend restrictions in the Credit Agreements with the restrictions contained in the latest series of first mortgage bonds issued by Lowell and Cape Cod, First Mortgage Bonds, Series R, 11-5/8% Due 1995, of Lowell, and First Mortgage 11-5/8% Bonds, Series P, Due 1995, of Cape Cod (HCAR No. 21127). The amendment now proposed would provide that upon receipt by Lowell of not less than $3,500,000 as cash proceeds of the issuance and sale of additional common stock of Lowell, the restrictions on common stock dividends in the Lowell Credit Agreement will be amended to allow Lowell to pay cash dividends upon any shares of its common stock to the extent that the amount of such cash dividend, together with all other such cash dividends declared or paid after December 31, 1978, does not exceed the excess of the net income of Lowell for the period subsequent to said date (which period shall be taken for the purpose as one accounting period) plus $800,000 over dividends on preferred stock paid during such period.

The effect of the amendment as now proposed is to leave a deficit of $228,000 which would have to be made up before 1980 net earnings in excess of preferred stock dividends can be used to pay common stock dividends. With respect to the Cape Cod Credit Agreement the previously proposed amendment has been deleted. The amendment now proposed will make no changes in the restriction on the payment of common stock dividends. As provided in the existing Cape Cod Credit Agreement formula, a deficit of $19,000 would have to be made up before 1980 earnings available for common stock dividends could be used to actually pay such dividends.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendments, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21646/July 1, 1980

In the Matter of

CONNECTICUT YANKEE ATOMIC POWER COMPANY
Hartford, Connecticut

(70-6464)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO A DEALER; RESERVATION OF JURISDICTION

Connecticut Yankee Atomic Power Company ("Connecticut Yankee"), a subsidiary of Northeast Utilities and New England Electric System, both registered holding companies, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transactions.

Connecticut Yankee is the owner of a 575,000 kW nuclear electric generating plant (the Plant) in Haddam, Connecticut, which has been in operation since January 1968. Outstanding shares of Connecticut Yankee's common stock are owned by eleven New England electric utilities.

Connecticut Yankee proposes to issue and sell notes to banks and commercial paper to a dealer from time to time on or before June 30, 1981. The aggregate amount of all such notes at any time outstanding, whether issued to banks or to a dealer in commercial paper, will not exceed $35,000,000. As of March 31, 1980, Connecticut Yankee's outstanding short-term debt was $11,050,000. The short-term debt to be outstanding at June 30, 1980 is estimated at $30,000,000. The proceeds of the sale of bank notes and commercial paper will be applied by Connecticut Yankee to repay $9,825,000 of commercial paper presently outstanding, to provide funds for construction and for the purchase of additional nuclear fuel through June 30, 1981. Connecticut Yankee's estimated construction and nuclear fuel programs for 1980 and 1981 are:

	1980	*1981*
Construction	$33,000,000	$26,000,000
Nuclear Fuel	- 0 -	$34,000,000

The bank notes issued by Connecticut Yankee will each be dated the date of issue, will have a maximum maturity date of nine months, and will bear interest at the prime rate and will be subject to compensating balance requirements. The bank notes will be issued no later than June 30, 1981, and will be subject to prepayment at any time at Connecticut Yankee's option without premium. Assuming a prime rate of 12% the effective cost of such borrowings would be 14.4% per annum.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be repayable prior to maturity. The commercial paper will be sold directly to Lehman Commercial Paper, Incorporated, at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity, sold by the public utility issuers thereof to commercial paper dealers. No commercial paper shall be issued having a maturity of more than 90 days at an effective interest cost to Connecticut Yankee in excess of the effective bank interest rate at which Connecticut Yankee could obtain loans from banks in an amount at least equal to the principal amount of such Commercial Paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to institution investors at a discount of not more than 1/8 of 1% per annum less than the prevailing discount rate to Connecticut Yankee in such manner as not to constitute a public offering.

The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared for Connecticut Yankee in advance by the purchasing dealer. No additions will be made to this customer list.

It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

Connecticut Yankee has demonstrated an immediate need to borrow only $25,000,000 of the $35,000,000 requested; therefore it will be authorized to borrow the lesser amount, jurisdiction being reserved over the remainder pending a showing of need to make such borrowings.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21611), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary with respect to the issuance of up to $25,000,000 of notes to banks and commercial paper to a dealer at any one time outstanding; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the issuance of up to $25,000,000 of notes to banks and commercial paper to a dealer at any one time outstanding:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the issuance of up to $25,000,000 of notes to banks and commercial paper to a dealer at any one time outstanding subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the issuance of notes to banks and commercial paper to a dealer in an aggregate principal amount of up to $35,000,000 at any one time outstanding pending a showing of need to make such borrowings.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21647/July 1, 1980

In the Matter of

NORTHEAST UTILITIES
WESTERN MASSACHUSETTS ELECTRIC COMPANY
West Springfield, Massachusetts

THE CONNECTICUT LIGHT & POWER COMPANY
THE HARTFORD ELECTRIC LIGHT COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY
Berlin, Connecticut

HOLYOKE WATER POWER COMPANY
Holyoke, Massachusetts

(70-6465)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS; CAPITAL CONTRIBUTIONS TO SUBSIDIARIES; RESERVATION OF JURISDICTION OVER PROPOSED MULTIBANK REVOLVING CREDIT AGREEMENT

Northeast Utilities ("NU"), a registered holding company, and five of its wholly owned subsidiary companies, The Connecticut Light & Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP") and Northeast Nuclear Energy Company ("NNECO"), have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6, 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 promulgated thereunder regarding the proposed transaction.

The applicants propose 1) to make short-term borrowings through the issuance of notes to banks and, with the exception of HWP and NNECO, the issuance of commercial paper to a dealer from time to time through June 30, 1981, and 2) to enter into a multibank revolving credit and term loan agreement under the terms of which CL&P, HELCO and WMECO may borrow up to an aggregate of $140,000,000. The aggregate amount of all such notes at any time outstanding, whether issued to banks ("Bank Notes") or to a dealer in commercial paper ("Commercial Paper") or to banks under the revolving credit/term loan agreement ("Revolving Credit/Term Notes") will not exceed $55,000,000 in the case of NU, $185,000,000 in the case of CL&P, $100,000,000 in the case of HELCO, $55,000,000 in the case of WMECO, $8,000,000 in the case of HWP and $30,000,000 in the case of NNECO. The applicants propose to renew and extend any notes so issued or to refund them with other similar notes issued to banks or to a dealer in commercial paper and to issue and sell additional short-term notes (and to renew such notes) from time to time to meet portions of their capital requirements, subject to the applicable maximum limitations.

The Bank Notes will each be dated the date of issue, will have maximum maturity dates of nine months with right of renewal, will bear interest at the prime rate or at the prime rate plus a fraction thereof, will be issued no later than June 30, 1981 and will be subject to prepayment at any time at the applicant's option without premium.

With respect to the issuance of Bank Notes, the applicants have credit lines with a number of banks subject in some cases to commitment fees and/or compensating balance requirements. The effective cost of borrowings under such credit lines, based on a prime rate of 12%, ranges from 12.72% to 15.36%. The bank credit lines expire at various times in 1980 and 1981 and their continued availability is subject to continuing review by the banks involved. Bank credit lines of the applicants may be changed and additional lines may be obtained from other banks.

Commercial Paper will be issued in the form of short-term promissory notes in denominations of not less than $50,000 and not more than $1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue and will not be repayable prior to maturity. The Commercial Paper will be sold directly to a dealer in commercial paper, Lehman Commercial Paper, Incorporated, at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by public utility issuers thereof to commercial paper dealers. No Commercial Paper shall be issued giving a maturity of more than 90 days at an effective interest cost to the applicant in excess of the effective bank interest rate at which the applicant could obtain loans from banks in an amount at least equal to the principal amount of such Commercial Paper. No commission or fee will be payable in connection with the issuance and sale of the Commercial Paper. The purchasing dealer, as principal, will reoffer the Commercial Paper to institutional investors at a discount of not more than 1/8 of 1% per annum less than the prevailing discount rate to the applicant in such manner as not to constitute a public offering.

The Commercial paper will be reoffered to not more than 200 identified and designated customers in a nonpublic list prepared for each applicant in advance by the purchasing dealer. No additions will be made to this customer list. It is anticipated that the Commercial Paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the purchasing dealer, pursuant to a verbal repurchase agreement, will repurchase the Commercial Paper and reoffer the same to others in the group of 200 customers.

The revolving credit/term loan agreement ("Agreement") will provide that during the revolving period, CL&P, HELCO and WMECO may borrow, on a first-come, first-served basis, up to the maximum amount committed, $80,000,000, $60,000,000 and $45,000,000, respectively. The revolving period would end June 30, 1983 or such earlier date as CL&P, HELCO and WMECO individually elect, and in either event the then outstanding borrowings will be converted to term loans maturing no later than June 30, 1987 and amortized in eight semi-annual installments commencing December 31, 1983. Borrowings may be repaid in whole or in part without penalty during the revolving period or during the term of the term notes and may be reborrowed during the revolving period. The borrowings outstanding shall bear interest, payable quarterly in arrears, at the following rates:

Year	*Rate*
1	100% Base Rate
2	100% Base Rate
3	102% Base Rate
4	104% Base Rate
5	104% Base Rate
6	105% Base Rate
7	106% Base Rate

Base Rate is the higher of (a) Continental Illinois National Bank floating prime rate (b) 1/2 of 1 percent per annum above the latest three week moving average of secondary market offering rates in the United States for three months certificates of deposit as published weekly by the Federal Reserve Bank of New York. Subject to requisite regulatory approval, the applicants will pay a commitment fee of 1/2 of 1 percent per annum, commencing not later than April 15, 1980, on the average unused portion of the commitment during the revolving period, payable quarterly in arrears.

The proceeds derived by NU from the issuance and sale of the Bank Notes and the Commercial Paper will be applied during the period from July 1, 1980 to June 30, 1981 (1) to make capital contributions to CL&P and to WMECO in amounts not to exceed $40,000,000 and $15,000,000, respectively, (2) to make capital contributions or open account advances to NNECO in an amount not to exceed in the aggregate $7,000,000, and (3) to make open account advances to the Quinnehtuk Company, a wholly-owned real estate subsidiary of NU, in amounts not to exceed $500,000, and (4) to supply funds as needs to other subsidiary companies as heretofore or hereafter authorized by the Commission. All capital contributions to subsidiaries will be credited to their capital surplus accounts. NNECO will apply such contributions or open account advances, together with short-term borrowings and other funds available to it, for nuclear fuel financing during 1980 and 1981. NNECO's total expenditures for nuclear fuel in 1980 and 1981 are estimated to be $41,000,000.

The funds to be derived by CL&P, HELCO and WMECO from the issuance and sale of the Bank Notes, Commercial Paper and Revolving Credit/Term Notes will be applied, together with other funds available to these companies, to provide working capital and to finance their respective construction expenditures in 1980 and 1981, which are estimated to be $323,000,000, $154,000,000 and $83,000,000, respectively. Funds derived by HWP from the sale of Bank Notes will be applied to the installation of a second hydro unit at its facility at Hadley Falls on the Connecticut River. It is anticipated that construction will commence in 1980 and the total estimated construction costs for the unit are $17,000,000.

It is presently contemplated that any Bank Notes or Commercial Paper of NU, CL&P, HELCO, WMECO, HWP and NNECO outstanding at June 30, 1981, or any Revolving Credit/Term Notes of CL&P, HELCO and WMECO, outstanding at June 30, 1987 will be repaid from internal cash resources or from the proceeds of long-term debt or equity financing.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The issue of the Revolving Credit/Term Notes by CL&P, HELCO and WMECO is subject to the jurisdiction of the Connecticut Division of Public Utility Control and the Massachusetts Department of Public Utilities. No other state or federal regulatory authority has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21607), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary with respect to the issuance and sale of short-term notes to banks, except pursuant to the proposed revolving credit agreement, and commercial paper to dealers; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the issuance and sale of short-term notes to banks, except pursuant to the proposed revolving credit agreement, and commercial paper to dealers;

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the issuance and sale of short-term notes to banks, except pursuant to the proposed revolving credit agreement, and commercial paper to dealers; subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the proposed borrowings by CL&P, HELCO and WMECO pursuant to the revolving credit/term loan agreement pending completion of the record with respect to that transaction.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21648/July 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 574/June 27, 1980

In the Matter of

PANHANDLE EASTERN PIPE LINE COMPANY

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 on application by Panhandle Eastern Pipe Line Company (the "Company") that the trusteeship of The Chase Manhattan Bank under two indentures of the Company is not so likely to involve a material conflict of interest as to make it necessary to disqualify The Chase Manhattan Bank from acting as trustee.

TRUST INDENTURE ACT OF 1939
Release No. 575/July 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11234/June 27, 1980

In the Matter of

SOCIETE GENERALE DE BANQUE S.A.

AND

SOCIETE GENERALE DE BANQUE INC.
c/o Charles J. Hansen, Esq.
Shearman & Sterling
52 Wall Street
New York, New York 10005

(812-4559)

NOTICE OF FILING OF APPLICATION FOR AN ORDER OF THE COMMISSION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING COMPANIES FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Societe Generale de Banque S.A. (the "Bank") and Societe Generale de Banque, Inc. ("SGBI"), a wholly-owned Delaware subsidiary of the Bank, filed an application on October 31, 1979, and amendments thereto on May 29, 1980, and June 20, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Bank and SGBI from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Bank states that its Registered Office is located at 1000 Brussels-Montagne du Parc 3, Belgium, and that it is the largest banking institution in Belgium and one of the 50 largest commercial banks in the world. It has 1,130 branches in Belgium and offices, branches, affiliates or subsidiaries in thirty countries. Bank is a public company with limited liability under Belgian law. Approximately 23% of its shares are held by Societe Generale de Belgique, a Belgian holding company, and the rest of the shares are held by the public. At December 31, 1979, Bank's total assets were $36,203 million, deposits were $17,411 million and shareholders equity was $619 million.

According to the application, Bank performs all of the typical functions of a Belgian deposit bank and its business is generally similar to that of major United States international commercial banks. Bank's principal business activity consists of receiving deposits and making loans. It receives most of its funds from private individuals, who at December 31, 1979, accounted for 49% of its deposits. Other major sources of the Bank's funds at December 31, 1979, included deposits by other banks which represented approximately 38% of total current liabilities, a percentage that is comparable to that for large United States and foreign banks actively engaged

in the eurocurrency markets. The Bank also issues cash certificates of deposit (up to 5 years) which amounted to $2,109 million at December 31, 1979. Bank's assets consist of loans and advances to private sector customers ($15,987 million) and banks ($8,787 million), representing, respectively, 44% and 24% of the Bank's total assets at December 31, 1979.

The application also indicates that the Bank is engaged in underwriting and selling securities and investment advisory services. Bank states that such activities represent only a relatively small part of its business, accounting for only 3% of its revenues.

Bank represents that it is subject to extensive regulation by Belgian banking authorities pursuant to a regulatory framework that is comparable in many respects to the regulation of United States commercial banks. Overall Belgian bank regulation is primarily administered by the Belgian Ministry of Finance acting principally through la Banque Nationale de Belgique (the "National Bank") and the Commission Bancaire (the "Banking Commission"). Bank indicates that it is subject to the Decree No. 185 of June 9, 1935 (the "Decree"). The main purpose of the Decree is to separate commercial banking activities from investment banking activities.

The application indicates that the Banking Commission is primarily responsible for the observance of the Decree by Belgian banks and more generally for the prudent operation of the Belgian banking system. Bank is registered with the Banking Commission and files prescribed reports of financial condition. The Banking Commission has, in certain circumstances, the power to nominate a special commissioner to operate the Bank, and to suspend all or part of the Bank's operations or revoke its registration. Bank states that the Banking Commission has the authority to fix certain ratios between assets and liabilities, or between equity and liabilities or assets. The Banking Commission currently requires banks to maintain an "equity ratio", *i.e.*, a level of equity with respect to various categories of assets covering adequately the degree of risk involved in such categories so as to assure that Bank's depositors are properly protected against loss.

The application indicates that the National Bank oversees Belgian monetary policy and acts as the lender of last resort to the Banking System. The National Bank is empowered to recommend to the Bank the observance of specified balance sheet ratios, special deposit requirements, proportions of holdings of government paper and ceilings on credit facilities and rediscounting facilities. According to the application, exchange control regulations are exercised by the Institute Belgo-Luxembourgeois Change (the "Institute"). Belgian banks report to the Institute on a daily basis with respect to claims of and liabilities to non-residents and forward exchange contracts made. Banks also report to the Institute on a monthly basis with respect to advances in foreign currencies and forward exchange transactions exceeding 20% of their equity. Reports are also made to the National Bank and to the Banking Commission with respect to the maturity and currency denomination of assets and liabilities and forward contracts.

Bank states that it is subject to audit by three Commissaires (independent auditors) whose appointments must be approved by the Banking Commission. The main function of the Commissaires is to report to the Banking Commission with respect to the Bank's financial condition. According to the application, SGBI will not deal with or trade in securities, and will not be a bank for purposes of Belgian law. Accordingly, SGBI will not be subject as such to Belgian substantive banking regulations. SGBI will, however, be subject generally to examination by the Banking Commission pursuant to its authority to supervise the Bank. SGBI has been incorporated under the laws of the State of Delaware and all of the outstanding shares of capital stock of SGBI will be owned by the Bank.

The application states that SGBI was formed to serve as a financing vehicle for the Bank and will issue commercial paper guaranteed by the Bank, since it appears that, if the Bank were to issue the commercial paper directly, the payments on the commercial paper notes constituting interest could be subject to Belgian withholding tax. Bank represents that it has been informed that, if a Belgian withholding tax were so imposed, its commercial paper, in order to be marketable, would have to bear a higher interest rate than commercial paper of similar maturity with a similar credit rating, the interest payments on which are not subject to withholding tax. In addition, the Bank states that many potential investors would be reluctant to purchase commercial paper subject to withholding tax not only because of the uncertainties involved, but also because of the paperwork involved to claim a refund of the tax withheld. Unlike the Bank, certain other foreign bank commercial paper issuers may issue commercial paper not subject to withholding tax.

According to the application the only business to be conducted by SGBI will be the issuance of commercial paper notes the proceeds of which will be placed on short-term deposit with, or loaned to, the Bank. These deposits, or loans, with interest, would be withdrawn by, or repaid to, SGBI, as the case may be, as required to pay maturing commercial paper notes. Payment of principal and interest on these securities will be guaranteed by the Bank. Since the sole business of SGBI will be the issuance of commercial paper and the making of loans to the Bank or its subsidiaries, substantially all of its assets will consist of bank deposits with, or amounts receivable from, the Bank.

According to the application, SGBI proposes to offer, issue and sell in the United States guaranteed commercial paper (the "notes") in bearer form and denominated in United States dollars. It is intended that the notes will be sold without registration under Section 5 of the Securities Act of 1933, as amended (the "Securities Act") in reliance upon an opinion of the Bank's United States counsel that the offering will qualify for the exemption from the registration requirements of the Securities Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. The notes will not be issued or sold until the Bank has received such an opinion letter. Bank does not request Commission review or approval of such opinion letter and the Commission expresses no opinion

as to the availability of any such exemption. The notes will be in denominations of $100,000 or more, will mature not more than nine months from the date of issuance and will not be payable on demand or include any provisions for extensions, renewal or automatic "roll-over" at the option of either the holders, SGBI or the Bank. The notes will rank *pari passu* among themselves and equally with all other unsecured indebtedness of SGBI and superior to the rights of shareholders. The application indicates that the notes are intended to be of prime quality and of the type eligible for discounting by a Federal Reserve Bank. The presently proposed issue of securities and any future issue of debt securities by SGBI will be conditioned upon the receipt of, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations, and the Bank's United States counsel will have certified that such a rating has been received.

According to the application, these notes will have the unconditional guarantee of the Bank endorsed thereon. As a result, a holder of the notes of SGBI will be the holder of obligations of the Bank. The guarantee of the Bank will rank *pari passu* with all other unsecured indebtedness of the Bank, including liability to depositors, and ahead of its share capital. The application further indicates that the proceeds of the sale of the notes (to the extent not applied to the repayment of maturing commercial paper notes or to the payment of current expenses) will be placed on short-term deposit with, or loaned to the Bank, and will thus be made available to the Bank to be used for "current transactions" within the meaning of Section 3(a)(3) of the Securities Act. These deposits or loans, with interest, would be withdrawn by, or repaid to, SGBI, as the case may be, as required to make timely payment on maturing notes.

The notes will be sold to a registered United States securities dealer which will reoffer the notes in the above minimum denominations to institutional investors and other entities and individuals in the United States who normally purchase commercial paper. The notes will not be advertised or otherwise offered for sale to the general public. Bank represents that the aggregate principal amount of the notes to be outstanding at any time is not expected to exceed $150 million. The Bank states that its purpose for making its proposed offering of the notes is to provide an alternative source of supply of United States dollars to supplement dollars currently obtained in the eurodollar market.

In the application the Bank agrees to secure an undertaking from the securities dealer that it will provide each offeree who has indicated an interest in the notes then being offered, and prior to any sale of such notes to such offeree, with a memorandum describing the business of the Bank and SGBI, and containing the most recent publicly available annual audited financial statements of the Bank (audited in accordance with Belgian auditing practices) and the most recently publicly available unaudited quarterly financial statements of the Bank. Such memorandum will describe the material differences between Belgian accounting principles applicable to Belgian commercial banks and generally accepted accounting principles applicable to United States commercial banks. Bank represents that such memoranda will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated periodically to reflect material changes in the business or financial condition of the Bank or SGBI. Bank further represents that any future offerings of its debt securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of the Bank and SGBI, and the business of the Bank and SGBI, as those used in the presently proposed offering. The Bank consents to any order granting, pursuant to Section 6(c) of the Act, the relief requested being expressly conditioned upon the Bank's compliance with the above undertakings regarding disclosure documents.

Bank states that it will appoint, and will cause SGBI to appoint, a bank in the United States as authorized agent for itself and SGBI to issue the notes from time to time on behalf of the Bank and SGBI. Bank will also appoint such bank or the Commission as agent to accept any process which may be served in any action based on the notes or the guaranty and instituted in any State of Federal court by the holder of any note. Applicant represents that it will expressly accept and cause SGBI to expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid by SGBI or the Bank.

The Bank represents that it will similarly consent, and will cause SGBI to consent, to jurisdiction and the Bank will appoint, and will cause SGBI to appoint, an agent for service of process in suits arising from any future offerings of securities that it or SGBI may make in the United States, which offerings the Bank states will be limited to debt or preferred securities guaranteed by the Bank.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investment, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Bank states that, although it may be considered to be an investment company as defined under the Act, it believes that as a commercial bank it is not an investment company under the Act and is significantly different from the type of institution that Congress intended the Act to regulate.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security of transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Bank requests an order pursuant to Section 6(c) of the Act exempting it and SGBI from all provisions of the Act. Bank states, among other things, that compliance by foreign commercial banks with a number of substantive provisions of the Act would, as a practical matter, conflict with such banks' commercial banking practices, and that foreign banks would thus be effectively precluded from selling securities in the United States if they were required to register as investment companies and comply with the provisions of the Act. Bank notes that approval of its application would advance the policies underlying the International Banking Act of 1978 by permitting the Bank to offer securities in the United States. Bank asserts that its operations are extensively supervised and regulated by Belgian banking authorities and that application of the requirements of the Act to the Bank would be unnecessary. It asserts that the rationale for granting an exemptive order pursuant to Section 6(c) of the Act to the Bank extends to SGBI as well because of the direct subsidiary relationship between the two companies. Bank states that the purchase of SGBI's notes will be the equivalent of the purchase of obligations of the Bank because of the Bank's unconditional guarantee. Furthermore, the Bank states that as a result of the disclosure memoranda that offerees of SGBI's commercial paper will receive, investors will be adequately protected, and it would therefore not be in the public interest to treat SGBI as an investment company under the Act. Finally, the Bank states that neither it nor SGBI will obtain any advantage under United States federal or state regulatory laws as a result of issuing the notes through SGBI. Bank asserts, based on all the facts and circumstances recited in its application, that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Bank and SGBI at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11235/June 27, 1980

In the Matter of

G.T. PACIFIC FUND, INC.
601 Montgomery Street, Suite 1400
San Francisco, California 94104

(812-4048)

NOTICE OF FILING OF APPLICATION FOR AN ORDER AMENDING A PRIOR ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF RULE 22c-1 UNDER THE ACT PURSUANT TO SECTION 6(c) OF THE ACT AND PURSUANT TO SECTION 22(e)(3) OF THE ACT GRANTING AN ORDER THEREUNDER

NOTICE IS HEREBY GIVEN that G.T. Pacific Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 20, 1980, and an amendment thereto on May 16, 1980, seeking an order of the Commission amending, in the manner described below, an earlier order of the Commission dated May 3, 1977 (Investment Company Act Release No. 9748). This earlier order ("Prior Order"), pursuant to Section 6(c) and 22(e)(3) of the Act, exempted Applicant from certain provisions of Rule 22c-1 under the Act, to permit Applicant to calculate the net asset value of its shares as of the close of trading on the Tokyo Stock Exchange ("TSE") next occurring after the close of the New York Stock Exchange ("NYSE") and permitted Applicant to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after proper tender of such security during periods when (a) the TSE is closed, for other than customary weekend or holiday closings, or (b) trading thereon is restricted. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that until March 24, 1980, it was a fundamental policy of Applicant to invest, under normal circumstances, at least 80% of its total assets in a diversified portfolio of Japanese equity securities. To accommodate such policy, Applicant requested, and on May 3, 1977, was granted the Prior Order, pursuant to Sections 6(c) and 22(e)(3) of the Act, permitting it to use the TSE as a benchmark for suspending the right of redemption and calculating the net asset value of its shares. On the basis of the above fundamental policy, Applicant made the following undertaking ("1977 Undertaking") in connection with the Section 22(e)(3) portion of the Prior Order: that if at any time subsequent to three months after its initial offering less than 50 percent of the value of its portfolio securities consists of securities of Japanese issuers purchased in Japan, it would not

utilize the order it had requested pursuant to Section 22(e)(3) of the Act, and that it would promptly inform the Commission of this fact and thereafter comply with the provisions of Section 22(e) as then in effect. Applicant also stated that so long as such order pursuant to Section 22(e)(3) remains operative, it waives the applicability to it of Section 22(e)(1) of the Act.

Applicant states that at its March 24, 1980, Annual Meeting of Stockholders an amendment was adopted to change Applicant's fundamental policy to require that Applicant invest, under normal circumstances, at least 80% of its total assets in a diversified portfolio of equity securities of issuers domiciled in the following jurisdictions: Japan, Hong Kong, Singapore, Malaysia, the Philippines, Australia and New Zealand. Applicant states that, pursuant to such an amendment, it obtained greater flexibility in its authority to invest in securities of issuers in Far Eastern countries in addition to Japan; however, Applicant states that it still expects that a substantial portion of its assets, if not a majority of its assets, will remain invested in securities of Japanese issuers.

Effective December 1, 1979, Rule 22c-1(b) under the Act was amended to provide, *inter alia*, that the board of directors of an investment company may choose the specific time during the day at which the investment company's net asset value shall be determined for pricing purposes. According to the application, Applicant's Board of Directors ("Board") believes that this revision of Rule 22c-1 affords it sufficient authority and flexibility to determine when Applicant's shares should be priced and, therefore, the Board has determined that Applicant will operate directly pursuant to the provisions of Rule 22c-1 rather than pursuant to the Prior Order of the Commission dated May 3, 1977. Applicant states that pursuant to Rule 22c-1(b) its Board believes that the close of trading on the TSE is an appropriate time for determining the net asset value of Applicant's shares. In this regard, the application states that the TSE is the major stock exchange in the Far East, and organized securities trading in the countries other than Japan referred to above tends to operate on a daily basis at the same time as does the TSE.

Applicant seeks to retain, however, the use of that portion of the Prior Order which was granted pursuant to Section 22(e)(3) of the Act. Applicant states that it believes that (1) its continued pricing of its shares based on the close of trading of the TSE, and (2) the preeminence of the TSE in Far Eastern Markets, make it necessary and appropriate for Applicant to retain the use of that portion of the Prior Order which authorized it to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after proper tender of such security during periods when (a) the TSE is closed, for other than customary weekend or holiday closings or (b) trading thereon is restricted. Accordingly, Applicant requests that the Commission issue an order amending the Prior Order to approve the withdrawal by Applicant of the 1977 Undertaking and to permit the Prior Order to remain effective subject to the following undertaking: (1) that Applicant shall only utilize the Prior Order so long as 50 percent or more of the value of Applicant's portfolio securities consist of securities, (a) of issuers domiciled in Japan, Hong Kong, Singapore, Malaysia, the Philippines, Australia and New Zealand and (b) purchased on the TSE or exchanges in those countries, and (2) that in the event that Applicant's portfolio shall consist of less than 50 percent (in value) of securities of such Far Eastern issuers purchased on such Far Eastern exchanges, Applicant undertakes to promptly inform the Commission thereof and promptly thereafter comply with the provisions of Section 22(e) of the Act as then in force and effect. In addition to the above undertaking Applicant states that so long as such order pursuant to Section 22(e)(3) remains operative it will continue to waive the applicability to it of Section 22(e)(1) of the Act. Applicant argues that, while it has no present expectation to utilize such portion of the Prior Order in the future, it believes that prudence and good business practice require that Applicant seek the continued availability of such portion of the Prior Order in connection with Applicant's operations.

Section 22(e)(1) of the Act provides, generally, that a registered investment company may not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after proper tender of such security except for any period during which the NYSE is closed other than customary weekend and holiday closings, or during which trading on the NYSE is restricted. Section 22(e)(3) of the Act provides, generally, that redemptions may also be suspended by a registered investment company for such other periods as the Commission may by order permit for the protection of security holders of the company.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11236/June 27, 1980

In the Matter of

THE CAPITOL LIFE INSURANCE COMPANY

AND

CAPITOL LIFE SEPARATE ACCOUNT A
1600 Sherman Street
Denver, CO 80203

(812-4696)

NOTICE OF APPLICATION FOR AN AMENDED ORDER PURSUANT TO SECTION 11 OF THE ACT FOR APPROVAL OF CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTIONS FROM SECTIONS 26(a) AND 27(c)(2) OF THE ACT

NOTICE IS HEREBY GIVEN that the Capitol Life Insurance Company, ("Capitol Life"), a stock life insurance company organized under the laws of the State of Colorado in 1905, and Capitol Life Separate Account A, ("Separate Account") established by Capitol Life on September 20, 1973 under the laws of the state of Colorado and registered as a unit investment trust (File No. 811-2479) under the Investment Company Act of 1940 ("Act") (hereinafter collectively referred to as "Applicants"), filed an Application on June 3, 1980 for an amended order pursuant to Section 11 of the Act, approving certain offers of exchange, and, pursuant to Section 6(c) of the Act, exempting the Applicants from the provisions of Sections 26(a) and 27(c)(2) of the Act. The requested order would supplement the exemptive relief previously granted (i) to the extent necessary to include the newly-established Series P, which will be invested solely in shares of Rowe Price Prime Reserve Fund, Inc. (sometimes hereinafter referred to as "Additional Fund"), in the offer of exchange allowing Accumulation Units of one Series of the Separate Account to be exchanged for those of another Series; and (ii) to the extent necessary to include Series P in the exemptions underlying the current safekeeping arrangement of the Separate Account, previously granted pursuant to Section 6(c).

All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein which are summarized below.

The Separate Account was established by Capitol Life to fund certain Variable Annuity Contracts ("Contracts") which are currently being offered and sold to the public pursuant to an effective registration statement under the Securities Act of 1933 (File No. 2-51169). The Separate Account presently consists of three Series, each of which invests solely in the shares of one of the following open-end diversified management investment companies: Securities First Legal Reserve Fund, Inc., Security First Variable Life Fund, Inc. and T. Rowe Price Growth Stock Fund, Inc., (hereinafter collectively referred to as the "Funds"). Applicants have created a new Account Division or "Series" (Series P) to the Separate Account. Applicants propose that all amounts allocated to Series P will invest solely in the shares of the Additional Fund.

Applicants seek to amend and supplement the orders of September 13, 1974 (Release No. IC-8497) and November 30, 1978 (Release No. IC-10502), only to the extent necessary to include Series P in the offers of exchange approved by such orders pursuant to Section 11, and to include Series P in the exemptions from Sections 26(a) and 27(c)(2) previously granted pursuant to Section 6(c).

Section 11

Section 11(a) makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to, and approved by, the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The order contained in Release No. IC-10502 approved the conversion or transfer of Contract Accumulation Units from any one of the three Series of the Separate Account to any other Division of the Separate Account then in existence. Applicants propose that this conversion right be extended so as to encompass Series P, whose underlying investment medium will consist solely of shares of Rowe Price Prime Reserve Fund, Inc.

Sections 27(c)(2) and 26(a)

Section 27(c)(2), in relevant part, prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such issuer from selling such periodic payment plan certificate unless the proceeds of all payments (other than any sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an indenture or agreement containing specified provisions. Section 26(a) requires that such indenture or custodianship agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust subject only to the charges and collections specifically allowed under clauses (A), (B) and (C) of such Section until distribution to the security holders of the trust; (ii) shall not resign until the trust has been liquidated or a successor has been appointed; (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services provided for in the agreement; (iv) shall not allow as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself. Section 6(c) authorizes the Commission to exempt any person, security or transaction, from the provisions of

the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Pursuant to an exemption from the aforementioned provision of the Act granted in Release No. IC-10502, Capitol Life acts as custodian of the Separate Accounts; however, all such assets are held for safekeeping pursuant to an agreement between Capitol Life and the State Street Bank and Trust Company or Boston, Massachusetts ("Bank"). Insofar as the Contracts proposed to be funded in Series P are not included within the terms of the order issued in Release No. IC-10502, the Applicants request that the order of exemption from Sections 26(a) and 27(c)(2) be amended to the extent necessary to make the requirement of a trust inapplicable to such newly-created Series.

Applicants have consented that the request for the foregoing exemptions may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, and the Commission may reserve jurisdiction for such purpose, and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be determined to be exempted from regulation by the Commission by reason of the requested amended order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

NOTICE IS FURTHER GIVEN that any interested party may, not later than July 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following July 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11237/June 30, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6219/June 30, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11238/June 30, 1980

In the Matter of

INVESTORS LIFE INSURANCE COMPANY OF NORTH AMERICA

AND

INA/PUTNAM SEPARATE ACCOUNT
1600 Arch Street
Philadelphia, PA 19101

(812-4615)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2), 27(d), NAD RULE 22c-1

Investors Life Insurance Company of North America ("Investors Life"), a stock life insurance company organized under the laws of the Commonwealth of Pennsylvania, and INA/Putnam Separate Account ("INA/Putnam"), a separate account of Investors Life registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on February 13, 1980, and an amendment thereto on March 14, 1980, pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act, for an order of exemption from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to offer the variable annuity contracts described in the application.

On June 3, 1980 a notice was issued (Investment Company Act Release No. 11198) of the filing of the application. The notice gave interested persons an

opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, and pursuant to Section 6(c) of the Act, that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder, be, and hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11239/July 2, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16952/July 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11240/July 1, 1980

In the Matter of

MASSACHUSETTS CASH MANAGEMENT TRUST

AND

MASSACHUSETTS CASH MANAGEMENT TRUST II
200 Berkeley Street
Boston, Massachusetts 02116

(812-4612)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Massachusetts Cash Management Trust (the "Trust") and Massachusetts Cash Management Trust II (the "New Trust") (collectively, "Applicants"), both open-end, diversified, management investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on February 11, 1980, and amendments thereto on April 14 and May 13, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicants to value their assets using the amortized cost method.

On May 30, 1980, a notice was issued (Investment Company Act Release No. 11192) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested be, and hereby is, granted, effective forthwith, subject to the following conditions agreed to by each Applicant:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of each Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of each Applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

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[1]To fulfill this condition, Applicants intend to use actual quotations or estimates of market value reflecting current market conditions chosen by each board of trustees in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Each Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that neither Applicant will (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Each Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the boards of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Each Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Each Applicant will include in each of its quarterly reports, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicants will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11241/July 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11242/July 2, 1980

In the Matter of

ELDORADO FUND, INC.
18158 Westover
Southfield, Michigan 48075

(811-1749)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On June 2, 1980, a notice was issued (Investment Company Act Release No. 11195) stating that Eldorado Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on April 28, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Eldorado Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 725/June 30, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6219/June 30, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 726/July 2, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 16952/July 2, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 727/July 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6220/July 2, 1980

LITIGATION

Litigation Release No. 9117/June 27, 1980

SEC v. *FINANCIAL CONCEPTS, LTD., ET AL.*

William D. Goldsberry, administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on June 16, 1980, the Honorable Marvin E. Aspen, United States District Court Judge for the Northern District of Illinois, Eastern Division in Chicago, entered Final Judgments of Permanent Injunction against Conrad Investment Properties, Ltd. (CIP) and Kenneth C. Naslund (Naslund), who is president and 90% shareholder of CIP. The Judgments enjoin each of the defendants from further violations of the registration and antifraud provisions of the Federal securities laws in connection with their activities relating to the offer and sale of real estate limited partnership interests. Naslund and CIP consented to the Final Judgments of Permanent Injunction without admitting or denying the allegations in the Commission's complaint.

The complaint alleges, among other things, that during the period August 1973 to March 1974, the defendants made material misrepresentations and omissions regarding the use of proceeds; the identity of the beneficiary of two land trusts; the unavailability of funds which were to be set aside to retire a mortgage obligation; that the investment site was put up as collateral in a loan to a company wholly owned by Naslund; and that the proceeds from this loan were used to pay debts of unrelated companies and to retire the aforementioned mortgage obligation.

Litigation Release No. 9118/June 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *NATIONAL KINNEY CORP., ET AL.* (United States District Court for the Southern District of New York, Civil Action No. 80-3683).

The Commission announced today the filing of a Complaint in the United States District Court for the Southern District of New York, seeking injunctive and other equitable relief against National Kinney Corp. ("NKC"), Peter Ulrich ("Ulrich"), Emily Johns, Max Beck ("Beck") and Fredric J. Freed ("Freed"). NKC is a New York City based corporation engaged primarily in the business of providing construction and maintenance services to the real estate industry. The Complaint alleged that the defendants violated the antifraud provisions of the Securities Exchange Act of 1934 (the "Exchange Act"). Simultaneously with the filing of the Complaint, the District Court entered Orders against each of the individual defendants which, among other things, required them to comply with antifraud provisions of the Exchange Act. NKC was ordered to make full, fair and accurate statements in communications with exchanges and self-regulatory organizations. The Court also ordered NKC to comply with certain undertakings. The defendants consented to the entry of these Orders without admitting or denying the allegations in the Complaint.

The Complaint alleged that, on September 18 and 24, 1979, an officer of NKC made untrue statements of material facts to an official of the American Stock Exchange in response to questions by the official prompted by unusual and unexplained trading in NKC's common stock on that exchange. The NKC officer, according to the Complaint, represented to the official that NKC was not involved in, nor was it having discussions or negotiations about, or concerning, any corporate developments, despite his knowledge of actions of NKC concerning a possible entry into the hotel-casino gaming business.

The Complaint further alleged that on October 22, 1979 and October 23, 1979, the defendants Ulrich, Emily Johns, Beck and Freed purchased NKC common stock while in possession of material, non-public information

concerning arrangements between certain persons and entities to, among other things, attempt to acquire or develop hotel-casino gaming businesses in the United States, including the possible acquisition of the Aladdin Hotel in Las Vegas, Nevada. According to the Complaint, these defendants knew that such information was unavailable to the sellers of the securities which they purchased and failed to disclose such information to the sellers. On October 24, 1979, NKC announced that it had signed a memorandum of understanding with Johnny Carson and Edward M. Nigro concerning a proposed agreement to develop one or more hotel-casino gaming businesses in Las Vegas and elsewhere in the United States. Negotiations with representatives of the owners of the Aladdin were also disclosed.

The Complaint alleged that the memorandum of understanding was signed at Johnny Carson's home on October 22, 1979 during a meeting of Carson, Nigro, an officer of NKC and others. Following the meeting, according to the Complaint, Carson's wife, who is the sister of Ulrich, called Ulrich from a health club. In that conversation and in a second conversation later that day, Ulrich learned of the meeting and that Carson and NKC might combine to acquire the Aladdin. On October 23, 1979 Ulrich purchased 2,000 shares of NKC common stock and two of his relatives purchased a total of 1,500 shares of NKC common stock for his benefit.

According to the Complaint, Emily Johns, an employee of the health club visited by Mrs. Carson on October 22, learned of the possible purchase of the Aladdin from Mrs. Carson during that visit. Emily Johns purchased 1,000 shares of NKC common stock on October 23, 1979.

The Complaint alleged that Beck learned on October 21, 1979 from his daughter, Judith Bushkin, the wife of Carson's lawyer, of the possibility that Carson's group and NKC might acquire the Aladdin and that if acquired, the Aladdin would be renamed "Johnny Carson's Aladdin". Beck was also informed that a press release would probably be made on October 24, 1979 if there was an agreement. Beck purchased 5,000 shares of NKC common stock on October 22, 1979.

According to the Complaint, Freed, while acting as "of counsel" to the law firm representing Carson, participated in meetings concerning a possible acquisition of the Aladdin by Carson, Nigro and others, not including NKC. The Complaint alleged that on October 18, 1979, Freed learned of NKC's interest to see if it could participate with Carson and Nigro and on October 19, 1979 was asked to go to New York on October, 1979 to advise NKC's lawyers of the status of his negotiations with the attorneys for the owners of the Aladdin. On October 22, 1979, Freed purchased 4,000 shares of NKC common stock pursuant to an order placed, but not executed, on October 19, 1979. The purchase order was placed in an account which Freed opened in the name of a relative.

In addition to the entry of the Court's Orders with respect to further violations, certain other equitable relief was ordered by the Court. In this regard, the Court ordered Ulrich, Emily Johns, Beck and Freed to disgorge or to comply with undertakings to disgorge profits realized on transactions in NKC common stock of $4,228, $1,260, $4,496 and $4,980 respectively to the sellers of the stock which they purchased.

Litigation Release No. 9119/July 1, 1980

SECURITIES AND EXCHANGE COMMISSION v. *STEWART ENERGY SYSTEMS OF IDAHO, INC., ET AL.* (Eastern District of Washington, Civil Action C79-372)

Jack H. Bookey, Regional Administrator of the Seattle Regional Office, announced the entry on June 3, 1980, of a decree of permanent injunction against defendant Robert C. Stewart by United States District Court Judge Robert J. McNichols. The Commission had filed a Complaint against Stewart and seven other defendants during October 1979, alleging violations of the registration and antifraud provisions of the federal securities laws in connection with the sale of promissory notes, royalty interests and dealership interests related to the development of the "Stewart engine". The other defendants had earlier consented to the entry of decrees of permanent injunction and to certain ancillary relief, without admitting or denying the allegations of the Commission's Complaint. Defendant Stewart also consented to the entry of the final decree of injunction without admitting or denying the allegations of the Commission's Complaint.

Litigation Release No. 9120/July 1, 1980

SEC v. *CHEMTREE CORPORATION AND WILLIAM CORNELIUS HALL* (S.D.N.Y.) 80 Civil 3562(CES)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities Exchange Commission, announced the filing of a Complaint in the United States District Court for the Southern District of New York on June 24, 1980 against Chemtree Corporation ("Chemtree"), a Delaware Corporation located in Central Valley, New York, and William Cornelius Hall ("Hall") of Central Valley, New York. The Commission's action seeks to enjoin Chemtree and Hall from further violations of the registration, antifraud, reporting and proxy provisions of the federal securities laws.

Chemtree is engaged in the production and sale of formulations of concrete and various metallic additives. During the period concerned in the Complaint, Hall was president and chief scientist of Chemtree. Chemtree's common stock is traded over-the-counter.

The Commission's Complaint alleges that from 1975 through 1979, the defendants offered for sale and sold to investors unregistered securities of Chemtree, including common stock and debt securities in the form of convertible notes, in violation of Section 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"). Common

stock and convertible notes were sold to members of the public for approximately $500,000 and in exchange for notes, good and services and upon conversion of debt securities.

Further, it is alleged in the Complaint that the defendants made false and misleading statements in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The false and misleading statements concerned, among other things, (1) the financial condition of Chemtree, including its true assets, expenses, earnings and losses; (2) the current operations and business of Chemtree, including default on debt instruments; and (3) predictions of future sales, earnings and potential markets for Chemtree.

The Complaint also alleges that the defendants filed and caused to be filed a general form for registration of securities (Form 10), and annual (Form 10K) and quarterly reports (Form 10Q) which were false and misleading, in violation of Sections 12(g) and 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder, in that they failed to disclose defaults on senior securities and predicted future nationwide and worldwide sales and earnings while failing to disclose the risks that such sales and earnings would not be achieved.

Finally, the Complaint alleges violations of Section 14(a) of the Exchange Act and Rules 14a-3, 14a-6 and 14a-9 thereunder, by failure to file with the Commission proxy materials which contained information required by the applicable rules and regulations; the proxy materials disseminated to Chemtree shareholders included annual reports which failed to contain required information.

Litigation Release No. 9121/July 2, 1980

STATE v. *DOUGLAS F. BROWN* (WA. CR 6505)

Jack H. Bookey, Regional Administrator of the Seattle Regional Office of the Securities and Exchange Commission and Henry R. Dunn, Prosecuting Attorney for Cowlitz County, Washington announced that on May 25, 1980, Douglas F. Brown, formerly the president of Douglas F. Brown Financial Services, Inc., a registered broker-dealer located in Longview, Washington, was found guilty in state court as charged in an eighteen count information. Brown was found guilty of nine counts of first degree theft and nine counts of fraudulent sale of securities in connection with his misappropriation of customer funds. On June 12, 1980 Brown was sentenced to 20 years imprisonment.

(For further information see Securities Exchange Act of 1934, Release No. 8456).

Litigation Release No. 9122/July 2, 1980

SEC v. *SAFEGUARD INVESTMENT CORP., d/b/a SAFEGUARD COMPANY, ET AL.* (W.D. Pa., Civil Action 80-777)

Paul F. Leonard, Administrator of the Washington Regional Office of the Securities and Exchange Commission and Ralph M. Fratkin, Chairman of the Pennsylvania Securities Commission, announced that on June 16, 1980, the Honorable Donald E. Ziegler, United States District Court Judge for the Western District of Pennsylvania entered an order (1) preliminary enjoining Safeguard Investment Corp., a Pennsylvania corporation doing business as Safeguard Company, and Anthony J. Pivirotto and John Robert Woods, both of Pittsburgh, from further violations of the securities registration and antifraud provisions of the federal securities laws, (2) freezing the corporate, personal and partnership assets of Defendants Pivirotto and Woods except for ordinary living expenses, and (3) ordering that an accounting be performed of all investor funds paid to Safeguard.

The Commission filed its complaint on June 12, 1980, alleging violations of the securities registration and antifraud provisions of the federal securities laws in connection with the offer and sale of certificates of participation interests in Safeguard mortgage investments, evidenced by passbook accounts. The Complaint alleges among other things that defendants made untrue statements of material fact and omitted to state material facts relating to the insured nature of the investments, investors' ability to withdraw funds from accounts, the diversion of investor monies into other businesses controlled by Pivirotto and Woods and the deteriorating financial condition of Safeguard. Safeguard is currently in proceedings instituted pursuant to Chapter 11 of the Bankruptcy Code.

The Complaint is based on information obtained in a joint investigation of this matter by the Securities and Exchange Commission and the Pennsylvania Securities Commission. No date has been set for the trial on the request for a permanent injunction.

Litigation Release No. 9123/July 2, 1980

U.S. v. *GRANT H. ROYLANCE*, (USDC, UT., Cr-80-80J)

Ronald L. Rencher, United States Attorney for the District of Utah and Robert H. Davenport, Administrator of the Denver Regional Office of the Commission, announced that on June 19, 1980, a federal grand jury in Salt Lake City, Utah returned a 12-count indictment against Grant H. Roylance of Provo, Utah. The indictment charges Grant H. Roylance with eight counts of mail fraud, two counts of interstate transportation of money obtained by fraud, and two counts of securities fraud. The charges in the indictment were brought against Roylance in connection with the obtaining of money by issuing notes to fund the alleged purchase and refining of gold ore concentrate. The

indictment was the result of a joint effort by the Salt Lake Branch Office of the Securities and Exchange Commission and the Salt Lake City, Utah and Provo, Utah offices of the Federal Bureau of Investigation.

Roylance, in July, 1979, was permanently enjoined by the United States District Court for Utah from violating the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of promissory notes, investment contracts, and evidences of indebtedness of G. R. and Associates, Inc. and Metals Exchange.

For further information see Litigation Release Nos. 8779 and 8840.

Litigation Release No. 9124/July 2, 1980

S.E.C. v. TELLCO INFORMATION SERVICES, ET AL. (S.D.N.Y. 79 Civil 6649)

Stephen L. Hammerman, Administrator of the New York Regional Office, announced that the Honorable Charles S. Haight, Jr., of the United States District Court for the Southern District of New York signed Final Judgments of Permanent Injunction by Consent against Stanley E. Wiklinski ("Wiklinski") on February 20, 1980, and against L. Henry Sarmiento ("Sarmiento") on May 23, 1980. Judge Haight also signed Final Judgments of Permanent Injunction by Default against David C. Heenan ("Heenan") on January 30, 1980, Tellco Information Services ("Tellco") on June 2, 1980, and Vittorio Widemann International Corporation ("VWI") on June 2, 1980. All the defendants are permanently enjoined from violating the registration and antifraud provisions of the federal securities laws. Wiklinski and Sarmiento consented to the entry of the permanent injunctions without admitting or denying the allegations of the Commission's complaint.

The complaint in this action, filed on December 6, 1979, named a total of ten defendants. The complaint alleged that Tellco, VWI, Sarmiento, Wiklinski, Heenan and others participated in a scheme to sell unregistered securities in the form of convertible promissory notes of VWI, and made or caused to be made material misrepresentations and failed to disclose material facts to investors in the offer and sale of VWI notes, and/or the common stock of Tellco. The complaint also alleged that these five defendants and others engaged in a concurrent manipulation of the over-the-counter trading market for Tellco common stock. Final Judgments of Permanent Injunction by Consent were previously entered against two other defendants, and the action is still pending as to the remaining three defendants.

For further information see Litigation Release Nos. 8950 and 8999.

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U. S. GOVT. PUBS
DEPOSITORY 376

RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 6221-	600
Securities Exchange Act	- 16956-77	608
Public Utility Holding Company Act	- 21649-54	651
Investment Company Act	- 11243-53	664
Litigation	- 9125-29	681

This listing covers releases issued from 7/3/80-7/10/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

34-16956 Letter sent to the National Association of Securities Dealers, Inc. ("NASD") concerning a proposed rule change filed by the NASD to amend its Rules of Fair Practice governing member practices in fixed price offerings of securities.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16957	34-16967	34-16970
34-16959	34-16968	34-16972
34-16960	34-16969	34-16976
34-16965		

33-6221 Amendments to Guides 61 and 3 for Statistical Disclosure by Bank Holding Companies.

34-16964 Proposed Amendments to Modify Rule 10a-1 Relating to Short Selling by Market Makers [File No. S7-842 Comment Period Expires August 31, 1980].

34-16966 Record Production Obligations and Record Destruction and Disposition Rights of Registered Clearing Agencies, the Municipal Securities Rulemaking Board, National Securities Exchanges and Registered Securities Associations [File No. S7-843—Comment Period Expires August 8, 1980].

SE 1.29:

34-16977 Proposed Revision of Form U-4, the Uniform Application for Securities and Commodities Industry Registration [File No. S7-844—Comment Period Expires August 13, 1980].

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6221/July 8, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16961/July 8, 1980

AMENDMENTS TO GUIDES FOR STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

ACTION: Publication of Amended Guides

SUMMARY: The Commission announces the completion of the review by the Division of Corporation Finance of the Guides for Statistical Disclosure by Bank Holding Companies and authorizes publication of various amendments to those guides designed to reduce the volume of disclosure, to lower compliance costs, and to make certain statistical disclosure adjustments requested by the staff, preparers and users of statistical information. This project is part of the Commission's ongoing program to have outstanding guides and rules reviewed to insure effectiveness and eliminate unnecessary or duplicative requirements.

EFFECTIVE DATE: [The Guides will be followed by the Division of Corporation Finance 30 days after publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the amendments contact William H. Carter at (202) 272-2604 or Charles A. Oglebay (202) 272-2557. Thereafter, contact only Charles A. Oglebay.

SUPPLEMENTARY INFORMATION: The Commission today authorized publication of amendments to Guides 61 and 3, "Statistical Disclosure by Bank Holding Companies," of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] and of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I. 1977)]. At the time Guides 61 and 3 (the "Guides") were originally published[1] the Commission stated that the experience of preparers and users of the information would be reviewed to see whether the new disclosures made under the Guides are necessary and appropriate. In order to implement that review function, the Commission issued a release on August 30, 1979,[2] requesting comments on the quality and desirability of the disclosure made under the existing Guides. Fifty-six letters of comment were received and analyzed. Most commentators supported the Guides and called the resulting disclosure valuable. Several amendments were suggested, however. The amendments authorized today are based on these suggestions and on over three years of staff experience. They are intended both to eliminate unnecessary elements of the Guides and to improve the quality of disclosure thereunder.

Background of Guides

Guides 61 and 3 are intended to provide registrants with a convenient reference to the statistical disclosures sought by the staff of the Division of Corporation Finance in registration statements and other disclosure documents filed by bank holding companies. They are not Commission rules nor do they bear the Commission's official approval.

In both the preparation of the original Guides and these amendments the staff was mindful of the user's need to assess uncertainties and the user's need for substantial and specific disclosure about changes in risk characteristics of loan portfolios. See Accounting Series Release No. 166 (December 24, 1974) (40 FR 2678, January 15, 1975). Accordingly, the Guides call for extensive disclosure about loan portfolios and related items in filings by bank holding companies. In addition, many of the suggested disclosures are intended to provide information to facilitate analysis and comparison of

[1]Securities Act of 1933 Release No. 5735 (August 31, 1976) [41 FR 39007].

[2]Securities Act of 1933 Release No. 6115 (August 30, 1979) [44 FR 52820].

sources of income and exposure to risks. Such information assists users in evaluating the potential impact of future economic events upon a registrant's business and earnings and in assessing the ability of a bank holding company to move into or out of situations with favorable or unfavorable risk/return characteristics.

The Guides are intended to apply only to the description of business portion of a bank holding company registration statement, proxy statement or report. Although the Guides describe certain information that should be disclosed, they do not purport to be all inclusive and in no way limit the extent of the disclosures to be made. Appropriate disclosure must always depend on the individual facts and circumstances concerning each registrant.

Discussion of Amendments

The following is a brief discussion of the amendments.

General Instructions

The instructions have been amended in several respects. First, the "reported period" generally has been reduced from the last five fiscal years of the registrant to the last three fiscal years. One exception, however, is for Items III and IV, "Loan Portfolio" and "Summary of Loan Loss Experience," for which the "reported period" remains five years. The other exception applies in the case of a holding company or a bank either with less than $200,000,000 of assets or net worth of $10,000,000 or less. In such a case the "reported period" for all items shall be the latest two fiscal years. One other aspect of the "reported period" definition has been changed. The previous definition required registrants to furnish statistical and other information for any interim period subsequent to the latest full fiscal year for which an income statement was furnished. This requirement often resulted in an unnecessary burden on registrants. Accordingly, the amended definition only requires information for a subsequent interim period when a material change in the information presented or the trend evidenced thereby has taken place.

The general reduction in the "reported period" from five to three years is being implemented because of the view of many commentators, in which the staff concurs, that the benefits of providing five years of information to various users do not outweigh the related costs. The five year presentation for the loan portfolio and the summary of loan loss experience, however, has been retained to provide a better basis for statistical trend analysis and to better identify unusual or non-recurring events which may have affected the loan portfolio and its related provisions for possible losses. Such information is important since a loan portfolio may equal sixty percent or more of the total assets of a bank holding company and may be the source of its greatest risk and uncertainty. Accordingly, in the case of this information the benefits of presentation appear to outweigh the related costs. Finally, the further reduction in the "reported period" for small banks to two years not only is based upon cost-benefit concepts but is also based upon the disproportionate burden upon small banks and upon the fact that typically the information is being presented in the context of an acquisition of the smaller bank by a larger bank holding company. When an acquisition occurs the compilation of statistical and other information often constitutes a significant burden with only a short-lived benefit to investors and other users.

Second, General Instruction 5 has been amended to require that the basis for presenting averages need only be stated when something other than a daily average basis is used. Banking practice generally involves daily averages and to reiterate constantly this known industry practice appears unnecessary.

Third, a new instruction (General Instruction 6) has been added to make it clear that the disclosure requirements of the Guides are also applicable to foreign registrants to the extent the requested information is available or could be made available without undue cost or expense. This instruction was added to codify the staff's long standing position that such disclosures should be made by all foreign banking registrants making filings.

Item I. Distribution of Assets, Liabilities and Stockholders Equity; Interest Rates and Interest Differential

Two significant changes have been made in this Item, the most extensive of which is the combination of this Item with the previous Item VII, Interest Rates and Interest Differential. The majority of the commentators favored such a combination, basically to eliminate duplication and to simplify the presentation. The other change is the deletion of the

previous Item I B which required percentage figures for the disclosures required in Item I A. The virtually unanimous opinion of the commentators was that such percentage figures are unnecessary and that any investor could easily calculate them on the basis of information otherwise presented. In addition, the requirement for details in this Item concerning foreign activities has been coordinated with comparable requirements in Article 9 of Regulation S-X (17 CFR Part 210) for the purpose of analytical consistency.

Item II. Investment Portfolio

In response to the suggestions of a number of commentators and in order to promote uniformity and consistency between the Guides and Article 9 of Regulation S-X, with the resultant decrease in reporting burdens on registrants, the investment categories listed under Item II have been revised to conform to the investment categories contained in Article 9. In addition, the previous requirement that the amount of any tax equivalent adjustment be disclosed has been deleted. It is believed that a statement containing the tax rate is sufficient disclosure in this regard.

Item III. Loan Portfolio

For the reasons stated in Item II above with respect to the investment categories, the categories of loans hereunder have been changed, along with the appropriate instructions, to coincide with the loan categories in Article 9. The request for the total of all loans now appearing in this Item was moved, for purposes of clarity of presentation, from the previous Item IV.

Under Part B, Maturities and Sensitivity to Changes in Interest Rates, a new instruction has been added to require disclosure of "rollover policy", which it is believed will give users a better insight into loan maturity policies.

With respect to Part C, Nonperforming Loans, a number of changes have been made. First, in order to expand the definition of nonperforming loans, a new category, non-accrual loans, has been added. Second, in response to the requests of a number of commentators and the bank regulatory agencies, the time period for loans contractually past due has been increased from 60 to 90 days. Third, paragraphs 2 and 3 of Part C of the original Guides, which required interest disclosures for nonperforming loans, have been deleted since they were confusing and appeared to be of marginal value.

Item IV. Summary of Loan Loss Experience

Part A of the original Item has been moved to Item III; the other parts have been rearranged; and Part H has been revised to reflect the new "reported period" and to indicate that disclosure as to management's policy for loan losses should cover the entire "reported period," not just the latest fiscal year and any interim period. Finally, Part J constitutes a codification of long existing staff policy concerning the substitution of a narrative discussion of risk elements for a breakdown of the allowance for loan losses by category of loan. In preparing such a discussion registrants should consider the following factors, among others: (1) the anticipated amount of chargeoffs by loan category during the next full year of operations; (2) specific risks associated with certain loan types, as well as a discussion of current and future economic trends that may affect the loan portfolio; (3) the significance of previous net loss experience, the overall significance of net losses with respect to the total loan portfolio, the anticipated effect, if any, of the current economic outlook on collectibility, and management's credit and loan review controls; (4) the risks by significant categories of loans, indicating whether any major concentrations exist in particular industries, and a discription of any material deteriorating accounts; and (5) an analysis of the relevant nonperforming loans where one particular loan category or separate types of loans within the category are unusually significant as to possible losses when compared to the entire loan portfolio.

Item V. Deposits

The only change in this Item was to conform the deposit categories and the related instructions to those contained in Article 9 of Regulation S-X which, among other things, will aid users in analyzing two sets of data (the Guides and the financial statements).

Item VI. Return on Equity and Assets

Instruction (1) of the previous Guides requiring disclosure of trends in the ratios has been deleted inasmuch as this information generally is either apparent or appears elsewhere in filings, such as in

Management's Discussion and Analysis or in financial statement footnotes. A new instruction (2) has been added to require dual data where mandatory redeemable preferred stock is outstanding. See Accounting Series Release No. 268 (July 27, 1979) (44 FR 45610). Finally, in response to a number of comments, an instruction (3) has been added to allow registrants to supply any other ratios they deem necessary to explain their operations.

Item VII of the Original Guides, Interest Rates and Interest Differential

The contents of this Item have now been combined into amended Item 1.

Item VIII of the Original Guides, Foreign Operations

This Item has been deleted since the disclosure formerly required hereunder is currently required in Article 9 of Regulation S-X.

Item IX of the Original Guides, Comments and Lines of Credit

This Item has been deleted because the disclosure formerly required should be included in notes to the financial statements, Item III of the Guides, or elsewhere.

TEXT OF THE GUIDES

17 CFR Chapter II is amended as follows:

1. Part 231 is amended by amending Guide 61, "Statistical Disclosure by Bank Holding Companies," of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 to read as follows:

GUIDE 61—GUIDES FOR THE PREPARATION AND FILING OF REGISTRATION STATEMENTS UNDER THE SECURITIES ACT OF 1933

STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

General Instructions

1. This Guide applies to the description of business portion of those bank holding company registration statements for which financial statements are required.

2. Information furnished in accordance with this Guide should generally be presented in tabular form in the order appearing below. However, an alternative presentation, such as inclusion of the information in Management's Discussion and Analysis, may be used if in management's opinion such presentation would be more meaningful to investors.

3. When the term "reported period" is used in the Guide, it refers to each of the periods described below:

(a) each of the last three fiscal years of the registrant, except as is provided in paragraphs (b) and (c) of this Instruction;

(b) each of the last five fiscal years of the registrant with respect to Items III and IV, except as is provided in paragraph (c) of this Instruction;

(c) each of the last two fiscal years with respect to all items, if the bank holding company or the bank with respect to which the presentation is made as of the end of its latest full fiscal year had assets of less than $200,000,000 or net worth of $10,000,000 or less; and

(d) any additional interim period necessary to keep the information from being misleading.

The "reported period" shall not include an additional interim period under paragraph (d) of this Instruction merely because an income statement is presented for such additional interim period, but the "reported period" shall include such an additional period if a material change in the information presented or the trend evidenced thereby has occurred.

4. Some of the information called for by the Guide which is prospective in nature may not be available on a historical basis. The staff should be advised of such situations prior to filing and if the requested information is unavailable and cannot be compiled without unwarranted or undue burden or expense, the requirement that such information be furnished may be waived. If possible, reasonably comparable data should be furnished instead. If, for some special reason, certain requested information will not be available with respect to periods to be covered in future filings subject to the Guide, this should also be brought to the staff's attention.

5. Unless otherwise indicated, averages called for by the Guide are daily averages. Where the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month-end averages may be used, provided such averages are representative of the operations of the registrant. The basis used for presenting averages need be stated only if not presented on a daily average basis.

6. The disclosure requirements of the Guide are also applicable to foreign registrants to the extent the requested information is available. If the information is unavailable and cannot be compiled without unwarranted or undue burden or expense, this should be brought to the staff's attention.

[NOTE: In evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.]

I. Distribution of Assets, Liabilities and Stockholders' Equity; Interest Rates and Interest Differential

A. For each "reported period," present average balance sheets. The format of the average balance sheets may be condensed from the detail required by the financial statements provided that the condensed average balance sheets indicate the significant sources and uses of funds. However, the average statements should show separately the major categories of interest-earning assets and interest-bearing liabilities for which further disclosure is required in paragraph B below. Major categories of interest-earning assets should include loans, taxable investment securities, non-taxable investment securities, federal funds sold and securities purchased with agreements to resell, and other (specify if significant). Major categories of interest-bearing liabilities should include savings deposits, other time deposits, deposits in foreign offices, short-term debt, long-term debt and other (specify if significant).

B. For each "reported period," present an analysis of net interest earnings as follows:

1. For each major category of interest-earning asset and each major category of interest-bearing liability, the average amount outstanding during the period and the interest earned or paid on such amount.

2. The average yield for each major category of interest-earning asset.

3. The average rate paid for each major category of interest-bearing liability.

4. The average yield on all interest-earning assets and the average effective rate paid on all interest-bearing liabilities.

5. The net yield on interest-earning assets (net interest earnings divided by total interest-earning assets, with net interest earnings equalling the difference between total interest earned and total interest paid).

6. This analysis may, at the option of the registrant, be presented in connection with the average balance sheet in paragraph A.

C. For the latest two fiscal years, present (1) the dollar amount of change in interest income and (2) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability into amounts attributable to (a) changes in volume (change in volume times old rate), (b) changes in rates (change in rate times old volume), and (c) changes in rate/volume (change in rate times the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variances and the basis of allocation disclosed in a note to the table.

Instructions. (1) Explain how non-accruing loans have been treated for purposes of the analysis in paragraph B;

(2) In the calculation of the changes in the interest income and interest expense, any out-of-period items and adjustments should be excluded and the types and amounts of items excluded disclosed in a note to the table;

(3) If loan fees are included in the interest income computation, the amount of such fees should be disclosed, if material;

(4) The interest income on tax exempt securities

may be calculated on a tax equivalent basis. A brief note should describe the extent of recognition of exemption from Federal, state and local taxation and the combined marginal or incremental rate used.

(5) If disclosure regarding foreign activities is required pursuant to the Instruction under paragraph I-D of this Guide, the information required by Item I-A, B, and C should be further segregated between domestic and foreign activities.

D. For each "reported period," present separately, on the basis of averages, the percentage of total assets and total liabilities attributable to foreign activities.

Instruction. Separate disclosure concerning foreign activities (banking, bank related and nonbanking) is required only if (1) assets, or (2) revenues, or (3) income (loss) before income tax expense, or (4) net income (loss), each as associated with foreign activities, exceeded ten percent of the corresponding amount in the related financial statements. In order to arrive at the foreign component of revenue or income, the registrant may be required to make internal allocations between foreign and domestic activities. The registrant should generally indicate the nature of significant estimates and assumptions used in such allocations. Any significant changes in assumptions or methods of allocations during the reported periods should also be indicated along with the effect of such changes on reported results.

II. Investment Portfolio

A. As of the end of each "reported period," present the book value of investments in obligations of (1) the U.S. Treasury and other U.S. Government agencies and corporations; (2) States of the U.S. and political subdivisions; and (3) other securities including bonds, notes, debentures and stock of business corporations, foreign governments and political subdivisions, intergovernmental agencies and a Federal Reserve Bank.

B. As of the end of the latest "reported period," present the amount of each investment category listed above which is due (1) in one year or less, (2) after one year through five years, (3) after five years through ten years, and (4) after ten years. In addition, state the weighted average yield for each range of maturities.

Instruction. State whether yields on tax exempt obligations have been computed on a tax equivalent basis. (See Instruction (4) to Item I-C.) Any major changes in the tax-free portfolio should be discussed hereunder.

III. Loan Portfolio

A. Types of Loans

As of the end of each "reported period," present separately the amount of loans in each category listed below. Categories 1 through 4 are for loans attributable to domestic operations only. Also show the total amount of all loans for each "reported period," which amounts should be the same as those shown on the balance sheets.

1. Commercial, financial and agricultural;

2. Real estate-construction;

3. Real estate-mortgage;

4. Installment;

5. Foreign.

Instructions. (1) Additional detail of loans by category may be appropriate in some circumstances, such as when a substantial portion of total commercial loans is concentrated in one or a few industries or to show country risks associated with foreign loans.

(2) Separate disclosure of category 5 is required only if disclosure regarding foreign activities is required pursuant to the Instruction under paragraph I-D of this Guide.

(3) Include, under the real estate-construction category, loans secured by real estate which are made for the purpose of financing construction of real estate and land development projects.

(4) Include, under the real estate-mortgage category, loans payable in monthly, quarterly or other periodic installments and secured by developed income property and personal residences.

(5) Include, under the installment category, loans to individuals generally repayable in monthly installments. This category shall include but not be

limited to credit card and related activities, individual automobile loans, other installment loans, mobile home loans and residential repair and modernization loans.

(6) Include, under the commercial, financial and agricultural category, all loans not included in another category. This category shall include but not be limited to loans to real estate investment trusts, mortgage companies, banks and other financial institutions, loans for carrying securities, and loans for agricultural purposes. Do not include loans secured primarily by real estate.

(7) State separately any other loan category regardless of relative size if necessary to reflect a concentration of any unusual risk or uncertainty.

(8) A series of categories other than those specified above may be used to present details of loans if considered a more appropriate presentation.

B. Maturities and Sensitivity to Changes in Interest Rates

As of the end of the latest fiscal year reported on, present separately the amount of loans in each category listed in paragraph A (except categories 3 and 4) (1) due in one year or less, (2) due after one year through five years and (3) due after five years. In addition, present separately the total amount of all such loans due after one year which (a) have predetermined interest rates and (b) have floating or adjustable interest rates.

Instructions. (1) Scheduled repayments should be reported in the maturity category in which the payment is due.

(2) Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

(3) Determinations of maturities should be based upon contract terms. However, such terms may vary due to the registrant's "rollover policy," in which case the maturity should be revised as appropriate and the "rollover policy" should be briefly discussed.

C. Nonperforming Loans

As of the end of each "reported period," state the aggregate amount of loans in each of the following categories for: (a) loans accounted for on a non-accrual basis; (b) loans which are contractually past due 90 days or more as to interest or principal payments (but not included in the non-accrual loans in (a) above); (c) loans, the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of a deterioration in the financial position of the borrower (exclusive of loans in (a) or (b) above); and (d), loans now current where there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. In connection with (d), a separate discussion of the risk elements associated with such loans, including the relative magnitude of such risks, shall be given.

Instructions. (1) Loans in category 4 under paragraph A need not be considered for disclosure pursuant to paragraph C unless the total amount of installment loans exceeds 10 percent of total loans.

(2) A renewal on current market terms of a loan at maturity will not be considered a renegotiation for purposes of clause (c) of paragraph C.

(3) A loan remains in the category described in clause (c) until such time as the terms are substantially equivalent to terms on which loans with comparable risks are being made.

(4) If a substantial portion of the loans stated pursuant to paragraph C are concentrated in one or a few industries, separate disclosure of the information required by this paragraph should be provided for such loans.

(5) The registrant may use different criteria and may present quantitative information in a different manner than described above if such presentation more effectively identifies and communicates the present risk elements in the loan portfolio.

IV. Summary of Loan Loss Experience

An analysis of loan loss experience shall be furnished in the following format for each "reported period:"

A. Average amount of loans outstanding.

B. Amount of allowance for loan losses at beginning of period.

C. Amount of losses charged off during period

broken down by the five major categories of loans specified in paragraph III-A.

D. Amount of recoveries during period of losses previously charged off broken down by the five major categories of loans specified in paragraph III-A.

E. Net loans charged off during period.

F. Amount of allowance for loan losses at end of period.

G. Ratio of net charge-offs during period to average loans outstanding for the period.

H. Additions to allowance for loan losses charged to operating expense during period. For each period reported on, also describe briefly the factors which influenced management's judgment in determining the amount charged to operating expense. A statement that the amount is based on management's judgment will not be sufficient.

I. A breakdown of the allowance for loan losses by the five major categories of loans specified in paragraph III-A, including as a separate category any unallocated portions of the allowance. State (a) the dollar amount of the allowance applicable to each category and (b) the percentage of loans in each category to total loans.

J. In lieu of the disclosure required by paragraph I above, the registrant may furnish a narrative discussion of the risk elements in the loan portfolio and the factors considered in determining the amount of the allowance for loan losses. The discussion may be extended to risk elements associated with particular loan categories or subcategories. Information should also be furnished as to the approximate anticipated amount of chargeoffs by loan category during the next full year of operation.

Instruction. If, in accordance with Instruction 8 of paragraph III-A, information concerning loans has been presented in categories other than those specified in that paragraph, those other categories should be used to present the disclosures called for under this paragraph.

V. Deposits

A. For each "reported period," present separately the average amount of:

(1) Demand deposits in domestic bank offices.

(2) Savings deposits in domestic bank offices.

(3) Time deposits in domestic bank offices.

(4) Deposits in foreign banking offices.

Instructions. (1) Include, under the demand deposits—domestic category, all domestic deposits other than savings and time deposits.

(2) Include, under the savings deposits—domestic category, interest bearing deposits without specified maturity or contractual provisions requiring advance notice of intention to withdraw funds. Include deposits for which a bank, optionally, may require written notice of intended withdrawal not less than 30 days in advance.

(3) Include, under the time deposits—domestic category, deposits subject to provisions specifying maturity or other withdrawal conditions such as time certificates of deposits, open account time deposits and deposits accumulated for the payment of personal loans.

(4) Categories (A)(2) and (A)(3) above may be combined if either one is less than ten percent of total deposits.

(5) If material, the registrant should disclose separately the aggregate amount of deposits by foreign depositors in domestic offices. Identification of the nationality of depositors is not requested.

B. As of the end of the latest fiscal year reported on, present separately the amount outstanding of time certificates of deposit issued by domestic offices in amounts of $100,000 or more by time remaining until maturity 3 months or less; over 3 through 6 months; over 6 through 12 months, and over 12 months.

IV. Return on Equity and Assets

For each "reported period," present the following:

(1) Return on assets (net income divided by average total assets).

(2) Return on equity (net income divided by average equity).

(3) Dividend payout ratio (dividends declared per share divided by net income per share).

(4) Equity to assets ratio (average equity divided by average total assets).

Instructions. (1) The ratios required under (1), (2), and (3) above may also be calculated using income before securities gains (losses).

(2) If mandatory redeemable preferred stock is outstanding, furnish the ratios required under (2) and (4) above in a dual presentation including and excluding such stock in the calculations.

(3) Registrants should supply any other ratios which they deem necessary to explain their operations.

2. Part 241 is amended by amending Guide 3, "Statistical Disclosure by Bank Holding Companies," of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934 to read as follows:

GUIDE 3—GUIDES FOR THE PREPARATION AND FILING OF REPORTS AND PROXY AND REGISTRATION STATEMENTS UNDER THE SECURITIES EXCHANGE ACT OF 1934

STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

This Guide applies to the description of business portion of bank holding company registration statements filed on Form 10 (Item 1) [17 CFR 249.210], in proxy and information statements relating to mergers, consolidations, acquisitions and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14C) [17 CFR 240.14a-101 and 240.14c-101], and in reports filed on Form 10-K (Item 7) [17 CFR 249.310].

[The rest of Guide 3 is identical to Guide 61 set forth above.]

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 454; secs. 1, 2 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77g, 77j, 77s(a), 78l, 78m, 78n(d), 78w(a).)

STATUTORY AUTHORITY

The Commission hereby adopts amended Guides 61 and 3, "Statistical Disclosure by Bank Holding Companies" pursuant to the Securities Act of 1933, particularly sections 7, 10 and 19(a) thereof, and the Securities Exchange Act of 1934, particularly sections 12, 13, 15(d) and 23(a).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16956/July 3, 1980

PRACTICES IN FIXED PRICE OFFERINGS

ACTION: Notice of issuance of letter.

SUMMARY: The Commission announced today that it has sent to the National Association of Securities Dealers, Inc. (the "NASD") a letter concerning a proposed rule change filed by the NASD to amend its Rules of Fair Practice governing member practices in fixed price offerings of securities. The letter reflects the Commission's concerns regarding certain aspects of the proposed rule change.

FOR FURTHER INFORMATION CONTACT: Janet R. Zimmer, Esq. (202) 272-2863, Kathleen McGann, Esq. (202) 272-2855, or Lucy A. Weisz, Esq. (202) 272-2840, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of 1934, the NASD filed a proposed rule change to amend Article III, Section 24

(governing selling concessions) and Article III, Section 8 (governing swap transactions) of its Rules of Fair Practice and to add a new Section 36 of Article III (governing recapture of selling concessions) and a new Section 1(m) of Article II to define the term "fixed price offering" (File No. SR-NASD-78-3).* The letter sent today by the Commission to the NASD reflects the Commission's concerns regarding certain aspects of proposed Section 24 and proposed Section 8.

The text of the letter follows:

Mr. Gordon S. Macklin, President
National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Macklin:

This letter is in reference to a proposed rule change concerning various practices in connection with fixed price offerings of securities (File No. SR-NASD-78-3), filed by the National Association of Securities Dealers, Inc. (the "NASD") on May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act").

Notice of the proposed rule change was given in Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). In May 1979, because of the significance and complexity of the issues raised by the proposed rule change, the Commission solicited additional comments and announced public hearings to be held on these issues. Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). These hearings concluded November 20, 1979, and the comment period expired December 15, 1979.

Presented below are a description of the proposed rule change and a discussion of certain revisions the Commission believes may be necessary or appropriate.

I. DESCRIPTION OF THE PROPOSED RULE CHANGE AND OF THE COMMISSION'S REVIEW

The proposed rule change would amend Articles II and III of the NASD's Rules of Fair Practice to regulate or prohibit a variety of practices that the NASD believes might be construed as providing a discount from fixed prices in underwritten public offerings. First, the proposed amendments to Article III, Section 8 would impose a more explicit prohibition on a member's taking securities in trade at more than their fair market price. Second, the proposed amendments to Article III, Section 24 would prohibit the granting of selling concessions, discounts, or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business and would permit such payments to be made or received only as consideration for services rendered in distribution. The amendments to Section 24 also would impose a number of related requirements. Third, a new Section 36 of Article III would prohibit an NASD member from selling or placing with any related person of the member securities that are part of a fixed price offering. Fourth, a proposed amendment to Article II of the Rules of Fair Practice would add a new section defining the term "fixed price offering." Finally, as part of the proposed rule change, the Board of Governors of the NASD would append to the amendments to Section 8 and 24, and to the new Section 36, several interpretive statements relating to the meaning and application of those sections.

Pursuant to Section 19(b) of the Act, the Commission has reviewed the proposed rule change

*Notice of the proposed rule change was given by Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). The Commission issued a subsequent release that solicited additional comment on the issues raised by the proposed rule change and announced public hearings to be held on these issues. Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). Sixteen witnesses testified at the hearings and 51 comment letters have been received, including the NASD's most recent submission, "Analysis of The Record Developed In The Matter of Papilsky Hearings From The Perspective of Statutory Authority" (March 3, 1980). All comments and transcripts of the hearings are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The issues associated with the proposed rule change are commonly identified by reference to a judicial decision, *Papilsky* v. *Berndt* [1976-1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) §95,627 (S.D.N.Y. 1976).

and has considered the data, views and arguments that were submitted in the hearings and in written comments received in this proceeding. Section 19(b)(2) provides that, in order to approve the proposed rule change, the Commission must find it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.

In particular, the Commission has reviewed the proposed rule change in light of certain requirements of Section 15A of the Act governing the rules of the NASD. Section 15A(b)(2) requires that the NASD have the capacity to enforce compliance by its members with its rules. Section 15A(b)(6) provides, among other things, that the rules of the NASD must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 15A(b)(6) also provides that NASD rules must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers, to fix minimum profits, or to impose any schedule or fix rates of commissions, allowances, discounts or other fees to be charged by NASD members. In addition, Section 15A(b)(9) provides that the rules of the NASD must not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed below, the Commission is concerned that the NASD Board's interpretations of proposed Section 24, limiting "soft dollar" payments for research, may not be consistent with the requirements of the Act. In addition, the Commission believes that a more flexible definition of "fair market price" in proposed Section 8 may better achieve the intended purposes of that section and Section 24. The balance of this letter describes the Commission's concerns about the proposed rule change and suggests ways in which the NASD could revise its proposal to address these concerns.

II. PROPOSED SECTION 24(a)—SOFT DOLLAR PAYMENTS FOR RESEARCH

A. *The Proposal as Filed*

Section 24(a), as proposed to be amended, would limit the grant or receipt of discounts in connection with the sale of securities that are part of a fixed price offering. It would provide that a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such selling concessions, discounts, or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business.

The interpretation by the NASD Board of proposed Section 24 would impose limitations that troubled many commentators. First, the Board's interpretation provides that a dealer has rendered "services in distribution" in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. The Board's interpretation does not otherwise specify what would constitute a service in distribution, except that it provides that furnishing a customer with research will not by itself constitute sufficient selling effort to satisfy Section 24; rather, the interpretation states, "some direct selling contact on a particular offering will be necessary." The Commission assumes, as did several of the commentators, that the interpretation requires some direct selling contact with the particular customer on that offering and that a broker-dealer that was not an underwriter would not fulfill the services in distribution requirement if it failed to make such direct contact.

Some commentators have stated that the NASD Board's "services in distribution" interpretation discriminates unfairly against dealers who are not underwriters and who have not made any selling contact with a customer before being designated by that customer to receive selling concessions, discounts, or other allowances in fixed price offerings on the basis of the research they have furnished to the customer. These commentators argue that research is a fundamental part of the distribution process since institutional investors frequently purchase securities on the basis of research rather than as a result of direct selling contact. They argue, therefore, that research *per se* should be considered a service in distribution.

The second feature of the NASD Board's interpretations of proposed Section 24 that troubled commentators is the interpretation of the phrase "selling concessions, discounts, or other allowances." Essentially, that interpretation provides that an NASD member who (i) supplies

another person with services or products that are "commercially available" or are provided by the member to that person or to others for cash or some other agreed upon consideration, and (ii) also retains or receives selling concessions, discounts, or other allowances from that person's purchases in a fixed price offering, would be deemed to be improperly granting a selling concession, discount, or other allowance to that person unless the member were fully compensated for those services or products from sources other than the selling concession, discount, or allowance retained or received on the sale.

The practical effect of this interpretation, as further amplified by the NASD Board, would be generally to permit "soft-dollar" arrangements involving in-house research furnished on a "goodwill" basis to customers who purchase securities in a fixed price offering, while precluding such arrangements involving third-party research that was purchased by a broker-dealer (other than one who was acting as the exclusive distributor of that product or service) and distributed on a "goodwill" basis. In addition, a firm would be precluded from providing any research (including its own in-house research) to one customer for cash, or for brokerage commissions, and to another for soft dollars in connection with a fixed price offering. Although the interpretation would apply to all NASD members, several commentators have asserted that the practical effect of the interpretation would be to discriminate unfairly against, and impose unnecessary burdens on, firms that have limited in-house research capabilities, or that derive a substantial portion of their revenues from research services and cannot afford to provide research on a "goodwill" basis.

In light of the above, the Commission is concerned that the proposed rule change, as filed, may not be consistent with the requirements, in Section 15A(b)(6) and 15A(b)(9) of the Act, that the rules of the NASD may not unfairly discriminate among brokers or dealers or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. *Alternative Formulations of Section 24*

The NASD stated at the hearings that it would consider modifying the prohibitions that would be imposed by the NASD Board's interpretations of proposed Section 24. The NASD has suggested several areas for possible further inquiry, and raised basically two alternative approaches that could help alleviate the problems that troubled the commentators.[1]

Alternative 1: Under the first alternative: (a) the "services in distribution" interpretation would be revised so that the furnishing of *bona fide* research, defined in a manner similar to the Commission's interpretation under Section 28(e) of the Act,[2] would be deemed to be a sufficient service in distribution; (b) the "commercially available" prohibition that derives from the Board's interpretation would be redefined so as not to apply to such *bona fide* research; and (c) the "agreed upon consideration" limitation that derives from the Board's interpretation would be modified to allow research supplied to one customer for cash or other agreed upon consideration to be made available to another customer on a "goodwill" basis in connection with a fixed price offering.

By including research as a service in distribution, this alternative would permit any broker-dealer, not just a member of the underwriting syndicate, to receive soft dollar designations for research services without having to show that it had engaged in direct selling contact with the customer. The additional revisions would expand the types of research arrangements that would not be considered a discount. Under this approach, the determination as to whether a discount had been granted would depend on the nature of the agreement between the customer and broker-dealer and not on whether the research provided was otherwise commercially available or had a readily ascertainable cash or cash equivalent value.

The Commission recognizes that this alternative has certain advantages over the filed interpretation of proposed Section 24. First, the interpretation embodied in the revised approach may be more easily enforceable since it would not be necessary to determine whether a designated broker-dealer had direct selling contact with a customer or whether "substantially identical" research was being offered

[1]In the Matter of Papilsky Hearings (Proposed Rule Change by NASD), Securities and Exchange Comm'n File No. 4-282, at 979-82 (November 20, 1979).

[2]Securities Exchange Act Release No. 12251 (March 24, 1976).

by others on a cash or cash equivalent basis. Second, the revised approach would appear to alleviate some potential anticompetitive burdens imposed on firms that distribute purchase "third-party research," as opposed to research generated "in-house", on a "goodwill" basis to customers.

The Commission believes, however, that this alternative, by maintaining the distinction between research provided only for "goodwill" and research provided for cash or other agreed upon consideration may impose undue burdens on firms that cannot afford to provide research solely on a "goodwill" basis. In addition, this approach seems to focus more on appearances than on the economic reality of research arrangements as a means of adjusting the value received by a customer paying the public offering price in a fixed price offering. Whether or not the broker-dealer and its customer have agreed on a specific and identifiable *quid pro quo*, the furnishing of research confers some added value. Accordingly, it may not be appropriate to distinguish, for purposes of defining what constitutes a discount, between arrangements that embody such an explicit understanding and those that do not. Indeed, the Commission is concerned that the drawing of such distinctions, which both the filed interpretation and this alternative would do, would tend to promote artificial compensation arrangements in which all parties know, but never explicitly state, that payment is expected for research services. Finally, the restrictions imposed on research by the first alternative may not be necessary or appropriate in furtherance of the purposes of the Act. For these reasons, the Commission believes that the first alternative suggested by the NASD fails to address adequately the Commission's concerns with regard to the NASD's treatment of research in the proposed rule change, as filed.

Alternative 2: The second alternative suggested by the NASD at the hearings would be to treat the provision of *bona fide* research as a sufficient service in distribution, as in the first alternative, but also to place such research in a class by itself so that, unlike other products or services, it could be furnished for soft dollars (even if the consideration were explicitly agreed upon) without being considered to be an improper discount for purposes of Section 24. The record includes several policy arguments for treating research as *sui generis* in this fashion. First, a number of commentators have argued that providing research is a valuable service that constitutes a fundamental part of the distribution process and should, therefore, be protected. Second, several commentators have maintained that soft dollar payments for research have been prevalent for years with no adverse effect on the fixed price underwriting system and that this practice does not give rise to the abuses that proposed Section 24 is designed to prevent. The NASD itself suggested at the hearings that none of the restrictions on *bona fide* research in the proposed Section 24 as filed or in the first alternative are essential to the operation of a fixed price offering.

This second, more liberal alternative appears to eliminate most effectively any potentially unfair discrimination between firms that produce extensive in-house research for distribution to their customers and other firms (including a number of smaller and regional firms having limited in-house research capabilities, or none at all) that provide their customers with research produced by third parties. In addition, the Commission believes the second alternative most clearly and honestly expresses the economic realities of current research compensation practices, which appear to have existed for some time now without any demonstrated harm to the underwriting system. The Commission believes, therefore, that the second alternative is better designed than the first alternative or the proposal as filed to carry out the purposes under the Act that the proposed rule change is intended to promote.

III. PROPOSED SECTION 8—SWAPS

Proposed Section 8 of Article III is another area of the proposed rule change the Commission believes the NASD should re-examine. Section 8 is intended to prohibit overtrading in swap transactions that are effected in connection with fixed price offerings and would require members to purchase securities taken in trade at their "fair market price." As filed, proposed Section 8 defines "fair market price" to mean a price not higher than the lowest independent offer for the securities at the time of purchase. In effect, proposed Section 8 would establish the lowest independent offer as a point below which a swap transaction could not, under any circumstances, be deemed to violate the rule.

The Commission is concerned that, as the NASD stated at the hearings, proposed Section 8 would sometimes permit the acceptance of swapped securities at a price in excess of their actual fair

market value. For example, since proposed Section 8 does not require that the lowest independent offer be determined with reference to the size of a transaction, it would permit a block of securities, including debt securities, to be purchased at a price equal to that offered for a much smaller quantity even though the block might otherwise trade at a discount. In addition, since most dealers usually buy at their bids and not at their offers, the Commission is concerned that, regardless of the size of the transaction, a dealer's purchase of securities at the lowest offer could, in many instances, constitute an overtrade when compared to the dealer's normal pattern of trading.

Even if permissible under proposed Section 8, the acceptance of swapped securities at a price in excess of that a dealer would pay in the absence of the customer's purchase of underwritten securities in a fixed price offering has the effect of reducing or even eliminating the dealer's selling concession and, accordingly, could be considered to confer a discount prohibited under proposed Section 24. The Commission is concerned that this result could be confusing to NASD members and, in fact, may be contrary to the purposes of the proposed rule change. The Commission, therefore, requests the NASD to re-examine proposed Section 8 with a view toward reconciling the apparent inconsistencies between that section and proposed Section 24.

The Commission is aware that, in certain instances, it may be difficult to determine precisely the fair market price of securities taken in trade and that, therefore, there may be advantages in having objective criteria to aid in this determiniation. The Commission believes, however, that any objective standard selected should be designed to account for the size of a transaction and to prohibit a broker-dealer from accepting swapped securities at a price in excess of what it would pay for the same amount of securities in a transaction having similar characteristics but not involving a fixed price offering. The Commission is concerned that the formulation of proposed Section 8, as filed, may not achieve this goal and encourages the NASD to re-evaluate that section to determine how best to arrive at the desired result.

One possible approach would be to eliminate the safe harbor provisions for transactions at or below the lowest independent offer and, instead, to use the lowest offer as a guideline rather than a fixed standard for determining whether a trade has taken place at the fair market price. Under such an approach, a transaction occurring at or below the lowest independent offer would be presumed to have taken place at the fair market price (although the NASD would be able to rebut that presumption), while a transaction above the lowest independent offer would place the burden upon the member to justify the higher price. This approach would allow the NASD to take into account the size of the particular transaction, the member's pattern of trading and other relevant circumstances in determining whether an overtrade had occurred.

Another approach might be to select a standard other than the lowest independent offer that more closely approximates the price at which dealers generally purchase securities, *i.e.*, at the bid. Such an approach would provide a safe harbor only for those transactions occurring below the highest independent bid for the securities. In evaluating this approach, the NASD should consider how it could account for the size of particular transactions.

The Commission encourages the NASD to consider the two approaches suggested above, as well as others, in an effort to develop an alternative formulation of Section 8 that addresses the Commission's concerns. The NASD's formulation should, of course, take into account all relevant aspects of normal swapping practices. For example, the NASD should clarify how the fair market price test would be applied in circumstances where the terms of a swap transaction were agreed upon at a time other than the time of purchase of the underwritten securities. The Commission also believes that the NASD's examination procedures to detect prohibited overtrades should be designed with this and the Commission's other concerns in mind.

IV. CONCLUSION

The NASD, at the hearings, has already indicated its willingness to re-examine the aspects of the proposed rule change discussed above and to consider revising the proposal accordingly. The Commission hopes that, after considering the Commission's concerns, the NASD will file an amended rule change proposal that responds to the concerns addressed above. Of course, the Commission would not be able to reach a final determination to approve the propsed rule change as so amended until notice of amendments had been published and the Commission had given full

consideration to any comments received in response to that notice.

The Commission wishes to thank the NASD for its continued cooperation throughout these proceedings and looks forward to a prompt resolution of this matter.

By the Commission, (Chairman Williams, Commissioners Loomis and Friedman), Commissioner Evans dissenting.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16957/July 3, 1980

In the Matter of

National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On May 5, 1980, the National Association of Securities Dealers, Inc. (the "Association") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which revises Schedule D of the Association's By-Laws to require that NASDAQ Level 1 service provide subscribers with inside quotations for each authorized security for which a minimum of two registered market makers are entering quotations during the day, except in the case of a locked or crossed market where only the highest bid would be displayed. The rule change also would require that, when quotations are released to the news media, Level 1 quotations be used in the NASDAQ Securities and bid and ask quotations representative of the inter-dealer market be used in the case of issues not included in NASDAQ. The rule change also would amend the footnote to Section A of Part XI of Schedule D to reflect a technical change in the average weekly volume ranking formula. The rule change is intended to conform Schedule D to the requirements for the dissemination of inside quotations contained in Rule 11Ac1-2 under the Act. The provisions of that rule prohibiting the display of representative quotations become effective on July 5, 1980.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16812, May 16, 1980) and by publication in the *Federal Register* (45 FR 34490, May 22, 1980). No comments were received. All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and in particular, the requirements of Sections 11A and 15A, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]On June 14, 1980, the NASD requested that the Commission exempt it from the application of subparagraph (c)(2)(i)(A) of Rule 11Ac1-2 to crossed and locked markets in securities quoted on the NASDAQ System. The Commission today granted the exemption by letter pursuant to the requirements of subparagraph (g) of Rule 11Ac1-2.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16958/July 7, 1980

A notice has been issued giving interested persons until July 24, 1980 to comment on the application of FILMWAYS, INC. to withdraw its 6% Convertible Subordinated Debentures (due 1-15-88) from listing and registration of the *American Stock Exchange*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16959/July 7, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-80-12

The Midwest Stock Exchange, Incorporated ("MSE") submitted on June 19, 1980, a proposed rule change under Rule 19b-4 to reassign to the MSE Committee on Specialist Assignment and Evaluation certain duties of the MSE Committee of Floor Procedure, including the examination, assignment, and evaluation, and suspension of specialists.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR-MSE-80-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1934
Release No. 16960/July 7, 1980

In the Matter of

National Association of Securities Dealers, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-3)

ORDER APPROVING PROPOSED RULE CHANGE

I. *Introduction*

On March 17, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] copies of a proposed rule change which would provide for gross reporting of third market transactions.[3]

Notice of the proposed rule change together with its terms of substance was given by publication of a Commission release[4] and by publication in the

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[1]15 USC §78s(b)(1).

[2]17 CFR §240.19b-4.

[3]The proposed rule change would amend Sections 1(a)(2) and 1(b)(2) of Schedule G of the NASD's By-Laws. Schedule G sets forth the procedures for reporting over-the-counter ("OTC") transactions in listed securities to the consolidated transaction reporting system ("consolidated system").

[4]Securities Exchange Act Release No. 16686 (March 21, 1980).

Federal Register.[5] Further, the NASD notified its own members of the proposed rule change, although it did not receive any comments from its members thereon.[6] The Commission has received three comments on the proposed rule change.[7] All written statements regarding the proposed rule change were were filed with the Commission and all written communcations relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communcations which may be withheld from the public[8]) were made available to the public at the Commission's Public Reference Room.[9] As discussed more fully below, the Commission has determined to approved the proposed rule change.

II. *Discussion*

A. Terms and Purpose of the Proposed Rule Change

Presently, OTC market makers in exchange listed securities ("third market makers") are permitted to report OTC transactions in listed transactions in those same securities. While all transactions effected on an exchange are reported on a "gross" basis (*i.e.*, exclusive of any commission which may be charged to the actual customer in connection with the transaction), principal transactions effected OTC are reported on a "net" basis (*i.e.*, exclusive of any commission, commission equivalent or differential, but inclusive of any retail mark-up or mark-down [collectively, "Mark-Up"]).

To achieve "comparability of transaction prices reported" in the consolidated system and to improve "the manner in which transaction prices are disclosed to public investors,"[10] the NASD filed SR-NASD-80-3, which would require reporting OTC transactions on a gross basis, the same as provided by exchanges. Specifically, SR-NASD-80-3 would provide that the reported price:

shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, [1] market conditions with respect to the security, [2] the number of shares involved in the transaction, [3] the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), [4] accessibility to market centers publishing bids and offers with size, [5] the cost of execution and [6] the expenses involved in clearing the transaction.[11]

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[5]45 FR 20604 (March 28, 1980) ("Notice Release"). The NASD consented to an extension of the time period applicable to Commission consideration of the proposed rule change. Form 19b-4A, SR-NASD-80-3, at 6. *See* Section 19(b)(2).

[6]NASD Notice to Members, No. 80-12, To all NASD Members and Interested Parties, from NASD, re Amendments to Procedures for Reporting Third Market Transactions to the Consolidated Tape, dated April 7, 1980.

[7]Letter from Richard D. Scribner, Executive Vice President, American Stock Exchange, Inc. ("Amex"), to George A. Fitzsimmons, Secretary, SEC, dated May 23, 1980 ("Amex Letter"); Letter from Gordon S. Macklin, President, NASD, to George T. Simon, Associate Director, Division of Market Regulation, SEC, dated June 12, 1980 ("NASD Letter"); and Letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE"), to George A. Fitzsimmons, Secretary, SEC, dated May 13, 1980 ("NYSE Letter").

[8]See Section 24(b) of the Act.

[9]See File No. SR-NASD-80-3. The NYSE Letter also referenced its earlier comments on another NASD proposed rule change, SR-NASD-79-12, which is still pending before the Commission. SR-NASD-79-12 would, among other matters, provide for gross reporting of riskless principal trades by non-market makers and reporting of block crosses at an average price. Interested parties are directed to the Commission's File No. SR—NASD-79-12. *See* Securities Exchange Act Release No. 16426 (December 4, 1979), 44 FR 75542 (December 20, 1979); Letter from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated February 21, 1980; Letter from R.T. O'Connell, Treasurer, General Motors Corp. ("GM"), to George A. Fitzsimmons, Secretary, SEC, dated January 30, 1980 ("GM Letter"); and Letter from James E. Buck, Secretary, NYSE, to George Fitzsimmons, Secretary, SEC, dated February 22, 1980.

[10]Notice Release, *supra* note 5, 45 FR at 20604.

[11]Proposed § 1(a)(2), Sch. G. Art. XVIII of the NASD's By-Laws. *See* Notice Release *supra* note 5, 45 FR at 20604.

The NASD envisions that reporting OTC transactions on a gross, rather than net, basis will increase the comparability of transactions reported in the consolidated system and thereby increase investor confidence in the integrity of the consolidated system. For example, the NASD notes that, if, as at present, the consolidated system includes both wholesale prices (*i.e.*, gross) and retail prices (*i.e.*, net) then "many persons and corporations" who use reported transaction prices "for a variety of important inventory and portfolio valuations" may have their securities valued differently than they anticipate.[12] In addition, the NASD notes that "certain. . . practices relating to the execution of limit orders. . . will be substantially improved by"[13] gross reporting.[14]

B. *Comments*

As noted above,[15] the Commission received three comments on the proposed rule change. Two of the commentators, the Amex and NYSE, were generally critical of the proposed rule change. Both the Amex and NYSE concluded that the existing net reporting procedures, notwithstanding their lack of comparability to exchange reporting procedures, should be retained. The third comment was submitted by the NASD to respond to the concerns raised by the Amex and NYSE.

The NYSE agrees that "[t]o the extent that a mark-up or mark-down does, in fact, constitute the equivalent of a commission. . . such a mark-up or mark-down might be excluded from the tape print"[16] and that, in the case of a "riskless principal" transaction, "the spread or mark-up might be viewed as a commission equalivalent."[17] However, both the Amex and the NYSE criticize the absence of objective standards in the proposed rule change to ensure consistent third market price reporting especially regarding block transactions. Moreover, the NYSE suggests that the six specific factors enumerated by the NASD to provide guidance in determining the gross price still allow third market makers too much latitude in determining the reported price of a transaction.

For example, the Amex and NYSE suggest that, without further definition, the term Mark-Up could be construed to include a "dealer's turn," *i.e.*, the profit a dealer normally anticipates receiving from buying at his bid and selling at his offer.[18] The NYSE also contends that the term Mark-Up could be interpreted to include the normal discount from or premium over the prevailing market price in the event of a block transaction.[19]

In particular, the NYSE argues that the rule proposal creates incentives for NASD members to price block transactions at artifically high prices to accomplish certain objectives. First, the NYSE suggests that a third market maker acting as a block positioner may desire to price a transaction artifically high (by including a larger amount in the mark-down and a correspondingly smaller discount from the market price) to create a tape print which will allow him to more effectively liquidate his positon. By so doing, the NYSE claims that NASD members would give the appearance that the block was easily absorbed at a

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[12]Notice Release, *supra* note 5, 45 FR at 20604. For example, in response to the earlier NASD filing, SR-NASD-79-12, GM argued for the complete elimination of net reporting because it funds various of its employee benefit plans with stock valued on the basis of the high and low prices reported for various days in the consolidated system. GM Letter, *supra* note 9. *See In re* Off-Board Trading Restrictions, file No. 4-220, at 183-84, dated June 20, 1979 (Testimony of George M. Ferris, Jr. on behalf of Ferris & Company). *Cf.* NYSE Response to Securities Exchange Act Release No. 13662, 42 FR 33510 (Proposal of Rule 19c-2 under the Act), at 119, dated August 31, 1977 ("NYSE 19c-2 Response"), *in* File No. 4-180.

[13]Notice Release, *supra* note 5, 45 FR at 20604.

[14]In addition, it should be noted that the NASD has agreed to "closely" study the effects of gross reporting in the third market and " to monitor its impact and determine whether any modifications to the reporting procedures are necessary." Notice Release, *id.*, 45 FR at 20604.

[15]See note 7, *supra*.

[16]NYSE Letter, *supra*, note 16, at 2.

[17]*Id.* at 3.

[18]See Amex Letter, *supra* note 7, at 3 and NYSE Letter, *supra* note 7, at 2.

[19]NYSE Letter, *id.*

price at or near the market and thus perhaps enable the third market maker to sell those same securities at a more favorable prices later.[20] Second, the NYSE argues that the rule proposal might have implications for the Commission's announced goal of ensuring nationwide price protection for displayed public limit orders.[21] Specifically, the NYSE suggests that, assuming the existence of intermarket limit order protection, the proposed reporting procedures would allow an NASD member buying a block as a block positioner to price a transaction at an inflated value to avoid triggering various buy limit orders.[22] Third, the NYSE suggests that the rule proposal allows a third market maker acting as a block positioner, when selling securities, to price the transaction artifically high to effect formal, but not substantive, compliance with the Commission's rule governing short sales, Rule 10a-1 under the Act.[23]

The NASD, however, disputes the Amex and NYSE arguments that its proposed reporting standards do not provide sufficient objectivity to ensure consistent reporting by third market makers. Specifically, the NASD states

> [a] mark-up is simply the difference between the price a customer paid for stock and the prevailing wholesale market in the issue at the time of the trade. Conversely, a mark-down is the difference between the price a customer receives for his stock and the prevailing wholesale market. Mark-ups and mark-downs do not exist in trades between NASD members since they are affected at the prevailing wholesale market. . . .[24]

In addition, the NASD indicates that there is a clear understanding in the securities industry that the term Mark-up normally does not include a dealer's turn.[25] Moreover, the NASD further notes that those institutional investors who are fiduciaries, the primary users of the third market for block transactions, can be expected to ensure the proper recording of block transactions.[26]

In response to the concerns raised by the NYSE regarding the effect of the rule on the reporting of block transactions, the NASD notes first that "the majority of block size transactions that are effected on stock exchanges today are negotiated as to the print price and the commission to be charged in the upstairs offices of exchange member firms in much the same manner that they are negotiated by off-board market makers today. . . ."[27] Second, the NASD notes that the price of a block transaction, is normally either subject to arms-length negotiation between institutional investors, in the event of an agency cross transaction, or regulated by the fiduciary obligations of most institutional investors.[28] Finally, in contrast to the NYSE's concerns regarding compliance with Rule 10a-1, the NASD believes that the proposed rule change is "a great improvement over the current reporting procedures which can

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[20]Of course, the Commission would be particularly concerned if third market makers were to pursue such a course of action. *See* Section 9(a)(2) of the Act.

[21]*See* Securities Exchange Act Release No. 15770 (April 26, 1979), 44 FR 26692.

[22]*See also* Amex Letter, *supra* note 7, at 2.

[23]*See also id.*

[24]NASD Letter, *supra* note 7, at 1.

[25]The NASD states

> [n]o one of the industry representatives who worked on our proposed trade reporting procedures has ever heard the term "dealer's turn" used to refer to a mark-up. A "dealer's turn" is the spread between the bid and ask quoted by a wholesale market maker.

Id. at 1.

[26]The NASD states

> [t]raders who represent institutions and initiate block size transactions are highly sophisticated people with strong and clearly defined fiduciary responsibilities. The prospect that they will accept a print price with a discount or premium from the last sale [i]n the security (or from the prevailing consolidated quote) which is an eighth of a point more than what is necessary is highly unrealistic. this is true irrespective of the commission or commission equivalent that has been agreed upon. Institutions simply will not accept tape prints which are away from the wholesale market.

Id. at 3.

[27]NASD Letter, *supra* note 7, at 3.

[28]See note 26, *supra*.

create up ticks and down ticks solely from inclusion of a mark-up or mark-down in the reported price."[29]

C. *Analysis*

The Commission believes that providing for comparable reporting of OTC and exchange transactions is a substantial improvement over the present reporting procedures. While the Commission shares the concerns expressed by commentators, that reporting standards should be clear and readily enforceable, the Commission also is concerned that investors not be misled by inconsistent reporting procedures and that any such inconsistencies not frustrate private contractual agreements regarding the valuation of securities.[30] Therefore, the Commission believes that the proposed rule change is a satisfactory initial approach to the method of reporting OTC transactions with retail customers and that there exist sufficient incentives (*e.g.*, competitive forces and surveillance) to ensure generally consistent reporting.

Specifically, the present differences in reporting exchange and third market transactions may result in public investors misperceiving that their limit orders have not been executed even though the market apparently moved past their limit prices. For example, assume that the market in *Y* security on the NYSE is 20 bid and 20-1/4 offered and that there are limit orders to buy on the specialist's book at 19 7/8. Further, assume that a third market maker agrees to buy 5,000 shares of *Y* at 20 minus 1/4 mark-down. Because the third market maker presently is required to report the transaction inclusive of mark-down, he would report the trade at 19 3/4. As a result, the investors who placed limit orders at 19 7/8 might receive indications, through the newspapers or otherwise, that the market had moved past their limit price without any resulting execution of their orders. In contrast, under the proposed reporting procedures, the third market maker would report the transaction at 20 thus eliminating this problem.

In addition, as noted by the NASD, net reporting can create situations where an issuer's securities are valued on the basis of the retail price rather than, as intended by the issuer, the wholesale price. Gross reporting, as proposed by the NASD, should remove this problem.[31].

Finally, the Commission does not believe that the specific issues raised by the Amex and NYSE outweigh the benefits noted above. The Commission agrees with the NASD that there is general industry understanding of what a Mark-Up includes.[32] Furthermore, the Commission believes that the six factors enumerated by the proposed rule change will provide sufficient guidance to third market makers to ensure consistent reporting with the exchanges. This would appear especially likely in light of the competitive and economic incentives third market members would have to report agency trades at prices which accurately reflect the prevailing wholesale market. Moreover, the Commission believes that the NASD's commitment to monitor carefully third market maker compliance with the new reporting procedures also should ensure consistent reporting.[33]

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[29]NASD Letter, *supra* note 7, at 4. An "up tick" is a purchase at a price above the last reported transaction price and a "down tick" is a purchase at a price below the last reported transaction price.

[30]*See* GM Letter, *supra* note 9, and text accompanying note 12, *supra*.

[31]The Commission also notes that, since the filing of SR-NASD-80-3, Rule 19c-3 under the Act has been adopted. Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125 (June 18, 1980)("Rule 19-3 Adopting Rule Release"). If the adoption of Rule 19c-3, which removes off-board trading restrictions regarding certain newly listed securities, results in increased third market trading, the concerns raised by the lack of comparability in reporting may be of greater significance.

[32]*Cf.* Letter from Jeffrey L. Steele, Assistant Chief Counsel, Division of Market Regulation, to Jack A. Alexander, President, First Affiliated Securities, dated December 10, 1979, publicly available January 10, 1980 (regarding definitions of the terms mark-up and mark-down for purposes of rule 10b-10 under the Act).

[33]In this regard, the Commission notes that it called for the NASD to undertake "a rigorous monitoring and enforcement effort," (Rule 19c03 Adopting release, *supra* note 31, at 35, 45 FR at 41131) to prevent overreaching (*see id.* at 19 n. 33, 45 FR at 41128 n.33) in Rule 19c-3 securities. Specifically, the Commission called for, among other matters, "evaluation of individual [OTC] transactions . . . taking into account (1) the net transaction price to

The Commission is mindful of the concerns raised regarding the possibility that third market makers might abuse the proposed rule change in reporting block transactions but does not believe those concerns should cause it to disapprove the proposed rule change. the method by which third market makers would report block transactions is in many respects similar to the current method by which exchange members assemble and price block transactions.[34] Moreover, it would seem unlikely that institutions, particularly those who are fiduciaries, and, as such, are responsible both for the quality of their executions received and for the amount of commissions or commission equivalents paid, would permit discounts or premiums from the market price to be included in the Mark-Up. Thus, such investors should be capable of ensuring the proper recording of transaction prices and Mark-Ups.[35]

III. *Conclusion*

For the reasons discussed above, the NASD proposal appears to offer a useful experimental step toward a greater comparability of transaction information. Therefore, in light of the NASD's commitment to monitor the effects of the proposed rule change and to modify its reporting procedures if necessary,[36] the Commission finds that the proposed rule change is, on balance, consistent with the requirements of the Act (particularly Sections 11A and 15A thereof) and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes that the proposed rule change should further the goals of Sections 11A(a)(1)(C)(iii) and 15A(b)(6) of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above mentioned proposed rule change, SR-NASD-80-3, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

Footnote 33 continued

customers; (2) the amount of mark-up or mark-down; (3) the net price reported to the consolidated system; and (4) the price obtainable if the customer's order were executed on an agency basis in another market." *Id.* at 35, 45 FR at 41131.

[34]Indeed, the NYSE Letter itself notes that its members determine the price of a block cross transaction after "probing the market" to determine the number of eligible limit orders at particular cross transaction prices. NYSE Letter, *supra* note 7, at 6.

[35]In addition, the Amex and NYSE's concerns regarding the Rule 10a-1 seem misplaced. In every situation where a third market block positioner seeks to sell a security, the net price, inclusive of the premium for selling the block, would be higher than the gross price exclusive of the mark-up. For example, assume the current quotation for Z security was 20 - 20 1/4, the last transaction was on a minus tick at 20 3/8 and that customer wished to buy a block of stock from a third market maker who was willing to sell the stock short. Assuming further a 1/4 point mark-up, net printing of the transaction, *i.e.*, 20 1/2, would avoid the strictures of Rule 10a-1, whereas gross printing under the rule proposal, *i.e.*, 20 1/4, would fall within the Rule's prohibition.

In addition, the concern that a third market maker would price a transaction so as to avoid public limit orders seems misplaced. Normally, if a third market maker is positioning stock, as an accommodation for a customer, he seeks to avoid taking down any more stock than is necessary. Thus, his incentive is to give up more stock to the limit order book, not less. Indeed, a third market maker, acting as a block positioner, would only have an incentive to avoid giving up orders to the book when he has arranged a cross transaction and does not wish to have the cross broken up by losing orders to the book. In this situation, however, the third market maker normally would be acting as agent for two institutions bargaining at arms-length over the transaction price. thus, in the primary situation where a third market maker might wish to avoid the book, the accuracy of the transaction price is ensured by arms-length institutional buyers and sellers.

[36]The Commission expects the NASD to make a major commitment of staff resources to conduct surveillance for violations of its reporting rules, to monitor the effects of its rule, and to report the results of such surveillance and monitoring to the Commission by January 12, 1981. In addition, the Commission will be alert to possible instances in which these reporting procedures may be improved and remains prepared to take appropriate action if necessary.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16961/July 8, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6221/July 8, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 16962/July 8, 1980

An order has been issued granting the application of *American Stock Exchange, Inc.* to strike the common stock (Par Value $.10) of GAYNOR-STAFFORD INDUSTRIES INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16963/July 8, 1980

An order has been issued granting the application of the *American Stock Exchange* to strike the common stock (Par Value $.10) of FAIRFIELD-NOBLE CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16964/July 8, 1980

MODIFICATION OF RULE 10a-1 RELATING TO SHORT SELLING BY MARKET MAKERS

ACTION: Proposed rule amendments.

SUMMARY: The Commission is proposing for comment amendments to its rule governing short sales. The amendments would (1) modify the Rule to permit a market maker, under certain specified circumstances to effect short sales of a security at a price equal to that market maker's most recently communicated offer for that security, and (2) modify the rule to provide a new definition of the term "third market maker."

DATE: Comments must be received on or before August 31, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-842 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt (202-272-2888), Room 390, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 10a-1[1] ("Rule") under the Securities Exchange Act of 1934 ("Act"), the Commission's anti-manipulative rule regulating short sales,[2] generally provides that short sales in reported securities (*i.e.*, securities as to which transaction information is reported in the consolidated transaction reporting system ("consolidated system"))[3] may be effected only on a plus-tick or a zero-plus tick, established by reference to the last sale from any market reported in the consolidated system.[4] Paragraph (e)(5) of the

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[1]17 CFR 240.10a-1.

[2]Rule 10a-1 was designed to accomplish three objectives: (1) to allow relatively unrestricted short selling in an advancing market; (2) to prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down; and (3) to prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25443.

[3]*See* Rule 11Aa3-1 under the Act, 17 CFR 240.11Aa3-1.

[4]Rule 10a-1(a)(1). The Rule permits an exchange to elect to have the permissibility of short sales in reported securities determined solely by reference to the last sale on that exchange rather than by reference to the last sale reported in the consolidated system. Rule 10a-1(a)(2). To date, only the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") have elected to use the last sale of their respective markets. *See* Securities Exchange Act Release Nos. 12201 (March 12, 1976), 41 FR 11907, and 12357 (April 21, 1976), 41 FR 17633.

Rule, however, commonly referred to as the "equalizing exemption," provides an exception to this general provision which allows a market maker (exchange specialist, registered exchange market maker or third market maker) to effect short sales for his own account at a price equal to the last sale price reported in the consolidated system (*i.e.*, on a zero-plus tick *or* a zero-minus tick).[5]

Notwithstanding the special treatment afforded market makers under paragraph (e)(5) of the Rule, there appears to be a conflict between that provision and the "firmness requirement" contained in paragraph (c)(2) of rule 11Ac1-1 under the Act ("Quote Rule").[6] The following hypothetical example illustrates this conflict. Assume that market maker who is short XYZ stock makes an offer which, if executed against at the time it was initially made, would be in compliance with Rule 10a-1, *e.g.*, at a price of 20-1/8 when the last sale reported in the consolidated system is also 20-1/8. Further, assume that there is a "trade-through"[7] of the market maker's offer on another market center which causes an up-tick to be reported in the consolidated system at 20-1/4. Finally, assume that a buy order is sent to a market maker *after* the trade-through at 20-1/4 has been reported. Under these circumstances, in order to assure compliance with Rule 10a-1, the market maker must refuse to execute the order on a down-tick of 20-1/8. In doing so, however, he would violate the "firmness requirement" of the Quote Rule. In addition, when a market maker "backs away" from an order, he may be revealing his short position in the security, thus making it more difficult to liquidate that position at a favorable price.

In order to resolve the conflict between the requirements of rules 10a-1 and 11Ac1-1,[8] the Commission is publishing for comment an amendment to paragraph (e) of Rule 10a-1 which would permit a market maker to effect short sales of a security at a price equal to that market maker's most recent offer for that security communicated pursuant to the Quote Rule if such offer, when communicated, was equal to or greater than the last sale for such security reported in the consolidated system.[9] As a general matter, such short sales would not appear to present the potential for manipulative abuse which Rule 10a-1 was designed to prohibit.[10]

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[5]Rule 10a-1(e)(5).

[6]17 CFR 240.11Ac1-1. The "firmness requirement" provides, in effect, that a market maker must honor his displayed quotations.

[7]The term "trade-through" generally refers to the execution of an order on one market center at a price inferior to that being displayed by another market center. It should be noted that, with respect to trade-throughs effected on market centers linked through the Intermarket Trading system ("ITS"), the Commission has taken the position that such trade-throughs constitute "unacceptable behavior." Moreover, the Commission has directed ITS market centers to take prompt action to resolve the trade-through problem. *See* Securities Exchange Act Release No. 15671. (March 22, 1979), 44 FR 20360.

[8]This conflict does not currently exist with respect to short sales effected on the NYSE and Amex because, as noted above, both primary exchanges use last sale reports from their own markets to gauge compliance with Rule 10a-1 and therefore would not be affected by trade-throughs effected in other markets.

[9]It is the Commission's understanding that such an amendment would also ensure that the National Association of Securities Dealers' ("NASD") NASDAQ system, upgraded and enhanced as an automated execution facility, could be operated in compliance with Rule 10a-1. The enhanced NASDAQ system is expected to begin operation on a pilot basis by October 1980.

[10]It should be noted, however, that the proposed amendment to paragraph (e)(5) of the Rule would permit substantial short selling on what is technically a prohibited down-tick. For example, if a market maker offers 100 shares of XYZ stock on a down-tick of 20-1/8. In addition, since the new last sale price would be 20-1/8, the market maker (as well as other market makers) would be able to effect additonal short sales at a price of 20-1/8 pursuant to the equalizing exemption. Although such sales would be effected on what is technically a down-tick, they do not appear to be inconsistent with the spirit of Rule 10a-1 inasmuch as they are caused solely through the occurrence of a trade-through.

At the same time, however, in view of the historical concerns which have been raised in connection with short selling, the Commission is concerned that any modification of the "tick test" provisions of Rule 10a-1 may have unanticipated negative consequences.[11] Accordingly, the Commission request commentators to provide their views as to whether the proposed amendment of paragraph (e)(5) of the Rule would increase the possibility of market manipulation through short sales.

The Commission also is publishing for comment technical amendments to paragraphs (e)(3), (e)(4) and (e)(5) of the Rule which would modify the definition of "third market maker." At present, the term "third market maker" is limited to those over-the-counter dealers who have filed notice of their exempt credit status on Form X-17A-16(1) under the Act.[12] Because this definition restricts the availability of exceptions to Rule 10a-1 in circumstances which do not appear to raise any manipulative concerns, the Commission is publishing for comment a new definition of the term "third market maker" based, in large part, on the definition provided in the Quote Rule.[13]

TEXT OF PROPOSALS

Part 240 of Title 17 of the Code of Federal Regulations is proposed to be amended by revising paragraphs (e)(3), (e)(4) and (e)(5) of §240.10a-1 to read as follows:

§ 240.10a-1 Short sales.

* * * * *

(e) The provisions of paragraphs (a) and (b) of this section (and of any exchange rule adopted in accordance with paragraph (a) of this section) shall not apply to—

* * * * *

(3) Any sale by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker, to offset odd-lot orders of customers;

(4) any sale by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker to liquidate a long position which is less than a round lot, provided such sale does not change the position of such odd-lot dealer or such market maker by more than the unit of trading;

(5) Any sale of a security covered by paragraph (a) of this section (expect a sale to a stabilizing bid complying with § 240.10b-7) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter.

(i) effected at a price equal to or above the last sale reported for such security pursuant to an effective transaction reporting plan; or

(ii) effected at a price equal to the most recent offer communicated for that security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association pursuant to § 240.11Ac1-1, if such offer, when communicated, was equal to or above the last sale reported for such security pursuant to an effective transaction reporting plan;

Provided, however, That any exchange, by rule, may prohibit its registered specialists and registered

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[11]The Commission is also concerned that the proposed amendment to paragraph (e)(5) would provide relief from Rule 10a-1 to third market makers who fail to update their quotations on a timely basis. It should be noted, however, that such behavior raises serious questions under the Quote Rule, which requires responsible brokers and dealers to "promptly communicate" their bids, offers and quotation sizes. As a result, the Commission's staff has requested the NASD to take action to assure that its members are promptly updating their quotations.

[12]17 CFR § 249.631.

[13]In this regard, it should be noted that, under the Commission's proposed definition of the term "third market maker," the exceptions contained in paragraphs (e)(3), (e)(4) and (e)(5) of the Rule would be available, with respect to short sales of a reported security, only if an over-the-counter dealer communicates quotations for such reported security to a national securities association pursuant to the Quote Rule.

exchange market makers from availing themselves of the exemptions afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors;

* * * * *

For the purposes of paragraph (8) of this section a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt. For the purposes of paragraphs (3), (4) and (5) of this section, the term "third market maker" shall mean any dealer who, with respect to a particular security, holds itself out as being willing to buy and sell such security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size and who has filed a report for such security on Form X-17A-9(1) [§249.917(1) of this chapter].

* * * * *

[Secs. 10 and 23, Pub. L. 78-291, 48 Stat. 891 and 901, as amended by sec. 18, Pub. L 94-29, 89 Stat. 155 (15 U.S.C. 78j and 78w); sec. 11A, as added by sec. 7, Pub. L. 94-29, 89 Stat. 111 (15 U.S.C. 78k-1)]

By the Commission.

George A. Fitzsimmons,
Secretary.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16965/July 8, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-7)

ORDER APPROVING PROPOSED RULE CHANGE

On May 27, 1980, the Pacific Stock Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend its Options Floor Procedure Advice B-5 to establish attendance requirements for Market Makers and specify disciplinary procedures and the specific sanctions that may be imposed for failure to satisfy those attendance requirements. The proposed amendment also would establish rules governing the granting of leaves of absence to Market Makers.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16855, May 29, 1980) and by publication in the *Federal Register* (45 FR 37794, June 4, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16966/July 8, 1980

RECORD PRODUCTION OBLIGATIONS AND RECORD DESTRUCTION AND DISPOSITION RIGHTS OF REGISTERED CLEARING AGENCIES, THE MUNICIPAL SECURITIES RULEMAKING BOARD, NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules governing record retention, production and destruction by self-regulatory organizations in order to extend the requirements embodied therein to registered clearing agencies and the Municipal Securities Rulemaking Board. In accordance with Section 17A(d)(3)(A)(i) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System at least fifteen days prior to this announcement.

DATES: Comments should be submitted on or before August 8, 1980.

ADDRESSES: Persons wishing to submit written views should file 6 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-843 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Judith Axe, Division of Market Regulation, Securities and Exchange Commission, Room 351A, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2415.

SUPPLEMENTARY INFORMATION: Rule 17a-1 [17 CFR 240.17a-1] under Section 17(a) of the Securities Exchange Act of 1934 ("Act"), requires national securities exchanges and registered securities associations to keep, and to permit the copying by members of the Commission's staff of, all documents made or received by such organizations in the course of their business and in the conduct of their self-regulatory activities.[1] Rule 17a-1 also requires that such records be kept for a period of not less than five years subject to the destruction and disposition provisions of Commission Rule 17a-6 [17 CFR 240.17a-6].

Shortly after the adoption of Rule 17a-1 in 1974, Congress amended Section 17 of the Act as part of the Securities Acts Amendments of 1975 ("1975 Amendments"),[2] and expanded the coverage of paragraph (a) to include registered clearing agencies and the Municipal Securities Rulemaking Board ("MSRB"), as well as registered municipal securities dealers, registered securities information processors and registered transfer agents. While the coverage of Section 17(a)(1) of the Act has now been expanded to require these entities to keep and provide the Commission with copies of such records as the Commission prescribes by rule, the Commission has not to date adopted general recordkeeping rules applicable to these entities. The Commission believes that it would be appropriate at this time to amend Rule 17a-1 to require registered clearing agencies and the MSRB to be subject to its recordkeeping requirements.

At the same time, the Commission proposes to amend Rule 17a-6, which currently applies only to exchanges and associations, to encompass clearing agencies and the MSRB.[3] Rule 17a-6 is designed to reduce the burden of the five-year record retention requirements of Rule 17a-1 by permitting the early destruction or conversion to microfilm or other recording media of records maintained under Rule 17a-1, pursuant to a record destruction plan filed with and approved by the Commission.

The proposed amendments to Rules 17a-1 and 17a-6 are intended to extend the application of the rules consistent with the authority Congress granted to the Commission through Section 17(a) of the Act and are not based on any lack of cooperation from the

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[1]*See* Securities Exchange Act Release No. 10809 (May 17, 1974), 39 FR 18765 (May 30, 1974).

[2]Pub. L. No. 94-29 (June 4, 1975).

[3]At this time the Commission also is correcting a textual error made in drafting the original rule which inadvertently omitted national securities associations from subparagraph (a) of Rule 17a-6.

MSRB or the clearing agencies in furnishing documents requested by the Commission staff.[4]

Accordingly, the Commission proposes to amend §§240.17a-1 and 240.17a-6 of Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:[5]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.17a-1 Recordkeeping rule for national securities exchanges, [and] national securities associations, *registered clearing agencies and the Municipal Securities Rulemaking Board*

(a) Every national securities exchange, [and] national securities association, *registered clearing agency and the Municipal Securities Rulemaking Board* shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.

(b) Every national securities exchange, [and] national securities association, *registered clearing agency and the Municipal Securities Rulemaking Board* shall keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a-6.

(c) Every national securities exchange, [and] registered securities association, *registered clearing agency and the Municipal Securities Rulemaking Board* shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (a) and (b) of this section.

§240.17a-6 Right of national securities exchange [or], national securities association, *registered clearing agency or the Municipal Securities Rulemaking Board* to destroy or dispose of documents.

(a) Any document kept by or on file with a national securities exchange, *national securities association, registered clearing agency or the Municipal Securities Rulemaking Board* pursuant to the Act or any rule or regulation thereunder may be destroyed or otherwise disposed of by such exchange, [or] association, *clearing agency or the Municipal Securities Rulemaking Board* at the end of five years or at such earlier date as is specified in a plan for the destruction or disposition of any such documents if such plan has been filed with the Commission by such exchange, [or] association, *clearing agency or the Municipal Securities Rulemaking Board* and has been declared effective by the Commission.[6]

(b) Such plan may provide that any such document may be transferred to microfilm or other recording medium after such time as specified in the plan and thereafter be maintained and preserved in that form. *If* [Any] *a* national securities exchange, [or] association, *clearing agency or the Municipal Securities Rulemaking Board* [which] uses microfilm or other recording medium *it* shall (1) be ready at all times to provide, and immediately provide, easily readable projection of the microfilm or other recording medium and easily readable hard copy thereof, (2) provide indexes permitting the immediate location of any such document on the microfilm or other recording medium, and (3) in the case of microfilm, store a duplicate copy of the microfilm separately from the original microfilm for the time required.

(c) For the purposes of this rule a plan filed with the Commission by a national securities exchange, [or]

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[4]Of course, under Section 17(b) of the Act, as amended by the 1975 Amendments, representatives of the Commission have direct statutory authority to obtain copies of any records maintained by persons described in Section 17(a) in the course of periodic, special or other examinations.

[5]In the text of the proposed amendment, "[ ]" indicate material to be deleted and italics indicate new material.

[6]It should be noted that with respect to a clearing agency for which the Commission is not the appropriate regulatory agency, as defined in Section 3(a)(34)(B) of the Act, Section 17(c)(1) of the Act requires such clearing agency to file with the appropriate regulatory agency a signed copy of any application, document or report filed with the Commission.

association, *clearing agency or the Municipal Securities Rulemaking Board* shall not become effective unless the Commission, having due regard for the public interest and for the protection of investors, declares the plan to be effective. The Commission in its declaration may limit the applications, reports, and documents as to which it shall apply, and may impose any other terms and conditions to the plan and to the period of its effectiveness which it deems necessary or appropriate in the public interest or for the protection of investors.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16967/July 8, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-77-8)

ORDER APPROVING PROPOSED RULE CHANGE

On March 4, 1980, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] (the "Act") and Rule 19b-4 thereunder, copies of Amendment No. 1 with respect to a proposed rule previously filed on July 7, 1977. The proposed rule, Article III, Section 35 of the Rules of Fair Practice, is an "enabling" rule that authorizes the NASD Board of Governors (the "Board") to adopt rules regulating the involvement of NASD members and their affiliates and associates in direct participation programs (programs with flow-through tax consequences).[2] Specifically, Section 35 authorizes the Board to adopt rules relating to: (1) the operation, structure, and management of programs of which an NASD member or affiliate of a member is a sponsor; (2) the underwriting of, advertising and sales literature in, and suitability of investments in, programs of which an NASD member or affiliate of a member is an underwriter, a participant in the distribution, or a sponsor; and (3) the definitions of terms used in connection with direct participation programs.

Rules adopted by the Board pursuant to Section 35 will be filed for Commission approval pursuant to Section 19(b) of the Act. If approved, they will be incorporated into an Appendix F to the NASD's Rules of Fair Practice.

The purpose of the proposed rule is to establish a system of regulation in connection with the distribution of direct participation programs by NASD members and the sponsorship of such programs by NASD members or their "affiliates."[3] More particularly, the purpose of the proposed rule is to prohibit abuses by members and persons associated with members that the NASD has identified in the distribution and sponsorship of programs.

The NASD first proposed to develop a regulatory scheme for direct participation programs in 1972. Antecedents of Section 35 were published by the NASD for comment by members and other interested persons in 1972 and 1973. Those earlier proposals for regulating direct participation programs would have regulated the operation, structure, and management of any direct participation program underwritten by an NASD member, even if the program sponsor was not an NASD member or affiliate.

In 1973, the Commission solicited public comment on, among other things, whether it would be "appropriate" and "practical" to limit the application of rules concerning operation, structure, and management to member-affiliated sponsors.[4] A

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[1]15 U.S.C. 78(s)(b)(1).

[2]Although Section 35 provides that the Board may adopt rules pursuant to that section without recourse to the membership for approval, the NASD has indicated that it will not adopt or amend rules under Section 35 without first submitting such rules or amendments (other than technical changes) to its membership for comment. Amendment No. 1, p. 8, File No. SR-NASD-77-8.

[3]See Section 35(d)(1).

[4]Securities Exchange Act Release No. 10260 (July 2, 1973).

number of comments received in response to that release questioned the NASD's authority to adopt rules affecting sponsors not affiliated with NASD members. The NASD thereafter redrafted its regulatory proposal to limit the application of rules concerning operation, structure, and management to programs of which an NASD member or affiliate is a sponsor.

The current proposal was approved by the NASD membership in 1977 and subsequently filed with the Commission. Notice of the proposed rule was given by publication of a Commission release[5] and by publication in the *Federal Register*.[6] As discussed below, one letter of comment was received in response to that notice of filing. The NASD more recently amended its filing to give additional notice of the basis and purpose of its rule proposal, and the amended notice was published for public comment.[7] In response to that notice, one comment letter was received after the expiration of the comment period.

Since Section 35 is in the nature of an enabling rule authorizing the Board to adopt specific, substantive regulations, the Commission has analyzed the proposed rule from the perspective of whether the authority could be used to further the purposes of the Act and whether the proposed rule would confer authority upon the Board that would exceed any limitations upon the NASD's regulatory authority under the Act. In that regard, the one comment letter received by the Commission questioned the NASD's authority to regulate the operation, structure, and management of direct participation programs sponsored by affiliates of NASD members, arguing that an affiliation between the NASD member and the program sponsor was an insufficient basis for such "issuer-oriented" regulation.

The NASD has indicated that the rules concerning operation, structure, and management will not be applied to sponsors who are affiliates of NASD members solely on the basis of a legal affiliation. The NASD has argued that, as a general matter, a sufficient factual nexus exists between a member's traditional securities or brokerage activities and the sponsorship of direct participation programs to support such an assertion of jurisdiction. The NASD has stated:

> In adopting proposed Article III, Section 35, the Association was relying upon the cumulative experience of its Board, relevant committees and staff which experience has demonstrated that, even if a member is not participating in the distribution of program interests, when a member or affiliate acts as sponsor of a limited partnership, there exists such an identity of interest between the member and the sponsor as to make the individual interests of the two indistinguishable. . . .There is very often common personnel between the member and the sponsor such that the one is the alter ego of the other and it becomes impossible to determine whether the broker-dealer or its affiliate/sponsor is performing a particular action.
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> This situation is exacerbated by the fact. . .that a limited partnership is wholly managed by, and acts only in the person of, its general partner or sponsor. . . .When this situation is combined with the coincidence of a broker-dealer or its affiliate performing the functions of sponsor, a potentially dangerous situation is created. This is so because a broker-dealer, existing as does any broker-dealer primarily for the purpose of selling securities, fully qualified to sell such securities, holding Association membership, and presumably respected by investors as a source of sound investment advice, is placed in a position to exert control, or be subject to control, which could lead to the structuring of an offering of securities in a way to conceal conflicts of interest and to incorporate weaknesses into the structure of a program solely to make the program interests a more attractive sales item.
>
> The Association maintains that the presence of an Association member in such a position as to influence the creation and marketing, from a sponsor's viewpoint, of program interests

[5]Securities Exchange Act Release No. 13753 (July 15, 1977).

[6]42 FR 37461 (July 21, 1977).

[7]Securities Exchange Act Release No. 16659 (March 17, 1980), 45 FR 18534 (March 21, 1980).

imposes upon the Association the responsibility to assure that that member is prevented from abusing investors and the public interest. . . .[8]

The NASD believes that Section 35 is consistent with the Act and indicates that it will adopt rules in furtherance of the purposes of the Act under Section 35 if approved. Section 15A(b)(6), for example, provides that the NASD's rules must be designed to prevent fraudulent acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. At the same time, the NASD is mindful of the fact that there are limits to the regulatory authority conferred upon it by the Act. Section 15A(b)(9) provides that the NASD may not adopt rules that impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(6) provides that the rules of the NASD may not be designed to discriminate unfairly among issuers or broker-dealers or to regulate by virtue of any authority under the Act matters not related to the purposes of the Act.[9]

One commentator noted that any substantive rules adopted by the NASD pursuant to Section 35 and approved by the Commission will apply only to programs sponsored by NASD members or their affiliates. It was argued that the rules would, therefore, place NASD members at a competitive disadvantage with respect to nonmembers and would unfairly discriminate between members and nonmembers. The Commission, however, does not believe that arguments based essentially upon the limits of NASD authority can provide a basis for reaching a general conclusion that the NASD is barred from regulating the involvement of its members in sponsoring direct participation programs. In that connection, the Commission has concluded that Section 35 would not be inconsistent with the limitations upon NASD rulemaking authority contained in Sections 15A(b)(6) and 15A(b)(9) of the Act.

One other commentator argued that public direct participation programs are "already sufficiently regulated as to substance and sufficiency of disclosure" by both the Commission and state securities administrators. The Commission does not believe that it should disapprove proposed Section 35 because offerings of direct participation programs are subject to the requirements of the Securities Act of 1933 or to regulation by the states. In some circumstances, however, those considerations might be pertinent to an evaluation of particular proposed rules filed by the NASD pursuant to Section 35.

The Commission finds that Section 35 is consistent with the Act and the rules thereunder applicable to a national securities association and, in particular, the requirements of Section 15A and the rules thereunder. Section 35, of course, does not impose any substantive requirements upon NASD members, and determinations concerning any rules adopted by the NASD Board of Governors must await the filing of those rules pursuant to Section 19(b) of the Act. Nevertheless, the Commission believes that the NASD could adopt rules pursuant to Section 35 that are designed to further purposes of the Act and that would not exceed the NASD's regulatory authority under the Act.

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[8]See File No. SR-NASD-77-8, letter of July 27, 1979 to Roger D. Blanc from Dennis C. Hensley, Vice-President, NASD.

[9]The *Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249* states:

The bill would eliminate present Section 6(c) and the open-ended authority it grants to the exchanges, and it would limit by Sections 6(b)(5) and 15A(b)(6) the scope of the self-regulatory organizations' authority over their members to matters related to the purposes of the Exchange Act. The growing diversification of securities firms into non-securities activities has raised, and will continue to raise, significant questions about the adequacy of the present regulatory structure. However, the diversification of securities firms should not automatically extend the jurisdiction of the self-regulatory agencies. Until it is specifically demonstrated to the Congress that the non-securities activities of firms which are members of self-regulatory agencies should be limited or regulated in the public interest, such firms should be free to undertake and pursue these activities in the same manner as other business organizations, subject only to those regulatory limitations necessary to assure protection of public investors and the public interest.

S. Rep. No. 94-75, 94th Cong., 1st Sess. 28 (1975).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and it hereby is, approved.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16968/July 8, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

ORDER INSTITUTING PROCEEDINGS TO DETERMINE WHETHER TO DISAPPROVE PROPOSED RULE CHANGE

I. *Introduction*

The Chicago Board Options Exchange Incorporated ("CBOE") has filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act")[1] and Rule 19b-4 thereunder[2] a proposed rule change[3] that would restructure the CBOE disciplinary process. The proposed rule change was adopted by membership petition, over the opposition of the Board of Directors. According to the CBOE Market Maker Association ("Association"), the proponent of the rule changes, the proposed modifications are designed to improve the exchange's judicial procedures and to bring them into conformity with the law and Commission regulations. The Association states that the proposals are designed to reduce the number of enforcement actions brought for violations of CBOE rules, in particular, the rules respecting position limits and off-floor trades by market makers.[4] The CBOE Board of Directors unanimously opposed the proposed rule change on the grounds that their adoption would result in unnecessary delay and expense in the resolution of disciplinary matters, as well as instability and lack of continuity in the disciplinary process.[5] The proposed rule change was approved by a membership vote at a special meeting held on December 19, 1979.

II. *Background*

1. *Current CBOE Disciplinary Systems and Procedures*

Under current CBOE rules, following the conclusion of a staff investigation of possible misconduct, the CBOE Business Conduct Committee ("BCC"), a standing committee currently comprised of a cross section of exchange members and one representative of the public, reviews the staff's recommendation and findings to determine whether formal disciplinary proceedings should be instituted.[6] If the BCC determines that there is probable cause for finding a violation within the disciplinary jurisdiction of the CBOE, it directs the staff to prepare a statement of charges against the person or organization alleged to have committed the violation (the "respondent"). A copy of the

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[1]15 U.S.C. §78s(b)(1).

[2]17 CFR 240.19b-4.

[3]File No. SR-CBOE-80-1. Notice of the filing was given by issuance of a Commission release and by publication in the *Federal Register*. Securities Exchange Act Release No. 16551 (February 1, 1980), 45 FR 8411. No comments were received.

[4]CBOE Rules 4.11 and 8.1. An Association Newsletter dated December 10, 1979, stated that "This year 94 floor members of the CBOE have been cited for major violations. On the NYSE the count is 4." It further states that most of these violations involve "[v]ictimless crimes as position limit violations and off floor trading into market maker accounts. In offenses of a serious nature, the CBOE runs about the same as NYSE, 4 a year." The Newsletter concluded that the implementation of the proposed rule change "* * * may result in cut[ting] the number of violations back down to 4." *See* exhibit 3 to the CBOE's Form 19b-4A.

[5]*See* letter dated December 5, 1979, from Wally E. Auch, Chairman of the Board, and Edward F. Neild, Chairman of the Executive Committee, to the CBOE membership.

[6]CBOE Rule 2.5 provides that the BCC shall consist of at least four members of the Exchange or Registered Options Principals ("ROP") associated with members and either one officer of the Exchange or

charges must be served upon the respondent[7] who may submit a written statement to the BCC setting forth why he should not be named in a statement of charges or why an offer by the respondent to settle those charges should be accepted.[8]

If the BCC issues a statement of charges, a hearing on the merits is held before a panel of one or more of its members at which the respondent is entitled to present evidence and produce witnesses, and to be represented by counsel who may participate fully in the hearings.[9] Following the hearing, the panel issues a written decision setting forth its findings, and if a violation is found to have been committed, imposing a penalty, if any.[10]

A respondent has the right to appeal any decision of the BCC to the Board of Directors.[11] The Board also may review a BCC decision on its own initiative. Board reviews are conducted by the full Board of Directors or by a committee of the Board composed of at least three directors. The Board may affirm, reverse or modify, in whole or in part, the decision of the BCC.[12]

2. *Summary of Proposed Rule Change*.

a. *Bifurcation of BCC Functions*

The proposed rule change would remove the existing authority of the BCC to initiate formal disciplinary actions, and would vest that authority in a new Complaint Committee ("CC") whose sole function would be to determine whether or not probable cause exists to issue a statement of charges and, if so, to issue the charges.[13] A respondent would be entitled to an oral hearing before the CC at which he would have the right to present evidence and be represented by counsel.[14] After the hearing before the CC, if a statement of charges is issued, another hearing would be held, this time before the BCC, to determine whether a violation has occurred and whether to accept offers of settlement.

The rule proposal would eliminate the ability of the BCC to hold hearings by a panel of its members and would require the BCC to hold hearings with a full committee.[15] Any action taken by the BCC would require the vote of a majority of all its members.[16] Similar requirements would be applicable to the CC.[17]

b. *Composition and Method of Selection of BCC and CC Members*

Eligibility for membership on the BCC and CC would be restricted to members and Registered Options Principals ("ROP") associated with members.[18] Thus, the amendment would eliminate the present practice of having a public representative or an officer of the CBOE on the BCC. Further, the proposed rule change would provide for the annual

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Footnote 6 continued

one non-member who is not engaged in the conduct of a public securities business. The BCC currently consists of five market makers, one floor broker, two ROPs associated with public brokerage firms and one public representative. Members of the BCC are appointed by the Chairman of the CBOE Executive Committee, with the approval of the Board of Directors.

[7]CBOE Rule 17.3.

[8]Memorandum from CBOE Executive Committee to Membership, dated September 14, 1979.

[9]CBOE Rule 17.5.

[10]If the hearing panel is composed of less than a majority of the BCC, its determination must be reviewed by a majority of the BCC which may accept or modify the determination or remand the matter for additional findings or supplemental proceedings. CBOE Rule 17.8.

[11]CBOE Rule 17.9.

[12]*Id.*

[13]Proposed Rule 2.11. The CC would be composed of at least seven members.

[14]In addition the respondent would be afforded the right to submit a written statement to the CC in opposition to the position of the staff (Proposed amendment to Rule 17.5); a procedure which CBOE already permits. *See* note 8 *supra*.

[15]The minimum number of BCC members would be increased from four to seven.

[16]Proposed amendment to Rule 17.5.

[17]*Id.*

[18]Proposed Rules 2.5 and 2.11.

election of BCC and CC members by the CBOE membership. Candidates for election to the BCC or CC would be selected by the CBOE Nominating Committee and additional candidates could be nominated by a petition signed by 100 members.[19] Eligibility for the BCC would be limited to members or ROPs who are not serving on the Board of Directors and who had not served on the Appeals Committee[20] or the Complaint Committee during the preceding two years. Similarly, a candidate for the CC could not be serving on the Board of Directors nor have been a member of the BCC or the Appeals Committee during the preceding two years.

c. *Attorney's Fees*

The amendments would authorize the BCC, in its discretion, to award to a respondent the payment of reasonable expenses and attorneys fees if the BCC finds that there was no reasonable basis to support the charge brought against the respondent, or that a charge was frivolous, was brought for the purpose of harassing the respondent or otherwise was brought in bad faith, or was substantially duplicative of other charges brought against the respondent.[21]

d. *Review by Appeals Committee*

The rule filing would divest the Board of Directors of its authority to review decisions of the BCC, either on its own motion or on petition by a respondent. The proposal would place such authority in the Appeals Committee[22] whose decision would be final.[23]

e. *Ex Parte Communications*

The rule filing provides that during the pendency of the disciplinary proceedings "no person who is not a member of the BCC, the Board or the Appeals Committee shall make or knowingly cause to be made to any person who is not a member of the BCC, the Board, or the Appeals Committee an ex parte communication relevant to the merits of the proceedings."[24] Thus, the proposal would preclude all *ex parte* communications between CBOE staff members regarding the merits of any disciplinary proceedings during the pendency of such proceedings, but would not preclude the CBOE staff from having *ex parte* communications with the BCC, the Board or the Appeals Committee.[25]

f. *Miscellaneous Changes*

Other significant modifications to the CBOE disciplinary process that would be effected by the amendments include: (i) a requirement that any determination by the BCC that a member committed a violation must be based on clear and convincing evidence;[26] and, (ii) the imposition of a three year statute of limitations for all disciplinary proceedings, except actions for theft, embezzlement, fraud, or manipulation.[27]

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[19]Proposed Rules 2.5 and 2.11.

The Nominating Committee presently has responsibility for selecting candidates for the Board of Directors and all other special and standing committees of the CBOE. It is composed of seven CBOE members: six members of the Nominating Committee are elected by the membership and one member is appointed by the Chairman of the Executive Committee with the approval of the Board of Directors. CBOE Constitution, Article IV, Sections 4.1 and 4.3.

[20]The Appeals Committee presently has responsibility for conducting hearings and reviews with respect to member grievances against the CBOE relating solely to non-disciplinary matters. The Appeals Committee is composed of 10 individuals: nine CBOE members and one member of the Board of Directors selected by the Chairman of the Executive Committee with the approval of the Board. CBOE Rule 2.11. For the proposed changes to the Appeals Committee, see discussion p. 6 *infra*.

[21]Proposed amendment to Rule 17.8.

[22]Proposed amendment to Rule 17.9.

[23]Of course, a respondent wishing further review could file a petition for review with the Commission under Section 19(d)(2) of the Act.

[24]Proposed amendment to Rule 17.11.

[25]The Commission understands that the proposal was intended to preclude *ex parte* communications between the CBOE staff and the Board of Directors, the Appeals Committee or the BCC.

[26]Proposed amendment to Rule 17.5.

[27]Proposed amendment to Rule 17.2.

III. *Institution of Proceedings to Determine Whether to Disapprove SR-CBOE-80-1*

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule changes should be disapproved. Institution of these proceedings is required in view of the legal and policy issues raised under the Act, summarized below, and does not indicate that the Commission has formulated any final conclusions with respect to any of the issues involved.

Section 19(b)(2) of the Act provides that the Commission must approve a proposed rule change of an exchange if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to exchanges. It must disapprove a proposed rule change if it cannot make those findings. Section 6(b) of the Act[28] sets forth criteria for evaluating the rules of a national securities exchange with respect to the disciplining of members and their associate persons. In particular, Section 6(b)(1) provides that an exchange must be organized and have the capacity to carry out the purposes of the Act, and to comply and to enforce compliance by its members and associated persons with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(5) provides that the rules of an exchange, in general, must be designed to protect investors and the public interest. And, Section 6(b)(6) provides that exchange rules must provide that its members and associated persons shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the exchange. Moreover, Section 19(g)(1) of the Act requires an exchange to enforce compliance with the Act, the rules and regulations thereunder, and Exchange rules, while under Section 19(h)(4)(A) of the Act, officers and directors of an exchange are charged with responsibility for ensuring the implementation of such compliance.[29]

The Commission is concerned that a number of the proposed structural and procedural amendments may seriously undermine the CBOE's ability to enforce compliance with the Act and Commission and exchange rules. For example, the vesting of the present functions of the BCC in two committees, both of which would be precluded from acting by subcommittees of their members, could, because of conflicting schedules of committee members, result in fewer hearings and a concomitant undue delay in the resolution of disciplinary matters. Similarly, the proposal to afford respondents the right to present evidence and witnesses at a hearing before the CC, which is convened solely to determine whether formal disciplinary action should be initiated, may result in unnecessary delay and expense in the resolution of disciplinary matters.[30] Moreover, it may not be necessary or appropriate to permit a member to obtain an adjudicatory hearing on the issue of probable cause; such a procedure would, in effect, result in a member obtaining two hearings on the merits of his case—a right not even afforded to defendants in criminal proceedings.

Although the proponents of the rule filing state that the proposal is necessary to inject fairness into the CBOE's disciplinary proceedings, some of the proposed changes may, in fact, seriously undermine the integrity of the CBOE disciplinary process. In this regard, the Commission is concerned that the proposal that BCC and CC members be elected by the membership, rather than appointed by the Board of Directors, may permit the composition of the BCC and CC to reflect the political interests of CBOE members and that, as a result, the CBOE would not be able to discharge fully its responsibilities under Sections 6(b)(1), 6(b)(6) and 19(g)(1) of the Act, to enforce compliance with the Act, the rules thereunder and exchange rules, and to ensure that members who violate those provisions are appropriately disciplined. Moreover, the rule change, by also eliminating the authority of the

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[28]15 U.S.C. 78f(b)(1975).

[29]Section 19(h)(4) provides that the Commission may remove from office or censure any officer or director of a self-regulatory organization if it finds, among other things, that such officer or director failed, without reasonable justification or excuse, to enforce compliance with the Act and rules thereunder, or other applicable rules.

[30]Moreover, such a procedure may not be appropriate since a potential respondent currently is permitted to make a written submission to the BCC at the probable cause stage setting forth reasons why he should not be charged or submitting an offer of settlement.

Chairman to remove members of the disciplinary committee, would permit members to elect committee members solely on the basis of partisan interests without providing for any oversight to ensure that such committee members fulfill their responsibilities.[31]

Other proposed changes would erect additional procedural hurdles which may make it more difficult for the CBOE to resolve disciplinary matters. For example, the proposal to require the CBOE to find violations by clear and convincing evidence could result in the CBOE applying a more rigorous standard of proof than even the Commission applies, either in its review of CBOE disciplinary actions or in its own administrative proceedings brought to enforce the securities laws.[32] As a result, culpable individuals might not be disciplined by the CBOE because of its application of a more rigorous standard of proof. In this regard, the proposal may be inconsistent with the statutorily mandated self-regulatory scheme which charges the CBOE with primary responsibility to enforce compliance with the securities laws by its members.[33]

Similarly, the proposed three year statute of limitations for the initiation of disciplinary actions would require the Commission to assume sole responsibility for enforcing violations of the securities laws discovered subsequent to the expiration of the statute of limitations, and therefore, also may be inconsistent with the CBOE's enforcement responsibilities. Moreover, the proposed limitation may be inconsistent with the public policy embodied in the Act in favor of proceedings brought to enforce the securities laws.[34]

Further, the proposal to authorize awards of attorney's fees under circumstances in which a proceeding is brought in good faith appears to go beyond those circumstances in which attorneys fees traditionally are awarded to successful litigants.[35] This proposal may inhibit the CBOE staff from pursuing an aggressive enforcement program and, along with the proposal to preclude the BCC from assessing costs against a respondent,[36] is, in the words of the Association included so that

> "* * * overzealous Exchange employees would be placed on notice that failure to make reasonable settlements could result in substantial cash losses to the Exchange and would reflect adversely on their job security."[37]

Finally, the proposed rule change would eliminate the authority of the Board of Directors to review BCC decisions and to appoint CC members as well as eliminate the authority of the Chairman of the Executive Committee to remove BCC members. Thus, the proposals would effectively exclude the Board or any Board member from having any meaningful role in the CBOE disciplinary process. Further the proposal would preclude the Board or any other body from taking steps (other than by annual membership elections) to ensure that the members of the CC and BCC responsibly discharge their obligations. As noted previously, Sections 6(b)(1), 19(g)(1) and 19(h)(4) of the Act charge the Exchange and its officers and Board of Directors with responsibility for enforcing compliance by members with the Act, the rules thereunder and Exchange rules.

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[31]Presently, the Chairman of the Executive Committee has authority to remove a member of the BCC. CBOE Rule 2.1. As discussed *infra*, the proposed rule change would remove that authority.

[32]There is a split of authority on whether the Commission must apply a clear and convincing standard of proof in its administrative proceedings involving allegations of violations of the antifraud provisions of the federal securities laws. *Compare Collins Securities Corporation* v. *Securities and Exchange Commission,* 562 F.2d 820 (D.C. Cir. 1977) with *Steadman* v. *Securities and Exchange Commission,* 603 F.2d 1126 (5th Cir. 1978). In *Steadman* the Supreme Court has granted *certiorari* to decide this question. 48 U.S.L.W. 3693 (April 29, 1980).

[33]Sections 6(b)(1) and 19(g)(1).

[34]In contrast, the Act imposes a relatively short statute of limitations for private actions brought under Sections 9 and 18.

[35]*See Alyeska Pipeline Service Co.* v. *Wilderness,* 421 U.S. 240 (1975).

[36]Proposed Rule 17.10.

[37]November 29, 1979, Newsletter at 6 attached as Exhibit 3 to the CBOE's Form 19b-4A.

[38]Sections 6(b)(1) and 19(g)(1).

The disciplinary responsibilities of a national securities exchange are central to the scheme of self-regulation embodied in the Act. A self-regulatory organization has primary responsibility for enforcing compliance by its members with the Act and rules thereunder and with its own rules.[38] Since the Commission has only limited resources to devote to this important task, it must depend on the self-regulatory organizations to vigorously discharge their responsibilities in this regard. A failure of a self-regulatory organization to maintain an effective disciplinary system inevitably undermines public confidence in the ability of that self-regulatory organization to adequately police its market and results in a loss of investor confidence in the fairness and integrity of the securities markets generally.

The current CBOE disciplinary system generally has been well-administered in the past, resulting in the timely discovery and prosecution of violations.[39] Indeed, the Commission believes the current CBOE disciplinary system has been one of the most effective disciplinary programs operated by a self-regulatory organization. The Commission is concerned that the proposed modifications to the CBOE disciplinary system embodied in this rule filing would undermine a heretofore effective disciplinary system and that approval of the modification would erode the ability of the CBOE to discharge its self-regulatory responsibilities.

In light of the above, the Commission is unable to conclude at this time that the proposed rule change is consistent with the Act. The potential grounds for disapproving the proposed rule changes under consideration by the Commission are that, for the reasons set forth above, the proposed rule changes are inconsistent with Sections 6(b)(1), 6(b)(6), 6(b)(7), 19(g)(1) and 19(h)(4) of the Act.

IV. *Procedure: Request for Written Comments*

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the potential grounds for disapproval identified above. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, arguments and data, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[40] In particular, the Commission invites the written views of interested persons concerning whether the proposed rule changes are inconsistent with the provisions of the Act and the rules and regulations thereunder, specifically Section 6(b) and 19(g) and (h).

In view of the varied issues raised by the proposed rule change, the Commission believes it necessary and appropriate to provide interested persons additional time to submit written comments. Accordingly, the Commission hereby extends the time for conclusion of the disapproval proceeding until September 26, 1980.[41] Interested persons are invited to submit written data, views and arguments regarding the proposed rule changes by August 1, 1980. Any person who wishes to file a rebuttal to any other person's submission must file their rebuttal by August 25, 1980. Persons desiring to submit written data, views and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-1.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications

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[39]See Securities and Exchange Commission, *Report of the Special Study of the Options Markets*, H.R. Comm. Print 1FC3, 96th Cong., 1st Sess. 256 (1979).

[40]Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975 (Pub. Law. 94-29, June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral hearing or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong. 1st Sess. 30 (1975).

[41]Section 19(b)(2) of the Act requires that proceedings to determine whether to disapprove a proposed rule change be concluded within 180 days of the date of publication of notice of filing of the proposed rule change, unless the Commission finds good cause to extend the time for the conclusion of such proceedings.

relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organizations.

IT IS HEREBY ORDERED, pursuant to Section 19(b)(2) of the Act that proceedings be instituted to determine whether to disapprove proposed rule change CBOE-80-1.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16969/July 8, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSR-80-7)

ORDER APPROVING PROPOSED RULE CHANGE

On May 9, 1980, the Midwest Stock Exchange, Inc. ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would provide that a member of either the MSE equity or options floor who appeals from the imposition of a summary fine or censure must, in writing, specifically state the actions complained of, the reasons for the appeal and the relief sought. A member appealing from a summary censure or fine must, in writing, specifically admit or deny each charge complained of in addition to the information stated above. The proposed rule change would provide that the reviewing committee may affirm, reverse, modify, increase or decrease a penalty.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16832, May 22, 1980) and by publication in the *Federal Register* (45 FR 35245, May 29, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national stock exchanges, and in particular, the requirements of Section 6(b)(5) which requires exchange rules to promote just and equitable principles of trade and Section 6(b)(7) which requires exchanges to provide fair procedures for disciplining their members.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, granted.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16970/July 8, 1980

In the Matter of

Boston Stock Exchange, Inc.
53 State Street
Boston, MA 02109

(SR-BSE-80-3)

ORDER APPROVING PROPOSED RULE CHANGE

I. *Introduction*

On April 30, 1980, the Boston Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would establish a Guaranteed Execution System available to member-firms for agency market orders from 100 up to and including 399 shares of stocks traded on the Intermarket Trading System ("ITS").

The proposed rule would require that BSE specialists execute such orders on the basis of the prevailing price in the primary market or better.

Notice of the proposed rule change together with the terms of substrance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16795, May 9, 1980) and by publication in the *Federal Register* (45 FR 32458, May 16, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

II. *Summary of Comments*

Comments were received from four specialists on the BSE who opposed the proposed rule on the ground that in order to ensure that they have adequate capital to assure execution of up to 399 shares in their specialty stocks, they would have to reduce the number of their specialty stocks. These commentators state that such a reduction would cause declines in their business and, in addition, would detract from the attractiveness of the BSE marketplace. Some of the specialists also suggested that the rule would be anti-competitive in that it would apply only to primary specialists (who would have to bear increased risks and expenses associated with guaranteed execution) but not to alternate specialists.[1] Several specialists stated that the proposed requirement to purchase for their own account up to 399 shares of their specialty stock rather than take the order as agent and sell it on ITS would force them to bear two sets of clearing charges and would create "fictitious volume." Two specialists suggested the proposed rule would be difficult to enforce since there would be no way to detect instances in which a specialist refuses to execute an order.

James E. Dowd, president of the BSE, submitted a letter responding to the comments filed by the specialists. Mr. Dowd states that the proposed rule change is absolutely essential if BSE is to remain competitive with the other regional stock exchanges which all operate automated or manual guaranteed small order execution systems.[2] Mr. Dowd also notes since brokers would report any instances in which their orders were turned down, the proposed rule could be enforced, and further would result in establishing for the first time, a standard by which BSE specialists may be evaluated. Mr. Dowd states that the proposed rule change is designed to encourage a balanced order flow to the floor; and, to the extent that the proposal would require thinly capitalized specialists to commit additional capital to the exchange, he believes that such a requirement is necessary if the BSE market is to remain competitive. Finally, Mr. Dowd states that the BSE plans to drop the two cents per share clearing charge on ITS trades coincident with the institution of the system in order to facilitate the ability of a dealer to change his position if local order flow does not provide such opportunity.

III. *Discussion and Findings*

The establishment of a Guaranteed Execution System on the BSE is designed to make the exchange more competitive with other marketplaces. To the extent that it may be necessary for BSE specialists to reduce their number of specialty stocks, or to commit additional capital to their markets, the proposed rule change should result in better, more liquid markets in those ITS stocks that are retained by BSE specialists, and further, may attract increased order flow to the BSE. While the Commission would prefer that the system guarantee execution at the best consolidated quote rather than that of the primary market, it notes that the BSE will consider imposing such a requirement after the system has been in operation for an appropriate period. Moreover, the BSE states that it is possible that the routing of orders and their execution could be automated sometime in the future.

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[1]The commentators suggest that alternative specialists also would benefit from the BSE's planned elimination of the current two cent per share ITS clearing charge, since they would obtain "free" access to the New York Stock Exchange for their ITS trades.

[2]Those systems are the Midwest Stock Exchange's Best Execution System, Pacific Stock Exchange's "SCOREX" and Philadelphia Stock Exchange's "PACE."

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and in particular, the requirements of Section 6(b)(5) and the rules and regulations thereunder, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16971/July 9, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of Sundance Gold Mining and Exploration, Inc. ("Sundance Gold"), a Delaware corporation located at 80 Broad Street, New York, New York 10006 for the ten day period commencing at 9:30 a.m on July 9, 1980 and terminating at midnight on July 18, 1980.

The Commission suspended trading in the securities of Sundance Gold in view of the recent unusual and unexplained market activity in that security between March 25, 1980 and June 6, 1980. During that period, there was no publicly available information which would have justified this market activity. In addition, since June 9, 1980, questions have been raised about the adequacy and accuracy of publicly disseminated information about joint ventures in which Sundance Gold is a participant.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other current available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

If any broker-dealer or other person has any information which may relate to this matter, the Division of Enforcement of the Securities and Exchange Commission should be telephoned at (212) 264-1600.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16972/July 9, 1980

EXTENSION OF STATUTORY TIME PERIOD FOR COMMISSION CONSIDERATION OF PROPOSED RULE CHANGE OF MIDWEST STOCK EXCHANGE, INC.

File No. SR-MSE-80-10

The Midwest Stock Exchange, Inc. ("MSE") submitted on May 19, 1980, a proposed rule change under Section 19(b)(1) of the Securities Exchange Act ("Act") and the rules thereunder, which, among other things, would delete from Article XXXIV, Rule 17 of the MSE Rules, the prohibition on registered market makers receiving exempt credit for transactions effected in other markets. Notice of the filing of the proposed rule change was given by the issuance of a Commission release and by publication in the *Federal Register.*[1]

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[1]Securities Exchange Act Release No. 16845 (May 27, 1980); 45 FR 37788 (June 4, 1980).

The Commission has determined that it is necessary and appropriate to provide additional time for Commission consideration of the proposed rule change in that the proposed rule change raises complex questions concerning market maker obligations under the Act, including whether the proposed rule change is consistent with Regulations T [12 CFR 220] and U [12 CFR 221] promulgated by the Federal Reserve Board.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, hereby extends until September 2, 1980, the time period within which the Commission must either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16973/July 9, 1980

A notice has been issued giving interested persons until July 30, 1980 to comment on the *Philadelphia Stock Exchange's* applications for unlisted trading privileges in eight stocks.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16974/July 9, 1980

An order has been issued granting the application of SAMBO's RESTAURANTS, INC. to withdraw its common stock (no par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16975/July 10, 1980

A notice has been issued giving interested persons until August 1, 1980 to comment on the *Boston Stock Exchange's* application for unlisted trading privileges in the common stock ($.10 par value) of SAFEGUARD BUSINESS SYSTEMS, INC.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16976/July 10, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On May 2, 1980, the Midwest Stock Exchange, Inc. ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend the MSE Constitution, Article XXX, Rule 15 and Rule 16 of the Rules and Practices for Trading on the MSE to extend the time periods within which claims for reports must be made concerning the terms of trades executed on the Midwest Stock Exchange. In unusual circumstances, the MSE Committee on Floor Procedure would rule on the disposition of liability.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16857, May 29, 1980) and by publication in the *Federal Register* (45 FR 37793, June 4, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(5) which requires exchange rules to promote just and equitable principles of trade and foster cooperation and coordination among persons trading on the exchange.

IT IS THEREFORE ORDERED, pursuant to Section

19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16977/July 10, 1980

PROPOSED REVISION OF FORM U-4, THE UNIFORM APPLICATION FOR SECURITIES AND COMMODITIES INDUSTRY REGISTRATION

ACTION: Proposed revision of Form U-4.

SUMMARY: This action proposes revision of Form U-4, the Uniform Application for Securities and Commodities Industry Registration, which will, among other things, reflect the provisions of the Securities Acts Amendments of 1975 (the "1975 Amendments"). The proposed revisions were developed and submitted to the Commission by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators).

DATE: Comments must be received on or before August 13, 1980.

ADDRESSES: Persons wishing to submit written views, data and comments should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All submissions should refer to File No. S7-844 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. York, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272-2376.

SUPPLEMENTARY INFORMATION: With a view towards having a revised, uniform Form U-4 which is acceptable to the states, the national securities exchanges, the National Association of Securities Dealers and the Commission in place by the fall of 1980, the Commission herein is publishing for comment the proposed revisions of the form.

I. Background

Form U-4, the Uniform Application for Securities and Commodities Industry Registration,[1] is the personnel form which the Commission requires to be filed by a registered broker or dealer who is not a member of a registered national securities association, on behalf of associated persons of such broker or dealer. The present Form U-4 is also accepted as a uniform application form for associated persons by 46 states, all national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").[2]

The form was developed by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators) which include representatives from the Commission, the NASD, the New York Stock Exchange, Inc. ("NYSE"), and other self-regulatory organizations. It was adopted in its present form in 1975.[3]

The form was adopted prior to the enactment of the Securities Acts Amendments of 1975 (the "1975 Amendments") and therefore does not reflect fully and accurately the provisions of Section 3(a)(39)(D) and (E)[4] and Section 15(b)(4)(A)[5] of the amended Securities Exchange Act of 1934 (the "Act"). Section 3(a)(39) of the Act designates five categories wherein a person is subject to a statutory disqualification with respect to membership or participation in, or association with a member of, a

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[1]17 CFR §249.502.

[2]In regard to representatives associated with brokers or dealers, the term "application" is somewhat inappropriate since, unless a disqualifying condition exists or the requisite examination requirement is not met, acceptance of the form for filing automatically qualifies the individual.

[3]Securities Exchange Act Release No. 11424 (May 16, 1975), 7 SEC Docket 2. [40 FR 30634].

[4]15 U.S.C. §78c (1976).

[5]15 U.S.C. §78o (1976).

self-regulatory organization.[6] Section 15(b)(4) of the Act indicates the type of conduct for which the Commission may impose limitations upon a broker or dealer and persons associated with a broker or dealer.[7]

Therefore, the NASAA ad hoc committee reconvened to consider the necessary revisions of the form. In addition to reflecting the 1975 Amendments it was apparent that certain other revisions of Form U-4, both in format and substance, were appropriate. For example, the committee decided to solicit additional data from the applicant so that the form could be used as a basis for completing Item 10(a) of Form BD relating to statutory disqualifications.[8] Finally, certain revisions to the form were necessary so that it would continue to be accepted as a uniform form by the states and the self-regulatory organizations.[9]

The NASAA ad hoc committee completed its work on Form U-4 in February 1980 and submitted the revised form to the NASAA Uniformity Committee in April 1980.[10] Subsequently, the Uniformity Committee requested comments from the NASAA membership concerning the revised form.

In addition to the comments of the NASAA membership, the NASAA Uniformity Committee believes that it would be beneficial for the Board to receive any public reaction to the revised form prior to its adoption by the Board. Accordingly, the Commission herein is publishing for comment the proposed revisions of Form U-4.

II. *The Proposed Revised Form U-4*

The overall structure of the revised form is similar to the current form. The first part of the form is to be completed by both the applicant and the broker or dealer with which the applicant will be associated. It contains general information regarding the self-regulatory organizations and jurisdictions with which the associated person is to be registered and the identity of the prospective employer. It also indicates the capacity in which the applicant will be employed and whether or not he or she has passed an examination for registration or been granted a waiver or qualified for an exemption.

The second part of the form, to be completed by the applicant, contains information concerning the person's personal and educational background and business associations; a series of questions concerning any disciplinary proceedings or court actions brought against such person; and information about criminal convictions. The form also requires various certifications by both the broker or dealer and the applicant.

Several changes in format have been proposed in order to improve clarity and eliminate duplicative information. As noted above, several new questions have been proposed in order to include information required by the 1975 Amendments and Item 10(a) of Form BD. The revised Form U-4 continues to request the information required by Rule 17a-3(a)(12) and therefore may be used by a broker or dealer to satisfy the record retention requirements imposed by that rule.[11]

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[6]The substance of Section 3(a)(39)(D) and (E) of the Act is reflected in questions 27B and 28B of the appendix (Proposed Form U-4).

[7]The substance of Section 15(b)(4)(A) of the Act is reflected in question 27A of the appendix.

[8]An affirmative answer to those questions on Form U-4 relating to statutory disqualifications will alert a broker or dealer that Item 10(a) of Form BD must be amended to reflect this information.

[9]During its April 1980 meeting, the NASAA membership approved the implementation of a Central Registration Depository ("CRD"), to be activated on January 1, 1981. The initial focus of the CRD is a consolidated nationwide system for registering securities agents. Therefore, final approval of a revised, uniform Form U-4 is essential to the orderly development of the CRD program.

[10]The NASAA Uniformity Committee reports to the NASAA President and the NASAA Board. The NASAA Board will ultimately approve a revised Form U-4 on behalf of its members.

[11]17 CFR §240.17a-3(a)(12). Rule 17a-3(a)(12) requires an associated person to complete a questionnaire or application for employment to be approved by the member, broker or dealer. The information required by Rule 17a-3(a)(12) is covered in the background section and several of the questions of Form U-4. *See, e.g.*, questions 26F and 27C of the appendix.

Accordingly, it is proposed to amend 17 CFR 249 by revising §249.502 as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers or dealers.

The proposed form is attached as the appendix.

In order to assist the Commission in determining whether or not to approve the proposed revised Form U-4, interested persons are invited to submit written comments within thirty (30) days of the date of publication of this notice in the *Federal Register*. Persons wishing to comment should file six (6) copies thereof with the Secretary of the Commission, 500 N. Capitol Street, Washington, D.C. 20549. Reference should be made to File No. S7-844.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX

UNIFORM APPLICATION FOR SECURITIES AND COMMODITIES INDUSTRY REGISTRATION

1. APPLICANT'S NAME_____
Last First Full Middle/Maiden (if none, specify)

2. DATE OF EMPLOYMENT_____ 3. FIRM I.D. NUMBER_____

4. FIRM NAME_____

5. FIRM MAIN ADDRESS_____

6. OFFICE OF EMPLOYMENT ADDRESS_____

7. TO BE REGISTERED WITH THE FOLLOWING: (Designate 1, Initial Registration; 2, Transfer of Registration)

ASE___ CBOE___ MSRB___ NYSE___
ACE___ CSE___ NASD___ PHLX___
BSE___ MSE___ NYFE___ PSE___
SECO_____ OTHER_____

AL__ CO__ GA__ IA__ MD__ MO__ NJ__ OH__ SC__ VT__ WY__
AK__ CT__ HI__ KS__ MA__ MT__ NM__ OK__ SD__ VA__ PR__
AZ__ DE__ ID__ KY__ MI__ NE__ NY__ OR__ TN__ WA__
AR__ DC__ IL__ LA__ MN__ NV__ NC__ PA__ TX__ WV__
CA__ FL__ IN__ ME__ MS__ NH__ ND__ RI__ UT__ WI__

8. Will applicant maintain registration with another broker/dealer? Yes___ No___
If yes, complete the following:

Name of Firm(s)_____ Name of Person(s) Contacted_____

Name of Applicant (print or type)	Signature	Date
Name of Appropriate Signatory (print or type)	Signature	Date

If there is an amendment to this page, circle question number(s) amended.

If there is an amendment to this page, circle question number(s) amended.

9. TYPE OF APPROVAL REQUESTED: (Check all applicable categories)

___Full Registration/General Securities
___Registered Commodity Representative
___Agent of Issuer
___Investment Company and Variable Contracts Products Representative
___Municipal Securities Representative
___Direct Participation Programs Representative
___Branch Office Manager
___Supervisory Analyst
___Member (Exchange)
___Approved Person (Exchange)
___Officer (Title) _____

___Sole Proprietor
___Manager Office of Supervisory Jurisdiction
___Financial and Operations Principal
___Municipal Securities Financial and Operations Principal
___General Securities Principal
___Municipal Securities Principal
___Allied Member
___Direct Participation Programs Principal
___Investment Company and Variable Contracts Products Principal
___Registered Options Principal
___Other _____

10. Applicant will be designated: (Answer only if applicable)

____Chief Financial and Operations Principal ____Senior Registered Options Principal

____Compliance Registered Options Principal

11. Has applicant ever passed an examination, been granted a waiver or qualified for exemption from an examination for registration in any capacity with any agency, jurisdiction, self-regulatory organization or commission? If so, indicate below:

Reg. Body	Date	Type of Exam	Basis for Waiver(if any)
Reg. Body	Date	Type of Exam	Basis for Waiver(if any)
Reg. Body	Date	Type of Exam	Basis for Waiver(if any)
Reg. Body	Date	Type of Exam	Basis for Waiver(if any)
Reg. Body	Date	Type of Exam	Basis for Waiver(if any)

ATTACH PASSPORT SIZE AND QUALITY PHOTO

_____
Applicant's Name (type or print)

Name of Applicant (print or type)	Signature	Date
Name of Appropriate Signatory (print or type)	Signature	Date

(If there is an amendment to this page, circle question number(s) amended.)

PERSONAL HISTORY

12. _____ 13. _____
Last First Full Middle/Maiden (if none, specify) Social Security Number

14. _____
Address City State Zip Code

15. _____ 16. _____
Date of Birth Place of Birth

17. _____ _____ _____ _____ _____ _____
Height Weight Hair Color Sex Color of Eyes Identifying Marks

18. _____ 19. _____
Alias, if none, specify Marital Status

20. _____
If married, full name of Spouse & Maiden Name

21. _____ _____
Father's Full Name Mother's Maiden Name

22. Educational Institutions Attended (Exclude Elementary School):

Name and Address of Institution (Street, City, State, Zip Code)	From Mo.	From Yr.	To Mo.	To Yr.	Course	Day or Evening	Did you Graduate	Degree

23. Business history for past ten years, starting with your current position & including self-employment, unemployment, part-time and all military service. (Continue on separate sheet)

Name of Employer and complete address (Street, City, State, Zip Code)	From Mo.	From Yr.	To Mo.	To Yr.	Full/ Part	Position Held	Reason for Leaving

24. Are you currently engaged in any other business either as proprietor, partner, officer, director, trustee, employee, agent or otherwise? Yes____ No____ (If yes, explain)

25. Give all home addresses for the past ten years (other than present)

Address (Street, City, State, Zip Code)	From Mo.	From Yr.	To Mo.	To Yr.

_____ _____ _____
Name of Applicant (Print or Type) Signature Date

_____ _____ _____
Name of Appropriate Signatory (print or type) Signature Date

If there is an amendment to this page, circle question number(s) amended.

I authorize and request any and all of my former employers and any other person to furnish to the agency, jurisdiction or organization with which this application is being filed, or any agent acting on its behalf, any information they may have concerning my credit worthiness, character, ability, business activities, educational background, general reputation, together with, in the case of former employers, a history of my employment by them and the reasons for the termination thereof. Moreover, I hereby release each such employer and each such other person from any and all liability of whatever nature by reason of furnishing such information to the agency, jurisdiction or organization or any agent acting on its behalf.

Further, I recognize that I may be the subject of an investigative consumer report ordered by the agency, jurisdiction, or organization with which this application is being filed, and that I have the right to request complete and accurate disclosure by such agency, jurisdiction, or organization of the nature and scope of the investigation requested.

Ten Year Limit Does Not Apply to Questions 26 through 28.

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS YES, ATTACH COMPLETE DETAILS:

26. Have you ever:
    - A. been the subject of a major complaint or legal proceeding? . . . . . Yes___ No___
    - B. been discharged, or requested or permitted to resign for cause? . . . Yes___ No___
    - C. been refused coverage under a fidelity or surety bond, or has any surety company paid out any funds on your coverage or cancelled such coverage? . . . . . Yes___ No___
    - D. had a license, permit, certificate, registration or membership denied, suspended, revoked or restricted, or had an application withdrawn for cause? . . . . . Yes___ No___
    - E. been the subject of any order, judgement, decree or other sanction of a foreign court, foreign exchange, or foreign governmental or regulatory agency? . . . . . Yes___ No___
    - F. been arrested or indicted for any felony or misdemeanor involving the purchase, sale or delivery of any security or commodity, or arising out of the conduct of the business of a broker, dealer, fiduciary, investment company, investment advisor, underwriter, bank, trust company, insurance company or other financial institution, or involving any crime in which violence or threats of violence against any person, dishonesty, wrongful taking of any property, or any manner of fraud was a factor, or involving conspiracy to commit any of the foregoing? . . . . . Yes___ No___
    - G. been convicted, or pleaded guilty or nolo contendere to any felony or misdemeanor except minor traffic offenses? . . . . . Yes___ No___
    - H. been a principal or employee of any firm, corporation or association which, while you were associated with it, was convicted of, or pleaded guilty or nolo contendere to, any felony or misdemeanor? . . . . . Yes___ No___
    - I. or has any firm, corporation or association of which you have been a principal or officer ever failed in business, made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt? . . . . . Yes___ No___
27. While associated in any capacity in the securities, commodities, investment advisory, real estate, banking or insurance industry or business have you ever:

Name of Applicant (Print or Type)	Signature	Date
Name of Appropriate Signatory (print or type)	Signature	Date

(If there is an amendment to this page, circle question number(s) amended.)

A. been found by the Securities and Exchange Commission or in any jurisdiction willfully to have made or caused to be made any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or to have omitted to state any material fact, which was required to be stated, in any application for registration or report required to be filed under the Federal securities laws or under the securities laws of any jurisdiction, or in any proceeding before the Securities and Exchange Commission or any jurisdiction relating to securities, the conduct of business or registration as a broker, dealer, municipal securities broker, dealer, or investment advisor or associated person thereof? . . . . . Yes___ No___

B. willfully made or caused to be made any statement which was, at the time and in the light of the circumstances under which it was made, false and misleading with respect to any material fact, or omitted to state any material fact, which was required to be stated, in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, in any report required to be filed with a self-regulatory organization, or in any proceeding before a self-regulatory organization? . . . . . Yes___ No___

C. had any temporary or permanent injunction or administrative order entered against you or any broker, dealer, investment advisor, municipal securities broker or dealer, bank or commodities firm with which you were associated in any capacity at the time such injunction was entered? . . . . . Yes__ No___

D. been associated in any capacity with any broker, dealer, municipal securities broker or dealer, investment advisor or commodity firm which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization? . . . . . Yes___ No ___

E. been found to be the cause of any action cited in 27D? . . . . . Yes___ No ___

F. been associated as an officer, a director, a general partner, or an owner of 10 percentum or more of the voting securities in, or a person who, directly or indirectly, through agreement or otherwise, exercised or had power to exercise a controlling influence over the management or policies of a broker, dealer or municipal securities dealer which had been adjudicated bankrupt or for which a trustee has been appointed pursuant to the Securities Investor Protection Act of 1970? . . . . . Yes___ No___

28. Are you currently:

A. the subject of any unsatisfied judgements or liens? . . . . . Yes___ No___

B. associated in any endeavor related directly or indirectly to business or financial activities with any person whom you know, or in the exercise of reasonable care should know, to be subject to a statutory disqualification? . . . . . Yes___ No___

C. the subject of any investigation or proceeding, or have you ever been the subject of discipline or found to have violated or to have aided, abetted, counselled, commanded, induced or procured the violation of any law, rule or regulation by any national securities, commodities or banking agency or jurisdiction, any national securities exchange, registered securities association or clearing agency or by any other agency or jurisdiction? . . . . . Yes___ No___

Name of Applicant (Print or Type)	Signature	Date
Name of Appropriate Signatory (print or type)	Signature	Date

THE FOLLOWING SHOULD BE READ VERY CAREFULLY BY THE APPLICANT

(1) I hereby certify that I have read and understand the foregoing statements and that my responses are true and complete to the best of my knowledge.

(2) I hereby apply for registration with the organizations and states indicated in Question 7 and, in consideration of such organizations and states receiving and considering my application, I submit myself to the jurisdiction of such states and organizations and hereby certify that I have read, understand and agree to abide by, comply with, and adhere to all the provisions, conditions and covenants of the statutes, constitutions, certificates of incorporation, by-laws and rules and regulations of the states and organizations as they are and may be adopted, changed or amended from time to time, and I agree to comply with, be subject to and abide by all such requirements and all rulings, orders, directives and decisions of, and penalties, prohibitions and limitations imposed by such states and organizations, subject to right of appeal as provided by law; and I agree that any decision of such states and organizations as to the results of any examination(s) that I may be required to pass will be accepted by me as final.

(3) I further agree that neither the states or organizations nor their officers, employees, and others acting on their behalf shall be liable to me for action taken or omitted to be taken in official capacity or in the scope of employment, except as otherwise provided in the statutes, constitutions, certificates of incorporation, by-laws or the rules and regulations of such states and organizations.

(4) I authorize the states and organizations to make available to any employer or prospective employer, or to any federal, state or municipal agency, or any securities or commodities industry self-regulatory organization any information they may have concerning me; and

(5) I release the states and organizations, their employees and agents, from any and all liability of whatever nature by reason of furnishing such information. I likewise release any employer, former employer, their employees and authorized agents from any liability whatever for furnishing such information to the states and organizations.

(6) I certify to arbitrate any dispute I may have that is required to be arbitrated in accordance with the arbitration rules, constitutions, or by-laws of the organizations with which I register.

(7) I, the undersigned, for the purpose of complying with the laws of the State(s) I have designated in Item 7 relating to either the registration or sale of securities or commodities, hereby irrevocably appoint the administrator, of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process of pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the aforesaid laws of said State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I was a resident in said State and had lawfully been served with process in said State(s). It is requested that a copy of any notice, process or pleading served hereunder be mailed to me at my residence.

NOTARIZATION OF APPLICANT'S SIGNATURE

Date _____ Signature of Applicant _____

Date _____ Signature of Witness _____

(Witness must be either a partner of the firm, officer of the corporation, branch office manager, or authorized employee. Please indicate which).

STATE OF _____

County _____ ss:

Subscribed and sworn before me this ____ day of _____A.D., 19__

_____Notary Public

My commission expires _____County of_____State of _____

To the best of my knowledge and belief, the applicant is currently bonded and, at the time of approval, will be familiar with the statute(s), constitution(s) and rules of the agency, jurisdiction or organization with which this application is being filed, and the rules governing registered persons, and will be fully qualified for the position for which application is being made herein. I agree that, notwithstanding the approval of such agency, jurisdiction or organization which hereby is requested, I will not employ the applicant in the capacity stated herein without first receiving the approval of any authority which may be required by law. This firm has communicated with all the previous employers of the applicant during the past three years, as set forth below:

EMPLOYER	NAME AND POSITION OF PERSON CONTACTED	EMPLOYED FROM	TO	CONTACTED BY PHONE,LLETTER OR INTERVIEW

In addition, I have taken appropriate steps to verify the statements contained in this application and to inquire into the past record and reputation of the applicant.

Date	Print Name of Appropriate Signatory	Signature of Appropriate Signatory

GENERAL INSTRUCTIONS - U-4

1. All information must be typed or neatly printed in *BLACK INK.*

2. Initial application must have original signatures of applicant and signatory on all pages. Each amended page must have an original signature of applicant and appropriate signatory. All required signatures must be originals; mechanical reproductions of signatures will not be accepted.

3. All questions on the form must be answered unless specifically directed otherwise. Failure to do so will cause the agency, jurisdiction or organization to which the form is sent to return it unprocessed and thus delay registration and increase cost.

4. Applicant must use all space provided on the form before using attachment sheet. Space permitting, the answers to more than one question may appear on an attachment sheet, so long as the questions are clearly identified. Be certain the name of both the applicant and the appropriate signatory appear on every attachment sheet.

5. For the purposes of this form, the term "agency" means any regulatory body of the Federal Government (e.g., The Securities and Exchange Commission).

6. For the purposes of this form, the term "jurisdiction" means a state, a territory, the District of Columbia, the Commonwealth of Puerto Rico, a province of the Dominion of Canada or any subdivision or regulatory body thereof.

7. For the purposes of this form, the terms "self-regulatory organization" or "organization" mean any national securities and commodities exchange, any registered national securities association (e.g., the NASD), or any registered clearing agency.

8. All information required by Form U-4 must be submitted on the officially prescribed form, or mechanical reproduction thereof. All pages containing this information may be mechanically reproduced by any method producing clear, legible copies of identical type size.

INSTRUCTIONS

Question #1

Fill in applicant's full legal name.

Question #2

Give date applicant first started employment with the member firm.

Question #3

Give the firm's computerized NASD identification number (if known and applicable).

Questions #4 & 5

Give complete name of your organization and the address of the firm's main office (including zip code).

Question #6

Give address of the office in which applicant will be employed.

Question #7

Indicate *all* applicable registrations using the following codes:

1, Initial Registration—First time registering with agency, jurisdiction or organization

2, Transfer—When applicant transfers registration from one firm to another

Question #8

If applicant is to be registered simultaneously with two or more broker/dealers, check "yes" and indicate the other firm(s) and authorized person(s) contacted to verify employment and acceptance of dual registration.

Question #9

Since the applicant could be classified in more than one category, be certain to check all applicable boxes (e.g., the applicant could be applying as a registered representative, vice president and branch office manager). Consult the rules and statutes of the appropriate exchange, association and/or jurisdiction. If the position applied for does not appear, check the box marked "other" and specify position.

Question #10

If the applicant will be qualified and designated as either the Chief Financial Options Principal or Senior Registered Options Principal, or both, or Compliance Registered Options Principal, indicate in this area.

Question #11

Furnish the requested details if the answer to any part of this question is "Yes."

Question #12

Fill in applicant's full legal name.

Question #13

If federal law does not require you to have a social security record, such as foreign nationals working in foreign offices, write "Not Applicable—Foreign National."

Question #14

This should be your CURRENT legal address. If you expect to move within three months from the date on which the application is submitted and know the new address, give the new address on a separate attachment or notify the agency, jurisdiction or organization with which you are registering immediately after the new address is known.

Question #15

Give full date: Month, day, year.

Question #16

Give city and state. If born outside the U.S., give city and country.

Question #17

Give complete physical description of applicant.

Question #18

Include any names by which you are or have been known, other than your current legal name. This would include any nicknames by which you have been known since adulthood.

Question #19

Give current marital status: Single, married, divorced, separated or widowed.

Question #20

Give either FULL name of husband or FULL name of wife including her maiden name. Do not use nicknames or aliases.

Question #21

Give FULL maiden name of mother and FULL name of father. Do not use nicknames.

Question #22

Give a complete list of schools attended, dates of attendance, major courses taken, day or evening classes (or both), type of degree awarded (if applicable). Do not list pre-high school education, unless it was the last school attended.

Question #23

Show all employment, self-employment and military service for the last ten years. Be certain to include dates of employment, and the full names and addresses of all previous employers. All time for the previous ten years must be accounted for.

Question #24

1. The full name and address of the business,

2. the nature of the business,

3. your title or position,

4. a brief description of your duties,

5. the amount of time you devote to the business,

6. whether it is during securities trading business hours.

Question #25

List all home addresses for the last ten years. Please do not give post office boxes.

Question #26 (A-I)

For each question answered "Yes," supply the following information:

1. Who was involved,

2. When it happened,

3. What the circumstances were, in your own words,

4. What the final determination was, if any,

5. A copy of any applicable documents.

Question #27

A. For each question answered "Yes," supply the following information:

1. Who was involved,

2. When it happened,

3. What the circumstances were, in your own words,

4. What the final determination was, if any,

5. A copy of any applicable documents.

B. If answered "Yes," give complete details of the circumstances surrounding the misstatement. Include specific details such as the parties involved and dates, and attach a copy of any proceeding regarding the finding of a misstatement.

C. If answered "Yes," give complete details of the circumstances surrounding the misstatement. Include specific details such as the parties involved and dates.

Question #27 (D-F)

For each question answered "Yes," supply the following information:

1. Who was involved,

2. When it happened,

3. What the circumstances were, in your own words,

4. What the final determination was, if any,

5. A copy of any applicable documents.

Question #28

A. Give complete details including dates, city, state, court, docket number and an explanation of the circumstances in your own words. Attach a copy of the judgment if available.

B. If answered "Yes," indicate the name of the person and give complete details of the circumstances surrounding your association with that person.

(a) (b) (c) (d) (e) of Section 3(a)(39) of the Securities Exchange Act of 1934 indicates when a person is subject to a statutory disqualification.

C. If answered "Yes," supply the following information:

1. Who was involved,

2. When it happened,

3. What the circumstances were, in your own words,

4. What the final determination was, if any,

5. A copy of the documents, if available.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21649/July 3, 1980

In the Matter of

ALABAMA POWER COMPANY
600 North 18th Street
Birmingham, Alabama 35291

(70-6472)

NOTICE OF PROPOSAL TO ISSUE FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Alabama Power Company ("Alabama"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding

Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Alabama proposes to issue and sell up to $300,000,000 aggregate principal amount of its First Mortgage Bonds ("new Bonds"). Of such amount it is proposed that up to $150,000,000 principal amount of new Bonds ("initial series") will be issued in September, 1980 and up to $150,000,000 principal amount of new Bonds ("additional series") will be issued in one or more series from time to time not later than February 28, 1981. It is proposed that each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price obtainable but for a price to Alabama of not less than 98% nor more than 101-3/4% of the principal amount thereof, plus accrued interest.

The new Bonds will be issued under the Indenture dated as of January 1, 1942, between Alabama and Chemical Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by Supplemental Indentures to be dated as of the first day of the month of the date on which each series of new Bonds is issued. It is further proposed that Alabama decide on the term of each series of the new Bonds after the date of the respective public invitation for proposals and then in each case notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of each bidding. It is also proposed that in each such notice Alabama may designate a lesser aggregate principal amount of the new Bonds of the particular series to be issued and sold than that previously specified in the respective public invitation for proposals, and that Alabama reserve the right in its discretion to designate a principal amount or term for the new Bonds of a particular series different from that theretofore specified by notice by prospective bidders not less than 24 hours prior to the time of each bidding.

Alabama will provide that none of the new Bonds will be redeemed for a five-year period commencing with the first day of the month of issuance, respectively, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such new Bond through the use, directly or indirectly, of funds borrowed by Alabama at an effective interest cost to Alabama of less than the effective interest cost to Alabama of the respective series of new Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the improvement (sinking) fund or the maintenance and replacement provisions of the above-mentioned Indenture or by the use of proceeds of released property.

Alabama also will convenant that it will not redeem any of the new Bonds of a particular series, in any year prior to the fifth year after the issuance of such series, through the operation of the improvement (sinking) fund provisions in a principal amount which would exceed the improvement fund requirement attributable to such series (i.e., 1% of the aggregate principal amount of such series).

Alabama also proposes to issue up to $100,000,000 aggregate stated value of its Preferred Stock, with a stated value of up to $100 per share ("new Preferred Stock"), and to sell such securities at competitive bidding for the best price obtainable (after giving effect to the purchasers' compensation hereinafter referred to) but for a price to Alabama (before giving effect to such purchasers' compensation) of not less than 100% nor more than 102% of the stated value per share, which shall also be the public offering price per share. In addition, Alabama proposes to pay to the purchasers of the new Preferred Stock compensation for their services in purchasing and making a public offering of such shares, which compensation shall be included as part of the competitive bidding on the new Preferred Stock. It is proposed that the new Preferred Stock be issued in one or more series from time to time not later than February 28, 1981.

The terms of each series of the new Preferred Stock will be established by amendment to the charter of Alabama. Alabama may also make provision for a cumulative sinking fund for the benefit of the new Preferred Stock which would retire not more than 5% annually of the number of shares initially issued of the particular series, commencing five years or later after the sale, with the non cumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming an additional like number of shares.

Alabama will provide that no share of the new Preferred Stock will be redeemed for a five-year period, commencing with the first day of the month

of issuance, respectively, if such redemption is for the purpose or in anticipation of refunding such share directly or indirectly through the incurring of debt, or through the issuance of stock ranking equally with or prior to the new Preferred Stock as to dividends or assets, if such debt has an effective interest cost to Alabama or such stock has an effective dividend cost to Alabama of less than the effective dividend cost to Alabama of the respective series of the new Preferred Stock.

Alabama may request by amendment hereto that one or more of such sales of new Bonds or new Preferred Stock be excepted from the competitive bidding requirements of Rule 50. Alabama proposes to use the proceeds from each sale of the new Bonds and the new Preferred Stock, along with other funds, to finance its business as an electric utility company, primarily the repayment of outstanding short-term indebtedness and the payment of costs incurred in its ongoing construction program.

Statements of the fees, commissions and expenses to be incurred in connection with each issuance and sale of securities, other than the respective underwriting discounts and commissions, will be filed by amendments to the application. The Alabama Public Service Commission has authorized the proposed transactions. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Alabama states that any amendment and/or pertinent information to this application seeking authority to issue and sell any additional series of new Bonds or any series of new Preferred Stock will be filed not less than 10 business days prior to the proposed effective date of the supplemental order relating thereto. Alabama will concurrently serve a copy of any such amendment and/or pertinent information upon any person who had, not later than July 30, 1980, requested a hearing on or advice as to whether a hearing is ordered with respect to any additional series of new Bonds or any series of new Preferred Stock. Any person so served may then, not less than five business days prior to the proposed effective date of the supplemental order, request a hearing on the terms and conditions of the additional series of new Bonds or series of new Preferred Stock.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 30, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as filed or as it may be amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21650/July 3, 1980

In the Matter of

TRANSOK PIPE LINE COMPANY
Tulsa, Oklahoma

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

(70-6467)

ORDER AUTHORIZING CAPITAL CONTRIBUTION BY PARENT COMPANY TO SUBSIDIARY PIPE LINE COMPANY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Transok Pipe Line Company ("Transok"), a subsidiary pipeline company of PSO, have filed an

application-declaration with this Commission pursuant to Sections 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following transaction.

Transok is an intrastate pipeline company with operations limited to its state of incorporation, Oklahoma. All of its common stock is owned by PSO. Transok is engaged in the purchase, transportation and sale to PSO of natural gas pursuant to a contractual arrangement to supply PSO's electric generating stations with boiler fuel on a long-term basis.

PSO proposes to make a capital contribution of $10,000,000 to Transok. The full amount of the capital contribution will be used to increase Transok's equity base primarily to support refinancing of $27,000,000 of Transok bonds due in November, 1980.

The proceeds of the capital contribution will be used to repay short-term debt incurred in connection with Transok's 1979 and 1980 construction programs. At July 15, 1980, short-term borrowings will approximate $11,000,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,250. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21616), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, be, and it hereby is granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21651/July 7, 1980

In the Matter of

OHIO POWER COMPANY
CENTRAL OHIO COAL COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

(70-6447)

NOTICE OF PROPOSED TRANSFER OF COAL LANDS AND RELATED ASSETS TO COAL MINING SUBSIDIARY AND PROPOSED INCREASE OF RETURN ON PRIOR INVESTMENTS THEREIN

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Central Ohio Coal Company ("COCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9 and 10 of the Act and Rules 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Power proposes to transfer certain coal lands, mineral rights, structures and equipment (in which it had a net investment of approximately $30,413,000 as of December 31, 1979), which represent a major portion of the assets associated with the Muskingum Mine, to COCO. Such transfer would be financed partially by long-term interest-bearing notes to be issued by COCO to Ohio Power, and partially by a capital contribution by Ohio Power to COCO. It is also proposed that the rate of return allowed Ohio Power on its prior investment in COCO, which rate is reflected in the price paid by Ohio

Power for coal from COCO, be increased from 6% per annum on the portion of COCO's capital and surplus (including declared but unpaid dividends) which is invested by Ohio Power in COCO, to a rate of 13% per annum on COCO's equity (excluding retained earnings).

COCO was incorporated in the State of Ohio in 1946 for the purpose of conducting surface coal mining operations for Ohio Power. COCO operates the Muskingum Mine, which is located in the Ohio counties of Morgan, Muskingum and Noble, on lands owned or controlled by Ohio Power. COCO supplies coal to Ohio Power pursuant to a contract dated February 15, 1946, which, as amended and supplemented (the "Coal Contract"), gives COCO the exclusive right to mine coal from certain designated lands owned or controlled by Ohio Power, and provides that COCO shall sell and deliver to Ohio Power, and Ohio Power shall accept and pay for, all of the coal produced by COCO from such lands. The price of the coal sold and delivered under the Coal Contract is an amount equal to the sum of: (a) the entire cost to COCO of mining, preparing and delivering such coal (including carrying charges on the coal lands billed by Ohio Power to COCO); and (b) an additional amount sufficient to give COCO a return (after taxes) of 6% per annum on the portion of its capital and surplus (including declared but unpaid dividends) which is invested by Ohio Power in COCO.

The Muskingum Mine is a large surface coal mine, encompassing more than 150,000 acres, located about 5 miles from Ohio Power's Muskingum River Generating Station (the "Muskingum River Plant") at its closest point. After cleaning at a preparation plant, coal from the Muskingum Mine is transported to the Muskingum River Plant by an overland conveyor belt system. The amount of recoverable clean coal remaining in the Muskingum Mine is estimated to be approximately 73 million tons. It is anticipated that this coal will be mined at an average annual rate of 2.3 to 2.4 million tons. The Muskingum River Plant, located on the Muskingum River near Beverly, Ohio, is a 5-unit coal-fired steam-electric generating plant having a net power capability (winter rating) of 1,375,000 kilowatts.

It is proposed that Ohio Power transfer to COCO (i) all the land, mineral rights, structures and equipment related to the Muskingum Mine which are presently carried on Ohio Power's books and which are the subject of carrying charge billings to COCO, and (ii) the Muskingum Mine preparation plant addition ("Preparation Plant"), a major addition completed on February 4, 1980, to the original coal cleaning plant (including in (i) above) and which is estimated to have a total construction cost of $18,000,000, the Preparation Plant not previously having been the subject of carrying-charge billings to COCO. The following table summarizes the property proposed to be transferred (book value figures as of December 31, 1979, in thousands):

TABLE

Electric Plant In Service (currently subject to carrying-charge billings)	*Original Cost*	*Accumulated Depreciation Depletion and Amortization*	*Net Book Value*
Surface lands and coal reserves	$21,931	$8,108	$13,823
Original cleaning plant and related equipment	2,211	613	1,598
Other structures and equipment	1,854	1,047	807
TOTAL	$25,996	$9,768	$16,228
(Not currently subject to carrying-charge billings)			
Construction Work in progress			
Additions to preparation plant facilities, less contract retentions of $272,000	13,798	—	13,798(1)
Other lands and rights	387	—	387
Total Subject to Transfer	$40,181	$9,768	$30,413

(1) Construction of the Preparation Plant improvements was completed on February 4, 1980 at a cost of approximately $18,000,000.

The property to be transferred would be conveyed at Ohio Power's net book value for such assets as of the first day of the month in which the transfer takes place. It is proposed that in exchange for the conveyance of such properties, COCO will issue long-term notes ("Notes") to and obtain capital contributions from Ohio Power in proportions equal to the debt-equity ratio of Ohio Power as of December 31, 1979. On such date the capitalization ratios of Ohio Power were 56.3% debt and 43.7% preferred and common equity.

It is proposed that the annual interest rate on the Notes shall be equal to the effective interest cost of Ohio Power's most recently issued series of first mortgage bonds, which was its 10-3/4% series due 1989, issued in September 1979, which have an effective interest cost of 10.75% per annum. The Notes to be issued by COCO would mature 30 years from the date of issuance and would be prepayable at any time without penalty.

It is proposed that the return on equity applicable to the capital contributions shall be based on the weighted cost of money of Ohio Power's last issue of preferred stock and the rate of return on common equity determined and allowed by the Federal Energy Regulatory Commission ("FERC") in its most recent wholesale rate proceedings involving Ohio Power. Since there is at present no such applicable FERC order, it is proposed that the cost of common equity capital be set (until there is such an applicable FERC order) at 13%, which rate is no more than the level allowed in the most recent order of the Public Utilities Commission of Ohio in retail rate proceedings involving Ohio return on equity applicable to the capital contribution would be 12.03%, as shown in the following table:

TABLE

Component	*Capitalization Ratio*	*Factor 100*	*Cost*	*Weighted Cost*
Preferred Stock	11.9%	27.2%	9.46%(1)	2.57%
Common Equity	31.8	72.8	13.00	9.46
	43.7%	100.0%		12.03%

(1) Cost to Ohio Power of its most recent preferred stock issue, its $2.27 series, par value $25, issued in March 1978.

It is also proposed that the presently allowed 6% rate of return, after taxes, for COCO on its existing common equity (including retained earnings and declared but unpaid dividends) under the Coal Contract be increased to a rate of 13% on said common equity (excluding retained earnings and declared but unpaid dividends). Ohio Power and COCO therefore propose to amend the Coal Contract to provide that the price to be paid by Ohio Power for coal delivered thereunder be an amount equal to the sum of: (a) the entire cost of COCO of mining, preparing and delivering such coal; (b) interest on COCO's indebtedness, including the Notes; and (c) an additional amount sufficient to give COCO a return, after taxes, of 13% on its common equity prior to the proposed transfer of assets and a return, after taxes, of 12.03% on the new capital contributions, both such rates to be adjusted to reflect the return last allowed to Ohio Power by FERC with respect to its common equity in wholesale into proceedings involving Ohio Power, such adjustment to occur on January 1 of the year following the year in which such FERC order is issued. It is stated that until this Commission acts on the instant filing the cost of coal shall include the rate of return currently allowed under the Coal Contract.

It is further stated that it was originally contemplated that the proposed transfer of Ohio Power's investment in the Preparation Plant would be consummated prior to the date of its commercial operation. However, since it was completed and put into operation on February 4, 1980, prior to the date the filing herein was made, Ohio Power has instituted an interim billing procedure to recover its carrying charges associated with such investment. Such billings, which include compensation for the cost of invested capital at a net-of-tax composite rate of 11.31%, have been made subject to adjustment or refund, as may be ordered by this Commission.

COCO claims exemption from the competitive bidding requirements of Rule 50 for its issuance of Notes to Ohio Power pursuant to Rule 50(a)(3).

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than August 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be

granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21652/July 8, 1980

In the Matter of

BLACKHAWK COAL COMPANY
c/o American Electric Power Service Corporation
2 Broadway
New York, New York 10004

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6273)

NOTICE OF PROPOSED SALE OF COAL MINES

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company ("Blackhawk"), a coal mining subsidiary of I&M, have filed with this Commission an application-declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10, 12(b), 12(f) and 13(b) of the Act and Rules 43, 45, 50(a)(3) and 86-92 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 21, 1974 (HCAR No. 18614), I&M was authorized to acquire up to $10,000,000 of notes to be issued by Braztah Corporation ("Braztah"), a subsidiary of McCulloch Oil Corporation ("McCulloch"), for the purpose of financing the expansion and operation of certain coal mines located in Carbon County, Utah ("Carbon County Mines"), from which mines McCulloch and Braztah were to sell coal to AEP system companies pursuant to a June 19, 1974, coal supply contract. By order dated June 26, 1975 (HCAR No. 19064), I&M was authorized to acquire the Carbon County Mines and related equipment, pursuant to arrangements therein set forth, which included, among other things, I&M's employment of Braztah to operate the mines until December 31, 1999. Title to the mines and equipment was taken by Franklin Real Estate Company ("Franklin"), a real estate subsidiary of AEP. The results of Braztah's operating the mines subsequently led to disputes between Braztah and McCulloch on the one hand and the AEP system on the other. Such controversy was resolved in November 1979 when McCulloch, Braztah, I&M and Franklin entered into a Settlement Agreement and a Post-Closing Adjustment Agreement (collectively the "Settlement Agreement"). Under the Settlement Agreement (1) the provision that Braztah was operator of the Carbon County Mines was terminated; (2) Braztah assigned to Franklin Braztah's application to the Bureau of Land Management, Department of Interior, for a United States Coal Lease (No. U-25683) (the "Federal Coal Lease"), which was not previously transferred when Franklin purchased the bulk of the Carbon County Mines' reserves in 1975; (3) I&M paid to McCulloch and Braztah $15,000,000 on November 30, 1979, $4,125,000 on June 27, 1980, and agreed to pay an additional amount aggregating $19,800,000 (the "Braztah Obligation") in installments over a five-year period ending in 1985; and (4) I&M agreed to pay McCulloch and Braztah, if the Federal Coal Lease were issued to Franklin on or before June 27, 1985, the amount of $3,888,000 (the "Contingent Braztah Obligation"), in installments beginning on the latter of June 27, 1981, or the June 27 next following the issuance of such lease, and on each June 27 thereafter to and including June 27, 1985, with interest on the unpaid balance of said amount at the rate of 8% per annum from June 27, 1979. The Carbon County Mines are currently being operated by Price River Coal Company ("Price"), a coal mining subsidiary of I&M; coal therefrom is presently being mined at the rate of 1.25 to 1.3 million tons per year, all of which is currently being delivered to I&M's Tanners Creek Plant; and I&M's investment therein

as of February 29, 1980, was approximately $190,482,000.

In the instant filing applicants-declarants request authorization (1) for I&M to transfer its interest in the Carbon County Mines and related reserves, leases, options, equipment, and stock certificates and other instruments representing water rights, water way and other licenses, etc., related to the ownership and operation of the Carbon County Mines (all such assets collectively, the "Mines") to Blackhawk, and (2) for Blackhawk to spend up to $13,000,000 between December 31, 1980, and June 30, 1981, on additional mine improvements in the event that a contemplated sale of the Mines to non-affiliated parties is not consummated prior to December 31, 1980.

On May 29, 1980, I&M and Franklin (collectively the "Prospective Seller") entered into an agreement ("Agreement") dated as of May 1, 1980, with Alusuisse of America, Inc. ("Alusuisse") and Samusa, Inc. ("Samusa"), a subsidiary of Alusuisse, non-affiliates of AEP (collectively the "Prospective Purchaser"), for further negotiations during a Negotiation Period (of a maximum of 180 days) to attempt to evolve arrangements on mutually agreed conditions providing for (i) a Mine Purchase Agreement under which the Prospective Seller would sell the Mines to the Prospective Purchaser; and (ii) a Coal Supply Agreement under which the Prospective Purchaser would sell to I&M, for the benefit of I&M and/or its affiliates and possibly non-affiliates, for up to 60 months following such purchase, coal mined by the Prospective Purchaser (or an affiliate) from the Mines (or from an alternative source), such coal to have characteristics as therein set forth, at a base price of $40 per ton, f.o.b. mine, plus escalation.

Under the Agreement the Prospective Purchaser also has a separate option to elect, at any time during the Negotiation Period, to purchase the Mines for cash at a price of approximately $195,000,000, subject to adjustments. The amount to be added to such option price is to be the sum, without duplication, of: (a) the undepreciated value of assets added to the Prospective Seller's Central Asset File—Coal Mining Assets—during the period February 29, 1980, and prior to the close of business on the fifth day prior to the closing date; and (b) amounts not exceeding in any one case, or in the aggregate, the respective amounts set forth in an appendix to the Agreement concerning projects involving projected capital expenditures during the period March 1, 1980, through December 31, 1980 (approximately $10,000,000 in the aggregate), expended by, and/or recorded on the accounting records of, the Prospective Seller in accordance with its normal accounting procedure, in accordance with written commitments authorized under the Agreement. The amount to be deducted from such option price is to be the sum, without duplication, of: (a) the aggregate amount of earnest money previously paid to the Prospective Seller under the Agreement; (b) the depreciated value of any depreciable assets included in the Prospective Seller's Central Asset File—Coal Mining Assets—at February 29, 1980, which shall have been retired subsequent to such date and prior to the close of business on the fifth day prior to the closing date; (c) the aggregate amount of depreciation recorded on the accounting records of Prospective Seller in accordance with its normal accounting procedures concerning depreciable assets owned and operated by Prospective Seller as a part of the Mines during the period subsequent to February 29, 1980, and prior to the close of business on the fifth day prior to the closing date; (d) the amount of $3,880,000, the Contingent Braztah Obligation, if the assignment to Franklin of the Federal Coal Lease shall not have been approved prior to the closing date and the Prospective Purchaser shall have assumed the obligation of the Prospective Seller to pay such amount to McCulloch and Braztah; and (e) accounts payable applicable to approved capital expenditure projects listed in the appendix to the Agreement if the Prospective Purchaser shall have, at the closing date, assumed the obligation to make such payments in lieu of the Prospective Seller. The arrangements for the determination of and adjustments to the option price are designed to provide for the recovery, in the event the Prospective Purchaser exercises its option, by I&M of its investment in the Mines. As of February 29, 1980, I&M's investment therein was as follows (in thousands):

	Total	Plant In Service	Coal Property Held For Future Use
Land	$1,263	$955	$308
Water rights	482	482	—
Coal reserves	49,824	16,100	33,724
Contract settlement	14,929	14,929	—
Depreciable assets	32,658	32,370	288
Development & pre-operating expense	56,072	47,079	8,943
Reorganization deferral	7,267	7,267	—
AFUDC	28,049	22,223	5,825
	*$190,492	$141,404	$49,088

*Excludes the Braztah Contingent Obligation.

The Agreement also contemplates that, if the Prospective Purchaser does exercise its option to purchase the Mines, I&M will, if requested in writing to do so by the Prospective Purchaser, purchase, during a period of approximately five years, unless such option shall be earlier terminated by the Prospective Purchaser, washed coal from the Mines on terms specified in the Agreement, one such term being that coal so sold to I&M shall be sold to it at a base price of $40 per ton f.o.b. mine, subject to escalation.

The Agreement further contemplates that I&M and Franklin may transfer at any time their entire right, title and interest in the Mines to Blackhawk, if (a) Blackhawk shall be designated by I&M and Franklin one of the entities constituting the Prospective Seller under the Agreement and (b) Blackhawk shall execute and deliver a valid and binding Agreement pursuant to which it shall expressly assume all the obligations of the Prospective Seller under the option granted in the Agreement. I&M proposes that it will assign and transfer to Blackhawk all of I&M's right, title and interest, including its beneficial interest in assets owned by Franklin for the benefit of I&M, in the assets comprising the Mines (with the exception of certain assets which will not be transferred during the pendency of the option period); that I&M and Franklin will designate Blackhawk as one of the entities constituting the Prospective Seller under the Agreement; and that Blackhawk will execute and deliver to Alusuisse and Samusa a written instrument pursuant to which Blackhawk will assume all of the obligations of the Prospective Seller under the option provisions of the Agreement. Such transaction will enable Blackhawk, in conjunction with I&M and Franklin, to convey the Mines to the Prospective Purchaser in the event that (a) a Mine Purchase Agreement is negotiated and completed pursuant to the Agreement, or (b) if, failing to reach an accord upon such Mine Purchase Agreement, Alusuisse and Samusa decide to exercise the option granted in the Agreement.

It is further proposed that in connection with the acquisition by Blackhawk of I&M's beneficial interest in the Mines: (i) Blackhawk will assume I&M's Braztah Obligation of $19,800,000 with interest at the rate of 8% per annum (and also assume I&M's Contingent Braztah Obligation of $3,888,000); (ii) I&M will make an advance of $31,000,000 to Blackhawk to be repaid not later than December 31, 1981, Blackhawk (a) to pay interest on the outstanding balance of such advance at the prime rate in effect from time to time of Manufacturers Hanover Trust Company, and (b) to endeavor to pay back the advance as soon as practicable with proceeds from a possible sale and leaseback transaction (to be the subject of a future filing with this Commission) involving certain coal processing and mining equipment; (iii) Blackhawk will issue to I&M a promissory note bearing interest at the rate of 10.13% per annum (reflecting I&M's weighted average cost of first mortgage bonds issued between March 1975 and March 1978) and maturing on December 31, 2010; (iv) Blackhawk will issue to I&M approximately 49,800 of Blackhawk's common stock, stated value $1,000 per share; and (v) I&M will make a non-interest bearing advance to Blackhawk in the amount of $49,100,000, said amount to finance Blackhawk's acquisition of the portion of the reserves of the Mines which constitute Coal Property Held For Future Use.

It is also proposed that Blackhawk be authorized to make capital expenditures required for mine improvements subsequent to December 31, 1980, in the event the Mines are not sold by such date. Such expenditures are estimated to require up to $13,000,000 between such date and June 30, 1981. It is proposed that any additional capital required will be supplied by I&M, such capital to be split between the purchase of debt, in the form of a promissory note of Blackhawk maturing December 31, 2010, and the purchase of equity in proportions corresponding to the respective debt-equity ratios of I&M at the end of the calendar year preceding the year in which such additional capital shall be supplied to Blackhawk. The interest rate on the new debt would be set at the effective interest cost of I&M's then most recent issue of first mortgage bonds preceding each such additional investment.

Blackhawk proposes, prior to, or in the absence of, any sale of the Mines under the Agreement, to carry out the further development and operation of the Mines, through Price, functioning as operator as at present, and to sell the coal so mined to I&M or to such affiliate or non-affiliate as I&M shall direct. It is further proposed that if at any time neither I&M nor its affiliates should have any need for coal produced from the Mines, then the excess coal will be sold, to the extent practicable, to one or more non-affiliates at the highest practicable price.

I&M proposes, in return for its right to receive all of the coal produced by Blackhawk from the Mines, to pay Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, will be at least sufficient to enable Blackhawk to pay when due, all of its operating and other expenses, including: (i) any amounts which Blackhawk may be required to pay as rent pursuant to any lease of real or personal property and/or as interest on any indebtedness of Blackhawk for borrowed money or purchase money indebtedness, issued or assumed by Blackhawk; and (ii) such additional amount as, after provision for taxes based upon or measured by income, will enable Blackhawk to earn a return on its equity equal to the sum of the products of (a) the weighted average of the effective dividend rates on the appropriately included outstanding preferred stock issued by I&M during the period when the related investments were made by Blackhawk in the Mines, and (b) a return of 12.5% on equity through December 31, 1980, and thereafter the return last allowed I&M by the Federal Energy Regulatory Commission ("FERC") on I&M's common equity in wholesale rate proceedings before FERC, multiplied, respectively, by the applicable percentages of I&M's total capitalization represented by preferred stock and common equity during the periods in which such related investments were made by Blackhawk. The return factor would be adjusted as a result of a change in any FERC-approved return on common equity, effective the succeeding January 1.

It is stated that the "Plant in Service" facilities, aggregating approximately $141,000,000 as of February 29, 1980, were substantially placed in service as of April 1, 1979, following an extended development period. During the development period, the developmental coal produced was priced at the average cost of coal purchased from non-affiliated sources by I&M and other AEP system companies purchasing such coal. However, upon the declaration of commercial operation, April 1, 1979, the basis of pricing the coal production shifted to the recovery of all expenses associated with the mining of such coal, including the cost of capital invested in the mining operation. Effective on such date I&M began to impute investment carrying charges to the current commercial coal production on the "Plant in Service" assets. The imputation of such investment carrying charges has been accomplished on I&M's books of account by crediting "Other Income" (the same classification in which the return on investment in Blackhawk would be recognized on I&M's books) with a corresponding charge to fuel stock. Depreciation of mining equipment in service and amortization have likewise been associated directly with tonnages produced. The provision for allowance for funds used during construction, and associated capitalization as a component of mine development costs, was discontinued effective April 1, 1979, on assets then ready for service.

It is further stated that to the extent that any subsequent order of this Commission authorizes a return on investment different from that proposed in this amended application-declaration for use in determining pricing arrangements for coal produced and delivered during this interim period, I&M and Blackhawk would reflect any necessary adjustments in subsequent coal billings. Applicants-declarants claim exemption from the competitive bidding requirements of Rule 50 for Blackhawk's issuance of its common stock and notes to I&M pursuant to Rule 50(a)(3).

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions (except that if the proposed coal supply arrangements between I&M and Blackhawk are reduced to any writing other than the amended application-declaration, which is not anticipated, then such further writing must be filed with the Public Service Commission of Indiana).

NOTICE IS FURTHER GIVEN that any interested person may not later than August 6, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if

the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended may be granted and be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issues in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21653/July 9, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
25 Research Drive
Westborough, Massachusetts 01581

(70-5543)

NOTICE OF PROPOSED INCREASED BUDGET FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary New England Energy Incorporated ("NEEI"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43 and 45(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement concerning the proposed transaction.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize NEEI, acquire its capital stock and make investments (including subordinated notes) in NEEI of up to $20,250,000 through July 31, 1976, and NEEI was authorized to enter into a partnership agreement ("Agreement") with Samedan Oil Corporation ("Samedan"), a wholly owned subsidiary of Noble Affiliates, Inc., to explore for oil and gas in the continental United States (both onshore and offshore). NEEI was at that time authorized to invest a maximum of $10,000,000 in that partnership through July 31, 1976. By order dated June 18, 1976 (HCAR No. 19580), NEES was authorized to increase its investment in NEEI to $45,000,000 through December 31, 1979, with NEEI to use such investments to finance its procurement and inventory activities and to finance fuel exploration and development activities with Samedan and/or other parties. By order dated July 19, 1978 (HCAR No. 20632), NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract on terms and conditions therein set forth. By order dated December 29, 1979 (HCAR No. 21365), NEEI was authorized (1) to enter an amendment to the Agreement, which amendment extended the term of the Agreement through December 31, 1984, and (2) to invest in the partnership with Samedan a maximum amount of $30,000,000 for exploration, development or any other purpose from January 1, 1980, through December 31, 1980.

By post-effective amendment applicants-declarants request that the maximum amount NEEI may invest in its partnership with Samedan for oil and gas exploration, development, or any other purpose from January 1, 1980, through December 31, 1980, be increased to $60,000,000. It is stated that on the basis of the projected exploration activities of Samedan (which is the managing partner and has responsibility for evaluation and selection of new prospects for exploration) for the calendar year 1980, NEEI now estimates that its share of partnership expenses for exploration purposes

alone will require capital contributions by NEEI to the partnership of approximately $33,000,000. It is further stated that NEEI now estimates its share of development expenses for the calendar year 1980 will be approximately $27,000,000, such amount representing an increase over earlier estimates due to additional expenses of developing several new prospects, revised plans for developing a large prospect and general inflation.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 6, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21654/July 10, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

(70-6437)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALERS

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transaction.

Columbia proposes to issue notes to banks and commercial paper to dealers from time to time through May 31, 1981. The aggregate amount of bank borrowings and commercial paper will not exceed $335,000,000 at any one time outstanding. Columbia has no short-term notes outstanding at the present time.

The proposed transaction is designed to enable Columbia to furnish funds to its subsidiary companies for purchase of gas for underground storage and liquid hydrocarbon inventories and for other short-term requirements. A separate application (File No. 70-6435) has been filed with this Commission seeking authorization to furnish such funds to its subsidiaries. The short-term gas and liquid hydrocarbon requirements of approximately $346,100,000 may make it necessary to have outstanding at any one time through May 31, 1981, short-term notes in the aggregate amount of $335,000,000.

Columbia may sell commercial paper to one or more commercial paper dealers and continue to do so as long as the effective interest rate on such commercial paper is less than the effective interest cost which Columbia would have to pay to the banks for an equivalent amount of funds as of the date of borrowing except that, in order to obtain greater flexibility, commercial paper may be issued with a maturity of not more than 60 days from the date of issue with an effective interest cost in excess of the effective interest cost on bank borrowings.

Commercial paper will be issued by Columbia in denominations of not less than $50,000 nor more than $5,000,000 and will be reoffered by the dealer or dealers in such a manner as not to constitute a public offering. Such commercial paper will be sold by Columbia to the dealer or dealers at a discount rate which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of that particular maturity and rating, sold by issuers thereof to commercial paper dealers. No commission or fee will be payable by Columbia in connection with the issuance and sale of such commercial paper. The purchasing dealer, however, will reoffer such notes at a discount rate of 1/10 of 1% per annum less than such discount rate to the issuer.

The commercial paper will be reoffered by the commercial paper dealer or dealers to not more than 200 of their customers (a total of 200 customers if more than one dealer) identified and designated in non-public lists of institutional investors prepared in advance by each of them for this purpose. It is expected that Columbia's commercial paper will be held by customers to maturity, but if they wish to resell prior thereto, the commercial paper dealer, pursuant to repurchase agreement, will repurchase the notes and reoffer the same to others in this designated list of customers.

The commercial paper shall be in the form of a promissory note with maturities to be determined by market conditions, effective interest cost to Columbia and Columbia's anticipated cash requirements at the time of issuance. The commercial paper to be issued by Columbia, in accordance with the established custom and practices in the market, would not be payable prior to maturity.

Columbia has negotiated two separate short-term lines of credit with commercial banks totaling $225,000,000 in order to satisfy its requirements through May 31, 1981. The first agreement consists of bank loan lines of credit aggregating $105,000,000 in accordance with agreements with nine participating banks. Under these agreements, Columbia will pay the participating banks a fee in lieu of compensating balances equal to 1/4% per annum times the aggregate amount of the line. Borrowings under these lines will bear, at Columbia's option, interest at an effective per annum rate equal to; (i) the floating prime rate at Manufacturers Hanover Trust Company, or (ii) a margin of 3/8% over the London Interbank Offered Rate ("LIBOR"). Assuming that the current prime rate of 12% and LIBOR of 8.5% prevail and full utilization of the line is made, the effective annual cost of borrowing under option (i) would be 12.25% and under option (ii) would be 9.125%. The second agreement consist of bank loan lines of credit aggregating $120,000,000 in accordance with agreements with twenty-four (24) participating banks. Borrowings under these lines will bear interest at an effective per annum rate equal to the floating prime rate at Morgan Guaranty Trust Company.

It is Columbia's intent to maintain average annual compensating balances in connection with certain banks participating in these lines of credit equating to the greater of 10% of the lines of credit or 20% of the annual average outstanding loan balance. Assuming that the current prime rate of 12% prevails and that the 10% compensating balances are appropriate, the effective annual cost of borrowing under this line would be 13.3%. Borrowings under these lines of credit will be repaid by May 31, 1981. Columbia will also have the right to prepay any or all of such bank notes, in whole or in part, without penalty.

The fees, commissions and expenses to be incurred by Columbia in connection with the proposed transaction are estimated at $25,000, including rating fees of $21,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21547), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the

certification thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11243/July 3, 1980

In the Matter of

PIRVEST, INC.
2520 West Freeway
Fort Worth, Texas 76102

(811-2971)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

Pirvest, Inc. ("Pirvest"), a closed-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application February 14, 1980, and an amendment thereto on May 27, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Pirvest has ceased to be an investment company as defined in the Act.

On June 6, 1980, a notice (Investment Company Act Release No. 11203) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Pirvest, Inc., as an investment company under the Act shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11244/July 3, 1980

In the Matter of

INA CASH FUND, INC.
3531 Silverside Road
Wilmington, Delaware 19810

(812-4692)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER OF EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that INA Cash Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 11, 1980, and amendments thereto on June 13 and June 27, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a corporation incorporated under the laws of the State of Maryland. Applicant states that its investment objective is to provide investors with preservation of capital, liquidity and, consistent with the foregoing objectives, the highest possible current income by investing in a broad range of money market instruments. Applicant invests in instruments consisting of securities issued or guaranteed by the United States government or any of its agencies or instrumentalities, time accounts (largely certificates of deposit) in and bankers' acceptances of large domestic commercial and savings banks and savings and loan associations, short-term corporate debt including commercial paper and variable amount master demand notes, and repurchase agreements. In addition, the Fund may invest in certificates of deposit of foreign branches of domestic commercial banks and engage in reverse repurchase agreements, subject to certain restrictions set forth in the Applicant's current prospectus.

Applicant states that when it commenced operations on November 5, 1979, its management decided that its net income, declared daily as a dividend, would include (i) interest accrued and discount earned (including both original issue and market discount), (ii) all unrealized appreciation and depreciation on the Applicant's portfolio securities, and (iii) all realized gains and losses on the Applicant's portfolio securities, less the applicable expenses of Applicant. It was decided to include all unrealized appreciation or depreciation in net income, rather than in net assets as certain other money market funds did, because the Applicant also undertook to use its best efforts to maintain a constant net asset value per share. Including unrealized appreciation or depreciation in net income had the undesirable effect of causing the Applicant's income to fluctuate. Fluctuations in income, however, were viewed by the Applicant as more acceptable than including unrealized appreciation and depreciation in net assets which posed the risk of breaking constant net asset value per share.

Applicant now proposes to change its dividend policy to include unrealized appreciation and depreciation in net assets, rather than in net income, and to round its net asset value per share to the nearest cent on a share value of $1.00. The proposed change in dividend policy has been occasioned by: (1) the desirability of increasing the proportion of the Applicant's portfolio which is invested in securities with remaining maturities of greater than 60 days, and (2) the decision on the part of the National Association of Securities Dealers to prepare and disseminate for newspaper publication a weekly report of annualized yields of money market funds. Applicant states that since it will not in the foreseeable future want to purchase securities having maturities of greater than one year, the Board of Directors of Applicant has determined that the advantages of the change in dividend policy far exceed the disadvantages of complying with the restrictions which will be imposed upon the Applicant under a "penny rounding" exemptive order.

The application states that Applicant has since inception marked to the market its portfolio securities with more than 60 days to maturity using market quotations. Further the Applicant represents that, with the exception of the relief sought here, it will in all other respects value portfolio securities in accordance with IC-9786.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction or any class or

classes of persons, securities or transactions from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that its investors place primary importance upon maintaining a constant net asset value per share. It is the Applicant's view that unanticipated fluctuations in the daily dividend are inconsistent with most shareholders' wishes. Both individual and institutional shareholders frequently invest cash reserves which occur, for example, between settlements on other securities, for relatively short periods. Applicant asserts that the proposed change in dividend policy will provide the Fund shareholders with more stable and predictable dividend payments. Applicant contends that in determining to change its dividend policy, the Applicant's Board of Directors reviewed its investment objective and policies, its shareholders' reasonable expectations and desires, and the advantages and possible disadvantages of including unrealized appreciation and depreciation in net assets, rather than net income, and concluded that such change was consistent with the economic needs and desires of the Applicant's shareholders. Applicant further submits that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that, to the extent necessary, Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a $1.00 price per share, if the net asset value per share declines to a value below $.996 or rises to a value of above $1.004, respectively. In addition, Applicant states that to maintain the stability of its price per share Applicant will adhere to the following conditions:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting Applicant's investment objectives, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 28, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11245/July 3, 1980

In the Matter of

INDEPENDENCE FUND, INC.
100 Federal Street
Boston, Massachusetts 02110

KEYSTONE CUSTODIAN FUNDS, INC.
as Trustee for
KEYSTONE CUSTODIAN FUND, SERIES K-2
99 High Street
Boston, Massachusetts 02104

(812-4624)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED ACQUISITION FROM SECTION 17(a) OF THE ACT

Independence Fund, Inc. ("Independence Fund") and Keystone Custodian Funds, Inc. ("Trustee"), as trustee for Keystone Custodian Fund, Series K-2 ("Keystone Fund") (the Trustee on behalf of Keystone Fund and Independence Fund collectively referred to as the "Applicants") filed an application on March 11, 1980, and an amendment thereto on June 2, 1980, for an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of Section 17(a) of the Act, to permit Keystone Fund to acquire all of the assets of Independence Fund.

On June 4, 1980, the Commission issued a notice (Investment Company Act Release No. 11199) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, without passing upon the fact that Independence Fund is a conventional management company and Keystone Fund is a common law trust of the type described in Section 16(c) of the Act, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of Keystone Fund and Independence Fund and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition by Keystone Custodian Fund, Series K-2, of all of the assets of Independence Fund, Inc. be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11246/July 3, 1980

In the Matter of

CONSTITUTION FUND, INC.
99 High Street
Boston, Massachusetts 02104

and

KEYSTONE CUSTODIAN FUNDS, INC.
as Trustee for
KEYSTONE CUSTODIAN FUND, SERIES K-2
99 High Street
Boston, Massachusetts 02104

(812-4623)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED ACQUISITION FROM SECTION 17(a) OF THE ACT

Constitution Fund, Inc. ("Constitution") and Keystone Custodian Funds, Inc. ("Trustee"), as trustee for Keystone Custodian Fund, Series K-2 ("K-2") (the Trustee on behalf of K-2 and

Constitution collectively referred to herein as the "Applicants") filed an application on March 11, 1980 and an amendment thereto on June 11, 1980 requesting an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 17(a) of the Act to permit K-2 to acquire all of the assets of Constitution.

On June 4, 1980, the Commission issued a notice (Investment Company Act Release No. 11200) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, without passing upon the fact that Constitution is a conventional management company and K-2 is a common law trust of the type described in Section 16(c) of the Act, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of Constitution and K-2 and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition by Keystone Custodian Funds, Series K-2, of all of the assets of Constitution Fund, Inc. be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11247/July 3, 1980

In the Matter of

MASSACHUSETTS FUND FOR INCOME
100 Federal Street
Boston, Massachusetts 02110

KEYSTONE CUSTODIAN FUNDS, INC.
as Trustee for
KEYSTONE CUSTODIAN FUND, SERIES B-2
99 High Street
Boston, Massachusetts 02104

(812-4626)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED ACQUISITION FROM SECTION 17(a) OF THE ACT

Massachusetts Fund For Income ("Massachusetts Fund") and Keystone Custodian Funds, Inc. ("Trustee"), as trustee for Keystone Custodian Fund, Series B-2 ("Keystone Fund") (the Trustee on behalf of the Keystone Fund and the Massachusetts Fund collectively referred to herein as the "Applicants") filed an application on March 11, 1980, and an amendment thereto on June 2, 1980 for an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of Section 17(a) of the Act, to permit the Keystone Fund to acquire all of the assets of the Massachusetts Fund.

On June 4, 1980, the Commission issued a notice (Investment Company Act Release No. 11202) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, without passing upon the fact that Massachusetts Fund is a conventional management company and Keystone Fund is a common law trust of the type described in Section 16(c) of the Act, that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of Keystone Fund and Massachusetts Fund and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition by Keystone Custodian Fund, Series B-2, of all of the assets of Massachusetts Fund For Income be, and hereby is,

exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11248/July 3, 1980

In the Matter of

FREEDOM FUND, INC.
100 Federal Street
Boston, Massachusetts 02110

and

KEYSTONE CUSTODIAN FUNDS, INC.
as Trustee for
KEYSTONE CUSTODIAN FUND, SERIES K-1
99 High Street
Boston, Massachusetts 02104

(812-4625)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED ACQUISITION FROM SECTION 17(a) OF THE ACT

Freedom Fund, Inc. ("Freedom Fund") and Keystone Custodian Funds, Inc. ("Trustee"), as trustee for Keystone Custodian Fund, Series K-1 ("Keystone Fund") (the Trustee on behalf of the Keystone Fund and the Freedom Fund collectively referred to herein as the "Applicants") filed an application on March 11, 1980, and an amendment thereto on June 2, 1980, requesting an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act") exempting Applicants from the provisions of Section 17(a) to permit Keystone Fund to acquire all of the assets of Freedom Fund.

On June 4, 1980, the Commission issued a notice (Investment Company Act Release No. 11201) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, without passing upon the fact that Freedom Fund is a conventional management company and Keystone Fund is a common law trust of the type described in Section 16(c) of the Act, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policies of the Freedom Fund and the Keystone Fund and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition by Keystone Custodian Fund, Series K-1, of all of the assets of Freedom Fund, Inc. be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11249/July 3, 1980

In the Matter of

ENERGY FUND INCORPORATED
GUARDIAN MUTUAL FUND, INC.
THE PARTNERS FUND, INC.

and

NEUBERGER & BERMAN
522 Fifth Avenue
New York, New York 10036

(812-4154)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTIONS FROM SECTION 17(a) OF THE ACT, PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING JOINT TRANSAC-

TIONS AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 18(f) OF THE ACT

Energy Fund Incorporated, Guardian Mutual Fund, Inc., and The Partners Fund, Inc. (collectively "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Neuberger & Berman ("N&B"), which serves as sub-adviser and principal broker for each of the Funds (the Funds and N&B are hereinafter referred to collectively as "Applicants"), filed an application on July 11, 1977, and amendments thereto on December 22, 1978, June 27, 1979, and November 21, 1979, for an order: (1) pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act proposed portfolio securities loans by the Funds to N&B; (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the Funds and N&B to enter into a joint arrangement with respect to certain portfolio securities loans; and (3) pursuant to Section 6(c) of the Act, exempting the Funds' portfolio securities loans from the provisions of Section 18(f) of the Act to the extent that such loans might be deemed to result in the creation of "senior securities."

On May 19, 1980, a notice was issued (Investment Company Act Release No. 11175) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that: (1) the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) on the basis of the information stated in the application, the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the respective policies of the Funds and with the general purposes of the Act; and (3) the participation by the Funds in the proposed transactions is consistent with the provisions, policies and purposes of the Act and is not on a basis less advantageous than that of any other participant. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 18(f) of the Act, to the extent requested be, and hereby is, granted, effective forthwith;

IT IS FURTHER ORDERED, pursuant to Section 17(b) of the Act, that the proposed portfolio securities loans by the Funds to N&B be, and hereby are, exempted from the provisions of Section 17(a) of the Act, effective forthwith; and

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the Funds and N&B be permitted to enter into the proposed joint arrangement respecting certain portfolio securities loans, effective forthwith, in each case subject to the following conditions which have been agreed to by Applicants:

(1) At the time of the loan, the Fund will receive from the borrower collateral, consisting of cash or securities issued or guaranteed by the United States Government or its agencies, or any combination thereof, at least equal to 100% of the market value of the securities loaned.

(2) The borrower must agree to add to the collateral to cover increases in the market value of loaned securities.

(3) The borrower must agree (a) that the Fund is to receive all dividends, interest or other distributions on loaned securities, and (b) to pay the Fund a reasonable return on such loan either in the form of a loan fee or premium which gives proper weight to prevailing interest rates or from the retention by the Fund of part or all of the earnings and profits realized by the Fund from the investment of the cash collateral.

(4) The Fund will not be required to pay any fees in connection with a loan, except (a) reasonable fees to a custodian, and (b) fees to a loan broker (other than N&B) provided: (i) the broker has disclosed to the Fund that it is possible to loan portfolio securities without incurring such fees, (ii) the Fund's Board of Directors, or either a committee thereof or an investment officer of the Fund, acting within the general guidelines established by the Fund's Board of Directors, has determined that such fee is reasonable and is based solely on the services rendered by such loan broker, and (iii) if under the

terms of a specific loan transaction there is to be a fee to be paid to the borrower of the securities by the Fund out of the interest the Fund expects to earn on the cash collateral put up by the borrower for the portfolio securities loan ("Collateral Fee"), such fee will be determined by the formula described below for transactions in which N&B is involved, or the Fund's Board of Directors, or either a committee thereof or an investment officer of the Fund, acting within general guidelines established by the Fund's Board of Directors, shall separately consider (before making such a payment to comply with the terms governing the transaction) the reasonableness of any such payment and the reasonableness of the return to the Fund after giving effect to such a payment.

(5) In the event the management of a Fund has knowledge that a material event will occur affecting an investment on loan and in respect of which the holder of such investment will be entitled to vote or consent, the Fund will call the loan in time to vote or consent or will otherwise obtain rights to vote or consent.

(6) A Fund will not make a portfolio securities loan when, immediately thereafter and as a result of the loan, portfolio securities with a market value of 10% or more of the Fund's total net assets will be subject to such loans.

(7) The Fund will make appropriate disclosure regarding portfolio securities loans in any prospectus it may be required to provide under the Securities Act of 1933, and effect such loan only in accordance with the policies set forth in the proxy statement utilized in connection with the annual meeting of shareholders, unless otherwise authorized by vote of the shareholders.

In addition to the above conditions, the following conditions shall apply with respect to portfolio securities loans between the Funds and N&B:

(1) Management of each of the Funds will continue to maintain a group of brokerage firms other than N&B to which that Fund is willing to make portfolio securities loans, using criteria approved by the Fund's Board of Directors. The continued eligibility of N&B as a borrower will be subject to its continuing to meet such criteria. Firms to which the Funds are willing to make portfolio securities loans will be provided with information on the Funds' portfolio securities available for loan and the Collateral Fees which the Funds are willing to pay such firms (hereinafter referred to as "Posted Rates").

(2) All brokerage firms to which portfolio securities loans are made, including N&B, will be required to execute a loan agreement.

(3) Each day the Funds will establish their Posted Rates in the following manner: at the beginning of each day, N&B will advise the Funds of the names of three registered investment companies (other than the Funds) which as of the close of business the preceding day had the largest market value of securities on loan to N&B as well as the Collateral Fees currently being paid by such investment companies on securities loans to N&B. The Funds' Posted Rates for such day will be fixed by averaging such three Collateral Fee rates and rounding to the nearest 1/8th percent. (N&B has represented that in determining the registered investment companies from which it will borrow securities, the Collateral Fee is only one factor considered and that the Collateral Fees charged on outstanding loans are revised when appropriate to reflect changes in interest rates.) The three investment companies utilized for the computation of the Funds' Posted Rates will not be selected with a view to influencing the Funds' Posted Rates, and the formula or method for setting the Posted Rate may be changed to produce a lower Posted Rate, but under no circumstances will the Funds pay N&B a Collateral Fee greater than their Posted Rate.

(4) When N&B desires to borrow a security which a Fund has indicated a willingness to lend, N&B will offer to borrow such security from the Fund at the Fund's Posted Rate before attempting to borrow the security from any other institution or firm unless such other institution or firm has indicated a willingness to and will in fact lend the security on terms which provide for the payment of a Collateral Fee which is 1/8 of 1 percent or more higher than the Posted Rate of the Fund.

(5) In situations where N&B borrows securities from a Fund in order to relend them to others, or acts as a finder in connection with a securities loan by a Fund, the compensation to N&B will not exceed that which is customary for performing such functions and any excess over the customary compensation will be turned over to the Fund. In addition: (a) N&B will provide the Funds with relevant information as to the prevailing customary rate; (b) if at any time the customary rate declines, N&B will apply such lower

rate to transactions with the Funds; and (c) N&B will not increase the applicable rate without the prior approval and concurrence of a majority of the disinterested directors of each of the Funds.

(6) If, during any month, a Fund is involved in a securities loan transaction with or through N&B where, because of the shortness of the period during which the loan is outstanding, or similar circumstances, the Fund's expenses exceed its income from the transaction, N&B will reimburse the Fund for such loss.

(7) In all securities loan transactions involving N&B, the collateral posted by N&B will be in the form of cash.

(8) Each of the Funds will maintain a committee of disinterested directors which will meet on approximately a quarterly basis to review information relating to securities loans by their Fund in which N&B has been involved to determine whether there has been compliance by N&B with the above terms and conditions and whether such terms continue to be fair and equitable. The Funds will also have the right to have their auditors examine the records of N&B relating to its stock loan transactions.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11250/July 3, 1980

In the Matter of

LIQUID GREEN TRUST
207 Guaranty Building
Indianapolis, Indiana 46204

(812-4688)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Liquid Green Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 3, 1980, and amendments thereto on June 13, 1980 and June 17, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per unit according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a business trust organized and existing under the laws of the State of Indiana. Applicant has filed with the Commission a Registration Statement on Form N-1 pursuant to Section 8(b) of the Act and the Securities Act of 1933, as amended. The 1933 Act Registration Statement on Form N-1 has not been declared effective. Thus, Applicant has not yet commenced a public distribution of its shares.

Applicant states that it intends to operate as a "money market" fund designed as an investment vehicle for investors with temporary or short-term reserves. Applicant further states that its investment objective is to obtain maximum current income consistent with safety of capital and the maintenance of liquidity. To realize this objective, Applicant proposes to invest in certain high quality money market instruments consisting of (i) obligations issued by or guaranteed as to principal and interest by the U.S. Government, its agencies, or instrumentalities; (ii) obligations of the 150 largest (in terms of assets) domestic commercial banks and the United States branches or agencies of the 50 largest (in terms of assets) foreign commercial banks, including negotiable certificates of deposit, commercial paper and [illegible] maturities not exceeding [illegible] paper and variable [illegible] with maturities not [illegible] the time of purchase [illegible] Standard & Poor's Corp[illegible] by Moody's Investors S[illegible] issued by a company which [illegible] has an outstanding debt [illegible] Standard & Poor's or Moo[illegible] board of trustees has [illegible] determination that the instru[illegible]

credit risks and is of high quality; (iv) corporate bonds and debentures which at the time of purchase have one year or less remaining to maturity and are rated at least AA by Standard & Poor's or Aa by Moody's; and (v) certain repurchase agreements with respect to obligations which, without regard to maturity, Applicant is authorized to invest.

According to the application, Unified Management Corporation, an investment adviser to four mutual funds and registered under the Investment Advisers Act of 1940, will act as Applicant's investment adviser. Applicant further states that its initial minimum investment will be $1,000, with a subsequent minimum investment of $500.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at fair value as determined in good faith by the board of directors of the registered company. [illegible] of the application, the Commission [illegible] that, among other things, (1) Rule [illegible] Act requires that portfolio [illegible] "money market" funds be valued with [illegible] market factors, and (2) it would be [illegible] with the provisions of Rule [illegible] market" fund to value its portfolio [illegible] amortized cost basis (Investment [illegible] No. 9786, May 31, 1977). In [illegible], Applicant requests an [illegible] from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to utilize the amortized cost method of valuation.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant represents that its use of the amortized cost method of valuation will enable its unitholders to have the convenience of determining the value of their holdings by knowing the number of units they hold, thus simplifying their task of maintaining an investment record. Moreover, Applicant states that absent unusual circumstances amortized cost valuation will represent the fair value of Applicant's portfolio investments, and is appropriate and preferable for Applicant. Thus, Applicant contends that granting its requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant has further agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of trustees undertake—as a particular responsibility within their overall duty of care owed to Applicant's unitholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per unit, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

(2) Included within the procedures adopted by the trustees are the following duties and responsibilities:

(a) Review by the trustees, as they deem appropriate

and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from Applicant's $1.00 amortized cost price per unit, and the maintenance of records of such review.[1]

(b) In the event any deviation from Applicant's $1.00 amortized cost price per unit exceeds one-half of one percent, a requirement that the trustees will promptly consider what action, if any, should be initiated.

(c) Where the trustees believe that the extent of any deviation from Applicant's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing unitholders, the trustees shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of units in kind; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity; withholding dividends; or utilizing a net asset value per unit as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per unit; *provided*, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will [illegible] meetings [illegible] a period [illegible] in an easily [illegible] trustees' [illegible] connection [illegible] disposition of a [illegible] dollar-weighted [illegible] of 120 days, [illegible] such in such a [illegible] ighted average [illegible] as soon as [illegible] the rules adopted under Section 31(g) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the trustees.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than July 28, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law [illegible] may request that [illegible] shall order a [illegible] application should [illegible] and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the trustees in the exercise of their discretion to be appropriate indicators of value, [illegible] (i) quotations or [illegible] dual portfolio [illegible] from yield data [illegible] instruments

herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11251/July 8, 1980

In the Matter of

EQUITY TRUST SHARES IN AMERICA
c/o Stifel, Nicolaus & Company, Inc.
500 N. Broadway
St. Louis, Mo. 63102

(811-411)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Equity Trust Shares In America ("Fund"), registered under the Act as a unit investment trust, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized pursuant to a Trust Indenture dated June 30, 1930, and executed on September 13, 1930, between the Equity Securities Corporation ("ESC"), the Fund's Sponsor, and the Mississippi Valley Trust Company ("Trustee"). ESC was organized on August 29, 1930, under the laws of the State of Missouri for the purpose of dealing in securities and the formation of investment trusts. Since 1935 ESC has been inactive, and since that date its only assets have consisted of cash on deposit with the Fund's Trustee. The Fund registered under the Act on December 18, 1940. It did not file a registration statement pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock. An accountants and auditors report to the Board of Directors of ESC dated February 5, 1945, states, among other things, that as of December 31, 1944, the Fund had 82 stock units, comprising 164,000 shares of the Fund outstanding, of which 17,712 shares were held by the Fund's Trustee as an integral part of the stock units. A stock unit on December 31, 1944, consisted of 98 shares of various issues of capital stock listed on the New York Stock Exchange and 216 shares of the Fund. The Fund's existence terminated as of June 30, 1950, as provided in the Trust Indenture, and on September 29, 1950, the first and final liquidating payment of $5.2638 per share was distributed to the Fund's shareholders representing their pro-rata share of the Fund's remaining assets.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may not later than August 4, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereo. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date

of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11252/July 8, 1980

In the Matter of

IMS VARIABLE LEVERAGE FUND, LTD.
11624 Old Trail Court
Fountain Hill, Arizona 85268

(812-4685)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM SECTIONS 2(a)(3), 2(a)(19), AND 22(e) OF THE ACT

NOTICE IS HEREBY GIVEN that IMS Variable Leverage Fund, Ltd., a Nebraska Limited partnership ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on May 28, 1980, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting the Applicant from the provisions of Sections 2(a)(3), 2(a)(19), and 22(e) of the Act to the extent necessary to allow Applicant to operate using the limited partnership form. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it has been organized as a limited partnership under the Uniform Limited Partnership Act of Nebraska and proposes to operate as an open-end, diversified, management investment company registered under the Act, with the objective of providing investors with capital appreciation and modest annual distributions of income. Moreover, the Applicant states that it has been organized on the initiative of Dr. Hebert W. Robinson, who together with members of his family owns all of the outstanding stock of International Management Systems Corporation. The Applicant further states that it will seek to achieve this objective by investing in a diversified portfolio of common stocks or securities convertible into common stock, or (for defensive purposes or for temporary periods) in non-convertible fixed obligations. Applicant also states that it may employ "leverage" by borrowing money to purchase additional securities to better achieve its primary investment objective of capital appreciation but that this use of leverage will be limited by the Applicant's secondary objective of making moderate annual distributions of income. According to the application, requests for rulings have been filed with the Internal Revenue Service seeking a determination that Applicant will be a partnership for federal income tax purposes and not an association taxed as a corporation.

The general partners of the Applicant will consist of three Director General Partners and an Adviser General Partner; the Applicant will be managed solely by the Director General Partners except in the circumstances described below. Only individuals may serve as Director General Partners. They will perform the same functions as directors of incorporated investment companies. Applicant states that the Adviser General Partner, International Management Systems Corporation ("IMSC"), in its capacity as such is excluded from participation in the management of the Applicant, except in the circumstances described below. In its capacity as investment adviser, however, IMSC will have the authority to act on behalf of the Applicant to the extent provided in its advisory agreement.

According to the application, the Director General Partners may act only by majority vote or consent and are subject to election and removal by vote of the limited partners. Applicant states that a Director General Partner may resign by giving not less than 180 days written notice to the other General Partners. If at any time the number of Director General Partners is reduced to less than three, the remaining Director General Partners shall within 120 days call a meeting of the limited partners for the purpose of electing an additional Director General Partner or Partners so as to restore the number of Director General Partners to at least three. In the event no Director General Partner remains, it is the responsibility of the Adviser General Partner to call a meeting of the limited partners of the Applicant ("Limited Partners"), to be held within 60 days of the date the last Director

General Partner ceased to act in such capacity, for the purpose of determining whether to elect to continue the business of the Applicant and, if the business is to be continued, electing new Director General Partners. During a period of time in which no Director General Partner remains, the Adviser General Partner is permitted to engage in the management, conduct and operation of the business of the Applicant to the same extent as a Director General Partner.

According to the application the Applicant's Limited Partners have no right to control the Applicant's business, but may exercise certain rights and powers of a Limited Partner under the partnership agreement, including voting rights, and the giving of consents and approvals provided for in the partnership agreement. The partnership agreement authorizes Limited Partners to exercise voting rights on certain matters, including the right to elect or remove general partners, approval or termination of investment advisory contracts, approval or disapproval of the sale of all or substantially all of the assets of the Applicant, ratification or rejection of the appointment of the independent public accountants of the Applicant and amendments to the partnership agreement (other than those to admit or substitute Limited Partners or to return or reduce the amount of partners' capital contributions). Applicant states that it has been advised that it will be the opinion of Nebraska counsel that the existence or exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Uniform Limited Partnership Act of Nebraska. However, Applicant further states that it is possible that, because of such voting rights, the Limited Partners might be found to be subject to liability as general partners by the courts of another state. In this regard, the Applicant states that, if a Limited Partner is sued to satisfy an obligation of the Applicant, the Applicant will, upon notice of such suit by the Limited Partner, either satisfy such obligation or, if it believes such suit is without merit, undertake the defense of such suit. In addition, the Applicant intends to include in all material contracts a provision limiting the claims of creditors to Applicant's assets. The Applicant specifically recognizes that in the event a Limited Partner should be found to be liable as a general partner, he will be required to satisfy such a claim personally to the extent that the assets and insurance of the Applicant are insufficient to reimburse him.

Applicant states that the entire interest of the partners will be divided into Shares of Partnership Interest ("Shares") which will be offered to investors, and that upon the sale of a Share to a purchaser who is not a Limited Partner, and upon receipt of a signed partnership authorization, including a power of attorney required of all Limited Partners, the purchaser will become a Limited Partner upon the filing of an amendment to the partnership agreement. According to the application, the Director General Partners agree to process such amendments at least weekly. However, while amendments will be processed at least weekly, income, loss, gain, expense or credits will be allocated to a holder of Shares on the day following receipt of payment for shares purchased and a signed partnership authorization. Applicant further states that (1) all items of income, gain, loss, deductions and credits will be allocated equally among the outstanding Shares of the Applicant, (2) all Shares will have equal rights and one vote each on all matters to be voted upon by partners and are redeemable; and (3) a Limited Partner can assign or pledge his Shares, in whole or part, provided the assignee agrees to become a substitute Limited Partner, the general partners consent to such assignment and substitution, and the assignee executes the necessary documents to become a substituted Limited Partner.

It is anticipated that, as a condition of the granting of the rulings noted above, the Internal Revenue Service will require that at all times the General Partners must have in the aggregate a one percent interest in all Applicant items of income, gains and losses. The General Partners intend to meet this condition by purchasing in the aggregate one percent of the outstanding Shares of the Applicant. In addition, IMSC undertakes that at all times while serving as Adviser General Partner it will own a sufficient amount of the Applicant's outstanding Shares so that when its ownership is combined with the Share ownership of the Director General Partners, the aggregate Share ownership of the general partners will amount to at least one percent of the outstanding Shares of the Applicant (or such other minimum percentage as may be required by the Internal Revenue Service to preserve the status of the Applicant as a partnership for federal income tax purposes). IMSC also undertakes that it will not withdraw as an Adviser General Partner except on 180 days notice or unless another General Partner has assumed this obligation. The Applicant undertakes that any successor Adviser General Partner will agree to the same undertakings as IMSC.

Applicant asserts that if it is organized as a limited partnership, certain tax benefits will accrue to its investors which would not be available if it were organized in corporate form. Applicant states this is because the sponsor of the Applicant and his family propose to make a large initial investment in the Applicant prior to any public offering of its Shares. Applicant further states that if it were to be organized in corporate form, it would risk being subject to surtaxes imposed by federal tax laws on corporations which are deemed to be "personal holding companies" within the meaning of the Internal Revenue Code.

Applicant states that its investment objectives and the manner in which they will be implemented will make the Applicant's Shares a unique investment vehicle which will fill a need of the class of investors for which they are intended. Applicant further states that Applicant's Shares are designed for those persons whose income and capital gains attract high rates of federal, state and local income tax and that the Applicant will make available to such persons the opportunity to invest in an open-end, diversified management investment company which will take explicitly into account the impact of capital gains taxes. Thus, when considering changes in the portfolio of the Applicant which will result in either long or short-term capital gains or losses, weight will be given to the fact that payment of capital gains taxes by the limited partners will reduce to that extent the funds available to the limited partners for investment. Applicant states that, in general, investment switches resulting in net capital gains will be considered appropriate only if the anticipated total return on the new investment will exceed the return on the old investment by an amount sufficient to compensate the partners for their assumed capital gains taxes. Applicant represents that the level of personal income tax to be assumed by the Applicant (federal, state and local) will initially be 65%, which is a compromise rate selected as suitable for a range of upper-income tax brackets. Applicant also states that the Applicant will require a minimum $30,000 investment by each purchaser with a view to attracting only those investors for whom Applicant's Shares would be an appropriate investment medium.

Section 10(a) of the Act provides that no registered investment company shall have a board of directors more than 60 percent of the members of which are persons who are "interested persons" of such registered company. Section 2(a)(12) of the Act defines "director" to include any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

Section 2(a)(19)(A) of the Act provides, in part, that an "interested person" of another person, when the other person is an investment company, means (1) any affiliated person of such investment company, and (2) any interested person of any investment adviser for such company. Section 2(a)(19)(B) of the Act provides, in part, that an "affiliated person" of an investment adviser is an "interested person" of such investment adviser.

Section 2(a)(3)(D) of the Act provides, in pertinent part, that an "affiliated person" of another person means any officer, director, partner, co-partner or employee of such other person.

Applicant submits that the relationship of the Director General Partners to the Applicant is essentially identical to the relationship of directors to an incorporated investment company. It states that, nevertheless, the provisions of Section 2(a)(3) of the Act would make all Director General Partners affiliated persons of IMSC, the investment adviser, which is the Adviser General Partner, with the result that the Director General Partners would be deemed interested persons of the Applicant and its Adviser General Partner under Section 2(a)(19) of the Act.

Applicant submits that such a finding would conflict with the intention of Section 2(a)(19) which provides that "no person shall be deemed to be an interested person of an investment company solely by reason of . . .his being a member of its board of directors. . .", but to resolve this conflict and assume compliance with the provisions of Section 10(a) of the Act, Applicant requests that it and its Director General Partners be exempted from the provisions of Section 2(a)(19) to the extent that the Director General Partners would otherwise be deemed to be interested persons of any other person solely because they are general partners of the Applicant or co-partners in the Applicant in which IMSC is also a general partner. Applicant asserts that since the Adviser General Partner is excluded from participation in the management of Applicant except in the limited circumstance described above, it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of Section 2(a)(19).

Section 22(e) provides, in part, that no registered investment company shall suspend the date of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after tender of such security. Section 47(b) of the Act provides, in part, that every contract the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of the Act, or any rule, regulation, or order thereunder shall be void.

As stated above, the Applicant's General Partners have undertaken to hold a minimum of 1% of its outstanding Shares. Applicant asserts that, nevertheless, the General Partners could tender their Shares for redemption in violation of the undertaking and the Partnership Agreement and could allege upon so doing that the provision was in contravention of Section 22(e) and therefore, void under Section 47(b). Applicant submits that this restraint upon redemption is similar to a commitment with respect to original subscribers who hold shares with investment intent. Since such restraint on redemption would not adversely affect, but rather would be for the benefit of the public investors, and would only serve the limited purpose of ensuring compliance by the General Partners of the above undertaking, Applicant asserts that an exemption from Section 22(e) allowing it to obtain enforcement of that undertaking in the event of its violation would be consistent with the purposes fairly intended by the policy and provisions of the Act.

As noted above Section 2(a)(3) of the Act in part defines an affiliated person of another person as "any. . .partner of such other person". Applicant states that its investors will be limited partners and thereby may, pursuant to Section 2(a)(3), be deemed its affiliated persons. Applicant submits that its Limited Partners will be equivalent to shareholders of an investment company organized as a corporation. Applicant further states that the extension of "affiliated person" status to such persons creates the possibility of violation of the provisions of Section 17 of the Act upon the redemption of Shares by a distribution of portfolio securities in kind, and renders meaningless those provisions of Section 2(a)(3) that require a minimum percentage ownership before a shareholder is considered an affiliated person. Since its requested exemption would not cover a Limited Partner for any reason other than partnership status, Applicant asserts that an exemption from the provisions of Section 2(a)(3) so that no person will be considered an "affiliated person" of Applicant solely by reason of being a Limited Partner of the Applicant would be consistent with the purposes fairly intended by the policy and provisions of the Act.

In addition to the undertakings summarized above, Applicant represents that when the total Shares owned, directly or by attribution, by Dr. Robinson and members of his family, by IMSC, and by four other holders of Fund Shares amounts to no more than 40% of the Shares of the Fund outstanding, or at such earlier time as, in the judgment of the Director General Partners, there is no significant risk that Applicant may be or become a personal holding company, the Director General Partners will recommend to Applicant's shareholders that Applicant be converted to corporate form.

Applicant states that, prior to a public offering of Shares, the Applicant will be named as an assured in an errors and omissions insurance policy, up to a maximum amount of $5,000,000 (with a $50,000 deductible for any one claim) and in a stock brokers blanket bond in the aggregate amount of $10,000,000. Applicant further states that it will not voluntarily cancel such insurance policies while it is organized as a limited partnership and that, if such policies are cancelled by the insurance companies, it will seek to obtain comparable insurance.

Applicant agrees that any exemptive order granted may be conditioned upon the continued effectiveness of the above-described undertakings. In conclusion, Applicant submits that the granting of the requested exemptions is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 6(c) of the Act provides, in part, that the Commission may by order upon application conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested

person may, not later than August 4, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11253/July 9, 1980

In the Matter of

KEMPER MONEY MARKET FUND, INC.
CASH EQUIVALENT FUND, INC.
SUPERVISED CASH ACCOUNT, INC.

and

KEMPER FINANCIAL SERVICES, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(812-4570)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Kemper Money Market Fund, Inc., Cash Equivalent Fund, Inc., and Supervised Cash Account, Inc. ("Funds"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, and Kemper Financial Services, Inc. ("Kemper"), the investment adviser and principal underwriter for the Funds (the Funds and Kemper are hereinafter referred to as "Applicants"), filed an application on November 13, 1979, and an amendment thereto on May 14, 1980, requesting an order pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Funds to compute net asset value per share using the amortized cost method of valuing portfolio securities.

On June 2, 1980, a notice was issued (Investment Company Act Release No. 11197) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has undertaken to adhere:

1. In supervising the Funds' operations and delegating special responsibilities involving portfolio management to the Funds' investment adviser, each Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Funds' investment objective, to stabilize each Fund's net

asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Boards of Directors of the Funds shall be the following:

(a) Review by the respective Boards of Directors as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of the Funds, as determined by using available market quotations, from the $1.00 amortized cost price per share of the Funds, and the maintenance of records of such review.

(b) In the event that such deviation from a Fund's $1.00 amortized cost price per share should exceed 1/2 of 1%, a requirement that such Fund's Board of Directors promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors of a Fund believes that the extent of any deviation from such Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable, such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Funds will maintain dollar-weighted average portfolio maturities appropriate to their objective of maintaining stable net asset values per share; provided, however, that the Funds will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, the Funds undertake that if the disposition of a portfolio security by a Fund should result in a dollar-weighted average portfolio maturity in excess of 120 days, such Fund will invest its available assets in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably possible.

4. The Funds will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in Paragraph 1 above; and, the Funds will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of their Boards of Directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the Boards of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Funds will limit their portfolio investments, including repurchase agreements, to U.S. dollar-denominated instruments which their Boards of Directors determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. The Funds will include in their quarterly reports, as an attachment to Form N-1Q, a statement as to whether any action taken pursuant to Paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9125/July 3, 1980

U.S. v. *AARON A. KLEINMAN* (U.S.D.C. CD California, Criminal Action No. 80-229)

Leonard H. Rossen, Administrator, Los Angeles Regional Office of the Securities and Exchange Commission and Andrea Sheridan Ordin, United States Attorney for the Central District of California, announced that on March 24, 1980 Aaron A. Kleinman ("Kleinman") pled guilty to four counts of an indictment filed in the Federal Court in Los Angeles alleging violations of the antifraud provisions of the Investment Advisers Act and the Securities Act and the mail fraud statute.

On May 5, 1980, Kleinman was sentenced to serve five (5) years imprisonment on each count, with the setences to run concurrently.

In an earlier civil action the Commission filed a complaint on August 24, 1979, in the Federal Court in Los Angeles against Manus, Inc. ("Manus") and Kleinman seeking to enjoin them from further violations of the registration and antifraud provisions of the federal securities laws and seeking the appointment of a receiver for Manus. The defendants consented to the entry of orders of permanent injunction and the appointment of a receiver for Manus.

For further information see Litigation Releases Nos. 8887, 9005 and 9051.

Litigation Release No. 9126/July 3, 1980

S.E.C. v. *PHILIP R. COHN, ET AL.* Civil Action No. 80-0052F

Willis H. Riccio, Administrator of the Boston Regional Office of the Securities and Exchange Commission, today announced that the Honorable Frank H. Freedman, United States District Judge for the District of Massachusetts, entered a Final Judgment of Permanent Injunction and Order For Ancillary Relief as to David E. Lyon ("Lyon"), the remaining defendant in the Commission's injunctive action charging Lyon and Philip R. Cohn ("Cohn") with violations of the securities registration and antifraud provisions of the federal securities laws.

The Commission commenced this action on March 12, 1980, by filing a Complaint which alleged, among other things, that Lyon violated the securities registration and antifraud provisions of the federal securities laws in that Lyon offered for sale and sold unregistered securities and engaged in fraudulent conduct in connection with the offer and sale of securities; namely promissory notes or investment contracts in the form of interests or participations relating to certain real estate transactions regarding multi-family housing projects.

Lyon consented to the Judgment of Permanent Injunction and Order for Ancillary Relief without admitting or denying the allegations of the Complaint, consented to further orders of the Court freezing assets and preserving books and records and consented to an accounting of all proceeds from the sale of securities in connection with certain multi-family housing projects and monies received from Cohn during the period March 1, 1976, to the present.

Litigation Release No. 9127/July 3, 1980

U.S. v. *JOHNEY B. KEARNEY, ET AL.* (USDC, UT., Cr-80-83W)

Ronald L. Rencher, United States Attorney for the District of Utah and Robert H. Davenport, Administrator of the Denver Regional Office of the Commission, announced that on June 19, 1980, a federal grand jury in Salt Lake City, Utah returned a 17-count indictment naming Johney B. Kearney and Johney B. Kearney, Jr., both formerly of Phoenix, Arizona and Salt Lake City, Utah, and both believed to be presently residing in Los Angeles, California; Stephen R. Gilliland of Salt Lake City, Utah; and Richard S. Berry and Richard K. Kerekes of Tempe, Arizona. All of the defendants were charged with conspiracy to violate certain laws of the United States. With respect to the other counts, the defendants are charged as follows: Johney B. Kearney and Johney B. Kearney, Jr., nine counts of securities fraud and two counts of interstate transportation of money obtained by fraud; Stephen R. Gilliland, nine counts of securities fraud and one count of interstate transportation of money obtained by fraud; Richard S. Berry, eleven counts of securities fraud and one count of interstate transportation of money obtained by fraud; and Richard K. Kerekes, two counts of securities fraud and two counts of interstate transportation of money obtained by fraud. All of the charges were brought against the defendants in connection with the offer and sale and use of the proceeds of sale of Century

Capital Notes of Century Mortgage Co., Ltd. The indictment was the result of a joint effort by the Salt Lake Branch Office of the Securities and Exchange Commission and the Salt Lake Office of the Federal Bureau of Investigation.

Kearney, Kearney, Jr., and Gilliland previously were permanently enjoined by the United States District Court for Utah, from violating the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of Century Capital Notes of Century Mortgage Co., Ltd., and other securities.

For further information see Litigation Releases Nos. 7801, 7814, 7845, 7975, 8071, 8312 and 8649.

Litigation Release No. 9128/July 3, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GATEWAY SPORTING GOODS COMPANY*

United States District Court for the District of Columbia, Civil Action No. 80-1638

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against Gateway Sporting Goods Company ("Gateway"), a manufacturer of young adult sport clothes and office furnishings with offices at 730 Fifth Avenue, New York, New York 10019. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Gateway, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended February 29, 1980, required to have been filed with the Commission by May 29, 1980.

The Complaint requests that the Court order Gateway to file forthwith, with the Commission, its delinquent Annual Report on Form 10-K. In addition, the Commission requests that the Court enjoin Gateway from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9129/July 8, 1980

SECURITIES AND EXCHANGE COMMISSION v. *JACK M. CATAIN, JR. AND RUSCO INDUSTRIES, INC.*, Civil Action No. 80-02917 (United States District Court for the Central District of California)

The Securities and Exchange Commission today announced the filing of a civil injunctive action in the United States District Court for the Central District of California seeking to enjoin Jack M. Catain, Jr. ("Catain") and Rusco Industries, Inc. ("Rusco") from further violations of Sections 10(b) (antifraud), 13(a) (reporting) and 14(a) (proxy) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-11, 14a-3 and 14a-9 thereunder. Both Catain and Rusco simultaneously with the filing of this action entered into a Consent and Undertaking as described below. Catain until today was Chairman and Chief Executive Officer of Rusco.

The Commission's Complaint alleges that between 1975 and the present Catain has engaged in a course of conduct in which Rusco corporate funds were used in connection with transactions in which Catain and/or certain of his friends or associates had an undisclosed interest for the benefit of Catain and his friends and associates without regard to the interests of Rusco, and its public shareholders.

These transactions included, among other things: Catain causing Rusco to purchase the assets of a corporation principally owned by Catain and thereby satisfying the corporation's obligations Catain had guaranteed and returning a substantial portion of Catain's investment in the losing venture; forming a car leasing company and leasing cars to Rusco; causing Rusco to make substantial advances to distributorships owned by Catain's relatives and associates and causing a Rusco subsidiary to enter into a substantial lease and financial guarantee agreement with a company in which Catain had an undisclosed interest.

The Complaint alleges that full, accurate and/or timely disclosure relating to the matters alleged in the Commission's Complaint has never been made to Rusco shareholders or investing public in any of Rusco's periodic or annual reports, or proxy solicitation materials.

Without admitting or denying the allegations contained in the Commission's Complaint, both Catain and Rusco have consented to the entry of

permanent injunctions prohibiting future violations of the antifraud, reporting and proxy provisions of the Securities Exchange Act. Moreover, Catain and Rusco have agreed to certain undertakings which, among other things, require Catain to immediately resign as Chairman of the Board and Chief Executive Officer of Rusco and repay any monies found to be due and owing Rusco from the activities complained of in the Commission's Complaint and other related matters to be investigated by the Rusco audit committee. Catain's undertaking further provides that Catain shall not be an officer or director of a public company without making an appropriate showing to the Court that matters as alleged in the Commission's Complaint will not recur.

Rusco has undertaken to restructure its Board of Directors and audit committee with the former consisting of a majority of outside independent directors and the latter to be composed entirely of outside independent directors. The Board of Directors shall conduct a search for a new chief executive officer and, under the supervision of a special counsel, the audit committee shall conduct a comprehensive investigation of Catain's activities as alleged in the Commission's Complaint, and Rusco shall file a report with the Commission relating thereto. Rusco has also agreed to correct all past inaccurate or incomplete filings currently on file with the Commission.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 06223-27	746
Securities Exchange Act	- 16984-05	755
Public Utility Holding Company Act	- 21659-65	788
Trust Indenture Act	- 00576-00	805
Investment Company Act	- 11261-76	805
Litigation	- 09134-43	829

This listing covers releases issued from 7/18/80-7/24/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
I	Vol. V, No. 15	12/3/74
II	Vol. V, No. 16	12/10/74
III	Vol. VI, No. 3	1/8/75
IV	Vol. VI, No. 15	4/22/75
V	Vol. VI, No. 20	5/28/75
VI	Vol. VII, No. 8	7/22/75
VII	Vol. VIII, No. 15	1/28/76
VIII	Vol. IX, No. 11	5/18/76
IX	Vol. X, No. 11	10/5/76
X	Vol. XI, No. 9	2/8/77
XI	Vol. XII, No. 12	7/19/77
XII	Vol. XIII, No. 11	11/29/77
XIII	Vol. XIV, No. 12	4/25/78
XIV	Vol. XV, No. 12	9/12/78
XV	Vol. XVI, No. 10, p. 647	1/16/79
XVI	Vol. XVII, No. 7, p. 467	5/15/79
XVII	Vol. XVIII, No. 6, p. 349	9/13/79
XVIII	Vol. XIX, No. 7, p. 529	2/20/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6224 Announcement of a general statement of policy concerning implications under the federal securities laws of the rescission of credit control regulations applicable to certain registered investment companies, including money market funds.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16986	34-16996	34-17001
34-16987	34-16997	34-17003
34-16995	34-17000	

34-17005 Extension of comment period on a notice of proposed rule change submitted by Chicago Board Options Exchange to amend its rules to provide for exchange trading of options on securities guaranteed by the Government National Mortgage Association. [Comment Period Expires September 1, 1980]

35-21661 Soliciting comments on proposed rules concerning certain acquisitions by one or more electric utility companies of voting securities of a defined class of electric generation of transmission companies.

SE 1.29:

35-21662	Soliciting comments on statements of beneficial ownership of securities of registered holding companies and their subsidiaries.

OPINION

DMR SECURITIES, INC.

34-16990	Where member of registered securities association and its president charged customers unfair and fraudulent markups in the sale of securities, but most of association's findings of violation set aside, proceedings *remanded* for reassessment of the sanctions imposed.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6223/July 18, 1980

TEMPORARY SUSPENSION OF THE REGULATION A EXEMPTION OF AQUARIUS GOLD EXPLORATION CO., INC.

The Securities and Exchange Commission has issued an order temporarily suspending the Regulation A exemption from registration under the Securities Act of 1933 with respect to a sale of 530,000 units consisting of common stock and warrants by Aquarius Gold Exploration Co., Inc. ("issuer") of New York, New York. Comiteau, Levine & Co. is disclosed as the underwriter on a 350,000 unit minimum "best efforts or none" basis.

According to the order, the Commission has reason to believe that: (a) the issuer's offering circular contains misleading statements and omits to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, particularly with respect to an undisclosed underwriter, Thomas F. Quinn ("Quinn"), who solicited and referred directed or indirectly 75% of Comiteau, Levine & Co.'s subscribers to the offering: (b) Quinn is a person barred from association with two broker-dealers by order of the Commission under Section 15(b) of the Securities Exchange Act of 1934 and is disqualified from acting as an underwriter in an offering pursuant to Regulation A; and (c) the Regulation A exemption from registration is not available if any underwriter is subject to an order by the Commission under Section 15(b) of the Securities Exchange Act of 1934.

SECURITIES ACT OF 1933
Release No. 6224/July 21, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11263/July 21, 1980

EFFECT OF THE TERMINATION OF CREDIT CONTROLS ON THE OPERATIONS OF CERTAIN REGISTERED INVESTMENT COMPANIES INCLUDING MONEY MARKET FUNDS

ACTION: General Statement of Policy.

SUMMARY: The Securities and Exchange Commission announces a general statement of policy concerning implications under the federal securities laws of the rescission of credit control regulations applicable to certain registered investment companies, including "money market" funds. The credit control regulations were promulgated by the Board of Governors of the Federal Reserve System ("Board") on March 14, 1980, and subsequently amended on March 28, 1980, and May 22, 1980, pursuant to the Board's authority under the Credit Control Act of 1969, as implemented by Executive Order of the President. On July 3, 1980, the Board announced that its credit control regulations would be eliminated with respect to the weekly reporting periods beginning on July 28, 1980. This general statement of policy expresses the Commission's views concerning various regulatory considerations under the Investment Company Act of 1940, which should promptly be considered by boards of directors of registered investment companies which have been subject to the Board's regulations.

EFFECTIVE DATE: July 21, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth S. Gerstein, Special Counsel (202-272-3023), Gene A. Gohlke, Examination Program Coordinator (202-272-2024) or Jeffrey B. Bailey, Esq. (202-272-3033), Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 3, 1980, the Board of Governors of the Federal Reserve System ("Board") announced its decision to rescind its credit control regulations [12 CFR §229.11-.15] applicable to certain registered investment companies, including "money market" funds and short-term unit investment trusts. The Board's regulations, which were adopted on March 14, 1980, and thereafter amended on March 28, 1980, and May 22, 1980, required each investment company subject thereto to maintain a noninterest bearing special deposit with the Federal Reserve Bank in the district where such investment company had its principal place of business equal to a specified percentage of the amount by which the average of the daily amounts of its "covered credit" during specified weekly periods exceeded a specified "base" amount, subject to certain adjustments.[1]

In response to adoption of the Board's regulations, the Commission issued a general statement of policy concerning some of the implications of such regulations under the federal securities laws in order to provide the boards of directors of registered investment companies with guidance respecting various disclosure obligations under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a *et seq.*] and various regulatory matters under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 *et seq.*].[2] Consistent with the views expressed in that general statement of policy, and in recognition of their responsibilities, many money market funds and their investment advisers implemented a variety of actions designed to modify the operations of such investment companies to accommodate the impact of the Board's regulations while minimizing inequities to existing shareholders and investors.

In particular, a number of so-called "clone" funds ("new funds") were organized by investment advisers to duplicate already existing money market funds ("existing funds"). The purpose of each new fund was to absorb new sales of shares which, if sold by the existing fund, could have increased the amount of its special deposit and, thus, adversely affected dividends payable to shareholders of the existing funds.[3] In order to enhance the ability of investment companies to take a variety of responsive actions, the Commission adopted Rule 6c-4(T) [17 CFR §270.6c-4(T)], which provides money market funds subject to the Board's regulations, and companies and persons dealing with such funds, with temporary exemptions on an emergency basis from various provisions of the 1940 Act and the rules adopted thereunder.[4]

The Commission believes that rescission of the Board's regulations will have various implications with respect to the operations of certain money market funds.[5] Accordingly, this general statement of policy is intended to provided guidance to the directors of registered investment companies which have been subject to the Board's regulations respecting compliance and disclosure responsibilities of such investment companies under the federal securities laws arising from

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[1]45 FR 17927 (March 19, 1980), 45 FR 22883 (April 4, 1980), and 45 FR 37413 (June 3, 1980). The last amendment to the Board's regulations reduced from 15 percent to 7.5 percent the proportion of each investment company's covered credit, in excess of its base, required to be deposited under the regulations.

The Board's action provides that the week ending July 27, 1980, shall be the last reporting period for which special deposits will be required. Such special deposits are required to be made on August 4, 1980, and will be refunded on August 11, 1980. 45 FR 46064 (July 9, 1980).

[2]Investment Company Act Release No. 11088 (March 14, 1980) [45 FR 17954, March 20, 1980].

[3]Because the credit control regulations imposed a special deposit, generally, only on assets in excess of the outstanding "covered credit" on March 14, 1980 ("base"), existing funds would have to make special deposits only if their assets (covered credit) increased above their base amounts.

[4]Investment Company Act Release No. 11137 (April 22, 1980) [45 FR 28307, April 29, 1980].

[5]The rescission of the credit control regulations will also have an impact on short-term unit investment trusts. However, the implications of the Board's action with respect to short-term unit investment trusts should simply be that special deposits of existing trusts will be refunded to the trustees of the trusts and then distributed to unitholders. Thus, this general statement of policy relates principally to open-end, management investment companies investing in short-term debt obligations, commonly termed "money market" funds.

termination of credit control regulations. In addition, it will outline one possible method that boards of directors may wish to utilize to transfer efficiently the interests of investors in new funds to existing funds, and one possible method that may be available for new funds to achieve the high degree of liquidity necessary to meet redemptions. It is not, however, intended to address all of the issues which may arise from the Board's action, which issues may nevertheless be appropriate for directors to consider.

DISCLOSING THE ELIMINATION OF SPECIAL DEPOSITS

The primary implication of the Board's rescission of its credit control regulations will be that money market funds no longer will be required to maintain specil deposits and that special deposits now being held by Federal Reserve Banks will be refunded. When investment companies are able to invest the assets previously constituting special deposits, investors in these funds, generally, should receive somewhat increased yields. Thus, to the extent that the prospectuses of money market funds currently disclose the existence and consequences of the special deposit requirement, money market funds should amend their prospectuses as soon as practicable to reflect the investment and other implications of the elimination of the need to make special deposits. In this regard, the Commission will not object to the use of a Rule 424(c) [17 CFR §230.424(c)] "sticker" by an investment company to amend its prospectus. In addition, the Commission will not object to continued use of the current prospectus to sell securities during the time reasonably necessary to amend the prospectus to make appropriate disclosure.[6]

In certain cases, prompt disclosure of other matters also will be necessary and appropriate. For example, an existing fund which adopted certain restrictive policies respecting the sale of its shares to minimize the impact of the special deposit requirement on existing shareholders should disclose any revision of such policies.[7] Similarly, where any other modifications of a money market fund's policies, objectives or services are made as a result of the elimination of credit control regulations, the fund should promptly make appropriate disclosure of such modifications. The matters discussed hereinafter also may necessitate certain additional disclosures to investors.

IMPLICATIONS FOR "NEW" MONEY FUNDS

As noted above, certain new funds were organized after the adoption of the credit control regulations by the investment advisers to existing funds for the purpose of minimizing the impact that additional sales of shares would otherwise have had on the existing funds. In most cases, these new funds are rather similar, if not identical, to the existing funds which they duplicate. However, the yields currently being earned by existing funds in most cases exceed those being earned by new funds by amounts which exceed differences attributable solely to the larger special deposits maintained by the new funds.[8]

Under these circumstances, many shareholders of new funds may decide to redeem their shares and to seek to purchase either (1) shares of the existing fund in the same "complex" of investment companies (if available) or (2) shares of another money market fund (whose shares may previously have been unavailable because of sales restrictions adopted after the institution of the special deposit requirement). In some cases, the level of such redemptions, coupled with reduced sales of new shares of such funds, may have serious implications respecting the future viability of new funds. As a result, directors of a new fund may have to consider seriously whether: (1) to terminate the business activities of and to liquidate the new fund;

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[6]Because shareholders of money market funds affected by the credit control regulations in many cases may have elected to have dividends reinvested, the Commission expects that any disclosures made by investment companies will be furnished promptly to existing shareholders, as well as to all future investors.

[7]As discussed at p. 19, *infra*, the Commission believes that certain matters should be considered by the boards of directors of money market funds before eliminating or modifying restrictive sales policies.

[8]These differences may, in part, be due to: (1) the higher expense ratios of new funds, and (2) the fact that existing funds still hold in their portfolios some higher yielding debt obligations which were acquired prior to the recent decline in short-term interest rates.

(2) to modify the fundamental investment objectives of the new fund to provide a continued business purpose; or (3) to enter into a merger, consolidation or reorganization with another money market fund. In some instances, shareholder approval may be necessary, and certain of these alternatives could cause the new fund to incur significant expenses.

Thus, the Commision believes that boards of directors of new funds should consider the effect of rescission of the credit control regulations on the continued viability of new funds as soon as reasonably practicable. Further, after that matter has been considered, it would be appropriate for new funds then to disclose their boards' conclusions as to any future courses of action they are likely to recommend that the new funds pursue. Most importantly, if the board of directors of a new fund determines that it is likely to seek shareholder approval of a fundamental change in the nature of a new fund's business or of a plan of liquidation or reorganization, or if the board determines to use an offer of exchange to transfer shareholders' interests to the existing fund, the board should carefully consider the appropriateness of creating a reserve account or some other protective device to assure that shareholders of the new fund who have benefited from the use of that investment vehicle each bear their fair share of any anticipated expenses, including unamortized organization expenses. Of particular concern to the Commission is the possibility that, if a new fund were to suffer significant net redemptions, the remaining shareholders of the new fund would bear a disproportionate portion of the expenses associated with liquidating, reorganizing or restructuring the fund.[9] In the Commission's view, failure of an investment company to take these anticipated expenses promptly into account may, under certain circumstances, raise questions as to whether a new fund's shares are being priced properly[10] and, depending upon all of the facts and circumstances, may raise questions concerning a breach of fiduciary duty on the part of those persons responsible for such decisions.[11]

The Commission cannot predict the magnitude of net redemptions of shares that may be experienced by new funds. However, it is possible that such funds may be faced with sufficient redemptions to require the sale of portfolio securities prior to maturity. In view of this possibility, the board of directors of a new fund should consider the appropriateness of maintaining an unusually high degree of liquidity so that an unusually high volume of shareholder orders to redeem shares can be satisified promptly,[12] with minimum disruption of the fund's activities and operations.

POSSIBLE ARRANGEMENTS FOR ORDERLY TRANSITIONS

As noted above, two significant concerns immediately confronting boards of directors of new

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[9]Of course, in the investment adviser or underwriter of the new fund agreed to bear all of such expenses, the creation of a reserve account or some other protective device may not be necessary. The Commission would not view such agreement in these unusual circumstances to be a joint enterprise within the meaning of Section (d) of the Act [15 U.S.C. 80a-17(d)] and Rule 17d-1 thereunder [17 CFR §270.17d-1]. *See* Rule 17d-1(d)(8).

[10]Rule 22c-1 under the 1940 Act [17 FR §270.22c-1] requires that redeemable securities of investment companies be sold and redeemed at the current net asset value per share next computed after receipt of an order to buy or to redeem such securities. Rule 2a-4 under the 1940 Act [17 CFR §270.2a-4], among other things, requires that expenses be included in calculating an investment company's current net asset value per share.

[11]Section 36(a) of the 1940 Act [15 U.S.C. 80a-35(a)], in pertinent part, authorizes the Commission to seek injunctive or other relief where any officer, director, investment adviser, or principal under writer of a registered investment company has engaged, or is about to engage, in any act or practice constituting a breach of fiduciary duty involving prsonal misconduct.

[12]Although Section 22(e) of the Act [15 U.S.C. 80a-22(e)] permits redemption requests to be satisfied within seven days of receipt, some money market funds have undertaken to process shareholder purchase and redemption requests more expeditiously. Unless those undertakings are qualified, or have been modified with ample notice to all shareholders, it is expected that such funds will adhere to the more restrictive time periods which they have disclosed in their prospectuses.

funds appear to be: (1) the expected movement of investors from new funds to existing funds, and (2) the accompanying high level of redemptions that may be experienced by new funds. The Commission recognizes that a variety of methods might be utilized to deal with these concerns promptly and efficiently to provide investors in new funds with a means to exchange their shares promptly for shares of existing funds, and to enhance the liquidity of new funds. In this regard, outlined below are certain methods which might be utilized to effect exchanges of shares of new funds for shares of existing funds, and to meet redemptions, in instances where the board of directors has determined that it is in the best interests of shareholders of the new fund to suspend its operations.

1. *Offers of Exchange.*

In providing for an orderly transition, boards of directors of existing funds, and the principal underwriters and investment advisers of such funds, may wish to make offers of exchange to shareholders of new funds. Such offers of exchange, when based upon the relative net asset values per share of the money market funds involved, are permitted under Section 11(a) of the 1940 Act [15 U.S.C. 80a-11(a)] without orders of the Commission.[13] Such offers would normally have to be accompanied by a statutory prospectus to comply with the prospectus delivery requirements of Section 5 of the 1933 Act [15 U.S.C. 77(e)]. In these unusual circumstances where the existing fund and the new fund are for all practical purposes almost identical in structural make-up and operation, including having the same investment adviser and directors, to satisfy the requirement that a statutory prospectus be provided the Commission will not object to the use of a Rule 424(c) prospectus which consists of a document that: (1) incorporates by reference the prospectus of the new fund already delivered, and (2) includes such additional information as is necessary to constitute the complete prospectus of the existing fund.[14] Investment companies may rely on this Commission position only where the objectives, services and features of the new fund and existing fund are essentially the same. Of course, the Commission would not object if a statutory prospectus of the existing fund is sent with the offer of exchange.

Offers of exchange may be useful in achieving a prompt and orderly movement of shareholders from new funds to existing funds.[15] Thus, directors of new funds and existing funds may wish to consider various methods, consistent with applicable state law, to effectuate exchanges of shares. Such offers of exchange are not subject to the Commission's rules under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] respecting tender offers, which do not apply to equity securities of registered open-end investment companies.[16] However, because an offer of exchange is an offer of a security as to which the prospectus delivery requirements of Section 5 of the 1933 Act apply, shareholders to whom offers of exchange are made should be furnished, in the

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[13]Anticipated liquidation expenses and unamortized organization expenses of a new fund must be fully and accurately reflected in the net asset value per share of that fund, regardless of the method utilized to value such fund's assets or to price such fund's shares. *See* p. 8, *supra,* concerning the establishment of liquidation reserves. The Commission believes that, if these expenses are not reflected in this manner, Section 11(a) of the 1940 Act would require the investment company making such an offer to obtain an order of the Commission prior to the making of an offer of exchange. On the other hand, to the extent that the investment adviser or principal underwriter of a new fund agreed to bear such expenses it would not be necessary to reflect such expenses in the new fund's net asset value per share. As noted above at n. 9, the Commission will not view such an agreement in these unusual circumstances as a joint enterprise within the meaning of Section 17(d) of the Act and Rule 17d-1 thereunder.

[14]The financial information contained in the currently effective prospectus of the existing fund, or any more recent financial information contained in a periodic report to shareholders, may be utilized in the Rule 424(c) prospectus. In addition, shareholders should be advised to request a prospectus of the existing fund if they have not retained their copies of the new fund's prospectus.

[15]This assumes, of course, that the existing fund has the authority under state law through its corporate charter or articles of incorporation to own, purchase or hold the shares of another registered investment company.

[16]*See* Sections 14(d)(1) and 12(g)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78n(d)(1) and 78l(g)(2)(B)].

manner described above, with all material information relevant to their investment decisions, and be given appropriate time and means to communicate their decisions respecting such offers. Under such circumstances, the Commission will not object to offers of exchange being made effective pursuant to methods chosen by directors, provided that in each instance the boards of directors of the new fund and the existing fund determine that such procedures are fair and in the best interests of the shareholders of their respective funds.[17]

Many money market funds are utilizing amortized cost valuation or "penny rounding" pricing pursuant to orders of the Commission for purposes of pricing their shares for sales and redemptions.[18] Such prices constitute "net asset value" for purposes of Section 11(a) of the 1940 Act.[19] This practice is not inherently objectionable because the most basic assumption underlying the amortized cost and "penny rounding" pricing methods is that all securities purchased will be held to maturity by the investment company as a "going concern."

Nevertheless, under certain circumstances the use of exchange ratios reflecting relative net asset values based upon amortized cost prices or "penny rounded" prices of shares of the new fund and the existing fund could result in serious inequities due to the magnitude of the exchanges, and consequential redemptions, which may occur. For example, where at the time of exchange the unrounded market based net asset value per share of a new fund (less any reserve for liquidation and organization expenses) is less than the price per share of the new fund, the new fund would not in fact have sufficient assets to redeem all of its remaining shares at their amortized cost or "penny rounded" price. Such a result would be inequitable to remaining shareholders of the new fund. Similarly, a windfall gain could result to shareholders of the new fund remaining after the offer of exchange if the new fund's unrounded market based net asset value per share (less liquidation and organization expenses) at the time of exchange exceeds its amortized cost or "penny rounded" price per share.[20] Accordingly, in the Commission's view, if offers of exchange are effected at relative net asset values per share calculated through the use of any method other than by reference to market factors (without rounding), boards of directors should, consistent with their fiduciary duties, give close and careful consideration to adopting the use of a market based

[17]If shares of the new fund are acquired by the existing fund pursuant to offers of exchange, the Commission will not view such acquisitions as violating the provisions of Section 12(d)(1) of the 1940 Act [15 U.S.C. 80a-12(d)(1)], provided that the shares so acquired are promptly redeemed. In this regard, the Commission intends to institute rulemaking proceedings to propose a temporary rule which may become effective on an emergency basis before July 28, 1980, immediately upon approval by the Commission, to exempt existing funds, whose fundamental policies may not permit the purchase of shares of other investment companies, from the provisions of Section 13(a) of the 1940 Act [15 U.S.C. 80a-13(a)] to the extent necessary to permit such purchases. In addition, the temporary rule would provide an exemption from the provisions of Section 12(d)(1) of the 1940 Act to permit the existing fund to hold shares of the new fund for not more than 120 days where no investment advisory fee, or fee for administrative services, is charged by the existing fund on account of the shares so held. The Commission will not view the offer of exchange, or the liquidation of assets which will follow of necessity, as having the effect of changing the nature of the business of the new fund so as to cease being an investment company without shareholder approval as required by Section 13(a)(4) of the 1940 Act [15 U.S.C. 80a-13(a)(4)].

[18]*See, e.g.*, Investment Company Act Release Nos. 10451 and 10824 (dated October 26, 1978, and August 8, 1979, respectively).

[19]*See* Section 11(a)(B) of the 1940 Act.

[20]Assuming directors have considered all other relevant factors, this latter result could be avoided through the declaration of a dividend prior to the exchange in an amount equal to the excess of market based net asset value per share (less amounts reserved) over the amortized cost price per share.

READEX FICHE

net asset value per share before exchanges of shares are effected in order to insure that such exchanges are equitable to all shareholders of the funds involved.[21]

Finally, in considering the timing and appropriateness of offers of exchange, boards of directors of new funds should be cognizant of the fact that special deposits will not be refunded until August 11, 1980. Significant redemptions of new fund shares prior to that date, absent appropriate emergency arrangements, will have the effect of increasing the portion of a new fund's assets subject to the special deposit, and could impair the ability of a fund to continue to redeem its remaining shares.[22]

This discussion is not intended to suggest that directors do not have the responsibility to consider and to determine whether other actions may not be equally appropriate.

2. *Sales of Securities Between Funds.*

Section 17(a) of the 1940 Act [15 U.S.C. 80a-17(a)], in pertinent part, generally prohibits an affiliated person of a registered investment company from purchasing securities from, or selling securities to, such registered investment company. Registered investment companies that are part of the same "complex" of investment companies are normally affiliated persons of each other.[23] In such cases, securities held in the portfolio of the new fund could not be sold or otherwise transferrred to the existing fund absent an exemption from the provisions of Section 17(a) of the 1940 Act. However, the most efficient and economical method of generating the necessary cash to meet the redemptions anticipated in new funds may be for the new fund to sell some or all of its assets to the existing fund.

The Commission intends to institute rulemaking proceedings permitting such transactions to be effected; it expects, before July 28, 1980, to propose a temporary rule which may become effective on an emergency basis, immediately upon approval by the Commission. It is expected that this rulemaking will require that the boards of directors of the companies involved find the transaction to be in the best interests of the respective affiliated companies, and find that the interests of the shareholders of the respective companies will not be diluted as a result of the transaction. The rule will require that all portfolio instruments of the new fund being sold to the existing fund be sold at market value (*i.e.*, marked to market), regardless of whether the new fund previously has valued such instruments at amortized cost, but will permit the sale of individual instruments at their amortized cost values provided that in the aggregate the mark to market value of all such individual instruments being sold does not differ materially from the amortized cost value of such instruments. Solely for this purpose, the rule

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[21]In fact, boards of directors of funds operating pursuant to Commission orders permitting amortized cost valuation are required, pursuant to the conditions of such orders, to adjust exchange ratios to reduce to the extent reasonably practicable any unfair result or material dilution.

[22]To alleviate some of the problems that could arise if shareholders remain in new funds, directors may be asked to consider whether shareholders who remain in the new fund shoud be redeemed on an involuntary basis. In that regard, directors should consider carefully the factors addressed in Rule 13e-3 under the Securities Exchange Act of 1934 [17 CFR §240.13e-3]. The staff of the Commission has stated that it would not recommend action by the Commission if shares held by shareholders who have not accepted offers of exchange are involuntarily redeemed, provided the board of directors of the new fund concludes that such mandatory action is in the best interests of these shareholders. The offers of exchange in such cases should disclose fully the consequences of rejecting the exchange offer. Although, under most circumstances, effectuation of involuntary redemptions could be viewed as a violation of shareholders' fundamental rights to redeem shares, as assured by Section 22(e) of the 1940 Act, in this situation the need to assure the orderly suspension of the operations of new funds, in a manner that is not inequitable, could justify the use of this highly unusual measure.

[23]Section 2(a)(3)(C) of the 1940 Act [15 U.S.C. 80a-2(a)(3)(C)]. For purposes of Section 17(a) of the Act, each series of shares of a registered open-end investment company meeting the provisions of Section 18(f)(2) of the 1940 Act [15 U.S.C. 80a-18(f)(2)] should be deemed to be separate companies which are affiliated persons of each other. *See* Section 2(a)(8) of the 1940 Act [15 U.S.C. 80a-2(a)(8)].

will deem a deviation of mark to market value from amortized cost value of less than 1/2 of 1 percent not to be material.[24]

The adoption of such a rule should enable new funds to generate sufficient cash, and existing funds to purchase assets, promptly and without some of the transactions costs normally associated with sales and purchases of portfolio securities.

OTHER MATTERS

Before revising any current policies presently restricting the sale of shares of an existing fund, the board of directors of the fund should give careful consideration to the potential impact of such policy revision upon existing shareholders of the fund. For example, if an existing fund previously has limited sales of its shares to existing accounts, the board of directors should consider whether elimination of that sales restriction at this time would result in substantial new sales of fund shares, requiring the fund to purchase debt securities bearing lower yields and thereby reducing significantly the dividends payable on existing shares of the fund.[25] Although under ordinary circumstances the Commission would not expect money market funds to alter their sales policies merely because of declining interest rates, the extraordinary level of sales of shares of existing funds that may occur warrants directoral consideration of this issue.

In addition, where a new fund currently is relying upon temporary Rule 6c-4(T) and the board of directors of that new fund is considering whether to modify its investment objectives, its features or its services, the directors should recognize that such modifications may deprive the new fund of its ability to continue to rely upon temporary rule.[26] Such modifications could also eliminate the availability of the rule for use by other persons and companies associated or dealing with the new fund and now relying on the rule.[27] On the other hand, the rescission of the Board's regulations will not be considered by the Commission as making a company or person ineligible to rely on Rule 6c-4(T) solely because of the rescission of the Board's regulations. Thus, paragraphs (a)(3)(ii) and (iii) of the rule, which, among other things, require that a fund relying upon the rule be a "covered creditor" under the Board's regulations, should be read for this purpose as though the Board's regulations remained in effect.

The Commission expects to consider the continued appropriateness of Rule 6c-4(T) in the near future, as investment companies react to rescission of the credit control regulations. As stated in the release adopting the temporary rule on an emergency basis, after appropriate notice, the Commission may determine it to be appropriate to rescind the rule in whole or in part.

Finally, the Commission expects to consider in the near future whether Rule 24e-2 under the 1940 Act [17 CFR §270.24e-2] should be amended to mitigate duplication of registration fees.

CONCLUSION

The Commission has instructed its Division of Investment Management to monitor closely the manner in which money market funds address the

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[24]The rule will permit the sale of portfolio instruments of the new fund to the existing fund in several separate transactions. However, in such cases and in cases where all of the assets of the new fund are not sold, boards of directors of new funds will be required to consider certain factors in selecting those assets to be sold in order to protect the interests of shareholders remaining in the new funds.

[25]Of course, this possibility should also be considered before making any offer of exchange pursuant to Section 11(a) of the 1940 Act to shareholders of another money market fund.

[26]Among other things, paragraph (a)(3) of rule 6c-4(T) requires that the new fund provide essentially the same features and services as an "existing company," and have comparable policies and objectives, in order to qualify for the exemptions provided by the rule.

[27]Paragraph (c) of Rule 6c-4(T) extends certain exemptions to persons and companies associated with or transacting business with a new fund to enable certain relationships and transactions with respect to an existing fund to continue with the new fund. However, that exemptive relief is conditioned upon the new fund meeting the requirements set forth in paragraph (a)(3) of the rule.

matters discussed herein, and to advise the Commission with respect to its findings as developments may require.

Accordingly, 17 CFR Parts 231 and 271 are hereby amended to incorporate therein this general statement of policy.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6225/July 21, 1980

IN THE MATTER OF

NYEMASTER, GOODE, MCLAUGHLIN, EMERY & O'BRIEN PARTNERSHIP EMPLOYEES PROFIT SHARING PLAN
Tenth Floor Hubbell Building
Des Moines, Iowa 50309

(18-75)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE NYEMASTER, GOODE, MCLAUGHLIN, EMERY & O'BRIEN PARTNERSHIP EMPLOYEES PROFIT SHARING PLAN.

Nyemaster, Goode, McLaughlin, Emery & O'Brien ("Applicant"), a law firm organized as a partnership under the laws of the State of Iowa, filed an application by letter dated March 20, 1980, requesting an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests of participations issued in connection with the Nyemaster, Goode, McLaughlin, Emery & O'Brien Partnership Employees Profit Sharing Plan ("Plan").

On June 23, 1980, a notice was issued (Securities Act Release No. 6215) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6226/July 21, 1980

IN THE MATTER OF

MORRISON & FOERSTER RETIREMENT PLAN
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

(18-72)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE MORRISON & FOERSTER RETIREMENT PLAN.

Morrison & Foerster ("Applicant"), a law firm organized as a partnership under the laws of the State of California, filed an application by letter dated February 20, 1980, requesting an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in the connection with the Morrison & Foerster Retirement Plan ("Plan").

On June 23, 1980, a notice was issued (Securities Act Release No. 6126) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6227/July 23, 1980

IN THE MATTER OF

THE PROFIT-SHARING PLAN OF KADISON, PFAELZER, WOODWARD, QUINN & ROSSI
707 Wilshire Boulevard
Los Angeles, CA 90017

(18-74)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE PROFIT-SHARING PLAN OF KADISON, PFAELZER, WOODWARD, QUINN & ROSSI.

Kadison, Pfaelzer, Woodward, Quinn & Rossi ("Applicant"), a law firm organized as a partnership under the laws of the State of California, filed an application by letter dated March 31, 1980, requesting an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interest or participations issued in connection with The Profit-Sharing Plan of Kadison, Pfaelzer, Woodward, Quinn & Rossi ("Plan").

On June 27, 1980, a notice was issued (Securities Act Release No. 6218) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16984/July 17, 1980

In the Matter of

REUTERS LIMITED

ORDER GRANTING EXEMPTION

I. *Introduction*

Reuters, Limited ("Reuters") has requested that the Commission grant it exemptions from paragraphs (b)(2)(ii), (c)(2)(i) and (c)(2)(ii) of 17 CFR 240.11Ac1-2 (Rule 11Ac1-2, the "Rule," under the Securities Exchange Act of 1934, the "Act"). Paragraphs (b)(2)(ii) and (c)(2)(ii) require that vendors provide consolidated transaction and quotation information with respect to securities as to which transaction information is reported in the consolidated transaction reporting system ("reported securities") by means of an interrogation sequence involving either a fewer number of key strokes than is used to retrieve displays of individual market center information or by an equal number of

key strokes if the transmit key to recall consolidated displays is more prominent (the "Key Stroke Requirements"). Paragraph (c)(2)(i) requires that vendors providing quotation information with respect to reported securities provide, at a minimum either a best bid and offer display, including market identifier and size ("BBO") derived from quotations from all reporting market centers, or a montage of such quotations (the "BBO Requirement").

II.Key Stroke Exemption Request

Reuters' interrogation system presently provides only one quotation and transaction information display for reported securities which includes both consolidated and individual primary market information. As a result, Reuters is not able to comply with the Key Stroke Requirements because consolidated information is recalled by the same number of key strokes as individual market information. Accordingly, Reuters has requested an exemption from the Key Stroke Requirements of the Rule to permit it to continue to provide both consolidated and individual primary market information on the same display.

The Commission believes that, at least in the present environment, a combined display of the type used by Reuters is an effective way to ensure that both a brokerage firm's registered representative and its customer are exposed to consolidated information and, therefore, the Commission has determined that the grant of an exemption from the Key Stroke Requirements to permit Reuters to retain its existing display format is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system. Accordingly, the Commission has determined to grant Reuters an exemption from the requirements of paragraphs (b)(2)(ii) and (c)(2)(ii), pursuant to paragraph (g) of the Rule, to permit it to provide both consolidated and individual primary market information on a single display.

III. *BBO Exemption Request*

Reuters has also requested an exemption from the BBO Requirement of the Rule. Reuters indicates that it would have to incur substantial computer, storage and communications costs in order to compute the BBO. Reuters also asserts that there is no existing viable alternative to Reuters itself computing the BBO. Specifically, Reuters alleges that presently the only entities which have the capability to compute the BBO are other information vendors who are competitors of Reuters. While Reuters indicates that it would be willing to purchase the BBO from an independent central processor, Reuters states that it has not explored the possibility of purchasing the BBO information from other vendors because (1) Reuters would have no ability to assure that the computation made by "an unofficial third party source" would be accurate, reliable and timely and (2) the manner in which existing "autoquote systems" presently operate would cause any computation of the BBO make by a vendor to be inherently misleading.

The Commission has determined to deny Reuters' request for an exemtion from the BBO Requirement. the Commission has since 1972 envisioned that a consolidated quotation system ("CQS") would be cornerstone of the congressionally mandated national market system.[1] Moreover, both Congress and the Commission have envisioned that the CQS would permit brokers and dealers to determine, simply and directly, the best market for a reported security at any given point of time during the trading day.[2] At present, however, no vendor has voluntarily modified its display system to make available, at a reasonable cost, a useful consolidated quotation display to all subscribers.

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[1]See Securities and Exchange Commission *Statement on the Future Structure of the Securities Market* (February 2, 1972) at 9, 34 FR 5236-87.

[2]In its 1973 Statement on the Structure of a Central Market System, the Commission indicated that in order for active competition to exist "brokers representing investors must be able to determine at any given time the lowest price at which a particular security can be bought and the highest price at which it can be sold." Policy statement of the Securities and Exchange Commission on the Structure of a Central Market System (March 29, 1973), at 25 *reprinted in*, [1973] Sec. Reg. & L. Rep. (BNA) No. 196 at D-1, D-5. Similarly, the House of Representatives' Securities Industry Study adovcated that bid and offer quotations would be published "in such fashion as to permit a comparison between specialists and market makers, who would be in competition with one another." Report of the Subcomm. on Com. & Fin. of the Comm. on Interstate & For. Com., *Securities*

The Commission adopted Rule 11Ac1-2 to respond to these concerns. The Commission believes that the Rule, by requiring ready availability of consolidated information, particularly quotation information, will improve the efficient pricing of securities transactions and directly enhance brokerage firms' ability to ensure best execution of their customers' orders. Moreover, the availability of a consolidated quotation display should increase investor awareness of the presence of competing market centers and thus enhance their ability to police the quality of the executions they receive. Finally, in the release adopting rule 11Ac1-2, the Commission discussed a number of alternative actions which might result in progress toward these fundamental national market system goals. Of those found feasible, the Commission indicated its belief that Rule 11Ac1-2 reflects the least burdensome alternative.[3]

In addition, the Commission believes that broad exemption from the BBO Requirement, if not extended to all vendors which provide stock quotation information, might provide Reuters with an inappropriate competitive advantage over other vendors. Specifically, Reuters would avoid incurring the incremental computer, communications and storage costs which all of the other vendors either have made, or will have to make, to comply with the BBO Requirement. The Commission believes that providing Reuters with such a cost advantage over other vendors would be inappropriate with respect to so essential a provision of the Rule.

While the Rule provides the Commission with authority to exempt a vendor from provisions of the Rule which would have unnecessarily severe economic consequences on that vendor, Reuters has shown no special circumstances which would, at this time, justify an exemption from such a critical provision of the Rule.[4] In light of Reuters' unwillingness to explore the feasibility of purchasing the BBO from another vendor, the Commission is unable to conclude that Reuters has shown that it must incur substantial expense to comply with the BBO Requirement. The Commission recognizes that it would be more desirable, from Reuters' perspective, to purchase the BBO from a central processor rather than a competing vendor.[5] However, the Commission is unwilling to accept Reuters' assertion, without making any attempt to explore costs with the other vendors, that such a relationship is inherently unacceptable. Indeed, the Commission understands that one vendor is presently selling quotation information to the National Association of Securities Dealers ("NASDAQ) for use in the NASD's NASDAQ Consolidated Quotation System service.[6] Accordingly, the Commission believes that Reuters' position is unacceptable, especially in light of both indications that the information could be purchased on a commercially reasonable basis and the Commission's authority to ensure that any charges made for providing Reuters with the BBO are not "unreasonably discriminatory."[7]

Footnote 2 Continued

Industry Study, H.R. Rep. No. 92-1519, at xiv, (1972). Finally, the House Report on the Securities Act Amendments of 1975 indicated that the implementation of a composite quotation system would be necessary in order to "allow stock brokers to ascertain *at a glance* the market which offers the best price for their customers. . . ." (emphasis supplied). Comm. on Interstate & For. Com., *Report to Accompany H.R. 4111 Securities Reform Act of 1975*, H.R. Rep. No. 94-123, at 91 (1975).

[3]See Securities Exchange Act Release No. 16590, (February 19, 1980) at 44-48, 45 FR 12391 at 12399-40.

[4]The Commission's denial today of Reuters' application for exemption from the BBO requirement does not, of course, preclude a subsequent exemption request based upon a showing of new factors or special circumstances upon which an exemption may be conditioned.

[5]In this connection it should be noted that, on June 24, 1980, the Commission announced that it was deferring the effective date of certain portions of the Rule, including the BBO Requirement, because it believed that those provisions should not become effective until, among other things, "the exchanges and the vendors have had an opportunity to explore appropriate methods of providing for more efficient and less costly methods of calculating the [BBO]." Securities Exchange Release No. 16924 (June 24, 1980) at 4, 45 FR 44922 at 44923 ("Deferral Release").

[6]The Commission also understands Reuters presently purchases stock information, for its foreign network, from another vendor.

[7]See Section 11A(c)(1)(D) of the Act.

The Commission also does not agree with Reuters' assertion that, without a central processor, it would be inappropriate for it to arrange to receive the BBO information from a third party because it would be unable to ensure the accuracy and timeliness of the BBO information. First, the underlying quotation information, from which the BBO would be calculated, would continue to be collected by each exchange and the NASD and disseminated to vendors by the Consolidated Quotation Asociation's plan processor, the Securities Industry Automation Corporation. Second, Reuters could presumably negotiate with each of the vendors who develop the capability to calculate the BBO and thus require that the vendor chosen provide assurance that the information was provided on an accurate and timely basis. Reuters' ability to accomplish this would seem especially likely in light of the fact that if a competing vendor supplied the BBO to Reuters it would presumably make the calculation once and then feed it to Reuters and its own system at the same time. Therefore the competing vendor would have every incentive to ensure that the BBO computation was both reliable and timely.[8]

In addition, the Commission does not accept Reuters' argument that exemptive relief is appropriate because any BBO display it, or any other vendor, might compute would be inherently misleading because of problems caused by autoquote systems employed by regional exchanges to generate automatically quotation information based on primary market quotations ("Autoquote Systems"). The Commission recognizes Reuters' underlying concern that the presence of Autoquote Systems has the potential for occasionally rendering the BBO misleading.[9] However, the problems caused by Autoquote Systems affect each of the vendors' systems equally. Accordingly, while the Commission currently believes that the Autoquote problems must be resolved before the effective date of the BBO Requirement, the Commission does not agree that their existence justifies the granting of exemptive relief to one particular vendor.

IT IS THEREFORE ORDERED that Reuters be granted an exemption from paragraphs (b)(2)(ii) and (c)(2)(ii) of the Rule, pursuant to paragraph (g) of the Rule, to permit Reuters to provide both consolidated and individual primary market information on a single display. This exemption is subject to modification or revocation at any time if the Commission determines that such action is necessary or appropriate in light of progress made toward a national market system or otherwise in furtherance of the purposes of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

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[8]It should also be noted that Section 11A(c)(1)(B) of the Act provides the Commission with rulemaking authority to "assure the prompt, accurate, reliable and fair . . . processing, distribution and publication" of quotation and transaction information.

[9]Currently Autoquote Systems have reaction times varying from a few seconds to approximately sixty seconds. The result of this delay is the generation of up to four additional BBO calculations and messages (with resulting increased demands on vendors' systems) and the possibility that investors inquiring for the BBO will be misled by a stale quotation from a regional exchange employing an Autoquote System. In recognition of this problem, the Commission specifically stated, in the Deferral Release, that the BBO and related provisions of the Rule should not become effective "until there is some assurance that any best bid and offer display which is made available is not misleading because of time lags in updating Autoquote bids and others." Deferral Release, *supra* note 5, at 4, 45 FR 44922 at 44923.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16985/July 18, 1980

Administrative Proceedings File No. 3-5945

In the Matter of

JESUP & LAMONT SECURITIES CO., INC.
(File No. 8-22790)
WALTER NOEL ANDERSON
CHARLES MACDONALD MILLER

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted with respect to Jesup & Lamont Securities Co., Inc. ("Jesup"), a registered broker-dealer, Walter Noel Anderson ("Anderson"), a former registered representative in Jesup's Chicago office, and Charles MacDonald Miller ("Miller"), a former branch manager of the Jesup Chicago office, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act")

In anticipation of this administrative proceeding, Jesup, Anderson, and Miller have each submitted an Offer of Settlement which the Commission has determined to accept. Without admitting or denying the allegations and findings contained herein, the Respondents hereby consent to the findings and order of the Commission imposing remedial sanctions.

II

Accordingly, IT IS ORDERED that such proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be, and they hereby are, instituted.

III

On the basis of the Order for Proceedings and the Offers of Settlement by Jesup, Anderson, and Miller, the Commission makes the following findings:

1. During the period from in or about August, 1976 to in or about October, 1978, Anderson wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of exchange listed options. As part of the aforesaid conduct and activities, Anderson among other things:

a. induced certain customers to purchase and sell listed options not withstanding that such transactions were not suited to their financial situation, investment sophistication and investment objectives;

b. misrepresented the risks inherent in option trading to certain customers;

c. exercised discretionary authority in certain customer accounts without proper authorization; and

d. misrepresented to certain customers potential profits and rates of return realizable from option trading strategies.

2. During the period from in or about August, 1976 to in or about October, 1978, Jesup and Miller failed to reasonably supervise Anderson with a view toward preventing the violations described above.

IV

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that:

1. Jesup & Lamont Securities Co., Inc. be, and hereby is censured.

2. All solicited trading in securities options in Jesup's Chicago office is suspended for a period of thirty (30) days for any account for which option account opening documents have not been submitted to Jesup prior to the entry of this Order.[1]

3. Jesup comply with the undertakings in its Offer of Settlement to:

a. make restitution in the amount of $26,000 to certain of Anderson's customers who suffered losses from 1976 to 1978 in option trading;

b. establish a Compliance Review Board ("CRB") which would formulate and oversee all option compliance policies and proceedings and review all substantive customer complaints;

c. revise its compliance manual to more fully discuss such areas as suitability and compliance as they relate to options, and to explain compliance procedures to all registered representatives;

d. prohibit further options activity by any registered representative who exhibits a material lack of understanding or familiarity with various rules and regulations pertaining to options until the CRB is

[1]Existing customers of salesmen hired by Jesup during the suspension period may continue their option activities by Jesup.

satisfied that such registered representative has become qualified to engage in options activity; and

e. deliver an affidavit to the Chicago Regional Office at the expiration of its suspension period stating therein that it has complied with its undertakings and the sanctions imposed by the Commission.

4. Walter Noel Anderson be, and he hereby is, suspended from association with any broker, dealer, investment adviser, or investment company, or affiliate thereof for a period of one calendar week effective at the opening of business on the second Monday after the entry of this Order.

5. Anderson comply with the undertakings in his Offer of Settlement to:

a. take the Registered Options Principal examination and exercise his best efforts to satisfactorily complete said examination within twelve months of the entry of the Final Order by the Commission against Anderson in this matter (the "Final Order");

b. have all options transactions effected by Anderson reviewed by an officer of his present employer during the twelve months following the entry of the Final Order; and

c. forward all written customer complaints to legal counsel for his present employer during the twelve months following the entry of the Final Order.[2]

6. Charles MacDonald Miller be, and he hereby is, suspended from serving in any supervisory capacity in association with any broker, dealer, investment adviser, or investment company or affiliate thereof, for a period of thirty (30) calendar days effective at the opening of business on the second Monday after the entry of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

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[2]The undertakings enumerated in 5(b) and 5(c) shall be effective only so long as Anderson remains employed by his present employer. Anderson represents that he has no present intention of terminating his present employment.

SERVICE LIST

Rule 23 of the Commission's Rules of Practice provides that all amendments to moving papers, all answers, all motions or applications made in the course of a proceeding (unless made orally during a hearing), all proposed findings and conclusions, all petitions for review of any initial decision, and all briefs shall be filed with the Commission and shall be served upon all other parties to the proceeding including the interested division of the Commission.

The attached order for public proceedings has been sent to the following parties:

Securities and Exchange Commission
Divison of Enforcement
500 North Capitol Street
Washington, D. C. 20549

George A. Fitzsimmons
Secretary
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

William D. Goldsberry, Administrator
Chicago Regional Office
Securities and Exchange Commission
219 South Dearborn Street, Room 1204
Chicago, Illinois 60604

Jesup & Lamont Securities Co., Inc.
25 Broadway
New York, New York 10004

Mr. Walter Noel Anderson
1106 Hunting Court
Palatine, Illinois 60067

Mr. Charles M. Miller
529 S. Banberry
Arlington Heights, Illinois 60005

SECURITIES EXCHANGE ACT OF 1934
Release No. 16986/July 18, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006
(SR-Amex-80-13)

ORDER APPROVING PROPOSED RULE CHANGE

On May 30, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend the Amex Constitution and rules to eliminate the requirement that the principal purpose of every member and member organization be the transaction of business as a broker or dealer in securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16879, June 6, 1980) and by publication in the *Federal Register* (45 FR 41100, June 17, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Sections 6(b)(2) which requires exchanges to provide that any registered broker or dealer may become a member, 6(b)(5) which requires that exchange rules remove impediments to and promote a free and open market, and 6(b)(8) requiring that exchange rules not impose any unnecessary burden on competition.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16987/July 18, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-14)

ORDER APPROVING PROPOSED RULE CHANGE

On June 2, 1980, the american Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend Amex Rule 444 to eliminate the requirement that members report to Amex unsecured, non-capital borrowings aggregating $20,000 or more, and eliminate the requirement that such borrowings be supervised by a designated senior member of the borrower's member organization.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16882, June 9, 1980) and by publication in the *Federal Register* (45 FR 41102, June 17, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6(b)(5) in that the rule change removes from Amex rules regulations which are not related to the purposes of the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16988/July 21, 1980

An order has been issued granting the application of the *Boston Stock Exchange, Inc.* to strike the common stock ($1 par value of NARRAGANSETT RACING ASSOCIATION, INC.

SECURITIES ACT OF 1934
Release No. 16989/July 21, 1980

A notice has been issued giving interested persons until August 8, 1980 to comment on the application of FLIGHTSAFETY INTERNATIONAL, INC. to withdraw its common stock ($.10 Par Value) from listing and registration on the *American Stock Exchange.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 16990/July 21, 1980

Administrative Proc. File No. 3-5841

In the Matter of the Application of

DMR SECURITIES, INC.
6840 East Broadway
Tucson, Arizona

and

DAVID M. REINER

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice and Antifraud Provisions

Unfair Markups

Where member of registered securities association and its president charged customers unfair and fraudulent markups in the sale of securities, but most of association's findings of violation set aside, proceedings *remanded* for reassessment of the sanctions imposed.

APPEARANCES:

Robert W. Taylor, for applicants.

Andrew McR. Barnes and *Mary S. Head,* for the National Association of Securities Dealers, Inc.

I.

DMR Securities, Inc. ("DMR"), a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"), and David M. Reiner, its president, appeal from NASD disciplinary action. the NASD found that applicants charged customers unfair markups in the sale of certain securities. It censured applicants, revoked DMR's NASD membership, fined Reiner $10,000, and barred him from association with any member in any capacity.[1] Our findings are based on an independent review of the record.

II.

The NASD found that, from October 13 to December 1, 1976, and from January 5 to September 13, 1977, DMR, acting through Reiner, violated the NASD's Rules of Fair Practice by charging customers unfair markups in 139 principal transactions involving the sale of various debt securities. The NASD's rules provide that, when a member sells securities for its own account, the price must be fair.[2] And the accompanying Board of Governors' interpretation states that it is inconsistent with just and equitable principles of trade for any member to enter into a securities transaction with a customer at a price not reasonably related to the current market price of that security.[3]

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[1]The NASD also assessed costs against applicants.

[2]Section 4 of Article III. NASD Manual paragraph 2154.

[3]NASD Manual paragraph 2154, p. 2056.

We have repeatedly pointed out that, in the absence of countervailing evidence, a dealer's contemporaneous cost is the best evidence of current market price,[4] a standard that has been accorded judicial approval.[5] While contemporaneous cost is not limited to same-day cost, the prices a broker-dealer pays must nevertheless be "closely related in time" to the retail sales in question in order to constitute evidence of the market price at the time of those sales.[6] However, in calculating DMR's markups in the transactions before us, the NASD based its computations in most instances on prices that DMR had paid in purchases that were not contemporaneous with its sales. We accordingly set aside the NASD's findings of violation with respect to 105 of the transactions at issue.[7]

Of the remaining transactions, thirty sales were effected by applicants at markups ranging from 5.9% to 29.6% above the prices that DMR paid for the same securities within one business day of its sales. In an additional four transactions, DMR charged customers markups ranging from 10.2% to 11.7% above same-day representative asked quotaions for the securities in question.[8]

The NASD's so-called 5% markup policy, which was announced in 1943 as a guide in determining the fairness of prices in principal transactions, was based on a survey of NASD members which revealed that, in 71% of the transactions studied, the markups charged by members over current market price did not exceed 5%. The NASD's Board of Governors thereafter instructed all District Business Conduct Committees to use the results of the survey as a guide in determining whether or not a markup was excessive.[9]

The Board's interpretation of the 5% policy states that, in determining the fairness of a markup, members should consider, among other things, that a lower markup is customarily charged in the sale of bonds than in transactions of the same size involving common stock; that the percentage of markup generally increases as the price of the security decreases; that "transactions in lower priced securities may require more handling and expense" and thus "warrant a wider spread"; and that a transaction involving a small amount of money "may warrant a higher percentage of markup."[10]

In this case, we are dealing with debt securities. In the above 34 transactions, the prices charged customers for a single unit ranged from $820 to $1,638, and the amounts of money involved ranged from $1,090 to $116,250. We find that the markups charged in these transactions were clearly unfair, and we accordingly affirm the NASD's findings of violation with respect thereto.

Applicants point out that the NASD's rule provides that, in determining whether a price is fair, consideration must be given to all relevant circumstances, including the expense involved and the fact that the member is entitled to a profit.[11] However, applicants do not claim that their transactions involved any unusual expense, and, while the firm was entitled to a profit, it was not entitled to overcharge customers, in many cases to an extent that we have found fraudulent in proceedings brought by this Commission.[12] Finally, as we pointed out in a previous case involving

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[4]See *Charles Michael West*, Securities Exchange Act Release No. 15454 (January 2, 1979), 16 SEC Docket 592, 594, and the authorities there cited.

[5]*Barnett* v. *S.E.C.*, 319 F.2d 340, 344 (C.A. 9, 1963).

[6]See *DMR Securities, Inc.*, Securities Exchange Act Release No. 16322 (November 6, 1979), 18 SEC Docket 873, 875, and cases there cited.

[7]Included in this number are a few transactions where, although the NASD's computations were based on DMR's contemporaneous costs, DMR's markups did not exceed 3%.

[8]We have frequently held that, in the absence of actual inter-dealer transactions, market quotations may be considered as evidence of prevailing market price. *Wesco and Company*, 43 S.E.C. 8, 9 (1966); *Costello, Russotto & Co.*, 42 S.E.C. 798, 800 (1965).

[9]NASD Manual paragraph 2154, pp. 2054-2055.

[10]NASD Manual paragraph 2154, p. 2057.

[11]Section 4 of Article III. NASD Manual paragraph 2154, p. 2054.

[12]See *Charles Michael West, supra*, 16 SEC Docket at 594, and the cases cited in footnote 12 of that opinion.

applicants, their argument that DMR's costs of execution should be deducted in computing its markups is wholly lacking in merit.[13]

III.

The NASD also found that, between January 12 and August 9, 1977, applicants violated the antifraud provisions of Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder by charging customers excessive markups in 27 transactions involving the sale to customers of municipal bonds.[14] The record shows that in 5 municipal bond transactions, DMR charged markups ranging from 11.2% to 16.7% above the contemporaneous prices it paid to acquire those securities from other dealers. We accordingly affirm the NASD's findings of violation with respect to those transactions.[15]

Applicants argue that their actions were not fraudulent. We cannot agree. We have repeatedly held that, at the least, markups of more than 10% are fraudulent in the sale of equity securities.[16] And we recently pointed out, in holding markups of 8% fraudulent in the sale of municipal bonds, that markups in such securities are generally a good deal lower.[17]

It has long been recognized that the failure to disclose an excessive markup is a material omission.[18] There is no evidence, and applicants do not claim, that they disclosed their markups to customers. Thus we may properly infer that there was no disclosure.[19] Finally, we think it clear that applicants acted with scienter in charging such exorbitant prices in the sale of municipal bonds.

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[13]*DMR Securities, Inc., supra,* 18 SEC Docket at 875: "Applicants' argument betrays a basic misunderstanding of the nature of markups. A markup is not the equivalent of net profit. Rather, it is the spread between the current inter-dealer market price and the price charged the customer. Applicants' formulation would allow a dealer to pass along all his expenses to the customer, no matter how excessive, and to obtain in addition a guaranteed 5% net profit, whether or not the price charged was reasonably related tocurrent market price. Such a result would clearly contravene the NASD's markup policy and the Board of Governors interpretation of that policy."

[14]Applicants contend that the NASD has no jurisdication to take disciplinary action with respect to misconduct involving municipal bonds. However, although the NASD's Rule of Fair Practice do not apply to transactions in exempted seucrities (NASD Manual paragraph 2004, p. 2011), Section 19(g)(1)(B) of the Exchange Act empowers the NASD to enforce compliance with that Act and the rules thereunder. That same section empowers the NASD to enforce rules promulgated by the Municipal Securities Rulemaking board ("MSRB"). Thus the NASD could have charged that some of the transactions in question violated the MSRB's rule on fair prices and commissions (Rule G-30).

[15]The NASD computed markups in the remaining 22 transactions on the basis of prices paid by DMR that were not contemporaneous with its sales. Hence we set aside the NASD's findings of violation with respect to those transactions.

Citing *Collins Securities Corp.* v. *S.E.C.*, 562 F.2d 820 (C.A.D.C., 1977), applicants contend that all of their misconduct must be established by clear and convincing evidence. While *Collins* does apply to findings of fraud, it is not applicable to the findings of unfair markups based on violations of the NASD's Rules of Fair Practice. In any event, we find the evidence clear and convincing with respect to all of the violations we have found.

[16]See, e.g., *Edward J. Blumenfeld,* Securities Exchange Act Release No. 16437 (December 19, 1979), 18 SEC Docket 1379, 1382-83; *Charles Michael West, supra,* 16 SEC Docket 592, 594 n. 12.

[17]*Edward J. Blumenfeld, supra,* 18 SEC Docket at 1382. As one court has noted, "[I]t is the practice in the municipal bond industry to charge a retail customer a price which is no more than one-quarter of one percent to five per cent over the then current market price for a bond." *S.E.C.* v. *Charles A. Morris & Associates, Inc.*, 386 F. Supp. 1327, 1334 n. 5 (W.D. Tenn., 1973).

[18]See *Charles Hughes & Co.*, v. *S.E.C.*, 139 F.2d 434, 436-37 (C.A. 2, 1943), *cert. denied,* 321 U.S. 786 (1944).

[19]*Barnett* v. *United States, supra,* 319 F.2d at 344.

IV.

We have set aside the NASD's findings of violation with respect to a large majority of the transactions at issue. We therefore think that the NASD should be given the opportunity to re-examine the sanctions. Accordingly, we shall remand this matter to the Association so that it may reassess the sanctions that it previously imposed.[20]

We previously denied applicants a stay of the sanctions imposed by the NASD pending our review. In light of the action we are taking herein, we shall grant applicants a stay until such time as the NASD redetermines their sanctions.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and FRIEDMAN).

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16990/July 21, 1980

Administrative Process File No. 3-5841

In the Matter of Application of

DMR SECURITIES, INC.
6840 East Broadway
Tucson, Arizona

and

DAVID M. REINER

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION AND GRANTING STAY

On the basis of the Commission's opinion issued this day, it is

ORDERED that these proceedings be, and they hereby are, remanded to the Board of Governors of the National Association of Securities Dealers, Inc. ("NASD") for further action in accordance with such opinion, and it is further

ORDERED that applicants be, and they hereby are, granted a stay of the sanctions imposed by the NASD until such time as the Association redetermines those sanctions.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16991/July 21, 1980

Administrative Proceeding File No. 3-5911

In the Matter of

CHARLES E. PURDY III

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS AGAINST CHARLES E. PURDY III

In these broker-dealer proceedings under the Securities Exchange Act of 1933, Charles E. Purdy III (Purdy) has submitted an offer of Settlement in which he, without admitting or denying the allegations in the Order for Proceedings, consents to findings by the Commission and the imposition of a sanction. The Commission has determined to accept Purdy's Offer of Settlement.

On the basis of the Order for Proceedings and the Offer of Settlement, it is found that Purdy wilfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. In view of these violations, it is in the public interest to impose the sanction specified in Purdy's Offer of Settlement.

Accordingly, IT IS ORDERED, that:

Charles E. Purdy III be, and he hereby is, suspended from association with any broker or dealer or

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[20]See *First Philadelphia Corporation*, Securities Exchange Act Release No. 13194 (January 21, 1977), 11 SEC Docket 1549, 1551.

investment adviser or investment company of affiliate of a broker or dealer or investment adviser or investment company for a period of four (4) months, effective at the opening of business on the second Monday after the date of this Order.

For the Commission, by its Secretary, prusuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16992/July 21, 1980

In the Matter of

REMIT SECURITIES LTD., ET AL.

(8-20323)

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act") in *In the Matter of Remit Securities, Ltd., et al.*[1], respondent Remit Securities, Ltd. ("Registrant"), a registered boker-dealer, has failed to file an answer to the Order for Proceedings in the time prescribed by Rule 7 of the Commission's Rules of Practice and is therefore in default.[2]

On the basis of the Order of Proceedings, it is found that:[3]

A. During the period from in or about August 1978 through December 31, 1978, Registrant wilfully violated and wilfully aided, abetted, and induced violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in connection with the offer, purchase, and sale of the common stock of Anglo American Properties, Inc. and Sunny Land Tours, Inc.

B. During the period from in or about January 1978 to the present, Registrant wilfully violated Sections 15(b), 17(a), and 17(f) of the Exchange Act and Rules 15b3-1, 17a-3, 17a-11, and 17f-2 thereunder, and Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System.

In view of the foregoing, it is in the public interest to revoke the registration of Registrant as a broker dealer.

Accordingly, IT IS ORDERED that the registration as a broker-dealer of Remit securities, Ltd. be, and it hereby is revoked.

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16993/July 22, 1980

A notice has been issued giving interested persons until August 12, 1980 to comment on the applications of the *Philadelphia Stock Exchange* for unlisted trading privileges in the common stock (no par value) of ARCHER-DANIELS-MIDLAND and the common stock ($5 par value) of NLT CORPORATION.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16994/July 22, 1980

A notice has been issued giving interested persons until August 12, 1980 to comment on the applications of the *Boston Stock Exchange* for unlisted trading privileges in the common stock (no par value) of HIRAM WALKER-CONSUMERS HOME LTD., and INTER-CITY GAS CORPORATION.

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[1]*In the Matter of Remit Securities, Ltd. et al.*, Admin. Pro. File No. 3-5894, Securities Exchange Act Release No. 16700 (March 26, 1980), 19 SEC Docket 14 (April 8, 1980).

[2]Rule 7 of the Commission's Rules of Practice provides that the allegations in the Order for Proceedings may be deemed to be true as to a defaulting respondent.

[3]The findings herein are not binding on any other respondent named in the proceedings.

SECURITIES EXCHANGE ACT OF 1934
Release No. 16995/July 22, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-11)

ORDER APPROVING PROPOSED RULE CHANGE

On May 27, 1980, the Chicago Board Options Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change prohibiting member firms from placing multiple orders with several floor borkers for the account of the same principal.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16873, June 4, 1980) and by publication in the *Federal Register* (45 FR 40269, June 13, 1980). Comments were solicited but none were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation prusuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16996/July 23, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois

Files Nos. SR-Amex-80-20; SR-CBOE-80-19

NOTICE OF FILING OF PROPOSED RULE CHANGES AND ORDER APPROVING PROPOSED RULE CHANGES

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Incorporated ("CBOE") have filed with the Commission copies of proposed rule changes to expand the number of authorized put options classes.[1] The proposed rule changes, if approved, would enable Amex and CBOE to list and institute put trading on all securities currently underlying each exchange's authorized call option classes, as well as those securities selected for options trading in the first options exchange allocation lottery.[2] Specifically, Amex requests Commission approval to list and institute put trading on 46 additional underlying securities and CBOE on 67 additional underlying securities.[3] Upon approval,

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[1]Amex's proposal was filed on June 27, 1980. CBOE's proposal was filed on July 8, 1980, and amended on July 21, 1980.

[2]*See*, Securities Exchange Act Release Nos. 16892 (June 13, 1980), and 16883 (May 30, 1980).

[3]Amex previously received authorization to list ten additional put classes on May 6, 1980 (Securities Exchange Act Release No. 16788), ten additional put classes on May 28, 1980 (Securities Exchange Act Release No. 16851) and ten additional put classes on June 20, 1980 (Securities Exchange Act Release No. 16915). CBOE previously received authorization to list 27 additional put classes on May 6, 1980 (Securities Exchange Act Release No. 16788) and

both Amex and CBOE intend to commence trading in new put classes in general accordance with their rspective puts expansion schdules[4] with both exchanges adding new put classes at a rate not to exceed 12 classes per month.

Interested persons are invited to submit written data, views and arguments concerning the submissions within 30 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to the file numbers captioned above.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof. In the March 26, 1980 policy statement announcing the termination of the moratorium on the expansion of standardized options trading, the Commission stated that it perceived certain benefits with respect to the listing of both puts and calls on the same underlying security.[5] In the March 1980 policy statement the Commission also indicated that in the absence of significant operational or surveillance problems encountered by the options exchanges or difficulties experienced by member firms in handling current or anticipated trade volume, it anticipated giving expedited treatment to puts expansion rule proposals. No comments were received by the Commission concerning this aspect of the March 1980 policy statment, nor were any comments received concerning the Commission's determination to approve previous puts expansion proposals on an accelerated basis. Amex and CBOE have stated that the prior phases of their puts expansion programs have proceeded without any apparent adverse effect on their exchange's surveillance or operational capabilities or on member firm back office operations. The Commission has no information currently before it which is contrary to these representations. Amex and CBOE have also indicated that upon approval of the proposed rule change, they will continue to add new puts classes on a periodic basis in a reasonable and prudent fashion giving due consideration to their own operational and surveillance capabilities, as well as the back office capacity of their member firms.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes referenced above be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

Footnote 3 Continued

12 additional put classes on May 30, 1980 (Securities Exchange Act Release No. 16861). CBOE also received authorization to add nine new put classes in connection with the consummation of the combination of its options program with the options program of the Midwest Stock Exchange, Incorporated (Securities Exchange Act Release No. 16862, May 30, 1980).

[4]See Securities Exchange Act Release No. 16788 (May 6, 1980).

[5]See Securities Exchange Act Release No. 16710 (March 26, 1980) ("March 1980 policy statement").

SECURITIES EXCHANGE ACT OF 1934
Release No. 16997/July 23, 1980

In the Matter of

PACIFIC STOCK EXCHANGE, INCORPORATED
618 South Spring Street
Los Angeles, CA 90014

(SR-PSE-80-2)

ORDER APPROVING PROPOSED RULE CHANGE

On March 13, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend Article V, X, XI, XII and XIV of its constitution.[1] The proposed amendments would provide standards which the PSE Board of Governors and its Executive Committee may use in determining grounds for suspension or expulsion of members or member organizations, to limit access of members or member organizations with respect to services offered by the Exchange, to provide procedures for review of any summary action taken by the Board or its Executive Committee, and to provide procedures for reinstatement after suspension. The proposal also would redefine those matters which may be submitted to arbitration pursuant to the rules of the Exchange.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16723, April 7, 1980) and by publication in the *Federal Register* (45 FR 25205, April 14, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room. No comments were received.

[1]The PSE is withdrawing the last sentence of proposed Article X, Section 2 and all of proposed Article X, Section 7.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, Sections 6(b)(5), (6) and (7) of the Act, and the rules and regulations thereunder, in that it is designed to promote just and equitable principles of trade to protect investors and the public interest, and to provide that members and member organizations be appropriately disciplined for violations of the Act, as well as violations of the PSE.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16998/July 23, 1980

CLEARING AGENCIES

NOTICE OF INSTITUTION OF A PROCEEDING BY THE SECURITIES AND EXCHANGE COMMISSION, PURSUANT TO SECTIONS 17A AND 19 OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 240.17Ab2-1 THEREUNDER, TO DETERMINE WHETHER TO GRANT OR DENY THE REGISTRATION OF PHILADELPHIA DEPOSITORY TRUST COMPANY ("PHILADEP")

The Securities and Exchange Commission hereby announces the institution of a proceeding to determine whether to grant or deny the registration of Philadep at the expiration of the registration previously granted to Philadep pursuant to subsection (c) of 17 CFR Section 240.17Ab2-1 under the Securities Exchange Act of 1934 (the "Act"). In this proceeding, which is being instituted pursuant to subsections 17A(a) and (b) and subparagraph 19(a)(1)(B) of the Act and Section 240.17Ab2-1 thereunder, the Commission will consider the issues and grounds described herein. At the conclusion of this proceeding, the Commission, by order, will grant or deny registration as a clearing agency to Philadep.

Description of Philadep

Philadep, a wholly owned subsidiary of the Philadelphia Stock Exchange, was incorporated under Pennsylvania law as a limited purpose trust company to engage in the business of holding, receiving, and delivering securities and making book entries with respect to the transfer and pledge thereof as a clearing corporation and as a custodian bank for other clearing corporations.

Background

On May 23, 1979, the Commission noticed the filing of Philadep's application for registration as a clearing agency.[1] On October 24, 1979, the Commission granted Philadep registration[2] which, pursuant to subsection (c) of Section 240.17Ab2-1, was effective for not more than eighteen months. The approach to registration incorporated in subsection (c) of Section 240.17Ab2-1 was intended to permit clearing agencies to be registered in compliance with the Act, upon a finding that their operations were safe, while affording the Commission sufficient time to make the other determinations required by subparagraphs (A)-(I) of paragraph 17A(b)(3) of the Act ("Subparagraph (A)-(I)"), including determinations pertinent to the establishment of a national clearing and settlement system.

The Commission has instituted this proceeding in order to obtain the views of interested persons concerning Philadep's compliance with the standards which the Commission is required to apply under the Act in making determinations in connection with the registration of clearing agencies.[3]

Standards to be applied in determining whether to grant or deny registration

Paragraph 17A(a)(1) of the Act sets forth the Congressional finding that:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Paragraph 17A(a)(2) of the Act directs the Commission to "use its authority under this title to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities . . . ." Paragraph 17A(a)(2) of the Act also directs the Commission, in carrying out its responsibilities under Section 17A, to have:

> due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents. . . .

Subsection 17A(b) of the Act makes it unlawful for a clearing agency to perform the functions of a clearing agency with respect to any security (other than an exempted security) unless the clearing agency has been registered with the Commission.

In the exercise of its authority under Section 17A of the Act, on November 3, 1975, the Commission adopted Section 240.17Ab2-1 and related Form CA-1 for the registration of clearing agencies. Although

[1]Securities Exchange Act Release No. 34-15890 (May 23, 1976), 44 FR 31337 (May 31, 1979).

[2]Securities Exchange Act Release No. 34-16294 (October 24, 1979).

[3]The Commission previously has instituted proceedings to determine whether the registrations of the other 12 clearing agencies temporarily registered under Rule 17Ab2-1 should be granted or denied.

paragraph 17A(b)(3) of the Act requires the Commission to make a number of determinations with respect to the applicant's operations, capabilities and rules[4] before granting registration, paragraph (c)(1) of Section 240.17Ab2-1 provides that, if requested by an applicant for registration as a clearing agency, the Commission may register the applicant for eighteen months without making all the determinations called for by Subparagraphs (A)-(I).

In the case of a clearing agency registered in accordance with paragraph (c)(1) of Section 240.17Ab2-1, the Commission is required, not later than nine months from the date such registration is made effective, either to grant registration in accordance with subsection 17A(b) and paragraph 19(a)(1) of the Act, without exempting the registrant from the requirements of one or more of the subparagraphs (A)-(I) determinations, or to institute

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[4]The determinations are set forth in subparagraphs (A) through (I) of paragraph 17A(b)(3) of the Act. Paragraph 17A(b)(3) provides:

A clearing agency shall not be registered unless the Commission determines that —

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any

proceedings in accordance with subparagraph 19(a)(1)(B) of the Act to determine whether to grant or deny registration.

Philadep applied for registration under paragraph (c)(1) of Section 240.17Ab2-1, thereby requesting that registration be granted while it was exempted, temporarily, from having to satisfy one or more of the requirements as to which the Commission is directed to make a determination pursuant to Subparagraphs (A)-(I). The Commission registered Philadep in accordance with paragraph (c)(1) of Section 240.17Ab2-1, upon the Commission's findings: that Philadep was so organized and had the capacity to safeguard securities and funds in its custody or control or for which it was responsible; that Philadep's rules did not impose any schedule of prices, or fix rates or other fees, for services rendered by participants; and that Philadep's rules assured the safeguarding of securities or funds which were in Philadep's custody or control or for which it was responsible.

When this proceeding is concluded, the Commission, by order, will grant or deny registration as a clearing agency to Philadep on the expiration of the registration previously granted to Philadep pursuant to subsection (c) of Section 240.17Ab2-1 under the Act unless the Commission, for good cause, extends the time for conclusion of these proceedings and publishes its reasons for so doing or Philadep agrees to an extension of the time for the conclusion of these proceedings.

Issues and Grounds for Denial Under Consideration

In deciding whether to grant or deny registration, the Commission must consider whether Philadep satisfies the requirements of Section 17A of the Act, including the determinations required by Subparagraphs (A)-(I). Of particular concern to the Commission in making its decision are whether Philadep's organization and rules (i) are consistent with the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities; (ii) continue to provide for the protection of investors and the safeguarding of securities and funds in Philadep's custody or control; and (iii) will enable it to reduce unnecessary costs and establish efficient, effective and safe procedures for clearance and settlement by taking advantage of new communications and data processing techniques.

The Commission would like to receive comments from interested persons on the appropriateness of registering Philadep, with particular reference to the compliance of its organization and rules with the objectives of the Act described above, including the determinations called for by Subparagraphs (A)-(I).[5]

All interested persons are invited to submit written data, views and arguments concerning the foregoing application within 90 days from the date of publication of this notice in the *Federal Register*. Such written data, views and arguments will be considered by the Commission in determining whether registration should be granted or denied in accordance with Sections 17A(b) and 19(a)(1)(B) of the Act and paragraph (c)(2) of Section 240.17Ab2-1 thereunder. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 600-19.

Copies of the applications and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20006.

For further information contact Michael J. Simon,

Footnote 4 continued

person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden or competition not necessary or appropriate in furtherance of the purposes of this title.

[5]In commenting, interested persons may wish to make reference to Securities Exchange Act Release No. 34-16900 (June 17, 1980) in which the Commission announced standards that the Division of Market Regulation will use in reviewing the organization, capacities and rules of all clearing agencies that are registered temporarily with the Commission and any clearing agencies that apply for registration in the future.

Division of Market Regulation, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2908.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 16999/July 23, 1980

A notice has been issued giving interested persons until August 13, 1980 to comment on the application of the *Pacific Stock Exchange, Incorporated* for unlisted trading privileges in the common stock ($1 par value) of WHITE CONSOLIDATED INDUSTRIES, INC..

SECURITIES EXCHANGE ACT OF 1934
Release No. 17000/July 23, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, NW
Washington, DC 20006

(File No. SR-NASD-80-8)

ORDER APPROVING PROPOSED RULE CHANGE

On May 21, 1980, the National Association of Securities Dealers, Inc. (the "Association") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to revise Schedule D under Section XVI of the Association's By-Laws regarding qualification of securities for inclusion in NASDAQ. In particular, the proposed rule change would require that a security which has been terminated from the NASDAQ system be required, prior to reinclusion, to comply with the requirements of a security which has never been authorized. In addition, the proposal would clarify procedures to be followed in NASDAQ qualification matters, including aggrievement proceedings.

Notice of the proposed rule change together with its terms of substance was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16842, May 23, 1980) and by publication in the *Federal Register* (45 FR 37790, June 4, 1980). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities associations, and in particular, the requirements of Section 15A and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17001/July 23, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On April 25, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to modify the reclamation provisions of MSRB rule G-12, applicable among other things, that reclamation may be made by either party, within 18 months of the delivery date, if there is either an irregularity in delivery or a refusal to transfer or deregister by a transfer agent due to lack of certain specified

documentation. The proposed rule change would expand the circumstances under which reclamation within 18 months would be permitted to include situations where descriptive information concerning a security, as contained in the confirmation, was inaccurate either because required information was omitted or erroneously noted, or because information not required by rule G-12, but material to the transaction, was erroneously noted.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16786 (May 5, 1980)) and by publication in the *Federal Register* (45 FR 31565 (1980)). No comments with respect to the proposed rule change have been received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereundr applicable to the MSRB, and in particular, the requirements of Section 15B, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17002/July 24, 1980

The Commission today determined to issue the followng statements by Sanford Noll, Carl Ablon, Sidney Stoneman, A-D-R Charitable Foundation and Trust, S. Darwin Noll, and Arthur Berkowitz. The statements were submitted to the Commission pursuant to Section 21(a) of the Securities Exchange Act of 1934[1] in connection with an investigation by the Commission's Division of Enforcement relating to certain transactions in the common stock of Curtis Noll Corporation. Included in the statements are certain factual assertions regarding the transactions under inquiry and certain representations, including to pay profits made by certain of the above named individuals or charitable foundations related to them from certain transactions in the common stock of Curtis Noll Corporation to persons on the other sides of such transactions.

George A. Fitzsimmons, Secretary
U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by Sanford B. Noll pursuant to Section 21(a) of the Securities Exchange Act of 1934. This statement is made in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation ("Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

My purposes in addressing this statement to the Commission are twofold: (1) to inform the Commission concerning the circumstances under which I discussed, in late September 1977, certain material non-public information regarding Curtis Noll with certain individuals; and (2) to assure the Commission that I will endeavor to be acutely aware of statutory provisions and rules which have been brought to my attention by this matter pertaining to the use of material information in connection with securities transactions.

In August and September, 1977, I was Chairman of the Board and Chief Executive Officer of Curtis Noll, a company incorporated in Delaware, with its principal executive offices in Cleveland, Ohio. Curtis

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[1]Section 21(a) of the Securities Exchange Act of 1934 provides, in part, that:

"The Commission may, in its discretion. . .require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated."

Noll's common stock was publicly traded on the New York Stock Exchange. Members of my family, which founded Curtis Noll, and I owned approximately 320,000 shares or 14 percent of Curtis Noll's outstanding common stock.

In late August 1977, I was approached by a brokerage firm acting on behalf of Congoleum Corporation ("Congoleum"), whose principal executive offices are located in Milwaukee, Wisconsin, concerning the possible acquisition of Curtis Noll by Congoleum. On August 29, 1977, Congoleum's Deputy Chairman, Byron Radaker, and its President, Eddy Nicholson, and I met in Cleveland. At that time, we discussed mutual business philosophies and I was informed that Curtis Noll met Congoleum's financial criteria for acquisition candidates. However, no agreement was even tentatively reached at this time between Curtis Noll and Congoleum concerning the potential acquisition of Curtis Noll by Congoleum.

In early September 1977, the investment banking firm representing Congoleum again contacted me to arrange for the continuation of the earlier acquisition discussions. Meetings were arranged in Cleveland between myself and other officers of Curtis Noll and Messrs. Radaker and Nicholson on September 14, 15, and 16, 1977.

During the evening of September 14, 1977, I met with Messrs. Radaker and Nicholson and continued the earlier discussions that had begun on August 29. In the morning of September 15, 1977, other senior officers of Curtis Noll and I met with representatives of Congoleum. During the afternoon of September 15, Manny Schor, Curtis Noll's President, and I took Messrs. Radaker and Nicholson on a tour of Curtis Noll's facilities in the Cleveland area. During the week of the visits by Congoleum's representatives to Curtis Noll, I warned members of Curtis Noll's senior management, who had been informed of the Curtis Noll-Congoleum discussions, that they should not divulge such information to others. I also told them that they should not effect any transactions in Curtis Noll's securities.

During the evening of September 15, 1977, Messrs. Radaker and Nicholson and I met at my residence in the Cleveland area to continue the discussions regarding the acquisition of Curtis Noll by Congoleum. During this meeting, which lasted for approximately 3 hours, I was informed that Congoleum was willing to acquire Curtis Noll in a cash transaction; that Congoleum probably would sell certain units of Curtis Noll in the event of an acquisition; and that Congoleum was desirous of retaining Curtis Noll's top management, including myself, in the event of an acquisition. After further negotiations concerning price, I concluded that Congoleum would not offer more than approximately $25 per share for Curtis Noll common stock. Thereafter, in response to Congoleum's inquiry concerning a possible acquisition, I advised the Congoleum representatives that if Congoleum made an offer at a reasonable price, I would feel obligated to take the matter to Curtis Noll's Board of Directors even though I had not yet made up my mind to sell my stock. The representatives of Congoleum then returned to Milwaukee.

During the morning of Friday, September 16, 1977, I was called by Mr. Nicholson who asked that the Curtis Noll Board of Directors meeting, scheduled for September 30, be advanced to September 26, at which time Congoleum would present a proposal to Curtis Noll's directors. I responded that I would poll Curtis Noll's directors to see if they would agree to Congoleum's request and inform Congoleum of their decision later in the day. The specific price that Congoleum would offer Curtis Noll was not discussed during this conversation. I then immediately contacted the members of Curtis Noll's Board of Directors, told them that Congoleum was going to submit a proposal in the $25 range for each share of Curtis Noll common stock, informed them of Congoleum's request to reschedule the Board of Directors meeting and inquired whether they would agree to advance the September 30 board meeting to September 26. I finished canvassing Curtis Noll's directors by the early afternoon of September 16, and they agreed to advance the date of Curtis Noll's Board of Director's meeting as requested. At that time, I concluded in my own mind that a majority of the directors were favorably inclined towards an offer of approximately $25 per share, depending on the final form of the offer and any contingencies that might be placed on the offer. The Board meeting was rescheduled for September 26. I informed Congoleum of this fact in the afternoon of September 16, 1977.

Over the course of the weekend of September 17-18, 1977, I sought advice concerning the possible sale of Curtis Noll from S. Darwin Noll, who is my brother, Carl Ablon and Sidney Stoneman. Each of these men are long time and close personal and business acquaintances of mine, and I discussed the possible

sale in an effort to obtain their counsel with respect to the pros and cons of the proposed transaction, including the nature of the transaction and the price.

I believed I discussed the matter with Darwin Noll at dinner on either Friday or Saturday evening, September 16 or 17. Darwin Noll's wife, Evelyn, was present during our discussion, and may have overheard the conversation. I believe I discussed the possible sale with Carl Ablon on Saturday while playing golf, and I discussed it with Sidney Stoneman in a long distance telephone conversation either Saturday evening or sometime Sunday.

I do not recall that I mentioned the name of the possible purchaser to any of these men during the course of my discussions with them.

I subsequently learned that Carl Ablon, and Darwin Noll and his wife, purchased shares of Curtis Noll common stock on Monday, September 19, 1977. I did not know of these purchases at the time they were made, nor was I advised by any of them that they were going to make such purchases.

On September 19, 1977, the New York Stock Exchange contacted Curtis Noll and inquired if there were any corporate developments that would account for the activity in Curtis Noll's common stock. The volume of trading in Curtis Noll common stock was up substantially compared to the preceding trading day, and the price was up between one and two points.

I immediately called Mr. Nicholson at Congoleum to inquire as to whether he knew of any reason for this increased activity. Shortly thereafter we jointly agreed that a meeting should be held to determine whether a press release concerning the negotiations should be issued.

As a result we met in Cleveland later that afternoon and after further negotiations, Congoleum and Curtis Noll issued a joint press release, after the close of trading on September 19, 1977, stating that negotiations between Curtis Noll and Congoleum had reached a point at which Congoleum was prepared to offer Curtis Noll approximately $25 per share, subject to certain customary conditions.

To the best of my knowledge, there had been no information disseminated to the public concerning the Curtis Noll-Congoleum discussions prior to the purchases of Curtis Noll common stock described above.

On October 11, 1977, Congoleum began its successful tender offer for all of Curtis Noll's common stock at $25 per share. Curtis Noll is now a wholly-owned subsidiary of Congoleum.

In connection with any future transactions by me in any securities, I will endeavor to be acutely aware of statutory provisions and rules brought to my attention by my counsel in this matter pertaining to the conveyance and use of material, non-public information.

Respectfully submitted,
Sanford B. Noll

George A. Fitzsimmons, Secretary
U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by Carl Ablon pursuant to Section 21(a) of the Securities Exchange Act of 1934. This statement is made in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation ("Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

My purposes in addressing this statement to the Commission are threefold: (1) to inform the Commission concerning the circumstances under which I purchased and sold common stock of Curtis Noll in late 1977; (2) to confirm to the Commission that I will return the profits made by me in such transactions to the sellers of the Curtis Noll stock that I purchased; and (3) to assure the Commission that any future transactions that I might effect in the securities of any company will be accomplished so as not to involve the improper use of material, non-public information.

During the afternoon of Saturday, September 17, 1977, while on a golf course, Sanford Noll, a close

personal friend and confidant, disclosed to me that discussions concerning a possible acquisition were taking place between Curtis Noll and Congoleum Corporation. I also had been informed by Sanford Noll of earlier acquisition approaches to Curtis Noll by other companies but these earlier approaches had never resulted in any offer of purchase being made. I had ascertained from these earlier approaches that Sanford Noll would not sell his stock in Curtis Noll for less than $25-26 per share. I had traded in Curtis Noll securities and debentures on and off since 1967.

In our discussion on Saturday, September 17, 1977, I was told by Sanford Noll that he wanted cash instead of stock for his shares of Curtis Noll common stock. I asked him what he could get for his shares of Curtis Noll common stock. Sanford Noll responded, "I told you what my price is". From this I concluded that it was approximately $26 per share and that Sanford Noll would recommend the sale to his Board of Directors if an offer in that price range was forthcoming. I regarded the information which I received from Sanford Noll concerning the Curtis Noll-Congoleum discussions as information which I should not be discussing generally with third persons, and I did not discuss this information with any other persons. Although I was aware, based upon my past experience as a member of the board of directors and as an officer of several publicly held and privately held companies, that a director or officer should not use non-public information to his benefit, I was not an officer or director of Curtis Noll, I did not consider myself an insider, and I did not realize that I was in violation of any laws.

On Monday, September 19, 1977, the first business day following my receipt of information from Sanford Noll regarding the pending offer by Congoleum for Curtis Noll, I purchased 2,000 shares of Curtis Noll's common stock. I subsequently tendered these shares at $25 per share in the Congoleum tender offer for Curtis Noll common stock, which began on October 11, 1977. I realized a profit of $11,258.41 in these transactions.

At the time that I purchased these securities, I did not believe that there was information available to the public regarding the Curtis Noll-Congoleum negotiations.

I have not previously been involved in any prior investigation conducted by the Commission. During my career I have held a number of positions in corporations and in civic and philanthropic institutions. However, I am no longer engaged in any management position with any company having publicly held securities.

I hereby represent that I will as promptly as feasible remit the profits from my purchases and sales of Curtis Noll common stock, discussed above, to the individuals and/or entities who sold the Curtis Noll securities which I purchased on September 19, 1977.

I also represent to the Commission that, for a period of two years following the Commission's publication of this statement, upon request, I will provide the Commission's staff with access to information with respect to any and all transactions to which I am a party in securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or of issuers filing reports with the Commission pursuant to Section 13(a) or required to do so pursuant to Section 15(d) of the Securities Exchange Act of 1934.

Further, in connection with any future transactions in any securities, I represent that I will be acutely aware of statutory provisions and rules pertaining to the conveyance and improper use of material, non-public information.

Respectfully submitted,
Carl Ablon

George A. Fitzsimmons, Secretary
U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by S. Sidney Stoneman on behalf of the Anne and David Stoneman Charitable Foundation pursuant to Section 21(a) of the Securities Exchange Act of 1934 in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation ("Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

My purposes in addressing this statement to the

Commission are threefold: (1) to inform the Commission concerning the circumstances under which the Anne and David Stoneman Charitable Foundation, a nonprofit charitable institution, made certain purchases and sales of Curtis Noll common stock in September 1977; (2) to confirm to the Commission that the profits made as a result of such transactions will be turned over to the appropriate sellers; and (3) to assure the Commission that I will endeavor to be acutely aware of statutory provisions and rules brought to my knowledge by this matter pertaining to the use of material information in connection with securities transactions.

On Saturday, September 17, 1977, Sanford Noll called at my home and informed me of discussions Curtis Noll was having with an unidentified company for that company's acquisition of Curtis Noll. I am a personal friend of Sanford Noll and he asked my advice with respect to an offer which he said had been made for the company at $25 per share. Sanford Noll and I discussed the merits of the proposal and alternative forms of consideration.

I told him that I did not think the price being offered was sufficiently high and that I did not consider the proposal to be very exciting. Sanford Noll thanked me and told me that he would think over the advice I had given him. At the time of the conversation I was not aware that any public announcement had been made with respect to the matter.

Sanford Noll had once mentioned to me in about March or April, 1976 that a brokerage firm had approached him to discuss the sale of Curtis Noll. He had also indicated to me that he would probably sell his interest in Curtis Noll when the Company reached a certain point and when he had attained such goals as he wished. In my telephone conversation of September 17, 1977, I inferred that Sanford Noll thought he might have reached those goals, but I did not know what he would decide to do with respect to the offer.

The first business day following my telephone conversation with Sanford Noll, I ordered 1,000 shares of Curtis Noll common stock on behalf of the Anne and David Stoneman Charitable Foundation, Inc. to add to the 1,000 shares which the Foundation had previously purchased in 1976. Shortly thereafter, my broker advised me that the 1,000 shares had been purchased and that the price of the stock had declined. I then ordered an additional 1,000 shares on behalf of the Foundation. My broker called again and indicated that the price had dropped further, and I ordered an additional 1,000 shares of Curtis Noll common stock for the Foundation. The stock was subsequently tendered by the Foundation to Congoleum in its tender offer for Curtis Noll at $25 per share, giving the Foundation a profit of $16,828.13 with respect to the 3,000 shares of Curtis Noll it purchased that day.

I am a director of General Cinema Corporation and on Monday, September 19, 1977, after the Foundation had purchased shares of Curtis Noll common stock, I telephoned Richard Smnith, Chairman of the Board of Directors of General Cinema, to discuss certain matters relating to a recently held Board of Directors' meeting of General Cinema. In the course of our telephone conversation, I mentioned to Mr. Smith that the Foundation had purchased Curtis Noll common stock and that in my view the prospects of Curtis Noll were good. I knew that Mr. Smith was somewhat familiar with Curtis Noll because in June 1976, General Cinema had considered the possibility of making an investment in the auto-parts industry and had received a report on certain companies in that field. The Board of Directors had discussed the matter and I had mentioned to Mr. Smith that I was familiar with Curtis Noll through my friend, Sanford Noll.

I subsequently learned that Richard Smith purchased 3,500 shares of Curtis Noll common stock on September 19, 1977 for the A-D-R Charitable Foundation and Trust, a non-profit institution, and tendered such shares to Congoleum during its acquisition of Curtis Noll.

I am 68 years old and for more than the past 20 years have been primarily occupied with philanthropic activities in the greater Boston area. I have never before been involved in any investigation by the Securities and Exchange Commission or by any other governmental agency or commission and I realize no personal profit as a result of the Foundation's transactions in Curtis Noll securities.

I will take all appropriate steps so that, as promptly as feasible, the profits from the Foundation's purchases and sales of Curtis Noll common stock, discussed above, will be turned over to the sellers who sold the securities which the Foundation purchased on September 19, 1977.

For a period of two years following the Commission's

publication of this statement, upon request, the Anne and David Stoneman Charitable Foundation and I will provide the Commission's staff with access to information with respect to any and all transactions to which we are a party in securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or of issuers filing reports with the Commission pursuant to Section 13(a) or required to do so pursuant to Section 15(d) of the Securities Act of 1934.

In connection with any future transactions in any securities, I will endeavor to be acutely aware of statutory provisions and rules brought to my knowledge by this matter pertaining to the conveyance and use of material, non-public information.

Yours very truly,
S. Sidney Stoneman

George A. Fitzsimmons, Secretary
U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by the A-D-R Charitable Foundation and Trust (hereinafter the "Trust"), pursuant to Section 21(a) of the Securities Exchange Act of 1934, in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation (hereinafter "Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

The Trust's purposes in addressing the statement to the Commission are threefold:

(1) To inform the Commission concerning the circumstances under which the Trust made certain purchases and sales of the common stock of Curtis Noll in September 1977;

(2) To confirm to the Commission that the profits made by the Trust as a result of such transactions will be turned over to the appropriate sellers; and

(3) To assure the Commission that the Trust will endeavor to be accutely aware of statutory provisions and rules brought to its knowledge by this matter pertaining to the use of material information in connection with securities transactions.

The Trust is a trust whose income beneficiaries are charities exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954. Although he is not a trustee, Mr. Richard Smith often gives investment advice to the Trust. On Monday, September 19, 1977, upon Mr. Smith's advice, the Trust purchased 3,500 shares of Curtis Noll common stock. In October, 1977, these shares were tendered to Congoleum Corporation in accordance with a tender offer. The Trust made a profit of $20,500 as a result of these transactions in Curtis Noll common stock.

Mr. Smith and Mr. Sidney Stoneman are both members of the Board of Directors of General Cinema Corporation. On Monday, September 19, 1977, they had a telephone conversation in which they discussed matters which had been raised at a Board meeting on Friday, September 16, 1977. During the course of that telephone conversation, Mr. Stoneman told Mr. Smith that recently Mr. Stoneman had purchased some shares of Curtis Noll common stock, that he considered it an excellent investment and that he recommended it to Mr. Smith. Mr. Stoneman told Mr. Smith that Curtis Noll was doing well, that it was in a good industry, that Mr. Stoneman had confidence in it and that Mr. Stoneman was knowledgeable about Curtis Noll. Mr. Stoneman indicated that there was a future possibility that Curtis Noll might be a candidate for a takeover but he gave no indication of any potential acquiring company, acquisition price or acquisition date. Mr. Smith asked no questions regarding a potential takeover but knew that Mr. Stoneman was acquainted with a Mr. Sanford Noll and that Mr. Stoneman was familiar with Curtis Noll. Mr. Smith was somewhat familiar with Curtis Noll because in June, 1976, General Cinema Corporation had considered the possibility of making an investment in the auto parts industry and had received a report on certain companies in that field including Curtis Noll.

The Trust will take all appropriate steps so that, as promptly as is feasible, the profits of the Trust's purchase and sale of Curtis Noll common stock, discussed above, will be turned over to the sellers who sold securities which the Trust purchased on September 19, 1977.

The Trust also represents to the Commission that the Trust and Mr. Smith, for a period of two years following the Commission's publication of this statement, upon request, will provide the Commission's staff with access to information with respect to any and all transactions to which they are party in securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or of issuers filing reports with the Commission pursuant to Section 13(a) or required to do so pursuant to Section 15(d) of the Securities Exchange Act of 1934.

In connection with any future transactions in any securities, the Trust will endeavor to be acutely aware of the statutory provisions and rules brought to its knowledge by this matter pertaining to the conveyance and use of material, non-public information.

Respectfully submitted,
A-D-R Charitable Foundation
and Trust

By: _____
, Trustee

George A. Fitzsimmons, Secretary
U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by S. Darwin Noll pursuant to Section 21(a) of the Securities Exchange Act of 1934. This statement is made in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation ("Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

My purposes in addressing this statement to the Commission are threefold: (1) to inform the Commission concerning the circumstances under which my wife and I purchased and sold common stock of Curtis Noll in September 1977; (2) without admitting any liability in the premises, to confirm to the Commission that I had paid over to the sellers the profits made as a result of such transactions; and (3) to assure the Commission that my future transactions in securities will be carried out in a manner that is in conformity with all legal requirements.

On Friday, September 16 or Saturday, September 17, 1977 Sanford Noll, my brother, informed me at a restaurant in a suburb of Cleveland at which he, my wife and I were present that Sanford Noll was considering the possible acquisition of Curtis Noll by another company or companies. He normally did not seek my opinion on financial matters relating to Curtis Noll.

During the discussion, I was told by Sanford Noll that he was considering selling his interest in Curtis Noll for cash. I believe that my brother told me that several members of the Board of Directors would favor a sale and that he had spoken to more than one company. I was informed by Sanford Noll that he was considering selling his interest in Curtis Noll because of his recent health problems and for estate planning purposes. I am the co-trustee of our father's estate, which holds shares of Curtis Noll common stock, and am involved in Sanford Noll's estate planning. Even though my wife was present throughout this conversation, she did not participate in it.

Sanford Noll, requested my advice to whether he should agree to any such sale and I advised him not to sell for a number of reasons. I did not believe that he would sell at that time, simply because he had been talking about "selling out" for years. Each time we had discussed such a possibility, I had told my brother not to sell. Although I did not believe that any sale would take place at the time of our September 1977 dinner conversation, I did assume that Curtis Noll would probably be acquired in the foreseeable future and for good reason—it was a well managed company.

For a considerable period of time prior to September 1977, I have maintained a securities investment account with a friend of mine, Ralph Adler, who resides in New York City.

On Monday, September 19, 1977, Mr. Adler and I discussed investments by telephone and in response to a question from him as to my opinion of suitable investments for our account, I replied that Curtis Noll appeared to be a good investment. Later that day, Mr. Adler caused the purchase of 1,900 shares of Curtis Noll common stock for our joint

account (950 shares each). Without my knowledge, my wife also purchased 100 shares of Curtis Noll common stock on September 19, 1977.

At the time of these purchases of Curtis Noll common stock on September 19, 1977, and until September 20, 1977, there had been to my knowledge no dissemination to the public of any information concerning the Curtis Noll-Congoleum Corporation discussions or any other discussions that Curtis Noll was having with other companies.

I first learned of Congoleum's proposal when a stockbroker called me with the news on Tuesday, September 20, 1977. Had I known that such a possible sale was so imminent, I would not have purchased the 950 shares referred to above. Indeed, I was, upon learning of the proposal, embarrassed for both my brother and myself. In fact, I called Ralph Adler and asked him to sell my shares in the market, rather than to hold them and ultimately tender them to Congoleum for $25 per share in cash. Shortly thereafter, Mr. Adler liquidated our position at a sale price of $23.25 per share, resulting in a profit of $4,790 to each of Mr. Adler and me. My wife sold her 100 shares to Congoleum in mid-October 1977 for $2,500, resulting in a profit to her of $490.72. I have discussed all of the foregoing with my wife and Mr. Adler and we have paid to the sellers of the shares which we acquired the profits referred to above as part of the resolution of the matter.

I also represent to the Commission that, for a period of two years following the Commission's publication of this statement, upon request, I will provide the Commission's staff with access to information with respect to any and all transactions to which I am a party in securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or of issuers filing reports with the Commission pursuant to Section 13(a) or required to do so pursuant to Section 15(d) of the Securities Exchange Act of 1934.

Finally, in connection with any future transactions in any securities, I represent that I will be acutely aware of statutory provisions and rules pertaining to the conveyance and use of material, non-public information.

Respectfully submitted,
S. Darwin Noll

George A. Fitzsimmons, Secretary

U.S. Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: In the Matter of Trading in the Securities of Curtis Noll Corporation

Dear Mr. Fitzsimmons:

This statement is submitted by Arthur Berkowitz pursuant to Section 21(a) of the Securities Exchange Act of 1934. This statement is made in connection with an investigation by the Division of Enforcement into certain transactions in the common stock of Curtis Noll Corporation ("Curtis Noll"), a distributor of automotive replacement parts and industrial maintenance products.

My purposes in addressing this statement to the Commission are threefold: (1) to inform the Commission concerning the circumstances under which I purchased and sold common stock of Curtis Noll in late 1977; (2) to confirm to the Commission that I will disgorge the profits made in such transactions; and (3) to assure the Commission that I will not effect future transactions in the securities of any company in a manner that might be construed to involve the improper conveyance or use of material, non-public information.

Sometime during the weekend of September 17-18, 1977, my wife talked by telephone to a relative, who is the wife of an officer of Curtis Noll. During this conversation, my wife was informed that the relative's husband had said that a merger was being discussed between Curtis Noll and another company.

During the morning of Monday, September 19, 1977, I called my broker and asked him to purchase 400 shares of Curtis Noll common stock for my account at whatever the market price of the stock was at that time. I purchased the stock because I thought that when a company is acquired in a merger, the price of its stock generally rises following the announcement. Based on what my wife had said, I thought that Curtis Noll would be acquired and that, by purchasing Curtis Noll stock before the public announcement and selling that stock after the public announcement, I could make a substantial profit.

On September 19, 1977, I purchased 400 shares of Curtis Noll common stock. I subsequently sold those

securities in a tender offer for Curtis Noll which was announced after my purchases on or about September 20, 1977. At the time that I purchased the 400 shares of Curtis Noll common stock, to the best of my knowledge, no public announcement had been made regarding the possible acquisition of Curtis Noll by Congoleum Corporation or any other company.

As a result of the transaction in Curtis Noll common stock described above, I made a profit of $2,561.26.

I hereby represent that I will as promptly as feasible disgorge the profits from the purchases and sales of Curtis Noll common stock, discussed above, to the individuals and entities who sold the securities which I purchased on September 19, 1977.

I also represent to the Commission that, for a period of two years following the Commission's publication of this statement, upon request, I will provide the Commission's staff with access to information with respect to any and all transactions to which I am a party in securities registered with the Commission pursuant to Section 12 of the Securities Exchange Act of 1934 or of issuers filing reports with the Commission pursuant to Section 13(a) or required to do so pursuant to Section 15(d) of the Securities Exchange Act of 1934.

Finally, in connection with any future transactions in any securities, I represent that I will be acutely aware of statutory provisions and rules pertaining to the improper use of material, non-public information.

Respectfully submitted,
Arthur Berkowitz

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17003/July 24, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INC.

File No. SR-CBOE-79-12

The Chicago Board Options Exchange, Inc. (the "CBOE") submitted on October 5, 1979, a proposed rule change under Rule 19b-4 to amend the rules of the CBOE to restrict the practice known as "free-riding" as it relates to options market-makers' activities in common stock which underlie options traded by such persons. On December 5, 1979, it filed amendment number one to the proposal. On June 27, 1980, it submitted amendment number two intended to supersede the earlier submissions. These were all filed in conjunction with the Federal Reserve Board's proposals to amend the provisions of Regulation T relating to specialists and the subsequent amendment of those provisions.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 29, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-79-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17004/July 24, 1980

The Commission determined today to issue the following statement by American Investment Company ("AIC"). The statement was submitted to the Commission pursuant to Section 21(a) of the Securities Exchange Act of 1934 in connection with a non-public investigation by the Commission concerning AIC's disclosure of the adoption by its Board of Directors of certain amendments to the corporation's By-laws in response to a threatened tender offer by LLC Corporation ("LLC"). In the statement AIC describes the circumstances under which it reached its decision concerning the timing and extent of disclosure of the by-law amendments and represents that it will take appropriate steps to assure that future disclosures in connection with LLC's exchange offer or any other tender offer concerning AIC are timely and complete.

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Attention: George A. Fitzsimmons

Re: American Investment Company

Dear Mr. Fitzsimmons:

The following statement is submitted to American Investment Company ("AIC") pursuant to Section 21(a) of the Securities Exchange Act of 1934, as amended ("Exchange Act"). This submission arises out of a non-public investigation by the Division of Enforcement of the Securities and Exchange Commission ("Commission"), concerning the timeliness of the public disclosure by AIC of the adoption by its Board of Directors of certain By-law Amendments in response to a threatened tender offer.

The purpose of this submission is to inform the Commission of the circumstances under which AIC reached its decision concerning the timing and the extent of its public disclosure of the By-law Amendments.

FACTS

On or about May 13, 1980, LLC Corporation ("LLC"), a Delaware corporation, filed a Registration Statement on Form S-1 ("Registration Statement") with the Commission, respecting 3,300,000 shares of its common stock, $1.00 par value ("LLC Shares"), pursuant to the Securities Act of 1933, as amended. In the Registration Statement, LLC asserts that it intended to use the LLC Shares in a forthcoming tender offer in which it would seek to acquire control of AIC. LLC stated that it anticipated exchanging the LLC Shares, together with cash, for shares of the common stock of AIC, $1.00 par value ("AIC Common"), in an attempt to obtain fifty-four percent of the outstanding shares of AIC Common. As stated in the Registration Statement, the terms of the anticipated tender offer would provide that in addition to tendering their shares of AIC Common, the AIC shareholders would grant irrevocable proxies to designees of LLC so that LLC could, through the control of a majority of the shares of AIC Common prior to the consummation of the tender offer, obtain control of AIC's board of directors and then transfer AIC receivables to LLC in exchange for certain of LLC's assets.

Upon learning of the intent of LLC to initiate its tender offer, including the request for irrevocable proxies, the Executive Committee of the AIC Board of Directors convened a meeting on May 19, 1980 to consider possible courses of action to be undertaken in response to the anticipated tender offer. At that meeting, the Executive Committee adopted a resolution recommending to the full Board of Directors that they (i) oppose the exchange offer, (ii) authorize approximate litigation, (iii) demand LLC's shareholders list, (iv) file documents and appear before regulatory bodies, (v) amend AIC's by-laws and (vi) authorize the Executive Committee and management to take such actions as may be necessary to oppose the offer.

On the afternoon of May 19, 1980, having considered the LLC exchange offer and the recommendations from the Executive Committee, the Board of Directors adopted two separate resolutions in opposition to the proposal. The first resolution authorized the Executive Committee and management to communicate the Board's opposition to the exchange offer to AIC's shareholders and to commence litigation and take other actions necessary to effectuate the Board's resolution.

The second resolution adopted by the Board amended AIC's By-Laws as follows:

(1) to provide that special meetings of stockholders

may be called only by the President, or by the President or Secretary at the request in writing of a majority of the Board of Directors, and eliminating the provision permitting stockholders to call such meetings;

(2) to reduce the maximum size of the Board from 25 to 15 members (there are currently fourteen members); and

(3) to provide specifically that the By-Laws may be amended by actions of the shareholders, provided any such stockholder-proposed amendment must be approved by a vote of not less than 80 percent of the stockholders entitled to vote.

The purpose of the By-law Amendments was to make it more difficult for LLC to accomplish its plan to gain control of AIC.

At the May 19, 1980 meeting, the directors considered whether and at what point disclosure of the adoption of the By-law Amendments would be required under the federal securities laws. Management of AIC represented to the Board that immediate disclosure was not required, that public disclosure would be made "in due course," and could be made through the filing of a Current Report on Form 8-K within 10 days after the end of the month. By a vote of ten to three the AIC directors decided not to immediately disclose the information.

On May 20, 1980, AIC issued a press release and filed with the Commission a Schedule 14D-9 indicating only that it intended to oppose the LLC tender offer and stating the reasons for its opposition to the offer. The press release specifically stated that the Board of Directors of AIC had authorized its management "to recommend to AIC stockholders that they reject the previously announced offer by LLC Corporation to acquire control of the Corporation." However, neither the press release nor the Schedule 14D-9 disclosed the adoption of the three By-law Amendments described above.

On May 20, 1980, the staff of the Commission ("Staff") contacted AIC and inquired with regard to AIC's intention to disclose information concerning the By-law Amendments. Upon being advised that the Staff believed that public disclosure of the By-law Amendments should be made, AIC promptly issued a news release on May 21, 1980 and thereafter set a letter to its shareholders disclosing the By-law Amendments and other defensive measures taken to oppose the LLC offer, including the filing of an injunctive action against LLC charging violations of federal antitrust and securities laws.

AIC filed an amendment to its Form 14D-9 on May 27, 1980 respecting its By-law Amendments, which incorporated as an exhibit thereto the letter sent to shareholders. Subsequently, AIC filed a Current Report on Form 8-K on June 5, 1980, setting forth the adoption of the By-law Amendments by the Board of Directors and containing as an exhibit thereto a copy of the amended By-laws.

The staff of the Commission has expressed its concern that before AIC was contacted by the staff of the Commission, AIC had rejected disclosure of the adoption of the By-law Amendments in its press release and May 20, 1980 Schedule 14D-9. The Staff's position is that disclosure of the adoption of the By-law Amendments was required by the tender offer provisions of the Exchange Act and rules promulgated thereunder at the time the Board first communicated its recommendation to the public.

To resolve this matter, and in response to the Staff's concern that similar decisions with regard to the disclosure of defensive tactics taken in response to takeover attempts are not again made by AIC, AIC hereby represents that it will take appropriate steps to assure that future disclosures in connection with LLC's exchange offer or any other tender offer concerning AIC will be timely and complete.

Respectfully submitted,
American Investment Company

By /s/ Robert J. Brockmann
Robert J. Brockmann
President and Chief Executive Officer

SECURITIES EXCHANGE ACT OF 1934
Release No. 17005/July 24, 1980

GNMA OPTIONS PROPOSAL

ACTION: Extension of comment period and request for additional comments.

SUMMARY: The Commission has published notice of a proposed rule change submitted by the Chicago Board Options Exchange to amend its rules to provide for exchange trading of options on securities guaranteed by the Government National Mortgage Association. In view of certain significant and novel issues raised by the proposal, the Commission has determined to extend to September 1, 1980, the period for public comment and to solicit additional written submissions of data, views and comments from interested persons, particularly with respect to the issues discussed in this release.

DATES: Comments should be received by September 1, 1980.

ADDRESSES: Interested persons should submit 25 copies of their views and comments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and should refer to File No. SR-CBOE-80-7. All submissions will be made available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: D. Michael Lefever, Esq., Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2412.

SUPPLMENTARY INFORMATION: Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(2), (the "Act") and Rule 19b-4 thereunder, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted on April 17, 1980, a proposed rule change to modify its rules to provide for exchange trading of options on Government National Mortgage Association modified pass-through certificates ("GNMAs").[1] Notice of the proposed rule change was given by Securities Exchange Act Release No. 16801 (May 12, 1980) which was published in the *Federal Register* on May 16, 1980 (45 FR 32458). The purpose of this release is to extend the comment period on the CBOE proposal to September 1, 1980, and to solicit additional written submissions of data, views and comments concerning particular features of the proposed options contract and the market and regulatory environment within which these instruments would be traded.

A. *Features of the Proposed GNMA Options Contract*

(1) *Delivery Specifications.* According to the terms of the options contract proposed by CBOE, delivery obligations generally can be satisfied by the delivery of certificates bearing any coupon rate equal to or less than the current GNMA production rate. [Proposed Rule 1.1(ii)]. CBOE proposes, however, that in the event of a change in the GNMA production rate, certain modifications will be made in the terms of acceptable delivery.[2] The Commission is seeking comment on the impact the proposed delivery specification would have on utility of the proposed options contract as well as on the underlying GNMA cash market.

When there is a decrease in the GNMA production rate, the proposed rules provide that any GNMA certificates bearing a coupon rate that would have been deliverable prior to such a change, but not after, would be deemed to bear the qualifying rate for the next 45 days or until the settlement date following the next options expiration date, whichever is later. Commentators should discuss whether this limitation on the certificates that may be delivered is appropriate. Specifically, commentators should consider whether the limitation may diminish the usefulness of the proposed GNMA options market, particularly in connection with the acquisition for hedging purposes of options positions in series that would expire beyond the next expiration date. Commentators also may wish to discuss whether the limitation would inappropriately burden the holders of GNMA certificates that, because of a decline in the GNMA production rate, would be rendered undeliverable after 45 days or the settlement date following the next expiration date.

A second exception to the delivery specifications occurs in the event of an increase in the production

[1]The full text of the CBOE proposal is attached as an appendix to this release.

[2]The "GNMA production rate" is defined as "a rate of interest .50 percent below the maximum stated rate of interest of residential mortgages which the Federal Housing Administration is willing to insure and which the Veterans Administration is willing to guarantee, as it may vary from time to time in accordance with official announcements of changes in such rates made by the Federal Housing Administration." [Proposed Rule 1.1(jj)].

rate. Specifically, the proposed rules provide that any existing GNMA certificates bearing coupon rates equal to the new production rate would be deemed not to bear a qualifying rate for 45 days or until the settlement date following the next expiration date, whichever is later. Commentators should discuss the justification for this restriction and whether it would inappropriately deter participation in the GNMA options market.

As a general matter, commentators should also consider whether the proposed definition of deliverable supply and the resulting uncertainty regarding the certificates that may be delivered upon the exercise of an options contract would impair the depth and liquidity of a GNMA options market by deterring prospective market participants. Commentators are also invited to compare, both in terms of utility and impact on the underlying GNMA cash market, the CBOE's proposed GNMA options contract with alternatively structured options contracts, including for example, a series of option contracts that would vary according to the coupon rate of the underlying certificate.

Commentators are also invited to discuss the extent to which they believe GNMA options positions would culminate in exercise and delivery, as opposed to a closing transaction. Commentators should focus on the proposed delivery specifications of the proposed options contract in terms of creating specific incentives or disincentives to utilize the options market as a delivery medium.

(2) *Margin.* CBOE, in general, proposes margin for uncovered short positions in GNMA options equal to 3 percent of the value of the underlying security that would be marked-to-market on a daily basis. The three percent level is based on the "haircut" applied to a broker-dealer's proprietary position in GNMAs for purposes of calculating broker-dealer net capital in accordance with Commission Rule 15c3-1 under the Act [17 CFR 240.15c3-1]. The three percent margin is approximately equal to the "margin" imposed by the boards of trade on GNMA futures positions. The suggested level is in contrast to the current 30 percent initial and maintenance margin requirements, adjusted by the amount the option is in or out of the money, prescribed by Regulation T[3] and the options exchanges,[4] respectively, for uncovered short positions in options on equity securities. The Commission is seeking comment on the appropriateness of the proposed margin. Specifically, commentators are invited to identify and discuss factors justifying a distinction between the current margin for uncovered short positions imposed by Regulation T and the options exchanges, and the three percent margin proposed by CBOE for GNMA options. Commentators also may wish to discuss whether the proposed three percent margin would encourage excessive speculative participation. In addition, commentators are invited to consider whether and to what extent margin in excess of three percent would divert either hedger or speculator participation into the futures or forward markets, and thereby impair the efficiency or liquidity of the proposed GNMA options market. In addition, commentators may wish to discuss the appropriateness of imposing varying margin requirements depending upon the nature or purpose of a particular GNMA options strategy.

B. *Regulatory Context*

CBOE has asserted that an important advantage of the proposed trading of standardized GNMA options on CBOE would be a significantly enhanced regulatory environment as compared to the current GNMA forward market. Unless specifically modified by CBOE's proposed rule change, current CBOE rules applicable to options trading on equity securities would be applicable to GNMA options. Among the provisions commentators may wish to focus particular attention are the following:

(1) *Suitability.* CBOE Rule 9.7(a) prohibits any member organization from accepting a customer order to effect any options transaction unless the customer's account has been approved for options trading. CBOE proposes to amend this rule to require that an account also must be specifically approved for GNMA options trading. CBOE Rule 9.9 prohibits any member from recommending an opening options transaction to a customer unless the person making the recommendation has a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and that the customer is financially able to bear the risks of the recommended position. Commentators are invited to discuss what information it would be

[3]See 12 CFR 220.8(j).

[4]See e.g., CBOE Rule 12.3(a)(5).

appropriate for a member organization to obtain from prospective customers in order to assess whether that customer's account is appropriate for GNMA options trading. In focusing on this question, commentators should distinguish between individual and institutional customers. Commentators are also invited to discuss the objective criteria that should be evaluated in determining whether any particular transaction or trading strategy is suitable for a customer. Commentators may also wish to identify and discuss the particular risks associated with options trading, particularly the writing of puts and calls, that should be disclosed to a prospective customer.

(2) *Position limits.* A single options contract would entitle the holder to purchase or sell GNMA certificates with remaining unpaid principal balances aggregating $100,000. CBOE Rule 4.11 prohibits a member from effecting an opening options transaction for its proprietary account or for the account of a customer which will cause the total position in the account to exceed 1000 contracts on the same side of the market, aggregating long call and short put positions, and short call and long put positions. CBOE does not propose to modify this restriction. Commentators may wish to discuss whether the 1000 contract limit is sufficiently restrictive to prevent market domination by a single participant or, alternatively, whether the 1000 contract position limit may be inappropriately restrictive as to particular market participants, particularly those seeking to hedge substantial positions in the GNMA cash, forward or futures markets.

In addition to the existing suitability and position limit rules, CBOE rules, such as those relating to sales practice and account supervision, currently applicable to the trading of options on stock also would apply to the GNMA options program. Commentators may wish to discuss whether the proposed regulatory structure would ensure an adequately regulated GNMA options market and, if not, what other regulatory measures would be desirable. Commentators also may wish to consider whether any of the proposed regulatory measures would impair the vitality of the proposed options market by deterring participation by particular prospective participants.

C. *Market Context*

(1) *Economies of Standardized Options Trading.* CBOE has indicated that the availability of exchange-based trading of a standardized GNMA options contract would introduce several economic enhancements, as compared to the current GNMA forward market, including more efficient pricing of GNMA options, reduced transaction costs, a secondary market that would enable participants to liquidate options positions with relative ease, streamlined clearing and delivery procedures, and reduced need for participants to scrutinize the credit-worthiness and financial integrity of the contra-party. Commentators are invited to address these issues.

(2) *Impact on the Underlying GNMA Cash Market.* Commentators may wish to discuss the potential impact of a viable, exchange-based GNMA options market on the quality of the GNMA cash market. If any adverse impact is identified, commentators are invited to suggest possible modifications in the proposed regulatory structure that may avert such consequences.

(3) *Options/Futures Market Relationship.* Approval of the CBOE proposal would create the possibility of trading strategies involving both options and futures. Commentators are invited to discuss the possible uses of combined options/futures trading strategies, including the extent to which the strategies may be used and the specific market participants for whom such strategies may be useful. Commentators also may wish to discuss potential forms of market manipulation involving the concurrent use of options and futures.

(4) *Options/Cash Market Relationship.* Unlike equity securities on which standardized options are presently traded, GNMA are not subject to Commission regulations mandating transaction[5] and quotation reporting.[6] Commentators may wish to identify and discuss the sources of information available for pricing GNMA options and the extent to which market participants could be expected to rely on these sources. Commentators should include in this discussion the use of comparable interest sensitive securities such as Treasury instruments as

[5]Securities Exchange Act Rule 11Aa3-1 [17 CFR 240.11Aa3-1].

[6]Securities Exchange Act Rule 11Ac1-1 [17 CFR 240.11Ac1-1].

a basis for derivative pricing and the utilization of prices in the futures market as a means of pricing by analogy. Given the absence of Commission-regulated transaction and quotation reporting, commentators also are requested to discuss whether sufficient pricing information would be available on a reasonably continuous and current basis and whether market participants would have equal opportunity of access to such information. In addition, commentators may discuss whether the absence of regulated transaction and quotation reporting would impair the ability of the CBOE and the Commission to detect manipulative trading practices.

As presently proposed, no restrictions would be imposed on the participation in the GNMA options market of dealers making markets in the GNMA cash market. Accordingly, such dealers would be permitted to make markets simultaneously in both the options and cash markets. Commentators should discuss whether this dual status enhances the potential for manipulation or other trading abuses and, if so, whether adequate surveillance techniques exist or can be developed to detect such abuses. Commentators may also consider the appropriateness of imposing restrictions on the participation of GNMA dealers in the GNMA options market and, if so, what those restrictions should be.

All interested persons are invited to submit in writing no later than September 1, 1980, 25 copies of their views concerning the proposed rule change to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications should refer to File No. SR-CBOE-80-7 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21659/July 18, 1980

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY
Westborough, Massachusetts

(70-6463)

ORDER AUTHORIZING INCREASE IN RATE OF RETURN ON INVESTMENT IN WORKING CAPITAL OF SERVICE DIVISION OF NUCLEAR POWER GENERATING COMPANY

Yankee Atomic Electric Company ("Yankee Atomic"), a generating subsidiary of Northeast Utilities and of New England Electric System, registered holding companies, has filed with this Commission a declaration and an amendment thereto pursuant to Section 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 90 and 91 promulgated thereunder concerning the following proposed transaction.

All of the outstanding capital stock of Yankee Atomic was acquired by its eleven sponsoring electric utilities pursuant to Commission orders dated November 25, 1955, and December 24, 1958 (HCAR Nos. 13048 and 13900). It was organized to construct and operate New England's first atomic power plant, located at Rowe, Massachusetts.

By order dated August 20, 1968 (HCAR No. 16141), Yankee Atomic was authorized to establish the Nuclear Service Division ("NSD"), which was organized to provide support services to Yankee Atomic's plant in Rowe and to various individual nuclear power projects undertaken by one or more of Yankee Atomic's sponsoring utilities and their associates and affiliates. The terms of organization, conduct of business and method of cost allocation of NSD are set forth in said order. Also contained in the order of August 20, 1968, was a provision authorizing Yankee Atomic to allocate to NSD initial working capital of about $200,000, equivalent to approximately 45 days' expenses plus investment in

office equipment, and to receive a return of 6% per annum on such investment in working capital, said return to be included in the costs of services rendered by NSD.

In the instant filing Yankee Atomic requests that it be authorized to increase the rate of return on its investment in NSD's working capital (which is included in the costs of services rendered by NSD) from the currently authorized 6% to the overall rate of return (including related federal and state income tax allowances) most recently ordered (or accepted) by the Federal Energy Regulatory Commission ("FERC") in rate proceedings involving Yankee Atomic. It is stated that use of the present 6% rate of return has resulted in those using NSD's services not paying a fair return to Yankee Atomic for the working capital supplied to NSD by Yankee Atomic. Yankee Atomic allocated average working capital to NSD of $1,741,000 in 1979, which amount was the equivalent of approximately 45 days' expenses.

Declarant states that the most recent overall rate of return allowed it in FERC proceedings is 9.72% after income taxes (FERC Order Docket Nos. E-9420 and E-9421, July 20, 1977). Yankee Atomic also requests that any new rate allowed by FERC with respect to it become effective for NSD upon the later of (a) the filing with this Commission of the FERC order authorizing such new rate for Yankee Atomic, or (b) the effective date of such order.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21620), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21660/July 18, 1980

In the Matter of

BLACKSTONE VALLEY ELECTRIC COMPANY
P.O. Box 1111
Lincoln, Rhode Island 02865

(70-6477)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND REQUEST FOR EXEMPTION FROM COMPETITIVE BIDDING IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Blackstone Valley Electric Company ("Blackstone"), an electric utility subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, has filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42(b)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Blackstone's present capital structure includes the following: a short-term secured note payable to the Chase Manhattan Bank, N.A., due January 27, 1981, in the principal amount of $25,000,000 (the "Chase Note"); short-term unsecured notes payable to banks in the aggregate principal amount of $4,100,000 as of June 30, 1980; 60,000 shares of $100 par value preferred stock in two series, publicly held; and 184,062 shares of $50 par value common stock, all of which are owned by EUA. Virtually all of the electric power required by Blackstone to meet

the needs of its customers is supplied by Montaup Electric Company ("Montaup"), another electric utility subsidiary of EUA. Under a contract ("Montaup Contract") entered into in 1923 among Montaup, Blackstone, Brockton Edison Company ("Brockton") and Fall River Electric Light Company ("Fall River"), Blackstone, Brockton and Fall River became the owners of all of Montaup's permanent securities and were obligated to make further investments in Montaup in proportion to their respective estimated demands for power. Blackstone, Brockton and Fall River each pledged its Montaup securities as security for its own bonds. As Montaup's capital requirements increased, Blackstone experienced difficulty after 1972 in providing its share of the necessary additional investments in Montaup. When two series of its bonds matured in 1973, Blackstone was able to pay the maturing principal amount only with the aid of an open account advance from EUA in the amount of $14,500,000.

In 1974 the Montaup Contract was amended to eliminate the requirement of proportionate investment by all three companies. In 1974 and 1975, Blackstone rearranged its short-term debt by means of (1) a $15,000,000 borrowing from Citibank, N.A. (the "Citibank Loan"), secured by a first lien on all of Blackstone's Montaup securities (Blackstone having procured the release of those securities from the lien of its bond indenture), and (2) the borrowing now represented by the Chase Note, secured by a second mortgage (junior to the lien of Blackstone's bond indenture) on substantially all of Blackstone's property. The agreement governing the Citibank Loan contemplated that the loan might be assumed by Brockton under specified circumstances. That assumption occurred in 1976, when Brockton purchased all of Blackstone's Montaup securities (subject to the Citibank lien) for consideration consisting of: (i) Brockton's assumption of the Citibank Loan; (ii) Brockton's assumption, as between Brockton and Blackstone, of the obligation to pay the interest on and principal of all of Blackstone's bonds then outstanding in the amount of $9,196,000; and (iii) approximately $1,050,000 in cash. Despite Brockton's assumption of the payment obligations with respect to the Blackstone bonds, Blackstone remained liable on those bonds, and substantially all of its property remained subject to the lien of its bond indenture as a first lien. Those anomolies were dealth with in a plan under Section 11(e) of the Act (the "Plan", HCAR No. 20931, February 23, 1979, in File No. 54-257), providing for, among other things, the merger of Fall River into Brockton. As part of the Plan, Blackstone's bonds ceased to be obligations of Blackstone and became obligations of Brockton (which changed its name to Eastern Edison Company), and Blackstone's bond indenture was discharged, with the result that the lien on Blackstone's property securing the Chase Note became a first lien.

The loan represented by the Chase Note was originally made in 1974 for 360 days; it has been renewed for similar periods five times because it was evident at each successive maturity date that limitations in EUA's bond indenture (which was discharged in 1979), or the unsatisfactory level of Blackstone's earnings, or both, would prevent its intended refunding by the issuance of long-term debt by Blackstone, and no other means of refunding it was feasible.

In the instant filing Blackstone proposes to issue and sell up to $30,000,000 principal amount of first mortgage bonds ("Bonds"), to be issued under a new first mortgage indenture (which will make provision for the issuance of additional series of bonds in the future upon compliance with appropriate requirements by Blackstone) to be entered into by Blackstone with a trustee or trustees. Blackstone also requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed issuance and sale of the Bonds by private placement. Blackstone proposes, and is hereby authorized, forthwith, to negotiate, with the advice and assistance of an investment banker, for the private placement of the Bonds. The actual negotiated terms, subject to further authorization, will be supplied by amendment.

It is anticipated that the Bonds will have a maturity of more than 10 but less than 30 years from the date of issuance. It is stated that the Rhode Island Public Utilities Commission recently granted Blackstone rate relief amounting to approximately $3,575,000 on an annual basis, and that the prospective improvement in Blackstone's earnings resulting from that decision should make it possible to sell the Bonds on reasonable terms. It is further stated that at the time of issuance of the Bonds it is not expected that Blackstone will have achieved net earnings over a 12-month period sufficient to meet the coverage test set forth in the Commission's Statement of

Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956), but that the Statement of Policy does not require (and it is thought that prospective purchasers of the Bonds will not require) compliance with that test for the issuance of the first series of bonds under a new indenture.

Blackstone proposes to apply the net proceeds from the sale of the Bonds as follows: (i) to the payment or prepayment of the Chase Note; (ii) as to any portion of such proceeds not required by (i), to the payment or prepayment of some or all of Blackstone's short-term unsecured notes payable to banks, expected to aggregate approximately $5,000,000 at December 31, 1980, unless sooner repaid; and (iii) as to any portion of such proceeds not required by (i) and (ii), to Blackstone's general corporate purposes.

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the requested exemption from competitive bidding. It is further stated that the Rhode Island Public Utilities Commission, and no other state or federal commission, other than this Commission, has jurisdiction over the proposed issuance and sale of the Bonds.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 14, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of ;such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21661/July 22, 1980

PROPOSED RULES CONCERNING CERTAIN ACQUISITIONS BY ELECTRIC UTILITY COMPANIES

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting comments concerning a proposed rule that would exempt from the requirements of Section 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 (the "Act") certain acquisitions by one or more electric utility companies of voting securities of a defined class of electric generation or transmission companies. The Commission is also proposing a related rule to clarify the availability of an exemption from regulation as a "holding company" under Section 3(a)(2) of the Act for electric utility companies that make such acquisitions.

The proposed rules are intended to eliminate the need for case-by-case consideration of joint venture projects by electric utility companies that would not be subject to regulation under the Act but for the fact that they desire to use a separate entity as a means of acquiring additional capacity to generate electricity. The proposed rules would be applicable in situations where certain aspects of such acquisitions have been passed upon by other state and federal regulatory authorities.

DATE: Comments must be received on or before September 2, 1980.

ADDRESS: Comments should refer to File S7-845 and should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments received will be available for public inspection and copying in the

Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, Division of Corporate Regulation (202-523-5156), or Andrew F. MacDonald, Special Counsel (202-523-5683), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting comments concerning two proposed rules which would exempt acquisitions of voting securities of certain electric generation or transmission companies (hereinafter referred to as "power supply companies") from Commission review and approval under Sections 9(a)(2) and 10 of the Act. A power supply company would be organized (and its voting securities acquired) by one or more electric utility companies (hereinafter referred to as "sponsoring companies") which would purchase substantially all of the electric energy produced or transmitted by the power supply company.

Proposed Rule 14 would exempt acquisitions of voting securities of a power supply company by a sponsoring company if the following conditions are satisfied:

(a) such acquisitions (and any agreement to provide capital funds to or guarantee the obligations of the power supply company) have been approved by state and federal regulatory authorities other than the Commission that have jurisdiction over the rates and service of the sponsoring company;

(b) all of the voting securities of the power supply company are owned by one or more sponsoring companies to which it sells all of the electric energy it produces or transmits (except for sales made to governmental authorities and cooperative electric associations); and,

(c) the issuance of all securities of such power supply company (other than short-term securities) are expressly authorized by a regulatory commission having jurisdiction over its rates and service.

Proposed Rule 15 will provide an exemption by rule with respect to the holding company status of an electric utility company which acquires an interest qualifying under proposed Rule 14, if the utility company meets the requirements of paragraph (2) of Section 3(a) in that it is predominantly an electric utility company that operates in the state of its incorporation and one or more states contiguous thereto. The proposed rule further provides that the acquisition of an interest in a power supply company that is exempt under Rule 14 shall not affect the availability of an exemption under Section 3(a)(2) of the Act.

INTRODUCTION

When one or more electric utility companies acquire the voting securities of a separate company established to construct or operate electric generation or transmission facilities, one or more of the acquiring electric companies may become "holding companies" within the meaning of Section 2(a)(7)(A) of the Act.[1] In addition, such acquisitions may require Commission approval under Sections 9(a)(2) and 10 of the Act if the acquiring company is an "affiliate" of another company within the meaning of Section 2(a)(11) of the Act (by reason of its ownership of 5 percent or more of the voting securities of another public utility) and is seeking to acquire 5 percent or more of the voting securities of a power supply company.[2]

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[1]A "holding company" is defined in Section 2(a)(7)(A) as "any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company * * *." A "holding company" and its subsidiaries must register under Section 5 of the Act, unless they are entitled to an exemption under Section 3(a) of the Act.

[2]Section 9(a)(2) provides that:

"Unless the acquisition has been approved by the Commission under Section 10, it shall be unlawful for any person to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate * * * of such [public utility] company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate."

If an electric utility company owns 5 percent or more of the voting securities of one public utility company or of a holding company, it is an "affiliate" of that company within the meaning of Section 2(a)(11) of the Act.

DISCUSSION

Proposed Rules 14 and 15 are intended to facilitate organization of jointly-owned corporations or partnerships for the purpose of financing construction of new electric generation or transmission facilities which would sell electric power to the sponsoring electric utility companies. Electric utilities are increasingly relying on joint ownership of large new base load generating facilities and related transmission equipment in an effort to spread the risks associated with escalating costs of plant and equipment, and to better adjust to changes in national fuel use and government policies. The joint ownership of such projects permits unaffiliated utilities to share the benefits of efficient new facilities that are too large for any one utility to construct or utilize for its own needs.

The Commission understands that some electric utility companies are interested in using jointly-owned corporations or partnerships to facilitate the financing of new generation and transmission facilities. The organization of a separate power supply company by one or more sponsoring utilities offers several advantages over joint ownership of undivided interests in a new facility. The principal advantage is the ability to utilize "project financing." This permits the sponsoring utilities to finance the facility through a power supply company's issuance of long-term securities that are not subject to the mortgage bond indentures of the sponsoring companies. It also provides flexibility with respect to the kind of security issued and the amount of debt used to finance the project. In addition, the proportionate interests of the participants in the new facility can be altered as load forecasts change and new participants in the project can be admitted by a transfer of the voting securities, which avoids the delay and expense of obtaining a release under a sponsoring utility's indenture, a step that is always necessary in cases involving the transfer of an undivided ownership interest.

Proposed Rule 14 would be adopted in part pursuant to Section 3(d) of the Act.[3] The conditions contained in the proposed rule, which are set forth above, would assure that state or federal authorities evaluate certain public interest considerations associated with the establishment of power supply companies.

The Commission has previously given case-by-case approval to the organization of jointly-owned facilities and the acquisition of voting securities of separate power supply companies by sponsoring utilities.[4] On the basis of this experience, the Commission believes that case-by-case Commission approval may constitute an undue or unnecessary burden and may have the effect of deterring electric utility companies that are not presently subject to regulation under the Act from sponsoring power supply companies. For example, an application for Commission review and approval under Sections 9(a)(2) and 10 of the Act may require the Commission to duplicate the kind of determinations witnin the jurisdiction of the Federal Energy Regulatory Commission under Section 203(a) of the Federal Power Act, as amended, 16 U.S.C. 824b, and of state authorities with jurisdiction over the rates and service of the sponsoring electric utility companies.

The Commission believes that the proposed exemption for acquisitions meeting the conditions mentioned above is in the public interest, will eliminate unnecessary and duplicative regulation of electric companies and, as a result, will expedite the efforts of electric utility companies to meet the nation's energy needs. In this regard, an acquisition of a proportionate interest in a power supply company by an electric utility is not typically the kind of acquisition Congress intended to regulate under Section 9 and 10 of the Act, nor does such an acquisition create a potential for the kind of abuses

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[3]Section 3(d) provides:

The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

[4]*See, e.g., Ohio Valley Electric Corporation, et al.*, 34 SEC 323 (1952); *Yankee Atomic Electric Company*, 36 SEC 552 (1955).

which Congress ascribed to holding companies at the time the Act was enacted. In essence, the acquisition of an interest in a power supply company permits the sponsoring company to secure a source of supply to serve existing or future needs. It does not enlarge the service area of an electric utility company, nor frustrate effective local regulation.

In addition, the Commission has been advised that some electric utility companies may be deterred from participating in ownership of a power supply company because the acquisition of an interest in such a company would make a sponsoring utility a "holding company" within the meaning of Section 2(a)(7)(A) of the Act. A "holding company" and its subsidiaries must register under Section 5 of the Act, unless they are entitled to an exemption under Section 3(a) of the Act.

On the basis of its experience, the Commission believes that a sponsoring electric utility company that is not already a subsidiary of a registered holding company, or a subsidiary of a holding company, will usually qualify for exemption under Section 3(a)(2) of the Act[5] or Rule 2(a)(2) thereunder,[6] as a holding company that is "predominantly" an operating public utility company whose operations do not extend beyond the state in which it is incorporated and one or more contiguous states. In this regard, Proposed Rule 15 would make clear that the acquisition of an interest in a power supply company in an exempt transaction under Rule 14 shall not affect the availability of an exemption under Section 3(a), provided that the sponsoring company and its subsidiaries otherwise satisfy the requirements for an exemption under Section 3(a)(2) of the Act or Rule 2(a) thereunder.

STATUTORY AUTHORITY

The Commission proposes to adopt Rule 14 pursuant to Sections 3(a) and 20(a) and Rule 15 pursuant to Sections 3(a) and 20(a) of the Act. Under Section 3(d) the Commission may, by rule or regulation, exempt any class or classes of persons from the duties, obligations and liabilities imposed upon such persons as "affiliates" under any provision or provisions of the Act. Section 3(a) authorizes the Commission to adopt rules and regulations that exempt certain classes of holding companies from some or all provisions of the Act. In addition, Section 20(a) complements each of these provisions by providing that the Commission "shall have authority * * * to make * * * such rules and regulations as it may deem necessary or appropriate to carry out the provisions of * * *" the Act.

TEXT OF THE PROPOSED RULES

It is proposed to amend 17 CFR Part 250 by adding §§250.14 and 250.15 to read as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§250.14 Exemption from section 9(a)(2) with respect to certain acquisitions of interests in power supply companies.

(a) An electric utility company which is not an "affiliate" under clause (B) of section 2(a)(11) of any other company shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of voting securities of a power supply company, either directly or through a wholly-owned company organized solely for that purpose, provided that:

(1) The acquisition of the voting securities of such power supply company and any agreement to provide capital funds to or a guarantee of any obligation of such power supply company have been authorized by the regulatory authorities having jurisdiction over the rates and service of such electric utility company;

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[5]In this regard, Section 3(a)(2) provides:

"The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of [the Act], unless and except insofar as it finds the exemption detrimental to the public interest or the interests of investors or consumer, if * * * (2) such holding company is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto * * *."

[6]The exemption under Rule 2, 17 CFR 250.2, is claimed by filing an annual statement on Form U-3A-2. No action is required by the Commission, and the applicant becomes exempt upon filing the statement in good faith. However, the Commission may take action to terminate the exemption under Rule 6, 17 CFR 250.6, if a question arises as to whether the claimant is entitled to the exemption.

(2) All of the voting securities of such power supply company are owned by the electric utility company or companies to which such power supply company sells all of its electric energy (exclusive of any electric energy which it sells to any person described in section 2(c) of the Act or to any rural electric cooperative association); and

(3) The issuance of securities by such power supply company (other than any security maturing not more than one year after the date of issuance thereof) is expressly authorized by a regulatory authority having jurisdiction over its rates and service.

(b) If the voting securities of a power supply company are acquired by more than one electric utility company, the requirements for exemption under this rule shall apply to each, except that paragraph (a)(1) shall not apply to any person referred to in section 2(c) of the Act or to any rural electric cooperative association.

(c) Definitions.

(1) The term "electric utility company," as used in this rule, may include any person referred to in section 2(c) of the Act.

(2) The term "power supply company" means any company which owns and/or operates facilities for the generation or transmission of electric energy for sale to one or more electric utility companies or holding companies that have an ownership interest in the company, together with such other facilities as are incidental and functionally related thereto.

(3) The term "voting security" shall have the same meaning as in section 2(a)(17) of the Act, including any voting interest that serves the same defined purpose.

(4) The term "sale," as used in this rule, shall have the same meaning as in section 2(a)(23) of the Act.

§250.15 Exemption of holding company and subsidiaries under section 3(a)(2).

(a) When an electric utility company becomes a holding company with respect to a power supply company in a transaction exempt under §250.14, the acquisition of an interest in such power supply company shall not affect the availability of an exemption under section 3(a) of the Act if the utility and its subsidiaries otherwise satisfy the requirements of paragraph (2) thereof by order or pursuant to §250.2(a)(2).

(b) The exemption under paragraph (a) of this section also applies to an electric utility company which is not subject to section 9(a)(2) but whose acquisition satisfies all the requirements provided by §250.14 for an exempt acquisiton.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21662/July 22, 1980

STATEMENTS OF BENEFICIAL OWNERSHIP OF SECURITIES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES

ACTION: Proposed rule amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment an amendment to Rule 72(b) to clarify that rules adopted under Sections 16(a) and (b) of the Securities Exchange Act of 1934 ("1934 Act") shall apply equally to any reporting requirements or liability, and any exemption therefrom, imposed by Sections 17(a) and (b) of the Public Utility Holding Company Act of 1935 ("1935 Act") with respect to any security of a registered holding company or subsidiary thereof. The amendment would eliminate an unnecessary and unintended distinction in the application of the reporting and liability provisions of Section 16 of the 1934 Act and Section 17 of the 1935 Act.

DATE: comments must be received on or before August 25, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, Division of Corporate Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 523-5156.

SUPPLEMENTARY INFORMATION: The Commission is requesting comments on a proposed amendment to Rule 72(b), 17 CFR 250.72(b), under the 1935 Act. If adopted, the proposed amendment would provide that rules adopted under Sections 16(a) and (b) of the 1934 Act, which require the filing of reports of beneficial ownership of equity securities registered under Section 12 of the 1934 Act and provide a remedy for imputed short-swing trading profits in transactions involving such securities, and any exemptions therefrom, shall apply equally to the reporting requirements and liabilities imposed under Sections 17(a) and (b) of the 1935 Act with respect to any security of a registered holding company and its subsidiaries.

GENERAL BACKGROUND

Section 17(a) of the 1935 Act requires officers and directors of a registered holding company to file statements of beneficial ownership of any security of such holding company and its subsidiaries, and Section 17(b) provides a remedy for short-swing trading profits realized by the officers and directors in transactions involving any such securities, but authorizes the Commission to exempt, by rule, transactions not comprehended within its purpose. These sections are substantially identical to Sections 16(a) and (b) of the 1934 Act.

Historical differences in the application of the two statutes have been eliminated by subsequent amendments to the 1934 Act, except that Section 17 applies to transactions in non-convertible debt securities of registered holding companies and their subsidiaries.

On March 9, 1961 (HCA Rel. No. 14383), the Commission adopted Rule 72 to eliminate duplication of reporting requirements by prescribing Forms 3 and 4 as common reporting forms and incorporating by reference whatever rules might be adopted under Section 16(a) of the 1934 Act. Rule 72 provides:

> (a) Initial statements of beneficial ownership of securities required by section 17(a) of the Act shall be filed on Form 3. Statements of changes in such beneficial ownership required by that section shall be filed on Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.
>
> (b) The rules under section 16(a) of the Securities Exchange Act of 1934 shall apply to statements filed pursuant to paragraph (a) of this section to the extent that such rules are pertinent.

The rules under Section 16(a) of the 1934 Act[1] include rules which also exercise the Commission's exemptive authority under Section 16(b). The Commission has received requests for advice whether a transaction which is exempt from the reporting requirements of Section 17(a) of the 1935 Act and Rule 72(a) thereunder by virtue of a rule under Section 16(a) of the 1934 Act would similarly be exempt from Section 17(b) of the 1935 Act. The status of exemptive rules adopted directly under Section 16(b) of the 1934 Act and the effect of the equity security context of these sections of the 1934 Act on the slightly broader coverage of the parallel sections of the 1935 Act also raise potential questions of interpretation.

It appears that a transaction which is exempt under either section 16(a) or (b) of the 1934 Act does not involve any greater opportunity for abuse under Section 17 of the 1935 Act than under Section 16 of the 1934 Act, and that it would be in the public interest to eliminate unnecessary distinctions between Sections 16 and 17. Accordingly, the Commission is inviting comments on a proposed amendment to Rule 72(b) that would expressly apply the rules under Sections 16(a) and (b) of the 1934 Act to a transaction involving any security of a holding company or subsidiary thereof.

TEXT OF PROPOSED RULE

It is proposed to amend Part 250 of Chapter II of Title 17 of the Code of Federal Regulations by amending paragraph (b) of §250.72 as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

[1]Rules 16a-1 to 16a-11, 17 CFR 240.16a-1 to 16a-11.

§250.72 Filing of statements pursuant to section 17(a).

* * * * *

(b) The rules under sections 16(a) and (b) of the Securities Exchange Act of 1934, including any rules which exempt a transaction from the duties or liabilities of section 16(a) or (b), shall apply to any duty or liability imposed with respect to a transaction involving any security of a registered holding company or subsidiary thereof under section 17(a) or (b) of the Act.

STATUTORY AUTHORITY: The Commission hereby publishes for comment a proposed amendment to Rule 72 pursuant to the provisions of Sections 17(a) and (b) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*).

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21663/July 22, 1980

In the Matter of

MASSACHUSETTS ELECTRIC COMPANY
Westborough, Massachusetts

(70-6471)

ORDER AUTHORIZING INCREASE IN SHORT-TERM BORROWING AUTHORITY

Massachusetts Electric Company ("Mass Electric"), an electric utility subsidiary company of New England Electric System ("NEES"), a registered holding company, has filed with this Commission a declaration and amendments thereto pursuant to Sections 6(a), 7(e) and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder concerning the following transaction.

The terms of Mass Electric's Preferred Stock, as set forth in the Articles of Organization and By-Laws, provide that, except as voted by holders of said stock, the short-term unsecured indebtedness of Mass Electric shall not exceed 10% of total capitalization. By order dated July 2, 1975 (HCAR No. 19076), Mass Electric was authorized to solicit proxies from its preferred stockholders to obtain their approval for the issuance of unsecured indebtedness in excess of the 10% limitation. By order dated July 29, 1975 (HCAR No. 19097), the Commission authorized the proposed increase in unsecured indebtedness, and such proposal was approved by a majority of the preferred shareholders at a special meeting held on August 1, 1975. The authorizations by the preferred stockholders and the Commission expired on July 1, 1980.

Mass Electric proposes to submit to the preferred stockholders at a special meeting to be held August 1, 1980, a proposal to extend its authority to issue short-term debt up to 20% of Mass Electric's total capitalization. The continuation of the 20% permitted amount of short-term unsecured debt requires the favorable vote at a meeting called for that purpose of a majority of the Preferred Stock. In connection therewith, Mass Electric proposes to solicit proxies from the holders of its Preferred Stock. The vote would renew the authorization for Mass Electric to issue unsecured indebtedness in excess of the 10% limitation provided (i) such indebtedness shall be issued not later than July 31, 1985, (ii) such indebtedness shall have a maturity not later than July 31, 1986, and (iii) the 20% limitation on all unsecured indebtedness of Mass Electric shall remain in effect.

Mass Electric states that it is seeking this authorization so that it may have latitude as to the amount of short-term unsecured debt outstanding in order to use market opportunities for long-term financing at favorable rates.

The fees and expenses to be paid by Mass Electric are estimated at $11,000 including service fees, at cost, of New England Power Service Company, a wholly owned subsidiary of NEES, of $3,600. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21635), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the

record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21664/July 24, 1980

In the Matter of

PHILADELPHIA ELECTRIC POWER COMPANY
2301 Market Street
Philadelphia, Pennsylvania 19101

(70-6480)

NOTICE OF PROPOSAL TO ISSUE AND SELL PROMISSORY NOTES TO BANKS

NOTICE IS HEREBY GIVEN that Philadelphia Electric Power Company ("PEPCO"), a registered holding company and subsidiary company of Philadelphia Electric Company ("PECO"), an exempt holding company pursuant to Section 2(a)(3) of the Public Utility Holding Company Act of 1935 ("Act"), has filed with this Commission a declaration designating Sections 6 and 7 of the Act as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement concerning the proposed transaction.

PEPCO had outstanding bank loans of $2,200,000 as of June 30, 1980, which is less than 5% of the principal amount and par value of PEPCO's other securities then outstanding. Prior to September 1, 1980 bank loans on outstanding will not exceed that level. PEPCO proposes to issue and sell, from time to time through December 31, 1981, promissory notes with maturities of 9 months or less, to banks in amounts which would from time to time exceed 5% of the principal amount and par value of its other securities then outstanding, but which would not exceed $4,000,000 outstanding at any one time through 1981.

The prospective borrowings of PEPCO will be obtained from a group of 12 Pennsylvania banks aggregating $27,900,000. There are no specific requirements for compensating balances in conjunction with the proposed bank loans. Since there are no compensating balance requirements or other cost factors associated with the proposed loans, the effective cost of any such loan would be the floating prime commercial rate in effect from time to time at such bank.

It is stated that the purpose of the loans is to make interest payments on debentures for the remainder of 1980 and 1981, to meet sinking fund obligations for 1981 on said debentures, and for common stock dividend payments to PECO. It is planned to liquidate said bank loans by the issuance of additional shares of PEPCO's common stock in 1982.

The fees and expenses to be incurred in connection with the proposed transaction are $2,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than August 20, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant

exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21665/July 24, 1980

In the Matter of

THE SOUTHERN COMPANY
ALABAMA POWER COMPANY
GEORGIA POWER COMPANY
GULF POWER COMPANY
MISSISSIPPI POWER COMPANY
SOUTHERN COMPANY SERVICES, INC.
SOUTHERN ELECTRIC GENERATING COMPANY

File No. 70-6456

MEMORANDUM OPINION AND ORDER AUTHORIZING ISSUANCE OF COMMON STOCK UNDER THE EMPLOYEE STOCK OWNERSHIP PLAN OF THE SOUTHERN COMPANY SYSTEM AND DENYING A REQUEST FOR HEARING

The Southern Company ("Southern"), a registered holding company, and its subsidiaries, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Company Services, Inc., and Southern Electric Generating Company adopted effective January 1, 1976 The Employee Stock Ownership Plan of The Southern Company System ("Plan"). The original plan and its Trust have been determined by the Internal Revenue Service to qualify as a stock bonus plan and employee stock ownership plan under Sections 401(a) and 501(a) of the Internal Revenue Code and under Section 301(a) of the Tax Reduction Act of 1975. We authorized the issuance of up to $15 million of Southern common stock under the plan on September 8, 1977 (HCAR 20165) covering the requirements for plan years 1976-1978.

The application before us under the Public Utility Holding Company Act of 1935 ("Act") is to authorize the issuance of up to $40 million of Southern common stock ("the common stock") on or before October 15, 1981, to cover the plan years 1979 and 1980.[1] The sale price of the new stock to the plan may not exceed the last sale or independent bid on the New York Stock Exchange. Southern proposes to price the new stock, in the alternative, under any pricing formula which may be required by law or by Internal Revenue Service regulation, or to use either the closing price of the previous trading day, or the average of such closing prices for the 20 preceding trading days, based on consolidated trading as defined by the Consolidated Tape Association. These alternatives would apply only if they yield a lower price than the last price. The Trustees under the plan are not required to purchase the common stock from Southern, but the pricing formulae will tend to make it advantageous to the employees for them to do so.

The plan implements provisions of the Internal Revenue Code which foster employee stock ownership by allowing a tax credit limited to 1% of the amount of qualified investments in property for which an investment tax credit is claimed, for contributions to a qualified plan, through which the contributions are invested in the employer's stock for the account of the employees. Since only Southern has common stock in public hands, the contributions of all of its subsidiaries are applied to the purchase of Southern stock. Such purchases provide funds for additional investment by Southern in the common equity of its subsidiaries.

No employee contribution is required for this "basic benefit" under the plan. Following amendment of the tax law, effective for the year 1979 and thereafter, the plan has been amended to provide additional voluntary contributory benefits, under which the employer companies will contribute up to an additional half of one percent of the qualified investment for the benefit of those employees who

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[1]Contributions under the plan are made 30 days after the due date (including extensions of time) for the filing of the consolidated federal income tax return, so the issuance of stock for each plan year occurs in the following year.

elect to make a participant matching contribution. The amount of each participant's maximum contribution is pro rated on the basis of the participant's compensation, with provisions for further proration to the extent that participants do not elect to use their full allotment.

The amendments, unlike the basic plan, have not yet been passed on by the Internal Revenue Service. Due to the time limitations on deductions, it is proposed to proceed with the plan as amended. Appropriate provisions are made for return of the additional contributions if the amended plan is not duly qualified.

The plan authorizes employer contributions in stock or in cash. The purchase of the common stock by the subsidiaries for immediate contribution is permitted, but it is expected that the contributions under this plan will be generally made in cash, which the trustees must invest in Southern common stock. The trust establishes an account for each participating employee which will reflect the shares to which the employee is entitled for each plan year. All amounts properly allocated to an employee's account are vested and non forfeitable. The employee has full voting rights and may elect to receive the cash dividends or allow them to be reinvested. Distribution of the stock to the employee will normally occur on termination of his employment, by retirement or otherwise.

The Southern system, through its subsidiaries, is the principal electric utility in the states of Georgia and Alabama, and serves adjacent portions of Florida and Mississippi. It had $10.5 billion in consolidated assets at December 31, 1979, of which $9.4 billion was net utility plant. Its consolidated capitalization, on the same date, consisted of:

	In millions	
	Amount	*Percentage*
Long term debt	$4,769	55.2
Bank loans and current maturities	444	5.1
Preferred stock	937	10.8
Common equity	2,499	28.9
Total	$8,649	100.0

The consolidated revenues of the Southern system for 1979 were $3.1 billion and its consolidated net income after subsidiary preferred stock dividends, was $219 million, representing about $1.51 a share on the approximately 145 million Southern common shares outstanding. Pro forma, as of December 31, 1979, the maximum amount of new stock sought to be authorized for the plan would be about 24/100ths of 1% of the outstanding shares.[2] The pricing formula assures that such stock will be sold at the current market evaluation of its earning power.

All of the common equity is that of Southern itself. Southern has outstanding a $125 million corporate term loan, due in approximately equal annual installments in the years 1980-1982. (HCAR No. 19439, March 23, 1976). During the past two years, Southern has not sold new common stock, except through the Employees Stock Ownership Plan which it seeks to continue here, and two other continuous plans for investment by stockholders and employees. During the same period, Alabama Power Company has not issued new bonds or preferred stock, but has relied on temporary bank financing, pending resolution of prolonged rate litigation. (HCAR No. 20970, March 23, 1979; HCAR No. 21188, August 16, 1979). On the basis of relief obtained in that litigation, Alabama has sold the first $100 million of refunding bonds. (HCAR No. 21605, June 3, 1980). Completion of such financing will necessarily include a substantial proportionate equity investment by Southern.

For present purposes, it is unnecessary to review the particulars of this or other financial requirements of the Southern system, since the common stock proposal before us, involving about $20 million a year, represents only a small fraction of Southern's projected requirements for this year. The present application is directed to the benefits it provides under independent federal policy to the system's employees. The system companies will gain the intangible but important fruits of employee stock ownership, and a modest but not trivial independent source of needed capital.

Three stockholders of Southern Company, who are also customers of Georgia Power Company, filed on June 10, 1980, a request for hearing on the application. They state that the Southern system's construction budget for 1980-1981 is approximately $2.8 billion, which includes work on 14 generating facilities as well as transmission, distribution, and miscellaneous capital improvements. They assert

[2]The actual number of shares to be issued under the plan in 1980 and 1981 will depend on the amount of the investment tax credit for 1979 and 1980, the amount of participations by the employees, and the market prices on the contribution dates.

that the construction program is excessive and improvident. They seek a hearing to examine the future demand for electric energy in the area served by Southern, and to examine alternatives, including but not limited to energy demand conservation and cogeneration. They also assert that the National Environmental Policy Act of 1969 ("NEPA") requires that the Commission prepare a detailed statement of the environmental impact of the proposed transaction before acting on the application.

Insofar as the motion seeks an examination of the Southern System's plans and choices of means for rendering electric service in the southeastern portion of the United States, it misunderstands the nature and scope of the Act's regulation. The Act does not confer authority on this Commission over either utility rates or services. These subjects were left to the state regulatory authorities. The stated purpose of the Act was to remove impediments to their authority.[3] The Federal Power Act, adopted as Title II of the statute of which the Holding Company Act was Title I, separated those matters of Federal concern which involved rates and operations, and assigned their administration to another agency, now the Federal Energy Regulatory Commission, specially qualified and equipped to deal with the technology of energy generation and transmission.[4] Each of the operating companies in the Southern system is regulated by the utility commission of its state, and in pertinent matters by the Federal Energy Regulatory Commission. The application before us deals with an issue of holding company common stock, within our jurisdiction, but is intimately related to regulations of the Internal Revenue Service and based primarily on employee compensation plans of subsidiaries subject to state regulation.

The specific and detailed standards prescribed by Sections 7(c) and 7(d) of the Act, which govern this application, deal with the investment character and cost of the financing. The only statutory requirement[5] not patently so limited is Section 7(d)(3), which would call for denial of the application if the Commission found that

> "(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest."

The Southern system consists of a single integrated electric system, as defined in Section 11(b)(1) of the Act, and the application is directed to financing that business. The requirement that financing be limited to a business in which applicant is lawfully engaged refers in the first instance to the limitations imposed by Section 11(b)(1) on the scope of a system's activities. We may assume that financing for an activity which has been determined to be unlawful under some other Federal or local law would be objectionable under Section 7(d)(3). But we are satisfied that the clause does not grant us jurisdiction to determine independently the scope and application of the many laws affecting the business operations of a registered holding company system.

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[3]Sections 1(a)(1), 1(b)(1), 1(b)(2), 1(b)(3), 7(g), 8, 9(b), 10(b).

[4]*City of Lafayette* v. *SEC*, 454 F2d 941, 954-956, (CADC, 1971), aff'd 411 US 747, 754-755 (1973); *sub nom. Gulf States Utilities Co.* v. *FPC;* Certiorari was not granted from the Court of Appeals decision which affirmed the SEC order in the consolidated case, but the Supreme Court noted favorably the distinction drawn by the Court of Appeals between the two acts. See also *Alabama Electric Cooperative* v. *SEC*, 353 F2d 905, 907 (CADC 1965).

[5]Section 7(d)(6), turns on a finding that

"(6) the *terms and conditions* of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers." (emphasis supplied)

This is directed to the terms of the security and the sale, not the purpose of the financing. See: *City of Lafayette* v. *SEC, supra* at 954-956, where the Court of Appeals held that the Commission did not have to consider matters arising out of utility operations in approving financings under Sections 6 and 7 of the Act. Section 7(f)

"Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance *with the conditions specified in this section*." (emphasis supplied)

is similarly limited in scope.

For the same reason, we cannot read the reference to "economical and efficient operation" as conferring on us a general jurisdiction over the conduct of the utility business of the operating subsidiaries in the registered system. We do not suggest that we have no interest in the subject. On the contrary, we generally require periodic data on the system budgets, but for the purpose of assessing the financial planning.[6] Financing needs are the mathematical difference between other receipts and expenditures. The total requirements and the full financing cycle are relevant to placing a particular element in context.[7] Section 7(a)(1) incorporates in each application the data required under the securities laws with respect to the transaction, which consist among other things, of full recent financial statements, and descriptions of the large generating plants under construction. A broader review, based on the cash budgets of the system members, is effected in the context of major transactions.[8]

A utility company does not require our permission to build facilities to carry on its utility business, or to contract with non affiliated manufacturers or construction firms for the equipment and work required. Major projects, such as a large generating plant, involve many years of work before completion, with relatively minor expenditures in the initial stages. The utility will fix the price for components by contract as early as feasible, with payments to be made as work is done or equipment delivered under the construction schedule.

Its need to seek financing authority under Section 7 of the Act arises only if and when its maturing obligations exceed its internal cash flow. In 1979, The Southern system's gross property additions were $1.1 billion, but it had $713 million available from internal sources. It raised $553 million by financing subject to our jurisdiction, of which $171 million was to refund maturing long term debt. Except for a minor amount of pollution control bonds, none of the new financing was directed to or identified with any particular capital improvement.

The expenditures for construction do not, as such, require our approval under the Act. The utility may and must, pay its obligations from any resources it has. If its internally generated cash is sufficient to meet all capital requirements, a common situation when the Act was adopted and for long periods during its history, no application is required by the Act for any purpose. A substantial portion of the aggregate capital additions are paid from operating revenues and are never used as a basis for new financing.[9]

Even under more exigent circumstances, now prevailing, capital needs follow, rather than precede construction. The financing cycle deals with the cash flow deficit created by an excess of current payments over current receipts. Capital expenditures appear in that calculation upon billing by the contractor or supplier, which in each period represents the currently incurred costs on each of the innumerable projects underway, ranging from the payroll for exmployees extending service to a new customer to a month's work on a generating plant commenced several years ago and scheduled for completion several years hence. The short term financing we authorize is applied to pay for work done, and the long term financing provides funds to repay the short term borrowings. And the need for both short term and long term financing actually depends on the daily balance in the utility company's bank account, rather than on the nature of the obligations being paid.

Although the impact of any form of impediment to financing, such as Alabama's recent rate difficulties, tends to be primarily on the construction budget, because of its size and deferred usefulness, the crisis management necessarily deals with short range cash requirements. Adjustments are limited by contractual commitments and penalty clauses and focus on minimizing disruption and waste.

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[6]*Ohio Power Company* HCAR No. 19502 (p. 5), April 27, 1976.

[7]*Central Power & Light Company*, 27 SEC 185, 189-191 (1947); *Consumers Power Company*, 6 SEC 444, 472 (1939), cf. *Georgia Power Company*, 45 SEC 610, (1974).

[8]HCAR No. 21501, March 28, 1980, dealt with the Southern system members short term borrowing levels for the twelve months ending March 31, 1981.

[9]This is required by bond indenture provisions dealing with sinking funds and renewal and replacement funds, which are a standard feature of utility financing and specifically prescribed by us under the Act. Statements of policy regarding first mortgage bonds, sections (b) to (g) (HCAR No. 13105, February 16, 1956).

Had we refused, for some lawful reason, to permit the Southern system to raise any new capital in 1979, it would have been forced to cut back its construction expenditures by about 30%.[10] But we would have had no authority to prescribe what projects it should abandon, much less to order it to apply its own resources to programs satisfactory to us.

The motion necessarily relies on an assumption that we can and should permit the members of the Southern system to sell securities to lenders and investors only if this Commission is satisfied with the system's construction program and the manner in which the operating utilities conduct their lawful business. We reject that premise. The suggestion that, ancillary to our responsibility to pass on the soundness of a registered system's security sales, we are vested with authority to regulate the operation of registered systems is wholly inconsistent with the scope of the Act. We conclude that the request for hearing is primarily directed to issues we cannot decide. Neither the application nor the request for hearing raise questions relevant to the authorization sought which require an evidentiary hearing to resolve.[11] The request for hearing will be denied.

Our authorization of the issue and sale of the common stock is not a major Federal action significantly affecting the quality of the human environment both in the total context of utility regulation and of our special financing responsibilities under the Act. The effect of security issues governed by Sections 6 and 7 of the Act is to permit the issuer to seek funds from investors. This effect is clearly outside the scope of NEPA. Southern itself is not engaged in utility operations or construction. Its functions under the Act are effectively limited (Section 13(a)), to owning the common stock of its subsidiaries and supplying their common equity requirements. The equity character of its investments make them especially unsuitable for earmarking for any particular project. The payment of bank debt or a maturing bond issue both provides an immediate return for eliminating interest charges and fulfills the purpose of equity by improving the capitalization ratio. We do not certify, license, or otherwise regulate any aspect of the construction of utility facilities.[12] We do not grant or authorize the grant of Federal funds, property or privileges for that purpose. Financing subject to our jurisdiction is effected in the capital markets in the same manner and subject to the same regulation as other issuers, except that the Act imposes additional restrictions with respect to terms, quality and costs. The effect of our review and order is to find that the transaction complies with these additional requirements.

The financing cycle of a large utility system is

[10]Our order in *Alabama Power Company* (HCAR No. 20469, March 24, 1979), deferring action on additional bank borrowing, had this kind of effect. But it was required by Sections 7(d)(1) and 7(d)(2), since the record offered no assurance the additional loans could be repaid.

[11]The entire $40 million sought is less than the 1980 principal installment on Southern's own term loan, and less than the $43 million of common equity required to balance, in the minimum 30% ratio, the initial $100 million of Alabama Power Company bonds already sold this year (HCAR No. 21605, *supra*) to partially refund the interim financing we authorized in 1979 (HCAR No. 21605, *supra*). Sections 7(c)(1)(A), 7(d)(1) and 7(d)(2) of the Act, in the context of the System's December 31, 1979 capitalization, establish the need for this particular transaction, independently of Southern's future plans.

[12]As noted in *City of Lafayette* v. *SEC*, *supra*, the Commission in acting pursuant to Sections 6 and 7 of the Act is limited to consideration of issues relating to the financial structure—not the operations—of holding companies and their subsidiaries. The courts have made clear in instances where there is no direct causal connection between the agency activity authorized and any significant environmental impact that no impact statement is required. See, *e.g.*, *Plaza Bank* v. *Board of Governors*, 575 F.2d 1248 (8th Cir. 1978); *National Citizens Committee for Broadcasting* v. *FCC*, 567 F.2d 1095, 1098 n.3 (D.C. Cir. 1977). Similarly, given the limited nature of the agency action requested in this case, it is clear that no policy underlying the National Environmental Policy Act would be served by preparing an impact statement in this proceeding.

complex and requires careful management. There are contractual limitations in bond indentures and corporate charters as to the amount and kinds of senior securities that can be issued.[13] and as to permissible levels of short term borrowing. Both these restrictions and rating considerations require new financing to consist of a balance combination of common stock and senior securities. Economy and efficiency in financing precludes raising new capital, and paying interest and dividends thereon, until it is needed, a policy embodied not only in Section 7(d)(3) in the Act, but also in the contractual earnings tests referred to and in market insistence on the same standards. With occasional exceptions like the present application, the long term financing governed by Section 7 consists of underwritten public offerings to be used to refund accumulated short term debt or maturing long term obligations. Since the Act deals with large issuers, such offerings are as large as the issuer and underwriters believe the market will absorb. They are designed to fit current market preferences, and are arranged with an eye to the scheduling of other large public offerings.

Accordingly, any significant delay in our order under Section 7 would create a financial crisis for the issuer. The market to which the proposed offering was directed would be missed, and the obligations it was designed to pay would be unsatisfied. The market and requirements would be different and the original proposal would tend to be inadequate even a few months later.

In recognition of such urgencies, the procedures prescribed by Section 7(b) of the Act require prompt action on financing applications. Unless the Commission orders a hearing:

> "(b) a declaration filed under this Section shall become effective within such reasonable period of time as the Commission shall fix by rules and regulations or order."[14]

Even if a hearing is ordered, Section 7(b) reiterates the direction that "within a reasonable time after an opportunity for hearing. . .the Commission shall enter an order."

These time constraints would not permit the imposition of environmental determinations as to the effects of the construction program and alternative means for supplying electricity in the southeastern part of the United States. The Southern system's $2.8 billion current construction budget covers its four state electric utility system. These characteristics are common to the kind of interstate holding company regulated under the Act. Environmental review of construction programs of such magnitude would make orderly and timely financing by registered systems impossible.[15] The "reasonable period of time" specified by Section 7(b) requires dispatch to accomplish the intended financing, not its frustration by environmental explorations.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21572). Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is in the

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[13]These implement the quality standards of Section 7(d)(1) and (2), codified in our statements of policy regarding first mortgage bonds and preferred stock (HCAR Nos. 13105 and 13106, February 16, 1956), but are self enforcing as long term contractual obligations of the issuer.

[14]Our Rule 23(c) provides

"(c) Effective date—a declaration or application which complies with the applicable requirements of the Act and the rules and regulations thereunder, will become effective or be granted respectively by an order to issue upon the expiration of the period prescribed in the notice of filing."

The application herein was filed April 30, 1980. The notice (HCAR 21472, May 13, 1980) set June 9, 1980 as the expiration date of the notice period. A period of 40-60 days from filing is standard for Section 7 applications for general financing.

[15]*Flint Ridge Dev. Co.* v. *Scenic Rivers Assn.*, 426 U.S. 776, 788 (1976). In *Elsman* v. *Detroit Edison Co.* (Cir. No. 7-72351, E.D. Mich., Jan. 4, 1978), the court upheld the Commission's failure to prepare an environmental impact statement in connection with the effectiveness of a Securities Act registration statement.

public interest and in the interest of investors and consumers that said declaration, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the hearing requested is hereby denied.

By the Commission.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 576/July 18, 1980

In the Matter of

WORLD AIRWAYS, INC.

File No. 22-10478

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until August 11, 1980 to request a hearing on an application by World Airways, Inc. ("Applicant") pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") declaring that the trusteeships of Bankers Trust Company ("Bankers Trust") under (1) an existing Equipment Trust Agreement, which is qualified under the Act (the "Indenture"), and (2) an Equipment Trust Agreement and the agency of Bankers Trust under a Pledge Agreement, neither of which is qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers Trust from acting as trustee under the Indenture.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11261/July 18, 1980

In the Matter of

BACHE, HALSEY, STUART, SHIELDS INCORPORATED
and
CORPORATE INVESTMENT TRUST FUND (FOURTH THROUGH FIFTEENTH MONTHLY PAYMENT SERIES)
c/o Bache Halsey Stuart Shields Incorporated
100 Gold Street
New York, New York 10038

(812-4548)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 11 OF THE ACT TO PERMIT AN OFFER OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Corporate Investment Trust Fund (Fourth through Fifteenth Monthly Payment Series) ("Trust"), which is registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and its sponsor, Bache Halsey Stuart Shields Incorporated ("Bache") (hereinafter collectively referred to as "Applicants") filed an application on October 5, 1979, and an amendment thereto on May 19, 1980, requesting an order of the Commission (1) pursuant to Section 11 of the Act permitting the exchange of units of the above Series of the Trust for units of other of such indicated Series at net asset value plus a

fixed and reduced sales charge per unit, pursuant to an exchange option ("Plan"), and (2) for an order pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Trust is comprised of fifteen Series of similar but separate unit investment trusts organized under the laws of the Commonwealth of Massachusetts, the last twelve of which are the subject of currently effective Securities Act of 1933 ("1933 Act") registration statements (such Series are hereinafter referred to as "Effective Series"). According to the application, the Trust's primary investment objective is production of a high level of current income consistent with preservation of capital and prudent risk through investment in a fixed portfolio of debt obligations of corporations and other entities.

Each Effective Series of the Trust is governed by the provisions of such Series' Trust Agreement and Indenture. Applicants state that, for each Effective Series of the Trust, Bache acquires a portfolio of securities, believed by Bache to satisfy the investment objectives of the Series, which is deposited with a trustee in exchange for certificates representing an undivided interest in the deposited portfolio. The units are then offered to the public at a public offering price which is based on the offering prices of the underlying portfolio securities, plus a sales charge. The application states that the sales charge is currently 4 percent of the public offering price or 4.167 percent of the net amount invested in the underlying portfolio securities.

The Applicants state that while not required to do so, Bache currently maintains a secondary market for Series Four through Fifteen and continually offers to purchase units of these Series, dependent on supply and demand and subject to change at any time, at prices based on the offering side evaluation of the underlying portfolio securities then in effect. Applicants further state that should Bache discontinue maintaining such market, the units can be liquidated only by direct presentation to the trustee and at redemption prices based on the bid side evaluation of the underlying portfolio securities. According to the application, Bache does not currently maintain a secondary market for Series One through Three of Trust, and thus such Series will not participate in the Plan.

Bache proposes to offer, subject to the conditions described below, the Plan to certificateholders of the Effective Series. The purpose of the Plan would be to provide investors in each of the Effective Series with a convenient means of transferring interests, as their investment requirements change, into any other series of the Effective Series. Applicants state that if Bache implements the Plan it would intend to hold it open under most circumstances; however, it reserves the right to modify, with the exception of sales charge, suspend or terminate the Plan at any time without notice to certificateholders. It is intended that the Plan will operate as follows: a certificateholder wishing to dispose of his units in a Series for which a secondary market is being maintained will have the option to exchange his units for any other Series of the Trust for which a secondary market is also maintained. When a certificateholder notifies Bache of his desire to participate in the Plan, Bache will deliver to such certificateholder a current prospectus for those Series of the Trust which Bache has available as a result of secondary market purchases and in which the certificateholder has indicated an interest. The certificateholder may then select the Series into which he desires his investment to be exchanged. An exchange pursuant to the Plan will operate in a manner essentially identical to any secondary market transaction except that the Applicants propose to allow a reduced sales charge for transactions effected pursuant to the Plan. According to the Application, heretofore units of the Effective Series have been repurchased by Bache at prices based on the aggregate offering side evaluation of the underlying securities in the portfolio of each Trust Series and have been resold at a public offering price based upon the offering side evaluation of the underlying securities plus a sales charge of 4% (4.167% of the net amount invested in the underlying obligations), which sales charge is calculated at the same rate as that calculated for the initial public offering. Applicants propose to sell units pursuant to the Plan at a price equal to the offering side evaluation of the underlying securities divided by the number of units outstanding ("Unit Offering Price"), plus a fixed charge of $15 per unit (approximately 1.5% of the offering price depending upon changes in the market value of the underlying securities). The application states that Bache reserves the right to change such fixed charge from time to time in the event of fluctuations in the costs

of professional assistance and operational expenses in connection with the Plan; however, such fixed charge shall not exceed a maximum sales charge which is set at 4% of the public offering price of the unit in question. In addition, the costs of professional assistance and operational expenses for purposes of determining the fixed charge will not include any expense reflecting the costs of soliciting certificateholders to participate in the Plan. In the event of a change in the sales charges, notice of such changes will be provided to certificateholders through regular updates of their prospectuses.

The application further states that under the Plan certificateholders would not be permitted to make up any cash deficiency between the amount representing the units being submitted for exchange and those being acquired; that is, the certificateholder would be permitted to acquire pursuant to the Plan whole units only and amounts representing any excess of the sales price of units submitted for exchange would be remitted to the certificateholder. To illustrate, a holder of three units of an Effective Series with a Unit Offering Price of $965 may seek to exchange such units for units of another Effective Series with a Unit Offering Price of $900. In this example the certificateholder's units would produce in the exchange $2,895 which amount may be invested in units of the other Series. Should three units of the other Series be acquired the cost would be $2,745 ($2,700 for the units and a $45 sales charge). The remaining $150 would be returned to the certificateholder in cash.

The application states that the initially suggested reduced sales charge of $15 rather than the customary 4% sales charge for regular primary and secondary market sales is proposed by Bache as a result of certain cost savings; which reduction, in the judgment of Applicants, would be beneficial to investors. According to the Application, a person desiring to dispose of units of one Effective Series and acquire units of another Effective Series may do so for a number of reasons, such as a change in investment goals or requirements. It is likely, according to the Applicants, that there will be a continuing need to assess an investor's individual financial position and in all probability Bache's account executives will actively participate in counseling the investor as to the proper course of action to follow, taking into account relevant factors involved. However, Applicants assert that since the investor is an existing customer whose essential investment needs have previously been identified, some transactional savings will be produced. Further, Applicants argue that as a result of the fact that all of the Effective Series of the Trust are practically identical investment vehicles, subject to differences in quality, diversity, current prices and yield of the individual portfolios, an exchanging certificateholder may require less advice than if he were acquiring an interest in an entirely different kind of investment. Applicants state that they believe that a charge of $15 is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses which are contemplated in connection with the exchange transactions. This sales charge compares favorably with the regular sales charge applicable to non-exchange transactions in connection with primary and secondary sales of units of the Trust, and Applicants submit that such a sales charge is warranted in that such charges should cover the reasonable costs of Bache related to the operation of the Plan and yet give exchanging certificateholders an opportunity to share in the expected cost savings.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus. The sales charge described in the prospectuses of each of the Effective Series of the Trust for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the Plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 11, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11262/July 18, 1980

In the Matter of

EQUITABLE MONEY MARKET ACCOUNT, INC.
100 West 52nd Street
P.O. Box 581
New York, New York 10001

(812-4678)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Equitable Money Market Account, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 7, 1980, and an amendment thereto on June 9, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(4) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation.

On June 19, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11225). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation, be, and hereby is, granted, effective forthwith, subject to the following conditions:

1. In supervising the Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser and sub-investment adviser, the Applicant's

board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objective, to stabilize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action if any should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors of existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares of kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses or to shorten the Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

[1]To fulfill this condition, the Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, the Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

3. The Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and the Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meeting. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11263/July 21, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6224/July 21, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11264/July 21, 1980

In the Matter of

IDS TAX-FREE MONEY FUND, INC.
1000 Roanoke Building
Minneapolis, Minnesota 55402

(812-4695)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that IDS Tax-Free Money Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940, as amended ("Act") as an open-end, diversified management investment company, filed an application on June 16, 1980, and an amendment thereto on June 26, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on February 29, 1980, as an investment vehicle for substantial investors who desire tax-exempt income from a portfolio of high quality short-term municipal obligations. According to the application, Applicant's investment objective is to provide as high a level of current income as is consistent with the stability of principal and liquidity. The application also states that Investors Diversified Services, Inc., will serve as the investment adviser to Applicant. A registration statement on Form N-1 under the Securities Act of 1933 covering shares of common stock of Applicant has been filed with the Commission, but has not yet become effective. Thus, a public offering of Applicant's common shares has not commenced. Applicant's common shares will be offered for sale to the public at net asset value without a sales charge.

The Applicant represents that its portfolio will be invested in general obligation bonds, revenue bonds, and notes with original or remaining maturities of one year or less. The Applicant further states that at least 80% of its net assets will be invested in debt obligations issued by states, the District of Columbia, territories and possessions of the United States, and their political subdivisions, duly constituted authorities and corporations, the interest from which is wholly exempt from federal income taxation in the opinion of bond counsel to the issuer and that this policy can be changed only if the holders of a majority of the Applicant's outstanding shares agree. Applicant further states that the remainder of its assets (not to exceed 20% of its net assets) may be invested in short-term notes and obligations of the United States government, banks, and corporations having remaining or original maturities of one year or less. The application states that the dollar-weighted average maturity of the Applicant's portfolio will at all times be 120 days or less.

The Applicant states that the tax-exempt securities which it may invest in include tax anticipation notes, bond anticipation notes, revenue anticipation notes, tax and revenue anticipation notes, construction loan notes, tax-exempt commercial paper, project notes and other short-term municipal securities that are similar to the foregoing. In addition, the application states that the Applicant may enter into repurchase agreements, and may purchase securities on a "when-issued" basis but that the Applicant will not invest more than 20% of its net assets in "when-issued" securities. The application further states that the Applicant does not presently intend to invest in "put" transactions, but that it reserves the right to do so in the future.

Applicant represents that the municipal notes in its portfolio will be rated not lower than Aa or MIG-2 by Moody's Investors Services, Inc., and that the municipal bonds will be rated not lower than AA by Standard & Poor's Corporation. Applicant may also purchase nonrated municipal bonds and notes so

long as they meet standards of quality equivalent to those described above.

The application states that all of the above instruments are generally offered on the basis of a quoted yield to maturity and the price of the security is adjusted so that relative to the stated range of interest it will return the quoted rate to the purchaser. The Applicant states that it intends to declare and pay its net income as a dividend to its shareholders on a daily basis and distribute it monthly, and that "net income" for this purpose will consist of all interest income accrued on the portfolio assets of the Applicant, less all expenses of the Applicant. The application also states that if the Applicant values its securities on an amortized cost basis there will be no calculation for realized or unrealized capital gains or losses. Applicant represents that the nature of the investments which it proposes to make have characteristics which are similar to those securities which are generally designated as money market instruments.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company, used in computing its price for the purposes of distribution, redemption and repurchase, shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its portfolio securities by means of the amortized cost method of valuation (i.e., valuing securities at cost, adjusted for amortization of premium or accretion of discount).

Section 6(c) provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that its experience has been that investors in a money market fund desire a stable net asset value, preferably at $1.00 per share, and a constant and steady flow of investment income. Applicant also states that it will not own portfolio securities having maturities exceeding one year, and its average portfolio maturity will not exceed 120 days. Applicant further states that its experience has been that with respect to municipal securities maturing in 120 days or less, there is normally a negligible discrepancy between market value and the amortized cost value of such securities. On the basis of the foregoing, Applicant believes that the valuation of its portfolio securities on the amortized cost basis will benefit its shareholders by enabling Applicant to more effectively maintain its $1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to fluctuation than under procedures whereby its daily dividend would be adjusted by all realized and unrealized gains and losses on its portfolio securities.

Applicant consents to the following conditions being contained in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio instruments, including repurchase agreements if any, to those U.S. dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations, or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of municipal securities published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

and circumstances of such action.

The Applicant represents that its Board of Directors has determined in good faith that in light of the characteristics of the Applicant as described above and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant and reflects fair value of such securities. Applicant further represents that granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 15, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11265/July 22, 1980

In the Matter of

NASSAU PHYSICIANS' FUND, INC.
1200 Stewart Avenue
Garden City, New York 11530

(811-920)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Nassau Physicians' Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on May 7, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On June 20, 1980, a notice (Investment Company Act Release No. 11229) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Nassau Physicians' Fund, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11266/July 22, 1980

In the Matter of

TAX EXEMPT BOND FUND FOR MINNESOTANS, INCORPORATED

1414 Soo Line Building
Minneapolis, Minnesota 55402

(811-2816)

ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

Tax Exempt Bond Fund For Minnesotans, Incorporated ("Applicant"), registered as an open-end diversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application pursuant to Section 8(f) of the Act on May 19, 1980, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On June 20, 1980, a notice was issued of the filing of said application (Investment Company Act Release No. 11228). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company as defined in the Act. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Tax Exempt Bond Fund For Minnesotans, Incorporated, shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11267/July 22, 1980

In the Matter of

ASSET INVESTORS FUND, INC.
67 Wall Street
New York, New York 10005

(812-4586)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTIONS 17(g), 30(a), 30(b), 30(d) AND 30(e) OF THE ACT AND APPLICABLE RULES THEREUNDER

Asset Investors Fund, Inc. ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a diversified, closed-end, management investment company, filed an application on December 21, 1979, and an amendment thereto on May 29, 1980, requesting an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Sections 17(g), 30(a), 30(b), 30(d) and 30(e) of the Act and Rules 17g-1, 30a-1, 30a-2, 30b1-1, 30b2-1 and 30d-1 thereunder.

On June 19, 1980, a notice (Investment Company Act Release No. 11227) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Sections 17(g), 30(a), 30(b), 30(d) and 30(e) of the Act and Rules 17g-1, 30a-1, 30a-2, 30b1-1, 30b2-1 and 30d-1 thereunder, to the extent requested, be and hereby is, granted, effective forthwith, subject to the terms and conditions set forth in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11268/July 22, 1980

In the Matter of

MELLON FINANCIAL COMPANY
6400 Steubenville Pike
P.O. Box 15599
Pittsburgh, Pennsylvania 15244

(812-4693)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Mellon Financial Company ("Applicant"), a Pennsylvania corporation, filed an application on June 13, 1980, and an amendment thereto on July 10, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting Applicant from all provisions of the Act. All interested persons are referred to the application which is on file with the Commission for a statement of the representations made therein which are summarized below.

Applicant, a Pennsylvania corporation, is a wholly-owned subsidiary of Mellon National Corporation ("Mellon"), a one-bank holding company registered under the Bank Holding Company Act of 1956 and incorporated under the laws of Pennsylvania. As of December 31, 1979, Mellon was the 12th largest bank holding company in the United States in terms of total equity capital and the 17th largest bank holding company in terms of total assets. Mellon's principal subsidiary is Mellon Bank, N.A. ("Mellon Bank"), a member bank of the Federal Reserve System which was the 16th largest commercial bank in the United States as of December 31, 1979 in terms of total assets and deposits. Other subsidiaries of Mellon engage in mortgage banking, real estate financing, consumer finance and equipment leasing.

Applicant states that it was organized in order to consolidate short-term commercial paper and long-term debt financing activities on behalf of Mellon under one corporate entity for ease of administration, accounting, recordkeeping and tax considerations, and that its sole purpose will be to provide a vehicle through which Mellon can finance its operations and those of its subsidiaries through the issuance of debt securities. According to the application, it is anticipated that Applicant will make public offerings and private placements of long-term and short-term debt instruments, including commercial paper. Applicant represents that all such debt securities will be unconditionally guaranteed by Mellon as to principal and interest, and such guarantees will be on a parity with other unsecured debt obligations of Mellon and guarantees of debt obligations of its subsidiaries, and no such guarantee will be subordinated in right of payment to other debt issued or guaranteed by Mellon. Applicant proposes to lend the proceeds of all debt offerings to Mellon and its subsidiaries in exchange for notes or other evidences of indebtedness issued by those entities. Applicant states that it will not engage in any other business and its only assets will be cash and evidences of the indebtedness owed to it by Mellon and its subsidiaries.

Applicant represents that its debt securities will be registered under the provisions of the Securities Act of 1933 unless they are issued in a nonpublic offering or are otherwise exempt from registration under that Act, and that any such debt securities to be registered under the provisions of the Securities Act of 1933 will be issued pursuant to a trust indenture subject to and qualified under the Trust Indenture Act of 1939. According to the application, if debt securities to be issued by Applicant are registered under the provisions of the Securities Act of 1933, Applicant will become a reporting company under the Securities Exchange Act of 1934 by reason of Section 15(d) thereof and, under existing rules and regulations of the Commission, will be required to file with the Commission annual reports on Form 10-K and quarterly reports on Form 10-Q. Applicant asserts that such reporting requirements under the Securities Exchange Act of 1934 will be in addition to more expansive filings of a similar nature required to be made by Mellon for itself and its subsidiaries on a consolidated basis.

Section 3(a)(3) of the Act defines the term "investment company" to include any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant states that its

only assets will be cash and evidences of indebtedness.

Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant submits that because Mellon is primarily engaged, through its wholly-owned subsidiary Mellon Bank, in the business of banking, it is excluded from the definition of investment company by Section 3(c)(6) of the Act, and it could therefore issue debt securities directly without raising questions under the Act. Applicant also submits that the fact that the debt securities are issued by a wholly-owned subsidiary of Mellon should not bring Mellon or Applicant within the policies of the Act. Applicant represents that Mellon and its subsidiaries, including Mellon Bank and Applicant, are subject to regulation by the Board of Governors of the Federal Reserve System, and Mellon is required to file with the Federal Reserve Board an annual report and such additional information as the Federal Reserve Board may require. Applicant represents that it and its related companies are and will be strictly supervised by various banking authorities. The application also states that the business of Mellon bank and that of its affiliates is subject to regulation of various federal and state banking authorities and examination by the Comptroller of the Currency. Applicant states that Mellon is also registered under the Securities Exchange Act of 1934 and is subject to reporting and other provisions of that act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 23, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11269/July 22, 1980

In the Matter of

CHAGRES FUND, INC.
P.O. Box 914
Hendersonville, North Carolina 28739

(811-1518)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Chagres Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on May 12, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant is a corporation organized under the laws of the State of Maryland. Applicant filed its initial

Registration Statement under the Act on August 3, 1967, which registration first became effective on February 29, 1968.

Effective August 23, 1979, Applicant sold substantially all of its property and assets to Beacon Income Fund, Inc. ("Beacon") without the assumption by Beacon of any liabilities of Applicant in exchange for shares of Beacon at net asset value, pursuant to an Agreement and Plan of Reorganization ("Agreement"), approved by Applicant's Board of Directors on January 31, 1979 and approved on August 22, 1979, in accordance with Maryland law by an affirmative vote of the holders of not less than two-thirds of the outstanding common stock of Applicant. The assets of Applicant transferred to Beacon consisted of all of the investments, properties, rights and other assets of Applicant, free and clear of all liens, encumbrances and claims, whatsoever, excluding a cash reserve in the amount of $5,000 which was retained by Applicant for the payment of its expenses in connection with the agreement, its liquidat.on, dissolution and its other liabilities. The shares of Beacon so received by Applicant were distributed, pro rata, to the shareholders of Applicant. According to the application, on August 22, 1979, Applicant had outstanding 59,748.80 shares of common stock held by 133 shareholders of record with a net asset value per share of $5.51 and an aggregate net asset value of $329,240.28.

The Applicant represents that it intends to take appropriate steps to file a certificate of dissolution under Maryland law. Applicant states that it is indebted for legal and accounting fees and expenses relating to its liquidation and dissolution in an indeterminable amount, but not in excess of $5,000. Further, the Applicant asserts that it no longer has any security holders, is not a party to any litigation or administrative proceeding and does not propose to engage in any activity other than that necessary for winding up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11270/July 22, 1980

In the Matter of

RETIREMENT PLANNING FUNDS OF AMERICA, INC.
111 West Washington St.
Chicago, Illinois

(812-4682)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

On June 18, 1980, a notice was issued (Investment Company Act Release No. 11224) of an application filed on May 15, 1980, by Retirement Planning

Funds of America, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder and LNC Equity Sales Corporation, Applicant's principal underwriter, from Rule 22c-1, to the extent necessary to permit Applicant to calculate the net asset value per share of its Money Market Fund using the amortized cost method of valuing portfolio securities.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. In supervising the operations of Applicant's Money Market Fund and delegating special responsibilities involving portfolio management to the Applicant's investment adviser, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the investment objectives of Applicant's Money Market Fund, to stabilize the net asset value per share of Money Market Fund, as computed for the purpose of distribution, redemption and repurchase at $10.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share of Money Market Fund as determined by using available market quotations from the $10.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $10.00 amortized cost price per share of Money Market Fund exceeds 1/2 of 1%, a requirement that Applicant's board of directors will promptly consider what action if any should be initiated.

(c) Where Applicant's board of directors believes the extent of any deviation from the $10.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing Money Market Fund shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses or to shorten Money Market Fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average Money Market Fund portfolio maturity appropriate to its objective of maintaining a stable net asset value per share for Money Market Fund; provided, however, that the Applicant will not (a) purchase any instrument for its Money Market Fund portfolio with a remaining maturity of greater than one year, or (b)

[1]To fulfill this condition, the Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Applicant's board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, the Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

maintain a dollar-weighted average Money Market Fund portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and the Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its Money Market Fund portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest Money Market Fund's available cash in such a manner as to reduce its dollar-weighted average Money Market Fund portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT COMPANY ACT OF 1940
Release No. 11271/July 23, 1980

In the Matter of

THE CAPITOL LIFE INSURANCE COMPANY

AND

THE CAPITOL LIFE SEPARATE ACCOUNT A
1600 Sherman Street
Denver, CO 80203

(812-4696)

AMENDED ORDER PURSUANT TO SECTION 11 APPROVING OFFER OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 26(a) AND 27(c)(2) OF THE ACT

Capitol Life Insurance Company ("Capitol Life"), a Colorado stock life insurance company, and Capitol Life Separate Account A ("Separate Account"), a separate account of Capitol Life, which is registered as a unit investment trust under the Investment Company Act of 1940 ("Act") (collectively referred to as "Applicants") filed an application on June 3, 1980, pursuant to Section 11 of the Act for an amended order approving an offer of exchange and pursuant to Section 6(c) of the Act for an amended order exempting Applicants from the provisions of Sections 26(a) and 27(c)(2) of the Act.

On June 27, 1980, the Commission issued a notice of the filing of the application (Investment Company Act Release No. 11236). The notice gave interested persons the opportunity to request a hearing and stated that an amended order disposing of the application would be issued as of course, unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested amended order and exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from Sections 26(a) and 27(c)(2) of the Act, to the extent

requested, be and hereby is, granted effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offer be approved.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11272/July 23, 1980

In the Matter of

FIRST INVESTORS LIFE INSURANCE COMPANY
FIRST INVESTORS LIFE VARIABLE ANNUITY FUND A
FIRST INVESTORS SPECIAL BOND FUND, INC.
c/o First Investors Life Insurance Company
120 Wall Street
New York, NY 10005

(812-4663)

NOTICE OF APPLICATION PURSUANT TO SECTION 11 OF THE ACT FOR AN ORDER APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTIONS FROM SECTIONS 26(a) AND 27(c)(2)

NOTICE IS HEREBY GIVEN that First Investors Life Insurance Company ("First Investors"), a New York life insurance company, First Investors Life Variable Annuity Fund A (the "Separate Account"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"), and First Investors Special Bond Fund, Inc. (the "Fund"), a diversified open-end investment company registered under the Act, (hereinafter collectively referred to as "Applicants") filed an application on April 16, 1980, and an amendment thereto on May 20, 1980, pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act for an order of exemption from Sections 26(a) and 27(c)(2) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Background

First Investors is a stock life insurance company organized under the laws of the State of New York. On September 11, 1979, First Investors created the Separate Account for the purpose of investing the net purchase payments received by it for certain variable annuity contracts (the "Contracts"). The Fund is registered as an open-end investment company under the Act. Assets of the Separate Account are invested at net asset value in shares of the Fund.

Applicants propose to offer a certain exchange privilege whereby shareholders of the Fund may exchange such shares for Contracts on the basis of their net asset value per share at the time of exchange without sales charge. Applicants assert that the purpose of the foregoing exchange privilege is to permit shareholders of the Fund to continue their investment in Fund shares in the form of a variable annuity contract and to do so without paying a sales charge. Under such an exchange, Fund shareholders will gain the ability to defer current income tax on Fund distributions and the right to elect annuity income payments upon retirement at rates guaranteed by, and available from, an insurance company.

Applicants propose to offer an additional exchange privilege whereby Contract owners may exchange the accumulated value of their Contracts for shares of the Fund on the basis of the net asset value of the Fund at the time of exchange subject only to a nominal transaction charge of $5.00 for such exchange. Applicants assert that the purpose of this exchange privilege is to permit a Contract owner who elects to terminate a Contract prior to the Annuity Commencement Date or the death of the annuitant to exchange the accumulated value of the Contract for shares of the Fund, without a sales charge.

Section 11

Section 11(a) of the Act provides, in pertinent part, that no registered, open-end company or any principal underwriter for such a company shall make an offer to the holder of a security of such company to exchange his security for a security in the same or another such company on any basis

other than relative net asset values unless the terms of the offer have been approved by the Commission.

Section 11(c) provides that, irrespective of the basis of exchange, the provision of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

As hereinabove described, shareholders of the Fund would be offered the right to exchange the net asset value of such shares toward the purchase of a contract without any sales charges; however, a $5.00 transactions fee will be charged Contract owners who exchange the accumulated value of their Contracts for Fund shares on the basis of the net asset values of the fund at the time of the exchange.

Section 26(a) and Section 27(c)(2)

Sections 26(a) and 27(c)(2) of the Act provide, in substance, that a registered unit investment trust or issuer of a periodic payment plan certificate and any depositor and underwriter for such investment company are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a qualified bank as trustee and are held under an indenture or agreement containing the following provisions: (1) that the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept and notice given to securities holders in the event of substitution of the trust's securities.

Applicants have requested an exemption from Sections 26(a) and 27(c)(2) of the Act to permit First Investors to be the custodian of the assets for the Separate Account; applicants state that such assets will be held in the safekeeping of the United States Trust Company in New York. The portion of the purchase payments under the Contracts allocated to the Separate Account will be invested in shares of the Fund. Applicants further state that the shares will be issued under an open account arrangement without the use of stock certificates. Their ownership will be shown on the books and records of the Fund and the Separate Account.

Applicants state that First Investors is subject to extensive supervision and control by the New York Insurance Department. Such control and supervision, Applicants contend, provide assurance against misfeasance and afford the essential protection of trusteeship. In addition, applicants state that under New York law, First Investors may not abrogate its obligations under the Contracts.

Therefore, Applicants assert that such existing regulation of First Investors affords substantially the same protection contemplated by the provisions of Sections 26(a) and 27(c)(2) of the Act.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, the Commission reserving jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, transaction, or class or classes of the same from any provision of the Act, if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should

be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following August 18, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11273/July 23, 1980

In the Matter of

ELRON ELECTRONIC INDUSTRIES LTD.
c/o Richard L. Teberg, Esq.
Reavis & McGrath
345 Park Avenue
New York, New York 10022

(812-4611)

NOTICE OF APPLICATION PURSUANT TO SECTION 3(b)(2) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT IS NOT AN INVESTMENT COMPANY, OR ALTERNATIVELY, FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Elron Electronic Indutries Ltd. ("Applicant"), a corporation organized under the laws of Israel, filed an application on February 6, 1980, and an amendment thereto on May 21, 1980, for an order of the Commission pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities, or alternatively, for an order pursuant to Section 6(c) of the Act exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Section 3(a)(3) of the Act defines an investment company as any issuer which is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

According to the application, Applicant was incorporated in 1962 as an industrial company manufacturing, developing and selling electronic equipment. Applicant states that it became a holding company in 1970 after spinning off its various divisions into independent industrial companies. Applicant represents that it is primarily engaged in the utilization of computer based and electronic sciences to develop, manufacture and sell high technology products, through controlled companies, three of which constitute 98% of its total investment in affiliated companies: (1) Elbit Computers Ltd. ("Elbit"), (2) Elscint Limited ("Elscint") and (3) Scientific Data Systems Israel Ltd. ("SDSI"). Applicant also states that investment in the stock of, and loans and advances to, controlled companies represents 95% of its total assets exclusive of investments in Israel government securities. According to the application, Applicant is contemplating a public offering of its common stock in the United States to raise between $5,000,000 and $10,000,000, which would be invested in controlled companies conducting a similar type of business to that of Applicant and its affiliates.

Applicant states that it has the right to cast 33% of the votes at meetings of Elbit's shareholders as of November 30, 1979. Control Data Corporation ("CDC") controls 37% of Elbit's voting securities and thus, Applicant contends, control of Elbit is shared with CDC. Applicant also contends that, despite CDC's voting power, Applicant has the responsibility for managing the business, and that, pursuant to an

agreement between CDC and Applicant, the Managing Director of Applicant is the Chairman of Elbit's Executive Committee. The application indicates that Elbit manufactures and sells military equipment, especially avionic systems for the Israeli air force, tank fire control systems and sophisticated systems for naval application. Applicant states that Elbit also produces mini-computer terminals and related software products for data processing markets and owns interests in two subsidiaries engaged in the production of high technology products.

The application states that Elbit's board of directors is presently comprised of twelve members, five of whom are nominated by Applicant, and four of the five are also on Applicant's board of directors. The agreement between CDC and Applicant provides that CDC and Applicant shall each designate two of the five members of the Executive Committee. Elbit's Managing Director, who is personally selected by Uzia Galil, the Managing Director of Applicant and the Chairman of the Executive Committee, is the fifth member of the Committee. The Executive Committee is responsible for managing the operation of Elbit, dealing with all matters and making final decisions on all issues except for those specifically reserved for the Board to handle. The Executive Committee meets monthly while the Board meets three times a year. Applicant's participation in such meetings is greater than CDC's as members designated by CDC came from outside Israel. The office of Chairman of the Executive Committee is a paid position since the job requires continuous interaction with Elbit management. In that capacity, Mr. Galil meets at least weekly with the President and other officers of Elbit, all of whom he either personally selected or approved. Applicant's control of the Executive Committee allows Applicant to designate Elbit's officers and Applicant contends that this means that, as a practical matter, Applicant designates the management of Elbit.

According to the application, Applicant was entitled to cast approximately 45% of the votes at any meeting of Elscint's shareholders as of November 30, 1979. Applicant states that Elscint is engaged primarily in the development, manufacture, marketing and servicing of medical imaging equipment and scientific instruments. The application states that two of Elscint's four directors are also on Applicant's board of directors, and it is contended that as a practical matter, Elron's stock ownership allows it to designate all the members of Elscint's Board and thus control the designation of management.

Applicant represents that it was entitled to cast approximately 43% of the votes at any meeting of SDSI's shareholders as of November 30, 1979. According to the application, SDSI develops, markets and manufactures computer peripherals for the commercial and military market, and through its wholly-owned subsidiaries, an environmental irrigation control system and other irrigation equipment. Applicant states that SDSI has been acquired for cash by, and is currently in the process of being merged into, Elbit. Applicant represents that it will invest the proceeds from the sale of SDSI either in Israel government securities or short-term bank deposits until such time as the proceeds are reinvested in new or existing controlled corporations engaged in the development, manufacture and sale of high technology products. The application indicates that three of the five SDSI directors are also directors of Applicant, and thus, it is contended, Applicant controls the designation of management.

Applicant represents that its chairman of the board and managing director hold similar positions in Elbit, Elscint and SDSI. The application states that these individuals have input into the operational control of Elbit, Elscint and SDSI, especially regarding policy decisions such as the commitment of funds for new product development, marketing strategies, selection of officers, development and approval of capital expenditures, financing and budgeting.

Applicant states that it holds interests in a number of privately owned companies engaged in the development, production and marketing of high technology biomedical instruments and devices, optical fiber and cable, and computerized numerical control for machine tools. The application states that such investments include ownership of 58% of Fibronics International Inc., 50% of Elron Iscar Biomedical Instruments, 45% of Conlog Ltd., and 33% of Worldtech Israel Ltd.

Applicant represents that 67% of its reported income for the fiscal year ended March 31, 1979 was attributable to its proportionate share of profits on an equity basis from Elbit, Elscint and SDSI. Applicant states that its other income resulted from the gains on investments pending investment in affiliates and that by the end of the fiscal year March 31, 1979, most of the other financial resources were invested

in the affiliates and subsidiaries.

Section 3(b)(2) of the Act exempts from the definition of an investment company in Section 3(a)(3) of the Act any issuer which the Commission finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, either directly or (a) through majority-owned subsidiaries or (b) through controlled companies conducting similar types of businesses. Section 2(a)(9) of the Act defines control as the power to exercise a controlling interest over the management or policies of a company, unless such power is solely the result of an official position with such company. In addition, Section 2(a)(9) of the Act states that any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company, but any such presumption may be rebutted by evidence.

Applicant submits that it is entitled to an order pursuant to Section 3(b)(2) of the Act because it is primarily engaged in the development, manufacture and sale of high technology products through Elbit, Elscint and SDSI. In that connection, Applicant represents that it has no present intention to engage in any business other than the high technology industry. The application states that Applicant has never represented itself as an investment company and has never considered itself to be anything but a company actively involved in the development of high technology companies which it controls. Applicant further submits that virtually all of its income will be derived from Elbit, Elscint and SDSI, and that over 98% of its assets consist of securities in the same companies. Lastly, Applicant represents that its management has substantial experience in corporate management and the high technology field and that Applicant's directors are actively involved in the operational management of Elbit, Elscint and SDSI.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 18, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11274/July 24, 1980

In the Matter of

IMS VARIABLE LEVERAGE FUND, LTD.
THE ROBINSON FAMILY FUND
HERBERT W. ROBINSON
ELSIE C. ROBINSON
KEITH B. ROBINSON
DENISE P. HALL and
INTERNATIONAL MANAGEMENT SYSTEMS CORPORATION
P.O. Box 17107
Fountain Hills, Arizona 85268

(812-4686)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 17(b) OF THE ACT FOR AN ORDER EXEMPTING A PROPOSED TRANSACTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT

NOTICE IS HEREBY GIVEN that IMS Variable Leverage Fund, Ltd., a Nebraska Limited Partnership ("Fund"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, and The Robinson Family Fund (the "Robinson Partnership") consisting of Herbert W. Robinson, Elsie C. Robinson, Keith B. Robinson, Denise P. Hall (collectively the "Robinson Family") and International Management Systems Corporation ("IMSC"), a Delaware corporation wholly owned by the Robinson Family (collectively referred to as the "Applicants"), filed an application on May 28, 1980, pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Sectin 17(a) of the Act the proposed transfer of substantially all the assets of the Robinson Partnership to the Fund in exchange for shares of the Fund. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Fund was organized as a limited partnership under the Uniform Limited Partnership Act of Nebraska on May 13, 1980. The Robinson Partnership is a partnership consisting of the Robinson Family and IMSC and was organized on October 8, 1978, pursuant to an oral agreement which was confirmed by a written agreement dated May 7, 1979. IMSC acts as investment adviser to the Robinson Partnership and registered as an investment adviser under the Investment Advisers Act of 1940, which registration was effective on June 17, 1979. Applicants further state that it is contemplated that IMSC will act as investment adviser and principal underwriter of the Fund. As of May 1, 1980, the cash contributions to the Robinson Partnership totaled $3,376,778. Additional information as to structure of the Fund, and why the Fund proposes to operate utilizing the limited partnership form is contained in Investment Company Act Release No. 11256 (July 8, 1980).

According to the application, it is proposed that the Robinson Partnership transfer to the Fund all the securities in its portfolio, excluding any which the Fund may not invest in consistent with its investment policies or the provisions of the Act, at their market value as determined at the close of business on the date of the transfer in exchange for Fund shares at net asset value determined according to the requirements of the Act. Applicants state that any transfer taxes or other expenses related to the exchange will be paid by the Robinson Partnership. Applicants represent that there will be no other adjustments affecting the basis for the exchange. The market value of those securities eligible for transfer from the Robinson Partnership to the Fund was $3,058,740 as of May 5, 1980, and there were unrealized gains and losses of $305,471 and $102,040, respectively.

Applicants state that prior to the closing of the transaction certain of the eligible securities may be sold and that the proceeds, to the extent not applied to payment of any Robinson Partnership liabilities, will be reinvested in other eligible securities. Applicants further state that none of the securities eligible for the transfer have been selected for early sale and no specific securities have been selected for investment of any proceeds. In addition, Applicants state that the portfolio of the Robinson Partnership was selected in accordance with the investment policies and by the investment techniques to be applied by IMSC in managing the portfolio of the Fund.

Applicants state that the Fund shares to be received by the Robinson Partnership and any retained portfolio securities will be distributed to its partners in liquidation of the partnership. Applicants further state that those Fund shares distributed to Herbert W. Robinson and IMSC, who will be general partners in the Fund, will be treated as acquired by them in that capacity and under the limited partnership agreement of the Fund will be subject to certain restrictions on transfer. According to the application, the Fund shares to be distributed to the other three Robinson Family members will be issued to them in their capacity as limited partners in the Fund and will be identical in all respects to the Fund shares which will be offered to the public.

Applicants state that the Fund and its organizers have filed with the Internal Revenue Service ("IRS") a request for rulings as to the income tax status of the Fund and its partners and the income tax consequences of the proposed transaction. Applicants further state that it is anticipated that the IRS will rule that the Fund will be classified as a partnership and that its general and limited partners will be treated as partners of the Fund for federal income tax purposes. In addition, Applicants state that it is anticipated that the IRS will rule that no gains or losses will be recognized by the Fund on the transfer of securities from the Robinson Partnership to the Fund. Applicants further state that the IRS has

indicated that it will decline to rule on whether gain or loss will be recognized on the transfer by the Robinson Partnership and on whether Fund's adjusted basis for the property received will be the same as the adjusted basis for the property while in the possession of the Robinson Partnership. According to the application, unrealized gains or losses of the Robinson Partnership on the date of the transfer will be treated as unrealized gains or losses of the Fund immediately following the transfer.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company or any affiliated person of such person knowingly to sell to or to purchase from such registered company any security or other property subject to certain exceptions not relevant here. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company involved and with the general purposes of the Act. Under Section 2(a)(3) of the Act an investment adviser to an investment company is an affiliated person of such investment company, any person controlled by or under common control with another person is an affiliated person of such person, anyone owning more than 5% of another person's outstanding voting securities is an affiliated person of that person and any partner or co-partner of another person is an affiliated person of that person. Accordingly, since each member of the Robinson Family is a partner in the Robinson Partnership, each member of the Robinson Family is an affiliated person of an affiliated person of the Fund. In addition, since Herbert W. Robinson and IMSC are general partners of the Fund and Keith B. Robinson is a limited partner thereof, both individuals are co-partners with the investment adviser to the Fund and therefore are affiliated persons of an affiliated person of the Fund. Moreover, in view of the interests which members of the Robinson Family have in the Robinson Partnership, and propose to have in the Fund, the Robinson Partnership and the Fund may be deemed to be under common control. For these reasons the proposed transfer of the securities of the Robinson Partnership to the Fund falls within the provisions of Section 17(a) of the Act.

Applicants assert that the terms of the proposed transaction are fair and reasonable and do not involve overreaching. Applicants state that the effect upon public investors of the carry-over to the Fund of the Robinson Partnership basis for its securities is possible accrual of a tax liability or a tax benefit subject to later offset. According to the application, this is because the tax liability attributable to Fund income and gains will ultimately be offset by increases in the investors' basis for their investments in the Fund, and any tax benefit obtained by reason of Fund losses or credits will also be offset by reduction in the investors' basis for their Fund shares. Applicants further state that the duration of the period between accrual of the tax liability or benefit, if any, and its offset is not susceptible to any present estimate and that no dollar amount can be computed or estimated as representing the benefit or detriment to Robinson Family or to public investors in the Fund by reason of the transfer of the assets of the Robinson Partnership without recognition of gain or loss. Applicants state that the terms of the proposed transaction, including the tax status of the exchange, will be fully disclosed to potential investors in the Fund's prospectus.

Applicants represent that the use of net asset value as the basis for the exchange was approved by the Director General Partners of the Fund whose only interest in or connection with the Fund, IMSC, or the Robinson Partnership is their status as Director General Partners of the Fund and owners of one Fund share each. Applicants state that since the value of the securities of the Robinson Partnership to be acquired by the Fund will be based on the market value of such securities at the close of business on the date of transfer, the exchange will be effected on a basis that is fair to the Fund and the Robinson Partnership. According to the application, Fund shares are to be offered to the public at net asset value plus a sales load of one percent on purchase of up to $500,000 and one-half of one percent on the excess of any purchase over $500,000. Applicants further state that there will be a charge, to be continued only so long as the Fund remains in limited partnership form, of one-half of one percent of net asset value payable to the Fund which is intended to offset estimated expenses to be incurred by the Fund in processing partnership applications of new investors and investing the additional moneys received. However, Applicants state none of these charges is to be made in connection with the proposed exchange. Applicants assert that because

no sales expenses will be incurred by the Fund in connection with the exchange, no brokerage expenses will be incurred and because the Fund is receiving an assembled portfolio with no changes contemplated in the immediate future it is not appropriate to impose any sales or expense charge in connection with effecting the proposed exchange.

Applicants state that the Fund will make available to upper income investors an investment vehicle with features specifically designed to meet the needs of such investors. Applicants contend that it will be advantageous to public investors to have the Fund start with a substantial asset base provided by the Robinson Partnership, demonstrating the Robinson Family's confidence in the new Fund. According to Applicants, these factors should encourage investment in the Fund by the public and reduce the selling effort required. Finally, Applicants argue that the initial investment of the Robinson Partnership plus the funds provided by public investors will permit the spreading of overhead expenses over a broader asset base and should contribute to the long-term success of the Fund. Thus, Applicants contend that the terms of the proposed sale are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed sale is consistent with the Fund's investment policy and with the general purposes of the Act. Applicants therefore request that the Commission enter an order exempting the proposed sale from the provisions of Section 17(a) of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 18, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11275/July 24, 1980

In the Matter of

CONSOLIDATED RAIL CORPORATION
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

(812-4662)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING CONRAIL EQUITY CORPORATION FROM ALL PROVISIONS OF THE ACT

Consolidated Rail Corporation ("Applicant"), a Pennsylvania corporation created pursuant to the provisions of the Regional Rail Reorganization Act of 1973, as amended, filed an application on April 11, 1980, and amendments thereto on June 5, 1980, and July 22, 1980, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Conrail Equity Corporation ("CEC"), a proposed subsidiary of Applicant which will be incorporated to facilitate the establishment of Applicant's noncontributory employee stock ownership plan, from all provisions of the Act.

On June 25, 1980, a notice was issued (Investment Company Act Release No. 11232) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the requested exemption of CEC from all provisions

of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption of CEC from all provisions of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11276/July 24, 1980

In the Matter of

G.T. PACIFIC FUND, INC.
601 Montgomery Street, Suite 1400
San Francisco, California 94104

(812-4048)

ORDER AMENDING A PRIOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM CERTAIN PROVISIONS OF RULE 22c-1 UNDER THE ACT, AND PURSUANT TO SECTION 22(e)(3) OF THE ACT

G.T. Pacific Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 20, 1980, and an amendment thereto on May 16, 1980, seeking an order of the Commission amending an earlier order of the Commission dated May 3, 1977 (Investment Company Act Release No. 9748). This earlier order ("Prior Order"), pursuant to Sections 6(c) and 22(e)(3) of the Act, exempted Applicant from certain provisions of Rule 22c-1 under the Act, to permit Applicant to calculate the net asset value of its shares as of the close of trading on the Tokyo Stock Exchange ("TSE") next occurring after the close of the New York Stock Exchange ("NYSE") and, as limited by certain undertakings made by Applicant, permitted Applicant to suspend the right of redemption and postpone the date of payment or satisfaction upon redemption of any redeemable security for more than seven days after proper tender of such security during periods when (a) the TSE is closed, for other than customary weekend or holiday closings, or (b) trading thereon is restricted. The amended order changes the basis upon which the Section 22(e)(3) portion of the Prior Order can be exercised.

On June 27, 1980, a notice was issued (Investment Company Act Release No. 11235) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found to be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to issue an order, amending the Prior Order, approving the withdrawal by Applicant of an undertaking made in connection with the Section 22(e)(3) portion of the Prior Order, to permit the Prior Order to remain effective subject to the following undertaking: (1) that Applicant shall only utilize the Prior Order so long as 50 percent or more of the value of Applicant's portfolio securities consist of securities, (a) of issuers domiciled in Japan, Hong Kong, Singapore, Malaysia, the Philippines, Australia and New Zealand and (b) purchased on the TSE or exchanges in those countries, and (2) that in the event that Applicant's portfolio shall consist of less than 50 percent in value of securities of such Fair Eastern issuers purchased on such Fair Eastern exchanges, Applicant undertakes to promptly inform the Commission thereof and promptly thereafter comply with the provisions of Section 22(e) of the Act as then in force and effect. Accordingly,

IT IS ORDERED, pursuant to Sections 6(c) and 22(e)(3) of the Act, that the application for amendment of the Commission's order dated May 3, 1977, contained in Investment Company Act release No. 9748, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9134/July 18, 1980

UNITED STATES OF AMERICA v. *MICHELE SINDONA*, S75 Cr. 948 (S.D.N.Y.) (TPG)

John S. Martin, Jr., United States Attorney for the Southern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on June 13, 1980, Michele Sindona ("Sindona"), former director of Franklin New York Corporation ("FNYC") and chairman of its International Executive Committee, was sentenced to 25 years imprisonment and fined $207,000 in connection with his March 27, 1980 conviction for conspiracy to defraud Franklin National Bank ("FNB"), FNYC, Talcott National Corp. and others, securities fraud, misapplication of funds, making false entries in the books of FNB and FNYC, and perjury. *United States of America* v. *Michele Sindona*, S75 Cr. 948 (S.D.N.Y.) (TPG). Sindona was convicted by a federal jury of 65 counts of a 66 count indictment.

Sindona remains a defendant in a related civil injunctive action entitled *SEC* v. *Harold V. Gleason, et al.*, 74 Civil 4557 (S.D.N.Y.) (DBB).

It is further announced that, on April 23, 1980, Carlo Bordoni ("Bordoni"), formerly a director of FNYC and a member of its International Executive Committee, was sentenced to seven years imprisonment, five years probation and fined $20,000 in connection with his guilty plea in *United States of America* v. *Michele Sindona and Carlo Bordoni*, S75 Cr. 948 (S.D.N.Y.) (TPG). As a condition of probation, Judge Griesa ordered that Bordoni submit voluntarily to extradition to Italy, where he faces charges of bank fraud.

Additionally, on May 29, 1980, Peter R. Shaddick ("Shaddick"), formerly Executive Vice Chairman of FNB and FNYC and a director of FNYC, was sentenced to three years imprisonment and fined in connection with his December 3, 1975 guilty plea to four counts of an indictment returned on September 29, 1975 charging him, among other things, with conspiracy, misapplication of funds, making false entries in the books of FNYC and making false statements to obtain a loan. *United States* v. *Peter R. Shaddick*, 75 Cr. 948 (S.D.N.Y.).

Both Bordoni and Shaddick previously consented to the entry of final judgments of permanent injunction in *SEC* v. *Harold V. Gleason, et al.*, 74 Civil 4557 (S.D.N.Y.) (DBB).

For further information, see Litigation Release Nos. 6551, 7886, 8495, 8549, and 8716.

Litigation Release No. 9135/July 21, 1980

SECURITIES AND EXCHANGE COMMISSION v. *N. ROUNTREE YOUMANS, ET AL.* (United States District Court for the Eastern District of Tennessee) Civil Action No. C-1-79-216

Jule B. Greene, Administrator of the Atlanta Regional Office of the Securities and Exchange Commission, announced that on June 24, 1980 the Honorable Frank W. Wilson, United States District Judge for the Eastern District of Tennessee, at Chattanooga, entered a Judgment of Permanent Injunction against John Vorder-Bruegge. The order enjoins him from further violations of the antifraud provisions and from aiding and abetting further violations of the periodic reporting and proxy provisions of the federal securities laws. The judgment was entered with the consent of Vorder-Bruegge in which he neither admitted nor denied the allegations of the Commission's Complaint.

The Complaint filed on September 17, 1979 alleged that Vorder-Bruegge and others had violated and aided and abetted violations of the federal securities laws in the course of their activities as officers and directors of Hamilton Bancshares, Inc. ("HBI"), a Chattanooga, Tennessee bank holding company now in receivership. Vorder-Bruegge was alleged to have had knowledge of the seriously deteriorating financial condition of Hamilton Mortgage Corporation, an HBI subsidiary, and of the adverse financial impact it had on its parent's books and

records, yet failed to disclose such information to the Commission, HBI shareholders, or the investing public.

Litigation in this matter continues concerning two remaining defendants. (See L.R. 8893)

Litigation Release No. 9136/July 22, 1980

SECURITIES AND EXCHANGE COMMISSION v. *HEINICKE INSTRUMENTS COMPANY, INC., ET AL.*, (S.D. Fla., Civil Action No. 79-6265-CIV-NCR)

Jule B. Greene, Administrator, Atlanta Regional Office, and the Miami Branch Office of the Securities and Exchange Commission announced that on July 10, 1980, the Honorable Norman C. Roettger entered a Judgment of Permanent Injunction against Heinicke Instruments Company, Inc. ("Heinicke"). Heinicke consented, without admitting or denying the allegations in the Commission's complaint relating to violations of the periodic reporting and proxy provisions of the federal securities laws. The Commission and Heinicke stipulated to dismiss, with prejudice, the counts in the complaint alleging violations of the antifraud provisions of the federal securities laws.

The Judgment of Permanent Injunction provides for the establishment of a committee, consisting of outside directors, to adopt written procedures to be formally adopted by the board of directors, which procedures shall provide for full reports to the board of directors by management concerning any proposed or contemplated purchases or acquisitions, by Heinicke or its subsidiaries, of any plans, specifications, engineering reports, models, or prototypes to assist Heinicke in research or development of any new product line and/or services, or to assist Heinicke in research or development of any improvements or modifications to existing product lines. Said reports by management to the board of directors shall be made prior to the purchase or acquisition. Further, the Judgment provides for the establishment of a committee of outside directors to periodically review the direct and indirect compensation of Heinicke's officers so as to ascertain whether the remuneration received by said officers bears a reasonable relationship to the value of the services performed by such officers in connection with the business enterprise engaged in by Heinicke, and to make, upon completion of such review, any recommendations as to such changes and adjustments in officer's compensation as the compensation committee deems necessary and appropriate. Heinicke was further ordered to prepare and file with the Commission a report on Form 8-K containing a description of the subject matter of the complaint, and all material developments since September, 1974 as they bear on the subject matter of the complaint.

With respect to defendant Rolf G. Franz ("Franz"), the Commission and Franz entered into a stipulation dismissing the complaint against Franz, without prejudice. Pursuant to said stipulation, Judge Roettger entered an order dismissing the complaint as to defendant Franz.

For further information see Litigation Release No. 8759/May 17, 1979.

Litigation Release No. 9137/July 23, 1980

SEC v. *GENERAL PRACTITIONERS INDEMNITY LIMITED: PIETRO JOHN MUSCARI, JR.* (U.S.D.C., E.D. of Mich., S. Div., Civil Action No. 80-72078)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission announced that on July 15, 1980, the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, entered a Final Judgment of Permanent Injunction against General Practitioners Indemnity Limited, a Grand Cayman corporation, and Pietro John Muscari, Jr., sole beneficial shareholder of General Practitioners. The judgment was entered pursuant to the consent of the defendants in which they neither admitted or denied the allegations in the complaint filed on June 6, 1980.

The complaint alleged that the defendants violated the registration provisions of the Securities Act of 1933 and the antifraud provisions of the Securities Act and the Securities Exchange Act of 1934 in connection with the offer and sale of debentures issued by General Practitioners. According to the complaint, the defendants misrepresented material facts and omitted to state material facts concerning, among other things, application and use of proceeds from the sale of the securities, rate of return to be

received by purchasers; the prior experience of Muscari in the establishment and operation of a business venture specializing in the medical malpractice insurance business; the financial condition of General Practitioners; and the actual operating fund established to conduct the business of General Practitioners.

Litigation Release No. 9138/July 23, 1980

SEC v. FREDERICK L. ROSS, ET AL. (S.D. Oh.) CIVIL NO. C2-80-609

William D. Goldsberry, Administrator of the Chicago Regional Office, announced that on July 17, 1980, a complaint was filed in the U.S. District Court for the Southern District of Ohio, Eastern Division, seeking to enjoin Frederick L. Ross (Ross), Dublin, Ohio; James R. Neeb (Neeb), Worthington, Ohio; Jack A. Wilson (Wilson), Gahanna, Ohio; and Stanley C. Miller (Miller), Columbus, Ohio from violating certain of the registration and antifraud provisions of the Federal securities laws.

The Commission's complaint alleges that, from approximately October, 1977, Ross and Neeb, joined in March, 1978 by Wilson and Miller, sold an aggregate of approximately $1,178,600 of unregistered interests in three (3) oil and gas limited partnerships to approximately 112 investors. The proceeds were used for non-partnership related purposes, and the wells were never drilled.

The Complaint also alleges that the defendants misrepresented material facts and omitted to state material facts concerning, among other things: the uses of the proceeds derived from the sale of the limited partnership interests; the anticipated return on investment and the time period when these returns would be received; the value of lands under lease; the financial condition of the companies; the lack of access to company records; and the profits received by Ross.

Litigation Release No. 9139/July 23, 1980

SECURITIES AND EXCHANGE COMMISSION v. ROCKY H. AOKI AND TAKASHI SASAKAWA (United States District Court for the Southern District of New York) (Civil Action No. 80-4280)

The Securities and Exchange Commission today announced the filing of a Complaint in the United States District Court for the Southern District of New York against Rocky H. Aoki ("Aoki") alleging violations of the antifraud and beneficial ownership reporting provisions of the Securities Exchange Act of 1934 ("Exchange Act") and against Takashi Sasakawa ("Sasakawa") alleging violations of an antifraud provision of the Exchange Act. Simultaneously with the filing of the Complaint, the Court entered a Stipulation and Order which ordered Sasakawa not to purchase or sell securities while in the possession of material non-public information concerning such securities or the issuer thereof, without disclosing such information to those persons from whom he is purchasing or selling the securities. The Stipulation and Order terminated the action with respect to Saskawa. Aoki was not a party to the Stipulation and Order and remains a defendant in the Commission's action.

The Commission alleged in its Complaint that Aoki and Sasakawa violated the antifraud provisions of the Exchange Act by purchasing the common stock of Hardwicke Companies Incorporated ("Hardwicke") on the basis of material non-public information concerning the potential management by Hardwicke of a hotel and gambling casino to be developed by Aoki, Sasakawa and others on the site of the Shelburne Hotel in Atlantic City, New Jersey. It is also alleged in the Complaint that Aoki, who during the relevant time period was a director of Hardwicke, transmitted such information to others who purchased Hardwicke stock. It is alleged that on the basis of this information, during the period from July 6 through July 7, 1978, Aoki purchased 1,400 shares of Hardwicke common stock for his own account and ordered the purchase of 4,500 shares for accounts in the names of various of his relatives and a friend, at prices between $11 and $13½, and that during the period from June 23 through July 7, 1978, Sasakawa purchased 52,900 shares of Hardwicke common stock, at prices from $7-3/8 to $15-1/2.

It is further alleged in the Complaint that on October 15, 1976, Aoki acquired beneficial ownership of Hardwicke securities such that his total beneficial ownership was greater than 5% of the then total outstanding shares of Hardwicke common stock, and that thereafter, though Aoki's percentage ownership of the total outstanding shares of

Hardwicke common stock was continuously greater than 5%, he failed to file a report of such beneficial ownership, thereby violating Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

It is further alleged in the Complaint that Aoki violated Section 16(a) of the Exchange Act and Rule 16a-1 thereunder by failing to timely file an initial report of his beneficial ownership of Hardwicke securities on Commission Form 3, after becoming a director of Hardwicke on December 14, 1976, and thereafter failing to timely file reports on Form 4, reporting monthly changes in such beneficial ownership.

In the Stipulation and Order, Sasakawa undertakes to disgorge the aggregate sum of $42,975 to the sellers of Hardwicke common stock from whom he purchased the stock during the period from June 23 through July 7, 1978.

Litigation Release No. 9140/July 24, 1980

SEC v. *JOHN P. HUBERTY* (District of Minn., Civil Action File No. 4-80-330)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on June 30, 1980, United States District Judge Miles W. Lord preliminarily enjoined John P. Huberty of Minnetonka, Minnesota from further violations of the antifraud provisions of the Federal securities laws. In addition, the receiver previously appointed under the temporary restraining order entered on June 13, 1980 was continued and authorized, among other things, to make an accounting of and prevent the disposition of Huberty's assets. Furthermore, Huberty was ordered to disgorge all funds and assets which he received from June 1, 1978 through June 20, 1980, except such funds and assets which are established to be the separate property of Huberty.

The Commission's Complaint, which was filed on June 13, 1980, alleged that Huberty had violated the antifraud provisions in obtaining approximately $1.3 million from at least 35 individuals and entities purportedly for the purchase of securities. The Complaint further alleged that instead of purchasing securities, Huberty used the funds to purchase commodities for his own account, speculate in interest rate futures, and buy real estate for himself.

Litigation Release No. 9141/July 24, 1980

S.E.C. v. *BRIAN PATRICK SMITH* (S.D.N.Y. 80 Civil 3659)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on June 27, 1980 a complaint was filed against Brian Patrick Smith ("Smith") of Flushing, New York, in the United States District Court for the Southern District of New York. The complaint charges Smith with violating Sections 7(f) and 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder and Regulation X promulgated by the Board of Governors of the Federal Reserve System by placing orders for the purchase of the common stock of Jupiter Development Corporation, Ltd. ("Jupiter") without intending to pay, and failing to make timely and proper payment for said purchases. Jupiter is a publicly owned corporation with executive offices located in Edmonton, Alberta and Toronto, Ontario; it is primarily engaged in energy and mining exploration and development projects.

The complaint alleges that between January and May of this year Smith ordered the purchase of 38,100 shares of Jupiter stock for a total purchase price of $237,584.60 through two brokerage firms located in Portland, Oregon and failed to pay for any of said purchases. The complaint further alleges that during the same period Smith ordered additional shares of Jupiter stock through a brokerage firm in New York City and tendered six (6) personal checks amounting to $145,667 in payment for said shares; these checks were all returned unpaid for insufficient funds or because the accounts on which the checks were drawn were closed. The Commission's complaint seeks temporary and permanent injunctive relief against Smith.

Litigation Release No. 9142/July 24, 1980

U.S.A. EX REL. S.E.C. v. *GERALD GREENSPAN* 80 Cr. Misc. No. 1 (P. 35) (S.D.N.Y.) (EW)

Stephen L. Hammerman, Administrator of the New York Regional Office ("NYRO"), announced that on June 13, 1980, the Honorable Thomas P. Griesa, United States District Judge in the Southern District of New York, signed an Order directing Gerald

Greenspan ("Greenspan") of Brooklyn, New York, to show cause before the Honorable Edward Weinfeld why he should not be adjudged in criminal contempt of court for disobeying three prior injunctive decrees issued against him which arose out of actions brought by the Commission. Following unsuccessful attempts to effect personal service of the Order to Show Cause on Greenspan, the Honorable Vincent L. Broderick issued an Order of Arrest on June 18, 1980. Greenspan was apprehended by a United States Marshall in New York City on July 8, 1980 and was arraigned before Judge Weinfeld who set bail at $20,000. A further arraignment hearing has been scheduled for July 14, 1980 at 10:00 a.m.

Greenspan was previously convicted of criminal contempt on January 26, 1979, in *U.S.A. ex rel. S.E.C.* v. *Greenspan*, 78 Cr. Misc. No. 1 (P. 41) (S.D.N.Y.) (EW), and served four and one-half months of a six month prison sentence in that action. In its application for its Order to Show Cause instituting the instant criminal contempt proceeding, the Commission alleged that, following Greenspan's release from prison on November 7, 1979, he again engaged in violations of Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder in connection with the securities of Hiller Aviation, Inc. (formerly Family Record Plan, Inc.) and other securities and also violated other provisions of the previous injunctive decrees issued against him.

For further information see LR-1820, 1832, 6954, 7008, 8622, 8672, 8986, 9018.

Litigation Release No. 9143/July 24, 1980

S.E.C. v. *JACK W. SHERWOOD* (USDC Colo. Civil Action No. 80-K-895)

Robert H. Davenport, Regional Administrator of the Denver Regional Office of the Securities and Exch;ange Commission, announced that on July 14, 1980 the Honorable John Kane, Judge, U.S. District Court, District of Colorado, entered an order (1) permanently enjoining Jack W. Sherwood from violating the antifraud provisions of the securities laws in connection with options to purchase or sell common stock of any issuer; (2) requiring that Sherwood give 60 days notice to the Commission prior to his becoming an affiliated person or an employee of any entity or person which is registered with the Commission as a broker or dealer and the Commission, upon receipt of such notice in its discretion may institute proceedings against Sherwood; and (3) ordering Sherwood to file an affidavit of his financial condition with the Court, and the Commission upon receipt of such affidavit has leave to file a motion seeking disgorgement.

Sherwood was a former registered representative of the Denver, Colorado office of a registered broker-dealer. The Complaint alleged, among other things, that Sherwood induced unsophisticated investors to trade in options and that Sherwood made false statements concerning the following: safety of trading in options, profits to be received from trading in options and the meaning, interpretation, and accuracy of brokerage firms' customer monthly account statements and similar records. (*S.E.C.* v. *Jack W. Sherwood* Civil Action USDC Colo. No. 80-K-895).

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RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	16986A-17006-37	835
Public Utility Holding Company Act	21666-68	854
Investment Company Act	11277-84	858
Litigation	9144-48	872

This listing covers releases issued from 7/25/80-7/31/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS RULES

AUG 18 1980
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DEPOSITORY 376

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-16986A	34-17013	34-17027
34-17006	34-17014	34-17028
34-17007	34-17020	34-17029
34-17012	34-17024	34-17030

IC-11277 Adoption of a temporary rule providing exemptions to certain money market funds.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16986A/July 28, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-13)

ORDER STAYING EFFECTIVENESS OF PROPOSED RULE CHANGE

On July 18, 1980, Securities Exchange Act Release No. 16986 was issued approving a proposed rule change by the American Stock Exchange, Inc. (SR-Amex-80-13) to amend the exchange's Constitution

SE 1.29

and rules to eliminate the requirement that the principal purpose of every member and member organization be the transaction of business as a broker or dealer in securities.

The effective date of this approval has been stayed until notice is filed by the exchange that its membership has approved the proposed rule change, thereby completing all action required for effectiveness.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17006/July 25, 1980

NOTICE OF FILING OR PROPOSED RULE CHANGE BY THE PACIFIC CLEARING CORPORATION

(File No. SR-PCC-79-1)

The Pacific Clearing Corporation submitted on July 22, 1980, a proposed rule change which amends File No. SR-PCC-79-1 concerning the establishment of a new participants' agreement.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 28, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PCC-79-1.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17007/July 25, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE BOSTON STOCK EXCHANGE CLEARING CORPORATION

(File No. SR-BSECC-80-2)

The Boston Stock Exchange Clearing Corporation submitted on July 18, 1980, a proposed rule change deleting a two cent per share fee on trades executed through the Intermarket Trading System.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 28, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-BSECC-80-2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17008/July 25, 1980

A notice has been issued giving interested persons until August 15, 1980 to comment on the application of the *Philadelphia Stock Exchange* for unlisted trading privileges in the common stock ($.62½ par value) of ELI LILLY & COMPANY.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17009/July 25, 1980

An order has been issued granting the application of FILMWAYS, INC. to withdraw its 6% Convertible Subordinated Debentures (due 1-15-88) from listing and registration on the *American Stock Exchange*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17010/July 25, 1980

In the Matter of

A. G. EDWARDS & SONS, INC., ET AL.

The Securities and Exchange Commission has ordered public administrative proceedings under the Securities Exchange Act of 1934 ("Exchange Act") against: A. G. Edwards & Sons, Inc. ("Edwards"), a registered broker-dealer with its principal place of business in St. Louis, Missouri; Jackie G. Tindel ("Tindel"), a former registered representative in Edwards' Dallas, Texas office; Jimmy J. Beale ("Beale"), manager of the Dallas office; Doyce G. Chestnutt ("Chestnutt"), a former branch manager in Edwards' Lubbock, Texas office; and Mark A. Wiltshire ("Wiltshire"), a registered representative in Edwards' Tulsa, Oklahoma office.

The Order for Proceedings alleges that Edwards, Tindel, Chestnutt, and Wiltshire wilfully violated and wilfully aided and abetted violations of the antifraud provisions of the Securities Act of 1933 ("Securities Act") and of the Exchange Act in connection with soliciting and transacting options business with public investors. The Order also alleges that Edwards failed to reasonably supervise Tindel and Chestnutt and that Beale failed to reasonably supervise Tindel with a view toward preventing their alleged violations.

Specifically, the Order alleges that at various times during the period September, 1974 to in or about June, 1979, Edwards, Tindel, and Chestnutt, in inducing public customers to trade in options and maintain option accounts with them, made false and misleading statements of material facts and omitted to state material facts concerning, among other things, the risks inherent in option trading strategies, the impact of commissions upon customer accounts, the kinds of options strategies that would be effected for such customer accounts, potential profits and rates of return realizable from option trading strategies, and the suitability of these trading strategies to their customers' financial situations, investment sophistication, and investment objectives.

The Order also alleges that Edwards, Tindel, and Chestnutt caused certain of their respective customers, who could not afford the risk and did not sufficiently understand the risk, margin requirements, mechanics and other fundamental aspects of option trading strategies, to open option trading accounts and purchased and sold options notwithstanding that such transactions were not suited to the financial situations, investment sophistication, and investment objectives of certain of these customers. In addition, Tindel and Chestnutt effected options transactions beyond the scope of their authority granted by their customers and by Edwards.

The Order further alleges that Edwards and Chestnutt effected purchase and sale transactions in options and related securities which were excessive in size and frequency in view of the financial resources, investment sophistication, and investment objectives of such customers.

The Order further alleges that Edwards and Wiltshire, in inducing customers to purchase options and common stock, made false and misleading statements of material facts and omitted to state material facts concerning, among other things, the existence and possession of material, non-public information concerning certain

corporate acquisition situations; the risks inherent in speculating in potential corporate acquisition target companies; and the risks inherent in certain option strategies.

Edwards, Beale, Chestnutt, and Wiltshire have submitted Offers of Settlement which have been accepted by the Commission (see Securities Exchange Act Release No. 17011). A hearing will be scheduled to determine whether or not the allegations against Tindel are true, and, if so, to decide what, if any, remedial action is necessary in the public interest.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17011/July 25, 1980

Admin. Proc. File No. 3-5947

In the Matter of

A. G. EDWARDS & SONS, INC.
(8-13580)
JIMMY J. BEALE
DOYCE G. CHESTNUTT
MARK A. WILTSHIRE

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these proceedings ordered today pursuant to the Securities Exchange Act of 1934 ("Exchange Act"), Respondents A. G. Edwards & Sons, Inc. ("Edwards"), Jimmy J. Beale ("Beale"), Doyce G. Chestnutt ("Chestnutt"), Mark A. Wiltshire ("Wiltshire"), have submitted Offers of Settlement which the Commission has determined to accept.[1] Solely for the purpose of settling these proceedings and without admitting or denying the allegations contained in the Order for Proceedings, the above Respondents consent to the findings of violations and sanctions contained in this Order.[2]

II.

In its Offer of Settlement, Edwards undertakes to:

A. Create an option compliance review committee which would consist of its Registered Options Principal, its Compliance Registered Options Principal, the Manager of its Options Department, its Compliance Director and its Executive Vice President. The functions of the committee will be to oversee the firm's options compliance policies and procedure and to review unresolved customer complaints. Within three months after the date of the Commission's Order accepting this Offer, Edwards will file a detailed description of the functions of the committee with the Fort Worth Regional Office ("FWRO") of the Commission. In addition, for one year after the date of the Commission's Order, Edwards will file a quarterly report of the record of proceedings of the committee with the FWRO and the Chicago Regional Office ("CRO") of the Commission.

B. Develop written parameters and guidelines for opening new option accounts. The firm will file copies of these documents with the FWRO and the CRO within three months after the Commission's Order;

C. Revise its branch office inspection procedures. This will include developing a written guide on the mechanics of conducting such inspections and will require its inspectors to conduct option suitability discussions with the firm's registered representatives, as well as to review all problem accounts and a sampling of other options accounts;

D. Verify information from the customer in response to account questionnaires for a period of one year, and on a selective basis thereafter. The firm will also be required to file a copy of the verification procedure with the FWRO and the CRO within three months after the Commission's Order;

E. Require the new account card to reflect the first options transaction, if known;

F. Establish procedures for option account review in accordance with the rules of the self-regulatory organizations and file such procedures with the FWRO and the CRO within three months after the Commission's Order;

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[1]The Order instituting proceedings was entered simultaneously with the Commission's acceptance of their Offers of Settlement.

[2]The findings herein are not binding on any other respondents named in these proceedings.

G. Establish a procedure for reviewing branch manager accounts and file such procedure with the FWRO and the CRO within three months after the Commission's Order;

H. Design a system to detect options trading at unauthorized risk levels and file such system with the FWRO and the CRO within three months after the Commission's Order; and

I. File an affidavit reflecting compliance with the undertakings specified above.

III.

On the basis of the Order for Proceedings and the Offers of Settlement, the Commission finds:

1. Edwards wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with option and common stock transactions in customer accounts as alleged in the Order for Proceedings;

2. Chestnutt and Wiltshire wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with option and common stock transactions in customer accounts as alleged in the Order for Proceedings;

3. Edwards and Beale failed to reasonably supervise employees under their supervision and control as alleged in the Order for Proceedings.

IV.

In view of the foregoing matters, it is in the public interest to impose the sanctions and to accept the undertakings specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, that:

1. Edwards be and hereby is censured, and that it comply with its undertakings contained in its Offer of Settlement and Section II herein.

2. Chestnutt is barred from association with any broker, dealer, investment adviser, investment company, or municipal securities dealer, effective at the opening of business on the second Monday after the date of this Order.

3. Wiltshire is suspended from association with any broker or dealer for a period of five (5) business days effective at the opening of business on the second Monday after the date of this Order.

4. Beale is suspended from association with any broker or dealer for a period of ten (10) business days effective at the opening of business on the second Monday after the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17012/July 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-16

The Chicago Board Options Exchange, Incorporated submitted on July 16, 1980, an amendment to previously filed proposed rules changes under Rule 19b-4. This amendment clarifies certain participation requirements for market makers and requires the recording of additional information on orders entered by market makers.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-16.

Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17013/July 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MIDWEST STOCK EXCHANGE, INC.

File No. SR-MSE-80-13

The Midwest Stock Exchange, Inc. ("MSE") submitted on July 21, 1980, a proposed rule change under Rule 19b-4 to amend Article VIII, Rule 9 of the Rules of the MSE, which governs off-floor transactions, to conform its provisions with the requirements of Commission Rule 19c-3 under the Securities Exchange Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the abovementioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17014/July 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-25

The New York Stock Exchange, Inc. ("NYSE") submitted on July 14, 1980, a proposed rule change under Rule 19b-4 to amend its rules to provide for the operation of the Opening Automated Report Service ("Service") designed to facilitate more efficient and accurate processing of certain orders received by the NYSE through DOT[1] prior to the

[1]"DOT" is the acronym for the NYSE's Designated Order Turnaround System, an application of the Common Message Switch, which permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor.

opening in an individual stock.[2] The five functions of the Service would be

1) to store—but not deliver to the trading post—individual pre-opening market orders;

2) to continuously tabulate these orders; matching buy and sell interest and calculating any remaining imbalance;

3) to inform the specialist of the tabulated buy/sell interest and imbalance [then after the specialist executes the orders in the Service];

4) to electronically receive the opening price in a stock via a single mark-sense card from the specialist; and

5) to disburse automatically—upon receipt of the opening price—machine generated reports to member firms for each stored order.

The Service is designed to achieve system efficiencies which would (i) materially assist specialists in arranging the opening transactions in their assigned stocks through effective automation of several clerical tasks at the trading post for the critical period just prior to the opening, (ii) improve reporting of completed trades through immediate dissemination of execution reports upon the opening of trading, and (iii) result in fewer questioned trades at the opening and, thus, would promote more efficient and accurate clearing and settlement of securities transactions.

Publication of the submission is expected to be made in the *Federal Register* during the week of July 28, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17015/July 28, 1980

In the Matter of

FIDELITY SECURITIES, INC.

(Adm. Proc. No. 3-5948)

The Commission announced that it has instituted public administrative proceedings against Fidelity Securities, Inc. ("Registrant") a broker-dealer in Memphis, Tennessee, and William Melvin Tidwell ("Tidwell"), Paul Carlton Mills ("Mills"), Charles M. Beale ("Beale"), Richard C. Flick ("Flick"), William A. Smith ("Smith"), Thomas D. Owens ("Owens"), Landon M. Hill ("Hill") and Arthur L. Driver ("Driver"), all of whom reside in Memphis and were formerly associated with Registrant.

Simultaneously with the institution of public administrative proceedings, the Commission accepted Offers of Settlement and issued an Order Imposing Remedial Sanctions for eight of the respondents. The Order (1) revoked the registration of Registrant; (2) barred William Melvin Tidwell, Paul Carlton Mills and Arthur L. Driver from association

[2]On March 13, 1980, the Commission approved implementation of the Service on a pilot basis. Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541.

best copy available

with any broker-dealer or investment adviser, provided, however, that they may apply to the Commission to become associated in a non-supervisory capacity after eighteen (18) months; (3) barred Charles M. Beale from association with any broker-dealer or investment adviser, provided, however, that he may apply to the Commission to become associated in a non-supervisory capacity after five (5) years; (4) suspended William A. Smith and Landon M. Hill from association with any broker-dealer or investment adviser for four (4) months and thereafter barred them from association with any broker-dealer or investment adviser in a proprietary or supervisory capacity, provided that eighteen (18) months after the date of the Order they may apply to the Commission to become associated with a broker-dealer or investment adviser in a proprietary or supervisory capacity; and (5) suspended Thomas D. Owens from association with any broker-dealer or investment adviser for sixty (60) days and thereafter barred him from association with any broker-dealer or investment adviser in a proprietary or supervisory capacity, provided that eighteen (18) months after the date of the Order he may apply to the Commission to become associated in a proprietary or supervisory capacity.

The sanctions were based upon findings that (1) Registrant, Tidwell, Mills, Beale, Smith, Owens, Hill and Driver willfully violated the antifraud provisions of the federal securities laws; (2) Registrant violated, and Tidwell and Mills aided and abetted violations of the books and records provisions; and (3) Registrant, Tidwell, Beale, and Mills were enjoined by the United States District Court for the Western District of Tennessee from violating the antifraud provisions of the federal securities laws. The respondents who submitted Offers of Settlement consented to the Order without admitting or denying the allegations.

The administrative proceedings against Richard C. Flick will proceed on the staff's allegations that Flick violated and aided and abetted violations of the antifraud provisions of the federal securities laws by charging excessive prices for securities sold while he was employed by Registrant, and by converting funds and securities of customers entrusted to him while he was selling securities as an unregistered securities broker-dealer doing business as L.N.I.B. and through El Taco, Inc. The proceedings against Flick are also based in part on Flick's conviction in the United States District Court for the Eastern District of North Carolina on charges of securities, mail and wire fraud. A hearing will be scheduled by further order to take evidence on the staff's allegations and to afford the respondent an opportunity to establish any defenses thereto for the purposes of determining whether any action of a remedial nature should be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17016/July 29, 1980

Admin. Proc. File No. 3-5948

In the Matter of

FIDELITY SECURITIES, INC.
WILLIAM MELVIN TIDWELL
PAUL CARLTON MILLS
CHARLES M. BEALE
RICHARD C. FLICK
WILLIAM A. SMITH
THOMAS D. OWENS
LANDON M. HILL
ARTHUR L. DRIVER

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934, respondents Fidelity Securities, Inc., William Melvin Tidwell, Paul Carlton Mills, Charles M. Beale, William A. Smith, Thomas D. Owens, Landon M. Hill, and Arthur L. Driver have submitted Offers of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by the Commission and, without admitting or denying the allegations contained in the Order for Proceedings, said respondents consent to the entry of the findings and sanctions set forth below.

On the basis of the order for proceedings and the Offers of Settlement, it is found:[1]

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[1]The findings herein are not binding on any other respondent named in these proceedings.

(1) That Fidelity Securities, Inc., William Melvin Tidwell, Paul Carlton Mills, Charles M. Beale, William A. Smith, Thomas D. Owens, Landon M. Hill, and Arthur L. Driver willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder;

(2) That Fidelity Securities, Inc. willfully violated and William Melvin Tidwell and Paul C. Mills willfully aided and abetted violations of Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-11 thereunder;

(3) That Fidelity Securities, Inc., William Melvin Tidwell and Paul C. Mills were enjoined by the United States District Court for the Western District of Tennessee from violating Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 15(c)(3) of the Securities Exchange Act of 1934, and Rules 10b-5 and 15c3-1 thereunder on August 15, 1978;[2] and

(4) That Charles M. Beale was enjoined by the United States District Court for the Western District of Tennessee from further violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder on May 27, 1977.[3]

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that:

(1) The registration of Respondent Fidelity Securities, Inc. be and hereby is revoked.

(2) Respondent William Melvin Tidwell be and hereby is barred from association with any broker or dealer or investment adviser; provided, however, that after a period of eighteen (18) months he may apply to the Commission to become so associated in a non-supervisory capacity upon a satisfactory showing that he will be appropriately supervised;

(3) Respondent Paul C. Mills be and hereby is barred from association with any broker or dealer or investment adviser; provvided, however, that after a period of eighteen (18) months he may apply to the Commission to become so associated in a non-supervisory capacity upon a satisfactory showing that he will be appropriately supervised;

(4) Respondent Charles M. Beale be and hereby is barred from association with any broker or dealer or investment adviser; provided that after a period of five (5) years he may apply to the Commission to become so associated in a non-supervisory capacity upon a satisfactory showing that he will be appropriately supervised;

(5) Respondent William A. Smith be and hereby is suspended for a period of four (4) months and thereafter barred from association in any supervisory or proprietary capacity or any position without adequate supervision with any broker or dealer or investment adviser; provided, however, that after a period of eighteen (18) months from the effective date of this Order, he may apply to the Commission to become associated in a supervisory or proprietary capacity;

(6) Respondent Thomas D. Owens be and hereby is suspended from association with any broker or dealer or investment adviser for a period of sixty (60) days and thereafter barred from association in any supervisory or proprietary capacity or any position without adequate supervision with any broker or dealer or investment adviser; provided, however, that after a period of eighteen (18) months from the effective date of this Order, he may apply to the Commission to become associated in a supervisory or proprietary capacity;

(7) Respondent Landon M. Hill be and hereby is suspended from association with any broker or dealer or investment adviser for a period of four (4) months and thereafter barred from association in any supervisory or proprietary capacity or any position without adequate supervision with any broker or dealer or investment adviser; provided, however, that after a period of eighteen (18) months from the effective date of this Order, he may apply to the Commission to become associated in a supervisory or proprietary capacity;

(8) Respondent Arthur L. Driver be and hereby is barred from association with any broker or dealer or investment adviser; provided, however, that after a

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[2] *SEC v. Fidelity Securities, Inc., et al.*, Civil Action No. C-78-2410 (W.D. Tenn.), Litigation Release No. 8520, 15 SEC Docket 1047.

[3] *SEC v. Shelby Bond Service Corp.*, Civil Action No. C-77-2236 (W.D. Tenn.), Litigation Release No. 7965, 12 SEC Docket 811.

period of eighteen (18) months from the effective date of this Order, he may apply to the Commission to become so associated in a non-supervisory capacity upon a satisfactory showing that he will be appropriately supervised.

The sanctions imposed by this Order shall become effective on the second Monday following the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17017/July 28, 1980

In the Matter of

ETI DEVELOPMENT COMPANY, and WILLIAM P. CRUM, JR.

ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these administrative proceedings ordered pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), Respondents ETI Development Company ("ETI Development") and William P. Crum, Jr. ("Crum") have submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings, ETI Development and Crum have consented to the findings of willful violations and sanctions, as set forth below.[1]

II.

On the basis of the Order for Public Proceedings and the Offer of Settlement submitted by ETI Development, it is found that ETI Development willfully violated and willfully aided and abetted violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and willfully aided and abetted violations of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder as alleged in the Order Instituting Proceedings.[2]

On the basis of the Order for Proceedings and the Offer of Settlement submitted by Crum, it is found that Crum willfully violated and willfully aided and abetted violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and willfully aided and abetted violations of Sections 15(c) and 17(a) of the Exchange Act and Rules 15c2-4, 15c3-1, 17a-3 and 17a-5 as alleged in the Order Instituting Proceedings.[2]

III.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer of Settlement submitted by ETI Development and Crum.

Accordingly, IT IS ORDERED that effective the opening of business on the second Monday following the date of this Order:

(1) ETI Development be and hereby is barred from association with a broker-dealer or investment adviser; provided, however, that at the expiration of eighteen (18) months, ETI Development may apply to the Commission to become so associated; and

(2) Crum be and hereby is suspended from association with a broker-dealer or investment adviser for three (3) months and thereafter is barred from association with a broker-dealer or investment adviser in a proprietary or supervisory capacity; provided, however, that Crum may apply to the

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[1]"Willful" in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts.

[2]*ETI Development Company and William P. Crum, Jr.*, Exchange Act Release No. 16583, 19 Docket 654 (February 19, 1980).

Commission to become associated with a broker-dealer or investment adviser in a proprietary or supervisory capacity eighteen (18) months from the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17018/July 29, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 728/July 29, 1980

Admin. Proc. File No. 3-5949

In the Matter of

LEE A. BLUMBERG and
LEE A. BLUMBERG, d/b/a
FINANCIAL CONCEPTS
One Central Plaza
11300 Rockville Pike
Box 23
Rockville, Maryland 20852

ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In anticipation of these proceedings, Lee A. Blumberg (Blumberg), a securities salesman of a broker-dealer and investment adviser registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(c)(1) of the Investment Advisers Act of 1940 (Advisers Act), and Blumberg doing business as an "investment planner" as Financial Concepts, have submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other Commission proceedings, and without admitting or denying the findings herein, respondents Blumberg and Blumberg d/b/a Financial Concepts (Respondents) consent to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED that public administrative proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act, and Section 203(f) of the Advisers Act, be, and they hereby are, instituted.

On the basis of this Order for Proceedings and Offer of Settlement, it is found that Respondents willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206 of the Advisers Act, in connection with offer and sale of mutual fund shares, annuities, Financial Concepts managed accounts, and other securities by failing to disclose that investors' funds were personally used by Blumberg; and that they willfully violated Section 203(a) of the Advisers Act by failing to register with the Commission as investment advisers.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer of Settlement.

Accordingly, IT IS ORDERED that Respondents be, and they hereby are, barred from association with any broker, dealer, investment adviser, or investment company.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17019/July 29, 1980

NOTICE OF FILING OF PROPOSED AMENDMENT TO THE CONSOLIDATED TAPE PLAN BY THE CONSOLIDATED TAPE ASSOCIATION

The Consolidated Tape Association ("CTA") submitted on July 2, 1980, a proposed amendment to the Joint Industry Plan ("Plan") governing the consolidated transaction reporting system ("consolidated system"). The proposed amendment was filed with the Commission pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934[1] ("Act") and Rule 11Aa3-1 thereunder.[2] The

[1] 15 U.S.C. §78k-1(a)(3)(B) (1977).

[2] 17 C.F.R. §240.11Aa3-1.

proposed amendment would conform the Plan to the requirements of Rule 11Aa3-1 under the Act.

The amendment would provide that vendors could retransmit, on a current and continuing basis, the data stream of transaction reports contained in the consolidated system for purposes of creating a moving ticker display. The amendment also would modify the CTA's schedules of charges in order to reflect the fees to be paid by subscribers who receive retransmitted information. As proposed to be modified, the Network A ticker display charge for retransmitted information would be $77 per month for the first unit, and $4 for each additional unit (the current Network A ticker display charge is $93 for the first unit, and $4 for each additional unit and would not be modified), and the Network B retransmitted ticker display charge for retransmitted information would be $26 per month for the first unit and $11 for each additional unit (the current Network B ticker display charge is $42 for the first unit, and $11 for each additional unit and would not be modified).

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. In order to assist the Commission in determining whether to approve the proposed amendment, interested persons are invited to submit written data, views and arguments on the submission within 45 days from the date of publication in the *Federal Register*. Copies of the submission, all subsequent changes, all written statements regarding the proposed amendment which are filed with the Commission, and all written communications relating to the proposed amendment between the Commission and any person, other than those which may be withheld from the public,[3] will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All such communications should refer to File No. S7-433.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17020/July 29, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INC.

File No. SR-PSE-80-13

The Pacific Stock Exchange, Incorporated ("PSE") submitted on July 21, 1980, a proposed rule change under Rule 19b-4 authorizing the PSE's Ethics and Business Conduct Committee to order investigations of possible violations that are within the PSE's disciplinary jurisdiction. The PSE's Board of Governors, its Executive Committee, and its Floor Trading Committee already have the authority to order such investigations.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

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[3]See Section 24(b) of the Act.

[4]17 C.F.R. §200.30-3(a)(27).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17021/July 29, 1980

An order has been issued granting the application of the *New York Stock Exchange* to strike the 7% Cumulative Preferred Stock ($100 Par Value) of LIGGETT GROUP INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17022/July 29, 1980

A notice has been issued giving interested persons until August 19, 1980 to comment on the applications of the *Philadelphia Stock Exchange* for unlisted trading privileges in five stocks. These stocks are listed and registered on another national securities exchange.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17023/July 30, 1980

Admin. Proc. File No. 3-5894

In the Matter of

HYMAN SUTNICK

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act"),[1] respondent Hyman Sutnick ("Sutnick"), vice president of Remit Securities, Ltd., a broker dealer registered with the Commission pursuant to Section 15 of the Exchange Act (8-20323) and a resident of Monsey, New York, has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purposes of this proceeding and without admitting or denying the allegations in the Order for Proceedings and the findings herein, respondent Sutnick consents to the findings and sanctions set forth below.

Findings[2]

On the basis of the Order Instituting Proceedings and Sutnick's Offer of Settlement, the Commission finds that respondent Sutnick wilfully aided and abetted violations of Sections 15(b), 17(a), and 17(f) of the Exchange Act and Rules 15b3-1, 17a-3, 17a-11, and 17f-2 thereunder, and Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the offer of settlement submitted by Sutnick.

Remedial Sanctions

ACCORDINGLY, IT IS ORDERED that respondent Sutnick be, and he hereby is, suspended from association with any broker-dealer in a supervisory capacity pertaining to required books and records for a period of three months and in a proprietary capacity for a period of six months, each suspension to run concurrently.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]The Order Instituting Proceedings in *In the Matter of Remit Securities, Ltd., et al.*, Admin. Proc. File No. 3-5894 was issued by the Commission on March 25, 1980. See Securities Exchange Act Release No. 16700 (March 26, 1980), 19 SEC Docket 14 (April 8, 1980).

[2]The Findings herein are not binding or any other respondent to these proceedings.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17024/July 30, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-18)

ORDER APPROVING PROPOSED RULE CHANGE

On June 23, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to make permanent the rule permitting members of a joint account to trade with each other but not with the joint account.

Notice of the proposed rule change together with the text of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16945, July 1, 1980) and by publication in the *Federal Register* (45 FR 45991, July 8, 1980). The Commission has received no written statements with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the CBOE proposal prior to the thirtieth day after the date of publication of notice of filing thereof, in that unless the proposal is approved the present rule would expire by its terms on July 31, 1980, and would leave without restriction the manner in which members of a joint account may trade.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17025/July 30, 1980

Admin. Proc. File No. 3-5901

In the Matter of

MICHAEL SUTTON WOLFE

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act"), respondent Michael Sutton Wolfe ("respondent"), without admitting or denying the substantive allegations of the Order for Proceedings, has submitted an offer of settlement, which the Commission has determined to accept.

On the basis of the Order for Proceedings and the offer of settlement, the Commission finds that respondent willfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, as alleged in the Order for Proceedings.

It is, therefore, in the public interest to impose the sanctions specified in the offer of settlement.

Accordingly, IT IS ORDERED that, effective forthwith, respondent Michael Sutton Wolfe be, and hereby is, barred from being associated with any broker or dealer, investment company, investment adviser or municipal securities dealer.

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17026/July 30, 1980

A notice has been issued giving interested persons until August 20, 1980 to comment on the application of AUGAT, INC. to withdraw its common stock ($.10 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17027/July 30, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-13

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 18, 1980, a proposed rule change under Rule 19b-4 to delete Sec. 8 of Article III, Section 33, Appendix E to the NASD's Rules of Fair Practice, containing the NASD's "restricted options" rule. In general, the restricted options rule, subject to several exceptions, prohibits individuals from entering an order for an opening options transaction if (1) the exercise price is more than $5.00 out-of-the-money based upon the closing price of the underlying stock in the primary market on the last previous day on which the underlying stock was traded and (2) the closing price of the option was less than $.50 per share on the last previous day on which the option was traded.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-13.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17028/July 30, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-14)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on July 18, 1980, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission copies of a proposed rule change. The proposed rule change would amend Article I, Section 7 and Article XV, Sections 4 and 5 of the NASD's By-Laws to provide that the NASD retains jurisdiction over members and associated persons who have resigned or been terminated until one year after the effective date of their resignation or termination. In addition, the proposed rule change would amend Appendix E under Article III, Section 5 of the NASD's Rules of Fair Practice to change the level at which members are required to report positions in options contracts. The reporting threshold would be increased from 100 to 200 contracts in a particular class of options on the "same side of the market."

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered securities association and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change would conform NASD rules to the rules of other self-regulatory organizations. Accordingly, the Commission believes that accelerated approval of the NASD proposal is necessary and appropriate in order to achieve a consistent and equal regulatory scheme.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17029/July 30, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-30

The New York Stock Exchange, Inc. submitted on July 22, 1980, a proposed rule change under Rule 19b-4 to require the member organizations report to the NYSE certain disciplinary actions taken by such member organizations against their associated persons.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-30.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17030/July 31, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-3)

ORDER APPROVING PROPOSED RULE CHANGE

On March 26, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change which would amend its Arbitration Code, MSRB rule G-35. The proposed rule change would establish a simplified procedure for the resolution of intra-industry disputes involving $5000 or less. MSRB rule G-35 currently provides that all intra-industry disputes subject to the Arbitration Code be submitted to a panel of at least three arbitrators, and that a hearing be held unless waived in writing by all the parties. Under the proposed rule change, such intra-industry disputes ordinarily would be decided without a hearing by a single arbitrator from the securities industry.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13726 (April 8, 1980)) and by publication in the *Federal Register* (45 FR 25981 (April 21, 1980)). No comments with respect to the proposed rule change have been received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17031/July 31, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

United Canso Oil & Gas Ltd.
Common Stock, $1 Par Value (File No. 7-5669)
Texas Oil & Gas Corporation
Common Stock, $.50 Par Value (File No. 7-5672)
Mohawk Rubber Company
Common Stock, $1 Par Value (File No. 7-5673)
Hudson Bay Mining & Smelting Co., Ltd.
Common Stock, No Par Value (File No. 7-5674)
Bow Valley Industries Ltd.
Common Stock, No Par Value (File No. 7-5675)
Westburne International Industries, Ltd.
Common Stock, No Par Value (File No. 7-5676)[1]

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 47775 (July 16, 1980). The Commission has received no comments with respect to these applications.

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Section 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange, Inc. in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17032/July 31, 1980

A notice has been issued giving interested persons until August 21, 1980 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in 22 stocks. These stocks are listed and registered on another national securities exchange.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17033/July 31, 1980

In the Matter of

HARLEYSVILLE MUTUAL INSURANCE COMPANY

File No. 81-623

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Harleysville Mutual Insurance Company (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Sections 13 and 15(d) of that Act.

It appears to the Commission that the requested exemption is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17034/July 31, 1980

In the Matter of

CORTERRA CORPORATION

File No. 81-625

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order exempting CorTerra Corporation (the "Applicant") from the periodic reporting requirements under Section 13 of the Securities Exchange Act of 1934, other than reports on Form 8-K, and an abbreviated unaudited Annual Report on Form 10-K for fiscal year ending June 30, 1980. The

Applicant has adopted a Plan of Complete Liquidation and Dissolution. It appears to the Commission that the requested exemption is not inconsistent with the public interest or the protection of investors, and that no significant benefit will accrue to investors or the public if the Applicant is required to file the subject reports.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17035/July 31, 1980

In the Matter of

CONGENERIC CORPORATION

File No. 81-627

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Congeneric Corporation (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the provisions of Sections 13 and 14 of the 1934 Act.

As the result of a plan of liquidation adopted on March 28, 1979 the Applicant's remaining assets were transferred to a liquidating trust as a liability reserve fund and there is virtually no trading activity in its securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17036/July 31, 1980

In the Matter of

WACOAL CORPORATION

File No. 81-630

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until August 25, 1980 to request a hearing on an application by Wacoal Corporation ("Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934 ("1934 Act"), for an order exempting Applicant from the reporting requirements of Section 15(d) of the 1934 Act.

The Applicant is a Japanese Corporation which had 34 United States resident holders of its common stock and American Depositary Receipts as of September 1, 1979.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17037/July 31, 1980

In the Matter of

WARNER-LAMBERT INTERNATIONAL CAPITAL CORPORATION

File No. 81-624

NOTICE OF APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until August 25, 1980 to request a hearing on an application by Warner-Lambert International Capital Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act"), for an order exempting the Applicant from the reporting requirements of Section 13 of the 1934 Act.

The Applicant is a wholly owned subsidiary of Warner-Lambert Company which files reports pursuant to Section 13 of the 1934 Act. The Applicant's 4-1/4% Debentures are its only class of securities registered under the 1934 Act. The Debentures are fully guaranteed by Warner-Lambert Company, and holders of Debentures can be fully informed as to their investment by referring to the reports filed by Warner-Lambert. Applicant has undertaken to report on Form 8-K the occurrence of any event which would materially affect the right of the holders of Debentures.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21666/July 28, 1980

In the Matter of

THE NARRAGANSETT ELECTRIC COMPANY
Providence, Rhode Island

(70-6470)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTAGE BONDS

The Narragansett Electric Company ("Narragansett"), a subsidiary of New England Electric System, has filed an application-declaration and an amendment thereto pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following transactions.

Narragansett proposes to issue and sell First Mortgage Bonds ("Bonds") not to exceed $20,000,000 principal amount, to bear interest at such rate and to be issued at such price as shall be determined by competitive bidding. The terms and conditions relating to bids provide that each bid shall specify the interest rate (which shall be a multiple of 1/8 of 1%) to be borne by the Series M Bonds, and the price to be paid to Narragansett, which shall be not less than 98% of the principal amount nor more than 101-3/4%. The Series M Bonds will bear interest from the date on which bonds of the series are first certified. Interest will be paid semi-annually on February 1 and August 1. Narragansett will publicly invite sealed, written bids for the purchase of the Series M Bonds at least six days prior to entering into any contract or agreement for the issuance or sale.

The Series M Bonds will be issued under a First Mortgage Indenture and Deed of Trust dated as of September 1, 1944, as amended and supplemented, and will be secured, along with all other bids issued under the Indenture, by a first mortgage on substantially all properties now owned and, to the extent permitted by law, thereafter acquired by Narragansett, except for the properties specifically excepted from the lien of the Indenture.

The proceeds from the sale of Series M Bonds, estimated at approximately $20,000,000 will be applied (a) to the payment in part of short-term debt incurred to retire $22,750,000 of Series K Bonds, 10-1/2%, maturing August 1, 1980, (b) retirement of short-term indebtedness incurred or to be incurred for capitalizable expenditures, (c) to pay for such expenditures or to reimburse the treasury therefor, or (d) to any combination thereof.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $200,000, including $50,000 for printing costs, $25,000 for trustee fees, $14,000 for accountant's fees and $80,000 for services performed at cost by New England Power Service Company, an affiliate. The Division of Public Utilities and Carriers, Department of Business Regulation of the State of Rhode Island has authorized the proposed transactions. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21638), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21667/July 30, 1980

In the Matter of

COLONIAL GAS ENERGY SYSTEM
73 East Merrimack Street
Lowell, Massachusetts 01853

LOWELL GAS COMPANY
95 East Merrimack Street
Lowell, Massachusetts 01853

CAPE COD GAS COMPANY
P.O. Box 1360
Hyannis, Massachusetts 02601

(70-6466)

SUPPLEMENTAL NOTICE OF ISSUANCE AND SALE OF HOLDING COMPANY COMMON STOCK TO PUBLIC; AND ISSUANCE AND SALE OF COMMON STOCK TO PARENT BY SUBSIDIARIES; DEFERRAL OF ACTION ON TERMINATION OF DIVIDEND WAIVER

NOTICE IS HEREBY GIVEN that Colonial Gas Energy System ("Colonial"), a holding company, Lowell Gas Company ("Lowell"), and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial, have filed a declaration and amendments thereto designating Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Colonial's corporate capital structure, as of March 31, 1980, is shown in the following table:

	Actual (000's omitted)	*Ratio*
Long-term debt	45,645	50.2
Short-term debt	15,580	17.1
Minority Interest	5,860	6.4
Preferred Stock	5,550	6.1
Common equity	18,288	20.2
Total Capitalization	90,923	100.0

On May 23, 1980, we noticed (HCAR No. 21590) a proposal of Colonial to exchange shares of restricted stock for unrestricted stock and upon consummation of such exchange to issue and sell additional common stock by public offering and to invest the net proceeds in subsidiary common stock. By amendment to its application, Colonial advises that on July 11, 1980 Colonial determined it would not be possible to reach agreement with the holders of the restricted stock on the exchange prior to the proposed public offering. Colonial now proposes to defer action on the exchange pending financial simplification or recapitalization of the system.

Colonial has proposed to the Trustees that they take action to bind themselves and their successors irrevocably not to exercise their discretion under the agreements relating to the dividend restriction to relax the restriction in any fiscal year in which annual earnings exceed certain specified amounts and $1.32 in dividends has been paid to the unrestricted shares. The dividend restriction would continue without relaxation with respect to the $.87 a share, in each fiscal year, of common dividends between $.45 a share and $1.32 a share. The restricted stock would continue to share on a parity with the unrestricted shares in the first $.45 of common dividends and in dividends above the $1.32 level. The unrestricted stock would continue to receive all common dividends in a fiscal year exceeding $.45 until it has received $1.32 a share.

Action on the proposed exchange of restricted shares is deferred until further notice.

Colonial is seeking authorization to raise approximately $7,000,000 by a negotiated public offering of additional common stock. The net proceeds from such sale would be invested in new common stock of Lowell and Cape Cod. It is anticipated that Lowell and Cape Cod will issue and sell to Colonial up to 450,000 shares and 500,000 shares of common stock respectively. The number of shares and price per share cannot be established until the net proceeds from the sale of Colonial

common stock can be determined and until the Massachusetts Department of Public Utilities ("DPU") has authorized the price per share at which the subsidiaries can sell common stock to the parent. The proceeds from the sale will be used by Lowell and Cape Cod to repay indebtedness incurred for or to reimburse Lowell and Cape Cod for expenditures made for properly capitalizable additions and extensions to plant and property. The terms of the public offering and the subsidiary issues will be supplied by amendment.

Colonial has outstanding $7,376,000 principal amount of 11% Notes due March 1, 1987 held by two insurance companies. In order to facilitate the public offering of its common stock, Colonial has negotiated with the holders of the Notes a revision in the dividend restriction imposed by the Note Agreement dated March 29, 1974 as heretofore amended. The Note Agreement now limits dividends on common stock and purchases, redemptions or other retirements of capital stock (not including sinking fund redemptions or preferred stock) and other distributions to the sum of $500,000 plus 50% of net income during the year 1978 increasing at the rate of five percentage points a year to 75% of net income during calendar years 1983 and thereafter. The amendment will change that restriction to an amount equal to 90% of net income from January 1, 1980 to the date of payment, taken as one accounting period. No other provision of the Note Agreement will be changed.

Colonial requests exception from the competitive bidding requirements of Rule 50(b) pursuant to paragraph (a)(5) with respect to the issuance and sale of its common stock to the public. It states that the size of the issue, the size of the company, and the fact that it is relatively unknown in the securities markets make it unlikely that the procedure specified in Rule 50(b) would produce competitive bids for the securities offered. Colonial proposes to immediately negotiate with underwriters. It may do so.

The fees and expenses incurred or to be incurred in connection with the proposed transactions will be filed by amendment. The DPU has jurisdiction over the proposed issue and sale of common stock by Lowell and Cape Cod. No other state or federal commission other than this Commission has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interest person may, not later than August 25, 1980, request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants, at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act (except that jurisdiction will be reserved as to the exchange transaction), or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof, may order a hearing thereon or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21668/July 31, 1980

In the Matter

GEORGIA POWER COMPANY
270 Peachtree Street, N.W.
Atlanta, Georgia 30302

(70-6481)

NOTICE OF PROPOSED ACQUISITION OF UNDIVIDED OWNERSHIP INTERESTS IN COAL-FIRED GENERATING UNITS

NOTICE IS HEREBY GIVEN that Georgia Power Company ("Georgia"), a public-utility subsidiary of

The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Georgia is currently the owner of a 23.5% undivided ownership interest in two 810 MWe nominally rated coal-fired generating units under construction in Monroe County, Georgia, to be known as the Robert W. Scherer Units Numbers One and Two (collectively, the "Units"), the owner of an 83.5% undivided ownership interest in two additional 810 MWe nominally rated coal-fired generating units under construction at the same site to be known as the Robert W. Scherer Units Numbers Three and Four (collectively, the "Additional Units") and the owner of a 23.5% undivided ownership interest in certain property and facilities to be used in common by, or in connection with, the Units and the Additional Units (the "Common Facilities"). Georgia owns such interests in the Units, the Additional Units, and the Common Facilities as a tenant in common with Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("OPC'), the Municipal Electric Authority of Georgia, a public body corporate and politic and an instrumentality of the State of Georgia ("MEAG"), and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners ("Dalton"), the percentage ownership interests of which are as follows:

	Units	*Additional Units*	*Common Facilities*
OPC	*60%*	*-0-*	*60%*
MEAG	*15.1%*	*15.1%*	*15.1%*
Dalton	*1.4%*	*1.4%*	*1.4%*

Georgia proposes to purchase from MEAG and Dalton their respective 15.1% and 1.4% undivided ownership interests in the Additional Units and to sell to MEAG an additional 15.1% undivided ownership interest in the Units, pursuant to a Plant Robert W. Scherer Purchase, Sale and Option Agreement between Georgia and MEAG, dated as of May 15, 1980 (the "MEAG Purchase Agreement"), and a Plant Robert W. Scherer Purchase and Sale Agreement between Georgia and Dalton, dated as of May 16, 1980 (the "Dalton Purchase Agreement"). As a result of such purchases and sales, Georgia will own an 8.4% undivided ownership interest in the Units, a 100% undivided ownership interest in the Additional Units, and 23.5% undivided ownership interest in the Common Facilities; OPC will own a 60% undivided ownership interest in the Units and in the Common Facilities; MEAG will own a 30.2% undivided ownership interest in the Units and a 15.1% undivided ownership interest in the Common Facilities; and Dalton will own a 1.4% undivided ownership interest in the Units and in Common Facilities. Georgia will obtain a release of the 15.1% undivided ownership interest in the Units to be sold to MEAG from the lien of Georgia's First Mortgage Bond Indenture.

At the closing, in consideration for the sale by MEAG and Dalton of their respective ownership interests in the Additional Units, Georgia is to pay to MEAG and Dalton an amount equal to their respective costs of acquiring and constructing their undivided ownership interests in that portion of the Additional Units acquired, constructed, or completed prior to the closing plus an amount in respect of MEAG's and Dalton's respective costs of bonds issued to finance such acquisition and construction. At the closing, in consideration of the sale by Georgia to MEAG of a 15.1% ownership interest in the Units, MEAG is to pay Georgia an amount equal to 15.1% of the cost incurred in the construction of the Units prior to the closing plus an amount in respect of Georgia's cost of long-term borrowings incurred to finance such construction.

Assuming the closing of such purchases and sale were to take place on August 15, 1980, Georgia estimates that it would pay MEAG approximately $2,196,000 for its 15.1% ownership interest in the Additional Units, that Georgia would pay Dalton approximately $202,000 for its 1.4% ownership interest in the Additional Units, and that Georgia would receive approximately $76,076,000 from MEAG for the 15.1% additional ownership interest which MEAG would acquire in the Units. Georgia expects to apply the net proceeds of such proposed transactions toward the cost of its construction program.

Under the MEAG Purchase Agreement, Georgia has given MEAG an option to purchase a 15.1% undivided ownership interest in the Additional Units exercisable by MEAG on or before December 31,

1990, but only following notice from Georgia to MEAG that the Additional Units will be built. Such option is subject, among other things, to Georgia's sole discretion as to whether the Additional Units will be completed and the schedule for construction and completion thereof. MEAG may exercise such option either by selling Georgia a 15.1% undivided ownership interest in the Units and purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units or by purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units with no transaction involving the Units. MEAG must pay Georgia compensation for the use of a 15.1% ownership interest in the Common Facilities in a declining amount which is a function of Georgia's carrying costs for such ownership interest in the common facilities and the historical periodic expenditures for construction of the Common Facilities. Georgia has given MEAG an option to terminate such payments by purchasing an additional 15.1% undivided ownership interest in the Common Facilities. The application states that the Act is not applicable to any of the proposed or potential sales by Georgia to MEAG or Dalton because MEAG is an instrumentality of the State of Georgia and Dalton is a subdivision of the State of Georgia withinm the meaning of Rule 44.

The fees and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transactions are to be filed by amendment. It is stated that no state and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11277/July 25, 1980

TEMPORARY RULE PROVIDING EXEMPTIONS TO CERTAIN MONEY MARKET FUNDS

ACTION: Final rule.

SUMMARY: The Commission is adopting, on an emergency basis, a temporary rule under the Investment Company Act of 1940 ("Act"): (1) to permit certain registered investment companies and other persons to acquire portfolio instruments of a money market fund of which they are affiliated persons, and (2) to exempt certain registered investment companies from the provisions of two sections of the Act which might otherwise prohibit such companies from purchasing securities issued by another investment company. Now that the Board of Governors of the Federal Reserve System ("Board") has announced the rescission of its credit control regulations, the adoption of this rule should assist boards of directors of money market funds, organized after the adoption of credit control regulations by the Board on March 14, 1980, in taking various actions to address the implications of rescission with respect to the operations of such money market funds. The purpose of the temporary rule is to provide appropriate exemptive relief to minimize the undue disruptions of the operations of

certain money market funds and other unnecessary hardships that might otherwise occur as a result of the termination of credit controls.

EFFECTIVE DATE: July 25, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth S. Gerstein, Special Counsel (202-272-3023), or Jeffrey B. Bailey, Esq. (202-272-3033), Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On July 21, 1980, the Commission issued a general statement of policy expressing its views concerning the implications under the federal securities laws for registered investment companies, particularly "money market" funds, which have been subject to credit control regulations adopted on March 14, 1980, and thereafter amended, by the Board of Governors of the Federal Reserve System ("Board"), as a result of the Board's decision to rescind such regulations.[1] In addition to discussing some of the matters that the Commission believes should be considered by boards of directors of money market funds affected by the Board's action, the general statement of policy stated that the Commission would institute a rulemaking proceeding to propose a temporary rule, to be effective immediately, under the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a-1 *et seq.*] permitting certain transactions in order to enhance the ability of money market funds which have been subject to the Board's regulations to take certain steps to protect and to further the interests of shareholders and investors.

Accordingly, the Commission has adopted Rule 6c-5(T) [17 CFR §270.6c-5(T)]. Because the rule is designed to minimize the disruption of the operations of money market funds which might otherwise begin to occur on July 28, 1980, Rule 6c-5(T) is being adopted on an emergency basis. On appropriate notice, and at such time as the exemptions provided by the rule are no longer necessary, the rule may be rescinded in whole or in part.

THE NEED FOR THE RULE

As discussed more fully in the general statement of policy issued on July 21, 1980, money market funds organized after March 14, 1980 ("new companies"), may experience significant net redemptions of their shares by investors beginning on July 28, 1980. In addition, it is likely that many such investors will seek to purchase shares of money market funds which were organized prior to March 14, 1980 ("existing companies"), and have, therefore, been affected to a lesser degree by the Board's regulations. As a result, among other things, boards of directors of new companies may find it necessary and appropriate to consider various methods of transferring the interests of shareholders from new companies to existing companies in a prompt and efficient manner, and of generating sufficient liquidity to satisfy the anticipated high level of net redemptions.

In this regard, two of the alternatives discussed in the general statement of policy were: (1) the use of offers of exchange made to shareholders of new companies, and (2) the sale of portfolio instruments by new companies to affiliated existing companies. Subject to various conditions, Rule 6c-5(T) will permit these transactions to be effected. However, prior to implementing such actions, boards of directors of each of the registered investment companies involved should satisfy themselves that such actions are appropriate and fair to shareholders, and should consider carefully each of the concerns expressed by the Commission in the general statement of policy respecting the types of transactions contemplated by the rule.

OPERATION OF THE RULE

Rule 6c-5(T) is exemptive in nature.[2] It provides three basic types of exemptions for two types of transactions, each of which is discussed below.[3] Paragraph (a) of the rule defines the terms "Board's regulations," "existing company," and "new company."

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[1]Investment Company Act Release No. 11263 (July 21, 1980) [FR). The general statement of policy describes generally the nature of the regulations and the method by which such regulations will be eliminated.

[2]Although the rule may be available to a company, as noted above and as discussed more fully in the general statement of policy, certain matters should be considered by the boards of directors before electing to effect the transactions permitted by the rule.

[3]Transactions in reliance upon Rule 6c-5(T) must be effected prior to November 21, 1980.

1. Sale of Portfolio Instruments.

Boards of directors of certain new companies may wish to transfer portfolio securities to affiliated persons of such companies as one way of enhancing liquidity and meeting redemptions. Such transactions would normally be prohibited by the provisions of Section 17(a) of the Act [15 U.S.C. 80a-17(a)].[4] However, under certain circumstances, the ability to effectuate these transactions might be an efficient and economical method to assist meeting the redemptions of shares anticipated to occur with respect to new companies. Such ability might also enable the companies and persons involved in the transaction to transfer and to obtain assets without some of the transactions costs normally associated with sales and purchases of portfolio instruments. The rule permits new companies to transfer or to sell portfolio instruments to affiliated investment companies, whether or not such affiliated company is a money market fund, and to other affiliated persons, where the five conditions of the rule are met.

Paragraph (b) of Rule 6c-5(T) is designed to permit money market funds which commenced the public offerings of their shares subsequent to March 14, 1980,[5] to transfer, sell or exchange their portfolio instruments for appropriate consideration to affiliated persons of such companies.[6] In order to protect the interests of each of the investment companies involved, paragraph (b)(1) of Rule 6c-5(T) requires boards of directors of such companies, including a majority of the directors who are not interested persons of such companies, to make certain specified findings.[7] In addition, to further minimize the potential for any material dilution, paragraph (b)(2) of the rule specifies the method used to determine the price at which instruments may be sold in reliance upon the rule.[8] Paragraph (b)(3) of Rule 6c-5(T) requires the board of directors of a new company to consider the potential financial impact upon shareholders when determining which portfolio instruments are to be transferred; in effect, it will have to consider the effect of transfers of portfolio instruments upon such company's yield and overall portfolio quality. Where such instruments are to be transferred to another registered investment company, paragraph (b)(4) of the rule requires that such instruments come within the investment limitations of such other company.

Finally, paragraph (b)(5) requires the maintenance of certain records in connection with the transactions permitted by the rule.

2. Offers of Exchange.

As noted above, boards of directors may, in some instances, determine to utilize offers of exchange as one method for transferring the interests of investors from new companies to existing companies. In situations where a money market fund has determined it to be appropriate to make such an offer of exchange to the shareholders of a new company, Rule 6c-5(T) provides two exemptions to the money market fund which will be acquiring securities issued by the new company. These exemptions will be necessary because: (1) the provisions of Section 12(d)(1) of the Act [15 U.S.C. 80a-12(d)(1)] generally prohibit any registered

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[4]Registered investment companies that are part of the same "complex" of investment companies are generally affiliated persons of each other. Section 2(a)(3)(C) of the Act [15 U.S.C. 80a-2(a)(3)(C)]. Moreover, as here relevant, each series of shares of a registered open-end investment company meeting the provisions of Section 18(f)(2) of the Act [15 U.S.C. 80a-18(f)(2)] would be deemed to be separate companies which are affiliated persons of each other. *See* Section 2(a)(8) of the Act [15 U.S.C. 80a-2(a)(8)].

[5]Such companies, termed "new companies," are defined by paragraph (a)(3) of the rule to include any registered open-end management investment company which would be a "covered creditor" under the Board's regulations and which commenced the public offering of its shares subsequent to March 14, 1980.

[6]The term "affiliated person" is defined by Section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)].

[7]These findings are similar to those which must be made by directors of registered investment companies relying upon Rule 17a-8 under the Act [17 CFR §270.17a-8] in connection with mergers of affiliated investment companies.

[8]In this regard, the rule is similar to Rule 17a-7 under the Act [17 CFR §270.17a-7] as it has been proposed to be amended. *See* Investment Company Act Release No. 11136 (April 21, 1980) [45 FR 29067, May 1, 1980].

investment company from purchasing securities issued by another investment company in excess of certain percentage limitations, and (2) the fundamental policies of the money market funds making such acquisitions may preclude the purchase of securities issued by another investment company. In the latter case, the purchase of such securities would ordinarily violate Section 13(a)(3) of the Act [15 U.S.C. 80a-13(a)(3)], which prohibits a registered investment company from deviating from any investment policy which is changeable only if authorized by shareholder vote or from any "fundamental" policy recited in its registration statement pursuant to Section 8(b)(3) of the Act [15 U.S.C. 80a-8(b)(3)].[9]

Under the highly unusual circumstances now confronting money market funds as a result of the Board's action, the Commission has determined it to be appropriate to facilitate offers of exchange by granting certain exemptions to money market funds which seek to acquire, pursuant to offers of exchange, securities issued by a new company. Such offers of exchange might be an effective method for the efficient and orderly transfer of the interests of shareholders of new companies to other money market funds.

Paragraphs (c) and (d) of Rule 6c-5(T) exempt certain money market funds ("existing company") from the provisions of Sections 12(d)(1) and 13(a)(3) of the Act, respectively.[10] In each case, such exemptions are conditioned upon: (1) the board of directors of the existing company and of the new company approving the making of an offer of exchange (paragraph (c)(2)); (2) the ability of the existing company to purchase and to hold securities issued by another investment company consistent with applicable state law (paragraph (c)(3)) and (3) the existing company disposing of the securities issued by the new company prior to November 21, 1980 (paragraph (c)(1)). Finally, paragraph (c)(1) further requires that the investment adviser, and administrator (if any), of the existing company not charge any investment advisory fee or fee for administrative services to the existing company on account of the securities of the new company being held.

PROCEDURAL MATTERS

The Commission believes that it is necessary and appropriate to adopt Rule 6c-5(T) immediately. In accordance with Section 553(d) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(d)], because Rule 6c-5(T) is exemptive in nature, publication 30 days before the rule's effective date is unnecessary. In accordance with Section 553(b) of the APA [5 U.S.C. 553(b)(B)], the Commission for good cause finds that notice and opportunity for public comment are similarly not required because such notice and opportunity for public comment would be impracticable and contrary to the public interest.

TEXT OF THE RULE

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

By adding §270.6c-5(T) to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§270.6c-5(T) Temporary exemptions for certain money market funds and certain affiliated persons thereof.

(a) Definitions.

(1) "Board's regulations" shall mean the credit control regulations applicable to registered investment companies adopted by the Board of Governors of the Federal Reserve System on March 14, 1980 [12 CFR 229.11 *et seq.*], and amended thereafter;

(2) "Existing company" shall mean any registered open-end, management investment company (or series of securities of such company) which commenced the continuous offering of its shares to the public on or prior to March 14, 1980, and which

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[9]Under the circumstances, the Commission would not require a money market fund to modify the stated policies contained in its registration statement where it temporarily acquires and holds securities issued by another money market fund pursuant to an offer of exchange of the type discussed herein.

[10]The money market funds so exempted must meet the definition of "existing company" set forth in paragraph (a)(2) of the rule (*i.e.*, be a money market fund making a continuous public offering of its shares before the imposition of credit controls).

would be a "covered creditor" under the Board's regulations; and

(3) "New company" shall mean any registered open-end, management investment company (or series of securities of such company) which commenced the public offering of its shares subsequent to March 14, 1980, and which would be a "covered creditor" under the Board's regulations.

(b) Any transaction occurring prior to November 21, 1980, whereby a new company transfers, sells or exchanges portfolio instruments for appropriate consideration to an affiliated person of such company shall be exempt from the provisions of section 17(a) of the Act; *Provided*, That:

(1) The boards of directors of each registered investment company participating in the transaction, including a majority of the directors of each such registered investment company who are not interested persons of such company, determine (i) that the interests of shareholders of their respective companies will not be diluted as a result of such transaction, and (ii) that participation in such transaction (A) in the case of the new company, is in the best interests of its shareholders, and (B) in the case of any registered investment company acquiring portfolio instruments of the new company, is reasonable and fair;

(2) The portfolio instruments of the new company are transferred, sold or exchanged at market value or, where market quotations are not readily available, at a price determined by reference to current market factors, except that portfolio instruments may be sold at their amortized cost values where, in the aggregate, the market value of all such instruments involved in the transaction (or the price of such instruments determined by reference to current market factors) does not differ by more than 1/2 of 1 percent from the amortized cost value of such instruments;

(3) The board of directors of the new company, in selecting those portfolio instruments to be transferred, sold or exchanged, considers the potential financial impact upon shareholders of the new company;

(4) Where such instruments are acquired by another registered investment company, the instruments meet all applicable investment restrictions and policies of such other company; and

(5) Each registered investment company involved in the transaction maintains, for a period of not less than five years (the first two years in an easily accessible place), a record of (i) its board of directors' consideration of the matters set forth in paragraphs (b)(1)-(4) of this section, including the basis for the board of directors' conclusions, and (ii) the value of any portfolio instruments sold and the method by which such value was determined.

(c) An existing company which, prior to November 21, 1980, purchases or otherwise acquires, pursuant to an offer of exchange, securities issued by a new company of which it is an affiliated person shall be exempt from the provisions of section 12(d)(1) of the Act to the extent necessary to permit such purchases or acquisitioins; *Provided*, That:

(1) Such securities are sold, exchanged or otherwise disposed of prior to November 21, 1980, and no investment advisory fee, or fee for administrative services, is charged to the existing company by its investment adviser or administrator on account of the securities of a new company held by the existing company;

(2) The boards of directors of the existing company and the new company, including a majority of the directors thereof who are not interested persons of such company, each have considered and approved the making of such offer of exchange; and

(3) The existing company, pursuant to applicable state law, has the authority under the circumstances to purchase and to hold shares of another registered investment company.

(d) An existing company which, prior to November 21, 1980, purchases or otherwise acquires, pursuant to an offer of exchange, securities issued by a new company of which it is an affiliated person shall be exempt from the provisions of section 13(a)(3) of the Act to the extent necessary to permit such purchases or acquisitions, where the conditions set forth in paragraphs (c)(1)-(3) of this section are satisfied.

STATUTORY BASIS: Rule 6c-5(T) is adopted pursuant to Section 6(c) [15 U.S.C. 80a-6(c)] and Section 38(a) [15 U.S.C. 80a-37(a)] of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11278/July 25, 1980

In the Matter of

PAUL R. DUPEE, JR.
151 Central Park West
New York, New York

(812-4670)

ORDER PURSUANT TO SECTION 9(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 9(a) OF THE ACT

On May 23, 1980 the Commission issued a notice of filing of an application by Paul R. Dupee, Jr. pursuant to Section 9(c) of the Investment Company Act of 1940. (Investment Company Act Release No. 11183/May 23, 1980). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application might be issued on the basis of the information therein unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemption, pursuant to Section 9(c) of the Act from the provisions of Section 9(a) of the Act, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

IT IS ORDERED pursuant to Section 9(c) of the Act that Paul R. Dupee, Jr. is hereby exempted from the provisions of Section 9(a) of the Act operative as a result of the entry of the injunction entered against him in *Securities and Exchange Commission* v. *Everest Mansagement Corporation, et al.*

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11279/July 29, 1980

In the Matter of

INA CASH FUND, INC.
3531 Silverside Road
Wilmington, Delaware 19810

(812-4692)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM RULES 2a-4 AND 22c-1 UNDER THE ACT

On July 2, 1980, a notice was issued (Investment Company Act Release No. 11244) of an application filed on June 11, 1980, with amendments thereto on June 13 and June 27, 1980, by INA Cash Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), pursuant to Section 6(c) of the Act for an order of exemption from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value for the purposes of sales, redemptions and repurchases of its shares to the nearest one cent on a share value of one dollar.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. The Board of Directors of Applicant, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable taking into account current market conditions affecting

Applicant's investment objectives, that the price per share of Applicant's shares as computed for purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from $1.00;

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objectives of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days; and

3. Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11280/July 30, 1980

In the Matter of

LIQUID GREEN TRUST
207 Guaranty Building
Indianapolis, Indiana 46204

(812-4688)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 UNDER THE ACT

Liquid Green Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 3, 1980, and amendments thereto on June 13, 1980, and June 17, 1980, requesting an order of the Commission pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per unit according to the amortized cost method of valuing portfolio securities.

On July 3, 1980, a notice (Investment Company Act Release No. 11250) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act, to the extent requested, be and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

(1) That Applicant's board of trustees in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's unitholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per unit, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per unit.

(2) Included within the procedures adopted by the trustees are the following duties and responsibilities:

(a) Review by the trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per unit as determined by using available market quotations from Applicant's $1.00 amortized cost price per unit, and the maintenance of records of such

review.[1]

(b) In the event any deviation from Applicant's $1.00 amortized cost price per unit exceeds one-half of one percent, a requirement that the trustees will promptly consider what action, if any, should be initiated.

(c) Where the trustees believe that the extent of any deviation from Applicant's $1.00 amortized cost price per unit may result in material dilution or other unfair results to investors or existing unitholders, the trustees shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of units in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of Applicant; withholding dividends; or utilizing a net asset value per unit as determined by using available market quotations.

(3) That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per unit, *provided*, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

(4) That Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of trustees' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) That Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's trustees determine present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not so rated, of comparable quality as determined by the trustees.

(6) That Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the trustees in the exercise of their discretion to be appropriate indicators of value, which may include among others; (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

INVESTMENT COMPANY ACT OF 1940
Release No. 11281/July 29, 1980

In the Matter of

ISRAEL DEVELOPMENT CORPORATION
10 Rockefeller Plaza
New York, N.Y. 10020

(811-619)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Israel Development Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on January 14, 1980, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On June 18, 1980, a notice was issued (Investment Company Act Release No. 11226) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Israel Development Corporation, under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11282/July 31, 1980

In the Matter of

UCB FINANCIAL SERVICES, LTD.
c/o United California Bank
707 Wilshire Boulevard
Los Angeles, California 90017

(812-4297)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that UCB Financial Services, Ltd. ("Applicant"), an Ontario corporation, filed an application on April 27, 1978, and amendments thereto on June 26, 1979, and May 16, 1980, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

BACKGROUND

Applicant states that it incorporated as a financial service company under the Business Corporations Act of Ontario, Canada, on October 8, 1975, and that it is a wholly owned subsidiary of United California Overseas Investment Company ("Overseas"), a corporation organized pursuant to Section 25(a) of the Federal Reserve Act, 12 U.S.C. §611 *et seq.* ("Edge Act"). According to the application, Overseas is a wholly owned subsidiary of United California Bank ("UCB"), a bank chartered under the provisions of the California Financial code. The application states that Overseas was organized for the purpose of holding equity investments made by UCB in non-bank financial institutions. UCB is a wholly owned subsidiary of Western Bancorporation ("WBC"), a publicly traded Delaware corporation which is a bank holding company.

Applicant states that its business consists of wholesale lending to both indigenous and foreign owned corporations in Canada and that each loan it makes is individually negotiated and memorialized in a written agreement. Such loans generally will be oriented to include companies engaged in developing and processing natural resources in Canada. In addition, Applicant proposes to provide term loans to Canadian commercial and industrial firms engaged in the exportation of Canadian products.

Applicant represents that WBC is subject to regulation under the Bank Holding Company Act and that WBC and its subsidiaries, including Applicant, are subject to examination by the Board of Governors of the Federal Reserve System ("Board"). Applicant further represents that UCB is

subject to regulation and supervision by both federal and California banking authorities, and that WBC, Overseas and Applicant, as affiliates of UCB, are also subject to the supervision of such authorities. In addition, Applicant asserts that as a foreign owned financial service company incorporated pursuant to Ontario law, it is subject to the provisions of the Canadian Foreign Investment Review Act. In this regard, Applicant states that it has entered into an agreement with the Foreign Investment Review Agency under which it has made certain undertakings with respect to its management, ownership, financial structure, capital structure, regulation and business objectives. This agreement is to remain in effect until such time as Applicant or any affiliate or associate of Applicant becomes subject to express regulation under the Canadian Bank Act. Applicant states that UCB intends to apply for a Canadian Bank Charter, and if such charter is granted, convert the operations of Applicant into those of a chartered bank subsidiary. Upon such conversion, Applicant would be regulated under the Canadian Bank Act.

Applicant states that, although it has a separate corporate existence, it is operated in substantially the same manncr as if it were a foreign branch of UCB. All final credit decisions involving loans of more than $500,000 are made by a credit committee which is the same committee that oversees the lending operations of UCB. A complete file on each of Applicant's credit transactions, as well as complete and up-to-date financial information on Applicant, is maintained by UCB. Applicant asserts that, as a consequence of both internal controls applied by UCB and the supervision effected by the Board in its application of the federal banking laws, the operations of Applicant are supervised in a manner consistent with the supervision exercised over banks incorporated and operating under the California Financial Code.

PROPOSED OFFERINGS

The application states that all of Applicant's equity securities are currently held, and will be held, by UCB, WBC or their wholly owned subsidiaries. The remainder of Applicant's capital is currently derived through the sale of notes with maturities of not more than 270 days ("Short-Term Notes"). The Short-Term Notes are sold through institutional intermediaries located in Canada in multiples of $1,000 with a minimum allotment of $50,000. They are guaranteed by UCB, payable in Canadian dollars (or the equivalent thereof in other currencies) and such notes may not be rolled over. Applicant states that from time to time it acquires other funds through individually negotiated borrowings from substantial and financially sophisticated entities doing business in Canada.

Applicant states that at the present time a substantial portion of the funds invested in its Short-Term Notes is derived from sources located in the United States. However, Applicant asserts that, because the Short-Term Notes are guaranteed by UCB, they are exempted from registration under the Securities Act of 1933 ("1933 Act") pursuant to Section 3(a)(2) thereof, and because all of Applicant's securities (other than short-term paper) are held by a company which is excepted from the definition of "investment company," Applicant is currently excluded from the applicability of the Act by the provisions of Section 3(b)(3) thereof.

Applicant asserts that, if it is to compete effectively in the Canadian financial marketplace, it must have available sources of funds having maturities in excess of 270 days in order to enable it to offer certain types of long-term loans to its customers. Accordingly, Applicant proposes to commence the issuance and sale of debt securities having maturities of more than 270 days ("Long-Term Debt"). Such Long-Term Debt will be sold outside the United States, in denominations of $100,000 or more, pursuant to private placements with substantial and financially sophisticated investors located outside the United States. Purchasers of the Long-Term Debt will be required to provide written assurance to Applicant or its underwriters that they are purchasing for investment and not with a view toward resale. Further, Applicant states that underwriters offering and selling the Long-Term Debt will be required to provide written assurance to Applicant that they will not offer or sell such securities: (1) to persons residing in the United States, its territories or possessions, or to a national or resident thereof; (2) to persons other than substantial and financially sophisticated institutions; or (3) to persons unwilling or unable to provide written assurances that they are purchasing such securities for investment and not with a view toward resale. Applicant states that the certificates representing the Long-Term Debt will bear a prominent legend to the effect that such securities may not be transferred (except by operation of law to the successor of the holder thereof) without the prior written consent of Applicant or its underwriter.

Applicant further states that, because the Canadian short-term note market is an important source of funds, it desires to continue to sell its Short-Term Notes. Upon the issuance of an order granting the exemption Applicant requests, Applicant states that the minimum denomination of the Short-Term Notes will be increased to $100,000 to reduce the possibility that such notes might be purchased by investors other than substantial and financially sophisticated institutions.

Applicant states that the Short-Term Notes and Long-Term Debt will rank on a *pari passu* basis with one another and will constitute direct obligations of Applicant. The rights of the Short-Term Notes and Long-Term Debt will be superior to the rights of Applicant's equity shares, and will be equal or superior to the rights of any other debt securities issued by Applicant. The Short-Term Notes will continue to be guaranteed by UCB and, as a result, will have rights superior to the rights of equity shares issued by UCB.

REQUESTED EXEMPTION

Applicant states that once it proceeds to offer the Long-Term Debt, it will no longer be able to rely on Section 3(b)(3) of the Act. Accordingly, Applicant has requested that it be exempted from all provisions of the Act. Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, from any provisions of the Act, or of any rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant represents that, prior to proceeding with any offering of Short-Term Notes without registration under the 1933 Act, it will obtain an opinion of its United States counsel that the offering will qualify for the exemption from registration provided by Section 3(a)(2) of the 1933 Act which exempts securities issued or guaranteed by U.S. banks. Applicant further represents that, in the event it makes any offering of short-term notes in the United States which are not guaranteed by UCB, such issue will be registered under the 1933 Act unless Applicant has received an opinion of its United States counsel that the offering will qualify for an exemption from the registration provisions of the 1933 Act, such counsel having taken into account the doctrine of "integration" as it might apply. Applicant does not request Commission review or approval of such opinion letters, and the Commission expresses no opinion as to the availability of any such exemptions.

In addition, Applicant undertakes to insure that each offeree of the Short-Term Notes will be provided with a memorandum including the most recent publicly available consolidated financial statements of UCB (which statements include the assets and liabilities, and profits and losses, of Applicant). Such memorandum will be at least as comprehensive as memoranda customarily used in connection with the issuance of bank guaranteed short-term notes in Canada. A similar memorandum will be provided to each offeree in connection with any exempt offering in the United States by Applicant of short-term notes not guaranteed by UCB, and will describe the business of Applicant and contain its most recently publicly available financial statements prepared in accordance with generally accepted accounting principles in Canada. According to the application, the memoranda utilized in connection with such offerings of non-guaranteed short-term notes in the United States will be at least as comprehensive as those customarily used in connection with the issuance of short-term notes in the United States and will include a description of material differences between United States and Canadian generally accepted accounting principles, if any. The memoranda utilized in connection with both types of offerings of short-term notes will be updated periodically, and at least annually, to reflect material changes in Applicant's financial condition.

In the case of any offering in the United States of short-term notes not guaranteed by UCB, and not required to be registered under the 1933 Act, Applicant states that such notes shall have received, prior to issuance, one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies. Applicant will advise in writing its U.S. counsel, in connection with the preparation of its opinion regarding exemption from the 1933 Act, that such rating has been received; provided, however, that if such notes are guaranteed by WBC, Applicant shall not be required to secure a rating so long as the outstanding commercial paper of WBC, at the time of the issuance of such notes, has received one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating agencies.

Applicant represents that it has no present intention to sell long-term debt securities in the United States. However, any public offering of such long-term debt securities in the United States will be registered under the 1933 Act. Applicant undertakes that it will comply with the prospectus delivery requirements of the 1933 Act in offering and selling such securities. In the case of any offering of long-term debt securities in the United States not requiring registration under the 1933 Act, Applicant undertakes to provide to each offeree in the United States a memorandum at least as comprehensive in its description of Applicant as those customarily used in such offerings of long-term debt in the United States. All financial statements included in such memoranda will be prepared in accordance with generally accepted accounting principles in Canada and will include a statement describing the material differences, if any, between United States and Canadian generally accepted accounting principles. Such memoranda will be updated at the time of subsequent offerings to reflect material changes in Applicant's financial position.

Applicant states that any order granting its application may be expressly conditioned upon compliance with its undertakings regarding disclosure memoranda. It represents that, in connection with the issuance of the Short-Term Notes and any other securities, it will appoint UCB as agent to accept service of process in any action based upon the securities issued and brought by a holder thereof. Applicant will accept jurisdiction in any state or federal court in California with respect to such actions. The appointment of UCB as agent for service of process and the acceptance of jurisdiction shall be limited to suits brought by a holder of Applicant's securities and based upon the acts of Applicant in connection with the purchase and sale of such securities, or the performance of any of Applicant's obligations thereunder, and shall be irrevocable until the amounts due or to become due on the securities have been paid.

In view of the foregoing representations and undertakings, Applicant asserts that the granting of the requested exemptive order pursuant to Section 6(ç) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11283/July 31, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

DREYFUS RAINBVOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, NY 10016

AND

DREYFUS LIQUID ASSETS, INC.

AND

DREYFUS A BONDS PLUS, INC.
767 Fifth Avenue
New York, NY 10153

(812-4532)

NOTICE OF FILING OF APPLICATION TO AMEND AN ORDER OF EXEMPTION GRANTED PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

NOTICE IS HEREBY GIVEN that Beneficial National Life Insurance Company ("Beneficial") a stock life insurance company organized under the laws of the State of New York, The Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, Dreyfus Liquid Assets, Inc. ("DLA") and Dreyfus A Bonds Plus, Inc. ("A Bonds") (collectively the "Funds") diversified, open-end management companies registered under the Act (hereinafter, Beneficial, the Separate Account, and the Funds are collectively referred to as "Applicants") filed an application on July 2, 1980 for an order amending an existing order of exemption pursuant to Section 11 of the Act approving certain offers of exchange (Investment Company Act Release No. 11173, May 19, 1980).

Applicants' existing order pursuant to Section 11 of the Act permits shareholders of the Funds to exchange their shares for variable annuity contracts (the "Contracts"). However, only purchase payments for the Contracts in the form of shares of DLA are invested by the Separate Account in DLA. Purchase payments for the Contracts in the form of cash or shares of A Bonds are invested by the Separate Account in A Bonds. Also, Contract owners who have DLA as the investment underlying their Contracts may reallocate such underlying investments to A Bonds. However, Contract owners who have A Bonds as the investment underlying their Contracts may not reallocate such underlying investment to DLA. The exchange privilege, according to Applicants, was limited in this way because of a recent regulation of the Federal Reserve Board placing reserve requirements on any increase in average assets of money market funds subsequent to March 14, 1980. As a result of this regulation, the Board of Directors of DLA decided to limit future sales of additional shares of DLA.

Subsequent to the Order being granted, the Federal Reserve Board announced a series of changes in its credit restraint program concerning money market funds and other similar investment media. As a result, investments in DLA by the Separate Account are exempt from the definition of "covered credit" in the Federal Reserve Board's regulations. Pursuant to such change, the Board of Directors of DLA has decided to allow the sale of shares of DLA to the Separate Account.

Applicants request that their existing Order be amended to permit Applicants to offer shareholders of A Bonds the option to exchange their shares for Contracts under which they would designate DLA as the underlying investment and to allow Contract owners to have investments which underlie the Contracts reallocated from A Bonds to DLA.

Applicants submit that the proposed exemption fully consistent with the policy and purposes of the Act, and that it will permit Applicants to make a desirable contractual feature available to Contract owners.

Applicant assert that the requested exemption is appropriate and in the public interest, is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 26, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this

matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11284/July 31, 1980

In the Matter of

EDIE SPECIAL GROWTH FUND, INC.
100 E. Pratt Street.
Baltimore, Maryland 21202

(811-1823)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Edie Special Growth Fund, Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 19, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant registered under the Act on March 6, 1969 and filed a registration statement pursuant to Section 8(b) of the Act on May 26, 1969. An S-5 registration statement was filed on March 6, 1969 with respect to 7,500,000 shares of stock and became effective on August 21, 1969.

On June 28, 1979, Applicant transferred substantially all of its assets, amounting to $25,898,211.20, to Rowe Price New Horizons Fund, Inc. ("New Horizons Fund"), and in exchange therefor, New Horizons Fund issued to Applicant a number of shares based on the companies' respective net asset values. The number of shares Applicant received from New Horizons Fund was determined by dividing the aggregate value of Applicant's net assets transferred by the net asset value per share of New Horizons Fund. Applicant's Board of Directors had approved the form, terms and provisioins of the reorganization and the liquidation thereafter at a regular meeting held on January 31, 1979. At a special meeting of stockholders held on June 27, 1979, Applicant's stockholders approved the reorganization and authorized the liquidation and dissolution of Applicant and the distribution of shares of New Horizons Fund to the holders of shares of Applicant. The shares of New Horizons Fund issued to Applicant's shareholders were issued as book shares of New Horizons Fund. Applicant filed a certificate of dissolution in the State of Delaware on July 12, 1979, which became effective on August 15, 1979.

Applicant indicates that it currently retains no assets and has no debt outstanding. Further, Applicant asserts that it no longer has any security holders, is not a party to any litigation or administrative proceeding and does not propose to engage in any activity other than necessary for winding up its business affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless

the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9144/July 25, 1980

SEC v. *CENCO INCORPORATED, ET AL.*, Civil Action No. 76C 3258 (N.D. Ill., Filed Sept. 1, 1976)

William D. Goldsberry, Administrator of the Chicago Regional Office, announced that on July 1, 1980, the Honorable John Powers Crowley, United States District Judge for the Northern District of Illinois, entered a Final Judgment and Order of Permanent Injunction Against Bernard Magdovitz. Magdovitz consented to entry of the injunction without admitting or denying the allegations in the Commission's Complaint. The Order enjoins Magdovitz from violating the antifraud, reporting, and proxy provisions of the Federal securities laws.

The Order arose from Magdovitz's involvement in a scheme to report false profit figures in Cenco, Inc.'s (Cenco) periodic and annual reports. The Commission's Complaint alleged that, among other devices, Cenco inflated its profits by inflating the inventory of its subsidiary, Cenco Medical Health (CMH). Magdovitz held various positions at Cenco, including President of CMH.

In April 1979, Magdovitz and others were indicted by Federal Grand Jury in Chicago on charges arising from the Cenco fraud. In January 1980, Magdovitz was sentenced to five years probation and fined $11,000 following a plea of guilty to the conspiracy and mail fraud charges included in that indictment.

Magdovitz now works and resides in South Hampton, England.

The Commission's Complaint in the Cenco case is still pending against Ronald Spiegel, another former Cenco officer.

For further information, see Litigation Release Nos. 7538, 8509, 8747, 8786, 8919, 8970, 8975, 8989, 9055, and 9093, and Securities Exchange Act of 1934 Release No. 11495.

Litigation Release No. 9145/July 25, 1980

SEC v. *ELDON MILLER*, 75 Civ. 3391 (S.D.N.Y.) (JMC)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on June 27, 1980, the Honorable John M. Cannella, United States District Judge for the Southern District of New York, issued an opinion in *SEC* v. *Eldon Miller*, 75 Civ. 3391 (S.D.N.Y.), after a bench trial. Judge Cannella denied the issuance of an injunction against defendant Eldon Miller ("Miller") of Kansas City, Missouri because of an insufficient likelihood of future violations. However, Judge Cannella found that defendant Miller had misstated and failed to disclose material financial information concerning Financial Corp., in connection with repurchase agreements involving government and agency securities.

The Commission's Complaint, filed on July 10, 1975, had charged defendants Miller and Financial Corp. with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by, among other things, (1) failing to maintain books and records necessary to adequately reflect Financial Corp.'s true financial condition and ability to meet its obligations and (2) entering into repurchase agreements without disclosing to its customers that Financial Corp. failed to maintain adequate books and records.

Defendants Miller and Financial Corp. consented to

the entry of a preliminary injunction and the appointment of a temporary receiver in July 1975. Thereafter, in August 1975, Financial Corp. filed a voluntary petition in bankruptcy. In light of this, Financial Corp. was dismissed as a defendant in this action in May 1977.

Litigation Release No. 9146/July 29, 1980

SECURITIES AND EXCHANGE COMMISSION v. *RICHARD MACDONALD, ET AL.* (Civil Action No. 79-0283, D. Hawaii)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office, and Bobby C. Lawyer, Associate Regional Administrator of the San Francisco Branch Office, announced that on July 10, 1980, final judgment was entered on the order of the Honorable Samuel P. King, Chief Judge of the United States District Court for the District of Hawaii, which, among other things, permanently enjoined Richard, Frances R. and Richard C. MacDonald ("the MacDonalds") from further violations of Section 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and appointed a receiver to protect the interests of investors.

Based upon evidence received in a four-day trial, Judge King found that in 1979 the MacDonalds solicited money and powers of attorney from investors in connection with a plan to partition and develop approximately 2,560 acres of undeveloped desert land near Las Vegas, Nevada. Judge King found that the solicitation involved the offer and sale of securities in the form of investment contracts in violation of the registration provisions of the federal securities laws. He further found that the MacDonalds made "substantial misrepresentations and omissions" to investors in connection with the plan in violation of the antifraud provisions.

Judge King appointed Joseph M. McKellar, Esq., 1122 Alakea Street, Honolulu, Hawaii 96813, as receiver, with authority to, among other things, take possession of the powers of attorney and other assets obtained by the MacDonalds in connection with the 1979 development plan, and investigate and report to investors concerning all material circumstances which bear upon the current status and potential disposition of the land in question.

Judge King declined to grant the Commission's request for a permanent injunction against defendants who were alleged to have violated registration and antifraud provisions in the course of earlier transactions concerning the land, based on his decision that those transactions did not involve the offer or sale of securities. (For further information on the Commission's complaint, see Litigation Release No. 8814/July 6, 1979.)

Litigation Release No. 9147/July 29, 1980

S.E.C. v. *ISOMEDICS, INC., ET AL.*, 80 Civil 4188 (S.D.N.Y.) (VLB)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on July 22, 1980 the Commission filed a Complaint in the United States District Court for the Southern District of New York seeking to enjoin Isomedics, Inc. ("Isomedics") and Leo R. Mindick ("Mindick"), president of Isomedics, from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("the Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The complaint alleges that during the period between 1970-1978, the defendants sold approximately $1,500,000 of Isomedics securities to approximately 180 investors. In connection with the offer and sale of these securities, the complaint alleges that the defendants made false and misleading statements to investors concerning, among other things, the development and utility of the defendants' sole product, a Cell Analyzer, designed to screen pap smears for cancerous cells.

Simultaneously with the filing of the complaint, the defendants consented to the entry of Final Judgments of Permanent Injunction and Orders for Further Equitable Relief ("Final Judgments") permanently enjoining them from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Further, among other things, the Final Judgment orders defendant Isomedics to remove certain members of its Board of Directors ("the Board"), establish an Audit Committee of the Board, maintain a majority of independent directors on both the Board and the Audit Committee, and disseminate a disclosure document to all investors

in the corporation. The defendants consented to the above Final Judgments without admitting or denying the allegations contained in the Commission's complaint.

Litigation Release No. 9148/July 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CALIFORNIA FLOWERLAND, LTD., CALIFORNIA FLOWERLAND '79, CF PARTNERSHIP, AND CALIFORNIA FLOWERLAND, INC.*, United States District Court for the District of Columbia (Civil Action No. 80-1900)

The Securities and Exchange Commission today announced the filing of a civil injunctive action in the United States District Court for the District of Columbia seeking to enjoin California Flowerland Ltd., ("Ltd."), California Flowerland '79, ("CF 79"), California limited partnerships engaged in the business of growing, harvesting and marketing plant products, CF Partnership ("CF"), general partner of Ltd. and CF 79, and California Flowerland, Inc. ("CFI"), managing partner of CF, variously from further violations of Sections 12(g) (registration) and 13(a) (reporting) of the Securities Exchange Act of 1934 ("Exchange Act") and various rules thereunder.

The Commission's Complaint alleges that CF 79 has failed to register its limited partnership units pursuant to Section 12(g) of the Exchange Act even though it had had total assets in excess of $1,000,000 and 500 or more limited partners, since at least December 31, 1979. Further, the Commission alleged that CF 79 and Ltd. have failed to file annual and quarterly reports with the Commission in violation of Section 13(a) of the Exchange Act. CF and CFI caused CF 79 to fail to register its securities and caused CF 79 and Ltd. to fail to file the reports as required.

Simultaneously with the filing of the Commission's Complaint, the defendants filed a third party complaint against 51 entities including limited partnerships, their corporate general partners and other entities. The defendants alleged that substantial amounts of their assets were paid to a third party defendant, Island Foliage, Inc., as were assets of various of the third party defendants, such assets were not segregated and that the books and records of Island Foliage do not permit the defendants to identify and segregate their assets. The defendants further alleged that they are accordingly unable to obtain the information necessary to comply with the requirements of the Exchange Act complained of in the Commission's Complaint and are unable to operate their businesses and fear for the safety of their assets. It was also alleged that other limited partnerships and corporations named as third party defendants are in similar circumstances. The defendants, in their third party complaint, seek, among other things, the appointment of a Special Agent to operate their business and that of other third party defendants.

Also simultaneously with the filing of the Commission's Complaint, the Commission, the defendants and the third party defendants, with the exception of Island Foliage, Inc., entered into a Stipulation and Consent wherein the defendants admitted to the allegations in the Commission's Complaint of past violations of law, and consented to the entry of a Final Judgment of Permanent Injunction variously enjoining them from further violations of Sections 12(g) and 13(a) of the Exchange Act and rules thereunder. The defendants and such third party defendants also consented to the appointment of a Special Agent, Robert A. Baker, to take control of all assets of such entities and to operate such parties' businesses.

As noted in the Stipulation and Consent, the Commission states that it is continuing its investigation *In the Matter of American Flowerland Inc., et al.*, File No. HO-1189, into all of the matters and the transactions which have heretofore been the subject of such investigation and that the Commission may amend this action and/or institute additional injunctive or other actions which may include additional charges against any person.

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VOLUME 20, NO. 13 AUGUST 19, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	17030A, 17038-53	875
Public Utility Holding Company Act	21669-74	891
Trust Indenture Act of 1939	577	900
Investment Company Act	11285-92	901
Litigation	9149-55	909
Securities Investor Protection Act	93	912

This listing covers releases issued from 8/1/80-8/7/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17030A	34-17044	34-17048
34-17038	34-17045	34-17051
34-17039	34-17046	34-17052
34-17040	34-17047	

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17030A/August 6, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-2)

CORRECTION OF ORDER APPROVING PROPOSED RULE CHANGE

In Securities Exchange Act Release No. 17030 (July 31, 1980), the Commission approved a proposed rule change filed by the Municipal Securities Rulemaking Board (the "MSRB"). The proposed rule change amended the MSRB's Arbitration Code (contained in MSRB rule G-35) to establish a simplified procedure for the resolution of intra-industry disputes involving $5000 or less. In announcing that approval, the Commission

SE 1.29:

incorrectly indicated the file number of the proposed rule change. The correct file number is SR-MSRB-80-2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17038/August 1, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
Eleven Wall Street
New York, New York 10005

File No. SR-NYSE-80-2

ORDER AND STATEMENT OF REASONS DISAPPROVING PROPOSED RULE CHANGE OF THE NEW YORK STOCK EXCHANGE, INC.

On April 3, 1980, the Commission instituted proceedings pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] to determine whether to disapprove a proposed rule change (SR-NYSE-80-2) of the New York Stock Exchange, Inc. ("NYSE") which would amend Article IX, Section 1(b) of the NYSE constitution, regarding physical access annual membership, to permanently limit the number of physical access memberships to two.[2]

After considering the proposed rule change together with all comments and submissions filed with the Commission regarding the filing, the Commission cannot conclude, for the reasons discussed below, that the proposed rule change is consistent with Sections 6(b)(5) and (8) of the Act,[3] and, therefore, has determined to disapprove the proposed rule change.

Background

1. ***Physical access annual membership***

Physical access annual membership was one of several means adopted by the NYSE to increase access to that exchange following the enactment of the 1975 Amendments.[4] When the Commission approved the creation of annual memberships on March 7, 1978, it found that the establishment of annual physical presence membership was consistent with the provisions of the Act and the rules and regulations thereunder, particularly Section 6(b)(5) of the Act, and stated that in making available electronic access and physical presence annual memberships, the NYSE was providing a "means of increasing access to most or all of the range of benefits (and obligations) attendant upon ownership of a NYSE seat (historically limited in number)."[5]

Article IX, Section 1(b) of the NYSE constitution provides for the Board of Directors to establish the number of physical access memberships based on periodic determinations as to the space and facilities available on the floor.[6] Persons interested in

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[1]15 U.S.C. §78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975) ("1975 Amendments").

[2]Notice was given by a Commission release (Securities Exchange Act Release No. 16721 (April 3, 1980)), and publication in the *Federal Register*, 45 FR 24743 (April 10, 1980).

[3]15 U.S.C. §78f(b)(5), (8) (1975).

[4]In December 1976, the NYSE Committee on Access, *Report on Achieving Greater Access to the New York Stock Exchange* (December 1976) recommended, among other things, that the NYSE create both electronic and physical access annual memberships, and permit equity members to lease seats in order to enhance "the NYSE's ability to compete within the emerging national market system***." *Id.* at 8.

[5]Securities Exchange Act Release No. 14535 (March 7, 1978), 14 SEC Docket 383, 384 (March 21, 1978).

[6]Article IX, Section 1(b) of the NYSE constitution provides that the exchange's membership shall consist of:

such number of members of the Exchange, as the Board of Directors may from time to time determine, consistent with available physical floor space and facilities, each of whom shall have paid an annual dues, which shall entitle such member, during the

becoming physical access members are subject to the same application procedures and must meet the same qualifications as individuals who purchase equity memberships ("seatholders"). Physical access members pay annual dues of $35,000,[7] which entitles them to go on the trading floor to carry out business in any of the capacities available to seatholders, but they have no equity interest in the exchange. Presently, physical access membership provides the only means, other than by NYSE constitutional amendment, by which the number of NYSE members permitted to maintain physical presence and facilities on the NYSE trading floor can be increased beyond the traditional 1,366 equity members.[8]

2. *The proposed rule change*

The proposed rule change would amend the NYSE constitution to permanently limit the number of physical access members to no more than two, the number in effect on August 31, 1979, when the NYSE was presented with a membership petition, pursuant to Article XX, Section 3b of the NYSE constitution, to obtain a membership vote on the proposed limitation.

The proposed limitation on physical access membership was sponsored by the Alliance of Floor Brokers, Inc. ("Alliance")[9] and was strongly opposed by the NYSE Board of Directors.[10] It was approved by a membership vote in November 1979, and filed as a proposed rule change with the Commission on January 7, 1980, pursuant to Section 19(b)(1) of the Act.[11]

3. *Institution of disapproval proceedings*

After considering the proposed rule change together with the comments filed by the Alliance,[12] the

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Footnote 6 continued

period for which dues have been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

[7]NYSE Constitution, Article X, Section 1(b). The dues were raised from $25,000 (the original rate) on October 4, 1979, pursuant to Section 19(b)(3)(A)(ii) of the Act (SR-NYSE-79-43). Securities Exchange Act Release No. 16279 (October 15, 1979) 44 FR 60463 (October 19, 1979).

[8]See NYSE Constitution, Article IX, Section 1.

[9]The grounds for the membership petition—which subsequently were submitted to the Commission in support of the instant proposed rule change—were summarized in the Commission's order instituting proceedings to determine whether to disapprove the proposed rule change. Briefly, the Alliance argued that the physical access program had not been successful and thus had not improved either competition on the NYSE floor or the NYSE's ability to attract or process increased order flow. The Alliance took the position that the exchange had the right to eliminate physical access membership because it was not required by the Act. It maintained that elimination of physical access membership would not be anticompetitive because other forms of access, such as leasing, exist and that, in any event, the 1,366 equity members already provide more than adequate competition on the NYSE floor. It also alleged that the availability of the relatively low-priced physical access memberships would depress the value of equity seats. Moreover, the Alliance started that the NYSE floor already was overcrowded and could not support additional personnel.

[10]The NYSE Board of Directors' position also was summarized in the order instituting disapproval proceedings. The Board took the position that as part of a comprehensive effort to provide varying forms of membership opportunities, offering physical access annual membership had enhanced the public credibility of the exchange as a progressive and competitive component of the capital raising mechanism of the country. The NYSE Board disputed the claim that there was insufficient space on the NYSE floor to accommodate new physical access members, stating that as many as 20 additional physical access members could be accommodated in the near term.

[11]Notice of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16538) in the *Federal Register* (45 FR 7022 (January 31, 1980)).

[12]The Alliance filed extensive comments on a Form 19b-4A. The NYSE incorporated substantial portions of those comments into item 3 (purpose of the proposed rule change), item 4 (basis under the Act), and item 6 (burden on competition) of its Form 19b-4A by an amendment to the Form filed with the

Commission determined that it could not find that the proposal was consistent with the Act and that it would be necessary to institute proceedings to determine whether to disapprove the proposed rule change. The Commission's order instituting the present proceedings stated that the grounds for disapproval under consideration were Section 6(b)(8) of the Act, which requires that exchange rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and Section 6(b)(5), which requires, among other things, that exchange rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Interested persons were invited to submit written data, views, and arguments, and to submit a rebuttal to any other person's submission. The Commission received two submissions during the hearing period which are summarized below.[13]

II. Summary of Submissions Received

In addition to certain arguments it made to the Commission during the comment period for the proposed rule change, the Alliance raises one new, essentially procedural, argument in its submission. The Alliance states that since Section 6(c)(4) of the Act expressly grants a securities exchange the qualified right to impose numerical limitations on its membership,[14] the exclusive means by which the Commission may remove or modify such a limitation is pursuant to Section 19(c) of the Act which grants the Commission authority to abrogate, add to and delete from self-regulatory organization rules.[15]

In the Alliance's view, in order to amend an exchange's limitation on membership (under Sections 6(c)(4) and 19(c)), the Commission must find that, under the circumstances, the limitation—"independently of the numerical limitation itself"—imposes a burden on competition not necessary or appropriate under the Act.[16] As a result, the Alliance states that the instant 19(b)(2) proceedings as well as any reference to the standards embodied in Section 6(b) of the Act are inappropriate.

The Alliance also restates several arguments it previously made to the Commission. It points out that there is numerical underutilization of the exchange floor (only about 51 percent of the equity members are present at any one time), and states that this "underutilized capacity of the Exchange

Footnote 12 continued

Commission on January 25, 1980. The remainder of the Alliance's filing was placed in the public file as comments on the proposed rule change.

[13]Thomas G. Kahn, an individual equity member of the NYSE, and the Alliance of Floor Brokers, Inc., submitted views supporting approval of the proposed rule change.

[14]Section 6(c)(4) of the Act, 15 U.S.C. 78f(c)(4), provides:

A national securities exchange may (A) limit the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: Provided, however, That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: And, provided further, That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

[15]Section 19(c) of the Act provides that the Commission, by rule, may abrogate, add to and delete from the rules of a self-regulatory organization as it deems necessary or appropriate to ensure the fair administration of the self-regulatory organization, or to conform the organization's rules to the requirements of the Act and the rules and regulations thereunder.

[16]Alliance at 11.

clearly indicates that there is no need for forcing an exchange to theoretically permit unlimited numbers of physical access memberships."[17] It also states that any qualified broker or dealer can obtain access by leasing or buying a seat from an equity member. The Alliance argues further that vigorous competition currently exists among floor brokers and among all members of the exchange, and that there is no evidence in the record which would support the proposition that competition on the NYSE would be advanced by increasing the number of members entitled to go on the NYSE trading floor beyond 1,368.[18] Finally, the Alliance argues that Commission disapproval of the proposed rule change would chill the development of other innovative programs by the exchanges.

The other commentator states that the proposed rule change represents "reasonable self-regulatory procedures designed to protect the at-risk equity capital of exchange members, while providing for reasonable physical access to any qualified individual on fair and reasonable terms."[19] It points out that any qualified person currently can obtain access to the NYSE floor by buying or leasing a seat, and notes that if conditions so warrant, the number of physical access memberships available could be increased in the future.

III. Discussion

A. *Statutory Criteria*

Under Section 19(b)(2) of the Act, the Commission must approve a proposed rule change of an exchange if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to exchanges, in particular Section 6(b) of the Act which establishes substantive requirements governing exchange rules. It must disapprove a proposed rule change if it does not make these findings.

Contrary to the Alliance's argument that the Commission must institute Section 19(c) proceedings to disapprove the proposed rule change, the Commission believes that the current proceedings were correctly instituted under Section 19(b) of the Act. The Act provides different procedures for Commission consideration of self-regulatory organization-initiated rule changes and changes to self-regulatory organization rules that are initiated independently by the Commission. Section 19(b) of the Act specifies the procedures applicable to self-regulatory organization rule changes proposed by the organizations. With respect to proceedings instituted by the Commission, Section 19(c) of the Act specifies the procedures which govern the Commission's actions.

Section 6(c)(4) does not modify the statutory scheme. While Section 6(c)(4) specifies that 19(c) proceedings are necessary for Commission-instituted amendments to limitations on exchange membership, the section is silent on the procedures which must be followed in considering limitations proposed by an exchange. The commentators argued that the Congress intended, in Section 6(c)(4), to permit exchanges to impose numerical limitations on their membership irrespective of the requirements of Section 6(b)(8) of the Act and without Commission approval under Section 19(b). However, in the Commission's view, nothing in Section 6(c)(4) permits an exchange unilaterally to alter restrictions on membership without obtaining Commission approval under Section 19(b) of the Act.[20] And, in determining whether to approve or disapprove proposed rule changes affecting restrictions on membership, the Commission must apply the substantive standards under Section 6(b) of the Act, which defines the rulemaking authority of securities exchanges.[21]

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[17] *Id.* at 19.

[18] This figure represents the 1,366 equity members plus two physical access members.

[19] Submission of Thomas G. Kahn at 2. Mr. Kahn states that the arbitrary nature of the proposed rule change does not constitute a sufficient ground for disapproval since many government rules and regulations are arbitrary.

[20] The Commission notes that the Alliance's interpretation of Section 6(c)(4) would lead to the anomolous result by that the Commission would be forced to approve an exchange rule filing limiting the number of members on the ground that it was consistent with the Act (including Section 6(b)(8)) and then institute 19(c) proceedings to remove or amend the limitation on the ground that the proposal imposed an undue burden on competition.

[21] At most, Section 6(c)(4) may be read to restrict the circumstances under which the Commission could eliminate or increase an existing numerical limitation on exchange membership, in the course of

Moreover, the fact that Section 6(c)(4) permits exchanges to impose limitations on membership does not, in the Commission's view, constitute a determination by the Congress either that such limitations are not burdens on competition or that any burdens resulting from such limitations are necessary or appropriate under the Act. Rather, the section should properly be read to sanction limitations on access (particularly those existing at the time of the 1975 Amendments) and to leave any determination with respect to the competitive aspects of those limitations to the Commission on a case-by-case basis—either in the context of a proposed rule change filed by an exchange pursuant to Section 19(b) or in proceedings instituted by the Commission under Section 19(c).

B. *Grounds for Disapproval*

The Commission is unable to find that the proposed rule is consistent with the requirements of the Act and, therefore, must disapprove the proposed rule change. In particular, the Commission is unable to find that the proposed rule is consistent with Section 6(b)(8) of the Act which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate under the Act.

While the Act does not expressly require the creation of new types of memberships (including annual memberships with physical access privileges), an exchange may limit or eliminate existing forms of membership by rule only if such action would not impose any burden on competition not necessary or appropriate under Section 6(b)(8) of the Act. It appears that the proposed rule change, by placing an arbitrary limit on the number of persons entitled to physical access under its annual membership program, would result in a burden on competition by restricting existing and potential competition for floor brokerage and other business requiring physical presence on the NYSE floor.

The proponents of the proposed rule change claim that alternative means of access to the NYSE exist—such as leasing, electronic annual access, "other market" access through the Intermarket Trading System ("ITS"), and "economic access" through negotiated commission rates. The Commission notes, however, that, of those "alternatives," only leasing provides the right to go on the NYSE floor and compete directly with equity members for business.[22] However, leasing does not provide the potential for increasing the number of members entitled to compete on the NYSE floor, and, thus, cannot be viewed as a substitute for physical access annual membership.[23] Moreover, even though only a small number of persons have thus far applied for physical access membership, the arbitrary

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Footnote 21 continued

a Section 19(c) proceeding, to those instances in which the Commission concludes that the limitations imposes a burden on competition not necessary or appropriate under the Act. However, the Commission has independent authority to place restrictions on exchange membership under Section 19(c).

[22]The other alternatives affect only the ability to execute transactions on the NYSE at lower costs and are not substitutes for the right of physical presence on the floor. Electronic access annual members obtain only a right of access to the NYSE's Designated Order Turnaround System, the Intermarket Trading System ("ITS") or the facilities of an equity member. Similarly, while so-called "economic access" through negotiated commission rates and "other market" access through ITS do provide a means for effecting trades on the NYSE, these forms of access do not provide the time and place execution advantages arising from physical presence on the floor or the opportunity to compete with equity members for floor brokerage or other business which depends on the floor presence.

[23]In addition, leasing does not require that all qualified individuals be given an "equal" opportunity to obtain access to the NYSE. While the NYSE must, under Section 6(b)(2) of the Act, permit any qualified person to become a member of the exchange, seatholders possess virtually unlimited discretion to determine to whom, and under what terms, they will lease their seats. As a result, if physical access membership is eliminated, individuals who meet the NYSE membership qualification standards may be denied access to the exchange floor by seatholders for an arbitrary reason even though leases would be available. Moreover, there may be periods of time when no seats are available for leasing. And, if physical access membership is eliminated, persons seeking physical access to the floor during such periods could obtain access only through the purchase of a seat. The price of seats may be so high as to be, in effect, a barrier to entry for smaller, less well-capitalized brokers and dealers.

limitation which would result from adoption of the proposal may, in the long run, adversely affect potential competition on the floor of the nation's primary stock market.[24]

It does not appear, and the proponents of the proposed rule change have not demonstrated, that the burden on competition that would result from limitation of physical access membership is necessary or appropriate to achieve any purpose in furtherance of the Act. Commentators on the proposed rule change argued, in effect, that to the extent the proposed rule change would impose a burden on competition, the burden is justified by space limitations on the floor of the NYSE. While the Act permits an exchange, subject to Commission oversight, to limit the number of memberships and the number of personnel permitted on its trading floor at any given time (in order, for example, to assure the comfort and safety of its members and employees), the proposed rule change, by placing a permanent limitation on physical access membership, seems to be wholly unrelated to space considerations on the NYSE. The Commission notes that, in October 1979, the NYSE Board of Directors determined that the floor was capable of accommodating as many as 20 additional physical access members in the near term.[25]

The commentators suggest that the present 1,366 seatholders provide adequate competition and fair prices on the exchange and that there is no indication that an increase in the number of members entitled to go on the trading floor would result in an increase in competition. But, the NYSE Board of Directors believes that the physical access membership program has enhanced the credibility of the exchange as a public institution, and that the proposed rule change would not promote the best interests of the exchange, the membership or the investing public.[26] The exchange also believes that certain key factors which prompted it to create physical access membership in 1978 are still relevant today—in particular that new forms of membership are essential if the exchange is to implement new products and meet increasing competition for order flow and that easier access to the exchange would provide an economic incentive for new members to bring capital, expertise and additional business to the NYSE.[27] The Commission has considered these views in concluding that it cannot find that the burden on competition which would result from adoption of the proposed rule change would be necessary or appropriate in furtherance of the purposes of the Act.

The Commission also has concluded that the proposed rule change, by permanently limiting the number of physical access memberships to two, irrespective of the availability of space and facilities on the NYSE floor, would restrict access to the NYSE, the nation's "primary" stock market. As volume on the NYSE increases, it becomes more difficult to justify limitations on access to that exchange in light

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[24]The small number of physical access members may result, in part, from the controversy which has surrounded the program since its inception. Moreover, the opposition of certain floor members to the program caused the NYSE to impose an eight month informal moratorium on the granting of physical access memberships which was not lifted until September 1979. Finally, certain floor members filed suit in July 1980, in the New York State Court to enjoin the NYSE from granting physical access memberships. That suit was resolved in favor of the NYSE in January 1980. *Higgins* v. *Hall*, [Current] Fed. Sec. L. Rep. (CCH) para 97,355 (N.Y. Sup. Ct., January 21, 1980). Thus, even if the physical access annual membership program were an experiment, as the Alliance argues, the Commission believes that the program has not thus far had a practical opportunity to develop.

[25]This determination was based on current estimates of the lead time required to provide the supporting personnel and services annual members need to conduct their activities, and on considerations arising from the NYSE's Facilities Upgrade Program which is currently being implemented.

[26]In creating physical access memberships in 1978, the NYSE Board stated that annual membership would increase the potential for access to the NYSE and encourage greater participation therein. The exchange urged that the creation of physical access membership was consistent with Section 6(b)(2) in enabling any qualified person to become a member of the exchange, and with Section 6(b)(5) in that the existence of various forms of membership tended to remove impediments to the mechanism of a free and open market. File No. SR-NYSE-77-21.

[27]NYSE Form 19b-4A, Exhibit B at 3-4 (Special Membership Bulletin; October 5, 1979), Exhibit C (Special Membership Bulletin; November 1, 1979).

of the competitive objectives of the Act of ensuring free and open markets.[28] Thus, the Commission cannot find that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the result today is consistent with its continued belief that a securities exchange should enjoy considerable latitude to develop—and terminate—regulatory experiments if the exchange can demonstrate that such experiments or their termination would be consistent with the Act. In light of the fact that the NYSE Board of Directors favors the continuation of the physical access membership program on the ground that the program makes the NYSE a more competitive and, therefore, more attractive marketplace, it appears unlikely that disapproval of the proposed rule change will deter the self-regulatory organizations from developing experiments designed to achieve the Act's broader goals as well as their own regulatory objectives. Finally, disapproval of the proposed rule change should reaffirm the Commission's strong commitment to the removal of artificial barriers to marketplaces and the fostering of competition within and among exchange markets.

IV. **Findings**

The Commission is unable to find that the proposed rule change is consistent with Section 6(b)(8) of the Act. The Commission concludes that the proposed rule change would impose a burden on competition by limiting access to the NYSE floor. On the basis of the data, views and arguments before the Commission, it cannot conclude that those burdens are either necessary or appropriate in furtherance of the purposes of the Act. The Commission also is unable to find that the proposed rule change is consistent with Section 6(b)(5), which requires tne NYSE's rules to remove impediments to and perfect the mechanism of a free and open market and the development of a national market system. Rather, the Commission believes the proposed rule change would restrict access to the trading facilities of the NYSE in ways that appear to restrict free and open markets without providing countervailing benefits.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-80-2) to amend Article IX, Section 1(b) of the NYSE Constitution to limit physical access annual memberships to two, be, and hereby is, disapproved.

By the Commission.

George A. Fitzsimmons
Secretary

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[28]In 1979, the NYSE accounted for 88.13 percent of all consolidated volume compared to 85.34 percent in 1976 (NYSE 1980 *Fact Book* at 15).

The Commission notes that it does not appear that the existence of physical access membership has had an adverse effect on the price of NYSE seats. In 1977, the year physical access annual membership was approved (at $25,000/year) by the NYSE membership, the average price of NYSE seats was $54,100 (high of $95,000), and in 1978, the year the Commission approved the physical access rule, the average price of NYSE seats was $63,746 (high of $105,000). In 1979, the year the Alliance sued to have the NYSE enjoined from granting physical access membership and obtained a membership vote on the proposed limitation, NYSE seats sold for an average of $139,500 (high of $210,000). The NYSE raised physical access dues to $35,000 in late 1979. Seats presently are selling for approximately $205,000.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17039/August 1, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE CINCINNATI STOCK EXCHANGE

File No. SR-CSE-80-3

The Cincinnati Stock Exchange submitted, on June 20, 1980, a proposed rule change under Rule 19b-4 which would revise the schedule of fees charged for access to the National Securities Trading System and would establish a maximum exchange charge of $150 on any single transaction executed by an individual firm.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change,

the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CSE-80-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17040/August 1, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE DEPOSITORY TRUST COMPANY ("DTC")

(File No. SR-DTC-80-3)

The Depository Trust Company submitted on July 3, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, to permit National Securities Clearing Corporation ("NSCC") Sponsored Participants to utilize DTC's Collateral Loan Program.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 4, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-DTC-80-3.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington. D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17041/August 4, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten-day suspension of over-the-counter trading for the period commencing at 9:45 a.m. on August 4, 1980 and terminating at midnight (EDT)

on August 13, 1980 of the securities of Liberty Oil Corporation formerly named Sullivan's Open Pit, Inc. located at Suite 840 Kennecott Bldg., 10 East South Temple Street, Salt Lake City, Utah, 84133.

The Commission suspended trading in the securities of Liberty Oil Corporation in view of the insufficient information currently available to the public regarding the amount of common stock outstanding, and the identity of the controlling shareholders of Liberty Oil Corporation.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain of the requirements of Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17042/August 4, 1980

The Securities and Exchange Commission has ordered public administrative proceedings under the Securities Exchange Act of 1934 (Exchange Act) and the Securities Investor Protection Act of 1970 against: Peter J. Kisch (Peter Kisch), president of P. J. Kisch & Co., Inc. (Kisch), a former Minneapolis, Minnesota broker-dealer; George R. Zenanko (Zenanko), registered representative and vice president at Kisch; Gerald M. Levine (Levine), a former registered representative at Kisch; Equity Securities Trading Company, Inc. (Equity), a registered broker-dealer located in Minneapolis; and Nathan Newman (Newman), president of Equity.

The Order for Proceedings alleges that Peter Kisch, Zenanko, Levine, Equity, and Newman wilfully violated and aided and abetted violations of the antifraud provisions of the Securities Act of 1933 (Securities Act) and the Exchange Act in connection with the sales of shares of an over-the-counter stock to Kisch customers at excessive mark-ups pursuant to a joint trading arrangement between Equity and Kisch. The Order alleges that the above parties failed to disclose to Kisch customers that Kisch dominated the market in the stock and that the prices which these customers paid for their shares did not bear a reasonable relationship to prevailing market prices. The Order also alleges that Equity violated Regulation T in connection with its part in the joint trading arrangement. In addition, the Order alleges that Peter Kisch and Newman failed to reasonably supervise employees under their supervision and control.

The Order further alleges that Peter Kisch and Zenanko violated the antifraud provisions of the Securities Act and the Exchange Act in that they diverted customer funds to pay expenses of Kisch, at a time when Kisch was experiencing financial difficulties.

Finally, it is also alleged that Peter Kisch and Zenanko aided and abetted Kisch's violations of the customer protection, net capital, and recordkeeping rules.

Levine, Equity and Newman have submitted offers of settlement which the Commission has determined to accept. (See Exchange Act Release No. 17043, entitled "Findings and Order Imposing Remedial Sanctions"). With respect to the other respondents, a hearing will be scheduled to take evidence on the staff's allegations, and to determine whether any remedial action should be taken by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17043/August 4, 1980

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 93/August 4, 1980

Admin. Proc. File No. 3-5950

In the Matter of

GERALD M. LEVINE
EQUITY SECURITIES TRADING COMPANY, INC.
(File No. 8-21025)
NATHAN NEWMAN

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these proceedings ordered today pursuant to the Securities Exchange Act of 1934 (Exchange Act) and the Securities Investor Protection Act of 1970, Respondents Gerald M. Levine (Levine), Equity Securities Trading Company, Inc. (Equity) and Nathan Newman (Newman) have submitted Offers of Settlement which the Commission has determined to accept.[1] Solely for the purpose of settling these proceedings and without admitting or denying the allegations contained in the Order for Proceedings, the above Respondents consent to the findings of violations and sanctions contained in this Order.[2]

On the basis of the Order for Proceedings and the Offers of Settlement, the Commission finds:

1. Levine wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and wilfully aided and abetted violations of Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-3 and 15c1-2 thereunder, as alleged in the Order for Proceedings.

2. Equity wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act (Securities Act) and Sections 7(c), 10(b) and 15(c)(1) of the Exchange Act and Rules 10b-3, 10b-5 and 15c1-2, and Regulation T thereunder, as alleged in the Order for Proceedings.

3. Newman wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and wilfully aided and abetted violations of Sections 7(c), 10(b), and 15(c)(1) of the Exchange Act and Rules 10b-3 and 15c1-2, and Regulation T thereunder, as alleged in the Order for Proceedings.

4. Equity and Newman failed reasonably to supervise persons subject to their supervision with a view toward preventing the violations as alleged in the Order for Proceedings.

In view of the foregoing matters, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that:

1. Levine be and hereby is suspended from association with any broker or dealer or investment company or investment adviser or affiliate thereof for a period of two (2) calendar weeks effective at the opening of business on the second Monday after the date of this Order.

2. Equity be and hereby is suspended for a period of ninety (90) calendar days from entering into any agreements to perform any clearing, execution or account-carrying functions for any broker-dealer for which any such agreement had not been entered into prior to the entry of the Order for Public Proceedings. The suspension shall be effective at the opening of business on the second Monday after the date of this Order.

3. Equity comply with its undertakings to:

(a) require any broker-dealer for whom it carries accounts to make full payment for any securities purchased for such accounts within the period provided by Regulation T, 12 C.F.R. 220.4;

(b) employ procedures that will establish that mark-ups charged by Equity and its correspondent broker-dealers in principal transactions with customers are not excessive and that such transactions with customers are effected at prices which are reasonably related to prevailing market prices;

(c) require correspondent broker-dealers to disclose to Equity all customer orders for a security prior to execution of any transaction in such security and to determine how each such transaction will be executed; and

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[1]The Order instituting proceedings was issued simultaneously with the Commission's acceptance of their Offers of Settlement.

[2]The findings herein are not binding on any other Respondent named in these proceedings.

(d) disclose on each confirmation statement of a customer transaction in a security whether a correspondent broker-dealer or Equity acted as principal in the transaction and whether a correspondent or Equity is a market maker in the security.

4. Newman be and hereby is suspended from serving in any supervisory capacity with any broker or dealer or investment company or investment adviser or affiliate thereof for a period of two (2) calendar weeks, effective at the opening of business on the second Monday after the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17044/August 4, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-27

The New York Stock Exchange, Inc. ("NYSE") submitted, on July 24, 1980, a proposed rule change under Rule 19b-4 to implement, on a pilot basis, trade comparison procedures using universal contra-party names for post-opening trades involving orders received by the Exchange through its Designated Order Turnaround System.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 11, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-27.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17045/August 4, 1980

BOSTON STOCK EXCHANGE CLEARING CORPORATION ("BSECC")

(SR-BSECC-80-1)

ORDER APPROVING PROPOSED RULE CHANGE

On January 8, 1980, BSECC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change establishing procedures whereby book-entry transfers within New England Securities Depository Trust Company may be used for settlement of trades clearing and settling through BSECC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16494, January 15, 1980) and by publication in the *Federal*

Register (45 FR 5425, January 15, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17046/August 5, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-24)

National Securities Clearing Corporation (NSCC) submitted on July 31, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act that changes the fee charged for submission of bond trades to $0.40 per side.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 11, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-24.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17047/August 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-77-14

On July 28, 1980, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder, a fourth amendment to a proposed rule change. The amendment would remove Canada as a qualifying domicile for NYSE member organizations and would require NYSE member organizations to be created or organized under the laws of, and maintain their principal place of business in, the United States.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 11, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons

desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-77-14.

Copies of the submission, any subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17048/August 5, 1980

In the Matter of

PACIFIC STOCK EXCHANGE, INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-12)

ORDER APPROVING PROPOSED RULE CHANGE

On June 9, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which defines combination orders and extends to such orders a limited exception to book priority and clarifies the definitions of spread orders and straddle orders.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16916, June 21, 1980) and by publication in the *Federal Register* (45 FR 43918, June 30, 1980). No written statements with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17049/August 6, 1980

A notice has been issued giving interested persons until August 27, 1980 to comment on the applications of the *Boston Stock Exchange, Inc.* for unlisted trading privileges in 17 stocks.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17050/August 6, 1980

A notice has been issued giving interested persons until August 27, 1980 to comment on the application of the *Philadelphia Stock Exchange* for unlisted trading privileges in the common stock ($1 par value) of STALEY (A.E.) MANUFACTURING COMPANY.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17051/August 6, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-7

The Municipal Securities Rulemaking Board (the "MSRB") submitted on August 4, 1980, a proposed rule change under Rule 19b-4 to extend from September 24, 1980, to December 1, 1980, the effective date of certain amendments to MSRB rule G-15 relating to customer confirmations (File No. SR-MSRB-79-6) and MSRB rule G-12 applicable to inter-dealer confirmations and rule G-15 (File No. SR-MSRB-80-1). The amendments to rule G-15 were approved by the Commission in Securities Exchange Act Release No. 16707 (March 28, 1980). Amendments to rules G-12 and G-15 were approved by the Commission in Securities Exchange Act Release No. 16844 (May 27, 1980).

Publication of the submission is expected to be made in the *Federal Register* during the week of August 11, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-7.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17052/August 6, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
1150 Connecticut Avenue, N.W.
Suite 507
Washington, D.C. 20036

(SR-MSRB-80-6)

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MUNICIPAL SECURITIES RULEMAKING BOARD AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on July 24, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission copies of a proposed rule change which would amend MSRB rule G-3, the MSRB's professional qualifications rule. The proposed rule change would extend from August 11, 1980, to September 15, 1980, the effective date of the requirement that persons performing the functions of municipal securities principals must qualify as municipal securities principals by taking and passing the Municipal Securities Principal Qualification Examination (the "Examination"), if they are not eligible for one of the exemptions provided under the rule. The text of the proposed rule change is as follows:*

Rule G-3. Classification of Principals and Representatives; Numerical Requirements; Testing

No municipal securities broker or municipal securities dealer or person who is a municipal securities principal, financial and operations

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**Italics* indicate new language; [Brackets] indicate deletions.

principal, or municipal securities representative (as hereafter defined) shall be qualified for purposes of rule G-2 unless such municipal securities dealer or person meets the requirements of the rule.

(a) through (b). No change

(c) Qualification Requirements for Municipal Securities Principals.

(i) through (v). No change.

(vi) The requirements of paragraph (c)(i) shall become effective on *September 15, 1980* [August 11, 1980 (six months following the date of the first administration of the Municipal Securities Principal Qualification Examination)].

(d) through (h). No change

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-6.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The proposed rule change, by extending from August 11, 1980, to September 15, 1980, the date by which candidates subject to the examination requirement must take and pass the Examination, will ensure that all candidates are afforded at least the six month period contemplated by MSRB rule G-3 for taking and passing the Examination. The six month time period was included in MSRB rule G-3 to provide a reasonable time for a person currently performing activities as a municipal securities principal to satisfy the examination requirement. Candidates associated with securities firms that are not members of the National Association of Securities Dealers, Inc. ("SECO firms"), and banks for which the Commission is the appropriate regulatory agency were not able, however, to enroll for the Examination until early March of 1980. Accordingly, by approving the rule on an accelerated basis, the Commission will provide at least a six month period for all candidates.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17053/August 7, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of Electro-Heat Resources Corp. ("EHR"), a New York corporation located at 310 Madison Avenue, New York, N.Y. 10017 for the ten day period commencing at 11:00 a. m. on August 7, 1980 and terminating on August 16, 1980 at midnight.

The Commission suspended trading in the securities of EHR in view of the recent unusual and unexplained market activity in that security and in view of questions raised about the adequacy and accuracy of publicly disseminated information about orders which EHR has received, contracts it has entered into and negotiations in which it is or was participating.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other current available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the security in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21669/August 4, 1980

In the Matter of

WESTERN MASSACHUSETTS ELECTRIC COMPANY
174 Brush Hill Avenue
West Springfield, Massachusetts

(70-6482)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Western Massachusetts Electric Company ("WMECO"), a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application, which is summarized below, for a complete statement of the proposed transaction.

WMECO proposes to issue and sell, at competitive bidding, up to $30,000,000 principal amount of its First Mortgage Bonds, Series N, ____% due October 1, 2010. The interest rate, which shall be a multiple of 1/8 of 1%, and the price, exclusive of accrued interest, to be paid to WMECO, which will be not less than 100% nor more than 103% of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of August 1, 1954, between WMECO and The First National Bank of Boston, Successor Trustee, as supplemented and amended from time to time, and as to be further supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by WMECO at an effective interest cost of less than the effective interest cost of the bonds.

The coverage ratio of net earnings to total annual interest charges is 2.51 on an actual basis and 2.02 on a *pro forma* basis.

The net proceeds from the sale of the bonds together with capital contributions totaling $15,000,000 scheduled to be made by Northeast Utilities to WMECO prior to the sale of the bonds, will be used by WMECO to repay a portion of the company's short-term borrowings estimated to total $37,000,000 at the time of such sale. Such short-term borrowings have been or will be applied to finance WMECO's 1979-1980 construction program. The company's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $86,122,000 ($42,082,000 in 1980 and $44,040,000 in 1981) of which $16,027,000 had been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in

1980 it will require an additional $70,700,000 of funds from external sources to complete its 1980 construction program and to refinance approximately $41,000,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $30,000,000 is expected to be realized from the sale of the bonds, $15,000,000 is expected to be realized from capital contributions, and the balance of $25,700,000 is expected to be financed through short-term borrowings.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval of the Connecticut Department of Public Utilities is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21670/August 4, 1980

In the Matter of

THE CONNECTICUT LIGHT AND POWER COMPANY
Selden Street
Berlin, Connecticut 06037

(70-6483)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Connecticut Light and Power Company ("CL&P"), a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested parties are referred to said application, which is summarized below, for a complete statement of the proposed transaction.

CL&P proposes to issue and sell, at competitive bidding, up to $75,000,000 principal amount of its First and Refunding Mortgage _____% Bonds, Series FF, due October 1, 2010. The interest rate, which shall be a multiple of 1/8 of 1%, and the price, exclusive of accrued interest, to be paid to CL&P, which will not be less than 98% nor more than 102% of the principal amount thereof, will be determined by competive bidding. The bonds will be issued under the Indenture of Mortgage and Deed of Trust dated as of May 1, 1921, between CL&P and Bankers Trust Company, Trustee, as heretofore supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by CL&P at an effective cost of less than the effective interest cost of the bonds.

The coverage ratio of net earnings to total annual interest charges is 2.35 on an actual basis and 2.01 on a *pro forma* basis.

The net proceeds from the sale of the bonds will be used by CL&P to repay a portion of the company's short-term borrowings estimated to total $155,000,000 at the time of such sale, including $15,000,000 to be borrowed on a temporary basis, to refund a bond issue maturing on October 1, 1980. Except for said $15,000,000 of temporary borrowings, such short-term borrowings were or will be applied to finance CL&P's 1979-1980 construction program. The company's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $317,043,000 ($154,150,000 in 1980 and $162,893,000 in 1981) of which $61,377,000 had been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in 1980 it will require an additional $199,600,000 of funds from external sources to complete its 1980 construction program, to repay at maturity $15,000,000 of 3% Bonds on October 1, 1980, and to refinance approximately $88,200,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $75,000,000 is expected to be realized from the sale of the bonds, $18,000,000 is expected to be realized from the sale of a 1.5% interest (out of CL&P's remaining 4.5% interest) in the Seabrook, New Hampshire, nuclear unit, $40,000,000 is expected to be realized from capital contributions, and the balance is expected to be financed through short-term borrowings.

A statement of the fees and expenses incurred or to be incurred in connection with the proposed transactions will be supplied by amendment. The approval of the Connecticut Department of Public Utilities is required for the issuance of the bonds. It is represented that no other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21671/August 5, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

(70-6473)

ORDER AUTHORIZING ISSUANCE AND SALE OF DEBENTURES AT COMPETITIVE BIDDING

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

Columbia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $100,000,000 principal amount of ____% Debentures, Series Due August, 2000 ("New Debentures"). The interest rate is to be specified in the bids for the purchase of the New Debentures. The New Debentures will be issued under a Twenty-eighth Supplemental Indenture to the 1961 Indenture between Columbia and Morgan Guaranty Trust Company of New York, Trustee. The proposed

Twenty-eighth Supplemental Indenture is to be dated as of August 1, 1980.

It is contemplated that the formula for the calculation of the regular redemption prices of the New Debentures will provide that the regular redemption price for the twelve-month period commencing August 1, 1980 will be the initial public offering price of the New Debentures (exclusive of accrued interest) plus a premium equal to the interest rate of the New Debentures. For each twelve month period thereafter, the regular redemption price shall be scaled down by 1/19th of the amount by which the regular redemption price for the twelve-month period commencing August 1, 1980 exceeds the principal amount of the New Debentures, except that on and after August 1, 1999 the regular redemption price shall be the principal amount of the New Debentures, without premium. In instances where the regular redemption prices would be applicable, Columbia shall not have the right to redeem any of the New Debentures prior to August 1, 1985 directly or indirectly, with borrowed funds, or in anticipation of funds to be borrowed, having an effective annual interest cost to Columbia of less than the effective annual interest cost to Columbia of the New Debentures.

A mandatory sinking fund for the New Debentures will be provided to retire $93,750,000 principal amount (representing 93.75%) prior to maturity through annual retirements of $6,250,000 principal amount beginning in 1985. In addition to such mandatory sinking fund obligation, Columbia shall have the non-cumulative option to redeem on any sinking fund date, at the then current sinking fund redemption price, up to an additional $9,375,000 principal amount of the New Debentures, but no redemption made pursuant to such option shall reduce any sinking fund requirement.

It is stated that the net proceeds from the sale of the New Debentures will be used for general corporate purposes including the 1980 capital expenditure program of Columbia's subsidiaries, which is presently estimated at $450,000,000.

It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed transaction are approximately $307,475. The fees and expenses of counsel for the successful bidders of the New Debentures are $30,000.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21631), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21672/August 7, 1980

In the Matter of

BLACKHAWK COAL COMPANY
New York, New York

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6273)

ORDER AUTHORIZING CREATION OF AND TRANSFER OF COAL MINES AND RELATED ASSETS TO COAL MINING SUBSIDIARY

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company

("Blackhawk"), a coal mining subsidiary of I&M, have filed with this Commission an application-declaration and amendments thereto pursuant to Sections 6, 7, 9, 10, 12(b), 12(f), and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(3) and 86-92 promulgated thereunder concerning the following proposed transactions.

Blackhawk was incorporated on September 15, 1978, under the laws of the State of Utah. It is authorized to issue 100,000 shares of common stock, without par value. To date it has issued no stock and has not done any business.

By order dated October 21, 1974 (HCAR No. 18614), I&M was authorized to acquire up to $10,000,000 of notes to be issued by Braztah Corporation ("Braztah"), a subsidiary of McCulloch Oil Corporation ("McCulloch"), for the purpose of financing the expansion and operation of certain coal mines located in Carbon County, Utah ("Carbon County Mines"), from which mines McCulloch and Braztah were to sell coal to AEP system companies pursuant to a June 19, 1974, coal supply contract. By order dated June 26, 1975 (HCAR No. 19064), I&M was authorized to acquire the Carbon County Mines and related equipment, pursuant to an option in the original agreement. I&M employed Braztah to operate the mines until December 31, 1999. Title to the mines and equipment was taken by Franklin Real Estate Company ("Franklin"), a real estate subsidiary of AEP.

Controversies among the parties arose, which were resolved by a settlement, embodied in two agreements and effective November 30, 1979. Under the settlement, (1) Braztah ceased to be operator of the Carbon County Mines; (2) Braztah assigned to Franklin Braztah's application to the Bureau of Land Management, Department of Interior, for a United States Coal Lease (No. U-25683) (the "Federal Coal Lease"), which was not previously transferred when Franklin purchased the bulk of the Carbon County Mines' reserves in 1975; (3) I&M paid to McCulloch and Braztah $15,000,000 on November 30, 1979, $4,125,000 on June 27, 1980, and agreed to pay an additional amount aggregating $19,800,000 (the "Braztah Obligation") in installments over a five-year period ending in 1985; and (4) I&M agreed to pay McCulloch and Braztah, if the Federal Coal Lease were issued to Franklin on or before June 27, 1985, the amount of $3,888,000 (the "Contingent Braztah Obligation"), in installments beginning on the latter of June 27, 1981, or the June 27 next following the issuance of such lease, and on each June 27 thereafter to and including June 27, 1985, with interest on the unpaid balance of said amount at the rate of 8% per annum from June 27, 1979. The Carbon County Mines are currently being operated by Price River Coal Company ("Price"), a coal mining subsidiary of I&M; coal therefrom is presently being mined at the rate of 1.25 to 1.3 million tons per year, all of which is currently being delivered to I&M's Tanners Creek Plant.

In the instant filing applicants-declarants request authorization for I&M to transfer to Blackhawk its interest in the Carbon County Mines and reserves, leases, options, equipment, and rights, water way and other water rights and licenses related to the ownership and operation of the Carbon County Mines (all such assets, collectively, the "Mines"). Under local law, certain of the water and other rights are represented by stock interests in mutual companies acquired as part of the purchase from McCulloch and Braztah or otherwise, which are included, without distinction, in the mine-related assets. They also request authorization for Blackhawk to spend up to $13,000,000 between December 31, 1980, and June 30, 1981, on additional mine improvements in the event that a contemplated sale of the Mines to non-affiliated parties is not consummated prior to December 31, 1980.

On May 29, 1980, I&M and Franklin (collectively the "Prospective Seller") entered into an agreement ("Agreement") dated as of May 1, 1980, with Alusuisse of America, Inc. ("Alusuisse") and Samusa, Inc. ("Samusa"), a subsidiary of Alusuisse, nonaffiliates of AEP (collectively the "Prospective Purchaser"), for further negotiations during a Negotiation Period (of a maximum of 180 days) to attempt to evolve arrangements on mutually agreed conditions providing for (i) a Mine Purchase Agreement under which the Prospective Seller would sell the Mines to the Prospective Purchaser; and (ii) a Coal Supply Agreement under which the Prospective Purchaser would sell to I&M, for the benefit of I&M and/or its affiliates and possibly non-affiliates, for up to 60 months following such purchase, coal mined by the Prospective Purchaser (or an affiliate) from the Mines (or from an alternative source), such coal to have characteristics as therein set forth, at a base price of $40 per ton, f.o.b. mine, plus escalation.

Under the Agreement the Prospective Purchaser also has a separate option to elect, at any time during the Negotiation Period to purchase the Mines for cash at a base price of approximately $195,000,000. The base price is to be adjusted for additions and retirements subsequent to February 29, 1980, as more fully described in the application, and the earnest money paid is to be credited. The option includes an obligation of I&M, on written request of the Prospective Purchaser, to contract to purchase for approximately 5 years washed coal from the Mines on the terms described above.

Pursuant to another provision in the Agreement, I&M proposes that it will assign and transfer to Blackhawk all of I&M's right, title and interest, including its beneficial interest in assets owned by Franklin for the benefit of I&M, in the assets comprising the Mines; that I&M and Franklin will designate Blackhawk as one of the entities constituting the Prospective Seller under the Agreement; and that Blackhawk will execute and deliver to Alusuisse and Samusa a written instrument pursuant to which Blackhawk will assume all of the obligations of the Prospective Seller under the option provisions of the Agreement. Such transaction will enable Blackhawk, in conjunction with I&M and Franklin, to convey the Mines to the Prospective Purchaser in the event that (a) a Mine Purchase Agreement is negotiated and completed pursuant to the Agreement, or (b) if, failing to reach an accord upon such Mine Purchase Agreement, Alusuisse and Samusa decide to exercise the option granted in the Agreement.

I&M states that its investment, as of February 29, 1980, was as follows (in thousands):

	Total	*Plant In Service*	*Coal Property Held For Future Use*
Land	$1,263	$955	$308
Water rights	482	482	—
Coal reserves	49,824	16,100	33,724
Contract settlement	14,929	14,929	—
Depreciable assets	32,658	32,370	288
Development & pre-operating expense	56,072	47,079	8,943
Reorganization deferral	7,267	7,267	—
AFUDC	28,049	22,223	5,825
	$190,492*	**$141,404**	**$49,088**

*Excludes the Braztah Contingent Obligation.

It is further proposed that in connection with the acquisition by Blackhawk of I&M's beneficial interest in the Mines: (i) Blackhawk will assume I&M's Braztah Obligation of $19,800,000 with interest at the rate of 8% per annum (and also assume I&M's Contingent Braztah Obligation of $3,888,000); (ii) I&M will make an advance of $31,000,000 to Blackhawk to be repaid not later than December 31, 1981, Blackhawk (a) to pay interest on the outstanding balance of such advance at the prime rate in effect from time to time of Manufacturers Hanover Trust Company, and (b) to endeavor to pay back the advance as soon as practicable with proceeds from a possible sale and leaseback transaction (to be the subject of a future filing with this Commission) involving certain coal processing and mining equipment; (iii) Blackhawk will issue to I&M a promissory note for $40,800,000 bearing interest at the rate of 10.13% per annum (reflecting I&M's weighted average cost of first mortgage bonds issued between March 1975 and March 1978) and maturing on December 31, 2010; (iv) Blackhawk will issue to I&M approximately 49,800 shares of Blackhawk's common stock, stated value $1,000 per share; and (v) I&M will make a non-interest bearing advance to Blackhawk in the amount of $49,100,000, said amount to finance Blackhawk's acquisition of the portion of the reserves of the Mines which constitute Coal Property Held For Future Use.

It is also proposed that Blackhawk be authorized to make capital expenditures required for mine improvements subsequent to December 31, 1980, in the event the Mines are not sold by such date. Such expenditures are estimated to require up to $13,000,000 between such date and June 30, 1981. It is proposed that any additional capital required will be supplied by I&M, such capital to be split between the purchase of debt, in the form of a promissory note of Blackhawk maturing December 31, 2010, and the purchase of equity in proportions corresponding to the respective debt-equity ratios of I&M at the end of the calendar year preceding the year in which such additional capital shall be supplied to Blackhawk. The interest rate on the new debt would be set at the effective interest cost of I&M's then most recent issue of first mortgage bonds preceding each such additional investment. Since such expenditures are to be made only in the event the Mines are not sold prior to December 31, 1980, and are to be made in the first six months subsequent to such date, jurisdiction will be reserved with respect thereto.

Blackhawk proposes, prior to, or in the absence of, any sale of the Mines under the Agreement, to carry out the further development and operation of the Mines, through Price, functioning as operator as at present, and to sell the coal so mined to I&M or to such affiliate or non-affiliate as I&M shall direct.

It is further proposed that if at any time neither I&M nor its affiliates should have any need for coal produced from the Mines, then the excess coal will be sold, to the extent practicable, to one or more non-affiliates at the highest practicable price.

I&M proposes, in return for its right to receive all of the coal produced by Blackhawk from the Mines, to pay Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, will be at least sufficient to enable Blackhawk to pay when due, all of its operating and other expenses, including: (i) any amounts which Blackhawk may be required to pay as rent pursuant to any lease of real or personal property and/or as interest on any indebtedness of Blackhawk for borrowed money or purchase money indebtedness, issued or assumed by Blackhawk; and (ii) such additional amount as, after provision for taxes based upon or measured by income, will enable Blackhawk to earn a return on its equity equal to the sum of the products of (a) the weighted average of the effective dividend rates on the appropriately included outstanding preferred stock issued by I&M during the period when the related investments were made by Blackhawk in the Mines, and (b) a return of 12.5% on equity through December 31, 1980, and thereafter the return last allowed I&M by the Federal Energy Regulatory Commission ("FERC") on I&M's common equity in wholesale rate proceedings before FERC, multiplied, respectively, by the applicable percentages of I&M's total capitalization represented by preferred stock and common equity during the periods in which such related investments were made by Blackhawk. The return factor would be adjusted as a result of a change in any FERC-approved return on common equity, effective the succeeding January 1.

It is stated that the "Plant in Service" facilities, aggregating approximately $141,000,000 as of February 29, 1980, were substantially placed in service as of April 1, 1979, following an extended development period. During the development period, the developmental coal produced was priced at the average cost of coal purchased from non-affiliated sources by I&M and other AEP system companies purchasing such coal. However, upon the declaration of commercial operation, April 1, 1979, the basis of pricing the coal production shifted to the recovery of all expenses associated with the mining of such coal, including the cost of capital invested in the mining operation. Effective on such date I&M began to impute investment carrying charges to the current commercial coal production on the "Plant in Service" assets. The imputation of such investment carrying charges has been accomplished on I&M's books of account by crediting "Other Income" (the same classification in which the return on investment in Blackhawk would be recognized on I&M's books) with a corresponding charge to fuel stock. Depreciation of mining equipment in service and amortization have likewise been associated directly with tonnages produced. The provision for allowance for funds used during construction, and associated capitalization as a component of mine development costs, was discontinued effective April 1, 1979, on assets then ready for service.

The production of coal by I&M for its own use has not been regulated under the Act. I&M's accounting for its investments and costs, including computations and allocations of indirect and capital costs, are subject to the applicable requirements of the Public Service Commission of Indiana and FERC. Upon transfer of the properties to Blackhawk, a separate subsidiary, the sale of coal by Blackhawk to I&M will become subject to Section 13 of the Act and the rules promulgated thereunder. Insofar as Rule 90 includes a reasonable return on capital as an element of the cost of such coal, the application specifies rates to be employed for that purpose. It further states that to the extent that any subsequent order of this Commission authorizes a return on investment different from that proposed in the application for use in determining pricing arrangements for coal produced and delivered during this interim period, I&M and Blackhawk would reflect any necessary adjustments in subsequent coal billings.

It is stated that the transfer will facilitate the proposed sale, if it occurs, and that the segregation of the subject properties will simplify and facilitate their administration and regulation, even if the sale does not occur. The transfer requires establishment of an immediately effective price, under the Act, for coal sold to I&M. The continued use of the book values already established by I&M, as proposed by the application, is appropriate for that purpose. The

acceptance of such book values, in this context, will not preclude any regulatory authority from exercising any jurisdiction it may have over I&M's previous operations or accounting. Nor will it preclude this Commission from exercising its jurisdiction, under Section 15(f) of the Act or other applicable provisions, to give appropriate effect to any determinations hereafter made by it or another regulatory agency.

Applicants-declarants claim exemption from the competitive bidding requirements of Rule 50 for Blackhawk's issuance of its common stock and notes to I&M pursuant to Rule 50(a)(3).

The record is incomplete with respect to the fees and expenses to be incurred in connection with the proposed transactions. No state commission and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21652), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to: (a) the fees and expenses to be incurred in connection with the proposed transactions; and (b) the proposed expenditures for mine improvements to be made between January 1, 1981, and June 30, 1981.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21673/August 7, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
Westborough, Massachusetts

(70-5543)

ORDER AUTHORIZING INCREASED BUDGET FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES

New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary New England Energy Incorporated ("NEEI") have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45(a) promulgated thereunder concerning the following proposed transaction.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize NEEI, acquire its capital stock and make investments (including subordinated notes) in NEEI of up to $20,250,000 through July 31, 1976, and NEEI was authorized to enter into a partnership agreement ("Agreement") with Samedan Oil Corporation ("Samedan"), a wholly owned subsidiary of Noble Affiliates, Inc., to explore for oil and gas in the continental United States (both onshore and offshore). NEEI was at that time authorized to invest a maximum of $10,000,000 in that partnership through July 31, 1979. By order dated June 18, 1976 (HCAR No. 19580), NEES was authorized to increase its investment in NEEI to $45,000,000 through December 31, 1979, with NEEI to use such investments to finance its procurement and inventory activities and to finance fuel exploration and development activities with Samedan and/or other parties. By order dated July 19, 1978 (HCAR No. 20632), NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an

affiliate, pursuant to a fuel purchase contract on terms and conditions therein set forth. By order dated December 29, 1979 (HCAR No. 21365), NEEI was authorized (1) to enter an amendment to the Agreement, which amendment extended the term of the Agreement through December 31, 1984, and (2) to invest in the partnership with Samedan a maximum amount of $30,000,000 for exploration, development or any other purpose from January 1, 1980, through December 31, 1980.

By post-effective amendment applicants-declarants request that the maximum amount NEEI may invest in its partnership with Samedan for oil and gas exploration, development, or any other purpose from January 1, 1980, through December 31, 1980, be increased to $60,000,000. It is stated that on the basis of the projected exploration activities of Samedan (which is the managing partner and has responsibility for evaluation and selection of new prospects for exploration) for the calendar year 1980, NEEI now estimates that its share of partnership expenses for exploration purposes alone will require capital contributions by NEEI to the partnership of approximately $33,000,000. It is further stated that NEEI now estimates its share of development expenses for the calendar year 1980 will be approximately $27,000,000, such amount representing an increase over earlier estimates due to additional expenses of developing several new prospects, revised plans for developing a large prospect and general inflation.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21653), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, and subject further to the reporting requirements set forth in the order of December 29, 1979 (HCAR No. 21365).

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21674/August 7, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
Ashland, Kentucky

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

(70-6435)

SUPPLEMENTAL ORDER AUTHORIZING INTRA-SYSTEM FINANCING AND RESERVING JURISDICTION

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed an application-declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

By order in this proceeding dated May 28, 1980 (HCAR No. 21593), Columbia and some of its wholly-owned subsidiary companies were authorized to engage in certain intra-system financing. Jurisdiction was reserved over those transactions as to which the record was not complete.

With the filing of orders of the state utility commissions of Kentucky, Virginia, and Ohio, the record is now complete with respect to the following proposed transactions:

Company	*Installment and/or Term Notes Aggregate Amount* $	*Short-Term Advances* $
Columbia of Kentucky...	3,100,000	—
Columbia of Virginia	2,000,000	2,900,000
Columbia of Ohio	37,100,000	—
Totals	**42,200,000**	**2,900,000**

The requisite authorization for certain transactions has not yet been obtained from the various state public-utility commissions for Columbia of Pennsylvania, Columbia of New York, and Columbia of West Virginia, and jurisdiction will continue to be reserved with respect thereto.

Due notice of the filing of said application-declaration has been given in the manner prescribed by Rule 23 promulgated under the Act (HCAR No. 21541), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found, with respect to the above-described transactions as to which the record is complete, that the applicable provisions of the Act and rules promulgated thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration in respect of said transactions be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the above-described transactions as to which the record has been completed, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended as requested so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved over the proposed transactions as to which the record is not yet complete.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 577/August 7, 1980

The Securities and Exchange Commission has issued an order under the Trust Indenture Act ("Act") on application of Pacific Gas and Electric Company, exempting its First and Refunding Mortgage Bonds, Series 80B, due August 1, 2013, from the provisions, Subsections 316(a)(1), 316(b) and 317(a)(2) of the Act.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11285/August 4, 1980

In the Matter of

AMERICAN GENERAL TOTAL RETURN FUND, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-1569)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that American General Total Return Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 10, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant, a Maryland corporation, registered under the Act on December 4, 1967; and on the same date it filed a registration statement (File No. 2-27779) under the Securities Act of 1933 covering 15,000,000 shares of its capital stock in connection with a proposed public offering of its shares. This registration statement was declared effective by the Commission on March 15, 1968, on which date the public offering commenced. At the close of business on November 30, 1979, Applicant had outstanding 4,024,356 shares with a net asset value of $8.00 per share for a total net asset value of $32,196,037.

At the annual meeting of shareholders held on November 28, 1979, holders of a majority of Applicant's outstanding shares of capital stock approved an Agreement and Plan of Reorganization which provided for the transfer of all of Applicant's portfolio securities and substantially all of its other assets to the Fund of America, Inc. ("FOA"), in exchange for shares of capital stock of FOA, and for the dissolution of Applicant. Applicant's board of directors approved the transfer of assets to FOA on September 7, 1979. The application states that the transfer of assets was effected on November 30, 1979, and that Applicant distributed to its shareholders all of the FOA shares it acquired by establishing for each shareholder an FOA account and transferring to such account the shareholder's pro-rata portion of the FOA shares. The transfer of assets was based on the relative net asset value of the shares of the two companies, which was determined by Applicant and FOA on the same basis. Each shareholder of Applicant received approximately 0.96365 FOA shares for each share of Applicant then owned by the shareholder.

Applicant states that it currently has no debts or other liabilities outstanding because all of its debts and liabilities were either assumed by FOA or paid by Applicant; it has no assets; it has no security-holders; it is not a party to any litigation or administrative proceedings; and within the last 18 months Applicant has not for any reason transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Applicant also states that both FOA and it bore their own expenses in connection with the transfer of its assets to FOA. Finally, Applicant states that it was dissolved as a corporation under the laws of the State of Maryland by the filing of Articles of Dissolution on December 3, 1979, and that it is not now engaged, and does not propose to engage, in any business activities since it has completed the winding-up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that

he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11286/August 6, 1980

In the Matter of

THE 44 WALL STREET EQUITY FUND, INC.

and

FORTY FOUR SALES, INC.
150 Broadway
New York, New York 10038

(812-4690)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM SECTION 22(d) OF THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT TO PERMIT AN OFFER OF EXCHANGE

NOTICE IS HEREBY GIVEN that The 44 Wall Street Equity Fund, Inc. ("Fund"), an open-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), and Forty Four Sales, Inc. ("Sales"), principal underwriter for the Fund (collectively the "Applicants"), filed an application on June 10, 1980, for an order of the Commission (1) pursuant to Section 11(a) of the Act to permit the Fund to offer its shares for certain shares of the Reserve Fund, Inc. ("Reserve"), and (2) pursuant to Section 6(c) of the Act to exempt Applicants from the provisions of Section 22(d) of the Act and the rules thereunder to the extent necessary to permit such an offer of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Sales, as principal underwriter for the Fund, will maintain a continuous public offering of the shares of the Fund at their net asset value plus a sales charge, following the effective date of the Fund's registration statement on Form N-1 under the Securities Act of 1933, which has been filed with the Commission.

On purchases of less than $10,000 the maximum sales charge is 8.50%, which is reduced on larger purchases. There is no sales charge imposed on the reinvestment of dividends and capital gains from shares of the Fund. The application states that Reserve, an open-end investment company registered under the Act, invests primarily in short-term money market instruments.

Applicants propose to permit a Reserve shareholder to exchange shares of Reserve acquired either (1) by investing the net proceeds from a redemption of shares of the Fund and held for such shareholders in the 44 Wall Street Equity Fund Exchange Account ("Account") in the name of such shareholder at Reserve or (2) by the reinvestment of income dividends and capital gains distributions paid on all Reserve shares held in such Account, for shares of the Fund, in either case without the imposition of the customary sales charge described in the prospectus of the Fund (hereinafter referred to as the "Switch Privilege"). Reserve shares acquired in any other manner than as described above would not qualify for the Switch Privilege. Reserve imposes no sales or administrative charge in connection with the sale of its shares. A $5 service fee will be charged by The Bank of New York, the custodian and transfer agent for the Fund, for each redemption by telephone, telegraph or overseas cable.

According to the application, the participant in an

Account would be able to exercise his Switch Privilege at any time by instructing Reserve to redeem shares of Reserve in his Account and apply the redemption proceeds to the acquisition of shares of the Fund. No charge on the exchange of Reserve shares for shares of the Fund will be imposed by Reserve or the Applicants. The Switch Privilege will not be available to the proceeds from a redemption of Reserves shares which are paid directly to the investor or at his direction to any person other than the Fund. The Fund and Reserve have reserved the right to limit further the number of exchanges pursuant to the Switch Privilege which any investor may make within a certain period. The Switch Privilege will be subject to termination by the Fund or by Reserve on not less than six months prior written notice to holders of Accounts, except for cause, in which event the Switch Privilege in respect of that Account is subject to immediate termination. An investor maintaining an Account will receive the current prospectus of both Reserve and the Fund provided the investor remains entitled to the Switch Privilege. The Switch Privilege will lapse for an investor if his account balance of shares of the Fund shows a zero balance for a period of two consecutive years.

Section 11(a) provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus.

Applicants state that, because any investor eligible for the Switch Privilege will have been an investor in shares of the Fund and will continue to receive current prospectuses of the Fund while he holds the Account with Reserve, no additional sales efforts will be incurred by Sales in connection with the reacquisition of shares of the Fund. Applicants contend that it is fair and equitable that no sales charge should be imposed on the investor in connection with his reacquisition of shares of the Fund. Applicants represent that the $5 service charge will defray the administrative costs involved in each exchange. It is asserted that the Switch Privilege will not enable any investor to avoid payment of the applicable sales charge on his original investment in shares of the Fund.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class of persons, securities, or transactions from any provisions of the Act and the Rules promulgated thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than August 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11287/August 6, 1980

In the Matter of

FIRST NATIONAL SECURITIES CORPORATION
42 Virginia Avenue
Indianapolis, Indiana 46204

(811-1478)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that First National Securities Corporation ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Indiana on May 31, 1963, and registered under the Act on March 3, 1967. The Fund did not file a registration statement pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock. In addition, the Fund has not filed those annual and periodic reports required by Section 30 of the Act since the date of its registration under the Act. Furthermore, the files of the Commission indicate that the last communication the Commission had with the Fund was on February 29, 1968. Finally, communications sent to the Fund's last known address by the staff of the Commission have been returned as undeliverable. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may not later than September 2, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11288/August 6, 1980

In the Matter of

IMS VARIABLE LEVERAGE FUND, LTD.
11624 Old Trail Court
Fountain Hill, Arizona 85268

(812-4685)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTIONS 2(a)(3), 2(a)(19), AND 22(e) OF THE ACT

IMS Variable Leverage Fund, Ltd. ("Fund"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on May 28, 1980, for an order of the

Commission pursuant to Section 6(c) of the Act exempting the Fund from the provisions of Sections 2(a)(3), 2(a)(19), and 22(e) of the Act to the extent necessary to allow the Fund to operate using the limited partnership form.

On July 8, 1980, a notice (Investment Company Act Release No. 11256) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requesting exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Sections 2(a)(3), 2(a)(19) and 22(e) of the Act to the extent requested be, and hereby is granted, effective forthwith, subject to the continued effectiveness of the undertakings set forth in the application, which the Fund agreed may be made conditions of this order, and which are summarized in the notice.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11289/August 6, 1980

In the Matter of

EQUITY TRUST SHARES IN AMERICA
c/o Stifel, Nicolaus & Company, Inc.
500 N. Broadway
St. Louis, MO 63102

(811-411)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On July 8, 1980, a notice was issued (Investment Company Act Release No. 11251) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Equity Trust Shares in America ("Fund"), registered under the Act as a unit investment trust, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Equity Trust Shares in America under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11290/August 7, 1980

In the Matter of

ZENITH GROWTH FUND, INC.
c/o Bernard W. Heinel, President
Fund/Plan Services, Inc.
P.O. Box 8079
Philadelphia, Pa. 19101

(811-2142)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Zenith Growth Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Delaware on May 20, 1970; that it registered under the Act on November 10, 1970; and that it filed a registration statement (File No. 2-38782) pursuant to the Securities Act of 1933. This registration statement became effective on June 16, 1972, and permitted the Fund to commence the public offer and sale of shares of its capital stock. The Fund's last effective prospectus used in the offer and sale of its shares was dated October 6, 1972. In December, 1973, the public sale of the Fund's shares was discontinued, and on April 24, 1974, the Fund's Board of Directors suspended the right of redemption and no Fund shares were redeemed after that date. By August, 1974, the Fund was left without any officers or directors, and with no investment adviser.

The First Pennsylvania Bank, N.A. ("Bank"), acting as the Fund's custodian, presently has in its possession portfolio securities of the Fund which it has found to have no value. The Bank last received its custodian fee from the Fund in November, 1973. In August, 1977, and June, 1978, the Bank received $425.11 and $2100.00, respectively, for the shares of five companies held by the Fund. The Bank applied these amounts to the payment of fees owed it by the Fund. The Bank is still owed $3000.00 under its Custody Agreement with the Fund, and Fund/Plan Services, Inc., an affiliate of the Bank, is owed approximately $38,500 for shareholder services it provided the Fund. The Fund appears to have a number of other outstanding obligations, including bills for legal services and state taxes, no provision for payment of which has been made, and which far exceed the presently valueless assets being held by the Bank for the Fund.

The Bank has also acted as the Fund's transfer agent. According to the transfer agent's files, the Fund currently has 38 shareholders holding some 10,918.441 shares of the Fund (of which 4710 shares are in certificated form). Since the date that the right to redeem Fund shares was suspended, there has been no shareholder activity. In addition, because the assets of the Fund being held by the Bank currently have no value there are no assets available which may be distributed to Fund shareholders as a liquidating dividend. If the Fund assets held by the Bank should develop a value, it is possible that the Bank and Fund/Plan Services, Inc., would succeed in claiming such assets in payment for debts due them for services provided to the Fund. Since 1973 the Fund has not filed any of the periodic reports required by the Act. Thus, based on the above information, it appears that the Fund is not currently engaged in the business of an investment company.

Section 3(c)(1) of the Act provides, in pertinent part, that any issuer whose outstanding securities (other than short term-paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities is not an investment company within the meaning of the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 8, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices

and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11291/August 7, 1980

In the Matter of

TRINWALL CASH RESERVE, INC.
61 Broadway
New York, New York 10006

(811-2595)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Trinwall Cash Reserve, Inc. ("Applicant"), an open-end, diversified, investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 17, 1980, pursuant to Section 8(f) of the Act, and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On September 30, 1975, Applicant, a Maryland corporation, registered under the Act and filed a registration statement under the Securities Act of 1933 with respect to 4,000,000 shares of its capital stock, $1.00 par value. Such registration statement was declared effective on December 5, 1975, and Applicant commenced offering its shares to the public on that date.

Applicant represents that on October 26, 1979 its board of directors voted to recommend to shareholders approval of transactions contemplated by Articles of Transfer and Agreement and Plan of Reorganization (the "Agreement"), providing for the acquisition by Putnam Daily Dividend Trust ("Putnam"), an open-end, diversified investment company registered under the Act, of substantially all of the assets of Applicant in exchange for shares of Putnam, the pro rata distribution of such shares to shareholders of Applicant, and for Applicant's dissolution. Applicant further states that on February 8, 1980 the Agreement was approved by its shareholders, and that on February 11, 1980 substantially all of its assets were acquired by Putnam in exchange for shares of beneficial interest in Putnam under the terms of the Agreement.

Applicant represents that as of the date of the filing of the application it had no assets and no debts or other liabilities outstanding, and was not a party to any litigation or administrative proceedings. Applicant further represents that it is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 2, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered,

will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11292/August 7, 1980

In the Matter of

INTERCAPITAL INCOME SECURITIES INC.
INTERCAPITAL LIQUID ASSET FUND INC.
and
DEAN WITTER REYNOLDS INTERCAPITAL INC.
One Battery Park Plaza
New York, New York 10004

(812-4671)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 10(e)(3) OF THE ACT FOR AN ORDER SUSPENDING THE OPERATION OF SECTION 15(f)(1) OF THE ACT FOR A PERIOD OF 150 DAYS

NOTICE IS HEREBY GIVEN that InterCapital Income Securities Inc., a registered, closed-end, diversified investment company, InterCapital Liquid Asset Fund Inc., a registered, open-end, diversified investment company (collectively, the "InterCapital Funds"), and Dean Witter Reynolds InterCapital Inc. ("InterCapital Adviser," collectively with the InterCapital Funds, "Applicants"), adviser to the InterCapital Funds, filed an application pursuant to Section 10(e)(3) of the Investment Company Act of 1940 ("Act") on May 23, 1980, with an amendment thereto on July 1, 1980, for an order declaring that, for purposes of the requirements of Section 15(f)(1) of the Act, the period for filling a currently existing vacancy on each of the InterCapital Funds' boards of directors be expanded to 150 days. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicants state that, effective September 1, 1977, the InterCapital Funds' advisory contracts with InterCapital Adviser were assigned as a result of a transaction in which all of the outstanding stock of InterCapital Adviser was transferred from Standard & Poors Corporation to Dean Witter Organization Inc. (now Dean Witter Reynolds Organization Inc.). Applicants further state that, from September 1, 1977, to March 23, 1980, at least 75 percent of the InterCapital Funds' boards of directors consisted of persons who were not interested persons of InterCapital Adviser. According to the application, on March 23, 1980, Dr. Arthur M. Okun, who had served as a director who was not an interested person of InterCapital Adviser, died, leaving a vacancy on the InterCapital Funds' boards of directors and leaving each board with only two of three directors being directors who are not interested persons of InterCapital Adviser. Section 15(f)(3) of the Act provides, in part, that an investment adviser of a registered investment company may receive any amount or benefit in connection with a sale of securities of such investment adviser which results in an assignment of an investment advisory contract with such registered investment company if, for a period of three years after the time of such action at least 75 percent of the members of the board of directors of the registered investment company whose advisory contract was assigned are not interested persons of the investment adviser of such company or interested persons of the predecessor investment adviser and if there is no unfair burden imposed upon the registered investment company as a result of such transaction.

Section 10(e) of the Act provides, in part, that if by reason of the death of any director the requirements of Section 15(f)(1) in respect of directors shall not be met by an investment company, the operation of such provision shall be suspended for a period of thirty days if the vacancy may be filled by action of the board of directors, for a period of sixty days if a vote of stockholders is required to fill the vacancy, or for such longer period as the Commission may prescribe, by order upon application, as not inconsistent with the protection of investors.

Applicants represent that the two remaining directors who are not interested persons of InterCapital Adviser ("Disinterested Directors") commenced a search for a replacement for Dr. Okun promptly after his death. Applicants represent that, despite diligent efforts to locate a replacement, no replacement has yet been found. Applicants state that since the vacancy occurred, Applicants have

not taken action to renew or extend the InterCapital Funds' investment advisory or principal underwriting contracts or to appoint independent public accountants as the InterCapital Funds' auditors, and further represent that no such actions will be required or taken during the period of time for which an extension has been requested in the application. Applicants represent that, since the vacancies have occurred, Applicants have not taken any action that would impose an "unfair burden" (as that term is used in Section 15(f)(2)(B) of the Act) on the InterCapital Funds and that it is not contemplated that any such action will be taken during the period of the requested extension. Applicants also state that two-thirds of the InterCapital Funds' present boards of directors are not interested persons of the InterCapital Funds or InterCapital Adviser and that all of the directors of the InterCapital Funds were elected to office by a vote of shareholders at an annual or special meeting of shareholders. Applicants further state that the nominee for election to the boards of directors will not be an interested person of InterCapital Adviser or the InterCapital Funds. Applicants assert that, in light of the above representations, the order that they request would not be inconsistent with the protection of investors.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 2, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9149/August 1, 1980

UNITED STATES OF AMERICA v. DOUGLAS P. FIELDS, FREDERICK M. FRIEDMAN AND ALAN E. SANDBERG, 76 Cr. 1022 (S.D.N.Y.)

John S. Martin, Jr., United States Attorney for the Southern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission ("Commission"), announced that on July 25, 1980, the United States Court of Appeals for the Second Circuit affirmed, without opinion, the convictions against defendants Douglas P. Fields ("Fields"), Frederick M. Friedman ("Friedman") and Alan E. Sandberg ("Sandberg") in the above-captioned matter. Defendants Fields and Friedman, of New York City, president and vice-president of TDA Industries, Inc. ("TDA"), respectively, were convicted on all five counts of an indictment which charged violations of the antifraud and proxy provisions of the federal securities laws. In a related trial, defendants Sandberg, of East Northport, New York, a former officer and director of TDA, and Friedman were convicted on two counts of mail fraud and one court of wire fraud.

Defendant Fields was sentenced to six months imprisonment on each of five counts, to run concurrently, and a $50,000 fine. Defendant Friedman was sentenced following the first trial to three months imprisonment on each of two counts, to run concurrently, and a $25,000 fine; and following the second trial, to one month imprisonment on each of three counts, to run concurrently, however, consecutively to the three month sentence in the first trial, and an additional fine of $3,000. Defendant Sandberg was sentenced

to six weeks imprisonment on each of three counts, to run concurrently and to be served on 14 weekends, and was fined $3,000.

The criminal trials arose out of a related Commission injunctive action, *SEC v. TDA Industries, Inc., et al.*, 75 Civil 4519 (S.D.N.Y. 1975).

For further information, see Litigation Release Nos. 9034, 8994, 8981, 8976, 8921, 7692, 7369, and 7088.

Litigation Release 9150/August 1, 1980

SEC v. ALLEN S. MANUS, ET AL., 80 Civil 724 (S.D.N.Y.) (CES)

Stephen L. Hammerman, Administrator of the Commission's New York Regional Office, announced that on July 17, 1980, the Honorable Charles E. Stewart, Jr., United States District Judge for the Southern District of New York, issued a judgment of permanent injunction against Burt Kleiner ("Kleiner"), a private consultant residing in Beverly Hills, California, enjoining him from future violation of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

The Complaint, which was filed on February 5, 1980, alleges that Kleiner had sold at least $150,000 of unregistered shares of International South African, N.V. ("ISA"). The Complaint further alleged that Kleiner had falsely told prospective investors of ISA that an investment in that company would involve no risks, and had failed to disclose that defendant Allen S. Manus, the president and controlling shareholder of ISA, had previously been enjoined in a Commission civil injunctive action, and had also failed to disclose that defendant Kleiner had previously been sanctioned by the Commission in an administrative proceeding.

The action continues with respect to the five remaining defendants: Mr. Manus, ISA, Jack Summers, Henry W. Trimble, Jr. and Arc Limited.

For further information, see Litigation Release No. 8998, 19 SEC Docket 610 (February 11, 1980).

Litigation Release No. 9151/August 1, 1980

SECURITIES AND EXCHANGE COMMISSION v. GEORGE LEWSON, ET AL., (United States District Court for the District of Columbia) Civil Action No. 77-1538

The Securities and Exchange Commission announced that on July 29, 1980, Judge John Garrett Penn, of the United States District Court for the District of Columbia, entered a final judgment of permanent injunction against George Lewson and Oceanography Development Corporation, enjoining further violations of the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5, thereunder, in connection with the offer or sale of securities of Oceanography Mariculture Industries, Inc. (O.M.I.) or any other security. George Lewson was also enjoined from further violations of Section 13(a) of the Exchange Act, and Rules 13a-1 and 12b-20 thereunder, with regard to the annual reports of OMI, or any other corporation whose securities are registered pursuant to Section 12 of the Exchange Act, and from further violations of Section 14(a) of the Exchange Act, and Rule 14a-9 thereunder, in the solicitation of proxies for O.M.I., or any other corporation whose securities are registered pursuant to Section 12 of the Exchange Act. The defendants consented to the entry of the injunction, without admitting or denying the allegations in the complaint. In March 1980, the complaint was dismissed against Adolph B. Lewson, deceased, on motion of the Commission.

The entry of the injunction against George Lewson and Oceanography Development Corporation concludes the Commission's litigation concerning securities of Oceanography Mariculture Industries, Inc.

Litigation Release No. 9152/August 5, 1980

SEC v. GEORGE MARISCAL (USDC ARIZ., CR 78-80)

A. Bates Butler, Chief Assistant U.S. Attorney, acting as U.S. Attorney for the District of Arizona, and Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on July 24, 1980, the

United States Court of Appeals for the Ninth Circuit affirmed the June 1, 1979 conviction of George Mariscal on twelve counts of mail fraud and ten counts of interstate transportation of securities obtained by fraud.

Mariscal, of Phoenix, Arizona was convicted in connection with a $1,200,000 Industrial Revenue Bond offering in the name of the City of Las Cruces, New Mexico for the benefit of Toltec Agri-Nomics, Inc. As a part of the scheme to defraud, Mariscal, by fraudulent misrepresentations, obtained disbursement checks for payment of plant construction expenses from which he diverted substantial amounts of monies to his own use and benefit.

For further information see Litigation Release Nos. 8332, 8773, and 8858.

Litigation Release No. 9153/August 5, 1980

S.E.C. v. BRIAN PATRICK SMITH, 80 Civil 3659 (S.D.N.Y.) (RO)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on July 16, 1980, the Honorable Robert Owen, United States District Judge for the Southern District of New York, signed an Order of Preliminary Injunction by Consent against Brian Patrick Smith ("Smith") of Flushing, New York. The defendant was enjoined from violating Sections 7(f) and 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 and Regulation X promulgated thereunder.

The Complaint, filed on June 27, 1980, alleges that between January and May of this year, Smith ordered the purchase of 38,100 shares of Jupiter Development Corporation ("Jupiter") stock for a total purchase price of $237,584.60 through two brokerage firms located in Portland, Oregon and failed to pay for any of said purchases. The Complaint further alleges that during the same period Smith ordered additional shares of Jupiter stock through a brokerage firm in New York City and tendered six (6) personal checks amounting to $145,667 in payment for said shares; these checks were all returned unpaid for insufficient funds or because the accounts on which the checks were drawn were closed. Jupiter is a publicly-owned Canadian corporation with executive offices located in Edmonton, Alberta and Toronto, Ontario; it is primarily engaged in energy and mining exploration and development projects. The Complaint also seeks permanent injunctive relief against Smith.

Litigation Release No. 9154/August 5, 1980

SEC v. D. G. HAMILTON, ET AL. (USDC CO. Civil Action No. 80-)

Robert H. Davenport, Administrator of the Denver Regional Office, announced that on July 29, 1980, the Commission filed a complaint in the United States District Court, District of Colorado, seeking to enjoin D. G. Hamilton (Hamilton) of Littleton, Colorado, George E. Bay (Bay) of Ft. Lauderdale, Florida, Arthur W. Guenther (Guenther) of Campbellsports, Wisconsin, David Conn (Conn) formerly of Sedalia, Colorado, and Dacon Oil Corporation (Dacon) of Denver, Colorado from violating the registration and antifraud provisions of the Securities Act of 1933, and certain of the antifraud provisions of the Securities Exchange Act of 1934.

The complaint alleges that Hamilton, Bay, Conn and Dacon offered and sold securities, namely, fractional undivided interests in five oil and gas wells located in Colorado and that Hamilton and Guenther sold similar type interests in five wells located in Indiana. In addition it is alleged that Conn offered and sold limited partnership interests in an oil and gas well located in Wyoming.

According to the complaint, the defendants made misrepresentations and omitted to state material facts in connection with the offer and sale of the above described fractional undivided interests and limited partnership interests.

The complaint also seeks an accounting from the defendants of all funds received from investors and also that the defendants be ordered to disgorge any and all monies received as a result of such sales.

Litigation Release No. 9155/August 6, 1980

SECURITIES AND EXCHANGE COMMISSION v. THE FUNDPACK, INC., ET AL., (United States District Court for the District of Columbia, Civil Action No. 79-0859)

The Securities and Exchange Commission ("Commission") announced that Honorable June L. Green, United States District Judge for the District of Columbia, today entered in the above-captioned action a Final Judgment as to defendant John M. Burnham ("Burnham"), Eugene A. Fischer ("Fischer"), Alexander K. Gregg ("Gregg"), William F. Holliday ("Holliday") and Carroll E. Multz ("Multz") ("Final Judgment"). Burnham, Fischer, Gregg, Holliday and Multz, each a former "disinterested" director of the Funds (hereinafter, "disinterested directors"), are codefendants with The Fundpack, Inc. ("Fundpack"), Holding Trust and Holdings of U.S. Government Securities, Inc. ("Government"), a complex of mutual funds in Coral Gables, Florida (the "Funds"), Fundpack Management, Inc. ("Management") (the Funds' former investment adviser) and its two subsidiaries, and with seven of the Funds' other former officers and directors, in a Complaint filed by the Commission on March 21, 1979. *See*, Litigation Release No. 8698, March 22, 1979. The Commission's Complaint alleged that they, as well as the other defendants in the action, violated numerous provisions of the antifraud, proxy, reporting, registration and fiduciary obligation provisions of the federal securities laws,

The Final Judgment prohibits each disinterested director from engaging in conduct violating certain of the registration and fiduciary obligation provisions of the federal securities laws, and orders them to take all steps reasonably necessary to cause any investment company with which they may become affiliated to file with the Commission and disseminate to shareholders complete and accurate prospectuses, proxy materials and periodic reports. The disinterested directors consented to the entry of the Final Judgment without admitting or denying the allegations in the Commission's Complaint.

The entry of the Final Judgment, which marks the end of the Commission's litigation with the disinterested directors, is the fifth major action taken by the Court in this litigation. On August 10, 1979, after a three day hearing, Judge Green entered a preliminary injunction against the Funds and Management. *See* Litigation Release No. 8838, August 13, 1979. Following the preliminary injunction the action was settled as to the Funds, Management and its subsidiaries and Victor H. Polk ("Polk"), former president and chairman of each of the defendant corporations. On September 29, 1979, the Court entered by consent a final order as to the Funds pursuant to which the Funds are required, among other things, to appoint and thereafter nominate and recommend for election to their respective boards of directors four individuals satisfactory to the Commission. *See*, Litigation Release No. 8880, October 1, 1979. On December 13, 1979, the Court entered a Final Judgment of Permanent Injunction against Polk and Management and its subsidiaries. *See*, Litigation Release No. 8949, December 13, 1979. On March 5, 1980, the Court entered Final Judgment and Orders as to defendants Marshall L. Jastromb, Gene Moore, Douglas Duke and John R. Kendall, former controlling stockholders, officers and employees of Management. *See* Litigation Release No. 9026, March 5, 1980. The Commission's action continues against Morrie Schactman, another former officer and director of Management and its subsidiaries.

SECURITIES INVESTOR PROTECTION ACT OF 1970

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 93/August 4, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17043/August 4, 1980

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RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	-17068-83	968
Public Utility Holding Company Act	-21679-85	980
Trust Indenture Act	578	991
Investment Company Act	-11306-13	991
Litigation	- 9162-64	1003

This listing covers releases issued from 8/15/80-8/21/80. This listing does not affect the legal status of any document published in the issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17071 34-17076 34-17081
34-17075 34-17078

34-17074 Extension of comment period on proposed amendments of Rules 17a-1 and 17a-6. [S7-843; Comment period expires October 10, 1980.]

34-17080 Amendment of Rule 16b-3 to exempt from the liability provisions of Section 16(b) the delivery of stock by an officer or director as payment for the exercise of an employee stock option and the receipt of an equal amount of stock upon such exercise.

35-21685 Solicitation of comments on a propose rule to exempt certain non-utility subsidiaries under the Public Utility Holding Company Act of 1935.

OPINION

PHILIP S. SIRIANNI

34-17077 Where registered representative of member firm of registered securities association unlawfully sold unregistered securities and failed to give proper notice of those sales

SE 1.29:

to the firm with which he was associated, *held*, association's findings of violation and sanctions imposed sustained.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17068/August 15, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the call options contracts of FEDERATED DEPARTMENT STORES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17069/August 15, 1980

An order has been issued granting the application of the *Boston Stock Exchange, Inc.* to strike the common stock ($.01 par value) of PHARMACARE, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17070/August 15, 1980

An order has been issued granting the application of the *Philadelphia Stock Exchange, Inc.* to strike the call options contracts of FIRESTONE TIRE & RUBBER COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17071/August 18, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-22

The American Stock Exchange, Inc. submitted, on August 6, 1980, a proposed rule change under Rule 19b-4 to revise its procedure for the disposition of minor rule violations and to include noncompliance with off-floor operational matters as a minor rule violation.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 18, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17072/August 18, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Eli Lilly & Company
Common Stock, $.62 1/2 Par Value (File No. 7-5683)[1]

The Commission finds that approval of the Phlx's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transaction in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other market. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintennce of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Philadelphia Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Notice of the application was given by publication in the *Federal Register*. 45 FR 51030 (July 31, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17073/August 18, 1980

A notice has been issued giving interested persons until September 9, 1980 to comment on the application of SOUTHWEST FLORIDA BANKS, INC. to withdraw its common stock ($1 par value) and its preferred stock, ($2.1875 cumulative convertible, $1 par value) from listing and registration on the *American Stock Exchange*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17074/August 19, 1980

EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENTS OF RULES 17a-1 AND 17a-6 UNDER THE SECURITIES EXCHANGE ACT OF 1934

ACTION: Extension of comment period.

SUMMARY: On July 8, 1980, the Commission published for comment proposed amendments to its rules governing record retention, production and destruction by self-regulatory organizations in order to extend the requirements embodied therein to registered clearing agencies and the Municipal Securities Rulemaking Board. The Commission is extending the period for submitting comments until October 10, 1980.

DATES: Comments should be submitted on or before October 10, 1980.

ADDRESS: Persons wishing to submit written comments should file 6 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-843 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Judith Axe, Division of Market Regulation, Securities and Exchange Commission, Room 351A, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2415.

SUPPLEMENTARY INFORMATION: On July 8, 1980, the Commission published for comment Proposed Amendments to Rules 17a-1 and 17a-6 [17 CFR 240.17a-1, 17a-6] under Section 17(a) of the Securities Exchange Act of 1934 which, if adopted, would extend the record retention, production and destruction requirements embodied therein to registered clearing agencies and the Municipal Securities Rulemaking Board.

Presently, Rule 17a-1 requires national securities exchanges and registered securities associations to keep, and to permit copying by members of the Commission's staff of, all documents made or received by such organizations in the course of their business and in the conduct of their self-regulatory activities. Rule 17a-1 also requires that such records be kept for a period of not less than five years subject to the provisions of Commission Rule 17a-6 which permits the early destruction or conversion to microfilm or other recording media of records maintained under Rule 17a-1, pursuant to a record destruction plan filed with and approved by the Commission.

Notice of the request for comments was given by Securities Exchange Act Release No. 34-16966 (July 8, 1980) and by publication in the *Federal Register* (45 FR 47160 (July 14, 1980)). Interested persons were invited to submit written data, views, and arguments prior to August 15, 1980. Interested persons have indicated to the Commission that an extension of the comment period would be in the public interest.

Accordingly, the Commission today has extended the period for the submission of written data, views and arguments concerning the foregoing proposed amendments until October 10, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17075/August 19, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South La Salle Street
Chicago, Illinois 60603

(SR-MSE-80-11)

ORDER APPROVING PROPOSED RULE CHANGE

On June 10, 1980, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change deleting from its rules all references and rules pertaining to MSE's organization, operation and regulation of an options market, while retaining its rules applicable to the handling of orders and the conduct of accounts relating to options trading.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16918, June 23, 1980) and by publication in the *Federal Register* (45 FR 45046, July 2, 1980). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule

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[1]An amendment which made certain technical changes to the original filing was filed with the Commission by the MSE on July 22, 1980.

change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17076/August 19, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-80-12)

ORDER APPROVING PROPOSED RULE CHANGE

On June 19, 1980, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would assign to the MSE Committee on Specialist Assignment and Evaluation certain duties currently performed by the MSE Committee on Floor Procedure, regarding the examination, assignment, evaluation, and suspension of specialists.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16959, 20 SEC Docket 615 (July 22, 1980)) and by publication in the *Federal Register* (45 FR 47283 (July 14, 1980)). No comments were received with respect to the rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17077/August 20, 1980

Admin. Proc. File No. 3-5767

In the Matter of the Application of

PHILIP S. SIRIANNI
207 South Hudson Avenue
Los Angeles, California

For Review of Disciplinary Action Taken by the

NATIONAL SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Rules of Fair Practice

Sale of Unregistered Securities

Failure to Inform Employer of Private Securities Transactions

When a registered representative of member firm of registered securities association unlawfully sold unregistered securities and failed to give proper notice of those sales to the firm with which he was associated, *held*, association's findings of violation and sanctions imposed *sustained*.

APPEARANCES:

James K. Manning and *Joseph G. Riemer, III*, of

Brown, Wood, Ivey, Mitchell & Petty, for Philip S. Sirianni.

Frank J. Wilson, Andrew McR. Barnes and *Peter J. Chepucavage,* for the National Association of Securities Dealers, Inc.

I.

Philip S. Sirianni, a registered representative of a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from disciplinary action taken against him by the Association. The NASD found that Sirianni participated in the unlawful sale of unregistered securities, and that he engaged in private securities transactions without giving his firm proper notification. It censured Sirianni, fined him $50,000, and suspended him from association with any NASD member for a period of one year.[1] Our findings are based on an independent review of the record.

II.

Sirianni is employed as a general agent of the Connecticut General Life Insurance Company ("CG") where his activities have focused primarily on the estate and tax planning areas of the life insurance industry. He is a registered representative of CG Equity Sales company ("CGE"), CG's wholly-owned broker-dealer subsidiary which engages in the sale of mutual funds.

In the spring of 1976, Sirianni was contacted by one Howard D. Gatliff. Gatliff had a contract with an affiliate of Cal-Am Corporation to sell interests in various limited partnerships whose general partners were Cal-Am and companies and persons affiliated therewith.[2] The partnerships were formed to acquire and operate various coal mining leases, and offered investors an attractive tax write-off. Interests in these ventures were sold pursuant to claimed private offering exemptions from the registration provisions of the Securities Act.[3]

Gatliff solicited Sirianni's purchase of interests in Cal-Am coal partnerships. However, Sirianni was informed by counsel that the tax benefits resulting from a purchase might not be sustainable if the Internal Revenue Service determined that a partnership did not have a *bona fide* intention of mining coal. He therefore advised Sirianni not to invest unless he had the power to remove the general partner if coal were not mined within a reasonable period of time. Sirianni subsequently invested $510,000 in two Cal-Am limited partnerships, after counsel had negotiated a rider to the partnership agreements giving the limited partners the right to remove the general partner.

Gatliff further stated that he would arrange for Sirianni to receive a "finders fee" for any individual whom Sirianni referred to Gatliff who invested in a Cal-Am partnership. The proposed fee was 15% of the amount paid in by any such investor. Sirianni agreed to the proposal, but arranged for all investors referred by him to receive the same rider to their partnership agreements that Sirianni had obtained for himself. By the end of 1976, as a result of his arrangement with Gatliff, Sirianni had received some $253,000 from an affiliate of Cal-Am.

III.

Sirianni argues that he did not offer or sell any interests in Cal-Am. He states that he merely referred to Gatliff those clients who asked whether he had any information regarding investments in tax shelters. He points out that he advised each client to speak with his own accountant and counsel before making an investment decision, and claims that he did not provide clients with any information concerning Cal-Am.

However, the record shows that Sirianni played a more active role than he concedes in influencing his clients and business associates to invest in Cal-Am. One such investor, Mr. T, who stated that he was "a typical Sirianni client," testified on Sirianni's behalf. T stated that he always regarded Sirianni as his primary financial consultant, and testified as follows with respect to their relationship:

> "For 20 years. . .he has planned both my estate and my insurance program and. . .my tax planning. I made a habit in January of going to him

[1]The NASD also assessed costs.

[2]See *Howard D. Gatliff,* Securities Exchange Act Release No. 16680 (March 20, 1980), 19 SEC Docket 934.

[3]Section 4(2) of the Act exempts from registration "transactions by an issuer not involving any public offering."

and asking gim what he was doing himself. . . . I simply got into the habit and practice, as so many of his clients did, of saying, 'Since you, yourself, have become expert in making money with money, . . .[t]his is what our projected income is for the year.' As a consequence of this practice I have purchased avocado groves. I have gone into ten oil programs. . . . After some 20 years in January [1976] I said, 'What are you doing this year?'; and. . .he said, 'I've been approached to look into coal.' . . .This has been the relationship that I'm sure he had with all of his clients."

Sirianni was undoubtedly aware of his clients' readiness to follow in his footsteps, and admitted that, when asked, he disclosed his personal investment in Cal-Am to clients. Contrary to Sirianni's claim that he did not provide clients with any information concerning Cal-Am, Mr. T testified that Sirianni made "a presentation" and, in response to questions, discussed the merits of an investment in Cal-Am. While it is true, as Sirianni points out, that Mr. T made an independent investigation of Cal-Am before making an investment, it is clear that Mr. T's decision was strongly influenced by his regard for Sirianni's judgment.

The terms "sell" and "offer" in the Securities Act are broadly defined in order to effectuate the purposes of the Act.[4] As one court has stated:

> "These definitions include as sellers or offerors all persons whose actions are a substantial factor in causing a purchaser to buy a security. . . . It is unnecessary to show that the offeror or seller owns the security, for the definition encompasses any significant participation in the sale on behalf of the actual owner."[5]

We conclude that Sirianni's actions placed him within the Act's definitions. Sirianni referred at least 60 of his clients and business associates to Gatliff. His referrals resulted in at least 30 purchases of Cal-Am securities by those individuals, and compensation to Sirianni at the agreed upon rate of 15% of the monies they paid in.[6] In light of the reliance placed on Sirianni by his clients, his successful efforts to protect the tax benefits those clients would obtain from an investment in Cal-Am, and the compensation he received from a Cal-Am affiliate for each purchase his clients made, we think it clear that Sirianni participated in the offer and sale of Cal-Am securities.

Sirianni further argues that his transactions are entitled to the exemption from registration requirements provided by Section 4(1) of the Securities Act since he was not acting as an issuer, underwriter, or dealer. He also claims that the private offering exemption under Section 4(2) applies to those transactions, since no showing was made that the transactions in question were part of a public offering.

These contentions are without merit. The term "underwriter" is broadly defined in the Act to include anyone who directly or indirectly participates in a distribution of securities from an issuer to the public.[7] We think that Sirianni clearly falls within that definition. Section 4(1) was intended to exempt only trading transactions between individual investors with respect to securities already issued, and not to exempt distributions by issuers or the acts of other individuals who engage in steps necessary to such distributions.[8]

As to whether the distribution in which Sirianni participated was public or private, Sirianni argues that the NASD did not establish that the private offering exemption was unavailable. However, the burden of establishing the availability of an

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[4]Section 2(3) of the Act defines "sell" as including "every contract of sale or disposition of a security or interest in a security for value." "Offer" is defined to include "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." See *Competitive Capital Corporation*, 44 S.E.C. 579, 582 (1971); *G.J. Mitchell, Jr., Co.*, 40 S.E.C. 409, 414 (1960).

[5]*Lawler* v. *Gilliam*, 569 F.2d 1283, 1287-1288 (C.A. 4, 1978).

[6]Sirianni also received compensation for the investments made by about 30 persons who were referred to Gatliff by Mr. T.

[7]See *S.E.C.* v. *North American Research and Development Corp.*, 424 F.2d 63, 72 (C.A. 2, 1970).

[8]See *S.E.C.* v. *Culpepper*, 270 F.2d 241, 247 (C.A. 2, 1959); see also *Quinn and Company, Inc.*, 44 S.E.C. 461, 464, 466-67 (1971), *aff'd sub nom. Quinn and Company, Inc.* v. *S.E.C.*, 452 F. 2d 943 (C.A. 10, 1971), *cert. denied*, 406 U.S. 957 (1972).

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exemption from registration rests upon those who claim it.[9] Sirianni failed to meet that burden.

We conclude, as did the NASD, that Sirianni violated the registration provisions of the Securities Act, and thereby engaged in conduct inconsistent with just and equitable principles of trade.

IV.

The NASD Board of Governors' interpretation with respect to private securities transactions provides in relevant part as follows:

> "It shall be deemed conduct inconsistent with just and equitable principles of trade for any person associated with a member to engage in a private securities transaction outside the regular course or scope of his association or employment with a member, for himself, or with or for any other person without prior written notification to the member."[10]

It is undisputed that Sirianni did not give the requisite notification of his Cal-Am activities to CGE. Sirianni asserts, however, that if he had been aware, or his attorney had advised him, that he was engaging in securities transactions, he would have brought the matter to the attention of CG or CGE.

The fact that Sirianni was unaware of his obligation to report the Cal-Am transactions to his employer cannot excuse him from compliance with NASSD requirements.[11] Nor can the fact that counsel, when consulted, failed to advise Sirianni concerning the violations we have found negate those violations.

We accordingly affirm the NASD's finding of violation.[12].

V.

Sirianni asserts that the sanctions imposed by the NASD are excessive and oppressive.[13] He asserts, among other things, that any violations he committed were technical in nature, that he consulted with counsel who did not alert him to the problems involved in his proposed course of conduct, that he did not believe that he was violating any statute or regulation, and that he has never previously been the subject of disciplinary action.

We cannot agree that the violations in which Sirianni engaged were merely technical. The registration provisions are a keystone of the entire system of securities regulation, and set forth basic requirements for the protection of investors. And, as we have previously pointed out, a salesman's "private" securities transactions deprive the public of protection it is entitled to expect, and may expose the salesman's employer to unwarranted risks.[14] We further note that the fine assessed against Sirianni is far less than the profits he earned from his improper conduct.[15]

Under the circumstances, we are unable to conclude that the sanctions imposed by the NASD are excessive or oppressive.

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[9]See *S.E.C.* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *United States* v. *Custer Channel Wing Corporation*, 376 F.2d 675, 678 (C.A. 4, 1967), *cert. denied*, 389 U.S. 850.

[10]NASD Manual para 2177, p. 2109-3.

[11]See *Spiro Sideris*, 44 S.E.C. 212, 214 (1970).

[12]Citing *Collins Securities Corp.* v. *S.E.C.*, 562 F.2d 820(C.A.D.C., 1977), and *Whitney* v. S.E.C., 604 F.2d 676 (C.A.D.C., 1979), applicant claims that the evidence against him must be clear and convincing. However, even apart from the question of whether the cited cases apply to NASD proceedings, the clear and convincing standard is only applicable to cases of fraud. This appeal does not involve any such finding. Thus the clear and convincing standard has been met.

[13]Applicant also asserts that the $50,000 fine imposed by the NASD violates Article V, Section 1 of NASD's Rules of Fair Practice which limits the maximum fine the Association can impose for each violation of its rules to $5,000. However, every Cal-Am transaction in which Sirianni participated was a separate violation of NASD rules for which the Association could impose the maximum fine. Cf. *First Philadelphia Corporation*, 45 S.E.C. 73, 74 (1972).

[14]See *Anthony J. Amato*, 45 S.E.C. 282, 285 (1973).

[15]Cf. *Unified Underwriters, Inc.*, Securities Exchange Act Release No. 11729 (October 14, 1975), 8 SEC Docket 69, 70, and cases there cited.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17077/August 20, 1980

Admin. Proc. File No. 3-5767

In the Matter of the Application of

PHILIP S. SIRIANNI
207 South Hudson Avenue
Los Angeles, California

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Philip S. Sirianni, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17078/August 20, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-16

The National Association of Securities Dealers, Inc. submitted on July 31, 1980, a proposed rule change under Rule 19b-4 to exempt those Compliance Registered Options Principals who are required to have no sales function from the requirement that they qualify as General Securities and Registered Options Representatives.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and argument concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17079/August 20, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges

Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Page Petroleum Ltd.
Common Stock, No Par Value (File No. 7-5706)

Macmillan Bloedel Limited
Common Stock, No Par Value (File No. 7-5707)

Keystone Foods Corporation
Common Stock, $.10 Par Value (File No. 7-5708)

General Housewares Corporation
Common Stock, $.33 1/3 Par Value (File No. 7-5709)

Canadian Pacific Enterprises Limited
Common Stock, No Par Value (File No. 7-5710)[1]

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, reardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of the last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDER, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17080/August 21, 1980

STOCK OPTIONS

ACTION: Final rule.

SUMMARY: The Commission is amending Rule 16b-3 under the Securities Exchange Act of 1934 to exempt from the liability provisions of Section 16(b) of the Act both the delivery of stock by an officer or director as payment for the exercise of an employee stock option and the receipt of an equal amount of stock upon such exercise. In addition, the Commission is amending the caption for Rule 16b-3 to reflect the broadened coverage of the rule. These changes are being adopted as the result of several requests from the public that the Commission provide relief from Section 16(b) for the use of stock as payment for the exercise of an employee stock option.

EFFECTIVE DATE: (30 days after publication in the

[1]Notice of these applications were given by publication in the *Federal Register*. 45 FR 51973 (August 5, 1980). The Commission has received no comments with respect to these applications.

Federal Register).

FOR FURTHER INFORMATION CONTACT: Michael R. Kargula or Peter J. Romeo, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 10549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: In Release No. 34-16770 (May 6, 1980) [45 FR 29853], the Commission invited public comments on a proposed amendment to Rule 16b-3 [17 CFR 240.16b-3] under the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] that would have exempted from Section 16(b) of the Act the delivery of stock by an officer or director upon the exercise of a stock option. The impetus for the proposal was provided by an Internal Revenue Service ("IRS") ruling dated April 27, 1979.[1] The ruling dealt with a non-qualified stock option and held that an employee could deliver stock already owned by him as payment for the exercise of an employee stock option without recognizing any taxable gain on the unrealized appreciation of the delivered shares. Pursuant to this ruling, the optionee is not taxed on the difference between his cost basis for the old shares and their market value on the date of delivery, even though the delivered shares are valued at their current market price for purposes of paying all or part of the option price.

The principal benefit of the IRS ruling is that in many instances it permits an employee who uses stock to exercise a stock option to acquire, without any cash outlay, not only a number of shares equal in all respects to the surrendered shares but also an additional number of shares having an aggregate exercise price equal to the difference between the aggregate market price of the shares delivered and the aggregate exercise price of an equal number of shares at the time of exercise.[2] Until now, however, the tax and other advantages flowing from the IRS ruling have for all practical purposes not been available to officers and directors of issuers which have a class of securities registered under Section 12 of the 1934 Act. The reason is that such persons are subject to Section 16(b) of the Act, which allows an issuer to recover any profits realized by its officers and directors on any purchase and sale, or sale and purchase, of the issuer's equity securities occurring in a period of less than six months. Since the delivery of stock upon the exercise of an option could be considered a "sale" to the issuer, and the acquisition of stock as a result of exercising the option could be deemed a "purchase," the profit on the combined sale and purchase would, unless the exemption were available, be recoverable by the issuer under Section 16(b) because it occurred in a period of less than six months.

Section 16(b) of the 1934 Act grants authority to the Commission to exempt by rules and regulations any transaction or transactions which it believes are not comprehended within the purpose of that section. Since it appears that the use of already-owned stock to exercise a stock option does not present an opportunity for the abuses which Section 16(b) is designed to prevent,[3] the Commission believes it is appropriate to exercise its exemptive authority under Section 16(b) to provide relief from that section for such transactions. This action is consistent with the Commission's prior determination to exempt from Section 16(b) certain transactions involving stock appreciation rights ("SARs").[4] The use of already-owned stock to exercise a stock option is in substance another form of stock appreciation right and does not appear to present any more opportunity for speculative abuse than stock appreciation rights payable in securities.

NATURE OF THE AMENDMENTS

As proposed in Release 34-16770, Rule 16b-3 would have been amended to exempt only the delivery of stock upon the exercise of a stock option. All stock received by the optionee upon such an exercise, would, under the original proposal, have been deemed "purchased" for purposes of Section 16(b) and could have been matched against any sales of

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[1]CCH Standard Federal Tax Reporter, para 6979.

[2]For example, if a person who holds an option for 200 shares at an exercise price of $10 per share decided to exercise the option when the stock was trading at $20 per share, he could do so by delivering 100 shares previously acquired by him (with a value of $2,000) for the 200 shares under the option.

[3]Generally, the purpose of Section 16(b) is to prevent insiders from unfairly utilizing confidential information to profit from short-term trading transactions in an issuer's securities.

[4]Release Nos. 34-13097 (December 22, 1976) [42 FR 755] and 34-13659 (June 22, 1977) [42 FR 33282].

the same securities occurring within less than six months. All except one of the 73 commentators expressed support for the original proposal, but many thought that it should be expanded to also exempt that portion of stock received upon the exercise of an option that is equal in number to the amount surrendered. In the view of these persons, the exchange of "old" shares for "new" shares was nothing more than a "wash" transaction which had no real economic effect. Only those shares received in excess of the number delivered should be deemed "purchased" for purposes of Section 16(b), according to these commentators.

The Commission believes that the point made by the above persons has merit. The effect obtained from using stock to exercise an option is that the optionee acquires, at no actual cost, a greater number of shares than that held prior to the exercise. The very same effect is achieved when so-called "phantom" stock options and stock appreciation rights are exercised and stock is received. In the case of phantom stock options and SARs, the participant receives additional stock at no cost, and this new stock is considered to be purchased for purposes of Section 16(b). The same result logically should occur in those situations where old shares are swapped for a greater number of new shares upon the exercise of an option. That is, only the number of shares exceeding the number surrendered should be deemed to have been currently purchased pursuant to Section 16(b). Accordingly, the adopted amendments also exempt shares acquired upon the exercise of an option that are equal to the number delivered.

Due to the fact that the above change has added still another category of exempt transactions to the several already covered by the opening paragraph of Rule 16b-3, it was decided for the sake of clarity to revise that paragraph completely. In this revised form, the paragraph reads as follows:

> The following transactions by a director or officer shall be exempt from the operation of Section 16(b) of the Act if they occur pursuant to a plan which satisfies the conditions of this rule: the acquisition of shares of stock, except that stock acquired upon the exercise of an option, warrant or right shall be exempt only the extent indicated in the final clause of this sentence; the acquisition, expiration, cancellation or surrender to the issuer of a stock option or stock appreciation right; the surrender or delivery to the issuer of shares of its stock as payment for the exercise of a stock option for shares of the same class; and the acquisition upon the exercise of a stock option of shares of stock equal to the number of shares of the same class surrendered or delivered to the issuer as payment for the exercise of the option. The conditions of this rule that a plan must satisfy in order for the above transactions to be exempt are as follows:

In addition to the foregoing, the Commission also has amended the caption for Rule 16b-3 in the manner proposed in Release 34-16770. The new caption, which is intended to reflect the broadened coverage of the rule, reads "Exemption from section 16(b) of certain transactions occurring under employee benefit plans."

OTHER VIEWS OF THE COMMENTATORS

Only one of the 73 commentators raised an objection to the amendments proposed in Release 34-16770, and the objection was concerned primarily with the accounting treatment likely to be accorded to the delivery of stock upon the exercise of an option. In view of the overwhelming support expressed by the other commentators and the fact that the accounting issue does not appear to be germane to the purposes of Section 16(b), the Commission does not believe an adequate basis for withdrawing the amendments has been provided.

A number of other commentators thought that the coverage of the proposed amendments should be expanded to permit the delivery of securities: (1) other than those of the same class to which the option relates; (2) to satisfy the exercise price of warrants and rights as well as employee stock options; and (3) to cover the withholding taxes that will be incurred with respect to income realized upon the exercise of an option. Each of these suggestions goes well beyond the purpose of the originally proposed amendments, which was simply to remove the barrier imposed by Section 16(b) to reliance upon the IRS ruling previously referred to. Moreover, each would, if adopted, result in an exemption being provided for a "sale" transaction that is much greater in scope than the "wash" transaction which the original amendments sought to reach. Under the circumstances, the Commission does not believe it would be appropriate to implement any of these suggestions.

OTHER MATTERS

The amendments to Rule 16b-3 previously described raised the question whether an amendment to an existing stock option plan allowing the delivery of already-owned stock upon the exercise of an option would constitue a material amendment that would require shareholder approval under paragraph (a) of the rule.[5] In Release 34-16770, the Commission expressed the view that such an amendment would not be material, since it would not result in any additional remuneration for directors and officers not already contemplated by option plans. As noted by the Commission, such an amendment would simply allow issuers to revise the form of consideration acceptable for the exercise of options.

The Commission invited comments on the foregoing view in Release 34-16770 and all of those who addressed the issue agreed with the Commission's opinion. Accordingly, amendments to existing stock option plans of the type described above need not be submitted to shareholders for approval under Rule 16b-3.

In order to insure uniformity and in response to public commentary, the Commission deems it public commentary, the Commission deems it advisable to specify the manner of reporting changes as a result of the delivery of stock upon the exercise of a stock option. The award of the option and its exercise price should be reported in Table II of Form 4 in the customary manner. The exercise of the stock option should be reported in Table I. The number of shares surrendered in connection with the exercise of the option should be reported in Column 5 of Table I of Form 4 and the number of shares acquired should then be indicated in Column 4. Column 6 of Table I should indicate that both the acquisition and the disposition of the securities occurred as a result of the exercise of an option. In the explanation space provided on page 2 of Form 4, it should be noted that the exercise price of the option was satisfied by the delivery of already-owned shares. The other information required should be reported in the usual manner in compliance with the instructions to Form 4.

[5]Rule 16b-3(a) states at the end thereof that any amendment to a plan must be approved by shareholders "if the amendment would: (A) materially increase the benefits accruing to participants under the plan..."

TEXT OF THE AMENDMENTS

17 CFR Part 240 is amended by revising the introductory paragraph of §240.16b-3 to read as follows:

§240.16b-3 Exemption from section 16(b) of certain transactions occurring under employee benefit plans.

The following transactions by a director or officer shall be exempt from the operation of section 16(b) of the Act if they occur pursuant to a plan which satisfies the conditions of this rule: the acquisition of shares of stock, except that stock acquired upon the exercise of an option, warrant or right shall be exempt only to the extent indicated in the final clause of this sentence; the acquisition, expiration, cancellation or surrender to the issuer of a stock option or stock appreciation right; the surrender or delivery to the issuer of shares of its stock as payment for the exercise of a stock option for shares of the same class; and the acquisition upon the exercise of a stock option of shares of stock equal to the number of shares of the same class surrendered or delivered to the issuer as payment for the exercise of the option. The conditions of this rule that a plan must satisfy in order for the above transactions to be exempt are as follows:

* * * * *

(Sections 16(b), 23(a), 48 Stat. 896, 901; sec. 203(a), 49 Stat. 704; sec. 8, Stat. 1379; sec. 18, 89 Stat. 155; 15 U.S.C. 78; (b), 78w(a)).

AUTHORITY

The Commission is adopting this amendment pursuant to the Securities Exchange Act of 1934, particularly Sections 16 and 23(a).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17081/August 21, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE DEPOSITORY TRUST COMPANY

(File No. SR-DTC-80-5)

The Depository Trust Company ("DTC") submitted a proposed rule change on August 18, 1980, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, that would establish a new fee schedule for DTC's major services.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file No. SR-DTC-80-5.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17082/August 21, 1980

An order has been issued granting the application of AUGAT, INC. to withdraw its common stock ($.10 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 17083/August 21, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten day suspension of over-the-counter trading for the period commencing on August 21, 1980 and terminating at midnight (EDT) on August 30, 1980 of the securities of Trafalgar Industries, Inc. ("Trafalgar"), located at 600 Madison Avenue, New York, New York 10022.

The Commission suspended trading in the securities of Trafalgar Industries, Inc. in view of the lack of adequate current information concerning the affairs of Trafalgar. Trafalgar has not filed its most recent Annual Report on Form 10-K for the year ended May 3, 1980, which was due on August 1, 1980.

If any broker-dealer or other person has any information which they believe would be useful to the Commission relating to this matter, they should contact the Washington office of the Securities and Exchange Commission at (202) 272-2254.

The Commission cautions brokers, dealers, sharenolder, and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisons of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain of the requirements of Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

PUBLIC UTILITY HOLDING COMPANY OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21679/August 15, 1980

In the Matter of

GEORGIA POWER COMPANY
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

(70-6348)

NOTICE OF PROPOSAL TO ISSUE AND SELL FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Georgia Power Company (" Georgia"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Georgia proposes to issue and sell up to $125,000,000 aggregate principal amount of its First Mortgage Bonds having a term of not less than five nor more than 30 years ("new Bonds"), and to sell the same at competitive biding for the best price obtainable but for price to Georgia of not less than 98% nor more than 101-3/4% of the principal amount thereof, plus accrued interest. The new Bonds will be issued under the Indenture dated as of March 1, 1941, between Georgia and Chemcal Bank, as Trustee, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by various indentures supplemental thereto, and as to be further supplemented by a Supplemental Indenture to be dated as of October 1, 1980.

It is difficult to determine, under present bond market conditions, whether it would be more advantageous to Georgia to sell the new Bonds having a 30-year or some shorter term. It is proposed, therefore, that Georgia decide on the term of the new Bonds after the date of the public invitation for porposals and then notify prospective bidders by telephone, confirmed in writing, of its decision, not less than 72 hours prior to the time of the bidding. For such reasons, it is also proposed that Georgia may designate a lesser aggregate principal amount of the new Bonds to be issued and sold than that previously specified in the public invitation for proposals, and that Georgia reserve the right its discretion to designate a principal amount or term for the new Bonds different from that theretofore specified by notice to prospective bidders not less than 24 hours prior to the time of the bidding.

Georgia will provide that none of the new Bonds will be redeemed for a five year period commencing with the first day of the month of issuance at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such new Bond through the use, directly or indirectly, of funds borrowed by Georgia at an effective interest cost to Georgia of less than the effective interest cost to Georgia of the new Bonds. Such limitation will not apply to redemption at a special redemption price by operation of the sinking or improvement fund or the maintenance and replacement provisions of the Indenture or by the use of proceeds of released property. Georgia also will convenant that it will not redeem any of the new Bonds, in any year prior to the fifth year after the issuance of the new Bonds, through the operation of the sinking or improvement fund provisions in a principal amount which would exceed the improvement fund requirement attributable to the new Bonds.

Georgia also proposes to issue up to $75,000,000 of Preferred Stock, without par value, but with a stated value of up to $100 per share ("new Preferred Stock"), and to sell such securities at competitive bidding for the best price obtainable but for a price to Georgia of not less than 100% nor more than 102% of the stated value per share, which shall also be the public offering price per share. In addition, Georgia proposes to pay to the purchasers of the new Preferred Stock compensation for their services in purchasing and making a public offering of such shares, which compensation shall be included as a part of the competitive bidding of the new Preferred Stock. The terms of the new Preferred Stock will be established by amendment to the charter of Georgia. Georgia may also make provision for a cumulative sinking fund for the benefit of the new Preferred Stock which would retire not more than 5% annually of the number of shares initially issued, commencing five years or later after the sale, with the non-cumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming an additional like number of shares. Georgia will provide that no share of the new

Preferred Stock will be redeemed for a year period commencing with the first day of the month of issuance, if such redemption is for the purpose or in anticipation of refunding such share directly or indirectly through the incurring of debt, or through the issuance of stock ranking equally with or prior to the new Preferred Stock as to dividends or assets, if such debt has an effective interest cost to Georgia or such stock has an effective dividend cost to Georgia of less than the effective dividend cost to Georgia of the new Preferred Stock.

Georgia states that it may request that either sale be excepted from the competitive bidding requirements of Rule 50. Georgia proposes to use the proceeds from the sales of the new Bonds and the new Preferred Stock primarily for the repayment of outstanding short-term indebtedness, if any, and the payment of costs incurred in its on-going construction program, estimated for 1980 at $80€.7 million.

Statement of the fees, commissions and expenses to be incurred in connection with each transaction will be filed by amendment. The proposed transactions are subject to the jurisdiction of the Georgia Public Service Commission. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Georgia states that any amendment to this application-declaration seeking authority to issue and sell the new Preferred Stock will be filed not less than ten business days prior to the proposed effective date of the supplemental order relating thereto. Georgia will concurrently serve a copy of any such amendment upon any person who had, not later than September 8, 1980, requested a hearing on or advice as to whether a hearing is ordered with respect to the new Preferred Stock. Any person so served may then, not less than five business days prior to the proposed effective date of the supplemental order, request a hearing on the terms and conditions of the proposed offering of new Preferred Stock.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 8, 1980, requet in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney by law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21680/August 15, 1980

In the Matter of

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
215 North Front Street
Columbus, Ohio 43215

(70-6451)

NOTICE OF PROPOSED REVISIONS TO FUEL INVENTORY FINANCING PORTION OF SHORT-TERM DEBT AUTHORIZATION

NOTICE IS HEREBY GIVEN that Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed

transaction. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated May 28, 1980 (HCAR No. 21594), CSOE was granted a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $200,000,000. CSOE's credit arrangements for such borrowings consisted of (1) lines of credit totaling $113,066,000 with 38 banks; (2) a loan agreement with certain banks for up to $80,000,000 of loans for use in retiring certain of its preferred shares; (3) a credit agreement ("Credit Agreement") with Prulease, Inc. ("Prulease"), for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments. With respect to the Credit Agreement borrowings, each loan is to be an amount equal to or less than CSOE's estimated average inventory value of coal and oil for the month in which the loan is made, is to be evidenced by a note, and is to be secured by a security interest in CSOE's supply of coal and fuel oil at its generating stations. Each note now matures at the end of the month for which the loan is made, bears interest at an annual rate equal to 1.125% plus .1% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. No compensating balances are required. The present Credit Agreement expires September 30, 1980.

By post-effective amendment CSOE requests authorization to enter into an amendment to the Credit Agreement, to be dated as of October 1, 1980, which amendment would extend its termination date to September 30, 1982, and would make certain other changes. Under the amendment each note would bear interest at an annual rate equal to 1.5% plus .13% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. In addition, there will be a commitment fee, payable if the average daily outstanding borrowings are less than 50% of the average daily available commitment during the period October 1, 1980, through September 30, 1982, of an amount equal to (i) 1.125% multiplied by (ii) the excess of such average daily available commitment during such period over such average daily outstanding borrowings during such period, multiplied by (iii) a fraction, the numerator of which is the number of months in such period and the denominator of which is 12. Such fee, if any, is payable on September 30, 1982, and annually thereafter if the termination date is extended. The amendment also contains provisions for annual extensions of the termination date. The effective cost of borrowings under the Credit Agreement, as proposed to be amended, based on the 8.75% interest rate for commercial paper issued by Prulease on July 15, 1980, and assuming no commitment fee, would be 10.38%.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 11, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21681/August 18, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Berks County, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-6311)

ORDER AUTHORIZING INCREASE IN AMOUNT OF SHORT-TERM NOTES ISSUED TO BANKS AND CERTAIN CHANGES IN THE LOAN AGREEMENT; RESERVATION OF JURSDICTION OVER OTHER CHANGES TO LOAN AGREEMENT

General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission post-effective amendment to their application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By order dated June 19, 1979, (HCAR No. 21107), this Commission authorized GPU, JCP&L, Met-Ed and Penelec to issue, sell and renew from time to time through October 1, 1981, their respective promissory notes (the "Notes") having a maturity of not more than six months from the date of issue, pursuant to a revolving credit agreement with a syndicate of commercial banks (the "loan agreement"). Aggregate borrowings under the loan agreement are limited to $500,000,000, and JCP&L's borrowings thereunder are limited to $139,000,000. At the date of filing, JCP&L had $110,000,000 in borrowings outstanding under the loan agreement. The indebtedness under the loan agreement is secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of JCP&L, Met-Ed, Penelec, and GPU Service Corporation, and, in the cases of JCP&L and Met-Ed, certain other collateral.

The order further provided, among other things, that the aggregate principal amount of Notes representing indebtedness under the loan agreement which JCP&L could have outstanding at any one time could not exceed the lesser of (a) $139,000,000 or (b) the limit imposed by JCP&L's charter. The proceeds of such loans have been and will continue to be used finance JCP&L business as a public utility.

The applicants-declarants have entered into discussions with the Agent and Co-Agent banks representing the syndicate participating in the loan agreement with a view, among other things, to increasing the amount of borrowings available thereunder to JCP&L to $160,000,000. As a result of such discussions, proposed amendments to the loan agreement have been formulated. JCP&L requests that it be permitted to make, pursuant to the loan agreement, unsecured borrowings in an amount not in excess of that permitted by its charter plus borrowings secured as heretofore authorized in the Commission's order of June 19, 1979, the aggregate of such unsecured and secured borrowings not to exceed $160,000,000. The proposed amendments would, among other things, provide that (i) JCP&L's loan limit shall be $160,000,000 until October 1, 1980, at which time it will revert to $139,000,000 absent action of the banks, (ii) from time to time, the loan limits of all borrowers, upon agreement of 85 percent of the banks, may be reduced to an amount not less than such borrower's then outstanding borrowings, or increased to an amount not in excess of $150,000,000 in the case of GPU, $160,000,000 in the case of JCP&L, $125,000,000 in the case of Met-Ed and $116,000,000 in the case of Penelec; (iii) the obligation of the banks to make further avances to such borrower will depend on the bank's determination of the sufficiency of such borrower's earnings in addition to the sufficiency of its revenues. The amendments also provide for an increase in the aggregate administration fee payable by the GPU Companies from $100,000 to $250,000 annually. In all other respects the transactions as heretofore authorized will remain unchanged.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $113,000, including legal fees of

$109,300. The New Jersey Board of Public Utilities has authorized the increased short-term borrowings by JCP&L, the proposals providing for alteration of the loan limits of JCP&L and GPU upon agreement by 85% of the banks, and the obligation of GPU to pay an increased administration fee. The other proposals remain subject to the jurisdiction of the New Jersey Board of Public Utilities and the Pennsylvania Public Utility Commission. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendments to said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the act (HCAR No. 21573), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied with respect to the proposed increase in JCP&L's short-term borrowing authority, with respect to the proposals providing for alteration of the loan limits of JCP&L and GPU upon agreement by 85% of the banks, and with respect to the obligation of GPU to pay an increased administration fee, and that no adverse findings are necessary with respect thereto; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the proposed increase in JCP&L's short-term borrowing authority, with respect to the proposals providing for alteration of the loan limit of JCP&L and GPU upon agreement by 85% of the banks, and with respect to the obligation of GPU to pay an increased administration fee:

IT IS ORDERED, pursuant the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the proposed increase in JCP&L's short-term borrowing authority, with respect to the proposals providing for alteration of the loan limits of JCP&L and GPU upon agreement by 85% of the banks, and with respect to the obligation of GPU to pay an increased administration fee, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the proposals providing for alteration of the loan limits of Met-Ed and Penelec upon agreement by 85% of the banks, the addition of the earnings contingency to the obligation of the banks to make further advances and the obligation of each of the borrowers except GPU to pay an increased administration fee, pending the issuance of appropriate ordrs by the Pennsylvania Public Utility Commission and the NewJersey Board of Public Utilities.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21682/August 20, 1980

In the Matter of

THE SOUTHERN COMPANY
Perimeter Center East
P.O. Box 720071
Atlanta, Georgia 30346

(70-6485)

NOTICE OF PROPOSAL BY HOLDING COMPANY TO ACT AS SURETY ON A SUPERSEDEAS BOND OF ITS SUBSIDIARY

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Southern proposes to act as one of two sureties on a bond of its subsidiary, Alabama Power Company ("Alabama"), in connection with Alabama's appeal in a rate proceeding. The second surety on the bond will be Joseph M. Farley, who is president of Alabama. The Alabama Public Service Commission ("APSC") on July 29, 1980, entered an order granting a retail electric rate increase for Alabama of $30.6

million annually based upon a test period ended November 30, 1979. The rates requested by Alabama would have increased the test period revenue by approximately $122.3 million annually. Alabama plans to file a notice of appeal to the Supreme Court of Alabama and plans to petition that court for authority to place into effect, subject to refund under supersedeas bond, the portion of the requested increase denied by the APSC order. The State of Alabama statutes which permit the court to grant supersedeas require, as a condition precedent to placing the contested rate increase in effect subject to refund, that a bond be furnished in double the estimated approximate amount by which revenues would be increased in six months by reason of the increased rates sought. Two or more sureties are required on the bond. Additional bond on like conditions must be provided each six months as long as the appeal is pending and the supersedeas is in effect.

Alabama estimates that the amount of the supersedeas bond, if the maximum requested supersedeas relief is granted by the court, would be approximately $100,000,000 which is twice the estimated increased revenue from the refundable rates for the first six months of the supersedeas period. Alabam has been advised that such a bond can be obtained from a commercial surety company only with difficulty and with a required premium of over $75,000 for the first six months' premium. The premium for additional bonds for subsequent six-month periods may be expected to increase so as to reflect increased usage and added revenue attributable to the increased rates. In order for Alabama to avoid the substantial premium costs attendant upon use of a commercial surety, Southern proposes to act as surety on Alabama's bond for no premium, fee or other compensation. Approval of this bond by the court would be expected.

Southern proposes to act as surety on the supersedeas bond for the revenues during the initial period of six months from the date of delivery thereof and to execute as surety such further bonds or renewals or extensions as may be required to permit Alabama to keep the proposed rates in effect until the questions raised in the appeal have been finally determined, without the necessity of having to pay the substaantial premiums required by the use of a commercial surety.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $3,200, including legal fees of $800. It is stated that no state or federal regulatory authority, orther than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21683/August 20, 1980

In the Matter of

GULF POWER COMPANY
P.O. Box 1151
Pensacola, Florida

MISSISSIPPI POWER COMPANY
P.O. Box 4079
Gulfport, Mississippi 39501

(70-5894)

NOTICE OF PROPOSAL BY ASSOCIATE ELECTRIC UTILITY COMPANIES TO ALLOCATE COSTS OF COAL HOPPER CARS

NOTICE IS HEREBY GIVEN that Gulf Power company ("Gulf") and Mississippi Power Company ("Mississippi"), each an electric utility subsidiary of The Southern Company, a registered holding company, have filed post-effective amendments to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9, 10 and 13(b) of the Act and Rules 43, 87(a)(3), 90 and 91 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Gulf and Mississippi are parties to a letter agreement dated July 28, 1976 ("Letter"), relating to the Victor J. Daniel, Jr. Electric Generating Plant ("Plant"), consisting of two coal-fired units of 500,000 kilowatts (nameplate capacity) each. The various transactions provided for by the Letter, which will result in Gulf and Mississippi each owning an undivided 50% interest in the Plant, were approved by order of the Commission dated September 28, 1976 (HCAR No. 19696).

Mississippi and Gulf each has purchased 230 rapid discharge hopper cars to transport coal to the Plant. Mississippi's purchase of its cars in 1978 was approved by the Commission's order dated May 16, 1978 (HCAR No. 20543), and Gulf's purchase of its cars in 1980 was approved by the Commission's order dated February 8, 1980 (HCAR No. 21414). While Gulf and Mississippi desire that each own as tenants in common an undivided 50% interest in such coal cars, the Letter makes no express provision therefor.

Accordingly, it is proposed that, as soon as practicable after the receipt of necessary regulatory approval ("First Settlement Date"), Mississippi and Gulf each will convey to the other, free and clear of all liens and encumbrances, other than excepted encumbrances as defined in the respective transferee's first mortgage indenture, an undivided 50% interest in the coal cars then owned by it. In addition, at such time Mississippi will make up to Gulf such payment as is necessary to equalize their respective investments, net of accumulated depreciation, in such cars. At July 1, 1980, such payment would have amounted to approximately $1,300,000.

It is stated that the railroad cars are being and will be used to transport coal to the Plant, for which there is a common fuel stockpile to be jointly owned by Gulf and Mississippi in accordance with the Letter. It is further stated that, therefore, the proposed transaction is entirely consistent with the provisions of the Letter and the various transactions provided for therein.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such

rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporation Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21684/August 21, 1980

In the Matter of

NORTHEAST UTILITIES
WESTERN MASSACHUSETTS ELECTRIC COMPANY
West Springfield, Massachusetts

THE CONNECTICUT LIGHT & POWER COMPANY
THE HARTFORD ELECTRIC LIGHT COMPANY
NORTHEAST NUCLEAR ENERGY CORPORATION
Berlin, Connecticut

HOLYOKE WATER POWER COMPANY
Holyoke, Masachusetts

(70-6465)

ORDER RELEASING JURISDICTION OVER SHORT-TERM BORROWINGS TO BE MADE PURSUANT TO A REVOLVING CREDIT AGREEMENT

By order dated July 1, 1980 (HCAR No. 21647) in this matter Northeast Utilities ("NU"), a registered holding company, and five of its wholly-owned subsidiary companies, Connecticut Light & Power Company ("CL&P"), Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP") and Northeast Nuclear Energy Corporation ("NNEC") were authorized to issue short-term notes to banks and commercial paper to a dealer from time to time through June 30, 1981. At that time jurisdiction was reserved over borrowings to be made by CL&P, HELCO and WMECO pursuant to a multibank revolving credit/term loan agreement pending completion of the record with respect thereto. A post-effective amendment has now been filed completing the record with respect to the proposed transactions.

The revolving credit/term loan agreement ("Agreement") will provide that during the revolving period, CL&P, HELCO, and WMECO may borrow, on a first-come, first-served basis, up to the maximum amount of $140,000,000 up to $80,000,000, $60,000,000 and $45,000,000, respectively. The revolving period would end June 30, 1983 or such earlier date as CL&P, HELCO and WMECO individually elect, and in either event the then outstanding borrowings will be converted at the option of the borrower to term loans maturing no later than June 30, 1987 and amortized in eight semiannual installment commencing December 31, 1983. Borrowings may be repaid in whole or in part without penalty during the revolving period or during the term of the term notes and may be reborrowed during the revolving period. The borrowings outstanding shall bear interet, payable quarterly in arrears, at the following rates:

YEAR	RATE
1	100% Base Rate
2	100% Base Rate
3	102% Base Rate
4	104% Base Rate
5	104% Base Rate
6	105% Base Rate
7	106% Base Rate

Base Rate is the higher of (a) Continental Illinois National Bank floating prime rate (b) 1/2 of 1 percent per annum above the latest three week moving average of secondary market offering rates in the United States for three months certificates of deposit as published weekly by the Federal Reserve Bank of New York. Subject to requisite regulatory approval, the applicants will pay a commitment fee of 1/2 of 1 percent per annum, commencing not later than April 15, 1980, on the average unused portion of the commitment during the revolving period, payable quarterly in arrears.

The funds to be derived by CL&P, HELCO and WMECO from the issuance and sale of the Revolving Credit/Term Notes will be applied together with other funds available to these companies, to provide working capital and to finance their respective construction expenditures in 1980 and 1981, which are estimated to be $323,000,000, $154,000,000

and $83,000,000, respectively.

It is presently contemplated that any Revolving Credit/Term Notes of CL&P, HELCO and WMECO, outstanding at June 30, 1987, will be repaid from internal cash resources or from the proceeds of long-term debt or equity financing.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $13,250, including legal fees of $11,250. The proposed transaction has been authorized by the Connecticut Division of Public Utility Control and the Massachusetts Division of Public Utilities. It is stated that no other state or federal regulatory authority, other than this Commission, has jursidiction over the proposed transaction.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction reserved in the Commission's order of July 1, 1980, with respect to the propsed borrowings by CL&P, HELCO and WMECO pursuant to the revolving credit/term loan agreement be, and it hereby is, released effective forthwith:

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21685/August 21, 1980

PROPOSED RULE TO EXEMPT CERTAIN NON-UTILITY SUBSIDIARIES UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

ACTION: Proposed rulemaking.

SUMMARY: The Commission is requesting comments concerning a proposed rule that would exempt subsidiaries of registered holding companies primarily engaged in the production, manufacture, transmission or storage of gas from the duties, liabilities and obligations imposed under the Public Utility Holding Company Act of 1935 ("Act") on "subsidiary companies," as such, if no more than 50% of the voting securities of or other voting interests in such subsidiaries are owned, directly or indirectly, by one or more registered holding companies.

The proposed rule is intended to eliminate an impediment to participation by registered holding company systems in joint ventures with persons not subject to the Act for the purpose of providing non-utility facilities useful to the business of the registered system, by exempting the joint venture entity, whether a corporation or partnership, from the regulatory provisions of the Act.

DATE: Comments must be received on or before September 26, 1980.

ADDRESSES: Comment should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, Division of Corporate Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. (202) 523-5156.

SUPPLEMENTARY INFORMATION: Section 2(a)(7) of the Act defines a "holding company" as any company which owns 10% or more of the voting securities of a "public utility company," a term which includes an "electric utility company" (Section 2(a)(3)) or a "gas utility company" (Section 2(a)(4)). For purposes of the Act, a "gas utility company" is a company engaged in the *retail distribution* of natural or manufactured gas. Companies which are engaged in the manufacture of production of gas, or its transmission, are not gas utility companies, within the meaning of this definition, and the owners of such companies are not "holding companies," unless retail gas service is also undertaken. The definition of an "electric utility company," on the other hand, includes generation and transmission of power, as well as its distribution, so there is no

similar distinction between the wholesale and retail functions.

The provisions of the Act, particularly Section 7, which govern security issues, apply to all subsidiaries of a registered holding company, including subsidiaries which are only partly owned and subsidiaries which are not utility companies, unless the subsidiary is exempted by rule under Section 3(d). If a group of companies undertakes a non-utility joint project of common interest, such as a pipeline or a synthetic fuel plant, the inclusion of a member of a registered system as a significant owner may subject to Commission authority under the Act all the financing and other activities of the company created for that purpose. Since such company will not be a "gas utility company" and its other owners will not become "holding companies" within the meaning of the Act, there is no apparent need for such a regulation. Such additional regulation may make potential co-venturers reluctant to include a registered system in their plans.

There are now three gas utility holding company systems registered under the Act, two of which also own major gas transmission subsidiaries. The three systems represent only about 8-1/2% of the total gas industry, counting both pipelines and retail distribution systems. Most of the pipeline systems are not subject to the Act, and significant joint ventures will be principally with non-utility companies.

Two applications for approving joint projects, one dealing with a plant to manufacture synthetic gas, and other with major new pipelines, have been filed and we are informed that further ventures are contemplated. Each of these projects is directed to provide gas to multiple pipeline systems from heretofore inaccessible sources for resale in existing markets. All of these projects are based on joint ownership of the company to be created to own and operate the facility. The recent passage of the Energy Security Act of 1980,[1] Title I of which is directed to promoting the development of a synthetic fuels industry in the United States, and other developments in the industry suggest that this kind of subsidiary relationship may become important in the planning of other similar projects.

[1]P.L. 96-294.

Section 3(d) of the Act authorizes the Commission to:

> by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affliliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

Proposed Rule 16 would be an exercise of this exemptive authority. It would declare the entity organized to own the specified kinds of non-utility facilities not to be a "subsidiary company" of an owner which is in a registered holding company system, provided certain conditions are met. The rule would not exempt the registered system in any other respect.

The Commission's responsibilities with respect to both the integration of the registered utility system, as defined in Section 11(b)(1) of the Act, and the financial involvement of the registered holding company system would seem to be satisfied by the exercise of its authority under Sections 9(a)(1) and 10 of the Act over that system's acquisition of an interst in the joint venture and under Sections 6(a) and 7 of the Act over the obligations it may undertake.

The rule, as proposed, does not extend to a company a majority of whose voting securities or other voting interests are held by registered systems, since such companies would be effectively part of the regulated systems.

TEXT OF THE PROPOSED RULE

It is proposed to amend 17 CFR Part 250 by adding §250.16 to read as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

§250.16 Exemption of non-utility subsidiaries.

Any company which is a subsidiary company, as defined in section 2(a)(8)(A) of the Act, or a registered holding company shall be exempt from every obligation, duty, and liability imposed upon such company, as such, *Provided* That:

(a) Such company is primarily engaged in the exploration, development, production, manufacture, storage, transportation or supply of natural or synthetic gas for resale and is not a gas utility company within the meaning section 2(a)(4) of the Act;

(b) No more than 50% its voting securities or other voting interests are owned or controlled, directly or indirectly, by any one or more registered holding companies; and

(c) The acquisition of an interest in such company by a registered holding company or subsidiary thereof has been approved by order under sections 9(a)(1) and 10 of the Act.

A failure of any member of a registered holding company system to otherwise comply with the Act shall not affect the exemption herein granted.

STATUTORY AUTHORITY: The Commission hereby publishes for comment proposed Rule 16 pursuant to the provisions of Section 3(d) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*)

By the Commission.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 578/August 18, 1980

In the Matter of

WORLD AIRWAYS, INC.

File No. 22-10478

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by World Airways, Inc. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Bakers Trust Company ("Bankers Trust") under (1) and existing Equipment Trust Agreement, which is qualified under the Act (the "Indenture") (2) an Equipment Trust Agreement and the agency of Bankers Trust under a Pledge Agreement, neither of which is qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers Trust from acting as trustee under the Indenture.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11306

In the Matter of

INDUSTRIAL GROWTH FUND OF NORTH AMERICA, INC.
c/o Oswald Ruggero, Esq.
Joseph & Ruggero
261 Broadway
New York, N.Y. 10007

(811-1133)

NOTICE OF PORPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940.

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Industrial Growth Fund of North America, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company

as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Delaware on May 11, 1961; that it registered under the Act on December 5, 1961, and that it filed a registration statement (File No. 2-20271) pursuant to the Securities Act of 1933 (1933 Act") in connection with a proposed public offering of shares of its capital stock. The 1933 Act registration statement was not made effective, and the Fund did not make a public offering of its securities. The Fund requested withdrawal of this registration statement, pursuant to Rule 477 under the 1933 Act, and the Commission ordered it withdrawn as of August 2, 1962. The Fund has not filed any of the periodic reports required by the Act since 1965. Finally, information in the Commission's files indicates that after the withdrawal of such registration statement the Fund was abandoned, and that it ceased to exist as a corporate entity and to profitably engage in any business. Thus it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may not later than September 15, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request, or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11307/August 18, 1980

In the Matter of

IDS TAX-FREE MONEY FUND, INC.
1000 Roanoke Building
Minneapolis, Minnesota 55402

(812-4695)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER.

IDS Tax-Free Money Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, filed an application on June 16, 1980, and an amendment thereto on June 26, 1980, requesting an order of the Commission, purusuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and rules 2a-4 and 22c-1 thereunder, subject to conditions, to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation.

On July 21, 1980, a notice was issued (Investment Company Act Release No. 11264) of the filing of the application. The notice gave intereted persons an opportunity to request a hearing and stated that an order disposing of the application would be issed as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be and hereby is granted, effective forthwith, subject to the following conditions agreed to by Applicant:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) in the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, shoud be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

4. Applicant will record, maintain, and perserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

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[1]Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market securities published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

5. Applicant will limit its portfolio investments, including repurchase agreements, if any, to those United States dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11308/August 19, 1980

In the Matter of

HUYLER'S
c/o Barnes, Hickam, Pantzer & Boyd
1313 Merchants Bank Building
Indianapolis, Indiana 46204

(811-1388)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Huyler's ("Fund"), registered under the Act as a close-end, non-diversified, management investment company has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of New York on June 6, 1881, and registered under the Act on May 5, 1966. Prior to becoming an investment company the Fund was engaged in the business of manufacturing and selling manifolds and other components for gas burners, which operations were sold on January 3, 1963.

The Fund did not file a registration statement pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock. On January 31, 1970, the Fund was merged into Altamil Corporation, a Delaware manufacturing corporation. Prior to the merger the Fund filed an application for an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act the proposed merger of the Fund into Altamil Corporation. A notice of filing of that application was issued on August 13, 1969 (Investment Company Act Release No. 5773), and an order pursuant to Section 17(b) of the Act exempting the proposed merger from the provisions of Section 17(a) of the Act was issued on September 9, 1969 (Investment Company Act Release No. 5809). By letter dated February 14, 1970, counsel for the Fund advised the Commission that the Fund had ceased to exist as a corporate entity. The Fund has not filed any of the periodic reports required by the Act since 1970. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any person may not later than September 15, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by

certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11309/August 19, 1980

In the Matter of

IMS VARIABLE LEVERAGE FUND, LTD.
THE ROBINSON FAMILY FUND
HERBERT W. ROBINSON
ELSIE C. ROBINSON
KEITH B. ROBINSON
DENISE P. HALL and
INTERNATIONAL MANAGEMENT SYSTEMS CORPORATION

P.O. Box 17107
Fountain Hills, Arizona 85268

(812-4686)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FOR THE PROVISIONS OF SECTION 17(a) OF THE ACT.

On July 24, 1980, a notice was issued (Investment Company Act Release No. 11274) of an application filed on May 28, 1980, by IMS Variable Leverage Fund, Ltd., a Nebraska Limited Partnership ("Fund"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, and The Robinson Family Fund (the "Robinson Partnership") consisting of Herbert W. Robinson, Elsie C. Robinson, Keith B. Robinson, Denise P. Hall (collectively the "Robinson Family") and International Management Systems Corporation ("IMSC"), a Delaware corporation wholly owned by the Robinson Family (collectively referred to as the "Applicants"), pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Section 17(a) of the Act the proposed transfer of substantially all the assets of the Robinson Partnership to the Fund in exchange for shares of the Fund.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issed as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found, on the basis of the information stated in the application, that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consitent with the Fund's investment policy and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act that the proposed transfer of substantially all the assets of the Robinson Partnership to the Fund in exchange for shares of the Fund be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11310/August 19, 1980

In the Matter of

BANKERS LIFE COMPANY

and

BANKERS LIFE COMPANY SEPARATE ACCOUNT B
711 High Street
Des Moines, IA 50307

(812-4701)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTIONS 22(e), 27(c)(1) AND 27(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Bankers Life Company ("Bankers Life"), a stock life insurance company organized under the laws of the state of Iowa and Bankers Life Company Separate Account B (the "Variable Account"), a separate account of Bankers Life registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on July 10, 1980, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representatives therein which are summarized below.

The Variable Account was established by Bankers Life's Board of Directors pursuant to Iowa law for the purpose of investing contributions received under certain variable annuity contracts issued in conjunction with plans which may or may not qualify for special tax treatment under Section 403(b) of the Internal Revenue Code of 1954, as amended.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program (the "Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System (the "System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of Section 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that not withstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

Sections 27(c)(1), 22(e) and 27(d)

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of

redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with Section 51.358 as it pertains to redemption value under Contracts issued to participants in the Program subsequent to the date of such exemptive order.

Applicants assert that if such exemptions are not granted, persons participating in the Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the state's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, Bankers Life will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market specifically to bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 15, 1980 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following September 15, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any

notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11311/August 21, 1980

In the Matter of

MELLON FINANCIAL COMPANY
6400 Steubenville Pike
P.O. Box 15599
Pittsburgh, Pennsylvania 15244

(812-4693)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

Mellon Financial Company ("Applicant"), a Pennsylvania corporation, filed an applicantion on June 13, 1980, and an amendment thereto on July 10, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. On July 22, 1980, a notice was issued (Investment Company Act Release No. 11268) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and on the basis of the representations in the application, as amended, it is found that granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11312/August 21, 1980

In the Matter of

CHAGRES FUND, INC.
P.O. Box 914
Hendersonville, North Carolina 28739

(811-1518)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Chagres Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on May 12, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On July 22, 1980, a notice (Investment Company Act Release No. 11269) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company, Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Chagres Fund, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11313/August 21, 1980

In the Matter of

LEASCO CORPORATION
919 Third Avenue
New York, New York 10022

(812-4595)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTIONS 6(c) AND 6(e) OF THE ACT FOR ORDER EXEMPTING APPLICANT, WITH CERTAIN EXCEPTIONS, FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Leasco Corporation ("Applicant"), a Delaware corporation, filed an application on January 21, 1980, and amendments thereto on February 29, 1980, April 15, 1980, and August 1, 1980, pursuant to Section 6(c) and 6(e) of the Investment Company Act of 1940 ("Act"), for an order exempting it from all provisions of the Act and its rules, other than: (1) Sections 9, 17(a)-(e), 31, 36(a) and 37 of the Act and the rules thereunder; (2) all sections of the Act and the rules thereunder necessary to implement the above sections of the Act; and (3) all administrative, procedural and jursidictional sections of the Act, subject to certain conditions and exceptions set forth in the application and discussed below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant was incorporated in 1978 as a wholly owned subsidiary of Reliance Group, Incorporated ("Reliance"), in order to acquire the computer leasing operations of Reliance which, prior to that time, had been conducted by two other Reliance subsidiaries. Thereafter, on January 29, 1979, Reliance's board of directors declared a dividend of Applicant's common stock to be distributed to holders of Reliance common stock, and on May 14, 1979, Applicant's common stock was so distributed ("spin off"). Prior to the spin off: (1) assets relating to Reliance's computer leasing operations with a value of $25,000,000 were transferred to Applicant and one of its subsidiaries; (2) Applicant issued $25,000,000 of its Series A preferred stock to a Reliance subsidiary; and (3) Leasco Europa, Ltd. ("Europa"), a subsidiary of Reliance with a net book value of $10,000,000, was transferred to Leasco Computer, Inc., a subsidiary of Applicant, in exchange for common stock of Applicant.

According to the application, Saul P. Steinberg ("Mr. Steinberg") is Chairman of the Board, President and Chief Executive Officer of Applicant, and with members of his family and certain estates and trusts for the benefit of his family (hereinafter referred to collectively as the "Steinberg Family") owns approximately 51 percent of Applicant's outstanding common stock. The application states that Mr. Steinberg also is founder, Chairman of the Board, President and Chief Executive Officer of Reliance, and that as of April 1, 1980, the Steinberg Family owned 15.24 percent of Reliance's outstanding common stock. The application further states that sixty percent of Applicant's directors are either directors or senior officers of Reliance.

Applicant states that, because of certain risks inherent in the computer leasing business, it investigated opportunities for the acquisition of businesses outside the computer leasing area in order to add stability and profits to its operations. Applicant's management believes that over time Applicant's computer leasing business will decline in value. Applicant states that it looked at hundreds of acquisition candidates, and that Reliance compared favorably with other companies investigated in terms of past and prospective returns on investment. Thus, Applicant has purchased 250,000 shares of Reliance common stock and is actively considering purchasing up to 1,000,000 additional shares. The 250,000 shares of Reliance held by Applicant were valued, on January 14, 1980, at approximately $15,000,000 and comprised nearly 31 percent of Applicant's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Applicant states that, in addition to its holdings of Reliance, it presently holds or may acquire the following additional securities: (1) a $30,000 Port of New York Authority Bond due February 1, 1996, and common stock in two publicly held corporations have a combined fair market value on June 4, 1980, of $1,395,350; (2) a warrant to purchase 40 percent of the outstanding common stock of North American

Broadcasting, Inc. ("Broadcasting"), for $20,000 and subordinated notes issued by Broadcasting with a face value of $2,000,000; and (3) preferred stock of Securilease, Inc. ("Securilease") with a redemption value of $380,000, and a non-recourse senior note of Securilease in the amount of $2,000,000. The transactions resulting in Applicant's acquisitions of securities issued by Broadcasting and Securilease, and the terms of such securities, are described in the application. Briefly, the securities of Broadcasting are being issued to Applicant in exchange for a loan and a loan guarantee made by Applicant, and the securities of Securilease were issued in connection with the sale of a subsidiary by a subsidiary of Applicant.

Section 3(a)(3) of the Act defines the term "investment company" to mean any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a) of the Act defines the term "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority owned subsidiaries of the owner which are not investment companies. Applicant states that it does not presently hold more than 40 percent of its total unconsolidated assets in investment securities, but that either additional purchases of Reliance common stock or the holding of the subordinated notes of Broadcasting could cause Applicant to exceed the 40 percent requirement and, therefore, meet the definition of investment company contained in the Act. Accordingly, Applicant has requested an order exempting it from all provisions of the Act and of the rules thereunder, except certain specified provisions.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any of the provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) of the Act provides that if, in connection with any order under Section 6 of the Act exempting any investment company from Section 7 of the Act, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as through such company were a registered investment company.

Applicant states that many of it activities and operations, especially those relating to Reliance, could conflict with various provisions of the Act and, therefore, has filed the present application, pursuant to Sections 6(c) and 6(e) of the Act, to permit its continued operations without the necessity of registering as an investment company under the Act. Applicant asserts that its holdings in Reliance are not for investment, and that it has no present intention to sell or otherwise dispose of the Reliance shares it now owns or may purchase. In this regard, Applicant submits that it has determined to engage in the insurance business through its ownership interest and management participation in Reliance. Applicant states that its management is experienced and expert in the operations of Reliance's wholly owned businesses, and expects to continue to participate fully in Reliance's operations.

Applicant represents that it has not engaged and, except to the extent that it will purchase additional shares of Reliance stock, does not expect to engage in the continuous purchase of portfolio securities. Applicant further represents that: (1) its primary business is not investing, but that it is a company which has engaged in computer leasing and related businesses through wholly owned subsidiaries; (2) it has no present intention to sell to the public, distribute to its shareholders or otherwise dispose of any shares of Reliance which it now holds or may acquire; (3) it has not emphasized an intent to invest in securities; and (4) it is not the type of company for which the Act was designed. Applicant submits that the granting of the requested exemption will permit the ordinary operations of Applicant and its subsidiaries without relinquishing appropriate investor protections.

As conditions to the granting of the requested order, Applicant has agreed to remain subject to all administrative, procedural and jurisdictional

sections of the Act. Applicant has also agreed o comply with Section 9 of the Act, and Sections 17(a)-(e) of the Act to the extent transactions, in the case of Section 17, involve (1) Applicant or "downstream" controlled companies of Applicant (other than Reliance) on the one hand, and (2) Reliance, the Steinberg Family or affiliated persons of Reliance or the Steinberg Family on the other hand. Applicant will also remain subject to Sections 31, 36(a) and 37 of the Act and the rules thereunder, as well as all sections of the Act and of the rules thereunder necessary to implement and to enforce the above sections of the Act, with the following exceptions:

(1) that Mr. Steinberg, his agents, servants, employees and attorneys shall not be prohibited by Section 9 of the Act from serving in the capacity of employee, offier, director, or member of an advisory board of Applicant by reason of any order, judgment or decree issued prior to the issuance of the order requested in the application, including the final judgment of permanent injunction entered on August 29, 1978, pursuant to an agreement of settlement and consent, without admission or denial of any of the allegations contained in the complaint, involving an allegation by the Commission that Mr. Steinberg had sold securities of Pulte Home Corporation, which he held as a personal investment, while discussing with acquaintances his opinion of the good business prospects for that corporation. (Applicant asserts that, with the exception of the above mentioned injunction, no other employees, officers and directors of Applicant or of any of its subsidiaries would be subject directly to the prohibitions of Section 9).

(2) that Sections 17(a)-(e) of the Act, which prohibit certain types of affiliated transactions, not apply to prohibit:

(a) Applicant and Reliance from carrying out the terms of a management agreement whereby Reliance provides certain services to Applicant;

(b) the sale by Applicant of any part of its holdings of Reliance stock to Reliance for fair market value at the time of sale;

(c) the leasing of computers to Reliance or any affiliate thereof at fair market value;

(d) the redemption by Applicant of its outstanding Series A preferred stock held by Reliance or the exchnge by Applicant of other property for such preferred stock;

(e) the purchase by Applicant of real estate services for fair market value from a wholly owned Reliance subsidiary;

(f) the purchase by Reliance from Applicant of computer services for fair market value;

(g) the subleasing of office space in the United Kingdom by Europa from a subsidiary of Reliance at fair market value;

(h) the joint coverage of Applicant and Reliance under various insurance policies;

(i) the purchase by Applicant from Reliance or its subsidiaries of insurance policies whereunder Appliant is the named insured or the beneficiary;

(j) the joint participation by Applicant and Reliance in the administration of each company's pension and profit sharing plans;

(k) the receipt by directors and officers of Applicant and Reliance of directors' fees, salaries, bonuses and benefits pursuant to employee benefit plans, including stock option plans, from Applicant and Reliance, respectively; provided, however, that any stock option plan of Applicant be approved by a vote of a majority of Applicant's shareholders, and further provided that all stock options so granted (i) will not exceed 10 percent of Applicant's outstanding shares, (ii) will not be exercisable for at least one year from the date of grant, and (iii) will have an exercise price of at least 100 percent of the market price of Applicant's common stock on the date of grant;

(l) the purchase of Reliance common stock in the open market and any public tender or exchange offer for such Reliance stock by Applicant to all Reliance shareholders, including Mr. Steinberg;

(m) the granting to Applicant by Mr. Steinberg of any option to purchase Reliance stock owned by Mr. Steinberg, such option to include the right of Applicant to vote the stock during the option period, provided that Applicant pays no more than a nominal fee in exchange for the option;

(n) the purchase by Applicant of consulting services from Reliance or its subsidiaries for fair market value;

(o) the continuance of the debtor-creditor relationship presently existing between Reliance and Michael F. Morrell ("Morrell"), Director and Executive Vice President of Applicant, with respect to $138,125 loaned to Morrell by Reliance which bears interest at eight percent per year and is due in April 1981;

(p) the subleasing of office space in the United States by Applicant from Reliance at Reliance's cost;

(q) the leasing of fleet cars by Applicant and Reliance for their respective use under the same leasing agreement; and

(r) the joint entering by Applicant and Reliance into a national buying program for the purchase of office equipment and supplies, and other material.

(3) that for purposes of the recordkeeping provisions of Section 31 of the Act and the rules thereunder, Applicant will maintain records in accordance with such provisions only to the extent to which transactions in which it engages are of the type described in such section and rules (such records shall be subject at anytime and from time to time to such reasonable periodic, special and other examinations by the Commision, or any member or representative thereof, as the Commission may prescribe).

As further conditions to the requested order, Applicant has agreed:

(1) not to acquire investment securities other than the common stock of Reliance if to acquire such investment securities would cause Applicant to hold more than five percent of its total consolidated net assets in investment securities, except that: the acquisition and continued holding of the securities issued by Broadcasting and Securilease in connection with certain transactions described in the application shall be permissible, as shall be the purchase of money market instruments, and shares of money market funds, acquired and held by Applicant as a cash management tool;

(2) to liquidate, within three months from the date of issuance of the requested order, its holdings of common stock in the two publicly held corporations and the $30,000 Port of New York Authority Bond; and

(3) not to take corporate action, such as repurchasing its outstanding shares or entering into a reorganization, which would serve to reduce its net assets and cause its holdings of investment securities to be more than five percent of its total consolidated net assets without first obtaining an order of the Commission modifying the order which may be granted on the present application.

Compliance with the above three conditions shall not require Applicant to sell investment securities if by reason of an increase in the market value of such securities, or a decline in the fair market value of other assets of Applicant, such investment securities have a value exceeding five percent of Applicant's total consolidated net assets.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 15, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Security and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9162/August 19, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CARDIFF INDUSTRIES, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-1117)

The Commission announced today that on August 18, 1980, the United States District Court for the District of Columbia entered a final Judgment of Permanent Injunction against Cardiff Industries, Inc. ("Cardiff") of Denver, Colorado, restraining and enjoining Cardiff from failing to file timely periodic reports and ordering it to comply with certain undertakings. Cardiff, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 4 separate occasions. The Commission's Complaint was filed on May 5, 1980.

The Complaint had alleged that Cardiff had failed to file an Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980. Further, the complaint alleged that Cardiff, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Cardiff has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9163/August 19, 1980

SEC v. *CURTIS R. RICHMOND* (Central District of California, CV-80-03239WMB)

Leonard H. Rossen, Regional Administrator of the Securities and Exchange Commission's Los Angeles Regional Office, announced that on July 24, 1980, the Commission filed an action in the United States District Court for the Central District of California against Curtis R. Richmond, both individually and in his capacity as General Partner for Marion County Partners, Blue Ribbon Partners, Shores Parners, Caddo Bayou Partners and Red River Partners. The Commission seeks to permanently enjoin Richmond from further violations of the anti-fraud provisions of the securities laws set forth in Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder,and also seeks other equitable relief including disgorgement and the appointment of a special auditor to provide to all limited partners corrective disclosures concerning the partnerships.

The Commission charges in today's action that Richmond misappropriated proceeds in connection with the sale of certain oil and gas limited partnerships of which he was General Partner. According to the Complaint, Richmond appropriated for his own personal benefit over $130,000 of partnership funds and was responsible for diverting another $65,000 to a third party. The Complaint also alleges that Richmond fraudulently misrepresented to the limited partners the manner in which the partnership proceeds were to be expended.

The Complaint further charges that Richmond fraudulently failed to disclose to prospective investors his background as a previous violator of the securities laws and a previous subject of Court injunctions and a Commission order. In 1974, Richmond was permanently enjoined by the U.S. District Court for the Central District of California from further violations of the registration requirements of Section 5 of the Securities Act of 1933. In 1975, he was permanently enjoined, after a full trial, from further violations of the anti-fraud provisions set forth in Section 206 of the Investment Advisers Act of 1940. Additionally, Richmond was barred by Commission order in 1976 from further association with any broker-dealer or investment adviser.

In addition to the above charges, the Complaint also alleges that the offering circulars for the partnerships contained false information concerning other aspects of the investment, including misleading projections of income to be earned by those partnerships.

Finally, the Complaint alleges that Richmond continued to perpetrate his fraud after the limited partnership interests were sold by misrepresenting to the limited partners the true facts concerning numerous aspects of the investment, including the status of drilling operations and the financial condition of the investments.

Richmond has previously been found in civil contempt of court in connection with the same oil and gas limited partnerships which are basis of the Commission's present action. In January, 1980, U.S. District Judge Laughlin Waters found Richmond in contempt for failure to produce partnership records, subpoenaed by the staff of the Los Angeles Regional Office and ordered Richmond imprisoned until he produced the records. Richmond purged himself of contempt by finally producing the records in March 1980 after he failed to obtain a stay of the contempt order pending appeal.

Litigation Release No. 9164/August 20, 1980

SEC v. GREAT PLAINS MINERAL BYPRODUCTS, INC., ET AL. (USDC, Colorado, Civil Action No. 77-M-529)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on August 12, 1980, Judge Zita L. Weinshienk of the United States District Court for the District of Colorado, entered a Final Judgment of Permanent Injunction against Steven R. Tomasko, Wayne Duell, David Duell and Gerald L. Barker, all Colorado residents, enjoining them from violating the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of investment contracts of Great Plains Mineral Byproducts, Inc., or any securities of any issuer. The defendants consented to the entry of the injunction without admitting or denying the allegations in the Complaint.

The Commission's Complaint filed June 2, 1977, alleged, in sum and substance, violations of the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of interests in Great Plains Mineral Byproducts, Inc., a company formed to, among other things, extract precious metals from fly ash.

Upon motions by the Securities and Exchange Commission, Judge Weinshienk dismissed the Commission's demand for restitution against Great Plains Mineral Byproducts, Inc., Messrs. Tomasko, Wayne and David Duell, and Barker.

For further information see Litigation Releases 8062 and 8014.

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VOLUME 20, NO. 16 SEPTEMBER 9, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6229-30	1005
Securities Exchange Act	17084-96	1032
Public Utility Holding Company Act	21686-91	1043
Trust Indenture Act	579-82	1052
Investment Company Act	11314-17	1053
Litigation	9165-66	1055

This listing covers releases issued from 8/22/80-8/27/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17088 34-17090
34-17089 34-17091

33-6229 Adoption of a rule which will permit most post-effective amendments to registration statements to become effective automatically.

33-6230 Adoption of amendments to Regulations S-K in order to standardize and improve the Commission's requirements relating to the filing of exhibits.

34-17085 Adoption of proposed amendment to its rule to exclude the requirement that national securities exchanges provide the Commission with notice of uncontested summary disciplinary actions involving infractions of floor decorum regulations.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6229/August 25, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11315/August 25, 1980

SE 1.29:

REVISED PROCEDURES FOR PROCESSING POST-EFFECTIVE AMENDMENTS FILED BY INVESTMENT COMPANIES

ACTION: Final rules and amendments to forms.

SUMMARY: The Securities and Exchange Commission today is adopting a rule which will permit most post-effective amendments to registration statements filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, without affirmative action on the part of the Commission or its staff. The Commission is also adopting amendments to its Rules of Organization and Program Management and to the registration statement forms for open-end management investment companies and unit investment trusts. The amendments to the Rules of Organization and Program Management delegate to the staff the authority to suspend automatic effectiveness of post-effective amendments and to declare amendments effective pursuant to the rule. The amendments to the registration statement forms require registrants to specify on the facing sheet of the filing if the amendment will become effective upon filing or within the time permitted by the rule. The form amendments will also require registrants to make certain representations on the signature page of the amendment. The Commission is taking this action to eliminate review of certain filings which are routine, and to permit registrants to assume greater responsibility for their compliance with the disclosure requirements of the federal securities laws.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2115, or Kathleen A. Jackson, Attorney, (202) 272-2118, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of rule 465 [17 CFR 230.465] under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("1933 Act"), and related amendments to rule 30-5 of the Commission's Rules of Organization and Program Management [17 CFR 200.30-5]; Form S-6 [17 CFR 239.16], the registration statement form for unit investment trusts under the 1933 Act; and Form N-1 [17 CFR 239.15, 17 CFR 274.11], the registration statement form for open-end management investment companies under the 1933 Act and the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.]. The new rule and related form amendments will result in the elimination of routine staff review of, and comment on, certain post-effective amendments filed by investment company registrants on Form S-6 or Form N-1. These amendments will become effective upon filing with the Commission or upon any subsequent date within twenty days of the date of filing specified by the registrant on the facing sheet of the amendment. Other post-effective amendments filed by investment company registrants, including those which contain disclosure relating to material events occurring since the effective date of the issuer's registration statement or its most recent post-effective amendment which included a prospectus, will still be subject to staff review and comment but will normally become effective automatically sixty days after filing.

Where the staff's review reveals circumstances suggesting that a post-effective amendment should not become effective after the sixty-day period, the rule provides that the operation of its automatic effectiveness provision may be suspended upon written notice to the registrant. Should automatic effectiveness be suspended with respect to a particular post-effective amendment, the amendment will not become effective until it is so declared by the Commission, or the staff pursuant to delegated authority, in accordance with section 8(c) of the 1933 Act [15 U.S.C. 77h(c)].

The amendment to the Commission's Rules of Organization and Program Management delegates to the staff the authority to suspend automatic effectiveness and to declare effective amendments with respect to which operation of the rule has been suspended. This amendment also delegates to the staff the authority to determine post-effective amendments filed pursuant to the rule to be effective within shorter periods of time than sixty days after filing when circumstances so warrant.

Background

Investment companies which issue redeemable securities file post-effective amendments to their 1933 Act registration statements for a number of reasons associated with the continuous offer and

sale of securities to the public. Such investment companies are permitted to increase the amount of their securities registered under the 1933 Act[1] and to register an indefinite number or amount of securities[2] by post-effective amendment. Moreover, because an investment company that continuously offers and sells securities to the public must also maintain a current prospectus, such companies must bring the information contained in their prospectuses up to date at approximately yearly intervals. Accordingly, most open-end management investment companies and unit investment trusts annually file post-effective amendments with the Commission in order to update the financial and narrative disclosures contained in their prospectuses, to register additional securities, or both. Post-effective amendments might also be filed by such registrants to correct deficiencies in their registration statements discovered after the statements have become effective, or to incorporate into the prospectus any important changes or developments in the business, operations or services of the company.

In the Commission's experience, the majority of post-effective amendments filed by open-end management investment companies and unit investment trusts do not present novel or complex questions of law or fact. Nevertheless, the staff has always examined and, under section 8(c) of the 1933 Act, declared effective each filing individually, although the staff has implemented several procedures for limited review in an effort to maintain expeditious processing of filings in the face of a steady increase in the number of registered investment companies and thus the number of post-effective amendments filed by such companies.[3]

While these procedures have helped the Commission to make better use of its resources, the total number of post-effective filings made by investment company registrants under the 1933 Act has continued to increase. For this and other reasons it seemed to the Commission that a basic revision to the review process of investment company post-effective amendments was necessary, and in April, 1980, the Commission proposed rule 465 under the 1933 Act and related amendments to Forms N-1 and S-6 (Securities Act Release No. 6205, April 3, 1980) [45 FR 24500, April 10, 1980]. Rule 465 was intended to eliminate review of those filings which, because of their routine nature, do not need review, and to allow the Commission and its staff to concentrate its resources on those filings which discuss material events affecting an investment company and thus require review. Moreover, by permitting filings to become effective automatically, without affirmative action by the Commission or its staff, rule 465 was intended to permit registrants to assume greater responsibility for compliance with the disclosure requirements of the 1933 and 1940 Acts. The Commission today adopts rule 465 and its related form amendments with the revisions described below.

PUBLIC COMMENTS AND MODIFICATIONS TO PROPOSED RULE 465

The comments received concerning the proposed rule unanimously favored the concept underlying the proposal, although many commentators suggested modifications. All comments received have been considered and the main points raised by the commentators are addressed below.

Opinion of Counsel

Paragraph (f) of the rule as proposed required an opinion of counsel relating to the representations required to be made by registrants in connection with filing post-effective amendments to become effective immediately without staff review, pursuant to paragraph (b) of the proposed rule. Specifically, paragraph (b)(3) of the proposed rule provided that when a registrant filed an amendment pursuant to paragraph (b) it was required to represent that none of the material events listed in paragraph (b)(2) were disclosed in the filing and that no other material change "requiring disclosure in the prospectus" had occurred since the effective date of the last registration statement or post-effective amendment containing a prospectus, whichever was later.

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[1]Pursuant to section 24(e)(1) of the 1940 Act [15 U.S.C. 80a-24(e)(1)].

[2]Pursuant to section 24(f) of the 1940 Act [15 U.S.C. 80a-24(f)] and rule 24f-2 thereunder [17 CFR 270.24f-2].

[3]A two-part filing procedure was adopted in 1976 in Securities Act Release No. 5738 (September 3, 1976) [41 FR 39013, Sept. 14, 1976], and in 1978, a procedure for "redline" review of post-effective filings by investment companies was announced in Securities Act Release No. 5988 (October 19, 1978) [43 FR 49886, Oct. 25, 1978].

Additionally, if the amendment contained disclosure about the resignation of any of the registrant's directors, a representation was required to the effect that the resignation was not the result of a disagreement on any matter relating to the registrant's operations, policies or practices. A similar representation was required when the amendment contained disclosure about a change in the registrant's independent public accountant. Paragraph (f) of the proposed rule provided that if counsel prepared or reviewed the post-effective amendment filed pursuant to paragraph (b), the representations of the registrant described above had to be supported by an opinion of counsel to the effect that counsel was not aware of any facts which would lead counsel to believe that the amendment could not properly be filed pursuant to paragraph (b). This provision was opposed by several commentators who urged its revision or deletion on the grounds that counsel should not be required to give an opinion as to factual matters (such as the resignation of directors), that it would be inappropriate to formalize the role of counsel in a rule under the federal securities laws, and that the required opinion merely restated the existing responsibility of counsel with respect to filings. It was also stated that the provision would discriminate against those registrants which had counsel review or prepare their filings.

The purpose of the requirement for an opinion was not, as suggested by some commentators, to make counsel a guarantor of the adequacy of the disclosure contained in the amendments which counsel reviewed, or to make counsel potentially liable to registrants or others for the content of the required opinion. Rather, the purpose of the provision was to ensure that where an amendment was filed under paragraph (b), and thus would become effective without staff review, the amendment would, to the best of counsel's knowledge, be properly filed, and counsel could be accountable to the Commission for counsel's determination to this effect. The Commission continues to believe that where, as is usually the case, a post-effective amendment is prepared or reviewed by counsel (whether outside counsel or a full-time employee of the registrant), a specific statement by counsel that the amendment can properly be filed under paragraph (b) will serve as an important safeguard against the improper filing of amendments under that paragraph. However, to avoid some of the difficulties alluded to by the commentators, the revised rule (in new paragraph (e)) requires counsel who prepares or reviews a post-effective amendment filed pursuant to paragraph (b) of the rule to state only that the amendment does not contain disclosure which would render it ineligible to become effective pursuant to paragraph (b). Furthermore, under the revised rule this statement will be in the form of a representation to the Commission rather than an opinion of counsel.

Effective Date of Amendments

The proposed rule provided that post-effective amendments filed pursuant to paragraph (a) of the rule would become effective on the sixtieth day after filing, and that amendments filed pursuant to paragraph (b) would become effective upon filing. Several commentators who addressed these effective date provisions pointed out that where a filing was transmitted by mail, particularly over a long distance, it would be difficult for the registrant to predict the exact date upon which the filing would be received by the Commission and hence the exact date upon which the amendment would become effective. Accordingly, it was suggested that the Commission allow some flexibility in the effective dates of amendments. Another suggested alternative was that the Commission issue an interpretation to the effect that registrants would be permitted to use a prospectus which was still current for purposes of section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] (because the financial statements contained therein were not as of a date more than sixteen months prior to its use) for a specified period after a more recent post-effective amendment containing a prospectus had become effective pursuant to the rule.

The Commission has historically taken the position that any prospectus filed by an investment company registrant, even one which is still current for purposes of section 10(a)(3) of the 1933 Act, becomes stale the moment a more recent amendment containing a changed prospectus becomes effective. This position is based on section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)] which provides that for purposes of the liabilities imposed by section 11 of the 1933 Act [15 U.S.C. 77k], the effective date of a post-effective amendment filed by an investment company registrant becomes the effective date of the registration statement with respect to securities sold after the amendment becomes effective. Therefore, it is conceivable that where an amendment becomes effective upon filing pursuant to paragraph (b) of the

proposed rule, but the registrant had not yet received a certified mail receipt or other confirmation of the filing date of its amendment, the registrant might inadvertently use a stale prospectus to sell shares. It would be equally unfortunate if a registrant filing pursuant to paragraph (b) were to use a prospectus before the amendment in which it was contained was received by the Commission and thus became effective. To avoid these problems, the revised rule permits registrants filing amendments pursuant to paragraph (b) of the rule to choose the effective date of the amendment, provided that the date chosen is within twenty days after the date on which the amendment is filed. Registrants should designate the date on the facing sheet of their amendment, and the amendment will become effective automatically on the date chosen. Registrants can still choose effectiveness immediately upon filing. The twenty-day period is adequate to permit registrants to receive a certified mail receipt or other confirmation of the filing date of an amendment in advance of the proposed effective date.

Paragraph (a) of the revised rule has not been modified because the sixty day period between the filing and effective dates of an amendment filed pursuant to that paragraph is sufficient to allow registrants to receive confirmation of the filing date well in advance of automatic effectiveness of the amendment.

Technical Changes

Paragraph (c) of the proposed rule provided that an amendment filed pursuant to the rule must recite on its facing sheet the provision of the rule pursuant to which it was filed. The release accompanying proposed rule 465 stated that because the rule was intended to provide the exclusive procedure for the review and processing of all post-effective amendments filed by open-end management investment companies and unit investment trusts (other than insurance company separate accounts), any amendment which did not recite on its facing sheet the provision of the rule pursuant to which it was filed would be deemed not to have been filed and would be returned to the registrant.

In response to comments, the Commission has concluded that the combined effect of paragraph (c) of the proposed rule and the statement made in the release would be more harsh than necessary. Accordingly, paragraph (c) of the rule has been revised to provide (in new paragraph (b)(4), that only those amendments which are filed pursuant to paragraph (b) need recite that fact on the facing sheet. Similar modifications to the facing sheets of Form N-1 and Form S-6 have also been made. Thus, under the revised rule, amendments within the purview of the rule which do not recite on the facing sheet that they are filed pursuant to paragraph (b) of the rule will be presumed to have been filed pursuant to paragraph (a), and will become effective in accordance with that paragraph.

Some commentators requested clarification of the form in which a registrant should make the representations required in conjunction with filing an amendment pursuant to paragraph (b) of the rule. Revisions to the rule and the form amendments accommodate this request. New paragraph (e) of the rule requires the representations of the registrant to be made by certification on the signature page of the post-effective amendment. The required certification is to the effect that the registrant meets all of the requirements for effectiveness of the amendment pursuant to paragraph (b) of the rule. The textual portions of the signature pages of Forms N-1 and S-6 have been amended to include this certification.

OTHER COMMENTS

A number of commentators suggested that if some of the restrictions on immediate effectiveness under proposed rule 465 were removed, more post-effective amendments would be filed pursuant to paragraph (b), thus enabling the staff to avoid reviewing a greater number of filings. Although one purpose of rule 465 is to eliminate staff review of investment company filings which are purely routine, the Commission is unwilling to eliminate review of investment company filings which are not routine. Moreover, while the Commission believes that a significant number of post-effective amendments will qualify for filing under paragraph (b), it also believes that rule 465 will serve a useful purpose even if the number of amendments which are not reviewed by the staff proves smaller than expected. A principal objective of automatic effectiveness for all filings is to permit registrants to assume greater responsibility for compliance with the disclosure standards of the federal securities laws.

In this regard, as stated in the release proposing rule 465, the power under paragraph (c) (former paragraph (d)) to suspend effectiveness of an

Additionally, if the amendment contained disclosure about the resignation of any of the registrant's directors, a representation was required to the effect that the resignation was not the result of a disagreement on any matter relating to the registrant's operations, policies or practices. A similar representation was required when the amendment contained disclosure about a change in the registrant's independent public accountant. Paragraph (f) of the proposed rule provided that if counsel prepared or reviewed the post-effective amendment filed pursuant to paragraph (b), the representations of the registrant described above had to be supported by an opinion of counsel to the effect that counsel was not aware of any facts which would lead counsel to believe that the amendment could not properly be filed pursuant to paragraph (b). This provision was opposed by several commentators who urged its revision or deletion on the grounds that counsel should not be required to give an opinion as to factual matters (such as the resignation of directors), that it would be inappropriate to formalize the role of counsel in a rule under the federal securities laws, and that the required opinion merely restated the existing responsibility of counsel with respect to filings. It was also stated that the provision would discriminate against those registrants which had counsel review or prepare their filings.

The purpose of the requirement for an opinion was not, as suggested by some commentators, to make counsel a guarantor of the adequacy of the disclosure contained in the amendments which counsel reviewed, or to make counsel potentially liable to registrants or others for the content of the required opinion. Rather, the purpose of the provision was to ensure that where an amendment was filed under paragraph (b), and thus would become effective without staff review, the amendment would, to the best of counsel's knowledge, be properly filed, and counsel could be accountable to the Commission for counsel's determination to this effect. The Commission continues to believe that where, as is usually the case, a post-effective amendment is prepared or reviewed by counsel (whether outside counsel or a full-time employee of the registrant), a specific statement by counsel that the amendment can properly be filed under paragraph (b) will serve as an important safeguard against the improper filing of amendments under that paragraph. However, to avoid some of the difficulties alluded to by the commentators, the revised rule (in new paragraph (e)) requires counsel who prepares or reviews a post-effective amendment filed pursuant to paragraph (b) of the rule to state only that the amendment does not contain disclosure which would render it ineligible to become effective pursuant to paragraph (b). Furthermore, under the revised rule this statement will be in the form of a representation to the Commission rather than an opinion of counsel.

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The proposed rule provided that post-effective amendments filed pursuant to paragraph (a) of the rule would become effective on the sixtieth day after filing, and that amendments filed pursuant to paragraph (b) would become effective upon filing. Several commentators who addressed these effective date provisions pointed out that where a filing was transmitted by mail, particularly over a long distance, it would be difficult for the registrant to predict the exact date upon which the filing would be received by the Commission and hence the exact date upon which the amendment would become effective. Accordingly, it was suggested that the Commission allow some flexibility in the effective dates of amendments. Another suggested alternative was that the Commission issue an interpretation to the effect that registrants would be permitted to use a prospectus which was still current for purposes of section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] (because the financial statements contained therein were not as of a date more than sixteen months prior to its use) for a specified period after a more recent post-effective amendment containing a prospectus had become effective pursuant to the rule.

The Commission has historically taken the position that any prospectus filed by an investment company registrant, even one which is still current for purposes of section 10(a)(3) of the 1933 Act, becomes stale the moment a more recent amendment containing a changed prospectus becomes effective. This position is based on section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)] which provides that for purposes of the liabilities imposed by section 11 of the 1933 Act [15 U.S.C. 77k], the effective date of a post-effective amendment filed by an investment company registrant becomes the effective date of the registration statement with respect to securities sold after the amendment becomes effective. Therefore, it is conceivable that where an amendment becomes effective upon filing pursuant to paragraph (b) of the

proposed rule, but the registrant had not yet received a certified mail receipt or other confirmation of the filing date of its amendment, the registrant might inadvertently use a stale prospectus to sell shares. It would be equally unfortunate if a registrant filing pursuant to paragraph (b) were to use a prospectus before the amendment in which it was contained was received by the Commission and thus became effective. To avoid these problems, the revised rule permits registrants filing amendments pursuant to paragraph (b) of the rule to choose the effective date of the amendment, provided that the date chosen is within twenty days after the date on which the amendment is filed. Registrants should designate the date on the facing sheet of their amendment, and the amendment will become effective automatically on the date chosen. Registrants can still choose effectiveness immediately upon filing. The twenty-day period is adequate to permit registrants to receive a certified mail receipt or other confirmation of the filing date of an amendment in advance of the proposed effective date.

Paragraph (a) of the revised rule has not been modified because the sixty day period between the filing and effective dates of an amendment filed pursuant to that paragraph is sufficient to allow registrants to receive confirmation of the filing date well in advance of automatic effectiveness of the amendment.

Technical Changes

Paragraph (c) of the proposed rule provided that an amendment filed pursuant to the rule must recite on its facing sheet the provision of the rule pursuant to which it was filed. The release accompanying proposed rule 465 stated that because the rule was intended to provide the exclusive procedure for the review and processing of all post-effective amendments filed by open-end management investment companies and unit investment trusts (other than insurance company separate accounts), any amendment which did not recite on its facing sheet the provision of the rule pursuant to which it was filed would be deemed not to have been filed and would be returned to the registrant.

In response to comments, the Commission has concluded that the combined effect of paragraph (c) of the proposed rule and the statement made in the release would be more harsh than necessary. Accordingly, paragraph (c) of the rule has been revised to provide (in new paragraph (b)(4), that only those amendments which are filed pursuant to paragraph (b) need recite that fact on the facing sheet. Similar modifications to the facing sheets of Form N-1 and Form S-6 have also been made. Thus, under the revised rule, amendments within the purview of the rule which do not recite on the facing sheet that they are filed pursuant to paragraph (b) of the rule will be presumed to have been filed pursuant to paragraph (a), and will become effective in accordance with that paragraph.

Some commentators requested clarification of the form in which a registrant should make the representations required in conjunction with filing an amendment pursuant to paragraph (b) of the rule. Revisions to the rule and the form amendments accommodate this request. New paragraph (e) of the rule requires the representations of the registrant to be made by certification on the signature page of the post-effective amendment. The required certification is to the effect that the registrant meets all of the requirements for effectiveness of the amendment pursuant to paragraph (b) of the rule. The textual portions of the signature pages of Forms N-1 and S-6 have been amended to include this certification.

OTHER COMMENTS

A number of commentators suggested that if some of the restrictions on immediate effectiveness under proposed rule 465 were removed, more post-effective amendments would be filed pursuant to paragraph (b), thus enabling the staff to avoid reviewing a greater number of filings. Although one purpose of rule 465 is to eliminate staff review of investment company filings which are purely routine, the Commission is unwilling to eliminate review of investment company filings which are not routine. Moreover, while the Commission believes that a significant number of post-effective amendments will qualify for filing under paragraph (b), it also believes that rule 465 will serve a useful purpose even if the number of amendments which are not reviewed by the staff proves smaller than expected. A principal objective of automatic effectiveness for all filings is to permit registrants to assume greater responsibility for compliance with the disclosure standards of the federal securities laws.

In this regard, as stated in the release proposing rule 465, the power under paragraph (c) (former paragraph (d)) to suspend effectiveness of an

amendment filed pursuant to paragraph (a) will usually be exercised only where the Commission has authorized injunctive action or administrative proceedings against the registrant or persons associated with it. If a post-effective amendment appears to raise the possibility of being materially incomplete or inaccurate, but the Commission is not yet prepared to take action against the registrant of the type described above, the amendment will normally be allowed to become effective, and the registrant assumes the risk that the Commission might later determine to take action on the ground that the filing is misleading or otherwise deficient. For this reason registrants who certify that their amendments can become effective pursuant to paragraph (b) should take special care in determining that no material event has occurred which would make the amendments ineligible for effectiveness under paragraph (b). For example, registrants who are aware that they are subject to a formal order of investigation by the Commission should consider the materiality of the matters being investigated in determining whether to file under paragraph (b).

Several commentators addressed paragraph (b)(1)(iii) of the rule which,a s proposed, permitted immediate effectiveness of amendments "filed for no purpose other than. . .[b]ringing the financial statements and other information up to date pursuant to section 10(a)(3)" of the 1933 Act. They argued that this provision should be revised to include explicitly amendments which, in addition to updating this information, also correct inconsistencies, typographical or other technical errors, or make other changes which the registrant represents not to be material. To make clear that paragraph (b)(1)(iii) of the rule is intended to include minor changes of the type described by the commentators, that paragraph now specifically provides that registrants may make such other non-material changes in connection with the annual update as they deem appropriate. Paragraph (b)(1) has also been amended to clarify that registrants may file amendments pursuant to paragraph (b) for any one or combination of the purposes listed in that paragraph.

Several commentators argued that the sixty day waiting period for effectiveness in paragraph (a) was too long, and urged its reduction to thirty or forty-five days. The Commission, however, believes that a period of fewer than sixty days may not allow sufficient time for staff review of filings which discuss material events. Moreover, since registrants obviously can know at any time the date upon which their current prospectuses will become stale, the Commission does not believe that it is unduly burdensome for them to file their post-effective amendments subject to rule 465(a) at least sixty days before that date.

The rule, as proposed, applied only to open-end management investment companies and unit investment trusts which were not registered separate accounts of insurance companies as defined in section 2(a)(37) of the 1940 Act [15 U.S.C. 80a-2(a)(37)]. Several commentators urged the Commission to reconsider this aspect of the applicability of the rule. Rule 465 as adopted does not apply to such companies. In the future, however, the Commission will be prepared to consider applying procedures similar to those set forth in rule 465 to registered separate accounts of insurance companies.

FILING PROCEDURES UNDER RULE 465

The adoption of rule 465 represents a significant departure from the procedures which heretofore have been applicable to the review and processing of post-effective amendments filed by investment company registrants, and the Commission wishes to bring certain matters to the attention of registrants.

First, the two-part filing procedure currently in effect[4] will not apply to filings subject to rule 465. Thus, the "narrative-only" filing now requested to be filed before the end of registrant's fiscal year has been eliminated.

Paragraph (d) (former paragraph (e)) of the rule provides that a post-effective amendment which includes a prospectus and which is filed pursuant to paragraph (a) shall not become effective automatically if a subsequent amendment relating to that prospectus is filed before the first amendment becomes effective. Thus, where it is appropriate for a registrant to file a later post-effective amendment (for example, to reflect changes made to prospectus disclosure as a result of staff comments on an earlier amendment), the subsequent amendment will become effective on

[4]*See* note 3, *supra*.

the sixtieth day after it is filed unless the effective date is advanced. The effective date of amendments filed in response to staff comments will be advanced in most instances, however, so that the subsequent amendment will become effective on the sixtieth day after the original amendment was filed. Some commentators suggested that post-effective amendments filed in response to comments should be permitted to become effective automatically on the sixtieth day after the original amendment was filed. The rule has not been modified in response to this comment, however, because such amendments may contain substantial changes in disclosure which require full review, as opposed to a simple checking or verification procedure. This review may not be completed before the sixtieth day after the original amendment was filed, particularly if the subsequent amendment is filed late in the sixty day period.

As noted above, if refiling in response to staff comments is necessary, paragraph (d) of the rule will operate to prevent the original amendment from becoming effective pursuant to paragraph (a). However, where the refiled amendment responds satisfactorily to all staff comments given which were not waived or otherwise withdrawn, the staff normally will exercise its authority under section 8(c) of the 1933 Act to declare the original amendment effective. This procedure will eliminate any necessity for registrants to pay duplicate filing fees where the original amendment sought to register additional shares, and will also make it unnecessary to refile all exhibits contained in the original filing.[5]

In order for a post-effective amendment to be properly filed pursuant to paragraph (b) of the rule, the filing must satisfy the following requirements. First, the box indicating that the filing is made pursuant to paragraph (b) must be checked on the facing sheet of the filing. Second, the registrant's certification must appear on the signature page of the filing. Third, if the post-effective amendment was prepared or revised by counsel, the filing must contain the required counsel's representation. Should counsel's representation (where appropriate), the registrant's certification, or the checked box on the facing sheet be omitted from the amendment, it will be deemed filed pursuant to paragraph (a) of the rule. As such, it will be subject to staff review and comment and will not become effective automatically until the sixtieth day after filing. As a result, the shares sought to be registered by such an amendment may not be sold, nor may any prospectus contained therein be used for purposes of offering or selling shares, before the sixtieth day after the amendment was filed. Any such sale or use would violate provisions of the 1933 Act. Therefore, registrants should take special care in the preparation of post-effective amendments filed pursuant to paragraph (b) in order to avoid these problems.

Rule 437 under the 1933 Act [17 CFR 230.437] concerns applications to dispense with the written consents of experts required by section 7 of the 1933 Act [15 U.S.C. 77g]. This rule provides that such applications shall have been filed, and the consent of the Commission shall have been obtained, prior to the effective date of a registration statement. The Commission and its staff are currently considering the appropriateness of waivers under rule 437. In the interim, however, registrants (particularly unit investment trusts investing in municipal or corporate bonds), which routinely file applications pursuant to rule 437, should be aware that rule 465 does not in any way modify the requirements of rule 437. It is the registrant's responsibility to ensure that the application is filed and approved before the amendment becomes effective pursuant to rule 465.

The staff will prepare notifications of effectiveness only in two cases: for amendments as to which the effective date has been advanced, and those which are being made effective following suspension of effectiveness. Thus, notifications of effectiveness will not be prepared for amendments which become effective on the date chosen by the registrant within twenty days after filing, pursuant to paragraph (b), or on the sixtieth day after filing, pursuant to paragraph (a). Rule 474 under the 1933 Act [17 CFR 230.474] states that the date on which amendments are actually received by the Commission shall be the filing date. In order to be aware of the exact filing date, registrants which file in person may wish to provide an extra copy of the amendment or a cover letter to be date-stamped and returned to the registrant. Registrants which do not file in person at the Commission may choose to send their amendments by certified mail requesting a receipt,

[5]Thus, registrants should omit any reference to the registration of shares from the facing sheet of the later filing.

or to enclose a stamped, self-addressed envelope as part of the filing together with a duplicate of the cover letter so that the duplicate can be date-stamped and returned to the registrant.

Registrants are reminded that the statutory burden of full disclosure is on the issuer, its affiliates, the underwriter, the accountants and others responsible for the filing. As a matter of law, this burden cannot be shifted to the Commission or its staff. To monitor compliance with these statutory responsibilities, the Commission staff will undertake a program of spot-checking amendments filed pursuant to paragraph (b).

DELEGATION OF AUTHORITY

As stated in the release proposing rule 465, the Commission is adopting an amendment to rule 30-5 of its Rules of Organization and Program Management [17 CFR 200.30-5], delegating to the Director of the Division of Investment Management the authority to advance the effective date of post-effective amendments filed pursuant to paragraph (a) of rule 465, and to suspend the operation of paragraph (a) with respect to amendments filed pursuant to that section.

TEXT OF RULE 465, AMENDMENTS TO FORM N-1 AND FORM S-6, AND AMENDMENT TO RULE 30-5

I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding §230.465 to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.465 Effective date of post-effective amendments filed by certain registered investment companies.

(a) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the sixtieth day after the filing thereof, unless the Commission, having due regard to the public interest and the protection of investors, declares such amendment effective on an earlier date.

(b) A post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than twenty days after the date on which the amendment is filed, provided that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered pursuant to section 24(e)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(e)(1)];

(ii) Registering an indefinite number or amount of securities pursuant to section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(f)] and Rule 24f-2 thereunder [17 CFR 270.24f-2]; and

(iii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act [15 U.S.C. 77j(a)(3)], and, in conjunction therewith, making such other non-material changes as the registrant deems appropriate;

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 [15 U.S.C. 80a-13], is changeable only by shareholder vote;

(iii) Suspension of sales or redemptions of securities issued by the registrant;

(iv) Resignation of any of the registrant's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the registrant's operations, policies or practices;

(v) A change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles or practices or financial statement disclosures; or

(vi) If registrant is a unit investment trust the assets of which do not consist solely of securities issued by a management investment company, any substitution by the depositor or trustee of the trust of securities held by the trust with a value of 5% or more of the trust's net assets; and

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later; and

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

(c) No amendment shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) A post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(e) The representations of the registrant referred to in paragraphs (b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be made by certification on the signature page of the post-effective amendment that such amendment meets all of the requirements for effectiveness pursuant to paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment filed pursuant to paragraph (b) of this section, such counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures which would render it ineligible to become effective pursuant to paragraph (b).

II. Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations are amended by:

(1.) Amending the facing sheet of Form N-1 and (2.) amending the signature page of Form N-1 as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

§274.11 Form N-1, registration statement of open-end management investment companies.

[1. Amendment to facing sheet. Insert the following after "Approximate Date of Proposed Public Offering":

☐ Check box if it is proposed that this filing will become effective (immediately upon filing or on (date)) pursuant to paragraph (b) of Rule 465.]

[2. Amendment to signature page. The first textual paragraph under "SIGNATURES" is amended as follows:

Pursuant to the requirements of the Securities Act of 1933 (and) (or) the Investment Company Act of 1940 the Registrant (certifies that it meets all of the requirements for effectiveness of this Registration

Statement pursuant to rule 465(b) under the Securities Act of 1933 and) has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, and State of _____ on the _____ day of _____, 19 ___.]

(3.) Amending the facing sheet of Form S-6 and (4.) amending the signature page of Form S-6 as follows:

§239.16 Form S-6 for unit investment trusts registered on Form N-8B-2.

[3. Amendment to facing sheet. Insert the following after "Name and complete address of agent for service":

☐ Check box if it is proposed that this filing will become effective (immediately upon filing or on (date)) pursuant to paragraph (b) of Rule 465.]

[4. Amendment to signature page. The textual paragraph under "SIGNATURES" is amended as follows:

Pursuant to the requirements of the Securities Act of 1933, the registrant, ... , (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to rule 465(b) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of _____, and State of _____, on the _____ day of _____, 19 ___]

III. Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding paragraph (b-2) to §200.30-5 to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

§200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b-2) With respect to post-effective amendments filed pursuant to paragraph (a) of rule 465 under the Act (17 CFR 230.465(a)):

(1) To suspend the operation of said paragraph (a) and to issue written notices to registrants of such suspensions; and

(2) To determine such amendments to be effective within shorter periods of time than the sixtieth day after the filing thereof.

STATUTORY AUTHORITY

The Commission hereby adopts Rule 465 and amendments to Form S-6 and Form N-1 pursuant to the provisions of Sections 7, 8 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h and 77s(a)], and Sections 8 and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-8 and 80a-37(a)]. Further, the Commission hereby amends rule 30-5 pursuant to authority contained in the Act of August 30, 1962, Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2] and Section 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-37].

By the Commission.

George A. Fitzsimmons
Secretary

August 25, 1980.

SECURITIES ACT OF 1933
Release No. 6230/August 27, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17095/August 27, 1980

AMENDMENTS REGARDING EXHIBIT REQUIREMENTS

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to Regulation S-K [17 CFR 229.20] and certain frequently used forms under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.] in order to standardize and improve the Commission's requirements relating to the filing of exhibits. The amendments delete thirteen exhibits

formerly required to be filed, revise and make uniform the requirements relating to certain other exhibits, and, with the exception of the exhibit requirements for Form S-18, consolidate all of the amended exhibit requirements of the frequently used forms into a new Regulation S-K item. To facilitate the identification and location of exhibits by the public, the Commission is also adopting amendments to certain rules to require an exhibit index with each form or report filed and a statement on the first page of each such document indicating the page on which the exhibit index can be found.

EFFECTIVE DATE: Thirty days after publication in the *Federal Register*. While the amendments will not be effective until such date, in view of the cost and other savings the amendments may provide to registrants, the Commission will accept filings complying with the amendments beginning immediately for those wishing to utilize them.

FOR FURTHER INFORMATION CONTACT: Prior to effectiveness contact Joseph G. Connolly, Jr. at (202) 272-3097. After effectiveness contact William E. Toomey, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain amendments to the exhibit filing requirements currently set forth in certain registration and reporting forms under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), the amendment of certain related rules under these Acts, and the adoption of a new item relating to exhibits in Regulation S-K.

I. *BACKGROUND*

As a result of a reexamination by the Division of Corporation Finance of the exhibit filing requirements for the registration and reporting forms promulgated under both the Securities Act and the Exchange Act, the Commission published proposed amendments to Regulation S-K and certain forms and rules under both Acts to standardize and improve the Commission's requirements relating to the filing of exhibits.[1] These changes were proposed for the dual purpose of making the requirements more relevant to investors and of reducing the burdens which they impose on registrants. A significant concommitant effect would also be to lessen the volume of paper filed with the Commission. Generally, the proposing release requested comments on the propriety of: (1) eliminating, modifying and, in limited circumstances, adding certain exhibit requirements in light of existing disclosure obligations; (2) deleting the specific exhibit requirements from certain frequently used forms;[2] (3) adding a new item to Regulation S-K to consolidate all exhibit requirements for such selected frequently used forms[3] and (4) amending certain rules under both the Securities Act and the Exchange Act to require an exhibit index with all registration and reporting forms filed under such Acts, as well as a statement on the first page of each such form indicating the page on which the exhibit index may be found.

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[1]Release No. 33-6149 (November 16, 1979) [44 FR 67143].

[2]As noted in the proposing release, the Commission has determined to confine the amendments to only those forms under the Securities and the Exchange Acts which are most frequently used. The frequently used forms selected are Forms S-1 [17 CFR 239.11], S-2 [17 CFR 230.12], S-7 [17 CFR 239.26], S-8 [17 CFR 239.16b], S-11 [17 CFR 239.18], S-14 [17 CFR 239.23], S-16 [17 CFR 239.27], and S-18 [17 CFR 239.28] under the Securities Act and Forms 10 [17 CFR 249.210], 8-K [17 CFR 249.308], 10-Q [17 CFR 249.308a] and 10-K [17 CFR 249.310] under the Exchange Act. Although the Form 11-K [17 CFR 249.31] had originally been included in the proposed Regulation S-K item, in view of the limited number and type of exhibits required by the Form 11-K [17 CFR 249.31], the Commission has determined not to include this form in Item 7 of Regulation S-K.

[3]With respect to the Form S-18, the Commission has determined to adopt all the substantive changes to the exhibit requirements outlined in this release but, instead of inserting a reference to Regulation S-K in the Form S-18, the substantive changes are directly incorporated into the "Instructions as to Exhibits" section of that Form. The basis for this distinction is the view that Form S-18 represents a "simplified" registration form and as such the Commission believes that it is appropriate to avoid cross references to other regulations wherever possible.

Twenty-one commentators addressed various aspects of the proposed amendments. The commentators expressed unanimous support for the proposed elimination of the thirteen exhibits listed in that release, commending the Commission for alleviating certain burdensome and outdated requirements upon registrants. The commentators also expressed in varying degrees their support for the Commission's attempt to achieve uniformity in the exhibit requirements for the forms selected and the relocation of the exhibit requirements for such forms in a single item of Regulation S-K. As a result of the views expressed by the commentators, a number of revisions have been incorporated into the proposals as adopted.

II. *SYNOPSIS OF AMENDMENTS*

The following synopsis discusses the exhibits which have been eliminated, modified and added to the filing requirements as well as the new exhibit item in Regulation S-K and the amendments to other rules. Attention is directed to the text of the amendments for a more complete understanding.

A. *ELIMINATION, MODIFICATION AND ADDITION OF EXHIBITS*

1. *Elimination of Exhibits*

As noted above, there was unanimous support of the commentators for the proposed elimination of the thirteen exhibits set forth below. The Commission believes that these exhibits are of limited interest to both the public and the Commission and may be eliminated without impairing investor information or protection.

The Commission has determined to no longer require the following exhibits, in those forms indicated in parentheses:

(1) syndication agreements (S-1, S-2, S-7, S-11, S-14, S-16 and S-18);

(2) selling group agreements (S-1, S-2, S-7, S-11, S-14, S-16 and S-18);

(3) specimen certificates (S-1, S-2, S-7, S-11, S-14, S-16, S-18, Form 10 and Form 20);

(4) plans relating to options, warrants and rights to the extent they are not deemed to be material contracts (S-1, S-8, S-11, S-14, S-18, Form 10 and Form 10-K);

(5) pension, retirement and deferred compensation plans (S-1 and S-18);

(6) indemnification contracts or arrangements (S-1, S-7, S-11 and S-14);

(7) profit sharing or bonus plans to the extent they are not deemed to be material contracts (S-8, S-11, S-14, S-18 and Form 10);

(8) agreements relating to registration rights (S-14);

(9) summaries of the employee benefit plan to which the filing relates and any related written communications (S-8 and S-18);

(10) waivers or undertakings required by Rule 460 [17 CFR 230.460] (S-8);

(11) list of subsidiaries participating in the plan (S-8);

(12) form of proxy (S-14);[4] and

(13) text of any proposal or any published report regarding matters submitted to a vote of security holders (Form 10-K and Form 10-Q).

2. *Modification of Exhibits Requirements*

(a) *Applicability of Requirements to Various Forms*

One of the commentators' general observations on the proposals was that the proposed revisions and codification into Regulation S-K of the exhibit filing requirements did not reflect adequately the distinctions among the various forms, particularly the Form S-16.

The Commission has determined that certain exhibit requirements are unnecessary for Form S-16 and can be eliminated without impairing investor information or protection. This determination is based upon the fact that the Form S-16 incorporates

[4]Although the form of proxy will no longer be required to be filed as an exhibit to the S-14 registration statement, the requirement that it be filed with the Commission with both the preliminary and definitive proxy material would be retained.

by reference current as well as subsequently filed reports under the Exchange Act where such exhibits may be found.[5] In this manner, information filed as an exhibit pursuant to the continuous disclosure requirements of the Exchange Act will be relied upon in lieu of an exhibit filing. This revision is intended to eliminate unnecessary and duplicative filings without reducing the quality of the information available to investors. As reviewed, only documents which relate specifically to the securities offering will be required as exhibits to Form S-16, i.e. underwriting agreements, plans of acquisition, reorganization, arrangement, liquidation or succession, instruments defining the rights of holders of the debt or equity securities being registered and opinions of counsel relating to legality and tax matters.

(b) *Modification of Specific Exhibits*

As discussed in Release No. 33-6149, the Commission proposed substantive revisions to two existing exhibit requirements: material contracts and previously unfiled documents. In response to the comments received, these definitions have been revised, as well as the proposed definitions of certain other exhibits, namely (a) instruments defining the rights of security holders, (b) letter with respect to changes in accounting principles, (c) plans of acquisition, reorganization, arrangement, liquidation or succession and (d) articles of incorporation and by-laws.

(i) *Material contracts*

The material contract definition has been revised from the proposal in two respects. First, in paragraph (b) of the definition relating to contracts not made in the ordinary course of business, the percentage in subpart 3 concerning the acquisition or sale of certain assets has been revised to the 15% threshold currently in the definition of material contracts in Form S-1. After analyzing the commentators' views in this area, the Commission has determined to set the percentage at 15% rather than reduce it to the Form 10 10% standard. This approach is consistent with the purpose of reducing the burdens which the exhibit filing requirements impose upon registrants without materially impairing investor information or protection.

Second, a new subpart has been added to paragraph (c) of the definition which specifically excludes from the exhibit filing requirements any remuneration plan or arrangement in which directors or executive officers of the registrant do not participate. The Commission believes that these types of plans generally are not material to investor information or protection and are not necessary for staff review purposes.

In certain respects, particularly with regard to the current exhibit requirements of Form S-7, the definition of material contract adopted will require the filing or at least the listing of some additional documents not currently required. The Commission does not believe, however, that this item requirement imposes an unreasonable burden upon registrants. It should be noted that Form S-7 allows the integration into the registration statement of the Exchange Act reports. To the extent such contracts have been filed with these reports, the registrant may incorporate them by reference so that the requirement in most instances will be a reference requirement rather than the imposition of a new filing requirement.

The Commission has determined, however, to eliminate this specific exhibit from the filing requirements for the Form S-16. Unlike the other registration and reporting forms, the Form S-16 incorporates by reference into the registration statement current, as well as subsequently filed, Exchange Act periodic reports where such contracts will be filed. As a result, the Commission believes that the elimination of this exhibit requirement will not reduce the quality of information available to investors but rather will eliminate a duplicative filing and reference requirement.

(ii) *Previously unfiled documents*

Although the substance of this exhibit requirement remains as originally proposed, the definition of this exhibit has been redrafted to remove certain ambiguities perceived by commentators, including eliminating the possible interpretation that the item

[5]Material changes in the registrant's affairs not previously disclosed in an incorporated document would be required to be disclosed in the registration statement pursuant to Item 8 of the Form. As a result, a material contract not previously filed as an exhibit to an Exchange Act periodic report would be required to be disclosed in the filing, although not required to be filed as an exhibit to the registration statement.

would require a continual updating of all Securities Act exhibits not otherwise required to be filed with the Forms adopted under the Exchange Act. As adopted, the exhibit requires the filing of all contracts or other documents either originally required to be filed with a registration statement on Form 10 or a report on Forms 10-K or 10-Q, as well as any document which later comes into existence and is of a character originally required to be so filed. Further, all amendments or modifications of previously filed exhibits are also encompassed within the item requirement. As noted in the proposing release, this item is a consolidation of several existing exhibit requirements in Forms 10-Q and 10-K and in the Commission's view does not impose any new filing requirements upon registrants except that the revised requirement would be operative on a quarterly basis, rather than on the annual basis used in the past.

(iii) *Instruments defining the rights of security holders, including indentures*

The substance, as well as the applicability, of this definition has been revised in a number of respects from the original proposal. Substantively, the definition has been revised by increasing the exclusionary provision in subpart (b), relating to non-registered long-term debt, from 5% to 10%.

Similarly, the applicability of the item to the various forms has been revised by limiting in certain respects the specific filing requirements. As adopted, the definition requires the filing of all instruments defining the rights of holders of the equity or debt securities being registered. Further, the definition requires the filing of all other instruments defining the rights of holders of long-term debt of the registrant, and of all subsidiaries for which consolidated or unconcolidated financial statements are required to be filed, only on Forms S-1, S-2, S-11 and S-14 under the Securities Act and Forms 10 and 10-K under the Exchange Act. The original proposal would have required the filing of all such instruments with each Securities Act and Exchange Act form. In light of the nature of Forms S-7, S-8 and S-16 under the Securities Act, however, the Commission has determined that this requirement is unnecessary. Forms S-7 and S-16 are simplified registration forms which are premised upon Exchange Act filings where such instruments are already filed while the Form S-8 is the registration form relating solely to the registration of securities to be offered to employees of the registrant pursuant to certain employee benefit plans.

With regard to Forms 8-K and 10-Q under the Exchange Act, the definition of this item requirement has been revised to call for such exhibits only when the periodic report filed discloses a modification of existing rights, the issuance of any additional securities of a class outstanding or the creation of a new class of securities or indebtedness. Each Form 10-K, however, will require as exhibits all instruments defining the rights of holders of long-term debt. To the extent such instruments have been previously filed with the Commission, the registrant may incorporate them by reference. In this manner an interested investor or the staff of the Commission will be able to obtain a listing of all such instruments by consulting the registrant's latest Form 10-K and any subsequently filed Form 10-Q's.

(iv) *Letter with respect to changes in accounting principles*

The Commission has revised this definition by adding the qualifying "under the circumstances" phrase currently appearing in the requirement for this exhibit. This language had been inadvertently omitted from the definition when proposed.

(v) *Plan of acquisition, reorganization, arrangement, liquidation or succession*

This definition has been revised by the addition of a sentence relating to the requirements for filing any schedules (or similar attachments) to these plans. Currently, all such schedules are required to be filed with the disclosure document. It has been the Commission's experience, however, that many of the schedules being received by the staff are not material for investor information or protection and are unnecessary for Commission review purposes. Accordingly, the definition as adopted limits the applicability of the exhibit filing requirements to these schedules which are material to an investment decision and which are not otherwise disclosed in the plan itself or the disclosure document. This provision has been qualified by the requirement that the plan or agreement filed as the exhibit contain a list briefly identifying the contents of all omitted schedules together with the registrant's agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(vi) *Articles of Incorporation and by-laws*

The definition of this exhibit has been revised in one respect from the proposal. A provision has been added to the item which requires that, whenever an amendment to the articles or by-laws of the registrant is filed as an exhibit to a reporting form, a complete copy of the registrant's articles or by-laws as amended must also be filed as an exhibit. The Commission believes that this revision will assist interested investors, as well as members of the staff of the Commission, in identifying and locating the registrant's complete charter or by-laws which at present is particularly difficult under the Commission's existing micrographic document storage system. Although the Commission recognizes that this revision may impose some additional burdens upon registrants, it believes that these burdens will be minimal and that significant benefits to the public will result.

3. *Additional Exhibits*

As noted in the proposing release, the Commission became aware during the reexamination of the exhibit filing requirements that the exhibits called for by certain related forms were inconsistent in the sense that certain items are required in some forms but not in others, even though such forms pertain to similar disclosure issues. To cure this inconsistency, the Commission is adopting the requirement that the following documents be filed as exhibits to the forms listed in parentheses: (1) instruments defining the rights of security holders, including indentures, (S-2); (2) opinion with respect to tax matters (S-1, S-2, S-7, S-14, S-16 and S-18); (3) voting trust agreements (S-2); (4) plans of acquisition, reorganization, arrangement, liquidation or succession (S-7 and S-16); and opinions of counsel with respect to liquidation preference and this discount on capital shares (S-2 and S-7).

Certain commentators believed that the additional requirement for an opinion of counsel relating to tax matters may be burdensome, costly and, in some instances, difficult to satisfy. In light of these views, the Commission has modified materially the filing requirement for such opinions. As adopted, an opinion of counsel will be mandated only for filings on Form S-11 or filings in which Guide 60 of the Guides for the Preparation of Registration Statements[6] applies. The Commission notes that tax opinions are currently required in these filings and in light of the type of securities being registered and the business activities of the registrant continues to believe in their importance to investors. For all other filings, including Forms S-2, S-7 and S-16, an opinion of counsel as to tax matters will be required only where the tax consequences are material to an investor and a representation as to the tax consequences is set forth in the filing. This requirement may be satisfied, however, by the inclusion of the full opinion in the registration statement.

A new exhibit requirement relating to the use of SAS No. 24[7] reports in registration statements has also been included in Table I of the exhibit item. Under this exhibit requirement, which is captioned "Letter re unaudited financial information," registrants must file as an exhibit to a registration statement a letter from the independent accountants which acknowledges the accountants' awareness of the use in the registration statement of any of their reports which are not subject to the consent requirement of Section 7 of the Securities Act. The intention of the Commission to adopt this exhibit requirement was announced in Securities Act Release No. 6173 (December 28, 1979) [41 FR 43398]. That Release announced the adoption of a rule excluding from the definition of a "report," for the purposes of Sections 7 and 11 of the Securities Act, SAS No. 24 reports by independent accountants on reviews of unaudited interim financial information. While this amendment to Rule 436 (17 CFR 230.436) eliminated the requirement of Section 7 of the Securities Act that accountants consent to the use of SAS No. 24 reports, the Commission noted in the Release that the independent accountants should acknowledge their awareness that these reports are being included in a registration statement. As adopted, this exhibit will be required for all the Securities Act forms in Table I except Form S-2.

B. *REVISION OF FORMS AND INCLUSION OF EXHIBIT ITEM IN REGULATION S-K*

In the interest of clarity, and to establish uniformity between the exhibit requirements for the most frequently used forms under both the Securities Act and the Exchange Act, the Commission has adopted, as proposed, two major changes in the manner in

[6]Securities Act Release No. 5745 [41 FR 43398].

[7]Statement on Auditing Standards No. 24, "Review of Interim Financial Information," AICPA, March 1979.

which such requirements are set forth. First, with the exception of the Form S-18, the specific exhibit requirements are no longer contained in the selected frequently used forms. In lieu thereof, a single reference appears to Regulation S-K. Second, the Commission has adopted Item 7 of Regulation S-K which contains all of the exhibit requirements for the relevant forms being amended.[8] The Commission believes that these changes will assist registrants in complying with the exhibit requirements by simplifying and consolidating requirements.

New Item 7 consists of two parts: first, two tables (one each for the Securities and Exchange Acts) list each of the forms being covered by the item and the exhibits required to be filed with each such form; second, a definitional section containing a narrative description of each exhibit listed in the table.

In response to a number of comments, certain revisions have been incorporated into Item 7. In paragraph (a) of the item, the reference to the exhibit index and sequential numbering requirement has been revised to require sequential pagination in only the manually signed original. This reference had been inadvertently omitted from the item when proposed.

Instruction number 2 to Item 7(a) has also been expanded to indicate that an "X" designation in the exhibit table indicates the documents which are required to be filed with each form even if previously filed with an earlier report.[9] Accordingly, the filing of certain previously filed exhibits is required in a number of documents. For example, in Table II, the Form 10-K requires the filing of all exhibits relating to the articles of incorporation and by-laws, instruments defining the rights of holders of long-term debt and material contracts, in addition to any previously unfiled documents. As noted in paragraph (a) of the Item, incorporation by reference is permitted and, if utilized, the Commission believes this requirement will, in many cases, result in a listing of previously filed exhibits, rather than the imposition of a requirement that the exhibits be physically filed each year.

The tables, as adopted, have also been modified in several respects to incorporate a number of the commentators' concerns. A number of footnotes have been added to the various requirements of the Item which limit, in certain respects, the specific exhibit filing requirements. In many respects, these footnotes clarify the Commission's intent in publishing the proposal. The requirement in Form S-16 for filing material contracts has been deleted. The requirements for the filing of opinions regarding liquidation preference and discount on capital shares have been added to Forms S-2 and S-7 while the opinion of counsel relating to tax matters has been added to Forms S-2, S-7 and S-16. Further, in view of the limited number and type of exhibits required by the Form 11-K, this form has been eliminated from the Regulation S-K Item requirements.

C. *AMENDMENTS TO CERTAIN RELATED RULES*

In connection with the amendment to Regulation S-K, the Commission has also adopted amendments to Rule 403 [17 CFR 230.403] under the Securities Act and Rule 0-3 [17 CFR 240.0-3] under the Exchange Act. Both rules set forth requirements relating to the filing of documents with the Commission. Each such rule has been amended to add a new paragraph thereto requiring that the following be included with each registration statement or report being filed: (1) an index listing each exhibit filed with the registration statement or report and, in the manually signed original, the page under the Commission's sequential numbering system where such exhibit can be found and (2) a statement on the cover page of the manually signed filing indicating the page under the sequential numbering system on which the exhibit index is located.

The purpose of the rule changes is to assist readers of the filings in identifying and locating exhibits. Under the current micrographic system used by the Commission to store documents, it is difficult to determine without a complete review of the document which exhibits are filed with a particular registration statement or report.

The Commission believes that these changes will

[8]As orginally proposed the exhibit requirement item of Regulation S-K would have been designated Item 8.

[9]Previously filed documents, however, may be incorporated by reference pursuant to Rule 447 under the Securities Act [17 CFR 230.447] and Rule 12b-32 [17 CFR 240.12b-32] under the Exchange Act to satisfy these requirements.

substantially ease the difficulties in identification and location inherent in the present micrographic system and will greatly facilitate the retrieval of such information for the investing public.

D. TEXT OF THE AMENDMENTS

1. 17 CFR 229 is amended by adding a new Item 7 to Regulation S-K.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

§229.20 Information required in document.

* * * * *

Item 7. Exhibits.

(a) Subject to Rule 447 (17 CFR 230.447) under the Securities Act of 1933 and Rule 12b-32 (17 CFR 240.12b-32) under the Securities Exchange Act of 1934 regarding incorporation of exhibits by references, the following exhibits shall be filed, where applicable, as part of the registration statement or report. For convenient reference, each exhibit should be listed in the exhibit index according to the number assigned to it in the applicable table set forth below. The exhibit index should immediately precede the exhibits filed with such document and should indicate in the manually signed original the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact should be noted in the exhibit index referred to in the preceding sentence. For a description of each of the exhibits included in the following tables, see paragraph (b) of this Item.

This Item applies only to the forms specified below. With regard to forms not listed in the tables, reference should be made to the appropriate form for the specific exhibit filing requirements applicable thereto.

TABLES

Instructions

(1) Each table indicates those documents which must be filed as exhibits to the respective forms listed. Only copies, rather than originals, need be filed of each document listed;

(2) The "X" designation indicates the documents which are required to be filed with each form even if previously filed with another document, *Provided, however,* That such previously filed documents may be incorporated by reference to satisfy the filing requirements; and

(3) The number used in the far left column of each table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

(b) *Description of Exhibits*

Set forth below is a description of each document listed in the foregoing tables for which copies should be filed, where appropriate.

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3) *Articles of incorporation and by-laws*—The articles of incorporation and by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the registrant are filed, there shall also be filed a complete copy of the articles or by-laws as amended.

(4) *Instruments defining the rights of security holders, including indentures.*

TABLE I

SECURITIES ACT OF 1933 - FREQUENTLY USED FORMS

	S-1	S-2	S-7	S-8	S-11	S-14	S-16
(1) Underwriting Agreement	X	X	X		X	X	X
(2) Plan of acquisition, reorganization arrangement, liquidation or succession	X		X		X	X	X 1/
(3) Articles of incorporation and by-laws	X	X			X	X	
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X
(6) Opinion re discount on capital shares	X	X	X		X	X	
(7) Opinion re liquidation preference	X	X	X		X	X	
(8) Opinion re tax matters	X	X	X	X	X	X	X
(9) Voting trust agreement	X	X			X	X	
(10) Material contracts	X	X	X		X	X	
(11) Statement re computation of per share earnings	X		X		X	X	
(12) Statements re computation of ratios 2/	X		X		X	X	
(13) Annual report to security holders				X			
(14) Material foreign patents	X	X				X	
(15) Instruments defining the rights of participating employees	X 3/			X			
(16) Letter re unaduited financial information	X	X	X	X	X	X	X

1/ Such plans need not be filed for secondary offerings on this form.

2/ Such statements are necessary only when such ratios are furnished.

3/ This exhibit need be filed only for the registration of securities offered pursuant to an employee benefit plan of the registrant.

TABLE II

SECURITIES EXCHANGE ACT OF 1934 - FREQUENTLY USED FORMS

	Form 10	8-K	10-Q	10-K
(2) Plan of acquisition, reorganization arrangement, liquidation or succession	X	X		
(3) Articles of incorporation and by-laws	X			X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X
(6) Opinion re discount on capital shares	X			
(7) Opinion re liquidation preference	X			
(9) Voting trust agreement	X			
(10) Material contracts	X			X
(11) Statement re computation of per share earnings	X		X	X
(12) Statements re computation of ratios 1/	X			X
(13) Annual report to security holders				X
(14) Material foreign patents	X			
(17) Letter re change in certifying accountant		X		
(18) Letter re director resignation		X		
(19) Letter re change in accounting principles			X	X
(20) Previously unfiled documents			X	X
(21) Financial statements furnished to security holders			X	

1/ Such statements are necessary only when such ratios are furnished.

(a) All instruments defining the rights of holders of the equity or debt securities being registered.

(b) Except as set forth in (c) below, for filings on Forms S-1, S-2, S-11 and S-14 under the Securities Act of 1933 and Forms 10 and 10-K under the Securities Exchange Act of 1934 all instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(c) Where the instrument defines the rights of holders of long-term debt of the registrant and all its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(d) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents; and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(e) With respect to Forms 8-K and 10-Q under the Securities Exchange Act of 1934 which are filed and which disclose the creation of a new class of securities or indebtedness or the issuance or reissuance of any additional securities or indebtedness of a class outstanding, or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness.

(5) *Opinion re legality*—

(a) An opinion of counsel, as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; or (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 410 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of that Act pertaining to such provisions.

(6) *Opinion re discount on capital shares*—If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

(7) *Opinion re liquidation preference*—If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(8) *Opinion re tax matters*—For filings on Form S-11 under the Securities Act of 1933 or those to which Guide 60 of the Guides for the Preparation of Registration Statements [Securities Act Release 5745; 41 FR 43398] applies an opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and

consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(10) *Material contracts*—

(a) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of the assets of the registrant on a consolidated basis; or

(4) Any lease under which a significant part of the property described in the registration statement or report is held by the registrant.

(c) Any management contract or any remunerative plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement in which directors or executive officers of the registrant do not participate. See Item 4 of Regulation S-K for the definition of the term "executive officer."

(5) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(11) *Statement re computation of per share earnings*—A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. (See Securities Act Release No. 5133 (February 18, 1971) [36 FR 4483]).

(12) *Statements re computation of ratios*—A statement setting forth in reasonable detail the computation of ratios of earnings to fixed charges which appears in the registration statement or

report.

(13) *Annual report to security holders*—The registrant's annual report to security holders for its last fiscal year if all or a portion thereof are incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy.

(14) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(15) *Instruments defining the rights of participating employees*—All constituent instruments (other than the plan itself) defining the rights of employees who participate in the plan.

(16) *Letter re unaudited financial information*—A letter, where applicable, from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which pursuant to Rule 436(c) (17 CFR 230.436(c)) under the Securities Act are not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

(17) *Letter re change in certifying accountant*—A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(18) *Letter re director resignation*—Any letter from a former director which sets forth a description of a disagreement with the registrant that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(19) *Letter re change in accounting principles*—Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board requiring such a change.

(20) *Previously unfiled documents*—All contracts and other documents of a type required to be filed as an exhibit to an original registration statement on Form 10 or a report on Forms 10-K and 10-Q under the Securities Exchange Act of 1934 which were executed or in effect during the reporting period and not previously filed, as well as all amendments or modifications, not previously filed, to all exhibits previously filed with Forms 10, 10-K and 10-Q.

(21) *Financial statements furnished to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a financial statement containing the information required by this form, the information called for may be incorporated by reference to such published statement provided copies thereof are included as an exhibit to Part I of the report filed.

2. 17 CFR 230.403 is amended by adding a new paragraph (e):

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.403 Requirements as to paper, printing and language.

* * * * *

(e) Each registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The index shall list each exhibit filed and identify by

handwritten, typed, printed, or other legible form of notation in the manually signed original, the paper number in the sequential numbering system described in paragraph (d) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

3. 17 CFR 240.0-3 is amended by adding a new paragraph (c):

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.0-3 Filing of material with the Commission.

* * * * *

(c) Each document filed shall contain an exhibit index, which should immediately precede the exhibits filed with such document. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (b) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed document shall list the page in the filing where the exhibit index is located.

4. PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

a. *Form S-1.* Item 30 and the Instructions as to Exhibits of Form S-1 are amended as follows:

§239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 30. Financial statements and exhibits

(a) * * *

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

b. *Form S-2.* Item 18 and the Instructions as to Exhibits of Form S-2 are amended as follows:

§239.12 Form S-2, for shares of certain corporations in the development stage.

* * * * *

Item 18. Exhibits Filed

Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

c. *Form S-7.* Item 17 and the Instructions as to Exhibits of Form S-7 are amended as follows:

§239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 17. Other Documents Filed as a Part of the Registration Statement.

(a) * * *

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits, shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

d. *Form S-8.* Instructions as to Exhibits of Form S-8 are amended as follows:

§239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

e. *Form S-11.* Item 32 and the Instructions as to Exhibits of Form S-11 are amended as follows:

§239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 32. Financial Statements and Exhibits

(a) * * *

(b) The exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.30.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

f. *Form S-14.* Item 5 and the Instructions as to Exhibits of Form S-14 are amended as follows:

§239.23 Form S-14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145].

* * * * *

Item 5. Exhibits Filed

Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

g. *Form S-16.* Item 13 and the Instructions as to Exhibits of Form S-16 are amended as follows:

§239.27 Form S-16, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

Item 13. List of Exhibits

Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

h. *Form S-18.* Instructions as to Exhibits of Form S-18 are amended as follows:

§239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

Subject to the rules regarding incorporation by reference, the following exhibits shall be filed as a part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for by Item 20.

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof.

(2) *Articles of incorporation and by-laws*—The articles of incorporation and by-laws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders, including indentures.*

(a) All instruments defining the rights of holders of the equity or debt securities being registered as well as all instruments defining the rights of holders of long-term debt of the registrant and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) Where the instrument defines the rights of holders of long-term debt of the registrant and all its subsidiaries for which consolidated or unconsolidated financial statements are required to be filed, there need not be filed (1) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10% of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (2) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (3) copies of instruments evidencing scrip certificates for fractions of shares.

(c) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act of 1939, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (1) a reasonably itemized and informative table of contents; and (2) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to Sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(4) *Opinion re legality*—

(a) An opinion of counsel, as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of that Act pertaining to such provisions.

(5) *Opinion re discount on capital shares*—If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(6) *Opinion re liquidation preference*—If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any dividend that would reduce surplus

to an amount less than the amount of such excess. The opinion shall set forth any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(7) *Opinion re tax matters*—An opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service supporting the tax matters and consequences as to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinion may be conditioned or may be qualified so long as such conditions and qualifications are adequately described in the filing.

(8) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(9) *Material contracts*—

(a) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed, unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance:

(1) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(2) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of all the assets of the registrant on a consolidated basis; or

(4) Any lease under which a significant part of the property described in the registration statement or report is held by the registrant.

(c) Any management contract or any remunerative plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed excpet the following:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement in which directors or executive officers of the registrant do not participate. See Item 4 of Regulation S-K for the definition of the term "executive officer."

(5) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(10) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material

foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(11) *Instruments defining the rights of participating employees*—All constituent instruments (other than the plan itself) defining the rights of employees who participate in the plan.

(12) *Letter re unaudited financial information*—A letter, where applicable, from the independent accountants which acknowledges their awareness of the use in a registration statement of any of their reports which pursuant to Rule 436(c) (17 CFR 230.436(c)) under the Securities Act are not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of Sections 7 and 11 of that Act.

* * * * *

5. PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

a. *Form 10.* Item 16 and the Instructions as to Exhibits of Form 10 are amended as follows:

§249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 16. Financial Statements and Exhibits

(a) * * *

(b) Exhibits, as required by Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

b. *Form 8-K.* Item 7 of the Form 8-K is amended as follows:

§249.308 Form 8-K, for current reports.

* * * * *

Item 7. Financial statements

(a) * * *

(b) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

c. *Form 10-Q.* Instruction 9 and Item 9 of Form 10-Q are amended as follows:

§249.308a Form 10-Q, for quarterly reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Instruction 9. Exhibits

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

Item 9. Exhibits and Reports on Form 8-K

(a) The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

d. *Form 10-K.* Item 12 and the Instructions to Exhibits of Form 10-K are amended as follows:

§249.310 Form 10-K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Item 12. Financial Statements, Exhibits Filed and Reports on Form 8-K.

(a) * * *

(2) Exhibits, as required by Item 7 of Regulation S-K,

17 CFR 229.20.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

* * * * *

CERTAIN FINDINGS

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact which the amendments would have on competition and has concluded that it imposes no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefit of this rule to investors and registrants.

The Commission also finds that any changes in the amended rule and forms adopted from those published in Securities Act Release No. 6149 have already been generally subject to comment so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

AUTHORITY

The amendments to Rule 403 and the enumerated forms prescribed under the Securities Act of 1933 are being adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of that Act. The amendments to Rule 0-3 and the enumerated forms prescribed under the Securities Exchange Act of 1934 are being adopted pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S-K are being adopted pursuant to all of the 1933 and 1934 Act provisions referred to above.

[Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; Secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; Secs. 205, 209, 48 Stat. 906, 908; Secs. 1, 3, 8, 203(a), 49 Stat. 704, 1375, 1377, 1379; Sec. 2, 52 Stat. 1075; Sec. 301, 54 Stat. 857; Secs. 8, 202, 68 Stat. 685, 686; Secs. 3, 4, 6, 10, 78 Stat. 88(a), 565, 569, 570; Sec. 1, 79 Stat. 1051; Secs. 1, 2, 82 Stat. 454; Secs. 1, 2, 7, 28, 84 Stat. 1435, 1497, 1653; Secs. 10, 11, 18, 89 Stat. 119, 121, 155; Sec. 308, 90 Stat. 57; Sec. 204, 91 Stat. 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78o(d), 78w(a).]

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17084/August 22, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of Sundance Gold Mining and Exploration, Inc. ("Sundance Gold"), a Delaware corporation located at 80 Broad Street, New York, New York 10006 for the ten day period commencing at 9:45 a.m. on August 22, 1980 and terminating at midnight on August 31, 1980.

The Commission suspended trading in the securities of Sundance Gold because of questions concerning a letter to shareholders dated July 15, 1980 referring to the company's discovery of gold.

The Commission cautions broker-dealers, shareholders, and prospective purchasers that they should carefully consider the foregoing information along with all other current available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but

immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

If any broker-dealer or other person has any information which may relate to this matter, the Division of Enforcement of the Securities and Exchange Commission should be telephoned at (212) 264-1600.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17085/August 22, 1980

Notice Obligations of Self-Regulatory Organizations with Respect to Final Disciplinary Actions, Denials, Bars or Limitations Respecting Membership, Association, Participation or Access to Services and Summary Suspensions

ACTION: Final rules.

SUMMARY: The Commission is adopting the proposed amendment to its rule governing notice obligations of self-regulatory organizations with respect to final disciplinary actions to exclude the requirement that national securities exchanges provide the Commission with notice of uncontested summary disciplinary actions involving infractions of floor decorum regulations.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Susan M. Wilk, Esq., Division of Market Regulation, Securities and Exchange Commission, Room 341, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2824.

SUPPLEMENTARY INFORMATION: On March 5, 1980, the Commission issued a release proposing for comment an amendment to subsection (c) of Rule 19d-1 which would exempt from the rule's reporting requirement uncontested summary disciplinary actions for infractions of exchange rules governing personal decorum on the trading floor.[1]

Rule 19d-1 [17 CFR 240.19d-1] prescribes the content of notices by self-regulatory organizations of final disciplinary actions, denials, bars or limitations respecting membership, association, participation or access to services, and summary suspensions. The rule was adopted in July 1977,[2] pursuant to Section 19(d)(1) of the Securities Exchange Act ("Act")[3] which requires that self-regulatory organizations promptly report any of the above-noted actions to the Commission (or appropriate regulatory agency) in such form as the Commission (or appropriate regulatory agency) prescribes by rule. Subsection (c) of Rule 19d-1, which the Commission is amending, presently requires any self-regulatory organization, for which the Commission is the appropriate regulatory agency, that takes any final disciplinary action with respect to any person to file promptly a notice thereof with the Commission.[4] No comments were received on the proposed amendment.[5]

The Commission has determined to amend Rule 19d-1 in the manner proposed in its March release based on its conclusion that, during the three years Rule 19d-1 has been in effect, the administrative burdens on the Commission staff and on the exchanges have outweighed the utility of reports of uncontested summary sanctions for violations of trading floor decorum regulations. The amendment to Rule 19d-1(c) exempts from the rule's reporting requirements uncontested disciplinary actions in

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[1]Securities Exchange Act Release No. 16628 (March 5, 1980), 45 FR 15942 (March 12, 1980).

[2]Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36412 (July 14, 1977).

[3]Section 19(d), 15 U.S.C. 78s(d)(1), was enacted as part of the Securities Acts Amendments of 1975, Pub. Law. 94-29 (June 4, 1975).

[4]Rule 19d-1(c). Subsection (d) of Rule 19d-1 prescribes the content of notices of final disciplinary action.

[5]The substance of the proposed amendment initially was suggested by the American Stock Exchange. Petition to Commission to amend Rule 19d-1 from American Stock Exchange (March 15, 1979).

which an exchange summarily imposes a fine not exceeding $500 or suspends floor privileges of a clerical employee for not more than five days for violation of regulations governing personal decorum on the trading floor. The amendment to Rule 19d-1(c) is not available for disciplinary sanctions involving recordkeeping, the handling of orders, or the execution of any securities transaction on an exchange.

The Commission notes that regulations regarding floor decorum will continue to be reviewed by the Commission to determine whether they are consistent with the Act at the time they are adopted by an exchange pursuant to Section 19(b) of the Act.[6] The Commission also notes that exchanges are required by Commission Rule 17a-1(a)[7] to keep a record of all disciplinary sanctions, including those for floor decorum violations, for five years. The Commission emphasizes that exchanges also will still be required to file notices of any contested summary decorum sanctions and decorum sanctions that are imposed at or as a result of a hearing. Reporting under those circumstances is consistent with the purposes of Section 19(d) and provides the Commission with information necessary to perform its oversight of exchange enforcement and disciplinary activities. The amendment also does not affect subsection (i) of Rule 19d-1,[8] which requires that summary suspensions of membership or summary limitations of access to services, for whatever reason, be reported to the Commission within 24 hours of the effectiveness of those sanctions.

For the reasons stated above, the Commission finds that the proposed amendment is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act. Accordingly, the Commission, acting pursuant to its authority under Section 23(a)(1) of the Act,[9] hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by revising paragraph (c) of §240.19d-1 as follows.

§240.19d-1 Notices by self-regulatory organizations of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services, and summary suspensions.

* * * * *

(c) *Notice of Final Disciplinary Action.* Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person shall promptly file a notice thereof with the Commission in accordance with paragraph (d) hereof. For the purposes of this rule, a "final disciplinary action" shall mean the imposition of any final disciplinary sanction pursuant to Section 6(b)(6), 15A(b)(7), or 17A(b)(3)(G) of the Act or other action of a self-regulatory organization which, after notice and opportunity for hearing, results in any final disposition of charges of:

(1) One or more violations of—

(i) The rules of such organiation;

(ii) The provisions of the Act or rules thereunder; or

(iii) In the case of a municipal securities broker or dealer, the rules of the Municipal Securities Rulemaking Board;

(2) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of Section 3(a)(39) of the Act; or

(3) In the case of a proceeding by a national securities exchange or registered securities association based on Sections 6(c)(3)(A)(ii), 6(c)(3)(B)(ii), 15A(g)(3)(A)(ii), or 15A(g)(3)(B)(ii) of the Act, acts or practices inconsistent with just and equitable principles of trade.

Provided, however, That in the case of a disciplinary action in which a national securities exchange summarily imposes a fine not exceeding $500 or suspends floor privileges of a clerical employee for not more than five days for violation of any of its regulations concerning personal decorum on a trading floor, the disposition shall not be considered "final" for purposes of this paragraph if the sanctioned person has not sought an adjudication,

[6] 15 U.S.C. 78s(b).

[7] 17 CFR 240.17a-1(a).

[8] 17 CFR 240.19d-1(i).

[9] 15 U.S.C. 78w(a)(1).

including a hearing, or otherwise exhausted his administrative remedies at the exchange with respect to the matter. *Provided further,* That this exemption from the notice requirement of this paragraph shall not be available where a decorum sanction is imposed at, or results from, a hearing on the matter.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17086/August 22, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:[1]

American General Corp. (AGC)
Common Stock, $1.50 Par Value (File No. 7-5684)
Benguet Corp. (BE)
Class B Common Stock (File No. 7-5685)
DMG, Inc. (DMG)
Common Stock, $.01 Par Value (File No. 7-5686)
Fischback Inc. (FIS)
Common Stock, $1 Par Value (File No. 7-5687)
Gearhart Industries, Inc. (GOI)
Common Stock, $.50 Par Value (File No. 7-5688)
JWT Group Inc. (JWT)
Common Stock, $.10 Par Value (File No. 7-5689)
Metro-Goldwyn-Mayer Film Company (MGM)
Common Stock, No Par Value (File No. 7-5690)
Tri-South Investments, Inc. (TSI)
Common Stock, $.10 Par Value (File No. 7-5691)
Augat, Inc. (AUG)
Common Stock, $.10 Par Value (File No. 7-5692)
Black Hills Power & Light Co. (BHP)
Common Stock, $1 Par Value (File No. 7-5693)
Canadian Pacific Enterprises Ltd. (ENT)
Common Stock, No Par Value (File No. 7-5694)
Flight-Safety International Inc. (FSI)
Common Stock, $.10 Par Value (File No. 7-5695)
Horizon Bancorp (HZB)
Common Stock, $4 Par Value (File No. 7-5696)
James River Corp. of Virginia (JR)
Common Stock, $.10 Par Value (File No. 7-5697)
Keystone Foods Corp. (KFC)
Common Stock, $.10 Par Value (File No. 7-5698)
Naples Federal Savings & Loan Association (NAF)
Common Stock, $.01 Par Value (File No. 7-5699)
Nobel Affiliates, Inc. (NBL)
Common Stock, $3.33-1/3 Par Value (File No. 7-5700)
Recognition Equipment Inc. (REC)
Common Stock, $.25 Par Value (File No. 7-5701)
Safeguard Business Systems, Inc. (SGB)
Common Stock, $.10 Par Value (File No. 7-5702)
Southwest Florida Banks, Inc. (SFB)
Common Stock, $1 Par Value (File No. 7-5703)
Ti-Caro, Inc. (TCX)
Common Stock, $1 Par Value (File No. 7-5704)
Tricentrol Limited (TCT)
American Depository Receipt for American Shares (File No. 7-5705)

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 52533 (August 7, 1980). The Commission has received no comments with respect to these applications.

and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17087/August 25, 1980

Admin. Proc. File No. 3-5952

In the Matter of

MERIT ENERGY CORPORATION AND ALVA J. HICKERSON

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND FINDINGS AND ORDER OF THE COMMISSION

The Commission deems it appropriate and in the public interest following an investigation by its Division of Enforcement that proceedings be instituted against Merit Energy Corporation ("Merit") and Alva J. Hickerson ("Hickerson") pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 ("Exchange Act")[1] to determine whether Merit and/or Hickerson failed to comply with Section 13(d) of the Exchange Act and the rules and regulations thereunder with respect to certain filings made and required to be made by Merit and Hickerson in connection with transactions in the securities of Minerals Engineering Company ("Minerals").

Simultaneously with the institution of these proceedings, Merit and Hickerson have submitted Offers of Settlement solely for the purpose of disposing of the issues raised in these proceedings. Under the terms of their Offers of Settlement Merit and Hickerson, solely for the purpose of these proceedings and on the basis that nothing contained herein is an admission or denial or adjudication with respect to any matter referred to herein, consent to the issuance of this Order by the Commission. Merit, in its Offer of Settlement has made certain undertakings as detailed herein with which the Commission has ordered Merit to comply.

The Commission has determined that it is appropriate and in the public interest to accept the Offers of Settlement of Merit and Hickerson, and accordingly is issuing this Order.

I.

FACTS

Background

Merit is a Colorado corporation with principal executive offices located at Suite 1750 Energy Center I, 717 17th Street, Denver, Colorado, 80202. Currently Merit is a privately held corporation which plans to engage in the business of acquiring, developing and disposing of oil and gas properties

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[1]Section 15(c)(4) of the Exchange Act provides:

If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of Section 12, 13 or subsection (d) of Section 15 of this title or any rule or regulation thereunder has failed to comply with any such provision, rule or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person to comply with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

and marketing oil and gas investment programs. On November 12, 1979, Merit filed with the Commission a registration statement on Form S-2 registering 3,000,000 shares of common stock (no par value) and warrants for 1,500,000 shares of common stock. Merits' registration statement has not yet become effective. In its registration statement Merit states that it has 9,067,248 shares of common stock issued and outstanding, held by twenty-four shareholders of record. Merit owns 284,525 shares of Minerals common stock or approximately 19.5% of the outstanding shares of such stock.

Hickerson is a Colorado resident, a director of Merit, and the third largest shareholder of Merit, owning 1,000,000 shares of Merit common stock. He is currently a promoter and director of four other oil and gas companies, each of which has filed a registration statement on Form S-2 with the Commission.

Minerals is a Colorado corporation with principal executive offices located at 950 Seventh Street, Denver, Colorado 80202. Minerals is in the business of owning and developing mineral properties and interests. As of June 30, 1979, Minerals had 1,459,359 shares of common stock issued and outstanding, held by 2,244 shareholders of record. Minerals common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act, is traded in the over-the-counter market and is quoted in the National Association of Securities Dealers Automatic Quotation System.

Acquisition of Minerals Stocks

On July 15, 1976, Hickerson purchased in a private placement 80,000 shares of Minerals common stock at $2.50 per share. As a result of this transaction, Hickerson became the largest single shareholder of Minerals, owning 6.7% of Minerals outstanding common stock. On July 25, 1976, Hickerson filed a Schedule 13D with the Commission. Under Item 4, *Purpose of transaction*, Hickerson stated:

> "The purpose of the transaction described in this statement is not to acquire control of MECO's business, and Al Hickerson has *no plans or proposals* to liquidate MECO, to sell its assets or to merge it with any other persons, or to make any other major change in its business or corporate structure." (emphasis added)

Disputes with Minerals' President Anton Foust

In May 1977, Minerals' President Anton Foust ("Foust") asked Hickerson to assist in resolving a dispute between Minerals and John Wayne, now deceased, a large Minerals shareholder, which threatened to prevent Minerals from entering into a significant business transaction requiring shareholder approval. On May 17, 1977, Hickerson accompanied Foust, Sam Wing, Minerals' outside counsel, and L. W. Brooks ("Brooks"), a Minerals director, to John Wayne's home in Newport Beach, California to assist in convincing John Wayne to vote for the proposed transaction.

At the meeting Hickerson, without consulting Foust, proposed, as a possible resolution of the dispute, that he and John Wayne place their Minerals common stock in a voting trust in an effort to exert greater influence over Foust. John Wayne expressed interest in the proposal. Foust, however, was surprised by Hickerson's proposal. While John Wayne, Hickerson, and Michael Wayne, John Wayne's son and business advisor, were discussing in private the details of Hickerson's proposal, Foust left the meeting. Thus, the effort to resolve the dispute between John Wayne and Foust failed, and one week later John Wayne filed a lawsuit against Minerals. Thereafter, Hickerson began to question Foust's ability to manage Minerals. In August 1977, Hickerson again met with John Wayne and Michael Wayne in California and discussed the possibility of waging a proxy fight to gain control of Minerals.

Attempts to Change Minerals' Business

In July 1978, Hickerson became eligible to sell the Minerals common stock he had acquired in the private placement in accordance with Rule 144 promulgated by the Commission pursuant to the Securities Act of 1933. However, at that time Minerals common stock was trading at approximately $2.50 per share, the same price which Hickerson had paid for the stock two years prior. Therefore, Hickerson contacted J. Daniel Bell ("Bell"), President of J. Daniel Bell & Co. ("Bell & Co."), a Denver broker-dealer, and asked Bell to meet with Foust to discuss Bell & Co.'s becoming a market maker in Minerals stock. Hickerson hoped this would have the effect of creating additional investment interest in Minerals.

Hickerson also proposed to restructure Minerals' primary business from mineral exploration to oil and gas exploration. Hickerson formulated a plan by which Minerals would effect a private placement with a company recommended by Hickerson that specialized in raising drilling funds for oil and gas companies. According to the plan, the Minerals stock would be offered at 1/2 of its current market price. Hickerson and the company involved in the private placement would invest an additional 3 to 15 million dollars in Minerals in the form of drilling funds. Another company with which Hickerson had done business, would be retained to locate oil and gas properties for acquisition by Minerals. Finally, a subsidiary of a foreign bank which had financed other Hickerson ventures would provide "well-completion funds" on a well by well basis. For its part, Minerals would get a 10% management fee off the top and an interest in the wells drilled. As part of the proposed deal Hickerson would be given control over three of the five seats on Minerals' Board of Directors, one each for himself, Michael Wayne and Mike Rafferty ("Rafferty"), a friend of Hickerson's who specialized in arranging financing for oil and gas companies.

In the fall of 1978, Hickerson presented his proposal to Foust who summarily rejected it. Thereafter, Hickerson solicited support for his plan from Minerals' other directors. Hickerson arranged a meeting with three of Minerals' five directors and Bell scheduled for November 10, 1978. Foust and Brooks, who was friendly to Foust, were not invited. At this meeting, Hickerson outlined the proposal he had previously presented to Foust. Hickerson offered to arrange the financing, contact the contemplated participants, and generally put the deal together. Bell opined that if the plan were successful the price of Minerals common stock could be expected to rise. The proposal was well received, and Hickerson was asked to present it to the full Board of Directors at its upcoming meeting.

On December 8, 1978, Hickerson presented his proposal to Minerals' Board of Directors. The Board of Directors adopted a resolution appointing a committee to meet with potential investors recommended by Hickerson. Hickerson agreed to arrange such a meeting. The meeting, however, never did take place. Shortly thereafter, Hickerson decided to attempt to take over Minerals.

Formation of Merit

In early January 1979, Hickerson decided to form a new company to take over Minerals and engage in oil and gas exploration. Hickerson planned to capitalize the new company with his and John Wayne's Minerals stock. To provide management for the new company, Hickerson contacted Earl Griffith ("Griffith") and Burdette Ogle ("Ogle"), both of whom were experienced oil men and had performed consulting work for Hickerson in the past. Coincidentally, Griffith and Ogle had previously formed Merit Oil Corporation ("Merit Oil"), with the intention of someday taking the company public and engaging in oil and gas exploration. However, for almost two years Merit Oil had lay dormant. Hickerson explained his proposal to Griffith and Ogle and discussed whether Merit Oil could be used to further such a proposal. After several conversations, Hickerson, Ogle and Griffith arranged a meeting with other potential participants to discuss Hickerson's proposal.

On January 25, 1979, Hickerson, Ogle, Griffith, Michael Wayne, Rafferty, and other associates of Hickerson and Ogle met in Denver, Colorado. Among the matters discussed at the meeting was a plan to make a public offering of Merit Oil stock and with the proceeds either make a cash tender offer for Minerals common stock or an exchange offer of newly issued Merit Oil stock for Minerals common stock. The directors of Merit, all of whom were present at the meeting, also amended Merit Oil's charter, changing its name from Merit Oil to Merit Energy Corporation ("Merit") and amended its purpose clause to permit Merit to hold securities of other companies.

On March 5, 1979, at a Merit Board of Directors meeting held in Santa Barbara, California, plans for the activation and capitalization of Merit were finalized. At that meeting, four Hickerson nominees, including Hickerson, Michael Wayne, and Rafferty and five Ogle nominees, were elected to Merit's Board of Directors. The Board of Directors then adopted a resolution authorizing Merit to acquire a total of 284,525 shares or approximately 19.5% of Minerals' outstanding common stock, including 80,000 shares from Hickerson, 170,000 shares from John Wayne, 15,000 shares from Batjac, a privately held corporation of which Michael Wayne is the sole shareholder, and 19,525 shares from Werner Heinrichs, who had purchased his shares of Minerals on Hickerson's recommendation, in exchange for 3,556,565 shares of Merit common stock.

On March 9, 1979, Hickerson approached a loan officer at a major Denver bank to obtain a $50,000 loan for Merit. Hickerson informed the loan officer that Merit intended to acquire Minerals in the near future and that the proceeds of the loan would be used to finance a public offering for that purpose. Because the bank was also the principal lender for Minerals, it refused to grant a loan to Merit under those circumstances. On March 23, 1979, Hickerson represented to the loan officer that Merit had no present plans to take over Minerals and, as a result, on March 26, 1979, the bank granted Merit the loan.

On June 19, 1979, Merit filed a private placement memorandum with the Department of Corporations, State of California. On July 13, 1979, the same private placement memorandum was filed with the State of Colorado. The private placement memoranda were used by Merit in connection with exchanges of Merit shares for Minerals common stock. In addition, the memoranda were used in connection with offers to sell and sales of Merit stock to individuals, several of whom, had been solicited by Hickerson. In the private placement memoranda, Merit disclosed that:

> "[T]he Company has acquired 80,000 shares of the common stock of Minerals Engineering Company, a Colorado Corporation, from A. J. Hickerson, valued at cost for $2.50 per share. In addition, the company has acquired from four persons including the father of Michael G. Wayne, a director of the company 170,000 shares of the common stock of Minerals Engineering Company, valued at $2.50 per share."

On September 14, 1979, Merit issued 9,067,248 shares of its common stock to twenty-four individuals, including all of the directors of Merit. On September 28, 1979, Merit filed its first Schedule 13D with the Commission. Under Item 4 it stated:

> "The purpose of the acquisition of securities of [Minerals] was for investment. [Merit] has no plans or proposals which relate to or would result in any of the matters described in Paragraph (a) through (j) of this item.

Statements by Hickerson

On November 30, 1979, Hickerson and two other disaffected shareholders of Minerals met with a geologist employed by another company which, by agreement with Minerals, was surveying the mineral deposits at Minerals' Creede mine. The meeting had been arranged by the two other Minerals shareholders. At the meeting Hickerson told the geologist about Merit and informed him that Merit was considering waging a proxy contest to take over Minerals. He informed the geologist that the proxy contest would be financed by a public offering of Merit stock for which Merit had already filed a registration statement. Hickerson offered the geologist the opportunity to purchase Merit stock. However, the geologist, concerned about a possible conflict of interest, declined to invest in Merit.

II.

FINDINGS AND CONCLUSIONS

The Commission finds that Merit and Hickerson violated Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. Section 13(d) of the Exchange Act and the rules and regulations thereunder were intended to provide information to the public and the affected issuer about accumulations of 5% or more of the issuer's equity securities. To effect this purpose, the Commission promulgated rules and regulations which require timely filing of Schedule(s) 13D, or amendments thereto, containing detailed information concerning the identity and background of the purchaser, its interest in such securities, the source and amount of funds or other consideration, the purpose of the transaction and any contracts, arrangements, understandings or relationships with respect to such securities.

In this case, Merit failed to file a Schedule 13D between January 1979 and September 1979, and Hickerson failed to amend his Schedule 13D first filed on July 26, 1976. As a result, the investing public was not provided with information concerning, among other things, the formation of a group of Minerals shareholders, that the purpose of the group was to transfer approximately 20% of the outstanding shares of Minerals to a new entity, and that Hickerson had undertaken efforts to make substantial changes in Minerals business. Moreover,

the investing public was not provided with information concerning Merit, its directors or shareholders, the consideration used for the purchase of Minerals common stock, and the purpose of such transactions, arrangements or understandings by Hickerson or Merit concerning Minerals common stock.

III.

ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offers of Settlement of Merit and Hickerson, and accordingly:

IT IS HEREBY ORDERED that proceedings be and hereby are instituted against Merit and Hickerson, pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934.

IT IS FURTHER ORDERED that Merit:

1. Comply with the requirements of Section 13(d) of the Exchange Act and the rules and regulations thereunder;

2. File any delinquent Schedule(s) 13D or amendments thereto, reporting the matters set forth in this Order and such other information required to be, but not previously, reported pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder; and

3. Comply with its undertaking in its Offer of Settlement to adopt, implement and maintain procedures reasonably designed to assure compliance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder.

IT IS FURTHER ORDERED that Hickerson:

1. Comply with the requirements of Section 13(d) of the Exchange Act and the rules and regulations thereunder; and

2. File any delinquent Schedule(s) 13D or amendments thereto, reporting the matters set forth in this Order and such other information required to be, but not previously, reported pursuant to Section 13(d) of the Exchange Act and the rules and regulations thereunder.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17088/August 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INC.

File No. SR-CBOE-80-21

The Chicago Board Options Exchange, Inc. submitted on August 13, 1980, a proposed rule change under Rule 19b-4 to amend its Rule 4.4 to increase to $100 the limit of any compensation or gratuity given by any member in any one year to an employee of the Exchange, or any other member, or non-member broker, dealer, bank or institution, without the prior consent of the employer and of the Exchange.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal

office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17089/August 25, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-31

The New York Stock Exchange, Inc. submitted, on August 18, 1980, a proposed rule change under Rule 19b-4 which would amend Exchange Rules 118.30, 123A.50 and 123A.55 to permit the Exchange to schedule confirmation dates for "good 'til cancelled" ("GTC") orders, on non-business days, and to require that specialists and members are represented and are sufficiently staffed on the trading floor on designated confirmation days.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-31.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17090/August 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-18

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on August 8, 1980, a proposed rule change under Rule 19b-4 which would amend Articles IV, V, VIII, X, XI and XVIII of the Phlx By-laws. The amendments would, among other things, vest the authority for disciplinary actions, including enforcement, prosecution and the imposition of sanctions, in the Business Conduct Committee and the newly-created Hearing Committee. The amendments also would abolish the Member Firms Committee, establish a Marketing Committee as a standing committee, and change the size and composition of standing committees.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six

copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to file No. SR-Phlx-80-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17091/August 25, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-19

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted, on August 19, 1980, a proposed rule change under Rule 19b-4 to conform Phlx By-Law 10-7 and Phlx Rule 950, both of which deal with arbitration procedures, to the language of the Uniform Code of Arbitration which the Phlx adopted on June 19, 1980.[1]

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rate change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of August 25, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-19.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17092/August 26, 1980

A notice has been issued giving interested persons until September 17, 1980 to comment on the applications of the *Pacific Stock Exchange Incorporated* for unlisted trading privileges in five issues which are listed and registered on one or more national securities exchange and are reported on the consolidated transaction reporting system.

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[1]See Securities Exchange Act Release No. 16906, 20 SEC Docket 437 (July 1, 1980), 45 FR 42910 (June 25, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17093/August 26, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the Shares of Beneficial Interest (no par value) of GUARDIAN MORTGAGE INVESTORS from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17094/August 26, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the common stock ($1 par value) of RB INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17095/August 27, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6230/August 27, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17096/August 27, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY FILE NO. SR-NYSE-80-23

The New York Stock Exchange, Inc. submitted on June 9, 1980, a proposed rule change under Rule 19b-4 to amend rule 325(e) to impose a minimum financial responsibility requirement on all members who execute orders on the floor of the Exchange and raise the amount of such financial requirement from $25,000 to $50,000.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 1, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21686/August 22, 1980

In the Matter of

PHILADELPHIA ELECTRIC POWER COMPANY
Philadelphia, Pennsylvania

(70-6480)

ORDER AUTHORIZING PROPOSAL TO ISSUE AND SELL PROMISSORY NOTES TO BANKS

Philadelphia Electric Power Company ("PEPCO"), a registered holding company and subsidiary company of Philadelphia Electric Company ("PECO"), an exempt holding company pursuant to Section 2(a)(3) of the Public Utility Holding Company Act of 1935 ("Act"), has filed a declaration and amendments thereto with this Commission pursuant to Sections 6 and 7 of the Act regarding the following proposed transaction.

PEPCO had outstanding bank loans of $2,200,000 as of June 30, 1980, which is less than 5% of the principal amount and par value of PEPCO's other securities then outstanding. Prior to September 1, 1980 bank loans outstanding will not exceed that level. PEPCO proposes to issue and sell, from time to time through December 31, 1981, promissory notes with maturities of 9 months or less, to banks in amounts which would from time to time exceed 5% of the principal amount and par value of its other securities then outstanding, but which would not exceed $4,000,000 outstanding at any one time through 1981.

The prospective borrowings of PEPCO will be obtained from a group of 12 Pennsylvania banks aggregating $27,900,000. There are no specific requirements for compensating balances in conjunction with the proposed bank loans. Since there are no compensating balance requirements or other cost factors associated with the proposed loans, the effective cost of any such loan would be the floating prime commercial rate in effect from time to time at such bank.

It is stated that the purpose of the loans is to make interest payments on debentures for the remainder of 1980 and 1981, to meet sinking fund obligations for 1981 on said debentures, and for common stock dividend payments to PECO. It is planned to liquidate said bank loans by the issuance of additional shares of PEPCO's common stock in 1982.

The fees and expenses to be incurred in connection with the proposed transaction are $2,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21664), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21687/August 25, 1980

In the Matter of

DELMARVA POWER & LIGHT COMPANY
800 King Street
Wilmington, Delaware 19801

(30-207)

IU INTERNATIONAL CORPORATION
(formerly **INTERNATIONAL UTILITIES CORPORATION)**
1105 North Market Street
Wilmington, Delaware 19801

(30-165)

NOTICE OF APPLICATIONS PURSUANT TO SECTION 5(d) FOR ORDERS DECLARING THAT COMPANIES HAVE CEASED TO BE HOLDING COMPANIES

NOTICE IS HEREBY GIVEN Delmarva Power & Light Company ("Delmarva") and IU International

Corporation ("IU"), formerly International Utilities Corporation, have each filed an application under Section 5(d) of the Public Utility Holding Company Act of 1935 ("Act") requesting the Commission to declare by order that each company has ceased to be a holding company and that the registration of each company as such under the Act be terminated.

Delmarva, a Delaware and Virginia corporation, is a public utility which provides electric service to the Delmarva Peninsula and retail gas service in northern Delaware, including the City of Wilmington. Delmarva registered as a holding company under the Act in 1943 upon acquiring as subsidiaries several public utility companies. Its only public-utility company subsidiaries on December 31, 1979 were Delmarva Power & Light Company of Maryland ("Delmarva-Maryland"), a Maryland corporation, and Delmarva Power & Light Company of Virginia ("Delmarva-Virginia"), a Virginia corporation. By order dated October 19, 1976 (HCAR No. 19717), Delmarva, Delmarva-Maryland and Delmarva-Virginia were granted an exemption from further regulation under the Act pursuant to Section 3(a)(2), with certain reservations of jurisdiction.

The application states that, on December 31, 1979, Delmarva-Maryland and Delmarva-Virginia were merged into Delmarva, the surviving company, and that Delmarva does not now have any subsidiary company which is a public-utility company. Accordingly, Delmarva requests the Commission to enter an order pursuant to Section 5(d) of the Act declaring that Delmarva has ceased to be a holding company under the Act and that its registration as a holding company shall cease to be in effect, and releasing jurisdiction heretofore reserved in the Commission's Order of October 19, 1976.

IU, a Maryland corporation, registered under Section 5(a) of the Act on January 11, 1939. On November 1, 1945, the Commission approved an application filed by IU and a subsidiary for the sale of the common stock of Rockland Gas Company, Inc., which represented IU's last remaining interest in any public utility company operating in the United States, and finding that, with respect to its remaining subsidiaries, three of which were public utility companies organized and operating in Canada, IU was entitled to an exemption as a holding company under Section 3(a)(5) of the Act. *International Utilities Corporation, et al.*, 21 SEC 283 (1945). Effective January 1972, all of IU's foreign public utility subsidiaries were reorganized as direct or indirect subsidiaries of Canadian Utilities, Limited, an intermediate holding company and a Canadian corporation. The application states that, on June 19, 1980, IU disposed of its entire interest in Canadian Utilities, Ltd., and that IU does not now have any subsidiary company which is a public utility company. Accordingly, IU requests the Commission to enter an order pursuant to Section 5(d) of the Act declaring that IU has ceased to be a holding company and that its registration as a holding company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by either of said applications which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the applications, as filed or as either may be amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21688/August 25, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
212 East 6th Street
Tulsa, Oklahoma 74119

TRANSOK PIPELINE COMPANY
600 South Main Street
Tulsa, Oklahoma 74101

(70-6487)

NOTICE OF PROPOSAL TO PRIVATELY PLACE SINKING FUND DEBENTURES GUARANTEED BY THE ISSUER'S PARENT; ORDER GRANTING EXCEPTION FROM COMPETITIVE BIDDING IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Transok Pipeline Company ("Transok"), an intrastate natural gas transmission pipeline, and Public Service Company of Oklahoma ("PSO"), the parent of Transok and an electric utility subsidiary of Central and South West Corporation, a registered holding company, have filed a joint application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 12(b) and 12(f) of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

On November 1, 1980, $27,000,000 of first mortgage bonds of Transok which represent all of its outstanding long-term debt will mature. Also Transok will need additional funds for its 1981 construction program. Transok's 1980-82 capital expenditure program is as follows: 1980-$13,900,000, 1981-$19,900,000 and 1982-$10,300,000. It is anticipated that during the next ten years Transok's internal generation of funds will exceed its construction expenditures thereby allowing it to repay a portion of the long-term debt proposed to be issued through the operation of a cash sinking fund. Since substantially all of Transok's natural gas sales are to PSO, to sell its debt to outside investors PSO must guarantee the payment of interest and principal on the indebtedness. All existing long-term debt of Transok is presently guaranteed by PSO.

Transok therefore proposes to issue up to $35,000,000 principal amount of its ____% guaranteed sinking fund debentures to a group of institutional investors pursuant to a negotiated underwriting. Transok proposes that the indenture under which the debentures will be issued will contain a mandatory annual sinking fund of 4%, with an additional optional sinking fund at the discretion of Transok of 4% beginning in 1982. The debentures are scheduled to mature in 1990 and cannot be called prior to 1990 out of funds having an interest cost lower than the debentures. Transok will be effectively precluded from issuing funded indebtedness ranking senior to the indebtedness, but will be able to issue additional debentures if earnings and capitalization tests are met.

Transok intends to privately place the debentures; such negotiations could result in modifications to the terms to enable Transok to obtain the best cost of money based on market conditions. Such modifications could include using a loan agreement and issuing notes, rather than an indenture and debentures. In the event notes are issued, the loan agreement would contain provisions similar to those set forth in the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105).

Although Transok has historically issued its securities at competitive bidding, it is proposed that this issue will be privately placed and that Transok will negotiate with underwriters to place the securities directly with large institutional investors. It is stated that Transok's last issue in 1975 occurred prior to many regulatory and legal changes which have made the issuance of these securities at competitive bidding inappropriate. With a private placement, PSO and Transok would have the opportunity to discuss the financing with more sophisticated institutional investors and such negotiations would provide the flexibility required to determine the appropriate terms for the securities in light of Transok's unique circumstances. In view of the comparatively small size of the issue, Transok is of the opinion that the securities could be marketed at a more favorable rate and with less expense through the vehicle of private placement rather than a public offering. It is stated that since $27,000,000 of the anticipated financing will be used to repay existing indebtedness, a private placement gives

Transok greater flexibility in timing take-downs to coincide with the maturity of the existing indebtedness and gives Transok flexibility to negotiate the rate over a period of several months rather than one instant in time. The effect of this can be to reduce the necessity of doing the financing early and thus having excess funds available for some period of time or doing the financing after the maturity date of the existing indebtedness and being required to secure alternative financing until long-term funding can be taken down.

The sale of debentures rather than first mortgage bonds will enable Transok to eliminate payment of mortgage taxes in the state of Oklahoma and will give Transok greater flexibility with respect to transfers and retirements of property and other matters governed by the indenture. This additional flexibility should also result in lower trustee costs.

The proceeds of the debenture sale will be used by Transok to repay $15,000,000 of its 6-5/8% Series First Mortgage Bonds due November 1, 1980 and $12,000,000 of its 9% Series First Mortgage Bonds due November 1, 1980. The additional proceeds estimated at $7,000,000 will be used by Transok for anticipated expenditures in its 1981 construction program.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

Upon the basis of the facts in the record it is found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the proposed exception from the competitive bidding requirements of Rule 50 and that no adverse findings are necessary with respect thereto.

IT IS ORDERED that Transok be, and it hereby is, granted an exception from the competitive bidding requirements of Rule 50 promulgated under the Act for the purpose of negotiating with underwriters for the private placement of the securities described herein with institutional investors.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21689/August 25, 1980

In the Matter of

SYSTEM FUELS, INC.
New Orleans, Louisiana

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

NEW ORLEANS PUBLIC SERVICE INC.
New Orleans, Louisiana

(70-6478)

ORDER AUTHORIZING PROPOSAL TO LEASE RAILROAD EQUIPMENT

Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service, Inc. ("New Orleans"), (collectively the "Operating Companies"), all public utility subsidiary companies of Middle South Utilities, Inc. ("Middle South"), a registered holding company, together with System Fuels, Inc. ("SFI"), a jointly owned nonutility subsidiary company of the Operating Companies, have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 9, 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transaction.

SFI proposes to enter into a lease of railroad equipment ("Lease") with The Connecticut Bank and Trust Company, as trustee ("Owner Trustee") designated as such in an agreement between the Owner Trustee and Xerox Services Inc. under which SFI will lease from the Owner Trustee 750 100-ton rotary dump Bethgon Coalporters ("Equipment"). The Equipment will be used initially to transport coal from Wyoming to the White Bluff Steam Electric Generating Station being constructed by Arkansas.

The Equipment is presently being manufactured by Bethlehem Steel Corporation ("Bethlehem") and delivery of, and payment for, the Equipment is presently expected to commence in September, 1980 and to terminate no later than December 31, 1980. Bethlehem will sell the Equipment to the Owner Trustee and will retain a security interest in the Equipment. The currently established cost of the Equipment is $32,400,000. The cost is subject to increase primarily based upon increases in certain of Bethlehem's costs, although any amounts in excess of $35,640,000 will, unless otherwise agreed among the parties, be excluded from the cost. SFI will be obligated to purchase any cars which are not purchased by the Owner Trustee as a result of such exclusion.

Concurrently with the initial purchase of Equipment by the Owner Trustee, SFI will enter into the Lease with the Owner Trustee. The basic term of the Lease will terminate on January 1, 1999. SFI will have the options (a) to renew the Lease for all of the Equipment at that time under the Lease for one two-year period at a semi-annual rental equal to 50% of the semi-annual rental during the basic term and (b) by right of first refusal to purchase all of the Equipment at that time under the Lease from the Owner Trustee.

The Lease will be a net lease conferring all responsibility for operation, maintenance, insurance, certain taxes, and other expenses upon SFI. SFI will be obligated to maintain the Equipment in good operating order, normal wear and tear excepted, and will have the right at its own cost and expense to make certain modifications and improvements to the Equipment. The Lease will be noncancellable except (a) in the event of total loss, destruction or irreparable damage of all or a portion of the Equipment; or (b) on or after January, 1991, upon a determination by SFI that the Equipment has become economically obsolete.

Lease payments will be made by SFI in one interim payment on January 1, 1981 and thereafter over the basic term in thirty-six semi-annual installments, payable in arrears, commencing on July 1, 1981. These semi-annual Lease payments will each be in an amount equal to 4.915% of the owner's cost. SFI understands that the Lease rate is equivalent to an effective annual interest rate of 6.963%.

So long as SFI makes timely payments and fully performs all of its obligations under the Lease and related documents, the Owner Trustee covenants, as lessor, that it will not hinder or interfere with SFI's peaceable and quiet enjoyment of the possession and use of the Equipment.

SFI does not presently contemplate subleasing any of the Equipment. However, it is possible that in the future SFI may sublease to third parties, with the written consent of the lessor (not to be unreasonably withheld), a portion of the Equipment which at that time represents excess coal transportation capacity. Any such subleasing transactions would be of a temporary nature. SFI will apply the proceeds therefrom to reduce the cost of transportation of fuel to the Middle South Utilities System and will credit the account in its books normally designated for this type transaction with the amount of such proceeds.

In connection with the proposed transaction, Arkansas, Louisiana, Mississippi and New Orleans, as the Operating Companies of SFI, will covenant and agree that so long as SFI shall have any obligations under the Lease and certain related documents the Operating Companies will, severally

in accordance with their present respective shares of ownership of the common stock of SFI, take any and all action as, from time to time, may be necessary to keep SFI in a sound financial condition and to place SFI in a position to perform and discharge, and will cause SFI to perform and discharge, in a timely manner, all of its obligations under the documents referred to above.

The fees, commissions and expenses to be incurred in connection with the proposed transaction will not exceed $98,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction. Arkansas is required to and has filed pertinent information with the Arkansas Public Service Commission relating to its participation in the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21655), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21690/August 27, 1980

In the Matter of

COLONIAL GAS ENERGY SYSTEM
Lowell, Massachusetts

LOWELL GAS COMPANY
Lowell, Massachusetts

CAPE COD GAS COMPANY
Hyannis, Massachusetts

(70-6466)

ORDER AUTHORIZING ISSUANCE AND SALE OF HOLDING COMPANY COMMON STOCK TO PUBLIC; AND ISSUANCE AND SALE OF COMMON STOCK TO PARENT BY SUBSIDIARIES; EXCEPTION FROM COMPETITIVE BIDDING; DEFERRAL OF ACTION ON TERMINATION OF DIVIDEND WAIVER; RESERVATION OF JURISDICTION

Colonial Gas Energy System ("Colonial"), a holding company, Lowell Gas Company ("Lowell"), and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial, have filed a declaration and amendments thereto pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder regarding the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-673). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Colonial's corporate capital structure, as of March 31, 1980, is shown in the following table:

	Actual (000's omitted)	*Ratio*
Long-term debt	45,645	50.2
Short-term debt	15,580	17.1
Minority Interest	5,860	6.4
Preferred Stock	5,550	6.1
Common equity	18,288	20.2
Total Capitalization	90,923	100.0

On May 23, 1980, we noticed (HCAR No. 21590) a proposal of Colonial to exchange shares of restricted stock for unrestricted stock and upon consummation of such exchange to issue and sell additional common stock by public offering and to invest the net proceeds in subsidiary common stock. By amendment to its application, Colonial advises that on July 11, 1980 Colonial determined it would not be possible to reach agreement with the holders of the restricted stock on the exchange prior to the proposed public offering. Colonial now proposes to defer action on the exchange pending financial simplification or recapitalization of the system.

Colonial has proposed to the Trustees that they take action to bind themselves and their successors irrevocably not to exercise their discretion under the agreements relating to the dividend restriction to relax the restriction in any fiscal year in which annual earnings exceed certain specified amounts and $1.32 in dividends has been paid to the unrestricted shares. The dividend restriction would continue without relaxation with respect to the $.87 a share, in each fiscal year, of common dividends between $.45 a share and $1.32 a share. The restricted stock would continue to share on a parity with the unrestricted shares in the first $.45 of common dividends and in dividends above the $1.32 level. The unrestricted stock would continue to receive all common dividends in a fiscal year exceeding $.45 until it has received $1.32 a share.

Action on the proposed exchange of restricted shares is deferred until further notice and completion of the record with respect thereto.

Colonial is seeking authorization to raise approximately $8,000,000 by a negotiated public offering of 700,000 shares of additional common stock. The net proceeds from such sale would be invested in new common stock of Lowell and Cape Cod. It is anticipated that Lowell and Cape Cod will issue and sell to Colonial up to 450,000 shares for a purchase price of $18 per share and 500,000 shares of common stock for a purchase price of $14.50 per share respectively. The number of shares cannot be established until the net proceeds from the sale of Colonial common stock can be determined. The proceeds from the sale will be used by Lowell and Cape Cod to repay indebtedness incurred for or to reimburse Lowell and Cape Cod for expenditures made for properly capitalizable additions and extensions to plant and property. Additional terms of the public offering will be supplied by amendment to complete the record.

Colonial has outstanding $7,376,000 principal amount of 11% Notes due March 1, 1987 held by two insurance companies. In order to facilitate the public offering of its common stock, Colonial has negotiated with the holders of the Notes a revision in the dividend restriction imposed by the Note Agreement dated March 29, 1974 as heretofore amended. The Note Agreement now limits dividends on common stock and purchases, redemptions or other retirements of capital stock (not including sinking fund redemptions or preferred stock) and other distributions to the sum of $500,000 plus 50% of net income during the year 1978 increasing at the rate of five percentage points a year to 75% of net income during calendar years 1983 and thereafter. The amendment will change that restriction to an amount equal to 90% of net income from January 1, 1980 to the date of payment, taken as one accounting period. No other provision of the Note Agreement will be changed.

Colonial is hereby granted an exception from the competitive bidding requirements of Rule 50(b) pursuant to paragraph (a)(5) with respect to the issuance and sale of its common stock to the public. It states that the size of the issue, the size of the company, and the fact that it is relatively unknown in the securities markets make it unlikely that the procedure specified in Rule 50(b) would produce competitive bids for the securities offered.

The record is incomplete with respect to the fees and expenses incurred or to be incurred in connection with the proposed transactions. The Massachusetts Department of Public Utilities has authorized the proposed issue and sale of common stock by Lowell and Cape Cod. No other state or federal commission other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21667), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found with respect to transactions as to which the record is complete that the applicable standards of the Act and the rules thereunder are satisfied and no adverse findings are necessary and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, in

respect of said transactions be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, with respect to the transactions as to which the record has been completed subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved pending completion of the record over the terms and conditions of the public offering, the fees, expenses and commissions to be paid or incurred in connection with the proposed transactions, and over the proposed exchange of the restricted shares.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21691/August 27, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10112

(70-6490)

NOTICE OF PROPOSED ISSUANCE AND SALE OF $100,000,000 PRINCIPAL AMOUNT OF DEBENTURES AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Consolidated proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, $100,000,000 principal amount of ____% Debentures due October 1, 2000. The interest rate (which will be a multiple of 1/8 of 1%) and the price, exclusive of accrued interest, (which will be not less than 99% or more than 102% of the principal amount thereof) will be determined by competitive bidding. The debentures will be issued as a new series under an Eighth Supplemental Indenture, to be dated as of October 1, 1980, to the Indenture between Consolidated and Manufacturers Hanover Trust Company, New York, New York, as Trustee, dated as of May 1, 1971. The Indenture includes a prohibition until October 1, 1985, against redeeming the issue with or in anticipation of funds borrowed at a lower effective interest cost. The debentures will be subject to an annual sinking fund of $6,250,000 commencing October 1, 1985, which will leave the issue fully paid out at maturity. In addition to meeting its sinking fund obligations, Consolidated intends that as long as any of the debentures are outstanding, it shall have the noncumulative option to redeem, on any sinking fund date, at the then current sinking fund redemption price, up to an additional $9,375,000 principal amount of such debentures. Redemptions made pursuant to such option may be used by the company to reduce future mandatory sinking fund obligations. The proceeds of the sale of the debentures will be used to finance, in part, the 1980 capital expenditures of Consolidated's subsidiary companies, estimated at $224,000,000.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at $216,400, including $30,000 service charges of the system service company at cost and accountants' fees and expenses of $22,000. The fees and expenses of counsel for the underwriters are to be paid by the successful bidders, and the amount thereof will be supplied by amendment.

It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission

should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 579/August 22, 1980

In the Matter of

UNITED TECHNOLOGIES CORPORATION
File No. 22-10612

NOTICE OF APPLICATION AND OPPORTUNITY FOR HEARING PURSUANT TO CLAUSE (ii) OF SECTION 310(b)(1) OF THE TRUST INDENTURE ACT OF 1939

The Securities and Exchange Commission has issued a notice giving interested persons until September 17, 1980 to request a hearing on the application of United Technologies Corporation ("United") declaring that the successor trusteeships of Manufacturers Hanover Trust Company ("Manufacturers Hanover") under the qualified indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover from acting as successor trustee under any of such indentures.

TRUST INDENTURE ACT OF 1939
Release No. 580/August 22, 1980

In the Matter of

UNITED TECHNOLOGIES CORPORATION
File No. 22-10627

NOTICE OF APPLICATION AND OPPORTUNITY FOR HEARING PURSUANT TO CLAUSE (ii) OF SECTION 310(b)(1) OF THE TRUST INDENTURE ACT OF 1939

The Securities and Exchange Commission has issued a notice giving interested persons until September 17, 1980 to request a hearing on the application of United Technologies Corporation ("United") declaring that the successor trusteeships of Morgan Guaranty Trust under the qualified indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Morgan Guaranty Trust from acting as successor trustee under any of such indentures.

TRUST INDENTURE ACT OF 1939
Release No. 581/August 27, 1980

In the Matter of

TRAILER TRAIN COMPANY

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until September 16, 1980 to request a hearing on an application by Trailer Train Company pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Continental Illinois National Bank and Trust Company of Chicago

under (a) two existing indentures qualified under the Act and (b) two proposed indentures that are not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such bank from acting as trustee.

TRUST INDENTURE ACT OF 1939
Release No. 582/August 27, 1980

In the Matter of

ITO-YOKADO CO., LTD.
(Kabushiki Kaisha Ito-Yokado)

File Nos. 2-58987
2-61271 (22-9600)

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until September 17, 1980 to request a hearing on an application by Ito-Yokado Co., Ltd. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Bank of Tokyo Trust Company under (a) three existing indentures qualified under the Act and (b) a proposed indenture that is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank of Tokyo Trust Company from acting as trustee under the qualified indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11314/August 22, 1980

In the Matter of

ELRON ELECTRONIC INDUSTRIES LTD.
c/o Richard L. Teberg, Esq.
Reavis & McGrath
345 Park Avenue
New York, New York 10022

(812-4611)

ORDER PURSUANT TO SECTION 3(b)(2) OF THE ACT DECLARING THAT APPLICANT IS NOT AN INVESTMENT COMPANY

Elron Electronic Industries Ltd. ("Applicant"), a corporation organized under the laws of Israel, filed an application on February 6, 1980, and an amendment thereto on May 21, 1980, for an order of the Commission pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities, or, alternatively, for an order pursuant to Section 6(c) of the Act exempting Applicant from all provisions of the Act.

On July 23, 1980, a notice of the filing of said application was issued (Investment Company Act Release No. 11273). The notice gave interested persons an opportunity to request a hearing and stated that an order would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found that the Applicant is primarily engaged, through controlled companies, in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Accordingly,

IT IS ORDERED, pursuant to Section 3(b)(2) of the Act, that Elron Electronic Industries Ltd. is hereby declared to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11315/August 25, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6229/August 25, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11316/August 26, 1980

In the Matter of

EDIE SPECIAL GROWTH FUND, INC.
100 E. Pratt St.
Baltimore, Maryland 21202

(811-1823)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Edie Special Growth Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 19, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On July 31, 1980, a notice (Investment Company Act Release No. 11284) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the registration of Edie Special Growth Fund, Inc., shall cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11317/August 27, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, NY 10016

AND

DREYFUS LIQUID ASSETS, INC.

AND

DREYFUS A BONDS PLUS, INC.
767 Fifth Avenue
New York, NY 10153

(812-4532)

ORDER AMENDING AN ORDER OF EXEMPTION GRANTED PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

Beneficial National Life Insurance Company ("Beneficial"), a stock life insurance company organized under the laws of the State of New York, the Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial's registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, Dreyfus Liquid Assets, Inc. and Dreyfus A Bonds Plus, Inc. (collectively the "Funds"), diversified, open-end management companies registered under the Act (hereinafter Beneficial, the Separate Account and the Funds are collectively referred to as "Applicants") filed an application on July 2, 1980 for an order amending an existing order of exemption pursuant to Section 11 of the Act approving certain offers of exchange (Investment Company Act Release No. 11173, May

17, 1980).

On July 31, 1980, a notice was issued (Investment Company Act Release No. 11283) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act that the proposed amendment to the order approving certain offers of exchange be, and hereby is approved, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9165/August 25, 1980

SECURITIES AND EXCHANGE COMMISSION v. *FARADAY LABORATORIES, INC.* United States District Court for the District of Columbia, Civil Action No. 80-2169

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against Faraday Laboratories, Inc. ("Faraday") with offices at 100 Hoffman Place, Hillside, New Jersey 07205. The Commission's Complaint alleges violations of the reporting provisions of federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Faraday, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended April 30, 1980, required to have been filed with the Commission by July 29, 1980.

The Complaint requests that the Court order Faraday to file forthwith, with the Commission, its delinquent Annual Report on Form 10-K. In addition, the Commission requests that the Court enjoin Faraday from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9166/August 27, 1980

SECURITIES AND EXCHANGE COMMISSION v. *UNITED RESOURCES, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-1416)

The Commission announced today that on August 26, 1980 the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against United Resources, Inc., of One Biscayne Tower, Miami, Florida, ("United") restraining and enjoining United from failing to file timely periodic reports and ordering it to comply with certain undertakings. United, consenting to the entry of the Court's judgment, admitted it had failed to file reports in a timely fashion. The Commission's complaint was filed on June 9, 1980.

The Complaint alleged that United, as part of a continuing course of violative conduct extending over several years, failed to timely file with the Commission certain Annual Reports and Quarterly Reports required to have been filed. United has agreed to adopt procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

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VOLUME 20, NO. 17 PART 1 SEPTEMBER 16, 1980

RELEASES IN THIS ISSUE

	PAGE
Securities Act ..... - 6228*, 6231-34	1058

This listing covers releases issued from 8/28/80-9/4/80. This listing does not affect the legal status of any document published in this issue.

*NOTE: Securities Act of 1933 Release No. 6228 was inadvertently omitted from Volume 20, No. 16.

10CT
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SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

34-17099 Statement of Commission Policy Concerning Section 30A of the Securities Exchange Act of 1934.

34-17111 Issuance of a Release Setting Forth in a Summary Manner the Staff Interpretations Regarding Rules that Establish Minimum Performance Standards and Other Requirements for All Registered Transfer Agents.

RULES

34-17097 34-17106 34-17109
34-17098 34-17107 34-17113
34-17102 34-17108

33-6228 Delegation of Authority to the Director of the Division of Investment Management, with respect to matters pertaining to certain contracts funded by or through the general assets or separate accounts of insurance companies.

33-6231 Adoption of Amendments to Form 10-K and related forms under the 1933 and 1934 Acts.

33-6232 Adoption of Form S-15, an optional experimental short form for registration under the 1933 Act of securities issued in certain business combination transactions.

SE 1.29:

33-6233	Adoption of a general revision of Articles 3 and 5 and the related Sections of Article 12 of Regulation S-X.
33-6234	Adoption of amendments to rules establishing uniform instructions governing the periods to be covered by financial statements.
33-6235	Proposed Comprehensive Revision to System for Registration of Securities Offerings [File No. S7-849—Comment Period Expires January 15, 1981].
33-6236	Proposed Amendments to Form 10-Q—Quarterly Reports [File No. S7-850—Comment Period Expires December 15, 1980].
33-6239	Adoption of Rule 14e-3 under Regulation 14E relating to Tender Offers.
34-17100	Final amendments to Form MSD—Registration of Municipal Securities Dealers.
34-17101	Withdrawal of Proposed Amendments to Form MSD.
34-17112	Adoption of a Form for the Annual Assessment for SECO Broker and Dealers.
IC-11330	Staff position with respect to provisions in an investment company's basic documents requiring or permitting the indemnification by the investment company of its directors, officers, investment adviser, or principal underwriter against any liability to the company or to its security holders to which they would otherwise be subject.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6228/August 22, 1980

DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE DIVISION OF INVESTMENT MANAGEMENT

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its rules relating to general organization to delegate to the Director of the Division of Investment Management, with respect to matters pertaining to certain contracts funded by or through the general assets or separate accounts of insurance companies, the authority to perform the same functions as are now delegated to the Director of the Division of Corporation Finance. This authority should result in a more expeditious and responsive processing of filings pertaining to these contracts by eliminating the delay involved in obtaining Commission approval for the acceleration of effective dates for such filings.

EFFECTIVE DATE: August 22, 1980.

FOR FURTHER INFORMATION CONTACT: William L. Strickland, Esq., Office of Compliance and Insurance Products, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2057.

SUPPLEMENTARY INFORMATION: The Director of the Division of Corporation Finance has delegated authority to perform certain functions with respect to registration statements under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Act").[1] The Commission is amending its rule relating to general organization (17 CFR 2000.30-5) to delegate to the Director of the Division of Investment Management the authority to perform the same functions with respect to matters pertaining to certain contracts funded by or through the general assets or separate accounts of insurance companies, except where the Director of the Divison of Investment Management believes it appropriate to submit the matter to the Commission.

[1]See Sections (a), (c) and (d) of Article 30-1 (17 CFR 200.30-1.

Last year the Commission published its General Statement of Policy ("Release 6051") regarding the determination of the status under the federal securities laws of certain contracts issued by insurance companies, including what are generally known as guaranteed investment contracts ("GIC") funded by or through the general assets of the companies.[2] Such contracts had never been registered under the Securities Act of 1933 in reliance upon the exemption from registration for annuity contracts provided by Section 3(a)(8) of the Act [15 U.S.C. 77c(a)(8)].[3] The development of new types of contracts and the publication in Release 6051 of the Commission's view with respect to the status of such contracts under the federal securities laws have resulted in the filing of a number of registration statements which are being or have been considered by the Division. In anticipation of future filings, the Commission is delegating authority to the Director of the Division of Investment Management to process such filings.

The delegation of authority should result in a more expeditious and responsive processing of filings pertaining to certain contracts funded by or through the general assets or or separate accounts of insurance companies by eliminating the delay involved in obtaining Commission approval for the acceleration of effective dates for such filings. Further, the resulting delegated authority will obviate the need for the Commission to address matters which it was previously considered and eliminate the burden of considering such matters in the future, except where the Director of the Division believes it appropriate to submit the matter to the Commission.

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[2]Securities Act Release No. 6051, April 5, 1979 [44 FR 21626, April 11, 1980].

[3]Section 3(a)(8) exempts from the registration requirements of the Act

Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commisioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia.

AUTHORITY, EFFECTIVE DATE: The Commission hereby amends Article 30-5 Section (b) of the rules of the Commission relating to general organization (17 CFR 200.30-5) pursuant to the authority contained in Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2].

The Commission finds, in accordance with Section 553(b)(A) and 553(d) of the Administrative Procedure Act [5 U.S.C. 553(b)(A), 553(d)], that the foregoing action relates solely to agency organization, procedure, or practice; that Section 553(d) of such act [5 U.S.C. 553(b)] makes it unnecessary to notice and publish procedures required by Section 553 of such Act [5 U.S.C. 553]; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendment to Rule 30-5 is effective immediately.

COMMISSION ACTION: Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by amending paragraph (b) of §200.30-5 to read as follows:

§200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940, pooled investment funds or accounts, the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933, the Securities Exchange of 1934 and the Trust Indenture Act of 1939, the same functions as are delegated to the Director of the Divison of Corporation Finance in regard to companies other than such registered investment companies in sections (a), (c) and (d) of Article 30-1 of this Chapter) of these articles.

By the Commission.

George A Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6231/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17114/September 2, 1980

ACCOUNTING SERIES RELEASE
No. 279/September 2, 1980

AMENDMENTS TO ANNUAL REPORT FORM, RELATED FORMS, RULES, REGULATIONS AND GUIDES;

INTEGRATION OF SECURITIES ACTS DISCLOSURE SYSTEMS

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to the present annual report form required to be filed by most publicly-owned companies, Form 10-K, and to related forms. rules, regulations and guides under the Securities Act of 1933 and the Securities Exchange Act of 1934. The amendments are part of a series of revisions and proposals intended to improve disclosure, reduce disclosure burdens, and to facilitate the integration of the disclosure systems under the two Acts.

EFFECTIVE DATE: For all filings and reports pursuant to the Securities Act of 1933 and the Securities Exchang Act of 1934 with respect to fiscal years ended after December 15, 1980. However, the Commission will accept filings and reports complying with the amendments beginning immediately for those wishing to use them.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the amendments, contact William H. Carter at (202) 272-2604, William E. Toomey at (202) 272-2573, or William E. Morley at (202) 272-2573. Thereafter, contact only William E. Toomey or William E. Morley.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain amendments to Form 10-K (17 CFR 249.310), the annual report form required to be filed by most publicly-owned companies, and a number of regulated rule, regulation, form and guide changes. The rule and regulation changes include: amendments to Rule 14a-3 (17 CFR 240.14a-3) and Rule 14c-3 (17 CFR 240.14c-3) with respect to annual reports to security holders; expansion of Regulation S-K (17 CFR 229.20) to include three new items: Management's Discussion and Analysis of Financial Condition and Results of Operations; Selected Financial Data; and Market Price of the Registrant's Common Stock and Related Security Holder Matters; amendments to Regulation S-K Item 1, Description of Business; and amendments to related forms, rules and guides under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.]. The amendments to Form 10-K and related revisions are part of a series of changes and proposals intended to improve disclosure in certain important areas, to reduce some of the burdens of disclosure by eliminating obsolete or duplicative requirements, and facilitate the integration of filings made under the Securities Act and the Exchange Act. Three other releases issued today adopt changes relating to: (1) uniform financial statement instructions for certain forms and reports required pursuant to the Securities Act and the Exchange Act; (2) amendments to Regulation S-X (17 CFR 210) designed to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S-X; and (3) a new simplified form for the registration of securities issued in certain merger and reorganization transactions.[1] In addition, two other releases issued today propose changes to Form 10-Q (17 CFR 249.308a) under the Exchange Act and propose three new registration forms under the Securities Act.[2]

FORM 10-K

A. *Introduction.*

The Commission today is adopting and proposing major changes in the Securities Act and Exchange Act disclosure systems. These changes are designed to improve the disclosure made to investors and other users of financial information, to facilitate the integration of the two disclosure systems into the single disclosure system long

[1]Securities Act Release Nos. 6234, 6233, and 6232 (September 2, 1980).

[2]Securities Act Release Nos. 6236 and 6235 (September 2, 1980).

advocated by many commentators[3], and to reduce current impediments to combining informal security holder communications, such as annual reports to security holders, with official Commission filings.

This release deals with format and content changes in the Form 10-K and in the annual report to security holders. Under the system in effect as a result of these changes, minimum disclosure requirement have been developd by the Commission for the Form 10-K and the annual report to security holders. To the extent these disclosure requirements have common elements, the Commission has made it easier now to simply incorporate from the annual report to security holders to the Form 10-K, if registrants so choose.

The Commission has determined to require only portions of the Form 10-K and the annual report to security holders to have equivalent disclosure because these documents are not necessarily used in an identical manner. Disclosure requirements in annual reports evolved in the context of shareholders making voting decisions. The Form 10-K has traditionally confirmed information previously delivered to investors and other users making economic decisions about the company and, as a result, has been more detailed. The Commission recognizes that the information content in Form 10-K not only was originally formulated for a specialized use, but that within those groups which have utilized the Form there are different constituencies. Those constituencies which have been the most frequent users of Form 10-K information are institutional investors, professional security analysts and sophisticated individual investors. The Commission believes that it continues to be appropriate to focus primarily on these frequent user constituencies in formulating Form 10-K requirements, but that such a focus would not be appropriate in formulating requirements for the annual report to security holders.

With regard to the content of the restructured Form 10-K several items in the present Form have been deleted and others have been simplified or have been moved to schedules or exhibits. The prime focus of this effort has been to eliminate unnecessary or duplicative disclosure throughout Commission filings through the further expansion of Regulation S-K and to relegate disclosures of a technical or supplmentary nature to schedules or exhibits which are available to users upon request. Insofar as the annual report to security holders are concerned, the principal effort hasbeen to standardize disclosure items to make them consistent with similar requirements in Commission filings. In particular, the focus has been primarily upoon financial disclosure to provide uniformity in form, content and timing of the required information.

B. *Background and Development of New Form 10-K.*

The Commission's review of the purpose and utility of the Form 10-K led it to believe that there is a basic information package which most, if not all, investors expect to be furnished. Further, it has become apparent that this basic information package, which in the context of Form 10-K developed to support the current information requirements of an active trading market, is virtually identical to the similar information package independently developed in connection with the registration and sale of newly issued shares under the Securities Act. The essential content of these Form 10-K and registration statement information packages includes audited finaincial statements, a summary of selected financial data appropriate for trend analysis, and ameaningful description of the registrant's business and financial condition.

The restructured Form 10-K which the Commission is adopting today is specifically designed to segregate the basic information package contained in that Form from proxy related or supplemental information. In this regard, the new Form 10-K is structured in four parts. The first part retains the detailed disclosure requirements relating to business, properties, legal proceedings and beneficial ownership. Much of this information, which in the past has been required primarily in Securities Act filings and not in annual reports to security holders, has been placed in a supplemental role. The second part consists of the basic disclosure

[3]*See generally* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340 (1968); SEC, *Disclosure to Investors* (Wheat Report) (1969); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce 95th Cong., 1st Sess., November 3, 1977 ("Advisory Committee").

package which is common to both Securities Act and Exchange Act filings. The third part consists of the traditional proxy disclosure information relating to directors and executive officers and management remuneration. Finally, the fourth part contains requirements for financial statement schedules and, in accordance with a recent Commission release, scaled-down requirements for exhibits.[4]

Although the revised Form 10-K is designed to promote the integration of the Securities Act and Exchange Act disclosure systems, which was the basic goal set forth in the report of the Advisory Committee, the restructured format of the new form does not precisely follow that suggested by the Advisory Committee. That Committee recommended a relatively unstructured document which would encourage registrants to combine informal annual and quarterly reports to security holders into single documents to be filed as Form 10-K's and 10-Q's. The new Form 10-K continues to encourage the combination of formal and informal reports. However, the new form changes the emphasis from the Form 10-K (which the Advisory Committee emphasized) to the basic disclosure package, wherever it appears. As a result, where the Advisory Committee envisioned the Form 10-K as the document to be integrated with the Securities Act filing, the new Form 10-K permits registrants to utilize the minimum disclosure package from the annual report to security holders sent with the proxy statement, from the Form 10-K, or to completely restate it.

Furthermore, the Commission does not believe it would be appropriate at this time to adopt the Advisory Committee approach and to mandate to totally combined Form 10-K and annual report to security holders in order to produce the readable Form 10-K which would be needed to form the basis for integration. Such a mandate might be overly burdensome on some registrants and could adversely affect the annual report to security holders.[5] Under these circumstances, the Commission believes that it would be wise to encourage combination on a voluntary basis. In the meantime, the detailed disclosure will remain available in the filed Form 10-K in order to supplement the more abbreviated presentation in the annual report to security holders.

C. *Annual Report to Security Holders.*

In a release issued on January 10, 1974,[6] the Commission amended Rules 14a-3 and 14c-3 to require that annual reports to security holders contain a variety of information, including certified financial statements, a summary of operations, a management analysis, a brief description of the issuer's business, a lines of business breakdown, an identification of the issuer's directors and executive officers, and an identification of the principal market in which the securities entitled to vote were traded. These requirements were based on substantially similar requirements in the then existing Form 10-K. In requiring this new information, the Commission made the following statement:

> The annual report to security holders has long been recognized as the most effective means of communication between management and security holders. Such reports are readable because they generally avoid legalistic and technical terminology and prsent information in an understandable, and often innovative, form. ... The Commission believes it is in the public interest that all security holders be provided with meaningful information regarding the business, management, operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information.

The Commission continues to believe that all security holders should be provided with meaningful information and that the changes in the Form 10-K

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[4]Securities Act Release No. 6230 (August 27, 1980).

[5]The inability to assure in all cases that there will be a single document which will be useable as a combined report to security holders and Form 10-K arises primarily because of the Business, Properties and Legal Proceedings disclosures called for under Items 1, 2 and 5 of Regulation S-K and because of certain parent and subsidiary financial statements required by Regulation S-X. Although it is hoped that most registrants will have little difficulty in presenting these items in a combined document, there is considerable evidence that in some cases the sheer volume of the disclosure called for by these items would adversely impact the readability of the registrant's annual reports to security holders.

[6]Exchange Act Release No. 10591 (January 10, 1974) [39 FR 3820].

requirements on which the annual report to security holder requirements were based should also be made in the annual report because of the importance of the disclosure. This results in a uniformity of the minimum disclosure package in the annual report to security holders and in Form 10-K. This uniformity has been achieved by adopting uniform financial statement requirements, by amending Regulation S-X, by adopting new provisions in Regulation S-K and by adopting several changes in Rules 14a-3 and 14c-3. The equivalency of the minimum disclosure package in both documents not only satisfies shareholder and investor needs, it also should avoid duplication by allowing issuers to use the disclosure in the annual report to security holders to satisfy some of the requirements of Form 10-K and, if they choose, when selling securities to the public. The changes made today in the annual report to security holders do not mean, however, that any further changs in Form 10-K will be reflected automatically in the annual report to security holders.

The Commission is aware that increasing the amount of required disclosure in annual security holder reports involves a risk that readability may be impaired. Although it is difficult to predict with certainty what the effect may be, the Commission does not believe that the changes implemented today should or will have general adverse consequences. The Commission staff, however, will continue to monitor the situation and, if adverse effects do occur, the new disclosure requirements will be revisited promptly.[7]

With the same information appearing in the annual report to security holders and in Part II of the Form 10-K, the Commission is hopeful that most, if not all, registrants will incorporate that portion of the annual report to security holders into the Form 10-K. Because of the benefits of this type of incorporation both to registrants and to the Commission staff, the January 15, 1980 release proposed mandatory incorporation of portions of the annual report into the Form 10-K and optional incorporation of portions of the annual report into certain Securities Act filings. The mandatory incorporation feature was severely criticized by the commentators.[8] As a result of this criticism, this mandatory feature has been eliminated. Instead, the four-part Form 10-K system has been designed to encourage, but not to require, the combination of annual reports and Form 10-K's into one document. For example, the revised financial statement requirements have been designed to require that only the financial statements of the registrant and its subsidiaries consolidated must appear in the annual report and in the financial statement section of the Form 10-K, Part II. the other financial statements and schedules have been designated "financial statement schedules" and have been placed in Part IV of the Form 10-K. This permits a less detailed minimum disclosure package, which is more compatible with a combined presentation, while nonetheless preserving in a separate information package the more detailed financial data for those who want it.

It shoud be emphasized th the minimal content changes adopted by the Commission today are not

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[7]In this regard the Commission's integration efforts are part of an ongoing project which is presently scheduled to continue for at least two more years. Monitoring will occur in the context of that program and, as has been recently the case with respect to bank holding company disclosures (Guide 61; Securities Act Release No. 6221 (July 8, 1980) [45 FR 47183] and remuneration disclosures (Item 4 of Regulation S-K; Securities Act Release No. 6210 (May 6, 1980) [45 FR 31733)]), in the context of the Commission's ongoing program to monitor the effectiveness of its rules.

[8]Over 300 letters containing substantive comments were received in response to the January 15, 1980 release proposing the new Form 10-K and the related forms, rules and guides changes. The comments were obviously the project of serious thought and drafting and many elements of them have been incorporated into these final rules. Most commentators, in addition to making specific suggestions, many of which are discussed later in this release in connection with particular forms, rules and guides, addressed the overall structure of the new Form 10-K and the related disclosure system, particularly as it involved the annual report to security holders. While a number of the letters supported the original proposal which would have used the annual report to security holders as the principal disclosure document, others were concerned about the effect such a mandate would have on the readability of the annual report, or on the Securities Act liability of directors for the report, or on what they foresaw as the beginning of a major incursion of the Commission into management's security holder communications.

intended to change the basic structure or quality of exisiting security holder reports. Indeed, the Commission continues to believe that the communicative style of these reports is generally excellent and that, by and large, these reports do not exclude the type of boilerplate disclosures and disclaimers which frequently do appear in formal Commission filings. it is hoped that the type of attention to style which is evidenced by better examples of security holder reports will continue to have a salutary effect on all of the report content, whether or not the particular information is also a part of the Form 10-K.

D. *Conclusion.*

The system adopted today will be carefully monitored for effectiveness, and future alternative systems will not be foreclosed. For example, consideration is still being given to approaches which might differentiate between user constituencies and which might give a security holder the option of receiving a simplified annual report containing summary indicators and other data in lieu of the traditional annual report or in lieu of the financial statement section of such report. This type of approach would be based upon an as yet unproven hypothesis that some users, particularly certain individual investors, either rely on financial advisers and therefore do not use detailed disclosure, or are overwhelmed by the technical nature or volume of presently required disclosure.[9] The Commission expects that these as well as other issues relating to concepts of differential disclosure will be pursued and studied as the integrated disclosure system evolves.

Table of Changes From Previous Form 10-K.

Item and Status

General Instructions. Revised.

Cover Page. Revised.

Part I

Item 1. Business Revised [In revised Regulation S-K Item 1].

Item 2. Summary of Operations. Deleted [Replaced by Selected Financial ata, New Item 6].

Item 3. Properties. Unchanged. [New Item 2].

Item 4. Parents and Subsidiaries. Deleted [But replaced by an exhibit].

Item 5. Legal Proceedings. Unchanged [New Item 3].

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness. Deleted.

Item 7. Changes in Securities and Changes in Security for Registered Securities. Deleted.

Item 8. Defaults Upon Senior Securities. Deleted.

Item 9. Approximate Number of Equity Security Holders. Deleted [But replaced by a requirement in new Regulation S-K Item 9].

Item 10. Submission of Matters to a Vote of Security Holders. Deleted.

Item 11. Indemnification of Directors and Officers. Deleted.

Item 12. Financial Statements, Exhibits filed, and Reports on Form 8-K. Revised [New Item 11].

Part II

Item 13. Security Ownership of Certain Beneficial Owners and Managers. Unchanged [New Item 4].

Item 14. Directors and Executive Officers of the Registrant. Unchanged [New Item 9].

Item 15. Management Remuneration and Transactions. Unchanged [New Item 10].

Signatures. Revised.

Instructions as to Financial Statements. Deleted [Replaced by New Item 8].

Instructions as to Exhibits. Revised [Per New Regulation S-K Item 7].

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[9]It is interesting to note, however, that studies such as that conducted by Professors Lucia S. Chang and Kenneth S. Most at Florida Interantional University indicate that the typical "unsopisticated small investor" often is quite sophisticated. L. Chang and K. Most, Financial Statements and Investment Decisions (1979).

Supplemental Information. Revised.

The new Form 10-K consists of four parts containing the items outlined below. The information required by Parts I and II, or any portion thereof, at the registrant's option, may be supplied by incorporating the information from an annual report to security holders either furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a) or otherwise meeting the requirements of Rule 14a-3(b), provided the incorporated portion contains the disclosure required by the appropriate items of Parts I and II of Form 10-K. Conversely, the information required by Part III must be supplied by incorporating by reference from the election of directors proxy statement (or information statement), if such statement has been or will be filed within 120 days of the end of the fiscal year.

Outline of New Form 10-K

General Instructions.

Cover Page.

Part I

Item 1. Business.

Item 2. Properties.

Item 3. Legal Proceedings.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

Part II

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters.

Item 6. Selected Financial Data.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Item 8. Financial Statements and Supplementary Data.

Part III

Item 9. Directors and Executive Officers of the Registrant.

Item 10. Management Remuneration and Transactions.

Part IV.

Item 11. Exhibits, Financial Statement Schedules and Reports on Form 8-K.

Signatures.

Supplemental Information

Discussion of Items in New Form 10-K Which Are Unchanged From Previous Form 10-K

Item. 2. Properties. [Item 3 of previous Form 10-K].

Except for the numbering, this Item is unchanged from the existing Item, "Properties" (Item 2 of Regulation S-K).

A thorough analysis was made of Item 2 of Regulation S-K. consideration was made of such factors as the comments recived on the Item when it was originally proposed for comment in May of 1977[10] as well as of comments received pursuant to the January 15, 1980 proposing release.[11] Virtually all the commentators addressing the Item felt it should not be changed. Accordingly, on the basis of the careful work that originally went into drafting Item 2, the Commission's short experience with the item (since March 31, 1978), the weight of the comments in favor of no change, and the importance of maintaining the integrity of Regulation S-K with its attendant value to the integration of Form 10-K into Securities Act filings, the Commission has decided that Item 2 should not be revised at this time.

Item 3. Legal Proceedings. [Item 5 of previous Form 10-K]

Except for the numbering the Item is unchanged from the previous Item 5, "Legal Proceedings," was recently adopted (July 28, 1978)[12] and only a few

[10]Securities Act of 1933 Release No. 5826 (May 10, 1977) [42 FR 26010].

[11]Securities Act of 1933 Releae No. 6176 (January 15, 1980) [45 FR 5972].

[12]Securities Act Release No. 5949 (July 28, 1979) [43 FR 34402].

commentators felt that any changes should be made. Accordingly, the Commission does not believe it is necessary to revisit this disclosure at the present time.

Item 4. Security Ownership of Certain Beneficial Owners and Management. [Item 13 of previous Form 10-K]

Item 9. Directors and Executive Officers of the Registrant. [Item 14 of previous Form 10-K]

Item 10. Management Remuneration and Transactions. [Item 15 of previous Form 10-K]

All three of these Items have recently been the subject of the comment process, Item 10 (Item 15 of previous Form 10-K; also Item 4 of Regulation S-K) having been adopted as recently as December 4, 1978.[13] Certain aspects of these Items are still being reconsidered at the present time. Accordingly, the Commission does not feel it appropriate or necessary to amend these Items now.

Discussion of Items In Previous Form 10-K Which have Been Deleted From New Form 10-K

Item 2. Summary of Operations.

The basis for deleting this Item is contained in the discussion of the new Item 6 relating to selected financial data. Briefly, however, this Item was deleted as a consequence of two basic decisions. First, the Commission believes that five-year information is relevant primarily where it can be related to trends in the registrant's continuing operations. The Summary was not limited to this type of information about trends. Second, as a result of the change of focus of Management's Discussion and Analysis to a discussion of the financial sttements, which now include statements of income for three years, the Summary of Operations is no longer the subject of that discussion and, therefore, its presentation is no longer needed. Although several commentators disagreed with this deletion, the overwhelming majority approved it.

Because of the deletion of the Summary of Operations from the Form 10-K and the insertion of Selection Financial Data, corresponding changes are being made in a number of Securities Act and Exchange Act forms, such as Form S-1 (17 CFR 239.11) and Form 10 (17 CFR 249.210) (See Text of Proposed Forms and Rules).

The Office of the Chief Accountant is currently considering the comments received in response to a concept release (Securities Act Release No. 6196, March 7, 1980 [45 FR 16498] which addresses the utility of historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred dividends ("ratios"). A rule proposal is expected to be considered in the near future. However, until amended rules are adopted, the present requirements for presentation of the ratios must be maintained. For this reason, the present ratio instructions in the Summary of Operation Items of Forms S-1, S-11 (17 CFR 239.18), 10 and 10-K and in the Statements of Income Item of Form S-7 (17 CFR 239.26) (Items which are being deleted by this release) are being retained in the forms as part of the new item entitled "Selected Financial Data." It should be noted that these ratio requirements are being included in the Forms as an interim measure and are expected to be revised and perhaps placed elsewhere in the future.

Item 4. Parents and Subsidiaries.

In the proposed new Form 10-K, the Commission deleted this Item in favor of a new exhibit requiring a list of "all" subsidiaries as suggested by the Advisory Committee. While a few commentators stated that no such exhibit, in any form, should be required, most commentators did not object to the exhibit if insignificant subsidiaries need not be named. The Commission agrees with the commentators that listing all subsidiaries would be too burdensome and accordingly has decided to adopt the exhibit with only the names of significant subsidiaries being required.

Item 6. Increases and Decreases in Outstanding Securities and Indebtedness.

Item 7. Changes in Securities and Changes in Security for Rgistered Securities.

Item 8. Defaults Upon Senior Securities.

Item 10. Submision of Matters to a Vote of Security Holders.

Item 11. Indemnification of Directors and Officers.

[13]Securities Act Release No. 6003 (Dec. 4, 1978) [43 FR 58181].

The above five Items were omitted by the Advisory Committee from its Form 10-K, were the subject of an express inquiry in Release No. 34-15068,[14] and were also the subject of comments in Release No. 33-6176. A significant number of commentators on both Releases agreed with the Advisory Committee that all of these Items should be deleted, either because the information called for is not generally useful (this was felt to be particularly true of Item 11, Indemnification of Directors and Officers) or because the information is available elsewhere (i.e., in Form 10's, Form 10-Q's, or in the financial statements). Several commentators indicated that this information would have to be disclosed either in the text or in the notes to the financial statements, if material, even if there is no specific item requirement covering the particular event or transaction. The Commission agrees with these commentators and accordingly has omitted these items from the new Form 10-K.

Item 9. Approximate Number of Equity Security Holders.

This Item has been deleted, but the substance has been added to new Item 5 of Form 10-K [New Item 9 of Regulation S-K], which deals with market information concerning the registrant's common stock and related security holder matters. The Commission believes that the information concerning the number of holders of common stock will have greater utility in this context. The commentators, to the extent they addressed this Item, generally agreed with this approach.

Discussion of Form 10-K Items and Instructions Which Are New or Are Revised From Current Form 10-K

General Instruction A. Rule As to Use of Form 10-K.

A technical amendment has been made to this Instruction to make it clear that only the schedules under Article 12 of Regulation S-X, and not all financial statement schedules, may be filed up to 120 days after the end of the fiscal year.

General Instruction D. Signatures and Filing of Report.

In the January 15, 1980 Release, it was proposed that this Instruction be expanded to require that the Form be signed on behalf of the issuer by the registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions.

Many commentators either did not address or did not oppose requirements as to additional officers' signatures. However, the proposed change concerning directors' signatures was disapproved of by most of the commentators. The main thrusts of the objections to director signatures were concerns over the expense and logistics of obtaining the signatures in a timely fashion or over the extent, if any, to which the signatures might increase director liability. Moreover, few of those responding thought that signing the Form 10-K would appreciably increase director awareness of or participation in its preparation.

The Commission has given careful consideration to the objections of the commentators concerning director signatures. It has, nevertheless, concluded that a requirement for the signatures of a majority of a registrant's directors—in addition to those of its principal executive officer, its principal financial officer, and its controller or principal accounting officer—is an appropriate one under the circumstances. The Commission believes that just as its rules and the administrative focus of the Division of Corporation Finance are being realigned to reflect the shift in emphasis toward relying on periodic disclosure under the Exchange Act, so too the attention of the private sector, including management, directors, accountants, and attorneys, must also be refocused towards Exchange Act filings if a sufficient degree of discipline is to be instilled in the system to make it work. With an expanded signature requirement, the Commission anticipates that directors will be encouraged to devote the needed attention to reviewing the Form 10-K and to seek the involvement of other professionals to the degree necessary to give themselves sufficient comfort. In the Commission's view, this added measure of discipline is vital to the disclosure objectives of the federal securities laws, and outweighs the potential impact, if any, of the signature on legal liability. The Commission has given attention to the concerns of commentators over the expense and logistics of obtaining the requisite signatures, but believes they do not

[14]Securities Exchange Act Release No. 15068 (August 16, 1978) [43 FR 37460].

constitute an undue obstacle to the imposition of this requirement.[15]

The Commission recognizes, however, that this requirement may result in certain hardships and inconveniences. It has therefore instructed the staff to report to it on the results of imposing the requirement after an appropriate time has passed, and the Commission will revisit the question if such action appears necessary or appropriate at that time.

General Instruction F. Information as to Employee Stock Purchase, Savings and Similar Plans.

The substance of this instruction has not been changed although some confusing and unnecessary language has been deleted.

General Instruction G. Information to be Incorporated by Reference.

First, this Instruction includes the requirement as to incorporation by reference contained under Instruction F of the previous Form 10-K. Second, it reflects the change from the proposals, as discussed above, making the incorporation of certain annual report to security holders information optional with the registrant rather than mandatory. Third, the requirement in the proposal that the annual report to security holders and the proxy be delivered with the Form 10-K has been deleted. Upon analyzing the comments and the existing requirements, it became evident that the existing Form 10-K delivery requirements encompassed only existing security holders. As such persons already receive the annual report and proxy, the Commission believes that the proposed requirement was an unnecessary and burdensome expansion of a registrant's duties. Accordingly, it was deleted.

General Instruction H. Registrants Filing on Form S-18.

The language of this Instruction has been revised, for purposes of clarity, from that contained in the previous Form 10-K. This revision is intended to make it clear that persons filing on Form 10-K who are allowed to use Form S-18 disclosure for certain items are only permitted to follow the Form S-18 disclosure requirements, as differentiated from being permitted to use the actual disclosures contained in their Form S-18, which may be out of date for Form 10-K purposes.

Cover Page

The requirement that the number of common shares outstanding be disclosed has been revised to be given as of the most recent practicable date, rather than as of the year end. This disclosure is included in the Form for purposes of Rule 144 under the Securities Act, and having the information more current is believed to be of greater value than having information which is usually almost 90 days old when filed.

Two technical changes have also been made in the cover page. The first requires disclosure of the market value of the voting stock held by non-affiliates of the registrant. The purpose of this change is to obtain data to be evaluated in connection with possible future changes in the eligibility requirement of various Securities Act registration forms. The second requires, for microfiche purposes, a listing of the documents incorporated by reference.

Item 1. Business.

This Item merely incorporates the revised Item 1 of Regulation S-K with the exception that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year.

In Release No. 33-6176 it was proposed to amend paragraph (b) of Item 1 of S-K to conform to the proposed new three-year requirement for statements of income. In addition, two specific questions were asked: Commentators were asked to consider (1) the advisability of requiring Item 1 disclosure to be included in annual reports to security holders in its current form or as modified by proposed changes; and (2) the advisability of conforming the present detailed segments reporting requirements in paragraph (b) of Item 1 to the similar but somewhat less extensive requirements in SFAS 14.

The Commission agrees with the commentators that to require Item 1 disclosure to be included in the annual report to security holders may seriously affect that document's readability. However, the

[15]See, e.g., Instruction D to Form 10-K and also Rule 12b-11(b) relating to the signing of reports.

Commission believes that to reduce the Item 1 segment disclosure to conform to SFAS 14 would result in the loss of some relevant and material information. Accordingly, the Commission has decided to make only three changes in the Item 1 segment requirements: (1) amend relevant portions to conform to the new three-year requirements for statements of income; (2) delete transitory provisions no longer needed; and (3) delete the requirement for information on intraenterprise sales due to the marginal disclosure received in response to this requirement in the past. Notwithstanding the changes to be made in the segment data requirements, however, it should be noted that significant trend data might still be presented in the Selected Financial Data called for under Item 6 of the new Form 10-K, and some registrants might find it advisable to include five-year selected segment data in that context.

A thorough analysis was made of the other provisions of Item 1 of Regulation S-K prior to the issuance of the January 15, 1980 release. Consideration was given to such factors as the comments received on the Item when it was originally proposed for comment in May of 1977,[16] as well as to comments received on the existing Form 10-K in the Commission's release of August 16, 1978.[17] Moreover, most commentators addressing the Item in response to the January 15, 1980 release wanted Item 1 kept generally intact. Accordingly, on the bases of the careful work that went into drafting Item 1, the Commission's short experience with the Item (since March 31, 1978), the importance of maintaining the integrity of Regulation S-K as it relates to Securities Act filings, and the recent comments, the Commission believes that no substantive revisions other than the one referred to above should be made at this time.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

While there has been no change in the language of this Item, which utilizes existing Item 6 of Regulation S-K, it should be noted that this disclosure has been moved from Part III of the new Form 10-K, the Part which can be completed by incorporation of a proxy or information statement, to Part I. The reason for the move is to eliminate the necessity of amending Form 10-K in the future if certain revisions in the proxy statements now being considered are adopted. These revisions would focus beneficial ownership, for proxy purposes, on voting power, leaving Item 6 of Regulation S-K as a non-proxy item.

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters.

This Item contains the disclosure required by new Item 9 of Regulation S-K which must be included both in the annual report to security holders and in the Form 10-K (incorporation by reference from the annual report to security holders being optional with the registrant). As proposed, this new S-K Item required market information for all of the registrant's securities, the number of equity security holders, and information on dividends paid as well as on dividend policy.

The proposed item constituted an amalgam of paragraph (8) of Rule 14a-3 [17 CFR 240.14a-3] (which required market price information to be included in the annual report to security holders), Guide 26 of the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 (17 CFR 231.4936) [which required a statement of a registrant's dividend policy], and Item 9 of the previous Form 10-K (which required information as to the approximate number of equity security holders.) The January 15, 1980 proposing release also asked commentators to consider whether the Item should be expanded to require the presentation of market data either of a general nature or of an industry specific nature and whether, if such date were required, it should be presented in one or more specific graphic forms.

The commentators pointed out that the market data requirements, as proposed, would include debt securities, which was much broader disclosure than the Commission had ever previously required and of debatable value. The Item accordingly has been revised to limit the market data to that for common stock only, which is the most relevant market information for most investors and users. The Commission has also amended the requirement on dividend policy to make such disclosure completely optional with the registrant. This change

[16]Securities Act Release No. 5826 (May 10, 1977) [42 FR 26010].

[17]Securities Exchange Act Release No. 15068 (August 16, 1978) [43 FR 37460].

was made since it appears that dividend policy requirements generally have not elicited meaningful disclosure, but rather have resulted in meaningless boilerplate. The title of the Item has accordingly been changed to reflect the deletion of the dividend policy requirement.

An additional instruction has been added to obtain data on currency restrictions, taxation, etc. on dividends payable to United States holders of foreign securities. Concurrently, the Commission is also rescinding Guide 26, Statement of Dividend Policy, from the Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933. Finally, it was decided not to implement the inquiries concerning possible market data disclosure, largely because it is generally difficult to relate any index to a particular registrant.

Item 6. Selected Financial Data.

In the Form 10-K as proposed in Release No. 33-6176 the Summary of Operations called for under Item 2 of the previous Form 10-K was deleted and in lieu thereof a new item calling for Selected Financial Data was inserted (which would become new item 10 of Regulation S-K). This new requirement was designed to present significant five-year trend data relating to a registrant's financial condition and results of continuing operations. Although a registrant, under the proposal, was permitted to include other financial information in addition to that specified, it was expected that any presentation of additional information would not unnecessarily emphasize income or revenues as opposed to other components of financial condition.

The deletion of the present summary and the substitution of Selected Financial Data[18] reflected the Commission's concern that operations summaries have duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognized that a detailed specification of the contents or format of a summary might not cure the perceived deficiencies. Accordingly, it hoped that the proposal would strike a reasonable balance between specified content and a flexible approach which permits registrants to select that data which best indicates performance. For example, those registrants who present the information relating to the impact of inflation and current prices on their business required by SFAS 33[19] would be encouraged to combine the summary information required by SFAS 33 with the information required by the proposed new Item.

Almost all the commentators favored the deletion of the Summary of Operations, and most of these also approved of the Selected Financial Data Item as a disclosure concept, although a significant number objected to certain specific aspects of it. For example, a number believed elements such as cost of sales and interest expense should be included while others questioned the value of including working capital or some other measure of liquidity in the Item. The Commission has decided to adopt Item 6, but has determined not to increase the disclosure requirements of the Item as proposed or its specificity in order to avoid decreasing a registrant's flexibility. However, the Item clearly encourages registrants to include those additional elements which they believe will aid investors and other users. The requirement to include working capital or some other measure of liquidity has been deleted. The Commission has concluded that there are potentially numerous indicators of liquidity in a given business and to require display of each for five years may be impractical. Further, the Commission believes that the disclosures required by the new Management's Discussion and Analysis should be adequate to address liquidity and trends therein. Finally, the instruction concerning SFAS 33 has been slightly revised to make it clear that the SFAS 33 data may be combined with this Item.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The Form 10-K, as proposed, incorporated an entirely restructured Management's Discussion and Analysis. Additionally, this Item was moved from the Guides to become new Item 11 in Regulation S-K.

The major features of the proposed new Item were as follows:

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[18]See the discussion of the deletion of the summary of Operations on page 18 *supra* (Discussion of Items in Previous Form 10-K Which Have Been Deleted From New Form 10-K; Item 2. Summary of Operations) regarding the inclusion of certain ratios from the Summary into Selected Financial Data.

[19]"Financial Reporting and Changing Prices."

(1) The discussion was to be focused on the financial statements and no longer centered upon a summary of operations. Indeed, as has been indicated above, the Summary of Operations would be eliminated.

(2) The proposed Item called for discussion of at least three financial aspects of the registrant's business—liquidity, capital resources, and results of operations.

(3) Within each area of the discussion there would be emphasis upon favorable or unfavorable trends and upon the identification of significant events or uncertainties.

(4) A discussion focused on individual segments would be required only if, in the registrant's judgment, it would be appropriate to an understanding of the registrant's business.

(5) Information concerning the effects of inflation and changing prices would be required.

(6) The percentage tests and line-by-line analysis encouraged by the present requirements contained in Guides 1 and 22 [20] would be eliminated. However, the proposed Item indicated that the causes for material changes in line items should be discussed.

(7) The proposed Item would not specifically require projections or other forward-looking information, although the presentation of this type of information on a voluntary basis would be encouraged.

(8) No specific provisions with respect to the location of management's discussion in the annual report to security holders were included.

The changes in Management's Discussion and Analysis were proposed as the result of the Commission's concerns that the disclosure elicited by the present requirement of Guides 1 and 22 is not fulfilling originally contemplated objectives. Instead, existing percentage tests are applied without regard to any concept of materiality or significance to the registrant's business. Accordingly, although some portions of the resulting discussion may be meaningful, the meaningful discussion is often obscured by the inclusion of material which is of little relevance.

The Commission was also concerned that the focus of the requirements of Guides 1 and 22 may be too narrow. In today's environment there is a growing need to analyze an enterprise's liquidity and capital resources, in addition to its revenues and income. The narrow approach set forth in Guides 1 and 22 does not ordinarily produce a discussion which focuses upon the financial condition of the enterprise as a whole.

Finally, the Commission, as it has indicated on a number of occasions, was concerned about the adequacy of disclosures with respect to the impact of inflation and changing prices on individual registrants' businesses. Although the Commission does not believe that it would be appropriate at this time to expand the applicability of SFAS 33 beyond that established by the Financial Accounting Standards Board, it does believe that all registrants, including those which are not required to present SFAS 33 information, should make some textual presentation with respect to these matters. In this regard the Commission believes that Management's Discussion and Analysis should contain information which changes the potentially confusing situation involving inflation impact disclosure into a meaningful discussion of the effects of changing prices on the registrant's business.

The Management's Discussion and Analysis, as proposed, evoked extensive and diverse responses from the commentators. Some rejected it in its entirety, others endorsed it to the letter. Some felt that is was too specific and eliminated needed flexibility, others wanted more specific guidance. The main areas of concern, however, were three: First, there were various problems with the concepts of liquidity and capital resources; second, there was general disapproval of any disclosure requirements relating to inflation and changing prices, and third, there were various objections to those aspects of the Item which were seen as forward looking.

As was stated earlier in this release and in the proposing release, the Commission believes there is a growing need in today's environment to analyze

[20] Guides for Preparation and Filing of Registration Statements Under the Securities Act of 1933 (17 CFR 231.4936).

enterprise liquidity and capital resources.[21] Therefore, the disclosure requirements concerning liquidity and capital resources have been retained, although in somewhat modified form. While the Commission recognizes that the terms "liquidity" and "capital resources" lack some precision in definition, it is believed that additional specificity would decrease the flexibility needed by management for a meaningful discussion. Moreover, the liquidity section has been revised to de-emphasize working capital and to emphasize the right and obligation of management to use whatever liquidity parameters they deem to be most appropriate.

In a similar manner, the Commission believes that disclosure on inflation and changing prices should be retained despite the early state of its development. Revisions have been made, however, to clarify that nothing more than SFAS 33 data is needed from those required to supply it and that the SFAS 33 type of detailed analysis is not necessary for those smaller registrants not required to comply with SFAS 33.

An effort also has been made to distinguish between those aspects of the Items which are entirely forward looking in nature, and hence encouraged but not mandated, and those mandated aspects which, although they look to the future, are basically present fact, such as a future labor cost increase established by an existing contract which will clearly increase future costs.

A number of other changes of a lesser nature have been made, often in response to specific comments. It is indicated that liquidity and capital resources discussions may be combined. Segment disclosure, if made, need not include every segment and registrants may use other breakdowns, such as company subdivisions, if investor understanding would thereby be improved. Causes of material changes in line items need be described only to the extent necessary to an understanding of a registrant's business as a whole. Foreign registrants are permitted to use their own country's version of SFAS 33, if it exists, and are required to discuss any governmental factors having a material impact on United States security holders.

Finally, as suggested in the proposing release, this new Item II of Regulation S-K is also being made a part of other Securities Act and Exchange Act forms (See Text of Amended Forms, Rules and Guides).

Item 8. Financial Statements and Supplementary Data.

Concurrently with the publication of this release the Commission, under cover of separate releases, is adopting uniform financial statement instructions and various amendments to Regulation S-X which are designed to facilitate the implementation of the proposed integrated disclosure system.[22] Although reference should be made to the two adopting releases for full details, the principal goals of the amendments are to adopt uniform three-year income statement and statement of changes in financial position and two-year balance sheet requirements for all registration forms as well as for the annual report to security holders and Form 10-K, and to eliminate, to the extent possible, the differences between the requirements of generally accepted accounting principles and those of Regulation S-X.

However, the Commission has determined to retain the substance of former Instruction 9 of the Instructions as to Financial Statements of Form 10-K for registrants using Form S-18. Thus, this Item 8 provides that a registrant may include audited financial statements prepared in accordance with generally accepted accounting principles in the Form 10-K which it files for the year in which it had a registration statement on Form S-18 become effective. The financial statements would include consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity for the registrant's two, rather than three, most recently ended fiscal years and a balance sheet as of the end of each of those years. For the earlier of the two years, the registrant would furnish financial statements and the balance sheet previously disclosed in its Form S-18. After this first Form 10-K is filed, compliance with

[21]The Commission is aware of the Financial Accounting Standards Board's project on Funds Flows and Liquidity and does not intend to preempt that project in any way by proceeding with these new disclosure requirements. Moreover, the Commission intends to re-examine these requirements in the light of the findings of that project, when completed.

[22]Securities Act Release Nos. 6233 and 6234 (September 2, 1980).

Regulation S-X would be phased prospectively into effect. Two minor technical amendments designed to clarify the application of the instruction as discussed in Securities Act Release No. 6049[23] also have been made.

Item 11. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

Recently, in Release No. 33-6230[24], the Commission adopted extensive revisions in the general exhibit requirements applicable to a number of forms including the Form 10-K. An addition has been made to this Item as adopted in Release No. 33-6230 to label the financial statements and schedules which are filed in Part IV of the Form 10-K but which are not required in the annual report to security holders pursuant to Rule 14a-3 (or Rule 14c-3) as "financial statement schedules." The reason for the new term "financial statement schedules" is to distinguish such documents from the other exhibits filed as part of Form 10-K for purposes of Form 10-K mailings to security holders and for microfiche processing, among others. For example, security holders requesting a copy of the Form 10-K from a registrant will receive, at no charge, copies of the financial statement schedules but will not receive copies of any exhibits.

Finally a new exhibit requiring the preparation of a list of the registrant's significant subsidiaries and setting forth limited data concerning subsidiaries has been added to the recently adopted Item 7, Exhibits, of Regulation S-K. This list replaces Item 4 of the previous Form 10-K and would be repeated in each annual filing or an express reference to the most recent list filed would be included.

Signatures.

This section has been amended, as explained above, to provide for the signatures of a registrant's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and at least a majority of its board of directors or persons performing similar functions.

Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Issuers Which Have Not Registered Securities Pursuant to Section 12 of the Act.

This section has been amended to make it clear that any materials incorporated by reference into the Form 10-K, and hence already furnished to the Commission, need not be supplied again pursuant to the provisions hereunder.

Amendments to Form 10 Under the Exchange Act—Discussion.

The changes in Form 10 reflect the deletion of Item 2, Summary of Operations, and its replacement by Regulation S-K Items 10 and 11, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively.

Amendments to Forms S-1, S-7, S-11 Under the Securities Act—Discussion.

The changes in the above Forms reflect the deletion of the Summary of Operations and Statements of Income from these Forms and thier replacement by Regulation S-K Items 10 and 11, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively. The Commission, however, has decided not to delete or amend, at this time, the Summary of Earnings requirements in Item 14 of Schedule 14A which contains the Summary of Earnings requirements for Form S-14.

Amendments to Rule 14a-3 and Rule 14c-3—Discussion.

The changes in Rule 14a-3 and Rule 14c-3 are minimal and are basically technical in nature, that is, they are made to reflect other substantive rule and regulation amendments adopted in this release and the two accounting releases.[25] Subparagraphs

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[23]Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562].

[24]Securities Act Release No. 6230 (August 27, 1980).

[25]Securities Act Release Nos. 6233 and 6234 (September 2, 1980).

(b)(1),[26] (b)(2), and (b)(3) of Rule 14a-3 and subparagraphs (a)(1),[27] (a)(2), and (a)(3) of Rule 14c-3 are amended to reflect the proposed new uniform Regulation S-X financial statement instructions. Subparagraph (b)(4) of Rule 14a-3 and subparagraph (a)(4) of Rule 14c-3 are revised to delete the reference to the Summary of Operations and to replace it with proposed Items 10 and 11 of Regulation S-K, Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations, respectively. The disclosure currently contained in subparagraph (b)(8) of Rule 14a-3 and subparagraph (a)(8) of Rule 14c-3 is deleted and a reference to the new Regulation S-K Item 9, Market Price of the Registrant's Common Stock and Related Security Holder Matters, which is a revised and expanded version of that subparagraph, is inserted. Subparagraph (b)(9) of Rule 14a-3 and subparagraph (a)(9) of Rule 14c-3 are expanded to indicate that if a registrant prepares an annual report to security holders which meets all the Form 10-K disclosure requirements, it need not also supply a Form 10-K to requesting security holders. In addition these two Items are revised to indicate that the "financial statement schedules" are to be delivered to requesting security holders. Finally, subparagraph (c) of Rule 14a-3 and subparagraph (b) of Rule 14c-3 are revised to reflect the fact that General Instruction G to the new Form 10-K permits certain information from the annual report to security holders to be incorporated by reference into the Form 10-K and that such parts of the annual report are therefore "filed" for purposes of Section 18 of the Exchange Act.

Amendments to Guides for Preparation and Filing of Reports and Registration Statements Under the Securities Exchange Act of 1934—Discussion.

Guide No. 1 Summary of Operations

This Guide is rescinded due to the deletion of Item 2, Summary of Operations, from Form 10-K and Form 10.

Guide No. 4 Integrated Reports to Shareholders.

The revisions in this Guide are minimal and are only technical changes necessitated by the changes in Form 10-K and in the annual report to security holders.

Amendments to Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933—Discussion.

Guide No. 22 Summary of Earnings.

This Guide is rescinded due to the deletion of Summary of Operations and the Statements of Income from Forms S-1, S-7, and S-11.

Guide No. 26 Statement of Dividend Policy.

This Guide is rescinded as no longer necessary and appropriate in view of the adoption of Item 9 of Regulation S-K, as discussed above.

TEXT OF AMENDED FORMS, RULES AND GUIDES

17 CFR Chapter II is amended as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By amending §249.310 to read as follows:

§249.310 Form 10-K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

This form shall be used for annual reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by Article 12 of Regulation S-X may, at the option of the registrant, be

[26]On April 17, 1980, the Commission issued Accounting Series Release No. 277 [45 FR 27747] which announced the adoption of amendments to Regulation S-X that permit oil and gas producers to disclose certain required information as supplemental information accompanying, but outside, the financial statements. However, the Commission did not intend by this action to affect its proposal in Securities Act Release No. 6176 to require disclosure in annual reports to security holders of all financial information required by Regulation S-X except certain exhibits and financial statement schedules. An instructional note has accordingly been added to the amendments to Rule 14a-3(b)(1) and Rule 14c-3(a)(1) to clarify that annual reports to security holders must include the information required by revised Rule 4-10(k) of Regulation S-X.

[27]*Id.*

filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8.

FORM 10-K
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.
20549

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10-K.

This Form shall be used for annual reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Act") for which no other form is prescribed. Reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. However, all schedules required by Article 12 of Regulation S-X may, at the option of the registrant, be filed as an amendment to the report not later than 120 days after the end of the fiscal year covered by the report. Such amendment shall be filed under cover of Form 8.

B. Application of General Rules and Regulations.

(1) The General Rules and Regulations under the Act (17 CFR 240) contain certain general requirements which are applicable to reports on an form. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form.

(2) Particular attention is directed to Regulation 12B which are applicable to reports on any form. These general requirements should be carefully read and used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. *See also* Regulations 13A and 15D.

C. Preparation of Report.

(1) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12. Except as provided in General Instruction G, the answers to the items shall be prepared in the manner specified in Rule 12b-13. The report shall contain the item numbers and captions of all items but the text of such items may be omitted.

(2) Except where information is required to be given for the fiscal year or as of a specified date, it shall be given as of the latest practicable date.

(3) Attention is directed to Rule 12b-20, which states: "In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

D. Signature and Filing of Report.

Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission.

At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions.

E. Disclosure With Respect to Foreign Subsidiaries.

Information required by any item or other requirement of this form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements and financial statement schedules, otherwise required, shall not be omitted pursuant to this Instruction. Where information is omitted pursuant to this

Instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Information as to Employee Stock Purchase, Savings and Similar Plans

Attention is directed to Rule 15d-21 which provides that separate annual and other reports need not be filed pursuant to Section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan if the issuer of the stock or other securities offered to employees pursuant to the plan furnishes to the Commission the information and documents specified in the Rule.

G. Information to be Incorporated by Reference.

(1) Attention is directed to Rule 12b-23 which provides for the incorporation by reference of information contained in certain documents in answer or partial answer to any item of a report.

(2) The information called for by Parts I and II of this Form [Items 1 through 8 or any portion thereof] may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a) or from the registrant's annual report to security holders, even if not furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a), provided such annual report contains the information required by Rule 14a-3.

NOTE: In order to fulfill the requirements of Part I of Form 10-K the incorporated portion of the annual report to security holders must contain the information required by Items 1-4 of Form 10-K, to the extent applicable.

(3) The information called for by Part III (Items 9 and 10) shall be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. However, if such definitive proxy or information statement is not filed with the Commission in the 120-day period, the Items comprising the Part III information must be filed as part of the Form 10-K, or as an amendment to the Form 10-K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers called for by Item 3 of Regulation S-K may be included in Part I of Form 10-K under an appropriate caption. *See* Instruction 4 to Item 3(b) of Regulation S-K (17 CFR 229.20).

(4) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b-23(e) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 8) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 9 and 10) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C(1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

H. Registrants Filing on Form S-18.

If the registrant is subject to the reporting requirements of Section 15(d) of the Exchange Act and such obligation arises solely because the registrant has filed a registration statement on Form S-18 (17 CFR 239.28) which has become effective during the last fiscal year, the registrant may comply with the disclosure requirements of Form S-18 Item 6, Description of Business; Item 10, Remuneration of Directors and Officers; and Item 13, Interest of Management and Others in Certain Transactions, in lieu of complying with the disclosure requirements of Item 1, Business, and Item 10, Management Remuneration and Transactions, herein. Item 6 of this Form, Selected Financial Data, may be omitted at the election of such registrant.

If a registrant remains subject to Section 15(d), or becomes subject to Section 12, after the year of its Form S-18 offering, it will then be required to comply with the general Form 10-K item requirements for its subsequent report.

1. Omission of Information by Certain Wholly-Owned Subsidiaries.

If, on the date of the filing of its report on Form 10-K, the registrant meets the conditions specified in paragraph (1) below, then such registrant may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

(1) Conditions for availability of the relief specified in paragraph (2) below.

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Act and which has filed all the material required to be filed pursuant to section 13, 14, or 15(d) thereof, as applicable, and which is named in conjunction with the registrant's description of its business;

(b) During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases; and

(c) There is prominently set forth, on the cover page of the Form 10-K, a statement that the registrant meets the conditions set forth in General Instruction I(1)(a) and (b) of Form 10-K and is therefore filing this Form with the reduced disclosure format.

(2) Registrants meeting the conditions specified in paragraph (1) above are entitled to the following relief:

(a) Such registrants may omit the information called for by Item 6, Selected Financial Data, and Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations provided that the registrant includes in the Form 10-K a management's narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.
reported.

(b) Such registrants may omit the list of subsidiaries exhibit called for by Item 7 of Regulation S-K (17 CFR 229.20).

(c) Such registrants may omit the information called for by the following otherwise required Items: Item 4, Security Ownership of Certain Beneficial Owners and Management; Item 9, Directors and Executive Officers of the Registrant; and Item 10, Management Remuneration and Transactions.

(d) In response to Item 1, Business, such registrant only need furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries, and in response to Item 2, Properties, such registrant only need furnish a brief description of the material properties of the registrant and its subsidiaries to the extent, in the opinion of the management, necessary to an understanding of the business done by the registrant and its subsidiaries.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

For the fiscal year ended .....

Commission file number .....

.....
(Exact name of registrant as specified in its charter)

.....	.....
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

....
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code.....

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
.....	
.....	.....

Securities registered pursuant to Section 12(g) of the Act:

.....
(Title of class)

.....
(Title of class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes _____ No_____

State the aggregate market value of the voting stock held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405).

APPLICABLE ONLY TO REGISTRANTS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 14(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

YES ..... NO.....

(APPLICABLE ONLY TO CORPORATE REGISTRANTS)

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

DOCUMENTS INCORPORATED BY REFERENCE.

List hereunder the following documents if incorporated by reference and the Part of the Form 10-K (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) Any annual report to security holders, (2) Any proxy or information statement; and (3) Any prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act of 1933. The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1980).

PART I

[See General Instruction G(2)]

Item 1. Business.

Furnish the information required by Item 1 of Regulation S-K (17 CFR 229.20) except that the discussion of the development of the registrant's business need only include development since the beginning of the fiscal year for which this report is filed.

Item 2. Properties.

Furnish the information required by Item 2 of Regulation S-K (17 CFR 229.20).

Item 3. Legal Proceedings.

Furnish the information required by Item 5 of Regulation S-K (17 CFR 229.20).

Item 4. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by Item 6 of Regulation S-K (17 CFR 229.20).

PART II

[See General Instruction G(2)]

Item 5. Market for the Registrant's Common Stock and Related Security Holder Matters.

Furnish the information required by Item 9 of Regulation S-K (17 CFR 229.20).

Item 6. Selected Financial Data.

Furnish the information required by Item 10 of Regulation S-K (17 CFR 229.20).

In addition, (a) if debt securities are registered under Section 12 of the Act, the registrant may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a

position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (*See* Accounting Series Release No. 122).

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(c) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Item 11 of Regulation S-K (17 CFR 229.20).

Item 8. Financial Statements and Supplementary Data.

Financial statements meeting the requirements of Regulation S-X (17 CFR 210) and the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20) shall be filed. Financial statements of the registrant and its subsidiaries consolidated [as required by Rule 14a-3(b)] shall be filed under this Item. Other financial statements and schedules required under Regulation S-X may be filed as "Financial Statement Schedules" pursuant to Item 11, Exhibits, Financial Statement Schedules, and Reports on Form 8-K, of this form.

Notwithstanding the above, if the issuer is subject to the reporting provisions of Section 15(d) and such obligation results solely from the issuer having filed a registration statement on Form S-18 which became effective under the Securities Act of 1933 during the last fiscal year, or such obligation applies as to the first or second fiscal year after the registration statement on Form S-18 became effective solely because the issuer had on the first day of the pertinent fiscal year 300 or more record holders of any of its securities to which the Form S-18 related, audited financial statements for the issuer, or for the issuer and its predecessors, may be presented as provided below. The report of the independent accountant shall in all events comply with the requirements of Article 2 of Regulation S-X.

(a) A Form 10-K filed for the fiscal year during which the registrant had a registration statement on Form S-18 become effective may include the following financial statements prepared in accordance with generally accepted accounting principles:

(1) A balance sheet as of the end of each of the two most recent fiscal years; and

(2) Consolidated statements of income, statements of changes in financial condition, and statements of other stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet being filed.

(b) A Form 10-K filed for the first fiscal year after the registrant had a registration statement on Form S-18 become effective may include financial statements prepared as follows:

(1) Financial statements for the most recent fiscal year prepared in accordance with Regulation S-X, Form and Content of and Requirements for Financial Statements; and

(2) Financial statements previously disclosed in accordance with paragraph (a) for the prior year. These statements do not need to include the compliance items and schedules of Regulation S-X, but should be recast to show the same line items as are set forth for the most recent fiscal year.

(c) A Form 10-K filed for the second fiscal year after the registrant had a registration statement on Form S-18 become effective may include financial statements for the two most recent fiscal years prepared in accordance with Regulation S-X (17 CFR 210).

PART III

[See General Instruction G(3)]

Item 9. Directors and Executive Officers of the Registrant.

Furnish the information required by Item 3 of Regulation S-K (17 CFR 229.20).

Item 10. Management Remuneration and Transactions.

Furnish the information required by Item 4 of Regulation S-K (17 CFR 229.20).

PART IV

Item 11. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

(a) List the following documents filed as a part of the report:

1. All financial statements

2. Those financial statement schedules required to be filed by Item 8 of this Form, and by paragraph (d) below.

3. Those exhibits required to be filed by Item 7 of Regulation S-K (17 CFR 229.20) and by paragraph (c) below; and Instruction. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this Item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an "exhibit". *See* Rule 12b-23.

(b) Reports on Form 8-K. State whether any reports on Form 8-K have been filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of any such reports.

(c) Registrants shall file, as exhibits to this Form, the exhibits required by Item 7 of Regulation S-K (17 CFR 229.20).

(d) Registrants shall file, as financial statement schedules to this Form, the financial statements required by Regulation S-X (17 CFR 210) which are excluded from the annual report to shareholders by Rule 14a-3(b)(1), including (1) separate financial statements of the registrant only (where consolidated financial statements of the registrant and it subisidiaries are included); (2) separate financial statements of subsidiaries not consolidated and fifty percent or less owned persons; (3) separate financial statements of consolidated majority-owned subsidiaries of the registrant engaged in diverse financial activites; (4) separate financial statements of affiliates whose securities are pledged as collateral; and (5) schedules.

SIGNATURES

[See General Instruction D]

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

(Signature and Title)* _____

(Date) _____

* * * *

(Signature and Title)* _____

(Date) _____

Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference (in which case see Rule 12b-23(d)), every registrant which files an annual report on this Form pursuant to Section 15(d) of the Act shall furnish to the

* Print the name and title of each signing officer under his signature.

Commission for its information, at the time of filing its report on this Form, four copies of the following:

(1) Any annual report to security holders covering the registrant's last fiscal year; and

(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

(b) The foregoing material shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of Section 18 of the Act, except to the extent that the registrant specifically incorporates it in its annual report on this Form by reference.

(c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report on this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

2. By amending §249.210 to read as follows:

§249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 2. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Rules of Operations.

Furnish the information required by Items 10 and 11 of Regulation S-K (17 CFR 229.20).

In addition, (a) if debt securities are being registered, the registrant may, at its option, show in tabular form for each fiscal year the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries.

(b) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(c) The term " fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

3. By amending Items 1 and 7 of §229.20 and adding Items, 9, 10 and 11 to read as follows:

§229.20 Information Required in Document.

Item 1. Description of business

(a) * * *

(b)*Financial information about industry segments*—(1) *Industry segments.* State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue from sales to unaffiliated customers, operating profit or loss and identifiable assets attributable to each of the registrant's industry segments. (See Appendix A for a suggested tabular format for presentation of this information.)

(i) The prior period information shall be retroactively restated in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement.

(A) When the financial statements of the registrant as a whole have been retroactively restated.

(B) When there has been a change in the way the registrant's products or services are grouped into industry segments and such change affects the segment information being reported. Restatement is not required when a registrant's reportable segments change solely as a result of a change in the

nature of its operations or as a result of a segment losing or gaining in significance.

(ii) If the registrant includes in the document interim period financial information, discuss any facts relating to the performance of any of the segments during the period which, in the opinion of management, indicate that the three year segment financial data may not be indicative of current or future operations of the segment. Comparative financial information shall be included to the extent necessary to the discussion.

Instructions to Item 1(b)(1). 1. To the extent that the financial information included pursuant to this Item complies with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information about its segments in the financial statements [Conversely, a registrant may cross reference to the financial statements.].

2. In determining what information about the industry segments is material to an understanding of the registrant's business taken as a whole and therefore should be disclosed, the registrant should take into account both quantitative and qualitative factors such as the signficance of the matter to the registrant (for example, whether a matter with a relatively minor impact on the company's business is represented by management to be important to its future profitability), the pervasiveness of the matter (for example, whether it affects or may affect numerous items in the segment information) and the impact of the matter (for example, whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

(2) *Information as to lines of business.* * * *

(c) *Narrative description of business.* (1) * * *

(i) The principal products produced and services rendered by the registrant in the industry segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in either of the last three fiscal years or 15 percent or more of consolidated revenue if total revenue did not exceed $50,000,000 during either of such fiscal years.

(ii) —(x) * * *

(2) The matters specified in paragraphs (i) through (iv) below shall be discussed with respect to the registrant's business in general. Where material, identify the industry segments to which these matters are significant.

(i) If material, the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state the estimated dollar amount spent during each of such years on material customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(ii)—(iv) * * *

(d) *Financial information about foreign and domestic operations and export sales.* State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shortest, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other geographic areas shown separately), profitability, and identifiable assets attributable to each of the registrant's geographic areas and the amount of export sales in the aggregate or by appropriate geographic area to which the sales are made. (*See* Appendix B for a suggested tabular format for presentation of this information.)

(1) * * *

(2) * * *

(3) If the registrant includes in the document interim period financial information, discuss any facts relating to the information furnished pursuant to this paragraph (d) which, in the opinion of management, indicate that the three year financial data for foreign and domestic operations or export sales may not be indicative of current or future operations.

Comparative information shall be included to the extent necessary to the discussion.

Instructions to Item 1(d). 1. * * *

2. See Instruction 1 to Item 1(b)(1).

3. In determining what information about the geographic areas and export sales is material to an understanding of the registrant's busines taken as a whole and therefore should be disclosed, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (for example, whether a matter with a relatively minor impact on the company's business is represented by management to be important to its future profitability), the pervasiveness of the matter (for example, whether it affects or may affect numerous items of the information) and the impact of the matter (for example, whether it distorts the trends reflected in the geographic area or export sales information). Situations may arise when information should be disclosed about the geographic areas or export sales, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

(e) * * *

Appendix A—Industry Segments

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraphs (b) and (c)(1)(i) of Item 1 of Regulation S-K regarding industry segments and classes of similar products or services.

Financial information relating to industry segments and classes of products or services

	Year—		
	1	2	3
Sales to unaffiliated customers:			
Industry segment A:			
Class of product 1			
Class of product 2			
Industry segment B:			
Class of product 1			
Class of product 2			
Industry segment C: other industries			
Operating profit or loss:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			
Identifiable assets:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			

* * * * *

Item 7. Exhibits.

(a) * * *

Table II Securities Exchange Act of 1934—Frequently Used Forms

* * * * *

	Form 10	*8-K*	*10-Q*	*10-K*
(21) Subsidiaries of the registrant.				*x*

(b) * * *

(21) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in Rule 1.02(v) [17 CFR 210.1-02(v)] of Regulation S-X). This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

* * * * *

Item 9. Market Price of the Registrant's Common Stock and Related Security Holder Matters.

Identify the principal market or markets on which the registrant's common stock is being traded and, if a principal market for such stock is an exchange, state the high and low sales prices for the stock as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market for such common stock is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is no market for such stock (excluding limited or sporadic quotations), furnish a statement to that effect.

Set forth the approximate number of holders of common stock securities of the registrant as of the latest practicable date.

State the frequency and amount of any dividends paid during the past two years with respect to such common stock and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

Where registrants have a record of paying no dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists to make a statement of that fact in the filing. Registrants which have a history of paying dividends are also encouraged to indicate whether there is a present expectation that dividends will continue to be paid in the future.

Instructions.

1. The computation of the approximate number of holders of such common stock may be based upon the number of record holders or may also include individual participants in security position listings. See Rule 17Ad-8 (17 CFR 240.17Ad-8). The method of computation which is chosen should be indicated.

2. If the registrant is a foreign issuer: (a) Describe briefly any governmental laws, decrees or regulations in the country in which the registrant is organized relating to restrictions on the export or import of capital, including but not limited to foreign exchange controls, affecting the remittance of dividends, interest and other payments of nonresident holders of the registrant's securities.

(b) State whether there are any limitations, either by the law of the country under which the registrant is organized or in the charter or other constituent document of the registrant, on the right of foreigners to hold or vote securities. Outline briefly any such limitations.

(c) Outline briefly all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country of origin. A brief description of pertinent provisions of any reciprocal tax treaties between such foreign country and the United States regarding withholding should be included. If there are no such treaties, so state.

* * * * *

Item 10. Selected Financial Data.

Furnish in comparative columnar form a summary of selected financial data for the registrant, for

(a) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions.

1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlight significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in ASR 268); and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

3. Those registrants which are required to provide five-year summary information in accordance with SFAS 33 may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the registrant in the Summary and in these Instructions shall mean the registrant and its consolidated subsidiaries.

* * * * *

Item 11. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a), (b) and (c) of this section with respect to liquidity, capital resources, and results of operations, and should also provide such other information which the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources mav be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion would focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(a) *Liquidity.*

Identify any known trends or any known demands, commitments, events or uncertainties which will result in or which are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the registrant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liqudity, and briefly discuss any material unused sources of liquid assets.

(b) *Capital resources.*

Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and the relative cost of such resources. This discussion should consider changes between equity, debt and any off-balance sheet financing arrangement.

(c) *Results of operations.*

Describe any unusual or infrequent events or transactions or any significant economic changes which materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expense which, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

Describe any known trends or uncertainties which have had or which the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments) the change in the relationship should be disclosed.

To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

For the three most recent fiscal years of the registrant, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the registrant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

Instructions.

1. The registrant's discussion and analysis shall be of the financial statement and of other statistical data which the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion should cover the three year period covered by the financial statements and should utilize year-to-year comparisons or any other formats which in the

registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five year selected financial data appearing in Item 10 of Regulation S-K may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 11 need only include that which is available to the registrant without undue effort or expense but which does not clearly appear in the registrant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the registrant's businesses as a whole; *provided, however*, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (a) of this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the registrant should indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the registrant's own business or businesses. For example, a discussion of working capital may be appropriate for certain manufacturing, industrial or related operations but might be inappropriate for a bank or public utility.

6. Registrants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently-known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Securities Act Release No. 6084 (June 25, 1979) [44 FR 38810].

7. Registrants which are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of SFAS 33 may combine such explanations with the registrant's discussion and analysis required pursuant to this provision or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined the discussion of the impact of inflation otherwise required by this item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign registrants need not comply with SFAS 33 but if, in its home country, a foreign registrant must satisfy requirements that are analogous to SFAS No. 33, then such analogous presentation shall be given.

8. Registrants which are not required to provide explanations of supplementary information disclosed in accordance with SFAS 33 (including foreign private registrants) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numeric financial data need be presented.

9. All references to the registrant in the discussion and in these instructions shall mean the registrant

and its subsidiaries consolidated.

10. Foreign private registrants should also discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors which have materially affected or could materially affect, directly or indirectly, company operations or investments by United States nationals.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. Part 231 is amended by rescinding Guide 22, "Summary of Earnings," of the Guides for the Preparation and Filing of Registration Statements Under the Securities Act of 1933.

5. Part 231 is amended by rescinding Guide 26, "Statement of Dividend Policy," of the Guides for the Preparation and Filing of Registration Statements Under the Securities Act of 1933.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. By amending §239.11 to read as follows:

§239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by items 10 and 11 of Regulation S-K (17 CFR 229.20).

In addition, (a)(1) If debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any issuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long-term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long-term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirement shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the interest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

A summary prospectus used pursuant to Rule 434A (17 CFR 230.434a) shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the

public, the aggregate underwriting discounts and commissions and the offering price per unit to the public; as to Item 2(a), the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; as to Item 2(c), a brief statement as to the manner of distribution; as to Item 3, a brief statement of the principal purposes for which the proceeds are to be used; Item 4; Item 5; as to Item 6, only the selected financial data (Item 10 of Regulation S-K) and the ratio of earnings to fixed charges (Sub-items 6a-6c) need be provided; Item 7, if the registrant was organized within 5 years; as to Item 9, a brief statement of the general character of the business done and intended to be done; Item 11(a); as to Item 12, a brief statement of the nature and present status of any material pending legal proceedings; as to Item 13, only 13(a)(1) and (2); as to Item 14(a), a brief statement as to interest and maturity provisions; as to Item 15, information corresponding to the foregoing and Item 18(b) as to outstanding options to purchase securities of any class being registered.

* * * * *

7. By amending §239.26 to read as follows:

§239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Items 10 and 11 of Regulation S-K (17 CFR 229.20).

In addition, (a)(1) If debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. If appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subisidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any issuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons. In the case of utilities, interest credits charged to construction shall be added to gross income and not deducted from interest.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long term debt or the annual dividend requirements on such preferred stock. To the extent that an issued represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the intrest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

1. * * *

(g) As to Item 6, only the Selected Financial Data (Item 10 of Regulation S-K) and the ratio of earnings to fixed changes (Sub-items 6a-6c) need be provided.

* * * * *

8. By amending §239.18 to read as follows:

§239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 6. Selected Financial Data; Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Items 10 and 11 of Regulation S-K (17 CFR 229.20).

In addition, (a)(1) If debt securities are being registered, the registrant shall show in tabular form for each fiscal year or other period the ratio of earnings to fixed charges. if appropriate, the ratio of earnings to fixed charges for such periods shall also be shown on a total enterprise basis in a position of equal prominence with the ratio for the registrant or the registrant and its consolidated subsidiaries (see Accounting Series Release No. 122). There shall also be shown for the most recent fiscal year or twelve months a pro forma ratio of earnings to fixed charges, adjusted to give effect to (i) the issuance of the securities being registered, (ii) any isuance, retirement or redemption of securities during such period, or (iii) any issuance, retirement or redemption of securities after, or presently proposed for one year after, such period.

(2) Earnings shall be computed after all operating and income deductions except fixed charges and taxes based on income or profits and after eliminating undistributed income of unconsolidated subsidiaries and 50 percent or less owned persons.

(3) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness; (ii) such portion of rentals as can be demonstrated to be representative of the interest factor in the particular case; and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

(b) If long-term debt or preferred stock is being registered, there shall be shown the annual interest requirements of such long-term debt or the annual dividend requirements on such preferred stock. To the extent that an issue represents refunding or refinancing, only the additional annual interest or dividend requirements shall be stated. If preferred stock is being registered, there shall also be shown in tabular form for each fiscal year or other period the ratio of earnings to combined fixed charges and preferred dividend requirements.

(c) For the purpose of computing the pro forma ratio required in paragraph (a)(1), an assumed maximum interest rate may be used on securities as to which the interest rate has not yet been fixed, which assumed rate shall be shown.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. By amending §240.14a-3 to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than §210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

NOTE: Information required by §210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by

§210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

(3) The report shall contain the Supplementary Financial Information specified by Item 12 of Regulation S-K (17 CFR 229.20).

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of Item 10 of Regulation S-K (17 CFR 229.20).

(ii) The report shall contain Management's Discussion and Analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S-K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's common stock and related security holder matters in accordance with the provisions of Item 9 of Regulation S-K (17 CFR 229.20).

(9) Management's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited, on the written request of any such person, a copy of the issuer's annual report on Form 10-K including the financial statements and the financial statement schedules, required to be filed with the Commision pursuant to Rule 13a-1 under the Act for the issuer's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, an issuer need not undertake to furnish without charge copies of all exhibits to its Form 10-K provided that the copy of the annual report on Form 10-K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the issuer will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expenses in furnishing such exhibit. If the issuer's annual report to security holders complies with all of the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such issuer need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

NOTE: * * *

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(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a-6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

NOTE: * * *

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10. By amending §240.14c-3 to read as follows:

§240.14c-3 Annual report to be furnished to security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than §210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be

omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

NOTE: Information required by §210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by §210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

(3) The report shall contain the Supplementary Financial Information specified by Item 12 of Regulation S-K (17 CFR 229.20).

(4)(i) The report shall contain Selected Financial Data in accordance with the provisions of Item 10 of Regulation S-K (17 CFR 229.20).

(ii) The report shall contain Management's Discussion and Analysis of the issuer's financial condition and results of operations in accordance with the provisions of Item 11 of Regulation S-K (17 CFR 229.20).

* * * * *

(8) The report shall contain the market price of the issuer's common stock and related security holder matters in accordance with the provisions of Item 9 of Regulation S-K (17 CFR 229.20).

(9) The information statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person furnished a copy of the information statement, on the written request of any such person, a copy of the issuer's annual report on Form 10-K including the financial statements and the financial statement schedules required to be filed with the Commission pursuant to Rule 13a-1 under the Act for the issuer's most recent fiscal year, and shall indicate the name and address of the person to whom such a written request is to be directed. In the discretion of management, an issuer need not undertake to furnish without charge copies of all exhibits to its Form 10-K provided that the copy of the annual report on Form 10-K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the issuer will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the issuer's reasonable expense in furnishing such exhibit. If the issuer's annual report to security holders complies with all of the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such issuer need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

NOTE: * * *

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(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of the information statement are filed with the Commission pursuant to Rule 14c-5, whichever date is later. The report is not deemed to be "filed" with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

NOTE: * * *

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND THE GENERAL RULES AND REGULATIONS THEREUNDER

* * * * *

11. Part 241 is amended by rescinding Guide 1, "Summary of Operations," of the Guides for the

Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934.

12. Part 241 is amended by amending Guide 4, "Integrated Reports to Shareholders," of the Guides for the Preparation and Filing of Reports and Proxy and Registration Statements Under the Securities Exchange Act of 1934 to read as follows:

Guide 4. Integrated Reports to Security Holders. Annual and quarterly reports to security holders may be combined with the required information of Form 10-K and Part I of Form 10-Q and be suitable for filing with the Commission when the following conditions are satisfied:

(a) The report contains full and complete answers to all items required by Form 10-K or Part I of Form 10-Q. When responses to a certain item of required disclosure are separated within the report, an appropriate cross-reference should be made. If the information required by Part III of Form 10-K is omitted by virtue of General Instruction G, a definitive proxy or information statement shall be filed.

(b) Any additional information or exhibits contained in the reports shall meet the requirements of Rules 12b-20 (17 CFR 240.12b-20) and 12b-30 (17 CFR 240.12b-30) of the Securities Exchange Act of 1934.

(c) For purposes of Form 10-K, its cover page and the required signatures shall be included. For purposes of Form 10-Q, its cover page, appropriate responses to Part II and the required signatures shall be included. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

(d) Any pictorial or graphic representations shall comply with the provisions of Guide 8 of the Guide for Preparation and Filing of Registration Statements (Securities Act Release No. 5171 (July 20, 1971)).

(e) The report should contain a disclaimer of any action on the part of this Commission to approve or disapprove the report or to pass upon its accuracy or adequacy.

(f) An annual report to security holders prepared on an integrated basis may also be submitted in satisfaction of Rule 14a-3 (17 CFR 240.14a-3) under the Securities Exchange Act of 1934. When filed as the annual report on Form 10-K, responses to the Items of that form are subject to Section 18 of the Act.

(g) A quarterly report to security holders filed in satisfaction of the requirements of Part I of Form 10-Q is not deemed to be "filed" for the purpose of Section 18 of the Act but is subject to all other provisions of the Act (Rules 13a-13(d) (17 CFR 240.13a-13(d)), 15d-13(d) (17 CFR 240.15d-13(d)).

AUTHORITY

The amendments to the forms and guides prescribed under the Securities Act of 1933 are being adopted pursuant to the authority in Sections 6, 7, 8, 10 and 19(a) of the Act. The amendments to Rule 14a-3, Rule 14c-3, and the forms and guides prescribed under the Securities Exchange Act of 1934 are being adopted pursuant to the authority in Sections 12, 13, 15(d) and 23(a) of that Act. The amendments to Regulation S-K are being adopted pursuant to all of the 1933 and 1934 Act provisions referred to above.

[Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119; 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78o(d), 78w(a)].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6232/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17115/September 2, 1980

BUSINESS COMBINATION TRANSACTIONS—NEW SHORT FORM FOR REGISTRATION AND RELATED RULE AMENDMENTS

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of Form S-15, an optional experimental short form for registration under the Securities Act of 1933 or securities issued in certain business combination transactions. At the same time, the Commission also announces the adoption of related amendments to Regulations 14A and 14C under the Securities Exchange Act of 1934, to the exhibits item of Regulation S-K, to Rule 24 of the Commission's Rules of Practice, and to Rule 411 under the Securities Act. The adoption of Form S-15 and the related rule amendments is part of the Commission's ongoing rulemaking effort designed to integrate the disclosure systems under the Securities Act and the Exchange Act and to streamline and make less burdensome the disclosure requirements imposed on registrants by those disclosure systems.

EFFECTIVE DATE: (30 days after publication in the Federal Register); however, persons desiring to use the new Form prior to that date may do so, provided that they comply with all applicable provisions of the form.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, contact Catherine Collins McCoy, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2589); thereafter, contact William E. Toomey or William E. Morley, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of new Form S-15 (17 CFR 239.29), an optional experimental form which may be used to register under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] securities issued in business combination transactions meeting certain specified criteria, and the adoption of related amendments to a number of Commission rules and regulations. As adopted, Form S-15 provides for an abbreviated prospectus to be delivered to security holders together with copies of the issuer's latest annual report to security holders. This Form generally will be available for Securities Act registration where the issuer meets the conditions as to the use of Form S-7 (17 CFR 239.27)[1] and the business combination transaction pursuant to which the registered securities are to be issued does not affect certain financial results of the issuer by more than 10%. Although the Form is not specifically limited to a maximum number of offerees, the Commission anticipates that it will be most appropriate for registration where the number of offerees is relatively small so that delivery of an annual report will not involve unusual effort or expense. In this regard, the Form presents an attractive alternative to using Rule 146 (17 CFR 230.146), the operation of which, it is claimed, has proved difficult for some issuers.

The amendments to Rule 24 of the Commission's Rules of Practice (17 CFR 201.24) and to Rule 411 under the Securities Act (17 CFR 230.411) permit incorporation by reference into a Securities Act registration statement of material contained in annual reports to security holders furnished to the Commission pursuant to Rule 14a-3 (17 CFR 240.14a-3) or Rule 14c-3 (17 CFR 240.14c-3) under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. The amendment to Item 7 (Exhibits) of Regulation S-K (17 CFR 229.20) adds Form S-15 to that Item's provisions. Finally, the amendments to Rules 14a-3 (17 CFR 240.14a-3), 14a-6 (17 CFR 240.14a-6) and 14a-12 (17 CFR 240.14a-12) of Regulation 14A (17 CFR 240.14a-1 et seq.) and to Rules 14c-2 (17 CFR 240.14c-2) and 14c-5 (17 CFR 240.14c-5) of Regulation 14C (17 CFR 240. 14c-1 et seq.) provide that the informational filing requirements of those Regulations, where applicable to the business combination transaction, would be satisfied when Form S-15 is used to register the issued securities under the Securities Act. The specific provisions of Form S-15 and the related amendments adopted today are discussed in greater detail below under "Synopsis of Form S-15 and Related Amendments."

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[1]These conditions include a minimum earnings test and a requirement that the registrant has provided continuous disclosure to investors pursuant to the reporting requirements of Sections 13(a), 14 and 15(d) of the Exchange Act. *See* Note 13 infra.

BACKGROUND

Proposed Form S-15 and related rule amendments were published for public comment on January 15, 1980,[2] simultaneously with three other releases which, taken together, constituted a major effort to achieve a simplified and integrated disclosure system. Those other actions were (1) proposed amendments to Form 10-K (17 CFR 249.310), Regulation S-K (17 CFR 229.20), and Rule 14a-3;[3] (2) proposed amendments to Regulation S-X (17 CFR Part 210) which would establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act and for annual reports to security holders;[4] and (3) proposed amendments to Regulation S-X which would require certain additional accounting disclosures in annual reports to security holders and would eliminate, to the extent possible, the differences between the requirements of that regulation and the requirements of Generally Accepted Accounting Principles ("GAAP").[5] The Commission today also announced final rulemaking action on each of these three matters; in this regard, attention is directed to Securities Act Release No. 6231, September 2, 1980 (Form 10-K, Rule 14a-3 and Regulation S-K); Securities Act Release No. 6234, September 2, 1980 (Uniform Financial Statement Instructions); and Securities Act Release No. 6233, September 2, 1980 (General Revision of Regulation S-X).

As was indicated in the January release proposing amendments to Form 10-K, Rule 14a-3 and Regulation S-K,[6] the Commission considered the four proposals published together in January to be the first of a number of steps anticipated to be taken in order to achieve integration and simplification of existing disclosure requirements. At that time, the Commission broadly outlined the design of a simplified Securities Act disclosure system integrated with the Exchange Act system by relying to varying degrees upon both formal and informal, *i.e.*, filed and unfiled, documents prepared pursuant to Exchange Act requirements. Specifically, the Commission anticipated delineating three general categories or levels of companies, with the degree of required disclosure and of document dissemination differing with each level. The Commission has now developed three new proposed Securities Act registration statement forms to be used by companies in the three levels and is publishing those proposed forms for comment[7] concurrently with the adoption of Form S-15 and of the other final rule amendments announced today, and the proposal for comment of amendments to Form 10-Q (17 CFR 249.308a) which will make that Form consistent with the new Form 10-K.[8]

The proposed forms (denominated Forms A, B and C for purposes of proposal discussion), particularly proposed Form B, raise a number of issues which also arose in the context of Form S-15 and which are not yet resolved. These issues include (1) whether delivery of the annual report to security holders with the prospectus should be mandatory or optional, (2) which documents should be incorporated by reference into prospectuses, (3) for what transactions abbreviated prospectuses are appropriate, and (4) how to ensure equivalent disclosure when issuers have the option of prospectus presentation or annual report delivery. Rather than delay adoption of Form S-15 until such time as all issues associated with the Commission's integration program have been resolved, however, the Commission has determined to adopt Form S-15 at this time as an experiment. A number of commentators on proposed Form S-15 specifically urged that the Commission consider and adopt Form S-15 independently of the other parts of its integration program so that the benefit of its savings would be made available as soon as possible, regardless of any delaying problems encountered in implementing the other proposals. Form S-15's prompt adoption, on an experimental basis,[9] is

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[2]Securities Act Release No. 6177 (January 15, 1980) [45 FR 5934].

[3]Securities Act Release No. 6176 (January 15, 1980) [45 FR 5972].

[4]Securities Act Release No. 6179 (January 15, 1980) [45 FR 5963].

[5]Securities Act Release No. 6178 (January 15, 1980) [45 FR 5943].

[6]Securities Act Release No. 6176.

[7]Securities Act Release No. 6235 (September 2, 1980).

[8]Securities Act Release No. 6236 (September 2, 1980).

[9]Securities Act Release No. 6177 stated that proposed Form S-15, if adopted, would be in the nature of an experiment and that its use and effects would be carefully watched so that the Commission could consider the advisability of either expanding or limiting its availability.

responsible to those commentators' views. More importantly, however, the Commission believes that experience with Form S-15 and its mandatory use of the issuer's annual report to security holders will provide empirical data as to its operation and usage which will be a valuable aid in evaluating proposed Form B, which as proposed would provide issuers with the option of either delivering the annual report or providing equivalent disclosure in the prospectus.

Proposed Form S-15 generated substantial public commentary. The commentators were overwhelmingly in favor of the Commission's goals of simplifying the disclosure provided to investors, reducing the burdens and costs which Securities Act registration imposes on issuers and integrating further the disclosure requirements of the Securities Act and Exchange Act. The majority of commentators believed proposed Form S-15 to be a significant step toward accomplishing those goals and urged that the Commission promptly adopt the new Form. A substantial number of helpful specific comments and suggestions were offered in connection with proposed Form S-15, quite a few of which are reflected in changes made from Form S-15 as proposed to Form S-15 as adopted. These specific comments, as well as others not directly reflected in the text of the form and rule amendments as adopted, are discussed below in the "Synopsis" portion of the release.

SYNOPSIS OF FORM S-15 AND RELATED AMENDMENTS

The following brief synopsis is intended to assist interested parties in their understanding of the new Form and related rule amendments. Respects in which the Form and rule amendments differ from those as proposed are included in this discussion. Attention is directed to the text of the proposals for a more complete understanding.

I *Form S-15*

A. *Availability*

General Instruction A to Form S-15 provides that the form is available only for registration of securities issued (a) in transactions of the character specified in Rule 145(a) (17 CFR 230.145),[10] (b) in a merger where applicable state law does not require a vote of the security holders of the company being acquired ("short form mergers") or (c) in an exchange offer for securities of another person where the amount of securities already held and the amount of securities to be sought in the exchange offer aggregate at the time of filing will exceed 50% of that class of securities of the other person. As proposed, the transactions for which Form S-15 would have been available were limited to transactions of the character specified in Rule 145(a)(2) and (a)(3) and exchange offers resulting in the issuer's acquisition of 80% of the voting power of the other person. A substantial number of the public commentators on proposed Form S-15 recommended that the Form's use be greatly expanded. While the Commission believes that the experimental value of Form S-15 might be impaired were its use expanded significantly beyond that proposed, it has determined that inclusion of Rule 145(a)(1) transactions,[11] short form mergers, and exchange offers to acquire a majority but not 80% is consistent with and compatible with the limited purpose for which Form S-15 is adopted.

A Form S-15 transaction must also meet the five conditions set forth in General Instruction A. The first condition restricts the Form's use to transactions where relatively small companies are acquired by substantially larger companies.[12] Under this condition, the effect of the transaction must not be a change of more than 10% between the items

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[10]Where the transaction pursuant to which securities are to be registered on Form S-15 is of the character specified in Rule 145(a)(1), (a)(2) or (a)(3), the provisions of Rule 145(c) and (d) will be applicable to persons and parties deemed underwriters with respect to those securities.

[11]Rule 145(a)(1) transactions are reclassifications of securities, other than stock splits, reverse stock splits, or changes in par value, which involve the substitution of a security for another security.

[12]The test for the effect of the transaction used in General Instruction A to proposed Form S-15 is similar to the tests set forth in Securities Act Release No. 4950 (February 20, 1980) for determining whether relief should be granted from the requirement for 3-year certified financial statements of companies acquired or to be acquired. It should be noted, however, that the test in General Instruction A to proposed Form S-15 is to be used only for purposes of determining the availability of such Form, and that, for all purposes other than Form S-15 availability and disclosure requirements, the standards and positions expressed in Release No. 4950 remain unchanged.

listed in General Instruction A.1(a) (gross sales and operating revenues, net income, total assets, and total shareholders' equity) for the issuer on a pro forma combined consolidated basis giving effect to the transaction in question. In addition, the total purchase price must not exceed 10% of the issuer's total assets. This provision differs from proposed General Instruction A.1(b), which would have provided instead that the total purchase price must not exceed 10% of the aggregate market value of voting stock held by nonaffiliates. A number of commentators believed the condition proposed was too restrictive and too difficult to apply as a practical matter. The condition as adopted addresses these concerns while still ensuring that the Form will not be used for transactions which have a substantial effect on the issuer. In this regard, a Note was added to condition A.1 to indicate that, while the Form may be used for multiple simultaneous acquisitions, it may only be so used if the condition is met on both an individual and an aggregate basis.

The second condition requires the issuer of the securities being registered to meet the requirements for the use of Form S-7 (17 CFR 239.26)[13] and to have furnished its latest annual report to security holders pursuant to Rule 14a-3 or 14c-3. The fact that the issuer will have been filing Exchange Act reports for at least three years, and that certain information about the issuer is thus already publicly available and disseminated, enables the Commission to reduce the actual prospectus disclosure requirements with respect to the issuer. The eligibility criteria of proposed Form B[14] which would, if adopted, replace Form S-7, are not as strict as those of Form S-7.[15] Should Form B be adopted as proposed, Form S-15 would be amended accordingly so that General Instruction A.2 would be met if the issuer qualifies for the use of Form B.

This second condition, as adopted, reflects a change made in response to a point raised by a number of commentators. Proposed General Instruction A.2 required the issuer to have furnished an annual report to security holders for its latest fiscal year. This provision would have had the effect of precluding the Form's use for the period between the end of the issuer's fiscal year and the time an annual report is prepared and disseminated to security holders. The Commission does not believe such preclusion is necessary or appropriate. Therefore, the requirement of General Instruction A.2 as adopted is that the issuer have furnished its latest annual report to security holders. Corresponding changes were also made to Items 6 and 9 of Form S-15.

The third condition to the use of Form S-15 is that the transaction pursuant to which the registered securities are being issued has been approved or recommended by the boards of directors of both parties to the transaction. A clarifying phrase has been added to the condition which specifies the Commission's intent that this condition must be met as of the date of effectiveness of the registration statement. While not all the commentators who addressed this condition agreed that it is necessary, the Commission believes that it is a useful means to ensure that the abbreviated Form S-15 format is not used for transactions where fuller disclosure may be appropriate.

The fourth condition provides that the prospectus must be delivered to security holders at least 20 days prior to the meeting date or the date of the vote, consent or authorization or the date the transaction is consummated. Changes were made from the language as proposed to clarify that the solicitation is to be made in accordance with applicable state or federal law, but in no event later than 20 days prior,

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[13]Generally, an issuer may use Form S-7 if it (a) has a class of securities registered under Section 12 (15 U.S.C. 78*l*) or is required to file reports pursuant to Section 15(d) (15 U.S.C. 78o(d)) of the Exchange Act; (b) has been subject to the requirements of Section 12 or 15(d), and has filed all applicable reports, for 36 calendar months prior to the filing of the registration statement and has timely filed all required reports for the past twelve calendar months; (c) has not defaulted in payments on preferred stock, indebtedness for borrowed money or long-term leases during the past 36 months; and (d) has had consolidated net income of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

[14]Securities Act Release No. 6235 (September 2, 1980).

[15]Proposed Form B eligibility differs from existing Form S-7 in that (1) the issuer must have had positive net income for two out of the three last fiscal years (rather than net income of $250,000 for three out of the last four years), including the most recent year and (2) the prohibition on defaults in payments on preferred stock, indebtedness and long-term leases has been somewhat modified.

and to clarify that 20-day prior delivery is required even where no meeting is held and no vote, consent or authorization is solicited.

As proposed, Form S-15 would have been unavailable for transactions where either the issuer or the company being acquired engages in significant oil and gas related operations. The Commission believed this exclusion, which was similar to the exclusion of such companies from use of Form S-18 (17 CFR 239.28) and Rule 242 (17 CFR 230.242), was appropriate because of the staff's current study of oil and gas disclosure requirements. The public commentators who addressed this condition, however, unanimously urged that companies engaged in oil and gas related operations not be excluded from using Form S-15. The Commission now requires such companies' annual reports to security holders prepared pursuant to Rule 14a-3 to contain the same financial information about oil and gas operations as is called for by Regulation S-X.[16] Accordingly, because of the unique and limited circumstances of Form S-15, and its experimental nature, the Form as adopted is available where the issuer or the company being acquired engages in significant oil and gas operations. Should the staff's on-going study of oil and gas disclosure requirements culminate in further amendments to existing requirements, those amendments would automatically be reflected in Form S-15 through its use of the annual report to security holders and its reference to Regulations S-K and S-X.

Finally, Form S-15 is available only when neither the issuer nor the company being acquired is a registered investment company. This provision is the same as that contained in proposed Form S-15, in connection with which the Commission invited comment as to whether the Form should be available to registered investment companies and, if so, what, if any, conditions and modifications to Form S-15 would be appropriate. Five commentators responded to this invitation for comment, all recommending that investment companies be able to use either Form S-15 or a similarly abbreviated form. A number of helpful detailed suggestions were submitted as to appropriate conditions to such a form's use and approaches to prospectus content and document delivery requirements. These comments also reinforced the Commission's belief that Form S-15 would require at least some modifications before it would be feasible for investment companies to use the Form. While the Commission has determined not to make Form S-15 available for investment company use at this time, it is considering the comments received in this regard in connection with its ongoing overall review of disclosure requirements for investment companies.

With the limited exception of the addition of the few types of business combination transactions noted above, and the deletion of the prohibitions for resales and for companies engaged in oil and gas operations, the availability of Form S-15 as adopted is not expanded from that of proposed Form S-15. The Commission is conscious of the public commentators' overwhelming encouragement to expand the number and types of companies and transactions for which Form S-15 could be used. Nevertheless, the Commission has decided to adopt Form S-15 at this time with its availability provisions essentially as proposed in the important respects of relative transaction size and issuer qualification to use Form S-7 so that it may gain experience with the form's use and effects. Based upon that experience, the Commission may subsequently ease some of the restrictions on Form S-15 availability, particularly at such time as the staff has had the opportunity to develop an appropriate disclosure requirement with respect to pro forma financial information.

B. *Other General Instructions*

General Instructions B and C are similar to instructions to all Securities Act forms, indicating the application of the rules and regulations under the Securities Act and specifying what documents comprise the registration statement. These instructions are adopted as proposed. The instruction requesting issuers to advise the staff of their intention to file a registration statement on Form S-15 has been deleted because experience with the instruction in existing forms has proved it to be ineffective.

Securities Act Release No. 6177, publishing proposed Form S-15 for comment, did not specifically address the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 (the "Guides")[17] or their applicability to registration statements on proposed

[16]*See* Securities Act Release No. 6231 (September 2, 1980).

[17]Securities Act Release No. 4936 (December 9, 1968) (33 FR 18671), as amended.

Form S-15. The Guides represent policies and practices followed by the Division of Corporation Finance in administering the various disclosure requirements of the Securities Act and the forms adopted thereunder. As such, they are able to be applied flexibly, when and where appropriate. Some Guides specifically indicate that they are applicable only to registration statements filed on certain forms, *e.g.*, Guide 11 applies to Form S-1 (17 CFR 239.11), Guide 28 applies to Forms S-1 and S-7 (17 CFR 239.26), Guide 30 applies to Forms S-1 and S-7, and Guide 59 applies to Forms S-1 and S-2 (17 CFR 239.12).

A number of public commentators questioned the applicability of the Guides, and in particular Guide 61, Statistical Disclosure by Bank Holding Companies, to proposed Form S-15. At the time proposed Form S-15 was published, Guide 61 by its terms specifically applied only to registration statements filed on Forms S-1, S-7 and S-14. The Commission did not believe Guide 61 disclosure would be necessary or appropriate in an abbreviated prospectus like that of Form S-15 and, therefore, did not propose to amend Guide 61 to include Form S-15. The Commission still believes that Guide 61 disclosure is unnecessary in Form S-15. In light of recent amendments to Guide 61, however, which, among other things, broadened its applicability to registration statements for which financial statements are required,[18] the Commission also believes it is appropriate at this time to state explicitly that it does not intend Guide 61 to be applicable to Form S-15 registration statements.

All other existing Guides, rules and regulations under the Securities Act are equally as applicable to Form S-15, where appropriate, as to any other Securities Act form for the registration of securities. In this regard, the Commission notes that it is engaged in an ongoing program of reviewing and reevaluating the rules, forms and Guides under the Securities Act and the Exchange Act. The first step in this program is the overall review of all of the Guides, a major project which was begun in December, 1979,[19] and which should result in the promulgation of proposed changes in the future.[20]

General Instruction D sets forth the relationship of Form S-15 to the proxy or information rules under the Exchange Act, where such are applicable to the transaction. The Form S-15 prospectus may be in the form of and may serve as the proxy or information statement used in connection with the transaction. It would be deemed to meet the informational and filing requirements of the proxy or informational rules under Section 14 of the Exchange Act, and Regulations 14A and 14C thereunder. All other provisions of those Regulations would still apply. A new paragraph (c) has been added to General Instruction D to make it clear that, where Sections 13(e), 14(d) or 14(e) of the Exchange Act apply to the transaction, the rules and regulations thereunder are still applicable to the transaction regardless of the provisions of Form S-15.

General Instruction E, Availability of the Prospectus for Reoffers or Resales, represents a change from the provision of Form S-15 as proposed, which would have prohibited use of the Form S-15 prospectus for reoffers or resales of securities acquired pursuant to that registration statement by affiliates of the issuer or by any other persons who may be deemed underwriters of such securities. As adopted, the Form S-15 prospectus will be available for such reoffers or resales, if (1) the additional information called for is provided in the prospectus, (2) the selling shareholders have an intent to make such offers and sales within sixteen months, and (3) the prospectus so used is updated in accordance with Section 10(a)(3) of the Securities Act. Most of the public commentators who addressed the proposed Form's resale prohibition believed the Form should be able to be used for that purpose, and the Commission believes that such use may be allowed without sacrificing the disclosure provided to investors. Indeed, because the Form S-15 issuer must meet the conditions to the use of Form S-7, the resale prospectus which generally would otherwise be available to be used would be that of Form S-16,

[18]Securities Act Release No. 6221 (July 8, 1980).

[19]Securities Act Release No. 6163 (December 5, 1979).

[20]Future changes in the Guides would, of course, be in addition to those made by rescinding a number of Guides (Securities Act Guide 22, Summary of Earnings, and 26, Statement of Dividend Policy, and Exchange Act Guide 1, Summary of Operations) as part of the final rulemaking amending Form 10-K, Rule 14a-3, and Regulation S-K. Securities Act Release No. 6231 (September 2, 1980).

which requires delivery of less information about the issuer than does Form S-15.[21]

A new General Instruction F has been added to make explicit the Commission's intention that, while Form S-15 relies heavily upon the concurrently adopted amendments to Form 10-K, Rule 14a-3, and Regulation S-K,[22] the delayed implementation requirements of these amendments nevertheless will not operate to delay the availability of Form S-15. Therefore, annual reports to security holders prepared with respect to fiscal years ending prior to December 15, 1980, may be used in connection with Form S-15 registration even though such annual reports are not required to contain the disclosure required to be presented in annual reports for fiscal years ending after that date. The Commission recognizes the differences in the levels of required disclosure. As a practical matter, however, requiring full implementation of the amended annual report disclosure items could delay by more than a year the availability of Form S-15 to issuers who might otherwise qualify to use and choose to use the new form. Additionally, a long delay to await full implementation of the annual report amendments would also delay the experimental use of annual reports to security holders in a Securities Act context. Accordingly, the Commission has determined to make Form S-15 available immediately.

C. *Information Required in the Prospectus*

Form S-15 provides for a short prospectus which will provide investors with the information necessary to make an investment decision presented in a comprehensible style and format. This is accomplished by requiring the issuer's latest annual report to security holders to be delivered with the prospectus. The issuer's business description, financial statements, industry segment information, market information with respect to its common stock, selected financial data, and management's discussion and analysis will be incorporated by reference from the annual report rather than presented in the prospectus itself. The prospectus, then, will contain only disclosure with respect to (1) the transaction pursuant to which the registered securities are being issued, (2) the company being acquired, and (3) any additional information about the issuer which needs to be disclosed to update that presented in the annual report delivered with the prospectus.

1. *Multiple Document Delivery*

The Form S-15 multiple document delivery approach takes advantage of one of the most useful and readable disclosure documents produced under the existing disclosure systems, the annual report to security holders prepared pursuant to Rule 14a-3 or 14c-3, both to ensure that the disclosure provided concerning the issuer is comprehensible and to reduce expenses and duplication by making use of an existing document.[23] In order that the prospectus which the annual report accompanies be equally comprehensible, issuers are urged to present information therein in as clear and concise a style as possible.

It should be noted that Form S-15 is an optional form; Forms S-1 (17 CFR 239.11) and S-14 (17 CFR 239.23) are still available should an issuer who qualifies to use Form S-15 nevertheless prefer not to deliver its annual report. A number of commentators argued: (1) that Form 10-K, rather than the annual report to security holders, should be used as the integrating document accompanying the prospectus; and (2) that issuers should be given the option of annual report delivery or presentation in the prospectus of information equivalent to that in the annual report. The Commission believes that the annual report is the preferable document and that

[21]Form S-16 [17 CFR 239.27] is available for secondary offerings if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association.

[22]Securities Act Release No. 6231 (September 2, 1980).

[23]The Commission has long recognized the annual report to security holders to be one of the most effective means of communication betwen management and security holders. *See* the discussion in two of the other releases published today, Securities Act Relese Nos. 6231 and 6235 (September 2, 1980), of the Commission's reasons for including the annual report to security holders in its integration program. *See also* Securities Exchange Act Release No. 11079 (October 31, 1974) and Securities Exchange Act Release No. 10591 (January 10, 1974).

issuers are provided sufficient opportunity to update and supplement their annual reports in the prospectus and, accordingly, need not be granted the option of presenting the annual report information in the prospectus.

While Form S-15 as adopted requires delivery of an annual report, the issue of presentation within the prospectus remains under consideration. Pending resolution of this issue, it is anticipated that S-15 as adopted will be used primarily to register those offerings not made to such a great number of offerees that mandatory annual report delivery would involve significant reproduction costs. Adopted on an experimental basis, it is believed that Form S-15 will produce meaningful data on the use of annual reports, in conjunction with shortened prospectuses, for Securities Act purposes. When the Commission considers proposed Form B, which as proposed would make annual report delivery optional, it thus will be able to add empirical data to the views expressed by the public commentators on proposed Form B. Experience with Form S-15 and the comments received on proposed Form B may also lead the Commission to amend Form S-15 appropriately.

If the company being acquired has a class of securities registered pursuant to Section 12 of the Exchange Act and has furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 for its latest fiscal year, then the issuer has the option of delivering such annual report with the prospectus and the issuer's annual report. If that option is elected, the prospectus will contain the same disclosure with respect to the company being acquired as with respect to the issuer, *i.e.*, only disclosure with respect to subsequent events and interim periods. Unlike the case for the issuer, the annual report which could be so used is that for the latest fiscal year, not the latest report furnished. The Commission believes it is appropriate that disclosure needs with respect to the company being acquired only be satisfied by annual report delivery if that report is for the latest full fiscal year.

2. *Disclosure Items*

The Form S-15 prospectus itself is required to contain the following information: Item 1, summarized information about the two companies' businesses, the transaction at hand, and comparative per share data; Item 2, terms of the transaction; Item 3, a description of the company being acquired which is of the same nature as would have been called for in a report prepared pursuant to Rule 14a-3; Item 4, certain proxy information; Item 5, information about the interests of affiliates in the transaction; Item 6, additional information about the issuer as to interim financial information, subsequent material changes and availability of reports and other information; Item 7, additional information about the company being acquired as to interim financial information, subsequent material changes, changes in control and availability of reports and other information; Item 8, additional information required if the prospectus is to be used for reoffers or resales; and Item 9, statements as to material incorporated by reference.

The Form S-15 prospectus disclosure requirements reflect a number of changes from the provisions of proposed Form S-15. First, an instruction has been added to Item 2(c), which calls for an outline of the material features of the proposed transaction, in order to emphasize that only a brief summary of the acquisition agreement terms is to be included in the prospectus. The second sentence of Item 2(d), concerning dividends in arrears and defaults, was deleted because it was unnecessary; an issuer with defaults would not qualify to use Form S-7 and therefore could not use Form S-15.

The provision in proposed Item 2(c) calling for disclosure of the reasons management of the company being acquired has for engaging in the transaction is adopted as proposed. A number of commentators objected that this provision is unnecessary and undesirable; the Commission believes, however, that this disclosure is appropriate. Like Form S-14, Form S-15 may serve the dual purpose of securities registration and proxy solicitation, where Regulation 14A or 14C is applicable to the transaction. In that event, the Form S-15 prospectus is also the proxy or information statement of the company being acquired. Item 2(e), which called for a brief description by the company being acquired of any other matters material to the fairness of the transaction to unaffiliated security holders, has been deleted. It is important for documents prepared pursuant to the federal securities laws to contain disclosure with respect to matters bearing on fairness in order for unaffiliated security holders to determine whether their rights under state law have been protected.[24]

[24]*See Sante Fe Industries, Inc.* v. *Green*, 430 U.S. 462, 474 n.14 (1977); *Wright* v. *Heizer Corp.*, 560

The Commission believes, however, that the provisions of Items 2 and 5 of Form S-15 as adopted adequately address this concern and that, accordingly, an explicit item in Form S-15 is not necessary. Moreover, the Commission plans to consider existing registration forms for all business combinations in the next phase of its review of Securities Act and Exchange Act rules and forms, and the issue of an explicit fairness disclosure item will be revisited at that time.

An instruction has been added to Item 3(b) to point out that the Commission may waive any of the financial information requirements of Item 3(b)(iv), (vi) and (vii) which it deems appropriate. This instruction is similar to that contained in Item 15(c) of Schedule 14A (17 CFR 240.14a-101) and indicates that the existing financial statement waiver procedures used in the Form S-14 context will be operative in the Form S-15 context as well. In addition, part of the five-year period for which selected financial data is required by Regulation S-K may be waived if unduly burdensome.

The Commission made a specific inquiry of commentators as to what beneficial ownership disclosure was thought appropriate in Form S-15, voting power alone or Regulation S-K, Item 6 disclosure. The majority of the commentators who responded to this inquiry favored consistency of beneficial ownership disclosure and, therefore, preferred Item 6 disclosure in Form S-15. Accordingly, Item 4 as adopted is unchanged from the proposal and refers to the requirements of Items 6(a) and 6(b) of Regulation S-K.

The public commentators who discussed the problem of updating the issuer's latest annual report overwhelmingly favored an approach which would grant issuers the greatest amount of flexibility in determining how best to update that report. Accordingly, Item 6 of Form S-15 has been changed to add a new paragraph (a) which calls for financial and other information as of the end of the most recent fiscal quarter for which a Form 10-Q has been filed. The information is to be in the form required by Part I of Form 10-Q (17 CFR 249.308a) but may be provided by any one of three means: (1) inclusion in the prospectus; (2) delivery of the Form 10-Q with the prospectus and annual report; or (3) delivery with the prospectus and annual report of the issuer's latest quarterly report to security holders if that report contains the required information. The other change to Item 6 is to add an undertaking, where the Form 10-Q delivery option is not chosen, to provide the issuer's latest Form 10-Q without charge upon request. Similar provisions with respect to the company being acquired have been added to Item 7 of Form S-15. This Item is applicable if the acquired company has a class of securities registered under Section 12 of the Exchange Act, has furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 for its latest fiscal year, and such annual report is being used in place of prospectus disclosure.

Both Items 6 and 7 have also been changed to add significant business combinations accounted for as purchases to those matters for which financial information may be required in the prospectus if not reflected in the financial statements in the annual report(s) delivered with the prospectus. This change was made in response to the suggestion of the commentators, as was the addition to Item 7(b) of the term "material" to identify what changes must be described thereunder. The latter change was necessitated by the inadvertent omission of the term in the proposal.

New Item 8, to be complied with if the Form S-15 prospectus is to be used for reoffers and resales, calls for (1) information in regard to the persons on whose behalf the securities are offered; (2) information with respect to the consummation of the proposed transaction and (3) information, including financial statements, necessary to make the prospectus current. This Item was modelled after Item 2 of Form S-14.

Item 9, which requires certain statements to be made as to information delivered with the prospectus and incorporated by reference therein, reflects a change from the Item as proposed. The Commission, concerned about ensuring prospectus readability, specifically inquired of commentators whether the detailed description of material incorporated by reference into the Form S-15 registration statement should (1) be required in the prospectus, (2) be allowed only in Part II of the Form,

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Footnote 24 continued

F.2d 236, 250 (7th Cir. 1977), *cert. denied*, 434 U.S. 1066 (1978); and *SEC* v. *Parklane Hosiery Co.*, 588 F.2d 1083, 1088-9 (2d Cir. 1977), with respect to the materiality of information which would be useful to security holders in challenging a transaction under state law.

or (3) be placed in either location, or both, at the issuer's option. Because there may be equally valid reasons for choosing to include the detailed description in either part of the registration statement, the Commission has decided to adopt the third alternative and thus afford issuers maximum flexibility. At the same time, however, issuers are cautioned to avoid legalistic descriptions which would impair the readability of the prospectus.

D. *Information Not Required in the Prospectus*

Part II of Form S-15 is similar to that part of other forms adopted for Securities Act registration of securities. It is a part of the registration statement filed with the Commission but is not delivered to security holders.

The provisions of Part II of Form S-15 are as follows. First, Item 10 requires an undertaking by the issuer to deliver with each prospectus a copy of its latest annual report to security holders, as well as a copy of the annual report of the company being acquired if that report has been used to satisfy prospectus disclosure requirements with respect to business, financial and other information about the company being acquired.

Item 10 as adopted deletes the requirement in this Item of proposed Form S-15 that the issuer's undertaking to transmit certain material with the prospectus be dated as of a date not more than twenty days prior to the effective date of the registration statement. A number of commentators questioned the necessity for such a dating requirement and pointed to the practical problems it could raise, such as creating the necessity for filing a pre-effective amendment merely because the undertaking has become stale. Because the Commission does not wish to impose any unnecessary burdens upon issuers, the proposed undertaking dating provision is not included in the Form as adopted.

Next, Item 11 requires a statement specifically incorporating by reference into the registration statement (a) certain portions of the annual report(s) to security holders and (b) any reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act by the issuer, as well as by the company being acquired if the latter is subject to those reporting requirements, for periods subsequent to that covered by the annual report(s) delivered with the prospectus. A new Item 12 requires undertakings similar to those required by Form S-8 (17 CFR 239.16b) and Form S-14 dealing with appropriately updating prospectuses. This new Item was necessitated by the expansion of Form S-15 to resales and reoffers by persons deemed underwriters. The remaining provisions deal with the interests of experts named in the registration statement (Item 13) and with exhibits to the registration statement as required by Item 8 of Regulation S-K (Item 14).

Form S-15 does not require that the issuer's latest proxy statement must be delivered along with the annual report to security holders and the prospectus. Item 4 of Form S-15 calls for the same disclosure as to directors and executive officers and beneficial ownership of securities which is contained in the proxy statement. Disclosure as to management remuneration (Item 4 of Regulation S-K) would not be contained in the documents actually delivered to security holders. This information is incorporated by reference into the registration statement, however, because it is either contained in the issuer's latest Form 10-K report or is incorporated by reference therein from the issuer's latest proxy statement. Most commentators who responded to the Commission's specific invitation to comment on this point agreed that there should not be a requirement to deliver the proxy statement with the Form S-15 prospectus.

II. *Related Amendments*

A. *Rules on Incorporation by Reference*

Form S-15 requires incorporation by reference into the registration statement of certain information contained in the annual report to security holders. That report, prepared pursuant to Regulation 14A or 14C, particularly Rule 14a-3 or 14c-3 thereof, is furnished to the Commission for its information, but is not deemed "filed" with the Commission.[25] The Commission is amending Rule 24 of its Rules of

[25]Rule 14a-3(c) (17 CFR 240.14a-3(c)) provides: "Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information. . . . The report is not deemed. . .to be 'filed' with the Commission or subject to this regulation otherwise than as provided in this rule or to the liabilities of Section 18 of the Act, except to the extent that the issuer specifically requests that it be treated as a part of the proxy

Practice (17 CFR 201.24) and Rule 411 (17 CFR 230.411) which make clear that information contained in such reports, though the reports are not deemed filed with the Commission, nevertheless may be incorporated by reference into a registration statement filed pursuant to the Securities Act. The company is still responsible for the information incorporated as if it had been set forth in the prospectus. These amendments are adopted as proposed.

B. *Rules 14a-3, 14a-6, 14a-12, 14c-2, 14c-5*

Exchange Act Rule 14a-3(a) (17 CFR 240.14a-3(a)) provides that no solicitation subject to the proxy rules shall be made unless each person solicited is concurrently furnished or has previously been furnished a written proxy statement containing the information specified in Schedule 14A (17 CFR 240.14a-101) under that Act. The Commission is amending Rule 14a-3 to provide that material filed in a Form S-15 registration statement under the Securities Act containing the information required by that Form satisfies the requirements of the Rule.

The Commission is amending Exchange Act Rule 14a-6(j) (17 CFR 240.14a-6(j)) to provide that material filed in an S-15 registration statement under the Securities Act satisfies the filing requirements of the proxy rules under the Exchange Act. This amendment enables registrants to avoid filing copies of the registration statement as a proxy statement under the Exchange Act and paying a proxy filing fee.

Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12) provides that solicitations in opposition to prior solicitations may be made before furnishing security holders a written proxy statement containing the information specified in Schedule 14A if certain conditions are met, including that no form of proxy be furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) is furnished. Where a proxy statement then meeting the requirements of Schedule 14A has already been furnished to security holders, however, this latter condition is inapplicable. Since the amendment to Rule 14a-3(a) provides that a proxy statement included in a registration statement filed under the Securities Act on Form S-15 may contain the information specified in that Form in lieu of the information specified in Schedule 14A, the Commission is amending Exchange Act Rule 14a-12(a) to refer to Rule 14a-3(a) and to delete the reference to Schedule 14A.

Rule 14c-2(a) under the Exchange Act (17 CFR 240.14c-2(a)) requires an issuer subject to the information rules to transmit to its security holders a written information statement containing the information specified in Schedule 14C. To provide similar treatment for proxy material and information statements, the Commission is amending Rule 14c-2 to provide that material filed in a Form S-15 registration statement satisfies the requirements of the Rule.

Also in order to provide similar treatment for proxy material and information statements, the Commission is amending Exchange Act Rule 14c-5(e) (17 CFR 240.14c-5(e)) to provide that material filed in a Form S-15 registration statement under the Securities Act satisfies the filing requirements of Regulation 14C under the Exchange Act. In such instances, no information statement filing fee is required.

The foregoing amendments to Regulations 14A and 14C are adopted exactly as proposed.

C. *Item 7 (Exhibits) of Regulation S-K*

As was indicated in Securities Act Release No. 6177, which published proposed Form S-15 for comment, the proposed Form assumed that the Commission's then outstanding proposal to incorporate uniform exhibit requirements into Item 7 of Regulation S-K would be adopted. It was therefore contemplated that at such time as the Commission decided to adopt Form S-15, new Item 7 of Regulation S-K would be amended by adding a new column to Table I thereof indicating that the following exhibits would be required for filings on Form S-15: plan of acquisition, reorganization arrangement, liquidation or succession; instruments defining the rights of security holders; opinion re legality; opinion re tax matters; and material contracts. Item 7 (Exhibits) of Regulation S-K was adopted by the Commission on August 27, 1980.[26] Accordingly, the Commission is

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Footnote 25 continued

soliciting material or incorporates it in the proxy statement by reference." Rule 14c-3(b) (17 CFR 240.14c-3(b)) contains a similar provision.

[26]Securities Act Release No. 6230 (August 27, 1980).

adopting the amendment thereto described in the proposal published in Securities Act Release No. 6177, with the addition of a requirement for a letter re unaudited financial information which provides consistency of Securities Act exhibit requirements in this regard.

TEXT OF FORM AND RULE AMENDMENTS

17 CFR Chapter II is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By adding §239.29 to read as follows:

§239.29 Form S-15, optional form for registration of securities to be offered in certain business combination transactions.

SECURITIES AND EXCHANGE COMMISSION
FORM S-15
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

(Address, including Zip Code, and telephone number, including area code, of issuer's principal executive offices)

(Name, address and telephone number of agent for service)

Approximate date of commencement of the proposed sale of the securities to the public_____.

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

FORM S-15
GENERAL INSTRUCTIONS

A. *Rule as to Use of Form S-15.*

Form S-15 may be used for registration under the Securities Act of 1933 of securities to be issued either (a) in a transaction of the type specified in Rule 145(a) (§230.145(a); (b) in a merger in which a vote of the security holders of the company being acquired is not required pursuant to applicable state law; or (c) in an exchange offer for securities of another person if the securities sought to be acquired together with any securities owned by the issuer at the time of the filing of the registration statement will aggregate in excess of 50% of the class of securities which is the subject of the exchange; Provided, that each of the following conditions is met:

1. (a) The change in each of the following items for the issuer on an historical basis compared to those for the issuer on a pro forma consolidated basis giving effect to the transaction does not exceed 10 percent for the latest fiscal year (with respect to items (i) and (ii)) and as of the end of the latest fiscal year (with respect to items (iii) and (iv)):

(i) gross sales and operating revenues;
(ii) net income;
(iii) total assets; and
(iv) total shareholders' equity.

(b) The total purchase price (market value of the securities being registered as of the date of filing the registration statement plus any additional cash consideration being offered) does not exceed 10% of the issuer's total assets as of the end of the latest fiscal year for which a report on Form 10-K (§249.310) has been filed.

Note: Form S-15 may be used to register securities to be issued pursuant to more than one single acquisition transaction. In order for the Form to be used in connection with simultaneous acquisitions or exchange offers of more than one company, however, the conditions of Instruction A. 1. above must be met on both an individual and an aggregate basis.

2. At the time of filing the registration statement, the issuer (a) meets the requirements for the use of Form S-7 (§239.26), (b) has furnished its latest annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) and (c) such report contains audited year-end financial statements as of a fiscal year end not more than

fifteen months prior to the date the registration statement becomes effective.

3. On or prior to the date of effectiveness of the registration statement, the transaction has been approved or recommended by the boards of directors, or other similar governing bodies, of the issuer and of the company being acquired.

4. The prospectus is delivered to the security holders whose vote, consent or authorization is solicited in accordance with the provisions of any applicable federal or state law but in no event later than 20 days prior to the date on which the meeting of such security holders is held or, if no such meeting is held, the earlier of the date of such vote, consent or authorization or the date the transaction is consummated.

5. Neither the issuer nor the company being acquired is a registered investment company.

B. *Application of General Rules and Regulations.*

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (§230.400 to §230.494). That Regulation contains general requirements regarding the preparation and filing of the registration statement. Rules 405, 411, 412, and 439 should be especially noted.

C. *Documents Comprising Registration Statement.*

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information called for by Part I, the information and undertaking called for by Part II, signatures, consents of experts, exhibits and any other information or documents filed as a part of the registration statement.

D. *Complance With Proxy or Information Rules.*

1. If a corporation or other person submits to its security holders entitled to vote or consent a proposal to approve the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§240.14a-1 to 14a-101 of this chapter) or 14C (§§240.14c-1 to 14c-101) under the Securities Exchange Act of 1934, then the provisions of such Regulations shall apply in all respects to such person's submission, except that (a) the prospectus may be in the form of a proxy or information statement and shall contain the information required by this Form in lieu of that required by Schedule 14A (§240.14a-101) or 14C (§240.14c-101) of Regulation 14A or 14C under the Securities Exchange Act of 1934; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to the requirements of such Regulations. All other soliciting material shall be filed in accordance with such Regulations.

2. If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction pursuant to which the securities being registered on this Form are to be issued is subject to Section 13(e), 14(d) or 14(e) of the Securities Exchange Act of 1934, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction regardless of the provisions of Form S-15.

E. *Availability of the Prospectus for Reoffers or Resales.*

The Form S-15 prospectus may be used by affiliates of the issuer, or any other persons who may be deemed underwriters of such securities, for reoffers or resales of securities acquired pursuant to this registration statement, Provided, that: (1) the additional information called for by Item 8 of this form is included in the prospectus so used; (2) each of the persons named as a selling security holder in a prospectus used for reoffers or resales shall have an intent to make such offers and sales within not more than sixteen months following the effective date of the prospectus [if after the effective date a person acquires an intent to reoffer or resell and the issuer wishes to add such person to the list of selling security holders the issuer may do so by filing a post-effective amendment]; and (3) the information in a prospectus used for reoffers or resales shall be updated through an amended prospectus filed in accordance with Section 10(a)(3) of the Act.

F. *Availability and Operation of Form S-15 Prior to Implementation of Revised Annual Report Requirements.*

On September 2, 1980, the Commission adopted certain amendments to Rule 14a-3 and Regulation S-K, effective for reports with respect to fiscal years ending after December 15, 1980. If all other conditions to the use of Form S-15 are met, the Form may be used prior to such time as those amendments are required to have been implemented by the issuer or, where appropriate, by the company being acquired (*See* Item 3(a)). In such event, the references in Item 3(b) and Item 11(a) of this Form to (1) supplementary financial information furnished in accordance with the provisions of [revised] Rule 14a-3(b)(3); (2) market for common stock and related security holder matters furnished in accordance with [new] Item 9 of Regulation S-K; (3) selected financial data furnished in accordance with [new] Item 10 of Regulation S-K; and (4) management's discussion and analysis of financial condition and results of operations furnished in accordance with [new] Item 11 of Regulation S-K, should be deemed to refer instead to the summary of operations, management's discussion and analysis, and market and securities price data as required by Rule 14a-3 for reports with respect to fiscal years ending prior to December 15, 1980. In addition, the provisions of Item 3(b) and Item 11(a) with respect to financial statements required by Rule 14a-3 shall be deemed to be satisfied by financial statements meeting the requirements of Rule 14a-3 applicable at the time such annual report was prepared.

PART 1. INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. *Summary*

Immediately following the cover page of the prospectus, set forth a summary containing the following:

(a) a brief description of the general nature of the business conducted by the issuer and by the company being acquired;

(b) a brief description of the transaction pursuant to which the securities being registered are to be offered; and

(c) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the company being acquired, for the following items: (i) book value per share as of the date of the most recent balance sheet presented in response to Item 11; (ii) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 3 or incorporated by reference in response to Item 11; (iii) net earnings per share for the year ended as of the same date used for purposes of paragraph (i) of this Item, and for the year to date ended as of the end of the latest corresponding fiscal quarter which ended not more than forty-five days prior to the effective date of the registration statement; and (vi) market value of securities as of the day preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into.

Item 2. *Terms of the Transaction.*

(a) Give the name of the issuer of the securities to be registered, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(b) Give the name of the company being acquired, its complete mailing address, including the zip code, and the telephone number, including the area code, of its principal executive offices.

(c) Outline briefly the material features of the proposed transaction, including a description of the securities to be issued pursuant thereto. State the reasons of the company being acquired for engaging in the transaction, the federal income tax consequences thereof to the security holders of the company being acquired, and any significant differences between the rights of those security holders and the rights of holders of the securities being offered.

Instruction.

A brief summary of the principal terms of an acquisition agreement is all that is required. Copies of the acquisition agreement need not be included in the prospectus if an undertaking is included to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of the agreement (excluding any confidential or proprietary exhibits or provisions).

(d) Briefly describe any restrictions on the issuer's present or future ability to pay dividends with respect to any class of securities.

Item 3. *Description of the Company Being Acquired.*

(a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year, then, at the issuer's option, portions of such annual report may be incorporated by reference and such annual report may be delivered in accordance with the provisions of Items 9, 10 and 11 of this Form.

(b) Otherwise, if the company being acquired does not have a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or has not furnished an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) for its latest fiscal year, or the issuer elects not to incorporate by reference from such annual report and to deliver it with the prospectus, then the following shall be set forth with respect to the acquired company:

(i) a brief description of the business of the company being acquired which indicates its general nature and scope;

(ii) market for common stock of the company being acquired and related security holder matters as required by Item 9 of Regulation S-K;

(iii) selected financial data as required by Item 10 of Regulation S-K;

(iv) management's discussion and analysis of financial condition and results of operations as required by Item 11 of Regulation S-K;

(v) financial statements and supplementary financial information as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3) had the company being acquired been required to prepare such a report; provided, however, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited; and

(vi) the quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10-Q (§249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

Instruction.

The Commission may, upon the request of the issuer, permit the omission of any of the statements or other financial information required by paragraphs (iii), (v) and (vi) of this Item where such statements are not necessary for the exercise of prudent judgment in regard to the transaction pursuant to which the securities being registered are to be offered, or may permit the filing in substitution therefor of appropriate statements of comparable character.

Item 4. *Voting Information.*

(a) If proxies, consents, or authorizations are to be solicited, include, where applicable, the information called for by the following items of Schedule 14A (§240.14a-101) of Regulation 14A under the Securities Exchange Act of 1934:

Item 1. Revocability of proxy;

Item 3. Persons making the solicitation;

Item 5. Voting securities and principal holders thereof; and

Item 22. Vote required for approval.

(b) If the transaction is not an exchange offer and proxies, consents, or authorizations are not to be solicited, include, where applicable, the information called for by Items 5 and 22 of Schedule 14A and the following items of Schedule 14C (§240.14c-101) of Regulation 14C under the Securities Exchange Act of 1934:

Item 2. Statement that proxies are not solicited; and

Item 3. Date, time and place of meeting.

(c) In addition to the information called for by paragraphs (a) and (b) above, in all cases include the following:

(i) *Dissenters' Rights of Appraisal.* Outline briefly appraisal or other similar rights of dissenters with respect to the proposed transaction and indicate any

statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment, or other similar act, state whether the person solicited will be notified of such date.

Instruction.

Indicate whether or not a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or other similar rights and whether or not a vote against a proposal will be deemed to satisfy any notice requirements under state law with respect to appraisal rights. If the state law is unclear, state what position will be taken in regard to these matters.

(ii) *Beneficial Ownership.* Provide the information required by Items 6(a) and 6(b) of Regulation S-K (§229.20) with respect to both the issuer of the securities being registered and the company being acquired. To the extent that this information is already provided pursuant to paragraph (a) of this Item, a statement to that effect will suffice.

(iii) *Executive Officers and Directors.* With respect to the issuer, provide the information required by Item 3 of Regulation S-K. With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

Item 5. *Interest of Certain Persons in the Transaction.*

Describe briefly any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the issuer and of the company being acquired, in the proposed transaction.

Instruction.

This item shall not apply to any interest arising from the ownership of securities of the issuer where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

Item 6. *Additional Information With Respect to the Issuer.*

(a) Provide financial and other information with respect to the issuer in the form required by Part I of Form 10-Q (§249.308a) as of the end of the most recent fiscal quarter for which a Form 10-Q has been filed or as of a more recent date by one of the following means:

(i) including such information in the prospectus;

(ii) delivering to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10-Q; or

(iii) delivering to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its security holders and which included the required financial and other information.

Instruction.

Form 10-Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders. Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(c) State that reports, proxy statements and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(d) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements and other information concerning the issuer can be inspected at such exchanges.

(e) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the name, address and telephone number of the person to whom such a written request is to be directed.

Item 7. *Additional Information With Respect to the Company Being Acquired.*

(a) If the company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, has furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 for its latest fiscal year, and such annual report is incorporated by reference into and delivered with the prospectus pursuant to the option provided by Item 3(a), provide financial and other information with respect to the company being acquired in the form required by Part I of Form 10-Q as of the end of the most recent of the first three fiscal quarters which ended more than forty-five days prior to the effective date of this registration statement or as of a more recent date by one of the following means:

(i) including such information in the prospectus;

(ii) delivering to each person to whom a prospectus is delivered a copy of the latest Form 10-Q filed by the company being acquired; or

(iii) delivering to each person to whom a prospectus is delivered a copy of the latest quarterly report which was delivered to the security holders of the company being acquired and which included the required financial and other information.

Instruction.

Form 10-Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(b) Describe any and all material changes in the affairs of the company being acquired which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(i) in the annual report to security holders delivered pursuant to Item 10 of this form; or

(ii) in the prospectus as a result of the provisions of paragraph (c)(v) of Item 3 of this Form.

Financial information may be required in the prospectus if such financial statements do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles where such change requires a substantial retroactive restatement of financial statements.

(c) Describe any changes in control of the company being acquired which have occurred within thirty-six months prior to the filing date of the registration statement.

(d) If the company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 or is required to file reports under Section 15(d) of that Act:

(i) state that reports and other information filed by the company being acquired can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and state the current address of such facility, and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates;

(ii) name any national securities exchange on which the securities of the company being acquired are listed, and state that reports, proxy statements and other information concerning the company being acquired can be inspected at such exchange; and

(iii) include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the name, address and telephone number of the person to whom such a written request is to be directed.

Item 8. *Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.*

If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof the prospectus shall, at the time of such offering, include the following additional information which would then be required to be included in the prospectus by the appropriate registration form, other than Form S-15, to the extent that such information is not already included in the prospectus:

(a) Information in regard to the persons and parties on whose behalf the securities are to be offered and the underwriting and distribution of such securities;

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material developments in the business or affairs of the issuer subsequent to the transaction; and

(c) Any other information necessary to make the prospectus current, including financial statements of the issuer and any other party to the transaction.

Item 9. *Information Delivered and Incorporated by Reference.*

(a) A statement shall be made indicating that the prospectus is accompanied by the following documents:

(i) the issuer's latest annual report to security holders; and

(ii) if the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, has furnished its annual report for its latest fiscal year to security holders pursuant to and meeting the requirements of Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3), and the issuer has elected pursuant to the option provided by Item 3(a) to incorporate by reference from such annual report and deliver it with the prospectus, such annual report.

(b) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the document(s) which accompany the prospectus. The issuer may also state, if it so chooses, that specifically described portions of those documents are not incorporated by reference and are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference may, at the issuer's option, either be included in the prospectus or in Part II of the registration statement in response to Item 11 or in both places.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS; UNDERTAKINGS

Item 10. *Undertaking To Transmit Certain Material.*

The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus to each person to whom the prospectus is sent or given by the issuer or by the acquired company:

(i) the issuer's latest annual report to security holders; and

(ii) the latest annual report to security holders of the company being acquired furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3."

However, if the issuer either does not have available or does not elect the option provided by Item 3(a) to incorporate by reference and deliver the annual report to security holders of the company being acquired, then paragraph (ii) of this undertaking may be omitted.

Item 11. *Incorporation of Certain Information by Reference.*

(a) The following information contained in the annual report(s) to security holders delivered with the prospectus pursuant to Item 10 shall be specifically incorporated by reference into the registration statement by means of a statement to that effect in Part II filed with the Commission (see Item 9(b)):

(i) description of business furnished in accordance with the provisions of Rule 14a-3(b)(5);

(ii) certified financial statements furnished in accordance with the provisions of rule 14a-3(b);

(iii) supplementary financial information furnished in accordance with the provisions of Rule 14a-

3(b)(3);

(iv) information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (§229.20);

(v) market for common stock and related security holder matters furnished in accordance with Item 9 of Regulation S-K;

(vi) selected financial data furnished in accordance with Item 10 of Regulation S-K; and

(vii) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 11 of Regulation S-K.

(b) The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission (see Item 9(b)):

(i) any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer on or after the end of the issuer's latest fiscal year reported on in the annual report to security holders delivered with the prospectus pursuant to Item 10 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction described in the registration statement is fully consummated; and

(ii) any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the company being acquired on or after the end of such company's latest fiscal year as reported on in the annual report to security holders delivered with the prospectus pursuant to Item 10 or as reported on in the prospectus pursuant to Item 3 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction in the registration statement is fully consummated.

Item 12. *Undertaking to File Prospectuses as Amendments.*

The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes as follows:

(a) that prior to any public reoffering of the securities registered hereunder through the use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain, or will be amended to contain, the information called for by Item 8 with respect to the securities to be so offered, in addition to the information called for by the other Items of Form S-15;

"(b) that every prospectus which is filed pursuant to paragraph (a) above, or which purports to meet the requirements of Section 10(a)(3) of the Act, will be filed as a part of an amendment to the registration statement and will not be used until such amendment has become effective, and that for the purpose of determining liabilities under the Act, the effective date of such amendment shall be deemed the effective date of the registration statement with respect to securities sold after such amendment has become effective;

"(c) that all such new registration statements will comply with the applicable forms, rules and regulations of the Commission in effect at the time such post-effective amendments are filed; and

"(d) that the issuer will remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering."

Item 13. *Interest of Experts Named in Registration Statement.*

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting

trustee, director, officer or employee, furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 14. *Exhibits.*

Subject to the rules regarding incorporation by reference, the exhibits as required by Item 7 of Regulation S-K (17 CFR 229.20) shall be filed as a part of the registration statement. List all exhibits so filed and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Signatures.

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19 ___.

(Issuer) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions.

1. The registration statement shall be signed by the issuer, its principal executive officer or officers to principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors or persons performing similar functions.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

PART 201—RULES OF PRACTICE

2. By amending §201.24 to read as follows:

§201.24 Incorporation by reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and, where the document being incorporated by reference has been filed with the Commission, to the prior filing in which such document was physically filed. Reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location and by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 NAD SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

3. By amending Item 7 of §229.20 to read as follows:

§229.20 Information required in document.

* * * * *

Item 7. *Exhibits.*

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

SECURITIES ACT OF 1933 - FREQUENTLY USED FORMS

	S-1	S-2	S-7	S-8	S-11	S-14	S-15	S-16
(1) Underwriting Agreement	X	X	X		X	X		X
(2) Plan of acquisition, reorganization arrangement, liquidation or succession	X		X		X	X	X	X 1/
(3) Articles of incorporation and by-laws	X	X			X	X		
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X
(6) Opinion re discount on capital shares	X	X	X		X	X		
(7) Opinion re liquidation preference	X	X	X		X	X		
(8) Opinion re tax matters	X	X	X	X	X	X	X	X
(9) Voting trust agreement	X	X			X	X		
(10) Material contracts	X	X	X		X	X	X	
(11) Statement re computation of per share earnings	X		X		X	X		
(12) Statements re computation of ratios 2/	X		X		X	X		
(13) Annual report to security holders				X				
(14) Material foreign patents	X	X				X		
(15) Instruments defining the rights of participating employees	X 3/			X				
(16) Letter re unaudited financial information	X	X	X	X	X	X	X	X

1/ Such plans need not be filed for secondary offerings on this form.

2/ Such statements are necessary only when such ratios are furnished.

3/ This exhibit need only be filed for the registration of securities offered pursuant to an employee benefit plan of the registrant.

* * * * *

4. By amending paragraph (b) of §230.411 to read as follows:

§230.411 Incorporation of certain information by reference.

* * * * *

(b) Any financial statement or part thereof filed with the Commission pursuant to any Act administered by the Commission, or any financial statement or part thereof contained in an annual report to security holders prepared in compliance with Rule 14a-3 (§240.14a-3) or Rule 14c-3 (§240.14c-3), and furnished to security holders and mailed to the Commission in compliance with those rules, may be incorporated by reference in any registration statement if it substantially conforms to the requirements of the appropriate form and is not required to be included in the prospectus. However, a financial schedule incorporated by reference to an annual report filed with the Commission pursuant to any Act administered by it need not be certified, if such schedule was not required to be certified in connection with the filing of the annual report, any requirement of any registration form to the contrary notwithstanding.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. By amending paragraph (a) of §240.14a-3 to read as follows:

§240.14a-3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§240.14a-101) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S-15 (§239.29) and containing the information specified in such Form.

* * * * *

6. By amending paragraph (i) of §240.14a-6 to read as follows:

§240.14a-6 Material required to be filed.

* * * * *

(i) Not withstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S-14 (§239.23 of this chapter) or Form S-15 (§239.29 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14 or Form S-15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

* * * * *

7. By amending paragraph (a) of §240.14a-12 to read as follows:

§240.14a-12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of Rule 14a-3(a) (§240.14a-3(a)), a solicitation (other than one subject to Rule 14a-11 (§240.14a-11)) may be made prior to furnishing security holders a written proxy statement meeting the requirements of Rule 14a-3(a) if—

(1) * * *

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a-3(a) (§240.14a-3(a)) is furnished to security holders: *Provided, however,* That this paragraph (2) shall not apply where a proxy statement then meeting the requirements of Rule 14a-3(a) has been furnished to security holders by or on behalf of the person making the solicitation.

* * * * *

8. By amending paragraph (a) of §240.14c-2 to read as follows:

§240.14c-2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written

authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§240.14c-101) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-15 (§239.29) and containing the information specified in such form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided*, however, That in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

9. By amending paragraph (e) of §240.14c-5 to read as follows:

§240.14c-5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S-14 (§239.23 of this chapter) or Form S-15 (§239.39 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S-14 or Form S-15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; 15 U.S.C. 77f, 77g, 77j, 77s(a); secs. 14(a), 23(a), 48 Stat. 985, 901; sec. 203(a), 49 Stat. 704; sec 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), 78w(a); secs. 12(e), 20(a), 49 Stat. 823, 833; 15 U.S.C. 79*l*, 79t; secs. 20(a), 38(a), 54 Stat. 822, 841; 15 U.S.C. 80a-20(a), 80a-37(a)).

STATUTORY AUTHORITY AND FINDINGS

The Commission hereby adopts Form S-15 and the foregoing amendments to 17 CFR Parts 201, 229, 230, and 240 pursuant to the Securities Act of 1933, particularly Sections 6, 7, 10 and 19(a) thereof, and pursuant to Sections 14(a) and 23(a) of the Securities Exchange Act of 1934, Sections 12(e) and 20(a) of the Public Utility Holding Company Act of 1935, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the new Form and related rule amendments would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of that Act.

Pursuant to Section 553(d) of the Administrative Procedure Act of 1949 (5 U.S.C. 553), the Commission finds for good cause that the new Form and related Rule amendments may be used and relied upon prior to their effective date by any persons desiring to do so, provided that they comply with all applicable provisions of the Form.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6233/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17116/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21699/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11325/September 2, 1980

ACCOUNTING SERIES
Release No. 280/September 2, 1980

GENERAL REVISION OF REGULATION S-X

ACTION: Final rules.

SUMMARY: The Commission is adopting a general revision of Articles 3 and 5 and the related sections of Article 12 of Regulation S-X ("S-X"). The changes in the content of S-X (i) eliminate rules which are presently duplicative of generally accepted accounting principles ("GAAP"), (ii) effect changes to recognize predominant current practice and changes in circumstances, (iii) clarify and modify requirements which are presently subject to differing interpretations, and (iv) expand certain requirements to improve financial reporting. These changes have been structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X.

EFFECTIVE DATE: The rule amendments published in this release shall be effective for companies with fiscal years ended after December 15, 1980. However, earlier implementation is encouraged.

FOR FURTHER INFORMATION CONTACT: Arthur J. Schmeiser, Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6178 issued January 15, 1980, the Commission proposed for comment revisions to Articles 3 and 5 and the related sections of Article 12 of Regulation S-X. The purposes of the proposal were to:

(i) eliminate rules which are presently duplicative of generally accepted accounting principles,

(ii) effect changes to recognize predominant current practice and changes in circumstances,

(iii) clarify and modify requirements which are presently subject to differing interpretations, and

(iv) expand certain requirements to improve financial reporting.

These proposed changes were structured in a manner to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X.

More than 300 letters of comment were received on the proposal. After giving these comments careful consideration, the Commission has determined to adopt the amendments with some revisions which are responsive to the comments. Generally, commentators were in accord with the revisions which related to the first three objectives enumerated above and those revisions have been adopted substantially as proposed. On the other hand, many commentators opposed the last objective, expansion of certain requirements to improve financial reporting, and the proposal to conform the financial statements included in annual reports to shareholders to those prepared in accordance with S-X. Nevertheless, the Commission has determined to adopt the rule which provides for uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X. The proposed expanded disclosure of the components of income tax expense has been withdrawn and the present disclosure requirements have been retained substantially; however, a requirement to disclose domestic and foreign income before income tax expense has been adopted. The present form of the property, plant and equipment schedules has been retained. The proposed property, plant and equipment schedules are being considered further and the issuance of a separate revised proposal is being evaluated. Additionally, certain commentators addressed rules which were proposed to be unchanged from previous S-X requirements and as a result further revisions have been adopted.

BACKGROUND

General

In 1940, the Securities and Exchange Commission announced the adoption of Accounting Series Release ("ASR") No. 12, "Adoption of Regulation S-X." S-X codified the existing instructions as to the form and content of financial statements included as a part of each of the registration and reporting forms. The regulation did not prescribe accounting methods, but rather stated requirements which were intended to elicit informative disclosures. In 1940, there was little available authoritative accounting literature. Indeed, the predecessor of the American Institute of Certified Public Accountants ("AICPA") only two years earlier had instituted a research program resulting in the publication of accounting

principles in the form of Accounting Research Bulletins ("ARBs"). This was the first attempt by the accounting profession to formally promulgate standards. Consequently, the Commission considered it beneficial that S-X included condensed requirements contained in one authoritative source.

Private Sector Initiatives

Since the development of S-X, however, the private sector has established and improved accounting and reporting standards through various organized bodies—the Accounting Principles Board ("APB"), other units of the AICPA and, most recently, the Financial Accounting Standards Board ("FASB"). The Commission indicated support for the FASB in ASR No. 150, which stated that financial statements conforming to standards set by the FASB will be presumed to have substantial authoritative support. Additionally, the Commission has indicated in its reports to Congress on its oversight of the accounting profession that it continues to believe that the initiative for establishing and improving accounting standards should remain in the private sector, subject to Commission oversight.

Need for Revision

Similarly, the Advisory Committee on Corporate Disclosure[1] supported private sector standard setting in its report to the Commission, issued in November 1977, in which it recommended among other things, that:

A continuing goal of the Commission should be the elimination of rules of general applicability which cause differences between financial statements prepared in accordance with Regulation S-X and those prepared in accordance with GAAP. When the Commission requires an extension of disclosures beyond those required by GAAP because of an emerging problem, the reasons for the extension and the underlying accounting issues involved should be stated. The Commission should then ask the FASB to consider the issue. . . .the Commission should undertake the following:

1. Eliminate all financial statement disclosures required by Regulation S-X which duplicate those required in financial statements prepared in accordance with codified GAAP.

2. Critically review all disclosures of general applicability which are supplementary to those required by GAAP with the objective of eliminating disclosures which may not be necessary to users in making investment decisions.

In recent years, the Commission has sought to integrate the registration and reporting requirements under the Securities Act of 1933 and Securities Exchange Act of 1934. The Commission believes integration of the requirements of these two Acts benefits registrants by offering a more coherent reporting structure. In this connection, the Commission has recently undertaken the task of re-examining the present reporting and disclosure system focusing principally on the form, content and use of Form 10-K. This re-examination process resulted in a variety of separate but related projects of which this general revision of S-X is a part.[2]

The most recent comprehensive revision of S-X was in 1972, which was prior to the issuance by the APB of its last seven opinions and the establishment of the FASB. During the ensuring eight year period, the authoritative accounting literature has expanded dramatically and some of the requirements of S-X are now outdated. Accordingly, this revision was undertaken to respond to that situation.

Role of the FASB

The Commission frequently and unequivocally has voiced its support of the FASB as the leader in the establishment and improvement of accounting

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[1]An *ad hoc* committee established by the Securities and Exchange Commission for the purpose of assessing the adequacy of the corporate disclosure system.

[2]Three other releases issued today adopt changes relating to: (1) certain amendments to Form 10-K, the annual report form required to be filed by most publicly-owned companies, and a number of related rule, form and guide changes; (2) a new simplified form for the registration of securities issued in certain merger and reorganization transactions; and (3) uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Exchange Act; Securities Act Release Nos. 33-6231, 33-6232 and 33-6234, respectively.

principles. A minority of the commentators have stated that certain components of the proposed amendments to S-X effectively may be pre-empting the activities of the FASB, especially its project to develop a conceptual framework for financial accounting and reporting. Indeed, one of the FASB's concerns about the proposal to require registrants to include financial statements prepared in accordance with S-X in their annual reports to shareholders is:

> Possible conflicts with the FASB's conceptual framework projects on reporting earnings, funds flows and liquidity, and financial statements and other means of financial reporting.

Other commentators objected that the proposal regarding the content of financial information in the annual report to shareholders contradicted ASR No. 150 and would undermine the authority of the FASB.

The Commission does not believe that any decision to require particular disclosures or, less likely, a decision to require a particular method of accounting through rulemaking in S-X, conflicts with the basic policy of relying on the FASB for leadership in establishing financial accounting and reporting standards. Furthermore, it believes that the remaining requirements of S-X address those areas where GAAP standards are not explicit and there is a need for an authoritative source for such requirements. While there is, of course, always the possibility that the Commission may conclude it cannot accept an FASB standard in a particular area, such events have been rare. The Commission intends to continue its present policy of carefully re-evaluating its rules as the FASB effectuates changes in financial accounting and reporting standards, and will eliminate those rules which become unnecessary. For example, as standards are issued by the FASB regarding "Funds Flows and Liquidity", "Reporting Earnings" and other phases of the conceptual framework project, the Commission expects it will be able to defer to the requirements of the private sector. The Commission believes that the action which it currently is taking is in harmony with its statement of policy pronounced in ASR No. 150.

Uniformity

The financial statements filed with the Commission frequently have been somewhat different from those included in annual reports to shareholders because of additional requirements of S-X. As mentioned previously, one of the purposes of the revisions to S-X is to facilitate the integration of the Securities Act of 1933 and the Securities Exchange Act of 1934 by attaining uniformity between financial statements included in annual reports to shareholders and those prepared in accordance with S-X. Therefore, the Commission has re-examined Articles 3, 5 and 12 of S-X to determine which financial statement requirements should be required in annual reports to shareholders because of their significance and relevance.[3]

The Commission believes that annual reports to shareholders should not be overburdened with information which, although relevant to meaningful analysis, is of little interest to the majority of users. Therefore, it has relocated certain financial disclosures mandated in the financial statements by its previous requirements to the supplemental schedules required by Article 12.

The rules which are being adopted today have been the focus of serious consideration by the Commission and its staff. The Commission has considered the comments of the respondents and appreciates their concerns regarding its rules which affect the content of the annual report to shareholders. Clearly, the need to provide registrants with adequate flexibility in order to maintain the annual report to shareholders, and the financial statements included therein, as readable and comprehensible documents has been one of the Commission's primary concerns. As a result, in January 1980 it proposed numerous changes to its rules, many of which are being adopted presently. As a consequence of the common process, the Commission has re-evaluated the proposed rules and is adopting further revisions which are less restrictive than those proposed.

These revisions are discussed throughout this release and focus on the need for registrant flexibility, balanced with the need for uniformity in an integrated system. Overshadowing both these

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[3]Registrants which are subject to Articles 6, 7, 7A and 9 of S-X may deviate from strict compliance with S-X in their annual reports to shareholders (as permitted by the proxy rules) until those Articles have been revised. That revision should occur during the ensuing twelve months.

issues is the pervasive concern that registrants disseminate the financial information which is necessary for a fair presentation of the registrant's financial condition and results of operations.

As part of this re-evaluation, the requirement for financial statement note references has been removed and greater flexibility has been provided for determining items to be presented on the face of the financial statements. The Commission has decided not to adopt certain proposals such as the requirements to disclose earnings applicable to common stock and certain information about income tax expense; it has relocated the note disclosures addressing short-term borrowings to the financial statement schedules; and the disclosure of disagreements with predecessor accountants to the supplementary financial information; and it has decided not to relocate the supplementary income statement schedule information to the notes. Additionally, certain rules which were interpretative of GAAP have been removed since present practice is considered acceptable.

ARTICLE 4

Article 4 now contains the rules of general application to be followed by all registrants in preparing financial statements in accordance with S-X which were included previously in Article 3. The proposed release envisioned a substantial reduction of the content of this Article and discussed the rationale for such action. Commentators substantially agreed with the changes which resulted in complete or partial elimination of certain rules and primarily focused their comments on those rules which were proposed to be retained or established. Consequently, this discussion will not include those rules which were proposed to be deleted, in whole or in part, the disposition of which is as proposed. The following is a discussion of the rules which were proposed to be retained, along with a discussion of the comments received and final rules being adopted.

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Form, order, and terminology. This rule describes certain mechanics which registrants should follow when preparing financial statements in accordance with S-X. One of the items proposed to remain in this rule presented specific requirements for the display of negative amounts in financial statements. Commentators have indicated that present practice renders this segment of the rule unnecessary, and since the Commission is requiring annual reports to shareholders, required by Rule 14a-3 of the Commission's proxy rules, to conform with S-X, this rule may conflict with the display techniques utilized in these annual reports. Accordingly, this segment of the rule is modified to require that negative amounts be presented in a manner which clearly distinguishes the negative attribute.

Items not material. This rule permits registrants to exclude the separate presentation of items not material which otherwise would be required to be shown. The proposed rule contained a reference to ASR No. 41 which has been deleted. The adopted rule instead paraphrases the essence of ASR No. 41 which permits insignificant amounts in financial statements to be combined. No negative comments were received regarding this rule and therefore it is adopted as proposed, with the modification indicated above.

Inapplicable captions and omission of unrequired or inapplicable financial statements. This rule explicitly permits the exclusion of captions and financial statements because the related information either does not exist or is not applicable. It further requires registrants to indicate the reasons why any otherwise required financial statements have been omitted. The rule is adopted as proposed.

Omission of substantially identical notes. This rule, which is adopted as proposed, permits the single presentation of substantially the same information which is required with respect to two or more financial statements relating to the same or affiliated persons, provided that a clear and specific reference is made in each of the other statements with respect to which the note is required.

Valuation and qualifying accounts. This proposed rule would have required that valuation and qualifying accounts be shown either separately in financial statements as deductions from the specific assets to which they apply or parenthetically on the face of the statements. Commentators recommended that registrants have the option of presenting this information in the notes to the financial statements. They indicated this flexibility would enhance the readability of the financial statements and that, in many cases, note disclosure results in a more meaningful and understandable financial presentation. The Commission has concluded that these comments have substantial

validity; and, accordingly, it has deleted this general requirement. However, rules as to presentation of certain valuation and qualifying accounts are provided in Article 5.

Basis of determining amounts—book value. The proposed rule would have provided guidance to registrants when an instruction requires a statement as to "the basis of determining the amount." Further, it prohibited use of the term "book value" except in situations where the term explicitly was indicated as acceptable. Commentators have indicated that this rule is duplicative of the requirements of APB Opinion No. 22, "Disclosure of Accounting Policies." Therefore, recognizing that GAAP requires this disclosure, the Commission has determined to delete this rule.

Current assets and current liabilities. This rule requires that generally recognized trade practice be followed if a company's normal operating cycle is longer than one year. This pertains to the inclusion of items in current assets or current liabilities and requires an explanation of the circumstances and, if practicable, an estimate of the amount not realizable or payable within one year, and the amounts maturing each year along with the interest rates or range of interest rates. This rule is adopted as proposed, except that the reference to ASR No. 102 is deleted.

Reacquired evidence of indebtedness. This rule requires that reacquired evidences of indebtedness be deducted from the appropriate liability caption, except for certain situations where the reacquired evidence of indebtedness is held for pension and other special funds not related to the particular issues and then may be shown as an asset of the fund. However, if shown as an asset, the amount of such evidences of indebtedness, the cost thereof, the stated amount, and purpose for which it was reacquired must be stated. This rule is adopted as proposed.

Reacquired shares. The proposed rule, which was unchanged from previous S-X requirements, would have required that reacquired shares not retired be shown separately as a deduction from the applicable account. Commentators noted that ARB No. 43 addresses this issue and permits reacquired shares to be shown as an asset when the investment is temporary and the shares are held for special purposes not related to the particular issue. The Commission recognizes the treatment prescribed by ARB No. 43 and accordingly has determined to delete this rule.

Discount on shares. This rule, which is adopted as proposed, requires that discounts on shares be shown separately as a deduction from the applicable account(s) as circumstances require.

General notes to financial statements. This section of Article 4 specifies the required general notes to the financial statements and requires disclosure of certain applicable information which is not explicitly required by GAAP. It requires presentation of the information either on the face of the appropriate financial statements or in appropriately captioned notes. The proposed rule would have required appropriate cross-references to the applicable notes on the face of the statements. Commentators indicated that registrants should be given flexibility in this matter, because in certain instances cross-references may impair readability or clutter the financial statements. Additionally, certain methods of presentation are not conducive to cross-referencing. Registrants stated their belief that a general statement referring the reader to the notes frequently is adequate. The Commission believes note references can be valuable to users of financial statements if properly utilized by preparers but it does not desire to impede preparer efforts to develop more effective means of communicating financial information. Accordingly, this rule proposal has been withdrawn; however, cross-references to the applicable notes should appear on the face of the financial statements when appropriate for the effective presentation of financial information to the user of the financial statements.

The following is a discussion of the proposed subsections of *General notes to financial statements:*

Principles of consolidation or combination. This rule, which received no negative comments, refers registrants to revised Article 3 of S-X which contains the requirements for consolidated and combined financial statements.

Assets subject to lien. Two commentators indicated that this rule, which requires the presentation of certain information concerning assets mortgaged, pledged or otherwise subject to lien, is duplicative of Statement of Financial Accounting Standards ("SFAS") No. 5, "Accounting for Contingencies." The Commission believes that SFAS No. 5 does not

provide explicit requirements in this regard and is adopting this rule as proposed.

Defaults. This rule requires disclosure of the facts and amounts concerning any default in principal, interest, sinking fund or redemption provisions with respect to any issues of securities or credit agreements. Previously, portions of this rule emphasized the need to classify as a current liability accelerated debt payments resulting from default. These were proposed for deletion since GAAP is considered to provide adequate guidance for the classification of liabilities as current or long-term. Most comments were favorable, and as a result this rule is adopted as proposed.

Preferred shares. This rule requires that the amount of aggregate preferences on involuntary liquidation, if other than par or stated value, be shown parenthetically in the appropriate section of the balance sheet. Commentators expressed conflicting interpretations of GAAP with regard to this issue. Some interpreted GAAP as requiring balance sheet presentation when this preference in liquidation may be of significance to the user, while others stated that presentation should be either on the balance sheet or in the notes to the financial statements. The Commission believes practice should be consistent and for this reason the rule is adopted as proposed.

Restrictions which limit the availability of retained earnings or net income for dividend purposes. This rule was proposed to be expanded to require disclosure of restrictions on the payment of intra-company dividends as well as restrictions on the parent company's payment of dividends to its shareholders. A number of commentators recommended that the rule only require disclosure of the most restrictive of any restrictions on the payment of dividends to shareholders.

The Commission proposed expansion of this rule because of its belief that there should be disclosure of information about the ability of the consolidated entity to transfer funds among its component corporations. The presentation of consolidated financial statements and use of the equity method of accounting frequently leads users to believe that there is a free flow of funds among the various corporations which are combined in the consolidated entity or whose investment are recorded at equity, when in fact the viability of certain components, and perhaps the entire entity, may be threatened because of restrictions on the intra-company flow of funds.

In formulating these disclosure requirements, the Commission has noted that previous Rule §210.5-02.41 required registrants to disclose the amount included in retained earnings of the issuer which represents undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. Since that requirement embraces issues which are related to the availability of retained earnings for dividend purposes it is being moved to this rule. Therefore, this rule has been altered to require disclosure of the most significant restrictions which limit the payment of dividends to shareholders and the payment of dividends by subsidiaries to the issuer; and in addition, the amount of undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. These restrictions may result from contractual agreements or from legal prohibitions.

Significant changes in bonds, mortgages and similar debt. This rule requires information about events occurring subsequent to the latest balance sheet being filed and is adopted as proposed.

Income tax expense. The proposed rule regarding income tax expense would have required registrants to reconcile pretax income and income tax expense for both their Federal and foreign components, as reported in their financial statements, to Federal (foreign) taxable income and related income taxes anticipated to be reported on registrants' Federal (foreign) income tax returns. A summary of the actual tax computation showing amounts taxed at various rates, statutory, capital gains, etc., and the effect of offsetting credits, also would have been required.

A substantial majority of the commentators addressed this particular rule proposal and, of that group, all but a few totally opposed the rule. Commonly expressed reasons for such opposition were the opinions that (1) the present rule adopted by ASR No. 149, "Notice of Adoption of Amendment to Regulation S-X for Improved Disclosure of Income Tax Expense," is adequate, (2) there is no real benefit to the majority of users by providing this information, (3) many of the tax circumstances are too complex to be properly presented and understood in the proposed format, (4) companies' tax returns usually are not prepared for many months after financial statements are published,

and (5) the amount of information would tend to overburden the financial statements. Commentators who supported the proposed rules indicated an overwhelming interest in the proposed disclosure concerning foreign income and related taxes.

The Commission believes that these objections substantially are valid. Accordingly, it is adopting final rules based primarily on the disclosure requirements adopted by ASR No. 149. These requirements call for disclosure of the components of income tax expense, the reasons for and tax effects of timing differences between book and tax reporting resulting in deferred income taxes, and a reconciliation between the effective income tax rate indicated by the income statement and the statutory Federal income tax rate. These rules are being retained with one significant addition—a requirement for separate disclosure of domestic and foreign pretax income.

In ASR No. 149, the Commission stated its belief that the detailed tax disclosure would be primarily of interest to professional analysts who have the obligation to develop an in-depth understanding of corporate results but might not be necessary in financial disclosure designed for the average investor. Since the adoption of those rules, however, the Commission has seen substantial voluntary inclusion by registrants of this tax information in their annual reports to shareholders. Furthermore, as previously mentioned, numerous commentators supported the disclosure requirements instituted by ASR No. 149. Therefore, the Commission has determined to require disclosure of this information in annual reports to shareholders.

In the rule proposal, the Commission specifically invited commentators to address whether the Commission should retain the requirement concerning disclosure about future cash outlays for income taxes that are anticipated to substantially exceed income tax expense. Most registrants suggested that the rule be deleted, notwithstanding the importance of the disclosure it requires, because it is difficult to predict. The Commission understands that it is difficult to accurately predict this information; however, it believes that in situations where future cash outlays are anticipated to substantially exceed income tax expense, disclosure should be made. Since this disclosure may be more useful in relation to the liquidity section of the revised Management's Discussion and Analysis,[4] the Commission has determined to delete this portion of the income tax rule. It should be pointed out that although this disclosure has not been explicitly required in the Management's Discussion and Analysis, when applicable, this is the type of information which should be provided.

Warrants and rights outstanding. This rule requires disclosure of certain pertinent information with respect to warrants and rights outstanding at the date of the related balance sheet. Similar disclosure is required by paragraph 19 of APB No. 15, "Earnings per Share." However, APB No. 15 requires disclosure for "the various securities outstanding" and is not as explicit as this rule with regard to warrants and rights. Only one commentator objected to this rule and the Commission has determined to adopt the rule as proposed.

Leased assets and lease commitments. The purpose of this rule is two fold. First, the Commission believes that, except for cases where a problem (as defined in the rules) exists, the provisions of SFAS No. 13, "Accounting for Leases," should be fully effective for public companies, whereas, SFAS No. 13 does not require full application until fiscal years beginning after December 31, 1980. When SFAS No. 13 is fully effective the Commission will rescind this segment of the rule. Second, the rule requires certain "as if" disclosures by rate-regulated enterprises which are not within the scope of SFAS No. 13, a requirement which several commentators suggested should be deleted. The Commission is aware of the FASB project and related discussion memorandum, "Effect of Rate Regulation on Accounting for Regulated Enterprises." It is expected that the issue of accounting for leases and lease commitments will be given due consideration in the FASB's project. The Commission expects to retain the disclosure requirements related to rate-regulated enterprises until the FASB project is completed, at which time this segment of the rule will be re-evaluated.

Interest Cost. This rule requires disclosure of the amount of interet cost incurred and the respective amount expensed or capitalized for each period for which an income statement is presented. In ASR No. 272, "Recission of Moratorium on Capitalization of

[4]Securities Act Release No. 33-6231 (September 2, 1980).

Interest Costs," the Commission required these disclosures because SFAS No. 34, "Capitalization of Interest Cost," only requires prospective compliance for fiscal years beginning after December 15, 1979. The Commission will rescind this rule when the transition period has lapsed.

Disagreements on accounting and financial disclosure matters. This rule, which was proposed to be unchanged from the previous S-X requirement, requires disclosure about disagreements between registrants and their predecessor accountant involving certain accounting and financial disclosure matters. Several commentators argued that the resultant disclosure is not of financial significance and therefore, at a minimum, should not be included in the notes to the financial statements. The Commission continues to believe, as it has stated previously in Accounting Series Release Nos. 165 and 194 that:

> This disclosure is...necessary to put readers of financial statements on notice that such a disagreement existed which could have significantly affected the statements.

However, the Commission has concluded that the disclosure of disagreements between registrants and their predecessor accountants can be made outside of the financial statements. Accordingly, this rule has been relocated to Item 12 of Regulation S-K, "Supplementary Financial Information."

Material related party transactions which affect the financial statements. The first component of this rule was taken from Statement of Auditing Standards No. 6 ("SAS No. 6"), "Related Party Transactions," which

> provides guidance on procedures that should be considered by the Auditor when he is performing an examination of financial statements in accordance with generally accepted auiditing standards to identify related party transactions and to satisfy himself as to the substance of and accounting for such transactions including financial statement disclosure.

Since GAAP does not include any general accounting or reporting guidelines for these types of transactions, the Commission believes it is beneficial to integrate the disclosure requirements of SAS No. 6 into S-X. Further, SAS No. 6 applies to audited financial statements only and not unaudited financial statements, which are frequently included in filings with the Commission. This part of the rule requires disclosure of transactions with, investments in, and balances due to or from related parties which are material to the financial statements, individually or in the aggregate.

If comprehensive requirements for related party issues are developed by the FASB in the future as part of GAAP, as a result of the work now being performed by a task force authorized by the AICPA to investigate the issues dealing with related parties, the Commission will re-examine the need for it to have specific rules with regard to related party transaction. Until then, the Commission believes the rule is appropriate notwithstanding its partial or total opposition by approximately fifteen percent of the commentators who stated that the rule was unnecessary primarily because related party transactions are addressed in the auditing literature.

The second component of the rule applies to separate financial statements of the registrant, certain investees, or subsidiaries. It requires disclosure in the separate statement of amounts in the related consolidated financial statement which are eliminated and those not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof must be disclosed. These provisions are necessary because the first component of this rule does not explicitly cover this area.

The third segment of the rule received several specific comments in opposition to its adoption. It requires disclosure on the face of the balance sheet, income statement, or statement of changes in financial position of any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Commentators were opposed to the requirement to exhibit significant related party items on the face of the statements. However, this rule has been adopted since the Commission believes that the information is meaningful to users of financial statement.

The fourth segment of the rule was proposed to provide guidance regarding the classification of current amounts due from related parties. Although commentators did not object to this component of the rule, the Commission has revised it in order to clarify that in classifying all amounts due to and due

from related parties consideration shoud be given to the intent and financial position of the related parties in determining whether such amounts should be classified as current or long-term.

Supplementary income statement information. The information proposed to be required by this rule was previously required by Rules 5-04 and 12-16; however, the information, whether presented in a note or a schedule, was required to be presented in the prospectus for purposes of a Securities Act offering. The proposal to require disclosure of this information in the notes to the financial statements reflected the Commission's belief that this information about certain income statement items is relevant to substantially all users of financial statements. Approximately ten percent of the commentators indicated the contrary belief and suggested that the information continue to be presented in a schedule. Since the FASB project, "Reporting Earnings," is expected to address the issues underlying the need for this type of information, and since material changes in the components of expense items are required to be discussed in the revised Management's Discussion and Analysis, the Commission has determined it can permit this information to be furnished in a schedule.

ARTICLE 5

Article 5 prescribes the form and content of financial statements (balance sheets and income statements) and identifies the necessary schedules for commercial and industrial companies. This article, similar to the other articles designed for use by specific types of registrant, was adopted to provide guidance to commercial and industrial registrants when preparing financial statements pursuant to the Commission's rules. Alterations and modifications have been adopted on a "need to" basis and the format and components are intended to follow generally accepted practice. Although GAAP provides some guidance with respect to form and content of financial statements, the Commission believes it is appropriate to continue to assist preparers of financial statements by providing this skeletal outline and narrative guidance based on generally accepted practice. The underlying intent of the article is to obtain financial statements presented in a coherent, comprehensive and consistent manner which thereby effectively communicate information to users. The Commission realizes that financial statement information can be displayed in a variety of somewhat similar and diverse forms and has retained Rule 4-01 to permit certain other presentations used by some industries. Nevertheless, it believes that a certain level of consistency is necessary to foster user comprehension. The adopted rules provide an overall structure but permit greater flexibility than did the prior S-X rules.

Additionally, the Commission is aware of the various activities of the FASB which might result in revised accounting principles and significant alteration of the form and content of financial statements. The Commission supports these endeavors and stands ready to re-evaluate this matter and alter S-X as acceptable alternatives are developed.

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The individual rules in Article 5 are numerous and most have been adopted as proposed. The following discusses those items which were of particular interest to commentators and those items which have been adopted in a different form than that which was proposed.

Balance sheets. This rule indicates the persons to whom this article applies and requires compliance with its provisions. The reference to ASR No. 41 has been deleted.

Certain commentators indicated that this part of the article should provide guidance as to the application of the various required line items. The Commission concurs and, accordingly, has expanded this section. The rule states that the various indicated line items should be presented on the face of the balance sheet. Revised rule 4-02 refers to the fact that insignificant amounts may be combined. Additionally, certain items may be combined on the face of the statement as long as there is separate disclosure in the notes. This treatment is governed by explicit provisions included in the various rules of Article 5.

Numerous commentators suggested that the proposed rules be altered to provide registrants with a greater degree of flexibility to determine whether certain information should be disclosed on the face of the balance sheet or in the accompanying notes.

The Commission has concluded that those comments have substantial validity and therefore

has revised the instructions to require separate disclosure of the following items *either* on the face of the balance sheet or in an appropriately captioned note:

—Notes receivable when in the aggregate they exceed 10% of the total of accounts and notes receivable.

—Allowances for doubtful accounts and notes receivable.

—The individual components of other current assets which exceed five percent of total current assets.

—Accumulated depreciation, depletion, and amortization of property, plant and equipment.

—Accumulated depreciation and amortization of intangible assets.

—The individual components of other assets which exceed five percent of total assets.

—Amounts payable to (1) banks for borrowings; (2) factors or other financial institutions for borrowings; and (3) holders of commercial paper.

—The individual components of other current liabilities which exceed five percent of total current liabilities.

—The individual components of other liabilities which exceed five percent of total liabilities.

Inventories. This rule requires certain disclosures with respect to the components of inventory and other specific disclosures when certain unique situations exist.

Several commentators recommended deletion or clarification of the segment of this rule which requires certain disclosures if "cost" is used to determine any portion of the inventory amounts. This particular rule was adopted by ASR No. 164, "Notice of Adoption of Amendments to Regulation S-X to Provide for Improved Disclosures Related to Defense and Other Long-Term Contract Activities." The rule was intended to require disclosure of unique components of inventory, i.e., retained costs representing the excess of manufacturing and production costs over the amounts charged to cost of sales for delivered or in-process units, initial tooling and other deferred start-up costs, or general and administrative costs. In general, the Commission believes that the accounting treatment of such costs is sufficiently unique to warrant disclosure of their existence. The adopted rule contains examples of costs, such as those above, to provide guidance to registrants.

Accounts and notes payable. In addition to defining the components of this caption, this rule previously required disclosure of certain information regarding short-term borrowings and unused lines of credit. These requirements were established by ASR No. 148, "Notice of Adoption of Amendments to Regulation S-X and Related Interpretations and Guidelines Regarding Disclosure of Compensating Balances and Short-Term Borrowing Arrangements." Several commentators noted that the detail of information required, including weighted average interest rates; average aggregate short-term borrowings outstanding, during the period; maximum amount of aggregate short-term borrowings outstanding at any month end; and lines of credit may not be of interest to the majority of users of financial statements. Certain commentators stated that the revised Management's Discussion and Analysis might elicit a more effective presentation of the required information.

The Commission has concluded that these comments have substantial validity and it is adopting rules which correspond to the comments. With respect to the requirement to disclose information about the amounts of short-term borrowings outstanding and related interest rates, the Commission has adopted a schedule in §210.12-10, "Short-term borrowings." This schedule is required by §210.5-04, Schedule IX, to provide information about current amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper. the information required for each of these categories includes the balance outstanding at the end of the period and related weighted average interest rate, the maximum amount outstanding at any month end during the period, and the average amount outstanding during the period and related weighted average interest rate. The Commission has concluded that information concerning unused lines of credit is meaningful to the majority of users of financial statements and should remain as a financial settlement requirement.

With regard to inclusion of the information concerning short-term borrowings, the information may be presented in Management's Discussion and Analysis if it results in a more meaningful presentation of the information being provided. If that procedure is followed, the schedule may be omitted if appropriate cross-references are made.

Income statements. This rule indicates that applicable registrants are to comply with the provisions of this rule except as otherwise permitted by the Commission. The reference to ASR No. 41 has been deleted.

Net sales and gross revenue. In addition to detailing the display format for sales and revenues, this rule specifies that if the total reported sales or revenues include consumer excise tax in an amount equal to 1% or more, the amount of excise tax shall be shown parenthetically or otherwise on the face of the income statement. Several commentators urged that that the rule be eliminated or the percentage requirement be increased.

The Commission proposed to lower the percentage test from 10% to 1% because consumer excise tax amounts which are less than 10% of sales and revenue frequently are significant to the reported tax amount which include the corresponding excise tax expense. The Commission continues to believe that this information should be disclosed because of its unique nature. It is neither a component of costs nor expenses although it frequently is aggregated with such items.

Earnings applicable to common stock. The proposed rule would have required registrants to present on the face of the income statement earnings which apply to common stock, if applicable. The previous requirement to disclose this amount was contained in the "Summary of Operations" items of the various Securitie Act and Securities Exchange Act forms; however, this summary has been deleted in a concurrent release.[5] Several commentators opposed the adoption of this rule because the information is not meaningful and suggested that the issue be considered by the FASB. The Commission has concluded that these comments are substantially valid with regard to many registrants and although it believes disclosure of earnings applicable to common stock is of value in certain situations, it has decided not to mandate presentation of the amount in all financial statements.

Property, plant and equipment. The proposed rule would have required substantial revision of the form and content of the property, plant and equipment schedules. The following information about property, plant and equipment would have been required:

(1) Assets classified by depreciation, depletion or amortization method and thereunder by major classification.

(2) Fully depreciated, depleted or amortized assets which are still in use.

(3) By classification, the rate used in computing depreciation, depletion or amortization, and, if more than one rate is used, the range and weighted average rate.

(4) Any asset or group of homogeneous assets (such as computers, equipment used in a specific manufacturing process, warehouses, and office buildings) which comprises 25 percent or more of a major class of property, plant and equipment and the depreciation, depletion or amortization rate. This requirement, however, would not have applied if the asset or group of homogeneous assets constituted less than five percent of total assets.

Numerous comments were received in response to the exposure of this rule. Most commentators opposed the disclosure on the grounds that it would be costly to produce and would provide details in excess of the present requirements which would be of little value to the majority of users. The Commission believes that certain of the comments have substantial validity, and therefore it has decided to reconsider the proposed rule and anticipates that it will re-expose in the near future a rule addressing this issue. Accordingly, the property, plant and equipment schedules will remain unchanged, except for a requirement to disclose depreciation methods, and, if practicable, rates used to compute annual charges to the income statement. These requirements were previosly included in the Rules of General Application and, accordingly, their inclusion in Article 5 is not an expansion of required disclosure.

[5]Securities Act Release No. 33-6231 (September 2, 1980).

OTHER AMENDMENTS

Changes to other articles. There are numerous cross-references in the other Articles of S-X to rules in Articles 3, 5 and 12 which have been deleted, revised or renumbered in this release. Accordingly, appropriate changes have been made to those articles in this release.

Selected quarterly financial data. This rule was proposed to be unchanged; however, it was proposed to be moved from S-X to Regulation S-K in recognition of the fact that the information is not required to be audited. This change has been adopted as proposed. The proposal noted that Rule 2-02(e) of S-X required a certain level of auditor involvement with this unaudited information. Coincident with the movement of the requirement for selected quarterly financial data to Regulation S-K, the substance of Rule 2-02(e) has been transferred to Regulation S-K. The Auditing Standards Board of the AICPA has stated that they will consider amendment of the applicable auditing standards in recognition of this change.

Financial accounting and reporting for oil and gas producing activities. A subparagraph is being added to §210.4-10(k)(5), "Disclosure of estimated quantites of proved oil and gas reserves," which deals with the situation where foreign governments restrict disclosures about estimated reserves in that country. This instruction is the same as the one already contained in Item 2(b)(1), instruction (c) of Regulation S-K; however, since a requirement to disclose reserve quantities is also contained in S-X, this instruction should have been included therein. This revision was not proposed in the original proposed rule changes; however, adoption is considered appropriate since no new requirement is being adopted, but rather the Regulations S-K and S-X provisions are being conformed.

Foreign issuers. As part of this revision of S-X, a rule has been added to Article 4-01 which provides that financial statements of foreign private issuers filed with the Commission, on any form other than Form 20-F, may be prepared according to foreign accounting principles, if a reconciliation to United States GAAP and the provisions of S-X are also filed as part of the financial statements. This rule is not an amendment but is formalization of a policy which the Commission follows presently.

REFERENCE TABLE OF RULE CHANGES

The table which follows is presented to enable the reader to trace each of the previous rules to its amended rule number or to identify which previous rules have been deleted. Very brief indications of the changes are also provided. The discussion in the previous sections release provides the detailed explanation of the more significant rule changes and those where the adopted rule differs from the proposed rule. The table is intended only as a guide, the new rules and the discussion of changes should also be read in conjunction with this table.

Previous Rule ..... *New Rule*

ARTICLE 3:

210.3-01(a) ..... 210.4-01(a)
The first paragraph contains minor wording revisions in the first sentence and the second sentence was moved from previous rule 210.3-06. a second and third paragraph were added covering GAAP requirements and foreign issuers, respectively.

210.3-01(b) ..... 210.4-01(b)
First sentence revised. Second sentence deleted.

210.3-01(c) ..... 210.4-01(c)
Rule revised to allow different methods of display for negative amounts.

210.3-02 ..... 210.4-02
Minor wording changes.

210.3-03 ..... 210.4-03
Minor wording revision in paragraph (a). Paragraph (c) also revised.

210.3-04 ..... 210.4-04
No change.

210.3-05 ..... Deleted.

210.3-06 ..... First sentence moved to 210.4-01(a). Second sentence deleted.

210.3-07 ..... Deleted.

210.3-08 ..... Deleted.

Previous Rule *New Rule*

ARTICLE 3 (continued):

210.3-09 ..... Deleted.

210.3-10 ..... Deleted.

210.3-11 ..... 210.4-05
Revised and combined with the previous rule 210.3-12.

210.3-12 ..... Combined with previous rule 210.3-11.

210.3-13 ..... 210.4-06
Minor revisions to rule.

210.3-14 ..... Deleted.

210.3-15 ..... 210.4-07
Minor revisions to recognize changes made in ASR No. 268.

210.3-16 ..... 210.4-08
The requirement to present note references on the face of the financial statements has been deleted.

210.3-16(a) ..... 210.4-08(a)
No change.

210.3-16(b) ..... Deleted.

210.3-16(c) ..... 210.4-08(b)
No change.

210.3-16(d) ..... Deleted.

210.3-16(e) ..... 210.4-08(c)
Second and third sentences deleted.

210.3-16(f) ..... 210.4-08(d)
Subparagraphs (1), (2), (3)(i), and (3)(ii) deleted. Minor revisions to reminder of rule.

210.3-16(g) ..... Deleted.

210.3-16(h) ..... 210.4-08(e)
Present requirements of the rule are clarified and subparagraph (b) of previous rule 210.5-02.41 added.

210.3-16(i) ..... Deleted.

210.3-16(j) ..... Deleted.

210.3-16(k) ..... 210.4-08(f)
No change.

210.3-16(l) ..... Deleted.

210.3-16(m) ..... Deleted.

210.3-16(n) ..... Deleted.

210.3-16(o) ..... 210.4-08(g)
Portions of the rule which duplicate GAAP were deleted and a requirement added for separate disclosure of domestic and foreign income (loss) before taxes.

210.3-16(p) ..... 210.4-08(h)
No change.

210.3-16(q) ..... 210.4-08(i)
Most of the rule is deleted but the references to SFAS No. 13, "Accounting for Leases," continue the previous requirements.

210.3-16(r) ..... 210.4-08(j)
No change from the rule adopted in Accounting Series Release No. 272.

210.3-16(s) ..... Moved to Item 12 of Regulation S-K.

210.3-16(t) ..... Moved to Item 12 of Regulation S-K.

210.3-17 ..... 210.4-09
No change but see Accounting Series Release No. 271.

210.3-18 ..... 210.4-10
Subparagraph (vii) added to 4-10(k)(5).

ARTICLE 5

210.5-01 ..... 210.5-01
No change.

210.5-02 ..... 210.5-02
Revisions to the introductory paragraph.

210.5-02.1 ..... 210.5-02.1
Minor revisions to the rule to focus on withdrawal or usage restrictions.

Previous Rule *New Rule*

ARTICLE 5 (continued):

210.5-02.2 ..... 210.5-02.2
Revised to recognize current GAAP requirements.

210.5-02.3 ..... 210.5-02.3
Subparagraphs (a) revised; (b) deleted; (c) deleted; (d) revised; and (e) through (g) combined.

210.5-02.4 ..... 210.5-02.4
Location of disclosure is optional.

210.5-02.5 ..... 210.5-02.5
Caption only retained.

210.5-02.6 ..... 210.5-02.6
A portion of the first and second paragraphs of subparagraph (b) is revised.

210.5-02.7 ..... 210.5-02.8
Last sentence deleted and location of disclosure is optional.

210.5-02.8 ..... 210.5-02.7
Reference deleted.

210.5-02.9 ..... 210.5-02.9
No change.

210.5-02.10 ..... 210.5-02.10
Caption only retained (after being revised to refer to related parties) with a reference to rule 210.4-08(k) added.

210.5-02.11 ..... 210.5-02.11
Caption only retained (after being revised to refer to related parties) with a reference to rule 210.4-08(k) added.

210.5-02.12 ..... 210.5-02.12
Revised to rcognize current GAAP requirements and to combine the requirements of previous rule 210.5-02.13.

210.5-02.13 ..... Deleted.
Requirement combined with 210.5-02.12.

210.5-02.14 ..... 210.5-02.13
Subparagraph (a) revised; subparagraph (b) revised to delete part of next to last sentence and all of last sentence.

210.5-02.15 ..... 210.5-02.14
Location of disclosure is optional.

210.5-02.16 ..... 210.5-02.15
Previous requirement revised and expanded.

210.5-02.17 ..... 210.5-02.16
Location of disclosure is optional.

210.5-02.18 ..... 210.5-02.17
Previous requirement revised and expanded and location of disclosure is optional.

210.5-02.19 ..... Deleted.

210.5-02.20 ..... Deleted.

210.5-02.21 ..... Deleted.

210.5-02.22 ..... Deleted.

210.5-02.23 ..... Deleted.

210.5-02.24 ..... 210.5-02.18
No change.

210.5-02.25 ..... 210.5-02.19
Minor revisions to subparagraph (a). The requirements of subparagraph (b) have been transferred to a schedule (§210.12-10). No change in subparagraph (c).

210.5-02.26 ..... Deleted.
Requirement combined with previous rule 210.5-02.27.

210.5-02.27 ..... 210.5-02.20
Revised to also include the requirements of previous rule 210.5-02.26.

210.5-02.28 ..... 210.5-02.21
No change.

210.5-02.29 ..... 210.5-02.22
Minor revisions in subparagraph (a); no change in subparagraph (b).

210.5-02.30 ..... Deleted.

210.5-02.31 ..... 210.5-02.23
Caption only retained with a reference to rule 210.4-08(k) being added.

210.5-02.32 ..... Deleted.

210.5-02.33 ..... 210.5-02.24
Location of disclosure is optional.

Previous Rule — *New Rule*

ARTICLE 5 (continued):

210.5-02.34 ..... 210.5-02.25
No change.

210.5-02.35 ..... 210.5-02.26
Last sentence deleted.

210.5-02.36 ..... Deleted.

210.5-02.37 ..... 210.5-02.27
Minor revisions.

210.5-02.38 ..... 210.5-02.28
No change.

210.5-02.39 ..... 210.5-02.29
Location of certain disclosure is optional.

210.5-02.40 ..... 210.5-02.30
Location of certain disclosure is optional.

210.5-02.41 ..... 210.5-02.31
Revised to permit the combination of certain items; subparagraph (b) moved to 210.4-08(e).

210.5-02.42 ..... 210.5-02.32
Minor wordings changes.

210.5-03 ..... 210.5-03
Minor revisions made to introductory paragraph; subparagraphs (a) and (b) deleted; minor revisins made to subparagraph (c).

210.5-03.1A 210.5-03.1
Minor revisions made and combined with previous rules 210.5-03.1B and .1C.

210.5-03.2A 210.5-03.2
Minor revisions made and combined with previous rules 210.5-03.2B and .2C.

210.5-03.3A ..... Deleted.

210.5-03.1B 210.5-03.1
See 210.5-03.1A above.

210.5-03.2B 210.5-03.2
See 210.5-03.2A above.

210.5-03.1C 210.5-03.1
See 210.5-03.1A above.

210.5-03.2C 210.5-03.2
See 210.5-03.2A above.

210.5-03.3 ..... 210.5-03.3
No change except for reference to preceding rules.

210.5-03.4 ..... 210.5-03.4
Caption only retained.

210.5-03.5 ..... 210.5-03.5
No change.

210.5-03.6 ..... 210.5-03.6
No change.

210.5-03.7 ..... 210.5-03.7
Revised and combined with previous Rules 210.5-03.8, .9, and .10.

210.5-03.8 ..... See 210.5-03.7 above.

210.5-03.9 ..... See 210.5-03.7 above.

210.5-03.10 ..... See 210.5-03.7 above.

210.5-03.11 ..... 210.5-03.8
Caption only retained.

210.5-03.12 ..... 210.5-03.9
Revised and combined with previous rule 210.5-03.13.

210.5-03.13 ..... 210.5-03.9
Revised and combined with previous rule 210.5-03.12.

210.5-03.14 ..... 210.5-03.10
No change.

210.5-03.15 ..... 210.5-03.11
No change.

210.5-03.16 ..... 210.5-03.12
No change.

210.5-03.17 ..... 210.5-03.13
First sentence deleted and minor revisions to remainder of rule.

210.5-03.18 ..... 210.5-03.16
Caption expanded.

Previous Rule	New Rule
ARTICLE 5 (continued):	
210.5-03.19	210.5-03.17
Caption only retained.	
210.5-03.20	210.5-03.18
Caption only retained.	
210.5-03.21	210.5-03.19
No change.	
210.5-03.22	210.5-03.20
Caption only retained.	
210.5-04	210.5-04
The changes made to this rule are as a result of the revisions made in Article 12 (see below) and a renumbering of schedules.	
ARTICLE 12:	
210.12-01	210.12-01
No change.	
210.12-02	210.12-02
Revised heading.	
210.12-03	210.12-03
Revised and expanded to include related parties.	
210.12-04	210.12-04
Expanded to include related parties.	
210.12-05	210.12-05
Format of schedule changed and combined with previous rule 210.12-11.	
210.12-06	210.12-06
Footnote added to include the requirements of previous rule 210.3-16(m)(1).	
210.12-07	210.12-07
No change.	
210.12-08	Deleted.
210.12-09	Deleted.
210.12-10	Deleted.
210.12-11	Combined with 210.12-05 above.
210.12-12	210.12-08
No change.	
210.12-13	210.12-09
Revised title.	
210.12-14	Deleted.
210.12-15	Deleted.
210.12-16	210.12-11
Partial elimination of disclosures.	
210.12-17	Previously revoked.
210.12-18	Previously revoked.
210.12-19	210.12-12
No change.	
210.12-20	Previously revoked.
210.12-21	210.12-13
No change.	
210.12-22	210.12-14
No change.	
210.12-23	Previously revoked.
210.12-24	Previously revoked.
210.12-25	Previously revoked.
210.12-26	Previously revoked.
210.12-27	210.12-15
No change.	
219,12-28	Previously revoked.
210.12-29	210.12-16
No change.	
210.12-30	Previously revoked.
210.12-31	210.12-17
No change.	
210.12-31a	210.12-18
No change.	
210.12-32	Previously revoked.

Previous Rule	*New Rule*
ARTICLE 12 (continued):	
210.12-33	210.12-19
No change.	
210.12-34	210.12-20
No change.	
210.12-35	210.12-21
No change.	
210.12-36	210.12-22
No change.	
210.12-37	210.12-23
No change.	
210.12-38	210.12-24
No change.	
210.12-39	210.12-25
No change.	
210.12-40	210.12-26
No change.	
210.12-41	210.12-27
No change.	
210.12-42	210.12-28
No change.	
210.12-43	210.12-29
No change.	

COMMISSION ACTION:

The Commission hereby amends 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By adding a new paragraph (t) to §210.1-02 and by redesignating the former paragraphs (t) through (y) as (u) through (z).

§210.1-02 Definitions of terms used in Regulation S-X (17 CFR Part 210).

* * * * *

(t) *Related parties.* The term "related parties" means the registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other, to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other, to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, the terms (1) "principal owner" means the owner(s) of record or known beneficial owner(s) of more than 10% of the voting interests of the reporting entity, and (2) "management" means any person(s) having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which such objectives are to be pursued.

* * * * *

2. By deleting §210.1-02(e).

§210.2-02 Accountants' reports.

* * * * *

(e) Deleted.

* * * * *

3. Article 3 (§210.3-01 to §210.3-18) is redesignated Article 4 (§210.4-01 to §210.4-10) (the present Article 4 is redesignated Article 3A in a concurrent release, Securities Act Release No. 33-6234); §§210.3-05 through 210.3-10, 210.3-12 and 210.3-14 are deleted; and §210.4-01 to §210.4-08 are revised to read as follows:

RULES OF GENERAL APPLICATION

§210.4-01. Form, order, and terminology.

(a) Financial statements should be filed in such form and order, and should use such generally accepted terminology, as will best indicate their significance and character in the light of the provisions applicable thereto. The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information as is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

Financial statements filed with the Commission which are not prepared in accordance with generally accepted accounting principles will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided. This article and other articles of Regulation S-X provide clarification of certain disclosures which must be included in any event, in financial statements filed with the Commission.

Financial statements of foreign private issuers filed with the Commission, on any form other than Form 20-F, may be prepared according to foreign accounting principles: *Provided*, That a reconciliation to United States generally accepted accounting principles and the provisions of Regulation S-X is also filed as part of the financial statements.

(b) All money amounts required to be shown in financial statements may be expressed in whole dollars or multiples thereof, as appropriate: *Provided*, That, when stated in other than whole dollars, an indication to that effect is inserted immediately beneath the caption of the statement or schedule, at the top of the money columns, or at an appropriate point in narrative material.

(c) Negative amounts (red figures) shall be shown in a manner which clearly distinguishes the negative attribute. When determining methods of display, consideration should be given to the limitations of reproduction and microfilming processes.

§210.4-02 Items not material.

If the amount which would otherwise be required to be shown with respect to any item is not material, it need not be separately set forth. The combination of insignificant amounts is permitted.

§210.4-03 Inapplicable captions and omission of unrequired or inapplicable financial statements.

(a) No caption should be shown in any financial statement as to which the items and conditions are not present.

(b) Financial statements not required or inapplicable because the required matter is not present need not be filed.

(c) The reasons for the omission of any required financial statements shall be indicated.

§210.4-04 Omission of substantially identical notes.

If a note covering substantially the same subject matter is required with respect to two or more financial statements relating to the same or affiliated persons, for which separate sets of notes are presented, the required information may be shown in a note to only one of such statements: *Provided*, That a clear and specific reference thereto is made in each of the other statements with respect to which the note is required.

§210.4-05 Current assets and current liabilities.

If a company's normal operating cycle is longer than one year, generally recognized trade practices should be followed with respect to the inclusion or exclusion of items in current assets or current liabilities. An appropriate explanation of the circumstances should be made and, if practicable, an estimate given of the amount not realizable or payable within one year. The amounts maturing in each year (if practicable) along with the interest rates or range of rates also shall be disclosed.

§210.4-06 Reacquired evidences of indebtedness.

Reacquired evidences of indebtedness shall be deducted from the appropriate liability caption. However, reacquired evidences of indebtedness held for pension and other special funds not related to the particular issues may be shown as assets: *Provided*, That there be stated the amount of such evidences of indebtedness, the cost thereof, the amount at which stated, and the purpose for which acquired.

§210.4-07 Discount of shares.

Discount on shares, or any unamortized balance thereof, shall be shown separately as a deduction from the applicable account(s) as circumstances require.

§210.4-08 General notes to financial statements.

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information required by items (b), (c), (d), (e), (f), and (h) shall be provided as of the most recent audited balance sheet being filed and for item (i) as specified therein. When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

(a) *Principles of consolidation or combination.*

With regard to consolidated or combined financial statements, refer to §§210.3A-01 to 3A-08 for requirements for supplemental information in notes to the financial statements.

(b) *Assets subject to lien.* Assets mortgaged, pledged, or otherwise subject to lien, and the approximate amounts thereof, shall be designated and the obligations collateralized briefly identified.

(c) *Defaults.* The facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured, shall be stated in the notes to the financial statements. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, state the amount of the obligation and the period of the waiver.

(d) *Preferred shares.* (1) Aggregate references on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(2) Disclosure shall be made of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceeds the par or stated value of such shares.

(e) *Restrictions which limit the availability of retained earnings or net income for dividend purposes.* (1) Describe the most significant restrictions, other than as reported in paragraph (d) of this section, on the payment of dividends by the issuer, indicating briefly their sources, their pertinent provisions, and, where appropriate and determinable, the amount of retained earnings or net income (i) so restricted, or (ii) free of such restrictions.

(2) Describe the most significant restrictions on the payment of dividends by consolidated subsidiaries to the issuer, indicating briefly their sources, their pertinent provisions, and, where determinable, the amount of retained earnings or net income (i) so retricted or (ii) free of such restrictions.

(3) Disclose separately the amount of retained earnings of the issuer which represents undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. With respect to the undistributed earnings of unconsolidated subsidiaries, describe the most significant restrictions on the payment of dividends by the unconsolidated subsidiaries to the issuer, indicating briefly their sources, their pertinent provisions, and, where determinable the amount (i) so restricted or (ii) free of such restrictions.

(f) *Significant changes in bonds, mortgages and similar debt.* Any significant changes in the authorized or issued amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

(g) *Income tax expense.* (1) Disclosure shall be made in the income statement or a note thereto, of (i) the components of income (loss) before income tax expense (benefit) as either domestic or foreign; (ii) the components of income tax expense, including (A) taxes currently payable and (B) the net tax effects, as applicable, of timing differences (indicate separately the amount of the estimated tax effect of each of the various types of timing differences, such as depreciation, warranty costs, etc., where the amount of each such tax effect

exceeds five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate; other differences may be combined.) *Note:* Amounts applicable to United States Federal income taxes, to foreign income taxes and the other income taxes shall be stated separately for each major component. Amounts applicable to foreign income (loss) and amounts applicable to foreign or other income taxes which are less than five percent of the total of income before taxes or the component of tax expense, respectively, need not be separately disclosed. For purposes of this rule, foreign income (loss) is defined as income (loss) generated from a registrant's foreign operations, i.e., operations that are located outside of the registrant's home country.

(2) Provide a reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, showing the estimated dollar amount of each of the underlying causes for the difference. If no indvidual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. The reconciliation may be presented in percentages rather than in dollar amounts. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. When the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

(h) *Warrants or rights outstanding.* Information with respect to warrants or rights outstanding at the date of the related balance sheet shall be set forth as follows:

(1) Title of issue of securities called for by warrants or rights.

(2) Aggregate amount of securities called for by warrants or rights outstanding.

(3) Date from which warrants or rights are exercisable.

(4) Price at which warrant or right is exercisable.

(i) *Leased assets and lease commitments.* (1) Leased assets and lease commitments of regulated enterprises subject to the rate-making process.

(i) Paragraph (1) of this section is applicable to all regulated enterprises subject to the rate-making process that do not record capital leases as assets with associated liabilities.

(ii) The following information shall be provided for capital leases covered by this rule:

(A) As of the date for each required balance sheet, the aggregate amounts of the assets and liabilities that would have been recorded in the accounts had all leases meeting the definition of a capital lease been recorded.

(B) For each period for which an income statement is required, the aggregate effect on expenses had all assets obtained through leases meeting the definition of a capital lease been recorded as assets with associated liabilities and any additional information management believes is necessary as to the rate-making process.

(2) Leased assets and lease commitments of enterprises which are not covered by paragraph (1). The financial statement requirements in Statement of Financial Accounting Standards No. 13, "Accounting for Leases," shall be applied in financial statements filed for fiscal years ended after December 24, 1978 with regard to all leases except for companies where a problem, as defined exists. The problem and its potential impact should be disclosed in the footnotes to the financial statements. For purposes of this paragraph "problem" is defined as: that situation where capitalization of capital leases as defined in Statement of Financial Accounting Standards No. 13 would result in the violation or probable future violation expected to occur prior to fiscal years beginning after December 31, 1980 of a restrictive clause in an existing loan indenture or other agreement.

(j) *Interest cost.* Disclosure shall be provided for

each period for which an income statement is presented of the amount of interest cost incurred and the respective amounts expensed or capitalized.

(k) *Material related party transactions which affect the financial statements.*

(1) The financial statements filed shall disclose transactions with, investments in, and balances due to or from related parties that are material, individually or in the aggregate. This disclosure should include the following:

(i) The nature of the relationship(s).

(ii) A description of the transactions (summarized when appropriate) for the periods for which an income statement is presented, including amounts, if any, and such other information as is deemed necessary to an understanding of the effects on the financial statements.

(iii) The dollar volume of transactions and the effects of any change in the method of establishing terms from that used in the preceding period.

(iv) Amounts due to or from related parties and, if not otherwise apparent, the terms and manner of settlements.

(v) Amount of investments in related parties.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, separate disclosure shall be made in such statements of the amounts in the related consolidated financial statements which are (i) eliminated and (ii) not eliminated. Also, any intercompany profits or losses resulting from transactions with related parties and not eliminated and the effects thereof shall be disclosed.

(3) Disclosure should be made on the face of the balance sheet, income statement, or statement of changes in financial position for any material related party receivable or payable; revenue, expense, gain or loss; or cash flows, respectively. Relevant details regarding these amounts should be provided in the notes.

(4) With respect to the classification of current amounts due from or to related parties, consideration hould be given to the intent and the financial position of such related parties in determining whether such amounts should be classified as current or long-term.

§210.4-09 Current replacement cost information.

(No change from redesignated text.)

§210.4-10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal Securities laws and the Energy Policy and Conservation Act of 1975.

Section §210.3-18 is redesignated §210.4-10 and a new paragraph (vii) is added to §210.4-10(k)(5) as follows:

§210.4-10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.

* * * * *

(k) * * *

(5) * * *

(vii) If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proved, the registrant should identify the country, cite the law or regulation which restrict or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that reserve estimates include reserves other than provided.

* * * * *

4. By revising Article 5 to read as follows:

COMMERCIAL AND INDUSTRIAL COMPANIES

§210.5-01 Application of §§210.5-01 to 210.5-04.

(a) Sections 210.5-01 to 210.5-04 shall be applicable to financial statements filed for all persons except—

(1) Management investment companies (see

§§210.6-01 to 210.6-10).

(2) Unit investment trusts (see §§210.6-10a to 210.6-13).

(3) Face amount certificate investment companies (see §§210.6-20 to 210.6-24).

(4) Employee stock purchase, savings and similar plans (see §§210.6-30 to 210.6-34).

(5) Insurance companies other than title insurance companies (see §§210.7-01 to 210.7-06 and §§210.7A-01 to 210.7A-06).

(6) Committees issuing certificates of deposit (see §§210.8-01 to 210.8-03).

(7) Bank holding companies and banks (see §§210.9-01 to 210.9-05).

(8) Brokers and dealers when filing forms X-17A-5 and X-17A-10 [§249.617] (see §§210.17a-5 and 240.17a-10 under the Securities Exchange Act of 1934).

(b) Companies in the development stage.

Section 210.5A-02 prescribes additional information to be included in financial statements filed by companies in the development stage.

§210.5-02 Balance sheets.

The purpose of this rule is to indicate the various line items and certain additional disclosures which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the balance sheets or related notes filed for the persons to whom this article pertains (see §210.4-01(a)).

ASSETS AND OTHER DEBITS

Current Assets, when Appropriate

(SEE §210.4-05)

1. *Cash and cash items.* Separate disclosure shall be made of the cash and cash items which are restricted as to withdrawal or usage. The provisions of any restriction shall be described in anote to the financial statements. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposit are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreeements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required in the notes to the financial statements. Compensating balances that are maintained under an agreement to assure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of such agreement.

2. *Marketable securities.* The accounting and disclosure requirements for current marketable equity securities are specified by generally accepted accounting principles. With respect to all other current marketable securities, state, parenthetically or otherwise, the basis of determining the aggregate amount shown in the balance sheet, along with the alternatives of the aggregate cost or the aggregate market value at the balance sheet date.

3. *Accounts and notes receivable.* (a) State separately amounts receivable from (1) customers (trade); (2) related parties (see §210.4-08(k)); (3) underwriters, promoters, and employees (other than related parties) which arose in other than the ordinary course of business; and (4) others.

(b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately, in the balance sheet or in a note thereto, for accounts receivable and notes receivable.

(c) If receivables include amounts due under long-term contracts (see §210.5-02.6(d)), state separately in the balance sheet or in a note to the financial statements the following amounts:

(1) Balances billed but not paid by customers under retainage provisions in contracts.

(2) Amounts representing the recognized sales value of performance and such amounts that had not been billed and were not billable to customers at the date of the balance sheet. Include a general

description of the prerequisites for billing.

(3) Billed or unbilled amounts representing claims or ther similar items subject to uncertainty concerning their determination or ultimate realization. Include a description of the nature and status of the principal items comprising such amount.

(4) With respect to (1) through (3) above, also state the amounts included in each item which are exepcted to be collected after one year. Also state, by year, if practicable, when the amounts or retainage (see (1) above) are expected to be collected.

4. *Allowances for doubtful accounts and notes receivable.* The amount is to be set forth separately in the balance sheet or in a note thereto.

5. *Unearned income.*

6. *Inventories.* (a) State separately in the balance sheet or in anote thereto, if practicable, the major classes of inventory such as: (1) finished goods; (2) inventoried costs relating to long-term contracts or programs (see (d) below and §210.4-05); (3) work in process (see §210.4-05); (4) raw materials; and (5) supplies.

(b) The basis of determining the amounts shall be stated.

If "cost" is used to determine any portion of the inventory amounts, the description of this method shall include the nature of the cost elements included in inventory. Elements of "cost" include, among other items, retained costs representing the excess of manufacturing or production costs over the amounts charged to cost of sales or delivered or in-process units, initial tooling or other deferred start-up costs, or general and administrative costs.

The method by which amounts are removed from inventory (e.g., "average cost," "first-in, first-out," "last-in, first-out," "estimated average cost per unit") shall be described. If the estimated average cost per unit is used as a basis to determine amounts removed from inventory under a total program or similar basis of accounting, the principal assumptions (including, where meaningful, the aggregate number of units expected to be delivered under the program, the number of units delivered to date and the number of units on order) shall be disclosed.

If any general and administrative costs are charged to inventory, state in a note to the financial statements the aggregate amount of the general and administrative costs incurred in each period and the actual or estimated amount remaining in inventory at the date of each balance sheet.

(c) If the LIFO inventory method is used, the excess of replacement or current cost over stated LIFO value shall, if material, be stated parenthetically or in a note to the financial statements.

(d) For purposes of §§210.5-02.3 and 210.5-02.6, long-term contracts or programs include (1) all contracts or programs for which gross profits are recognized on a percentage-of-completion method of accounting or any variant thereof (e.g., delivered unit, cost to cost, physical completion), and (2) any contracts or programs accounted for on a completed contract basis of accounting where, in either case, the contracts or programs have associated with them material amounts of inventories or unbilled receivables and where such contracts or programs have been or are expected to be performed over a period of more than twelve months. Contracts or programs of shorter duration may also be included, if deemed appropriate.

For all long-term contracts or programs, the following information, if applicable, shall be stated in a note to the financial statements:

(i) The aggregate amount of manufacturing or production costs and any related deferred costs (e.g., initial tooling costs) which exceeds the aggregate estimated cost of all in-process and delivered units on the basis of the estimated average cost of all units expected to be produced under long-term contracts and programs not yet complete, as well as that portion of such amount which would not be absorbed in cost of sales based on existing firm orders at the latest balance sheet date. In addition, if practicable, disclose the amount of deferred costs by type of cost (e.g., initial tooling, deferred production, etc.).

(ii) The aggregate amount representing claims or other similar items subject to uncertainty concerning their determination or ultimate realization, and include a description of the nature and status of the principal items comprising such aggregate amount.

(iii) The amount of progress payments netted

against inventory at the date of the balance sheet.

7. *Prepaid expenses.*

8. *Other current assets.* State separately, in the balance sheet or in a note thereto, any amounts in excess of five percent of total current assets.

9. *Total current assets, when appropriate.*

10. *Securities of related parties.* (See §210.4-08(k).)

11. *Indebtedness of related parties—not current.* (See §210.4-08(k).)

12. *Other investments.* The accounting and disclosure requirements for non-current marketable equity securities are specificed by generally accepted accounting principles. With respect to other security investments and any other investment, state, parenthetically or otherwise, the basis of determining the aggregate amounts shown in the balance sheet, along with the alternate of the aggregate cost or aggregate market value at the balance sheet date.

13. *Property, plant and equipment.*

(a) State the basis of determining the amounts.

(b) Tangible and intangible utility plant of a public utility company shall be segregated so as to show separately the original cost, plant acquisition adjustments, and plant adjustments, as required by the system of accounts prescribed by the applicale regulatory authorities. This rule shall not be applicable in respect to companies which are not required to make such a classification.

14. *Accumulated depreciation, depletion, and amortization of property, plant and equipment.* The amount is to be set forth separately in the balance sheet or in a note thereto.

15. *Intangible assets.* State separately each class of such assets which is in excess of five percent of the total assets, along with the basis of determining the respective amounts. Any significant addition or deletion shall be explained in a note.

16. *Accumulated depreciation and amortization of intangible assets.* The amount is to be set forth separately in the balance sheet or in a note thereto.

17. *Other assets.* State separately, in the balance sheet or in a note thereto, any other item not properly classed in one of the preceding asset captions which is in excess of five percent of total assets. Any significant addition or deletion should be explained in a note. With respect to any significant deferred charge, state the policy for deferral and amortization.

18. *Total assets and, when appropriate, other debits.*

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities, When Appropriate

(See §210.4-05)

19. *Accounts and notes payable.* (a) State separately amounts payable to (1) banks for borrowings; (2) factors or other financial institutions for borrowings; (3) holders of commercial paper; (4) trade creditors; (5) related parties (see §210.4-08(k)); (6) underwriters, promoters, and employees (other than related parties); and (7) others. Amounts applicable to (1), (2) and (3) may be stated separately in the balance sheet or in a note thereto.

(b) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

20. *Other current liabilities.* State separately, in the balance sheet or in a note thereto, any item in excess of 5 percent of total current liabilities. such items may include, but are not limited to, accrued payrolls, accrued interest, taxes, indicting the current portion of deferred income taxes, and the current portion of long-term debt. Remaining items may be shown in one amount.

21. *Total current liabilities, when appropriate.*

LONG-TERM DEBT

22. *Bonds, mortgages and other long-term debt, including capitalized leases.* (a) State separately, in the balance sheet or in a note thereto, each issue or type of obligation and such information as will indicate (see §210.4-06):

(1) the general character of each type of debt including the rate of interest; (2) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such as "maturing serially from 1980 to 1990"; (3) if the payment of principal or interest is contingent, an appropriate indication of such contingency; (4) a brief indication of priority; (5) if convertible, the basis; and (6) the combined aggregate amount of maturities and sinking fund requirements for all issues, each year for the five years following the date of the balance sheet. For amounts owed to related parties, see §210.4-08(k).

(b) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that would be disclosed under this rule if used shall be disclosed in the notes to the financial statements if significant.

23. *Indebtedness to related parties—noncurrent.* Include under this caption indebtedness to related parties as required under §210.4-08(k).

24. *Other liabilities.* State separately, in the balance sheet or in a note thereto, any item not properly classified in one of the preceding liability captions which is in excess of 5 percent of total liabilities.

25. *Commitments and contingent liabilities.*

26. *Deferred credits.* State separately in the balance sheet amounts for (a) deferred income taxes, (b) deferred tax credits, and (c) material items of deferred income.

MINORITY INTERESTS

27. *Minority interests in consolidated subsidiaries.* State separately in a note the amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated stockholders' equity.

REDEEMABLE PREFERRED STOCKS

28. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (1) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (2) it is redeemable at the option of the holder; or (3) it has conditions for redemption which are not solely within the control of the issuer, such as stocks which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under §210.5-02.29 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title of each issue, the carrying amount, and redemption amount. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [See §210.4-07].

(c) State in a separate note captioned "Redeemable Preferred Stocks" (1) a general description of each issue, including its redemption features (e.g. sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made; (2) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet; and (3) the changes in each issue for each period for which an income statement is required to be filed. [See also §210.4-08(d).]

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 29, 30 or 31 which follow.

NON-REDEEMABLE PREFERRED STOCKS

29. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* State on the face of the balance sheet, or if more than one issue is outstanding state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but

unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate [see §210.4-07]. Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be filed. [See also §210.4-08(d).]

COMMON STOCKS

30. *Common stocks.* For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate [see §210.4-07], and the dollar amount thereof. If convertible, this fact should be indicted on the face of the balance sheet. For each class of common shares state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis of conversion [see also §210.4-08(d)]. Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show in a note or statement the changes in each class of common shares for each period for which an income statement is required to be filed.

OTHER STOCKHOLDERS' EQUITY

31. *Other stockholders' equity.* (a) Separate captions shall be shown for (1) additional paid-in capital, (2) other additional capital and (3) retained earnings (i) appropriated and (ii) unappropriated. [See §210.4-08(e).] Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate.

(b) For a period of at least 10 years subsequent to the effective date of a quasi-reorganization, and description of retained earnings shall indicate the point in time from which the new retained earnings dates and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) A summary of each account under this caption setting forth the information prescribed in Rule 11-02 [§210.11-02] shall be given in a note or separate statement, for each period for which an income statement is required to be filed.

32. *Total liabilities and stockholders' equity.* §210.5-03 Income statements.

The purpose of this rule is to indicate the various line items which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the income statements filed for the persons to whom this article pertains (see §210.4-01(a)).

If income is derived from more than one of the subcaptions described under §210.5-03.1, each class which is not more than 10 percent of the sum of the items may be combined with another class. If these items are combined, related costs and expenses as described under §210.5-03.2 shall be combined in the same manner.

1. *Net sales and gross revenues.* State separately (a) net sales of tangible products (gross sales less discounts, returns and allowances), (b) operating revenues of public utilities or others; (c) income from rentals; (d) revenues from services; and (e) other revenues. Amounts earned from transactions with related parties shall be disclosed as required under §210.4-08(k). A public utility company using a uniform system of accounts or a form for annual report prescribed by federal or state authorities, or a similar system or report, shall follow the general segregation of operating revenues and operating expenses reported under §210.5-03.2 prescribed by such system or report. If the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1 percent or more of such total, the amount of such excise taxes shall be shown on the face of the statement parenthetically or otherwise.

2. *Costs and expenses applicable to sales and revenues.* State separately the amount of (a) cost of tangible goods sold, (b) operating expenses of public utilities or others, (c) expenses applicable to rental income, (d) cost of services, and (e) expenses applicable to other revenues. Merchandising organizations, both wholesale and retail, may include occupancy and buying costs under caption 2(a). Amount of costs and expenses incurred from transactions with related parties shall be disclosed as required under §210.4-08(k).

3. *Other operating costs and expenses.* State separately any material amounts not included under caption 2 above.

4. *Selling, general and administrative expenses.*

5. *Provision for doubtful accounts and notes.*

6. *Other general expenses.* Include items not normally included in caption 4 above. State separately any material item.

7. *Non-operating income.* State separately amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under §210.4-08(k). Material amounts included under miscellaneous other income shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

8. *Interest and amortization of debt discount and expense.*

9. *Non-operating expenses.* State separately amounts of (a) losses on securities (net of profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated, indicating clearly the nature of the transactions out of which the items arose.

10. *Income or loss before income tax expense and appropriate items below.*

11. *Income tax expense.* Include under this caption only taxes based on income (see §210.4-08(g)).

12. *Minority interest in income of consolidated subsidiaries.*

13. *Equity in earnings of unconsolidated subsidiaries and 50 percent or less owned persons.* State, parenthetically or in a note, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner (see §210.4-01(a)).

14. *Income or loss from continuing operations.*

15. *Discontinued operations.*

16. *Income or loss before extraordinary items and cumulative effects of changes in accounting principles.*

17. *Extraordinary items, less applicable tax.*

18. *Cumulative effects of changes in account principles.*

19. *Net income or loss.*

20. *Earnings per share data.*

§210.5-04 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form -

(1) The schedules specified below in this section as Schedules I, VII, XI, XII, and XIII shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) All other schedules specified below in this section as Schedules II, III, IV, V, VI, VIII, IX, and X shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and the registrant and its subsidiaries consolidated it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I - Marketable securities - other investments. The schedule prescribed by §210.12-02 shall be filed—

(1) In support of caption 2 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of marketable securities as of the balance sheet date constitutes 10 percent or more of total assets.

(2) In support of caption 12 of a balance sheet, if the greater of the aggregate cost or the aggregate market value of other investments as of the balance sheet data constitutes 10 percent or more of total assets.

(3) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market of other investments plus the greater of the aggregate cost or the aggregate market value of marketable securities as of the balance sheet date constitutes 15 percent or more of total assets.

(4) In support of captions 2 and 12 of a balance sheet, if the greater of the aggregate cost or aggregate market value of the securities as of the balance sheet date of any issuer reported under either caption 2 or caption 12 constitutes 2 percent or more of total assets.

Schedule II — Amounts receivable from related parties and underwriters, promoters, and employees other than related parties. The schedule prescribed by §210.12-03 shall be filed with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $100,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is prescribed by §210.12-05. For the purposes of this schedule, exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances and for other such items arising in the ordinary course of business.

Schedule III — Investments in, equity in earnings of, and dividends received from related parties. The schedule prescribed by §210.12-04 shall be filed in support of caption 10 of each balance sheet. This schedule may be omitted if (1) neither the sum of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet a either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule IV — Indebtedness of and to related parties — not current. The schedule prescribed by §210.12-05 shall be filed in support of captions 11 and 23 of each balance sheet; however, the required information may be presented separately on Schedule III. This schedule may be omitted if (1) neither the sums of captions 10 and 11 in the related balance sheet nor the amount of caption 23 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule V — Property, plant and equipment. The schedule prescribed by §210.12-06 shall be filed in support of caption 13 of each balance sheet, provided that this schedule may be omitted if the total shown by caption 13 does not exceed 5 percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule VI — Accumulated depreciation, depletion, and amortization of property, plant and equipment. The schedule prescribed by §210.12-07 shall be filed in support of caption 14 of each balance sheet. This schedule may be omitted if Schedule V is omitted.

Schedule VII — Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement if filed.

Schedule VIII — Valuation and qualifying accounts. The schedule prescribed by §210.12-09 shall be filed in support of valuation and qualifying accounts included in each balance sheet but not included in Schedule VI. (See §210.4-02.)

Schedule IX — Short-term borrowings. The schedule prescribed by §210.12-10 shall be filed in support of caption 19, amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper. The information required by this schedule may be presented in Management's Discussion and Analysis if it results in a more meaningful presentation of the information being provided.

Schedule X — Supplementary income statement information. The schedule prescribed by §210.12-11 may be omitted for each income statement in which sales or operating revenues were not of

significant amount. This schedule may also be omitted if the information required by column B and instructions 3 and 5 thereof is furnished in the income statement or in a note thereto.

Schedule XI — Real estate and accumulated depreciation. The schedule prescribed by §210.12-28 shall be filed for real estate (and the related accumulated depreciation) held by persons a substantial portion of whose business is that of acquiring and holding for investment real estate or interests in real estate, or interests in other persons a substantial portion of whose business is that of acquiring and holding real estate or interests in real estate for investment. Real estate used in the business shall be excluded from the schedule.

Schedule XII — Mortgage loans on real estate. The schedule prescribed by §210.12-29 shall be filed by persons specified under Schedule XI for investments in mortgage loans on real estate.

Schedule XIII — Other investments. If there are any other investments, under caption 12 of §210.5-02 or elsewhere in a balance sheet, not required to be included in Schedule I or III, there shall be set forth in a separate schedule information concerning such investments corresponding to that prescribed by Schedule I. This schedule may be omitted if the total amount of such other investments does not exceed 5 percent of total assets as shown by such balance sheet.

* * * * *

5. By revising §210.6-10 to read as follows:

§210.6-10 What schedules are to be filed.

(a) Except as otherwise expressly provided in the applicable form:

(1) The schedules specified below in this section as Schedules I and VII shall be filed as of the date of the most recent balance sheet filed for each person and for each group for which separate statements are filed. Such schedules shall be certified if the related balance sheet is certified.

(2) All other schedules specified below in this section shall be filed for each period for which a statement of income and expense is filed. Such schedules shall be certified if the related statement of income and expense is certified.

(b) The information required in schedules for the registrant, for the consolidated subsidiaries and for the registrant and its subsidiaries consolidated may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant and to each consolidated subsidiary or group for which separate statements are required are separately shown and that such single schedule affords a properly summarized presentation of the facts.

(c) If the information required by any schedule (including the footnotes thereto) may be shown in the statements required by §§210.6-03 to 210.6-09 (Rules 6-03 to 6-09) without making such statements unclear or confusing, that procedure may be followed and the schedule omitted.

A. INVESTMENT SCHEDULES

Schedule I — Investments in securities of unaffiliated issuers. The schedule prescribed by §210.12-12 (Rule 12-12) shall be filed in support of caption 7 of each balance sheet (§210.6-03).

Schedule II — Investments — other than securities. The schedule prescribed by §210.12-13 (Rule 12-13) shall be filed in support of caption 8 of each balance sheet (§210.6-03). This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than 1 percent of total assets or $50,000, whichever is less.

Schedule III — Investments in affiliates. The schedule prescribed by §210.12-14 (Rule 12-14) shall be filed in support of caption 9 of each balance sheet (§210.6-03).

B. MISCELLANEOUS SCHEDULES

Schedule IV — Amounts due from directors and officers. The schedule prescribed by §210.12-03 (Rule 12-03) shall be filed with respect to each person among the directors and officers from whom any amount was owed at any time during the period for which related statements of income and expense are filed.

Schedule V — Indebtedness to affiliates. The schedule prescribed by §210.12-05 (Rule 12-05) shall be filed in support of caption 16(b). This schedule and schedule III may be combined if desired.

Schedule VI — Valuation and qualifying accounts. The schedule prescribed by §210.12-09 (Rule 12-09) shall be filed in support of all reserves included in the balance sheet (§210.6-03).

Schedule VII — Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

Schedule VIII — Short-term borrowings. The schedule prescribed by §210.12-10 shall be filed in support of caption 12, amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper, of each balance sheet (§210.6-03).

* * * * *

6. By revising §210.6-13 to read as follows:

§210.6-13 What schedules are to be filed.

(a) Schedule IV, specified below, shall be filed as of the date of the most recent statement of condition filed. The other schedules specified shall be filed for each period for which a statement of income and distributable funds is filed. All schedules shall be certified.

Schedule I — Investment in securities. The schedule prescribed by §210.12-19 (Rule 12-19) shall be filed in support of caption 1 of each statement of condition and of captions 1 and 2 of each statement of income and distributable funds.

Schedule II — Trust shares. The schedule prescribed by §210.12-20 (Rule 12-20) shall be filed in support of caption 8 of each statement of condition.

Schedule III — Gain or loss from transactions in trust property. A schedule shall be submitted showing for each investment set forth in Schedule I in which there were any sales or redemptions during the period: (a) the aggregate amount received from sale; (b) the aggregate cost of the investment sold; and (c) the realized gain or loss thereon.

Schedule IV — Allocation of trust assets to series of trust shares. If the trust assets are specifically allocated to different series of trust shares, and if such allocation is not shown in the statement of condition in columnar form or by the submission of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of trust assets, indicated by each statement of condition filed, which is applicable to each series of trust shares.

Schedule V — Allocation of trust income and distributable funds to series of trust shares. If the trust income and distributable funds are specifically allocated to different series of trust shares and if such allocation is not shown in the statement of income and distributable funds in columnar form or by the submission of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of income and distributable funds, indicated by each statement of income and distributable funds filed, which is applicable to each series of trust shares.

* * * * *

7. By revising §210.6-24 to read as follows:

§210.6-24 What schedules are to be filed.

(a) Except as otherwise expressly provided in the applicable forms:

(1) The schedules specified in this section as schedules I, V, and X shall be filed as of the date of the most recent balance sheet filed for each person and for each group for which separate statements are filed. Such schedules shall be certified if the related balance sheet is certified.

(2) All other schedules specified in this section shall be filed for each period for which a profit and loss or income statement is filed, except as indicated for schedule III and IV. Such schedules shall be certified if the related profit and loss or income statement is certified.

(b) The information required in schedules for the registrant, for the consolidated subsidiaries and for the registrant and its subsidiaries consolidated may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant and to each consolidated subsidiary or group for which separate statements are required are separately shown and that such single schedule affords a properly summarized presentation of the facts.

(c) If the information required by any schedules (including the notes thereto) may be shown in the statements required by §§210.6-22 and 210.6-23 without making such statements unclear or

confusing, that procedure may be followed and the schedule omitted.

A. INVESTMENT SCHEDULES

Schedule I — Investment in securities of unaffiliated issuers. The schedule prescribed by §210.12-21 shall be filed in support of captions 6(a) and 12 of each balance sheet. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule II — Investments in and advances to affiliates and income thereon. The schedule prescribed by §210.12-22 shall be filed in support of captions 10 and 13 of each balance sheet and caption 1(a) of each profit and loss or income statement. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule III — Mortgage loans on real estate and interest earned on mortgages. The schedule prescribed by §210.12-23 shall be filed in support of captions 6(b) and (c) and 12 of each balance sheet and caption 1(a)(i) of each profit and loss or income statement, except that only the information required by column G and note 8 of the schedule need be furnished in support of profit and loss or income statements for years for which related balance sheets are not required.

Schedule IV —Real estate owned and rental income. The schedule prescribed by §210.12-24 shall be filed in support of captions 7 and 12 of each balance sheet and caption 1(a)(iv) of each profit and loss or income statement for rental income included therein, except that only the information required by columns H, I, and J, and item "Rent from properties sold during the period" and note 4 of the schedule need be furnished in support of profit and loss or income statements for years for which related balance sheet are not required.

B. MISCELLANEOUS SCHEDULES

Schedule V — Qualified assets on deposit. The schedule prescribed by §210.12-27 shall be filed in support of note required by caption 11 of §210.6-22 as to total amount of qualified assets on deposit.

Schedule VI — Amounts due from officers and directors. The schedule prescribed by §210.12-03 shall be filed with respect to each person among the directors and officers from whom any amount was owed at any time during the period for which related profit and loss or income statements are filed. The schedule shall include also amounts due from employees. These amounts may be shown in an aggregate amount setting forth separately the amount due (1) from office employees and (2) sales employees, stating the total number of employees in each class. State if an exemption has been granted by the Commission with respect to amounts included in this schedule.

Schedule VII — Short-term borrowings. The schedule prescribed by §210.12-10 shall be filed in support of caption 17(a), amounts payable to banks for borrowings; factors and financial institutions for borrowings; and holders of commercial paper, of each balance sheet.

Schedule VIII — Indebtedness to affiliates — not current. The schedule prescribed by §210.12-05 shall be filed in support of caption 20 of each balance sheet. This schedule and schedule II may be combined if desired.

Schedule IX — Supplementary profit and loss information. The schedule prescribed by §210.12-25 shall be filed in support of each profit and loss or income statement.

Schedule X — Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is filed.

C. RESERVE SCHEDULES

Schedule XI—Certificate reserves. The schedule prescribed by §210.12-26 shall be filed in support of caption 16 of each balance sheet.

Schedule XII—Valuation and qualifying account. The schedule prescribed by §210.12-09 shall be filed in support of all other reserves included in the balance sheet.

* * * * *

8. By revising §210.6-34 to read as follows:

§210.6-34 What schedules are to be filed.

(a) Schedules I and II, specified below, shall be filed as of the date of each statement of financial condition filed. Schedule III shall be filed for each period for which a statement of income and changes in plan equity is filed. All schedules shall be certified if the related statements are certified.

Schedule I—Investments. A schedule substantially in form prescribed by §210.12-12 shall be filed in support of captions 1, 2 and 3 of each statement of financial condition unless substantially all of the information is given in the statement of financial

condition by footnote or otherwise.

Schedule II—Allocation of plan assets and liabilities to investment programs. If the plan provides for separate investment programs with separate funds, and if the allocation of assets and liabilities to the several funds is not shown in the statement of financial condition in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the allocation of each caption of each statement of financial condition filed to the applicable fund.

Schedule III—Allocation of plan income and changes in plan equity to investment programs. If the plan provides for separate investment programs with separate funds, and if the allocation of income and changes in plan equity to the several funds is not shown in the statement of income and changes in plan equity in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the allocation of each caption of each statement of income and changes in plan equity filed to the applicable fund.

* * * * *

9. By revising §210.7-06 to read as follows:
§210.7-06 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedules specified below in this rule as Schedules I and VII shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) All other schedules specified below in this rule as Schedules II, III, IV, V, and VI shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and its consolidated subsidiaries it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall support the financial statements prepared in accordance with generally accepted accounting principles except for statements prepared in accordance with §210.7-02(d).

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Summary of investments—other than investments in affiliates. The schedule prescribed by §210.12-15 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments in, equity in earning of, and dividends received from related parties. The schedule prescribed by §210.12-04 shall be filed, for each period for which an income statement is required to be filed, in support of caption 3(a) of each balance sheet. This schedule may be omitted if neither the sum of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule III—Indebtedness of and to related parties—not current. The schedule prescribed by §210.12-05 shall be filed, for each period for which an income statement is required to be filed, in support of captions 3(b) and 15 of each balance sheet; however, the required information may be presented separately on Schedule II. This schedule may be omitted if neither the sums of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule IV—Amounts receivable from related parties, and underwriters, promoters, and employees other than related parties. The schedule prescribed by §210.12-03 shall be filed, for each period for which an income statement is required to be filed, with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $20,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is

prescribed by §210.12-05. For purposes of this schedule exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances, and for other such items arising in the ordinary course of business.

Schedule V—Valuation and qualifying accounts. The schedule prescribed by §210.12-09 shall be filed for each period for which an income statement is required to be filed, in support of valuation and qualifying accounts included in each balance sheet (see §210.4-02).

Schedule VI—Premiums, losses and claims and policy acquisition costs. The schedule prescribed by §210.12-16 shall be filed, for each period for which an income statement is required to be filed, in support of captions 8 and 12 of each balance sheet and captions 1(a), 1(c), 4(a), 4(b) and 5 of each income statement.

Schedule VII—Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

* * * * *

10. By revising §210.7A-06 to read as follows: §210.7A-06 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) The schedule specified below in this rule as Schedules I, VII, and VIII shall be filed as of the date of the most recent audited balance sheet being filed for each person or group.

(2) All other schedules specified below in this rule as Schedules II, III, IV, V, and VI shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) When information is required in schedules for both the registrant and the registrant and its consolidated subsidiaries it may be presented in the form of a single schedule: *Provided,* That items pertaining to the registrant are separately shown and that such single schedule affords a properly summarized presentation of the facts. If the information required by any schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall support the financial statements prepared in accordance with generally accepted accounting principles except for statements prepared in accordance with §210.7A-02(d).

(d) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

Schedule I—Summary of investments—other than investment in affiliates. The schedule prescribed by §210.12-15 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investment in equity in earnings of, and dividends received from related parties. The schedule prescribed by §210.12-04 shall be filed in support of caption 3(a) of each balance sheet. This schedule may be omitted if neither the sum of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule III—Indebtedness of and to related parties—not current. The schedule prescribed by §210.12-05 shall be filed in support of captions 3(b) and 15 of each balance sheet; however, the required information may be presented separately on Schedule II. This schedule may be omitted if neither the sums of captions 3(a) and 3(b) in the related balance sheet nor the amount of caption 15 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period.

Schedule IV—Deferred policy acquisition costs. The schedule prescribed by §210.12-18 shall be filed in support of caption 6 of each balance sheet provided that this schedule may be omitted if the total shown by caption 6 does not exceed five percent of total assets as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor the deductions during the period exceeded five percent of total assets as shown by the related balance sheet at either the beginning or end

of the period.

Schedule V—Amounts receivable from related parties and underwriters, promoters, and employees other than related parties. The schedule prescribed by §210.12-03 shall be filed with respect to each person among related parties and underwriters, promoters, and employees other than related parties, from whom an aggregate indebtedness of more than $20,000 or 1 percent of total assets, whichever is less, is owed, or at any time during the period for which related income statements are required to be filed was owed. This schedule shall not include information which is prescribed by §210.12-05. For the purposes of this schedule exclude in the determination of the amount of indebtedness all amounts receivable from such persons for purchases subject to usual trade terms, for ordinary travel and expense advances, and for other such items arising in the ordinary course of business.

Schedule VI—Valuation and qualifying accounts. The schedule prescribed by §210.12-09 shall be filed in support of valuation and qualifying accounts included in each balance sheet (see §210.4-02).

Schedule VII—Future policy benefits and insurance in force. The schedule prescribed by §210.12-17 shall be filed in support of caption 11 of each balance sheet. The schedule prescribed by §210.12-16 shall be used insofar as it may more appropriately support the liability or future policy benefits of accident and health insurance at caption 11(b) which are based on unearned premiums.

Schedule VIII—Guarantees or securities of other issuers. The schedules prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

* * * * *

11. By revising paragraphs (b)(1) and (2) of §210.9-01 to read as follows:

§210.9-01 Application of §§210.9-01 to 210.9-05.

* * * * *

(b) * * *

(1) On the balance sheet, (i) current assets and current liabilities need not be separately classified from other assets and liabilities respectively, and (ii) in lieu of amounts of investments in, equity in earnings of, dividends received from, indebtedness of and to related parties to be reported at §§210.5-02.10, .11, and .23 and on Schedules III and IV, there shall be substituted amounts of securities and indebtedness of and to affiliates and entities for which investments are accounted for by the equity method. The references to related parties in §§210.5-02.3 and .19 and in Schedule II shall be limited to affiliates and entities for which investments are accounted for by the equity method. Securities and indebtedness of and to banks shall be shown separately from amounts for other persons; and

(2) On the income statement dividends received from unconsolidated subsidiaries and 50 percent or less owned persons shall be shown as the first item on the statement, and the amount to be reported at §210.5-03.13 shall be the equity in undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons. Dividends and equity in undistributed earnings related to banks shall be shown separately from amounts for other persons. Disclosures related to transactions with related parties required under §§210.5-03.2, .2, and .7 shall be limited to unconsolidated subsidiaries and 50 percent or less owned persons.

* * * * *

12. By removing from §210.9-02.17 paragraph (a) and the designation of the second paragraph as (b).

* * * * *

13. By revising §210.9-05 to read as follows:
§210.9-05 What schedules are to be filed.

(a) Except as expressly provided otherwise in the applicable form—

(1) Schedule III, specified below, shall be filed as of the dates of the most recent audited balance sheet for each person or group.

(2) The other schedules specified below in the rule as schedules I and II shall be filed for each period for which an income statement is required to be filed for each person or group.

(b) If the information required by any

schedule (including the notes thereto) may be shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.

(c) The schedules shall be examined by the independent accountant if the related financial statements are so examined.

(d) The schedules prescribed by §§210.12-04 and 05 shall be filed in support of subcaptions 9(c) and 14(b) of each balance sheet and shall be designated schedules IV and V, respectively. These schedules shall be filed for each period for which an income statement is required to be filed. These schedules may be omitted if (1) neither the amount required to be reported in a note under subcaption 9(c) in the related balance sheet nor the amount required to be reported in a note under subcaption 14(b) in such balance sheet exceeds 5 percent of stockholders' equity as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

Schedule I—Amounts receivable from certain persons. The schedule prescribed by §210.12-03 shall be filed with respect to indebtedness of more than $500,000 or 2.5 percent of stockholders' equity, whichever is less, which is owed or, at any time during the period for which related income statements are required to be filed, was owed by each person (including those referred to below) related to the reporting person or any of its principal subsidiaries as director, executive officer[3], or principal holder of equity securities. Indebtedness to be reported for a director, officer or principal holder of equity securities shall include the aggregate of indebtedness owed by such person and indebtedness owed by any of the following which are related to such person: (1) Any corporation, venture or organization of which any of the foregoing persons is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which any of the foregoing persons has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person. Indebtedness to be reported shall include amounts owed to the parent company or any consolidated subsidiary. Notwithstanding the foregoing and the requirement of Column A of §210.12-03, indebtedness incurred in the ordinary course of business by directors (and related persons specified above) who are neither executive officers nor principal holders of equity securities may be stated in the aggregate in Columns B, C, D and E of §210.12-03 and need not be reported on an individual basis. The number of directors whose indebtedness is included in the aggregate amount shall be stated in Column A. It shall not be necessary to include in the individual or aggregate indebtedness reported those amounts related to installment loans as defined in §210.9-02.5(c)(3) made in the ordinary course of business. For the purpose of this schedule, loans or indebtedness made or incurred in the ordinary course of business shall be those which (i) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features.

Schedule II—Valuation and qualifying accounts. The schedule prescribed by §210.12-09 shall be filed in support of valuation and qualifying accounts included in each balance sheet excluding the allowances for loan losses and real estate losses.

Schedule III—Guarantees of securities of other issuers. The schedule prescribed by §210.12-08 shall be filed with respect to any guarantees of securities of other issuers by the person for which the statement is being filed.

* * * * *

14. By deleting present §§210.12-08, 09, 10, 11, 14, 15, 17, 18, 20, 23, 24, 25, 26, 28, 30, and 32; and by revising, amending, and redesignating the remaining rules as follows:

FORM AND CONTENT OF SCHEDULES
GENERAL

§210.12-01 Application of §§210.12-01 to 210.12-27.

These sections prescribe the form and content of the schedules required by §§210.5-04, 210.6-10,

[3]See footnote 1 for definition of "principal subsidiaries," "executive officer" and "relative."

210.6-13, 210.6-24, 210.6-34, 210.7-06, 210.7A-06 and 210.9-05. The heading of §210.12-02 is revised to read as follows:

§210.12-02 Marketable securities—other investments.

No change from present schedule format.

The heading of §210.12-03 is revised to read as follows:

§210.12-03 Amounts receivable from related parties and underwriters, promoters, and employees other than related parties.

No change from present schedule format.

The heading of §210.12-04 is revised to read as follows:

§210.12-04 Investments in, equity in earnings of, and dividends received from related parties.

No change from present schedule format. However, §210.12-04 is amended by removing the words "affiliates and other persons" and inserting, in their place, the words "related parties."

§210.12-05 is revised to read as follows:

§210.12-05 Indebtedness of and to related parties—not current.

Column A	Column B	Column C	Column D	Column E
		—Indebtedness of—		
Name of person[1]	Balance at beginning	Additions[2]	Deductions[3]	Balance at end

Column F	Column G	Column H	Column I
		—Indebtedness to—	
Balance at beginning	Additions[2]	Deductions[3]	Balance at end

[1]The persons named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons whose investments were shown separately in such related schedule.

[2]For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related balance at either the beginning or end of the period.

[3]If deduction was other than a receipt or disbursement of cash, explain.

§210.12-06 Property, plant and equipment.[1,7]

No change from present schedule format. However, footnote designation[7] is added to the heading and note 7 is added as follows:

[7]Disclosure shall be made of the methods and, if practicable, the rates used in computing the annual provision for depreciation, depletion, obsolescence, and amortization of physical properties and capitalized leases.

§210.12-07 Accumulated depreciation, depletion and amortization of property, plant and equipment.[1]

No change.

§210.12-08 Guarantees of securities of other issuers.[1]

§210.12-12 is redesignated §210.12-08.

§210.12-09 Valuation and qualifying accounts.

§210.12-13 is redesignated §210.12-09.

§210.12-10 is revised to read as follows:

§210.12-10 Short-term borrowings.[1]

Column A	Column B	Column C
Category of aggregate short-term borrowings[2]	Balance at end of period	Weighted average interest rate

Column D	Column E	Column F
Maximum amount outstanding during the period[3]	Average amount outstanding during the period[4]	Weighted average interest rate during the period[4]

[1]Indicate in a note the general terms (as well as formal provisions for the extension of maturity) of each category of aggregate short-term borrowings.

[2]The categories of short-term borrowings are amounts payable to banks for borrowings; factors or other financial institutions for borrowings; and holders of commercial paper.

[3]Indicate the maximum amount outstanding at any month end (or similar time period) during the period.

[4]Indicate the means used to compute such average.

§210.12-11 is revised to read as follows:

§210.12-11 Supplementary income statement information.[1]

Column A	Column B[2]
Item	Charged to costs and expenses
1. Maintenance and repairs	
2. Depreciation and amortization of intangible assets, preoperating costs and similar deferral[5]	
3. Taxes, other than payroll and income taxes[3]	
4. Royalties	
5. Advertising costs[4]	

[1]State, for each of the items noted in column A which exceeds 1 percent of total sales and revenues as reported in the related income statement, the amount called for in column B.

[2]Totals may be stated in column B without further designation of the accounts to which charged.

[3]State separately each category of tax which exceeds 1 percent of total sales and revenues.

[4]This item shall include all costs related to advertising the company's name, products or services in newspapers, periodicals or other advertising media.

[5]State separately each category of cost amortized.

FOR MANAGEMENT INVESTMENT COMPANIES

§210.12-12 Investments in securities of unaffiliated issuers.

§210.12-19 is redesignated §210.12-12.

§210.12-13 Investments; other than securities.

§210.12-21 is redesignated §210.12-13.

§210.12-14 Investments in affiliates.

§210.12-22 is redesignated §210.12-14.

§210.12-15 Summary of investments—other than investments in affiliates.

§210.12-27 is redesignated §210.12-15.

§210.12-16 Premiums, losses and claims, and policy acquisition costs.

§210.12-29 is redesignated §210.12-16.

§210.12-17 Future policy benefits and insurance in force.

§210.12-31 is redesignated §210.12-17.

§210.12-18 Deferred policy acquisition costs.

§210.12-31a is redesignated §210.12-18.

FOR UNIT INVESTMENT TRUSTS, AND FOR THOSE UNINCORPORATED MANAGEMENT INVESTMENT COMPANIES WHICH ARE ISSUERS OF PERIODIC PAYMENT PLAN CERTIFICATES

§210.12-19 Investments in securities.

§210.12-33 is redesignated §210.12-19.

§210.12-20 Trust shares.

§210.12-34 is redesignated §210.12-20.

FOR FACE-AMOUNT CERTIFICATE INVESTMENT COMPANIES

§210.12-21 Investments in securities of unaffiliated issuers.

§210.12-35 is redesignated §210.12-21.

§210.12-22 Investments in and advances to affiliates and income thereon.

§210.12-36 is redesignated §210.12-22.

§210.12-33 Mortgage loans on real estate and interest earned on mortgages.

§210.12-37 is redesignated §210.12-23.

§210.12-24 Real estate owned and rental income.

§210.12-38 is redesignated §210.12-24.

§210.12-25 Supplementary profit and loss information.

§210.12-39 is redesignated §210.12-25.

§210.12-26 Certificate reserves.

§210.12-40 is redesignated §210.12-26.

§210.12-27 Qualified assets on deposit.

§210.12-41 is redesignated §210.12-27.

FOR CERTAIN REAL ESTATE COMPANIES

§210.12-28 Real estate and accumulated depreciation.

§210.12-42 is redesignated §210.12-28.

§210.12-29 Mortgage loans on real estate

§210.12-43 is redesignated §210.12-29.

* * * * *

15. The following table serves to revise certain cross-references within Regulation S-X. The first column identifies the location of the reference, the second column indicates the old reference which is deleted, and the third column indicates the new reference which is to be presented in the place of the old reference.

Location of Reference	*Old Reference*	*New Reference*
§210.1-01(c)	§210.3-18	§210.4-10
§210.2-02(e)	§210.3-16(t)	Item 12 of Regulation S-K
§210.6-02 (introductory text)	§§210.1-01 to 210.4-14 (Articles 1, 2, 3, and 4)	§§210.1-01 to 210.4-10 (Articles 1, 2, 3, and 4)
§210.6-02(c)(1)	§§210.4-01 to 210.4-14 (Article 4)	§§210.3A-01 to 210.3A-14 (Article 3A)
§210.6-02(k)	§210.3-02 (Rule 3-02)	§210.4-02
§210.6-03-12	§210.5-02.25(b) and (c)	§210.5-02.19(b)
§210.6-21 (introductory text)	§§210.1-01 to 210.4-14	§§210.1-01 to 210.4-10
§210.6-21(c)(1)	§§210.4-01 to 210.4-14	§§210.3A-01 to 210.3A-14
§210.6-21(h)	§210.3-02 and 210.3-03(a)	§§210.4-02 and 210.4-03(a)
§210.6-22-17(a)(*ii*)	§210.5-02.25(b) and (c)	§210.5-02.19(b)
§210.6-31 (introductory text)	§§210.1-01 to 210.4-14	§§210.1-01 to 210.4-10
§210.7-02(a)	§§210.1-01-210.1-02, 210.2-01-210.2-05, 210.3-01-210.3-16, and 210.4-01-210.4-08	§§210.1-01-210.1-02, 210.2-01-210.2-05, 210.3A-01-210.3A-08, and 210.4-01-210.4-08
§210.7-03(a)-14	§210.5-02.29	§210.5-02.22
§210.7-03(a)-18	See §§210.3-16(i) and 210.7-05.4	See §210.7-05.4
§210.7-03(a)-19	§210.5-02.38	§210.5-02.28
§210.7-03(a)-20	§210.5-02.39	§210.5-02.29
§210.7-03(a)-21	[See §§210.3-14 and 210.3-15], [See also §210.3-16(f)(3)]	[See §210.4-07] [See also §210.4-08(d)]
§210.7-04-9	[See §210.3-16(o)]	[See §210.4-08(g)]
§210.7-05-1	(See also §210.3-08)	Deleted.
§210.7-05-2	§210.3-16(h)	§210.4-08(e)
§210.7a-02(a)	§§210.1-01 - 1-02, 210.2-01 - 2-05, 210.3-01 - 3-16, and 210.4-01 - 4-09	§§210.1-01 - 1-02, 210.2-01 - 2-05, 210.3A-01 - 3A-08, and 210.4-01 - 4-08
§210.7A-03(a)-14	§210.5-02-29	§210.5-02.22
§210.7A-03(a)-20	§§210.3-16(i) and 210.7a-05-6	§210.7a-05.6
§210.7A-03(a)-21	§210.5-02.38	§210.5-02.28
§210.7A-03(a)-22	§210.5-02.39	§210.5-02.29
§210.7A-03(a)-23	[See §210.3-14 and §210.3-15], [See also §210.3-16(f)(3)]	[See §210.4-07] [See also §210.4-08(d)]
§210.7A-04-10	[See §210.3-16(o)]	[See §210.4-08(g)]
§210.7A-05-1	(See also §210.3-08)	Deleted.
§210.7A-05-2	§210.3-16(h)	§210.4-08(e)
§210.7A-05-3	§210.3-16(o)	§210.4-08(g)
§210.9-01(c)	§§210.1-01 - 210.1-02, 210.2-01 - 210.2-05, 210.3-01 - 210.3-17, and 210.4-01 - 210.4-08	§§210.1-01 - 210.1-02, 210.2-01 - 210.2-05, 210.3A-01 210.3A-08, and 210.4-01 - 210.4-09
§210.9-02	(See paragraph (a) of §210.3-01)	(See paragraph (a) of §210.4-01)

§210.9-02-14(a)(3)	(See §210.5-02.31)	(See §210.5-02.23)
§210.9-02-14(b)	(See §210.5-02.31)	(See §210.5-02.23)
§210.9-02-15(b)	§210.5-02.29 (See also §210.5-02.30)	§210.5-02.22 Deleted.
§210.9-02-19	§210.5-02.38	§210.5-02.28
§210.9-02-20	§210.5-02.39	§210.5-02.29
§210.9-02-21	§210.5-02.40	§210.5-02.30
§210.9-02-22	§210.5-02.41	§210.5-02.31
§210.9-03	(See paragraph (a) of §210.3-01)	(See §210.4-01(a))
§210.9-03-17	(See §210.3-16(o))	(See §210.4-08(g))
§210.11-01	§210.5-02.41	§210.5-02.31
§210.11-02	(See §210.5-03(a))	Deleted.
§210.11A-02(a)	(See §210.3-01)	(See §210.4-01)

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

By adding new Item 12 to §229.20 to read as follows:

§229.20 Information required in document.

* * * * *

Item 12. Supplementary financial information.

(a) *Selected quarterly financial data.*

(1) Exemption. This rule shall not apply to any registrant that does not meet both of the two following tests:

(i) First test. The registrant:

(A) Has securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of the Act and has securities which also meet the tests set forth in paragraphs (1)(i) (C)(*1*) and (C)(*2*) of this section; or

(C) Has securities registered pursuant to section 12(g) of that Act which also

(*1*) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(*2*) Meet the following criteria:

(*i*) Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a national securities exchange pursuant to section 5 of the Securities Exchange Act of 1934.

(*a*) For purposes of this subsection, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market.

(*ii*) There continue to be 800 or more holders of record, as defined in Rule 12g5-1 (§240.12g5-1) under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock.

(*iii*) The issuer continues to be a U.S. corporation.

(*iv*) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock.

(*v*) In addition, the issuer shall meet two of the three following requirements:

(*a*) The shares described in paragraph (1)(i) (C)(*2*)(*iv*) continue to have a market value of at least $2.5 million.

(*b*) The minimum representative bid price of such

stock is at least $5 per share.

(c) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

Instructions. 1. The computation required by (*v*)(*a*) and (*v*)(*b*) shall be based on the average of the closing representative bid prices as reported by NASDAQ for the 20 business days immediately preceding the fiscal year for which the financial statements are required.

2. The computation required by (*v*)(*c*) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.

(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal years; or (B) had total assets of at least $200,000,000 for the last fiscal year-end.

(2) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income, and net income for each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented.

(3) When the data supplied in paragraph (2) of this section vary from the amounts previously reported on the Form 10-Q [17 CFR 249.308a] filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported describing the reason for the difference.

(4) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which income statements are presented, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(5) Paragraphs (1) through (4) of this rule shall not apply to a foreign private issuer not required to report quarterly financial information on Form 10-Q; *Provided, however,* That a foreign registrant which reports or is required to report interim financial information on Form 6-K shall disclose such data in the manner provided in paragraphs (1) through (4) with respect to the financial information reported on Form 6-K.

(6) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by this rule.

(b) *Disagreements on accounting and financial disclosure matters.* If, (1) within the twenty-four months prior to the date of the most recent financial statements, a Form 8-K has been filed reporting a change of accountants, (2) included in the Form 8-K there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (3) during the fiscal year in which the change of accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (4) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising paragraph (b)(3) of §240.14a-3 to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

* * * * *

2. By revising paragraph (a)(3) of §240.14c-3 to read as follows:

§240.14c-3 Annual report to be furnished security holders.

(a) * * *

(3) The report shall contain the supplementary financial information specified by Item 12 of Regulation S-K (17 CFR 229.20).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

The following table serves to revise certain cross-references in §249.308a. The first column identifies the location of the reference, the second column indicates the old reference which is deleted, and the third column indicates the new reference which is to be presented in the place of the old reference.

Location of Reference	*Old Reference*	*New Reference*
§249.308a Part I *Instruction* 4(a)(1)	Rule 3-02	Rule 4-02
§249.308a Part I *Instruction* 4(a)(2)	Rule 3-02	Rule 4-02
§249.308a Part I *Instruction* 4(a)(3)	Rule 3-08 and 3-16	Rule 4-08

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10, and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d), and 23(a) [15 U.S.C. 78l, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14, and 20(a) [15 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)] of the Investment Company Act of 1940.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware at this time of any burden that they would impose on competition.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6234/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17117/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21700/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11326/September 2, 1980

ACCOUNTING SERIES
Release No. 281/September 2, 1980

UNIFORM INSTRUCTIONS AS TO FINANCIAL STATEMENTS—REGULATION S-X

ACTION: Amendment of rules.

SUMMARY: The Commission announces the adoption of amendments to rules establishing uniform instructions governing the periods to be covered by financial statements included in (1) most registration and reporting forms filed with the Commission under the Securities Act of 1933 and Securities Exchange Act of 1934, and (2) annual reports to security holders furnished pursuant to the proxy rules. The amendments specify the periods to be covered by audited financial statements as well as the periods for which unaudited interim financial information is required when securities are being registered. In addition, requirements as to the form and content of interim financial information included in registration statements have been adopted which parallel current requirements of quarterly reports filed on Form 10-Q. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and

establish a centralized set of revised instructions in Regulation S-X. The amendments adopted are intended to simplify the registration and reporting requirements under the Federal securities laws and further the ability of registrants to integrate reporting under the 1933 and 1934 Acts.

EFFECTIVE DATE: Effective for companies with fiscal years ended after December 15, 1980. However, earlier implementation is encouraged.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to rules establishing uniform instructions as to the periods to be covered by financial statements included in most registration and reporting forms filed with the Commission under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act," together the "securities acts") and in annual reports to security holders furnished pursuant to the proxy rules. Further, amendments are being adopted which modify requirements as to the form and content of interim financial information included in registration statements, conforming for most registrants previous requirements under the Securities Act with current requirements for quarterly data under the Exchange Act. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of revised instructions in Regulation S-X.

Adoption of the amendments contained in this release result in amendments to Forms S-1 [17 CFR 239.11], S-2 [17 CFR 239.12], S-3 [17 CFR 239.13], S-7 [17 CFR 239.26], S-11 [17 CFR 239.18], 10 [17 CFR 249.210], 10-K [17 CFR 249.310], 11-K [17 CFR 249.311], Rule 14a-3 [17 CFR 240.14a-3], Schedule 14a [17 CFR 240.14a-1 *et seq.*], Rule 14c-3 [17 CFR 240.14c-3], Regulation S-X [17 CFR 210] and Guide 23 [17 CFR 231.4936] under the Securities Act of 1933 or the Securities Exchange Act of 1934.

BACKGROUND

On January 15, 1980, the Securities and Exchange Commission, in four separate but related releases, introduced a plan to redesign the registration and reporting system under the securities acts[1]. The plan proposed substantial changes to the disclosure system and incorporated revisions designed to improve overall disclosure, simplify existing rules, and reduce the registration and reporting burdens for most registrants. The underlying theme of the plan was the accomplishment of a coordinated disclosure system encompassing integrated reporting under the Securities Act and the Exchange Act.

The plan envisioned, among other things, the use of what may be referred to as a "uniform financial disclosure package" as the central disclosure mechanism in the integrated disclosure system. This uniform package containing certain minimum disclosures was to appear in the annual report to security holders and be incorporated by reference into the Form 10-K as well as certain Securities Act filings. It was to contain items of disclosure the Commission believed warranted maximum public exposure.

In developing this plan for an integrated disclosure system, the Commission placed a high priority on determining what it believed to be the minimum content necessary for an informed investment decision and undertook to reexamine its financial disclosure requirements in an effort to develop a uniform financial disclosure package. This reexamination involved revisiting requirements for primary audited financial statements, the summary of operations, and management's discussion and analysis of the summary of operations as well as the provisions of Regulation S-X.

The reassessment of these rules resulted in the Commission proposing a redesign of the basic financial disclosure model included in most filings and in annual reports to security holders. Under the proposal, the summary of operations would be eliminated and management's discussion and analysis would be refocused on the primary audited financial statements. In addition, management's discussion and analysis would be expanded to encompass an explanation of factors affecting financial condition and exchanges in financial condition as well as the results of operations. The primary financial statements, prepared in

[1]Securities Act Release Nos. 6176, 6177, 6178 and 6179.

accordance with Regulation S-X, would include balance sheets as of the end of the two most recent fiscal years and statements of income and changes in financial position for the three most recent fiscal years. Also, the financial disclosure package would include selected financial data and certain market data relating to common shares outstanding.

Final rules evolving from these proposals and the related public comment process are being adopted today in this release and three other concurrent releases. Amendments constituting a major restructuring of Form 10-K and a discussion of the concept of integration adopted by the Commission are included in Securities Act Release No. 6231, September 2, 1980 (Amendments to Annual Report Form, Related Forms, Rules and Guides; Integration of Securities Acts Disclosure Systems). Amendments to Regulation S-X constituting a general revision of Articles 3, 5 and 12 aimed at facilitating integration are included in Securities Act Release No. 6233, September 2, 1980 (General Revision—Regulation S-X). Finally, the adoption of a new registration form, Form S-15, representing an experimental optional short form for registration of securities issued in certain business combinations, encompassing integrated disclosure concepts, is the subject of Securities Act Release No. 6232, September 2, 1980 (Business Combination Transactions—New Short Form for Registration and Related Rule Amendments).

The principal focus of this release is the adoption of a uniform requirement for financial statements included in the uniform financial disclosure package referred to above and covered in the amendments adopted in the concurrent release on revision of Form 10-K. In addition, this release establishes certain uniform instructions as to the age, form and content of interim financial information included in registration statements.

All four releases referred to above are related and were developed with the intention of achieving mutual goals and objectives. Consequently, this release should be read in conjunction with the three other concurrent releases in order to fully understand the registration and reporting format adopted by the Commission.

UNIFORM REQUIREMENT FOR FINANCIAL STATEMENTS

As registration and reporting requirements have evolved, differences have been created in the rules covering the periods for which financial disclosures are required. These differences have resulted to some extent from a piece-meal approach, covering many years, in developing the disclosure system. Also, these differences have resulted from continuous attempts to tailor disclosure requirements to the particular circumstances surrounding the use of each of the respective forms. Such differences in requirements have contributed to the complexity of the disclosure rules and frequently have been a source of confusion to those attempting to understand filing requirements.

Under present rules, the periods for which financial statements are required to be filed with the Commission vary depending on the particular registration or reporting form being filed. A registrant, for example, filing a registration statement on Form S-1 under the Securities Act is required to include statements of income and charges in financial position for three years and a balance sheet as of a recent date. A registrant filing a registration statement under the same Act on Form S-7 is required to provide statements of income and changes in financial position for five years and a balance sheet as of a recent date. For registration of securities using Form S-8, a registrant is required to provide the financial statements required to be included in Form 10-K (under the 1934 Act) or in the annual report to security holder consisting of statements of income and changes in financial position for two years plus balance sheets as of the end of the most recent two fiscal years.

The Commission, in connection with its reassessment of the reporting and disclosure requirements, has questioned the necessity for these differences among forms. Common to all investment decisions involving securities is the need for sufficient information to assess the financial health of the underlying issuer. Whether a potential investor is considering investing in a security traded on the open market or in one being registered for the first time, his method of analysis and evaluation is most likely very similar and his basic informational needs the same.

It is difficult, therefore, to draw meaningful distinctions among the various registration and reporting forms to support the need for the financial statements to encompass differing periods of time. Although the nature of securities and the purpose of registration may differ in many respects and thus

require certain disclosures tailored to the specific circumstances of the filing, the Commission believes that such varying circumstances do not warrant a variation among forms as to the periods to which primary financial statements relate.

Accordingly, the Commission in conjunction with the adoption of a uniform financial disclosure package, discussed in greater detail in the concurrent release on revision of Form 10-K, is adopting uniform instructions as to periods to be covered by financial statements. These instructions require registrants to, among other things, provide audited statements of income and changes in financial position for three fiscal years and audited balance sheets as of the end of two fiscal years in most disclosure documents prepared under the securities acts. The Commission believes that the adoption of this uniform requirement will improve overall disclosure and simplify existing rules.

The proposal of uniform instructions as to financial statement periods generated response from a significant number of commentators, most of whom were preparers of financial statements. The commentators generally offered support for the Commission's stated goals and agreed that a uniform requirement should prove to simplify rules and facilitate the move toward integrated reporting. However, the views of commentators varied as to the appropriate periods to be encompassed by such a uniform requirement.

Commentators supportive of the amendments as proposed concurred with the Commission's view that three-year statements of income are necessary to an understanding of changes in results of operations for two years and that selected financial data for five years, in lieu of the more detailed summary of operations, should be sufficient for an assessment of trends. These commentators further indicated that any incremental costs associated with the additional year's statements of income and changes in financial position would not be significant. In addition, support for the amendments was expressed by other commentators who viewed the amendments as striking an appropriate balance within the framework of an integrated reporting system.

Opposition to the amendments as proposed was based on various concerns regarding the addition of a third year's statements of income and changes in financial position in Form 10-K and in annual reports to shareholders. In the view of opposing commentators, the addition of a third year would jeopardize the readability of disclosure documents, especially the annual report to shareholders, by adding to the prolixity of disclosures already provided. They argued that the benefits accruing from the additional year would be marginal and that the proposed selected financial data would provide sufficient disclosure regarding earlier years.

In addition, opposition to the proposal was voiced by commentators arguing that a user, seeking information for the additional year, could refer to previously filed documents for such data. These same commentators suggested that the additional costs and burdens associated with providing the third year's financial statements would be substantial.

In response to concerns regarding the decreased readability of the financial statements and the increased cost of their preparation, the Commission attempted to project the incremental disclosure involved in requiring the additional year's statements of income and changes in financial position. From this, the Commission observed that the major portion of footnote disclosure in financial statements is balance sheet oriented, and that few, if any, of the notes relate directly to the statement of changes in financial position. Also, where footnote disclosure relates to the income statement, the addition of one year often will require only the inclusion of an additional dollar amount to a note already prepared for the latest two fiscal years.

Incremental disclosure imposed by the requirement for a third year will principally involve only the addition of one column to both the statements of income and changes in financial position and the addition of several lines to any statement of shareholders' equity presented. This degree of added disclosure in the view of the Commission should not have a negative impact on the readability of disclosure documents and should not, in most cases, result in any significant increases in preparatory costs.

In response to comments questioning the benefits accruing from the third year's information and suggesting that such data is already available in previously filed documents, the Commission has reviewed its stated objectives for developing a uniform financial disclosure package. A principal objective of the uniform package is to provide

enough data to satisfy the needs of most users desiring to make an informed judgment as to the financial well-being of an underlying issuer. It has been designed with the intention of providing users with easy access to sufficient data for an informed decision while refraining from requiring data in excess of the amount necessary to satisfy most users or data for which the costs of preparation cannot be justified by the benefits.

The decision to require statements of income and changes in financial position for three years is premised on the view that investors should be provided sufficient detail to analyze and understand a company's results of operations for at least the most recent two fiscal years. Since information for the immediately preceding year is needed to understand changes in operations for one year, comparative information for three years is necessary for an understanding of changes in operations for two years.

The view that three years' income statements are necessary to provide an understanding of the results of operations for two fiscal years is not unique to these amendments. Since 1974 the Commission has required registrants in their annual reports to shareholders to provide management's discussion and analysis of its results of operations for the three most recent fiscal years. With the elimination of the detailed summary of operations, discussed in the concurrent release on revision of Form 10-K, the three-year requirement for financial statements retains the disclosures previously focused on by management's discussion and analysis and provides a more effective disclosure package.

One of the Commission's principal intentions in developing the uniform financial disclosure package was to refocus the concentration of users to the financial statements as a whole. In the past, the results of operations was given greater emphasis than financial condition by separate display in a detailed summary of operations, which, in turn, was the exclusive focus of management's discussion and analysis. The Commission believes that, by eliminating the summary of operations, requiring the financial statements to cover results of operations for three years, and by refocusing management's discussion and analysis on the financial statements, users will concentrate more on the financial statements as a whole and be provided a more effective presentation.

INTERIM FINANCIAL INFORMATION— AGE, FORM AND CONTENT

In addition to adopting a uniform requirement for periods to be covered by audited financial statements, substantial changes are being adopted relating to the age, form and content of unaudited interim financial information provided in registration statements. Under present requirements of the various forms, a "90-day" or "six-month" rule must be followed to determine the age of financial information required to be filed. The amendments adopted in this release revise and update these requirements to recognize quarterly reporting requirements under the Exchange Act and ensure that interim data provided in registration statements under the Securities Act is at least as current as the data already filed under the Exchange Act. As to form and content, changes are being adopted which will greatly reduce the burden on registrants required to file interim financial information. The amendments eliminate the requirement to provide complete financial statements and schedules for interim periods and allow interim data to be presented in condensed financial statements in the same degree of detail as is required under Form 10-Q.

Age of Financial Statements

In general, the amendments adopted today regarding the inclusion of interim financial information in registration statements parallel existing requirements for interim financial data under Form 10-Q. The new rules do not require registrants to provide in registration statements interim financial data any more current than interim data required for most registrants in quarterly reports on Form 10-Q. A discussion of the new rules, which specify the interim data to be included both as of the date of filing and as of the expected effective date of the filing, or proposed mailing date in the case of a proxy statement, and a description of the exceptions to the general rule are set forth below.

Filings Within 90 Days of Year-End

The uniform financial statement requirement adopted in this release requires audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the most recent three fiscal years. Exceptions to this rule occur under the amendments adopted when filings,

other than on Form 10-K or Form 10, are made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not yet available. In these circumstances, the rules provide that the audited balance sheets may be as of the end of the two preceding fiscal years and audited statements of income and changes in financial position may be presented for each of the three fiscal years preceding the most recent audited balance sheet presented. Under these circumstances, however, an additional balance sheet (which may be unaudited) will be required as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year and unaudited statements of income and changes in financial position will be required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet presented and the date of the most recent interim balance sheet being filed.

This same provision for filing interim financial data will be applicable to filings, other than on Form 10-K or Form 10, made after 45 days but within 90 days of the end of the registrant's fiscal year provided the registrant meets certain prescribed conditions.

To this extent, the rules adopted parallel interim reporting requirements under the 1934 Act. A potential investor of securities already registered and traded in the open market, for instance, wishing to make an investment decision on March 1, may only have available to him for a calendar year company the audited financial statements for the two years preceding the fiscal year most recently completed and unaudited interim data on a condensed basis through the end of the third fiscal quarter of the most recent fiscal year (as filed on Form 10-Q). Under the rules adopted, this same level of disclosure will be available to the investor considering an investment in shares being registered on March 1.

However, where a company files a registration statement or plans to become effective with a registration after 45 days but within 90 days of the end of its fiscal year (i.e., February 16 to March 31 for calendar year companies) and does not meet the conditions prescribed by the rules described below, the Commission will require that audited financial statements for the most recently completed fiscal year be included in the registration statement. To avoid the possibility of having to accelerate the preparation and audit of the financial statements for the most recently completed fiscal year, a company filing in the "45 day window" specified above must:

(1) be a registrant who files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Exchange Act; (2) have filed all reports due; (3) reasonably and in good faith expect income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, for the most recent fiscal year for which audited financial statements are not yet available; and (4) for at least one of the two immediately preceding fiscal years for which audited financial statements are available, have reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

In adopting the requirement for certain registrants to provide audited financial statements for the most recent fiscal year when within the "45 day window," the Commission recognizes that for some short period of time these companies may be prevented from going to the market. However, the Commission has concluded that, when a company is either a new registrant or is a registrant with unprofitable operations and is attempting to raise capital in the marketplace during the 45 days before audited financial statements for the most recent fiscal year would otherwise be required, it is reasonable to delay registration until such financial statements become available. The Commission believes that companies which do not meet the conditions described above will be cognizant of applicable registration requirements and will plan to accelerate the preparation and audit of their financial statements when planning to file or become effective in this 45 day period.

The Commission believes that this exception in the rules is in the best interest of the investing public and will not create any burden on the large majority of registrants. Also, it should be understood that, as in the past, the Commission will offer waivers to the rules where unusual circumstances dictate the need for them.

Filings After 134 Days of Year-End

The amendments also provide for interim financial information in registration statements filed after 134 days subsequent to the end of a registrant's fiscal year—the period after audited financial statements

for the most recently completed fiscal year are already required to be filed by most registrants on Form 10-K and on or after the date most registrants are required to have filed interim financial statements for the first fiscal quarter. When a registration statement is filed during this period an additional balance sheet is required as of an interim date within 135 days of the date of filing but as of a date at least as current as the date of the most recent quarterly data filed with the Commission on Form 10-Q. Also, statements of income and changes in financial position are required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet and the date of the most recent interim balance sheet being filed. Here again, the rules adopted parallel the requirements for interim information under the 1934 Act but also provide some flexibility for those registrants who may not be required to file quarterly data on Form 10-Q.[2]

These new rules for interim financial data in registration statements are being adopted primarily to update the rules to recognize quarterly reporting requirements under the Exchange Act. The previous six-month rule under Forms S-1, S-7 and S-11 was never updated in recognition of requirements to file interim data on Form 10-Q. Applicable to registrants meeting certain conditions, the six-month rule was originally adopted with Form S-1 prior to the inception of quarterly reporting requirements and was subsequently incorporated into Forms S-7 and S-11 without modification.

Currently, reporting companies are required to file unaudited interim financial information on Form 10-Q within 45 days of the end of each of the first three quarters of their fiscal year. Under present registration requirements, a filing could conceivably be filed under the Securities Act with financial information less current than that already filed under the Exchange Act. Under the amendments adopted, financial statements included in a registration statement will be required to be at least as current as any financial statements filed under the Exchange Act. Although the amendments require more current information than would be required under the six-month rule, they do not require most reporting companies to provide information which is any more current than is now required under the Exchange Act.

Age at Effective Date of Filing

In addition to the adoption of the above rules applicable to financial statements as of the filing date of a registration statement, financial statement updating requirements are also being adopted which focus on the age of financial statements at the effective date of a registration statement or the proposed mailing date in the case of a proxy statement. Here again, the rules adopted, except for certain registration statements which are expected to become effective during the "45 day window" referred to in the previous discussion, correspond with the requirements for quarterly data under the 1934 Act on Form 10-Q.

Where financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the rules require the financial statements to be updated with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position, on a comparative basis, for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided.

Two exceptions to this rule have been provided. First, where the registrant meets the four conditions described in the previous section and the anticipated effective date or proposed mailing date in the case of a proxy statement falls after 45 days

[2]For instance, a calendar year company not subject to quarterly reporting requirements under the Exchange Act and therefore not required to file a Form 10-Q may, in a filing on May 30, include interim financial statements as of, say, the end of January or February as opposed to the end of the first fiscal quarter (March 31). For some companies not accustom to reporting as of an interim date, a requirement for data as of the end of the most recent fiscal quarter imposes a significant burden in preparing a registration statement. Under the amendments adopted, data less current than as of the end of the most recent fiscal quarter will be acceptable as long as it is within the prescribed 135 day period prior to the date of filing.

but within 90 days of the end of the fiscal year, the filing need not be updated with financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided audited financial statements for such fiscal year are not available. Second, where the registrant does not meet the prescribed conditions referred to above and the anticipated effective date or proposed mailing date falls after 45 days but within 90 days of the end of the fiscal year, the filing will be required to include the audit financial statements for the most recent fiscal year. Both of these exceptions are consistent with the rules adopted governing financial statements as of the date of filing and have been included for the same reasons described in the previous sections.

In addition, the updating rules include a general provision that, if a filing is made near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the original filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

As a consequence of adopting these rules for updating financial statements, the amendments in the release include the elimination of the previous "Guide 23" of "Guides for Preparation and Filing Registration Statements."[3]

Views of Commentators

Commentators were generally supportive of the Commission's efforts to conform the requirements for interim data under the Securities Act with those under the Exchange Act.[4] However, many commentators felt that greater conformity could and should be adopted. For instance, under the rules as proposed registrants would have been required to include in filings made within 90 days of the most recent fiscal year-end unaudited balance sheets as of a date within 90 days prior to the date of filing if audited financial statements for the fiscal year were not available. Such interim balance sheets would have been accompanied by comparative statements of income and changes in financial position for the interim period between the date of the most recent audited balance sheet and the date of the interim balance sheet provided. Also, under the proposed rules all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year could not have availed themselves of the proposed 135 day rule. Unless they could meet certain prescribed conditions a more stringent 90 day rule would have applied.

The Commission considered the views of commentators in reevaluating the rules as proposed and concluded that a higher level of conformity between the Securities Act and the Exchange Act is appropriate. As a consequence, the rules adopted have been revised (as discussed in the previous sections) from those proposed to conform the timing of interim data in registration statements with the timing imposed by quarterly reporting requirements of Form 10-Q under the Exchange Act. Under the rules as adopted, registrants filing registration statements will not be subject to requirements for interim data more stringent than requirements under Form 10-Q. In addition, the 135 day rule has been made applicable to all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year.

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[3]The Commission recognizes that many foreign private issuers will have difficulty complying with the provisions adopted in this release. As announced in the concurrent Release 33-6231, the Commission is considering the feasibility of developing an integrated disclosure system for foreign issuers and will consider the development of specific rules concerning the age and content of financial statements for foreign issuers in the context of that project. Until final rules are adopted, however, the staff will consider, as it has in the past, requests for waivers of certain of the requirements of Regulation S-X that may be inappropriate for foreign issuers. In particular, registrants should be aware that waiver requests regarding the age of financial statements in a firm commitment under-written offering have in the past been granted if the registrant presented financial statements at least as current as six months prior to the effectiveness of the registration statement.

[4]Letters of comment were received from 160 commentators in response to the invitation to comment included in Securities Act Release No. 6179.

Form and Content

Presently, the disclosure requirements as to the form and content of interim data under the Securities Act and the Exchange Act are significantly different. Interim or stub period information included in registration statements under the Securities Act is required to be presented in full compliance with Regulation S-X, including complete financial statements and schedules. Where separate financial statements for the parent company only, unconsolidated subsidiaries or any 50 percent or less owned persons are required for annual periods, complete financial statements and schedules for these entities are also required for interim periods. Under the Exchange Act, the disclosure required for interim periods is significantly different as to both the degree of detail and the entities for which financial statements are provided. On a Form 10-Q, only condensed financial statements, without schedules, are required for the registrant and its subsidiaries consolidated. In most cases, parent company only financial statements are omitted and only summarized data is provided for significant unconsolidated subsidiaries and 50 percent or less owned persons.

As an additional step toward attaining consistency between the disclosures required under the Securities Act and those required under the Exchange Act, the Commission is adopting amendments which conform the requirements as to form and content of interim financial data under the Securities Act with existing requirements as to form and content under Form 10-Q under the Exchange Act. The rules as adopted eliminate the requirements to include, in registration statements, complete financial statements and schedules for interim periods. Further, the rules eliminate interim period requirements for separate financial statements for separate entities such as parent company only, unconsolidated subsidiaries or 50 percent or less owned persons. The form and content of financial statements for interim periods included in registration statements must only, as a minimum, comply with rules which conform with requirements for such data under Form 10-Q.

The amendments adopted are revised from those proposed to the extent that complete conformity with the form and content provisions under Form 10-Q has been adopted. The rules as adopted are consistent with the Commission's view that disclosure requirements under the Securities Act and those under the Exchange Act should not be materially different.

The election to remove the major differences, as to form and content of interim data, between requirements under the Securities Act and those under the Exchange Act, however, should not be construed as representing a determination by the Commission that separate financial statements of the entities referred to above may not be required for interim periods at some future point in time. As indicated in the release containing the proposed rules, the Commission is presently studying the significance and utility of the various separate financial statements currently required by most disclosure forms for annual periods. After the Commission completes its studies of the significance and utility of these separate statements, a determination will then be made as to whether such statements in a condensed form need be included where interim periods are presented (registration statements as well as Form 10-Q).

INSTRUCTIONS TO FINANCIAL STATEMENTS CENTRALIZED IN REGULATION S-X

Instructions as to the financial statements to be provided in a filing and the periods to be covered are presently located in the various registration and reporting forms. The amendments adopted today remove substantially all these instructions from the various forms and position a centralized set of revised instructions in a new Article 3 of Regulation S-X. The Commission believes that the centralization of these instructions simplifies the rules and facilitates the establishment of a uniform requirement for periods to be covered by financial statements.

In relocating the instructions as to financial statements to Regulation S-X, it should be noted that no significant changes have been made other than those relating to the periods to be covered by financial statements and those regarding the form and content of interim data in registration statements. Certain minor changes, however, that should be noted are briefly described below.

Consistent with the adoption of a uniform requirement for registrants to provide statements of income for three fiscal years, a requirement that the disclosure of segment information in accordance with provisions of Statement of Financial Accounting Standards No. 14 for each year for which an audited

income statement is presented has been adopted. This specific amendment to the rules is required because generally accepted accounting principles only require segment data when complete financial statements—including balance sheet—are presented. This requirement is also consistent with the number of years provided for by the revised Item 1 of Regulation S-K discussed in the release on revision of Form 10-K. The amendment adopted herein provides that to the extent that the segment information required to be included in the financial statements comply with the provisions of Item 1 of Regulation S-K, the disclosures may be combined by cross referencing to or from the financial statements.

The amendments also revise the present rules applicable to financial statements of development stage companies required to be filed on Form 10-K. Presently, when receipts and expenditures of a development stage company, each, do not exceed $5,000, the financial statements may be unaudited. The rules adopted would encompass financial statements of any inactive company and would raise the receipts and expenditures levels, each, to $100,000. This change broadens and updates the present rules.

Further, because Regulation S-X now encompasses requirements for financial statements, its title has been changed from "Form and Content of Financial Statements" to "Form and Content of and Requirements for Financial Statements."

TEXT OF AMENDED RULES, FORMS, AND GUIDES

(Regulation S-X)

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

* * * * *

1. Part heading (CFR 210) is revised to read as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

* * * * *

2. Paragraph (a) of §210.1-01 is amended to read as follows:

§210.1-01 Application of Regulation S-X [17 CFR Part 210].

* * * * *

(a) This part (together with the Accounting Series Releases [Part 211 of this chapter]) sets forth the form and content of and requirements for financial statements required to be filed as a part of—

(1) Registration statements under the Securities Act of 1933 [Part 239 of this chapter], except as otherwise specifically provided in the forms which are to be used for registration under this Act;

(2) Registration statements under section 12 [Subpart C of Part 249 of this chapter], annual or other reports under sections 13 and 15(d)[Subparts D and E of Part 249 of this chapter], and proxy and information statements under section 14 of the Securities Exchange Act of 1934 except as otherwise specifically provided in the forms which are to be used for registration and reporting under these sections of this Act;

(3) Registration statements and annual reports filed under the Public Utility Holding Company Act of 1935 [Part 259 of this chapter] by public utility holding companies registered under such Act; and

(4) Registration statements and annual reports under the Investment Company Act of 1940 [Part 274 of this chapter].

* * * * *

3. Articles 3 and 4 are amended by (1) redesignating the present Article 3 as Article 4, (2) redesignating the present §210.4-01 through §210.4-08 as §210.3A-01 through §210.3A-08, and (3) adding new "General Instructions as to Financial Statements," §210.3-01 through §210.3-16 as set forth below:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

These instructions specify the balance sheets and statements of income and changes in financial position to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to §230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to §240.12b-23 regarding incorporation by reference and §240.12b-36 regarding use of financial statements filed under other acts.

§210.3-01 Consolidated balance sheets.

There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

If the filing, other than a filing on Form 10-K or Form 10, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

The above instruction is also applicable to filings, other than on Form 10-K or Form 10, made after 45 days but within 90 days of the end of the registrant's fiscal year *Provided* That the following conditions are met:

(1) The registrant files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

For filings made after 45 days but within 90 days of the end of the registrant's fiscal year where the above conditions are not met, the filing must include the audited balance sheets required by the first paragraph of this rule.

For filings made after 134 days subsequent to the end of the registrant's most recent fiscal year the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

Any interim balance sheet provided in accordance with the above requirements may be unaudited and need not be presented in great detail than is required by instructions to Form 10-Q. Notwithstanding the above requirements, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10-Q.

§210.3-02 Consolidated statements of income and changes in financial position.

There shall be filed, for the registrant and its subsidiaries consolidated, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by instructions to Form 10-Q.

See also instructions under §210.3-06.

§210.3-03 Balance sheets of the registrant.

There shall be filed for the registrant and its predecessors audited balance sheets as of the same dates as the audited consolidated balance sheets required to be filed pursuant to §210.3-01.

§210.3-04 Statements of income and changes in financial position of the registrant.

There shall be filed for the registrant and its predecessors audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

§210.3-05 Omission of registrant's financial statements in certain cases.

Notwithstanding §§210.3-03 and 3-04, the individual financial statements of the registrant may be omitted if (a) consolidated financial statements of the registrant and one or more of its subsidiaries are being filed and (b) the conditions specified in either paragraphs (1) or (2) of this section are met.

(1) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interests and/or indebtedness to any person other than the registrant or its consolidated subsidiaries in amounts which together exceed 5 percent of the total assets as shown by the most recent year and consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the registrant by guarantee, pledge, assignment or otherwise are to be excluded for the purpose of this determination.

(2) The registrant's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75 percent or more of the total assets as shown by the most recent year-end consolidated balance sheet; and the registrant's total sales and revenues, exclusive of interest and dividend received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement for the most recent fiscal year if it were filed, constitute 75 percent or more of the total sales and revenues shown by the most recent annual consolidated income statement.

The basis for the omission of registrant's financial statements shall be stated in the index of financial statements filed.

§210.3-06 Instructions to income statement requirements.

(a) The statements required shall be prepared in compliance with the applicable requirements of this Regulation.

(b) If the registrant is engaged primarily (1) in the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and changes in financial position (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the income statements for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported; *Provided, however,* That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the

results shown.

(e) Disclosures regarding business segments required by generally accepted accounting principles (Statement of Financial Accounting Standards No. 14) shall be provided for each year for which an audited statement of income is presented. To the extent that the segment information presented pursuant to this instruction complies with the provisions of Item 1 of Regulation S-K, the disclosures may be combined by cross referencing to or from the financial statements.

§210.3-07 Past successions to other businesses.

If, during the period for which its income statements are required, the registrant has by purchase or pooling of interests succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any comparable interim periods. In addition, if any purchased business or businesses, singly or in the aggregate, had major significance in relation to the registrant, audited income statements, separate or combined as appropriate, for such business or businesses shall be filed for such periods prior to the purchase as may be necessary when added to the time, if any, for which audited income statements after the purchase are filed to cover the equivalent of the period specified in §§210.3-02 and 3-04. The test of major significance shall be based on the tests used in the term "significant subsidiary" with substituted percentages (determined in comparison to the most recent annual consolidated financial statements of the registrant being filed) being utilized in relation to the period the businesses have been merged prior to the date of the registrant's most recent audited balance sheet as follows: (1) for one full year or less, no substitution; (2) more than one but less than two full years, 25 percent; and (3) two full years or more, 45 percent. If financial statements for an acquired business would not be required in the year of acquisition, they would not be required subsequently. (See Release No. 33-4950 with regard to audit requirements for such financial statements.)

This instruction shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

Information required by the foregoing instruction is not required to be included in a filing on Form 10-K.

§210.3-08 Future successions to other businesses.

(a) If, after the date of the most recent balance sheet filed pursuant to §210.3-01 or 3-03, the registrant by purchase or by pooling of interests has succeeded to or is about to succeed to one or more businesses or has acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, prepared in accordance with Regulation S-X. In addition, to reflect the succession to any businesses, there shall be filed in columnar form (1) a balance sheet of the registrant (or the registrant and its subsidiaries consolidated, if appropriate), (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(b) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need to be filed, however, for any business acquired or to be acquired or for any business in which an investment acquired or to be acquired is required to be accounted for by

the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate, would not meet the test of a significant subsidiary; *Provided* That the statements of any business may not be omitted where any of the securities being registered are to be offered in exchange for securities representing such business or for assets of such business.

Information required by the foregoing instruction is not required to be included in a filing on Form 10-K.

§210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) Subject to §210.3A-03 regarding group financial statements and paragraphs (b) and (c) of this section, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant and were required to file financial statements. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant.

(b) *Summarized financial information.* Notwithstanding paragraph (a) above, summarized information as to assets, liabilities and results of operations may be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, except such subsidiaries or 50 percent or less owned persons which are individually significant under the tests specified in paragraph (c) below.

(c) *Omission of financial statements required by paragraphs (a) and (b) above.* Notwithstanding paragraphs (a) and (b), there may be omitted all financial statements of any one or more unconsolidated subsidiaries or 50 percent or less owned persons accounted for by the equity method, if in the aggregate (1) neither the registrant's and its other subsidiaries' investments in and advances to, nor their proportionate share of the total assets (after intercompany eliminations) of, such subsidiaries and other persons exceed 10 percent of the total assets as shown by the most recent year-end consolidated balance sheet; (2) the total sales and revenues (after intercompany eliminations) of such subsidiaries or other persons, reduced to the percentages of equity interests held by the registrant and its subsidiaries in such subsidiaries and other persons, do not exceed 10 percent of the total sales and revenues as shown by the most recent annual consolidated income statement; and (3) the registrant's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiaries and other persons does not exceed 10 percent of such income of the registrant and consolidated subsidiaries for the most recent fiscal year; *Provided* That, if such income of the registrant and its consolidated subsidiaries for the last fiscal year is at least 10 percent lower than the average of such income for the last five fiscal years, such average income may be substituted in the determination.

§210.3-10 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each affiliate of the registrant whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual, consolidated or combined basis.

(b) For the purposes of this instruction, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value as shown by the books of the registrant, or market value, whichever is the greatest, of such securities equals 20 percent or more of the principal amount of the class secured thereby.

§210.3-11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation for purposes of reports pursuant to the Securities Exchange Act of 1934 may be unaudited. An inactive entity is one meeting all of the following conditions:

(a) Gross receipts from all sources for the fiscal year are not in excess of $100,000;

(b) The registrant has not purchased or sold any of its own stock, granted options therefor, or levied assessments upon outstanding stock;

(c) Expenditures for all purposes for the fiscal year are not in excess of $100,000;

(d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases; and

(e) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of audited financial statements.

§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

If the financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by instructions to Form 10-Q. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10-Q.

Where the anticipated effective date of a filing, or in the case of a proxy statement the proposed mailing date, falls within the period after 45 days but within 90 days of the end of the fiscal year and the registrant meets the conditions prescribed under §210.3-01, the filing need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided the audited financial statements for such fiscal year are not available. A registrant not meeting the conditions prescribed under §210.3-01 shall include in the filing audited financial statements for the most recent fiscal year.

Where a filing is made near the end of a fiscal year and audited financial statements for that fiscal year are not included in the filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

§210.3-13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§210.3-14 Special instructions for real estate operations to be acquired.

If, during the period for which income statements are required, the registrant (a) has acquired one or more properties which in the aggregate are significant, or (b) since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements, for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operation of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes. Earnings per unit shall not be given in these statements.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the

estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant. Information called for by the foregoing instruction is not required to be included in filings on Form 10-K.

§210.3-15 Special provision as to real estate investment trusts.

In lieu of the income statements required by §210.5-03 there shall be filed statements of income and expense and statements of realized gain or loss on properties and investments which shall generally conform with the requirements of §§210.6-04 and 6-05. In place of the balance sheet caption prescribed by §210.5-02.31(a)(3) there shall be shown separately (a) the balance of undistributed net income and (b) accumulated net realized gain or loss on investments, and the statements of other stockholders' equity shall generally conform to the requirements of §210.6-07.

The trust's status as a "real estate investment trust" under applicable provisions of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the trust has relied in making or not making provisions for Federal income taxes.

The tax status of distributions per unit shall be stated (e.g., ordinary income, capital gain, return of capital).

§210.3-16 Reorganization of registrant.

(a) If, during the period for which its income statements are required, the registrant has emerged from a reorganization in which substantial changes occurred in its asset, liability, capital shares, other stockholders' equity or reserve accounts, a brief explanation of such changes shall be set forth in a note or supporting schedule to the balance sheets filed.

(b) If the registrant is about to emerge from such a reorganization, there shall be filed, in addition to the balance sheets of the registrant otherwise required, a balance sheet giving effect to the plan of reorganization. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheet of the registrant prior to the reorganization, the changes to be effected in the reorganization and the balance sheet of the registrant after giving effect to the plan of reorganization. By a footnote or otherwise a brief explanation of the changes shall be given.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

* * * * *

1. Form S-1 is amended by deleting Instructions as to Financial Statements and revising Item 19 to read as follows:

§239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 19. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

* * * * *

2. Form S-2 is amended by revising Item 13 to read

as follows:

§239.12 Form S-2, for shares of certain corporations in the development stage.

* * * * *

Item 13. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

3. Form S-3 is amended by revising Item 12 to read as follows:

§239.13 Form S-3, for shares of mining corporations in the development stage.

* * * * *

Item 12. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

* * * * *

4. Form S-11 is amended by deleting Instructions to Financial Statements and revising Item 24 to read as follows:

§239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 24. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-12, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

* * * * *

5. Form S-7 is amended by deleting Item 6 and revising Item 11 to read as follows:

§239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Item 11. Financial Statements and Supplementary Data

Include in the prospectus all financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. All schedules may be omitted from the registration statement except those prepared in accordance with rules 12-15, 12-28 and 12-29 which shall be included in the prospectus.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

1. Form 10 is amended by deleting Instructions to Financial Statements and adding a new Item 17 to read as follows:

§249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 17. Financial Statements and Supplementary Data

Include in the registration statement all financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K.

* * * * *

2. Form 10-K is amended by deleting the Instructions as to Financial Statements and revising the present Item 12. See technical amendments in the concurrent release on revision of Form 10-K (Securities Act Release No. 6231.

3. Form 11-K is amended by revising paragraph (b) of the "Instructions as to Financial Statements" to read as follows:

§249.311 Form 11-K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

* * * * *

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

1. Section 240.14a-3 is amended by revising paragraphs (b)(1), (b)(2) and (b)(3). For revision to paragraph (b)(3), see concurrent Securities Act Release No. 6233. Paragraphs (b)(1) and (b)(2) are revised to read as follows:

§240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than §210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited. NOTE: Information required by §210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by §210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

* * * * *

(2) Section 240.14a-101 is amended by revising Item 15 of Schedule 14A to read as follows:

§240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 15. Financial statements and supplementary data.

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S-X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S-14 and if any of the

securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, within the meaning of Rule 145(c), the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of that regulation need be furnished in the proxy statement.

Parent company only financial statements are not required to be furnished unless necessary to make the financial statements not misleading.

* * * * *

3. Section 240.14c-3 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3). For revision to paragraph (a)(3), see concurrent Securities Act Release No. 6233. Paragraphs (a)(1) and (a)(2) are revised to read as follows:

§240.14c-3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than §210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

NOTE: Information required by §210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by §210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2-point.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

* * * * *

Guide 23, "Current Financial Statements and Related Data," of Guides for Preparation and Filing of Registration Statements [17 CFR 231.4936] is deleted.

* * * * *

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s] of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78o(d), 78w] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [145 U.S.C. 79e, 79n, 79t] of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31(c) and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)] of the Investment Company Act of 1940. Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition.

By the Commission.

George A. Fitzsimmons
Secretary

END PART I

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20/17/pt.2

sec docket

VOLUME 20, NO. 17, PART II SEPTEMBER 16, 1980

RELEASES IN THIS ISSUE **PAGE**

Securities Act	6228*, 6231-34	1058
Securities Exchange Act .	17097-20	1257
Public Utility Holding Company Act	21692-06	1309
Trust Indenture Act	583-00	1325
Investment Company Act	11318-37	1325
Litigation	9167-73	1352
Accounting Series Release	279-81	1355

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SECURITIES ACT OF 1933
Release No. 6235/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11327/September 2, 1980

PROPOSED COMPREHENSIVE REVISION TO SYSTEM FOR REGISTRATION OF SECURITIES OFFERINGS

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment three proposed new forms to be used to register offerings of securities under the Securities Act of 1933. This action represents another major step in the Commission's efforts to integrate the disclosure systems under the various federal securities laws and to simplify and streamline the disclosure requirements imposed under those systems. The three new forms proposed today would constitute the basic disclosure document format for most Securities Act registration, with different levels of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-849. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Margaret W. Hammond (202) 272-3059, Bruce S. Mendelsohn (202) 272-2589, or Catherine Collins McCoy (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing three new registration statement forms to be used to register offerings of securities under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.]. These three forms, denominated Forms A, B and C for proposal purposes, would replace the most widely used existing registration statement forms and would constitute the basic framework for Securities Act registration.[1]

This proposal should be considered together with a number of final rulemaking actions also announced today. Those actions are: (1) the adoption of

[1]If proposed Forms A, B and C were adopted by the Commission the following forms would be rescinded: Form S-1 (17 CFR 239.11); Form S-2 (17 CFR 239.12); Form S-7 (17 CFR 239.26); and Form S-16 (17 CFR 239.27).

SE 1.29:

amendments to Form 10-K (17 CFR 249.310), Rule 14a-3 (17 CFR 240.14a-3), and Regulation S-K (17 CFR 229.20) to reduce certain regulatory burdens thereunder and to facilitate the integration of disclosure systems; (2) the adoption of amendments to Regulation S-X (17 CFR Part 210) to establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a *et seq.*]; (3) the adoption of amendments to Regulation S-X to eliminate, to the extent possible, the differences between the requirements of that regulation and the requirements of generally accepted accounting principles ("GAAP"); and (4) the adoption of Form S-15 (17 CFR 239.29), a new simplified form for the registration of securities issued in certain types of business combination transactions. These four rulemaking actions (Securities Act Release Nos. 6231, 6232, 6233, and 6234, respectively, September 2, 1980) were published for comment in January 1980[2] and constituted a major effort to achieve a simplified and integrated disclosure system. The new Securities Act registration framework being proposed today builds up that effort and implements its objectives for simplifying and streamlining Securities Act disclosure requirements.

The framework contemplates dividing issuers into three categories.[3] The category to which an issuer belongs would determine the extent to which previously disseminated information would also be required to be presented in the prospectus or otherwise delivered to potential investors. Because of its prior impact on the market and to ensure its accuracy, information not actually delivered would be incorporated by reference.

Proposed Forms A, B, and C are designed to work as a coordinated system using standard disclosure requirements for the registration of securities under the Securities Act.[4] Form A, which is analogous to existing Form S-16 and is to be used by companies widely followed by the market, serves as the initial repository of the uniform disclosure item requirements. In this respect, Forms B and C refer to Form A for much of their content. Form A itself calls for very little prospectus disclosure and would primarily entail incorporation by reference from Exchange Act information. Form B provides an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to present substantially equivalent disclosure in the prospectus. Form C is a streamlined Form S-1 and provides for very little incorporation by reference.

The proposed three forms represent a detailed implementation of the approach adumbrated by the Commission in January. The Commission believes that the new Securities Act system which would be implemented by adoption of the forms should reduce unnecessary costs and burdens of registration to issuers without attendant losses in the quality of information flowing to investors. By taking advantage of existing, high quality Exchange Act disclosure documents wherever possible, the approach embodied in these proposed Securities Act forms integrates the disclosure systems under the two Acts. By eliminating unnecessary disclosure items and by making those retained uniform wherever possible, these proposed forms should greatly simplify registration of securities under the Securities Act.

This release contains a general discussion of the fundamental questions integration poses; the legislative and administrative background of the integration proposals published today; and the current characteristics of the securities markets and of the technology of information dissemination which also contributed to shape the proposals. This introductory discussion is followed by a detailed synopsis of the proposed forms to assist in a better understanding of their provisions.

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[2]Securities Act Release Nos. 6176, 6179, 6178 and 6177 (January 15, 1980) [45 FR 5972, 5934, 5943 and 5963].

[3]The classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

[4]However, the forms which are presently available for certain specialized offerings of securities, such as Forms S-8 (17 CFR 239.16b), S-11 (17 CFR 239.18), S-14 (17 CFR 239.23) and S-15 (17 CFR 293.29) will continue to be available for the foreseeable future. Also, appropriate accommodation for the special needs of small business, as in Form S-18 (17 CFR 239.28), will continue.

I. *Integration*

The Commission's integration program involves a comprehensive evaluation of the disclosure policies and procedures underlying the Securities Act of 1933 and the Securities Exchange Act of 1934 with a view toward integrating the information systems under those Acts so that investors and the marketplace are provided meaningful, non-duplicative information periodically and when securities are sold to the public, while the costs of compliance for public companies are decreased.

The shape of the program will be influenced by the answers to two fundamental questions:

(1) What information is material to investment decisions in the context of public offerings of securities; and

(2) Under what circumstances and in what form should such material information be disseminated and made available by companies making public offerings of securities to the various participants in the capital market system?

The task of identifying what information is material to investment and voting decisions is a continuing one in the field of securities regulation. Integration, as a concept, involves a conclusion as to equivalency between transactional (Securities Act) and periodic (Exchange Act) reporting. If a subject matter is material information (other than a description of the transaction itself), then it will be material both in the distribution of securities and to the trading markets. Moreover, requirements governing the description of such subject matters should be the same for both purposes. As an example, if a management's discussion of the financial statements is important for transactions involving distributions, then it would also be equally important for an informed trading market. Thus, both prospectuses and periodic reports should take this information into account. Also, the requirements for its content should be essentially the same. This principle of equivalency has led to the development and expansion of Regulation S-K, a technical device designed to state in one place uniform requirements which both Securities Act and Exchange Act items incorporate by reference. It also has led to increasing the quality of reports under the Exchange Act, a trend that started in 1970 when Form 10 was amended.[5]

Integration consists, however, of more than just the notion of equivalency of reportable material information under both Acts. It involves answers to the second question posed above: Under what circumstances and to whom should this information be made available? Equivalency alone might be read to suggest that all the information contained, for example, in a Form 10-K should also be reiterated in all prospectuses.

However, the concept of integration also proceeds from the observation that information is regularly being furnished to the market through periodic reports under the Exchange Act. This information is evaluated by professional analysts and other sophisticated users, is available to the financial press and is obtainable by any other person who seeks it for free or at nominal cost. To the extent that the market accordingly acts efficiently, and this information is adequately reflected in the price of a registrant's outstanding securities, there seems little need to reiterate this information in a prospectus in the context of a distribution. The fact of market availability of information for sophisticated users also allows the exploration of other values in addition to cost reductions afforded through non-duplication: in particular, readability and effective communication in specific contexts.

Set forth below as additional background information for these proposals is a review of the evolution of the Securities Act and the Exchange Act; the nature of and participants in the securities marketplace, and recent technological advances.

A. *Background*

1. *The Law*

The Securities Act and the Exchange Act were enacted as separate legislation and in response to different needs. The Securities Act was intended to prevent frauds in the sale of securities by providing full and fair disclosure in the context of public

[5]Securities Exchange Act Release No. 8996 (October 14, 1970) [35 FR 16537]. These revisions were proposed in Securities Exchange Act Release No. 8681 (September 15, 1969) [34 FR 14236] in response to recommendations of the "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969) [the "Wheat Report"].

offerings of securities.[6] The Exchange Act was enacted to regulate brokers and dealers and securities markets.[7] The disclosure framework of the Exchange Act contemplated in 1934 pertained primarily to classes of securities traded on stock exchanges. While both statutes were designed to provide disclosure to investors and the marketplace, the framework of the Securities Act was transaction oriented, *i.e.*, the focus was upon the public offering of securities by any company. The framework of the Exchange Act was status oriented, *i.e.*, the focus was upon issuers with a class of securities listed and traded on an exchange. Also, the two frameworks operated independently. Information required in the Securities Act context was not modified because of the existence of Exchange Act reporting and was only triggered by public offerings at varying times.

While the disparate orientations of the two statutes still exist, the gap between the disclosure frameworks has significantly narrowed since 1934. In 1936, Section 15(d) was added to the Exchange Act to provide that under certain circumstances the continuous reporting system would apply to unlisted companies with respect to classes of their securities for which a registration statement had become effective under the Securities Act. Thus, Section 15(d) expanded investor protection under the Exchange Act to the over-the-counter market, but only on a fragmentary basis.

The disparity between Exchange Act disclosure requirements for listed and unlisted classes of securities was not resolved until the passage of the Securities Acts Amendments of 1964[8] which brought many more companies into the continuous reporting system of the Exchange Act.[9] With the passage of Section 15(d) and the 1964 amendments, all issuers of a certain size and issuers with certain characteristics selling securities to the public pursuant to an effective registration statement were subjected to the registration and reporting obligations of the Exchange Act.[10] It is estimated that over 9,000 companies are now required to file periodic reports under the Exchange Act.

These amendments not only closed a gap under the Exchange Act, but also narrowed the gap between the disclosure framework under the Securities Act—information concerning the issuer and the transaction given only in the context of the public offering—and that under the Exchange Act—continuous disclosure about the issuer. Milton Cohen, a principal advocate of the concept of integration, opined that the disclosure frameworks under the Acts would have been quite different—and perhaps more congruent—if they "had been enacted in opposite order, or had been enacted as a single, integrated statute—that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosure in connection with public offerings had then been

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[6]The Act also contains broad liability sections which were intended to have the prophylactic effect of preventing such frauds. *See, e.g.*, Section 11 of the Securities Act of 1933 [15 U.S.C. 77k].

[7]In addition to these purposes, the 1934 Act also established the continuous disclosure system whereby companies subject to certain provisions of the Act are required to file periodic reports. *See* Section 13 of the Securities Exchange Act of 1934 [15 U.S.C. 78m].

[8]Pub. L. No. 88-467, 78 Stat. 566 (1964).

[9]Prior to these amendments, issuers could delist their securities from the exchange on which they were traded and thereby avoid the 1934 Act reporting requirements. This simple method of thwarting any Commission effort to upgrade the quality of Exchange Act reports was therefore blocked. Prior to 1964, however, Section 15(d) of the Exchange Act did provide that all registration statements filed under the Securities Act contain an undertaking by the registrant to comply with the reporting requirements of Section 13. However, the undertaking became operative and the reports were required only when the value of the securities offered plus the value of all other outstanding securities of the same class equalled at least $2 million. The duty to file such reports was suspended if, and for as long as, the value of the securities outstanding was reduced to less than $1 million or the issuer had become subject to an equivalent reporting requirement.

[10]The Securities Acts Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 566 (1964), added Section 12(g) to the Act which requires issuers with total assets exceeding $1,000,000 and a class of equity security held of record by five hundred or more persons, to comply with the Act's continuous reporting provisions.

faced in this setting."[11] In large part, the Commission's efforts will attempt to redress this legislative anomaly by establishing an integrated system of disclosure which will provide investor protection both in public offerings and in the securities markets, at a minimum burden to public companies.

2. *Nature of the Securities Markets*

The basic issues relating to Securities Act disclosure, *i.e.*, the type of information that should be available and the dissemination of that information, must also be considered in light of the composition of today's markets. The participants in the markets, and therefore the users of the information made available to the markets, are varied and have correspondingly varied needs. They include the professional analyst, the institutional investor, the financial press, and the individual investor.

The professional analysts, widespread throughout the country, constantly digest and synthesize market and company-specific information. These professionals use, and often implore the Commission to require, increasingly complex and sophisticated information. The influx of institutional investors, and their financial advisors, also contributes to the constituency for technical but important statistical data. To a large extent, these professionals act as essential conduits in the flow of information to the ordinary investor and as intermediaries acting on behalf of participants in collective investment media.

In addition, this country has a uniquely active and responsive financial press which facilitates the broad dissemination of highly timely and material company-oriented information to a vast readership. The information needs of the individual investor must be considered in this context, recognizing that information reaches the individual investor through both direct and indirect routes.[12]

It is incumbent upon the Commission to consider the entire community of users of company information in developing the proposed system and its model information package and to maintain a balance between the needs of the more and less sophisticated users.

3. *Technological Advances*

The instant proposals are also evidence of an awareness by the Commission of the increasingly easy availability of Exchange Act information through improved technological means. Computerization and electronics are progressing to such a level that information necessary to trading markets is becoming available on a timely and inexpensive basis. Additionally, a large volume of such information can be synthesized, analyzed and presented quickly and in almost any format desired by the user.

The system of public dissemination of Exchange Act information has improved dramatically in recent years. The Commission now employs an outside contractor to microfiche all filed reports. This microfiche is produced not only for the Commission's use, but also for the subscribers of private services. Such subscribers include individual and institutional investors, law firms, corporations and other specialized financial research services. The microfiche covers the entire Exchange Act reporting system, is becoming more timely, and is relatively inexpensive. Should subscribers wish to extract only certain financial data or information regarding insiders or litigation, for instance, they may also subscribe to on-line computer data base systems which will provide such information. Financial research services break down this acquired information into a myriad array of informational matrices depending upon either the purposes of the users' research or the ultimate users' needs. Also developed in the last few years are magnetic tape systems which will extract numerous data items on a particular company and provide the user with a long-term historic view of such company by carrying this information back five to twenty years. The services bureaus which buy and sell Exchange Act information, either directly from the

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[11]*See* Cohen, "Truth in Securities" Revisited, 79 Harv. L. Rev. 1340, 1341 (1966).

[12]For a more complete discussion of various market participants and their respective roles in the dissemination of information to the investment decisionmakers, *see* "The Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission" Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. at 1-304 (November 3, 1977) [the "Advisory Committee Report"].

Commission's contractor or through other information providers, furnish the market with sophisticated research which is further disseminated to broker dealers and investment advisers and through them, to the public at large.

B. *Materiality of Disclosure Under the Securities Act*

As noted above, the determination of what information is material to an investment decision in the context of a public offering is a critical question in establishing an integrated system of disclosure. Prior to the adoption of Regulation S-K (17 CFR 229.20) in December, 1977, there were disparate informational requirements between Securities Act registration forms and Exchange Act reporting forms. Regulation S-K reflects the perception of equivalency discussed above—that information necessary for investment or voting decisions (other than that relating to the transaction itself) should be similar for distribution and for trading markets. With that acknowledgement, the Commission is in a position to develop what information is material, then to shift to determine under what circumstances this information must be reiterated in a prospectus.

Regulation S-K has been designed as the repository for the Commission's requirements for standard and integrated disclosure requirements. In December 1977, the Commission adopted Items 1 and 2 of Regulation S-K, the first significant steps in achieving standard disclosure under both Acts.[13] In the following year, Items 3 through 6 were added as an express response to the suggestions of the Advisory Committee.[14] The Regulation represented the first step in the definition of that company information which is material to an investment or voting decision, whether that decision is under the purview of the Securities Act or the Exchange Act. Accordingly, the multiplication of disclosure item requirements in Regulation S-K is a recognized prerequisite to full integration of the registration and reporting requirements under the two Acts. Consequently, in addition to the present Regulation S-K items pertaining to disclosures regarding an issuer's business, property, directors and executive officers, their remuneration and security ownership, and legal proceedings, the Commission has adopted six more item requirements.[15] These new items will ensure uniform disclosure under both Acts of information regarding market price of the issuer's common stock, selected financial data, management's discussion and analysis of the issuer's financial condition, supplementary financial information, and exhibits. It is anticipated that Regulation S-K will develop in time to encompass further disclosure requirements.

C. *Dissemination and Availability of Disclosure*

The second major issue, concerning under what circumstances and to whom the various elements of the disclosure package should be made available, has been addressed to some extent during the promulgation and subsequent amendments of Forms S-7, S-16, S-8, S-14, and S-15.[16] The goals of the Commission in this area have been to: (1) avoid duplicative disclosure wherever possible; (2) provide appropriate information for each type of market participant; and (3) foster readability and effective communication wherever possible. Duplicative disclosure stems from similar requirements imposed on registrants when they sell securities to the public, file periodic reports, or solicit proxies. All of these requirements seek to enhance the flow of company-specific disclosure within different, but not mutually exclusive, arenas and at different times. In many cases, the ability to take advantage of prior disclosure is increasingly attractive.

An early step towards examining Securities Act disclosure requirements, taking into consideration

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[13]Securities Act Release No. 5893 (December 23, 1977) [42 FR 65554].

[14]Securities Act Release No. 5949 (July 28, 1978) [43 FR 34407].

[15]See Securities Act Releases Nos. 6231 and 6233 (September 2, 1980).

[16]Forms S-14 (17 CFR 239.23) and S-8 (17 CFR 239.16b) were specifically designed to elicit disclosure appropriate for certain transactions. Form S-8 was adopted in Securities Act Release No. 3480 (June 16, 1953) [18 FR 3688] to facilitate registration by certain issuers of securities to be offered pursuant to stock purchase, savings or similar plans. This form was broadened to include employee stock options in Securities Act Release No. 4533 (August 30, 1962) [27 FR 9213]. Form S-14 was intended to simplify the registration of securities issued in certain merger or acquisition transactions.

the availability of similar information as a result of Exchange Act reporting, was taken in 1967 when Form S-7 was adopted.[17] Form S-7 was envisioned as a simplified form for registration of securities to be offered for cash by companies subject to the reporting requirements of the Exchange Act and having long records of earnings and stability of management and business.[18] The benefits to be attained from such a shortened form and integration were expressed in terms of easing the burden on the issuer of preparing a registration statement and on the staff of processing it.[19] However, the rationale and benefits of a system of integrated disclosure were not thoroughly analyzed and discussed. Instead, the Commission took advantage of the occasion of Form S-7's adoption to announce a subsequent review of the Exchange Act requirements which was designed to improve both the quality and timeliness of reports filed under that Act.

The Wheat Report, which was the product of the Commission's study, strongly recommended closer coordination of Exchange Act and Securities Act

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[17]Securities Act Release No. 4886 (November 29, 1967) [32 FR 17934].

[18]The eligibility requirements for use of Form S-7 at its initial adoption were the following:

(a) The registrant meets either of the following conditions:

(1) it has a class of equity securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or

(2) it is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act.

(b) The registrant has been subject to and has complied in all respects, including timeliness, with the requirements of Sections 13 and 14 of the Securities Exchange Act of 1934 for a period of at least five fiscal years immediately preceding the filing of the registration statement on this form.

(c) The registrant has been engaged in business of substantially the same general character since the beginning of the last five fiscal years.

(d) A majority of the existing board of directors of the registrant have been directors of the registrant during each of the last three fiscal years.

(e) The registrant and its subsidiaries have not during the past ten years defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long term leases.

(f) The registrant and its consolidated subsidiaries had sales or gross revenues of at least $50,000,000 for the last fiscal year and a net income, after taxes but before extraordinary items net of tax effect, of at least $2,500,000 for the last fiscal year and of at least $1,000,000 for each of the preceding four fiscal years.

(g) If the securities to be registered are common stock or securities convertible into common stock, the registrant earned in each of the last five fiscal years any dividends paid in each such year on all classes of securities. If the registrant paid a stock dividend in any of such fiscal years, the aggregate amount transferred from surplus to capital in respect of each such dividend was charged only to the earned surplus account and was equal to the aggregate fair market value of the stock issued as such dividend.

[19]The simplifications evidenced by Form S-7 included the omission of such Form S-1 disclosure item requirements as: parents of registrant; description of property; organization within five years; pending legal proceedings; directors and executive officers and their remuneration; options to purchase securities; principal holders of securities; and interest of management and others in certain transactions, *i.e.*, for the most part, proxy statement disclosure.

disclosures.[20] Many of the recommendations of the Report (including those related to registration of securities under the Securities Act) anticipated substantial improvement in Exchange Act reporting. Such improved Exchange Act reporting was suggested not only to better the information provided to the trading markets, but also to allow closer coordination between Securities Act and Exchange Act disclosures, resulting in the substitution of Exchange Act disclosure for information otherwise required in the Securities Act context. In the Study's view, the phrase " 'improvement in 1934 Act reporting', [had] at least three aspects: (1) more comprehensive reporting forms, (2) better administration and enforcement of requirements relating to the preparation and filing of such forms, and (3) better dissemination of the information contained in such forms."[21]

Since the enactment of the 1964 amendments and the suggestion of the Wheat Report that the Exchange Act forms contain more comprehensive disclosure, the quantity and quality of information in the Exchange Act reports have increased significantly. For instance, in 1965 the basic form for registration of a class of securities pursuant to Section 12 of the Exchange Act, Form 10, required only a brief general description of the business of the registrant, its property, directors and officers, their remuneration, principal holders of the registrant's securities, and other similar information.[22] Today Form 10 requires extensive detailed disclosure pertaining to these topics in compliance with the requirements in Items 1 through 6 of Regulation S-K. In addition to the broad expansion of these requirements with today's action, the Form also requires such information as selected financial data and an analysis of the registrant's financial condition.[23]

Besides the expansion of disclosure requirements in pre-existing Exchange Act forms, the Commission also adopted another reporting form, Form 10-Q, for quarterly reports.[24] The adoption of Form 10-Q keeps filed financial information regarding publicly-held companies more current.[25]

A further response implementing the recommendations of the Wheat Report was the adoption of Form S-16 in 1970.[26] This registration statement form contains minimal prospectus disclosure and places more reliance on information reported under the Exchange Act by simply incorporating by reference Exchange Act documents containing otherwise required information into the registration statement, not by relying upon reiteration and delivery of such information to investors. The issuer is still responsible for such information as if it had been set forth in the prospectus, since the premise is that the existing stock price reflects that information. Initially, this new short form registration statement was limited in its use for the most part to secondary offerings of securities of issuers meeting the Form S-7 eligibility requirements.

The Commission's rulemaking efforts have also focused on the increased use and availability of annual reports to security holders.[27] In 1974 minimum disclosure requirements were mandated in Rule 14a-3(b) (17 CFR 240.14a-3(b)) for annual reports to security holders which either

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[20]A series of proposals were published in 1969 to implement the Wheat Report's recommendations in the 1934 Act context. *See, e.g.*, Securities Exchange Act Release Nos. 8680, 8681, 8682, 8683 (September 15, 1969) [34 FR 14235-240].

[21]Wheat Report, *supra* at 328.

[22]*See* Securities Exchange Act Release No. 7544 (March 5, 1965) [30 FR 3422].

[23]Securities Act Release No. 6231 (Septemhber 2, 1980).

[24]Securities Exchange Act Release No. 9004 (November 14, 1970) [35 FR 17537]. Before the adoption of Form 10-Q (17 CFR 249.308a), companies were only required to file semi-annual interim reports on Form 9-K. The Commission found in its analysis leading to the adoption of Form 10-Q that current reports on Form 8-K (17 CFR 249.308) were filed irregularly and were not used widely by investors or their advisors.

[25]The amendments to Form 10-Q proposed today would further prescribe requirements relating to the age, form and content of unaudited interim financial information and the management's discussion and analysis of such information. Cite to 10-Q release.

[26]Securities Act Release No. 5117 (December 23, 1970) [36 FR 777].

[27]The practice of sending annual reports to security holders apparently derived from early state

accompanied or preceded the issuer's solicitation of proxies for election of directors at an annual meeting of shareholders. At the time these amendments were adopted the Commission stated that "it is in the public interest that all security holders be provided with meaningful information regarding the business, management operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information."[28] The Commission also adopted rules to improve the dissemination of the annual report. Thus, the Commission could be assured that the most successfully disseminated document contained some minimal information content.[29]

In 1976, the Commission continued its program to integrate and streamline disclosure under the two Acts in recognition of the improved quality of reports filed under the Exchange Act. Once again, the availability of Form S-7 was substantially broadened, both in terms of those issuers eligible to use it and those transactions for which it could be used.[30] These amendments underscored the Commission's resolve toward simplification and integration and permitted the improved information reported pursuant to the requirements of the Exchange Act

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Footnote 27 Continued

corporate and tax laws which required that annual financial statements be filed with state officials or sent, sometimes only upon request, to all security holders or a certain proportion of security holders. *See generally* L. Loss, Securities Regulation 825 (2d ed. 1961). In 1942, the Commission adopted amendments to its proxy rules which required for the first time that annual reports "containing such financial statements for the last fiscal year as will, in the opinion of the management, adequately reflect the position and operations of the issuer" be sent to security holders when management solicited proxies relating to a meeting at which directors were to be elected. *See* Securities Exchange Act Release No. 3347 (December 18, 1942). This requirement, of course, resulted in expanded use and dissemination of such annual reports.

[28]Securities Exchange Act Release No. 11079 (October 31, 1974). [39 FR 40768].

[29]The Commission had already directed some attention in 1969 to improving the disclosures in the annual report filed with the Commission, Form 10-K (17 CFR 249.310). The Commission adopted amendments to divide Form 10-K into two parts, Part I, to be filed by companies subject to the proxy rules under Section 14 of the Exchange Act, and Part II, which would also have to be filed by companies subject only to Section 15(d) of that Act. The purpose was to coordinate proxy statement and annual report disclosure and thereby reduce some of the burdens of reporting under the Exchange Act. *See* Securities Exchange Act Release No. 8682 (September 15, 1969) [34 FR 14238].

[30]Securities Act Release No. 5791 (December 20, 1976) [41 FR 56304]. These amendments to Form S-7 made this Form, and therefore Form S-16, available for the first time to companies required to file reports pursuant to Section 15(d) of the Exchange Act. However, to ensure that information concerning these issuers was widely available to the investing public, the Commission required them to furnish all of their security holders with a report containing the information called for by Rule 14a-3(b) and Part II of Form 10-K.

In addition to securities offerings for cash, exchange offers were also permitted on Form S-7 by these amendments.

At the same time that Form S-7's availablity was broadened, the Commission rescinded Form S-9. Form S-9, which had been adopted in 1954, reduced the then existing disclosure requirements for Securities Act registration of non-convertible fixed interest debt securities where the issuer had been in business at least ten years, met an earnings requirement, and filed reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Because virtually all issuers who had qualified to use Form S-9 could now qualify to use Form S-7, the Commission did not believe there was a continued need for Form S-9.

continuous disclosure system to be relied upon in lieu of Securities Act disclosure by a certain class of issuers.

At the same time that these amendments were adopted, the Commission published a concept release seeking public comments on the advisability of and methodology to be used in making Form S-16 available for certain primary offerings by a limited category of large companies.[31] The release focused on the selection of appropriate criteria for delimiting the availability of this abbreviated prospectus.

However, before the concept could be set forth in proposal form, the Commission received the report of the Advisory Committee on Corporate Disclosure. Like the study group which produced the Wheat Report, the Advisory Committee conditioned its support for further integration and its recommendations as to ways of achieving this goal on additional improvements in the quality and dissemination of disclosures in Exchange Act reports.[32] It also suggested that more staff emphasis be placed on review of Exchange Act reports.[33]

The Advisory Committee also made specific recommendations as to how the Commission could accomplish the goal of integration. It recommended that the Commission adopt a single integrated disclosure form which would contain all the disclosure requirements necessary to comply with the registration, reporting and proxy requirements of both Acts.[34] For purposes of compliance with the Securities Act, it suggested that companies be divided into three levels.[35] Such classification would be appropriately reflected in the integrated disclosure form. More specifically, the Advisory Committee recommended that Form S-16 be made available for primary offerings by the top level of companies, and that a short form registration statement with the Form S-16-type incorporation by reference feature be adopted for exchange offers or transactions subject to Rule 145(a) (17 CFR 230.145(a)) under the Securities Act.[36]

The rationale for this proposed system of integration was set forth as follows:

> When a company is engaged in a public offering of its securities, the Committee believes that the necessity of providing information to offerees should vary with the type of company and the type of security involved, and the amount of information already available. Accordingly, it is the Committee's view that a further integration of the 1933 and 1934 Acts, by means of substitution of 1934 Act filed information for that traditionally required in a statutory prospectus, could be effectuated by varying the particular combination of (1) the information comprising the registration statement; (2) the information delivered to offerees; and (3) the information available on request.[37]

This is basically the same rationale for the Securities Act disclosure system proposed for comment today.

The Commission responded to a specific recommendation of the Advisory Committee with the adoption in 1978 of amendments to Form S-16 which made it available to certain issuers for certain specified primary offerings.[38] The benefits to be gained from an integrated system of disclosure were highlighted in the adopting release: reducing the cost of registration, and hence the costs of raising capital; facilitating timely access to the markets by issuers anxious to make public offerings; making Exchange Act reports more meaningful; and eliminating needless duplication which results in increased costs to investor.[39] The Commission's proposing release stated that the expanded use of

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[31]Securities Act Release No. 5792 (December 20, 1976) [41 FR 56331].

[32]Advisory Committee Report, *supra* at 425.

[33]*Id.* at 427.

[34]The Committee called this single integrated form, Form CD (Coordinated Disclosure). *Id.* at 456-69.

[35]However, the Committee specifically noted in its Report that its classification of issuers may not be appropriate for use in short form registrations. *Id.* at 450.

[36]*Id.* at 420-21.

[37]*Id.* at 432

[38]Securities Act Release No. 5923 (April 11, 1978) [43 FR 16677].

[39]*Id.*

this abbreviated Form was considered appropriate only for those "transactions or issuers for which detailed disclosure in a registration statement is believed to be unnecessary for the protection of investors because of the wide availability of such information under other provisions of the federal securities acts."[40] In this regard, the Commission believed that the additional standards it imposed for primary offerings followed the theory suggested by the Advisory Committee—that Form S-16 be available for the primary offerings of securities by a "small top tier of companies. . .which usually provide high quality corporate communication documents, including 1934 Act reports, and whose corporate information is widely disseminated" because "members of this class of registrants are widely followed by debt and equity analysts."[41] For example, an eligibility criterion was adopted providing that an issuer may register securities offered to the public in a primary offering on the Form if the aggregate market capitalization of its voting stock held by non-affiliates were $50 million or, if the issuer were a majority-owned subsidiary, its parent met this condition and fully guaranteed the securities. The origin of the $50 million standard was a report by the Financial Analysts Federation to the Advisory Committee concluding, among other things, that New York City-based brokerage firms, and especially institutions, generally follow companies having at least $50 million in market capitalization.

The Commission's action in expanding the availability of Form S-16 to primary offerings was premised on the interest of professionals in the securities industry in certain issuers. The theory relied on then, as now, is that the operation of today's markets is such that investors are protected by the market's analysis of information about certain companies which is widely-available, both from the Commission's files and other sources, and that such analysis is reflected in the price of the securities offered. Therefore, with companies whose shares are actively traded, disclosure to potential investors in a prospectus may be strictly limited to essential matters concerning the issuer and the offering without loss of investor protection or market efficiency. However, even though the registration statement is abbreviated, it should incorporate by reference the issuer's Exchange Act information which otherwise would be included in the prospectus to ensure that the information previously furnished is accurate in all material respects. Thus, the system operates in an effective manner: interested investors have access to the detailed Exchange Act reports which generally confirm or supplement information previously in the market and all investors are presented with short, readable prospectuses.

D. *The Proposals*

The three proposed registration forms under the Securities Act attempt to address the two basic issues the Commission faces for Securities Act disclosure, identifying the necessary information package and determining how and to whom such information should be made directly available. The proposed system addresses these issues by dividing issuers into three classes.[42] The class or category to which an issuer belongs would determine what information would be required to be presented in the prospectus or otherwise delivered to potential investors, and what already-disseminated information could be relied on, by incorporation by reference, in place of actual delivery in or with the prospectus.

Proposed Forms A, B, and C are designed to work as a coordinated system. Using standard requirements wherever possible they will serve as the framework for the registration of securities under the Securities Act. Form A, as has been indicated, is analogous to existing Form S-16 and is to be used by companies widely followed by the market. Form B contemplates an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to provide substantially the same disclosure in the prospectus as is in the annual report. Form C is a streamlined Form S-1 and provides for minimal incorporation by reference.[43]

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[40]Securities Act Release No. 5879 (November 2, 1977).

[41]Securities Act Release No. 5923 (quoting the Advisory Committee Report at 433-34), *supra* note 38.

[42]As indicated previously, the classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

[43]An extensive discussion of the content required in registration statements on Forms A, B and C is set forth below.

The system proposed today is designed to be consonant with the purpose of Regulation S-K: to foster uniform and integrated disclosure. Indeed, many of the specific disclosure requirements refer directly to items in Regulation S-K.[44] Further, it is intended that the other uniform disclosure requirements of the three proposed Securities Act forms ultimately will be placed in one or more sections of a reorganized Regulation S-K.[45] Although the items contained in the three Forms would represent the basis for Securities Act disclosure, items addressing specialized circumstances and industries also will be considered for inclusion in that Regulation.[46]

In the Commission's view, Form A would take full advantage of the market's having digested and synthesized material company-specific information. Form B, representing the transitional phase, strives for improved readability by streamlining disclosure requirements and allowing certain disclosure obligations to be satisfied either through the delivery of the annual report to security holders or by a presentation of comparable updated information in the prospectus. In addition, the primary source of Exchange Act disclosure, the Form 10-K, would be incorporated by reference and would always be available. Form C would be used by companies in the reporting system for less than three years and by companies having certain financial characteristics that would preclude the use of the top two Forms. It sacrifices readability, to some extent, in order to ensure that analysts and other participants in the market have access to the necessary building blocks of disclosure embodied in Regulation S-K. The Commission believes that for certain companies, especially new issuers, there is no realistic alternative to full disclosure within the confines of the prospectus.

As is apparent from the above brief description of the content and eligibility requirements of Forms A, B, and C, there is substantial overlap with the present registration system under the Securities Act. Specifically, Forms A, B and C overlap with Forms S-1, S-2, S-7 and S-16 both in function and content. Accordingly, the Commission believes it is necessary to concurrently propose the rescission of these existing forms.

SYNOPSIS

The following discussion of the proposed forms is included in order to assist all interested persons in their understanding of the proposed registration form system under the Securities Act published herein. However, attention is directed to the text of the proposed forms for a more complete understanding.

Eligibility Rules for Use of Forms A, B and C

Form A

Proposed Form A is designed to be used by the same qualified issuers and for the same primary and secondary offerings as existing Form S-16 is now used. This means that Form A could be used by an issuer which meets the following conditions: (1) the issuer has a class of securities registered pursuant to Section 12 of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, has timely filed all required reports for the 12 months preceding the filing of the registration statement, and, if subject only to Section 15(d), has sent security holders a report containing the disclosure required by Rule 14a-3(b); (3) the

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[44]With the additional items being adopted today, Regulation S-K now contains 11 major disclosure item requirements—the core of the new proposed integrated registration statement system.

[45]For the most part, the first six disclosure item requirements in proposed Forms A, B and C are identical. Numerous item requirements in Part II of these three forms are also substantially the same. Such uniformity of disclosure requirements would naturally lead to inclusion in Regulation S-K.

[46]The Commission will continue its ongoing evaluation and monitoring of the Guides for the Preparation and Filing of Registration Statements and Report with an emphasis on coordination with the integration and standardization themes of today's adopted rules and forms and these proposals. *See* Securities Act Release No. 6163 (December 5, 1979) [44 FR 72604)]. It is anticipated that staff recommendations concerning the Guides will be submitted to the Commission in the near future. The planned overall review of Regulation C will commence in 1981 and will further reflect the Commission's goal to review all of its Securities Act disclosure requirements with a view towards simplification and reduction in costs.

issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or had a payment default on material indebtedness or on a material long-term lease within the past 36 months;[47] and (4) the issuer has had consolidated net income of at least $250,000 for three of the last four years, including the most recent year. With regard to condition (3) above, which is also in proposed Form B, the Commission is soliciting comment on whether some exception should be made for material defaults[48] which have been "cured" prior to the filing of the registration statement and, if advisable, on how such an exception should be structured. In addition, like existing Form S-16, if proposed Form A is to be used for primary offerings of debt or equity securities to be offered for cash, the issuer must also meet a "float" test, *i.e.*, the aggregate market value of its voting stock held by non-affiliates must be at least $50 million.

The eligibility criteria for proposed Form A, as stated above, are based upon the understanding that information about companies using the form is already known or is so readily available it need not be repeated in a prospectus. The Commission notes that the reliance on dissemination of Exchange Act information in the Securities Act context, the use of a short form prospectus allowed by Form S-16, and the volatility of the market have all contributed increasing pressure on the staff to reduce drastically processing time for registration statements on Form S-16. In some extreme instances, the staff is requested to declare the registration statement effective within twenty-four hours of filing. The Commission anticipates that market conditions will cause this pressure on the staff to continue. However, such short processing time may overly diminish the opportunity afforded underwriters to make independent verification of the disclosure in the registration statement, and may deprive investors of sufficient time to review Exchange Act information if they so choose. It also raises questions as to whether the eligibility criteria of Form S-16 are sufficiently stringent so that only those companies carefully followed by the market are eligible to come to the market so quickly. If such criteria were too low, there would be danger of companies availing themselves of quick access to a market which has not in fact followed the issuer closely enough to have assimilated publicly available Exchange Act information. The Commission's Directorate of Economic and Policy Analysis has developed a profile of Form S-16 issuers since May of 1978 which is attached as Appendix I. This profile provides empirical data which may be of assistance in formulating eligibility criteria.[49] The Commission urges commentators to address these eligibility criteria questions, particularly in the context of the data presented in Appendix I. In addition, commentators are specifically invited to respond to the following inquiries:

(1) Should the eligibility criteria for proposed Form A be changed from those of existing Form S-16? Specifically, is the net income test of $250,000 too low? Is the "float" test of $50 million adequate to restrict use of Form A to qualified companies? If not, to what number should it be raised?

(2) Should there be a minimum time period between filing and effectiveness of a registration statement on Form A?

Primary offering use of proposed Form A would be limited to underwritten offerings. Unlike Form S-16, however, proposed Form A could be used by qualified issuers for primary offerings either pursuant to a firm commitment underwriting in which the underwriters are committed to take down at least 90% of the offering, or pursuant to a best

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[47]This condition reflects a difference from General Instruction A(c) of Form S-7, which refers simply to defaults, without limiting the scope to material defaults. The proposed change would codify current practice, to some degree, and would help reduce the need for case-by-case waiver determinations by the staff where a nonmaterial default has occurred. However, any failure to pay dividends or sinking fund installments on preferred stock would preclude the use of the form absent a granted waiver request.

[48]This provision of Forms A and B refers to events which have become defaults under the governing instruments, *i.e.*, after the expiration of any period of grace and compliance with any notice requirements.

[49]The variables used to develop the profiles include such characteristics as: the issuer's standard industrial classification code number; the issuer's revenues and net income for the most recent fiscal year; the average weekly trading volume in the issuer's common stock; the number of shareholders; the offering amount; the amount of time it took to process the registration statement; etc.

efforts underwriting done on an "all-or-none" basis.[50] The Commission believes that the presence of an underwriter who has a degree of responsibility for an offering serves to enhance the likelihood that investor protection will not suffer because of abbreviated disclosure in the prospectus. The Commission invites specific comment with respect to this condition, particularly as to whether proposed Form A should (1) be limited to firm commitment underwritten primary offerings; (2) be available as proposed; (3) be available for all underwritten offerings, regardless of the type of best efforts arrangement involved; or (4) be available to qualified issuers regardless of whether the offering is underwritten at all.

At present, the only foreign private issuers[51] authorized to use Forms S-7 and S-16 are those that are required to file with the Commission the same reports under Section 13(a) or 15(d) of the Exchange Act as domestic issuers, *i.e.*, Forms 10-K, 10-Q, and 8-K. The financial statements of foreign private issuers included in such forms generally are required to be prepared in accordance with United States generally accepted accounting principles and Regulation S-X, or, if appropriate, material differences are to be reconciled thereto. These same requirements are applicable also to the annual report to security holders which, as a condition to the use of Forms S-7 and S-16, must comply with Rule 14a-3(b) under the Exchange Act. Generally, the only foreign private issuers required to file such reports are certain North American issuers, *i.e.*, Canadian and Mexican issuers,[52] and foreign issuers deemed to be essentially United States companies.[53]

Some foreign issuers have inquired whether they would be eligible to use Forms S-7 and S-16 if they voluntarily filed reports on Forms 10-K, 10-Q, and 8-K and prepared an annual report to security holders in compliance with Rule 14a-3 provided they otherwise met the requirements for use of Forms S-7 and S-16. The literal language of the existing instructions to Form S-7 precludes this procedure since the foreign issuers are not actually required to file such reports. The Commission is, however, of the view that foreign private issuers who, on a voluntary basis, file the same reports with the Commission as domestic issuers should similarly be entitled to use the short forms for registration of securities under the Securities Act. Accordingly, the Commission is proposing to allow the use of Forms A and B by foreign issuers under these circumstances.

Like existing Form S-16, proposed Form A would also be available for use by qualified issuers to register securities (1) to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, if the issuer has a $50 million non-affiliate float or if no commission is paid for soliciting the conversion or exercise; (2) to be offered upon the exercise of outstanding rights granted by the issuer; (3) to be offered pursuant to dividend or interest reinvestment plans; (4) to be offered for the account of any person other than the issuer, including standby underwriters and affiliates; (5) to be offered by certain closed-end management investment companies; and (6) to be offered by qualified foreign private issuers upon the exercise of outstanding rights.[54]

The first five of these uses of Form A are consistent with the provisions of existing Form S-16. With respect to the registration of securities to be offered pursuant to dividend or interest reinvestment plans, however, the Commission believes that it is appropriate at this time to announce that consideration is being given to allowing such registration statements to become effective

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[50]Form S-16 use is restricted to primary offerings pursuant to firm commitment underwritings in which the underwriters are committed to take down at least 90% of the offering. Consistent with the present staff position, an instruction has been included in Form A that would deem delayed delivery arrangements to be part of a firm commitment agreement.

[51]Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)] defines a foreign private issuer as any foreign issuer other than a government or subdivision thereof.

[52]*See* Rule 14a-3(b)(2) under the Exchange Act.

[53]*See* General Instruction to Form 20-F A(b)(1) [17 CFR 249.220-f(b)(1)].

[54]This provision for rights offerings by foreign private issuers is the same as that of existing Form S-16. Because proposed Form A would also be available for somewhat greater use by foreign issuers, however, this provision has been set forth as a separate item.

automatically. The Commission took a similar step in February 1980 when amendments were adopted to Form S-8 to provide that original filings on that form become effective automatically 20 days after filing and post-effective amendments on Form S-8 become effective automatically upon filing.[55] The same considerations which made automatic effectiveness of registration statements on Form S-8 advisable, *i.e.*, time and cost savings to issuers and the fact that no significant improvement to the quality of disclosure would result from staff review, would appear to be equally applicable to registration statements on Form S-16 or proposed Form A relating to dividend or interest reinvestment plans. Accordingly, commentators are invited to direct comment to the advisability of pursuing this contemplated approach.

Form B

Proposed Form B would be available for the registration of securities to be offered by the middle tier of public companies. The conditions to the Form's use are modeled after but are not entirely the same as those for existing Form S-7. Specifically, proposed Form B would be available where (1) the issuer has a class of securities registered pursuant to Section 12 or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, and has timely filed all required reports for 12 months preceding the filing of the registration statement; (3) the issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or defaulted in the payment or any material indebtedness or material long-term lease within the past 36 months; and (4) the issuer has had earnings for two of the last three years, including the most recent year.[56]

The Commission notes that its staff receives a number of requests to waive the present Form S-7 requirement for timely filing of Exchange Act reports during the twelve months preceding the filing of the registration statement. Most of these requests involve rather insubstantial periods of lateness.[57] Although the Commission affirms its position that timely reporting is important to the trading markets, commentators are invited to address the appropriateness of this requirement in connection with Form B.

The last condition to the use of proposed Form B is that the issuer does not have any of the financial characteristics specified in General Instruction A(7). These characteristics are: (1) a decline of more than 50% in income from continuing operations over the last fiscal year; (2) any material uncertainty concerning either the issuer's financial position or results of operations which is or will be accompanied by a "subject to" opinion in the accountant's report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); and (3) a downgraded bond rating during the last 12 months.

Form B represents a policy choice to favor the readability and communicability that results from use of annual reports to security holders rather than a prospectus providing the more detailed and complex information of Regulation S-K. However, companies not eligible to use Form A are, by their nature, not sufficiently followed to allow the omission of any reiteration in a prospectus about the company's business. Also, for those companies which may be financially troubled, but which are not sufficiently followed, the Commission does not believe that readability should be chosen over the more detailed presentation required by Form C. Notwithstanding this judgment, however, the Commission recognizes that it may be exceedingly difficult, if not impossible, to develop criteria which indicate when a company may be financially troubled or experiencing difficulty. The three criteria proposed in Form B are not intended to be definitive but rather to stimulate comment as to whether any such criteria can be developed. Moreover, com-

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[55]Securities Act Release No. 6190 (February 22, 1980).

[56]The respects in which these conditions of proposed Form B differ from those of existing Form S-7 are: (1) the provision concerning defaults is changed as described in note 47, *supra;* and (2) Form S-7 requires earnings of $250,000 for three of the last four years.

[57]The Commission believes that recently revised Rule 12b-25 (17 CFR 240.12b-25) may address situations where a report cannot be filed timely without unreasonable effort or expense. *See* Securities Act Release No. 6203 (April 2, 1980) [45 FR 23652].

mentators are also specifically asked to address the question of whether there are any characteristics of a company otherwise eligible to use Form A that should require it as well to use Form C.

Commentators are also asked to consider in this regard whether market criteria, such as the dollar value of voting stock held by non-affiliates, would also be useful characteristics for determining eligibility to use proposed Form B. A deficiency in the extent to which information about a company has been analyzed and assimilated by the market may be as much a reason for a prospectus to contain full Regulation S-K level disclosure as is an indicator of troubled financial condition.

Form C

Proposed Form C would be the basic full form for registering offerings of securities under the Securities Act.[58] This Form would be available to all issuers who either do not qualify to use or choose not to use any other Securities Act registration statement form.

Under the three tier system as proposed, only proposed Form C is contemplated to be used to register securities to be issued in an exchange offer for securities of another person.[59] Comment is specifically invited as to (1) whether either proposed Form A or proposed Form B, or both, should also be so available and (2) what level of prospectus disclosure with respect to the target company is appropriate where a Form C issuer is exchanging its shares for those of a company qualified to use proposed Form A or Form B.

A general instruction has been included in proposed Forms B and C referring to Guide 4 which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered.[60] The Commission requests comments as to the appropriateness of the proposed forms for continuous primary offerings of all types, including those at the market. Commentators are also invited to indicate what additional eligibility criteria or disclosure requirements they believe would be appropriate for such offerings.

Disclosure Items

As previously described, proposed Forms A, B, and C are designed to work as a coordinated system. Form A would serve as the initial repository of the uniform disclosure requirements. In this respect, Forms B and C refer to Form A for much of their content.

The following chart is included to assist in the understanding of the proposed forms. The second column of the chart indicates the derivation of the various disclosure items. The third, fourth and fifth columns indicate where disclosure items are uniform among the three forms and also indicate where material is to be presented in the prospectus or otherwise delivered to investors as opposed to incorporated by reference.

CONTENT OF PROPOSED FORMS A, B AND C

ITEM	SOURCE	FORM A	FORM B	FORM C
PART I. PROSPECTUS CONTENT				
1. Distribution Spread	Form S-7, modified	X	X (modified)	X (modified)
2. Summary	New (includes Item 10 of Regulation S-K)	X	X	X

[58]Form S-18 would, of course, still be available to register securities sold to the public by a non-reporting corporation for an aggregate cash price not exceeding $5 million and the Commission will continue its ongoing program to assist, and to reduce the burdens upon, small business.

[59]Of course, Form S-15 would be available for certain exchange offers. In addition, the Commission anticipates a review of Form S-14 with a view to possible revision.

[60]Guide 4 is a subject of the review announced in Securities Act Release No. 6163, discussed in note 46, *supra*.

ITEM	SOURCE	FORM A	FORM B	FORM C
3. Plan of Distribution	Forms S-7, S-16	X	X	X
4. Use of Proceeds	Form S-1, modified	X	X	X
5. Selling Security Holders	Form S-16, modified	X	X	X
6. Description of Securities to be Registered	Forms S-1, S-7, S-16, modified	X	X	X
7. Information with Respect to the Issuer	New	All periodic reports are incorporated by reference	X Form B has option to deliver annual report to security holders containing this information. Also, periodic reports are incorporated by reference.	X
(a) Business		Incorporated by reference from periodic reports.	14a-3 (and periodic reports are incorporated by reference).	Item 1, S-K
(b) Financial Statements		Incorporated by reference from periodic reports (Note: if Rules 3-07 or 3-08 of S-X are applicable financial statements must be in prospectus).	Uniform but schedules and non-consolidated financial statements are incorporated by reference	Uniform
(c) Segments		Incorporated by reference from 10-K	Item 1, S-K	Item 1,S-K
(d) Beneficial Ownership		Incorporated by reference from 10-K	Incororated by reference from 10-K	Item 6, S-K Incorporated by reference in some cases from 10-K
(e) Market & Dividend Data		Incorporated by reference from 10-K	Item 9, S-K, modified Incorporated by reference from annual report to security holders in some cases	Item 9, S-K, modified
(f) Management's Discussion		Incorporated by reference from 10-K and	Item 11, S-K Incorporated by reference	Item 11, S-K

ITEM	SOURCE	FORM A	FORM B	FORM C
		10-Q	from annual report to security holders in some cases	
(g) Supplementary Financial Data		Incorporated by reference from 10-K	Item 12, S-K Incorporated by reference from annual report to security holders in some cases	Item 12, S-K
8. Additional Information	New—based on Forms S-7, S-16	X	X	X
(a) Quarterly Financials		(Form 10-Q is incorporated by reference as are all periodic reports)	X (option to deliver Form 10-Q)	X
(b) Subsequent Material Changes		X	X	
(c) Availability of 1934 Act Reports		X	X	X
(d) National Exchange Listing		X	X	X
(e) Undertaking to Provide Periodic Reports That Are Incorporated by Reference Upon Request		X	X	X
PART II. INFORMATION NOT REQUIRED IN PROSPECTUS				
9. Incorporation by Reference	New	all 34 Act periodic reports—10-K, 10-Q, 8-K	Same as Form A plus certain portions of annual report to security holders if used	Part III and Item 4 of Part I of Form 10-K if necessary
10. Other Expenses of Issuance and Distribution	Forms S-7, S-16	X	X	X
11. Interest of Experts Named	Forms S-7, S-16	X	X	X
12. Indemnification of Directors and Officers	Form S-7	X	X	X
13. Other Documents Filed; Exhibits	Form S-7 and New Item 7 of S-K	X	X	X
14. Recent Sales of Unregistered Securities	Form S-1			X

ITEM	SOURCE	FORM A	FORM B	FORM C
15. Undertakings	Form S-7 modified	1st 3 same, 4th deleted-about sending shareholders annual report to security holders if issuer 15(d) co.	1st 3 same, plus adds one-re delivering annual report to security holders with prospectus if used for incorporating by reference	Same as Form A
Signatures	Forms S-1, S-7, S-16	X	X	X

Form A

Form A, like existing Form S-16, requires only minimal prospectus disclosure and relies heavily, through incorporation by reference, on the high quality and widespread dissemination of Exchange Act information for the balance of the standard disclosure package. For the most part, the disclosure that would be included in the prospectus is limited to summary information concerning the issuer and specific data concerning the offering. Information concerning the offering is the type of disclosure that has not been disseminated to the public and, therefore, should be included in all prospectuses.

Proposed Item 1, "Distribution Spread", was derived from the Form S-7 requirement. The Commission notes that this Item may have to be modified if Form A, when adopted, may be used for other than firm commitment or "all-or-none" best efforts underwritten primary offerings.[61] In this regard, the corresponding items in Forms B and C would require a presentation reflecting minimum and maximum proceeds that may be received if securities are to be offered on a best efforts basis other than an "all-or-none" type of agency arrangement.

The summary presentation required by proposed Item 2 has its genesis in the existing practice of many issuers and in Guide 59, "Summary of Disclosure in the Prospectus."[62] The purpose of the summary is to provide the reader with a succinct picture of the registrant and the offering. In no way is the proposed presentation meant to replace the disclosure found elsewhere in the registration statement or in Exchange Act filings; rather, it is intended to create a starting or reference point in the reading of the prospectus.

Under the proposed formulation of the summary, the text of every prospectus would begin with a brief description of the business conducted by the issuer and the material terms and features of the offering. In addition, the forepart of the prospectus would include selected financial data disclosed in accordance with Item 10 of Regulation S-K,[63] which was

[61]See eligibility discussion, *supra*.

[62]Guide 59, by its terms, is only applicable to Forms S-1 and S-2. However, in practice many issuers have opted to use it as a standard for other forms.

[63]Item 10 of Regulation S-K reads:

Furnish in comparative columnar form a summary of selected financial data for the registrant, for

(1) each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessor, if less), and

(2) any additional fiscal years necessary to keep the summary from being misleading.

Instructions

1. The purpose of the summary of selected financial

adopted today, plus information concerning net income and net income per share for five fiscal years and for any applicable interim periods.

The new Regulation S-K Item 10 requirement is designed to present significant five year trend data relating to an issuer's revenues, income from continuing operations, liquidity, and capital resources. Item 10 also allows issuers flexibility to include additional information which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations. The Commission believes that while net income and net income per share are not necessarily trend related information if there have been discontinued operations or extraordinary events, they nevertheless should be required in the summary because many investors want and expect that information in a section of financial highlights. Item 10 information therefore is appropriately adaptable for use in a prospectus summary. The Commission wishes the summary to be a useful tool and specifically invites comment concerning what, if any, other financial information, such as an indicator of gross profit margin, would be appropriate to require in the summary. In this regard, the Commission notes that the proposed Summary Information item does not include a requirement to present historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends. This ratio information is currently the subject of a separate project of the Office of the Chief Accountant.[64] When this project is concluded, the Commission will consider the advisability of adding a ratio requirement to the Summary Information item in the proposed forms.

Instructions to the summary would provide that if the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the summary or if an acquisition has occurred or is expected to occur that would require the filing of information pursuant to Rules 3-07 and 3-08 of Regulation S-X,[65] the issuer shall furnish a pro forma condensed balance sheet and a pro forma summary of operations giving effect to the disposition or acquisition for appropriate periods.[66] In addition, if the offering involved the redemption of outstanding preferred stock or indebtedness, the summary would have to include earnings per share data to show what the earnings would have been for the latest fiscal year and interim period if the redemption had taken place at the beginning of the respective period. The Commission believes that the combination of this disclosure is necessary in order that an investor may more easily assess the nature of

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Footnote 63 Continued

data shall be to supply in a convenient and readable format selected data which highlights significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations [including longterm debt, capital leases and redeemable preferred stock as defined in ASR 268] and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operation.

3. Those registrants which are required to provide five year summary information in accordance with SFAS 33 may combine such information with the selected data and may modify the information presented to conform to the requirements of SFAS 33.

4. All references to the registrant in the summary and in these instructions shall mean the registrant and its consolidated subsidiaries.

[64]That office is now considering the comments it received in response to the concept release which addressed the utility and computation of this ratio. Securities Act Release No. 6196 (March 7, 1980) [45 FR 16498].

[65]See discussion of Rules 3-07 and 3-08 accompanying note 72 *infra*.

[66]This release is also proposing a technical amendment to Rule 170 (17 CFR 230.170) under the Securities Act which would allow condensed pro forma financial statements in the prospectus summary even though an offering was not on a firm commitment or best-efforts "all-or-none" basis. This is necessary since the summary requirements would be the same in all three forms.

the offering and the interests being purchased. Similarly, an additional summary provision would require the disclosure of a material dilution of the purchasers' interest or of the existing shareholders' interest.[67] In this regard, the Commission requests commentators to address whether a measure of dilution of book value is appropriate in the context of the prospectus summary.

As an adjunct to the above discussion, the Commission invites commentators to indicate whether a table of capital structure should be required in the proposed forms and, if so, whether it should be similar to that required by Item 5 of Form S-1. A capitalization table item has not been included in the proposed forms because it is believed that the information that would be presented therein is readily apparent from other sources such as the financial statement.

Item 3, "Plan of Distribution", would not be changed from the same item in Forms S-16 and S-7. In the Commission's view, this is preferable to but is not significantly different from the Form S-1 item.

Compliance with the disclosure requirements respecting the use of proceeds from the offering has concerned the Commission for some time. Because of the nature of this disclosure, the prospectus is the primary disseminating document of such information into the market. Too often the disclosure in response to this item has become boilerplate. For this reason, the Commission proposes certain modifications to the Form S-1 item for use in all three tiers.[68]

The proposed Item, which is designated Item 4 in all three Forms, would not include the first sentence of Instruction 1 to Item 3 of Form S-1 which states that "[d]etails of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment." Apparently, issuers have been reading this sentence to allow disclosure of minimal substance. The Commission believes that the language of the item itself, which refers to the "principal purposes" of the proceeds and "approximate amounts intended to be used for each purpose," is sufficiently limited in space. In addition, the instructions have been refined to require disclosure of the terms of any indebtedness to be discharged from a material part of the proceeds. Additional changes have been made to Instruction 5 concerning assets to be acquired from the proceeds which would only require the name of the seller and an explanation of cost determining principles if the seller were an affiliate of the issuer or an associate of such affiliate. Again, the Commission wishes to call attention to the importance of meaningful disclosure in this area. Accordingly, commentators are requested to submit suggestions that will assist the Commission in upgrading the use of proceeds information.

All three forms would be available for secondary transactions. Therefore, the selling security holders provision, Item 5 in all three Forms, is the same for all tiers and is similar to that in Form S-16.

The "Description of Securities to be Registered", Item 6 of Form A, is derived from the items in Forms S-1, S-7, and S-16 with minor changes and would be present in all three forms. Unlike Form S-16, all three forms would require a description of the securities to be registered even though they are of a class registered pursuant to Section 12 under the Exchange Act. The Commission believes that such information should be presented in the prospectus rather than incorporated by reference from the Exchange Act registration statement.

In addition, because the presence of charter or bylaw provisions or contractual arrangements designed to restrict the rights or alienability of the subject security or to thwart either changes in control of the issuer or acquisitions above a certain percentage of the class of securities being registered may affect the nature, liquidity and value of the securities being offered or may restrict or prevent registration on an exchange, the Commission believes that a description of such provisions as well

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[67]The Commission notes that this provision concerning material dilutions would be generally inapplicable to offerings on Form A. The prospectus summary item, however, is designed to be standard among forms and would eventually be placed in Regulation S-K.

[68]This Item would also be a standard item and would eventually appear in Regulation S-K. In this regard, Instruction 3 relates to other than firm commitment or "all-or-none" best efforts arrangements and would, therefore, not be applicable for Form A offerings.

as the overall effects, advantages, disadvantages and operation of such provisions should be required in this section of the prospectus. Therefore, subparagraph (a)(5) has been incorporated into proposed Item 6. For some time, the Commission has been concerned with anti-takeover proposals in the context of proxy statements[69] and believes that the same concerns are relevant when an initial investment decision is being made. Subparagraph (a)(5) also would require that a legal opinion be set forth or summarized indicating whether a given anti-takeover provision is both lawful and enforceable.

Item 7, "Additional Information", of Form A[70] is based on the corresponding items in Forms S-7 and S-16. A statement would be required indicating that certain information has been incorporated by reference and, at the issuer's option, a statement could also be included stating that specifically described portions which are not incorporated by reference are not part of the registration statement. Detailed descriptions of all material incorporated by reference would have to be provided in Part II of the registration statement and, at the issuer's option, could also be presented in the prospectus.

Perhaps the most important aspect of Item 7 is the requirement for a description of any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year and which have not been described in a report on Form 10-Q or 8-K.[71] This Item tracks the present language of Form S-16 and would provide the necessary disclosure link to Exchange Act information which would be incorporated by reference. However, unlike Form S-16, this proposed additional information requirement would not provide that information concerning a material change could be omitted if it had previously been disclosed in a proxy or information statement. This is because the proposed forms only incorporate by reference to periodic reports and not to proxy material.

The corresponding Additional Information item in Form S-16 indicates that financial information may be required in the prospectus if the documents incorporated by reference do not include financial statements which reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles necessitating a substantial restatement of the financial statements. The relevant provisions in Form A reflect today's adoption of Rules 3-07 and 3-08 of Regulation S-X[72] which set forth the requirements concerning the type of financial information necessary for significant business combinations, whether they be accounted for as a pooling of interests or as a purchase transaction. These rules are in response to the concerns expressed by the Commission in Securities Act Release No. 4950 (February 20, 1969) regarding compliance with the requirements of Item 27 of Schedule A of the Securities Act.[73] The Commission believes that the information required by these S-X rules is essential to an understanding of the issuer's

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[69]See Securities Act Release No. 5906 (February 15, 1978) wherein the Commission indicated that the Advisory Committee's recommendations urging the staff to review closely proxy materials containing anti-takeover proposals would be implemented administratively and would be the subject of specific instructions to the staff of the Division of Corporation Finance. These instructions were subsequently made public in Securities Exchange Act Release No. 15230 (October 13, 1978) [43 FR 49863].

[70]Variations of the Additional Information item are also in Forms B and C. See Item 7(a)(3) and Item 8 of Form B and Item 8 of Form C.

[71]Item 7(a)(3) of Form B, which relates to the option of delivering the annual report to security holders, requires this information to be placed in the prospectus whether or not it has been previously reported. No such express requirement is included in the second option (Item 7(b)) of Form B since it is implicit that such information would appear in the prospectus because the business information would need to be as of the effective date of the registration statement. See Instruction to Item 7(b)(1) of Form B.

[72]Securities Act Release No. 6234 (September 2, 1980).

[73]Item 27 of Schedule A states:

if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, [the registration statement shall include] a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a

operations and, when applicable, should be included in the prospectus. In addition, since such information is not designed to be presented by itself, historical financial statements of the issuer and its subsidiaries consolidated (as required by Regulation S-X) would have to be presented in the prospectus whenever Rule 3-07 or 3-08 information would be necessary. This represents the only case where Form A would require the presentation of historical financial statements within the prospectus. In this regard, however, the Commission requests specific comment on whether an issuer should be required to file on Form B or C when Rules 3-07 or 3-08 are applicable.

In addition, the Form A Additional Information item indicates that financial information may have to be filed as an exhibit to the registration statement with regard to a material disposition of assets outside the normal course of business where such information had not been previously filed in an Exchange Act periodic report. Likewise, if there had been a change in accounting principles necessitating a substantial restatement of financial statements which had not been previously filed in a report, such restated financial statements would be a required exhibit of Form A. If either of these two exhibits had to be filed, the prospectus would include a brief description of the subject transaction or change in accounting principles and a statement that relevant financial information has been filed as an exhibit. In this way, just as the reader knows he has access to the issuer's latest financial statements, he would be put on notice that this additional information was available.

Pursuant to subparagraph (c) of Item 7, the issuer would include an undertaking to provide without charge a copy of any information that has been incorporated by reference, and any financial information exhibit required by the additional information requirement described above, to any requesting person who has been delivered a prospectus. So that each investor will have easy access to the entire disclosure package, the name, address and telephone number of the person to whom a written request for such information is to be directed would be included in the prospectus.

The first item in Part II of the registration statement, Item 8, contains the requirements as to the documents to be incorporated by reference into the registration statement. Although incorporation from the issuer's latest Form 10-K and subsequent periodic reports filed under Section 13(a) or 15(d) of the Exchange Act would be mandated, a registration statement filed on Form A, unlike Form S-16, would need not incorporate from any information in a proxy or information statement. The Commission believes that direct incorporation of proxy material would be unnecessary since Part III of the new Form 10-K will include, through incorporation by reference in most cases, relevant proxy information. Furthermore, the Additional Information item would require disclosure respecting any material changes in the issuer's affairs, including significant business combinations.

Comments at the time Form S-16 was amended to allow primary offering use[74] prompted the Commission to propose certain amendments to Form S-16 which it hoped would alleviate somewhat the concerns of underwriters over potential Section 11 liability for issuers' Exchange Act filings which they had not helped prepare, but which are incorporated by reference into Securities Act registration statements.[75] Specifically, the Commission proposed amendments to Form S-16 which would: (1) deem the effective date of documents incorporated by reference into registration statements on that Form to be the date of the document's initial filing with the Commission; (2) deem a statement in a document incorporated by reference into the registration statement on that Form not to be part of the registration statement if the statement has been modified or superseded in the registration statement or in subsequently filed documents which are incorporated by reference into a registration statement on that Form; and (3)

Footnote 73 Continued
balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement.

[74]*See* comments available in File No. S7-725. *See also* the rulemaking petition filed May 3, 1978 by the Corporate Finance Committee of the Securities Industry Association and the Commission's letter of response dated May 26, 1978 from George A. Fitzsimmons, Secretary.

[75]Securities Act Release No. 5923 (April 11, 1978).

provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws. These proposed amendments were in response to the concern that, because Section 11 imposes liability for statements misleading or untrue when the registration statement becomes effective, liability could be asserted based on Exchange Act documents accurate when filed but subsequently outdated. In addition, they dealt with what underwriters feared would be a reluctance by issuers to accept recommendations to change disclosure in Exchange Act filings because the issuers would not want to admit a deficiency in the original filing.

The Commission believes that further consideration of the proposed amendments to Form S-16 is warranted in connection with the proposed Securities Act disclosure system. Therefore, the Commission has included these proposals as provisions in the relevant incorporation by reference items[76] in all three proposed forms. Although the original proposals to Form S-16 are being withdrawn, the Commission believes that additional public comment in the context of this release is necessary to assist it in determining whether the proposals represent a reasonable and prudent approach to the liability problems relating to incorporated documents.

The balance of the items in Part II of Form A will, with minor exceptions, be standard in all three forms. These are: Item 9, Other Expenses of Issuance and Distribution; Item 10, Interest of Experts Named; Item 11, Indemnification of Directors and Officers; Item 12, Other Documents Filed as a Part of the Registration Statement; and Exhibits. It should be noted that the exhibit item is keyed to recently adopted Item 7 of Regulation S-K.[77] Although disclosure relating to provisions for indemnifying officers and directors is not presently required in Part II of Form S-16, it is called for in Forms S-1 and S-7. The Commission believes that this is important information which may not be succinctly explained elsewhere in its disclosure system and therefore should be included in all three proposed forms. In contrast to existing Forms S-1, S-7 and S-16, the Commission is not proposing to include an item relating to the accounting treatment of proceeds from the stock to be registered[78] because the accounting literature appears to sufficiently address this area.

FORM B

As stated previously, Form B relies on Form A for much of its content. The major difference from Form A is the delivery of information either in the form of an annual report to security holders or in the prospectus itself.

Item 7 is the cornerstone of Form B. This Item permits the issuer the option of delivering its annual report to security holders along with the prospectus or including specified information within the prospectus. The option allowing the annual report to be delivered is made possible because of the improved nature of the disclosure within security holder reports required by Rule 14a-3, as it was amended today.[79]

In the Commission's opinion, the option of delivering the annual report to security holders with the prospectus would be most helpful and cost effective in the registration of securities used in transactions which do not involve large numbers of offerees or which will be made at the market or over an exchange. For example, companies could avail themselves of this inexpensive method to register securities that might otherwise be the subject of private placements or of fairness hearings required under Section 3(a)(10) of the Securities Act.[80] In doing so, a company could sell securities without the discount that is commonly attendant to the sale of restricted securities.

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[76]Besides Item 8 of Form A, see Item 9 of Forms B and C.

[77]Securities Act Release No. 6230 (August 27, 1980).

[78]*See, e.g.*, Item 29 of Form S-1.

[79]Securities Act Release No. 6231 (September 2, 1980).

[80]Section 3(a)(10) provides for an exemption from registration for securities issued in an exchange transaction where the terms and conditions of such issuance are approved after a hearing upon their fairness.

If the issuer elects the alternative of delivering its annual report, it would also be presented with an additional option respecting the delivery of updated quarterly financial information. Item 7(a)(2) would require that the issuer provide financial and other information in the form required by Part I of Form 10-Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of the registration statement. This requirement coincides with the 135 day financial statement age standard of new Rule 3-12 of Regulation S-X.[81] Three means are set forth by which such updating may be provided: (1) by including such information in the prospectus; (2) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10-Q; or (3) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report to security holders which included the required financial information. Thus, if the issuer so chooses, duplication of previously reported quarterly information may be avoided.

Under Item 7(a)(3), issuers opting to deliver their annual reports to security holders in satisfaction of the Form's requirements would have to describe material changes in their affairs (other than those relating to business combinations or acquisitions or changes in accounting principles or material dispositions of assets for which financial information is required) much in the same manner as in Form A, except that prospectus disclosure could be omitted only[82] if such information had previously been reported in a report on Form 10-Q delivered with the prospectus in the manner described in the previous paragraph. A major departure from Form A would occur if the issuer has effected or were about to effect a transaction for which information is required by Rule 3-07 or Rule 3-08 of Regulation S-X,[83] *i.e.*, has had an accounting principles change that requires a substantial restatement of the financial statements in the annual report or has effected or is about to effect a material disposition of assets that requires financial information to be set forth. In such case the Form B option to deliver the annual report to security holders would be unavailable. The Commission believes that if such a transaction has been or is about to be consummated, all financial information and other required information should be included in the prospectus in order to avoid possible confusion on the part of the reader. Moreover, it is also recognized that the occurrence of this type of event may require that substantial attention be given to various aspects of disclosure, particularly the description of business, segment information, and management's discussion and analysis of the issuer's financial condition and results of operations.

Item 7(b) would provide the framework of the prospectus content if the option to deliver the annual report were not elected or were unavailable. The Commission is striving in Item 7 of Form B for an equivalent level of disclosure whether accomplished through the delivery of the annual report to security holders or of a prospectus which stands alone. Specifically, Item 7(b) would require a description of business in reasonable detail and to the same extent as would be required in the preparation of an annual report to security holders as required by Rule 14a-3 or Rule 14c-3 under the Exchange Act. An instruction is included that would allow the issuer's most recent annual report to security holders to be used as a guide, but it would insist that the issuer take into account changes in its business which occurred between the most recent annual report to security holders and the effective date of the registration statement.

In general, the remaining requirements would encompass the Regulation S-X and Regulation S-K requirements required in annual reports to security holders by revised Rule 14a-3. Financial statements of the registrant and its subsidiaries consolidated, including any information required by Rules 3-07

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[81]In general, Rule 3-12 states that if financial statements in a filing are as of a date more than 135 days prior to the date the filing is expected to become effective, the financial statements shall be supplemented with condensed financial statements through the end of the last fiscal quarter on a comparative basis. Such condensed financial statements are to be given in the same degree of detail as in Part I of Form 10-Q.

[82]Under Form A, such information could be omitted if it were previously disclosed in a Form 10-Q or 8-K, even though neither periodic report would be delivered with the prospectus.

[83]For a discussion of Rules 3-07 and 3-08, see the text accompanying note 72 *supra*.

and 3-08 of Regulation S-X, would be presented in the prospectus. Industry segment information would be the same as that required in the annual report, *i.e.*, in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K. Market and related information would be the same or equivalent to the information required by new Item 9 of Regulation S-K, depending upon the securities being registered. Management's discussion and analysis would key to new Item 11 of Regulation S-K and, if applicable, to proposed Item 2 of Part I of Form 10-Q. New Item 12 of Regulation S-K, Supplementary Financial Information, would also be addressed. Finally, Item 7(b)(7) would make clear that if the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3-18(k) of Regulation S-X,[84] information of the type required in Form 10-K would have to be presented with regard to such operations.

As is described above, the historical financial statements that would be required to be delivered by Form B, either in the prospectus or in the annual report to security holders, are for the issuer and its subsidiaries consolidated. The Commission invites comments on whether any other financial statements contemplated by Regulation S-X should be delivered and, if so, which statements.

Statements respecting incorporation by reference, availability of reports and listing on a national securities exchange would be required by Item 8, Other Information, and would be the same as those in Form A. Additionally, Item 8 would elicit an undertaking from the issuer to provide without charge on the written request of any person to whom a prospectus is delivered a copy of the issuer's latest Form 10-K and the latest Form 10-Q if such Form is not delivered with the prospectus.

Item 9, Incorporation by Reference, in Part II would be identical to the corresponding provision in Form A with one exception. If the issuer elected the Item 7(a) option and delivered the annual report to security holders with the prospectus, certain portions of the annual report would have to be incorporated by reference. This would include: the business description; certified financial statements; industry segment information; selected financial information; and management's discussion and analysis of financial statements. In this way, the disclosure package under both alternatives in Form B would be equivalent to one another. In addition, an undertaking in Part II to deliver the annual report to security holders to each person to whom the prospectus is delivered would be necessary if the Item 7(a) option were used.

Form C

The format of Form C is relatively simple. In essence, it represents a streamlined version of Form S-1. The core informational requirements for the forepart of the prospectus would be the same as Forms A and B. Item 7, Information with Respect to the Issuer, is structured along the lines of Forms S-1 and 10-K. The descriptions of business, properties and legal proceedings would be furnished in accordance with Items 1, 2 and 5 of Regulation S-K, respectively. The financial statements would be those required by Regulation S-X, and schedules required by S-X would be filed as schedules to the registration statement. Market price information, management's discussion and analysis, and supplementary financial information would derive from the relevant new Items 9, 11, and 12 in Regulation S-K.

Under Item 7(b), information called for by Item 3, Directors and Executive Officers, Item 4,

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[84]The exemption for oil and gas disclosure under Rule 3-18(k) reads:

Exemption. This paragraph shall not apply to filings under the federal securities laws by any registrant meeting all of the conditions described below for each of the two most recent fiscal years, based on its annual consolidated financial statements:

(i) Gross revenues from sales or transfers of oil and gas (as defined in subparagraph (4)(ii) of this paragraph) do not exceed 10 percent of total revenues;

(ii) Income after taxes (but before extraordinary items) from oil and gas producing activities, including amounts applicable to investees accounted for under the equity method, does not exceed 10 percent of consolidated income before extraordinary items; and

(iii) The "Present Value of Estimated Future Net Revenues" (see subparagraph (6)(ii) of this paragraph), including amounts attributable to investees accounted for under the equity method, plus the net capitalized costs of unproved properties, do not exceed 10 percent of total assets.

Management Remuneration and Transactions,[85] and Item 6, Security Ownership of Certain Beneficial Owners and Management, of Regulation S-K would have to be included in the prospectus for those issuers which have had a change in control within the last three years or have not been reporting companies for the last three years. The Commission believes that this requirement is necessary to ensure adequate dissemination of management and ownership information for these types of companies. All other Form C issuers, except those which voluntarily include such information within the prospectus, would incorporate this information by reference from the pertinent portions of their latest Form 10-K: Item 4 of Part I, and all of Part III.

Item 14 of Part II would require the disclosure of sales of unregistered securities during the past three years. This Item would be the same as Item 25 of Form S-1.

Audit Committees

The Commission has endorsed the concept of audit committees for over forty years.[86] More recently, in 1972, the Commission recommended the establishment of such committees, "in order to assist in affording the greatest possible protection to investors who rely upon. . .financial statements."[87] In 1974, the Commission adopted an amendment to Schedule 14A (17 CFR 240.14a-101) of the proxy rules requiring disclosure of the existence and composition of the audit committee of the board of directors.[88] Finally, in 1978, the Commission further amended Schedule 14A to require disclosure of the functions performed by issuers' audit committees and the number of meetings held by such committees.[89]

Comment is requested specifically on whether this same, or some similar, disclosure should be required in Forms A, B, and C. In the case of reporting companies, this information is disclosed, as discussed above, in election of director proxy statements. Therefore, comment also is requested on whether this disclosure requirement should be limited to first time issuers.

IMPACT OF THE PROPOSED INTEGRATED DISCLOSURE SYSTEM ON FOREIGN ISSUERS

Although most of the actions taken today relate only to domestic issues,[90] the Commission believes that a similar integrated disclosure system may be feasible for foreign private issuers that file reports on Form 20-F (17 CFR 249.220-f).

Because the registration and reporting requirements of foreign issuers are significantly different from those to which domestic issuers are subject and involve a complicated interrelationship of statutory sections, rules, and forms, this summary may assist commentators in responding to the inquiries listed below.

A. *The Exchange Act*

Much of the complexity in this area is caused by two principles the Commission adopted in its early years. First, a distinction is made between foreign companies that voluntarily enter the United States securities markets and those companies whose securities are traded in the United States without any voluntary acts or encouragement by the issuer. This distinction is accomplished by deeming all foreign

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[85]Foreign issuers would disclosure management remuneration in accordance with Guide 63, Disclosure Relating to Management Remuneration by Certain Foreign Private Issuers. *See* Securities Act Release No. 6157 (November 29, 1979).

[86]Accounting Series Release No. 19 (December 5, 1940).

[87]Accounting Series Release No. 123 (March 23, 1972).

[88]Accounting Series Release No. 165 (December 20, 1974) [40 FR 1010].

[89]Securities Exchange Act Release No. 15384 (December 6, 1978).

[90]In a concurrent release, the Commission has adopted provisions in Regulation S-X that codify the existing policy concerning the use of financial statements presented in accordance with foreign generally accepted accounting principles and reconciliations to United States generally accepted accounting principles. See Securities Act Release No. 33-6234 (September 2, 1980). As discussed previously in this release, the Commission is proposing to extend the use of Forms A and B to foreign private issuers that voluntarily file the same reports as domestic issuers.

companies having either listed securities on a United States exchange or made a public offering of securities registered under the Securities Act of 1933 as voluntarily entering the United States market. All other foreign companies whose securities are traded in the United States are deemed not to have taken any voluntary acts to enter the United States market. Second, certain North American companies (Canadian and Mexican companies), which have voluntarily entered the United States markets, are treated the same as United States companies for reporting purposes.

Thus, foreign issuers with a class of securities registered pursuant to Section 12(b) of the Exchange Act or with a reporting obligation pursuant to Section 15(d) of the Exchange Act fall within the voluntary classification. Of this group of issuers, North American issuers must file the same disclosure documents as domestic issuers. All other foreign issuers in this class generally can file on Form 20-F and Form 6-K (17 CFR 249.306)[91] and are exempt from the proxy solicitation and information statement provisions of Section 14 and from the insider reporting and short-swing trading profits provisions of Section 16 of the Exchange Act.[92]

Foreign issuers with more than $1 million of assets and a class of equity securities with 500 holders world-wide are required to register that class of securities pursuant to Section 12(g) of the Exchange Act. No distinction is made between North American and other foreign issuers in this category; all foreign issuers can generally use Forms 20-F and 6-K and will be exempt from the proxy rules. Moreover, many issuers in this category can instead rely on the exemptions from registration specified in Rule 12g3-2.[93] Two of such exemptions are especially relevant. First, paragraph (a) of Rule 12g3-2 provides an exemption from Section 12(g) for the securities of a foreign company that meets the tests of $1 million assets and 500 shareholders of record world-wide but has less than 300 United States shareholders of record. Second, paragraph (b) of the Rule provides another exemption, frequently called the information-supplying exemption. Essentially the securities of a foreign company will be exempt from Section 12(g), regardless of the number of United States shareholders, if the company furnishes to the Commission for public inspection copies of the material investor information it makes public in its local jurisdiction or sends to its shareholders either voluntarily or pursuant to foreign law or exchange requirements.

This entire scheme is subject to the concept of "essentially United States companies" which are treated for reporting purposes as domestic registrants. Essentially United States companies are those with (1) more than 50 percent of their voting securities held of record by United States residents and (2) either their business administered principally in the United States or United States residents constituting at least 50 percent of the members of their board of directors.[94]

B. *The Securities Act*

North American issuers required to file the same reports under the Exchange Act as domestic registrants are permitted to use Forms S-7 and S-16 provided the other conditions to the use of those Forms are met.[95] The Commission, however, has not yet extended the availability of the short forms to any other foreign issuers except for certain rights offerings. Foreign issuers reporting on Form 20-F that otherwise meet the eligibility requirements for the use of Form S-7 may use Form S-16 to register rights offerings to shareholders provided the Form 20-F is either delivered with the prospectus or made available upon request.[96] This would also be true

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[91]Form 20-F is a consolidated registration and annual report form. Form 6-K is an interim report for furnishing the same type of information required to be furnished by Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) discussed below. These forms require less information than Forms 10-K, 10-Q, and 8-K. *See* Securities Exchange Act Release No. 16371 (November 29, 1979).

[92]See Rule 3a12-3 (17 CFR 240.3a12-3).

[93]See Securities Exchange Act Release No. 8066 (April 15, 1967) for a detailed discussion of the operation of this rule.

[94]See Rule 3a12-3, and Form 20-F General Instructions A(a)(2) and (b)(2).

[95]See the discussion *supra* concerning proposals to slightly enlarge this category with regard to Forms A and B.

[96]See Form S-16, General Instructions, A(3) and Securities Act Release No. 6156 (November 29, 1979).

with regard to proposed Form A. In all other situations, however, foreign private issuers must presently use Form S-1, and under the proposals would have to use Form C, to register their offerings of securities.[97]

C. *Request for Comments*

In view of the improving disclosure standards of many foreign countries, the increasing efforts to harmonize international disclosure and accounting guidelines, and the recent adoption of the Form 20-F which substantially increased the disclosure requirements of foreign issuers, the Commission believes that it should consider the feasibility of developing an integrated disclosure system for foreign issuers. Although the results of such a system should be similar to those of the integrated disclosure system for domestic issuers, the design and operation of the systems may differ because of the differing reporting structure for foreign issuers under the Exchange Act.

At this time, the Commission is not proposing a specific system for foreign issuers, but rather is requesting comments on the general concept of such a system. The diversity of foreign disclosure standards[98] and the major departure from the Commission's traditional policy such a system would represent make design of any such system especially difficult. Consequently, the Commission believes that information concerning investors in foreign securities, their methods of making investment decisions, and the markets, both domestic and foreign, for foreign securities would be of assistance. Therefore, the Commission is requesting public comments regarding the above discussion, as well as on the specific inquiries listed below.

1. Commentators are invited to address the application of the proposed integration system for domestic users to foreign private issuers reporting on Form 20-F including, but not limited to, the criteria for the eligibility of such issuers to use Forms A and B. Additionally, comments are requested as to whether a separate classification and form(s) should be developed for foreign private issuers.

2. Public comment is sought on whether the Commission's rules and forms should maintain the present distinction made between North American issuers and all other foreign private issuers and, if not, whether any other distinctions should be made or whether private issuers from all foreign countries should be able to use the same forms.

3. Comment is solicited on whether the existence outside the United States of the primary market for the securities of foreign private issuers creates any special difficulties in applying the proposed system to foreign registrants.

4. Commentators are invited to comment on whether foreign laws impede or restrict the information that can be filed with the Commission.

5. The Commission is soliciting comment on whether the investors in foreign securities significantly differ in composition from those investing in the securities of United States issuers and, if such differences exist, whether there are any ramifications for the requirements relating to the disclosure and dissemination of information regarding foreign issuers.

6. In view of the above inquiries, specific comment is solicited with regard to the relative importance to investors, analysts and others of the information contained in a Form S-1 registration statement that is not in a filing on Form 20-F.

GENERAL AND SPECIFIC INQUIRIES

Any interested persons wishing to submit written comments on the proposed forms, as well as on other matters which might have an impact on the proposals contained herein, are invited to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in its reformulation of the Securities Act disclosure system.

The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Securities Act.

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[97]Some of the forms designed for special types of offerings or special categories of issuers are available for use by foreign issuers, *e.g.*, Form S-11 for securities of certain real estate companies.

[98]*See e.g.*, Lafferty and Cairns, "Financial Times World Survey of Annual Reports 1980".

TEXT OF PROPOSED FORMS

17 CFR Chapter II is proposed to be amended as follows:

1. By proposing registration statement Forms A, B, and C set forth below.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

SECURITIES AND EXCHANGE COMMISSION
FORM A
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

_____
(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code number)	(I.R.S. Employer Identification No.)

_____
(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

_____
(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

GENERAL INSTRUCTIONS

A. Rule as to Use of Form A.

(1) Any issuer which meets the following conditions may use this form for registration under the Securities Act of 1933 of securities offered in the transactions specified in (2) below.

(a) The issuer (i) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (ii) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports pursuant to Section 15(d) of the above Act.

(b) The issuer (i) has been subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to Sections 13, 14, or 15(d) (including Forms 10-K, 10-Q and, if necessary, Forms 8-K), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and, if the issuer has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has *actually* been filed within the time period prescribed by that Rule; and (iii) if subject only to the requirements of Section 15(d) of the Securities Exchange Act of 1934, has sent to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) within the twelve calendar months preceding the filing of the registration statement.

(c) The registrant and its subsidiaries have not during the past thirty-six calendar months (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted on any installment on material indebtedness for borrowed money, or on any rental on a material long-term lease.

(d) The issuer and its subsidiaries consolidated had an annual net income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, of at least $250,000 for three of the last four fiscal years, including the most recent fiscal year.

(e) An issuer shall be deemed to have met conditions (b), (c) and (d) above if (i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(f) This Form may be used for the registration of securities of a majority-owned subsidiary which are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions, notwithstanding the failure of the subsidiary issuer to meet such conditions. In such an instance, the guarantor shall be a co-issuer with the issuer.

(g) A foreign private issuer (as defined in Rule 3b-4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b-4(c)), which satisfies all of the provisions in this instruction for the use of Form A except the provisions in paragraph (1)(a)(ii) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the above Act as a domestic issuer, and provided further that all of its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate, have been sent a report containing the information called for by Rule 14a-3(b).

(2) Securities offered in the following transactions may be registered on this Form.

(a) *Primary Offerings by Certain Issuers.* Debt or equity securities to be offered for cash by or on behalf of the issuer provided the issuer meets the conditions specified in (i), (ii), or (iii) below and also meets the conditions specified in (iv) below:

(i) The aggregate market value of the voting stock held by nonaffiliates of the issuer is $50 million or more; or

(ii) The aggregate market value of the voting stock of the issuer's parent held by non-affiliates is $50 million or more, the issuer is a majority-owned subsidiary and its parent has fully guaranteed the securities as to principal and interest; or

(iii) The aggregate market value of the voting stock of the issuer's parent held by non-affiliates is $50 million or more, the issuer is a majority-owned subsidiary; and

A. The issuer has outstanding securities held by non-affiliates, with an aggregate principal amount or market value of at least $250 million, the offer or sale of which has been registered pursuant to the provisions of Section 6 of the Securities Act of 1933, 15 U.S.C. 77f; and

B. The issuer has at least 1,000 security holders to whom the issuer has furnished an annual report for its most recent fiscal year containing certified financial statements in compliance with the requirements of Rule 14a-3 (17 CFR 240.14a-3) or Rule 14c-3 (17 CFR 240.14c-3). An annual report of the issuer's parent that contains separate certified financial statements of the issuer may be used to satisfy this requirement; and

(iv) The offering is or will be pursuant to a best efforts underwriting which is either done on an "all-or-none" basis, or a firm commitment underwriting in which the underwriters are committed to take and to pay for all or not less than 90% of the securities being offered.

Instruction. The aggregate market value of the issuer's or its parent's outstanding common stock shall be computed by reference to the price at which the stock was sold, or the average of the bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See the definition of "affiliate" in Rule 405, 17 CFR 230.405.)

Contracts for the delayed delivery of securities included in the offering which are solicited by the principal underwriters shall be deemed part of a firm commitment to purchase by such underwriters.

(b) *Conversions or Warrants.* Securities to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer, provided:

(i) No commission or other remuneration is paid for soliciting the conversion of the convertible securities or the exercise of the warrants; or

(ii) The issuer (or the parent, if the issuer is a majority-owned subsidiary and the parent fully guarantees the securities) has one or more classes of outstanding voting stock and the aggregate market value of the voting stock held by its nonaffiliates is $50 million or more determined in accordance with the Instruction to paragraph (2)(a) above.

(c) *Rights Offerings.* Securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered, provided such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach.

(d) *Transactions Involving Dividend or Interest Reinvestment Plans.* Securities of the issuer offered solely to its existing security holders pursuant to a plan established to allow such persons to reinvest dividends or interest paid them on securities issued by the issuer, plus additional cash amounts contributed by the participants of the plan, provided that if any securities to be registered are purchased by the registrant for the account of plan participants, the purchase price for such securities shall not exceed either the current market price at the time of the purchase or an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of the purchase.

(e) *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form A may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction E to Form S-8 (17 CFR 239.16b).

(f) *Secondary Offerings by Certain Closed End Management Investment Companies.* Form A may be used by closed end management investment companies for the registration of securities under the Securities Act of 1933 only for the purposes specified in paragraphs (2)(d) and (2)(e) above and subject to the applicable requirements of Section 18(d) of the Investment Company Act of 1940 provided that such company: (i) is registered as a closed end management investment company under the Investment Company Act of 1940; (ii) has been subject to and has filed all material required to be filed pursuant to Sections 20(a), 30(a) and 30(b) of such Act for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (iii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement; and (iv) meets the requirements of paragraphs (1)(c) through (e) of the Rule as to the Use of this Form.

(g) *Rights Offerings by Foreign Private Issuers.* A foreign private issuer (as defined in Rule 3b-4(c) of the Exchange Act, 17 CFR 240.3b-4(c)) which satisfies all of the provisions of paragraph (1) of the Rule as to Use of this Form, except the provisions in General Instruction A(1)(a) relating to incorporation and principal business operations, General Instruction A(1)(g) relating to the filing with the Commission of the same type of reports filed by domestic issuers, and in General Instruction A(1)(b)(iii) relating to a report containing the information called for by Rule 14a-3(b), may register rights offerings on this form, provided such foreign issuer:

(i) Furnished previously or furnishes with the prospectus to all its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, copies of its latest annual report to security holders, if in the English language, and such annual report to security holders or the prospectus contains the issuer's undertaking to send promptly to any such United States holder, upon written request, a copy of the issuer's latest annual report filed with the Commission under the Exchange Act on Form 20-F; or

(ii) Furnishes with the prospectus a copy of its latest annual report filed with the Commission under the Exchange Act on Form 20-F.

B. Application of General Rules and Regulations.

Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements. Rules 405, 411, 412, 439 and 473 should be especially noted. Notwithstanding Rules 404(c) and 421(c), no table of contents or cross-reference sheet need be included in the prospectus or the registration statement.

C. Documents Comprising Registration Statement.

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the

information called for by Part I, the information, list of exhibits, and undertakings specified in Part II, signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

PART 1. INFORMATION REQUIRED IN PROSPECTUS

Item 1. Distribution Spread.

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities to be registered (estimated, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per Unit	.....	.....	.....
Total	.....	.....	.....

Instructions. 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only commissions paid by the issuer or selling security holders in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fee or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

(3) If any of the securities to be registered are to be offered for the account of security holders, refer on the first page of the prospectus to the information called for by Item 5.

Item 2. Summary Information.

Immediately following the cover page of the prospectus, set forth a summary containing the following:

(a) a brief description of the business conducted by the issuer;

(b) a brief description of the material terms and features of the offering;

(c) for the five fiscal years and for any interim periods for which statements of income would be required by Rule 3-02 of Regulation S-X, selected financial data prepared in accordance with Item 10 of Regulation S-K and data concerning net income and net income per share; and

(d) if the proposed offering involves material dilution of the purchasers' interests or of existing shareholders' interests, then such material dilution should be set forth in appropriate tabular form.

Instructions

1. If the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the summary or if an event has occurred or is expected to occur which would require the filing of information pursuant to Rules 3-07 or 3-08 of Regulation S-X, then the issuer shall furnish, as a part of or in addition to the summary, a pro forma condensed balance sheet giving effect to the disposition or acquisition as of the end of the most recent fiscal year and a pro forma summary of operations giving effect to the disposition or acquisition as of the beginning of the most recent fiscal year and through any interim periods shown in the summary.

2. If the offering involves the redemption of outstanding preferred stock or indebtedness, earnings per share data should be furnished to show what the earnings would have been for the latest fiscal year and any subsequent interim period if the redemption had taken place at the beginning of the respective period (or date of issuance of the redeemed security if later).

Item 3. Plan of Distribution.

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issue and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "marketouts," need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

(c) Outline briefly the plan of distribution of any securities to be registered which are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to dividend or interest reinvestment plans the terms of which provide for the purchase of some securities on the market, state whether the issuer or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions, and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) who will participate in the offering and state the amount to be offered each.

(d) State the name of the exchange on which the securities are to be offered, if any; if the securities are to be offered in the over-the-counter market, so state. If the registered securities are to be offered in connection with the writing of exchange-traded call options, briefly describe such transactions.

Item 4. Use of Proceeds to Issuer.

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle following in determining the cost to the issuer.

Item 5. Selling Security Holders.

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which

he has had within the past three years with the issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by him, the amount to be offered for his account, and the percentage of the class (if one percent or more) to be owned by him after completion of the offering.

Item 6. Description of Securities to be Registered.

(a) *Capital Stock to be Registered.* If capital stock is to be registered, state the title of the class and furnish the information listed in (1)-(5) below. A complete legal description of the securities need not be given.

(1) Outline briefly: (A) dividend rights; (B) voting rights; (C) liquidation rights; (D) pre-emptive rights; (E) conversion rights; (F) redemption provisions; (G) sinking fund provisions; and (H) liability to further calls or to assessment by the issuer.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, outline briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by the securities to be registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities to be registered. No information need be given, however, as to any class of securities all of which will be redeemed and retired, provided appropriate steps to ensure such redemption and retirement will be taken prior to or upon delivery by the issuer of the securities to be registered.

(5) Briefly describe and discuss any charter or by-law provision or any contractual or other arrangement which (A) restricts the alienability of any securities to be registered; (B) pertains to the classification of the board of directors; (C) operates or could operate to increase the number of shares needed to elect a director, assuming all directors were to be elected at a single meeting; (D) provides that upon the occurrence of any event or condition the securities being registered or other securities within the same class will not have equal voting rights; (E) provides that holders of any other class or series will have a right to disapprove action approved by the holders of the securities to be registered; (F) discriminates against any existing or prospective substantial stockholder of any class of equity securities of the registrant; or (G) has the intent or effect of delaying, deterring or preventing a change in control of the registrant. Such discussion shall describe the purposes, effects, operation, advantages and disadvantages of any such provision or arrangement. A legal opinion, naming counsel, shall be set forth or shall be summarized indicating whether or not such provision or arrangement is both lawful and enforceable in accordance with its terms; and, if such opinion is qualified or conditional, all such qualifications or conditions shall be described.

(b) *Debt Securities to be Registered.* If debt securities are to be registered, state the title of such securities and outline briefly such of the matters listed in (1)-(8) below as are relevant. A complete legal description of the securities need not be given. For purposes solely of this item, debt securities which differ from one another only as to the stated interest rate or the term of maturity shall be regarded as securities of the same class.

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the issue, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities registered to other security holders or creditors of the issuer;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves, or the maintenance of properties;

(5) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions. In the case of

secured debt, there should be stated: (i) the approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, the deposit of cash, or otherwise. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain, the application of insurance moneys, and similar provisions need not be described.

(6) The name of the trustees and the nature of any material relationship with the issuer or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(7) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

(8) Provisions relating to material limitations on or qualifications of the rights evidenced by the securities to be registered. See Item 6(a)(4).

Instruction to Item 6(b). Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this Form.

(c) *Warrants, Rights and Convertible Securities.* If the securities described are to be offered pursuant to warrants, rights, or convertible securities, state: (1) the amount of securities called for by such warrants, convertible securities, or rights; (2) the period during which and the price at which the warrants, convertible securities or rights are exercisable; (3) the amounts of warrants, convertible securities or rights outstanding; and (4) any other material terms of such securities.

(d) *Other Securities.* If securities other than capital stock or debt are to be registered, outline briefly the rights evidenced thereby.

Item 7. Additional Information.

(a) A statement shall be made that certain information has been incorporated by reference. The issuer may also state, if it so chooses, that specifically described portions of documents which are not incorporated by reference are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference may, at the issuer's option, either be included both in the prospectus in response to Item 7 and in Part II of the registration statement or only in Part II.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10-Q (17 CFR 249.308a) or Form 8-K (17 CFR 249.308) filed under the Securities Exchange Act of 1934.

If the registrant has effected or is about to effect a transaction for which information is required by Rules 3-07 or 3-08 of Regulation S-X (17 CFR Part 210), the prospectus must include financial statements meeting the requirements of Regulation S-X for the issuers and its subsidiaries consolidated, including any information required by Rules 3-07 and 3-08.

If there has been a change in accounting principles where such change requires a substantial restatement of financial statements which have not been previously filed in any periodic Exchange Act report, such restated financial statements shall be filed as an exhibit to the registration statement. If any financial information required because of a material disposition of assets outside the normal course of business has not been previously filed in any periodic Exchange Act report, such information shall also be filed as an exhibit to the registration statement. A statement that such information has been filed as an exhibit and a brief description of the subject accounting change or disposition shall be furnished in the prospectus.

(c) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, including any exhibit to the registration statement required by paragraph (b) of this item.

Exhibits to such information need not be included in the undertaking. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(d) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(e) Name any national securities exchange on which the issuer's securities are listed and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 8. Incorporation of Certain Information by Reference.

(a) *Documents Incorporated by Reference.*

The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission:

(1) the issuer's latest Form 10-K filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 which contains certified financial statements for the issuer's latest fiscal year for which a Form 10-K (17 CFR 249.310) was required to have been filed; and

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 since the end of the fiscal year covered by the annual report referred to in (a)(1) above.

(b) *Effective Date of Documents Incorporated by Reference.*

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) *Modified or Superseded Documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Instruction. If any accountant, engineer, or any person whose profession gives authority to a statement made by him is named as having prepared or certified any part of the material incorporated by reference or is named as having prepared or certified a report or valuation for use in connection with any of the material so incorporated, the written consent of such person shall be included in the registration statement. The written consent of persons so named in future material incorporated by

reference shall be filed by amendment to the registration statement no later than the date on which such material is filed with the Commission unless express consent to such incorporation by reference is contained in the material incorporated by reference. Attention is directed to Rules 435-439.

Instruction for Items 9 through 11. Items 9 through 11 below need be answered only if the registration statement involves a primary offering of securities in accordance with the criteria in General Instruction A 2(a).

Item 9. Other Expenses of Issuance and Distribution.

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distributioin of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holders.

Instruction. Insofar as practicable, registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be separately itemized. Include as a separate item any premium paid by the issuer or any selling security holder on any policy which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of the securities to be registered. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 10. Interest of Experts Named in Registration Statement.

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Item 11. Indemnification of Directors and Officers.

State the general effect of any charter provisions, bylaws, contract, arrangement, or statute under which any director or officer of the issuer is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Item 12. Other Documents Filed as a Part of the Registration Statement; Exhibits.

The following documents shall be filed as a part of the registration statement and shall be listed in Part II:

(a) Statements of eligibility and qualification of persons designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939;

(b) Subject to the rules regarding incorporation by reference, the exhibits as required by Item 7 of Regulation S-K (17 CFR 229.200; and

(c) Exhibits required by Item 7(b) of this Form.

Instruction. List all exhibits filed with the registration statement and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Item 13. Undertakings.

(a) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered in a continuous offering over an extended period of time:

"The undersigned issuer hereby undertakes: (1) to file any prospectus required by Section 10(a)(3) as a post-effective amendment to this registration statement; (2) that for the purpose of determining any liability under the Act each such post-effective amendment and each filing of the issuer's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; (3) that all such new

registration statements will comply with the applicable forms, rules, and regulations of the Commission in effect at the time such post-effective amendments or annual reports are filed; and (4) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering."

(b) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

"The undersigned issuer hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made in terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

(c) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered at competitive bidding:

"The undersigned issuer hereby undertakes to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made."

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19__

(Issuer) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions. 1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the issuer is a foreign person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

SECURITIES AND EXCHANGE COMMISSION
FORM B
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

_____
(Exact name of issuer as specified in its charter)

_____	_____	_____
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code number)	(I.R.S. Employer Identification No.)

_____
(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

_____
(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____

CALCULATION OF REGISTRATION FEE

ıtle of ach class ıf secur- ties to be ·egistered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

FORM B
GENERAL INSTRUCTIONS

A. Rule as to Use of Form B.

Any issuer which meets the following conditions may use this Form for registration of securities under the Securities Act of 1933:

(1) The issuer (a) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (b) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports ɔursuant to Section 15(d) of the above Act.

;2) The issuer (a) has been subject to the ·equirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material ·equired to be filed pursuant to Sections 13, 14 or 15(d) (including Forms 10-K, 10-Q and, if necessary, Forms 8-K), as applicable, for a period of at least ·hrity-six calendar months immediately preceding ·he filing of the registration statement on this Form; ɜnd (b) has filed in a timely manner all reports ·equired to be filed during the twelve calendar months preceding the filing of the registration ;tatement and if the issuer has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with ·espect to a report, that report has *actually* been filed within the time prescribed by that Rule.

;3) The registrant and its subsidiaries have not during the past thirty-six calendar months (a) failed o pay any dividend or sinking fund installment on ɔreferred stock, or (b) defaulted on any installment ɔn material indebtedness for borrowed money or on ɜny rental on a material long-term lease.

;4) The issuer and its subsidiaries consolidated had ɜarnings, after taxes but before extraordinary items ɜnd the cumulative effect of a change in accounting principle, for two of the last three fiscal years, including the most recent fiscal year.

(5) An issuer shall be deemed to have met conditions (2), (3), and (4) above if (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (b) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(6) This Form may be used for the registration of securities of a majority-owned subsidiary that are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions, notwithstanding the failure of the subsidiary issuer to meet such conditions. In such an instance, the parent guarantor shall be a co-issuer with the issuer. The annual report to security holders referred to in Item 7(a) of this Form pertains to the report of the parent if such report contains certified financial statements of the issuer.

(7) The issuer does not have any of the following: (a) a decline in income from continuing operations of more than 50% for the past fiscal year as compared to the prior fiscal year; (b) any material uncertainty concerning either its financial position or results of operations which is or will be accompanied by a "subject to" opinion in the independent accountants' report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); or (c) any downgrading during the twelve month period preceding the date of filing of a bond rating assigned by a nationally recognized statistical rating agency.

(8) A foreign private issuer (as defined in Rule 3b-4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b-4(c)), which satisfies all of the provisions in paragraph (1) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the Act as a domestic issuer.

(9) Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4936, December 9, 1968 [33 FR

18671], as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Act, particularly Regulation C (17 CFR 230.400). That Regulation contains general requirements regarding the use of registration forms and the preparation and filing of the registration statement. The definitions contained in Rule 405, should be especially noted.

C. Documents Comprising Registration Statement.

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information specified in Part I; the information, list of exhibits, and undertakings specified in Part II; and signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus.

(1) The information set forth in the prospectus should be presented in a clear, concise, and understandable fashion. Avoid unnecessary and irrelevant details, repetition, or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference.

E. Omission of Information Regarding Foreign Subsidiaries.

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwide required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Filing of Other Financial Statements in Certain Cases.

The Commission may, upon the request of the issuer, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

G. Preparation of Part II.

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form but the text of the items and the instructions thereto are to be omitted. The answers to the items are to be so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, such item may be answered by a reference to the specified page or caption of the prospectus which contains such information. If any item of Part II is inapplicable or the answer thereto is in the negative, a statement to that effect shall be made in answer to the item.

PART I. INFORMATION REQUIRED IN THE PROSPECTUS

Item 1. Distribution Spread.

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information.

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution.

[Same as Item 3, Proposed Form A except that this Form B includes the following additional provision.]

4. If the securities are to be offered on a best efforts basis, the cover page should also set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Price to Public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total Minimum	_____	_____	_____
Total Maximum	_____	_____	_____

Item 4. Use of Proceeds to Issuer.

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders.

[Same as Item 5, Proposed Form A.]

Item 6. Description of Securities to be Registered.

[Same as Item 6, Proposed Form A.]

Item 7. Information with Respect to the Issuer.

Provide the information called for by either paragraph (a) or paragraph (b) of this item. However, if (1) the issuer has effected or is about to effect a transaction for which information is required by Rule 3-07 or Rule 3-08 of Regulation S-X; or (2) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a change in accounting principles where such change requires a substantial retroactive restatement of financial statements; or (3) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a material disposition of assets outside the normal course of business, the registrant shall not provide prospectus information in the manner allowed by subparagraph (a) below.

(a) If the issuer elects to deliver this prospectus together with the issuer's latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a-3 or Rule 14c-3:

(1) Indicate that the prospectus is accompanied by the issuer's latest annual report to security holders.

(2) Provide financial and other information with respect to the issuer in the form required by Part I of Form 10-Q (17 CFR 239.308a) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) including such information in the prospectus; or

(ii) providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10-Q; or

(iii) providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its shareholders and which included the required financial information.

Instruction. Form 10-Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(3) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which were not described in a Form 10-Q delivered with the prospectus in accordance with subparagraph (a)(2)(ii) of this item.

(b) If the issuer does not elect to deliver its latest annual report to security holders:

(1) Describe the business of the issuer, its subsidiaries and its predecessors in reasonable detail at least to the same extent as would be required in the preparation of an annual report as

required by Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934.

Instruction. The description in the prospectus should be in comparable detail to the presentation used in the issuer's most recent annual report to security holders but the issuer should take into account changes in its business which have occurred between the date of the most recent annual report to security holders and the effective date of the registration statement.

(2) Include financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) for the registrant and its subsidiaries consolidated, including any information required by Rules 3-07 and 3-08 of Regulation S-X.

(3) Provide information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (17 CFR 229.20).

(4) Provide the information required by Item 9 of Regulation S-K or equivalent information depending on the type of security being registered.

(5) Furnish management's discussion and analysis of the issuer's financial condition and results of operations in accordance with Item 11 of Regulation S-K and, if applicable, in accordance with Item 2 of Part I of Form 10-Q. A single presentation of the information required by this Item should be made.

(6) Furnish supplementary financial information in accordance with Item 12 of Regulation S-K.

(7) If the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3-18(k) of Regulation S-X, furnish the disclosure with respect to those operations which is required by Regulation S-X and Regulation S-K to be presented in Form 10-K (17 CFR 249.310).

Item 8. Other Information.

(a) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the documents which accompany the prospectus to the extent that those portions have been incorporated or have been duplicated in filed documents. The issuer may also state, if it so chooses, that specifically described portions of documents accompanying the prospectus are not incorporated by reference and are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference, at the issuer's option, either may be included both in the prospectus and in Part II of the registration statement in response to Item 10 or may be included only in Part II.

(b) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(c) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

(d) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference (and is not delivered with the prospectus) in the registration statement, other than exhibits to such information. Indicate the name and address of the person to whom such a written request is to be directed.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 9. Incorporation of Certain Information by Reference.

[Same as Item 8, Proposed Form A, but with the following addition.]

(a)(3). If the issuer uses the option available in Item 7(a) of this Form:

(i) description of business furnished in accordance with the provisions of Rule 14a-3(b)(5) under the

Securities Exchange Act of 1934 (17 CFR 240.14a-3(b)(5));

(ii) certified financial statements furnished in accordance with the provisions of Rule 14a-3(b);

(iii) information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (17 CFR 229.20);

(iv) market for common stock and related security holder matters furnished in accordance with Item 9 of Regulation S-K;

(v) selected financial data furnished in accordance with Item 10 of Regulation S-K; and

(vi) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 11 of Regulation S-K.

Item 10. Other expenses of Issuance and Distribution.

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement.

[Same as Item 10, Proposed Form A.]

Item 12. Indemnification of Directors and Officers.

[Same as Item 8, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits.

[Same as Items 12(a) and (b), Proposed Form A.]

Item 15. Undertakings.

[Same as Item 13, Proposed Form A, except this Form B also includes the following additional provision.]

(d) The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the issuer's latest annual report to security holders furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3."

However, if the issuer elects the option provided in Item 7(b) of this Form, then this undertaking may be omitted.

SIGNATURES

[Same as Signature provisions in Proposed Form A.]

SECURITIES AND EXCHANGE COMMISSION
FORM C
REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933

_____
(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code number)	(I.R.S. Employer Identification No.)

_____
(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

_____
(Name, address, and telephone number of agent for service)

Approximate date of commencement of proposed sale to the public _____.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

FORM C
GENERAL INSTRUCTIONS

A. Rule as to Use of Form C.

Form C shall be used for registration under the Securities Act of 1933 of securities of all issuers for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political sub-divisions thereof.

B. Application of General Rules and Regulations.

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (17 CFR 230.400). That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

C. Documents Comprising Registration Statement.

The registration statement shall consist of the facing sheet of the Form; a prospectus containing the information called for by Part I, the information, list of exhibits, financial statement schedules, and undertakings specified in Part II; and the signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus.

(1) The information set forth in the prospectus should be presented in clear, concise, understandable fashion. Avoid unnecessary and irrelevant details, repetition or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference. In lieu of restating information in the form of notes to the financial statements, references should be made to other parts of the prospectus where such information is set forth.

E. Omission of Information Regarding Foreign Subsidiaries.

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Exchange Offers.

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus shall also include the information which would be required by Item 7 if the securities of such other issuer were registered on this Form. There shall also be included the information concerning such securities of such other issuer which would be called for by Item 6 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

G. Deferred or Extended Offerings.

Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4936, December 9, 1968 [33 FR 18671], as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

H. Preparation of Part II.

(1) Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

(2) If the information required by Part II has been given in a registration statement, application for registration or annual report filed with the Commission pursuant to any act administered by the Commission and no additional information is needed to make the information previously filed accurate, complete, and up-to-date, the required information may be incorporated by a specific reference to the page or pages of the previous filing which contains such information.

PART I. INFORMATION REQUIRED IN PROSPECTUS

Item 1. Distribution Spread.

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information.

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution.

[Same as Item 3, Proposed Form B.]

Item 4. Use of Proceeds to Issuer.

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders.

[Same as Item 5, Proposed Form A.]

Item 6. Description of Securities to be Registered.

[Same as Item 6, Proposed Form A.]

Item 7. Information With Respect to the Issuer.

(a) Provide the following information with respect to the issuer:

(1) Information required by Item 1 of Regulation S-K (17 CFR 229.20), Description of Business;

(2) Information required by Item 2 of Regulation S-K, Description of Property;

(3) Information required by Item 5 of Regulation S-K, Legal Proceedings;

(4) Information required by Item 9 of Regulation S-K or equivalent informaiton depending on the type of security being registered;

(5) Financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) [Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 14, Exhibits and Financial Statement Schedules, of this Form];

(6) Information required by Item 11 of Regulation S-K, Management's Discussion and Analysis of Financial Condition and Results of Operations, and, if applicable, information required by Item 2 of Part I of Form 10-Q (Management's Discussion and Analysis of Quarterly Data) [A single presentation of the information required by this subparagraph should be made]; and

(7) Information required by Item 12 of Regulation S-K, Supplementary Financial Information.

(b) Issuers who (1) have had a change in control (as defined by Rule 405(f)) within the last three years; or (2) have not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 for the last three years; or (3) are foreign issuers which are required to report on Form 20-F (17 CFR 249.220f) shall provide the following information in addition to that required by paragraph (a) of this item:

(1) Information required by Item 3 of Regulation S-K, Directors and Executive Officers;

(2) Information required by Item 6 of Regulation S-K, Security Ownership of Certain Beneficial Owners and Management; and

(3) Information required by Item 4 of Regulation S-K, Management Remuneration and Transactions.

Instruction. Any issuer not required to include the information required by subparagraph (b) of this item in its prospectus may do so at its option, in which case incorporation by reference to the Form 10-K (17 CFR 249.310) would not be required. See Item 9.

Item 8. Additional Information.

If the issuer is subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934:

(a) A statement shall be included on the outside front cover page or on the inside front cover page of the prospectus that the issuer is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports and other information with the Securities and Exchange Commission. If Item 7(b) is inapplicable to the registrant and the information called for by Item 7(b) is not included in the prospectus, provide a statement that the information, as of particular dates, concerning

directors and officers, their remuneration, options granted to them, the principal holders of securities of the issuer and any material interest of such persons in transactions with the issuer is disclosed either in proxy statements or in information statements filed under Section 14 of the Securities Exchange Act of 1934 or in Forms 10-K (17 CFR 249.310). Include, if applicable, an undertaking to provide without charge to each person to whom a prospectus is delivered, upon written request of such person, a copy of any Item 7(b) information that has been incorporated by reference. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(b) The statement shall also indicate that such reports, proxy statements, and other information can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C. and at certain of its Regional Offices, stating the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission at Washington, D.C. 20549 at prescribed rates. In addition, name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 9. Incorporation by Reference.

(a) If information called for by Item 7(b) of this Form is not required to be included in the prospectus, and it is not included therein, Item 4 of Part I, Security Ownership of Certain Beneficial Owners and Management, and all of Part III of the issuer's latest Form 10-K (17 CFR 249.310) shall be incorporated by reference into the registration statement by means of a statement to that effect in Part II filed with the Commission.

(b) *Effective Date of Documents Incorporated by Reference.*

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) *Modified or superseded documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a munipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Item 10. Other Expenses of Issuance and Distribution.

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement.

[Same as Item 10, Proposed Form A.]

Item 12. Indeminification of Directors and Officers.

[Same as Item 11, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits and Financial Statement Schedules.

[Same as Item 12, Proposed Form A, except this Form C substitutes the following provision for paragraph (c) of the Form A item.]

(c) Financial statement schedules required by Regulation S-X and Item 7(a)(5) of this Form. These schedules shall be lettered or numbered in the manner described for exhibits in paragraph (a).

Item 14. Recent Sales of Unregistered Securities.

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 15. Undertakings.

[Same as Item 13, Proposed Form A.]

SIGNATURES

[Same as Signature provision in Proposed Form A.]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By amending §230.170 to read as follows (★ stars indicate addition):

§230.170 Prohibition of use of certain financial statements

Financial statements which purport to give effect to the receipt and application of any part of the proceeds from the sale of securities for cash shall not be used unless such securities are to be offered through underwriters and the underwriting arrangements are such that the underwriters are or will be committed to take and pay for all of the securities, if any are taken, prior to or within a reasonable time after the commencement of the public offering, or if the securities are not so taken to refund to all subscribers the full amount of all subscription payments made for the securities. However, the above sentence is not applicable to financial statements that are required by the prospectus summary item of a registration statement form. The caption of any such financial statement shall clearly set forth the assumptions upon which such statement is based. The caption shall be in type at least as large as that used generally in the body of the statement.

[Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; secs. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77(s)(a).]

Authority

These forms are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons
Secretary

PROFILE OF FORM S-16 OFFERINGS AND ISSUERS
MAY 1978 - JUNE 1980
Prepared by the Directorate of Economic and Policy Analysis

T.1 - *TYPE OF SECURITY*

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings
Debt	24	40.0%	64	50.0%	156	45.5%
Stock	34	56.7%	49	38.3%	174	50.7%
Other	2	3.3%	15	11.7%	13	3.8%
Totals	60	100.0%	128	100.0%	343	100.0%

T.2 - *INDUSTRY OF ISSUER*

Extractive	2	4.0%	3	3.1%	11	4.5%
Manufacturing	13	26.0%	31	32.3%	103	41.7%
Transportation	5	10.0%	1	1.0%	5	2.0%
Communication	1	2.0%	4	4.2%	12	4.9%
Utilities	16	32.0%	26	27.1%	51	20.6%
Finance	5	10.0%	22	22.9%	29	11.7%
Miscellaneous	8	16.0%	9	9.4%	36	14.6%
Total	50	100.0%	96	100.0%	247	100.0%

T.3 - *TIME IN REGISTRATION*

0-1 Week	5	8.6%	25	19.7%	69	20.2%
1-2 Weeks	15	25.9%	43	33.9%	111	32.5%
2-3 Weeks	13	22.4%	25	19.7%	62	18.1%
3-4 Weeks	11	19.0%	22	17.3%	36	10.5%
4-6 Weeks	8	13.8%	5	3.9%	37	10.8%
6-8 Weeks	2	3.4%	4	3.1%	13	3.8%
8+ Weeks	4	6.9	3	2.4%	14	4.1%
Total	58	100.0%	127	100.0%	342	100.0%

NOTE: (1) The total number of offerings varies from table to table due to the occasional incidence of missing data which caused some of the offerings to be excluded from certain tables. Offerings are grouped into time periods based upon filing date. Tabulations exclude extended offerings (i.e., employee savings and thrift plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, identified wholly owned subsidiaries, and secondary offerings. The number of offerings and the number of issuers do not coincide because issuers who made more than one offering during the period are accounted for as single issuers.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

T.4 - *AMOUNT OF OFFERING*

($000's, except for number of offerings)

	May 78-Jan. 79	Feb. 79 - Sept. 79	Oct. 79 - June 80
Debt Issues			
No. of offerings	24	64	156
Median	100,000	100,000	99,200
Mean	115,493	124,683	108,027
Minimum	24,610	8,505	2,500
Maximum	500,000	498,125	600,000
Standard Deviation	92,587	94,050	90,430
Equity Issues			
No. of offerings	34	49	174
Median	23,550	25,000	15,000

Mean	31,732	42,516	33,742
Minimum	164	126	8
Maximum	135,250	328,000	334,028
Standard Deviation	32,642	57,621	53,426
Other Issues			
No. of offerings	2	15	13
Median	110,038	100,000	60,000
Mean	110,038	128,179	167,600
Minimum	21,249	35,000	349
Maximum	198,828	250,000	732,087
Standard Deviation	125,567	61,915	258,181

T.5 - *ANNUAL REVENUES OF ISSUERS*[1]

($000,000's, except for number of offerings)

	May 78 - Jan. 79	Feb. 79 - Sept. 79	Oct. 79 - June 80
No. of issuers	50	96	237
Median	580	869	773
Mean	1,298	1,947	1,861
Minimum	27	6	9
Maximum	6,339	21,076	44,488
Standard Deviation	1,623	3,214	3,835

[1]Most recent fiscal year prior to offering.

T.6 - *ANNUAL EARNINGS OF ISSUERS*[2]

($000,000's, except number of offerings)

	May 78 - Jan. 79	Feb. 79 - Sept. 79	Oct. 79 June 80
No. of issuers	50	96	237
Median	60	85	66
Mean	92	162	155
Minimum	0	1	(121)
Maximum	395	3,111	8,767
Standard Deviation	92	342	583

T.7 - *ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK*

(000's, except number of offerings)

No. of issuers	49	91	238
Median	5,271	5,920	4,415
Mean	8,242	8,306	7,507
Minimum	31	3	3
Maximum	39,292	46,182	47,610
Standard Deviation	8,602	8,561	8,688

T.8 - *SHAREHOLDERS OF ISSUERS' COMMON STOCK*[3]

No. of issuers	46	83	210
Median	30,340	22,001	16,772
Mean	46,155	55,522	55,439
Minimum	2,630	1,025	826
Maximum	251,516	580,572	2,939,090
Standard Deviation	58,533	90,030	207,748

[2]Most recent fiscal year prior to offerings.
[3]Excludes companies not listed by Moody's Investors Services, Inc.

Source: Moody's Investors Service, Inc. (various manuals) and Registered Offerings Statistical File, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

PROFILE OF TWENTY-FIVE LARGEST AND TWENTY-FIVE SMALLEST FORM S-16 ISSUERS RANKED ON THE BASIS OF ANNUAL REVENUE MAY 1978 - JUNE 1980

T.1 - *TYPE OF SECURITY*

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
Debt	13	5	17	6	18	0
Stock	11	19	4	16	6	23
Other	1	1	4	3	1	2
Total	25	25	25	25	25	25

T.2 - *INDUSTRY OF ISSUER*

Extractive	0	2	0	2	0	5
Manufacturing	9	4	14	7	14	13
Transportation	1	4	0	0	0	0
Communication	1	0	1	1	3	1
Utilities	7	9	3	9	1	1
Finance	2	3	5	5	3	2
Miscellaneous	5	3	2	1	4	3
Total	25	25	25	25	25	25

T.3 - *TIME IN REGISTRATION*

0-1 Week	2	4	9	3	10	0
1-2 Weeks	7	5	9	6	5	4
2-3 Weeks	8	3	3	4	2	6
3-4 Weeks	4	3	3	7	3	3
4-6 Weeks	3	5	1	2	2	5
6-8 Weeks	0	2	0	2	2	2
8+ Weeks	1	3	0	1	1	5
Total	25	25	25	25	25	25

NOTE: (1) Offerings are grouped into time periods based upon filing date. Tabulations exclude identified wholly owned subsidiaries and issuers of extended offerings (i.e., employee savings and thrift plans, stock option plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, and secondary offerings.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

T.4 - *AMOUNT OF OFFERING* ($000's)

	May 78 - Jan. 79		Feb. 79 - Sept. 79		Oct. 79 - June 80	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
Median	99,500	21,249	150,000	25,000	150,000	1,970
Mean	98,473	26,890	162,163	40,802	172,029	35,457

T.5 - *ANNUAL REVENUES OF ISSUERS*[1] ($000,000's)

Median	1,505	227	3,526	214	6,622	53
Mean	2,349	247	5,454	212	9,353	49

T.6 - *ANNUAL EARNINGS OF ISSUERS*[1] ($000,000's)

Median	119	32	230	28	420	4
Mean	148	33	429	31	709	7

T.7 - *ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK* (000's)

Median	6,723	2,812	13,982	1,181	15,269	1,429
Mean	11,869	6,869	15,576	2,165	16,437	2,059

T.8 - *SHAREHOLDERS OF ISSUERS' COMMON STOCK*

Median	42,072	16,137	59,712	8,891	75,782	1,831
Mean	70,569	23,775	122,988	18,962	215,548	2,130

[1]For the most recent fiscal year prior to offering.

Source: Moody's Investors Services, Inc. (various manuals) and Registered Offerings Statistical File, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

SECURITIES ACT OF 1933
Release No. 6236/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17118/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21701/September 2, 1980

TRUST INDENTURE ACT OF 1939
Release No. 583/September 2, 1980

PROPOSED REVISION OF FORM 10-Q, QUARTERLY REPORT

ACTION: Proposed Rulemaking.

SUMMARY: The Commission is publishing for public comment proposed amendments to Form 10-Q under the Securities Exchange Act of 1934 designed to (1) encourage and facilitate the integration of formally filed quarterly reports with information quarterly reports furnished to shareholders; (2) make certain disclosure requirements for interim periods consistent with the revised disclosure requirements for annual periods; and (3) centralize a uniform set of instructions for interim financial statements in Regulation S-X. The proposed revisions are intended to simplify present rules and reduce the reporting burdens of most registrants.

DATE: Comments must be received on or before December 15, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-850. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Accounting Matters—Lawrence C. Best, (202) 272-2130, Office of the Chief Accountant; Other Matters—Bruce S. Mendelsohn, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today the publication for comment of a revised Form 10-Q (17 CFR 249.318a), the quarterly report form required to be filed by most publicly owned companies, an amendment to Item 11 of Regulation S-K (17 CFR 229.20) which would set forth the requirements as to management's discussion and analysis of interim financial information, a new Article 10 in Regulation S-X which would become the central location of instructions as to form and content of interim financial statements, and a related amendment to the projections safe-harbor rule, Rule 175 (17 CFR 230.175) under the Securities Act. The proposed revisions to Form 10-Q are intended to make it easier for those registrants who may wish to combine the financial information section of the Form 10-Q with an informal quarterly report to shareholders. This release evidences the Commission's intention to encourage the practice of sending quarterly reports to shareholders by emphasizing that issuers have the option of incorporating their informal communications into the Form 10-Q. The Commission believes that costs to issuers can be reduced and shareholder communications enhanced by such integrated reporting.

The proposed amendments to Form 10-Q are intended to be responsive to the recommendation of

the Advisory Committee on Corporate Disclosure that the Commission encourage companies to publish readable, understandable quarterly reports to shareholders which include the information content of a Form 10-Q, and to file these documents with the Commission in satisfaction of Form 10-Q reporting obligations.[1] The Commission believes that companies can reduce their reporting burdens by utilizing the option to incorporate by reference to their informal quarterly report in order to fulfill the requirements of Part I, Financial Information, of Form 10-Q. Additionally, if this option is widely used, it could result in an upgrading of the corporate communications system.

The proposed revised Form 10-Q has been designed to be consistent with the newly amended Form 10-K and to be utilized as a part of the Commission's proposed integrated disclosure system. In this regard, the Commission today published four releases announcing the adoption of certain forms and rules which represent a major effort to achieve integration of the disclosure systems under the Securities Act and the Exchange Act.[2] These releases include (1) amendments to Form 10-K (17 CFR 249.310) and Rule 14a-3 (17 CFR 240.14a-3) under the Exchange Act and Regulation S-K (17 CFR 229.20) under the Securities Act and the Exchange Act; (2) the adoption of Form S-15 for the registration under the Securities Act of 1933 of securities issued in certain business combination transactions; (3) a general revision of Regulation S-X facilitating, to the extent possible, integration of reporting; and (4) additions to Regulation S-X (17 CFR Part 210) establishing uniform instructions as to financial statements for certain forms and reports required pursuant to the Securities Act and the Exchange Act. In addition, the Commission proposed for public comment a new registration statement system under the Securities Act involving integrated and simplified disclosure.[3] The Commission believes that the proposed changes in Form 10-Q should be viewed in relation to these other rules, forms and proposals, as a further step in implementing the integrated disclosure system.

DISCUSSION OF PROPOSED REVISIONS

Under the proposals, the structure of Form 10-Q would be essentially the same as the present form. As is currently the case, the interim financial information and management's discussion and analysis called for by Part I of the Form would not be deemed filed for purposes of Section 18 of the Exchange Act[4] and could be incorporated by reference from an informal quarterly report to security holders. Part II of the form is proposed to be amended to eliminate certain items which may provide duplicative disclosure or which may be unnecessary.

Financial Statement Instructions Centralized in Regulation S-X

In Securities Act Release No. 6234 (September 2, 1980), published concurrently with this release, the Commission adopted amendments to conform requirements as to form and content of interim financial statements under the Securities Act with the form and content requirements for interim statements under the Exchange Act (Form 10-Q). The rules adopted, which are applicable to registration statements under the Securities Act, reference the form and content provisions of the current Form 10-Q.

Consistent with the Commission's goals to simplify and make uniform the disclosure requirements under the Securities Act and the Exchange Act, the amendments proposed by this release would remove the instructions as to interim financial statements from the current Form 10-Q and establish a uniform set of instructions as to interim financial statements in a new Article 10 of Regulation S-X. The Commission believes that the centralization of these instructions in Regulation S-X represents the next logical step in establishing uniform instructions as to financial statements under both Acts.

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[1]Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. (1977), Committee Print 95-29, at 470-5.

[2]Securities Act Release Nos. 6231 (Form 10-K, Rule 14a-3 and Regulation S-K); 6232 (Form S-15); 6233 (Revision of Regulation S-X); and 6234 (Uniform Instructions as to Financial Statements) (September 2, 1980).

[3]Securities Act Release No. 6235 (September 2, 1980).

[4]See Rules 13a-13 (17 CFR 240.13a-13) and 15d-13 (17 CFR 240.15d-13) under the Exchange Act.

Clarification of Interim Disclosure Rules

In addition to the centralization of the uniform instructions as to interim financial statements in Regulation S-X, the Commission is proposing certain modifications to the existing requirements as discussed in this and the following sections.

First, the Commission is proposing to revise the instruction regarding footnote disclosure accompanying interim financial statements. To alleviate present interpretative problems and to clarify the Commission's intent,[5] the revised instruction would make clear that certain disclosures are required to supplement the interim financial statements. The language of Instruction 4(a)(3) to Part I of Form 10-Q,[6] apparently has caused confusion as to whether any footnote disclosure is necessary for interim periods. The proposed amendment attempts to make clear the nature and extent of disclosure required for interim reports filed with the Commission.

The condensed interim financial information should include disclosures either on the face of the financial statements, in accompanying footnotes, or in management's discussion and analysis, sufficient so as to make the interim information presented not misleading. The proposed amendments specify that registrants may presume that users of the condensed interim financial information have read the latest annual report distributed to security holders or have access to such report, and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material uncertainties, may be determined in that context. Accordingly, under the proposal, footnote disclosure which would substantially duplicate the disclosure contained in the recent annual report to security holders, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by Rule 4-08 of Regulation S-X (note requirements for complete financial statements) may be omitted.

However, disclosure under the proposed amendment would be provided where events or circumstances which have a material impact on the registrant have occurred since the end of the most recent fiscal year. Disclosures would encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as: accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant new borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding these proposed requirements, where material uncertainties or contingencies exist, disclosure of such matters would be required to be provided even though a significant change since year end may not have occurred.

Reference to Review by Independent Accountants

A revision regarding reporting where reference is made by the registrant to a review of interim data by an independent accountant is being proposed in response to the issuance of Statement on Auditing Standards ("SAS") No. 24.[7] This new SAS, which supersedes previous standards for independent auditor involvement with interim financial information, provides the accounting profession guidance on the nature, timing, and extent of procedures to be applied in conducting interim reviews and on the reporting applicable to such engagements.

Under existing rules,[8] if a registrant states that an independent accountant has performed a review of interim data, it must indicate whether all

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[5]See Securities Act Release No. 5611 (September 10, 1975) [40 FR 46107].

[6]Current Instruction 4(a)(3) reads:

Rules 3-08 and 3-16 of Regulation S-X and other requirements which calls for detailed footnote disclosure and schedules shall not apply. As with all information filed with the Commission, however, disclosures must be adequate to make the information presented not misleading.

[7]Statement on Auditing Standards No. 24, "Review of Interim Financial Information," American Institute of Certified Public Accountants, March 1979.

[8]Present Instruction 7 to Part I of Form 10-Q, which would be relocated and modified in Regulation S-X, reads as follows:

adjustments or additional disclosures proposed by the independent accountant have been reflected in the data presented, and, if not why not. Further, a letter from the independent accountant may be included as an exhibit to the form confirming or otherwise commenting upon the registrant's representations.

The provisions of SAS No. 24 now require, among other things, a statement in the independent accountants' report as to whether he is aware of any material modifications that should be made to the interim financial information so that it conforms with generally accepted accounting principles. The Commission believes that this expression of limited assurance now provided for by SAS No. 24 may have rendered unnecessary the present Form 10-Q requirement discussed in the preceding paragraph and, therefore, a modification to such requirement is being proposed. Under the proposed rule, if a review of interim data is made in accordance with the established professional standards and procedures for such reviews and the registrant makes reference to such review, the report of the independent accountant on the review would be required to be included as an exhibit to the filing. Additionally, the proposal would delete the present requirement for a statement by the registrant regarding adjustments and disclosures proposed by the independent accountant.

Management's Discussion and Analysis

An important feature of the proposed Form 10-Q is Item 2 of Part I, Management's Discussion and Analysis of Financial Condition and Results of Operations, which incorporates the requirements of proposed paragraph (b) of new Item 11 under Regulation S-K. The proposed sub-item would require a discussion of the year to date, the corresponding period in the prior year and, if the registrant has elected to present a trailing year, of the trailing year. The current requirement to discuss the immediately preceding quarter is proposed to be deleted.

Accordingly, Item 11 of Regulation S-K would include requirements for management's discussion and analysis of annual and interim financial information. The proposed requirement would supplement the analysis that will be required in Form 10-K. That is, the registrant's discussion and analysis would focus on the material changes in financial condition and results of operations as reflected in the interim financial statements. It is intended that the proposed Form 10-Q discussion would serve as an update to the discussion. In the annual report and would need to address only material changes. Furthermore, as a provision in Regulation S-K, the management's discussion and analysis of interim financial information would become uniform for forms filed under both the Exchange Act and the Securities Act.

Modifications to Part II of the Form

Item 3, Changes in Security for Registered Securities, Item 5, Increase in Amount Outstnding of Securities or Indebtedness, and Item 6, Decrease in Amount Outstanding of Securities or Indebtedness, are proposed to be deleted from the form. The Commission believes that the information elicited by these items is otherwise generally available and is not necessary in a quarterly report.[9] In addition, the instruction requesting issuers to advise the staff of their intention to file a registration statement on Form S-16 or S-7 is proposed to be deleted because experience has proven that the instruction is not useful.

An additional proposal would require that the Form 10-Q be signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant.

Footnote 8 Continued

The financial information included in this form need not be reviewed prior to filing by an independent public accountant. If, however, a review of the data is made in accordance with established professional standards and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the registrant shall indicate whether all adjustments or additional disclosures proposed by the independent accountant have been reflected in the data presented, and, if not why not. In addition, a letter from the registrant's independent accountant confirming or otherwise commenting upon the registrant's representations and making such other comments as the independent accountant deems appropriate may be included as an exhibit to the form.

[9]It should be noted that appropriate technical amendments to Item 7 of Regulation S-K, Exhibits, would be made if these proposed deletions are finalized.

This represents a technical amendment which would correct an inadvertent deletion made in Release No. 33-5951 (July 28, 1978) [43 FR 33904].

Safe Harbor Rule for Projections

Finally, the Commission is proposing an amendment to the safe harbor rule for forward-looking information, Rule 175 under the Securities Act,[10] which would make clear that a projection of the type enumerated by that rule is protected if included or properly reaffirmed in Part I of Form 10-Q. This would codify the staff position which deems Part 1 "filed" for purposes of the safe-harbor rule even though it is not filed for purposes of Section 18 of the Exchange Act.

General and Specific Inquiries

Any interested person wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact upon the proposals contained herein, is invited to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in achieving the objectives set for in the release.

The Commission also solicits comments as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

TEST OF PROPOSALS

The text of the proposals is set forth below.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. 17 CFR 249.308a is proposed to be amended by revising Form 10-Q to read as follows:

†249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act.

[10]Rule 3b-6 (17 CFR 240.3b-6) under the Exchange Act, and Rule 103A (17 CFR 250.103A) under the Public Utility Holding Company Act of 1935, and Rule 0-11 (17 CFR 260.0-11) under the Trust Indenture Act of 1939.

FORM 10-Q
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Quarterly Report Under Section 13 or 15(d)
of the Securities Exchange Act of 1934

For Quarter Ended .....

Commission file number .....

FORM 10-Q
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Quarterly Report Under Section 13 or 15(d)
of the Securities Exchange Act of 1934

For Quarter Ended .....

Commission file number .....

.....
(Exact name of registrant as specified in its charter)

.....
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

.....
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code .....

.....
Former name, former address and former fiscal year, if changed since last report.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ..... No. .....

APPLICABLE ONLY TO ISSUERS INVOLVED
IN BANKRUPTCY PROCEEDINGS DURING
THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes. *222*. No. *222*.

(APPLICABLE ONLY TO CORPORATE ISSUERS)

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the close of the period covered by this report.

Exchange Act Forms

For Quarterly Reports Under Section 13 or 15(d) of the Securities Exchange Act of 1934

A. Rule as to Use of Form 10-Q.

Exchange Act Forms
For Quarterly Reports Under Section 13 or 15(d) of The Securities Exchange Act of 1934

A. Rule as to Use of Form 10-Q.

(a) Form 10-Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934, filed pursuant to Rule 13a-13 or Rule 15d-13.

(b) A report on this form shall be filed within 45 days after the end of each of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year.

B. Application of General Rules and Regulations.

(a) The General Rules and Regulations under the Act contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. See also Regulations 13A and 15D.

C. Preparation of Report.

(a) This is not a blank form to be filled in. It is a guide copy to be used in preparing the report in accordance with Rules 12b-11 and 12b-12. The Commission does not furnish blank copies of this form to be filled in for filing.

(b) These general instructions are not to be filed with the report. The instructions to the various captions of the form are also to be omitted from the report as filed.

D. Incorporation by Reference.

(a) If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting the requirements of Part I of this form, the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to Part I of the report on this form. Pursuant to Rule 13a-13(d) and (17 CFR 240.13a-13) and Rule 15d-13(d) (17 CFR 240.15d-13(d)), the financial information required by Items (1) and (2) of Part I of this form shall not be deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(b) Other information may be incorporated by reference in answer or partial answer to any item or items of Part II of this form in accordance with the provisions of Rule 12b-23.

E. Signature and Filing of Report.

Three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. Copies not manually signed shall bear typed or printed signatures.

F. Omission of Information by Certain Wholly-Owned Subsidiaries.

If, on the date of the filing of its report on Form 10-Q, the registrant meets the conditions specified in paragraph (a) below, then such registrant may omit the information called for in the Part II Items specified in paragraph (b) below.

(a) Conditions for availability of the relief specified in paragraph (b) below:

(1) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company under the Act and which has filed all the material required to be filed pursuant to section 13, 14 or 15(d) thereof, as applicable.

(2) During the preceding thirty-six calendar months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rentals under material long-term leases; and

(3) There is prominently set forth, on the cover page of the Form 10-Q, a statement that the registrant meets the conditions set forth in General Instruction F(a)(1) and (2) of Form 10-Q and is therefore filing this Form with the reduced disclosure format.

(b) Registrants meeting the conditions specified in paragraph (a) above may omit the information called for in the following Part II Items: Item 2, Changes in Securities; Item 3, Defaults Upon Senior Securities; and Item 4, Submission of Matters to a Vote of Security Holders.

PART I—FINANCIAL INFORMATION

Item 1. Condensed Financial Statements

Provide the information required by Rule 10-01 of Regulation S-X.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Furnish the information required by Item 11(b) of Regulation S-K (17 CFR 229.20).

PART II—OTHER INFORMATION

Instruction. The report shall contain the item numbers and captions of all applicable items of Part II, but the text of such items may be omitted provided the responses clearly indicate the coverage of the item. Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b-2 [17 CFR 240.12b-2].

Item 1. Legal Proceedings.

The description of legal proceedings shall include the information required by Item 5 of Regulation S-K, 17 CFR 229.20.5. As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. A legal proceeding need only be reported in the 10-Q filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form 10-Q filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 2. Changes in Securities.

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Instruction. Working capital restrictions and other limitations upon the payment of dividends are to be reported hereunder.

Item 3. Defaults Upon Senior Securities.

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the registrant or any of its significant subsidiaries exceeding 5 percent of the total assets of the registrant and its consolidated subsidiaries, identify the indebtedness and state the

nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of an arrearage in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction. Item 4 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter has been submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) Briefly describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation 14A under the Act) terminating any solicitation subject to Rule 14a-11, including the cost of anticipated cost to the registrant.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14 under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to the report on this form.

Item 5. Other Materially Important Events.

The registrant may, at its option, report under this item any events, not previously reported in a report on Form 8-K, with respect to which information is not otherwise called for by this form but which the registrant deems of material importance to security holders.

Item 6. Exhibits and Reports on Form 8-K [17 CFR

249.308].

(a) The exhibits shall be furnished in accordance with the provisions of Item 7 of Regulation S-K, 17 CFR 229.20.

(b) Reports on Form 8-K. State whether any reports on Form 8-K have been filed during the quarter for which this report is filed, listing the items reported, any financial statements filed, and the dates of any such reports.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

.....
(Registrant)

Date ....
(Signature)*

Date .....
(Signature)*

*See General Instruction E.

**Print name and title of the signing officer under his signature.

PART 228—STANDARD INSTRUCTIONS FOR FILING FORM UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

2. 17 CFR 229.20 is proposed to be amended by revising Item 11 as follows: (** stars indicate addition and [ ] brackets indicate deletions):

§229.20 Information required in document.

* * * * *

Item 11. Management's discussion and analysis of financial condition and results of operations.

a Discuss registrant's financial condition, changes in financial condition and results in operations. The discussion shall provide . . .

* * *

(1) [(a)] Liquidity

* * * * *

(2) [(b)] Capital Resources

* * * * *

(3) [(c)] Results of Operations

* * * * *

INSTRUCTIONS

* * * * *

*b. If interim financial statements are presented, a narrative analysis of the financial condition and results of operation shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified below.

(1) *Material Changes in Financial Condition*

Discuss material changes in financial condition, particularly addressing material changes in those items specifically listed in paragraph (a) of this Item 11 of Regulation S-K (17 CFR 229.20), by comparing financial condition at the end of the most recent interim period for which financial statements are presented with financial condition at the end of the preceding fiscal year. If financial statements are presented as of the end of the corresponding interim period in the preceding fiscal year, a comparison shall also be made with financial condition at the end of such interim period. If both the comparisons with the prior year end and the prior interim period are required, the discussion and analysis may be combined at the discretion of the registrant.

(2) *Material Changes in Results of Operations*

Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which financial statements are presented and the corresponding year-to-date period in the preceding fiscal year. If the registrant is required to or has elected to present financial statements for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year.

If the registrant has elected to provide financial statements for the twelve month period ending at the end of the most recent interim period for which financial statements have been presented, the discussion also shall cover material changes with respect to that twelve month period and the corresponding twelve month period ending at the end of the corresponding interim period in the preceding fiscal year.

Instructions

1. If interim financial statements are required to be presented and such financial statements are not accompanied by fiscal year financial statements (as is the case in Form 10-Q and in certain registration forms which call for the presentation of interim financial statements in the manner required by Part I of Form 10-Q), then only the discussion called for by this paragraph (b) of Item 11 of Regulation S-K shall be required. In all other cases, where both fiscal year financial statements and interim financial statements are presented together in the same document, both the discussions called for by paragraph (a) and by this paragraph (b) shall be required, and such discussions may be combined.

2. The registrant's discussion and analysis should focus on the material changes in financial condition and results of operations as reflected in the interim financial statements.

3. In order to ensure understanding of material changes, the information provided should include that which is available to the registrant without undue effort or expense but which is not obvious from the registrant's condensed interim financial statements.

4. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; *provided, however,* if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statement. The discussion should not merely repeat numerical data contained in the condensed financial statements.

5. The registrant's discussion of material changes in results of operations should identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business. Such items might include unusually large promotion or research and development expenses, unusually high or low export activities, identifiable costs associated with a business interruption caused by labor disruptions or other events, or significant gains or losses from disposition of assets.

6. The registrant should discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

7. Registrants are encouraged but are not required to discuss forward looking information.

8. Additional disclosures required for interim information by Rule 10-01(a)(3) of Regulation S-X (17 CFR 210) may be satisfied by inclusion in the management's discussion and analysis.★

PART 210—FORM AND CONTENT OF AN REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975.

3. A new §210.10-01 (Interim financial statements) is proposed to be added as set forth below. The present §210.10-01 (Financial statements of natural persons) is proposed to be amended by redesignating it as §210.3-17 and revising it to read a set forth below.

* * * * *

§210.10-01 Interim financial statements.

(a) *Condensed statements.* Interim financial statements shall follow the general form and content of presentation prescribed by the other sections of this Regulation with the following exceptions:

(1) Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.

(2) Balance sheets and income statements shall include only major captions (i.e., numbered captions) prescribed by the applicable sections of this Regulation with the exception of Inventories where data as to raw materials, work in process and finished goods shall be included, if applicable. Where any major balance sheet caption is les than 10% of total assets, and the amount in the caption has not increased or decreased by more than 25% since the previous balance sheet presented, the caption may be combined with others. When any major income statement caption is less than 15% of average net income for the most recent three years and the amount in the caption has not increased or decreased by more than 20% as compared to the next preceding comparable income statement, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this text. Notwithstanding these tests, Rule 4-02 of Regulation S-X applies and de minimis amounts therefore need not be shown separately.

(3) The statement of changes in financial position may be abbreviated, starting with a single figure of funds provided by operations and showing other changes individually only when they exceed 10% of the average of funds provided by operations for the most recent three years. Notwithstanding this test, Rule 4-02 of Regulation S-X applies and de minimis amounts therefore need not be shown separately.

(4) The condensed interim financial information shall include disclosures either on the face of the financial statements, in accompanying footnotes, or in management's discussion and analysis, sufficient so as to make the interim information presented not misleading. Registrants may presume that users of the condensed interim financial information have read the latest annual report distributed to security holders or have access to such report, and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material uncertainties, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by Rule 4-08 of this Regulation may be omitted. However, disclosure shall be provided where events or circumstances subsequent to the end of the most recnt fiscal year have occurred which have a material impact on the registrant. Disclosures should encompass for example, significant changes since the end of the most recently completed fiscal year in such items as: accounting principles and practices; estimates inherent in the prepration of financial statements; status of long-term contracts; capitalization including significant new borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Notwithstanding the above, where material uncertainities or contingencies exist, disclosure of such matters shall be provided even though a significant change since year end may not have occurred.

(5) Detailed schedules otherwise required by this Regulation may be omitted for purposes of preparing interim financial statements.

(b) *Other instructions as to content.* The following additional instructions shall be applicable for purposes of preparing interim financial statements:

(1) Amounts included in interim financial statements may be stated in thousands or hundred thousands of dollars providing such rounding is clearly stated. Losses or other negative amounts shall be indicated clearly in the caption and the amounts shown in parentheses.

(2) Summarized income statement information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods. Such summarized information, however, need not be furnished for any such unconsolidated subsidiary or person which would not be required pursuant to Rule 13a-13 or 15d-13 to file quarterly financial information with the Commission if it were a registrant.

(3) If appropriate, the income statement shall show earnings per share and dividends per share applicable to common stock and the basis of the earnings per share computation shall be stated together with the number of shares used in the computation period. The registrant shall file as an exhibit a statement setting forth in reasonable detail the computation of per share earnings, unless the computation is otherwise clearly sent forth in the

report period.

(4) If, during the most recent interim period presented the registrant or any of its consolidated subsidiaries, entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(5) Where the registrant has disposed of any significant portion of its business during any of the periods covered by the interim financial statements, the effect thereof on revenues and net income—total and per share—for all periods shall be disclosed. In addition, where a material business combination accounted for as a purchase has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the end of the most recent fiscal quarter (and for the comparable period in the preceding year) as though the companies had combined at the beginning of the period being reported on. This pro forma information should as a minimum show revenue, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis and net income and net income per share.

(6) In addition to meeting the reporting requirements specified by existing standards for any accounting changes, the registrant shall state the date of any accounting change and the reasons for making it. In addition, for filings on Form 10-Q, a letter from the registrant's independent accountants shall be filed as an exhibit in the first Form 10-Q subsequent to the date of an accounting change indicating whether or not the change is to an alternative principle which in his judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(7) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with the effect thereof upon net income—total and per share—of any prior period included and upon the balance of retained earnings. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(8) The interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end.

(c) *Periods to be covered.* The periods for which interim financial statements are to be provided in registration statements are prescribed elsewhere in this regulation (see §§210.3-01 and 3-02). For filings on Form 10-Q, interim financial statements shall be provided for the periods set forth below:

(1) Interim balance sheets shall be provided as of the end of the most recent fiscal quarter and as of the corresponding date of the preceding fiscal year.

(2) Interim statements of income and changes in financial position shall be provided for the most recent fiscal quarter, for the period between the end of the last fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding period of the preceding fiscal year.

(3) Registrants engaged in seasonal production and sale of a single-crop agricultural commodity may provide interim statements of income and changes in financial position for the twelve months ended with the most recent fiscal quarter with comparative data for the corresponding period of the preceding fiscal year in lieu of the year-to-date statements specified in (2) above.

(d) *Review by independent public accountant.* The interim financial information included in filings with the Commission need not be reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with established professional standards

and procedures for such a review, the registrant may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall be included as an exhibit to the filing.

(e) The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of any of the interim financial information herein required or the filing in substitution therefor of appropriate information of comparable character. The Commission may also by informal written notice require the filing of other statements in addition to, or in substitution for, the interim statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person for which financial statements are required, or whose statements are otherwise necessary for the protection of investors.

* * * * *

§210.3-17 Financial statements of natural persons.

(a) In lieu of the financial statements otherwise required, a natural person may file an unaudited balance sheet as of a date within 90 days of date of filing and unaudited statements of income for each of the three most recent fiscal years.

(b) Financial statements conforming with the instructions as to financial statements of subsidiaries not consolidated and 50 percent or less owned persons under §210.3-09(a)(1) shall be separately presented for: (1) each business owned as a sole proprietor, (2) each partnership, business trust, unincorporated association, or similar business organization of which the person holds a controlling interest and (3) each corporation of which the person, directly or indirectly, owns securities representing more than 50 percent of the voting power.

(c) Separate financial statements may be omitted, however, for each corporation, business trust, unincorporated association, or similar business organization if the person's total investment in such entity does not exceed 5 percent of his total assets *and* the person's total income from such entity does not exceed 5 percent of his gross income; *Provided*, that the person's aggregate investment in and income from all such omitted entities shall not exceed 15 percent of his total assets and gross income, respectively.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. 17 CFR 230.175 is proposed to be amended as follows:

(★★ stars indicate additions):

§230.175 Liability for Forward-Looking Statements by Issuers.

(a) * * *

(b) This rule applies to (1) a forward looking statement (as defined in paragraph (c) below) made in a document filed with the Commission★ (including Part 1 of a quarterly report on Form 10-Q, 17 CFR 249.308a)★ or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934, (2) a statement reaffirming the forward looking statement referred to in (b)(1) subsequent to the date the document was filed or the annual report was made publicly available, or (3) a forward looking statement made prior to the date the document was filed, or the date the annual report was made publicly available if such forward looking statement is reaffirmed in a filed document★ (including Part I of a Form 10-Q)★ or annual report made publicly available within a reasonable time after the making of such forward looking statement.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. 17 CFR 240.3b-6 is proposed to be amended as follows: §240.3b-6 Projections of future economic performance by issuers.

(The proposed amendment of the rule is identical to that of Rule 175 above.)

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

6. 17 CFR 250.103A is proposed to be amended as follows:

§250.103A Projections of Future Economic Performance by issuers

(The proposed amendment of the rule is identical to that of Rule 175 above.)

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

7. 17 CFR 260.103A is proposed to be amended as follows:

§260.0-11 Projections of Future Economic Performance issuers.

(The proposed amendment of the rule is identical to that of Rule 175 above.)

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 658; sec. 1, 79 Stat. 1051. Secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 469, 570-574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; Sec. 20(a), 49 Stat. 833; Sec. 319(a), 53 Stat. 1149, 15 U.S.C. 77f, 77g, 77j, 77s(a), 78m, 78o(d), 78w(a), 79t, 77nnn(a))

Authority

These amendments are being proposed pursuant to the authority in Sections 6, 7, 8, and 19(a) of the Securities Act of 1933 and Sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934. The amendment to the safe harbor rules for projections is also being proposed pursuant to Section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t) and Section 319(a) under the Trust Indenture Act of 1934 (15 U.S.C. 77nnn(c)).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6237/September 3, 1980

In the Matter of

LADAS & PARRY PROFIT-SHARING PLAN
10 Columbus Circle
New York, NY 10019

(18-70)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE LADAS & PARRY PROFIT-SHARING PLAN

NOTICE IS HEREBY GIVEN that the law firm of Ladas & Parry (the "Firm" or "Applicant"), a New York partnership, has by letter, dated February 14, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with its Profit-Sharing Plan (the "Plan") for certain partners and employees of the Applicant. All interested persons are referred to the application, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers all the Applicant's qualifying partners and employees of whom there were approximately 250 as of August 6, 1980. All employees are eligible to participate in the Plan if they have attained age 25 and have completed one year of consecutive employment with the Firm. Participation in the Plan is automatic and each person becomes a Plan "participant" on July 1 or January 1 following his or her satisfaction of the eligibility requirements.

The Plan is of a type commonly referred to as a "Keogh" plan, which covers persons (in this case certain partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Secton 3(a)(2) is inapplicable to the interests in the Plan, absent an order of the Commission.

In relevant part, Section 3(a)(2) provides that the

Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protectio of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Admininstration of the Plan

Applicant states that the Plan became effective on February 1, 1978, and has the purpose of creating a Trust Fund for the provisions of benefits for its Participants upon their retirement, disability or death. The Internal Revenue Service ("IRS") has issued a ruling to the effect that the Plan is a qualified one under Section 401 of the Code. The Plan is an employee profit-sharing plan subject to the full fiduciary, reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

Applicant states that its contributions to the Trust Fund established by the Plan become fully vested and non-forfeitable upon the earliest of the following occurrences involving the Participant: his total and permanent disability; his death; completion of ten years of service with the Firm; termination of the Plan by the Firm; or complete discontinuance of contributions to the Plan by the Firm. The unvested portion of the Firm's contributions are forfeited by a Participant upon the termination of his employment and are applied to reduce the Firm's future contributions to the Trust Fund. Any voluntary contributions made by the Participant are fully vested at all times.

The Plan has a mandatory Firm contribution feature and a voluntary Participant contribution feature, both of which are based on a percentage of compensation. In general, the Firm's annual contribution made by it on behalf of each eligible Participant cannot be more than the maximum amount deductible for federal income tax purposes nor more than 7% of that portion of a Participant's annual salary which exceeds $15,000. The Firm's contribution further is limited by formulas which take account of (1) the Participant's contributions and forfeitures and (2) the Participant's anticipated annual benefits under the Firm's defined benefit plan and under its defined contribution plan (i.e., this Plan). The Firm may determine in any year to contribute a lesser amount than that determined by these formulas or to make no contributions. A Participant is not required to contribute to the Plan, but is permitted to make voluntary contributions which may not exceed the greater of (1) 10% of his aggregate earnings in that year of (2) 10% of those earnings plus 10% of those for every other year in which he is a Participant less any amount previously contributed by him to the Plan.

Applicant states that the Firm is designated as the Administrator of the Plan. The Firm's Management Committee must appoint an Administrative Committee for the Plan and one or more Trustees for the Plan and can appoint one or more Investment Managers. The Admininstrative Committee has been appointed and three Trustees, all partners in the Firm, have been appointed; as yet, no Investment Manager has been designated. Applicant states that at the request of a Participant other than a partner, the Trustees may purchase a life insurance policy on his behalf in an amount defined by the Plan. The Trustees shall own such policies, except that the right to name and change a beneficiary shall be exercised by the Trustee in accordance with the written direction of the Participant. At his own expense, such a Participant may direct the Trustee to purchase any supplemental insurance benefits which may be available.

Contributions not invested in insurance policies are retained in the Trust Fund, which the Trustees are authorized to manage, invest and reinvest in such manner as they determine, within their discretion, is in the best interests of the Fund and the Participants, except to the extent such authority is delegated to an Investment Manager and except to the extent the Administrative Committee directs that the Trust Fund be used to make limited loans to Participants or to pay the expenses of administering the Fund. Except as it regards the life insurance option, a Participant has no right to direct the manner in which any portion of that Fund is invested or administered.

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises extensive administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners and employees without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investor and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980 at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of the fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following September 29, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6238/September 3, 1980

TEMPORARY SUSPENSION OF THE REGULATION A EXEMPTION OF HASTINGS INDUSTRIES, INC.

The Securities and Exchange Commission has issued an order temporarily suspending the Regulation A exemption from registration under the Securities Act of 1933 of Hastings Industries, Inc. ("Hastings").

According to the order, the Commission has reason to believe that: (a) Hastings failed to comply with the terms and conditions of Regulation A with respect to (1) the proposed underwriting activity by Brooks Hamburger Satnick, Inc., a registered broker-dealer, (2) the disclosure of Edward Vanasco ("Vanasco") as an officer of Hastings, and (3) the disclosure of Vanasco's permanent injunction from violating the federal securities laws and conviction for violating the federal securities laws; (b) the unavailability of the exemption from the registration under Regulation A due to the background of Vanasco and (c) the offering was made in violation of Section 17(a) of the Securities Act of 1933, as amended, for the reasons described above.

SECURITIES ACT OF 1933
Release No. 6239/September 4, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17120/September 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11336/September 4, 1980

TENDER OFFERS

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of a new antifraud rule establishing a "disclose or abstain from trading rule" for any person who is in possession of material information that relates to a tender offer by another person which information he knows or has reason to know is nonpublic and was acquired, directly or indirectly, from that person or the issuer of the securities subject to the tender offer. The rule also contains exceptions pertainig to multi-service financial institutions and brokerage transactions. In addition, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, the rule establishes an "anti-tipping" rule with respect to material, nonpublic information relating to a tender offer. The provision implements existing statutory requirements and will be applicable to any tender offer. This action is necessary and appropriate in the public interest and for the protection of investors because of the current abuses in tender offer practice and the detrimental effects which such trading has on shareholders and securities markets in the context of tender offers.

EFFECTIVE DATE: Thirty days after the publication of this release in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the rule contact John J. Huber or W. Scott Cooper (202-272-2589), Office of Disclosure Policy; thereafter, contact Joseph G. Connolly, Jr., (202-272-3097), Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 14e-3 under Regulation 14E[1] pursuant to Sections 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. The rule pertains to trading by persons in securities which may be the subject of a tender offer as well as tipping of material, nonpublic information relating to a contemplated tender offer. It should be noted that the rule applies only in the context of tender offers. Persons subject to the provisions of Rule 14e-3 may also be subject to other provisions of the federal securities laws. Moreover, good business judgment and industry standards may require persons subject to the provisions of Rule 14e-3, particularly broker-dealers, to perform acts and to implement policies and procedures beyond the minimum standards necessary to avoid liability under Rule 14e-3.

Rule 14e-3(a) establishes a "disclose or abstain from trading" rule under the Williams Act. A person who is in possession of material information that relates to a tender offer by another person which information he knows or has reason to know is nonpublic and which he also knows or has reason to know was acquired directly or indirectly from a person who has taken a substantial step or steps to commence or has commenced a tender offer (hereinafter also referred to as the "offering person"), the issuer whose securities are subject to the tender offer or any officer, director, partner or employee or any other person acting on behalf of the offering person or the issuer would be subject to the restrictions of the new rule. Any person subject to the rule would be prohibited from purchasing or selling or causing the purchase or sale of the securities to be sought or being sought in the tender offer unless, within a reasonable period of time prior to the purchase or sale, the information and its source are publicly disclosed.

Rule 14e-3(b) provides that certain transactions by multi-service financial institutions under certain circumstances which would otherwise be proscribed will not violate Rule 14e-3(a). This exception is available for purchases or sales by multi-service institutions where the institution can show that the individuals making the investment decision did not know the information and that the institution has established policies and procedures, reasonable under the circumstances, to ensure that individual decision maker(s) would not violate Rule 14e-3(a).

Rule 14e-3(c) provides that certain transactions which would otherwise be proscribed will not violate Rule 14e-3(a). These exceptions include: (1) the

[1]Regulation 14E [17 CFR 240.14e-1 through 17 CFR 240.14e-3] is applicable to any tender offer other than one involving exempted securities and includes provisions relating to the length of the tender offer and extensions thereof, the payment of consideration offered, and the disclosure of the subject company's position with respect to the tender offer.

execution by a broker or another agent on behalf of the offering person; and (2) sales by any person to the offering person.

Rule 14e-3(d) is designed to prevent leaks of material, nonpublic information relating to a tender offer. Rule 14e-3(d) provides that, as a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of Section 14(e), it shall be unlawful for certain specified persons to communicate such information to persons under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of Rule 14e-3. An exception to the rule provides that a communication made in good faith to certain other persons involved in the planning, financing, preparation or execution of the tender offer, to the issuer and certain affiliated persons or to any person pursuant to applicable statute will not violate Rule 14e-3(d).

Rule 14e-3(a) does not proscribe purchases or sales of securities to be sought or sought in a tender offer by the person who has taken a substantial step or steps to commence or has commenced the tender offer.[2] The offering person will be subject to liability, however, under Rule 14e-3(d) if he tips, *i.e.*, communicates material, nonpublic information relating to a tender offer to someone under circumstances in which it is reasonably foreseeable that he may violate Rule 14e-3. Persons other than the offering person will also be subject to liability for tipping under Rule 14e-3(d).

Rule 14e-3 is the result of a Commission proceeding which began in February 1979 with the publication of a proposed rule which would have proscribed any purchase of subject company securities by any person, other than a bidder, who was in possession of nonpublic information received directly or indirectly from a bidder that the bidder would make a tender offer for the subject company securities, unless prior to the purchase the person publicly announced the information received and its source (the "February proposal").[3] Based on the comments received on the February proposal, proposed Rule 14e-3 was published for comment as part of a package of tender offer proposals in November 1979 (the "November proposals").[4] Rule 14e-3, as

[2]The Commission had published for comment a proposed rule which would have prohibited the purchase of subject company securities by a bidder which had determined to make a tender offer therefor but had not yet publicly announced its intention to do so unless prior to any such purchase the bidder made a public announcement of certain information. *See* proposed Rule 14e-2(c), Release No. 34-15548 (February 5, 1979) (44 FR 9956). As noted in Release No. 34-16384 (November 29, 1979) (44 FR 70326, 70338), the Commission continues to be concerned by such purchases by bidders and is still considering the wisdom of adopting such a rule. In any event, the adoption of Rule 14e-3 should not be construed as relating in any way to the Commission's authority to regulate the conduct of a bidder under Section 10(b) or Section 14(e) of the Exchange Act or as an indication that the Commission may not act to bar such purchases in the future.

[3]Release No. 34-15548 (February 5, 1979) (44 FR 9956). As more fully discussed in Release No. 34-16385 (44 FR 70349), the Commission did not adopt proposed Rule 14e-2 due in part to the concern that the scope of proposed Rule 14e-2(a) was not sufficiently broad to reach certain aspects of the misuse of material, nonpublic information relating to a tender offer.

[4]Release No. 34-16385 (November 29, 1979) (44 FR 70349). The November proposals also included: a definition of the term "tender offer", provisions requiring equal treatment of all security holders in the context of a tender offer; a prohibition of certain purchases not made by means of a tender offer; and general and specific inquiries. While Rule 14e-3 has been adopted separately from the other November proposals, it should be particularly noted that the remaining proposals have not been withdrawn. The Commission presently anticipates that further rulemaking action will be undertaken with respect to these proposals.

adopted, is based primarily on the November proposal, the seventeen letters of comment received[5] and the Commission's experience.

This release contains a discussion of the background for Rule 14e-3 and a synopsis. While the synopsis is intended to assist in a better understanding of Rule 14e-3, attention is directed to the provisions of the rule itself for a more complete understanding.

I. *Background*

Several commentators on proposed Rule 14e-3 expressed the view that the Commission should not adopt any rule regulating trading on material, nonpublic information relating to a tender offer until after the Supreme Court had rendered its decision in *Chiarella* v. *United States*.[6] These commentators suggested that the *Chiarella* decision might either make the proposed rule superfluous or raise questions concerning the Commission's authority to adopt such a rule. The Supreme Court decided *Chiarella* on March 18, 1980. In the Commission's view, that decision has had neither of the suggested effects.

The *Chiarella* case arose from a series of securities transactions by an employee of a financial printer. On the basis of confidential information obtained in the course of his employment, Mr. Chiarella deduced the identities of various companies that were to be the subject of tender offers that had not yet been publicly announced. Without disclosing the fact of the impending tender offers, Mr. Chiarella purchased target securities and then sold them at a profit immediately after the tender offers were made public.

In the U.S. District Court for the Southern District of New York,[7] Mr. Chiarella was convicted of a criminal violation of Section 10(b) and Rule 10b-5 [17 CFR 240.10b-5]. The U.S. Court of Appeals for the Second Circuit affirmed the conviction and held that he was a "market insider" because of his regular access to market information, and, therefore, was barred from trading on the basis of material, nonpublic information obtained in that capacity.[8] The Second Circuit also found that his actions were fraudulent because he misappropriated the information used in trading.

The Supreme Court reversed the Second Circuit's decision and held "that a duty to disclose under Section 10(b) does not arise from the mere possession of nonpublic market information."[9] The Court, however, did not reach the question of whether Mr. Chiarella violated Section 10(b) and Rule 10b-5 by trading while in possession of material, nonpublic information that he had misappropriated[10] or that he had used or obtained by unlawful means.[11] The Court concluded that this basis for liability had not been properly charged to the jury.

Notwithstanding its conclusion, the Court in its opinion clearly indicated that insiders and their tippees continue to be liable under Rule 10b-5 when they trade on material, nonpublic inside

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[5]Of the 39 letters submitted in response to the Commission's request for comment on the November proposals, 17 comment letters specifically addressed proposed Rule 14e-3 and related inquiries. These 17 commentators may be categorized as follows: law firms and associations (7); securities industry (4); corporations (3); trade organizations and associations (2); and individuals (1). Copies of the 39 letters, as well as the summary of comments prepared by the Commission staff with respect to proposed Rule 14e-3, are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-812).

[6]___ U.S. ___ , 100 S. Ct. 1108 (1980). The comment period for proposed Rule 14e-3 expired on February 15, 1980, before the *Chiarella* decision was handed down.

[7]*U.S.* v. *Chiarella*, 450 F. Supp. 95 (S.D.N.Y. 1978).

[8]*Chiarella* v. *U.S.*, 588 F.2d 1358, 1365 (2d Cir. 1978).

[9]___ U.S. at ___ , 100 S. Ct. at 1118. Thus, the Court only examined whether Chiarella was under a duty to make certain disclosures prior to trading where he had remained silent. The Court's analysis in *Chiarella* does not alter existing standards of liability under Section 10(b) and Rule 10b-5 in cases where the defendant has made affirmative statements in connection with the purchase or sale of a security.

[10]*See* ___ U.S. at ___ , 100 S. Ct. at 1119 n.21.

[11]*See* ___ U.S. at ___ , 100 S. Ct. at 1120-3. (Burger, C. J., dissenting).

information.[12] The Court not only cited the Second Circuit's decision in *SEC v. Texas Gulf Sulphur Co.*[13] but also cited with approval the Commission's administrative decision in *Cady, Roberts & Co.*,[14] in which it articulated the duty of insiders to disclose material, nonpublic inside information or to abstain from trading.[15] In that proceeding, the Commission emphasized that such a duty arose both from the existence of a relationship affording access to inside information intended to be available only for a corporate purpose, and the unfairness of allowing a corporate insider to take advantage of such information by trading without disclosure.[16] In addition, the Court noted without comment that persons have been held liable who receive or learn material, nonpublic information from an insider ("tippees") and who subsequently trade without disclosing such information.[17]

The Court also affirmed its holding in *Affiliated Ute Citizens v. United States*[18] that a fiduciary may not trade with its beneficiary while in possession of material information of which the beneficiary is not aware. Thus, persons who possess such information and in whom a purchaser or seller has reasonably reposed trust and confidence with respect to securities transactions are subject to a duty to disclose that information or to abstain from trading with such purchaser or seller.[19]

As noted, the *Chiarella* Court did not resolve whether trading while in possession of material, nonpublic market information misappropriated or obtained or used by unlawful means violates Rule 10b-5. The Commission continues to believe that such conduct undermines the integrity of, and investor confidence in, the securities markets, and that persons who unlawfully obtain or misappropriate material, nonpublic information violate Rule 10b-5 when they trade on such information.[20] Moreover, the decision did not suggest any limitation on the Commission's authority under Section 14(e) to adopt a rule

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[12]The Court in *Chiarella* did not distinguish between corporate and market information where there exists a duty to disclose such information or abstain from trading. Nor does the Commission believe that any such distinction is appropriate, since both corporate and market information may be material to an investment decision. Moreover, Section 10(b) and Rule 10b-5 by their terms do not distinguish between corporate and market information.

[13]401 F.2d. 833 (2d Cir. 1968), *cert. denied*, sub nom. *Coates v. Securities and Exchange Commission*, 394 U.S. 976 (1969). *See* ___ U.S. at ___, 100 S. Ct. at 1115.

[14]40 S.E.C. 907 (1961).

[15]*See* ___ U.S. at ___, 100 S. Ct. at 1113-15.

[16]*See* 40 S.E.C. at 912 and n.15.

[17]*See* ___ U.S. at ___, 100 S. Ct. at 1115. *See, e.g., Shapiro v. Merrill Lynch, Pierce, Fenner & Smith*, 495 F.2d 228, 237-38 (2d Cir. 1974).

[18]406 U.S. 128 (1972).

[19]For example, the Investment Advisers Act of 1940 imposes, in effect, a fiduciary obligation on an investment adviser to its client. *See* §§205 & 206 [15 U.S.C. 80b-5 & 80b-6]. Under traditional principles of agency law, a broker owes a fiduciary duty to its customer which is defined by the scope of the agency relationship. *See, e.g.*, N. Wolfson, R. Phillips & T. Russo, *Regulation of Brokers, Dealers and Securities Markets* para. 2.03 (1977). In addition, in appropriate circumstances, a dealer has been held to owe a fiduciary obligation to its customer. *See Charles Hughes & Co., Inc. v. Securities and Exchange Comm'n*, 139 F.2d 434 (2d Cir. 1943), *cert. denied*, 321 U.S. 786 (1944); *Arleen W. Hughes*, 27 S.E.C. 629 (1948); *Chasins v. Smith Barney & Co.*, 438 F.2d 1167 (2d Cir. 1970). *See also* Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510, 33519-33521, in which the Commission discussed the standards of conduct applicable to certain market professionals in connection with publishing Rule 19c-2 for comment.

[20]In view of the limited holding in *Chiarella*, the Commission continues to believe that such trading may violate Rule 10b-5. Accordingly, no inference should be drawn respecting the applicability of Section 10(b) and Rule 10b-5 to such trading from the adoption of Rule 14e-3 under the Exchange Act.

regulating trading while in possession of material, nonpublic information relating to a tender offer.[21]

In view of the potential harm to investors and the securities markets which results from trading on material, nonpublic information,[22] the Commission will continue diligently to discharge its enforcement responsibilities in this area with particular emphasis on corporate insiders and securities professionals involved in tender offers. The Commission and the self-regulatory organizations will continue to monitor insider trading and to investigate allegations of unlawful trading on material, nonpublic information.

The abuses which result from trading in securities by persons in possession of material, nonpublic information are particularly troublesome in the context of tender offers. Such trading was a matter of concern to Congress when it enacted the Williams Act and is of ongoing concern to the Commission in administering the Exchange Act.[23] As more fully discussed in Release No. 34-15548 setting forth the February proposals[24] and in Release No. 34-16385 setting forth the November proposals,[25] the testimony in the Senate and House Hearings on the legislation which became the Williams Act highlighted the market disruption and abusive practices associated with leaks by a bidder relating to a tender offer.[26] During the hearings on the Williams Act amendments in 1970, the issue of trading on material, nonpublic information relating to a tender offer was brought to the attention of Congress in the discussion of the manner in which the Commission would implement its rulemaking authority under Section 14(e).[27]

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[21]___ U.S. at ___, 100 S. Ct. at 1117-18.

[22]*See* discussion at notes 29-32, *infra*.

[23]The Commission has instituted numerous civil injunctive actions alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by persons trading in subject company securities while in possession of material, nonpublic information prior to the public announcement of a tender offer. *See, e.g., S.E.C.* v. *Hall*, No. 80-0504, filed Feb. 22, 1980 (D.D.C.), Lit. Rel. No. 9013 (special counsel to issuers making tender offers for their own stock purchased stock before the tender offers were announced); *S.E.C.* v. *Lopata*, No. 80-0274, filed Jan. 29, 1980 (D.D.C.), Lit. Rel. No. 8985 (chairman of the board of directors of subject company tipped brother who purchased subject company stock before the tender offer was announced); *S.E.C.* v. *Fike*, No. 79 Civ. 4434, filed Aug. 23, 1979 (S.D.N.Y.), Lit. Rel. No. 8851 (secretary for director of subject company purchased subject company stock before the tender offer was announced); *S.E.C.* v. *Wright*, No. 79-1981 filed July 30, 1979 (D.D.C.), Lit. Rel. No. 8829 (director of subject company purchased subject company stock before an announcement that management supported tender offer by third party was made); *S.E.C.* v. *Hechler*, No. 79-1729, filed July 5, 1979 (D.D.C.), Lit. Rel. No. 8811 (consultant to bidder and his brother-in-law purchased subject company securities before the tender offers were announced); *S.E.C.* v. *Lockwood*, No. 79 Civ. 0245, filed Jan. 16, 1979 (S.D.N.Y.), Lit. Rel. No. 8646 (vice president of bidder purchased subject company stock before the tender offer was announced); *S.E.C.* v. *Stone*, No. 78 Civ. 4259, filed Sept. 11, 1978 (S.D.N.Y.), Lit. Rel. No. 8527 (employee of bidder who was inadvertent tippee—"eavesdropper"—purchased subject company stock before the tender offer was announced).

[24]44 FR 9956, 9976-9979.

[25]44 FR 70349, 70352-70355.

[26]*See, e.g.*, Hearing on S.510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. 69 *passim* (1967).

[27]During his testimony at the Senate hearings, then Chairman Budge was asked by Senator Williams to give the committee some examples of fraudulent, deceptive or manipulative practices used in tender offers which would be prevented by the rulemaking authority to be granted to the Commission under the proposed amendment to Section 14(e) of the Exchange Act. Hearings on S.3431 and S.336 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 91st Cong., 2d Sess. 11 (1970). In response to this specific request, a memorandum from the Commission's Division of Corporation Finance was submitted for the record. Among the "problem areas" enumerated by this memorandum which the staff proposed to deal with by rulemaking authority under Section 14(e), as amended, was the situation in which

In 1971, the Commission indicated in its Institutional Investor Study Report that it would consider the possibility of developing appropriate rules to deal with the misuse by institutional investors in the market of undisclosed information concerning corporate takeovers.[28]

The Commission has previously expressed and continues to have serious concerns about trading by persons in possession of material, nonpublic information relating to a tender offer.[29] This practice results in unfair disparities in market information and market disruption.[30] Security holders who purchase from or sell to such persons are effectively denied the benefits of disclosure and the substantive protections of the Williams Act. If furnished with the information, these security holders would be able to make an informed investment decision, which could involve deferring the purchase or sale of the securities until the material information had been disseminated or until the tender offer had been commenced or terminated. Moreover, the Williams Act was designed to avert a "stampede effect" in the context of tender offers[31] and the trading on material, nonpublic information and the dissemination of leaks and rumors in connection with such trading tends to promote this detrimental effect.

In view of the continued trading and potential for trading by persons while in possession of material, nonpublic information relating to tender offers and the detrimental impact which such trading has on tender offer practice, shareholder protection and the securities markets, the Commission has determined that Rule 14e-3 is necessary and appropriate in the public interest and for the protection of investors.[32] As adopted, Rule 14e-3 pertains to both the person who receives the information, the tippee, and the person who transmits the information, the tipper.

II. *Synopsis of Rule*

A. *Rule 14e-3(a)*

Like the November proposal, Rule 14e-3(a) imposes a duty of disclosure under Section 14(e) on any person who trades in securities which will be sought or are being sought in a tender offer while that person is in possession of material information which he knows or has reason to know is nonpublic and has been acquired directly or indirectly from the offering person, from the issuer or from an officer, director, partner or employee or any other person acting on behalf of the offering person or the issuer. Since no duty to disclose would arise if a person subject to the rule does not purchase or sell or cause the purchase or sale of such securities while in possession of such information, the rule establishes a specific duty to "disclose or abstain from trading" under Section 14(e). The "disclose or abstain from trading" framework of Rule 14e-3(a) is similar to the approach taken in *Texas Gulf* and *Cady, Roberts* which the *Chiarella* Court cited with approval. In the Commission's view this framework is the least restrictive method of regulating this abusive practice.

In order to avoid the prohibition on trading, there must be public disclosure within a reasonable time prior to any such purchase or sale. This public disclosure may be made by the person who has acquired information subject to the prohibition or by another person. As with the earlier proposals, the Commission does not believe that electing to make the public disclosure required by Rule 14e-3(a) prior to trading would be a defense for a breach of duty owed by such person under a contractual or

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Footnote 27 Continued

[t]he person who has become aware that a tender offer is to be made, or has reason to believe that such bid will made, may fail to disclose material facts with respect thereto to persons who sell him securities for which the tender bid is to be made.

Id. at 12.

[28]Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. XXXIII (Comm. Print 1971).

[29]Release Nos. 34-15548 and 34-16385.

[30]Such purchases may result in rapid and unexplained price and volume movements in the subject company's and the bidder's securities.

[31]*Rondeau* v. *Mosinee Paper Co.*, 422 U.S. 49, 58 n.8 (1975).

[32]In addition, the Commission will continue to consider additional regulatory initiatives in the area of trading on material, nonpublic information.

fiduciary relationship with the offering person or the issuer. When such contractual or fiduciary relationships exist, abstention from trading may be the only alternative available to persons in possession of material, nonpublic information which will be both lawful and not in breach of the relationships.

1. *Operation of Rule 14e-3(a)*

The "disclose or abstain from trading" duty of Rule 14e-3(a) will arise if the following elements are present:

(a) If any person has taken a substantial step or steps to commence[33] or has commenced a tender offer and another person[34] is in possession of material information relating to such tender offer;[35]

(b) which information the other person knows or has reason to know[36] is nonpublic;

(c) which information the other person knows or has reason to know has been acquired directly or indirectly from the offering person, from the issuer of the securities sought or to be sought in such tender offer or from an officer, director, partner or employee or any other person acting on behalf of the offering person or the issuer;[37] and

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[33]Unlike the November proposal, which was triggered by the determination by the bidder to make a tender offer, Rule 14e-3(a) is triggered by any person taking a substantial step or steps to commence a tender offer. Thus, the prohibition of Rule 14e-3(a) will apply to the period from the accomplishment by the offering person of a substantial step or steps to commence a tender offer to the termination of the tender offer. This provision addresses the commentators' concern with the difficulty of identifying when a person has actually determined to make a tender offer by replacing that standard with the one in the rule as adopted. The Commission believes that, although this standard is not totally objective, it provides a reasonable basis to identify when the prohibition of Rule 14e-3(a) would apply.

The Commission believes that a substantial step or steps to commence a tender offer include, but are not limited to, voting on a resolution by the offering person's board of directors relating to the tender offer; the formulation of a plan or proposal to make a tender offer by the offering person or the person(s) acting on behalf of the offering person; or activities which substantially facilitate the tender offer such as: arranging financing for a tender offer; preparing or directing or authorizing the preparation of tender offer materials; or authorizing negotiations, negotiating or entering into agreements with any person to act as a dealer manager, soliciting dealer, forwarding agent or depository in connection with the tender offer.

[34]This person is someone other than the offering person, or in the case of an issuer tender offer, the issuer.

[35]Like the November proposal, Rule 14e-3(a) pertains to any material, nonpublic information relating to a tender offer. Therefore, this element would include information prior to the commencement of a tender offer, such as the intention to make a tender offer, as well as such information during a tender offer such as the withdrawal of a tender offer or an increase in the consideration being offered to security holders.

[36]In light of the comments received, the "knows or has reason to believe" standard embodied in the November proposal was replaced with a "knows or has reason to know" standard. This revision should not be construed to indicate that the person who trades or causes a transaction does not necessarily have a duty of inquiry with respect to the information and its source.

[37]Unlike the November proposal which focused on information directly or indirectly received from the bidder, Rule 14e-3(a) differs in two respects. First, it provides that the other person knows or has reason to know that he has directly or indirectly acquired the information. Thus, information received as well as information obtained by conversion, misappropriation and other means is included in the term "acquired." Second, the information may be acquired from the offering person, from the subject company or from an officer, director, employee or partner or any other person acting on behalf of the offering person or the issuer. This revision responds to concerns of the commentators that the proposed Rule did not address adequately material, nonpublic information emanating from the subject company. This revision also makes clear that the response to a tender offer by the subject company, including its

(d) the other person purchases or sells or causes the purchase or sale[38] of any security to be sought or sought in such tender offer, or any other security convertible into or exchangeable for such security or any option or right to obtain or to dispose of such securities.[39]

As adopted, the information which will trigger the operation of the Rule (1) must be material, (2) must relate to a tender offer, (3) must be nonpublic and (4) must have been acquired directly or indirectly from the offering person, from the issuer or from another specified person. For the last two requisites, there is a "knows or has reason to know" standard by the person who has possession of the information. For the first two requisites, *i.e.*, materiality and relation to a tender offer, there is no "knows or has reason to know" standard.

In addition, Rule 14e-3(a) applies prior to the commencement of a tender offer as well as after an offer has commenced. Trading while in possession of material, nonpublic information prior to the commencement of a tender offer results in the same abuses and causes the same detrimental effects as trading during a tender offer. Since the scope of Section 14(e) applies to acts or practices "in connection with any tender offer," it was, in the Commission's judgment, intended that conduct prior to the date of commencement as well as during a tender offer be covered.

The operation of Rule 14e-3(a) may be illustrated by examples. It should be emphasized that these examples are not exclusive and do not constitute the only situations in which the duty under Rule 14e-3(a) would arise:[40]

(1) If an offering person tells another person that the offering person will make a tender offer which information is nonpublic, the other person has acquired material, nonpublic information directly from the offering person and has a duty under Rule 14e-3(a).

(2) If an offering person delegates the authority to determine whether such offering person should take a substantial step or steps to commence or should commence a tender offer to an officer, employee, director or partner and such person decides to implement the tender offer, such person will be deemed to have acquired information relating to the tender offer from the offering person and therefore will have a duty under Rule 14e-3(a) to disclose or abstain from trading.

(3) If the offering person sends a nonpublic letter to a subject company notifying the subject company of a proposed tender offer at a specified price and upon specified terms and the management of the subject company learns the contents of the letter, the management of the subject company has acquired material, nonpublic information directly from the offering person. An individual member of such management will violate Rule 14e-3(a) if he purchases or sells or causes the purchase or sale of the securities to be sought in the tender offer.

Footnote 37 Continued

recommendation to accept or reject the tender offer, is within the purview of Rule 14e-3(a). One result of the revision is that, in circumstances where the subject company or its insiders are the source by which the information is acquired, the duty established by Rule 14e-3(a) may overlap with a similar duty under Rule 10b-5. Thus, the subject company-s response to the tender offer would be information from the subject company and would be covered by Sections 14(e) and 10(b) and Rule 10b-5. Since the information must come directly or indirectly from the offering person, from the subject company or from an officer, director, partner or employee or any other person acting on behalf of the offering person or the issuer, Rule 14e-3(a) would not apply if the information comes from an initial source other than such persons.

[38]The meaning of the term "causes" in the context of this Rule includes a recommendation by one person to another person which results in a purchase or sale by the other person.

[39]The November proposal prohibited trading in any security or any option to purchase any security of the subject company. In response to the commentators, the types of securities subject to the trading prohibition has been narrowed. As a result, trading is proscribed only in securities whose market value has a relationship to the security sought or to be sought in the tender offer.

[40]Also, these examples do not illustrate the operation of Rule 14e-3(d). *See* discussion at 34, *infra*.

(4) If, under the facts in the preceding example, the management of the subject company also tells other persons not affiliated with management of the letter, then those other persons have acquired material, nonpublic information indirectly from the offering person and are under a duty to disclose or abstain from trading under Rule 14e-3(a).

(5) If a person receives material information from the subject company relating to its response to another person's tender offer for the subject company's securities, such person will be under a duty to disclose or abstain from trading provided that such person knows or has reason to know the information is nonpublic.

(6) If a person steals, converts or otherwise misappropriates material, nonpublic information relating to a tender offer from an offering person, such person will have acquired the information directly from the offering person and has a duty under Rule 14e-3(a).

(7) If an offering person tells another person of his intention to make a tender offer, and such other person subsequently tells a third person that a tender offer will be made and this third person knows or has reason to know that this non-public information came indirectly from the offering person, then this third person has a duty under Rule 14e-3(a).

2. *Disclosure under Rule 14e-3(a)*

A person who triggers the elements of Rule 14e-3(a) discussed above may either refrain from trading in the securities specified or comply with the disclosure requirement of Rule 14e-3(a). The disclosure requirement has two elements: (1) timing of disclosure; and (2) the information and its source. Within a reasonable time prior to such purchase or sale the person must publicly disclose, by press release or otherwise, the information received and its source. The Commission does not believe that this requirement imposes an undue burden of disclosure. Moreover, the Commission emphasizes that the disclosure must be made in a manner which will fully disseminate the information. Various methods are available. These include, but are not limited to, disclosing the information and its source to a national securities exchange on which the class of securities sought or to be sought in the tender offer is listed; to the National Association of Securities Dealers, Inc., if such security is authorized for trading in the NASDAQ interdealer quotation system; a daily newspaper with a national circulation; or a national news service.

In addition, if full and complete disclosure of the information is made by another person, then there is no requirement for duplicative disclosure by a person who would otherwise be required to disclose or abstain from trading. It should be emphasized, however, that the disclosure made by another person must occur within a reasonable time prior to any purchase or sale by the person and that the disclosure must be substantially similar in content to that disclosure which such person would have been required to make under the rule.

B. *Rule 14e-3(b)*

The abuse at which Rule 14e-3(a) is directed is the actual misuse of material, nonpublic information in connection with a sale or purchase. The Commission recognizes that the rule is capable of being applied to a person that is not a natural person even though the individuals making the investment decision on behalf of such person did not know the material, nonpublic information. This could occur, for example, where one department of a multi-service financial institution received material, nonpublic information relating to a tender offer while a separate and independent department of the same organization made the decision to purchase (or sell) securities of the subject company without any knowledge of such information. In the instance where the prohibition would be applicable to a person other than a natural person, and the individuals making the investment decision did not know the material, nonpublic information, there would be no actual misuse of the information, yet it could be said that the institution was in possession of the information and did purchase or sell in apparent violation of Rule 14e-3(a).

In recognition of this situation, the November proposal contained an exception from the prohibition on trading for a person, which is not a natural person, where the individuals making the investment decision on behalf of that person did not know and did not have access to such material, nonpublic information. The commentators supported the Commission's recognition that an exception was necessary and appropriate for such persons, typically multi-service financial institutions. Many, however, suggested certain changes in the formulation of the exception. In

response to the comments received and based on further analysis by the Commission, the exception provided in Rule 14e-3(b) has been revised.[41]

As adopted, Rule 14e-3(b) provides an exception to the prohibition of Rule 14e-3(a) where an institution or other non-natural person engaged in the securities business can show that the individual decision makers did not know the information and that the institution has implemented one or a combination of reasonable procedures to ensure that such individuals would not violate Rule 14e-3(a).

1. *Elements of the exception*

In order to qualify for the exception in Rule 14e-3(b), a person who is not a natural person must carry the burden of proof for both elements of the exception. First, under Rule 14e-3(b)(1) such person must show that the individual decision maker(s)[42] within the person did not know the information at the time the investment decision was made. Whenever the actual decision maker(s) know[43] the information, the exception is not available whether or not the second element of the exception is satisfied. Second, Rule 14e-3(b)(2) requires that the person must show that it has implemented[44] one or a combination of policies and procedures, reasonable under the circumstances to ensure that individual(s) making investment decision(s) would not violate paragraph (a). These policies and procedures may include but are not limited to (i) those which restrict any purchase, sale and causing any purchase or sale of any security and (ii) those which prevent the individual decision maker(s) from knowing such information.

The neutral approach adopted in Rule 14e-3(b)(2) is intended to provide flexibility to each institution to

[41]Rule 14e-3(b) differs from proposed Rule 14e-3(b) in two respects. First, the proposed rule required the institution to prove that the individual making the investment decision did not know and did not have access to the material, nonpublic information. The separate requirement of proving lack of access was criticized by the commentators, based on the belief that it would be difficult, especially in smaller institutions, to prove that the investment decision maker did not have access to the information and because evidence concerning a lack of access really bears on the question of whether the investment decision maker had actual knowledge. As adopted, Rule 14e-3(b) requires the institution to show that it has implemented reasonable policies and procedures to ensure that individual decision maker(s) would not violate paragraph (a). Second, proposed Rule 14e-3(b) provided that the existence of policies and procedures designed to prevent the misuse of the material, nonpublic information may, depending upon the facts and circumstances, be taken into account in determining whether the individuals had access. Rule 14e-3(b) provides that Rule 14e-3(a) will not apply if the institution can show that the individual decision maker(s) did not know the information and that the institution had implemented reasonable policies and procedures so that investment decision maker(s) would not violate paragraph (a). This revision addresses the concerns of the commentators that the proposed rule did not indicate whether the existence of policies and procedures would provide a defense to liability under rule 14e-3(a).

[42]One of the commentators expressed concern over a possible expansive interpretation of the phrase "individual(s) making the investment decision." Only the individual(s) actually involved in the investment decision are covered by the phrase and it does not include individual(s) that have a purely supervisory authority with respect to investment decisions. Thus, an insurance company's Finance Committee which may be charged with ultimate responsibility for supervising investment decisions by that institution but which does not make the actual investment decision would not be considered "individual(s) making the investment decision" under Rule 14e-3(b)(1).

[43]A person attempting to establish the non-availability of the exception may be able after the institution has met the initial burden to show circumstances under which it would not be reasonable to assume that the individual decision maker(s) did not know the information. This evidence may also bear on the effectiveness of the policies and procedures in the second element.

[44]As used in Rule 14e-3(b)(2), the term "implemented" includes the establishment and effective maintenance of the reasonable procedures.

tailor its policies and procedures to fit its own situation. The policies and procedures which are implemented to satisfy the exception must be reasonable under the facts and circumstances of the person and that person's type of business. Policies and procedures which may be reasonable for one institution may not be reasonable for another institution, even in the same industry. Moreover, the phrase "reasonable under the circumstances" relates to the timing of the policies and procedures—at which point in time they are implemented with respect to material, nonpublic information—as well as to their substance.

Rule 14e-3(b)(2)(i) and (ii) specify certain types of policies and procedures, which are not exclusive. The first type of policies and procedures is the restricted list procedure and the second type refers to policies and procedures that some institutions employ when they receive material, nonpublic information, such as "watch lists." The "reasonable under the circumstances" standard may require one or a combination of these policies and procedures to ensure that actual investment decision maker(s) do not violate paragraph (a).

As adopted, the availability of the exception does not depend on the type of multi-service financial institution involved, the departments within the multi-service financial institutions involved or the activities performed by such multi-service financial institutions. This position is consistent with the views of the majority of the commentators who addressed the issue of whether distinctions should be made for different institutions. However, the Commission believes that the type of institution or the particular department within an institution involved and the activities that are engaged in are factors which should be assessed when determining what constitutes reasonable policies and procedures within the circumstances of a particular institution.

2. *Present practices*

The Commission understands that policies and procedures to prevent the use of material, nonpublic information relating to a tender offer as well as other types of information are widely used by multi-service financial institutions. These present practices include the use of so-called "Chinese Walls" which are used to isolate the nonpublic flow of information from one department to the rest of the institution. Depending on the circumstances, it may be appropriate to advise customers of its use of the Chinese Wall, because the institution would not be using all information that it had received to the benefit of a particular customer. There is also a danger that the Chinese Wall may not be fully effective in all instances and that information may pass through the wall. In that regard, other informal procedures are often used in conjunction with and to supplement the Chinese Wall at times when the institution has material, nonpublic information but before the information is appropriate for public release or to cause placement of the security on a strict list. This "watch list" procedure enables the institution to monitor trading activity to determine whether any leaks in the Chinese Wall have occurred.

Another type of procedure is the restricted list whereby an institution will prohibit recommendations relating to, solicitations of orders to purchase or sell, execution of unsolicited orders to purchase or sell a particular security or any combination of these prohibitions. Most firms are reluctant to place a security on a restricted list until the information is significant and ready to be publicly announced.[45] This reluctance is based upon the perception that a restricted list often operates as a "tip-sheet" for the investment community—immediately signaling that the institution is in possession of material, nonpublic information about the issuer of the stock placed on restriction.

Depending upon the nature of the activities of a particular institution, it may use a Chinese Wall or a restricted list or a combination of these and other procedures. The specific policies and procedures selected by an institution will be those which will be most effective in preventing the misuse of material, nonpublic information.

The Commission expects that present practices would continue in light of Rule 14e-3(b) and may, in certain instances, be strengthened to ensure the availability of this exception to liability. The Commission will carefully monitor and review the impact that Rule 14e-3(b) has on the present

[45]The Commission notes that that information may be material for purposes of Rule 14e-3(a) well in advance of time the security is placed on the restricted list.

practices.[46] In addition, the Commission believes that Rule 14e-3(b) will not unduly burden the operations of multi-service financial institutions and that the provision is consistent with those of other federal agencies.[47]

In addition to these practices, these institutions in the exercise of sound business judgment and in light of attendant legal responsibilities have instituted policies and procedures which may exceed those required by Rule 14e-3(b). The business judgment aspect involves the perception of the customers of that institution concerning the conduct and practices of the institution. To maintain a high level of customer confidence in the integrity of the institution and the industry in general, the institution may be compelled to institute policies or procedures in addition to those required by Rule 14e-3(b). The Commission anticipates that the adoption of Rule 14e-3(b) will not affect these business judgment decisions.

C. *Rule 14e-3(c)*

Rule 14e-3(c) sets forth two exceptions in addition to that provided by Rule 14e-3(b). The exceptions pertain to purchases of the securities sought or to be sought in the tender offer by brokers or other agents on behalf of an offering person; and to sales of such securities by any person to an offering person.

It should be noted that the scope of the exceptions from liability provided by this paragraph is limited. Rule 14e-3(c) provides an exception for only those persons named in Rule 14e-3(c) and an exception from liability for violations of only Rule 14e-3(a). Rule 14e-3(c) does not have any effect on the duties imposed on an offering person under other provisions of the federal securities laws such as Rule 10b-13 [17 CFR 240.10b-13]. Rule 10b-13 prohibits an offering person from directly or indirectly purchasing or arranging to purchase certain securities otherwise than pursuant to a tender offer from the time the tender offer is publicly announced or otherwise made known by the offering person until the expiration of the offer. Therefore, if Rule 10b-13 is applicable, the offering person would be unable to purchase the securities notwithstanding that Rules 14e-3(c)(1) or 14e-3(c)(2) will render the provisions of Rule 14e-3(a) inapplicable. In such instances, the transaction would not occur because the offering person would be unable to purchase or arrange for the purchase of the securities.

Rule 14e-3(c)(1) provides that the purchase or purchases of any security described in Rule 14e-3(a) by a broker or by another agent on behalf of an offering person are not violations of Rule 14e-3(a). This exception addresses the concern by some commentators that a broker or other agent making purchases on behalf of an offering person would violate the proposed rule if the offering person disclosed material, nonpublic information to such broker or agent. As adopted, Rule 14e-3(a) applies to

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[46]One such practice that the Commission expects to continue is the practice that a broker dealer does not trade for its own account, such as arbitrage and other proprietary activities, when the broker dealer possesses material, nonpublic information relating to a tender offer. In the Commission's view, the burden of proof with respect to knowledge and the effectiveness of the policies and procedures would be more difficult to sustain if the purchases at issue involve such activities.

[47]By not designating the specific policies and procedures that should be adopted to ensure that the individual decision maker(s) would not violate Rule 14e-3(a), the Commission's approach is consistent with that of the Federal Reserve Board ("Fed") and the Comptroller of the Currency ("Comptroller"). In a policy statement concerning the use of inside information, the Fed stated its judgment that the use of material inside information by any state member bank in connection with any decisioin or recommendation to purchase or sell securities constitutes an unsafe and unsound banking practice. Those banks which exercise investment discretion for the account of others were then notified to adopt written policies and procedures suitable to its particular circumstances to ensure that such information is not misused [43 FR 12755]. The Comptroller has adopted regulations to require every national bank exercising fiduciary powers to adopt written policies and procedures to ensure that national bank trust departments shall not use material, inside information in connection with any decision or recommendation to purchase or sell any security (12 CFR 9.7(d)). In adopting these requirements, the Comptroller rejected the idea of setting forth the key aspects of these policies and procedures in favor of a flexible approach, whereby each bank would be able to choose those policies and procedures which best suit it [43 FR 6759].

any person and since the broker or the offering person's agent is a person within the meaning of paragraph (a), the exception is necessary for the offering person to consummate lawful purchases if the broker or agent acquires material, nonpublic information from the offering person. As noted earlier, this exception does not provide any relief for the offering person from other provisions of the federal securities laws.

Rule 14e-3(c)(2) provides that a sale or sales by any person of any security described in paragraph (a) to the offering person are not in violation of Rule 14e-3(a). This exception permits a person who has received material, nonpublic information from a particular offering person relating to a tender offer to sell securities to that offering person prior to the date of commencement of the tender offer as well as to tender securities to that offering person pursuant to the tender offer and to have those securities accepted for payment by the offering person pursuant to the tender offer. Since the potential for misuse of the information is negligible in these instances, liability is not imposed on the seller in this type of transaction.

The exception in Rule 14e-3(c)(2) is designed to permit the following transactions without a violation of Rule 14e-3(a). In the situation where the offering person acquires the securities of an insider prior to the commencement of a tender offer and the insider is informed of the offering person's nonpublic intention to make a tender offer, then paragraph (a) would prohibit the sale to the offering person by the insider without disclosure. However, the exception in Rule 14e-3(c)(2) would permit the sale by the insider to the offering person. This exception would also permit any person to tender securities to the offering person in the tender offer, where such person knows material, nonpublic information relating to the tender offer, such as an increase in consideration or an extension of the tender offer, without complying with the disclosure requirements of paragraph (a).

D. *Rule 14e-3(d)*

As discussed earlier, trading on the basis of material, nonpublic information leaked to the market creates disparities in market information and market disruption. This undermines the purposes of the Williams Act since security holders who sell to persons with such material, nonpublic information are effectively denied the benefits of disclosure and the substantive protections provided by the Williams Act.

To address this problem the Commission published for comment proposed Rule 14e-3(c) as part of the November proposals. This proposal focused on the bidder's role in preventing these practices and fostering the achievement of the purposes of the Williams Act. Under proposed Rule 14e-3(c), a person who had determined to make or was making a tender offer or any person acting on behalf of such person would be prohibited from communicating material, nonpublic information relating to such tender offer to any other person if such person knew or had reason to know that the other person was likely to violate proposed Rule 14e-3(a) by purchasing or selling securities of the subject company. An exception was provided from proposed Rule 14e-3(c) for the communication of material, nonpublic information relating to a tender offer by the person who had determined to make or is making the tender offer to its officers, directors, employees or partners as well as persons included in the planning, financing, preparation or execution of the tender offer in order to implement the tender offer, unless the person who had determined to make or is making the tender offer had evidence that such persons are likely to violate proposed Rule 14e-3(a).

Rule 14e-3(d) is the rule designed to prevent the selective communication of material, nonpublic information relating to a tender offer as contemplated by the November proposals but contains a number of revisions to the proposal. Rule 14e-3(d) is adopted as a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices under Section 14(e) in the area of trading on material, nonpublic information relating to a tender offer. Rule 14e-3(d) provides that it shall be unlawful for certain specified persons to communicate material, nonpublic information relating to a tender offer under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of Rule 14e-3(a) or Rule 14e-3(d) except that the prohibition shall not apply to a communication made in good faith to certain specified persons: those involved in the planning, financing, preparation or execution of the tender offer; the issuer and certain persons involved in the planning, financing, preparation or execution of the issuer's activities with respect to such tender offer; and any person pursuant to a requirement of any

statute or rule or regulation promulgated thereunder.

1. *Operation of Rule 14e-3(d)(1)*

Rule 14e-3(d)(1) proscribes the selective communication of certain information by persons described in Rule 14e-3(d)(2). The proscription consists of two elements. First, such person must possess material, nonpublic information relating to a tender offer. Such person may create the information, e.g., the offering person or the subject company, or he may have acquired the information from the offering person or the subject company or from a person who is in a chain from the offering person or the subject company. Second, such person tips the information to another. The tipping occurs where it is reasonably foreseeable that the communication is likely to result in a violation of Rule 14e-3. The standard of reasonably foreseeable is premised on what a reasonable man would view as reasonably foreseeable. This formulation is reasonably related to the objective of preventing trading on the basis of material, nonpublic information because it operates to prohibit leaks which are the source of this information.

The rule is not intended to have an impact on casual and innocently motivated social discourse. The rule applies where the circumstances such as the identity, position, reputation or prior actions of the participants—or other relevant factors—make it reasonably foreseeable that a violation of Rule 14e-3 is likely to occur. Even beyond the reach of the rule, because of the disruptive effect of leaks of material, non-public information relating to tender offers, the Commission urges that persons in possession of such information exercise all due care in communications.

2. *Persons subject to the anti-tipping rule*

Rule 14e-3(d)(2) specifies the persons subject to the proscription of Rule 14e-3(d)(1). These persons may be grouped into two categories. The first category consists of those persons who occupy a certain status such as the offering person, the subject company, or an officer, director, partner or employee or any other person acting on behalf of the offering person or the issuer. The second category consists of tippees of the persons in the status category. As a result, Rule 14e-3(d)(2) would reach intermediate level tippees, regardless of whether they trade on the basis of the information. For example, a person who receives such information from the offering person such as a broker or dealer not involved in the tender offer will violate Rule 14e-3 if he communicates such information to another person under circumstances where it is reasonably foreseeable that such other person will trade on the basis of the information or such other person will tip someone else.

3. *Exception to Rule 14e-3(d)*

In order not to hinder tender offer practice and to allow both the offering person and the subject company to conduct their affairs without exposure to an unwarranted litigation hazard, the Commission believes that it is necessary to specify an exception to Rule 14e-3(d). On the basis of the exception, Rule 14e-3(d) will not apply to communications by the persons specified in Rule 14e-3(d)(2) to the persons enumerated in Rule 14e-3(d)(1)(i) through (iii), provided that they are made in good faith. The adoption of this exception responds to the concerns of several commentators that a safe harbor be added to assure that the offering person can communicate information to persons involved in the tender offer without violating the proposed rule.

The good faith standard is the critical concept to the availability of the exception and the person claiming the availability of the exception bears the burden of proof in establishing his good faith. If the person who communicates the information knows or has reason to know that the person enumerated in Rule 14e-3(d)(1)(i) through (iii) is going to violate Rule 14e-3, then the exception is not available. The communicator would be a tipper subject to the prohibition of Rule 14e-3(d) and the person who acquires and trades will violate Rule 14e-3(a).

III. *Certain Findings*

In publishing the November proposals, the Commission specifically invited comments with respect to: (1) whether the costs imposed on bidders, subject companies and/or others by the proposals would outweigh their benefits to investors and the public interest; and (2) whether any proposed rule, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The comment letters did not provide any significant

basis for concluding that the implementation of the Commission's statutory mandate in the manner proposed would be outweighed by such possible additional costs. Accordingly, the Commission finds that the costs imposed on bidders, subject companies and others by the rule published herein are not unreasonable and are far outweighed by the benefits which will accrue to investors.

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the rule published herein will have on competition. The Commission finds that compliance with the rule will not impose any significant burden on competition. In any event, the Commission has determined that any possible competitive burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of the rule to investors.

IV. *Text of the Adopted Rule*

Accordingly, 17 CFR Part 240 is amended by adding §240.14e-3 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14e-3—Transactions in securities on the basis of material, nonpublic information in the context of tender offers.

(a) If any person has taken a substantial step or steps to commence, or has commenced, a tender offer (the "offering person"), it shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act for any other person who is in possession of material information relating to such tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from (1) the offering person, (2) the issuer of the securities sought or to be sought by such tender offer, or (3) any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, to purchase or sell or cause to be purchased or sold any of such securities or any securities convertible into or exchangeable for any such securities or any option or right to obtain or to dispose of any of the foregoing securities, unless within a reasonable time prior to any purchase or sale such information and its source are publicly disclosed by press release or otherwise.

(b) A person other than a natural person shall not violate paragraph (a) of this section if such person shows that:

(1) The individual(s) making the investment decision on behalf of such person to purchase or sell any security described in paragraph (a) or to cause any such security to be purchased or sold by or on behalf of others did not know the material, nonpublic information; and

(2) Such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person's business, to ensure that individual(s) making investment decision(s) would not violate paragraph (a), which policies and procedures may include, but are not limited to, (i) those which restrict any purchase, sale and causing any purchase and sale of any such security or (ii) those which prevent such individual(s) from knowing such information.

(c) Notwithstanding anything in paragraph (a) to the contrary, the following transactions shall not be violations of paragraph (a) of this section:

(1) Purchase(s) of any security described in paragraph (a) by a broker or by another agent on behalf of an offering person; or

(2) Sale(s) by any person of any security described in paragraph (a) to the offering person.

(d)(1) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, it shall be unlawful for any person described in paragraph (d)(2) of this section to communicate material, nonpublic information relating to a tender offer to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of this section *except* that this paragraph shall not apply to a communication made in good faith,

(i) To the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) To the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons,

involved in the planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or

(iii) To any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

(d)(2) The persons referred to in paragraph (d)(1) of this section are:

(i) The offering person or its officers, directors, partners, employees or advisors;

(ii) The issuer of the securities sought or to be sought by such tender offer or its officers, directors, partners, employees or advisors;

(iii) Anyone acting on behalf of the persons in paragraph (d)(2)(i) or the issuer or persons in paragraph (d)(2)(ii); and

(iv) Any person in possession of material information relating to a tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from any of the above.

[Sec. 14(e), sec. 3, 82 Stat. 455; sec. 5, 84 Stat. 455; sec. 13(2), sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(e) 78w(a)].

Authority

The Commission hereby adopts rule 14e-3 (§240.14e-3) as part of Regulation 14E (§§240.14e-1 through 14e-3) pursuant to Sections 14(e) and 23(a) of the Exchange Act.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17097/August 28, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-80-26)

National Securities Clearing Corporation submitted on August 13, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, amending its rules to clarify that the Corporation's facilities are available to members as a conduit for payment of the New York State Stock Transfer Tax.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 2, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-26.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17098/August 28, 1980

NOTICE OF FILING OF AMENDMENT TO PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-79-5

The National Association of Securities Dealers, Inc. ("NASD") submitted on August 21, 1980, an amendment to a proposed rule change under Rule 19b-4 to amend its rules governing member advertising and sales literature. Notice of this proposed rule change was given in Securities Exchange Act Release No. 15891 (June 1, 1979) and in the *Federal Register*, 44 FR 33206 (June 8, 1979).

This amendment was filed to revise the definition of "sales literature," to require that advertising and sales literature relating to investment companies be filed with the NASD within ten days of use, to clarify that the exemptions from the filing and spot-check requirements for members submitting advertising and sales literature to exchanges do not apply to materials relating to municipal securities, to revise the disclosure requirements for advertising and sales literature recommending specific securities, to delete from the proposal standards relating to options communications, which will be the subject of a separate proposed rule change, and to make other technical revisions to the proposed rule change.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 1, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17099/August 28, 1980

STATEMENT OF COMMISSION POLICY CONCERNING SECTION 30A OF THE SECURITIES EXCHANGE ACT OF 1934

ACTION: Issuance of a Statement of Commission Policy.

SUMMARY: On February 21, 1980, the Securities and Exchange Commission issued a release requesting public comments on the impact and operation of Section 30A of the Securities Exchange Act of 1934,[1] which prohibits corporate bribery of foreign officials and certain other persons for the purpose of obtaining, retaining or directing business to any person. However, due to the limited response to the request for comments, the Commission has determined that it cannot fairly assess the questions that were raised by the comment letters. These questions include: (a) the extent to which there may be perceived uncertainties concerning the applicability of the Act; (b) whether such perceptions may be impeding legitimate foreign trade; and (c) whether such concerns could be alleviated consistent with the purposes that the Congress sought to achieve in enacting that provision.

Although the Commission has determined that it cannot fairly assess these questions on the basis of the comments received, it makes clear its position with respect to enforcement of Section 30A. While the Commission adheres to its decision not to participate in reviewing transactions under the Foreign Corrupt Practices Act ("FCPA") Review Procedure that has been established by the

[1]Securities Exchange Act Release No. 16593 (Feb. 21, 1980); 45 FR 12574 (Feb. 26, 1980); 19 SEC Docket 691 (Mar. 4, 1980).

Department of Justice, the Commission states that, as a matter of prosecutorial discretion, it will take no enforcement action alleging violations of Section 30A with respect to a transaction in any case where an issuer has sought and obtained a letter from the Department as part of the Review Procedure, prior to May 31, 1981, which states that the Department will not take enforcement action under Section 30A with respect to the transaction.

The Department of Justice has indicated that it will evaluate the results of the FCPA Review Procedure after it has been in operation for one year. After the Commission has had an opportunity to evaluate the experience of the Justice Department in administering the FCPA Review Procedure, the Commission will revisit the policy set forth above to determine whether the Commission should continue the policy or take other steps.

FOR FURTHER INFORMATION CONTACT: Frederick B. Wade, Office of the General Counsel (202-272-2493), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Origin and Structure of Section 30A of the Securities Exchange Act

Section 30A of the Securities Exchange Act was enacted approximately two and one-half years ago as part of the Foreign Corrupt Practices Act ("FCPA").[2] It prohibits public companies from using any means or instrumentality of interstate commerce in furtherance of any offer, payment or gift of any money or other item of value to a foreign official, foreign political party or candidate for foreign political office for the "corrupt" purpose of obtaining, retaining or directing business to any person. Section 30A also proscribes the promise or authorization of such payments or gifts by public companies and prohibits any officer, director, employee, or agent of such a company, and any natural person in control of such a company, from authorizing, ordering or carrying out any act or practice constituting a violation of the foregoing prohibitions.

The Congress enacted the FCPA after extensive study of the issues surrounding illegal or improper payments emanating from American corporations in connection with their overseas business.[3] The Senate Committee in which the legislation originated described the Act as a "strong anti-bribery law" and recommended its passage because of the need "to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system."[4]

The legislative history makes clear that the FCPA was enacted because bribery of foreign officials by American companies had caused "severe adverse effects" on the conduct of the nation's foreign policy and threatened the long range interests of American companies that compete in overseas markets.[5] Other concerns included the fact that bribery is

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[2]Pub. L. 95-213, 91 Stat. 1494 (Dec. 19, 1977).

[3]*See, e.g.*, S. Rep. No. 95-114, 95th Cong., 1st Sess. (1977); H.R. Rep. No. 95-640, 95th Cong., 1st Sess. (1977); H.R. Rep. No. 95-831, 95th Cong., 1st Sess. (1977); S. Rep. No. 94-1031, 94th Cong., 2d Sess. (1976); *Hearings on Political Contributions to Foreign Governments Before the Subcommittee on Multinational Corporations of the Senate Committee on Foreign Relations*, 94th Cong., 1st Sess., Part. 12 (1975); *Hearings on the Activities of American Multinational Corporations Abroad Before the Subcommittee on International Relations*, 94th Cong., 1st Sess. (1975); *Prohibiting Bribes to Foreign Officials, Hearing Before the Committee on Banking, Housing and Urban Affairs*, U.S. Senate, 94th Cong. 2d Sess. (1976); *Foreign Payments Disclosure, Hearings Before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce*, House of Representatives, 94th Cong., 2d Sess. (1976); *Foreign Corrupt Practices and Domestic and Foreign Investment Disclosure, Hearing Before the Committee on Banking, Housing and Urban Affairs*, U.S. Senate, 95th Cong., 1st Sess. (Mar. 16, 1977); *Unlawful Corporate Payments Act of 1977, Hearings Before the Committee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce*, House of Representatives, 95th Cong., 1st Sess. (1977).

[4]S. Rep. No. 95-114, *supra* note 3, at 4. *Accord*, 13 Weekly Compilation of Presidential Documents 1909 (Dec. 21, 1977).

[5]*See* S. Rep. No. 95-114, *supra* note 3, at 4-5; H.R. Rep. No. 95-640, *supra* note 3, at 4-5.

unethical and inimical to the principles of open and fair competition.[6]

The House Report concerning the FCPA summarizes the damage to the nation's foreign policy interests as follows:

> [Revelations of corporate bribery] shook the Government of Japan to its political foundations and gave opponents of close ties between the United States and Japan an effective weapon with which to drive a wedge between the two nations. In another instance, Prince Bernhardt of the Netherlands was forced to resign from his official position***. In Italy, alleged payments***to officials of the Italian Government eroded public support for that Government and jeopardized U.S. foreign policy, not only with respect to Italy and the Mediterranean area, but with respect to the entire NATO alliance as well.[7]

The Senate Report voiced similar concerns and concluded, "The image of American democracy abroad has been tarnished."[8]

With respect to the long-range interests of American companies, the Senate Report states that "[c]orporate bribery of foreign officials***affects the very stability of overseas business," has an adverse impact on domestic competition "when domestic firms engage in such practices as a substitute for healthy competition for foreign business" and "is fundamentally destructive" of the basic tenet of our free market system that "the sale of products should take place on the basis of price, quality and service."[9] The House Report adds that the exposure of corporate bribery can damage a company's image, lead to costly lawsuits, cause the cancellation of contracts, and result in the expropriation of valuable overseas assets.[10] With respect to ethical considerations, the House Report stated:

> The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American public***. [I]t rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business.[11]

The FCPA addressed both the issue of specific questionable foreign payments and the broader problem of strengthening corporate accountability mechanisms as a means of preventing off-the-books slush funds, which had often been used to make such payments.[12] For example, the Conference Report concerning the FCPA states that the record-keeping provision is designed to assure that corporate transactions are recorded "in conformity with accepted methods of recording economic events" and that such recording "should effectively prevent off-the-books slush funds and payments of bribes."[13] The Conference Report also points out that the provision governing systems of internal accounting controls is designed "to provide reasonable assurance, among other things, that transactions are recorded as necessary to maintain accountability for assets."[14]

Accordingly, Section 102 of the FCPA enacted new Section 13(b)(2) of the Securities Exchange Act

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[6]See S. Rep. No. 95-114, *supra* note 3, at 4-5; H.R. Rep. No. 95-640, *supra* note 3, at 5.

[7]H.R. Rep. 95-640, *supra* note 3, at 5.

[8]See S. Rep. No. 95-114, *supra* note 3, at 3.

[9]*Id.* at 4.

[10]H.R. Rep. No. 95-640, *supra* note 3, at 4-5.

[11]*Id.*

[12]*See generally Report of the Securities and Exchange Commission on Questionable and Illegal Corporate Payments and Practices* (hereinafter the "Commission's Report") submitted to the Committee on Banking, Housing and Urban Affairs, United States Senate (May 12, 1976), *reprinted in* 642 CCH Fed. Sec. L. Rep., Pt. II (May 19, 1976).

[13]H.R. Rep. No. 95-831, *supra* note 3, at 10.

[14]*Id.* As the Commission's Report noted, *supra* note 12, at 23-24, one of the most troublesome and pervasive circumstances associated with the cases that had come to the Commission's attention was "the accumulation of funds outside the normal channels of financial accountability, placed at the discretion of one or a very small number of corporate executives not required to account for expenditures from the fund."

which requires issuers subject to the registration and reporting provisions of the latter Act to: (a) "make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer"[15]; and (b) "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances" that certain specified objectives are met, including the recording of transactions "as necessary***to maintain accountability for assets" and the execution of transactions "in accordance with management's general or specific authorization."[16]

In addition, the FCPA enacted direct prohibitions against the making of certain payments or gifts to officials of foreign governments and certain other persons.[17] Section 30A of the Securities Exchange Act, enacted by Section 103 of the FCPA, applied these prohibitions to any issuer which has a class of securities registered pursuant to Section 12 of the Securities Exchange Act, or is required to file reports under Section 15(d) of that Act, and to any officer, director, employee, or agent of such issuer, or any shareholder acting on behalf of such issuer. These persons are prohibited from using the mails, or any means or instrumentality of interstate commerce, corruptly, in furtherance of an offer, payment, or promise to give anything of value to any foreign official, any foreign political party or official thereof or any candidate for foreign political office, or to any other person, where the reporting company has reason to know that the payment will accrue to any foreign official, foreign political party or official thereof, or any candidate for foreign political office.[18] The statute provides that a payment or gift is made "corruptly" if it is made for the purpose of influencing any act, decision, or failure to act of a foreign official, foreign political party or official thereof, or candidate for foreign political office, or inducing such a person or party to influence any act or decision of such foreign government or instrumentality in order to assist a reporting company in obtaining, retaining, or directing business to any person.

The FCPA also amended Section 32 of the Securities Exchange Act to create specific penalties applicable to violations of this prohibition. Violations of Section 30A are punishable by a fine of up to $10,000, imprisonment for up to five years, or both, in the case of an individual, and a fine up to $1 million in the case of a corporation.[19] Amended Section 32 also provides that a fine levied upon any officer, director, stockholder, employee, or agent of an issuer shall not be paid, directly or indirectly, by such issuer.

Section 104 of the FCPA, which is not part of the federal securities laws, enacted parallel prohibitions applicable to any "domestic concern," other than an entity covered by Section 30A, or any officer, director, employee, or agent of such domestic concern, or any stockholder thereof acting on its behalf.[20] This provision contains the same prohibitions and penalties that are applicable to reporting companies and their officers, employees, and agents under the Securities Exchange Act.

Section 30A is subject to Commission civil enforcement and regulatory implementation in the same manner as are other provisions of the Securities Exchange Act. The Department of Justice is responsible, as with other sections of that Act, for any criminal prosecutions. The prohibition in Section 104 of the Foreign Corrupt Practices Act is, on the other hand, enforced exclusively by the

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[15]Section 13(b)(2)(A) of the Securities Exchange Act, 15 U.S.C. 78m(b)(2)(A).

[16]Section 13(b)(2)(B) of the Securities Exchange Act, 15 U.S.C. 78m(b)(2)(B). *See* Securities Exchange Act Release No. 16877, (June 9, 1980); 45 FR 40134 (June 13, 1980); 20 SEC Docket 310 (June 24, 1980).

[17]*See* S. Rep. No. 95-114, *supra* note 3; H.R. Rep. No. 95-640, *supra* note 3; and H.R. Rep. No. 95-640, *supra* note 3.

[18]The term "foreign official" is defined as "any officer or employee of a foreign government or any department, agency or instrumentality thereof, or any person acting in an official capacity for or on behalf of such government or department, agency or instrumentality." The term does not, however, include employees "whose duties are essentially ministerial or clerical." Section 30A(b), 15 U.S.C. 78dd-1(b).

[19]Section 32(c) of the Securities Exchange Act of 1934, 15 U.S.C. 78ff(c).

[20]15 U.S.C. 78dd-1.

Department of Justice, which may bring either civil or criminal proceedings to enforce that provision. Since the enactment of Section 30A two and one half years ago, the Commission has filed one civil injunctive action to enjoin violations of the anti-bribery prohibitions.[21] The Department has brought two civil actions[22] and one criminal[23] action alleging violations of the bribery prohibitions.[24]

II. The Commission's Request For Comments Concerning the Impact and Operation of the Bribery Prohibitions

On February 21, 1980, the Commission issued Securities Exchange Act Release No. 16593[25] requesting comments concerning the impact and operation of Section 30A of the Securities Exchange Act. Submissions were requested by the close of business on June 30, 1980.

In large measure, this request responded to published reports that "uncertainty" concerning the applicability of the bribery prohibitions was having a negative effective on the willingness or ability of public companies to engage in foreign commerce.[26] The Commission stated that it was seeking to understand and evaluate "what impact, if any, uncertainty concerning***[Section 30A] may be having on competition in foreign markets" so that it could "determine whether there are any steps which the Commission should take, consonant with the public interest and the concerns of registrants, to better administer the elements of the anti-bribery prohibition which fall within its jurisdiction." The Commission added that it was seeking "to determine whether there is substance to the concerns which have been voiced regarding the impact and construction of Section 30A" and stated that, after analyzing the comments received, "the Commission will consider whether there is further action which it should take to address these matters."

In accordance with normal procedures, Release No. 16593 was summarized in the daily SEC News Digest,[27] and published in the SEC Docket[28] and the *Federal Register*.[29] In addition, the Commission's release set forth the procedure for seeking confidential treatment of any part of a submission[30] and indicated that, because some issuers might be reluctant to identify themselves in a comment letter—even if confidential—the Commission would consider submissions made by counsel that would relate the experiences of clients without identifying the client involved.

The Commission received a total of fourteen comments in response to its request during the four-month comment period.[31] This relatively limited response appears inconsistent with published reports that there is widespread concern and uncertainty on the part of public companies and

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[21]*Securities and Exchange Commission* v. *Katy Industries*, Civil Action No. C78-3476 (N.D. Ill., filed Aug. 30, 1978).

[22]*See United States* v. *Roy J. Carver, et ano.*, Civil Action No. 79-1768 (S.D. Fla., filed April 9, 1979); *United States* v. *Finbar B. Kenny and Kenny International Corp.*, Civil Action No. 79-2038 (D. D.C., filed Aug. 2, 1979).

[23]*See United States* v. *Kenny International Corp.*, Criminal Action No. 79-00372 (D.D.C., filed Aug. 2, 1979).

[24]In addition, the Department has instituted a Foreign Corrupt Practices Act Review Procedure, which is discussed below.

[25]*See* note 1, *supra*.

[26]A number of these reports are cited in the Commission's release requesting comments.

[27]SEC News Digest (Feb. 21, 1980).

[28]See note 1, *supra*.

[29]See note 1, *supra*.

[30]In this regard, the Commission stated that those wishing to make application for confidential treatment of any part of their submission should state that fact prominently on the first page or cover sheet of their comments. *See* Section 23(a)(3) of the Securities Exchange Act of 1934, 15 U.S.C. 78w(a)(3); Rule 24b-2, 17 CFR 240.24b-2.

[31]Of these fourteen letters, one transmitted a duplicate copy of a trade association's comments and another took issue with a decision of a different independent regulatory agency, which was unrelated to Section 30A.

some individuals as to the applicability of the bribery prohibitions to particular transactions. The Commission recognizes, however, that concerns may exist with respect to the bribery prohibitions, but that affected persons may be unwilling, despite the provision made for confidential submissions, to provide the Commission with the kind of information that is needed to determine what action, if any, might be appropriate in response to those concerns.

The Commission remains sensitive to the need to consider the impact of newly enacted laws on affected persons. Even the most carefully drafted legislation may have unintended consequences or create an undue burden on such persons. However, the response to the request for comments is too sparse to permit a fair and comprehensive analysis to be made at this time with respect to the impact and operation of the bribery prohibitions contained in Section 30A. Moreover, there is presently no other body of empirical data that would support such an analysis. In addition, the available data is insufficient to support a reasoned evaluation of whether problems exist that were not contemplated at the time the FCPA was enacted, which alternatives may be appropriate for dealing with those problems, and the degree to which alternative responses may be consistent with the multiple objectives that the Congress sought to achieve by enacting the FCPA.

III. Other Government Initiatives Concerning the Bribery Prohibitions of the FCPA.

Although the Commission cannot fairly assess the issues raised by the comments, or the need for further action in response to the concerns that have been expressed, certain other initiatives are currently underway that may provide useful information and experience.

The Department of Justice established an FCPA Review Procedure on March 20, 1980, which permits companies to obtain guidance concerning the applicability of the FCPA's bribery prohibitions to particular transactions.[32] Under that procedure, companies may submit a request for review setting forth the details of a proposed transaction and request that the Department indicate whether it would take enforcement action if the transaction is carried out in the manner described. The Department has indicated that it will make every reasonable effort to respond to such requests within 30 days after receiving all of the information it considers relevant to the proposed transaction. In addition, it has stated that it will not disclose any information submitted as part of a review request which is exempt from mandatory public disclosure under the Freedom of Information Act.

Companies that receive Justice Department clearance for a proposed transaction under the FCPA Review Procedure will be assured that the Department will not take enforcement action on the basis of the transaction involved. In addition, the Department has indicated that it will issue public releases with respect to review requests that will describe the nature of reviewed transactions in general terms and set forth the Department's advice with respect to those transactions, thus making guidance available to companies and their counsel with respect to transactions that are not made the subject of a review request. As a result, the FCPA Review Procedure may serve to provide a greater measure of predictability as to how the anti-bribery provisions of the FCPA will be applied by the Department.

The Commission chose not to participate in the Justice Department's FCPA Review Procedure. In making that decision, the Commission considered the fact that determinations with respect to the applicability of Section 30A to particular fact patterns often would turn on judgments concerning motivation and intent. It concluded that many questions of this nature do not easily lend themselves to guidance on the basis of a written description of a proposed transaction and that such questions could, in the first instance, better be resolved by corporate officials and their professional advisors, who have access to all of the relevant facts bearing upon intention.

The Department of Justice has also issued a statement of its enforcement priorities with respect to the bribery prohibitions.[33] This statement identifies a number of factors that increase the likelihood of investigation or prosecution:

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[32] *See* 45 FR 20800 (Mar. 31, 1980).

[33] *See Heymann*, "The Justice Department's Proposed Program to Provide Advice to Businesses in Connection with Foreign Payments," an Address Delivered at the Pierre Hotel, New York, New York (Nov. 8, 1979).

(a) the making of prohibited payments or gifts in countries where the only other competitors are American companies;

(b) situations in which there are no American competitors, but an American company is the only company engaging in corrupt practices;

(c) the fact that a foreign nation is making an effort to eliminate corrupt practices; and

(d) the making of prohibited payments or gifts to a foreign cabinet officer or other officials of high rank.

Other circumstances identified as affecting the likelihood of prosecution are the size of the payment; the size of the transaction; the past conduct of the persons or entities involved; the passive or active involvement of senior management officials; the involvement of lower level employees where the company has failed to exercise due diligence in monitoring employee activities; and the strength of the available evidence.

In addition, the General Accounting Office ("GAO") is conducting a study of the FCPA, which is attempting to acquire empirical data concerning the impact and operation of the bribery prohibitions. The GAO study will be based on a sample of 250 companies selected from *Fortune* magazine's list of the top 1,000 companies. It will collect data through an extensive questionnaire and employ certain audit procedures to validate the responses received.

By this time next year, the initiatives of the Justice Department and the GAO, taken together with the additional experience of the Commission, the Department of Justice and the business community in implementing the bribery prohibitions of the FCPA, may provide the kind of data that will make possible a more satisfactory evaluation of the impact and operation of Section 30A. The Commission believes that that evaluation should consider whether significant uncertainties actually exist with respect to the applicability of the bribery prohibitions to particular transactions and the merits of alternative steps that might provide a greater measure of predictability as to how the law will be applied to particular transactions.

IV. *Statement of Commission Policies Concerning Section 30A*

As noted above, the Commission and the Department of Justice share responsibility for administering and enforcing the bribery prohibitions applicable to public companies, which were added as Section 30A of the Securities Exchange Act. Because the Commission is responsible for civil enforcement proceedings and the Justice Department is authorized to bring criminal enforcement actions, a number of comments suggest that the Commission's decision to decline participation in the Justice Department's FCPA Review Procedure might give rise to differing interpretations or applications of the law with respect to the same transaction or transactions, and thereby reduce the degree of assurance that issuers can obtain by making use of the review procedure. Most of these comments urge that the Commission "coordinate" its interpretation and enforcement of the statute with the Department of Justice.[34]

The Commission wishes to emphasize that, although it has declined to participate directly in the Justice Department's FCPA Review Procedure, it continues to work closely with the Justice Department in administering the bribery prohibitioins. The Commission is aware of no difference of substance between the Commission and the Department of Justice with respect to interpretation of the bribery prohibitions.

Although the Commission adheres to its original position concerning participation in the FCPA Review Procedure, the Commission recognizes that the review procedure is an experiment that may serve to provide a greater measure of predictability as to how the bribery prohibitions will be applied by the Department. The Commission also believes—particularly in view of the limited response to its request for comments concerning the impact and operation of Section 30A—that the FCPA Review Procedure may provide a needed source of reliable data concerning the impact and operation of the bribery prohibitions. As a result, the Commission continues to have a strong interest in the experience and results of the Department's FCPA Review Procedure.

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[34]In this context, one comment incorrectly asserts that "the joint administration of Section 30A * * * has resulted in uncoordinated interpretation and enforcement of the Act." In fact, however, none of the cases filed in the past three years reflect any difference in interpretation between the Commission and the Department of Justice.

The Commission is concerned, however, by the views expressed in the comment letters to the effect that its decision to decline participation in the FCPA Review Procedure will reduce the degree of assurance that issuers can obtain through the FCPA Review Procedure. In addition, it has been suggested that the possibility of Commission enforcement action, despite a favorable review letter from the Department, might deter some public companies from making use of the Department's Procedure. Such a response would diminish the possibility that the FCPA Review Procedure will provide a greater degree of predictability as to the Department's enforcement of the bribery prohibitions and also inhibit the compilation of a credible body of data that might permit a fair and comprehensive assessment to be made with respect to the impact and operation of Section 30A.

As a general rule, the Commission does not anticipate that it would commence a civil enforcement action under Section 30A with respect to a particular transaction, despite the differing considerations that may be applicable to the commencement of civil and criminal enforcement actions, if the Department of Justice has indicated that it will not take criminal action under Section 30A with respect to the transaction based upon the circumstances set forth in an FCPA review request. Nevertheless, it has reserved the right to make an independent determination as to the need for such action.

However, in the light of the comments received concerning Section 30A, the Commission believes that further clarification of its position is appropriate to assure that its decision to decline participation in the FCPA Review Procedure will not adversely affect the willingness of public companies to make use of the procedure, and thereby reduce the possibility that there will be sufficient experience with the procedure to permit a fair assessment to be made with respect to its effectiveness. Accordingly, the Commission has decided, as a matter of prosecutorial discretion, that it will not commence an enforcement action alleging violations of Section 30A in any case in which a public company seeks clearance for a proposed transaction under the FCPA Review Procedure and receives a letter from the Department of Justice, prior to May 31, 1981, stating that the Department does not intend to take enforcement action based on the facts and circumstances presented.

The Commission understands that the Department of Justice will conduct a review of the effectiveness of the procedure after it has been in operation for a period of one year. Since the review procedure was announced in the Federal Register on March 31, 1980, the Department's review should commence on or about March 31, 1981. After the Commission has had an opportunity to evaluate the experience of the Justice Department in administering the FCPA Review Procedure, the Commission will review the policy set forth above and may revisit the question of whether it should participate in the FCPA review procedure, continue the policy set forth above, or take other steps.

This policy statement eliminates the possibility that the Commission would commence an enforcement action with respect to transactions that are the subject of a favorable letter, issued prior to May 31, 1981, as part of the Department's FCPA Review Procedure. In addition, it should encourage public companies to make use of the procedure in cases where they may be uncertain as to the possible applicability of Section 30A to particular transactions and should help to assure that the FCPA Review Procedure will result in a sufficiently broad data base to make more adequate evaluations of the impact and operation of Section 30A in the future.

VI. *Conclusion*

The Commission hopes that the policies set forth above will make clear its position with respect to enforcement of Section 30A in cases where the Department of Justice has issued a letter, prior to May 31, 1981, stating that it will take no enforcement action under that provision with respect to a particular transaction. After the Commission has had an opportunity to evaluate the experience that the Department of Justice gains in administering its FCPA Review Procedure, it may revisit the question of what actions it could take to improve its administration of Section 30A in the light of that experience.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17100/August 28, 1980

REGISTRATION OF MUNICIPAL SECURITIES DEALERS

ACTION: Final amendments tc form.

SUMMARY: The Commission is amending Form MSD, the registration form used by municipal securities dealers which are banks or separately identifiable departments or divisions of banks. The amendments (1) conform a definition in Form MSD to a definition contained in a rule of the Municipal Securities Rulemaking Board, (2) allow, under certain circumstances, bank municipal securities dealers to substitute, for forms currently required to be filed with the Commission, forms containing similar information with respect to supervisory personnel currently filed with the bank regulatory agencies, and (3) make certain technical changes in Form MSD. Banks or separately identifiable departments or divisions of banks whose municipal securities dealer registration is either currently effective or pending will be required to update their registrations or applications on Form MSD if such registrations or applications do not already contain the new information required by the amendments.

EFFECTIVE DATES: With respect to registrants or applicants whose municipal securities dealer registration is either effective or pending on [30 days after the date of publication of the amendments in the *Federal Register*], the effective date of the amendments is December 28, 1980. With respect to other applicants, the effective date of the adopted amendments is [30 days from the date of publication of the amendments in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Thomas G. Lovett, Esq., Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2411.

SUPPLEMENTARY INFORMATION: On July 17, 1978, the Securities and Exchange Commission published and solicited comments concerning three proposed substantive amendments and two proposed technical amendments to Form MSD. The Commission has determined to adopt certain of the substantive amendments described below and the two technical amendments. The Commission, in a companion release, is withdrawing the proposed substantive amendment to the instruction to item 6 of Form MSD.[1]

The first proposed substantive amendment would amend Form MSD's definition of the phrase "municipal securities dealer activities" in the instructions to Form MSD to conform to the definition of that term in rule G-1(b) of the Municipal Securities Rulemaking Board (the "MSRB").[2] As originally adopted, MSRB rule G-1 included four types of activities as "municipal securities dealer activities"; this list of activities was incorporated verbatim into Form MSD. After the Commission adopted Form MSD, the MSRB amended rule G-1 to expand the list of "municipal securities dealer activities" to include (1) financial advisory and consultant services in connection with the issuance of municipal securities and (2) activities which involve communication, directly or indirectly with public investors in municipal securities. As a result, the instructions in Form MSD do not conform to the MSRB's current definition of the term "municipal securities dealer activities." The amendment would replace the current list of activities enumerated in Form MSD with language referring to the definition of the term "municipal securities dealer activities," thus conforming the two definitions eliminating the need for future amendments to the same instructions in the event additional amendments to the term, as defined in MSRB rule G-1, become effective.

The second proposed amendment would permit certain persons named in response to item 5 of Form MSD, who are required to complete a separate

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[1]The Commission published and solicited comments concerning the proposed amendments in Securities Exchange Act Release No. 14971 (July 17, 1978) (43 FR 32309 (1978)). The Commission, in this release, is adopting two of the substantive amendments and the two technical amendments. In Securities Exchange Act Release No. 17101 (August 28, 1980), the Commission is withdrawing the proposed substantive amendment to the instruction to item 6 of Form MSD. *See* discussion beginning at fn. 5, *infra*.

[2]MSRB rule G-1 defines the term "separately identifiable department or division of a bank" for purposes of Setion 3(a)(30) of the Securities Exchange Act (the "Act") [15 U.S.C. 78c(a)(30)].

Schedule A,[3] to substitute for that schedule Form MSD-4.[4] In order to satisfy the requirements in MSRB rule G-7 with respect to information concerning associated persons, the federal bank regulatory agencies have uniformly adopted Form MSD-4, which every bank municipal securities dealer is required to submit to its appropriate regulatory agency on behalf of each municipal securities principal or municipal securities representative associated with such bank dealer. Applicants would still be required, however, to complete a Schedule A for any disciplined personnel named in response to item 7 of Form MSD even if such persons have also completed a Form MSD-4, since Schedule A solicits additional disciplinary information which is not available on Form MSD-4.

The third proposed substantive amendment would amend the instruction to item 6 of Form MSD. Item 6 solicits information concerning any person who "directly or indirectly control[s] any of the applicant's municipal securities dealer activities." The current instruction can be interpreted to exclude members of the board of directors of a bank dealer and of a parent bank holding company (if any) from the category of persons considered to control directly or indirectly an applicant bank's municipal securities dealer activities. The proposed amendment to the instruction to item 6 would explicitly require a bank municipal securities dealer, whether it applies for registration as a whole or as a separately identifiable department or division, to list on Schedule B all the members of the board of directors of the applicant, or of the bank of which it is a part, and of the parent bank holding company, if any.

The first proposed technical amendment to item 1 of Form MSD would facilitate the processing of registration forms filed by applicants which intend to succeed to and continue the business of another registered municipal securities dealer by requiring that such applicants check a box on the form indicating their successor status. The second proposed technical amendment would make a minor correction to item 10(c) of Form MSD to avoid an overlap with item 12(h) of the form. Under the proposed amendment, an applicant which is a department or division of a bank, rather than a whole bank, would not be required to answer item 10(c) in addition to item 12(h), which requests identical information.

As stated above, the Commission has determined to adopt all of the proposed amendments, with the exception of the proposed amendment to the instruction to item 6.[5] The Commission believes that adoption of the proposed amendment to the instruction to item 6 is not necessary at this time in view of the public availability elsewhere of much of the information the proposed amendment is designed to elicit,[6] and the potentially duplicative

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[3]Each person directly engaged in the management, direction or supervision of any of the applicant's or registrant's municipal securities dealer activities, as enumerated in MSRB rule G-1(b), is required to be listed in response to item 5 and on Schedule A of Form MSD. Such persons include personnel responsible for the clearance and processing activities of the bank with respect to transactions in municipal securities.

[4]Form MSD-4 is an abbreviation for the form entitled "Uniform Application for a Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Dealer." The information required by Form MSD-4 is substantially identical to, or more detailed than, similar information required on Schedule A.

[5]The Commission received 14 comment letters on the proposed amendments. The commenters generally favored their adoption, with the exception of the proposed amendment to the instruction to item 6.

[6]As indicated in the responses of the staff of the Board of Governors of the Federal Reserve System (the "Federal Reserve") and the Hartford National Bank and Trust Co. ("Hartford"), a publicly-held bank holding company may be subject to Section 12(g) of the Act [15 U.S.C. 78*l*(g)], thereby requiring Form 10-K to be filed with the Commission. Form 10-K requires a listing or diagram of all subsidiaries of the registrant, and the names of all directors of the registrant. A publicly-held bank is subject to substantially similar regulations issued by the appropriate bank regulatory agencies pursuant to Section 12(i) of the Act [15 U.S.C. 78*l*(i)] and accordingly must file similar information with those agencies. In addition, certain professional publications provide listings of the members of the boards of directors of banks. Responses of the American Bankers Association (the "ABA") (Sept. 8, 1978), the Association of Bank Holding Companies (the "Association") (Sept. 15, 1978), the Dealer

paperwork burden that the requirement would impose on bank municipal securities dealers.[7] The proposed amendment, if adopted, would have required every member of the board of directors of the applicant or registrant, or of the bank of which it is a part, and of a parent bank holding company to (i) state on Schedule B his or her name, business address, and basis for control, (ii) respond to the list of questions in items 7, and (iii) update such information on a periodic basis.

Information with respect to persons associated with an applicant bank is important for the Commission to evaluate properly whether registration as a municipal securities dealer should be granted or denied in accordance with Section 15B(a)(2) of the Act [15 U.S.C. 78o-4(a)(2)]. Under that section, the Commission is directed to deny registration to an applicant if it finds that, if the applicant were already registered as a municipal securities dealer, its registration would be subject to revocation or suspension under Section 15B(c) of the Act [15 U.S.C. 78o4(c)].

Information relating to an applicant's associated persons is relevant in determining whether its registration would be subject to suspension or revocation. Section. 15B(c)(2) [15 U.S.C. 780-4(c)(2)] empowers the Commission to suspend or revoke the registration of a municipal securities dealer which has committed or omitted any act or omission enumerated in Section 15(b)(4) [15 U.S.C. 78o(b)(4)], including a violation of any provision of the Act or rules or regulations thereunder. A municipal securities dealer that permits a person subject to a disciplinary order entered pursuant to Section 15B(c) of the Act to become or remain an associated person violates Section 15B(c)(4) of the Act [15 U.S.C. 78o-4(c)(4)], if the dealer knows or should have known of the order. Thus, by violating a provision of the Act, a municipal securities dealer would be subject, if already registered, to revocation or suspension pursuant to Section 15B(c)(2). Accordingly, it is evident that, pursuant to Section 15B(a)(2) of the Act, the Commission could deny an application for registration based on the applicant's relationship with certain persons associated with it, and it is important that information concerning those persons be furnished to the Commission.

Nevertheless, since item 7 of Form MSD currently asks for information with respect to enumerated disciplinary actions taken against any person who meets the definition of the term "person associated with a municipal securities dealer,"[8] the Commission will not at this time specifically require information on Schedule B concerning every member of the board of directors. Instead, applicants and registrants will continue to be required, in response to item 6, to make individual case-by-case decisions as to whether a director is in fact a controlling person.

In the case of those directors who are not viewed by applicants as within the definition of "person associated with a municipal securities dealer" and for whom information accordingly will not be furnished, the Commission notes that the federal bank regulatory agencies, which have primary inspection and enforcement authority with respect to bank municipal securities dealers, are authorized to enforce compliance by those entities and associated persons with applicable provisions of the securities laws.[9] In exercising those responsibilities, the bank regulatory agencies can be expected to examine the control relationship of members of the board of directors of a bank, and of a parent bank holding company, with the bank or the department of the bank which engages in municipal securities

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Footnote 6 Continued

Bank Association (the "DBA") (Aug. 31, 1978), Federal Reserve (Aug. 31, 1978), Hartford (Aug. 31, 1978), the Irving Trust Co. ("Irving") (Aug. 31, 1978), the Manufacturers Hanover Trust Co. ("Manufacturers") (Aug. 31, 1978), the Pacific National Bank of Washington ("Pacific") (Aug. 24, 1978), the Public Securities Association (Aug. 31, 1978), the Seattle Trust and Savings Bank ("Seattle") (Aug. 31. 1978); Securities and Exchange Commission File No. S7-746 ("File No. S7-746").

[7]Responses of the ABA, the Association, the DBA, Federal Reserve, Hartford, Irving, Manufacturers, Pacific, the Republic National Bank of Dallas ("Republic") (Sept. 14, 1978), the Seattle; File No. S7-746.

[8]The term "person associated with a municipal securities dealer" is defined in Section 3(a)(32) of the Act [15 U.S.C. 78c(a)(32)]. The text of that section is set forth in full *infra*, at fn. 13.

[9]Section 15B(c)(5) of the Act [15 U.S.C. 78o-4(c)(5)].

dealer activities. Accordingly, the Commission believes that appropriate statutory safeguards exist to ensure that it has access to certain relevant information with respect to associated persons for whom information is not furnished on Form MSD.[10]

In withdrawing the proposed amendment to the instruction to item 6, the Commission, of course, reserves the right to reconsider the matter at a later date if information in Form MSD about all members of the boards of directors of a municipal securities dealer proves necessary to the registration process.

Discussion of certain aspects of Commission authority with respect to bank municipal securities dealers

As indicated above, the Commission in withdrawing the proposed amendment to the instruction to item 6, has considered the commenters' concerns that the information which would be elicited by the proposed amendment is already publicly available to a large degree,[11] and that the proposed amendment would impose a duplicative paperwork burden without a corresponding benefit.[12] The commenters also argued that the proposed amendment was contrary to the legislative history of Section 3(a)(32) of the Act[13] which defines the term "person associated with a municipal securities dealer,"[14] and, as a further amplification on that concern, that the proposed amendment, contrary to case law and previous Commission positions, would establish an irrebuttable presumption concerning the existence of a control relationship, in contrast to a case-by-case approach.[15] The Commission believes, however, that the commenters have misconstrued the legislative history of Section 3(a)(32) in asserting that the Commission should not require information concerning members of the board of directors of a bank unless such persons are directly involved in the management of the municipal securities department. Accordingly, it is

[10]For example, the appropriate bank regulatory agency, prior to the commencement of any proceeding against a person associated with a municipal securities dealer for a violation of applicable provisions of the securities laws, is required to notify the Commission of the identity of such person. Section 15B(c)(6)(A) of the Act [15 U.S.C. 78o-4(c)(6)(A)]. In addition, pursuant to Section 17(c) of the Act [15 U.S.C. 78q(c)] the appropriate bank agency is required to furnish the Commission, upon request, with a copy of any report of an examination of a municipal securities dealer.

[11]*See* fn. 6, *supra* for commenters.

[12]*See* fn. 7. *supra* for commenters.

[13]Section 3(a)(32) of the Act provides:

The term "person associated with a municipal securities dealer" when used with respect to a municipal securities, and any person directly or indirectly controlling such activities or controlled by directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municiapl securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

[14]Responses of the ABA, the DBA, the Federal Reserve, the MSRB (Sept. 21, 1978), the Republic; File No. S7-746.

[15]Responses of the Association, the Continental Illinois National Bank and Trust Co. ("Continental Bank") (Aug. 31, 1978), and Irving; File No. S7-746. Commenters should be aware of the distinction between actions of a director undertaken in an individual capacity and of actions undertaken as a member of a board of directors. As indicated in the text of this release *infra*, to the extent an individual director intervenes in the activities of the dealer department, the director would be a "person associated with a municipal securities dealer." In addition, however, as a group, the board of directors of a bank or of a bank holding company, except in a rare instance, at least indirectly controls the activities of the dealer department. Accordingly, the board as a whole would be "a person associated with a municipal securities dealer," as that term is defined in Section 3(a)(32) of the Act. *Cf.* rule 19g2-1 (17 CFR 240.19g2-1), adopted under Section 19(g) of the Act [15 U.S.C. 78s(g)], which establishes a rebuttable presumption that certain persons "control" a securities exchange or securities association member firm. Among the persons presumed to control are the directors of the firm.

appropriate, at this time, to interpret that section, together with the term "separately identifiable department or division" used in Section 3(a)(30) of the Act,[16] in order to clarify the Commission's views concerning certain aspects of the regulatory scheme applicable to municipal securities dealers which are banks or separately identifiable departments or divisions of banks.

Some commenters, relying on the legislative history of the Securities Acts Amendments of 1975 (the "1975 Amendments"),[17] indicated that they believed the term "person associated with a municipal securities dealer," as defined in Section 3(a)(32) of the Act, was intended to be limited to "[p]ersons involved in the management, direction or supervision of a bank's municipal securities activities."[18] Thus, absent personal intervention in the municipal securities activities of the bank's municipal securities department or division, a person would not be considered a "person associated with a municipal securities dealer,"[19] and, therefore, information concerning such person need not be supplied on Schedule B of Form MSD. The legislative history cited by the commenters, however, interprets only the specific language in Section 3(a)(32) referring to persons "directly engaged in the management, direction, supervision or performance of any of the municipal securities dealer's activities," and does not address the "directly or indirectly controlling" language which follows. The legislative history, therefore, does no more than clarify the intent behind the "directly engaged in" language of Section 3(a)(32). Accordingly, the commenters' reference to the legislative history of Section 3(a)(32) inappropriately focuses on only one aspect of that section. The Senate Report does not explain the application of the section with respect to persons "directly or indirectly controlling" a municipal securities dealer's activities, and should not be interpreted to limit the definition with respect to such controlling persons.

Furthermore, the Senate Report discussion of the activities of a bank president which would result in the president's being considered a "person associated with a municipal securities dealer" should be read in conjunction with the Commission's comment on draft Section 3(a)(32) in S.2474, the "Municipal Securities Act of 1973." In order to clarify the application of the proposed section to bank officers, the Commission suggested that the adverb "directly" be substituted for "actively" in the phrase "any person. . .engaged in" certain management-related activities of a bank municipal securities dealer.[20] That drafting suggestion, which was subsequently adopted by the Congress, indicates the section is meant to apply broadly to *all* persons responsible, no matter how infrequently, for the activities of a bank municipal securities dealer.

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[16]Section 3 (a)(30) of the Act provides, in pertinent part:

The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise. . .

[17]Pub. L. 94-29 (June 4, 1975).

[18]*Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 45 (1975). (Hereafter cited as the "Senate Report")

[19]The Senate Report on Section 3(a)(32) of the Act, *id.*, at 93, states:

[T]he term "person associated with a municipal securities dealer" . . . is intended to be applied broadly to persons assuming any significant role in a dealer's activities. That is to say, in the event a bank president personally intervened in the municipal securities activities of his bank's municipal securities department or division, he would be regarded as a "person associated with a municipal securities dealer" and would be subject to all provisions of the Act governing or affecting persons with that status.

[20]The Commission stated:

if the president of a bank is responsible for or has directed improper activities in connection with the operation of his bank's municipal securities department, he should be subject to those sanctions established for persons associated with a municipal securities dealer. Therefore, the Commission would . . . eliminate the adverb "actively" . . . and . . . single occasion, would provide an adequate basis for intervention in the activities of a bank municipal securities department by a bank officer, even on a single occasion, would provide an adequate basis for

Some commenters, in connection with a discussion of the scope of Commission regulation intended by the Congress for Bank municipal securities dealers and their associated persons, relied on the provisions in the 1975 Amendments permitting a bank to register as a separately identifiable department or division ("SIDD") as evidence of Congressional intent to allow a bank to separate completely its municipal securities dealer activities from its other activities for purposes of registration and subsequent regulation. The term "separately identifiable department or division," as noted above, is defined in MSRB rule G-1 as "that unit of the bank which conducts all of the activities of the bank relating to the conduct of business as a municipal securities dealer. . . ." This definition serves to limit the scope of MSRB and Commission regulation so that certain requirements which more appropriately apply to a department or division of a bank are not imposed upon the entire bank.[21] MSRB rule G-1 further provides:

> The fact that directors and senior officers of the bank may from time to time set broad policy guidelines affecting the bank as a whole and which are not directly related to the day-to-day conduct of the bank's municipal securities dealer activities, shall not disqualify the unit hereinbefore described as a separately identifiable department or division of the bank or require that such directors or officers be considered as part of such unit.[22]

Moreover, those directors and senior officers who merely set broad policy guidelines with respect to the activities of the municipal securities dealer department are not subject to the qualification requirements for municipal securities principals set forth in MSRB rule G-3.[23]

A bank may, therefore, register as a SIDD in order to limit the application of certain regulatory requirements to a department or division rather than the entire bank. Nevertheless, there is a distinction which should be drawn between persons who are considered a *part* of the dealer unit for purposes of MSRB rule G-1 and persons who are *associated with* that unit under Section 3(a)(32) of the Act.[24] An application for registration as a SIDD does not limit the Commission's statutory authority with respect to persons associated with the SIDD for purposes of determining whether registration should be granted or denied.

Effective Dates of Amendments to Form MSD

The amendments to Form MSD adopted in this release will require registrants, as well as applicants for registration, to make any necessary amendments to Form MSD in order to comply with the new requirements. The Commission recognizes that an appropriate period should be allowed for registrants and applicants to make such amendments. Therefore, with respect to municipal securities dealers whose registration is either effective or pending on [30 days from the date of publication of the amendments in the *Federal Register*], the effective date of the amendments to Form MSD is

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Footnote 20 Continued

deeming such an officer to be a "person associated with" that department. *Hearings on S.1933 and S.2474 before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 93rd Cong., 2nd Sess., 82 (1974).

[21]For example, MSRB rule G-8 concerning recordkeeping applies only to transactions in municipal securities effected by the dealer department, if the bank is registered in that capacity.

[22]MSRB rule G-1(c).

[23]MSRB rule G-3(a)(i) defines a municipal securities principal, in the case of a bank dealer, as "a natural person associated with such bank dealer which is directly engaged in the management, direction or supervision of one or more municipal securities dealer activities . . . ." Unless an officer or director meets this definition he is not required to satisfy the qualification requirements of rule G-3.

[24]As discussed above, the term "person associated with a municipal securities dealer" is broadly defined to include not only persons directly engaged in the municipal securities dealer activities of the dealer department or division (who would be considered a part of such department or division), but also persons who directly or indirectly control such activities. As an example, the board of directors of a bank holding company owning a subsidiary engaged in municipal securities dealer activities would, as a whole, be considered a person associated with a municipal securities dealer.

December 28, 1980. This delayed effectiveness does not extend, however, to a registrant or applicant that, because the registration or pending application becomes inaccurate for other reasons during the intervening period, is required to amend its registration statement "promptly" in accordance with Securities Exchange Act Rule 15Ba2-1(b) [17 CFR 240.15Ba2-1(b)]. With respect to new applicants, the effective date of the proposed amendment is, in accordance with 5 U.S.C. 553(d), [30 days from the date of publication of this release in the *Federal Register*].

Accordingly, Part 249 of Title 17 of the Code of Federal Regulations is amended by the Securities and Exchange Commission to revise the instructions to §249.1100, as well as two items of §249.1100, as follows:

§249.1100 Form MSD, Application for registration as a municipal securities dealer pursuant to rule 15Ba2-1 under the Securities Exchange Act of 1934 or amendment to such application.

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G. General Definitions

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d. Municipal securities dealer activities—The term "municipal securities dealer activities" has the meaning set forth in Municipal Securities Rulemaking Board rule G-1(b), which defines the term "separately identifiable department or division of a bank" for purposes of Section 3(a)(30) of the Securities Exchange Act of 1934.

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L. Instructions to Specific Items

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a. Item 1(a)—If the applicant is not registered currently with the Commission and is not succeeding to and continuing the business of another registered municipal securities dealer, the box marked "a new application" should be checked. If a registered municipal securities dealer is amending items on a currently effective Form MSD, the box marked "an amendment" should be checked. If the applicant is succeeding to and continuing the business of another registered municipal securities dealer, the box marked "a successor application" should be checked. If a bank registered as a municipal securities dealer determines it would prefer to register as a separately identifiable department or division, or the converse, it is necessary that (i) the applicant file a Form MSD, indicating in item 1 that it is a "successor application" and (ii) the currently registered entity file a Form MSDW to withdraw its registration. Pursuant to Securities Exchange Act Rule 15Ba2-4, 17 CFR 240.15Ba2-4, if a municipal securities dealer succeeds to and continues the business of another registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 75 days after such succession, provided that a Form MSD is filed by such successor within 30 days after such succession.

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c. Item 5—This item calls for information concerning persons directly engaged in the supervision of any of the applicant's municipal securities dealer activities. A separate Schedule A or Form MSD-4 must be completed for each person named in response to item 5.

* * * * *

1. (a) This Form is filed with the Securities and Exchange Commission as:

A new application
An amendment
A successor application

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10. (c) If applicant is a bank, * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17101/August 28, 1980

REGISTRATION OF MUNICIPAL SECURITIES DEALERS

ACTION: Withdrawal of proposed amendment to form.

SUMMARY: The Commission is withdrawing a proposed amendment to Form MSD, the registration form used by municipal securities dealers which are banks or separately identifiable departments or divisions of banks. The amendment would have explicitly required a bank municipal securities dealer to list on the form all members of its board of directors, and the directors of its parent bank holding company, if any.

EFFECTIVE DATE: Upon publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Thomas G. Lovett, Office of Self Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2411.

SUPPLEMENTARY INFORMATION: In a companion release[1] issued today, the Commission is adopting certain amendments to Form MSD, the form used by municipal securities dealers which are banks or separately identifiable divisions or departments of banks. As part of this action, the Commission is withdrawing a proposed amendment to the instruction to item 6 of Form MSD.

The proposed amendment would have explicitly required a bank municipal securities dealer to list on Form MSD all members of its board of directors, and the directors of its parent holding company, if any, in response to a request for disclosure of persons directly or indirectly controlling the municipal securities dealer. For the reasons stated in the companion release, the Commission is withdrawing the proposed amendment to the instruction to item 6.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]Securities Exchange Act Release No. 17100 (August 28, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17102/August 28, 1980

NOTICE OF FILING OF AMENDMENT TO PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-77-17

The National Association of Securities Dealers, Inc. (the "NASD") submitted on August 18, 1980, an amendment to its proposed rule change under Rule 19b-4 to revise Section B.3.1. of Part II of Schedule D under Article XVI of the NASD's By-Laws to provide for the inclusion of beneficial owners as well as recordholders to satisfy the 300 holder requirement for initial inclusion and continued inclusion in the NASDAQ system.[1] The amendment is intended to provide a more precise method for determining the number of persons holding the security by limiting the definition of "beneficial shareholders" to customer accounts.[2]

Publication of the submission is expected to be made in the *Federal Register* during the week of September 1, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-77-17.

Copies of the submission, all subsequent amendments, all written statements with respect to

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[1]Notice of the proposed rule change was originally given by publication of a Commission Release (Securities Exchange Act Release No. 14146, November 7, 1977) and by publication in the *Federal Register* (42 FR 59147, November 15, 1977).

[2]This amendment supercedes an earlier amendment which was filed on August 16, 1977, but was not published due to technical deficiencies. The amendment is available in the public files.

the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17103/August 28, 1980

An order has been issued at the request of the Pacific Stock Exchange, Inc. staying the delistings of GUARDIAN MORTGAGE INVESTORS (Shares of Beneficial Interest, No Par Value) and RB INDUSTRIES, INC. ($1 Par Value) until September 8, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17104/August 28, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Staley (A.E.) Manufacturing Company
Common Stock, No Par Value (File No. 7-5728)

The Commission finds that approval of the Phlx's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Philadelphia Stock Exchange in the above named security is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 53940 (August 13, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17105/August 28, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($.10 par value) of TIFFANY INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17106/August 28, 1980

In the Matter of the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-80-9)

ORDER APPROVING PROPOSED RULE CHANGE

On May 22, 1980, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which revises the standards non-NASDAQ securities must meet in order to be included in the National OTC-NASDAQ List. The rule change also adjusts the price requirements which securities must meet in order to be included in the local quotations program. In addition, the rule change revises the NASD provisions which relate to the public dissemination of quotations to the news media.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16874, June 5, 1980) and by publication in the *Federal Register* (45 FR 39606, June 11, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and in particular, the requirements of Section 15A of the Act, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17107/August 29, 1980

In the Matter of

PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INC.

(SR-CBOE-1980-6)

ORDER APPROVING PROPOSED RULE CHANGE

On April 21, 1980, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend CBOE Rules 13.1, 13.2, 13.3 and 13.4 in order to incorporate by reference the Net Capital requirements of Rule 15c3-1 (17 CFR 240.15c3-1) and the early warning provisions of Rule 17a-11 (17 CFR 240.17a-11) promulgated under the Securities Exchange Act of 1934 and the business restriction or business reduction rules of other self-regulatory organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16818,

May 20, 1980) and by publication in the *Federal Register* (45 FR 35960, May 28, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and by any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room. No public comments were received with respect to the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to National Securities Exchanges and in particular, the requirements of Section 6(b)(5) and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17108/August 29, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-33

The New York Stock Exchange, Inc. submitted, on August 25, 1980, a proposed rule change under Rule 19b-4 which would amend Article VII, Section 3 of the Exchange Constitution to provide that the Nominating Committee's report of nominees for offices and positions to be filed at the Exchange's annual election shall be given to the Secretary of the Exchange on the second Monday in March rather than the second Monday in April.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 2, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17109/August 29, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street & Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-16)

ORDER APPROVING PROPOSED RULE CHANGE

On July 1, 1980, the Philadelphia Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend Sections 1-1(b), 1-1(c), 12-1(g), 12-10, 14-19, 15-13 of its By-laws and rescind Sections 21-1 through 21-6 of its By-laws to eliminate Phlx's class of Associate Membership which is available to members of the Boston Stock Exchange. The Phlx states that the business objectives of its Associate Membership arrangement with the Boston Stock Exchange are now being achieved through the Intermarket Trading System.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission Release (Securities Exchange Act Release No. 16981, 20 SEC Docket 720 (July 29, 1980)) and by publication in the *Federal Register* (45 FR 49416 (July 24, 1980)). No comments were received with respect to the rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]The BSE also rescinded its rules regarding associate membership. *See* Securities Exchange Act Release No. 16907 (June 19, 1980), 45 FR 42909 (June 25, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17110/August 29, 1980

The Records Retention Plan filed by the NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., pursuant to Section 17(a) of the Securities Exchange Act of 1934 and Rule 19h-1 thereunder, has been declared effective by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17111/September 2, 1980

Regulation of Transfer Agents

ACTION: Interpretations of rules.

SUMMARY: The Commission has authorized the issuance of a release that sets forth in a summary manner the interpretations of its staff regarding rules that establish minimum performance standards and other requirements for all registered transfer agents. The purposes of the release are to aid interested persons in understanding how these rules have been interpreted, to resolve certain recurring issues that have arisen under these rules, and to provide uniform interpretations of these rules for the benefit of those persons subject to their requirements.

DATE: September 2, 1980.

FOR FURTHER INFORMATION CONTACT: Lisa Gessow Michelson, Branch Chief, or Thomas V. Sjoblom, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2895, or (202) 272-2910, respectively.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission, in order to facilitate the establishment of a national system for the clearance and settlement of transactions in securities under Section 17A of the Securities Exchange Act of 1934 (The "Act"), adopted Rules 17Ad-1 to 17Ad-7 (17 CFR §§240.17Ad-1 to 17Ad-7) (the "turnaround rules"), which, among other things, establish minimum performance standards and recordkeeping

requirements for all registered transfer agents.[1] Numerous oral and written requests for interpretations of the turnaround rules have been presented to the Commission's staff. To provide guidance on the subjects and problems raised by such requests and on other significant recurring issues under those rules, the Commission has authorized the issuance of this release, which sets forth the views of its Division of Market Regulation.

Although many of the issues which have arisen under the turnaround rules have previously been addressed by the staff in interpretive and no-action letters that are publicly available, the staff has further clarified, and in certain instances revised, some of the positions expressed in those letters. Attention in this regard is directed particularly to Questions (4), (8), (9), (14), (26), (34), (40), (41) and (100) herein. To the extent that views expressed in previously issued interpretive and no-action letters are not discussed in this release, those views may still be considered to represent the staff's position on the questions raised therein.

TABLE OF CONTENTS

I. Rule 17Ad-1: Definitions
- A. Item—Rule 17Ad-1(a)
- B. Outside Registrar—Rule 17Ad-1(b)
- C. Made Available—Rule 17Ad-1(c)
- D. Transfer—Rule 17Ad-1(d)
- E. Turnaround—Rule 17Ad-1(e)
- F. Receipt—Rule 17Ad-1(g)
- G. Business Day—Rule 17Ad-1(h)
- H. Routine—Rule 17Ad-1(i)
  1. Requisitioning Certificates-Rule 17Ad-1(i)(1)
  2. No Additional Documents, Explanations or Endorsements Required-Rule 17Ad-1(i)(3)
  3. No Review of Certain Supporting Documentation Required-Rule 17Ad(1) (i)(4)
  4. Transfers Not in Connection with a Reorganization, Tender Offer, Exchange, Redemption or Liquidation-Rule 17Ad-1(i)(5)
  5. Recent Registered Public Offerings Not of a Continuing Nature-Rule 17Ad-1 (i)(8)

II. Rule 17Ad-2: Turnaround, Processing and Forwarding of Items.
- A. General
- B. Turnaround Requirement for Registered Transfer Agents—Rule 17Ad-2(a)
- C. Processing Requirement for Outside Registrars—Rule 17Ad-2(b)
- D. Notice of Non-Compliance—Rule 17Ad-2(c)
- E. Turnaround and Processing of Remaining Routine and All Non-Routine Items—Rule 17Ad-2(e)
- F. Receipt of Items Off the Transfer Premises—Rule 17Ad-2(f)

III. Rule 17Ad-4: Exemptions from Certain Turnaround Rules.
- A. Exempt Transfers—Rule 17Ad-4(a)
- B. Exempt Transfer Agents—Rule 17Ad-4(b)
- C. Loss of Exempt Transfer Agent Status—Rule 17Ad-4(c)

IV. Rule 17Ad-5: Written Inquiries and Requests.
- A. General
- B. Requests Regarding Status of Items Prepared for Transfer—Rule 17Ad-5(a)
- C. Certain Broker-Dealer Requests—Rule 17Ad-5(b)
- D. Inquiries or Requests Which May Not Meet Rule 17Ad-5(a) through (d)—Rule 17Ad-5(e)

V. Rule 17Ad-6: Recordkeeping.
- A. Certain Records Required to Monitor Compliance—Rule 17Ad-6(a)
  1. Records Showing Date of Receipt and Availability of Items-Rule 17Ad-6(a)(1)
  2. Monthly Records Relating to Transfer Agent Turnaround-Rule 17Ad-6(a)(2)
  3. Records of Outside Registrar-Rule 17Ad-6(a)(3)
  4. Calculations of Performance-Rule 17Ad-6(a)(4)
  5. Written Inquiries-Rule 17Ad-6(a)(6)
  6. Records Concerning the Appointment of a Transfer Agent-Rule 17Ad-6(a)(8)
  7. Records of Restrictions on Transfer-Rule 17Ad-6(a)(9)
  8. Journals-Rule 17Ad-6(a)(10)

[1]Securities Exchange Act Release No. 13636 (June 16, 1977) (hereinafter cited as "Release No. 13636") [42 FR 32404] [Vol. 12, No. 9 SEC Docket 853 (June 28, 1977) (hereinafter cited as "SEC Docket")].

9. Special Event Documentation-Rule 17Ad-6(a)(11)

B. Records Regarding Control Logs for Each Issue—Rule 17Ad-6(b)

C. Cancelled Registered Certificates and Accompanying Documentation—Rule 17Ad-6(c)

VI. Rule 17Ad-7: Record Retention.

A. Retention Periods for Records Regarding Transfer Agent's Appointment, Stops, Journals and Control Logs—Rule 17Ad-7(c)

B. Retention Periods for Cancelled Certificates and Accompanying Documentation—Rule 17Ad-7(d)

C. Microfilming of Records—Rule 17Ad-7(f)

D. Records Maintained by a Third Party on Behalf of a Transfer Agent—Rule 17Ad-7(g)

E. Transfer Agents that Cease to Perform Transfer Agent Functions—Rule 17Ad-7(h)

I. *Rule 17Ad-1: Definitions.*[2]

A. *Item—Rule 17Ad-1(a):* The term "item" means [1] a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or [2] an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities. [3] In the case of an outside registrar, each certificate to be countersigned is an item.

(1) *Question:* Does the term "item," as the basic unit upon which performance standards and other requirements are formulated, apply only to securities registered under Section 12 of the Act?

Answer: No. Under Section 17A(c)(1) of the Act, a transfer agent must be registered with its appropriate regulatory agency if it uses the mails or any means or instrumentality of interstate commerce to perform any transfer agent function with respect to any security either registered under Section 12 of the Act,[3] or which would be required to be registered except for the exemptions provided by Sections 12(g)(2)(B) (securities issued by registered investment companies) or 12(g)(2)(G) (securities issued by certain insurance companies) of the Act ("qualifying securities"). Once a transfer agent is registered, the turnaround rules apply to all securities, for which the registered transfer agent performs transfer agent functions. Accordingly, the term "item," and the use of the word "securities" in defining an "item," refers to *all* securities for which a registered transfer agent performs transfer agent functions, whether or not all such securities are qualifying securities.

Illustration (a): Facts: A registered bank transfer agent performs transfer agent functions for the securities of an open-end, management company registered under the Investment Company Act of 1940 ("mutual fund shares") and for its own shares which are not qualifying securities. Interpretation: The certificates and instructions for transfer pertaining to the bank's own shares and the mutual fund shares are "items" for purposes of the turnaround rules. Accordingly, the turnaround rules apply to the bank's own shares even though the bank's shares are not qualifying securities. In addition, except as provided in Rule 17Ad-4(a), the turnaround rules apply to the mutual fund shares.

(2) *Question:* What are the essential elements in determining whether an "item" has been received by the transfer agent?

Answer: In addition to certificates to be countersigned by an outside registrar, Rule 17Ad-1(a) refers to two general categories of "items": certificates and instructions.

The first part of the definition of "item" refers to *certificates.* An "item' exists for purposes of the turnaround rules if the certificates are (i) of the *same issue* of securities, (ii) covered by *one ticket, or* if there is no ticket, presented by *one presentor, and* (iii) presented for *transfer,* as defined in Rule 17Ad-1(d).

The second part of the definition of "item" concerns *instructions.* An "item" exists if the instruction requests a transfer agent (i) that holds securities

[2]The captions used hereinafter are not intended and must not be construed as interpretations of the substance of each rule. The captions are used for reference only.

[3]*See generally* Sections 12(a), 12(b) and 12(g)(1) of the Act.

registered in the name of the presentor, (ii) to *transfer* (as defined in Rule 17Ad-1(d)) *or* to *make available* (as defined in Rule 17Ad-1(c)), (iii) all or a portion of the securities held in its possession or custody. For example, a shipment control list ("SCL") containing instructions from a depository to a transfer agent holding, under a transfer agent custodian or other arrangement, a balance certificate registered in the name of the depository's nominee to withdraw by transfer under the Fast Automated Securities Transfer ("FAST") program some of those securities and to make them available to the depository would constitute an "item."[4]

(3) *Question:* If a registered transfer agent is requested to replace a lost certificate, is the request an "item" presented for transfer?

Answer: No. In this instance, the transfer agent replaces a lost certificate upon receipt of an indemnity bond. No certificate has been presented for transfer, and the transfer agent is not making available any securities which are registered in the name of the presentor and are being held by the transfer agent.

(4) *Question:* When several certificates of the same issue of securities have been presented for transfer on several occasions during the same day by the same presentor, has only one item been presented for transfer?

Answer: No. Each time a single certificate is presented for transfer by one presentor, one item has been presented for transfer. Similarly, when there is no ticket, each time certificates of the same issue of securities are presented for transfer at the same time by one presentor, one item has been presented for transfer. In the latter case, certificates presented at different times must not be aggregated as one item, even though all certificates are of the same issue of securities and even though the same person was the presentor.

Illustration: Facts: At 2:00 p.m. on a business day, a messenger for a broker-dealer presents at the "window" of the transfer agent's premises two 10 share certificates of Company A's Class A common stock. At 10:30 a.m. on the next business day, the same messenger from the same broker-dealer presents at the "window" of the transfer agent's premises two more 10 share certificates of Company A's Class A common stock. Interpretation: Pursuant to Rule 17Ad-2(a), both presentments were received on the same business day. However, two items were presented for transfer because the presentments occurred at different times, even though the certificates were of the same issue of securities and even though the presentor was the same in both instances.

(5) *Question:* Is there a maximum number of certificates of the same issue of securities which may be presented for transfer at a single time and still be considered a single "item"?

Answer: No. Only one item is presented for transfer, regardless of the number of certificates, as long as all the certificates presented at the same time are (a) of the same issue of securities, and (b) covered by one ticket, or if there is no ticket, presented by one presentor.

(6) *Question:* How many certificates of the same issue of securities may be "covered by one ticket"?

Answer: If all certificates are of the same issue of securities, there is no limit to the number of certificates which may be covered by one ticket.

(7) *Question:* When the presentor includes certificates representing securities of nine different issues under one ticket, to be registered in the name of the presentor's nominee, how many items have been presented for transfer?

Answer: Nine. Since the certificates represent nine different issues, nine items have been presented for transfer.

(8) *Question:* Is each broker-originated-window-ticket contained in or attached to an SCL a separate item?

Answer: No. An SCL, not each broker-originated-window-ticket attached thereto, is a separate item.

(9) *Question:* Is the entire SCL one item or is each line on an SCL considered a separate item?

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[4]See Release No. 13636. [SEC Docket, at 855].

Answer: The entire SCL, and not each line thereon, is a single "item."[5]

(10) *Question:* When a transfer agent receives certificates covered by one instruction from one presentor to transfer the shares to a number of shareholders, resulting in the issuance of a greater number of separate certificates, how many items have been presented for transfer?

Answer: Assuming that all certificates presented for transfer are of the same issue of securities, only one item has been presented for transfer since there is only one presentor.

Illustration: Facts: A transfer agent receives five certificates from one broker under one transmittal letter requesting that the total amount of share be transferred to ten shareholders in 20 separate certificates. Interpretation: There is only one presentor. Therefore, assuming all five certificates are of the same issue of securities, only one item has been presented for transfer.

(11) *Question:* Do either of the following constitute an "item" presented for transfer:

(a) A bond called for partial reduction only?

Answer: No. If there is only a partial reduction of the bond, *i.e.*, the bond is subject to a series of partial cash redemptions and has been presented for one of them, the bond is not an "item" subject to the turnaround rules. As stated in Question (2) above, one of the elements of an "item," when a certificate is involved, is that the certificate be "presented for transfer."

"Transfer" is defined in Rule 17Ad-1(d) to include, among other things, cancellation of a certificate and issuance of a new one. However, when a bond is presented for partial redemption only, the certificate presented is not cancelled and a new certificate is not issued. Accordingly, since there is no "transfer," the certificate has not been "presented for transfer" as required by Rule 17Ad-1(a) and, therefore, is not an "item."

(b) A bond called for partial reduction and transfer?

Answer: Yes. If the bond has been presented for both partial reduction and transfer, then it is an "item."[6]

(12) *Question:* Does an issuer's instruction to effect a stock dividend payable from previously authorized but unissued shares constitute an "item"?

Answer: No. Since no certificates are presented for transfer, and since the transfer agent does not hold the securities as registered in the name of the issuer-presentor, a stock dividend issued from previously authorized but unissued shares (*i.e.*, original issue securities) is not an item.

(13) *Question:* Is an issuer's instruction to a registered transfer agent to issue shares pursuant to the company's stock purchase plan considered an "item" subject to the turnaround rules?

Answer: If the shares issued pursuant to a stock purchase plan are original issue securities, the instruction to issue certificates for those shares is not an "item," since no certificates are presented for transfer and since the instruction does not relate to securities registered in the name of the issuer-presentor and already in the transfer agent's possession.

However, if treasury shares are used, the instruction relates to securities held by the transfer agent and registered in the name of the presentor company. Accordingly, the instruction constitutes an item subject to the turnaround rules.[7]

(14) *Question:* When the transfer agent, pursuant to a transfer agent custodian or other arrangement, holds a balance certificate registered in the name of the depository's nominee, do deposits of certificates by a depository, and do fanfold instructions attached to an SCL to withdraw by transfer under the FAST program any shares and to reduce the balance certificate constitute "items"?

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[5]The entire SCL is a single item, regardless of whether some certificates or instructions pertaining to any line on an SCL may be classified as "routine," and other certificates or instructions attached to the SCL may be classified as "non-routine." *See* Question (34) and note 29 *infra.*

[6]However, because the transaction includes a partial redemption, the item is "non-routine" under Rule 17Ad-1(i)(5). *Cf.* Question (43) *infra.*

[7]When any additional instruction is necessary before transfer can be effected, the item is considered non-routine under Rule 17Ad-1(i)(3). *See* Question (38) *infra.*

Answer: Yes. Under the first part of the definition of an "item,"[8] certificates deposited by the depository constitute items. The third element—"presented for transfer"—is met because "transfer," as defined in Rule 17Ad-1(d), includes registration of the change of ownership without the physical issuance of certificates.

Under the second part of the definition of an "item,"[9] if the transfer agent receives an SCL with fanfold instructions from the depository to withdraw by transfer under the FAST program any shares and effects transfer by reducing the balance certificate and by issuing certificates, the SCL with such instructions would also constitute an "item."

B. *Outside Registrar—Rule 17Ad-1(b):* The term "outside registrar" with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(15) *Question:* Do the federal securities laws prohibit a registered transfer agent from performing the functions of both a transfer agent and a registrar?

Answer: No. The federal securities laws do not prohibit a single transfer agent from performing both functions, nor do the federal securities laws require an issuer to engage two separate entities for purposes of performing transfer agent and registrar functions.[10]

C. *Made Available—Rule 17Ad-1(c):* An item is "made available" when (1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presentor or a person designated by the presentor, or (2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or (3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

(16) *Question:* What is the meaning of "dispatched" for purposes of Rule 17Ad-1(c)?

Answer: An item is considered "dispatched" when it leaves the premises where transfer agent functions are performed *and* is sent to the receiving party or to a location from which it is picked up by the receiving party.[11]

(17) *Question:* When is an item considered "mailed" for purposes of Rule 17Ad-1(c)?

Answer: An item is considered "mailed" either when it is delivered to a location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service.[12]

(18) *Question:* When a transfer agent, after completing its performance of both the transfer and registrar functions, delivers *by noon* on the third business day a completed item in a properly addressed envelope to its on-premises mail room from which the mail is picked up daily at 5:30 p.m. by the U.S. Postal Service, is the item considered to have been made available when it reaches the mail room?

Answer: Yes. Rule 17Ad-1(c)(1) indicates that an item is "made available" when the transfer agent "mails" the item to the presentor or a person designated by the presentor. In this instance, the mail room serves as a designated drop area from which the U.S. Postal Service makes daily pickups. More importantly, since the completed item was delivered to the mail room *by noon* of the third business day as required by Rule 17Ad-2(a),[13] the item is considered to have been mailed[14] and, accordingly, "made available."

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[8]See Rule 17Ad-1(a) and Question (2) *supra*, and Release No. 13636. [SEC Docket, at 855].

[9]*Id.*

[10]This matter is largely governed by state law. In addition, the various national securities exchanges may require separate entities. See e.g., NYSE Company Manual, Section A1, Agencies, At A-5.

[11]See Release No. 13636. [SEC Docket, at 855].

[12]*Id.*

[13]The result would be different if the item is not delivered to the mail room by noon on the third business day as required by Rule 17Ad-2(a).

[14]See note 12 *supra* and Question (17).

(19) *Question:* After the transfer agent completes transfer, the items are placed into an outgoing mail basket from which they are picked up by an in-house mail carrier. The carrier then delivers the items to the transfer agent's central mail facility, located several miles away, which, in turn, delivers the items to the U.S. Postal Service. When are the items "made available"?

Answer: The transfer agent makes the items available when the central mail facility "mails the item[s] to. . . the presentor." Thus, in this instance, the items are "made available" when they are being delivered to the U.S. Postal Service.[15]

D. *Transfer—Rule 17Ad-1(d):* [There are two parts to, or methods which describe, the definition of "transfer."] The "transfer" of an item is accomplished [1] when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or [2] when, in accordance with the presentor's instructions, a transfer agent which holds securities registered in the name of the presentor [a] completes all acts necessary to issue a new certificate or certificate representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor, or [b] with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(20) *Question:* What is the status of an item rejected at the window of the transfer agent's premises?

Answer: Items presented for transfer but rejected at the window are not received for transfer and, accordingly, are not subject to the turnaround rules.[16]

(21) *Question:* How should a transfer agent treat an item which, after some internal circulation and review, is rejected as unacceptable for transfer?

Answer: The item should be considered as rejected. Since the transfer agent, pursuant to Rule 17Ad-6(a)(1), made a record showing the date the item was received from the presentor, that record should indicate that the item was subsequently rejected, so that the item does not appear as an "open" item on the transfer agent's records. In addition, if an internal control ticket was prepared prior to the time of rejection, the ticket must be traceable to any rejection notice sent to the presentor.

The item should not be considered non-routine under Rule 17Ad-1(i)(3) and should not be logged in as a non-routine item under Rule 17Ad-6(a)(2)(iv).

Finally, since these items are considered rejected, they are not included in the records required by Rule 17Ad-6(a)(2) and (a)(4) used to compute the number of items turned around pursuant to Rule 17Ad-2(a).

(22) *Question:* When a transfer agent, pursuant to a transfer agent custodian or other arrangement, holds a balance certificate representing securities registered in the name of a depository's nominee, does "transfer" occur when the transfer agent either (a) issues new certificates representing a portion of those securities and makes the certificates available to the depository, or (b) registers a change in ownership from the name of a participant in a depository to the name of the depository's nominee without a physical issuance of securities?

Answer: In either case, such transfers fall within the second method of "transfer." Thus, although a "transfer" usually will involve cancelling old certificates and issuing new certificates, no physical issuance of certificates need occur—*e.g.*, when a depository is the presentor and it requests the transfer agent, which holds a balance certificate, to complete registration of a change of ownership from the name of the depository's participant to the name of the depository's nominee.[17]

E. *Turnaround—Rule 17Ad-1(e):* The "turnaround" of an item is completed [1] when transfer is accomplished, or [2] when an outside registrar is involved, the transfer agent in accordance with the presentor's instructions completes all acts necessary to cancel the certificate or certificates pres-

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[15]*Id.* Any delay occurring before the item reaches the U.S. Postal Service must be recorded on the record maintained under Rule 17Ad-6(a)(1).

[16]See Release No. 13636. [SEC Docket, at 856].

[17]*Id.*

ented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(23) *Question:* If an outside registrar is involved, when is turnaround complete?

Answer: Turnaround is completed when the item is made available to the outside registrar after the transfer agent has cancelled the old certificate and has issued the new certificate in accordance with the presentor's instructions.

(24) *Question:* Is turnaround completed when the transfer agent makes the item available to an outside registrar, even if the outside registrar performs its function on the transfer agent's own premises?

Answer: Yes. Rule 17Ad-1(c)(2), in describing how an item is "made available" to an outside registrar, does not specify *where* the transfer agent must dispatch or mail the item. In addition, Rule 17Ad-1(b) does not specify *where* an outside registrar must perform its function. Thus, turnaround is completed when a transfer agent makes the item available to an outside registrar, regardless of whether the registrar performs its function on or off the transfer agent's premises.[18]

Illustration: Facts: A New York transfer agent has a subsidiary transfer agent operation located in Chicago, which receives the items for transfer. The cancelled certificate is forwarded to the New York transfer agent for issuance of the new certificate. A bank in New York, acting as outside registrar, daily performs its functions on the New York transfer agent's premises. Interpretation: The New York transfer agent completes "turnaround" when the new certificate is made available to the outside registrar's employees on the New York transfer agent's premises.

(25) *Question:* Is an item made available and, therefore, turnaround completed, when, after the old certificate is cancelled and the new one issued, the item is placed by noon on the third business day following its receipt in the mail room of the transfer premises for the only daily pick-up at 5:30 p.m. by the U.S. Postal Service?

Answer: Yes. Turnaround is completed either (a) when transfer is accomplished in accordance with Rule 17Ad-1(d), which requires as the last step in the transfer of the item making it available to the presentor (or a person designated by the presentor), or (b) when an outside registrar is involved, the item is made available to the outside registrar.

Under Rule 17Ad-1(c), an item is "made available" when, among other things, the transfer agent "mails" the item. The item is considered mailed when it is placed by noon of the third business day following its receipt in the mail room on the transfer premises from which it is collected by the U.S. Postal Service.[19]

F. *Receipt—Rule 17Ad-1(g):* The "receipt" of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in Section 3(a)(25) of the Act.

(26) *Question:* Are the following considered items received for transfer and, accordingly, subject to the turnaround rules:

(a) Items addressed to another transfer agent but inadvertently delivered to the subject transfer agent?

Answer: No. The transfer agent does not perform transfer agent functions for such items.

(b) Items addressed to the subject transfer agent, but for which the transfer agent does not perform transfer agent functions?

Answer: No, since the transfer agent does not perform transfer agent functions for such items.

(c) Items for which the transfer agent is the appropriate transfer agent but, because of nonpayment of fees, refuses to transfer such securities?

Answer: If these items are promptly returned to the presentor, they would not be considered received for transfer.[20]

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[18]However, the transfer agent must maintain, pursuant to Rule 17Ad-6(a)(1)(ii), records showing clearly when the item was made available to the outside registrar.

[19]See Question (17) *supra*.

[20]If the transfer agent *retains* the item, it must be considered "received" for transfer but may be classified as "non-routine." See Question (40) *infra*.

(27) *Question:* Has "receipt" occurred when the item arrives in the mail room at the transfer premises?

Answer: Yes. Since the item arrived at the premises at which the transfer agent performs transfer agent functions, receipt has occurred for purposes of the turnaround rules.[21] The fact that the item was received in the mail room instead of the actual office or department where transfer agent functions are performed is immaterial. Thus, when the mail room is located in the *same* building as, or in a building connected to, the transfer premises, receipt occurs when the item arrives at the mail room. In this connection, the transfer agent must minimize delays which are subject to its control. It will be in the transfer agent's interest, therefore, to ensure that a received item is promptly forwarded from the mail room to the transfer department.[22]

(28) *Question:* Has "receipt" occurred when items arrive at a "drop" located a significant distance from the transfer premises?

Answer: No. The items have not been received, for purposes of the turnaround rules, until they arrive at the actual premises where transfer agent functions are performed. Thus, since the items have not arrived at the actual transfer premises when they arrive at such a "drop," they are not considered as having been received under Rule 17Ad-1(g)[23] However, when items are received at a "drop," a registered transfer agent must have, pursuant to Rule 17Ad-2(f), appropriate procedures to assure, and must assure, that items are promptly forwarded to the actual transfer premises.

(29) *Question:* In those cases where the named transfer agent for an issue contracts with a service bureau,[24] which also is a registered transfer agent, to perform the transfer agent functions for the issue, including transferring the certificates and maintaining the securityholder records, does receipt of an item occur when it arrives at the premises of the named transfer agent?

Answer: No. An item is "received" when it arrives at the premises of the transfer agent that actually performs the transfer agent functions. Under the facts as presented, the named transfer agent does not perform the transfer agent functions; rather, those activities are performed at the premises of the service bureau. Accordingly, for purposes of the turnaround rules, receipt of the item occurs when it arrives at the service bureau's premises. However, pursuant to Rule 17Ad-2(f), both the service bureau and named transfer agent must have appropriate procedures to assure, and must assure, that items are promptly forwarded to the premises of the service bureau.

Illustration: Facts: Both Company A and Company B are registered with their appropriate regulatory agency as transfer agents. Company A is the named transfer agent for an issue. Company A has contracted with Company B, a service bureau, to perform on behalf of Company A the transfer agent activities for that issue. Company A does not maintain or update the securityholder records. When an item is presented for transfer to Company A, Company A promptly forwards the item to Company B. Company B date-stamps the item upon receipt, completes turnaround, and makes the item available directly to the presentor. Company B daily sends to Company A a print-out of transfers completed by Company B. Interpretation: Company A and B must have appropriate procedures to assure, and must assure, that the item is promptly forwarded to Company B's premises. Receipt occurs, for the purposes of the turnaround rules, when the item arrives at Company B's premises. In addition, Company B must maintain the appropriate records[25] and meet the required turnaround performance.

G. *Business Day—Rule 17Ad-1(h):* A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays and legal holidays or other holidays normally observed by the transfer agent.

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[21]See Release No. 13636. [SEC Docket, at 856].

[22]*Id.*

[23]*Id.*

[24]As used in this release, the terms "named transfer agent" and "appointed transfer agent" refer to the registered transfer agent engaged by the issuer to perform the transfer agent functions for an issue of securities. Except where the term "outside service bureau" is used, the term "service bureau" refers to an entity that performs the transfer agent functions for that issue for the named transfer agent and is a registered transfer agent. A service bureau arrangement is sometimes also referred to as a "private label service."

[25]See Rules 17Ad-6 and 17Ad-7.

(30) *Question:* Would any of the following circumstances give rise to a determination that a given day not be considered a "business day" for purposes of the turnaround rules:

(a) Days when, because of severe inclement weather, city government and other businesses are forced to close down, virtually all forms of transportation are not available and ordinary commerce is suspended, but a bank transfer agent nevertheless opens its transfer department with a skeleton staff only?

Answer: Yes. Such days are not considered "business days" for purposes of the turnaround rules.

(b) Days when various public transportation systems have ceased to operate because of union or other strikes?

Answer: No. In these circumstances, most businesses, including transfer agents, are still "normally open for business." Transit strikes do not terminate basic business operations, even though it may be more difficult for employees to get to work.[26]

(c) Days when businesses are requested or required to close by order of a city, municipal or state government?

Answer: Yes. Such days would not be considered business days for purposes of the turnaround rules, since most, if not all, business would not normally be open.

H. *Routine—Rule 17Ad-1(i):* [The definition of a "routine" item is stated in the negative—*i.e.*, an item received for transfer will be deemed routine unless it falls within the specified exceptions enumerated in Rule 17Ad-1(i)(1)-(8).][27]

(31) *Question:* When should a transfer agent classify an item as "routine" or "non-routine"?

Answer: The decision that an item is routine or non-routine must be made as soon as the item is reviewed upon receipt at the transfer premises. Once a transfer agent determines than an item is "routine," the item generally retains that classification throughout the completion of turnaround. Thus, an otherwise routine item does not become non-routine by virtue of internal delays in the turnaround of the item.

(32) *Question:* Once an item is determined to be "non-routine," does it remain so, even after additional documentation has been received and reviewed and the item can be transferred?

Answer: Yes. An item that is determined to be "non-routine"retains that classification until turnaround is completed.

(33) *Question:* What is the effect under the turnaround rules when an item is classified as non-routine?

Answer: Some of the turnaround rules apply only to routine items. For example, the three business day turnaround requirement in Rule 17Ad-2(a) applies only to routine items. If the item is non-routine, Rule 17Ad-2(e) requires that the item receive "diligent and continuous attention" and must be turned around "as soon as possible."

Other rules, while applying to both routine and non-routine items, distinguish between the two. For example, the recordkeeping rules in Rule 17Ad-6 contain separate requirements depending on whether the item is routine or non-routine.

Thus, every transfer agent is encouraged to examine carefully each turnaround rule.

(34) *Question:* Is an SCL which has attached thereto some certificates or instructions that might be denominated non-routine treated partially as a non-routine item?

Answer: No. An SCL is a single[28] routine item, regardless of whether some of the certificates or instruc-

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[26]A 10% margin in the turnaround and processing standards exists in Rule 17Ad-2(a) and (b). If, despite this margin, a transfer agent still fails to meet the turnaround or processing requirement, it should explain the circumstances in its notice of non-compliance filed pursuant to Rule 17Ad-2(c) or (d).

[27]The various subparagraphs of Rule 17Ad-1(i) are set forth below preceding the interpretations thereunder.

[28]See note 5 *supra* and Question (9).

tions attached thereto pertain to a line on the SCL that may be classified as non-routine.[29]

1. *Requisitioning Certificates-Rule 17Ad-1(i)(1):* An item is "routine" if it does not require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates.

(35) *Question:* May a registered transfer agent, which, under the terms of its agency, is obligated to maintain a supply of certificates for an issue of securities, treat as "non-routine" items received for transfer if the transfer agent has exhausted its supply of certificates for that issue?

Answer: No. A transfer agent, which is required to maintain under the terms of its agency a working supply of unissued ceertificates, must treat items received for transfer as "routine," even though it must requisition additional certificates from the issuer or another source before transfer may be effected. There is no exception from the definition of "routine" in such cases, even if the transfer agent had earlier made a timely request for more certificates and they were not forthcoming, or even if there was an unusually large volume of trading and resulting transfers that exhausted its supply of certificates earlier than anticipated. The absence of such an exception encourages the implementation of effective inventory control and efficient reorder procedures.[30]

Answer: No. The bond registrar is not required to perform any additional act in effecting the transfer of the bond which it would not otherwise perform had the bond been presented directly to the bond registrar. The bond is not transformed into a "non-routine" item merely because it is first presented to the bond trustee. Thus, unless the item otherwise qualified as non-routine under Rule 17Ad-1(i), it is a routine item for purposes of the turnaround rules.

(37) *Question:* When the registered transfer agent, as trustee and authenticating agent for a bond issue, must forward, pursuant to the Indenture Agreement, the bonds to the issuer for signature by an officer in his corporate capacity before the certificate may be made available to the presentor, is the item non-routine?

Answer: Yes. Such items may be treated as non-routine because the trustee, in order to effect transfer, must obtain additional signatures from the corporate officer.

(38) *Question:* A transfer agent receives an instruction from the issuer-presentor to use treasury shares, which are registered in the name of the issuer and being held by the transfer agent, to issue certificates under the issuer's stock purchase plan. However, transfer can be accomplished only after an authorization letter is received from the issuer. Is such an instruction a non-routine item?

Answer: Yes. If the transfer agent must await the receipt of an authorization letter from the issuer-presentor before accomplishing transfer, the instruction qualifies as a non-routine item, since additional instructions must first be obtained from the issuer.

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[29]Generally, before the SCL is presented to the transfer agent, securities depositories review the certificates and instructions and retain those items which are non-routine. In those instances where an SCL does contain both routine and non-routine certificates or instructions, transfer agents might consider using the following procedure: Notify the depository; photocopy the SCL; transfer those certificates, and effect transfers pursuant to those instructions, capable of being transferred, and make them available to the depository together with the SCL and a memorandum containing information as to why non-routine certificates or instructions were not transferred; and return to the depository in a separate envelope all non-routine certificates or instructions not transferred, unless the depository instructs otherwise. This is merely a suggested procedure; other procedures may be used. However, this procedure does not suggest or imply that the SCL, as a single routine item, has now been broken down into several items—some routine and some non-routine; the SCL remains a single, routine item in all respects.

In all cases, appropriate documentation satisfying Rule 17Ad-6 must be prepared and maintained. If the transfer agent returns any certificates or instructions because they are non-routine and cannot be transferred, the record required by Rule 17Ad-6(a)(1)(i) for the SCL schould contain either a notation for that line, such as "returned to presentor," or an indication of the number of lines not transferred, such as "3 lines returned to presentor."

[30]See Release No. 13636. [SEC Docket, at 856-57].

Illustration: Facts: A company submits stock certificate transmittal forms to its transfer agent. These forms supply information necessary to issue one certificate per form and designate participants eligible to receive shares of the company pursuant to its stock purchase plan. Three days later, the transfer agent receives a general transmittal letter confirming the number of stock certificate transmittal forms previously sent and indicating the number of shares to be issued. The transfer agent thereafter receives an authorization letter, signed by an officer of the company, instructing the transfer agent to draw against treasury shares, which are registered in the name of the company and are being held by the transfer agent, to fulfill the transmittal forms. Although the transfer agent begins issuing the new certificates as soon as it receives the stock certificate transmittal forms, transfer can be accomplished only after the authorization letter is received. Interpretation: Since the transfer agent must await additional instructions from the company via the authorization letter before transfer can be accomplished, the instruction is a non-routine item.

(39) *Question:* May a service bureau, which is a registered transfer agent, classify items that are received from and subsequently returned to the named transfer agent for performance of the registrar function as non-routine?

Answer: No. The service bureau must classify the items as routine, even though two separate entities perform part of the transfer function—the transfer activity by the service bureau and the registrar activity by the named transfer agent. No additional documents or endorsements of the type contemplated by Rule 17Ad-1(i)(3) are required. This example is similar to any other situation where both a transfer agent and outside registrar are involved.

Illustration: Facts: The named transfer agent for an issue receives the certificates, totals and logs them. The certificates are then forwarded to the service bureau, which issues new certificates and creates transfer journals. Thereafter, the certificates are returned to the named transfer agent, which performs the registrar function, countersigns the certificates and makes them available to the presentor. Interpretation: The service bureau must consider these items as routine.

(40) *Question:* If a transfer agent retains items received for transfer pending receipt of payment of transfer fees rather than returning them to the presentor for non-payment, may such items be classified as non-routine?

Answer: Yes. If the transfer agent decides to retain items at its premises even though transfer fees for such items have not been paid, the items have been "received."[31] However, such items may be classified as "non-routine" because the transfer agent must await additional instruments by which payment of transfer fees is to be effected. In such cases, pursuant to Rule 17Ad-2(e), the transfer agent is then obligated both to give such non-routine items "diligent and continuous attention," which includes, among other things, frequent and assiduous notification to the presentor that the item is being retained pending receipt of transfer fees, and, after receipt of payment, to turn around such items "as soon as possible."

(41) *Question:* May an item presented for transfer be classified as "non-routine" when, in the course of effecting transfer, the transfer agent is required to compute its transfer fee and fill in several blank checks attached to the item with the appropriate amount?

Answer: No. When a blank check is attached to the item and the transfer agent can compute its transfer fee and enter the appropriate amount on the check, the item must be classified as "routine." Thus, if a single certificate is presented for transfer with a blank check attached, the item is routine. Similarly, if several certificates of the same issue under one ticket are presented for transfer with blank checks attached, the item is routine. And, if an SCL is submitted with several vouchers attached, the item (*i.e.*, the SCL) is routine. The transfer agent need not obtain any further documentation or endorsements, within the meaning of Rule 17Ad-1(i)(3), which would transform such routine items into non-routine items.

3. *No Review of Certain Supporting Documentation Required-Rule 17Ad-1(i)(4):* An item is "routine" if it does not require review of supporting documentation other than assignments, endorsements, stock powers, certified corporate resolutions, signature or other common and ordinary guarantees or appropriate tax or tax waivers.

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[31]*Compare* note 20 *with* Question (26)(c) *supra*.

(42) *Question:* Are all items referred to counsel for review considered non-routine?

Answer: No. Items referred to counsel are not automatically non-routine under Rule 17Ad-1(i)(4). If the item requires no more than a review by counsel of the documents listed in Rule 17Ad-1(i)(4), the item is considered routine. If that review, however, requires counsel to examine other documentation, to obtain the information listed in Rule 17Ad-1(i)(3), or to render a legal opinion, the item would be considered non-routine.

4. *Transfers Not in Connection with a Reorganization, Tender Offer, Exchange, Redemption or Liquidation-Rule 17Ad-1(i)(5):* An item is "routine" if it does not involve a transfer in connection with a reorganization, tender offer, excange, redemption or liquidation.

(43) *Question:* When a portion of a registered bond issue is called, and the bond registrar remits new bonds and cash to the bondholder as well as pays on uncashed coupons, is the item non-routine?

Answer: Yes. Under Rule 17Ad-1(i)(5), the item involves a partial cash redemption and, accordingly, is not routine.

5. *Recent Registered Public Offerings Not of a Continuing Nature-Rule 17Ad-1(i)(8):* An item is "routine" if it does not include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

(44) *Question:* When does the 15 business day period start to run?

Answer: For purposes of determining whether an item is non-routine under this exception, the 15 business day period begins from the closing date of the public offering, *i.e.*, the date on which the securities are delivered to the underwriter for the issue.

(45) *Question:* Pursuant to a registration statement effective under the Securities Act of 1933, securities are sold to the public in an offering not of a continuing nature. Thirty to forty-five days elapse before the certificates are presented for transfer, and they are presented in large quantities. May the transfer agent treat such certificates as "non-routine" items?

Answer: No. The securities were not offered to the public within the previous 15 business days, and the offering was not of a continuing nature. Thus, any such items received for transfer are "routine." The increase in the volume of transfers, because of both the offering and the quantity of certificates presented, does not entitle the transfer agent to treat such items as non-routine.

(46) *Question:* Would the answer to Question (45) be different if the securities are initially registered in the name of nominees that, more than 15 business days later, present in large quantities certificates for breakdown and transfer to individual securityholders?

Answer: No. If more than 15 business days have elapsed since the securities were initially offered to the public in an offering not of a continuing nature, the items remain routine. The classification of items is not altered merely because the securities were initially registered in nominee name or were presented in large quantity for breakdown and transfer to individual holders.

II. *Rule 17Ad-2: Turnaround, Processing and Forwarding of Items.*

A . *General.*[32]

(47) *Question:* Must a registered transfer agent report to its appropriate regulatory agency that it is meeting the turnaround or processing requirements of Rule 17Ad-2?

Answer: No. Rule 17Ad-2(a) and (b) does not require that a transfer agent report its compliance with the performance standards of that rule.

(48) *Question:* Is there an exemption from the turnaround, processing and forwarding requirements of Rule 17Ad-2 when a registered transfer agent converts its transfer operations to an "on-line"[33] system?

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[32]The following questions and answers have general application to some or all provisions in Rule 17Ad-2. The text of various paragraphs in Rule 17Ad-2 is set forth below preceding the interpretations thereinunder.

[33]When a transfer agent uses an "on-line" system, the master shareholder files and records are updated immediately upon transfer.

Answer: No. No exemption from the requirements of Rule 17Ad-2 is provided for a registered transfer agent that converts from a "batch"[34] system to an "on-line" system. There are several reasons for reaching this conclusion. First, in order to protect investors, it is important that transfer agents meet the performance standards in Rule 17Ad-2(a) and (b) to avoid any lag in the transfer and processing of securities transactions and to prevent any backlog from occurring. Second, Rule 17Ad-6 imposes requirements that recordkeeping be "current." If transfer operations are shut-down to allow for conversion from one system to another, potential problems in maintaining "current" records may occur. Finally, Rule 17Ad-2 provides a 10% margin for turnaround and processing of items. Accordingly, a registered transfer agent must comply with the turnaround rules when converting from the "batch" method to an "on-line" system, and all performance standards of Rule 17Ad-2 must still be met.

(49) *Question:* A registered transfer agent has located in several cities satellite offices performing various transfer agent functions. May such transfer agent separately compute the performance statistics for each satellite office?

Answer: No. The transfer agent must aggregate figures from all of its operations when calculating turnaround and processing performance statistics for purposes of determining compliance with Rule 17Ad-2 and for purposes of recordkeeping under Rule 17Ad-6. In addition, aggregate figures must be used in computing volume when determining the availability of the exemption in Rule 17Ad-4(b).

(50) *Question:* How should a registered transfer agent that accepts a new appointment treat items that are received for transfer between the effective date of the appointment and the date on which the shareholder records and stop files are received?

Answer: Once the appointment is effective, a registered transfer agent is obligated to perform its contracted transfer agent activities for those new issues in compliance with the Act and the rules thereunder. Hence, all items arriving after the effective date of the appointment, regardless of whether the transfer agent has all the necessary books and records to effect transfer or processing, are treated as items received for transfer subject to the turnaround rules. Accordingly, a registered transfer agent should not make its appointment effective under its agency agreement until it has custody and possession of all shareholder records, stop files, unissued blank certificates and other materials necessary to effect transfer or processing. To avoid the possibility of a transfer agent falling into noncompliance with the turnaround rules, it is recommended that registered transfer agents remind issuers and others from whom transfer agents receive such records of the obligations imposed upon transfer agents by the turnaround rules.[35]

(51) *Question:* Does a transfer agent satisfy the 90% standard in Rule 17Ad-2(a) and (b) by applying that standard cumulatively to a 12 month period, *i.e.*, by turning around or processing 90% of all items received for the year by the end of that year?

Answer: No. The 90% standard in Rule 17Ad-2(a) and (b) must be applied to *each month* separately. A transfer agent is not permitted to aggregate the percentage of items turned around or processed for each 12 consecutive months to arrive at an *annual* percentage rate of 90% to establish compliance with that rule.

B. *Turnaround Requirement for Registered Transfer Agents—Rule 17Ad-2(a):* Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month. For the purposes of Rule 17Ad-2(a), items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(52) *Question:* Does a bond registrar comply with the turnaround rules if it transfers a registered bond within three business days of receipt?

Answer: Yes. The person who performs the transfer function for a bond issue is called a "bond registrar." Since it performs the "transfer" function for the bond

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[34]Under the "batch" method of updating the shareholder records, changes to the master files are not entered until after close of the normal business day, when all items transferred that day are inputed into the books and records.

[35]*See generally* Release No. 13636. [SEC Docket, at 857.].

issue, a bond registrar is treated the same as any other registered transfer agent for purposes of the turnaround rules, including Rule 17Ad-2(a).[36] Accordingly, the transfer of bonds by a bond registrar is subject to the three business day turnaround requirement of Rule 17Ad-2(a).

(53) *Question:* May a transfer agent that uses an outside registrar choose to calculate its turnaround performance as if it performed the registrar function, *i.e.*, by recording the dates on which each item is received from and made available to the *presentor* (rather than by recording the date on which each item is made available to the outside registrar, as contemplated by Rule 17Ad-1(c)(2) and required by Rule 17Ad-6(a)(1)(ii))?

Answer: Yes. The effect of this election is to treat the outside registrar as if the registrar function were performed in-house. Generally, when an outside registrar is involved, a registered transfer agent has three business days under Rule 17Ad-2(a) to "turnaround" the item, which is defined under Rule 17Ad-1(e) to include making the item available to the outside registrar pursuant to Rule 17Ad-1(c)(2). The outside registrar, pursuant to Rule 17Ad-2(b), then has one business day to "process" the item, which, under Rule 17Ad-1(f), is defined as performing the registrar function and making the item available to the presenting transfer agent pursuant to Rule 17Ad-1(c)(3). The transfer agent, in turn, must make the item available to the presentor, as required by Rule 17Ad-1(c)(1). Thus, the entire procedure, from the time of receipt by the transfer agent until the item is made available to the presentor, normally takes four business days.

However, if the transfer agent elects to treat the outside registrar as an in-house registrar, the item must be made available to the presentor within three business days. When an outside registrar is not involved, "turnaround" of an item is completed, under Rule 17Ad-1(e) when "transfer" is accomplished. "Transfer," by definition under Rule 17Ad-1(d), includes performing the registrar function as well as making the item available to the presentor. Thus, turnaround of an item does not involve the additional business day which would otherwise occur.

If the requirements of Rules 17Ad-2(a) (turnaround within three business days), 17Ad-1(e) (completing turnaround by accomplishing transfer) 17Ad-1(d) (transfer, including the registrar function), and 17Ad-1(c)(1) (making the item available to the presentor) are met, the transfer agent is required under Rule 17Ad-6(a)(1) to prepare records showing the business days on which each item is received from and made available only to the presentor.

The transfer agent's election to comply with the turnaround rules and to calculate its turnaround performance under Rule 17Ad-6(a) in this manner must be set forth in a written undertaking and sent to the Commission and the transfer agent's appropriate regulatory agency. In addition, the written undertaking must provide that a failure to comply with the turnaround performance standards under Rule 17Ad-2(a) will be charged to the transfer agent, irrespective of whether the delays were caused by the transfer agent or by the outside registrar.

(54) *Question:* What is the effect of the noon cut-off provision when an item is received before noon in the transfer agent's mail room but not forwarded until after noon to the transfer department where dating of the item occurs?

Answer: Items received in the transfer agent's mail room, located on the premises where the transfer activities are actually performed, are considered "received" under Rule 17Ad-1(g).[37] Thus, under Rule 17Ad-2(a), items received in the mail room at or before noon on a business day are deemed received by the transfer agent at noon on that same business day, even though the items may not be forwarded until after noon to the transfer department.

When the items are dated by the transfer department and not by the mail room, the transfer agent first must determine the cut-off time by which all items received at or before noon in the mail room will be forwarded to the transfer department. Then the transfer agent must observe this cut-off time for date-stamping items received in the transfer department. To implement this procedure, the transfer

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[36]A bond registrar is not an "outside registrar," which is defined in Rule 17Ad-1(b) as a transfer agent that performs only the registrar function or similar functions with respect to debt issues and which must process items within one business day under Rule 17Ad-2(b).

[37]See Question (27) *supra*, and Release No. 13636. [SEC Docket, at 856].

department must receive a commitment from the mail room that all items received at or before noon by the mail room will be forwarded by that specified cut-off time to the transfer department. Finally, the transfer agent must periodically check to ensure that the mail room is meeting its commitment.

Illustration: Facts: An item is received by the mail room at the transfer premises at 11:45 a.m. on Monday, a business day. The item is not date or time-stamped at that time by the mail room. By 2:00 p.m. on Monday, all items received by the mail room at or before noon (including the item received at 11:45 a.m.) are brought to the transfer department where they are date-stamped. Interpretation: The item was received before noon and must be date-stamped accordingly. In addition, since the item was received before noon on a business day, it must be turned around by noon on Thursday, the third next business day.

(55) *Question:* When, due to inclement weather, airports close for several days suspending the delivery of items, is an exemption from the requirements of Rule 17Ad-2(a) available to a transfer agent for the large quantity of back items received after the airports reopen and deliveries recommence?

Answer: No. The turnaround rules do not provide automatic exemptions for inclement weather or other acts of God. A transfer agent is required to meet the turnaround requirements for all items received, even if an unusually large quantity of items is presented on a given day. This question illustrates why Rule 17Ad-2(a) and (b) provides a 10% margin. Nevertheless, if a transfer agent is unable to meet the turnaround or processing requirements of Rule 17Ad-2(a) or (b) because of weather conditions, the notice required to be filed by Rule 17Ad-2(c) or (d) should state such circumstances.

(56) *Question:* When must the remaining 10% of routine items presented and received for transfer be turned around?

Answer: Rule 17Ad-2(e) requires that routine items not turned around within three business days of receipt must be turned around "promptly," which, under usual circumstances, means within one additional business day.[38]

C. *Processing Requirement for Outside Registrars—Rule 17Ad-2(b):* Every registered transfer agent acting as an outside registrar shall process[39] at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of Rule 17Ad-2, "items received" shall not include any item enumerated in Rule 17Ad-1(i)(5), (6), (7) or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(57) *Question:* If the transfer agent and outside registrar have so agreed, may an outside registrar satisfy the processing requirements of Rule 17Ad-2(b) by notifying the presenting transfer agent that an item is available for pick-up, if the item is in fact available for pick-up?

Answer: Yes. To accomplish processing, which is defined in Rule 17Ad-1(f),[40] the outside registrar is required to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates.

Rule 17Ad-1(c)(3) provides than an item is "made available," in the case of an item for which an outside registrar has completed processing, when "the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent." The understanding between the outside registrar and the presenting transfer agent will govern which of the alternative methods permitted by Rule 17Ad-1(c)(3) will be used. If the parties have agreed that the presenting transfer agent will "pick-up" the processed item and that the outside registrar will notify the transfer agent when the item is avail-

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[38]See Release No. 13636. [SEC Docket, at 859].

[39]Rule 17Ad-1(f) provides: "The term 'process' means the accomplishing by an outside registrar of all acts necessary [1] to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or [2] to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed."

[40]*Id.*

able for pick-up, then the item is processed when the outside registrar completes the registrar function and notified the presenting transfer agent that the completed certificate is in fact awaiting pick-up.

The outside registrar must be consistent in clocking the completion of its processing with the alternative agreed upon—in this case, notification that the item is awaiting pick-up. To accomplish processing, notification that an item is awaiting pick-up must be given to and received by the presenting transfer agent no later than the time period within which processing must be accomplished under Rule 17Ad-2(b). Thus, in the case of an item received at or before noon on a business day, notification that the item is awaiting pick-up must be given by the opening of business on the next business day; and, in the case of an item received after noon on a business day, by noon of the next business day.

(58) *Question:* Within what time period must the remaining 10% of items be processed?

Answer: Rule 17Ad-2(e) requires that items not processed within the periods prescribed by Rule 17Ad-2(b) shall be processed "promptly," which in usual circumstances means by the end of the business day following the day of receipt.[41]

[41]See Release No. 13636. [SEC Docket, at 859].

[42]This requirement of Rule 17Ad-2(c) should be read in conjunction with Rule 17Ad-6(a)(2)(vi), which requires a registered transfer agent to make and keep current a record showing for each month "the number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agents's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day)." In this case, a *cumulative* record of aged items must be made of all routine items not turned around within three business days during *all* months in which those items were outstanding. *See* Release No. 13636, no. 18. [SEC Docket, at 864 n. 18].

[43]It should be noted, however, that Rule 17Ad-2(e) requires all routine items not turned around within three business days of receipt to be turned around "promptly," which, in the usual case, means within one additional business day. Accordingly, routine items received in the previous month must be given precedence over, and turned around before, items received in th, current month.

D. *Notice of Non-Compliance—Rule 17Ad-2(c):* Any registered transfer agent which fails to comply with paragraph (a) of Rule 17Ad-2 with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of Rule 17Ad-2. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turnaround in accordance with the requirements of paragraph (a) of Rule 17Ad-2, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure, and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(59) *Question:* For purposes of the notice requirement, must routine items not turned around within the prescribed time period and in a transfer agent's possession be reported only in the month they were received, or must they be reported on a cumulative basis?

Answer: Rule 17Ad-2(c) requires a registered transfer agent that does not comply with Rule 17Ad-2(a) with respect to any month to file a written notice stating, among other things, "the number of routine items which the registered transfer agent failed to turnaround" in accordance with Rule 17Ad-2(a). This requirement applies only to routine items received for transfer during that particular month which were not turned around in three business days; it does not refer to all outstanding items, regardless of the month in which they were received.

However, Rule 17Ad-2(c) also requires that the notice state "the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month, have been in [the transfer agent's] possession for more than four business days and have not been turned around."[42] If routine items received for transfer in a previous month and not turned around within three business days are still in the transfer agent's possession as of the close of business on the last business day of the current month,[43] those items

must be included in the current month's notice of non-compliance. Accordingly, this aspect of the notice is cumulative.

Illustration: Facts: Ten routine items are received for transfer in January. Eight of those items are turned around within three business days. Interpretation: A written notice, reporting the two items, is required to be filed for the month of January.

Facts: In February, ten routine items are received for transfer. Eight of those items are turned around within three business days. However, as of the close of business on the last business day in February, the transfer agent had not turned around within three business days the remaining two items received in February, and when aged in increments of one business day, had them in its possession for more than four business days. In addition, the transfer agent had not yet turned around the two items received in January. Interpretation: The transfer agent has not met turnaround under Rule 17Ad-2(a) and must file for the month of February a notice of non-compliance which will include the two outstanding routine items for February. In addition, the notice of non-compliance filed for the month of February must include, as aged items, the two items received in January but not yet turned around. In such a case, however, the transfer agent has violated Rule 17Ad-2(e).[44]

E. *Turnaround and Processing of Remaining Routine and All Non-Routine Items—Rule 17Ad-2(e):* All routine items not turned around within three business days of receipt and all items not processed within the periods prescribed by paragraph (b) of Rule 17Ad-2 shall be turned around or processed promptly, and all non-routine items shall receive dilligent and continuous attention and shall be turned around as soon as possible.

(60) *Question:* What are the time requirements regarding the turnaround of "non-routine" items?

Answer: The turnaround rules do not impose a specific time period within which turnaround of non-routine items must occur. However, Rule 17Ad-2(e) requires that all "non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible." This is a flexible standard dependent on the facts and circumstances of each case. If experience indicates that a specific standard is necessary, the Commission will consider proposing such a requirement.

F. *Receipt of Items Off the Transfer Premises—Rule 17Ad-2(f):* A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(61) *Question:* When the named transfer agent for an issue contracts with a service bureau, which is also a registered transfer agent, to perform for it the transfer agency functions, when is the item considered received for transfer?

Answer: Items are received for transfer when they arrive at the premises of the service bureau, even if the items were first sent to the named transfer agent. However, both the named transfer agent and the service bureau, as registered transfer agents, must have appropriate procedures to assure that items which are received by the named transfer agent are forwarded propmtly to the service bureau.

III. *Rule 17Ad-4: Exemptions from Certain Turnaround Rules.*

A. *Exempt Transfers—Rule 17Ad-4(a):* Rules 17Ad-2, 17Ad-3 and 17Ad-6(a)(1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(62) *Question:* If the issuer acts as its own transfer agent for its only issue of securities, which are interests in joint ventures, are transfers of those interests exempt from the turnaround rules under Rule 17Ad-4(a)?

Answer: Yes. Rules 17Ad-2, 17Ad-3 and 17Ad-6(a)(1) through (7) and (11) do not apply to the transfer of interests in joint ventures; provided that the certificates are legended and there are restrictions on transferability, such as the existence of stop transfer instructions on the shareholder records and the requirement of consent by the issuer or other authorized person before transfer can be effected, so that no such item would be routine as defined in Rule 17Ad-1(i); and provided that the securities are

[44] *Id.*

neither traded on any securities exchange or in the over-the-counter market nor the subject of market-making activity by any broker-dealer. However, transfers of interests in joint ventures remain subject to Rules 17Ad-1; 17Ad-4; 17Ad-5; 17Ad-6(a)(8), (9) and (10); 17Ad-6(b) and (c); and 17Ad-7.[45]

(63) *Question:* Does the issuance, redemption or transfer of interests in a unit investment trust registered under Section 8 of the Investment Company Act of 1940 fall within the exemption provided in Rule 17Ad-4(a)?

Answer: Yes. The exemption contained in Rule 17Ad-4(a) includes the issuance, redemption or transfer of redeemable securities of registered unit investment trusts.[46]

B. *Exempt Transfer Agents—Rule 17Ad-4(b):* Except as provided in paragraph (c) of Rule 17Ad-4, Rules 17Ad-2(a), (b), (c), (d) and (h), 17Ad-3 and 17Ad-6(a)(2) through (7) and (11) shall not apply to any registered transfer agent [1] which during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing and [2] which, within ten business days following the close of the sixth such consecutive month, shall have filed with its appropriate regulatory agency[47] a notice certifying to that effect (hereinafter an "exempt transfer agent").

(64) *Question:* Based on the number of *certificates* received for transfer, may a registered transfer agent for an issue obtain an exemption under Rule 17Ad-4(b), even though the outside registrar for that same issue remains ineligible for the exemption?

Answer: Yes. To qualify for an exemption, a transfer agent must receive fewer than 500 items for transfer and fewer than 500 items for processing. An "item" with respect to an outside registrar is defined in Rule 17Ad-1(a) as "each certificate to be countersigned." An "item" with respect to a transfer agent that performs transfer activities, however, is defined, in pertinent part, as "a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer..." Consequently, in order to qualify for an exemption under Rule 17Ad-4(b), an outside registrar must receive *fewer* than 500 *certificates* for countersigning and for processing during any consecutive six month period. However, the transfer agent for the same issue may have received *fewer* than 500 *items* covering more than 500 certificates during the consecutive six month period and, accordingly, qualify for the exemption.

(65) *Question:* May a registered transfer agent qualify as an "exempt transfer agent" when it performs both the transfer agent activities for some issues and the processing activities as an outside registrar for other issues?

Answer: Yes. If, during any consecutive six month period, a transfer agent receives fewer than 500 items for transfer for those issues for which it performs transfer activities and fewer than 500 certificates for countersigning and processing for those issues for which it acts as an outside registrar, it will qualify as an "exempt transfer agent."

(66) *Question:* May a transfer agent that has recently assumed the transfer agent functions for an issue be eligible for an exemption under Rule 17Ad-4(b), even though it has not performed the transfer agent functions for the requisite six month period, by tacking onto its period of performance the performance by the prior transfer agent for that issue?

Answer: Yes. The new transfer agent qualifies as an exempt transfer agent under Rule 17Ad-4(b), provided it can demonstrate, through appropriate records and documentation, that the previous transfer agent in fact received fewer than 500 items for transfer and fewer than 500 items for processing during the immediately preceding six consecutive months.[48]

Illustration: Facts: For the period December 1 through May 31, an issuer's transfer agent received

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[45]See *generally* Release No. 13636. [SEC Docket, at 855 and 862].

[46]See Release No. 13636. [SEC Docket, at 861].

[47]Rule 17Ad-2(h) states with which regulatory agency the notice must be filed.

[48]Although such tacking is permitted, if the number of items received for transfer by the transfer agent seeking to qualify as an exempt transfer agent together with the number of items received by the prior transfer agent *exceeds 500* for the preceding six consecutive month period, exempt status would not be available.

60 items for transfer. On June 1, after its registration as a transfer agent became effective, the issuer assumed the transfer agent functions for its securities. On June 7, the issuer-transfer agent filed with the Commission a notice certifying that it received fewer than 500 items for transfer and fewer than 500 items for processing for the six consecutive months ending May 31 and, accordingly, that the issuer qualified as an exempt transfer agent. Interpretation: Since the previous transfer agent received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six month period, the issuer qualifies as an exempt transfer agent under Rule 17Ad-4(b), provided it can demonstrate through appropriate records and documentation that the prior transfer agent received, in fact, fewer than 500 items for transfer during December 1, though May 31.

(67) *Question:* In order not to exceed the requirement in Rule 17Ad-4(b) that the transfer agent receive fewer than 500 items for transfer and processing, may a transfer agent combine several items of the same issue received from several presentors in order to qualify as an exempt transfer agent?

Answer: No. If there is no ticket, an "item" is defined by Rule 17Ad-1(a) to mean certificates of the same issue of securities presented for transfer at the same time by *one presentor.* Thus, certificates of the same issue presented by several presentors must be treated as separate items and must not be combined when determining the availability of the exemption under Rule 17Ad-4(b), even though all certificates relate to the same issue of securities.

(68) *Question:* For purposes of determining whether a transfer agent qualifies as an exempt transfer agent, must a transfer agent, which has satellite offices located throughout the country, aggregate the total number of items received for transfer and for processing by all of its offices, even if one or more satellite offices perform transfer agent or registrar activities only for securities which are not qualifying securities?

Answer: Yes. A transfer agent must aggregate the total number of items received by all of its offices when computing volume for purposes of Rule 17Ad-4(b).[49] Once a transfer agent becomes registered with its appropriate regulatory agency, the turnaround rules apply to all of its transfer and processing activities, including those involving non-qualifying securities. Accordingly, the term "item" includes both qualifying and non-qualifying securities.[50] Thus, a registered transfer agent must aggregate the total number of items (including both qualifying securities and non-qualifying securities) received by it and its satellite offices for purposes of determining whether it qualifies as an "exempt transfer agent."

C. *Loss of Exempt Transfer Agent Status—Rule 17Ad-4(c):* Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent receives 500 or more items for transfer or 500 or more items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with its appropriate regulatory agency a notice to that effect. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the registered transfer agent shall no longer be exempt under paragraph (b) of Rule 17Ad-4 from the requirements of Rules 17Ad-2(a), (b), (c), (d) and (h), 17Ad-3 and 17Ad-6(a)(2) through (7) and (11). Any registered transfer agent which has ceased to be an exempt transfer agent shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing rules for six consecutive months following the month in which it filed the notice required by this paragraph.

(69) *Question:* Must a registered transfer agent, which has filed the appropriate notice certifying that it is an exempt transfer agent under Rule 17Ad4-(b), file on a monthly basis additional notices to retain its exempt status?

Answer: No. A transfer agent that has filed a notice certifying its exempt status under Rule 17Ad-4(b) should not file any additional exemption notices, as long as it continues to receive fewer than 500 items for transfer and fewer than 500 items for processing during any consecutive six-month period.

However, Rule 17Ad-4(c) requires every exempt transfer agent to test continuously for the availability

[49]*See* Question (49) *supra.*

[50]*See* Question (1) *supra.*

of the exemption by determining, within the first five business days of each month, the number of items received for transfer and the number of items received for processing during the immediately preceding six months. Whenever any exempt transfer agent has received 500 or more items for transfer *or* 500 or more items for processing during any six consecutive months, Rule 17Ad-4(c) requires it to file a notice to that effect within ten business days after the end of the sixth month. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the transfer agent no longer is exempt.

Illustration: A transfer agent that has submitted by July 15, 1980 (the tenth business day in July) an exemption noticed based upon its operations from January 1st through June 30th, must determine by August 7th (the fifth business day in August) the number of items received for transfer *and* the number of items received for processing for the period February 1st through July 31st; and by September 8th (the fifth business day in September), it must make the same determination for the period March 1st through August 31st; and so on.

If the calculation performed by August 7th demonstrates that the transfer agent received during the six-month period, from February 1st through July 31st, 500 or more items for transfer *or* 500 or more items for processing, the transfer agent would be required to file the requisite notice by August 14th (the tenth business day after July 31st). Finally, its exempt status would terminate as of the close of business on August 31st.

(70) *Question:* What is the definition of "item" for purposes of determining under Rule 17Ad-4(c) the continuing availability of the Rule 17Ad-4(b) exemption to a transfer agent that does not act as an outside registrar?

Answer: A transfer agent that does not act as an outside registrar does not receive items for "processing," as that term is defined in Rule 17Ad-1(f). Accordingly, for purposes of determining the continuing availability of exempt transfer agent status under Rule 17Ad-4(b) and (c), such a transfer agent need only compute whether fewer than 500 items have been received for *transfer* during the preceding six consecutive months.

(71) *Question:* Does an exempt transfer agent lose its exempt status by issuing a stock dividend of original issue securities, if the additional certificates issued increase the number of items to more than 500 for a six consecutive month period?

Answer: No. Since stock dividents of original issue securities are not items received for transfer,[51] the issuance of the new certificates is not included in the calculation of items transferred and processed for purposes of Rule 17Ad-4(c).

IV. *Rule 17Ad-5: Written Inquiries and Requests.*

A. General.[52]

(72) *Question:* If a co-transfer agent receives a written inquiry or request subject to Rule 17Ad-5 to which the principal transfer agent is responsible for responding, and the co-transfer agent promptly forwards such communication to the principal transfer agent, when is the inquiry or request considered "received"?

Answer: For purposes of determining the required time period within which a response must be made under the various paragraphs of Rule 17Ad-5, a written inquiry or request is "received," under Rule 17Ad-1(g), when it arrives at the premises of the transfer agent responsible for making the response[53]—in this case, the principal transfer agent.

(73) *Question:* If a transfer agent, which is not the issuer, receives a written inquiry subject to Rule 17Ad-5 and refers the inquiry to one of its special departments or to the issuer for response, has the transfer agent met its obligations under Rule 17Ad-5?

Answer: No. A response has not been made and the requirements of Rule 17Ad-5 have not been satisfied, when the transfer agent sends, in accordance with its internal procedures, the inquiry out of the transfer department to another department or to the issuer for response. Rather, the transfer agent still must make the required response within the time periods specified in Rule 17Ad-5.

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[51]*See* Question (12) *supra.*

[52]The following questions and answers have general application to some or all of the provisions in Rule 17Ad-5. The various paragraphs in Rule 17Ad-5 are set forth below preceding the interpretations thereunder.

[53]*See also* Questions (28) and (29) *supra.*

(74) *Question:* In counting the number of business days in which a transfer agent is required to respond to written inquiries and requests under Rule 17Ad-5, should the transfer agent treat inquiries received at or before noon on a business day as having been received at noon on that day, and treat inquiries received after noon on a business day or received on a non-business day as having been received at noon on the next business day?

Answer: No. The noon-to-noon cut-off applicable for computing turnaround under Rule 17Ad-2 is not relevant to the calculation of time periods under Rule 17Ad-5. Rather, timely compliance is measured in terms of business days, as defined in Rule 17Ad-1(h).

(75) *Question:* If an inquiry relates to activities of a prior transfer agent whose duties have recently been assumed by the successor transfer agent, and if the successor transfer agent is unable to respond because it does not have the necessary records, how can it comply with Rule 17Ad-5?

Answer: The successor transfer agent complies with Rule 17Ad-5 when it responds, within the required time period, that it has recently been appointed the transfer agent for the issue and that additional time is necessary to research and answer the question. Once the transfer agent is able to respond, it must do so as promptly as possible.[54]

However, registered transfer agents are immediately subject to the turnaround rules upon appointment and should remind others of the obligations imposed on them by these rules. Accordingly, appointment should not be made effective until the transfer agent has possession of all necessary records.[55]

B. *Requests Regarding Status of Items Presented for Transfer—Rule 17Ad-5(a):* When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(76) *Question:* When a registered transfer agent does not know why transfer of an item has been delayed, may it respond by stating that it will research the question and respond after an answer can be determined?

Answer: No. Such a response does not satisfy the requirements of Rule 17Ad-5(a) which requires, in the case of an item received but not transferred, a statement of "the reason for the delay and what additional matter, if any, is necessary before transfer may be effected. . . ." However, if the transfer agent, after a good faith and diligent effort to research the question, must respond in order to meet the time requirement of five business days, no violation of the rule will occur from the *occasional* response that further research is necessary; provided, the transfer agent does, in fact, send within a reasonable time follow-up correspondence containing an appropriate and complete response; and further provided, this is not a recurring practice of the transfer agent.

C. *Certain Broker-Delaer Requests—Rule 17Ad-5(b):* When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket[56] with respect to such security and the request identifies the issue, the

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[54]*See also* Question (76) infra.

[55]*See* Question (50) *supra*.

[56]The Commission understands that the phrase "revalidate a window ticket" has a generally accepted meaning in the industry. "A transfer agent is requested to 'revalidate a window ticket' when the presentor desires acknowledgment in some fashion (*e.g.*, by time-stamping again a copy of the window ticket) that the item is in the transfer agent's posses-

number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall, within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(77) *Question:* Does Rule 17Ad-5(b) apply to a *bank* which submits a written inquiry requesting the transfer agent either to acknowledge the transfer instructions and the possession of a security presented for transfer or to revalidate a window ticket with respect to that security?

Answer: No. Rule 17Ad-5(b) is limited to written requests received specifically from broker-dealers. However, Rule 17Ad-5(a) covers the type of inquiry in question; it applies to "any person," including a bank.

(78) *Question:* Must a registered transfer agent respond in writing within five business days following receipt of a broker-dealer's request to acknowledge transfer instructions and possession of a security or to revalidate a window ticket, regardless of the fee arrangement between the transfer agent and the broker-dealer for providing such information?

Answer: Yes. Rule 17Ad-5(b) does not authorize a registered transfer agent either to charge a fee or to condition its response upon receipt or assurance of payment of a fee.[57] Thus, a registered transfer agent must make a timely written response whether or not it has charged or received a fee.[58]

D. *Inquiries or Requests Which May Not Meet Rule 17Ad-5(a) through (d)—Rule 17Ad-5(e):* When any person makes a written inquiry or request which would qualify under paragraph (a), (b), (c) or (d) of Rule 17Ad-5 except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent shall confirm promptly receipt of the inquiry or request and shall respond to it as soon as possible.[59]

(79) *Question:* Does Rule 17Ad-5(e) apply to a written inquiry or request that would otherwise satisfy the requirements of a particular paragraph of Rule 17Ad-5, but concerns an issue for which the entity no longer acts as transfer agent?

Answer: Yes. In these cases, Rule 17Ad-5(3) requires that the registered transfer agent promptly confirm receipt of the inquiry or request and respond as soon as possible that it no longer acts as transfer agent for the issue.

V. *Rule 17Ad-6: Recordkeeping.*

A. *Certain Records Required to Monitor Compliance—Rule 17Ad-6(a):* [Every registered transfer agent is required by Rule 17Ad-6(a) to "make and keep current" the records enumerated in subparagraphs (1)-(11).]

(80) *Question:* What types of recordkeeping system and forms are required under Rule 17Ad-6?

Answer: No specific type of system and no particular forms are required,[60] as long as all the information required under Rule 17Ad-6 is captured. Thus, each registered transfer agent may adopt a recordkeeping and record retention system suitable to its own oper-

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Footnote 56 continued

sion pursuant to the presentor's transfer instructions." Release No. 13636, n. 17. [SEC Docket, at 863 n. 17].

[57]References to a fee appear in Rule 17Ad-5(c) and (d) [17 CFR§240.17Ad-5(c) and (d)]. *See also* Release No. 13636. [SEC Docket, at 863].

[58]Registered transfer agents should be aware of a broker-dealer's obligations under Rule 15c3-3(c)(3) [17 CFR§240.15c3-3(c)(3)], regarding a broker-dealer's control of customer securities, and Rule 17a-13(b)(3) [17 CFR§240.17a-13(b)(3)], regarding quarterly security counts by broker-dealers. Rule 17Ad-5(b) was written to complement those rules.

[59]Rule 17Ad-5(e) was adopted by the Commission in Securities Exchange Act Release No. 14219 (December 1, 1977) [42 FR 62129].

[60]See Release No. 13636. [SEC Docket, at 863].

ations, provided that the records contain the requisite information.

(81) *Question:* May a registered transfer agent that acts in its own name as a transfer agent on behalf of issuers and that also performs contractual services for other transfer agents maintain separate records of its performance for each contractual arrangement?

Answer: No. The records and performance statistics of a registered transfer agent, whether acting in its own name or under contract (*e.g.*, a "private label service") must be aggregated for all purposes under the turnaround rules.

(82) *Question:* Does Rule 17Ad-6 require a registered transfer agent to file any notice with its appropriate regulatory authority that it is fulfilling its obligations under the turnaround rules?

Answer: No. Rule 17Ad-6 does not require a registered transfer agent to file any notice stating, or any records showing, that it is complying with the turnaround rules.

1. *Records Showing Date of Receipt and Availability of Items-Rule 17Ad-6(a)(1):* Every registered transfer agent shall make and keep current a receipt, ticket, schedule, log or other record showing the business day each routine item and each nonroutine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar.

(83) *Question:* What type of receipt or ticket is required?

Answer: No particular form of receipt or ticket is required, provided the ticket identifies the item involved and the relevant business day (*i.e.*, the year, month, and day, as determined under Rule 17Ad-1(h)) the item was received and made available. A transfer agent that uses a batch method for handling transfer items would use an "other record" by recording the required information for each batch of items.[61]

(84) *Question:* Does Rule 17Ad-6(a)(1) require that a registered transfer agent be able to identify the specific dates on which a particular item is received and made available?

Answer: Yes. A transfer agent's records must show the business day each item is received from and made available to the presentor and the outside registrar, if applicable, and the entries on such records must be traceable to the specific item.

(85) *Question:* How many dates must be recorded on a Rule 17Ad-6(a)(1) record when an outside registrar is involved?

Answer: Four, in the usual case.[62] The record must state the business day each item was (i) received from the presentor, (ii) made available to the outside registrar, (iii) received from the outside registrar and (iv) made available to the presentor.

(86) *Question:* How should a transfer agent indicate on its Rule 17Ad-6(a)(1) record receipt of items tendered in connection with a record date?

Answer: In order to record accurately receipt of an item under Rule 17Ad-6(a)(1)(i) while still complying with record date requirements, the ticket, receipt or other record should include the calendar date and time the item was actually received.

(87) *Question:* May the records required by Rule 17Ad-6(a)(1) be maintained in a fragmentary manner—for example, partially in a log and partially on tickets?

Answer: No. Either all the information for a particular item should be compiled in one record or all the pieces of paper capturing the required information should be attached together. Thus, even though Rule 17Ad-6 neither requires a particular recordkeeping system nor prescribes a particular form of records, a registered transfer agent must establish a recordkeeping system and develop forms of records that integrate and centrally locate all the information required by Rule 17Ad-6.

2. *Monthly Records Relating to Transfer Agent Turnaround-Rule 17Ad-6(a)(2):* Every registered transfer agent must make and keep current a log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

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[61]Release No. 13636. [SEC Docket, at 863].

[62]But see Question (53) *supra*.

(ii) The number of routine items received during the month that were turned around within three business days of receipt;
(iii) The number of routine items received during the month that were not turned around within three business days of receipt;
(iv) The number of non-routine items received during the month;
(v) The number of non-routine items received during the month that were turned around;
(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and
(vii) The number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month.

(88) *Question:* Are the records required by Rule 17Ad-6(a)(2)(vi) and (a)(2)(vii) cumulative in nature?

Answer: Yes. These records contain cumulative information. Thus, any item recorded on the previous month's log that is still in the transfer agent's possession as of the last business day of the current month must be shown on the current month's log.[63]

(89) *Question:* Does Rule 17Ad-6(a)(2)(vii) require aging of non-routine items in a transfer agent's possession?

Answer: No. Rule 17Ad-6(a)(2)(vii) requires only that the number and not the age of such items be recorded.[64]

3. *Records of Outside Registrar-Rule 17Ad-6(a)(3):* Every registered transfer agent shall make and keep current, with respect to items for which it acts as an outside registrar:
(i) A receipt, ticket, schedule, log or other record showing the date and time:
(A) Each item is (1) received from the presenting transfer agent and (2) made available to the presenting transfer agent;
(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and
(ii) A log, tally, journal, schedule or other record showing for each month:
(A) The number of items received;
(B) The number of items processed within the time reqqired by Rule 17Ad-2(b); and
(C) The number of items not processed within the time required by Rule 17Ad-2(b).

(90) *Question:* Must items processed within one-half day of receipt be recorded on the records required to be maintained by Rule 17Ad-6(a)(3)(ii)(B)?

Answer: Yes. The record required by Rule 17Ad-6(a)(3)(ii)(B) includes the number of items processed within the time periods specified in Rule 17Ad-2(b), including items processed in a shorter period of time. That is, Rule 17Ad-2(b) prescribes a maximum period within which items must be processed.

(91) *Question:* Where are items processed more quickly than required by Rule 17Ad-2(b) recorded?

Answer: In addition to the record required by Rule 17Ad-6(a)(3)(ii)(B), such items are recorded on the records required to be maintained by Rule 17Ad-6(a)(4) regarding calculations of processing performance under Rule 17Ad-2(b).

4. *Calculations of Performance-Rule 17Ad-6(a)(4):* Every registered transfer agent shall make and keep current a record of calculations demonstrating the registered transfer agent's monitoring of its performance under Rule 17Ad-2(a) and (b).

(92) *Question:* Is there any particular form which must be used to record calculations of turnaround or processing performance?

Answer: No. No specific form of record is required, provided the calculations monitoring performance are actually shown.[65] For example a record indicating the total number of routine items received in a month and turned around within three business

[63]See Release No. 13636, n. 18. [SEC Docket, at 864 n. 18]. Footnote 18 in Release No. 13636 contains two typographical errors; the referenced paragraphs should be (a)(s)(vi) and (a)(2)(vii). *See also* Question (59) *supra.*

[64]See Release No. 13636. [SEC Docket, at 864].

[65]See Release No. 13636 [SEC Docket, at 863] and Question (80) *supra.*

days of receipt divided by the total number of routine items received in that month is sufficient.[66]

5. *Written Inquiries - Rule 17Ad-6(a)(6):* Every registered transfer agent shall make and keep current any written inquiry or request, including those not subject to the requirements of Rule 17Ad-5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request under Rule 17Ad-5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry.

(93) *Question:* Under Rule 17Ad-6(a)(6), is a transfer agent required to keep only those inquiries subject to Rule 17Ad-5?

Answer: No. Rule 17Ad-6(a)(6) specifically requires that a transfer agent keep all written inquiries or requests received concerning an item, regardless of whether the inquiry falls within the parameters of Rule 17Ad-5.

(94) *Question:* Does Rule 17Ad-6(a)(6) require a named transfer agent that utilizes a service bureau, which is a registered transfer agent, to keep a copy of all written inquiries or requests?

Answer: Yes. The named transfer agent must keep a copy of all written inquiries received, including those not subject to the requirements of Rule 17Ad-5, even though it forwards such requests and inquiries to a service bureau for response.

6. *Records Concerning the Appointment of a Transfer Agent-Rule 17Ad-6(a)(8):* Every registered transfer agent shall make and keep current any document, resolution, contract, appointment or other writing, and any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer.

(95) *Question:* Must an issuer that only maintains the official securityholder records and, accordingly, is a registered transfer agent make and keep current the records required by Rule 17Ad-6(a)(8)?

Answer: Yes. Rule 17Ad-6(a)(8) specifically applies to a registered transfer agent acting "on behalf of itself as the issuer." An issuer that maintains the official securityholder records is acting on its own behalf. Therefore, it must make and keep current the records required by Rule 17Ad-6(a)(8).

7. *Records of Restrictions on Transfer-Rule 17Ad-6(a)(9):* Every registered transfer shall make and keep current any record of an active (*i.e.*, unreleased) stop order, notice of adverse claim or any other restriction on transfer.

(96) *Question:* May a registered transfer agent remove, on instruction from the issuer, stops or other restrictions on transfer of a security merely because the security has a *de minimus* market value?

Answer: No. The market value of a security subject to a stop is not a decisive factor in determining whether to permit removal thereof. A stop or other restriction on transfer remains active until a transfer agent receives instructions from an authorized person to release it.[67]

8. *Journals—Rule 17Ad-6(a)(10):* Every registered transfer agent shall make and keep current a copy of any transfer journal and registrar journal prepared by such registered transfer agent.

(97) *Question:* Is a registered transfer agent required, under Rule 17Ad-6(a)(10), to prepare a transfer or registrar journal?

Answer: No. Rule 17Ad-6(a)(10) does not require that a registered transfer agent prepare any transfer or registrar journal. However, if a registered transfer agent, in fact, maintains such a journal, Rule 17Ad-6(a) requires that it be kept current.

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[66]See Release No. 13636. [SEC Docket, at 864].

[67]An unauthorized removal of a restrictive legend could lead to a violation of the Securities Act of 1933 and could expose the transfer agent to further liability. Also, an unauthorized removal of a stop transfer instruction could be inconsistent with the Commission's Lost and Stolen Securities Program. See Rule 17f-1 (17 CFR§240.17f-1).

9. *Special Event Documentation-Rule 17Ad-6(a)(11):* Every registered transfer agent shall make and keep current any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under Rule 17Ad-1(i)(5) or (8).

(98) *Question:* Does Rule 17Ad-6(a)(11) require that the documents, upon which the determination is made that an item received for transfer is non-routine under Rule 17Ad-1(i)(5) or (8), be traceable to the particular certificates involved?

Answer: Yes. The documents required by Rule 17Ad-6(a)(11) must be traceable to the particular item received for transfer. Although the transfer agent need not explain on the certificate why the item has been determined to be non-routine, two suggested methods for complying with Rule 17Ad-6(a)(11) are: 1) attaching the ticket and any appropriate documentation (*e.g.*, shareholder transmittal form) to the item; or 2) referring directly on the ticket to the document which served as the basis for a determination that the item was non-routine.

Illustration: Facts: An issuer engages in a registered exchange offer. Shareholders tender their certificates together with a letter of transmittal to the issuer's exchange agent, a registered transfer agent. Based on the letter of transmittal, the transfer agent determines that the item is non-routine under Rule 17Ad-1(i)(5). Interpretation: To ensure proper accountability under Rule 17Ad-6(a)(11), the transfer agent should leave the letter of transmittal attached to the certificates tendered and subsequently cancelled.

B. *Records Regarding Control Logs for Each Issue—Rule 17Ad-6(b):* Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth [1] the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and [2] the total issued and outstanding pursuant to issuer authorization.

(99) *Question:* Where the issuer as a registered transfer agent maintains securityholder records only, and the service bureau, which also is a registered transfer agent, cancels and issues certificates as well as performs the registrar function, must the issuer-transfer agent retain the documentation required by Rule 17Ad-6(b) and (c)?

Answer: Yes. However, *for purposes of the turn-around rules,* the issuer need not keep *documents* (*e.g.*, certificate of incorporation or amendments thereto) concerning the matters covered by Rule 17Ad-6(b).[68] Instead, the issuer must retain a *record* setting forth the total number of securities authorized, issued and outstanding, as well as copies of each cancelled registered security referred to in Rule 17Ad-6(c) with accompanying documentation (except legal papers returned to the presentor).

C. *Cancelled Registered Certificates and Accompanying Documentation—Rule 17Ad-6(c):* Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain [1] each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and [2] all accompanying documentation, except legal papers returned to the presentor.

(100) *Question:* Does Rule 17Ad-6(c) apply only to *registered* bonds, debentures, shares, warrants, rights, other evidences of indebtedness and other certificates of ownership, which have been cancelled?

Answer: Yes. Rule 17Ad-6(c) specifically applies to "registered" securities; the word "registered" does not modify the word "bond" only.

VI. *Rule 17Ad-7: Record Retention.*

A. *Retention Periods for Records Regarding Transfer Agent's Appointment, Stops, Journals, and Control Logs—Rule 17Ad-7(c):* The records required by Rule 17Ad-6(a)(8), (9) and (10) and 17Ad-6(b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

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[68]*See* Release No. 13636. [SEC Docket, at 864-65].

(101) *Question:* Does the language "continuance of the transfer agency and... one year after termination of the transfer agency" refer to the transfer agent's period of appointment for a particular issue of securities?

Answer: Yes. This language refers to the period of time during which a transfer agent is appointed to perform transfer agent activities for a *particular issue.* The rule does not refer to the period of time during which a transfer agent is registered with its appropriate regulatory agency.

B. *Retention Periods for Cancelled Certificates and Accompanying Documentation—Rule 17Ad-7(d):* The records required by Rule 17Ad-6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(102) *Question:* May a registered transfer agent destroy cancelled share certificates after they have been retained for a period of six years?

Answer: Rule 17Ad-7(d) establishes a *minimum* retention period of six years under the federal securities laws. Rule 17Ad-7(d) does not grant a registered transfer agent the right to destroy cancelled certificates after they have been retained for six years. Varying circumstances, other federal and state statutory provisions, as well as the by-laws of the issuing corporation, may require retention of cancelled certificates beyond six years.

C. *Microfilming of Records—Rule 17Ad-7(f):* The records required to be maintained pursuant to Rule 17Ad-6 may be produced or reproduced on microfilm and be preserved in that form for the time required by Rule 17Ad-7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other representatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(103) *Question:* Has a registered transfer agent complied with Rules 17Ad-6(c) and 17Ad-7(d) when it releases cancelled certificates if it maintains microfilm substitution for hard copies of the cancelled certificates in compliance with Rule 17Ad-7(f)?

Answer: Yes. Rule 17Ad-6(c) requires that the transfer agent retain cancelled certificates for which it maintains securityholder records under its agency agreement, and Rule 17Ad-7(d) requires that such certificates be maintained for a period of at least six years, the first six months in an easily accessible place. However, Rule 17Ad-7(f) provides that records, which must be maintained pursuant to Rule 17Ad-6 (*e.g.*, cancelled certificates), may be microfilmed and preserved in that form for the appropriate period under Rule 17Ad-7, provided all four conditions of Rule 17Ad-7(f)(1)-(4) are met. Thus, microfilm substitution for hard copy of the cancelled certificates, if all conditions of Rule 17Ad-7(f) are met, satisfies the recordkeeping requirement of Rule 17Ad-6(c) and, if preserved in that form for at least six years, satisfies Rule 17Ad-7(d).

(104) *Question:* Does Rule 17Ad-7(f)(4) require that a transfer agent keep the copy of microfilm records on premises that are physically separated from the location of the original microfilm records?

Answer: No. The rationale for requiring separate storage for the two sets of microfilm records is to minimize the possibility that a localized fire or other occurence might destroy both sets of microfilm records. Consequently, compliance with Rule 17Ad-7(f)(4) depends upon the design and safeguards of the particular premises involved. If a separate building is available, the original and the copy of microfilm records should be stored in separate buildings. If there is only one building, such records should be stored on separate floors or in separate parts of the building.

D. *Records Maintained by a Third Party on Behalf of a Transfer Agent—Rule 17Ad-7(g):* If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of Rules 17Ad-6 and 17Ad-7 are maintained and preserved on behalf of the registered transfer agent by

an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent, if it is not the Commission; and

(2) The outside service bureau, recordkeeping service or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(105) *Question:* When certain records are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, does the production and furnishing by such entity of an easily readable facsimile enlargement in paper copy form, which is reproduced from microfilm as permitted by Rule 17Ad-7(f), violate the "hard copy" requirement of Rule 17Ad-7(g)(2)?

Answer: No. Rule 17Ad-7(f) provides that records required to be maintained under Rule 17Ad-6 by a transfer agent may be reproduced on microfilm and preserved in that form for the time period required by Rule 17Ad-7, provided that, among other thing, easily readable facsimile enlargements are producible therefrom.

Pursuant to Rule 17Ad-7(g)(2), the registered transfer agent must obtain a written agreement from such entity that it will furnish, upon demand, "complete, correct and current hard copies of any and all such records." The purpose of Rule 17Ad-7(g) is to extend the record retention requirements of registered transfer agents to entities maintaining and preserving records on behalf of the registered transfer agent. The words "hard copy" in Rule 17Ad-7(g)(2) neither expand upon that responsibility nor increase the requirements of Rule 17Ad-7(f). Thus, an easily readable facsimile enlargement of records in paper copy form, which is reproduced from microfilm in accordance with Rule 17Ad-7(f) by an outside service bureau, other recordkeeping service or the issuer, satisfied Rule 17Ad-7(g)(2).

Illustration: Facts: Pursuant to an agreement with the issuer, the registered transfer agent forwards, six months or more after cancellation, cancelled share certificates to the issuer. Upon receipt of the cancelled certificates, the issuer microfilms and then destroys the certificates. The issuer retains the microfilm copy for a period of not less than six years, as required under Rules 17Ad-6(c) and 17Ad-7(d). If the Commission or the transfer agent's appropriate regulatory agency requests a hard copy of a destroyed cancelled certificate, the issuer has agreed in writing to reproduce a paper copy thereof from the microfilm. Interpretation: This paper copy will satisfy the "hard copy" requirement of Rule 17Ad-7(g)(2).

E. *Transfer Agents that Cease to Perform Transfer Agent Functions—Rule 17Ad-7(h):* When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under Rule 17Ad-7 to retain the records required to be made and kept current under Rule 17Ad-6(a)(1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(106) *Question:* What are the record retention requirements for a registered transfer agent that is in the process of terminating all of its stock transfer activities but has not yet withdrawn from registration as a transfer agent with its appropriate regulatory agency?

Answer: Rules 17Ad-6 and 17Ad-7 set forth, respectively, the recordkeeping and record retention requirements for registered transfer agents. In addition, Rule 17f-1(g) prescribes record retention requirements in connection with the Commission's Lost and Stolen Securities Program. A registered transfer agent that is ceasing to perform transfer agent functions for either a particular issue or entirely may fulfill its obligations by delivering, pursuant to Rule 17Ad-7(g) or 17Ad-7(h), the records required to be maintained by the above rules to the issuer for which it was a transfer agent, to an outside service bureau, or to a successor transfer agent. If a transfer agent determines to fulfill its obligations by delivering such records to the issuer or an outside service bureau, it must obtain a written agreement from the issuer or the outside service bureau stating that the records will be retained for the required time periods and will be made available to the Commission and the appropriate regulatory agency for examination in accordance with Rule 17Ad-7(g). If the records are delivered to a successor transfer

agent, however, no such written agreement is required by Rule 17Ad-7(h).

(107) *Question:* What obligations are imposed by the federal securities laws on transfer agents to retain transfer agent records after a transfer agent's withdrawal from registration with the Commission has become effective?

Answer: Rule 17Ac3-1[69] and related Form TA-W[70] prescribe the procedure to be followed by transfer agents withdrawing from registration as transfer agents with the Commission. Pursuant to the terms of withdrawal stated therein, the withdrawing transfer agent undertakes to preserve those records which it would otherwise be required to make and keep pursuant to Rules 17Ad-6 and 17f-2 for the remainder of the time periods specified in Rule 17Ad-7.

Illustration: Facts: A transfer agent, whose withdrawal from registration with the Commission has become effective, is storing cancelled certificates, transmittal letters and transfer journals. How long must the transfer agent continue to store these records? Interpretation: Pursuant to Rule 17Ad-7(d), cancelled certificates and transmittal letters are required to be retained for six years. Accordingly, the transfer agent must retain these records for the remainder of the six year period. Pursuant to Rule 17Ad-7(c), transfer journals must be retained during the continuance of the transfer agency and for one year after termination thereof. Accordingly, the transfer agent must retain its transfer journals for one year from the date of termination of its transfer agency with respect to that issue of securities.

(108) *Question:* After a transfer agent's withdrawal from registration with the Commission becomes effective, what records may be delivered to the issuer or the successor transfer agent?

Answer: Any records enumerated in Rules 17Ad-6 and 17Ad-7 may be delivered to the issuer pursuant to Rule 17Ad-7(g) or to the successor transfer agent pursuant to Rule 17Ad-7(h).

[69]See 17 CFR§240.17Ac3-1.

[70]See 17 CFR§249b.101.

If the transfer agent chooses to deliver these records to the issuer, it should obtain a written agreement, in accordance with the transfer agent's undertaking in Form TA-W, that the issuer will retain the records for the applicable time periods and make them available to the Commission.

Accordingly, 17 CFR Part 241 is amended by adding thereto this interpretative release, Regulation of Transfer Agents.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17112/September 3, 1980

Annual Assessment Form for SECO Brokers and Dealers

ACTION: Adoption of form.

SUMMARY: The Securities Exchange Act of 1934 authorizes the Commission to collect such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to broker-dealers who are not members of a registered national securities association. This form sets forth the annual schedule under which such broker-dealers are to be assessed for fiscal year 1980.

EFFECTIVE DATES: The form is adopted effective upon publication in the *Federal Register*. The Form is required to be filed on or before October 31, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Finegan, Office of Reports and Information Services, Room 7417, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 523-5545

SUPPLEMENTARY INFORMATION:
The Securities and Exchange Commission announced today that it has adopted Form SECO-4-80 which sets forth the annual assessment payable to the Commission for fiscal year 1980 by registered broker-dealers who are not members of a registered

national securities association (nonmember or "SECO" broker-dealers.)

In adopting Form SECO-4-80, the Commission has determined to increase the basic membership fee from $250 to $300. In addition, the Commission has increased the gross municipal securities income assessment from .19% to .21% and the gross securities income assessment (exclusive of municipal securities) from .23% to .25%. These assessments are being increased pursuant to Rule 15b9-2 of the Securities Exchange Act of 1934 (the "Act"). Rule 15b9-2 provides that, unless the Commission takes action to change them, the levels or rates of fees and assessments imposed on SECO broker-dealers will be set each year at the same levels or rates as the corresponding fees and assessments imposed by the National Association of Securities Dealers, Inc. on its members.

Notice of date for filing Form SECO-4-80
Normally, Rule 15b9-2 requires that nonmember broker-dealers to file a Form SECO-4 for the particular year and pay the assessment specified therein by September 1 of each year. This year, however, the Commission has extended the deadline until October 31, 1980, to provide sufficient notice to those broker-dealers required to file the Form and pay the fees and assessments.

Statutory Basis
The modifications of 1980 assessments for SECO broker-dealers are adopted pursuant to the Securities Exchange Act of 1934 and particularly Sections 14(b)(7), 15(b)(8), and 23(a) thereof. The Commission finds, in accordance with the Administrative Procedure Act [5 U.S.C. 533(b)(3)(B)], that Rule 15b9-2 and Securities Exchange Act Release No. 16143 (August 28, 1979) (44 FR 52273 (September 10, 1979)) provided sufficient notice of the basis for and amount of these fees and assessments, that further notice is unnecessary as a prerequisite to the adoption of the requirements, and that the extension of time provided grants a temporary exemption sufficient to permit the requirements to become effective on publication in accordance with the Administrative Procedure Act [5 U.S.C. 533(d)(3)]. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance for the purposes of the Act, particularly the implementation of the Commission's continuing mandate under Section 15(b)(8) to collect such reasonable fees and charges as may be necessary to defray the costs of the specified regulatory duties required to be performed with respect to SECO broker-dealers. The Securities and Exchange Commission, pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975)] and particularly Sections 15(b)(7), 15(b)(8), and 23(a) thereof, amends Part 249 of Title 17 of the Code of Federal Regulations by adding §249.504n as follows:

> §249.504n Form SECO-4-80, 1980 assessment and information form for registered brokers and dealers not members of a registered national securities association.

This form shall be filed on or before October 31, 1980, pursuant to §240.15b9-2 of this chapter, accompanied by the annual assessment fee required thereunder and specified in the form, by every registered broker and dealer not a member of a registered national securities association. Those broker-dealers which are exempt from the payment of any assessment or fee pursuant to the provisions of §240.15b9-2(e) must still file the form.

Copies of the proposed form have been filed with the Office of the Federal Register and additional copies are available on request from the Commission.

By the Commission.

George A. Fitzsimmons
Secretary

September 3, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17113/September 4, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-34

The New York Stock Exchange, Inc. ("NYSE") submitted on August 25, 1980, a proposed rule change under Rule 19b-4 to require that the NYSE Board of Directors include the President of the NYSE, if one is in office.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 8, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-34.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17114/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6231/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17115/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6232/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17116/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6233/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17117/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6234/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17118/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6236/September 2, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17119/September 4, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($1 par value) of BARCLAY INDUSTRIES, INC. from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17120/September 4, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6239/September 4, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21692/August 28, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
New York, New York

CNG COAL COMPANY
CNG DEVELOPMENT COMPANY, LTD.
CNG PRODUCING COMPANY
CNG RESEARCH COMPANY
CONSOLIDATED GAS SUPPLY CORPORATION
CONSOLIDATED NATURAL GAS SERVICE COMPANY, INC.
CONSOLIDATED SYSTEM LNG COMPANY
THE EAST OHIO GAS COMPANY
THE PEOPLES NATURAL GAS COMPANY
THE RIVER GAS COMPANY
WEST OHIO GAS COMPANY

(70-6452)

SUPPLEMENTAL ORDER AUTHORIZING INTRASYSTEM FINANCING; ISSUANCE AND SALE OF SUBSIDARY COMMON STOCK TO HOLDING COMPANY; AND RELEASING JURISTICTION PREVIOUSLY RESERVED.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company, CNG Development Company Ltd., CNG Producing Company, CNG Research Company, Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company ("River") and West Ohio Gas Company ("West Ohio") have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a), 6(b), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), designating Rules 43, 45 and 50(a)(5) and 50(a)(2) promulgated thereunder regarding the following proposed transactions.

By order in this proceeding dated August 7, 1980 (HCAR No. 21603), Consolidated and some of its subsidary companies were authorized to engage in certain intrasystem financing. Jurisdiction was reserved over those transactions as to when the record was not complete.

With the filing of the orders of the Public Service Commission of West Virginia and the Public Utilities Commission of Ohio, the record is now complete with respect to the proposed short-term borrowings and stock issuances of Gas Supply and over the stock issuances proposed by River and West Ohio.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21553), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective with respect to the proposed transactions.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction reserved in the order in this proceeding dated August 7, 1980 be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21693/August 28, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY
2 Broadway
New York, New York 10004

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
215 North Front Street
Columbus, Ohio 43215

(70-6486)

NOTICE OF PROPOSAL OF SUBSIDIARY FINANCING PROGRAM AND ORDER AUTHORIZING DISTRIBUTION OF INFORMATION STATEMENT IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that American Electric Power Company ("AEP"), a registered holding company, and Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary company thereof, have filed with this Commission an application-declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 6(b), 7, 12(c) and 12(f) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

CSOE proposes to issue and sell, through competitive bidding, up to $80,000,000 aggregate principal amount of its First Mortgage Bonds ("Bonds") of a new series, having a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of the Bonds (which will be expressed in a multiple of ⅛ of 1%) and the price to be paid to CSOE for the Bonds (which shall not be less than 100% of the principal amount, unless CSOE shall authorize a lower percentage not less than 99%, and shall not be more than 102¾%) will be determined at the time of sale. It is expected that the terms of the Bonds will preclude CSOE from redeeming such Bond prior to a date five years subsequent to the first day of the month in which the Bonds are first authenticated and delivered, if such redemption is for the purpose of refunding such Bond through the use, directly or indirectly, of borrowed funds at a cost less than the effective interest cost to CSOE of such Bonds. It is stated that the substantive terms of the Bonds will conform to those standards in the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935, as modified (HCAR Nos. 13105 and 16369).

It is difficult to determine, under present market conditions, whether it would be more advantageous to CSOE to sell Bonds with a 30 year or some shorter maturity. It is proposed, therefore, that CSOE determine the maturity of the Bonds at a subsequent date and notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

CSOE proposes to issue and sell, through competitive bidding, up to $50,000,000 par value of a new series of its Cumulative Preferred Shares ("Cumulative Preferred Shares"). It has not been determined whether it will be more advantageous to CSOE to issue Cumulative Preferred Shares with a par value of $100 per share or with a par value of $25 per share. CSOE proposes therefore to determine the per share par value of such shares at a subsequent date and will notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

Each proposal shall specify (a) the dividend rate (which will be expressed in a multiple of $.01 or its equivalent), (b) that the price to be paid to CSOE for the stock shall be the par value per share, and (c) the amount per share to be paid by CSOE to the bidders as compensation for their commitments. It is expected that the terms of the Cumulative Preferred Shares will preclude CSOE from redeeming any such Cumulative Preferred Shares prior to a date five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, if such redemption is for the purpose of refunding such shares, directly or indirectly, through the incurring of debt or the issuance of stock ranking equally with or prior to the Cumulative Preferred Shares as to dividends or assets, if such debt has an effective interest cost, or such stock has an effective dividend cost, less than the effective dividend cost to CSOE of the Cumulative Preferred Shares to be redeemed.

The terms of the Cumulative Preferred Shares may also provide for a cumulative sinking fund pursuant to which CSOE would retire at par value, commencing no earlier than five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, not more than 5% annually of the

number of shares initially issued, with the non-cumulative option on any sinking fund date, commencing no earlier than five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, of redeeming at par value an additional like number of shares and with the option to credit against any sinking fund requirement Cumulative Preferred Shares theretofore purchased or otherwise acquired by CSOE. It is proposed that CSOE will decide on the necessity for a sinking fund provision at a subsequent date and that it will notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

CSOE currently has outstanding two series of Cumulative Preferred Shares and one series of Cumulative Preference Shares with sinking fund provisions, i.e., 17,804 Cumulative Preferred Shares, 10.52% Series ("10.52% Preferred Shares"), and 400,000 Cumulative Preferred Shares 9.50% Series ("9.50% Preferred Shares"), both with a par value of $100 per share, and 548,342 Cumulative Preference Shares, $15.25 Series ("$15.25 Preference Shares"), without par value. Pursuant to the requirements of the respective sinking funds provided by the Amended Articles of Incorporation of CSOE, as amended, CSOE is required to redeem annually, on the respective sinking fund dates and at the respective sinking fund prices, the respective number of shares of the 10.52% Preferred Shares, the 9.50% Preferred Shares and the $15.25 Preference Shares set forth in such Amended Articles of Incorporation. CSOE requests authority to acquire by redemption or purchase, from time to time, shares of the 10.52% Preferred Shares, the 9.50% Preferred Shares, the $15.25 Preference Shares and the new Cumulative Preferred Shares, in each case, on or in anticipation of any respective sinking fund date, for sinking fund purposes.

CSOE proposes, prior to the issue and sale of the Cumulative Preferred Shares, to amend its Amended Articles of Incorporation and in connection therewith to call a special meeting of its shareholders to be held on or about September 19, 1980 to consider and take action with respect to such amendments. Such amendments relate to compliance by CSOE with the Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935 (HCAR Nos. 13106 and 16758) and require the affirmative vote of at least two thirds (2/3) of all shareholders of record. Also, such amendments must comply with the Supplemental Memorandum and Order Approving Acquisition of Common Stock of CSOE by AEP dated February 13, 1980 (HCAR No. 21433) whereby the computation of earning coverages for the issuances of additional preferred stock by CSOE must include dividends on the outstanding $15.25 Preference Shares. CSOE proposes to distribute an information statement to all shareholders of record on the books of CSOE as of September 18, 1980.

No condition is to be contained in the Bond Purchase Contract requiring the issue and sale of the Cumulative Preferred Shares, nor is any condition to be contained in the Cumulative Preferred Share Purchase Contract requiring the issue and sale of the Bonds.

CSOE contemplates that it will receive one or more cash capital contributions from AEP in an aggregate amount of $30,000,000. It is therefore proposed that AEP be authorized to make, on or before December 31, 1980, one or more cash capital contributions to CSOE in an aggregate amount not exceeding $30,000,000.

The proceeds from the sale of the Cumulative Preferred Shares will be used to repay a portion of the $65,300,000 principal amount of notes issued by CSOE for the purpose of retiring Cumulative Preferred Shares pursuant to CSOE's tender offer dated March 31, 1980 to the holders of such shares, which offer was made in connection with the acquisition by AEP of common shares of CSOE.

The proceeds from the sale of the Bonds together with the cash capital contributions to be made by AEP and any other funds which may become available to CSOE will be used to repay unsecured short-term indebtedness of CSOE incurred for construction and other corporate purposes. Construction costs for the year 1980 are currently estimated at $116,130,000. As of June 30, 1980, CSOE had approximately $171,597,000 aggregate principal amount of short-term debt outstanding and it is anticipated that not more than $168,000,000 of short-term debt will be outstanding as of September 30, 1980.

Fees and expenses to be incurred in connection with the proposed transactions are estimated at $371,560. The Public Utilities Commission of Ohio has jurisdiction over the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN any interested person may, not later than September 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that the application-declaration, insofar as it seeks authorization to distribute information statements to CSOE's stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED that the application-declaration regarding the proposed distribution of information statements to CSOE stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21694/August 29, 1980

In the Matter of

CEDAR COAL COMPANY
CENTRAL APPALACHIAN COAL COMPANY
SOUTHERN APPALACHIAN COAL COMPANY
301 Virginia Street East
Charleston, West Virginia 25327

CENTRAL OHIO COAL COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44702

SOUTHERN OHIO COAL COMPANY
Post Office Box K
Moundsville, West Virginia 26041

(70-6487)

NOTICE OF PROPOSED MINING EQUIPMENT LEASES BY COAL MINING SUBSIDIARIES

NOTICE IS HEREBY GIVEN that Cedar Coal Company ("Cedar"), Central Appalachian Coal Company ("CACCo"), and Southern Appalachian Coal Company ("SACCo"), coal mining subsidiaries of Appalachian Power Company ("Appalachian"), and Central Ohio Coal Company ("COCCo") and Southern Ohio Coal Company ("SOCCo"), coal mining subsidiaries of Ohio Power Company, which, like Appalachian, is an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed with this Commission an application and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9 and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the application which is summarized below, for a complete statement of the proposed transactions.

Applicants propose to enter into a separate master leasing agreement with Connecticut Bank and Trust Company and Donald E. Smith, as Trustees for the Bank of New York, ("Lease") pursuant to which the Trustees will commit to lease to such companies coal mining equipment with a total cost to Trustees not exceeding $25,000,000. It is stated that Applicants anticipate leasing coal mining equipment during 1980 and 1981 under the Lease, having a total estimated value as set forth below:

Company	Estimated New Equipment Cost	Estimated Replacement Equipment Cost ($000)	Contingency Allowance ($000)	Total
Cedar	$ 1,256	$3,270	$ 474	$ 5,000
CACCo	1,310	650	290	2,250
COCCo	850	3,711	439	5,000
SACCo	3,865		435	4,300
SOCCo	6,637	1,070	743	8,450
	$13,918	*$8,701*	*$2,381*	*$25,000*

Applicants state that the mining equipment to be leased will contribute to maintaining and improving the efficiency and capacity of Appalachian's and Ohio's fuel supply operations. The coal mined by Applicants is of a quality which permits burning in conformance with present environmental standards applicable to consuming power plants. The generating plants named below expect to burn Applicant's coal in the indicated amounts:

Coal Company	Receiving Plant	(000's) Plant Burn (Annual) Actual 1979	Est. 1980	Est. 1981	Operating Company
Cedar	Amos (a)	7,618	7,209	7,074	Appalachian
CACCo	Mountaineer	0	755	3,020	Appalachian
SACCo	Amos	(see above)			Appalachian
COCCo	Muskingum	3,829	3,244	3,532	Ohio
SOCCo	(1) Gavin (b)	8,218	8,063	7,483	Ohio
	(2) Mitchell	3,385	3,379	3,391	Ohio
	Totals	*23,050*	*22,650*	*24,500*	

The table below indicates each Applicant's "proven and probable" reserves of clean, recoverable coal, its current annual production capacity, and the anticipated additional production capactiy to be obtained from the equipment proposed to be leased together with other new investments.

Applicant	Total Reserves	(000 tons) 1979 Tons Shipped	Anticipated Additional Clean Tons Capacity	Total Anticipated Clean Tons Capacity
Cedar	122,235	1,774	721	2,495
CACCo	22,250	684	200	884
SACCo	57,275	1,242	1,153	2,395
COCCo	102,500	3,451	—	3,451
SOCCo	324,340	4,623	1,577	6,200
	628,600	*11,774*	*3,651*	*15,425*

The Lease provides for the lease on or before October 1, 1981 of various types of equipment for surface and underground mining of coal for terms of three, five, seven or ten years. The lessor's total cost, including freight, taxes and installation, will not exceed $25,000,000 in the aggregate. Rents are payable quarterly and provide for the full amortization of lessor's cost over periods of 12 to 40 calendar quarters. Each quarterly rental payment for an item under lease will consist of (i) one quarter's amortization of the lessor's cost of the item on a level basis over the lease term for that item, plus (ii) as an additional rental factor, the Quarterly Interest Rate applied to lessor's amortized cost of the item on the first day of the quarter. The Quarterly Interest Rate for such quarter shall be the lower of the prime interest rate of the owner (based on a 365 day year) or LIBO Rate (based on a 360 day year). The Prime Rate shall mean a rate per annum equal to the minimum commercial lending rate charged by Owner for 90 day loans to substantial and responsible commercial borrowers plus ¼% beginning July 1, 1984 until July 1, 1986; ½% beginning July 1, 1986 until July 1, 1988; ¾% beginning July 1, 1988 until July 1, 1991. The LIBO Rate shall mean a rate per annum equal to the rate per annum at which deposits of United States Dollars are offered by Owner to prime banks in the London interbank market at 11:00 AM (London time) for a period of 90 days, and in an amount substantially equal to the aggregate of all Quarterly Lease Rates due hereunder and under the Other Leases for the Quarter involved plus ½% beginning on the effective date until July 1, 1984; ⅝% beginning July 1, 1984 until July 1, 1986; ¾% beginning July 1, 1986 until July 1, 1988; ⅞% beginning on July 1, 1988 until July 1, 1991.

Assuming a prime rate of 11¼% over the term of the leased equipment, the equivalent effective annual interest rate would be 11.45% on a weighted basis, or lower if the LIBO Rate is less than 11¼%. If an item of equipment is placed under lease other than on the first day of a calendar quarter, the rental for each fraction thereof during that quarter will consist only of the Quarterly Interest Rate for that period applied to Lessor's Cost of the item and prorated for the number of days in the period that the item was under lease. In that event, the Quarterly Interest Rate will be restricted to the prime interest rate of the Owner. When the aggregate Amortized Value of any item equals the lessor's cost of such item, the lessee has the option to purchase it for a price of one dollar or return it to the lessor or its agent at lessee's expense freight collect.

Upon 90-days written notice, the lessee may terminate the lease of any item by purchasing the item

from the lessor for the Termination Value plus any accrued but unpaid rent and any taxes and charges upon such sale. During the term of the lease, if the coal supply agreement between the lessee and its immediate parent shall for any reason cease to be in full force and effect or be rescinded or terminated, lessee shall promptly give lessor written notice thereof. Lessee shall pay lessor an amount equal to the Stipulated Loss Value of the leased items and any accrued and unpaid rent for the eqqipment due on such quarterly date and all sales taxes and charges. Upon such payment the lease shall terminate and lessor shall transfer all its right, title and interest in and to the equipment to the lessee. Prior consent of the lessor is required to amend, supplement, modify or waive the coal supply agreement. Investment tax credits will be for the account of the lessee. The Lease is a net lease with all expenses directly related to the transaction borne by the lessee. The lessor will be indemnified by the lessee against all liabilities and risks of loss.

For its $25,000,000 commitment under the Lease, lessor will charge Applicants an annualized fee of ½ of 1% of the unused amount of the commitment during the period commencing on the closing date of the Lease Agreement and ending on October 1, 1981. No other fees or expenses are expected to be incurred in connection with the proposed transactions. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended, or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21695/August 29, 1980

In the Matter of

THE SOUTHERN COMPANY
Perimeter Center East
P.O. Box 720071
Atlanta, Georgia 30346

(70-6492)

NOTICE OF PROPOSAL BY HOLDING COMPANY TO ACT AS SURETY ON BONDS OF PUBLIC-UTILITY SUBSIDIARY COMPANIES

NOTICE IS HEREBY GIVEN that the Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern proposes to act as a surety on bonds of its subsidiaries, Alabama Power Company ("Alabama") and Southern Electric Generating Company ("SEGCo"), in connection with appeals by Alabama and SEGCo from final ad valorem tax assessments by the State of Alabama.

The Department of Revenue of the State of Alabama, on July 2, 1980, issued its final assessments and notices of 1980 ad valorem taxes on Alabama's and SEGCo's property located in the State of Alabama. On July 28, 1980, Alabama and SEGCo appealed their respective assessments in connection with

such taxes to the Circuit Court of Montgomery County, Alabama, alleging that the valuation of property owned by non-public utility taxpayers at less than 100% of fair market value and the valuation of the property of Alabama and SEGCo at 100% of fair market value discriminates against Alabama and SEGCo in violation of the Alabama Constitution of 1901 and the United States Constitution.

As a condition to appealing from assessments for the ad valorem tax without being required to pay the disputed taxes when allegdly due, Alabama and SEGCo are required to post supersedeas bonds with the court in double the amount of the respective taxes payable, and such bonds must have a good and sufficient surety thereon. Such taxes are currently estimated to be approximately $30 million for Alabama, resulting in the need for a surety bond of approximately $60 million, and $766,000 for SEGCo, resulting in a need for a surety bond in the amount of $1,532,000.

Alabama and SEGCo have been advised that bonds can be obtained from a commercial surety company, but with aggregate required premiums of over $70,000 annually. In order for Alabama and SEGCo to avoid the substantial premium cost attendant upon the use of a commercial surety, Southern proposes to act as surety on Alabama's and SEGCo's bonds for no premium, fee, or other compensation. Approval of these bonds by the Circuit Court of Montgomery County is expected. Southern intends to act as surety on the supersedeas bonds during the entire appeal period in order to avoid the payment of the alledgedly discriminatory taxes until the questions raised in the appeals have been finally determined.

The fees and expenses incurred or to be incurred in connection with the proposed transactions are estimated at $3,200. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21696/August 29, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6491)

NOTICE OF PROPOSED ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South") a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposes to issue and sell, subject to the

competitive bidding requirements of the Act, not in excess of 1,200,000 shares of a new series of its class of preferred stock, $25 par value ("Stock"). The Stock is to be established by appropriate corporate action and, except as to the number of shares and designation, dividend rate, the date from which dividends commence to accumulate, the amounts payable upon redemption, the terms and amount of the sinking fund, and matters relating to par value and certain voting rights (including matters relating to quorums and adjournments), will have the same rank and the same relative rights as the presently outstanding preferred stock of the company.

The dividend rate of the Stock (which will be a multiple of 4/25ths of 1%) and the price to be paid to the company for the Stock (which will be not less than $25 nor more than $25.70 per share, plus accumulated dividends, if any) will be determined by competitive bidding. The terms of the Stock will include a prohibition until November 1, 1985, against refunding the Stock, directly or indirectly, with funds derived from the issuance of securities at a lower effective interest or dividend cost. Louisiana presently expects that the terms of the stock will include provisions for a sinking fund designed to redeem at $25 per share, plus accumulated dividends, 60,000 shares on each November 1 commencing in the year 1985, with the company having a non-cumulative option to redeem an additional 60,000 shares on each November 1 during the sinking fund redemption period. In the event, however, that market conditions change so that, in the opinion of the company, the market for non-sinking fund preferred stock is more favorable, the company may amend the declaration to provide therefor.

The declaration states that in the event that market conditions change so that, in the opinion of the company, the market for $100 par value preferred stock is more favorable than that for $25 preferred stock, Louisiana may amend the declaration to propose the issuance and sale of not in excess of 300,000 shares of its $100 par value preferred stock in lieu thereof.

Louisiana will apply the net proceeds derived from the issuance and sale of the preferred stock to the payment in part of short-term borrowings estimated to total $149,000,000 at the time the sale proceeds are received, to the financing in part of the company's construction program, and to other corporate purposes.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $170,000, including legal fees of $51,000 and auditors' fees of $15,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 30, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21697/August 29, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6489)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration with this Commission purusant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration which is summarized below, for a complete statement of the proposed transaction.

Middle South proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to 8,000,000 authorized by unissued shares of common stock, $5 par value, to underwriters or investment bankers who will promptly make a public offering thereof. If market conditions at the time of the offering of the securities are unfavorable, Middle South may request an exception from the competitive bidding requirements of Rule 50 so that the common stock may be offered pursuant to a negotiated underwriting.

The net proceeds to be derived from the sale of the common stock (presently estimated to be approximately $100,000,000) will be applied toward the reduction of Middle South's then outstanding bank loans made pursuant to the credit agreement between Middle South and various commercial banks dated as of June 27, 1980. The amount of the loans to be outstanding is estimated to be $198,000,000. Proceeds derived from the bank borrowings are used to acquire common stock of Middle South's subsidiary companies which apply such funds to construction, acquisition of property, retirement of short-term indebtedness, and other corporate purposes.

Middle South Energy, Inc., ("MSEI"), is a wholly-owned subsidiary of Middle South whose function is to construct Grand Gulf Electric Generating Unit No. 1 and No. 2 near Port Gibson, Mississippi. MSEI has covenanted with its bondholders and with the holders of its bank notes that Grand Gulf Unit No. 1 will be placed in commercial operation no later than December 31, 1982, and, with the bondholders that Grand Gulf Unit No. 2 will be placed in commercial operation no later than December 31, 1986. If either of these covenants in not fulfilled or if MSEI defaults with respect to either the bonds or the bank borrowings, MSEI's outstanding obligations will become due and payable by MSEI and by Middle South under its Capital Funds Agreement, unless extensions of time can be arranged. MSEI has assigned, as security, to the banks and to the trustee for the bondholders its rights under its Availability Agreement with Middle South's five electric utility subsidiaries. It provides that no later than December 31, 1982, the operating companies will begin paying MSEI such amounts as will be at least equal to MSEI's operating expenses or an equivalent amount if Unit No. 1 is not in operation, including MSEI's interest charges and depreciation expense.

A statement of the fees and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21698/September 2, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

(70-6484)

NOTICE OF PROPOSED EXTENSION OF UNSECURED DEBT BORROWING LIMITATION AND PROPOSED REVISED CHARTER; ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary of American Electric Power Comapny, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

I&M proposes to obtain the consent of the holders of its outstanding cumulative preferred stock to approve a 5-year extension of I&M's authority under its Articles of Acceptance ("Charter") to issue or assume unsecured debt in an aggregate principal amount exceeding 10%, but which amount, including all outstanding long-term unsecured debt, would not exceed 20% of I&M's total capitalization at any time. I&M's capitalization is defined as the sum of (i) the total outstanding principal amount of its secured debt, (ii) the total par value of, or stated capital represented by, outstanding shares of all classes of its stock, and (iii) any surplus. I&M is at present authorized to incur or assume unsecured debt within the foregoing limitation through December 31, 1980, purusant to an order dated September 29, 1976 (HCAR No. 19697). The proposed extension would commence January 1, 1981, and end December 31, 1985, and would be subject to the condition that the principal amount of such unsecured debt in excess of 10% of total capitalization outstanding on December 31, 1985, shall mature not later than June 30, 1986. The actual issuance and sale of any debt securities within the limits of the shareholder and Commission authorizations described above will be subject to further authorization by the Commission.

I&M also proposes to adopt a new Charter which generally would integrate, restate and supersede the existing Charter and the resolutions of its Board of Directors creating the various series of cumulative preferred stock currently outstanding, and which would effect a number of essentially technical amendments designed to correct obsolete references and to simplify and modernize the Charter by eliminating certain provisions which are unnecessary or redundant under, or which conflict with, the Indiana General Corporation Act. Counsel to I&M have advised that none of the proposed technical changes would be substantially prejudicial to the rights of the holders of any series of I&M's cumulative preferred stock, and thus ordinarily would not require the approval of such holders. In addition to such technical changes, however, the proposed new Charter will also provide for a 4,000,000 share increase, from 7,200,000 to 11,200,000, in the number of shares of $25 Preferred Stock that I&M shall be authorized to issue. Such an increase requires the consent of holders of I&M's cumulative preferred stock and of the holder of its common stock. I&M therefore proposes to submit the new Charter for adoption by holders of its cumulative preferred stock, voting as a class, and by the holder of its common stock. Adoption of the new Charter and the amendments contained therein will be submitted as a single proposal, so that if the proposed new Charter should not be adopted by the holders of the cumulative preferred stock, none of the changes proposed therein, including those not otherwise requiring approval by such holders, will become effective.

I&M proposes to solicit proxies from its common stockholder and the holders of its cumulative preferred stock to be used at a special meeting of the common and preferred shareholders to be held on October 17, 1980. Holders of I&M's cumulative preferred stock will be asked to approve the extension of the unsecured borrowing authority in excess of 10% of I&M's capitalization, and to approve the new Charter. Approval of the extension of time to issue unsecured debt in excess of 10% of capitalization requires the affirmative vote of the holders of cumulative preferred stock entitled to cast a majority of the votes which all outstnading shares of cumulative preferred stock are entitled to cast (with holders of

$25 Preferred entitled to cast one-quarter of a vote per share). Approval of the new Charter requires the affirmative vote of the holders of shares of cumulative preferred stock entitled to cast a majority of the votes which all outstanding shares of cumulative preferred stock are entitled to cast (with holders of $100 Preferred entitled to cast one vote per share, and holders of $25 Preferred entitled to cast one-quarter of a vote per share), voting as a class, and by the holders of a majority of the outstanding shares of common stock, voting as a class. AEP, the holder of all of I&M's common stock, has indicated that it intends to vote all of such shares in favor of the new Charter.

The fees and exenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than September 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the amended declaration, insofar as it proposes the solicitation of proxies from I&M's preferred and common stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

IT IS ORDERED, that the amended declaration regarding the proposed solicitation of proxies from I&M's preferred and common stockholders, be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62, subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21699/September 2, 1980

SEF

SECURITIES ACT OF 1933
Release No. 6233/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21700/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6234/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21701/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6236/September 2, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21702/September 3, 1980

In the Matter of

THE CONNECTICUT LIGHT AND POWER COMPANY
Berlin, Connecticut

(70-6483)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

The Connecticut Light and Power Company ("CL&P"), a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

CL&P proposes to issue and sell, at competitive bidding, up to $75,000,000 principal amount of its First and Refunding Mortgage % Bonds, Series FF, due October 1, 2010. The interest rate, which shall be a multiple of ⅛ of 1%, and the price, exclusive of accrued interest, to be paid to CL&P, which will not be less than 98% nor more than 102% of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the Indenture of Mortgage and Deed of Trust dated as of May 1, 1921, between CL&P and Bankers Trust Company, Trustee, as heretofore supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides, among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by CL&P at an effective cost of less than the effective interest cost of the bonds.

The net proceeds from the sale of the bonds will be used by CL&P to repay a portion of the company's short-term borrowings estimated to total $155,000,000 at the time of such sale, including $15,000,000 to be borrowed on a temporary basis, to refund a bond issue maturing on October 1, 1980. Except for said $15,000,000 of temporary borrowings, such short-term borrowings were or will be applied to finance CL&P's 1979-1980 construction program. The Company's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $317,043,000 ($154,150,000 in 1980 and $162,893,000 in 1981) of which $61,377,000 had been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in 1980 it will require an additional $199,600,000 of funds from external sources to complete its 1980 construction program, to repay at maturity $15,000,000 of 3% Bonds on October 1, 1980, and to refinance approximately $88,200,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $75,000,000 is expected to be realized from the sale of the bonds, $18,000,000 is expected to be realized from the sale of a 1.5% interest (out of CL&P's remaining 4.5% interest) in the Seabrook, New Hampshire, nuclear unit, $40,000,000 is expected to be realized from capital contributions, and the balance is expected to be financed through short-term borrowings.

The fees and expenses incurred or to be incurred in connection with the proposed transactions are estimated at $135,000. The Connecticut Department of Public Utilites has authorized the issuance of the bonds. No other state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21670), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21703/September 3, 1980

In the Matter of

WESTERN MASSACHUSETTS ELECTRIC COMPANY
West Springfield, Massachusetts

(70-6482)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Western Massachusetts Electric Company ("WMECO"), a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), Rule 50 promulgated thereunder regarding the following proposed transaction.

WMECO's proposal to issue and sell, at competitive bidding, up to $30,000,000 principal amount of its First Mortgage Bonds, Series N, % due October 1, 2010. The interest rate, which shall be a multiple of ⅛ of 1%, and the price, exclusive of accrued interest, to be paid to WMECO, would be not less than 98% nor more than 102% of the principal amount thereof, will be determined by competitive bidding. The bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of August 1, 1954, between WMECO and The First National Bank of Boston, Successor Trustee, as supplemented and amended from time to time, and as to be further supplemented by a supplemental indenture to be dated as of October 1, 1980. The supplemental indenture provides among other things, that the bonds shall not be redeemed at the applicable general redemption price prior to October 1, 1985, if such redemption is for the purpose of or in anticipation of refunding such bonds through the use, directly or indirectly, of funds borrowed by WMECO at an effective interest cost of less than the effective interest cost of the bonds.

The net proceeds from the sale of the bonds together with capital contributions totaling $15,000,000 scheduled to be made by Northeast Utilities to WMECO prior to the sale of the bonds, will be used by WMECO to repay a portion of the company's short-term borrowings estimated to total $31,000,000 at the time of such sale. Such short-term borrowings have been or will be applied to finance WMECO's 1979-1980 construction program. The company's 1980-1981 construction program expenditures, including allowance for funds used during construction and nuclear fuel, are expected to total about $86,122,000 ($42,082,000 in 1980 and $44,040,000 in 1981) of which $16,027,000 been expended as of June 30, 1980. In addition to the sale of the Bonds, the Company estimates that in 1980 it will require an additional $70,700,000 of funds from external sources to complete its 1980 construction program and to refinance approximately $41,000,000 of short-term debt that had been incurred before 1980. Of the required amount, approximately $30,000,000 is expected to be realized from the sale of the bonds, $15,000,000 is expected to be realized from capital contributions and the balance of $25,700,000 is expected to be financed through short-term borrowings.

The fees and expenses incurred or to be incurred in connection with the proposed transactions are estimated at $102,000. The Connecticut Department of Public Utilities and the Department of Public Utilities of the Commonwealth of Massachusetts have authorized the issuance of the bonds. No other state commission, and no federal commission, other than this Commission, has jursidiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21675), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21704/September 4, 1980

In the Matter of

THE SOUTHERN COMPANY
64 Perimeter Center Street
P.O. Box 720071
Atlanta, Georgia 30346

(70-6469)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Southern proposes to issue and sell at competitive bidding on or before November 12, 1980, an undetermined number of shares of its authorized but unissued common stock, par value $5 per share. The number of shares to be issued will be determined by Southern and set forth in its registration statement or an amendment thereto and will be an amount which Southern estimates, in light of market conditions at that time, will result in aggregate cash proceeds of $200,000,000. Southern states that it may request an exception from the competitive bidding requirements of Rule 50 if circumstances develop which, in the opinion of Southern, make such an exception in the best interest of Southern and its investors and consumers.

It is stated that Southern intends to use the net proceeds from the sale of the additional common stock, together with treasury funds and the proceeds from the sales of common stock through operation of its dividend reinvestment and stock purchase plan, the employee savings plan, and the employees stock ownership plan to make, from time to time, additional equity investments in the form of capital contributions to the operating subsidiaries and for other corporate purposes. The operating subsidiaries intend to use the funds received for the construction or acquisition of property, for the retirement of interim indebtedness incurred for such purposes, and for other corporate purposes.

A statement of the fees and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 6, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21705/September 4, 1980

In the Matter of

CONOCO INC.
Stamford, Connecticut

LOUISIANA GAS SYSTEM INC.
Houston, Texas

(31-775)

ORDER GRANTING EXEMPTION PURSUANT TO SECTION 2(a)(4)

Conoco Inc. ("Conoco"), a Delaware corporation, and its wholly-owned subsidiary, Louisiana Gas System Inc. ("Louisiana Gas"), also a Delaware corporation, have filed an application pursuant to Section 2(a)(4) of the Public Utility Holding Company Act of 1935 ("Act") for an order declaring Louisiana Gas not to be a "gas utility company" under the Act.

Conoco, directly and through subsidiaries, engages in business in over 20 countries. Its operations include the following: exploring for, developing and producing crude oil and natural gas; refining petroleum; producing and processing chemicals; and transporting and marketing crude oil, natural gas, refined products and chemicals. In addition, Conoco has held a major position in the coal industry in the United States through its wholly-owned subsidiary, Consolidated Coal Company, and has engaged in exploring for and producing uranium, and exploring for copper and other associated minerals. Conoco's natural gas transportation facilities include a 610 mile intrastate pipeline system in Louisiana (the "System") through which natural gas produced or purchased by Conoco is transported to its Gillis Plant for processing and to certain direct customers. In addition, Conoco transports natural gas for others over the System.

At December 31, 1979, Conoco reported consolidated assets of $8,802,139,000, and for the year then ended, consolidated revenues of $3,404,570,000. At that date, and for the same period, the total assets of the System were $34,048,000, and its total revenues were $70,775,000. Of the total revenues of the System, approximately $33,561,000 (or 47.42%) were from sales of natural gas for feed stock, fuel and pressure maintenance to industrial and utility purchasers (43,895 MCF representing $32,797,000) and to domestic and irrigation purchasers (231 MCF representing $462,000).

Approximately $35,828,000 (or 50.62%) of the System's total revenues were from intercompany transfers, and the balance was derived from fees for transporting gas for others.

Conoco proposes to transfer the System to Louisiana Gas. Following the transfer, Louisiana Gas will be primarily engaged in the pipeline business, but will, by virtue of retail sales of natural gas to purchasers other than Conoco's refining and chemical department and its industrial and utility purchasers, be a "gas utility company" within the meaning of Section 2(a)(4) of the Act. Conoco states that sales of natural gas at retail will not exceed 1% of the total revenues of Louisiana Gas on a *pro forma* basis, and requests that the Commission find that by reason of the small amount of such sales at retail Louisiana Gas will not be deemed a "gas utility company."

Section 2(a)(4) provides, in part, that the Commission may declare a company not to be a "gas utility company" if it finds that "(a) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (b) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors and consumers that such company be considered a gas utility company for the purposes of [the Act]." Rule 10(a)(1) under the Act provides, further, that a company shall be exempt from the duties, liabilities and obligations imposed under the Act upon it as a "holding company" with respect to a subsidiary which, insofar as it is a public utility company, is declared not to be a "gas utility company" under Section 2(a)(4).

Due notice of the filing of said application has been given (HCAR No. 21676), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that Louisiana Gas will, upon transfer of the System, be primarily engaged in a non-utility business and that, by reason of the small amount of natural gas which Louisiana Gas expects to sell at retail, it is not necessary in the public interest or for the protection of investors or consumers that Louisiana Gas be considered a gas utility company.

IT IS DECLARED, accordingly, that Louisiana Gas is

not deemed to be a gas utility company for purposes of the Act, and the application filed herein is ORDERED effective forthwith.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21706/September 4, 1980

In the Matter of

THE CONNECTICUT GAS COMPANY
Selden Street
Berlin, Connecticut 06037

(70-6497)

NATIONAL FUEL GAS SUPPLY CORPORATION
308 Seneca Street
Oil City, Pennsylvania 16301

(70-6496)

NOTICE OF PROPOSAL TO ACQUIRE VOTING SECURITIES OF NATURAL GAS SUPPLY COMPANY

NOTICE IS HEREBY GIVEN that the Connecticut Gas Company ("Conn Gas"), a gas utility subsidiary of The Connecticut Light and Power Company, itself a subsidiary of Northeast Utilities, a registered holding company, and National Fuel Gas Supply Corporation ("NFG Supply"), a non-utility subsidiary of National Fuel Gas Company, also a registered holding company, have filed separate applications pursuant to Sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction. All interested persons are referred to the applications, which are summarized below, for a complete description of the proposed transaction.

Conn Gas and NFG Supply and twelve other public utility companies (collectively, the "Participants") which serve natural gas at retail in New England and in New York and New Jersey, have conducted negotiations with TransCanada PipeLines Limited ("TransCanada"), a Canadian corporation which owns and operates a natural gas transmission pipeline system extending from the province of Alberta to Eastern Canada, for an additional source of natural gas supply for resale in domestic markets. In order to facilitate their negotiations with TransCanada, the Participants have organized a new company under Delaware law, named Boundary Gas, Inc. ("Boundary Gas"), and propose to acquire all of the voting securities that Boundary Gas is authorized to issue (100 shares of Common Stock, par value $100 per share) for an aggregate price to the Participants of $10,000.

Boundary Gas was organized primarily at the request of TransCanada, which prefers to deal with one entity representing the Participants, rather than separately with each Participant. It is contemplated that Boundary Gas will enter into (i) a gas purchase contract with TransCanada ("Purchase Contract") under which TransCanada will agree to sell and Boundary Gas to purchase volumes of natural gas, and (ii) a gas sales agreement ("Sales Agreement") with the Participants. Under the Sales Agreement, it is intended that Boundary Gas will sell to the several Participants their respective *pro rata* share of the natural gas which Boundary Gas has purchased from TransCanada under the Purchase Contract. Since it is not contemplated that Boundary Gas will own any material properties or facilities or conduct any active business other than taking of legal title to natural gas purchased from TransCanada, the sales by Boundary Gas to each Participant will take place simultaneously with the purchase made by Boundary Gas from TransCanada.

The Participants and their proposed respective stock ownership in Boundary Gas is as follows:

Participant	*Percentage of Stock Ownership*
The Brooklyn Union Gas Company	22.54
Consolidated Edison Company of New York, Inc.	22.54
Long Island Lighting Company	12.97
Bay State Gas Company	10.27
New Jersey Natural Gas Company	7.85
Boston Gas Company	7.52
Connecticut Gas Company	5.11
National Fuel Gas Supply Corp.	4.87
Haverhill Gas Company	1.74
Berkshire Gas Company	1.16

Manchester Gas Company	1.15
Valley Gas Company	1.14
Gas Service, Inc.	.57
Fitchburg Gas and Electric Co.	.57

Under the terms of the subscription agreement which the Participants have entered into, Conn Gas may acquire 5.11 shares of Boundary Gas' capital stock for a total of $511, and NFG Supply may acquire 4.87 shares for a total of $487. The number of shares which each Participant may purchase corresponds to the percentage of natural gas to which each Participant will be entitled to purchase from Boundary Gas under the Sales Agreement with the Participants. The physical delivery of natural gas by TransCanada is to be made at a point near Niagara, Ontario, where the facilities of TransCanada interconnect with those of Tennessee Gas Pipeline Company ("Tennessee"). Tennessee will take delivery of the natural gas at this point for the account of Boundary Gas and, pursuant to transportation contracts with the several Participants, deliver such gas to the Participants.

Under the Purchase Contract, TransCanada will sell and deliver to Boundary Gas up to 185,000 Mcf of natural gas per day for a period of ten years, commencing on November 1, 1981, at the international border price for gas as determined under Canadian law. Under the Sales Agreement, Conn Gas and NFG Supply will agree to take and pay for 5.11% and 4.87%, respectively, of the gas which Boundary Gas becomes obligated to purchase from TransCanada and will be obligated to pay for gas not taken only to the extent that the failure to take gas results in a requirement that Boundary Gas pay TransCanada for gas not taken. The applicants have estimated that their share of the gas purchased by Boundary Gas will result in the purchase of at least 3,285 MMCF of gas per year for each of the ten years covered by the Purchase Contract in the case of NFG Supply and 3,450 MMCF in the case of Conn Gas.

The fees, commissions and expenses paid or incurred in connection with the proposed transaction total, in addition to the filing fees, approximately $1,500. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposal.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by either of said applications which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant(s) at the above-stated address(es), and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the applications, as filed or as they may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including notice of the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 583/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6236/September 2, 1980

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11318/August 28, 1980

In the Matter of

BROAD STREET INVESTING CORPORATION
NATIONAL INVESTORS CORPORATION
TRI-CONTINENTAL CORPORATION
UNION CAPITAL FUND, INC.
UNION CASH MANAGEMENT FUND, INC.
SECOND UNION CASH MANAGEMENT FUND, INC.
UNION INCOME FUND, INC.
UNION SERVICE CORPORATION
UNION SERVICE DISTRIBUTOR, INC.
J. & W. SELIGMAN & CO.
J. & W. SELIGMAN & CO. INCORPORATED
One Bankers Trust Plaza
New York, New York 10006

(812-4294)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 17 (b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT AND FOR AN ORDER PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER.

NOTICE IS HEREBY GIVEN that Broad Street Investing Corporation, National Investors Corporation, Union Capital Fund, Inc., Union Cash Management Fund, Inc. ("Union Cash"), Second Union Cash Management Fund, Inc. ("Second Union Cash"), Union Income Fund, Inc. and Tri-Continental Corporation ("Tri-Continental"), diversified, management investment companies (the "Union Service companies") registered under the Investment Company Act of 1940 ("Act"); Union Service Corporation ("Union Service"); Union Service Distributor, Inc. ("Distributor"); J. & W. Seligman & Co. ("Seligman"); and J. & W. Seligman & Co. Incorporated (the "Manager") filed an application on April 19, 1978, and amendments thereto on March 13, 1980, April 10, 1980, and April 18, 1980, requesting an order of the Commission pursuant to Sections 17(b) and 17(d) of the Act and Rule 17d-1 thereunder, permitting the externalization of the presently internalized advisory, management and distribution functions of the Union Service companies. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Union Service Complex ("Complex") consists of six registered open-end investment companies (Broad Street Investing Corporation, National Investors Corporation, Union Income Fund, Inc., Union Capital Fund, Inc., Union Cash, and Second Union Cash) and a registered closed-end investment company (Tri-Continental). Investment advisory, management and share distribution functions are performed by three service companies (Union Service, Union Data Service Center, and Distributor) jointly owned by the investment companies in the Complex. Seligman, a broker-dealer registered under the Securities Exchange Act of 1934, originally organized the Complex. Seligman partners have always served as senior officers of the companies in the Complex, and Seligman executes securities transactions for the Complex. Fred E. Brown, Seligman's Managing Partner, currently serves as Chairman of the Board and President of Union Service, Chairman of the Board and President, and Chairman of both the Investment and Executive Committees of each of the seven Union Service companies. During 1978 and 1979 Seligman received brokerage commissions from the Complex amounting to $1,091,000 and $1,052,000, respectively, representing approximately two-thirds of the Complex's agency transactions in listed securities (exclusive of options and option related transactions).

The present operation of the Complex is unusual in that each of the Union Service companies is internally managed by its own directors and officers. Investment decisions for each investment company are made by an Investment Committee consisting of directors and officers of that company. Investment research and advice, as well as certain other administrative services, are provided to the Complex by Union Service, an investment adviser registered under the Investment Advisers Act of 1940 and wholly-owned by the Union Service companies. The cost of the advisory and management services provided by Union Service is shared by the Union Service companies in proportion to the net assets of each company (75% of their assets in the cases of Union Cash, and Second Union Cash). To allow the Union Service companies to obtain advisory and management services through Union Service, the Commission has issued three orders (Investment Company Act Release Nos. 6994, 7117 and 9513) under Section 6(c) of the Act providing limited exemptions from the provisions of Sections 2(a)(19) and 12(d)(3) of the Act.

Distributor, which is also wholly-owned by the Union Service companies, acts as distributor for the capital

stock of each Company. The costs and financial requirements of Distributor are shared by the Union Service companies in proportion to the net assets of each company (60% of net assets in the case of Tri-Continental), provided that the maximum amount contributed by any of such companies does not exceed 5/100 of 1% of its average net assets (3/100 of 1% in the case of Tri-Continental). To enable them to bear all of their distribution and promotional expenses through Distributor the Union Service companies have obtained two Commission orders (Investment Company Act Release Nos. 7144 and 9513) under Section 17(d) of the Act and Rule 17d-1 thereunder. Union Data Service Center ("Union Data") is a wholly-owned subsidiary of Union Service, which provides the Union Service companies, Union Service and Distributor with corporate accounting and shareholder account and other data processing and related services on a nonprofit basis.

The Applicants have requested an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder to permit the externalization of the Complex's presently internalized advisory, management and distribution functions. Under the Externalization Proposal each of the Union Service companies will enter into an investment advisory contract with the Manager, an investment adviser which has been organized by personnel of Union Service and Seligman, and the senior officers of the Union Service companies. In the event that the Externalization Proposal is implemented, Seligman will dissolve and the Manager and its subsidiaries will acquire the assets and personnel of the Seligman Partnership. The Manager and its subsidiaries will also offer employment to the staff of Distributor and Union Service (which will also be dissolved), and assume obligations under a retirement plan for employees of Distributor and Union Service and a long-term employment agreement with Mr. Fred Brown (such obligations having a value of $511,329 as determined by the disinterested directors of the Union Service companies). The Manager will utilize substantially the same personnel and facilities as are now employed by Union Service, Distributor and Seligman, and will provide substantially similar services to the Complex.

The Manager will provide to the Union Service companies all of the investment advisory and management services now provided by Union Service. Discount Corporation of New York Advisers, which currently serves as an external investment adviser to Union Cash and Second Union Cash will become an investment adviser to the Manager with respect those two companies, providing essentially the same services as it does now, with its advisory fee being paid by the Manager. In addition, the investment advisory contract will specify that the Manager will have the responsibility for making portfolio security decisions for each of the Union Service Companies.

Distribution services now performed by Distributor under the Externalization Proposal will be performed by Seligman Distributor, Inc. ("Seligman Distributor"), an entity formed as a wholly-owned subsidiary of the Manager, Seligman Securities, Inc. ("Seligman Securities"), will perform the order placing services currently provided by the staff of the Union Service companies and Union Service, and will act as broker for the Complex pursuant to the undertaking discussed below. The Manager will also oversee the operation of Union Data, which will continue to be beneficially owned by the Union service companies and to provide its services to them on an at cost basis.

The fee to be paid by each of the Union Service companies for advisory and management services performed by the Manager will be calculated based on a percentage of the assets of all of the Union Service companies (including any investment company which may join the Complex in the future). However since the assets of Second Union Cash that were subject to the Federal Reserve Board's reserve requirements on assets of money market funds would not need the advisory services of the Manager, but would require the administrative services provided by the Manager, the Applicants proposed that 50 percent of the assets of that new company subject to the reserve requirements be included in the Fee Base for purposes of calculating the Manager's fee. Effective July 28, 1980, money market funds will no longer have to deposit with the Federal Reserve Board 7.5 percent of any increase in their assets over the level of March 14, 1980. The abolition of the FRB's reserve requirements will necessitate that the disinterested directors of the Union Service companies reconsider the basis on which Second Union Cash will participate in the Externalization Proposal. The Applicants have represented that, before the period for requesting a hearing on the application expires, they will file an amendment to the application setting forth the basis upon which the Applicants propose to treat Second Union Cash after July 28, 1980.

In addition, the management fee rate for the Complex will be cumulatively reduced in successive steps (from 0.45% to 0.20% on an annual basis), and so long as the management fee exceeds 0.25%, a specified percentage (from 30% to 10%) of the aggregate total assets of all accounts advised by or under the supervision of the Manager on a fee basis will be included in the Fee Base, provided that the dollar amount of the reduction in the fee resulting from the inclusion of such other assets in the Fee Base does not exceed 15% of the fee which would otherwise be payable by the Union Service companies to the Manager. At December 31, 1979, the Fee Base would have been $2,094,139,000, comprised of $1,922,792,000 of investment company assets and $171,347,000 representing 30% of the total assets of all accounts which Seligman served as investment adviser for a fee, and would have resulted in a management fee percentage of 0.392%.

With respect to the distribution services to be provided by Seligman Distributor, it is represented that the Union Service companies will bear only those expenses relating to issuance, registration and qualification of their shares, the preparation and printing of prospectuses and the provision of date processing and related services in connection with share distribution activity. Seligman Distributor will receive, as direct compensation, only the sales charge paid by investors, less dealer commissions.

According to information contained in the application, the aggregate cost to the Union Service companies of investment advisory, management and distribution services during 1977, 1978, and 1979 was $4.1 million, $4.4 million, and $5.0 million, respectively. Under the Externalization Proposal the costs for such services for those three years would have been $6.5 million, $6.3 million and $6.8 million, respectively. Under the Externalization Proposal the total operating expenses of the Complex would have increased 32.1%, 23.5%, and 20.2% during 1977, 1978, and 1979. The ratio of operating expenses to total net assets for the Complex is expected to increase from .504% to .606% if the externalization is implemented.

The following undertakings have been incorporated into the Externalization Proposal: (1) The Manager has undertaken to provide advisory services to the Union Service companies under the proposed investment advisory contract, and not to propose any increase in the management fee for at least three years; (2) The Manager has undertaken to make all of its shares subject to an option by the Manager for a five year period to repurchase such shares at their book value (which would exclude any value attributable to the advisory agreement) at the death or termination of employment of a shareholder, or a proposed voluntary or involuntary transfer of the shareholder's shares; (3) The articles of incorporation of each of the Union Service companies will be amended to provide that at least 75% of the Board of Directors shall be persons who are not interested persons of the Manager, and that such disinterested directors will direct the operations of the Board of Directors, including the major board committees; (4) The leasehold improvements held by Distributor and the furniture, furnishings, equipment and library now used by Union Service and Distributor will be sold to the Manager for cash in an amount equal to the higher of their appraised value or book value at the time of sale (established by an independent appraiser and approved by the Board of Directors of each Union Service company); (5) Seligman Securities has undertaken to be available to act as broker for approximately two-thirds of the Union Service companies' portfolio transactions for three years at rates approximating its incremental costs (determined according to a prescribed formula); (6) The Manager has undertaken to implement a procedure whereby for five years the Union Service companies will be able to recapture a declining portion of the profits from any sale of the Manager's shares (determined according to a prescribed percentage formula), and the shareholders of such companies will have to approve any sale of a control block of the Manager's shares; (7) The Manager has undertaken to attempt to recapture, to the extent it is possible to do so, underwriting commissions or soliciting dealers' fees on behalf of the Union Service companies where the Manager or an affiliated person thereof is a member of an underwriting syndicate in connection with effecting purchases of new issues of securities for such companies; (8) Seligman Distributor has committed to serve under the proposed distribution contract for a three year period; and (9) The Board of Directors of each Union Service company has acknowledged that it will be under a fiduciary duty, if it believes that the quality of services to the company will be impaired by the Manager taking on new clients of material significance, to take such steps as it deems necessary including a renegotiation of the fee payable to the Manager.

The disinterested directors of the Union Service companies have estimated that such companies in the aggregate will enjoy management fee savings of $1,176,000 initially, and between $3,611,451 and $5,250,238 over a three year period under Undertaking No. 1 above, based on the difference between the management fee that those companies will pay under the proposed rate structure and the fee that would be payable under the prevailing rate structure for the investment company industry. Such disinterested directors have also estimated that under Undertaking No. 5 above all of the Union Service companies will enjoy brokerage commission savings over a three year period of between $2,128,425 and $2,694,607. The Board of Directors of each Union Service company in approving and reviewing the brokerage allocation procedure whereby Seligman Securities will effect brokerage transactions for such company on an incremental cost basis will attempt to ensure compliance with the requirements of Rule 17e-1 under the Act.

Section 17(a) of the Act, in pertinent part, provides that is shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell to or purchase from such registered investment company any security or other property except securities of which the investment company is the issuer. Section 17(b) of the Act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of Section 17(a) of the Act if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Rule 17d-1, adopted by the Commission pursuant to Section 17(d) of the Act, provides, in part, that no affiliated person of any registered investment company and no affiliated person of such a person, acting as principal, shall participate in, or effect any transaction in connection with any joint enterprise or other joint arrangement in which such registered company is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by an order. A joint enterprise or other joint arrangement as used in this Rule is any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company and any affiliated person of such registered investment company, or any affiliated person of such a person, have a joint and several participation, or share in the profits of such enterprise or undertaking. In passing upon such application, the Commission will consider whether the participation of such registered investment company in such joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Based on the relationships outlined above, Union Service and Distributor are affiliated persons of the Union Service companies, each Union Service company is an affiliated person of the other companies, and the offices and employees of Union Service and Distributor are affiliated persons of affiliated persons of the Union Service companies under Section 2(a)(3) of the Act. Thus, the cooperation and participation of the Union Service companies with Union Service, Distributor and the officers and employees of those companies in the proposed externalization, the proposed liquidation of Union Service with the participation of the Union Service companies, and the proposed transfer of the responsibility for distribution of the shares of the Union Service companies to Seligman Distributor constitute joint transactions within the meaning of Section 17(d) of the Act. Finally, the proposed sale of leasehold improvements held by Distributor and the furniture, furnishings, equipment and library now used by Union Service and Distributor to the Manager is a transaction subject to the provisions of Section 17(a) of the Act.

The Applicants state that the proposed externalization of the advisory, management and distribution functions of the Union Service companies has five primary purposes: (1) to encourage expansion of the asset base of the Union Service companies, and a consequent reduction of the operating expense ratios of such companies; (2) to provide an opportunity for the employees of Union Service and Distributor to enjoy an equity participation in a profit oriented investment advisory firm and other personnel incentives which the Applicants claim are needed to attract, motivate and retain superior personnel to manage the operations of the Union Service companies; (3) to preserve the relationship of the Union Service companies with the personnel of Union Service, Distributor and Seligman, including

the senior management of such companies, who are currently providing a high level of advisory, management and distribution services to such companies; (4) to strengthen and expand the capabilities of the present management of the Union Service companies by combining the new investment advisory staff of Seligman with the present staff of Union Service and Distributor; and (5) to adopt the conventional organizational format for the Complex, and thus decrease the present risks and additional expenses for the Union Service companies resulting from the unique, internalized management and distribution structure of the Complex. The Applicants contend that the chances are excellent that the above five objectives will be accomplished under the terms of the Externalization Proposal, while the chances of accomplishing such objectives under the present internalized structure are minimal. In this regard, the Applicants place great emphasis in their support for the Externalization Proposal on the increased potential for bringing out new investment company products for the Complex, which in their opinion will result because of the availability of an entity (the external investment adviser) to bear the startup expenses involved in offering such new products. The Applicants acknowledge that implementation of the Externalization Proposal will result in an immediate increase in the operating expenses of the Union Service companies; however, they claim that such increase in expenses is justified given the potential contained in the externalization to expand the asset base of the Complex and thereby limit future increases in the operating expenses of such companies, and given the comparatively small size of the expense increase (amounting in the aggregate to approximately 1/10 of 1 percent of company assets). The Applicants also point out that under the Externalization Proposal the expense ratios of the Union Service companies would still be relatively low measured by investment company industry standards. In addition, the Applicants note that the proposed externalization will not be put into effect unless it is approved by the shareholders of all the Union Service companies.

Based on their detailed review of the terms of the Externalization Proposal the disinterested directors of the Union Service companies have determined that the externalization will be fair and reasonable in all respects to each of the Union Service companies, and in the best interests of each company and its shareholders. In this regard, the disinterested directors have determined that the Union Service companies under the terms of the Externalization Proposal will receive economic benefits worth between $6,320,129 and $8,525,098 (management fee savings, brokerage commission savings, plus assumption of liabilities under a retirement plan and long-term employment contract) within the first three years, and could anticipate receiving at least $6,292,795 in benefits thereafter, far in excess of the $6.5 million which the directors estimate to be the value of the right to manage the Union Service companies. Specifically, the directors have determined that, while the Externalization Proposal will affect each of the Union Service companies differently, all of the Union Service companies will benefit from it. Moreover, the directors have determined that the Externalization Proposal is free of any inherent bias favoring one Union Service company over another; the qualitative benefits of the externalization for the Union Service companies balance against the inevitable quantitative disparities in the allocation of economic benefits among such companies; and the anticipated benefits flowing to each Union Service company falls within an acceptable range of fairness. On the basis of these determinations of the disinterested directors, later accepted by the Boards of Directors of all the Union Service companies, the Applicants contend that the criteria of Rule 17d-1 for issuance of an order under Section 17(d) of the Act are met by the Externalization Proposal.

In processing the application the Commission gives significant weight to the views of the disinterested directors of the Union Service companies in light of their having retained independent legal counsel to provide them legal advice concerning the Externalization Proposal and an independent financial consultant having experience with investment companies to prepare an analysis of the anticipated costs and benefits of the Externalization Proposal. The Commission regards the fact that the disinterested directors, based on information provided them by such independent legal counsel and financial analyst, have compared, and quantified, on a company by company basis the benefits which they expect will result from the externalization against the increased operating costs which will, at least initially, result from it in order to determine whether such costs and benefits are allocated fairly among all the Union Service companies, or are weighed in favor of the Manager or Seligman, as being crucial to its acceptance of the views of the directors. The Commission also notes that the disinterested directors, with the assistance of their independent legal counsel and financial analyst, have determined what

value should be placed on the right to manage the Union Service companies which is being acquired by the Manager in order to determine whether the benefits flowing to those companies under the externalization exceed the value of the right to manage the Union Service companies.

Finally, the Applicants contend that the terms of the proposed sale of the leasehold improvements of Distributor and the furniture, furnishings, equipment and library used by Distributor and Union Service to the Manager for cash in an amount equal to the higher of their appraised value (established by an independent appraiser and approved by the Board of Directors of each Union Service company), or book value at the time of sale meets all the requirements of Section 17(b) of the Act for an order of the Commission exempting such sale from the provisions of Section 17(a).

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11319/August 28, 1980

In the Matter of

IMPACT FUND, INC.
711 Polk Street
Houston, TX 77002

(811-1802)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Impact Fund, Inc. ("Applicant"), and open-end, diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 2, 1979, and an amendment thereto on July 28, 1980, for an order of the Commission pursuant to Section 8(f) of the Act declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a Texas corporation and that it registered under the Act on January 29, 1969. Applicant also states that it filed a registration statement under the Securities Act of 1933 with respect to 2,000,000 shares of its common stock and that such registration statement was declared effective on July 11, 1969.

According to the application, Applicant's board of directors and the board of directors of Commerce Income Shares, Inc. ("Commerce"), an open-end, diversified investment company registered under the Act, voted unanimously at meetings held on September 29, 1978, to approve a plan and agreement of reorganization providing for the transfer of substantially all of the assets of Applicant to Commerce. Applicant states that requisite approval of such sale was obtained from its shareholders on May 14, 1979, and that on February 15, 1979 the Commission issued an order (Investment Company Act Release No. 10594), pursuant to Sections 6(c) and 17(b) of the Act, permitting the proposed transaction. Applicant states that at the close of business on May 31, 1979 substantially all of its assets were transferred to Commerce. Applicant represents that its shareholders received a final dividend of $.164 per share

from net investment income immediately prior to the sale of its assets and that its shareholders received .986 shares of common stock of Commerce in exchange for each share of its stock. Applicant also represents that $25,980 in cash was retained to pay any remaining expenses relating to the winding-up of its affairs. Applicant states that such expenses totalled $24,732 and that the remaining $1,248 was transferred to Commerce.

Applicant represents that, as a result of the sale of substantially all its assets to Commerce, it has no assets and no liabilities, that it is not a party to any litigation or administrative proceeding, and that it currently has no security holders. Applicant also states that it has filed articles of dissolution with the State of Texas and that the Secretary of the State of Texas has issued a certificate of dissolution.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 22, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11320/August 28, 1980

In the Matter of

INTERNATIONAL POWER SECURITIES CORPORATION
c/o Mr. William A. Stockel, Ass't Vice President
National Bank of North America
80 Pine Street
New York, New York 10005

(811-456)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that International Power Securities Corporation ("International Power"), registered under the Act as a closed-end, non-diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that International Power was organized under the laws of the State of Delaware on April 30, 1923. On February 24, 1941, International Power filed a petition under Chapter X of the United States Bankruptcy Act in the United States District Court, District of New Jersey ("bankruptcy court") proposing that a plan for its reorganization be effected. Subsequently, on September 13, 1941, it registered under the Act by filing Form N-8A.

After International Power registered under the Act it filed an application pursuant to Section 6(c) of the Act requesting an order of the Commission exempting it from all of the provisions of the Act during the time that it was subject to the jurisdiction of the bankruptcy court in the Chapter X proceedings. The Commission granted the application by an order dated November 17, 1941 (Investment Company Act Release No. 258), subject to the condition, among others, that International Power remain sub-

ject to Section 8(a) of the Act. International Power did not file a registration statement pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock.

International Power's petition for reorganization was approved on February 24, 1941, and the bankruptcy court appointed a disinterested trustee and a trustee to operate the business and manage the properties. On October 26, 1951, the bankruptcy court approved an Amended Plan of Reorganization, effective November, 1951, which provided, among other things, for International Power's assets to be acquired by a successor company, Italian Power Realization Trust ("Italian"), and the exchange of new securities and/or cash to International Power's preferred shareholders and the holders of other outstanding debt securities of International Power. Italian did not become a registered investment company. International Power's securityholders were notified of their rights under the Amended Plan of Reorganization in a notice mailed to them dated December 6, 1962, by the Indenture Trustee, The Meadow Brook National Bank of New York, which was later acquired by the National Bank of North America. The bankruptcy court's decree provided that unless the securityholders presented their securities for cash and/or new securities before January 1, 1967, they would no longer have the right to exchange their securities for such assets. Thus, it appears that International Power is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon International Power at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request, or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11321/August 28, 1980

In the Matter of

THE GALAXY FUND, INC.
7600 Jericho Turnpike
Woodbury, New York 11797

(811-1623)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that The Galaxy Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of New York on January 19, 1968, as Advanced Technology Fund, and that the name was changed to The Galaxy Fund, Inc., shortly after March 19, 1968, the date on which the Fund registered under the Act. The Fund filed a registration

statement (File No. 2-28469) under the Securities Act of 1933 in connection with a proposed public offering of shares of its capital stock. This registration statement was declared effective by the Commission on March 21, 1969, and the Fund commenced a public offering of shares of its capital stock on that date. The Fund's Board of Directors ordered that the sale of shares be suspended on February 9, 1972. The Fund continued to redeem its outstanding shares, and as of March 31, 1974, its total net assets had been reduced to $4,012.95. Since 1974, the Fund has not filed any of the periodic reports required to be filed with the Commission pursuant to the Act. On January 24, 1980, the United States District Court for the Eastern District of New York issued an order approving a Stipulation and Settlement dated January 31, 1979, settling a shareholders derivative action, entitled *Elson et al.* v. *The Galaxy Fund, Inc.* (72 Civil No. 1217), brought on behalf of the Fund and its shareholders seeking to recover damages from the Fund's investment adviser and various officers and directors of the Fund resulting from their alleged violations of various provisions of the Act.

On May 15, 1973, the Fund's investment adviser and manager, Galaxy Management Corporation, resigned, effective June 15, 1973. Unable to secure a new investment adviser and manager, the Fund's Board of Directors on May 30, 1973, voted to liquidate the Fund and to seek shareholder approval of a plan of voluntary dissolution of the Fund. The proposal to liquidate and dissolve the Fund was to be considered by the Fund's shareholders at the Fund's annual meeting of shareholders scheduled for September 20, 1973; however, lacking a quorum, the shareholders meeting was adjourned and the proposal to liquidate and dissolve was never considered or approved by the Fund's shareholders. Subsequently, on January 28, 1974, the Fund's Board of Directors voted to seek judicial liquidation of the Fund and a petition seeking such liquidation was filed in the Supreme Court of New York, but the petition was not pursued and that Court never issued a final order on the matter. The Commission has been advised that the Fund currently has no assets, and has virtually ceased operations. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 22, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified, if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11322/August 29, 1980

In the Matter of

THE 44 WALL STREET EQUITY FUND, INC.

and

FORTY FOUR SALES, INC.
150 Broadway
New York, New York 10038

(812-4690)

ORDER GRANTING AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM SECTION 22(d) OF THE ACT AND PURSUANT TO SECTION 11(a) OF THE ACT TO PERMIT AN OFFER OF EXCHANGE

The 44 Wall Street Equity Fund, Inc. ("Fund"), an open-end, non-diversified management investment company registered under the Investment Company Act of 1940 ("Act"), and Forty Four Sales, Inc., principal underwriter for the Fund (collectively the "Applicants"), filed an application on June 10, 1980, for an order of the Commission (1) pursuant to Section 11(a) of the Act to permit the Fund to offer its shares for certain shares of the Reserve Fund, Inc. ("Reserve"), and (2) pursuant to Section 6(c) of the Act to exempt Applicants from the provisions of Section 22(d) of the Act and the rules thereunder to the extent necessary to permit such an offer of exchange.

On August 6, 1980, a notice (Investment Company Act Release No. 11286) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the proposed offer of exchange be approved.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the request for exemption from Section 22(d) of the Act to the extent requested by, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11323/August 29, 1980

In the Matter of

KEMPER INCOME AND CAPITAL PRESERVATION FUND, INC.
KEMPER HIGH YIELD FUND, INC.
KEMPER MUNICIPAL BOND FUND, INC.
KEMPER FUND FOR GOVERNMENT GUARANTEED SECURITIES, INC.
KEMPER FINANCIAL SERVICES, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(812-4481)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Kemper Income and Capital Preservation Fund, Inc. ("Income Fund"), Kemper High Yield Fund, Inc. ("High Yield Fund"), Kemper Municipal Bond Fund, Inc. ("Municipal Fund") and Kemper Fund for Government Guaranteed Securities, Inc. ("Government Fund"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Kemper Financial Services, Inc. ("Kemper"), investment manager for such investment companies (hereinafter, such investment companies and Kemper are referred to as "Applicants"), filed an application on June 1, 1979, and amendments thereto on February 5, 1980, June 20, 1980 and August 7, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit the sale of shares of the applicant investment companies (and shares of such other registered open-end, management investment companies with portfolios consisting primarily of fixed income securities and for which Kemper serves as investment manager and principal underwriter in the future) (collectively, "Funds") at net asset value, without imposition of normal sales charges and without regard to minimum initial investment requirements, to participants in reinvestment programs proposed to be offered to unitholders of: (1) Kemper Tax-Exempt Income Trust, (2) Kemper Income Trust, (3) Kemper Trust for Government Guaranteed Securities and (4) other unit investment trusts sponsored by Kemper in

the future (collectively, "Trusts"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application: (1) Income Fund seeks to provide as high a level of current income as is consistent with stability of capital by investing in corporate debt securities rated "A" or better by Standard & Poors Corporation or Moody's Investment Services, Inc., U.S. government obligations, certificates of deposit, and prime commercial paper; (2) High Yield Fund seeks the highest level of current income, consistent with reasonable risk, obtainable from a professionally managed, diversified portfolio of fixed income securities; (3) Municipal Fund seeks the highest level of current interest income exempt from federal income taxation as is consistent with preservation of capital through a professionally managed portfolio of municipal bonds rated "A" or better at the time of purchase; and (4) Government Fund seeks high current income, liquidity and security of principal by investing in obligations issued or guaranteed by the U.S. government or its agencies. The Trusts are unit investment trusts which are or will be registered under the Act. The portfolios of the Trusts are or will be invested in one of various types of fixed income securities.

Applicants propose to permit unitholders of each Trust to invest monthly distributions of principal (including capital gains, if any), interest, or both, in shares of one of the Funds which invests in securities similar to those in which that Trust is invested ("Reinvestment Fund"), without a sales charge and without regard to minimum investment requirements pursuant to a reinvestment program ("Program"). Each of the Trusts will disclose the availability of the Program and details concerning how a unitholder can become a participant in the Program ("Participant"). In addition, each Fund will disclose the existence of the Program in its prospectus. The application states that the expenses of offering the Programs will be borne by Kemper. The application further states that, upon request, each unitholder of the Trusts will be furnished with a prospectus of the appropriate Reinvestment Fund and a form by which the unitholder may affirmatively elect to invest monthly distributions in shares of the Reinvestment Fund. Investors Fiduciary Trust Company, a limited purpose trust which is a joint venture of Kemper and DST, Inc. ("DST"), is or will be the trustee for each of the Trusts, and will serve as program agent for the Programs ("Program Agent").

Applicants state that upon the dates distributions of the Trusts are made, such distributions with respect to a Participant's units which have been designated by the Participant to be invested will automatically be forwarded by the Program Agent to DST, transfer agent for the Funds, for the purchase of shares of the appropriate Reinvestment Fund at the net asset value next determined. Where a Participant has elected to invest distributions of principal, the proceeds of redemption, or payment at maturity, of securities held by the Trust will be invested in shares of the appropriate Reinvestment Fund pursuant to the Program. Any redemption of units of a Trust initiated by a Participant will result in payment of redemption proceeds directly to that Participant. Applicants state that notices will be mailed by the Program Agent to each Participant setting forth the total amount of each distribution made by a Trust on the units held by that Participant and the portions thereof attributable to interest and principal, and that DST will mail confirmations of purchases of shares of the Funds to participants. According to the application, by notifying the Program Agent in writing, Participants will be able to terminate their participation in the Programs as to: (1) all Trust distributions; (2) Trust principal and capital gains distributions; or (3) Trust interest distributions. Such notification will have to be recieved by the Program Agent at least 10 days prior to the record day applicable to any distribution in order to be effective with respect to that distribution.

Applicants state that participation in the Programs will not interfere with the rights of unitholders to redeem their units as set forth in the Trusts' prospectuses. They represent that the interests of Participants as shareholders of the Funds will be identical to the interests of other shareholders of the Funds and will include the right of redemption and the right to reinvest Fund distributions in additional Fund shares at net asset value as set forth in each Fund's prospectus. Participants will be provided with annual updated prospectuses of the appropriate Reinvestment Fund. The Funds' normal sales charges and minimum investment requirements will apply to purchases of Fund shares by Participants other than through the Programs.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being cur-

rently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person, except a dealer, a principal underwriter or the issuer, except at a current public offering price described in the prospectus. Applicants request an exemption from the provisions of Section 22(d) of the Act to permit the investment of monthly distributions made by the Trusts in shares of the Funds at net asset value, without a sales charge and without regard to minimum initial investment requirements, pursuant to the Programs.

Section 6(c) of the Act provides that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the granting of an exemption from the provisions of Section 22(d) of the Act would be consistent with the public interest and with the purposes of Section 22(d) of the Act, and that such exemption would also be beneficial to the Funds and to unitholders of the Trusts. Applicants assert that the major portion of the cost of selling investment company shares is incurred in identifying potential investors and ascertaining their financial requirements. In this respect, Applicants state that unitholders of the Trusts have already been identified as having objectives identical to those of the Fund in which their distributions would be invested because the applicable Reinvestment Fund will be investing in securities similar to those in which each unitholder's Trust has invested. Applicants further assert that little or no additional sales cost need be allocated to the purchase of shares of the Funds throught the Programs and, therefore, submit that Participants should receive the benefit of the reduced selling expenses associated with the Programs through the investment of distributions made by the Trusts at net asset value without the payment of a sales charge. Applicants submit that the Funds will benefit from the proposed transactions because: (1) the investments in the Funds through the Programs will produce larger asset bases and steady cash flows which should assist the Funds in meeting redemption requests without liquidating portfolio securities; (2) to the extent that the Funds' operating expenses do not increase in direct proportion to increases in assets, increases in asset bases attributable to the Programs will reduce the costs of operations on a per share basis; and (3) the Funds and DST have agreed that the transfer agency fees attributable to Participants' accounts in the Funds will not exceed, as a percentage of assets, the fees paid by the Funds with respect to other shareholder accounts. Applicants further submit that the Trusts also will benefit from the Programs to the extent that they will be able to provide unitholders with the opportunity to invest their distributions in open-end investment companies which are similar to the Trusts.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11324/September 2, 1980

In the Matter of

AMERICAN GENERAL SHARES, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-2438)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER OF THE COMMISSION DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that American General Shares, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company having outstanding two classes of common stock, American General Capital Growth Fund ("Capital Growth") and American General Income Fund ("Income"), filed an application on August 4, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Maryland corporation, registered under the Act on November 13, 1973. It is the successor in interest to a Delaware corporation which had registered under the Act, and filed a registration statement pursuant to Section 8(b) of the Act on November 1, 1940. Applicant's predecessor filed its initial registration statement (File No. 2-13945) under the Securities Act of 1933 in 1936, covering shares of Capital Growth and shares of Income. This registration statement was declared effective by the Commission in 1936, at which time an initial public offering of Applicant's securities commenced. At the close of business on August 31, 1979, Applicant had outstanding 30,374,627 shares of Capital Growth with a net asset value of $5.14 per share for a total net asset value of $155,990,273, and 13,730,790 shares of Income with a net asset value of $6.49 per share for a total net asset value of $89,138,072.

The application states that on August 31, 1979, Applicant was merged with and into American General Enterprise Fund, Inc. ("Enterprise"), pursuant to a Plan and Articles of Merger ("Merger") dated June 8, 1979. The Merger was approved by Applicant's board of directors on June 8, 1979, and by a majority of the holders of each outstanding class of its shares at a special meeting of Applicant's shareholders on August 23, 1979. Under the terms of the Merger all assets and liabilities of Applicant automatically became assets and liabilities of Enterprise, and each of the then outstanding shares of Applicant was converted into shares of common stock of Enterprise and each shareholder of Applicant received approximately .6667 shares of Enterprise for each share of Capital Growth then owned by such shareholder and .8428 shares of Enterprise for each share of Income then owned by such shareholder. The number of Enterprise shares issued in the Merger to Applicant's shareholders was determined on the basis of relative net asset values which were computed by Applicant and by Enterprise on the same basis.

Applicant states that it currently has no debts or other liabilities outstanding because all of its debts and liabilities were either assumed by Enterprise or paid by Applicant; that it has no assets; it has no securityholders; it is not a party to any litigation or administrative proceedings; and within the last 18 months Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Both Applicant and Enterprise bore their own expenses in connection with the Merger. Finally, Applicant states that its legal existence as a corporation ceased under the laws of the State of Maryland by the filing of Articles of Merger on August 31, 1979, with the State of Maryland's Department of Assessment and Taxation, and that it is not now engaged, and does not proposed to engage, in any business activities since its corporate existence has ceased.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law

proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11325/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6233/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11326/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6234/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11327/September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6235/September 2, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11328/September 2, 1980

In the Matter of

FUND FOR GROWTH, INC.
c/o Arvey, Hodes & Mantynband
One North LaSalle Street
Chicago, IL 60602

(811-1551)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Fund for Growth, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Maryland on August 16, 1967, and registered under the Act on October 23, 1967. The Fund filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") on Form S-5 to make a public offering of shares of its capital stock. The files of the Commission further indicate that counsel for the Fund requested withdrawal of this registration statement pursuant to Rule 477 under the 1933 Act, and requested that the Fund be deregistered pursuant to Section 8(f) of the Act. This 1933 Act registration statement was ordered withdrawn on March 1, 1971; and thus, the Fund never made a public distribution of its securities. The Fund has never filed any of the periodic reports required by the Act. Counsel for the Fund has stated that the Fund never had any assets or liabilities, and never engaged in any business operations. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company is shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11329/September 3, 1980

In the Matter of

NATIONAL MUNICIPAL TRUST
NATIONAL MUNICIPAL TRUST, SPECIAL TRUSTS
NATIONAL GOVERNMENT SECURITIES TRUST
NATIONAL CORPORATE TRUST
THOMSON McKINNON SECURITIES INC.
PIPER, JAFFRAY & HOPWOOD INCORPORATED
A. G. EDWARDS & SONS, INC.
OPPENHEIMER & CO. INC.
c/o Thomson McKinnon Securities Inc.
One New York Plaza
New York, New York 10004

(812-4598)

NOTICE OF FILING OF APPLICATION FOR AN ORDER OF THE COMMISSION GRANTING AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING AN OFFER OF EXCHANGE PURSUANT TO SECTION 11 OF THE ACT

NOTICE IS HEREBY GIVEN that National Municipal Trust ("Municipal Trust"), National Municipal Trust, Special Trusts ("Special Trusts"), National Government Securities Trust ("Government Trust"), National Corporate Trust ("Corporate Trust"), registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (collectively referred to as the "Trusts") and Thomson McKinnon Securities Inc., Piper Jaffray & Hopwood Incorporated, A. G. Edwards & Sons, Inc. and Oppenheimer & Co., Inc. (all such securities firms hereinafter referred to as the "Sponsors," and collectively with the Trusts, the "Applicants") filed an application on January 22, 1980 and amendments thereto on August 27, and September 2, 1980, for an order of the Commission (1) pursuant to Section 6(c) of the Act exempting them from the provisions of Section 22(d) of the Act and (2) pursuant to Section 11 of the Act permitting the Trusts to offer their units at net asset value plus a fixed dollar sales charge pursuant to a conversion option. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

The investment objectives of Municipal Trust and Special Trusts are tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds. All of such bonds are obligations issued by or on behalf of states, counties, territories, possessions and municipalities of the United States and/or authorities, agencies, instrumentalities or political subdivisions therof, the interest on which in the opinion of counsel to the various issuers of such bonds is exempt from all federal income taxes under existing law. The objectives of the Corporate Trust are a high level of current

income and preservation of principal through an investment in a diversified portfolio of corporate securities, and the objectives of the Government Trust are safety of capital and a high level of interest income through investment in a diversified portfolio of taxable securities guaranteed or backed by the full faith and credit of the United States. At the present time more than 50 series of the Trusts have been issued. It is anticipated that further series will be created in full compliance with the representations herein made concerning the respective series now outstanding.

Applicants state that a separate trust indenture is entered into each time a series of a Trust is created and the securities to comprise its portfolio are deposited with one or more trustee banks (the "Trustee(s)"). Pursuant to the related indenture the Trustee may dispose of securities when events occur which may affect their investment stability and must sell securities if necessary for the payment of the redemption price of units tendered for redemption. In the case of the Municipal Trust and Special Trust, proceeds from such sales must be distributed in partial liquidation to unitholders, while such proceeds may be reinvested in the case of the Corporate and Government Trusts subject to certain limitations.

The Applicants propose to offer, subject to the conditions described below, a conversion option (the "Plan") to unitholders of the various series of the Trusts. The purpose of the Plan is to provide investors in each of the Trusts a convenient means of transferring interests as their investment requirements change. The Sponsors contemplate holding open this option at all times although they reserve the right to modify, suspend or terminate the Plan at any time without further notice to unitholders. A unitholder wishing to dispose of his units for which a market is maintained will have the option to convert his units into units of any other series of the same Trust or of any series of any other Trust for which units are available for sale in the secondary market and the Sponsors are participating in the Plan. While it is not presently contemplated that unitholders would be permitted to exchange their units into units of other series which are available during the initial offering, the Sponsors might determine at some future date to permit such exchanges. When a unitholder notifies the Sponsors of his desire to exercise such a conversion option, the Sponsors will mail a current prospectus for units of each series that the unitholder indicates interest and which the Sponsors have available to offer to the unitholders as the result of acquisitions by them in the secondary market. The unitholder may then select the series into which he desires his investment converted.

Applicants indicate that the conversion transaction will operate in a manner essentially identical to any secondary transaction, except that Applicants propose to allow a reduced sales charge in a transaction under the Plan. At the present time, except in the case of Series of the Government Trust, for which the Sponsors' repurchase price is based on the offering side evaluations, units in the Trusts are repurchased by the Sponsors of the Trusts at the per unit price based on the aggregate bid side evaluations of the underlying securities in the portfolio of the series and are resold at that price plus a specified sales charge which is a percentage of that price. Applicants propose to sell units in the secondary market under the Plan at the public offering price plus a fixed sales charge of $25 per unit except for unitholders of a series with a sales charge less than the sales charge of the series into which they desire their investment converted. Such unitholders must have held their units for a period of at least six months in order to exercise the conversion option or agree to pay a sales charge based on the greater of $25 per unit or an amount which together with the initial sales charge paid in connection with the acquisition of units being exchanged equals the normal sales charge of the series into which the investment is being converted determined as of the date of exchange.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable secur-

ity issued by such company to any person except at a current offering price described in the prospectus. None of the exemptions from the provisions of that section provided by Rule 22d-1 applies to the Plan. The Applicants therefore would be unable to proceed with the Plan unless, pursuant to Section 6(c), the Commission exempts the Plan from the provisions of Section 22(d).

Section 6(c) of the Act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Applicants state that under the proposed Plan, a person desiring to dispose of units of one series and acquire units of another series may wish to do so for a number of reasons, such as changes in his or her particular investment goals or requirements (which might lead to a decision that he or she prefers taxable income to tax-exempt income) or in order to take advantage of possible tax benefits flowing from the exchange. Taking these factors into account, it is likely that there will be a continuing need to assess an investor's individual financial and tax position and in all probability the account executives of the Sponsors will actively participate in financially counseling the investor as to the proper course of action to follow considering all of the relevant investment factors involved. However, the fact that the investor is an existing customer whose essential investment needs have been identified should produce some transaction savings. Further, in view of the fact that all of the Trusts are very similar investment vehicles, an exchanging unitholder may require somewhat less advice than if he was acquiring an interest in an entirely different kind of investment.

Applicants assert that the reduced charge as set forth in the Plan is a reasonable and justifiable expense to be allocated to the broker for his professional assistance in connection with a conversion transaction. Further, Applicants contend that the sales charge compares favorably to the regular sales charges which are currently allocated to broker-dealers in the sale of units in any primary and secondary sales of the Trusts. Thus, the Sponsors submit that a sales charge of $25 per unit is warranted in that such charges should cover reasonable costs related to the conversion of units under the Plan and yet give participants an opportunity to share in cost savings.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11330/September 4, 1980

Indemnification by Investment Companies

ACTION: Statement of staff position.

SUMMARY: The Commission is announcing the position of its staff with respect to (1) provisions in an investment company's basic documents requiring or permitting the indemnification by the investment company of its directors, officers, investment adviser, or principal underwriter against any liability to the company or to its security holders to which

they would otherwise by subject, and (2) the advancement of legal expenses for the defense of proceedings brought against such directors, officers, advisers, or underwriters. The position being announced differs significantly from the staff position previously expressed in the guidelines for the preparation of the registration statements of investment companies and, to that extent, modifies that previous position.

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Tsai, Esq. (202)-2028, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is announcing the position of its Division of Investment Management ("the staff") concerning the inclusion in the charter, bylaws, or other basic documents of a registered investment company of a provision requiring or permitting the indemnification by the company of its directors or officers, or the inclusion in its investment advisory or underwriting agreement of a provision requiring or permitting the indemnifiction by the company of its investment adviser or principal underwriter, against any liability to the company or to its security holders to which such person would otherwise be subject.

The present position of the staff differs in significant respects from its previous position as expressed in item 19 of the guidelines for the preparation of Form N-8B-1 ("guidelines")[1] and, to that extent, modifies that previous position.

The staff is of the view that an indemnification provision does not violate section 17(h)[2] or (i)[3] of the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-17(h) or (i)] if it precludes indemnification for any liability, whether or not there is an adjudication of liability, arising by reason of willful misfeasance, bad faith, gross negligence, or reckless disregard of duties as described in section 17(h) and (i) ("disabling conduct") and sets forth reasonable and fair means for determining whether indemnification shall be made. In the staff's view, "reasonable and fair means" would include (1) a final decision on the merits by a court or other body before whom the proceeding was brought that the person to be indemnified ("indemnitee") was not liable by reason of disabling conduct or, (2) in the absence of such a decision, a reasonable determination, based upon a review of the facts, that the indemnitee was not liable by reason of disabling conduct, by (a) the vote of a majority of a quorum of directors who are neither "interested persons" of the company as defined in section 2(a)(19) of the 1940 Act [15 U.S.C. 80a-2(a)(19)] nor parties to the proceeding ("disinterested, non-party directors"), or (b) an independent legal counsel in a written opinion.[4]

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[1]Investment Company Act Release No. 7221, June 6, 1972 [37 FR 12790, June 29, 1972]. Although Form N-8B-1 has been replaced by Forms N-1 and N-2, integrated registration forms under both the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] and the 1940 Act [15 U.S.C. 80a et seq.], the guidelines have not been withdrawn by the Commission since they contain regulatory positions which are applicable to the new forms. Investment Company Act Release No. 10378, August 28, 1978 [43 FR 39548, September 5, 1978].

[2]Section 17(h), in part, provides:
[N]either the charter, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered investment company, nor any other instrument pursuant to which such a company is organized or administered, shall contain any provision which protects or purports to protect any director or officer of such company against any liability to the company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

[3]Section 17(i), in part, provides:
[N]o contract or agreement under which any person undertakes to act as investment adviser of, or principal underwriter for, a registered investment company shall contain any provision which protects or purports to protect such person against any liability to such company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contrct or agreement.

[4]Whether an indemnification provision which is not prohibited by section 17(h) or (i) might nevertheless be invalid as contravening some other provision of the federal securities laws, such as section 47(a) of the 1940 Act [15 U.S.C. 80a-46(a)], is beyond the scope of this release.

The dismissal of either a court action or an administrative proceeding against an indemnitee for insufficiency of evidence of any disabling conduct with which he has been charged would, in the staff's view, provide reasonable assurance that he was not liable by reason of disabling conduct. The staff also believes that a determination by the vote of a majority of a quorum of disinterested, non-party directors would provide a reasonable assurance that the indemnitee was not liable by reason of disabling conduct.[5]

The staff continues to believe, however, that an indemnification provision which requires or permits indemnification except when the person to be indemnified has been adjudged by a court to be liable by reason of disabling conduct violates section 17(h) or (i), since it would, for example, protect a person whose conduct constitutes disabling conduct but who avoids judgment by settlement.

The staff further believes that an indemnification provision does not violate section 17(h) or (i) simply because it requires or permits the company to advance attorneys' fees or other expenses incurred by its directors, officers, investment adviser, or principal underwriter in defending a proceeding, upon the undertaking by or on behalf of the indemnitee to repay the advance unless it is ultimately determined that he is entitled to indemnification, so long as the provision also requires at least one of the following as a condition to the advance: (1) the indemnitee shall provide a security for his undertaking, (2) the investment company shall be insured against losses arising by reason of any lawful advances, or (3) a majority of a quorum of the disinterested, non-party directors of the investment company, or an independent legal counsel in a written opinion, shall determine, based on a review of readily available facts (as opposed to a full trial-type inquiry), that there is reason to believe that the indemnitee ultimately will be found entitled to indemnification. The staff will not recommend any action to the Commission under section 17(a)(3) or section 21 of the 1940 Act [15 U.S.C. 80a-17(a)(3) or 21][6] if an advance is made pursuant to such a provision. Finally, the staff believes that an improper indemnification payment or advance of legal expenses could constitute a breach of fiduciary duty involving personal misconduct under section 36 of the 1940 Act [15 U.S.C. 801-35] or an unlawful and willful conversion of an investment company's assets under section 37 of that Act [15 U.S.C. 80a-36].

Accordingly, 17 CFR Part 271 is hereby amended to incorporate therein this statement of staff position.

By the Commission.

George A. Fitzsimmons
Secretary

September 4, 1980

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[5]See Burks v. Lasker, 441 U.S. 471 (1979).

[6]Section 17(a)(3) and section 21 taken together state the circumstances under which an affiliated person of, or principal underwriter to, an investment company may be permitted to borrow money from the company.

INVESTMENT COMPANY ACT OF 1940
Release No. 11331/September 4, 1980

In the Matter of

EQUITY GROWTH FUND OF AMERICA, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-1398)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER OF THE COMMISSION DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Equity Growth Fund of America, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 13, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant, a Maryland corporation, registered under the Act on June 28, 1966. On the same date it filed a registration statement (File No. 2-25194) under the Securities Act of

1933, registering shares of its capital stock in connection with a proposed public offering of Applicant's shares. This registration statement was declared effective by the Commission on August 24, 1966, at which date the initial public offering of shares commenced. At the close of business on December 31, 1979, Applicant had outstanding 3,778,646 shares with a net asset value of $9.06 per share for a total net asset value of $34,229,530.

At the annual meeting of shareholders held on December 28, 1979, holders of a majority of Applicant's outstanding shares of capital stock approved an Agreement and Plan of Reorganization which provided for the transfer of all of Applicant's portfolio securities and substantially all of its other assets to American General Enterprise Fund, Inc. ("Enterprise"), in exchange for shares of capital stock of Enterprise, and for the dissolution of Applicant. The board of directors of Applicant approved the transfer of assets to Enterprise on September 7, 1979. The application states that the transfer of assets was effected on December 31, 1979, and that Applicant distributed to its shareholders all of the Enterprise shares it acquired by establishing for each shareholder an Enterprise account and transferring to each account the shareholder's pro-rata portion of the Enterprise shares. The transfer of assets was based on the relative net asset values of the shares of the two companies, which were determined by Applicant and Enterprise on the same basis. Each shareholder of Applicant received approximately 1.0258 Enterprise shares for each share of Applicant then owned by such shareholder.

Applicant states that it currently has no debts or other liabilities outstanding because all of its debts and liabilities were either assumed by Enterprise or paid by Applicant; it has no assets; it has no securityholders; it is not a party to any litigation or administrative proceedings; and within the last 18 months Applicant has not for any reason transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant. Applicant also states that both Enterprise and it bore their own expenses in connection with the transfer of assets. Finally, Applicant states that it was dissolved as a corporation under the laws of the State of Maryland by the filing of Articles of Dissolution on February 20, 1980, and that it is not now engaged, and does not propose to engage, in any business activities since it has completed the winding-up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11332/September 4, 1980

In the Matter of

AMERICAN GENERAL TOTAL RETURN FUND, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-1569)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY.

On August 4, 1980, a notice was issued (Investment Company Act Release No. 11285) stating that American General Total Return Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 10, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that the Applicant has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of American General Total Return Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11333/September 4, 1980

In the Matter of

INTERCAPITAL HIGH YIELD SECURITIES INC.
INTERCAPITAL INDUSTRY-VALUED SECURITIES INC.
INTERCAPITAL TAX-EXEMPT SECURITIES INC.
INTERCAPITAL LIQUID ASSET FUND INC.
One Battery Park Plaza
New York, New York 10004

and

DEAN WITTER REYNOLDS INC.
130 Liberty Street
New York, New York 10006

(812-4620)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 11(a) OF THE ACT TO PERMIT CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT TO PROVIDE AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT IN CONNECTION WITH SUCH EXCHANGES

NOTICE IS HEREBY GIVEN that InterCapital High Yield Securities Inc. ("High Yield"), InterCapital Industry-Valued Securities Inc. ("Industry-Valued"), InterCapital Tax-Exempt Securities Inc. ("Tax Exempt") and InterCapital Liquid Asset Fund Inc. ("Liquid Asset") (collectively, the "Funds"), registered, open-end, diversified, management investment companies, and Dean Witter Reynolds Inc. ("Dean Witter") (collectively with the Funds, "Applicants") filed an application on February 27, 1980, and an amendment thereto on May 14, 1980, for an order pursuant to Section 11(a) of the Investment Company Act of 1940 ("Act") approving certain proposed offers of exchange of shares among the Funds on a basis other than their relative net asset values and pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act in connection with such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Dean Witter, as principal underwriter for High Yield, Industry-Valued and Tax-Exempt, maintains a continuous offering of the shares thereof at their respective net asset values plus a sales load. A continuous offering of the shares of Liquid Asset is made directly by Liquid Asset on a no-load basis. Each of the Funds permits reinvestment of dividends and distributions without a sales load. At present, the applicable sales load for High Yield and Industry-Valued varies with the quantity purchased as follows:

Size of Transaction at Offering Price	*Sales Load as Percentage of Offering Price*
Less than $25,000	5.50%
$ 25,000 but less than $ 50,000	5.00%
$ 50,000 but less than $100,000	4.25%

$100,000 but less than $250,000	3.25%
$250,000 but less than $500,000	2.50%
$500,000 and over	1.75%

The sales load for Tax-Exempt varies as follows:

Size of Transaction at Offering Price	*Sales Load as Percentage of Offering Price*
Less than $25,000	4.00%
$ 25,000 but less than $ 50,000	3.50%
$ 50,000 but less than $100,000	3.25%
$100,000 but less than $250,000	2.75%
$250,000 but less than $500,000	2.50%
$500,000 and over	1.75%

According to the application, at present investors may have the benefit of reduced sales loads in accordance with the above schedules by combining purchases of shares of High Yield, Industry-Valued or Tax-Exempt in single transactions with the purchase of shares of any of the other Funds which are sold with a sales load. The sales load payable on the combined purchase of shares of two or more such Funds would be at their respective rates applicable to the total amount of the combined concurrent purchases. Also according to the application, investors currently may benefit from a reduction of sales loads in accordance with the above schedules through the operation of "rights of accumulation," whereby an investor, when computing the sales load applicable to a present purchase of shares of one of the Funds, may add the total cost of shares of the Funds which he had previously purchased at a load, or the current net asset value of such shares, whichever is higher, to the public offering price of the shares purchased. In calculating the applicable sales load on a purchase affected by the right of accumulation, shares of Liquid Asset acquired through an exchange at relative net asset values of shares of one of the other Funds are treated as if they had been purchased at a load. In this regard, Applicants state that at present shares of Industry-Valued or High Yield may be exchanged for shares of any of the Funds, and shares of Tax-Exempt may be exchanged for shares of Liquid Asset, on the basis of relative net asset values and subject to applicable minimum investment restrictions. Shares of Liquid Asset acquired through such an exchange (and shares received as dividends thereon) may be exchanged in the same manner as shares of the Fund for which the Liquid Asset shares were formerly exchanged.

Applicants propose to make the following offers of exchange: Industry-Valued and High Yield propose to offer their shares to shareholders of Tax-Exempt in exchange for shares of Tax-Exempt at their relative net asset values per share, plus a sales load differential representing the difference in sales loads that would have to be paid upon purchases of Industry-Valued or High Yield, and Tax-Exempt shares, giving recognition to the rights of accumulation and the combined purchase privileges described above. That difference in sales loads will be determined as follows: (a) the total cost of shares of all Funds with a sales load previously purchased at their public offering price, or the current net asset value of shares of all such Funds owned by the same shareholder at the time of the exchange, whichever is higher, will be calculated (excluding shares of Liquid Asset acquired directly, but including Liquid Asset shares acquired in exchange for shares of any other Fund and Liquid Asset shares received as dividends thereon); (b) the sales load that would be applicable to the purchase of shares in the amount calculated in (a), expressed as a percentage of public offering price, will be ascertained for both Industry-Valued or High Yield, and Tax-Exempt shares; (c) the sales load will then be subtracted from the sales load percentage that would be applicable to such a purchase of shares of Industry-Valued or High Yield; and (d) the resulting difference in percentages between Industry-Valued or High Yield, and Tax-Exempt shares will be applied to the value of the shares of Tax-Exempt to be exchanged. The resulting amount will be the sales load differential payable on the exchange.

Industry-Valued and High Yield propose to offer their shares to shareholders of Liquid Asset in exchange for shares of Liquid Asset which were acquired in exchange for Tax-Exempt shares, together with Liquid Asset shares received as dividends thereon, at their relative net asset values per share, plus a sales load differential determined in the same manner as set forth in the preceding paragraph, with the Liquid Asset shares to be exchanged considered as though they were Tax-Exempt shares in those calculations.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered, open-end investment company or any principal underwriter thereof to make or cause to be made an offer to a security holder of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and

approved by the Commission.

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the company's prospectus.

Applicants represent that the purpose of the proposed offers of exchange is to permit a shareholder of Tax-Exempt (or a shareholder of Liquid Asset who acquired his shares in exchange for Tax-Exempt shares) who changes his investment objective to that of Industry-Valued or High Yield to change his investment to Industry-Valued or High Yield upon payment of the difference in sales loads but without paying the full sales load otherwise applicable. Applicants assert that an exchange offer to shareholders of Tax-Exempt (or shareholders of Liquid Asset who acquired their shares in exchange for Tax-Exempt shares) at the relative net asset value of the Fund to be acquired would unfairly benefit such shareholders, who would pay substantially lower sales load to acquire shares of Industry-Valued or High Yield than investors who purchased those Funds directly.

Applicants state that the proposed exchange offers would violate Section 11(a) of the Act unless an order approving the offers of exchange is issued. Also, if shares of Industry-Valued or High Yield were acquired by a shareholder of Tax-Exempt (or by a shareholder of Liquid Asset whose shares were acquired in exchange for Tax-Exempt shares), then such acquisition might be deemed to be in violation of Section 22(d) of the Act since an investor thereby would be able to acquire share of Industry-Valued or High Yield at a public offering price other than that described in its prospectus by purchasing shares of Tax-Exempt and subsequently exchanging those shares for shares of Industry-Valued or High Yield, with or without an intervening exchange into shares of Liquid Asset.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11334/September 4, 1980

In the Matter of

THE CHASE FUND OF BOSTON
SHAREHOLDERS' TRUST OF BOSTON
CHASE SPECIAL FUND OF BOSTON, INC.
CHASE FRONTIER CAPITAL FUND OF BOSTON, INC.
PHOENIX INVESTMENT COUNSEL OF BOSTON, INC.
535 Boylston Street
Boston, Massashusetts 02116

PHOENIX FUND, INC.
PHOENIX CAPITAL FUND, INC.
PHOENIX EQUITY PLANNING CORPORATION
PHOENIX MUTUAL LIFE INSURANCE COMPANY
One American Row
Hartford, Connecticut 06115

(812-4649)

ORDER OF THE COMMISSION EXEMPTING CERTAIN PROPOSED EXCHANGES FROM SECTION 22(c) OF THE ACT AND RULE 22c-1 THEREUNDER PURSUANT TO SECTION 6(c) OF THE ACT AND EXEMPTING SUCH PROPOSED EXCHANGES FROM SECTION 17(a) OF THE ACT PURSUANT TO SECTION 17(b) OF THE ACT

Shareholders' Trust of Boston ("Shareholders"), Chase Special Fund of Boston, Inc., ("Special"), Chase Frontier Capital Fund of Boston, Inc. ("Frontier"), Phoenix Fund Inc. ("Phoenix Fund"), Phoenix Capital Fund, Inc. ("Phoenix Capital") (hereinafter collectively referred to as "the Funds"), and The Chase Fund of Boston ("Chase"), all registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, and Phoenix Investment Counsel of Boston, Inc. ("Phoenix of Boston") and Phoenix Equity Planning Corporation ("PEPCO"), both registered under the Investment Advisers Act of 1940 ("Advisers Act") and Phoenix Mutual Life Insurance Company ("Phoenix Mutual") (the Funds, Chase, Phoenix of Boston, PEPCO, and Phoenix Mutual hereinafter referred to as "Applicants"), filed an application on February 1, 1980 and an amendment thereto on June 17, 1980, in connection with the proposed acquisition by Chase, after the recapitalization of Chase as a series fund, of the assets of the Funds ("Proposed Exchanges"). The application requested an order of the Commission (1) pursuant to Section 6(c) of the Act exempting the Proposed Exchanges from the provisions of Section 22(c) of the Act and Rule 22c-1 thereunder, to permit the issuance of shares of the series fund at net asset value, but at a price other than the price next determined after receipt of a purchase order; and (2) pursuant to Section 17(b) of the Act exempting the Proposed Exchanges from the provisions of Section 17(a) of the Act.

On August 8, 1980, a notice (Investment Company Act Release No. 11294) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is also found, on the basis of the information stated in the application, that the terms of the Proposed Exchanges, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the Proposed Exchanges are consistent with the respective policies of the Funds and with the general purposes of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 22(c) of the Act and Rule 22c-1 thereunder, to the extent requested, be, and hereby is, granted, effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition by Chase of the assets of the Funds be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith.

For the Commission, by the Division of Investment Manager, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11335/September 4, 1980

In the Matter of

FIRST NATIONAL SECURITIES CORPORATION
42 Virginia Avenue
Indianapolis, Indiana 46204

(811-1478)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On August 6, 1980, a notice was issued (Investment Company Act Release No. 11287) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that First National Securities Corporation ("Fund"), registered under the Act as a closed-end, non-diversified manage-

ment investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of First National Securities Corporation under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11336/September 4, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6239/September 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11337/September 4, 1980

In the Matter of

PACIFIC FIDELITY LIFE INSURANCE COMPANY

FIDELITY VARIABLE ANNUITY ACCOUNT
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52499

AND

FIDELITY DAILY INCOME TRUST
FIDELITY CASH RESERVES
FIDELITY CORPORATE BOND FUND, INC.
FIDELITY AGGRESSIVE INCOME FUND
FIDELITY THRIFT TRUST
FIDELITY GOVERNMENT SECURITIES FUND, LTD.
82 Devonshire Street
Boston, MA 02109

(812-4551)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 11 OF THE ACT FOR ORDER APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER EXEMPTING PROPOSED TRANSACTION FROM SECTIONS 26(a), 26(a)(2)(C) AND 27(c)(2)

NOTICE IS HEREBY GIVEN that Pacific Fidelity Life Insurance Company ("PFL" or the "Company"), Fidelity Variable Annuity Account ("FVAA"), a unit investment trust registered under the Investment Company Act of 1940 (the "Act"), Fidelity Daily Income Trust ("FDIT"), Fidelity Cash Reserves ("FCR"), Fidelity Corporate Bond Fund ("FCBF"), Fidelity Aggressive Income Fund ("FAIF"), Fidelity Thrift Trust ("FTT"), and Fidelity Government Securities Fund, Ltd. ("FGSF"), each of which is organized as an open-end diversified management investment company under the Act (hereinafter collectively referred to as "Applicants"), have filed an application on October 12, 1979, and amendments thereto on May 30, 1980 and July 23, 1980, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 26(a), 26(a)(2)(C) and 27(c)(2) to the extent requested and for approval of certain offers of exchange pursuant to Section 11 of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Background

PFL is a stock life insurance company organized under the laws of the State of California. On August 24, 1979, PFL created FVAA under California law as a separate account for the purpose of investing the net purchase payments received by the company for certain variable annuity contracts (Contracts). FDIT, FCR, FAIF and FTT are each organized as Massachusetts business trusts. FCBF is a Massachusetts corporation, and FGSF is organized as a Nebraska limited partnership. FDIT, FCR, FAIF, FTT, FCBF and FGSF are hereinafter collectively referred to as the "Funds."

FVAA proposes to offer and sell variable annuity contracts and to invest the net purchase payments for each such contract, as directed by the Contract purchaser, in shares of one or more of the Funds. FVAA will hold only shares of such funds and will reinvest any dividends and distributions in additional shares of the appropriate Fund. Subject to receipt of the order requested hereby, individuals will have the right to purchase such Contracts by exchanging their shares of a Fund; in addition, contract owners would be permitted without charge, at any time, to exchange their shares in one Fund for those of another Fund.

Section 11

Section 11(a) of the Act provides, in pertinent part, that no registered, open-end company of any principal underwriter for such a company shall make an offer to the holder of a security of such company to exchange his security for a security in the same or another such company on any basis other than relative net asset values unless the terms of the offer have been approved by the Commission.

Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

As hereinabove described, holders of shares in the Funds will be offered the right to exchange the net asset value of shares toward the purchase of a contract without any sales charges; in addition, Contract owners will have the right to transfer accumulated purchase payments from one Fund to another. Applicants have requested an Order of the Commission pursuant to Section 11 in order that the Contract purchaser or participant may make such exchanges or transfers under the circumstances described.

Section 26(a) and Section 27(c)(2)

Sections 26(a) and 27(c)(2) of the Act provide, in substance, that a registered unit investment trust or issuer of a periodic payment plan certificate and any depositor or underwriter for such investment company are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a qualified bank as trustee and are held under an indenture or agreement containing the following provisions: (1) that the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them; (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept and notice be given to securities holders in the event of substitution of trust's securities.

Applicants hereby request an exemption from Sections 26(a) and 27(c)(2) to permit them to sell Contracts without need of an independent trustee or custodian.

Applicants state that the Company is subject to extensive supervision and control by California's insurance authorities, and the Insurance Commissioners of each state in which the Contracts will be sold. In addition, Applicants state that under California law and the terms of the Contracts, the assets of FVAA are not chargeable with liabilities arising out of any other business conducted by the Company. Obligations arising under the Contracts are general obligations of the Company and cannot be abrogated without violating California insurance law. Therefore, Applicants assert that such existing regulation of the Company affords substantially the same protection contemplated by the provisions of Sections 26(a) and 27(c)(2) of the Act.

Sections 26(a), 26(a)(2)(C) and 27(c)(2)

Sections 26(a) and 27(c)(2), as here pertinent, provide in substance that a registered unit investment trust and any depositor of or underwriter for such trust are prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than amounts deducted for sales load, are deposited with a qualified bank as trustee or custodian. Section 26(a)(2)(C) provides that a payment to the depositor shall not be allowed as an expense to the custodian of a unit investment trust except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself. Section 27(c)(2) applies the same restrictions to periodic payment plan certificates.

Insurance Commissions

Applicants state that the Contracts will be distributed through Fidelity Insurance Agency, Inc. ("FIA"), which is affiliated with the investment adviser for the

Funds. PFL has agreed to pay insurance commissions to FIA for its services as an insurance general agent in distributing the Contracts. FIA may have subagents to whom it may pay a portion of its commissions. The insurance commissions payable to FIA are assessed at an annual rate of 0.55% of annuity business in force, payable monthly.

PFL will deduct from the Separate Account an amount which is equal on an annual basis to 0.8% of the daily net asset value of the Separate Account. The 0.8% amount is an insurance charge and will be retained by PFL to compensate it for mortality risks which inhere in the annuity tables forming a part of the Contracts. PFL will profit from the insurance premium to the extent that actual mortality experience is more favorable than expected and to the extent that it is not required to bear unreimbursed expenses. Since PFL will not be reimbursed for insurance commissions paid to FIA, its profit will be reduced to the extent of these commissions.

Applicants state that PFL will pay insurance commissions out of its general funds, and not directly "out of" the insurance premium. To the extent that PFL's unreimbursed expenses and mortality experience are such that it realizes a profit from the 0.8% insurance premium, this profit will increase the pool of general company surplus which is available to pay commissions. Such profit may not in fact occur, in which case PFL must still pay the commissions and represents that it will not seek reimbursement from the Contract owners. In order to remove any possible uncertainty that the Custodian is, in effect, being allowed as an expense amounts which are indirectly paid towards distribution expenses, Applicants seek an exemption from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit such payments. Applicants acknowledge the Commission policy against investment companies bearing distribution expenses. However, Applicants submit that the Contract charges are consistent with industry norms and argue that charging both an asset charge and a sales load would not clearly be in the best interest of the Contract owners.

Applicants have consented that the foregoing requested exemptions may be made subject to the following conditions: (1) that the deductions for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, the Commission reserving jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges. In addition, Applicants agree that if the requested exemptions are granted, the exemptive order shall remain in effect only so long as there is no increase in the Contract Administrative Charge.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, transaction, or any class or classes of the same from any provision of the Act, if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than September 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that they be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following September 29, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9167/August 28, 1980

SECURITIES AND EXCHANGE COMMISSION v. ALEXANDER KASSER (United States District Court for the District of New Jersey) Civil Action No. 74-90

The Securities and Exchange Commission announced that on August 4, 1980, Judge Vincent J. Biunno, of the United States District Court for the District of New Jersey, signed a final judgment of permanent injunction against Alexander Kasser, enjoining further violations of the antifraud provisions of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder. The defendant Kasser consented to the entry of the judgment, without admitting or denying the allegations in the complaint. The Commission accepted the payment of $9,000,000 (Canadian) to the Manitoba Development Corporation by the defendant Kasser and various affiliated corporations, pursuant to a settlement of other litigation founded in part on the same transactions, in lieu of disgorgement and other ancillary relief. The complaint charged Kasser and eight other defendants (three individuals and five corporations) with engaging in a scheme to defraud the Manitoba Development Fund (now known as the Manitoba Development Corporation) in the offer and sale of securities of Churchill Forest Industries (Manitoba) Ltd. and the River Sawmills Company.

Previously, final judgments of permanent injunction were entered against Churchill Forest Industries (Manitoba) Ltd., Churchill Pulp Mill Ltd., River Sawmills Company, Blue Construction Corporation, James M. Brown, Jr., and Chester Chastek enjoining further violations of the anti fraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, without admitting or denying the allegations in the complaint. The defendants consented to the entry of the injunctions. The complaint was dismissed as to Stephen Mochary by stipulation. Mochary acknowledged being bound by the injunctions entered against the defendants Churchill Forest Industries (Manitoba) Ltd. and Churchill Pulp Mill Ltd. when acting in a representative capacity for the corporations. The Commission accepted the payment of $440,000 to the Manitoba Development Corporation by Brown and various affiliates pursuant to a settlement of other litigation, founded on the same transactions, in lieu of disgorgement and other ancillary relief.

The judgement against Kasser concludes the Commission's civil litigation concerning Churchill Forest Industries (Manitoba) Ltd. For additional information concerning the matter, see Litigation Release Number 6206.

Litigation Release No. 9168/August 28, 1980

SECURITIES AND EXCHANGE COMMISSION v. GATEWAY SPORTING GOODS COMPANY (United States District Court for the District of Columbia, Civil Action No. 80-1638)

The Commission announced today that on August 26, 1980, the United States District Court for the District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Gateway Sporting Goods Company ("Gateway") of New York, New York, restraining and enjoining Gateway from failing to file timely periodic reports and ordering it to comply with certain undertakings. Gateway, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 8 separate occasions. The Commission's Complaint was filed on July 3, 1980.

The Complaint had alleged that Gateway, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Gateway has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9169/August 28, 1980

SECURITIES AND EXCHANGE COMMISSION v. VAPORTECH CORPORATION (United States District Court for the District of Columbia, Civil Action No. 80-325)

The Commission announced today that on August 26, 1980, the United States District Court for the District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Vaportech Corporation ("Vaportech") of Los Angeles, California, restraining and enjoining Vaportech from failing to file timely periodic reports and ordering it to comply with certain undertakings. Vaportech, consenting to the entry of the Court's judgment, admitted that it had failed to file or filed reports in an untimely manner on 15 separate occasions. The Commission's Complaint was filed on January 30, 1980.

The Complaint had alleged that Vaportech, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Vaportech has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9170/August 29, 1980

US v. GILBERT, ET AL.
80 Cr. 493 (S.D.N.Y.)

Stephen L. Hammerman, Regional Administrator of the New York Regional Office and John S. Martin, Jr., U.S. Attorney for the Southern District of New York, announce that on August 19, 1980, Edward M. Gilbert ("Gilbert") of New York, New York, John C. Revson ("Revson") of Bedford Hills, New York, and Ludwig J. Cserhat of New York, New York, were charged in a thirty-six (36) count indictment, filed in the United States District Court for the Southern District of New York, with violations of the anti-manipulative and antifraud provisions of the federal securities laws, Section 9(a)(1), 9(a)(2), and 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. In addition, Gilbert and Revson were charged with violating the beneficial ownership reporting provisions, Section 13(d) of the Exchange Act and Rule 13d-1 thereunder and with conspiring to violate all of the aforementioned provisions.

The indictment charged that the three defendants conspired to manipulate the price of the common stock of Conrac Corporation, which is traded on the New York Stock Exchange, during 1975 by, among other things, placing numerous "wash"sales and "matched" orders and by guaranteeing their nominees and others against loss.

Previously, all three defendants had consented to the entry of final judgments of permanent injunction in a related civil action, SEC v. Gilbert, et al., 76 Civil 366 (MEL) (S.D.N.Y.)

Litigation Release No. 9171/September 2, 1980

SEC v. UNION PETROCHEMICAL CORP. OF NEVADA, INC., ET AL. (W.D.Tex./Wichita Falls Division)

Michael J. Stewart, Administrator of the Fort Worth Regional Office, announced that on August 28, 1980, the Commission filed a Complaint in the United States District Court for the Northern District of Texas, Wichita Falls Division. The Complaint seeks to preliminarily and permanently enjoin Union Petrochemical Corp. of Nevada, Inc., Thomas R. Kelly, Jerry Pinkston and Frank Kelly from further violations of the registration and antifraud provisions of the federal securities laws, and Jeffrey Bruce Mayper from further violations of the antifraud provisions of the federal securities laws.

The Complaint specifically alleges that the defendants have engaged in the offer and sale of unregistered securities, namely, common stock of Union Petrochemical, to investors throughout the United States. The Commission's Complaint further alleges that in connection with the offer and sale of these securities, the defendants made material misrepresentations and omitted to state material facts, concerning, among other things, the registration of the securities of Union Petrochemical; the nature of Union Petrochemical's business and the profitability of its operations; and the nature, extent and value of the assets of Union Petrochemical and its subsidiaries.

Litigation Release No. 9172/September 3, 1980

SEC v. BERTSIL L. SMITH, ET AL. (United States

District Court for the Western District of Tennessee, Civil Action No. C-76-497)

Jule B. Greene, Administrator of the Atlanta Regional Office of the Securities and Exchange Commission, announced that on August 21, 1980, a Judgment of Permanent Injunction was entered against Jon R. Walls, of Memphis, Tennessee, by the Honorable Odell Horton, United States District Judge for the Western District of Tennessee, at Memphis, permanently enjoining him from violating the antifraud provisions of the federal securities laws in connection with the purchase or sale of municipal bonds or any other securities.

Walls consented to the entry of the judgment without admitting or denying the allegations of the Commission's Complaint. (For further information see Litigation Releases Nos. 7615, 7652, 7764, 7813 and 8054.)

Litigation Release No. 9173/September 3, 1980

SEC v. BLINDER, ROBINSON & CO., INC., ET AL. (USDC Colorado, Civil Action No. 80-M-1125)

Robert H. Davenport, Administrator, of the Denver Regional Office of the Securities and Exchange Commission, announced that on August 26, 1980, a Complaint was filed in the U.S. District Court for the District of Colorado, seeking a Temporary Restraining Order and Preliminary and Permanent Injunctions against Blinder, Robinson & Co. Inc., (Blinder-Robinson), Meyer Blinder (Blinder), both of Denver, Colorado, and a Preliminary and Permanent Injunction against American Leisure Corp. (American Leisure) of Atlantic City, New Jersey, Nathan S. Jacobson (Jacobson) and Irwin S. Lampert (Lampert), both of whom are believed to be residents of New York, Cavanagh Communities Corporation (Cavanagh), Scope (Scope), Inc., Joseph Klein (Klein), and Leon Joseph (Joseph), all of Miami, Florida, for alleged violations of certain antifraud provisions of the Securities Act of 1933 and of certain antifraud provisions of the Securities Exchange Act of 1934 and the rules thereunder.

The allegations in the Complaint which vary as to each defendant, in substance concern activities of the defendants relating to a $25,000,000 public offering of securities of American Leisure Corporation pursuant to a registration statement filed with the Commission and trading in the purported "after-market" of American Leisure securities, namely units (of common stock and warrants), common stock, and warrants.

The Complaint alleges, in sum and substance, among other things, that Blinder-Robinson, Blinder, American Leisure, Jacobson, and Lampert, in connection with the offer and sale of American Leisure securities, each made some or all of the following untrue statements of material fact to the effect that:

(1) The price of the units would open at double or triple in the immediate after-market;
(2) The availability of American Leisure units was very limited because of the great demand;
(3) American Leisure had entered an agreement to acquire, by some means, sufficient land to build a hotel-casino in Atlantic City;
(4) All of the units offered in the public offering had been sold to the public and all of the proceeds had been received from the public, as required to be sold and received by the prospectus.

The Complaint also alleges, that Blinder-Robinson, Blinder, American Leisure, Jacobson and Lampert each in sum and substance, omitted to inform investors as to some or all of the following:

(1) The American Leisure public offering was not completed on or about March 25, 1980, but was and is continuing;
(2) Purchasers in the "continuing after-market distribution" are paying prices which are greater than or less than the $2.50 offering price stated in the prospectus;
(3) American Leisure used part of the proceeds of the public offering to facilitate the closing of the offering;
(4) Blinder-Robinson had been unable to sell the offering to the public and had to purchase 956,393 units during the offering in order to give the appearance that the offering had reached the minimum amount necessary for closing.

The Complaint also alleges, in sum and substance, among other things, that Blinder-Robinson, Blinder, American Leisure, Jacobson, and Lampert engaged in a course of business which operated and would operate as a fraud on purchasers and sellers of American Leisure securities in that the defendants represented that the public offering of American Leisure units was being made to the public on an "all or none" basis when, in fact, all the securities were not sold to the public within the time specified in the

prospectus and all of the investors' monies were not returned, as required by the prospectus. The Complaint also alleged that Cavanagh, Klein, Scope and Joseph aided and abetted these violations.

The Complaint further alleges, in sum and substance, that Blinder-Robinson and Blinder have engaged and are engaging in a course of business which operates and would operate as a fraud and deceit on purchasers and sellers of American Leisure securities, in that these defendants, before distributing to the public all of American Leisure securities which were part of the public offering, bid for and purchased such securities in trading during the purported "after-market."

On August 27, 1980, the Commission filed a Motion for Temporary Restraining Order, Preliminary Injunction, and certain other equitable relief which includes, among other things, an order requiring the return of all of the proceeds of the American Leisure Corporation public offering to the public investors. The Motion is supported by affidavits and other materials.

ACCOUNTNG SERIES RELEASE

ACCOUNTING SERIES RELEASE NO. 279/ September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6231/September 2, 1980

ACCOUNTING SERIES RELEASE NO. 280/ September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6233/September 2, 1980

ACCOUNTING SERIES RELEASE NO. 281/ September 2, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6234/September 2, 1980

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20/18

sec docket

VOLUME 20, NO. 18 SEPTEMBER 23, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6240	1358
Securities Exchange Act	17121-42	1360
Public Utility Holding Company Act	21707-11	1437
Investment Company Act	11338-50	1450
Litigation	9174-78	1472

This listing covers releases issued from 9/5/80-9/11/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	4/22/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

33-6240 Staff interpretative letter setting forth views regarding use of registration statements for delayed offerings by foreign governments or political subdivisions.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17121	34-17128	34-17132
34-17122	34-17129	34-17133
34-17123	34-17130	34-17141
34-17124	34-17131	

34-17138 FOCUS Reporting System—Requirements for Financial Reporting—Proposed Amendments to Form and Rule 17a-5 [File No. S7-851—Comment Period Expires October 15, 1980].

OPINION

34-17136 **WILLIAM D. GEORGE, III**

Where officer of member firm of registered securities association engaged in a private securities transaction without prior written notification to the member, *held*, association's finding of violation *sustained*, but proceedings *remanded* for reassessment of sanctions since association's other findings of violation set aside.

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SECURITIES ACT OF 1933
Release No. 6240/September 10, 1980

INTERPRETATIVE RELEASE RELATING TO DELAYED OFFERINGS BY FOREIGN GOVERNMENTS OR POLITICAL SUBDIVISIONS THEREOF

ACTION: Publication of Staff Interpretation.

SUMMARY: The Commission announces today that the Division of Corporation Finance (the "Division") has released an interpretative letter setting forth the Division's views regarding the use of registration statements for delayed offerings by foreign governments or political subdivisions thereof.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus or Ronald Adee, (202/272-3246, 272-3250), Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Securities issued or guaranteed by a foreign government or political subdivision thereof are registered under the Securities Act of 1933 (the "1933 Act") [15 U.S.C. 77a et seq., as amended] by filing a registration statement containing the information specified in Schedule B of the 1933 Act as well as additional statistical information regarding the issuer, its country, economy, and government.[1] These registration statements, which are analogous in scope to a Form S-1 [17 CFR 239.11], are comprehensive and lengthy documents. The Division believes that the delayed offering procedure set forth in the interpretative letter below is a feasible method of permitting seasoned registrants on Schedule B to utilize an approach similar to the Form S-16 [17 CFR 239.27].

The Division feels that this approach has several benefits. It reduces the time and expense for the registrant in preparing filings necessary to register an offering. It streamlines the registration process and will permit the Division's staff to examine carefully the registrant's disclosure annually rather than several times a year in a cursory fashion, thereby also reducing the time burden on the staff. This approach may also benefit investors since registrants will be able to register easily offerings made in the international bond market from which United States investors are typically excluded.[2]

In view of the advantages of this procedure, the Division announces that it would issue an interpretative letter, similar to the one below, to all registrants similarly situated. This interpretation is in the nature of an experiment, and its use will be monitored. If appropriate, the Division may, in the future, recommend to the Commission that rules codifying this interpretation be proposed and adopted.

Although this release is an announcement of existing Division policy, interested persons are invited to send comments or suggestions to the staff members mentioned in the forepart of the release.

Re: Country of X ("X")

Dear

This is in response to your letter of _____ in which you requested the staff's interpretative advice concerning the public offering and sale in the United States of the debt securities of "X" registered under the Securities Act of 1933 (the "1933 Act") pursuant to a shelf registration statement.

We understand the facts to be as follows: "X" filed its first registration statement under the 1933 Act on _____, and has to date offered publicly in the United States an aggregate of $_____ principal amount of its debt securities pursuant to _____ registration statements. The registration statements and the related prospectuses used in connection with these offerings have contained the information specifically required by Sections 7 and 10 and Schedule B of the 1933 Act as well as additional statistical and other information with regard to "X".

In light of the increasingly volatile markets for debt securities, "X" proposes the following procedure to

[1]Transnational organizations, sovereign nations, provinces, municipalities, development banks, school districts are among the various types of entities that have filed Schedule B registration statements. Therefore, the exact nature of this additional information varies according to the type of entity that is the registrant.

[2]Cf. Release No. 33-4708 (July 9, 1964).

register the offerings and sales of its securities in the United States. Initially, a registration statement would be filed under the 1933 Act to register a maximum amount of debt securities (of undetermined maturities, redemption provisions, interest rates and other terms) to be offered from time to time on a "firm commitment" basis through groups of underwriters to be named in subsequent amendments to the registration statement during a period of 12 months from the effective date of the registration statement. The basic prospectus included in the registration statement (the "Basic Prospectus") would contain substantially the same general political, economic and statistical information with regard to "X" that appears in its present prospectus. The Basic Prospectus would include detail as to "X's" funded and floating debt and the budget information required by paragraphs (3) and (5) of Schedule B of the 1933 Act, as well as certain other general information required by Schedule B. The Basic Prospectus would also include a general statement concerning the use of the net proceeds of any offering covered by the registration statement, including the general statutory purposes for which "X" may issue debt. Any necessary changes in response to comments of the Commission's staff would be reflected in a pre-effective amendment which would then be declared effective.

In the case of "X", the statistical information in its prospectus can generally be updated at least once a year, although current information with respect to various statistics is available at different times during the year. Accordingly, the registration statement, including the Basic Prospectus, would be updated by post-effective amendments to the extent necessary to cause the Basic Prospectus to comply with Section 10(a)(3) of the 1933 Act.

Although a registration statement would be effective under the 1933 Act, "X" would undertake not to sell any portion of the registered securities until a post-effective amendment describing the particular offering had been filed and declared effective under the 1933 Act. These post-effective amendments would include a supplement (the "Prospectus Supplement") to the Basic Prospectus, which would be essentially in the form of a Form S-16 prospectus and would include the following information: the distribution spread, use of proceeds, plan of distribution, description of the security offered, summary information, and recent material developments. For a specific issue, "X" would file a Preliminary Prospectus Supplement that would be analogous to a preliminary prospectus since it would contain the information listed above except for pricing information and the names of the underwriters. "X" would undertake to make no sales until a pricing amendment in the form of a Final Prospectus Supplement had been filed with the Commission and declared effective. The Prospectus Supplements and the current version of the Basic Prospectus would be circulated and the staff would receive information on the distribution pursuant to Guide 19 of Release No. 33-4936.

Based upon the facts presented, and especially noting that (1) a new registration statement containing a Basic Prospectus will be filed annually, (2) the Preliminary Prospectus Supplements will be distributed before sales, (3) no sales will be made until the Final Prospectus Supplement has been declared effective, and (4) offerings of securities outside the United States may be registered by this procedure, this Division will not recommend any enforcement action to the Commission if the securities of "X" are offered and sold pursuant to the procedure described above.

Because this position is based upon the representations made to the Division in your letter, it should be noted that any different facts or conditions might require a different conclusion. Further, this response only expresses the Division's position on enforcement action and does not purport to express any legal conclusion on the questions presented.

Accordingly, 17 CFR Part 231 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17121/September 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-23

The American Stock Exchange, Inc. ("Amex") submitted on August 28, 1980, a proposed rule change under Rule 19b-4 to amend Amex Rule 904 to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call classes on the same side of the market on the same underlying security and to amend Amex Rule 905 to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within a period of five consecutive business days.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 8, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17122/September 5, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-24

The American Stock Exchange, Inc. ("Amex") submitted on August 29, 1980, a proposed rule change under Rule 19b-4 to modify its policy relating to Amex Rule 903(a) concerning the intervals at which exercise prices of options are fixed. The policy, as modified, would provide that for underlying securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals, and for securities trading above $100 per share exercise prices generally would be fixed at 10 point intervals.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 8, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17123/September 5, 1980

NATIONAL SECURITIES CLEARING CORPORATION ("NSCC")

(SR-NSCC-80-16)

ORDER APPROVING PROPOSED RULE CHANGE

On May 12, 1980, NSCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change establishing a "Demand As Of" service to assist in the resolution of uncompared trades in the over the counter market.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16825, May 22, 1980) and by publication in the *Federal Register* (45 FR 36245, May 29, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17124/September 5, 1980

OPTIONS CLEARING CORPORATION ("OCC")
(SR-OCC-79-4)

ORDER APPROVING PROPOSED RULE CHANGE

On July 9, 1979, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change establishing procedures to follow when it determines that an imminent or pending tender offer, exchange offer, suspension of trading, or other event in an underlying security threatens to reduce the available supply of that security to a level insufficient to permit the performance of the obligations under option contracts written on that security.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16014, August 3, 1979) and by publication in the *Federal Register* (44 FR 47424, August 13, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17125/September 5, 1980

Admin. Proc. File No. 3-5869

In the Matter of

OLDE & COMPANY, INC. (8-16752)
RICHARD G. HAWKS

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934,[1] Respondents Olde & Company, Inc. (Olde), a registered broker-dealer, and Richard G. Hawks (Hawks), have submitted Offers of Settlement which the Commission has determined to accept. Without admitting or denying the allegations in the Order for Proceedings, Hawks and Olde consent to the findings and sanctions set forth below.

On the basis of the Order for Proceedings and the Offers of Settlement, the Commission finds[2] that: 1) Olde wilfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as alleged in Section II(C)(1) and (D) of the Order for Proceeding; and 2) Hawks wilfully violated and wilfully aided and abetted the violation of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as alleged in the Order for Proceedings.

In view of the above, it is in the public interest to impose the sanctions specified in Hawks' Offer of Settlement and in Olde's Offer of Settlement.

Accordingly, IT IS ORDERED that:

(1) Richard G. Hawks be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company for a period of four months, effective at the opening of business on the second Monday after the date of this Order;

(2) Richard G. Hawks be, and hereby is, suspended from association with any broker, dealer, investment adviser or investment company, in any supervisory capacity, for a period of six months, effective at the opening of business on the second Monday after the date of this Order; subsequent to the six month period, before performing any supervisory functions, Hawks shall demonstrate to the Commission's staff that he has taken and successfully completed the NASD's supervisory principals examination and the registered options principals examination of a registered options exchange;

(3) Olde & Company, Inc. be, and it hereby is, censured;

(4) the options business of Olde & Company, Inc., its home office and each of its branch offices, be suspended for a period of thirty (30) days for any accounts for which options trades have not been effected prior to the opening of business on the second Monday after the date of this Order; and

(5) Olde & Company, Inc. comply with the following undertakings contained in its Offer of Settlement:

a. that Olde will implement procedures concerning the opening and monitoring of customer option accounts to conform with the industry guidelines set forth by the American, Midwest, Pacific, New York, Philadelphia, and Chicago Board Options exchanges in their publications entitled "Handling Options Transactions For Public Customers" and "Guidelines For Options Communications," both dated March 1980;

b. that Olde will modify and expand its current employee options training program to emphasize the responsibility of a Registered Representative to make full and fair disclosure of the risks in options trading, and to adhere to established suitability rules.

By the Commission

George A. Fitzsimmons
Secretary

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[1] *In the Matter of Olde & Co., Inc., et al.*, Administrative Proceeding File No. 3-5869, instituted on January 30, 1980.

[2] The findings herein are not binding upon any other respondent named in these proceedings.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17126/September 5, 1980

Admin. Proc. File No. 3-5955

In the Matter of

AES TECHNOLOGY SYSTEMS, INC.
140 Lively Boulevard
Elk Grove Village, Illinois 60007

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND FINDINGS AND ORDER OF THE COMMISSION

The Commission deems it appropriate that proceedings be instituted with respect to AES Technology Systems, Inc. (AES) pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 (Exchange Act) to determine whether AES's filings with the Commission pursuant to Section 13 of the Exchange Act and the Rules and Regulations promulgated thereunder are materially deficient in that they contain false statements and omit to state facts concerning: AES's actual and projected sales of slot machines and pinball machines, as is more fully set forth below.

In anticipation of the institution of these proceedings, AES has submitted an Offer of Settlement for the purpose of disposing of the issues raised in these proceedings. Under the terms of its Offer of Settlement, AES solely for the purpose of these proceedings, makes certain undertakings, and without admitting or denying any of the matters set forth herein, consents to the issuance of this Order of the Commission and the Findings herein. In its Offer of Settlement to dispose of these proceedings AES has made certain undertakings which are accepted by the Commission as detailed herein.

Accordingly, the Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of AES and the undertakings contained in the Offer of Settlement and, accordingly, issues this Order.

Facts

AES is a Delaware corporation headquartered in Elk Grove Village, Illinois. AES is primarily engaged in the development and manufacture of check and document processing equipment for banks and governmental agencies. AES's securities are traded in the over-the-counter market and registered with the Commission pursuant to Section 12(g) of the Exchange Act. During all times relevant herein, AES has filed with the Commission certain reports including Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q pursuant to Section 13 of the Exchange Act and Rules 13a-1, and 13a-13 thereunder.

Game Plan, Inc. (Game Plan) is a wholly owned subsidiary of AES. Games Plan, which is located in Addison, Illinois, is primarily engaged in the manufacture and sale of pinball and slot machines.

In September, 1978, AES's Game Plan subsidiary entered into an agreement with a Danish corporation for the purchase of certain patents, patent applications, tools, dies, and inventory relating to the manufacture, use and sale of a coin operated slot machine. During the period following this acquisition, AES disseminated a number of public announcements and filed a Form 10-K Report detailing its marketing efforts with respect to slot machines. As discussed hereinafter, these announcements, and the 10-K Report, misstated certain material information and omitted to state material information concerning the true status of AES's slot and pinball machine sales.

On March 13, 1979, AES issued a release which stated that AES's Game Plan subsidiary had received its first orders for slot machines. The release stated that Game Plan had received an order for 50 machines from the Dunes Hotel and Country Club (Dunes) in Las Vegas, Nevada and an order for 72 machines from the Silver Nugget Casino (Silver Nugget), which is also located in Las Vegas. The release also stated that the Dunes had agreed in principle to buy a substantial number of additional slot machines in Las Vegas as well as for the Dunes' new hotel casino in Atlantic City, New Jersey.

The March 13th release did not disclose two material facts concerning the orders which were received from the Dunes and from the Silver Nugget. First the release did not disclose that on March 5, 1979, AES had authorized the issuance of an option for 15,000 shares of AES stock to M & R Investment Corporation

(M & R), a Dunes' subsidiary.[1] Second, the release did not disclose that the Silver Nugget order was not a firm order for 72 slot machines, but rather was an order for 3 machines with 69 machines to follow contingent upon the approval of the original 3 mchines.[2]

On June 21, 1979, AES disseminated a release which stated in part, ". . . the company has been field testing its new slot machines at the three locations in Las Vegas and has received orders from more than a dozen casinos in Nevada." The release failed to state that certain of the orders received by AES were contingent or conditional orders rather than firm orders, and that certain of the casinos had agreed to test AES's slot machine with the understanding that later orders might follow if the machine was satisfactory.

On July 30, 1979, AES disseminated a release in response to a July 29, 1979 newspaper article concerning the company. The AES release stated that AES's "First year pinball sales went from -0- to $5,000,000." In fact, at the time of this release, AES's records showed its pinball sales for the fiscal year ending June 30, 1979 to be $4,371,000. Subsequent to the July 30, 1979 release, AES reversed certain sales of pinball machines which had previously been recorded. This reversal lowered the actual sales figure for AES's pinball machines to $3,763,000.[3]

The second material inaccuracy in AES's July 30, 1979, release was the statement that "AES has commitments for more than 1,000 slot machines, virtually all of its initial production for the first several months." This release omitted to state that certain of these commitments were contingent or conditional in nature, and that in fact, AES did not have firm commitments for 1,000 machines but rather had agreements whereby certain potential buyers would test machines with the understanding that later orders might follow if the tests were satisfactory.

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[1]As disclosed during the investigation of this matter, certain facts concerning the granting of the option to the Dunes, are the subject of some dispute.

According to Lee Goldboss (Goldboss), AES's president, on March 5, 1979, prior to the receipt of the Dunes' order, AES decided to grant a 15,000 share stock option to the Dunes. Goldboss stated that this option was granted to the Dunes for several reasons. Primary among these reasons was the Dunes' agreement to supply AES with information concerning the performance of the 4 slot machines which the Dunes had agreed to test. Goldboss has also stated that another significant reason for this option was the appreciation he felt for the Dunes' enthusiasm concerning his machine. Goldboss testified that this option was not requested by anyone at the Dunes and that no one at the Dunes knew of AES's intention to grant this option until April 21, 1979, after the receipt of the Dunes' order. At that time, AES informed the Dunes of its intention to grant the option, and was told that the option should be in the name of M & R. Goldboss further testified that the option was not actually delivered to M & R until between May 16 and May 20, 1979.

The option actually delivered to M & R was priced at $8.12 per share and was dated March 5, 1979. This price was within market range for AES's stock on March 5, 1979.

According to an M & R official, however, he met with Goldboss on at least two separate occasions. This individual stated that at one of these meetings the question of whether AES would grant a stock option was discussed. He stated that he felt that M & R should receive an option from AES because they were doing a favor to AES by testing their slot machines. He further stated that he implied to Goldboss that there was a relationship between the Dunes' desire to receive some type of consideration from AES and the agreement to test and purchase its slot machines. He did state however, that the Dunes might have tested the AES machine without receiving an option.

[2]Subsequent to this release, the Silver Nugget refused to go forward with the purchase of the additional 69 machines referred to in the purchase agreement with AES. As a result, the 69 machines referred to above were never delivered to the Silver Nugget. No disclosure was made by AES of this information.

[3]This reversal of sales was apparently the result of the refusal of certain of AES's European customers to take delivery of pinball machines which had been delayed in transit by a strike. These machines were subsequently accepted by the customers and recorded as sales during the next fiscal year.

On December 4, 1979, AES filed a Form 10-K Report which dealt in part with its sales of pinball and slot machines. The 10-K Report incorporated as an exhibit thereto AES's July 30, 1979 release and reaffirmed the statements contained therein as to its sales of pinball and slot machines. The 10-K Report in discussing AES's slot machine activities did not disclosure that certain of the orders which AES had previously announced for its slot machines were not in fact firm orders, but rather were agreements whereby certain potential buyers would test machines with the understanding that later orders might follow if the tests were satisfactory. The 10-K Report, in discussing the Dunes' stock option, failed to adequately disclose all of the circumstances surrounding the grant of this option, and what, if any, relationship existed between the grant of this option and the Dunes' agreement to purchase or test AES's slot machines. In addition, while the 10-K Report accurately reflected AES's 1979 pinball machine sales of $3,763,000 in one part of the report, it inaccurately reaffirmed AES's July 30, 1979, release which overstated actual pinball machine sales by more than $1,200,000.

Findings and Conclusions

The Commission finds that AES's Form 10-K Report for the fiscal year ending June 30, 1979, filed on December 4, 1979, was materially deficient in three major respects:

First, the report reaffirmed and failed to correct the information which AES had disseminated to the public concerning its receipt of "orders" or "commitments" for slot machines in that it failed to disclose that such "orders" and "commitments" were not firm, but were conditional or contingent in nature.

Second, this report failed to disclose all of the circumstances surrounding the grant of a stock option to M & R Investment Corporation, a subsidiary of the Dunes, and what, if any, relationship existed between the grant of this option and the Dunes' agreement to test or purchase AES's slot machines.

Third, this report reaffirmed the pinball machines sales figures contained in the July 30, 1979, AES release which overstated actual sales by in excess of $1,200,000.

Based upon the foregoing, the Commission finds that AES's 10-K Report, noted above, failed to comply with the provisions of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder in that it failed to fully and accurately disclose the aforesaid material information concerning AES's sales of pinball and slot machines.

Offer of Settlement

In connection with these proceedings, AES has submitted an Offer of Settlement in which it undertakes that it will:

A. Expeditiously seek a qualified candidate for an independent outside director to join its present three-member board. The candidate selected shall not be objectionable to the Commission's staff.

B. Through resolution of its board of directors, will establish a policy wherein it will not issue stock options or other securities of the company to persons who are not officers, directors, or employees of AES except with prior approval of its board of directors and its securities counsel and on condition that the issuance of said options and securities is fully and promptly disclosed in filings with the Commission.

C. Make projections of revenues and profits only if said projections are made pursuant to the provisions of the Commission's Guide 62 of the Guides For Preparation and Filing of Registration Statements, and have been reviewed by and are not objectionable to its auditors.

D. Issue press releases and other statements to the news media only if said releases and statements are subject to prior review by its securities counsel.

E. Promptly make such filings with the Commission pursuant to the reporting provisions of the Securities Exchange Act as may be necessary for complete and accurate disclosure of material facts.

Order

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of AES and accordingly, IT IS HEREBY ORDERED that such proceedings be, and they hereby are instituted.

IT IS FURTHER ORDERED THAT AES:

1. Comply with the reporting requirements of the

Exchange Act.

2. Amend its reports currently on file with the Commission by filing this Order on a Form 8 within 30 days after the date of entry of this Order.

3. Upon AES becoming aware of non-compliance with its undertakings set forth herein, AES shall immediately notify the Commission of that fact and unless the Commission otherwise agrees, AES shall disclose such non-compliance in a current report on Form 8-K within 10 days.

4. Upon entry of this Order, these proceedings are terminated, provided however, the Commission specifically reserves the right to reopen these proceedings solely to enforce the Commission's Order or if AES fails to comply with its undertakings set forth in this Order. If these proceedings are reopened, the only issues in such proceedings shall be AES's failure to comply with its undertakings as set forth in this Order or its failure to comply with this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17127/September 8, 1980

Admin. Proc. File No. 3-5954

In the Matter of

FLORIDA POWER CORPORATION
P.O. Box 14042
St. Petersburg, Florida 33733

ORDER INSTITUTING PROCEEDINGS AND ACCEPTING OFFER OF SETTLEMENT.

I.

The Commission deems it appropriate that these proceedings be instituted pursuant to Section 15(c)(4) of the Securities Exchange Act of 1934 ("Exchange Act")[1] based on allegations that Florida Power Corporation ("FPC") failed, in material respects, to comply with provisions of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder by omitting to state, in quarterly, annual and other reports filed with the Commission, material information related to FPC's spot purchases of light fuel oil in 1973 and 1974.

II.

In anticipation of these proceedings FPC, without admitting or denying that any of its reports are deficient, has submitted an Offer of Settlement which the Commission has determined to accept. The Offer of Settlement waives findings by the Commission and provides for the entry of this Order requiring FPC to file the attached report on Form 8-K.

In view of the foregoing, the Commission deems it appropriate to accept the Offer of Settlement of FPC. Accordingly, IT IS HEREBY ORDERED that these proceedings be and they hereby are instituted. IT IS FURTHER ORDERED that FPC, pursuant to its Offer of Settlement, forthwith file said report on Form 8-K as attached hereto.

By the issuance of this Order, and subject to FPC's filing said report, the Commission terminates these proceedings.

By the Commission.

George A. Fitzsimmons
Secretary

Item 5. *Other Materially Important Events*

Pursuant to an Order of the Securities and Exchange Commission accepting the Company's Offer of Settlement in an administrative proceeding

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[1]Section 15(c)(4) of the Exchange Act provides, in part, that if the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of Section 12, 13 or subsection(d) of Section 15 of the Exchange Act has failed to comply with any provision, Rule or Regulation thereunder in any material respect, the Commission may publish its findings and issue an order requiring such person to comply with such provision, Rule or Regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

brought by the Commission to determine whether the Company's prior filings had omitted to state material information related to its spot purchases of light fuel oil in 1973 and 1974, and without admitting or denying that any of its reports were deficient, the following is set forth:

In 1973, the Company was faced with a serious need for light fuel oil to use in connection with its peaking units which were designed to meet high customer demands for electricity for short periods of time. These peaking units require No. 2 fuel oil. Owing to international conditions and the inability of the Company's historical contract suppliers, because of regulatory restrictions, to supply the Company's requirements of No. 2 fuel oil, it was necessary for the Company to turn to the "spot" market as an additional means to obtain its requirements of light fuel oil. The Company had little prior experience in purchasing fuel in the "spot" market.

Since 1971, the Company had used the services of a Consultant who was originally retained under a yearly contract, renewable in March who was originally retained under a yearly contract, renewable in March of each year, to assist the Company in obtaining its requirements of residual oil and other petroleum products. Pursuant to discussions had in April, 1973, among the then Chairman of the Board of the Company, a Vice President of the Company, and the Consultant, the Company, on September 19, 1973, supplemented its prior contract with the Consultant to require the Consultant, after fulfilling his obligation to another Company, to use his best efforts in assisting the Company in locating additional petroleum products. Under the terms of the contract, as supplemented, the Consultant was to continue to receive $1,500 per month. In addition, the Consultant was authorized to accept compensation from companies selling fuel to the Company without creating a conflict of interest. The contract, as supplemented, did not require the Consultant to disclosure the amount of such compensation to the Company. Under the contract, the Consultant could not commit the Company to any purchase of oil but was required to submit all offers of supply, with costs, to the Company's Fuel Department for its first refusal or acceptance. The supplement to the contract was executed by the then Senior Vice President having responsibility for fuel purchases, but a copy was not supplied to the Manager of the Fuel Department.

During the period from June, 1973, through September, 1974, a period of sharply escalating oil prices resulting from, among other things, the oil embargo and energy crisis, the Consultant was responsible for locating approximately 93% of the total "spot" No. 2 fuel oil purchased by the Company at an approximate cost of $20 million. This amounted to approximately 8% of the Company's total fuel oil purchased during that period. The Company did not purchase any oil located by the Consultant until the Fuel Department had determined, by independent checking, that the price of the oil located appeared to be the lowest price available.

In February, 1975, certain officials of the Company obtained information from public court records, including a pretrail deposition of the Consultant, indicating tht the Consultant had received substantial compensation from a supplier to the Company as a result of arranging sales to the Company, which sales constituted almost all of the "spot" No. 2 fuel oil purchased by the Company in 1973 and 1974. Upon receiving the foregoing information, the Company, on March 26, 1975, terminated the Consultant's contract which had been renewed within the prior month.

On April 8, 1975, Company officials traveled to Washington, D.C., and requested that the FEA determine if, in fact, the Company had been overcharged and to otherwise assist the Company in determining whether it had legal recourse against the Seller for recovery of possible overcharges and the subsequent refund of any such overcharges to its customers.

On April 17, 1975, the Company's Board of Directors was advised of the Consultant's arrangements with the Company and, further, was informed of the possibility that the Company may have been overcharged in connection with its purchase of No. 2 fuel oil in 1973 and 1974; that it appeared that the Consultant had made considerable profits as a result of these purchases; that because of the Consultant's agreement with the Company it did not appear that the Company had a legal claim to recover the Consultant's profits; and of the Company's report to and request for assistance from the FEA.

During the period from April, 1975, through August, 1977, Company officials were in contact with FEA officials in an attempt to ascertain the progress and findings of the FEA in connection with the Company's complaint. During this period, the FEA did not furnish the Company with any information

which satisfied the Company's express purpose of having gone to the FEA in the first instance. With the exception of a preliminary inquiry which formed the basis for the Company's report to the FEA in 1975, during this time interval the Company made no independent investigation regarding the details surrounding the contractual agreement with the Consultant, nor any independent inquiry into whether the Company was, in fact, overcharged in connection with purchases of No. 2 fuel oil.

Commencing in 1976, the Company undertook steps to reorganize and restructure its internal audit system and, in 1977, conducted a System Fossil Fuel Audit, which the Company believes resulted in improvement of the Company's internal controls with respect to all aspects of fossil fuels, including purchasing procedures. The Company intends to continually monitor its internal procedures and make changes as it deems appropriate and consistent with changes in the fuel oil market.

As a result of newspaper reports in August, 1977, the Board of Directors and management first learned that a former Chairman of its Board of Directors may have been involved with the Consultant and may have received approximately $193,000 from him. The receipt of such sums by the former Chairman of the Board would have violated the Company's conflict of interest policy.

On November 17, 1977, the Company filed with the Securities and Exchange Commission its Form 10-Q for the quarter ended September 30, 1977, and disclosed the following:

On April 7, 1977, the Company filed a petition with the Florida Public Service Commission for approval to modify its rate schedules to reflect the expenses associated with the ownership of its Crystal River nuclear unit, which was put into commercial operation on March 13, 1977, and to pass through to its customers the lower fuel costs associated with the nuclear generation. The Commission, on April 28, 1977, issued an order granting, on an interim basis, subject to refund, an increase in the Company's base rates of $60.8 million, effective May 1st, and authorizing the modification of the fuel adjustment clause as requested.

Public hearings on the Company's petition were scheduled to be held on September 13, 1977; however, on September 1st, the Commission rescinded the interim rate adjustment. In taking such action, the Commission stated that it was doing so as a punitive measure in connection with the current controversy over alleged fuel oil overcharges to the Company, and in addition because the nuclear unit did not run up to initial expectations. The Company immediately initiated an appeal to the Florida Supreme Court, which granted a temporary "stay" of the Commission's order. Oral arguments were held before the court on September 23rd, however, the court has not yet rendered an opinion. A public hearing originally scheduled to be held on September 13th, has been rescheduled for November in St. Petersburg.

The Florida Public Service Commission's action in rescinding the interim rate adjustment was in response to newspaper reports relative to the Federal Energy Administration (FEA) investigations into alleged overpricing of light oil purchased on the "spot" market by the Company during 1973-1974. These reports include allegations concerning a contract with a Consultant retained by the Company to locate sources of light oil during that period.

The contract allowed the Consultant to accept compensation from supplying companies. However, the Company was under no obligation to purchase the oil located by the Consultant and purchases of light oil were made at prices which were considered competitive at the time of purchase. The FEA (now Department of Energy—DOE) investigation was initiated by the Company early in 1975 when officials of the Company represented to the FEA suspicions they had regarding possible pricing irregularities in the "spot" market for light oil. Major questions have been raised regarding certain activities in this matter of Mr. A. P. Perez, former President of the Company. Mr. Perez also served as Chairman of the Board of Directors from March 1972 through September 1973, and as a member of the Board of Directors from September 1973 until its annual meeting in March of 1977.

In light of these developments, the Public Service Commission, the Securities and Exchange Commission and the Florida State's Attorney's office are investigating this matter. The Company anticipates that the Public Service Commission will hold hearings on its investigation in January, 1978. To protect the interests of both stockholders and customers the President of the Company appointed a special independent investigative task force, headed by Director Byron E. Herlong, with three other outside Directors.

On September 20, 1977, the Company filed a Complaint in Federal District Court, Middle District of Florida, Tampa Division, against Ray Granlund, A. P. Perez, Ronald Pruitt, Walter L. Ballard, John L. Burns, Charter International Oil Co., Larcon Petroleum, Inc., Matrix Properties, Inc., Rotary Oil Co., and Signal Oil and Gas Company, and others. In eleven separate counts the Complaint alleges fraud, breach of certain duties and violation of certain legislation and regulations in connection with fuel oil sales to the Company during 1973 and 1974. Although the total amount of damages to be ultimately claimed is not yet determinable, it may be in excess of $8 million. The relief sought includes actual and punitive damages, treble damages, costs, interest and attorney fees. The Defendants have been served. Discovery and other pre-trial procedures are expected to require several months before the case can be set for trial.

Subsequent to the time period covered by this report, the Company has been named as a defendant in several suits which seek to recover any overcharges which may have been passed on to the customer through the Company's fuel adjustment clause and other related damages. These suits contain various allegations including price-fixing, fraud, breach of various duties, negligence, as well as others. The Company considers these suits to be spurious and strongly feels that it can successfully defend all these actions, although the outcome cannot be assured at this time. These suits will not materially impact the Company.

The suit filed by the Company seeks, among other things, recovery of any overcharges to the Company on purchases of light fuel oil on the spot market during the period 1973 and 1974.

A number of different causes of action were asserted against the various defendants, including claims of violations of the federal antitrust laws and federal petroleum pricing laws, common law fraud, common law conspiracy, and violation of fiduciary and agancy obligations owed to the Company.

The Florida Attorney General and a State Attorney for Florida filed a Motion to Intervene in this litigation as plaintiffs on behalf of a class of customers of the Company. The motion sought leave to file a complaint naming the Company as a defendant in this litigation, adding additional defendants to those originally sued by the Company; and expanding the claims to encompass No. 6 oil as well as No. 2 oil. The Company opposed the motion, but the Court granted the motion on April 5, 1978. This action placed the Company in the posture of both a plaintiff and a defendant in this proceeding.

While this suit was pending, the Commission issued an Order requiring the Company to show cause why it should not refund $8,495,000, plus interest from October 1, 1978. The Order stemmed from the report and recommendation of a Special Counsel appointed by the Commission to investigate whether the Company's customers were entitled to any refunds as a result of alleged overcharges to the Company on its spot market fuel oil purchases during 1973 and 1974. The Special Counsel concluded that the Company was overcharged on some of those purchases and that the Company, and not the ratepayers, should bear the burden of such overcharges on the ground that the Company allowed the overcharges to occur. The Special Counsel also reported that the sellers of the oil allegedly paid the Consultant $2,339,030 in commissions on the oil sales in question.

Although the Company denied that it should be required to make a refund to its customers in the amount of $8,495,000, it stated its willingness to reach a settlement of the controversy by means of which a refund could be made to its customers. Such a settlement would permit the Company to move forward in its suit against those persons whom the Company believes were responsible for the alleged overcharges.

Following extensive negotiations between the Company, the Commission, the Attoney General and the Public Counsel of the State of Florida, it was agreed that the Company would establish a settlement fund of $6.5 million on behalf of its customers. The Commission voted to accept the Company's offer to refund $6.5 million and terminate any further action by the Commission against the Company related to these purchases. The Commission order was conditioned on the final approval of the settlement by the U.S. District Court for the Middle District of Florida, where the class action suit against the Company filed by the Florida Attorney General is now pending. The Federal District Court ruled on June 7, 1979, that it would not accept the $6.5 million settlement proposal. The Court's denial was based on procedural objections to the terms of the settlement agreement and not on the adequacy of the amount of the settlement.

On September 17, 1979, the Company, certain other defendants in the suit to recover the alleged oil overcharges, and the Florida Attorney General filed a new proposed settlement agreement with the Court. This second proposal provides that a settlement fund of $5.0 million will be established, with the Company contributing $1.5 million, plus costs of administration, and the other defendants contributing a total of $3.5 million. The proposed settlement agreement was also filed with the Commission in response to its order of August 14, 1979, which required its Special Counsel to revise the initial settlement offer to make it acceptable to the Court. The Commission held hearings on the proposal and approved the agreement on March 31, 1980. The Court conditionally approved the agreement on April 25, 1980. This settlement differs from the one previously accepted by the Commission, but rejected by the Court, in that the Company has no recourse against other parties for its $1.5 million contribution. Under the prior settlement offer the Company would refund $6.5 million, but it would be permitted to continue its suit against the other defendants to recover this amount.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17128/September 8, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-32

The New York Stock Exchange, Inc. ("NYSE") submitted, on August 25, 1980, a proposed rule change under Rule 19b-4 applicable to individuals who become NYSE members after September 1, 1980, and to prior members whose membership is interrupted for longer than three months. Authorized death benefits from the NYSE Gratuity Fund for such persons will be graduated from $20,000 to $100,000 in five equal annual steps measured from the date of membership or reinstatement, respectively. Annual premiums paid to the Gratuity Fund will be increased from $15 to $75 over the same period.[1]

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 8, 1980. Interested persons are invited to submit written data, views and agruments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-32.

Copies of the submission, all subsequent amendements, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 110 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]These increases have been in effect since May 15, 1979, for existing NYSE members. *See* Securities Exchange Act Release No. 16019 (July 12, 1979), 17 SEC Docket 1246 (July 24, 1979), 44 FR 42360 (July 19, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17129/September 8, 1980

NOTICE OF FILING OF AMENDMENT TO PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-78-3

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 4, 1980, an amendment to a proposed rule change under Rule 19b-4 to amend its Rules of Fair Practice governing member practices in connection with fixed price offerings of securities ("Papilsky filing"). The proposed rule change was filed (1) to amend Article III Section 24 which prohibits the grant or receipt of selling concessions, discounts or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business, and would permit such payments to be made only as consideration for services rendered in distribution; (2) to amend Article III Section 8 which prohibits a member from taking securities in trade at more than their fair market price; (3) to add a new Section 36 to Article III to prohibit a member from selling to or placing with any related person of the member securities that are part of a fixed price offering; (4) to add a new section 1(m) to Article II to define the term "fixed price offering." Notice of the proposed rule change was given in Securities Exchange Act Release No. 15020 (August 2, 1978) and in the *Federal Register*, 43 FR 35446 (August 9, 1978).

This amendment was filed (1) to revise Article III Section 24 to include the provision of bona fide research [1] as a "service in distribution" and to permit a member to be compensated for such research by a purchaser of securities in a fixed price offering through selling concessions arising out of the purchase; and (2) to revise Article III Section 8 to add a definition of "fair market price" and to add certain guidelines for determining fair market price in connection with securities taken in trade.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 45 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17130/September 8, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-20

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on August 25, 1980, a proposed rule change under Rule 19b-4 regarding exchange disciplinary procedures. The rules set forth, among other things, procedures relating to investigations, the issuance of complaints, hearings and review.

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[1] The amendment to the proposed rule change states that "[t]he definition of bona fide research is substantially the same as the definition of the term research in Subsection 28(e)(3) of the Securities Exchange Act in 1934, as amended, and as interpreted by the Securities and Exchange Commission."

The rules also define the powers of the Business Conduct Committee, the Hearing Committee and its panels and the exchange staff.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 8, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W. Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17131/September 8, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-80-13)

ORDER APPROVING PROPOSED RULE CHANGE

On July 21, 1980, the Midwest Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 there under, copies of a proposed rule change which amends Article VIII, Rule 9 of the Exchange Rules, which governs off-floor transactions, to conform its provisions with the requirements of Commission Rule 19c-3 under the Securities Exchange Act.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17013, July 28, 1980) and by publication in the *Federal Register* (45 FR 51325, August 1, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and in particular, the requirements of Section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release no. 17132/September 8, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
11 Wall Street
New York, New York 10005

(SR-NYSE-80-25)

ORDER APPROVING PROPOSED RULE CHANGE

On July 14, 1980, the New York Stock Exchange, Inc. ("NYSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change to provide for the operation of the Opening Automated Report Service ("Service"), which is designed to facilitate more efficient and accurate processing of certain orders received by the NYSE through DOT[1] prior to the opening. The five functions of the Service will be

1) to store—but not deliver to the trading post—individual pre-opening market orders;

2) to continuously tabulate these orders; matching buy and sell interest and calculating any remaining imbalance;

3) to inform the specialist of the tabulated buy/sell interest and imbalance;

4) [then, after the specialist executes the orders in the Service] to electronically receive the opening price in a stock via a single mark-sense card from the specialist; and

5) to disburse automatically—upon receipt of the opening price—machine generated reports to member firms for each stored order.

The Service is designed to achieve system efficiencies which would (i) materially assist specialists in arranging the opening transactions in their assigned stocks through automation of several clerical tasks at the trading post for the critical period just prior to the opening, (ii) improve reporting of completed trades through immediate dissemination of execution reports upon the opening of trading, and (iii) result in fewer questioned trades at the opening and, thus, would promote more efficient and accurate clearing and settlement of securities transactions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17014, July 29, 1980) and by publication in the *Federal Register* (45 FR 51326, August 1, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. The Service should better enable the Exchange to carry out the purposes of the Act, including the maintenance of fair and orderly markets, the fostering of competition and cooperation with persons engaged in settling and processing information with respect to transactions in securities and facilitating transactions in securities, pursuant to Section 6(b)(5). In addition, the Service will introduce new data processing and communications techniques which should result in a more efficient and effective market operation consistent with the objectives of Section 11A(a)(1)(B). Finally, the Service is consistent with and should advance the purposes of Section 17A(a)(1) of the Act, including the prompt and accurate clearance and settlement of securities transactions and the introduction of more efficient procedures for the clearance and settlement operation.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]"DOT" is the acronym for the NYSE's Designated Order Turnaround System, an application of the Common Message Switch, which permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. On March 13, 1980, the Commission approved implementation of the Service on a pilot basis. Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17133/September 8, 1980

In the Matter of

PACIFIC STOCK EXCHANGE, INC.
301 Pine Street
San Francisco, CA 94104

(SR-PSE-80-13)

ORDER APPROVING PROPOSED RULE CHANGE

On July 21, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would authorize the PSE Ethics and Business Conduct Committee to order investigations of possible violations that are within the PSE's disciplinary jurisdiction. The PSE's Board of Governors, its Executive Committee, and its Floor Trading Committee already have the authority to order such investigations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17020, July 29, 1980) and by publication in the *Federal Register* (45 FR 37973, August 5, 1980). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17134/September 8, 1980

In the Matter of

WACOAL CORP.

File No. 81-630

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the application of Wacoal Corp., for an exemption from the reporting requirements of Section 15(d) of the Securities Exchange Act of 1934. It appears to the Commission that the requested exemption is consistent with the public interest and the protection of investors.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17135/September 8, 1980

WARNER-LAMBERT INTERNATIONAL CAPITAL CORPORATION

File No. 81-624

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order, exempting Warner-Lambert International Capital Corporation (the "Applicant") from the periodic reporting requirements of Section 13 of the Securities Exchange Act of 1934.

The matter having been considered, it is found that the requested exemption is appropriate in the public interest and consistent with the protection of investors, and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17136/September 8, 1980

Admin. Proc. File No. 3-5773

In the Matter of the Application of

WILLIAM D. GEORGE, III
2900 United States Steel Building
Pittsburgh, Pennsylvania

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY ACTION

Violation of Rules of Fair Practice

Failure to Inform Employer of Private Securities Transaction

Where officer of member firm of registered securities association engaged in a private securities transaction without prior written notification to the member, *held*, association's finding of violation *sustained*, but proceedings *remanded* for reassessment of sanctions since association's other findings of violation set aside.

APPEARANCES:

William D. George, III, pro se.

Andrew McR. Barnes and *T. Grant Callery*, for the National Association of Securities Dealers, Inc.

I.

William D. George, III, vice president of a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from disciplinary action taken against him by the NASD. The NASD found that George executed an indemnity agreement in favor of a customer of the firm, knowing that he did not then have the resources to honor it; that he thereafter failed to honor the agreement; and that he did not give his firm prior written notice of the transaction. It censured George and barred him from association with any NASD member as a principal.[1] Our findings are based on an independent review of the record.

II.

During the latter part of 1976, George, while associated with the firm, was also chairman of the board and a 32% shareholder of Saranac Recreation, Inc., a company that was attempting to secure a $1,000,000 loan from the Ford Motor Credit Company in order to finance the development of an indoor tennis complex.

In order to obtain the loan from Ford, Saranac had to clear certain liens from its property, and attempted to borrow the necessary funds from the Mellon Bank, N.A. However, the bank would not lend the money unless it received substantial collateral. Certain customers of another salesman at the firm, Dr. and Mrs. K, had already agreed to invest $250,000 in a proposed limited partnership of which Saranac was to be general partner. Mrs. K agreed to pledge 500 shares of Bristol-Myers Corp. stock with the bank as partial collateral for a $50,000 loan to Saranac, provided that she was indemnified against any loss resulting from her pledge. George accordingly signed the necessary indemnity agreement.

Subsequently, as the result of certain actions on the part of Saranac's president, the Ks decided not to invest in the proposed limited partnership, and the loan from Ford was never obtained. In May 1977, Saranac filed for bankruptcy under Chapter 11 of the Bankruptcy Act. The Ks subsequently reacquired the pledged Bristol-Myers stock by redeeming it from the bank.

III.

As indicated above, the NASD found that George failed to observe "high standards of commercial honor and just and equitable principles of trade" in that he was aware when he signed the indemnity agreement that he lacked the necessary funds to honor it, and, in fact, never honored the agreement However, on the basis of our review of the record, we are unable to sustain the NASD's findings of violation.

George has consistently maintained that, at the time he signed the agreement, the Ks were aware that he did not have the resources to honor his indemnity. And nothing in the record shows that he misled or deceived anyone at that time concerning his personal financial situation or his ability to fulfill his commitment. In fact, in response to a letter from the

[1]The NASD also assessed costs.

NASD inquiring whether Mrs. K believed that George was capable of honoring the agreement at the time it was executed, Dr. K replied, "We were aware that this could not be honored immediately, or he, logically, would not have needed our collateral. We did not really discuss how long is long."

Moreover, George's subsequent failure to reimburse Mrs. K does not constitute a breach of the NASD's ethical standards unless it appears that George acted in bad faith.[2] No such showing has been made. According to George, he fully intends to honor his agreement. He states, however, that, at the present time, the Ks are not pressing him for payment, since they are willing to wait and see how much they and George can recover from the Saranac bankruptcy proceedings.[3] Since the record contains no evidence to the contrary, we are unable to conclude that George engaged in any unethical conduct.

We accordingly set aside the NASD's findings of violation.

III.

The introduction to the NASD's interpretation with respect to private securities transactions states that the NASD's Board of Governors has determined that "no person [associated with a member] may be involved in any way with a private securities transaction outside the regular course or scope of his association or employment without prior [written] notice to the member with whom he is associated."[4] The indemnification agreement which George signed recites that Mrs. K "desires indemnification from Mr. George to *induce*" her pledge of securities to the bank as collateral for a loan to Saranac. (Emphasis supplied.) And the salesman who serviced the Ks' account testified that the agreement "had a substantial impact" on the Ks' decision to make that pledge. We agree with the NASD that the indemnity agreement was "inextricably linked to the pledge of stock," and therefore, that George engaged in a private securities transaction within the meaning of the NASD's interpretation.

It is undisputed that George did not give his firm prior written notice of his agreement to indemnify Mrs. K against any loss resulting from her pledge of securities. George claims that Saranac's president led him to believe that the indemnification was corporate, not personal. But even assuming that George was misled, it would merely be a factor to be considered in mitigation. In any event, we cannot credit George's claim. The brief, one-page agreement which he signed clearly and unambiguously spells out personal liability on his part. Moreover, as the Board of Governors pointed out, George never claimed that he was misled as to the nature of his agreement either in his answer to the NASD's complaint or at the lengthy hearings before the NASD's District Committee.

We accordingly affirm the NASD's finding of violation.

IV.

We have set aside a major portion of the NASD's findings of violation. We therefore consider that the Association should be given the opportunity to re-examine the sanctions that it imposed. Accordingly, we shall remand this matter to the NASD so that it may reassess those sanctions.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and FRIEDMAN).

George A. Fitzsimmons
Secretary

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[2]See *Buchman* v. *S.E.C.*, 553 F.2d 816, 820-821 (C.A. 2, 1977); *Southern Brokerage Co., Inc.*, 42 S.E.C. 449, 453 (1964); *Samuel B. Franklin & Co.*, 38 S.E.C. 113, 116 (1957).

[3]George testified that he had substantial claims against Saranac that were senior to other claims, and counsel stated, "[W]e are looking to repay [the Ks] from the funds held by the company that is in receivership, that belong to Mr. George. . . ."

[4]NASD Manual para 2177, p. 2109-3.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17136/September 8, 1980

Admin. Proc. File No. 3-5773

In the Matter of the Application of

WILLIAM D. GEORGE, III
2900 United States Steel Building
Pittsburgh, Pennsylvania

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that these proceedings be, and they hereby are, remanded to the Board of Governors of the National Association of Securities Dealers, Inc. for further action in accordance with such opinion.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17137/September 9, 1980

In the Matter of

TOSHIBA CORPORATION

File No. 81-626

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until October 3, 1980, to request a hearing on an application by Toshiba Corporation ("Applicant"), a Japanese corporation, pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an order exempting the Applicant from the reporting requirements of Section 15(d) of that Act. The Applicant has only 280 shareholders resident in the United States.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17138/September 9, 1980

FOCUS REPORTING SYSTEM; REQUIREMENTS FOR FINANCIAL REPORTING

ACTION: Proposed amendments to Form and Rule 17a-5.

SUMMARY: The Commission proposes to revise and clarify certain financial and operational reporting requirements of the FOCUS reporting system and requests additional information to be used for regulatory and policy-making purposes by the Commission with respect to brokers and dealers. Certain forms now required would be eliminated. Paragraph (d) of Rule 17a-5 would be amended to require that two copies of the Annual Audited Report of Financial Statements be sent to the Commission's principal office in Washington, D.C., instead of the one copy currently required. This change is necessitated by the requirements of the Commission's micrographics program. In addition, the Commission requests interested persons to give their assessment of the present FOCUS reporting system and suggestions for modifying that system within the context of the proposed amendments.

DATE: Comments must be received on or before October 15, 1980.

ADDRESSES: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-851 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2370; or William J. Atkinson, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, Washington, D.C. 20549 (202) 523-5493.

SUPPLEMENTARY INFORMATION: The Securities

and Exchange Commission today announced proposed amendments to Part I, Part II, and Part IIA of Form X-17A-5 (17 CFR 249.617), a financial and operational combined uniform single report under the Securities Exchange Act of 1934. Schedules I, II, and III of Form X-17A-5 and the Commission's Quarterly Survey of Specialists would be eliminated. The proposed amendments would revise the Form so as to clarify certain financial and operational reporting requirements of securities brokers and dealers, to require more detailed reporting of some items, and to eliminate or consolidate other items. Rule 17a-5 would be amended to require the filing of two copies of the annual audited report at the headquarters office instead of the single copy now required.

INTRODUCTION

Section 17(a)(1) of the Securities Exchange Act of 1934 provides that the Commission shall prescribe by rule the records to be kept and the reports to be made and disseminated by brokers and dealers. Under that section, the Commission has adopted Rule 17a-5 which is the basic reporting rule for brokers and dealers. It requires the filing of Form X-17A-5, the Financial and Operational Combined Uniform Single Report ("FOCUS Report"), which was the result of years of study and comment by representatives of the securities industry through advisory committees and through the normal rule proposal method.[1] The FOCUS Report was designed to eliminate all of the overlapping regulatory reports required by various self-regulatory groups and the Commission and to reduce reporting burdens as much as possible.

Rule 17a-5 requires three kinds of reports: (1) a monthly form (Part I of the FOCUS Report) which must be filed by every broker or dealer who clears transactions or carries customer securities; (2) a bifurcated quarterly report composed of a comprehensive Part II which must be filed by every broker or dealer who clears transactions or carries customer accounts and a less detailed Part IIA which must be filed by brokers and dealers which do not clear transactions or carry customer accounts; and (3) an annual report that must be filed by every broker or dealer (with certain narrow exceptions) and audited by an independent public accountant.

The FOCUS Report and the annual audited report are the primary means of monitoring the financial condition of brokers and dealers and enforcing the financial responsibility rules. The completed forms are also used to determine which firms are engaged in various securities-related activities, the extent of those activities, and how economic events and government policies might affect various segments of the securities industry.

In the adopting release, the Commission stated its intention to periodically review the FOCUS Report ". . .in order to continue modifying and updating the financial and operational reporting systems to keep pace with the changing securities industry."[2] Because of the recent problems experienced in the securities industry and the changing nature of the business in the last several years, that time has come again. The amendments are proposed in this release (1) to provide more useful information that will assist the Commission in monitoring the operations and financial condition of broker-dealers and in evaluating the likely effect of proposed and existing regulations on the industry, (2) to define items more clearly so information will be reported in a consistent manner by all firms, and (3) to streamline the FOCUS Report and associated requirements so that the reporting burden is minimized, consistent with the attainment of other public policy objectives.

In general, changes are proposed to Part I of the FOCUS Report which would recognize the Form so that it would follow a more logical progression from an accounting and operational viewpoint. Certain items such as a Schedule of Operational Exposure Items would be added to the Form, which would increase its value as a management and surveillance tool. The changes to Parts II and IIA of the FOCUS Report would require firms to disclose areas of potential exposure not now sought. Among other things, the form will request data on commodities and commodity futures contracts for delayed deliveries and standby transactions and affiliates and subsidiaries of the broker or dealer. The present Statement of Income (Loss) will be revised to provide more precise categories for

[1]The Commission adopted the FOCUS Report as of January 1, 1976. See Securities Exchange Act Release No. 11935, December 17, 1975; 40 FR 59706, December 30, 1975.

[2]Id., at six.

revenue and expense items. Finally, certain schedules now required to be filed can be eliminated as unnecessary.

In reviewing the reporting requirements and in proposing amendments to the FOCUS Report, members of the Commission's staff have consulted informally with the staffs of self-regulatory organizations. Committees of the Securities Industry Association, broker-dealers, and accountants were also asked for and provided their views on changes to the reporting system. The recommended amendments to the FOCUS Report embody the contributions of all the parties.

PROPOSED AMENDMENTS

PART I OF FORM X-17A-5 [§249.617][3]

Part I as amended would be completely reorganized and contain an appended Schedule of Operational Exposure Items. The revised Part I would follow a more logical progression from an accounting and operational viewpoint and would therefore have more value as a management and surveillance tool. The Commission would be especially interested in receiving comments from the public concerning the appropriate parameters for determining when a security or commodity position should be deemed concentrated.

PART II OF FORM X-17A-5 [§249.617][4]

The proposed amendments discussed below are described in the order in which the particular statement or schedule appears in Part II.

(1) The cover page of Part II would be revised to indicate if subsidiaries or affiliates of a broker-dealer which are consolidated in accordance with Appendix C are guaranteed or flow-through and to clarify the distinction between broker-dealers that are required to file Part II from those that must file Part IIA.

A sentence will be added to the Execution block on the cover page referring the signing parties to a sample letter of representation which will be included in the general instructions. This proposal would give the parties signing the report an opportunity to review the representations they are making.

(2) Cash segregated in compliance with federal and other regulations* [page one of Part II].

This item would be expanded into separate categories consisting of cash segregated in compliance with SEC Rules 15c2-4 (Transmission or maintenance of payments received in connection with underwritings) and 15c3-3 (Customer protection-reserves and custody of securities) as well as the Commodity Exchange Act. The final category would be All other. This proposal would give a more meaningful picture of the broker-dealer's regulatory cash position.

(3) Omnibus accounts [page one of Part II]

This item would be amended to include a category for commodity accounts.

(4) Clearing organizations [page one of Part II]

This item would also be amended to include a category from commodity accounts.

(5) Receivables from customers [page one of Part II]

The Securities accounts section of this item would include a category for Cash consisting of Delivery Versus Payment and Other. The Commodity accounts section of this item would include separate categories for regulated and other. The line items requesting information on assets "Includable in formula for Reserve Requirements" would be eliminated.

(6) Receivables from non-customer [page one of Part II]

This item now consists of the combined categories of Cash and fully secured accounts and Partly secured and unsecured accounts. These items would be broken out into four independent categories and a category requesting data on commodity accounts would be added. This would generate a more comprehensive picture of receivables from non-customers.

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[3]The text of the proposed amended Part I is appended hereto as Appendix A.

[4]The text of the proposed amended Part II is attached hereto as Appendix B.

*All page numbers in brackets refer to the current FOCUS Part II.

(7) Securities purchase under agreements to resell [page one of Part II]

This item will have a new sub-category entitled Matched repurchase agreements. This will aid in determining the extent to which this type of business is currently being conducted by broker-dealers.

(8) Securities and spot commodities owned at market value [pages one and two of Part II]

This item would be amended to read "Securities and spot commodities owned at market value—including long positions in arbitrage accounts." The category that is now listed as Arbitrage would be eliminated. A new item, Direct participation programs, would be added.

(9) Securities Borrowed Under Subordination Agreements and Partners' Individual and Capital Securities Accounts, at Market Value [page two of Part II]

The instructions to this section would be amended to indicate clearly that, if a partner contributes capital through a secured demand note, the excess value of these securities over the face value of the secured note should also be added to this item.

(10) Secured demand notes-market value of collateral [page two of Part II]

A cash category would be added to this item to give a more complete picture.

(11) Other Assets [page two of Part II]

This item would be modified to require that any miscellaneous asset that is more than five percent of a broker-dealer's excess net capital be listed. A new category listing taxes receivable would be added to this item.

(12) Bank loans payable [page three of Part II]

New categories would be added to this item which would determine if the bank loans payable are collateralized by customer securities or assets which would not normally be deducted in computing net capital. A second new category would require the firm to report the amount of its bank overdrafts.

(13) Payable to brokers or dealers and clearing organizations [page three of Part II]

A Commodity accounts section would be added to the Omnibus and Clearing accounts categories under this item. A Securities Accounts section would also be added to the Clearing Organizations Section. Line items requesting information relating to Reserve Formula Computations (except for "securities loaned") would be eliminated.

(14) Payable to customers: [page three of Part II]

The Commodities accounts category under this item would be sub-divided to determine if the liability is includable in the Commodity Exchange Act Segregated Funds computation.

(15) Securities sold not yet purchased at market value—including arbitrage [page three of Part II]

The heading for this item would be changed to "Securities and commodities sold short—including short positions in arbitrage accounts." Sub-categories under this item would be added to correspond with those listed under Securities and spot commodities owned at market value. The options category under this item would be divided into covered and uncovered subcategories.

(16) Accounts Payable and Accrued Liabilities and Expenses [page three of Part II]

This item would be amended to combine line 23-B, Accounts Payable, and 23-E, Accrued expenses and other liabilities. This combination would eliminate any confusion concerning which items should be listed in each category.

(17) Notes and mortgages payable [page four of Part II]

The secured category would be expanded to determine if the notes and mortgages payable are secured by assets which would normally be deducted in computing net capital or by some other assets.

(18) Total unsubordinated liabilities.

This is a new item designed to differentiate between subordinated and unsubordinated liabilities.

(19) Total Liabilities [page four of Part II]

This item would be modified to specify total subordinated liabilities.

(20) Commodity futures contracts and spot commodities—proprietary capital charges [page five of Part II]

Three sub-categories will be added to this item to determine if the proprietary capital charge applies to Financial futures, Precious metals, or Other.

(21) Deductions and/or changes [page five of Part II]

The total non-allowable assets from Statement of Financial Condition category of this item would be expanded to request data on charges related to exempt securities. The additional charges for customers and non-customers commodity accounts section would specifically refer to futures, forward and spot commodity accounts including omnibus accounts. The Commodity futures contracts and spot commodities proprietary capital section of this category would specifically include commodity forward contracts and the other deductions and/or charges section would be expanded to require data on specific types of deductions and charges.

(22) Haircuts on Securities: (computed where applicable pursuant to 15c3-1(f): [page five of Part II]

The Contractual securities commitments category of this item would be expanded to request data on charges related to exempt and non-exempt securities. The Subordinated securities borrowings category would be changed to suspense accounts and the Options section of the Trading and Investment securities category would specify if the options are covered or uncovered.

(23) Capital Ratios [page six of Part II]

The instructions to these items would be amended to make clear that all ratios should be reported as whole percents.

(24) Statement of Income (Loss) [page seven of Part II]

The Statement of Income (Loss) would be replaced by a new, more detailed Statement of Revenue and Expense.[5] The new Statement will enable the Commission to better identify which firms are involved in various securities-related activities and to determine the amount of revenues firms derived from these activities. These data will be useful to the Commission in considering the effects of economic events and public policies on various segments of the securities industry, and it will also be useful to the securities industry for managerial and financial planning purposes. Retail mark-ups/mark-downs would be reported separately from other gains (losses) on principal transactions. Gains (losses) from making a market, on an exchange or over the counter, in various kinds of securities would be reported separately. Gains (losses) would be further classified into four categories: interest, dividends, other realized gains (losses), and unrealized gains (losses). Underwriting and other investment banking activities would be subclassified. Interest income and expense would be segmented into major categories in order to provide a better picture of how firms finance their securities-related activities and the amount of income they obtain by lending funds to customers and other firms.

Comments are requested regarding the merits of a proposal to allow smaller firms to file less detailed revenue and expense data on a quarterly basis. Under this proposal, only about three hundred of the largest firms would be required to file a more detailed Statement on a quarterly basis. These firms account for 95% of the securities industry's total assets and 85% of its gross revenues. The remainder of the industry would be required to file the more detailed Statement on an annual basis. Firms filing the more detailed Statement on an annual basis would be required to file a condensed version of the Statement quarterly. Smaller firms could also choose, voluntarily, to file the more detailed data quarterly.

(25) Monies borrowed collateralized by securities carried for the accounts of customers (see Note B) [page eight of Part II]

This item would be modified to read Monies borrowed and letters of credit collateralized by securities carried for the accounts of customers (see Note B).

(26) Market Value of short securities count differences over 30 calendar days old [page eight of Part II]

The words "or seven days if net capital is computed under Rule 15c3-1(f)" would be added to this item.

[5]The text of the proposed Statement of Revenue and Expense is attached hereto as Appendix C.

(27) Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days [page eight of Part II]

The words "or seven days if net capital is computed under Rule 15c3-1(f)" would be added to this item.

(28) Information for Possession or Control Requirements (Under Rule 15c3-3) [page nine of Part II]

The sub-category concerning customers' fully paid and excess margin securities not in the possession of the broker-dealer has been deleted, as this figure is seldom used and often unreliable. In addition the reference notes currently found in §240.15c3-3 would be added to Part II as a handy reference.

(29) Financial and Operational Data [page thirteen of Part II]

The Financial and Operational Data report will be replaced by a more comprehensive two part report entitled Operational Exposure Items.[6]

PART IIA OF FORM X-17A-5 [§249.617][7]

Part IIA of the FOCUS Report would be amended to make item in Part II and Part IIA comparable.

SCHEDULE I

Schedule I of Form X-17A-5 requires the reporting of general information designed to measure certain economic and financial characteristics of a registered broker or dealer. Schedule I is a calendar year unconsolidated report which is filed by all registrants as a supplement to the regular fourth quarter Part II or IIA of Form X-17A-5 within seventeen business days after the end of the quarter. Certain information contained in Schedule I would be incorporated in Parts II and IIA in a new two-part report entitled Operational Data and Average Securities and Commodities Positions.[8] Schedule I would be eliminated.

SCHEDULE II

Schedule II of Form X-17A-5 requires the listing of annual revenue and expense items, annual net income, and certain balance sheet items on both a consolidated and unconsolidated basis. The income and expense figures reported on Schedule II reflect the aggregate of all income and expenses during the calendar year. Schedule II of Form X-17A-5 will be eliminated.

SCHEDULE III

Schedule III of Form X-17A-5 is an unconsolidated report required to be filed by any broker or dealer which files Part II of Form X-17A-5 and has annual gross revenue related to their securities business of $10 million or more for a calendar year. Schedule III of Form X-17A-5 will be eliminated.

Rule 17a-5 (§240.17a-5)

Paragraph (d) of Rule 17a-5 would be amended to require that two copies of the Annual Audited Report of Financial Statements be sent to the Commission's principal office in Washington, D.C., instead of the one copy currently required. This change is necessitated by the requirements of the Commission's micrographics program.

IMPACT ON THE SECURITIES INDUSTRY

About 4,800 firms file Schedule I and about 3,000 firms file Schedule II annually. The elimination of these schedules would reduce the industry's reporting burden by about 648,000 line items per year. Schedule III is filed annually by approximately 125 firms. The elimination of this schedule would reduce the industry's reporting burden by about 12,500 items per year.

In addition, the Commission proposes to eliminate its Quarterly Survey of Specialists which is filed by approximately 200 firms. Certain data now available only from this survey would be required under the proposed amendments to the FOCUS Report: (1) specialists' floor brokerage received on assigned stocks and options; (2) specialists' trading gains (losses) in assigned stocks and options; and (3) specialists' long and short positions in assigned stocks and options. The elimination of the survey

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[6]The text of the proposed Operational Exposure Items is attached hereto as Appendix D.

[7]The text of the proposed amended Part IIA is attached hereto as Appendix E.

[8]The text of the proposed report is attached hereto as Appendix F.

would reduce the industry's reporting burden by about 70,000 line items per year.

More detailed reporting requirements in Parts II and IIA would largely offset the aforementioned reduction in the industry's reporting burden. In addition, Part I would be expanded to contain a new section on Operational Exposure Items. The additional information required is, however, both relevant and necessary to the Commission's regulatory and policy-making concerns.

The Commission does not believe that the proposed amendments to the FOCUS Report would unduly increase the reporting burden on the securities industry. Nevertheless, the Commission requests comments (accompanied by specific factual data, if possible) regarding the impact of the proposed amendments to the FOCUS Report on the securities industry.

INSTRUCTIONS

No instructions are being published for comment at this time. However, the Commission expects to review all of the current instructions to ensure their accuracy. No major changes are contemplated in the instructions. Brokers and dealers and others who prepare the reports for filing are requested to advise the Commission of any difficulties they have experienced with the instructions.

CONCLUSION

The Commission believes that the new information requested of brokers and dealers will not generally require much additional effort from brokers and dealers in preparing the FOCUS Report. It is believed that most of the data requested is presently captured by brokers and dealers for internal control purposes. Moreover, by proposing less stringent reporting requirements for small firms, the Commissions has attempted to bring into better balance the regulatory burden imposed on broker-dealers of different sizes and, in particular, to reduce the reporting burden on small businesses engaged in securities activities. This regulatory approach has been successfully implemented with respect to small corporate issuers, and it is the Commission's intention to experiment further with such innovative regulatory techniques. The Commission requests comment on this as well as on any other aspect of the reporting program of the Commission.

Accordingly, the Commission proposes to amend Parts 240 and 249 of Title 17 of the Code of Federal Regulations as follows:

1. By amending paragraph (d)(6) of §240.17a-5 to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.17a-5 Reports to be made by certain brokers and dealers.

* * * * *

(d) * * *

(6) One copy of the annual audit report shall be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for said broker or dealer. Two copies of said report shall be filed at the Commission's principal office in Washington, D.C. Copies thereof shall be provided to all self-regulatory organizations of which said broker or dealer is a member.

2. By amending §249.617 as follows:

PART 249—FORMS SECURITIES EXCHANGE ACT OF 1934

§249.617 Form X-17A-5, information required of certain brokers and dealers pursuant to Section 17 of the Securities Exchange Act of 1934 and §240.17a-5, §240.17a-10, §240.17a-11, and §240.17a-20 of this chapter.

[The proposed amendments are attached as Appendices A to F.]

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

Pursuant to the Securities Exchange Act of 1934 and particularly Section 15(c)(3), 17 and 23 thereof, 15 U.S.C. §78o(c)(3), 78q and 78w, the Commission proposes to amend 17 CFR §240.617 in Part 240 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth above. The Commission believes that any burden imposed upon competition by the proposed amendment is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement

the Commission's continuing mandate under Section 15(c)(3) thereof, 15 U.S.C. §78o(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

REQUEST FOR COMMENTS

All interested persons are invited to submit, in triplicate, their written views and comments concerning the amendments to §240.17a-5(d)(6) and §249.617 proposed herein. All communications should be addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, no later than October 15, 1980. All comments received will be available for public inspection.

By the Commission.

George A. Fitzsimmons
Secretary

The proposed amendments are attached as Appendices:

Appendix A—The Text of the Amended Part I.
Appendix B—The Text of the Amended Part II.
Appendix C—The Text of the Proposed Statement of Revenue and Expense.
Appendix D—The Text of the Proposed Report Entitled Operational Exposure Items.
Appendix E—The Text of the Amended Part IIA.
Appendix F—The Text of the Proposed Report Entitled Operational Data and Securities and Commodities Positions.

APPENDIX A

Name of Broker/Dealer	
Name and Telephone No. of Person Completing This Report	
ID No.	FOR MONTH (IN THOUSANDS - 000's OMITTED)
SEC File No.	

	ITEM	MONTH
1710	1. Subordinated Loan Accounts - Cash	
880	2. Secured Demand Notes - Face Value	
102	3. Secured Demand Notes - Collateral Value	
3520	4. Total Equity Subordinations	
1011	5. Total Equity Subordinations	
	6. Unconsolidated Income/Expense for the Month:	
3950	a. Trading and Investment Account Profit or (Loss)	
4212	b. Other Gross Income (Loss)	
4201	c. Expenses	
	d. Income Taxes	
	7. Net Profit or (Loss) for the Month	
	8. Other Additions (Exclude Non-Conforming Capital)	
	9. Other Deductions (exclude Non-Conforming Capital)	
3500	10. Ownership Equity/Capital -- end of Month	
3530	11. Total Debt/Equity	
	Charges to Capital	
	12. Customers' and Non-Customers' Security Accounts	
	a. Cash Margin Deficiency - Exempt Securities	
	b. Cash Margin Deficiency - Non-exempt Securities	
3560	13. Customers' and Non-Customers' Commodity Accounts	
	14. Money Suspense/Security Suspense/Short Security Differences	
	15. Commodity Suspense	
3540	16. Unsecured Loans and Advances	
101	17. Non-Allowable Assets (Not Includable Above)	
	18. Haircuts on Commodities	
	19. Other Charges to Capital	
	20. Tentative Net Capital Line 11 less 12 thru 19	
	21. Haircuts on Proprietary Security Positions	
	a. Exempt Securities - Including Contractual Commitments	
	b. Non-Exempt Securities - Including Contractual Commitments	
3740	22. Total Haircuts on Securities	
3750	23. Net Capital Line 20 less 22	
	24. Scheduled Capital Withdrawals Within 6 Months	
	25. Net Capital After Withdrawals Line 23 less 24	
	26. A.I./A.D.I.	
3840	a. Aggregate Indebtedness under SEC Rule 15c3-1	
4470	b. Aggregate Debits under SEC Rule 15c3-3 as adjusted	
3760	27. Minimum Net Capital Required	
	28. Ratios: and excess Net Capital	
3850	a. Aggregate Indebtedness to Net Capital	
3851	b. Net Capital to Aggregate Debit Items	
3770	c. Net Capital in Excess of Greater of 6 2/3% of AI or Minimum	
3910	d. Net Capital in Excess of Greater of 4% of ADI or Minimum	
3852	e. Option Deductions Net Capital Ratio	
	Rule 15c3-3 Reserve Formula	
4430	29. Total Credits	
4472	30. Total Debits - net	
4530	31. Net Amount in Reserve Bank Account	
	Commodity Exchange Act - Segregation Requirement	
7060	32. Amount Required to be Segregated	
7180	33. Amount in Segregated	
	Exposure Information	
	34. Firm Security Positions (including contractual commitments	
850	a. Long - Exempt	
	- Non-Exempt	
1620	b. Short - Exempt	
	- Non-Exempt	
	35. Security Concentration - Firm	
	- Customer	
	36. Commodity Concentration - Firm	
	- Customer	
	Statistical Information	
4980	37. Total Tickets	
114	38. Equity Markets a. NASDAQ	
116	b. Other	
770	39. Total Fails a. To Deliver	
1505	b. To Receive	
5362	40. Aged Fails a. To Deliver	
5365	b. To Receive	
	41. Clearing Agency Balances	
810	a. Due from Clearing	
1560	b. Due to Clearing	
750	42. Unrestricted Cash	
	43. Customers' Accounts (Securities)	
310	a. Secured Debits	
	b. Total Credits	
103	44. Securities Borrowed	
540	45. Allowable Assets under SEC Rule 15c3-1	

Name of Broker/Dealer	
Name and Telephone No. of Person Completing This Report	
ID No.	FOR MONTH (IN THOUSANDS - 000's OMITTED)
SEC File No.	

Operational Exposure Items

	No. of Items	Debits (Short Value)	Credits (Long Value)	Deductions in Computing Net Capital
1. Money suspense and balancing differences				
2. Securities differences with money balances unresolved at report date				
3. Market value of short and long security differences without money at report date (other than reported in Item 4 below)				
4. Market value of security record breaks				
5. Unresolved reconciling differences with others at report date				
A. Correspondents and broker/dealers				
B. Depositories				
C. Clearing Organizations				
D. Inter-company and inter-office accounts				
E. Bank Loans				
F. Bank Accounts				
G. Other				
6. Open transfers and reorganization account items over 40 days not confirmed or verified				
TOTAL				
7. Commodity suspense differences unresolved at report date				

Note - Exclude items that were resolved two business days subsequent to the reporting date that were not required to be deducted in computing net capital at the report date.

APPENDIX B

FORM X-17A-5

FOCUS REPORT
(Financial and Operational Combined Uniform Single Report)
PART II

(Please read instructions before preparing Form.)

This report is being filed pursuant to (Check Applicable Block(s)):

1) Rule 17a-5(a) ☐ 2) Rule 17a-5(b) ☐ 3) Rule 17a-11 ☐

4) Special request by designated examining authority ☐ 5) Other ☐

Name of Broker-Dealer

SEC File No.

Address of Principal Place of Business (Do Not Use P.O. Box No.)

(No. and Street)

(City) (State) (Zip Code)

Firm ID. No.

For Period Beginning (MM/DD/YY)

And Ending (MM/DD/YY)

Name and Telephone Number of Person to Contact in Regard to This Report

(Area Code) - Telephone No.

Name(s) of Subsidiaries or Affiliates Consolidated in This Report Pursuant to Appendix C of Rule 15c3-1:

	Guaranteed	Flow-Thru
	☐	☐
	☐	☐
	☐	☐

Does Respondent Carry Customer Accounts? Yes ☐ No ☐

Does Respondent Clear Transactions? Yes ☐ No ☐

(If you checked "Yes" to either of the two preceding questions, please complete Part II in lieu of Part IIA.)

Was the respondent operating under the alternative method for the computation of the net capital requirement during the reporting period? Yes ☐ No ☐

Is respondent filing an audited report? Yes ☐ No ☐

Execution:

The registrant/broker or dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. See letter of representation included in the General Instructions.

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report

Name (If individual, state last, first, middle name) 70

ADDRESS **Number and Street** 71 **City** 72 **State** 73 **Zip Code** 74

Check One

( ) **Certified Public Accountant** 75

( ) **Public Accountant** 76

( ) **Accountant not resident in United States or any of its possessions** 77

FOR SEC USE

DO NOT WRITE UNDER THIS LINE . . . FOR SEC USE ONLY

WORK LOCATION	REPORT DATE MM/DD/YY	DOC. SEQ. NO.	CARD
50	51	52	53

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

Broker or Dealer

STATEMENT OF FINANCIAL CONDITION

As of (MM/DD/YY) _____
SEC File No. _____

Consolidated ☐

Unconsolidated ☐

ASSETS

	Allowable	Nonallowable	Total
1. Cash	$		$
2. Cash segregated in compliance with federal and other regulations:			
A. SEC Rule 15c2-4			
B. SEC Rule 15c3-3			
C. Commodity Exchange Act			
D. Other			
E. Total			
3. Receivables from brokers or dealers and clearing organizations:			
A. Failed to deliver			
B. Securities borrowed:			
(1) Customer			
(2) Non-Customer			
C. Omnibus accounts:			
(1) Securities Accounts			
(2) Commodities Accounts:			
a. Includable in CEA Segregated Funds Computation			
b. Other			
D. Clearing organizations:			
(1) Securities Accounts			
(2) Commodities Accounts:			
a. Includable in CEA Segregated Funds Computation			
b. Other			
E. Other			
4. Receivables from customers:			
A. Securities Accounts:			
(1) Cash accounts:			
a. DVP Accounts			
b. Other			
(2) Fully secured accounts			
(3) Partly secured accounts			
(4) Unsecured accounts			
B. Commodity accounts			
(1) Regulated			
(2) Other			
C. Allowance for doubtful accounts	( )	( )	

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

5. Receivables from non-customers:			
A. Cash accounts	_____		
B. Fully secured accounts	_____		
C. Partly secured accounts	_____	_____	
D. Unsecured accounts	_____	_____	
E. Commodity accounts	_____	_____	
F. Total non-customers			_____
6. Securities purchased under agreements to resell:			
A. Matched repurchase agreements	_____	_____	
B. All other	_____	_____	
C. Total			_____
7. Securities and spot commodities owned, at market value -- including long positions in arbitrage accounts:			
A. Bankers' acceptances, certificates of deposit and commercial paper	_____		
B. U.S. and Canadian government obligations	_____		
C. State and municipal government obligations	_____		
D. Corporate obligations	_____		
E. Stocks and warrants	_____		
F. Options	_____		
G. Direct participation programs	_____		
H. All other securities	_____		
I. Spot commodities	_____		
J. Total			_____
8. Securities owned not readily marketable:			
A. At cost $_____			
B. At estimated fair value	_____	_____	_____
9. Other investments not readily marketable:			
A. At cost $_____			
B. At estimated fair value	_____	_____	_____
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts, at market value	_____	_____	_____
A. Exempted securities $_____			
B. Other $_____			
11. Secured demand notes	_____	_____	_____
Market value of collateral:			
A. Exempted securities $_____			
B. Other securities $_____			
C. Cash $_____			
12. Memberships in exchanges:			
A. Owned at market value $_____			
B. Owned at cost		_____	
C. Contributed for use of company, at market value		_____	_____
13. Investment in and receivables from affiliates, subsidiaries and associated partnerships	_____	_____	_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

14. Property, furniture, equipment, leasehold improvements and rights under lease agreements: At cost (net of accumulated depreciation and amortization)			
15. Other Assets:			
A. Dividends and interest receivables			
B. Free shipments			
C. Loans and advances			
D. Taxes receivable			
E. Miscellaneous (list if allowable is over 5% of excess net capital)			
16. TOTAL ASSETS	$	$	$

LIABILITIES AND OWNERSHIP EQUITY

Liabilities	A.I. Liabilities*	Non-A.I. Liabilities*	Total
17. Bank loans payable:			
A. Collateralized by customer securities			
B. Collateralized by assets which would normally be deducted in computing net capital			
C. Bank overdrafts			
D. Other			
18. Securities sold under repurchase agreements:			
A. Matched repurchase agreements			
B. All other			
C. Total			
19. Payable to brokers or dealers and clearing organizations:			
A. Failed to receive			
B. Securities loaned:			
(1) Customer related			
(2) Other			
C. Omnibus accounts:			
(1) Securities Accounts			
(2) Commodity Accounts:			
a. Includable in CEA Computation			
b. Other			
D. Clearing organizations:			
(1) Securities Accounts			
(2) Commodities Accounts:			
a. Includable in CEA Computation			
b. Other			
E. Other			

*If registrant computes its capital under the alternative net capital requirement, only the totals are applicable.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

20. Payable to customers:			
A. Securities accounts — including free credits of..... $_____	_____		_____
B. Commodities accounts:			
(1) Includable in CEA Computation.....	_____	_____	_____
(2) Other.....	_____	_____	_____
21. Payable to non-customers:			
A. Securities accounts.....	_____	_____	_____
B. Commodities accounts.....	_____	_____	_____
22. Securities and commodities sold short — including short positions in arbitrage accounts:			
A. Bankers acceptances, certificates of deposit and commercial paper.....		_____	_____
B. U.S. and Canadian government obligations....		_____	_____
C. State and municipal government obligations..		_____	_____
D. Corporate obligations.....		_____	_____
E. Stocks and warrants.....		_____	_____
F. Options:			
(1) Covered or hedged.....		_____	_____
(2) Uncovered.....		_____	_____
G. Other securities.....		_____	_____
H. Spot commodities.....		_____	_____
I. Total.....		_____	_____
23. Accounts payable and accrued liabilities and expenses:			
A. Drafts payable.....	_____		_____
B. Accounts payable, accrued expenses and other liabilities.....	_____		_____
C. Income taxes payable.....	_____		_____
D. Deferred Income taxes.....		_____	_____
E. Other.....	_____	_____	_____
24. Notes and mortgages payable:			
A. Unsecured.....			
B. Secured:			
(1) Secured by assets which would normally be deducted in computing net cpaital.....	_____	_____	_____
(2) Other.....	_____	_____	_____
25. TOTAL UNSUBORDINATED LIABILITIES.....	$_____	$_____	$_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
Part II

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

26. Liabilities subordinated to claims of general creditors:			
A. Cash borrowings.....		_____	_____
1. From outsiders.....$_____			
2. Includes equity subordination (15c3-1(d)) of.....$_____		_____	_____
B. Securities borrowings, at market value: From outsiders.....$_____			
C. Pursuant to secured demand note collateral agreements:		_____	_____
1. From outsiders.....$_____			
2. Includes equity subordination (15c3-1(d)) of.....$_____			
D. Exchange memberships contributed for use of company at market value.....		_____	_____
E. Accounts and other borrowings not qualified for net capital purposes.....	_____	_____	_____
27. TOTAL SUBORDINATED LIABILITIES.....	$_____	$_____	$_____

Ownership Equity

28. Sole proprietorship.....	$_____
29. Partnership-limited partners.....$_____	_____
30. Corporations:	
A. Preferred stock.....	_____
B. Common stock.....	_____
C. Additional paid-in capital.....	_____
D. Retained earnings.....	_____
E. Total.....	_____
F. Less capital stock in treasury.....	(_____)
31. TOTAL OWNERSHIP EQUITY	$_____
32. TOTAL LIABILITIES AND OWNERSHIP EQUITY	$_____

FINANCIAL FOOTNOTES

I. For each subsidiary or affiliate which is consolidated pursuant to Appendix C of Rule 15c3-1, provide the following information:

Name of Subsidiary or Affiliate: _____

Nature of Business: _____

Guaranteed ☐ Flow-Through ☐

Total assets..... $_____

Liabilities:

Subordinated..... $_____

Other..... $_____

Ownership equity..... $_____

Net capital of the subsidiary or affiliate after eliminations and deductions specified in SEC Rule 15c3-1..... $_____

Net capital requirement if any (1)..... $_____

State net increase (decrease) parent's net capital..... $_____

Net income or (loss) before Federal Income Taxes..... $_____

Intercompany receivables or (payables)..... $_____

Were these assets, liabilities and ownership equity consolidated in the broker/dealer's net capital computation under Rule 15c3-1? Yes ☐ No ☐

II. Where not deducted in computing net capital, state the amount of unsecured or partially secured liabilities guaranteed by the broker or dealer, its guaranteed subisidiary or capital flow through affiliate. $_____

III. State the total amount of outstanding letters of credit commitments (including use for options and commodities).

Fully secured..... $_____

Unsecured..... $_____

IV. During the current period, has the organization been the subject of an investigation or proceeding by any government agency or self-regulatory organization? Yes ☐ No ☐

V. During the current period, has the organization been named as a defendant in any new litigation or arbitration proceeding or subjected to claims aggregating in excess of 5% of its net capital or $10,000 or more by a customer? Yes ☐ No ☐ If yes, submit detail.

Aggregate Amount..... $_____

VI. Contingencies

If not shown elsewhere in this report, describe total contingent liabilities which if deducted in computing net capital would result in a capital deficiency under Rule 15c3-1 or capital rules of the designated examining authority.

VII. Management projection of any major change which would affect a change in the firm's Excess Net Capital of at least 5% during the next six months.

Amount..... $_____

Describe significant changes including new product lines, branches acquisition, mergers, contracts, acquisition of non-allowable assets, expansion of customer or proprietary business, operating profits or losses, capital outflow, additional financing and computer systems.

VIII. SECURITY AND COMMODITY CONCENTRATION

	FIRM POSITIONS		CUSTOMER POSITIONS		FIVE LARGEST CUSTOMERS	
	LONG	SHORT	LONG	SHORT	LONG	SHORT
NAME OF EQUITY SECURITY *						
NAME OF COMMODITY - SPOT, FORWARD OR FUTURES *						

* BASED ON EXCEPTION REPORTING CRITERIA

* * * *

	Ledger Balance	Market Value
IX. a. FAILED TO DELIVER - 11 BUSINESS DAYS OR LONGER (21 BUSINESS DAYS OR LONGER FOR MUNICIPAL SECURITIES)	_____	_____
b. FAILED TO RECEIVE - 11 BUSINESS DAYS OR LONGER (21 BUSINESS DAYS OR LONGER FOR MUNICIPAL SECURITIES)	_____	_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART II

BROKER OR DEALER _____ as of _____

COMPUTATION OF NET CAPITAL

1. Total ownership equity (from Statement of Financial Condition)..... $_____
2. Deduct: Ownership equity not allowable for net capital..... (_____)
3. Total ownership equity qualified for net capital..... _____
4. Add:
   A. Liabilities subordinated to claims of general creditors allowable in computation of net capital..... _____
   B. Other (deductions) or allowable credits (List)..... _____
5. Total capital and allowable subordinated liabilities..... $_____
6. Deductions and/or charges:
   A. Total non-allowable assets from Statement of Financial Condition (Note B and C)..... $_____
      1. Additional charges for customers' and non-customers' security accounts..... _____

      Charges related to exempt securities:

	Actual Positions	Contractual Positions
Charge included in 6.A.1. above	_____	_____
Total deficits in accounts	_____	_____
Face amount long	_____	_____
Face amount short	_____	_____

      2. Additional charges for customers' and non-customers' futures, forward and spot commodity accounts including omnibus accounts..... $_____
   B. Aged fail-to-deliver: ..... _____
   C. Aged short security differences--less
      reserve of..... _____
      number of items..... _____
   D. Secured demand note dificiency..... _____
   E. Commodity futures and forward contracts and spot commodities—proprietary capital charges..... _____
      1. Financial futures including foreign currencies..... _____
      2. Precious metals..... _____
      3. Other..... _____
   F. Other deductions and/or charges .....
      1. Securities dividends short..... _____
      2. Deficits in failed to receive and securities loaned..... _____
      3. Insurance claims..... _____
      4. Losses on contractual commitments..... _____
         Exempt securities..... _____
         Non-exempt..... _____
      5. Guarantees..... _____
      6. Miscellaneous..... _____
      7. Total..... _____

G. Deductions for accounts carried under Rule 15c3-1 (a)(6), (a)(7) and (c)(2)(x)..... _____

H. Total deductions and/or charges..... _____

7. Other additions and/or allowable credits (List)..... _____

8. Net Capital before haircuts on securities positions..... $_____

9. Haircuts on securities: (computed, where applicable, pursuant to 15c3-1 (f)):

A. Contractual securities commitments..... _____

1. Charges related to exempt securities:

	Contractual Positions
Charges included in above	_____
Total mark to market losses	_____
Face amount long	_____
Face amount short	_____

2. Charges related to non-exempt securities..... _____

B. Suspense and difference accounts..... _____

C. Trading and investment securities:

1. Bankers' acceptances, certificates of deposit and commercial paper..... _____
2. U.S. and Canadian government obligations ..... _____
3. State and municipal government obligations..... _____
4. Corporate obligations..... _____
5. Stocks and warrants..... _____
6. Options: _____
   a. Covered or hedged.....
   b. Uncovered..... _____
7. Arbitrage..... _____
8. Other securities..... _____

D. Undue concentration..... _____

E. Other (list)..... _____

10. Net Capital.....$_____

OMIT CENTS

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER as of _____

COMPUTATION OF BASIC NET CAPITAL REQUIREMENT

Part A

11. Minimum net capital required (6-2/3% of line 19) ..... $ _____ 3756
12. Minimum dollar net capital requirement of reporting broker or dealer and minimum net capital requirement of subsidiaries computed in accordance with Note (A) ..... $ _____ 3758
13. Net capital requirement (greater of line 11 or 12) ..... $ _____ 3760
14. Excess net capital (line 10 less 13) ..... $ _____ 3770
15. Excess net capital at 1000% (line 10 less 10% of line 19) ..... $ _____ 3780

COMPUTATION OF AGGREGATE INDEBTEDNESS

16. Total A.I. liabilities from Statement of Financial Condition ..... $ _____ 3790
17. Add:
    A. Drafts for immediate credit ..... $ _____ 3800
    B. Market value of securities borrowed for which no equivalent value is paid or credited ..... $ _____ 3810
    C. Other unrecorded amounts (List) ..... $ _____ 3820 $ _____ 3830
18. Deduct: Adjustment based on deposits in Special Reserve Bank Accounts (15c3-1 (c) (1) (vii)) ..... $ _____ 3838
19. Total aggregate indebtedness ..... $ _____ 3840
20. Percentage of aggregate indebtedness to net capital (line 19 ÷ by line 10) ..... % _____ 3850
21. Percentage of Aggregate Indebtedness to net capital *after* anticipated capital withdrawals (line 19 ÷ by line 10 less item 4880 page 11) ..... % _____ 3853

COMPUTATION OF ALTERNATE NET CAPITAL REQUIREMENT

Part B

22. 4% of combined aggregate debit items as shown in Formula for Reserve Requirements pursuant to Rule 15c3-3 prepared as of the date of the net capital computation including both brokers or dealers and consolidated subsidiaries' debits ..... $ _____ 3970
23. Minimum dollar net capital requirement of reporting broker or dealer and minimum net capital requirement of subsidiaries computed in accordance with Note (A) ..... $ _____ 3880
24. Net capital requirement (greater of line 22 or 23) ..... $ _____ 3760
25. Excess net capital (line 10 less 24) ..... $ _____ 3910
26. Percentage of Net Capital to Aggregate Debits (line 10 ÷ by line 17 page 8) ..... % _____ 3851
27. Percentage of Net Capital, *after* anticipated capital withdrawals, to Aggregate Debits (line 10 less item 4880 page 11 ÷ by line 17 page 8) ..... % _____ 3854
28. Net capital in excess of the greater of:
    A. 6% of combined aggregate debit items or $120,000 ..... $ _____ 3920
    B. 7% of combined aggregate debit items or $120,000 ..... $ _____ 3930

OTHER RATIOS

Part C

29. Percentage of debt to debt-equity total computed in accordance with Rule 15c3-1 (d) ..... % _____ 3860
30. Options deductions/Net Capital ratio (1000% test) total deductions exclusive of liquidating equity under Rule 15c3-1(a)(6), (a)(7) and (c)(2)(x) ÷ Net Capital ..... % _____ 3852

NOTES:

(A) The minimum net capital requirement should be computed by adding the minimum dollar net capital requirement of the reporting broker dealer and, for each subsidiary to be consolidated, the greater of:
1. Minimum dollar net capital requirement, or
2. 6-2/3% of aggregate indebtedness or 4% of aggregate debits if alternative method is used.

(B) Do not deduct the value of securities borrowed under subordination agreements or secured demand notes covered by subordination agreements not in satisfactory form and the market values of memberships in exchanges contributed for use of company (contra to item 1740) and partners' securities which were included in non-allowable assets.

(C) For reports filed pursuant to paragraph (d) of Rule 17a-5, respondent should provide a list of material non-allowable assets.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER _____ as of _____

COMPUTATION FOR DETERMINATION OF RESERVE REQUIREMENTS
FOR BROKER-DEALERS UNDER RULE 15c3-3
(See Rule 15c3-3, Exhibit A and Related Notes)

** IN THE EVENT THE NET CAPITAL REQUIREMENTS IS COMPUTED UNDER THE ALTERNATIVE METHOD, THIS "RESERVE FORMULA" SHALL BE PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF PARAGRAPH (f) OF RULE 15c3-1.

CREDIT BALANCES

1. Free credit balances and other credit balances in customers' security accounts (see Note A, Exhibit A, Rule 15c3-3)..... _____
2. Monies borrowed and letters of credit collaterized by securities carried for the accounts of customers (see Note B) ..... _____
3. Monies payable against customers' securities loaned (see Note C)..... _____
4. Customers' securities failed to receive (see Note D) ..... _____
5. Credit balances in firm accounts which are attributable to principal sales to customers ..... _____
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days..... _____
   **Market value of short security count differences over 30 calender days old or 7 days if net capital is computed under Rule 15c3-1(f)_____
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days or 7 business days if net capital is computed under 15c3-1(f)..... _____
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days..... _____
10. Other (List)..... _____
11. TOTAL CREDITS..... $_____

DEBIT BALANCES

12. **Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection net of deductions pursuant Note E, Exhibit A, Rule 15c3-3..... _____
13. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver..... _____
14. Failed to deliver of customers' securities not older than 30 calendar days..... _____
15. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts (See Note F)..... _____
16. Other (List)..... _____
17. **Aggregate debit items..... $_____
18. **less 3% (for alternative method only—see Rule 15c3-1(f)(5)(i))..... (_____)
19. TOTAL 15c3-3 DEBITS..... $_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER _____ as of _____

COMPUTATION FOR DETERMINATION OR RESERVE REQUIREMENTS
FOR BROKER-DEALERS UNDER RULE 15c3-3 (continued)

RESERVE COMPUTATION

20. Excess of total debits over total credits (line 19 less line 11)..... $_____
21. Excess of total credits over total debits (line 11 less line 19)..... _____
22. If computation permitted on a monthly basis, enter 105% of..... _____
    excess of total credits over total debits..... _____
23. Amount held on deposit in "Reserve Bank Account(s)," including
    value of qualified securities, at end of reporting period..... _____
24. Amount of deposit (or withdrawl) including
    $_____ value of qualified securities..... _____
25. New amount in Reserve Bank Account(s) after adding deposit or
    subtracting withdrawal including value of qualified securities
    $_____ ..... $_____
26. Date of deposit (MMDDYY)..... _____

OMIT CENTS

FREQUENCY OF COMPUTATION

27. Daily _____ Weekly _____ Monthly_____

28. If an exemption from Rule 15c3-3 is claimed, identify below the section
    upon which such exemption is based (check one only)..... _____
    A. (k) (1)—$2,500 capital category as per Rule 15c3-1..... _____
    B. (k) (2)(A)—"Special Account for the Exclusive Benefit of
       customers" maintained..... _____
    C. (k) (2)(B)—All customer transactions cleared through another
       broker-dealer on a fully disclosed basis. _____
    Name of clearing firm _____
    D. (k) (3)—Exempted by order of the Commission..... _____

Information for Possession or Control Requirements Under Rule 15c3-3

State the market valuation and number of items of:

1. Customers' fully paid securities and excess margin securities not in the
   respondent's possession control as of the report date (for which
   instructions to reduce to possession or control had been issued as of the report
   date) but for which the required action was not taken by respondent within
   the time frames specified under Rule 15c3-3. Notes G and H.....$_____

   A. Number of items..... _____

2. Customers' fully paid securities and excess margin securities for which
   instructions to reduce to possession or control had not been issued as
   of the report date, excluding items arising from "temporary lags which
   result from normal business operations" as permitted under Rule 15c3-3.
   Notes H, I, and J..... _____
   A. Number of items..... _____
3. The system and procedures utilized in complying with the requirement
   to maintain physical possession or control of customers' fully paid
   and excess margin securities have been tested and are functioning in
   a manner adequate to fulfill the requirements of Rule 15c3-3..... Yes / No

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER _____ as of _____

COMPUTATION FOR DETERMINATINON OF RESERVE REQUIREMENTS
FOR BROKER-DEALERS UNDER RULE 15c3-3 (continued)

Note A

Item 1 shall include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and shall also include checks drawn in excess of bank balances per the records of the broker or dealer.

Note B

Item 2 shall include the principal amount of Restricted Letters of Credit obtained by members of Options Clearing Corporation which are collateralized by customers' securities.

Note C

Item 3 shall include in addition to monies payable against customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D

Item 4 shall include in addition to customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E

(1) Debit balances in margin accounts shall be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of all securities which collateralize all margin accounts receivable; provided, however, the required reduction shall not be in excess of the amounts of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of Section 4(b) of Regulation T under the Act (12 CFR 220.4(b)) or similar accounts carried on behalf of another broker or dealer, shall be reduced by any deficits in such accounts (or if a credit, such credit shall be increased) less any calls for margin, mark to the market, or other required deposits which are outstanding 5 business days or less.

(3) Debit balances in customers' cash and margin accounts included in the formula under Item 10 shall be reduced by an amount equal to 1 percent of their aggregate value.

Note F

Item 15 shall include the amount of margin deposited with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

Note G

Do not include in item one customers' fully paid and excess margin securities required by Rule 15c3-3 to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 15c3-3.

Note H

State separately in response to items 1 and 2 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

Note I

Be sure to include in item 2 only items not arising from "temporary lags which result from normal business operations" as permitted under Rule 15c3-3.

Note J

Item 2 must be responded to only with the report which is filed as of the date selected for the broker's or dealer's annual audit of financial statements, whether or not such date is the end of a calendar quarter. The reponse to item 2 should be filed within 60 calendar days after such date, rather than with the remainder of this report. This information may be required on a more frequent basis by the Commission or the designated examining authority in accordance with Rule 17a-5(a)(2)(iv).

FINANCIAL AND OPERATION COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER _____ as of _____

SCHEDULE OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION

CUSTOMERS' REGULATED COMMODITY FUTURES ACCOUNTS

SEGREGATION REQUIREMENTS

1. Net ledger balance
   a. Cash..... _____
   b. Securities (at market)..... _____
2. Net unrealized profit (loss) in open futures contracts..... _____
3. Net equity (Deficit) (Total of 1 plus or minus 2)..... _____
4. Add: accounts liquidating to a deficit and accounts with debit balances with no open trade*..... _____
5. Amount required to be segregated (Total of 3 plus 4)..... _____

FUNDS ON DEPOSIT IN SEGREGATION

6. Deposited in segregated funds bank accounts:
   a. Cash..... _____
   b. Securities representing investments of customers' funds (at market)..... _____
   c. Securities held for customers in lieu of cash margins (at market)..... _____
7. Margins on deposit with clearing organizations of contract markets:
   a. Cash..... _____
   b. Securities representing investments of customer funds (at market)..... _____
   c. Securities held for customers in lieu of cash margin (at market)..... _____
8. Settlement due from (to) contract market clearing organization..... _____
9. Net equities with other FCMs..... _____
10. Segregated funds on hand:
    a. Cash..... _____
    b. Securities representing investments of customers' funds (at market)..... _____
    c. Securities held for customers in lieu of cash margins (at market)..... _____
11. Total amounts in segregation (Total of 6 through 10)..... _____
12. Excess funds (Insufficiency) in segregation (1 minus 5)..... _____

* State unsecured deficits and debits:
From prior period $_____
From current period $_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER _____ as of _____

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed withdrawal or Accrual See below for code to enter	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	(MMDDYY) Withdrawal or Maturity Date	Expect to Renew (yes or no)

TOTAL $_____

OMIT CENTS

* To agree with the total on Recap (Item No. 4880)

Instructions: Detail listing must include the total of items maturing during the six month period following the reported date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15d3-1(c)(2)(iv), which could be required by the lender on demand or in less than six months.

WITHDRAWAL CODE:	DESCRIPTION
1.	Equity Capital
2.	Subordinated Liabilities
3.	Accruals
4.	15c3-1(c)(2)(iv) Liabilities

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
Capital Withdrawals
PART II

BROKER OR DEALER For the period (MMDDYY) from _____ to _____

RECAP

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months, non-liquid assets and accruals, which have not been deduced in the computation of net capital.

1. Equity Capital
   A. Partnership Capital: (Notes)
      1. General Partners..... _____
      2. Limited..... _____
      3. Undistributed Profits..... _____
      4. Other (describe below)..... _____
      5. Sole Proprietorship..... _____
   B. Corporation Capital: (Notes)
      1. Common Stock..... _____
      2. Preferred Stock..... _____
      3. Retained Earnings (Dividends and Other)..... _____
      4. Other (describe below)..... _____
2. Subordinated Liabilities
   A. Secured Demand Notes..... _____
   B. Cash Subordinations..... _____
   C. Debentures..... _____
   D. Other (describe below)..... _____
3. Other Anticipated Withdrawals
   A. Bonuses..... _____
   B. Voluntary Contributions to Pension or Profit Sharing Plans..... _____
   C. Other (describe below)..... _____
      Total..... $ _____
4. Description of Other
   _____
   _____
   _____

STATEMENT OF CHANGES IN OWNERSHIP EQUITY
(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period..... $ _____
   A. Net income (loss)..... _____
   B. Additions (Includes non-conforming capital of..... $ _____ _____
   C. Deductions (Includes non-conforming capital of..... $ _____ _____
2. Balance, end of period (From Item 1800)..... $ _____

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED
TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period..... $ _____
   A. Increases..... _____
   B. Decreases..... (_____)
4. Balance, end of period (From item 3520)..... $ _____
   OMIT CENTS

NOTES: 1/ Total of personal capital borrowing due within six weeks. _____
2/ Planned capital expenditures for business expansions during next six months. _____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER

As of (MM/DD/YY) _____
Trade Days Included _____

OPERATIONAL EXPOSURE ITEMS

	No. of Items	Debits (Short Value)	Credits (Long Value)	Deductions in Computing Net Capital
1. Money suspense and balancing differences at report date				
2. Securities differences with related money balances unresolved at report date				
3. Market value of short and long security differences without money at report date (other than reported in Item 4 below)				
4. Market value of security record breaks				
5. Unresolved reconciling differences with others at report date				
(A) Correspondents and broker/dealers				
(B) Depositories				
(C) Clearing Organizations				
(D) Inter-company and inter-office accounts				
(E) Bank loans				
(F) Bank accounts				
(G) Other				
6. Open transfers and reorganization account items over forty days not confirmed or verified				
TOTAL				
7. Commodity suspense and differences unresolved at report date				

*Exclude items resolved two business days subsequent to month end not charged to capital at report date.

OPERATIONAL STATISTICS

8. Number of open customer and non-customer accounts at report date	
(A) Security transactions	
(B) Commodity transactions	
9. Number of tickets (contracts) executed during the reporting period	
(A) Security transactions	
(B) Commodity transactions	
10. Customer extensions of time requested during the reporting period	
(A) Regulation T extensions requested	
(B) SEC 15c3-3(n) extensions requested	
11. Number of corrected customer confirmations mailed after settlement date during the reporting period	
12. Number of customer complaints	
(A) Received during the reporting period	
(B) Unresolved at report date over 60 days old	
13. Number of customer accounts carried by respondent for other brokers or dealers on a fully-disclosed basis at the end of the reporting period	
14. Number of omnibus accounts carried by respondent for other brokers or dealers at the end of the reporting period	
15. Number of customer accounts carried by respondent (other than those carried for other brokers or dealers) at the end of the reporting period	
16. Number of margin accounts carried by respondent at the end of the reporting period	
17. Number of margin accounts that represent in excess of five percent of aggregate margin balances at the end of the reporting period	

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: _ _/_ _/_ _ TO: _ _/_ _/_ _

STATEMENT OF REVENUE AND EXPENSE
(Comprehensive Annual/Quarterly Report)

REVENUES		AMOUNT ($) (Omit Cents)
1. Commissions on transactions in:		
a. Listed stocks and warrants executed on an exchange		_____
b. Listed stocks and warrants executed over-the-counter		_____
c. All other stocks and warrants		_____
d. Listed options		_____
e. All other options		_____
f. Municipal securities		_____
g. Corporate bonds		_____
h. All other securities		_____
i. Spot commodities		_____
j. Futures, forwards, and standbys		_____
k. Subtotal (1a thru 1j)	$ _____	
2. Retail mark-ups/mark-downs on principal transactions in: 1/		
a. Listed stocks and warrants		_____
b. All other stocks and warrants		_____
c. Options		_____
d. Municipal securities		_____
e. Corporate bonds		_____
f. All other securities		_____
g. Spot commodities		_____
h. Forwards and standbys		_____
i. Subtotal (2a thru 2h)	$ _____	
3. Gains (losses) on firm securities and commodities accounts: 2/		
a. Market making on an exchange in:		
(1) Listed stocks and warrants		_____
(2) Listed options		_____
b. Market making over-the-counter in:		
(1) Listed stocks and warrants		_____
(2) All other stocks and warrants		_____
c. All other proprietary accounts in:		
(1) Stocks and warrants		_____
(2) Options		_____

1/ Mark-ups/mark-downs represent the difference between the current market price and the price charged a customer on a principal transaction.

2/ Include all realized and unrealized gains (losses) on firm securities and commodities accounts, except (1) retail mark-ups/mark-downs on principal transactions and (2) gains (losses) from investment banking and related activities.

(3) State and municipal government obligations _____
(4) U.S. and Canadian government obligations _____
(5) Bankers' acceptances, certificates of deposit and commercial paper _____
(6) Corporate obligations _____
(7) All other securities _____
(8) Spot commodities _____
(9) Futures, forwards and standbys _____

d. Subtotal (3a thru 3c) which includes:
(1) Interest income $_____
(2) Dividend income $_____
(3) Unrealized gains (losses) on investment accounts $_____
(4) All other gains (losses) on investment accounts $_____
(5) All other unrealized gains (losses) $_____
(6) All other gains (losses) $_____
(7) Subtotal (3d(1) thru 3d(6)) $_____

4. Gains (losses) from investment banking and related activities:
a. Sales of direct participation programs 3/ _____
b. Sales of investment company securities _____
c. All other registered stock offerings _____
d. All other registered securities offerings _____
e. Municipal securities offerings _____
f. All other exempted securities offerings _____
g. Private placements of securities _____
h. Mergers and acquisitions _____
i. All other investment banking activities _____
j. Subtotal (4a thru 4i) $_____

5. Gross interest income from:
a. Margin loans to public customers _____
b. Repurchase agreements _____
c. Securities loaned _____
d. All other loans _____
e. Subtotal (5a thru 5d) $_____

6. Floor brokerage and clearance income:
a. Specialist floor brokerage in assigned stocks and warrants _____
b. Specialist floor brokerage in assigned options _____
c. All other floor brokerage _____
d. Clearance income _____
e. Subtotal (6a thru 6d) $_____

7. All other revenues related to the securities business _____
8. All other revenues _____
9. Total revenues _____

3/ A direct participation program is an investment vehicle which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. It includes, but is not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program or any combination thereof.

EXPENSES

10. Employment costs:
    a. All employment compensation and benefits paid to:
        (1) Firm owners 4/ _____
        (2) Registered representatives _____
        (3) All other income-producing employees _____
    b. All other _____
    c. Subtotal (10a thru 10b) $_____
11. Gross interest expenses on:
    a. Repurchase agreements _____
    b. Bank loans collateralized by:
        (1) Customer securities _____
        (2) Firm securities _____
    c. Subordinated debt _____
    d. Securities borrowed _____
    e. All other obligations _____
    f. Subtotal (11a thru 11e) $_____
12. Floor brokerage, commissions and clearance _____
13. Advertising and promotional _____
14. Occupancy _____
15. Communications equipment and services _____
16. Data processing equipment and services _____
17. Regulatory fees and expenses _____
18. Losses due to errors and bad debts _____
19. Non-recurring charges _____
20. All other expenses _____
21. Total expenses _____

NET INCOME

22. Income (loss) before Federal income taxes (Item 9 less Item 21) _____
23. Provision for Federal income taxes (for parent only) _____
24. Equity in earnings (losses) of unconsolidated subsidiaries excluded above _____
    a. After Federal income taxes of $_____
25. Extraordinary gains (losses) _____
    a. After Federal income taxes of $_____
26. Cumulative effect of changes in accounting principles _____
27. Net income (loss) after Federal income taxes and extraordinary items _____

4/ Persons that have a direct or indirect equity interest in the firm equal to or greater than five percent of the firm's equity capital.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: __/__/__ TO: __/__/__

STATEMENT OF REVENUE AND EXPENSE
(Condensed Quarterly Report)

REVENUES	AMOUNT($) (Omit Cents)
1. Commissions on securities and commodities transactions	_____
2. Gains (losses) on firm securities and commodities accounts:	
a. Retail mark-ups/mark-downs	_____
b. Interest and dividends	_____
c. Unrealized gains (losses) on investment accounts	_____
d. All other gains (losses) on investment accounts	_____
e. All other realized gains (losses)	_____
f. All other gains (losses)	_____
g. Subtotal (2a thru 2f) $_____	
3. Gains (losses) from investment banking and related activities	_____
4. Gross interest income from repurchase agreements and loans	_____
5. Floor brokerage and clearance income	_____
6. All other revenues	_____
7. Total revenues	_____
EXPENSES	
8. Employment costs	_____
9. Gross interest expenses	_____
10. Floor brokerage, commissions and clearance	_____
11. Losses due to errors and bad debts	_____
12. Non-recurring charges	_____
13. All other expenses	_____
14. Total expenses	_____
NET INCOME	
15. Income (loss) before Federal income taxes (Item 7 less Item 14)	_____
16. Provision for Federal income taxes (for parent only)	_____
17. Equity in earnings (losses) of unconsolidated subsidiaries excluded above	_____
18. Extraordinary gains (losses)	_____
a. After Federal income taxes of $_____	
19. Cumulative effect of changes in accounting principles	_____
20. Net income (loss) after Federal income taxes and extraordinary items	_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

AS OF (MM/DD/YY): __/__/__

[This report must be completed once each year as of December 31.]

OPERATIONAL DATA	YES	NO
1. Is the firm a member of the Securities Investor Protection Corporation?	☐	☐
2. Does the firm send quarterly statements to customers pursuant to Rule 10b-10(b) in lieu of daily or immediate confirmations?	☐	☐
3. Is the firm a subsidiary of a company ("parent") which is registered as a broker or dealer?	☐	☐
Name of parent: _____		
4. Is the firm a subsidiary of a company ("parent") which is not registered as a broker or dealer?	☐	☐
Name of parent: _____		
5. Number of branch offices operated by the firm at the end of the year. (Exclude the headquarters office.)	_____	
6. Average number of persons on the firm's payroll during the year.		
a. Firm's owners 1/	_____	
b. Registered representatives:		
(1) With limited registration	_____	
(2) With general sales registration	_____	
c. All other income-producing employees	_____	
d. All other employees	_____	
e. Total employees	_____	
7. Aggregate dollar amount of non-exempted, OTC sales of exchange-listed securities effected by the firm during the year (Omit cents).	$_____	

1/ Persons who have an equity interest in the firm equal to or greater than five percent of the firm's equity capital.

A Broker or Dealer which does not make a market (either over the counter or on an exchange) in any stock, warrant or option is not required to complete the items below if the aggregate market value of the firm's securities and commodities accounts (long positions plus short positions) is less than $25 million as of the report date. Average positions are to be determined by averaging the market value of overnight positions at the end of each month during the year.

AVERAGE POSITIONS IN SECURITIES AND COMMODITIES

	LONG POSITIONS ($000)	SHORT POSITIONS ($000)
1. Positions for market making on an exchange in:		
a. Listed stocks and warrants	_____	_____
b. Listed options	_____	_____
2. Positions for market making over-the-counter in:		
a. Listed stocks and warrants	_____	_____
b. All other stocks and warrants	_____	_____
3. All other proprietary positions in:		
a. Stocks and warrants	_____	_____
b. Options	_____	_____
c. State and municipal government obligations	_____	_____
d. U.S. and Canadian government obligations	_____	_____
e. Bankers' acceptances, certificates of deposit and commercial paper	_____	_____
f. Corporate obligations	_____	_____
g. All other securities	_____	_____
h. Spot commodities	_____	_____
4. Total (1a thru 3h)	_____	_____

APPENDIX C

STATEMENT OF REVENUE AND EXPENSE

The Statement of Revenue and Expense must be filed by every broker or dealer with each required filing of Part II or Part IIA. A broker or dealer may elect to file the Condensed Quarterly Report in lieu of the Comprehensive Quarterly Report provided that: (a) the firm's total revenues during the preceding calendar year amounted to less than $5 million; and (b) the firm's total assets at the end of the preceding calendar year amounted to less than $10 million. Any broker or dealer that files a Condensed Quarterly Report in a given year must also file the Comprehensive Annual Report with the last required filing of Part II or Part IIA for the year.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: _ _/_ _/_ _ TO: _ _/ _ _/_ _

STATEMENT OF REVENUE AND EXPENSE
(Comprehensive Annual/Quarterly Report)

REVENUES		AMOUNT ($) (Omit Cents)
1. Commissions on transactions in:		
a. Listed stocks and warrants executed on an exchange		_____
b. Listed stocks and warrants executed over-the-counter		_____
c. All other stocks and warrants		_____
d. Listed options		_____
e. All other options		_____
f. Municipal securities		_____
g. Corporate bonds		_____
h. All other securities		_____
i. Spot commodities		_____
j. Futures, forwards, and standbys		_____
k. Subtotal (1a thru 1j)	$_____	
2. Retail mark-ups/mark-downs on principal transactions in: 1/		
a. Listed stocks and warrants		_____
b. All other stocks and warrants		_____
c. Options		_____
d. Municipal securities		_____
e. Corporate bonds		_____
f. All other securities		_____
g. Spot commodities		_____
h. Forwards and standbys		_____
i. Subtotal (2a thru 2h)	$_____	
3. Gains (losses) on firm securities and commodities accounts: 2/		
a. Market making on an exchange in:		
(1) Listed stocks and warrants		_____
(2) Listed options		_____
b. Market making over-the-counter in:		
(1) Listed stocks and warrants		_____
(2) All other stocks and warrants		_____
c. All other proprietary accounts in:		
(1) Stocks and warrants		_____
(2) Options		_____

1/ Mark-ups/mark-downs represent the difference between the current market price and the price charged a customer on a principal transaction.

2/ Include all realized and unrealized gains (losses) on firm securities and commodities accounts, except (1) retail mark-ups/mark-downs on principal transactions and (2) gains (losses) from investment banking and related activities.

(3) State and municipal government obligations _____
(4) U.S. and Canadian government obligations _____
(5) Bankers' acceptances, certificates of deposit and commercial paper _____
(6) Corporate obligations _____
(7) All other securities _____
(8) Spot commodities _____
(9) Futures, forwards and standbys _____

d. Subtotal (3a thru 3c) which includes:
(1) Interest income $_____
(2) Dividend income $_____
(3) Unrealized gains (losses) on investment accounts $_____
(4) All other gains (losses) on investment accounts $_____
(5) All other unrealized gains (losses) $_____
(6) All other gains (losses) $_____
(7) Subtotal (3d(1) thru 3d(6)) $_____

4. Gains (losses) from investment banking and related activities:
a. Sales of direct participation programs 3/ _____
b. Sales of investment company securities _____
c. All other registered stock offerings _____
d. All other registered securities offerings _____
e. Municipal securities offerings _____
f. All other exempted securities offerings _____
g. Private placements of securities _____
h. Mergers and acquisitions _____
i. All other investment banking activities _____
j. Subtotal (4a thru 4i) $_____

5. Gross interest income from:
a. Margin loans to public customers _____
b. Repurchase agreements _____
c. Securities loaned _____
d. All other loans _____
e. Subtotal (5a thru 5d) $_____

6. Floor brokerage and clearance income:
a. Specialist floor brokerage in assigned stocks and warrants _____
b. Specialist floor brokerage in assigned options _____
c. All other floor brokerage _____
d. Clearance income _____
e. Subtotal (6a thru 6d) $_____

7. All other revenues related to the securities business _____
8. All other revenues _____
9. Total revenues _____

3/ A direct participation program is an investment vehicle which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. It includes, but is not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program or any combination thereof.

EXPENSES

10. Employment costs:
    a. All employment compensation and benefits paid to:
        (1) Firm owners 4/ _____
        (2) Registered representatives _____
        (3) All other income-producing employees _____
    b. All other _____
    c. Subtotal (10a thru 10b) $_____ _____
11. Gross interest expenses on:
    a. Repurchase agreements _____
    b. Bank loans collateralized by:
        (1) Customer securities _____
        (2) Firm securities _____
    c. Subordinated debt _____
    d. Securities borrowed _____
    e. All other obligations _____
    f. Subtotal (11a thru 11e) $_____ _____
12. Floor brokerage, commissions and clearance _____
13. Advertising and promotional _____
14. Occupancy _____
15. Communications equipment and services _____
16. Data processing equipment and services _____
17. Regulatory fees and expenses _____
18. Losses due to errors and bad debts _____
19. Non-recurring charges _____
20. All other expenses _____
21. Total expenses _____

NET INCOME

22. Income (loss) before Federal income taxes (Item 9 less Item 21) _____
23. Provision for Federal income taxes (for parent only) _____
24. Equity in earnings (losses) of unconsolidated subsidiaries excluded above _____
    a. After Federal income taxes of $_____ _____
25. Extraordinary gains (losses) _____
    a. After Federal income taxes of $_____
26. Cumulative effect of changes in accounting principles _____
27. Net income (loss) after Federal income taxes and extraordinary items _____

4/ Persons that have a direct or indirect equity interest in the firm equal to or greater than five percent of the firm's equity capital.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: __/__/__ TO: __/__/__

STATEMENT OF REVENUE AND EXPENSE
(Condensed Quarterly Report)

REVENUES	AMOUNT($) (Omit Cents)
1. Commissions on securities and commodities transactions	_____
2. Gains (losses) on firm securities and commodities accounts:	
a. Retail mark-ups/mark-downs	_____
b. Interest and dividends	_____
c. Unrealized gains (losses) on investment accounts	_____
d. All other gains (losses) on investment accounts	_____
e. All other realized gains (losses)	_____
f. All other gains (losses)	_____
g. Subtotal (2a thru 2f) $_____	
3. Gains (losses) from investment banking and related activities	_____
4. Gross interest income from repurchase agreements and loans	_____
5. Floor brokerage and clearance income	_____
6. All other revenues	_____
7. Total revenues	_____
EXPENSES	
8. Employment costs	_____
9. Gross interest expenses	_____
10. Floor brokerage, commissions and clearance	_____
11. Losses due to errors and bad debts	_____
12. Non-recurring charges	_____
13. All other expenses	_____
14. Total expenses	_____
NET INCOME	
15. Income (loss) before Federal income taxes (Item 7 less Item 14)	_____
16. Provision for Federal income taxes (for parent only)	_____
17. Equity in earnings (losses) of unconsolidated subsidiaries excluded above	_____
18. Extraordinary gains (losses)	_____
a. After Federal income taxes of $_____	
19. Cumulative effect of changes in accounting principles	_____
20. Net income (loss) after Federal income taxes and extraordinary items	_____

APPENDIX D

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART II

BROKER OR DEALER

As of (MM/DD/YY) _____
Trade Days Included _____

OPERATIONAL EXPOSURE ITEMS

	No. of Items	Debits (Short Value)	Credits (Long Value)	Deductions in Computing Net Capital
1. Money suspense and balancing differences at report date				
2. Securities differences with related money balances unresolved at report date				
3. Market value of short and long security differences without money at report date (other than reported in Item 4 below)				
4. Market value of security record breaks				
5. Unresolved reconciling differences with others at report date				
(A) Correspondents and broker/dealers				
(B) Depositories				
(C) Clearing Organizations				
(D) Inter-company and inter-office accounts				
(E) Bank loans				
(F) Bank accounts				
(G) Other				
6. Open transfers and reorganization account items over forty days not confirmed or verified				
TOTAL				
7. Commodity suspense and differences unresolved at report date				

*Exclude items resolved two business days subsequent to month end not charged to capital at report date.

OPERATIONAL STATISTICS

8. Number of open customer and non-customer accounts at report date
   (A) Security transactions _____
   (B) Commodity transactions _____
9. Number of tickets (contracts) executed during the reporting period
   (A) Security transactions _____
   (B) Commodity transactions _____
10. Customer extensions of time requested during the reporting period
   (A) Regulation T extensions requested _____
   (B) SEC 15c3-3(n) extensions requested _____
11. Number of corrected customer confirmations mailed after settlement date during the reporting period _____
12. Number of customer complaints
   (A) Received during the reporting period _____
   (B) Unresolved at report date over 60 days old _____
13. Number of customer accounts carried by respondent for other brokers or dealers on a fully-disclosed basis at the end of the reporting period _____
14. Number of omnibus accounts carried by respondent for other brokers or dealers at the end of the reporting period _____
15. Number of customer accounts carried by respondent (other than those carried for other brokers or dealers) at the end of the reporting period _____
16. Number of margin accounts carried by respondent at the end of the reporting period _____
17. Number of margin accounts that represent in excess of five percent of aggregate margin balances at the end of the reporting period _____

APPENDIX E

FORM X-17A-5

FOCUS REPORT
(Financial and Operational Combined Uniform Single Report)
PART IIA

(Please read instructions before preparing Form.)

This report is being filed pursuant to (Check Applicable Block(s)):

1) Rule 17a-5(a) ☐ 2) Rule 17a-5(b) ☐ 3) Rule 17a-11 ☐

4) Special request by designated examining authority ☐ 5) Other ☐

Name of Broker-Dealer

SEC File No.

Address of Principal Place of Business (Do Not Use P.O. Box No.)

Firm ID. No.

(No. and Street)

For Period Beginning (MM/DD/YY)

(City) (State) (Zip Code)

And Ending (MM/DD/YY)

Name and Telephone Number of Person to Contact in Regard to This Report

(Area Code) - Telephone No.

Name(s) of Subsidiaries or Affiliates Consolidated in This Report Pursuant to Appendix C of Rule 15c3-1:

	Guaranteed	Flow-Thru
	☐	☐
	☐	☐
	☐	☐

Does Respondent Carry Customer Accounts? Yes ☐ No ☐

Does Respondent Clear Transactions? Yes ☐ No ☐

(If you checked "Yes" to either of the two preceding questions, please complete Part II in lieu of Part IIA.)

Was the respondent operating under the alternative method for the computation of the net capital requirement during the reporting period? Yes ☐ No ☐

Is the respondent filing an audited report? Yes ☐ No ☐

Execution:

The registrant/broker or dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. See letter of representation included in the General Instructions.

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report

Name (If individual, state last, first, middle name) 70

ADDRESS **Number and Street** 71 **City** 72 **State** 73 **Zip Code** 74

Check One

( ) **Certified Public Accountant** 75

( ) **Public Accountant** 76

( ) **Accountant not resident in United States or any of its possessions** 77

FOR SEC USE

DO NOT WRITE UNDER THIS LINE . . . FOR SEC USE ONLY

WORK LOCATION	REPORT DATE MM/DD/YY	DOC. SEQ. NO.	CARD				
50	51	52	53				

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIA

Broker or Dealer

STATEMENT OF FINANCIAL CONDITION

As of (MM/DD/YY) _____
SEC File No. _____

Consolidated ☐

Unconsolidated ☐

ASSETS

	Allowable	Nonallowable	Total
1. Cash	$		$
2. Cash segregated in compliance with federal and other regulations			
3. Receivables from brokers or dealers:			
A. Clearance Accounts:			
(1) Securities		$	
(2) Commodities			
B. Other			
4. Receivables from non-customers			
(1) Securities			
(2) Commodities			
(3) Other			
5. Securities purchased under agreements to resell:			
A. Matched repurchase agreements			
B. All other			
C. Total			
6. Securities and spot commodities owned, at market value — including long positions in arbitrate accounts:			
A. Bankers' acceptances, certificates of deposit and commercial paper			
B. U.S. and Canadian government obligations			
C. State and municipal government obligations			
D. Corporate obligations			
E. Stocks and warrants			
F. Options			
G. Direct participation programs			
H. All other securities			
I. Spot Commodities			
J. Total			
7. Securities owned not readily marketable:			
A. At cost $			
B. At estimated fair value			
8. Other investments not readily marketable:			
A. At cost $			
B. At estimated fair value			
9. Securities borrowed under subordination agreements and partners' individual capital securities accounts, at market value:			
A. Exempted securities $			
B. Other $			

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIA

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

10. Secured demand notes market value of collateral:			
A. Exempted securities..... $ _____			
B. Other..... $ _____	_____	_____	_____
C. Cash..... $ _____	_____	_____	_____
11. Memberships in exchanges:			
A. Owned at market value... $ _____			
B. Owned at cost.....		_____	
C. Contributed for use of company, at market value.....		_____	_____
12. Investment in and receivables from affiliates, subsidiaries and associated partnerships.....	_____	_____	_____
13. Property, furniture, equipment, leasehold improvements and rights under lease agreements: At cost (net of accumulated depreciation and amortization).....	_____	_____	_____
14. Other Assets.....	_____	_____	_____
15. TOTAL ASSETS.....	$_____	$_____	$_____

LIABILITIES AND OWNERSHIP EQUITY

Liabilities	A.I. Liabilities*	Non-A.I. Liabilities*	Total
16. Bank loans payable:			
A. Collateralized by assets which would normally be deducted in computing net capital.....	_____	_____	_____
B. Bank overdrafts.....	_____	_____	_____
C. Other.....	_____	_____	_____
17. Securities sold under repurchase agreements:			
A. Matched repurchase agreements.....		_____	
B. All other.....		_____	
C. Total.....		_____	_____
18. Payable to brokers or dealers:			
A. Clearance Account:			
(1) Securities Accounts.....	_____	_____	_____
(2) Commodities Accounts.....	_____	_____	_____
(3) Other.....	_____	_____	_____
19. Payable to non-customers.....	_____	_____	_____
20. Securities and commodities sold short — including short positions in arbitrage accounts:			
A. Bankers acceptances, certificates of deposit and commercial paper.....		_____	
B. U.S. and Canadian government obligations.....		_____	
C. State and municipal government obligations...		_____	
D. Corporate obligations.....		_____	
E. Stocks and warrants.....		_____	

*If registrant computes its capital under the alternative net capital requirement, only the totals are applicable.

Broker or Dealer _____ as of _____

STATEMENT OF FINANCIAL CONDITION

F. Options:
1. Covered or hedged..... _____
2. Uncovered..... _____
G. Other securities..... _____
H. Spot commodities..... _____
I. Total..... _____

21. Accounts payable, accrued liabilities, expenses, and other:
A. Drafts payable..... _____ _____
B. Accounts payable, accrued expenses and _____ _____
C. Income taxes payable..... _____ _____ _____
D. Deferred Income taxes..... _____ _____ _____
E. Other..... _____ _____ _____

22. Notes and mortgages payable:
A. Unsecured..... $_____ _____ $_____
B. Secured..... _____ _____

23. TOTAL UNSUBORDINATED LIABILITIES..... _____ _____ _____

24. Liabilities subordinated to claims of general creditors:
A. Cash borrowings..... _____ _____
1. From outsiders.....$_____
2. Includes equity subordination (15c3-1(d)) of.....$_____
B. Securities borrowings, at market value: From outsiders.....$_____ _____ _____
C. Pursuant to secured demand note collateral agreements: _____ _____
1. From outsiders.....$_____
2. Includes equity subordination (15c3-1(d)) of.....$_____
D. Exchange memberships contributed for use of company at market value..... _____ _____
E. Accounts and other borrowings not qualified for net capital purposes..... _____ _____ _____

25. TOTAL SUBORDINATED LIABILITIES $_____ $_____ $_____

Ownership Equity

26. Sole proprietorship..... $_____
27. Partnership-limited partners.....$_____ ..... _____
28. Corporations:
A. Preferred stock..... _____
B. Common stock..... _____
C. Additional paid-in capital..... _____
D. Retained earnings..... _____
E. Total..... _____
F. Less capital stock intreasury..... (_____

29. TOTAL OWNERSHIP EQUITY $_____

30. TOTAL LIABILITIES AND OWNERSHIP EQUITY $_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIA

BROKER OR DEALER _____ as of _____

COMPUTATION OF NET CAPITAL

1. Total ownership equity (from Statement of Financial Condition)..... $_____
2. Deduct: Ownership equity not allowable for net capital..... (_____)
3. Total ownership equity qualified for net capital..... _____
4. Add:
   A. Liabilities subordinated to claims of general creditors allowable in computation of net capital..... _____
   B. Other (deductions) or allowable credits (List)..... _____
5. Total capital and allowable subordinated liabilities..... $_____
6. Deductions and/or charges:
   A. Total non-allowable assets from Statement of Financial Condition (Note B and C)..... $_____

   Charges related to exempt securities:

	Actual Positions	Contractual Positions
Charge included in 6.A.1. above	_____	_____
Total deficits in accounts	_____	_____
Face amount long	_____	_____
Face amount short	_____	_____

   B. Secured demand note deficiency..... $_____
   C. Commodity futures and forward contracts and spot commodities—proprietary capital charges..... _____
      1. Financial futures including foreign currencies..... _____
      2. Precious metals..... _____
      3. Other..... _____
   D. Other deductions and/or charges .....
      1. Securities dividends short..... _____
      2. Deficits in failed to receive and securities loaned..... _____
      3. Insurance claims..... _____
      4. Losses on contractual commitments..... _____
         Exempt securities..... _____
         Non-exempt..... _____
      5. Guarantees..... _____
      6. Miscellaneous..... _____
      7. Total..... _____

E. Deductions for accounts carried under Rule 15c3-1 (a)(6), (a)(7) and (c)(2)(x)..... _____

F. Total deductions and/or charges..... _____

7. Other additions and/or allowable credits (List)..... _____

8. Net Capital before haircuts on securities positions..... $_____

9. Haircuts on securities: (computed, where applicable, pursuant to 15c3-1 (f)):

A. Contractual securities commitments..... _____

1. Charges related to exempt securities:

	Contractual Positions
Charges included in above	
Total mark to market losses	_____
Face amount long	_____
Face amount short	_____
	_____

2. Charges related to non-exempt securities..... _____

B. Suspense and difference accounts..... _____

C. Trading and investment securities:

1. Bankers' acceptances, certificates of deposit and commercial paper..... _____
2. U.S. and Canadian government obligations ..... _____
3. State and municipal government obligations..... _____
4. Corporate obligations..... _____
5. Stocks and warrants..... _____
6. Options: _____
   a. Covered or hedged..... _____
   b. Uncovered.....
7. Arbitrage..... _____
8. Other securities..... _____

D. Undue concentration..... _____

E. Other (list)..... _____

10. Net Capital.....$_____

OMIT CENTS

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIA

BROKER OR DEALER as of _____

COMPUTATION OF BASIC NET CAPITAL REQUIREMENT

Part A

11.	Minimum net capital required (6-2/3% of line 19)	$	3756
12.	Minimum dollar net capital requirement of reporting broker or dealer and minimum net capital requirement of subsidiaries computed in accordance with Note (A)	$	3758
13.	Net capital requirement (greater of line 11 or 12)	$	3760
14.	Excess net capital (line 10 less 13)	$	3770
15.	Excess net capital at 1000% (line 10 less 10% of line 19)	$	3780

COMPUTATION OF AGGREGATE INDEBTEDNESS

16.	Total A.I. liabilities from Statement of Financial Condition			$	3790
17.	Add				
	A. Drafts for immediate credit	$	3800		
	B. Market value of securities borrowed for which no equivalent value is paid or credited	$	3810		
	C. Other unrecorded amounts (List)	$	3820	$	3830
19.	Total aggregate indebtedness			$	3840
20.	Percentage of aggregate indebtedness to net capital (line 19 ÷ by line 10)			%	3850
21.	Percentage of debt to debt-equity total computed in accordance with Rule 15c3-1 (d)			%	3860

COMPUTATION OF ALTERNATE NET CAPITAL REQUIREMENT

Part B

22.	4% of combined aggregate debit items as shown in Formula for Reserve Requirements pursuant to Rule 15c3-3 prepared as of the date of the net capital computation including both brokers or dealers and consolidated subsidiaries' debits	$	3870
23.	Minimum dollar net capital requirement of reporting broker or dealer and minimum net capital requirement of subsidiaries computed in accordance with Note (A)	$	3880
24.	Net capital requirement (greater of line 22 or 23)	$	3760
25.	Excess net capital (line 10 less 24)	$	3910
26.	Net capital in excess of the greater of:		
	A. 6% of combined aggregate debit items or $120,000	$	3920
	B. 7% of combined aggregate debit items or $120,000	$	3930

OMIT CENTS

NOTES:

(A) The minimum net capital requirement should be computed by adding the minimum dollar net capital requirement of the reporting broker dealer and, for each subsidiary to be consolidated, the greater of:

1. Minimum dollar net capital requirement, or
2. 6-2/3% of aggregate indebtedness or 4% of aggregate debits if alternative method is used.

(B) Do not deduct the value of securities borrowed under subordination agreements or secured demand note covered by subordination agreements not in satisfactory form and the market values of memberships in exchanges contributed for use of company (contra to item 1740) and partners' securities which were included in non-allowable assets.

(C) For reports filed pursuant to paragraph (d) of Rule 17a-5, respondent should provide a list of material non-allowable assets.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIA

BROKER OR DEALER

For the period (MMDDYY) from _____ to _____

STATEMENT OF CHANGES IN OWNERSHIP EQUITY
(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period		$	4240
A. Net income (loss)			4250
B. Additions (Includes non-conforming capital of	$ 4262		4260
C. Deductions (Includes non-conforming capital of	$ 4272)	)	4270
2. Balance, end of period (From item 1800)		$	4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period	$	4300
A. Increases		4310
B. Decreases		4320
4. Balance, end of period (From item 3520)	$	4330

OMIT CENTS

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIA

BROKER OR DEALER _____ **as of** _____

Exemptive Provision Under Rule 15c3-3

25. If an exemption from Rule 15c3-3 is claimed, identify below the section upon which such exemption is based (check one only)

A. (k) (1)—$2,500 capital category as per Rule 15c3-1 ..... _____ 4550

B. (k) (2)(A)—"Special Account for the Exclusive Benefit of customers" maintained ..... _____ 4560

C. (k) (2)(B)—All customer transactions cleared through another broker-dealer on a fully disclosed basis. Name of clearing firm _____ 4335 _____ 4570

D. (k) (3)—Exempted by order of the Commission ..... _____ 4580

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed withdrawal or Accrual See below for code to enter	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	(MMDDYY) Withdrawal or Maturity Date	Expect to Renew (yes or no)
4800	4801	4802	4803	4804	4805
4810	4811	4812	4813	4814	4815
4820	4821	4822	4823	4824	4825
4830	4831	4832	4833	4834	4835
4840	4841	4842	4843	4844	4845
4850	4851	4852	4853	4854	4855
4860	4861	4862	4863	4864	4865
4870	4871	4872	4873	4874	4875
4880	4881	4882	4883	4884	4885
4890	4891	4892	4893	4894	4895

TOTAL $ _____ 4899

OMIT CENTS

Instructions: Detail listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15c3-1(c)(2)(iv)), which could be required by the lender on demand or in less than six months.

WITHDRAWAL CODE:	DESCRIPTION
1.	Equity Capital
2.	Subordinated Liabilities
3.	Accruals
4.	15c3-1(c)(2)(iv) Liabilities

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: _ _/_ _/_ _ TO: _ _/_ _/_ _

STATEMENT OF REVENUE AND EXPENSE
(Comprehensive Annual/Quarterly Report)

REVENUES	AMOUNT ($) (Omit Cents)
1. Commissions on transactions in:	
a. Listed stocks and warrants executed on an exchange	_____
b. Listed stocks and warrants executed over-the-counter	_____
c. All other stocks and warrants	_____
d. Listed options	_____
e. All other options	_____
f. Municipal securities	_____
g. Corporate bonds	_____
h. All other securities	_____
i. Spot commodities	_____
j. Futures, forwards, and standbys	_____
k. Subtotal (1a thru 1j)	_____
2. Retail mark-ups/mark-downs on principal transactions in: 1/ $_____	
a. Listed stocks and warrants	_____
b. All other stocks and warrants	_____
c. Options	_____
d. Municipal securities	_____
e. Corporate bonds	_____
f. All other securities	_____
g. Spot commodities	_____
h. Forwards and standbys	_____
i. Subtotal (2a thru 2h)	_____
3. Gains (losses) on firm securities and commodities accounts: 2/ $_____	
a. Market making on an exchange in:	
(1) Listed stocks and warrants	_____
(2) Listed options	_____
b. Market making over-the-counter in:	
(1) Listed stocks and warrants	_____
(2) All other stocks and warrants	_____
c. All other proprietary accounts in:	
(1) Stocks and warrants	_____
(2) Options	_____

1/ Mark-ups/mark-downs represent the difference between the current market price and the price charged a customer on a principal transaction.

2/ Include all realized and unrealized gains (losses) on firm securities and commodities accounts, except (1) retail mark-ups/mark-downs on principal transactions and (2) gains (losses) from investment banking and related activities.

(3) State and municipal government obligations _____
(4) U.S. and Canadian government obligations _____
(5) Bankers' acceptances, certificates of deposit and commercial paper _____
(6) Corporate obligations _____
(7) All other securities _____
(8) Spot commodities _____
(9) Futures, forwards and standbys _____

d. Subtotal (3a thru 3c) which includes:
(1) Interest income $_____
(2) Dividend income $_____
(3) Unrealized gains (losses) on investment accounts $_____
(4) All other gains (losses) on investment accounts $_____
(5) All other unrealized gains (losses) $_____
(6) All other gains (losses) $_____
(7) Subtotal (3d(1) thru 3d(6)) $_____

4. Gains (losses) from investment banking and related activities:
a. Sales of direct participation programs 3/ _____
b. Sales of investment company securities _____
c. All other registered stock offerings _____
d. All other registered securities offerings _____
e. Municipal securities offerings _____
f. All other exempted securities offerings _____
g. Private placements of securities _____
h. Mergers and acquisitions _____
i. All other investment banking activities _____
j. Subtotal (4a thru 4i) $_____

5. Gross interest income from:
a. Maryin loans to public customers _____
b. Repurchase agreements _____
c. Securities loaned _____
d. All other loans _____
e. Subtotal (5a thru 5d) $_____

6. Floor brokerage and clearance income:
a. Specialist floor brokerage in assigned stocks and warrants _____
b. Specialist floor brokerage in assigned options _____
c. All other floor brokerage _____
d. Clearance income _____
e. Subtotal (6a thru 6d) $_____

7. All other revenues related to the securities business _____
8. All other revenues _____
9. Total revenues _____

3/ A direct participation program is an investment vehicle which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. It includes, but is not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program or any combination thereof.

EXPENSES

10. Employment costs:
    a. All employment compensation and benefits paid to:
        (1) Firm owners 4/ _____
        (2) Registered representatives _____
        (3) All other income-producing employees _____
    b. All other _____
    c. Subtotal (10a thru 10b) $_____ _____
11. Gross interest expenses on:
    a. Repurchase agreements _____
    b. Bank loans collateralized by:
        (1) Customer securities _____
        (2) Firm securities _____
    c. Subordinated debt _____
    d. Securities borrowed _____
    e. All other obligations _____
    f. Subtotal (11a thru 11e) $_____ _____
12. Floor brokerage, commissions and clearance _____
13. Advertising and promotional _____
14. Occupancy _____
15. Communications equipment and services _____
16. Data processing equipment and services _____
17. Regulatory fees and expenses _____
18. Losses due to errors and bad debts _____
19. Non-recurring charges _____
20. All other expenses _____
21. Total expenses _____

NET INCOME

22. Income (loss) before Federal income taxes (Item 9 less Item 21) _____
23. Provision for Federal income taxes (for parent only) _____
24. Equity in earnings (losses) of unconsolidated subsidiaries excluded above _____
    a. After Federal income taxes of $_____ _____
25. Extraordinary gains (losses)
    a. After Federal income taxes of $_____ _____
26. Cumulative effect of changes in accounting principles _____
27. Net income (loss) after Federal income taxes and extraordinary items _____

4/ Persons that have a direct or indirect equity interest in the firm equal to or greater than five percent of the firm's equity capital.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

FOR THE PERIOD (MM/DD/YY) FROM: __/__/__ TO: __/__/__

STATEMENT OF REVENUE AND EXPENSE
(Condensed Quarterly Report)

REVENUES	AMOUNT($) (Omit Cents)
1. Commissions on securities and commodities transactions	_____
2. Gains (losses) on firm securities and commodities accounts:	
a. Retail mark-ups/mark-downs	_____
b. Interest and dividends	_____
c. Unrealized gains (losses) on investment accounts	_____
d. All other gains (losses) on investment accounts	_____
e. All other realized gains (losses)	_____
f. All other gains (losses)	_____
g. Subtotal (2a thru 2f) $_____	
3. Gains (losses) from investment banking and related activities	_____
4. Gross interest income from repurchase agreements and loans	_____
5. Floor brokerage and clearance income	_____
6. All other revenues	_____
7. Total revenues	_____
EXPENSES	
8. Employment costs	_____
9. Gross interest expenses	_____
10. Floor brokerage, commissions and clearance	_____
11. Losses due to errors and bad debts	_____
12. Non-recurring charges	_____
13. All other expenses	_____
14. Total expenses	_____
NET INCOME	
15. Income (loss) before Federal income taxes (Item 7 less Item 14)	_____
16. Provision for Federal income taxes (for parent only)	_____
17. Equity in earnings (losses) of unconsolidated subsidiaries excluded above	_____
18. Extraordinary gains (losses)	_____
a. After Federal income taxes of $_____	
19. Cumulative effect of changes in accounting principles	_____
20. Net income (loss) after Federal income taxes and extraordinary items	_____

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

AS OF (MM/DD/YY): __/__/__

[This report must be completed once each year as of December 31.]

OPERATIONAL DATA

	YES	NO
1. Is the firm a member of the Securities Investor Protection Corporation?	☐	☐
2. Does the firm send quarterly statements to customers pursuant to Rule 10b-10(b) in lieu of daily or immediate confirmations?	☐	☐
3. Is the firm a subsidiary of a company ("parent") which is registered as a broker or dealer?	☐	☐
Name of parent: _____		
4. Is the firm a subsidiary of a company ("parent") which is not registered as a broker or dealer?	☐	☐
Name of parent: _____		

5. Number of branch offices operated by the firm at the end of the year. (Exclude the headquarters office.) _____

6. Average number of persons on the firm's payroll during the year.

   a. Firm's owners 1/ _____
   b. Registered representatives:
      (1) With limited registration _____
      (2) With general sales registration _____
   c. All other income-producing employees _____
   d. All other employees _____
   e. Total employees _____

7. Aggregate dollar amount of non-exempted, OTC sales of exchange-listed securities effected by the firm during the year (Omit cents). $_____

1/ Persons who have an equity interest in the firm equal to or greater than five percent of the firm's equity capital.

A Broker or Dealer which does not make a market (either over the counter or on an exchange) in any stock, warrant or option is not required to complete the items below if the aggregate market value of the firm's securities and commodities accounts (long positions plus short positions) is less than $25 million as of the report date. Average positions are to be determined by averaging the market value of overnight positions at the end of each month during the year.

AVERAGE POSITIONS IN SECURITIES AND COMMODITIES

	LONG POSITIONS ($000)	SHORT POSITIONS ($000)
1. Positions for market making on an exchange in:		
a. Listed stocks and warrants	_____	_____
b. Listed options	_____	_____
2. Positions for market making over-the-counter in:		
a. Listed stocks and warrants	_____	_____
b. All other stocks and warrants	_____	_____
3. All other proprietary positions in:		
a. Stocks and warrants	_____	_____
b. Options	_____	_____
c. State and municipal government obligations	_____	_____
d. U.S. and Canadian government obligations	_____	_____
e. Bankers' acceptances, certificates of deposit and commercial paper	_____	_____
f. Corporate obligations	_____	_____
g. All other securities	_____	_____
h. Spot commodities	_____	_____
4. Total (1a thru 3h)	_____	_____

APPENDIX F

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

NAME OF BROKER-DEALER: _____

AS OF (MM/DD/YY): __/__/__

[This report must be completed once each year as of December 31.]

OPERATIONAL DATA

	YES	NO
1. Is the firm a member of the Securities Investor Protection Corporation?	☐	☐
2. Does the firm send quarterly statements to customers pursuant to Rule 10b-10(b) in lieu of daily or immediate confirmations?	☐	☐
3. Is the firm a subsidiary of a company ("parent") which is registered as a broker or dealer?	☐	☐
Name of parent: _____		
4. Is the firm a subsidiary of a company ("parent") which is not registered as a broker or dealer?	☐	☐
Name of parent: _____		

5. Number of branch offices operated by the firm at the end of the year. (Exclude the headquarters office.) _____

6. Average number of persons on the firm's payroll during the year.

   a. Firm's owners 1/ _____
   b. Registered representatives:
      (1) With limited registration _____
      (2) With general sales registration _____
   c. All other income-producing employees _____
   d. All other employees _____
   e. Total employees _____

7. Aggregate dollar amount of non-exempted, OTC sales of exchange-listed securities effected by the firm during the year (Omit cents). $_____

1/ Persons who have an equity interest in the firm equal to or greater than five percent of the firm's equity capital.

A Broker or Dealer which does not make a market (either over the counter or on an exchange) in any stock, warrant or option is not required to complete the items below if the aggregate market value of the firm's securities and commodities accounts (long positions plus short positions) is less than $25 million as of the report date. Average positions are to be determined by averaging the market value of overnight positions at the end of each month during the year.

AVERAGE POSITIONS IN SECURITIES AND COMMODITIES

	LONG POSITIONS ($000)	SHORT POSITIONS ($000)
1. Positions for market making on an exchange in:		
a. Listed stocks and warrants	_____	_____
b. Listed options	_____	_____
2. Positions for market making over-the-counter in:		
a. Listed stocks and warrants	_____	_____
b. All other stocks and warrants	_____	_____
3. All other proprietary positions in:		
a. Stocks and warrants	_____	_____
b. Options	_____	_____
c. State and municipal government obligations	_____	_____
d. U.S. and Canadian government obligations	_____	_____
e. Bankers' acceptances, certificates of deposit and commercial paper	_____	_____
f. Corporate obligations	_____	_____
g. All other securities	_____	_____
h. Spot commodities	_____	_____
4. Total (1a thru 3h)	_____	_____

SECURITIES EXCHANGE ACT OF 1934
Release No. 17139/September 9, 1980

A notice has been issued giving interested persons until September 30, 1980 to comment on the application of the *Cincinnati Stock Exchange* for unlisted trading privileges in the common stock ($1.50 par value) of AMERICAN GENERAL CORPORATION. This stock is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17140/September 9, 1980

An order has been issued granting the application of BASIC RESOURCES CORPORATION to withdraw its common stock ($.05 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17141/September 9, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY FILE NO. SR-MSE-80-8

The Midwest Stock Exchange, Incorporated submitted on May 13, 1980, a proposed rule change under Rule 19b-4 to amend its recordkeeping requirement regarding transactions effected in margin accounts and to amend certain advertising rules to facilitate the period examination of member organizations designated to the Midwest Stock Exchange, Incorporated.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17142/September 11, 1980

An order has been issued granting the application of SOUTHWEST FLORIDA BANKS, INC. to withdraw its common stock ($1 par value) and its preferred stock, ($2.1875 cumulative convertible, $1 par value) from listing and registration on the *American Stock Exchange Inc.*

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21707/September 5, 1980

In the Matter of

ALABAMA POWER COMPANY
Birmingham, Alabama

(70-6117)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND DEALERS IN COMMERCIAL PAPER; EXCEPTION FROM COMPETITIVE BIDDING

Alabama Power Company ("Alabama"), an electric utility subsidiary of The Southern Company ("Southern"), a registered holding company, has filed post-effective amendments to the application-declaration in this proceeding, pursuant to Sections 6, 7 and 12 of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 45 and 50(a)(5) promulgated thereunder, as applicable to the proposed transactions.

Alabama currently is negotiating to extend its Revolving Credit Agreement with a group of banks for a period of one year so that the expiration date thereof will be September 30, 1981, rather than September 30, 1980. The Revolving Credit Agreement provides a $500,000,000 line of credit. Alabama has additional lines of credit from other banks, principally in the State of Alabama, aggregating approximately $75,000,000 and issues commercial paper. Alabama now requests that its short-term borrowing authorization be extended through September 30, 1981 and be increased to permit a maximum aggregate principal amount outstanding at any one time of $575,000,000.

In general, borrowings are in the form of unsecured promissory notes, of a maturity of nine months or less. Except for commercial paper, issued for much shorter periods, such notes are prepayable without penalty. The credit agreements give Alabama the right to refund maturing obligations, within the limits specified in those agreements. The base interest rate on the first $250,000,000 of borrowing under the Revolving Credit Agreement is 108% of the higher of the base rate of Citibank, or 1/2 of 1% above a defined commercial paper rate. The base rate will apply only if Alabama's bond rating is upgraded to a single A category. An additional 1/4 of 1% is added, as long as the bond rating is lower and increases 1/2 of 1% if rating drops below base. Borrowings about the $250,000,000 level cost 110% of the applicable rate.

A two part commitment fee is charged, consisting of 7½% of the variable interest rate which is or would be applicable to the first $250,000,000 of borrowings and 10% of the rate applicable to the second $250,000,000, plus 1/2% of 1% on the unborrowed portion. No compensating balance is required. The local bank credit agreements generally require compensating balances of up to 20% of the amounts borrowed, and bear interest at the lenders' prime rates.

Based on the current Citibank rate of 10% per annum, Alabama's current bond ratings and the approximate balance of $286 million as of July 31, 1980, the effective interest rate under the Revolving Credit Agreement is 14.21% per annum. The effective interest rate on the local bank borrowings, based on an 11% prime rate and compensating balances of 20% of the amounts borrowed is approximately 13.75% per annum.

The Revolving Credit Agreement was entered into as of March 31, 1978, pursuant to an order entered in this proceeding on March 24, 1978 (HCAR No. 20469), which reserved jurisdiction over $250,000,000 of the authorized borrowings thereunder. Further orders on March 23, 1979 (HCAR No. 20970), and August 16, 1979 (HCAR No. 21188) were entered, the last reserving jurisdiction over the final $100,000,000.

The capitalization of Alabama, at December 31, 1979 and March 31, 1980 consisted of:

	December 31, 1979		*March 31, 1980*	
	(in millions)			
	Amount	*%*	*Amount*	*%*
Long-term debt	$1,884	51.4	$1,883	50.4
Interim obligation	353	9.6	394	10.5
Current maturities	24	0.6	29	0.8
	2,261	61.6	2,306	61.7
Preferred stock	384	10.5	382	10.2
Common equity	1,023	27.9	1,050	28.1
Total	3,668	100.0	3,738	100.0

Prolonged rate litigation had precluded long-term financing, except for common equity supplied by Southern and compelled a sharp curtailment of Alabama's previously planned expenditures. Relief obtained in 1979 has permitted Alabama to develop a financial plan, based on bond and stock financing, which contemplates the payment of the accumulated borrowings in 1980 and a return to a normal level and cycle of short term borrowings and

security sales. The first $100,000,000 of new bonds were sold pursuant to the order of June 3, 1980 (HCAR No. 21605) and an application-declaration for sale of the next series, of $150,000,000, is pending. Alabama's gross capital addition budget is about $425 million for 1980, of which about $130 million had been expended as of April 11, 1980, and its budget for the first three quarters of 1981 is about $370 million.

The timing of the full financing program is subject to market conditions and other variable factors. Alabama states that the extension of the Revolving Credit Agreement and the borrowing authorization requested is necessary to permit it to cope with possible delays and contingencies.

The Alabama Public Service Commission has authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $4,500.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21677), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable standards of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21708/September 5, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Reading, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-6443)

ORDER AUTHORIZING ORGANIZATION OF A WHOLLY OWNED SUBSIDIARY FOR THE MANAGEMENT AND OPERATION OF NUCLEAR STATIONS

General Public Utilities Corporation ("GPU"), a registered holding company, and its subsidiary companies named above have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6, 7, 9, 10, 12(b), and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(3), and 86-95 promulgated thereunder regarding the following proposed transactions.

GPU proposes to organize a new wholly owned subsidiary company to be known as GPU Nuclear Corporation ("NC"). NC will issue and GPU will purchase for cash 2,500 shares of NC's common stock, at a price of $20 per share or an aggregate consideration of $50,000. If necessary, GPU will make open account advances to NC from time to time. The aggregate amount of such advances by GPU to NC outstanding at any time will be not more than $500,000. Interest on such open account advances will accrue at a rate equal to the current interest cost on GPU's bank borrowings. Based on the current prime rate of 11½%, the effective cost of such bank borrowings would be 12.21%.

NC will be a service company and will not own or finance any nuclear or other utility assets. It is intended that NC will become responsible, on behalf of the owners and through contract with them, as and when necessary regulatory authorizations are

received, for the safe operation, maintenance, rehabilitation, design, construction, start-up and testing of all nuclear generating facilities owned by GPU System companies and related research and development. The purpose is to consolidate all resources of the GPU companies relating to nuclear matters in a single organization. GPU cites the Report of the President's Commission on the Accident at Three Mile Island and the Report of the NCR/TMI Special Inquiry which have stated that integration into one organization of management and operating responsibility for nuclear generating stations is desirable so that there will be a single organization with the requisite expertise to manage the integrated operation and maintenance of such stations.

NC proposes to apply to the Nuclear Regulatory Commission ("NRC") for operating licenses for the Oyster-Creek Nuclear Generating Station ("Oyster Creek") owned and operated by Jersey Central Power & Light Company ("JCP&L") and for the Three Mile Island Nuclear Plants, ("TMI") jointly owned, but not presently operated and for which Metropolitan Edison Company ("Med-Ed") is the present licensee and the operator under the existing TMI Operating Agreement among JCP&L, Met-Ed and Pennsylvania Electric Company ("TMI Operating Agreement"). An amendment of the TMI Operating Agreement would be proposed in the NRC proceeding, which would, among other things, make NC a party to the agreement and the operator of TMI. The NRC has broad jurisdiction over the operation of nuclear facilities. Both the timing and scope of NC's activities will be governed by the terms and conditions of any licenses granted by the NRC and by its other regulatory requirements. Any such license will also be implemented by a specific operating agreement between NC and the owner or owners of the subject facility. And licensing will be for specific plants, so that NC's functions may commence in stages.

Shortly after the March 28, 1979 accident at Unit No. 2 on TMI, the GPU System combined the technical staffs from Met-Ed and GPU Service Corporation ("Service") to form the TMI Generation Group consisting of approximately 250 professionals assigned exclusively to activities at Units Nos. 1 and 2 of TMI. This group, together with the technical staff of JCP&L that is presently responsible for the operation and maintenance of Oyster Creek, and approximately 800 of the non-professional employees of the various GPU System companies will ultimately be transferred to NC, if and when it receives the necessary authorizations. The salaries and other costs of the present GPU System employees including pension and other employee benefits for such employees, will be included in NC's operating costs. The aggregate salaries and costs of such employees to the GPU System during 1979 amounted to approximately $25,000,000. NC may also engage consultants and contractors as needed for the discharge of its functions.

NC will render service at cost, pursuant to Section 13(b) of the Act. The costs will be accounted for and billed to the owners of the subject facilities as prescribed by Rules 91 and 93 and the system of accounts prescribed thereunder. In the case of NC services rendered for the TMI units, these costs will be determined and accumulated and allocated among the owners of TMI in proportion to ownership interests in TMI.

NC's initial function will be to seek from other regulatory agencies the licenses and authorizations required. It shall report its progress and activities under Rule 24, including the undertaking of any of the intended functions summarized above, as its authority to do so is established. The companies shall file with this Commission, at least 60 days before the taking of any such action, written notice of (1) the proposed transfer of employees to NC's payroll, (2) proposed changes in the methods of allocation to be employed by NC, and (3) any other proposed material changes in the conduct and organization of NC's operations, including related financial information.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $11,250. Amendment of the TMI and Oyster Creek operating agreement will require amendment of the TMI and Oyster Creek operating licenses issued by the Nuclear Regulatory Commission. The amended TMI operating agreement is subject to the jurisdiction of the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities ("BPU"). The amended Oyster Creek operating agreement is subject to the jurisdiction of the BPU. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21610),

and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21709/September 5, 1980

In the Matter of

GEORGIA POWER COMPANY
Atlanta, Georgia

(70-6481)

ORDER AUTHORIZING ACQUISITION OF UNDIVIDED OWNERSHIP INTERESTS IN COAL-FIRED GENERATING UNITS

Georgia Power Company ("Georgia"), a public-utility subsidiary of The Southern Company, a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

Georgia is currently the owner of a 23.5% undivided ownership interest in two 810 MWe nominally rated coal-fired generating units under construction in Monroe County, Georgia, to be known as the Robert W. Scherer Units Numbers One and Two (collectively, the "Units"), the owner of an 83.5% undivided ownership interest in two additional 810 MWe nominally rated coal-fired generating units under construction at the same site to be known as the Robert W. Scherer Units Numbers Three and Four (collectively, the "Additional Units") and the owner of a 23.5% undivided ownership interest in certain property and facilities to be used in common by, or in connection with, the Units and the Additional Units (the "Common Facilities"). Georgia owns such interests in the Units, the Additional Units, and the Common Facilities as a tenant in common with Oglethorpe Power Corporation (An Electric Membership Generation & Transmission Corporation) ("OPC"), the Municipal Electric Authority of Georgia, a public body corporate and politic and an instrumentality of the State of Georgia ("MEAG"), and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners ("Dalton"), the percentage ownership interests of which are as follows:

	Units	*Additional Units*	*Common Facilities*
OPC	60%	-0-	60%
MEAG	15.1%	15.1%	15.1%
Dalton	1.4%	1.4%	1.4%

Georgia proposes to purchase from MEAG and Dalton their respective 15.1% and 1.4% undivided ownership interests in the Additional Units and to sell to MEAG an additional 15.1% undivided ownership interest in the Units, pursuant to a Plant Robert W. Scherer Purchase, Sale and Option Agreement between Georgia and MEAG, dated as of May 15, 1980 (the "MEAG Purchase Agreement"), and a Plant Robert W. Scherer Purchase and Sale Agreement between Georgia and Dalton, dated as of May 16, 1980 (the "Dalton Purchase Agreement"). As a result of such purchases and sales, Georgia will own an 8.4% undivided ownership interest in the Units, a 100% undivided ownership interest in the Additional Units, and 23.5% undivided ownership interest in the Common Facilities; OPC will own a 60% undivided ownership interest in the Units and in the Common Facilities; MEAG will own a 30.2% undivided ownership interest in the Units and a 15.1% undivided ownership interest in the Common Facilities; and Dalton will own a 1.4% undivided ownership interest in the Units and in Common Facilities. Georgia will obtain a release of the 15.1% undivided ownership interest in the Units to be sold

to MEAG from the lien of Georgia's First Mortgage Bond Indenture.

The MEAG Purchase Agreement provides that at the closing, Georgia will pay to MEAG, as the purchase price for MEAG's 15.1% undivided ownership interest to the Additional Units, an amount equal to the sum of (i) construction costs paid by MEAG through the date of the closing, plus (ii) MEAG's other direct and indirect costs of acquiring its 15.1% ownership interest in the Additional Units, including legal costs and administrative and engineering overheads, properly and reasonably allocable to MEAG's 15.1% ownership interest in the Additional Units, plus (iii) interest cost in an amount equal to MEAG's average weighted interest costs on the bonds issued by it, in principal amount equal to and properly and reasonably allocable to, MEAG's investment in the Additional Units from the respective dates of issuance of such bonds to the closing. At the closing, MEAG will pay to Georgia, as the purchase price for MEAG's acquisition of an additional 15.1% ownership interest in the Units, an amount equal to 15.1% of the cost incurred in the construction of the Units prior to closing. In addition, MEAG will pay to Georgia an amount in respect of Georgia's cost of long-term borrowings incurred to finance such construction which will be computed by multiplying 15.1% of the total amount of cost incurred in the construction of the Units as of the end of each month times the interest rate of Georgia's then most recent issue of first mortgage bonds, and such interest will be compounded monthly until the closing. The Dalton Purchase Agreement provides that the closing, Georgia will pay to Dalton, as the purchase price for Dalton's 1.4% ownership interest in the Additional Units, an amount equal to the sum of (i) construction costs paid by Dalton through the date of the closing, plus (ii) Dalton's other direct and indirect costs of acquiring its 1.4% undivided ownership interest in the Additional Units, including financing and legal costs and administrative and engineering overheads properly and reasonably allocable to Dalton's investment in the Additional Units, plus (iii) Dalton's net interest costs on the bonds issued by it, in principal amount equal to, and properly and reasonably allocable to, Dalton's investment in the Additional Units from the respective dates of issuance of such bonds until the closing.

Assuming the closing of such purchases and sale were to take place on August 15, 1980, Georgia estimates that it would pay MEAG approximately $2,196,000 for its 15.1% ownership interest in the Additional Units, that Georgia would pay Dalton approximately $202,000 for its 1.4% ownership interest in the Additional Units, and that Georgia would receive approximately $76,076,000 from MEAG for the 15.1% additional ownership interest which MEAG would acquire in the Units. Georgia expects to apply the net proceeds of such proposed transactions toward the cost of its construction program.

Under the MEAG Purchase Agreement, Georgia has given MEAG an option to purchase a 15.1% undivided ownership interest in the Additional Units exercisable by MEAG on or before December 31, 1990, but only following notice from Georgia to MEAG that the Additional Units will be built. Such option is subject, among other things, to Georgia's sole discretion as to whether the Additional Units will be completed and the schedule for construction and completion thereof. MEAG may exercise such option either by selling Georgia a 15.1% undivided ownership interest in the Units and purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units or by purchasing from Georgia a 15.1% undivided ownership interest in the Additional Units with no transaction involving the Units. MEAG must pay Georgia compensation for the use of a 15.1% ownership interest in the Common Facilities in a declining amount which is a function of Georgia's carrying costs for such ownership interest in the common facilities and the historical periodic expenditures for construction of the Common Facilities. Georgia has given MEAG an option to terminate such payments by purchasing an additional 15.1% undivided ownership interest in the Common Facilities. The application states that the Act is not applicable to any of the proposed or potential sales by Georgia to MEAG or Dalton because MEAG is an instrumentality of the State of Georgia and Dalton is a subdivision of the State of Georgia within the meaning of Rule 44.

No state and no federal commission, other than this Commission has jurisdiction over the proposed transactions.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21668), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are

satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21710/September 8, 1980

In the Matter of

EASTERN EDISON COMPANY
36 Main Street
Brockton, Massachusetts 02403

MONTAUP ELECTRIC COMPANY
P.O. Box 391
Fall River, Massachusetts 02722

(70-6493)

NOTICE OF PROPOSAL OF PARENT TO ISSUE AND SELL FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING AND TO PURCHASE DEBENTURES TO BE ISSUED AND SOLD BY SUBSIDIARY

NOTICE IS HEREBY GIVEN that Eastern Edison Company ("Eastern"), an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), an electric utility subsidiary of Eastern, have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6, 7, 9, 10 and 12 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Eastern proposes to increase its capital stock in an amount up to $15,000,000 consisting of not in excess of 150,000 shares of its ___% preferred stock, par value $100 per share ("New Preferred Stock"), and to issue and sell such additional shares at competitive bidding. The proposed dividend rate (which shall be a multiple of .04% of the par value) and the price (which shall be not less than $100, nor more than $102.75 per share) for the New Preferred Stock will be determined by competitive bidding.

It is stated that the New Preferred Stock will be redeemable as a whole or in part at a redemption price which shall be equal to the public offering price plus 100% of the annual dividend rate for the first five years, with that percentage declining to 75%, 50% and 25% respectively, in the second, third and fourth five-year periods and to 10% thereafter, together in each case with accrued dividends. Redemption for the purpose of refunding at an effective interest or dividend cost less than the effective dividend cost to Eastern of the New Preferred Stock will be prohibited for the first five years, through September 30, 1985. The sinking fund provision will require Eastern to redeem at the initial public offering price plus accrued dividends 6,000 shares on each October 1 beginning in 1985. This obligation will be cumulative. In addition, Eastern will have the right beginning October 1, 1985, to redeem at the same price not more than an additional 6,000 shares each year. This right shall not be cumulative. There shall also be a prohibition, effective if and so long as a default exists on any obligation of Eastern with respect to the sinking fund for the New Preferred Stock, against Eastern's paying any dividend or making any other distribution on junior stock (except dividends payable in shares of such junior stock) or acquiring for value any junior stock, otherwise than by exchange or use of proceeds forthwith from the contemporaneous issuance of junior stock.

Eastern proposes to issue and sell at competitive bidding up to $15,000,000 principal amount of its first mortgage and collateral trust bonds, ___% Series ("New Bonds"). The maturity date of the New Bonds will be supplied by amendment. The proposed interest rate (which shall be a multiple of 1/8 of 1%) and the price (which shall be not less than 100% nor more than 102-3/4% of the principal amount) will be determined through competitive

bidding. It is stated that the Supplemental Indenture relating to the New Bonds will contain a prohibition until October 1, 1985 against redemption of the New Bonds as a part of or in anticipation of any refunding at a lower effective interest cost.

Montaup proposes to issue and sell to Eastern, and Eastern proposes to purchase at their principal amount plus accrued interest, up to $20,000,000 principal amount of ____% Debenture Bonds due 2010 ("New Debenture Bonds"). The New Debenture Bonds will be dated October 1, 1980, will mature October 1, 2010, and will bear interest payable January 1, April 1, July 1, and October 1 in each year. The effective interest cost to Montaup will approximate the composite cost (including income tax effect) of the New Bonds and, to the extent utilized, the New Preferred Stock. In no case will such cost to Montaup exceed 15% per annum without express approval of the Commission. The New Debenture Bonds themselves will contain all of their terms and there will be no indenture or similar instrument governing them.

The net proceeds to Eastern from the sale of the New Bonds and New Preferred Stock will be applied first, to the extent of $20,000,000, for the purchase of the New Debenture Bonds proposed to be issued by Montaup, second, to the extent of $5,000,000, for the reduction of short-term bank indebtedness incurred by Eastern for construction or incurred to repay earlier borrowings so incurred, and third, for the prepayment of a $5,000,000 portion of Eastern's secured borrowing from Citibank, N.A. outstanding in the principal amount of $15,000,000.

The net proceeds to Montaup from the sale of the New Debenture Bonds will be used to reduce short-term bank indebtedness incurred for construction (including facilities owned or to be owned in common with other utilities) or incurred to repay earlier borrowings so incurred. It is stated that bank borrowings of Montaup will be outstanding in the amount of approximately $39,200,000 at the time the New Debenture Bonds are issued.

It is stated that the Department of Public Utilities of the Commonwealth of Massachusetts has jurisdiction over the proposed transactions and that the Department of Public Utility Control of the State of Connecticut may have jurisdiction over the proposed issuance and sale of the New Debenture Bonds by Montaup. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21711/September 10, 1980

In the Matter of

ALABAMA POWER COMPANY
Birmingham, Alabama

(70-6472)

MEMORANDUM OPINION AND ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST

MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING AND DENYING A REQUEST FOR HEARING

Alabama Power Company ("Alabama"), an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transactions. Alabama has applied for authority to issue and sell, by competitive bidding, up to $300,000,000 principal amount of First Mortgage Bonds ("New Bonds") and up to $100,000,000 aggregate stated value of its preferred stock. Notice of Alabama's proposal was duly published in the manner prescribed by Rule 23 under the Act (HCAR No. 21649, July 3, 1980) and objections and a request for a hearing have been filed, as discussed below.

Alabama is the principal electric utility in the state of Alabama, providing retail service to rural areas and over 800 communities, including the cities of Birmingham, Mobile, Montgomery, Gadsden, Tuscaloosa and Anniston. Alabama also provides wholesale service to 16 municipalities and 11 rural distributing cooperative associations. Its net utility plant at March 31, 1980, was about $4 billion, including about $1 billion of construction in progress.

Up to $150,000,000 of the new Bonds have been scheduled for issue and sale in September, 1980.[1] In that event, the balance will be issued and sold in one or more series from time to time not later than February 28, 1981. Each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price to Alabama obtainable but not for less than 98% nor more than 101-3/4% of the principal amount thereof, at an interest rate fixed by competitive bidding.[2]

Alabama will fix a maximum amount of bonds to be offered in its invitation for proposals under Rule 50(b). It may defer specifying the maturity date, and prospective bidders will be notified of the selected maturity date by telephone, confirmed in writing, not less than 24 hours prior to the time of bidding, if the right to do so is reserved in the invitation. It may also reduce the amount of bonds to be offered in the same manner. Unless the shorter period is specified in the invitation, such notices will be given not less than 72 hours before the time of bidding.

Alabama also proposes to sell its $100,000,000 of preferred stock in one or more series, but not later than February 28, 1981. The sale will be for the best price attainable, but not less than 100% or more than 102% of the stated value per share, which will also be the public offering price per share. The dividend rate for each series will be fixed by competitive bidding, as will the purchaser's compensation, to be paid by Alabama to the successful bidders for purchasing and reoffering each share to the public. The procedure for competitive bidding follows that for the new Bonds with respect to the number of shares to be offered in each series, and as to whether the terms of a series are to include a cumulative sinking fund of not more than 5% annually of the number of shares of the series originally issued. Such a sinking fund will commence 5 or more years after the sale, with a non-cumulative option, on any sinking fund date, of redeeming an additional like number of shares.[3]

Alabama lost the coverage required to issue bonds after March 1978, and for preferred stock after 1977. Largely as a result of prolonged difficulties in securing what it considered sufficient rate relief,[4]

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[1]The new Bonds will be first mortgage bonds, issued under and secured by Alabama's Indenture, dated January 1, 1942, as amended, and as to be further amended, by supplemental indentures for each series, dated as of the first day of the month in which the bonds are issued.

[2]The effective interest rate, which is the cost to Alabama, is a function of the stated interest rate and the premium or discount. The purchaser will also pay accrued interest from the date of the bond, always the first of a month, to the date of the purchase.

[3]The terms of the bonds and preferred stock will include the customary restrictions on refundability or redemptions at a lower cost of money.

[4]A rate increase estimated to produce annual revenues of $210 million was declared void on procedural grounds by the Alabama Supreme Court in an order issued on November 22, 1978. In December Alabama applied to the Alabama Public Service Commission (PSC) for a rate increase

Alabama has not been in a position to meet indenture requirements for the issue of bonds or charter provision for the issue of preferred stock. Its bond indenture provides a coverage test based on actual earnings for 12 consecutive months of the 15 months immediately preceding the issue. It requires, in substance, that 110%[5] of the 12 months operating income, before income taxes, be at least twice the annual bond interest, including interest on the bonds to be issued. A similar coverage of one and a half times is required for preferred stock. That ratio relates net income before interest expense, with the total annual interest and preferred stock dividend requirements.

Unable to proceed with long-term or permanent financing, Alabama was forced to rely on short-term loans under a revolving credit agreement with a group of banks to finance its capital requirements.[6] We authorized these short-term loans, by appropriate orders,[7] and interim borrowings reached $394 million, more than 10% of Alabama's capitalization, at March 31, 1980. These loans bear variable rates, and proved to be extremely expensive in the recent period of exceptionally high prime bank rates. Alabama's needs were supplemented by Southern, which provided $47.2 million of common equity in 1978, $66.4 million in 1979 and $33 million in the first quarter of 1980. Interim borrowings and Southern's investment in common equity were about $540 million, of which Southern's contribution was about 27%, a little below the normal 30%.

Alabama's revenues and income have improved in 1979 and more in 1980 as shown in the following table:

(In Millions)

	1977	*1978*	*1979*	*12 months ended June 30, 1980*
Operating revenues	$969	$1,014	$1,164	$1,238
Operating income before income taxes	256	186	265	322
Other income *(a)*	112	83	98	120
Provision for income taxes	(89)	(25)*b*	(59)*b*	(87)
Interest expense	(138)	(170)	(216)	(243)
Net income	$141	$74	$88	$112
Preferred dividends	(24)	(31)	(31)	(31)
Net	$117	$43	$57	$81

a Principally allowance for funds used during construction.

b Deferred tax accounting, after crediting actual tax refunds of $8.8 million in 1978 and $3.1 million in 1979.

Rising revenues and income, due to the rate increases in 1979, allowed Alabama to sell $100 million of bonds in June of this year[8]; and up to $150 million of bonds will be offered this month. Alabama proposes to sell the balance of the bonds and up to $100 million of preferred stock later on in one or

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Footnote 4 continued

estimated to yield yearly additional revenues of about $289 million. On March 6, 1979, PSC granted an emergency increase of about $82 million, effective March 9. On July 19, this emergency increase was made permanent by an order of PSC which also granted additional increases, one effective immediately and the balance effective January 1, 1980. Total increases so granted amounted to $208 million in annual revenues. On appeal, the Alabama Supreme Court by order issued on October 19, 1979 permitted, subject to refund, collection forthwith of the revenues PSC had deferred to 1980. In December Alabama filed rate schedules for an additional increase of about $123 million in revenues. PSC allowed only an increase of about $31 million effective August 1, 1980, but the Alabama Supreme Court, on August 13, allowed, subject to refund, collection of the full amount that Alabama had requested. Approximately $16.1 million of revenues collected in 1979 were subject to refund.

[5]More precisely, the test includes both operating income and "other income", but limits inclusion of other income to not more than 10% of operating income. Since other income, which includes allowance for funds during construction, is normally well above that limit, the mathematical test is equivalent to 110% of operating income.

[6]This agreement expires September 30, 1980, and we have autorized its extension for another year, *Alabama Power Co.* HCAR No. 21707 (September 5, 1980).

[7]*Alabama Power Co.* HCAR Nos. 20970 (March 23, 1979) and 21188 (August 16, 1979).

[8]*Alabama Power Co.*, HCAR No. 21605 (June 3, 1980).

more series, but no later than next February, as full-year results of last October's rate increases are realized in terms of revenues and income and if, as in every case, market conditions are receptive to these offerings. The proposed financing and the rising revenues and income would also improve Alabama's cash flow over the 14 months ending February 28, 1981. The following table shows Alabama's cash flow estimates for that period:

	Four Months Actual To 4/30/80	*Ten Months Estimated To 2/28/81*	*Fourteen Months To 2/28/81*
Sources of funds:			
First Mortgage bonds	$—	$400	$400
Pollution control	4	8	12
Capitalized leases	23	(8)	15
Preferred stock	(2)	100	98
Common equity	50	96	146
Net financing	$75	$596	$671
Short-term obligations	62	(415)	(353)
Internal sources	(6)	188	182
Funds available	$131	$369	$500

Particularly noteworthy is the substantial increase in funds available from internal sources and the retirement of short-term obligations by the sale of bonds and preferred stock. The revolving credit agreement, extended for another year, will continue to be available and to provide capital funds for interim needs pending long-term or permanent financing.[9] The major generating facilities under construction, their planned completion date and projected costs and expenditures as estimated by Alabama (as of July 18, 1980) are:

	Name-capacity mw	*Planned Completion date*	*Expenditures (in millions) Through 1979*	*1980*	*Estimated Balance*	*Total*
Farley (Nuclear)	860	1980	$553	$118	$49	$720
Harris (Hydro)	135	1983	88	17	76	181
Miller No. 2 (Coal)a	660	1983	133	48	188	369
			$774	$183	$313	$1,270

a Two other units of the same size at Miller are planned for 1985 and 1987, but are in early stages.

The 1980 budget also includes $41 million of work on the other two Miller units and $59 million of additions and improvements to existing generation facilities, including completion of the Walter Bouldin Dam. The balance of the capital is for new business and for transmission and distribution plant and general facilities.

Three shareholders of Southern and a residential customer of Alabama ("complainants") have filed objections to Alabama's proposed bond and preferred stock financing and request that a hearing be held before any authorization is granted. Their major contentions are: (1) the construction program to be financed through the proposed securities sales is "clearly excessive and grossly improvident"; and (2) that before approving or disapproving Alabama's application this Commission is required to prepare an environmental impact statement under the National Environmental Policy Act of 1969 ("NEPA").

Less than two months ago we published our decision authorizing a stock issue by Southern, Alabama's parent.[10] Three stockholders of Southern filed objections and requested a hearing, contending that the construction program of the Southern system for 1980-81 (which includes Alabama) is excessive and improvident and that NEPA requires that we prepare an environmental impact statement. We denied their request for a hearing, and in an extensive discussion determined that the issues they raised were not pertinent to the authorization that the Act requires for financing proposals of a registered holding company or its subsidiaries. The same three shareholders, joined by a customer of Alabama, now repeat the same contentions in this proceeding, almost *in haec verba*. We will deny their request for a hearing on these issues for the reasons stated in our decision in *Southern*, to which complainants do not make reference.

In the case of Alabama, moreover, the need for the facilities under construction, to which the proposed financing is related, is not an open question. Alabama law requires the Alabama Public Service Commission to determine that these facilities are necessary to provide adequate service to Alabama's customers. It provides that, except for ordinary extensions of existing systems in the usual course of business, no electric utility may construct facilities for the production, transmission, or distribution of electric energy without first applying to the PSC for a

[9]This pattern of construction financing has become common practice for utilities. See *Georgia Power Co.*, 45 SEC 610, 613 (1974).

[10]*The Southern Company, et al.*, HCAR No. 21665 (July 24, 1980).

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certificate of convenience and necessity and the grant of such certificate.[11] Alabama states that it has received the required certificates for the facilities in question.

The PSC also has jurisdiction over Alabama's security issues. On October 21, 1979, the PSC authorized Alabama to issue in 1980 and 1981 up to $150 million of preferred stock and up to $450 million of its first mortgage bonds, and make short term borrowings. The object of these financings was:

> "...to provide a portion of the funds required by it for acquiring or constructing plants, properties, permanent improvements, extensions or additions to the property used or to be used by it in its public utility business, and to provide for its lawful obligations already incurred and to be incurred in respect of public utility purposes (including, among others, the satisfaction, of certain maturing bonded debt and the repayment of short term borrowings as more fully set forth below), such securities to be in addition to securities heretofore issued and sold pursuant to Commission authorization."

Section 6(b) of the Act requires express approval of the proposed financing by the State Commission as an essential condition for the grant of the application.

Complainants state that Alabama's return on equity has been inadequate since 1976, noting that its 1979 rate of return was 5.82% compared to 12.21% earned by Georgia Power Co., also a subsidiary of Southern. There is no dispute as to Alabama's difficulties during 1977-79, but complainants ignore the rate adjustments granted to Alabama in 1979 and the benefits of the new rates to Alabama, as noted previously.

The proposed financing effectively deals with Alabama's short term debt, whose refunding, long overdue, has been delayed by lack of the required coverages that the 1979 rate increases are to provide. This is readily indicated by Alabama's capitalization at March 31, 1980:

	(in millions) March 31, 1980 Amount	%
First mortgage bonds	$1,635	
Pollution control obligations	165	
Capitalized leases	112	
Current portion	(28)	
Long-term debt	$1,884	50.4
Interim obligations and current maturities	423	11.3
Preferred stock	382	10.2
Common equity	1,050	28.1
Total	$3,739	100.0

The $400 million of bonds, including the $100 million sold in June, would replace an approximately equal amount of interim obligations. The new $100 million of preferred stock and a budgeted $113 million of common equity[12] would supplement the $146.6 million of common equity supplied at the time of the $400 million of interim borrowings.

Complainants urge that Alabama's senior financing be indefinitely suspended until Alabama has actually realized the necessary additions to equity and attained rates of return comparable to those of Southern's other subsidiaries. As developed above, Alabama has received rate adjustments to provide a sufficient return on equity to permit the proposed financing over the next six months. If the expected results are not realized, the coverage tests will limit the sale of bonds and preferred stock to amounts supported by actual earnings. Accordingly, no hearing on income forecasts is needed relative to the proposed financing.

We do not have jurisdiction to define an adequate rate of return on equity for Alabama, nor can we prohibit Alabama from financing its business as a public utility company in accordance with the standards of the Act even if we were not satisfied with the rate policies of the State of Alabama. The Act does not and cannot require either that all operating subsidiaries continuously produce the same rate of return, or that the holding company invest only in whichever of its subsidiaries is currently producing the highest rate of return. In an interstate holding company system, the subsidiaries are necessarily

[11]Code of Alabama (1975), §37-4-28. The PSC may grant or deny the application, but only after a public hearing.

[12]The $146 million for the 14 months from January 1, 1980 to February 28, 1981, includes $33 million contributed before the balance sheet date, March 31, 1980. In April, $17 million was contributed and $96 million remains.

subject to the rate and regulatory policies of their respective states, and fluctuations in relative profitability are inevitable.

The Southern system, as required by the Act, comprises a single interconnected and coordinated electric system, the members of which are interdependent. Southern's principal function under the Act is to provide the subsidiaries with common equity as required, and the proposed financing is directed to curing critical financial problems of Alabama. The suggestion that the financing program be deferred makes no financial or statutory sense. The cost of the delay that complainants want would not be in the interest of Alabama or Southern as the common stockholder of Alabama.

An amendment, filed by complainants on August 12, 1980, objects to Alabama's request "that there be no 30 day waiting period in any case between the dates of the Commission's orders and the date on which they are to become effective." The order herein is entered under Rule 23(c) and becomes effective immediately upon issuance since the period prescribed in our notice has already expired. If the order is a "substantive rule" under the Administrative Procedure Act ("APA") and subject to the 30-day provision prescribed by 5 USC 553(d) thereof, Alabama is excepted from that requirement by subparagraph (1) of that subsection.[13]

Alabama's proposed financing meets the requirements of Section 6(b) of the Act. The security issues proposed by Alabama are solely for the purpose of financing the business of Alabama and have been expressly authorized by the State commission in which Alabama is organized and is doing business. Our order, accordingly, will authorize the issue and sale, by competitive bidding, of $300 million of First Mortgage bonds and $100 million of preferred stock in one or more series, as proposed by Alabama, subject to the terms and conditions prescribed in Rule 24 under the Act. The registration statement with respect to each series, filed with us under the Securities Act of 1933, shall also be filed in this proceeding.

The fees, commission and expenses to be incurred in connection with the proposed initial bond sale are estimated at $475,000, including legal fees of $46,000 and accountants' fees of $21,000. The fee of counsel for purchasers of the bonds is estimated at $22,000 and is to be paid by the successful bidders. The record is incomplete with respect to the subsequent security issues and jurisdiction will be reserved.

Alabama has reserved the right to apply for an exception to the competitive bidding requirements of Rule 50 with respect to the sale of any of the series of bonds or preferred stock. Such an exception would be justified only in circumstances not presently foreseeable. But we will reserve jurisdiction over such possible applications.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that the application, as amended, be, and it hereby is, granted effective forthwith with respect to the issue and sale, by competitive bidding, of $300 million of First Mortgage Bonds and $100 million of preferred stock, as aforesaid, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act; and

IT IS FURTHER ORDERED, that jurisdiction be, and it hereby is, reserved with respect to:

(1) any post-effective amendment Alabama may file for an exception from the competitive bidding requirements of Rule 50;

(2) Any change in the terms of the draft supplemental indenture or in the draft charter amendment with respect to the preferred stock, both as now on file in this proceeding;

(3) Fees and expenses with respect to the sale of the security issues other than the initial series of the First Mortgage Bonds; and

IT IS FURTHER ORDERED that the request for a hearing be, and it hereby is, denied.

By the Commission.

George A. Fitzsimmons
Secretary

[13]The APA definition of a "rule", 5 USC 551(4) "includes the approval or prescription for the future of. . .corporate or financial structure. . ." Orders under Section 6 and 7 of the Holding Company Act cannot reasonably be considered *ad hoc* rules, but there has been sufficient verbal uncertainty for applicants routinely to claim the exception provided by the APA.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11338/September 9, 1980

In the Matter of

NEW HAVEN CORPORATION
54 Meadow Street
New Haven, Connecticut 06506

(811-2867)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that New Haven Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company filed an application on August 18, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, registered under the Act on August 30, 1978. It has never engaged in a public offering of shares of its securities and does not propose to make a public offering. Accordingly, Applicant has not filed any registration statements pursuant to the Securities Act of 1933.

The application states that Applicant currently has no securityholders. The Applicant also states that it has no assets or liabilities. Applicant further states that it is not a party to any litigation or administrative proceeding. The Applicant's Registration Statement (Form N-8B-1), Item 9) reported that Applicant was expected to succeed to the assets of the New York, New Haven and Hartford Railroad Co., Debtor (the "New Haven"), in connection with implementation of the Plan of Reorganization of the New Haven ("Plan"). However, as approved by the Reorganization Court, such Plan does not contemplate utilization of Applicant.

The application further states that Applicant will not engage in any business activities pending consummation of the Plan. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 6, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11339/September 9, 1980

In the Matter of

NATIONAL MUNICIPAL TRUST
NATIONAL MUNICIPAL TRUST, SPECIAL TRUSTS
THOMSON McKINNON SECURITIES, INC.
PIPER, JAFFRAY & HOPWOOD INCORPORATED
c/o Thomson McKinnon Securities Inc.
One New York Plaza
New York, New York 10004

(812-4723)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR ORDER AMENDING PRIOR ORDER OF EXEMPTION FROM SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that National Municipal Trust, National Municipal Trust, Special Trusts, Thomson McKinnon Securities, Inc. and Piper, Jaffray & Hopwood Incorporated ("Applicants") filed an application on August 27, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") amending a prior order ("Prior Order") which exempted Applicants from Section 22(d) of the Act to permit mandatory redemption of reinvestment units at the time of a unitholder's withdrawal from or in the event of termination of the National Municipal Trust Reinvestment Program ("Reinvestment Program"). The Prior Order was issued on April 14, 1978 (Investment Company Act Release No. 10207). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

National Municipal Trust and National Municipal Trust, Special Trusts (collectively referred to as the "Municipal Trusts") are unit investment trusts as defined in the Act which have been sponsored by Thomson McKinnor Securities Inc. and Piper, Jaffray & Hopwood Incorporated (collectively referred to as the "Sponsors"). The objectives of the Municipal Trusts are tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds. All of such bonds are obligations issued by or on behalf of states, counties, territories, possessions and municipalities of the United States and/or authorities, agencies, instrumentalities or political subdivisions thereof, the interest on which in the opinion of counsel to the various issuers of such bonds is exempt from all federal income taxes under existing law.

On March 21, 1978 a notice was issued by the Commission (Investment Company Act Release No. 10170) of an application filed by National Municipal Trust pursuant to Section 6(c) of the Act for an order of the Commission exempting the Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit the Applicants to offer to unitholders of the Municipal Trusts the opportunity to participate in the Reinvestment Program at no additional sales charge. The Commission issued an order of exemption on April 14, 1978 (Investment Company Act Release No. 10207) granting the Applicants the relief requested from Section 22(d) of the Act. Applicants request an amendment of the Prior Order to add a provision to the Reinvestment Program which would authorize the mandatory redemption of reinvestment units by the trustee at the time a unitholder withdraws from the Reinvestment Program or the Program is terminated at the then current redemption price per reinvestment unit.

Applicants assert that the mandatory redemption provision is intended to prevent an increase in the expenses of the individual series of the Municipal Trusts resulting from the use of such series as instruments for reinvestment. Under the current Reinvestment Program, distributions of the principal and interest for reinvestment units are normally reinvested in additional reinvestment units at no cost to the individual series. If a unitholder withdraws from the Reinvestment Program, however, the Trustee would no longer reinvest principal and interest distributions in additional reinvestment units but would be required to mail such distributions each month to the holder of such reinvestment units. Applicants contend that it is therefore necessary to authorize the trustee to redeem reinvestment units at the time a unitholder withdraws from the Reinvestment Program or at the termination of the Reinvestment Program in order to prevent an increase in the costs of the respective series represented by the reinvestment units.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any

provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 3, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11340/September 9, 1980

In the Matter of

BONDSTOCK CORPORATION

1100 One Washington Plaza
Tacoma, Washington 98402

(811-502)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Bondstock Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, filed an application on May 19, 1980, and an amendment thereto on August 12, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act.

On August 11, 1980, a notice was issued (Investment Company Act Release No. 11299) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company as defined by the Act. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration under the Act of Bondstock Corporation shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11341/September 9, 1980

In the Matter of

O.N. MARKET YIELD FUND, INC.
P.O. Box 237
Cincinnati, Ohio 45201

(812-4669)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

O.N. Market Yield Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on April 22, 1980, and amendments thereto on June 23, 1980, and July 11, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On August 11, 1980, a notice (Investment Company Act Release No. 11298) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which its Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

2. Applicant will maintain a dollar weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value of $10.00 per share; provided, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar weighted average portfolio maturity in excess of 120 days.[1]

3. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $10.00 per share.

4. Included within the procedures to be adopted by Applicant's Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $10.00 amortized cost price per share, and the maintenance of records of such review.

(b) In the event such deviation from the $10.00 amortized cost price exceeds 1/2 of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $10.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent

[1]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

5. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 3 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 4(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11342/September 9, 1980

In the Matter of

UCB FINANCIAL SERVICES, LTD.
c/o United California Bank
707 Wilshire Boulevard
Los Angeles, California 90017

(812-4297)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT.

UCB Financial Services, Ltd. ("Applicant"), filed an application on April 27, 1978, and amendments thereto on June 26, 1979, and May 16, 1980, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act.

On July 31, 1980, a notice was issued (Investment Company Act Release No. 11282) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the express condition that Applicant shall comply with its undertakings: (1) to insure that each offeree of the Short-Term Notes (which are described in the application, and which will be guaranteed by United California Bank and offered for sale in Canada) will be provided with a disclosure memorandum at least as comprehensive as memoranda customarily used in connection with the issue of bank guaranteed short-term notes in Canada; (2) to insure that a similar memorandum will be provided to each offeree in connection with any offering in the United States of short-term notes not guaranteed by United California Bank and not requiring registration pursuant to the Securities Act of 1933 ("1933 Act") (such memorandum will be at least as comprehensive as those customarily used in connection with the issuance of short-term notes in the United States and will include a description of material differences between United States and Canadian generally accepted accounting principles, if any); (3) to register pursuant to the 1933 Act any public offering of long-term debt securities in the United States and to comply with the prospectus

delivery requirements of the 1933 Act in connection with the offer and sale of such securities; (4) to provide each offeree in connection with any offering in the United States of long-term debt securities not requiring registration under the 1933 Act a memorandum at least as comprehensive as those customarily used in such offers of long-term debt securities in the United States (such memorandum will include a description of material differences between United States and Canadian generally accepted accounting principles, if any); and (5) to update all such disclosure memoranda in the manner described in the application to reflect material changes in Applicant's financial position.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11343/September 10, 1980

In the Matter of

U.S. RAILROAD SECURITIES FUND, INC.
134 North La Salle Street
Chicago, Illinois 60602

(811-583)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission purposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its motion, that U.S. Railroad Securities Fund, Inc. ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Ohio on April 26, 1905, and registered under the Act on June 19, 1950. The Fund was originally engaged in the business of operating an intra-state switching railroad which operations ceased in January, 1937. The original name of the Fund was The Culver & Port Clinton Railroad Company, which was changed to the present name in 1955.

The Fund filed a registration statement on Form S-4 under the Securities Act of 1933 ("1933 Act") on February 12, 1953, for the public offer and sale of shares of its common stock, which registration statement became effective on April 3, 1953. This public offering of the Fund's shares of common stock was terminated on April 24, 1953, with a total of 68,050 shares outstanding. The files of the Commission indicate that the Fund filed no other registration statements pursuant to the 1933 Act to make an additional public offering of shares of its capital stock. The last Form N-30A-1 filed by the Fund with the Commission indicates that on December 31, 1963, the Fund had 109 shareholders of record. The files of the Commission indicate that on February 24, 1964, the Fund filed with the Commission a proxy statement which would authorize the Board of Directors to effect a planof liquidation of the Fund. In addition, a letter dated July 23, 1965, from the Vice-President of the Fund indicates that the portfolio of the Fund had been liquidated and that the writer of the letter was the last surviving officer of the fund. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may not later than October 6, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an

attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11344/September 10, 1980

In the Matter of

PAINE, WEBBER MUNICIPAL BOND FUND FIRST SERIES,
PAINE, WEBBER MUNICIPAL BOND FUND SECOND SERIES,
PAINE, WEBBER MUNICIPAL BOND FUND THIRD SERIES,
THE MUNICIPAL BOND FUND, SERIES ONE THROUGH SERIES FORTY-THREE,
THE MUNICIPAL BOND TRUST, SERIES FORTY-FOUR AND SUBSEQUENT SERIES,
THE MUNICIPAL BOND TRUST, MULTI-STATE PROGRAM SERIES ONE AND SUBSEQUENT SERIES,
THE CORPORATE BOND TRUST, SERIES ONE AND SUBSEQUENT SERIES,
THE MUNICIPAL BOND TRUST, PUERTO RICO SERIES ONE AND SUBSEQUENT SERIES,
THE MUNICIPAL BOND TRUST, MULTIPLE MATURITY SERIES ONE AND SUBSEQUENT SERIES,

and

PAINE, WEBBER, JACKSON & CURTIS INCORPORATED
1221 Avenue of the Americas
New York, New York 10020

(812-4628)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING AN OFFER OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

On August 12, 1980, a notice was issued (Investment Company Act Release No. 11301) of an application filed on March 12, 1980 and amended on July 14, 1980, by Paine, Webber Municipal Bond Fund First Series; Paine, Webber Municipal Bond Fund Second Series; Paine, Webber Municipal Bond Fund Third Series; The Municipal Bond Fund, Series One through Series Forty-Three; The Municipal Bond Trust, Series Forty-Four and subsequent series; the Municipal Bond Trust, Multi-State Program Series One and subsequent series; The Corporate bond Trust, Series One and subsequent series; The Municipal Bond Trust, Puerto Rico Series One and subsequent series; The Municipal Bond Trust, Multiple Maturity Series One and subsequent series (collectively referred to as the "Trusts"); and Paine, Webber, Jackson & Curtis Incorporated (the "Sponsor") (the Trusts and the Sponsor collectively referred to as "Applicants") requesting an order of the Commission (1) pursuant to Section 11 of the Act permitting the exchange of units of certain series of the Trust for units of other series of the Trusts, pursuant to an exchange option, at net asset value plus a sales charge of $15 per unit, and (2) pursuant to Section 6(c) of the Act exempting such exchange transactions from the provisions of Section 22(d) of the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed offer of exchange be, and hereby is, approved.

IT IS FURTHER ORDERED, pursuant to Section 6(c)

of the Act, that the application for exemption from the provisions of Section 22(d) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11345/September 10, 1980

In the Matter of

GENERAL AMERICAN INVESTORS COMPANY, INC.
330 Madison Avenue
New York, New York 10017

(812-4399)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 12(d)(3) OF THE ACT

NOTICE IS HEREBY GIVEN that General American Investors Company, Inc. ("Applicant"), a closed-end, diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 4, 1978, with amendments thereto on July 17, 1979, and August 7, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 12(d)(3) of the Act so that Applicant can organize a subsidiary, which will register under the Investment Advisers Act of 1940 ("Advisers Act"), and acquire all of its outstanding capital stock. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, states that since its incorporation in 1928 it has been managed by its officers and directors, rather than by an external advisory organization pursuant to contract. Applicant represents that in 1973 it sought and received shareholder approval of a decision by its board of directors to enter into the business of providing investment advisory services to others. Applicant states that the board's decision was made as a result of its consideration of various approaches to enhancing the use of its in-house research staff and facilities (1) to improve its expense ratio by earning additional income and (2) to strengthen its ability to attract and retain highly qualified management and research personnel. Applicant states further that, after receiving shareholder approval, it acquired a small number of investment advisory clients. Applicant represents that it has an informal understanding with those advisory clients that their portfolios will generally contain securities which are also held by Applicant and represents that, in fact, since Applicant's advisory business commenced, the portfolios of its advisory clients have overlapped with its own portfolio and no security in any advisory account is not also in its portfolio, although not all of the securities in its portfolio are held by the outside accounts. Applicant further represents that it intends to continue its policy of overlapping portfolios. According to the application, Applicant adopted certain procedures with respect to purchases and sales for its account and for its advisory clients in order to assure fair dealing. Applicant maintains that it has used those procedures since 1973 and that it has not experienced any greater difficulty acquiring or disposing of securities as a result of providing advisory services to third parties. In this regard, Applicant asserts that, to the extent it has been affected at all by trading larger blocks of stock, it has experienced the benefits of the lower commission rates obtainable for such trades. Applicant states that revenues from its advisory business have enabled it to more than offset rising costs.

Applicant states that its board of directors now believes, based on the same fundamental considerations underlying its decision in 1973 to enter into the business of providing investment advice to others, that it would be desirable to expand its advisory business. According to the application, Applicant proposes to organize a subsidiary ("Subsidiary") which would register under the Advisers Act and would, as Applicant has, solicit and enter into contracts with new investment advisory clients with investment objectives similar to those of Applicant. Applicant represents that its board of directors has determined to organize the Subsidiary, rather than to continue providing investment advice directly, in order to maintain its tax status as a regulated investment company under the Internal Revenue Code of 1954 ("Code"). Applicant submits

that Section 851(b)(2) of the Code effectively limits the income which may be generated through an advisory business conducted directly by a regulated investment company. Applicant states that both management and its board of directors have determined that it would be risky for Applicant to take on additional investment advisory clients directly or to allow current advisory accounts to grow substantially, because of the potential for transgressing the limitations set forth in Section 851(b)(2) of the Code. Accordingly, Applicant states that when the fee income derived from management of the assets of current advisory clients reaches an amount whereby its tax status would be jeopardized, new assets of existing clients will be managed by the Subsidiary.

Applicant states that the Subsidiary would be capitalized with an amount of money and assets reasonably necessary to cover its organizational expenses and would utilize certain employees and facilities of Applicant to meet the investment advisory requirements of existing and new clients. Applicant represents that expenses associated with the provision of investment advisory services, other than direct expenses, will be allocated between Applicant and the Subsidiary and that all net income generated by the Subsidiary will be passed on to Applicant in the form of dividends. Applicant states that, initially, all of the officers and employees of Applicant will hold similar positions as officers and employees of the Subsidiary and that its officers will be directors of the Subsidiary. Applicant represents that, while its board of directors has not finally determined the compensation of its officers and employees following the start-up of the Subsidiary, it is contemplated that they will not be compensated solely as a result of holding positions as directors, officers or employees of the Subsidiary.

Section 12(d)(3) of the Act, in pertinent part, makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is either an investment adviser of an investment company or an investment adviser registered under the Advisers Act. Applicant states that since the Subsidiary will register under the Advisers Act, Applicant's interest in the Subsidiary would violate the provisions of Section 12(d)(3).

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order of the Commission, pursuant to Section 6(c), exempting it from the provisions of Section 12(d)(3) so that it can wholly own the Subsidiary.

In support of the requested exemption, Applicant asserts that, together with the Subsidiary, it will be conducting the same business that it is currently conducting directly. Applicant maintains that it contemplates no change either in the methods presently employed for investment research and portfolio management or in the number of persons employed. Applicant emphasizes that the underlying reason for the formation and ownership of the Subsidiary is to increase its gross revenues and income without jeopardizing its tax status as a regulated investment company. Applicant argues that Section 12(d)(3) should not prevent its shareholders from realizing the substantial benefits to be obtained through its ownership of the Subsidiary. Applicant asserts that the procedures and policies that it has adopted with respect to the Subsidiary and the methods of operations proposed will ensure that Applicant will continue to be operated and managed in the interests of its security holders and that ownership by it of the Subsidiary will otherwise be consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant states that when its board of directors first recommended entry into the investment advisory business, it did so after discussion of the concomitant risks and liabilities. Applicant represents that its board of directors is satisfied that the added risks have been justified in light of the benefits to Applicant from its initial entry into the investment advisory business. Applicant further represents that its board of directors believes there will be no additional risks or liabilities to which Applicant or the Subsidiary would be exposed as a result of the creation of the Subsidiary and the commencement of its operations.

In addition, Applicant has consented to the imposition of the following conditions to any order issued herein:

1. Applicant's board of directors expressly

recognizes its fiduciary responsibility to oversee on a continuing basis and approve (by at least a vote of a majority of the directors of Applicant who are not "interested persons" of Applicant as defined in the Act) at least annually the compensation of officers of Applicant and of the Subsidiary.

2. Applicant's board of directors will review at least annually the investment advisory business of Applicant and the Subsidiary in order to determine whether or not such business should be continued and whether or not the benefits derived by Applicant warrant the continuation of the investment advisory business and the ownership by Applicant of the Subsidiary and, if appropriate, approve (by at least a vote of a majority of the directors of Applicant who are not "interested persons" of Applicant as defined in the Act) at least annually such continuation.

3. Applicant will, consistent with its normal shareholder communications practices, which include the preparation and mailing of annual, semi-annual and quarterly reports, and proxy statements, advise its shareholders of the creation of the Subsidiary, the implementation through the Subsidiary of an expansion of its outside advisory services and an assessment of whatever risks, if any, are associated therewith promptly after the entry of the requested order.

4. The effectiveness of any order issued herein shall be conditioned upon Applicant's continued tax status as a regulated investment company within the meaning of Section 851 of the Code.

5. Applicant undertakes, without prejudice to the right of its board of directors to dispose to unaffiliated persons the equity interest of Applicant in the Subsidiary in its entirety, that it will at all times own beneficially and of record all of the issued and outstanding shares of capital stock of the Subsidiary and will cause the Subsidiary not to issue any authorized but unissued shares of its capital stock to any person other than Applicant.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 6, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will recieve any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11346/September 10, 1980

In the Matter of

NATIONAL WESTMINSTER BANK LIMITED
c/o Bruce W. Nichols, Esq.
Davis, Polk & Wardwell
One Chase Manhattan Plaza
New York, New York 10005

(812-4617)

ORDER DENYING REQUEST FOR HEARING AND REISSUING PRIOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On May 13, 1980, a notice was issued (Investment Company Act Release No. 11169) of the filing of an application on February 20, 1980, and an amendment thereto on April 16, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting National Westminster Bank Limited ("Applicant"), a bank registered in the United Kingdom, from all provisions of the Act. The notice gave interested persons an opportunity to request a hearing and

stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. The Commission has previously considered applications and issued orders exempting foreign commercial banks proposing to make public offerings of their commercial paper in the United States from all provisions of the Act, subject to certain conditions.[1] The Applicant intends to make a similar public offering of its commercial paper in the United States, and its application conforms in all material respects to the prior foreign commercial bank applications considered by the Commission.

On June 9, 1980, the final day of the notice period, Mr. William Leighton, president of Option Advisory Service, Inc. ("OAS"), an investment adviser registered under the Investment Advisers Act of 1940, requested, on behalf of OAS, that a hearing be held on the application.[2] Mr. Leighton's submission was not officially received in the office of the Secretary until June 10, 1980, however, and, on that date, an order was inadvertently issued (Investment Company Act Release No. 11210), pursuant to delegated authority, granting the application. Accordingly, in order to resolve any question as to the validity of the previously issued order, the matter has been reconsidered in light of the issues raised by Mr. Leighton in his hearing request.

In summary, the principal assertions made by Mr. Leighton are that (1) federal bank regulatory agencies were not given sixty days' personal notice of this application; (2) the application filed pursuant to Section 6(c) of the Act constitutes an admission that Applicant is an investment company, a matter which the Applicant failed to discuss in a recent application before the Federal Reserve Board in which Applicant sought permission to acquire National Bank of North America; (3) exemptive relief pursuant to Section 6(c) of the Act is inappropriate in the case of a banking organization such as the Applicant; (4) the granting of the application would encourage Americans to convert their bank deposits insured by the Federal Deposit Insurance Corporation into shares of money market mutual funds with portfolios partially consisting of Applicant's uninsured certificates of deposit; (5) Applicant failed to specify the purpose of its commercial paper offerings and such an omission may conceal a possible violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; (6) granting the application pursuant to Section 6(c) of the Act will frustrate recent regulations implementing the Credit Control Act of 1969 designed to restrain the extension of short-term credit; and (7) Option Advisory Services, Inc., and all other small investment advisers registered with the Commission would be adversely affected by the Commission's order on this application because it would permit a large foreign bank to compete with them unfairly in seeking capital.

The Commission has reviewed all of the issues listed above and all other issues presented in Mr. Leighton's hearing request, many of which are irrelevant and speculative, and finds that none of the issues raised has sufficient merit to warrant a hearing on the application. The Commission's responses to the foregoing issues raised by Mr. Leighton may be summarized as follows:

First, all applicable notice requirements were met with regard to this application. There is no statutory or other requirement that federal bank regulatory agencies be given sixty days' personal notice of applications under the Act.

Second, the filing of an application for exemption pursuant to Section 6(c) of the Act is not necessarily an admission of investment company status. Applicant states that it filed its application "because of uncertainty whether or not a foreign commercial bank would be defined as an investment company under the Act," and submits that commercial banks such as itself were not within the intended purview of the Act.

Third, it has previously been determined, in the course of reviewing the applications filed by the original group of foreign commercial banks, that it would be appropriate to grant exemptive relief pursuant to Section 6(c) of the Act.

Fourth, no showing has been made to establish that granting the application would encourage United States citizens to convert their FDIC insured bank deposits into money market mutual funds.

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[1]The first seven orders were issued by the Commission on August 7, 1979, Investment Company Act Release Nos. 10813-17, 10820-21.

[2]Additional letters dated June 28 and July 11, 1980, were filed subsequently by Mr. Leighton in further support of his hearing request on the application.

Fifth, the application states that the sale of commercial paper in the United States will provide the Applicant with an additional source of United States dollars.[3] The possible uses asserted by Mr. Leighton for the proceeds of Applicant's commercial paper offerings are highly speculative and, in any event, are only tangentially relevant to the question of whether or not the application satisfies the requirements for an exemption set forth in Section 6(c) of the Act. No rational showing has been made that there is any likelihood that granting the application might facilitate a scheme to violate the antifraud provisions of the Federal securities laws.

Sixth, the allegation concerning the Credit Control Act is moot because, on July 3, 1980, the Board of Governors of the Federal Reserve System announced that its credit control regulations would be eliminated with respect to weekly reporting periods beginning on July 28, 1980.

Seventh, the ability of Applicant to offer securities that may yield a higher return to American investors than OAS can offer provides no basis for determining that the order permitting their offering is not in the public interest or consistent with the protection of investors, since Mr. Leighton's hearing request does not remotely establish any connection between the issuance of commercial paper by Applicant and injury to OAS or any other person.

On the basis of the foregoing, Mr. Leighton has raised no issue of fact, law or policy that would warrant the ordering of a hearing on this application. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.[4]

The matters presented by the application have been considered, and it is found that the granting of the exemption request pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following conditions: 1) Applicant will insure that the commercial paper dealer will provide each offeree of its notes with a memorandum describing the business of Applicant and its subsidiaries and containing the most recently published financial statements of Applicant and its subsidiaries, which will be audited in accordance with United Kingdom auditing practices; such memorandum will include a brief paragraph highlighting the material differences between United Kingdom accounting principles applicable to United Kingdom clearing banks, as used by Applicant, and generally accepted accounting principles employed by United States banks; such memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material changes in the financial status or business of Applicant or its subsidiaries; and 2) any future offering of Applicant's debt securities will be done on the basis of disclosure documents which are at least as comprehensive as those customarily used by United States issuers of such securities in the United States and will contain the financial statements of Applicant and its subsidiaries.

By the Commission.

George A. Fitzsimmons
Secretary

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[3]By letter to the Commission dated June 19, 1980, United States counsel for the Applicant expanded on this point by indicating that Applicant intended to use the dollars obtained from its commercial paper offerings to support dollar denominated assets in the form of Eurodollar loans.

[4]Mr. Leighton does not allege that he or OAS have an ownership or other direct interest in the Applicant, and he has failed to demonstrate that either OAS or any other registered investment adviser is likely to be perceptibly harmed by the granting of the instant application, or that their interest is meant to be protected by the Act. While it is apparent that neither Mr. Leighton nor OAS has any real basis for contending that either one of them is an interested person within the meaning of Section 40(a) of the Act and Rule 0-5(c) under the Act, we do not deem it necessary to make a formal determination with respect to the status of Mr. Leighton or OAS inasmuch as we have determined that the assertions made and the issues raised in connection with this application do not warrant a hearing on this matter.

INVESTMENT COMPANY ACT OF 1940
Release No. 11347/September 10, 1980

In the Matter of

DEN DANSKE BANK AF 1871 AKTIESELSKAB
c/o H. Rodgin Cohen, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

(812-4616)

ORDER DENYING REQUEST FOR HEARING AND GRANTING APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On May 23, 1980, a notice was issued (Investment Company Act Release No. 11188) of the filing of an application on February 21, 1980, with amendments thereto on May 9, May 20 and September 4, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Den Danske Bank af 1871 Aktieselskab ("Applicant"), a Danish commercial bank, from all provisions of the Act. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. The Commission has previously considered applications and issued orders exempting foreign commercial banks proposing to make public offerings of their commercial paper in the United States from all provisions of the Act, subject to certain conditions.[1] The Applicant intends to make a similar public offering of its commercial paper in the United States, and its application conforms in all material respects to the prior foreign commercial bank applications considered by the Commission.

On June 16, 1980, prior to the expiration of the notice period, Mr. William Leighton, president of Option Advisory Service, Inc. ("OAS"), an investment adviser registered under the Investment Advisers Act of 104, requested, on behalf of OAS, that a hearing be held on the application.[2]

In summary, the principal assertions made by Mr. Leighton are that (1) interested persons were given inadequate notice of the application, and, in particular, federal bank regulatory agencies were not given 60 days' personal notice of the application; (2) Applicant is required to obtain "prior approval" by the Board of Governors of the Federal Reserve System ("Reserve Board") for its nonbanking activities in the United States; (3) Applicant's status as an investment company should be resolved by the issuance of a declaratory order and/or by permitting or requiring Applicant to register as a foreign investment company pursuant to Section 7(d) of the Act; (4) Applicant should have obtained a license from the Reserve Board prior to extending credit in the United States; (5) the application does not discuss the possible impact of Danish foreign exchange controls on Applicant's ability to honor its obligations on its commercial paper in United States dollars; (6) it is against the public interest to grant the application because it would enable Applicant to circumvent the International Banking Act of 1978, the Federal Deposit Insurance Act and the Securities Act of 1933; (7) the application fails to disclose Applicant's exposure on its outstanding international loans; (8) the proceeds of Applicant's commercial paper offering in the United States may be used for purposes that are against the American public interest; and (9) granting the application would permit Applicant to compete unfairly with small domestic investment advisers.

The Commission has reviewed all of the issues listed above and all other issues presented in Mr. Leighton's hearing request, many of which are irrelevant and speculative, and finds that none of the issues raised has sufficient merit to warrant a hearing on the application. The Commission's responses to the foregoing issues raised by Mr. Leighton may be summarized as follows:

First, all applicable notice requirements were met with regard to this application. There is no statutory or other requirement that federal bank regulatory agencies be given sixty days' personal notice of applications under the Act.

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[1]The first seven orders were issued by the Commission on August 7, 1979. Investment Company Act Release Nos. 10813-17, 10820-21.

[2]Mr. Leighton submitted additional material in connection with his hearing request on this application by letters dated June 30, July 11, and August 7, 1980.

Second, the allegation that Applicant should have sought Reserve Board approval of its nonbanking activities in the United States has little, if any, bearing on the propriety of granting the application under the Act.[3]

Third, the Commission has determined, as a matter within its discretionary authority, that it would be more appropriate to grant conditional relief to foreign commercial banks, such as Applicant, exempting them from all provisions of the Act, pursuant to Section 6(c) of the Act, rather than to issue a declaratory order or to act pursuant to Section 7(d) of the Act and issue a conditional or unconditional order permitting such companies to register under the Act and to make a public offering of their securities in the United States.

Fourth, the allegation that Applicant should have sought a Reserve Board license has little, if any, bearing on the propriety of granting the application. Mr. Leighton provides no basis for making this assertion, and he fails to cite any Reserve Board regulation that would implement any licensing requirements authorized under the Credit Control Act of 1969. Moreover, Mr. Leighton's argument is misplaced, since Applicant will be obtaining credit, rather than extending credit.

Fifth, Mr. Leighton does not allude to any specific Danish foreign exchange regulation presently in effect that might affect Applicant's ability to honor its commercial paper obligations in United States dollars. If such regulations were ever implemented in a manner that might limit Applicant's ability to repay its commercial paper obligations in United States dollars, then it is reasonable to expect that Applicant would find it difficult to comply with its representation in the application that it will secure one of the three highest investment grades from at least one nationally recognized statistical rating organization. It is also reasonable to expect that Applicant will describe any material limitation on its ability to honor its commercial paper obligations in the disclosure material required to be given to United States offerees prior to purchase.

Sixth, Mr. Leighton's allegations concerning the Applicant's non-compliance with various federal statutory and regulatory requirements administered by various federal bank regulatory agencies has little, if any, bearing on the propriety of granting exemptive relief to the Applicant under the Act, particularly because he has not provided adequate evidence that the Applicant is in fact operating in violation of any of those requirements. As far as compliance with the Securities Act of 1933 is concerned, Mr. Leighton merely states that the Commission's decision not to review counsel's opinion letters as to the availability of an exemption from the registration requirements of that Act for Applicant's commercial paper offering "strongly indicates" that the exemption from Section 3(a)(3) of the Act will not meet Commission requirements set forth in Securities Act Release No. 4412 (September 20, 1961). No basis for this assertion is provided, and, in any event, Applicant is liable if the exemption does not prove to be available.

Seventh, Applicant has provided financial statements as exhibits to its application that include its commitments on international loans. The disclosure memoranda that Applicant will ensure is provided to each investor in its commercial paper will also contain its most recent financial statements. These disclosure memoranda will be at least as comprehensive as those customarily provided in offerings of commercial paper in the United States and should provide the sophisticated investors that normally comprise the market for commercial paper (denominated in units of at least $100,000) with sufficient information upon which to base an evaluation of Applicant's exposure on international loans. As noted above, Applicant has also agreed to obtain one of the three highest ratings by a national ratings service prior to issuance of its commercial paper, and those ratings should, at least in part, reflect the risk of Applicant's exposure on international loans.

Eighth, Mr. Leighton offers no evidence in support of his assertion that the proceeds of Applicant's United

[3]By letter dated June 25, 1980, United States counsel for Applicant contends, among other things, that Applicant is not subject to the International Banking Act of 1978 and the Bank Holding Company Act of 1956 because it does not have a branch, agency or banking subsidiary in the United States and that, in any event, the issuance of commercial paper is not a nonbanking activity requiring prior Reserve Board approval. Counsel submitted additional letters dated July 31 and August 11, 1980, in further response to Mr. Leighton's allegations.

States commercial paper offering may be used for purposes that are against the American public interest.

Ninth, Mr. Leighton offers no plausible reason to expect that Applicant will be in competition with small domestic investment advisers or that any competition, however remote and speculative, would be unfair.

On the basis of the foregoing, Mr. Leighton has raised no issue of fact, law or policy that would warrant the ordering of a hearing on this application. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.[4]

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following express conditions: (1) Applicant will ensure that each offeree of its presently proposed offering of commercial paper notes will be provided with a memorandum describing its business and containing its most recent publicly available fiscal year-end balance sheet and income statement, audited in such manner as is customarily done for Applicant by Danish auditors; the memorandum will describe material differences, if any, between the accounting principles applied by Applicant in the preparation of such financial statements and generally accepted accounting principles as employed by banks in the United States; the memorandum will be at least as comprehensive as memoranda customarily used by United States bank holding companies in offering commercial paper in the United States; the memorandum will be updated promptly to reflect material changes in Applicant's financial condition; and (2) Applicant will ensure that each offeree of any future offering of its debt securities will be provided a memorandum that is at least as comprehensive in its description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities (but, in any event, no less comprehensive than required by applicable federal and state law).

By the Commission.

George A. Fitzsimmons
Secretary

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[4]Mr. Leighton does not allege that either he or OAS has an ownership interest in the Applicant, and he has failed to demonstrate that either OAS or any other small domestic investment adviser is likely to be perceptibly harmed by the granting of the instant application, or that their interest, if any, is of the type meant to be protected by the Act. While it is apparent that neither Mr. Leighton nor OAS has any real basis for contending that either one of them is an interested person within the meaning of Section 40(a) of the Act and Rule 0-5(c) under the Act, we do not deem it necessary to make a formal determination with respect to the status of Mr. Leighton or OAS inasmuch as we have determined that the assertions made and the issues raised in connection with the application do not warrant a hearing on this matter.

INVESTMENT COMPANY ACT OF 1940
Release No. 11348/September 10, 1980

In the Matter of

SPARBANKERNAS BANK
Brunkebergstorg 8
S-105 34 Stockholm
Sweden

(812-4679)

ORDER DENYING REQUEST FOR HEARING AND GRANTING APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On June 24, 1980, a notice was issued (Investment Company Act Release No. 11230) of the filing of an

application on May 12, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Sparbankernas Bank ("Applicant"), a Swedish commercial bank, from all provisions of the Act. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. The Commission has previously considered applications and issued orders exempting foreign commercial banks proposing to make public offerings of their commercial paper in the United States from all provisions of the Act, subject to certain conditions.[1] The Applicant intends to make a similar public offering of its commercial paper in the United States, and its application conforms in all material respects to the prior foreign commercial bank applications considered by the Commission.

On July 24, 1980, prior to the expiration of the notice period, Mr. William Leighton, president of Option Advisory Service, Inc. ("OAS"), an investment adviser registered under the Investment Advisers Act of 1940, requested, on behalf of OAS, that a hearing be held on the application.

In summary, the principal assertions made by Mr. Leighton are that (1) the Department of the Treasury may have primary jurisdiction over Applicant's activities in the United States, and, as a foreign bank within the meaning of Section 1(b)(7) of the International Banking Act of 1978, Applicant has a duty to register with the Secretary of the Treasury pursuant to Section 10 of that Act and the regulations thereunder; (2) federal bank regulatory agencies were not given sixty days' personal notice on this application; (3) the granting of this application could "convert depositors in F.D.I.C. insured banks into investors in [Applicant's] paper;" (4) Applicant did not disclose in its application that, since its commercial paper will rank *pari passu* with its other liabilities that are expressed in Swedish kroner, American creditors will have claims in Swedish kroner and not United States dollars; (5) Applicant's proposed commercial paper offerings will not be exempt from the registration requirements of the Securities Act of 1933 because there is no assurance that such paper would be eligible for discounting by a Federal Reserve Bank; (6) Applicant should be required or permitted to register as a foreign investment company pursuant to Section 7(d) of the Act rather than exempted from all provisions of the Act pursuant to Section 6(c) of the Act; and (7) Applicant should be required to post $50,000 with the Commission as security for costs, expenses and reasonable attorneys' fees incurred by OAS in this proceeding.

The Commission has reviewed all of the issues above and all other issues presented in Mr. Leighton's hearing request, many of which are irrelevant and speculative, and finds that none of the issues raised has sufficient merit to warrant a hearing on the application. The Commission's responses to the foregoing issues raised by Mr. Leighton may be summarized as follows:

First, it is clear that the Commission has jurisdiction to determine Applicant's status as an investment company within the meaning of that term in the Act, and to decide whether a conditional exemption from the provisions of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. No other federal agency or department has been authorized by Congress to make such determinations under the Act. Mr. Leighton's suggestion that primary jurisdiction may lie with the Department of the Treasury is, therefore, in error. Moreover, Mr. Leighton has failed to establish a sufficient connection between the Applicant's failure, if any, to register under the International Banking Act of 1978 and the appropriateness of granting its application under the Act.[2]

Second, all applicable notice requirements were met with regard to this application. There is no statutory or other requirement that federal bank regulatory agencies be given sixty days' personal notice of applications under the Act.

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[1]The first seven orders were issued by the Commission on August 7, 1979. Investment Company Act Release Nos. 10813-17, 10820-21.

[2]By letter dated August 7, 1980, United States counsel for the Applicant contends that its designation of a corporation service company as its United States agent for service of legal process does not constitute the establishment of a "representative office" within the contemplation of the International Banking Act of 1978 and the regulations cited by Mr. Leighton.

Third, Mr. Leighton offers no evidence for the proposition that the investors in Applicant's commercial paper, which will be issued in minimum denominations of $100,000, would otherwise hold their funds on deposit in bank accounts subject to FDIC insurance. Moreover, it is doubtful that the offering of these securities would be much more likely to attract funds from FDIC insured accounts than a similar offering of commercial paper by a domestic bank holding company.

Fourth, with regard to repayment in United States dollars, Applicant has represented that investors in its commercial paper will be provided disclosure memoranda at least at comprehensive as those that are customary in offerings of commercial paper in the United States. Such disclosure memoranda must contain the financial statements of Applicant. The United States investors to whom the paper will be sold, who are expected to be institutional investors and others who customarily invest in commercial paper, should be able to determine prior to purchase that the assets of the issuer are located primarily in Sweden and denominated in Swedish kroner and that, in the event of default by the issuer, they would have to look to such assets for repayment in accordance with the terms of the instruments that they purchase. Mr. Leighton's objection does no more than state the obvious consequences of default by any foreign issuer, and does not have any impact upon the propriety of granting Applicant an exemption from the provisions of the Act.

Fifth, the application specifically states that the Commission is not being asked to pass upon Applicant's opinion of counsel concerning the availability of an exemption under Section 3(a)(3) of the Securities Act of 1933, and the notice specifically states that the Commission expressed no opinion as to the availability of any such exemption.

Sixth, the Commission has determined, as a matter within its discretionary authority, that it would be more appropriate to grant conditional relief to foreign commercial banks, such as Applicant, exempting them from all provisions of the Act, pursuant to Section 6(c) of the Act, rather than to issue a conditional or unconditional order pursuant to Section 7(d) of the Act permitting such companies to register under the Act and to make a public offering of their securities in the United States.

Seventh, the Commision does not have the authority to require Applicant to post security for costs, expenses and attorneys' fees.

On the basis of the foregoing, Mr. Leighton has raised no issue of fact, law or policy that would warrant the ordering of a hearing on this application. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly, IT IS ORDERED that the request for a hearing is denied.[3]

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following express conditions: 1) Applicant will ensure that each offeree of its presently proposed offering of commercial paper notes will be provided with a memorandum describing its business and containing its most recent publicly available fiscal year-end balance sheet and income statement, audited in such manner as is customarily done for Applicant by Swedish auditors and will also include a brief paragraph highlighting material differences between Swedish and United States generally accepted accounting principles applicable to banks;

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[3]Mr. Leighton does not allege that he or OAS has an ownership or other financial interest in the Applicant, and he has failed to demonstrate that either OAS or any other small United States investment adviser is likely to be perceptibly harmed by the granting of the instant application, or that their interest, if any, is of the type meant to be protected by the Act. While it is apparent that neither Mr. Leighton nor OAS has any real basis for contending that either one of them is an interested person within the meaning of Section 40(a) of the Act and Rule 0-5(c) under the Act, we do not deem it necessary to make a formal determination with respect to the status of Mr. Leighton or OAS inasmuch as we have determined that the assertions made and the issues raised in connection with the application do not warrant a hearing on this matter.

such memorandum will be at least as comprehensive as memoranda which are customarily used in connection with the issuance of commercial paper in the United States; such memorandum will be updated periodically to reflect material changes in Applicant's financial position; and 2) Applicant will ensure that each offeree of any future offering of its securities (other than shares of its capital stock, which will not be offered) will be provided with a memorandum at least as comprehensive as memoranda customarily used in similar offerings in the United States and in any case at least as comprehensive as that used in the presently proposed offering, unless such an offering is registered under the Securities Act of 1933, in which case disclosure documents will be provided to investors in such manner as may be required by the Securities Act of 1933 and the rules and regulations thereunder.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11349/September 10, 1980

In the Matter of

SOCIETE GENERALE DE BANQUE S.A.
and
SOCIETE GENERALE DE BANQUE INC.
c/o Charles J. Hansen, Esq.
Shearman & Sterling
53 Wall Street
New York, New York 10005

(812-4559)

ORDER DENYING REQUEST FOR HEARING AND GRANTING APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On June 27, 1980, a notice was issued (Investment Company Act Release No. 11234) of the filing of an application on October 31, 1979, and amendments thereto on May 29, 1980, June 20, 1980, and September 9, 1980, and for order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Societe Generale de Banque S.A. ("Bank"), a commercial bank located in Belgium and Societe Generale de Banque Inc. ("SGBI"), a wholly owned Delaware subsidiary of Bank, from all provisions of the Act. (Both entities will collectively be referred to as "Applicants.") The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. The Commission has previously considered applications and issued orders exempting foreign commercial banks proposing to make public offerings of their commercial paper in the United States from all provisions of the Act, subject to certain contitions.[1] SGBI intends to make a similar public offering of commercial paper, guaranteed by Bank, in the United States, and its application conforms in all material respects to prior foreign commercial bank applications considered by the Commission.

On July 23, 1980, prior to the expiration of the notice period, Mr. William Leighton, president of Option Advisory Service, Inc. ("OAS"), an investment adviser registered under the Investment Advisers Act of 1940, requested, on behalf of OAS, that a hearing be held on the application.

In summary, the principal assertions made by Mr. Leighton are that (1) federal bank regulatory agencies were not given sixty days' personal notice of this application; (2) the Treasury Department may have primary jurisdiction over the Applicants' activities in the United States and the Bank has failed to register with the Secretary of the Treasury pursuant to Section 10 of the International Banking Act of 1978 and the regulations thereunder; (3) the proposed commercial paper to be issued by the SGBI and guaranteed by Bank will not be exempt from the registration requirements of the Securities Act of 1933 because there is not assurance that the proceeds of the offering wil be used for "current transactions;" (4) Applicants did not disclose in the application that, since SGBI's commercial paper will rank *pari passu* with the Bank's other liabilities which are expressed in Belgian francs, American creditors will have claims in Belgian francs and not in United States dollars; also, Applicants failed to

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[1]The first seven orders were issued by the Commission on August 7, 1979. Investment Company Act Release Nos. 10813-17, 10820-21.

state how purchasers of SGBI's commercial paper can enforce, under Belgian law, judgements they may obtain in the United States; (5) there is no assurance that the commercial paper will be sold only to sophisticated individuals; (6) the granting of an order pursuant to Section 6(c) of the Act will permit the Applicants to circumvent the Federal Deposit Insurance Act; (7) the proceeds of the commercial paper might be employed in a manner detrimental to the interests of the United States; (8) Option Advisory Services, Inc., and all other small investment advisers registered with the Commission would be adversely affected by the Commission's order on this application because it would permit a large foreign bank to compete with them in seeking capital; and (9) Applicants should be required or permitted to register as foreign investment companies pursuant to Section 7(d) of the Act rather than exempted from all provisions of the Act pursuant to Section 6(c) of the Act.

The Commission has reviewed all of the issues listed above and all other issues presented in Mr. Leighton's hearing request, many of which are irrelevant and speculative, and finds that none of the issues raised has sufficient merit to warrant the ordering of a hearing on the application. The Commission's responses to the foregoing issues raised by Mr. Leighton may be summarized as follows:

First, all applicable notice requirements were met with regard to this application. There is no statutory or other requirement that federal bank regulatory agencies be given sixty days' personal notice of applications under the Act.

Second, it is clear that the Commission has jurisdiction to determine Applicants' status as investment companies within the meaning of that term in the Act, and to decide whether a conditional exemption from the provisions of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. No other federal agency or department has been authorized by Congress to make such determinations under the Act. Mr. Leighton's suggestion that primary jurisdiction may lie with the Department of the Treasury is, therefore, in error. Moreover, Mr. Leighton has failed to establish a sufficient connection between the Bank's failure, if any, to register under the International Banking Act of 1978 and the appropriateness of granting its application under the Act.

Third, the application specifically states that the Commission is not being asked to pass upon Applicant's opinion of counsel concerning the availabilty of an exemption under Section 3(a)(3) of the Securities Act of 1933, and the notice specifically states that the Commission expressed no opinion as to the availability of any such exemption. The Applicants, as issuers, are responsible for any violation of the securities laws, and, in any event, Mr. Leighton has failed to provide satisfactory evidence that the Section 3(a)(3) exemption may not be available in this case.

Fourth, Applicants have represented that investors in SGBI's commercial paper will be provided disclosure memoranda at least as comprehensive as those that are customary in offerings of commercial paper in the United States. Such disclosure memoranda must contain the financial statements of Applicants. The United States investors to whom the paper will be sold, who are expected to be institutional investors and others who customarily invest in commercial paper, should be able to determine prior to purchase that the assets of the issuer are located primarily in Belgium and denominated in Belgian francs and that, in the event of default by the issuer, they would have to look to such assets for repayment in accordance with the terms of the instruments that they purchase. Mr. Leighton's objections do no more than state the obvious consequences of default by any foreign issuer, and do not have any impact upon the propriety of granting Applicants an exemption from the provisions of the Act.

Fifth, Applicants represent that the proposed offering of commercial paper notes, which will be in minimum denominations of $100,000 or more, will be sold to United States securities dealers which will reoffer the notes as principal to institutional investors and other entities and individuals who normally purchase commercial paper. Applicants also represent that the notes will not be advertised or otherwise offered for sale to the general public. These representations and the minimum denomination of the notes provide sufficient assurance that the proposed offering generally will be limited to institutional investors and others who customarily invest in commercial paper.

Sixth, Mr. Leighton offers no evidence for the proposition that investors in Applicant's commercial

paper, which, as noted above, will be issued in minimum denominations of $100,000, would otherwise hold their funds on deposit in bank accounts subject to FDIC insurance. Moreover, it is doubtful that the offering of these securities would be much more likely to attract funds from FDIC insured accounts than a similar offering of commercial paper by a domestic bank holding company.

Seventh, Mr. Leighton offers no specific information to substantiate in any way the allegations concerning the possibility that the Applicants might use the proceeds of SGBI's commercial paper offering "to sell the dollar short against other foreign currencies" or otherwise in a manner that is detrimental to the interests of the United States.

Eighth, the ability of Applicants to offer paper that may yield a higher return to American investors than OAS can offer provides no basis for determining that the order permitting the offerings of SGBI is not in the public interest or consistent with the protection of investors, since Mr. Leighton's letter does not remotely establish any connection between the issuance of commercial paper by the Applicants and injury to OAS or any other person.

Ninth, the Commission has determined. as a matter within its discretionary authority, that it would be more appropriate to grant conditional relief to foreign commercial banks, such as the Applicants, exempting them from all provisions of the Act, pursuant to Section 6(c) of the Act, rather than to issue a conditional or unconditional order pursuant to Section 7(d) of the Act permitting such companies to register under the Act and to make a public offering of their securities in the United States.

On the basis of the foregoing, Mr. Leighton has raised no issue of fact, law or policy that would warrant the ordering of a hearing on this application. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.[2]

The matters presented by the application have been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the following express conditions:

(1) That the Bank will secure an undertaking from the securities dealer through whom its commercial paper notes will be offered to the public that the dealer will provide to each offeree who has indicated an interest in the notes then being offered, and prior to any sale of notes to such offeree, with a memorandum describing the business of the Bank and SGBI, and containing the most recent publicly available annual audited financial statements of the Bank (audited in accordance with Belgian auditing practices) and the most recent publicly available unaudited quarterly financial statements of the Bank. This memorandum will describe the material differences between Belgian accounting principles applicable to Belgian commercial banks and generally accepted accounting principles applicable to United States commercial banks, and such memorandum will be at least as comprehensive a those customarily used in offering commercial paper in the United States and will be updated periodically to reflect material changes in the business or financial condition of the Bank or SGBI, and

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[2]Mr. Leighton does not allege that he or OAS has an ownership or other direct interest in either of the Applicants, and he has failed to demonstrate that either OAS or any other small United States investment adviser is likely to be perceptibly harmed by the granting of the instant application, or that their interest, if any, is of the type meant to be protected by the Act. While it is apparent that neither Mr. Leighton nor OAS has any real basis for contending that either one of them is an interested person within the meaning of Section 40(a) of the Act and Rule 0-5(c) under the Act, we do not deem it necessary to make a formal determination with respect to the status of Mr. Leighton or OAS inasmuch as we have determined that the assertions made and the issues raised in connection with this application do not warrant a hearing on this matter.

(2) That any future offerings of the Bank's securities in the United States, which will be limited to debt or preferred securities, guaranteed by the Bank, will be done on the basis of disclosure documents at least as comprehensive in their description of the Bank and SGBI, and the business of the Bank and SGBI, as those used in the presently proposed offering but in no event will such future disclosure documents be less comprehensive than is customary for United States offerings of similar debt securities.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11350/September 10, 1980

In the Matter of

BNP US FINANCE CORPORATION
c/o Peter H. Darrow, Esq.
Cleary, Gottlieb, Steen & Hamilton
1 State Street Plaza
New York, New York 10004

(812-4658)

ORDER DENYING REQUEST FOR HEARING AND GRANTING APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

On June 26, 1980, a notice was issued (Investment Company Act Release No. 11233) of the filing of an application on April 10, 1985, with amendments thereto on June 4, June 20 and September 2, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting BNP US Finance Corporation ("Applicant"), a Delaware corporation and a subsidiary of Banque Nationale de Paris ("BNP"), a French commercial bank, from all provisions of the Act. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. The Commission has previously considered applications and issued orders exempting foreign commercial banks proposing to make public offerings of their commercial paper in the United States from all provisions of the Act, subject to certain conditions.[1] The Applicant intends to make a similar public offering of its commercial paper in the United States, and its application conforms in all material respects to the prior foreign commercial bank applications considered by the Commission.

Prior to the expiration of the notice period, on July 21, 1980, Mr. William Leighton, president of Option Advisory Service, Inc. ("OAS"), an investment adviser registered under the Investment Advisers Act of 1940, requested, on behalf of OAS, that a hearing be held on the application.

In summary, the principal assertions made by Mr. Leighton are that (1) the Board of Governors of the Federal Reserve System, rather than the Commission, has primary jurisdiction over Applicant's activities in the United States; (2) the application fails to state that BNP sold $77,500,000 in commercial paper to an American investment company, The Corporate Income Fund, First and Subsequent Short Term Series (A Unit Investment Trust) ("CIF"), between August 29, 1979, and September 25, 1979, and another $60,000,000 prior to August 7, 1979; (3) BNP may have sold commercial paper in the United States in violation of its representations in a 1979 application to the Commission for exemptive relief similar to that now being sought by its subsidiary (Applicant) that it would obtain one of the three highest investment ratings for its commercial paper prior to making a public offering of that paper in the United States; (4) in the event of default on its commercial paper obligations by the Applicant, American investors could not be assured of repayment in United States dollars; (5) because of ownership of over 91% of BNP by the French government, investors in Applicant's commercial paper would be exposed to the possibility that its ability to honor its commitments on its commercial paper would be adversely affected by certain obligations of the French government that are tied to the market price of gold bullion; (6) BNP should have been required or permitted by the Commission to register with the Commission as a foreign investment company under Section 7(d) of the Act rather than exempted from all provisions of

[1]The first seven orders were issued by the Commission on August 7, 1979, and included an exemptive order granted BNP. Investment Company Act Release No. 10813.

the Act pursuant to an order under Section 6(c) of the Act; (7) Option Advisory Services, Inc., and all other small investment advisers registered with the Commission would be adversely affected by the Commission's order on this application because it would permit a large foreign bank to compete with them for speculative capital; and (8) federal banking regulatory agencies were not given sixty days' personal notice of this application.

The Commission has reviewed all of the issues listed above and all other issues presented in Mr. Leighton's hearing request, many of which are irrelevant and speculative, and finds that none of the issues raised has sufficient merit to warrant a hearing on the application. The Commission's responses to the foregoing issues raised by Mr. Leighton may be summarized as follows:

First, the Commission has jurisdiction to determine Applicant's status as an investment company within the meaning of that term in the Act, and to decide whether a conditional exemption from the provisions of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. No other federal agency has been authorized by Congress to make such determinations under the Act.

Second, the alleged sales of commercial paper by BNP between August 29, 1979, and September 25, 1979, and prior to August 7, 1979, were actually private placement sales of certificates of deposit, according to the prospectuses of CIF, which Mr. Leighton cites as a source of his allegations. In any event, Mr. Leighton's references to securities of BNP and CIF are irrelevant to the issue of whether or not the Applicant should be exempted from the Act.

Third, Mr. Leighton offers insufficient support for his suggestion that BNP has been in violation of conditions to its August 7, 1979, order.

Fourth, with regard to assurance of repayment in United States dollars, Applicant has represented that investors in the commercial paper issued by Applicant or BNP pursuant to the terms of Commission orders will be provided disclosure memoranda at least as comprehensive as those that are customary in offerings of commercial paper in the United States. Such disclosure memoranda must contain the financial statements of BNP, the guarantor of Applicant's proposed offerings. The American investors to whom the paper may be expected to be sold should be able to determine prior to purchase that the assets of the issuer are located in France and denominated in French francs and that, in the event of default by the issuer, that they would have to look to such assets for repayment in accordance with the terms of the instruments that they purchase. Mr. Leighton's objection does no more than state the obvious consequences of default by any foreign issuer of securities issued in the United States or elsewhere, and does not have any impact upon the propriety of granting Applicant an exemption from the provisions of the Act. It seems likely that the agreement by Applicant to secure one of the three highest ratings by national ratings services prior to issuance of its commercial paper in a public offering in the United States, together with the fact that such paper can be expected to mature in a relatively short period of time after the rating is received, will mitigate any risk of default.

Fifth, Mr. Leighton cites nothing to support his speculation that American investors in the commercial paper of Applicant or BNP could be adversely affected by refusal of the French government to honor its commitments on loans tied to the price of gold bullion. He does not indicate any plausible way that default by the French government on an unrelated loan obligation could impair, in any way, the ability of Applicant or BNP to honor commercial paper obligations.

Sixth, the Commission has determined, as a matter within its discretionary authority, that it would be more appropriate to grant conditional relief to foreign commercial banks, such as the Applicant and BNP, exempting them from all provisions of the Act, pursuant to Section 6(c) of the Act rather than to act pursuant to Section 7(d) of the Act and issue a conditional or unconditional order permitting such companies to register under the Act and to make a public offering of their securities in the United States.

Seventh, the ability of Applicant and BNP to offer paper that may yield a higher return to United States investors than OAS can offer provides no basis for determining that the order permitting such offerings is not in the public interest or consistent with the protection of investors, since Mr. Leighton's letter does not remotely establish any connection between the issuance of commercial paper by BNP or the Applicant and injury to OAS or any other person.

Eighth, all applicable notice requirements were met with regard to this application. There is no statutory or other requirement that federal bank regulatory agencies be given sixty days' personal notice of applications under the Act.

On the basis of the foregoing, Mr. Leighton has raised no issue of fact, law or policy that would warrant the ordering of a hearing on this application. Therefore, it appears that a hearing is not necessary or appropriate in the public interest or for the protection of investors. Accordingly,

IT IS ORDERED that the request for a hearing is denied.[2]

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the express condition, with regard to both presently proposed and future offerings of Applicant's debt securities in the United States, that Applicant comply with its undertakings that it will ensure that each dealer in the securities issued by Applicant and guaranteed by BNP will provide each offeree thereof with a disclosure memorandum at least as comprehensive as those customarily used in offerings of commercial paper in the United States or, in the case of other debt securities, disclosure documents that will be no less comprehensive than is customary for United States offerings of similar debt securities and that such memoranda (1) will describe the business of BNP and Applicant, (2) will contain BNP's most recent publicly available financial statements, audited in accordance with French auditing practices, (3) will include a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by United States banks, and (4) will be updated as promptly as practicable to reflect material adverse changes in BNP's financial status.

By the Commission.

George A. Fitzsimmons
Secretary

[2]Mr. Leighton does not allege that he or OAS has an ownership or other direct interest in the Applicant, and he has failed to demonstrate that either OAS or any other investment adviser registered with the Commission is likely to be perceptibly harmed by the granting of the instant application, or that their interest, if any, is of the type meant to be protected by the Act. While it is apparent that neither Mr. Leighton nor OAS has any real basis for contending that either one of them is an interested person within the meaning of Section 40(a) of the Act and Rule 0-5(c) under the Act, we do not deem it necessary to make a formal determination with respect to the status of Mr. Leighton or OAS inasmuch as we have determined that the assertions made and the issues raised in connection with this application do not warrant a hearing on this matter.

LITIGATION

Litigation Release No. 9174/September 5, 1980

SEC v. FREDERICK L. ROSS, ET AL. (S.D. Oh.) Civil No. C-2-80-609

William D. Goldsberry, Administrator of the Chicago Regional Office, announced that on August 22, 1980, the Honorable John D. Holschuh, United States District Judge for the Southern District of Ohio, Eastern Division, entered a Final Judgment and Order Granting a Permanent Injunction Against James R. Neeb (Neeb). The Order enjoins him from future violations of the registration and antifraud provisions of the Federal securities laws. Neeb consented to the entry of this Order without admitting or denying the allegations in the Commission's Complaint.

The Complaint, filed on July 17, 1980, alleged that Neeb and others had violated the Federal securities laws while offering and selling limited partnerships interests in oil and gas programs. According to the

Complaint, the defendants misrepresented material facts and omitted to state material facts concerning, among other things, the use of the proceeds derived from the sale of the interests; the anticipated return on investment and the time period when those returns would be received; the value of lands under lease; the financial condition of the companies; the lack of access to company records; and the profits received by Frederick L. Ross.

(For further information, see Litigation Release No. 9138.)

Litigation Release No. 9175/September 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *STARRETT HOUSING CORPORATION* United States District Court for the District of Columbia, Civil Action No. 80-2269

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against Starrett Housing Corporation ("Starrett") with offices at 909 Third Avenue, New York, New York 10022. The Commission's Complaint alleges violations of the reporting provisions of the federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Starrett as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended December 31, 1979, required to have been filed with the Commission by March 30, 1980 and its Quarterly Reports on Form 10-Q for its fiscal quarters ended March 31, 1980 and June 30, 1980, required to have been filed by March 15, 1980 and August 14, 1980, respectively.

The Complaint requests that the Court order Starrett to file forthwith, with the Commission, its delinquent Annual and Quarterly Reports on Forms 10-K and 10-Q. In addition, the Commission requests that the Court enjoin Starrett from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9176/September 8, 1980

SEC v. *HARRY T. McCLAIN* (USDC W.D. of Texas, Civil Action File No. SA-78-CA-105)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on August 11, 1980 the Honorable Fred Shannon of the United States District Court for the Western District of Texas (San Antonio Division) signed an Order Dismissing Complaint as to Harry T. McClain, formerly of Houston, Texas, without prejudice to Plaintiff's refiling a complaint at a later date. The Complaint in this matter was filed on March 18, 1976 and after diligent efforts service of the Summons and Complaint could not be effected on Mr. McClain.

For further information see litigation release no.'s 8360 and 8728.

Litigation Release No. 9177/September 8, 1980

SECURITIES INVESTOR PROTECTION CORPORATION v. *YASIN JAFFER* (N. D. Ill., 80 C 4399)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities Exchange Commission, announced that on August 18, 1980 the Securities Investor Protection Corporation (SIPC) filed a Complaint and Application in the United States District Court for the Northern District of Illinois under the Securities Investor Protection Act of 1970 (SIPA) against Yasin Jaffer (Jaffer). SIPC alleged that Jaffer was in danger of failing to meet his obligations to those who may be his customers. SIPC requested that the Court issue a protective decree that Jaffer's customers are in need of protection; and that SIPC be appointed trustee to liquidate Jaffer's business as a broker-dealer. On August 26, 1980, the Securities and Exchange Commission (Commission) entered its appearance in the SIPC action against Jaffer.

On January 9, 1980, the Commission had instituted public administrative proceedings, pursuant to the Securities Exchange Act of 1934 (Exchange Act), against Jaffer, a registered broker-dealer located in Chicago, Illinois. The Order which instituted the administrative proceedings alleged that Jaffer wilfully violated the antifraud provisions of the

securities laws in that he made misrepresentations and omitted to state material facts to customers, converted customer funds, and forged checks; that he wilfully violated the recordkeeping and reporting requirements of the Exchange Act; and that he failed to send confirmations of securities transactions to customers. Jaffer failed to answer the Commission's Order. Jaffer's registration as a broker-dealer was revoked on February 21, 1980, and he was barred from associating with any broker or dealer.

On August 28, 1980, without admitting or denying the allegations in the SIPC Complaint and Application, Jaffer consented to an Order appointing a trustee for the liquidation of his business. An Order was entered on August 28, 1980 by the Honorable Nicholas J. Bua of the Northern District of Illinois that the securities customers of Jaffer are in need of the protection afforded by SIPA; and appointed SIPC as trustee for the liquidation of Jaffer's business. Judge Bua removed the liquidation proceeding to the Bankruptcy Court of the Northern District of Illinois.

Litigation Release No. 9178/September 8, 1980

SEC v. *HARRY T. McCLAIN, ET AL* (USDC. Western District of Texas Civil Action No. SA 78-CA-105)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on August 27, 1980, the Honorable Fred Shannon, United States District Judge for the Western District of Texas, San Antonio Division, signed a Default Judgment against William C. Simpson of San Antonio, Texas. The defendant was permanently enjoined from violating the antifraud provisions of the federal securities laws in connection with the offer for sale, sale, or offer to purchase or purchase of fractional undivided interests in oil, gas or other mineral rights, or any other security whatsoever.

The Complaint in this matter was filed on March 23, 1978 and defendant Simpson was served with a summons and complaint on March 24, 1978. Simpson failed to file an answer by August 14, 1980 after he was ordered to do so by the court.

For further information see Litigation Releases 8360 and 8728.

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20/19

sec docket

VOLUME 20, NO. 19 SEPTEMBER 30, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6241-42	1475
Securities Exchange Act	17143-55	1515
Public Utility Holding Company Act	21712-18	1521
Trust Indenture Act	584-88	1527
Investment Company Act	11351-64	1528
Investment Advisers Act	719-30	1545
Litigation	9179-83	1545
Freedom of Information Act	61	1548

This listing covers releases issued from 9/12/80-9/18/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENTS

33-6241 Statement Concerning Codification of the Federal Securities Laws.

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RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17143	34-17146	34-17150
34-17144	34-17147	34-17155
34-17145	34-17148	

33-6241 Final Rules providing procedures whereby persons submitting information to the Commission may request that such information not be released in response to a Freedom of Information Act request.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6241/September 12, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17149/September 12, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21712/September 12, 1980

SE 1.29:

TRUST INDENTURE ACT OF 1939
Release No. 584/September 12, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11354/September 12, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 729/September 12, 1980

FREEDOM OF INFORMATION ACT
Release No. 61/September 12, 1980

CONFIDENTIAL TREATMENT PROCEDURES UNDER THE FREEDOM OF INFORMATION ACT

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule to provide a procedure whereby persons submitting information to the Commission may request that such information not be released in response to a Freedom of Information Act request. The rule is designed to allow such persons to request that the Commission invoke Freedom of Information Act exemptions to protect personal privacy or business confidentiality, or for other reasons recognized by federal law. The proposed rule has guided the Commission's action in this area since its publication. *See* 45 FR 1627 (Jan. 8, 1980). The Commission is requesting comments on the rule's implementation and it intends to review the rule after approximately one year.

DATES: Effective [30 days after publication in the *Federal Register*]. Comments on the rule's implementation and operation must be received on or before [one year after publication].

ADDRESSES: All communications concerning this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such communications should refer to File No. 4-229 and will be available for publication inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Harlan W. Penn, Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2454.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today adopted a rule, Section 200.83, Subpart D of Part 200, Chapter II, Title 17, Code of Federal Regulations, relating to requests for confidential treatment under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. On December 28, 1979, the Commission proposed the rule for public comment, *see* 45 FR 1627 (Jan. 8, 1980), and the proposed rule has been revised in certain respects to reflect the views of the commentors.

Background

The Securities and Exchange Commission must carefully weigh competing interests in fulfilling its obligations to disclose records to the public under the FOIA while preserving the legitimate confidentiality of the corporations and individuals who submit information to the Commission. The Commission is very sensitive to the concerns of self-regulatory organizations, corporations, and individuals with respect to the confidentiality of records obtained by the Commission. To the extent permitted by law, and consistent with the Commission's responsibilities, the Commission desires to alleviate legitimate concerns and to assure submitters of information that the Commission will seek to preserve the confidentiality of such material against disclosure under the FOIA.

The Commission previously has adopted procedures for granting confidential treatment with respect to documents which, in the normal course of Commission business, would be placed in public files upon their receipt by the Commission. *See* 17 CFR 240.24b-2. Those procedures were adopted in order that the Commission could determine whether or not to grant confidential treatment to such records at the time of receipt.

The rule adopted today creates procedures which will apply to documents for which there is no other specific procedure and which, in the normal course of Commission business, would not be placed in a public file. The Commission would resolve any request for confidential treatment under these new procedures only at such time as a FOIA request is made for the particular documents.

These procedures reflect the Supreme Court's decision in *Chrysler* v. *Brown*, 99 S.Ct. 1705 (1979), in which the Court held that, while other remedies may be available, submitters have no right to *de novo* review under the FOIA of an agency's decision to release purportedly confidential records. As a result

of this decision, the Commission is concerned that submitters may not be able to protect their interests without imposing an undue burden upon the Commission's processes. Accordingly, this rule provides procedures for determining a request for confidential treatment. These procedures do not establish substantive criteria for resolving confidential treatment requests. Nor do they affect the responsibility of self-regulatory organizations, corporations and individuals to comply promptly with requests by the Commission or its staff for documents pursuant to the federal securities laws and rules thereunder. Rather, the procedures are designed to give the Commission the maximum amount of flexibility in determining issues related to confidentiality on a case-by-case basis in accordance with applicable law and an evaluation of the impact of disclosure on the legitimate interests of affected persons, as well as of the Commission's ability promptly to acquire information in the future.

The rule applies to any information obtained by the Commission but not publicly filed; for example, the rule will apply, *inter alia*, to records obtained in the course of Commission inspections and investigations and to records (other than those required to be filed and made publicly available) submitted in connection with the Commission's review of applications or filings. The proposed rule, however, will not affect the appliability of sections of the federal securities laws or other federal statutes which either require or authorize the confidential treatment of information on the basis of standards other than those contained in the FOIA,[1] nor are these rules intended to apply in cases where the Commission has rules of specific applicability governing the treatment of specific types of records,[2] or where the Commission establishes other procedures, on an *ad hoc* basis, in connection with a particular study, report or investigation [*see* 17 CFR 200.83(e)(1)]. This rule will supplement the Commission's existing regulations governing the FOIA [*see* 17 CFR 200.80] by establishing procedures which will allow the Commission to ascertain whether a request for confidentiality has been made with respect to material sought under the FOIA and to resolve the request.

Significant Revisions in the Rule

The comments generally supported the establishment of procedures for determining whether to treat information as confidential. Many comments, however, expressed concern about particular aspects of the proposed rule. The proposed rule has been modified in response to those concerns and after further study by the Commission and its staff. Significant comments and related revisions are discussed below.

1. A few comments reflected confusion over the purpose and coverage of the proposed rule. The rule has been amended to emphasize that its application is limited to requests that information submitted to the Commission not be disclosed under the FOIA. The Commission intends this rule to provide an opportunity for submitters of information to set forth their views for the Commission's consideration in determining whether to disclose particular records under the FOIA. The rule is not intended to alter the substantive rights of any person to obtain or protect information under the FOIA or any other federal statute or regulation.

2. The proposed rule referred to "documents" or "records" and appears, in this context, to be too narrow. It is the Commission's intent that the new rule provide an opportunity for confidential treatment to be requested with respect to any type of information submitted to the Commission, including, without limitation, all "records," as defined in Sections 3(a)(37) and 24(a) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78c(a)(37) and 78x(a), whether or not that information specifically may be subject to the FOIA as it is presently interpreted. Accordingly, the word "information" has been substituted for the words "document(s)" or "record(s)," except where the context clearly requires reference to records. Since this rule is procedural only, it is unnecessary to consider in this context whether and to what extent various types of information submitted to the Commission become "agency records" within the meaning of the FOIA.

3. Many comments indicated concern that the

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[1]*See, e.g.*, Section 210 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-10.

[2]*See* Rule 24b-2 under the Securities Exchange Act, 17 CFR 240.24b-2 (applicable to records filed pursuant to the securities acts, in circumstances where the data filed would otherwise become a part of the Commission's public files, and thus immediately available to anyone upon request); 17 CFR 200.81 (concerning requests made of the Commission's staff for legal advice or opinions).

substantiation for a confidential treatment request proposed to be required at the time the material in question was submitted to the Commission was unduly burdensome. Most comments urged that the Commission should instead require only the submission of a statement requesting confidentiality at the time the Commission received the information and then require prompt substantiation of that request only when a request for the information under the FOIA is received.

The proposed rule reflected the Commission's concern that delaying substantiation of a confidential treatment request might impede the Commission's ability to meet the strict time limits of the FOIA. The FOIA requires that the Commission respond to requests for access to records within ten business days. *See* 5 U.S.C. 552(a)(6)(A)(i). This has proven difficult, especially where extensive files must be examined to determine if information should be withheld. The Commission believes it essential that persons requesting confidential treatment provide necessary information promptly in order for the Commission to reach timely decisions. Nevertheless, the Commission is persuaded that requiring detailed substantiation at the time the information is submitted may not be necessary. Accordingly, the Commission will not require detailed substantiation of a confidential treatment request under this rule until the information is requested under the FOIA. The Commission intends to review this rule after one year and may amend the rule to reincorporate the prior substantiation requirement if experience indicates that persons requesting confidential treatment cannot provide adequate substantiation of their requests within a time frame consistent with the Commission's obligations under the FOIA or if the Commission is receiving an undue number of nonmeritorious requests for confidential treatment.

If a Commission determination to withhold particular records from disclosure is subject to challenge in court, the Commission must bear the burden of demonstrating that one or more FOIA exemptions are applicable. Thus, in addition to substantiating their requests at the administrative level, submitters of information may be required to assist the Commission in presenting necessary substantiation to the courts. *See, e.g., Vaughn* v. *Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

4. Some comments raised concerns regarding the practicality of requiring a submitter of information to supply substantiation for a confidential treatment request when that request is made on behalf of another person. This might occur, for example, when a self-regulatory organization submits information to the Commission pertaining to one of its members and that member regards the information in question as confidential. The rule has been amended to provide that, under such circumstances, an initial request for confidential treatment may be made by the submitter on behalf of other persons. If the submitter is unable to substantiate the request, the submitter must so indicate in the initial request and furnish the name and address of the person or persons who can supply substantiation.

5. Some comments questioned the adequacy of the period provided in which submitters of information may appeal an initial determination denying the confidential treatment request to the Commission. In light of the change described in paragraph 3 above, the Commission believes that a ten-day appeal period is ample, since the person requesting confidential treatment will have recently submitted detailed substantiation for that request. Those who are particularly concerned about the adequacy of this period might consider expanding their initial substantiation or otherwise furnishing detailed substantiation in advance of the Commission's receipt of any request under the FOIA for access to the information.

The revised rule does provide for a discretionary extension of the appeal deadline for good cause shown; such extensions will be granted only in exceptional circumstances, however, since the Commission should respond to requests for information in 10 business days. *See* 5 U.S.C. 552(a)(6)(A)(i).

6. Revisions have been made to clarify the procedures for issuance of a Commission order denying a confidential treatment request. Disclosure may occur ten days after notice to the submitter of the denial of the request, but the proposed rule has been amended to provide that the Commission's order denying confidential treatment will be stayed, if within that ten-day period the Commission is notified that the confidential treatment requestor has instituted an action in federal court for review of that decision and for an

order preventing disclosure.[3] Some comments suggested that this stay should remain in effect until all court proceedings have been resolved and the rule has been amended accordingly; but, the Commission retains its discretion to dissolve the stay, on its own motion or that of the FOIA requestor, with appropriate notice to be given the confidential treatment requestor.

7. Some comments objected to the proposed exception from the rule's application where the Commission in the future specifies an alternate procedure for requesting confidential treatment in connection with a particular matter. The Commission must retain this provision in order to assure maximum flexibility in responding to the concerns of submitters of information because, in some circumstances, different procedures may be justified. Any such alternate procedures will entail appropriate notice and an adequate opportunity to substantiate confidential treatment requests.

8. Some comments were critical of the provision in the proposed rule which would create a presumption that, where no request for confidentiality has been received, the submitter of the information has waived any interest in urging the Commission to assert an FOIA exemption. The Commission has concluded, however, that this provision should be retained. If the Commission cannot assume that the submitter does not object to the release of records which have not been indicated as confidential, the processing of FOIA requests will be greatly complicated. In any event, such a presumption will not be conclusive; the rule provides that, in appropriate circumstances, the Commission may inquire whether persons to whom information pertains wish to request confidential treatment even where such a request was not initially submitted. The presumption of waiver encourages submitters to request confidential treatment in accordance with the rule when information is furnished to the Commission, but allows the Commission an opportunity to solicit the views of persons who may be affected by public disclosure even where the submitter fails to make such a request.

9. A few comments suggested that the rule be amended to provide that Commission deliberations concerning confidential treatment requests be closed to the public. Although such deliberations typically will be nonpublic, the decision to close a Commission meeting must be made on a case-by-case basis in light of the procedures set forth in the Government in the Sunshine Act, 5 U.S.C. 552b, and the Commission's rules thereunder, 17 CFR 200.400 *et seq.*

10. Some comments expressed concern about the Commission's ability to safeguard confidential information against accidental release. To prevent inadvertent public disclosure, the Commission has modified the rule in two respects. First, where pages of documents submitted are individually marked with a notice that confidential treatment is requested, that marking should include the name of the submitter. Second, in the less preferable instance where records are submitted under a cover sheet prominently marked "Confidential Treatment Requested by [name]," the rule now provides that each of the records as to which confidential treatment is requested should be individually marked with an identifying number and code. For example, in the case where John Doe submits documents with a request for confidentiality and uses the cover page procedure, each of the documents should be marked serially (*e.g.*, "JD-1"; "JD-2"). As an additional assurance against inadvertent disclosure, submitters should be careful to specify in detail the records subject to their confidential treatment request.

11. Some comments urged that the rule define substantive criteria for determining confidential treatment issues. In making case-by-case determinations in this area, the Commission must adhere to the principles set forth in the FOIA and the Commission's rules thereunder, other applicable statutes, and judicial precedents. The information

[3]In the Commission's view, federal jurisdiction to review such an order lies in the court of appeals. *See Continental Stock Transfer and Trust Co.* v. *Securities and Exchange Commission*, 566 F.2d 373 (C.A. 2, 1977) (review by the court of appeals, pursuant to 15 U.S.C. 78y(a), of denial of confidential treatment request under 17 CFR 240.24b-2). *But see Chrysler Corp.* v. *Brown, supra*, 99 S.Ct. at 1725 n.47 (*dicta* indicating jurisdiction to review agency decision to release records under FOIA may be in district court pursuant to 28 U.S.C. 1331).

received by the Commission is varied and the need for confidentiality can arise in many circumstances. Thus, and in light of the rapidly developing law in this area, adoption of substantive criteria is premature at this time.

Effective Date of Rule; Request for Additional Comments

The rule will be effective [30 days after publication in the *Federal Register*]. The Commission intends to review the rule after approximately one year. Comments received prior to [one year after date of publication in the *Federal Register*], will be considered by the Commission during this review.

Authority

This rulemaking is effected under the authority of the FOIA, 5 U.S.C. 552; the Administrative Procedure Act, 5 U.S.C. 553; Section 19 of the Securities Act of 1933, 15 U.S.C. 77s; Sections 23 and 24 of the Securities Exchange Act of 1934, 15 U.S.C. 78w, 78x; Section 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79t; Section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; Section 38 of the Investment Company Act of 1940, 15 U.S.C. 80a-37; and Section 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-11.

Text of Rule

Subpart D of Part 200 of Chapter II of Title 17, Code of Federal Regulations, is amended by adding §200.83, to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§200.83. Confidential treatment procedures under the Freedom of Information Act.

(a) *Purpose.* This section provides a procedure by which persons submitting information in any form to the Commission can request that the information not be disclosed pursuant to a request under the Freedom of Information Act, 5 U.S.C. 552. This section does not affect the Commission's right, authority, or obligation to disclose information in any other context. This section is procedural only and does not provide rights to any person or alter the rights of any person under the Freedom of Information Act or any other applicable statute or regulation.

(b) *Scope.* The provisions of this section shall apply only where no other statute or Commission rule provides procedures for requesting confidential treatment respecting particular categories of information (*see, e.g.,* 17 CFR 240.24b-2) or where the Commission has not specified that an alternative procedure be utilized in connection with a particular study, report, investigation, or other matter. The provisions of this section shall not apply to any record which is contained in or is part of a personnel, medical or similar file relating to a Commission member or employee which would normally be exempt from disclosure pursuant to Section 552(b)(6) of Title 5, United States Code.

(c) *Written request for confidential treatment to be submitted with information.* (1) Any person who, either voluntarily or pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, which information is entitled to confidential treatment and for which no other specific procedure exists for according confidential treatment, may request that the Commission afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, or for any other reason permitted by federal law, and should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Commission (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which specifies the information as to which confidential treatment is requested.

(2) Except in the circumstances covered by paragraph (c)(4), all records which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an

identifying number and code so that they are separately identifiable.

(3) In addition to providing a copy of any written request for confidential treatment required by this section to the Commission personnel receiving the information in question, the person requesting confidential treatment shall also deliver or send by mail a copy of the request (but not the records to which the request applies) to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20549. The written request shall be clearly and prominently identified on the envelope or other cover and on the top of the first page by the legend "FOIA Confidential Treatment Request" and shall contain the name, address and telephone number of the requestor. The requestor is responsible for informing the Commission promptly of any changes in address or telephone number. In case records submitted are not individually marked "Confidential Treatment Request by [name]," the written request for confidential treatment should refer to the identifying number and codes placed on the records.

(4) In some circumstances, such as when a person is testifying in the course of a Commission investigation or providing documents requested in the course of a Commission inspection, it may be impracticable to submit a written request for confidential treatment at the time the information is first provided to the Commission. In no circumstances can the need to comply with the requirements of this section justify or excuse any delay in submitting information to the Commission. Rather, in such circumstances, the person testifying or otherwise submitting information should inform the Commission employee receiving the information, at the time the information is submitted or as soon thereafter as possible, that the person is requesting confidential treatment for the information. The person shall then submit a written request for confidential treatment within 30 days of the submission of the information. Any request for confidential treatment submitted pursuant to this paragraph shall be clearly and prominently identified as provided in paragraph (c)(3) of this section and shall be delivered or sent by mail both to the Commission personnel who received or is known to have custody of the information and to the Freedom of Information Act Office, Securities and Exchange Commission, Washington, D.C. 20549.

(5) Where confidential treatment is requested by the submitter on behalf of other persons, the request should identify those persons and provide the telephone number and address of such person or the responsible representative thereof if the submitter would be unable to provide prompt substantiation of the request at the appropriate time.

(6) No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under the Freedom of Information Act is received.

(d) *Substantiation of request for confidential treatment.*

(1) If it is determined that records which are the subject of a request for access under the Freedom of Information Act are also the subject of a request for confidential treatment under this rule and no other grounds appear to exist which would justify the withholding of the records [e.g., Freedom of Information Act Exemption 7(a), 5 U.S.C. 552(b)(7)(A)], the Commission's Freedom of Information Act Officer promptly shall so inform the person requesting confidential treatment or, in the case of a request made on behalf of a person other than the submitter, the person identified as able to provide substantiation, by telephone, telegram or express mail and require that substantiation of the request for confidential treatment be submitted in ten calendar days.

(2) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determinations by the Commission, other federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Commission;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether the commercial or financial information was voluntarily submitted to the Commission, and if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Commission;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential treatment; and

(ix) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is not warranted with respect to all or part of the information in question, the person requesting access to the information under the Freedom of Information Act and the person requesting confidential treatment will be so notified by telephone, telegram or express mail. The person requesting confidential treatment will also be informed that any appeal of such decision must be taken to the Commission within 10 calendar days of the date of the notice. Information which is determined not to be entitled to confidential treatment may be released under the Freedom of Information Act ten calendar days after notice to the person requesting confidential treatment. If within that ten calendar day period the Commission has actually received an appeal from the person requesting confidential treatment, the person requesting access to the information under the Freedom of Information Act will be informed of the pending appeal and that no disclosure of the information will be made until the appeal is resolved.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by the legend "FOIA Confidential Treatment Appeal." The appeal should be delivered or sent by mail to the Freedom of Information Act Officer, Securities and Exchange Commission, Washington, D.C. 20549. The person requesting confidential treatment may supply additional substantiation of the request for confidential treatment in connection with the appeal to the Commission.

(3) All appeals taken under this section will be considered by the Commission as expeditiously as circumstances permit. Although other procedures may be employed, to the extent possible, the Commission will decide the matter on the basis of the affidavits and other documentary evidence submitted by the interested persons and such other information as is brought to the attention of the Commission in accordance with the provisions of §201.28 of this chapter.

(4) If the Commission determines that confidential treatment is not warranted with respect to all or any part of the information in question, an appropriate order will issue and the person requesting confidential treatment will be so informed by telephone, if possible, with a telegram or express mail letter directed to the person's last known address. Disclosure of the information under the Freedom of Information Act will occur ten calendar days after notice to the person requesting confidential treatment, subject to any stay entered pursuant to paragraph (e)(5) of this section.

(5) If within that ten calendar day period the Commission has been notified that the person requesting confidential treatment has commenced an action in a federal court concerning the Commission's determination to make such information publicly available, the Commission will stay making the public disclosure of the information pending final judicial resolution of the matter. The Commission may vacate a stay under this section either on its own motion or at the request of a person seeking access to the information under the Freedom of Information Act. If the stay is vacated, the information will be released under the Freedom of Information Act ten calendar days after the person

requesting confidential treatment is notified of this action by telephone, if possible, with a telegram or express mail letter sent to the person's last known address, unless the court orders otherwise.

(f) *Initial determination that confidential treatment is warranted.* If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is warranted, the person submitting the information and the person requesting access to the information under the Freedom of Information Act will be so informed by mail. The person requesting access, pursuant to the Freedom of Information Act, will also be informed of the right to appeal the determination to the Commission. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. See CFR 200.80(d)(6).

(g) *Effect of no prior request for confidentiality.* (1) If access is requested under the Freedom of Information Act to information which is submitted to the Commission on or after [30 days after effective date of this section] with respect to which no request for confidential treatment has been made pursuant to either paragraph (c)(1) or (c)(4) of this section, it will be presumed that the submitter of the information has waived any interest in asserting an exemption from disclosure under the Freedom of Information Act for reasons of personal privacy or business confidentiality, or for other reasons.

(2) Notwithstanding paragraph (g)(1) of this section, in appropriate circumstances, any person who would be affected by the public disclosure of information under the Freedom of Information Act may be contacted by Commission personnel to determine whether the person desires to make a request for confidential treatment. Any request for confidential treatment that is asserted in response to such inquiry shall be made in accordance with provisions of this section.

(h) *Extensions of time limits.* Any time limit under this section may be extended, in the discretion of the Commission or the Commission's Freedom of Information Act Officer, for good cause shown.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6242/September 18, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17153/September 18, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21716/September 18, 1980

TRUST INDENTURE ACT OF 1939
Release No. 586/September 18, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11362/September 18, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 730/September 18, 1980

STATEMENT CONCERNING CODIFICATION OF THE FEDERAL SECURITIES LAWS

ACTION: Publication of Commission Statement of Position.

SUMMARY: The Commission has authorized the publication of a statement setting forth its position concerning codification of the federal securities laws. The Commission has determined to support the proposed Federal Securities Code as revised to incorporate certain changes which reflect agreements reached in discussions between the Commission and the ALI's Reporter and a group of his advisers. The text of those amendments is appended to this release. The Commission's statement also emphasizes that its support for codification is based upon its overall assessment of such a code; in the event that this proposal is significantly amended during the legislative process, the Commission will have to reconsider its position in light of the document as it then exists.

FOR FURTHER INFORMATION CONTACT: Donald C. Langevoort, Special Counsel, Office of the General Counsel, (202) 272-2426, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today authorized the publication of the following statement of position concerning codification of the federal securities laws:

After extensive review and analysis, the Commission has determined to support enactment of the Federal

Securities Code[1] as revised to incorporate certain changes which reflect agreements reached in discussions between the Commission and the ALI's Reporter and a group of his advisers.[2] The Commission's support is premised upon the assumption that any legislation which may ultimately be adopted will maintain the integrity and content of this proposal; if substantial changes are made during the course of the legislative process, the Commission will, of course, evaluate the document as it then exists and reassess its support.

Members of the Commission and its staff have followed the ALI's codification project since its inception almost 11 years ago. In addition, during the past two years, the Commission has devoted extensive resources to careful scrutiny of the ALI's proposal. Based on that review, the Commission concluded that certain changes to the Official Draft which the Institute approved in 1978 were needed in order fully to harmonize that proposal with the objectives which are embodied in present law and which the Commission has administered during the past 45 years. These changes are the product of the Commission's lengthy and detailed discussions with the ALI's Reporter and certain of his advisers and represent the consensus of both groups. In considering the ALI's draft, the Commission was sensitive to the importance of preserving the underlying framework, the structure of particular sections, and the reforms embodied in the ALI's document to the greatest extent possible. While not every provision is cast in the manner which the Commission might prefer, the Commission believes that the proposal which has resulted from this effort would be consistent with the spirit and goals of the existing federal securities laws and would contribute to the state of the law.

The Commission recognizes the strength, effectiveness, and relative brevity of the existing federal securities statutes. This brevity, and the complexity of the subject, have, however, given rise to a large body of nonstatutory law and practice embodied in Commission rules, court decisions, administrative rulings, staff interpretations, and other sources. The Commission, therefore, believes that enactment of this proposal would, on the whole, promote greater predictability and certainty in the interpretation of the federal securities laws and would, thus, promote investor protection, the integrity of our Nation's securities markets, and the capital formation process.

The need for Congress to consider clarifying important aspects of existing law is particularly pronounced in light of recent judicial decisions. The Supreme Court has, for example, limited the existence of private rights of action. The proposal strikes a new balance between the scope and nature of private actions and the extent of potential liability in such litigation, and the Commission believes that this resolution is appropriate.

Similarly, enactment of the proposed code would provide a specific new statutory base for evolving regulatory initiatives. For example, in some respects, such as the integration of the Securities Act and Securities Exchange Act disclosure requirements, it would affirm the approach which the Commission is taking in administering present law.

The Commission is fully aware of the complex, difficult, and time consuming task which Congress would face in reviewing this proposal. The Commission also recognizes that Congress, quite properly, will exercise its own independent judgment regarding specific provisions of this proposal, and that interested groups may seek to accomplish goals not presently embodied in this codification. Should that process result in significant changes in this document, the Commission will, of course, reassess whether the codification package, as a whole, remains consistent with the protection of investors and the integrity of the markets, and thus whether the Commission can continue to support the proposal.

The Commission also notes that the Reporter and his advisers, with the Commission's concurrence, have omitted from this proposal certain important issues which Congress may find it appropriate to consider prior to, or simultaneously with, its consideration of codifying the securities laws. For example, the Commission has recently transmitted to Congress proposals which would amend Sections 13 and 14 of the Securities Exchange Act of 1934 to create a

[1]The American Law Institute adopted its Federal Securities Code "Official Draft" on May 19, 1978. That document was recently published by the Institute in a two-volume set including the reporter's commentary.

[2]Appendix A to this release sets forth these amendments. Appendix B is a commentary on those changes by the ALI's Reporter, Professor Louis Loss.

revised scheme regulating tender offers and other changes in corporate control. This and similar separable issues, which the Commission may bring to Congress's attention prior to the likely time frame for completion of any consideration of codification of the securities laws, have been omitted in order to avoid further multiplication of the complex legal and policy issues which Congress must confront. In the event that Congress does act on these issues while codification is under consideration, the legislative proposal for which the Commission is today announcing its support will, of course, need to be changed to reflect those developments.

Because of the number and range of matters which this proposal covers, the Commission is not issuing specific comments on particular provisions at this time. The Commission will be prepared, in whatever forum Congress may request, to explain fully the impact of particular provisions, to offer the benefit of its expertise and experience to Congress and its staff, and to facilitate to the greatest extent possible a thorough and informed review of the legislation.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX A

This appendix describes changes to the Official Draft of the American Law Institute's proposed Federal Securities Code to which both the Commission and the ALI's reporter and a group of his advisers have agreed. However, not all of the amendments to the Official Draft set forth in this appendix were the subject of discussion between the Commission and the reporter; rather, some of these changes originated with the reporter and his advisers, others in the Office of the House Legislative Counsel, and some from other groups outside of the Commission.

The material set forth below was prepared by the ALI's reporter, Professor Louis Loss of the Harvard Law School. Page and section references in this appendix refer to the two-volume *Federal Securities Code* recently published by the ALI.

* * *

COMMENTS ON STYLE

P. lix, Comment (3). *References to specific parts.* Moreover, a provision like §202(143)(F)(v) that applies "for purposes of Part XVI" contemplates those sections in Parts XVII and XVIII that apply to conduct in violation of Part XVI.

Table of Contents

Change §202(143)(F) *to* Exchanges, issuances, dividends, loans, and hypothecations.

Insert: §1609(f) General.

Delete §1702(c). *Change* (d)-(f) *to* (c)-(e).

Change §1705 *to* Registrant's false filings generally, and failure to correct.

Change §1705(f) *to* (g). *Insert:* (f) False annual reports.

Change §1722 (a) *to* When actions may be implied.

Change §1722 (b) *to* When actions may not be implied.

Change §1725(d) *to* In pari delicto.

Insert: §1802(j) Commission contracts

Insert: §1819(o) Service of supoenas.

§101(7) (Necessity for a Code)

Before "(B)," *delete:* and. At end, before the period, *insert:*

, and.(C) to further the integrity of the capital marketplace and thereby to promote the process of capital formation on which the American economic system so heavily depends

COMMENT: This is designed to avoid any question, for example, whether initiatives designed to further capital formation by small business extend beyond the disclosure and antifraud policies of Parts IV-VI.

§202(7)(A)(iii) (Associate)

Substitute:

or (iii) when the specified person is a broker, dealer,

municipal broker, municipal dealer, or investment adviser, a limited partner or stockholder if (I) there are no more than five partners or stockholders of all classes, or (II) the limited partner or stockholder has at least 5 percent of the total equity or voting power or a right to at least 5 percent of the distributable profits.

COMMENT: Clause (iii) has been made to apply only to a "limited partner" because Clause (i) covers a "director" and *all* general partners are "directors" within §202(40), infra, regardless of whether the conditions in Clauses (I) and (II) are satisfied.

§202(34) (Dealer)

Substitute:

(34) DEALER.—

(A) GENERAL.—* * * but the term does not include (i) * * *, or (ii) any other institutional investor that is not otherwise a dealer.

(B) DEALING IN ONE'S OWN SECURITIES.—A person who would be a dealer if section 202(34)(A) applied with respect to securities of which it is the issuer is a dealer (i) to the extent provided by rule, or (ii) if it elects to register under section 703.

COMMENT: (1) §202(34)(A)(ii): The phrase "or similar person" after "institutional investor" has been deleted as unduly vague. But no negative implication is intended that a person not within the definition of "institutional investor" *is* automatically a dealer.

(2) §202(34)(B)(i): This has been inserted in contemplation of oil and gas limited partnerships organized by the same syndicate, etc.

§202(40) (Director)

Substitute:

(40) DIRECTOR.—"Director" means a director of a corporation, a partner other than a limited partner, or a person occupying a similar status or performing similar functions with respect to any other company; but the term does not include a person who deputizes another person to be a director.

COMMENT: The partnership language has been inserted because some large partnerships have management committees that resemble boards of directors, so that other partners might not come within the language of the Official Draft. The single word "partner," which is not defined, is used in the Code only when it is intended to include a limited partner.

§202(41)(B)(iii) (Distribution: Limited Offering)

No change.

COMMENT: One type of further condition might be a clean record so far as previous violation of the Code is concerned.

§202(41)(B)(iv) (Distribution: Limited Offering)

Renumber §202(41)(B)(iv)-(viii) as (v)-(ix); in §202(41)(B)(i)(III), and also §202(41)(B)(viii) as renumbered, *change* (iv) *to* (v); and *insert* new §202(41)(B)(iv):

(iv) When the issuer is a one-year registrant, the Commission may require, by rule, that the most recent annual report and all subsequent reports sent to security holders under section 602(a)(2) be sent or delivered, not later than the sale, to each initial buyer within section 202(41)(B) other than an institutional investor, except that section 202(41)(B)(iv) does not apply if—

(I) the security is traded on a national securities exchange designated by rule or order, is included in services rendered by an electronic interdealer quotations system so designated, or is a qualified security within section 1005(a); or

(II) the issuer is a three-year registrant (that term being defined as if section 202(113) referred to three years) and the offering is for the account of a person other than the issuer.

COMMENT: The additional rulemaking authority with respect to offerings that do not meet one of the three conditions in Clause (I) reflects the view that those conditions should add to the "one-year registrant's" continuous disclosure rationale some assurance that the market adequately reflects that disclosure. At the same time, because the Code contains nothing like S4(1), Clause (II) affords an alternative "out," once the issuer has been registered for three years, for *secondary* offerings that meet none of those conditions.

See also §510(d)(2) infra. There is not the same perceived need for rulemaking authority in §§202(41)(C) and 512(3), (4), (7) and (8), the other provisions that refer to one-year registrants.

§202(41)(C)(i)(II) (Distribution: Trading Transaction)

Change the broker or dealer *to* the person selling through the broker or to the dealer.

COMMENT: Applying the Clause (II) condition to the broker or dealer rather than his customer was inadvertent. Cf. §§202(41)(B)(viii), 510(a), 512(4)(A)(ii), 512(5)(B), 514(d)(3).

§202(61)(A) (Fraudulent Act: General)

Substitute:

(A) "Fradulent act" includes an act, device, scheme, practice, or course of conduct that (i) is fraudulent or deceptive, or (ii) operates or would operate as a fraud or deceit.

COMMENT: At various times the drafting of the Code has used either "fraudulent" or "deceptive" as a generic term. This change *adds* "deceptive" or "fraudulent" language in order to avoid any argument of loss of coverage a compared with provisions like S17(a)(3), X10(b) or X15(c)(1).

§202(61)(C) (Fraudulent Act: Knowledge or Recklessness)

Substitute:

(C) KNOWLEDGE OF RECKLESSNESS.—(i) For purposes of an action or proceeding under part XVII or section 1821(a)(2), a person engages in a fraudulent act only if he acts with knowledge that his conduct is of the type specified in section 202(61)(A), or in reckless disregard of whether his conduct is of that type.

(iii) For purposes of any other action or proceeding, a person engages in a fraudulent act if he engages in an act, device, scheme, practice, or course of conduct that is likely to defraud or deceive, regardless of whether fraud or deception is intended.

COMMENT: See §1819(a)(3) of the Official Draft. Clauses (A) and (B) of that section fit better here, and Clause (C) is being shifted to §1819(*l*), infra, so that §1819(a)(3) disappears. Section 1819(*l*) aside, the purpose and effect are (1) to apply the scienter-like concept of §202(61)(C)(i) to private actions and criminal prosecutions, and (2) to perserve in §202(61)(C)(ii) the "would operate as a fraud or deceit" language of S17(a)(3) for all other proceedings.

§202(61)(D) (Cross-Reference)

Change 1819(A)(4) *to* 1819(a)(3).

COMMENT: This corrects an *erratum*.

§202(74) (Institutional Investor)

Substitute:

(74) INSTITUTIONAL INVESTOR.—"Institutional investor" means (A) a bank, insurance company, or registered investment company, a fund, trust, or other account with respect to which a bank or insurance company has investment discretion, or a person who controls any such person, except to the extent that the Commission provides otherwise by rule with respect to any such class of persons on the basis of such factors as financial sophistication, nature and volume of participation in the securities markets, net worth, and the amount of assets under investment management, or (B) any other person or class of persons that the Commission designates by rule on the basis of such factors.

COMMENT: The "nature and volume" phrase has been inserted to reflect the need of rulemaking flexibility in view of the rapid evolution of the markets. There is no implication that the Commission is to look primarily to size.

§202(78)(B)(i) (Investment Adviser: Banks *re* Mini-Account Clients)

Change 914(c) and 915(b) *to* 914(c), 915(b), and 1602(a)(4).

COMMENT: The addition of §1602(a)(4) (which automatically activates remedial provisions like §1709(c)(1)) corrects an inadvertence in the Official Draft. That antifraud section should apply *a fortiori* to a bank that is acting with reference to a mini-account client.

§202(80)(B)(ii) (Investment Company: Exclusions)

Substitute:

(ii) an issuer whose outstanding securities (other than debt securities owned by institutional investors or commercial paper) are beneficially owned by not more than one hundred persons and that is not making and does not propose to make a distibution of securities of which it is the issuer;

COMMENT: This goes back to N3(c)(1). The definition of "limited offering" (§202(41)(B)(i)(I)) continues to refer to institutional investors without limit. But the context in §202(80)(B)(ii) is different.

§202(93)(A) (Exchange Member)

For Clause (iii), *substitute:*

(iii) * * * those provisions of section 604 and prts VII to XI inclusive and XVI designated by Commission rule;

In Clause (iv), after "1080," *insert:* and

COMMENT: Section 604, which has been added to Clause (iii), deals with the matter of communication with beneficial owners. And the insertion in Clause (iv) corrects an *erratum*.

§202(99)(B)(ii) (Municipal Dealer: Exclusions)

Substitute:

(ii) any other institutional investor that is not otherwise a municipal dealer.

COMMENT: This provision has been conformed to §202(34)(A)(ii), supra ("dealer").

§202(110)(B) (Offering)

Substitute:

(B) LIMITED OFFERINGS, TRADING TRANSACTIONS, AND CERTAIN EXEMPTED OFFERINGS.—Within the meaning of section 202(110(A)(ii), a limited offering, an offering by means of trading transactions, and an offering by means of transactions exempted by section 512(6) to (8) inclusive are presumed to be substantially distinct from each other; but this presumption may be rebutted by evidence.

COMMENT: This has been made into a rebuttable presumption. Cf. §202(29)(B) ("control").

§202(117)(A) (Own: Investment Companies)

Substitute:

(A) INVESTMENT COMPANIES.—For purposes of section 202(80)(B)(ii), beneficial ownership of an issuer's securities by a company is beneficial ownership by one person, except that, if (i) the company owns more than 10 percent of the outstanding voting securities of the issuer, or more than 10 percent of total equity when the issuer has no voting securities or no more than a nominal amount of voting securities, and (ii) the value of all securities and equity of companies within section 202(80)(B)(ii) and held by the company exceeds (as of the date of its last acquisition of any such security or equity) 10 percent of the value of its total assets, the beneficial ownership of the issuer's voting securities or of its equity, as the case may be, is that of the holders of the company's outstanding securities (other than commercial paper).

COMMENT: (1) The limitation of 10% of the value of total assets of the top-tier company has been made more closely analogous to N Rule 3c-2 in that it applies to the value of *all* lower-tier companies in which the top-tier company invests and that rely on the exemption is §202(80)(B)(ii).

(2) As revised, §202(117)(A) treats more than 10% of total equity as the equivalent of 10% of the oustanding voting securities not only when the issuer has *no* voting securities but also when the issuer has no more than a *nominal amount* of voting securities. The purpose is to deal with a problem recently encountered by the Commission in that investment companies apparently have been organized as corporations with an extremely small number of voting shares and the rest of the common stock or other equity has been issued as nonvoting securities.

§202(131) (Reasonable)

Delete the last sentence.

COMMENT: The effect is that the definition of "reasonable" will apply for purposes of the phrase, "without reasonable justification or excuse." The reason for making the definition inapplicable was to leave the courts untrammeled as they proceeded in the common law tradition to develop a body of

jurisprudence under the new phrase, including standards to determine when the absence (or cursory nature) of any investigation or inquiry would go to establish conduct "without reasonable justification or excuse." But the last sentence might have been construed to preclude a court from *ever* considering presence or absence of any investigation or inquiry in construing the new phrase.

§202(143)(F) (Sale and Offer: Exchanges, etc.)

Change the title *to* (F) EXCHANGES, ISSUANCES, DIVIDENDS, LOANS, AND HYPOTHECATIONS.

COMMENT: This formulation is more accurate.

§202(150)(B) (Security: Exclusions)

Substitute:

B. EXCLUSIONS.—Notwithstanding section 202(150)(A), "security" does not include

(i) * * *;

(ii) * * *;

(iii) * * *;

(iv) an interest in a deposit account with a bank;

(v) * * *;

(vi) * * *;

(vii) * * *;

(viii) * * *; or

(ix) the interest of a mini-account client in a mini-account under advisement if section 914(c) is effective;

but section 202(150)(B) does not excluse a participation in any of the foregoing.

COMMENT: The new "but" clause at the end appeared in the Official Draft only at the end of Clause (iv). This does not mean that every participation in a primarily mercantile or consumer note (or in one of the other excluded categories) *is* a security. The participation simply is not *excluded*. The participation is a security if it is an investment contract or comes within another of the §202(150)(A) phrases. Even so, the participations, as long as they were limited to banks and other institutional investors, would come within the "limited offering" concept of §202(41)(B) in any event. And, with respect to the practice whereby lead banks "lay off" portions of notes to other banks, normally a "participation" is not involved at all when each of several banks takes a note from the borrower instead of the lead bank's taking one or more notes and issuing its own participations in the note or notes to other banks.

§202(163)(A) (Statutory Disqualification)

In Clause (A)(i), after "1810(c)," *insert:* or within section 808,

In Clause (A)(ii), *change* 1809(a)(1) *to* 1809(b)(1).

COMMENT: The first change corrects an inadventence and the second corrects an *erratum*.

§202(164)(D) (Subsidiary: Applicants for Order)

Substitute:

(D) APPLICANTS FOR ORDER.—An application under section 202(164)(B) may be made by the company with respect to which the order is to be entered or by the holding company.

COMMENT: The concluding "but" clause in the Official Draft, although it mirrored U2(a)(8), last sentence, has been deleted on the ground that it is just as important to require the holding company as the "non-subsidiary" to file reports of relevant future changes.

§302(6) (Employee Plans)

Delete §302(6)(B), and in §302(6)(A) *delete* the letter (A), run on at that point without indentation, *change* (i) and (ii) *to* (A) and (B), and *change* (I) and (II) *to* (i) and (ii).

COMMENT: See Comments (1)-(8) at pp. 225-27.

§302(9)(A)-(B) (Cooperatives)

Substitute:

(9) COOPERATIVES.—A security issued by—

(A) a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), or a federation of such associations that possesses no greater powers or purposes than such an association, if the security (i) qualifies its holder to be a member of the issuer or, in the case of a patronage refund certificate or similar security, is part of a class issuable only to persons who deal in commodities with, or obtain services from, the issuer, and (ii) is transferable by sale only to such persons or the issuer;

COMMENT: See Comment (1) at pp. 229-31. Although the language of the Official Draft was developed over a considerable period of time with representatives of cooperatives, problems have since arisen with respect to the issuance of securities to nonmember patrons. A no-action letter of February 2, 1977, *re* Mid-America Dairymen, Inc., stated that the Commission would ask the appropriate Congressional committees to review the financing activities of farmers' cooperatives. But the Commission later decided to wait to bring the problem to the attention of Congress in the broader context of the Code. This draft accordingly moves from the third to the second of the four formulas discussed in Comment (1).

§302(11) (Commercial Paper Exemption)

Change $50,000 *to* $100,000.

COMMENT: The figure was $100,000 in TD1 (§§12161, 301(n)), and it has been restored to that amount in recognition of the fact that dealers generally offer paper in denominations no lower than $100,000.

§303(a) (Exemption by Rule or Order)

Substitute:

Sec. 303. (a) COMMISSION.—The Commission, by rule or order, may exempt any person, security, or transaction, or any class of persons, securities, or transactions, from any or all of the provisions of this Code, except that section 303(a) does not apply with respect to (1) part XII, (2) section 1506 or 1904, (3) a provision that prohibits the fixing of minimum profits or the imposition of any schedule, or the fixing of rates, of commissions, allowances, discounts, or other fees, or (4) a rule of a bank regulator or the Municipal Board. See also section 1804(b).

COMMENT: The new §303(a)(1) has been added at the request of SIPC on the ground that Part XII is unique and the Code should not unbalance the relationship between the Commission and SIPC. And the Municipal Board reference has been added to §303(a)(4) because the Municipal Board is the only self-regulatory organization whose rules are included within the "Code" as defined by §202(24)(A), so that the Commission's exemptive authority under §303(a) does not extend to rules of the other self-regulatory organizations.

§510(a) (Secondary Distributions: Election of §510)

At end, *insert:*

The exception in the preceding sentence does not apply with respect to an acquisition or resale pursuant to a foreclosure of a hypothecation.

COMMENT: Today banks simply reserve the right under the Uniform Commercial Code, when foreclosing on pledges, to sell privately pursuant to the S4(1) exemption. But the only comparable "exemption" in the Code is the "limited offering" concept in §202(41)(B); §510(a) by its terms is not available "if within the past year [the secondary distributor] acquired any security of the same class in a limited offering (not otherwise exempted) or pursuant to a resale that was subject to section 202(41)(B)"; and a foreclosure would involve the bank's "acquisition" of the pledged security in a limited offering.

As a result, the bank—unless it resold purely to institutional investors (or others within the thirty-five limitation of §202(41)(B)) so as to avoid a "distribution"—would have to wait a year after the foreclosure before it could use §510(a) for a foreclosure sale. This was not intended. If anything, the inclusion of "a hypothecation" in §202(143)(F)(v) "for purposes of part XVI" was intended to *exclude* hypothecations from the definitions of "offer" and "sale" for purposes of Part V. The emphasis was on treating the pledgee's *sale on foreclosure* like any other secondary distribution. See Comment (6) to §202(143) at pp. 189-90.

§510(d) (Contents of Distribution Statement As Used)

Substitute:

(d) CONTENTS OF DISTRIBUTION STATEMENT AS

USED.—When a distribution statement is used, it need not contain the certification specified in section 510(c)(3) and the Commission, by rule—

(1) may permit the omission of any of the items specified in section 510(c);

(2) may require that the issuer's most recent annual report and all subsequent reports sent to security holders under section 602(a)(2) be physically attached to the distribution statement if (A) according to the issuer's most recent report filed or sent under section 602(a)(1) or (2) there were fewer than one thousand holders (or whatever smaller number is specified by rule) of each class of security covered by the distribution statement, or (B) the aggregate market value of the issuer's outstanding voting securities not held by its controlling, controlled, or commonly controlled persons did not equal at least whatever amount is specified by rule: and

(3) may require that the distribution statement by supplemented or changed to identify (or physically attach if section 510(d)(2) applies) any reports sent to security holders under section 602(a)(2) after the filing of the distribution statement and not identified therein (or physically attached if section 510(d)(2) applies).

COMMENT: See also §202(41)(B)(iv), supra, with respect to limited offerings. With respect to a secondary *distribution*, §510(d)(2) indicates the need for a somewhat stricter test of whether the market adequately reflects the one-year registrant's continuous disclosure: hence (1) the substitution here of the (A)-(B) clauses (which come from Form S-16, Gen. Instr. A, Paras. 1(a)(i), (B)) for §202(41)(B)(iv)(I), and (2) the absence here of the three-year provision of §202(41)(B)(iv)(II).

Clause (B)'s referring *entirely* to rulemaking instead of specifying the $50,000,000 figure of Form S-16 reflects the thought that the figure set by rule should not necessarily be that high even *prima facie* but should be smaller if at all possible; indeed, Clause (B) does not *require* any rules at all.

Of course, all that is involved here is the Commission's authority to require delivery of the stockholders' report along with the distribution statement. The availability of the §510 procedure for secondary distributions of securities of one-year registrants is not in question.

§512(4) (Exemptions: Secondary Distributions)

Substitute:

(4) SECONDARY DISTRIBUTIONS.—(A) A transaction incident to an offering of securities of a one-year registrant, execlusively through a marketmaker with respect to the security or a block positioner with respect to the transaction, by a secondary distributor who owns, or reasonably believes on the basis of a statement by the registrant or its transfer agency that he owns, not more than 15 percent of the voting securities of the registrant; but—

(i) if the secondary distributor owns more than 5 percent of the voting securities of the registrant, this exemption does not apply unless (I) he does not control, is not controlled by, and is not under common control with, the registrant, and (II) he forwards to the Commission any amendment required by section 605(b)(1) not later than the end of the next business day after the date that the contract to sell is made;

(ii) if within the past year the secondary distributor acquired any securities of the same class in a limited offering (not otherwise exempted), or pursuant to a resale that was subject to section 202(41)(B), this exemption applies only to an amount of securities of that class in excess of those he so acquired, less any he previously resold pursuant to that section; and

(iii) this exemption does not apply if the contract to sell between the secondary distributor and the marketmaker or block positioner is made within six months (or whatever shorter period the Commission prescribes by rule) before or after a limited offering of securities of the same class by the secondary distributor.

(B) With respect to the secondary distributor, this exemption applies if (i) the offering is otherwise within section 512(4)(A), and (ii) he reasonably believes that the offering is made exclusively through a marketmaker with respect to the security or a block positioner with respect to the transaction, whether or not it is in fact so made.

(C) With respect to a marketmaker or block positioner through whom the offering is made, this exemption applies if he reasonably believes that the offering will satisfy all the conditions of section 512(4)(A), whether or not they are in fact satisfied.

COMMENT: This section has been rewritten substantially in accordance with Comments (5) and (6) at pp. 275-77.

§512(5) (Exemptions: Small Offerings)

Change $100,000 *to* $200,000, *and change* $50,000 *to* $100,000.

COMMENT: The figures have been doubled to reflect the inflation since work began on TD1 sometime before 1972. Cf. §1708(c)(2), infra.

§514(a) (Local Distribution)

Change 80 percent *to* 95 percent.

COMMENT: The double 95% test should allow adequate room for slippage.

§805(c)(3) Self-Regulatory Organization Rules· Summary Procedure)

Substitute:

(3) * * *; but such action does not affect the validity of the rule change during the period it was in effect, and, whether or not abrogated, it may be enforced while in effect to the extent that it is not inconsistent with this Code or any other applicable Federal or State law.

COMMENT: This restores the limitation on enforceability in X19(b)(3)(C), 1st sentence.

§903(d) (Summary Suspensions)

No change.

COMMENT: In line 2 of the Comment at p. 369, *change* "one or more periods" to "at a time." This corrects an *erratum*.

§903(e) (Prohibition of Trading During Suspension)

Substitute:

(e) PROHIBITION OF TRADING DURING SUSPENSION.—Except to the extent permitted by a rule or order of the Commission, it is unlawful for a broker or dealer to engage in any activity in that capacity with respect to a security in a market in which trading in the security is suspended.

COMMENT: The language has been turned around so as not to *require* a Commission rule or order.

§904(a) (Limitation of Number of Members and Floor Representatives)

Substitute:

Sec. 904. (a) LIMITATION OF NUMBER OF MEMBERS AND FLOOR REPRESENTATIVES.—A national securities exchange, by rule, may limit the total number of its members, as well as the number of its members and their designated representatives permitted to effect transactions on the floor without the services of another person acting as broker; * * *

COMMENT: The Official Draft reads: "as well as the number of *any or all classes of* it members***." The deletion of the words here italicized preserves X6(c)(4).

§906(a) (Limitation of Trading by Exchange Members)

Substitute:

(a) MEMBERS.—It is unlawful for a member of a national securities exchange to effect a transaction on that exchange for the account of the member or an associate, or an account with respect to which the member or an associate exercises investment discretion, unless the transaction—

(1) is by a dealer acting in the capacity of marketmaker or odd lot dealer;

(2) is a stabilizing transaction effected in compliance with rules under section 1610 to facilitate a distribution in which the member is participating;

(3) is (A) a bona fide arbitrage transaction, (B) a bona fide hedge transaction involving (i) a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell that equity security, or (ii) a long or short position in a security entitling the holder to acquire or sell an equity security and a long or short position in one or more other securities entitling the holder to acquire or sell that equity security, of (C) a risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(4) is for the account of a natural person other than the member, the estate of such a person, or a trust (other than an investment company) created by such a person for himself or another such person;

(5) is to offset a transaction made in error; or

(6) (A) is for the account of the member, who is primarily engaged in doing business with the public as a broker, dealer, municipal broker, or municipal dealer (or in any combination of those capacities) and normally derives his gross income primarily from that business and related activities, and (B) is effected in compliance with rules of the Commission that, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members of the exchange or their associates.

COMMENT: This section has been rewritten in accordance with Comment (8) at pp. 381-82.

§907(b) (Segregation of Broker-Dealer Functions)

Substitute:

(b) SEGREGATION OF BROKER-DEALER FUNCTIONS.—The rules under section 907(a) may prohibit the same person from acting as both broker and dealer, or municipal broker and municipal dealer, in securities of the same class, or condition his so acting.

COMMENT: The authority to condition has been added on the theory that the greater should include the lesser.

§915(b) (Trading and Investment Advisory Practices: Rulemaking Authority)

Before "define," *insert:* (1). Before "prescribe," *insert:* (2).

COMMENT: See the comment to §614, infra.

§919(a) (Investment Advisory Contracts)

Substitute:

Sec. 919. (a) GENERAL.—It is unlawful for an investment adviser (unless exempted by section 702(b) (2)) to enter into, extend, renew, or perform an advisory contract that (1) is not in writing, (2) provides for compensation on the basis of a share of capital gains on or capital appreciation of the funds or any portion of the funds of the client, or (3) provides for a rebate or waiver of compensation if the investment adviser fails to achieve a specified level of capital gains on or appreciation of, or fails to avoid a specified level of capital losses on or depreciation of, the funds or any portion of the funds of the client.

COMMENT: The new Clause (3) reflects the increasing popularity of a type of contract that is subject to the same abuses as incentive fees. See Inv. Adv. Act Rel. 721, 20 SEC Dock. 89 (1980).

§1005(b) (Quotations and Transactions in National Market System Securities)

No change.

COMMENT: The omitted X11A(c)(1)(A)—"prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities"—is subsumed by §1608 (see the comment to that section at p. 673) and the rulemaking authority in §1614.

§1009(c) (Lost, Counterfeit or Stolen Securities: Bona Fide Purchaser)

Substitute:

(c) BONA FIDE PURCHASER.—A person's violation of section 1009(a)(2) does not as a matter of Federal law effect his status as a "bona fide purchaser" under State law.

COMMENT: The phrase, "as a matter of Federal law," has been inserted to clarify the intention of this section, which is that the section does not *automatically* affect "bona fide purchaser" status as a matter of *federal* law. It does not preclude a court from noticing a violation of §1009(a)(2) as a matter of state law.

§1306(c) (Disqualification of Trustee)

No change.

COMMENT: In the last sentence of Comment (2) at p. 501, *change* parenthetical *to* "unless." This corrects an *erratum.*

§1308(b)(4) (Bondholders' Communications)

Substitute:

(4) Instead of complying with section 1308(b)(1) to (3) inclusive, the institutional trustee may elect to request the information specified in section 1308(a)(1)(B) and to give the applicants access to all information furnished to or received by it under section 1308(a)(1). Such action, regardless of the source of the information, does not violate any existing law or any law enacted after the effective date of this Code unless it expressly refers to section 1308(b)(4). See also section 2007(a)(1).

(5) See also section 603.

COMMENT: The Official Draft deleted the trustee's option under T312(b)(1) to afford access, essentially because the trustee will normally prefer the mailing alternatives (to judge, at least, from experience under X Rule 14a-7). But §1308(b)(4) restores the option in view of both that rule and the recently adopted X Rule 14d-5 on tender offers. See also §1410(h)(4), infra. Section 2007(a)(1) reflects the trustee's privilege against liability at the end of T312(c).

§1410(h)(4) (Strict Trust Shareholders' Communications)

Insert:

(4) Instead of complying with section 1410(h)(1) to (3) inclusive, the trustees may give the applicants access to a list of the names and addresses of shareholders of record. Such action, regardless of the source of the information, does not violate any existing law or any law enacted after the effective date of this Code unless it expressly refers to section 1410(h)(4). See also section 2007(a)(1).

COMMENT: See the comment to §1308(b)(4), supra. The second sentence has been included here, through N16(c) did not incorporate it from T312(c), in order to avoid a negative implication.

§1411(a) (Transactions of Certain Affiliates and Underwriters: Scope of Section)

Substitute:

(a) SCOPE OF SECTION.—For purposes of section 1411—

(1) "investment company insider" means (A) an affiliate of a registered investment company other than a downstream affiliate, (B) a promoter of a registered investment company, (C) a principal underwriter for a registered investment company, of (D) an affiliate of any such affiliate, promoter, or underwriter (other than a person who is an affiliate of a downstream affiliate solely by reason of the downstream affiliate's ownership of its voting securities); and

(2) "downstream affiliate" means a person that is an affiliate of a registered investment company solely by reason of the investment company's ownership of its voting securities, unless that person knows that an affiliate of the investment company within section 202(3)(A) (other than section 202(3)(A)(ii)), a promoter or principal underwriter of the investment company, or an affiliate of any such affiliate, promoter, or underwriter—

(A) is also a party to a transaction described in section 1411(b) to (e) inclusive or 1412; or

(B) has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a financial interest (as defined by rule or order) in a party (other than the investment company) to the transaction.

COMMENT: The revisions bring the section into closer agreement with N Rules 17a-6 and 17d-1(d)(5) by requiring Commission approval when an upstream, noncontrolling affiliate has or will acquire a financial interest in a party (other than an investment company) to the transaction. See Comment (3)(e) at p. 565.

§1418(e) (Suspension of Right of Redemption)

Substitute:

(e) SUSPENSION OF RIGHT OF REDEMPTION.—It is unlawful for a registered investment company to postpone the date of payment of a redeemable security, on redemption in accordance with its terms, for more than five business days after the date of its tender to the company or its designated agent for redemption, or to suspend the right of redemption, except—* * *

COMMENT: The order of the two prohibitions has been reversed to reflect the Commission's interpretation of N22(e), 1st sentence, as not

extending the time limitation to suspension of the right of redemption as distinct from postponement of the date of payment.

§1419(b)(2) (Distribution Price of Closed-End Securities)

Substitute:

(2) with the consent of both holders of a majority of its common stock and a majority of its common stockholders,

COMMENT: This restores the N23(b)(2) reference to "a majority of its common stockholders" in addition to retaining the new (and more traditional) reference in the Official Draft to "holders of a majority of its common stock."

§2603 (Insiders' Duty to Disclose When Trading)

Substitute:

Sec. 1603 (a) GENERAL.—It is unlawful for an insider to sell or buy a security of the issuer, if he knows a material fact with respect to the issuer or the security that is not generally available, unless—

(1) the insider reasonably believes that the fact is generally available;

(2) the identity of the other party to the transaction (or his agent) is known to the insider and (A) the insider reasonably believes that that party (or his agent) knows the fact, or (B) that party (or his agent) knows the fact from the insider or otherwise; or

(3) the insider proves that the fact is not a fact of special significance, except that this defense is not available in an action or proceeding by the Commission under section 1809, 1810, 1811, 1812, 1815, or 1819(a).

COMMENT: (1) In the introductory portion "material fact" has been substituted for "fact of special significance." But new §1603(a)(3) affords a *defense*, except in SEC injunctive and disciplinary actions, in terms of the Official Draft's language. That is to say, the plaintiff need allege and prove only materiality, after which (except in SEC injunctive and disciplinary actions) the burden of going forward will shift to the defendant to show lack of special significance.

(2) The question whether a particular communication by an insider constitutes a "tip" of a "material fact" (or a "fact of special significance") is itself a question of fact. For example, a chief executive officer who suggests to a friend that he "buy" shares of the company without the officer's disclosing the basis for the suggestion may be "tipping" within the meaning of §1603 if, under all the circumstances, a person would reasonably conclude that the recommendation was based on a fact of special significance (or in an action by the Commission of material fact) that was not generally available. Alternatively, the fact that the officer was making such a recommendation might itself be regarded, in appropriate circumstances, as a fact of special significance or a material fact not generally available, particularly insofar as "fact" is defined in §202(55)(B) to include a statement of opinion. On the other hand, the mere fact that an officer is recommending purchases of his company's stock may not be sufficient to come within §1603 without an appropriate showing of the circumstances under which the recommendation was made.

§1603(b)(3) (Insider)

Change fact of special significance *to* material fact.

COMMENT: This is incidental to the revision of §1603(a), supra.

§1604(c) (Misleading Publicity)

Change such conduct *to* the publicity.

COMMENT: (1) This is designed to make clear that the publicity rather than the misrepresentation is the causal event in determining the foreseeability of an effect on investors.

(2) This section (subject to the aider and abettor provisions) is limited to a "company, or a person acting on its behalf." Others who are responsible for false publicity with respect to a company may fall within some other provision of Part XVI (e.g., §1602 or 1609) or a §1614 rule, depending on the facts.

§1609(c) (Manipulation by Trading)

Substitute:

(c) MANIPULATION BY TRADING.—It is unlawful for any person to effect (alone or with one or more other

persons) a series of transactions in a security, or to create active trading (actual or apparent) in a security, for the purpose of raising or depressing the price of (1) the same security, (2) a security of a different class of the same issuer, or (3) a security of a controlling, controlled, or commonly controlled company.

COMMENT: This has been rewritten to eliminate the troublesome requirement, now in X9(a)(2), of showing a purpose to *induce others* to buy or sell. See 3 Loss 1550-57.

§1609(f) (Manipulation: General)

Substitute:

(f) GENERAL.—It is unlawful for any person to engage in a manipulative act not prohibited by section 1609(a) to (e) inclusive in connection with a sale or purchase of a security, an offer to sell or buy a security, or an inducement not to buy or sell a security.

COMMENT: This new provision is designed to repair the Official Draft's overlooking the fact, in spelling out the various kinds of manipulation in §1609(a)-(e), that Part XVI nowhere preserves the general or residual antimanipulative prohibition in X10(b) and Rule 10b-5 in the way in which §1602(a)(1) preserves the general or residual antifraud prohibition of that section and rule.

§1613 (Purchase by Issuer)

No change.

COMMENT. The first sentence of X13(e) is here reflected in §1614. No diminution in the Commission's rulemaking authority is intended.

§1614 (Rulemaking Authority *re* Fraudulent and Manipulative Conduct)

Before "define," *insert:* (1). Before "prescribe," *insert:* (2).

COMMENT: (1) These insertions will facilitate reference to one or the other of the two related but separate grants of authority. The "conditions and restrictions" language modifies only Clause (1). On the other hand, the authority under Clause (2) is restricted not only by the "reasonably designed" phrase but also by the fact that conduct is "made unlawful by that part" (that is to say, Part XVI) only if it is prohibited by §§1602-13 or by definitional rules adopted under Clause (1). This is not to say that before the Commission adopt a rule reasonably designed to prevent certain fraudulent or manipulative conduct it must first have adopted a rule defining (and thus prohibiting) that conduct. It simply means that the conduct that the rule is designed to prevent must fall fairly within the scope of Part XVI.

(2) The "conditions and restrictions" phrase, which appears also in §915(b), makes express what would undoubtedly be the construction of §1614 in any event. That limitation is not meant to detract from the paramount importance of admininstrative flexibility to deal with new forms of fraud and manipulation that confront the Commission from time to time. Thus:

On the one hand, it goes without saying that a Commission rule could not directly contradict an express limitation in §§1602-13, as, for example, by prohibiting insider trading without regard to the insider's reasonable belief under §1603(a)(1) that the undisclosed fact was generally available.

On the other hand,the fact that the Code deals with a certain issue expressly does not preclude the Commission from adopting rules to deal with perceived problems that fall outside the express prohibitions. For example, the Commission might use §1614 in the light of §1609(f) to proscribe conduct that is manipulative even though apparently related conduct is expressly covered by §1609(a)-(e). Again, particularly in the light of Comment (3)(d) to §1603 at pp. 663-64, the Commission might experiment with a rulemaking solution to the problem posed by the Supreme Court's decision in *Chiarella* v. *United States*, 100 S. Ct. 1108 (1980), which came down after that comment. Cf. U.K. Companies Act 1980, c. 22, §§68-73.

In short, while §1614 does not give the Commission *carte blanche*, there is no intent in Part XVI to create a rigid scheme that defines illegal activity in terms of the state of affairs at the time of the Code's adoption, or to suggest that the set of express provisions in Part XVI is an exclusive listing of unlawful conduct. Rather, Part XVI—especially §1602(a) and 1609(f) as supplemented by §1614—is designed to enable the Commission (and the courts) to deal with conduct that, at the time and under the

circumstances under which it occurs, may reasonably be considered fraudulent, deceptive or manipulative.

§1702(a)(2) (Illegal Sales and Purchases)

Change 1402 *to* 1402(a).

COMMENT: This avoids an inconsistency between §1702(a)(2) and §1722(c)(1), infra.

§1702(c) (Mitigation Defense)

Delete this section (which is §2007 of the POD); *reletter* §1702(d)-(f) *as* (c)-(e); in §1702(e)(1)(A), *change* 1702(d)(1) *to* 1702(c)(1); in *§1702(e)(1)(B), change* 1702(d)(2) *to* 1702(c)(2); in §1702(e)(2), *change* 1702(e)(1) *to* 1702(d)(1); in §1703(h)(1), *change* 1702(d)(1) *to* 1702(c)(1); in §1703(h)(2), *change* 1702(d)(2) *to* 1702(c)(2); in §1722(a), *change* 1702(e)(2) *to* 1702(d)(2); and in §1723(e), *change* 1702(e)(2) *to* 1702(d)(2).

COMMENT: Section 1702(c) is deleted because (1) it would concededly have complicated litigation under the otherwise strict liability approach of §1702, and (2) the Code reduces much of both the vagueness and the absolutism of the underlying substantive law. See, e.g., the good-faith-type language in §§202(41)(B)(i), (B)(viii) (as here renumbered) and (C)(iii) and 514(d)(2).

§§1704(a), 1705(a)(1), 1705(f) (Civil Liabilty *re* Annual Reports and Failure to Correct Generally)

Substitute:

FALSE REGISTRATION STATEMENTS, OFFERING STATEMENTS, AND REPORTS

Sec. 1704. (a) SCOPE OF SECTION.—Section 1704 applies (whether or not the particular registration has terminated or been withdrawn) on proof that an effective registration statement, an effective offering statement as of the date specified in section 509(2) or (3), or a report filed under section 602(a)(1) and incorporated by reference in any such filing (1) contained a misrepresentation, or (2) omitted a material fact or material document required.

* * *

REGISTRANTS' FALSE FILINGS GENERALLY, AND FAILURE TO CORRECT

Sec. 1705. (a) SCOPE OF SECTION.—Section 1705(b) to (e) inclusive applies (whether or not the particular registration has terminated or been withdrawn)—

(1) on proof that—

(A) a filing by a registrant (other than a filing within section 1704(a) or 1705(f)) contained, as of the date the filing was filed (or became public if it was not public immediately); or

(B) with respect to a plaintiff within section 1705(c)(1), an offering statement contained, as of the date specified in section 509(2) or (3),

a misrepresentation made by the registrant with scienter (except that section 1705 does not apply to the extent that section 1703 applies); or

(2) on proof that a failure to file, send, or publish a report in violation of section 602(a) with knowledge that a report was required, or in reckless disregard of whether a report was required, caused the registration statement, or an annual report filed under that section, to contain a misrepresentation or to omit a material fact or material document required.

(b) DEFENDANTS.—Except as provided in section 1724, only the registrant is liable for damages under section 1705(b) to (e) inclusive.

(c) PLAINTIFFS.—Section 1705(b) to (e) inclusive gives a right of action—

(1) under section 1705(a)(1) to a person who—

(A) in the case of an offering statement, bought a security of the registrant other than a security of a class covered thereby, or sold a security of the registrant, in either case after its effectiveness; or

(B) in the case of any other filing, bought or sold a security of the registrant after the filing (or the date the filing became effective or public if it was not effective or public immediately); and

(2) under section 1705(a)(2) to a person who bought or sold a security of the registrant after the omitted filing was due.

(d) DEFENSE OF CORRECTION.—A defendant under section 1705(a)(1) has a defense if he proves that the

misrepresentation was corrected by means of a filing or press release or in any other way reasonably designed to bring the correction to the attention of the investing public; but this defense is subject to the exceptions in section 1703(d)(1) and (2).

(e) DEFENSE OF PLAINTIFF's KNOWLEDGE.—A defendant has a defense if he proves (1) that the plaintiff bought or sold with knowledge of the relevant facts as they should have been disclosed or corrected, or (2) that any alleged falsity was obvious. See also section 202(86)(B).

(F) FALSE ANNUAL REPORTS.—(1) Section 1705(f) applies (whether or not the particular registration has terminated or been withdrawn) on proof that an annual report under section 602(a)(1) contained a misrepresentation as of the date the report was filed (or became public if it was not public immediately).

(2) All the persons specified in section 1704(b)(1) to (5) inclusive are liable for damages.

(3) Section 1705(c)(2) to (e) inclusive applies, except that a defendant has an additional defense if he proves lack of scienter. A violation of section 2003(c)(4) does not of itself preclude such a defense.

(g) MEASURE OF DAMAGES.—The measure of damages for section 1705 is stated in section 1708(d).

COMMENT: (1) *Civil liability for the "10-K":* Sections 1704(a), 1705(a)(1)(A) and 1705(f) reflect a compromise of the question whether civil liability with respect to the "10-K" should be governed by §1704 or 1705. The "10-K" is subjected, in effect, to §1704-type liability so far as *persons liable* and *defendant's burden of proof* are concerned, but to §1705-type liability to the extent that the defendant's burden of proof is satisfied if he establishes *lack of scienter* rather than due care as in §1704. See also the provision with respect to directors' signing of annual reports in §2003(c)(4), infra.

(2) *Civil liability for failure to correct:* On the Official Draft's treatment of the duty to correct filings that have become false, see Comment (2) to §1602(b) at p. 652, with its reference to Comment (4)(a) to §602(a)-(d) at p. 295, particularly the statement at p. 652 that "The Commission may be expected to adopt reporting rules under §602, and its authority there is broad enough to require corrections, whether or filings or of publicity, to reflect subsequent events." It is contemplated that those rules will be relatively specific rather than simply mandating a general duty to correct as in §1602(b). But §1705 has been rewritten to create an express civil liability for a violation of §602(a) by failing to file (or send or publish) *any required report* that is necessary to correct *the registration statement or a filed annual report.* This has been done by supplementing the title of §1705, inserting §1705(a)(2) and (c)(2) as §1705 is here renumbered, and limiting §1705(d) to §1705(a)(1).

The parenthetical "except" clause at the end of §1705(a)(1) is also new. It avoids an overlap when a target company stockholder sells on the basis of false tender offer literature. Cf. §1713(c).

§1704(g) (Standard of Reasonableness)

Substitute:

(g) STANDARD OF REASONABLENESS.—In determining what constitutes reasonable investigation and reasonable ground for belief under section 1704(f)(3), the standard of reasonableness is that required of a prudent man under the circumstances in the conduct of his own affairs. Relevant circumstances include, with respect to a defendant other than the registrant, (1) the type of registrant, (2) the type of defendant, (3) when the defendant is an officer, the office held, (4) when the defendant is an officer, director, or proposed director, (A) the presence or absence of another relationship to the registrant, and (B) reasonable reliance on officers (or other officers when the defendant is an officer), employees, and others whose duties would reasonably be expected to give them knowledge of the particular facts (in the light of the functions and responsibilities of the particular defendant with respect to the registrant and the filing), (5) when the defendant is an underwriter, the type of underwriting arrangement and the role of the particular defendant as an underwriter, and (6) whether, with respect to a fact or document incorporated by reference, the particular defendant had any responsibility for the fact or document at the time of the filing from which it was incorporated.

COMMENT: (1) To reflect the views expressed in Comment (3) at p. 714, Clauses (4) and (5) have been combined in a new Clause (4)—(6) and (7) being renumbered (5) and (6)—and in the process the phrase "whose duties should have given them

knowledge" has been changed to "whose duties would reasonably be expected to give them knowledge."

(2) In the renumbered §1704(g)(5), the phrase "and the accessibility to information with respect to the registrant" has been deleted on the ground that "the role of the particular defendant as an underwriter" adequately recognizes the junior role of the nonmanaging underwriter without inviting undue dilution of his diligence responsibility.

§1706(b) (Liability for Reports Attached to Distributions Statements)

Substitute:

(b) PORTION SUBJECT TO SECTION 1705 LIABILITY.—With respect to the contents of a distribution statement other than those contents referred to in section 1706(a), including reports that are identified or physically attached, the secondary distributor and every underwriter have the same liability that a registrant has under section 1705, except that (1) the secondary distributor and any underwriter are not liable with respect to a misrepresentation in such a report, and (2) the issuer is not so liable if the report contained no misrepresentation when filed and the issuer is in compliance with section 602(a)(1).

COMMENT: The purpose of the new Clauses (1) and (2) is obvious. See §510(d), supra. Clause (1) does not immunize the secondary distributor from liability under §1706(a) if the misrepresentation in the report results in a false certification.

§1708(b) (Measure of Damages for §1703(b))

Substitute:

(b) FOR SECTION 1703(b).—The measure of damages under section 1703(b) is computed as in section 1708(a), except that—

(1) sections 1703(h)(1)(B), 1708(a)(1)(A), and 1708(b)(2)(A) do not apply;

(2) the measure is reduced to the extent (which may be complete) that the defendant proves that the violation did not cause the loss;

(3) the measure (apart from any assessment of consequential damages or costs under section 1723(a) and (d)) is limited as if all the plaintiffs, together with all the members of the class in the case of a class action, had bought (or sold) only the amount of securities that the defendant had sold (or bought) (se also section 1711); and

(4) in an action for violation of—

(A) section 1602(a)(1) or 1613 in which the plaintiff proves a fraudulent act or a misrepresentation made with knowledge;

(B) section 1602(b)(1)(A) in which the plaintiff proves that the uncorrected statement became a misrepresentation made with knowledge; or

(C) section 1603(a),

the court in its discretion, on consideration of the circumstances and the purposes of this Code (including the deterrent effect of liability), may increase the measure of damages to an amount not in excess of 150 percent of the amount computed under section 1708(b)(1) to (3) inclusive; but section 1708(b)(4)(A) and (B) does not apply to the extent that the plaintiff recovers under section 1705 or 1707, and section 1708(b)(4)(C) does not apply to the extent that section 1705(a)(2) applies.

See also section 1711.

COMMENT: (1) §1708(b)(2): The plaintiff satisfies his burden by establishing the underlying violation and demonstrating the applicability of the specified measure of damages. The burden then shifts to the defendant, who normally will be obliged to show that some other factor caused all or part of the loss.

(2) §1708(b)(4): This has been added in order to provide a deterrent against an insider's *going into the marketplace* on the basis of inside information that he *knows* (under the language of §§1603(a) and 1708(b)(4)(A) and (B)) is undisclosed. Under §1708(b)(3) of the Official Draft the measure of damages in such cases would be limited in terms of the amount of securities that the insider had traded, so that his only risk would be the possibility of surrendering his ill-got gains.

To be sure, that would be equally true of an action under §1703(b) for violation of *§1602(a)(1), 1602(b)(1)(A) or 1613* by going into the marketplace on the basis of a *misrepresentation* or failure to correct) rather than silence. But usually

conduct of that sort would be actionable also under §1705 or 1707 on the basis of a false *filing* or false *publicity;* and the plaintiff would simply plead under §1705 or 1707 as an alternative to §1703(b). Except for the possibility of aider and abettor liability under §1724, that is not so under §1705 unless the §1703(b) defendant is a registrant, or under §1707 unless the defendant is a company or a person acting on its behalf. That explains the first "but" clause.

Similarly, the plaintiff complaining of a violation of §1603(a) does not have the §1705 or 1707 alternative except when the new §1705(a)(2) (action for violation of a rule requiring a correction) is available. That explains the second "but" clause.

There is not the same need for extra damages as additional deterrent so far as §1708(a) is concerned. For §1703(a), to which §1708(a) refers, has to do with face-to-face transactions, so that the insider is not fouling the marketplace.

For instances of similar judicial discretion, see §1716(a)(2) (excessive credit) and §1717(3) (churning).

§1708(c)(2) (Ceiling on Damages)

Change $100,000 *to* $200,000; *change* $1,000,000 *to* $2,000,000; and *substitute* for the "but" clause:

but section 1708(c)(2) does not apply if the plaintiff proves that the particular defendant made a misrepresentation with knowledge, or omitted a material fact or material document with knowledge of the omission, nor does it apply * * *

COMMENT: The figures have been doubled to reflect the inflation since work began in 1972 on TD3 (1973), in which this section first appeared. Cf. §512(5) supra. And the failure of the "but" clause to refer to omissions of required facts or documents (see §1704(a)(2), supra) was inadvertent.

§1709(c) (Civil Liability of Investment Advisers)

Substitute:

(c) INVESTMENT ADVISERS.—An investment adviser who—

(1) violates section 1602(a)(4) by means of a fraudulent act; or

(2) without reasonable justification or excuse

(A) violates section 1602(a)(4) by means of a misrepresentation, or (B) violates section 1602(b)(1)(D), is liable to his client for any loss caused by the violation.

COMMENT: The scienter test has been changed to "without reasonable justification or excuse." Once the plaintiff shows a violation, the burden of going forward on that issue shifts to the defendant, although the plaintiff retains the burden of persuasion as an incident of his ultimate burden of proof. Although R206(1), (2) and (4) uses "fraud" and "deceit" rather than "misrepresentation" language, and although trustees and the other categories specified in §1709(a) are no less fiduciaries than investment advisers are, the fact remains that advisers are specially regulated.

§1710(d) (Ceiling on Damages under §1609(d) or 1610)

Change $100,000 *to* $200,000 *and* $1,000,000 *to* $2,000,000.

COMMENT: See the comment to §1708(c)(2), supra.

§1714 (Short-Term Insider Trading)

No change.

COMMENT: In Comment (7) at p. 753, *change* §1413(e). In comment (11) at p. 754, *change* §1413(f)(4). These changes correct *errata.*

§1722(a)-(b) (Implied Actions)

(a) WHEN ACTIONS MAY BE IMPLIED.—A court, considering the nature of the conduct complained of, the type of relief sought, and the deterrent effect of recognizing a private action based on a violation of a provision of this Code, may recognize such an action even though it is not expressly created by part XVII, but only if (1) the action is not inconsistent with the conditions or restrictions in any of the actions expressly created, (2) the provision, rule, or order that is the basis of the action is designed for the special benefit of a class of persons to which the plaintiff belongs, (3) the plaintiff satisfies the court that under the circumstances the type of remedy sought is not disproportionate to the alleged

violation, and (4) in cases comparable to those dealt with in section 1702(d)(2) or 1708(c)(2) or a similar provision that specifies a maximum measure of damages, a comparable maximum is imposed.

(b) WHEN ACTIONS MAY NOT BE IMPLIED.—A court may not recognize a private action based on a violation of (1) section 1602(a)(1), 1602(b)(1), or 1604(c) in connection with an inducement not to buy or sell a security, or (2) section 2003(c)(4).

COMMENT: (1) Section 1722(a) has been rewritten to deemphasize the *ad hoc* factors that might have been considered implicit in the first few lines of the Official Draft, and to conform more closely to the standards of *Cort* v. *Ash*, 422 U.S. 66 (1975).

(2) The new §1722(b)(2), together with the changes in section headings, is incidental to §2003(c)(4), infra.

§1722(c) (Illegal Contracts)

Substitute:

(c) ILLEGAL CONTRACTS:—(1) A contract that is made, or whose performance involves, a violation of this Code (or of a rule of a self-regulatory organization within section 1721(a)) is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate this Code) unless the plaintiff satisfies the court that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this Code.

(2) To the extent that a contract described in section 1727(c)(1) has been performed, the court may not deny rescission at the instance of any party unless the defendant satisfies the court that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this Code.

(3) Section 1722(c)(1) and (2) does not apply (A) to the extent that the unlawful portion of the contract may be severed, (B) to preclude recovery against any person for unjust enrichment, or (C) for purposes of sections 504(b) and 1724(e)(2) and (3).

COMMENT: It has been suggested that U26(b) and N47(b), though verbally similar to X29(b), really mean (or at least *should* mean) that illegal contracts are literally "void" rather than merely (1) unenforceable by the guilty party (or nonparty with knowledge) and (2) voidable (i.e., subject to rescission) at the instance of the innocent party; for the Holding Company and Investment Company Acts regulate *industries* and not merely securities transactions. That is to say, the important factor under Parts XIV and XV should be not whether it is the innocent or guilty party who is suing but whether enforcement or nonenforcement (or rescission or withholding of rescission to the extent that a contract is executed) produces the more equitable result consistently with the purposes of the Code. For example, if a person from whom a regulated company had contracted to acquire assets in violation of §1505(a)(1)(A) were to be able as the "innocent" party to get damages for loss of its bargain, the purpose of requiring advance authorization would be frustrated.

Since §1722(c)(1)-(2) speaks in terms of the more equitable result consistently with the purposes of the Code, and since the important reform of the existing "void" provisions like X29(b) is to soften their absolute quality, the Official Draft's §1722(c) has been simplified by making the revised §1722(c)(1)-(2) Code-wide.

A potential defendant under either §1722(c)(1) or (2) could, of course, bring a declaratory judgment action against the potential plaintiff under the usual rules governing such actions. Cf. the X16(b) cases cited in 5 Loss 3010.

§1724(b)(1) (Causing or Assisting a Violation)

Substitute:

(b) CAUSING OR ASSISTING A VIOLATION.—(1) An agent or other person who knowingly causes or gives substantial assistance to conduct by another person (herein a "principal") giving rise to liability under this Code (as defined in section 202(24) and except for section 1714) with knowledge that the conduct is unlawful or a breach of duty, or involves a fraudulent or manipulaive act, a misrepresentation, or nondisclosure of a material fact by an insider (as defined in section 1603(b)), is liable as a principal. A person may cause or give substantial assistance to conduct by inaction or silence when he has a duty to

act or speak.

COMMENT: The second sentence has been added. Cf. §202(61)(B), which is a comparable provision in the definition of "fraudulent act."

§1725(b)(3)(C) (Arbitration)

No change.

COMMENT: This provision assumes voluntary bargaining between "peers," usually institutions. Normally it would not apply to an agreement between broker-dealer and customer.

§1725(d) (Unclean Hands and In Pari Delicto)

Substitute:

(d) IN PARI DELICTO.—In a private action created by or based on a violation of this Code (as defined in section 202(24)), the defense of in pari delicto is valid * * *.

COMMENT: This section has been limited to the *in pari delicto* defense on the ground that the last two factors listed are not adapted to the defense of unclean hands. In any event, there have been few cases under the SEC statutes involving unclean hands as distinct from *in pari delicto*. See Comment (4) at p. 806; *Bertoglio* v. *Texas Int'l Co.*, CCH Fed. Sec. L. Rep. Par. 97,342 at 97,284 (D. Del. 1980), and cases cited, *reargument or modification denied*, CCH Par. 97,373 (D. Del. 1980). The result is to leave the unclean hands defense uncodified, so that it will be applied as a matter of federal equity jurisprudence.

§1802(j) (Commission Contracts)

(j) COMMISSION CONTRACTS.—Notwithstanding any other provision of law, the Commission, to the extent provided in advance in approprition Acts, may make contracts with respect to all matters that in its judgment are necessary and appropriate to effectuate the purposes and provisions of this Code, including the rental of space in the District of Columbia or elsewhere.

COMMENT: This new section, which the Commission desires, is based on 7 U.S.C. §16(b), which pertains to the CFTC. See also 47 U.S.C §154(g) (FCC).

§1804(a) (Rules and Orders: Commission's Authority)

Substitute:

Sec. 1804. (a) COMMISSION'S AUTHORITY.—The Commission may adopt, condition, amend, suspend, and repeal rules and orders to implement specific provisions of this Code or for the execution of the functions vested in it. * * *

COMMENT: The "execution of the functions" phrase has been reinserted from X23(a)(1).

§1804(a)(6) (Rulemaking Authority *re* Options)

At end of §1804(a)(4), *delete:* and

At end of §1804(a)(5), *change* the period *to* a semicolon, and *insert:* and

Insert §1804(a)(6):

(6) may extend or adapt a provision of this Code to include, in addition to a security sepcifically covered by the provision, a put, call, or similar option or privilege with respect to that security or a warrant, right, or convertible security that relates to that security.

COMMENT: This section is not intended as an expansion of the Commission's rulemaking authority concerning options as such, as provided in §912, but rather is directed to situations where the purpose of a particular provision of the Code referring to "a security" or its issuer may not be fully accomplishable unless certain interrelationships or interactions between options, privileges or rights and their underlying securities are encompassed. It is not practical to deal with all such situations in the Code itself, not only because of their complexity and considerable variety but also because all standardized (publicly traded) options have an issuer (The Options Clearing Corporation) different from the issuer of the underlying security. Among other consequences, this means that, although it might be appropriate to extend some Code provisions to interrelations or interactions between stocks and options in either direction (stock to options or options to stock), others might apply in one direction only. For example:

(1) Whereas §1609(c) (following in this respect

X9(a)(2)) deals with manipulation involving different classes of securities of the same issuer or affiliated issuers, the Special Study of Options Markets recognized a need for a comparable provision dealing with manipulations involving an option and its underlying security. A rule extending and adapting §1609(c) to this situation and expressly dealing with stock transactions affecting options prices or vice versa would be within the authority granted by this section.

(2) Section 915(a)(1) makes it unlawful for a broker or dealer to effect a purchase or sale of a security without disclosing that he is a marketmaker, is financially interested in a current distribution, or has a substantial long or short position, in "the" security. The Commission would have the authority to adopt a rule whereby, if the first security referred to were an option, the second reference could be to its underlying security, or vice versa. Presumably any such rule would read in both directions.

(3) On the other hand, with reference to §913(2), which makes it unlawful for a broker or dealer to effect a purchase or sale of a security unless he discloses any control relationship with the issuer, it might be appropriate to adopt a rule requiring disclosure of a control relationship with the issuer *of the underlying security* when there is a transaction in an option, but the reverse would make no sense because the issuer of all standardized options is The Options Clearing Corporation.

§1804(b) (Rules and Orders: Standards)

Substitute:

(b) STANDARDS.—In exercising its authority under section 1804, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest or for the protection of investors (as well as consumers so far as part XV is concerned) and not inconsistent with the purposes of this Code, in addition to satisfying whatever other standards are made applicable by particular provisions.

COMMENT: The phrase "not inconsistent with" has been substituted for the Official Draft's "in furtherance of," in part because the latter phrase does not fit an *exemptive* rule or order too well.

§1804(d) (Rules and Orders: Procedure)

Substitute:

(d) PROCEDURE.—(1) Except to the extent provided in section 903(c), rulemaking under this Code is not required to be determined on the record after opportunity for a hearing. See also sections 805(e)(2) and 908.

(2) Section 553 of title 5, United States Code, does not apply to any rule change that is designed to reflect the adoption of this Code and does not constitute a change that the Commission considers significant in the rules previously in effect.

COMMENT: The new §1804(d)(2) is self-explanatory. Without it the effective date of the Code (§2010(a)) might have to be substantially extended.

§1805(g) (Accountants for Registrants Generally)

No change.

COMMENT: See the comment to this section at pp. 845-46. The withholding of authority "to prescribe the qualifications of directors" carries no implication either way with respect to such matters as the Commission's authority, *apart* from this section, to require audit committees of "independent" directors in appropriate circumstances, as stated in the comment, or to take similar director-oriented action in the corporate governance area.

§1806(d)(3) (Public Investigations and Publicity)

Substitute:

(3) If the Commission considers it practicable to do so, a person who is or will be the subject of adverse publicity as a result of a public investigation under section 1806(d)(1) or the publication of a report of an investigation under section 1806(d)(2) shall be given, as the case may be, (A) a reasonable opportunity to state his position on the record in the public investigation, or (B) advance notice of the publication of the report together with a reasonable opportunity to prepare a response in advance of the publication.

COMMENT: The purpose of this change is to make clear, as was always intended (see Comment (4) to §1806(d) at p. 852), that §1806(d)(3)(B) contemplates only a public response to the equivalent of today's X21(a) reports, not a private "Wells-type" submission.

§1806(f) (Subpoena Enforcement)

Substitute:

(f) ENFORCEMENT.—In case of contumacy or refusal to obey, the Commission may bring an action to enforce compliance with section 1806(c) or (e). The court may grant appropriate relief in aid of the investigation or proceeding, including orders that require the defendant to appear before the Commission or its designated member or officer, produce records and file a statement if so ordered, and give testimony with respect to the matter under investigation or in question. Failure to obey an order of the court may be punished by the court as a contempt. See also section 1821(d).

COMMENT: The "appropriate relief" language in the second sentence has been added in the interest of flexibility.

§1806(g)(5) (Copies of Records)

Substitute:

(5) A person designated in section 1805(c)(1) shall furnish to the Commission whatever copies of its records, and within whatever reasonable time, the Commission designates by rule or order, without regard to whether copies are required to be made or kept under that section.

COMMENT: (1) The "undue effort, expense, or delay" limitation appears today only in N31(b), not in X17(a)(1) or SIP11(c)(1). By the same token, only N31(b) refers to "extracts." Section 1806(g)(5) has been conformed in both respects to X17(a)(1).

(2) The addition of the "without regard" clause reflects the 1975 Senate report's description of X17(b) although that interpretation is not clear today from the face of the statute. S. Rep. No. 94-75, 94th Cong., 1st Sess. (1975) 120.

§1808(c) (Compliance Orders)

Substitute:

(c) COMPLIANCE ORDERS.—If the Commission finds (1) that an issuer is in violation of section 402(a), part VI, or section 1805(b), or (2) that a filing by an issuer (or material incorporated therein by reference) contains a misrepresentation, or omits a required fact or document, the Commission, by order, may require the issuer to file within a specified time whatever is necessary.

COMMENT: (1) This section has been extended from §602 to all of Part VI as well as §1805(b), the latter provision reflecting X15(c)(4). These orders, of course, are not selfenforcing. And it is understood that potential injunctive defendants under the proxy rules, for example, would prefer the extra flexibility of a Commission compliance order in negotiating settlements.

(2) In addition, the materiality requirement has been deleted from §1808(c)(2). As distinct from §1604(a)(2), which makes it "unlawful" to omit only a *material* fact that is required §1808(c) should enable the Commission to obtain *all* required facts.

§1808(d)(1) (Stop Orders)

Substitute:

(d) STOP ORDERS AGAINST OFFERING AND DISTRIBUTION STATEMENTS.—(1) If the Commission finds that an offering statement or distribution statement (or material incorporated therein by reference), as of the date specified in section 509, contains a misrepresentation, or omits a required fact or document, the Commission may issue a stop order suspending the effectiveness of the offering or distribution statement.

COMMENT: See Comment (2) to §1808(c), supra.

§1809(a) and (d)(1) (Administrative Proceedings: Securities Professionals)

Substitute:

(a) SANCTIONS.—If the Commission makes any of the findings specified in section 1809(b)(1) to (5) inclusive with respect to a person that is, was at the time of any conduct alleged under section 1809(b)(4) or (5), or is seeking to become, (1) registered under part VII, or (2) an associate of any such person, * * * .

* * *

(d) ASSOCIATES.—(1) If the subject of one of the findings specified in section 1809(b) is, was, or is seeking to become an associate within section 1809(a), the Commission's order may be directed either—

(A) to that person; or

(b) to the person who is, was, or is seeking to become registered,

except that, if the person described in section 1809(d)(1)(A) is an associate whose functions are solely clerical, ministerial, or in areas not subject to regulation under this Code, he is the only person to whom the Commission's order may be directed.

COMMENT: (1) §1809(a): The insertion of the numbers is designed to clarify what was intended: that "an associate of any such person" is the object of "with respect to" but of "is, was * * *, or is seeking to become."

(2) §1809(d)(1): The new language at the beginning of §1809(d) is likewise designed only to clarify what was intended to be the meaning of "him" in §1809 (a). That is to say, §1809 contemplates derivative liability of a *respondeat superior* type, as is the case today with respect to X15(b)(4) and R203(e) but not X15B(c)(2). Sections 1809(b)(5) and 1809(c)(2), with respect to failure to supervise, simply afford an additional basis for proceeding against the principal *directly;* they in no sense derogate from the principal's *derivative* liability.

§1809(b)(1) and (4) (Administrative Proceedings: Securities Professionals: Grounds for Sanctions)

Substitute:

(b) GROUNDS FOR SANCTIONS.—The Commission may take the action described in section 1809(a) with respect to a person within that section if it finds that he—

(1) without reasonable justification or excuse (A) made a misrepresentation in an application for registration or in a proceeding with respect to registration under part VII, or (B) omitted (or failed to incorporate by reference) a document or material fact required in such an application;

(2) was convicted of a crime involving a security or any aspect of the securities business or reflecting on his qualifications to act in any of the capacities specified in section 1809(a);

(3) is personally named in a preliminary or final judgment or decree of a court of competent jurisdiction enjoining him from acting as a broker, dealer, municipal broker, municipal dealer, underwriter, or investment adviser, or as an associate of an investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of a security;

(4)(A) without reasonable justification or excuse violated any provision of this Code, (B) is unable to comply with any provision of this Code, or (C) acted as in section 1821(b) or (c); or

(5) failed reasonably to supervise, with a view to preventing violations of this Code, a person who was subject to his supervision.

COMMENT: (1) The new phrase, "without reasonable justification or excuse," has been substituted for scienter in the misrepresentation-type conduct specified in §1809(b)(1)(A) and (4)(A). Since scienter has been eliminated also with respect to misrepresentation-type offenses in the criminal section in favor of a single "intentionally or recklessly" standard (compare TD3, §1517(a), with the Official Draft, §1821(a)(1)-(3)), the result is uniformly to abandon the scienter test outside of Part XVII (Civil Liability).

(2) Once the staff shows a misstatement or other violation, the burden of going forward with evidence of reasonable justification or excuse shifts to the respondent, although the staff retains the burden of persuasion on that issue as an incident of its ultimate burden of proof.

§1817(b)(2)(A)-(C) ("On the Record" Proceedings)

Combine (A)-(C) into the following (A), and *reletter* (D)-(G) as (B)-(E):

(A) is entered under section 1506(a) or (b), 1808(b) to (e) inclusive, 1808(g), 1808(i), 1809(a), 1810, 1811(a), 1812, or 1815(a);

COMMENT: This change is in the interest of specificity, and is consistent with the trend toward flexibility in administrative procedure generally.

§1817(b)(3) (Adjudicatory Proceeding)

No change.

COMMENT: 5 U.S.C. §551(5) defines "rule making" as "agency process for formulating, amending, or repealing a rule," and 5 U.S.C. §551(4) defines "rule" to include "an agency statement of general *or particular* applicability and future effect***" (emphasis supplied). Therefore, "particularized"

rulemaking would not be an "adjudicatory proceeding" for purposes of §1817. Moreover, "particularized" rulemaking *would* be "rulemaking" within §1804(d), which provides that "no rulemaking under this Code is required to be determined on the record after opportunity for a hearing." But there have been few if any instances of such rulemaking in the SEC's history, and neither §1817 nor §1804(d) would prevent the Commission from affording more procedure than is *required*.

§1817(d)(2)(B) (Procedure Prescribed by Commission)

Substitute:

(B) limit a hearing to written submissions or oral argument or both, with or without affidavits, (i) in a proceeding not within section 1817(b)(2), or (ii) when there is no genuine issue as to a materal fact;

COMMENT: The new Clause (i) affords the added flexibility of this section to proceedings not "on the record." And "material" in Clause (ii) is used with the summary judgment flavor of F. R. Civ. P. 56.

§1818(a)(6) (Judicial Review: Orders)

Substitute:

(6) If—

(A) any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission; or

(B) the court determines that a hearing (when none was held) or an additional hearing is required by law or is desirable to resolve a genuine issue with respect to a material fact or for any other reason,

the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers proper. The Commission shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order or other evidence of its action.

COMMENT: The alternative in certain cases of the court's conducting additional proceedings itself, etc., has been deleted.

§1819(a)(2) (Injunctions)

Substitute:

(2) On a showing—

(A) that the defendant is engaged or about to engage in acts or practices constituting a violation specified in section 1819(a)(1);

(B) that the defendant has engaged in such acts or practices; or

(C) that the defendant is not in compliance as specified in section 1819(a)(1),

the court shall grant appropriate relief in the form of temporary or permanent restraining orders and injunctions and orders enforcing compliance, except that it may not grant permanent relief under section 1819(a)(2)(B) without a showing of a reasonable likelihood of future violation.

COMMENT: The "reasonable likelihood" language—which reflects the case law but not the source provisions—is not necessary when the Commission shows that the defendant is actually engaged or about to engage in a violation or is not in compliance. The requirement of a showing of reasonable likelihood of recurrence when an injunctive action is based on a past violation is in accord with the current case law. But that showing need not be based on direct evidence of imminent recurrence. Many different factors can suggest the required likelihood. See, *e.g.*, *SEC* v. *Manor Nursing Centers, Inc.*, 458 F. 2d 1082 (2d Cir. 1972); *SEC* v. Management Dynamics, Inc., 515 F. 2d 801 (2d Cir. 1975); *SEC* v. *Koracorp Industries, Inc.*, 575 F. 2d 692, 698 (9th Cir. 1978). With respect to aiders and abettors, see Comment (3)(b) (2d paragraph) to §1724(a) at pp. 792-93.

(2) The "except" clause has been limited to permanent relief (final injunctions) in order not to affect the present standards with respect to temporary restraining orders or preliminary injunctions. This is not to say that the "reasonable likelihood" factor is irrelevant with respect to temporary relief. It is simply not a *sine qua non*. The courts will continue, unaffected by the Code, to consider the usual factors associated with temporary relief in SEC actions, with the "reasonable likelihood" factor playing whatever role it has played traditionally.

(3) Jurisdiction for an action brought by the Commission is conferred by §1819(a)(1). Nothing in §1819(a)(2) (including the "reasonable likelihood" language) is meant to establish a jurisdictional prerequisite to bringing such an action.

§1819(a)(3) (Injunctions)

Delete.

COMMENT: See the comment to §202(61)(C), supra.

§1819(f) (Injunctions: Investment Companies: Breach of Fiduciary Duty)

For the 2d sentence, *substitute:*

On a showing

(1) that the defendant is engaged or about to engage in such a breach; or

(2) that the defendant has engaged in such a breach within the past five years,

the court shall grant appropriate injunctive relief, including a temporary or permanent injunction against the defendant's acting in any or all of the specified capacities, excpet that it may not grant permanent relief under section 1819(f)(2) without a showing of a reasonable likelihood of future breach.

COMMENT: This section has been conformed to §1819(a)(2), supra.

§1819(*l*) (Ancillary Relief)

Substitute:

(*l*) ANCILLARY RELIEF.—(1) In a civil action created by or based on a violation of this Code, whether or not brought by the Commission and whether or not the court grants the principal relief requested, the court has the authority of a court of equity to grant appropriate ancillary or other relief, including an injunction, an accounting, a receivership of the defendant or the defendant's assets, disgorgement of profits, restitution, and limitation of the defendant's activities. In exercising its discretion whether to order disgorgement of profits or restitution, the court shall consider (among other relevant factors) whether an injunction could have been granted in the absence of section 202(61)(C)(ii).

(2) Section 1819(*l*) applies for purposes of sectio 1711 together with the sections specified in sectior 1711(a), except as provided in section 1723(a)(2)

(3) The court may not order a receivership of a bank or insurance company or of its assets without providing notice and an opportunity to be heard to the particular bank regulator or State insurance agency or official with jurisdiction to regulate insurance companies, as the case may be.

COMMENT: (1) §1819(*l*)(1): The "limitation" clause at the end of the first sentence has been added. And the reference to the principal relief reflects the case law. *SEC* v. *Commonwealth Chemical Securities, Inc.*, 574 F. 2d 90, 103, n. 13 (2d Cir. 1978); cf. *United States* v. *Moore*, 340 U.S. 616 (1951) (Housing and Rent Act of 1947); and, under the antitrust laws, cf. cases cited in 6 Loss 3972, n. 476. This is not to say, of course, that the plaintiff has any more *right* to ancillary relief when an injunction is denied than when it is granted. Even apart from the limitation in the second sentence, which is §1819(a)(3)(C) in the Official Draft (see the comment to §202(61)(C), supra), §1819(*l*) is simply a grant of authority to exercise the chancellor's discretion.

(2) §1819(*l*)(3): (a) This will give the court an opportunity to weigh any counterconsiderations to a receivership motion from the point of view of bank or insurance company regulation.

(b) As "bank regulator" is defined in §202(12), no notice will be required with respect the very small number of state banks that are neither member banks nor insured by the FDIC.

§1809(o) (Service of Subpoenas in Judicial Actions by SEC)

Insert:

(o) SERVICE OF SUBPOENAS.—A subpoena requiring the attendance of a witness at a hearing or trial in an action brought by the Commission under section 1819 may be served in, and the production of papers may be required from, any place within or without the United States, but only with the prior permission of the court for cause shown when the person to whom the subpoena is directed lives outside the district and more than one hundred

miles from the court.

COMMENT: This is new. F. R. Civ. P. 45(e)(1) authorizes service "at any***place" when a statute of the United States so provides. And the Commission has had the benefit of worldwide service of investigative subpoenas. See §1806(e). This section is modeled on 15 U.S.C. §23, with respect to antitrust actions.

§1820 (Pleading Fraudulent Acts and Misrepresentations)

Substitute:

Sec. 1820. In administrative proceedings brought by the Commission and all civil actions under this Code, the circumstances alleged to constitute a fraudulent act or a misrepresentation shall be stated as in the district courts of the United States.

COMMENT: The insertion of "brought by the Commission" is designed to make it clear that the section does not apply to proceedings brought by a self-regulatory organization.

§1903(c) (Antitrust Laws)

Remove the brackets from the Official Draft. Comment (1) at pp. 956-57 concludes with the statement that, with both the Commission and the investment company industry favoring the section, perhaps principle should here yield to practicality.

§1903(e) (Administrative Procedure)

Change section 1818 *to* sections 1804(d)(2), 1817(b)(3), and 1818.

COMMENT: (1) There was no §1804(d)(2) in the Official Draft.

(2) The addition of §1817(b)(3) corrects an inadvertence in the Official Draft. See the comment to §1903(e) at p. 959. By the same token, Comment (1) to §1817 at p. 892, when it says that "All of §1817 is meant to be consistent with 5 U.S.C. §§551-59," should have referred to "All of §1817 apart from the 'except' clause in §1817(b)(3)."

§1904(k) (Relation to State Law: Cross-References)

Substitute:

(k) CROSS-REFERENCE:—(1) For other provisions with a peremptive effect, see sections 917(a), 1202(c)(4), 1203(i)(6), 1206(d)(6), 1305(c), 1308(b)(4), 1313(b), 1410(h)(4), 1724(e)(2)(A)(ii) and (e)(3)(A), 1805(i), 1806(j)(3), 1819(j)(7), 1906, and 2007.

COMMENT: The reference to §§1308(b)(4) and 1410(h)(4) reflects those added provisions, supra.

(2) For other provisions that expressly preserve State law, see sections 202(179)(C), 805(c)(3), 1009(c), 1306(a)(1)(A) to (C) inclusive, 1308(b)(2), 1423(g), 1722(e), and 1822(a)(2).

COMMENT: The reference to §805(c)(3) reflects the revision of that section, supra.

§1905(a)(1)(D)(i) (Extraterritoriality)

Change substantial *to* significant.

COMMENT: The word "significant," which is favored in the *Restatement (Second) of Conflict of Laws* by way of describing a particular relationship, expresses the contemplated qualitative approach better than "substantial."

§1905(a)(2) (Extraterritorial Application)

Substitute:

(2) Within the limits of international law, part XVI applies with respect to an act specified in section 1905(a)(1)(A) that is initiated within the United States although it occurs outside the United States.

COMMENT: The deleted reference to Part XVII might have created a negative implication with respect to Part XVII, and was inconsistent with Code style. See Comments on Style, para (3), at p. lix.

§2003(c)(4) (Signatures: Directors' Duty to Investigate When Signing Annual Report)

Insert:

(4) It is unlawful for a director to sign an annual report pursuant to section 602(a)(1) unless he has made a reasonable investigation of its contents. Section 1704(g) applies for purposes of determining the standard of reasonableness.

COMMENT: (1) This is part of the solution of the

problem of fixing liability for the "10-K" as between §§1704 and 1705. See Comment (1) to §1705, supra. Directors will not have to sign unless required by rule under §2003(c)(1). But it is assumed that there will be such a rule. And the purpose of §2003(c)(4) is to impose a sense of responsibility on directors who sign without subjecting them to §1704-type liability. Indeed, there will be *no* civil liability for violation of §2003(c)(4)—neither express, since the Code nowhere provides for such liability, nor implied, since §1722(b), supra, specifically forecloses it. Moreover, §1705(f), supra, specifically provides that a violation of §2003(c)(4) does not of itself preclude a successful defense of lack of scienter so as to create liability under §1705(f) (and hence, indirectly, for violation of §2003(c)(4)). Thus the only sanctions will be injunction at the instance of the Commission and (in extreme cases) criminal prosecution.

(2) In order to avoid the problem of obtaining signatures (or powers of attorney) from directors scattered throughout the country, the Commission's rules could require every director, when elected, to give the secretary (or some other official) of the registrant a general power of attorney with respect to all filings that are required to be signed pursuant to §2003(c)(1).

§2004(a) (Public Availability of Information: Records)

At end, before the period, *insert:*

except that for purposes of section 552 of title 5, United States Code, "records" does not include any material that the Commission receives in an investigation under section 1806(a) or (b), whether provided pursuant to compulsory process under this Code or voluntarily in lieu of any such process

COMMENT: The Freedom of Information Act, 5 U.S.C. §552(b)(7), exempts investigatory records only under six specified circumstances. This change is modeled on §14(f) of the Federal Trade Commission Act, 15 U.S.C. §14(f), as amended by the Federal Trade Commission Improvements Act of 1980.

§2006(c)(1) (Causing or Assisting a Violation)

Substitute:

(c) CAUSING OR ASSISTING A VIOLATION.—(1) A person who causes or gives substantial assistance to conduct that is unlawful under this Code is subject to—

(A) section 1819(a);

(B) section 1809(b)(1), 1809(b)(4)(A) or (B), 1810(c), 1811(a), or 1812 if he is a person within any of those sections and he acts without reasonable justification or excuse; or

(C) section 1809(b)(4)(C) if he is such a person and the conduct is within section 1821(b) or (c).

COMMENT: The substitution of the (B) here for the Official Draft's (B) and (D) is incidental to the deletion of the scienter standard from §1809(a)(1) and (4), supra.

§2010 (Effective Date and Saving Provisions)

No change.

COMMENT: At p. 1035, in 2d line from end, *change* §§2-4 *to* Title II. This corrects an *erratum.*

APPENDIX B

Harvard Law School
Cambridge, Mass 02138
September 18, 1980

Advisers and Consultants on
the Federal Securities Code

Gentlemen:
At long last I am able to give you definite word of the status and prospects of the Code; and I hope you will agree that the news was worth the wait. Copies of this letter are also being forwarded by Warren Grienenberger to the members of the ABA Committee.

First: As you know, the Official Draft of the Code, with the Reporter's comments, was published in late April in two volumes totaling (with tables) 1161 pages. The Official Draft is the "Proposed Official Draft" as approved by the Institute in May 1978 and as changed to reflect (1) comments received before and at the meeting, (2) action taken at the meeting, (3) adjustments required by the subsequently enacted Bankruptcy Reform Act, which the Reporter was authorized to make with the Council's concurrence by the vote approving the Code, and (4) postmeeting changes of an editorial or technical

nature that the Reporter was likewise authorized to make by that vote.

Some of the amendments in the last cateogry reflect minor changes of substance that are believed not to be controversial. The more significant of these editorial changes were cleared with the Executive Committee of the Council. See, *e.g.*, §§1506(d) and 1819(j), which rearrange and simplify all the reorganization provisions in the 1935 Act. And all changes of significance in the Proposed Official Draft are reflected in the books' comments.

Second: The Official Draft reflects also a painstaking review, over a period of some months, by two very able lawyers in the Office of House Legislative Counsel. (Their review accounts for some of the changes in numbering, particularly in Part II.) And an unpublished 696-page House Committee Print of a bill that is identical with the version in the two volumes—except for the bill's resolution of the tnree questions left open by the Institute—has been in existence for some time awaiting the completion of discussions with the Commission.

Third: In December 1978 the Council of the American Bar Association's Section of Corporate, Banking and Business Law—after its Committee on Federal Regulation of Securities had endorsed the Code by a postal ballot majority of more than 90 percent—voted unanimously to recommend that the House of Delegates "approve the Federal Securities Code proposed by The American Law Institute*** and recommend its prompt introduction, consideration and enactment by the Congress." That resolution was adopted by the House, again unanimously, on February 14, 1979. The Council, in approving the Code, also appropriated funds for the expenses of the working group referred to in the next paragraph; and it voted a supplemental appropriation, again unanimously, at the ABA meeting in Honolulu last month.

Fourth: It is the Institute's practice not to engage in any legislative activities. However, several members of the advisory group and I, making it very plain that we were acting in our personal capacities and without authority to speak for the Institute or the ABA or anybody else, formed ourselves into a small working group dedicated to the adoption of the Code. This group consists of Messrs. Milton H. Cohen, Demmler, Harris, Henkel, Kroll, Sommer and Throop; and Ray Garrett played a very active role until just a few weeks before his death.

We have been in virtually continual discussions with various people at the Commission for the past twenty months or so. Beginning in December 1978, initially Ray Garrett and I, then various other members of the working group and I, met first for several days with the SEC's General Counsel and others from his office; then separately (at the Chairman's suggestion) with each operating division; after that with the entire Commission in three open meetings; and finally with the Chairman and key staff people in a series of discussions over the past few months. A considerable number of the staff, we were told, have spent some 9000 hours reviewing the Code. And I should say that on a technical level their review, on top of the thorough review by House Legislative Council, has increased my confidence in the internal integrity of the Code.

The staff had a great many comments—we thought far too many. One difficulty was that most of the staff people with whom we had closely worked in the development of the Code had left. Indeed, some months ago we came close to breaking off further discussions and seeking to have the Official Draft introduced in Congress with the idea that the subcommittees would simply ask the Commission for its comments. But Congressmen Eckhardt and Scheuer, the subcommittee chairmen who are expected jointly to preside over the House side's hearings on the Code, advised all concerned that they would prefer to introduce the Official Draft as changed to reflect those proposals on which the Commission and the working group *could* agree, with a side enumeration of those Commission proposals that the working group considered unacceptable. That advice turned out to be sound; for in the past few months we have managed to reach nothing less than complete agreement between the Commission and the working group on an amended version of the Official Draft. This is not to say that every member of the working group is perfectly happy with every change. But there is a clear consensus that the Commission's support in Congress is well worth the changes agreed on.

Fifth: The enclosure contains all of the changes in the language of the Official Draft, together with comment explaining their purpose. On the one hand, the advantages of going to Congress with the Commission's support are obvious. On the other hand, the price of such support, we have always recognized, would be too high if the results were perceived to be essentially an SEC-dictated Code rather than the version approved by the ALI and the

ABA. Accordingly, the working group sought to demonstrate to the people on the SEC side the logic and soundness of the positions contemplated by the Official Draft, as well as the vital necessity of maintaining a balance. And (to their great credit if I may say so) the Commission ultimately agreed with or came close to the group's position on many of the staff's proposals.

Sixth: The text and comments in the enclosure should be self-explanatory. But let me try to sum up their tenor in very general terms—more detailed explanations appear in the comments—with full recognition that this process inevitably involves the comparing not only of apples and oranges but also, frequently, of grapes and melons.

Aside from 20 or so changes that are essentially technical (*e.g.*, §202(7)(A)(iii) or clarifying (*e.g.*, §1009(e)), or that simply conform the sections in question to changes in other sections (*e.g.*, §202(99)(B)(ii)), there are 60-odd changes altogether. As I categorize these changes (see the chart attached to this letter), they may be broken down as follows:

(1) Eleven originated outside the Commission:

Three of these represent the Commission's acquiescence in the working group's proposed solution of the three points on which the Institute took no position. See §§302(6)(B), 1704(a) et al. and 1903(c). These include a compromise, suggested by the group and accepted by the Commission, with respect to civil liability for the "10-K," under which the burden of proof rests with the defendant but all he need do is negative scienter. See §1705(f).

Two more changes in this category represent improvements that the comments in the book state the Reporter would have made if he had had the authority. See §512(4), which was negotiated with the SEC staff and representatives of block traders, and §906(a).

Another represents two exclusions from the general exemptive authority in §303(a) that affect SIPC and the Municipal Board. They originated, respectively, with SIPC and a member of the working group.

Section 510(a) has been rewritten to facilitate bank foreclosure sales. The exemption limits in §512(5) have been doubled to $200,000 and $100,000, in response to the Commission-initiated doubling of the liability limits in §§1708(c)(2) and 1710(d) to $200,000 and $2,000,000 by way of recognizing the inflation since those figures made their appearance. The rulemaking flexibility in §1804(a)(6) with respect to the confluence of options and their underlying securities is recognized as essential by both sides. The change in §1706(b) is designed to help certain defendants rather than plaintiffs. And §1819(*l*) has been revised to preclude receiverships of banks or insurance companies without notice to the appropriate regulators.

(2) That leaves 55 changes, most of which very likely would have been incorporated in the Proposed Official Draft if the suggestions had been made while the Code was being drafted. Not a few of these are recognized by the working group as improvements in the Code. And a number simply restore existing law. See §§202(61)(A) (definition of "fraudulent act"), 202(80)(B)(ii) (part of the definition of "investment company"), 906(a) (limitation of trading by exchange members), 1308(b)(4) and 1410(h)(4) (communications by bondholders and strict trust shareholders), 1804(a) (Commission's rulemaking authority), and 1818(a)(6) (remand on judicial review). My own list breaks this residue down to 35 changes that I would consider minor (*e.g.*, the insertion of the "nature and volume" phrase in §202(74), the definition of "institutional investor"); 14 that I would consider a bit more substantial (*e.g.*, the revision and, I think, simplification of the provisions on manipulation by trading and illegal contracts in §§1609(c) and 1722(c)); and 6 that might be considered *relatively* major. But, of course, drawing a line in this way, at least between the small and medium-sized potatoes (I am running out of fruits and vegetables), entails a good deal of subjective judgment.

(3) The 6 relatively major changes are as follows:

§§202(41)(B)(iv) (limited offering) and 510(d)(2) (contents of distribution statement as used): The SEC staff, while favoring some sort of dichotomy comparable to the Code's line at "one-year registrants," would have preferred a qualification test of some kind. But agreement was ultimately reached on retention of the "one-year registrant" concept in these two sections (its use in §§202(41)(C) and 512(3), (4), (7) and (8) was not seriously questioned), subject to formulas that are designed to reinforce the concept's continuous disclosure rationale with some assurance that the market adequately reflects that disclosure: The

limited offering provision authorizes the Commission by rule to require delivery of the latest circulated annual report (and all later circulated reports) when the security is not traded on a Commission-designated exchange or included in a Commission-designated service like NASDAQ; and in any event, because the Code contains nothing like S4(1), the rulemaking authority disappears with respect to *secondary* limited offerings after the issuer has been registered for *three* years. When there is a secondary *distribution*, on the other hand, §510(d)(2) restricts the report-delivery rulemaking authority along the lines of Form S-16; by reference to number of security holders and aggregate market value of outstanding securities not held by the issuer's affiliates.

§1603(a): Here—although it is worth noting that *the Commission* receded from the proposal that an insider's bare suggestion to buy or sell unaccompanied by *any* information should make the tippee an "insider" (see Comment (2) in the enclosure)—*both sides* (as explained in Comment (1)) yielded somewhat in order to achieve a compromise on the Commission's preference for "material fact" over "fact of special significance." In SEC injunctive and administrative actions the test will be materiality, as presumably it is today. But in private (and criminal) actions (private actions being the real area of the Official Draft's concern here) the test will be "fact of special significance," except that the burden of going forward on that issue will shift to the defendant once the plaintiff (or the Government) proves that the omitted fact was material. This compromise—which was not easy for the Commission to accept from its point of view, but which it did accept in the interest of reaching an accord—seems to the working group to retain the essential point of the Official Draft.

§1702(c) of the Official Draft (which was §2007 of the Proposed Official Draft): This mitigation defense has been deleted because (1) it would concededly have complicated litigation under the otherwise strict liability approach of §1702, and (2) the Code reduces much of both the vagueness and the absolutism of the underlying substantive law. See, e.g., the "good faith" flexibility in §§202(41)(B)(i), (B)(viii) ((B)(vii) in the Official Draft) and (C)(iii), and 514(d)(2).

§1705: The revision of this section goes part of the way back to an early draft. See TD2, §1304(d), and Comment (2) to §1604(c) at pp. 543-44 of the Proposed Official Draft. But, whereas the TD2 provision would have made it broadly *unlawful* to fail to correct *any* false filing, record or publicity, §1705 as revised is much narrower: It merely creates *civil liability* for violation of a *reporting rule* under §602(a) through failure to file (or send or publish) any *required* report that is necessary to correct *the registration statement or a filed annual report;* and the kind of reporting rule contemplated will be relatively specific rather than a mandate to correct in general terms.

§1708(b): This has been rewritten to amend the measure of damages in certain cases under §1703(b), as explained in Comment (2) to §1708(b) in the enclosure, in order to provide a deterrent against an insider's *going into the marketplace* on the basis of inside information that he *knows* is undisclosed. Whereas the Official Draft would merely create the risk of the insider's surrendering his ill-got gains, §1708(b)(4) as revised authorizes the court *in its discretion* to increase the measure of damages by a maximum of 50 percent.

See also the "10-K" civil liability compromise (§1705(f)) referred to in para (1) above.

Seventh: The Commission has a further list of 6 "separable issues" that would not be reflected in the Official Draft as introduced, but that the Commission would reserve the right to bring to the attention of Congress at any time. Some of these reflect questions that have come to the fore only since the end of the Institute's deliberations on the Code. Others are thought to involve political issues that might impede action on the Code.

This list is as follows: (1) whether §202(150)(B)(viii) (definition of "security") should be changed to make it clear that futures contracts based on securities are not excluded from the definition; (2) the whole tender offer area, in which the Commission has recently been developing a legislative program; (3) whether §1804 should explicitly grant the Rule 2(e) type of authority; (4) whether §1805 should give the Commission explicit rulemaking authority with respect to auditing standards; (5) whether §302(a) should incorporate the Commission's recent legislative proposal with respect to industrial development bonds; and (6) whether the "clear and convincing" rule of the *Collins* case should be reversed.

Eighth: Perhaps as important as what the changes

would do is an analysis of what remains unchanged:

(1) So far as their quantitative relevance is concerned, the 60-odd nontechnical changes must be considered in the light of a 700-page bill that contains (according to my count) no fewer than 1021 sections or subsections. In other words, only some 6% of the subsections are significantly affected at all (some 5% if the non-SEC-initiated changes are excluded).

(2) The basic structure of the Code remains unimpaired. Seven parts (IV, VI, VII, XI, XII, XV and XX) are not touched, and five more parts (I, VIII, X, XIII and XIX) are represented by only one section each in the enclosure. Most of the changes, as might be expected, occur in Parts XVI-XVIII.

(3) On a qualitative rather than a quantitative analysis—and this is the most important consideration—the Commission has accepted the Code's major reforms, for example: (a) the substitution of company registration and continuous disclosure for the traditional concentration on §5 of the 1933 Act; (b) the concept of the "one-year registrant"; (c) the Code's treatment of secondary distributioins; (d) the liberalization of the whole 1933 Act registration scheme, including the Commission's acquiescence in the objective "limited offering" concept, the expansion of the "trading transaction" concept, the considerable expansion of S3(a)(11) into the Code's "local distribution," and the "good faith" lubricant in the definiton of "distribution" as well as the "local distribution" exemption (§514(d)(2)); (e) the integration of the fraud and civil liability provisions in Parts XVI and XVII, including the statute of limitations scheme; and (f) the partial preemption and extraterritorial schemes of §§1904-05.

Ninth: The Commission is today issuing a release—to which this letter and the enclosure are attached—expressing its support for the Code as changed in accordance with the enclosure and its recommendation that the Code be enacted in this form. The letter and its enclosure will also be published as soon as possible as a supplement to the two-volume edition of the Code.

In order to give the members of the ABA Committee an opportunity to comment on the changes at its scheduled meeting on October 18 (to which all of you will be invited)—and also in view of the imminent recess of the Congress—consultations with the subcommittee chairmen in both the Senate and the House have led to the conclusioin that it would be advisable to postpone introduction of the Code until the opening of the next session of the Congress in January. There is, however, the possibility of introduction and preliminary hearings in November if the present Congress comes back after the election. That decision will be made by the legislative leaders later.

Tenth: Finally, I want to express the devout hope—particularly to the members of the ABA Committee, who have been so supportive in the past—that all concerned will remember that a Code of this size cannot be expected to be perfect; that, by hypothesis, it would not be a good or a viable Code if either the Commission or the Bar or anybody else liked *everything* about it; that compromise is inevitable, as the Committee must have realized when it resolved on codification in principle half a generation and a mountain of drafts ago; and that realistically the Code must be compared with the existing state of affairs rather than some imaginary ideal.

If this peroration has not already brought tears to everybody's eyes, I could go on and remind the members of the ABA Committee that the Code is essentially a child of the Committee; that the project was undertaken with great enthusiasm on the part of most of the Committee's then members; that more than eleven years, untold hours, about a half-million in cash raised by the ALI and probably several millions in uncompensated time have been spent by hundreds of persons in getting to the present point; that we have exceeded our most extravagant expectations in that we never dared hope for complete agreement with the SEC on terms that we could recommend; that a legislative project so vast is not apt to prosper in Congress if the volume of controversy becomes too great; and that, if this effort fails, it will be a long, long time before anybody tries again despite the certainty of chaos and near chaos as we continue to try to live with seven disjointed statutes in an area as complex as the world of securities.

With warm regards, and my fervent thanks to all the recipients of this letter for many favors,

Sincerely
Louis Loss

LL/js
Enclosures

(1) *Non-SEC changes*

§302(6)(B)
303(a)
510(a)
512(4)
512(5)
906(a)
1704(a) et al.
1706(b)
1804(a)(6)
1819(1)(3)
1903(c)

(2a) *Minor changes*

202(34)
202(40)
202(61)(A)
202(61)(C)
202(74)
202(80)(B)(ii)
202(93)(A)(iii)
202(117)(A)
202(131)
202(150)(B)
202(164)(D)
302(9)(A)-(B)
514(a)
805(c)(3)
903(e)
904(a)
919(a)
1308(b)(4)
1410(h)(4)
1411(a)
1418(e)
1419(b)(2)
1604(c)
1704(g)
1722(a)
1802(j)
1804(a)
1804(d)(2)
1806(f)
1806(g)(5)
1808(c)
1817(d)(2)(B)
1818(a)(6)
1819(a)(2) and 1819(f)
1819(*l*)(1)-(2)

(2b) *More substantial changes*

101(7)
202(110)(B)
302(11)
1609(c)
1609(f)
1708(c)(2) and 1710(d)
1709(c)
1710(d): see 1708(c)(2), supra
1722(b) and 2003(c)(4)
1722(c)
1804(a)(6)
1809(b)(1) and (4)
1817(b)(2)(A)-(C)
1819(o)
2003(c)(4): see 1722(b), supra
2004(a)

(3) *Relatively major changes*

202(41)(B)(iv)
510(d)(2)
1603(a)
1702(c)
1705
1708(b)

(4) *Technical changes*

202(7)(A)(iii)
202(41)(C)(i)(II)
202(78)(B)(i)
202(99)(B)(ii)
202(163)(A)
907(b)
915(b) and 1614
1009(c)
1603(b)(3)
1614: see 915(b), supra
1702(a)(2)
1724(b)(1)
1725(d)
1804(b)
1806(d)(3)
1808(d)(1)
1809(a) and (d)(1)
1819(a)(3)
1820
1903(e)
1904(k)
1905(a)(1)(D)(i)
1905(a)(2)
2006(c)(1)

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17143/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE INCORPORATED

File No. SR-CBOE-80-24

The Chicago Board Options Exchange Incorporated ("CBOE") submitted on September 8, 1980, a proposed rule change under Rule 19b-4 to eliminate the requirement that members submit monthly reports of certain uncovered short positions, and to require instead that such reports be submitted only if requested by the CBOE.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17144/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-80-14

The Pacific Stock Exchange Incorporated ("PSE") submitted on September 4, 1980, a proposed rule change under Rule 19b-4 to establish procedures for the execution of cross transactions on the options floor of the PSE.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market

Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17145/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-23

The Chicago Board Options Exchange, Incorporated submitted on September 8, 1980, a proposed rule change under Rule 19b-4 to modify its policy relating to CBOE Rule 5.6 concerning the intervals at which options exercise prices are fixed and the introduction of new options series. Specifically, the policy, as modified, would provide that for underlying securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals, and for securities trading above $100 per share exercise prices generally would be fixed at 10 point intervals. The policy, as modified, also would provide that a new options series could be added when the market price of the underlying security equaled the highest or lowest existing exercise price in a particular options series and that new options series could be added on any date so long as the series to be added would not expire in the calendar month during which it was introduced.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17146/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-21

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on September 2, 1980, a proposed rule change under Rule 19b-4 to amend Phlx Rule 1001 to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call classes on the same side of the market on the same underlying security, and to amend Phlx Rule 1002 to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within a period of five consecutive business days.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six

copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17147/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-15

The Pacific Stock Exchange Incorporated ("PSE") submitted on September 10, 1980, a proposed rule change under Rule 19b-4 to amend PSE Rule VI, Sec. 5 to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call classes on the same side of the market on the same underlying security, and to amend PSE Rule VI, Sec. 6 to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within a period of five consecutive business days.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17148/September 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-22

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on September 8, 1980, a proposed rule change under Rule 19b-4 to amend CBOE Rule 4.11 to increase position limits from 1,000 to 2,000 options contracts and to authorize the President of CBOE or his designee to grant exceptions from the Rule. CBOE also proposes to amend CBOE Rule 4.12 to increase from 1,000 to 2,000 the number of contracts of a given class of

options that can be exercised within a period of five consecutive business days. In addition, CBOE proposes to rely on existing language in both rules to permit CBOE to fix higher position and exercise limits in certain options classes and series in order to conduct experiments to determine whether further expansion of position and exercise limits is advisable.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17149/September 12, 1980

SEE

SECURITIES ACT OF 1933

Release No. 6241/September 12, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17150/September 12, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-7)

ORDER APPROVING PROPOSED RULE CHANGE

On August 4, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change extending from September 24, 1980, to December 1, 1980, the effective date of certain amendments to MSRB rule G-15 relating to customer confirmation and MSRB rule G-12 applicable to inter-dealer confirmations. The amendments to rule G-15 (File No. SR-MSRB-79-6) were approved by the Commission in Securities Exchange Act Release No. 16707 (March 28, 1980). Amentments to rules G-12 and G-15 (File No. SR-MSRB-80-1) were approved by the Commission in Securities Exchange Act Release No. 16844 (May 27, 1980).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17051 (August 6, 1980)), and by publication in the *Federal Register* (45 FR 53938 (1980)). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and were made available to the public at the Commission's Public Reference Room.

The Commission received one comment letter on the proposed rule change. A securities firm commented that the extension of the effective date would "not provide adequate time" to adjust data

processing systems to comply with the new requirements of MSRB rules G-15 and G-12. The firm had no objections to an extension of time, but argued that the additional time proposed would be insufficient for it to make the necessary modifications to its systems.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17151/September 15, 1980

A notice has been issued giving interested persons until October 6, 1980 to comment on the application of the *Philadelphia Stock Exchange, Inc.* for unlisted trading privileges in the common stock ($.67 par value) of TFI COMPANIES, INC.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17152/September 17, 1980

A notice has been issued giving interested persons until October 8, 1980 to comment on the application of PACIFIC SCIENTIFIC COMPANY to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17153/September 18, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6242/September 18, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17154/September 18, 1980

In the Matter of Applications of the

PACIFIC STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Pacific Stock Exchange ("PSE") has filed applications with the Commission pursuant to Section 12(f)(1)B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Data General Corporation
Common Stock, $.01 Par Value (File No. 7-5729)
Dorchester Gas Corporation
Common Stock, $.10 Par Value (File No. 7-5730)
Foster Wheeler Corporation
Common Stock, $3.33-1/3 Par Value (File No. 7-5731)
Hospital Corporation of America
Common Stock, $1 Par Value (File No. 7-5732)
Mohawk Data Sciences Corporation
Common Stock, $.10 Par Value (File No. 7-5733)[1]

The Commission finds that approval of the PSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 58457 (September 3, 1980). The Commission has received no comments with respect to these applications.

PSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the PSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the PSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Pacific Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17155/September 18, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-16

The Pacific Stock Exchange Incorporated submitted on September 15, 1980, a proposed rule change under Rule 19b-4 to modify its policy relating to PSE Rule VI, Section 4, concerning the intervals at which options exercise prices are fixed and the introduction of new options series. Specifically, the policy, as modified, would provide that for underlying securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals, and for securities trading above $100 per share exercise prices generally would be fixed at 10 point intervals. The policy, as modified, also would provide that a new options series could be added when the market price of the underlying security equaled the highest or lowest existing exercise price in a particular options series and that new options series could be added on any date so long as the series to be added would not expire in the calendar month during which it was introduced.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 22, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21712/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6241/September 12, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21713/September 15, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

(70-6485)

ORDER AUTHORIZING HOLDING COMPANY TO ACT AS SURETY ON A SUPERSEDEAS BOND OF ITS SUBSIDIARY

The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to Sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the proposed transaction.

Southern proposes to act as one of two sureties on a bond of its subsidiary, Alabama Power Company ("Alabama"), in connection with Alabama's appeal in a rate proceeding. The second surety on the bond will be Joseph M. Farley, who is president of Alabama. The Alabama Public Service Commissioin ("APSC") on July 29, 1980, entered an order granting a retail electric rate increase for Alabama of $30.6 million annually based upon a test period ended November 30, 1979. The rates requested by Alabama would have increased the test period revenue by approximately $122.3 million annually. Alabama plans to file a notice of appeal to the Supreme Court of Alabama and plans to petition that court for authority to place into effect, subject to refund under supersedeas bond, the portion of the requested increase denied by the APSC order. The State of Alabama statutes which permit the court to grant supersedeas require, as a condition precedent to placing the contested rate increase in effect subject to refund, that a bond be furnished in double the estimated approximate amount by which revenues would be increased in six months by reason of the increased rates sought. Two or more sureties are required on the bond. Additional bond on like conditions must be provided each six months as long as the appeal is pending and the supersedeas is in effect.

Alabama estimates that the amount of the supersedeas bond, if the maximum requested supersedeas relief is granted by the court, would be approximately $100,000,000, which is twice the estimated increased revenue from the refundable rates for the first six months of the supersedeas period. Alabama has been advised that such a bond can be obtained from a commercial surety company only with difficulty and with a required premium of over $75,000 for the first six months' premium. The premium for additional bonds for subsequent six-month periods may be expected to increase so as to reflect increased usage and added revenue attributable to the increased rates. In order for Alabama to avoid the substantial premium costs attendant upon use of a commercial surety, Southern proposes to act as surety on Alabama's bond for no premium, fee or other compensation. Approval of this bond by the court would be expected.

Southern proposes to act as surety on the supersedeas bond for the revenues during the initial period of six months from the date of delivery thereof and to execute as surety such further bonds or renewals or extensions as may be required to permit Alabama to keep the proposed rates in effect until the questions raised in the appeal have been finally determined, without the necessity of having to pay the substantial premiums required by the use of a commercial surety.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $3,200, including legal fees of $800. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been

given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21682), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21714/September 15, 1980

In the Matter of

GULF POWER COMPANY
Pensacola, Florida

MISSISSIPPI POWER COMPANY
Gulfport, Mississippi

(70-5894)

ORDER AUTHORIZING ASSOCIATE ELECTRIC UTILITY COMPANIES TO ALLOCATE COSTS OF COAL HOPPER CARS

Gulf Power Company ("Gulf") and Mississippi Power Company ("Mississippi"), each an electric utility subsidiary of The Southern Company, a registered holding company, have filed post-effective amendments to an application-declaration previously filed with this Commission pursuant to Sections 9, 10 and 13(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 87(a)(3), 90 and 91 promulgated thereunder regarding the proposed transaction.

Gulf and Mississippi are parties to a letter agreement dated July 28, 1976 ("Letter"), relating to the Victor J. Daniel, Jr. Electric Generating Plant ("Plant"), consisting of two coal-fired units of 500,000 kilowatts (nameplate capacity) each. The various transactions provided by the Letter, which will result in Gulf and Mississippi each owning an undivided 50% interest in the Plant, were approved by order of the Commission dated September 28, 1976 (HCAR No. 19696).

Mississippi and Gulf each has purchased 230 rapid discharge hopper cars to transport coal to the Plant. Mississippi's purchase of its cars in 1978 was approved by the Commission's order dated May 16, 1978 (HCAR No. 20543), and Gulf's purchase of its cars in 1980 was approved by the Commission's order dated February 8, 1980 (HCAR No. 21414). While Gulf and Mississippi desire that each own as tenants in common an undivided 50% interest in such coal cars, the Letter makes no express provision therefor.

Accordingly, it is proposed that, as soon as practicable after the receipt of necessary regulatory approval ("First Settlement Date"), Mississippi and Gulf each will convey to the other, free and clear of all liens and encumbrances, other than excepted encumbrances as defined in the respective transferee's first mortgage indenture, an undivided 50% interest in the coal cars then owned by it. In addition, at such time Mississippi will make up to Gulf such payment as is necessary to equalize their respective investments, net of accumulated depreciation, in such cars. At July 1, 1980, such payment would have amounted to approximately $1,300,000.

It is stated that the railroad cars are being and will be used to transport coal to the Plant, for which there is a common fuel stockpile to be jointly owned by Gulf and Mississippi in accordance with the Letter. It is further stated that, therefore, the proposed transaction is entirely consistent with the provisions of the Letter and the various transactions provided for therein.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $3,000, including legal fees of $2,500. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21683), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21715/September 16, 1980

In the Matter of

COLONIAL GAS ENERGY SYSTEM
Lowell, Massachusetts

LOWELL GAS COMPANY
Lowell, Massachusetts

CAPE COD GAS COMPANY
Hyannis, Massachusetts

(70-6466)

SUPPLEMENTAL ORDER AUTHORIZING TERMS OF HOLDING COMPANY COMMON STOCK TO BE ISSUED AND SOLD TO PUBLIC; DEFERRAL OF ACTION ON TERMINATION OF DIVIDEND WAIVER; RESERVATION OF JURISDICTION

Colonial Gas Energy System ("Colonial"), a holding company, Lowell Gas Company ("Lowell"), and Cape Cod Gas Company ("Cape Cod"), public utility subsidiaries of Colonial, have filed a declaration and amendments thereto pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder regarding the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

By order in this proceeding dated August 27, 1980 (HCAR No. 21690), Colonial was authorized to raise up to $8,000,000 by a negotiated offering of additional common stock and to invest the net proceeds from such common stock sale in new common stock of Lowell and Cape Cod. Lowell and Cape Cod will issue and sell to Colonial up to 450,000 shares for a purchase price of $19 per share and up to 500,000 shares of common stock for a purchase price of $14.50 per share, respectively. An exception from the competitive bidding requirements of Rule 50(b) was granted and jurisdiction was reserved pending completion of the record, over the terms and conditions of the Colonial common stock, the fees and expenses incurred in connection with the proposed transactions, and over the proposed exchange of the restricted shares.

The record is now complete with respect to the terms and conditions of the Colonial common stock and the fees and expenses incurred in connection with the proposed issuance and sale of the Colonial and subsidiary common stocks.

The underwriters have contracted to purchase for public redistribution 700,000 shares of the common stock at an initial price of $10 per share for an aggregate initial offering price of $7,000,000. The underwriters' spread is $.85 per share, 8½% of the public offering price. Colonial will receive $6,405,000, the initial public offering price less the underwriters' compensation.

The purpose of this offering is a step in the program to improve the common equity of Colonial and its operating subsidiaries. (HCAR Nos. 29690, 20992, 21127, 20880, 20797 and 20826).

It is found that both the price to be received by Colonial and the underwriting compensation are reasonable and that all of the requirements of the Act and of the rules thereunder, including the requirements of Section 7(d), are satisfied.

The fees and expenses to be incurred in connection with the sale of the common stock are estimated at $220,000, including legal fees of $53,000, printing fees of $92,000 and accounting fees of $48,000. The stated legal fees also include the fees and expenses of counsel to the Company and counsel to the two institutional investors in connection with the amendment to the Note Agreement which was authorized in the order of August 27, 1980 (HCAR No. 21690). No fees and expenses are expected to be incurred in connection with the sale of the common stock of Lowell and Cape Cod to Colonial.

Action on the proposed exchange of restricted shares noticed May 23, 1980 (HCAR No. 21590) is deferred until further notice and completion of record with respect thereto.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21667), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found with respect to transactions as to which the record is complete that the applicable standards of the Act and the rules thereunder are satisfied and no adverse findings are necessary and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, in respect of said transactions be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, with respect to the transactions as to which the record has been completed subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved pending completion of the record over the proposed exchange of the restricted shares.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21716/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6242/September 12, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21717/September 18, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

(70-6381)

NOTICE OF PROPOSAL TO INCREASE AMOUNT OF SHORT-TERM BORROWINGS AND TO EXTEND TIME PERIOD DURING WHICH SUCH BORROWINGS MAY BE MADE

NOTICE IS HEREBY GIVEN that Arkansas Power & Light Company ("AP&L"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to a declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transaction.

By an order dated January 2, 1980 in this matter (HCAR No. 21380) the Commission authorized AP&L to issue and sell from time to time, through June 30, 1981, up to $150,000,000 aggregate principal amount at any one time outstanding of its short-term notes to banks and commercial paper to a dealer. AP&L now proposes that the aggregate principal amount of all such unsecured short-term promissory notes to commercial banks that it is permitted to have outstanding at any one time be increased to the lesser, from time to time, of $165,000,000 or 10% of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by AP&L and then outstanding, and (b) the capital and surplus of AP&L as then stated on its books of account. AP&L also proposes that the time through which such bank notes and commercial paper may be issued be extended to December 31, 1981 and that the latest maturity date thereof be extended to September 30, 1982.

The proceeds of such borrowings will primarily be used by AP&L to finance its construction program and to discharge or refund its outstanding obligations incurred therefor.

It is stated that no special or separable fees, commission and expenses will be incurred by AP&L in connection with the proposed transaction. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 13, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21718/September 18, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
100 Interpace Parkway
Parsippany, New Jersey 07054

JERSEY CENTRAL POWER & LIGHT COMPANY
Madison Avenue at Punch Bowl Road
Morristown, New Jersey 07960

METROPOLITAN EDISON COMPANY
2800 Pottsville Pike, Muhlenberg Township
Berks County, Pennsylvania 19605

PENNSYLVANIA ELECTRIC COMPANY
1001 Broad Street
Johnstown, Pennsylvania 15907

(70-6311)

NOTICE OF PROPOSED FURTHER PLEDGE OF COLLATERAL IN CONNECTION WITH SHORT-TERM NOTES TO BANKS BY SUBSIDIARY COMPANY

NOTICE IS HEREBY GIVEN that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power and Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act")

regarding the following proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated June 19, 1979, (HCAR No. 21107), this Commission authorized GPU, JCP&L, Met-Ed, and Penelec to issue, sell, and renew from time to time through October 1, 1981, their respective promissory notes (the "Notes") having a maturity of not more than six months from the date of issue, pursuant to a revolving credit agreement with a syndicate of commercial banks (the "loan agreement"). Aggregate borrowings under the loan agreement are limited to $500,000,000 and Met-Ed's borrowings thereunder are limited to $125,000,000. At the date of filing, Met-Ed had $81,000,000 in borrowings outstanding under the loan agreement. The indebtedness under the loan agreement is secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of JCP&L, Met-Ed, Penelec, and GPU Service Corporation, and, in the cases of JCP&L and Met-Ed, certain other collateral. In addition, as authorized by the Commission's order dated January 28, 1980, Met-Ed has sold $13,000,000 of its first mortgage bonds to the Banks.

By order dated May 23, 1980, the Pennsylvania Public Utility Commission ("PaPUC") directed that Met-Ed's capital and operating costs associated with its investment in Unit No. 1 of the Three Mile Island nuclear generating station be removed from Met-Ed's base rates. By orders dated August 28, 1980, the PaPUC denied Met-Ed's petition for extraordinary rate relief in the amount of $35 million and instituted proceedings with respect to a Met-Ed request for rate relief aggregating approximately $76.5 million. In light of these actions, the banks have advised Met-Ed that its borrowings under the loan agreement will not be permitted to exceed Met-Ed's "liquid assets" (as defined in the letter) pledged to the banks plus Met-Ed's deferred energy account from time to time. (Met-Ed's deferred energy balance is expected to decline in the future.) The banks have stated, however, that they are prepared to permit a further increase in the amount of permitted borrowings by a further pledge of collateral.

Consequently, Met-Ed is now requesting authority to grant to the banks as additional security for Met-Ed borrowings under the loan agreement a first priority security interest in substantially all of Met-Ed's accounts receivable. Met-Ed proposes to pledge to the banks its existing and future accounts receivable, together with the proceeds thereof, from the sale of electric energy to retail and wholesale customers. At July 31, 1980, Met-Ed had approximately $25 million of such accounts receivable.

In all other respects, the transactions as heretofore authorized by the Commission would remain unchanged.

The PaPUC has authorized Met-Ed to issue and sell up to $150 million aggregate principal amount of Notes under the loan agreement. Met-Ed will submit to the PaPUC the proposal to pledge its accounts receivable to the banks as additional collateral under the loan agreement. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed pledge are to be filed by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D..C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements

thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 584/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6241/September 12, 1980

TRUST INDENTURE ACT OF 1939
Release No. 585/September 15, 1980

In the Matter of:

HUGHES TOOL COMPANY
File No. 22-10591

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a notice giving interested persons until October 7, 1980, to request a hearing on an application by Hughes Tool Company pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Texas Commerce Bank National Association (the "Bank") under (1) an indenture, dated as of July 15, 1975; (2) an indenture, dated as of November 1, 1978; (3) an indenture, dated as of April 1, 1980, heretofore qualified under the Act, and (4) an indenture to be entered into between a commercial bank as trustee and the Walker County Industrial Development Corporation, under which it is desired that the Bank serve as trustee, which indenture is not qualified under the Act, are not so likely to involve a material conflict of interest or for the protection of investors to disqualify the Bank from acting as trustee under any of these indentures.

TRUST INDENTURE ACT OF 1939
Release No. 586/September 18, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6242/September 18, 1980

TRUST INDENTURE ACT OF 1939
Release No. 587/September 18, 1980

In the Matter of

ITO-YOKADO CO., LTD.
(Kabushiki Kaisha Ito-Yokado)
File Nos. 2-58987, 2-61271 (22-9600)

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by Ito-Yokado Co., Ltd. pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of The Bank of Tokyo Trust Company under (a) three existing indentures qualified under the Act and (b) an indenture that is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify The Bank of Tokyo Trust Company from acting as trustee under the qualified indentures.

TRUST INDENTURE ACT OF 1939
Release No. 588/September 18, 1980

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by Trailer Train Company ("Applicant") pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Continental Illinois National Bank and Trust Company of Chicago ("Continental Bank") under two existing indentures of the Applicant, one new indenture of the Applicant and one new indenture of Railbox Company, a wholly-owned subsidiary of the Applicant, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Continental Bank from acting as trustee under any of such indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11351/September 12, 1980

In the Matter of

THE INDEX OPTION INCOME FUND, INC.
612 North Michigan Avenue
Chicago, Illinois 60611

(811-2844)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that The Index Option Income Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, investment company, filed an application on June 19, 1980 for an order of the Commission pursuant to Section 8(f) of the Act declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant was organized as a Maryland corporation. On June 13, 1978 Applicant registered under the Act and filed a registration statement under the Securities Act of 1933 with respect to an indefinite number of shares of its common stock, par value $.01. Such registration statement never became effective and Applicant never issued any shares of its common stock.

Applicant states that it has no assets, that it has no debts or other liabilities outstanding, that it is not a party to any litigation or administrative proceeding and that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. In addition, Applicant represents that it has been dissolved under the laws of the State of Maryland.

Section 8(f) of the Act provides, in part, that when the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 6, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11352/September 12, 1980

In the Matter of

METROPOLITAN FUND, INC. (THE)
c/o The Plains Corporation
7000 E. Camelback Road #33
Scottsdale, Arizona 85251

(811-2065)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY.

On August 8, 1980, a notice was issued (Investment Company Act Release No. 11293) stating that The Metropolitan Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 21, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of The Metropolitan Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11353/September 12, 1980

In the Matter of

ZENITH GROWTH FUND, INC.
c/o Bernard W. Heinel, President
Fund/Plan Services, Inc.
P.O. Box 8079
Philadelphia, Pa. 19101

(811-2142)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On August 7, 1980, a notice was issued (Investment Company Act Release No. 11290) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Zenith Growth Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Zenith Growth Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11354/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6241/September 12, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11355/September 16, 1980

In the Matter of

FEDERATED TRUST FOR SHORT-TERM MUNICIPAL OBLIGATIONS
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(811-2975)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Federated Trust for Short-Term Municipal Obligations ("Applicant"), a Massachusetts business trust registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 25, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act.

On August 13, 1980, a notice was issued (Investment Company Act Release No. 11305) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company as defined by the Act. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration under the Act of Federated Trust for Short-Term Municipal Obligations shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11356/September 16, 1980

In the Matter of

HUYLER'S
c/o Barnes, Hickman, Pantzer & Boyd
1313 Merchants Bank Building
Indianapolis, Indiana 46204

(811-1388)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On August 19, 1980, a notice was issued (Investment Company Act Release No. 11308) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Huyler's ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Huyler's under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11357/September 16, 1980

In the Matter of

INDUSTRIAL GROWTH FUND OF NORTH AMERICA, INC.
c/o Oswald Ruggero, Esq.
Joseph & Ruggero
261 Broadway
New York, New York 10007

(811-1133)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On August 18, 1980, a notice was issued (Investment Company Act Release No. 11306) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Industrial Growth Fund of North America, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Industrial Growth Fund of North America, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11358/September 16, 1980

In the Matter of

TRINWALL CASH RESERVE, INC.
61 Broadway
New York, New York 10006

(811-2595)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Trinwall Cash Reserve, Inc. ("Applicant"), an open-end, diversified, investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 17, 1980, pursuant to Section 8(f) of the Act, and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company.

On August 7, 1980 a notice was issued (Investment Company Act Release No. 11291) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Trinwall Cash Reserve, Inc. under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11359/September 17, 1980

In the Matter of

BANKERS LIFE COMPANY

AND

BANKERS LIFE COMPANY SEPARATE ACCOUNT B
711 High Street
Des Moines, IA 50307

(812-4701)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTIONS 22(e), 27(c)(1) AND 27(d) OF THE ACT

Bankers Life Company ("Bankers Life"), a stock life insurance company organized under the laws of the State of Iowa, and Bankers Life Company Separate Account B (the "Variable Account"), a separate account of Bankers Life registered under the investment Company Act of 1940 (the "Act") as a unit investment trust (collectively "Applicants") filed an application on July 10, 1980 pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas.

On August 19, 1980, a notice was issued (Investment Company Act Release No. 11310) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act that the exemptions from Sections 22(e), 27(c)(1), and 27(d) of the Act be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11360/September 18, 1980

In the Matter of

TRUST FOR LIQUID ASSETS
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4712)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Trust For Liquid Assets ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 13, 1980, requesting an order pursuant to Section 6(c) of the Act exempting Applicant from the provisionsof Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's portfolio assets to be valued at amortized cost. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is organized as a Massachusetts business trust and that Liquid Assets Research Corp., a wholly-owned subsidiary of Federated Investors, Inc., acts as its investment adviser. Applicant further states that it is designed as an investment vehicle for investors with temporary cash balances or cash reserves seeking stability of principal and current income consistent with stability of principal. Applicant invests in a variety of money market instruments, including United States Government obligations, instruments of banks and savings and loan associations which are members of FDIC or FSLIC, and other money

market instruments maturing in one year or less. According to the application, it will limit its investments in commercial paper to those instruments rated A-1 by Standard & Poor's Corporation, Prime 1 by Moody's Investors Service or F-1 by Fitch Investors Service.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that its experience indicates that two features are necessary in a "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant asserts that by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost it can provide these features. Applicant represents that its trustees have properly determined in good faith under the provisions of the Act to value the portfolio of Applicant by use of the amortized cost method and that this method is in the best interest of the shareholders of Applicant. Applicant further represents that: (1) its trustees have determined in good faith, in light of the characteristics of Applicant, that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method, and (2) its trustees have further determined to continuously monitor valuations indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors. Accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit its assets to be valued as set forth in the application, and as described above, whether or not market quotations are available.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemptions it requests satisfy these standards in view of its management policies and the conditions hereinafter set forth.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the trustees undertake—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by

the trustees shall be the following:

(a) Review by the trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the trustees will promptly consider what action, if any, should be initiated by the trustees.

(c) Where the trustees believe the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the trustees' meeting. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the trustees determine present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the trustees in the exercise of their discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11361/September 18, 1980

In the Matter of

LEASCO CORPORATION
919 Third Avenue
New York, New York 10022

(812-4595)

ORDER PURSUANT TO SECTIONS 6(c) AND 6(e) OF THE ACT EXEMPTING APPLICANT, WITH CERTAIN EXCEPTIONS, FROM ALL PROVISIONS OF THE ACT

Leasco Corporation ("Applicant"), a Delaware corporation, filed an application on January 21, 1980, and amendments thereto on February 29, 1980, April 15, 1980, and August 1, 1980, pursuant to Sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act"), for an order exempting it from all provisions of the Act and its rules, other than: (1) Sections 9, 17(a)-(e), 31, 36(a) and 37 of the Act and the rules thereunder; (2) all sections of the Act and the rules thereunder necessary to implement the above sections of the Act; and (3) all administrative, procedural and jurisdictional sections of the Act, subject to certain conditions and exceptions.

On August 21, 1980, a notice was issued (Investment Company Act Release No. 11313) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found to be necessary and appropriate in the public interest and for the protection of investors that certain provisions of the Act apply to Applicant and to other persons in their dealings with Applicant. Accordingly,

IT IS ORDERED, pursuant to Sections 6(c) and 6(e) of the Act, that the requested exemption from all provisions of the Act be, and hereby is, granted, effective forthwith, subject to the conditions and exceptions to which Applicant has agreed and which are set forth below.

Applicant shall be subject to all administrative, procedural and jurisdictional sections of the Act. In addition, the following provisions of the Act and any rules thereunder shall be applicable with respect to Applicant, and to other persons in their transactions and relations with Applicant, as though Applicant were a registered investment company: (1) Section 9 of the Act; (2) Sections 17(a)-(e) of the Act to the extent transactions involve (a) Applicant or "downstream" controlled companies of Applicant other than Reliance Group, Incorporated ("Reliance") (to the extent that Reliance may be controlled by Applicant), on the one hand, and (b) Reliance, Saul P. Steinberg ("Mr. Steinberg"), members of Mr. Steinberg's family and certain estates and trusts for the benefit of his family (hereinafter referred to collectively as the "Steinberg Family"), or affiliated persons of Reliance or the Steinberg Family, on the other hand; (3) Sections 31, 36(a) and 37 of the Act and the rules thereunder; and (4) all sections of the Act and of the rules thereunder necessary to implement and to enforce the sections of the Act enumerated above.

The following exceptions shall apply:

(1) Mr. Steinberg, his agents, servants, employees and attorneys shall not be prohibited by Section 9 of the Act from serving in the capacity of employee, officer, director, or member of an advisory board of

Applicant by reason of any order, judgment or decree issued prior to the issuance of this order, including a final judgment of permanent injunction entered on August 29, 1978, pursuant to an agreement of settlement and consent.

(2) Sections 17(a)-(e) of the Act shall not apply to prohibit:

(a) Applicant and Reliance from carrying out the terms of a management agreement whereby Reliance provides certain services to Applicant;

(b) the sale by Applicant of any part of its holdings of Reliance stock to Reliance for fair market value at the time of sale;

(c) the leasing of computers to Reliance or any affiliate thereof at fair market value;

(d) the redemption by Applicant of its outstanding Series A preferred stock held by Reliance or the exchange by Applicant of other property for such preferred stock;

(e) the purchase by Applicant of real estate services for fair market value from a wholly owned Reliance subsidiary;

(f) the purchase by Reliance from Applicant of computer services for fair market value;

(g) the subleasing of office space in the United Kingdom by Leasco Europa, Ltd., a subsidiary of Applicant, from a subsidiary of Reliance at fair market value;

(h) the joint coverage of Applicant and Reliance under various insurance policies;

(i) the purchase by Applicant from Reliance or its subsidiaries of insurance policies whereunder Applicant is the named insured or the beneficiary;

(j) the joint participation by Applicant and Reliance in the administration of each company's pension and profit sharing plans;

(k) the receipt by directors and officers of Applicant and Reliance of directors' fees, salaries, bonuses and benefits pursuant to employee benefit plans, including stock option plans, from Applicant and Reliance, respectively; provided, however, that any stock option plan of Applicant be approved by a vote of a majority of Applicant's shareholders, and further provided that all stock options so granted (i) will not exceed 10 percent of Applicant's outstanding shares, (ii) will not be exercisable for at least one year from the date of grant, and (iii) will have an exercise price of at least 100 percent of the market price of Applicant's common stock on the date of grant;

(l) the purchase of Reliance common stock in the open market and any public tender or exchange offer for such Reliance stock by Applicant to all Reliance shareholders, including Mr. Steinberg;

(m) the granting to Applicant by Mr. Steinberg of any option to purchase Reliance stock owned by Mr. Steinberg, such option to include the right of Applicant to vote the stock during the option period, provided that Applicant pays no more than a nominal fee in exchange for the option;

(n) the purchase by Applicant of consulting services from Reliance or its subsidiaries for fair market value;

(o) the continuance of the debtor-creditor relationship presently existing between Reliance and Michael F. Morrell ("Morrell"), Director and Executive Vice President of Applicant, with respect to $138,125 loaned to Morrell by Reliance which bears interest at eight percent per year and is due in April 1981;

(p) the subleasing of office space in the United States by Applicant from Reliance at Reliance's cost;

(q) the leasing of fleet cars by Applicant and Reliance for their respective use under the same leasing agreement; and

(r) the joint entering by Applicant and Reliance into a national buying program for the purchase of office equipment and supplies, and other material.

(3) For purposes of the recordkeeping provisions of Section 31 of the Act and the rules thereunder, Applicant shall be required to maintain records in accordance with such provisions only to the extent to which transactions in which it engages are of the type described in such section and rules (such records shall be subject at anytime and from time to time to such reasonable periodic, special and other examinations by the Commission, or any member or representative thereof, as the Commission may

prescribe).

As further conditions to the requested order:

(1) Applicant shall not acquire investment securities other than the common stock of Reliance if to acquire such investment securities would cause Applicant to hold more than five percent of its total consolidated net assets in investment securities, except that the acquisition and continued holding securities issued by North American Broadcasting, Inc., and Securilease, Inc., in connection with certain transactions described in the application, shall be permissible, as shall be the purchase of money market instruments, and shares of money market funds, acquired and held by Applicant as a cash management tool.

(2) Applicant shall liquidate, within three months from the date of this order, its holdings of the common stock of two publicly held corporations and a $30,000 Port of New York Authority Bond, as described in the application.

(3) Applicant shall not take any corporate action, such as repurchasing its outstanding shares, or entering into a reorganization, which would serve to reduce its net assets and cause its holdings of investment securities (other than the common stock of Reliance) to be more than five percent of its total consolidated net assets without first obtaining an order of the Commission modifying this order.

Compliance with the above three conditions shall not require Applicant to sell investment securities if by reason of an increase in the market value of such securities, or a decline in the fair market value of other assets of Applicant, such investment securities have a value exceeding five percent of Applicant's total consolidated net assets.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11362/September 18, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6242/September 18, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11363/September 18, 1980

In the Matter of

MIDWEST INCOME INVESTMENT COMPANY
508 Dixie Terminal Building
Cincinnati, Ohio 45202

(812-4705)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Midwest Income Investment Company ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on July 25, 1980 requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market fund" offering its shares to individuals, corporations, fiduciaries and institutions as a means of investing in a professionally-managed portfolio with the objective of obtaining high current income to the extent available on debt and money market instruments, and to the extent consistent with protection of capital. It is further stated that Applicant's shares are sold without a sales charge. Applicant states that the minimum initial investment in its shares is $500, with additional investments accepted in amounts of $50 or more. At the close of business on June 30, 1980, Applicant represents that its aggregate net assets amounted to approximately $120,179,000. Applicant further represents that it invests in debt instruments which

include securities issued by the United States Government or its agencies or instrumentalities, instruments of banks and savings and loan companies, repurchase agreements and commercial paper.

At present, Applicant states, all of its net income is declared and paid daily as a dividend. "Net income" for this purpose consists of (1) all interest income and discount earned (including original issue and market discount), (2) plus or minus all realized short term capital gains or losses and unrealized gains or losses on portfolio securities, and (3) minus all Applicant's expenses. It is stated that because the daily dividend is paid in the form of additional shares of Applicant and includes both realized and unrealized gains and losses on portfolio securities, Applicant's per-share net asset value remains constant at $1,000. Applicant states that, on the other hand, the dividend as a percentage of net asset value can fluctuate significantly in comparison with other investment vehicles designed for the investment of excess cash balances.

Applicant proposes to value its portfolio securities by means of the amortized cost method of valuation, subject to the conditions enumerated below. Applicant asserts that sophisticated professional and institutional investors own shares representing a large portion of Applicant's total assets, and that these shareholders and others like them represent an increasingly important source of potential investment in Applicant. Applicant represents that it has been its management's experience that in order to continue to attract such investors and retain them as shareholders, Applicant must maintain a stable net asset value, preferably at $1,000 per share, together with a constant and steady flow of investment income. It is asserted that Applicant's present practice of including in dividends realized and unrealized gains and losses on portfolio securities results in payments which are not reflective of Applicant's earned net income and in recordkeeping inconvenience for investors who desire segregation of principal and interest in these payments. Thus, Applicant contends, valuation of its portfolio securities on the basis of amortized cost would benefit its shareholders by enabling Applicant to maintain a constant $1,000 per share purchase and redemption price, while at the same time providing shareholders with a steady flow of investment income through daily dividends which reflect Applicant's net income as earned.

Applicant represents that it has never owned portfolio securities having maturities exceeding thirty (30) months, and that its dollar-weighted average portfolio maturity has been less than 120 days since November 10, 1979. Furthermore, it is stated that it has been Applicant's experience that with respect to securities maturing in one year or less, there is normally a negligible difference between market value and the amortized cost value of such securities. Applicant believes that the valuation of its portfolio securities on the basis of amortized cost will enable it to maintain more effectively its price per share at $1,000 while providing shareholders the opportunity to receive a flow of investment income less subject to fluctuation than under its present procedures.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security, nor principal underwriter therefor, shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security. Rule 2a-4 adopted under the Act provides, in pertinent part, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of the rule, with estimates used where necessary or appropriate. Rule 2a-4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and other securities shall be valued at fair value as determined in good faith by the board of directors. Section 2(a)(41) defines, in pertinent part, the term "value" in a similar manner.

In Investment Company Act Release No. 9786, dated May 31, 1977, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments (except those having maturities of 60 days or less) on an amortized cost basis.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or

classes of persons, securities or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that its board of directors has determined in good faith that in light of Applicant's characteristics, and absent unusual or extraorindary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for Applicant and reflects the fair value of such securities. Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving its portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize its net asset value per share, as computed for the purpose of distribution, redemption, and repurchase, at $1,000 per share.

(2) Included within the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by the Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1,000 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1,000 amortized cost price per share of Applicant exceeds 1/2 of 1%, a requirement that Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's board of directors believes the extent of any deviation from the $1,000 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders of Applicant, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; utilizing a net asset value per share as determined by using available market quotations; or a revaluation of all or an appropriate portion of the portfolio based on current market factors.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in

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[1]Applicant states that to fulfill this condition it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Applicant's board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

the minutes of its board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 13, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11364/September 18, 1980

In the Matter of

KEMPER INVESTORS LIFE INSURANCE COMPANY
KEMPER INVESTORS LIFE INSURANCE COMPANY VARIABLE ANNUITY ACCOUNT C
KEMPER INCOME AND CAPITAL PRESERVATION FUND, INC.
KEMPER FUND FOR GOVERNMENT GUARANTEED SECURITIES, INC.
KEMPER HIGH YIELD FUND, INC.
KEMPER GROWTH FUND, INC.
KEMPER OPTION INCOME FUND, INC.
KEMPER MONEY MARKET FUND, INC.
KEMPER TOTAL RETURN FUND, INC.

AND

KEMPER FINANCIAL SERVICES, INC.
120 South LaSalle Street
Chicago, IL 60603

(812-4632)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 11 OF THE INVESTMENT COMPANY ACT OF 1940 APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) AND 27(d) OF THE ACT, AND RULE 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Kemper Investors Life Insurance Company ("KILICO"), Kemper Investors Life Insurance Company Variable Account C ("Account"), a separate account of KILICO registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Kemper Income and Capital Preservation Fund, Inc. ("KICPF"), Kemper High Yield Fund, Inc. ("KHYF"), Kemper Total Return Fund, Inc. ("KTRF"), Kemper Growth Fund, Inc. ("KGF"), Kemper Option Income Fund, Inc. ("KOIF"), Kemper Money Market Fund, Inc. ("KMMF"), and Kemper Fund For Government Guaranteed Securities, Inc. ("KFGGS") (collectively, the "Funds") each of which is registered under the

Act as an open-end, diversified investment management company, and Kemper Financial Services, Inc. ("KFS"), the investment manager and principal underwriter for the Funds, registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker/dealer under the Securities Exchange Act of 1934 (collectively referred to hereinafter as "Applicants"), filed an application on March 10, 1980, and amendments thereto on June 25, 1980, July 18, 1980, September 5, 1980 and September 8, 1980, for an order of the Commission pursuant to Section 11 of the Act, approving certain offers of exchange and pursuant to Section 6(c) of the Act, granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) of the Act insofar as such exemptions are necessary to permit the transactions described below. All interested persons are referred to the Application on file with the Commission for a statement of the representations made therein, which are summarized below.

KILICO is a stock life insurance company organized under laws of the State of Illinois. The Account is a separate account of KILICO. The Account was established by KILICO for the purpose of funding variable annuity contracts issued by KILICO. The Account shall consist of seven (7) divisions, each one of which is invested solely in shares of one of the following funds: KICPF, KFGGS, KHYF, KGF, KOIF, KMMF and KTRF. A contract owner will be credited with accumulation units in the appropriate separate account division(s) based upon the purchase payment applied.

Under the variable annuity contracts proposed by Applicants, the initial purchase payment for a contract would be in cash without application of a sales charge. Upon purchase of a contract, a contract owner would select up to three (3) divisions of the separate account in which the owner desires investment and may also allocate the purchase payment to KILICO's general account. The minimum initial purchase payment for contracts issued other than pursuant to a tax qualified plan is $2,500, and additional purchase payments of at least $500 may be made under such contracts. With respect to contracts issued pursuant to tax qualified plans, the minimum purchase is $50 per payment, and the maximum purchase payment shall be that permitted under the type of qualified plan involved. Further, contract owners may transfer all or part of their interest in a separate account division to another separate account division or KILICO's general account or all or part of the contract owner's interest in KILICO's general account to a separate account division, subject to certain minimum transfer limitation and subject to the limitation that a contract owner may have an interest in a maximum of three (3) separate account divisions at any particular time.

Further, a contract owner may withdraw up to ten percent (10%) of the contract value in any contract year without assessment of any charge. If the contract owner withdraws an amount in excess of ten percent (10%) of the contract value in any contract year, the amount withdrawn in excess of ten percent (10%) of contract value will be subject to a contingent deferred sales charge ("Withdrawal Charge"). The Withdrawal Charge starts at 6.00% in the first contribution year and reduces by 1.00% each contribution year so that there is no charge in the seventh and later contribution years. The Withdrawal Charge would also apply as a charge against contract value with respect to amounts which are annuitized and are in the first six (6) contribution years. However, in no event, shall the aggregate Withdrawal Charges assessed against a contract exceed nine percent (9%) of the aggregate purchase payments made under the contract.

KILICO will assess the entire separate account with a daily charge for mortality and expense risks equal, on an annual basis, to 1.00% per annum. Also KILICO intends to assess a records maintenance charge of $25 per year against each contract participating in the separate account.

Section 2(a)(35)

Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer less any portion of such difference deducted for trustees' or custodians' fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional expenses. Applicants assert that the proposed Withdrawal Charge is consistent with the intent of the definition of "sales load" contained in the Act. The Withdrawal Charge will be retained by KILICO to reimburse it solely for expenses related to the sale of the contracts and is thus within the Section 2(a)(35) definition of sales load but for the time of imposition of the charge.

However, Applicants have requested an exemption from the provisions of Section 2(a)(35) to the extent such exemption may be necessary, to implement the proposed pricing of their contracts.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security. When the contract owner withdraws all or a part of the contract value, the proceeds paid on such withdrawal will be based on the current net asset value. The Withdrawal Charge will be deducted at the time of withdrawal in arriving at the contract owner's proportionate share or account value. While Applicants do not believe that the imposition of the contingent deferred sales charge is violative of Section 22(c) or Rule 22c-1, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder, to the extent necessary, to offer the contracts.

Sections 26(a) and 27(c)(2)

Section 26(a) and 27(c)(2) of the Act provide, in substance, that a registered unit investment trust or issuer of a periodic payment plan certificate and any depositor or underwriter for such investment company is prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than the sales load, are deposited with a qualified bank as trustee and are held under an indenture or agreement containing the following provisions: (1) that the trustee or custodian be a bank of a designated size; (2) that the assets be held in trust and only certain charges be made against them; (3) that the trustee or custodian may only resign in a specified fashion; and (4) that certain records be kept and notice be given to securities holders in the event of substitution of the trust's securities.

Section 27(c)(2) prohibits a registered investment company or depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

Applicants state that the provisions of Section 26(a) were designed to assure performance of contractual obligations under periodic payment plans, to minimize the opportunities for misuse of the assets of unit investment trusts and to prevent sponsors from reaping hidden profits. However because KILICO is subject to extensive and rigorous supervision and control by the California Insurance Department, Applicants contend that such supervision and control provides assurance against misfeasance and affords the essential protection of trusteeship. Further, under California law, Applicants state that KILICO may not abrogate its obligation under the contracts.

Under the foregoing circumstances, the Applicants contend that the dangers against which Section 26(a) is directed are not present. Therefore an exemption from Sections 26(a) and 27(c)(2) is requested, to the extent necessary, to allow KILICO to be the custodian of the assets of the Account.

Sections 26(a)(2)(C) and 27(c)(2)

Section 26(a)(2)(C) of the Act, as here pertinent, provides, in substance, that no payment to the depositor or principal underwriter of a unit investment trust shall be allowed the custodian bank as an expense, except a fee, not exceeding such reasonable amounts as the Commission may prescribe, as compensation for performing bookkeeping and other administrative expenses normally performed by the custodian.

An exemption is requested, to the extent necessary, from the requirements of Section 26(a)(2)(C) so that KILICO may collect the Withdrawal Charge. Applicants submit that the requirements imposed by Section 26(a)(2)(C) were not intended to prevent the depositor of a unit investment trust from imposing a sales load. They assert that the Withdrawal Charge to be imposed upon withdrawal of contract values is designed to recover costs related solely to sales of the Contracts. Also, Applicants contend that the contracts offered are not periodic payment contracts. However, Applicants have requested an exemption from the provisions of Section 27(c)(2), to the extent necessary, to offer the contracts. Applicants submit that the Withdrawal Charge is a sales loads to which Section 27(c)(2) applies and that the deferral of the

imposition of the charge until withdrawal of contract value, an event which may never occur, should not be construed in any way as a violation of Section 27(c)(2). Applicants have requested an exemption from the provisions of Sections 26(a)(2)(C) and 27(c)(2), to the extent necessary, to permit the imposition of the Withdrawal Charge and to offer the contracts.

Applicants consent to the exemptions requested from Sections 26(a), 26(a)(2)(C) and 27(c)(2) being made subject to the following conditions: (1) that the charges to variable annuity contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose, and (2) that the payments of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services; and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums or charges.

Section 27(a)(3)

Section 27(a)(3) of the Act, in pertinent part, prohibits any registered investment company issuing periodic payment plan certificates from selling any such certificate if the amount of sales load deducted from any or such first payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment. Applicants assert that the contracts issued are not periodic payment plans but nevertheless request an exemption, to the extent necessary, to offer the contracts. Under the contracts, in the event that a total withdrawal of a contract is requested within one calendar year of a partial withdrawal with respect to which all or a portion of the amount withdrawn was not subject to the Withdrawal Charge because of the ten percent (10%) free withdrawal provision such amount or amounts previously withdrawn will be added to the contract value at the time total withdrawal is requested for the purpose of calculating the Withdrawal Charge. Applicants assert that this provision enables KILICO to recover a portion of the sales expenses relating to totally withdrawn contracts and not be subject to a manipulative partial withdrawal of the ten percent (10%) of contract value in order to avoid assessment of the charge levied upon total withdrawal. The one calendar year period was selected in order to provide a reasonable cap on the time period. Applicants maintain that this method permits maximization of the amount of free partial withdrawal to those contract owners who have purchased the contract for the long term but prevents use of the partial free withdrawal to avoid a charge by any party intending to totally withdraw contract value. Applicants assert further that such a schedule for imposition of the Withdrawal Charge does not constitute a disproportionate deduction of a sales expense because the imposition of such schedule only occurs in the event of total withdrawal of a contract, assessed against the entire contract value and in no event shall the aggregate Withdrawal Charge assessed exceed nine percent (9%) of aggregate purchase payments made under the contract. However, Applicants have requested an exemption from the provisions of Section 27(a)(3), to the extent necessary, to offer the contracts.

Section 2(a)(32) and 27(d)

Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that the contracts offered are not periodic payment contracts but request exemption from such Section 27(d), to the extent necessary, to offer the contracts. Applicants submit that the imposition of the Withdrawal Charge does not violate Sections 2(a)(32) and 27(d). Applicants assert that Sections 2(a)(32) and 27(d) contemplate the assessment of an initial sales load and that under the contracts, the net amount invested is the gross purchase payments. Thus, the owner's proportionate share or account value would be the gross purchase payments, plus or minus any increase or decrease in value less the Withdrawal Charge. Applicants assert that deferring the imposition of the charge in no way restricts the

contract owner from receiving his proportionate share or account value on withdrawal. Applicants contend that the Withdrawal Charge is contingent upon an event which might never occur, and that the purchaser's initial amount invested is maximized thus providing a benefit to the purchaser. Applicants have requested an exemption from the provisions of Sections 2(a)(32) and 27(d), to the extent necessary, to permit the imposition of the Withdrawal Charge and to offer the contracts.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, prohibits any registered investment company issuing periodic payment plan certificates, or depositor or underwriter of such company, to sell any such certificates unless it is a redeemable security. Applicants assert that the contracts issued are not periodic payment plans but nevertheless request an exemption, to the extent necessary, to offer the contracts. Applicants submit that its Withdrawal Charge is not a restriction on redemption under Section 27(c)(1). Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner from receiving his proportionate share or current value on withdrawal and has the effect, through deferral of sales charge until contract value is withdrawn, of increasing the contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit the Withdrawal Charge to be imposed only upon withdrawal of contract values.

Section 11

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust and any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants contend that a transfer privilege is consistent with the protection of contract owners and the purposes clearly intended by the policy and provisions of the Act. The only purpose of the transfer provision is to provide contract owners the right to invest in a separate account division holding the shares of a fund whose investment objective aligns with the contract owner's financial needs and investment discretion, from time to time. This provides the contract owner with greater flexibility in balancing his particular needs for retirement income.

Applicants state that the transfer privilege would involve an "exchange" from one division of the separate account to another division of the same separate account. Applicants contend that there would be no change in or exchange of the variable annuity contracts for which the accounts serve as funding vehicles. However, in the event Section 11(a) may be considered applicable by virtue of Section 11(c), Applicants are seeking, to the extent necessary, approval of the Commission pursuant to Section 11 of the Act for an exemption from the provisions of Section 11, so that Applicants may offer owners of the contracts the transfer provisions described above, subject to the right of KILICO to change non-discriminatory restrictions on such transfers described above by reducing or increasing the minimum amounts transferable or the time period between transfers or to otherwise suspend or terminate the transfer privilege at any time.

Section 6(c)

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transactions, or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act if, and to the extent, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of

fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following October 14, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 729/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6241/September 12, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 730/September 18, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6242/September 18, 1980

LITIGATION

Litigation Release No. 9179/September 15, 1980

UNITED STATES OF AMERICA v. *GARY R. PARO*, No. 79-1450 (2d Cir.)

George H. Lowe, United States Attorney for the Northern District of New York, and Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission ("Commission"), announced that on August 20, 1980, the United States Court of Appeals for the Second Circuit affirmed the conviction of Gary R. Paro ("Paro") of Syracuse, New York for mail fraud. Paro was convicted on October 3, 1979 by a federal jury on 34 counts of an indictment and subsequently sentenced to three years imprisonment.

Paro was previously enjoined by consent from violating the registration and antifraud provisions of the federal securities laws in two related civil injunctive actions filed by the Commission. *SEC* v. *T.A.S. Investments and Gary R. Paro*, 77 Civil 275 (N.D.N.Y.) (EP) (the "1977 injunction") and *SEC* v. *Gary R. Paro, et al.*, 79 Civil 70 (N.D.N.Y.) (HGM).

On June 4, 1979, the Commission filed an Order to Show Cause why Gary R. Paro should not be punished for criminal contempt, based on alleged violations of the 1977 injunction. *United States of America ex rel. Securities and Exchange Commission* v. *Gary R. Paro*, 79 Misc. 237 (N.D.N.Y.) (HGM).

For further information, see Litigation Release Nos. 8744, 8780, 8833 and 8946.

Litigation Release No. 9180/September 15, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MORRIS A. SHENKER, ET AL.* United States District Court for the Southern District of California, Civil Action No. 78-0204-N

The Securities and Exchange Commission announced that on August 26, 1980 the Honorable

Leland C. Nielson, United States District Judge, signed a final judgment of permanent injunction against Jerome Mack, a director of Continental Connector Corporation. Mack consented to the entry of an injunction, which enjoins him from further violations of Section 17(a) (antifraud) of the Securities Act of 1933 and Sections 10(b) (antifraud) and 13(a) (reporting) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1 and 13a-11 thereunder, without admitting or denying the allegations contained in the Commission's Complaint.

The Commission's Complaint in this action, which was filed on October 13, 1977, generally alleged that Mr. Mack and others, during the period commencing from in or about July 1974, participated in a transaction alleged to be in violation of the antifraud provisions of the federal securities laws by causing Continental Connector Corporation to enter into a transaction with defendant Murrieta Hot Springs, Inc., a land development company owned by defendant Morris A. Shenker, which transaction was designed to benefit Murrieta and Shenker to the detriment of Connector and its public shareholders. As a result of this transaction, the Complaint alleged, Murrieta received $5,000,000 of Connector's monies. The Complaint further alleged that reporting provisions of the federal securities laws concerning this transaction. Mr. Mack was the sole remaining defendant in this action. All other defendants had previously consented to the entry of final judgments of permanent injunctions against them without admitting or denying the allegations in the Complaint.

For further information see Litigation Releases Nos. 8155, 8189, and 8732.

Litigation Release No. 9181/September 17, 1980

SEC v. *THE INTERNATIONAL MINING EXCHANGE, INC., ET AL* (USDC, COLO, Civil Action No. 80-1198)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that, on September 12, 1980, a complaint was filed in the United States District Court for the District of Colorado seeking to enjoin The International Mining Exchange, Inc. (Mining), Trenton H. Parker & Associates, Inc., Mansion Properties Corporation, Mansion Properties Management Corporation, and Trenton H. Parker (Parker), all of Denver, Colorado, from violating the registration and antifraud provisions of the Securities Act of 1933, and certain of the antifraud provisions of the Securities Exchange Act of 1934, and rules promulgated thereunder; and to enjoin Trenton H. Parker Associates, Inc. and Parker from violating certain of the filing and reporting provisions of the Securities Exchange Act of 1934, and rules promulgated thereunder.

The Complaint alleges, in sum and substance, among other things, that, in connection with the offer and sale of Mining securities, namely investment contracts in the form of a "gold tax shelter investment program," Mining and Parker made untrue statements of material fact to the effect that (1) investors in Mining would acquire a leasehold interest in mining concessions, (2) investors would profit from gold to be mined, and (3) investors could take a 500% federal income tax deduction based on mining developmental expenses incurred on the investor's behalf. The Complaint also alleges, in sum and substance, that, among other things, Parker and Mining omitted to inform investors that (1) some purchasers of the investment contracts acquired no interest in any gold concession, (2) no payments were made on behalf of the purchasers for mining developmental expenses, and (3) the purchaser's investments were diverted by Mining and Parker to uses unrelated to mining developmental expenses.

The Complaint further alleges, in sum and substance, among other things, that Trenton H. Parker & Associates, Inc., Mansion Properties Corporation, Mansion Properties Management Corporation, and Parker, in connection with the offer and sale of securities, namely limited partnership interests in limited partnerships organized by Parker to purchase and renovate historical mansions located in Denver, Colorado, made untrue statements of material fact to the effect that purchasers could reasonably expect a 25% to 50% annual cash return on their investments, could reasonably expect approximately 100% to 200% capital appreciation in six to nine months, and could reasonably expect to recover their investments by the end of the following year. In connection with such statements, it is alleged that these defendants omitted to disclose, among other things, that the investments involved a high degree of risk and that funds would be diverted to Parker's own use and benefit.

The Complaint also alleges, in sum and substance, that Trenton H. Parker & Associates, Inc. and Parker failed to file certain required reports in violation of the reporting provisions of the Securities Exchange Act of 1934, and rules promulgated thereunder.

Contemporaneously, the Commission filed a Motion for Preliminary Injunction supported by affidavits and other materials. A date for hearing has not yet been set.

Litigation Release No. 9182/September 18, 1980

SEC v. *HOUSTON COMPLEX, INC., ET AL.* (USDC, Nevada, C.A. No. LV-79-57-RDF)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office of the Securities and Exchange Commission, announced that on September 8, 1980, The Honorable Roger E. Foley entered an Amended Final Judgment against Houston Complex, Inc., Network One, Inc.; and Grady A. Sanders. The Amended Final Judgment was entered in connection with the Commission's Application to have the defendants held in civil contempt for their failure to comply with the court's order of April 5, 1979 requiring them to appoint independent audit committees.

Pursuant to the Amended Final Judgment, the court appointed Samuel Belford of Reno, Nevada as Special Counsel for Houston Complex and Network One. Pursuant to the Amended Final Judgment, the Special Counsel will conduct certain inquiries and monitor compliance by the companies with the Judgment of Permanent Injunction. The defendants stipulated to Amendment of the Final Judgment and the appointment of Mr. Belford as Special Counsel.

For further information on this action, see Litigation Release Nos. 8766 and 8771.

Litigation Release No. 9183/September 18, 1980

SEC v. *CLOYCE K. BOX and OKC CORP.* (N.D. Tex./Dallas Division)

Michael J. Stewart, Administrator of the Fort Worth Regional Office, announced that on September 15, 1980, the Commission filed a Complaint in the United States District Court for the Northern District of Texas, Dallas Division. The Complaint seeks to preliminarily and permanently enjoin Cloyce K. Box of Dallas, Texas, from further violations of the antifraud provisions of the federal securities laws, and Box and OKC Corp., also of Dallas, from further violations of the periodic reporting and proxy provisions of the federal securities laws.

The Complaint among other things alleges that since at least 1973, Box, OKC's chief executive officer, pursuant to secret and undisclosed partnerships and business arrangements, caused OKC to purchase and sell substantial amounts of petroleum products through certain brokers who were his friends and business associates. At Box's direction, these "friendly brokers" received preferential price, product delivery and credit arrangements from OKC and, in turn, resold these products at substantial markups. At least two of these "friendly brokers" then split their profits with Box. Pursuant to these arrangements, during the period from November 1973 through June 1977, Box received in excess of $5 million. None of these favorable financial arrangements were disclosed by OKC in its periodic, annual or other reports. Box also used certain of the "friendly brokers" as parties in bogus purchases and sales of petroleum products purportedly engaged in by OKC. The result of these bogus transactions were that both interim and year-end financial statements of OKC were materially false.

In addition to the preliminary and permanent injunctions, the Commission seeks an order requiring Box; to file an accounting for the period from December 1, 1973 to the present which sets forth all commissions, kickbacks, payments, property and other remuneration or favors received from persons other than OKC Corp., which were derived from profits earned on transactions involving purchases and sales of products produced by OKC Corp., and all payments and reimbursements from OKC Corp. received in connection with his legal representations; to disgorge to OKC Corp. all monies wrongfully received by him or otherwise wrongfully diverted by him for his benefit or the benefit of those persons with whom he is affiliated; and to resign as chief executive officer and as a director of OKC Corp. and to be prohibited from reassuming either position without further order of this Court.

The Commission also seeks an order directing OKC Corp. to pay to a conservator any funds to be paid to Box from the distribution of funds derived from the sale and liquidation of assets of OKC Corp.

FREEDOM OF INFORMATION ACT

FREEDOM OF INFORMATION ACT
Release No. 61/September 12, 1980

SEE

SECURITIES ACT OF 1933
Release No. 61/September 12, 1980

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20/20

sec docket

VOLUME 20 NO. 20 OCTOBER 7, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Exchange Act	17156-66	1549
Public Utility Holding Company Act	21719-27	1559
Investment Company Act	11365-73	1572
Litigation	9184-86	1585

Note: In Vol. 20, No. 17 Part II the listings for the 1933 Act should read 6235 through 6239 and the Accounting Series Releases begin on page 1356.

This listing covers releases issued from 9/19/80-9/25/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory organization rules proposals and/or adoptions.

34-17156	34-17160	34-17166
34-17158	34-17161	
34-17159	34-17165	

34-17162 Solicitation of comments on an amendment to Form U-4 to raise the level of the initial registration fee for associated persons of such broker-dealers from $35 to $50. [S7-852; Comment Period Expires October 24, 1980.]

OPINION

Order dismissing proceedings

34-17136 **STEVEN S. MITCHELL, ET AL.**

Proceedings against nine respondents dismissed on ground that charges were not sustained.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17156/September 19, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

SE 1.29:

File No. SR-Phlx-80-23

The Philadelphia Stock Exchange, Inc. submitted on September 15, 1980, a proposed rule change under Rule 19b-4 to modify its policy concerning the intervals at which options exercise prices are fixed and the introduction of new options series. Specifically, the policy, as modified, would provide that for underlying securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals, and for securities trading above $100 per share exercise prices generally would be fixed at 10 point intervals. The policy, as modified, also would provide that a new options series could be added when the market price of the underlying security equaled the highest or lowest existing exercise price in a particular options series.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 22, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17157/September 22, 1980

A order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the call option contracts of LUCKY STORES, INC. from listing and registration thereon.

SECURIES EXCHANGE ACT OF 1934
Release No. 17158/September 22, 1980

File No. SR-NASD-80-10

NASD OPTIONS PROPOSAL

ACTION: Extension of comment period.

SUMMARY: The Commission has published notice of a proposed rule change submitted by the National Association of Securities Dealers to amend its rules to provide for the over-the-counter trading of standardized options. In view of the significant and novel issues raised by the proposal the Commission has determined to extend to November 28, 1980 the period for public comment.

FOR FURTHER INFORMATION CONTACT:

Stuart Strauss, Esq. or Pat Payne, Esq.
Division of Market Regulation
500 North Capitol St., N.W.
Washington, D.C. 20549
(202) 272-2405 or (202) 272-2841

SUPPLEMENTARY INFORMATION: Pursuant to 19(b)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(2) (the "Act"), and Rule 19b-4 thereunder, the National Association of Securities Dealers, Inc. ("NASD") submitted on June 12, 1980 a proposed rule change to provide for the over-the-counter trading of standardized options. Notice of the proposed rule change was given by Securities Exchange Act Release No. 16979 (June 15, 1980) which was published in the *Federal Register* on August 11, 1980 (45 FR 53295). The purpose of this release is to extend the comment period on the NASD proposal to November 28, 1980. The NASD options proposal raises a number of significant issues pertaining to the regulatory environment in

which standardized options are traded. The proposal would for the first time provide for standardized options trading in the over-the-counter market. The NASD proposal also raises the question of whether it would be appropriate to permit a broker-dealer simultaneously to act as a marketmaker in both an option and the security underlying the option. Moreover, the proposal raises the question of whether marketmakers in options on securities traded exclusively over-the-counter should be required to assume affirmative and negative marketmaking obligations. Additionally, the NASD proposal raises a number of market surveillance issues, since the establishment of an over-the-counter market for the trading of standardized options may provide new opportunities for price manipulation and misuse of market information.

Accordingly, the Commission believes that the comment should be extended in order to ensure an adequate opportunity for all interested persons to comment upon these specific issues raised by the NASD proposal.

All interested persons are invited to submit in writing, no later than November 28, 1980, 25 copies of their views concerning the proposed rule change to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All communications should refer to File No. SR-NASD-80-10 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17159/September 22, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-27)

The National Securities Clearing Corporation ("NSCC") submitted on August 29, 1980, a proposed rule change amending its fee schedule.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 29, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-27.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17160/September 23, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-8)

ORDER APPROVING PROPOSED RULE CHANGE

On May 27, 1980, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to clarify the obligations of Order Book Officials for executing orders, to base maximum market marker spreads on the current bid rather than last sale price and to adopt or amend several Options Floor Procedure Advices.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16890, June 11, 1980) and by publication in the *Federal Register* (45 FR 41748), June 20, 1980). No written statements with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, and the rules and regulations thereof.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]An amendment was filed with the Commission by the PSE on September 10, 1980 which withdrew the proposed revision of the exchange floor, and also made certain technical changes to the original filing.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17161/September 24, 1980

In the Matter of

CONSOLIDATED TAPE ASSOCIATION
11 Wall Street
New York, New York 10005

ORDER APPROVING PROPOSED AMENDMENT TO THE CONSOLIDATED TAPE PLAN

On July 2, 1980, the Consolidated Tape Association ("CTA") filed with the Commission, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3-1 thereunder,[2] copies of a proposed amendment ("Amendment") to the Joint Industry Plan ("Plan") governing the consolidated transaction reporting system ("consolidated system"). The Amendment provides that vendors could retransmit, on a current and continuing basis, the data stream of transaction reports contained in the consolidated system for purposes of creating a moving ticker display. The Amendment also modifies the CTA's schedules of charges in order to reflect the fees to be paid by subscribers who receive retransmitted information. The Amendment is designed to conform the Plan to requirements of Rule 11Aa3-1 under the Act.[3]

Notice of the proposed Amendment was given by issuance of a Commission Release[4] and by publication in the *Federal Register*.[5] In addition, the Division's staff mailed copies of the Amendment to the current vendors of securities information.

In adopting Rule 11Aa3-1, the Commission stated its belief that the ticker networks provided valuable services to the investment community and should be preserved, and that a subscriber charge would

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[1]15 U.S.C. §78k-1(a)(3)(B).

[2]17 C.F.R. §240.11Aa3-1.

[3]See Securities Exchange Act Release No. 16589 (February 19, 1980) ("Rule 11Aa3-1 Adopting Release"), 45 FR 12377.

[4]Securities Exchange Act Release No. 17019 (July 29, 1980), 20 SEC Docket 845 (July 29, 1980).

[5]45 FR 51679 (August 3, 1980).

ensure the continued existence of the networks. The Commission did not, however, prescribe the level of fees to be charged, but deferred that decision pending the receipt of an appropriate amendment to the CTA Plan. In light of the absence of any adverse comment by vendors on the proposed amendment, the Commission believes that it is appropriate to approve the amendment. Therefore, the Commission, having due regard for the purposes of the Act, including the public interest, the protection of investors, the maintenance of fair and orderly markets, and the need to remove impediments to, and perfect the mechanisms of, a national market system, has declared the Amendment effective as of the date of this release.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act and Rule 11Aa3-1 thereunder, that the above-mentioned proposed Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17162/September 24, 1980

[Release No. 34-17162; File No. S7-852]

PROPOSED INCREASE IN FILING FEE FOR ASSOCIATED PERSONS OF NON-MEMBER BROKER-DEALERS AND AUTOMATION OF SECO EXAMINATION

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing for comment an amendment to Form U-4, a personnel form filed by non-member broker-dealers concerning their associated persons, to raise the level of the initial registration fee for associated persons of such broker-dealers from $35 to $50. It has been the Commission's experience that maintaining assessments and fees for non-members at rates or levels comparable to those imposed by the National Association of Securities Dealers, Inc. (the "NASD") upon its members has generated revenues which have reasonably approximated the costs to the Commission of administering the regulatory program for non-member broker-dealers. The increase in the Form U-4 filing fee, therefore, will set the level of the initial registration fee for non-member broker-dealers at the same level as the corresponding fee presently imposed by the NASD on its members. In addition, the Commission today announced the administration of the SECO General Securities Examination on an automated format. The NASD, which currently administers the SECO examination for the Commission, suggested conversion of the SECO examination to the automated system. The new examination format will begin October 31, 1980. The Commssion believes that the conversion will provide substantial advantages over the traditional paper and pencil format.

DATE: Comments must be received by October 24, 1980.

ADDRESSES: All comments should refer to File No. S7-852 and be sent in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of all written submissions will be made available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Frank Ramirez
Division of Market Regulation
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549
(202) 272-2839

SUPPLEMENTARY INFORMATION: Section 15(b)(8) of the Securities Exchange Act of 1934 (the "Act") [15 U.S.C. 78o(b)(8)] requires that the Commission, by rule, establish and levy such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to registered broker-dealers who are not members of a registered national securities association ("non-member broker-dealers" or "SECO broker-dealers") and their

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[6]See Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. §78d-1); 17 C.F.R. §200.30-3(a)(27).

associated persons.[1] Pursuant to that Section, the Commission adopted Securities Exchange Act Rules 15b8-1 [17 CFR 240.15b8-1] and 15b9-1 [17 CFR 240.15b9-1] which require SECO broker-dealers to file Form U-4 [17 CFR 249.502], a personnel form concerning associated persons engaged in securities activities on behalf of the broker-dealer and to pay to the Commission the fee prescribed by the Form. Rule 15b8-1 also requires that every associated person engaged directly or indirectly in securities activities for or on behalf of a SECO broker-dealer, and every associated person who supervises others engaged in such activities, must successfully complete a general securities examination and pay a reasonable fee to defray the costs of its administration.

Section 15(b)(7) [15 U.S.C. 78o(b)(7)] specifically authorizes the Commission to cooperate with registered securities associations and national securities exchanges in devising and administering tests. In addition, that Section authorizes the Commission to require registered brokers or dealers and persons associated with such brokers or dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administrating such test.[2]

This release invites comment on a proposed amendment to Form U-4 which would set the level of the initial registration fee imposed by the Commission upon associated persons of SECO broker-dealers at $50, the same level as the corresponding fee presently imposed by the NASD upon its members. This release also provides notice that, as of October 31, 1980, the SECO General Securities Examination (the "SECO examination") will be administered using an automated format.

Proposed Amendment to Form U-4

The initial registration fee imposed upon associated persons of SECO broker-dealers is intended to defray the Commission's cost of administering the SECO program. Since fiscal year 1976, the levels or rates of SECO fees and assessments have been the same as corresponding fees and assessments levied by the NASD on its members. It has been the Commission's experience that maintaining annual SECO assessments and specific SECO fees at rates or levels comparable to those imposed by the NASD has generated revenues which have reasonably approximated expenditures incident to the administration of the SECO program. The Commission, therefore, proposes to amend Form U-4 to set the level of the initial registration fee for associated persons of SECO broker-dealers at $50, the same level as the corresponding fee presently imposed by the NASD on its members.

The Commission has explained, in connection with determining annual assessments for SECO broker-dealers, that there are both legal and pragmatic justifications for setting SECO assessments at the same level as corresponding assessments imposed by the NASD on its members.[3] A similar rationale applies generally to specific fees.[4] The Commission, of course, recognizes the statutory mandate that SECO fees and assessments be reasonable and that they be used to defray the costs of administering the SECO program. To determine whether the rates of specific fees, which include Form U-4 filing fees, bear a reasonable correlation to the applicable costs incurred by the Commission in administering the SECO regulatory program, the Commission will review the level of such fees when it periodically collects and analyzes cost data on the SECO program. If such a cost analysis discloses a significant variance between the fees collected and the costs incurred in administering the relevant portion of the SECO program, the Commission will invoke its authority under the Act to adjust the rates or levels of SECO fees.

The Commission, therefore, believes that an initial

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[1] A non-member broker or dealer who is a member of a national securities exchange may, under limited circumstances, be exempt from this provision. *See* Securities Exchange Act Rules 15b9-1(e) and 15b9-2(e)(3) (17 CFR 240.15b9-1(e) and 17 CFR 240.15b9-2(e)(3)).

[2] Section 15(b)(7), formerly Section 15(b)(8), was redesignated by the Securities Exchange Act Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975).

[3] Securities Exchange Act Release No. 16080 (August 3, 1979), 44 FR 47953.

[4] *See* H. Rep. No. 1418, 88th Cong. 2nd Sess. 12 (1964); and *see, Statement of policy of the Director of the Division of Trading and Markets Regarding the Comparability of NASD and SECO Regulation* at 1, Securities and Exchange Act Release No. 9420 (December 20, 1971).

registration fee comparable to the corresponding NASD fee is reasonable in order to defray the costs of SECO regulation. Accordingly, the Commission proposes to set the SECO initial registration fee for associated persons of SECO broker-dealers at the same level as that imposed by the NASD on its members, which reflects an increase in the fee from $35.00 to $50.00.

Administration of SECO examination on the PLATO system

1. *Background*

Section 15(b)(7) of the Act authorizes the Commission to "cooperate" with the NASD in devising and administering examinations. The Commission in 1965 announced that it had arranged with the NASD to have the NASD administer SECO examinations.[5] This arrangement provides that persons associated with SECO broker-dealers are charged examination fees comparable to those charged for persons associated with NASD members. The current fee is $40 per examination.[6]

The NASD, in a letter to the Commission dated April 3, 1980, suggested conversion of the SECO examination to an automated format, the PLATO system, for which service it will collect the present $40 testing fee without rebating to the Commission any portion of the fee.[7]

The Commission believes that there are significant advantages to be realized in converting the SECO examination to the PLATO system. In particular, the PLATO system provides a substantial improvement in the integrity of the examination process. It also facilitates the process of examination administration. Accordingly, beginning October 31, 1980, the SECO examination will be administered on the PLATO system.

2. *System Description*

PLATO is a time-sharing system capable of delivering a wide variety of programs to remote visual display terminals located in learning centers owned and operated by Control Data Corporation.[8] The system has been modified to serve as a medium for delivering the types of qualifications examinations utilized by the NASD and other securities industry self-regulatory organizations. The PLATO system enables the NASD to enter a bank of examination questions into the system and to program the computer to generate a unique examination of equivalent difficulty for each candidate.[9] A more detailed description of test administration on the PLATO system is outlined in the sections which follow.

a. *Enrollment*

After receiving a candidate's examination request form and appropriate fees, the NASD will enroll the candidate on the PLATO system. Enrollment must occur in order for a candidate to sit for an examination on the system. After a candidate has

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[5]Securities Exchange Act Release No. 7695 (September 7, 1965).

[6]On August 28, 1979, the Commission approved a new schedule of fees and assessments for NASD members (SR-NASD-79-7). It provides, in part, that the fee required of applicants to take the NASD principal or registered representative qualification examinations is $40, rather than the $30 fee previously charged. Since October 1, 1979, applicants to take the SECO examination also have been charged $40.

[7]The NASD presently rebates to the Commission $15 per examination, less an administrative fee for the program of $2500. This rebate scheme was devised to assure that SECO broker-dealers defray only the actual costs incurred by the NASD in administering the SECO examination program.

[8]The PLATO system is administered by Control Data Education Company, a "service" of Control Data Corporation ("CDC"). CDC learning certers are operating in the NASD cities where 90% of NASD examinations are conducted. There are currently seventy-two CDC learning centers which service fifty-six metropolitan areas in thirty-six states and the District of Columbia. Learning Centers are open from 8:30 a.m. to 5:30 p.m., Monday thru Friday. Some are open evenings and weekends.

[9]The PLATO system is capable of producing hard copy examinations for use in paper and pencil examinations when unusual circumstances do not allow the use of terminal facilities by the candidate. Such paper and pencil examinations will be given when candidates are unable to use the PLATO system because of physical disabilities or religious beliefs, and when a test is given in a city where no learning center is located.

been enrolled on the system, a confirming notice will be sent to the sponsoring firm. This notice will identify the candidate, the qualification examination for which the candidate has been enrolled, and the expiration date of the enrollment. The expiration date will be 90 calendar days from the date the enrollment is entered into the system. If a candidate does not sit for the examination during this period, he may be re-enrolled in the system only upon receipt by the NASD of another testing fee and the appropriate request form.

b. *Appointment Scheduling*

Together with the enrollment confirmation notice sent to the firm, the NASD will include a schedule of CDC learning centers at which the examination can be taken. The candidate must call a learning center in order to make an appointment to sit for the examination. Unless otherwise requested by the candidate, appointments will be scheduled within five business days from the date the appointment request is received by Control Data. An appointment will not be made for a candidate who is not enrolled on the system or for a candidate requesting an appointment date which falls after the expiration date of his enrollment. The sponsoring firm will be charged a penalty fee of $10 in the event that a candidate does not appear for a scheduled appointment or cancels a scheduled appointment less than 72 hours prior to the appointed time and date. At the discretion of the learning center's administrator, a candidate may be precluded from sitting for an examination if the candidate arrives later than 15 minutes after the start of the examination. In such a case, a penalty fee of $10 also will be levied.

c. *Group Reservations*

Firms or training organizations that plan training classes may reserve a block of terminals at a learning center by calling the learning center at least one month in advance of the desired testing date. The same procedures outlined above with respect to late cancellations, no shows, and late arrivals for appointment sessions will be in effect for individuals scheduled in groups.

d. *Examination Presentation on the System*

After a candidate is seated at a terminal, the actual examination will be preceded by an introductory lesson designed to familiarize the candidate with the procedures to be followed in answering and reviewing test questions. These procedures are simple and do not require any previous experience with a computer terminal or typing ability. All questions are answered by touching the appropriate location on the terminal screen itself. At the end of the examination or when a candidate voluntarily terminates a testing session, the computer will automatically score the examination and display the score on the terminal. Although a candidate must receive a score of only 70% to qualify as an associated person, the computer also will display a notification to candidates that they must receive a score of 80% to qualify as a supervisory person. On the first business day following the testing session, a hard copy grade notification will be forwarded by the NASD to the sponsoring firm and to the Commission.

On the basis of the foregoing, the Commission proposes to amend Part 249 of the Code of Federal Regulations to raise the level of the initial registration fee for associated persons of nonmember broker-dealers. The proposed amendment to the special instructions to Form U-4 would be adopted pursuant to the Commission's authority in Sections 15(b)(8) and 23a [15 U.S.C. 78o(b)(8), 78w(a)] of the Securities Exchange Act of 1934. The proposed amendment to the instructions reads as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers and dealers.

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SPECIAL INSTRUCTIONS FOR COMPLETING FORM U-4, UNIFORM APPLICATION FOR SECURITIES AND COMMODITIES INDUSTRY REPRESENTATIVE AND/OR AGENT.

* * * * *

2. A filing fee of $50.00 must accompany this form. A check should be made payable to the Securities and Exchange Commission and mailed along with one (1) copy of this Form to the Office of the Comptroller.

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By the Commission.

George A. Fitzsimmons
Secretary.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17163/September 24, 1980

Admin. Proc. File No. 3-5302

In the Matter of

STEVEN S. MITCHELL
160 Sansome Street
San Fransciso, California

(8-20286)

CLYDE REYNOLDS MAHNKE
Orinda, California

(8-20459)

LAWRENCE DENNIS DOUGHERTY
141 West Jackson
Chicago, Illinois

(8-20239)

MICHAEL W. ENGMANN
408 Stanyan Street
San Francisco, California

(8-20301)

NOAM RAND
1080 Pacheco Street
San Francisco, California

(8-20296)

RICHARD JAMES FRENCH
6960 Gloria Drive
Penngrove, California

(8-20293)

RAINBOW OPTIONS
(now known as HAYNES & CO.)
160 Sansome Street
San Francisco, California

(8-20658)

GEOFFREY B. HAYNES

JOSE C. PASCUAL
301 Pine Street
San Francisco, California

ORDER DISMISSING PROCEEDINGS

The above-captioned respondents appeal from the adverse decision of an administrative law judge. The order for proceedings charges, and the law judge found, that respondents violated anti-manipulative provisions of the Securities Exchange Act.

On the basis of an independent review of the record, we are unable to conclude that the charges against respondents have been sustained.

Accordingly, IT IS ORDERED that these proceedings with respect to Steven S. Mitchell, Clyde Reynolds Mahnke, Lawrence Dennis Dougherty, Michael W. Engmann, Noam Rand, Richard James French, Rainbow Options (now known as Haynes & Co.), Geoffrey B. Haynes, and Jose C. Pascual be, and they hereby are, dismissed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17164/September 24, 1980

A notice has been issued giving interested persons until October 15, 1980 to comment on the application of the *Philadelphia Stock Exchange, Inc.* for unlisted trading privileges in the common stock ($.05 par value) of COMPUTERVISION CORPORATION.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17165/September 25, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY MIDWEST STOCK EXCHANGE, INCORPORATED

File No. SR-MSE-79-20

The Midwest Stock Exchange, Incorporated submitted on September 17, 1980, an amendment to a previously proposed rule change under Rule 19b-4 to clarify that only those member firms subject to examination by another self-regulatory organization having comparable rules to those being

amended in this instance are exempt from compliance with these Midwest Stock Exchange, Incorporated rules.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 29, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-79-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17166/September 25, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-8

The Municipal Securities Rulemaking Board (the "MSRB") submitted on September 25, 1980, a proposed rule change under Rule 19b-4 to amend MSRB rule A-3 concerning the filling of vacancies which occur on the Board. The proposed rule change would establish a procedure for the election of a new member to the Board in the event a member-elect withdraws from the position prior to the commencement of the term of office for which such member-elect was elected.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 29, 1980. In order to assist the Commission in determining whether to abrogate the proposed rule change, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-8.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21719/September 19, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009
(70-6499)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12(c) of the Act and Rules 42 and 50 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Appalachian proposes to issue and sell up to $80,000,000 aggregate principal amount of its first mortgage bonds, of a new series, with a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of the bonds (which will be expressed in a multiple of 1/8 of 1%) and the price to be paid to Appalachian for the bonds (which shall not be less than 100% of the principal amount, unless the company shall authorize a lower percentage not less than 99%, and shall not be more than 102-3/4% of the principal amount) will be determined at the time of sale by competitive bidding carried out in accordance with the requirements of Rule 50 under the Act. If market conditions should not be propitious for the sale of the bonds on a competitive bidding basis, Appalachian proposes, subject to further authorization by this Commission, either to place the bonds privately with institutional investors or to negotiate with underwriters for the sale of the bonds. The interest rate and price, if authorized by the Commission, would be determined by negotiation with institutional investors or with underwriters for the sale of the bonds.

Appalachian expects that the terms of the bonds will preclude the company from redeeming any such bond for five years if such redemption is for the purpose of refunding such bond through the use, directly or indirectly, of borrowed funds at an effective interest cost less than the effective interest cost to the company of such bonds. It is also expected that the successful bidders for these bonds will make a public offering of the same.

Appalachian states that it is difficult to determine, under present market conditions, whether it would be more advantageous to the company to sell bonds with a 30-year or some shorter maturity and that it is in the public interest that the company be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur. Appalachian proposes, therefore, that it decide at a later time, prior to the submission of bids for the bonds, on the maturity of the bonds and notify prospective bidders of its decision reasonably in advance of, but in any event not less than 72 hours prior to, the bidding.

Appalachian also proposes to issue and sell up to 1,600,000 shares of a new series of its no par cumulative preferred stock with an involuntary liquidation price of $25 per share. The dividend rate per share (which will be expressed in a multiple of $.01) and the amount per share to be paid by the company to the purchasers as compensation to the purchasers will be determined at the time of sale by competitive bidding carried out in accordance with the requirements of Rule 50 under the Act. The price to be paid to Appalachian will be $25 per share which also will be the price at which the cumulative preferred stock is initially offered to the public.

Appalachian expects that the terms of the cumulative preferred stock will preclude the company from redeeming any share of such cumulative preferred stock for five years if such redemption is for the purpose of refunding such share, directly or indirectly, through the incurring of debt or the issuance of stock ranking equally with or prior to the cumulative preferred stock as to dividends or assets, if such debt has an effective interest cost or such stock has an effective dividend cost less than the effective dividend cost of the cumulative preferred stock. It is also expected that the successful bidders for the prefered stock will make a public offering of the same.

The terms of the cumulative preferred stock may also provide for a cumulative sinking fund pursuant to which the company would retire, at $25 per share, commencing no earlier than five years subsequent to the first day of the month in which the cumulative preferred stock is issued, not more than 5% annually of the number of shares initially issued, with the non-cumulative option on any sinking fund date of redeeming at $25 per share an additional like number of shares and with the option to credit against any sinking fund requirement shares of the cumulative preferred stock theretofore purchased or otherwise acquired by the company. It is stated that Appalachian will decide on the necessity for a sinking fund provision at a later time, prior to the submission of bids for the cumultive preferred stock, and that it will notify prospective bidders of its decision reasonably in advance of, but in any event not less than 72 hours prior to, the bidding.

If market conditions should not be propitious for the sale of the cumulative preferred stock on a competitive bidding basis, Appalachian intends, subject to further authorization by the Commission, either to place the cumulative preferred stock privately with institutional investors or to negotiate with underwriters for the sale of the cumulative preferred stock. The dividend rate and underwriters' compensation, if applicable, would, if authorized by the Commission, be determined by negotiation with institutional investors or underwriters for the sale of the cumulative preferred stock.

The proceeds from the sale of the bonds and cumulative preferred stock will be used to repay $50,000,000 aggregate principal amount of bank loans outstanding under a revolving credit agreement and, to the extent additional funds are available, to repay unsecured short-term indebtedness of the company consisting of short-term notes and commercial paper.

The fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment. It is stated that the Virginia State Corporation Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 16, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case or an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21720/September 22, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-6495)

NOTICE OF PROPOSAL OF HOLDING COMPANY TO ACT AS SURETY FOR SUBSIDIARY

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed

transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

AEP requests approval of a surety bond in the amount of $51,000,000 that is to be posted with the Public Service Commission of West Virginia ("State Commission") prior to December 10, 1980, by AEP as surety and Appalachian Power Company ("Appalachian") as principal.

On July 8, 1980, Appalachian filed with the State Commission new increased rates for electric service in West Virginia. By order dated August 4, 1980, the State Commission suspended the increased rates until December 10, 1980, pending its investigation of such increased rates. The new increased rates can be made effective on and after December 10, 1980, subject to the posting by Appalachian of an appropriate bond to assure the making of appropriate refunds to its customers including interest thereon at a rate later to be determined by the State Commission, in the event the State Comission's final order in the proceeding should require refunds to be made. It is stated that the State Commission has indicated that it would permit AEP to become a surety for Wheeling in lieu of Wheeling posting the said bond. It is expected that the amount of the bond for the new increased rates will not exceed $51,000,000 which is equal to the estimated additional annual revenue that the new increased rates will provide.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. The Public Service Commission of West Virginia has authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 20, 1980 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavid or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other actions as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereto.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21721/September 22, 1980

In the Matter of

DELMARVA POWER & LIGHT COMPANY
Wilmington, Delaware

(30-207)
(31-736)

IU INTERNATIONAL CORPORATION (formerly INTERNATIONAL UTILITIES CORPORATION)
Wilmington, Delaware

(30-165)

ORDERS PURSUANT TO SECTION 5(d) DECLARING THAT COMPANIES HAVE CEASED TO BE HOLDING COMPANIES AND RELEASING JURISDICTION HERETOFORE RESERVED

Delmarva Power & Light Company ("Delmarva") and IU International Corporation ("IU"), formerly International Utilities Corporation, have each filed an application under Section 5(d) of the Public Utility Holding Company Act of 1935 ("Act") requesting the Commission to declare by order that each company has ceased to be a holding company and that the registration of each company as such under the Act be terminated.

Delmarva, a Delaware and Virginia corporation, is a public utility which provides electric service to the Delmarva Peninsula and retail gas service in northern Delaware, including the City of Wilmington. Delmarva registered as a holding company under the Act in 1943 upon acquiring as subsidiaries several public utility companies. Its only public-utility company subsidiaries on December 31, 1979 were Delmarva Power & Light Company of Maryland ("Delmarva-Maryland"), a Maryland corporation, and Delmarva Power & Light Company of Virginia ("Delmarva-Virginia"), a Virginia corportion. By order dated October 19, 1976 (HCAR No. 19717), Delmarva, Delmarva-Maryland and Delmarva-Virginia were granted an exemption from further regulation under the Act pursuant to Section 3(a)(2). The order reserved jurisdiction to pass on questions raised under Sections 3(a)(2) and 11(b)(1) of the Act with respect to Delmarva's continued ownership of gas distribution properties.

On December 31, 1979, Delmarva-Maryland and Delmarva Virginia were merged into Delmarva, the surviving company. Delmarva does not now have any subsidiary company which is a public-utility company. Accordingly, Delmarva has requested the Commission to enter an order pursuant to Section 5(d) of the Act declaring that Delmarva has ceased to be a holding company under the Act and that its registration as a holding company shall cease to be in effect, and releasing jurisdiction heretofore reserved in the Commission's order of October 19, 1976.

IU, a Maryland corporation, registered under Section 5(a) of the Act on January 11, 1939. On November 1, 1945, the Commission approved an application filed by IU and a subsidiary for the sale of the common stock of Rockland Gas Company, Inc., which represented IU's last remaining interest in any public utility company operating in the United States, and finding that, with respect to its remaining subsidiaries, three of which were public utility companies organized and operating in Canada, IU was entitled to an exemption as a holding company under Section 3(a)(5) of the Act. *International Utilities Corporation, et. al.*, 21 SEC 283 (1945). Effective January, 1972, all of IU's foreign public utility subsidiaries were reorganized as direct or indirect subsidiaries of Canadian Utilities, Limited, an intermediate holding company and a Canadian corporation. On June 19, 1980, IU disposed of its entire interest in Canadian Utilities Ltd., and does not now have any subsidiary company which is a public utility company. Accordingly, IU has requested the Commission to enter an order pursuant to Section 5(d) of the Act declaring that IU has ceased to be a holding company and that its registration as a holding company shall cease to be in effect.

Due notice of the filing of said applications has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21687), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that IU and Delmarva have ceased to be holding companies and that it is appropriate in the public interest and in the interest of investors and consumers that said applications be granted.

IT IS ORDERED, pursuant to Section 5(d) of the Act, that said applications be, and they hereby are, granted forthwith, and that, with respect to Delmarva, the reservation of jurisdiction contained in the Commission's order of October 19, 1976 be, and it here by is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21722/September 23, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY
New York, New York

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

(70-6486)

ORDER AUTHORIZING PROPOSAL OF SUBSIDIARY FINANCING PROGRAM

American Electric Power Company ("AEP"), a registered holding company, and Columbus and Southern Ohio Electric Company ("CSOE"), an

electric utility subsidiary company thereof, have filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(a), 6(b), 7, 12(c) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder concerning the following proposed transactions.

CSOE proposes to issue and sell, through competitive bidding, up to $80,000,000 aggregate principal amount of its First Mortgage Bonds ("Bonds") of a new series, having a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of the Bonds (which will be expressed in a multiple of 1/8 of 1%) and the price to be paid to CSOE for the Bonds (which shall not be less than 100% of the principal amount, unless CSOE shall authorize a lower percentage not less than 99%, and shall not be more than 102-3/4%) will be determined at the time of sale. It is expected that the terms of the Bonds will preclude CSOE from redeeming such Bond prior to a date five years subsequent to the first day of the month in which the Bonds are first authenticated and delivered, if such redemption is for the purpose of refunding such Bonds through the use, directly or indirectly, of borrowed funds at a cost less than the effective interest cost to CSOE of such Bonds. It is stated that the substantive terms of the Bonds will conform to those standards in the Commission's Statement of Policy Regarding First Mortgage Bonds Subject to the Public Utility Holding Company Act of 1935, as modified (HCAR Nos. 13105 and 16369).

It is difficult to determine, under present market conditions, whether it would be more advantageous to CSOE to sell Bonds with a 30 year or some shorter maturity. It is proposed, therefore, that CSOE determine the maturity of the Bonds at a subsequent date and notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

CSOE proposes to issue and sell, through competitive bidding, up to $50,000,000 par value of a new series of its Cumulative Preferred Shares ("Cumulative Preferred Shares"). It has not been determined whether it will be more advantageous to CSOE to issue Cumulative Preferred Shares with a par value of $100 per share or with a par value of $25 per share. CSOE proposes therefore to determine the per share par value of such shares at a subsequent date and will notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

Each proposal shall specify (a) the divident rate (which will be expressed in a multiple of $.01 or its equivalent), (b) that the price to be paid to CSOE for the stock shall be the par value per share, and (c) the amount per share to be paid by CSOE to the bidders as compensation for their commitments. It is expected that the terms of the Cumulative Preferred Shares will preclude CSOE from redeeming any such Cumulative Preferred Shares prior to a date five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, if such redemption is for the purpose of refunding such shares, directly or indirectly, through the incurring of debt or the issuance of stock ranking equally with or prior to the Cumulative Preferred Shares as to dividends or assets, if such debt has an effective interest cost, or such stock has an effective dividend cost, less than the effective dividend cost to CSOE of the Cumulative Preferred Shares to be redeemed.

The terms of the Cumulative Preferred Shares may also provide for a cumulative sinking fund pursuant to which CSOE would retire at par value, commencing no earlier than five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, not more than 5% annually of the number of shares initially issued, with the non-cumulative option on any sinking fund date, commencing no earlier than five years subsequent to the first day of the month in which the Cumulative Preferred Shares are issued, of redeeming at par value an additional like number of shares and with the option to credit against any sinking fund requirement Cumulative Preferred Shares theretofore purchased or otherwise acquired by CSOE. It is proposed that CSOE will decide on the necessity for a sinking fund provision at a subsequent date and that it will notify prospective bidders of its decision not less than 72 hours prior to the bidding date.

CSOE currently has outstanding two series of Cumulative Preferred Shares and one series of Cumulative Preference Shares with sinking fund provisions, i.e., 17,804 Cumulative Preferred Shares, 10.52% Series ("10.52% Preferred Shares"), and 400,000 Cumulative Preferred Shares 9.50% Series ("9.50% Preferred Shares"), both with a par value of $100 per share, and 548,342 Cumulative Preference Shares, $15.25 Series ("$15.25 Preference Shares"), without par value. Pursuant to the requirements of the respective sinking funds provided by the Amended Articles of Incorporation–

of CSOE, as amended, CSOE is required to redeem annually, on the respective sinking fund dates and at the respective sinking fund prices, the respective number of shares of the 10.52% Preferred Shares, the 9.50% Preferred Shares and the $15.25 Preference Shares as set forth in such Amended Articles of Incorporation. CSOE requests authority to acquire by redemption on purchase, from time to time, shares of the 10.52% Preferred Shares, the 9.50% Preferred Shares, the $15.25 Preference Shares and the new Cumulative Preferred Shares, in each case, on or in anticipation of any respective sinking fund date, for sinking fund purposes.

Pursuant to a special meeting of its shareholders held on September 19, 1980, CSOE amended its Amended Articles of Incorporation. In connection therewith, CSOE was authorized to distribute an information statement to its shareholders (HCAR No. 21693). Such amendments relate to compliance by CSOE with the Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935 (HCAR Nos. 13106 and 16758) and required the affirmative vote of at least two-thirds (2/3) of all shareholders of record. Also, such amendments comply with the Supplemental Memorandum and Order Approving Acquisition of Common Stock of CSOE by AEP dated February 13, 1980 (HCAR No. 21433) whereby the computation of earning coverages for the issuances of additional preferred stock by CSOE must include dividends on the outstanding $15.25 Preference Shares.

No condition is to be contained in the Bond Purchase Contract requiring the issue and sale of the Cumulative Preferred Shares, nor is any condition to be contained in the Cumulative Preferred Share Purchase Contract requiring the issue and sale of the Bonds.

CSOE contemplates that it will receive one or more cash capital contributions from AEP in an aggregate amount of $30,000,000. It is therefore proposed that AEP be authorized to make, on or before December 31, 1980, one or more cash capital contributions to CSOE in an aggregate amount not exceeding $30,000,000.

The proceeds from the sale of the Cumulative Preferred Shares will be used to repay a portion of the $65,300,000 principal amount of notes issued by CSOE for the purpose of retiring Cumulative Preferred Shares pursuant to CSOE's tender offer dated March 31, 1980 to the holders of such shares, which offer was made in connection with the acquisition by AEP of common shares of CSOE.

The proceeds from the sale of the Bonds together with the cash capital contributions to be made by AEP and any other funds which may become available to CSOE will be used to repay unsecured short-term indebtedness of CSOE incurred for construction and other corporate purposes. Construction costs for the year 1980 are currently estimated at $116,130,000. As of June 30, 1980, CSOE had approximately $171,597,000 aggregate principal amount of short-term debt outstanding and it is anticipated that no more than $168,000,000 of short-term debt will be outstanding as of September 30, 1980.

Fees and expenses to be incurred in connection with the proposed transactions are estimated at $371,560. The Public Utilities Commission of Ohio has authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21693), and no hearing has been requested of or order by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21723/September 23, 1980

In the Matter of

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

(70-6451)

ORDER AUTHORIZING REVISIONS TO FUEL INVENTORY FINANCING PORTION OF SHORT-TERM DEBT LIMITATION

Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission post-effective amendments to its application previously filed and amended pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following proposed transaction.

By order dated May 28, 1980 (HCAR No. 21594), CSOE was granted a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $200,000,000. CSOE's credit arrangements for such borrowings consisted of (1) lines of credit totaling $113,066,000 with 38 banks; (2) a loan agreement with certain banks for up to $80,000,000 of loans for use in retiring certain of its preferred shares; (3) a credit agreement ("Credit Agreement") with Prulease, Inc. ("Prulease"), for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments. With respect to the Credit Agreement borrowings, each loan is to be an amount equal to or less than CSOE's estimated average inventory value of coal and oil for the month in which the loan is made, is to be evidenced by a note, and is to be secured by a security interest in CSOE's supply of coal and fuel oil at its generating stations. Each note now matures at the end of the month for which the loan is made, bears interest at an annual rate equal to 1.125% plus .1% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. No compensating balances are required. The present Credit Agreement expires September 30, 1980.

By post-effective amendment CSOE requests authorization to enter into an amendment to the Credit Agreement, to be dated as of October 1, 1980, which amendment would extend its termination date to September 30, 1982, and would make certain other changes. Under the amendment each note would bear interest at an annual rate equal to 1.5% plus .13% (subject to adjustment) as an indemnity for state and local income taxes plus the rate borne by (or quoted on) commercial paper issued by Prulease. In addition, there will be a commitment fee, payable if the average daily outstanding borrowings are less than 50% of the average daily available commitment during the period October 1, 1980, through September 30, 1982, of an amount equal to (i) 1.125% multiplied by (ii) the excess of such average daily available commitment during such period over such average daily outstanding borrowings during such period, multiplied by (iii) a fraction, the numerator of which is the number of months in such period and the denominator of which is 12. Such fee, if any, is payable on September 30, 1982, and annually thereafter if the termination date is extended. The amendment also contains provisions for annual extensions of the termination date. The effective cost of borrowings under the Credit Agreement, as proposed to be amended, based on the 8.75% interest rate for commercial paper issued by Prulease on July 15, 1980, and assuming no commitment fee, would be 10.38%.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendments to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21680), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said

application, as amended by said post-effective amendments, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21724/September 23, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA ASH CREEK MINING COMPANY
Tulsa, Oklahoma

(70-5868)

SUPPLEMENTAL ORDER AUTHORIZING EXTENSION OF AN INCREASE IN SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ash Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any one time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos. 20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926,20975, 21049, 21364, 21486, 21556 and 21640). In the latest such supplemental order dated June 24, 1980 (HCAR No. 21640), PSO was authorized to continue its financing of Ash Creek through September 30, 1980, in the maximum principal amount of $1,350,000 outstanding at any one time.

By post-effective amendment applicants-declarants request an extension of PSO's authorization to finance Ash Creek through December 31, 1980, in the maximum principal amount of $1,425,000 outstanding at any one time. Said amount includes approximately $1,300,000 of such loans expected to be outstanding at September 30, 1980, and $125,000 to cover budgeted expenditures through December 31, 1980.

The reason for such loans is continued and indefinite suspension of mining operations at Ash Creek, pending the securing of permission from the Wyoming Department of Environment Quality for coal trucks to use the state highway serving Ash Creek's proposed coal outloading facility for PSO mine No. 1 near Sheridan, Wyoming, and the availability of federal coal leasing on PSO's States Ranch property. Accordingly, Ash Creek has not budgeted expenditures for further coal exploration and mine development activities or for construction of a coal outloading facility. Expenditures are needed, however, for maintenance and admininstrative costs required to maintain the interests of Ash Creek and PSO.

It is stated the PSO and Ash Creek do not comtemplate further development of the coal interests described in this filing, and that they continue to hold and maintain them until they can negotiate a satisfactory sale of the interests to a non-affiliate. Such sale is contemplated irrespective of any actions taken by the Wyoming Department of Environmental Quality with respect to the coal outloading facility and irrespective of any possible future availability of a federal coal leasing program on PSO's States Ranch property.

The fees and expenses to be incurred in connection

with the proposed transaction are estimated at $500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that PSO be, and it hereby is, authorized forthwith to continue its financing of Ash Creek through December 31, 1980, in the maximum principal amount of $1,425,000 outstanding at any one time, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, continued with respect to any further extension of time and any expenditures to be made after December 31, 1980.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21725/September 23, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

CENTRAL POWER AND LIGHT COMPANY
P.O. Box 2121
Corpus Christi, Texas 78403

SOUTHWETERN ELECTRIC POWER COMPANY
P.O. Box 21106
Shreveport, Louisiana 71156

PUBLIC SERVICE COMPANY OF OKLAHOMA
P.O. Box 201
Tulsa, Oklahoma 74102

WEST TEXAS UTILITIES COMPANY
P.O. Box 841
Abilene, Texas 79604

CENTRAL AND SOUTH WEST SERVICES, INC.
2700 One Main Place
Dallas, Texas 75250

(70-6163)

NOTICE OF PROPOSED CHANGE IN METHOD OF CALCULATING INTEREST ON FUNDS LENT BY A SUBSIDIARY TO INTRASYSTEM MONEY POOL

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), Southwestern Electric Power Company ("SWEPCO"), Public Service Company of Oklahoma ("PSO"), West Texas Utilities Company ("WTU"), and Central and South West Service, Inc. ("CSWS"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application - declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 14, 1979, July 19, 1979, July 31, 1979, October 24, 1979, February 5, 1980, March 20, 1980, and June 10, 1980 (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166, 21269, 21421, 21482 and 21617), CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1981, in a maximum aggregate collective amount of $250,000,000 and in the following individual amounts; CSW, $200,000,000; CPL, $100,000,000; SWEPCO, $75,000,000; PSI, $180,000,000; WTU, $15,000,000; and CSWS, $4,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make

borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus of funds of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, CSW is authorized to issue and sell its commercial paper to commercial paper dealers and to certain approved financial institutions, and to borrow from banks.

With respect to intrasystem loans, the arrangements currently authorized provide that (1) a subsidiary's loans to the money pool earn interest at a rate for that day published in *The Wall Street Journal* for commercial paper placed directly by a major financial company, which paper has a term most nearly equal to the term of the particular loan in question to the money pool (the "Journal Rate"); and (2) a subsidiary's loans from the money pool are charged interest at a rate equal to CSW's net cost of borrowings from external sources.

By post-effective amendment applicants-declarants request authorization to make the interest rate on a subsidiary's advance of surplus funds to the money pool equal to the net cost of CSW's borrowings from external sources, or, if there are no such borrowings outstanding, then the Journal Rate. It is stated that recent experience under the presently-authorized dual rates had created an inequitable disparity in the rates paid subsidiaries on loans of surplus funds to the money pool as compared with rates charged subsidiaries on borrowings from the money pool. The proposed change would eliminate the disparity by making equal the rate paid to subsidiaries on advances to the money pool and the rate charged subsidiaries on loans therefrom, yet would result in no overall change in net system borrowing costs.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $250. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 21, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21726/September 24, 1980

In the Matter of

CEDAR COAL COMPANY
CENTRAL APPALACHIAN COAL COMPANY
SOUTHERN APPALACHIAN COAL COMPANY
Charleston, West Virginina

CENTRAL OHIO COAL COMPANY
Canton, Ohio

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

(70-6488)

ORDER AUTHORIZING MINING EQUIPMENT LEASES BY COAL MINING SUBSIDIARIES

Cedar Coal Company ("Cedar"), Central Appalachian Coal Company ("CACCo"), and Southern Appalachian Coal Company ("SACCo"), coal mining subsidiaries of Appalachian Power Company ("Appalachian"), and Central Ohio Coal Company ("COCCo") and Southern Ohio Coal Company ("SOCCo"), coal mining subsidiaries of Ohio Power Company, which, like Appalachian, is an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed with this Commission an application and amendments thereto pursuant to Sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act"), regarding the proposed transactions.

Applicants propose to enter into a separate master leasing agreement with Connecticut Bank and Trust Company and Donald E. Smith, as Trustees for the Bank of New York, ("Lease") pursuant to which the Trustees will commit to lease to such companies coal mining equipment with a total cost to Trustees not exceeding $25,000,000. It is stated that Applicants anticipate leasing coal mining equipment during 1980 and 1981 under the Lease, having a total estimated value as set forth below:

Company	*Estimated New Equipment Cost*	*Estimated Replacement Equipment Cost* ($000)	*Contingency Allowance* ($000)	*Total*
Cedar	$1,256	$3,270	$474	$5,000
CACCo	1,310	650	290	2,250
COCCo	850	3,711	439	5,000
SACCO	3,865		435	4,300
SOCCo	6,637	1,070	743	8,450
	$13,918	$8,701	$2,381	$25,000

Applicants state that the mining equipment to be leased will contribute to maintaining and improving the efficiency and capacity of Appalachian's and Ohio's fuel supply operations. The coal mined by Applicants is of a quality which permits burning in conformance with present environmental standards applicable to consuming power plants. The generating plants named below expect to burn Applicant's coal in the indicated amounts:

Coal Company	*Receiving Plant*	*(000's) Plant Burn (Annual) Actual 1979*	*Est. 1980*	*Est. 1981*	*Operating Company*
Cedar	Amos (a)	7,618	7,209	7,074	Appalachian
CACCo	Mountaineer	0	755	3,020	Appalachian
SACCo	Amos	(see above)			Appalachian
COCCo	Muskingum	3,829	3,244	3,532	Ohio
SOCCo	(1) Gavin (b)	8,218	8,063	7,483	Ohio
	(2) Mitchell	3,385	3,379	3,391	Ohio
	Totals	23,050	22,650	24,500	

The table below indicates each Applicant's "proven and probable" reserves of clean, recoverable coal, its current annual production capacity, and the anticipated additional production capacity to be obtained from the equipment proposed to be leased together with other new investments.

Applicant	*Total Reserves*	*1979 Tons Shipped*	*Anticipated Additional Clean Tons Capacity*	*Total Anticipated Clean Tons Capacity*
Cedar	122,235	1,774	721	2,495
CACCo	22,250	684	200	884
SACCo	57,275	1,242	1,153	2,395
COCCo	102,500	3,451	—	3,451
SOCCo	324,340	4,623	1,577	6,200
	628,600	11,774	3,651	15,425

The Lease provides for the lease on or before October 1, 1981 of various types of equipment for surface and underground mining of coal for terms of three, five, seven or ten years. The lessor's total cost, including freight, taxes and installation, will not exceed $25,000,000 in the aggregate. Rents are payable quarterly and provide for the full amortization of lessor's cost over periods of 12 to 40 calendar quarters. Each quarterly rental payment for an item under lease will consist of (i) one quarter's amortization of the lessor's cost of the item on a level basis over the lease term for that item, plus (ii) as an additional rental factor, the Quarterly Interest Rate applied to lessor's amortized cost of the item on the first day of the quarter. The Quarterly Interest Rate for such quarter shall be the lower of the prime interest rate of the owner (based on a 365 day year) or LIBO Rate (based on a 360 day year). The Prime Rate shall mean a rate per annum equal to the minimum commercial lending rate charged by Owner for 90 day loans to substantial and responsible commercial borrowers plus 1/4% beginning July 1, 1984 until July 1, 1986; 1/2% beginning July 1, 1986 until July 1, 1988; 3/4% beginning July 1, 1988 until July 1, 1991. The LIBO Rate shall mean a rate per annum equal to the rate per annum at which deposits of United States Dollars are offered by Owner to prime banks in The

London interbank market at 11:00 AM (London time) for a period of 90 days, and in an amount substantially equal to the aggregate of all Quarterly Lease Rates due hereunder and under the Other Leases for the Quarter involved plus 1/2% beginning on the effective date until July 1, 1984; 5/8% beginning July 1, 1984 until July 1, 1986; 3/4% beginning July 1, 1986 until July 1, 1988; 7/8% beginning on July 1, 1988 until July 1, 1991.

Assuming a prime rate of 12.50% over the term of the leased equipment, the equivalent effective annual interest rate would range from 12.75% to 13.25% on a weighted basis, or lower if the LIBO Rate is less than 12.50%. If an item of equipment is placed under lease other than on the first day of a calendar quarter, the rental for each fraction thereof during that quarter will consist only of the Quarterly Interest Rate for that period applied to Lessor's Cost of the item and prorated for the number of days in the period that the item was under lease. In that event, the Quarterly Interest Rate will be restricted to the prime interest rate of the Owner. When the aggregate Amortized Value of any item equals the lessor's cost of such item, the lessee has the option to purchase it for a price of one dollar or return it to the lessor or its agent at lessee's expense freight collect.

Upon 90-days written notice, the lessee may terminate the lease of any item by purchasing the item from the lessor for the Termination Value plus any accrued but unpaid rent and any taxes and charges upon such sale. During the term of the lease, if the coal supply agreement between the lessee and its immedite parent shall for any reason cease to be in full force and effect or be rescinded or terminated, lessee shall promptly give lessor written notice thereof. Lessee shall pay lessor an amount equal to the Stipulated Loss Value of the leased items and any accrued and unpaid rent for the equipment due on such quarterly date and all sales taxes and charges. Upon such payment the lease shall terminate and lessor shall transfer all its right, title and interest in and to the equipment to the lessee. Prior consent of the lessor is required to amend, supplement, modify or waive the coal supply agreement. Investment tax credits will be for the account of the lessee. The Lease is a net lease with all expenses directly related to the transaction borne by the lessee. The lessor will be indemnified by the lessee against all liabilities and risks of loss.

For its $25,000,000 commitment under the Lease, lessor will charge Applicants an annualized fee of 1/2 of 1% of the unused amount of the commitment during the period commencing on the closing date of the Lease Agreement and ending on October 1, 1981. No other fees or expenses are expected to be incurred in connection with the proposed transactions. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21694), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said appliction, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21727/September 25, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

MIDDLE SOUTH ENERGY, INC.
225 Baronne Street
New Orleans, Louisiana 70112

(70-6051)

NOTICE OF PROPOSAL BY SUBSIDIARY TO ISSUE COMMON STOCK TO PARENT

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiary, Middle South Energy, Inc. ("MSEI") have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By a series of orders dating to December 1977 in this matter the Commission has authorized MSEI to issue and sell its common stock to Middle South from time to time in order to finance, in part, MSEI's construction of the nuclear-fired Grand Gulf Generating Station. The Commission's most recent order in this matter was dated February 12, 1980 (HCAR No. 21429) and authorized MSEI to issue and sell up to 50,000 additional shares of its authorized but unissued no par common stock to Middle South from time to time through December 31, 1980 ("1980 Common Stock"). As of July 15, 1980 MSEI had sold 18,500 of such shares to Middle South.

It now appears that, based upon MSEI's revised estimate of cash requirements for the remainder of 1980 and during 1981, in addition to the 31,500 shares of 1980 Common Stock which were unsold as of July 15, 1980, it may be necessary for MSEI to issue and sell to Middle South during the remainder of 1980 and through and including December 31, 1981, an aggregate of 50,000 additional shares of its authorized but unissued common stock, no par value ("Additional Shares"). MSEI proposes to issue and sell, and for Middle South to purchase up to 50,000 shares of the Additional Shares through and including December 31, 1981, at a price of $1,000 per share for an aggregate cash purchase price of $50,000,000. MSEI will apply the proceeds of sales of the Additional Shares to costs incurred by it in the construction of the Grand Gulf Project. MSEI is authorized by its articles of incorporation to issue up to 1,000,000 shares of its common stock, no par value, and as of July 15, 1980 the Company has issued and sold an aggregate of 425,500 shares of its common stock no par value to Middle South for an aggregate cash consideration of $425,500,000.

MSEI and Middle South state that it is preferable for sales of the Additional Shares to be timed to coincide with MESI's cash needs from time to time, which are primarily determined by the nature and pace of the construction work on the Grand Gulf Project. Accordingly, MSEI proposes to sell the Additional Shares to Middle South from time to time at any time through and including December 31, 1981 in increments to be determined by MSEI and Middle South. Each such sale will be reported to the Commission by a certificate filed pursuant to Rule 24.

To the extent funds are required from external sources to acquire the Additional Shares, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 27, 1980 with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's Order dated June 17, 1980 (HCAR No. 21628), or through extensions thereof or such other forms of financing as may be approved by the Commission.

It is stated that sales of the Additional Shares will enable MSEI to continue construction of the Grand Gulf Project and to maintain capitalization ratios required under various agreements.

It is stated that no special or severable fees, commissions or expenses will be incurred in connection with the proposed transaction. It is further stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 20, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should served personally or by mail upon the applicant's declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be

filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in the matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1934

INVESTMENT COMPANY ACT OF 1940
Release No. 11365/September 19, 1980

In the Matter of

HILLIARD-LYONS CASH MANAGEMENT, INC.
545 South Third Street
Louisville, Kentucky 40202
(812-4698)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

NOTICE IS HEREBY GIVEN that Hilliard-Lyons Cash Management, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 27, 1980, and amendments thereto on July 17, 1980 and July 31, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects, its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of the State of Maryland on June 5, 1980. Applicant has filed with the Commission a Registration Statement on Form N-1 pursuant to Section 8(b) of the Act and the Securities Act of 1933, as amended. The 1933 Act Registration Statement on Form N-1 has not yet been declared effective. Thus, Applicant has not yet commenced a public distribution of its shares. Applicant states that its investment adviser will be J.J.B. Hilliard, W.L. Lyons, Inc.

Applicant states that it is a "money market" fund, the investment objectives of which are preservation of capital and liquidity while seeking the highest possible current income that is consistent with these objectives. Applicant further states that, by resolution of its Board of Directors, Applicant has adopted a policy of investing its assets exclusively in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities (which, except for the securities underlying the repurchase agreements within the Applicant's portfolio, will mature in six months or less) or in repurchase agreements collateralized by such securities or in a combination of both government backed securities and repurchase agreements. According to the application, Applicant may enter into repurchase agreements with any member bank of the Federal Reserve System and dealers with which the Federal Reserve conducts open market transactions. Applicant further states that the securities subject to the repurchase agreements within its portfolio may bear maturities in excess of one year. While Applicant may invest all of its assets in repurchase agreements at any given time, Applicant represents that it will not enter into a repurchase agreement of a duration of more than seven business days if, as a result, more than 10% of the value of Applicant's total assets would be so invested.

Applicant further represents that the yield differential between the securities Applicant intends to invest in and other high quality short-term investments such as certificates of deposit, bankers' acceptances and high-grade commercial paper is normally quite small. Should this differential widen significantly, Applicant states that its Board of Directors may at its discretion, but only after 30 days written notice to Applicant's shareholders, authorize investment in securities other than those issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or in repurchase agreements collateralized by such securities, provided such investments are not prohibited by Applicant's investment restrictions or by applicable federal and state law. Applicant has no present plans to change its policy with regard to the types or maturities of the securities in which it intends to invest.

Applicant states that in calculating its total net assets to determine the offering price of its shares each day, it intends to value all its portfolio securities which, on the date of valuation, have sixty days or less to maturity, on the basis of the amortized cost valuation technique. As stated by the Applicant, the amortized cost valuation technique involves valuing a security at its cost and thereafter assuming a constant amortization to maturity of any discount or premium, regardless of the impact of fluctuating interest rates on the market value of the security. Applicant further states that portfolio securities which on the date of valuation have remaining maturities in excess of sixty days and for which market quotations are readily available will be valued at the mean between the bid and asked prices in the over-the-counter market. Securities for which market quotations are not readily available will be valued at their value as determined in good faith in accordance with consistently applied procedures established by and under the general supervision of Applicant's Board of Directors.

Applicant states that its management believes that it would be advantageous for Applicant to maintain a fixed net asset value per share from and after the day upon which Applicant's Registration Statement under the Securities Act of 1933 is declared effective by the staff of the Commission. Accordingly, Applicant's Board of Directors intends to authorize Applicant to effect sales, redemptions, and repurchases of its shares at prices calculated to the nearest one cent on a share having a $1.00 net asset value.

Rule 22c-1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for purposes of distribution, redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company.

In Release No. 9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that (1) it is inconsistent with the provisions of Rule 2a-4 for money market funds to value their assets on an amortized cost basis except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation method is determined to be appropriate by each respective fund's board of directors, and (2) it is inconsistent with the provisions of Rule 2a-4 for money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" such funds' proper portfolio valuation as required by Rule 2a-4. On the basis of the foregoing, Applicant states that, without an exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, Applicant may be prohibited from determining its net asset value in the manner set forth above.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested Applicant states that it wishes to attract individual and institutional investors. Applicant further understands that many of these investors require a "money market" fund which maintains a constant net asset value per share even though this might result in dividends which fluctuate to reflect daily changes in the value of its portfolio securities. Applicant believes that granting of the relief requested would provide Applicant's shareholders, after the effective date of Applicant's Registration Statement, with the convenience of being about to determine the value of their shares of Applicant simply by knowing the number of shares they own, and would make the task of maintaining an investment record easier. Applicant further believes that computing its net asset value per share to the nearest one cent on a share value of $1.00 would eliminate the periodic fluctuation in Applicant's net asset value per share which could occur and which might cause Applicant's shareholders to realize unwanted nominal capital gains and losses upon redemption of their shares.

Applicant asserts that a substantial number of "money market" funds, which will be in direct competition with Applicant, now effect sales, redemptions and repurchases of their shares at prices calculated to the nearest one cent on a share having a $1.00 net asset value. Applicant further states that its Board of Directors has determined in good faith that this method of calculating the net asset value per share of Applicant under such circumstances is appropriate and would be in the best interests of Applicant's shareholders.

Applicant further agrees that the following conditions may be imposed in any order granting the requested exemptions.

1. That Applicant's Board of Directors, in supervising operations and delegating special responsibilities involving Applicant's portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's shares as computed for purposes of effecting sales, redemptions and repurchases, rounded to the nearest one cent, will not deviate from $1.00.[1]

2. That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Applicant will neither (a) purchase an instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 14, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

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[1]In this regard, Applicant represents, to the extent necessary, that Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains distribution (if and to the extent that realized and unrealized capital gains and losses have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declines to a value below $.997 or rises to a value above $1.003, respectively.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11366/September 19, 1980

In the Matter of

SECURITY CASH FUND, INC.
Security Benefit Life Building
700 Harrison Street
Topeka, Kansas 66636

(812-4704)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT.

.NOTICE IS HEREBY GIVEN that Security Cash Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified, management investment company, filed an application on July 22, 1980, and an amendment thereto on September 4, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of the State of Kansas on March 21, 1980. Applicant further states tht it has filed with the Commission a Notification of Registration on Form N-8A pursuant to Section 8(a) of the Act, together with a Registration Statement on Form N-1 under the Act and the Securities Act of 1933. The Registration Statement under the Securities Act of 1933 has not yet been declared effective and the Applicant has not yet commenced a public distribution of its shares. Applicant states that its investment adviser will be Security Management Company, Inc.

Applicant states that it proposes to operate as a "money market" fund designed to earn as high a level of current income as is consistent with preservation of capital and liquidity. According to the application, Applicant intends to invest in high grade money market instruments consisting of (i) obligations issued or guaranteed by the United States Government or its agencies or instrumentalities and instruments fully collateralized with such obligations; (ii) obligations of United States banks that are members of the Federal Deposit Insurance Corporation or of savings and loan associations that are members of the Federal Savings and Loan Insurance Corporation; (iii) commercial paper issued by corporations rated Prime-1 or Prime 2 or better by Moody's Investors Service, Inc. or A-1 or A-2 or better by Standard & Poor's Corporation, or other corporate debt instruments rated at least Aaa or Aa or better by Moody's or AAA or AA or better by Standard and Poor's; and (iv) repurchase agreements with respect to any of the foregoing securities (but without limitation as to the maturity dates thereof). Applicant further states that all of its portfolio securities must have maturities of not longer than one year, or be subject to repurchase agreement usually maturing within not more than seven days from the date of purchase. Applicant further intends to maintain a dollar weighted average portfolio maturity of less than 120 days.

According to the application, the net asset value per share of Applicant wil be determined on each business day as of the normal close of the New York Stock Exchange by dividing the total value of is portfolio securities and other assets, less liabilities, by the total number of shares outstanding. Applicant further proposes to compute its net asset value per share to the nearest one cent on a share value of one dollar. Securities for which quotations are readily available are valued at the mean of the most recent bid and asked prices. Other assets are valued at fair value under procedures determined in good faith by Applicant's Board of Directors. If market quotations for particular securities are not readily available, then in determining fair value, such securities will generally be valued at prices based on market quotations for securities of similar type, yield, quality

and duration, except that securities with less than sixty days to maturity will be valued at amortized costs.

Applicant states that it wishes to maintain a net asset value per share of $1.00; that it will be its policy to distribute daily, on each day it is open for business, all of its net income, increased or reduced by realized or unrealized capital gains and losses. Through a policy of distribution dividends on a daily basis and by "rounding off" its net asset value per share to the nearest penny, Applicant hopes that its net asset value per share will remain constant.

Rule 22c-1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for purposes of distribution, redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In Release No. 9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that (1) it is inconsistent with the provisions of Rule 2a-4 for money market funds to value their assets on an amortized cost basis except with respect to portfolio securities with remaining maturities of 60 days or less and provided that such valuation method is determined to be appropriate by each respective fund's board of directors, and (2) it is inconsistent with the provisions of Rule 2a-4 for money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" such funds' proper portfolio valuation as required by Rule 2a-4. On the basis of the foregoing, Applicant requests an exemption, from the provisions of Rules 2a-4 and 22c-1 under the Act, to permit its net asset value to be determined in the manner set forth above.

Section 6(c) of the Act provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the exemptive relief requested, Applicant states that it is anticipated that, as a result of "rounding off" its net asset value per share to the nearest one cent on a share value of one dollar, Applicant's price per share for purposes of sales, redemptions and repurchases, should remain at one dollar under normal circumstances. Applicant further states, however, that it would be difficult to maintain Applicant's net asset value per share at one dollar if Applicant was required to value its shares within one tenth of one percent as is required under IC-9786.

Applicant further states its belief that the institutional and individual investors who are the potential stockholders of the Applicant are primarily concerned that the net asset value of their shares remain stable. The Applicant anticipates that such stockholders will use these shares of Applicant for cash reserves and balances and that the maintenance of a stable net asset value per share will be crucial to the purchase and holding of Applicant's shares by them. Applicant further asserts that unfair treatment to stockholders of Applicant may result if the Applicant is unable to "round off" its price per share but must value such shares to within one-tenth of one percent, thereby accentuating variations in its share price.

On the basis of the foregoing, Applicant submits that granting of the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant further agrees that the following conditions may be imposed in any order granting the requested exemptions.

1. That Applicant's Board of Directors, in supervising operations and delegating special responsibilities

involving Applicant's portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from one dollar.

2. That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments described above which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 14, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11367/September 23, 1980

In the Matter of

INTERNATIONAL POWER SECURITIES CORPORATION
c/o Mr. William A. Stockel, Ass't Vice President
National Bank of North America
80 Pine Street
New York, New York 10005

(811-456)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940.

On August 28, 1980, a notice was issued (Investment Company Act Release No. 11320) stating that the Commission proposed, pursuant to Section 8 (f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that International Power Securities Corporation ("International Power"), registered under the Act as a closed-end, non-diversified, management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that International Power has created to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of International Power

Securities Corporation under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11368/September 23, 1980

In the Matter of

THE GALAXY FUND, INC.
7600 Jericho Turnpike
Woodbury, New York 11797

(811-1623)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940.

On August 28, 1980, a notice was issued (Investment Company Act Release No. 11321) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that The Galaxy Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of The Galaxy Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11369/September 23, 1980

In the Matter of

THE FIRST GUARDIAN SECURITIES CORPORATION
20 Pine Street
New York, New York 10005

(811-535)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that The First Guardian Securities Corporation ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Maryland on November 25, 1947, and registered under the Act on November 26, 1947. The Fund filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") on June 4, 1948, in order to make a public offering of shares of its capital stock. Such registration statement was effectively withdrawn on January 31, 1949, following a proceeding pursuant to Section 8(f) of the 1933 Act. On March 4, 1949, the Fund filed an application requesting an order of the Commission exempting it, subject to certain conditions, from the provisions of Sections 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 30, 32 and 33 of the Act. The requested order of the Commission was granted on March 17, 1949. *See* Investment Company Act Release No. 1279. This order required that the Fund file with the Commission current financial statements within 60 days of the end of its fiscal year. Such financial statements were last filed for the Fund's fiscal year ended December 31, 1950. The files of the Commission indicate that on June 28, 1951, counsel for the Fund advised the staff of the Commission that

the Fund was no longer engaged in business as an investment company and was in the process of being liquidated. In addition, this letter stated that the corporate charter of the Fund had been forfeited for the non payment of franchise taxes to the State of Maryland. Furthermore, the files of the Commission indicate that this letter was the last communication the Commission has had with the Fund. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any person may not later than October 20, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11370/September 24, 1980

In the Matter of

MEXICO FUND
Suite 318
1150 Anchorage Lane
San Diego, CA 92106

(811-2409)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Mexico Fund ("Fund"), registered under the Act as a closed-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of California on November 25, 1970, and registered under the Act on September 11, 1973. The Fund filed a registration statement pursuant to the Securities Act of 1933 ("1933 Act") on Form S-4 to make a public offering of shares of its capital stock. The files of the Commission further indicate that on July 19, 1978, the Commission ordered this registration statement abandoned pursuant to Rule 479 under the 1933 Act and, thus, the Fund has never made a public distribution of its securities. Furthermore, the Fund has never filed any of the periodic reports required by the Act. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 20, 1980, at 5:30 p.m., submit to the Commission in writing, a request

for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11371/September 24, 1980

In the Matter of

STATE BOND AND MORTGAGE COMPANY
100-106 North Minnesota Street
New Ulm, Minnesota 56073

(812-4726)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF THE COMMISSION EXEMPTING CERTAIN LOANS FROM THE PROVISIONS OF SECTION 17(a)(3) OF THE ACT

NOTICE IS HEREBY GIVEN that State Bond and Mortgage Company ("Applicant"), a Minnesota corporation registered under the Investment Company Act of 1940 (the "Act") as a face-amount certificate company, filed an application on August 29, 1980, and an amendment thereto on September 18, 1980, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting from the provisions of Section 17(a)(3) of the Act certain government guaranteed student loans to be made by State Bank and Trust Company of New Ulm ("State Bank") to children of officers, directors and employees of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Section 17(a)(3) of the Act, in part, provides that it is unlawful for affiliated persons of a registered investment company, or affiliated persons of affiliated persons of a registered investment company to borrow money or other property from any company which is controlled by the registered investment company. State Bank, a Minnesota chartered commercial bank, is a wholly-owned subsidiary of Applicant and thus is an affiliated person of Applicant. Section 2(a)(9) of the Act provides that a natural person shall be presumed not to be a controlled person but that any such presumption may be rebutted by evidence. Applicant states that although children of officers, directors and employees of it are presumed not be be controlled persons and therefore not within the scope of the prohibitions of Section 17(a)(3) unless such children are otherwise affiliated persons, State Bank is reluctant to make student loans to such children because of the possibility that evidence in some cases may rebut the presumption against control of a natural person. Because of the possibility that these student loans may violate Section 17(a)(3) of the Act, Applicant has filed this application.

Section 6(c) of the Act, provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that the contemplated student loans will be made pursuant to the Guaranteed Student Loan Program ("Program"), which Program

is administered under the Provisions of Part B of Title IV of the Higher Education Act of 1965 [20 U.S.C. 1071, *et. seq.*] and the regulations promulgated thereunder [45 CFR, part 177]. According to the application, in Minnesota loans made under the Program are made by commercial lenders (or, in cases where such private money is unavailable, by the Minnesota State Student Loan Program) and are guaranteed by the Higher Education Assistance Foundation ("HEAF"), a private, non-profit Minnesota corporation. Applicant further states that HEAF admininsters the Program in Minnesota and guarantees the repayment of 100 percent of the outstanding principal and accrued interest to the lender for each such student loan. The application also states that the federal government reinsures loans guaranteed by HEAF for 80 to 100 percent of the principal and accrued interest, with the percentage varying according to the default rate in each year, and that HEAF must maintain sufficient reserves to cover that portion of default claims for which federal reimbursement is not made. According to the application, these reserves consist of advances from the federal government and insurance premiums collected from the borrowers at the time the student loans are made. The Applicant states that the student loans are available in amounts not to exceed $2,500 per year for undergraduate students and $5,000 per year for graduate students and that the aggregate amount for such loans cannot exceed $7,500 in the case of an undergraduate student and $15,000 (including all undergraduate loans) in the case of a graduate or professional student. According to the application the annual rate of interest on such student loans is currently 7 percent as fixed by the Higher Education Act of 1965, but that to encourage lenders to participate in the Program, lenders receive a "special allowance" in order to ensure that the yield on the loans is competitive. The Applicant states that this "special allowance" is computed quarterly by the Secretary of Education (formerly the Secretary of Health, Education and Welfare) in consultation with the Secretary of the Treasury and other appropriate agencies, and is fixed at a rate of 3.5% below the average bond equivalent rate for 91-day Treasury bills sold during the quarter, rounded upward to the nearest 1/8th percent. The minimum repayment schedule, both as to amount and time, for such student loans is also fixed by the Higher Education Act of 1965.

Applicant is of the opinion that, because of the restrictions and circumstances cited above, and the conditions outlined below which Applicant has consented to, the requested exemption would not and could not result in overreaching on the part of affiliated persons, and that the investing public will continue to be fully protected from such overreaching. In this regard, Applicant notes that the stock of State Bank held by it is not deposited with its custodian as a qualified asset in order to satisfy its certificate reserve requirements under the Act, and thus states that the holders of Applicant's face-amount certificates are not dependent on the financial condition of State Bank for the security of their investments. Applicant is further of the opinion that the requested exemption is in the public interest in that it would permit children of officers, directors and employees of Applicant to obtain educational financing otherwise difficult to secure, and would permit State Bank to make guaranteed loans yielding competitive rates of return. Finally, Applicant states that the exemption requested is consistent with the exemptions previously granted by the Commission permitting the making of real estate loans by State Bank to its officers, directors and employees and to the officers, directors and employees of Applicant, and that the considerations bearing upon the determination of this application are not significantly different from those relative to the previous applications.

As conditions to the requested order, if issued pursuant to this application, Applicant consents to the following regarding any student loans made by State Bank to the children of any officer, director or employee of Applicant:

1. The loans are to be student loans guaranteed and administered by HEAF and reinsured by the federal government pursuant to the statutory provisions and regulations of the Program.

2. State Bank shall not pay a finder's fee in connection with any loan covered by the requested order, nor shall Applicant pay to State Bank a fee for any such loan.

3. All loans covered by the requested order shall be made in accordance with the applicable State and/or Federal banking laws, including any applicable rules of the Federal Reserve Board.

4. All loans made pursuant to the requested order shall be issued only to those individuals who are affiliated with State Bank by reason of their being children of officers, directors or employees of Applicant.

5. All loans, and the terms thereof, made pursuant to the requested order shall be in accordance with the normal lending policies of State Bank and shall not be inconsistent with any policies of State Bank or of Applicant.

6. Any guaranteed student loan to one individual, which when aggregated with all such previous student loans to such individual, exceeds $5,000.00 shall be approved by the Board of Directors of State Bank or by an executive committee thereof pursuant to delegated authority.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 20, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11372/September 24, 1980

In the Matter of

INTERCAPITAL INCOME SECURITIES INC.
INTERCAPITAL LIQUID ASSET FUND INC.

and

DEAN WITTER REYNOLDS INTERCAPITAL INC.
One Battery Park Plaza
New York, New York 10004

(812-4671)

ORDER PURSUANT TO SECTION 10(e)(3) OF THE ACT SUSPENDING THE OPERATION OF SECTION 15(f)(1) OF THE ACT FOR A PERIOD OF 150 DAYS

InterCapital Income Securities Inc., a registered, closed-end, diversified, management investment company, InterCapital Liquid Asset Fund Inc., a registered, open-end, diversified, management investment company (collectively, the "InterCapital Funds"), and Dean Witter Reynolds InterCapital Inc. (collectively with the InterCapital Funds, "Applicants"), adviser to the InterCapital Funds, filed an application pursuant to Section 10(e)(3) of the Investment Company Act of 1940 ("Act") on May 23, 1980, with an amendment thereto on July 1, 1980, for an order declaring that, for purposes of the requirements of Section 15(f)(1) of the Act, the period for filling a currently existing vacancy on each of the InterCapital Funds' boards of directors be expanded to 150 days.

On August 7, 1980, a notice (Investment Company Act Release No. 11292) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is not inconsistent with the protection of investors. Accordingly,

IT IS ORDERED, pursuant to Section 10(e)(3) of the Act, that, for the purposes of the requirements of Section 15(f)(1) of the Act, the period for filling a vacancy (created by the death of a director in March,

1980) on each of the InterCapital Funds' boards of directors be, and hereby is, expanded to 150 days.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11373/September 25, 1980

In the Matter of

BROAD STREET INVESTING CORPORATION
NATIONAL INVESTORS CORPORATION
TRI-CONTINENTAL CORPORATION
UNION CAPITAL FUND, INC.
UNION CASH MANAGEMENT FUND, INC.
SECOND UNION CASH MANAGEMENT FUND, INC.
UNION INCOME FUND, INC.
UNION SERVICE CORPORATION
UNION SERVICE DISTRIBUTOR, INC.
J. & W. SELIGMAN & CO.
J. & W. SELIGMAN & CO. INCORPORATED
One Bankers Trust Plaza
New York, New York 10006

(812-4294)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING PARTICIPATION IN PROPOSED TRANSACTION

On August 28, 1980, a notice was issued (Investment Company Act Release No. 11318) of an application filed on April 19, 1978, and amendments thereto on March 13, 1980, April 10, and April 18, 1980, by Broad Street Investing Corporation, National Investors Corporation, Union Capital Fund, Inc., Union Cash Management Fund, Inc. ("Union Cash"), Second Union Cash Management Fund, Inc. ("Second Union Cash"), Union Income Fund, Inc. and Tri-Continental Corporation, diversified, management investment companies (the "Union Service companies") registered under the Investment Company Act of 1940 ("Act"); Union Service Corporation ("Union Service"); Union Service Distributor, Inc. ("Distributor"); J. & W. Seligman & Co. ("Seligman"); and J. & W. Seligman & Co. Incorporated (the "Manager"). The application requested an order of the Commission pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting the externalization of the presently internalized advisory, management and distribution functions of the Union Service companies. The application also requested an order of the Commission pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act sale of certain leasehold improvements held by Distributor and the furniture, furnishings, equipment and library now used by Union Service and Distributor to the Manager for cash in an amount equal to the higher of their appraised value or book value at the time of sale (established by an independent appraiser and approved by the Board of Directors of each Union Service company).

On September 22, 1980, another amendment to the application was filed. This amendment, the filing of which was provided for in the above notice, describes the revised participation of Second Union Cash in the proposed externalization. The amendment states that the board of directors of Second Union Cash, at a special meeting on July 28, 1980, after considering the effect of the abolition of the Federal Reserve Board's reserve requirements for money market funds, determined that continuation of the operations of Second Union Cash as a money market fund would not be in the best interest of its shareholders. The directors of Second Union Cash determined that the best course of action for the shareholders would be the redemption of their shares in Second Union Cash and the reinvestment of the proceeds of such redemption in shares of Union Cash. According to the amendment, on July 29, 1980, a notice was sent to all shareholders of Second Union Cash (other than that company's investment adviser, Discount Corporation of New York Advisers) ("Discount Corporation") informing them that on August 5, 1980, their shares in Second Union Cash would be redeemed and, unless they requested direct payment of the proceeds in cash to them, such proceeds would be invested on August 5, 1980, in shares of Union Cash. Such redemption and reinvestment occurred on August 5, 1980; and since no shareholder of Second Union Cash requested direct payment of the proceeds of the redemption in cash, all shareholders of Second Union Cash on August 5, 1980 (other than Discount Corporation)

became shareholders of Union Cash. As a result of Discount Corporation not immediately redeeming its shares in Second Union Cash, Discount Corporation bore all of the approximately $21,000 in unamortized expenses which existed on the books of Second Union Cash. The amendment states that Second Union Cash presently has discontinued all operations.

With respect to the participation of Second Union Cash in the proposed externalized advisory, management and ditribution arrangements of the Union Service companies, the above amendment states that the board of directors of each of such companies consented to the withdrawal of Second Union Cash from active participation in the Externalization Proposal. The only participation of Second Union Cash in the proposed externalization will be as a shell corporation. According to the amendment, the board of directors of each of the Union Service companies has concluded that the participation of each such company and of the service companies controlled by the Union Service companies in the proposed externalization, after giving effect to the withdrawal of Second Union Cash as an active participant, continued to be consistent with the provisions, policies and purposes of the Act, and to be on a reasonable and fair basis not less advantageous than that of other participants. In this regard, the directors have concluded that the withdrawal of Second Union Cash as an active participant in the proposed externalization had no material effect on the conclusions previously reached as to the valuation of the right to manage the Union Service companies and the compensation to be received therefor.

Finally, the amendment of September 22, 1980, states that the board of directors of each of the Union Service companies on September 8 and 9, 1980, approved the sale of Second Union Cash to the Manager for cash in the amount of $11,200, with the proceeds of such sale to be paid to Union Service and divided among the Union Service companies in accordance with their respective ownership interests in Union Services. According to the amendment, on September 8, 1980, a committee consisting of the disinterested directors of all the Union Service companies, after considering information provided it by independent legal counsel and an independent financial consultant, determined that Second Union Cash had a fair value of $11,200. This committee determined that it would be in the best interest of the shareholders of each of the Union Service companies if Second Union Cash were sold for cash to the Manager at fair value as recommended by its independent financial consultant in connection with effectuation of the proposed externalization. In this regard, this committee determined that pursuing other alternatives (including possible sale of Second Union Cash to an outside party) would involve delays in the effectuation of the Externalization Proposal under circumstances where it would be in the best interest of each company and its shareholders to effectuate the externalization as soon as possible in order to remove shareholder uncertainty as to the future structure of the Union Service complex and to assure the retention of key personnel. This committee further determined that sale of Second Union Cash to the Manager at fair value as recommended by its independent financial consultant would be consistent with, and would facilitate, an important underlying objective of the proposed externalization, i.e., having the Manager establish and market new investment companies in order to increase the amount of assets under management. The board of directors of each of the Union Service companies determined, and the Applicants assert that the terms of the proposed sale of Second Union Cash to the Manager, including the consideration to be received from the Manager, would be reasonable and fair in all respects to each of the Union Service companies, would not involve overreaching on the part of any person concerned, would not involve the participation of any of the Union Service companies on a basis different from or less advantageous than that of any other participant, and would be in the best interest of each company and its shareholders. Applicants further submit that the proposed sale is consistent with the policies of each Union Service company and with the general purposes, provisions and policies of the Act.

The above notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found, on the basis of the information stated in the application, that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions

are consistent with the respective policies of the Union Service companies and with the general purposes of the Act. It is also found that the participation of the Union Service companies in the proposed externalization is consistent with the provisions, policies and purposes of the Act and is not on a basis less advantageous than that of any other participant. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the sale of certain leasehold improvements held by Distributor and the furniture, furnishings, equipment and library now used by Union Service and Distributor to the Manager for cash in an amount equal to the higher of their appraised value or book value at the time of sale (established by an independent appraiser and approved by the Board of Directors of each Union Service company); and the sale of Second Union Cash to the Manager for cash in the amount of $11,200 be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that said application to permit the externalization of the presently internalized advisory, management and distribution functions of the Union Service companies be, and hereby is, granted, effective forthwith.

In granting the requested orders the Commission gives significant weight to the following: (1) the disinterested directors of the Union Service companies retained independent legal counsel to provide them legal advice concerning the Externalization Proposal and an independent financial consultant having experience with investment companies to prepare an analysis of the anticipated costs and benefits of the Externalization Proposal; (2) the disinterested directors, based on information provided them by such independent legal counsel and financial consultant, have compared, and quantified, on a company-by-company basis the benefits which they expect will result from the externalization against the increased operating costs which will, at least initially, result from it in order to determine whether such costs and benefits are allocated fairly among all of the Union Service companies, or are weighed in favor of the Manager or Seligman; and (3) the disinterested directors, with the assistance of their independent legal counsel and financial consultant, have determined what value should be placed on the right to manage the Union Service companies which is being acquired by the Manager in order to determine whether the benefits flowing to those companies under the externalization exceed the value of the right to manage them.

By the Commission.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9184/September 23, 1980

U.S. v. *FRED FLEISHMAN* (E.D. Pa. Criminal Action Nos. 79-34 and 79-36)

U.S. v. *ROBERT ABRAMSON* (E.D. Pa. Criminal Action No. 79-35)

Peter F. Vaira, United States Attorney for the Eastern District of Pennsylvania, Paul F. Leonard, Administrator and Thomas H. Monahan, Assistant Regional Administrator (Philadelphia) of the Washington Regional Office of the Securities and Exchange Commission, announced that on September 9, 1980, the Honorable William J. Ditter, Jr., of the United States District Court for the Eastern District of Pennsylvania sentenced Fred Fleishman of Whitestone, New York, and Robert Abramson, of South Natick, Massachusetts, each to three years probation.

Fleishman had previously pled guilty to one count of conspiracy in one indictment and two counts of mail fraud in another indictment for his role in devising a scheme to defraud investors in oil and gas drilling programs sponsored by Equity Service Corporation. Fleishman was sentenced to three years probation on each count, the terms to run concurrently. Abramson had previously pled guilty to one count of conspiracy and one count of mail fraud and was sentenced to three years probation on each count, each term to run concurrently. Fleishman and Abramson were president and vice president,

respectively, of Leverage Resources Corporation, a New York firm, which was engaged in marketing oil and gas programs of Equity Services Corporation.

(For further information, see Litigation Release No. 8675.)

Litigation Release No. 9185/September 23, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GENERAL HOBBIES CORPORATION* United States District Court for the District of Columbia, Civil Action No. 80-1415

The Commission announced today that on September 18, 1980, the United States District Court for the District of Columbia entered a Final Order enjoining General Hobbies Corporation ("Hobbies"), of Philadelphia, Pennsylvania, restraining and enjoining Hobbies from failing to timely file timely periodic reports and ordering it to comply with certain undertakings. Hobbies, consenting to the entry of the Court's judgment, admitted that it had filed reports in an untimely manner on 7 separate occasions. The Commission's Complaint was filed on June 9, 1980.

The Complaint had alleged that Hobbies, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Hobbies has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9186/September 24, 1980

UNITED STATES OF AMERICA v. *JACK C. PETTEE* (W.D. N.C. Criminal No. A-CR-80-47)

Jule B. Greene, Administrator of the Atlanta Regional Office and Harold M. Edwards, United States Attorney for the Western District of North Carolina, announced that on September 8, 1980, a federal grand jury sitting in Asheville, North Carolina, returned an eight-count indictment charging Jack C. Pettee ("Pettee"), of Asheville, North Carolina with four counts of mail fraud and four counts of securities fraud in connection with the offer and sale of promissory notes of Thermal Belt Air Service, Inc. ("Thermal Belt"), a North Carolina corporation.

The indictment charges, among other things, that beginning prior to 1973 and continuing to above

The indictment charges, among other things, that beginning prior to 1973 and continuing to about October 31, 1977, Pettee engaged in a scheme to defraud purchasers of Thermal Belt promissory notes, by making misrepresentations of facts and/or omitting to state material facts, concerning: (1) Thermal Belt's insolvency since 1968, (2) the company's consistent history of operating losses, (3) the use of proceeds, and (4) the risks of the investment. Pettee, the president and a director of Thermal Belt, was previously permanently enjoined from violations of the registration and antifraud provisions of the Securities Act of 1933, the antifraud provisions of the Securities Exchange Act of 1934, and the registration and antifraud provisions of the Investment Advisers Act of 1940 in an action brought by the Commission in 1978. In that action, Pettee consented to the entry of the permanent injunction without admitting or denying the allegations in the complaint.

The trial on the criminal charges has been set for November 4, 1980.

For further information, see Litigation Release No. 8447.

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21/1

sec docket

VOLUME 21 NO. 1 OCTOBER 14, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6243-44	1
Securities Exchange Act	17167-88	8
Public Utility Holding Company Act	21672A, 21728-37	30
Trust Indenture Act	589-90	46
Investment Company Act	11374-85	47
Litigation	9187-95	61
Accounting Series	282	66

This listing covers releases issued from 9/26/80-10/2/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

34-17169 List of foreign issuers which have submitted information required by the exemption relating to certain foreign securities.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17171 34-17186 34-17188
34-17179 34-17187

33-6243 Inclusion of a standardized yield computation in prospectuses regarding money market funds.

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SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6243/September 30, 1980

INVESTMENT CO. ACT OF 1940
Release No. 11379/September 30, 1980

"Money Market" Funds; Inclusion of a Standardized Yield Computation in Prospectuses

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to the registration form for open-end management investment companies to require the

SE 1.29:

inclusion of a yield figure computed by a standardized method, and a quotation based on that computation, in the prospectuses of money market funds, and an amendment to a rule to require that any yield quotations used in advertisements pursuant to the rule be computed by the same standardized method. The amendments are based on the need of money market fund investors for comparable yield quotations since such funds are marketed primarily on the basis of yield to shareholders. Currently, money market fund yield quotations are not comparable and may confuse and mislead investors. The amendments would have the effect of standardizing yield quotations for money market funds.

EFFECTIVE DATES: Amendment to Rule 434d: November 17, 1980. Amendment to Form N-1: November 17, 1980 for all investment companies filing a new registration statement with the Commission on or after that date; for all other investment companies, effective upon the effective date of any post-effective amendment updating the prospectus to include financial statements containing any information which pertains to any fiscal year or portion thereof ending after December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Larry L. Greene, Esq. (202/272-2093) or Anthony A. Vertuno, Esq. (202/272-2107), Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

On January 28, 1980 the Commission proposed amending Form N-1 [17 CFR 239.15, 274.11], the registration form for open-end management investment companies, to require that prospectuses of those investment companies known as "money market" funds include a description of a standardized method of computing yield as set forth in the proposal, and a quotation based on that method.[1] At the same time, the Commission proposed an amendment to Rule 434d [17 CFR 230.434d] under the Securities Act of 1933 [15 U.S.C. 77a-77aa] ("1933 Act") to require money market funds to conform yield quotations used in Rule 434d advertisements to the standardized method. The proposed requirements would apply to any open-end investment company holding itself out to be a "money market" fund or having an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less.

Under the method of computing yield set forth in the proposed amendments, the yield would be calculated by dividing the average daily net investment income per share earned by the fund (that is, accrued interest income plus or minus amortized purchase discount or premium, less all accrued expenses) during a seven calendar day period, by the fund's average daily price per share over the same period and multiplying the result by 365, i.e.,

$$\frac{\text{average daily net investment per share} \times 365}{\text{average daily price per share}} = \text{Yield.}$$

The resulting yield figure would be carried to at least the nearest hundredth of one percent. Net investment income would not include either realized gains and losses or unrealized appreciation and depreciation, but the average price per share would include any changes in net asset value during the seven day period. Any fees charged directly to all shareholder accounts, such as fixed monthly shareholder service fees, would be included in the accrued expenses of the fund. This method had previously been suggested in a request by the Investment Company Institute ("ICI") for a no-action letter.[2]

The Commission proposed the amendments because of its belief that yield is particularly important to investors in making an investment decision with respect to money market funds, and that they might choose one fund over another on the basis of even a slight difference in yield. The Commission stated its view that, absent the use of a standardized method of yield computation, money

[1]Securities Act Release No. 6183 (January 28, 1980) [45 FR 7578 (February 4, 1980)].

[2]Investment Company Institute, available November 16, 1979. The Commission had earlier proposed to standardize yield quotations by money market funds by use of the "yield to average life" method. Investment Company Act Release No. 8816 (June 12, 1975) [40 FR 27492 (June 30, 1975)]. The public comment with respect to this proposal was generally adverse, and it was withdrawn in Securities Act Release No. 6183 (January 28, 1980) [45 FR 7578 (February 4, 1980)].

market fund yield quotations are not comparable and have a potential for confusing and misleading investors.[3]

The Commission received nineteen comments on the proposal, all favoring standardization of yield computation and all except one agreeing that a description of the standardized method should be in the prospectus. Only three commentators, however, agreed with the proposal without qualification; the remainder suggested various changes.

After reviewing the comments the Commission is of the view that the proposal should be adopted as proposed, except for a modification relating to the location of the required yield quotation in the prospectus. That modification is discussed below, together with a discussion of various issues raised by the commentators and the Commission's views concerning those issues.

1. *Inclusion of yield quotation in prospectus*

Nine commentators objected to the requirement to include a current yield quotation in the prospectus. Although most of these commentators did not object to including in the prospectus a decription of how yield would be computed for purposes of quotations used in advertisements, they argued that, due to rapidly changing fund portfolios and yields, a yield quotation in a prospectus would be out of date within a few weeks of publication. They also argued that a prospectus quotation would not aid comparability, since the proposed rule required that the quotation be for the seven days ended on the date of the most recent financial statements in the prospectus, and hence funds using different fiscal years would be quoting yield for different periods. One of these commentators also suggested that the requirements to include a quotation and a description of the method of computation in the propsectus should be optional.

The Commission has determined to adopt the requirement for a yield quotation in the prospectus notwithstanding these objections. As indicated earlier, yield may be expected to play a significant part in investment decisions concerning money market funds. The required yield figure will provide a prospective investor with an indication of the yield achieved by the fund at a particular point in time that is related to the other information furnished in the prospectus, together with an understanding of the yield computation to be used as an industry standard. Although differences in fiscal years would impair direct comparability of yield figures included in prospectuses, an investor could compare the yield figures of money market funds for the same time period, whether they appear in a prospectus or are available in other sources. Moreover, the Commission believes that the quotation will serve as a useful example of the figures which result from the method of computation required to be described in the prospectus, and this illustration will assist investors in comprehending the textual discussion of the subject. Funds may, of course, in fulfilling their duty to make sufficient disclosures to make the quotation not misleading, point out that is should not be viewed as an indication of the fund's current yield.

2. *Location in prospectus of yield quotation*

Three commentators objected to the requirement that the prospectus quotation be placed immediately after the per share table. They argued that it could be misleading to display prominently a yield which may vary substantially from the yield a prospective investor would actually receive. It was also argued that this requirement might prove to be a hindrance in drafting prospectuses which are easily read by the average investor. Thus, these commentators argued, funds should have discretion to decide where to place the quotation in the prospectus.

While the Commission does not agree that a prominent display of this quotation would necessarily be misleading, the Commission has determined that its juxtaposition with other required performance information should not be made mandatory, and that instead money market funds should have discretion concerning the placement of the quotation. Accordingly, the proposed requirement in General Instruction 3G to Form N-1 relating to placement of the yield quotation in the prospectus has been eliminated, and the form item is being renumbered.

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[3]Reference is made to Securities Act Release No. 6183 for a discussion of the basis for the Commission's proposal, including the factors affecting comparability of yield quotations, and an explanation of the proposed amendments.

3. *Use of seven day base period*

Some commentators argued that the proposed seven day standard base period for yield quotations was too short, in that it would make yield quotations too subject to temporary variables in the money market. Those commentators argued, variously, that periods of a month, 45 days, or a year, or a year with each month of the year shown separately, would be more representative of a fund's performance. In addition, some commentators objected to the proposed requirement that *all* quotations of yield in Rule 434d advertisements be based on the seven day period. They argued that, when a seven day base period was suggested by the ICI in its no-action request, that period was intended only for situations where funds seek to quote current yield. They argued that where funds wish to present historical performance information for longer periods they should be allowed to do so.

The Commission continues to believe that a seven day base period is appropriate, and that this should be the exclusive method for computing yield quotations used in Rule 434d advertisements by money market funds. One of the considerations underlying the Commission's proposal was the probability that the predominant use of yield quotations by funds and their investors will be to convey and receive information about current yield, particularly when used in advertisements. Nothing in the comments received suggests that that consideration is not valid. The Commission believes that, in view of the short-term nature of money market instruments and the rapidity with which the rates payable on those instruments can change, a longer period could result in quotations not representative of a fund's current yield. Thus, the seven day base period proposed to be used as the basis for the standardized yield computation is not being changed.

With respect to the suggestion that Rule 434d advertisements be permitted to include yield quotations indicative of longer range performance information instead of, or in addition to, the standardized current yield quotations, the Commission believes that this would interfere with the primary purpose of the amendments: that is, to achieve comparability among the yield quotations advertised by money market funds. It should be noted, however, that while yield quotations used in Rule 434d advertisements of money market funds will be limited to the prescribed method using seven day periods, funds will remain free to include additional yield and performance information that is not misleading in their full prospectuses and in sales material that is accompanied or preceded by a prospectus.

4. *Absence of specific requirement concerning choice of seven day period for use in Rule 434d advertisements*

The ICI's no-action request relating to the use of current yield figures in Rule 434d advertisements included a condition that any advertisement containing a yield quotation be based on a period beginning no later than the fourteenth calendar day prior to publication of the advertisement. Several commentators objected to the fact that the Commission's proposed amendment to Rule 434d did not include such a limitation, requiring instead only that the period used be identified in the advertisement. These commentators argued that the absence of the limitation recommended by the ICI could result in the use of yield figures which were out of date.

The prohibition against using yield quotations based on a period beginning more than fourteen days in the past was omitted from the proposed rule because such a prohibition might effectively prevent yield quotations from being used in advertisements appearing in magazines or other publications with long lead times. The Commission believes that the rule's requirement that the seven day period be identified, coupled with the general 1933 Act requirement that a Rule 434d advertisement, like any other prospectus, contain whatever information is needed to make the document not misleading, will serve as an adequate safeguard against yield quotations being used in a misleading way, and that it is not necessary to prohibit specifically the use of seven day periods beginning more than fourteen days in the past. However, the Commission expects that registrants, in order to make Rule 434d advertisements not misleading, normally would use the most recent period practical.

5. *Absence of specific requirements concerning accompanying disclosures*

In its no-action request, the ICI set forth a number of specific textual disclosures to accompany yield quotations. The proposal incorporated certain of these disclosures, specifically the requirement to identify the seven day period used, and the

requirement to disclose material changes in the quoted yield which would have resulted from changes in net asset value or the inclusion of realized or unrealized capital changes in the calculation of average daily net investment income. Some commentators argued that the other disclosures suggested by the ICI should be specifically required as well.[4] These commentators contended that such information would be helpful to investors in evaluating advertised current yields and would help to make yield quotations broadly comparable and not misleading.

In light of its general policy not to establish specific standards with respect to investment company sales literature beyond the minimum extent necessary, the Commission is not persuaded that it should adopt the remainder of the ICI's recommended textual disclosures as specific requirements of the rule. It should be emphasized, however, that by not including these recommendations within the required standardized method the Commission does not intend to suggest that such disclosures are not important or that they should not be included in the disclosure. Rather, the Commission is of the view that funds will be adequately guided by the general requirement to include whatever disclosures are needed to make the quotation not misleading.

6. *Other comments*

One commentator suggested changes in the elements used in the yield computation. Pursuant to this suggestion, the average daily net investment income used in the calculation would reflect any realized or unrealized capital changes recognized by a fund in determining its daily dividend and any changes in net asset value during the period. Both of these items would be excluded under the Commission's proposal. In addition, this commentator would compare the average daily net investment income to the price of shares at the beginning of the period rather than the average price during the period. The commentator suggested that these changes would make the yield quotations consistent with the actual experience of an investor in the fund during the period for which the calculation is made.

The Commission is not adopting this commentator's suggestions. The Commission is of course aware that various funds have different methods of operation, and that this can result in differences in individual investor experience and yield quotations, especially over the short term. It is these differences which have heretofore made it difficult for investors to make yield comparisons among money market funds. The rule is intended to alleviate this problem by standardizing the method of computation with a view to obtaining yield quotations which are comparable while accounting for differences in individual investor experience by way of the conditional disclosures required. To the extent that this commentator's suggestions would maintain disparity in yield quotations, the purpose of the rule would tend to be defeated. With regard to the suggestion that the yield computation use the price at the beginning of the period rather than the average price during the period, the Commission believes that such a procedure would pose an unnecessary risk that yield figures could be distorted by an aberrant change in price on one day.

Several commentators disagreed with the manner in which the proposal treated fees charged to shareholders. Some suggested that all fees which might be charged to shareholders, including those related to optional transactions, such as redemption by check, be treated as accrued expenses of the fund for purposes of the yield computation. Others suggested that all fees charged to shareholders be excluded from the computation of yield. In the Commission's view, the treatment of fees in the proposal strikes a proper balance between these two alternatives by including in the computation those fees that are charged to all shareholders while excluding those that would be charged only to some. The former are included because their effect is to reduce yields to all shareholders; the latter are excluded because their inclusion would distort the

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[4]The other disclosures suggested by ICI were: that the advertised yield consist of a seven calendar day annualized historical yield; that the principal is not insured or guaranteed, or alternatively, that principal and yield may fluctuate; that the yield is affected by portfolio quality, portfolio maturity, type of instrument, and a fund's operating expenses; the risk, if unusual, arising from the composition of a fund's portfolio; the daily average dollar-weighted portfolio maturity for the period; that the actual income to any particular shareholder may be higher or lower than the quoted yield if fixed dollar fees are charged directly to all shareholders and, if appropriate, the temporary subsidization of fund expenses by an affiliate.

quotation for those shareholders not subject to the fees.

WHEN TO COMPLY

The amendment to Rule 434d will become effective on November 17, 1980. The amendment to Form N-1 will become effective on November 17, 1980 for all investment companies filing a new registration statement with the Commission on or after that date. For other investment companies, the amendment to Form N-1 will become effective upon the effective date of any post effective amendment filed for the purpose of updating the prospectus pursuant to Section 10 of the Securities Act of 1933 [15 U.S.C. 80a-77j] to include financial statements any portion of the information of which pertains to any fiscal year or portion thereof ending after December 31, 1980.

Although the amendment of the registration statement will not be necessary for most money market funds until their next regular updating amendment, funds desiring to use yield quotations in Rule 434d advertisements must, in accordance with that rule, have a discussion in the prospectus to serve as the basis for a Rule 434d yield advertisement. The Commission is aware that the prospectuses of many money market funds already include such a discussion. Where a fund's prospectus does not include the discussion and the fund wishes to include yield figures in Rule 434d advertisements before the prospectus is ready for its regular updating, the prospectus may be revised to include it with a "sticker" filed pursuant to Rule 424 [17 CFR 230.424]. For those companies not yet required to comply with the form amendment, it will not be considered necessary to add a yield figure to the prospectus for the purpose of complying with Rule 434d.

USE OF NEW RULE 465 BY REGISTRANTS COMPLYING WITH THE FORM AMENDMENT

On August 25, 1980, the Commission adopted new Rule 465 [17 CFR 230.465] under the 1933 Act effective October 6, 1980 [Release No. 33-6229; 45 FR 57702, August 29, 1980]. Pursuant to paragraph (b)(1)(iii) of that rule, a post-effective amendment to a registration statement filed by an investment company otherwise qualified under the rule may become effective automatically on the date of filing or on such other date designated by the registrant not later than twenty days after the filing date, provided that the amendment is filed only for the purpose of updating financial information in the prospectus and making other non-material changes in the prospectus. For purposes of Rule 465, the Commission will regard the inclusion of the yield figure required (and its subsequent updating in later filings) as updating of financial information and it will not consider the addition of textual material to the prospectus to comply with the form amendment adopted hereby as a material change.

COMMISSION ACTION

Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By amending §§239.15 and 274.11 by changing the item number of current Item 17 of Part I of Form N-1 to Item 18 and by adding a new Item 17 to Part I to read as follows:

§§239.15 Form N-1, for open-end management investment companies registered on Form N-8A.

§§274.11 Form N-1, registration statement of open-end management investment companies.

* * * * *

Item 17. *Yield Quotations of Money Market Funds* (Prospectus Only)

(a) For a registrant which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less, furnish the following informaiton:

(i) a yield quotation based on the seven days ended on the date of the most recent financial statements of the Registrant included in the prospectus, computed by dividing the Registrant's average daily net investment income per share earned during such seven calendar day period by its average daily price per share for the same period and multiplying the result by 365, with the resulting yield figure carried to at least the nearest hundredth of one percent; and

(ii) a description of the method by which the yield is computed.

(b) For purposes of the calculation required in subsection (a), above, Registrant's average daily net investment income per share shall include its accrued interest income plus or minus amortized purchase discount or premium less accrued expenses, but shall not include realized gains and losses or unrealized appreciation and depreciation. For purposes of this computation, fees charged to all shareholder accounts must be included in the accrued expenses of the fund, and the Registrant's average price per share must include any changes in net asset value during the seven day period.

Instructions: In connection with the presentation of the yield figure, the prospectus must disclose:

(1) if applicable, that the Registrant follows the practice of reflecting changes in portfolio values in its daily dividend, and

(2) if material, the net amount of any change in the yield figure which would result from:

(a) the inclusion in the determination of net investment income of realized gains or losses and unrealized appreciation or depreciation recognized by the Registrant but excluded from the computation pursuant to Item 17(b)

(b) any change in net asset value during the period used for computing yield.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

2. By deleting the word "and" from the end of paragraph (a)(4) of §230.434d, adding the word "and" to the end of paragraph (a)(15), and adding a new paragraph (a)(6), to provide as follows:

§230.434d Advertisement by an investment company as satisfying requirements of section 10.

(a) * * *

(4) It states, conspicuously, from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing,

(5) It contains the statement required by §230.433(b) of this chapter when used prior to effectiveness of the company's registration statement, and

(6) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement is based on the method of computation prescribed in Item 17 (and the instructions thereto) of Form N-1, set forth in §§239.15 and 274.11 of this chapter and identifies [the date of the last day in] the period used in computing that quotation.

* * * * *

STATUTORY AUTHORITY: The amendments are adopted pursuant to the authority granted to the Commission in Sections 10 and 19(a) of the 1933 Act [15 U.S.C. 77j and 77s(a)] and Section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-37(a)].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6244/September 30, 1980

In the Matter of

LADAS & PARRY PROFIT-SHARING PLAN
10 Columbus Circle
New York, NY 10019

(18-70)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE PROFIT-SHARING PLAN OF LADAS & PARRY

Ladas & Parry, a law firm organized as a partnership under New York law, filed an applicaiton on February 14, 1980, for an exemption from the registration

READEX FICHE

requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Profit-Sharing Plan of Ladas & Parry ("Plan").

On September 3, 1980, a notice was issued (Securities Act Release No. 6237) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17167/September 26, 1980

A notice has been issued giving interested persons until October 20, 1980 to comment on the application of HOWELL PETROLEUM CORPORATION to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17168/September 26, 1980

A notice has been issued giving interested persons until October 20, 1980 to comment on the applications of the *Midwest Stock Exchange, Incorporated* for unlisted trading privileges in the common stock of five issues.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17169/September 29, 1980

LIST OF FOREIGN ISSUERS WHICH HAVE SUBMITTED INFORMATION REQUIRED BY THE EXEMPTION RELATING TO CERTAIN FOREIGN SECURITIES

Foreign private issuers with total assets in excess of $1,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)] (the "Act").[1]

Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed to its security holders.

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[1]Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States or subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)].

When it adopted Rule 12g3-2 and other rules relating to foreign securities (see Securities Exchange Act Release No. 8066, April 28, 1967), the Commission indicated that from time to time it would issue lists containing those foreign issuers which have obtained exemptions from the registration provisions of Section 12(g) of the Act by providing the information specified in rule 12g3-2(b). The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the attached list is available in the public files of the Commission. The attached list includes those foreign issuers which, as of August 31, 1980, appear to be current in furnishing information under Rule 12g3-2(b). There is a total of 227 foreign issuers on the list.

The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning certain foreign issuers may not be available in the United States. The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers. The Commission will continue to review activity in the markets for foreign securities to determine whether the present rules are achieving their purpose and whether further rules or rule revisions are necessary in the public interest or for the protection of investors.

Any questions regarding Rule 12g3-2 or the list included herein should be directed to Carl T. Bodolus or Ronald Adee, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 (202/272-3246 or 272-3250).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

List of Foreign Private Issuers which appear to qualify for the exemption provided in Rule 12g3-2(b) as of August 31, 1980.

Registrant
File No. Domicile

Abitibi Paper Company Limited
82-80 Toronto, Ontario, Canada

Aegean Resources Corp.
82-365 Vancouver, B.C., Canada

The Afrikander Lease Limited
82-245 Johannesburg, South Africa

Agnico-Eagle Mines Limited
82-179 Toronto, Ontario, Canada

Aktiebolaget Svenska Kullagerfabriekn
82-139 Gothenberg, Sweden

Algoma Steel Corp. Ltd.
82-99 Sault Ste. Marie, Ontario, Canada

Allwest Industries Ltd.
82-340 Vancouver, B.C., Canada

American Pyramid Resources
82-384 Vancouver, B.C., Canada

Anglo American Corp. of South Africa Ltd.
82-97 Johannesburg, South Africa

Anglo American Gold Investment Co. Ltd.
(formerly West Rand Investment Trust Ltd.)
82-146 Johannesburg, South Africa

Anglo-Bomarc Mines Ltd.
82-346 Vancouver, B.C., Canada

Anglo United Development Corp. Ltd.
82-190 Toronto, Ontario, Canada

B.A.T. Industries Limited
82-33 London, England

Bank of Montreal
82-126 Montreal, Quebec, Canada

Banner Resources Ltd.
82-357 Vancouver, B.C., Canada

Basic Resources International S.A.
82-203 Luxembourg, Luxembourg

Beecham Group Limited
82-22 Middlesex, England

Bethlehem Copper Corporation
82-248 Vancouver, B.C., Canada

Bianca Resources Ltd.
82-379 Vancouver, B.C., Canada

Blue Diamond Energy Resources Inc.
82-391 Vancouver, B.C., Canada

Blyvooruitzicht Gold Mining Company, Ltd.
82-69 Johannesburg, South Africa

Bonanza Oil & Gas Ltd.
82-355 Calgary, Alberta, Canada

The Border & Southern Stockholders Trust, Ltd.
82-287 London, England

The Bowater Corporation
82-3 Toronto, Ontario, Canada

Bralorne Resources Ltd.
82-143 Calgary, Alberta, Canada

Bramalea Consolidated Developments Ltd.
82-154 Toronto, Ontario, Canada

Brascan, Ltd.
82-4 Toronto, Ontario, Canada

Brent Exploration Ltd.
82-321 Vancouver, British Columbia, Canada
Buffelsfontein Gold Mining Co., Ltd.
82-302 Johannesburg, South Africa
Burmah Oil Company Limited
82-5 Glasgow, Scotland
B. X. Development Ltd.
82-270 Vancouver, B.C. Canada
Camflo Mines Limited
82-193 Toronto, Ontario, Canada
Canada Tungsten Mining Corporation, Ltd.
82-290 Vancouver, British Columbia, Canada
Canadian Barranca Corp., Ltd.
82-292 Edmonton, Alberta, Canada
Canadian Bashaw Leduc Oil & Gas Ltd.
82-377 Edmonton, Alberta, Canada
Canadian Cablesystems Ltd.
82-335 Toronto, Ontario, Canada
Canadian Imperial Bank of Commerce
82-103 Toronto, Ontario, Canada
Canadian Marconi Co.
82-86 Montreal, Quebec, Canada
Celanese Canada Inc.
82-171 Montreal, Quebec, Canada
Central Pacific Mines
82-354 Sydney, Australia
Challenger International Services Ltd.
82-369 Calgary, Alberta, Canada
Charriot Resources Ltd.
82-372 Toronto, Ontario, Canada
Charter Consolidated Ltd.
82-233 London, England
Chromasco Ltd.
82-106 Montreal, Quebec, Canada
Cominco Ltd.
82-107 Vancouver, B.C., Canada
Conex Australia N.L.
82-319 Perth, Australia
Coniagas Mines Ltd.
82-168 Toronto, Ontario, Canada
Consolidated-Bathurst Limited
82-172 Montreal, Quebec, Canada
Consolidated Cinola Mines, Ltd.
82-310 Vancouver, British Columbia, Canada
Consumers Distributing Co., Ltd.
82-297 Toronto, Ontario, Canada
Consumers Gas Ltd.
82-329 Toronto, Ontario, Canada
Coralta Resources Ltd.
82-380 Vancouver, B.C. Canada
Cornwall Petroleum & Resources Ltd.
82-347 Vancouver, B.C., Canada
Coseka Resources Ltd.
82-295 Vancouver, British Columbia, Canada
Cusac Industries Ltd.
82-367 Vancouver, B.C., Canada
Cygnus Corporation Ltd.
82-110 Toronto, Ontario, Canada
The Dai'ei
82-230 Osaka, Japan
Daon Development Corp.
82-344 Vancouver, B.C., Canada
DeBeers Consolidated Mines, Ltd.
82-91 Johannesburg, South Africa
Deelkraal Gold Mining Company Ltd.
82-246 Johannesburg, South Africa
Delhi Pacific Mines Ltd.
82-370 Toronto, Ontario, Canada
Deutsche Bank AG
82-334 Frankfurt, W. Germany
Dickenson Mines Limited
82-8 Toronto, Ontario, Canada
Dominion Textile Company Limited
82-113 Montreal, Quebec, Canada
Domtar Limited
82-18 Montreal, Quebec, Canada
Doornfontein Gold Mining Co. Ltd.
82-213 Johannesburg, South Africa
Double Eagle Energy & Resources Ltd.
82-362 Vancouver, B.C., Canada
Dresdner Bank AG
82-229 Frankfurt a.M., Federal Republic of Germany
Dupont of Canada Limited
82-19 Montreal, Canada
Durban Roodepoort Deep Ltd.
82-156 Johannesburg, South Africa
East Daggafontein Mines Limited
82-42 Johannesburg, South Africa
East Driefontein Gold Mining Co., Inc.
82-124 Johannesburg, South Africa
East Rand Gold and Uranium Company, Ltd.
82-289 Johannesburg, South Africa
East Rand Proprietary Mines, Limited
82-239 Johannesburg, South Africa
Elandsrand Gold Mining Company Ltd.
82-266 Johannesburg, South Africa
Elsburg Gold Mining Company Limited
82-269 Johannesburg, South Africa
Energie & Resources O'Brien Limited
82-262 Toronto, Ontario, Canada
L. M. Ericsson Telephone Co.
82-115 Stockholm, Sweden
Falconbridge Nickel Mines Ltd.
82-30 Toronto, Ontario, Canada
Fisons Limited
82-202 Suffolk, England

Free State Development & Investment Corp., Ltd.
82-296 Johannesburg, South Africa
Free State Geduld Mines Ltd.
82-40 Johannesburg, South Africa
Free State Saaiplass Gold Mining Co., Ltd.
82-41 Johannesburg, South Africa
Fuji Photo Film Company, Limited
82-78 Tokyo, Japan
General Mining Union Corp., Ltd.
formerly, General Mining and Finance Corp., Ltd.
82-311 Marshalltown, South Africa
Gillian Mines Ltd.
82-386 Vancouver, B.C., Canada
Glaxo Holdings Limited
82-10 London, England
Gold Fields of South Africa, Ltd.
82-204 Johannesburg, South Africa
Gold Fields Property Co. Ltd.
82-214 Johannesburg, South Africa
Granisle Copper Ltd.
82-26 Vancouver, British Columbia, Canada
Greenwood Explorations Ltd.
82-368 Vancouver, B.C., Canada
Grootvlei Proprietary Mines Ltd.
82-222 Johannesburg, South Africa
Groundstar Resources Ltd.
82-249 Toronto, Ontario, Canada
Grove Explorations Ltd.
82-343 Vancouver, B.C., Canada
Gulf Oil Ltd. (Canada)
82-101 Toronto, Ontario, Canada
Hal Roach Studios Corp.
82-250 Toronto, Ontario, Canada
Harlequin Enterprises Ltd.
82-318 Don Mills, Ontario, Canada
Harmony Gold Mining Ltd.
82-238 Johannesburg, South Africa
Host Ventures Ltd.
82-257 Vancouver, B.C., Canada
IAC Limited
82-120 Toronto, Ontario, Canada
Imasco Limited
82-118 Montreal, Quebec, Canada
Impala Platinum Holdings Ltd.
82-359 Johannesburg, South Africa
Imperial Group Ltd.
82-316 London, England
Indusmin Limited
82-201 Toronto, Ontario, Canada
The Investors Group
82-13 Winnipeg, Manitoba, Canada
Iona Silver Mines Ltd. (NPL)
82-356 Vancouver, B.C., Canada
Japan Air Lines
82-122 Tokyo, Japan
Jet-Star Resources Ltd.
82-325 Vancouver, B.C., Canada
Julia Resources Group, Ltd.
82-366 Vancouver, B.C., Canada
Kerr Addison Mines Limited
82-14 Toronto, Ontario, Canada
Kirin Brewery Co., Ltd.
82-188 Tokyo, Japan
Kloof Gold Mining Company Ltd.
82-205 Johannesburg, South Africa
Knobby Lake Mines, Ltd.
82-336 Vancouver, B.C., Canada
LCM Resources Ltd.
82-330 Calgary, Alberta, Canada
Lacana Mining Corporation
82-265 Toronto, Ontario, Canada
LaLuz Mines Ltd.
82-237 Toronto, Ontario, Canada
Lava Cap Resources Ltd.
82-376 Ontario, Canada
Leichardt Exploration Ltd.
82-322 Adelaide, Australia
Lennard Oil Co.
82-298 Perth, Australia
Libanon Gold Mining Co. Limited
82-215 Johannesburg, South Africa
Lincoln Resources Inc.
82-349 Vancouver, B.C., Canada
Little Long Lac Mines Ltd.
82-198 Toronto, Ontario, Canada
Lydenburg Platinum Ltd.
82-312 Marshalltown, South Africa
Magnet Metals, Ltd.
82-299 Perth, Australia
Marievale Consolidated Mines Ltd.
82-224 Johannesburg, South Africa
Mentor Exploration & Development Ltd.
82-178 Toronto, Ontario, Canada
M.I.M. Holdings Ltd.
82-173 Brisbane, Australia
Minerals and Resources Corporation
82-206 Pembroke, Bermuda
Mitel Corp.
82-326 Ottawa, Ontario, Canada
Monarch Petroleum N.L.
82-339 Perth, Australia
NRD Mining Ltd.
82-358 Vancouver, B.C., Canada
Neomar Resources Ltd.
82-382 Toronto, Ontario, Canada

New Dimension Resources Ltd.
82-272 Toronto, Ontario, Canada
New Frontier Exploration Inc.
82-341 Vancouver, B.C. Canada
Ni-Cal Developments Ltd.
82-360 Vancouver, B.C. Canada
Nor-Quest Resources Ltd.
82-374 Nanaimo, B.C., Canada
Noranda Mines Ltd.
82-158 Toronto, Ontario, Canada
North American Power Petroleums Inc.
82-383 Vancouver, B.C., Canada
North West Mining N.L.
82-309 Perth, Australia
Northwest Ventures Ltd.
82-260 Toronto, Ontario, Canada
Norwegian American Line
82-111 Oslo, Norway
Nu-Energy Development Company
82-286 Vancouver, British Columbia, Canada
Oceanic Iron Ore of Canada, Ltd.
82-159 Toronto, Ontario, Canada
Ocelot Industries Inc.
82-331 Calgary, Alberta, Canada
Onaping Mines Limited
82-273 Toronto, Ontario. Canada
Otter Exploration N.L.
82-320 St. Leonards, Australia
Omni Resources Inc.
82-385 Vancouver, B.C., Canada
Overseas Inns SA
82-166 Luxembourg City, Luxembourg
Pan Canadian Petroleum Limited
82-285 Calgary, Alberta, Canada
Paragron Resources Ltd.
82-388 Vancouver, B.C., Canada
Patino N.V.
82-135 The Hague, The Netherlands
Pennant Resources Ltd.
82-371 Toronto, Ontario, Canada
Philex Mining Corp.
82-136 Manila, Philippines
Piper Petroleums Ltd.
82-361 Vancouver, B.C., Canada
Pop Shoppes International Inc. (PSI)
82-256 Ontario, Canada
Power Corporation of Canada Limited
82-137 Montreal, Quebec, Canada
President Brand Gold Mining Co., Ltd.
82-39 Johannesburg, South Africa
President Steyn Gold Mining Co., Ltd.
82-44 Johannesburg, South Africa
Prism Resources Ltd.
82-375 Vancouver, B.C., Canada
Quasar Petroleum Ltd.
82-278 Alberta, Canada
Quintaine Resources Inc.
82-350 Edmonton, Alberta, Canada
Quebec Sturgeon River Mines Ltd.
82-186 Toronto, Ontario, Canada
The Randfontein Estates Gold Mining Co.
Witwatersrand, Limited
82-267 Johannesburg, South Africa
Rank Organization Limited
82-17 London, England
Rayrock Resources Ltd.
82-378 Toronto, Ontario, Canada
Reed Steinhouse Companies Limited
82-254 Toronto, Ontario, Canada
Roman Corp. Ltd.
82-345 Toronto, Ontario, Canada
Rothmans International Limited
82-84 Basildon, Essex, England
Rustenburg Platinum Holdings Ltd.
82-241 Johannesburg, South Africa
Sabina Industries Ltd.
82-244 Pembroke, Ontario, Canada
Samantha Exploration N.L.
82-323 Perth, Australia
San Miguel Corp.
82-306 Manila, Philippines
Santa Sarita Mining Co., Ltd.
82-338 Vancouver, B.C., Canada
Sanyo Electric Co., Ltd.
82-264 Tokyo, Japan
Sceptre Resources Ltd.
82-387 Calgary, Alberta, Canada
Scottie Gold Mines Ltd.
82-351 Vancouver, B.C., Canada
Scheer Energy Development Corp.
82-333 Vancouver, B.C., Canada
Sherritt Gordon Mines, Limited
82-29 Toronto, Ontario, Canada
Shiseido Co., Ltd.
82-225 Tokyo, Japan
Siemens Aktiengesellschaft
82-73 Munich, Federal Republic of Germany
Silverado Mines Ltd.
82-348 Vancouver, B.C., Canada
Sotheby Parke Bernet Group Ltd.
82-337 London, England
Source Perrier
82-291 Paris, France
South African Breweries, Ltd.
82-303 Johannesburg, South Africa
Southern Pacific Petroleum N.L.
82-353 Sydney, Australia

Southvaal Holdings Limited
82-197 Johannesburg, South Africa
Spartan Capital Corp. Ltd.
82-160 Ottawa, Ontario, Canada
Stampede International Resources Ltd.
82-242 Toronto, Ontario, Canada
Steel Co. of Canada Limited
82-141 Toronto, Ontario, Canada
Sudbury Contact Mines Ltd.
82-180 Toronto, Ontario, Canada
Sunexco Energy Corp.
82-389 Vancouver, B.C., Canada
20th Century Energy Fund Corp.
82-352 Vancouver, B.C., Canada
TDK Electronics Co., Ltd.
82-255 Tokyo, Japan
T.R.V. Minerals Corp.
82-327 Vancouver, B.C., Canada
Taro-Vit Chemical Industries Ltd.
82-210 Haifa, Israel
Telefonos de Mexico, S.A.
82-332 Mexico
Toronto Dominion Bank
82-142 Toronto, Ontario, Canada
Tournigan Mining Explorations
82-328 Vancouver, B.C., Canada
Toyota Motor Co., Ltd.
82-208 Tokyo, Japan
Trans Colt Resources Ltd.
82-342 Vancouver, B.C., Canada
Transvaal Consolidated Land & Exploration Co.
82-304 Johannesburg, South Africa
Treasure Cay Ltd.
82-288 Abaco, Bahamas
Troy Gold Industries
82-307 Calgary, Alberta, Canada
U.C. Investments Limited
82-235 Johannesburg, South Africa
Union Corporation Limited
82-231 Johannesburg, South Africa
United Hearne Resources Ltd.
82-315 Vancouver, British Columbia Canada
United Keno Hill Mines Ltd.
82-61 Toronto, Ontario, Canada
United Siscoe Mines Inc.
82-194 Toronto, Ontario, Canada
United Westland Resources Ltd.
82-393 Vancouver, B.C., Canada
Velcro Industries N.V.
82-145 Curacao, Netherlands Antilles
Venterspost Gold Mining Company Ltd.
82-216 Johannesburg, South Africa
Ventora Resources Ltd.
82-381 Vancouver, B.C., Canada
Veronex Resources Ltd.
82-364 Vancouver, B.C., Canada
Versatile Cornat Corp.
82-390 Vancouver, B.C., Canada
Vlakfontein Gold Mining Company Ltd.
82-217 Johannesburg, South Africa
Warrior Resources ltd.
82-363 Vancouver, B.C., Canada
Welkom Gold Mining Company Limited
82-57 Johannesburg, South Africa
West Driefontein Gold Mining Co. Ltd.
82-90 Johannesburg, South Africa
Westfort Petroleums Ltd.
82-308 Calgary, Alberta, Canada
Westmount Resources Ltd.
82-392 Vancouver, B.C., Canada
West Rand Consolidated Mines, Ltd.
82-314 Marshalltown, South Africa
Western Areas Gold Mining Company Ltd.
82-268 Johannesburg, South Africa
Western Deep Levels Limited
82-58 Johannesburg, South Africa
Western Holdings Limited
82-54 Jchannesburg, South Africa
Willanour Resources Ltd.
(formerly Cochenour Willans Gold Mines Ltd)
82-63 Toronto, Ontario, Canada
F.W. Woolworth and Co., Limited
82-200 London, England
Zambia Copper Investments, Ltd.
82-227 Pembroke, Bermuda

SECURITIES EXCHANGE ACT OF 1934
Release No. 17170/September 29, 1980

Admin. Proc. File No. 3-5960

In the Matter of

CONTINENTAL AMERICAN SECURITIES, INC.
3201 North First Place
Phoenix, Arizona

JAMES ROE
2822 East Osbourn Road
Phoenix, Arizona

ORDER INSTITUTING PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate in the public interest that administrative proceedings pursuant to Section 15(b)(4) and (6) of the Securities Exchange

Act of 1934 (the "Exchange Act") be instituted against Continental American Securities, Inc. ("Continental"), a registered broker-dealer, and James Roe ("Roe"), a registered representative employed by Continental, to determine whether they willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. These proceedings arise out of transactions in the common stock of Olympic Gas & Oil, Inc. ("Olympic") and SNG & Oil Energy Company ("SNG") at the time of the inception of trading in such securities in the over-the-counter markerts.[1]

Continental and Roe, simultaneously with the institution of these proceedings and without admitting or denying the allegations or findings herein, have submitted offers of settlement for the purpose of disposing of the issues raised in these proceedings. Under the terms of the offers of settlement, Continental and Roe waive the institution of formal proceedings and, solely for the purpose of these proceedings, consent of the issuance of this Order.[2]

The Commission has deemed it appropriate and in the public interest to accept the offers of settlement and accordingly is issuing this Order.

I. *FACTS*

Continental, with headquarters in Phoenix, Arizona, is registered with the Commission as a broker-dealer. The firm has branch offices in Seattle, Washington and in Grand Junction, Colorado. It is a member firm of the Pacific Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Roe is a registered representative in Continental's Phoenix office.

Trading in the common stock of Olympic began in the over-the-counter markets on September 13, 1979, when the stock was first quoted in the Pink Sheets. Prior to that date, Roe became aware of Olympic through discussions with Ian I. Allison ("Allison") of Santa Rosa, California, who provided Roe with certain publicly available documents concerning Olympic. Allison placed a series of open limit sell orders with Roe prior to the opening of trading. The orders placed by Allison were to sell a total of 15,400 shares of Olympic common stock at varying prices scaled upward from $1 1/2 through $3 1/2 per share.

Upon receipt of the orders, Roe and certain officers and employees of Continental placed buy orders for accounts in their names or in which they had interests for a total of 4,000 of the shares offered in the open limit sell orders. Their buy orders were for the stock offered at the lowest price limits. Roe and certain of the other Continental officers and employees placing such buy orders then solicited their customers to purchase the remainder of the stock offered at the higher price limits. Such customers were not informed that the Continental personnel soliciting them to purchase the stock would acquire the stock at the lower prices.

When trading opened in Olympic common stock on September 13, 1979, Continental executed the orders by crossing the market buy orders from customers and the open limit sell orders. On such day the market price of the stock increased.

Trading in SNG's common stock began in the over-the-counter market on January 9, 1980. Prior to the opening of trading, Allison notified Roe that SNG common stock would begin trading over-the-counter and provided him with certain documents concerning SNG. As was the case with Olympic, a series of open limit sell orders for SNG common stock was placed with Roe prior to the opening of trading. The open sell limit orders directed the sale of 45,000 shares of SNG common stock at varying prices scaled upward from $1 to $1.925. Roe and certain officers and employees of Continental placed buy orders for 9,500 of the 15,000 shares available at $1 per share and for 1,400 shares at $1 1/2. Upon placing the buy ordres for accounts in their names or in which they had an interest, Roe and certain of the others solicited their customers to purchase the balance of the stock offered in the open limit sell orders, without disclosing that they would acquire the stock at lower prices.

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[1]On September 29, 1980, the Commission instituted an action for injunctive and other equitable relief against 23 defendants in the United States District Court for the District of Columbia. In its Complaint the Commission alleged violations of the antifraud, registration and reporting provisions of the federal securities laws. Both Olympic and SNG were named as defendants. Litigation Rel. No. 9188/September 29, 1980.

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[2]The findings herein are not binding on any respondent named in any administrative proceedings based on any of the matters described in this Order.

Upon the opening of trading in SNG common stock on January 9, 1980, Continental crossed the buy and sell orders. On such day the market price of the stock increased.

II. *FINDINGS*

Based upon the foregoing, the Commission finds that Continental and Roe willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III. *OFFERS OF SETTLEMENT*

In their offers of settlement, Continental and Roe consent to the issuance of this Order making findings and containing remedial sanctions. Roe's offer of settlement provides for a suspension from being associated with any broker or dealer for thirty (30) business days and that he will not be employed in a supervisory capacity with a broker or dealer for two (2) years. Continental's offer of settlement provides for a censure and an order that Continental comply with certain undertakings.

Continental has undertaken to, within thirty (30) days after the entry of this Order, adopt and implement and thereafter to maintain written procedures sufficient to prevent firm employees from obtaining undisclosed preferential treatment in connection with employee purchases of stock offered in limit sell orders and solicitation of customer purchases of stock offered pursuant to such orders at higher prices.

Continental has also undertaken to, within thirty (30) days after the entry of this Order, make an offer to pay certain sums of money to certain of its customers, as detailed below, and, upon acceptance of such offer by such customers, to promptly pay such monies. The customers to whom the offer will be made are those: (1) who purchased the common stocks of Olympic and SNG on September 13, 1979 and January 9, 1980 respectively from open limit sell orders placed with Continental by Richard Dugger and/or Allison or at their direction, (2) who were solicited to purchase the stocks by those of Continental's employees, not otherwise affiliated with such customers, who themselves purchased such securities on such dates from such open limit sell orders at lesser prices, and (3) who later sold such stock for less than the purchase price (the stock sold to be determined through use of the first in first out method) or who still retain such stock. The sum to be offered to the customers, who meet each of the above criteria, shall be the lesser of $1.00 per share of such securities purchased on such dates or the difference between each customer's purchase price and the maximum price at which stock was offered in the above open limit sell orders.

IV. *ORDER*

Based upon the foregoing, the Commission deems it in the public interest that admininstrative proceedings pursuant to Section 15(b)(4) and (6) of the Exchange Act be instituted and that the offers of settlement of Continental and Roe be accepted.

Accordingly, IT IS ORDERED that administrative proceedings pursuant to Section 15(b)(4) and (6) of the Exchange Act be, and they hereby are, instituted.

IT IS FURTHER ORDERED that Continental be, and it hereby is, censured and that Continental shall fully comply with its undertakings contained in its offer of settlement.

IT IS FURTHER ORDERED that Roe be, and hereby is, suspended from being associated with any broker or dealer for thirty (30) business days and that he shall not be employed in a supervisory capacity with any broker or dealer for two (2) years from the date of entry of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17171/September 29, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY CINCINNATI STOCK EXCHANGE,INC.

File No. SR-CSE-80-5

The Cincinnati Stock Exchange submitted on September 11, 1980, a proposed rule change under Rule 19b-4 to revise the National Securities Trading System ("NSTS") fee schedule by the addition of a volume discount schedule to be applied to both members' and non-members' monthly fees.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of September 29, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CSE-80-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17172/September 29, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($1 par value) of AMERICAN DISTILLING COMPANY (THE) from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17173/September 30, 1980

In the Matter of

P.E.C. ELECTRONICS CORPORATION

File No. 81-632

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until October 24, 1980 to request a hearing on an application by P.E.C. Electronics Corporation ("Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting the Applicant from certain of the reporting requirements of Section 13 of the 1934 Act.

The Applicant believes that such action would not be inconsistent with the public interest or the protection of investors since the Applicant has no operations, and is presently distributing its assets in accordance with a plan of liquidation approved by its shareholders.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17174/September 30, 1980

In the Matter of

EAST BOSTON COMMUNITY DEVELOPMENT CORPORATION

File No. 81-634

Application pursuant to Section 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until October 24, 1980 to request a hearing on an application by East Boston Community Development Corporation (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of Sections 13 and 14 of the 1934 Act.

Applicant is a federally-funded, community

development corporation, controlled by members of the community. Each of Applicant's stockholders owns one nominally priced share of voting stock. There is no trading interest in these securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17175/September 30, 1980

In the Matter of

LIFE ASSURANCE COMPANY OF PENNSYLVANIA

File No. 81-629

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until October 24, 1980 to request a hearing on an application by Life Assurance Company of Pennsylvania ("Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting Applicant from the periodic reporting requirements of Section 15(d) of that Act.

Applicant has no publicly-held securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17176/September 30, 1980

In the Matter of

LOYAL AMERICAN LIFE INSURANCE COMPANY

File No. 81-638

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until October 24, 1980 to request a hearing on an application by Loyal American Life Insurance Company, ("Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an order exempting Applicant from the provisions of Section 15(d) of that Act.

As the result of a merger, Applicant has become a wholly-owned subsidiary of The Imperial Life Assurance Company of Canada and no longer has any public shareholders.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17177/September 30, 1980

In the Matter of

QUAKER PROFIT-SHARING AND INVESTMENT PLAN

NOTICE REGARDING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued a notice giving interested persons until October 24, 1980, to request a hearing on an application by Quaker Profit-Sharing and Investment Plan (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting the Applicant from the provisions of Section 15(d) of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17178/September 30, 1980

In the Matter of

REI LIQUIDATING CORPORATION

File No. 81-631

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchanges Commission has issued a notice giving interested persons until October 24, 1980, to request a hearing on an application by R.E.I. Liquidating Corporation ("Applicant"), formerly Rodale Electronics, Inc., pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an order exempting the Applicant from certain of the reporting requirements of Section 13 of the 1934 Act.

The Applicant believes that such action would not be inconsistent with the public interest or the protection of investors since the Applicant has no operations, and is presently distributing its assets in accordance with a plan of liquidation approved by its shareholders.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17179/September 30, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-17

The Pacific Stock Exchange Incorporated ("PSE") submitted on September 29, 1980, a proposed rule change under Rule 19b-4 to set forth acceptable methods of allocating options exercise notices among options trading accounts at member organizations.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 6, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17180/September 30, 1980

File No. 3-5961

In the Matter of

LOEB, RHOADES, HORNBLOWER & CO.
Respondent

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I

Respondent, named in the Commission's Order Instituting Proceedings issued this day, has submitted an Offer of Settlement simultaneously with the institution of such proceedings.[1] Under and subject to the terms of the Offer of Settlement, the Respondent, solely for the purpose of disposing of this proceeding, without admitting or denying any of the matters set forth herein or in the Order of Instituting Proceedings, and, on the understanding that nothing contained in the Order Instituting Proceedings or in this Order constitutes an adjudication or may be used in any way for any purpose, as evidence or otherwise, in any action or proceeding, other than Commission proceedings, nor shall any future order or findings which the Commission may issue in any related proceeding against any other respondent constitute an adjudication or finding against, or be used in any way for any purpose, as evidence or otherwise, in any action or proceeding as to the Respondent herein, consents to the issuance of this Order.[2]

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[1]The findings herein are not binding on any respondent named in any other administrative proceeding based on any of the matters described in the Order Instituting Proceedings.

[2]The Order for Proceedings contains allegations limited to the Commission's statutory functions in a broker-dealer proceeding. It does not purport to be a report of investigation. The Respondent is involved in two private civil actions which include among other parties, Respondent to these proceedings. Nothing in the Order for Proceedings or in this Order is intended to reflect, or should be construed as reflecting, any view of the Commission or the Division of Enforcement as to the civil culpability or responsibility of any party to any private action in such action. The Order for Proceedings does not refer to all the matters which may have a bearing upon the issues involved in private civil actions. These matters are not within the scope of the Commission's proceedings.

This Order is being issued with the consent of the Respondent, without a hearing, without factual findings and is based solely upon the allegations of the Division of Enforcement contained in the Order Instituting Proceedings herein and the Offer of Settlement submitted by the Respondent.

II. *FINDINGS*

Respondent failed to reasonably supervise an employee subject to its supervision with a view to preventing his violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

III. *ORDER*

In view of the foregoing, we deem it appropriate and in the public interest to accept the Offer of Settlement of Respondent, and accordingly,

IT IS ORDERED that Respondent be, and it hereby is censured.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

Release No. 17181/September 30, 1980

Admin. Proc. File No. 3-5962

In the Matter of

BARRY L. LEFKO

ORDER INSTITUTING PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate that proceedings be instituted against Barry L. Lefko ("Respondent") pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act").

Respondent, simultaneously with the institution of these proceedings, has submited an Offer of Settlement for the purpose of disposing of the issues raised in these proceedings. Under the terms of the Offer of Settlement, Respondent waives the institution of formal proceedings and, solely for the purposes of these proceedings and without admitting or denying the facts or findings set forth herein, consents to the issuance of this Order.[1]

The Commission has deemed it appropriate and in the public interest to accept the Offer of Settlement and, accordingly, is issuing this Order.

I. *FACTS*

1. *Introduction*

Respondent, a resident of Baltimore, Maryland, was at all times relevant herein employed by the Baltimore, Maryland office of Dean Witter Reynolds, Inc., as a registered representative.

C.H.B. Foods, Inc., ("CHB") is a California corporation whose securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. CHB's common stock is traded on the American Stock Exchange ("AMEX") and the Pacific Stock Exchange. CHB is engaged in the business of processing and canning a variety of Food products for institutional and consumer use. As of October 1, 1978, CHB had 2,651,678 shares of common stock issued and outstanding, approximately 60% of which were held by persons associated with CHB.

2. *Fraudulent and Manipulative Scheme*

(a) *Introduction*

During the period from May 1978 through January 1979, James E. Corr, III ("Corr"), of St. Petersburg, Florida, his wife, Neica Corr, [2] a registered representative in the Boca Raton office of a large

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[1]The findings herein are not binding on any respondent named in any other administrative proceeding based on any of the matters described in this Order.

[2]Corr and his wife, Neica Corr, are both under permanent injunctions from further violations of Sections 7(d), 7(f), 9(a), 10(b) and 13(d) of the Exchange Act and Rules 10b-5 and 13d-1 thereunder, in connection with their manipulative scheme involving the common stock of American Agronomics Corp. (*SEC v. James E. Corr III et al.*, DDC 75-0386). See Litigation Release Nos. 7197,

brokerage firm ("Corr's registered representative"), and other engaged in a scheme to dominate, control and manipulate upward the market price of CHB stock.[3] Respondent aided and abetted these activities. As part of the manipulative scheme, Corr purchased CHB stock and induced a number of individuals, including fellow inmates at the federal prison camp at Eglin Air Force Base, Florida ("Eglin Prison"), and their relatives, to purchase CHB stock through false and misleading statements (many of which involved making false statements concerning a purported takeover of CHB at a price significantly in excess of its then current market price) which created actual and apparent trading in CHB stock and which raised the price of CHB stock for the purpose of inducing purchases of the securities by others.

As a further part of the manipulative scheme, during the period from May 1978 through January 1979, Corr, other inmates at Eglin Prison, and their relatives purchased approximately 224,950 shares of CHB stock. This purchase activity dominated, controlled and manipulated upward the market in CHB stock. At one point, Corr and accounts for which Corr directed activities, owned nearly 7% of the outstanding shares of CHB stock and over 16% of the public float in CHB stock. As a result of this activity, the price of CHB stock rose from a low of $7-5/8 per share during July 1978 to a high of $16-7/8 per share during January 1979.

As a further part of the manipulative scheme, Corr purchased CHB stock in nominee accounts, advanced the funds to pay for such purchases, and purchased the CHB stock for his own account by means of misappropriating funds entrusted to him by other Eglin Prison inmates and their relatives. Corr also controlled a group of securities brokerage accounts which had acquired more than 5% of CHB outstanding stock without making the required disclosure of such fact. After his release from Eglin Prison on October 1, 1978, Corr continued to recommend CHB stock to former Eglin inmates, some of whom were still incarcerated. He also began to recommend the stock to other investors and broker-dealers.

Most of the purchases of CHB stock, in furtherance of the manipulative scheme, were effected through Corr's registered representative.[4] After the initial contacts from the inmates or their relatives, that registered representative would frequently accept orders for many of these accounts directly from Corr. That registered representative also falsified information concerning identities, occupations, income and net worth of such persons on the account opening cards to conceal the fact that persons for whose benefit the shares were being purchased were incarcerated.

After that registered representative's ability to execute purchases in CHB stock was halted by his employer on November 17, 1978, due to the firm's heavy concentration in the stock,[5] the registered

Footnote 2 continued

7124, 7025 and 6794. Corr has recently finished serving consecutive terms in federal prison for a conviction of criminal contempt of the aforementioned injunction as well as for a conviction for securities fraud, perjury and filing a false loan application in connection with his activities relating to the securities of Jerome Mackey Judo Studios, Inc. [*U.S.* v. *James E. Corr III et al.*, 75 Crim 803 (SDNY)]. See Litigation Release Nos. 7349, 7199 and 7066.

[3]On or about January 11, 1978, Corr opened a brokerage account in the name of N.L. Ormond, which was Neica Corr's maiden name. Neica Corr was at that time and still is married to Corr. Corr's registered representative knew that the account was for the benefit of Corr and his wife and that Neica Corr used her maiden name, N.L. Ormond, for the purpose of disguising the fact that Corr had a beneficial interest in the account.

[4]During the period from April 1978 to December 1978, this registered representative opened accounts attributable to at least eleven persons who were incarcerated at Eglin Prison. Some of the accounts were opened in the names of persons incarcerated at Eglin Prison and other accounts were opened in the names of relatives of those inmates, these accounts were opened and orders were placed for the accounts of such persons through telephone conversations. At the time the registered representative began opening the brokerage accounts for individuals referred to him by Corr, he was aware that Corr was imprisoned as a result of his conviction for violation of the federal securities laws and that his wife, Neica Corr, had been convicted of violating the federal securities laws for which she was fined $500.

[5]Subsequently, a modification of this directive was obtained which allowed the Boca Raton office to

representative referred Corr to Respondent and arranged for Corr to open an account with Respondent in Corr's wife's maiden name for the purpose of executing additional purchases of CHB stock.[6] Thereafter, Corr purchased CHB stock through the account with Respondent, and the registered representative placed orders to purchase CHB stock with Respondent for another person, although Corr and his registered representative lacked written authorization to do so.

Although he had insufficient funds to pay for the purchases at the time, on November 22 and 27, Corr ordered 12,600 and 10,000 shares respectively, of CHB stock through Respondent. Unable to obtain the necessary funds, Neica Corr stopped payment on two checks totalling $180,695 which Corr had mailed to Respondent endorsed by Neica Corr in blank.[7] In addition, on December 1, Corr ordered the purchase of 2,000 more shares of CHB stock for the N.L. Ormond account with Respondent. A margin account was opened with Corr's registered representative on December 1, in the name of a friend of Corr's from Eglin Prison and an order was placed to purchase $100,000 worth of CHB stock. The registered representative, operating under the one-for-two restriction,[8] placed part of the order with Respondent without written authorization to do so. The friend eventually purchased 11,500 shares of CHB common stock, 5,000 shares from Corr's registered representative and 6,500 shares from Respondent. However, he did not have the necessary funds to meet the initial margin requirement at either firm and his position was subsequently sold out by both firms.

Respondent also recommended purchases of CHB to his own customers, to at least one other registered representative at another brokerage firm and to a customer of that brokerage firm. During the course of these discussions, Respondent indicated that CHB was to be the target of a tender offer in the twenty-dollar range, which in fact was not true. At least 12,000 shares were purchased by a customer of the other brokerage firm after reeiving this information.

II

FINDINGS

Respondent willfully violated and aided and abetted violations of Section 17(a) of the Securities Act of 1933, Sections 9(a)(2), 10(b), and 17(a) of the Exchange Act and Rules 10b-5, and 17a-3 thereunder.

III

OFFER OF SETTLEMENT

Respondent has submitted an Offer of Settlement pursuant to which, without admitting or denying the facts or findings set forth herein, he consents to the findings herein and the issuance of this Order.

IV

ORDER

In view of the foregoing, we deem it appropriate and in the public interest to accept the Offer of Settlement of Respondent, and accordingly,

IT IS ORDERED that such proceedings be and hereby are instituted.

IT IS FURTHER ORDERED that Respondent be, and he hereby is suspended from association with any broker-dealer, investment advisor or investment company, for one hundred twenty (120) calendar days and thereafter if he becomes so associated, will only be so associated in a non-supervisory position under appropriate supervision.

Footnote 5 continued

make unsolicited purchases in an amount equal to 50% of the number of shares sold (the "one for two restriction").

[6]Respondent and Corr's registered representative were long-time friends who spoke to each other daily to discuss stocks that they were recommending. Prior to this time, Lefko had already recommended to some of his customers that they purchase CHB common stock. Soon after opening the account, Respondent was informed by Corr's registered representative of Corr's involvement with the American Agronomics manipulation and Corr's subsequent imprisonment at Eglin.

[7]In endorsing these checks, Neica Corr left both the payee and amount ordered to be paid blank. These blanks were filled in by an employee of Respondent's employer at Respondent's direction.

[8]See Note 5, *supra*.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17182/September 30, 1980

The Commission announced today the institution of public administrative proceedings against Meyer Berg ("Berg") who was formerly a registered representative with Loeb Rhoades, Hornblower & Co. The Commission ordered the proceedings against Berg to determine whether he violated the anti-manipulative, anti-fraud, beneficial reporting and record-keeping provisions of the federal securities laws. The Order for Proceedings was based on allegations by the Commission's Division of Enforcement that Berg participated in a scheme to manipulate upward the market price of securities of C.H.B. Foods, Inc. during the period from approximately May, 1978 through January, 1979. A further allegation recited in the Commission's order was that Berg participated in such manipulative scheme with James Corr and his wife Neica Corr of St. Petersburg, Florida.

The Federal grand jury for the District of Columbia has been investigating since July, 1980 whether James Corr and Neica Corr, as a result of their activities regarding trading in the securities of C.H.B. Foods, Inc., may be in criminal contempt of a "Final Judgment of Permanent Injunction and Other Relief" which had been previously entered against them by the federal district court for the District of Columbia. As alleged in the Commission's Order which commenced these administrative proceedings, Berg acted as the broker for James and Neica Corr and for other individuals referred to him by James Corr.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17183/October 1, 1980

Admin. Proc. File No. 3-5964

In the Matter of

BOSTON STOCK EXCHANGE, INC.
BOSTON STOCK EXCHANGE CLEARING CORPORATION, INC.

ORDER INSTITUTING PROCEEDINGS, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

The Commission deems it appropriate in the public interest that proceedings be instituted against the Boston Stock Exchange, Inc. ("BSE" or "Exchange") and the Boston Stock Exchange Clearing Corporation, Inc. ("Clearing Corp") pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934 ("Exchange Act"[1] to determine whether the Exchange violated Section 19(g)[2] of the Exchange Act, and the Clearing Corp violated Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System.

In anticipation of the institution of these proceedings, the BSE and the Clearing Corp have submitted an Offer of Settlement for the purpose of

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[1]Section 19(h)(1) provides that:

The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organiation, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provisions of this title, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof.

[2]Section 19(g)(1) of the Exchange Act provides in relevant part that:

Every self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and. . .absent reasonable justification or excuse enforce compliance—(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members.

disposing of the issues raised in these proceedings. The BSE and the Clearing Corp solely for the purpose of these proceedings and any other future proceedings by the Commission, without admitting or denying the facts or findings set forth herein, consent to the findings contained herein and sanctions imposed by this Order.

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of the BSE and the Clearing Corp and, accordingly, issues this Order.

I

PARTIES

The BSE is a national securities exchange registered with the Commission pursuant to Section 6(a) of the Exchange Act.

Clearing Corp is a wholly owned subsidiary and a member of the BSE, and a clearing organization registered with the Commission pursuant to Section 17A(b)(2) of the Exchange Act. Apart from performing a clearing function, the Clearing Corp acted as a lender, financing transactions by BSE specialists.

II

FACTS

A. *Parking*

From January, 1976, through January, 1977, four BSE specialists and certain of their principals and employees met margin calls from the Clearing Corp. by entering into fictitious transactions generally with a fifth specialist. A computerized data processing system generated margin calls automatically in the course of processing all trades. By submitting an order ticket, a "selling" specialist would cause the computer to reflect a liquidation of securities, thus eliminating a margin call. The specialist would then cancel the trade on the following day, thereby returning to the position that originally generated the margin call, but allowing an additional period of time to meet the apparently new call. The practice of making fictitious trades to meet margin calls has been referred to as "parking" securities.[3]

To create the appearance that securities were being liquidated to satisfy a margin call, specialists who engaged in parking would initiate a false transaction with a BSE member who also had direct access to the New York Stock Exchange ("NYSE"). Order tickets marked to reflect that the trade would be executed on the NYSE were submitted for processing, thus entering the trade into the computer where it was reflected in margin computations. Subsequent cancellation prevented the trade from, in fact, ever being executed. A New York Stock Exchange member was apparently used so that the trade would not be recorded on the BSE tape (nor did it appear on the NYSE tape, since it was never executed). One specialist sold to its cash clearing account instead of to the NYSE member. Since the cash account did not enter into the specialist margin report, selling to the cash account had the same effect as parking with another specialist. Prior to settlement date the specialists cancelled the trades, but only after the margin call had been satisfied on paper.

B. *Non-specialist Securities in Specialist Accounts*

From January, 1976, through January, 1977, three BSE specialists purchased non-specialist securities through their specialist accounts. Over 800 non-specialist positions with a total market value of approximately $38,000,000 were carried in this manner.

Under BSE rules, specialist securities received more favorable margin rates and discounts for net capital computation ("haircuts") than non-specialist securities. The computer applied the favorable rate to all securities placed in the specialist account.

[3]The BSE uncovered the parking problem in February, 1977 and retained special counsel to investigate the situation. Special counsel determined that four specialists, Solana Associates, Barclay Douglas and Co., HTN Securities Co. and Gowell Securities Corp. had parked securities most often with a fifth BSE specialist, the Fairfield Group, Inc. Special counsel also noted that specialist accounts had been used to carry positions in non-specialist securities. The BSE's special counsel immediately advised the Commission's staff that an investigation was being undertaken; special counsel also advised the Commission of its findings.

III

VIOLATIONS BY BSE MEMBERS

The parking and practice of purchasing non-specialist securities through specialist accounts resulted in violations of the applicable margin, net capital and bookkeeping requirements discussed below.

A. *Margin*

The Clearing Corp, as a member of the BSE, was required, in lending to specialists, to comply with Regulation T.[4] That Regulation at the time under review imposed a 50% margin rate on retail transactions, and a margin rate on credit extended to specialists for the purchase of specialist securities as determined by the lender in "good faith". The credit agreement between the Clearing Corp and the specialists set 25% as the good faith margin. Regulation T also required that margin requirements be met as promptly as possible but in any event before the expiration of five full business days.

During the period from January, 1976, through January, 1977, securities were parked by BSE specialists in the face of outstanding margin calls in approximately 300 instances, frequently on the fifth day of the call. As a result of the parking, the specialists were in apparent but not actual compliance with the margin requirements. BSE specialists frequently met the margin requirements on the fifth day of a call by using the parking scheme and resumed non-compliance thereafter; therefore, where parking was involved, the specialist was in continual non-compliance.

Three of the specialists that engaged in parking also carried non-specialist securities in their specialist accounts.[5] Under Regulation T, the non-specialist securities should have been margined at a 50% rate but, because they were carried in the specialist account, they were margined at 25%. Thus, excess credit was extended in the specialist accounts in an amount equal to 25% of the market value of the non-specialist securities carried in those accounts.

As a result of both the parking and the improper margining of non-specialist stock, there were from January 1976 to February 1977 substantial violations of the margin limitations imposed by Regulation T.

B. *Net Capital*

BSE specialists who do not maintain retail accounts are exempted from the provisions of the Commission's net capital rule by Rule 15c3-1(b)(1). However, such specialists are subject to the Exchange's rule. Two of the specialists had no retail accounts and, therefore, had to comply with the BSE net capital rule.[6] That rule required each specialist to maintain minimum net capital equal to 1,500 per centum of its aggregate indebtedness but in no event less than the greater of $25,000 or the equity required to carry at 25% margin 200 shares of each security in which the member was a specialist.

In addition, the BSE net capital rule required a 10% haircut on securities long and short in specialist accounts and a 30% haircut on other securities. By placing non-specialist securities in specialist accounts and not applying the proper deduction, the amount of haircut was understated by 20%, and net capital was overstated by the corresponding dollar amount. Specialist and non-specialist securities parked received no deduction and resulted in overstating net capital by their respective haircuts.[7] As the result of both the parking and the non-specialist securities carried in specialist accounts, the BSE, specialists were in frequent violation of the exchange net capital rule, even though their records reflected compliance.

C. *Bookkeeping Requirements*

Section 17(a)(1) of the Exchange Act imposes on national securities exchanges and their members the obligation to maintain certain books and records. Implicit in this obligation is the requirement that the

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[4]Section 2(b) of Regulation T defines "creditor" as any broker or dealer including every member of a national securities exchange.

[5]Solana Associates, HTN Securities Co. and Gowell Securities Corp.

[6]Solana Associates and HTN Securities Co.

[7]Gowell Securities Corp. had retail accounts and was therefore subject to the Commission's net capital rule. Adjustments for non-specialist securities in its specialist account resulted in violations of the Commission's rule.

books maintained be complete and accurate.[8] As discussed, various specialists prepared false order tickets, thus violating Rule 17 CFR 240.17a-3(a)(7), the rule that requires that memoranda of orders (order tickets) be maintained. The order tickets were source materials for other records maintained by the Exchange and the specialists. This in addition to the practice of carrying non-specialist securities in specialist accounts resulted in false purchase and sale blotters in violation of Rule 17 CFR 240.17a-3(a)(1); false ledgers in violation of Rule 17 CFR 240.17a-3(a)(2); and inaccurate trial balance and net capital computations in violation of Rule 17 CFR 240.17a-3(a)(11).

IV

VIOLATIONS BY BSE AND THE CLEARING CORP

A. *The Clearing Corp*

The Clearing Corp is a member of the BSE, and therefore credit it extended to specialists to finance trading is subject to Regulation T. As noted above, the practices of parking and carrying non-specialist securities in specialist accounts resulted in substantial margin violations.

The primary onus of compliance with the margin requirements rests with the Regulation T creditor. During the time period in which bSE specialists engaged in parking and used specialist accounts to trade in non-specialist securities, the Clearing Corp issued margin calls, but did not adequately monitor margin compliance despite frequent margin calls which were generally outstanding for the maximum five-day period. The frequency of the margin calls and the regular five-day duration should have alerted the Clearing Corp to a need for greater vigilance. Furthermore, the parking could have been detected by reviewing documents in the Clearing Corp's possession.

The Clearing Corp did not fulfill its responsibility under Regulation T to monitor compliance with the applicable margin requirements, and it extended excessive credit to BSE specialists in violation of Regulation T.

B. *The Exchange*

As a national exchange registered with the Commission, the BSE is required pursuant to 19(g)(1) of the Exchange Act, absent reasonable justification or excuse, to enforce compliance with the Exchange Act, Exchange Act Rules, and its own rules. Section 19(h)(1) authorizes the Commission to sanction an exchange for failure to so enforce. The obligation to enforce imposed by Section 19(g)(1) on an exchange necessarily includes an obligation to monitor and maintain surveillance over its members to insure compliance with the applicable statutes and regulations.[9]

From January 1976 through January 1977, the BSE failed to maintain surveillance procedures adequate to insure that its members would comply and were complying with the Exchange Act, BSE and Commission Rules, and Regulations of the Federal Reserve Board. This failure resulted in the failure to detect for the aforesaid period the violations described above.

V

ACTIONS TAKEN BY THE EXCHANGE AND THE CLEARING CORP

In late February, 1977, a Clearing Corp. internal auditor discovered that fictitious trades ("parking") had occurred on the floor of the BSE. The discovery was immediately reported to the Assistant Vice President of the Exchange. An initial inquiry was made, and on March 3, 1977, the determination of that inquiry, namely, that fictitious trades had occurred on the BSE floor over a period of approximately a year, was reported to the President and Vice President of the Exchange. An internal investigation was commenced by the BSE to determine the extent of the practice and the underlying material facts. All specialist members of

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[8] *In re Jay Rutledge*, Securities and Exchange Release No. 12841 (Sept. 29, 1976) 10 SEC Docket 597. *In the Matter of Edward Sinclair*, 44 SEC 523, 528 (1973); *In the Matter of Cohen Goren Equities, Inc.* Securities Exchange Act Release No. 10252 (June 28, 1973), 2 SEC Docket 70.

[9] The Exchange has a duty to investigate the dealings and financial condition of its members. *Baird* v. *Franklin* 141 F.2d 238, 239 (2d. Cir. 1944). See also Section 6 of the Exchange Act which requires that an Exchange be organized so as to have the capacity to enforce compliance with the Exchange Act, Exchange Act regulations and rules, and its own rules.

the BSE were examined in this regard. By March 21, 1977 it had been determined that five firms had engaged in questionable practices.

The Executive Committee of the BSE met and decided to create a Special Ad Hoc Committee to deal with this matter, and on April 1, 1977, retained Special Counsel for the purpose of making an investigation of the facts pertaining to the "parking" practices.

After an initial assessment of the "parking" problem at the BSE in April, 1977, Special Counsel notified the Division of Market Regulation and advised it of the nature of the problem, that Special Counsel had been appointed and that the BSE had created a Special Ad Hoc Committee to deal with the problems. Thereafter, Special Counsel periodically advised the Commission staff of the progress of its investigation.

Based on the evidence assembled, the Board of Governors instructed Special Counsel to prepare statements of charges pertaining to each of those found in the investigation as having engaged in the "parking" practice. The statements of charges were filed and hearings were waived by all respondents. A preliminary report was filed with the Commission's staff outlining the parking violations and referring to additional problems relating to the clearing of non-specialist securities in specialists' accounts.

As a result of special counsel's investigation, the BSE instituted disciplinary proceedings and sanctioned seven of its members.[10] The sanctions included fines ranging from $2,500-$10,000 for six members, five-day suspensions for six of the seven members, a prohibition from holding any elective exchange office for one year, and a prohibition against serving in any appointive exchange office for six months.[11] Three of the subject members, David C. Gowell, Richard F. Warner, and Bruce K. Newell, were renominated and elected to the BSE Board of Governors after the prohibitions had expired.[12] These members currently serve on the BSE Board of Governors, as well as several other exchange committees.

As a result of its investigation and that conducted by special counsel, the BSE instituted surveillance procedures to detect the aforesaid violations. Surveillance for parking is now conducted by a daily review of certain automated reports produced by the Clearing Corp. Basically, this review focuses on changes in each specialist's daily equity position that are attributable to added, cancelled, or corrected trades. Depending upon the magnitude of the alteration and the particular specialist's equity position, a corrected total long and short position is calculated and a new margin requirement is determined. When necessary, a margin call is issued or an outstanding margin call is adjusted. Further, the BSE now evaluates the legitimacy of all trade alterations and checks for patterns of alterations by an individual specialist. Finally, the BSE maintains a record by specialist of all margin calls. With regard to the carrying of non-specialist securities in specialist accounts, the BSE instituted an automated exception report which identifies each instance where a specialist account contains a position in a non-specialist security.

VI

FINDINGS

Based upon the above discussion the Commission finds that the Exchange without reasonable justification or excuse failed to employ adequate surveillence procedures for monitoring the activity of its specialists, and failed to discover on a timely basis violations by its members of Commission, Exchange and Federal Reserve Board Regulations, which continued over a thirteen month period. While the Exchange retained special counsel to investigate the violations and ultimately sanctioned various members, its failure for a thirteen month period to maintain adequate surveillance procedures and to detect and terminate the violative conduct constitutes a failure to enforce Commission and Exchange regulations in violation of Section 19(g)(1) of the Securities Exchange Act of 1934. Moreover, we find that the Clearing Corp extended credit to specialists in violation of Section 7(c)(1) of the

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[10]The seven members were principals or employees of the five specialists who engaged in the parking scheme.

[11]On November 30, 1977 the BSE filed the results of its disciplinary actions in this matter with the Commission pursuant to Rule 19d-1 of the Exchange Act.

[12]Messrs. Gowell and Warner had been fined $10,000 and $6,000 respectively, while Mr. Newell had received no fine.

Exchange Act and Federal Reserve Board Regulation T.

VII

OFFER OF SETTLEMENT

In its Offer of Settlement the BSE represents that after discovery of the violations described herein, it instituted an internal investigation, advised the Commission of the violations and sanctions imposed on the specialists involved, and instituted new procedures with a view towards preventing further similar violations.

In addition, the BSE has agreed to undertake the following steps to review and to report to the Commission on the adequacy of the performance of the Board of Governors of the BSE in the discharge of the Exchange's self-regulatory responsibilities:

A. The formation of a Special Management Review Committee which shall be appointed by the Board of Governors of the BSE and composed of persons who are not officers of the BSE (but may otherwise be Board Members) and who are not unacceptable to the staffs of the Commission's Enforcement and Market Regulation Divisions.

B. The Special Management Review Committee shall be formed within 30 days of the date of this order and shall deliver a final report to the BSE Board and to the staffs of the Commission's Enforcement and Market Regulation Divisions within 120 days of the date of this order or such extension as may be mutually agreed upon between BSE and the Commission's staff.

C. The Special Management Review Committee shall review and its report shall discuss the following:

(1) Procedures for nominating members for the Board of Governors, including standards and qualifications for eligibility.

(2) The Board of Governors' oversight of the management of the BSE, including adequacy of systems of internal controls and the integrity of the Exchange's disciplinary process, to ascertain whether the BSE is fully discharging its self-regulatory responsibilities under the Exchange Act.

(3) The formulation of appropriate recommendations to the Board of Governors to deal with any deficiencies in its nomination and oversight functions as determined by the Special Management Review Committee, and to assure that the BSE is fully discharging its self-regulatory responsibilities under the Exchange Act.

(4) The nomination process resulting in election of Messrs. Gowell, Warner and Newell to the Board of Governors following the 1977 disciplinary action by the BSE (including findings as to fitness of those persons to serve on the Board of a self-regulatory organization), including an evaluation of that process in light of the recommendations formulated under C(3) above.

VIII

ORDER

Based on the foregoing, and after due consideration of all the circumstances, the Commission has determined that it is appropriate in the public interest to institute these proceedings and accept the Offer of Settlement of the BSE and the Clearing Corporation. Accordingly, IT IS ORDERED that proceedings pursuant to Section 19(h) of the Exchange Act be and hereby are instituted.

IT IS FURTHER ORDERED that the BSE and the Clearing Corporation be and hereby are censured; and

IT IS FURTHER ORDERED that the BSE fully comply with its undertakings as described above.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17184/October 2, 1980

A notice has been issued giving interested persons until October 24, 1980 to comment on the applications of the *Midwest Stock Exchange, Incorporated* for unlisted trading privileges in four stocks which are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17185/October 2, 1980

In the Matter of Application of the

CINCINNATI STOCK EXCHANGE

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Cincinnati Stock Exchange ("CSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

American General Corporation
Common Stock, $1.50 Par Value (File No. 5734[1]

The Commission finds that approval of the CSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the CSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the CSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the CSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Cincinnati Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17186/October 2, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-37

The New York Stock Exchange, Inc. submitted on September 26, 1980, a proposed rule change under Rule 19b-4 to amend Exchange Rule 341 to delete the requirement that the registered address of every member who personally transacts business on its trading floor must be in the vicinity of the Exchange.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 6, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-37.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 61059 (September 15, 1980). The Commission has received no comments with respect to this application.

Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17187/October 2, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-18

The Pacific Stock Exchange Incorporated submitted on September 29, 1980, a proposed rule change under Rule 19b-4 to amend its schedule of minimum fines that may be imposed on members for violation of exchange rules or floor procedures relating to the conduct of business on the options floor.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 6, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17188/October 2, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-22

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on September 16, 1980, a proposed rule change under Rule 19b-4 to permit members to execute transactions in Phlx options as principals in the over-the-counter market for a premium not in excess of $1.00 per contract.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 6, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-22.

Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21672A/September 30, 1980

In the Matter of

BLACKHAWK COAL COMPANY
New York, New York

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6273)

SUPPLEMENTAL ORDER CORRECTING ERRORS AND IMPOSING QUARTERLY REPORTING REQUIREMENTS

The order of August 7, 1980 (HCAR No. 21672), issued in this proceeding is hereby corrected in the following respects.

The ninth paragraph is corrected to read in full as follows:

I&M states that its investment, as of February 29, 1980, was as follows (in thousands):

	Total	*Plant In Service*	*Coal Property Held For Future Use*
Land	$1,263	$955	$308
Water rights	482	482	—
Coal reserves	49,824	16,100	33,724
Contract settlement	14,929	—	14,929
Depreciable assets	32,658	32,370	288
Development & pre-operating expense	56,022	47,079	8,943
Reorganization deferral	7,267	—	7,267
AFUDC	28,048	22,223	5,825
	$190,493*	$119,209	$71,284

*Excludes the Braztah Contingent Obligation.

The tenth paragraph is corrected to read in full as follows:

It is further proposed that in connection with the acquisition by Blackhawk of I&M's beneficial interest in the Mines: (i) Blackhawk will assume I&M's Braztah Obligation of $19,800,000 with interest at the rate of 8% per annum (and also assume I&M's Contingent Braztah Obligation of $3,888,000); (ii) I&M will make an advance of $31,000,000 to Blackhawk, evidenced by a promissory note maturing December 31, 1990, said note bearing interest at the rate of 10.13% per annum, Blackhawk to endeavor to pay back the advance as soon as practicable, and in any event prior to December 31, 1981, with proceeds from a possible sale and leaseback transaction (to be the subject of a future filing with this Commission) involving certain coal processing and mining equipment; (iii) Blackhawk will issue to I&M a promissory note for $30,800,000 bearing interest at the rate of 10.13% per annum (reflecting I&M's weighted average cost of first mortgage bonds issued between March 1975 and March 1978) and maturing on December 31, 2010; (iv) Blackhawk will issue to I&M approximately 37,600 shares of Blackhawk's common stock, stated value $1,000 per share; and (v) I&M will make a non-interest bearing advance to Blackhawk in the amount of approximately $71,300,000, said amount to finance Blackhawk's acquisition of that part of the reserves of the Mines which constitutes Coal Property Held For Future Use.

The first sentence of the fifteenth paragraph is corrected to read in full as follows:

It is stated that the "Plant in Service" facilities, aggregating approximately $119,208,000 as of

February 29, 1980, were substantially placed in service as of April 1, 1979, following an extended development period.

The sixteenth paragraph is corrected to read in full as follows:

The production of coal by I&M for its own use has not been regulated under the Act. I&M's accounting for its investments and costs, including computations and allocations of indirect and capital costs, are subject to the applicable requirements of the Public Service Commission of Indiana and FERC. Upon transfer of the properties to Blackhawk, a separate subsidiary, the sale of coal by Blackhawk to I&M will become subject to Section 13 of the Act and the rules promulgated thereunder. Insofar as Rule 90 includes a reasonable return on capital as an element of the cost of such coal, the application specifies rates to be employed for that purpose. It further states that to the extent that any subsequent order of this Commission authorizes a return on investment different from that proposed in the application for use in determining pricing arrangements for coal produced and delivered during this interim period, I&M and Blackhawk would reflect any necessary adjustments in subsequent coal billings; except that with respect to the portion of I&M's proposed investment described in item (ii) of the tenth paragraph above, a fluctuating rate of return equal at all times to the prime rate of Manufacturers Hanover Trust Company in effect during such interim period shall be used to determine the price of coal produced and delivered through August 31, 1980.

The twenty-first paragraph is corrected to read in full as follows:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that (1) Blackhawk shall file certificates within 60 days after the end of each calendar quarter setting forth concerning its activities during such quarter the following: (a) corporate balance sheets and income statements, including computations of cost of capital for the quarter on investments made by I&M; (b) a description of mine operations and improvements made during the quarter; (c) a statement of commercial coal shipped, including the quantities of coal sold to each buyer, the price of such coal and the computation of the cost of coal sold; (d) a schedule of the applied cost of capital allowance; (e) a schedule of commercial investment, including a breakdown of mining plant and service; and (f) supporting schedules of operating expenses incurred during the quarter; and (2) Blackhawk shall include with the certificate reporting the results of the last quarter of the calendar year a description of the construction expenditures budgeted for the following calendar year.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21728/September 26, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
NEW ENGLAND ELECTRIC SYSTEM
20 Turnpike Road
Westborough, Massachusetts 05181

(70-6500)

NOTICE OF PROPOSED CAPITAL CONTRIBUTION BY HOLDING COMPANY TO SUBSIDIARY

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiary company, New England Power Company ("NEPCO") have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution to repay a like amount of its short-term promissory notes issued to pay for capitalizable

expenditures or to reimburse the treasury therefor. It is expected that such short-term promissory notes will aggregate approximately $90,000,000 at the time of the proposed capital contribution.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed, at cost, by New England Power Service Company, an affiliate of NEES. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21729/September 26, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
Ashland, Kentucky

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

(70-6435)

SUPPLEMENTAL ORDER AUTHORIZING INTRASYSTEM FINANCING AND RESERVING JURISDICTION

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed with this Commission a further amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

By orders in this proceeding dated May 28, 1980, and August 7, 1980 (HCAR Nos. 21593 and 21674), Columbia and some of its wholly-owned subsidiary companies were authorized to engage in certain intra-system financing. Jurisdiction was reserved over those transactions as to which the record was not complete.

With the filing of orders of the state utility

commissions of Pennsylvania and West Virginia, the record is now complete with respect to the following proposed transactions: Columbia of Pennsylvania proposes to issue and sell to Columbia, which proposes to acquire, up to 184,000 shares of its common stock, $25 par value, in an aggregate amount of $4,600,000 and up to $10,500,000 of installment and/or floating rate term notes. Columbia of West Virginia, in addition to the $7,900,000 of installment notes previously authorized herein, proposes alternatively to issue and sell to Columbia, which proposes to acquire, up to $7,900,000 of floating rate term notes.

The requisite authorization for certain transactions has not yet been obtained from the state public-utility commission for Columbia of New York, and jurisdiction will continue to be reserved with respect thereto.

Due notice of the filing of said application-declaration has been given in the manner prescribed by Rule 23 promulgated under the Act (HCAR No. 21541), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found, with respect to the above-described transactions as to which the record is complete, that the applicable provisions of the Act and rules promulgated thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration in respect of said transactions be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the above-described transactions as to which the record has been completed, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended as requested so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved over the proposed transactions as to which the record is not yet complete.

For the Commission, by the Corporate Regulation Division, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21730/September 26, 1980

In the Matter of

THE CONNECTICUT GAS COMPANY
Berlin, Connecticut

(70-6497)

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

(70-6496)

ORDER AUTHORIZING SUBSIDIARIES OF REGISTERED HOLDING COMPANIES TO ACQUIRE VOTING SECURITIES OF NATURAL GAS SUPPLY COMPANY

The Connecticut Gas Company ("Conn Gas"), a gas utility subsidiary of The Connecticut Light and Power Company, itself a subsidiary of Northeast Utilities, a registered holding company, and National Fuel Gas Supply Corporation ("NFG Supply"), a non-utility subsidiary of National Fuel Gas Company, also a registered holding company, have filed separate applications, and amendments thereto, pursuant to Sections 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

Conn Gas and NFG Supply and twelve other public utility companies (collectively, the "Participants") which serve natural gas at retail in New England and in New York and New Jersey, have conducted negotiations with TransCanada PipeLines Limited ("TransCanada"), a Canadian corporation which owns and operates a natural gas transmission pipeline system extending from the province of Alberta to Eastern Canada, for an additional source of natural gas supply for resale in domestic markets. In order to facilitate their negotiations with TransCanada, the Participants have organized a new company under Delaware law, named Boundary Gas, Inc. ("Boundary Gas"), and propose to acquire all of the voting securities that Boundary Gas is authorized to issue (100 shares of Common Stock,

without par value) for an aggregate price to the Participants of $10,000.

Boundary Gas was organized primarily at the request of TransCanada, which prefers to deal with one entity representing the Participants, rather than separately with each Participant. It is contemplated that Boundary Gas will enter into (i) a gas purchase contract with TransCanada ("Purchase Contract") under which TransCanada will agree to sell and Boundary Gas to purchase volumes of natural gas, and (ii) a gas sales agreement ("Sales Agreement") with the Participants. Under the Sales Agreement, it is intended that Boundary Gas will sell to the several Participants their respective *pro rata* share of the natural gas which Boundary Gas has purchased from TransCanada under the Purchase Contract. Since it is not contemplated that Boundary Gas will own any material properties or facilities or conduct any active business other than taking of legal title to natural gas purchased from TransCanada, the sales by Boundary Gas to each Participant will take place simultaneously with the purchase made by Boundary Gas from TransCanada.

The Participants and their proposed respective stock ownership in Boundary Gas are as follows:

Participant	*Percentage of Stock Ownership*
The Brooklyn Union Gas Company	22.54
Consolidated Edison Company of New York, Inc.	22.54
Long Island Lighting Company	12.97
Bay State Gas Company	10.27
New Jersey Natural Gas Company	7.85
Boston Gas Company	7.52
Connecticut Gas Company	5.11
National Fuel Gas Supply Corp.	4.87
Haverhill Gas Company	1.74
Berkshire Gas Company	1.16
Manchester Gas Company	1.15
Valley Gas Company	1.14
Gas Service, Inc.	.57
Fitchburg Gas and Electric Co.	.57

Under the terms of the subscription agreement which the Participants have entered into, Conn Gas may acquire 5.11 shares of Boundary Gas capital stock for a total of $511; and NFG Supply may acquire 4.87 shares for a total of $487. The number of shares which each Participant may purchase corresponds to the percentage of natural gas to which each Participant will be entitled to purchase from Boundary Gas under the Sales Agreement with the Participants. The physical delivery of natural gas by TransCanada is to be made at a point near Niagara, Ontario, where the facilities of TransCanada interconnect with those of Tennessee Gas Pipeline Company ("Tennessee"). Tennessee will take delivery of the natural gas at this point for the account of Boundary Gas and, pursuant to transportation contracts with the several Participants, deliver such gas to the Participants.

Under the Purchase Contract, TransCanada will sell and deliver to Boundary Gas up to 185,000 Mcf of natural gas per day for a period of ten years, commencing on November 1, 1981, at the international border price for gas as determined under Canadian law. Under the Sales Agreement, Conn Gas and NFG Supply will agree to take and pay for 5.11% and 4.87%, respectively, of the gas which Boundary Gas becomes obligated to purchase from TransCanada and will be obligated to pay for gas not taken only to the extent that the failure to take gas results in a requirement that Boundary Gas pay TransCanada for gas not taken. The applicants have estimated that their share of the gas purchased by Boundary Gas will result in the purchase of at least 3,285 MMCF of gas per year for each of the ten years covered by the Purchase Contract in the case of NFG Supply and 3,450 MMCF in the case of Conn Gas.

Due notice of the filing of said applications, as amended, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21706), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said applications, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said applications, as amended, be, and they hereby are, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21731/September 29, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
25 Research Drive
Westborough, Massachusetts 01581

(70-6260)

NOTICE OF PROPOSED INCREASE IN BANK LOANS TO FINANCE FUEL SUBSIDIARY

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and New England Energy Incorporated ("NEEI"), a fuel subsidiary of NEES, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 43, 50(a)(2) and 50(a)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

In a series of prior orders in other proceedings dated October 30, 1974, June 18, 1976, July 19, 1978, December 28, 1979, and August 7, 1980 (HCAR Nos. 18635, 19580, 20632, 21365 and 21673), applicants-declarants were authorized, among other things, to do the following: (1) NEES was authorized to organize NEEI and acquire its capital stock; (2) NEEI was authorized to enter into a partnership agreement with Samedan Oil Corporation ("Samedan"), to explore for oil and gas, and an amendment thereto, said partnership currently extending through December 31, 1984; (3) NEES was authorized to invest in NEEI in the form of common stock and subordinated debt up to $45,000,000 through December 31, 1979 (which date was subsequently extended through December 31, 1988); and (4) NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract, on certain terms and conditions, including a full cost pool concerning its oil and gas properties. In the order of August 7, 1980 (HCAR No. 21673), NEEI was authorized to invest up to $60,000,000 in the Samedan partnership during the 1980 calendar year.

By prior order issued in this proceeding dated July 25, 1979 (HCAR No. 21558), NEEI was authorized to enter into an agreement ("Loan Agreement") with the Bank of Montreal and the National Bank of North America (the "Banks") for an $80,000,000 revolving credit loan, up to $40,000,000 of such amount to be made available in 1979, $60,000,000 in 1980, and $80,000,000 in 1981. Upon termination the revolving credit loan will become a term loan. Under the Loan Agreement the revolving credit period runs from January 1, 1979, through December 31, 1981, and may, at NEEI's option, be extended for two additional years. The Banks will make a term loan to NEEI upon termination of the revolving credit period in the amount of the revolving credit balance outstanding on the termination date, such loan to be for a maximum of five years and to require equal quarterly payments amortizing the principal. The loan bears interest during the revolving credit period at a rate per annum of 3/4 of 1% over the Bank of Montreal's United States prime rate, or 7/8 of 1% over the London Interbank Offered Rate ("LIBOR") for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. The loan bears interest during its term loan period at a rate per annum of 7/8 of 1% over the Bank of Montreal's United States prime rate, or 1% over LIBOR for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. There is a commitment fee on the unused available portion of the loan commitment of 1/4 of 1% per year (on that year's committed amount) during the revolving credit period and 3/8 of 1% per year during any extension of that period. Interest and the commitment fee are payable quarterly. The loan is prepayable without penalty, and the commitment amount may be reduced in whole or in part without penalty.

Under the Loan Agreement NEEI is required to maintain a ratio of not more than 70 to 30 with respect to (i) debt outstanding under the Loan Agreement and (ii) subordinated debt payable to NEES and stockholder's equity (excluding any deferred taxes). The latter amount is presently limited to $45,000,000 (HCAR No. 21158, July 25, 1979), so debt outstanding under the Loan Agreement, without regard to the present maximum committed amounts, is limited to $105,000,000. The Loan Agreement also (1) requires NEEI to prepay the loan to the extent it receives proceeds from any long-term financing secured by any of its oil

and gas properties included in the full cost pool, (2) limits modifications which may be made to the fuel purchase contract between NEEI and NEP, (3) required NEEI to assign to the Bank of Montreal its rights under the fuel purchase contract.

By post-effective amendment in this proceeding NEEI requests authorization to enter into an amendment ("Amendment") to the Loan Agreement, which amendment would (1) accelerate the $80,000,000 commitment of the Banks from 1981 to the effective date of a Commission order authorizing NEEI's entering into the Amendment, and (2) increase the Banks' commitment for 1981 to $105,000,000. It is stated that NEEI's borrowings under the Loan Agreement were $52,000,000 as of August 31, 1980, and that NEEI estimates it will require an additional $24,000,000 of borrowings during 1980 to finance its expenditures in the Samedan partnership. Only $8,000,000 of additional borrowings are available from the present committed amount under the Agreement for 1980, leaving a shortfall of $16,000,000. In addition, NEEI is seeking, in another filing, to enter into a separate partnership agreement with Dorchester Exploration Incorporated to explore for oil and gas, which could require investment by NEEI in 1980 of up to $15,000,000. It is NEEI's belief that entering into the Amendment would provide for bank borrowings adequate to finance NEEI's needs for the remainder of 1980, including investment in the Dorchester partnership if it should be authorized. It is further stated that an increase in the Banks' commitment to $105,000,000 for 1981 is needed in order to meet, in part, NEEI's capital requirements for 1981, presently estimated at $100,000,000. Authorization concerning the remainder of NEEI's 1981 financing requirements will be the subject of a further filing with this Commission.

NEEI claims exemption from the competitive bidding requirement of Rule 50 for the issuance of its notes to the Banks pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21732/September 29, 1980

In the Matter of

CEDAR COAL COMPANY
CENTRAL APPALACHIAN COAL COMPANY
SOUTHERN APPALACHIAN COAL COMPANY
Charleston, West Virginia

CENTRAL OHIO COAL COMPANY
Canton, Ohio

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

(70-6488)

SUPPLEMENTAL ORDER CORRECTING HCAR NO. 21726, ISSUED SEPTEMBER 24, 1980

A reference to Rule 50, which requires a competitive bidding procedure on certain sales of securities, was erroneously included in the ordering paragraph of the order identified above. Rule 50 is not applicable to the transaction. The order is hereby amended as of September 24, 1980, to read as follows:

> IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21733/September 30, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

(70-6492)

ORDER AUTHORIZING HOLDING COMPANY TO ACT AS SURETY ON BONDS OF PUBLIC-UTILITY SUBSIDIARY COMPANIES

The Southern Company ("Southern"), a registered holding company, has filed a declaration with this Commission pursuant to Section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

Southern proposes to act as a surety on bonds of its subsidiaries, Alabama Power Company ("Alabama") and Southern Electric Generating Company ("SEGCo"), in connection with appeals by Alabama and SEGCo from final ad valorem tax assessments by the State of Alabama.

The Department of Revenue of the State of Alabama, on July 2, 1980, issued its final assessments and notices of 1980 ad valorem taxes on Alabama's and SEGCo's property located in the State of Alabama. On July 28, 1980, Alabama and SEGCo appealed their respective assessments in connection with such taxes to the Circuit Court of Montgomery County, Alabama, alleging that the valuation of property owned by non-public utility taxpayers at less than 100% of fair market value and the valuation of the property of Alabama and SEGCo at 100% of fair market value discriminates against Alabama and SEGCo in violation of the Alabama Constitution of 1901 and the United States Constitution.

As a condition to appealing from assessments for the ad valorem tax without being required to pay the disputed taxes when allegedly due, Alabama and SEGCo are required to post supersedeas bonds with the court in double the amount of the respective taxes payable, and such bonds must have a good and sufficient surety thereon. Such taxes are currently estimated to be approximately $30 million for Alabama, resulting in the need for a surety bond of approximately $60 million, and $766,000 for SEGCo, resulting in a need for a surety bond in the amount of $1,532,000.

Alabama and SEGCo have been advised that bonds can be obtained from a commercial surety company, but with aggregate required premiums of over $70,000 annually. In order for Alabama and SEGCo to avoid the substantial premium cost attendant upon the use of a commercial surety, Southern proposes to act as surety on Alabama's and SEGCo's bonds for no premium, fee, or other compensation. Approval of these bonds by the Circuit Court of Montgomery County is expected.

Southern intends to act as surety on the supersedeas bonds during the entire appeal period in order to avoid the payment of the alledgedly discriminatory taxes until the questions raised in the appeals have been finally determined.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21695), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable

standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21734/September 30, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6484)

ORDER AUTHORIZING EXTENSION OF UNSECURED DEBT BORROWING LIMITATION AND PROPOSED REVISED CHARTER

Indiana & Michigan Electric Company, an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration and amendments thereto pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder concerning the following proposed transactions.

I&M proposes to obtain the consent of the holders of its outstanding cumulative preferred stock to approve a 5-year extension of I&M's authority under its Articles of Acceptance ("Charter") to issue or assume unsecured debt in an aggregate principal amount exceeding 10%, but which amount, including all outstanding long-term unsecured debt, would not exceed 20% of I&M's total capitalization at any time. I&M's capitalization is defined as the sum of (i) the total outstanding principal amount of its secured debt, (ii) the total par value of, or stated capital represented by, outstanding shares of all classes of its stock, and (iii) any surplus. I&M is at present authorized to incur or assume unsecured debt within the foregoing limitation through December 31, 1980, pursuant to an order dated September 29, 1976 (HCAR No. 19697). The proposed extension would commence January 1, 1981, and end December 31, 1985, and would be subject to the condition that the principal amount of such unsecured debt in excess of 10% the total capitalization outstanding on December 31, 1985, shall mature not later than June 30, 1986. The actual issuance and sale of any debt securities within the limits of the shareholder and Commission authorizations described above will be subject to further authorization by the Commission.

I&M also proposes to adopt a new Charter which generally would integrate, restate and supersede the existing Charter and the resolutions of its Board of Directors creating the various series of cumulative preferred stock currently outstanding, and which would effect a number of essentially technical amendments designed to correct obsolete references and to simplify and modernize the Charter by eliminating certain provisions which are unnecessary or redundant under, or which conflict with, the Indiana General Corporation Act. Counsel to I&M have advised that none of the proposed technical changes would be substantially prejudicial to the rights of the holders of any series of I&M's cumulative preferred stock, and thus ordinarily would not require the approval of such holders. In addition to such technical changes, however, the proposed new Charter will also provide for a 4,000,000 share increase, from 7,200,000 to 11,200,000, in the number of shares of $25 Preferred Stock that I&M shall be authorized to issue. Such an increase requires the consent of holders of I&M's cumulative preferred stock and of the holder of its common stock. I&M therefore proposes to submit the new Charter for adoption by holders of its cumulative preferred stock, voting as a class, and by the holder of its common stock. Adoption of the new Charter and the amendments contained therein will be submitted as a single proposal, so that if the proposed new Charter should not be adopted by the holders of the cumulative preferred stock, none of the changes proposed therein, including those not otherwise requiring approval by such holders, will become effective.

By order dated September 2, 1980 (HCAR No. 21698), I&M was authorized to solicit proxies from its common stockholder and the holders of its cumulative preferred stock to be used at a special meeting of the common and preferred shareholders to be held on October 17, 1980. Holders of I&M's cumulative preferred stock will be asked to approve the extension of the unsecured borrowing authority in excess of 10% of I&M's capitalization, and to approve the new Charter. Approval of the extension of time to issue unsecured debt in excess of 10% of capitalization requires the affirmative vote of the holders of cumulative preferred stock entitled to cast a majority of the votes which all outstanding shares of cumulative preferred stock are entitled to cast (with holders of $100 Preferred entitled to cast one vote per share, and holders of $25 Preferred entitled to cast one-quarter of a vote per share). Approval of the new Charter requires the affirmative vote of the holders of shares of cumulative preferred stock entitled to cast a majority of the votes which all outstanding shares of cumulative preferred stock are entitled to cast (with holders of $100 Preferred entitled to cast one vote per share, and holders of $25 Preferred entitled to cast one-quarter of a vote per share), voting as a class, and by the holders of a majority of the outstanding shares of common stock, voting as a class. AEP, the holder of all of I&M's common stock, has indicated that it intends to vote all of such shares in favor of the new Charter.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $93,700, including printing expenses of $37,000, state taxes and fees of $13,700 and transfer agent's fees of $14,000. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21698), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21735/October 1, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10112

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
10 Lafayette Square
Buffalo, New York 14203

NATIONAL FUEL GAS SUPPLY CORPORATION
308 Seneca Street
Oil City, Pennsylvania 16301

(70-6395)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMERCIAL PAPER AND NOTES TO BANKS BY HOLDING COMPANY

NOTICE IS HEREBY GIVEN that National Fuel Gas Company, ("National"), a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated January 21, 1980 (HCAR No. 21402) the Commission authorized National to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $30,000,000 aggregate

principal amount at any one time outstanding of its short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to National Fuel Gas Distribution Corporation ("Distribution Corporation") ("TRANSACTION A"). The Commission also authorized National to issue and sell from time to time during the same period up to $20,000,000 aggregate principal amount at any one time outstanding of its commercial paper and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation ("TRANSACTION B").

In addition, National was authorized to establish lines of credit with various banks aggregating $50,000,000 and to issue and sell from time to time short-term unsecured notes and loan the proceeds to National Fuel Gas Supply Corporation ("Supply Corporation") ("TRANSACTION C"). Supply Corporation uses the funds for working capital and to purchase gas placed in storage during the summer months.

In order to take advantage of more favorable commercial paper borrowing rates, National has filed a post-effective amendment to seek authorization to make the following changes in their proposals outlined as TRANSACTION A and TRANSACTION B in the original application-declaration:

TRANSACTION A: National now proposes to issue and sell from time to time through December 31, 1980, up to $10,000.000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to Chase and to loan the proceeds therefrom to Distribution Corporation.

The short-term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest based on the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20% was required, the effective cost of money, based on a 12.25% prime rate, would be 15.3125%. There will be no commitment fee or any closing or related cost in connection with the above borrowings.

National proposes to exchange the proceeds from the sale of its short-term notes for up to $10,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $10,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

TRANSACTION B: National now proposes to issue and sell from time to time through December 31, 1980, up to $40,000,000 aggregate principal amount at any one time outstanding of its commercial paper to A. G. Becker & Co., Incorporated ("Dealer") and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation.

The decision to issue commercial paper or short-term notes is at the discretion of National, except that, if the effective cost for commercial paper exceeds the cost of equivalent borrowings from Chase on the date of issue, National will issue its short-term unsecured notes to Chase. The commercial paper will be sold by National to the Dealer on the same terms and conditions as provided in the original application-declaration.

National proposes to exchange the proceeds from the sale of its short-term notes and/or commercial paper for up to $40,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $40,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

It is stated that all of the other terms and conditions in the order dated January 21, 1980, will remain the same.

It is stated that no special and separable fees or expenses are anticipated in connection with the consummation of the transactions proposed herein and that no federal or state regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21736/October 2, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10112

NATIONAL FUEL GAS SUPPLY CORPORATION
308 Seneca Street
Oil City, Pennsylvania 16301

NATIONAL FUEL GAS DISTRIBUTION CORPORATION

NATIONAL GAS STORAGE CORPORATION
SENECA RESOURCES CORPORATION
10 Lafayette Square
Buffalo, New York

(70-6441)

NOTICE OF PROPOSAL TO ALLOCATE TAXES WITHIN A HOLDING COMPANY SYSTEM IN A MANNER DIFFERING FROM THAT PERMITTED BY RULE 45

NOTICE IS HEREBY GIVEN that National Fuel Gas Company ("National"), a registered holding company, and its four subsidiary companies, National Fuel Gas Supply Corporation, National Fuel Gas Distribution Corporation, National Gas Storage Corporation and Seneca Resources Corporation ("Seneca") have filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated April 17, 1963 (HCAR No. 14853) the Commission granted National authority to allocate the National Fuel Gas System's consolidated federal income tax liabilities, after giving effect to investment tax credits allowed, in a manner differing from that permitted by Rule 45 under the Act. By order dated October 17, 1978 (HCAR No. 20733), the Commission granted National authorization to further modify its manner of allocating consolidated federal income tax liabilities among its subsidiaries for the years 1978 and 1979. National and its subsidiaries now request authority to allocate consolidated tax liabilities for their 1980 and 1981 fiscal years in the same manner as authorized by the Commission's order dated October 17, 1978 (HCAR No. 20733).

Seneca, National's exploration and development subsidiary, has incurred and is expected to continue to incur tax losses. During initial years, a large portion of the related expenses for gas exploration and development, such as intangible drilling and development costs and the abandonment of certain leasehold interests, although capitalized on Seneca's books, are deducted as current expenses for federal income tax purposes. These deductions

produce tax losses which consequently result in savings to the system by decreasing the system's consolidated tax liability. However, under the tax allocation method set out in Rule 45(b) of the Act, the benefit of such current reductions are allocated to subsidiaries in the system other than Seneca, whose tax losses decrease the tax liability of the system. This allocation would make unavailable to Seneca the tax benefits which might otherwise be utilized in furtherance of its efforts to develop additional gas reserves which may be needed in the future to supplement the System's supplies.

It is stated that the proposed method of tax allocation will enable Seneca to utilize the tax losses sustained in the initial years of its exploration and development program as a source of funds for future exploration and development of gas reserves. By utilizing the tax allocation procedure authorized by the Commission's previous orders, Seneca received benefits of $2,088,575 during the 1978 fiscal year, and $3,688,302 during the 1979 fiscal year. These benefits resulted from tax losses sustained and investment tax credits generated by Seneca's exploration and development program. It is stated that expenditures for exploration and development normally exceed revenues from newly discovered reserves for a period of several years and that, as a result, it is uncertain when Seneca will be in a profitable tax position.

National proposes to calculate the system's tax liability to be reported on its consolidated tax return for its 1980 and 1981 fiscal years in the usual manner, but, for purposes of allocating liability among individual subsidiaries in the system, will add back the reduction in such tax liability generated by Seneca's tax loss during each year. This combined amount (adjusted consolidated tax liability) will then be allocated among the system companies which are not in a tax loss position in accordance with the procedure specified in Rule 45. The other subsidiaries will then make payments to National of their allocated share of the adjusted consolidated tax liability. National, in turn, will pay to Seneca the cash equivalent of the differences between the actual consolidated tax liability of the system and the aggregate amounts received by National from its other subsidiaries. In no event will the tax allocated to any subsidiary exceed the amount of tax based upon a separate return computed as if each subsidiary had always filed its tax return on a separate return basis.

Expenditures for Seneca's exploration and development program are presently estimated at $17,000,000 for fiscal 1980. Based on this budgeted amount, it is estimated that Seneca will have a net tax loss of $10,120,000 for the 1980 fiscal year. The proposed transaction will allow Seneca to continue to receive the benefit of its tax losses during 1980 and 1981, and enable it to sustain the level of expenditures necessary to find and develop gas reserves. In future years, when Seneca has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback or carryover provisions of the Internal Revenue Code ("Code") in order to comply with the separate return limitation provisions of the Code and Rule 45 of the Act. To the extent that Seneca receives tax benefits pursuant to the proposed transaction, such benefits would be applied to reduce any tax credits in future years to which Seneca might otherwise become entitled under the aforementioned separate return limitation provisions.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,930. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive

any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21737/October 1, 1980

In the Matter of

GEORGIA POWER COMPANY
Atlanta, Georgia

(70-6348)

MEMORANDUM OPINION AND ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING AND DENYING A REQUEST FOR HEARING

Georgia Power Company ("Georgia"), an electric utility subsidiary of The Southern Company ("Southern"), a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transactions. Georgia applied on April 22, 1980 for authority to issue and sell at competitive bidding up to $250,000,000 principal amount of first mortgage bonds ("new Bonds") and up to $75,000,000 stated value of its preferred stock ("new Preferred Stock"). On July 18, 1980, the application was amended to reduce the proposed bond sales to $125,000,000, and to postpone the initial sale from July to October 1980. Notice of Georgia's amended proposal was duly published in the manner prescribed in Rule 23 under the Act (HCAR No. 21679, August 15, 1980) and objections and a request for hearing have been filed, as described below.

Georgia is engaged in the generation, distribution and sale of electric energy within the state of Georgia, providing retail service to rural areas and over 600 communities, including Athens, Atlanta, Augusta, Columbus, Macon, Rome and Valdosta. Georgia also provides wholesale service to 39 rural cooperative associations and 49 municipalities. Its net utility plant at June 30, 1980 was about $4.2 billion including $736 million of construction work in progress.

Up to $75,000,000 of the new Bonds have been scheduled for issue in October 1980. The new Bonds will be first mortgage bonds, issued under and secured by Georgia's Indenture, dated March 1, 1941, as amended, and as to be amended by supplemental indentures for each series, dated as of the first day of the month in which the bonds are issued. The balance will be issued and sold in one or more series from time to time not later than March 31, 1981. Each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold at competitive bidding for the best price to Georgia obtainable but not for less than 98% nor more than 102-3/4% of the principal amount thereof, at an interest rate fixed by competitive bidding.

Georgia will fix a maximum amount of bonds to be offered in its invitation for proposals under Rule 50(b). It may defer specifying the maturity date, and prospective bidders will be notified of the selected maturity date by telephone, confirmed in writing, not less than 24 hours prior to the time of bidding, if the right to do so is reserved in the invitation. It may also reduce the amount of bonds to be offered in the same manner. Unless the shorter period is specified in the invitation, such notices will be given not less than 72 hours before the time of bidding.

Georgia also proposes to sell its $75,000,000 of preferred stock in one or more series, but not later than March 31, 1981. The sale will be for the best price attainable, but not less than 100% or more than 102% of the stated value per share, which will also be the public offering price per share. The dividend rate for each series will be fixed by competitive bidding, as will the purchaser's compensation, to be paid by Georgia to the successful bidders for purchasing and reoffering each share to the public. The procedure for competitive bidding follows that for the new Bonds with respect to the number of shares to be offered in each series and as to whether the terms of a series are to include a cumulative sinking fund of not more than 5% annually of the number of shares of the series originally issued. Such a sinking fund will commence 5 or more years after the sale,

with a non-cumulative option, on any sinking fund date, of redeeming an additional like number of shares.

The terms of the new Bonds and the new Preferred Stock will include the customary restrictions on refundability or redemption at a lower cost of money.

The proposed financing is part of Georgia's capital budget for the 13 months ending January 31, 1981, which may be summarized as follows:

(000's omitted)

	January-June 1980- (Actual)	*July 1980-Jan. 1981 (Estimated)*	*Total*
First mortgage bonds	$(15,000)	$124,250	$109,250
Long term notes	120	—	120
Pollution control obligations	11,075	15,615	26,690
Capitalized leases	(1,125)	[3]68,810	67,685
Debt	$(4,930)	$208,675	$203,745
Preferred	(3,467)	74,947	71,480
Common equity		10,300	10,300
Financing[1]	$(8,397)	$293,922	$285,525
Sale of property—book value	[2]237,961	45,110	283,071
Depreciation and amortization	91,927	106,867	198,794
Deferred taxes and tax credits	67,043	56,334	123,377
Other internal sources—net	(135,119)	(3,489)	(138,608)
Available	$253,415	$498,744	$752,159
Plant additions:			
Scherer—coal[2]	$45,043	$27,489	$72,532
Vogtle—nuclear	53,567	148,181	201,748
Wallace Dam—hydro	9,944	1,226	11,170
Other	5,257	8,099	13,356
Under construction	$113,811	$184,995	$298,806
Nuclear fuel	13,884	26,903	40,787
Plants in service	53,005	84,392	137,397
Generation	$180,700	$296,290	$476,990
Transmission, distribution and other	72,715	202,454	275,169
Additions	$253,415	$498,744	$752,159

[1]Net of maturities, including sinking fund preferred stock.
[2]Pre 1980 cost of 60% of Scherer units 1 and 2, sold May 22, 1980 to Oglethorpe Power Corporation (HCAR No. 21582, May 20, 1980). Georgia acts as agent for its co-owners in constructing these plants. The budget shows its share of the current costs, excluding about $78 million for which it has been or will be currently reimbursed by its co-owners.
[3]Principally sale and lease back of Georgia's new office building on expected completion about the end of 1980. (HCAR No. 21138, July 9, 1979).

At the end of 1979 Georgia owned 83.5% of the Scherer plants and 50.72% of the Vogtle plants. Two units at each site, scheduled for completion in 1982, 1984, 1985 and 1987 respectively, are in advanced stages. Units 3 and 4 at Scherer, scheduled for 1987 and 1989 are in an early stage. The Scherer coal units are each about 810 mw capacity and the Vogtle nuclear units about 1,160 mw capacity.

A planned sale of 60% of Scherer units 1 and 2 to Oglethorpe Power Corporation was closed May 22, 1980. The ownership of the other co-owners was concurrently adjusted (HCAR No. 21709, September 8, 1980) by doubling the interest of the Municipal Electric Authority of Georgia ("MEA") in Scherer Units 1 and 2 from 15.1 to 30.2%, and reacquiring the interests of MEA (15.1%) and the city of Dalton (1.4%) in units 3 and 4. Georgia now owns 8.4% of units 1 and 2, 100% of the other two units, and 23.5% of the common facilities. This sale was closed in September. Sales of 16.5% of the two Vogtle units to unaffiliated Florida utility companies, have been discussed as has a 25% participation by Southern's Florida and Mississippi subsidiaries in Scherer units 3 and 4, but are contingent on appropriate agreements and our approval. The Wallace Dam, wholly owned by Georgia, is to be completed during this period.

Georgia's capitalization at June 30, 1980, and the effect of the proposed financing, may be summarized as follows:

(in millions of dollars)

	June 30, 1980 Amount	*%*	*Proposed Financing*	*Pro Forma Amount*	*%*
Long term debt	[1]$2,181	56.9	$209	$2,390	57.9
Preferred stock	429	11.2	75	504	12.2
Common equity	[2]1,225	31.9	10	1,235	29.9
	$3,835	100.0	$294	$4,129	100.0

[1]Includes $23 million current maturities.
[2]Includes $227 million of retained earnings.

Its reported operating revenues for the twelve months ended June 30, 1980 were about $1.6 billion, operating income, after $155 million provision for income taxes, $293 million, and net revenue after preferred dividends $177 million. The pro forma bond interest coverage was approximately 2-1/2 times.

The Georgia Public Service Commission, which has primary jurisdiction over Georgia, expressly approved, on June 30, 1980, Georgia's application to sell the $250,000,000 in bonds and $75,000,000 in preferred stock, finding among things that:

"4. It proposes to make capital expenditures during 1980 in the amount of approximately $697,618,000

and during 1981 in the amount of approximately $896,163,000. Said capital expenditures are necessary and reasonably required for purposes for which Section 93-414 of the Georgia Code permits the issuance of securities with the approval of the Commission, including the acquisition of property, the construction and equipment of power plants, and completion, extension and improvement of facilities and properties, the improvement and maintenance of service, the discharge or the lawful refunding of obligations, and the reimbursement to the Company's treasury for expenditures for one or more such purposes, all of which are in the scope of Section 93-414."

The subsequent consummation of the MEA transaction and other favorable developments permitted Georgia to halve the proposed bond issue. Less than 38% of its capital budget for the 13 months under consideration requires external financing.

We note that Georgia's budget for this period includes no significant common equity. This reflects the modest requirements of Georgia and the critical needs of Alabama Power Company which we have recently examined, (HCAR No. 21711, September 10, 1980). The results of the remaining portions of Georgia's program to share its generating facilities, and of Southern's expected 1980 common stock offering, are still to be seen.

Southern has contributed $190,900,000 to Georgia from 1976-1979 and maintained the common equity ratios at about 32% until the latter part of 1979.[1] We will expect its 1981 financial program to include appropriate adjustment of the effects of the financial strains of the recent period, now that the major transactions with the cooperatives and municipalities in Georgia have been effected.

Three persons, each a common shareholder of Southern and residential customer of Georgia, ("complainants") have filed objections to Georgia's proposed financing and request that a hearing be held before any authorization is granted. Their major contentions are: 1) the construction program to be partially financed through the proposed securities sales is excessive and improvident; 2) the proposed securities issues are unreasonably adapted to Georgia's security structure; 3) the proposed securities issues will contribute to the perpetuation of an existing imbalance in rates of return on equity among Southern's four operating subsidiaries, such imbalance being detrimental to Georgia; and, 4) this Commission is required, before acting on Georgia's application, to prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 ("NEPA").

The complainants, reinforced by an Alabama consumer for the Alabama case, have raised essentially the same objections to the last two Southern System filings. We will not repeat the analysis and conclusions expressed in our opinions in *The Southern Company* (HCAR No. 21665, July 24, 1980),[2] and *Alabama Power Company*, (HCAR No. 21711, September 10, 1980). They are controlling here. The particular characteristics of Georgia are described above. Complainants' statements in the Alabama case as to Alabama's asserted inferiority to Georgia, are the mirror image of their statements as to Georgia here. They do not alter our conclusions.

Georgia's proposed financing meets the requirements of Section 6(b) of the Act. The security issues proposed by Georgia are solely for the purpose of financing the business of Georgia and have been expressly authorized by the State commission of the state in which Georgia is organized and is doing business. Our order, accordingly, will authorize the issue and sale, by competitive bidding, of $125 million of first mortgage bonds and $75 million of preferred stock, in one or more series, as proposed by Georgia, subject to the terms and conditions prescribed in Rule 24 under the Act. The registration statement with respect to each series, filed with us under the Securities Act of 1933, shall also be filed in this proceeding.

The fees, commissions and expenses to be incurred in connection with the proposed sale of the initial series of new Bonds are estimated at $236,000, including legal fees of $35,000 and accountants' fees of $18,000. The fee of counsel for purchasers of the bonds is estimated at $24,000 and is to be paid by the successful bidders. The record is incomplete

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[1] Its policy was reviewed in Georgia Power Company, 45 SEC 610, 614-615 (1974), and Georgia moved promptly and effectively to correct the imbalances examined there.

[2] On September 19, 1980 complainants petitioned the United States Court of Appeals for the District of Columbia Circuit, under Section 24 of the Act, for review of our *Southern Company* order.

with respect to the issuance of any subsequent series of new Bonds and new Preferred Stock and jurisdiction will be reserved over the fees, commissions and expenses to be incurred in connection therewith.

Georgia has reserved the right to apply for an exception to the competitive bidding requirements of Rule 50 with respect to the sale of any of the series of bonds or preferred stock. Such an exception would be justified only in circumstances not presently foreseeable. But we will reserve jurisdiction over such possible applications.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that the application, as amended, be and it hereby is, granted effective forthwith with respect to the issue and sale, by competitive bidding, of $125 million of first mortgage bonds and $75 million of preferred stock, as aforesaid, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act; and

IT IS FURTHER ORDERED, that jurisdiction be, and it hereby is, reserved with respect to:

(1) Any post-effective amendment Georgia may file for an exception from the competitive bidding requirements of Rule 50;

(2) Any change in the terms of the draft supplemental indenture or in the draft charter amendment with respect to the preferred stock, both as now on file in this proceeding;

(3) Fees and expenses with respect to the sale of the issues other than the initial series of the first mortgage bonds, and

IT IS FURTHER ORDERED that the request for a hearing be, and it hereby is, denied.

By the Commission.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 589/September 26, 1980

In the Matter of

UNITED TECHNOLOGIES CORPORATION
File No. 22-10612

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii) OF THE TRUST INDENTURE ACT OF 1939

The Securities and Exchange Commission has issued an order on an application by United Technologies Corporation pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "1939 Act") declaring that the trusteeship of Manufacturers Hanover Trust Company under three indentures, heretofore qualified under the 1939 Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers Hanover Trust Company from acting as trustee under any of these indentures.

TRUST INDENTURE ACT OF 1939
Release No. 590/September 26, 1980

In the Matter of

UNITED TECHNOLOGIES CORPORATION
File No. 22-10627

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii) OF THE TRUST INDENTURE ACT OF 1939

The Securities and Exchange Commission has issued an order on an application by United Technologies Corporation to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "1939 Act") declaring that the trusteeship of Morgan Guaranty Trust Company under four indentures, two of which were not qualified under the 1939 Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Morgan Guaranty Trust Company from acting as trustee under any of these indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11374/September 26, 1980

In the Matter of

IMPACT FUND, INC.
711 Polk Street
Houston, TX 77002

(811-1802)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On August 28, 1980, a notice was issued (Investment Company Act Release No. 11319) of an application filed on August 2, 1979 and amended on July 28, 1980 by Impact Fund, Inc. ("Applicant"), an open-end, diversified management company registered under the Investment Company Act of 1940 ("Act"), for an order of the Commission declaring that Applicant has ceased to be an investment company.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Impact Fund, Inc. under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11375/September 26, 1980

In the Matter of

KEMPER INCOME AND CAPITAL PRESERVATION FUND, INC.
KEMPER HIGH YIELD FUND, INC.
KEMPER MUNICIPAL BOND FUND, INC.
KEMPER FUND FOR GOVERNMENT GUARANTEED SECURITIES, INC.
KEMPER FINANCIAL SERVICES, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(812-4481)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

Kemper Income and Capital Preservation Fund, Inc., Kemper High Yield Fund, Inc., Kemper Municipal Bond Fund, Inc., and Kemper Fund for Government Guaranteed Securities, Inc., each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, and Kemper Financial Services, Inc. ("Kemper"), investment manager for such investment companies (hereinafter, such investment companies and Kemper are referred to as "Applicants"), filed an application on June 1, 1979, and amendments thereto on February 5, 1980, June 20, 1980, and August 7, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit the sale of shares of the applicant investment companies (and shares of such other registered open-end, management investment companies with portfolios consisting primarily of fixed income securities and for which Kemper serves as investment manager and principal underwriter in the future) at net asset value, without imposition of normal sales charges and without regard to minimum initial investment requirements, to participants in reinvestment programs proposed to be offered to unitholders of: (1) Kemper Tax-Exempt Income Trust, (2) Kemper Income Trust, (3) Kemper Trust for Government Guaranteed Securities and (4) other unit investment trusts sponsored by Kemper in the future.

On August 29, 1980, a notice was issued (Investment Company Act Release No. 10931) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 22(d) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11376/September 26, 1980

In the Matter of

VOYAGER VARIABLE ANNUITY ACCOUNT C
VOYAGER VARIABLE ANNUITY ACCOUNT D

AND

VOYAGER LIFE INSURANCE COMPANY
2255 Phyllis Street
Jacksonville, FL 32204

(812-4710)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER GRANTING EXEMPTIONS FROM SECTIONS 14(a) AND 27(c)(2) OF THE ACT

Notice is hereby given that Voyager Variable Annuity Account C ("Account C"), and Voyager Variable Annuity Account D ("Account D"), diversified, open-end management investment companies registered under the Investment Company Act of 1940 (the "Act"), and Voyager Life Insurance Company ("Voyager Life"), a stock life insurance company incorporated under the laws of the State of Florida (hereinafter collectively called "Applicants"), filed an application on August 12, 1980 for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 14(a) and 27(c)(2) of the Act. All interested persons are referred to the application on file with the Commission for the facts and representations contained therein, which are summarized below.

Voyager Life established Account C and Account D as investment media for group variable annuity retirement contracts (the "Contracts") to be issued by Voyager Life in connection with deferred compensation plans adopted by governmental entities under Section 457 of the Internal Revenue Code of 1954, as amended ("Code"). The Contract owner will be the public employer.

The Contracts offered for sale by Voyager Securities, Inc., a wholly-owned subsidiary of the parent of Voyager Life, Voyager Group, Inc., as principal underwriter of Accounts C and D, are periodic payment contracts.

In Connection with its issue and sale of the Contracts, Voyager Life makes no front-end deductions from purchase payments (except for any premium taxes which may be then due; otherwise any premium tax due will be deducted from purchase payments or from individual account values at the annuity commencement date or at such other time as the tax becomes due).

In the event of a partial or full surrender of the Contract or individual account thereunder during the accumulation period, a contingent deferred sales charge may be made from the amount surrendered to determine the amount to be paid if purchase payments have been made for fewer than fifteen years for an individual account. No contingent deferred sales charge is made from annuity payments under an option involving lifetime payments or from amount paid due upon the death of a participant.

The contingent deferred sales charge is a percentage of the amount surrendered, as below; however, the charge will not exceed 9% of the purchase payments made.

Completed Years of Purchase Payment for the Individual Account	*Contingent Deferred Sales Charge*
Less than 5	5%
5 or more but less than 10	3%
10 or more but less than 15	2%
15 or more	none

Voyager Life makes daily deductions from the variable portion of the Contract at an effective annual rate of 1.44%, consisting of .44% for investment advisory services and 1.00% for the annuity rate and expense risks assumed by Voyager Life.

During the accumulation period, an annual administrative fee of $15 is deducted on each July 2 from the individual account value. If an individual account is fully surrendered prior to the commencement of annuity payments, the annual administrative fee will be deducted from proceeds paid.

The assets of Account C and Account D will include the purchase payments paid to Voyager Life under the Contracts and the securities and other investments in which such purchase payments are invested. These securities will remain in the custody of Voyager Life as provided by Rule 17f-2 of the Act by deposit through safekeeping agreements with a bank whose functions and physical facilities are supervised by authorities of the State of New York.

Section 14(a)

Section 14(a) of the Act provides, in pertinent part, that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless the investment company has a net worth of at least $100,000. An exemption from this requirement for a separate account funding only "tax-benefited variable annuity contracts" is set forth in Rule 14a-2. The Rule, promulgated in 1969, does not include within the definition of "tax benefited variable annuity contracts" contracts used in connection with plans satisfying the requirements of Sections 408 or 457 of the Code.

Applicants seek an exemption from the provisions of Section 14(a) of the Act, subject to the same conditions as are currently set forth in Rule 14a-2, to permit the allocation to the Accounts of purchase payments under Contracts issued in accordance with the provisions of Sections 408 or 457 of the Code.

Applicants assert that a separate account funding contracts issued in connection with Section 408 or Section 457 plans, in addition to "tax-benefited variable annuity contracts" as defined in Rule 14a-2, is entitled to precisely the same relief from Section 14(a) of the Act as a separate account funding only "tax-benefited variable annuity contracts." Applicants believe that the narrower definition found in Rule 14a-2 is due solely to the fact that Sections 408 and 457 of the Code did not exist at the time Rule 14a-2 was adopted and that the purpose of the Rule (as well as Rules 15a-3, 16a-1 and 32a-2), that of allowing the Accounts to avoid mingling monies received under "tax-benefited variable annuity contracts" with other funds, is equally served by allowing contracts issued in connection with Section 408 and 457 plans to be treated as "tax-benefited variable annuity contracts."

Section 27(c)(2)

Section 27(c)(2) of the Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales load, are deposited with a bank as trustee or custodian and held under an inventure or agreement containing, in substance, the provisions required by Section 26(a)(2) and (3) for trust indentures of a unit investment trust.

Applicnats assert that all purchase payments received under the Contracts are to be applied or held for later application to the purchase of investments for the Account, of which Voyager Life will have custody as owner and not as trustee. Exemption is requested from Section 27(c)(2) to permit all purchase payments received under the Contracts to be held and applied by Voyager Life in the manner set forth in its Investment Advisory Services Agreement which requires, in part, that monies received for each Account be deposited in one or more cash accounts identified as assets of the Account maintained in one or more banks which will have the qualifications prescribed in paragraph (1) of Section 26(a) of the Act for trustees of unit investment trusts, but which banks will not act as trustee or custodian, or under an indenture or agreement meeting the requirements in Sections 26(a)(2) and (3).

In support of their requested exemptions from Section 27(c)(2), Applicants state that Voyager Life is subject to extensive supervision and regulation by the Commissioner of Insurance of Florida, and to the applicable insurance laws in the other jurisdictions in which Voyager Life does an insurance business. In addition, under Florida law, Voyager Life cannot abandon its obligations to owners or annuitants until they have been fully discharged, and the assets of the Account, equal to the reserves and other liabilities under the Contracts, are not chargeable with liabilities arising out of any other business that Voyager Life may conduct.

The regulatory and supervisory functions of the Florida Commissioner of Insurance include periodic inspections of Voyager Life's operations. Applicants further state the Accounts' investments will be physically segregated at all times, that its investments will at all times be subject to inspection by the Commission, that each person depositing or withdrawing investments will sign a notation in respect thereof, and that only certain designated persons will have access to the securities and other investments in the accounts as follows: (1) two or more jointly of the not more than three officers or responsible employees of the Accounts or of Voyager Life designated pursuant to a resolution of the Board of Managers of the Account; (2) properly authorized officers and employees of Voyager Life; (3) for the purposes of verification, audit and examination, independent public accountants jointly with any of the persons designated above; and (4) authorized employees or agents of the state insurance regulatory authorities.

Section 6(c) authorizes the Commission upon application to conditionally or unconditionally exempt any person, securities, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act or the Rules and Regulations promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants have consented that any order granting the requested exemption from Section 27(c)(2) may be made subject to the conditions (1) that the charges under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved to the Commission for such purpose, and (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

NOTICE IS FURTHER GIVEN that any interested person may not latter than October 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted; or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the Application herein may be issued as of course following October 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11377/September 26, 1980

In the Matter of

VOYAGER VARIABLE ANNUITY FUND
VOYAGER VARIABLE ANNUITY ACCOUNT C
VOYAGER VARIABLE ANNUITY ACCOUNT D

AND

VOYAGER LIFE INSURANCE COMPANY
2255 Phyllis Street
Jacksonville, FL 32204

(812-4709)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) AND RULE 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN THAT Voyager Variable Annuity Fund ("Fund"), Voyager Variable Annuity Account C ("Account C"), and Voyager Variable Annuity Account D ("Account D") of Voyager Life Insurance Company ("Voyager Life") (hereinafter collectively referred to as "Applicants"), filed an application on August 12, 1980 pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission granting exemptions from Sections 2(a)(32), 2(a)(25), 22(c) (and Rule 22c-1 thereunder), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act. The Fund is registered under the Act as an open-end diversified management investment company. Account C and Account D each filed registration statements under the Act on August 4, 1980 as open-end diversified management investment companies. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Voyager Life, a Florida-domiciled stock life insurance company, is a wholly-owned subsidiary of Voyager Group, Inc., also a Florida corporation. The Accounts are separate accounts of Voyager Life established pursuant to the insurance laws of Florida for the purpose of holding reserves attributable to certain of Voyager Life's variable annuity contracts. Voyager Life is registered as an investment adviser under the Investment Advisers Act of 1940 and, as such, acts as investment adviser to the Accounts.

Under the variable annuity contracts currently offered by the Fund, sales charges are deducted from purchase payments as they are made. Applicants seek this exemption to permit the offering by the Accounts of new periodic payment group variable annuity retirement contracts (the "Contracts") to governmental entities which have adopted deferred compensation plans ("Plans") under Section 457 of the Internal Revenue Code of 1954, as amended (the "Code") which will have a contingent deferred sales charge. These Contracts are designed primarily for Plans involving 25 or more participants, having annual purchase payments of at least $50,000, and permitting group meetings of employees for solicitation. A single master group Contract is issued to cover all present and future participants. The Contract owner will be the public employer and the Contracts will be a part of the Contract owner's general assets. Benefits available to Participants are governed exclusively by the provisions of the Plan and are backed only by the general assets of the Contract owner.

Values of Individual Accounts under a Contract and the Contract value itself will vary with the investment performance in the Accounts of the full purchase payments (less periodic deductions from those values). At the selected annuity commencement date, annuity payments will begin as designated by the Contract owner (or Participant, as appropriate). In the event of partial or full surrender of the Contract or an Individual Account during the purchase payment accumulation period prior to the completion of fifteen purchase payment years, a Contingent Deferred Sales Charge is made from the amount surrendered to determine the amount to be paid. The Contingent Deferred Sales Charge is a percentage of the amount surrendered, as below; however, the deduction will not exceed 9% of the purchase payments made.

Completed Years of Purchase Payment for the Individual Account	*Contingent Deferred Sales Charge*
Less than 5	5%
5 or more but less than 10	3%
10 or more but less than 15	2%
15 or more	none

The Contingent Deferred Sales Charge will not be imposed on withdrawals due to the death of a Participant nor will it be imposed upon election of a life contingency annuity option.

Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) prohibits a registered investment company, depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping or other administrative duties normally performed by the trustee or custodian. For purposes of the Act, Voyager Life is the depositor, and its wholly-owned subsidiary, Voyager Securities, Inc. is the principal underwriter with respect to the Accounts. Voyager Life acts as its own custodian as provided by Rule 17f-2 under the Act, through safekeeping arrangements with a bank whose functions and physical facilities are regulated by authorities of the State of New York.

Section 26(a)(2)(C) provides that no payment to the depositor of or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an "expense." Applicants submit that the proposed Contingent Deferred Sales Charge is not the kind of expense contemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to (1) designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to prevent the depositor of a unit investment trust from imposing a sales load. They assert that the Contingent Deferred Sales Charge to be imposed upon the withdrawal of Contract values is designated to recover costs related solely to the sale of the Contracts. Section 27(c)(2) expressly provides for the deduction of sales loads from purchase payments before the proceeds are deposited with a custodian under the requirements of Section 26. Applicants submit that the Contingent Deferred Sales Charge is a sales load to which Section 27(c)(2) applies, and that the deferral of the imposition of the sales charge until withdrawal of Contract value, an event which may never occur, should not be construed in any way as in violation of Section 27(c)(2). Applicants have requested an exemption from the provisions of Section 26(a)(2)(C) and Section 27(c)(2), to the extent necessary, to offer the Contracts.

Applicants have consented to the exemptions requested herein from Sections 26(a) and 27(c)(2) being made subject to the following conditions: (1) that the charges to variable annuity Contract owners for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, jurisdiction being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services; and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums or charges.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that Sections 2(a)(32) and 27(d) contemplate the deduction of sales charges from purchase payments at the time they are made. Applicants assert that under a Contract, the net amount invested would be the gross purchase payments, and therefore, the holder's "proportionate share" would be the gross purchase payment(s) plus or minus any increase or decrease in value, less the Contingent Deferred Sales Load, if any. Applicants maintain that the

deferral or elimination of the sales charge does not restrict in any way the Contract owner or participant from receiving his proportionate share or the value of his individual account on redemption. If applicable, the Contingent Deferred Sales Load would be deducted upon redemption in determining the proportionate share or account value, as opposed to being deducted from initial purchase payments. Applicants submit that the deferral or elimination of sales charges permits the Contract owner's net amount invested to be increased, to its and its participating employees' benefit. Applicants have requested an exemption from the provisions of Sections 2(a) and 27(d), to the extent necessary to permit the imposition of the Contingent Deferred Sales Load.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company to sell any such certificate unless it is a redeemable security. Applicants submit that the Contingent Deferred Sales Load which may be imposed on redemption of the Contracts is not a restriction on redemption under Section 27(c)(1). Applicants assert that this is particularly true where the deferral or elimination of sales charges until the Contract is redeemed has the effect of increasing the Contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit sales charges to be imposed only upon withdrawal of Contract values.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing redeemable securities from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. When a Contract owner surrenders all or part of the value of the Contract, the price on redemption will be based on the current net asset value. The Contingent Deferred Sales Load, if any, will merely be deducted at the time of redemption in arriving at the Contract owner's proportionate share or account value. While Applicants do not believe that the imposition of the Contingent Deferred Sales Load is violative of Section 22(c) or Rule 22c-1, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder, to the extent necessary, to offer the Contracts.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities or transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to issues of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following October 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11378/September 29, 1980

In the Matter of

CHASE NATIONAL INCOME FUND, INC.
1000 N. Central Expressway
Dallas, Texas 75231

(811-2555)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Chase National Income Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund filed its Notification of Registration (Form N-8A) on January 17, 1975, pursuant to Section 8 of the Act but has never filed a registration statement pursuant to that section or pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock. The Fund has never filed the annual and periodic reports required by Section 30 of the Act. Moreover, a letter sent to the address of the last known counsel for the fund by the staff of the Division has been returned as undeliverable. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 24, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11380/September 30, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6243/September 30, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11380September 30, 1980

In the Matter of

UNITED CASH MANAGEMENT, INC.
One Crown Center
P.O. Box 1343
Kansas City, Missouri 64141

(812-4740)

NOTICE OF FILING OF APPLICATION FOR AMENDED ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

NOTICE IS HEREBY GIVEN that United Cash Management, Inc. ("Applicant"), an open-end, diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 7, 1980, for an amended order, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On July 17, 1979, the Commission issued an order (Investment Company Act Release No. 10783) ("Prior Order"), pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit it to compute its price per share for the purposes of sales and redemptions to the nearest one cent on a share value of one dollar. The Prior Order was issued subject to the following condition, among others:

(3) Applicant will invest only in (i) obligations issued or guaranteed by the U.S. Government or its agencies or instrumentalities; (ii) time deposits, certificates of deposit, bankers' acceptances and other bank obligations (or instruments secured by such obligations) provided that the issuing bank has at least $1,000,000,000 in assets and is subject to regulation by the United States Government (including foreign branches of such banks); (iii) commercial paper rated A-1 or A-2 by Standard & Poor's Corporation ("S&P") or Prime-1 or Prime-2 by Moody's Investors Services, Inc. ("MIS"), or if not rated, issued by a corporation in whose debt obligations Applicant may invest; (iv) corporate debt obligations if they are rated at least A by S&P or MIS; and (v) obligations other than those listed in (i) through (iv) only if such other obligation is guaranteed as to principal and interest by either a bank in whose obligations Applicant may invest or a corporation in whose commercial paper Applicant may invest.

Applicant requests an order of the Commission amending the Prior Order by deleting condition (3) as set forth above and substituting the following condition:

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors of Applicant determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

In support of this request, Applicant submits that the restrictions set forth in condition (3) of the Prior Order would not be necessary if, as provided in new condition (3), its Board of Directors assumes responsibility for such quality determinations. Applicant further submits that exemptive orders issued by the Commission after the Prior Order with respect to other money-market funds contain restrictions similar to those now proposed by it.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as relevant here, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In Investment Company Act Release No. 9786, the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of one dollar, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons,

securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11381/September 30, 1980

In the Matter of

AMERICAN GENERAL SHARES, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-2438)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On September 2, 1980, a notice was issued (Investment Company Act Release No. 11324) stating that American General Shares, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company having outstanding two classes of common stock, American General Capital Growth Fund and American General Income Fund, filed an application on August 4, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of American General Shares, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11382/September 30, 1980

In the Matter of

EQUITY GROWTH FUND OF AMERICA, INC.
2777 Allen Parkway
Houston, Texas 77019

(811-1398)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On September 4, 1980, a notice was issued (Investment Company Act Release No. 11331) stating that Equity Growth Fund of America, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 13, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Equity Growth Fund of America, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11383/October 2, 1980

In the Matter of

GOVERNMENT EMPLOYEE'S INVESTMENT FUND, INC.
P.O. Box 572
Rancho Santa Fe, California 92067

(811-1872)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Government Employee's Investment Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application of July 7, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 28, 1969, and that it filed also on that date a registration statement under the Securities Act of 1933 ("1933 Act"). The registration statement under the 1933 Act was ordered abandoned by the Commission, pursuant to Rule 479 under the 1933 Act, following notice to Applicant. The application states that Applicant: (1) has never made a public offering of its securities; (2) has no assets, debts or liabilities currently outstanding; and (3) has never commenced operations. The application further states that Applicant's Delaware corporate charter has been abandoned. Finally, Applicant states that it did not, within the last eighteen months, transfer any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenver the Commission upon application finds that a registered investment company has ceased to be an investment company it shall so declare by order, and that upon the effectiveness of such order the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, at 5.30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should

be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11384/October 2, 1980

In the Matter of

NATIONAL MUNICIPAL TRUST
NATIONAL MUNICIPAL TRUST, SPECIAL TRUSTS
NATIONAL GOVERNMENT SECURITIES TRUST
NATIONAL CORPORATE TRUST
THOMSON McKINNON SECURITIES INC.
PIPER, JAFFRAY & HOPWOOD INCORPORATED
A. G. EDWARDS & SONS, INC.
OPPENHEIMER & CO., INC.
c/o Thomas McKinnon Securities Inc.
One New York Plaza
New York, New York 10004

(812-4598)

ORDER OF THE COMMISSION GRANTING AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING AN OFFER OF EXCHANGE PURSUANT TO SECTION 11 OF THE ACT

National Municipal Trust, National Municipal Trust, Special Trusts, National Government Securities Trust, National Corporate Trust, registered under the Investment Company Act of 1940 ("Act") as unit investment trusts (collectively referred to as the "Trusts") and Thomson McKinnon Securities Inc., Piper, Jaffray & Hopwood Incorporated, A. G. Edwards & Sons, Inc. and Oppenheimer & Co., Inc. filed an application on January 22, 1980, and amendments thereto on August 27 and September 2, 1980, for an order of Commission (1) pursuant to Section 6(c) of the Act exempting them from the provisions of Section 22(d) of the Act and (2) pursuant to Section 11 of the Act permitting the Trusts to offer their units at net asset value plus a fixed dollar sales charge pursuant to a conversion option.

On September 3, 1980, a notice was issued (Investment Company Act Release No. 11329) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offer be approved, and

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from Section 22(d) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11385/October 2, 1980

In the Matter of

THE RESERVE FUND, INC.
810 Seventh Avenue
New York, New York 10019

(812-4674)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that The Reserve Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on May 1, 1980, and an amendment thereto on July 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund incorporated in the State of Maryland, and that it is designed to offer corporations, fiduciaries, other institutions and individuals, a means to invest in a professionally managed portfolio of money market instruments with the objective of seeking as high a level of current income as is consistent with the preservation of capital and liquidity. According to the application, Applicant invests its assets in various money market instruments. Applicant further states that it will not purchase any security which has a maturity date of more than one year after the date of purchase, except purchases subject to repurchase agreements calling for redelivery in one year or less following the date of purchase.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the Board of Directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the Board of Directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that experience indicates that two features are important to most investors in "money market" funds: (1) stability of principal, and (2) steady flow of predictable and competitive investment income. Applicant asserts that its ability to provide these features would be enhanced through use of amortized cost valuation. Applicant represents that its Board of Directors has properly determined to value the portfolio of Applicant at amortized cost and that this method is in the best interests of shareholders. Applicant further represents that the amortized cost method represents fair value of the instruments in Applicant's portfolio. Accordingly, Applicant requests an exemption from Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit its assets to be valued as set forth in the application, and as described above,

whether or not market quotations are available.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemptions it requests satisfy these standards in view of its management policies and the conditions hereinafter set forth.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share determined by reference to market factors from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; redemption of shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year (unless subject to a repurchase agreement with a maturity of one year or less), or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. If the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as

[1]To fulfill this condition, Applicant intends to use available market quotations in its current valuation system and any other indicators of market value of portfolio instruments which its Board of Directors from time to time may consider appropriate.

determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9187/September 26, 1980

UNITED STATES v. *ROBERT F. DZIURGOT (D.N.H.)* (Criminal No. 79-38-01-D)

Willis H. Riccio, Administrator of the Boston Regional Office of the United States Securities and Exchange Commission, and the Honorable William H. Shaheen, United States Attorney for the District of New Hampshire, today announced that a federal jury at Concord, New Hampshire returned guilty verdicts on one count of transporting in interstate commerce; and one count of having received and converted certain stolen securities, that is, ten (10) 1961 City of Sunnyvale, California Municipal Improvement Bonds, valued at $5,000 each against Robert F. Dziurgot an attorney, of New Ipswich, New Hampshire and New York City, New York. Dziurgot had been indicted on November 28, 1979 (for further information see Litigation Release 8954).

The Honorable Shane Devine, Chief Judge of the United States District Court for the District of New Hampshire has not as yet set a date for the imposition of sentence.

Litigation Release No. 9188/September 29, 1980

SECURITIES AND EXCHANGE COMMISSION v. *IAN T. ALLISON, ET AL.* (United States District Court for the District of Columbia, Civil Action No. 80-2465)

The Commission today announced the filing of a complaint for injunctive and other equitable relief against 23 Defendants in the United States District Court for the District of Columbia and a motion for preliminary relief. The Defendants are Ian T. Allison ("Allison") and Fred K. Austin of Santa Rosa, California, Richard L. Dugger of Phoenix, Arizona, William L. Henderson, Jr. of Santa Clara, California, Olympic Gas & Oil, Inc. ("Olympic") of Dallas, Texas, its former secretary and director, John E. Mahoney, of San Rafael, California, SNG & Oil Energy Company ("SNG") of Buffalo, New York, its president, Richard I. Johnson of Buffalo, New York, and vice president, Charles J. Cazeau of East Amherst, New York and 14 corporations, which the complaint alleges are controlled by Allison. The 14 corporations are Pacific Christian Church, Southern Christian Missionaries, World Missionary Society, Cascade Christian Church, First Christian Missionaries, Pacific States Builders, Inc., AG Tech Corporation, Sensor Tech Corporation, American Vitamin Company, Nevada

Mines, Inc., River City Farms, Inc., Sporthaus, Inc., Creative Research & Design Ltd. and Gas Y Petrolio Olympico, S.A. The Complaint alleges violations of the antifraud, anti-manipulative and registration provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 and the periodic reporting and stock ownership reporting provisions of the Securities Exchange Act of 1934. The District Court simultaneously entered final judgments against the Defendants SNG, Richard I. Johnson and Charles J. Cazeau. These three Defendants consented to the entry of the final judgments without admitting or denying the allegations in the complaint.*

The Commission alleged in the Compiaint that Allison and other of the Defendants participated in a scheme to defraud in connection with promotions of Olympic and SNG, which had no substantial operations. In September and December 1979 respectively, Registration Statements under the Securities Exchange Act were filed to register the common stocks of the two companies with the Commission. The Commission alleged that false and misleading statements were made in both filings, including that new majority owners of the companies had contributed assets, which were included in financial statements of both companies. The complaint alleged that, in fact, the assets were not contributed and that statements in the Registration Statements concerning the shareholders of both companies were also false and misleading, in that Allison had arranged for stock to be placed in the names of hundreds of Europeans, without their knowledge, in order to qualify the stocks for eventual trading through NASDAQ. According to the Complaint, Allison arranged for an over-the-counter market to develop in the two securities beginning in September 1979 and January 1980 respectively, and took steps to generate buying interest in the stocks.

The Complaint alleged that Allison manipulated the markets in the two securities at the time of the opening of trading over-the-counter. The prices of both securities more than doubled during the first few days of trading and increased thereafter in heavy trading. Upon the opening of trading and thereafter, according to the Complaint, Allison and other of the Defendants sold hundreds of thousands of shares of the securities into the market, without registration under the Securities Act. The Complaint alleges that Allison, Henderson and corporations controlled by them received at least $819,837.50 from the sale of Olympic stock and at least $951,762.00 from the sale of SNG stock in these sales. The Complaint alleged that Allison and other of the defendants engaged in promotional activities, which included arranging television interviews of the new managements, press releases and research reports about Olympic and SNG. According to the Complaint, false and misleading statements were made during the television interviews and in the releases and research reports. The Complaint alleged that certain persons assisting in the activities received stock on favorable terms and other considerations. The Complaint further alleged that false and misleading statements were made in filings of both companies with the Commission, certain of which included, according to the Complaint, balance sheets in which assets purportedly contributed by the new majority owners were presented and at inflated values and, income statements, in which sales and cost of sales were overstated.†

The Court entered final judgments against SNG, Johnson and Cazeau permanently restraining and enjoining them from violating the antifraud, registration and reporting provisions of the Securities Exchange Act of 1934 and Johnson and Cazeau from violating the ownership reporting provisions of that Act. In addition, the Court ordered SNG to make corrective filings, and appoint 2 independent directors, satisfactory to the Commission, who are to approve in advance certain press releases and filings, investigate and determine whether SNG should pursue claims against any person and, absent disapproval by the Court, after a hearing upon request of SNG or the Commission, take action recommended, including the institution and prosecution of lawsuits. In addition the Court ordered Johnson to pay to SNG the difference, if any, between the value (as determined pursuant to the final judgment) of a subdivision purportedly contributed to SNG and the book value at which it was recorded by SNG. The case is pending against the remaining Defendants.

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*The Commission simultaneously entered orders instituting administrative proceedings, making findings and ordering remedial sanctions against Continental American Securities, Inc., a broker-dealer, James Roe, a registered representative in its Phoenix office, and Saul Glazer, an accountant.

†The Commission suspended trading in securities of both companies for 10 days in March and again in April, 1980.

The Commission is seeking both preliminary and final relief against all of the remaining defendants. Included in the relief sought is injunctive relief and orders freezing assets and requiring disgorgement of profits.‡

Litigation Release No. 9189/September 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *AIRCRAFT INSTRUMENT AND DEVELOPMENT, INC.* United States District Court for the District of Columbia, Civil Action No. 80-2498

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against Aircraft Instrument and Development, Inc. ("Aircraft") with offices at 317 East Lewis, Wichita, Kansas 67202. The Commission's Complaint alleges violations of the reporting provisions of federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that Aircraft, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended March 31, 1980, and its Quarterly Report on Form 10-Q for its fiscal quarter ended June 30, 1980 required to have been filed with the Commission by June 29, and August 14, 1980, respectively. The Complaint requests that the Court order Aircraft to file forthwith, with the Commission, its delinquent reports on Forms 10-K and 10-Q. In addition, the Commission requests that the Court enjoin Aircraft from further violations of the reporting provisions of the federal securities laws.

Litigation Release No. 9190/October 1, 1980

SEC v. *AQUA-SONIC PRODUCTS CORP.* 80 Civil 5513 (S.D.N.Y.) (RWS)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on September 30, 1980, the Commission filed a civil injunctive action seeking to enjoin the following defendants from future violations of the registration and antifraud provisions of the federal securities laws (Sections 5(a), (5) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder): Aqua-Sonic Products Corp. ("Aqua-Sonic"), a New York corporation whose business consists of the development, manufacture and sale of certain dental products known as Steri Products; Ultrasonic Dental Products, Inc. ("Ultrasonic"), a New York corporation whose business consists of marketing dental products on behalf of Aqua-Sonic licensees; Leon Schekter ("Schekter"), an attorney, residing in Roslyn, New York; M. Joshua Aber ("Aber"), an attorney residing in Yonkers, New York; Martin E. Hecht ("Hecht"), an attorney residing in New York, New York; Dentasonic, N.V. ("Dentasonic"), a corporation chartered in the Netherlands Antilles and substantially owned by its original shareholders Schekter, Aber and Hecht, Invental Corporation ("Inventel"), a Delaware corporation whose principal office is located in New York, New York; and Melvin Hersch, the president of Aqua-Sonic who resides in Roslyn Heights, New York.

The Commission's Complaint alleges that commencing on or about May 1, 1978 three lawyers, namely the defendants Schekter, Aber and Hecht, through various entities which were directly or indirectly under their control, made a public offering of securities. These securities were in the form of exclusive licenses issued by Aqua-Sonic combined with sales agency agreements issued by Ultrasonic (hereinafter referred to as "Aqua-Sonic investments") to market new dental products known as Steri Products. It is alleged that such securities should have been registered with the Commission; however, no registration statement has ever been filed or is in effect with respect to the Aqua-Sonic investments. Between approximately May 1 and December 31, 1978, a total of 49 Aqua-Sonic investments were sold for a total of approximately $12,100,000 as follows: $11,200,000 in the form of non-recourse promissory notes and $900,000 in cash and recourse promissory notes.

The Complaint further alleges that, in connection with the offer and sale of the Aqua-Sonic investments, the defendants omitted to state material facts to investors and prospective investors concerning, among other things, the comprehensive role of the lawyers, defendants Schekter, Aber and Hecht, as creators, promoters, control persons and

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‡This matter was referred to the Commission by the National Association of Securities Dealers, Inc.

principal financial beneficiaries of the Aqua-Sonic venture. More specifically, it is alleged that the defendants failed to disclose the existence of Inventel and Dentasonic, two entities created and substantially owned by Schekter, Aber and Hecht, and through which, according to the terms of certain undisclosed agreements with Aqua-Sonic, they had a substantial financial interest in the Aqua-Sonic venture. For example, Dentasonic had sold to Aqua-Sonic for an inflated $26 million a portion of the rights it had just purchased from the inventor for $406,500.

The Complaint further alleged that the offering materials for the Aqua-Sonic investments included a tax opinion letter issued by the law firm of defendants Schekter, Aber and Hecht (then known as Schekter, Aber & Hecht, P.C. ("SAH")) which failed to disclose to potential investors the significant conflict of interest its principals had in this venture. Similarly, it is also alleged that a federal securities opinion letter issued by SAH and used extensively in the offer and sale of the Aqua-Sonic investments was based on facts the defendants knew were erroneous and omitted to state the same material facts about the substantial financial interest of Schekter, Aber and Hecht in the success of the offering.

The Complaint also alleges that the defendants made to investors material misstatements and omissions with regard to certain other material facts relating to, among other things, the actual viability of the products and the use of proceeds from the sale of the Aqua-Sonic investments.

Litigation Release No. 9191/September 30, 1980

UNITED STATES v. *RALPH OLIVER* (D.N.J., Criminal No. 80-324)

Robert J. Del Tufo, United States Attorney for the District of New Jersey, Paul F. Leonard, Regional Administrator, and Thomas H. Monahan, Assistant Regional Administrator (Philadelphia) of the Washington Regional Office of the Securities and Exchange Commission, announced that on September 9, 1980, a Federal Grand Jury sitting at Camden, New Jersey, returned an indictment charging Ralph Oliver of Cherry Hill, New Jersey, with twelve counts of mail fraud. The indictment charges that during the period from January 1970 through 1978 the defendant Oliver engaged in a scheme and artifice to defraud thirty-nine individuals and obtained approximately $120,000 from such individuals by means of false and fraudulent pretenses, representations and promises. The indictment charges that as a part of the scheme to defraud, defendant Oliver held himself out as an employee of Barnhart & Co., an established and reputable securities brokerage firm when in fact Barnhart & Co. was not an established securities brokerage firm, not licensed to sell securities and existed solely to further defendant's fraudulent scheme. The indictment further charges that the defendant Oliver induced his customers to agree to a regular investment program through Barnhart & Co. and to entrust money to him for the purchase of mutual funds and other securities recommended by him. However, the indictment charges, that the defendant had no intention of purchasing such securities but instead diverted investors' money to his own benefit and use.

In an earlier civil action brought by the Commission, Oliver was permanently enjoined from violating the antifraud provisions of the federal securities laws in connection with the same conduct charged in the indictment (*SEC* v. *Barnhart & Company, et al.*, E.D.Pa., No. 78-2018).

(For further information, see Litigation Release No. 8450.)

Litigation Release No. 9192/September 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MULTI-POWER*

G. William Hunter, United States Attorney for the Northern District of California; Leonard H. Rossen, Regional Administrator, Los Angeles Regional Office; and Bobby C. Lawyer, Associate Regional Administrator, San Francisco Branch Office, announced that on September 18, 1980, a federal grand jury in San Francisco, California, returned a twelve count indictment against Alfred J. Cusino ("Cusino"). The indictment charges Cusino with six counts of mail fraud and six counts of fraud by wire.

The indictment alleges Cusino claimed to be the inventor of a device known as the "energy multiplier"

and that he made certain false claims and representations regarding the device, including (1) that it existed and was functional; (2) that it multiplied an initial electrical charge fourteen-fold, was self-perpetuating, and could produce electrical energy indefinitely; (3) that it had powered a Boeing 747; (4) that investment returns would be astronomical; and (5) that investments could and would be refunded at any time. The indictment further alleges that Cusino employed Multi-Power Electrical Corporation to locate and solicit potential victims who desired to invest in the energy multiplier and that Cusino caused the money invested by the victims to be disbursed to him and converted to his own use and benefit.

In an order of permanent injunction filed on March 27, 1980, Cusino was permanently enjoined by the United States District Court for the Northern District of California from violating the registration and antifraud provisions of the federal securities laws in connection with the offer and sale of securities of Multi-Power Electrical Corporation.

Litigation Release No. 9193/September 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *MOVIEMATIC INDUSTRIES CORP.* (United States District Court for the District of Columbia, Civil Action No. 80-1417)

The Commission announced today that on September 29, 1980 the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Moviematic Industries Corp. of 444 Brickell Avenue, Miami, Florida ("Moviematic"), restraining and enjoining Moviematic from failing to file timely periodic reports and ordering it to comply with certain undertakings. Moviematic, consenting to the entry of the Court's judgment, admitted it had failed to file reports in a timely fashion. The Commission's complaint was filed on June 9, 1980.

The Complaint alleged that Moviematic, as part of a continuing course of violative conduct extending over several years, failed to timely file with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Moviematic has agreed to adopt procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9194/October 2, 1980

SECURITIES AND EXCHANGE COMMISSION v. *C & R CLOTHIERS, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-2517)

The Securities and Exchange Commission today announced that the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against C & R Clothiers ("C & R") restraining and enjoining C & R from further violations of the tender offer antifraud and reporting provisions of the Securities Exchange Act of 1934. C & R consented to the entry of the judgment without admitting or denying the allegations of the Commission's Complaint.

The Commission's Complaint, also filed today, alleges that C & R violated the tender offer provisions of the federal securities laws by filing with the Commission and distributing to its shareholders tender offer materials which contained materially false and misleading statements and which omitted to state material facts. Specifically, the Complaint alleges that the tender offer materials failed to disclose adequately, among other things, the true purposes and effects of the tender offer, that the tender offer is designed and structured to benefit and accommodate the interests of the two largest shareholders of C & R, that a principal purpose for the tender offer is to allow the two largest shareholders of C & R stock to dispose of at least 70,000 shares of their C & R stock at a price greater than the prevailing market price, that the two largest shareholders of C & R stock are receiving bonuses in connection with the tender offer in amounts of $137,000 and $61,000 each, that the book value of C & R stock is reduced from $3.09 to $2.87 per share by the bonuses paid in connection with the tender offer, that the earnings per share of C & R are reduced by one-half from $.45 to $.23 by the bonuses paid in with the tender offer and that holders of less than ten shares of C & R will not be able to sell any shares pursuant to the tender offer. Further, the Commission Complaint indicated that on three occasions prior counsel for C & R had advised the company that the proposed transaction raised issues of corporate waste and possible breach of fiduciary duties.

In addition to the entry of the Final Judgment permanently enjoining C & R from violating the tender offer provisions of the federal securities laws, the Court also ordered C & R to comply with its undertaking that it will, within forty (40) days of any new tender offer for shares of C & R stock, financing of which is provided by C & R, and in no event later than sixty (60) days of the entry of the Final Judgment, return to C & R shareholders all shares of C & R stock tendered pursuant to the June 25, 1980, tender offer unless those shareholders (1) are provided with tender offer materials containing all of the information required by the tender offer provisions of the federal securities laws, (2) are given written notice that their tendered shares will be returned to them unless they notify the tender offerors of their desire to tender those shares tendered pursuant to the June 25, 1980, tender offer, and (3) have notified the tender offerors of their desire to tender those shares tendered pursuant to the June 25, 1980, tender offer. The Court also ordered C & R to comply with its undertaking to adopt, implement and maintain policies and procedures reasonably designed to ensure compliance with the tender offer provisions of the Securities laws.

Litigation Release No. 9195/October 2, 1980

SECURITIES AND EXCHANGE COMMISSION v. *JOSEPH F. VALVERDE, LEE KNIGHT MOFFETT, CANADIAN AMERICAN FINANCIAL CORPORATION, S.A., AND TRUSTEE MORTGAGE CORPORATION*, U.S. District Court for the Southern District of New York, Civil Action No. 80 Civ. 3073 (LWP), filed May 30, 1980

The Securities and Exchange Commission announced today that Judge Lawrence W. Pierce of the U.S. District Court for the Southern District of New York has entered Final Judgments of Permanent Injunction against defendants Joseph F. Valverde, Lee Knight Moffett and Canadian American Financial Corporation, S.A., ("CAF") and has entered a Final Judgment of Permanent Injunction by Default against the remaining defendant Trustee Mortgage Corporation, enjoining those defendants from violations of the anti-manipulation, antifraud and margin requirements of the federal securities laws. The defendant Valverde, Moffett and CAF consented to the entry of the Final Judgments against them without admitting or denying the allegations of the Commission's Complaint.

The Commission alleged in its Complaint that Valverde and Moffett engaged in a fraudulent scheme, both individually and through corporate entities, to manipulate the common stock of Robintech, Inc. during September and October, 1979.

The Commission filed its action against Valverde, Moffett, CAF and Trustee Mortgage Corporation on May 30, 1980. Litigation Release No. 9076 (May 30, 1980).

ACCOUNTING SERIES

ACCOUNTING SERIES
Release No. 282/September 29, 1980

Admin. Proc. File No. 3-5959

In the Matter of

SAUL GLAZER
7543 Fairview Drive
Lockport, New York

OPINION AND ORDER PURSUANT TO RULE 2(e) OF THE COMMISSION'S RULES OF PRACTICE

The Commission deems it appropriate in the public interest to institute administrative proceedings against Saul Galzer ("Glazer"), an accountant, pursuant to Rule 2(e) of the Commission's Rules of Practice.[1] This matter arises out of the audit and accountant's report issued by Glazer as to the financial statements of SNG & Oil Energy Company

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[1]Rule 2(e), 17 CFR 201.2(e), provides in part:

The Commission may deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice of and opportunity for hearing in the matter (i) not to possess the requisite qualifications to represent others, or (ii) to be lacking

("SNG") as of and for the seven months ended March 31, 1980. The Commission concludes that the audit of these financial statements was not conducted in accordance with generally accepted auditing standards and that the Respondent's unqualified opinion as to the financial statements, which was included in a filing with the Commission, was materially false and misleading.[2]

Simultaneously with the institution of these proceedings, Glazer has submitted an Offer of Settlement for the purpose of disposing of the issues raised in these proceedings. In the Offer of Settlement, which the Commission has determined to accept and which is described below, Glazer consents, without admitting or denying the findings or allegations set forth herein, to the issuance of this Opinion and Order.

I

FACTS

Background

Glazer is a certified public accountant practicing in Lockport, New York under his own name with one other professional, who is an employee. Audits of financial statements of public companies have not constituted a substantial part of Glazer's practice.

Footnote 1 continued

in character or integrity or to have engaged in unethical or improper professional conduct, or (iii) to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws (15 U.S.C. 77a to 80b-20), or the rules and regulations thereunder.

The findings herein are not binding on any respondent named in any administrative proceeding based on any of the matters described in this Opinion and Order.

[2]On September 29, 1980 the Commission filed an action for injunctive and other equitable relief in the United States District Court for the District of Columbia against 23 defendants. In the Complaint the Commission alleged, among other things, that SNG filed a materially false and misleading registration statement and periodic reports with the Commission. See Litigation Release No. 9188/September 29, 1980.

Richard I. Johnson ("Johnson"), of Buffalo, New York, acquired 80% of the common stock of SNG, in late October or early November 1979, through Lockport Meadows, Inc., a private corporation owned by his wife. The common stock of SNG became registered with the Commission as a result of the filing of a Registration Statement on Form 10 with the Commission.[3] The Form 10 included audited financial statements as of and for each of the three years ended August 31, 1979 and an accountant's report containing the unqualified opinion of the predecessor auditor. The balance sheet as of August 31, 1979 reported, in addition to other assets of SNG, $1,310,000 of assets which were purportedly contributed to SNG by Johnson pursuant to a written agreement, dated August 15, 1979, between Lockport Meadows, Inc. (owned by Johnson's wife) and SNG. These assets consisted of a parcel of real estate known as the Meadows subdivision, valued at $1.2 million and gas, oil and mineral rights, valued at $110,000. The textual portion of the Form 10 included an extensive description of the Meadows subdivision and the gas, oil and mineral rights.

Attached as an exhibit to the Form 10, among other things, was the August 15, 1979 agreement which recited that Lockport Meadow's Inc. would "deliver deed, bill of sale and assignment forms necessary to convey good title to the subject assets" at a closing to be held at a designated place on August 24, 1979. The parties expressly waived all claims against each other upon failure to close at the designated time.[4]

As of August 31, 1979, there was no agreement for the conveyance of assets by Lockport Meadows, Inc. to SNG. The written agreement and other documents were backdated when they were signed at the end of October or early November 1979. Furthermore, no

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[3]Form 10 is the general form for registration of securities pursuant to Sections 12(b) or 12(g) of the Securities Exchange Act of 1934.

[4]The agreement provided:

"Failure to close this transaction on said time and date will irrevocably void this agreement without force or effect regardless of fault by either BUYER or SELLER. It is hereby agreed and acknowledged that both parties, without reservation, waive their right to claim of damages or specific performance upon said failure to close this transaction on said time set forth above."

closing ever occurred and title to the land was never conveyed to SNG.

The gas, oil and mineral rights were valued at $110,000 in the August 31, 1979 balance sheet based on an appraisal dated November 7, 1979, made by Charles J. Cazeau ("Cazeau"), a geologist. Cazeau had not personally visited the property to perform his appraisal. In addition, Cazeau was the President of SNG at the time of his appraisal. The oil, gas and mineral rights were not assigned to SNG until April 7, 1979.

Financial Statements as of and for the Seven Months Ended March 31, 1980

On April 21, 1980 SNG filed with the Commission a Current Report on Form 8-K, signed by Johnson, containing audited financial statements as of and for the seven months ended March 31, 1980, together with the report containing the unqualified opinion of Glazer dated April 17, 1980.[5]

The financial statements were consolidated financial statements, reflecting a consolidation of SNG and Lockport Meadows, Inc. The consolidated financial statements were certified by Glazer on the assumption that all of the Lockport Meadows, Inc. stock was conveyed to SNG on August 31, 1979.

The March 31, 1980 consolidated balance sheet continued to value the Lockport Meadows subdivision at $1.2 million and the gas, oil and mineral rights at $110,000, and also included a $50,000 item classified as "deposit on plant acquisition" which was not explained.

The income statement reported zero revenue and a net loss of $9,214. The income statement, according to its caption, was for the "period ending March 31, 1980." The period covered was not stated in the caption. The bottom line of the income statement read "Income (loss) for the year." However, Glazer has informed the staff that the reference to the year was in error and that it was an income statement for the seven months from September 1, 1979 through March 31, 1980.[6]

The consolidated statement of source and application of funds reflected a decrease of $123,648 in the $150,000 [as of August 31, 1979] notes and contract payable. This represented the liquidation of all of the assets and the federal income tax payable which were reflected on the August 31, 1979 balance sheet, except for the real estate and gas, oil and mineral rights allegedly contributed and related liabilities.

Note C to the financial statements disclosed the terms of the $26,352 balance remaining of the $150,000 contract payable discussed above. The footnotes to the August 31, 1979 financial statements stated that the note was payable November 15, 1979. The March 31, 1980 financial statements indicated that the note payable was due on September 30, 1980 with 10% interest annually. No disclosure was made as to the actual disposition of the assets related to the note payable.

Note G discussed income taxes, but made no mention as to the disposition of the $2,158 federal tax liability which was removed from the books as noted above.

The Audit

Glazer was selected by Johnson to audit the March 31, 1980 financial statements. Glazer had done previous work, not involving certified financial statements, for companies owned or controlled by Johnson. Glazer was asked by Johnson to perform an audit of SNG on or about April 16, 1980, and completed his audit two days later, for a fee of $750. He estimated that the audit took about 15 to 20 hours, including clerical time.[7]

Glazer was given a collection of documents concerning SNG, which included the SNG Registration Statement on Form 10, and his attention was directed by Johnson to certain "errors" in the Form 10 and in the financial statements for the

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[5]SNG also filed a Quarterly Report on Form 10-Q for the quarter ended March 31, 1980 which contained the same financial statements but did not contain Glazer's report.

[6]Likewise in his audit report, Glazer referred to the income statement as presenting the results of operations "for the period then ended" [March 31, 1980].

[7]Documents provided by Glazer indicate chargable time on the audit of 23-1/4 hours, valued at $915 per Glazer's Standard rates. Glazer was paid for his audit work by a post dated check, dated June 15, 1980, in the amount of $750.

year ended August 31, 1979. Glazer was told by Johnson that his audit would clear up certain problems that the Commission had with the previous financial statements relating to errors regarding ownership of Lockport Meadows, Inc. and the ownership of 80% of the stock of SNG.

Johnson told Glazer that he needed certified financial statements in a couple of days. Glazer was also given the cash receipts and cash disbursements journal, some bank statements, cancelled checks and the stock record book. Glazer knew that the financial statements which he would prepare and certify would be filed with the Commission.

Glazer relied on the certification of the August 31, 1979 financial statements by the predecessor auditor to a great degree with respect to existence and valuation of assets and liabilities, but took no steps to verify the professional standing or competency of the predecessor auditor, nor did he attempt to contact him at any time. At no time did Glazer examine any of the predecessor auditor's audit workpapers, as required by generally accepted auditing standards. Glazer was told by Johnson that the predecessor auditor was replaced because he was too far away and that he represented the previous owners of SNG. Johnson also told Glazer that the predecessor auditor had refused to furnish any information to Johnson regarding his audits of SNG. Glazer has asserted that he had no reason to doubt the predecessor auditor's professional opinion on the financial statements and that he didn't know if the predecessor auditor was aware of the errors in the financial statements brought to his attention by Johnson. Glazer departed from generally accepted auditing standards, which require a successor auditor to communicate or attempt to communicate with the predecessor auditor prior to accepting an audit engagement.

Glazer relied on representations by Johnson and on a copy of a Lockport Meadows, Inc. stock certificate dated August 31, 1979 in the name of SNG, which was given to him by Johnson, as evidence that consolidation of Lockport Meadows, Inc. and inclusion of the real estate in the March 31, 1980 balance sheet was proper. In fact, SNG did not own Lockport Meadows, Inc. securities on August 31, 1979 or during the period covered by the financial statements. Glazer relied on the appraisal and the opinion of the predecessor auditor on the August 31, 1979 financial statements for the valuation of the real estate.

Glazer departed from standard audit procedures by his failure to send bank confirmations to the banks which SNG and Lockport Meadows, Inc. did business with. This is an audit procedure which cannot be replaced by alternative audit procedures due to the pervasive nature of the audit evidence obtained by bank confirmations. With respect to the mortgage payable to one of the banks, he relied on Johnson's verbal representation that the balance had not changed since the previous audited balance sheet.

The balance sheet contained a $50,000 deposit on plant acquisition and a $5,000 loan. Neither balance was confirmed with the outside party. Glazer relied on Johnson's representation that the $5,000 loan would be repaid shortly and stated that he did not believe the amount to be material. The $50,000 deposit was audited by examining the cancelled check payable to the party from which the plant was going to be purchased and by looking at pictures of the plant shown to him by Johnson. No contract was available because arrangements had not yet been finalized.

Glazer admitted being unable to perform any audit work with respect to the disposition of the assets which were contained in the August 31, 1979 balance sheet and which were removed from the books of the company as of March 31, 1980, with a corresponding reduction to notes or contracts payable. He indicated that the remainder ($26,352) of the $150,000 contract payable was probably payable to Mr. or Mrs. Johnson, but he couldn't be sure.

During the course of his audit Glazer apparently requested, but never received from Mrs. Johnson, what he termed a "liability certificate", a representation from management that certain liabilities reflected on the balance sheet were proper and that no additional liabilities or contingent liabilities existed as of the audit date. Such certificates were finally signed and furnished to Glazer by Mrs. Johnson subsequent to the staff's initial contact with him in early May 1980.

Glazer failed during his audit to obtain a written representation from management confirming oral representations made to him during his audit, concerning among other things, satisfactory title to assets and existence of liabilities and contingencies, as required by Statement on Auditing Standards No. 19.

Glazer's workpapers reflected that SNG began capitalizing, during the period, the interest on a mortgage related to the real estate. Such capitalized interest was shown on the balance sheet as prepaid expense in the amount of $5,233. No disclosure was made in the financial statements, nor in Glazer's audit report, of this new accounting policy. Also, Rule 3-16(r) of Regulation S-X sets forth certain required disclosures with respect to capitalized interest, none of which were complied with. Additionally, as previously noted, neither Glazer's audit report nor the financial statements properly identify the period which is covered by the financial statements.

By letter dated May 23, 1980, Glazer notified SNG that he had become aware of facts which may have affected his report on SNG's financial statements, requested that SNG no longer rely on his report and sought authorization to complete an investigation of the affairs of SNG in order to determine whether there was a need to supplement or amend his report. By letter dated June 12, 1980, upon SNG's failure to authorize Glazer to reopen his audit or furnish any reason for not giving such authorization, Glazer notified SNG that his April 17, 1980 report must no longer be relied upon by SNG or other persons, or associated with the SNG financial statements.

II

FINDINGS

Based upon the foregoing, the Commission finds that Glazer engaged in improper professional conduct in this matter in that his audit was not conducted in accordance with generally accepted auditing standards and he issued a report stating the contrary and stating that, in his opinion, the financial statements presented fairly the financial position and results of operations of SNG in conformity with generally accepted accounting principles applied on a consistent basis, when, in fact, there was no reasonable basis therefore.

III

OFFERS OF SETTLEMENT

Glazer has submitted an Offer of Settlement with respect to these proceedings, solely for the purpose of settlement and without admitting or denying the findings or allegations contained herein. In his Offer of Settlement, Glazer consents to the entry of this Opinion and Order, containing the findings set forth above and ordering remedial sanctions.

IV

ORDER

In view of the foregoing, the Commission deems it appropriate in the public interest that administrative proceedings pursuant to Rule 2(e) of its Rules of Practice be instituted and that Glazer's Offer of Settlement be accepted.

Accordingly,

IT IS ORDERED that proceedings pursuant to Rule 2(e) of the Commission's Rules of Practice be, and they hereby are, instituted.

IT IS FURTHER ORDERED that Glazer be and he hereby is suspended from appearing or practicing before the Commission for a period of nine months from the date of entry of this Opinion and Order.

By the Commission.

George A. Fitzsimmons
Secretary

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VOLUME 21, NO. 2 OCTOBER 21, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6245	72
Securities Exchange Act	17060A, 17189-05	82
Public Utility Holding Company Act	21738-41	103
Investment Company Act	11386-89	108
Litigation	9196-98	118
Staff Accounting Bulletin	39	121

This listing covers releases issued from 10/3/80-10/8/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

SAB-39 Publication of Staff Accounting Bulletin No. 39.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17060A	34-17194	34-17199
34-17190	34-17196	34-17202
34-17191	34-17198	34-17203

33-6245 Solicitation of comments on amendments to Form S-18 which would allow certain issuers engaged in the mining business to register their securities on that Form. [S7-853; Comment period expires November 21, 1980.]

OPINION

34-17192 **P. LYNN DIXON**

Where member of registered securities association was underwriter of offering which rose to an immediate aftermarket premium, and allocated shares of that offering to a corporation of which one of its registered representatives was president, *held*, sanctions imposed on representative *set aside*, and proceedings *remanded* to association to determine whether representative or any member of his immediate family had a prohibited "beneficial interest" in corporation's account.

SE 1.29:

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6245/October 7, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17197/October 7, 1980

PROPOSED AVAILABILITY OF SIMPLIFIED REGISTRATION FORM TO CERTAIN MINING COMPANIES

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to Form S-18, a simplified registration form, which would allow certain issuers engaged in the mining business to register their securities on that Form. A new disclosure item which includes requirements applicable to mining companies is proposed for Form S-18 and similar amendments are proposed for Item 2 of Regulation S-K. The latter will be applicable to companies using registration forms other than Form S-18 and to companies subject to the continuous reporting requirements under the Securities Exchange Act of 1934. The Commission is also recommending that Form S-3 be rescinded. That form is currently available to certain start-up or unprofitable companies engaged in the mining business.

DATE: Comments must be received on or before November 21, 1980.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549. Comments should refer to File No. S7-853 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Rupp, Office of Small Business Policy, Division of Corporation Finance, (202) 272-2644. With respect to proposed Item 7A of Form S-18 and Item 2(c) of Regulation S-K, contact Hubert W. Norman, Office of Engineering, Division of Corporation Finance, (202) 272-3257.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment certain amendments to Form S-18 [17 CFR 239.28], and Regulation S-K [17 CFR 229.20] and a proposal to rescind Form S-3 [17 CFR 239.13].

Form S-18 is a simplified registration statement available to certain domestic and Canadian corporate issuers for the registration under the Securities Act of 1933 [15 U.S.C. §§77a, et seq., as amended (1976)] of up to $5 million worth of securities to be sold for cash. The Form is not available to issuers that are engaged or intend to engage in significant mining operations. Form S-3 is designed exclusively for start-up and unprofitable mining companies. The Commission is hereby proposing that the availability of Form S-18 be extended to certain mining companies and that existing Form S-3 be rescinded. A new disclosure requirement specifically applicable to mining issuers would be added to Form S-18.

The Commission is also proposing an amendment to Item 2 of Regulation S-K. The item sets forth the type of disclosure to be made in describing an issuer's property. The proposed amendments deal specifically with the type of information to be furnished by mining companies.

BACKGROUND

The Commission has for some time been examining steps which might be taken to facilitate capital formation by small businesses. The adoption of Form S-18 in April 1979 represented a significant initiative in this regard.[1] As adopted, issuers who engaged or intended to engage in significant mining operations were precluded from the use of the Form. Several commentators and witnesses who appeared at the Commission's Small Business Hearings opposed this exclusion.[2] However, in view of the experimental nature of the Form and the initiation of regional processing of registration statements, the Commission determined to proceed cautiously in

[1]Securities Act Release No. 33-6049, April 3, 1979 [44 FR 21562].

[2]In Securities Act Release No. 33-5914, March 6, 1978 [43 FR 10876], the Commission announced its intention to hold a series of small business hearings. The full text of the comments offered can be found in Commission File No. S7-734.

connection with the adoption of Form S-18. The Commission did express its intent to monitor the use of the Form for an appropriate period and to consider whether the conditions as to its availability should be expanded. The Office of Small Business Policy in the Division of Corporation Finance has undertaken an ongoing monitoring program regarding Form S-18. In addition, the Commission's Directorate of Economic and Policy Analysis recently published a study concerning the use of Form S-18 during the first eight months since its adoption.[3]

In view of the relatively widespread acceptance of the Form and the absence to date of any significant disclosure or enforcement problems, the Commission has determined to propose that Form S-18 be made available to certain companies engaged in the mining business. The staff will continue to consider, over the next several months, the advisability of further expanding Form S-18 to make it available to corporate issuers engaged in oil and gas operations and limited partnerships.

The amendments proposed herein provide for a new disclosure item, Item 7A, to be added to Form S-18. This item contains revised disclosure requirements applicable to issuers engaged in the mining business. With respect to those mining companies filing registration statements or Forms other than Form S-18 and those subject to the reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. §§78a, et seq., as amended (1976)] an amendment to Item 2 of Regulation S-K is also proposed.

Item 7A of Form S-18 incorporates the substantive disclosure concepts that are presently set forth in Form S-3. These provisions have been updated to reflect current disclosure practices and certain additional requirements have been included. Item 2(c) of Regulation S-K incorporates the provisions of proposed Item 7A in their entirety. Certain additions which were unnecessary in the Form S-18 context were included in the Regulation S-K amendments.

DISCUSSION

I. Form S-18 and Form S-3

Form S-3 is available to corporate issuers which engage or intend to engage in the mining business. The registration statement can be used only for shares of stock that are to be sold for cash. Issuers must be either start-up corporations or corporations that have not had any significant income during the past five years. If the issuer expects to succeed to any income producing activity the Form will likewise be unavailable to it. At present, any mining issuer that does not meet the above restrictions would be required to register on Form S-1.[4]

As indicated above, the Commission has determined to propose that Form S-18 be made available to companies engaged in the mining business. This change would be accomplished by deleting the existing prohibition against usage of the Form by mining companies from General Instruction A to the Form. The other restrictions present in the Instructions to Form S-18 would remain. Therefore a mining issuer would be required to be a domestic or Canadian corporation which proposes to sell not more than $5 million worth of securities to the public for cash. The mining issuer also may not be a company reporting under the Securities Exchange Act of 1934, a limited partnership or a subsidiary of a parent that would be unable to use the Form.[5]

If adopted, the proposals published today would extend to mining companies the benefits now available to issuers currently able to use Form S-18. The primary distinctions between Forms S-3 and S-18 are as follows. Issuers utilizing Form S-18 have the option to file their registration statements at the Headquarters Office or at an appropriate regional office.[6] All Form S-3's must be filed at the Headquarters Office. Form S-3 requires financial statements for the past three years that are prepared in accordance with Regulation S-X. Form S-18, on the other hand, requires financial statements for two years and they need only be prepared in accordance with Generally Accepted Accounting Principles. Registrants utilizing Form S-3 incur a reporting

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[3]Form S-18, A Monitoring Report on its Use in 1979, U.S. Securities and Exchange Commission, Directorate of Economic and Policy Analysis, March 1980.

[4]17 CFR 239.11.

[5]*See* General Instruction A(a).

[6]The study prepared by the Directorate of Economic and Policy Analysis indicated that regional filing was perceived as one of the most important benefits of Form S-18. Form S-18 Monitoring Report, *supra* note 3, at 31.

obligation under Section 15(d) of the Exchange Act immediately after the registration statement is declared effective. Form S-18 registrants incurring a reporting obligation under Section 15(d) are extended a gradual phase-in procedure whereby much of the information required in the initial Exchange Act reports is either carried over from the Form S-18 registration statement or is permitted to comply with Form S-18 requirements. Finally, Form S-3 is available only for equity offerings while Form S-18 may be used for debt as well as equity offerings.

The Commission is also proposing that Form S-3 be rescinded since the revision of Form S-18 will allow its use by certain mining companies. Under the present restrictions with respect to use of Form S-3 and as proposed for Form S-18, it appears that the only issuers that would be able to use Form S-3 but not Form S-18 are a reporting company that has not had any significant income in the past five years or a foreign issuer that has not had significant income in the past five years. One additional limitation, discussed below, is the $5 million ceiling on the amount of securities that may be registered on Form S-18. Form S-3, on the other hand, has no such limitation. The Division of Corporation Finance, Office of Small Business Policy has conducted a review of all Form S-3 filings over the past two years. This survey indicates that the number of companies that would be able to register on Form S-3 but not Form S-18 is extremely small.

With respect to the first category, the Commission believes that the burden of generating the additional information necessary for registration on Form S-1, the currently available alternative form for registration, would not be significant for an issuer that has been reporting under the 1934 Act. With regard to foreign issuers presently able to use Form S-3 but not Form S-18, it was found that only one registration statement filed in the past two years would have fallen within this category.

Based on the Commission's experience with Form S-3, the $5 million ceiling applicable to Form S-18 also should not impose a hardship on issuers who would have used Form S-3. It was found that only one Form S-3 registration during the past two years exceeded the $5 million amount and that registration related to a $5.7 million offering. As a result, the effect of this limitation is expected to be minimal.

II. Regulation S-K, Item 2

Proposed Item 7A of Form S-18 represents a comprehensive set of disclosure requirements which address issues particularly germane to registrants engaged in the mining business. In order to provide for similar disclosure in other Securities Act registrations and in Exchange Act registrations and reports, the Commission is also proposing amendments to Item 2 of Regulation S-K.

Item 2 of Regulation S-K concerns the description of properties held by the issuer. Item 2 includes detailed disclosure requirements for issuers engaged in the oil and gas business but does not include similar requirements for issuers engaged in the mining business. The proposal herein suggests the addition of Item 2(c) which would set forth detailed disclosure requirements for mining issuers.

The entire set of disclosure requirements proposed as Item 7A to Form S-18 have been carried over to proposed Item 2(c) of Regulation S-K. In addition to those provisions, certain areas which are not relevant to Form S-18 have been included in the Regulation S-K item. The first relates to the impact of takeover or nationalization of properties owned by registrants which are located in foreign nations. Form S-18 is available to domestic and Canadian corporations only. Takeover or nationalization by Canadian authorities has not presented a problem in the past and therefore this provision was not deemed necessary for Form S-18.

A series of requirements concerning issuers that have entered into long term supply contracts have been included in the Regulation S-K item but not in the Form S-18 item. The reason is that mining companies that would be able to enter into such contracts would generally be larger, well-established companies with significant reserves. Such issuers probably would not be able to register on Form S-18. It is expected that the vast majority of mining companies that will use the form will be smaller, start-up companies with no significant reserves. Therefore, this requirement was not included in Item 7A to Form S-18.

SYNOPSIS

The following brief synopsis is intended to assist interested parties in their understanding of the proposed amendments. Attention is directed to the attached text for a more complete understanding.

Item 7A. Description of Property—Issuers Engaged

or to be Engaged in Significant Mining Operations

As proposed, new Item 7A would provide for the inclusion in Form S-18 of disclosure requirements specifically applicable to issuers who engage or intend to engage in significant mining operations. The new item will appear immediately following present Item 7, "Description of Property." The item is essentially divided into three subsections. The first includes certain definitions applicable to mining companies; the second includes the applicable disclosure requirements; and the third includes certain supplemental information requirements.

(a) Item 7A(a)—Definitions

A basic definition of the term "reserve" as it relates to mineral deposits has been included in this subsection. The definition incorporates views from the recently published *U.S. Geological Survey Circular 831*[7] and from standard mining dictionaries. Form S-3 does not include a similar explanatory definition.

The definitions of "proven" and "probable" reserves included in this subsection are similar to those included in Form S-3. They have, however, been updated to reflect the substance of the *U.S. Geological Survey Circular 831*.

FASB No. 7 groups together, under the title "Development Stage Enterprises," issuers that are in both the exploratory and development stages. The distinction, from the perspective of the geologist or engineer, is significant. In mining terminology an exploratory stage company is basically engaged in the search for minerals. A development stage company, on the other hand, has found a commercially feasible body of minerals and is engaging in the preparation of that body for production. Financial statements for exploratory stage mining issuers will typically identify the issuer as a "development stage company." Such a classification may be confusing to investors. As a result, proposed Item 7A requires that the definitional terms in Item 7A(a) be utilized in the textual and financial statement disclosure. In this regard, Item 7A(a) includes separate definitions of the "Exploration," "Development" and "Production" stages. In addition, an amendment to Item 15 "Financial Statements and Instructions" has been inserted which cross-references to the Item 7A(a) definitions. The Commission specifically requests comments on the issue of whether such an instruction is necessary or desirable.

(b) Item 7A(b)—Disclosure Requirements

This subsection sets forth the prospectus informational requirements concerning the registrant's mining operations. Items 7A(b)(1)-(6) are similar to the requirements in Form S-3 Items 4(a)(1)-(6). These requirements have been expanded and updated to reflect current disclosure standards. The salient facts regarding the properties owned and operated by the registrant would be disclosed pursuant to these subsections. These disclosures would include the location of and means of access to the property, form of title or lease and any known mineralization on the property. In addition, a description of the history of operations and work done by the registrant will be required. An instruction indicating that the summation of proven (measured) and probable (indicated) reserves will be allowed under certain circumstances also has been inserted. This instruction will be applied where the difference between the issuer's proven (measured) and probable (indicated) reserves cannot reliably defined. In addition, the Form S-3 prohibition against disclosure of reserves of lesser assurance proven (measured) or probable (indicated) has been retained. Finally, the present state of the property, plans and equipment would be included.

Two new substantive disclosure provisions have been added. Item 7A(b)(7) requires a description of the total tonnage produced, the grade of such ore and relevant production cost statistics. Item 7A(b)(8) would elicit disclosure concerning changes in the deposits mined and changes in the mining conditions experienced by the issuer.

(c) Item 7A(c)—Supplemental Information

Item 7A(c) addresses three separate subject matter areas of supplemental information. The first concerns maps, drill data and calculations upon which the reserve estimates are based. These requirements are similar to those included in Form S-3's "Instructions to Exhibits" section. A series of new instructions have been added which will

[7]Principles of a Resource/Reserve Classification for Minerals, U.S. Bureau of Mines and the U.S. Geological Survey (1980). This survey was intended as a revision of the widely utilized U.S. Geological Survey Bulletin No. 1450-A.

delineate the proper format for maps submitted to the staff.

The second section, similar to Form S-3, requires that each engineering, geological or metallurgical report concerning the registrant's property be filed supplementally. The proposal modifies the existing Form S-3 requirements by allowing a list of the non-governmental reports to be filed instead of the reports themselves.

The third subsection requires filing of certain documents necessary to support representations made in the registration statement.

Regulation S-K, Item 2(c)

The disclosure requirements discussed above with respect to Form S-18 were carried over in their entirety to proposed Item 2(c) of Regulation S-K. Certain additional disclosure requirements normally not applicable to Form S-18 registrants were added to Item 2(c). These additions are as follows.

Two disclosure provisions concerning the impact of foreign governments have been added. The first would mandate disclosure of the impact on the issuer of takeover or nationalization by a foreign government of the issuer's properties. The second concerns prohibitions against disclosure of estimated reserves by foreign governments or required disclosure of reserves other than proven or probable where the properties are under governmental authority. In these instances, the document should disclose the name of the country, identify the applicable law or regulation and give an appropriate description of the disclosure that is required or prohibited by the foreign government.

Issuers that have entered into contracts for supply of fixed amounts of minerals also will be required to set forth detailed disclosure concerning several aspects of such contracts. These disclosure requirements address matters such as the quantity of minerals to be supplied, the sources of supply, the impact of certain priorities or curtailments which may affect the ability to deliver, and the impact of price limitations imposed by federal or state authorities.

TEXT OF PROPOSED AMENDMENTS

17 CFR Chapter II is proposed to be amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. By rescinding §239.13 in its entirety.

2. By amending §239.28 to read as follows:

§239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

* * * * *

General Instruction

A. Rule as to Use of Form S-18

* * *

(6) (delete the text of subsection (6) and insert the text of subsection (7))

(7) (insert the text of subsection (8))

(8) (delete this subsection)

* * * * *

Item 7. Description of Property

[no change]

Item 7A. Description of Property—Issuers Engaged or to be Engaged in Significant Mining Operations

(a) *Definitions:* The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(1) *Reserve:* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. *Note:* Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil shale, tar sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(2) *Proven (Measured) Reserves:* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings, or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection,

sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of reserves are well-established.

(3) *Probable (Indicated) Reserves:* Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measured) reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(4)(i) *Exploration Stage*—includes all issuers engaged in the search for mineral deposits (reserves), which are not in either the development or production stage.

(ii) *Development Stage*—includes all issuers engaged in the preparation of an established commercially mineable deposit (reserves) for its extraction which are not in the production stage.

(iii) *Production Stage*—includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction—Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements, even though such companies should comply with SFAS 7, if applicable.

(b) *Mining Operations Disclosure*—Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(1) The location of and means of access to the property.

(2) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the location of significant properties.

(3) A brief history of previous operations, including the names of previous operators, insofar as known.

(4) A brief description of the present state of exploration and/or development and the present condition of the property. The information provided should describe on a property-by-property basis the: (i) age, (ii) details as to modernization, (iii) total cost, and (iv) physical condition, with respect to plants, equipment, including subsurface improvements and equipment. Mines should be identified as either open-pit or underground.

(5) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (i) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (ii) the name of the person making the estimates and the nature of his relationship to the registrant. *Instructions:* 1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be reliably defined.

3. No estimates of reserves of lesser assurance than proven (measured) and probable (indicated) such as "possible" or "inferred" should be set forth.

(6) Describe the work already done by the registrant on the property and the registrant's proposed program of exploration or development of the property. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect should be made.

(7) Show in tabular form to the extent reasonably practicable for each of the registrant's significant mines or, if appropriate, for each group of mines operating as a unit within a specific mining district or other limited area:

(i) the total tonnage of production during each of the last five fiscal years and the average grade or quality of such production during each such year;

(ii) where applicable, for each of the last five fiscal years, the average direct operating cost for mining and beneficiation per ton of production, showing separately cost of labor, power and materials, plus footnotes to the table showing the aggregated amount of additional costs, such as depletion, depreciation, administration and taxes per ton of such production, and the average dollar value realized per ton of material produced;

(iii) the source of power utilized.

(8) Show to what degree there have been material changes during the last five fiscal years, to the most recent date practicable, in the principal deposits mined or the physical mining conditions and whether any such material changes are anticipated. Describe and state the significance of any such past or anticipated changes.

(9) If technical terms relating to geology, mining or related matters whose definitions cannot be readily found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in the registration statement.

(10) Detailed geologic maps and reports, feasibility studies and other highly technical data should not be included in the registration statement but should be, to the degree appropriate and necessary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(c) *Supplemental Information:*

(1) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the registration statement, furnish:

(i) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon,

(ii) all pertinent drill data and related maps,

(iii) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions—Maps and other drawings submitted to the staff should include: 1. A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of the symbols used by the U.S. Geological Survey is encouraged:

2. A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

3. A north arrow on maps;

4. An index map showing where the property might be in relationship to the state or province, etc., in which it was located;

5. A title of the map or drawing and the date on which it was drawn;

6. In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data;

7. Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(2) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the registration statement. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(3) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the registration statement.

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Item 15. Financial Statements and Instructions

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(f) With respect to companies engaged or to be engaged in the mining business, attention is directed to the instruction to Item 7A(a)(4) concerning the appropriate classification of issuers engaged in the exploratory, development and production stages of mining.

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PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K.

1. By amending §229.20 to amend Item 2 to read as follows.

§229.20 Information required in document.

* * * * *

Item 2. Description of property.

(a) * * *

(b) * * *

(c) If mining operations are material to the registrant's and its subsidiaries' business operations or financial position, disclose the following under appropriate captions in tabular form where practicable, with cross-references, where applicable, to related information in the financial statements:

2(c)(1). Definitions: The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(i) *Reserve:* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. Note: Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other material such as coal, oil shale, tar sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(ii) *Proven (Measured) Reserves:* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings, or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of reserves are well-established.

(iii) *Probable (Indicated) Reserves:* Reserves for which quality and grade and/or quality are computed from information similar to that used for proven (measured) reserves, but the sites for inspection, sampling, and measurement are further apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(iv)(a) *Exploration Stage:* includes all issuers engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.

(b) *Development Stage:* includes all issuers engaged in the preparation of an established commercially mineable deposit (reserve) for its extraction which are not in the production stage.

(c) *Production Stage:* includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction: Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements even though such companies should comply with SFAS No. 7.

2(c)(2). Mining Operations Disclosure: Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(i) The location of and means of access to the property.

(ii) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the exporation dates of such leases or options should be stated. Appropriate maps may be used to portray the location of significant properties.

(iii) A brief history of previous operations, including the names of previous operators, insofar as known.

(iv) A brief description of the present state of exploration and/or development and the present condition of the property. The information provided should describe on a property-by-property basis the: (a) age, (b) details as to modernization (c) total cost, and (d) physical condition, with respect to plants, equipment and including subsurface improvements and equipment. Mines should be identified as either open-pit or underground.

(v) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (a) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (b) the name of the person making the estimates and the nature of his relationship to the registrant. *Instructions:* 1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be reliably defined.

3. No estimates of reserves of lesser assurance than proven (measured) and probable (indicated) such as "possible" or "inferred" should be set forth.

4. Disclosure shall be given of the effect or ownership of reserves of any takeover or nationalization by foreign governments of properties owned by the registrant, including any change of property interest into a long-term supply, purchase or similar agreement.

5. If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proven and probable, the registrant should notify the Office of Engineering, Division of Corporation Finance, of the Commission. If the required information is not disclosed or if categories of reserves other than proven or probable are disclosed for these reasons, the document should identify the country, cite the law or regulation which restricts or requires such disclosure, and indicate that the reported reserve estimates or amounts do not include figures for the named country or that the reserve estimates include reserves other than proven or probable.

(vi) Describe the work already done by the registrant on the property and the registrant's proposed program of exploration or development of the property. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made.

(vii) Show in tabular form to the extent practicable for each of the registrant's significant mines or, if appropriate, for each group of mines operating as a unit within a specific mining district or other limited area:

(a) the total tonnage of production during each of the last five fiscal years and the average grade or quality of such production during each such year;

(b) where applicable, for each of the last five fiscal years, the average direct operating cost for mining and beneficiation per ton of production, showing separately cost of labor, power and materials, plus footnotes to the table showing the aggregated amount of additional costs such as depletion, depreciation, administration, taxes, etc., per ton of such production, and the average dollar value realized per ton of material produced;

(c) the source of power utilized.

(viii) Show to what degree there have been material changes during the last five fiscal years, to the most recent date practicable, in the principal deposits mined or the physical mining conditions and whether any such material changes are anticipated. Describe and state the significance of any such past or anticipated changes.

(ix) If technical terms relating to geology, mining or related matters whose definitions cannot be readily found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in the registration statement.

(x) Detailed geologic maps and reports, feasibility studies and other highly technical data should not be included in the registration statement but should be,

to the degree appropriate and necessary for the Commission's understanding of the registrant's presentatioin of business and property matters, furnished as supplemental information.

(xi) If the registrant is obligated to provide a fixed and determinable quantity of minerals in the future under existing contracts or agreements, material information concerning the estimated availability of minerals from any principal sources.

(a) Such information shall be furnished as to current and future reserves and supplies, and shall (A) identify the principal sources of minerals to be relied upon and the total available amount expected to be received from each principal source and from all sources combined; (B) disclose the total quantities of minerals which are subject to delivery commitments; and (C) indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information shall be provided for an appropriate period of one to five years.

(b) The registrant should develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure should be in a form understandable to investors and should include, but not be limited to, a description of the following factors: (A) significant supplies dedicated or contracted to the registrant; (B) any significant amounts of reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptible contracts; (C) any priority allocations or price limitations imposed by federal or state regulatory agencies, as well as other factors beyond the control of the registrant which may affect the ability of the registrant to meet its contractual obligations (detailed discussions of price regulation need not be furnished); (D) any other factors beyond the control of the registrant, such as competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies which may affect the ability of the registrant to acquire additional reserves and supplies, or to maintain or increase the availability of reserves and supplies; and (E) any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractual obligations.

(c) If within the last five years the registrant has been unable to meet any significant delivery commitments, describe the circumstances concerning such events and the impact on the registrant.

2(c)(3). Supplemental Information:

General Instruction: In filings on Form 10-K, the supplemental information required by this Item 2(c)(3) need only be furnished if requested by the staff.

(i) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the registration statement, furnish:

(a) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon,

(b) all pertinent drill data and related maps,

(c) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions—Maps and other drawings submitted to the staff should include: 1. A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of symbols used by the U.S. Geological Survey is encouraged;

2. A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

3. A north arrow on maps;

4. An index map showing where the property might be in relationship to the state or province, etc., in which it was located;

5. A title of the map or drawing and the date on which it was drawn;

6. In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data;

7. Any drawing should be simple enough or of sufficiently large scale to clearly show all features on

the drawing.

(ii) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the registration statement. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(iii) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the registration statement.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; sec. 28(c) 84 Stat. 1435; secs. 1, 2, 3-5, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78o(d), 78w(a)).

The Commission hereby proposes for comment amendments to Form S-18 and an amendment to rescind Form S-3 pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The Commission also proposes for comment amendments to Regulation S-K pursuant to all of the 1933 Act provisions referred to above and Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17060A/October 6, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY CINCINNATI STOCK EXCHANGE

File No. SR-CSE-80-4

This is to correct a material error that occurred in the notice of Securities Exchange Act Release No. 17060 (August 13, 1980) as it was published in 20 SEC Docket 931 (August 26, 1980). The notice should have stated that the trading hours of the Cincinnati Stock Exchange will be 10:00 a.m. - 4:05 p.m., local Cincinnati time, and not, as erroneously stated, 10:10 a.m. - 4:05 p.m.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 17189/October 3, 1980

In the Matter of:

JOHN DEES
2550 West Cir.
Fresno, California 93704

Admin. Proc. File No. 3-5142

NOTICE OF PERMANENT DISQUALIFICATION FROM APPEARANCE OR PRACTICE BEFORE THE COMMISSION

On December 21, 1976, the Commission entered an order, pursuant to Rule 2(e)(3)(i) of its Rules of Practice, 17 C.F.R. 201.2(e)(3)(i), temporarily suspending John Dees, a certified public accountant, from appearing or practicing before the Commission. The order was based on a permanent injunction by consent entered against Mr. Dees on

September 28, 1976, in *Securities and Exchange Commission* v. *Walter Wencke, et al.*, Civil Action File No. 76-0783T (S.D. Calif.). Mr. Dees consented to the permanent injunction, enjoining him from violating Section 17(a) of the Securities Act of 1933, as amended, and Sections 10(b), 13(a), 14(a), and 14(c) of the Securities Exchange Act of 1934, without admitting or denying the allegations of the Commission's complaint.

Rule 2(e)(3)(ii) of the Commission's Rules of Practice provides that any person temporarily suspended in accordance with paragraph (i) of that rule may, within 30 days after service upon him of the order of temporary suspension, petition the Commission to lift such suspension, but that if no petition has been received by the Commission within 30 days after such service, the suspension shall become permanent. Mr. Dees was duly notified of this provision. The 30-day period expired and no petition to lift the suspension was filed with the Commission.

Accordingly, notice is hereby given that the temporary suspension of John Dees has become permanent and that Mr. Dees is, therefore, disqualified from appearing or practicing before the Commission.

For the Commission, by its Secretary, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17190/October 3, 1980

NOTICE OF WITHDRAWAL OF PROPOSED RULE CHANGE SUBMITTED BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-79-4

The National Association of Securities Dealers, Inc. (the "NASD") by a letter dated September 18, 1980, has withdrawn a proposed rule change submitted on May 14, 1979 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) and Rule 19b-4 thereunder. Notice of the proposed rule change was given by issuance of a Commission Release, Securities Exchange Act Release No. 15890 (June 1, 1979) and by publication in the *Federal Register*, (44 FR 33205 (June 8, 1979)).

The proposed rule change would have amended subsection 2 of Paragraph B, Part II of Schedule D under Article XVI of the NASD's By-Laws to expand the class of domestic securities eligible for temporary listing on the NASD's automated quotation system ("NASDAQ"). The proposed rule change would have allowed for the inclusion in the NASDAQ System of securities exempt from registration under the Securities Act of 1933 (the "Act") pursuant to Regulation A, provided that the issuer of the securities furnished the NASD with financial statements that would have been required had the company's securities been registered with the Commission pursuant to the Act. In addition, the proposed rule change would have also required that such companies undertake to provide the NASD with quarterly and annual financial statements equivalent to those required to be filed by issuers registered with the Commission. The NASD states that it wishes to withdraw the proposed rule change because it anticipates further revisions of other provisions relating to NASDAQ listing standards.

The Commission has considered the aforementioned letter from the NASD as a request for consent to the withdrawal of the referenced rule proposal. Accordingly, the proposed rule filing is withdrawn.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17191/October 3, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-79-21)

ORDER APPROVING PROPOSED RULE CHANGE

On December 4, 1979, the American Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which extends, in certain instances, the time before a business restriction is imposed.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-16575, February 14, 1980) and by publication in the *Federal Register* (45 FR 11636, February 21, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17192/October 3, 1980

In the Matter of the Application of

P. LYNN DIXON
80 West Broadway
Salt Lake City, Utah

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of Rules of Fair Practice

Failure to Comply with Free-riding and Withholding Interpretation

Where member of registered securities association was underwriter of offering which rose to an immediate aftermarket premium, and allocated shares of that offering to a corporation of which one of its registered representatives was president, *held*, sanctions imposed on representative *set aside*, and proceedings *remanded* to association to determine whether representative or any member of his immediate family had a prohibited "beneficial interest" in corporation's account.

APPEARANCES:

Thomas G. Kimble, of Thomas G. Kimble & Associates, for P. Lynn Dixon.

Frank J. Wilson, Andrew McR. Barnes and *Marshall H. Lichtenstein*, for the National Association of Securities Dealers, Inc.

I.

P. Lynn Dixon, a registered representative of a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from disciplinary action taken against him by the Association. The NASD found that Dixon violated its interpretation with respect to free-riding and withholding. It censured Dixon and fined him $1,000.[1] Our findings are based on an independent review of the record.

The NASD's free-riding interpretation provides that a member participating in a public offering of securities which immediately trade at a premium in the aftermarket (a "hot issue") must make a bona

[1]The fine was imposed on Dixon, his firm, and the firm's president jointly and severally. The firm and its president did not appeal from the NASD's action.

fide distribution of such securities to the public at the public offering price.[2] To that end, the interpretation forbids the member to sell any of the securities to any of its associated persons (or members of their immediate families) or to "any account in which [such a person] has a beneficial interest."[3]

In June 1977, the firm was underwriter for a public offering of 1,000,000 shares of common stock of Tiffany Enterprises, Inc. at 10¢ a share, an issue which traded at an immediate premium in the aftermarket. During the offering, 5,000 shares of Tiffany were sold to Western Food Factories, Inc., a corporation of which Dixon is president.

The NASD found that Dixon had a "beneficial interest" in Western's account merely on the basis of the office he held with the company. In its November 5, 1973 notice to members announcing the pertinent amendment to its free-riding interpretation, the NASD defined beneficial interest in an account as follows:

"Such beneficial interest covers not only ownership interests, but every type of financial interest, including but not limited to, management fees and other fees based on the performance of the account."

In our view, the mere fact that Dixon had an official position with Western did not give him a beneficial interest in that corporation's account within the meaning of the NASD's interpretation.[4] That interpretation is designed to prevent Association members and their associated persons from taking unfair advantage of their insider positions to benefit themselves at the expense of public customers. However, the beneficial interest in the Tiffany stock purchased by Western was ostensibly held by Western's shareholders.

On the basis of the record before us, we are unable to determine whether or not Dixon or any member of his immediate family had a beneficial interest in Western's account. Under the circumstances, we shall set aside the sanctions imposed by the Association, and remand these proceedings to the NASD for further exploration of that issue, including, if necessary, the holding of additional hearings.[5]

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS and EVANS); Commissioner FRIEDMAN not participating.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17192/October 3, 1980

Admin. Proc. File No. 3-5816

In the Matter of the Application of

P. LYNN DIXON
80 West Broadway
Salt Lake City, Utah

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER REMANDING PROCEEDINGS TO REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is ORDERED that the sanctions imposed by the National Association of Securities Dealers, Inc. ("NASD") on P. Lynn Dixon be, and they hereby are, set aside, and it is further

ORDERED that these proceedings be, and they hereby are, remanded to the NASD's Board of Governors for further action in accordance with such opinion.

By the Commission.

George A. Fitzsimmons
Secretary

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[2]See NASD Manual para 2151, p. 2039-3 *et seq.*

[3]*Id.* at pp. 2040-2041.

[4]Cf. *Norman G. Jensen, Inc.* v. *Federal Maritime Commission,* 497 F.2d 1053, 1057 (C.A. 8, 1974).

[5]See Section 19(e)(1)(B) of the Securities Exchange Act. See also *Howard D. Gatliff,* Securities Exchange Act Release No. 16680 (March 20, 1980), 19 SEC Docket 934, 936.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17193/October 3, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten-day suspension of exchange and over-the-counter trading for the period commending at 11:15 a.m. on October 3, 1980 and terminating at midnight on October 12, 1980. Of the securities of Glasrock Medical Services Corp. ("Glasrock"), a Georgia corporation located in Fairburn, Georgia.

The Commission ordered the suspension of trading in Glasrock's securities because of questions concerning unusual market activity in those securities and because of questions which have been raised concerning an undisclosed accumulation of a significant percentage of shares of the company's outstanding common stock by a registered representative and numerous customers of his at one brokerage firm and the resulting potential impact on the market for Glasrock shares.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly compiled with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has compiled with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement of Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time all of its provisions have been met. It any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17194/October 6, 1980

In the Matter of

BOSTON STOCK EXCHANGE, INC.
53 State Street
Boston, Massachusetts 02109

MIDWEST STOCK EXCHANGE, INC.
120 South LaSalle Street
Chicago, Illinois 60603

NEW YORK STOCK EXCHANGE, INC.
20 Broad Street
New York, New York 10005

(SR-BSE-80-6)

(SR-MSE-80-15)

(SR-NYSE-80-38)

NOTICE OF FILING OF PROPOSED RULE CHANGES

The Boston Stock Exchange,Inc. ("BSE"), Midwest Stock Exchange, Inc. ("MSE") and New York Stock Exchange, Inc. ("NYSE") submitted on September 19, 23 and 29, 1980, respectively, proposed rule changes under Rule 19b-4 to facilitate the start-up of the Limit Order Information System ("LOIS"), an experimental system which would operate as a component of the Intermarket Trading System. LOIS is designed to achieve inter-market price protection for "away from the market" public limit orders against inferior-priced executions.

Publication of the submissions is expected to be made in the *Federal Register* during the week of October 6, 1980. In order to assist the Commission to determine whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submissions within 21 days from the date of the publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549. Reference should be made to File No. SR-BSE-30-6, SR-MSE-80-15 or SR-NYSE-80-38.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes which are filed with the Commission, and of all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filings and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organizations.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17195/October 6, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($.10 par value) of MEDCO JEWELRY CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17196/October 6, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-80-14)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on September 19, 1980, the Midwest Stock Exchange, Incorporated ("MSE") filed with the Commission copies of a proposed rule change which would reinstate certain rules pertaining to allocation of exercise notices and to stock transfer taxes which were inadvertently deleted by a previous MSE rule filing.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copes thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSE-80-14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that it would reinstate certain MSE rules which were inadvertently deleted by a previous MSE rule filing (SR-MSE-80-11) in which MSE rules regarding options trading were deleted but those rules pertaining to customer accounts were retained.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17197/October 7, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6245/October 7, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17198/October 7, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60607

(SR-CBOE-80-1)

ORDER DISAPPROVING PROPOSED RULE CHANGE

I. *Introduction*

On July 8, 1980, the Commission instituted proceedings pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act")[1] to determine whether to disapprove a proposed rule change (SR-CBOE-80-1) filed by the Chicago Board Options Exchange, Incorporated ("CBOE") which would restructure the CBOE disciplinary process.[2] The proposed rule change was adopted by membership petition, over the opposition of the CBOE Board of Directors. According to the CBOE Market Maker Association ("Association"), the proponent of the proposal, the proposed modifications are designed to improve the exchange's judicial procedures and to bring them into conformity with the law and Commission regulations. The Association also states that the proposals are designed to reduce the number of enforcement actions brought for violations of CBOE rules, in particular, the rules respecting position limits and off-floor trades by market makers.[3] The CBOE Board of Directors unanimously opposed the proposal on the grounds that adoption would result in unnecessary delay and expense in the resolution of disciplinary matters, as well as instability and lack of continuity in the disciplinary process.[4] The proposal was approved by a membership vote at a special meeting held on December 19, 1979.

After considering the proposed rule change together with all comments and submissions filed with the Commission,[5] the Commission is unable to conclude, for the reasons discussed below, that the proposed rule change is consistent with Sections 6(b)(1), 6(b)(6), 19(g)(1) and 19(h)(4) of the Act. Accordingly, the proposed rule change must be disapproved.

II. *Summary of Proposed Rule Change*

a. *Bifurcation of BCC Functions*

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[1]15 U.S.C. §78s(b)(2).

[2]Notice of the commencement of the proceeding was given by the issuance of a Commission release, Securities Exchange Act Release No. 16968 (July 8, 1980) and by publication of the *Federal Register*, 45 FR 47287 (July 14, 1980). Interested persons were invited to submit written data, views and arguments, as well as rebuttals to any such submissions.

[3]See Exhibit 3 to the CBOE's Form 19b-4A, File No. SR-CBOE-80-1.

[4]See letter dated December 5, 1979, from Walter E. Auch, Chairman of the Board, and Edward F. Neild, Chairman of the Executive Committee, to the CBOE membership. Exhibit 4 to CBOE Form 19b-4A, File No. SR-CBOE-80-1.

[5]These documents include the material prepared by the CBOE Market Maker Association contained in Exhibits 3 and 4 to the CBOE's Form 19b-4A; a memorandum dated August 13, 1980, which contains a summary of a July 25, 1980 meeting between Gene Carasick, Assistant Director, Division of Market Regulation, and representatives of the CBOE Market Makers Association concerning the proposal; a written submission from the CBOE staff dated September 15, 1980; and a written submission from the Market Maker Association dated September 23, 1980. All documents were placed and made available in the Commission's public file (File No. SR-CBOE-80-1).

The proposal would remove the existing authority of the CBOE Business Conduct Committee ("BCC") to initiate formal disciplinary actions, and would vest that authority in a new Complaint Committee ("CC"), composed of at least seven persons, whose sole function would be to determine whether or not probable cause exists to issue a statement of charges and, if so, to issue the formal charges.[6] Respondents would be entitled to an oral hearing before the CC, with the right to present evidence and to be represented by counsel.[7] If a statement of charges is issued by the CC, a second evidentiary hearing would be held, this time before the BCC, to determine whether a violation has occurred and whether to accept offers of settlement.

The proposal would eliminate the current ability of the BCC to hold hearings by a panel of its members and require the BCC to hold hearings with a full committee.[8] Action taken by the BCC would require the vote of a majority of its members.[9] Similar requirements would be applicable to the CC.[10]

b. *Composition and Method of Selection of BCC and CC Members*

Eligibility for membership on the BCC and CC would be limited to members and Registered Options Principals ("ROP") associated with members.[11] Thus, the current practice of having a public representative or an officer of the CBOE on the BCC would be discontinued. The proposal also would provide for the annual election of BCC and CC members by the CBOE membership. Candidates for election to either committee would be selected by the CBOE Nominating Committee and additional candidates could be nominated by a petition signed by 100 members.[12] Eligibility for BCC membership would be limited to members or ROPs who are not serving on the Board of Directors and who had not served on the Appeals Committee[13] or the Complaint Committee during the preceding two years. Similarly, a candidate for the CC could not be serving on the Board of Directors nor have been a member of the BCC of the Appeals Committee during the preceding two years.

c. *Attorney's Fees*

The proposal would authorize the BCC, in its discretion, to award to a respondent the payment of reasonable expenses and attorneys fees if the BCC finds that there was no reasonable basis to support the charge brought against the respondent, or that a charge was frivolous, was brought for the purpose of harassing the respondent or otherwise was brought in bad faith, or was substantially duplicative of other charges brought against the respondent.[14]

d. *Review by Appeals Committee*

The rule filing would divest the Board of Directors of its authority to review decisions of the BCC, either on its own motion or on petition by a respondent. The proposal would place such authority in the Appeals

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[6]Proposed Rule 2.11.

[7]In addition, respondents would be afforded the right to submit a written statement to the CC in opposition to the recommendation of the CBOE staff (proposed amendment to Rule 17.5); a procedure which CBOE already permits with respect to the current BCC at the probable cause stage of the disciplinary process.

[8]The minimum number of BCC members would be increased from four to seven.

[9]Proposed amendment to Rule 17.5

[10]*Id.*

[11]Proposed Rules 2.5 and 2.11.

[12]Proposed Rules 2.5 and 2.11.

The Nominating Committee presently has responsibility for selecting candidates for the Board of Directors and all other special and standing committees of the CBOE. It is composed of seven CBOE members: six members of the Nominating Committee are elected by the membership and one member is appointed by the Chairman of the Executive Constitution, Article IV, Sections 4.1 and 4.3.

[13]The Appeals Committee currently has responsibility for conducting hearings and reviews with respect to member grievances against the CBOE relating solely to non-disciplinary matters. The Appeals Committee is composed of 10 individuals: nine CBOE members and one member of the Board of Directors selected by the Chairman of the Executive Committee with the approval of the Board. CBOE Rule 2.11.

[14]Proposed amendment to Rule 17.8.

Committee[15] whose decision would be final.[16]

e. *Ex Parte Communications*

The rule filing provides that during the pendency of a disciplinary proceeding, "no person who is not a member of the BCC, the Board or the Appeals Committee shall make or knowingly cause to be made to any person who is not a member of the BCC, the Board, or the Appeals Committee an ex parte communication relevant to the merits of the proceedings."[17] Thus, the propsal would preclude all *ex parte* communications between CBOE staff members regarding the merits of any pending disciplinary proceeding, but would not preclude *ex parte* communications between the CBOE staff and the BCC, the Board or the Appeals Committee.

f. *Miscellaneous Amendments*

Other significant modifications to the CBOE disciplinary process that would be effected by the proposal include: (i) a requirement that any determination by the BCC that a member has committed a violation be based on clear and convincing evidence;[18] and, (ii) the imposition of a three year statute of limitations for all disciplinary proceedings, except actions for theft, embezzlement, fraud, or manipulation.[19]

III. *Summary of Submission Received*[20]

The CBOE Market Maker Association stated that one of the concerns which prompted the proposal is its belief that a disproportionately large number of disciplinary actions are brought by the CBOE against its floor members, particularly market makers, when compared to those brought by the American Stock Exchange and New York Stock Exchange against their respective floor members. The Association also stated its belief that CBOE staff resources are unduly directed towards market maker violations and that off-floor violations are not prosecuted as vigorously.

More specific concerns expressed by the Market Maker Association include: the CBOE's schedule of fines for position limit violations is too rigid; the potential respondent is not informed of the nature of the charges being investigated until issued by the BCC and is not permitted to be present before the BCC when the CBOE staff presents its recommendations as to whether to issue charges; while the CBOE now permits a potential respondent to file a written submission with the BCC arguing why he should not be named in a statement of charges, only sworn testimony taken by the CBOE staff may be submitted;[21] respondents are not permitted to be present when the CBOE staff presents offers of settlement to the BCC[22]; if an offer of settlement is rejected by the BCC, the respondent is not informed of the reasons for the rejection; and appeals from decisions of the BCC are heard by an Appeals Committee of the Barod of Directors, composed of three Board members, and the entire Board will see only this committee's recommendation, unless a

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[15]Proposed amendment to Rule 17.9.

[16]Of course, a respondent wishing further review could file a petition for review with the Commission under Section 19(d)(2) of the Act.

[17]Proposed amendment to Rule 17.11

[18]Proposed amendment to Rule 17.5

[19]Proposed amendment to Rule 17.2

[20]The only comments regarding the proposal received during the period provided for public comment were conveyed by the Market Maker Association to Gene Carasick, Assistant Director, Division of Market Regulation, at a meeting in Chicago on July 25, 1980. A summary of the Market Maker Association's comments was placed in the Commission's public file. Subsequent to the expiration of the comment period the CBOE staff filed a written submission which reiterated statements previously made by the CBOE Board and staff which were incorporated as part of the rule filing and the Market Maker Association filed a written submission which substantially reiterated the statements previously made by representatives of the Market Maker Association at the July 25 meeting and in previous material prepared by the Association that was incorporated as part of the CBOE's rule filing. See note 5 *supra*.

[21]Exhibit 4 to the CBOE's 19b-4A which states that the Executive Committee, on September 14, 1979, had granted this right to respondents, does not indicate that the written submission is limited to sworn testimony.

[22]Exhibit 4 to the CBOE's 19b-4A states that the Executive Committee recently granted this right to respondents.

Board member specifically requests to see the record.

IV. *Discussion*

Section 19(b)(2) of the Act requires the Commission to approve a proposed rule change of an exchange if it finds that the proposal is consistent with the applicable requirements of the Act and the rules and regulations thereunder. The Commission must disapprove a proposed rule change if it is unable to make such a finding.

In its order instituting this proceeding, the Commission set forth the following potential grounds for disapproval of the proposed rule change under the Act: (1) Section 6(b)(1),[23] which provides that an exchange must be so organized and have the capacity to carry out the purposes of the Act, and to comply and to enforce compliance by its members and associated persons with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange; (2) Seciton 6(b)(6),[24] which requires that exchange rules must provide that its members and associated persons shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the exchange; (3) 6(b)(7) which requires that Exchange rules must provide fair procedures for the disciplining of members and persons associated with members;[25] (4) Section 19(g)(1)[26] which requires exchanges to enforce compliance by its members and associated persons with the Act, the rules and regulations thereunder and exchange rules; and (5) Section 19(h)(4)(A),[27] which empowers the Commission to remove from office any officer or director of an exchange for failure, without reasonable justification, to enforce compliance with the Act, the rules thereunder and the rules of the exchange.

While a self-regulatory organization enjoys flexibility under the Act to structure its disciplinary procedures, the Commission is unable to find that the proposed rule change is consistent with the requirements of the Act and, therefore, must disapprove the proposed rule change. Indeed, it appears to the Commission that the cumulative effect of the proposed amendments would be to undermine significantly the CBOE's ability to enforce compliance with the Act and Commission and exchange rules, in derogation of its ability to discharge its statutory responsibilities.

The Commission has concluded that certain of the provisions of the proposed rule change regarding the procedures to be followed by the BCC and CC would substantially impair the administration of the CBOE disciplinary process. First, the proposal to preclude both the BCC and CC from acting by a subcommittee of their members, because of the potential difficulty in scheduling hearings at times convenient to all committee members, would likely result in fewer hearings and undue delays in the resolution of disciplinary matters. Second, the proposal to afford respondents the right to present evidence and witnesses at the CC hearing, which is convened solely to determine whether probable cause exists to issue formal charges, as well as at the BCC hearing, would result in a respondent effectively obtaining two hearings on the merits—a right not even provided a defendant in a criminal action. The Commission cannot conclude that it is either necessary or appropriate to permit a member to obtain a full adjudicatory hearing at both of these stages of the disciplinary process. Nor does the Commission believe that an adjudicatory hearing at the probable cause stage would enhance the procedural fairness of the disciplinary process, particularly since the CBOE permits a potential respondent to make a written submission to the BCC at the probable cause stage setting forth reasons why he should not be charged. Not only would these proposed amendments not provide any significant enhancement of procedural safeguards, but the Commission has concluded that these provisions will likely result in unnecessary delay and expense in the resolution of CBOE disciplinary matters. Accordingly, on balance, the Commission is unable to find that these provisions are consistent with Sections 6(b)(1), 6(b)(6) and 19(g)(1) of the Act.

The Commission is concerned that other provisions, by excluding the CBOE Board of Directors from any meaningful role in the disciplinary process, would

[23] 15 U.S.C. 78f(b((1).

[24] 15 U.S.C. 78f(b)(6).

[25] 15 U.S.C. 78f(b)(7).

[26] 15 U.S.C. 78s(g)(1).

[27] 15 U.S.C. 78s(h)(4)(A).

undermine the ability of the CBOE Board of Directors effectively to enforce compliance with the Act, the rules thereunder and CBOE rules, as contemplated by Section 19(b)(4) of the Act. The annual election of CC and BCC members by the CBOE membership, taken together with the elimination of the authority of the Executive Committee Chairman to remove disciplinary committee members and the elimination of the authority of the Board to review BCC decisions, would preclude any oversight by the Board to ensure that committee members discharge their responsibilities. Members of the BCC currently are selected by the Board[28] which, as such, has a responsibility to ensure enforcement of the provisions of the Act, the rules thereunder and exchange rules. Thus, the Board has a duty to select persons to serve on disciplinary committees who are likely to discharge their responsibilities in a fair and impartial manner and to remove members who do not.

These provisions would preclude the CBOE Board from taking steps to ensure that the members of the CC and BCC discharge their obligations. In order for the Board to carry out its responsibilities under the Act, however, it must retain some measure of control over the exchange disciplinary process to ensure that individuals serving on disciplinary panels responsibly discharge their obligations. The Commission believes that the elimination of the Board's authority in this regard would impede the CBOE's ability to enforce compliance with the Act, the rules thereunder and exchange rules, and to ensure that members who violate the provisions are appropriately disciplined. In addition, it would be virtually impossible for the Board to discharge its responsibilities under the Act. In light of the above, the Commission is unable to conclude that the provisions requiring that committee members be elected annually by the membership and limiting the authority of the Board of Directors and the Chairman of the Executive Committee are consistent with Sections 6(b)(1), 6(b)(6), 19(g)(1) and 19(h)(4) of the Act.

The Commission has concluded that other provisions would erect procedural hurdles that would undermine the effectiveness of the CBOE disciplinary process and, at the same time, are not necessary to ensure procedural fairness to respondents in CBOE disciplinary matters. First, the BCC would be required to apply a clear and convincing standard of evidence in all disciplinary proceedings. The Commission, however, currently applies that standard only in proceedings involving fraud, pending a final determination by the Supreme Court in *Steadman v. Securities and Exchange Commission*,[29] as to the appropriate standard of proof in administrative proceedings brought by the Commission for violations of the anti-fraud provisions of the federal securities law. The Commission applies the lesser, preponderance of the evidence standard for all other administrative proceedings. Thus, the proposed rule change would result in the CBOE applying a more rigorous standard of proof in disciplinary proceedings brought to enforce exchange rules and the federal securities laws than the Commission applies in its review of self-regulatory organization disciplinary actions or in its own administrative proceedings brought to enforce the federal securities laws, at least with respect to proceedings that do not involve the anti-fraud provisions.[30]

As a result, the Commission would be forced to expend its already limited resources to investigate and bring its own proceedings for violations of the securities laws and regulations that were not prosecuted successfully by the exchange because of

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[28]The Commission notes that while the CBOE currently permits a public representative to sit on its BCC, the proposal would preculde a public representative from sitting on either the CC or BCC.

[29]603 F.2d 1126 (5th Cir. 1978). There is a split of authority on whether the Commission must apply a clear and convincing standard of proof in its admininstrative proceedings involving allegations of violations of the anti-fraud provisions of the federal securities laws. *Compare Collins Securities Corporation v. Securities and Exchange Commission*, 562 F.2d 820 (D.C. Cir. 1977) with *Steadman v. Securities and Exchange Commission, supra*. The Supreme Court has granted *certiorari* in *Steadman* to decide this question. 48 U.S.L.W. 3693 (April 29, 1980).

[30]Moreover, for the reasons set forth in the Commission's brief in the *Steadman* case, the Commission believes that the preponderance of the evidence standard, which is the standard best calculated to arrive at correct factual determinations, is the appropriate standard of proof in proceedings brought to enforce the securities laws.

the imposition of the stricter standard of proof.[31] This result is inconsistent with the statutorily prescribed scheme of self-regulation under which self-regulatory organizations have primary responsibility to enforce compliance with the securities laws by disciplining their members and associated persons. Accordingly, the Commission is unable to conclude that this proposal is consistent with Sections 6(b)(1), 6(b)(6) and 19(g)(1) of the Act.

Second, the proposed three year statute of limitations for the initiation of disciplinary actions would require the Commission to assume sole responsibility for enforcing violations discovered subsequent to the expiration of the statute of limitations, and, therefore, also is inconsistent with the CBOE's primary responsibility to govern its membership under Sections 6(b)(1), 6(b)(6) and 19(g)(1) of the Act. Moreover, as a general policy matter, because self-regulatory organization disciplinary actions, like Commission enforcement actions, are remedial in nature and are brought in the public interest, the Commission believes that there should be no statute of limitations for the prosecution of such violations, regardless of their nature.[32] The Commission's authority under Section 19(e)(1)(B) of the Act to cancel, reduce or require remission of any sanction which it determines to be excessive or oppressive provides sufficient protection against unfairness that might result from the initiation of actions that have been unreasonably delayed.

Finally, while the proposal was intended to prohibit *ex parte* communications between the CBOE staff and the Board of Directors, the Appeals Committee or the BCC, its language would instead prohibit all *ex parte* communications between CBOE staff members regarding pending disciplinary proceedings. Such a provision would effectively preclude the CBOE staff from conducting an investigation. Consequently, the Commission has determined that this proposal is inconsistent with Sections 6(b)(1), 6(b)(6) and 19(g)(1) of the Act.[33]

IV. *Conclusions*

For the reasons set forth above, the Commission has concluded that the proposed rule change would substantially diminish the effectiveness of the CBOE disciplinary program and would impede the ability of the CBOE and its Board of Directors and officers to discharge their responsibilities under the Act. Accordingly, the Commission is unable to conclude that the proposed rule change is consistent with Sections 6(b)(1), 6(b)(6), 19(g)(1) and 19(h)(4) of the Act.

The Commission believes that while the CBOE Market Maker Association may have intended the proposed rule change to remedy a number of legitimate concerns, those objectives cannot be achieved, consistent with the Act, by making it procedurally difficult or otherwise discouraging the CBOE from enforcing its rules and the federal securities laws. While certain portions of the proposed rule change if viewed in isolation may in fact represent acceptable changes to the CBOE disciplinary process, the conclusions that the Commission has reached today reflect a Commission judgment that the overall effect of the instant proposals, as filed, would be to substantially reduce the effectiveness of a heretofore effective CBOE disciplinary program. The Commission encourages the proponents of the rule proposal to meet with the CBOE staff to address its legitimate concerns in a more constructive manner.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-80-1) to modify the CBOE disciplinary process, be, and hereby is, disapproved.

By the Commission.

George A. Fitzsimmons
Secretary

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[31]The Commission also might find it necessary to bring proceedings under Section 21(d) to enforce the exchange's rules.

[32]The Act does not expressly provide a statute of limitations for actions brought under its provisions with the exception of private actions brought under Sections 9 and 18 (15 U.S.C. 78 1, r), which provide that a private action must be brought within one year of discovery of the facts constituting the violation and within three years after such violation occurred.

[33]While the CBOE and the Market Maker Association were informed of the unintended effect of this provision, it was not amended to reflect its true intent, and, thus, must be considered by the Commission as submitted.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17199/October 7, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-9

The Municipal Securities Rulemaking Board (the "MSRB") submitted on October 1, 1980, a proposed rule change under Rule 19b-4 (17 CFR 240.19b-4) to amend MSRB rule A-13 by increasing the underwriting assessment fee payable to the MSRB by municipal securities brokers and municipal securities dealers from .001% to .003% of the par value of a new issue. The proposed rule change would apply to all new issues of municipal securities, with a par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities, which a municipal securities broker or municipal securities dealer, on or after October 1, 1980, contracted to purchase from an issuer.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 13, 1980. In order to assist the Commission in determining whether to abrogate the proposed rule change, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between tne Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17200/October 7, 1980

NOTICE OF FILING OF PROPOSED AMENDMENT TO THE PLAN FOR THE PURPOSE OF CREATING AND OPERATING AN INTERMARKET COMMUNICATIONS LINKAGE

File No. 4-208

On September 3, 1980, the participants in the Intermarket Training System ("ITS")[1] filed with the Commission an amendment ("Amendment") to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage ("ITS Plan").[2] The ITS is an experimental market linkage facility which links participating market centers and provides facilities and procedures for (1) routing of commitments to trade and administrative messages between and among the participants, and (2) participation, under certain conditions, by members of all participant markets in opening transactions in those markets.[3]

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[1]The participants include the American, Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges.

[2]The ITS Plan and amendments thereto are contained in File No. 4-208.

[3]The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. Approval on a temporary basis has been extended through January 31, 1983. Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

The Amendment would provide the ITS Operating Committee[4] with authority to implement and administer a pilot program with respect to the Pre-Opening Application created under the terms of the ITS Plan.[5] The pilot would be designed to determine the appropriateness of effecting the Pre-Opening Application based on proce parameters outside the previous trading day's closing price which are other than those currently contained in the ITS Plan and shortening the period of time after which an inquiring specialist may open a stock in his market after inquiring of other specialists. The pilot only may be implemented if the price and time parameters selected to be used in the pilot are agreed to by all members of the ITS Operating Committee. In addition, the authority granted to the ITS Operating Committee will expire six months after Commission approval of the Amendment, unless extended by unanimous consent of the ITS participants.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 13, 1980. In order to assist the Commission in determining whether to approve the Amendment, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4-208.

Copies of the submission, including all amendments, all written statements with respect to the Amendment which are filed with the Commission, and of all written communications relating to the Amendment between the Commission and any person, other than those which may be withheld from the public,[6] will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

George A. Fitzsimmons
Secretary

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[4]The ITS Operating Committee includes one member from each ITS participant.

[5]See Section 5(b) of the ITS Plan. The Pre-Opening Application enables a specialist on one ITS participant to obtain any pre-opening interest of specialists on other participants. Currently, a specialist arranging an opening transaction is required to inquire of interest from other specialists whenever he determines that the opening transaction in his market in a stock traded in the ITS will be at a price which is more than one-quarter of a point away from the closing price on the previous trading day. The inquiring specialist is prohibited from opening the stock until not less than five minutes after inquiring of other specialists.

[6]See 17 C.F.R. §240.24b-2.

[7]See Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. §78d-1); 17 CFR §200.30-3(a)(29).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17201/October 8, 1980

In the Matter of Applications of the

BOSTON STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Boston Stock Exchange, Inc. ("BSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more other national securities exchanges:[1]

Cox Broadcasting Corporation, common, $1 Par Value (File No. 7-5032);

American Brands, Inc., $2 67 Cum. Conv. Pfd., No Par Value (File No. 7-5104);

Georgia-Pacific Corporation, Series A Adjustable Rate, Conv. Pfd. (File No. 7-5105);

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[1]Notice of these applications has been given by publication in the *Federal Register*.

McDermott (J. Ray) & Co., Inc., $2.20 Series A Cum. Conv. Pfd., $1 Par Value (File No. 7-5106);

Reynolds (R.J.) Industries, Inc., $2.25 Cum. Conv. Pfd., No Par Value (File No. 7-5107);

Aloha Airlines Inc., common, $1.25 Par Value (File No. 7-5470);

Barber Oil Corporation (Del.), common, No Par Value (File No. 7-5471);

Berven Carpets Corp., common, $.10 Par Value (File No. 7-5472);

California Portland Cement Co., capital, $5 Par Value (File No. 7-5473);

Conrac Corp., common, $.50 Par Value (File No. 7-5474);

Dillingham Corp., common, No Par Value (File No. 7-5475);

Financial Corp. of Santa Barbara, capital, $1 Par Value (File No. 7-5476);

Gap Stores Inc. (The), common, $.05 Par Value (File No. 7-5477);

Genisco Technology Corp., common, $.50 Par Value (File No. 7-5478);

Golden Nugget Inc., common, $.833 Par Value (File No. 7-5479);

Golden West Homes, Inc., common, No Par Value (File No. 7-5480);

Kinark, common, $.10 Par Value (File No. 7-5481);

McKeon Construction, common, $1 Par Value (File No. 7-5482);

Mesta Machine Co., common, $5 Par Value (File No. 7-5483);

Mission Insurance Group, Inc., common, No Par Value (File No. 7-5484);

Movielab, Inc., common, $.50 Par Value (File No. 7-5485);

National Medical Enterprise Inc. (NV), common, $.05 Par Value (File No. 7-5486);

North American Royalties, Inc., common, $1 Par Value (File No. 7-5487);

Omark Industries, Inc., common, No Par Value (File No. 7-5488);

Pogo Producing Company, common, $1 Par Value (File No. 7-5489);

SSP Industries, common, $1 Par Value (File No. 7-5490);

Salem Corporation, common, $.50 Par Value (File No. 7-5491);

Sharon Steel Corp., common, $.014 Par Value (File No. 7-5492);

Stanwood Corp., common, $1 Par Value (File No. 7-5493);

Thriftimart, Inc., 5% Cum. Part. Class A, $1 Par Value (File No. 7-5494);

Transcon Lines, common, $.31-1/4 Par Value (File No. 7-5495);

Trico Industries, Inc., common, $.50 Par Value (File No. 7-5496);

URS Corp., common, $.25 Par Value (File No. 7-5497);

Unimax Group Inc., common, $.75 Par Value (File No. 7-5498);

Vernitron Corp. (Del.), common, $.10 Par Value (File No. 7-5499);

Wallace Murray Corp., common, $3.75 Par Value (File No. 7-5500);

American Stores Company, common, $1 Par Value (File No. 7-5133);

Burns (R.L.) Corp., common, $.10 Par Value (File No. 7-5153);

Executive Industries, Inc., common, $.125 Par Value (File No. 7-5154);

Federal Resources Corp., common, $.50 Par Value (File No. 7-5155);

Financial Federation Inc., capital, $1 Par Value (File No. 7-5156);

Frigitronics Inc., common, $.10 Par Value (File No. 7-5157);

Fuqua Industries Inc., common, $1 Par Value (File No. 7-5158);

GDV Inc., common, $1 Par Value (File No. 7-5159);

General American Oil Co. of Texas, common, $1 Par Value (File No. 7-5160);

General Exploration Co., common, $1 Par Value (File No. 7-5161);

Genstar Ltd., common, No Par Value (File No. 7-5162);

Gerber Products Co., common, $2.50 Par Value (File No. 7-5163);

Golden West Financial Corp., common, $.10 Par Value (File No. 7-5164);

Granger Association, capital, $1 Par Value (File No. 7-5165);

Great Basins Petroleum Co., common, $.40 Par Value (File No. 7-5166);

Grow Group, Inc., common, $.10 Par Value (File No. 7-5167);

Guardian Industries Corp., common, $1 Par Value (File No. 7-5168);

Hecla Mining Co., common, $.25 Par Value (File No. 7-5170);

Heileman (G) Brewing Co., Inc., common, $1 Par Value (File No. 7-5171);

House of Fabrics, Inc. (Del.), common, No Par Value (File No. 7-5172);

Humana Inc., common, $.16-2/3 Par Value (File No. 7-5173);

International Banknote Co., Inc., common, $1 Par Value (File No. 7-5174);

Interstate Power Co., common, $3.50 Par Value, (File No. 7-5175);

Iowa-Illinois Gas & Electric Co., common, $1 Par Value (File No. 7-5176);

IPCO Corp., common, $1 Par Value (File No. 7-5177);

Kaiser Steel Corp., common, $.66-2/3 Par Value (File No. 7-5178);

Keene Corp. (N.Y.), common, $.10 Par Value (File No. 7-5179);

Lehman Corp. (The), capital, $1 Par Value (File No. 7-5180);

Lennar Corp., common stock, $.10 Par Value (File No. 7-5181);

Macrodyne Industries, Inc., common, $.10 Par Value (File No. 7-5182);

Marshall Field & Co., common, $1 Par Value (File No. 7-5183);

Measurex Corp., common, No Par Value (File No. 7-5184);

Mesa Petroleum Co., common, $1 Par Value (File No. 7-5185);

Mission Investment Trust, shares of beneficial interest, $1 Par Value (File No. 7-5186);

Mitchell Energy & Development Corp., common, $.10 Par Value (File No. 7-5187);

Narco Scientific, Inc., common, $1 Par Value (File No. 7-5188);

New Idria, Inc., capital, $.50 Par Value (File No. 7-5189);

Nortek, Inc., common, $1 Par Value (File No. 7-5190);

Northwest Energy Co., common, $1 Par Value (File No. 7-5191);

Oklahoma Natural Gas Co., common, No Par Value (File No. 7-5192);

Pacific Lumber Co. (The), common, $1-1/9 Par Value (File No. 7-5193);

Pargas Inc., common, $1 Par Value (File No. 7-5194);

Piedmont Aviation, common, $1 Par Value (File No. 7-5195);

Presley Companies (The), common, $.25 Par Value (File No. 7-5196);

RLC Corp., common, $1 Par Value (File No. 7-5197);

Republic Corp., common, $2.50 Par Value (File No. 7-5198);

Royal Crown Companies Inc., common, $1 Par Value (File No. 7-5200);

Sabine Corp., common, No Par Value (File No. 7-5201);

Seatrain Lines Inc., capital, $1 Par Value (File No. 7-5202);

Shapell Industries Inc., common, $1 Par Value (File No. 7-5203);

Shearson Loeb Rhodes Inc., common, $.10 Par Value (File No. 7-5204);

Southeastern Public Service Co., common, $1 Par Value (File No. 7-5206);

Specialty Restaurants Corp., common, $1 Par Value (File No. 7-5205);

Standard-Pacific Corp., common, $.25 Par Value (File No. 7-5207);

Steego Corp., common, $.10 Par Value (File No. 7-5208);

Transco Companies Inc., common, $.50 Par Value (File No. 7-5210);

Tubos de Acero de Mexico, S.A., ADR's common, 50 Mexican Pesos Par Value (File No. 7-5211);

Tyler Corp., common, $.10 Par Value (File No. 7-5212);

United Foods, Inc., common, $1 Par Value (File No. 7-5213);

Univar Corp., common, $.33-1/3 Par Value (File No. 7-5214);

Washington Gas Light Co., common, No Par Value (File No. 7-5215);

Westcoast Transmission Co., Ltd., common, No Par Value (File No. 7-5216);

Wheeling-Pittsburgh Steel Corp., common, $10 Par Value (File No. 7-5217);

Zurn Industries, Inc., common, $.50 Par Value (File No. 7-5218);

Wyly Corporation (New), common, $.10 Par Value (File No. 7-5069);

Fluor Corp. (Del.), common, $.62-1/2 Par Value (File No. 7-5070);

UNC Resources, Inc. (Va.), common, $.20 Par Value (File No. 7-5071);

Savin Corp. (Del.), common, $.10 Par Value (File No. 7-5072);

Alco Standard Corp., common, No Par Value (File No. 7-5077);

Barry Wright Corp., common, $1 Par Value (File No. 7-5078);

Caesar's World, Inc., common, $.10 Par Value (File No. 7-5080);

Cessna Aircraft Co., common, $1 Par Value (File No. 7-5081);

Charter Co. (The), common, $1 Par Value (File No. 7-5082);

Church's Fried Chicken, common, $.12 Par Value (File No. 7-5083);

Computer Sciences Corp., common, $1 Par Value (File No. 7-5084);

Data Terminal Systems, Inc., common, $.20 Par Value (File No. 7-5085);

Hall (Frank B.) & Co., Inc., common, $.50 Par Value (File No. 7-5086);

International Rectifier Corp., common, $1 Par Value (File No. 7-5088);

Levi Strauss & Co., common, $1 Par Value (File No. 7-5089);

Maryland Cup Corp., capital, $.33-1/3 Par Value (File No. 7-5090);

Parker Drilling Co., common, $1 Par Value (File No. 7-5091);

Playboy Enterprises, Inc., common, $1 Par Value (File No. 7-5092);

Prime Computer Inc., common, $.0125 Par Value (File No. 7-5093);

Sambo's Restaurant, Inc., common, No Par Value (File No. 7-5094);

Saxon Industries, Inc., common, $.25 Par Value (File No. 7-5095);

Shaklee Corp., common, No Par Value (File No. 7-5096);

Storage Technology Corp., common, $1 Par Value (File No. 7-5097);

Sun Company, The, common, No Par Value (File No. 7-5098);

Texas International Co., common, $.25 Par Value (File No. 7-5099);

United Inns, Inc., common, $ Par Value (File No. 7-5100);

Webb (Del E.) Corp., common, No Par Value (File No. 7-5101);

Wickes Corp., (The), common, $2.50 Par Value (File No. 7-5102);

Amdauhl Corp. (Del.), common, $.05 Par Value (File No. 7-5042);

Arrow Electronics, Inc., common, $1 Par Value (File No. 7-5043);

Arvin Industries, Inc. (Ind.), common, $2.50 Par Value (File No. 7-5044);

Datapoint, Corp., common, $.25 Par Value (File No. 7-5045);

General Host Corp., common, $1 Par Value (File No. 7-5046);

Itel Corp., common, $1 Par Value (File No. 7-5047);

Lincoln National Corp. (Ind.), common, $2.50 Par Value (File No. 7-5048);

Memorex Corp., common, $1 Par Value (File No. 7-5049);

NLT Corp., common, $5 Par Value (File No. 7-5050);

Genuine Parts Co., common, $1 Par Value (File No. 7-5060);

Systron Dohner Corp. (Del.), common, No Par Value (File No. 7-5061);

Teradyne, Inc., common, $.125 Par Value (File No. 7-5062);

Ihop Corp., common, $1 Par Value (File No. 7-4906);

American Medical International Inc., common, $1 Par Value (File No. 7-4910);

Development Corporation of America, common, $.10 Par Value (File No. 7-4911);

Best Products Co., Inc., common, $1 Par Value (File No. 7-5584);

Browning-Ferris Industries, Inc., common, $.16-2/3 Par Value (File No. 7-5585);

Carolina Freight Carriers Corp., common, $.50 Par Value (File No. 7-5586);

Cenco Incorporated, common, $1 Par Value (File No. 7-5587);

Centronics Data Computer Corp., common, $.01 Par Value (File No. 7-5588);

Cetec Corp., common, No Par Value (File No. 7-5589);

Coleman Company, Inc., common, $5 Par Value (File No. 7-5590);

Collins Foods International Inc., common, $.10 Par Value (File No. 7-5591);

Adams-Millis Corporation, common, No Par Value (File No. 7-5573);

Albertson's Inc., common, $1 Par Value (File No. 7-5574);

American Medical Buildings, Inc., common, $.10 Par Value (File No. 7-5576);

Ampco Pittsburgh Corp., common, $1 Par Value (File No. 7-5577);

Applied Digital Data Systems, Inc., common, $.01 Par Value (File No. 7-5578);

Arcata Corp., common, $.25 Par Value (File No. 7-5579);

Baldwin Securities Corp., common, $.01 Par Value (File No. 7-5580);

Ball Corporation, common, $2.50 Par Value (File No. 7-5581);

Baruch Foster Corp., common, $.50 Par Value (File No. 7-5582);

Bergen Brunswig Corp., Class A Common Stock, No Par Value (File No. 7-5583);

Texas Eastern Corp., common, $3.50 Par Value (File No. 7-4912);

United Energy Resources, Inc., common, $1 Par Value (File No. 7-4913);

Utah Power and Light Co., common, $12.80 Par Value (File No. 7-4914);

APL Corp., common, $.10 Par Value (File No. 7-5135);

AZL Resources, Inc., common, No Par Value (File No. 7-5136);

Alaska Airlines, Inc., common, $1 Par Value (File No. 7-5137);

Amrep Corp., common, $.10 Par Value (File No. 7-5138);

Bancal Tri-State Corp., common, $15 Par Value (File No. 7-5139);

Bandag, Inc., common, $1 Par Value (File No. 7-5140);

Bangor Punta Corp., common, $1 Par Value (File No. 7-5141);

Craig Corp., common, $.25 Par Value (File No. 7-5142);

DWG Corp., common, $1 Par Value (File No. 7-5143);

Deltona Corp., common, $1 Par Value (File No. 7-5144);

Mobil Corp., common, $7.50 Par Value (File No. 7-5145);

Moore McCormack Resources, Inc., common, $2.50 Par Value (File No. 7-5146);

Fleetwood Enterprises, Inc. (Del.), capital, $1 Par Value (File No. 7-5030);

American Natural Resources, common, $1 Par Value (File No. 7-4770);

Cordura Corp. (Del.), common, No Par Value (File No. 7-4771);

Penn Central Corp., common, $1 Par Value (File No. 7-5131);

North Canadian Oils Ltd., common, $.25 Par Value (File No. 7-5619);

Northern California Savings and Loan Association, capital, No Par Value (File No. 7-5620);

Overseas Shipholding Group, Inc., common, $1 Par Value (File No. 7-5621);

Palm Beach Incorporated, common, $.25 Par Value (File No. 7-5622);

Peoples Drug Stores, Inc., common, $1 Par Value (File No. 7-5623);

Petro-Lewis Corporation, common, $1 Par Value (File No. 7-5624);

Philadelphia Suburban Corp., common, $1 Par Value (File No. 7-5625);

Plantronics, Inc., common, No Par Value (File No. 7-5626);

Commercial Alliance Corp., common, $.10 Par Value (File No. 7-5592);

Cooper Laboratories, Inc., common, $.10 Par Value (File No. 7-5593);

Copperweld Corp., common, $2.50 Par Value (File No. 7-5594);

Crystal Oil Co., common, $1 Par Value (File No. 7-5595);

Cubic Corp., capital, No Par Value (File No. 7-5596);

Dayton-Hudson Corp., common, $1 Par Value (File No. 7-5597);

Dutch Boy Inc., common, No Par Value (File No. 7-5598);

Ehrenreich Photo-Optical Industries, Inc., common, $.10 Par Value (File No. 7-5599);

Elixir Industries, common, $1 Par Value (File No. 7-5600);

Elsinore Corp., common, No Par Value (File No. 7-5601);

Farah Manufacturing Co., Inc., common, $4 Par Value (File No. 7-5602);

Fidelity Financial Corporation, common, $1 Par Value (File No. 7-5603);

Financial Corporation of America, common, $.50 Par Value (File No. 7-5604);

Fotomat Corporation, common, $.10 Par Value (File No. 7-5605);

Friendly Frost Inc., common, $.10 Par Value (File No. 7-5606);

Greit Realty Trust, Shares of Beneficial Interest, No Par Value (File No. 7-5607);

Harnischfeger Corp., common, $1 Par Value (File No. 7-5608);

Hershey Foods Corp., common, No Par Value (File No. 7-5609);

Instrument Systems Corp., common, $.25 Par Value (File No. 7-5610);

International Controls Corp., common, $.10 Par Value (File No. 7-5611);

Iowa Public Service Co., common, $5 Par Value (File No. 7-5612);

Marshall Industries, common, $1 Par Value (File No. 7-5613);

Mite Corp., common, $1 Par Value (File No. 7-5615);

Mortgage Trust of America, Shares of Beneficial Interest, $1 Par Value (File No. 7-5616);

National Mine Service Co., common, $1 Par Value (File No. 7-5617);

Niagara Share Corp., common, $1 Par Value (File No. 7-5618);

Atlantic City Electric, common, $3 Par Value (File No. 7-5711);

Audiotronics Corp., common, $1 Par Value (File No. 7-5712);

C.H.B. Foods, Inc., common, $1 Par Value (File No. 7-5713);

C P National Corp., common, $5 Par Value (File No. 7-5714);

Earth Resources Co., common, No Par Value (File No. 7-5715);

Energy & Utility Shares, Inc., common, $1 Par Value (File No. 7-5716);

Gulf Resources & Chemical Corp., common, $.10 Par Value (File No. 7-5717);

Juniper Petroleum Corporation, common, $.10 Par Value (File No. 7-5718);

National Patent Development Corp., common, $.01 Par Value (File No. 7-5719);

Pennsylvania Engineering Corp., common, $.10 Par Value (File No. 7-5720);

Standard Metals Corp., common, $.03 Par Value (File No. 7-5721);

Products Research and Chemical Corp., common, $2 Par Value (File No. 7-5627);

Publicker Industries Inc., common, $5 Par Value (File No. 7-5628);

Pueblo International Inc., common, $1 Par Value (File No. 7-5629);

Republic Airlines, Inc., common, No Par Value (File No. 7-5630);

Rollins, Incorporated, common, $1 Par Value (File No. 7-5631);

Saga Corporation, common, $1 Par Value (File No. 7-5632);

Security Pacific Corp., common, $10 Par Value (File No. 7-5633);

SGL Industries, Inc., common, $.20 Par Value (File No. 7-5634);

Smith International, Inc., common No Par Value (File No. 7-5635);

South Jersey Industries, Inc., common, $2.50 Par Value (File No. 7-5636);

Superscope Inc., common, $1 Par Value (File No. 7-5637);

Systems Engineering Laboratories, Inc., common, $1 Par Value (File No. 7-5638);

Tannetics, Inc., common, $1 Par Value (File No. 7-5639);

Texas Commerce Bancshares, Inc., common, $4 Par Value (File No. 7-5640);

Thomas & Betts Corporation, common, $.50 Par Value (File No. 7-5641);

Thriftimart, Inc., 5% Cum. Part. Class A, $1 Par Value (File No. 7-5642);

Triangle Industries, Inc., capital, No Par Value (File No. 7-5643);

UGI Corp., common, $4.50 Par Value (File No. 7-5644);

Umet Trust, Shares of Beneficial Interest, $1 Par Value (File No. 7-5645);

Union Corporation (The), common, $.50 Par Value (File No. 7-5646);

VSI Corporation, common, $2 Par Value (File No. 7-5647);

Valley Industries, Inc., common, $.01 Par Value (File No. 7-5648);

Wisconsin Public Service Corp., common, $8 Par Value (File No. 7-5649);

Wyle Laboratories, Common Stock, No Par Value (File No. 7-5650);

Kyoto Ceramic Co., Ltd., ADR's Representing 2 Shares of Common Stock, 50 Yen Per Share Par Value (File No. 7-5560);

Filmways, Inc., common, $.25 Par Value (File No. 7-5563);

Technical Tape, Inc., common, $1 Par Value (File No. 7-5722);

Thermo Electron Corp, common, $1 Par Value (File No. 7-5723);

Unimax Group, Inc. (The), common, $.75 Par Value (File No. 7-5724);

WTC, Inc., common, No Par Value (File No. 7-5725);

Western Financial, common, $1 Par Value (File No. 7-5726);

Wilson Brothers, common, $1 Par Value (File No. 7-5727);

Natomas Company (New Holding Company), common, $1 Par Value (File No. 7-5571);

Hiram Walker-Consumers Home Ltd., common, No Par Value (File No. 7-5678);

Inter-City Gas Corporation, common, No Par Value (File No. 7-5679);

Safeguard Business Systems, Inc., common, $.10 Par Value (File No. 7-5677);

Aegis Corporation, common, $.01 Par Value (File No. 7-5664);

Anheuser-Busch Co., common, $1 Par Value (File No. 7-5665);

Arundel Corporation, common, No Par Value (File No. 7-5666);

CCI Corporation, common, $.50 Par Value (File No. 7-5667);

Tucson Electric Power, common, $2.50 Par Value (File No. 7-5668);

American Israeli Paper Mills Ltd., American Shares, 1 Israeli Pound Par Value (File No. 7-5651);

Atlas Consolidated Mining & Development Corp., Class B Capital Stock, 10 Phil. Peso Par Value (File No. 7-5652);

Condec Corp., common, $.10 Par Value (File No. 7-5653);

Geosource, Inc., common, $1 Par Value (File No. 7-5654);

Heinicke Instruments Co., common, $.16-2/3 Par Value (File No. 7-5655);

Huyck Corporation, common, $1 Par Value (File No. 7-5656);

King Radio Corporation, common, $.30 Par Value (File No. 7-5657);

National Homes Corp., common, $.50 Par Value (File No. 7-5658);

North American Mortgage Investors, common, No Par Value (File No. 7-5659);

Petrolane Incorporated, common, $1 Par Value (File No. 7-5660);

Teleflex Inc., common, No Par Value (File No. 7-5661);

Tosco Corp., common, $.15 Par Value (File No. 7-5662);

Twin Fair Inc., common, $1 Par Value (File No. 7-5663);

Buttes Gas & Oil Company, common, No Par Value (File No. 7-5011);

Loral Corporation, common, $.25 Par Value (File No. 7-5010);

National Presto Industries, Inc., common, $1 Par Value (File No. 7-5012);

Sea Containers Inc. (N.Y.) common, $.12-1/2 Par Value (File No. 7-5009) and Sea Containers Atlantic Ltd., common $.01 Par Value (File No. 7-5761).

The Commission finds that approval of the BSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange, registered with the Commission pursuant to Section 6 of the Act the BSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 17a-15 under the Act [17 CFR 240.17a-15]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the BSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the BSE's applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Boston Stock Exchange, Inc. in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17202/October 8, 1980

OPTIONS CLEARING CORPORATION (OCC)

(SR-OCC-79-8)

ORDER APPROVING PROPOSED RULE CHANGE

On December 12, 1979, OCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change extending from 3:30 p.m. to 7:00 p.m. the deadline for filing exercise notices with OCC on regular trading days, and permitting clearing members to revoke or modify exercise notices until 7:00 p.m. on the day those notices are submitted to OCC.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16438, December 19, 1979), and by publication in the *Federal Register* (44 FR 76901, December 28, 1979). No written comments were received by the Commission.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17203/October 8, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE DEPOSITORY TRUST COMPANY

(File No. SR-DTC-80-6)

The Depository Trust Company ("DTC") submitted on October 1, 1980, a proposed rule change providing that monthly refunds earned by DTC from investment of dividends payments received by DTC may be suspended for any Participant whose performance in making dividends payments to DTC indicates that the Participant has not established procedures to meet DTC's standard of payment of DTC on payable data in immediately-available funds.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 14, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-DTC-80-6.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17204/October 8, 1980

A notice has been issued giving interested persons until October 30, 1980 to comment on the application of NATIONAL EDUCATION CORPORATION to withdraw its capital stock (no par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17205/October 8, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

TFI Companies, Inc.
Common Stock, $.67 Par Value (File No. 7-5735)[1]

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 62245 (September 18, 1980). The Commission has received no comments with respect to this application.

The Commission finds that approval of the Phlx's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions of the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Philadelphia Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21738/October 6, 1980

In the Matter of

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Reading, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-6041)

ORDER EXTENDING TIME FOR ACQUISITIONS OF EVIDENCES OF INDEBTEDNESS FROM RESIDENTIAL ELECTRIC CUSTOMERS PURSUANT TO INSULATION PROGRAM

Jersey Central Power & Light Company ("Jersey Central"), Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec"), each an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, have filed with this Commission a post-effective amendment to their application previously filed and amended in this matter pursuant to Section 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 40 promulgated thereunder concerning the following proposed transaction.

By orders dated October 5, 1977 (HCAR No. 20197), September 29, 1978 (HCAR No. 20719) and October 4, 1980, evidences of indebtedness, in the maximum aggregate amount of $50,000, from its residential electric heating customers arising from such customers' purchase of insulation, attic ventilation fans and automatic night/day thermostats.

By post-effective amendment Jersey Central seeks to extend the period within which it may acquire such evidence of indebtedness until October 4, 1981, subject to the same limitations on aggregate indebtedness.

It is stated that Jersey Central instituted the program as authorized, but to date none of its customers has elected to utilize such means of financing. Jersey Central nonetheless remains under a mandate from the New Jersey Public Utility Commission to continue the program. It is further stated that neither Met-Ed nor Penelec has instituted such a program to date, nor does either have any present plans or expectations of doing so unless such a program is mandated by federal or state regulatory or legislative action.

There are no additional fees or expenses to be incurred in connection with the proposed transactions. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions, except to the extent that any particular program is mandated by order of a state or federal commission.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that Jersey Central will file a certificate pursuant to Rule 24 within 30 days after the end of any calendar quarter in which its acquired evidences of indebtedness since the previous Rule 24 certificate filing exceeds $10,000.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21739/October 6, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
25 Research Drive
Westborough, Massachusetts 01581

(70-5750)

NOTICE OF PROPOSED EXTENSION OF AND INCREASE IN SHORT-TERM BORROWING AUTHORIZATION

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the applicant-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By orders dated December 1, 1975, May 23, 1977, December 18, 1978, and December 6, 1979 (HCAR Nos. 19272, 20047, 20834, and 21330), NEES was authorized to issue short-term notes to banks through December 31, 1980, in an aggregate amount not to exceed $25,000,000 outstanding at any one time.

By post-effective amendment filed in this proceeding, NEES now proposes that such borrowing authority be extended through December 31, 1981, and that the maximum permitted borrowings to be increased to $50,000,000.

Although no formal commitments have been made, NEES expects such borrowing will be made from among 34 commercial banks set forth in the post-effective amendment. The proposed borrowings will be evidenced by notes maturing in less than one year from date of issuance and bearing interest at a rate not in excess of the prime rate. NEES may either maintain compensating balances of 10% of the line of credit made available and 10% of any borrowings thereunder, or pay fees equivalent to such requirements. Based on a prime rate of 14%, the effective interest cost would be 17.5%.

Concerning the proposed increase in the maximum permitted borrowings, it is stated that NEES needs such increase to give it greater flexibility in the

timing of its next common share issue in light of plans to make capital contributions to its subsidiary New England Power Company of $20,000,000 in October 1980 (which contribution is the subject of a pending filing with this Commission) and $40,000,000 in 1981 (which contribution will be the subject of a future filing), and to make further funds available to its fuel subsidiary New England Energy Incorporated in 1980 and 1981 (which funding will also be the subject of a future filing).

There are no additional fees or expenses to be incurred in connection with the proposed transaction. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21740/October 7, 1980

In the Matter of
CONSOLIDATED NATURAL GAS COMPANY
New York, New York

(70-6490)

ORDER AUTHORIZING ISSUANCE AND SALE OF $100,000,000 PRINCIPAL AMOUNT OF DEBENTURES AT COMPETITIVE BIDDING

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

Consolidated proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, $100,000,000 principal amount of ____% Debentures due October 1, 2000. The interest rate (which will be a multiple of 1/8 of 1%) and the price, exclusive of accrued interest, (which will be not less than 99% or more than 102% of the principal amount thereof) will be determined by competitive bidding. The debentures will be issued as a new series under an Eighth Supplemental Indenture, to be dated as of October 1, 1980, to the Indenture between Consolidated and Manufacturers Hanover Trust Company Company, New York, New York, as Trustee, dated as of May 1, 1971. The Indenture includes a prohibition until October 1, 1985, against redeeming the issue with or in anticipation of funds borrowed at a lower effective interest cost. The debentures will be subject to an annual sinking fund of $6,250,000 commencing October 1, 1985, which will leave the issue fully paid out at maturity. In addition to meeting its sinking fund obligations, Consolidated intends that as long as any of the debentures are outstanding, it shall have the noncumulative option to redeem, on any sinking fund date, at the then current sinking fund redemption price, up to an additional $9,375,000 principal amount of such debentures. Redemptions made pursuant to such option may be used by the company to reduce future mandatory sinking fund obligations. The proceeds of the sale of the debentures will be used to finance, in part, the 1980 capital expenditures of Consolidated's subsidiary companies, estimated at $224,000,000.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21691), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21741/October 7, 1980

In the Matter of

EASTERN EDISON COMPANY
Brockton, Massachusetts

MONTAUP ELECTRIC COMPANY
Fall River, Massachusetts

(70-6493)

ORDER AUTHORIZING PROPOSAL OF PARENT TO ISSUE AND SELL FIRST MORTGAGE BONDS AND PREFERRED STOCK AT COMPETITIVE BIDDING AND TO PURCHASE DEBENTURES TO BE ISSUED AND SOLD BY SUBSIDIARY

Eastern Edison Company ("Eastern"), an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, and Montaup Electric Company ("Montaup"), an electric utility subsidiary of Eastern, have filed with this Commission an application-declaration and amendments thereto pursuant to Sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transactions.

Eastern proposes to increase its capital stock in an amount up to $15,000,000 consisting of not in excess of 150,000 shares of its ____% preferred stock, par value $100 per share ("New Preferred Stock"), and to issue and sell such additional shares at competitive bidding. The proposed dividend rate (which shall not be less than $100, nor more than $102.75 per share) for the New Preferred Stock will be determined by competitive bidding.

It is stated that the New Preferred Stock will be redeemable as a whole or in part at a redemption price which shall be equal to the public offering price plus 100% of the annual dividend rate for the first five years, with that percentage declining to 75%, 50% and 25% respectively, in the second, third and fourth five-year periods and to 10% thereafter, together in each case with accrued dividends. Redemption for the purpose of refunding at an effective interest or dividend cost less than the effective dividend cost to Eastern of the New Preferred Stock will be prohibited for the first five years, through September 30, 1985. The sinking fund provision will require Eastern to redeem at the initial public offering price plus accrued dividends 6,000 shares on each October 1 beginning in 1985. This obligation will be cumulative. In addition, Eastern will have the right beginning October 1, 1985, to redeem at the same price not more than an additional 6,000 shares each year. This right shall not be cumulative. There shall also be a prohibition, effective if and so long as a default exists on any obligation of Eastern with respect to the sinking fund for the New Preferred Stock, against Eastern's paying any dividend or making any other distribution on junior stock (except dividends payable in shares of such junior stock) or acquiring for value any junior stock, otherwise than by exchange or use of proceeds forthwith from the contemporaneous issuance of junior stock.

Eastern proposes to issue and sell at competitive bidding up to $15,000,000 principal amount of its first mortgage and collateral trust bonds, ____% Series ("New Bonds"). The maturity date of the New

Bonds will be in the year 1990. The proposed interest rate (which shall be a multiple of 1/8 of 1%) and the price (which shall be not less than 100% nor more than 102-3/4% of the principal amount) will be determined through competitive bidding. It is stated that the Supplemental Indenture relating to the New Bonds will contain a prohibition until October 1, 1985 against redemption of the New Bonds as a part of or in anticipation of any refunding at a lower effective interest cost.

Montaup proposes to issue and sell to Eastern, and Eastern proposes to purchase at their principal amount plus accrued interest, up to $20,000,000 principal amount of ____% Debenture Bonds due 2010 ("New Debenture Bonds"). The New Debenture Bonds will be dated October 1, 1980, will mature October 1, 2010, and will bear interest payable January 1, April 1, July 1, and October 1 in each year. The effective interest cost to Montaup will approximate the composite cost (including income tax effect) of the New Bonds and, to the extent utilized, the New Preferred Stock. The New Debenture Bonds themselves will contain all of their terms and there will be no indenture or similar instrument governing them.

The net proceeds to Eastern from the sale of the New Bonds and New Preferred Stock will be applied first, to the extent of $20,000,000 for the purchase of the New Debenture Bonds proposed to be issued by Montaup, second, to the extent of $5,000,000, for the reduction of short-term bank indebtedness incurred by Eastern for construction or incurred to repay earlier borrowings so incurred, and third, for the prepayment of a $5,000,000 portion of Eastern's secured borrowing from Citibank, N.A. outstanding in the principal amount of $15,000,000.

The net proceeds to Montaup from the sale of the New Debenture Bonds will be used to reduce short-term bank indebtedness incurred for construction (including facilities owned or to be owned in common with other utilities) or incurred to repay earlier borrowings so incurred. It is stated that bank borrowings of Montaup will be outstanding in the amount of approximately $37,600,000 at the time the New Debenture Bonds are issued.

It is stated that the Department of Public Utilities of the Commonwealth of Massachusetts ("Department") has authorized the proposed transactions; however, in the event that the cost of money exceeds 16-1/2% for the New Bonds, the New Debenture Bonds, and/or the New Preferred Stock, a subsequent order approving such greater percentages must be obtained from the Department. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated to be $228,360.

Due notice of the filing of said application-declaration, as amended, has given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21710), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-delcaration, as amended, be, and it hereby is, granted and permitted to become effective, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11386/October 3, 1980

In the Matter of

HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY

SHEARSON/HARTFORD VARIABLE ACCOUNT "A"
Hartford Plaza
Hartford, Connecticut 06115

AND

SHEARSON LOEB RHOADES, INC.
14 Wall Street
New York, New York 10005

File No. 812-4703

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), 27(d), OF THE ACT AND RULE 22c-1 THEREUNDER AND PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE.

NOTICE IS HEREBY GIVEN that Hartford Variable Annuity Life Insurance Company ("HVA"), a stock life insurance company organized under the laws of the state of Connecticut; Shearson/Hartford Variable Account "A" ("Variable Account 'A'"), a unit investment trust registered under the Investment Company Act of 1940 ("Act") and Shearson Loeb Rhoades Inc. ("Shearson Loeb Rhoades"), a broker-dealer registered under the Securities Exchange Act of 1934 filed an application on July 11, 1980 and an amendment thereto on October 1, 1980 pursuant to Section 6(c) of the Act for an Order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), 27(d) of the Act to the extent requested and for an Order pursuant to Section 11(a) of the Act with respect to offers of exchange. All interested persons are referred to the Application on file with the Commission for a statement of representations contained therein which are summarized below.

Background

On July 10, 1980 Variable Account "A" was registered as a unit investment trust with the Commission under the Act. Variable Account "A" will initially issue only single premium deferred variable annuity contracts which will provide for a Contingent Deferred Sales Charge.

The Contracts issued with respect to Variable Account "A" will provide that the Contract Owner will have the right to direct that the single premium payment made under the terms of the Contract is to be invested in shares of no more than three open-end, diversified investment companies (herein after collectively referred to as the "Shearson funds") at any one time.

The Contracts issued with respect to Variable Account "A" may be acquired either by the direct purchase of a Contract for cash or by exchanging shares of one or more of the Shearson funds that have been owned by an investor for at least 45 days prior to exchange for a Contract. Contract purchasers will not pay a sales charge at the time of purchase but will pay a sales charge (referred to as a Contingent Deferred Sales Charge) if a full or partial redemption of a Contract is made within a specified period of time after purchase, except for a partial surrender of up to 10% of the single premium payments as hereinafter described and except in the event of the Contract Owners death.

With respect to the direct purchase method of acquiring a Contract, the Contingent Deferred Sales Charge shall be applied against the proceeds of redemption starting at six percent (6%) during the first full Contract year, declining one percent (1%) per year thereafter until the sixth year. During the seventh and subsequent full Contract year(s) there is no charge in the event of a redemption.

With respect to the indirect purchase method, the Contingent Deferred Sales Charge shall be applied against the proceeds of redemption at one percent (1%) per year during the first three full Contract years and there shall be no charge during the fourth and subsequent years.

After a Contract has been in force for a full Contract year (12 months) a Contract Owner may surrender

up to ten percent (10%) of the single premium purchase payment each Contract year without the proceeds of redemption being subject to the Contingent Deferred Sales Charge which would otherwise be applicable. This right of surrender is noncumulative.

With respect to the indirect purchase method, only those shares of the Shearson funds which have been subject to a sales charge at the time of purchase from the particular Shearson fund involved are eligible to be exchanged for a Contract through the indirect purchase method. Thus, shareholders of a Shearson "no-load" fund can only purchase a Contract through the indirect purchase method by first liquidating their "no-load" fund shares and then utilizing the surrender proceeds to purchase a Contract by the direct method.

The Variable Account "A" Contracts shall be subject to an Annual Maintenance Fee which shall be $25.00 for all Contract years other than the first and $35.00 for the first Contract year.

CONTINGENT DEFERRED SALES CHARGE

Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) of the Act provides,in substance, that a periodic payment plan certificate company or a depositor or underwriter for such a company are prohibited from selling any such certificates unless, among other things, the proceeds of all payments, other than the sales load, on the certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) and are held by such trustee or custodian under an agreement containing, in substance, the trust indenture provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

Section 26(a)(2)(C) of the Act provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust (or to any affiliated person or agent of such depositor or principal underwriter) shall be allowed the trustee or custodian as an expense except for payment of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other admininstrative services of a character normally performed by the trustee or custodian.

Applicants allege that the Deferred Sales Charge to be imposed (if any) upon the surrender of the Contracts issued with respect to Variable Account "A" is designed to recover distribution costs relating to the sales of the Contracts. The Contracts merely defer the time when the sales charge may be imposed.

Applicants further allege that since there is nothing in the Act to suggest that if Deferred Sales Charges were being used at the time the Act was promulgated, that deductions for such sales charges would not have been permitted, and, since it is in the Contract Owners' best interests that the entire amount of their purchase payments be invested at the time when made, Applicants have requested an exemption from the provisions of Section 26(a)(2)(C) and 27(c)(2) of the Act, to the extent necessary, in order to permit the offer and sale of the single premium Contracts subject to the schedule of Contingent Deferred Sales Charges as shown.

Section 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or "admininstrative expenses or fees which are not properly chargeable to sales or promotional activities."

Applicants state that the definition of sales load contained in Section 2(a)(35) contemplates that any deduction therefor will be made from the security purchaser's investment at the time when the Contract is purchased. However, the Deferred Sales Charge (if any) that would be made upon the surrender of a Contract for redemption would be applied to pay sales expenses including the admininstrative expenses and fees which are properly chargeable to sales or promotional activities theretofore incurred in connection with the offer and sale of the Contracts. Applicants contend that the fact that the sales charge is deducted from the Contract proceeds of redemption rather than from the purchase payment initially made to acquire the Contract, does not change the essential character of the charge; it is a sales charge.

Accordingly, Applicants request an exemption from the provisions of Section 2(a)(35) of the Act to the extent one is deemed necessary in order to permit

the offer and sale of the single premium contracts, with a Contingent Deferred Sales Charge.

Section 2(a)(32) and Section 27(d)

Section 2(a)(32) of the Act, in substance, defines a redeemable security as a security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in substance, requires that the holder of a periodic payment plan certificate be able to surrender his certificate within a specified time and receive the value of his account and the return of sales charges in excess of a certain percentage. Sections 2(a)(32) and 27(d) therefore, contemplate the deduction of sales charges from purchase payments at the time they are made.

Applicants state that the fact that the sales charges are not deducted from the amount initially invested does not change the essential nature of the deduction being made and does not alter the fact that the investor in fact receives his proportionate share of the issuer's current net assets and the value of his account upon redemption.

Therefore, Applicants request, to the extent necessary, an exemption from the provisions of Section 2(a)(32) and 27(d) of the Act to permit the offer and sale of the Contracts with a Contingent Deferred Sales Change.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certificate unless it is a redeemable security.

Applicants contend that the imposition of a Deferred Sales Charge upon the proceeds of redemption is not a restriction on redemption within the meaning of Section 27(c)(1). The Contract Owner is not prohibited in any way from tendering his Contract for redemption. Applicants request an exemption from the provisions of Section 27(c)(1) to the extent that one is deemed necessary, in order to permit the offer and sale of the Contracts with a Deferred Sales Charge.

Section 22(c) and Rule 22c-1 thereunder

Section 22(c) of the Act and Rule 22c-1 thereunder prohibit a registered investment company issuing redeemable securities such as the Contracts from selling, redeeming, or repurchasing any such security except at a price based upon the current net asset value of such security. Because the Deferred Sales Charge is deducted from the amount that the Contract Owner receives upon redemption, it may be said that the Contract Owner does not receive an amount equal to the current net asset value of his contract. Applicants submit, however, that the deduction of a Deferred Sales Charge at the time the Contract is submitted for redemption, as opposed to the deduction of such charge at the time that the investment is initially made, does not prevent the Contract Owner from receiving the current net asset value of his Contract upon redemption. Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder to the extent that one is deemed necessary in order to permit the offer and sale of the Contracts with a Deferred Sales Charge.

In further support of the request for redemption with respect to the Deferred Sales Charge, Applicants allege that, as noted, the entire amount of the Contract purchase payment will be invested until the Contract is annuitized or until redemption. Further by virtue of the fact that no sales charge will be made if the Contract is annuitized under an annuity option involving life contingencies or if redemption, in whole or part, is effected after six full Contract years on direct purchases and three years on indirect purchases, the proposed arrangement is more beneficial to the Contract Owner. Finally, the maximum amount to which such charge may apply is the single premium payment paid for the Contract.

In summary, Applicants request exemption from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) and Rule 22c-1 in order that they may offer and sell the single premium Contracts subject to a Contingent Deferred Sales Charge, as aforesaid.

ANNUAL MAINTENANCE FEE

As previously noted, the Contracts are subject to an Annual Maintenance Fee. If the value of a Contract is redeemed in full at any time before the last business day of the year or the last day of the Contract year, the Annual Maintenance Fee will be deducted from the Contract Owner's redemption proceeds. Because the foregoing provisions of the Act may be said to be

equally applicable in this situation, Applicants request an exemption from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 27(c)(1), 27(c)(2), 26(a)(2)(c), 27(d) and Rule 22c-1, to the extent deemed necessary, in order to permit the deduction of the Annual Maintenance Fee under the circumstances described.

PERFORMANCE OF CUSTODIAL FUNCTIONS

Sections 26(a)(1) and 27(c)(2)

As noted, Section 27(c)(2) of the Act prohibits a registered investment company and any depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments other than the sales load are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) and held under an agreement containing, in substance, the provisions required by Section 26(a)(2) and (3) of the Act.

Section 26(a)(1) requires the trustee or custodian to be a bank which meets certain financial standards. Applicant HVA proposes to hold in custody for safekeeping the property and assets of the newly created but as yet inoperative Variable Account "A".

HVA requests an exemption from the provisions of Section 26(a)(1) of the Act in order that HVA may hold the property and assets of Variable Account "A" in custody for safekeeping. HVA will keep such assets in its vault facilities which HVA contends are comparable to the vaults of large commercial banks and adequate protection will thereby be afforded to owners of Contracts issued with respect to Variable Account "A". Also, HVA will limit access to the vault.

Section 26(a)(2)(D) of the Act requires, in part, that the custodian shall have possession of all the securities and other property in which the funds of the unit investment trust are invested. This has been interpreted to mean that the securities owned by the trust must be actually represented by share certificates maintained in custody.

Applicant HVA asserts that the primary purpose of Section 26(a)(2)(D) relating to the possession of trust assets is to provide for their safekeeping. Applicant HVA contends that to require that shares certificates be physically issued by each of the Shearson funds to HVA under the circumstances would not significantly add to the safety of the unit investment trust assets and would result in unnecessary admininstrative expenses for the trust. As noted, the assets of Variable Account "A" will be invested exclusively in shares of the several Shearson funds. Furthermore, the custodian of the several Shearson funds will have physical possession of each of the fund's portfolio securities and other assets.

Applicant HVA requests that the Commission enter an order of exemption from the pertinent provisions of Section 26(a)(2)(D) in order that Applicant HVA may accept "book shares" evidencing the investment of purchase payments that are made, from time to time, by Variable Account "A" Contract Owners in shares of the several Shearson funds in order to purchase variable annuity benefits.

Section 26(a)(2)(D) of the Act also requires that the securities and other property in which the funds of the unit investment trust are invested shall be segregated and held in trust until distribution.

Applicant HVA asserts that while the assets of the unit trust will be segregated, HVA, as a life insurance company, may not properly place the assets of Variable Account "A" in trust because the insurance laws of the State of Connecticut require HVA to retain ownership and control of the disposition of its property. If HVA is permitted to hold in custody for safekeeping the asset of Variable Account "A", an exemption from Section 26(a)(2)(D) will be necessary in order that HVA shall not be required to hold such assets in trust.

In support of the requested exemptions from the foregoing provisions of the Act, Applicant HVA states that it is subject to extensive supervision and control by the Connecticut Insurance Commissioner and the comparable official of each state in which it does business. Such supervision requires HVA to file complete and detailed periodic reports. Applicant HVA also states that the activities of HVA are subject to review by the Connecticut Insurance Department and its representatives at all times and are subject to comprehensive examinations periodically. Further HVA, under the arrangement for recordkeeping will maintain either itself or through an agent a record of all purchases and redemptions of Shearson fund shares with respect to Variable Account "A".

In summary, Applicant HVA requests exemption from the provisions of Sections 26(a)(1), 26(a)(2)(D) and

27(c)(2) of the Act in order that HVA may perform the safekeeping and other functions normally performed by a custodian with respect to Variable Account "A"; that the property and assets of Variable Account "A" do not have to be held in trust although segregated; and that the investments of the trust in shares of the several Shearson funds may be held in "book share" form.

PAYMENT OF CONTRACT FEES AND CHARGES

Sections 26(a)(2)(D) and 27(c)(2)

Section 26(a)(2)(D) further provides that the Custodian have possession of all securities and other property in which the funds of the trust are invested subject only to the charges and collections allowed under clauses (A), (B) and (C) of Section 26(a)(2) until distribution thereof to the security holders of the trust.

The Contracts issued with respect to Variable Account "A" provide that there shall be deducted an Annual Maintenance Fee of $35.00 for the first Contract year and $25.00 for all subsequent years. There shall also be deducted a 1% asset charge which will be paid to HVA for providing mortality and expense guarantees with respect to the Contracts. HVA or its agent will provide bookkeeping and other admininstrative services of the type normally performed by custodians of unit investment trusts. Finally, deduction and payment of premium taxes will be made.

Applicant HVA requests that the Commission enter an Order exempting it from the provisions of Sections 26(a)(2)(D) and 27(c)(2) to the extent necessary to permit the deduction by HVA and the payment to HVA of (1) the Annual Maintenance Fee charges, (2) the fee for providing the mortality and expense undertakings (to be deducted on a daily basis), (3) depending on the requirements of the particular state, either (a) to permit the deduction from purchase payments where made and payment of applicable annuity premium taxes to such state by HVA or (b) to permit the deduction of such taxes by HVA from the value of the Contract account and the payment of such taxes to such state at the time when an annuity is effected.

Applicant HVA has consented that the foregoing requested exemptions from Section 26(a)(1), 26(a)(2) and 27(c)(2) may be made subject to the following conditions:

(a) the charges to Contract Owners for admininstrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose; and

(b) the payment of sums and charges out of Variable Account "A" shall not be deemed to be exempted from regulation by the Commission by reason of the requested Order; provided, that Applicant HVA's consent to the condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for admininstrative services, and Applicant HVA reserves the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums or charges.

EXCHANGES

Sections 11(a) and 11(c)

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made, an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company.

The purchaser of a Contract has the right, from time to time and at any time, to exchange that part of the value of his account represented by shares of one of the Shearson funds for the shares of any of the other Shearson funds at net asset value. Therefore, because the shares of one Shearson fund may be freely exchanged for the shares of another Shearson fund at net asset value, Applicants believe that the provisions of Section 11(a) are inapplicable to any such exchange.

Further, the Contract Owner physically retains the same variable annuity contract after any such

exchange that he had before the exchange was made; thus, there is no exchange of the variable annuity contract itself and, therefore, Applicants are of the view that the provisions of Section 11(c) of the Act are inapplicable to the right of exchange described above.

However, it may be said that a different Contract is involved after an exchange of the Contract's underlying investment medium and, therefore, an exchange of variable annuity contracts has technically taken place.

Applicants disagree and do not believe that the facts surrounding an exchange of the underlying investment medium causes any such exchange of Contracts to occur. However, in order to avoid any question, Applicants request that the Commission issue a Section 11 Order—to the extent that one is deemed necessary—in order that a Contract owner may switch the underlying investment medium of his Contract from the shares of one or more of the Shearson funds to the shares of one or more other Shearson funds (subject to the limitation of investments in not more than three at any one time) without any deductions being made.

Further, owners of Shearson fund shares also have the right to exchange their shares for a single premium Contract under the indirect purchase method. This will involve an offer of exchange of the securities of a registered unit investment trust (Variable Account "A") for the securities of one or more other investment companies (the shares of one or more of the Shearson funds). Nevertheless, the evil toward which Section 11 was directed—the churning of an investor's account to generate sales commissions—is not present. No sales charge is incurred upon the exchange. Since the sales charges are exacted at redemption—if at all—there is no incentive for anyone to churn the investors account with a view to generating sales commissions and the practices which Section 11 was designed to prevent are not present.

Accordingly, Applicants request that the Commission issue a Section 11 Order in order that owners of shares of one or more of the Shearson funds may exchange their shares (if the redemption and investment of the redemption proceeds in the case of a "no-load" indirect purchase is deemed a *de facto* exchange) for a single premium Contracts.

Section 6(c)

Section 6(c) of the Act provides that the Commission, by order upon Application, may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities or transactions from any provision of the Act if and to the extent taht such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The Act specifically allows the imposition of a sales charges and there is no provision of the Act which specifically or by implication prohibits the imposition of a Contingent Deferred Sales Charge. As noted above,it is beneficial for the Contract Owner to have the entire amount of his purchase payment invested for his benefit and working over the term of years of the Contract. In addition, if the Contract is maintained for a sufficient length of time, the investor may then redeem the value of his Contract, in whole or in part, at any time without the imposition of any sales charge. As to the deduction of the Annual Maintenance Fee from the proceeds of redemption, if the Contract Owner redeems prior to year end, the Contract Owner will be but paying for services theretofore provided.

Also, as previously noted, Applicant HVA states that it is subject to extensive supervision and control by the Connecticut Insurance Commissioner as well as the comparable official of each state in which it does business. Applicant HVA therefore believes that the regulatory supervision by the Connecticut and other state insurance commmissioners of the activities of HVA provide sufficient protection with respect to maintenance of the assets of Variable Account "A".

Applicants submit that for the foregoing reasons the exemptions above requested in order to enable Applicants to apply a Contingent Deferred Sales Charge in the case of the Contracts issued with respect to Variable Account "A" and with respect to the deduction of the Annual Maintenance Fee, as aforesaid, and to permit Applicant HVA to perform the stated custodial services on behalf of Variable Annuity Account "A" and to allow the shares of the several Shearson funds to be represented in the form of "book shares," will be totally appropriate in the public interest and consistent with the protection

of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is given that any interested person may, not later than October 28, 1980 at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following October 28, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY OF 1940
Release No. 11387/October 3, 1980

In the Matter of

FUND FOR GROWTH, INC.
c/o Arvey, Hodes & Mantynband
One North LaSalle Street
Chicago, Illinois 60602

(811-1551)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940.

On September 2, 1980, a notice was issued (Investment Company Act Release No. 11328) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Fund for Growth, Inc. ("Fund"), registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Fund for Growth, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11388/October 7, 1980

In the Matter of

INSTITUTIONAL LIQUID ASSETS
8700 Sears Tower
Chicago, Illinois 60606

SALOMON BROTHERS
One New York Plaza
New York, New York 10004

THE FIRST NATIONAL BANK OF CHICAGO
One First National Plaza
Chicago, Illinois 60670

(812-4743)

NOTICE OF FILING OF APPLICATION PURSUANT TO

SECTIONS 6(c) AND 17(b) OF THE ACT REQUESTING AN ORDER OF EXEMPTION FROM SECTIONS 12(d)(3), 13(a)(3), 15(a), 15(c) AND 17(a) OF THE ACT, AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER FOR AN ORDER PERMITTING JOINT TRANSACTIONS, AND ORDER GRANTING SUCH RELIEF ON A TEMPORARY BASIS.

NOTICE IS HEREBY GIVEN that Institutional Liquid Assets ("ILA"), a money market fund registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, Salomon Brothers ("Salomon"), administrator and distributor for ILA, and The First National Bank of Chicago ("Bank"), investment adviser to ILA (collectively, "Applicants") filed an application on October 6, 1980, and an amendment thereto on October 7, 1980, requesting an order: (1) pursuant to Sections 6(c) and 17(b) of the Act exempting Applicants from the provisions of Sections 12(d)(3), 13(a)(3), 15(a), 15(c) and 17(a) of the Act to the extent necessary to permit certain transactions, and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting certain joint transactions. The application further requests that such order be made effective as of the date of the filing of the application, on a temporary basis, pending issuance of a permanent order following appropriate notice and opportunity for hearing. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that ILA invests in money market instruments and that it offers shares of beneficial interest ("units") in two separate series of portfolios, the Prime Obligations Portfolio and the Government Portfolio. According to the application, ILA is designed as an investment vehicle for institutional investors with temporary cash balances which seet the yield available on money market instruments, while maintaining maximum liquidity and a constant net asset value per unit. The application states that, under the Act, portfolio instruments of an investment company must be valued with reference to market factors unless the Commission, by order, permits the instruments to be valued by another method. On August 8, 1979, ILA received an order of the Commission (Investment Company Act Release No. 10824) ("Release No. 10824") permitting, subject to conditions, the use of the amortized cost method of valuation in determining its net asset value per unit for purposes of sales and redemptions. In connection with the granting of that order, ILA's Trustees agreed to a variety of conditions which, *inter alia*, require certain monitoring and review procedures to insure that the net asset values per unit of ILA's portfolios not deviate from the $1.00 amortized cost prices per unit to such an extent, in view of all of the circumstances, so as to render the continued use of amortized cost valuation inappropriate.

The application states that, as of September 30, 1980, and October 3, 1980, the dollar-weighted average portfolio maturity of the Government Portfolio was 76 and 73 days, respectively. It is further stated that, on the afternoon of October 2, 1980, the Bank informed ILA that the net asset value per unit for the Government Portfolio, when determined with reference to current market factors, was $.9928. As of October 3, 1980, the net asset value per unit, using available market quotations, had increased to $.9930. The Bank advised ILA that, in its view, the good faith fair valuation of the Government Portfolio, at that time, called for the use of market values for all assets. Applicants state that upon becoming aware of the situation they began to develop a program ("Program") to assure that ILA would continue to be able to value its securities on an amortized cost basis and that it would be in a position to restructure its investments and to maintain liquidity. ILA, Salomon and the Bank believe that the Program, which is summarized below, is designed to accomplish those goals. However, the Commission expresses no opinion as to the adequacy of the Program.

Pursuant to the Program, on October 6, 1980, ILA sold securities held by its Government Portfolio as follows: (1) Salomon purchased securities from ILA at their amortized cost value of approximately $228.5 million, which value is approximately $700,000 in excess of the October 3, 1980, market based value of such securities, and (2) ILA sold in the market securities with an amortized cost value of $215.4 million. The Bank estimates that such value is approximately $998,000 in excess of the market based value of such instruments. Accordingly, the Bank has made a payment to ILA of $1 million from past advisory fees. Effective October 3, 1980, Salomon and the Bank waived the entire amount of their administration and investment advisory fees until further notice. Also pursuant to the Program, on October 6, 1980, Salomon extended to ILA a put option ("Put") entitling ILA to sell any or all of the

securities held by the Government Portfolio as of the opening of business on that day to Salomon at the amortized cost value of such securities. The Put is accompanied by a letter of credit in favor of ILA in the amount of $5 million issued by Morgan Guaranty Trust Company of New York. The Put may be exercised by ILA only at such time as its net asset value per unit, using available market quotations, is less than $.9950 and only to such extent as is necessary to increase ILA's net asset value per unit to $.9950, using available market quotations for all assets. ILA will not place a dollar value on the Put. In order to effectuate the Program in compliance with the Act and the rules thereunder, Applicants have requested an order of the Commission exempting Applicants from certain provisions of the Act and permitting certain transactions.

Section 12(d)(3) of the Act, in pertinent part, makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by any person who is a broker, a dealer, or who is engaged in the business of underwriting. Applicants state that because Salomon is a broker and a dealer, and is engaged in the business of underwriting, the receipt by ILA of the Put could be deemed to be inconsistent with Section 12(d)(3) of the Act. Section 13(a)(3) of the Act, in pertinent part, provides that a registered investment company shall not, unless authorized by the vote of the majority of its outstanding voting securities, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to Section 8(b)(3) of the Act. ILA policies which are changeable only with unitholder approval include: (1) a policy of investing the assets of the Government Portfolio only in U.S. Government securities, (2) a policy precluding investing in puts, and (3) a policy precluding the purchase of securities issued by any person employing as an officer any person serving as an officer of ILA (the president and a vice president of ILA are officers of Salomon).

Section 15(a) of the Act, in general, makes it unlawful for any person to serve or to act as investment adviser of a registered investment company, except pursuant to a written contract, which contract has been approved by the vote of a majority of the outstanding voting securities of such registered company, and precisely describes all compensation to be paid thereunder. In addition, Section 15(c) of the Act, in pertinent part, makes it unlawful for any registered investment company to enter into, renew, or perform any contract or agreement whereby a person undertakes regularly to serve or act as investment adviser of such company unless the terms of such contract or agreement have been approved by the vote of a majority of directors who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. The advisory agreement between the Bank and ILA prohibits portfolio securities of ILA from being purchased from or sold to Salomon. Accordingly, Applicants state that the receipt, and any exercise, of the Put by ILA, the sale of any portfolio securities to Salomon, and the payment and fee waiver by the Bank, could be considered to be inconsistent with Sections 15(a) and 15(c) of the Act.

Section 6(c) of the Act provides that the Commission, upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes thereof, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly, Applicants have requested exemptions from the provisions of Sections 12(d)(3), 13(a)(3), 15(a) and 15(c) of the Act, to the extent necessary to permit the transactions set forth above.

Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company knowingly to sell or to purchase from such registered company any security or other property. Applicants state that the issuance and any compliance with the terms of the Put, as well as the purchase by Salomon of the portfolio securities, could be considered to be in violation of Section 17(a) of the Act. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company involved and with the general purposes of the Act. Accordingly, Applicants have requested an order, pursuant to Section 17(b) of the

Act, granting an exemption from the provisions of Section 17(a) to permit the issuance and exercise of the Put, and to permit the sale of portfolio securities to Salomon.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in part, that it is unlawful for an affiliated person of a registered investment company, acting as principal, to effect any transaction in which such investment company is a joint participant without the permission of the Commission. Rule 17d-1 provides, in part, that in passing upon applications for orders granting such permission, the Commission will consider (1) whether the participation of the investment company in such transaction on the basis proposed is consistent with the provisions, policies and purposes of the Act, and (2) the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants state that one or more of the aspects of the Program described above could be considered to be a joint enterprise, a joint arrangement or profit-sharing plan. Therefore, they have requested an order permitting the transactions.

ILA states that its Trustees have approved the Program by a majority vote thereof, and that those Trustees not present at the meeting have approved the Program in principle. ILA represents that at such time as the Put becomes exercisable, the Trustees of ILA shall have discretion whether to exercise that Put consistent with condition 2(c) of the order of the Commission permitting ILA's use of amortized cost valuation (Release No. 10824). The Trustees of ILA will conduct a thorough review of the events which resulted in a deviation between the market based net asset value per unit of the Government Portfolio and its $1.00 amortized cost price per unit exceeding 1/2 of 1% with a view to determining the causes and responsibility, if any, therefor, and whether additional procedures are appropriate under the circumstances. In addition, ILA has undertaken to take such action, if any, in addition to the Program, as may be required by condition 2(c) of Release No. 10824. Applicants represent that no Applicant has waived any of the rights which it may have against any of the other Applicants by reason of participating in or accepting the benefits of the Program, the filing of the application or the receipt of any order in connection therewith. Finally, Salomon and the Bank represent that ILA is under no obligation of any kind to them by reason of participating in or accepting the benefits of the Program, the filing of the application or the receipt of any order issued in connection therewith. Applicants state that, based on the foregoing actions, undertakings, and representations, they believe that the standards set forth in Sections 6(c) and 17(b) of the Act and Rule 17d-1 thereunder have been satisfied.

The matter has been considered, and it is found, on the basis of the information stated in the application, that it is appropriate to issue the orders requested by Applicants immediately, on a temporary basis, in view of the circumstances facing ILA and the adverse consequences that might be experienced by investors in ILA if the Commission did not issue the requested orders. It should, however, be noted that the Commission makes no finding as to whether the Program, and the transactions contemplated by Applicants, are satisfactory responses to ILA's situation so as to justify its continued use of amortized cost valuation. In addition, the Commission by its action on this application shall not be precluded from taking such other actions with respect to Applicants and their affiliated persons as the Commission may deem to be appropriate. The issuance of the orders is merely intended to permit Applicants to take certain extraordinary actions which appear to be in the interests of investors. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the exemption from the provisions of Sections 12(d)(3), 13(a)(3), 15(a) and 15(c) of the Act, to the extent requested, be and hereby is granted on a temporary basis;

IT IS FURTHER ORDERED, pursuant to Section 17(b) of the Act, that the transactions be and hereby are exempted from the provisions of Section 17(a) of the Act on a temporary basis;

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the transactions be and hereby are permitted on a temporary basis;

IT IS FURTHER ORDERED, that each of the above orders shall be effective as of 9:00 A.M., E.D.S.T., October 6, 1980, and that such temporary orders remain in effect only until such time as the Commission shall by order (1) terminate such temporary orders after notice and opportunity for hearing, or (2) terminate such temporary orders by the issuance of a permanent order on this matter.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 27, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application on a permanent basis will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11389/October 7, 1980

In the Matter of

THE INDEX OPTION INCOME FUND, INC.
612 North Michigan Avenue
Chicago, Illinois 60611

(812-2844)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On September 12, 1980, a notice was issued (Investment Company Act Release No. 11351) of an application filed on June 19, 1980 by The Index Option Income Fund, Inc. ("Applicant"), an open-end, diversified management company registered under the Investment Company Act of 1940 ("Act"), for an order of the Commission declaring that Applicant has ceased to be an investment company.

The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of The Index Option Income Fund, Inc. under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9196/October 7, 1980

SEC v. NATIONAL CHARTER MANAGEMENT AND FINANCIAL SERVICES, INC., ET AL. (C. D. of Calif., Civil Action No. 80 04244 AAH(Px))

Leonard H. Rossen, Regional Administrator of the Commission's Los Angeles Regional Office announced that on September 24, 1980, the Commission filed a civil action in the United States District Court for the Central District of California in Los Angeles naming the following as defendants:

National Charter Management and Financial Services, Inc. of Claremont, California
General Arizona Clearinghouse Corporation of

Maricopa County, Arizona
American Security Bank and Trust Company (West Indies) Limited of Anguilla, West Indies
General Finance Corporation of Denver, Colorado
Jack Walker Wright, aka Robert Morgan of Claremont, California
J. Wayne Haws of Huntington Beach, California
Iris G. Eaton of Anaheim, California
William Louis Teske of Maricopa County, Arizona
William Vaughn Ellsworth of Maricopa County, Arizona
Barry Eaton of Anaheim, California
Arvey Drown of Berthoud, Colorado

The Commission is seeking to enjoin those defendants from committing further violations of the anti-fraud provisions set forth in Section 17(a) of the Securities Act of 1933 and in Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, of the registration requirements set forth in Section 5 of the Securities Act and is also seeking ancillary equitable relief including the appointment of a receiver and orders against the dissipation and disbursement of assets, and preventing the destruction or concealment of any records of the various defendants.

The Commission's complaint alleges in substance that since about November 1979, the defendants have participated in a scheme to fraudulently sell unregistered investment contracts and other unregistered securities, which have sometimes been referred to as contracts for the "lease" of money, to numerous public investors residing in the states of California, Arizona, Colorado, Idaho, Iowa, Illinois, Nevada, New Mexico, Oregon, Utah, Texas and possibly elsewhere. The complaint alleges that at least $5 million was raised from over 1,000 investors.

According to the allegations in the complaint, the fraudulent scheme involved the false representation to investors that 2% interest per week would be paid on amounts invested with such high rates of return being generated by the defendants making highly profitable investments in the international precious metals markets when, in fact, investors receiving payments were merely receiving ponzi-like distributions from their own or other investors' capital investments and little, if any, profit was being obtained from metals market trading. The complaint further alleged that the defendants falsely represented that profits were made by investing the investors' funds in tax-free municipal bond funds and from volume discounts arising from advance large scale payments on accounts payable to telephone and electric public utility companies when, in fact, no significant business operations to generate any such profits were in existence. The complaint further alleged that defendant Wright, aka Morgan, failed to disclose his prior conviction and prison record, and his and defendant Haws prior injunctions in *SEC* v. *Hi-Plains, Ltd.* in 1973 consisting of a similar ponzi-like scheme to fraudulently sell unregistered securities. Defendant Haws was also convicted of criminal contempt in 1978 based on his violation of that injunction and that fact was also not disclosed to investors according to the complaint.

Upon the filing of the complaint, the Commission sought a temporary restraining order against the defendants from committing further violations as above alleged and further restraining those defendants from dissipating or disbursing the assets arising from the conduct of the fraudulent scheme and from destroying or concealing any of the books and records involved in this matter. On September 24, 1980, the Honorable A. Andrew Hauk, United States District Judge in Los Angeles, granted the Commission's application for such an order, with that order to expire following a hearing on the Commission's motion for a preliminary injunction and the appointment of a receiver to be heard on Tuesday, October 14, 1980 at 10:00 a.m.

The defendant General Finance Corporation of Denver Colorado, an Arizona corporation, is a separate entity and should not be confused with General Finance Corporation of Evanston, Illinois, a Delaware corporation, which has regularly filed periodic reports with the Commission pursuant to the Securities Exchange Act for more than the past five years.

Litigation Release No. 9197/October 7, 1980

SEC v. *WESTERN GEOTHERMAL & POWER CORPORATION, ET AL.* (District of Arizona, CIV 77-504-CAM)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office of the Securities and Exchange Commission announced that on September 15, 1980 the Honorable Carl A. Muecke, Judge of the

United States District Court for the District of Arizona, entered an order of summary judgment against defendants Western Geothermal & Power Corporation ("WGP") and its president, Phoenix resident, David V. Tolle ("Tolle"). The order enjoins WGP and Tolle from further vioaltions of the registration and anti-fraud provisions of the federal securities laws. WGP, also located in Phoenix, Arizona, is registered with the Commission under Section 12(g) of the Securities Exchange Act of 1934. The Court found as follows in substance; WGP was formed in 1974 as the result of a merger between Champion Silver Mining Corporation ("Champion") and. . .Geothermal Power Corp. Both companies were dormant, but Champion had a class of publicly-held common stock. Subsequently, Tolle launched an effort to stimulate and vitalize the company. To that end, unregistered common shares were sold to public investors in an effort to raise working capital. Other unregistered securities including fractional interests in oil and gas leases were sold whereby WGP would retain royalty interests. The company subsequently began purchasing various mineral and geothermal properties and issued common stock as payment. In its communications with the shareholders, WGP misrepresented the value of these assets as well as the status of many of its business ventures and failed to disclose that Tolle, as well as the other directors of WGP, had secretly issued themselves large blocks of WGP common stock.

It was also announced that Judge Muecke ordered that defendant Tolle be sanctioned for failing to attend a pre-trial status conference which the Court had scheduled for August 4, 1980. Judge Muecke ordered that Tolle pay to the United States Securities and Exchange Commission the amount of $250 for failure to comply with local pre-trial procedures.

The Order of Permanent Injunction based upon the motion for summary judgment continues the appointment of the independent officer who had been previously appointed to WGP under the terms of the preliminary injunction entered on May 23, 1979. That Order is currently on appeal. The independent officer is to be provided all underlying offering material which relates to the offer and sale of WGP securities and is empowered to determine that any securities of WGP offered or sold without registration in fact qualifies under an appropriate exemption from registration. If any improprieties exist, the officer will immediately notify the staff of the Commission. The officer is also empowered to determine that all proceeds from the sale of WGP securities are properly used consistent with the representations made to investors and are not misapplied or misappropriated. The officer is empowered to review all communications with shareholders and to determine that they are not misleading.

Earlier in the litigation, on April 18, 1978, Judge Muecke issued an order of permanent injunction against Robert Cornell ("Cornell") of Phoenix, Arizona, a major shareholder of WGP, from further violations of the registration and antifraud provisions. Cornell had consented to the Court's order without admitting or denying the allegations in the Commission's complaint. Additionally, on April 18, 1978, Judge Muecke issued an order of permanent injunction against Frank Bryan of Phoenix, Arizona, a director of WGP from further violations of the registration provisions. He consented to the order without admitting or denying the allegations in the complaint. Also, it had been previously announced that on July 12, 1978, William Campbell of Spokane, Washington was enjoined from further violations of the registration, antifraud and manipulation provisions for his participation in the conduct underlying the scheme. Campbell had consented to the order without or admitting or denying the allegations in the complaint.

Finally, Judge Muecke had previously issued an order of permanent injunction (by default) against Colony Stock Transfer Corporation ("Colony") of Phoenix, Arizona on April 3, 1979 from further violations of the antifraud provisions. Colony had made no appearance in the litigation and failed to oppose on motions.

The entry of the summary judgment against WGP and Tolle constitutes the achievement of final injunctive relief against all defendants. For further information see Litigation Releases No. 8439, June 20, 1978 and No. 8794, June 25, 1979.

Litigation Release No. 9198/October 7, 1980

UNITED STATES OF AMERICA EX REL. SECURITIES AND EXCHANGE COMMISSION v. *GERALD GREENSPAN* 80 Crim. Misc. #1 (Page 35) (EW) (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the New York Regional Office ("NRYO"), announced that on August 28, 1980, after a six day jury trial held before the Hon. Edward Weinfeld of the United States District Court for the Southern District of New York, Gerald Greenspan of Brooklyn, New York, was found guilty of criminal contempt for disobeying three prior orders of permanent injunction issued against him by the federal court in the Southern District of New York.

The first order, entered against Greenspan on November 10, 1960 in *S.E.C.* v. *Gerald Greenspan*, (60 Civil 4170), enjoined him from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The second order was entered on July 8, 1975 in *S.E.C.* v. *Gerald Greenspan a/k/a Jay Greene* (75 Civil 2826) and enjoined Greenspan from violating Sections 9(a)(1), 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.

The third order, entered against Greenspan on February 22, 1980 in *S.E.C.* v. *Gerald Greenspan a/k/a Jay Greene* (75 Civil 2826) repeated the terms of the 1975 injunction and in addition, enjoined Greenspan from purchasing the securities of Hiller Aviation, Inc. (formerly known as Family Record Plan, Inc.); directed him to disclose the two prior injunctions and his prior conviction for criminal contempt [*United States of America ex rel. Securities and Exchange Commission* v. *Greenspan*, 78 Cr. Misc. #1 (P. 41) (EW)], by delivering copies thereof to any registered broker or dealer prior to purchasing or selling any securities through such broker or dealer; and required him to submit to the NYRO a written report listing all of his brokerage accounts and securities in which he held a beneficial interest and, thereafter, to submit monthly reports detailing all of his securities transactions, and brokerage accounts opened by him.

In the criminal contempt action, the Commission charged that between November 27, 1979 and May 31, 1980, Greenspan disobeyed these three prior orders by engaging in a deliberate and wilful scheme to violate the anti-fraud and anti-manipulation provisions of the Exchange Act. The scheme involved the purchase of the securities of Hiller Aviation Inc. and other securities at 11 brokerage firms, for a total price of $140,890.85 without intending to pay for such securities; and, in fact, Greenspan failed to pay for over $110,000 of the total purchase price. The Commission further charged that Greenspan, in furtherance of his fraudulent scheme, issued checks to brokerage firms (1) drawn on accounts with insufficient funds or (2) that were otherwise returned unpaid in the amount of $62,927.69. Finally, the Commission charged that Greenspan failed to comply with the three specific directives of the 1980 Injunction. In reaching its verdict, the jury rejected a defense of insanity raised by the defendant and found him guilty of all the charges filed against him. Greenspan will be sentenced on October 14, 1980 at 9:00 a.m.

For further information see LR-1820, 1832, 6954, 7008, 8622, 8672, 8986, 9018, 9142.

STAFF ACCOUNTING BULLETIN

Staff Accounting Bulletin No. 39/October 6, 1980

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This interpretation presents the staff's view that the general proscription against routine bookkeeping services and the preparation of financial statements by independent auditors, as expressed in Accounting Series Release Nos. 126 and 234, is applicable irrespective of whether a constituent entity is located within or outside of the United States and whether or not the involved entity is material to the total enterprise.

DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Rita J. Gunter, (202-272-2133), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the

Federal securities laws.

George A. Fitzsimmons
Secretary

STAFF ACCOUNTING BULLETIN NO. 39

The staff hereby adds Section O to Topic 6 which sets forth the staff's view that the general proscription against routine bookkeeping services and the preparation of financial statements by independent auditors, as expressed in Accounting Series Release Nos. 126 and 234, is applicable irrespective of whether a constituent entity is located within or outside of the United States and whether or not the involved entity is material to the total enterprise.

TOPIC 6: INTERPRETATIONS OF ACCOUNTING SERIES RELEASES

* * * * *

O. Accounting Series Release Nos. 126, "Independence of Accountants—Guidelines and Examples of Situations Involving the Independence of Accountants," and 234, "Interpretations and Guidelines—Independence of Accountants."

Facts:

A registrant with international operations has a foreign subsidiary or other affiliate whose assets and operations are not material to the consolidated financial statements. The registrant proposes to engage its independent accountant to perform certain routine services for the foreign subsidiary or other affiliate because such subsidiary has no employees capable of performing the services, or for other reasons the registrant finds it desirable or expedient to engage the independent accountant in such capacity.

Question 1:

In these or similar circumstances, would the independence of the accountant be affected adversely if he were engaged to provide routine, on-going recordkeeping services or prepare the financial statements for this foreign subsidiary or other affiliate?

Interpretive Response:

Yes. In Accounting Series Release No. 126, the Commission stated:

> The Commission is of the opinion that an accountant cannot objectively audit books and records which he has maintained for a client. The performance of these services, whether accomplished manually or by means of computers and other mechanized instruments, ultimately places the accountant in the position of evaluating and attesting to his own recordkeeping.

This notion was elaborated in Accounting Series Release No. 234 which states in pertinent part:

> It is the Commission's position that an accounting firm cannot be deemed independent with regard to auditing financial statements of a client. . .if the firm performs other accounting services through which it participates with management in operational decisions.
>
> A major value of an audit of financial statements by an independent accountant is derived from the fact that the accounting records and financial statements of management are reviewed and examined from an independent or outside viewpoint by knowledgeable professional accountants who are not connected with management.

Rule 2-01(b) of Regulation S-X (17 CFR 210.2-01(b)) precludes an independent accountant, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements from having *any* direct financial interest in his client or any of its parents, subsidiaries or other affiliates. For reasons of appearance and practicality, no standard of materiality is relevant for the purposes of this prohibition. Similarly, and for the same reasons, the staff believes materiality considerations to be irrelevant to independence determinations regarding routine bookkeeping services. Neither does the geographic location of the constituent entity nor the place the offending service is performed mitigate the independence problem. However, this interpretation is not intended to affect

earlier guidance respecting emergency situations, temporary in nature, such as those described in Accounting Series Release No. 81, paragraphs 44 and 45.

Question 2:

In these or similar circumstances, is it acceptable to engage the registrant's independent accountant to act as the corporate secretary for the foreign subsidiary?

Interpretive Response:

No. Both the appearance and fact of independence are essential to the credibility that an independent audit adds to the financial reporting process. Rule 2-01(b) of Regulation S-X (17 CFR 210.2-01(b) states that, ". . .an accountant will be considered not independent. . .[where] he or his firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee. . ." An independent auditor who serves as a corporate secretary appears to be acting in a managerial or other capacity associated with the conduct of the business rather than an impartial outside party. Such a relationship has the potential to affect, in an adverse manner, the appearance of the accountant's independence.

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21/no 3

sec docket

VOLUME 21, NO. 3 OCTOBER 28, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6235A, 6246-47	126
Securities Exchange Act	16980A, 17088A, 17206-21	136
Public Utility Holding Company Act	21742-47	174
Trust Indenture Act	591-93	182
Investment Company Act	11327A, 11390-02	182
Investment Advisers Act	731-34	205
Litigation	9199-05	206

This listing covers releases issued from 10/9/80-10/16/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6246 Publication of a series of working papers which will discuss economic aspects of various facets of the capital markets and securities regulation.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions

34-17088A	34-17214	34-17216
34-17206	34-17215	34-17217

33-6235A Publication of a revised version of a statistical profile of Form S-16 issuers and offerings which was originally published as Appendix I to Release No. 33-6235.

33-6247 Proposed rule that would provide an exemption from registration of interests and participations in certain H.R. 10 plans. [S7-857; Comment Period Expires December 15, 1980.]

34-17208 Proposed amendments to the net capital rule which would affect those portions of the rule applicable when brokers and dealers have elected the alternative net capital requirements. [S7-855; Comment Period Expires January 15, 1981.]

34-17209 Proposed amendments to the uniform net capital rule which would increase the percentage deductions from the market value of certain

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	debt securities in the proprietary or other accounts of the broker or dealer. [S7-856; Comment Period Expires January 15, 1981.]
34-17213	Extension of comment period on proposed amendments to Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report. [S7-851; Comment Period Expires October 31, 1980.]
IC-11391	Proposed rule which would deem investment management services which provide their clients with individualized treatment not to be investment companies. [S7-854; Comment Period Expires January 9, 1981.]

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6235A/October 15, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11327A/October 15, 1980

PROPOSED COMPREHENSIVE REVISION TO SYSTEM FOR REGISTRATION OF SECURITIES OFFERINGS; CORRECTION

ACTION: Proposed rulemaking; correction.

SUMMARY: The Commission is publishing a revised version of a statistical profile of Form S-16 issuers and offerings which was originally published as Appendix I to Release No. 33-6235 (September 2, 1980) [45 FR 63693] (September 25, 1980).

DATE: Comments on Release No. 33-6235 must be received on or before January 15, 1981.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-849. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Hugh Haworth (202) 523-5629, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Release No. 33-6235 (September 2, 1980) the Commission proposed three new forms (Forms A, B and C) to be used to register offerings of securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.]. In order to assist commentators in assessing the eligibility criteria for proposed Form A, the release had attached Appendix I which presented a statistical profile of the use of Form S-16 (17 CFR 239.27) for primary offerings from May 1978 to June 1980. Subsequent to publication of the release, the Commission discovered that certain errors had occurred in the compilation of data. The errors have been corrected and revised Appendix I is published herewith. The Commission regrets any inconvenience this may have caused the public.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX I
PART 1

PROFILE OF FORM S-16 OFFERINGS AND ISSUERS
MAY 1978 - JUNE 1980

Prepared by the Directorate of Economic and Policy Analysis

T.1 – TYPE OF SECURITY

	May 1978 – Jan. 1979		Feb. 1979 – Sept. 1979		Oct. 1979 – June 1980	
	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings
Debt	24	40.7%	57	47.5%	139	55.8%
Stock	33	55.9	48	40.0	98	39.4
Other	2	3.4	15	12.5	12	4.8
TOTALS	59	100.0%	120	100.0%	249	100.0%

T.2 – INDUSTRY OF ISSUER

Extractive	2	4.2%	3	3.1%	6	3.4%
Manufacturing	13	27.1	31	32.0	68	38.7
Transportation	5	10.3	1	1.0	1	0.6
Communication	1	2.1	4	4.1	6	3.4
Utilities	14	29.2	29	29.9	49	27.8
Finance	5	10.4	20	20.6	22	12.5
Miscellaneous	8	16.7	9	9.3	24	13.6
TOTAL	48	100.0%	97	100.0%	176	100.0%

T.3 – TIME IN REGISTRATION

0-1 Week	5	8.6%	23	19.3%	56	22.4%
1-2 Weeks	15	25.8	41	34.5	97	38.8
2-3 Weeks	12	20.7	24	20.1	38	15.2
3-4 Weeks	11	19.0	20	16.8	27	10.8
4-6 Weeks	8	13.8	5	4.2	22	8.8
6-8 Weeks	3	5.2	4	3.4	6	2.4
8+ Weeks	4	6.9	2	1.7	4	1.6
TOTAL	58	100.0%	119	100.0%	250	100.0%

T.4 – AMOUNT OF OFFERING

($000's, except for number of offerings)

	May 78 – Jan. 79	Feb. 79 – Sept. 79	Oct. 79 – June 80
Debt Issues			
No. of Offerings	24	57	139
Median	100,000	100,000	75,000
Mean	115,493	124,255	99,802
Minimum	24,610	8,505	2,500
Maximum	500,000	198,125	600,000
Standard Deviation	92,587	97,775	81,929

NOTE: (1) The total number of offerings varies from table to table due to the occasional incidence of missing data which caused some of the offerings to be excluded from certain tables. Offerings are grouped into time periods based upon filing date. Tabulations exclude extended offerings (i.e., employee savings and thrift plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, identified wholly owned subsidiaries, and secondary offerings. The number of offerings and the number of issuers do not coincide because issuers who made more than one offering during the period are accounted for as single issuers.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

T.4 Continued

	May 78 – Jan. 79	Feb. 79 – Sept. 79	Oct. 79 – June 80
Equity Issues			
No. of Offerings	33	48	98
Median	22,100	25,126	35,635
Mean	31,785	42,881	49,773
Minimum	164	126	975
Maximum	135,250	328,000	334,028
Standard Deviation	33,146	58,174	55,782
Other Issues			
No. of Offerings	2	15	12
Median	110,038	100,000	65,000
Mean	110,038	128,179	181,538
Minimum	21,249	35,000	4,380
Maximum	198,828	250,000	732,087
Standard Deviation	125,567	61,915	264,504

T.5 – ANNUAL REVENUES OF ISSUERS[1]

($000,000's, except for number of offerings)

	May 78 – Jan. 79	Feb. 79 – Sept. 79	Oct. 79 – June 80
No. of Issuers	48	97	175
Median	580	862	859
Mean	1,302	1,928	2,211
Minimum	27	6	5
Maximum	6,339	21,076	44,488
Standard Deviation	1,620	3,202	4,315

T.6 – ANNUAL EARNINGS OF ISSUERS[2]

($000,000's, except number of offerings)

	May 78 – Jan. 79	Feb. 79 – Sept. 79	Oct. 79 – June 80
No. of Issuers	48	97	175
Median	58	80	78
Mean	90	158	177
Minimum	0	1	(121)
Maximum	395	3,111	8,767
Standard Deviation	92	340	670

T.7 – ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK

(000's, except number of offerings)

No. of Issuers	47	92	173
Median	5,183	5,128	5,115
Mean	8,323	7,603	7,691

[1] Most recent fiscal year prior to offering.

[2] Most recent fiscal year prior to offerings.

T.7 Continued

	May 78 – Jan. 79	Feb. 79 – Sept. 79	Oct. 79 – June 80
Minimum	31	3	3
Maximum	39,292	35,830	47,610
Standard Deviation	8,775	7,528	8,029

T.8–SHAREHOLDERS OF ISSUERS' COMMON STOCK[3]

No. of Issuers	48	96	168
Median	29,801	27,209	27,004
Mean	41,709	54,021	66,613
Minimum	2,630	1,025	826
Maximum	251,516	580,572	2,939,090
Standard Deviation	50,677	84,640	230,857

[3] Excludes companies not listed by Moody's Investors Services, Inc.
Source: Moody's Investors Service, Inc. (Various manuals) and Registered Offerings Statistical File, Directorate of Economic and Policy Analysis Securities and Exchange Commission

APPENDIX I
PART 2

PROFILE OF TWENTY-FIVE LARGEST AND TWENTY-FIVE SMALLEST FORM S-16 ISSUERS RANKED ON THE BASIS OF ANNUAL REVENUE
MAY 1978 - JUNE 1980

T.1 – TYPE OF SECURITY

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
Debt	14	5	21	7	20	3
Stock	10	19	2	17	3	19
Other	1	1	2	1	2	3
TOTAL	25	25	25	25	25	25

T.2 – INDUSTRY OF ISSUER

Extractive	0	2	0	1	0	3
Manufacturing	9	4	14	6	14	9
Transportation	2	4	0	0	0	0
Communication	1	0	1	1	2	1
Utilities	5	10	3	12	1	4
Finance	3	2	5	4	3	3
Miscellaneous	5	3	2	1	5	5
TOTAL	25	25	25	25	25	25

NOTE: (1) Offerings are grouped into time periods based upon filing date. Tabulations exclude identified wholly owned subsidiaries and issuers of extended offerings (i.e., employee savings and thrift plans, stock option plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, and secondary offerings.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

T.3 – TIME IN REGISTRATION

	May 1978 – Jan. 1979		Feb. 1979 – Sept. 1979		Oct. 1979 – June 1980	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
0-1 Week	3	4	8	3	11	4
1-2 Weeks	8	4	10	4	8	5
2-3 Weeks	5	5	4	6	3	8
3-4 Weeks	5	2	3	9	0	4
4-6 Weeks	3	5	0	1	1	3
6-8 Weeks	0	4	0	2	1	1
8+ Weeks	1	1	0	0	1	0
TOTAL	25	25	25	25	25	25

T.4 – AMOUNT OF OFFERING ($000's)

	May 78 – Jan. 79		Feb. 79 – Sept. 79		Oct. 79 – June 80	
	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest	Twenty-Five Largest	Twenty-Five Smallest
Median	99,500	21,249	150,000	25,000	150,000	17,100
Mean	106,270	24,279	161,465	36,801	197,800	28,686

T.5 – ANNUAL REVENUES OF ISSUERS[1] ($000,000's)

Median	1,505	246	3,526	206	6,601	107
Mean	2,274	271	5,445	205	9,140	112

T.6 – ANNUAL EARNINGS OF ISSUERS[1] ($000,000's)

Median	108	32	218	23	314	9
Mean	140	33	421	27	691	13

T.7 – ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK (000's)

Median	7,220	3,031	13,982	1,181	15,617	2,294
Mean	11,154	5,764	14,040	2,037	17,409	2,930

T.8 – SHAREHOLDERS OF ISSUERS' COMMON STOCK

Median	32,286	19,000	62,743	17,448	72,000	3,766
Mean	56,968	26,300	167,011	22,219	208,846	5,616

[1] For the most recent fiscal year prior to offering.

SOURCE: Moody's Investors Services, Inc. (various manuals) and Registered Offerings Statistical File, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

SECURITIES ACT OF 1933
Release No. 6246/October 9, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17207/October 9, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11392/October 9, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 731/October 9, 1980

PUBLICATION OF COMMISSION CAPITAL MARKET WORKING PAPERS

ACTION: Announcement of the publication of a series of capital market working papers.

SUMMARY: The Securities and Exchange Commission has announced that it has authorized the publication of a series of working papers which will discuss economic aspects of various facets of the capital markets and securities regulation. In general, these working papers will be prepared by the staff of the Commission's Directorate of Economic and Policy Analysis, although the series may also include papers prepared by scholars outside of the Directorate. The papers will be distributed to those with an interest in the field and, upon request, to member of the general public. They are intended to be topical and to stimulate public discussion which can assist the Commission in the performance of its responsibilities under the securities laws. The views and conclusions presented will not, however, necessarily be those of the Commission.

FOR FURTHER INFORMATION CONTACT: Jeffry L. Davis, Assistant Director, Directorate of Economic and Policy Analysis (tele. 202/272-2850), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it has authorized its staff to commence the publication of a series of working papers concerning the operation of the capital markets, the capital formation process, and the economic implications of aspects of Commission regulation. The Commission has traditionally viewed economic and empirical analysis as a valuable tool and recognizes the importance of a full understanding of the economics of the marketplace to the formulation of regulatory policy. Similarly, the Commission is sensitive to the impact of regulatory decisions on those markets.[1] The Securities Acts Amendments of 1975 gave the Commission new responsibilities in this area,[2] and, during the past five years, the Commission has therefore made special efforts to ensure that it has access to informed empirical information relevant to its responsibilities.

The new working paper series is a part of this process. While these papers will not necessarily relate to particular Commission rules or rule proposals, each will serve to highlight general issues of importance to those with an interest in the health, vitality, and future structure of the capital markets and market participants.

The Commission believes that papers of this nature will serve to stimulate dialogue, research, and understanding which will directly benefit Commission decisionmaking. More broadly, the Commission also intends these papers to focus attention on capital formation and other issues of importance to our society as a whole.

The Commission's Directorate of Economic and Policy Analysis will select the topics and the Directorate staff will prepare the papers published in this series. In some cases, however, the Commission will publish papers prepared by academics or others with an interest in the field who are not affiliated with the Directorate.[3] Whether or not prepared by the staff, the papers in the series will not be approved formally on an individual basis by the Commission, and, therefore, will not necessarily represent the views of the Commission. Publication of a particular paper reflects only the fact that the staff of the Directorate of Economic and Policy Analysis has made a judgment that the matters discussed are significant to those with an interest in the capital markets and that the Commission would benefit

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[1]*See generally* Securities Act Release No. 6219 (June 30, 1980), 20 SEC Docket 547, 552-53, 45 FR 45554; SEC, *Staff Report on the Securities Industry in 1978* (July 1979).

[2]*See, e.g.*, Sections 6(e)(3), 23(a)(2), and 23(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. 78(e)(3), 78w(a)(2), and 78w(b)(4)(H).

[3]Persons with suggestions concerning particular papers or topics which might be included in this series should correspond with the Directorate.

from the publication of those views and from the resulting opportunity to receive the response and comments of others.

The publication of each paper in this series will be announced in the Commission's *News Digest*. Papers will be distributed routinely to a limited list of scholars and economists active in the fields with which the series deals. In addition, any person interested in receiving a copy of a particular paper may do so, at no cost, by contacting the Commission's Publication Unit, Room B-28, 500 North Capitol Street, Washington, D.C. 20549. While each requestor will be limited to a single copy, there are, of course, no restrictions on private reproduction of these papers.

The Commission invites and encourages comments from economists, academics, issuers, participants in the securities industry, investors, and other interested members of the public on the issuers raised in any of these papers. Unless indicated otherwise in a particular paper, all comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. In addition, comments on any aspects of this release (*e.g.*, the general goals of the Working Paper series) which do not relate to a particular paper should also be addressed to the Secretary. All such correspondence will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Simultaneous with the publication of this release, the Commission is issuing the first working paper in this series. Working Paper No. 1 is Entitled "Acquisition of Technology-Based Firms by Tender Offer: An Economic and Financial Analysis" was prepared by the staff of the Commission's Directorate of Economic and Policy Analysis.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6247/October 14, 1980

EXEMPTION FROM REGISTRATION OF INTERESTS AND PARTICIPATIONS IN CERTAIN H.R. 10 PLANS

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt a rule that would provide an exemption from the registration requirements of the Securities Act of 1933 for interests and participations issued in connection with the tax-qualified retirement plans commonly called "H.R. 10" plans of certain partnerships that meet the criteria set forth in the proposed rule. Because H.R. 10 plans are not entitled to the exemption from registration available to the tax-qualified retirement plans of certain employers, many such plans have applied for and received exemptions from such registration requirements. The proposed rule, if adopted, would obviate the need for such applications for H.R. plans that meet the criteria set forth in the rule.

DATES: Comments should be submitted on or before December 15, 1980.

ADDRESSES: Persons wishing to submit written comments should file 10 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C., 20549. All submissions should refer to File No. S7-857 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary A. Cole, (202) 272-2057, Office of Compliance and Insurance Products, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment Proposed Rule 180 (17 CFR 230.180) under the Securities Act of 1933 (the "Act") [15 U.S.C. 77a-77aa]. Proposed Rule 180, if adopted, would provide an exemption from the registration requirements of Section 5 of the Act [15 U.S.C. 77e] for interests and participations issued in connection with the H.R. 10 plans of partnerships that meet certain criteria.

BACKGROUND

Section 3(a)(2) of the Act [15 U.S.C. 77c(a)(2)] provides an exemption from the registration requirements of the Act for interests and participations issued in connection with certain employee benefit plans qualified under Section 401 of the Internal Revenue Code (the "Code"). However, the exemption does not apply to plans that cover self-employed persons as defined in Section 401(c)(1) of the Code. Plans covering such self-employed persons are generally referred to as "Keogh" or "H.R. 10" plans. Plans of partnerships are generally H.R. 10 plans since partners are self-employed persons within the meaning of Section 401(c)(1). Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act, by rule, regulation or order, any interest or participation issued in connection with a pension or profit-sharing plan that covers such self-employed persons, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Commission itself has exercised its exemptive authority with respect to such plans five times, granting orders of exemption to three law firms, an accounting firm, and an investment banking firm, each of which is organized as a partnership. Under a grant of delegated authority, the Commission's Division of Investment Management (the "Division") has issued to approximately 70 large partnerships, mostly law firms, orders of exemption from Section 5 of the Act for interests or participations in their pension or profit-sharing plans. If the proposed rule is adopted, the need for such applications should be greatly reduced.

SUMMARY OF THE PROPOSED RULE

The proposed rule is divided into two parts. Part (a) deals with the participation interests of plans in the collective investment vehicles in which such plans invest their assets, and part (b) deals with the participation interests of employees in their respective plan.[1]

Paragraph (a) of Proposed Rule 180 would exempt interests or participations in certain investment media sold to H.R. 10 plans where: (1) the plan covers employees of a single employer or is a single plan covering employees of interrelated partnerships; and (2) either (i) the employer is a financially sophisticated law firm, accounting firm or investment banking firm, or (ii) the employer has secured independent expert advice in connection with its plan.[2] The investment media covered by paragraph (a) are: (1) any single trust; (2) a collective trust fund maintained by a bank; and (3) a separate account maintained by an insurance company.[3]

Paragraph (b) or Proposed Rule 180 would exempt any interest or participation in an H.R. 10 plan if the assets of such plan are invested in a single trust, a collective trust fund maintained by a bank, separate account maintained by an insurance company, or in an annuity contract funded through the general account of an insurance company. The H.R. 10 plan would be entitled to the exemption provided for in paragraph (b) only if interests or participations in the funding media in which the plan invests are exempt from the registration requirements of the Act pursuant to paragraph (a) of Proposed Rule 180 or any other rule, regulation or provision of the Act or if such interests or participations are registered under the Act.

DISCUSSION OF PROPOSED RULE 180

Two Interests Exempted

The proposed rule recognizes that two securities are created when a plan invests in a trust or separate account. These are the interest of the beneficiary in the plan and the interest of the plan in the trust or separate account in which plan assets are invested.

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[1]A bill recently passed by Congress [H.R. 7554, 96th Cong. 2d Sess., §701, 126 Cong. Rec. 10207, October 1, 1980] would amend Section 3(a)(2) of the Act in several respects. If the bill is enacted into law, the Commission will amend Proposed Rule 180 to reflect the changes in Section 3(a)(2).

[2]The Commission understands that, since most, if not all, H.R.10 plans are covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), the reporting and disclosure requirements and fiduciary standards thereof will provide a partial substitute for the protections registration under the Act would provide.

[3]H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make the exemption available to insurance company general account contracts.

Over the past four years, the Commission and, pursuant to delegated authority, the Division have granted exemptive relief under Section 3(a)(2) to such plans for interests in the plans. Typically, applications for orders under Section 3(a)(2) are filed on behalf of the plans themselves and not on behalf of the underlying funding media.

In order to resolve any uncertainty regarding the status of either interests or participations in plans or interests of plans in funding media, the proposed rule exempts both from the Section 5 registration requirements. The Commission believes that the language of the statute is broad enough to authorize it to adopt a rule recognizing that two securities are created, and providing means for exempting both.[4]

Funding Media

Section 3(a)(2) of the Act exempts "any interest or participation in a single or collective trust fund maintained by a bank." The language makes it unclear whether a single trust must be maintained by a bank in order for the exemption to be available. However, the legislative history makes clear that Congress intended, in drafting this section, to conform it in all material respects to Section 3(c)(11) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(11)]. Since that provision clearly exempts single trusts whether or not maintained by a bank, the Commission has intrepreted Section 3(a)(2) as not requiring that a single trust be maintained by a bank. The Commission believes it desirable that Proposed Rule 180 leave no doubt on the issue; therefore, the proposed rule applies to "(a)ny interest or participation in a single trust or in a collective trust fund maintained by a bank . . ."[5]

Single Plan

The legislative history of Section 3(a)(2) of the Act indicates that, in excluding interests in H.R. 10 plans from the exemption from registration provided by that provision, Congress was primarily concerned with interests in collective investment vehicles for the assets of H.R. 10 plans of more than one employer.[6] The concern was that sponsoring financial institutions would mass market their products to numerous unrelated self-employed persons for whom such prototype plans might not be suitable. Recognizing this concern, the Commission has included in the proposed rule a condition that the plan cover employees of a single employer. However, the proposed rule treats the plans of interrelated partnerships as plans of single employers. The Commission has granted exemptive orders under Section 3(a)(2) to several partnerships which encompass individual offices in various cities because they do not appear to present the risks with which Congress was concerned.

Financial Sophistication

Subsection (a)(2) of the proposed rule sets as a condition for exemption either that the employer be a "law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees," or that the employer obtain "the advice of an expert that (A) is not affiliated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees."

Congress gave a statutory exemption from Securities Act registration with respect to certain type of qualified plans, but left it to the Commission to determine whether, and to what extent, to exempt H.R. 10 plans. The legislative history indicates that H.R. 10 plans were not exempted automatically

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[4]Specifically, the applicable language of Section 3(a)(2) reads:

"The Commission, by rules, regulations or order, shall exempt from the provisions of Section 5 of this title any interest or participation issued in connection with a pension, profit-sharing, or annuity plan . . . ""

In this connection, see Securities Act Release No. 6188 (February 1, 1980) published in the Federal Register at 45 FR 8960 (Feb. 11, 1980), in which the Commission's Division of Corporation Finance expressed the view that two securities are issued in connection with H.R. 10 plans.

[5]H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make clear that the exemption is available to single trust funds whether or not maintained by a bank.

[6]S. Rep. No. 194, 91st Cong., 2d Sess. 27-28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

"because of their fairly complex nature as an equity investment and because of the likelihood that they could be sold to self-employed persons, unsophisticated in the securities field."[7] Accordingly, in processing applications with respect to H.R. 10 plans, the Commission and the Division have sought assurance that applicants were sufficiently sophisticated to be able to protect adequately their interests and those of their employees or that they received the advice of experts who were financially sophisticated. In practice, the bulk of the applications filed for exemptive orders have involved law firms, accounting firms, and investment banking firms where the plans cover principals of the partnerships who are professionals offering legal or financial services which necessarily involve financially sophisticated and complex matters and which plans, therefore, do not appear to present the risks with which Congress was concerned. In addition, an exemptive order has been granted to another type of partnership that secured the advice of an independent expert.[8]

The proposed rule is intended to codify the Commission's administrative experience and, therefore, is drafted to cover those types of entities with respect to which exemptions have been granted: law firms, accounting firms, investment banking firms, and other firms which rely on independent experts. The substantive requirement of knowledge and experience in financial and business matters sufficient to enable adequate representation of the interests of plan participants addresses the concerns of Congress as indicated in the legislative history. That standard is similar to that which Rule 146 under the Act [17 CFR 230.146] establishes with respect to offerees and offeree representatives.

TEXT OF PROPOSED RULE 180

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended by adding §230.180 to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.180 Exemption from registration of interests and participations in certain H.R. 10 plans.

(a) Any interest or participation in a single trust or in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company, issued in connection with a pension or profit-sharing plan that meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954 or an annuity plan that meets the requirements for the deduction of the employer's contribution under section 404(1)(2) of such Code, which plan covers employees, some or all of whom are employees within the meaning of section 401(c) of such Code, shall be exempt from the provisions of section 5 of the Act if each of the following terms and conditions is met:

(1) The plan covers employees of a single employer or the plan is a single plan covering employees of interrelated partnerships;

(2) (i) The employer is a law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees; or (ii) in connection with the plan, the employer has obtained the advice of an expert that (A) is not affiliated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation in a pension or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act if all the assets of the plan are held in a single trust, in a collective trust fund maintained by a bank, in a separate account maintained by an insurance company or by a life insurance company under an annuity contract issued to the plan or its trustee, *Provided* That the interests or participations held by the plan in each of the said issuers are either

[7]S. Rep. No. 194, 91st Cong., 2d Sess. 27-28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

[8]Monroe Clinic Employees' Retirement Plan, Securities Act Release No. 6174 (January 9, 1980) published in the SEC Docket, Vol. 19, No. 3 (January 22, 1980) p. 142.

registered under section 5 of the Act or exempt from the provisions of said section 5 under paragraph (a) of this section or by statute or other rule or regulation.

STATUTORY BASIS: Rule 180 is proposed pursuant to the provision of section 3(a)(2) [15 U.S.C. 77c(a)(2)] of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16980A/October 16, 1980

Admin. Proc. File No. 3-5877

In the Matter of

VERRILLI, ALTSCHULER, SCHWARTZ, INC. (8-20356)
M. RICHARD VERRILLI
STANLEY S. ALTSCHULER
STEPHEN SCHWARTZ
CLIFTON J. BATSON

CORRECTED FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I

In these administrative proceedings ordered pursuant to Section 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] respondents Verrilli, Alschuler, Schwartz, Inc. ("Registrant"), M. Richard Verrilli"), Stanley S. Altschuler ("Altschuler"), Stephen Schwartz ("Schwartz") and Clifton J. Batson ("Batson") have submitted Offers of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings, Registrant, Verrilli, Altschuler, Schwartz and Batson have consented to the findings of willfull violations and sanctions set forth below.

II

On the basis of the Order for Public Proceedings and the Offers of Settelement, it is found that:[2]

A. Registrant willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), and Section 15(a) of the Exchange Act and failed reasonably to supervise persons who were subject to its supervision with a view to preventing such violations pursuant to Section 15(b)(4)(E) of the Exchange Act;

B. Verrilli willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act and willfully aided and abetted violations of Section 15(a) of the Exchange Act;

C. Altschuler willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act and willfully aided and abetted violations of Section 15(a) of the Exchange Act;

D. Schwartz willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act and willfully aided and abetted violations of Section 15(a) of the Exchange Act; and

E. Batson willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act;

in connection with the offer and sale of the securities of ATVA Enterprises, Inc., as alleged in the Order for Public Proceedings.

III

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement submitted by Registrant, Verrilli, Altschuler, Schwartz and Batson, respectively.

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[1] *In the Matter of Verrilli, Altschler, Schwartz, Inc., et al.*, Admininstrative Proceeding File No. 3-5877 (February 13, 1980).

[2] The findings contained in this Order shall not be binding upon other respondents in this proceeding.

Accordingly, IT IS ORDERED that effective as of the date of the issuance of this Order:

A. Registrant is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with the offer to sell or sale of such unregistered securities, provided that Registrant may engage in such activities in connection with any offering of unregistered securities pursuant to any applicable exemption under the Securities Act or the rules and regulations promulgated thereunder, in which Registrant participated prior to the effective date of this Order.

B. Verrilli is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with the offer to sell or sale of such unregistered securities, provided that Verrilli may engage in such activities in connection with any offering of unregistered securities pursuant to any applicable exemption under the Securities Act or the rules and regulations promulgated thereunder, in which Verrilli participated prior to the effective date of this Order;

C. Altschuler is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with the offer to sell or sale of such unregistered securities, provided that Altschuler may engage in such activities in connection with any offering of unregistered securities pursuant to any applicable exemption under the Securities Act or the rules and regulations promulgated thereunder, in which Altschuler participated prior to the effective date of this Order;

D. Schwartz is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Secion 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with the offer to sell or sale or such unregistered securities, provided that Schwartz may engage in such activities in connection with any offering of unregistered securities pursuant to any applicable exemption under the Securities Act or the rules and regulations promulgated thereunder, in which Schwartz participated prior to the effective date of this Order;

E. Batson is suspended;

1. for a period of one year from association with any broker or dealer, investment adviser or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity; and

2. for a period of six months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with the offer to sell or sale of such unregistered securities, unless the securities are offered in accordance with the terms and conditions of Regulation A promulgated under the Securities Act.

IT IS FURTHER ORDERED that Registrant, Verrilli, Altschuler, Schwartz and Batson comply with the undertakings enumerated in their respective Offers of Settlement.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17088A/October 15, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INC.
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-21)

AMENDMENT TO PROPOSED RULE CHANGE

On August 25, 1980, Securities Exchange Act Release No. 17088 was issued to give notice of the filing of a proposed rule change by the Chicago Board Options Exchange,inc. (SR-CBOE-80-21) to amend its Rule 4.4 to increase to $100 the limit of any compensation or gratuity given by any member in any one year to an employee of the Exchange, or any other member, or non-member broker, dealer, bank or institution, without the prior consent of the employer and the Exchange.

On October 6, 1980, the Exchange submitted an amendment to this filing revising the amount of annual gratuities or compensation to any employee of the Exchange to $50.00, while retaining the $100.00 amount for employees of members.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17206/October 9, 1980

In the Matter of

NEW YORK STOCK EXCHANGE, INC.
55 Water Street
New York, New York 10041

(SR-NYSE-80-23)

ORDER APPROVING PROPOSED RULE CHANGE

On June 9, 1980, the New York Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend New York Stock Exchange Rule 325(e) to impose a minimum financial responsibility requirement on all members who execute orders on the floor of the Exchange and raise the amount of such financial requirement from $25,000 to $50,000.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17096, August 27, 1980) and by publication in the *Federal Register* (45 FR 58998, September 5, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17207/October 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6246/October 9, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17208/October 9, 1980

NET CAPITAL REQUIREMENTS FOR BROKERS AND DEALERS

ACTION: Proposed rules and solicitation of comments on financial responsibility rules.

SUMMARY: The Commission is proposing amendments to the net capital rule which would affect those portions of the rule applicable when brokers and dealers have elected the alternative net capital requirements. The proposed amendments would lower the ratio of required net capital to debit balances in customers' margin accounts and lower the minimum net capital requirement for those firms electing the alternative. The Commission is also proposing certain changes regarding the entries in the Reserve Formula of the customer protection rule which will also affect the computation of required net capital under the alternative. Finally, the Commission is soliciting comments on a broad range of questions regarding the financial responsibility rules for brokers and dealers in its re-examination of the scope, adequacy and necessity of those rules.

DATE: Comments to be received by January 15, 1981.

ADDRESSES: All comments should be submitted in triplicate and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to file No. S7-855 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Gregory N. Smith, Division of Market Regulation (202) 272-2368, 500 N. Capitol Street, N.W., Washington, D.C. 20549. For questions relating to the analysis and interpretation of the economic data herein, please contact Rosanne F. Greene, Directorate of Economic and Policy Analysis (202) 523-5495.

SUPPLEMENTARY INFORMATION: During the 1970's, the Commission substantially reformed its broker-dealer financial responsibility standards in response to the collapse of large firms and subsequent losses to customers arising from the financial and operational weaknesses of the firms in the late 1960's. In 1973, the Commission adopted Rule 15c3-3, which for the first time established procedures for the segregation of customers' fully-paid and excess margin securities held by broker-dealers and prohibited use of customer funds on deposit with broker-dealers except in certain customer related areas.[1]

The second major reform occurred with the adoption of the present uniform net capital rule (the "Rule"), 17 CFR 240.15c3-1, in 1975 after a lengthy review by the Commission of the then-existing financial responsibility rules and extensive public comment. The Rule eliminated the exemption in the Commission's prior net capital rule for all members of national securities exchanges and made virtually all registered brokers and dealers subject to the Commission's capital requirements.[2] The Rule continued the basic liquidity concept under which the securities industry had operated for many years. That concept requires a firm to have and maintain designated minimum amounts of liquid assets in relation to its aggregate indebtedness. In addition, the Commission introduced an alternative concept to measure the capital adequacy of brokers and dealers. The alternative concept linked the capital requirements of brokers and dealers to their customer related business as measured by the requirements of Rule 15c3-3. These reforms were significant steps in the Commission's continuing efforts to structure its rules to provide adequate

[1]Rule 15c3-3 was adopted pursuant to Section 15(c)(3) of the Securities Exchange Act of 1934 (the "Act") which was amended by Section 7(d) of the Securities Investor Protection Act of 1970. The amendment required the Commission to adopt rules and regulations to provide ". . .safeguards with respect to the financial responsibility and related practices of brokers and dealers; including, but not limited to, the acceptance of custody and use of customers' securities, and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall require the maintenance or reserves with respect to customers' deposits or credit balances, as determined by such rules and regulations."

[2]Section 15(c)(3) of the Act was further amended by the Securities Reform Act of 1975 to require the Commission, by September 1, 1975, to establish minimum financial responsibility requirements for all brokers and dealers.

protection for customers' assets while recognizing the need of securities firms for flexibility in efficiently using their capital resources.

When it adopted the present net capital rule, the Commission anticipated that it would revisit the financial responsibility rules at some time in the future. The Commission concludes that this review should be undertaken now because of changes in the structure of the industry and the nature and volume of the business of brokers and dealers.

Brokers and dealers and the markets in which they deal are different from those in the early 1970's. The financial data set forth in Tables 1 and 2 for New York Stock Exchange ("NYSE") member firms doing a public business[3] show that there has been a dramatic shift in the business mix of firms measured in terms of their major revenue sources and in their balance sheet structures.[4] In addition, many brokers and dealers now can clear significant portions of their business through a single clearing agency, regardless of the market where the transaction was executed. Participants in securities depositories can move securities throughout the country more efficiently and with less overall loss, to effect transfers and to make deliveries by book entry as a result of the expanded interfaces among depositories. This development has also had the effect of further immobilizing securities certificates.

These factors raise the question whether the present net capital rule properly assesses the risks involved in the business and requires appropriate reserves. The amount of liquid reserves required to prevent losses to customer assets and at the same time maximize scarce capital available to the intricate securities system is a subject which can elicit different responsible opinions. The object of this release is to explore these issues and elicit comment from the public. Accordingly, there follows a brief description of the net capital rule and certain proposed changes. The release concludes with an invitation for public comment on a broad range of questions regarding the financial responsibility rules.

The Commission intends that the proposals and issues raised in this release be considered in conjunction with the release proposing an amended schedule of haircuts on debt securities, also being issued today.[5] The haircut schedule, as proposed, may have a substantial effect on the net capital of firms. It should also be noted that the Commission's proposed amendments to the FOCUS report would provide new detailed data relative to firms' activities.[6]

I. *Present Net Capital Requirements*

Historically, the principal regulatory tool relied upon to insure the financial integrity of broker-dealers was the required maintenance of a net capital base relative to a firm's aggregate indebtedness in order to ensure sufficient liquid assets to cover a firm's current indebtedness. The Commission's basic net capital rule currently requires that a broker-dealer's "aggregate indebtedness" never be more than 1500% of his "net capital," as those terms are defined in the Rule. Net capital essentially means the net worth of a broker-dealer reduced by prescribed percentages of the market value of securities owned by the broker or dealer ("haircuts") and reduced by other assets not readily convertible into cash, but including certain subordinate debt, i.e., net liquid assets. Aggregate indebtedness includes all the money liabilities of a broker or dealer, except certain specifically described items. In essence, the Rule requires a broker or dealer to cover each dollar of his liabilities with not less than one dollar and six and two-thirds cents of liquid assets.

The alternative method of calculating net capital requires a broker or dealer to maintain minimum net capital equal to the greater of $100,000 or 4% of aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under Rule 15c3-3 ("Reserve Formula"), 17

[3]Historical data for NYSE member firms doing a public business has been available on a consistent basis since 1972 while comparable data for other industry segments did not become available until 1976 with the adoption of the FOCUS Report (Financial and Operational Combined Uniform Single Report).

[4]For an analysis of the financial structure of the broker-dealer industry, see Securities and Exchange Commission, *Staff Report on the Securities Industry in 1979*, September 1980.

[5]Securities Exchange Act Release No. 17209 (October 9, 1980).

[6]Securities Exchange Act Release No. 17138 (September 19, 1980).

Table 1

UNCONSOLIDATED ANNUAL REVENUES AND EXPENSES OF NYSE MEMBER FIRMS DOING A PUBLIC BUSINESS

(Millions of Dollars)

Revenues	1972	1973	1974	1975	1976	1977	1978	1979
Securities Commissions	$3,224	$2,860	$2,271	$2,925	$3,164	$2,809	$3,779	$4,012
Realized and Unrealized Gain or (Loss) in Trading and Investments	909	415	592	914	1,400	1,296	1,543	2,671
Commodities Revenue	120	181	160	174	210	243	351	436
Profit or (Loss) From Underwriting and Selling Groups	770	430	430	781	853	776	742	770
Revenue From Sale of Investment Company Securities	95	100	41	35	45	58	59	76
Margin Interest	507	641	616	455	565	755	1,173	1,852
Revenue Unrelated to the Securities Business	28	41	67	89	137	136	237	353
All Other Revenues	337	343	443	494	530	657	949	1,294
Gross Revenues	$5,990	$4,811	$4,620	$5,867	$6,902	$6,730	$8,832	$11,264
Number of firms at year-end	490	463	420	409	384	364	361	374

Sources: NYSE Joint Regulatory Report and FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

Table 2

SUMMARY BALANCE SHEET FOR NYSE FIRMS DOING A PUBLIC BUSINESS, 1972-1979

(Millions of Dollars)

	1972	1973	1974	1975	1976	1977	1978	1979
ASSETS								
Cash	$ 816.6	$ 687.6	$ 581.6	$ 664.7	$ 761.0	$ 797.0	$ 984.0	$ 1,763.0
Receivables from other broker-dealers and clearing corporations:								
Securities failed to deliver	1,967.5	1,496.9	987.4	1,163.2	1,663.0	2,030.0	1,781.0	2,279.0
Securities borrowed	1,260.8	1,043.2	808.3	1,447.1	1,874.0	2,211.0	2,484.0	3,912.0
Other	297.2	272.3	848.6	621.4	418.0	741.0	844.0	632.0
Receivables from customers	12,321.1	8,122.7	6,539.8	8,265.4	11,453.0	13,537.0	15,868.0	17,981.0
Long positions in securities and commodities	8,307.2	7,063.0	8,319.2	8,860.5	15,662.0	13,799.0	15,238.0	20,199.0
Securities owned – not readily marketable	94.0	103.2	75.1	79.8	41.0	32.0	22.0	30.0
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	198.3	95.2	54.0	65.4	93.0	65.0	63.0	67.0
Securities purchased under agreement to resell[1]	NA	NA	NA	NA	4,255.0	8,187.0	14,018.0	24,244.0
Secured capital demand notes	268.7	412.3	343.3	292.7	291.0	236.0	248.0	255.0
Exchange memberships	218.5	134.1	109.6	102.2	129.0	106.0	108.0	139.0
Other Assets	1,365.9	1,244.2	1,139.0	1,163.5	1,541.0	1,880.0	2,244.0	3,503.0
Total Assets	$27,115.8	$20,674.7	$19,805.9	$22,725.9	$38,181.0	$43,621.0	$53,902.0	$75,004.0
LIABILITIES AND EQUITY CAPITAL								
Bank loans payable:								
Secured by customer collateral	$ 5,720.1	$ 2,499.2	$ 1,522.2	$ 2,054.1	$ 4,725.0	$ 5,883.0	$ 5,123.0	$ 4,002.0
Secured by firm collateral	5,960.4	5,146.2	6,783.8	6,803.0	5,108.0	5,812.0	4,337.0	4,557.0
Securities sold under repurchase agreements[1]	NA	NA	NA	NA	11,222.0	10,584.0	16,306.0	23,851.0

Table 2 Continued

	1972	1973	1974	1975	1976	1977	1978	1979
Payable to other broker-dealers and clearing organizations:								
Securities failed to receive	2,077.0	1,389.0	1,039.1	1,173.8	1,539.0	2,161.0	1,745.0	2,105.0
Securities loaned	1,238.3	839.7	573.6	1,033.9	1,585.0	1,828.0	2,198.0	3,715.0
Other	817.4	782.4	619.8	836.1	430.0	902.0	733.0	671.0
Payable to customers	3,998.8	3,610.3	2,934.5	3,323.4	4,786.0	5,099.0	7,202.0	10,992.0
Short positions in securities and commodities	1,285.1	1,018.9	645.2	931.0	2,129.0	3,980.0	6,610.0	13,706.0
Other liabilities	1,828.2	1,785.0	2,432.2	3,103.8	2,744.0	3,839.0	5,258.0	6,406.0
Total liabilities excluding subordinated liabilities	22,925.3	17,070.7	16,550.4	19,258.9	34,268.0	39,688.0	49,512.0	70,005.0
Subordinated liabilities	$ 1,041.2	$ 1,077.5	$ 909.4	$ 777.6	$ 766.0	$ 759.0	$ 963.0	$ 1,040.0
Total Liabilities	$23,966.5	$18,148.2	$17,459.8	$20,036.5	$35,034.0	$40,447.0	$50,475.0	$71,045.0
Equity Capital	3,149.3	2,526.5	2,346.1	2,689.6	3,147.0	3,174.0	3,427.0	3,959.0
Total Liabilities and Equity Capital	$27,115.8	$20,674.7	$19,805.9	$22,725.9	$38,181.0	$43,621.0	$53,902.0	$75,004.0
Number of firms at year-end	490	463	420	409	384	364	361	374

[1]Data on repurchase agreements is not available before the first quarter of 1976. Prior to 1976, securities purchased under agreement to resell were combined with long positions in securities and commodities, while securities sold under repurchase agreements were combined with money borrowed secured by firm collateral. Much of the considerable growth of assets in 1976 reflects the increased involvement of broker-dealers in U.S. Government and Agency obligations which was accompanied by a substantial growth in the use of repurchase agreements.

Sources: NYSE Joint Regulatory Report and FOCUS Report, Directorate of Economic and Policy Research

CFR 240.15c3-3a. The debit items in the Reserve Formula represent moneys owed the broker-dealer in relation to customer transactions. The alternative approach is founded on the concept that, if the debit items in the Reserve Formula can be liquidated at or near their contract value, these assets along with any cash required to be on deposit under the rule, will be sufficient to satisfy all liabilities to customers (which are represented as credit items in the Reserve Formula). As an additional safeguard, election of the alternative requires a firm to reduce by 3% its aggregate debit items to provide, in essence, a bad debt reserve of firm capital to assure adequate resources to pay customer claims. Election of the alternative also requires that operational charges (stock record differences and suspense account items) be reflected in the Reserve Formula after seven business days, rather than after 30 business days, as permitted for those firms which have not elected the alternative. Together, these limitations allow a firm to increase its customer commitments only as a function of its net capital.

Most broker-dealers utilize the basic method for complying with the net capital rule. Tables 3 through 6 provide a financial profile of firms electing the alternative and basic methods for computing net capital. As Tables 3 and 4 indicate, 139 of the 374 NYSE member firms conducting a public business as of December 31, 1979 were using the alternative method for the computation of net capital. These 139 firms accounted for 68% of the aggregate assets, 76% of the aggregate equity capital, and 81% of the aggregate revenues of the 374 NYSE firms conducting a public business. Of the classified NYSE member firms, all ten National Full Line firms elected the alternative capital approach, while 57 Regional firms (48% of NYSE member firms classified as Regional) utilized this method.[7]

Only 44 of the 2,066 broker-dealers that conducted a public business as of December 31, 1979 and were not members of the NYSE used the alternative method for the computation of net capital (see Tables 5 and 6). These 44 firms were, on average,

[7]National Full Line firms conduct a general securities business and have a nationwide branch office network. Regional firms, on the other hand, confine their activities to a more limited geographic area. For further information on classified NYSE member firms, see Chapter 3, Securities and Exchange Commission, *Staff Report on the Securities Industry in 1979*, September 1980.

Table 3

UNCONSOLIDATED REVENUES AND EXPENSES OF NYSE FIRMS DOING A PUBLIC BUSINESS, 1979

(Millions of Dollars)

	Firms Using Alternate Method			Firms Using Basic Method		
	National Full Line	Regional Firms	Other Firms*	Regional Firms	Other Firms	All Firms
REVENUES						
Commissions						
Listed equities on an exchange	$1,275.2	$ 331.9	$ 976.5	$ 153.2	$ 388.2	$3,125.0
Listed option transactions	251.7	45.6	112.9	15.0	18.0	443.2
All other commissions	138.9	99.2	113.1	42.3	50.7	444.2
Total securities commissions	1,665.8	476.7	1,202.5	210.5	456.9	4,012.4
Gains or Losses on Trading Accounts	793.0	141.6	771.9	65.5	399.3	2,171.3
Realized and Unrealized Gains or Losses on Securities Investment Accounts	69.8	7.7	241.6	3.5	177.0	499.6
Profits or Losses from Underwriting and Selling Groups	313.0	77.0	238.2	61.5	79.8	769.5
Margin Interest	915.1	183.4	452.5	13.0	87.5	1,651.5
Sale of Investment Company Shares	32.9	14.5	17.0	9.8	1.4	75.6
Investment Advisory, Account Supervision	35.8	7.6	28.3	8.9	41.0	121.6
All Other Revenue	700.3	106.1	610.2	82.4	463.5	1,962.5
Gross Revenue	$4,525.7	$1,014.6	$3,562.2	$ 455.1	$1,706.4	$11,264.0
EXPENSES						
Employee Expenses Other than Registered Representatives' Compensation	$ 880.9	$ 175.9	$ 677.0	$ 88.2	$ 270.6	$2,092.6
Salaries and Other Employment Costs for General Partners and Voting Stockholder Officers	63.2	78.1	139.2	45.4	113.5	439.4
Commissions and Clearance Paid	176.3	59.5	298.7	25.5	86.3	646.3
Interest Expense	931.2	142.1	988.5	40.2	573.3	2,675.3
Regulatory Fees and Expenses	19.4	6.3	9.9	3.9	7.9	47.4
All Other Expenses	2,126.0	468.5	1,068.2	203.9	396.2	4,262.8
Total Expenses	$4,197.0	$ 930.4	$3,181.5	$ 407.1	$1,447.8	$10,163.8
Net Income Before Taxes	$ 328.7	$ 84.2	$ 380.7	$ 48.0	$ 258.6	$1,100.2
Number of firms in group as of end-of-year 1979	10	57	72	60	175	374

*Includes three quarters of data for two firms that were acquired or went out of business in the fourth quarter.

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

Table 4

SUMMARY BALANCE SHEET FOR NYSE FIRMS DOING A PUBLIC BUSINESS, 1979

(Millions of Dollars)

	Firms Using Alternate Method			Firms Using Basic Method		
	National Full Line	Regional Firms	Other Firms*	Regional Firms	Other Firms	All Firms
ASSETS						
Cash						
Receivables from other broker-dealers:	$1,160.1	$ 70.3	$ 258.6	$ 34.7	$ 239.3	$1,763.0
Securities Failed to deliver	879.5	152.3	963.4	56.2	227.6	2,279.0
Securities borrowed	1,110.8	166.3	2,005.6	36.3	593.0	3,912.0
Other	272.9	38.1	127.1	20.0	173.9	632.0
Receivables from customers	9,546.6	1,724.4	3,690.2	467.0	2,552.8	17,981.0
Long positions in securities and commodities	4,755.8	541.0	6,754.1	219.8	7,928.3	20,199.0
Securities owned – not readily marketable	1.8	2.8	11.0	1.7	12.7	30.0
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	0	21.7	22.1	15.0	8.2	67.0

Table 4 Continued

	Firms Using Alternate Method			Firms Using Basic Method		
	National Full Line	Regional Firms	Other Firms*	Regional Firms	Other Firms	All Firms
Securities purchased under agreement to resell	5,453.1	93.0	7,929.2	275.5	10,493.2	24,244.0
Secured capital demand notes	38.8	32.2	119.9	30.3	33.8	255.0
Exchange memberships	30.5	13.2	53.7	9.5	32.1	139.0
Other Assets	1,440.9	176.4	1,056.1	70.2	759.4	3,503.0
Total Assets	$24,690.8	$3,031.7	$22,991.0	$1,236.2	$23,054.3	$75,004.0
LIABILITIES AND EQUITY CAPITAL						
Bank loans payable:						
Secured by customer collateral	$1,927.7	$ 661.9	$1,004.7	$ 144.0	$ 263.7	$4,002.0
Secured by firm collateral	1,610.1	150.3	1,910.7	77.1	808.8	4,557.0
Securities sold under repurchase agreements	6,697.2	85.7	8,267.4	234.9	8,565.8	23,851.0
Payable to other broker-dealers:						
Securities failed to receive	871.3	172.6	757.5	63.7	239.9	2,105.0
Securities loaned	1,963.1	211.9	1,230.2	19.6	290.4	3,715.0
Other	169.1	100.9	103.2	25.6	272.2	671.0
Payable to customers	4,517.1	820.5	2,873.1	242.6	2,538.7	10,992.0
Short positions in securities and commodities	1,783.1	217.2	3,777.3	41.5	7,886.9	13,706.0
Other liabilities	3,361.0	220.2	1,431.5	159.3	1,234.0	6,406.0
Total liabilities excluding subordinated liabilities	$22,899.7	$2,641.2	$21,355.4	$1,008.3	$22,100.4	$70,005.0
Subordinated liabilities	378.3	70.2	349.4	43.4	198.7	1,040.0
Total Liabilities	$23,278.0	$2,711.4	$21,704.8	$1,051.7	$22,299.1	$71,045.0
Equity Capital	1,412.8	320.3	1,286.4	184.5	755.0	3,959.0
Total Liabilities and Equity Capital	$24,690.8	$3,031.7	$22,991.2	$1,236.2	$23,054.1	$75,004.0
Number of firms in group as of end-of-year 1979	10	57	72	60	175	374

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

Table 5

UNCONSOLIDATED REVENUES AND EXPENSES OF NASD AND REGIONAL BROKER-DEALERS FILING FOUR QUARTERS DURING 1979

(Millions of Dollars)

	Firms Using Alternate Method	Firms Using Basic Method	All Firms
REVENUES			
Commissions			
Listed equities on an exchange	$ 19.1	$ 187.5	$ 206.6
Listed option transactions	1.8	32.7	34.5
All other commissions	42.3	258.2	300.5
Total securities commissions	63.2	478.4	541.6
Gains or Losses on Trading Accounts	86.2	342.6	428.8
Realized and Unrealized Gains or Losses on Securities Investment Accounts	2.2	96.7	98.9
Profits or Losses from Underwriting and Selling Groups	17.3	133.7	151.0
Margin Interest	17.0	26.9	43.9
Sale of Investment Company Shares	1.9	117.0	118.9
Investment Advisory, Account Supervision	1.9	100.6	102.5
All Other Revenue	102.1	273.1	375.2
Gross Revenue	$291.8	$1,569.0	$1,860.8
EXPENSES			
Employee Expenses Other than Registered Representatives' Compensation	$ 32.6	$ 271.1	$ 303.7
Salaries and Other Employment Costs for General Partners and Voting Stockholder Officers	15.7	147.7	163.4

Table 5 Continued	Firms Using Alternate Method	Firms Using Basic Method	All Firms
Commissions and Clearance Paid	10.1	140.8	150.9
Interest Expense	114.5	111.9	226.4
Regulatory Fees and Expenses	1.9	14.8	16.7
All Other Expenses	88.4	656.9	745.3
Total Expenses	$263.2	$1,343.2	$1,606.4
Net Income Before Taxes	$ 28.6	$ 225.8	$ 254.4
Number of firms in group as of end-of-year 1979	44	2,022	2,066

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

Table 6

SUMMARY BALANCE SHEET FOR NASD AND REGIONAL BROKER-DEALERS FILING FOUR QUARTERS DURING 1979

(Millions of Dollars)

	Firms Using Alternate Method	Firms Using Basic Method	All Firms
ASSETS			
Cash	$ 19.3	$ 272.2	$ 291.5
Receivables from other broker-dealers:			
Securities failed to deliver	111.0	763.1	874.1
Securities borrowed	45.1	285.2	330.3
Other	29.9	415.7	445.6
Receivables from customers	229.4	434.5	663.9
Long positions in securities and commodities	780.0	1,882.8	2,662.8
Securities owned — not readily marketable	7.7	29.9	37.6
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	1.6	8.4	10.0
Securities purchased under agreement to resell	1,377.0	958.6	2,335.6
Secured capital demand notes	1.3	34.6	35.9
Exchange memberships	.3	9.4	9.7
Other Assets	92.8	712.8	805.6
Total Assets	$2,695.3	$5,807.3	$8,502.6
LIABILITIES AND EQUITY CAPITAL			
Bank loans payable:			
Secured by customer collateral	$ 98.1	$ 156.0	$ 254.1
Secured by firm collateral	126.7	541.1	667.8
Securities sold under repurchase agreements	1,596.7	1,004.7	2,601.4
Payable to other broker-dealers:			
Securities failed to receive	123.8	843.1	966.9
Securities loaned	12.4	161.9	174.3
Other	15.0	126.2	141.2
Payable to customers	148.1	280.5	428.6
Short positions in securities and commodities	303.1	602.6	905.7
Other liabilities	120.4	499.7	620.1
Total liabilities excluding subordinated liabilities	$2,544.2	$4,216.0	$6,760.2
Subordinated liabilities	7.1	129.0	136.1
Total Liabilities	$2,551.3	$4,345.0	$6,896.3
Equity Capital	144.0	1,462.3	1,606.3
Total Liabilities and Equity Capital	$2,695.3	$5,807.3	$8,502.6
Number of firms in group as of end-of-year 1979	44	2,022	2,066

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

substantially larger than the 2,022 firms using the basic method.

II. *Proposed Rule Amendments*

The Commission is proposing changes to the net capital rule which will affect only the alternative method of computing net capital. Under the proposed amendments, the alternative will still require, for the protection of customers, a cushion of liquid assets beyond the "net" amount of liquid assets needed to offset a broker's or dealer's liabilities. Later in this release, the Commission discusses the possibility of reexamining the liquidity concept.

The proposed amendments will not only lower the ratio of required net capital to certain debit items and the minimum but also will affect the treatment of certain debit items in the Reserve Formula.

A.

The moneys owed by customers of a broker or dealer in connection with their securities transactions are included in Item 10 (a debit item) of the Reserve Formula. This item includes debit balances in customers' cash and margin accounts (other than unsecured accounts and accounts doubtful of collection). The Item 10 debits comprise approximately 85% of aggregate debit items and thus for most brokers and dealers which have elected the alternative are the major determinants of their net capital requirements. In times of heavy trading volume these customer debits will generally increase, thereby causing a broker's or dealer's capital requirement to increase by at least 4% of the increased debit balances in customers' accounts. The Commission's present review of the net capital rule focused on whether the increased requirement was commensurate with the risk connected with these debits.

Initially, it must be noted that there is not necessarily any direct correlation between the 4% figure presently in the Rule and the amount of liquid capital required to protect customers. That figure was selected based on judgments inferred from the then-existing system. The result was that the 4% requirement under the alternative was estimated by the staff to require approximately 15% to 25% less capital than if the firm were required to maintain net capital based on the aggregate indebtedness test. Since 1975, the year of the adoption of the alternative, these Item 10 debits have increased substantially, thereby resulting in increased net capital requirements. While the level of margin debt is volatile, it has displayed a general trend of expansion since the beginning of 1975. In the first quarter of that year, customers owed NYSE member firms an average of $4.1 billion as debit balances in margin securities accounts. This increased 173% to $11.2 billion in the fourth quarter of 1979. During this same time period, the largest quarter-to-quarter increase in the level of margin debt was $1.1 billion, while the largest decrease was $740 million.[8]

In addition to the 4% capital requirement ratio, the Commission's early warning rules and comparable programs of the various self-regulatory organizations in effect require firms to maintain greater net capital than the minimum. The financial responsibility rules not only restrict withdrawal of firm capital if the ratio of net capital to aggregate debit items falls below 7%, but also require periodic reports in addition to those required generally of brokers and dealers when the ratio falls below 6%. *See* Rule 15c3-1(e) and Rule 17a-11, and discussion under "B", *infra*. The practical effect of these provisions is to cause broker-dealers to maintain net capital substantially in excess of 7% in order to maintain a cushion of net capital at a level which will avoid an inadvertent piercing of these early warning thresholds. Moreover, the NYSE (of which all major retail firms are members) imposes by rule restrictions on those member firms whose net capital falls below 7% of the aggregate debit items. *See* NYSE Rule 326.

In combination, the present capital cushion represented by Item 10 debits and the early warning provisions cited above may be excessive when viewed against the risks of the collectibility of these debit items and the relatively small losses experienced by firms in this area since 1975. Despite recent events revealing both the imprudence and operational inefficiencies of some broker-dealers, it seems appropriate to propose a reduction in the basic requirements. Experience has indicated that other provisions of the Rule (which require capital charges) provide the required discipline in sufficient time to permit the correction

[8]*See*, Federal Reserve Bulletin, January 1975 through December 1979, Table 828.

of unsound practices or the liquidation of potentially dangerous positions.

The Securities Industry Association Capital Committee (the "SIA") has recommended to the Commission that the minimum capital required under the alternative based on Item 10 debits should be lowered from 4% to 2%.

While that may be the proper figure to determine capital adequacy for financing these particular transactions, at this time the Commission believes that it is appropriate to propose a reduction of the 4% minimum figure to 3% and have that reduction apply only to debit balances in margin accounts rather than to those in cash accounts and other debit items in the Reserve Formula. It should be noted that the SIA did not recommend reductions in the capital requirements based on other debit items.

In sum, the Commission herein proposes to require brokers and dealers which have elected the alternative to have and maintain a net capital of 3% rather than the present 4% of the debit balances in customers' margin accounts which are maintained in compliance with Regulation T of the Federal Reserve Board or the maintenance margin requirements of the various self-regulatory organizations. This reduction appears to be prudent because these margin accounts should be virtually 100% collectible. It appears that any risk of loss is adequately safeguarded against by Regulation T and maintenance margin requirements as well as by the cushion provided by the 3% reduction of debit items required of firms electing the alternative.

This reduction will have no effect on most registered brokers and dealers (see Tables 7 and 8). As noted above, of the approximately 2,400 broker-dealers doing public business in 1979, only 185 broker-dealers elected the alternative method for computing net capital at year-end 1979, 169 of which carried or cleared customer accounts.

These 169 (128 NYSE and 41 non-NYSE) firms electing the alternative capital method in the fourth quarter of 1979 had required net capital of $1.2 billion based upon the 7% Early Warning Test. Under the SIA proposal, the required net capital of these 169 firms would have been $684 million compared to an estimated $1.02 billion under the current proposal.[9]

While the Commission is proposing some net capital reduction in certain areas, the Commission emphasizes that the primary burden is on the securities industry to substantiate, with empirical data where feasible, the basis for this or any other proposed reduction. The Commission is concerned that the consequence of this reduction may simply be a withdrawal of capital from the broker-dealer business. The Commission therefore requests response to the following question: Will the additional capital which is no longer required by the net capital rule be used in the "core" securities activities of the firm or will it tend to be diverted into non-securities activities or be removed from the firm altogether?

B.

As noted above, under the current Rule, brokers and dealers who have elected to operate under the alternative are required to maintain net capital of not less than 4% of Reserve Formula aggregate debit items. Under this provision no broker-dealer may effect a securities transaction if his net capital is less than 4% of aggregate debit items. In addition, the Rule provides that no capital, either equity capital or subordinated debit, may be withdrawn from the firm when its net capital is less than 7% of aggregate debits, i.e., 175% of minimum required net capital. Under Rule 17a-11, a broker-dealer operating under the alternative whose net capital is less than 6% of aggregate debit items (150% of minimum required net capital) must file certain reports monthly on Form X-17A-5 in furtherance of the Commission's early-warning program for broker-dealers who may be approaching financial or operational difficulty.

Unless these thresholds are revised, no effective reduction would be made in the amount of net capital required. Accordingly, the Commission proposes to replace the 7% level under paragraph (e) of Rule 15c3-1 and 6% under Rule 17a-11 with amounts equal to 175% and 150% respectively of the amount of net capital required (i.e., 175% and

[9]The precise impact of the modified proposal set forth in the proposed rule cannot be determined because debit balances in customers' margin accounts are not reported as a separate item on the FOCUS Report. Debit balances in customers' margin accounts in the aggregate represented approximately 72% of cash and margin debits in the Reserve Formula in a sample of 100 broker-dealers who elected the alternative as of year-end 1979.

Table 7

SELECTED FINANCIAL DATA FOR BROKER-DEALERS DOING A PUBLIC BUSINESS AND USING THE ALTERNATIVE CAPITAL APPROACH[1], YEAR-END 1979

(Millions of Dollars)

	NYSE FIRMS	NON-NYSE FIRMS[2]	ALL FIRMS
Customer Cash/Margin Debits	$14,199	180	14,379
Aggregate Debits	16,687	269	16,956
Net Capital	2,011	72	2,083
Required Net Capital[3]	1,168	19	1,187
Excess Net Capital[3]	843	53	896
Impact of SIA Proposal[4]			
a. Required Net Capital	671	13	684
b. Excess Net Capital	1,340	59	1,399
Numberof Firms	128	41	169

[1]Excludes 16 firms filing Part IIA of the FOCUS Report who neither carry nor clear customer accounts.

[2]Firms submitting four quarters of FOCUS data in 1979.

[3]Based on Early Warning 7% Test.

[4]Based on 2% "Item 10 Debits" criteria and Early Warning 7% Test.

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

Table 8

SELECTED FINANCIAL DATA FOR GROUPS OF NYSE FIRMS DOING A PUBLIC BUSINESS AND USING THE ALTERNATIVE CAPITAL APPROACH[1], YEAR-END 1979

(Millions of Dollars)

	National Full Line	Regional	Other	Total
Total Assets	$24,691	$2,997	$22,511	$50,199
Total Liabilities[2]	22,900	2,603	20,986	46,489
Subordinated Debt	378	78	229	755
Equity Capital	1,413	316	1,226	2,955
Customer Cash/Margin Debits	9,237	1,693	3,269	14,199
Aggregate Debits	10,222	1,993	4,472	16,687
Net Capital	1,022	227	762	2,011
Required Net Capital[3]	716	140	313	1,168
Excess Net Capital[3]	307	87	449	843
Impact of SIA Proposal[4]				
a. Required Net Capital	395	80	197	671
b. Excess Net Capital	627	147	565	1,340
Number of Firms	10	57	61	128

[1]Excludes 16 firms filing Part IIA of the FOCUS Report who neither carry nor clear customer accounts.

[2]Excludes subordinated debt.

[3]Based on Early Warning 7% Test.

[4]Based on 2% "Item 10 Debits" criteria and Early Warning 7% Test.

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission

150% of the sum of 3% of margin debits as proposed in "A" *infra* and 4% of the remaining debits in the Reserve Formula).

While the Commission recognizes that the early warning levels must be adjusted in connection with implementing any change in net capital requirements, the Commission must also examine whether the existing early warning mechanisms effectively alert the Commission and self-regulatory organizations of a firm's potential financial and operational difficulties in time to take action to protect customers. For example, a firm has reason to believe that a material charge to net capital may arise in the near future. Under the present rules, even if the charge would put the firm's net capital below the minimum, no early warning notice need be given until the charge is actually required to be made. The Commission therefore solicits comment on the following questions: Is the present structure of the early warning system, which is based on a firm's net capital level as of a certain day, adequate to insure customer protection? Do the proposed early warning levels (150% and 175% of minimum required net capital) provide an adequate margin of safety or should they be increased? What changes could be made in the early warning system so that the Commission and the self-regulatory organizations would have timely notice of a firm's potential difficulties without forcing firms to maintain excessive regulatory capital?

C.

In order to qualify to operate under the alternative net capital requirement, a broker or dealer must maintain net capital of at least $100,000. That minimum apparently acts as a deterrent to many firms who carry customer accounts from electing the alternative. Yet, if the benefits of the alternative are as significant as believed and if the alternative is a proper measurement of financial responsibility for broker-dealer, there may be no reason for a minimum greater than that applicable to those who comply with the aggregate indebtedness test (the basic rule). The minimum under the basic rule for those brokers or dealers which do a general securities business and carry customer accounts is $25,000.

Year-end 1979 FOCUS data indicate that there were approximately 1001 firms doing a public business[10] and which have net capital of at least $100,000, (or 7%[11] of aggregate debits) but were not utilizing the alternative method. If the net capital threshold were reduced to $25,000, the FOCUS data indicate that approximately 399 additional broker-dealers would have been eligible to use the alternative computation. The number of additional broker-dealer eligible to use the alternative computation at $75,000 and $50,000 thresholds, respectively, would have been 205 and 252.

The Commission has decided that consideration should be given to lowering the minimum in stages. Initially, it proposes for comment a new minimum of $75,000 for election of the alternative.[12] That figure would represent a reduction of 25% from the present minimum and would still appear to provide adequate reserves to ensure that customer funds and securities are not at undue risk. After a monitoring period, ending no later than December 31, 1982, during which the Commission will review FOCUS data and liquidations by the Securities Investor Protection Corporation ("SIPC") and make periodic on-site examinations, the Commission will consider a further reduction.

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[10]The non-NYSE firms "doing a public business" consists of firms filing four quarters of FOCUS data in 1979.

[11]See paragraph B above.

[12]Under the present alternative net capital rule, an introducing broker may still elect the alternative even though he is exempt from Rule 15c3-3 and therefore does not calculate the Reserve Formula. In lieu of the 4% of aggregate debit items calculation, he is required to maintain the $100,000.

One of the benefits of the alternative is that it enbles a broker-dealer to take smaller haircuts on inventory positions, thereby allowing him greater flexibility in market making, underwriting and firm trading. Many introducing brokers engage in these activities and therefore could elect the alternative. Under the proposal, the Commission has not changed the $100,000 minimum for introducing brokers electing the alternative, in part, because there is no other capital constraint on the level of an introducing broker's business. The public is invited to respond to the problem of minimum capital requirements for introducing brokers. *See* Part IV, *infra*, question 7. Other brokers or dealers who have elected to operate pursuant to an exemption from Rule 15c3-3 as at present, will not be able to elect the alternative under the proposal.

D.

A "fail to receive" arises when a broker or dealer purchasing securities has not taken delivery from the selling broker or dealer as of settlement date. A "fail to deliver" arises when a selling broker or dealer has not made delivery to the buying broker or dealer as of settlement date. When these transactions are related to customer purchases and sales, they are included in Reserve Formula Items 4 and 12, respectively. For a firm electing the alternative, the inclusion of the fails to deliver (a debit item) raises its net capital requirement and the inclusion of the fails to receive (a credit item) increases its potential cash deposit requirement.

As recognized in Securities Exchange Act Release No. 9922 (January 2, 1973), brokers or dealers doing a large volume of business normally find it impractical or unduly burdensome to determine which fail to receive contracts and fail to deliver contracts relate to proprietary accounts or customer accounts on a transaction by transaction basis. That release provided that a conservative allocation should be made to accomplish maximum protection for customers. If such an allocation is used with regard to the foregoing items, the broker or dealer should be able to demonstrate that the result so obtained regarding designations of customer and proprietary positions would be comparable to those which would be obtained if the respective positions had been developed without the use of an allocation.

When the alternative method of computing net capital was adopted, the Commission authorized conservative interpretations regarding Reserve Formula items where an allocation procedure was used. Fails to receive not allocable to the broker's or dealer's proprietary long positions and fails to deliver not allocable to the broker's or dealer's proprietary short positions were presumed to be customer-related and thus includable in the Reserve Formula. These interpretations were intended to insure that customer related fails would be provided for through a Reserve Formula deposit or increased capital requirements.

Before the Rule was amended in 1975, segments of the securities industry had argued that transactions in which corporate and municipal bond fails to deliver are paired off in the Reserve Formula with fails to receive (for instance, when a broker or dealer makes a simultaneous purchase and sale of a security, and the transaction has not yet settled) should not be included in either side of the Reserve Formula since not related to customer activity. That view was rejected in large part because of the experimental nature of the alternative concept and the Commission's desire to test its operation.

That situation may no longer be justifiable. Accordingly, the interpretation should be relaxed where a broker or dealer can demonstrate that it has full possession or control of all customer fully paid and excess margin securities as required under Rule 15c3-3. Moreover, where no customers of the calculating broker or dealer are involved in a particular offsetting fail transaction, the only risk to customers is where the broker or dealer on the other side of the fail to deliver must redeliver to its customer. This is basically a credit risk which should more properly be measured by a charge on "aged" fails to deliver.

At present, paragraph (c)(2)(ix) of the net capital rule requires a capital charge based on the haircuts applicable to the securities underlying the contract for "aged" fail to deliver contracts. A fail becomes "aged" when it has been outstanding 11 business days or longer (except in the case of municipal securities, where the fail must be outstanding 21 business days or longer).

Since elimination of these fails from the Reserve Formula would exclude from net capital consideration a firm's collection risk on fails to deliver until these items become "aged," the Commission herein proposes a new amendment. A broker or dealer may elect a procedure whereby he may exclude from the Reserve Formula both fails to deliver and fails to receive which allocate to one another, so long as the broker or dealer for purposes of paragraph (c)(2)(ix) treats the fail to deliver as "aged" three business days after settlement date of the transaction on all fails except fails related to municipal securities. On fails related to municipals, the aging period would be 11 business days under the proposed amendments. This change would not require significant regulatory capital to support normal street side clearance which settles routinely. The proposed approach would provide a reduction in required net capital. At the same time, an appropriate capital reserve would be imposed on a timely basis to insure customer protection. The broker or dealer must still, of course, be able to demonstrate full possession or control of customer fully paid and excess margin securities.

If the broker or dealer chooses, at his election, to place these "paired" fails in the Reserve Formula, the percentage of net capital required for these fail to deliver items remains the present 4%. Under this approach, the rule would in addition still require a capital charge for fails to deliver more than 11 business days old (and in the case of municipals, more than 21 business days). A broker-dealer electing either alternative, of course, must treat all fails consistently and continuously in accordance with his election. Under either, the rule assures protection of any customers which may be involved by providing incentives for the broker-dealer to resolve these items.[13]

E.

In C.O.D. transactions with customers, money and securities change hands simultaneously at settlement. C.O.D. transactions with customers (primarily institutions) as a practical and economic matter may be broken out into receipt vs. payment and delivery vs. payment items which are included in Reserve Formula Items 1 and 10 respectively. However, in either a sale or purchase of securities on a C.O.D. basis, the only financial exposure of a firm to its customer is the "net-equity" on one side as a result of market movement before completion of the transaction. Hence it appears that the Rule, by requiring capital equal to at least 4% of the amount of such transactions, may require more liquid capital than necessary to protect against the risks in C.O.D. transactions.

The Commission proposes to amend the Rule to allow the broker or dealer to make a choice similar to the alternative presented above related to fails to deliver. The broker-dealer may exclude C.O.D. transactions from the Reserve Formula, treat the security which is the subject of the C.O.D. transaction as if it were a proprietary position and take the appropriate haircut for that security (this would occur as of settlement date, however, with no period allowed for "aging"). Since many C.O.D. transactions currently appear to involve debit securities (government or municipal securities), the haircut on the underlying securities normally may be less than the 7% early warning threshold which currently would be required by including such items in the Reserve Formula. Alternatively, a broker or dealer choosing to place these items in the Reserve Formula would continue to have the 4% capital requirement on these items.

III. *Solicitation of Comments on the Report of the Securities Industry Association Capital Committee*

As noted earlier in the release, the Capital Committee of the SIA has made certain recommendations to the Commission which would alter both the net capital rule and rule 15c3-3. Some of those recommendations are reflected in the amendments proposed above; others, relating to stock loans and non-customer securities in firm bank loan, have been ongoing subjects of staff study and should be the end of the year result in public releases. With respect to the four remaining recommendations below, the Commission has insufficient data to make a proper evaluation. The Commission requests comment to assist it in determining their merit. They are:

1) The value of certain illiquid assets (specifically, certain unsecured receivables and exchange memberships, as described below) now deducted from net worth in computing net capital should no longer be required to be deducted.

2) Delivery vs. payment and receipt vs. payment accounts (C.O.D. accounts) should be excluded from the Reserve Formula, and only the customer equity in an unsettled transaction should be included as a credit (cash item) in the Reserve Formula.

3) The Commission should reduce to 15% the haircut on preferred stocks under the alternative, or permit its inclusion in paragraph (f)(3)(ii) of the Rule if the inclusion would result in a smaller deduction from net worth than that prescribed by paragraph (c)(2)(vi)(H) of the Rule.

4) Where a firm short position is allocated to a customer debit, both sides should be excluded from the Reserve Formula.

A.

The SIA report points out that a substantial amount of a firm's non-collateralized receivables are considered non-allowable assets for purposes of computing net capital and that certain receivables due from other brokers and dealers (floor brokerage

[13]Under either alternative, the staff responses in a letter to Wien & Co., Inc., dated July 15, 1976, and in similar letters to other brokers or dealers would no longer be applicable.

and other commissions receivable) are allowable assets for a certain time after they arise. The SIA recommends that all receivables from brokers and dealers should be allowable assets on the theory that all brokers and dealers are subject to the Commission's financial responsibility rules and should therefore be able to pay promptly.

The SIA also recommends that receivables related to fees for investment banking and other services which are due from highly rated, financially sound corporations present no greater risk than debt instruments issued by those corporations and should be accorded similar treatment for net capital purposes. Related to these issues, the SIA proposes that receivables against which the broker or dealer has accrued taxes should be allowed to the extent of the accrued tax.

Finally, the SIA report recommends that a firm should be allowed to include the value of exchange memberships in computing net capital. It argues that the memberships are readily liquid, and an appropriate haircut could be devised to compensate for fluctuations in value.

The Commission notes that these proposals go to the very heart of the liquidity concept of the Rule, which is that a broker or dealer must always maintain sufficient liquid assets to satisfy promptly customer demands. With certain limited exceptions, unsecured receivables have not been treated as readily convertible into cash because they may not be readily collectable on the initiative of the broker or dealer. If the broker's or dealer's debtor disputes the claim, or simply does not pay, court action and its attendant delays may be the only recourse. Thus customers may be in the position of waiting for the broker or dealer to liquidate claims against others. Furthermore, it should be noted, there are no objective standards for classifying which receivables should be regarded as collectable and how they should be valued. With respect to exchange memberships, though in most cases they may be readily sold at some price, because of the priorities set forth in exchange rules,[14] it is not certain what amount of the proceeds would benefit customers.

The Commission requests comment from the public regarding these proposals. Specifically, interested persons are encouraged to address the problem of how to determine which unsecured receivables should be treated as readily convertible into cash.

B.

The SIA proposes removing both sales and purchases on a C.O.D. basis from the Reserve Formula (both are now included in Reserve Formula Items 1 and 10). The net equity, which would be determined by computing the sum which the firm would owe a customer on the date of a Reserve Formula calculation, would be entered as a credit in the Reserve Formula.

Elimination of this item from the debits distorts the initial intention of the alternative, which was to utilize the aggregate dollar amount of firm assets which have as their source transactions with customers as the standard for determining the maximum permissible level of the broker's or dealer's activity. In this regard, the impact of the proposal is difficult to measure primarily because data relative to C.O.D. transactions is not segregable on FOCUS or other reports. The Commission understands that many large institutions purchase securities on a C.O.D. basis, and that some broker-dealers use C.O.D. transactions almost exclusively. Excluding C.O.D. transactions from the Reserve Formula theoretically could reduce the capital requirement of a firm doing primarily this type of business to the $100,000 minimum.

Moreover, the Commission notes that, since a broker or dealer could allow under Regulation T a C.O.D. account to remain open for as long as 35 days, the broker or dealer may be taking a significant credit risk which is unmeasured by the net capital rule. Furthermore, because firms under the alternative are required to compute their Reserve Formula only once a week, there is no assurance that reserves will be set aside to cover transactions entered into between computation dates. Finally, it should be noted that a credit entry in the Reserve Formula under Rule 15c3-3 may actually impose a greater financing burden on a firm than the 4% minimum capital requirement based on the contra debit item, since any excess of credits caused by the inclusion of net equity in C.O.D. accounts over aggregate debit items (reduced by 3%) would be required to be placed in the Reserve Bank Account. The broker or dealer then may have greater financing needs and be forced to borrow to meet the deposit requirement.

[14] *See e.g.*, Article XI, Section 3 of the New York Stock Exchange Constitution.

The Commission requests information from the public in assisting it to determine the potential impact of this proposal and the ability of firms to isolate C.O.D. transactions from their other cash and margin transactions. Commentators are also asked to respond to the issue of evaluating capital requirements for firms executing orders on behalf of institutions dealing in large blocks of securities.

C.

Under paragraph (c)(2)(vi)(H) of the Rule, the haircut on preferred stock is 20% of the market value of the greater of the long or short position. Under paragraph (f)(3)(ii) of the Rule, which applies to firms utilizing the alternative, the haircut on securities other than those specifically enumerated is reduced to 15%. Preferred stock is one of the classes of securities which is ineligible for the 15% haircut. The SIA argues that the imposition of a 20% haircut on preferred stock under the alternative does not appear to be reasonably related to the risks involved with positions in such securities and may hinder market making activities in this area.

The SIA proposal does not address the fact that the prices of preferred stocks tend to move in tandem with those of debt instruments and is thus influenced by other factors than those affecting common stocks. The present haircuts for debt securities are based on historical data of the fluctuations of these instruments over a long period of time. That same kind of record should be made for preferred stock. Moreover, like corporate debt securities, preferred stocks are rated by statistical rating services. It may be appropriate to require a greater haircut for those lower-rated preferred stocks than for higher-rated stocks. The Commission requests any information which may assist in the resolution of this issue.

D.

When a firm sells short, as principal, to a customer, both sides of the transaction are included in the Reserve Formula, (i.e., the customer debit and the market value of the short proprietary position). However, when the firm buys as principal from a selling customer who is short and has not resold, the customer credit and related debit can be excluded from the Reserve Formula. The SIA recommends that a firm short position which allocates to a customer debit should be treated in the same manner as a firm long position which allocates to a customer credit.

This recommendation, however, appears to disregard the fact that the broker or dealer who has sold short as principal owes the customer securities and may be required to borrow in order to meet his delivery requirement under Rule 15c3-3. The public is invited to respond to the SIA's proposal and suggest any other possible solution to the difficulty pointed out by the Commission.

IV. *Solicitation of Comments on Basic Concepts of Financial Responsibility Rules*

The Commission adopted its uniform net capital rule over five years ago and the customer protection rule (Rule 15c3-3) nearly eight years ago. In promulgating these rules, the Commission sought to protect the investing public from the risk of dealing with thinly capitalized and operationally unsound brokers and dealers, while, at the same time, avoiding the imposition of unduly onerous capital requirements and burdensome operational restrictions. As noted above, current industry conditions and recent improvements to back office operations systems suggest it may now be appropriate to revisit the basic concepts.

The Commission, therefore, welcomes the participation of the public in this important effort. This release contains questions about a number of areas of particular concern to the Commission. It is not necessary, however, that comments be limited to these questions. Commentators should feel free to provide any reasonable, constructive suggestion or comment regarding any aspect of the Commission's financial responsibility program.

Areas of Inquiry

1. In Securities Exchange Act Release No. 11497, (June 26, 1975) announcing amendments to the net capital rule, the Commission indicated that "[u]ltimately, it may be possible for Rule 15c3-3 in some form to replace the liquidity requirements of the net capital rule and become the primary source of protection of customer assets held by the broker or dealer." The Commission is considering whether this statement has continued validity in today's market environment.

(a) Do you believe that the net capital rule can be substantially revised or even eliminated so as to

place greater emphasis on the other financial responsibility rules, particularly Rule 15c3-3?

(b) If so, please explain how and what the effect would be on brokers and dealers and their customers. Would it be necessary to strengthen these rules, particularly Rule 15c3-3, to ensure that customer funds are not deployed in unsafe areas of a firm's business, other than by requiring daily Reserve Formula computations under Rule 15c3-3?

(c) If not, can Rule 15c3-1 be so structured as to make the computation of net capital less complex? If so, please explain.

(d) Can the customer protection rules, other than the net capital rule, be structured to make such rules less complex? If so, how can this be accomplished?

2. As illustrated in Tables 1 and 2, the securities industry is undergoing substantial change. Broker-dealers deploy their capital in new and different areas to enhance their competitive positions and provide new services to investors and corporate issuers.

(a) In what ways, if any, have current financial responsibility requirements, including the net capital rule, altered firms' investment decisions?

(b) Are current regulatory capital standards adaptable to the changing capital needs of a firm? If not, please explain.

3. The ability of small or regional broker-dealers to raise investment capital may differ from that of larger firms or those which are national in scope.

(a) To what extent, if any, do present financial responsibility rules affect the ability of these broker-dealers to raise capital? In particular, can the rules be made less burdensome to smaller broker-dealers without substantially reducing customer protection?

(b) What additional cost burdens and/or financial risks does the quest for "regulatory capital" (capital required to satisfy regulatory requirements with arguably little or no business justification) impose on small broker-dealers?

4. A number of securities firms have formed subsidiaries or affiliates whose product lines fall outside the securities business and beyond the regulatory reach of the Commission. To what extent, if any, have financial responsibility requirements, including the net capital rule, created incentives to diversify into activities unrelated to the securities business? Please explain.

5. The alternative represented a new concept for the determination of net capital requirements. The aggregate indebtedness standard measures a firm's capital requirements based on its liabilities. The alternative changes this concept considerably by making the capital requirement contingent upon the level of a firm's customer related assets, in the form of secured receivables. The alternative net capital approach integrates the net capital requirements with the custodial and reserve requirements of Rule 15c3-3 and places greater reliance for the protection of customer funds and securities on Rule 15c3-3. This corresponds to the policy of Rule 15c3-3 and the Securities Investor Protection Act of 1970, both of which exclude other brokers and dealers from their protective provisions.

As the Commission stated in Release 34-11497 when it adopted the alternative:

> The Commission believes the alternative approach will effectively create and maintain an environment of customer protection while enabling the securities industry to fulfill its function of capital raising and the maintenance of a liquid secondary market by:
>
> 1. Acting as an effective early warning device to provide reasonable assurance against loss of customer assets through a logical interface with other operation standards and existing surveillance, reporting and examination aspects of the securities industry regulatory framework;
>
> 2. Avoiding the inefficient and costly commitment of capital within the securities industry where such a commitment is not necessary for customer protection;
>
> 3. Eliminating, to the extent possible and consistent with the objective of customer protection, competitive restraints on the securities industry's ability to compete effectively with other diversified financial institutions;
>
> 4. Making the capital structures of brokers and dealers as well as their investment and

operating policies more understandable to lending institutions and other suppliers of capital and to the public; and

5. Providing some reasonable and finite limitation on broker-dealer expansion to minimize the possibility of customer loss and the possibility that the SIPC Fund will have to be utilized to protect customers.

The Commission is largely satisfied with the operational experience of the alternative since its adoption five years ago. Consequently, the Commission would like to explore the possibility of supplanting the traditional aggregate indebtedness test with the alternative. To do so might require the elimination of the exemptive provisions to Rule 15c3-3 found in paragraph (k)(2)(i) of that rule (and perhaps all of its exemptive provisions) and other adjustments.

(a) Do you believe that Rule 15c3-1 and Rule 15c3-3 could be integrated into a single less complex financial responsibility requirement? If so, how could this best be accomplished?

(b) Do you believe that the alternative can effectively replace the traditional aggregate indebtedness test for brokers and dealers? Please explain.

(c) Should all brokers and dealers be required to follow the alternative and, as a result, also be subject to Rule 15c3-3? Please explain.

(d) Have the objectives voiced by the Commission in the release quoted above been met? Will they continue to be met if the entire industry is subject to the alternative? Please explain.

(e) The alternative measures a broker-dealer's capital requirement in terms of its customer related business. However, a broker-dealer has many obligations running to other brokers and dealers which in turn have customers. Would requiring all firms to comply with the alternative undermine the interdependence of the broker-dealer industry by inadequately protecting broker-dealers who do a large business outside of their customer activity? Please explain.

6. The alternative net capital provisions sought to enhance the ability of brokers and dealers to engage in market making. It does this primarily by modifying the haircuts from those applicable in the basic net capital rule. It has, however, been suggested that even more flexibility might be appropriate.

(a) Does the alternative net capital provision measure market risk in any unreasonable manner and thus require more net capital of market makers with no customer exposure than necessary to ensure the liquidity of a broker or dealer?

(b) Should the haircut provisions of the alternative and basic net capital requirements be made uniform? Please explain.

(c) What standards of financial responsibility are appropriate for market makers? Please explain.

7. The liquidity concept of the net capital rule is premised on the policy that a broker or dealer must maintain a cushion of cash or assets readily convertible into cash in order to meet promptly the demands of customers. It may be unnecessary, however, to require such strict standards of liquidity with respect to firms who do not carry customer accounts and who do not handle customer funds or securities.

(a) What, if any, financial responsibility standards are appropriate for brokers or dealers who do not handle customer funds or securities? Please explain.

(b) What is the feasibility of substituting for the net capital rule a net worth test with a minimum net worth computed in accordance with generally accepted accounting principles (the Commission suggests a $25,000 figure) for brokers and dealers who do not handle customer funds and securities? Please explain.

8. In the last four years, brokers and dealers have become increasingly involved in government financial instruments, including T-bills and GNMA certificates. Not only do they act as intermediaries between the GNMA issuers, performing broker or dealer functions, but they also have used such instruments as a means to speculate on interest rates or to hedge other positions or, in the case of repurchase agreements, to borrow cash for short periods of time. The staff has issued interpretations dealing with some of these matters. It may be necessary, however, to examine brokers' and dealers' involvement in this entire area to determine if there is need for more specific requirements than those now in effect.

(a) What rules, if any, should the Commission adopt to protect the liquidity of a broker-dealer from the risks of dealing in the financial instruments markets?

(b) What amendments, if any, should be made to the net capital rule to protect the liquidity of a broker-dealer from the risks of dealing in the financial instruments market?

(c) What risks, if any, does a broker-dealer experience because of customer transactions in the financial instruments futures or forward markets which are not now provided for by the net capital rule? How should the net capital rule treat those risks?

(d) What modifications, if any, should be made to Rule 15c3-3 in connection with brokers' and dealers' or customers' transactions in financial instruments?

9. The net capital rule requires that in computing net capital several deductions from net worth of certain specified percentages of the market values of marketable securities ("haircuts") be taken. Some have contended that the haircuts for certain securities are unwarranted.

(a) Do you believe that any of the percentage deductions are unwarranted? If so, which are unwarranted and what should be the appropriate deduction? Please supply any data or explanation which may support such changes.

(b) The net capital rule refers to "nationally recognized statistical rating organizations" in determining lower haircut categories for certain assets. *See* Rule 15c3-3(c)(2)(vi)(E) and (F). Are these categories appropriate? Are there other means for distinguishing between investment grade and speculative securities for purposes of reduced haircuts? Should ratings by other organizations and institutions be considered?

10. In the recent past, because of market volume and interest rates, capital requirements for firms electing the alternative have substantially increased and then suddenly declined. Some firms have met this additional capital requirement by subordinated borrowing in accordance with Appendix D of Rule 15c3-1. These loans cannot be repaid within a period of one year and therefore must be maintained even after a firm's capital requirement is reduced. Because of the one year lock-in requirement, these loans frequently prove to be an expensive solution to a perhaps short-term problem.

(a) Is it feasible to modify Appendix D (relating to Satisfactory Subordination Agreements) to allow subordinate borrowings to meet increases in capital requirements based on dramatic increases in customer business, which borrowings may be prepaid within a year if such business returns to normal levels? Please explain.

(b) What, if any, limitations should be placed on such prepayments?

11. The net capital rule requires a deduction from net worth for the inefficiencies or operational defaults of a broker or dealer. For example, a broker or dealer must deduct from net worth the market value of all short securities differences unresolved for seven business days after discovery. In requiring these deductions, the Rule assumes a 100% loss in these unresolved accounts pending their resolution.

(a) Are all of the operational charges warranted? If not, which are not and why not?

(b) Is there a solution other than treating operational inefficiencies as deductions of a broker or dealer? Please explain.

12. The Commission, in its *Study of Unsafe and Unsound Practices of Brokers and Dealers*[15] made the following observations regarding the capitalization of the securities industry at that time:

> The defects fall into several broad categories. First and foremost is the inadequacy and impermanence of capital, and, in some cases, the injudicious employment of such capital as does exist.[16]
>
> . . .
>
> It should be noted at the outset that protections provided by net capital requirements with a liquidity focus for meeting current obligations are not a substitute for the need for having sufficient long-term capital, in the absence of which the underlying structure of broker-dealers may be unsatisfactory.[17]

[15] *Study of Unsafe and Unsound Practices of Brokers and Dealers* 92d Congress, 1st Sess., House Doc. No. 92-231 (December, 1971).

[16] *Id.*, p. 11.

[17] *Id.*, p. 55.

The Commission at that time was concerned about the extreme difficulties experienced by the industry during the period 1968-1970. Since that time, there has been a tightening of Commission oversight and administration of the capital rules. The self-regulatory organizations have, during this same time period, also considerably tightened their surveillance of their members.

(a) Aside from statutory compulsion, is there any reason that the Commission should impose financial responsibility rules at all?

(b) If the Commission should impose financial responsibility rules, are the present rules, i.e., Rules 15c3-1 and 15c3-3, and Rules 8c-1 and 15c2-1, the appropriate rules? Should any of these rules be merged, modified or done away with completely? Are these rules realistic in terms of today's market environment?

(c) If the Commission were to substantially revise its rules, or substantially reduce the scope of its rules, what safeguards would exist to insure a sound and adequately capitalized broker-dealer industry?

(d) Are there any other concepts which the Commission should consider which are appropriate in determining the financial responsibility of brokers and dealers?

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3), 17(a) and 23 thereof (15 U.S.C. 78o(c)(3), 78q(a) and 78u), hereby proposes for public comment amendments to Rules 15c3-1, 15c3-3a and 17a-11, which would affect the computation of net capital for brokers and dealers, all as set forth below.

The rules as proposed, if adopted, will probably have an impact on competition. For the most part, firms computing under the alternative net capital rule would have lower net capital requirements; furthermore, more firms would be able to avail themselves of the alternative and its simplified method of computation. These amendments may therefore give firms eligible for the alternative some competitive advantage over firms required to calculate net capital according to the traditional aggregate indebtedness rule, giving them greater leeway to expand their business in relation to their capital. Lowering the entry level for the election of the alternative to a certain extent ameliorates this situation, and the Commission intends to study the feasibility of further easing restrictions for election of the alternative.

The goals of the Commission in this respect are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to provide a regulatory environment that permits an efficient deployment of scarce industry capital and encouraging diversification while at the same time assuring investors that their funds and securities are protected against financial instability and operational weaknesses of brokers or dealers. The Commission, therefore, specifically solicits comment on the question of competitive impact and how the benefits and/or burdens imposed by this may be more evenly distributed.

TEXT OF PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934.

ATTENTION

The text of the following proposed amendments uses stars ★ ★ to indicate additions.

1. By amending paragraphs (a), (e), (f)(1)(i) and (ii), (f)(2) and deleting paragraph (g) of §240.15c3-1 as follows:

§240.15c3-1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percent of his net capital, except as otherwise limited by the provisions of paragraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than ★the sum of the percentages prescribed by that paragraph of debit items★ computed in accordance with 17 CFR 240.15c3-3a or, if registered as a futures commission merchant, 4 percent of the funds required to be * * *

* * * * *

(e) *Limitation on withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C (17 CFR 250.15c3-1c) whether in the form of capital contributions by partners (excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stock holder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix D) (17 CFR 240.15c3-1d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan either aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital or its net capital would fail to equal 120 percent of the minimum dollar amount required thereby or would be less than ★175 percent of the sum of the percentages prescribed by paragraph (f) of 17 CFR 240.15c3-1 of debit items★ computed in accordance with 17 CFR 240.15c3-3a, or, if registered as a futures * * *

(f) *Alternative net capital requirement.*

(1)(i) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. *Provided,* That in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of ★3 percent of debit item 10a (relating to debit balances in margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000★ or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to this paragraph (f), he shall continue to do so unless a change is approved upon application to the Commission. ★A broker or dealer who claims an exemption from Rule 15c3-3 by virtue of paragraph (k)(2)(ii) of that rule shall at all times maintain a net capital of not less than $100,000. If the electing broker or dealer chooses to exclude fails to deliver and fails to receive from the Rule 15c3-3 Reserve Formula in accordance with Note F thereto, such fails to deliver shall be considered "aged" three business days after settlement date except for fails to deliver related to municipal securities, which shall be considered "aged" after 11 business days. The electing broker or dealer must charge its net capital with the deduction prescribed by paragraph (c)(2)(ix) for such aged fails.★

(ii) In the case of a municipal securities broker as defined in section 3(a)(31) of the Securities Exchange Act of 1934, who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i), and who effects transactions only on a payment versus delivery basis with other brokers or dealers or municipal securities brokers or municipal securities dealers, and who does not hold funds or securities for, or owe money or securities to, customers and does not otherwise carry accounts of, or for, customers, in order to qualify to operate under this paragraph (f) such municipal securities broker shall at all times maintain net capital equal to the greater of ★3 percent of debit item 10a (relating to debit balances in customers' margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a) plus 4 percent of the total of the remainder of the debit items of such formula or $25,000.★ *Provided,* That in order to qualify to operate under this paragraph (f), such municipal securities broker shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a municipal securities broker has determined to operate pursuant to this paragraph (f), he shall

continue to do so unless a change in such election is approved upon application to the Commission. ★If the electing broker or dealer chooses to exclude fails to deliver and fails to receive from the Rule 15c3-3 Reserve Formula in accordance with Note F thereto, such fails to deliver shall be considered "aged" three business days after settlement date except for fails to deliver related to municipal securities, which shall be considered "aged" after 11 business days. The electing broker or dealer must charge its net capital with the deduction prescribed by paragraph (c)(2)(ix) for such aged fails.★

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix C (17 CFR 240.15c3-1c) such broker's or dealer's minimum net capital requirements shall be ★the sum of the greater of 3 percent of debit item 10a (relating to debit balances in customers' margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-3a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000,★ or, if the parent is registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be ★the greater of 3 percent of debit item 10a (relating to debit balances in customers' margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, 17 CFR 240.15c3-a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000,★ or, if registered as a futures* * *.

* * * * *

(g) [deleted]

2. By amending paragraphs (b)(6)(iii), (b)(7), (b)(8)(i), (b)(10(ii)(B), (c)(2) and (c)(5) of §240.15c3-1d as follows:

§240.15c3-1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3-1).

* * * * *

(b) * * *

(6) * * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the securied demand note. *Provided,* That after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, net capital would not be less than ★175 percent of the sum of the percentages prescribed by that paragraph★ of debit items computed in accordance with 17 CFR 240.150c3-3a, or, if registered as a * * *

(7) *Permissive prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective; *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than ★175

percent of the sum of the percentages prescribed by that paragraph of debit items* computed in accordance with 17 CFR 240.15c3-3a or, if registered as a * * *

(8)(i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than *150 percent of the sum of the percentages prescribed by that paragraph of debit items* computed in accordance with 17 CFR 240.15c3-3a or, if registered* * *

* * * * *

(10) * * *

(ii) Notwithstanding the provisions of paragraph (b)(8) of this Appendix, a subordination agreement may provide that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commenced, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. Any subordination agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the broker or dealer has not already commenced, be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Default which may be included in a subordination agreement shall be limited to:

(A) * * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3-1, its net capital computed in accordance therewith is less than *the sum of the percentages prescribed by that paragraph of debit items* computed in accordance with 17 CFR 240.15c3-3a or, if registered * * *

* * * * *

(2) *Notice of Maturity or Accelerated Maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital would be less than *150 percent of the sum of the percentages prescribed by that paragraph of debit items* computed in accordance with 17 CFR 240.15c3-3a or, if registered * * *

* * * * *

(5) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3-1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. *Provided,* That this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a-11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer

exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1, or (ii) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, its net capital is less than ★175 percent of the sum of the percentages prescribed by that paragraph of debit items★ computed in accordance with 17 CFR 240.15c3-3a, or, if registered as * * *

* * * * *

3. By amending items 10, 12 and 13 and Notes E and F and adding Note G of §240.15c3-3a as follows:

§240.15c3-3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under §240.15c3-3.

* * * * *

	Credits	*Debits*
★10a. Debit balances in customers' margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E)	.....	XXX
10b. Debit balances in customers' cash accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E) .... ★	.....	XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver	.....	XXX
12. Failed to deliver of customers' securities not older than 30 calendar days. ★(See Note F) ..... ★	.....	XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts. ★(See Note G) ..... ★	.....	XXX
Total credits.....	.....	.....
Total debits	.....	.....
14. Excess of total credits (sum of items 1-9) over total debits (sum of items 10-13) required to be on deposit in the "Reserve Bank Account" (15c3-3(c)). If the computation is made monthly as permitted by this rule, the deposit shall be not less than 105% of the excess of total credits over total debits		XXX

* * * * *

Note E.

* * *

★(4) A broker or dealer operating pursuant to paragraph (f) of Rule 15c3-1 (17 CFR 240. 15c3-1(f)) may exclude C.O.D. transactions from Items 1 and 10 of the Reserve Formula if the security underlying the transaction is treated as a proprietary position and given the appropriate haircut prescribed under Rule 15c3-1(c)(2)(vi) (17 CFR 240.15c3-1(c)(2)(vi)).★

★Note F. A broker or dealer operating pursuant to paragraph (f) of Rule 15c3-1 (17 CFR 240.15c3-1(f)) which can demonstrate that its possession and control of customers' securities requirements are met, may make the following election: Fails to deliver not allocable to the broker's or dealer's long positions and fails to receive not allocable to the broker's or dealer's short positions may be excluded from Items 4 and 12 of the Reserve Formula if those fails to deliver allocate to fails to receive.★

★Note G.★ Item 13 shall include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

4. By amending paragraph (b)(2) of §240.17a-11 as follows:

§240.17a-11 Supplemental current financial and operational reports to be made by certain brokers and dealers.

* * * * *

(b) * * *

(2) If a computation made by a broker or dealer pursuant to paragraph (f) of Rule 15c3-1 (17 CFR 240.15c3-1(f)) shows, at any point during the month, that his net capital is less than ★150 percent of the sum of the percentages prescribed by that paragraph of debit items★ computed in accordance with 17 CFR 240.15c3-3a, or that his total net capital is less than 120 percent of the minimum net capital required of him, such broker or dealer shall file a report on Part II or Part IIA of Form X-17A-5 (17 CFR 249.617) as determined in accordance with the standards set forth in 17 CFR 240.17a-5(a)(2)(ii) and (a)(2)(iii), within 15 days after the end of each month thereafter until three successive months shall have elapsed during which his net capital is not less than ★150 percent of the sum of the percentages prescribed by paragraph (f) of debit items★ computed in accordance with 17 CFR 240.15c3-3a and his total net capital does not fall below 120 percent of the minimum net capital required of him.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17209/October 9, 1980

NET CAPITAL REQUIREMENT FOR BROKERS AND DEALERS

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: The Commission is proposing amendments to the uniform net capital rule which would increase the percentage deductions from the market value of certain debt securities in the proprietary or other accounts of the broker or dealer which must be made in computing net capital to reflect the recent sharp fluctuations in the market value of these securities. The Commission is also soliciting comments on whether and to what extent these deductions should be reduced by hedging positions in financial futures or securities of a different issuer.

DATE: Comments to be received by January 15, 1981.

ADDRESSES: All comments should be submitted in triplicate and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to file No. S7-856 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Division of Market Regulation (202) 272-2372, 500 N. Capitol Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The uniform net capital rule not only requires a broker or dealer to maintain a minimum net capital the amount of which depends on the nature of its business but also prohibits it from incurring aggregate indebtedness in excess of 1500 percentum of its net capital, as those two terms are defined in the Rule. A broker or dealer electing the alternative method of computing net capital must maintain a minimum net capital equal to the greater of $100,000 or 4% of aggregate debit items in the formula for Determination of Reserve Requirements for Broker-Dealers.

In computing net capital, a broker or dealer is required to deduct from net worth (net worth as calculated in accordance with generally accepted accounting principles) certain percentages of the market value of all securities carried in its proprietary or other accounts. These deductions are generally referred to as "haircuts." The amount of the haircuts for debt securities (including short term notes) depends on the nature of the issuer, the time to maturity of the security and, for securities of non-governmental issuers, the ratings of nationally recognized rating services. In general, the haircuts for debt securities were designed to reflect the historical market fluctuations of each type of instrument.

Recent events in the debt market have led the

Commission to question the adequacy of the haircut provisions for debt securities. Interest rates rose to unprecedented heights in the past year, causing precipitous declines in the values of already issued debt instruments. Several broker-dealer firms dealing primarily in municipal securities were forced to liquidate because of the unanticipated sharp movements in debt securities. Moreover, some major broker-dealer firms reportedly suffered large trading losses in debt securities, as did several large national banks.

Data recently provided to the Commission from industry sources tend to confirm doubts as to the adequacy of the present haircut categories. The data were compiled from records accumulated in the ordinary course of business of broker-dealer firms dealing in debt securities. In general, the data covered the period from February 1976 through February 1980, a period of 49 months. In the case of Government securities, daily values were given for three-month, six-month, nine-month and twelve-month treasury bills, and for selected two-year, five-year, ten-year, twenty-year and thirty-year coupon treasury bonds. For corporate bonds, summary price histories were given for representative long-term industrial and utility bonds. For municipals, weekly prices were provided from the BBI municipal index. The data show that the month-end to month-end price movements in most debt securities in the months of January 1977, October 1979, January 1980 and February 1980 were greater than the existing haircuts for the securities. They indicate a need for higher haircuts than the Rule presently provides. Each of the categories is more fully discussed below, as is the question of whether and to what extent the rule should be revised to incorporate various hedging positions.

I.
Government Securities

A. Haircut Schedules

The Rule requires, in the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, deductions from the market value of the net long or short position in each category described in subparagraph (A) of the haircut provisions of the Rule. There is no deduction for securities less than one year to maturity. The deduction for securities having one year but less than three years to maturity is 1%; that for securities having three years but less than five years to maturity is 2%; that for securities five years or more to maturity is 3%. The data submitted to the Commission tend to indicate that these haircuts are inadequate in measuring the risk in carrying the securities, particularly for those securities less than one year to maturity and those five years or more to maturity.

The data show that the majority of monthly changes in market value were greater than the existing haircuts, and that for four months (January 1977, October 1979, January 1980 and February 1980) the month-end to month-end price movements were considerably greater than the existing haircuts. Some examples will help to illustrate the concern. In 26 of the 49 months in the survey, treasury bills maturing in six months moved in price between one-tenth of one percent to over 1% (in February 1980). In October 1979, treasury bills maturing in nine months moved 1.50% and in February 1980, 1.90%. Finally, in 39 of 49 months, treasury bills maturing in 12 months moved between .1% and 2.51% (in February 1980). In each case, however, the net capital rule required no haircut.

The data for two-year coupons, five-year coupons, ten-year coupons, twenty-year coupons and thirty-year coupons show the same character of discrepancy as securities having one year or less to maturity. For example, in three different months within a six months period, United States Treasury securities maturing in 30 years declined substantially: 7.06% in February 1980, 8.82% in January 1980 and 9.16% in October 1979. Yet the required haircut is only 3% for these securities.

These figures demonstrate the need to reassess the present haircut category for Government securities.

Based largely on this data, the Commission proposes to alter the haircuts on Government securities in Rule 15c3-1(c)(2)(vi) as follows:

(A). . . . .

(*1*) less than three months to maturity — 0% [0%];[1]

(*2*) three months but less than six months to maturity — 1/8 of 1% [0%];

[1]The present haircut is shown in brackets.

(3) six months but less than nine months to maturity — 1/4 of 1% [0%];

(4) nine months but less than one year to maturity — 3/8 of 1% [0%];

(5) one year but less than three years to maturity — 1½% [1%];

(6) three years but less than five years to maturity — 3% [2%];

(7) five years but less than ten years to maturity — 4½% [3%];

(8) ten years but less than 20 years to maturity — 5% [3%]; and

(9) 20 years or more to maturity — 6% [3%].

While the proposed haircuts are not based on the largest changes in any 30-day period, the Commission believes that they nevertheless represent a more realistic appraisal of the potential movements of Government securities over a 30-day period.

B. *Hedges*

The present rule assesses deductions only on the net long or net short positions in the fixed categories in subparagraph (A), thereby recognizing certain hedges. In some cases, however, the Rule may not appropriately deal with hedges. For example, the Rule requires no haircut where a broker or dealer is long Government securities one month to maturity and short a Government security 11 months to maturity but requires a haircut of 1% on the short position where the broker or dealer is long a security 11 months to maturity and short a security 13 months to maturity. Furthermore, the Rule requires no haircut on the following positions: a long Government five years to maturity offset by a short Government security, 30 years to maturity. Yet, the data demonstrate that the historical market fluctuations of these two securities are not similar.

To some degree the problem will be lessened by the new haircut categories. But the provisions will still not distinguish adequately between bona fide risk limiting hedges and non-bona fide hedges. The job of precisely measuring hedges is of course a difficult one for the Commission. It is a matter about which experienced traders disagree daily. However, the data provided to the Commission suggest that netting of longs and shorts be allowed where the securities have a relationship by virtue of relatively close maturity dates rather than because fixed in the same haircut category. For short term instruments (less than one year to maturity), the Commission proposes that an appropriate period for netting purposes be no more than three months. For intermediate term instruments, that period will be no more than one year. For long term instruments (those five years or more to maturity), the period will be no more than five years. Hence, the rule, if amended as proposed, would require a haircut only on the net long or short position for short-term instruments where the long and short positions matured no longer than three months apart. For intermediate-term instruments the netting would be allowed if the instruments matured within one year or less of each other. Long term instruments could be netted if the longs and shorts matured within five years of one another. No netting would otherwise be permitted.

The Commission therefore proposes to amend Rule 15c3-1(c)(2)(vi)(A), as modified by the proposed amendments set forth above, as follows:

Long or short positions may be netted as follows:

(*i*) Long or short positions with maturity dates within one year may be netted against long or short positions with maturity dates within 15 months, but only when such maturity dates are within three months of one another;

(*ii*) Long or short positions with maturity dates of between one and five years (except as in (*i*) above) may be netted against long or short positions with maturity dates of between one and six years, but only when such maturity dates are within one year of another;

(*iii*) Long or short positions with maturity dates of five years or more (except as in (*ii*) above) may be netted against long or short positions with maturity dates of five years or more, but only when such maturity dates are within five years of one another.

II.
MUNICIPAL SECURITIES

The haircut provision of the net capital rule which treats with municipal securities specifically divides municipal securities into two general categories (i)

any municipal security which has a scheduled maturity at date of issue of 731 days or less and which is issued at par value and pays interest at maturity, or which is issued at a discount, and which is not traded flat or in default as to principal or interest and (ii) any other municipal security which is not traded flat or in default as to principal or interest.

The first category contains seven subcategories. The haircuts range from 0% for those securities having less than 30 days to maturity to 1% for those securities having from 456 to less than 732 days to maturity (hereinafter "short term notes"). The second category has four subcategories which require haircuts ranging from 1% for securities with less than one year to maturity, to 5% for securities with five years or more to maturity.

Although the data supplied to the Commission relating to municipal bonds are not as extensive as that available for Government securities, they show that the existing haircuts in this area are inadequate in relation to the market fluctuations in the last year. In two months, October 1979 and February 1980, municipal bonds moved in price substantially more than the maximum haircut. In October 1979, bond prices moved 8.58%; in February 1980 they moved 11.05% as a percentage of market value. Based on this data, increased haircuts are being proposed for municipal securities in category (ii) with more than 2 years to maturity.

The Commission does not now have sufficient data to propose any new haircuts for short-term notes in category (i) or for municipal securities with less than two years to maturity in category (ii). The Commission may possibly determine after further analysis that there is no need to change the haircuts at all for these remaining securities. The Commission solicits relevant data and comment as to whether the haircuts for these securities are appropriate.

The haircuts on securities with longer term maturities are proposed to be increased to reflect the recent sharp fluctuations in their market prices. The new proposed Haircut Schedule for municipal securities is as follows:

(B)(ii) In the case of any municipal security other than those specified in subdivision (B)(i), which is not traded flat or in default as to principal or interest, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(3) 2 years but less than 5 years to maturity — 5 percent; and

(4) Five years or more to maturity — 7 percent.

* * * * *

The Commission also solicits comments on two issues that have been the subject of controversy in the past with respect to municipal securities:

(1) Should the haircut provision for municipal securities distinguish between "rated" and "unrated" securities to differentiate between investment grade issues and more speculative issues?

(2) What criteria should be used to determine the market value of municipal securities for net capital and reporting purposes where the securities are the subject of quotations by only the computing broker or dealer?

III.

Non-Convertible Debt Securities

Subsection (c)(2)(vi)(F) of the net capital rule requires a deduction in the case of non-convertible debt securities having a fixed interest rate and fixed maturity date and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, ranging from 1% for those securities with less than one year to maturity to 7% for securities with five years or more to maturity.

The Commission has insufficient data to make any determination as to appropriate haircuts for securities in this category where the security has less than five years to maturity. The Commission solicits comment on this matter. It appears from the available data, however, that the haircut for long-term debt securities in this category should be raised to 9% rather than the present 7%. The data show that prices of representative issues in this category moved about 30% more than the present haircut in several months of the past year. The new proposed haircut for debt securities in this category will reflect these recent sharp fluctuations in prices.

The proposed new haircut schedule is as follows:

(f) In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of its four highest rating categories by each of at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

. . . . .

(6) five years or more to maturity — 9 percent.

IV.

Because of the changes in the haircuts for government and municipal securities, it will be necessary to adjust the haircut provision for securities issued by investment companies whose assets are in the form of cash or securities or money market instruments which are described in subparagraph (A)-(C) or (E) of Rule 15c3-1(c)(2)(vi). Subparagraph (D) now requires a haircut of 5% of the market value of the greater of the long or short position. That haircut was based on the highest haircut for municipal securities. Compatible with that approach, the Commission proposes to raise the haircut for those securities in subparagraph (D) to 7%. For securities issued by investment companies whose portfolio consists of the instruments described above and non-convertible debt securities in category (F), the Commission proposes a haircut of 9%. The provision would also be amended to make clear that it applies only to redeemable securities issued by the investment company. The Rule would be amended as follows:

"(D) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivision (A)-(C) above or (E) below, the deduction shall be 7% of the market value of the greater of the long or short position. In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivisions (A)-(C) above or (E) or (F) before, the deduction shall be 9 percent of the market value of the greater of the long or short position."

V.

HEDGING

Broker-dealers generally do not carry heavy non-hedged positions in debt securities. Often, brokers and dealers have significant positions in instruments which they believe hedge and reduce the market risk in the positions in which they are mainly interested. While not perfect hedges, they are thought to act as buffers to complete speculation. The hedged positions may consist either of positions in securities of the same issuer, positions in financial futures or positions in different issuers. While the Rule, as noted above in the discussion as to Government securities, does take hedges into account to some degree, it has been criticized as being much too conservative.

Much sophisticated analysis has been made of the relationships among the prices of various fixed income securities and interest rate futures. Some believe, for example, that futures contracts may be used not only to hedge the underlying cash instruments but also to cross-hedge corporate bonds. The net capital rule, as indicated above, does not recognize any such relationships for purposes of reducing the haircuts, although the rule does extensively deal with techniques of reducing risks through various hedging devices in listed options trading.

The Commission, in an effort to make its financial responsibility rules compatible to the extent feasible with economic reality, solicits comment on the degree to which the haircut rules should deal with hedges among the instruments described above. From the comments the Commission may be able to develop hedge criteria which are objective, clear and easily determinable for reducing any required haircuts.

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3) and 23(a) thereof, 15 U.S.C. §§78o(c)(3) and 78w(a), the Commission proposes to amend §240.15c3-1 in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the proposed amendments is necessary in furtherance of the purposes of the Act, and particularly to imple-

ment the Commission's continuing mandate under Section 15(c)(3) thereof, to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

TEXT OF PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES AND EXCHANGE ACT OF 1934

ATTENTION

The text of the following amendments uses stars * * to indicate additions.

By amending paragraphs (A), (B), (D) and (F) of §240.15c3-1(c)(2)(vi) as follows:

§240.15c3-1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

*(A) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position as specified below are:

(*1*) Less than three months to maturity — 0 percent;

(*2*) Three months but less than six months to maturity — 1/8 of 1 percent;

(*3*) Six months but less than nine months to maturity — 1/4 of 1 percent;

(*4*) Nine months but less than one year to maturity — 3/8 of 1 percent;

(*5*) One year but less than three years to maturity — 1½ percent;

(*6*) Three years but less than five years to maturity — 3 percent;

(*7*) Five years but less than ten years to maturity — 4½ percent;

(*8*) Ten years but less than 20 years to maturity — 5 percent;

(*9*) 20 years or more to maturity — 6 percent.

Long or short positions may be netted as follows:

(*i*) Long or short positions with maturity dates within one year may be netted against long or short positions with maturity dates within 15 months, but only when such maturity dates are within three months of one another;

(*ii*) Long or short positions with maturity dates of between one and five years (except as in (*i*) above) may be netted against long or short positions with maturity dates of between one and six years, but only when such maturity dates are within one year of another;

(*iii*) Long or short positions with maturity dates of five years or more (except as in (*ii*) above) may be netted against long or short positions with maturity dates of five years or more, but only when such maturity dates are within five years of one another.*

(B)(*1*) * * *

(*2*) In the case of any municipal security other than those specified in subdivision (B)(*i*), which is not traded flat or in default as to principal or interest, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(*i*) less than 1 year to maturity — 1 percent;

(*ii*) 1 year but less than 2 year to maturity — 2 percent;

*(*iii*) 2 years but less than 5 years to maturity — 5 percent;

(*iv*) Five years or more to maturity — 7 percent.*

* * * * *

(D) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market

instruments which are described in subdivision (A)-(C) above or (E) below, the deduction shall be *7* percent of the market value of the greater of the long or short position. *In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivisions (A)-(C) above or (E) or (F) below, the deduction shall be 9 percent of the market value of the greater of the long or short position.*

* * * * *

(F) In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by each of at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(1) less than one year to maturity — 1 percent;

(2) one year but less than two years to maturity — 2 percent;

(3) two years but less than three years to maturity — 3 percent;

(4) three years but less than four years to maturity — 4 percent;

(5) four years but less than five years to maturity — 5 percent;

(6) five years or more to maturity — 9 percent.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17210/October 10, 1980

An order has been issued granting the application of PACIFIC SCIENTIFIC COMPANY to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17211/October 10, 1980

A notice has been issued giving interested persons until November 3, 1980 to comment on the applications of the *Boston Stock Exchange, Inc.* for unlisted trading privileges in 15 stocks which are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17212/October 10, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 732/October 10, 1980

Admin. Proc. File No. 3-2572

In the Matter of

COLLINS SECURITIES CORPORATION
TIMOTHY COLLINS

FINDINGS AND ORDER ACCEPTING OFFER OF SETTLEMENT AND MODIFYING PRIOR ORDER

I.

Respondents Collins Securities Corporation ("Registrant") and Timothy Collins ("Collins") have, for the purpose of resolving these proceedings[1] and without admitting or denying the violations alleged in the Order for Proceeding, submitted an offer of settlement which the Commission has determined to accept.

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[1]In the matter of Collins Securities Corp., et al., instituted August 4, 1970.

II.

On the basis of the Order for Proceedings and the offer of settlement the Commission finds that Registrant and Collins willfully violated Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") and Rule 10b-6 thereunder; that Registrant wilfully violated and Collins wilfully aided and abetted violations of Sections 7(c), 15(b) and 17(a) of the Exchange Act, Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve Board, and Rules 15b3-1 and 17a-3 promulgated under the Exchange Act; that Registrant willfully violated and Collins willfully aided and abetted violations of Section 203(c) of the Investment Advisers Act of 1940 and Rule 204-1 thereunder.[2] The Commission further finds that it is in the public interest to impose the sanctions specified in the offer of settlement.

Accordingly, and on the basis of Collins's representation that he has not been associated with any broker, dealer or investment adviser since October 23, 1975, and on the basis of Registrant's representation that it has not engaged in business as a broker, dealer or investment adviser since October 23, 1975, and in light of the proposed cancellation of registrant's registrations, the Commission's Order Imposing Remedial Sanctions and Dismissing Proceedings in Part dated October 23, 1975 (but not its opinion) is hereby reinstated and modified in pertinent part as follows:

IT IS ORDERED

1. That Collins Securities Corporation's registrations as a broker dealer and as an investment adviser be, and they hereby are, suspended for six months from the date of this reinstated order and that without further order of the Commission said registrations be, and they hereby are, cancelled effective six months from the date of this reinstated order.

2. That Collins be, and he hereby is, suspended from association with any broker, dealer or investment adviser for three months from the date of this reinstated order.

By the Commission.

George A. Fitzsimmons
Secretary

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[2]The Order for Proceedings additionally alleged violations of Exchange Act Rule 10b-5. In their offer of settlement Registrant and Collins do not consent to findings of violations of Rule 10b-5 and in accepting their offer of settlement the Commission concludes this matter without determining whether respondents did, or did not, violate Rule 10b-5. The previous findings and opinion of the Commission, dated October 23, 1975; 8 SEC Docket 250, was vacated by the decision of the U.S. Court of Appeals, *Collins Securities Corp. v. SEC*, 562 F.2d 820 (D.C. Cir. 1977).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17213/October 14, 1980

FOCUS REPORTING SYSTEM; REQUIREMENTS FOR FINANCIAL REPORTING

ACTION: Extension of comment period.

SUMMARY: On September 9, 1980, the Commission published for comment proposed amendments to Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 under the Securities Exchange Act of 1934. The Commission is extending the period for submitting comments until October 31, 1980.

DATE: Comments must be received on or before October 31, 1980.

ADDRESSES: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-851 and will be available for inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2370; or William J. Atkinson, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, Washington, D.C. 20549 (202) 523-5493.

SUPPLEMENTARY INFORMATION: On September 9, 1980, the Commission published for comment Proposed Amendments to Part I, Part II, and Part IIA of Form X-17A-5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 (17 CFR 240.17a-5) under the Securities Exchange Act of 1934. The proposed amendments would revise the Form so as to clarify certain financial and operational reporting requirements of securities brokers and dealers, to require more detailed reporting of some items, and to eliminate or consolidate other items. Rule 17a-5 would be amended to require the filing of two copies of the annual audited report at the Commission's headquarters' office instead of the single copy now required.

Notice of the request for comments was given by Securities Exchange Act Release No. 34-17138 (September 9, 1980) and by publication in the *Federal Register* (45 FR 62092 (September 18, 1980)). Interested persons were invited to submit written comments prior to October 15, 1980. It appears that the comment period may be inadequate for some interested members of the public to submit responsible comments on the proposed changes.

Accordingly, the Commission today has extended the period for the submission of written comments concerning the foregoing proposed amendments until October 31, 1980.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17214/October 14, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE STOCK CLEARING CORPORATION OF PHILADELPHIA (File No. SR-SCCP-80-4)

The Stock Clearing Corporation of Philadelphia ("SCCP") submitted on October 1, 1980, a proposed rule change reducing the fee for deposits of securities known as "legal" items from $15.00 to $7.50.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 20, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-SCCP-80-4.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17215/October 14, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION (File No. SR-NSCC-80-28)

The National Securities Clearing Corporation ("NSCC") submitted on September 25, 1980, a proposed rule change permanently establishing the $10.00 processing fee for dividend claims against NSCC's NCC & Co. nominee. This fee change

continues the use of the fee initially established on October 24, 1979 by SR-NSCC-79-13 for a period of one year.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 20, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-28.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17216/October 14, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE
17th Street & Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-20)

ORDER APPROVING PROPOSED RULE CHANGE

On August 25, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change regarding exchange disciplinary procedures. The rules set forth, among other things, procedures relating to investigations, the issuance of complaints, hearings and review. The rules also define the powers of the Business Conduct Committee the Hearing Committee and its panels and staff.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17130, September 8, 1980) and by publication in the *Federal Register* (45 FR 61058, September 15, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the proposed rule changes enhance the exchange's ability to comply with its statutory obligations to enforce compliance with the Act, the rules and regulations thereunder, and its own rules; to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions; and to provide fair procedures for discipline in accordance with Sections 6(b)(1), (6) and (7), respectively.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17217/October 14, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-17

The National Association of Securities Dealers, Inc. (the "NASD" or the "Association") submitted on October 1, 1980, a proposed rule change under Rule 19b-4 to amend Section C.4 of Part I of Schedule D of the Association's By-Laws to permit a market maker's initial registration in a security not previously authorized to become effective immediately during the initial week of quotations on the Association's Automated Quotation System ("NASDAQ"), if the request for registration is received by the NASD within five (5) business days of authorization of the security.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 20, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-17.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17218/October 9, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 734/October 9, 1980

In the Matter of

JOHN ROBERT PFUETZE DBA PFUETZE INVESTMENTS

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission announced that the Commission has ordered administrative proceedings pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940, ("Act"), and Section 15(b) of the Securities Exchange Act of 1934, ("Exchange Act"), against John Robert Pfuetze dba Pfuetze Investments, ("Registrant") an investment adviser located in Littleton, Colorado. The order for proceedings alleges violations of the registration and antifraud provisions of the Securities Act of 1933, ("Securities Act") and the Exchange Act; violations of certain recordkeeping and filing provisions of Section 204 of the Act and Rules 204-1 and 204-2 thereunder, and of certain antifraud provisions of Section 206 of the Act in that, among other things, Registrant: (1) offered, sold, and delivered after sale unregistered securities of at least seven issuers which securities had been contemporaneously purchased by Registrant from said issuers; (2) acted as a broker-dealer without being registered as such; (3) failed to disclose conflicts of interest; (4) used false advertisements in soliciting clients; and (5) failed to have clients' funds and securities in his possession verified by an independent public accountant. The order also alleges violations of Section 207 concerning material misstatements and omissions in connection with a registration application required to be filed with the Commission.

A hearing will be scheduled to take evidence on the staff's allegations and to afford Registrant an opportunity to present any defenses thereto. The purpose of the hearing is to determine whether the allegations are true and whether any remedial action should be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17219/October 14, 1980

An order has been issued granting the application of the *American Stock Exchange, Inc.* to strike the common stock ($1 par value) of CITATION COMPANIES, INC. (THE) from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17220/October 14, 1980

A notice has been issued giving interested persons until November 4, 1980 to comment on the application of the *Midwest Stock Exchange, Incorporated* for unlisted trading privileges in the common stock ($2.50 par value) of UNR INDUSTRIES, INC.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17221/October 16, 1980

Admin. Proc. File No. 3-5967

In the Matter of

SAUL RING
JEROME E. ROSEN

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In anticipation of the institution of these administrative proceedings, Jerome E. Rosen ("Rosen") and Saul Ring ("Ring"), who are associated persons of broker-dealers registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and members of the National Association of Securities Dealers, Inc., have submitted Offers of Settlement which the Commission has determined to accept.

Solely for the purpose of these proceedings and any other proceeding pursuant to specified sections of the Exchange Act, and without admitting or denying the findings herein, Ring and Rosen consent to the findings and sanctions set forth below.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be and hereby are instituted.

II.

On the basis of this Order for Proceeding ("Order") and the Offers of Settlement, the Commission finds that Rosen and Ring willfully violated Sections 5(a) and 5(c) of the Securities Act of 1933 in that they engaged in an unlawful distribution of unregistered Westamerica Automotive Corporation common stock during 1976 and 1977.

III.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that Rosen and Ring are each suspended from association with any broker or dealer for a period of fourteen (14) calendar days, and thereafter Ring is suspended from association in a supervisory capacity with any broker or dealer for an additional seven (7) calendar days.

IT IS FURTHER ORDERED that Rosen and Ring will prepare and adopt compliance procedures, not objectionable to the staff of the Commission, designed to assure that Rosen and Ring comply with the basic standards of conduct required of registered broker-dealers and those associated with them in meeting their responsibilities in connection with sales of unregistered securities, such compliance procedures to include an undertaking by Rosen and Ring that their compliance with said procedures be supervised by a qualified supervisory person associated with the broker-dealer with whom Rosen and Ring are associated or become associated; with said supervision to continue for a period of two years from the date of this Order.

This Order shall be effective at the opening of business on the first Monday after the date hereof.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21742/October 9, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
P.O. Box 201
Tulsa, Oklahoma 74102

TRANSOK PIPE LINE COMPANY
600 South Main Street
Tulsa, Oklahoma 74101

(70-6501)

NOTICE OF PROPOSAL TO SELL AND LEASE BACK OFFICE BUILDING; GUARANTEE OF LESSEE'S OBLIGATIONS BY AFFILIATE

NOTICE IS HEREBY GIVEN that Transok Pipe Line Company ("Transok"), an intrastate pipe line company and a subsidiary of Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, has, with its parent, filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

PSO owns an office building in Tulsa, Oklahoma which it presently leases to Transok for a rental of $28,290 per month. The property has a depreciated book value of $1,028,244 and a fair market value of approximately $3,750,000, determined pursuant to appraisal. PSO proposes to sell the property to Pubson Associates Limited Partnership, a Connecticut limited partnership ("lessor") to be formed by Integrated Resources, Inc., which partnership will own the property and enter into a long term net lease ("lease") with Transok as lessee. The sales price of the property will be $3,750,000 cash, subject to appraisal. PSO will guarantee to the lessor all of Transok's obligations as lessee under the lease.

The lease will have a term of 25 years ("basic term"), beginning on the closing date of the transaction, which is anticipated to occur in November, 1980, and will contain two 10-year renewal options. As rental for the use of the property, Transok will agree to pay, monthly in arrears, .643% of the capitalized cost of the property during the first 5 years of the basic term, 1.003% of the capitalized cost of the capitalized 1.192% of the capitalized cost of the property during the third 5 years of the basic term and 1.303% of the capitalized cost of the property during the last 10 years of the basic term of the lease. If Transok exercises the renewal options, it will be required to pay .767% of the capitalized cost of the property, monthly in arrears, during each month of the renewal term. Capitalized cost, for purpose of calculating the rentals payable by Transok, is defined to be an amount equal to the Lessor's purchase price of the property from PSO plus amounts paid by the lessor for title insurance, recording costs, mortgage taxes and any other costs incurred by the lessor in connection with its permanent mortgage loan. The foregoing rentals have been calculated by the lessor on the assumption that it can obtain permanent financing on terms acceptable to it at a fixed annual interest cost of 12%. The lessor has advised PSO that it has a commitment from an insurance company to provide this financing at the assumed interest rate but the base rentals are subject to adjustment, upward or downward, in the event the permanent financing is at an interest cost other than 12% per annum.

The lease will be a net lease and in addition to Transok's obligation to pay rentals, Transok will be required to pay all taxes (other than income taxes of the lessor), assessments, utility charges, the cost of insurance, repairs and maintenance and will agree to maintain the property in good order and repair and to keep the property free of all liens and encumbrances except those permitted by the terms of the lease. If during the term of the lease the property sustains a casualty (including condemnation) which renders the property unsuitable for restoration and continued use by Transok, or if at any time during the last 10 years of the 25 year basic term of the lease Transok determines that the property has become uneconomical for continued use in Transok's operations, the lease will terminate and Transok will be required to make a rejectable offer to purchase the property at a price determined

by reference to a casualty value schedule designated in the lease. Transok will be given the right to sublease the property provided that, upon such a sublease, its obligation under the lease and PSO's obligations under the guaranty will not be affected.

PSO will enter into an Agreement of Guaranty (the "Guaranty") with the lessor pursuant to which PSO will agree, unconditionally and irrevocably, to perform, observe and discharge each and every one of the convenants, agreements, terms and conditions of Transok under the lease, to the extent not performed by Transok. The Guaranty will provide that PSO shall be required to perform the obligations of Transok under the lease in the event of the disaffirmance of the lease by a trustee or receiver of the property of Transok in a bankruptcy proceeding affecting Transok. PSO will further agree under the guaranty to provide to the lessor certain information relating to its financial condition.

The proceeds to be derived from the sale of the property will be used by PSO to repay short-term borrowings which were incurred for PSO obligations, including projects under construction. Approximately $13,400,000 of short-term borrowings are expected to be outstanding as of November 30, 1980, the anticipated closing date of the sale to the lessor. No funds generated from the sale of the property will be utilized to pay the cost of facilities which would not be needed to provide service to customers of PSO if it were not part of the Central and South West System. No expenditures will be made by PSO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended. For the purpose of the foregoing representation, it is assumed that none of the facilities the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (File No. 3-4951), would be needed to provide service to customers of PSO if it were not part of the Central and South West System.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21743/October 10, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

(70-6489)

ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK AT COMPETITIVE BIDDING

Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

Middle South proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to 8,000,000 authorized but unissued shares of common stock, $5 par value, to underwriters or investment bankers who will promptly make a public offering thereof.

The net proceeds to be derived from the sale of the common stock (presently estimated to be approximately $100,000,000) will be applied toward the reduction of Middle South's then outstanding bank loans made pursuant to the credit agreement between Middle South and various commercial banks dated as of June 27, 1980. The amount of the loans to be outstanding is estimated to be $198,000,000. Proceeds derived from the bank borrowings are used to acquire common stock of Middle South's subsidiary companies which apply such funds to construction, acquisition of property, retirement of short-term indebtedness, and other corporate purposes.

Middle South Energy, Inc., ("MSEI"), is a wholly-owned subsidiary of Middle South whose function is to construct Grand Gulf Electric Generating Unit No. 1 and No. 2 near Port Gibson, Mississippi. MSEI has covenanted with its bondholders and with the holders of its bank notes that Grand Gulf Unit No. 1 will be placed in commercial operation no later than December 31, 1982, and, with the bondholders that Grand Gulf Unit No. 2 will be placed in commercial operation no later than December 31, 1986. If either of these covenants is not fulfilled or if MSEI defaults with respect to either the bonds or the bank borrowings, MSEI's outstanding obligations will become due and payable by MSEI and by Middle South under its Capital Funds Agreement, unless extensions of time can be arranged. MSEI has assigned, as security, to the banks and to the trustee for the bondholders its rights under its Availability Agreement with Middle South's five electric utility subsidiaries. It provides that no later than December 31, 1982, the operating companies will begin paying MSEI such amounts as will be at least equal to MSEI's operating expenses or an equivalent amount if Unit No. 1 is not in operation, including MSEI's interest charges and depreciation expenses.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21697), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21744/October 14, 1980

In the Matter of

WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

(70-6505)

NOTICE OF PROPOSAL TO ISSUE AND SELL PROMISSORY NOTES TO AUTHORITY IN CONNECTION WITH FINANCING OF POLLUTION CONTROL FACILITIES

NOTICE IS HEREBY GIVEN that West Penn Power Company ("West Penn"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The proposed transactions involve the financing, including the transfer to and purchase from Washington County Industrial Development Authority ("Authority") by West Penn, of certain air and water pollution control equipment and facilities including a flue gas desulferization system, associated sludge disposal and handling facilities, precipitators, lime unloading handling and storage facilities, fly ash handling systems, a new chimney, associated land and interests in land and equipment (collectively known as the "Facilities"), now under construction at West Penn's Mitchell Power Station ("Mitchell") located in Washington County, Pennsylvania. The Facilities are required to be installed to meet air quality standards pursuant to consent decrees embodying settlement agreements with the Federal Environmental Protection Agency and the Pennsylvania Department of Environmental Resources.

The Authority proposes to finance the Facilities by issuing and selling its tax exempt pollution control revenue bonds ("Bonds") in one or more series with a maturity of not less than three and not more than forty years. It is not expected that the amount of Bonds to be issued will exceed $60 million. The Bonds will be issued in either coupon or registered form under a trust indenture with a corporate trustee approved by West Penn, which will provide for redemption, sinking funds, no call and other appropriate provisions, and such bonds shall be sold at such times, in such principal amounts, at such rates and for such prices as shall be approved by West Penn.

At the date the financing is consummated, West Penn will transfer to the Authority title to those portions of the Facilities then in place at Mitchell, subject to the first mortgage lien of the indenture securing West Penn's first mortgage bonds and to a second lien to be imposed on the Facilities. Title to those portions of the Facilities thereafter constructed shall vest in the Authority. The aggregate purchase price of the Facilities will be an amount equal to the aggregate principal amount of the Bonds issued by the Authority.

To evidence its obligation to pay the purchase price of the Facilities, West Penn will deliver concurrently with the issuance of each series of Bonds its non-negotiable pollution control notes ("Notes"), corresponding to such series of Bonds with respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Payments on such notes will be made to the trustee and applied to pay the maturing principal, redemption prices, interest and other costs of the Bonds as the same become due. West Penn also proposes to pay any trustees' fees or other expenses incurred by the Authority. The Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to a Mortgage and Security Agreement creating a mortgage and security interest in the Facilities and certain other property. It is stated that the Notes will not constitute "unsecured debt" within the meaning of the provisions of West Penn's charter.

West Penn intends to accomplish a permanent long-term financing of the Facilities through the proposed transactions. If the current high interest rates prevail at the proposed time of the financing, it may be advantageous for West Penn to complete the financing in two phases. The first phase would be the issuance of three year bonds by the Authority and notes by West Penn. The second phase would be the refunding of those three year bonds and notes sometime prior to their maturity with long term

bonds and notes having a maturity not to exceed forty years. Such refunding would be the subject of a post-effective amendment.

It is expected that the Authority will engage Goldman, Sach's & Co. and any co-managers that may be desirable to provide financing advice and, together with such other underwriters as may be designated, to underwrite the sale of the Bonds. Fees, commissions and expenses of the underwriters and of legal counsel will be included in the total cost of the Facilities.

The Bonds will be secured by the Notes and will be supported by various covenants of West Penn to be contained in a Pollution Control Financing Agreement. West Penn will cause the Facilities to be completed and will have complete control of the operation of the Facilities including maintenance thereof.

The proceeds to be received by West Penn will be added to its general funds to reimburse its treasury for expenditures made or to be made in connection with the Facilities, including costs to complete construction thereof and to pay fees and expenses associated therewith. As of December 31, 1980, it is expected that about $20 million of such expenditures will have been made.

The fees, commissions and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. The proposed transactions are subject to authorization by the Public Utility Commission of Pennsylvania. The Department of Environmental Resources of the State of Pennsylvania will be required to certify that the Facilities are being installed for air quality purposes. The Secretary of Commerce of the Commonwealth of Pennsylvania is required to certify the proposed transactions. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested persons may, not later than November 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21745/October 15, 1980

In the Matter of

BLACKSTONE VALLEY ELECTRIC COMPANY
Washington Highway, P.O. Box 111
Lincoln, Rhode Island 02865

(70-6510)

NOTICE OF PROPOSED AMENDMENT OF PREFERRED STOCK PROVISIONS AND ORDER AUTHORIZING SOLICITATION OF PROXIES

NOTICE IS HEREBY GIVEN that Blackstone Valley Electric Company ("BVEC"), an electric utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) thereof and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declaration states that the provisions relating to the issuance and the terms, limitations and relative rights and preferences of the preferred stock of BVEC are set out in the Preferred Stock Provisions. The Preferred Stock Provisions provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebredness of BVEC having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital (including premiums on capital stock) and surplus of the company and that the amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

BVEC proposes to amend the Preferred Stock Provisions and intends to hold a special meeting of the holders of its preferred stock on November 20, 1980, to permit such shareholders to consider and act upon a proposal to authorize BVEC, for a five year period, to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation thereon. Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the short-term unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series) voting as a single class.

In connection with the special meeting to be held on November 20, 1980, BVEC proposes to solicit proxies seeking the affirmative vote of holders of its preferred stock with respect to the above-described amendment to the Preferred Stock Provisions.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. BVEC has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that BVEC's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62 and that jurisdiction should be reserved with respect to the expenses thereof:

IT IS ORDERED that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62, and that jurisdiction be, and it hereby is, reserved with respect to the expenses thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21746/October 15, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

(70-6508)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, up to $100,000,000 principal amount of its first mortgage bonds of a new series having a term of not less than five years nor more than thirty years. The interest rate of the bonds (which will be a multiple of 1/8th of 1%) and the price, exclusive of accrued interest, to be paid to Louisiana for the bonds (which will not be less than 98% nor more than 101-3/4% of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under Louisiana's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Chase Manhattan Bank (National Association), Trustee, as heretofore supplemented by various indentures and as it is to be further supplemented by a Twenty-eighth Supplemental Indenture to be dated as of the first day of the calendar month in which the bonds are issued. The supplemental indenture will include a prohibition, for a period of not more than five years, against refunding the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

Louisiana will use the net proceeds derived from the sale of the bonds to pay, in part, short-term borrowings estimated to total $120,000,000 at the time the proceeds are received, to finance, in part, Louisiana's construction program (estimated to total approximately $263,800,000 in 1980), and for other corporate purposes.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $220,000, including legal fees of $51,000 and auditor's fees of $9,800. The fee of counsel for the purchasers of the bonds is estimated at $19,000 and will be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21747/October 16, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

(70-6381)

ORDER APPROVING PROPOSED INCREASE IN AMOUNT OF SHORT-TERM BORROWINGS AND EXTENSION OF TIME PERIOD DURING WHICH SUCH BORROWINGS MAY BE MADE

Arkansas Power & Light Company ("AP&L"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to a declaration previously filed with this Commissioin pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the proposed transaction.

By order dated January 2, 1980 in this matter (HCAR No. 21380) the Commission authorized AP&L to issue and sell from time to time, through June 30, 1981, up to $150,000,000 aggregate principal amount at any one time outstanding of its short-term notes to banks and commercial paper to a dealer. AP&L now proposes that the aggregate principal amount of all such unsecured short-term promissory notes to commercial banks that it is permitted to have outstanding at any one time be increased to the lesser, from time to time, of $165,000,000 or 10% of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by AP&L and then outstanding, and (b) the capital and surplus of AP&L as then stated on its books of account. AP&L also proposes that the time through which such bank notes and commercial paper may be issued be extended to December 31, 1981 and that the latest maturity date thereof be extended to September 30, 1982.

The proceeds of such borrowings will primarily be used by AP&L to finance its construction program and to discharge or refund its outstanding obligations incurred therefor.

It is stated that no special or separable fees, commissions and expenses will be incurred by AP&L in connection with the proposed transaction. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21717), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 591/October 9, 1980

In the Matter of

PACIFIC SOUTHWEST AIRLINES
File No. 22-10730

APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued a Notice giving interested persons until October 27, 1980 to request a hearing on an application by Pacific Southwest Airlines, pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of United States Trust Company of New York under (i) an existing Indenture qualified under the Act in 1967, (ii) an existing Indenture qualified under the Act in 1979; and (iii) two proposed Trust Agreements that will not be qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under such Indentures or Trust Agreements.

TRUST INDENTURE ACT OF 1939
Release No. 592/October 10, 1980

The Securities and Exchange Commission has issued a notice giving interested persons until November 4, 1980 to request a hearing on an application by Jones and Laughlin Steel Corporation and Mellon Bank N.A., pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeship of Mellon Bank N.A. under such indentures is not so likely to involve a material conflict of interest as to make it necessary to disqualify Mellon Bank N.A. from acting as trustee.

TRUST INDENTURE ACT OF 1939
Release No. 593/October 10, 1980

In the Matter of

HUGHES TOOL COMPANY
File No. 22-10591

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by Hughes Tool Company pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of Texas Commerce Bank National Association (the "Bank") under (1) an indenture, dated as of July 15, 1975; (2) an indenture, dated as of November 1, 1978; (3) an indenture, dated as of April 1, 1980, heretofore qualified under the Act, and (4) an indenture to be entered into between a commercial bank as trustee and the Walker County Industrial Development Corporation, under which it is desired that the Bank serve as trustee, which indenture is not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of these indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11327A/October 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6235A/October 15, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11390/October 9, 1980

In the Matter of

NATIONAL MUNICIPAL TRUST
NATIONAL MUNICIPAL TRUST, SPECIAL TRUSTS
THOMSON McKINNON SECURITIES, INC.
PIPER, JAFFRAY & HOPWOOD INCORPORATED
c/o Thomson McKinnon Securities Inc.
One New York Plaza
New York, New York 10004

(812-4723)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING PRIOR ORDER OF EXEMPTION FROM SECTION 22(d) OF THE ACT

National Municipal Trust, National Municipal Trust, Special Trusts, Thomson McKinnon Securities Inc. and Piper, Jaffray & Hopwood Incorporated ("Applicants") filed an application on August 27, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") amending a prior order ("Prior Order") which exempted Applicants from Section 22(d) of the Act to permit mandatory redemption of reinvestment units at the time of a unitholder's withdrawal from or in the event of termination of the National Municipal Trust Reinvestment Program ("Reinvestment Program"). The Prior Order was issued on April 14, 1978 (Investment Company Act Release No. 10207).

On September 3, 1980, a notice (Investment Company Act Release No. 11329) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application woud be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of the Commission's order dated April 14, 1978, contained in Investment Company Act Release No. 10207 to the extent requested, be and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11391/October 10, 1980

INDIVIDUALIZED INVESTMENT MANAGEMENT SERVICES

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to adopt a rule under the Investment Company Act of 1940 which would deem investment management services which provide their clients with individualized treatment not to be investment companies. The proposed rule would provide a "safe harbor" for any investment manager affording its clients individualized treatment. Under such circumstances, regulation of investment management services under the Investment Company Act of 1940 would appear to be unnecessary.

DATE: Comments must be received by January 9, 1981.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. (Refer to File No. S7-854.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel (202) 272-2048 or Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 272-3041.

SUPPLEMENTARY INFORMATION: The Commission today proposed for public comment a new rule 3a-4 [17 CFR 270.3a-4] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), concerning individualized investment management services. The proposed rule was developed by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

BACKGROUND

In 1970, the Commission instituted an injunctive action against First National City Bank's ("FNCB") Special Investment Advisory Service ("SIAS"). The SIAS arrangement involved discretionary accounts managed so that clients who shared the same general investment objective received substantially the same investment advice. Although each client had his own account with the broker used by SIAS and each owned specified securities, the Commission alleged that SIAS was an investment company within the meaning of section 3(a) of the Act, and that participations in the arrangements were securities required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Securities Act").[1]

Subsequently, in response to no-action requests, the Commission's staff took the position that registration under the Act would be required if an investment adviser provided substantially the same or substantially overlapping advice, on a discretionary basis, to each account or to a discernible group of accounts.[2] This position was taken generally in connection with the offering of small account investment management services which had been made economically feasible through the increased use of computers, and reflected the staff's concern that computer systems not be used to facilitate the operation of small account investment management services in a manner that would make them the functional equivalent of investment companies without providing the investor protections afforded by the Act.

As a result of these developments, the Advisory Committee on Investment Management Services for Individual Investors ("Advisory Committee") was formed to assist the Commission in developing clearer policies and guidelines.[3] The Advisory Committee identified the significant distinctions between individualized and non-individualized services. It concluded that the promotion and operation of a discretionary investment management service may involve a public offering of securities which should be registered under the Securities Act if the service generally solicits clients and gives substantially the same advice to all clients.[4] However, the Advisory Committee also concluded that registration under the Securities Act should not be considered necessary when investment management services are

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[1]See SEC v. First National City Bank, SEC Litigation Release No. 4534 (Feb. 6, 1970). FNCB agreed to a stipulation and consent order providing for the discontinuance of SIAS, but it was permitted to operate a non-discretionary service for small investors who could select from among three or more brokers to carry their accounts rather than be limited to a single specified broker.

[2]Wheat & Co., Inc. [1971-1972 Transfer Binder] Fed. Sec. L. Rep. (CCH) para 78,358; Finanswer America Investment, Inc. [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) para 78,111; Jacobs Persinger & Parker, [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) para 78,053.

[3]Investment Company Act Release No. 7423 (Oct. 12, 1972). The Advisory Committee's report was published in January 1973.

[4]Advisory Committee Report at 23. In this connection, the Advisory Committee stated:

A service which purports to furnish investment management but does not tailor the advice given to the particular needs of the client creates an impersonal relationship. The fortunes of the client depend on no factors other than the ability of the investment adviser to make a profit. The client stands in substantially the same position as other clients. Such an arrangement is basically an investment in a common enterprise for profit. The person offering such a service is acting as a promoter of discretionary accounts. That situation is in stark contrast to the confidential professional relationship between the investment manager and the client where the manager is furnishing investment advice on the basis of the individual needs of each client.

Advisory Committee Report at 23-24.

individualized. It was the Advisory Committee's view that "a client of an investment manager who receives the full complement of fiduciary attention and protection does not need the protection of a Securities Act prospectus."[5] However, with respect to the Act, it was the Advisory Committee's view that, whether or not individualization is afforded, an investment company is not created where clients retain all the incidents of ownership of the securities in their portfolios, and there is thus no pooling of assets in the conventional sense.[6]

DISCUSSION

The Commission is aware that the law is unclear on the issue of whether discretionary advisory arrangements between investors and an investment adviser are securities. This conflict results from differing interpretations afforded the words "common enterprise" which appear in the definition of the term "investment contract" expounded in *SEC* v. *W.J. Howey Co.*[7] Some courts require a pooling of clients' funds in order for a common enterprise, and thus a security, to exist.[8] However, other courts have defined a common enterprise to be "one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties."[9] The Commission notes that an investment management service operating in a jurisdiction following this latter approach might be held to be an "issuer" of securities, which, in turn, would be an "investment company" if it were found to be engaged primarily in the business of investing and trading in securities.[10]

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[5]Advisory Committee Report at 24. In this connection, the Advisory Committee suggested various criteria to assist in the determination of what constitutes individualized service or advice. It also recommended that clients of those services not subject to Securities Act registration receive an information statement disclosing material facts concerning the service offered.

[6]The Advisory Committee urged that any investor protection problems presented by such non-pooled investment management services be dealt with by appropriate disclosure and other guidelines and rules under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.] ("Advisers Act").

Subsequently, the Commission brought an administrative proceeding against a registered investment adviser for violations of the antifraud provisions of the Advisers Act and the Securities Exchange Act of 1934, alleging that the adviser did not provide its clients with personalized treatment despite representations by the adviser to the contrary. In its offer of settlement, which was accepted by the Commission, the adviser, among other things, agreed to develop standards and procedures designed to assure that each advisory client would receive individualized treatment. Investment Advisers Act Release No. 449 (Mar. 28, 1975). Similarly, the Commission recently censured another registered investment adviser for violation of section 206 of the Advisers Act in an administrative proceeding in which it was alleged that the adviser failed to accurately disclose to its clients the amount of individualized treatment they would receive, and the extent to which investment decisions for those clients would be based upon "model portfolios." Investment Advisers Act Release No. 658 (Jan. 16, 1979).

[7]"The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. 293, 301 (1946).

[8]See, e.g., Hirk v. Agri-Research Council, Inc., 561 F.2d 96 (7th Cir. 1977); Curran v. Merrill Lynch, Pierce, Fenner and Smith, Inc., No. 77-1300 (6th Cir. May 12, 1980).

[9]See, e.g., SEC v. Continental Commodities Corp., 497 F.2d 516, 522 (5th Cir. 1974).

[10]See section 3(a)(1) of the Act which defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; section 2(a)(22) of the Act which defines an "issuer" as every person who issues or proposes to issue any security, or has outstanding any security which it has issued; section 2(a)(28) of the Act which provides that "person" means a natural person or a company; and section 2(a)(8) of the Act which defines "company" to include a corporation, a partnership, an association, a joint stock company, a trust, a fund

However, faced with an identical factual situation, a court in a jurisdiction which requires a pooling o funds for a common enterprise to exist might arrive at a different conclusion.

On the other hand, in the context of investment management services, a group of advisory accounts under common investment management would appear to satisfy the common enterprise element of the *Howey* test under all the facts and circumstances when they have the following characteristics: First, the advisory accounts are discretionary;[11] second, the investors receive substantially the same or substantially overlapping investment advice; third, the investment advice is not "individualized."[12] An adviser must often provide its clients with nonindividualized advice to make an investment management service economically feasible.

Therefore, an investment management service having those characteristics should be found to be an issuer of securities to its clients which is engaged primarily in the business of investing, reinvesting and trading in securities. Nevertheless, because the law in this area has not yet been fully developed, the Commission does not believe it would be appropriate at this time to adopt a rule defining which investment management services must register as investment companies under the Act.[13] Instead, the Commission has decided to propose a rule which would provide a safe harbor for any investment management service affording its clients individualized treatment. When an investment manager differentiates among its clients based upon their unique goals and needs, the likelihood is substantially reduced of a common enterprise existing *de facto* amongst all the investment adviser's clients. In this respect, the economic relationship created is more closely akin to a personal service contract than to a participation in a business venture.[14]

Footnote 10 continued

or any organized group of persons whether incorporated or not. In this regard, the discretionary advisory accounts, taken together, might be "an organized group of persons" and therefore a "company." See Prudential Insurance Co. v. SEC, 326 F.2d 383 (3d Cir.), cert. denied, 377 U.S. 953 (1964); and SEC v. First National City Bank, supra.

[11]As used herein, discretionary accounts refer to all accounts other than those in which the investor both has the authority to accept or reject the investment manager's recommendations, and in fact exercises a judgment with respect to each such recommendation, regardless of whether the arrangement is labelled "discretionary" or "nondiscretionary."

[12]The concept of individualization has a basis in the term "investment supervisory services" which is defined in section 202(a)(13) of the Advisers Act as "the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client." This definition has been interpreted to some extent by Item 1(a) of Form ADV Part II for registration under the Advisers Act, which lists various factors an adviser rendering such services considers in formulating its advice, such as the nature and amount of other assets, investments and insurance, and the nature and extent of the personal and family obligations of each client. It is also relevant that the personal and confidential relationship between an investment manager and his clients was emphasized by members of the industry at the Congressional hearings in 1940. See, e.g., Hearings on S.3580, Subcomm. on Securities and Exchange, Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., pt. 2 at 713, 719 (1940).

[13]However, the Commission is prepared to take appropriate enforcement action against those investment management services which it believes, under all the facts and circumstances, have created unregistered investment companies within the meaning of the Act.

[14]The Commission is aware that investment management services for large accounts traditionally have been offered to the public without registration under either the Securities Act or the Act, apparently on the basis of their clients receiving individualized treatment and the investment manager being sufficiently aware of each client's needs that he can properly fulfill his fiduciary duties.

PROPOSED RULE

The Commission proposes to adopt rule 3a-4 under the Act which would deem an investment management service providing its clients with individualized treatment not to involve the creation of an investment company, notwithstanding that the accounts managed by the service are discretionary and receive substantially the same investment advice.[15] The relief provided by the proposed rule would be available to any investment management service which meets the rule's requirements, regardless of the size of the accounts managed by the service.

The proposed standards of individualization were modeled after, generally, the treatment investment counselors have traditionally provided their clients.[16] Specifically, the proposed rule would require the service to furnish continuous advice as to the investment of funds on the basis of the individual needs of each such client.[17] This requirement would ordinarily entail consideration, before a transaction is effected, of each client's account and his financial and personal data in order to determine whether the transaction would be appropriate for that particular client.[18]

Since in most cases model portfolios do not take the individual needs and goals of each client into consideration, their use would appear to be presumptively inconsistent with individualized treatment. Similarly, the practice of simply categorizing clients in terms of general investment objectives, and mechanically treating clients within the same category in the same fashion, would also appear to be presumptively inconsistent with individualized treatment. However, the mere existence of portfolio similarities among accounts would not necessarily establish that the investment manager was not rendering investment advice on the basis of the individual needs and goals of each client. In this regard, the Commission is aware that providing dissimilar treatment merely to avoid the appearance of nonindividualized treatment could detract seriously from the quality of investment management by causing possibly unsuitable recommendations to be made to some accounts.

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[15]In this connection, the Commission's Division of Corporation Finance has indicated that, if the proposed rule were adopted, that Division would take the view that discretionary advisory arrangements meeting the requirements of the rule should not be regarded themselves as securities for purposes of the Securities Act.

[16]The Advisory Committee recommended various criteria to assist in the determination of what constitutes individualized treatment or advice. Among other things, the criteria would include adequate screening by the investment manager of prospective clients to determine whether the service is appropriate for them and to ascertain and suggest reasonable investment objectives for clients. In order to do this, investment managers would have to obtain comprehensive financial and other information from prospective clients and make sure that such information is kept current. The investment manager would be required to give clients reasonable access to information on the status of their accounts and some leeway in excluding certain types of securities from their portfolios (e.g., liquor, drugs and tobacco company stocks). Any across-the-board or other mechanical methods for selection of securities for accounts would be precluded. However, the use of a model portfolio by an investment manager would not be necessarily inconsistent with the rendering of individual treatment, if it is used only as a guide for selecting securities for clients. Advisory Committee Report at 27-32.

[17]Proposed rule 3a-4(a). In this regard, the Commission expects that the client's account would be managed by persons capable of analyzing those individual needs in the context of making the investment decision.

[18]In certain cases, such as an investment manager's research indicating that a particular security held by several clients will almost certainly decline in value quickly, it may be appropriate to sell that security on behalf of all accounts without first reviewing the status of each such account. The Commission does not believe such "emergency" situations are necessarily inconsistent with providing individualized service.

To ensure that the investment manager is in a position to evaluate the portfolios of his clients in light of their changing needs and circumstances, the proposed rule would require a significant amount of contact between the investment manager and his client.[19] Having such contact would not necessarily result in an investment manager providing individualized treatment; that would depend on the actual operation of the investment management service. However, having such contact should enable the investment manager to provide individualized treatment to advisory clients. In this regard, the proposed rule would require the investment manager to provide prospective clients with an initial interview.[20] This interview would give the investment manager an opportunity, among other things, to discuss with the client any financial or other personal information he furnished to the manager in writing, to ascertain the degree of risk the client is willing to take, and to discover other factors which would be difficult to obtain from a written report. Where practical, such an interview should be conducted in person.

Beyond the initial interview, the proposed rule would require that the investment manager interview his clients at least annually, determine at least quarterly whether there have been changes in the client's financial status, and provide the client with a statement of the account on a quarterly basis.[21] Moreover, under the proposed rule, the investment manager would be required to be available on a reasonable basis both for consultation (e.g., if a client needs cash for some purpose, he should be able to obtain the investment manager's recommendation on how to obtain the needed money) and to answer questions from clients who desire explanations concerning the administration of their accounts and their financial situation or investment needs.[22]

Finally, the proposed rule would require that each client of the service maintain to the extent reasonably practicable every indicia of ownership over the funds that the client placed under management, including the right to withdraw, hypothecate, vote or pledge securities[23] and the receipt of a notification (such as a confirmation) of each security transaction for his account.[24] Similarly, the client would have to be given the opportunity and authority to determine whether to refrain from purchasing particular securities otherwise generally purchased by the investment manager.[25]

The Commission is aware that compliance with the proposed standards of individualization might make it difficult to manage profitably accounts below a certain dollar amount. However, in view of the wide variations in efficiency among investment management services, the Commission does not propose to specify a minimum account size which must be maintained; rather, the Commission believes that any such minimum account size should be

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[19]Such contact should be directly between the investment manager and his client. The use of intermediaries by the investment manager, such as having clients direct inquiries through brokers, appears to be inconsistent with the concept of individualized investment management services.

[20]Proposed rule 3a-4(b)(1).

[21]Proposed rule 3a-4(b)(1), (2) and (3). If a client does not avail himself of the opportunity to initiate contact with the investment manager, the manager would be expected to make reasonable efforts to contact that client for the purpose of maintaining current information. At a minimum, the investment manager should write the client requesting current information on that client's financial status, and, if there is no response, the manager should follow-up the letter with a telephone call.

[22]Proposed rule 3a-4(b)(4).

[23]Proposed rule 3a-4(c)(1).

[24]Proposed rule 3a-4(c)(2).

[25]Proposed rule 3a-4(d). For example, the client would have to be able to elect whether to exclude securities such as liquor, drug and tobacco company stocks from his account, or to decide whether his account should invest in fewer numbers of securities than the number the investment manager typically invests in for his clients.

determined by each adviser in the context of its own circumstances.[26]

TEXT OF PROPOSED RULE

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by adding §270.3a-4 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§270.3a-4 Individualized investment management services.

Notwithstanding section 3(a) of the Act, an investment manager will be deemed not to create an investment company within the meaning of the Act: *Provided*, That:

(a) such investment manager furnishes continuous advice as to the investment of funds on the basis of the individual needs of each client;

(b) a person who is authorized to make investment decisions regarding the client's account:

(1) at the opening of the account, and at least annually thereafter, interviews the client regarding the client's financial situation and individual needs;

(2) at least quarterly, attempts to determine whether there has been any change in the client's financial situation and individual needs;

(3) at least quarterly, provides the client with a statement of the account; and

(4) during normal business hours, is reasonably available to the client for consultation regarding the administration of the client's account and financial situation or investment needs;

(c) each client of the investment manager maintains to the extent reasonably practicable every indicia of ownership of such funds, including:

(1) the right to withdraw, hypothecate, vote or pledge securities; and

(2) the receipt of a notification of each security transaction; and

(d) each client of the investment manager has the opportunity and authority to instruct the adviser to refrain from purchasing particular securities which otherwise might be purchased.

STATUTORY BASIS: Proposed rule 3a-4 is promulgated pursuant to the provisions of section 6(c) [15 U.S.C. 80a-6(c)] and 38(a) [15 U.S.C. 80a-37(a)] of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11392/October 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6246/October 9, 1980

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[26]In addition, the ratio of investment managers to clients can be an important indication of whether individualized treatment is being provided. Here too, however, in view of the variables involved in the administration of accounts, such as the number and quality of support and research personnel which may be available to assist the investment manager, the Commission does not propose specifying a maximum number of accounts per investment manager.

INVESTMENT COMPANY ACT OF 1940
Release No. 11393/October 10, 1980

In the Matter of

U.S. RAILROAD SECURITIES FUND, INC.
134 North LaSalle Street
Chicago, Illinois 60602

(811-583)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On September 10, 1980, a notice was issued (Investment Company Act Release No. 11343) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that U.S. Railroad Securities Fund, Inc. ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of U.S. Railroad Securities Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11394/October 10, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 733/October 10, 1980

Admin. Proc. File No. 3-5966

RESERVE MANAGEMENT CORPORATION
RESERVE MANAGEMENT COMPANY
HENRY B. R. BROWN
BRUCE R. BENT
810 Seventh Avenue
New York, New York 10019

ORDER INSTITUTING PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In connection with a proposed public administrative proceeding pursuant to Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") and Sections 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act"), Reserve Management Corporation ("RM Corp.") and Reserve Management Management Company ("RM Co."), both registered investment advisers, and Henry B. R. Brown ("Brown"), general partner of RM Co. and president and treasurer of RM Corp., and Bruce R. Bent ("Bent"), general partner of RM Co. and vice-president and secretary of RM Corp., have submitted an Offer of Settlement which the Commission has determined it is in the public interest to accept.

Solely for the purpose of this proceeding, and without admitting or denying the allegations and findings contained herein, RM Corp., RM Co., Brown and Bent (hereinafter collectively "Respondents") consent to the findings and order of the Commission imposing the remedial sanctions set forth below. Respondents further consent to the entry of an order by the Commission suspending the investment adviser registrations of RM Corp. and RM Co. and suspending Respondents from association with an investment adviser or investment company for a period of 12 months if, prior to December 31, 1981, Respondents willfully fail or cease to comply with their undertakings. Respondents undertake: (1) not to willfully violate or aid and abet any violation of the federal ecurities laws; (2) to use their best efforts to

cause The Reserve Fund, Inc. ("Reserve"), a registered investment company, to employ an in-house legal counsel acceptable to the Commission's New York Regional Office ("NYRO"); (3) to file periodic reports containing certain information with the NYRO; and (4) to provide equipment and/or services to Reserve in an amount not less than all investment advisory fees earned by RM Corp. and RM Co. from Reserve during a 20-day period.

II.

Accordingly, IT IS ORDERED that a proceeding pursuant to Section 9(b) of the Investment Company Act and Sections 203(e) and (f) of the Advisers Act be, and it hereby is, instituted.

III.

On the basis of the Order Instituting Proceedings and the Offer of Settlement, it is found that Respondents willfully[1] violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and Section 34(b) of the Investment Company Act in that, in documents sent to Reserve shareholders and/or filed with the Commission, they did not specifically disclose problems concerning computer and telephone malfunctions affecting the ability of Reserve to consistently make same-day payments upon redemption of its shares.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offer of Settlement.

Accordingly, IT IS ORDERED that RM Corp., RM Co., Brown and Bent be, and they hereby are, censured, and

IT IS FURTHER ORDERED that, for the purposes of convening a hearing to determine whether Respondents have failed or ceased to comply with their undertakings and whether the sanctions specified in their Offer of Settlement should be imposed, the jurisdiction of the Commission over this matter be, and it hereby is, retained until March 31, 1982 and such additional time as may be necessary to resolve or adjudicate any issue raised at such hearing.

By the Commission.

George A. Fitzsimmons
Secretary

[1] 'Willfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement that the actor also be aware that he is violating one of the Rules or Acts." *Tager* v. *SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

INVESTMENT COMPANY ACT OF 1940
Release No. 11395/October 10, 1980

In the Matter of

BERGEN BANK A/S
c/o H. Rodgin Cohen, Esq.
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

(812-4724)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL THE PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Bergen Bank A/S ("Applicant") filed an application on August 27, 1980 for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant represents that it is one of the three major commercial banks in Norway, and that as of December 31, 1979, based on that date's exchange rate for Norwegian kroners, it had assets of $2.88 billion, deposits of $2.1 billion and capital funds (including reserves and subordinated loan capital) of $163 million. Applicant states that its principal business is the receipt of deposits and the making of loans, and that approximately 93% of its liabilities (excluding capital) consists of deposits. It is stated that approximately 83% of the deposits are from nonbank depositors, and over 90% of its deposits are from Western European countries and the United

States. Applicant states that its deposits are received from a broad spectrum of customers, and that approximately 38% of its nonbank deposits are retail deposits received through a domestic network of approximately 100 branches. Applicant states that approximately 43% of its nonbank deposits are received from corporations.

Applicant further represents that its loans total approximately $1.8 billion and that almost all of its loans are to, or guaranteed by, Norwegian persons. According to Applicant, its loan portfolio is widely diversified as to type of borrower. Applicant states that its other assets consist principally of Norwegian government and government-guaranteed bonds, which as of December 31, 1979 amounted to $670 million.

Applicant also represents that, in addition to its deposit and lending business, it engages in other banking and bank-related activities typical of major full service European banks, including fiduciary and investment advisory services, money transfers, foreign exchange, lease financing and underwriting in the Eurobond market.

According to Applicant, its shares are held by an estimated 34,000 investors and are listed on the Oslo Stock Exchange. Applicant represents that approximately 53% of its shares are held by individuals, 31% by institutional investors and 16% by the Kingdom of Norway.

Applicant states that the Government of Norway has adopted a statutory and administrative policy to ensure the solvency of Norwegian commercial banks. It is stated that the basic statute governing commercial banks, the Bank Act of 1961 ("Bank Act"), provides that bankruptcy proceedings cannot be instituted by creditors of commercial banks. Applicant also represents that in a report to the Norwegian Parliament, the Governor of the Norwegian Central Bank (Norges Bank) stated that under no circumstances would the Norges Bank allow a Norwegian commercial bank to default on its obligations, that Norges Bank would provide sufficient loans to achieve that objective, and that the Governor of the Norges Bank subsequently confirmed in writing that this policy applied to commercial paper issued in the United States by a Norwegian commercial bank.

Applicant asserts that it is subject to a regulatory structure comparable to that to which United States banks are subject. Applicant states that it is supervised by the Norwegian Bank Inspectorate ("NBI"), which has broad regulatory and enforcement powers with respect to commercial banks. It is represented that under the Bank Act, a Norwegian commercial bank such as Applicant is required to hold: (i) cash, deposits at other banks with maturities of not more than one month, and government obligations with maturities of not more than five years, in an amount equal to not less than 25% of demand deposits and time deposits with maturities of not more than one month; (ii) similar assets in an amount equal to not less than 5% of time deposits from nonbanks; and (iii) similar assets in an amount equal to not less than 10% of nonbank deposits and demand and one month deposits from banks.

Applicant states that it is required to maintain "primary liquid reserves," consisting generally of high quality assets, in an amount currently equal to 5% of total assets, and that it is currently also required to maintain 30% of its assets in Norwegian Government and similar high class bonds. Applicant also states that it is required to maintain equity capital equal to at least 6.5% of total liabilities after deducting cash in hand, amounts receivable from Norges Bank and government securities, and advances having government or equavalent guarantees, and that it is required to maintain a reserve fund equal to at least one-half its share capital. Applicant represents that the NBI receives monthly statements of financial condition from each Norwegian commercial bank and conducts periodic inspections of each commercial bank, and that NBI prescribes the accounting principles for commercial banks. Applicant states that it cannot engage directly or through subsidiaries in non-banking activities, and that it may not own real estate in an amount exceeding 4% of its total assets, nor equity securities exceeding 2% of its total assets. Applicant further states that a Norwegian commercial bank generally may not lend more than 50% of its capital to any borrower, and that its single largest loan is approximately one-half this maximum. Applicant states that loans to related parties are closely regulated through collateralization requirements. Applicant represents that Norwegian governmental authorities appoint a majority of its Board of Representatives, its the highest governing authority, which among other things, elects its board of directors and is required to (i) establish a Control Committee to supervise the activities of the bank and its compliance with all

applicable statutes and regulations and (ii) appoint auditors who report to the Board of Representatives through the Control Committee.

Applicant proposes to issue and sell in the United States unsecured prime quality commercial paper notes ("Notes"), in bearer form and denominated in United States dollars, in order to provide an alternative source of supply of United States dollars which supplement United States dollars currently obtained by Applicant in the Eurodollar market. It is stated that under this proposal no Note will be in a denomination smaller than $100,000, and that the Notes will be issued and sold by Applicant to a commercial paper dealer in the United States which will reoffer the Notes as principal to investors in the United States. Applicant represents that it does not currently intend to sell the Notes in the United States in excess of an aggregage of $100 million at any one time outstanding.

Applicant states that it undertakes to ensure that the Notes will not be advertised nor otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicant also states that it undertakes to ensure that the dealer will provide each offeree of the Notes prior to purchase with a memorandum which briefly describes Applicant's business and includes its most recent publicly available fiscal year-end balance sheet and income statement, which shall have been audited in such manner as is customarily done for Applicant by its auditors. Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. Applicant states that such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in Applicant's financial condition.

Applicant represents that the terms of the Notes, including their maturity and minimum denomination, the amount outstanding at any given time, and their manner of offering to investors, will be such as to qualify them for the exemption from registration provided for certain short-term commercial paper by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant states further that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicant states that it will agree with its commercial paper dealer that the Notes will contain no provision for payment on demand, extension, renewal or automatic rollover either at the option of Applicant or the holder. Applicant asserts that, as a consequence, it will not be required to register the Notes under the 1933 Act.

Applicant represents, in addition, that it will not issue and sell the Notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption provided by Section 3(a)(3) of the 1933 Act. Applicant states that it does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act. Applicant further represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicant also represents that the currently proposed issue of securities and all future issues of securities will have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization and that its United States counsel will have certified that such rating has been received.

Applicant asserts that the Notes will rank *pari passu* among themselves and equally with all other of its unsecured indebtedness (including liabilities to depositors) and will rank prior to its equity securities.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant also states that it will appoint either such bank, the Commission or some other party which normally acts in such capacity to accept any process which may be served in any action based on the Notes and instituted by the holder of any Note in any state or federal court. Applicant further states that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an authorized agent to accept service of process and such consent

to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise, but that its authorized agent will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other securities, such as debt securities, bankers acceptances and letters of credit supporting commercial paper issued by other companies, but not including shares of its capital stock, for sale in the United States. Applicant represents that any such future offering of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Applicant further states that any such future offering will be made with due regard to the provisions of Rule 146 and the doctrine of "integration" referred to in Securities Act Release Nos. 4434, 4552 and 4708 and various "no action" letters made public by the Commission. Applicant states, in connection with any future offering in the United States of its securities, that it will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any state or federal court by the holder of any such security. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Section 3(a)(3) of the Act defines investment company to mean any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Section 6(c) provides that the Commission, by order upon application, may exempt any person from the provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is applying to the Commission because of uncertainty whether or not foreign commercial banks would be defined as "investment companies" under the Act.

Applicant contends that approval of its application is both necessary and appropriate in the public interest. According to Applicant, a foreign bank would be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with the provisions of the Act and such a result would be inherently inequitable and conflict with the objective of the International Banking Act of 1978, which, Applicant contends, was intended to place foreign banks on a basis of competitive equality in their transactions in the United States with United States banks, which are not required to register as investment companies.

Applicant maintains that foreign banks have a particular need for access to the United States securities markets which goes beyond that for foreign issuers generally. It is stated that because of the development of the large Eurodollar market, major foreign banks which deal in that market need a source of dollars in the event of even a short disruption in the market. Applicant asserts that an exemption pursuant to Section 6(c) could make an important contribution to the stability of the international financial markets. Applicant further asserts that such an exemption would benefit United States investors, and that absent an exemption these investors would be unable to purchase securities issued by foreign banks. Those securities, according to Applicant, represent an increasingly important

segment of the short-term, prime quality securities available for purchase.

Applicant asserts further that the exemption requested would be consistent with the protection of investors because there are already in place Norwegian governmental policies and regulatory structures which afford sufficient protection for investors. Applicant asserts that to subject it to the provisions of the Act would be to impose unnecessary regulation upon it, and thereby prevent it from engaging in normal commercial banking operations. Applicant states that in general the operations of commercial banks do not result in abuses the Act was intended to prevent, either because banking regulations prevent such abuses or because banking operations do not lend themselves to such abuses.

NOTICE IS FURTHER GIVEN that any interested person may, not later than October 31, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. . copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11396/October 10, 1980

In the Matter of

GENERAL AMERICAN INVESTORS COMPANY, INC.
330 Madison Avenue
New York, New York 10017

(812-4399)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 12(d)(3) OF THE ACT

On September 10, 1980 a notice was issued (Investment Company Act Release No. 11345) of an application, filed on December 4, 1978, and amended on July 17, 1979 and August 7, 1980, by General American Investors Company, Inc. ("Applicant"), a closed-end, diversified investment company registered under the Investment Company Act of 1940 ("Act"), for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 12(d)(3) of the Act so that Applicant can organize a subsidiary ("Subsidiary"), which will register under the Investment Advisers Act of 1940 and acquire all of its outstanding capital stock.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 12(d)(3) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith; provided that, Applicant maintains its tax status as a regulated investment company within the meaning of Section 851 of the Internal Revenue Code of 1954, as amended; and provided further that Applicant complies with the following conditions:

1. Applicant's board of directors expressly recognizes its fiduciary responsibility to oversee on a continuing basis and approve (by at least a vote of a majority of the directors of Applicant who are not "interested persons" of Applicant as defined in the Act) at least annually the compensation of officers of Applicant and of the Subsidiary.

2. Applicant's board of directors will review at least annually the investment advisory business of Applicant and the Subsidiary in order to determine whether or not such business should be continued and whether or not the benefits derived by Applicant warrant the continuation of the investment advisory business and the ownership by Applicant of the Subsidiary and, if appropriate, approve (by at least a vote of a majority of the directors of Applicant who are not "interested persons" of Applicant as defined in the Act) at least annually such continuation.

3. Applicant will, consistent with its normal shareholder communications practices, which include the preparation and mailing of annual, semi-annual and quarterly reports, and proxy statements, advise its shareholders of the creation of the Subsidiary, the implementation through the Subsidiary of an expansion of its outside advisory services and an assessment of whatever risks, if any, are associated therewith promptly after the entry of this order.

4. Applicant undertakes, without prejudice to the right of its board of directors to dispose to unaffiliated persons the equity interest of Applicant in the Subsidiary in its entirety, that it will at all times own beneficially and of record all of the issued and outstanding shares of capital stock of the Subsidiary and will cause the Subsidiary not to issue any authorized but unissued shares of its capital stock to any person other than Applicant.,

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11397/October 15, 1980

In the Matter of

ALGEMENE BANK NEDERLAND N.V.
c/o Michael F. Orr, Esq.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

(812-4717)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Algemene Bank Nederland N.V. ("Applicant") filed an application on August 22, 1980, and an amendment thereto on October 3, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant states that it is a commercial bank organized under the law of The Netherlands by an instrument of incorporation on February 7, 1825, and that it is one of the largest commercial banks in the world and the largest in The Netherlands. Applicant's registered head office is at 32, Vijzelstraat, P.O. Box 669, Amsterdam, The Netherlands. As of the end of March, 1980, Applicant operated 712 branches in The Netherlands and had branches and affiliates in 42 foreign countries. In the United States Applicant maintains bank branches in New York, Chicago, Pittsburgh and Los Angeles; banking agencies in San Francisco and Atlanta; a subsidiary, LaSalle National Bank, in Chicago; and a representative office in Houston.

the application states that in addition to its primary business of receiving deposits and making loans, Applicant is engaged in providing a wide range of banking services, including assistance in foreign exchange transactions, Eurocurrency business, letters of credit, international payments, trade and investment information, stock exchange trading, individual portfolio management and management

of a number of investment funds, securities safekeeping and new issue business. As of December 31, 1979, Applicant's total consolidated assets amounted to $45,529,553,000; deposits (savings accounts plus fixed-term deposits plus creditors) amounted to $40,157,253,000, and shareholders' equity and subordinated loans amounted to $1,822,543,000. As of December 31, 1979, approximately 70% of Applicant's total consolidated assets related to business conducted in and from the Netherlands. On the same date it had outstanding 5,947,184 ordinary shares (of which a small percentage were registered) and 30 priority shares.

Applicant represents that it is extensively regulated pursuant to Dutch banking laws which include supervision by the Minister of Finance of The Netherlands and by De Nederlandsche Bank N.V. ("Central Bank"), the central bank of The Netherlands. The application states that various aspects of Applicant's business, including capital and reserves, solvency, liquidity, investments and loans are subject to regulation in The Netherlands. According to the Applicant, the Revised Act on the Supervision of the Credit System ("ASCS") embodies the principal characteristics in respect of the supervision of Dutch credit institutions, viz. *Monetary supervision, Prudential control* and *Structural supervision.* Applicant, as qualifying as a "universal bank" as defined by the ASCS, is subject to the fullest extent to the provisions of the ASCS. The Central Bank is charged with the implementation of these three aspects of banking supervision, although its responsibilities regarding structural policy are shared with the Minister of Finance. According to the application, the Central Bank regularly examines Dutch credit institutions and requires reports in a specified form on a monthly basis, as part of its regulatory and supervisory function.

The application also states that Applicant's branches and agencies in the United States are licensed by state banking authorities under the banking laws of the states in which such branches and agencies are located. Applicant's branches and agencies are examined by such state banking authorities, and must observe the banking regulations of such states. In addition, Applicant's subsidiary, LaSalle National Bank, is subject to all legal requirements, including supervision and examination by the Comptroller of the Currency, which are applicable to national banks. By reason of its ownership of LaSalle, Applicant itself is registered with the Federal Reserve Board as a bank holding company, and Applicant is restricted under the Bank Holding Company Act from acquiring another bank outside of Illinois and is subject to restrictions on business and investments it may have in the United States outside the banking sector.

Applicant proposes to issue and sell unsecured short-term promissory notes of the type generally referred to as commercial paper ("notes") in the United States. The notes will be in bearer form, denominted in United States dollars, of prime quality and issued in minimum denominations of $100,000. They will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured unsubordinated indebtedness of Applicant, including deposit liabilities and superior to the rights of shareholders. Applicant states that the notes will provide it with an alternative source of funding to meet its United States dollar requirements. The aggregate principal amount of notes to be outstanding at any one time is not expected to exceed $300 million.

Applicant states that the terms of the notes and the use of the proceeds of the notes to finance current transactions will be such as to qualify them for the exemption from registration under the Securities Act of 1933 ("1933 Act"), as amended, provided by Section 3(a)(3) of the 1933 Act. Applicant will not issue and sell the notes until it has received an opinion of its legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the notes would be entitled to such exemption. Applicant does not request review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of notes, and any future issue of such debt securities in the United States, shall have received prior to issuance one of three highest investment grade ratings from at least one of the nationally recognized United States statistical rating organizations, and that its American counsel shall have certified that such rating has been received.

The notes will be issued and sold by Applicant through one or more commercial paper dealers in the United States to institutional investors and other entities and individuals who normally purchase commercial paper notes. However, the notes will not be advertised or otherwise offered for sale to the

general public. Applicant undertakes to ensure that the dealer or dealers will provide each offeree of the notes, prior to any sale of notes to such offeree, with (i) a memorandum which describes the business of Applicant, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, which shall have been audited in such manner as is customarily done for Applicant by its auditors (to be included in (i)), and (iii) the most recent publicly available unaudited semi-annual financial statements of Applicant. Such memorandum will be updated periodically to reflect material changes in Applicant's business and financial status. The memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States. Such memorandum will describe the material differences between the accounting principles applied by Applicant in the preparation of its financial statements and generally accepted accounting principles as employed by commercial banks in the United States. Applicant consents to any order granting the relief requested pursuant to Section 6(c) of the Act being expressly conditioned upon Applicant's compliance with all of its undertakings regarding disclosure documents.

The application states that Applicant will appoint a bank in the United States as its authorized agent to issue the notes from time to time and will appoint such bank to accept any service of process in any action based on the notes and instituted in any State or Federal court by the holder of any note. Applicant will accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid by Applicant. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise. Applicant similarly represents that it will consent to jurisdiction and will appoint an agent for service of process in suits arising from any other future offer of debt securities that it may make in the United States.

Applicant states that in the future it might offer other debt securities for sale in the United States. Except for deposit taking or other ordinary commercial banking activities of Applicant's bank branches, banking agencies and subsidiaries in the United States, any future offerings of Applicant's securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial statements, as the dealer's memorandum referred to above. In no event will such disclosure documents be less comprehensive than is customary for United States offerings of similar debt securities. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by such Act and the rules and regulations thereunder.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons securities, or transactions from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act because of uncertainty as to whether a foreign commercial bank such as Applicant would be considered an investment company as defined under the Act. Applicant states that absent an exemption a foreign bank would be denied ready access to the credit markets in the United States, a result said to be both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978. Applicant also states that an exemptive order here is both necessary and appropriate because it affords foreign banks access to a source of dollars which is necessary in view of

their activities in the Eurodollar market and because it would benefit U.S. investors by making available to them additional opportunities for investment in short term, prime quality securities. Applicant asserts that its activities are extensively regulated by the Dutch banking authorities and that the limitations imposed by Dutch laws as to liquidity and solvency afford substantial protection to investors in debt securities. The application further claims that a commercial bank, such as itself, is substantially different from the typical investment company that Congress intended the Act to regulate, and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent. Finally, Applicant states that granting its requested order will not give it any advantage over U.S. banks in the issuance of commercial paper.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11398/October 16, 1980

In the Matter of

MONTE J. WALLACE,
NEIL W. WALLACE

(812-4748)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 9(c) OF THE INVESTMENT COMPANY ACT OF 1940 AND ORDER OF TEMPORARY EXEMPTION PENDING DETERMINATION OF THE APPLICATION

NOTICE IS HEREBY GIVEN that Monte J. Wallace and Neil W. Wallace (the "Wallaces") have filed an application pursuant to Section 9(c) of the Investment Company Act of 1940, 15 U.S.C. §80a-1, *et seq.*, as amended (the "Act"), for an order granting them a partial exemption from the provisions of Section 9(a) of the Act, and a temporary, partial exemption from Section 9(a) pending the Commission's determination of the application for a permanent exemption.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below.

In January of 1978, the Wallaces and Continental Advisers ("CA") were named, with others, as defendants in Civil Action No. 78-0066, brought by the Commission in the United States District Court for the District of Columbia (the "action"). The Commission's Complaint alleged, *inter alia*, that between 1972 and 1975 the Wallaces, in the course of their association with Continental Mortgage Investors ("CMI"), a publicly held real estate investment trust and CA, a partnership that served as CMI's investment adviser prior to October 29, 1975, violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), as amended, and Rule 10b-5, 17 C.F.R. §240.10b-5, thereunder, and other provisions of the securities laws.

On October 16, 1980, without admitting or denying the allegations of the Complaint, CA and the Wallaces consented to the entry of an order enjoining them from engaging in acts and practices that constitute violations of Section 10(b) of the Securities Exchange Act of 1934, as amended and

Rule 10b-5 thereunder. The Wallaces further agreed to contribute part of a $2 million escrow fund that may be used to satisfy claims by certain present and past owners of CMI securities and the Trustee in Bankruptcy of CMI. Finally, the Wallaces undertook to support the establishment of an independent Audit Committee of the Board of any publicly held company of which they may become officers, directors, or substantial shareholders within five years from the Court's entry of the order. The agreed-upon order provides that the action shall be terminated against the Wallaces with prejudice and without costs.

Section 9(a) of the Act, insofar as is pertinent here, disqualifies any person, or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company, if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) of the Act provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant the application.

The Wallaces have submitted an application pursuant to Section 9(c) stating, *inter alia*, that:

(1) Prior to March of 1976, Monte J. Wallace was the Chairman of the Board of Trustees, and Neil W. Wallace the Vice-President of the Board of Trustees, of CMI, and the Wallaces were the beneficial owners of a substantial interest in CA. The Wallaces also founded and served as directors of Continental Investment Corporation ("CIC"), which is publicly held.

(2) Unqualified application of Section 9(a) of the Act would work an undue hardship upon the Wallaces. The Wallaces, various members of their families, and family trusts collectively own approximately 65.7% of the outstanding shares of CIC, which is currently in reorganization under Chapter X of the Bankruptcy Act. The Wallaces and their families have and may continue to have a significant stock interest in CIC, and therefore wish to be able to serve on its Board of Directors. Because one of CIC's subsidiaries, Waddell & Reed, advises registered investment companies — specifically United Funds, Inc. (United Income Fund, United Accumulative Fund, United Bond Fund, United Science & Energy Fund), United Continental Fund, Inc., United Continental Income Fund, Inc., United Vanguard Fund, Inc., United Fiduciary Shares, Inc., United Municipal Bond fund, Inc., United High Income Fund, Inc., United Cash Management, Inc., United Cash Management II, Inc. — the Wallaces may be precluded from serving as directors of CIC if they are not granted partial relief from the disqualifications mandated by Section 9(a) of the Act.

(3) Unqualified application of Section 9(a) of the Act would work an undue hardship upon the investing public. CIC may be deemed to be an affiliated of the Wallaces and/or CA. Its successful reorganization and ultimate financial health depend in part upon income generated by Waddell & Reed. If the Wallaces and CA are not granted partial relief from Section 9(a) of the Act, Waddell & Reed may become ineligible to advise investment companies. The investment companies advised by Waddell & Reed and their shareholders have, throughout the companies' existence, relied upon Waddell & Reed for both investment advice and distributioin. The prohibitions of Section 9(a) could thus operate severely to the detriment of the financial interests of CIC and its stockholders, and of the investment companies advised by Waddell & Reed and their stockholders, who were not involved in the events and transactions that gave rise to the action.

(4) The Wallaces have never before applied for an exemption from the provisions of Section 9(a) of the Act.

(5) The Wallaces have relied upon the Commission Staff's agreement to recommend a conditional exemption from the prohibitioins of Section 9(a) in entering into settlement of the action.

(6) The Wallaces are applying for a limited exemption from the prohibitions of Section 9(a) pursuant to which they would be entitled to serve on the Board of Directors of CIC but, (a) not to serve on

the Board of Directors of Waddell & Reed or any of its affiliated investment companies, (b) not to participate, directly or indirectly in the management of Waddell & Reed or any of its affiliated investment companies, and (c) during the three-year period commencing with the entry of the injunction in the action, not to participate in any CIC Board decisions affecting membership on, or the composition of, the board of Directors of Waddell & Reed or any of its affiliated investment companies.

The Commission has considered the matter and finds that:

(1) The absolute and complete prohibitions of Section 9(a), to the extent they may be applicable, may be unduly or disproportionately severe as applied to the Wallaces and companies with which the Wallaces may be affiliated; and

(2) In order to maintain the uninterrupted services provided by CIC and its affiliates to regulated investment companies and others, it is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, that a temporary order be issued forthwith.

Accordingly, IT IS ORDERED THAT, pursuant to Section 9(c) of the Act, Monte J. and Neil W. Wallace, CA, CIC and CIC's subsidiaries as of the date of this Order, be and hereby are granted a temporary, limited exemption from the prohibitions of Section 9(a) of the Act, pending final determination by the Commission of the Wallaces' application for an order granting them a partial exemption from such prohibitions, to allow Waddell & Reed to serve as investment adviser to the funds described on p. 2, *supra*, and to enable the Wallaces to serve on the Board of Directors of CIC so long as the Wallaces (a) do not serve on the Board of Directors of Waddell & Reed or any of its affiliated investment companies, (b) do not participate, directly or indirectly, in the management of Waddell & Reed or any of its affiliated investment companies, and (c) during a three-year period commencing with the entry of the injunction in this action, do not participate in any CIC Board decisions affecting membership on, or composition of, the Board of Directors of Waddell & Reed or any of its affiliated investment companies; provided, however, that the Wallaces shall not be precluded from exercising their full rights as members of CIC's Board of Directors, or otherwise, with respect to the non-investment company activities, subsidiaries or affiliates of Waddell & Reed.

NOTICE IS FURTHER GIVEN that any interested party may, not later than November 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Arthur F. Mathews, Wilmer & Pickering, 1666 K Street, N.W., Washington, D.C. 20006. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11399/October 16, 1980

In the Matter of

SECURITY CASH FUND, INC.
Security Benefit Life Building
700 Harrison Street
Topeka, Kansas 66636

(812-4704)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

Security Cash Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 22, 1980, and an amendment thereto on September 4, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects its portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977).

In a letter dated October 14, 1980, counsel for Applicant further explains a statement contained in the application by representing that Applicant's policy is to declare daily dividends, each day Applicant is open for business, of all of its net income, increased or reduced by realized or unrealized capital gains or losses. Counsel further represented that Applicant intends to carry-out this policy by automatically crediting such dividends to its shareholders accounts.

On September 19, 1980, a notice (Investment Company Act Release No. 11366) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented.

1. That Applicant's Board of Directors, in supervising operations and delegating special responsibilities involving Applicant's portfolio management to Applicant's investment adviser, undertake — as a particular responsibility within their overall duty of care owed to Applicant's shareholders' to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objective, that the price per share of Applicant's shares as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from one dollar.

2. That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Applicant will not (i) purchase an instrument with a remaining maturity of greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments described above which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11400/October 16, 1980

In the Matter of

PACIFIC FIDELITY LIFE INSURANCE COMPANY

FIDELITY VARIABLE ANNUITY ACCOUNT
4333 Edgewood Road, N.E.
Cedar Rapids, IA 52499

AND

FIDELITY DAILY INCOME TRUST
FIDELITY CASH RESERVES
FIDELITY CORPORATE BOND FUND, INC.
FIDELITY AGGRESSIVE INCOME FUND
FIDELITY THRIFT TRUST
FIDELITY GOVERNMENT SECURITIES FUND, LTD.
82 Devonshire Street
Boston, MA

(812-4551)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 26(a) AND 27(c)(2)

Pacific Fidelity Life Insurance Company, its Fidelity Variable Annuity Account, a unit investment trust registered under the Investment Company Act of 1940 ("Act") and Fidelity Daily Income Trust, Fidelity Cash Reserves, Fidelity Corporate Bond Fund, Inc., Fidelity Aggressive Income Fund, Fidelity Thrift Trust and Fidelity Government Securities Fund, Ltd., (hereinafter collectively referred to as "Applicants") each of which is a diversified open-end management investment company registered under the Act, filed an application on October 12, 1979, and amendments thereto on May 30, 1980 and July 23, 1980, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 26(a) and 27(c)(2) and for approval of certain offers of exchange pursuant to Section 11 of the Act.

On September 4, 1980, a notice was issued (Investment Company Act Release No. 11337) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 26(a) and Section 27(c)(2) be, and hereby is granted effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11401/October 16, 1980

In the Matter of

THE DECADE FUND — 1965, INC.
c/o Walter S. Weiss, Esq.
Greenberg & Glusker
Suite 200
1900 Avenue of the Stars
Los Angeles, California 90067

(811-1410)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE ACT

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare, by order on its own motion, that The Decade Fund — 1965, Inc. ("Fund"), registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined by the Act.

The Fund registered under the Act on July 21, 1966. Information contained in the files in the Commission indicates that the Fund's registration statement under the Securities Act of 1933 (File No. 2-25334) did not become effective, and was ordered

abandoned by the Commission on August 9, 1973. Thus, the fund has never engaged in a public distribution of its securities. In addition, the Fund has not filed the annual and periodic reports required by Section 30 of the Act since its fiscal year ending December 31, 1967. Moreover, efforts by the staff of the Division to contact the Fund have been unsuccessful. Thus, it appears that the fund is not currently engaged in the business of an investment company.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11402/October 16, 1980

In the Matter of

THE DECADE FUND — 1967, INC.
c/o John Michael McCormick, Receiver
707 Wilshire Boulevard, 39th Floor
Los Angeles, California 90017

(811-1445)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that The Decade Fund — 1967, Inc. ("Applicant"), a Delaware corporation which registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 29, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

A qualified receiver was duly appointed for the Applicant by an order of the United States District Court for the Central District of California dated April 25, 1972. The application states that, pursuant to an order of the court filed on June 29, 1979, the receiver distributed to the holders of Plan/Certificate Shares of Applicant the approximate sum of $102,556.92 representing the first and final liquidating dividend of the receivership estate. The application further states that as of the date of the application, the receiver holds worthless, unsaleable securities and the sum of approximately seven thousand dollars (subject to expenses in the amount of $5,000) representing the only asset of value of the receivership estate. According to the application, the receiver anticipates that this cash on hand will not exceed that required to administer the closing phases of the liquidation of the receivership estate. Finally, it is represented that the Applicant does not intend to engage in any further business activities other than those necessary to wind up its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 731/October 9, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6246/October 9, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 732/October 10, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17217/October 10, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 733/October 10, 1980

SEE

INVESTMENT COMPANY ACT OF 1940
Release No. 11394/October 10, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 734/October 9, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17218/October 9, 1980

LITIGATION

Litigation Release No. 9199/October 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *UNITRON INTERNATIONAL SYSTEMS, INC., ET AL.*, Civil Action No. C 80-1696A (United States District Court for the Northern District of Georgia)

Jule B. Greene, Administrator of the Atlanta Regional Office announced that on September 30, 1980, the Commission filed a Complaint in the United States District Court for the Northern District of Georgia, seeking to enjoin Unitron International Systems, Inc. ("Unitron"), a Georgia corporation based in Atlanta; Nevin L. Wagner individually and d/b/a Nev Wagner and Associates, Ltd. of Atlanta, Georgia; and James Albert of Boston, Massachusetts, from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The Complaint alleges that from 1969 to the present, the defendants sold unregistered shares of Unitron common stock and interests therein to investors and made untrue statements and omitted to state material facts concerning, among other things, the financial condition of the issuer, the marketability of the securities, and the future prospects for the sale of Unitron.

Simultaneously with the filing of the Complaint, the defendants consented to the entry of a Final Judgment of Permanent Injunction and Other Relief, which Final Judgment was entered on October 7, 1980, by United States District Judge Orinda D. Evans, permanently enjoining them from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Further, the Final Judgment orders the defendants to retain an independent auditor to make an accounting of all funds advanced by investors for the purchase of Unitron stock or interests therein and all funds or property received by the individual defendants from Unitron. The Final Judgment also orders the defendants to comply with their undertakings to correct the shareholders list of Unitron to accurately reflect the owners of Unitron stock and to inform Unitron's shareholders of the facts surrounding the action by the Commission. A further hearing will be set by the Court to consider whether further orders should be entered by the Court based upon the results of the accounting and examination of Unitron's financial condition by the independent auditor. The defendants consented to the entry of the Final Judgment of Permanent Injunction and Other Relief without admitting or denying the allegations contained in the Commission's Complaint.

Litigation Release No. 9200/October 15, 1980

S.E.C. v. *STEPHEN SMITH*, 80 CIV. 5840 (CSH) (S.D.N.Y.)

The Securities and Exchange Commission announced today the filing of a complaint for injunction and other equitable relief against Stephen Smith of New York, New York, on October 14, 1980. The complaint, filed in the United States District Court for the Sourthern District of New York, alleges that Smith violated the beneficial ownership reporting requirements of the Williams Act, in connection with Smith's acquisition of the common stock of Friendly Frost, Inc. ("Frost"). According to the complaint, Smith purchased 300,298 shares of Frost common stock in November 1977 and thereafter failed to disclose in reports on Schedule 13D or amendments thereto, among other things, transactions which Smith effected in Frost common stock; contracts, arrangements, understandings or relationships Smith entered into with certain persons with respect to Frost common stock, including several individuals who purchased Frost common stock using funds borrowed or obtained from Smith; the source of funds Smith used to purchase Frost common stock; and plans or proposals by Smith to make material changes in the nature of Frost's business. The complaint also charges that Smith failed to disclose that he has previously been the subject of three Commission enforcement proceedings, and has been enjoined from violating the provisions of Rule 10b-5 and barred from association with a broker or dealer, investment adviser or investment company. The Commission's action seeks an injunction against Smith from future violations of the beneficial ownership requirements of the Williams Act, Section 13(d) of the Securities Exchange Act of 1934, and Rules 12b-20, 13d-1 and 13d-2, and an order that

Smith correct his past reports of beneficial ownership of Frost common stock on Schedule 13D.

Frost's common stock is listed for trading on the American Stock Exchange. This matter was initially brought to the Commission's attention by the American Stock Exchange whose market surveillance section assisted the Commission's staff during the investigation.

Litigation Release No. 9201/October 15, 1980

SEC v. *LIBERTY OIL CORPORATION, ET AL.* (C.D. California) (C.A. No. CV-80-04398 RMT)

Leonard H. Rossen, Administrator of the Los Angeles Regional Office of the Securities and Exchange Commission, announced that on October 2, 1980, the Commission filed a civil action in the United States District Court for the Central District of California, charging Liberty Oil Corporation and three associated persons with violations of the registration and anti-fraud provisions of the federal securities laws. Named as defendants in addition to Liberty Oil are Harold D. Goldstein, Michael Bradley Krivacek and Joseph DiGiovanni, all of Los Angeles, California.

The complaint alleges that Goldstein and Krivacek devised a scheme to gain control of Liberty Oil and then merged it with Co Petro Marketing Group, Inc., a private company which they controlled. Goldstein and Krivacek then allegedly attempted to induce Co Petro contract holders to exchange their futures contracts for Liberty Oil stock. As part of their scheme to distribute this unregistered stock, the defendants allegedly made false and misleading statements which portrayed Liberty Oil as an established oil company when, in fact, it was a shell corporation without significant assets and with no operations.

The complaint further charges that Liberty Oil, Goldstein, Krivacek and DiGiovanni implemented a scheme to sell limited partnership interests in oil and gas properties purportedly owned by Liberty Oil. The defendants, according to the complaint, set up a boiler room and employed fraudulent statements in their efforts to sell the unregistered limited partnership interests.

The Commission charges that this conduct constituted violations of Sections 5 and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

The Commission is seeking injunctive relief as well as appointment of a Receiver for Liberty Oil. The complaint asks that all expenses of the Receivership be borne by Goldstein and Krivacek.

Goldstein is the subject of several prior injunctions and, on June 14, 1973 entered a plea of guilty to three counts of mail fraud. Both Goldstein and Krivacek were enjoined in May of 1980 from further violations of the Commodity Exchange Act.

Litigation Release No. 9202/October 15, 1980

SEC v. *LIBERTY OIL CORPORATION, ET AL.* (C.D. California) (C.A. No. CV-80-04398 RMT)

The Los Angeles Regional Office announced that on October 9, 1980, a Final Judgment of Permanent Injunction was entered against Joseph DiGiovanni enjoining him from violations of Sections 5(c), 17(a)(1) and 17(a)(3) of the Securities Act of 1933. DiGiovanni had been charged with the fraudulent offer of unregistered limited partnership interests of Liberty Oil Corporation Drilling Fund No. 5., Ltd. DiGiovanni, without admitting or denying the allegations, consented to issuance of the Permanent Injunction.

For further information, see Litigation Release No. 9201.

Litigation Release No. 9203/October 15, 1980

U.S. v. *DANIEL R. GIBB AND WILLIAM H. MARTZ* (USDC, N.D., Criminal No. C 280-38)

James Britton, United States Attorney for North Dakota, and Robert H. Davenport, Administrator for the Denver Regional Office of the Securities and Exchange Commission, today announced that on September 9, 1980, a Federal Grand Jury at Fargo,

North Dakota returned a nine count indictment against Daniel R. Gibb of Phoenix, Arizona, and Ogden, Utah, and William H. Martz of Colorado Springs, Colorado, charging them with violations of the anti-fraud provisions of the federal securities laws and violation of provisions of 18 U.S.C. 2314 (interstate transportation of money and securities obtained by fraud) and 7 U.S.C. 136 j(a) (Federal Insecticide, Fungicide and Rodenticide Act).

The indictment alleges that the violations occurred in connection with the offer and sale of the stock of Mother Lode Mines, Inc., a Utah corporation, and in the sale and transporting of certain insecticide products.

Litigation Release No. 9204/October 16, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CONTINENTAL ADVISERS, ET. AL.*, United States District Court for the District of Columbia, Civil Action No. 78-0066

The Securities and Exchange Commission today announced the entry of a Final Judgment of Permanent Injunction and Order for Payment ("Judgment") in the above-captioned case. The Judgment permanently enjoins Continental Advisers ("CA"), Monte J. Wallace, Neil W. Wallace, and Durand A. Holladay from violating the anti-fraud provisions (Section 10(b) and Rule 10b-5 thereunder) of the Securities Exchange Act of 1934 and orders the Wallaces and Holladay to pay two million dollars in proportion of their respective ownership interests in CA as of March 31, 1974. These proceedings will be held in escrow for the benefit of certain class action plaintiffs and beneficiaries of any actions brought by a court appointed trustee. In addition, the Judgment orders each defendant to comply with the provisions of the Consent and Undertaking ("Consent") agreed to by each defendant. As part of the Wallace's and Holladay's respective consents each defendant agrees to use his best efforts during the next five years to ensure that any publicly held company with which he becomes affiliated maintains an audit committee with certain specified responsibilities. The defendant consented to the entry of the judgment without admitting or denying the allegations of the Complaint.

Continental Mortgage Investors ("CMI") is a real estate investment trust ("REIT") currently undergoing Chapter 10 reorganization in bankruptcy. However, in the early 1970's it was second largest REIT in the country with loan commitments of approximately $1 billion. From the time of its creation in 1961 until 1976, CMI had no staff of its own. Rather, it relied upon CA for all management and administrative services, including loan portfolio management.

The Commission's complaint charged that, from as early as 1972 through 1974, CA and the individual defendants became aware of a serious deterioration in the condition of CMI's loan portfolio. The complaint alleged that rather than recognize known losses, the defendants sought to conceal such losses through sham transactions including, in the most extreme cases, causing CMI to transfer to its borrowers at nominal consideration assets which CMI beneficially controlled so that the borrowers could collateralize their loans with CMI.

During the 1972-74 period, the adviser received a fee calculated on the size rather than the profitability of the portfolio, and the Wallaces and Holladay, as owners of CA, received a substantial share of the fee as partnership profit. These fees form the basis of the $2 million payment.

The entry of this Judgment concludes litigation initiated by the Commission in January, 1978. Judgments of permanent injunction were previously entered against certain other defendants. CMI was not sued by the Commission.

Litigation Release No. 9205/October 16, 1980

SECURITIES AND EXCHANGE COMMISSION v. *IAN T. ALLISON, ET AL.* (United States District Court for the District of Columbia, Civil Action No. 80-2465)

The Commission today announced that the United States District Court for the District of Columbia entered Final Judgment against Olympic Gas & Oil, Inc. ("Olympic") of Dallas, Texas, a defendant in an action previously instituted by the Commission against 23 defendants. Olympic consented to the entry of the Final Judgment without admitting or denying the allegations in the Complaint. The Commission alleged in the Complaint, filed on September 29, 1980, that Olympic violated the anti-

fraud, registration and periodic reporting provisions of the Securities Exchange Act of 1934.

In the Final Judgment, the Court permanently enjoined Olympic from violating the anti-fraud, registration and periodic reporting provisions of the Securities Exchange Act of 1934. The Court also ordered Olympic to appoint two additional directors satisfactory to the Commission who, as a regular committee of Olympic's Board of Directors, are to review and authorize in advance information disseminated generally and filings of Olympic; examine and evaluate to determine whether Olympic should pursue claims or causes of action against any person, agreements with the estate of a former President of the company and proposals for the acquisition of assets or securities of a company controlled by the current President of the company; report to the Court its conclusions and recommendations and take action recommended, unless otherwise ordered by the Court. The Court also restricted Olympic's actions with respect to certain persons, ordered it to provide its shareholders with a summary of the allegations in the Complaint and terms of the Final Judgment and to use its best efforts to correct past filings with the Commission.

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sec docket

VOLUME 21, NO. 4 NOVEMBER 4, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	6248-51	212
Securities Exchange Act	17222-43	253
Public Utility Holding Company Act	21748-59	274
Trust Indenture Act	594	292
Investment Company Act	11403-10	292
Litigation	9206-18	306

This listing covers releases issued from 10/17/80-10/23/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/18/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

34-17231 Publication of standards for registration as clearing agencies.

RULES

The following releases relate to self-regulatory organization rule proposals and/or adoptions.

34-17226 34-17230 34-17236 34-17238
34-17227 34-17232 34-17237 34-17242

33-6248 Reproposing for comment a revised rule to regulate purchases of certain classes of common stock and preferred stock by or for the issuer or any "affiliated purchases," as that term is defined in the rule. [S7-858; Comment Period Expires January 15, 1981.]

33-6249 Adoption of interim rules to establish ceiling limitations on the amount of debt securities that can be partially or totally exempt from the 1939 Act at $2,000,000 and $5,000,000 respectively.

33-6250 Amendment of Rule 242 to specify a fixed dollar limitation on the amount of securities that can be sold thereunder.

33-6251 Proposed amendments to Rule 463 to extend the requirement to file Form SR to issuers of securities which will be sold by a direct distribution or by a best efforts underwriting.

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SE 1.29:

34-17243 **ROBERT P. VOLPE**

Where member of national securities exchange improperly purchased securities for his own account on the exchange floor, incurred financial obligations in connection with such purchases which he could not meet prepared inaccurate records of the purchases, delayed notifying the member firm which carried his margin account of such purchases, charged that firm commissions on his own transactions, retained an employee of another member firm to act as his clerk without obtaining the approval of that firm or the exchange, and caused the member firm which carried his margin account to extend him unlawful credit, *held*, exchange's findings of violation *sustained*, but proceedings *remanded* both for reconsideration of another finding of violation as to which relevant documents proffered by member were not admitted into evidence, and for reassessment of the sanction imposed in light of such reconsideration and the fact that certain addition findings of violation were set aside.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6248/October 17, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17222/October 17, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11403/October 17, 1980

PURCHASES OF CERTAIN EQUITY SECURITIES BY THE ISSUER AND OTHERS

ACTION: Proposed Rulemaking.

SUMMARY: The Commission is reproposing for comment a revised rule under the Securities Exchange Act of 1934 to regulate purchases of certain classes of common stock and preferred stock by or for the issuer, any affiliate of the issuer, or any "affiliated purchaser," as that term is defined in the rule. If adopted, the rule would impose disclosure requirements and substantive purchasing limitations on an issuer and on any affiliated purchaser. It also would impose certain of the purchasing requirements on a broker-dealer or other person acting for the issuer or for an affiliated purchaser in connection with purchases of the issuer's common stock or preferred stock. In addition, the issuer, its affiliates and affiliated purchasers, as well as certain other persons, would be subject to a general antifraud provision in connection with their purchases of the issuer's common or preferred stock. The Commission also is reproposing for comment revised amendments to a rule that regulates purchases of securities during a distribution of those securities. If the amendments are adopted, that rule no longer will prohibit purchases of an issuer's securities by the issuer or by an affiliate where the issuer is engaged in certain distributions of the securities and the purchases are made in compliance with the proposed rule.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-858. All submissions will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin, Esq. (202-272-2880); or John B. Manning, Esq. (202-272-2874); Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Securities and Exchange Commission is publishing for comment a revised version of

proposed Rule 13e-2 [§240.13e-2] pursuant to the Securities Exchange Act of 1934 (the "Act") to regulate purchases of the common and preferred stock of certain issuers by or on behalf of issuers and certain other persons.

It has been almost seven years since the Commission previously proposed Rule 13e-2 for comment. During that period, the Commission has devoted considerable attention to the need for a program of regulation pertaining to issuer repurchases. It has adopted Rules 13e-1 [§240.13e-3][1] and 13e-4 [§240.13e-4][2] to regulate going private transactions and issuer tender offers, respectively. In addition, the Commission has continued to regulate certain other issuer repurchases through a program of exemptions granted pursuant to Rule 10b-6 [§240.10b-6] under the Act. On the basis of its experience with those initiatives, and for the reasons discussed below, the Commission believes that it should adopt Rule 13e-2 as a rule of general applicability to issuer repurchases.

The regulatory predicate that underlies the Commission's proposed Rule 13e-2 is the need for a scheme of regulation that limits the ability of an issuer and persons whose purchases are closely related to those of the issuer to control the price of the issuer's securities. That predicate stems in part from the unique incentives that an issuer and those related persons have to control the price of the issuer's securities. It stems also from the fact that the antifraud and anti-manipulative provisions of the Act are very general in language and may not provide adequate guidance. A rule such as Rule 13e-2 can curb the opportunity for abuse while at the same time providing greater clarity and certainty, both to issuers and to broker-dealers who assist in their repurchase programs, as to the permissible limits for such programs. In that way, it can assist issuers, broker-dealers and others in avoiding what might otherwise be a substantial and unpredictable risk of securities law liability. By providing that guidance, it can facilitate the operation of legitimate repurchase programs.

The issuer's special incentives to control the price of its securities may arise under varying circumstances. For example, the issuer may seek to raise capital through the issuance of additional securities in a manner that would minimize dilution of the ownership interest of existing shareholders. That desire to avoid dilution may provide an incentive to peg or even to raise the price of the issuer's stock. Similar incentives may arise from the issuer's desire to use shares to purchase assets for the issuer or to engage in stock-for-stock acquisitions of other companies.

The insiders of a company, including those who agree to coordinate their purchases with those of the issuer or who control the issuer by virtue of their ownership of the issuer's securities, may have parallel incentives to varying degrees. For example, the controlling shareholders of a company may have an identity of interest with the issuer in connection with its desire to raise capital cheaply, to acquire other companies and other assets cheaply and to preserve the value of their shareholdings. Incumbent management itself, of course, has an incentive to prevent the issuer's existing shareholders from becoming dissatisfied with it (as might be occasioned by a substantial drop in the price of the issuer's stock), and to preserve an appearance of prosperity and to prevent erosion in the market value of the issuer's securities. In that connection, management may be chronically dissatisfied with the performance of the issuer's stock and that dissatisfaction may present its own rationale for action.

During an actual distribution of the issuer's securities, and for a period of varying length preceding the distribution of securities to the public, purchases by the issuer or by those participating in the distribution are regulated under existing rules, particularly Rule 10b-5. Nevertheless, that rule does not prevent issuers from controlling the price during the period immediately preceding the time Rule 10b-6 becomes applicable, or during what may be a relatively unsettled or declining market following the completion of the distribution.

Rule 13e-2 would not impose any absolute prohibition such as the one Rule 10b-6 establishes. Instead, it would impose only those limitations that appear necessary to prevent the issuer from leading or dominating the market through its repurchase program. In fashioning those limitations, the Commission has balanced the need to curb the opportunity to engage in manipulative conduct

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[1]Securities Exchange Act Release No. 16075 (August 2, 1979), 44 FR 46736 (1979).

[2]Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 (1979).

against the need to avoid excessively burdensome restrictions. The Commission thereby has endeavored to tailor the restrictions imposed to the particular circumstances of the markets as they exist today. It also has attempted to exempt as many transactions as could be identified where the likelihood of manipulative abuse is not sufficient to justify imposing the restrictions of the rule. In addition, the Commission has provided for additional case-by-case exemptive authority for specific transactions to which application of some or all of the restrictions of the proposed rule would be inappropriate.

The Commission has not attempted to determine whether all transactions that exceed the specific limitations would be inherently fraudulent, deceptive, or manipulative. Instead, the Commission has relied upon its authority under Section 13(e) of the Act to define means reasonably designed to prevent fraudulent, deceptive and manipulative acts and practices in connection with issuer repurchases. Defining those means necessarily involves predictive judgments as to conduct that, on balance, is sufficiently likely to result in abuse that it should be prohibited.

Proposed Rule 13e-2 would codify a prohibition on certain kinds of conduct by issuers that the Commission has long viewed as inappropriate and that have been the subject of enforcement actions under the antifraud and anti-manipulative provisions of the Act.[3] In particular, the purchasing restrictions found in the proposed rule, including limitations on the volume, timing, pricing and manner of purchases, reflect that effort to codify prior interpretations of the law and prior Commission policy. The volume limitations are designed to prevent the issuer from dominating the market in its securities by purchasing large amounts of those securities relative to trading by independent parties. The time limitations are designed to prevent issuers from establishing either the opening price of the security or the closing price of the security, both of which are viewed by market professionals and investors as guides to the trend of the market in a security. Although not as stringent as the Commission's stabilizing rules,[4] the price limitations are designed to prevent an issuer from leading the market in its securities to new price levels or from maintaining the price at levels that would not be supported by independent buying interest. Finally, the requirement that the issuer purchase through only one broker or dealer on a given trading day is designed to prevent the use of several brokers to create a false appearance of widespread purchasing interest in the securities.

Limitations similar to those of the proposed rule have been imposed on certain issuers under Rule 10b-6, and the Commission understands that many issuers that are not subject to that rule comply with those limitations (or with those set forth in prior versions of proposed Rule 13e-2), in order to minimize the risk of incurring liability under the anti-manipulative provisions of the Act. The Commission believes that if the proposed rule is adopted it will eliminate the need to refer to those earlier interpretive and exemptive guidelines and in large measure clarify existing law and policy.

In addition to the purchasing limitations, and not as a substitute for the, the Commission has proposed specific disclosure requirements that pertain to issuer repurchase programs of substantial size. In certain circumstances, those requirements may exceed the requirements imposed on issuers under existing antifraud provisions. They are designed to give the market an opportunity to react to the fact that the issuer may account for a substantial amount of purchasing activity in its securities.

While the Commission believes that the required disclosures are necessary or appropriate to prevent fraud, deception and manipulation, it does not believe that disclosure alone can take the place of the substantive regulation embodied elsewhere in the rule. Disclosure is unlikely to prevent manipulative conduct from having improper effects on the market since market manipulation is not solely a matter of deception and cannot be cured solely by preventing deception. For example, an issuer that every day participated in the opening and closing transactions in its securities could significantly and improperly affect the price of those securities despite the fact that its conduct was fully disclosed. Similarly, disclosure of an issuer repurchase program that involved purchases that dominated the market would not eliminate the effects of that domination. Disclosure of an issuer's efforts to drive the price of its securities up or to maintain it at artificial levels, by engaging several brokers to bid against one another or through other

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[3]*See* text at nn. 10-12, *infra*.

[4]*See* Rules 10b-7 and -8 under the Act, §§240.10b-7 and 240.10b-8.

measures, would not cure the ill effects of such a manipulation. Moreover, given the often considerable fluctuations in market conditions and the rapid pace at which market transactions occur, it is questionable whether full and timely disclosure of certain practices could ever be made in a fashion that would protect the markets and investors as fully or efficiently as can more direct prohibitions on manipulative practices. For these reasons, the proposed rule would prohibit the practices proscribed by the purchasing limitations, instead of merely requiring their disclosure.

If adopted, proposed Rule 13e-2 would impose the purchasing restrictions described above, and certain disclosure requirements, on (i) any issuer with a class of equity securities registered under Section 12 of the Act, (ii) any closed-end investment company registered under the Investment Company Act of 1940, and (iii) any "affiliated purchaser" of such issuer, as that term would be defined in the rule, in connection with a bid for or purchase of the issuer's common stock or preferred stock.[5] The substantive purchasing restrictions would not apply to privately negotiated purchases (those not made from or through a broker or dealer). Broker-dealers and other persons acting for the issuer or affiliated purchaser also would be required to comply with certain provisions of the proposed rule. In addition, all of the foregoing persons, and any person affiliated with the issuer, would be subject to a general antifraud provision with respect to their purchases of the issuer's common stock or preferred stock. Finally, issuers that are required to file reports pursuant to Section 15(d) of the Act would be required to comply with the disclosure provisions of the proposed rule.

The Commission also is reproposing revised amendments to Rule 10b-6 [§240.10b-6] under the Act that are related to Rule 13e-2. If amended as proposed, Rule 10b-6 no longer would prohibit an issuer or any affiliate from bidding for or purchasing the issuer's securities if (i) the issuer would be deemed to be engaged in a distribution of the securities to be purchased solely because it had outstanding a class of securities convertible into or exchangeable for such securities and (ii) the bids or purchases were made in accordance with Rule 13e-2. In addition, the proposed amendments to Rule 10b-6 would incorporate into that rule certain of the staff's current interpretive positions regarding bids and purchases by independent agents for employee or shareholder plans sponsored by an issuer. During this rulemaking proceeding, however, the Commission's Office of Legal Policy and Trading Practices in the Division of Market Regulation will continue to consider requests for exemptive relief from, and interpretive advice under, Rule 10b-6 in connection with transactions that would be exempted from Rule 10b-6 under the proposed amendments.

The Commission has considered carefully the issues raised in connection with prior versions of proposed Rule 13e-2 that have been published for comment and in connection with the regulation of certain issuer repurchases under Rule 10b-6 under the Act.[6] Since the Commission already has devoted considerable attention to regulating such purchases, and since the regulatory approach reflected in the proposed rule remains largely consistent with the one taken in earlier proposed versions of the rule, the Commission expects to be able to conclude this rulemaking proceeding expeditiously after it has considered the comments received in response to this amended proposal.

In order to facilitate public comment, this release contains (i) a discussion of the administrative background of proposed Rule 13e-2; (ii) a description of the current regulation of purchases of an issuer's securities by the issuer or an affiliate; (iii) a summary of the background and purpose of Section 13(e); (iv) an overview of the coverage of proposed Rule 13e-2; (v) a section-by-section analysis of proposed Rule 13e-2; and (vi) a description of the proposed amendments to Rule 10b-6. In addition, the Commission solicits comments on the proposed rules generally and on certain specific issues.

I. ADMINISTRATIVE BACKGROUND

Purchase by an issuer of its own securities have been the subject of three previous public rule proposals. The first was a Commission draft of a proposed Rule 10b-10 published in 1967 by the United States Senate in connection with hearings on proposed legislation that became the Williams Act

[5]See text at subsection IV.C, *infra*.

[6]See text at Section II., *infra*.

Amendments of 1968.[7] The Commission subsequently published for comment a revised proposal denominated Rule 13e-2 in 1970 (the "1970 Proposal[8] and another in 1973 (the "1973 Proposal").[9] Those regulatory initiatives were directed at preventing abuses often associated with corporate repurchases, including

1. during mergers and acquisitions, purchases designed to support or raise the market price of the issuer's securities for the purpose of making exchange ratios appear more favorable to target company security holders;[10]

2. after mergers and acquisitions, purchases designed to support or raise the market price of the issuer's securities for the purpose of reducing the number of shares required to be issued pursuant to contingent obligations owed to former shareholders of the target company.[11]

3. purchases designed to support the price of the issuer's securities in order to assist insiders in disposing of their holdings at or above the pegged price; and

4. purchases designed to support the market price of the issuer's securities in order to maintain the value of securities pledged by insiders as collateral for bank loans.[12]

Draft Rule 10b-10 would have required an issuer to disclose certain information and to comply with specific restrictions in connection with purchases of its own securities. The 1970 and 1973 Proposals would not have imposed any independent disclosure obligations on issuers, but would have imposed substantive restrictions, similar to those contained in draft Rule 10b-10, on the time, manner, volume, and price of issuer repurchases. In its regulatory approach, Rule 13e-2 as proposed in this release is substantially consistent with these earlier proposals.

II. CURRENT INDIRECT REGULATION OF ISSUER REPURCHASES

The Commission has regulated indirectly certain issuer repurchases under Rule 10b-6. That rule prohibits, among other things, an issuer or any of its affiliates from bidding for a security or purchasing it

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[7]Pub. L. No. 90-439, 82 Stat. 454 (July 29, 1968). Proposed Rule 10b-10 was reprinted in *Hearings on S.510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Cong., 1st Sess. 214-216 (1967) ("Senate Hearings"). That rule proposal should not be confused with a different (and wholly unrelated) Rule 10b-10 [§240.10b-10] that was adopted by the Commission in 1977 to regulate the confirmation of securities transactions.

[8]Securities Exchange Act Release No. 8930 (July 13, 1970), 35 FR 11410 (1970).

[9]Securities Exchange Act Release No. 10539 (December 6, 1973), 38 FR 34341 (1973).

[10]*See Genesco, Inc.*, [1964-66 Transfer Binder] Fed. Sec. L. Rep. (CCH) Par. 77,354 (May 10, 1966) (excerpt of prospectus). Although formal action was not brought against Genesco, the Commission delayed the effective date of a registered public offering of Genesco common stock until additional disclosures had been made in the prospectus relating to substantial purchases of Genesco stock by certain of Genesco's employee plans and a retirement trust while the company was engaged in various acquisitions. In addition, Genesco agreed to restrict future repurchases in accordance with terms the Commission specified.

[11]*See, e.g., Georgia-Pacific Corporation* [1964-1966 Transfer Binder] Fed. Sec. L. Rep. (CCH) Par 91,680 (S.D.N.Y. 1966) (complaint); [1964-1966 Transfer Binder] Fed. Sec. L. Rep. (CCH) Par 91,692 (S.D.N.Y 1966) (consent judgment). Under the terms of the consent judgment, Georgia-Pacific was required to comply with certain restrictions on purchases of its securities. Those restrictions were similar to the ones imposed upon Genesco, Inc., as discussed at n. 10, *supra*.

[12]*See, e.g.*, Securities Exchange Act Release No. 4657 (December 6, 1963), in which the Commission issued a stop order pursuant to Section 8(d) of the Securities Act of 1933 [15 U.S.C. 77h(d)] suspending the effectiveness of the registration statement of Atlantic Research Corporation upon a finding that the issuer had made extensive and undisclosed open market purchases of its securities through several of its subsidiaries for the purpose, among others, of supporting the market price of the registrant's stock in order to maintain the value of an insider's securities pledged as collateral on certain loans.

outside a distribution if the security is the subject of a distribution that is conducted by, or is attributable to, the issuer.

A class of securities may be the subject of a distribution for purposes of Rule 10b-6 in a number of circumstances that do not involve an underwritten public offering. For example, for purposes of Rule 10b-6, a distribution is deemed to exist with respect to a class of securities if the issuer has outstanding securities immediately exchangeable or exercisable for, or convertible into, that class. Also, regardless of whether an underwriter is involved, a distribution may be deemed to exist if the issuer has registered a substantial amount of securities for resale from time to time by one or more persons whose sales would be attributable to the issuer. In many cases, the Division of Market Regulation, pursuant to delegated authority, has granted exemptions from Rule 10b-6 to permit an issuer, or another person whose purchases would be attributable to the issuer, to make purchases of a security that was the subject of the distribution.[13] Frequently, the exemptions from Rule 10b-6 have been conditioned on compliance with certain conditions similar to those of proposed Rule 13e-2.[14]

The development of exemptive conditions under Rule 10b-6 has provided the Commission and its staff with valuable regulatory oversight of issuer repurchases. The Commission believes, however, that proposed Rule 13e-2, if adopted, would protect more adequately and directly the issuer's shareholders, and the investing public in general, since it would regulate an issuer's purchases of its own stock regardless of whether there existed a distribution of the issuer's securities, for purposes of Rule 10b-6, that was conducted by, or was attributable to, the issuer. In addition, if Rule 13e-2 were adopted, it would substantially reduce the burden associated with filing written requests with the Commission for interpretive or other relief under Rule 10b-6.

III. BACKGROUND AND PURPOSE OF SECTION 13(e)

The Commission's authority for adopting Rule 13e-2 under the Act would be based, in part, on Section 13(e).[15] That section expressly grants the Commission the authority to adopt rules that define, and prescribe means reasonably designed to prevent, acts and practices that are fraudulent, deceptive, or manipulative in connection with an issuer's purchases of its own securities.[16] Section 13(e) also specifically authorizes the Commission to require an issuer to make appropriate disclosures to its shareholders concerning its repurchases.

Some commentators on the 1970 and 1973 Proposals questioned the Commission's authority to regulate substantively the manner in which issuer repurchases are made. Those commentators suggested, on the basis of the legislative history of Section 13(e), that the Commission's authority under that provision may be limited to promulgating disclosure requirements in connection with an issuer's purchase of its own securities.

The Commission does not believe that its authority under Section 13(e) is so limited. The Commission's authority in Section 13(e)(1) is a broad power that is similar to other rulemaking provisions of the Act under which the Commission, has adopted extensive substantive requirements.[17] That authority is not

[13]Such exemptions are granted under paragraph (f) of Rule 10b-6 in circumstances where it appears that the proposed transactions do not present the potential for manipulative abuse that the Rule is designed to prohibit.

[14]These conditions are set forth in an appendix (denominated Appendix C) that is attached to, and made a part of, the staff's letter granting exemptive relief. Appendix C is reprinted in 2 Fed. Sec. L. Rep. (CCH) Par 22,727; Sec. Reg. & L. Rep. (BNA), No. 465 at F-1 (August 9, 1978).

[15]In addition to Section 13(e), Rule 13e-2 is being proposed under the Act generally and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 15(c) and 23(a).

[16]The Commission has adopted three rules under Section 13(e). Rule 13e-1 [§240.13e-1] prohibits an issuer from purchasing any of its equity securities after a third party has filed with the Commission a Schedule 14D-1 relating to a tender offer for any of those securities, unless the issuer complies with the filing and disclosure requirements of that Rule. *See* Securities Exchange Act Release Nos. 8370 (July 30, 1968); 8392 (August 30, 1968); and 8556 (March 24, 1969). Rule 13e-3 regulates going private transactions by issuers and their affiliates, and Rule 13e-4 regulated issuer tender and exchange offers. *See* nn. 1-2, *supra*.

[17]*See, e.g.*, Section 15(c)(2) of the Act [15 U.S.C. 78o(c)(2)], and the rules thereunder, §240.15c2-1 *et seq.*

restricted by the additional language in that Section that provides specifically that the Commission's rulemaking authority includes the power to require issuers to make appropriate disclosures concerning their repurchases.[18]

A narrow and constricted reading of the Section 13(e)(1) power would be inconsistent with the congressional purposes underlying the enactment of that section. Purchases by an issuer of its own securities had previously been (and today remain) fully subject to the general antifraud and anti-manipulative provisions of the federal securities laws, such as Sections 9(a)(2) and 10(b), and Rule 10b-5 [§240.10b-5]. At the same time, the enactment of Section 13(e) as part of the Williams Act Amendments of 1968 indicates that the specific concerns raised by those purchases were sufficient to prompt the Congress to grant the Commission more extensive and specific rulemaking authority, independent of Sections 9(a)(2) and 10(b), to regulate them.

The legislative history of Section 13(e) supports this conclusion. The Congress recognized the complex nature of the issues raised by issuer repurchases. The Senate Committee observed:

> Corporate repurchases of their own securities may serve a number of legitimate purposes. For example, they may result from a desire to reduce outstanding capital stock following the cash sale of operating divisions or subsidiaries, or to have shares available for options, acquisitions, employee or stock purchase plans, and the like, without increasing the total number of shares outstanding. Repurchase programs, however, may also be utilized by management to preserve or strengthen their control by counteracting tender offers or other attempted takeovers, or may be made in order to increase the market price of the company's shares. Whatever the motive behind a repurchase program, if the repurchases are substantial they will have a significant impact on the market.[19]

In view of the special considerations attendant to issuer repurchases, the Congress enacted Section 13(e) to provide the Commission with ample authority to regulate them. The Congress did so with full knowledge that the Commission might well use the authority in Section 13(e) to adopt a rule like the draft Rule 10b-10 it had furnished to the Senate (which, as noted above, is a close antecedent of the subsequent Rule 13e-2 proposals). As the Commission stated to the Congress during the hearings on the Williams Act:

> While the Commission has substantial authority under the antifraud provision[s] of existing legislation, under the rule-making authority provided in the bill, the Commission could adopt more specific rules designed to deal with a variety of problems arising out of corporations' repurchases of their own shares.[20]

Section 13(e) explicitly grants the Commission authority to regulate more than an issuer's disclosure responsibilities in connection with purchases of its own securities. It does so by authorizing the Commission to adopt rules in the public interest or for the protection of investors[21] that define, and prescribe means reasonably designed to

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[18]The first sentence of subsection 13(e)(1), in essence, authorizes the Commission to adopt rules designed to prevent fraudulent, deceptive, or manipulative acts and practices. This authorization would appear to contemplate regulatory rules that prohibit or restrict certain types of conduct. If the subsection had stopped there, it could have been argued that it did not authorize rules requiring disclosure, particularly in view of the fact that where the Congress intended to authorize disclosure rules, it often did so explicitly, as in Section 12 and Section 13(a). Consequently, it appears that the second sentence of subsection 13(e)(1) was designed to make it clear that disclosure rules were also authorized, rather than to limit the authorization clearly granted in the first sentence.

[19]S. Rep. No. 550, 90th Cong., 1st Sess. at 5 (1967). *See also Senate Hearings, supra* n. 7, at 37.

[20]*Id.* at 212.

[21]As discussed in the releases proposing and adopting Rule 13e-3 and the release adopting Rule 13e-4, the Commission believes it would be appropriate for the federal courts to imply a private right of action under Section 13(e). *See* Securities Exchange Act Release Nos. 14185 (November 27, 1977), 41 FR 60099-60100 (1977); 16075 (August 2, 1979), 44 FR 46136 (1979); 16112 (August 16, 1979), 44 FR 49406 (1979). The Commission adheres to this view in connection with proposed Rule 13e-2.

prevent acts and practices that are fraudulent, deceptive, or manipulative. Pursuant to the specific authority in Section 13(e)(1), and the more general authority in other provisions of the Act, the Commission has defined such acts in paragraph (b) of proposed Rule 13e-2, and has proposed certain other requirements intended to prevent such acts and practices.

Some commentators on the 1973 Proposal suggested that the rule should be drafted as a "safe harbor" from liability under the antifraud and anti-manipulative provisions of the federal securities laws such as Section 10(b) (and Rule 10b-5) and Section 9(a)(2) of the Act. Although these commentators discussed certain policy considerations for structuring the rule as a safe harbor, their suggestion appeared in large measure to be based on questions relating to the Commission's authority to adopt a rule that would prescribe specific requirements, such as the time and price limitations, as means designed to prevent fraudulent, deceptive, or manipulative acts and practices. As discussed above, the Commission believes that Section 13(e) provides the authority to adopt the rule as proposed. Moreover, as a policy matter, the Commission is concerned that the suggested "safe harbor" approach would not sufficiently deter improper issuer conduct. The standards embodied in the proposed rule, particularly the volume limitations, are likely to be the most confining in the cases where they may also be the most needed, *i.e.*, in their application to issuers whose securities are thinly-traded. Particularly in view of the difficulty in many instances of proving whether a manipulation has or has not in fact occurred, the purposes sought to be achieved by the proposed rule would likely not be achieved if the rule were only a safe harbor and the issuer were free to engage in transactions that exceeded the rule's limits.

IV. COVERAGE OF PROPOSED RULE 13e-2

Proposed Rule 13e-2 would apply to any bid or purchase that constituted a "Rule 13e-2 bid" or a "Rule 13e-2 purchase," as defined by the Rule, unless an exception for the particular bid or purchase were available. Paragraph (a)(5) would define a "Rule 13e-2 purchase" as a purchase of common stock or preferred stock of an issuer by or for the issuer or any affiliate or affiliated purchaser[22] of the issuer. Whether a particular bid or purchase (collectively referred to below as a "purchase") was a Rule 13e-2 bid[23] or a Rule 13e-2 purchase would depend on three factors:

(1) whether the issuer of the security to be purchased was subject to the rule;

(2) whether the class of securities to be purchased was a common stock or preferred stock subject to the rule; and

(3) whether the person making the purchase was subject to the rule.

If a bid or a purchase were determined to be a Rule 13e-2 bid or a Rule 13e-2 purchase, the remaining inquiry would be whether it fell within one or more of the enumerated exceptions to the rule.

A. Issuers Subject to the Rule

Proposed Rule 13e-2 would apply to two defined classes of issuers. First, the proposed rule would apply to any "Section 13(e) issuer," which would be defined as any issuer that has a class of equity securities registered pursuant to Section 12 of the Act, or that is a closed-end investment company registered under the Investment Company Act of

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[22]The concept of "affiliated purchaser" is discussed below. *See* text at subsection IV.C., *infra*.

[23]Paragraph (a)(6) would define the term "Rule 13e-2 bid" as (i) a bid for securities that, if accepted, or (ii) a limit order to purchase securities that, if executed, would result in a Rule 13e-2 purchase. Limit orders (*i.e.*, in this case orders to purchase a stated amount of the security at a price not exceeding a specified one) would be separately included in view of the rules of certain exchanges that are interpreted to as not to treat as bids purchase orders at prices away from the current price. *See, e.g.*, New York Stock Exchange Rules 70 and 71, 2 New York Stock Exchange Guide (CCH) Par. 2070, 2071; American Stock Exchange Rule 126(c), (d) and (e), 2 American Stock Exchange Guide (CCH) Par 9276. Limit orders away from the market would be subject to the purchasing restrictions in view of the market impact they may have. That impact derives in part from the effects limit orders have on exchange specialists and other market participants whose own conduct in the markets may be substantially influenced by knowledge of those orders.

1940.[24] Section 13(e) issuers would be subject to all the requirements of the rule.

Second, the proposed rule would apply to any "Section 15(d) issuer," which would be defined as any issuer that is required to file periodic reports pursuant to Section 15(d) of the Act.[25] Those issuers would be subject to the specific disclosure requirements of the proposed rule, but (unlike Section 13(e) issuers) they would not be subject to the antifraud provision in paragraph (b) or to the purchasing limitations in paragraph (e) of the proposed rule.[26] In light of the class of issuers with which the Congress was directly concerned in formulating Section 13(e), the Commission believes it appropriate to impose through Rule 13e-2 more limited requirements on Section 15(d) issuers. Nevertheless, Section 15(d) and other issuers are subject to other anti-manipulative provisions of the federal securities laws, such as Section 10(b) and Rule 10b-5. The Commission believes that issuers that made repurchases in a manner that was inconsistent with the kinds of limitations contained in the rule might incur liability under those provisions. In a manner consistent with other rules under the Act that regulate issuer repurchases, the proposed rule would impose disclosure obligations on Section 15(d) issuers.[27]

B. Securities Covered by the Rule

The second inquiry to determine the applicability of Rule 13e-2 would be whether the securities to be purchased were common or preferred stock of a class subject to the rule. It appears that most issuer repurchase programs are limited to securities of a class that is registered under Section 12 or that subjected the issuer to Section 15(d). For that reason, the Commission does not currently believe that the application of the proposed rule need be extended, in cases where a Section 13(e) issuer has more than one class of common or preferred stock, to purchases of a class of common stock or preferred stock if that class itself is not registered under Section 12 of the Act, or to purchases of common stock or preferred stock of a Section 15(d) issuer if that class (i) has not been the subject of a registration statement declared effective by the Commission under the Securities Act of 1933, or (ii) is held by fewer than 300 persons.

In addition, the Commission solicits comment on whether purchases of preferred stock generally present a potential for manipulative abuse that justifies the restrictions imposed under the proposed rule. The Commission also inquires whether it would be desirable or feasible to apply limitations similar to those contained in the proposed rule to purchases by an issuer of any other of its equity securities such as warrants, rights, and convertible debt securities. Specific comment is requested on whether purchases of listed call options or sales of listed put options by the issuer of the underlying stock should be regulated by limitations analogous to those contained in the proposed rule in view of the possible effects of such transactions on the market price of the underlying security.

C. Persons Subject to the Rule

Once it had been determined that the issuer of the securities to be purchased was subject to the proposed rule, and that the securities being purchased were of a class covered by the rule, the third inquiry would be whether the rule would apply to the person making the purchase. In addition to their application to the issuer itself, various provisions of the rule would apply to affiliates of the issuer, affiliated purchasers of the issuer, and to any broker, dealer, or other person acting for the issuer or affiliated purchaser in making purchases.

The question of whether, and to what extent, purchases by persons other than the issuer should be subject to restrictions similar to those imposed on purchases by the issuer itself is a complex one. Section 13(e)(2) of the Act provides that, for purposes of Section 13(e), a purchase by or for the issuer, or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed a purchase by the issuer. Thus, the Act recognizes that purchases of an issuer's

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[24]Proposed Rule 13e-2(a)(3).

[25]Proposed Rule 13e-2(a)(4).

[26]The purchasing requirements are discussed below in text at subsection V.C., *infra*.

[27]Rule 13e-3 requires an issuer subject to Section 15(d) that proposes to engage in a going private transaction to comply with the filing, disclosure and dissemination requirements of that Rule. In addition, Rule 13e-4 governs any tender offer by a Section 15(d) issuer for its equity securities.

securities by affiliates of the issuer, and purchases otherwise controlled by the issuer, may give rise to the same abuses as purchases by the issuer itself. Nevertheless, the Act explicitly gives the Commission authority to promulgate exemptive rules covering situations in which it deems it unnecessary or inappropriate to attribute purchases described in Section 13(e)(2) to the issuer.

By operation of Section 13(e)(2), the 1973 Proposal would have applied to purchases by the persons described in that Section. The Commission specifically inquired, however, whether and to what extent such persons should be covered by the rule, and it received a substantial amount of commentary on this issue. Some commentators suggested that purchases by affiliates should be unconditionally exempted from the proposed rule. Others suggested that it should apply to such purchases only to the extent that affiliates act in concert with, or at the request of, the issuer. A third group of commentators indicated that purchases of insubstantial amounts of securities by affiliates, in terms of either trading volume or units of the security, should be permitted without requiring that such purchases be aggregated with purchases by the issuer.

The Commission believes that it may not be necessary to subject all purchases of an issuer's securities by affiliates of the issuer to the same restrictions as apply to the issuer, particularly where (i) the purchases are truly independent of any purchasing activity or control by the issuer, (ii) the affiliate does not control the issuer by means of his ownership of the issuer's stock, and (iii) the affiliate is a natural person. To the extent that officers, directors, or other natural persons who may be deemed to be in a control relationship with the issuer otherwise than by reason of their ownership of the issuer's securities independently determine to invest in the issuer's securities, a requirement that such persons comply with the time and price limitations applicable to the issuer, together with a requirement that purchases by such persons be aggregated with those by the issuer for purposes of the volume limitations, currently seems unnecessary. Such a requirement might result in a substantial burden on an issuer and its affiliates that would not be outweighed by regulatory benefits to be achieved. In view of that problem the Commission is proposing generally to subject an affiliate[28] of an issuer who is a natural person, and does not control the issuer by virtue of stock ownership, only to the general antifraud provisions of proposed Rule 13e-2(b)(1) unless that affiliate is also an "affiliated purchaser" described below. Of course, affiliates would remain fully subject to other provisions of the federal securities laws such as Rule 10b-5 and Section 16 of the Act in connection with their purchases of the issuer's securities.[29]

The Commission believes, however, that there are several classes of persons whose purchases present the same potential for manipulative abuse as purchases by the issuer. Purchases by such persons should be deemed to be purchases by the issuer and should be regulated co-extensively with issuer purchases. Proposed Rule 13e-2 would reach those purchasers through the definition of the term "affiliated purchaser" in paragraph (a)(2). The term would be defined as (i) a person acting with the issuer for the purpose of acquiring securities of the issuer,[30] (ii) a person who controls the issuer's

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[28]Paragraph (a)(1) of proposed Rule 13e-2 would define the term "affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the issuer.

[29]Although the Commission currently believes that the treatment of affiliates is a sensible one, it is prepared to reverse course and subject purchases by affiliates to all the requirements that would apply to purchases by the issuer if persuaded that that result would be preferable. In this connection, the Commission notes that exemptions from Rule 10b-6 have been granted to permit issuers and their affiliates to make purchases of the issuer's securities, and have required that all such purchases be aggregated for purposes of determining the applicable volume limitations. Since experience under Rule 10b-6 may be significant in determining the appropriate parameters of proposed Rule 13e-2, the Commission believes that it would be helpful if commentators on the proposed rule referred to their experience with the aggregation requirement used in the administration of Rule 10b-6.

[30]Purchases by an affiliate that occurred at or about the same time as purchases by the issuer itself or by affiliated purchasers might well raise questions as to whether the affiliate was in fact an affiliated purchaser. In the absence of proof to the contrary, an affiliate might be deemed to be an affiliated purchaser in some circumstances of that kind, particularly if other facts were present that suggested an identity of purpose between the issuer

purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer,[31] (iii) a person who controls the issuer through stock ownership, or (iv) an affiliate that is not a natural person. All purchases by affiliated purchasers would be required to be aggregated with others made by or for the issuer for purposes of the volume test in paragraph (e)(4) of the proposed rule, and would have to be effected in accordance with the other purchasing requirements contained in paragraph (e).[32]

The limitations contained in paragraph (e) of the proposed rule relating to the time, price and volume of issuer repurchases also would apply to broker-dealers and to other persons who make Rule 13e-2 bids or effect Rule 13e-2 purchases by or on behalf of Section 13(e) issuers or their affiliated purchasers.[33] Because of their proximity to the marketplace, broker-dealers (and others similarly situated) generally would be in the best position to determine whether bids they made and purchases they effected were done in compliance with the time and price limitations under the rule.[34] For that reason, they would be liable for their own failures to comply with those limitations. If the issuer complied with the single broker limitation of the rule, the broker, dealer, or other person would be in a position also to ensure that purchases on behalf of the issuer did not exceed the volume limitation. The proviso to paragraph (b)(2)(i) states, however, that the issuer (or the affiliated purchaser) would not be liable for the conduct of brokers, dealers, or others acting for it in connection with transactions effected on its behalf solely by reason of that conduct if the issuer or the affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer had taken reasonable steps to assure that the broker, dealer, or other person would comply with the rule. The proviso in paragraph (b)(2)(ii) would state that a broker, dealer or other person acting for the issuer or affiliated purchaser would not be liable for the conduct of the issuer or affiliated purchaser if it did not know or have reason to know that the issuer or affiliated purchaser would engage in such conduct.

Brokers, dealers and others acting on behalf of the issuer or an affiliated purchaser would not be subject to direct liability for a failure by the issuer or an affiliated purchaser to comply with the single broker provision. The single broker requirement is designed to prevent issuers from exerting unusual and manipulative buying pressure on the market. For example, it would prevent an issuer from giving orders to several brokers for the purpose of creating a false impression of widespread demand for its stock. Where, however, the issuer engages a single coordinating broker-dealer to make its repurchases,

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Footnote 30 continued.

and the affiliate in connection with the purchases, or a common purchasing plan, or consciously parallel purchasing behavior. In addition, if the issuer and another person or other group of persons acted together in acquiring the issuer's securities, the other person or group would be deemed to be acting with the issuer, and, accordingly, would be affiliated purchasers regardless of whether purchases for the account of the issuer itself were made.

[31]The term "affiliated purchaser" would not include a broker, a dealer, or another person acting on behalf of the issuer and for its account. Such persons independently would be subject to certain provisions of the proposed Rule. *See* text at nn. 33-36, *infra*. If the "affiliated purchaser" provisions were adopted, the determination as to whether a particular person was an affiliated purchaser would have to be made by the issuer and other persons involved in the transaction. The Commission's staff would not render interpretations or no-action advice concerning specific factual situations in which persons might be deemed to be affiliated purchasers.

[32]The issuer would be responsible for coordinating its purchases with those of its affiliated purchasers. The Commission expects that issuers would take whatever steps were reasonably necessary to inform affilited purchasers of their responsibilities under the rule.

[33]Proposed Rule 13e-2(b)(ii).

[34]For example, paragraph (a)(16) would exclude from the definition of "block" (which is used in conjunction with special provisions that apply to blocks) any quantity of a security that a broker-dealer had assembed or accumulated for the purpose of resale to the issuer or an affiliated purchaser. Thus, in a given transaction, the broker-dealer might be the only person practically capable of knowing whether the securities would qualify as a block under the proposed rule.

it does not seem necessary or appropriate to prevent that broker-dealer from making appropriate and customary arrangements with other broker-dealers, including exchange specialists and "two-dollar" brokers on exchange floors, to execute repurchase transactions. The coordinating broker-dealer would remain subject to the antifraud provisions of the Act and paragraph (b)(1) of the rule in connection with all such transactions and arrangements.[35] The broker-dealer could be liable as an aider or abettor in cases where it knew or had reason to know that the issuer or affiliated purchaser was violating the single broker-dealer limitation.

In order to put broker-dealers in a better position to comply with the proposed rule, paragraph (d)(3) of the proposal would provide that a Section 13(e) issuer or affiliated purchaser that directed a broker-dealer to make purchases for its account would have to disclose to the broker-dealer that such purchases had to be made in compliance with the rule, and would be responsible for disclosing to the broker-dealer all facts necessary to enable it to comply with the rule. If the broker-dealer used another person (*e.g.*, a "two-dollar" broker) to make the purchases, it would have to disclose to that person that the purchases had to be made in compliance with the rule.

The fact, however, that an issuer had made the required disclosure to a broker-dealer concerning the application of the rule would not by itself insulate the issuer from liability if the broker-dealer did not make purchases in compliance with it. As reports concerning such purchases usually are furnished to the issuer by the broker-dealer effecting the repurchase program, the Commission expects that the issuer would examine such reports promptly and with due care, and that it would take appropriate measures to prevent any continuing or future violations of the rule.

The Commission solicits comment on whether the proposed requirement that issuers and affiliated purchasers disclose to a broker-dealer or other person acting on their behalf that purchases must be made in compliance with Rule 13e-2 would adequately facilitate compliance with the rule by such person, or whether further or different provisions should be adopted.

D. Exceptions

The final inquiry to determine the applicability of Rule 13e-2 would be whether the transaction was exempt under paragraph (f) of the rule. Paragraph (f) of the proposed rule would except certain bids for and purchases of an issuer's securities that either are regulated sufficiently under existing rules, or generally do not present the potential for the kind of abuse the proposed rule would be designed to prohibit.[36] In addition, paragraph (g) would authorize the Commission to exempt certain transactions upon written request or upon its own motion.

V. SECTION-BY-SECTION ANALYSIS OF PROPOSED RULE 13e-2

A. Definitions

Paragraph (a) would define certain terms used in the proposed rule. The terms defined in paragraphs (a)(9) through (12) would reflect implementation of the consolidated transaction reporting system ("consolidated system") contemplated by Rule 11Aa3-1 [§240.11Aa3-1] under the Act for reporting last sale data and the consolidated quotation system contemplated by Rule 11Ac1-1 [§240.11Ac1-1] under the Act for reporting quotation information.

The proposed rule would define "reported," "exchange traded" and "NASDAQ" securities in paragraphs (a)(10), (a)(11), and (a)(12), respectively. A reported security would be defined as any security as to which last sale information is reported in the consolidated system. An exchange traded security would be defined as any security, other than a reported security, that is listed, or is admitted to unlisted trading privileges, on a national securities exchange. A NASDAQ security would be defined as any security, except a reported security, as to which quotation information is reported in NASDAQ.

The daily volume limitation on Rule 13e-2 purchases would be a percentage of trading volume. Paragraph (a)(13) would define "trading volume" as a daily average based upon the total daily volume in all

[35]In making such arrangements, the broker-dealer would have to ensure that it did not organize or facilitate a manipulative or deceptive purchasing program. For example, the use of more brokers or other intermediaries than would be customary for transactions or programs of like character that did not involve an issuer repurchase might well subject the coordinating broker-dealer to liability if a manipulation was being atempted. *See also* text at n. 48, *infra*.

[36]*See* text at subsection V.F., *infra*.

markets that made volume data available in the four calendar weeks preceding the week in which the Rule 13e-2 purchase was to be effected. Trading volume would exclude any Rule 13e-2 purchases by or for the issuer or any affiliated purchaser. That exclusion would be designed to assure that the trading volume figures used to calculate the permissible volume of issuer purchases reflected only transactions independent of the issuer.

The Commission is proposing two alternative definitions of the term "block" in paragraphs (a)(16A) and (a)(16B) of the proposed rule. That term is significant since the volume restrictions of the proposed rule would not prohibit the purchase of blocks.[37] A block would be defined in paragraph (a)(16A) on a sliding scale as any number of shares of a security with an aggregate purchase price equal to at least a specified minimum dollar amount that would vary according to the purchase price per share. This definition was contained in the 1973 proposal. Substantially all of the commentators supported the definition based on a sliding scale. The Commission, however, also is proposing as a possible substitute for the sliding scale a simpler formulation of the term "block." Paragraph (a)(16B) would define that term to mean a number of shares of a security that had an aggregate purchase price of not less than $50,000 and, if the aggregate purchase price was less than $200,000 a number of shares that was not less than 5,000. The Commission believes this second alternative may be preferable not only since it is simpler than the sliding scale but also since it eliminates the somewhat arbitrary distinctions drawn under the sliding scale near the "breakpoints."[38] In any event, the Commission solicits comment on which of the two definitions would be more appropriate.

Paragraphs (a)(16)(A) and (B) each contain a separate (and alternative) definition of the term "block" that would be designed to enable issuers to engage in exempted block transactions, even though the securities were not heavily traded, or consisted of a relatively small number of shares outstanding. Under this definition, at least twenty round lots of a security, if that quantity was equal to at least 150 percent of the trading volume in that security, would constitute a block under either paragraph (a)(16A)(ii) or paragraph (a)(16B)(iii). If trading volume data for the security were not available, twenty round lots would constitute a block if that amount equaled at least one-tenth of one percent of the outstanding shares of such security, exclusive of any shares owned by any affiliate.

Under any of the definitions of the term, however, a block would not include any amount that a broker-dealer assembled or accumulated for the purpose of sale or resale to the issuer or an affiliated purchaser,[39] or any amount that a broker or dealer sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knew or had reason to know that the short sale was made.[40]

The proposed definitions of the term "block" also would require that the issuer or affiliated purchaser exclude any shares of stock that it acquired upon its exercise of a listed call option. The Commission is concerned that exercises of calls by the issuer or affiliated purchaser may result in substantial purchasing activity by the call writers who are assigned exercise notices. For that reason, the Commission does not believe that stock acquired by

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[37]See text at subsection V.C.4, *infra*.

[38]For example, under the sliding scale a "block" might consist of only 3,948 shares of a $19 stock but would have to be at least 6,250 shares of a $20 stock.

[39]As a result, a repurchase would not qualify for the block exception to the extent that the broker-dealer had assembled or accumulated any portion of the block with the intention of selling to the issuer or to an affiliated purchaser the shares so assembled or accumulated. The Commission believes that the exception of blocks from the volume limitations should not apply in view of the likely market impact of the assembly or accumulation. In a case where a broker-dealer sold to the issuer or to an affiliated purchaser a block that contained shares so assembled or accumulated, the transaction would not qualify for the block exception unless the remaining shares would independently be large enough to meet the definition of the term "block." While the remaining portion, if it independently was a "block," would be exempt from the volume limitations, the part that was assembled or accumulated would not and would count against the issuer's permissible volume.

[40]The proviso to the definition of the term "block" would incorporate in the rule the position expressed by the Commission in the 1973 Proposal. See 1973 Proposal, 38 FR at 34345, nn. 9-10.

the issuer or affiliated purchaser upon exercise of calls should be included in the block determination.[41]

B. Disclosure

The 1973 Proposal did not contain any express disclosure requirements. The Commission solicited comment, however, on whether an issuer should be required to disclose specified information with respect to its repurchases and, if so, the manner and timing of such disclosure. Certain commentators suggested that, in light of an issuer's disclosure responsibilities under other provisions of the federal securities laws, additional disclosure requirements in an issuer repurchase rule would be unnecessary. Other commentators suggested that a disclosure requirement in the proposed rule would be appropriate.

The Commission is proposing for comment the disclosure provisions contained in paragraph (d) of the rule. Those requirements would be intended to cover Rule 13e-2 purchases under a repurchase program that sought the acquisition of more than two percent of the outstanding class of securities during any twelve-month period, regardless of whether the program was undertaken pursuant to formal authorization by a corporation's board of directors.[42] Before engaging in any Rule 13e-2 purchase that was part of such a program, the issuer or affiliated purchaser would have to disclose the information required by paragraph (d)(1)(i)-(iv) in a manner reasonably calculated to inform investors.[43] Paragraph (d) would require disclosure of (i) the time period during which Rule 13e-2 purchases would be effected; (ii) the maximum number of shares that would be purchased or the maximum amount of funds that would be expended;[44] (iii) the purpose or purposes to be achieved through acquisition of the shares; and (iv) any plan or proposal that related to, or would result in, the disposition of the shares. Paragraph (d)(2) also would require prior disclosure of such information to each national securities exchange where the security to be purchased was registered and listed for trading, or admitted to unlisted trading privileges, and to the NASD if the security was authorized for

[41]Shares of stock acquired upon exercise of a call option would be included for purposes of the volume limitations. *See* text at n. 68, *infra*.

[42]Although the Commission believes that the disclosure obligations of paragraph (d) generally would arise upon formal action by a corporation's board of directors, there may be other instances where an issuer or affiliated purchaser would seek the acquisition of greater than two percent of the issuer's outstanding securities. Paragraph (d) would apply in any of those circumstances.

The Commission is aware that certain issuer repurchase programs might constitute tender offers under the definition proposed in November, 1979. Proposed Rule 14d-1 would define the term to include one or more offers to purchase more than 5% of a class of securities during any 45-day period that are directed to more than ten persons. *See* Securities Act Release No. 6159 (November 29, 1979), 44 FR 70326 (1979). Pending adoption of any definition, however, the question whether a purchase program constitutes a tender offer must be evaluated on the basis of existing standards. *See, e.g., Securities and Exchange Comm'n* v. *Sun Co.*, reported sub nom., *Wellman* v. *Dickinson* [Current] Fed. Sec. L. Rep. (CCH) para 96,918 (S.D.N.Y. 1979); *Cattlemen's Investment Co.* v. *Fears*, 343 F. Supp. 1248 (W.D. Okla. 1972).

[43]Although the proposed rule does not specify the time at which, or the manner in which, disclosure must be made before commencing Rule 13e-2 purchases, the requirement that disclosure be made "in a manner reasonably calculated to inform investors" would be intended to govern both the timeliness of disclosure and the method used. Depending on the particular facts and circumstances, disclosure in a press release shortly before the date of commencement of Rule 13e-2 purchases probably would satisfy this requirement. If any of the information required to be disclosed by the proposed rule was not known at the time disclosure was made, a statement to that effect would have to be included, and the information would have to be included, and the information would have to be disclosed as soon as it became known.

[44]The proposed rule would not require that the issuer or affiliated purchaser disclose both the maximum number of shares and the maximum amount of funds. If both items were material, however, the anti-fraud provisions of the federal securities laws would require that they be disclosed to the purchasers. *See Securities and Exchange Comm'n* v. *Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), *cert. denied*, 404 U.S. 1005 (1971).

quotation in NASDAQ.[45]

An issuer's plan to engage in a repurchase program, regardless of the percentage of outstanding securities sought to be purchased, may involve the expenditure of a material amount of assets, or may otherwise involve an event of material importance to security holders. Under these circumstances, disclosure obligations independent of those under Rule 13e-2(d) arise. Paragraph (d), however, would be intended to assure that certain information concerning the repurchase program, whether or not material to the issuer itself under a particular set of circumstances, was disclosed publicly. That disclosure requirement is intended to insure that not only the parties to the issuer's transactions but also the marketplace in general would be on notice that an issuer or affiliated purchaser might account for a substantial percentage of purchasing activity in the subject securities. The specific disclosure requirements proposed would not be intended to affect existing obligations of an issuer or any person subject to the proposed rule under Rule 10b-5 and other antifraud provisions of the federal securities laws in the context of transactions by such persons in securities of the issuer.

The Commission recognizes that there may be circumstances in which it would be impracticable for an issuer to make the disclosure required by paragraph (d) before effecting a purchase. For example, the issuer may receive an unsolicited offer to sell a block of its securities that equals more than two percent of that class of securities, and may be required to consider the offer within a short period of time. The Commission solicits comments on whether the rule should require disclosure of such a purchase as soon as practicable after it is consummated, or should entirely except from the disclosure requirements of paragraph (d) Rule 13e-2 purchases where it would be impracticable to make prior disclosure.

C. Purchasing Requirements

1. Single Broker-Dealer Limitation

Proposed Rule 13e-2(e)(1) would provide that all Rule 13e-2 purchases not specifically excepted from the requirements of that paragraph would have to be made exclusively from or through one broker on any given day. If no broker was used on that day, purchases could be made from one dealer. The issuer and any affiliated purchaser would have to use the same broker-dealer on any single day in effecting Rule 13e-2 purchases. As noted above, the single broker-dealer limitation would be designed to prevent the manipulative technique of creating the appearance of widespread interest and trading activity in the security through the use of several broker-dealers to acquire the issuer's securities.[46]

The rule would except all unsolicited Rule 13e-2 purchases from the single broker-dealer limitation regardless of whether other Rule 13e-2 purchases were solicited by or for the issuer or an affiliated purchaser on the same day.[47] This exception is a liberalization of the 1973 Proposal, which would have imposed the limitation on all purchases except

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[45]Generally, telephonic notice to the exchanges and to the NASD would satisfy this requirement. The Commission understands that the exchanges generally require, and the NASD suggests, that an issuer notify the exchange or the NASD of material impending developments which may affect market activity in the issuer's securities prior to the public announcement of such developments. *See, e.g.*, NYSE Company Manual, Section A2, Part II, at A-23; American Stock Exchange Company Guide, Part 4, §402; NASD Notice No. 1-79 (February 2, 1979).

[46]*See United States* v. *Stein*, 456 F.2d 844 (2d Cir.), *cert. denied*, 408 U.S. 922 (1972); *United States* v. *Dardi*, 330 F.2d 316 (2d Cir. 1964), *cert. denied*, 379 U.S. 845, and 869 (1965); *Charles C. Wright*, 3 SEC 190 (1938), *rev'd on other grounds sub nom. Wright* v. *Securities and Exchange Comm'n* 112 F.2d 89 (2d Cir. 1940); *R. J. Koeppe & Co.* v. *Securities and Exchange Comm'n*, 95 F.2d 550 (7th Cir. 1938); *Securities and Exchange Comm'n* v. *Georgia Pacific Corp., supra*, n. 11; *Allessandrini & Co.*, Securities Exchange Act Release No. 10466 (October 31, 1973); and *Cohen Goven Equities Inc.*, Securities Exchange Act Release No. 10252 (June 28, 1973).

[47]Some commentators on the 1973 Proposal expressed the fear that, in circumstances where the issuer was obligated (by the disclosure provisions of the proposed rule or otherwise) to disclose its intent to engage in Rule 13e-2 purchases, the issuer might be deemed to have solicited all indications of interest it thereafter received. Nevertheless, disclosure of the information contained in paragraph (d)(1), or a general public announcement by an issuer of a repurchase program, would not necessarily cause all subsequent Rule 13e-2 purchases to be deemed to be solicited.

block purchases, effected either on or off an exchange, that were not solicited by or for the issuer. In view of the abuse the single broker-dealer limitation would be designed to prevent, the Commission does not believe that the size of the purchase should determine the applicability of the limitation.

In addition, the proposed rule has been revised to delete the requirement contained in the 1973 Proposal that bids and purchases, otherwise than in privately negotiated transactions, be made by the issuer "under the supervision and control" of only one broker-dealer. Some commentators expressed concern that a "control" requirement would preclude the use of a subagent, such as a "two-dollar" broker, to execute a purchase order on the floor of an exchange. Proposed Rule 13e-2 would permit the single broker-dealer to use such subagents under appropriate circumstances. The "supervision" requirement has been deleted in order to preclude any interpretation of the single broker-dealer limitation that would have permitted a single, supervising broker to engage several different brokers simultaneously to bid for the issuer's securities in the same market or through the same quotation medium.[48]

2. Time Restrictions

The 1973 Proposal would have restricted the times during which Rule 13e-2 purchases in less than block size could be made by or for the issuer on a national securities exchange or through NASDAQ. The time restrictions would have applied on a market-by-market basis. The 1973 Proposal would have proscribed such purchases on an exchange before the entry of an independent opening transaction on the exchange or within one-half hour of the close of trading on the exchange, or in NASDAQ until after an independent bid had been entered or within one-half hour of the termination of Level 1 service.[49] The prohibition on opening bids and purchases by or for the issuer was designed to prevent such transactions from setting the character of the day's trading. The prohibition on bids and purchases near the close of trading was designed to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close.[50]

As revised, the time restrictions contained in proposed Rule 13e-2(e)(2) would apply to all Rule 13e-2 purchases, including block purchases, except those that were not effected from or through a broker or dealer. Unlike the 1973 Proposal, the rule as now

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[48]Exchange rules such as NYSE Rule 122 and Amex Rule 157 independently preclude members, member organizations and allied members from maintaining with more than one broker, for execution on the exchange, market orders or orders at the same price for the purchase or sale of the same security, if such person knows that such orders are for the account of the same principal. In order to permit a broker-dealer or other person that acted on behalf of the issuer or affiliated purchaser to accumulate the issuer's securities, paragraph (b)(2)(ii) would provide that the broker-dealer or other person would not be subject to the single broker-dealer limitation. That provision is designed to allow the broker-dealer to make appropriate and customary arrangements with executing brokers, such as customary arrangements with executing brokers, such as "two-dollar" brokers and specialists. It is not intended to permit a broker-dealer to engage several different brokers simultaneously to bid for the issuer's securities in the same market or through the same quotation medium. Even if the use by a broker-dealer of more than one broker to execute orders on behalf of the issuer would not independently be prohibited by exchange rules, it would be inconsistent with the rule for the broker-dealer to employ more than one floor broker at the same time on the same exchange to make bids or to execute purchases on behalf of the issuer.

[49]See n. 51, *infra*.

[50]This trading practice, sometimes called "marking the close," is a variation of the technique known as "painting the tape." It is a potentially manipulative device because opening and closing transaction data receive wide coverage by the media and are disseminated daily to the investing public. Purchases of a reported or exchange traded security at the opening or close of a trading day generally are thought to be significant indicia of the current market value of the security inasmuch as they tend to forecast the direction of trading and to suggest the strength of demand.

In Litigation Release No. 7850 (March 30, 1977), the Commission announced the filing of a civil complaint (in response to which the defendants consented to an entry of a permanent injunction) alleging violations of Sections 9(a)(2) and 10(b) of the Act and Rule 10b-5 by Chromalloy American

proposed would not restrict the times at which a dealer acting for the issuer or for an affiliated purchaser could effect Rule 13e-2 purchases in NASDAQ securities if an independent bid currently was reported in Level 2[51] of NASDAQ.

In light of the implementation of the consolidated system, time restrictions would apply to Rule 13e-2 purchases in reported securities on a uniform basis. Accordingly, a Rule 13e-2 purchase in a reported security on a national securities exchange or in the over-the-counter market would be prohibited if the purchase would constitute all or part of the opening transaction reported in the consolidated system. Once an independent opening transaction had been reported (regardless of the market in which the transaction occurred), Rule 13e-2 purchases could be made by or for the issuer or affiliated purchaser. The proposed rule would prohibit Rule 13e-2 purchases of reported securities during the period commencing one-half hour before the close of trading in the principal market for the security,[52] and ending with the termination of the period in which last sale prices are reported in the consolidated system. The latter period would be the same for all United States markets in which a particular security was traded.[53]

The periods during which the proposed rule would prohibit Rule 13e-2 bids for and purchases of exchange traded securities[54] would continue to be determined on a market-by-market basis. A Rule 13e-2 bid on a national securities exchange would be prohibited if it would constitute the opening bid for the security on that exchange. Rule 13e-2 bids and purchases also would be prohibited during the one-half hour before the scheduled close of trading on that exchange.

The absence of an independent opening transaction on a given trading day would preclude any bids or purchases by or for an issuer or an affiliated purchaser from being effected on that day, with the exception of bids and purchases that were not effected from or through a broker or dealer. Certain commentators suggested, and the Commission recognizes, that the operation of this requirement, together with the volume limitation, might prevent issuers of thinly-traded securities from acquiring those securities on a regular basis or in substantial amounts. Nevertheless, the Commission believes that the proposed requirement of an independent opening transaction is appropriate since the potential for issuer domination of such a market — even in the absence of deliberate manipulative abuse — may be greater in the context of trading in such securities.[55]

Footnote 50 continued

Corporation and certain of its affiliates. The complaint alleged, among other things, that Chromalloy and those affiliates manipulated the price of Chromalloy common stock by repeatedly "upticking" the price of the stock at or near the close of trading on the New York Stock Exchange.

[51]As a result of the recent adoption of Rule 11Ac1-2 under the Act [§240.11Ac1-2], which governs the display of transaction reports, last sale data and quotation information, Level 1 service of NASDAQ now displays the best bid and offer made available by NASDAQ market makers rather than a "representative" bid and offer. It is the level generally used by registered representatives in retail trading. Level 2 displays the best bid and offer as well as a montage of the current quotations of individual NASDAQ market makers for a given security. Level 3 is the only level that accepts user input, allowing a market maker to enter, update, or remove its price quotations.

[52]The principal market for a security would be the market that reported the greatest volume of trading in the security.

[53]The purchasing restrictions of the rule would not apply to Rule 13e-2 purchases effected in foreign markets.

[54]As noted above, the term "exchange traded" securities, as used in the proposed rule, refers to those securities traded on a national securities exchange for which last sale data are not reported on the consolidated tape.

[55]One commentator recommended that the execution by a specialist of limit orders placed by the issuer should be excepted from the time restrictions since an issuer or other person subject to the rule might inadvertently violate it if a limit order entered within a permissible time period was executed later as an opening transaction or within the prohibited period near the close of trading. The Commission believes, however, that such an exception would be inconsistent with the purposes of the time restrictions of the proposed rule. *See* text at n. 50,

3. Price Limitations

The maximum price at which an issuer could purchase its securities under the 1973 Proposal would have been based on the prevailing price in the principal market for the security. If the principal market for the security was an exchange, the maximum permissible price for purchases in less than block size from or through a broker-dealer and in privately negotiated purchases, regardless of size, would have been the higher of the last sale price or the highest independent bid on that exchange. If the principal market otherwise than on an exchange, the price limitation would have been the mean between the highest current independent bid and lowest independent ask quotations for the security.

Purchases of a block by the issuer from or through a broker-dealer would have been subject to more restrictive price limitations under the 1973 Proposal. If the principal market for a security was an exchange, the price limitation for a block of the security would have been limited to the lower of the last sale price or the highest independent bid on such exchange. The price limit on purchases of a block of a security for which the principal market was not an exchange would have been the highest current independent bid.

In light of the development of the consolidated system, the Commission has deleted the principal market standard for determining price limits on purchases of reported securities. In addition, the price limits for Rule 13e-2 purchases, whether or not of block size, would be the same.[56] Thus, the price limit for purchases of reported securities would be the higher of the last sale price or highest independent published bid, regardless of the market reporting that figure.[57] The price limit applicable to purchases of exchange traded securities in transactions on an exchange would be the higher of the highest current independent bid quotation or the last sale price on such exchange.[58]

The 1973 Proposal would have limited the price at which purchases of securities for which the principal market was otherwise than on an exchange to a price no higher than the mean between the highest independent bid and the lowest independent offer, and no purchase of those securities could be made at a price above such mean price "plus a customary or negotiated commission." In view of the difficulty an issuer might encounter in determining the amount of any commission equivalent, mark-up, or differential paid to a dealer in the over-the-counter market,[59] the price limitations applicable to purchases of those securities have been revised to incorporate a pricing standard based on the net price (*i.e.*, a price that would include all dealer mark-ups and other transaction costs charged to the customer).[60] Purchases of a NASDAQ security

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Footnote 55 continued.

supra. Accordingly, any limit order by or for the issuer or an affiliated purchaser for a reported security or an exchange traded security could be entered only after an independent opening transaction was reported in the consolidated system or on a particular exchange, respectively, and the other would be required to be canceled if it had not been executed before one-half hour preceding the close of trading.

[56]The rationale for the stricter price limit on block purchases in the 1973 Proposal primarily was based on the asumption that most blocks trade at a discount. *See* 4 Institutional Investor Study Report of the Securities and Exchange Commission at 1825, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. (1971). While this assumption currently may be valid, the Commission does not believe that the purchase of a block presents any additional potential for manipulative abuse that would necessitate a more restrictive price limitation than purchases of less than block size.

[57]Proposed Rule 13e-2(e)(3)(i).

[58]Proposed Rule 13e-2(e)(3)(ii).

[59]Except in the case of "riskless" principal transactions, Rule 10b-10 under the Act [§240.10b-10] currently does not require disclosure on the customer confirmation of the amount of remuneration received from the customer by the broker-dealer acting as principal for its own account.

[60]Use of the net price standard would be limited to over-the-counter transactions in securities that are not reported. In the case of over-the-counter transactions in reported securities, the purchase price would be defined to exclude any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer. *See* Proposed Rule 13e-2(a)(14)(i). The requirement that such charges be excluded in connection with third market transactions should

otherwise than on an exchange could be made at a net price no higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ.[61] The price limit for purchases of securities that are not reported or NASDAQ securities otherwise than on an exchange would be the lowest current independent offer quotation ascertained on the basis of reasonable inquiry.[62] The purchase price under proposed Rule 13e-2(e)(3)(iii)-(iv) would include any commission equivalent, mark-up, or differential paid to a dealer.[63]

Commentators on the 1973 Proposal generally did not address the proposed price restrictions on purchases of securities in the over-the-counter market. Accordingly, the Commission specifically solicits comment on whether the proposed price restrictions, contained in paragraphs (e)(iii)-(iv) of the rule, on purchases of NASDAQ and other securities traded over-the-counter would be appropriate, or whether limitations similar to those contained in the 1973 Proposal would be preferable.

The 1973 Proposal would have imposed the price limitations on purchases that were solicited by the issuer even if they were not effected from or through a broker or a dealer. Although there might be some impact on the market for an issuer's stock if the issuer extensively solicited those purchases, the Commission does not believe that the potential for manipulative abuse in the context of such transactions is sufficient to warrant imposition of the price limitations particularly since applying the price limitations in that fashion might prevent an issuer from buying out a shareholder at a premium over market price in a privately negotiated transaction that had little if any destructive market impact. Accordingly, the price restrictions would not apply to Rule 13e-2 purchases that were not from or through a broker or a dealer, regardless of whether a solicitation was involved.[64]

4. Volume Limitations

The volume limits of the proposed rule would be designed to prevent an issuer or affiliated purchaser from dominating the market for the issuer's securities through substantial purchasing activity. Notwithstanding the other requirements of the rule that would prevent the issuer or affiliated purchaser from leading the market for the securities by establishing new high bids or from creating the appearance of widespread interest through the use of many brokers, the Commission believes that domination of the market in terms of the amount of securities purchased may mislead investors and deprive the public of a pricing mechanism free of issuer control. In addition, issuer domination of the market can be manipulative even in the absence of price leadership. As one commentator has noted:

Moreover, the price of a security may be raised without raising the bid. Following the market too closely on a rise with either purchases or bids may be just as instrumental in creating a price rise. The obvious effect of promptly putting a new floor under the market each time it goes up as a result of an independent purchase or bid is to exhaust the supply of securities which may be offered at lower levels and thus to force others to raise their bids.[65]

As a means designed to prevent this form of manipulative abuse, paragraph (e)(4) of the proposed rule would restrict the aggregate amount

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Footnote 60 continued.

not, in the Commission's view, present any difficulties of computation since exclusion of such charges is currently required under NASD rules in computing the price at which third market trades are reported for inclusion in the consolidated system.

[61]Proposed Rule 13e-2(e)(3)(iii).

[62]Proposed Rule 13e-2(e)(3)(iv). Whether an inquiry was "reasonable" would depend upon customary practice within the securities industry as well as the circumstances surrounding a particular transaction, such as the number of dealers that submitted quotations for publication by the National Quotation Bureau, Inc. and the frequency with which such dealers submitted quotation.

[63]*See* proposed Rule 13e-2(a)(14), which defines the term "purchase price."

[64]A program of active solicitation, however, may suggest that the issuer is making a tender offer that must be conducted in compliance with applicable rules and regulations (*e.g.*, Rule 13e-4).

[65]3 Loss, *Securities Regulation* at 1551 (1961). *Cf. Kidder, Peabody & Co.*, 18 SEC 559, 570 (1945); *Halsey, Stuart & Co., Inc.*, 30 SEC 106, 129 (1949) (over-the-counter manipulation).

of securities that could be purchased on any day by the issuer or affiliated purchaser to a percentage of the total trading volume, as that term would be defined by the rule.

The 1973 Proposal would have used a principal market standard to determine the permissible volume of an issuer's repurchases. If the principal market for a security was an exchange, the 1973 Proposal would have limited the daily volume of the issuer's purchases on any exchange to fifteen percent of the average daily trading volume on such exchange during the preceding four calendar weeks. The volume limitations would have applied separately to purchases in each market in which the security was traded, provided that volume data in each market were made available by the appropriate self-regulatory organization. If the principal market for a security was otherwise than a national securities exchange, the 1973 Proposal would have limited the daily volume of issuer repurchases to fifteen percent of the average daily trading volume reported in NASDAQ in the four preceding calendar weeks, or, if the security was not quoted in NASDAQ, to 0.04 percent of the outstanding securities of the class per week. Any issuer would have been permitted to purchase at least one round lot per day. Block and privately negotiated purchases would not have been subject to any volume limitations.

The volume limitations of proposed Rule 13e-2 have been revised substantially in response to comments received on the 1973 Proposal and the implementation of the consolidated transaction reporting system. Proposed Rule 13e-2(a)(13) would define average daily trading volume ("trading volume") for reported securities, exchange traded securities and NASDAQ securities that are not exchange traded securities. In all instances, trading volume would be an average based upon the total daily volume, exclusive of Rule 13e-2 purchases, reported by all markets that made volume data available in the four weeks preceding the week in which the Rule 13e-2 purchases were to be effected. The daily volume limitation for all securities for which volume data were reported is set forth in paragraph (e)(4). That limitation would be the higher of one round lot or that number of round lots closest to fifteen percent of defined trading volume.[66] The volume limitation for other securities would be the higher of one round lot per day or, in any consecutive seven-day period, 0.05 percent of the shares of the class of securities. Block purchases and purchases that were not made from or through a broker or dealer would not be subject to the volume limitations.[67] As a general matter, the Commission believes that the market impact of a block purchase is likely to be less than that of a series of purchases of smaller amount that in the aggregate are equal in size to the block but are accomplished over a period of time.

The exercise of listed call options to purchase the issuer's stock by the issuer or an affiliated purchaser may in turn require the persons who are assigned the exercise notices to purchase in the open market. In view of the potential market impact of these purchases, paragraph (e)(4) would require that any shares that the issuer or affiliated purchaser acquired upon its exercise of a listed call option be included in the volume limitations of the proposed rule. For example, if proposed Rule 13e-2 would permit an issuer to purchase 2,000 shares on any day, the issuer could purchase all the shares in the open market, exercise 20 options contracts,[68] or do a combination of those things, so long as the total amount acquired through exercises and market purchases did not exceed 2,000 shares.

D. Purchases on Behalf of Employee and Shareholder Plans

Section 13(e) of the Act does not address purchases of an issuer's securities by an employee or shareholder plan ("plan") sponsored by the issuer or an affiliate. Rather, Section 13(e)(2) contains a control standard for determining whether purchases by a person other than the issuer shall be deemed to be purchases by the issuer for purposes of any rule promulgated by the Commission under Section

[66]Where 15% of average daily volume equaled a multiple of round lots plus half or more of an additional round lot, the "closes to" language would permit maximum permissible purchases to be rounded up to the next higher number of round lots.

[67]*But see* n. 64, *supra*.

[68]Generally, one call option contract gives the holder the right to buy 100 shares of the underlying stock.

13(e)(1).[69] Proposed Rule 13e-2 would establish criteria for determining whether a purchase by a trustee or other purchasing agency ("agent" for a plan sponsored by an issuer or an affiliate was a purchase subject to the control of, and thereby attributable to, the issuer or any affiliate for purposes of Section 13(e)(2) of the Act.

With certain exceptions, noted below, the provisions of proposed Rule 13e-2 that would apply to purchases on behalf of plans would be substantially similar to those contained in the 1973 Proposal. The definition of a Rule 13e-2 purchase contained in paragraph (a) would exclude any purchase effected by or for an issuer plan[70] if the transaction were effected by an agent independent of the issuer. Paragraph (a)(8) of the proposed rule would define the term "agent independent of the issuer." In order to be independent, the agent for the issuer plan could not be an affiliate of the issuer[71] and would have to be independent of the issuer's control in effecting transactions. The criteria that would be used to satisfy these tests of independence would be designed to insulate the market in the issuer's securities from potentially manipulative influence by the issuer or an affiliate.[72]

The transactional independence test would contain five criteria. Under paragraph (a)(8)(ii), an agent would be independent if neither the issuer nor any affiliate, directly or indirectly, had any control or influence over the time, price, amount, and manner of purchases for the plan, or the selection of the broker-dealer through which purchases would be executed. Each of these factors is discussed below. Generally, however, any restrictions imposed by an issuer or affiliate on purchases by an agent, other than those attributable to the timing of the issuer's prescheduled payments of funds, might well preclude a determination that the agent was independent. The discretion of an issuer to elect to contribute cash or securities to a plan, which by definition must be exercised before any contribution to the plan, would not be deemed to constitute control over the agent, notwithstanding the fact that exercise of such discretion might determine the amount of any market purchases by the agent.

1. Timing of Purchases

In order for the agent to be deemed independent, the agent would have to retain full discretion with respect to the timing of purchases on behalf of a plan. For example, the issuer could not require the

[69]*See* text at subsection IV.C., *supra*. As published by the Senate in 1967, the Commission's draft Rule 10b-10 would have treated purchases for any employee plan of the issuer, its parent or subsidiaries as purchases by the issuer. The Commission recommended that a comparable provision be included in S.510. The bill originally passed by the Senate included an amendment that would have regulated all purchases of an issuer's securities by an employee plan of the issuer or an affiliate. In response to industry comment, the House proposed an amendement which subsequently was enacted at Section 13(e)(2) of the Act. That amendment deleted previous references to employee plans and substituted the control standard for determining whether purchases by persons other than the issuer should be deemed to be purchases by the issuer. *See* H.R. Rep. No. 1711, 90th Cong., 2d Sess. 18 (1968).

[70]The term "issuer plan" would be defined in paragraph (a)(7) to mean any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, dividend reinvestment, or similar plan for employees or security holders of the issuer or any affiliate.

[71]Certain commentators suggested incorporating in the rule the position that neither a common directorship between the issuer and the agency, nor the issuer's right to remove the agent, would itself constitute control over the agent. Although the Commission generally adheres to this view, it does not believe that a common directorship or the issuer's right to remove the agency should never be considered to be evidence of control. Since the determination of whether a control relationship exists between the issuer and the agent would be a factual one to be made on a case-by-case basis by the issuer, the Commission has determined not to delineate further indicia of that relationship in the rule.

[72]Even where purchases for a plan are made through an independent agent, the Commission believes that the magnitude of those purchases may have a significant impact on the market price of the issuer's securities. Given the proliferation of diverse plans in recent years, the aggregate amount of purchases of an issuer's securities by or for plans sponsored by the issuer or its affiliates in many instances may exceed the amount of purchases by the issuer and its affiliates. The Commission may consider whether

agent to make or refrain from making purchases during any particular part of the day, or that the agent commence or complete purchasing for a plan on any specified date or within any specified period of time after receipt of contributions from the issuer.[73]

The proviso to paragraph (a)(8)(ii) relating to the frequency of an issuer's contributions to a plan is intended to address an issuer's indirect control over the timing of purchases by an agent. If the issuer were permitted to change the frequency of its contributions more than once in any six-month period, the agent would not be deemed to be independent.

2. Price of Purchases

To satisfy this criterion of independence, the issuer could not control the price at which the agent made purchases for a plan. For example, the issuer could not set a minimum or maximum price per share to be paid for its securities, or require tht purchases be made at a price not higher or lower than a particular current market price or closing price of the security.

The Commission understands that some plans contain a provision requiring the agent to purchase the issuer's securities at "fair market value" at the time purchases are made. Such a provision may be imposed by statute,[74] or in the absence of a statutory mandate may be intended to insure that the agent's purchases for the plan are consistent with the interests of the beneficiaries. In either case, the provision would not preclude a determination that the agent was independent.

3. Amount or Purchases

Under this test of independence, the issuer could not direct the agent to make purchases for a plan in specified amounts, or in transactions of a particular size (*e.g.* block, round lot, or odd lot).[75] In addition, the issuer could not impose any restriction with respect to the volume of purchases made by the agent.

Paragraph (a)(8)(ii) also would provide that an agent would not be deemed to be independent of the issuer if the issuer revised the basis for determining the amount of its contributions to the plan more than once in any six-month period.[76] This provision would be intended to address the indirect control an issuer could exercise over the amount of purchases by an agent if permitted frequently to revise the formula used to determine the amount of its contribution.

4. Manner of Purchases

To satisfy this criterion, the issuer could not retain

Footnote 72 continued.

to authorize its Directorate of Economic and Policy Analysis to conduct a voluntary survey to determine the approximate market share represented by purchases by independent agents to fund employee and shareholder plans relative to purchases by or attributable to the issuer. The survey would be designed to produce empirical data from which the Commission may draw inferences regarding the impact that plan purchases have on the market prices for issuers' securities.

[73]Certain timing limitations that were imposed otherwise than by the issuer would not compromise the independence of the agent. For example, the Commission's Division of Investment Management requires that purchases with contributions to dividend reinvestment plans be made within 30 days from the date contributions are received by the agent if the plan is not to be deemed to be an investment company. *See* Letter dated May 6, 1974 from the Division of Investment Management Regulation to Lucky Stores, Inc. *See also* Rule 10b-10(d)(4), which defines the term "periodic plan."

[74]Trustees for plans subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, generally are subject to the "fair market value" requirement.

[75]It would be permissible, however, for the issuer to establish at the beginning of a repurchase program an aggregate maximum number of shares to be purchased for the plan.

[76]The 1973 Proposal contained a proviso that would have attributed purchases by an otherwise independent agent to the issuer if the issuer revised the amount of its contributions to the plan more than once every six months. The commentators suggested that this provision was overly restrictive since the issuer would be unable to control fluctuations in the amount of contributions resulting from changes in the number of participating employees or shareholders, amounts of salaries and profits or dividends rates. Accordingly, the proviso has been modified as described above.

the discretion to direct the agent to make or refrain from making purchases in a particular market, or to make purchases by means of particular kinds of orders (*e.g.*, limit orders or market orders).

5. Selection of the Broker-Dealer

The 1973 Proposal provided that, in order for the agent to be independent of the issuer, the issuer could not select the broker-dealer through which purchases for a plan could be executed. The Commission was concerned that the issuer's retention of the power to direct brokerage for the plan could tend to undermine the regulatory objectives of insulating the plan from any control or influence of the issuer. This concern would be particularly significant where the agent acted merely as a conduit for funds between the issuer and the executing broker-dealer, even if the broker-dealer was not otherwise in a control relationship with the issuer.

Several commentators on the 1973 Proposal criticized the prohibition on broker-dealer selection as a criterion of an agent's independence. They expressed concern that it would preclude brokerage firms from acting as both agent and executing broker for the plan as, for example, in the case of monthly investment plans currently operated by such firms on behalf of numerous issuers. In view of that concern, and the possibly anticompetitive consequences of the 1973 Proposal, the Commission has modified the requirement so that a broker-dealer would be permitted to act both as agent and as executing broker.

E. Broker-Dealer Issuers

The 1973 Proposal would have imposed special restrictions on repurchases by issuers that are registered as broker-dealers under Section 15 of the Act. Under that proposal, all such purchases would have had to be made through an agent independent of the issuer and the broker-dealer issuer could not execute purchases made on its behalf by the independent agent.

The Commission has deleted that proposed requirement. A broker-dealer enjoys the ability to gain access to the marketplace on terms that are not generally available to other issuers. Nevertheless, the Commission currently believes that the disclosure obligations and the purchasing restrictions of the rule, as well as the general antifraud provisions and the Commission's administrative jurisdiction over broker-dealer use an independent agent for its repurchase transactions.

F. Exceptions

Paragraph (f) would contain eleven exceptions to the substantive purchasing restrictions of the proposed rule. The general antifraud provision of the proposed rule, however, would apply to excepted bids and purchases. The exceptions would be intended to cover purchases that either do not appear to present the potential for manipulative abuse the rule would be intended to prohibit, or that already are subject to other regulatory safeguards.

Exception (1) would apply to purchases of any security that are subject to, and made in compliance with, Rule 10b-7 under the Act.[77] New exception (2) would apply to any purchase made in connection with a tender offer by a third party for securities of the issuer if the issuer complied with Rule 13e-1 under the Act before making it. Exceptions (3) and (4) would except purchases pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e-4 under the Act, or with Section 14(d) of the Act and the rules applicable thereto, respectively.

Exception (5) would apply to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments. Exception (6) would except purchases of securities pursuant to a merger, acquisition or similar transaction involving a recapitalization. Exception (7) would apply to purchases of securities of dissenting shareholders who asserted rights of appraisal with respect to their shares.[78]

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[77]The 1973 Proposal contained an exception for purchases of equity securities by an issuer or affiliate made in compliance with Rule 10b-8 under the Act. [§240.10b-8] In view of the fact that the rule as proposed would not apply to purchase of rights, which are the only securities subject to the purchasing restrictions of Rule 10b-8, that exception has been deleted.

[78]The 1973 Proposal contained a similar exception, but would have required that shareholders exercise their appraisal rights "in accordance with statutory provisions." Since certain statutes do not provide for, or are unclear on the timing of, appraisal rights, that phrase has been deleted.

Several commentators on the 1973 Proposal suggested that the proposed rule should except an issuer's purchases of its securities if the purchases were made in order to satisfy sinking fund obligations. Those commentators stated that the exception would be appropriate since it might otherwise be difficult for an issuer subject to the purchasing restrictions to accumulate a sufficient amount of the security to satisfy its obligation, particularly if the security was not actively traded. The Commission understands that most sinking fund obligations arise in connection with debt securities and convertible debentures, which are not covered by the proposed rule. Nevertheless, in view of the concerns raised by the commentators, the Commission is proposing new exception (8), which would cover situations where the issuer was required to make purchases of preferred stock to satisfy sinking fund obligations. The exception would apply only in the context of mandatory sinking fund obligations that must be satisfied not more than one year from the time the purchases are made. The Commission does not believe that the exception should apply to purchases to satisfy sinking fund obligations that are not current or mandatory.

Exceptions (9) and (10) are substantially the same as exceptions proposed in 1973. Exception (9) would apply to purchases of fractional interests in a security, and exception (10) would apply to purchases of securities from employees pursuant to a pre-existing right or obligation.

The 1973 Proposal would have excepted purchases of any security not traded on a national securities exchange for which no dealer market existed. Several commentators suggested that the term "dealer market" should be defined. As revised, exception (11) would apply to purchases of any security not traded on a national securities exchange and with respect to which the issuer thereof did not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

Finally, paragraph (g) of the proposed rule would authorize the Commission to exempt any Rule 13e-2 purchase from one or more paragraphs of the rule as not comprehended within the intended meaning and purpose of such paragraph or paragraphs.

VI. PROPOSED AMENDMENTS TO RULE 10b-6

As discussed earlier in this release,[79] the Commission has taken the position that, for purposes of Rule 10b-6, an issuer is deemed to be engaged in a distribution of a class of securities if it has outstanding a publicly held series of securities that are immediately convertible into, or exchangeable or exercisable for, that class of securities. Exemptions from Rule 10b-6 frequently have been granted to permit an issuer or an affiliate to make purchases of a security which is the subject of such a distribution. The exemptions generally have been conditioned on compliance with certain purchasing restrictions. If Rule 13e-2 were adopted, it would impose substantially similar limitations on all persons subject thereto. Accordingly, it would no longer be necessary to regulate under Rule 10b-6 purchases of a security that was the subject of a so-called "technical distribution."[80] The Commission, therefore, is proposing to amend paragraph (f) of Rule 10b-6 to provide that purchases of equity securities would not be subject to Rule 10b-6 if (i) they were subject to Rule 13e-2, and also subject to Rule 10b-6 solely because the issuer had outstanding securities convertible into, or exchangeable or exercisable for, such securities,[81] and (ii) the purchases were subject to and made in compliance with Rule 13e-2, to the extent the rule was applicable to the person making the purchases.[82]

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[79]See text at n.13, *supra*.

[80]Rule 10b-6 would continue to apply if the issuer were engaged in any other distribution (*e.g.*, an underwritten offering) of the security to be purchased.

[81]Paragraph (f) of Rule 10b-6 was recently added to the rule to except purchases pursuant to tender offers by issuers and affiliates, subject to Rule 13e-4 or Section 14(d) of the Act, where Rule 10b-6 would apply only because of the kind of distribution described above. *See* Securities Act Release No. 6197 (March 13, 1980), 45 FR 18914 (1980).

[82]For example, if a Section 15(d) issuer would be subject to Rule 10b-6 solely because of outstanding securities convertible into its common stock, Rule 10b-6 would not prohibit its purchases of common stock if it complied with the disclosure requirements of paragraph (d). *See* text at nn. 25-27, *supra*.

Proposed paragraph (g) to Rule 10b-6 would codify the staff's position concerning purchases of an issuer's securities by or on behalf of issuer-sponsored plans.[83] Those purchases would be deemed to be purchases by the issuer unless effected by an agent independent of the issuer, as that term is proposed to be defined in Rule 13e-2(a)(8).

VII. STATUTORY BASIS

Proposed Rule 13e-2 and the amendments to Rule 10b-6 would be promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 13(e), 15(c) and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78i(b), 78j(b), 78m(e), 78o(c) and 78w(a).

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

1. By adding 17 CFR §240.13e-2 as follows:

§240.13e-2 Purchases of certain equity securities by the issuer and others.

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term "affiliate" means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer:

(2) The term "affiliated purchaser" means

(i) A person acting with the issuer for the purpose of acquiring the issuer's securities; or

(ii) A person who controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; or

(iii) A person who controls the issuer by means of his ownership of the issuer's securities; or

(iv) Any affiliate that is not a natural person; *Provided, however,* That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 13e-2 bids or effecting Rule 13e-2 purchases on behalf of the issuer and for its account;

(3) The term "Section 13(e) issuer" means an issuer that has a class of equity securities registered pursuant to section 12 of the Act or that is a closed-end investment company registered under the Investment Company Act of 1940;

(4) The term "Section 15(d) issuer" means a purchase of common stock or preferred stock of a Section 13(e) issuer, or a Section 15(d) issuer, by or for the issuer or any affiliate or affiliated purchaser, but does not include

(i) Any purchase of common stock or preferred stock of a Section 13(e) issuer if the class of such stock is not registered pursuant to section 12 of the Act;

(ii) Any purchase of common stock or preferred stock of a Section 15(d) issuer if the class of such stock has not been the subject of a registration statement that has become effective pursuant to the Securities Act of 1933, or if the class is held of record by fewer than 300 persons; or

(iii) Any purchase of a security effected by or for an issuer plan if the transaction is effected by an agent independent of the issuer;

(6) The term "Rule 13e-2 bid" means

(i) A bid for securities that, if accepted, or

(ii) A limit order to purchase securities that, if executed,

would result in a Rule 13e-2 purchase;

(7) The term "issuer plan" means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, dividend reinvestment or similar plan for

[83]The Commission recently proposed to amend paragraph (e) of Rule 10b-6 to except from the operation of that rule distributions of securities by an issuer to its employees or shareholders pursuant to a plan, as that term is defined in paragraph (c)(4) of the rule. *See* Securities Act Release No. 6198 (March 13, 1980), 45 FR 18948 (1980). The Commission anticipates that it will take further action on these amendments in the near future.

employees or security holders of the issuer or any affiliate;

(8) The term "agent independent of the issuer" means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate has any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock or preferred stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or affiliate will not be deemed to have such control or influence solely because it has the power to revise not more than once in any six-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to be issuer plan;

(9) The term "consolidated system" means the consolidated transaction reporting system contemplated by Rule 11Aa3-1 [§240.11Aa3-1];

(10) The term "reported security" means any security as to which last sale information is reported in the consolidated system;

(11) The term "exchange traded security" means any security, except a reported security, that is listed, or admitted to unlisted trading privileges, on a national securities exchange;

(12) The term "NASDAQ security" means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD");

(13) The term "trading volume" means

(i) With respect to a reported security, the average daily trading volume for each security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 13e-2 purchase is to be effected or the Rule 13e-2 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 13e-2 purchase is to be effected or the Rule 13e-2 bid is to be made; and

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 13e-2 purchase is to be effected or the Rule 13e-2 bid is to be made;

Provided, however, that such trading volume under paragraph (a)(13)(i), (ii) and (iii) shall not include any Rule 13e-2 purchases by or for the issuer or any affiliated purchaser, and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(14) The term "purchase price" means the price paid per share

(i) For a reported security, or an exchange traded security on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(15) The term "round lot" means 100 shares or other customary unit of trading for a security;

(16A) The term "block" means a quantity of stock that either

(i) Has an aggregate purchase price of not less than (A) $50,000 if the purchase price per share is less than $10, (B) $75,000 if the purchase price per share is at least $10 but less than $20, (C) $125,000 if the purchase price per share is at least $20 but less than $35, (D) $175,000 if the purchase price per

share is at least $35 but less than $50, or (E) $200,000 if the purchase price per share is $50 or more; or

(ii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraph (a)(16)(i) and (ii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options;

(16B) The term "block" means a quantity of stock that either

(i) Has a purchase price of $200,000 or more; or

(ii) Is at last 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, that a block under paragraph (a)(16)(i), (ii) and (iii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knows or has reason to know that the sale was short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(b) *Application of section to Section 13(e) issuers and certain other persons.*

(1) It shall constitute a fraudulent, deceptive, or manipulative act or practice within the meaning of section 13(e) of the Act for a Section 13(e) issuer, for an affiliate or an affiliated purchaser of such issuer, or for a broker, a dealer, or any other person acting for such an issuer or affiliate or affiliated purchaser, in connection with a Rule 13e-2 purchase, or with a Rule 13e-2 bid, effected or made by or for such issuer or affiliate or affiliated purchaser

(i) To employ any device, scheme, or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in connection with a Rule 13e-2 purchase, or with a Rule 13e-2 bid, it shall be unlawful, by the use of any means or instrumentality of interstate commerce or of the mails

(i) For any Section 13(e) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e-2 purchase or to make or cause to be made a Rule 13e-2 bid unless that issuer or affiliated purchaser complies with paragraphs (d) and (e) of this section; *Provided, however,* That the issuer or affiliated purchaser shall be deemed not to have violated paragraph (e)(2), (3)(3), or (e)(4) of this section if a violation occurred solely by reason of the conduct of a broker, dealer, or other person acting for it if the issuer or affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer or affiliated purchaser had taken reasonable steps to assure that the broker, dealer, or other person would comply with paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(ii) For any broker, dealer, or other person acting for a Section 13(e) issuer, or for an affiliated purchaser of such an issuer, to effect any Rule 13e-2 purchase or to make or cause to be made any Rule 13e-2 bid that he knows or has reason to know is a Rule 13e-2 purchase or a Rule 13e-2 bid unless that broker,

dealer, or other person complies with paragraphs (e)(2), (e)(3), and (e)(4) of this section: *Provided, however,* That the broker, dealer, or other person shall be deemed not to have violated paragraph (e)(2), (e)(3), and (e)(4) of this section if a violation occurred solely by reason of the conduct of the Section 13(e) issuer or affiliated purchaser if the broker, dealer, or other person did not know or have reason to know that such issuer or affiliated purchaser was engaging or would engage in such conduct.

(c) *Application of section to Section 15(d) issuer or any affiliated purchaser of such issuer.*

It shall be unlawful as a fraudulent, deceptive, or manipulative act or practice for any Section 15(d) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e-2 purchase or to make or cause to be made any Rule 13e-2 bid unless that issuer or affiliated purchaser complies with paragraph (d) of this section.

(d) *Disclosure of certain information.*

(1) A person who is required to comply with paragraph (d) shall not effect a Rule 13e-2 purchase, or a series of Rule 13e-2 purchases, that seeks the acquisition of more than two percent of the outstanding shares of any class of common stock or preferred stock within any 12-month period, unless disclosure is made of the following information in a manner reasonably calculated to inform investors before any such Rule 13e-2 purchase is effected, or any Rule 13e-2 bid that could result in any such Rule 13e-2 purchase is made:

(i) The estimated time at which, or time period during which, the purchase or purchases are proposed to be effected;

(ii) The maximum number of shares of the security proposed to be purchased or the maximum amount of funds or other consideration to be expended;

(iii) The purpose or purposes to be achieved through acquisition of the shares to be purchased; and

(iv) Any plan or proposal that relates to, or would result in, the disposition of the shares to be purchased.

(2) A person who is required by paragraph (d)(1) of this section to disclose the information described therein shall also disclose that information, before any Rule 13e-2 purchase is effected, or any Rule 13e-2 bid is made, to each national securities exchange on which the securities to be purchased are registered and listed for trading and to the NASD if the securities to be purchased are authorized for quotation in NASDAQ.

(3) A person who is required to comply with paragraph (e) of this section shall disclose to any broker, dealer, or other person acting on his behalf in connection with a Rule 13e-2 purchase that the transaction is a Rule 13e-2 purchase and that it must be effected in accordance with paragraph (e) of this section.

(e) *Purchasing requirements.*

(1) *One broker or dealer.* A person required to comply with paragraph (e)(1) shall not effect any Rule 13e-2 purchase or purchases with a dealer, or from or through more than one broker on any single day, nor shall such person make or cause to be made any Rule 13e-2 bid to any dealer, or through more than one broker on any single day;

Provided, however, That

(i) If a broker is not used on a day, Rule 13e-2 purchases may be effected with, and Rule 13e-2 bids may be made to, a single dealer on that day;

(ii) This paragraph (e)(1) shall not apply to Rule 13e-2 purchases that are not solicited by or on behalf of that person; and

(iii) Where Rule 13e-2 purchases or Rule 13e-2 bids are made by or on behalf of more than one affiliated purchaser (or the issuer and one or more affiliated purchasers) on a single day, this paragraph (e)(1) shall apply to all such bids and purchases in the aggregate.

(2) *Time limitations.* A person required to comply with paragraph (e)(2) shall not effect any Rule 13e-2 purchase from or through a broker or dealer

(i) In a reported security for which the principal market is a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the period commencing one-half hour before the scheduled close of trading in the principal market for the security and ending with the

termination of the period in which last sale prices are reported in the consolidated system;

(ii) In a reported security for which the principal market is not on a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(iii) On a national securities exchange, in any exchange traded security, (A) if the Rule 13e-2 bid would constitute the opening bid for the security on such exchange; or (B) during the one-half hour before the scheduled close of trading on the exchange;

(iv) Otherwise than on a national securities exchange in any NASDAQ security unless a current independent bid quotation for the security is reported in Level 2 of NASDAQ.

(3) *Price limitations.* A person required to comply with paragraph (e)(3) shall neither effect any Rule 13e-2 purchase from or through a broker or dealer at a purchase price, nor make nor cause to be made any Rule 13e-2 bid at a price

(i) For a reported security, higher than the published bid, as that term is defined in Rule 11Ac1-1(a)(9) under the Act [§240.11Ac1-1(a)(9)], that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, higher than the highest current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange, for a NASDAQ security, higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry.

(4) *Volume limitations.* A person required to comply with paragraph (e)(4) shall not effect from or through a broker or dealer any Rule 13e-2 purchase, other than a block purchase, or any purchase through the exercise of an exchange listed call option

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 13e-2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds the higher of (A) one round lot or (B) the number of round lots closest to 15 percent of the trading volume for the security;

(ii) Of any other security, in an amount that, (A) when added to the amounts of all other Rule 13e-2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds one round lot and (B) when added to the amounts of all other Rule 13e-2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser during that day and the preceding six calendar days, exceeds 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(f) Paragraph (e) of this section shall not apply to a bid or purchase that is:

(1) Subject to, and made in compliance with, Rule 10b-7 under the Act [§240.10b-7];

(2) By the issuer and is subject to, and made in compliance with, Rule 13e-1 under the Act [§240.13e-1];

(3) Pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e-4 under the Act [§240.13e-4];

(4) Pursuant to a tender offer that is subject to, and made in compliance with, section 14(d) of the Act and the rules and regulations thereunder;

(5) Pursuant to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments;

(6) Pursuant to a merger, acquisition, or similar

transaction involving a recapitalization;

(7) A bid for or purchase of securities of a dissenting shareholder who has asserted rights of appraisal with respect to his shares;

(8) Made to satisfy mandatory sinking fund obligations that must be satisfied not more than one year from the time such bids or purchases are made;

(9) A bid for or purchase of any fractional interest in a security, evidenced by a scrip certificate, order form, or similar document;

(10) A bid for or purchase of securities from an employee upon termination of the employment relationship, or from a former employee of the issuer or of any wholly-owned subsidiary thereof, or from the estate of such employee, pursuant to any right or obligation to purchase such securities established in connection with the employment of, or the sale of such securities to, the employee; and

(11) A bid for or purchase of any security that is not traded on a national securities exchange and with respect to which the issuer thereof does not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

(g) The Commission may, upon written request or upon its own motion, exempt any Rule 13e-2 bid or Rule 13e-2 purchase from one or more paragraphs of this section, either unconditionally or upon specified terms or conditions, as not comprehended within the intended meaning and purpose of this section or of such paragraph or paragraphs.

2. By amending paragraph (f) of §240.10b-6, redesignating paragraph (g) thereof as paragraph (h) and adding a new paragraph (g), as follows (Attention — The text of the following proposed amendments uses ★ ★ to indicate additions and [ ] brackets to indicate deletions):

§240.10b-6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(f) If [the provisions of] this section would apply to bids for or purchases of any equity security [pursuant to an issuer tender offer, as that term is defined in Rule 13e-4(a)(2) under the Act, or to a tender offer subject to section 14(d) of the act and the rules applicable thereto,] solely because the issuer [has] ★had★ outstanding securities [which are] immediately convertible into, or exchangeable or exercisable for, [the security for which the tender offer is to be made] ★that security,★ [such provisions] ★this section★ shall not apply to ★any★ such bid[s] [and] ★or★ purchase[s if such bids and purchases are subject to and made in accordance with the provisions of Rule 13e-4 or section 14(d) and the rules applicable thereto] ★that is subject to, and is made or effected in accordance with (1) Rule 13e-2 under the Act, (2) Rule 13e-4 under the Act, or (3) section 14(d) of the Act and the rules and regulations thereunder.

(g) A bid for or purchase of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is defined in Rule 13e-2(a)(8) under the Act.★

VIII. SOLICITATION OF COMMENTS

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should submit six copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than January 15, 1981. Reference should be made to File No. S7-858. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6249/October 23, 1980

TRUST INDENTURE ACT OF 1939
Release No. 594/October 23, 1980

ADOPTION OF INTERIM RULES UNDER THE TRUST INDENTURE ACT OF 1939

ACTION: Adoption of interim rules.

SUMMARY: The Commission is adopting, on an interim basis, rules under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 to establish ceiling limitations on the amount of debt securities that can be partially or totally exempt from that Act at $2,000,000 and $5,000,000 respectively. The rules adopted today are in response to recent legislative amendments, the substance of which was submitted to Congress by the Commission. The Commission is also soliciting public comment on whether, and in what form, the interim rules should be adopted as final rules.

EFFECTIVE DATE: October 23, 1980. Comments on the interim rules must be received on or before November 30, 1980.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549. Comments should refer to File No. S7-859 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272-2644), Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is adopting interim rules effective until December 31, 1981, under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 (the "Trust Indenture Act") [15 U.S.C. 77ddd et seq.] to establish the ceiling limitations at $2,000,000 and $5,000,000 respectively. Sections 304(a)(8) and 304(a)(9) are the small offering exemptions under the Trust Indenture Act. Presently, offerings of less than $250,000 are completely exempt from the Trust Indenture Act pursuant to Section 304(a)(8) of that Act. In general, offerings greater than $250,000 but less than $1,000,000 are required to utilize an indenture; however, an offering of this size is exempt from the qualification provisions of the Trust Indenture Act pursuant to Section 304(a)(9) of that Act. The rules adopted today are in response to recent legislative amendments the substance of which was submitted to Congress by the Commission.

Section 302 of the Small Business Investment Incentive Act of 1980 (the "Act") (October 21, 1980) amends Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act. These amendments affect three distinct areas. First, the $250,000 exemption ceiling included in Section 304(a)(8) has been replaced by a reference to the amount that can be exempted from registration under Section 3(b) of the Securities Act of 1933[1] (the "Securities Act") [15 U.S.C. 77a et seq.]. Second, the Section 304(a)(9) ceiling of $1,000,000 has been increased to $10,000,000. Third, the Commission is given informal rulemaking authority to establish, from time to time, appropriate amounts beneath the respective ceiling amounts that can be partially or totally exempt from the Trust Indenture Act pursuant to Sections 304(a)(8) and 304(a)(9).

In its legislative proposal to Congress recommending the amendments,[2] the Commission indicated that compliance with the Trust Indenture Act has become a significant burden to small issuers. The Commission noted that, although the burdens under the Trust Indenture Act are generally not as great in those instances where a qualified indenture is not required, the cost of a non-qualified indenture is still significant due to the fixed costs of preparing such a complex document. The Commission further noted that the definitions, exemptions, requirements and procedures for qualification of indentures and trustees under the Trust Indenture Act are closely integrated with the

[1]As amended by Section 302 of the Act, the ceiling amount of Section 3(b) of the Securities Act is increased to $5,000,000.

[2]Hearings on S.1533, S.1940, and S.2699 Before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs; 96th Cong., 2nd Sess., 521 (1980).

provisions of the Securities Act. However, the alignment of the two Acts has been substantially disrupted as a result of certain amendments to the Securities Act and revisions to the rules and regulations promulgated thereunder, because either a corresponding amendment to the Trust Indenture Act was not considered or the Commission had no rulemaking authority to resolve the problem. Finally, the Commission noted that the Trust Indenture Act small offering exemptions have remained unchanged since 1939 and, thus, do not represent present day purchasing power.

In adopting the proposals submitted by the Commission, Congress has accomplished three important objectives. First, the increase in the Trust Indenture Act small offering exemptions alleviates the lack of coordination between the two Acts by, in effect, updating the Trust Indenture Act. Second, in order to add a degree of flexibility to the administration of the Trust Indenture Act, especially with a view to limiting the regulatory burden on small businesses, rulemaking authority is granted to the Commission to establish, from time to time, appropriate amounts of securities that may be exempted from the Trust Indenture Act in a manner consistent with the protection of investors. Third, by increasing the dollar amounts of debt securities that may be totally or partially exempt from the Trust Indenture Act the amendments reduce the costs normally associated with debt offerings which have traditionally represented an additional impediment to the capital raising process.[3]

In connection with its proposal, the Commission indicated to Congress that, if the amendments were adopted, it believed that appropriate initial ceiling amounts for Sections 304(a)(8) and 304(a)(9) would be $2,000,000 and $5,000,000 respectively. In this regard, the Commission stated that while one of the primary purposes of recommending the amendments was to allow the Section 304(a)(8) exemption to move in tandem with the Securities Act Section 3(b) exemption to prevent future discrepancies between the two Acts, the rulemaking authority granted to the Commission is also designed to add a degree of flexibility to the administration of the Trust Indenture Act by providing for the possibility of a gradual increase in the ceiling.[4]

Accordingly, the Commission is adopting interim rules, effective immediately, pursuant to Sections 304(a)(8) and 304(a)(9). These rules will establish the ceiling under Sections 304(a)(8) and 304(a)(9) at $2,000,000 and $5,000,000 respectively.

The Commission is also soliciting comment on the ceilings established herein before it adopts any final rules. The Commission also intends to evaluate the ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) of the Securities Act, particularly in light of the recent legislative action in raising the Section 3(b) ceiling,[5] and believes that the ceilings established under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act should be similarly evaluated. Accordingly, the Commission has adopted Rules 4a-1 and 4a-2 as interim rules to expire on December 31, 1981, absent further action by the Commission. The Commission invites comment on the $2,000,000 and $5,000,000 ceilings under the Trust Indenture Act. Commentators are asked to focus on the prescribed limits established herein as they relate to the exemptive rules promulgated under Section 3(b) of the Securities Act and Form S-18, the simplified registration and reporting form for first time issuers.[6]

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt interim Rules 4a-1 and 4a-2, effective until December 31, 1981, in view of the enactment of the Small Business Investment Incentive Act of 1980. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b), for good cause finds that prior notice and comment are not required, and that to provide for prior notice and comment is impracticable, unnecessary, and contrary to the public interest. In addition, the Commission, pursuant to Section

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[3]S. Rep. No. 958, 96th Cong., 2d Sess., 13 (1980).

[4]As the Senate Committee report indicates, "[B]y allowing the Commission to set amounts within the prescribed ceiling, an aspect of flexibility that will be added to the Trust Indenture Act, Congress can be assured that its intent will be consistent with its approach to exempting small offerings under Section 3(b) of the Securities Act." *Id.* at 13.

[5]Small Business Investment Incentive Act of 1980, §301 (October 21, 1980).

[6]17 CFR 239.28.

553(d) of the APA, 5 U.S.C. 553(d), finds good cause to adopt the foregoing interim rules, effective immediately, in view of the recent enactment of the Small Business Investment Incentive Act, and the necessity of providing the Commission with an opportunity to coordinate the levels of exemptions available under the Trust Indenture Act with those available under the Securities Act.

TEXT OF RULES

Part 260 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding §§260.4a-1 and 260.4a-2 to read as follows:

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

§260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to more than $2,000,000 aggregate principal amount of any securities of the same issuer.

§260.4a-2 Exempted securities under section 304(a)(9).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $5,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $5,000,000 aggregate principal amount of securities of the same issuer.

* * * * *

AUTHORITY: The Commission hereby adopts Rules 4a-1 and 4a-2 pursuant to Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939. [Sec. 302, Pub. L. 96-477; Secs. 304(a)(8), 304(a)(9), 53 Stat. 1153; 15 U.S.C. 77ddd(a)(8), 77ddd(a)(9)].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6250/October 23, 1980

FIXED DOLLAR LIMITATION ON AMOUNT OF SECURITIES SOLD PURSUANT TO EXEMPTION

ACTION: Technical Rule Amendments

SUMMARY: The Commission is amending Rule 242 promulgated under Section 3(b) of the Securities Act of 1933 to specify a fixed dollar limitation on the amount of securities that can be sold thereunder. Rule 242 provides an exemption from registration for sales of Securities to an unlimited number of "accredited persons" as defined in the Rule, and to 35 additional purchasers. The amendment maintains the present limit of $2,000,000 less the aggregate gross proceeds from all securities sold pursuant to any Section 3(b) exemption, on the aggregate offering price of an issue of securities that can be sold in reliance on the Rule, and is necessitated by recent legislative changes made in that Section.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Paula L. Chester, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6180 (January 17, 1980) [45 FR 6362] the Commission announced that it was adopting Rule 242, a small issue exemptive rule under Section 3(b) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77c(b), which allows certain corporate issuers to offer and sell up to $2,000,000 of their securities in a six-month period to an unlimited number of "accredited investors" as defined in the Rule, and to 35 other purchasers. As adopted, the Rule limits the amount of each issue of securities sold pursuant to the rule to the amount specified in Section 3(b), which at the time of the adoption was $2,000,000.

The Commission notes, however, that the recently enacted Small Business Investment Incentive Act of 1980, among other things, increased from $2,000,000 to $5,000,000 the ceiling on the Commission's authority under Section 3(b) of the

Securities Act.[1] Consequently, absent appropriate amendments to the Rule, an issuer could sell up to $5,000,000 in a six-month period. However, the Commission, in adopting Rule 242, intended that offers and sales in reliance on the Rule be limited to $2,000,000 in any six-month period, the maximum amount allowed under Section 3(b) at that time.[2] In addition, the legislative history of the new statute clearly reflects the Commission's position that it intended to carefully evaluate the ceilings on all of the exemptions promulgated pursuant to Section 3(b), before increasing any limits to the new statutory amount. Thus, the Commission is today amending paragraph (c) of the Rule to specify the dollar amount originally intended in order to maintain the *status quo* pending further review of its experience under Rule 242.

The Commission intends to reconsider the limitation on the amount of securities that can be sold under Rule 242 and other ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) in the near future, particularly in light of recent Congressional action in raising the Section 3(b) ceiling. The action today, however, is intended to maintain the Rule 242 limitations as originally intended until such time as the Commission has had reasonable opportunity to evaluate the effectiveness of the Rule and prescribe appropriate limits under the new statutory ceiling.

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt these technical amendments to Rule 242 effective immediately to retain the fixed dollar limitations originally intended to apply under that Rule. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedures Act ("APA"), 5 U.S.C. 553(d), finds good cause to adopt the foregoing technical amendments to Rule 242 effective immediately to maintain previously established dollar limits under that rule.

TEXT OF AMENDMENT

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by amending paragraph (c) of §230.242 to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.242 Exemption of limited offers and sales by qualified issuers.

* * * * *

(c) *Limitation on aggregate offering price of each issue.* The aggregate offering price of an issue of securities of the issuer by a qualified issuer shall not exceed $2,000,000, less the aggregate gross proceeds from all securities sold pursuant to any section 3(b) exemption (other than securities of the issuer sold pursuant to an exemption from registration provided by Regulation A pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b-3 under the Securities Exchange Act of 1934 which meets the conditions of paragraphs (a) through (c) of that rule) six months prior to the commencement and during the offering of the issue of securities pursuant to this rule.

* * * * *

AUTHORITY: The Commission hereby adopts the amendment to Rule 242 pursuant to Sections 3(b) and 19(a) of the Securities Act of 1933. [Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat 908; 59 Stat. 167; 84 Stat. 1480; sec. 308(a)(1), (2), (3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a)].

By the Commission.

George A. Fitzsimmons
Secretary

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[1]Small Business Incentive Investment Act, §301 (October 21, 1980).

[2]In the release adopting the rule, the Commission noted that the purpose of a certain provision in the proposed version of the Rule was to ensure that the combined use of Rule 242 and other Section 3(b) exemptions would not exceed $2,000,000 in any six-month period. The Commission further noted that, "consistent with [that] intent, a revision in the final Rule requires that the issuer must also subtract from the aggregate dollar price ceiling all Section 3(b) sales of securities of the issuer made during the issue, unless effected pursuant to an employee plan under the Regulation A exemption." *See* Securities Act Release No. 6180 (January 17, 1980) [45 FR 6362].

SECURITIES ACT OF 1933
Release No. 6251/October 23, 1980

REPORT OF SALES OF SECURITIES

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposed amendments to Rule 463 and related Form SR under the Securities Act of 1933. The proposals, if adopted, would extend the requirement to file Form SR (Report of the Sales of Securities and Use of Proceeds Therefrom) to issuers of securities which will be sold by a direct distribution or by a best efforts underwriting and would reduce the number of reports which must be filed regarding a given offering. The proposals would also change Form SR to a standardized short-answer format, requiring issuers to provide additional identifying information and a more detailed accounting of offering expenses and the use of proceeds. These proposals are intended to provide the Commission and investors with more meaningful information concerning first-time offerings, direct distributions and best efforts underwritings.

DATE: Comments should be submitted on or before December 5, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-860. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth Norsworthy, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, or Jeffry L. Davis (202) 272-2850, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 463 of Regulation C [17 CFR 230.463] under the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.] and to related Form SR [17 CFR 239.61] pursuant to Section 19(a) of the Act. Rule 463 applies to the first effective registration statement filed under the Act by an issuer and requires such first-time registrants to file reports on Form SR disclosing the progress of the offering and the use of proceeds. Forms SR are required to be filed within ten days after the initial three months of the effective date of the registration statement and at six-month intervals thereafter until the completion or termination of the offering, following which a final report is filed.

As discussed in more detail below, proposed Rule 463 is designed to establish a simplified and standardized reporting framework to provide more meaningful information to the Commission and investors. While the number of issuers required to file Form SR would be increased by including issuers of direct distributions or best-efforts underwritings as well as first-time issuers, the proposal would decrease the number of Forms SR which are currently required to be filed by an issuer subject to the filing requirement.

Form SR currently requires the issuer to report in a narrative format upon the progress of the offering and the use of proceeds. The proposed revision would require issuers to furnish information in a short-answer format so that the data can be easily digested by a data processing system. The proposed Form would also be expanded to require issuers to furnish certain information relating to the offering and the securities registered and to provide a more detailed accounting of the offering expenses and the use of net proceeds.

In order to facilitate the comment process, this release contains background information, a discussion of the purposes for the proposed amendments and a synopsis. While the synopsis is intended to assist in a better understanding of the proposals, attention is directed to the text of the proposals for a more complete understanding.

A. *Background*

Rule 463 and Form SR, requiring reports by first-time registrants of sales of registered securities and the use of proceeds therefrom, were adopted nine years ago[1] to enable investors and the Commission to obtain follow-up information about first-time offerings. At that time, the Commission indicated

[1]See Securities Act Release No. 5141 (April 19, 1971) [36 FR 7896].

that the following concerns had prompted the requirement for such reports:

(1) In the case of issuers which are not required to file periodic reports,[2] the Commission did not know when an offering had commenced and terminated and consequently was unable to enforce adequately the prospectus delivery and updating requirements of Section 4(3)[3] and Section 10(a)(3) of the Act.[4]

(2) If the Commission and investors were not given follow-up information concerning the actual use of proceeds from the offering, neither the Commission nor investors would be in a position to know whether or not the prospectus adequately and accurately disclosed the intended use of proceeds.[5]

Rule 463 has been amended once since 1971 — in 1979, at the time of the adoption of Form S-18 [17 CFR 239.28], a simplified registration statement form for small issuers.[6] At that time, in order to correspond to General Instruction B in Form S-18 permitting filing at a regional office or at the Commission's main office, Rule 463 was amended to provide that Form SR should be filed at the office where the registration statement was filed.

The proposed amendments to Rule 463 and Form SR are intended to facilitate the determination of whether an issuer of a direct distribution or a best efforts underwriting which is not a first-time offering is complying with the prospectus delivery and updating requirements of Sections 4(3)[7] and 10(a)(3) of the Act. Even in the case of issuers which are required to file periodic reports pursuant to Section 12 or 15(d) of the Exchange Act, information with respect to the progress of the offering may be difficult to obtain in an efficient and timely manner from the financial statements contained in quarterly and annual reports.

The proposals are also intended to provide the Commission and investors with a more understandable and detailed accounting of an issuer's actual use of proceeds in order to better evaluate the manner in which the intended use of proceeds was disclosed in the prospectus.

If adopted, the proposals will also have two tangential effects. They will permit the Commission to: (1) assemble a data base relating to first-time offerings, direct distributions and best efforts offerings with respect to the cost of such offerings and the manner in which they are conducted in order to determine more accurately the impact of alternative regulatory actions affecting the issuers of such offerings; and (2) provide more complete information with respect to such offerings in the Commission's annual report.

B. *Synopsis of Proposals*

1. *Applicability.*

Rule 463 currently applies only to first-time issuers. To enable the Commission to monitor compliance with prospectus delivery and updating requirements in direct distributions and best efforts offerings, the proposed amendments would extend the filing requirement to the issuers of such offerings. It should be noted that the Rule would also be revised to make clear that a successor issuer would succeed to the reporting obligation of the prior issuer.

Rule 463 currently excepts registered investment companies, public utility companies filing reports with any State or Federal authority and issuers of American depository receipts for foreign securities.

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[2]This pertains to issuers which are not subject to the reporting requirements of Sections 12 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.].

[3]Section 4(3) provides that dealers effecting transactions in a security registered for the first time under the Act must deliver a prospectus to prospective customers during the ninety-day period following the commencement of the offering.

[4]Section 10(a)(3) provides that if a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein must be no more than sixteen months old.

[5]See Securities Act Release No. 5130 (February 8, 1971) [36 FR 3429].

[6]See Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562].

[7]Section 4(3) provides that dealers effecting transactions in a previously registered security must deliver a prospectus to prospective customers during a forty-day period following the commencement of the offering.

While the proposal would continue to except registered investment companies and issuers of American depository receipts from the filing requirement, public utility companies which are required to file reports with State or Federal authorities would no longer be excepted.

In addition, proposed Rule 463 would exempt from the filing requirement issuers which directly distribute securities in certain specialized offerings, including securities issued in connection with a business combination as defined in Rule 145(a) [17 CFR 230.145(a)]; pursuant to an employee benefit plan; or pursuant to a dividend reinvestment plan.

2. *Filing Procedures*

Form SR is presently required to be filed within ten days after the end of the first three-month period following the effective date of the registration statement and within ten days after the end of each six-month period following such three-month period. A final report is required to be filed within ten days after completion or termination of the offering.

To minimize possible burdens on issuers and still provide timely and meaningful information to investors and the Commission, proposed Rule 463 would require an issuer to file only an initial report if the offering extends beyond six months after the effective date of the registration statement, a second report after the termination of the offering and a third report if substantially all of the proceeds have not been applied at the time of the termination of the offering. Under the proposed Rule, if an offering terminates within six months after the effective date of the registration statement and substantially all of the offering proceeds are applied prior to or promptly after the termination of the offering, only one report would be required. To permit issuers adequate time to prepare the required information, proposed Rule 463 allows an issuer thirty days to file these reports.

Rule 463 presently refers to the "termination" and "completion" of the offering without defining those terms. In order to clarify the time at which an issuer is required to file the second report, the proposals refer only to "termination" and define that term as the date on which the securities cease to be offered for sale. In order to make clear that the third report should disclose the final application of the offering proceeds, paragraph (c)(2) provides that the term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

If adopted proposed Rule 463 would no longer follow the automatic reporting framework of the present Rule. Specific comment is requested on whether the timing of the filing requirement should be predicated upon the passage of six-month intervals until the termination of the offering, as currently required by the Rule.

3. *Disclosure Requirements*

In order to provide more meaningful information to investors and the Commission with respect to public offerings by issuers subject to proposed Rule 463, proposed Form SR has been substantially revised both in terms of the format and the information required. Rather than the current narrative format, the proposed Form would establish a short-answer framework. With respect to disclosure, the proposed Form would require: certain identifying and trading market data[8]; information concerning the progress of the offering; and disclosure with respect to the use of proceeds.

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[8]Form SR currently requires that the following identifying data be given: the name of the registrant and the name of the managing underwriter, if any.

The proposed Form would require the following additional information:

(a) CUSIP number of the issuer (proposed Item 2);

(b) Standard Industrial Classification (SIC) of the issuer (proposed Item 3);

(c) the effective date of the registration statement (proposed Item 4(a));

(d) the SEC file number assigned to the registration statement (proposed Item 4(b));

(e) whether or not the registration statement is the first effective registration statement of the issuer (proposed Item 4(c));

(f) whether or not the issuer is required to file periodic reports (proposed Item 5(a));

(g) if the issuer is required to file periodic reports, the SEC file number assigned to such reports (proposed Item 5(b));

Form SR currently requires the issuer to state the date the offering commenced; if the offering did not commence, the reasons why; the date the offering was completed; if the offering was terminated, the reasons why; the total amount of securities registered, sold and still being offered; and the total amount received from the public. In addition to this information, the proposed Form requires the issuer to report (i) the aggregate offering price of the units registered and the aggregate offering price of the units sold; (ii) the total amount of securities sold, but not delivered, as of the most recent practicable date; and (iii) the date on which substantially all of the offering proceeds were applied.

Form SR currently requires the issuer to provide "reasonably itemized statement" of the use of proceeds (noting in the instructions that expenses paid for underwriting discounts and commissions, finders' fees, and expenses paid to or for the underwriters should be stated separately) and whether the expenses were paid by the issuer or by "others" (i.e., selling shareholders). In order to provide a complete accounting, the revised Form asks the issuer to report the expenses paid by the issuer to certain affiliates[9] and to others in all of the expense categories required to be disclosed in Part II of the registration statement forms.

The present Form requires the reporting of every purpose for which significant amounts — determined by the lesser of $50,000 or 5% of the total proceeds — were used (noting in the instructions that payments to certain affiliates of the issuer should be shown separately), as well as any temporary investments. In order to provide more precise and detailed information concerning the use of proceeds, the revised Form would require that the use of proceeds be stated separately for several categories, e.g., construction, research, and development. These categories reflect the uses of proceeds which are most often disclosed in prospectuses. As in the current Form, the issuer would be required to report, with respect to each category, payments to certain affiliates[10] and to others.

Finally, the present Form asks the issuer to report and explain any deviation in the use of proceeds as set forth in the prospectus. In order to reduce reporting obligations, the revised Form would require the issuer to report only material changes in the use of proceeds described in the prospectus.

REQUEST FOR COMMENT

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact on the proposals contained herein, are requested to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the commission in achieving the objectives set forth in this release.

TEXT OF PROPOSALS

17 CFR Chapter II is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising §230.463 to read as follows:

§230.463 Report of sales of securities and use of proceeds therefrom.

(a) With respect to any effective registration statement that is the first effective registration statement of the issuer or successor issuer or

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Footnote 8 continued

(h) the method of distribution of the securities (i.e., direct, best efforts, or firm commitment underwriting) (proposed Item 9);

(i) the trading market(s), if any, for the securities (i.e., exchange or over the counter) (proposed Item 10); and

(j) the type of securities (i.e., debt, equity, convertible, limited partnership or other) (proposed Item 12).

[9]These persons include officers, directors or general partners of the issuer or their associates, as well as persons owning 10% or more of any class of equity securities of the issuer and affiliates of the issuer. With the exception of general partners, the persons specified in the proposal are the same as under the current Form.

[10]*Id.*

discloses that the securities will be distributed by the issuer or discloses that the securities will be distributed on a best efforts basis, the issuer or successor issuer shall file at the same office of the Commission where the registration statement was filed five copies of a report on Form SR (§239.61 of this chapter) promptly, but not later than thirty days:

(1) After the date which is six months after the effective date of such registration statement unless the offering has terminated prior to the end of such six month period;

(2) After the termination of the offering; and

(3) After the application of substantially all the proceeds from the offering unless such application has been disclosed in a report filed pursuant to paragraph (a)(2) of this section.

(b) Paragraph (a) of this section shall not apply to any effective registration statement for securities to be issued in connection with a business combination as described in Rule 145(a) (§230.145(a) of this chapter); pursuant to an employee benefit plan; pursuant to a dividend reinvestment plan; as American depository receipts for foreign securities; or by any investment company registered under the Investment Company Act of 1940.

(c) For the purposes of this section:

(1) The term "termination of the offering" shall mean the date on which the securities cease to be offered for sale; and

(2) The term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By revising §239.61 to read as follows:

§239.61 Form SR, report of sales of securities and use of proceeds therefrom.

SEC USE ONLY
Filing Date

Day	Mo.	Year
□	□	□

U.S. SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

REPORT OF SALES OF SECURITIES
AND THE USE OF PROCEEDS THEREFROM

FIRST □ SECOND □ THIRD □

	Day	Mo.	Year		Day	Mo.	Year
For Period From	□	□	□	TO	□	□	□

General Instructions

A. Answer every item by entering the information requested in the boxes or blanks provided. If an item is inapplicable or the answer is in the negative, so state. If additional space is required, continue the answer on the attached sheet. Where the number of boxes provided for an answer exceed the number of digits contained in that answer, zero(es) should be entered in the left-most box(es). For example, if two boxes are provided for entering the month of the year and the 6th month is to be entered, the entry should appear as [0][6].

B. No fee is required to be paid to the Commission in connection with the filing of this report.

C. If the report is filed by a successor issuer, the items should be answered with respect to that successor issuer. For example, in response to Item 3, the SIC code of the successor, not the predecessor, issuer should be given.

1. (a) Name of issuer _____

_____

(b) Name of successor issuer, if any _____

_____

2. (a) Has the issuer been assigned a CUSIP number? Yes □ No □

(b) If yes, specify the first six (6) digits. □□□□□□

3. Indicate the issuer's Standard Industrial Classification (SIC) at the 3 digit level. □□□

4. (a) What was the effective date of the registration statement for which this report is filed?

Day	Mo.	Year
□	□	□

(b) Indicate the SEC file number assigned to that registration statement. 2-□□□□□

(c) Was that registration statement the first effective registration statement of the issuer or successor issuer? Yes ☐ No ☐

5. (a) Has the issuer filed any periodic reports pursuant to Section 12 or 15(d) of the Securities Exchange Act of 1934? Yes ☐ No ☐

(b) If yes, indicate the SEC file number assigned to such periodic reports. ☐ - ☐☐☐☐

6. (a) Date offering commenced. Day ☐ Mo. ☐ Year ☐

(b) Date offering terminated. Day ☐ Mo. ☐ Year ☐

(c) Date substantially all of the offering proceeds were applied. Day ☐ Mo. ☐ Year ☐

7. (a) Did the offering terminate prior to the sale of any securities? Yes ☐ No ☐

(b) If yes, explain briefly. .....

.....

.....

NOTE: If the offering terminated prior to the sale of any securities, the registration statement should be withdrawn pursuant to Rule 477, and Items 8 through 19 need not be answered.

8. (a) Did the offering terminate prior to the sale of all of the securities registered? Yes ☐ No ☐

(b) If yes, explain briefly. .....

.....

.....

9. Indicate the method of distribution of the securities registered.

Directly ☐ by Issuer | Best Efforts ☐ Underwriting | Firm Commitment ☐ Underwriting

10. Name of managing underwriters, if any.

.....

11. (a) Indicate the trading market(s) (if any) for the securities registered:

National Securities Exchange ☐ | Over-the-Counter ☐ | Other ☐

(b) If traded over-the-counter, are the registered securities listed on NASDAQ? Yes ☐ No ☐

(c) If "other" is indicated in response to (a), explain briefly. ...

.....

.....

12. (a) Indicate the type of securities registered.

Date ☐ | Equity ☐ | Convertible ☐

Limited Partnership ☐ | Other (e.g. investment contract) ☐

(b) If "convertible" or "other," describe briefly. .....

.....

.....

13. Indicate below the number and aggregate offering price of units of securities registered and sold:

	Number of Units Registered	Aggregate Offering Price of Units Registered	Number of Units Sold	Aggregate Offering Price of Units Sold
Debt	_____	$ _____	_____	$ _____
Equity	_____	_____	_____	_____
Limited Partnership	_____	_____	_____	_____
Convertible .	_____	_____	_____	_____
Other	_____	_____	_____	_____
Total:	_____	$ _____	_____	$ _____

14. Total amount of securities sold, but not delivered, as of the most recent practicable date: $ _____

15. Total amount received from the sale of the securities registered (excluding amount received for the accounts of selling security holders): $_____

16. Indicate below the amount of expenses incurred for the account of the issuer for each of the following purposes:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer.	Payments to others.

	(A)	(B)
a. Underwriting Discounts and Commissions	$ _____	$ _____
b. Finders' Fees	$ _____	$ _____
c. Expenses Paid to or for the Underwriters	$ _____	$ _____
d. Registration Fees	$ _____	$ _____
e. State Taxes and Fees, including Blue Sky Fees	$ _____	$ _____
f. Trustees' and Transfer Agents' Fees	$ _____	$ _____
g. Printing and Engraving Costs	$ _____	$ _____
h. Legal Fees	$ _____	$ _____
i. Accounting Fees	$ _____	$ _____
j. Engineering Fees	$ _____	$ _____
k. Premium (or increase in premium) paid for liability insurance	$ _____	$ _____
l. Other Expenses (identify)	$ _____	$ _____
m.	$ _____	$ _____
n.	$ _____	$ _____
Total Expenses:	$ _____	$ _____

17. Net proceeds to the issuer after above expenses: $_____

18. Indicate below the amount of the net proceeds to the issuer used or to be used for each of the following:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer.	Payments to others.
a. Construction of plant, building and facilities	$ _____	$ _____
b. Purchase and installation of machinery and equipment	_____	_____
c. Purchase of real estate	_____	_____
d. Acquisition of other businesses	_____	_____
e. Repayment of indebtedness	_____	_____
f. Salaries and fees	_____	_____
g. Research and development	_____	_____
h. Raw materials, inventory and supplies	_____	_____
i. Exploration	_____	_____
j. Selling, advertising and other sales promotion	_____	_____
k. Temporary investment—specify		
.....	_____	_____
l. Organization expenses	_____	_____
m. Other—specify.....	_____	_____
Total:	$ _____	$ _____
Balance of cash proceeds on hand:		$ _____

19. (a) Do the above disbursements represent a material change in the use(s) of proceeds described in the prospectus? Yes☐No☐

(b) If yes, explain briefly. .....

.....

.....

Signature After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____ _____

(Date) (Signature)

The original report shall be signed by an executive officer or general partner of the issuer or his/her authorized representative. If the report is signed on behalf of a person by his/her authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the report. The name and any title of the person who signs the report shall be typed or printed beneath his/her signature.

Attention: Intentional misstatements or omissions of facts constitute Federal criminal violations (See 18 U.S.C. 1001).

FORM SR CONTINUATION SHEET

Item of Form

Identify *Answer*

* * * * *

[Sec. 19(a), 48 Stat. 85; Sec. 209, 48 Stat. 908; 15 U.S.C. 77s (a).].

AUTHORITY

These amendments are being proposed pursuant to Section 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17222/October 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6248/October 17, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17223/October 17, 1980

A notice has been issued giving interested persons until November 7, 1980 to comment on the application of GOLDEN NUGGET, INC. to withdraw its common stock ($.833 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17224/October 17, 1980

A notice has been issued giving interested persons until November 7, 1980 to comment on the applications of the *Midwest Stock Exchange, Incorporated* for unlisted trading privileges in three stocks which are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17225/October 17, 1980

A notice has been issued giving interested persons until November 7, 1980 to comment on the applications of the *Philadelphia Stock Exchange, Inc.* for unlisted trading privileges in three stocks which are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17226/October 17, 1980

NOTICE OF FILING OF AMENDED PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-79-12

The National Association of Securities Dealers, Inc. (the "NASD" or the "Association") on October 8, 1980, submitted under Rule 19b-4 an amended proposed rule change to revise Schedule G under

Article XVIII of the NASD By-laws. The proposed rule change was originally filed on October 19, 1979. Notice of the proposed rule change was given by a Commission Release, Securities Exchange Act Release No. 16426 (December 18, 1979), and by publication in the *Federal Register* (44 FR 75542 (1979)). The amended proposed rule change alters certain sections of the proposed change in the language and format of Schedule G, which sets forth procedures for reporting over-the-counter transactions in listed securities that are required to be reported to the Consolidated Tape, by eliminating the section dealing with block transactions and by clarifying that "riskless" principal transactions, including both over-the-counter and exchange-executed trades, should be reported as single transactions in all instances, with those containing exchange-executed transactions reported solely by the exchange. Schedule G has also been amended to conform with the revisions approved on July 7, 1980 by the Commission in Securities Exchange Act Release No. 16960 (File No. SR-NASD-80-3).

Publication of the submission is expected to be made in the *Federal Register* during the week of October 20, 1980. In order to assist the Commission in determining whether to approve the amended proposed rule change or to institute proceedings to determine whether the amended proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-79-12.

Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17227/October 17, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE
17th Street and Stock Exchange Place
Philadelphia, PA 19103

(SR-Phlx-80-18)

ORDER APPROVING PROPOSED RULE CHANGE

On August 8, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend Articles IV, V, VIII, X, XI and XVIII of the Phlx By-laws. The amendments, among other things, vest the authority for disciplinary actions, including enforcement, prosecution and the imposition of sanctions, in the Business Conduct Committee and a newly created Hearing Committee. The amendments also would abolish the Member Firms Committee, establish a Marketing Committee as a standing committee, and change the size and composition of standing committees.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17090, August 25, 1980) and by publication in the *Federal Register* (45 FR 57804, August 29, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the proposed amendments would enhance the exchange's ability to comply with its statutory obligations to enforce compliance with the Act, the rules and regulations thereunder and its own rules; to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions; and to provide fair procedures for discipline in accordance with Section 6(b)(1), (6) and (7), respectively.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17228/October 20, 1980

Admin. Proc. File No. 3-5894

In the Matter of

DENNIS S. TINSKY

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act") in *In the Matter of Remit Securities, Ltd., et al.*[1], respondent Dennis S. Tinsky ("Tinsky"), president of Remit Securities, Ltd. and a resident of Miami, Florida, has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purposes of this proceeding and any other proceeding which may be brought by the Commission or any other governmental or self-regulatory body pursuant to specified sections of the Exchange Act, respondent Tinsky consents to findings by the Commission:

(1) without admitting or denying the allegations in the Order for Proceedings and the findings herein, that he:

(a) wilfully violated and wilfully aided, abetted, and induced violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer, purchase and sale of the common stock of Anglo American Properties, Inc. and Sunny Land Tours, Inc.; and

(b) wilfully aided and abetted violations of Sections 15(b), 17(a) and 17(f) of the Exchange Act and Rules 15b3-1, 17a-3, 17a-11 and 17f-2 thereunder, and Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System; and

(2) that he was permanently enjoined from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in *SEC* v. *John P. Galanis, et al.*, 78 Civil 0259 (MEF) (S.D.N.Y. 1978).

In view of the foregoing, it is in the public interest to impose the sanction specified by respondent Tinsky in his Offer of Settlement.

REMEDIAL SANCTION

Accordingly, IT IS ORDERED that respondent Tinsky be, and he hereby is, barred from association with any broker-dealer, provided that one year from the effective date of this Order, respondent Tinsky may apply to the Commission to become reassociated in a non-proprietary, non-supervisory capacity, with his duties limited to the sale of tax shelter investments, upon a showing that he will be properly supervised.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]*In the Matter of Remit Securities, Ltd., Dennis S. Tinsky and Hyman Sutnick*, Admin. Proc. File No. 3-5894. See Securities Exchange Act Release No. 16700, 19 SEC Docket 997 (March 26, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17229/October 20, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 735/October 20, 1980

In the Matter of

FINANCIAL PRINCIPLES CO., INC.
(801-10759)
MELVIN RAY HASSELL
DANNY RAY HASSELL

ORDER INSTITUTING PUBLIC PROCEEDINGS AND FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public proceedings be instituted pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(e) and 203(f) of the Investment Advisers Act of 1940 (Advisers Act) with respect to Financial Principles Co., Inc. (FPCI), a registered investment adviser located in Dallas, Texas; Melvin Ray Hassell (M. Hassell) president and director of FPCI; and Danny Ray Hassell (D. Hassell), secretary-treasurer of FPCI. At all times relevant hereto, M. Hassell and D. Hassell were persons associated with a registered broker-dealer which was a member of the National Association of Securities Dealers.

In anticipation of these proceedings, FPCI, M. Hassell and D. Hassell have submitted a joint Offer of Settlement (Offer) which the Commission has determined to accept. Under the terms of their joint offer, FPCI, M. Hassell and D. Hassell, solely for the purpose of these proceedings and without admitting or denying the allegations and findings contained therein, consent to the findings and order of the Commission imposing remedial sanctions set forth below.

Accordingly, IT IS ORDERED that such proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act and Section 203(e) and 203(f) of the Advisors Act be, and they hereby are, instituted.

II.

On the basis of this Order Instituting Public Proceedings (Order) and the joint Offer of Settlement submitted by FPCI, M. Hassell and D. Hassell, the Commission makes the following findings:

During the period from on or about October, 1976, through December, 1978, FPCI, M. Hassell and D. Hassell wilfully violated, and wilfully aided and abetted violations of Section 15(a) of the Exchange Act in that FPCI, M. Hassell and D. Hassell, while acting as brokers and dealers, made use of the mails and means and instrumentalities of interstate commerce in effecting transactions in and induced and attempted to induce the purchase and sale of, securities, without being registered in accordance with Section 15(b) of the Exchange Act. These securities were offered and sold to at least 175 investors for proceeds in excess of $2.4 million.

III.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the joint Offer. Accordingly, IT IS ORDERED that effective on the second Monday after the date of this Order:

1. FPCI, M. Hassell and D. Hassell be censured.

2. FPCI, M. Hassell and D. Hassell comply within 30 days of the entry of this Order with the following voluntary undertakings contained in their joint Offer of Settlement, intended to prevent a recurrence of the violations of federal securities laws discussed above:

A. FPCI will not offer, sell, purchase, or induce or attempt to induce the purchase or sale of any security unless FPCI is registered with the Commission as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD");

B. M. Hassell and D. Hassell or each of them, while engaged in the business of effecting transactions in securities for their own accounts or for the accounts of others, will not offer, sell, purchase, or induce or attempt to induce the purchase or sale of any security unless they are associated with a broker or dealer which is registered with the Commission and is a member of the NASD;

C. FPCI, M. Hassell and D. Hassell or each of them, while engaged in the business of effecting transactions in securities for their own accounts or for the accounts of others, will not purchase or sell

any security unless such purchase or sale is recorded in the appropriate books and records required to be maintained by a registered broker-dealer pursuant to Section 17(a) of the Exchange Act and Rule 17a-3 thereunder;

D. Paragraphs A, B and C above shall not apply to the offer, purchase or sale of any investment vehicle by FPCI, M. Hassell and D. Hassell or each of them, if prior to such offer, purchase or sale a written opinion of counsel is obtained reflecting that such investment vehicle is not a security within the meaning of Section 2 of the Securities Act of 1933, as amended, or Section 3 of the Exchange Act, as amended;

E. FPCI, M. Hassell and D. Hassell or each of them shall maintain all such opinions of counsel as required by paragraph D above for a three year period after the date of their issue and shall make such opinions available to the staff of the Commission upon request; and

F. Each year on the anniversary of the entry of this Order, for a period of three years, FPCI, M. Hassell and D. Hassell will provide the staff of the Commission with an affidavit stating that they have fulfilled these undertakings during the course of the past year.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17230/October 20, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-39

The New York Stock Exchange, Inc. ("NYSE") submitted, on October 6, 1980, a proposed rule change under Rule 19b-4 to increase from $35,000 to $50,000 per year, the dues payable to the Exchange by physical access annual members and to increase from $13,500 to $18,500 per year the dues payable to the Exchange by electronic access annual members.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 20, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-39.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17231/October 20, 1980

REGULATION OF CLEARING AGENCIES

ACTION: Extension of date by which clearing agencies are required to file Form CA-1 and related materials.

SUMMARY: On June 17, 1980 the Commission announced the publication of standards that the Division of Market Regulation will use in reviewing applications for registration as a clearing agency in accordance with Section 17A(b)(3) of the Securities Exchange Act of 1934. Notice of the standards was given by Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980). That release also requested that by October 31, 1980, each clearing agency currently temporarily registered with the Commission submit a new Form CA-1, 17 CFR §249b.200, amendments to its current rules to comply with the standards set forth in the release, and, if appropriate, alternative approaches to the standards that satisfy the statutory criteria contained in Section 17(A)(b)(3) or exemptive requests from such statutory criteria. Because several clearing agencies have indicated that they anticipate difficulty in submitting all of the requested material by the October 31, 1980 deadline, the Commission is extending the time for submitting the requested material until December 15, 1980.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: JoAnn Carpenter, Esq., Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2902.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17232/October 21, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-25

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on October 14, 1980, a proposed rule change under Rule 19b-4 which provides that, in specified circumstances, an options order transmitted by a marketmaker from off the floor of the exchange which either results in a closing transaction or which provides a bona fide hedge of an open options position in the marketmaker's account is deemed to be initiated on the floor of the exchange and shall count as a marketmaker transaction.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 27, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17233/October 21, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INCORPORATED

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange, Incorporated ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Modular Computer Systems, Inc.
Common Stock, Par Value $.05 (File No. 7-5737)
Source Capital, Inc.
Common Stock, Par Value $1 (File No. 7-5738)
Howell Corporation
Common Stock, Par Value $1 (File No. 7-5739)
Howell Petroleum Corporation
Common Stock, Par Value $1 (File No. 7-5740)[1]

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange, Incorporated in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17234/October 21, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the American Depository Shares of DELTEC INTERNATIONAL LIMITED from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17235/October 21, 1980

An order has been issued granting the application of HOWELL PETROLEUM CORPORATION to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange, Inc.*

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 65376 (October 2, 1980). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17236/October 22, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th and Stock Exchange Place
Philadelphia, Pennsylvania 19103

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

File Nos.
SR-CBOE-80-5
SR-Amex-80-8
SR-PSE-80-5
SR-Phlx-80-9
SR-NASD-80-13

ORDER APPROVING PROPOSED RULE CHANGES

I. *Introduction*

The self-regulatory organizations ("SROs") listed above each have filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, copies of proposed rule changes to rescind their respective "restricted" options rules.[1] In general, subject to certain exceptions for covered writing transactions, spread transactions and the purchase of puts offset by long positions in the underlying security, the restricted options rules prohibit customers and non-marketmaker members from entering opening transactions in any series of options as to which, as of the close of trading on the previous day, (1) the exercise price of the option was more than $5 out-of-the-money and (2) the closing price of the option was less than $.50 per share.[2] Adoption of the restricted options rules was premised on concerns as to whether trading in deep-out-of-the-money options served a legitimate economic purpose and, more importantly, whether it was suitable for most public customers, in view of the high probability that such options would expire worthless.

II. *Discussion*

The Commission's Special Study of the Options Markets reviewed the impact of the restricted options rules on the options trading markets and addressed the desirability of eliminating the rules.[3] The Options Study found that as the options trading markets have expanded new uses for restricted options have developed. Numerous market professionals indicated that such options could be utilized effectively in various ways as a part of prudent and viable investment strategies — for example, the purchase of deep-out-of-the-money

[1]The SROs filed their proposed rule changes with the Commission on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE") (SR-CBOE-80-5), filed April 4, 1980; (2) American Stock Exchange, Inc. ("Amex") (SR-Amex-80-8), filed April 23, 1980; (3) Pacific Stock Exchange Incorporated ("PSE") (SR-PSE-80-5), filed May 13, 1980, amended September 2, 1980; (4) Philadelphia Stock Exchange, Inc. ("Phlx") (SR-Phlx-80-9), filed April 23, 1980; (5) National Association of Securities Dealers, Inc. ("NASD") (SR-NASD-80-13), filed July 18, 1980. Notice of the exchanges' proposed rule changes was given by a single Commission release, Securities Exchange Act Release No. 16809, May 15, 1980, and by publication in the *Federal Register*, 45 FR 34093, May 21, 1980. Notice of the proposed rule change by the NASD was given by Commission release, Securities Exchange Act Release No. 17027, July 30, 1980, and by publication in the *Federal Register*, 45 FR 51972, August 26, 1980. No comments were received with respect to the rule filings.

[2]CBOE Rule 4.17; Amex Rule 910; Rule VI, Section 11; Phlx Rule 1046; NASD Section 8 of Appendix E to Article III, Section 33 of the Rules of Fair Practice.

[3]See Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. at 193-195 (Comm. Print 1978) ("Options Study").

calls with a small percentage of an investor's funds while placing the remainder in money market instruments, or the utilization of spreads involving the purchase of several restricted options for each lower strike price option held.

The Options Study also found that the restricted options rules result in pricing inefficiencies and a loss of market liquidity for some options series. When previously unrestricted options become restricted, individuals with positions in such options are left with a limited market since a large number of potential buyers and sellers are barred from the marketplace.

The Options Study balanced these factors against the primary objective of the rules; *i.e.*, the protection of investors who may not fully appreciate the risks involved in such options. The Options Study concluded that its recommendations to enhance customer suitability rules and the internal procedures of broker-dealers may ameliorate these concerns and, at a future date, permit elimination of the restricted options rules. Accordingly, the Options Study recommended that "the Division of Market Regulation. . .consider the elimination of the restricted options rules as soon as the overall effectiveness of the Options Study's suitability recommendations can be evaluated."[4]

III. *Conclusion*

Although the Options Study found that deep-out-of-the-money options can be utilized as part of conservative and prudent investment strategies, the Commission continues to believe that certain more common uses of deep-out-of-the-money options (*e.g.*, the simple purchase or sale of such options) can be among the most risky and speculative of all trading strategies and, thus, are not suitable for most public customers, either because customers do not fully understand the risks of positions in deep-out-of-the-money options or cannot financially bear those risks. In response to the Options Study's recommendations, the SROs have adopted new options suitability rules and broker-dealer supervisory procedures, and have enhanced their broker-dealer examinations. While sufficient time has not passed yet to permit a complete evaluation of the overall effectiveness of these rules and procedures, the Commission and the SROs have taken additional measures to assure the effectiveness of these new rules as they relate to deep-out-of-the-money options. At the Commission's request, the SROs have undertaken measures designed to assure that their member firms understand the application of and comply with the new suitability rules with respect to transactions in deep-out-of-the-money options. The SROs have prepared a joint educational circular which sets forth member firm obligations with respect to recommending transactions in deep-out-of-the-money options. In addition, each SRO has undertaken to focus specifically during its broker-dealer examinations on trading in such options as part of its exam module for suitability.

Moreover, the Commission will enhance oversight of trading in deep-out-of-the-money options by (1) monitoring SRO broker-dealer examinations in connection with the Commission's Office of Inspections compliance program and (2) giving transactions in deep-out-of-the-money options special scrutiny during the Commission's broker-dealer examinations. Of course, should the Commission find that the measures that have been taken are inadequate to prevent abuses in the selling of deep-out-of-the-money options, the Commission would take appropriate remedial action.

Given this regulatory environment, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and a registered securities association, and in particular, the requirements of Sections 6 and 15A, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[5]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[4] *Id.* at 195.

[5] To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the rescission of the SROs' restricted options rules, the SROs each have indicated that they intend to continue in effect the prohibitions contained in the restricted options rules until October 31, 1980 by using their general authority to restrict options transactions. *See, e.g.*, CBOE Rule 4.16 and Amex Rule 909.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17237/October 22, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th and Stock Exchange Place
Philadelphia, Pennsylvania 19103

File Nos.
SR-Amex-80-23
SR-CBOE-80-22
SR-PSE-80-15
SR-Phlx-80-21

ORDER APPROVING PROPOSED RULE CHANGES

I. *Introduction*

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes[1] to amend their position limit rules to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call options on the same side of the market on the same underlying security[2] and to amend their exercise limit rules to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within any period of five consecutive business days.[3]

Notice of each of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission release[4] and by publication in the *Federal Register*.[5] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

II. *Discussion*

The position limit rules, in combination with the exercise limit rules, are designed principally to minimize the manipulative potential inherent in large options positions and to prevent the accumulation of large options positions that, if exercised against uncovered writers, could affect the price of the underlying security by necessitating purchases in the underlying market to satisfy delivery

[1]The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 28, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 2, 1980, amended September 30, 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 2, 1980, amended September 16, 1980.

[2]Position limits are set forth in the following options exchange rules: Amex Rule 904; CBOE Rule 4.11; PSE Rule VI, Sec. 5; Phlx Rule 1001.

[3]Exercise limits are set forth in the following options exchange rules: Amex Rule 905; CBOE Rule 4.12; PSE Rule VI, Sec. 6, Phlx Rule 1002.

[4]Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17121, September 5, 1980; CBOE, Securities Exchange Act Release No. 17148, September 12, 1980; PSE, Securities Exchange Act Release No. 17147, September 12, 1980; Phlx, Securities Exchange Act Release No. 17146, September 12, 1980.

[5]Notice by publication in the *Federal Register* was given as follows: Amex, 45 FR 60523, September 12, 1980; CBOE, 45 FR 62597, September 19, 1980; PSE, 45 FR 62241, September 18; 1980; Phlx, 45 FR 62245, September 18, 1980.

requirements. In addition, position limit rules limit the financial exposure of market participants.

The Special Study of the Options Market ("Options Study")[6] made several observations concerning the effects of the position limit rules on the options market. In particular, the Options Study noted that current position limits have restricted the use of options by institutional investors because they are prevented from writing calls or buying puts on more than 100,000 shares of a particular stock.[7] In this regard, the Options Study suggested that existing position limits do not provide sufficient risk limiting potential for institutional investors. The Options Study also indicated that the impact of position limits on proprietary trading by member firms may impair market liquidity. Member firm proprietary options activities, such as hedging block positioning activities and various forms of arbitrage, may easily involve 1,000 contracts, thereby precluding further proprietary participation in options that may be beneficial to market liquidity. Accordingly, the Options Study recommended that:

The Division of Market Regulation should undertake a complete review of the position limit rules of the options exchanges. This review should include: (1) the possibility of eliminating position limit rules, (2) the feasibility of relaxing position limit rules for (a) all market participants, (b) for accounts which hold fully paid, freely transferable securities or (c) for "hedged" positions, and (3) whether exemptions from the rules should be granted to options specialists and, if so, under what circumstances.[8]

In lieu of the comprehensive study of position limits suggested by the Options Study, the Commission believes it would be more appropriate for the options exchanges to experiment with positon limits by increasing the ceiling from 1,000 to 2,000 options contracts.[9] On balance, the Commission believes that such an increase at this time is not an unacceptable first step in the reconsideration and modification of the current rules. As noted above, there is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications, to increase, eliminate, or possibly decrease, position limits in the future.

Nevertheless, the Commission remains concerned that any increase in position limits can create additional incentives to manipulate. Given this fact, the Commission expects the options exchanges to carefully evaluate possible enhancements to their surveillance programs and report to the Commission concerning the enhancements they have made at the end of eight months.[10] In addition, the options exchanges each have undertaken to monitor closely and collect data regarding the effect of the proposed

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[6]96th Cong., 1st Sess., H.R. No. 96-IFC3 (Comm. Print 1978) at 190.

[7]The Options Study further noted that one rationale for the imposition of position limits, the concern that exercise of a large long call position may affect the price of the underlying stock, is not applicable to the writers of covered calls. Because covered writers by definition own the underlying stock, there generally is no need to acquire the stock in the market when they receive an exercise notice, thereby possibly affecting stock prices.

[8]Options Study at 192.

[9]In this regard, the options exchanges have indicated that, if warranted by trading experience, further modifications may be proposed in the future. In particular, the CBOE expressed a desire in the statement of purpose for its proposed rule change to conduct experiments, including the removal of position limits for particular options classes or series for specified periods of time, to determine whether further modification of its position and exercise limits may be appropriate. The CBOE has indicated to the Commission staff, however, that the CBOE did not intend these statements of its future intentions to be a subject of the Commission's deliberations on the current CBOE position and exercise limit proposal.

[10]For example, the Commission views with some concern the current inability of the options exchanges to detect intra-day position limit violations. The Commission understands that

modifications on options and underlying stock trading activity and on market participants. The options exchanges have indicated that at the end of eight months each will submit to the Commission a report, based on the information obtained, analyzing the impact of the increased ceiling on the options and the underlying stock markets.

With respect to the proposed increase in exercise limits, the Commission similarly believes that the modest proposed increase is not an inappropriate first step in experimenting with modification of these rules. The options exchanges appear to have assumed that their proposed increase in position limits should be accompanied by a similar increase of exercise limits. The only rationale proffered for the proposed increase is to permit exercise of any options positions that can be acquired under the proposed new position limits. Given the existence of a liquid secondary options market that allows market participants efficiently to close out options positions without exercise, it is not apparent that any increase or removal of position limits must necessarily be accompanied by a similar change in exercise limits.[11] Nevertheless, for the reasons articulated with respect to position limits, the Commission also believes that this relatively modest increase in exercise limits will not have any significant negative risks.

III. *Conclusion*

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those changes are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[12]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

Footnote 10 continued

currently the exchanges routinely capture position data with respect to market participations only as of the close of the trading day and currently the exchanges do not determine whether during the course of a given day position limits are temporarily exceeded. In preliminary discussions, exchange officials have indicated that the creation of such a routine intra-day detection program currently is not feasible. Similarly, the Commission is concerned about the ability of the exchanges to detect manipulative activities of non-marketmaker broker-dealers and public customers under the increased position limits, particularly since the exchanges currently do not receive reports concerning the underlying securities activities of such market participants.

[11]In this regard, the Commission intends to review any future proposed modifications of exercise limits separately from proposed position limit changes, and expects the options exchanges to justify such modifications independently.

[12]To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the increased position and exercise limits, the SROs each have indicated that they intend to use their authority to fix limits at other than 2,000 contracts to continue in effect the 1,000 contract limits until October 31, 1980.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17238/October 22, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

PHILADELPHIA STOCK EXCHANGE, INC.
17th and Stock Exchange Place
Philadelphia, Pennsylvania 19103

File Nos.
SR-Amex-80-24
SR-CBOE-80-23
SR-PSE-80-16
SR-Phlx-80-23

ORDER APPROVING PROPOSED RULE CHANGES

I. *Introduction*

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes to modify their policies concerning the intervals at which options exercise prices are fixed and the introduction of new options series.[1] Specifically, the policies as modified, would provide that for securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals and for securities trading above $100 per share exercise prices would be fixed at 10 point intervals. The policies, as modified, also would provide that a new options series could be added when the price of the underlying security equaled the highest or lowest exercise price in a particular options class.[2]

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release[3] and by publication in the *Federal Register*.[4] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

II. *Discussion*

The options exchanges state that the proposed reduction of exercise price intervals would enable the exchanges to open options series at exercise prices closer to the market price per share of the underlying stock than is possible under current exchange policies. This, the options exchanges contend, would produce two principal enhancements in the options market. First, the ability to open options series at prices which more

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[1]The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 29, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15 and 24, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 15, 1980, amended September 30 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 16, 1980.

[2]The proposed policy modifications relate to the following options exchanges rules: Amex Rule 903(a); CBOE Rule 5.6, PSE Rule VI, Sec. 4; and Phlx Rule 1012(a).

[3]Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17122, September 5, 1980, CBOE, Securities Exchange Act Release No. 17145, September 12, 1980; PSE, Securities Exchange Act Release No. 17155, September 18, 1980; Phlx, Securities Exchange Act Release No. 17156, September 19, 1980.

[4]Notice by publication in the *Federal Register* was given as follows: Amex, 45 FR 60524, September 12, 1980; CBOE, 45 FR 62243, September 18, 1980; PSE, 45 FR 63986, September 26, 1980; Phlx, 45 FR 63596, September 25, 1980.

closely approximate the market price of the underlying securities would afford public investors enhanced opportunities to engage in hedging and other purchase and writing strategies. Second, by providing greater assurance that, at all times, there will be a liquid "at-the-money" options series, spread transactions by marketmakers would be facilitated, thus reducing the risk inherent in marketmaking and enhancing the ability of marketmakers to fulfill their obligations to maintain fair, orderly and liquid markets.

As the options exchanges suggest, the narrower the intervals between open options series, the greater the flexibility accorded to market participants and the more finely options positions can be tailored to achieve intended objectives. It must be recognized, however, that limitation of the number of exercise prices for a particular options class is an essential element of options contract standardization. Moreover, in order to enable market participants to achieve their investment objectives and to diminish the potential for manipulation, the options series which are traded must have sufficient depth and liquidity. Accordingly, the balance sought by the options exchanges in opening new options series within a particular options class is to accommodate market participants by providing an array of exercise prices while concommitantly ensuring that the number of options series does not produce an excessive dispersion of interest and, as a consequence, excessive dilution of liquidity in open options series.

The Commission is unable to conclude that the introduction of 5 point intervals with respect to securities trading between $50 and $100 per share, and 10 point intervals with respect to securities trading above $200 per share, constitutes an inappropriate resolution of these interrelated concerns. The options exchanges have represented, as stated in the CBOE filing, that the proposed modification would "not result in an undue proliferation in options series." This conclusion is based on the assumption that series opened at the new reduced intervals "would frequently be replacements for, rather than additions to," series that otherwise would have been opened "further out of the money." Although the Commission cannot concur fully with this conclusion, it has no basis for believing that the increase in the number of options series that would result from approval of the proposed modification would adversely affect the options markets. To the contrary, while the Commission did not receive any comments in response to publication of notice of the rule proposals, letters supporting reduced exercise price intervals were received shortly after the moratorium was lifted in which it was contended that such a measure would improve market liquidity for both options and their underlying securities.[5] In addition, it has been represented that the addition of the new exercise price intervals would not adversely affect exchange operational capabilities. The Commission expects that the options exchanges will take steps to assure that new exercise price intervals will be added in a deliberate and prudent manner consistent with exchange and member firm operational capacities. In this regard, the options exchanges each have indicated that they intend to delay implementing the proposed rule changes until early 1981.[6]

The second aspect of the rule proposals would allow the addition of new options series as soon as the market price of the underlying security equalled the highest or lowest existing exercise price for a particular options class. The options exchanges contend that this proposed policy modification would ensure the existence at all times of exercise prices both in and out of the money. This, in turn, it is contended, would offer public investors greater opportunities to limit their risk through increased hedging and other purchasing and writing strategies, and would better enable marketmakers to make fair and orderly markets. As with the first aspect of the rule proposals, the Commission is inclined to defer to the business judgment of the options exchanges that, as a general matter, the overall quality of the options markets would not be adversely affected by this proposed modification.

III. *Conclusion*

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the

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[5]*See* letter from Eugene D. Brody, President, New York Institutional Option Society, to Douglas Scarff dated May 7, 1980. *See also* letter from Abraham J. Bronchtein, Vice President, Chemical Bank, to Douglas Scarff dated May 14, 1980.

[6]*See* letter to Gene Carasick, Assistant Director, Division of Market Regulation, from Anne Taylor, Associate General Counsel, CBOE, dated October 3, 1980.

requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those changes are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17239/October 22, 1980

In the Matter of Application of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Computervision Corporation
Common Stock, $.05 Par Value (File No. 7-5736)[1]

The Commission finds that approval of the Phlx's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Philadelphia Stock Exchange, Inc. in the above named security is hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 65377 (October 2, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17240/October 22, 1980

A notice has been issued giving interested persons until November 13, 1980 to comment on the application of the *Philadelphia Stock Exchange, Inc.* for unlisted trading privileges in the common stock ($.10 par value) of PATRICK PETROLEUM CO.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17241/October 22, 1980

An order has been issued granting the application of ELECTRONICS, MISSILES AND COMMUNICATIONS, INC. to withdraw its common stock ($.01-2/3 Par Value) from listing and registration on the *Boston Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17242/October 23, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-36

The New York Stock Exchange, Inc. submitted on September 25, 1980, a proposed rule change under Rule 19b-4 to require Exchange approval of member and member organization bank loan agreements which are given capital value for otherwise non-allowable fixed assets and securities with no ready market value.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 27, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-36.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17243/October 23, 1980

Admin. Proc. File No. 3-5799

In the Matter of the Application of

ROBERT P. VOLPE
98-05 67th Avenue
Forest Hills, New York

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NEW YORK STOCK EXCHANGE, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE — REVIEW OF DISCIPLINARY PROCEEDINGS

Where member of national securities exchange improperly purchased securities for his own account on the exchange floor, incurred financial obligations in connection with such purchases which he could not meet, prepared inaccurate records of the purchases, delayed notifying the member firm which carried his margin account of such purchases, charged that firm commissions on his own transactions, retained an employee of another

member firm to act as his clerk without obtaining the approval of that firm or the exchange, and caused the member firm which carried his margin account to extend him unlawful credit, *held*, exchange's findings of violation *sustained*, but proceedings *remanded* both for reconsideration of another finding of violation as to which relevant documents proffered by member were not admitted into evidence, and for reassessment of the sanction imposed in light of such reconsideration and the fact that certain additional findings of violation were set aside.

APPEARANCES:

Robert P. Volpe, pro se.

Richard M. Drew and *George Brunelle*, for the New York Stock Exchange, Inc.

I.

Robert P. Volpe, a member of the New York Stock Exchange ("NYSE"), appeals from disciplinary action taken against him by the Exchange. The NYSE found that Volpe violated various rules and engaged in conduct inconsistent with just and equitable principles of trade. It barred Volpe from membership, allied membership or employment in any capacity with any member or member organization. Based on an independent review of the record, we make the following findings.

II.

Until September 25, 1978, when the NYSE suspended him for lack of adequate financial resources, Volpe was authorized to act as a broker on the floor of the Exchange where he executed orders for customers of Comiteau Levine & Co., a NYSE member firm in which he was a partner, and for customers of other members and member firms.[1] To assist him in his floor brokerage operations and to prepare his bills for commissions due, Volpe retained the employee of another member firm to whom he paid a $125 monthly salary.

Volpe had been experiencing severe financial difficulties which resulted in a heavy accumulation of debt, and judgments and tax liens against him. Most of his July 1978 income and all of his income for August was withheld to meet these obligations by Comiteau, through which almost all of Volpe's income was channeled. In late August, Volpe gave Comiteau 90 days' notice of his resignation, and informed the Exchange that he would thereafter act as an independent floor broker. On September 14, the NYSE notified Volpe in writing that he would have to secure a guarantee from a member firm in an amount at least equal to the largest lien outstanding against him (approximately $90,000 due the Internal Revenue Service) in order to act as an independent broker, and that, if he failed to do so, the Exchange's staff would request the Exchange's Board of Directors to deny him access to the floor.

For at least six months prior to September, Volpe had maintained a margin account with Purcell, Graham & Co., Inc. ("PG"), a NYSE member firm, through which he purchased securities for his own account. On the same day that he received the Exchange's letter, he also received a $110,000 margin call from PG in connection with certain options he had purchased.

Faced with such substantial financial demands, Volpe admittedly was "under great stress" and "decided that if I couldn't get out from under by paying off these debts. . .that I might be able to get out by buying stock and making some money. . .and be off the hook." Thus on September 15, a Friday, and again on September 18, Volpe, although he was not authorized to effect transactions as a principal on the Exchange floor, made a total of seven purchases of two securities for his PG account in an amount exceeding $252,000.[2] Also on September 15, Volpe gave PG his personal check for $110,000 to cover the firm's margin call. However, the balance in Volpe's checking account on that day was only $1,000.

Unfortunately for Volpe, the market prices of the two issues he purchased immediately began a steep

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[1]Volpe received a salary from Comiteau for executing its customers' orders, and earned commissions for executing orders for other members' customers.

[2]Volpe purchased a total of 1,200 shares of Bally Manufacturing Corporation in 3 separate transactions, and 3,000 shares of Caesars World, Inc. in 4 transactions. In connection with two purchases of Caesars World stock, Volpe prepared order tickets for his records which stated that his orders were for 200 and 100 shares, respectively, when in fact the amount of each order was actually 1,000 shares.

decline.[3] Volpe "was distraught" and sought to prevent his purchases from being billed to his PG account for "as long as possible" so that "if the stock went back, I would get out of it." He consequently did not make or send any reports of his seven purchases to PG. On September 21, the Exchange members from whom Volpe had made two of the purchases in question requested him to acknowledge the trades by signing "Questioned Trade Forms." Volpe initially refused to sign the forms. However, he soon changed his mind, and copies of the signed forms were received by PG later that same day. The five remaining transactions were not reported to PG until September 25.[4] In addition to receiving late notification of Volpe's purchases, PG was billed by Volpe's clerk for commissions on the transactions Volpe had effected for his own account.

When Volpe's check to PG for $110,000 was presented to his bank for payment on September 19, the bank's manager telephoned Volpe to advise him that there were insufficient funds in his account to cover the check. Volpe told the manager that he would deposit the required amount. To obtain it, he telephoned PG on September 20 seeking to withdraw $109,000 from his margin account. Volpe told the PG employee with whom he spoke that he needed the money to cover the check he had previously given PG, stating that he intended to sell the options in his account. However, he said nothing about the seven purchases of stock he had just made on the Exchange. PG gave Volpe a check for $109,000 which he promptly deposited in his bank on September 20.[5]

III.

Based on the foregoing, we find, as did the NYSE,[6] that:

1. Volpe violated NYSE Rule 111[7] by effecting transactions for his own account on the floor of the Exchange without being registered or authorized to do so.

2. Volpe violated NYSE Rule 435(1)[8] by purchasing for his own account 4,200 shares of stock for an amount in excess of $252,000 when such purchases were excessive in view of his financial resources, and when he knew or should have known he would be

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[3]Volpe testified that his losses on September 18 alone were about $60,000, and that his ultimate loss was about $120,000.

[4]Based on the closing prices of the two stocks on September 25, Volpe's shares were worth about $51,000 less than the prices he had paid for them.

[5]When PG realized what Volpe had done, it attempted to stop payment on its $109,000 check, but was unable to do so. PG then sold out Volpe's options positions.

[6]In his answer to the NYSE's complaint, Volpe pled "guilty" or "guilty with an explanation" to each charge of violation. Moreover, at the hearings, Volpe rejected the opportunity to contest the factual allegations in the complaint, stating that they were "true," and did not object to the motion of the NYSE's Market Surveillance and Evaluation Department that he be deemed to have admitted such factual statements. Volpe reaffirmed his pleas of "guilty" to each of the charges and was offered the opportunity to present his explanations. On the basis of the admitted factual allegations and Volpe's pleas and explanations, the NYSE Hearing Panel found that he had committed the violations alleged. On Appeal to the NYSE's Board of Directors, Volpe made no attempt to recant his admissions, and merely presented his explanations of the violations in mitigation of the sanction imposed by the Hearing Panel.

[7]In pertinent part, that rule provides:

"No member shall initiate transactions, while on the Floor, for an account in which he has an interest unless such member is registered as a Competitive Trader with the Exchange and unless the Exchange has approved of his so acting as a Competitive Trader and has not suspended or withdrawn such approval." 2 NYSE Guide para 2111, p. 2712.

[8]That rule states, in pertinent part:

"No member. . .shall:

(1) Effect on the Exchange purchases or sales for any account in which he is directly or indirectly interested, which purchases or sales are excessive in view of his. . .financial resources. . . ." 2 NYSE Guide para 2435, p. 3775.

unable to meet the financial obligations incurred.[9]

3. Volpe engaged in conduct inconsistent with just and equitable principles of trade[10] by delaying reports to PG of the seven purchases of securities that he made on September 15 and 18, which had the effect of concealing those transactions from PG.[11]

4. Volpe violated NYSE Rule 440[12] by preparing two order tickets which understated the amounts of two of his orders on September 18 by 800 and 900 shares, respectively.[13]

5. Volpe violated NYSE Rule 350[14] by paying the employee of another member firm to act as his clerk without obtaining the prior written consent of that firm or of the Exchange.[15]

6. Volpe engaged in conduct inconsistent with just and equitable principles of trade by obtaining floor brokerage commissions from PG on transactions he had executed for his own account, when he knew or should have known he was not entitled to receive

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[9]Volpe now contends that he had options in his PG account worth over $110,000 at the time of his purchases and that his only mistake was that he was too busy to sell the options to cover the cost of his purchases. This contention is without merit. Volpe had an outstanding margin call of $110,000 against the very same options. In other words, he had not paid for them. And there was no cash or other securities in his account which could be applied against their purchase price.

Volpe also points to a floor order ticket which he prepared that calls for the sale of 1,000 shares of Caesars World at 61-1/4, and argues that the ticket in question establishes that the amount of his purchases on September 18 should have been reduced accordingly. But Volpe previously admitted that he had prepared that ticket by mistake, that the "sale" was never executed, and that he later prepared a corrected ticket reflecting a purchase. Moreover, Volpe admitted that he knew that he did not have sufficient funds in his PG margin account to cover the cost of the Caesars and Bally stock that he purchased.

[10]NYSE Rule 476(a) makes it an offense for a member to engage in any conduct "inconsistent with just and equitable principles of trade." 2 NYSE Guide para 2476, p. 4031-3.

[11]Volpe now contends that he never intended to conceal or delay the processing of such transactions, and that he was only following PG's procedures which required that, if a trade were not processed on the trade date, he should wait until he received a Questioned Trade Form from the member with whom he had traded and attach the form to his late or duplicate report of execution. But Volpe admitted that he did not send PG any reports at the time of execution with respect to his seven purchases, "stalled as long as [he] could," and did not disclose such purchases to PG when he withdrew $109,000 from his account on September 20. Such admissions clearly show an intent to conceal.

[12]NYSE Rule 440 provides that all members "shall make and preserve books and records as the Exchange may prescribe and as prescribed by Regulation 240.17a-3 and 240.17a-4 of the Securities and Exchange Commission." 2 NYSE Guide para 2440, p. 3781. Rule 17a-3(a)(7) under the Securities Exchange Act requires that NYSE members such as Volpe prepare "[a] memorandum of each purchase and sale for the account of such member."

We have consistently held that the obligation to make and keep records current "embodies the requirement that such records be true and correct." See, e.g., *Richard O. Bertoli*, Securities Exchange Act Release No. 16220 (September 25, 1979), 18 SEC Docket 486, 488 n. 11.

[13]See n. 2, *supra*.

[14]2 NYSE Guide para 2350, pp. 3599-3603.

[15]Volpe now contends that because the employee's firm knew of the arrangement, and the employee never referred any business to him, the intent and spirit of the rule was followed. However, the rule clearly required that Volpe obtain the prior written consent of the Exchange and of the employee's firm before retaining him, which Volpe admittedly did not do.

such commissions.[16]

7. Volpe violated Section 7 of the Securities Exchange Act[17] and Regulation X promulgated thereunder,[18] by causing PG to issue him a $109,000 check on September 20 drawn against the balance in his margin account when he admittedly knew that such withdrawal exceeded the total of the funds and bona fide equity in the account.[19]

IV.

The Exchange found that Volpe engaged in conduct inconsistent with just and equitable principles of trade by making payments to PG by check when he knew or should have known that there were insufficient funds in his account to cover those checks.

Volpe has consistently maintained that he had an arrangement with his bank pursuant to which his overdrafts were honored. He attempted to establish the existence of that arrangement before the Exchange, reading from documents both before the Exchange's Hearing Panel and its Board of Directors which purportedly showed that his bank consistently honored his overdrafts, merely charging him interest or a service fee. Although Volpe, who appeared *pro se*, offered the documents to the Hearing Panel, they were never admitted into evidence, and there is no indication that they were ever considered by the Exchange.

Under the circumstances, we are unable to affirm the Exchange's finding of violation. As noted below, we are remanding these proceedings to the Exchange. On remand, the Exchange should reconsider this issue, admitting into evidence and taking into consideration the documents proffered by Volpe and whatever additional evidence it may wish to adduce.[20]

V.

Volpe contends that, in various respects, the NYSE treated him unfairly. He argues that the NYSE staff presented only one side of the case against him, that he was offered no assistance in defending himself, and that he was not permitted to bring anyone to accompany him to the hearing before the Exchange's Board of Directors while the NYSE's prosecutor was permitted to do so.

We have carefully reviewed the record of the proceedings below with respect to each of Volpe's contentions, and we find no unfairness in his treat-

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[16]Volpe contends that he did not realize that his clerk had been billing PG for commissions on transactions that Volpe had effected for his own account. But Volpe did not identify or otherwise distinguish the reports of executions of his personal transactions from those he executed for other customers of PG. Consequently, it was impossible for his clerk to prepare commission bills properly. And Volpe did not take any steps to correct the situation even though he was aware of it.

[17]Section 7 of the Exchange Act prohibits the obtaining or granting of credit on securities transactions which does not comply with the regulations promulgated thereunder.

[18]Regulation X, promulgated by the Board of Governors of the Federal Reserve System under Section 7, prohibits a customer from obtaining credit from a broker-dealer in contravention, *inter alia*, of the requirements of Regulation T, also promulgated by the Board under Section 7.

[19]Volpe now contends that he cannot be held responsible for the errors or mistakes of PG's margn clerk with respect to this violation. But Volpe withdrew $109,000 from his account at a time when he knew that such amount, when combined with the decline in the current market value of the Caesars and Bally stock he had purchased, exceeded the total amount of funds and bona fide equity in his account. Moreover, because PG was not notified of those purchases until September 21 and 25, due to Volpe's delaying tactics, and because Volpe did not disclose his purchases when he made the withdrawal, any mistake which PG's margin clerk may have made in allowing him to withdraw the $109,000 was primarily attributable to Volpe.

[20]The Exchange also found that Volpe committed several violations of Regulation X in addition to the one we have dealt with above, and that he caused brokerage memoranda to be prepared which bore inaccurate time stamps. On the basis of our independent review of the record, we are unable to sustain those findings, and we accordingly set them aside.

ment by the NYSE.[21] In any event, Volpe has not been prejudiced since the NYSE's findings have been accorded *de novo* review by this Commission.[22]

VI.

Volpe contends the sanction imposed on him by the Exchange is too severe.

As noted above, we have found that the Exchange failed to give proper consideration to evidence bearing on one of its findings of violation, and we have set aside other such findings.[23] Under the circumstances, we have determined to remand these proceedings to the Exchange. On remand, the Exchange, as set forth above, should reconsider its finding as to Volpe's issuance of checks against insufficient funds, and reassess the sanction imposed on Volpe in the light of its finding on that issue and the findings of violation we have set aside. By remanding this matter, we do not mean to express any opinion as to whether or not the sanction imposed on Volpe should be modified.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS and FRIEDMAN).

George A. Fitzsimmons
Secretary

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[21]As previously noted, Volpe was afforded the opportunity to contest the NYSE's factual allegations but did not do so, stating that they were "true." Moreover, Volpe was afforded the opportunity to present his version of the infractions both before the NYSE's Hearing Panel and its Board of Directors. Although he was repeatedly advised to retain counsel, he voluntarily chose not to do so. Nor was the NYSE obligated to retain counsel for him. *Boruski* v. *S.E.C.*, 340 F.2d 991, 992 (C.A. 2, 1965), *cert. denied*, 381 U.S. 943, 944; *Cf. Goldberg* v. *Kelly*, 397 U.S. 254, 271 (1970). Although it is true that Volpe was not permitted to bring "guests" to the hearing before the Board of Directors, he does not contend that such "guests" were necessary to assist him in presenting his appeal, and does not contradict the NYSE's representation that the "guests" were merely members of his family.

[22]See *Shultz* v. *S.E.C.*, 614 F.2d 561, 568 (C.A. 7, 1980); *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855.

[23]See n. 20, *supra*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17243/October 23, 1980

Admin. Proc. File No. 3-5799

In the Matter of the Application of

ROBERT P. VOLPE
98-05 67th Avenue
Forest Hills, New York

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NEW YORK STOCK EXCHANGE, INC.

ORDER REMANDING PROCEEDINGS TO NATIONAL SECURITIES EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that these proceedings be, and they hereby are, remanded to the Board of Directors of the New York Stock Exchange, Inc. for further action in accordance with such opinion.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21748/October 20, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA ALASKAN GAS TRANSMISSION CORPORATION
20 Montchanin Road
Wilmington, Delaware 19807

(70-5513)

NOTICE OF PROPOSAL OF SUBSIDIARY TO ENTER INTO PARTNERSHIP AGREEMENT RELATING TO CONSTRUCTION AND OWNERSHIP OF NATURAL GAS PIPELINE AND TO ISSUE AND SELL COMMON STOCK AND NOTES TO PARENT IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that Columbia Gas System, Inc. ("Columbia"), a registered holding company, and Columbia Alaskan Gas Transmission Corporation ("Columbia Alaskan"), a non-utility gas transportation subsidiary of Columbia, have filed post-effective amendments to a previously amended application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rules 43, 45 and 51 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, as amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transactions.

Columbia Alaskan is seeking authorization to become a partner under the Alaskan Northwest Agreement, as amended, ("Northwest Agreement"), which is summarized below, and to issue common stock and notes to finance its participation in the Northwest Agreement.

By order in this proceeding dated August 16, 1974 (HCAR No. 18534), Columbia was authorized, among other things, to participate in the Northern Border Project, a project which was one step in a larger overall project ("Arctic Gas Project") designed to deliver gas from Prudhoe Bay, Alaska to the lower 48 states. The Northern Border Project was organized to constitute and operate a natural gas pipeline which would represent the second leg of the Arctic Gas Project, would commence at Monchy, Saskatchawan and would extend through the United States to a terminal near Delmont, Pennsylvania. The August 16, 1974 order authorized the acquisition by Columbia of up to 40,000 shares of the common stock, $25 par value per share, of Columbia Alaskan Gas Transmission Corporation ("Columbia Alaskan"). A total of 8,000 shares were issued and purchased as authorized for the purpose of financing Columbia Alaskan's proportionate share of the fees paid by the Northern Border Project in connection with the Federal Energy Regulatory Commission ("FERC") filing. Subsequently, Columbia Gas Transmission Corporation advanced to Columbia Alaskan, in support of this long-term gas supply project, funds equal to these expenses. Columbia Alaskan was then a newly organized corporation with no other issued securities or outstanding capital. Columbia's interest in the Northern Border Partnership would be represented by the participation of its subsidiary, Columbia Alaskan, in the Northern Border Project pursuant to the terms of the Northern Border Pipeline Company General Partnership Agreement dated as of April 15, 1974 ("Northern Border Partnership Agreement"). By further order dated November 22, 1978 (HCAR No. 20789), Columbia Alaskan was permitted to participate in a Successor Partnership Agreement, effective as of March 9, 1978, which replaced the Northern Border Partnership Agreement previously authorized in HCAR No. 18534. The Successor Partnership Agreement dealt with Columbia Alaskan's decision not to participate in the "pre-build" of the Northern Border Project but to retain its option to join the project if and when pipeline facilities were built to transport gas from Alaska to Canada.

The Arctic Gas Project would also have involved the representation of Columbia's interest by the participation of its subsidiary, Columbia Alaskan, in the Alaskan Arctic Gas Pipeline Company General Partnership Agreement ("Alaskan Agreement") under which gas would be transported over the first leg of the Arctic Gas Project extending from The North Slope of Alaska to the Alaskan-Canadian border.

Columbia Alaskan's participation in the Alaskan

Agreement was authorized by order in this proceeding dated June 22, 1977 (HCAR No. 20086). Columbia Alaskan's contributions to the partnership pursuant to the Alaskan Agreement would be made from the proceeds from the sale of common stock to Columbia authorized in the order of August 16, 1974 (HCAR No. 18534).

The Arctic Gas Project had filed in 1974 for the necessary regulatory approvals in the United States and Canada and had been supported by Columbia. A competing application was filed by El Paso Alaska Company with the then Federal Power Commission ("FPC"). That project provided for the delivery of Prudhoe Bay gas to the lower 48 states via pipeline and LNG tankers. In 1976, Alcan Pipeline Company and Northwest Pipeline Company filed a third competing application with the FPC for a certificate to transport Alaskan Gas ("Alcan Project"). The Alcan Project, subsequently modified, provided for a pipeline following existing utility corridors from Prudhoe Bay to Canada and through to the United States markets.

On October 22, 1976, Congress passed the Alaska Natural Gas Transportation Act of 1976 ("ANGTA"), 15 USC 719, *et seq.*, which provided that the President of the United States and the Congress would make the final decision on the selection of a route to transport Alaskan gas. Canada's National Energy Board on July 4, 1977, made its decision supporting the Alcan proposal. The Alcan Project was selected over the Arctic Gas Project through the procedures set forth in ANGTA.

On January 31, 1978, the Alcan sponsors formed the Alaskan Northwest Natural Gas Transportation Company, a general partnership ("Northwest Partnership"), for the purpose of constructing and operating the Alaskan segment of the pipeline. At that time there were six partners: Northwest Alaskan Pipeline Company, Northern Arctic Gas Company, Pan Alaskan Gas Company, Natural Gas Corporation of California, Pacific Interstate Transmission Company and United Alaska Fuels Corporation, all of which entered into an Alaskan Northwest Agreement ("Northwest Agreement") which governs the Partnership. On August 1, 1980, FERC, the FPC's successor, noticed the filing of an amendment to the Northwest Agreement which admitted American Natural Alaskan Company ("American") to the Northwest Partnership. The notice of amendment stated that the Northwest Partnership was willing to provide other interested persons with the opportunity to join the Northwest Partnership on the same terms as those accepted by American and that the offer would remain open for a period of thirty days from the date of the FERC notice. During the thirty day period, the Northwest Partnership would waive the requirement of a provision of the Northwest Agreement which requires an unequal allocation of all net profits and net losses and credits to the Northwest Partnership for persons who join the Northwest Partnership after certain dates set forth therein.

In view of the substantial regulatory progress towards commencement of construction of the project, Columbia Alaskan's continued need for the attachment of Alaskan reserves to its system and the intent of the Northwest Partnership to permit persons to join the Northwest Partnership on more favorable terms and conditions during the thirty day period following August 1, 1980, Columbia Alaskan has decided that it would be appropriate to request to become a partner in the Northwest Partnership created under the Northwest Agreement. At a meeting held on August 22, 1980, Columbia Alaskan's request to join the Northwest Partnership was accepted. The Northwest Partnership would be entered into in lieu of the Alaskan Partnership previously authorized (HCAR No. 20086) by this Commission and the Alaskan Agreement would be dissolved. Pursuant to the Northwest Agreement, Columbia Alaskan will be obligated to contribute its pro rata share of the cash contributions already made by the original partners. It will be allowed to do so gradually by contributing twice as much as the first six partners contribute with each future cash call until its contributions equal those of the first six partners. At the present time, each of the original six partners have made capital contributions of $16 million for planning and design of the project. It is estimated that Columbia Alaskan will have equalized its partnership contribution by December 1981.

In the application filed with FERC for the final certificate for the Alaskan segment, it was estimated that the Alaskan segment would cost $7.9 billion. It is planned that the partners will contribute equity equal to 25% of the project's financing. The balance of the necessary funding will be acquired through the issuance of debt by the Northwest Partnership. At present, the number of partners and companies which have indicated an intent to become partners totals eleven. Therefore, Columbia Alaskan's contribution to the Northwest Partnership required

to finance construction is currently estimated to be approximately $180 million ($7.9 billion X 25% X 1/11). The amount of Columbia Alaskan's required contribution may be decreased if additional partners join in the Northwest Partnership or if Northwest Alaskan Pipeline Company or its affiliate elects to hold a greater share in the Northwest Partnership, or it may be increased if the cost of the project escalates.

To finance its participation in the Northeast Partnership, authorization is hereby sought for Columbia Alaskan to issue and Columbia to purchase common stock, $25 par value and Installment Promissory Notes ("Installment Notes") or Floating Rate Term Notes in an unlimited amount. As stated above, while the total amount of the contribution required of Columbia Alaskan is currently estimated at $180 million, the ultimate amount of the contribution is subject to a number of variables and cannot be definitively determined at this time. No amount is designated in the Northwest Agreement as a limit for any partner's contribution. The ratio of stock and debt to total capitalization will be determined based upon the ability of Columbia Alaskan to service debt. Only equity may be issued initially or debt may be issued prior to the commencement of operations of the pipeline deferred until after operations have commenced. Ultimately, it is anticipated that a 50%-50% debt equity ratio will result.

The Installment Notes will be unsecured, unregistered and dated the date of their issue. The principal amounts will be due in twenty equal annual installments on September 30 of each year from 1987 to 2006, inclusive. Interest will accrue from the date of issuance and will be paid semiannually on September 30 and March 31 on the unpaid principal thereof. The interest rate will be the actual cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said Installment Notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%. Columbia sold $100,000,000 principal amount of debentures on August 13, 1980 (HCAR No. 21631), at an effective cost of money of 12.9%. Subject to market conditions, Columbia anticipates selling additional long term securities after 1980. Installment Notes to be issued subsequent to Columbia's future financings would carry an interest rate related to the last such sale of securities prior to the issuance of said Installment Notes.

Installment Notes will be issued unless Columbia has issued notes under the Revolving Credit and Term Loan Agreement dated as of April 1, 1980 ("Revolving Credit Agreement") since the last issuance of debentures. If Columbia has issued said notes, Columbia Alaskan will issue Floating Rate Term Notes, due March 31, 1987. This procedure has been authorized in connection with Columbia's general financing program (HCAR No. 21593). Such Floating Rate Term Notes will be issued by Columbia Alaskan in lieu, of Installment Notes, will be dated the date of their issuance and will bear interest at a rate equal to the effective cost of money under the Revolving Credit Agreement. Any such Floating Rate Term Notes will be refinanced upon maturity.

As a result of its participation in the Northwest Partnershhip, Columbia Alaskan will earn or have allocated to it investment tax credits allowable under Section 38 of the Internal Revenue Code of 1954 as amended with respect to the investment in the Alaskan segment of the pipeline. In addition, Columbia Alaskan may sustain taxable losses during the construction period and early operation of such segment of the pipeline. Because Columbia Alaskan will be a member of the affiliated group of corporations ("System Affiliated Group") for which Columbia files consolidated federal income tax returns, it is requested that this Commission authorize the following partial exemption from Section 12(b) of the Act and Rule 45(b)(6) promulgated thereunder, as modified by orders HCAR No. 15021 dated February 27, 1964 and HCAR No. 18000 dated June 12, 1973: For purposes of determining the liability to be allocated to each member of the System Affiliated Group, the total amount of liability to be so allocated shall be computed without regard to (i) any portion of the consolidated investment tax credit earned by Columbia Alaskan or allocable to it as a result of its participation in the Northwest Partnership and (ii) any reduction in consolidated taxable income attributable to a separate taxable loss of Columbia Alaskan including any such loss resulting from its participation in the Northwest Partnership. The total amount of liability as computed above shall be allocated to the members of the System Affiliated Group. Any excess of the total amount of liability so allocated over the actual consolidated tax liability shall be remitted in cash by Columbia to Columbia Alaskan in order that such excess may be utilized by Columbia Alaskan in financing its share of the project. It is stated that in no event shall any member's allocated portion of the total amount of

liability as computed above exceed the amount of tax of such member based upon a separate return computed as if such member had always filed a separate return.

Consistent with the separate return limitations of Rule 45(b)(6) for future years when Columbia Alaskan will have separate taxable income, Columbia Alaskan shall not be entitled to any reduction in its allocated portion of actual consolidated tax liability for any such future year to the extent that such reduction is attributable to an investment tax credit or net operating loss carryovers and carrybacks and represents amounts previously paid to it by Columbia as provided hereinabove.

The fees and expenses to be incurred in connection with the proposed transactions will not exceed $6,000. No state commission and no federal commission, other than this Commission, has jurisdication over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration as amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21749/October 21, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

CNG COAL COMPANY
CNG DEVELOPMENT COMPANY LTD.
CNG PRODUCING COMPANY
CNG RESEARCH COMPANY
CONSOLIDATED GAS SUPPLY CORPORATION
CONSOLIDATED NATURAL GAS SERVICE COMPANY, INC
CONSOLIDATED SYSTEM LNG COMPANY
THE EAST OHIO GAS COMPANY
THE PEOPLES NATURAL GAS COMPANY
THE RIVER GAS COMPANY
WEST OHIO GAS COMPANY

(70-6452)

NOTICE OF POST-EFFECTIVE AMENDMENT RELATED TO INTRASYSTEM FINANCING, ISSUANCE OF LONG-TERM NOTES OF SUBSIDIARIES TO HOLDING COMPANY AND ACQUISITION OF SUCH NOTES BY HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company ("Coal Company"), CNG Development Company Ltd., CNG Producing Company ("Producing Company"), CNG Research Company ("Research Company"), Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples

Natural Gas Company ("Peoples"). The River Gas Company ("River"), and West Ohio Gas Company ("West Ohio") have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order issued June 2, 1980 (HCAR No. 21603), the Commission authorized the intrasystem financing program of Consolidated Natural Gas Company and eleven of its subsidiary companies. Among other things, the order authorized: (1) a short-term bank loan ("Gas Storage Loan") by Consolidated of up to $125,000,000; (2) the issuance of up to $100,000,000 of commercial paper by Consolidated or backup bank borrowings not exceeding $100,000,000 if the sale of commerical paper is impractical; and (3) the purchase by Consolidated of $110,000,000 par value of subsidiary common stock.

Consolidated would make up to $260,000,000 in open account advances to subsidiaries for gas storage requirements to be financed with proceeds of Gas Storage Loan and proceeds from the sale of commercial paper or back-up bank borrowings. The subsidiaries would use the proceeds from the sale of common stock to finance, in part, their 1980 capital expenditures. On August 28, 1980 a Supplemental Order (HCAR No. 21692) was issued releasing jurisdiction with respect to various matters on which jurisdiction had been reserved pending issuance of state commission orders. On October 7, 1980, Consolidated was authorized to issue and sell $100,000,000 principal amount of _____% Debentures Due October 1, 2000 at competitive bidding.

Consolidated has now filed a post-effective amendment requesting authorization to make long term loans in 1980 to certain subsidiaries to partially finance their 1980 capital expenditures. Such loans would be made following the debenture financing by Consolidated. The consummation of these proposed transactions are contingent upon the issuance in 1980 of the $100,000,000 principal amount of the Debentures authorized in our order of October 7, 1980.

The subsidiary companies listed below propose to issue to Consolidated and Consolidated proposes to acquire up to $100,000,000 principal amount of nonnegotiable, long-term notes maturing in the years stated, at a date to be determined by the officers of Consolidated, and bearing interest at a rate predicated upon and substantially equal to the effective cost of money to Consolidated through the issuance and sale by Consolidated of its debenture issue in 1980, such interest to be paid semi-annually, at dates to be determined by the officers of Consolidated, as follows:

CNG Producing Company maturing: $2,125,000 in each year 1985 to 2000, inclusive.	$34,000,000
Consolidated Gas Supply Corporation maturing: $2,812,500 in each year 1985 to 2000, inclusive.	45,000,000
The East Ohio Gas Company maturing: $625,000 in each year 1985 to 2000, inclusive.	10,000,000
The Peoples Natural Gas Company maturing: $625,000 in each year 1985 to 2000, inclusive.	10,000,000
West Ohio Gas Company maturing: $62,500 in each year 1985 to 2000, inclusive.	1,000,000
	$100,000,000

The order of June 2, 1980 (HCAR No. 21603) authorized the issuance and sale of $110,000,000 of subsidiary company capital stock to Consolidated from time to time up to May 31, 1981. The sale of Debentures and subsequent issuance of long-term notes by subsidiary companies to Consolidated will result in a reduction in the acquisition of the subsidiary companies' capital stock by Consolidated. Consolidated now proposes to purchase from the following subsidiary companies, subject to the sale of the Debentures and receipt of appropriate state commission financing approvals, and the subsidiaries propose to issue and sell, at par value, capital stock to Consolidated aggregating $68,000,000 as follows:

Subsidiary	Number of Shares ($100 Par)	Par Value
CNG Coal Company	20,000	$ 2,000,000
CNG Producing Company	515,000	51,500,000
CNG Research Company	35,000	3,500,000
Consolidated Gas Supply Corp.	100,000	10,000,000
The River Gas Company	10,000	1,000,000
Total		$68,000,000

Assuming that said Debentures are issued and sold as contemplated, it can be anticipated that the amount of open account advances for gas storage inventory and/or working capital similarly authorized by the Commission can be reduced. The extent of such reduction cannot, however, be presently determined. Therefore, it is requested that authorizations heretofore granted with respect to such open account advances be permitted to continue.

It is stated that the Public Service Commission of West Virginia has jurisdiction over the proposed long-term borrowings of Gas Supply that the Public Utilities Commission of Ohio has jurisdiction over the long-term borrowings proposed by River and West Ohio and that the Public Utility Commission of Pennsylvania has jurisdiction over the long-term borrowings by Peoples.

It is further stated that no other state or federal commission, other than this Commission has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $600, including $500 for the system service company charges, at cost. All such fees and expenses are to be paid by Consolidated.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commision may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21750/October 21, 1980

In the Matter of

CAPE COD GAS COMPANY
P.O. Box 1360
Hyannis, Massachusetts 02601

(70-6503)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS TO INSTITUTIONAL INVESTOR PURSUANT TO A PRIVATE OFFERING

NOTICE IS HEREBY GIVEN that Cape Cod Gas Company ("Cape Cod"), a public utility subsidiary of Colonial Gas Energy System ("Colonial"), a holding company, has filed a declaration with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(4) promulgated thereunder regarding the private placement of first mortgage bonds. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending.

Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Cape Cod is seeking authorization to issue and sell up to $1,000,000 of its 14% first mortgage bonds due 1995 which are to be sold to John Hancock Mutual Life Insurance Company. It claims exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(4).

Cape Cod's capital structure as of July 31, 1980, and pro forma is shown in the following table.

Cape Cod
(000's Omitted)

	Unaudited		*Pro Forma*	
	Amount	*%*	*Amount*	*%*
Long-term debt	*$13,713*	*44.73*	*$13,488*	*44.32*
Notes Payable				
Banks	*6,000*	*19.57*	*6,000*	*19.71*
Total Debt	*$19,713*	*64.30*	*$19,488*	*64.03*
Preferred Stock	*1,079*	*3.52*	*1,079*	*3.55*
Common Equity	*9,866*	*32.18*	*9,866*	*32.42*
Total Capitalizations	*$30,658*	*100.000*	*$30,433*	*100.00*

A statement of bond and total fixed charges coverages as of July 31, 1980, is reflected below, based on the reported income for the twelve months ended that day.

	(Unaudited)	*(Pro Forma)*
Income before taxes	$3,692	$3,692
Bond Interest	1,246	1,319
Bond Interest Coverage	2.96 x	2.80 x
Total Interest	3,050	3,092
Preferred Dividends	2,035	2,108
Total Fixed Charges	70	70
Coverages for Total Fixed Charges and Preferred Stock Dividends	1.45 x	1.42 x

The bonds will be issued under Cape Cod's Indenture of Mortgage and Deed of Trust, as amended and supplement, and will be of equal rank with the outstanding bonds. The bonds will have an average life of approximately 10 years and will not be redeemable for five years nor refundable for an additional five years in anticipation of borrowings having a lower effective interest cost. Cape Cod will also agree to certain reasonable limitations on its right to issue additional bonds, incur short-term debt, and pay dividends on its common stock. The exact terms of the bonds will be negotiated and contained in a supplemental indenture to be filed by amendment.

The Cape Cod bonds will mature November, 1995 and will be subject to sinking fund requirements beginning in the third year and increasing at designated intervals. The proceeds of the bonds will be used by Cape Cod to refund approximately $1,000,000 in principal amount of First Mortgage Bonds, Series E, 5½% due November 15, 1980.

The fees and expenses incurred or to be incurred in connection with the proposed transactions will be filed by amendment. The Massachusetts Department of Public Utilities has jurisdiction over the proposed issue and sale of bonds. No other state or federal commission except this Commission, has jurisdiction over such transactions.

NOTICE IS HEREBY GIVEN that any interested person may, not later than November 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or in case of an attorney at law, be certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing red) and any postponements thereof.

For the Commission by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21751/October 21, 1980

In the Matter of

GENERAL PUBLIC UTILITIES CORPORATION
Parsippany, New Jersey

JERSEY CENTRAL POWER & LIGHT COMPANY
Morristown, New Jersey

METROPOLITAN EDISON COMPANY
Berks County, Pennsylvania

PENNSYLVANIA ELECTRIC COMPANY
Johnstown, Pennsylvania

(70-6311)

SUPPLEMENTAL ORDER AUTHORIZING FURTHER PLEDGE OF COLLATERAL IN CONNECTION WITH SHORT-TERM NOTES TO BANKS BY SUBSIDIARY COMPANY

General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power and Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a further post-effective amendment to their application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transaction.

By order dated June 19, 1979, (HCAR No. 21107), this Commission authorized GPU, JCP&L, Met-Ed, and Penelec to issue, sell, and renew from time to time through October 1, 1981, their respective promissory notes (the "Notes") having a maturity of not more than six months from the date of issue, pursuant to a revolving credit agreement with a syndicate of commercial banks (the "loan agreement"). Aggregate borrowings under the loan agreement are limited to $500,000,000 and Met-Ed's borrowings thereunder are limited to $125,000,000. At the date of filing, Met-Ed had $81,000,000 in borrowings outstanding under the loan agreement. The indebtedness under the loan agreement is secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of JCP&L, Met-Ed, Penelec, and GPU Service Corporation, and, in the cases of JCP&L and Met-Ed, certain other collateral. In addition, as authorized by the Commission's order dated January 28, 1980, Met-Ed has sold $13,000,000 of its first mortgage bonds to the Banks.

By order dated May 23, 1980, the Pennsylvania Public Utility Commission ("PaPUC") directed that Met-Ed's capital and operating costs associated with its investment in Unit No. 1 of the Three Mile Island nuclear generating station be removed from Met-Ed's base rates. By orders dated August 28, 1980, the PaPUC denied Met-Ed's petition for extraordinary rate relief in the amount of $35 million and instituted proceedings with respect to a Met-Ed request for rate relief aggregating approximately $76.5 million. In light of these actions, the banks have advised Met-Ed that its borrowings under the loan agreement will not be permitted to exceed Met-Ed's "liquid assets" (as defined in the letter) pledged to the banks plus Met-Ed's deferred energy account from time to time. (Met-Ed's deferred energy balance is expected to decline in the future.) The banks have stated, however, that they are prepared to permit a further increase in the amount of permitted borrowings by a further pledge of collateral.

Consequently, Met-Ed is now requesting authority to grant to the banks as additional security for Met-Ed borrowings under the loan agreement a first priority security interest in substantially all of Met-Ed's accounts receivable. Met-Ed proposes to pledge to the banks its existing and future accounts receivable, together with th eproceeds thereof, from the sale of electric energy to retail and wholesale customers. At July 31, 1980, Met-Ed had approximately $25 million of such accounts receivable.

In all other respects, the transactions as heretofore authorized by the Commission would remain unchanged.

The PaPUC has authorized Met-Ed to issue and sell up to $150 million aggregate principal amount of Notes under the loan agreement and also to pledge its accounts receivable to the banks as additional collateral under the loan agreement. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective

amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21728), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21752/October 21, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6495)

ORDER AUTHORIZING HOLDING COMPANY TO ACT AS SURETY FOR SUBSIDIARY

American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration pursuant to Sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 45 promulgated thereunder concerning the following proposed transaction.

AEP requests approval of a surety bond in the amount of $51,000,000 that is to be posted with the Public Service Commission of West Virginia ("State Commission") prior to December 10, 1980, by AEP as surety and Appalachian Power Company ("Appalachian") as principal.

On July 8, 1980, Appalachian filed with the State Commission new increased rates for electric service in West Virginia. By order dated August 4, 1980, the State Commission suspended the increased rates until December 10, 1980, pending its investigation of such increased rates. The new increased rates can be made effective on and after December 10, 1980, subject to the posting by Appalachian of an appropriate bond to assure the making of appropriate refunds to its customers, including interest thereon at a rate later to be determined by the State Commission, in the event the State Commission's final order in the proceeding should require refunds to be made. It is stated that the State Commission has indicated that it would permit AEP to become a surety for Appalachian in lieu of Appalachian posting the said bond. It is expected that the amount of the bond for the new increased rates will not exceed $51,000,000, which is equal to the estimated additional annual revenue that the new increased rates will provide.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500. The Public Service Commission of West Virginia has authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21720), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the declaration, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, be, and it hereby is, permitted to become effective forthwith, subject to the terms and

conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21753/October 21, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

(70-6491)

ORDER AUTHORIZING ISSUANCE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

Louisiana proposes to issue and sell, subject to the competitive bidding requirements of the Act, not in excess of 1,200,000 shares of a new series of its class of preferred stock, $25 par value ("Stock"). The Stock is to be established by appropriate corporate action, and, except as to the number of shares and designation, divided rate, the date from which dividends commence to accumulate, the amounts payable upon redemption, the terms and amount of the sinking fund, and matters relating to par value and certain voting rights (including matters relating to quorums and adjournments), will have the same rank and the same relative rights as the presently outstanding preferred stock of the company.

The dividend rate of the Stock (which will be a multiple of 4-25ths of 1%) and the price to be paid to the company for the Stock (which will be not less than $25 nor more than $25.70 per share, plus accumulated dividends, if any) will be determined by competitive bidding. The terms of the Stock will include a prohibition until November 1, 1985, against refunding the Stock, directly or indirectly, with funds derived from the issuance of securities at a lower effective interest or dividend cost. Louisiana expects that the terms of the stock will include provisions for a sinking fund designed to redeem at $25 per share, plus accumulated dividends, 60,000 shares on each November 1 commencing in the year 1985, with the company having a non-cumulative option to redeem an additional 60,000 shares on each November 1 during the sinking fund redemption period.

Louisiana will apply the net proceeds derived from the issuance and sale of the preferred stock to the payment in part of short-term borrowings estimated to total $149,000,000 at the time the sale proceeds are received, to the financing in part of the company's construction program, and to other corporate purposes.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21696), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21754/October 21, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

MIDDLE SOUTH ENERGY, INC.
New Orleans, Louisiana

(70-6051)

ORDER AUTHORIZING SUBSIDIARY TO ISSUE AND SELL COMMON STOCK TO PARENT

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and its subsidiary, Middle South Energy, Inc. ("MSEI") have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and rule 43 promulgated thereunder regarding the proposed transaction.

By a series of orders dating to December 1977 in this matter the Commission has authorized MSEI to issue and sell its common stock to Middle South from time to time in order to finance, in part, MSEI's construction of the nuclear-fired Grand Gulf Generating Station. The Commission's most recent order in this matter was dated February 12, 1980 (HCAR No. 21429) and authorized MSEI to issue and sell up to 50,000 additional shares of its authorized but unissued no par common stock to Middle South from time to time through December 31, 1980 ("1980 Common Stock"). As of July 15, 1980 MSEI had sold 18,500 of such shares to Middle South.

It now appears that, based upon MSEI's revised estimate of cash requirements for the remainder of 1980 and during 1981, in addition to the 31,500 shares of 1980 Common Stock which were unsold as of July 15, 1980, it may be necessary for MSEI to issue and sell to Middle South during the remainder of 1980 and through and including December 31, 1981, an aggregate of 50,000 additional shares of its authorized but unissued common stock, no par value ("Additional Shares"). MSEI proposes to issue and sell, and for Middle South to purchase, up to 50,000 shares of the Additional Shares through and including December 31, 1981, at a price of $1,000 per share for an aggregate cash purchase price of $50,000,000. MSEI will apply the proceeds of sales of the Additional Shares to costs incurred by it in the construction of the Grand Gulf Project. MSEI is authorized by its articles of incorporation to issue up to 1,000,000 shares of its common stock, no par value, and as of July 15, 1980 the Company has issued and sold an aggregate of 425,500 shares of its common stock no par value to Middle South for an aggregate cash consideration of $425,500,000.

MSEI and Middle South state that it is preferable for sales of the Additional Shares to be timed to coincide with MSEI's cash needs from time to time, which are primarily determined by the nature and pace of the construction work on the Grand Gulf Project. Accordingly, MSEI proposes to sell the Additional Shares to Middle South from time to time at any time through and including December 31, 1981 in increments to be determined by MSEI and Middle South. Each such sale will be reported to the Commission by a Certificate filed pursuant to Rule 24.

To the extent funds are required from external sources to acquire the Additional Shares, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 27, 1980 with a group of banks headed by Manufacturers Hanover Trust Company, New York, New York, as authorized by the Commission's Order dated June 17, 1980 (HCAR No. 21628), or through extensions thereof or such other forms of financing as may be approved by the Commission.

It is stated that sales of the Additional Shares will enable MSEI to continue construction of the Grand Gulf Project and to maintain capitalization ratios required under various agreements.

It is stated that no special or severable fees, commissions or expenses will be incurred in connection with the proposed transaction. It is further stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21727), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the

record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21755/October 21, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6499)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to Sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder regarding the following proposed transactions.

Appalachian proposes to issue and sell up to $80,000,000 aggregate principal amount of its first mortgage bonds, of a new series, with a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of the bonds (which will be expressed in a multiple of 1/8th of 1%) and the price to be paid to Appalachian for the bonds (which shall not be less than 100% of the principal amount, unless the company shall authorize a lower percentage not less than 99%, and shall not be more than 102-3/4% of the principal amount) will be determined at the time of sale by competitive bidding carried out in accordance with the requirements of Rule 50 under the Act.

Appalachian expects that the terms of the bonds will preclude the company from redeeming any such bond for five years if such redemption is for the purpose of refunding such bond through the use, directly or indirectly, of borrowed funds at an effective interest cost less than the effective interest cost to the company of such bonds. It is also expected that the successful bidders for these bonds will make a public offering of the same.

Appalachian states that it is difficult to determine, under present market conditions, whether it would be more advantageous to the company to sell bonds with a 30-year or some shorter maturity and that it is in the public interest that the company be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur. Appalachian proposes, therefore, that it decide at a later time, prior to the submission of bids for the bonds, on the maturity of the bonds and notify prospective bidders of its decision reasonably in advance of, but in any event not less than 72 hours prior to, the bidding.

Appalachian also proposes to issue and sell up to 1,600,000 shares of a new series of its no par cumulative preferred stock with an involuntary liquidation price of $25 per share. The dividend rate per share (which will be expressed in a multiple of $.01) and the amount per share to be paid by the company to the purchasers as compensation to the purchasers will be determined at the time of sale by competitive bidding carried out in accordance with the requirements of Rule 50 under the Act. The price to be paid to Appalachian will be $25 per share which also will be the price at which the cumulative preferred stock is initially offered to the public.

Appalachian expects that the terms of the cumulative preferred stock will preclude the company from redeeming any share of such cumulative preferred stock for five years if such redemption is for the purpose of refunding such share, directly or indirectly, through the incurring of

debt or the issuance of stock ranking equally with or prior to the cumulative preferred stock as to dividends or assets, if such debt has an effective interest cost or such stock has an effective dividend cost less than the effective dividend cost of such cumulative preferred stock. It is also expected that the successful bidders for the preferred stock will make a public offering of the same.

The terms of the cumulative preferred stock may also provide for a cumulative sinking fund pursuant to which the company would retire, at $25 per share, commencing no earlier than five years subsequent to the first day of the month in which the cumulative preferred stock is issued, not more than 5% annually of the number of shares initially issued, with the non-cumulative option on any sinking fund date of redeeming at $25 per share an additional like number of shares and with the option to credit against any sinking fund requirement shares of the cumulative preferred stock theretofore purchased or otherwise acquired by the company. It is stated that Appalachian will decide on the necessity for a sinking fund provision at a later time, prior to the submission of bids for the cumulative preferred stock, and that it will notify prospective bidders of its decision reasonably in advance of, but in any event not less than 72 hours prior to, the bidding.

The proceeds from the sale of the bonds and cumulative preferred stock will be used to repay $50,000,000 aggregate principal amount of bank loans outstanding under a revolving credit agreement and, to the extent additional funds are available, to repay unsecured short-term indebedness of the company consisting of short-term notes and commercial paper.

The Virginia State Corporation Commission and the Tennessee Public Service Commission have authorized the proposed transactions. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21719), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the ACT and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21756/October 22, 1980

In the Matter of

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
215 North Front Street
Columbus, Ohio 43215

(70-6451)

NOTICE OF PROPOSED REVISIONS IN ARRANGEMENTS FOR SHORT-TERM BORROWINGS

NOTICE IS HEREBY GIVEN that Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By orders dated May 28, 1980, and September 23, 1980 (HCAR Nos. 21594 and 21723), CSOE was granted a short-term borrowing authorization

through July 1, 1981, in an aggregate principal amount not to exceed $200,000,000. CSOE's credit arrangements for such borrowings consisted of (1) lines of credit aggregating $113,066,000 with 38 banks; (2) a loan agreement with certain banks for up to $80,000,000 of loans for use in retiring certain of its preferred shares; (3) a credit agreement for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments.

By post-effective amendment CSOE requests authorization to change its borrowing arrangements under (1) above, and to issue and sell commercial paper, all as further described below. No changes are sought concerning its borrowing arrangements under (2)-(4) above, or in the total amount of short-term debt authorized.

With respect to CSOE's lines of credit, it is stated that CSOE has arrangements for lines of credit totaling $385,926,000 with 46 banks of three classes. Each note to be issued to a Class I and Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayable at any time without premium or penalty. CSOE's credit arrangements with the Class I banks generally require it to maintain compensating balances equal to a percentage of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10% of the line of credit and 10% of the amount borrowed). CSOE's credit arrangements with the Class II banks require it to maintain a compensating balance of 5% of the line of credit made available and to pay a fee equal to 4% of the bank's prime rate then in effect times the size of the line. The combination of a compensating balance of 5% and such fee is generally equivalent to a compensating balance not in excess of 10% of the line of credit made available. In addition to the compensating balance and fee, CSOE must pay interest on the borrowings at the rate of up to 108.5% of the bank's prime rate. Borrowings from one of the Class II banks, Credit Lyonnais, may be made in domestic U.S. dollars and/or in eurodollars, and on any borrowings in eurodollars the interest thereon will be a designated percent of the London Interbank Offering Rate ("LIBOR"). It is stated that the total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10% of the line of credit and 10% of the amount borrowed. The effective interest cost of borrowings from either Class I or Class II banks would not exceed 125% of the prime rate, or not more than 17.5% on the basis of a prime rate of 14%.

Concerning its credit arrangements with the Class III banks, CSOE has money market facilities with two banks in an aggregate amount of $20,000,000. These facilities do not represent a formal commitment by the banks to CSOE, but merely represent the ability of CSOE to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. The facility at one of the Class III banks, the Bank of Nova Scotia, is available for unsecured borrowings in domestic U.S. dollars and/or in eurodollars. Borrowings from either Class III bank may be made for up to 180 days and will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be negotiated on a case-by-case basis (using a 360-day year), will be a designated percent of the bank's prime rate, except on borrowings made in eurodollars from the Bank of Nova Scotia, upon which the interest rate will be a designated percent of LIBOR. It is stated that the effective interest cost of borrowings from a Class III bank will be lower than the effective interest cost of borrowings from a Class I or Class II bank.

In addition to its borrowing arrangements with banks, CSOE also proposes to issue and sell commercial paper to a dealer in commercial paper, Lehman Commercial Paper Incorporated ("Lehman"), through July 1, 1981, provided that none of such commercial paper shall mature later than March 31, 1982. The commercial paper will be in the form of promissory notes in denominations of not less than $50,000, nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after date of issuance. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not in excess of the discount rate prevailing at the time of issuance for commercial paper of comparable quality and maturity. Lehman will reoffer the commercial paper, at a discount rate of 1/8 of 1% less than the discount rate at which such paper was purchased from CSOE, to not more than 200 of Lehman's customers identified and designated in a non-public list prepared by Lehman. It is expected that such customers will hold the commercial paper until maturity, but if any such customer desires to resell prior thereto, Lehman will, pursuant to a verbal repurchase agreement, repurchase such commercial paper and reoffer it to other customers on its non-public list.

CSOE claims exemption from the competitive bidding requirements of Rule 50 for its issuance of short-term notes to banks pursuant to Rule 50(a)(2), and requests an exemption for its sale of commercial paper pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21757/October 22, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
CENTRAL AND SOUTH WEST SERVICES, INC.
Dallas, Texas

CENTRAL POWER AND LIGHT COMPANY
Corpus Christi, Texas

SOUTHWESTERN ELECTRIC POWER COMPANY
Shreveport, Louisiana

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

WEST TEXAS UTILITIES COMPANY
Abilene, Texas

(70-6163)

ORDER AUTHORIZING CHANGE IN METHOD OF CALCULATING INTEREST ON FUNDS LENT BY A SUBSIDIARY TO INTRASYSTEM MONEY POOL

Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiaries, Central Power and Light Company ("CPL"), Southwestern Electric Power Company ("SWEPCO"), Public Service Company of Oklahoma ("PSO"), West Texas Utilities Company ("WTU"), and Central and South West Services, Inc. ("CSWS"), have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to Sections 6, 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 promulgated thereunder concerning the following proposed transaction.

By orders dated June 30, 1978, October 27, 1978, March 29, 1979, May 9, 1979, June 14, 1979, July 19, 1979, July 31, 1979, October 24, 1979, February 5, 1980, March 20, 1980, and June 10, 1980 (HCAR Nos. 20608, 20749, 20978, 21041, 21097, 21150, 21166, 21269, 21421, 21482 and 21617), CSW and its subsidiaries were authorized to incur short-term borrowings through December 31, 1981, in a maximum aggregate collective amount of $250,000,000 and in the following individual amounts: CSW, $200,000,000; CPL, $100,000,000;

SWEPCO, $75,000,000; PSO, $180,000,000; WTU, $15,000,000; and CSWS, $4,000,000. The short-term borrowings are pursuant to a CSW System money pool under which CSW and its subsidiaries coordinate their short-term borrowings and make borrowings outside the money pool from banks and through the issuance of commercial paper. The money pool consists of funds from the following sources: (i) surplus funds of CSW; (ii) surplus funds of the subsidiaries; (iii) borrowings by CSW or the subsidiaries from banks; and (iv) proceeds from CSW's sales of commercial paper.

CSW administers the money pool by matching up, to the extent possible, short-term cash surplus and loan requirements of itself and its subsidiaries. Subsidiary requests for short-term loans are met first from surplus funds of the other subsidiaries which are available to the money pool and then from CSW's corporate funds, to the extent available. When these sources of funds are insufficient to meet short-term loan requests, CSW is authorized to issue and sell its commercial paper to commercial paper dealers and to certain approved financial institutions, and to borrow from banks.

With respect to intrasystem loans, the arrangements currently authorized provide that (1) a subsidiary's loans to the money pool earn interest at a rate for that day published in *The Wall Street Journal* for commercial paper placed directly by a major financial company, which paper has a term most nearly equal to the term of the particular loan in question to the money pool (the "Journal Rate"); and (2) a subsidiary's loans from the money pool are charged interest at a rate equal to CSW's net cost of borrowings from external sources.

By post-effective amendment applicants-declarants request authorization to make the interest rate on a subsidiary's advance of surplus funds to the money pool equal to the net cost of CSW's borrowings from external sources, or, if there are no such borrowings outstanding, then the Journal Rate. It is stated that recent experience under the presently-authorized dual rates had created an inequitable disparity in the rates paid subsidiaries on loans of surplus funds to the money pool as compared with rates charged subsidiaries on borrowings from the money pool. The proposed change would eliminate the disparity by making equal the rate paid to subsidiaries on advances to the money pool and the rate charged subsidiaries on loans therefrom, yet would result in no overall change in net system borrowing costs.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $250. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21725), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21758/October 22, 1980

In the Matter of

CENTRAL POWER & LIGHT COMPANY
120 North Chaparral Street
Corpus Christi, Texas 78401

(70-6512)

NOTICE OF PROPOSED ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Central Power & Light Company ("CP&L"), an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its First Mortgage Bonds, Series R, Due December 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985, and will be subject to a 1% sinking fund beginning in 1982. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. file No. 3-4951), would be needed to provide service to customers of CP&L if it were not part of the *Central and South West System*.

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1981 are estimated at $198,000,000, $198,000,000, and $278,000,000, respectively. Approximately $168,000,000 of the 1980 estimated total had been expended as of August 31, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $120,000, including accountants' fees of $7,500 and legal fees of $18,500. The fee of counsel for the purchasers of the bonds is estimated at $19,500 and is to be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it

may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21759/October 23, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

TRANSOK PIPELINE COMPANY
Tulsa, Oklahoma

(70-6487)

ORDER AUTHORIZING PRIVATE PLACEMENT OF LONG-TERM NOTES GUARANTEED BY PARENT OF ISSUER

Transok Pipe Line Company ("Transok"), an intrastate natural gas transmission pipeline, and Public Service Company of Oklahoma ("PSO"), the parent of Transok and an electric utility subsidiary of Central and South West Corporation, a registered holding company, have filed a joint application-declaration and amendments thereto with this Commission pursuant to Sections 6, 7, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 promulgated thereunder regarding the proposed transaction.

On August 25, 1980 (HCAR No. 21688) the Commission gave notice of a proposal by Transok to privately place up to $35,000,000 principal amount of sinking fund debentures to be guaranteed by PSO or, in the alternative, privately placed long-term notes in the same amount and having the same characteristics as the debentures. The notice of August 25, 1980 also granted Transok an exception from the competitive bidding requirements of Rule 50 promulgated under the Act for the purpose of negotiating with underwriters for the private placement of such securities. Transok has now completed its negotiations with underwriters and proposes to issue long-term notes to be placed through The First Boston Corporation.

Transok will issue $35,000,000 of notes due October 31, 1990, guaranteed by PSO, at an interest rate of 13% ("notes"). The notes will be Transok's senior debt and will have the same characteristics as the debentures. The notes will be unconditionally guaranteed by PSO. The major advantage of the notes as opposed to sinking fund debentures is that it will not be necessary to have a trustee under an indenture and therefore the trustee fees which would have been necessary will be saved. The Note Agreement contains conditions similar to those set forth in the Commission's Statement of Policy regarding first mortgage bonds subject to the Public Utility Holding Company Act of 1935 (HCAR No. 13105). Transok intends to close the sale of the notes to a group of eleven institutional investors on October 31, 1980.

The notes will be subject to a mandatory sinking fund requirement on October 31 each year commencing in the year 1982 through 1989. The sinking fund requirement provides that Transok retire through a mandatory pro rata cash sinking fund in the year 1982, 4% of the principal amount of notes ($1,400,000) increasing 1% per year through the year 1989 with the requirement for 1989 being 11% ($3,850,000). The mandatory sinking fund provision results in an average life of the notes of 7.72 years. In addition. Transok may redeem, at its option, an amount equal to the mandatory siunking fund requirement pursuant to a noncumulative option, an amount equal to the mandatory sinking fund requirement pursuant to a noncumulative principal amount of the note plus accrued interest to the redemption price.

The notes will be entitled to refunding protection and may not be redeemed before October 31, 1988 out of or in anticipation of borrowed funds having an interest cost to Transok of less than that of the notes. Subject to the refunding protection the notes will be redeemable upon not less than 30 days notice and in whole at any time or in part from time to time at election of Transok at the percentages set forth below of the principal amount together with accrued interest to the prepayment date:

best copy available

During The 12-Months Ending October 31 In The Years:	Percentage of Principal Amount:
1980	113.000
1981	111.556
1982	110.112
1983	108.668
1984	107.224
1985	105.780
1986	104.336
1987	102.892
1988	101.448
1989	100.000

Pursuant to the Note Agreement Transok may not declare dividends on its common stock or make any other distribution to its common stock holders except out of net income earned subsequent to December 31, 1979. The proceeds of the sale will be used by Transok to retire maturing debt and to finance, in part, its 1981 construction program.

The fees, conditions and expenses to be incurred by Transok in connection with the proposed transaction are estimated at $30,000, including legal fees of $18,500. The fee of counsel for the purchasers of the notes is estimated at $17,500 and will be paid by Transok. In addition, Transok will pay to The First Boston Corporation a fee of $105,000 as its placement fee. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21688), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 594/October 23, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6249/October 23, 1980

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11403/October 17, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6248/October 17, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11404/October 17, 1980

In the Matter of

THE CASH MANAGEMENT TRUST OF AMERICA
333 South Hope Street
Los Angeles, California 90071

(812-4730)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that The Cash Management Trust of America ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 5, 1980, and amendments thereto on September 19, 1980, and September 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a business trust organized and existing under the laws of the state of Massachusetts. Applicant has registered under the Act (File No. 811-2380) and its securities are registered under the Securities Act of 1933 (File No. 2-47940).

Applicant states that it intends to operate as a "money market" fund. Applicant's investment objective is to provide current income to its investors while preserving capital and maintaining liquidity. To realize this objective Applicant invests in certain high quality money market instruments consisting of (i) securities of the United States government, its agencies and instrumentalities; (ii) obligations of commercial banks having total assets in excess of $1 billion based on latest published reports; (iii) obligations of savings associations having assets in excess of $1 billion and which are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; (iv) corporate notes with maturities up to nine months at the time of issuance which at the time of purchase are either rated in one of the two highest categories by Standard & Poor's Corporation or Moody's Investors Service, Inc. or, with respect to not more than 15% of the trust's total assets after such purchase, other commercial paper deemed by the trustees on the basis of the issuer's credit worthiness to be of comparable quality; (v) other investment grade corporate obligations that mature, or that may be redeemed by the trust, in one year or less and (vi) repurchase agreements with selected banks and securities dealers, provided that the trust does not enter any repurchase agreement if, as a result, more than 10% of the trust's total assets would be subject to repurchase agreements maturing in more than seven days.

According to the application, Capital Research & Management Company, an investment adviser to fifteen mutual funds and registered under the Investment Advisers Act of 1940, will act as Applicant's investment adviser. Applicant further states that the minimum initial investment in its shares is $5,000. Applicant states that from the inception of the public offering of its shares in November, 1976, it has maintained the public offering price of its shares at $1.00 per share.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, repurchase and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used

where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission, by order upon applicaton, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to permit it to use the amortized cost method of valuing portfolio securities. In support of the relief requested Applicant represents that use of the amortized cost method of valuing portfolio securities would provide the necessary flexibility in managing Applicant's securities portfolio to deal with fluctuating interest rate levels, while at the same time maintaining the offering price of Applicant's shares at $1.00 per share. Applicant also states that such valuation would enable it to attract as investors corporate investors and bank trust departments which require stability of principal and a steady flow of investment income. Finally, Applicant states that unless it is allowed to use the amortized cost method of valuation it would be at a competitive disadvantage as compared with other money market funds. Therefore, Applicant submits that granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has further agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In overseeing Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes — as a particular responsibility within the overall duty of care owed to its shareholders — to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of each Applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of

maintaining a stable net asset value per share; provided, however, that Applicant will (a) refrain from purchasing any instrument with a remaining maturity of greater than one year, and (b) maintain a dollar-weighted average portfolio maturity which does not exceed 120 days.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11405/October 17, 1980

In the Matter of

TAX DEFERRED FUND, INC.
660 Madison Avenue
New York, New York 10021

(811-2845)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER OF THE COMMISSION DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN THAT Tax Deferred Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 25, 1979, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Application states that Applicant, a Maryland

corporation, registered under the Act on June 14, 1978. Applicant has not filed a registration statement under the Securities Act of 1933, and thus has never made a public offering of its securities. The application further states that Applicant does not propose to make a public offering of securities or engage in any business activities other than those necessary for the winding-up of its affairs. Applicant currently has no securityholders, no assets, no debts, and is not a party to any litigation or administrative proceedings. In addition, Applicant within the last eighteen months has not for any reason transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant. Finally, Applicant states that its legal existence under Maryland law is expected to terminate in the future because of non-payment of state taxes.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 11, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communiation should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11406/October 17, 1980

In the Matter of

HILLIARD-LYONS CASH MANAGEMENT, INC.
545 South Third Street
Louisville, Kentucky 40202

(812-4698)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

Hilliard-Lyons Cash Management, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 27, 1980, and amendments thereto on July 17, 1980, and July 31, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit the Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. In all other respects, Applicant's portfolio securities will be valued in accordance with the views of the Commission set forth in Investment Company Act Release No. 9786 (May 31, 1977).

On September 19, 1980, a notice (Investment Company Act Release No. 11365) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is

appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented.

1. That Applicant's Board of Directors, in supervising operations and delegating special responsibilities involving Applicant's portfolio management to Applicant's investment adviser, undertake — as a particular responsibility within their overall duty of care owed to Applicant's shareholders — to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for purposes of effecting sales, redemptions and repurchases, rounded to the nearest one cent, will not deviate from $1.00.[1]

2. That Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and that Applicant will neither (a) purchase an instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. That Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those United States dollar denominated instruments which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

[1]In this regard, Applicant represents, to the extent necessary, that Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains distribution (if and to the extent that realized and unrealized capital gains and losses have not been reflected in prior dividends) to maintain a $1.00 price per share if the net asset value per share declines to a value below $.997 or rises to a value above $1.003, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11407/October 17, 1980

In the Matter of

WEDNESDAY ALPHA CORPORATION
203 Park Building
Cleveland, Ohio 44113

(811-2572)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Wednesday Alpha Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified, management investment company, filed an application on August 15, 1980, and an amendment thereto on September 30, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a corporation organized under the laws of the State of Ohio, registered under the Act on May 19, 1975, and filed a registration statement on Form S-4 under the Securities Act of 1933 for the public offer and sale of shares of its common stock on May 28, 1975. Applicant states that this registration statement was declared effective on June 3, 1977, and that an initial public offering was commenced as of that date.

Applicant further states that on February 20, 1980, a special meeting of shareholders of the Applicant was held at which a plan of liquidation and dissolution of the Applicant was adopted. Applicant states that on

March 24, 1980, the Board of Directors of the Applicant authorized payment to shareholders of a liquidating distribution in an amount equal to the net asset value per share of the Applicant. Applicant states that the plan of liquidation was implemented on April 30, 1980. Applicant further states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are shareholders of Applicant. Applicant represents that as of August 1, 1980, all the shareholders of the Applicant had surrendered their shares for redemption at net asset value, and had received a liquidating distribution of $4.23 per share.

Applicant states that it currently has assets in the amount of $26,764.79, which has been retained by Applicant from amounts otherwise payable as a liquidating distribution to its investment adviser, The Wednesday Corporation ("Adviser") for shares of Applicant held by the Adviser. Applicant further states that this amount of cash has been retained pursuant to an agreement between the Adviser and the Applicant which provides that the Adviser will pay certain expenses of the Applicant including, without limitation, professional fees, filing fees and other expenses not including, however, interest, taxes and extraordinary expenses beyond the control of the Adviser. Applicant states that it has incurred expenses estimated not to exceed $10,000 and will be liable for certain other expenses as yet unascertainable in connection with its liquidation, all of such expenses being subject to reimbursement by the Adviser under the above agreement. In addition, should the liquidating distribution payable to the Adviser be insufficient to pay the Applicant's expenses, the Adviser will be liable for any remaining expenses.

Applicant represents that it is a party plaintiff in *The Wednesday Alpha Corporation, et al.* v. *Forrester & Kovanda, et al.*, a law suit filed against the Applicant's former attorney and his law firm and Applicant's accounts. Applicant further represents that it is being represented in this lawsuit on a contingent fee basis and that it will not be responsible for any costs of such lawsuit unless there is a judgment in favor of Applicant. Applicant also represents that if there is a net recovery in this lawsuit, the shareholders of record of Applicant as of the date of liquidation will receive their pro-rata share directly from Applicant's counsel, after deducting Applicant's pro-rata share of the costs of the lawsuit. Applicant further represents that it has ceased all business activities and does not propose to engage in any business activities other than those activities necessary for the final winding up of its affairs. Finally, Applicant states that it has applied for certificates necessary for filing a Certificate of Dissolution with the Ohio Secretary of State prior to December 31, 1980.

NOTICE IS FURTHER GIVEN that any interested person may, not later tha November 12, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11408/October 20, 1980

In the Matter of

TRINWALL BOND FUND, INC.
61 Broadway
New York, New York 10006

(811-2596)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Trinwall Bond Fund, Inc. ("Applicant"), an open-end, diversified, investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on June 17, 1980, pursuant to Section 8(f) of the Act and Rule 8f-1 thereunder, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act.

On August 8, 1980, a notice (Investment Company Act Release No. 11296) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that Applicant has ceased to be an investment company. Accordingly,

IT IS HEREBY ORDERED, pursuant to Section 8(f) of the Act, that the Registration of Trinwall Bond Fund, Inc., shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11409/October 22, 1980

In the Matter of

THE CYPRUS CORPORATION
THE RET INCOME FUND INCORPORATED
GPM REIT MANAGERS, INC.
GARDNER AND PRESTON MOSS, INC.
JOHN L. GARDNER
ROBERT F. BIRCH
One Winthrop Square
Boston, Massachusetts 02110

and

J. B. FUQUA
J. B. FUQUA FOUNDATION, INC.
3800 First National Bank Tower
Atlanta, Georgia 30383

(812-4697)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING CERTAIN PROPOSED TRANSACTIONS FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING CERTAIN PROPOSED TRANSACTIONS

NOTICE IS HEREBY GIVEN THAT The Cyprus Corporation ("Cyprus"), The RET Income Fund Incorporated ("RET"), GPM REIT Managers, Inc. (the "RET Adviser"), Gardner and Preston Moss, Inc. ("Gardner"), John L. Gardner ("Mr. Gardner"), Robert F. Birch ("Mr. Birch"), J. B. Fuqua ("Mr. Fuqua"), and J. B. Fuqua Foundation, Inc. (the "Foundation") (collectively, "Applicants"), filed an application on June 26, 1980, and amendments thereto on September 18, 1980 and October 17, 1980, for an order: (1) pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of Section 17(a) of the Act, in connection with the proposed merger of RET with and into Cyprus, the issuance by Cyprus to Mr. Fuqua and the Foundation of shares of its common stock in exchange for shares of common stock of RET owned by each of them, and the issuance by Cyprus to Gardner, Mr. Gardner and Mr. Birch of shares of its common stock and preferred stock in exchange for shares of common stock and preferred stock of RET; and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder,

permitting Gardner to sell and Mr. Fuqua to purchase, 88 percent of the stock of the RET Adviser; permitting Mr. Fuqua to contribute to Cyprus at no cost to Cyprus, and Cyprus to accept, the assets of the RET Adviser; permitting the RET Adviser to serve as investment adviser to RET during the period between the closing date of the merger and the effective date of the merger; and permitting Gardner to serve as investment adviser to Cyprus following approval of an investment advisory agreement between Gardner and Cyprus. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

APPLICANTS

According to the application, Cyprus and RET are each registered under the Act as closed-end, diversified, management companies. Applicants represent that, as of September 5, 1980, Cyprus had total net assets of approximately $13.8 million, beneficially owned by approximately 4,300 shareholders of record, and RET had total net assets of approximately $44.2 million, beneficially owned by approximately 6,600 shareholders of record. Applicants represent that Cyprus has outstanding shares of common stock ("Old Cyprus Common") and $1.70 Cumulative Preference Shares ("Old Cyprus Preferred"), and that RET has outstanding shares of common stock ("RET Common") and $4.38 Cumulative Preference Shares ("RET Preferred"). Applicants state that the RET Adviser is the investment adviser of RET and that, as of September 5, 1980, the RET Adviser owned of record 500 shares of RET Common and 100 shares of RET Preferred. Applicants represent that the RET Adviser is an 88-percent-owned subsidiary of Gardner, which is a Massachusetts corporation engaged in business as an investment adviser furnishing investment advice (together with its subsidiaries) to clients, including RET and other investment companies, with combined portfolios of approximately $1 billion. Applicants also state that Gardner is a party to the investment advisory agreement between the RET Adviser and RET (the "Existing RET Advisory Agreement") and may be deemed to be a co-adviser of RET for purposes of the Act. In addition, Applicants represent that Audit Investment Research, Inc. ("Audit") is employed by the RET Adviser as a sub-adviser.

Applicants state that Mr. Gardner is the chairman of the board of RET, the RET Adivser and Gardner, and that his principal business is the business of Gardner. Applicants represent that, as of September 5, 1980, Mr. Gardner was the record or beneficial owner of 45.5 percent of the outstanding voting securities and 26.1 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 10,500 shares of RET Common and 150 shares of RET Preferred. In addition, Applicants state that Mr. Birch is president and a director of RET; president, treasurer, and a director of the RET Adviser; and president and a director of Gardner. Applicants represent that, as of September 5, 1980, Mr. Birch was the record or beneficial owner of 36.4 percent of the outstanding voting securities and 24.9 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 2,000 shares of RET Common and 154 shares of RET Preferred.

Applicants state that Mr. Fuqua is the president and chairman of the board of Cyprus and the beneficial owner of 605,000 shares, or 37.2 percent, of Old Cyprus Common which amounts to 26.5 percent of the outstanding voting stock of Cyprus. Of this stock, Applicants state that 600,000 shares are owned in the name of Fuqua Investment Company ("FIC"), a Georgia corporation all of the stock of which is owned by Mr. Fuqua, and 5,000 shares are owned in the name of the Foundation. In addition, Applicants state that Mr. Fuqua may be deemed to be the beneficial owner of 630,600 shares, or 16.6 percent, of the outstanding shares of RET Common, which amounts to 14.4 percent of the outstanding voting stock of RET. Of this stock, Applicants state that 480,600 shares are owned in Mr. Fuqua's name and 150,000 shares are owned by the Foundation. Applicants represent that neither Mr. Fuqua, FIC nor the Foundation owns Old Cyprus Preferred or RET Preferred.

Applicants represent that the Foundation, a Georgia nonprofit corporation, was organized by Mr. Fuqua, who is the chief contributor to the Foundation and serves as its president and one of its three directors. Applicants also represent that the Foundation is a charitable organization exempt from federal income taxation. Applicants state that the Foundation is the record owner of 3.9 percent (150,000 shares) of the outstanding shares of RET Common and 0.3 percent (5,000 shares) of the outstanding shares of Old Cyprus Common.

PROPOSED TRANSACTIONS

The transaction which gives rise to most of the matters discussed in the application is the merger of RET with and into Cyprus (the "Merger"). Applicants represent that the Merger and certain related transactions are governed by the "Amended and Restated Plan of Recapitalization of The Cyprus Corporation and Agreement and Plan of Merger by and between The Cyprus Corporation and The RET Income Fund Incorporated" dated as of September 9, 1980 (the "Merger Agreement"). Applicants represent that the Merger Agreement will be submitted for approval of (1) the holders of a majority of the outstanding shares of Old Cyprus Common and Old Cyprus Preferred, each voting as a separate class, (2) the holders of a majority of each class of Cyprus capital stock, other than those shares owned by Mr. Fuqua or his affiliates or associates, and (3) the holders of two-thirds of the outstanding shares of RET Common and RET Preferred, each voting as a separate class. Applicants state that, subject to the satisfaction of certain conditions, the closing of the Merger will take place on the next business day following the last to adjourn of the shareholders' meetings of RET and Cyprus called for the purpose of approving the Merger Agreement, or on such later date as may be mutually agreed upon by RET and Cyprus (the "Closing Date"), and that the Merger will be consummated on the tenth business day following the Closing Date (the "Effective Date").

Applicants state that immediately prior to the Merger Cyprus will effect a recapitalization by means of a reverse split whereby each three shares of Old Cyprus Common will be converted to one $.30 par value common share ("New Cyprus Common") and that Cyprus will establish a new class of preferred stock to be denominated Cyprus $1.80 Cumulative Preferred Shares ("New Cyprus Preferred"). Applicants represent that provisions of New Cyprus Preferred are: (a) a cumulative preference dividend of $1.80 per share payable quarterly; (b) a liquidation preference at the Effective Date of approximately $15.40 per share (which is calculated by determining the total liquidation preference of Old Cyprus Preferred and RET Preferred immediately prior to the Merger, and dividing that number by the total number of shares of New Cyprus Preferred to be issued in the Merger), which will increase at the rate of $.35 per share annually, commencing November 1, 1981 and each November 1 thereafter through November 1, 1991, at which time the liquidation preference will increase to the extent required to total $20; (c) the right to convert such shares at any time at the then current liquidation preference, into up to two shares of New Cyprus Common with New Cyprus Common valued at its then net asset value so long as Cyprus is registered under the Act; and (d) New Cyprus Preferred may be called for redemption at an initial price of $23 per share, which will decrease by $.25 per share annually, commencing October 30, 1981 and each October 31 thereafter through October 31, 1992, at which time the redemption price will be $20 per share (all outstanding shares of New Cyprus Preferred must be retired on October 31, 1992 at a price of $20 per share). Applicants state that one share of New Cyprus Preferred will be exchanged for each outstanding share of Old Cyprus Preferred.

Applicants state that in the Merger each share of RET Common will be converted into that number of shares of New Cyprus Common which will have a net asset value equal to the net asset value of a share of RET Common as of the close of business on the business day immediately preceding the Closing Date and that three shares of New Cyprus Preferred will be issued in exchange for each share of RET Preferred. Applicants state that the Merger Agreement provides that upon the consummation of the Merger Cyprus, as the surviving corporation (the "Surviving Corporation"), will be authorized to operate as a non-diversified company as defined in the Act. Following the Merger, Applicants represent that the Surviving Corporation intends to meet the requirements of Subchapter M of the Internal Revenue Code of 1954, as amended, and would be able to invest up to 25 percent of its assets in the stock of each of two companies which are in different industries. Thus, Applicants maintain, the Surviving Corporation will have investment objectives substantially similar to those of Cyprus and RET — primarily to obtain current income sufficient to pay dividends on outstanding preferred stock and, secondarily, to enhance the value of outstanding common stock. Applicants represent that to the extent consistent with its primary objective, the Surviving Corporation will have as its long-term objective the acquisition of a significant investment interest in one or more companies for the purpose of changing from an investment company to an operating or holding company, although, in view of its primary investment objective, Applicants anticipate that the Surviving Corporation will continue to conduct a significant investment business following such change.

Applicants state that, at the time of the closing under the Merger, Mr. Fuqua, under the terms of a purchase agreement dated as of March 28, 1980, will purchase all of the outstanding stock of the RET Adviser from its shareholders for an aggregate cash purchase price of $500,000 plus accrued management fees (the "Share Purchase Transaction"). Applicants represent it is planned that the RET Adviser will continue to serve as investment adviser of RET between the Closing Date and the Effective Date, and that immediately following the Effective Date Mr. Fuqua will contribute all of the assets of the RET Adviser, except cash, cash-equivalent items and securities, to Cyprus. Applicants state that the purchase by Mr. Fuqua of the stock of the RET Adviser will result in an assignment as defined in the Act and, consequently, automatic termination of the Existing RET Advisory Agreement. Applicants represent that since it is planned that the RET Adviser will continue to act as investment adviser to RET between the Closing Date and the Effective Date, the shareholders of RET will be asked to approve for this period an investment advisory agreement (the "New RET Advisory Agreement"), which will be identical to the Existing RET Advisory Agreement except that the RET Adviser will not be authorized to enter into a sub-advisory agreement with Audit.

According to the application, Cyprus was internally managed from June 15, 1979 to August 24, 1980 and, accordingly, did not rely principally on a separate investment adviser for investment advice with respect to its investment policies and decisions. Applicants state that since August 25, 1980 Gardner has acted as investment adviser to Cyprus, without compensation, pursuant to an investment advisory agreement dated as of August 25, 1980 (the "GPM Advisory Agreement"). Applicants represent that the GPM Investment Advisory Agreement will be submitted to the shareholders of Cyprus for approval by a majority of the outstanding voting securities of Cyprus and that such approval is a condition to the consummation of the Merger. Applicants state that, if approved, the GPM Advisory Agreement will remain in effect, subject to its termination provisions, for two years from and after the date of its execution, irrespective of whether the Merger is consummated, and thereafter upon requisite annual approval as required by the Act. Applicants state that under the GPM Advisory Agreement Gardner has agreed (1) to manage, subject to the supervision of the board of directors of Cyprus, the investment and reinvestment of the assets of Cyprus, (2) to furnish Cyprus, at Gardner's own expense, with office space and facilities, equipment and personnel for managing investments of Cyprus and to provide, if desired by Cyprus, members of Gardner's organization to serve as officers or agents of Cyprus, and (3) to assist in administering the affairs of Cyprus, subject to the supervision of the Cyprus board of directors by furnishing to Cyprus all necessary office facilities, equipment and personnel, in order to perform such administrative services and arranging, if desired by Cyprus, for members of its organization to serve without salary from Cyprus as officers or agents of Cyprus to perform such services. Applicants state that under the GPM Advisory Agreement Gardner assumes and shall pay or reimburse Cyprus for the compensation, if any, of the officers of Cyprus who are employees of Gardner, and the charges and expenses incurred by Gardner for Cyprus for such office space. Applicants also represent that the GPM Advisory Agreement provides that Cyprus will assume and pay all expenses other than those specifically required to be paid by Gardner. Applicants state that as compensation for its services under the GPM Advisory Agreement Gardner will be paid by Cyprus as follows: (a) for all services during the period commencing with the date of the GPM Advisory Agreement and terminating upon the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, no compensation will be paid by Cyprus to Gardner; (b) for all investment advisory services rendered after the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, Gardner will be paid a fee, payable monthly and computed at the rate of .5 percent per year of the average of the weekly aggregate net assets of Cyprus up to $20,000,000, zero percent per year of the average of the weekly aggregate net assets in excess of $20,000,000 and up to the combined net assets of Cyprus and RET as of the Effective Date (as defined in the Merger Agreement) (the "Effective Date Assets") and .25 percent of the average of the weekly aggregate net assets in excess of the Effective Date Assets; and (c) for all administrative services rendered by Gardner ("Covered Administrative Services") after approval of the GPM Advisory Agreement by the Cyprus shareholders, Gardner will be paid by Cyprus an annual fee of $20,000.

SECTIONS 17(a) AND 17(b)

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered

investment company, or any affiliated person of such person, knowingly to sell any security or other property to such registered company, or knowingly to purchase from such registered investment company, any security. Section 17(b) of the Act provides, however, that the Commission upon application may exempt a transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Mr. Fuqua is an affiliated person of Cyprus and the Foundation is an affiliated person of Mr. Fuqua. In addition, Applicants state that in the Merger Mr. Fuqua and the Foundation will be selling shares of RET Common to Cyprus in exchange for shares of New Cyprus Common. Applicants also state that Messrs. Gardner and Birch are affiliated persons of Gardner and affiliated persons of an affiliated person of Cyprus and that, in the Merger, they will be selling shares of RET Common and RET Preferred in exchange for shares of New Cyprus Common and New Cyprus Preferred, respectively. Accordingly, Applicants request an order, pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act in connection with the Merger: (1) the issuance of shares of New Cyprus Common in the Merger to Mr. Fuqua and the Foundation in exchange for shares of RET Common owned by each of them; and (2) the issuance of shares of New Cyprus Common and New Cyprus Preferred in the Merger to Gardner and Messrs. Gardner and Birch in exchange for shares of RET Common and RET Preferred owned by each of them.

In support of this request, Applicants represent that Mr. Fuqua, the Foundation, Gardner and Messrs. Gardner and Birch will receive New Cyprus Common in exchange for the RET Common owned by them in precisely the same manner as all other holders of RET Common, and that Gardner and Messrs. Gardner and Birch will receive New Cyprus Preferred in exchange for the RET Preferred owned by each of them in precisely the same manner as all other holders of RET Preferred. Applicants maintain that the transactions with respect to RET Common will be on the basis of the net asset values of New Cyprus Common and RET Common and are consistent with the policies of Cyprus and RET and with the provisions of the Act. Applicants submit the one-for-three reverse split with respect to Old Cyprus Common is merely an administrative action designed to enhance the market value of New Cyprus Common without changing the proportionate ownership of New Cyprus Common and that the issuance of New Cyprus Common in the Merger in exchange for RET Common will be determined solely on the basis of relative net asset values of such common stock. Applicants argue that, with respect to the issuance of the New Cyprus Preferred in exchange for both Old Cyprus Preferred and RET Preferred, the boards of directors of Cyprus and RET weighed the perceived advantages of the Merger to the holders of their respective preferred shares against the fact that the consummation of the Merger would, in effect, extend the redemption date of the preferred shares of each corporation. Applicants represent that each board separately concluded that the advantages of the Merger to the holders of its preferred shares outweigh any disadvantages from the extension of redemption dates. In addition, Applicants argue that the change in diversification limitations and the improved asset base resulting from the Merger will better enable the Surviving Corporation to achieve the basic investment objective of earning the dividends for the New Cyprus Preferred and obtaining increases in net asset value for the benefit of the New Cyprus Common and to pursue an investment and business strategy designed to take advantage of the current undervaluation of equity securities of operating companies.

SECTION 17(d) AND RULE 17d-1

Section 17(d) of the Act and Rule 17d-1 thereunder provide that it shall be unlawful for an affiliated person, or an affiliated person of an affiliated person, of a registered investment company, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered investment company, or company controlled by such registered investment company, is a participant, unless an application concerning such arrangement has been granted by the Commission. In passing upon such application, the Commission will consider whether the participation of such registered investment company is on a basis different from, or less advantageous than, that of the other participants.

Applicants state that the Share Purchase Transaction, the continuation of the RET Adviser as

investment adviser to RET between the Closing Date and the Effective Date, and the services of Gardner under the GPM Advisory Agreement as investment adviser to Cyprus following approval of the GPM Advisory Agreement (and, if the Merger is consummated, to the Surviving Corporation following the Merger) are transactions which may be deemed to constitute joint enterprises or other joint arrangements. Accordingly, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder: (1) permitting the Share Purchase Transaction, (2) permitting Mr. Fuqua to contribute to Cyprus and Cyprus to accept the assets of the RET Adviser following the Share Purchase Transaction, (3) permitting the RET Adviser to serve as investment adviser to RET during the period between the Closing Date and the Effective Date; and (4) permitting Gardner to serve as investment adviser to Cyprus following the approval of the GPM Advisory Agreement.

In support of the Share Purchase Transaction, Applicants represent that the assets of the RET Adviser consist of cash and cash-equivalent items, investment records, investment memoranda, research material, and computer software programs and printouts concerning securities and investment matters, but that the cash and cash-equivalent items (including securities) will be distributed to the shareholders of the RET Adviser prior to the Share Purchase Transaction. According to Applicants, Mr. Fuqua perceived that the Share Purchase Transaction would give Cyprus an additional element of bargaining power in negotiating an agreement with an external investment adviser and that, in the event that the Surviving Corporation determined to resume internal management, the assets of the RET Adviser would benefit management at that time. Accordingly, Applicants submit that the Share Purchase Transaction is consistent with the provisions, policies and purposes of the Act and that, to the extent that the participation of the Surviving Corporation in the Share Purchase Transaction is different from that of any other participant, it is at least equally advantageous, since the Surviving Corporation will benefit from the transactions at no cost to it.

In support of the New RET Advisory Agreement, Applicants state that the directors of Cyprus and RET concluded, in approving the Merger Agreement, that it was appropriate to provide an adequate amount of time between the Closing Date and the Effective Date in order tro confirm the relative net asset values of the common stocks of Cyprus and RET and to complete other transitional matters required in connection with the Merger. Applicants submit that it is necessary for RET to continue to receive investment advisory services during this period and, consequently, that the New RET Advisory Agreement is necessary and in the best interests of RET. In addition to providing investment advice during this period, Applicants state that the RET Adviser will provide substantial services in connection with transitional matters involved in the Merger. Applicants state that the New RET Advisory Agreement is identical to the Existing RET Advisory Agreement, except that the RET Adviser will not be authorized to enter into a sub-advisory agreement with Audit, and accordingly, RET will be receiving substantially the same level of investment advisory services from substantially the same personnel drawing on substantially the same advisory resources for the same rate of compensation during this period as has been the case in the past. Applicants submit that the New RET Advisory Agreement is in the best interests of RET, that such Agreement is consistent with the provisions, policies and purposes of the Act, and that participation of RET in the New RET Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

In support of the GPM Advisory Agreement, Applicants state that the directors of Cyprus unanimously approved the GPM Advisory Agreement after considering the following factors: (1) during the period from August 30, 1979 to August 25, 1980 the investment performance of Cyprus, on an internally-managed basis, had been disappointing; (2) during the same period the overall investment performance of RET, under the management of the RET Adviser, was significantly better than that of Cyprus; and (3) RET and Cyprus are extremely similar investment companies since each was established with the same basic investment objectives and policies and the subsequent experience of each has been similar. In addition, Applicants represent that the board of directors of Cyprus has determined that the proposed fee under the GPM Advisory Agreement, based upon the size of Cyprus' portfolio, is substantially less than the costs which Cyprus would incur for investment management and Covered Administrative Services on an internally-managed basis, and appears to be less than the fee which would normally be charged by other external investment advisers for rendering similar services.

Further, Applicants state that Cyprus' directors were advised that, if the Merger were consummated, the resulting fee under the GPM Advisory Agreement for an investment company with approximately $55,000,000 in net assets (which, based upon the size of the Cyprus and RET portfolios as of August 21, 1980, approximates the combined net assets of the Surviving Corporation upon consummation of the Merger) would be less than Cyprus' board of directors anticipated incurring for investment management and Covered Administrative Services on an internally-managed basis. In addition, Applicants represent that the amount of the fee under the GPM Advisory Agreement appeared to the board to be less than the amount which would normally be charged by other external investment advisers for rendering similar advisory and administrative services. In summary, Applicants maintain that the costs proposed under the GPM Advisory Agreement are more economical to Cyprus and that, based upon either the existing net assets of Cyprus or the anticipated combined net assets of RET and Cyprus upon consummation of the Merger, the resulting fee can be expected to be less than the amount which Cyprus had been expending when internally managed and less than the fees charged by other external advisers for providing similar services. Consequently, Applicants submit that the GPM Advisory Agreement is in the best interests of Cyprus and is consistent with the provisions, policies and purposes of the Act, and that participation of Cyprus in the GPM Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

NOTICE IS FURTHER GIVEN THAT any interested person may, not later than November 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11410/October 23, 1980

In the Matter of

NEW HAVEN CORPORATION
54 Meadow Street
New Haven, Connecticut 06506

(811-2867)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On September 9, 1980, a notice was issued (Investment Company Act Release No. 11338) stating that New Haven Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company, filed an application on August 18, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of New Haven Corporation under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9206/October 21, 1980

SECURITIES AND EXCHANGE COMMISSION v. *DIAGNOSTIC DATA INC.* (United States District Court for the District of Columbia Civil Action No. 80-2093)

The Securities and Exchange Commission announced the filing of a civil injunctive complaint in the United States District Court for the District of Columbia on October 21, 1980 against Diagnostic Data Inc. ("DDI") alleging violations of Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 14(a)-9 thereunder in connection with the solicitation of proxies by DDI's Board of Directors for the election of directors at the Company's 1980 Annual Meeting, previously scheduled for October 3, 1980. DDI, without admitting or denying the allegations, simultaneously consented to the entry of a Final Judgment of Permanent Injunction restraining and enjoining DDI from further violations of the proxy rules.

DDI, a Delaware corporation with offices in Mountain View, California, is a pharmaceutical research company currently attempting to obtain Food and Drug Administration approval for its principal product, Ontosein, an anti-inflammatory drug to be used in the treatment of arthritis in humans.

The Commission's Complaint alleges that DDI, in connection with the solicitation of proxies by its Board of Directors, made certain materially false and misleading statements regarding an agreement it had entered into to license Ontosein in the United States. In August 1980, DDI entered into an agreement-in-principle with Bristol-Myers Company ("Bristol") which gave Bristol an option until September 30, 1980 to determine whether to enter into a sales licensing agreement with DDI. The aggreement-in-principle was preliminary in nature and, in effect, a non-bidding expression of intent by both parties. The agreement-in-principle was entered into at a time when DDI's Board of Directors was involved in a proxy contest with a group of dissident shareholders who were critical of management and of the company's efforts to obtain a U.S. license for Ontosein, and were proposing an alternative slate of directors.

The Commission's Complaint alleged that, following the signing of the agreement-in-principle with Bristol, DDI made false and misleading statements to shareholders regarding the terms of the agreement. Specifically, in a letter to shareholders dated August 29, 1980, DDI stated that the value of the agreement-in-principle was worth $5 million over the next two years when in fact it contained provisions totaling only $2.5 million, $1.8 million of which was contingent upon FDA approval. The letter further stated that the agreement-in-principle provided for a 10% royalty to DDI in any sales license, the exclusive purchase of all Ontosein from DDI and specified minimum purchase quantities, when in fact the agreement-in-principle did not contain any of these provisions. Certain of these false and misleading statements were orally repeated by the DDI's former President in connection with the solicitation of proxies.

In addition to the entry of the Final Judgment of Permanent Injunction against DDI, the Court ordered DDI to comply with certain undertakings. DDI adjourned its Annual Meeting of Shareholders on October 3, 1980, and agreed to treat as if null and void any proxies solicited on behalf of the Board of Directors and tendered before the date of the Court's order. DDI agreed not to convene its Annual Meeting or any other meeting or vote of shareholders, agreed to reimburse the dissidents for all expenses of such resolicitation up to $50,000, and to notify its shareholders of the Commission's action and the facts underlying it. DDI also undertook to adopt, implement and maintain procedures designed to assure compliance with the Commission's proxy rules.

Litigation Release No. 9207/October 21, 1980

SEC. v. NATIONAL CHARTER MANAGEMENT AND FINANCIAL SERVICES, INC., ET AL. (C.D. of Calif., Civil Action No. 80 04244 AAH(Px))

The Los Angeles Regional Office announced that on October 14, 1980, the Honorable A. Andrew Hauk, United States District Judge in Los Angeles, granted the Commission's Motion for a Preliminary Injunction and entered an Order preliminarily enjoining the following defendants from committing further violations of the registration and anti-fraud provisions of the federal securities laws:

National Charter Mangement and Financial Services, Inc. of Claremont, California
General Arizona Clearinghouse Corporation of Maricopa County, Arizona
American Security Bank and Trust Company (West Indies) Limited of Anguilla, West Indies
General Finance Corporation of Denver, Colorado
Jack Walker Wright, aka Robert Morgan of Claremont, California
J. Wayne Haws of Huntington Beach, California
William Vaughn Ellsworth of Maricopa County, Arizona
Barry Eaton of Anaheim, California
Arvey Drown of Berthoud, Colorado

The Court further ordered the appointment of Richard H. Dinel as receiver over defendants National Charter Management and Financial Services, Inc. of Claremont, California; General Arizona Clearinghouse Corporation of Maricopa County Arizona; American Security Bank and Trust Company (West Indies) Limited of Anguilla, West Indies; and General Finance Corporation of Denver, Colorado.

The Court further extended the Temporary Restraining Order which it had entered September 24, 1980, as to two defendants, William Louis Teske and Iris G. Eaton.

The Court's order further prohibits the defendants from dissipating assets emanating from their conduct of the alleged fraudulent scheme and from destroying and concealing any of the books and records involved in the matter.

The defendants have been charged with the fraudulent offer and sale of unregistered securities, which have sometimes been referred to as contracts for the "lease" of money, to over 1000 investors in several states.

The Commission's action resulted from an investigation conducted by the Commission together with the Arizona Corporation Commission, which itself has previously filed a civil injunctive action in the Superior Court for the State of Arizona against defendants General Arizona, Teske, and Ellsworth.

For further information see Litigation Release No. 9196.

Litigation Release No. 9208/October 21, 1980

SEC v. WACO FINANCIAL, INC. AND J. JEROME PREVATTE (W.D. Mich. Civil No. K80-670CA4)

William D. Goldsberry, Admininstrator of the Chicago Regional Office announced that on October 9, 1980, the Honorable Benjamin F. Gibson, United States District Judge for the Western District of Michigan, signed an Order of Preliminary Injunction by Consent against WACO Financial, Inc. (WACO), a registered broker-dealer located in Kalamazoo, Michigan, and J. Jerome Prevatte (Prevatte), WACO's President, Treasurer and majority shareholder. The Defendants were preliminarily enjoined from violating Sections 15(c) and 17(a) of the Securities Exchange Act of 1934 and Rules 15c3-1, 15c3-3, 17a-3, 17a-4 and 17a-5 promulgated thereunder.

The Complaint, filed on September 26, 1980, alleges that WACO, aided and abetted by Prevatte, from in or about August 31, 1980 to the date of the complaint, had not maintained the required minimum net capital as computed in accordance with Rule 15c3-1; and while carrying customers' free credit balances, failed or neglected to maintain in a Reserve Bank Account or Accounts, cash or qualified securities in the amount computed pursuant to the formula prescribed by Rule 15c3-3(e). The Complaint further alleges that WACO, aided and abetted by Prevatte, from July 15, 1980 to the date of the Complaint had not made, kept current or preserved those books and records relating to WACO's business required by Rules 17a-3 and 17a-4. In addition, the Complaint alleges that WACO, aided and abetted by Prevatte, did not file with the Commission a report of its financial condition for the

year ending June 30, 1980, as required by Rule 17a-5. The Complaint also seeks permanent injunctive relief against WACO and Prevatte.

Litigation Release No. 9209/October 21, 1980

SEC v. *TEXAS INTERNATIONAL COMPANY* (U.S.D.C., N.D. ILL., CIVIL ACTION NO. 78-C-847)

William D. Goldsberry, Admininstrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that, on September 30, 1980, the Honorable Prentice H. Marshall entered an order granting in part and denying in part the Commission's motion for summary judgment and granting in part and denying in part the defendant Texas International Company's (TI) motion for summary judgment.

In December of 1977, TI made an offer to purchase the claims in bankruptcy of a group of creditors designed "the Dietrich class," who had received their claims as the result of a settlement of litigation against King Resources Company (KRC). This litigation alleged that KRC had violated the anti-fraud provisions of the federal securities laws in the sale of KRC stock and debentures. All members of the Dietrich class were either stockholders or debentureholders of KRC. In satisfaction of these claims, the Dietrich class members agreed to take stock of two newly created classes of stock of KRC, since renamed Phoenix Resources Company. This new stock, designated new Class A and new Class B was to be issued sometime in early 1978. The outstanding securities of KRC held by the Dietrich class members were registered with the Commission under the Securities Exchange Act of 1934.

At the time of its offer to the Dietrich class members, TI already had obtained claims exchangeable for approximately 40% of the new stock to be issued. In his option, Judge Marshall ruled that since the claims held by the Dietrich class members had for their original basis the ownership of KRC securities, which were registered with the Commission, coupled with the facts that the new class A and B stock would be registered with the Commission after its issuance and that TI would own over 5% of the total claims after its solicitation, TI's solicitation was a tender offer which was required to have been filed under the Williams Act. In granting the Commission's motion, the Court denied TI's motion for summary judgment that its solicitation was not a Williams Act offer.

The Court granted TI's motions for summary judgment on all but one of the Commission's fraud counts. The fraud counts were based upon Sections 10b and 14e of the Exchange Act and Rule 10b-5. Likewise, the Commission's motions for summary judgment were denied on all but one of the fraud counts. The Court denied both the Commission's and TI's motion for summary judgment on the question of scienter. The Court denied the Commission's motion for a preliminary and permanent injunction and the prayer for an order of rescission. A status hearing will be held on November 14, 1980.

Litigation Release No. 9210/October 21, 1980

U.S. v. *JOHN B. MUMFORD*, No. 79-5087;

U.S. v. *CORTES W. RANDELL*, No. 79-5088 (4th Cir. Ct. of Appeals, October 2, 1980)

Justin W. Williams, U.S. Attorney for the Eastern District of Virginia and Paul F. Leonard, Administrator of The Washington Regional Office of the Securities and Exchange Commission announced that on October 2, 1980, the United States Court of Appeals for the Fourth Circuit affirmed the convictions of Cortes W. Randell of McLean, Virginia and John B. Mumford of Fairfax, Virginia on 17 federal felony counts, namely, 5 counts of securities fraud, 7 of mail fraud, 4 of interstate transportation of monies obtained by fraud, and 1 of making a false statement to the Veterans Admininstration. The defendants were convicted on January 17, 1979 after a 6 day jury trial in the Federal District Court for the Eastern District of Virginia, Alexandria Division. The convictions were based on the activities of Randell and Mumford as officers, directors, and controlling persons in National Commercial Credit Corporation and Federal Mortgage Acceptance Corporation.

On December 30, 1977, Randell was enjoined by consent from future violations of antifraud and registration provisions of the federal securities laws in connection with his association with National Commercial Credit Corporation and Federal Mortgage Acceptance Corporation. In the same

case, the District Court dismissed the Commission's complaint against Mumford. (*SEC* v. *Randell, et al.* E.D. Va., Civil Action No. 77-872-A). The dismissal was affirmed by the Fourth Circuit on February 22, 1980. (*SEC* v. *Mumford*, No. 78-1386.)

Litigation Release No. 9211/October 20, 1980

UNITED STATES OF AMERICA EX REL SECURITIES AND EXCHANGE COMMISSION v. *GERALD GREENSPAN* 80 Crim. Misc. #1 (Page 35) (EW) (S.D.N.Y.)

Stephen L. Hammerman, Admininstrator of the New York Regional Office, announced that an October 14, 1980 the Hon. Edward Weinfeld of the United States District Court for the Southern District of New York, sentenced Gerald Greenspan of Brooklyn, New York, to a two-year prison term, following his conviction for criminal contempt of three prior orders of permanent injunction issued against him by the federal court in the Southern District of New York.

Greenspan was found guilty on August 28, 1980, following a six day jury trial, for disobeying three prior injunctions which enjoined him from violating the anti-fraud provisions of the federal securities laws and also placed certain restrictions on his securities trading activities. The injunctions were issued on November 10, 1960, in *SEC* v. *Gerald Greenspan*, (60 Civil 4170); July 8, 1975, in *SEC* v. *Gerald Greenspan a/k/a Jay Greene* (75 Civil 2826); and February 22, 1980 in *SEC* v. *Gerald Greenspan a/k/a Jay Greene* (75 Civil 2826).

Greenspan violated the orders by engaging in a scheme, between November 27, 1979 and May 31, 1980, which involved the purchase of the securities of Hiller Aviation Inc. and other securities at 11 brokerage firms, for a total price of $140,890.85, without intending to pay for such securities; and, in fact, he failed to pay for over $110,000 of the total purchase price. In furtherance of his fraudulent scheme Greenspan also issued checks to brokerage firms which were drawn on accounts with insufficient funds or were otherwise returned unpaid, in the amount of $62,927.69. Finally, Greenspan failed to comply with three specific directives of the 1980 Injunction.

For further information see LR-1820, 1832, 6954, 7008, 8622, 8672, 8986, 9018, 9142, 9198.

Litigation Release No. 9212/October 21, 1980

SECURITIES AND EXCHANGE COMMISSION v. *THE CITIZENS AND SOUTHERN NATIONAL BANK* (United States District Court for the Northern District of Georgia, Atlanta Division) Civil Action No. *80-1821A*

The Division of Enforcement and the Atlanta Regional Office of the Securities and Exchange Commission announced the filing of a complaint in the United States District Court for the Northern District of George against the Citizens and Southern National Bank ("C & S"), a national bank located in Atlanta, Georgia.

The Commission's Complaint alleges that C&S violated provisions of the Securities Exchange Act of 1934 by failing to make accurate and complete disclosure of certain material matters. C&S failed to disclose a course of conduct whereby it acquired indirect control over certain banks in Georgia, the so-called correspondent associate banks. C&S, which was prohibited from acquiring those banks outright by Georgia banking law, had certain of its directors, officers, employees, and other persons friendly to C&S purchase large amounts of the stock of those banks. Many of those stock purchases were financed by loans from C&S or the correspondent associate banks which featured preferential interest rates, and which did not require periodic reductions in principal. The Commission's Complaint alleges further that in 1975, C&S acquired six Atlanta-area correspondent associate banks on terms which were negotiated by C&S officers who themselves, or whose superiors and colleagues, were shareholders of the acquired banks. Those acquisitions resulted in large profits for the shareholders of the acquired banks, including the C&S officers, directors, and friends who were shareholders.

In addition the Commission alleges that C&S overstated its earning for 1976 in that it failed to make a sufficient provision for anticipated loan losses. The reserve provision, which must be charged to current earnings, was inadequate to cover losses which C&S, based on facts in its possession at the time, had reason to anticipate would occur. Moreover, the Commission alleges that

C&S did not explain adequately the significance of a decrease in its reserve for loan losses between 1975 and 1976, and that C&S, in 1976 and 1977, failed to disclose that it valued much of its real estate collateral and property acquired through foreclosure on the basis of projected future values which were substantially higher than the values which C&S could have received for those properties in the then-current market.

The Commission also alleges that C&S failed to make adequate disclosure relating to its handling as investment advisor of certain transactions of Citizens and Southern Realty Investors, now Southmark Properties, and the resultant claims raised against C&S by Citizens and Southern Realty Investors.

The Commission also announced that pursuant to the consent of C&S, in which it neither admitted nor denied the allegations of the Complaint, the Court entered a Judgment of Permanent Injunction against C&S, enjoining it from further violations of Rule 10b-5(2) under the Securities Exchange Act of 1934 which prohibits the making of any untrue statement of a material fact or any omission to state a material fact.

In addition to the entry of the Judgment of Permanent Injunction mentioned above, certain other equitable relief was ordered by the Court, upon an undertaking by C&S, relating to procedures governing approval of future acquisitions of correspondent associate banks and to procedures for review of certain transactions between C&S and its officers, directors and employees. C&S also agreed to disclose the material circumstances surrounding the development of the relationship with the correspondent associate banks, and the circumstances surrounding C&S's acquisition of six Atlanta-area correspondent associate banks in 1975.

Litigation Release No. 9213/October 22, 1980

UNITED STATES v. *RUSSELL E. PHILLIPS ET. AL.* (Western District of Missouri)

William D. Goldsberry, Admininstrator of the Chicago Regional Office and Ronald S. Reed, Jr., United States Attorney for the Western District of Missouri announced that on August 25, 1980, after an eleven month trial, Russell E. Phillips, Quentin Darence Cloninger, Carl L. Bledsoe, Jr., Thomas B. Moffitt and Ronald J. Stafford were found guilty of securities fraud, racketeering and conspiracy by a jury in the United States District Court for the Western District of Missouri. The convictions resulted from the activities of the defendants in offering and selling the securities of farm cooperatives in Missouri, Oklahoma and Arkansas. On October 8, 1990 the Honorable Warren K. Urbom, Chief Judge of the United States District Court for the District of Nebraska, who was the trial judge sitting in Kansas City, Missouri, sentenced Phillips, Bledsoe, Moffitt and Stafford. The sentencing of Quentin Darence Cloninger was continued.

Russell E. Phillips of Springfield, Missouri, was found guilty of one count of conspiracy to commit rackerteering offenses, one count of racketeering under 18 U.S.C. 1962(c), two counts of securities fraud in the offer and sale of the securities of Progressive Farmers Association, and two counts of securities fraud involving Progressive Investors, Inc. Phillips was sentenced to 15 years imprisonment, a $20,000 fine, and 5 years probation following his release. All remaining counts of the indictment against Phillips had been severed before trial.

Carl L. Bledsoe, Jr. of Memphis, Tennessee, was found guilty of one count of conspiracy to commit racketeering offenses, one count of racketeering under 18 U.S.C. 1962(c), and two counts of securities fraud in the offer and sale of the securities of Progressive Farmers Association. Bledsoe was sentenced to 10 years imprisonment, a $15,000 fine, and 5 years probation following his release. All remaining counts of the indictment against Bledsoe had been severed before trial.

Thomas B. Moffitt of California, Missouri was convicted of one count of conspiracy to commit racketeering offenses and one count of racketeering under title 18 U.S.C. 1962(c). Moffitt was sentenced to 5 years imprisonment, a $5,000 fine and 5 years probation following his release. All remaining counts of the indictment against Moffitt were severed before trial.

Ronald J. Stafford of El Dorado, Arkansas was convicted of one count of conspiracy to commit racketeering offenses and one count of racketeering under 18 U.S.C. 1962(c). Stafford was sentenced to 5 years imprisonment, a $5,000 fine and 5 years probation following his release. All remaining counts

of the indictment against Stafford were severed before trial.

Phillips, Cloninger, Bledsoe, Moffitt and Stafford were indicted on October 27, 1978 along with 17 persons. The disposition of the other defendants is as follows:

Paul D. Canaday of Springfield, Missouri pled guilty in October, 1979 to one count of racketeering under 18 U.S.C. 1962(c) and was sentenced on August 29, 1980 to four years imprisonment with all but 6 months suspended, four years probation and a $15,000 fine. All remaining counts were dismissed.

Ronald M. Elia of El Dorado, Arkansas pled guilty to one count of racketeering under 18 U.S.C. 1962(c) and was sentenced on November 26, 1979 to 5 years probation and a $10,000 fine. All remaining counts were dismissed.

Donald Owen Beaver of North Miami, Oklahoma pled guilty in October, 1979 to one count of securities fraud and was sentenced on August 29, 1980 to 3 years probation and a $5,000 fine. All remaining counts were dismissed.

Quentin Leroy Cloninger of Bossier, Louisiana, pled guilty to a one count securities fraud misdemeanor information and on August 29, 1980 was fined $2,500. All remaining counts were dismissed.

Charles Hoose of Springfield, Missouri pled guilty to a one count securities fraud misdemeanor information and on October 19, 1979 was fined $5,000. All remaining counts were dismissed.

Robert Moore of Tampa, Florida pled guilty to one count of securities fraud and on November 28, 1979 was sentenced to 18 months imprisonment with all but 60 days suspended, 3 years probation and a $7,500 fine. All remaining counts were dismissed.

Dennis Moore of Phoenix, Arizona pled guilty to a one count securities fraud misdemeanor information and on October 29, 1979 was fined $5,000. All remaining counts were dismissed.

Warren H. Moore of Springfield, Missouri pled guilty to a one count securities fraud misdemeanor information and on November 2, 1979 was fined $2,500. All remaining counts were dismissed.

James H. Morrison of Memphis, Tennessee pled guilty to one count of securities fraud and on August 29, 1980 was sentenced to 3 years imprisonment, execution of sentence suspended, two years probation and a $7,500 fine. All remaining counts were dismissed.

Charles F. Thrower of Cape Girardeau, Missouri pled guilty to a one count securities fraud misdemeanor information and on November 5, 1979 was fined $7,500. All remaining counts were dismissed.

Thomas H. Thrower of Cape Girardeau, Missouri pled guilty to a one count securities fraud misdemeanor information and on November 5, 1979 was fined $5,000.

Truman W. "Bay" Harmon of Springfield, Missouri pled guilty to one count of securities fraud and was placed on 5 years probation and fined $10,000.

All charges against Gerald B. Nance and William F. Suedekum were dismissed.

All charges against John Weston Chase and Nancy L. Haney were dismissed. Chase and Haney testified as government witnesses.

In the seventh month of the trial Donald E. Burks was severed by order of the Court. All charges remain pending against Burks. (For further information see Litigation Release #7932.)

Litigation Release No. 9214/October 22, 1980

SEC v. *JEROLD ZUKOR, ET AT.* (Civil Action No. 80-4663-AWT(GX) (C.D. Cal.))

The Los Angeles Regional Office announced that on October 22, 1980, a Complaint was filed in the U.S. District Court for the Central District of California against Jerold Zukor, Arnold Poliskin, Murry Zukor, H. George Pollack, Ralph R. Frank, James M. Morse, Arthur Levine, Saul Ring, Jerome E. Rosen, Angela Deane, Ernest Braunstein, William P. Malpezzi, Steven Edmondson, Trio Enterprises, Inc., and Pure-Flow, Inc.

The Complaint charges that Jerold Zukor, Poliskin, Murry Zukor, Pollack and Trio violated the registration and anti-fraud provisions of the federal securities laws while engaged in a scheme to resurrect Westamerica Automotive Corporation, a

public shell coporation, by acquiring control of that company, infusing into the shell some of the assets and operations of Trio, and then causing activity to be generated in the over-the-counter market in Westamerica stock using false and misleading information and manipulative transactions and, after attaining increased market activity thereby, beginning to sell shares of Westamerica held in nominee accounts. The Complaint alleges that in connection therewith, Malpezzi, Edmondson, Braunstein, Morse, Levine and Pure-Flow violated the anti-fraud provisions, and Frank, Ring, Rosen and Deane violated the registration provisions.

Simultaneously with the filing of the Commission's Complaint, Jerold Zukor, Murray Zukor, Trio, Malpezzi, Edmondson, Morse, Ring, Rosen and Frank each consented, without admitting or denying any of the allegations of the Complaint, to the entry of final judgments of permanent injunction. Further, as a part of his consent to the entry of injunctions, Frank, an attorney, agreed not to practice before the Commission for a period of two years.

Litigation Release No. 9215/October 22, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GBC CLOSED CIRCUIT TV CORPORATION*

United States District Court for the District of Columbia Civil Action No. 80-2710.

The Commission announced today that it filed a civil injunctive action in the United States District Court for the District of Columbia against GBC Closed Circuit TV Corporation ("GBC") with offices at 315 Hudson Street, New York, New York 10013. The Commission's Complaint alleges violations of the reporting provisions of federal securities laws and seeks a Judgment of Permanent Injunction and Other Relief.

The Complaint alleges that GBC, as part of a continuing course of violative conduct, has failed to file its Annual Report on Form 10-K for its fiscal year ended May 31, 1980, and its Quarterly Report on Form 10-Q for its fiscal quarter ended August 31, 1980 required to have been filed with the Commission by August 29, and October 15, 1980, respectively. The Complaint requests that the Court order GBC to file forthwith, with the Commission, its delinquent reports on Forms 10-K and 10-Q. In addition, the Commission requests that the Court enjoin GBC from further violations of the reporting provisions of the Federal securities laws.

Litigation Release No. 9216/October 22, 1980

SECURITIES AND EXCHANGE COMMISSION v. *STARRETT HOUSING CORPORATION* (United Stated District Court for the District of Columbia, Civil Action No. 80-2269)

The Commission announced today that on October 21, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Starrett Housing Corporation ("Starrett") of New York, New York restraining and enjoining Starrett from failing to file timely periodic reports and ordering it to comply with certain undertakings. The Commission's complaint was filed on September 5, 1980. Starrett, consenting to the entry of the Court's judgment, admitted that it had failed to timely file its 1979 Annual Reports and two subsequent Quarterly Reports. Such Reports were filed by Starrett on September 15, 1980.

Litigation Release no. 9217/October 23, 1980

SECURITIES AND EXCHANGE COMMISSION v. *JAMES W. HARRIS, STEPHEN J. KLEMEN, JR. AND JEFFREY SILVERMAN*, 80 Civil 5992, S.D. N.Y. October 22, 1980

The Securities and Exchange Commission announced the filing of a complaint on October 22, 1980 in the United States District court for the Southern District of New York seeking injunctive relief against James W. Harris ("Harris"), Stephen J. Klemen, Jr. ("Klemen") and Jeffrey Silverman ("Silverman"). The complaint alleges that the defendants violated the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 in connection with the formation and operation of Sheridan Associates ("Sheridan"), a partnership headquartered in New York City, which dealt in government securities.

According to the Commission's complaint, the defendants and an unnamed partner formed Sheridan during late 1978 to trade in U.S. government and U.S. government guaranteed

securities. The defendants induced individuals, institutions and securities dealers to trade with Sheridan by, among other things, distribution a certified financial statement which showed equity of approximately $4.5 million as of December 15, 1978. In fact, that equity was withdrawn on December 19, 1978, and only approximately $2 million was later contribution by the partners.

The complaint further alleges that Klemen and Silverman caused Sheridan to make certain payments in the form of loans to Klemen. Those payments exceeded $7.6 million, and repayments decreased the total to $3.4 million which is still outstanding. Those funds were taken from margin deposits by those who traded with Sheridan.

In addition, the complaint alleges that Harris traded in certain nominee accounts with Sheridan although he did not have sufficient assets to purchase those securities. Sheridan financed those purchases from the margin deposited by others. Harris' accounts lost approximately $2 million before he left Sheridan, and he has not paid Sheridan for his trading losses.

The assets of Sheridan and the defendants are under the supervision of the bankruptcy courts.

Simultaneously with the filing of the complaint the defendants consented to the entry of a final judgment of permanent injunction without admitting or denying the allegations contained in the complaint. They also undertook for one year not to engage in the business of trading U.S. government or U.S. government guaranteed securities. Harris also undertook not to apply for association with a broker or dealer registered with the Commission for one year.

Litigation Release No. 9218/October 23, 1980

SEC v. JEROME A. BERNSTEIN AND LAWRENCE BERNSTEIN (USDC, COLORADO, 80-CR-255)

Joseph Dolan, United States Attorney for the District of Colorado and Robert H. Davenport, Admininstrator of the Denver Regional Office of the United States Securities and Exchange Commission, announced the return of a four count indictment on September 17, 1980 by a Federal Grand Jury in Denver, Colorado against Jerome A. Bernstein and Lawrence Bernstein of Aurora, Colorado. The Bernsteins were charged with two counts of securities fraud and one count each of mail and wire fraud, involving, among other things, the offer and sale of Republic Oil and Mining Company and Continental Concepts common stock.

For further information, see Litigation Release No. 8767.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6252-54	316
Securities Exchange Act	17244-62	339
Public Utility Holding Company Act	21760-70	372
Trust Indenture Act	595	398
Investment Company Act	11411-20	398
Investment Advisers Act	736	408
Litigation	9219-24	408
Accounting Series	283	412
Corporate Reorganization	324	414

This listing covers releases issued from 10/24/80-10/30/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6253 Interpretive release describing procedures for responding to all requests for no-action and interpretive letters except those involving shareholder proposals.

CR-324 Advisory Report of the SEC on the Proposed Plan of Reorganization for Continental Investment Corporation.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-17244 34-17248 34-17251
34-17245 34-17249 34-17253

33-6252 Proposal to Amend Rule 144, which provides a safe harbor for the resale of securities [File No. S7-861 — Comment Period Expires: December 1, 1980].

33-6254 Adoption of Rule 12b-1 under the Investment Company Act to permit open-end management investment companies to bear expenses associated with the distribution of their shares.

34-17258 Adoption of amendments to Rule 19b-4 under the 1934 Act.

34-17259 Withdrawal of proposed Rule 3b-7 which would have defined the term "rule" of a self-regulatory organiza-

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tion for purposes of Sections 3(a)(27) and 3(a)(28) and withdrawal of proposed amendments to Rule 19b-4 and related Form 19b-4A.

35-21767 Proposal to amend Rule 45(b)(6) under the 1935 Act which is a conditional general authorization by rule for the members of a holding company system to join in a consolidated federal income tax return without applying each year, under Rule 45(a), for a specific order authorizing such action. [File No. S7-862 — Comment Period Expires: December 31, 1980].

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6252/October 24, 1980

RESALES OF SECURITIES

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment a proposal to amend Rule 144, which provides a safe harbor for the resale of securities to the public. The proposed amendments would permit persons who have held securities covered by the rule for periods of three or four years, depending on the status of the issuer of the securities, to sell such securities without compliance with the provisions of the rule relating to amount limitation, manner of sale and notice, provided such persons are not affiliates of the issuer and there is current information available to the public concerning the issuer. The purpose of the amendments is to relax restrictions on resales of restricted securities that may be more burdensome than necessary. The Commission specifically invites comment from interested persons on its proposal to eliminate the notice of sale requirement, as it has no way to determine the utility of information furnished thereby to issuers, the investment community, or the general public. When Rule 144 was adopted in 1972, the notice requirement (Form 144) was considered valuable as an aid to the Commission in monitoring the operation of the rule, and as an enforcement tool to assist in the detection of abuses. The Commission also would welcome comments as to whether the Form 144 requirement should be retained for nonaffiliates, but with revisions in content or format, so as to provide information that would be especially relevant to those functions in light of the other proposed amendments.

DATE: Comments must be received on or before December 1, 1980.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Comment letters should refer to File No. S7-861 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ann M. Glickman or William E. Toomey at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today published for comment proposed amendments to Rule 144 (17 CFR 230.144) under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.]. The amendments are being proposed for the purpose of relaxing certain provisions of the rule which may be unnecessarily burdensome.

BACKGROUND

Rule 144 provides a safe harbor for the resale of "restricted securities"[1] and securities held by affiliates[2] of an issuer. The rule sets forth standards which, if met, permit persons who hold such

[1]The term "restricted securities" includes securities acquired in nonpublic offerings, such as those under Section 4(2) of the Securities Act, as well as securities acquired in offerings made in reliance upon Rule 240 (17 CFR 230.240) under the Act.

[2]An "affiliate" of an entity is defined in Rule 405 (17 CFR 230.405) under the Securities Act as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the (entity)."

securities to sell them publicly without the need for registration and without being deemed underwriters[3] under the Securities Act. Rule 144 was considered experimental at the time of its adoption in 1972.[4] Because the rule represented a significant departure in the effort to regulate resales of restricted securities, the resale provisions of the original rule were relatively strict. The Commission has watched the operation of the rule carefully and, from time to time, has relaxed its requirements to alleviate the burden of compliance with the rule in a manner consistent with its goal of investor protection.

In Release No. 33-6032 (March 5, 1979) [44 FR 15610] the Commission adopted amendments to Rule 144 which permitted sales of securities by non-affiliates without regard to the volume restrictions of the rule, provided that the seller held the securities for at least three years, if the securities to be sold were of a class listed on a national securities exchange or quoted on NASDAQ;[5] or after a four-year holding period, if the issuer filed periodic reports under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.]. The Commission did not change any of the other requirements of the rule. In the adopting release, the Commission indicated that the amendments gave some recognition to the fact that a non-affiliate who has held his securities for a considerable length of time has provided a substantial indication that he did not acquire his securities with a view to distribution, and is therefore not an underwriter who must register his securities for resale. Anyone who is not an issuer, underwriter or dealer may resell securities in any manner he wishes subject, of course, to the antifraud provisions of the Securities Act and the Exchange Act.[6] The Commission believes that similar considerations warrant the proposed elimination of the manner of sale and notice requirements of the rule for non-affiliates who have held their securities for the specified periods.

The proposed amendments would also eliminate the manner of sale, amount limitation and notice requirements of the rule for sales by non-affiliates who have held their securities for four years, if the issuer of such securities is in compliance with the requirements of paragrah (c)(2) of Rule 144 regarding the availability of current public information. The Commission is of the opinion that the three or four-year stratified holding period condition is appropriate for the protection of persons who purchase securities sold pursuant to Rule 144. Issuers with securities listed on an exchange or quoted on NASDAQ are subject to self-regulatory controls and trading surveillance not applicable to other issuers, and there is a significant difference in the amount of information available concerning exchange-listed or NASDAQ-quoted securities and the securities of other companies that meet the conditions of paragraph (c) of Rule 144.

Certain other considerations prompt the Commission's proposal at this time to provide limited relief from the manner of sale and notice requirements of Rule 144. In Release No. 33-5979 (September 27, 1978) [42 FR 43709] the Commission amended Rule 144 to permit persons selling securities to deal directly with a market maker as an alternative to the unsolicited brokers'

---

[3]The term "underwriter" is broadly defined in Section 2(11) of the Securities Act and includes persons who acquire securities "with a view to * * * distribution."

[4]See in this regard that portion of Release No. 33-5223 (January 11, 1972) (37 FR 591) entitled "Operation of the Rule."

[5]NASDAQ is an electronic interdealer quotation system which is owned and operated by the National Association of Securities Dealers, Inc.

[6]If the proposed amendments are adopted, the manner in which a nonaffiliate resells his securities may raise questions as to whether he is engaged in a distribution for purposes of Rule 10b-6 (17 CFR 240.10b-6) under the Exchange Act. The traditional test of a Rule 10b-6 distribution involves analysis of such factors as (i) the magnitude of the offering, (ii) the selling efforts, and (iii) the selling methods used. *See Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961). These are the same criteria used to determine whether sales pursuant to the liberalized volume limitations under Rule 144, effective as of September, 1978 (Release No. 33-5979 (September 27, 1978)), constitute a distribution for purposes of Rule 10b-6. See Release No. 33-6099 (August 4, 1979), Question 57. If sales pursuant to Rule 144 constitute such a distribution, Rule 10b-6 prohibits, among other things, purchases of the class of securities to facilitate the distribution by a participant in the distribution until his participation has been completed.

transaction historically required by the rule. As a consequence, meaningful amounts of securities have been sold through market makers in transactions involving some degree of solicitation. The Commission is not aware that this relaxation has resulted in any significant adverse effect on the securities markets or the investing public, and a further easing of this restriction seems appropriate at this time. Indeed, a recent joint study by the Commerce Department and the Commission's Directorate of Economic and Policy Analysis suggests that Rule 144 sales generally do not have a significant impact in the over-the-counter market.[7] When Rule 144 was adopted in 1972, the notice requirement (Form 144) was considered valuable as an aid to the Commission in monitoring the operation of the rule, and as an enforcement tool to assist in the detection of abuses. After eight years of successful experience under the rule, the Commission's need for the information provided by the notice provision is not longer so great, and it has therefore proposed deletion of this requirement for certain non-affiliates. However, the notice requirement remains the primary, if not the sole, source of information regarding certain transactions under the rule. The Commission would therefore welcome comments as to whether the Form 144 requirement should be retained for non-affiliates, or retained but with revisions in content or format, so as to provide information that would be especially relevant to the monitoring and enforcement functions in light of the proposed amendments. Specifically, comment is required as to the usefulness of the representation as to material adverse information required to be made in the form. And, from the point of view of a monitoring function, which aspects of the form would be particularly useful? Comment is also invited on the cost or burden involved in the preparation and filing of the form and whether the form should be required to be filed at the time the sale order is placed or after the transaction is effected. The Commission particularly urges any persons who utilize the information provided by Form 144 to comment upon the proposal so that we may measure more adequately the utility of the information provided by Form 144 to issuers, the investment community, and the general public.

The Commission is not recommending any relaxation of the requirements of paragraph (c) of Rule 144 relating to current public information regarding the issuer of the securities to be sold. Because Rule 144 provides a safe harbor for the public resale of restricted securities, the Commission considers these requirements essential in light of the basic policy and purpose of the Securities Act "to provide full and fair disclosure of the character of securities." As the Commission proceeds to relax the more mechanical provisions of Rule 144, the current public information requirement of the rule will help assure the continuance of informed and orderly markets.

DISCUSSION OF THE PROPOSAL

The Commission is proposing for public comment an amendment which would add to Rule 144 a new paragraph (k), exempting from the amount limitation, manner of sale and notice requirements of the rule sales of securities by non-affiliates after a specified holding period, such holding period to depend upon the information status of the issuer. Specifically, new paragraph (k) as proposed would exempt from the requirements of paragraphs (e), (f) and (h) of Rule 144 sales of restricted securities by persons who have been non-affiliates of the issuer of such securities for a period of at least three months, provided that (i) the securities have been held for at least three years, and are of class listed on a national securities exchange or quoted in NASDAQ; or (ii) the securities have been held for at least four years, and the issuer thereof files reports pursuant to Sections 13 or 15(d) of the Exchange Act and otherwise is in compliance with the requirements of paragraph (c)(1) of Rule 144, or there is publicly available concerning the issuer of the securities the information specified in clauses (1) to (14), inclusive, and clause (16) of paragraph (a)(4) of Rule 15c2-11 under the Exchange Act or, if the issuer is an insurance company, the information specified in Section 12(g)(2)(G)(i) of that Act.

Paragraph (e)(2) of Rule 144 specifies the amount of restricted securities which may be sold by a non-affiliate within a three-month period.[8] Paragraph (e)(2) by its terms exempts from the amount

[7] "Rule 144 Sales in the OTC Market: A Preliminary Analysis of the Impact of Rule 144 Sales in the OTC Market," pp. 14-16.

[8] In general, a person may sell during any three-month period an amount equal to the greater of the average weekly trading volume (if available), or one percent of the outstanding securities of the class. See, in this regard, paragraph (e)(1) of Rule 144.

limitations securities held for at least three years, if they are of a class listed on a national securities exchange or quoted on NASDAQ, or securities held for at least four years, if the issuer thereof files reports pursuant to Sections 13 or 15(d) of the Exchange Act. The proposed amendment would delete this exemptive language and substitute therefor a cross reference to the broader exemptive provisions of proposed paragraph (k).

Paragraph (f) of Rule 144 specifies that all securities sold pursuant to the provisions of the rule must be sold in "brokers' transactions" within the meaning of Section 4(4) of the Securities Act, or in transactions directly with a "market maker" as defined in Section 3(a)(38) of the Exchange Act. Paragraph (f) also requires the seller of securities not to solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with the transaction, or to make any payment in connection with the offer and sale of the securities to any person other than the broker who executes the order to sell the securities. Paragraph (f) by its terms is not applicable to sales of securities for the account of a decedent's estate or the beneficiary of such an estate, if the estate or the beneficiary thereof is not an affilite of the issuer. The proposed amendments would add to paragraph (f) a cross reference to paragraph (k) to alert the reader to the non-applicability of the general requirements of paragraph (f) if the conditions of paragraph (k) are satisfied.

Paragraph (h) requires the filing of notices of proposed sale pursuant to the provisions of Rule 144, except in *de mi imis* situations. The proposed amendments would add to paragraph (h) a cross reference to paragraph (k) to alert the reader to the non-applicability of such notice requirements if the conditions of paragraph (k) are satisfied.

TEXT OF THE PROPOSED AMENDMENTS

It is proposed to amend 17 CFR Part 230 by amending paragraphs (e)(2), (f), and (h) of §230.144 and adding paragraph (k) thereto to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(e) * * *

(2) *Sales by persons other than affiliates.* The amount of restricted securities sold for the account of any person other than an affiliate of the issuer, together with all other sales of restricted securities of the same class for the account of such person within the preceding three months, shall not exceed the amount specified in paragraphs (e)(1)(i), (1)(ii) or (1)(iii) of this section, whichever is applicable, unless the conditions in paragraph (k) of this rule are satisfied.

* * * * *

(f) *Manner of sale.* The securities shall be sold in "brokers' transactions" within the meaning of section 4(4) of the Act or in transactions directly with a "market maker," as that term is defined in section 3(a)(38) of the Securities Exchange Act of 1934, and the person selling the securities shall not (1) solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or (2) make any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. The requirements of this paragraph, however, shall not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate: *Provided* the estate or beneficiary thereof is not an affiliate of the issuer, nor shall they apply to securities sold for the account of any person other than an affiliate of the issuer, *Provided* the conditions of paragraph (k) of this rule are satisfied.

* * * * *

(h) *Notice of proposed sale.* If the amount of securities to be sold in reliance upon the rule during any period of three months exceeds 500 shares or other units or has an aggregate sale price in excess of $10,000, three copies of a notice on Form 144 shall be filed with the Commission at its principal office in Washington, D.C.; and if such securities are admitted to trading on any national securities exchange, one copy of such notice shall also be transmitted to the principal exchange on which such securities are so admitted. The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with

a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment thereon shall be deemed to preclude the Commission from taking any action it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The requirements of this paragraph shall not apply, however, in the event the conditions of paragraph (k) of this rule are satisfied.

* * * * *

(k) *Sales by persons other than affiliates after specified holding period.* The requirements of paragraphs (e), (f) and (h) of this rule shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months: *Provided* (1) the securities have been beneficially owned by the person for a period of at least three years prior to their sale and are part of a class that is either listed on a national securities exchange or quoted in the National Association of Securities Dealers, Inc.'s electronic interdealer quotation system known as NASDAQ, or (2) the securities have been beneficially owned by the person for a period of at least four years prior to their sale and the issuer thereof is in compliance with the requirements of paragrap (c)(1) of this rule regarding the filing of reports under sections 13 or 15(d) of the Securities Exchange Act of 1934, or with the requirements of paragraph (c)(2) of this rule regarding the availability of public information concerning the issuer. In computing the period for which securities have been beneficially owned for purposes of this provision, reference should be made to paragraph (d) of this secton.

(Secs. 2(11), 4(1), 4(4), 19(a), 48 Stat. 74, 88, 85; secs. 201, 203, 209, 210, 48 Stat, 904, 906, 908; secs. 1-4, 5, 68 Stat. 683, 684; sec. 12, 78 Stat. 580; (15 U.S.C. 77b(11), 77d(1), 77d(4), 77s(a))).

STATUTORY BASIS

The amendments to Rule 144 are being proposed by the Commission pursuant to the Securities Act of 1933, particularly Sections 2(11), 4(1), 4(4) and 19(a) thereof.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6253/October 28, 1980

PROCEDURES UTILIZED BY THE DIVISION OF CORPORATION FINANCE FOR RENDERING INFORMAL ADVICE

ACTION: Interpretive Release.

SUMMARY: The Commission has authorized the issuance of a release describing certain procedures recently adoted by the Division of Corporation Finance (the "Division") for responding to all requests for no-action and interpretive letters except those involving shareholder proposals. In addition, the release discusses some of the alternative methods utilized by the Division in providing informal interpretive advice to the public. Also, it enumerates those matters which the staff of the Division, for policy or other reasons, will not express any view on when raised in a request for no-action or interpretive advice. Finally, it sets forth a discussion of letters regarding shareholder proposals.

FOR FURTHER INFORMATION CONTACT: William E. Morley or Peter J. Romeo, Division of Corporation Finnce, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2573.

SUPPLEMENTARY INFORMATION: One of the more important functions of the Commission's Division of Corporate Finance is to respond to requests for informal advice concerning the application of the federal securities laws administered by it.[1] As explained in more detail later in this release, the Division provides such advice in a variety of ways, such as by issuing no-action and interpretive letters,[2] preparing interpretive releases, and answering telephone inquiries. Some other units of

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[1]The Division administers the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a, et seq.], the Trust Indenture Act of 1939 ("1939 Act") [15 U.S.C. 80a, et seq.], and portions of the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a, et seq.].

[2]A no-action letter is one in which an authorized staff official indicates that the staff will not recommend any enforcement action to the Commission if the proposed transaction described in the incoming correspondence is consummated. In some instances, the staff will state in response to a no-action request that it is unable to assure the writer

the Commission, such as the Divisions of Investment Management and Market Regulation, similarly provide informal advice in this manner.

NO-ACTION AND INTERPRETIVE LETTERS

The practice of issuing no action and interpretive letters in response to written requests has been singled out in the past as an "excellent practice in administrative procedure,"[3] and many members of the public have come to rely on the informal advice provided in this manner.[4] Such letters provide a current statement of the staff's views concerning the application of the securities laws to particular transactions and are monitored closely by many issuers, members of the bar, and the public. As an aid to these persons, the Division publishes monthly in the SEC News Digest a list of those letters issued during the preceding month that it considers significant.

Until recently, all no-action and interpretive letters issued by the Division have followed the format of reciting the essential facts and then setting forth the position of the Division regarding the issues raised. While such detailed responses have been helpful to the public in the sense that they have included in a single document all of the pertinent information relating to the matter under discussion, they have required significant expenditures of staff manpower both in preparation and typing.[5] Due to an increase in the number of disclosure documents which are subject to review by the Division, as well as a decrease in the number of Division attorneys, it no longer is practical for the Division to continue providing such lengthy responses. Accordingly, in order to make more efficient use of its resources, while at the same time continuing its longstanding practice of providing no-action and interpretive letter advice upon request, the Division has instituted a new abbreviated procedure for providing such advice.

The new procedure involves the use of an endorsement to the incoming letter as a method of response. Under this procedure, which is being utilized for all no-action and interpretive requests except those involving shareholder proposals,[6] the Division simply sets forth its position on the issues raised either on the last page of the incoming letter or, more commonly, on a separate page attached at the end of that letter. Both the incoming letter and the Division's endorsement response are then set to the requestor, along with a brief note explaining the procedure.

The principal difference between the endorsement procedure and the procedure formerly utilized by the Division is that the Division no longer recites the facts in its response. The absence of such a recitation is not harmful, since all of the pertinent facts are set forth in the incoming correspondence. The experience of the Commission's Division of Investment Management, which has been utilizing a similar type of endorsement procedure for many years without any apparent adverse results, indicates that while a resettlement of the facts is useful, it is not essential and can therefore be dispensed with.

OTHER METHODS FOR PROVIDING INFORMAL ADVICE

In addition to no-action and interpretive letters, the Division, as previously mentioned, also provides informal advice in other ways as well. For example, it responds to many thousands of telephone inquiries annually concerning the statutes, rules and regulations administered by it. While the statements made by the staff on the telephone are intended to

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Footnote 2 continued

that it will not recommend enforcement action to the Commission if the transaction occurs in the manner proposed by the writer. An interpretive letter is one in which the staff provides an interpretation of a specific statute, rule or regulation in the context of an actual fact situation.

[3]See the "Task Force Report on Legal Services and Procedures" prepared in 1955 by the Commission on Organization of the Executive Branch of the Government, p. 189.

[4]Members of the public are entitled to rely on no-action and interpretive letters as representing the views of the Division. Such letters, however, set forth staff positions only and do not constitute an official expression of the Commission's views. See 17 CFR 202.1(d).

[5]The extent of these expenditures is evident in the fact that the Division annually issues more than one thousand such letters, and the letters commonly are four or more pages in length.

[6]Letters involving shareholder proposals will be discussed later in this release.

be helpful to the persons making the inquiries, they are not binding due to their highly informal nature.

The Division also provides informal advice through the periodic issuance of interpretive releases on matters of general interest to the public. In the past, these releases generally have been limited to a discussion of a single issue and have been relatively short.[7] During the past year or so, the Division determined to expand its activities in this regard by issuing interpretive releases on selected subjects or areas of the law that are much more comprehensive than those issued in the past. These comprehensive interpretive releases are intended both to inform the public of the staff's current views on matters of wide interest and to reduce the need for the public to submit no-action or interpretive requests.

The two major interpretive releases issued to date under this policy dealt, respectively, with resales of restricted securities[8] and the application of the 1933 Act to employee benefit plans.[9] Both releases appear to have been quite helpful to the interested public and, as a consequence, the Division intends to continue to issue such releases whenever a need for them is perceived.

Currently, the staff of the Division is engaged in preliminary work for the preparation of an extensive interpretive release on the Commission's rules underlying the insider reporting and liability provisions of Sections 16(a) and (b) of the 1934 Act. It also is preparing another comprehensive release on employee benefit plans which is intended to supplement the earlier release on that subject by discussing some issues not previously addressed. The Division would welcome any comments or suggestions from the public regarding other specific topics or areas of the law that are believed to be appropriate subjects for such a release.[10]

AREAS OF NO-COMMENT

In connection with its functions of providing informal no-action and interpretive advice, the Division occasionally finds that it is inappropriate for policy or other reasons to express any position or to comment upon the transaction which is the subject of a particular inquiry. In such situations, the Division will decline to express any view on the application of the securities laws to the proposed transaction.

There are several reasons why the Division may feel it is inappropriate in a particular instance to express an opinion. For example, (1) the Division may be in no position to verify the facts and circumstances which are the basis of the letter; (2) the Division may be concerned that its position may be misconstrued in somewhat different factual situations; and (3) in some areas policy concerns dictate that the Division not express a view.

All of the situations in which the staff will decline to state a position have previously been publicized either in Commission releases or in staff letters which are publicly available. The Division believes, however, that it would be helpful to provide a comprehensive list of those situations. The list, which relates generally to matters arising under the 1933 Act, is as follows:

(1) *Hypothetical questions.* Responses to such inquiries could be misconstrued when applied to actual fact situations.[11]

(2) *Integration.* Questions of this nature involve factual issues which the staff is not in a position to resolve.[12]

(3) *Affiliate or control status.* This too is an area involving factual questions which the staff is not in a

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[7]See, e.g., Release Nos. 33-4790 (July 13, 1965) [30 FR 9059] (employee stock purchase plans), 33-4982 (July 2, 1969) [34 FR 11581] (spin-off transactions), 33-5347 (January 18, 1973) [34 FR 1735] (sale of condominiums), 33-5515 (August 8, 1974) [39 FR 28520] (dividend reinvestment plans), and 33-5927 (April 24, 1978) [18163] (registration of certain tender offers.)

[8]Release No. 33-6099 (August 2, 1979) [44 FR 46752].

[9]Release No. 33-6188 (February 1, 1980) [45 FR 8962].

[10]Any such suggestions or comments should be forwarded to William E. Morley, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

[11]See Release No. 33-5127 (January 25, 1971) [36 FR 2600].

[12]See, e.g., letter re *Security Bancorp Inc.* dated January 21, 1980.

position to resolve.[13]

(4) *Removal of restrictive legends.* Since such legends are applied by the issuer voluntarily, their removal is subject solely to the issuer's discretion.[14]

(5) *Availability of the Section 4(2) exemption.* The Commission has adopted a safe harbor in the form of Rule 146 [17 CFR 230.146] for this exemption.[15] Accordingly, only in the most compelling circumstances will the Division express a view on its availability.

(6) *Availability of the Section 3(a)(11) exemption.* Again, the Commission has adopted a safe harbor, Rule 147 [17 CFR 230.147], for this exemption and will therefore express a view concerning its availability only in the most compelling circumstances.[16]

(7) *Availability of the Section 4(1) exemption.* Rule 144 [17 CFR 230.144] has provided a safe harbor for this exemption since April 15, 1972. As a consequence, the Division will not express any view concerning the availability of the exemption unless the securities involved were acquired on or before April 15, 1972.[17]

(8) *Availability of the Section 3(a)(4) exemption where the issuer has not received a favorable tax ruling.* The exemption provided by Section 3(a)(4) of the 1933 Act depends in part on whether the issuer possess certain characteristics that are common to specific types of tax-exempt organizations. Under the circumstances, unless the issuer can demonstrate that it has received a ruling from the Internal Revenue Service that it qualifies as such an organization, the Division will not exress any view on the availability of the exemption.[18]

(9) *Time-Sharing and other novel real estate offerings.* Pursuant to a directive from the Commission, the Division will not take a position on whether individual offerings of this nature involve securities within the meaning of Section 2(1) of the 1933 Act.[19] The concern underlying the Commission's directive is that incorrect inferences could be drawn from any expression of staff views in this evolving area.

(10) *Esoteric commodity offerings (e.g., gems, rare books, gold, silver, and master recordings).* The Division has declined to express any view as to whether such offerings involve securities because of the unique and unusual circumstances involved and the possibility that no-action letters for such offerings could be misunderstood or misaplied.[20] The applicability of Section 2(1) of the 1933 Act to these offerings is highly dependent on the particular facts and circumstances involved, and the Division is in no position to verify such facts and circumstances.

SHAREHOLDER PROPOSAL LETTERS

As previously noted, the new endorsement procedure outlined earlier in this release will not be used in responding to letters under Rule 14a-8 [17 CFR 240.14a-8] of the Commission's proxy rules relating to the omission of shareholder proposals from an issuer's proxy materials. Letters received from issuers pursuant to Rule 14a-8 generally raise a variety of complex and difficult issues which cannot be easily dealt with through the abbreviated endorsement format. The Division, however, is concerned with the amount of staff time being devoted to shareholder proposal matters and therefore is exploring ways for reducing the length and complexity of its responses in this area.

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[13]*See*, e.g., letter re *Book Mobile, Inc.* dated November 17, 1979.

[14]*See*, e.g., letter re *RLT, Inc.* dated December 12, 1979.

[15]Release No. 33-5487 (April 23, 1974 [39 FR 15266].

[16]Release No. 33-5450 (January 7, 1974) [39 FR 2353].

[17]Release No. 33-5223 (January 11, 1972) [37 FR 591].

[18]*See*, e.g., letter re *Shannondale Club, Ltd.* dated January 12, 1979.

[19]*See*, e.g., letters re *Tropics International* and *Spirit of Hawaii* dated April 5, 1974.

[20]*See*, e.g., letters re *Publishers Distributors Inc.* dated August 23, 1979 (book sales); *Wes Sanborn* dated November 9, 1979 (master recording leases); and *Diamond Network Associates Inc.* dated July 9, 1979 (gems).

Some of the alternatives presently under consideration for achieving the above objective are the elimination from the Division's response of a verbatim restatement of the proposal under discussion and the use of standardized statement of the Division's function regarding such proposals that can be attached to each response rather than retyped in each letter as a separate final paragraph. While none of these alternatives have yet been adopted, it is anticipated that some methods of this nature will be utilized within the next few months to limit the amount of time which must be spent on shareholder proposal matters. Any comments or suggestions from members of the public regarding this subject would be welcomed.[21]

The recently issued Staff Report on Corporate Accountability indicated a desire by the Division and the Commission to reconsider some of the views previously expressed with respect to certain types of shareholder proposals.[22] The Report indicates that the Commission will issue concept releases relating to various shareholder proposal matters in the future.[23] It is anticipated that these releases will reduce the number of requests for no-action letters under Rule 14a-8 because they will set forth the staff's position with respect to the applicability of the rule's provisions to certain relatively common types of proposals. If such a reduction does indeed occur, it will alleviate somewhat the Division's resource problem in this area.

In connection with the foregoing, the Division urges issuers to avoid the practice followed by some in the past of citing frivolous grounds for omitting proposals. Such a practice causes the Division's staff to spend valuable time in responding to such grounds that could be better utilized in other areas. Accordingly, while the Division continues to believe that issuers should feel free to raise all legitimate bases for the omission of a proposal, they and their counsel should review past statements issued by the Division in connection with the same or similar proposals submitted to other issuers to make certain that the grounds for omission have not been previously addressed,[24] thereby reducing the need for the Division to discuss previously settled issues.

Accordingly, 17 CFR Part 231 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6254/October 28, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11414/October 28, 1980

BEARING OF DISTRIBUTION EXPENSES BY MUTUAL FUNDS

ACTION: Final rules.

SUMMARY: The Commission is adopting a rule to permit open-end management investment companies to bear expenses associated with the distribution of their shares, if such companies comply with certain conditions and procedures. The rule requires that any decision by an open-end management investment company to use its assets to finance distribution be approved by its shareholders and directors, including its disinterested directors.

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[21]Any such comments or suggestions should be directed to William E. Morley at the address listed in footnote 10.

[22]See Chapter Two of the "Staff Report on Corporate Accountability" prepared by the Division. The Staff Report is dated September 4, 1980 and is set forth in a Committee Print for the Senate Committee for Banking, Housing and Urban Affairs, 96th Cong., 2nd Sess. GPO Document No. 052-070-05418-2.

[23]Some areas which are to be the subject of such releases are Rule 14a-8(c)(7) dealing with proposals relating to an issuer's ordinary business, and the Commission's view of the applicability to shareholder proposals of the Supreme Court's decision in *First National Bank* v. *Bellotti*, 435 U.S. 765 (1978).

[24]All correspondence and other materials relating to shareholder proposals which an issuer seeks to omit from its proxy materials pursuant to Rule 14a-8(d) are publicly available. See 17 CFR 200.82. Thus, it is a relatively simply matter to review prior statements by the Division on the same or similar proposals submitted to other issuers.

The rule also contains provisions intended to ensure that the disinterested directors are not dominated nor unduly influenced by management and that the directors are fully informed and exercise reasonable business judgment. The procedures in the rule by which shareholders and directors would approve a plan to use assets for distribution are generally similar to those prescribed by statute for approval of investment advisory contracts. The procedural requirements are somewhat less stringent than they were in the rule as proposed.

The Commission also is adopting a rule to exempt from the requirement of prior Commission approval, to the extent necessary, certain agreements between open-end management investment companies and their affiliated persons whereby investment company assets are used for distribution, if such agreements are entered into in compliance with the rule permitting such companies to bear their distribution expenses.

The Commission is adopting certain disclosure and reporting requirements relating to the use of assets for distribution, including a revision of the registration and reporting form for open-end management investment companies.

The Commission is taking these actions because it believes that directors and shareholders of open-end management investment companies should be able to make business judgments to use fund assets for distribution in appropriate cases but that, in view of the investment adviser's conflict of interest with respect to any recommendation to bear distribution expenses and because of uncertainties about whether such companies are likely to benefit from such expenditures, any such exercise of business judgment should be subject to conditions designed to ensure that it is made by persons who are free of undue management influence and have carefully considered all relevant factors.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Richard W. Grant, Special Counsel to the Director, (202) 272-2041, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 12b-1 [17 CFR 270.12b-] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act") to permit open-end management investment companies ("mutual funds" or "funds") to bear expenses associated with the distribution of their shares. Among the significant provisions of the rule are the following:

— selection and nomination of directors who are not interested persons of the fund must be committed to the discretion of such disinterested directors;

— a fund which decides to bear distribution expenses must formulate a written plan describing all material aspects of the proposed financing of distribution, and all agreements relating to implementation of the plan must be in writing; such plan and agreements must contain certain provisions similar to those required by the Act for investment advisory contracts;

— the plan must be approved initially: (1) by a vote of at least a majority of the fund's outstanding voting securities; (2) by its board of directors as a whole; and (3) separately by its directors who are not interested persons of the fund and have no direct or indirect financial interest in the operation of the plan or any agreements related to the plan;

— in considering a plan to finance distribution, the directors must give appropriate weight to all pertinent factors; and

— the directors must decide, in the exercise of their reasonable business judgment and in light of their fiduciary duties under state law and under the Act, that there is a reasonable likelihood that a plan will benefit the fund and its shareholders.

The Commission also is adopting rule 17d-3 [17 CFR 270.17d-3] under the Act to provide an exemption from section 17(d) [15 U.S.C. 80a-17(d)] of the Act and rule 17d-1 [17 CFR 270.17d-1] thereunder, to the extent necessary, for agreements between a mutual fund and its affiliated persons whereby payments are made by the fund with respect to distribution, if such agreements are entered into in compliance with rule 12b-1. The Commission also is adopting certain disclosure and reporting requirements relating to use of assets for distribution, so that funds which bear distribution expenses in accordance with rule 12b-1 will disclose that fact to shareholders and prospective investors, as well as report it in registration statements filed with the Commission.

BACKGROUND

In November, 1976, the Commission held public hearings on the use of fund assets for distribution.[1] After analyzing the comments and written submissions made at the hearings, the Commission reiterated its traditional view that it is generally improper under the Act for mutual funds to bear direct or indirect expenses related to the distribution of their shares.[2] However, the Commission has been reviewing the issue in light of public interest in and comment on the legal and policy implications of use of fund assets for distribution. In May, 1978, the Commission issued an Advance Notice of Proposed Rulemaking concerning conditions under which mutual funds might be permitted to bear distribution expenses.[3] Release No. 10252 stated the Commission's belief that it would be useful to explore further whether permitting mutual funds to finance distribution could, under some circumstances, benefit investors. It also solicited public comment on a variety of proposed conditions upon such use of assets designed to safeguard the interests of investors.

The Commission reevaluated the issue of funds bearing distribution expenses in view of the comments received in response to Release No. 10252[4] and in view of the philosophy and objectives of the Investment Company Act Study being conducted by the Division of Investment Management. The Commission concluded that there were a number of difficulties with some of the conditions proposed in Release No. 10252. Accordingly, in September, 1979, the Commission proposed for public comment rule 12b-1 under the Act.[5] Generally, the proposed rule would make it unlawful for a mutual fund to finance distribution directly or indirectly except in compliance with the rule's substantive provisions. It would prescribe procedural requirements which are similar to those established by the Act for approval of investment advisory contracts, although the requirements of the proposed rule were more stringent. The substantive provisions of the proposed rule would place a great deal of responsibility on fund directors, especially the disinterested directors. The provisions were intended to insure that: (1) the disinterested directors would be free of domination or undue influence by management; (2) the directors would be fully informed and consider all relevant factors; and (3) the directors would exercise reasonable business judgment and would act in a manner consistent with their fiduciary duties.

SUMMARY OF COMMENTS ON RELEASE NO. 10862

Thirty-two comments were received on Release No. 10862.[6] Twenty-two commentators, associated primarily with the mutual fund industry, submitted statements favoring the use of fund assets for distribution.[7] Six commentators argued against such

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[1]The hearings were announced in Investment Company Act Release No. 9470 (Oct. 4, 1976) [41 FR 44770, Oct. 12, 1976] ("Release No. 9470"). Copies of the hearing transcripts and written submissions made in connection with the hearings are filed in File No. 4-186.

[2]Investment Company Act Release No. 9915 (Aug. 31, 1977) [42 FR 44810, Sept. 7, 1977].

[3]Investment Company Act Release No. 10252 (May 23, 1978) [43 FR 23589, May 31, 1978] ("Release No. 10252").

[4]The comments are summarized in Investment Company Act Release No. 10862 (Sept. 7, 1979) [44 FR 54014, Sept. 17, 1979] ("Release No. 10862").

[5]Release No. 10862. Certain disclosure and reporting requirements relating to the use of fund assets for distribution were also proposed in Release No. 10862. In addition, the release contained proposed rule 17d-3 under the Act.

[6]Copies of the comments are filed in File No. S7-743. Two comments were filed too late to be included in this summary. However, neither contained comments that had not already been made by the other commentators on the proposed rule.

[7]American Bar Association ("ABA"), Capital Research and Management Company ("Capital Research"), The Fidelity Group of Mutual Funds ("Fidelity Group"), Fidelity Management and Research Company ("Fidelity Management"), Neil Flanagin, Gardner, Carton & Douglas ("Gardner"), Investment Company Institute ("ICI"), Investors Diversified Services, Inc. ("IDS"), Investors Group of Companies ("Investors Group"), Alice P. Jones ("Jones"), Jones & Babson, Inc. ("Babson"), Lord Abbett & Co. ("Lord Abbett"), Massachusetts Financial Services Company ("Mass. Financial"), John G. McDonald ("McDonald"), John R. Metcalf, National Association of Securities Dealers, Inc., Paine Webber Cashfund, Inc. ("Paine Webber"),

use of fund assets,[8] and one commentator refrained from taking any position on the propriety of a fund using its assets for distribution.[9] In general, most commentators objected to at least some of the provisions of proposed rules 12b-1 and 17d-3. Several commentators also questioned some general statements made by the Commission in Release No. 10862.

Several commentators challenged the fundamental premises underlying the proposed rule. A common statement made by those in favor of using fund assets for distribution was that no Commission rule was necessary to enable funds to finance distribution.[10] Instead, these commentators thought that directors could already authorize a fund to bear distribution expenses. Several commentators thought that the proposed rule would create uncertainty about purportedly well-established and current industry practice whereby the level of advisory fees reflects distribution expenses of the advisers.[11]

Three of the commentators who opposed the use of fund assets for distribution concluded that withdrawal of the proposed rule and a reaffirmation of the Commission's traditional position was warranted because of the assertedly irreconcilable conflicts of interest of fund advisers and because the shareholder benefit would not be as discernible as that of advisers, since advisers clearly benefit from increased sales of fund shares.[12] Dreyfus and Federated, which also opposed using fund assets for distribution, thought that the proposed rule would destroy the entrepreneurial incentives provided by the Act. Dreyfus concluded that the additional responsibilities placed on the disinterested directors would improperly transform their role from one of supervision to one of management. Dreyfus questioned the ability of the disinterested directors to assume the management functions described in Release No. 10862. The board of directors of a fund advised by Dreyfus and a disinterested director[13] from that fund made similar comments individually.

Several commentators criticized the Commission's reliance on section 12(b) for rulemaking authority with respect to distribution and argued that Congress intended section 12(b) [15 U.S.C. 80a-12(b)] to authorize the Commission to adopt rules only where a fund distributed its own shares without an external underwriter.[14] Instead, several submitted that any distribution rule with respect to funds which have principal underwriters should be promulgated only under section 15 of the Act.[15]

Some commentators, who argued in favor of permitting mutual funds to bear distribution expenses, urged the Commission to adopt the standard for decision-making by fund disinterested directors established by *Tannenbaum* v. *Zeller*, 552 F.2d 402 (2d Cir.), *cert. denied*, 434 U.S. 934 (1977), as the only legal requirement in the distribution area.[16] In *Tannenbaum*, the Court of Appeals for the Second Circuit held that the disinterested directors of a fund did not breach their fiduciary duty to the fund in deciding to forgo recapture of brokerage commissions because: the directors were truly independent of the adviser; they were fully informed of all the available alternatives; and they had made a "reasonable business judgment" after thorough

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Footnote 7 continued

Pilgrim Management Corporation ("Pilgrim"), Charles D. Root, Jr. ("Root"), Scudder, Stevens & Clark ("Scudder"), The Vanguard Group of Investment Companies ("Vanguard"), and Waddell & Reed, Inc. ("Waddell").

[8]American Bankers Association ("American Bankers"), The Dreyfus Corporation ("Dreyfus"), The Dreyfus Third Century Fund, Inc. ("Dreyfus Fund"), Federated Investors, Inc. ("Federated"), State of California, Department of Corporations ("Calif. Department of Corporations"), and Harold N. Warsawer ("Warsawer").

[9]The Association of the Bar of the City of New York ("NYC Bar").

[10]Capital Research, Fidelity Group, ICI, McDonald, and Waddell.

[11]ICI, NYC Bar, Paine Webber, and Waddell.

[12]American Bankers, Calif. Department of Corporations, and Warsawer.

[13]Jones.

[14]Gardner, ICI, Mass. Financial, Paine Webber, and Waddell.

[15]ABA, ICI, Mass. Financial, and Waddell.

[16]Gardner, ICI, IDS, and Lord Abbett.

review of all relevant factors. Others would place responsibility with the entire board of directors and/or shareholders.[17] The ABA urged that any rule adopted should apply only to those funds which knowingly elect to use fund assets for distribution purposes.

Two commentators suggested conditions governing use of fund assets for distribution that were, in some respects, similar to the proposed rule. Scudder would be sympathetic to a permissive rule if the independent directors of a fund concluded, acting in good faith, that a fund would benefit from sales expenditures by the fund, and if there was adequate disclosure to and consent by the shareholders. A disinterested director of Vanguard thought that shareholder interests would be protected by independent directors exercising reasonable business judgments on distribution arrangements where: (1) the independent directors have no connection to or conflicts of interest with investment advisers, distributors, or any other organizations rendering services to the fund; (2) the independent directors are fully informed and represent a diversity of talent; (3) actual distribution expenses, whether paid directly or indirectly, are disclosed to shareholders; and (4) the independent directors review annually the long-term cost effectiveness and benefits to shareholders of any distribution expenses.

Commentators expressed some support for the statement in Release No. 10862 that there would be an indirect use of fund assets for distribution if the advisory fee was inflated to provide the adviser with funds for that purpose[18] and agreement with the position that any rule on distribution should encompass both direct and indirect distributioin expenses.[19] In general, however, the commentators either criticized or were confused by the statement that distribution expenses include direct and indirect expenses primarily intended to result in the sale of shares of a fund. The ABA thought that directors should consider whether there is any indirect use of fund assets only if the directors previously made an express determination that a portion of the advisory fee would be used by the adviser to pay distribution expenses. Two commentators[20] thought that, to the extent approval of an underwriting contract which diverted a portion of investors' payments from the fund to the underwriter is deemed to be an indirect distribution expense, a fund and its directors could comply with section 15(b) of the Act [15 U.S.C. 80a-15(b)] and still violate the proposed rule. Others[21] were uncertain whether the indirect bearing of distribution expenses was intended to be subject to the proposed rule. Two commentators[22] urged that the concept of "indirect expenses" be deleted from the proposed rule.

Many commentators misconstrued the discussion in Release No. 10862 of the Commission's long-standing position that an adviser may use its "legitimate" or "not excessive" profits to finance distribution. In the opinion of several, such statements represented an improper and unwarranted expansion of the fiduciary duty standard embodied in section 36(b) of the Act [15 U.S.C. 80a-35(b)].[23] A few commentators concluded that the proposed rule would establish a level of profit standard that was rejected by Congress in 1970, when Congress considered profit standards for investment advisory agreements but instead created the fiduciary duty standard under section 36 [15 U.S.C. 80a-35].[24] The ABA and the ICI thought that every externally managed fund would be forced to adopt the procedures within the proposed rule rather than risk a later determination that the adviser's profits were not legitimate and that the

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[17]Federated, Mass. Financial, and McDonald (director approval), and Babson (director and shareholder approval). In the context of responding specifically to the voting provisions of the proposed rule, several commentators, including some who preferred the *Tannenbaum* standard, supported the general concept of shareholder and director approval. Others opposed the requirements for shareholder approval. *See* pp. 13-14 *infra*.

[18]Lord Abbett.

[19]Vanguard.

[20]Fidelity Management and Paine Webber.

[21]Pilgrim and Vanguard.

[22]Babson and Pilgrim.

[23]ABA, Federated, IDS, and Waddell.

[24]Federated, NYC Bar, and Waddell.

failure to adopt a plan resulted in a violation of the rule. Fidelity Management, on the other hand, thought that the rule would discourage an adviser from using any of its profits for distribution for fear of second guessing by the Commission.

Many of the specific conditions suggested by the Commission drew extensive criticism from the commentators. For example, several objected to the definition of distribution expenses, part of which included a non-exclusive list of activities that would be deemed distribution expenses. Instead, the commentators recommended that the definition be changed to recite precisely all activities that would be deemed distribution expenses.[25]

Similarly, commentators criticized the requirement for two-thirds approval by shareholders and directors for the implementation of a distribution plan. They concluded that, since the potential for conflict in the decision whether a fund should bear distribution expenses would assertedly be no greater than the conflict involved in approving the advisory contract, a majority vote by shareholders and directors should be sufficient to approve a distribution plan,[26] and that there was no statutory basis for the more stringent voting requirements in the proposed rule.[27] Several commentators thought that it would be expensive[28] and difficult[29] for a fund to achieve such a high percentage of shareholder approval. Capital Research and Vanguard were of the opinion that, after the initial shareholder approval of a distribution plan, choice of specific arrangements to be used from time to time should be within the discretion of the board of directors. Capital Research argued against requiring shareholder approval after each adjustment to the basic plan. Other commentators saw no need to require any shareholder approval for a distribution plan proposal.[30]

Several commentators urged the Commission to eliminate the nominating committee requirement because they viewed it as unnecessary,[31] founded on erroneous premises,[32] inconsistent with the Act,[33] and creating additional problems.[34] Commentators also questioned the Commission's views in Release No. 10862 as to the possible lack of independence of independent directors, in light of the analysis by the Supreme Court in *Burks v. Lasker*, 99 S. Ct. 1831 (1979), concerning the role of disinterested directors.[35] Vanguard was the only commentator that expressly approved of the requirement that the selection and nomination of disinterested directors be committed to the discretion of the disinterested directors. Several commentators thought that, if the nominating committee concept is preserved in the proposed rule, interested directors should be allowed to participate in the nominating process.[36]

With respect to the requirement that the directors weigh all pertinent factors before deciding to use fund assets for distribution, including a list of nine requisite factors, a majority of commentators on this point preferred the Commission to issue a release incorporating the nine factors.[37] In such a format, they contended, the directors could be made aware of their obligations to consider each factor without the rigidity that they feared would occur if the factors became mandatory provisions in a rule.

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[25]ABA, ICI, IDS, and NYC Bar.

[26]ABA, Capital Research, Federated, ICI, IDS, Investors Group, NYC Bar, Paine Webber, Pilgrim, Root, and Vanguard.

[27]Babson, Fidelity Management, Gardner, ICI, Mass. Financial, NYC Bar, and Waddell.

[28]ABA, IDS, and Paine Webber.

[29]ABA, Fidelity Management, Gardner, ICI, Lord Abbett, NYC Bar, and Paine Webber.

[30]Fidelity Management, Lord Abbett, and Scudder.

[31]Federated, Lord Abbett, and ICI.

[32]ABA, Federated, Fidelity Group, ICI, Paine Webber, and Pilgrim.

[33]ABA, Federated, Fidelity Group, ICI, Mass. Financial, and NYC Bar.

[34]Dreyfus Fund.

[35]ABA, Federated, Fidelity Group, ICI, and Paine Webber.

[36]ABA, Capital Research, and Fidelity Management.

[37]ABA, Fidelity Management, ICI, Investors Group, and Lord Abbett.

The standard of care required of directors in implementing a distribution plan was viewed with concern by some commentators, who thought the standard suggested that there may be fiduciary duties under state law or under the Act which are inconsistent with a business judgment standard.[38] Instead, these commentators joined Mass. Financial in the view that a business judgment standard alone would be appropriate when directors considered adopting a distribution plan.

Release No. 10862 stated that the proxy statement relating to a proposal to use fund assets for distribution would have to describe all material aspects of the plan and all material aspects of any agreements relating to implementation of the plan and it listed numerous disclosure items. The few comments that were received on this portion of the proposed rule generally supported the concept of full disclosure to investors.[39] The Fidelity Group concluded that meaningful disclosure would be the most practical check on excessive commitments of fund assets for distribution expenses. Fidelity Management, however, objected to the list of items in Release No. 10862 that were deemed to be required disclosure items because it was concerned that such a pattern of regulation could be expected to expand into other areas.

Release No. 10862 noted that the Commission has taken the preliminary position in the *Vanguard*[40] proceeding that a fund which bears distribution expenses but which does not charge a front end sales load cannot refer to itself as a "no-load" fund or use equivalent terminology. Release No. 10862 stated further that the Commission would not change its position at this time but that further consideration would be given to the "no-load" issue in connection with the *Vanguard* proceeding. Scudder, adviser to eight "no-load" funds, argued that, if the term "no-load" could be applied where a fund pays promotional expenses, the term would lose its meaning. On the other hand, a few commentators argued that there was no justification for the position taken in the *Vanguard* proceeding because the Act makes a distinction between a "sales load" and "sales or promotional expenses,"[41] and because such a prohibition would not necessarily result in fair disclosure.[42]

Commentators on proposed rule 17d-3 requested that the Commission clarify the effects of such a rule,[43] requested that the rule be expanded to encompass fund complexes,[44] and challenged the Commission's asserted characterization of situations raising questions under section 17(d) of the Act.[45] The ICI and IDS objected to what they considered the Commission's position that funds with a common adviser, directors and/or officers are affiliated persons of one another. Paine Webber objected to what it viewed as the assumption in proposed rule 17d-3 that a traditional advisory or distribution agreement involving a single fund and its underwriter is subject to rule 17d-1. Federated and Vanguard argued that distribution services would be done most efficiently on a group-sharing basis and that proposed rule 17d-3 ignores the fact that fund complexes, rather than individual funds, dominate the industry. The ABA questioned whether the proposed rule would apply only with respect to a single fund within a complex, to funds not within a complex, or to several funds within a complex.

DISCUSSION

After a thorough review of the comments on proposed rule 12b-1 and the companion rules, the Commission has decided to adopt the rules substantially as proposed in Release No. 10862. In response to the comments, however, the Commission has made certain modifications to proposed rule 12b-1, which are discussed below. Since there may be circumstances under which it would be appropriate for a fund to bear its distribution expenses, the Commission believes there should be some latitude for fund directors to exercise their business judgment to authorize such a use of fund assets. Nevertheless, the Commission

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[38]ABA, Federated, and ICI.

[39]Fidelity Group, Fidelity Management, and Lord Abbett.

[40]For a full discussion of this issue, see *In Re The Vanguard Group, Inc.*, Initial Decision, Admin. Proc. File No. 3-5281, 21 (Nov. 29, 1978).

[41]Paine Webber and Vanguard.

[42]Gardner and Paine Webber.

[43]ABA.

[44]Federated, Root, and Vanguard.

[45]ICI, IDS, and Paine Webber.

still remains generally concerned about: (1) the conflicts which may exist between the interests of a fund and those of its investment adviser in deciding whether a fund should pay its distribution costs; (2) the likelihood that the fund will benefit from paying for such costs, and (3) the fairness to existing shareholders. Therefore, the Commission believes that any permissive rule in this area must contain substantive standards to protect fund shareholders, guidelines to ensure an orderly process of decision-making by directors, and accountability for exercising the authority to use fund assets for distribution. The Commission has concluded that proposed rule 12b-1, as modified, and its companion rules establish an appropriate regulatory balance and should be adopted. The Commission and its staff will monitor the operation of the rules closely and will be prepared to adjust the rules in light of experience to make the restrictions on use of fund assets for distribution either more or less strict.

The Legal Authority to Adopt Proposed Rule 12b-1

Before proposing rule 12b-1 the Commission twice received public comment on its legal authority to regulate the direct or indirect use of fund assets for distribution. The release announcing the public hearings which were held in November, 1976, suggested as an issue for consideration: "What, if any, authority does the Commission have to adopt rules which would permit, prohibit, or limit the use of fund assets to pay distribution expenses?"[46] The Advance Notice of Proposed Rulemaking[47] stated that any ensuing rule proposal would be under section 12(b).

Relatively few of the presentations at the public hearings discussed the legal issues associated with the regulation of fund distribution expenses, but the prevalent view among those who did was that, although the Act did not necessarily prohibit the financing of distribution by funds, the Commission had the legal authority under the Act to prohibit or limit such activity. Of the 51 persons who commented on the Advance Notice, only three questioned the Commission's legal authority under section 12(b); only two argued affirmatively that the Commission lacks the authority to regulate expenditures by funds which have principal underwriters.

However, a significant number of the commentators on Release No. 10862 questioned the Commission's legal authority, so it is important to set forth fully the Commission's basis for relying primarily on section 12(b) for authority to regulate the use of fund assets for distribution.[48] Section 12(b) provides:

> It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 10(d)) to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Many commentators argued that the Commission has no authority under this provision to regulate the distribution financing activities of funds which have principal underwriters because of the phrase "except through an underwriter." Most of these commentators believed that other provisions of the Act, primarily section 15(b), govern the distribution efforts of funds which have principal underwriters. Some contended that the proposed rule was inconsistent with the basic statutory scheme regulating the relationships between funds and their investment advisers and principal underwriters established by section 10 and 15 of the Act [15 U.S.C. 80a-10, 80a-15] because some of the procedural and substantive requirements of the

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[46]Release No. 9470.

[47]Release No. 10252.

[48]It must be noted that the Commission is also relying on other sources of authority as well. Section 38(a) of the Act [15 U.S.C. 80a-37(a)] gives the Commission general authority to adopt rules "necessary or appropriate to the exercise of the powers conferred" elsewhere in the Act and specifically authorizes the Commission to define "accounting, technical, and trade terms" used in the Act. The latter phrase is significant because the term "distributor" in section 12(b) is not defined. In addition, section 17(d) of the Act authorizes the Commission to adopt rules regulating certain joint transactions involving investment companies and their affiliated persons and principal underwriters. The Commission is exercising its authority under section 17(d) to permit arrangements for use of fund assets for distribution which involve covered joint transactions only if such arrangements comply with rule 12b-1.

proposed rule were more rigorous than similar provisions in the Act.

Section 12(b) was intended to permit the Commission to regulate the use of mutual fund assets to finance distribution. Commission spokesman David Schenker testified that the purpose of the section was to protect funds "against excessive sales, promotion expenses, and so forth."[49] The phrase "except through an underwriter" does not deprive the Commission of authority over the distribution financing activities of funds which have underwriters. If a fund finances distribution, it becomes so actively and intimately involved in the distribution process that, even if it contracts with an underwriter, it cannot fairly be said to be distributing *through* that underwriter. Such a fund should more properly be viewed as acting as a distributor *along with* the underwriter.

Nevertheless, it is argued that section 15(b) of the Act is the exclusive source of authority to regulate the distribution arrangements of funds with underwriters. However, that section, in contrast to Section 12(b), provides no alternative mechanism for the regulation of fund expenditures to promote distribution. It would appear that section 15(b) is designed to regulate traditional underwriting arrangements, i.e., those where underwriters get their compensation from sales loads. Unlike section 15(a) [15 U.S.C. 80a-15(a)], Section 15(b) does not require any description of the compensation to be paid to the underwriter. This difference presumably exists because Congress did not expect funds to pay underwriters anything. It would appear that Congress sought to regulate under section 15(b) only distribution arrangements as it understood them to exist and did not contemplate the bearing of distribution expenses by funds which have underwriters. Therefore, it is inconsistent with the purposes of the Act to conclude that Section 15(b) is the exclusive source of regulation of fund expenditures to promote distribution.

General Requirements

Many commentators were critical of the inclusion of indirect distribution expenses within the scope of the rule. Some appeared confused about what might constitute indirect expenses, and others recommended that the rule apply only to direct expenditures. One commentator recommended that directors consider whether there is an indirect use of fund assets only if the directors made an express determination that part of the advisory fee would be used for fund distribution expenses. Accepting these recommendations would make evasion of the rule easy. The Commission has historically been concerned with whether funds are paying for distribution in substance and not with the form of particular arrangements. In this connection, it should be noted that section 48(a) of the Act [15 U.S.C. 80a-47(a)] in effect prohibits doing indirectly that which cannot be done directly. Therefore, the Commission believes that the rule should apply to indirect expenses as well as direct expenses.

However, in light of the uncertainty evinced by the commentators, some further explanation is in order. If a mutual fund makes payments which are earmarked for distribution, that is obviously a direct use of fund assets for distribution. If a fund makes payments which are ostensibly for some other purpose, and the recipient of those payments finances distribution, the question arises whether the fund's assets are being used indirectly. The Commission's position has been and continues to be that there can be no precise definition of what types of expenditures constitute indirect use of fund assets. That judgment will have to be made based on the facts and circumstances of each individual case. Under proposed rule 12b-1, fund directors,

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[49]H.R. 10065, *Investment Trusts and Investment Companies: Hearings Before a Subcom. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong. 3d Sess. 112 (1940) (testimony of Commission spokesman David Schenker). H.R. 10065, which became law, embodied a compromise accepted both by the Commission and representatives of the investment company industry. (*Id.* at 15-16.) Shortly after passage of the Act, Alfred Jaretzki, who had participated in drafting the Act as a representative of closed-end companies, wrote about section 12(b):

[a]pparently the Commission was particularly fearful of the possibility that open-end investment companies in their formative stages might be made to shouler the unprofitable burden of selling and distributing their shares during this period of heavy expenses and small return, building up the investment company for the benefit of some controlling person.

Jaretzki, *The Investment Company Act of 1940*, 26 Wash. U.L.Q. 303, 324-25 (1941) (footnote omitted).

particularly the disinterested directors, would bear substantial responsibility for making that judgment. Under sections 15(a) and (c) of the Act they are also responsible for evaluating and deciding whether to approve the advisory contract. In fulfilling these obligations directors of mutual funds would have to give careful scrutiny to any past, present or planned expenditures by the investment adviser for distribution, and determine on the basis of the facts of each particular case whether such expenditures constituted an indirect use of fund assets in violation of their fiduciary obligations under section 36 of the Act and in contravention of the rule. The Commission and its staff will continue to scrutinize arrangements which appear to involve the indirect use of fund assets for distribution.

Much of the confusion among the commentators arose from the description in Release No. 10862 of the effect proposed rule 12b-1 would have on advisers who bear the cost of distribution. Many commentators misconstrued the Commission's reaffirmation of its position that distribution financing activities by investment advisers do not necessarily involve an indirect use of fund assets. It is hoped that the following explanation will clarify the Commission's position. It is the Commission's view that, an indirect use of fund assets results if any allowance is made in the adviser's fee to provide money to finance distribution. Therefore, when an adviser finances distribution, fund directors, in discharging their responsibilities in connection with approval of the advisory contract, must satisfy themselves either that the management fee is not a conduit for the indirect use of the fund's assets for distribution or that the rule has been complied with. However, under the rule there is no indirect use of fund assets if an adviser makes distribution related payments out of its own resources. In determining whether there is an indirect use of fund assets, it is appropriate to relate a fund's payments pursuant to the advisory contract to the adviser's expenditures for distribution and to view such expenditures as having been made from the adviser's profits, if any, from the advisory contract. To the extent that such profits are "legitimate" or "not excessive", the adviser's distribution expenses are not an indirect use of fund assets. Many commentators drew unwarranted inferences from the use of "legitimate" and "not excessive" in Release No. 10862. Profits which are legitimate or not excessive are simply those which are derived from an advisory contract which does not result in a breach of fiduciary duty under section 36 of the Act. The courts have not established definitive standards for determining what does or does not constitute a breach of fiduciary duty in the compensation area, and, although the Commission reserves the right to express its own views of what such standards should be, it has not done so.

Some commentators suggested that the definition of distribution expenses recite precisely all activities that would be deemed distribution expenses. Recognizing that new distribution activities may continuously evolve in the future, and in view of the impracticability of developing an all-inclusive list, the Commission maintains that the better approach is to define distribution expenses in conceptual terms (e.g., financing activities primarily intended to result in the sale of fund shares).

Procedural Requirements

The Commission has reevaluated the requirement in the proposed rule for two-thirds approval by shareholders in light of comments about the practical difficulties funds anticipated in getting sufficient shareholder participation, as distinct from approval, to meet the two-thirds requirement. Consequently, the rule, as adopted, requires only a majority shareholder vote. The Commission believes that the approval requirements, including the requirement of director approval, are sufficient to protect adequately shareholer interests in deciding whether it is necessary or appropriate for a fund to bear its distribution expenses. In addition, the Commission does not believe it is necessary to impose the extraordinary requirement that two-thirds of the disinterested directors and of the board as a whole approve the use of fund assets for distribution. It is not clear that the practical effect of such a requirement would justify deviation from the normal requirement of a majority vote, especially since in most cases it would require the support of as many disinterested directors to achieve a majority vote as it would to achieve a two-thirds vote.

The rule has also been amended to clarify that, subsequent to the adoption of a distribution plan, only modifications which would materially increase the amount of money to be spent need be submitted to the shareholders for approval. Moreover, agreements pursuant to a plan will not be subjected to a shareholder vote. The Commission recognizes that once a distribution plan has been approved in the manner prescribed in the rule, directors should be allowed some discretion to modify agreements

with the providers of distribution services as the circumstances change.

Independence of Directors

Permitting the use of fund assets for distribution is a major regulatory change for the Commission. This change reflects both altered circumstances and a determination by the Commission that adoption of rule 12b-1 is appropriate in light of the regulatory reform objectives of the Investment Company Act Study. Two central goals of the Study are to permit investment companies to exercise wider latitude in making business judgments without Commission approval and to enhance the role of directors, particularly the disinterested directors, in scrutinizing investment company affairs. These goals are interdependent in that the more capable the disinterested directors are of overseeing the kinds of activities of investment companies which are of regulatory significance, the more the Commission will be willing to reduce regulatory restrictions.

The Commission views a decision to use fund assets for distribution as a particularly difficult business judgment which is complicated by the conflicts of interest which are present. Since rule 12b-1 does not restrict the kinds or amounts of payments which could be made, the role of the disinterested directors in approving such expenditures is crucial. No formal provisions in a rule can insure that directors will make the right decision in every instance; however, the likelihood that a decision will be in the best interests of a fund and its shareholders will be increased if the disinterested directors are genuinely independent of management. Of course, a requirement that the tenure of disinterested directors be independent of management control will not guarantee that disinterested directors will in fact be independent. Nevertheless, experience indicates that such formal independence will breed an atmosphere in which actual independence will develop. The well-documented trend among corporations generally toward director independence (e.g., the increasing number of boards which have independent majorities and majority independent committees, including nominating committees) strongly implies a recognition of the validity of this proposition. Accordingly, the Commission believes that, in order for rule 12b-1 to be effective, disinterested directors must be independent.

The Commission remains concerned that there will be situations in which disinterested directors may not be able to act with complete independence in deciding whether to use fund assets for distribution because of the possibility that the advisers' control over the funds they advise could lead to domination of or undue influence over the disinterested directors. The Commission recognizes that many advisers who control the funds they advise would not attempt to misuse such control over the disinterested directors and that many disinterested directors are fully indepedent. However, the Commission still believes that it is appropriate to enhance the independence of disinterested directors by adopting the provisions of paragraph (c) as proposed. This belief reflects the cumulative experience of the staff in regulating the mutual fund industry, and, for that reason, citations of such cases as *Burks* v. *Lasker*[60] are not apposite. Whatever *Burks* or *Tannenbaum* may have said about the theoretical role of disinterested directors or about the actual independence of the directors who were involved in those cases, it is the Commission's view that as a general proposition disinterested directors should not be entrusted with a decision on use of fund assets for distribution without receiving the benefit of measures designed to enhance their ability to act independently.

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[60]99 S. Ct. 1831. In *Burks* the Supreme Court held, in part, that the Act did not forbid disinterested directors from terminating non-frivolous law suits. In that case, the Court did not pronounce generally that under all circumstances disinterested directors are able to act with genuine independence. Instead, the court recognized that because of the potential conflicts, "some restraints upon the unfettered discretion of even disinterested mutual fund directors, particularly in their transactions with the investment adviser" may be justified (at 1839). Although the Commission does not view the measures in the rule which will enhance the independence of disinterested directors to be restraints upon such directors, the Commission believes that such measures, in the context of a permissive rule to allow funds to pay distribution expenses, are consistent with the Supreme Court's caution concerning the role of disinterested directors and are necessary and appropriate.

With respect to the argument that paragraph (c) is extrastatutory, the Commission acknowledges that there are no identical provisions in the Investment Company Act, although section 15(f) contains provisions of similar import.[51] Nevertheless, the Commission believes that paragraph (c) is a reasonable restriction. That provision does not impose a new regulatory requirement on all investment companies; instead it makes available an exemption from regulation for companies which elect to institute a corporate governance mechanism which, as suggested above, is consistent with salutary developments among corporations of all types.

Factors

In order to avoid the appearance of either unduly constricting the directors' decision making process or of creating a mechanical checklist, the Commission has decided to delete the list of factors from rule 12b-1. However, in order to insure a proper record of the deliberative process, the rule will require preservation of minutes. Since corporate minutes are frequently cryptic, the rule requires explicitly that these minutes set forth the factors the directors considered, together with an explanation of the basis for the decision to use fund assets for distribution.

Although the Commission has decided not to require directors to consider any particular factors, the Commission believes that the factors enumerated in rule 12b-1 would normally be relevant to a determination of whether to use fund assets for distribution. Therefore, it appears that setting forth those factors in this release may provide helpful guidance to directors. The following list of factors is the same as the list contained in proposed rule 12b-1, except for a slight amplification of the fourth factor:

(1) consider the need for independent counsel or experts to assist the directors in reaching a determination;

(2) consider the nature of the problems or circumstances which purportedly make implementation or continuation of such a plan necessary or appropriate;

(3) consider the causes of such problems or circumstances;

(4) consider the way in which the plan would address these problems or circumstances and how it would be expected to resolve or alleviate them, including the nature and approximate amount of the expenditures; the relationship of such expenditures to the overall cost structure of the fund; the nature of the anticipated benefits, and the time it would take for those benefits to be achieved;

(5) consider the merits of possible alternative plans;

(6) consider the interrelationship between the plan and the activities of any other person who finances or has financed distribution of the company's shares, including whether any payments by the company to such other person are made in such a manner as to constitute the indirect financing of distribution by the company;

(7) consider the possible benefits of the plan to any other person relative to those expected to inure to the company;

(8) consider the effect of the plan on existing shareholders; and

(9) consider, in the case of a decision on whether to continue a plan, whether the plan has in fact produced the anticipated benefits for the company and its shareholders.

Reasonable Business Judgment

The Commission is adopting the standard of care required of directors in implementing a distribution plan as proposed originally in Release No. 10862. The Commission intentionally did not define the relationship between a "reasonable business judgment" and "fiduciary duties" under state law and sections 36(a) and (b) of the Act, nor did it define those director activities that would be consistent with each concept. The Commission did this in recognition that the concepts are constantly evolving and, particularly, that there have been no comprehensive or definitive interpretations of the various fiduciary duty requirements of section 36. Certainly it was not the Commission's intent to assert

[51]Section 15(f) requires, inter alia, that the board be three-fourth disinterested for three years after a sale of an interest in the investment adviser resulting in assignment of the advisory contract.

any such interpretation of its own. Rather, as stated clearly in Release No. 10862, paragraph (e) incorporates directors' existing duties in order to emphasize that formal compliance with the other provisions of the rule will not establish a safe harbor. The Commission believes that the standards for accountability placed on the directors concerning their decision to implement a distribution plan are necessary and are consistent with the standards under the Act and under state law required of fund directors in other decision making contexts.

Disclosure and Reporting Requirements

The Commission is adopting the disclosure and reporting requirements substantially as proposed in Release No. 10862 for the reasons stated in that release.[52] As noted above, the few comments that were received on the disclosure and reporting requirements generally supported the concept of full disclosure to investors. Moreover, the Commission continues to believe that it is inappropriate, at this time, to modify the position taken in the *Vanguard* proceeding that a fund which bears distribution expenses but which does not charge a front-end sales load cannot refer to itself as a "no-load" fund or use equivalent terminology. Instead, the Commission remains of the opinion that it is more appropriate to give further consideration to this issue within the context of the *Vanguard* proceeding.

Proposed Rule 17d-3

The Commission is adopting rule 17d-3 as proposed in Release No. 10862. One commentator asked whether the rule 17d-3 exemption would apply to several funds within a complex. Each fund within a complex can make individual and independent determinations, in accordance with the provisions of rule 12b-1, to bear its own distribution expenses. To the extent that each fund independently decides to bear its own distribution expenses, and to the extent that the provisions of section 17(d) and rule 17d-1 would otherwise apply, the exemption under rule 17d-3 is available. However, the Commission remains of the opinion that it would be inappropriate, in view of the *Vanguard* proceeding, to extend rule 17d-3 to arrangements for the joint sharing of distribution costs by funds which are affiliates (or affiliates of affiliates) of each other. The commission wishes to emphasize that it has no intention of categorizing certain transactions as raising the applicability of section 17(d) and rule 17d-3 of the Act. The Commission's only comment is that, to the extent that arrangements in which a fund pays for its distribution costs could involve the fund in a "joint enterprise" with an affiliated person, and if such arrangements were entered into in compliance with rule 12b-1, the Commission sees no need for prior Commission review and approval of the arrangements.

AUTHORITY, EFFECTIVE DATE

The Commission, pursuant to section 12(b) [15 U.S.C. 80a-12(b)], and section 38(a) [15 U.S.C. 80a-37(a)] of the Act hereby amends 17 CFR Part 270 by adding new §270.12b-1. Further, the Commission pursuant to sections 17(d) [15 U.S.C. 80a-17(d)] and 38(a) of the Act hereby amends 17 CFR Part 270 by adding new §270.17d-3. Finally, the Commission is amending 17 CFR Part 239 and 17 CFR Part 274 by amending §239.15 and §274.11, pursuant to sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77f, 77g, 77h, 77j and 77s(a)], and sections 8 [15 U.S.C. 80a-8] and 38(a) of the Act. This action is effective immediately pursuant to the Administrative Procedure Act [5 U.S.C. 553(d)(1)].

TEXT OF RULES

I. Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. Adding a new §270.12b-1 as follows:

§270.12b-1 Distribution of shares by registered open-end management investment company.

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act [15 U.S.C. 80a-10(d)] to act as a distributor of securities of which it is the issuer, except through an underwriter.

[52]The Commission has slightly amended proposed new Item 9, Part II, Form N-1 [17 CFR 239.15, 274.11] in order to facilitate monitoring of expenditures for distribution.

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature.

(b) A registered, open-end management investment company ("company") may act as a distributor of securities of which it is the issuer, *Provided* That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing, *and further provided* That:

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements; and

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2);

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company; and

(iv) In the case of an agreement related to a plan,

(A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment; and

(4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2);

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if selection and nomination of those directors who are not interested persons of such company are committed to the discretion of such disinterested directors;

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes

describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

NOTE: For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) [15 U.S.C. 80a-35(a) and (b)] of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders; and

(f) A registered open-end management investment company must preserve copies of any plan, agreement or report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place.

2. Adding a new §270.17d-3 as follows:

§270.17d-3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

An affiliated person of, or principal underwriter for, a registered open-end management investment company and an affiliated person of such a person or principal underwriter shall be exempt from section 17(d) of the Act [15 U.S.C. 80a-17(d)] and rule 17d-1 thereunder [17 CFR §270.17d-1], to the extent necessary to permit any such person or principal underwriter to enter into a written agreement with such company whereby the company will make payments in connection with the distribution of its shares,

Provided That:

(a) Such agreement is made in compliance with the provisions of §270.12b-1 of this part; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

II. Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By adding new Item 1(b)(15), Part II of Form N-1 as follows:

§239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

§274.11 Form N-1, registration statement of open-end management investment companies.

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Item 1. Financial Statements and Exhibits.

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(b) Exhibits:

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(15) copies of any plan entered into by Registrant pursuant to rule 12b-1 under the 1940 Act, which describes all material aspects of the financing of distribution of Registrant's shares, and any agreements with any person relating to implementation of such plan.

2. By adding new Item 9, Part II, of Form N-1 and renumbering current Item 9 in Part II:

§239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

§274.11 Form N-1, registration statement of open-end management investment companies.

* * * * *

Item 9. Distribution Expenses.

Furnish a summary of the material aspects of any

plan pursuant to which the Registrant incurs expenses related to the distribution of its shares, and of any agreements related to the implementation of such a plan. The summary should include, among other material information, the following:

(a) the amounts paid by the Registrant under the plan during the last fiscal year, as a total dollar amount and a percentage of Registrant's average net assets during that period;

(b) the manner in which such amount was spent on:

(i) advertising,

(ii) printing and mailing of prospectuses to other than current shareholders,

(iii) compensation to underwriters,

(iv) compensation to dealers,

(v) compensation to sales personnel, and

(vi) other (specify)

(c) whether any of the following persons had a direct or indirect financial interest in the operation of the plan or related agreements:

(i) any interested person of the Registrant; or

(ii) any director of the Registrant who is not an interested person of the Registrant.

(d) the benefits, if any, to the Registrant resulting from the plan.

Instruction: In responding to this item the Registrant should take note of the requirements of rule 12b-1 under the 1940 Act [17 CFR 270.12b-1].

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17244/October 24, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-24)

ORDER APPROVING PROPOSED RULE CHANGE

On September 8, 1980, the Chicago Board Options Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which eliminates the requirement that members submit monthly reports of certain uncovered short positions, and requires instead that such reports be submitted only if requested by the CBOE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Sec;urities Exchange Act Release No. 17143, September 12, 1980) and by publication in the *Federal Register* (45 FR 62598, September 19, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17245/October 24, 1980

In the Matter

PACIFIC STOCK EXCHANGE, INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-14)

ORDER APPROVING PROPOSED RULE CHANGE

On September 4, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and rule 19b-4 thereunder, copies of a proposed rule change which establishes procedures for the execution of cross transactions on the options floor of the PSE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17144, September 12, 1980) and by publication in the *Federal Register* (45 FR 62241, September 18, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17246/October 24, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($1 par value) of HUYCK CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17247/October 24, 1980

A notice has been issued giving interested persons until November 17, 1980 to comment on the applications of the *Boston Stock Exchange, Inc.* for unlisted trading privileges in the common stock (no par value) of METRO-GOLDWYN-MAYER FILM CO. and the capital stock ($.50 par value) of SUNSHINE MINING COMPANY (DEL.)

SECURITIES EXCHANGE ACT OF 1934
Release No. 17248/October 24, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-40

The New York Stock Exchange, Inc. submitted, on October 17, 1980, a proposed rule change under Rule 19b-4 to amend Exchange Rule 46 to increase the number of Floor Governors designated by the Chairman from fourteen to sixteen.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of

October 27, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-40.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17249/October 27, 1980

Admin. Proc. File No. 3-5873

In the Matter of

JAMES SCIBELLI

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these broker-dealer proceedings under the Securities Exchange Act of 1934 ("Exchange Act") *In the Matter of Marcel H. Aronheim, et ano.*[1], respondent James Scibelli ("Scibelli"), of Merrick, New York, has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purposes of this proceeding and any other proceeding which may be brought by the Commission or any other governmental or self-regulatory body pursuant to Sections 15(b) and 19(h) of the Exchange Act, and without admitting or denying the allegations in the Order for Proceedings and the findings herein, respondent Scibelli consents to the findings and sanctions set forth below.

Findings

On the basis of the Order Instituting Proceedings and Scibelli's Offer of Settlement, the Commission finds that respondent Scibelli wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

In view of the foregoing, it is in the public interest to impose the sanction specified by respondent Scibelli in his Offer of Settlement.

Remedial Sanction

Accordingly, IT IS ORDERED that respondent Scibelli be, and he hereby is, suspended from association with any broker-dealer for a period of thirty calendar days.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]The Order Instituting Proceedings in *In the Matter of Marcel H. Aronheim and James Scibelli*, Admin. Proc. File No. 3-5873 was issued by the Commission on February 5, 1980. See Securities Exchange Act Release No. 16556 (February 5, 1980), 19 SEC Docket 7 (February 19, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17250/October 27, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 736/October 27, 1980

In the Matter of

WILLIAM LEE PARKS

Robert H. Davenport, Administrator of the Commission's Denver Regional Office, announced that the Commission has ordered public administrative proceedings pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 ("Act") and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against William Lee Parks (Parks), an investment adviser located in Boulder, Colorado. Parks is also an associated person of a broker-dealer registered with the Commission. The order for proceedings alleges willful violations of recordkeeping and filing provisions of Section 204 of the Act and Rules 204-1 and 204-2 thereunder, and of antifraud provisions of Section 206 of the Act concerning, among other things: (1) Parks' overcharging his clients for advisory fees; (2) Parks' failure to refund to his clients the unearned portion of advisory fees; and (3) the use by Parks of a void "hedge" clause in advisory contracts. The order also alleges violations of Section 207 concerning material misstatements and omissions in connection with a registration application, reports and amendments thereto required to be filed with the Commission.

A hearing will be scheduled to take evidence on the staff's allegations and to afford Parks an opportunity to present any defenses thereto. The purpose of the hearing is to determine what, if any, remedial action should be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17251/October 27, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE, INC.

File No. SR-Phlx-80-24

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on October 6, 1980, a proposed rule change under Rule 19b-4 to create an Allocation, Evaluation, and Securities Committee and an Executive Committee as standing Phlx committees.[1] The present Admissions Committee, Floor Procedures Committee, and Options Committee, which are standing committees, would be given additional duties[2] and the Stock List Committee would be discontinued.[3] All the standing committees, except as otherwise provided in Phlx's By-Laws, would be composed of nine or more persons, to be appointed by Phlx's Chairman of the Board with the approval of the Phlx Board of Governors.[4]

A majority of the new Allocation, Evaluation and Securities Committee would be composed by members who conduct a public securities business, with the balance consisting of equity floor and options floor members[5] and would have authority over the allocation, retention, and transfer of privileges to deal in securities on the equity and options trading floors. It also would perform the functions of the discontinued Stock List Committee involving the listing and delisting of equity securities.[6]

The new Executive Committee would consist of the following officials: the Phlx's Chairman of the Board (who would chair the Executive Committee), the two Vice Chairmen, the immediate past Chairman, the President, the Executive Vice President, and three other Board members to be appointed by the

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[1]Proposed Phlx By-Laws, Section 5-3.

[2]*Id.*, Sections 10-6, 10-12, and 10-15.

[3]*Id.*, Section 10-1(a).

[4]*Id.* Further, except as otherwise provided in Phlx's By-Laws, the decision of a majority of members present at a committee meeting, where a quorum exists, would be the decision of the committee. *Id.* Section 10-3(a).

[5]*Id.*, Section 10-7(a), (b).

[6]*Id.*, Section 10-7(d). The current Section 10-14 of the By-Laws, which sets forth the present authority of the Stock List Committee, would be re-numbered as Section 10-7(d) under the provisions on the proposed Allocation, Evaluation and Securities Committee.

Chairman.[7] The Executive Committee would be authorized to implement and execute policy previously approved by the Board of Governors.[8]

The present Admissions Committee would have authority over admission and readmission to exchange membership.[9] Under the proposed rules, any applicant who is rejected for admission would be entitled to notification in writing as to the reasons and to a review or hearing by the Admission Committee, and, if finally rejected by the Admissions Committee the applicant would be entitled to an appeal to the Board of Governors.[10]

The present Floor Procedure Committee would have additional responsibilities regarding equity floor supervision over specialists, odd-lot dealers, and floor brokers, and it would be required to establish training procedures for equity floor members.[11]

The present Options Committee, in addition to its present responsibilities, would supervise all means of options floor communication, the location of equipment and use of floor space, and Phlx's relations with other options exchanges. Further, the Options Committee would have jurisdiction over the approval of underlying stocks for options trading and would make and enforce options floor decorum rules.[12]

Publication of the submission is expected to be made in the *Federal Register* during the week of October 27, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-80-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17252/October 27, 1980

Admin. Proc. File No. 3-5970

In the Matter of

D.H. BLAIR & CO., INC.
(BD 8-18290)
J. MORTON DAVIS
CHARLES M. SPANAKOS

ORDER INSTITUTING PROCEEDINGS, FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I

The Commission deems it appropriate in the public interest that public administrative proceedings be instituted against D.H. Blair & Co., Inc. ("Blair"), a registered broker-dealer and investment adviser located in New York, New York, J. Morton Davis ("Davis"), president and principal shareholder of Blair, and Charles M. Spanakos ("Spanakos"), a

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[7]Proposed By-Laws, Section 10-10(a).

[8]*Id.*, Section 10-10(b).

[9]*Id.*, Section 10-6(a).

[10]*Id.*, Section 12-4(b), (c), (f).

[11]Proposed By-Laws Section 10-12.

[12]*Id.*, Section 10-15.

registered representative and compliance assistant at Blair, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act").

II

In anticipation of the institution of these proceedings, Blair, Davis and Spanakos have submitted Offers of Settlement ("Offers"). For the purpose of this proceeding and any other administrative proceeding in which the Commission or any other securities regulatory or self-regulatory body is a party, the Respondents by their Offers consent to the findings and sanctions set forth below without admitting or denying the findings herein.

III

After due consideration of the Offers of Settlement and upon the recommendation of the staff, the Commission has determined that it is in the public interest to accept such Offers and, accordingly, IT IS ORDERED that proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be, and they hereby are, instituted.

IV

On the basis of this Order and the Offers, it is found that:

A. From in or about May 1979 to August 1979, Blair, Davis and Spanakos willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") in that they accepted approximately 110,000 shares of unregistered and restricted securities of Covington Brothers Technologies ("Covington") as collateral in margin accounts, and 30,000 shares of unregistered and restricted CBT shares in another account, of certain Blair customers who acquired such securities directly from certain insiders of Covington. The respondents also delivered a portion of such unregistered and restricted securities of Covington from customers' accounts to accounts of these customers at other broker-dealers. The buying power created by pledging the Covington shares was used to purchase in the margin accounts substantial holdings of common stock of The Presley Companies ("Presley") in the open market. The customers further used the leverage to acquire common stock of Covington in private purchases.

B. During the same period, Blair, Davis and Spanakos willfully aided and abetted violations of Sections 17(a)(2) and (3) of the Securities Act by delivering to other broker-dealers, pursuant to instructions of such Blair customers, unregistered and restricted securities of Covington without disclosing to such broker-dealers the source and nature of such securities.

C. Blair and Davis failed to exercise their duty of reasonable supervision in connection with the activities of a person subject to their supervision resulting in willful violations as alleged in paragraphs A and B above.

V

In view of the foregoing it is in the public interest to impose the sanctions specified in the Offers of Settlement. Accordingly, IT IS ORDERED that:

A. Blair is censured.

B. Davis' and Spanakos' activities shall be subject to the following limitations: for a period of fifteen (15) calendar days from the effective date of this Order, Davis and Spanakos will be prohibited from engaging in transactions in any securities for retail customers, provided, however, that such limitation shall not apply to offerings as to which a registration statement has been filed or declared effective by the Commission for which Blair is a managing underwriter, member of the underwriting syndicate or member of the selling group.

C. Blair shall within ten (10) days from the date of this Order, or such other time satisfactory to the Commission's staff, retain a person or firm not objectionable to the staff to conduct a study of Blair's compliance procedures with respect to all aspects of Blair's handling of accounts for retail customers, including, but not limited to, margin accounts and the acceptance into, and delivery out of, customers' retail accounts of securities of customers. Such review shall encompass the implementation and maintenance of effective compliance procedures to prevent any violations of the federal securities laws and the rules and regulations thereunder and any other applicable rules and regulations of any self-regulatory organizations of which Blair is a member.

Upon completion of the review which shall be within sixty (60) days after the date of this Order or such

other time agreeable to the staff of the Commission, said person or firm shall render a report with respect to the above, together with its recommendations designed to prevent the conduct embraced by this Order. Said recommendations shall include, but not be limited to the engagement of a compliance officer. Within sixty (60) days after completion of the compliance report and recommendations, Blair shall file an affidavit with the Commission's New York Regional Office with respect to implementation of the recommendations of such report. This affidavit shall include the nature and extent of Blair's compliance procedures designed to prevent any recurrence of the violations as alleged in this Order.

If the Commission determines that the recommendations or implementation of the recommendations are inadequate, it may reopen these proceedings, with notice and opportunity for hearing to Blair, to determine what, if any, further action is necessary or appropriate in the public interest.

D. From fifteen (15) calendar days after the effective date of this Order, this Order shall not constitute a disqualification of Blair, Davis or Spanakos (or any issuer with which any of them is affiliated) pursuant to Rule 252(d)(3) of Regulation A under the Securities Act.

The sanctions ordered herein shall become effective the second Monday after the date of this Order.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17253/October 27, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-25

The American Stock Exchange, Inc. submitted on October 16, 1980, a proposed rule change under Rule 19b-4 to amend Article V, Section 6 of the Exchange Constitution to (1) extend the period of retained disciplinary jurisdiction over former members to one year following termination of membership status, and (2) expand the scope of such jurisdiction to cover member organizations.

Publication of the submission is expected to be made in the *Federal Register* during the week of October 27, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17254/October 27, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INCORPORATED

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Geico Corp.
Common Stock, $1 Par Value (File No. 7-5741)
Gerber Scientific Inc.
Common Stock, $1 Par Value (File No. 7-5742)
Golden Nuggett Inc.
Common Stock, $.833 Par Value (File No. 7-5743)
National Education Corp.
Common Stock, No Par Value (File No. 7-5744)[1]

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange, Incorporated in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 67180 (October 9, 1980). The Commission has received comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17255/October 27, 1980

A notice has been issued giving interested persons until November 18, 1980 to comment on the application of JOHN H. HARLAND COMPANY to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17256/October 27, 1980

An order has been issued granting the application of the *Pacific Stock Exchange, Inc.* to strike the 9% Subordinated Debentures due 6-1-95 of BROWN COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17257/October 28, 1980

A notice has been issued giving interested persons until November 19, 1980 to comment on the application of the *Cincinnati Stock Exchange* for unlisted trading privileges in the common stock (no par value) of METRO-GOLDWYN-MAYER FILM CO.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17258/October 30, 1980

FILINGS BY SELF-REGULATORY ORGANIZATIONS OF PROPOSED RULE CHANGES AND OTHER MATERIALS WITH THE COMMISSION

ACTION: Final rules and form; revocation of rule and form.

SUMMARY: The Commission is amending the requirements applicable to the filing by self-regulatory organizations of proposed rule changes and certain other materials. The amendments, which are intended to facilitate the review of proposed rule changes, (i) specify in greater detail the information required in a filing; (ii) expand the categories of proposed rule changes that may become effective summarily to include certain rules effecting changes in existing services of registered clearing agencies; and (iii) clarify which actions of self-regulatory organizations are proposed rule changes. In addition, the Commission is revoking the requirement that self-regulatory organizations file stated policies, practices, and interpretations not deemed to be rules. The Commission is also revoking requirements that each national securities exchange or registered securities association file separately information about its rules in effect on June 4, 1975, and certain forms, reports, or questionnaires. Finally, the Commission is adopting a rule requiring registered clearing agencies to file material they make generally available. The Commission is withdrawing, in a separate release, proposals relating to these matters.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., (202) 272-2828 or Jeffrey Jordan, Esq., (202) 272-2847, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the following action with respect to proposals in its May 1979 release[1] (the "Proposal Release") to facilitate review of proposed rule changes of self-regulatory organizations under Section 19(b)[2] of the Securities Exchange Act of 1934 (the "Act"):[3]

(1) Adoption of amendments to Rule 19b-4 under the Act,[4]

(A) Clarifying which actions of a self-regulatory organization constitute proposed rule changes,

(B) Providing summary effectiveness for certain rules changing existing services of registered clearing agencies,

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[1]Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979). The Commission received comments in response to the Proposal Release from the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), Depository Trust Company ("DTC"), Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers, Inc. ("NASD"), New York Stock Exchange, Inc. ("NYSE"), and Options Clearing Corporation ("OCC"). Securities and Exchange Commission File No. S7-590 ("File No. S7-590").

[2]15 U.S.C. 78s(b). Section 19(b) requires a self-regulatory organization to file with the Commission each of its proposed rule changes, accompanied by a concise general statement of the basis and purpose of the proposed rule change. A proposed rule change cannot take effect unless the Commission approves it, or it is otherwise permitted to become effective under Section 19(b). To approve a proposed rule change, the Commission must find that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization proposing the rule change.

[3]15 U.S.C. 78a *et seq.*

[4]17 CFR 240.19b-4. Rule 19b-4 was adopted in August 1975. Securities Exchange Act Release No. 11604 (Aug. 19, 1975), 40 FR 40509 (Sept. 3, 1975).

(C) Eliminating the requirement that a self-regulatory organization file on Form 19b-4B[5] notice of stated policies, practices, and interpretations not deemed to be rules, and

(D) Eliminating the requirement that each national securities exchange and registered securities association file informatioin about its rules in effect on June 4, 1975.

(2) Adoption of amendments to Form 19b-4A[6] and redesignation of Form 19b-4A as Form 19b-4.

(3) Revocation of Form 19b-4B, on which notice is filed of stated policies, practices, and interpretations not deemed to be rules.

(4) Revocation of Rule 17a-18,[7] which requires national securities exchanges and registered securities associations to file new or substantially modified forms, reports, or questionnaires.

(5) Adoption of Rule 17a-22[8] requiring registered clearing agencies to file materials they issue or make generally available.

(6) Withdrawal of proposed amendments to Rule 19b-4 and Form 19b-4A that would have provided summary effectiveness for certain proposed rule changes of self-regulatory organizations circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

(7) Withdrawal of proposed Rule 3b-7, which would have defined the term "rule" of a self-regulatory organization for purposes of Sections 3(a)(27) and 3(a)(28) of the Act.[9]

The Commission's actions announced today[10] are intended to facilitate the review of proposed rule changes of self-regulatory organizations[11] and are designed to complement the Commission's ongoing program to improve the review process.[12] The self-regulatory organizations have also undertaken efforts to improve the review process and have substantially assisted the Commission in its efforts in this area. Continued cooperation and communication between the Commission and the self-regulatory organizations is essential to the efficient administration of Section 19(b).

The Commission's actions are discussed in detail in the remainder of this release,[13] which consists of the following sections:

I. Amendments to Form 19b-4

II. Expansion of Categories of Proposed Rule Changes That May Become Effective on Filing

III. Self-Regulatory Organization Actions Constituting Proposed Rule Changes

IV. Revocation of Certain Filing Requirements; Adoption of Rule 17a-22 Concerning Registered Clearing Agencies

V. Statutory Basis

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[5]17 CFR 249.819b.

[6]17 CFR 249.819a.

[7]17 CFR 240.17a-18.

[8]17 CFR 240.17a-22.

[9]15 U.S.C. 78c(a)(27), 78c(a)(28).

[10]In accordance with Section 17A(d)(3)(A)(i) of the Act, 15 U.S.C. 78q-1(d)(3)(A)(i), at least fifteen days before this announcement, the Commission consulted and requested the views of the Board of Governors of the Federal Reserve System.

[11]Rule 19b-4 applies only to proposed rule changes of self-regulatory organizations. The Commission has proposed a separate rule under the Act, proposed Rule 11Aa3-2, which would establish procedures relating to plans governing the planning, developing, operating or regulating of a national market system, or one or more facilities thereof. See Securities Exchange Act Release No. 16410 (Dec. 7, 1979), 44 FR 72607 (Dec. 14, 1979).

[12]Each year since 1975 the Commission has received approximately three hundred filings of proposed rule changes and stated policies, practices, and interpretations not deemed to be rules.

[13]The withdrawal of proposed Rule 3b-7 and certain proposed amendments to Rule 19b-4 and Form 19b-4A is the subject of a brief companion release also issued today, *Securities Exchange Act Release No.* 17259 (October 30, 1980) (the "Companion Release").

VI. Text of Rules and Form

I. *Amendments to Form 19b-4*

A major problem the Commission has encountered in administering Section 19(b) is that many proposed rule change filings have not provided an adequate basis for Commission review. As a result, the Commission's staff has had to devote considerable time and resources to obtaining from self-regulatory organizations necessary information not provided in the filings, thereby delaying the rule review process. To avoid such delays, the Commission proposed amendments to Form 19b-4A designed to elicit the information necessary for it to review proposed rule changes promptly and efficiently. The Commission is adopting the proposed amendments with the modifications described below and is redesignating Form 19b-4A as Form 19b-4.

A. Instruction B. Need for Careful Preparation of the Completed Form, Including Exhibits

The Commission proposed a new Instruction B to Form 19b-4 emphasizing that the information required by the form is necessary for the Commission to determine whether, as required by Section 19(b) of the Act, a proposed rule change is consistent with the Act and the rules and regulations thereunder. Instruction B also makes clear that any filing not in compliance with the requirements of the form may be returned to the self-regulatory organization at any time before issuance of the notice of filing.

Commentators expressed concern that Instruction B would permit the Commission or its staff to return filings on the basis of substantive objections.[14] Instruction B, however, does not contemplate that filings will be returned for reasons other than failure to comply with the requirements of the form.

Another commentator stated that Instruction B could exacerbate pre-filing delays unless the Commission established a limit on the time for determining whether a filing is deficient.[15] The Commission intends to publish notices of filing promptly. Since prompt publication of the notices will effectively reduce pre-filing delays, the Commission believes that establishing further limits on the time for pre-filing review is unnecessary.

The Commission believes that the information provided on Form 19b-4 must be adequate to support a Commission finding that a proposed rule change is consistent with the Act and applicable rules and regulations.[16] Returning deficient filings permits the Commission and its staff to focus on filings that provide an adequate basis for review. Accordingly, the Commission is adopting Instruction B, as proposed, with only editorial changes.

B. Instruction D. Amendments

Instruction D prescribes requirements for amending rule change filings. The Commission proposed certain amendments to the instruction, including requirements to indicate changes, if any, made from the preceding filing and from existing rules of the self-regulatory organization.

One commentator stated that when amending a filing the self-regulatory organization should not be required to submit the entire text of a lengthy rule in order to alter, for example, only one page of the text.[17] The Commission agrees that the filing requirement should afford some flexibility in that regard and has revised the instruction to provide that if the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may file only those portions of the text in which amendments are made if the filing is clearly understandable on its face.

Instruction D has also been revised in several other respects. First, it has been revised to make clear that the self-regulatory organizatioin must file, in accordance with Instruction F, copies of any correspondence or other communications reduced to writing (including comment letters) to and from the self-regulatory organization that it prepares or receives on a proposed rule change after the rule change is filed with the Commission but before the Commission takes final action on it. Second, Instruction D has been revised to provide that if information in such a communication makes the rule change filing inaccurate, the filing must be amended to correct the inaccuracy. Third, it has

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[14]DTC, NADD, and NYSE Responses, File No. S7-590.

[15]Amex Response, File No. S7-590.

[16]*See* text accompanying n. 24, *infra*.

[17]NADD REsponse, File No. S7-590.

been revised to describe more clearly the manner in which changes made by the amendment are to be marked. Finally, the instruction has been revised to provide that the self-regulatory organization is required to explain the purpose of the amendment and, if the amendment changes the purpose of the proposed rule change, it is also required to provide a revised statement of the purpose of the proposed rule change.[18]

C. Instruction E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

Instruction E provides that if the self-regulatory organization files a proposed rule change before it has completed all action necessary for internal approval of the change, it must consent to an extension of time until at least thirty-five days after the self-regulatory organization files an amendment stating that it has completed action on the rule change. One commentator stated that the requirement is unnecessarily rigid.[19] The commentator suggested that the instruction should provide for extensions of up to thirty-five days, to be negotiated as circumstances warrant.

In most instances, after the self-regulatory organization files an amendment stating that it has completed action on the proposed rule change, the Commission requires thirty-five days to complete its review. Where the Commission completes its review before expiration of the thirty-five day period, it can accelerate effectiveness of the rule change.[20] Accordingly, the Commission is adopting Instruction E without the suggested amendment.

D. Item 1. Text of the Proposed Rule Change

Paragraph (a) of Item 1 requires the self-regulatory organization to set forth the text of the proposed rule change. The Commission proposed to amend paragraph (a) to require the self-regulatory organization to submit any existing form, report, or questionnaire that is directly related to a proposed rule change. A number of self-regulatory organization rules are implemented through prescribed forms, reports, or questionnaires not set forth in the text of the rules published by the self-regulatory organization. In considering such rules, the Commission reviews the related forms, reports, or questionnaires. Accordingly, to expedite the review process, the Commission is adopting the amendment to Item 1(a) as proposed.

Paragraph (b) of Item 1 of Form 19b-4A as originally adopted requires the self-regulatory organization to set forth the text of any rules the application of which is affected, directly or indirectly, by the proposed rule change. In response to comments that that requirement was overly burdensome, the Commission proposed to amend paragraph (b) to require that the designation or title, rather than the text, of such rules be provided.

One commentator suggested that the Commission revise paragraph (b) to delete the requirement that the self-regulatory organization list those rules that the proposed rule change affects indirectly.[21] The commentator stated that the requirement is unwieldy and burdensome because indirect effects cannot be predicted fully and accurately.

The Commission does not intend to require the self-regulatory organization to predict every effect a proposed rule change could have on the organization's existing rules. Rather, the Commission intends to require the self-regulatory organization merely to identify those rules on which the organization reasonably expects the proposed rule change to have direct or significant indirect effects. Accordingly, the Commission has revised the amendment to Item 1(b) to make that intent clear.

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[18]As indicated elsewhere in this release, the Commission has decided not to adopt the proposed category for summary effectiveness of proposed rule changes subjected to pre-filing review (see text accompanying n. 46 *infra*). Therefore, the Commission is withdrawing related proposed amendments to Instructions D and E and Item 7. See the Companion Release.

[19]NYSE Response, File No. S7-590.

[20]Section 19(b)(2) of the Act provides that the Commission shall not approve any proposed rule change before the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for doing so. If the self-regulatory organization requests accelerated effectiveness pursuant to Section 19(b)(2), it should so indicate in Item 7(d) of Form 19b-4 and provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

[21]NYSE Response, File No. S7-590.

E. Item 2. Procedures of the Self-Regulatory Organization

Item 2 requires the self-regulatory organization to describe action on the proposed rule change taken by its members or board of directors or other governing body. The Commission proposed to amend Item 2 to require the self-regulatory organization to provide the name and telephone number of the staff member prepared to respond to questions and comments on the proposed rule change. The Commission has revised the amendment, in light of a suggestion made by one commentator,[22] to provide for instances where different persons at the self-regulatory organization are best prepared to discuss different aspects of the proposal.

F. Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Item 3 of Form 19b-4A as originally adopted requires a statement of the purpose of a proposed rule change, and Item 4 requires a statement of its basis under the Act. The Commission proposed to combine the statements of purpose and basis. The Commission also proposed amendments to specify in detail the information required in the statement, making clear that the statement should be sufficiently detailed and specific to support a Commission finding under Section 19(b) that the proposed rule change is consistent with the Act and rules and regulations thereunder. Several commentators objected to proposed Item 3, contending that the required statement either is unnecessary or exceeds the Section 19(b)(2) requirement for a "concise" statement.[23]

The statement of purpose and basis must be sufficient to support a finding by the Commission that a proposed rule change is consistent with the Act and rules and regulations thereunder. The Congress anticipated that, in most instances, the Commission's statement of reasons for approving a proposed rule change would "simply be an endorsement of the justification filed by the self-regulatory agency."[24] The Commission is adopting the proposed amendments to the statement of purpose and basis, limiting the requirement to discuss problems persons are likely to have in complying with the proposed rule change. In light of objections raised by commentators,[25] the Commission has modified that requirement to require discussion only if significant compliance problems.

G. Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Item 4 requires the self-regulatory organization to provide a discussion of any burden on competition the proposed rule change would impose. The Commission proposed to amend Item 4 to make it clear that the discussion must be clearly articulated and thorough and to specify in detail the information to be included.

One commentator stated that the proposed amendment would require self-regulatory organizations to speculate on competition issues.[26] A second commentator suggested that the requirement to discuss competition issues raised by commentators should be limited to significant issues.[27]

The Commission believes that the statement concerning any burden on competition must be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act and is adopting Item 4 essentially as proposed. It has, however, revised the requirement to respond to comments received concerning any impact on competition to comments received concerning any significant impact on competition.[28]

H. Items 5 and 9. Comments on the Proposed Rule Change

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[22] *Id.*

[23] DTC, NASD, and NYSE REsponses, File No. S7-590.

[24] Securities Act Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 30 (1975).

[25] DTC and NASD Responses, File No. S7-590.

[26] DTC Response, File No. S7-590.

[27] NYSE Response, File No. S7-590.

[28] See text accompanying n. 29 *infra*.

Item 5 requires the self-regulatory organization to summarize the comments it receives on a proposed rule change. The Commission proposes to amend Item 5 to require the self-regulatory organization to respond in detail to significant issues raised by commentators that are not discussed in response to Items 3 or 4.

One commentator stated that the requirement in Item 5 to respond to comments is unnecessary in light of the Item 4 requirement to provide a discussion of comments on any burden on competition.[29] A second commentator stated that the requirement is unnecessary because self-regulatory organizations will not risk rejection or disapproval of a proposed rule change by failing to respond to any comment concerning the statutory basis for the proposed rule change.[30] This commentator also stated that the new requirement would, in effect, require the self-regulatory organization to respond to every comment received because the significance of a comment would be determined not by the self-regulatory organization but by the Commission's staff in its review of the filing.[31] A third commentator stated that the comments to which the self-regulatory organization must respond should be limited to written comments, at least as far as clearing agencies are concerned.[32]

The requirement in Item 5 to respond to comments does not duplicate the Item 4 requirement to discuss comments on competitioin. Item 5 provides that if a comment is addressed in the statement of basis and purpose (Item 3) or discussion of competition issues (Item 4), the self-regulatory organization should cross-reference the response.

The Commission does not believe that the requirement to respond to comments raising significant issues would impose an undue burden on self-regulatory organizations. The amendment is intended to require only that the self-regulatory organization respond to written comments. The volume of such comment letters usually is not great. Frequently, none or at most a very few are received. Moreover, it has not been the Commission's experience that the comment letters typically raised inappropriate or trivial issues. Accordingly, the Commission is adopting the amendment to Item 5, modified to make clear that the requirement applies only to written comments.

A related provision, Item 9, requires the self-regulatory organization to file copies of any comment letters it receives. The Commission proposed to amend Item 9 to require the self-regulatory organization to provide, in addition to the required copies of comment letters, an alphabetical list of such letters and a transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of such comments.

One commentator suggested that the Commission make it clear that the term "public meeting" does not include, except to the extent specifically designated as "public," meetings such as board meetings, committee meetings, and informal meetings between staff and members of the self-regulatory organization.[33] The Commission does not intend, and does not believe the term "public meeting" is generally understood, to cover such meetings. The Commission believes transcripts or summaries of comments made at public meetings would facilitate Commission review.[34]

The Commission is adopting Item 9 as proposed with one revision. It has revised Item 9 to reflect the requirement in Instruction D that the self-regulatory organization file copies of any correspondence or other communications reduced to writing (including comment letters) to and from the self-regulatory organization concerning the rule change that it receives or prepares after the proposed rule change is filed with the Commission but before the Commission takes final action on it.

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[29]NYSE Response, File No. S7-590.

[30]Amex Response, File No. S7-590.

[31]*Id.*

[32]DTC Response, File No. S7-590.

[33]Amex Response, File No. S7-590.

[34]The Commission is amending paragraph (h) of Rule 19b-4 to require that a self-regulatory organization retain in a file, available for public inspection and copying, any correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any proposed rule change filing, whether the correspondence or communication is prepared or received before or after the filing of the proposed rule change.

I. Item 7. Basis for Summary Effectiveness or Accelerated Effectiveness of the Proposed Rule Change

Item 7 requires the self-regulatory organization to indicate under which provision of Section 19(b)(3), if any, it is designating the proposed rule change for summary effectiveness. The Commission is amending that item to reflect the new category for summary effectiveness of certain clearing agency rules.[35] It is also adding a new paragraph (d) to Item 7 providing that if the self-regulatory organization requests accelerated effectiveness pursuant to Section 19(b)(2), it must provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.[36]

J. Item 8. Proposed Rule Change Based on Other Rules

The Commission proposed a new Item 8 to require the self-regulatory organization to state whether a proposed rule change is based on a rule of another self-regulatory organization or of the Commission and, if so, to identify the rule and explain any differences between that rule and the proposed rule change.

One commentator asserted that it is inappropriate to require the self-regulatory organization to interpret the rules of another self-regulatory organization, with respect to which it does not have jurisdiction, expertise, or experience.[37] The Commission is adopting Item 8, revised to make clear that any discussion of rules of other self-regulatory organizations or of the Commission is to be based on the self-regulatory organization's understanding of those rules.

K. Exhibit 1. Notice of Filing

The Commission is adopting the proposed amendments to Exhibit 1 of Form 19b-4, the Notice of Filing for publication in the *Federal Register*.[38] The Commission is also adopting two other amendments to Exhibit 1. First, it is amending Item I to require that the response to the item include only the terms of substance of the proposed rule change or the text of the proposed rule change, if it is relatively brief. Second, it is amending Item II to require a brief summary of the most significant aspects, rather than the full text, of the responses to Items 3, 4, and 5 in the completed Form 19b-4. These two changes are designed to reduce the length of notices published in the *Federal Register*.

II. *Expansion of Categories of Proposed Rule Changes That May Become Effective on Filing*

Section 19(b)(3)(A)(iii) of the Act[39] authorizes the Commission to expand the categories of proposed rule changes that self-regulatory organizations may designate for summary effectiveness.[40] The Commission proposed to exercise that authority by

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[35]See text accompanying n. 49, *infra*.

[36]See n. 20, *supra*.

[37]NYSE Response, File No. S7-590.

[38]For the reasons expressed in the Proposal Release, the Commission plans to continue publishing notices in the *Federal Register*. See Proposal Release, 44 FR 30932.

[39]Section 19(b)(3)(A) provides that a proposed rule change may take effect upon filing if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of Section 19(b), may specify as without the provisions of Section 19(b)(2).

[40]The Commission announced in the Proposal Release that, as a matter of general policy, if a self-regulatory organization, other than the MSRB, files under Section 19(b)(3)(A)(ii) a proposed rule change that establishes or changes a due, fee, or other charge applicable to a non-member or a non-participant, the Commission intends, unless unusual circumstances are present, to abrogate the rule change and require that it be filed for review under Section 19(b)(2). Proposal Release, 44 FR 30928. Several commentators stated that they believe that general policy is too broad. The Commission, however, continues to believe that, in the absence of unusual circumstances, dues, fees, and other charges applicable to non-members or non-participants should receive full review under

amending Rule 19b-4 to permit the self-regulatory organization to designate a proposed rule change for summary effectiveness if the self-regulatory organization provides a thirty-day pre-filing comment period on the rule and before the rule change becomes operative affords the Commission a sixty-day period to consider abrogation (and refiling under Section 19(b)). The proposal was intended to permit proposed rule changes to be put into effect more rapidly than frequently is the case when full Commission review and approval are required.

Commentators questioned both the usefulness of the proposed category[41] and the Commission's authority to adopt it.[42] The major objection to the proposed amendment was to the length of time required between circulation and operation of the rule.[43] Commentators stated that the time savings offered by the proposed category would not be sufficient to cause them to forego Commission approval under Section 19(b)(2). They suggested that the proposed new category be revised either to permit the Commission to use its discretion to set a postfiling operative date up to 60 days after filing[44] or to dispense with the post-filing delay in operation.[45]

The proposed category for summary effectiveness was intended to provide, consistently with the purposes of Section 19(b), a meaningful opportunity for public comment on, and Commission review of, proposed rule changes filed under the category. The Commission believes that the suggested revisions do not make sufficient provision for comment or review before such rule changes become operative. Accordingly, because commentators indicated that they would not use the new category as proposed, the Commission is withdrawing the proposal.[46]

The Commission also is not adopting the proposal suggested by certain commentators[47] that proposed rule changes of limited duration be permitted to become effective summarily. The proposal does not make adequate provision for pre-effective comment or review, nor does it provide sufficient assurance that a defective rule could be abrogated promptly. A substantive rule change involving, for example, facilities implementation or clearing practices that became operative under the proposed category might not be able to be withdrawn without undue disruption. The Commission also does not agree with commentators that the proposal would reduce the Commission's work. In fact, if adopted, the proposal might require a disproportionate amount of staff time for evaluation of such filings to avoid disruption resulting from abrogation.[48]

The Commission, however, is expanding the categories of clearing agency rules that may become effective summarily, as suggested in the Proposal Release and supported by clearing agency commentators.[49] Clearing agencies often include in their rules the precise mechanical or operational details of their procedures.[50] Frequently, minor changes in these details do not fall within any existing category of proposed rule changes that may be designated for summary effectiveness, and therefore they require Commission review and approval.

Proposed rules dealing solely with mechanical or operational details of existing clearing agency services are similar to "solely administrative" rules, which currently qualify for summary effectiveness under Section 19(b)(3)(A)(ii) of the Act. Allowing such changes to become effective on filing should

Footnote 40 continued

Section 19(b)(2). The general policy announced is sufficiently flexible to permit summary effectiveness on a case-by-case basis.

[41]Amex, CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7-590.

[42]CBOE, NYSE, and OCC Responses, File No. S7-590.

[43]CBOE Response, File No. S7-590.

[44]NYSE Response, File No. S7-590.

[45]Amex Response, File No. S7-590.

[46]See Companion Release.

[47]CBOE, NSCC, and OCC Responses, File No. S7-590.

[48]The Commission has previously accelerated the effectiveness of, or taken similar steps for, temporary or test programs filed as proposed rule changes under Section 19(b)(2). The Commission will continue to do so for appropriate proposed rule changes.

[49]NSCC and OCC Responses, File No. S7-590.

[50]DTC, NSCC, and OCC Responses, File No. S7-590.

increase staff time available to review other filings. The Commission believes that it is consistent with the public interest and the purposes of Section 19(b) to amend paragraph (d) of Rule 19b-4 (redesignated as paragraph (e)) by adding a new subparagraph (4) to provide that:

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as

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(4) effecting a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

The Commission believes that permitting such proposed rule changes to become summarily effective could expedite the review process significantly.[51] For example, proposed rule changes that make minor modifications or improvements in services or implement changes of a "housekeeping" nature would be eligible for summary effectiveness under the category.[52]

III. *Self-Regulatory Organization Actions Constituting Proposed Rule Changes*

The Commission's proposals to facilitate filing and review of proposed rule changes included a new rule, proposed Rule 3b-7, defining the term "rule." That definition was intended to clarify which stated policies, practices, and interpretations and other self-regulatory actions must be filed as proposed rule changes. Commentators, however, stated that they did not believe the proposed definition would provide clarification.

The Commission has decided to withdraw proposed Rule 3b-7 and to amend Rule 19b-4 to specify more precisely which self-regulatory actions constitute proposed rule changes. The amendments to Rule 19b-4 are discussed in detail below. As background for that discussion, this section first discusses (A) the standards under the Act and under Rule Rule 19b-4 as originally adopted for determining which actions are proposed rule changes and (B) proposed Rule 3b-7.

A. Standards Under the Act and Rule 19b-4 as Originally Adopted

Section 19(b) defines the term "proposed rule change" to mean any proposed rule or any proposed change in, addition to, or deletion from the rules of the self-regulatory organization. Read together, Sections 3(a)(27) and 3(a)(28) of the Act define "rules of a self-regulatory organization" to mean (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding thereto, of any other self-regulatory organization, and (ii) such stated policies, practices, and interpretations of the self-regulatory organization, other than the MSRB, as the Commission deems to be rules.

Paragraph (b) of Rule 19b-4 as originally adopted defines "stated policies, practices, and interpretations" to include certain self-regulatory actions and paragraph (a) of the rule deems certain of these to be rules. The definition of "stated policies, practices, and interpretations" in paragraph (b) focuses primarily on whether the self-regulatory action is either a material aspect of the operation of the facilities of a self-regulatory organization or a statement that is made generally available to specified persons and has certain effects on those persons.[53] Paragraph (a) deems a stated policy, practice, or interpretation to be a rule onlyif it meets

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[51]The Commission, at this time, is not expanding this category to include rule changes of other self-regulatory organizations. Clearing agencies, unlike other self-regulatory organizations, function primarily as providers of services to their participants. As other self-regulatory organizations develop more varied and complex services, it may become appropriate to expand the category to include certain rules of those organizations.

[52]The Commission, of course, retains the authority, under Section 19(b)(3)(C), to abrogate summarily within sixty days of the date of filing any proposed rule change that has become effective under Section 19(b)(3)(A).

[53]Paragraph (b) of Rule 19b-4 as originally adopted provided that the term "stated policies, practices, and interpretations" includes:

one of several primarily procedural tests, such as being required, under the rules of the self-regulatory organization, to be approved by the organization's governing body.[54] The standards established by paragraphs (a) and (b) were intended to ensure that all significant regulatory actions by self-regulatory organizations would be subject to Commission review.

The definition of "stated policies, practices, and interpretations" in paragraph (b) of Rule 19b-4 is sufficiently broad to encompass most significant self-regulatory initiatives. The definition, however, does not make clear that certain significant regulatory matters that may be considered to concern "privileges," rather than "rights or obligations," are within the definition. In addition, the definition does not cover significant interpretations if they are not made generally available, even if the interpretation is approved or ratified by the governing body of the self-regulatory organization.

The Commission believes that paragraph (a), which deems certain stated policies, practices, and interpretations to be rules, focuses too extensively on procedural aspects of how the statement was adopted rather than on the substance of the statement. For example, paragraph (a) deems a stated policy, practice, or interpretation to be a rule if it is required to be approved by the governing body of the self-regulatory organization; however, not all matters that are required to be so approved are necessarily significant enough to warrant Commission review. At the same time, certain other matters that are not required to be approved by the governing body have significant regulatory effects and should be subject to Commission review.

B. Proposed Rule 3b-7

Proposed Rule 3b-7 was intended to resolve problems encountered with Rule 19b-4 by defining the term "rule" functionally, instead of procedurally, to include statements and stated policies, practices, and interpretations having specified significant regulatory effects.[55] The definition of "rule" in

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Footnote 53 continued

any material aspect of the operation of the facilities of the self-regulatory organization or any statement made generally available to the membership of, or all participants in, or persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, a self-regulatory organization, or to a group or category of such persons, establishing or changing any standards or guidelines with respect to (1) the rights or obligations of such persons or, in the case of national securities exchanges or registered securities associations, persons associated with such persons or (2) the application or interpretation of an existing rule.

[54]Paragraph (a) of Rule 19b-4 as originally adopted provided that a stated policy, practice, or interpretation of a self-regulatory organization shall be deemed to be a rule of the self-regulatory organization if:

(1) action thereon by the members or by the board of directors, or similar governing body, of such self-regulatory organization is required under its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, (2) a self-regulatory organization elects or is required, pursuant to its constitution, articles of incorporation, by-laws, rules, or instruments corresponding thereto, to treat it as a rule change hereunder, (3) it represents a change in, addition to, or deletion from a stated policy, practice or interpretation which the self-regulatory organization previously treated as a proposed rule change or (4) it requires a determination, or affects a prior determination, pursuant to Rules 8c-1(g) or 15c2-1(g).

[55]Proposed Rule 3b-7 defined "rule" to include:

the whole or part of any statement or of any stated policy, practice, or interpretation (including any form, report, or questionnaire)

(a) that is of general or particular applicability and future effect,

(b) that is designed to implement, interpret, describe, or prescribe a requirement, procedure, definition, standard, guideline, policy, or any part of a corporate or financial structure or organization, and

(c) that directly or indirectly affects the rights or obligations of any person or the conduct of business by any person;

proposed Rule 3b-7 was drawn, in large part, from the definition of "rule" in the Administrative Procedure Act ("APA").[56] The definition expressly excluded certain stated policies, practices, and interpretations of the self-regulatory organization that are reasonably and fairly implied by the organization's existing rules.

Commentators raised a number of objections to the proposed definition of "rule." Several commentators stated that they believe the meaning of the term "rule" is already sufficiently clear. They questioned both the Commission's authority to define "rule"[57] and the usefulness of doing so.[58] One commentator stated that the proposed definition of "rule" is difficult to read and understand.[59] Several commentators questioned whether the APA definition of "rule" is an appropriate basis for a definition of "rule" for self-regulatory organizations.[60] In addition, one commentator stated that the proposed definition appears to preclude the self-regulatory organization from designating actions that are not within the proposed definition as proposed rule changes.[61]

The major objection to proposed Rule 3b-7, however, was to the breadth of the definition of "rule."[62] Commentators were concerned that the definition is too open-ended and would, inappropriately, cover internal administrative matters[63] and many day-to-day business decisions of self-regulatory organizations.[64] Clearing agencies expressed concern that the definition would cover minor changes in clearance and settlement systems.[65] A few commentators suggested that the definition would cover such statements or documents as contracts for goods and services, individual employment arrangements, real estate leases, and annual reports.[66]

Several commentators focused separately on the exclusion from the definition of "rule" of any stated policy, practice, or interpretation that is "reasonably and fairly implied" by an existing rule of the self-regulatory organization and is not required under the rules of the organization to be approved by its governing body (the "exclusion"). Commentators stated that the "reasonably and fairly implied" standard would not provide sufficient guidance to self-regulatory organizations as to when an action would not be required to be filed as a proposed rule change,[67] and that the standard would allow self-regulatory determinations to be "second-guessed" by the Commission.[68] In addition, the MSRB expressed concern that, because the exclusion would not be available if the action was required to be approved by the self-regulatory organization's governing body, the exclusion would not be available for MSRB interpretations.[69] The MSRB explained that it has adopted internal procedures to ensure that the Board itself is directly involved in the interpretive process.

C. Amendments to Rule 19b-4

The Commission continues to believe it is important to make clear to self-regulatory organizations that

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Footnote 55 continued

Provided, however, that the term "rule" shall not include any stated policy, practice, or interpretation with respect to an existing rule that is reasonably and fairly implied by that rule and that is not required under the rules of the self-regulatory organization to be approved by the governing body of the self-regulatory organization.

[56]5 U.S.C. 551(4).

[57]Amex and CBOE Responses, File No. S7-590.

[58]Amex Response, File No. S7-590.

[59]CBOE Response, File No. S7-590.

[60]Amex, CBOE, and NSCC Responses, File No. S7-590.

[61]OCC Response, File No. S7-590. See n. 74 *infra*.

[62]Amex, CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7-590.

[63]Amex, CBOE, and NYSE Responses, File No. S7-590.

[64]Amex, NSCC, NYSE, and OCC Responses, File No. S7-590.

[65]DTC and NSCC Responses, File No. S7-590.

[66]CBOE, DTC, NSCC, NYSE, and OCC Responses, File No. S7-590.

[67]NSCC, NYSE, and OCC Responses, File No. S7-590.

[68]OCC Response, File No. S7-590.

[69]MSRB Response, File No. S7-590.

they must file all significant regulatory actions for Commission review.[70] The Commission also continues to believe that additional guidance can be provided, beyond that contained in Rule 19b-4 as originally adopted, as to which self-regulatory actions are proposed rule changes. In light of the comments received on proposed Rule 3b-7, however, the Commission does not believe that it is useful to attempt to provide additional guidance through a definition of "rule" based on the APA. Accordingly, the Commission is withdrawing proposed Rule 3b-7[71] and is amending Rule 19b-4 to specify more precisely which self-regulatory actions are proposed rule changes.

The amendments (i) make minor modifications in the definition of "stated policies, practices, and interpretations" in paragraph (b); (ii) revise paragraph (a) (redesignated as paragraph (c)) to deem stated policies, practices, and interpretations to be proposed rule changes primarily on the basis of their substantive effect; and (iii) add a new paragraph (d) deeming to be a proposed rule change any interpretation of an existing rule of the self-regulatory organization if it is approved or ratified by the governing body of the self-regulatory organization and is not reasonably and fairly implied by the existing rule.[72]

Paragraphs (a) through (d) of Rule 19b-4 will read as follows:

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b-4.

(b) The term "stated policy, practice, or interpretation" means (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization ("specified persons"), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to (i) the rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons, or (ii) the meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

Paragraphs (b), (c), and (d) will operate as discussed below.

1. Paragraph (b): Definition of Stated Policy, Practice, or Interpretation

Revised paragraph (b) continues to define "stated policy, practice, or interpretation" as, essentially, (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement that the self-regulatory organization makes generally available to specified persons and

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[70]The Commission expects that, in most instances where a self-regulatory organization acts in such a manner as to have a significant regulatory impact on persons, the self-regulatory organization will designate the action as a "rule." Sections 6, 15A, 15B, and 17A of the Act provide that self-regulatory organizations must have "rules" designed to achieve specified objectives.

[71]See Companion Release.

[72]Self-regulatory organizations may seek interpretive advice from the Commission's staff in those instances where the self-regulatory organization is uncertain whether a particular action is a proposed rule change or should have been previously treated as one.

that has certain effects.[73] The revised definition differs from the definition as originally adopted in several minor respects.

First, the revised definition substitutes "stated policy, practice, or interpretation means" for "stated policies, practices, and interpretations includes" to clarify that a self-regulatory action that is not within the definition is not a stated policy, practice, or interpretation.[74] Second, for simplification, it adds the term "specified persons" as a definition of the persons included in the definition of "stated policy, practice, or interpretation" in Rule 19b-4.

Third, the revised definition adds the word "limit" to the list of specified effects to make clear that a statement prohibiting conduct is within the definition. Fourth, it adds in paragraph (b)(2)(i) the word "privileges" to make clear that statements establishing or changing any standard, limit, or guideline with respect to the privileges of specified persons are within the definitioin. Finally, it substitutes, in paragraph (b)(2)(ii), "meaning, administration, or enforcement of an existing rule" for "application or interpretation of an existing rule." That substitution is intended to conform the language of the provision to that in Section 19(b)(3)(A)(i) of the Act and is not intended to change the meaning of paragraph (b)(2).[75]

2. Paragraph (c): Stated Policy, Practice, or Interpretation Deemed to be a Proposed Rule Change

Revised paragraph (c) is intended to limit the stated policies, practices, and interpretations subject to Commission review to those most likely to affect significantly the activities of specified persons. It does so by excepting two categories of stated policies, practices, and interpretations from those deemed to be proposed rule changes. The first exception is for stated policies, practices, and interpretations "reasonably and fairly implied" by the self-regulatory organization's existing rules. The second exception is for certain stated policies, practices, and interpretations that are "concerned solely with the administration" of the self-regulatory organization. The two exceptions are intended to operate independently of each other; if the action meets the requirements of either exception, it will not be considered a proposed rule change under paragraph (c). The two exceptions are discussed further below.

(i) "Reasonably and Fairly Implied" Exception

The "reasonably and fairly implied" exception is intended to make clear that self-regulatory organizations may issue stated policies, practices, and interpretations with respect to their existing rules without necessarily being subject to rule filing requirements. For example, interpretations of existing rules arising out of individual enforcement or disciplinary proceedings would not have to be filed as proposed rule changes if the interpretations are reasonably and fairly implied by the existing rules.

The "reasonably and fairly implied" standard is the same standard used in proposed Rule 3b-7 to except certain stated policies, practices, and interpretations from the definition of "rule." The Commission believes, in spite of commentators' objections that the standard is vague, that it provides as much guidance to self-regulatory organizations as is now possible. The limits of the "reasonably and fairly implied" exception will have to be determined on a case-by-case basis. It is clear, however, that a stated policy, practice, or interpretation that prescribes extensive and specific limitations on particular types of transactions or conduct that are not apparent from the face of the existing rule is not

[73]Material, even if it is not included in the definition of "stated policy, practice, or interpretation," that the self-regulatory organization (other than a registered clearing agency) makes generally available is required to be filed with the Commission under Rules 6a-3, 15Aj-1, and 17a-21 under the Act, 17 CFR 240.6a-3, 240.15Aj-1, and 240.17a-21. Rule 17a-22, the adoption of which is announced in this release, will impose a similar requirement on registered clearing agencies.

[74]The self-regulatory organization could, of course, elect to designate as a "rule" a statement that is not within the definition of "stated policy, practice, or interpretation."

[75]A form, report, or questionnaire of a self-regulatory organization that constitutes a stated policy, practice, or interpretation under paragraph (b) would have to be filed as a proposed rule change if, under paragraph (c), it is a stated policy, practice, or interpretation deemed to be a proposed rule change.

"reasonably and fairly implied" by the rule.[76] Moreover, the fact that a self-regulatory organization, for purposes of its internal operations, characterizes a stated policy, practice, or interpretation as reasonably and fairly implied does not mean the statement is reasonably and fairly implied for purposes of Rule 19b-4.[77]

(ii) "Concerned Solely With the Administration" Exception

The "concerned solely with the administration" exception in paragraph (c) is intended to prevent the self-regulatory organization from having to file as a proposed rule change most stated policies, practices, or interpretations that deal solely with "housekeeping" matters.[78] The exception should eliminate concern, stemming from the definition of "rule" in proposed Rule 3b-7, that self-regulatory organizations would have to file as proposed rule changes stated policies, practices, or interpretations relating to matters such as floor decorum.[79]

The exception would not be available for stated policies, practices, and interpretations with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. The Commission believes that, once the self-regulatory organization has chosen to handle a housekeeping matter by rule, the Commission and the public should be given notice of any stated policy, practice, or interpretation that effectively modifies the terms of that rule.[80] Any such stated policy, practice, or interpretation should be set forth in the self-regulatory organization's rule book.

3. Paragraph (d): Governing Body Interpretations Deemed to be Proposed Rule Changes

The Commission believes that any interpretation of an existing rule that is of sufficient importance to be approved or ratified by the governing body of the self-regulatory organization, whether or not it is made generally available, is a proposed rule change subject to Commission review unless it is reasonably and fairly implied by the existing rule.

Accordingly, the Commission is amending Rule 19b-4 to provide, in paragraph (d), that regardless of whether it is made generally available, an

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[76]As the Commission explained in connection with its discussion of the "reasonably and fairly implied" standard in the exclusion of proposed Rule 3b-7, the standard would not be met by an interpretation such as that filed by the CBOE and other exchanges concerning "front-running." *See, e.g.*, File No. SR-CBOE-78-28. The standard also would not be met by a stated policy, practice, or interpretation that implements a system if it affects the manner in which members or others do business or in which the system functions, in a way that is not reasonably foreseeable from the rule to which the stated policy, practice, or interpretation applies.

[77]For example, the governing body of the NASD adopts or amends specific implementing policies under general rules adopted by its membership, such as its rule requiring observance of just and equitable principles of trade, and, for purposes of its by-laws, characterizes the implementing policies as reasonably and fairly implied by the general rules. See the NASD's interpretations and policy statements relating to "free-riding," advertising, and underwriting arrangements. Such interpretations or policy statements are required to be filed as proposed rule changes. NASD Manual (CCH) para 2151. See also Article VII of the NASD's By-Laws, NASD Manual (CCH) para 1501 *et seq.*

[78]If the self-regulatory organization adopts a "rule" that is concerned solely with the administration of the organization, that rule is required to be filed as a proposed rule change, but it may qualify for summary effectiveness under Section 19(b)(3)(A) of the Act.

[79]As administrative stated policy, practice, or interpretation having implications beyond housekeeping matters would not, of course, qualify for this exception. For example, a stated policy, practice, or interpretation establishing or changing floor procedures, procedures for resolving or determining the rights or obligations of members, or composition of the self-regulatory organization's governing body would generally not be "concerned solely with the administration" of the self-regulatory organization.

[80]For example, if the self-regulatory organization has a rule establishing a dress code, any stated policy, practice, or interpretation with respect to the dress code would be a proposed rule change, unless it is reasonably and fairly implied by the rule, in which case it would qualify for the first exception.

interpretation of an existing rule of the self-regulatory organization is a proposed rule change if it is approved or ratified by the governing body of the self-regulatory organization and it is not reasonably and fairly implied by the existing rule.[81] Paragraph (d) makes clear that, whenever the governing body of the self-regulatory organization, including that of the MSRB,[82] approves or ratifies an interpretation that is not reasonably and fairly implied by an existing rule, its action is a proposed rule change.

IV. *Revocation of Certain Filing Requirements; Adoption of rule 17a-22 Concerning Registered Clearing Agencies*

The Commission proposed to revoke several filing requirements that it believes are unduly burdensome. First, the Commission proposed to revoke the provision in paragraph (c) of Rule 19b-4 as originally adopted, and related Form 19b-4B, requiring self-regulatory organizations to file on Form 19b-4B notice of stated policies, practices, and interpretations not deemed to be rules. The filing requirement partially duplicates filing requirements in Rules 6a-3, 15Aj-1, and 17a-21 under the Act,[83] which require national securities exchanges, registered securities associations, and the MSRB, respectively, to submit to the Commission any material they make generally available.

Second, the Commission proposed to revoke Rule 17a-18, which requires a national securities exchange or registered securities association to file with the Commission any form, report, or questionnaire it requires or proposes to require its members to complete. The Commission believes this requirement is unnecessary because self-regulatory organizations are required to file such documents under Section 19(b).

Finally, the Commission proposed to revoke paragraph (g) of Rule 19b-4. Paragraph (g) required self-regulatory organizations to respond to Items 3, 4, 5, and 6 of Form 19b-4A with respect to their rules in effect on June 4, 1975, and to file those responses with the Commission by April 1, 1976. Paragraph (g) was intended to afford national securities exchanges and associations an opportunity to provide relevant informatioin on their existing rules before any Commission action under Section 31(b) of the Securities Acts Amendments of 1975. Commentators expressed the view that the information supplied would be of little assistance to the Commission and that supplying the information would impose a considerable burden on self-regulatory organizations. To avoid imposing that burden, the Commission decided in early 1976 not to require compliance with paragraph (g) of Rule 19b-4.[84]

The Commission did not receive any comments on its proposals to revoke the Form 19b-4B filing requirement, Rule 17a-18, and paragraph (g) of Rule 19b-4, and, as proposed, is revoking those provisions.

In conjunction with its proposal to revoke Form 19b-4B, the Commission proposed Rule 17a-22, which would establish for registered clearing agencies a filing requirement parallel to the filing requirements imposed under Rules 6a-3, 15Aj-1, and 17a-21. Registered clearing agencies, unlike national securities exchanges, registered securities associations, and the MSRB, previously have not been required to file with the Commission materials (other than stated policies, practices, and interpretations deemed not to be rules) they make generally available. Receipt of such material is important to the Commission's oversight responsibilities under the Act. The Commission did not receive any comments on proposed Rule 17a-22 and is adopting the rule as proposed, with minor modifications.

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[81]If the governing board of the self-regulatory organization establishes a committee to approve or ratify interpretations, the self-regulatory organization should treat interpretations approved or ratified by that committee as having been acted upon by the governing body.

[82]Paragraph (d) makes clear that if the MSRB issues an interpretation of an existing rule that is not reasonably and fairly implied by that rule, it is a proposed rule change.

[83]17 CFR 240.6a-3, 240.15Aj-1, and 240.17a-21. Rule 17a-22, the adoption of which is announced in this release, will impose a similar requirement on registered clearing agencies.

[84]Securities Exchange Act Release Nos. 12157 (Mar. 2, 1976), 41 FR 10662 (Mar. 12, 1976), and 13100 (Dec. 22, 1976), 42 FR 782 (Jan. 4, 1977).

V. *Statutory Basis*

On the basis of the foregoing analysis and discussion, the Commission finds that the rule and the amendments to the rule and the form adopted are consistent with the public interest, the protection of investors, and the purposes of the Act. The Commission also finds that the amendment to paragraph (e) of Rule 19b-4, expanding the categories of proposed rule changes that may become effective pursuant to Section 19(b)(3)(A) of the Act, is consistnet with the public interest and the purposes of Section 19(b) of the Act. The Commission, pursuant to Section 23(a)(2) of the Act, finds that the rule and the amendments to the rule and the form adopted herein do not impose any burdens on competition.

Rule 17a-22 is promulgated under the Act, and particularly Sections 2, 3, 17, 17A, and 23, 15 U.S.C. 78b, 78c, 78q, 78q-1, and 78w. The amendments to Rule 19b-4 and Form 19b-4A (redesignated as Form 19b-4) are promulgated under the Act, and particularly Sections 2, 3, 6, 11A, 15A, 15B, 17, 17A, 19, and 23, 15 U.S.C. 78b, 78c, 78f, 78k-1, 78o-3, 78o-4, 78q, 78q-1, 78s, and 78w.

VI. *Text of Rules and Form*

The Commission is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revoking §240.17a-18.

2. By adding §240.17a-22 to read as follows:

§240.17a-22 Supplemental material of registered clearing agencies.

Within ten days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, such as pledgees, transfer agents, or self-regulatory organizations, any material (including, for example, manuals, notices, circulars, bulletins, lists, or periodicals), a registered clearing agency shall file three copies of such material with the Commission. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall at the same time file one copy of such material with its appropriate regulatory agency.

(Secs. 2, 3, 17, and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 897, and 901, as amended by Secs. 2, 3, 14, and 18, Pub. L. No. 94-29, 89 Stat. 97, 137, and 155 (15 U.S.C. 78b, 78c, 78q, and 78w); Sec. 17A, as added by Sec. 15, Pub. L. No. 94-29, 89 Stat. 141 (15 U.S.C. 78q-1).)

3. By revising §240.19b-4 to read as follows:

§240.19b-4 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b-4.

(b) The term "stated policy, practice, or interpretation" means (1) any material aspect of the operation of the facilities of the self-regulatory organization or (2) any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization ("specified persons"), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to (i) the rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons, or (ii) the meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as (1) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, (2) establishing or changing a due, fee, or other charge, (3) concerned solely with the administration of the self-regulatory organization, or (4) effecting a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

(f) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(g) Notice of orders issued pursuant to Section 19(b) of the Act will be given by prompt publication thereof, together with a statement of written reasons therefor.

(h) Self-regulatory organizations shall retain at their principal place of business a file, available to interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

(Secs. 2, 3, 6, 17, 19, and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 897, 898, and 901, as amended by Secs. 2, 3, 4, 14, 16, and 18, Pub. L. No. 94-29, 89 Stat. 97, 104, 137, 146, and 155 (15 U.S.C. 78b, 78c, 78f, 78q, 78s, and 78w); Sec. 15A, as added by Sec. 1, Pub. L. No. 75-719, 52 Stat. 1070, as amended by Sec. 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. 78o-3); Secs. 11A, 15B, and 17A, as added by Secs. 7, 13, and 15, Pub. L. No. 94-29, 89 Stat. 111, 131, and 141 (15 U.S.C. 78k-1, 78o-4, and 78q-1).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. By redesignating §249.819a [Form 19b-4A, for filings with respect to proposed rule changes by all self-regulatory organizations] as §249.819, by amending the heading of this section to refer to "Form 19b-4," and by amending the text of this form as provided by this release.

2. By revoking §249.819b.

* * * * *

A copy of amended Form 19b-4 is attached to this release (not reproduced in the *Federal Register*). Copies of the form have been filed with the Office of the Federal Register and will be forwarded to the self-regulatory organizations. Copies may be requested from the Commission.

By the Commission.

George A. Fitzsimmons
Secretary

File No. SR _____
(See Instruction C)*

Amendment No. _____
(If applicable)*

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change by

_____
(Exact Name of Self-Regulatory Organization)*

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

_____

*(Do not include parenthetical material in completed form)

General Instructions

A. *Use of the Form*

This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"). National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form.

B. *Need for Careful Preparation of the Completed Form, Including Exhibits*

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. See also Rule 0-3 under the Act (17 CFR 240.0-3).

C. *Documents Comprising the Completed Form*

The completed form filed with the Commission shall consist of the facing sheet, numbers and captions for all items, responses to all items, and exhibits required in Item 9. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the facing sheet with the initials of the self-regulatory organization, the year, and the number of the filing for the year.

D. *Amendments*

If information on this form is or becomes inaccurate before the Commission takes action on the proposed rule change, the self-regulatory organization shall file amendments correcting any such inaccuracy. Copies of amendments shall be provided in the quantities specified in Instruction F.

Amendments to a filing shall include the facing sheet marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended response to Item 3 shall explain the purpose of the amendment and, if the amendment changes the purposes of or basis for the proposed rule change, the amended response shall also provide a revised purpose and basis statement for the proposed rule change. Exhibit 1 shall be refiled if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Item 1(a) using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the amendment alters the text of the proposed rule change as it appears in the immediately preceding filing (even if the proposed rule change does not alter the text of an existing rule), the amendment shall include, as Exhibit 4, two full copies of the entire text of the rule as altered. This full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may file only those portions of the text of the proposed rule change in which changes are being made if the filing is clearly understandable on its face. Such portions shall be clearly identified and marked to show deletions and additions.

If, after the rule change is filed but before the

Commission takes final action on it, the self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, copies of the communications shall be filed in accordance with Instruction F. If information in the communications makes the rule change filing inaccurate, the filing shall be amended to correct the inaccuracy.

E. *Completion of Act by the Self-Regulatory Organization on the Proposed Rule Change*

The Commission will not approve a proposed rule change before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law). Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

F. *Signature and Filing of the Completed Form*

Twelve copies of Form 19b-4, twelve copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with the Chief of the Branch of Exchange Regulation,* Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. At least one copy of the completed Form 19b-4 shall be manually signed by a duly authorized officer of the self-regulatory organization; on copies not manually signed, the name of the signing person shall be typed or printed. The manually signed copy shall be numbered sequentially by handwritten, typed, printed, or other legible form of notation from the facing page of the form through the last page of the form, including any exhibits or attachments thereto. The total number of pages contained in the manually signed copy shall be set forth on the facing page of the form. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall also file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board shall also file copies of the form, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

Information to be Included in the Completed Form

1. *Text of the Proposed Rule Change*

(a) Set forth the text of the proposed rule change. In the case of any change in, addition to, or deletion from, any existing rule, the existing rule should be set forth, with brackets used to indicate words to be deleted and underscoring used to indicate words to be added. If any form, report, or questionnaire is proposed to be used in connection with the implementation or operation of the proposed rule change, or if the proposed rule change prescribes or refers to any form, report, or questionnaire, a copy of such document shall be attached to, and shall be considered to be part of, such proposed rule change. If, however, the completion of the form, report, or questionnaire either is voluntary or is required pursuant to an existing rule of the self-regulatory organization, such form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3.

*All self-regulatory organizations, including those other than natioinal securities exchanges, shall address filings to the Chief of the Branch of Exchange Regulation.

(b) If the self-regulatory organization reasonably expects that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change on the application of such other rule.

(c) Set forth the file numbers for prior filings with respect to any existing rule specified in response to Item 1(b).

2. *Procedures of the Self-Regulatory Organization*

(a) Describe action on the proposed rule change taken by the members or board of directors or other governing body of the self-regulatory organization (by amendment if initial filing is prior to completion of final action). See Instruction E.

(b) State the name(s) and telephone number(s) of the person(s) on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

3. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The statement should be sufficiently detailed and specific to support a finding under Section 19(b) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The statement should respond specifically to all significant arguments, raised by commentators or known to the self-regulatory organization, that the proposed rule change is inconsistent with those requirements. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.*, brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and

(b) Explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

NOTE 1. *National Securities Exchanges and Registered Securities Associations.* Under Sections 6 and 15A, rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. Rules of a registered securities association may not fix minimum profits or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

Under Section 11A(c)(5), a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

NOTE 2. *Registered Clearing Agencies.* Under Section 17A, rules of a registered clearing agency may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A or the administration of the clearing agency, and may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

NOTE 3. *Municipal Securities Rulemaking Board.* Under Section 15B, rules of the Municipal Securities Rulemaking Board may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, may not fix minimum profits, or impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by

municipal securities brokers or municipal securities dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act with respect to municipal securities or the administration of the Board.

4. *Self-Regulatory Organization's Statement on Burden on Competition*

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization. The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition.

5. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issuer is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.

6. *Extension of Time Period for Commission Action*

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) of the Act until it shall file an amendment which specifically states that the time organization consents.

NOTE. The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) of the Act until it shall file lan amendment which specifically states that the time period specified in Section 19(b)(2) shall begin to run on the date of filing such amendment.

7. *Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)*

(a) If the proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragraph (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) establishes or changes a due, fee, or other charge,

(iii) is concerned solely with administration of the self-regulatory organization, or

(iv) effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service,

and set forth the basis on which such designation is made.

(c) In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of

investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires that the proposed rule change should be put into effect summarily by the Commission.

NOTE. The Commission has the power under Section 19(b)(3)(C) of the Act to abrogate summarily within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

(d) If accelerated effectiveness pursuant to Section 19(b)(2) is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

8. *Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission*

State whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule, as the filing self-regulatory organization understands it. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.

9. *Exhibits*

List of exhibits to be filed, in the quantities specified in Instructions D and F:

1. Complete Notice of Proposed Rule Change for publication in the *Federal Register*. Amendments to Exhibit 1 should be filed in accordance with Instruction D.

2. (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments.

(b) Any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a summary of comments on the proposed rule change made at such meeting.

(c) If after the proposed rule change is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, copies of the communications shall be filed in accordance with Instruction F.

3. Current copies of any form, report, or questionnaire covered by the last sentence of Item 1(a).

4. For amendments to a filing, marked copies, if required by Instruction D, of the text of the proposed rule change as amended.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the self-regulatory organization has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

_____

(Self-Regulatory Organization)

By: _____

(Signature)*

*Print name and title of signer below signature.

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR- - -)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change By

(Name of Self-Regulatory Organization)

Relating to (brief description of subject matter of proposed rule change)

Comments requested within (*) days after the date of this publication

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General Instructions

A. *Format Requirements*

Leave a 1 inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

B. *Need for Careful Preparation of the Notice*

The self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the self-regulatory organization to prepare Items I, II, and III of the notice. The Commission cautions self-regulatory organizations to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b-4 it accompanies. Any filing that does not comply with the requirements of Form 19b-4, including the requirements applicable to the notice, may, at any time before the Commission issues a notice of filing, be returned to the self-regulatory organization. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. See Instruction B to Form 19b-4.

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*To be completed by the Commission.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on (date*), the (name of self-regulatory organization) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commissionis publishing this notice to solicit comments on the proposed rule change from interested persons.

(Information to be Included in the Completed Notice)

I. *Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

(Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and italics for words to be added.)

II. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, and 5 of Form 19b-4, redesignating them as (A), (B), and (C), respectively.)

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*To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. See Instruction B to Form 19b-4.

III. *Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2), the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effective pursuant to Section 19(b)(3) and subparagraph (e) of Rule 19b-4, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within (*) days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary.

Dated: (*)

SECURITIES EXCHANGE ACT OF 1934
Release No. 17259/October 30, 1980

FILINGS BY SELF-REGULATORY ORGANIZATIONS OF PROPOSED RULE CHANGES AND OTHER MATERIALS WITH THE COMMISSION

ACTION: Withdrawal of a proposed rule and withdrawal of proposed amendments to a rule and a related form.

SUMMARY: The Commission is announcing certain changes applicable to the filing by self-regulatory organizations of proposed rule changes and other materials. Specifically, the Commission is announcing (i) withdrawal of a proposed rule that would have defined the term "rule" of a self-regulatory organization and (ii) withdrawal of proposed amendments to a rule and related form that would have provided summary effectiveness for certain proposed rule changes of a self-regulatory organization circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

EFFECTIVE DATE: Upon publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Susan Davis, Esq., (202) 272-2846 or Jeffrey Jordan, Esq., (202) 272-2847, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

*To be completed by the Commission.

SUPPLEMENTARY INFORMATION: In a companion release issued today,[1] the Securities and Exchange Commission is announcing certain actions designed to facilitate review of proposed rule changes of self-regulatory organizations under Section 19(b)[2] of the Securities Exchange Act of 1934 (the "Act").[3] As part of those actions, the Commission is withdrawing certain proposals made earlier[4] relating to these matters. Specifically, for the reasons explained in the companion release, the Commission is announcing the following actions:

(1) Withdrawal of proposed Rule 3b-7, which would have defined the term "rule" of a self-regulatory organization for purposes of Sections 3(a)(27) and 3(a)(28) of the Act.

(2) Withdrawal of proposed amendments to Rule 19b-4 and related Form 19b-4A that would have provided summary effectiveness for certain proposed rule changes of a self-regulatory organization circulated, for pre-filing review, to the Commission and to persons who would be subject to the rules.

Further explanation of the above actions, and of other actions being taken concerning filings of proposed rule changes and other materials, is provided in the companion release issued today.

By the Commission.

George A. Fitzsimmons
Secretary

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[1]Securities Exchange Act Release No. 17258 (October 30, 1980).

[2]15 U.S.C. 78s(b).

[3]15 U.S.C. 78a et seq.

[4]Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17260/October 30, 1980

A notice has been issued giving interested persons until November 21, 1980 to comment on the applications of the *Philadelphia Stock Exchange, Inc.* for unlisted trading privileges in three stocks which are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17261/October 30, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the Cumulative Preferred Stock, Series A ($4) of ITT CONSUMER SERVICES CORPORATION from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17262/October 30, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common stock ($2 par value) and Series H Convertible Preferred Stock ($2.75 Annual Dividend) of KOEHRING COMPANY from listing and registration thereon.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21760/October 27, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
NEW ENGLAND ELECTRIC SYSTEM
Westborough, Massachusetts

(70-6500)

ORDER AUTHORIZING PROPOSED CAPITAL CONTRIBUTION BY HOLDING COMPANY TO SUBSIDIARY

New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiary company, New England Power Company ("NEPCO") have filed with this Commission an application-declaration pursuant to Sections 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(a) and 45 promulgated thereunder concerning the following proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution to repay a like amount of its short-term promissory notes issued to pay for capitalizable expenditures or to reimburse the treasury therefor. It is expected that such short-term promissory notes will aggregate approximately $90,000,000 at the time of the proposed capital contribution.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed, at cost, by New England Power Service Company, an affiliate of NEES. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21728), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21761/October 28, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
Westborough, Massachusetts

(70-6260)

ORDER AUTHORIZING INCREASE IN BANK LOANS TO FINANCE FUEL SUBSIDIARY IN 1980 AND RESERVING JURISDICTION WITH RESPECT TO PROPOSED INCREASE FOR 1981

New England Electric System ("NEES"), a registered holding company, and New England Energy Incorporated ("NEEI"), a fuel subsidiary of NEES, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended in this matter pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 50(a)(2) and 50(a)(3) promulgated thereunder concerning the following proposed transaction.

In a series of prior orders in other proceedings dated October 30, 1974, June 18, 1976, July 19, 1978,

December 28, 1979, and August 7, 1980 (HCAR Nos. 18635, 19580, 20632, 21365 and 21673), applicants-declarants were authorized, among other things, to do the following: (1) NEES was authorized to organize NEEI and acquire its capital stock; (2) NEEI was authorized to enter into a partnership agreement with Samedan Oil Corporation ("Samedan"), to explore for oil and gas, and an amendment thereto, said partnership currently extending through December 31, 1984; (3) NEES was authorized to invest in NEEI in the form of common stock and subordinated debt up to $45,000,000 through December 31, 1988; and (4) NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract, on certain terms and conditions, including a full cost pool concerning its oil and gas properties. In the order of August 7, 1980 (HCAR No. 21673), NEEI was authorized to invest up to $60,000,000 in the Samedan partnership during the 1980 calendar year.

By prior order issued in this proceeding dated July 25, 1979 (HCAR No. 21558), NEEI was authorized to enter into an agreement ("Loan Agreement") with the Bank of Montreal and the National Bank of North America (the "Banks") for an $80,000,000 revolving credit loan, up to $40,000,000 of such amount to be made available in 1979, $60,000,000 in 1980, and $80,000,000 in 1981. Upon termination the revolving credit loan will become a term loan. Under the Loan Agreement the revolving credit period runs from January 1, 1979, through December 31, 1981, and may, at NEEI's option, be extended for two additional years. The Banks will make a term loan to NEEI upon termination of the revolving credit period in the amount of the revolving credit balance outstanding on the termination date, such loan to be for a maximum of five years and to require equal quarterly payments amortizing the principal. The loan bears interest during the revolving credit period at a rate per annum of 3/4 of 1% over the Bank of Montreal's United States prime rate, or 7/8 of 1% over the London Interbank Offered Rate ("LIBOR") for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. The loan bears interest during its term loan period at a rate per annum of 7/8 of 1% over the Bank of Montreal's United States prime rate, or 1% over LIBOR for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. There is a commitment fee on the unused available portion of the loan commitment of 1/4 of 1% per year (on that year's committed amount) during the revolving credit period and 3/8 of 1% per year during any extension of that period. Interest and the commitment fee are payable quarterly. The loan is prepayable without penalty, and the commitment amount may be reduced in whole or in part without penalty.

Under the Loan Agreement NEEI is required to maintain a ratio of not more than 70 to 30 with respect to (i) debt outstanding under the Loan Agreement and (ii) subordinated debt payable to NEES and stockholder's equity (excluding any deferred taxes). The latter amount is presently limited to $45,000,000 (HCAR No. 21158, July 25, 1979), so debt outstanding under the Loan Agreement, without regard to the present maximum committed amounts, is limited to $105,000,000. The Loan Agreement also (1) requires NEEI to prepay the loan to the extent it receives proceeds from any long-term financing secured by any of its oil and gas properties including in the full cost pool, (2) limits modifications which may be made to the fuel purchase contract between NEEI and NEP, (3) required NEEI to assign to the Bank of Montreal its rights under the fuel purchase contract.

By post-effective amendment in this proceeding NEEI requests authorization to enter into an amendment ("Amendment") to the Loan Agreement, which amendment would (1) accelerate the $80,000,000 commitment of the Banks from 1981 to the effective date of a Commission order authorizing NEEI's entering into the Amendment, and (2) increase the Banks' commitment for 1981 to $105,000,000. It is stated that NEEI's borrowings under the Loan Agreement were $52,000,000 as of August 31, 1980, and that NEEI estimates it will require an additional $24,000,000 of borrowings during 1980 to finance its expenditures in the Samedan partnership. Only $8,000,000 of additional borrowings are available from the present committed amount under the Loan Agreement for 1980, leaving a shortfall of $16,000,000. In addition, NEEI is seeking, in another filing, to enter into a separate partnership agreement with Dorchester Exploration Incorporated to explore for oil and gas, which could require investment by NEEI in 1980 of up to $15,000,000. It is NEEI's belief that entering into the Amendment would provide for bank borrowings adequate to finance NEEI's needs for the remainder of 1980, including investment in the Dorchester partnership if it should be authorized. It is further stated that an increase in the Banks' commitment to $105,000,000 for 1981 is needed in

order to meet, in part, NEEI's capital requirements for 1981, presently estimated at $100,000,000. Authorization concerning the remainder of NEEI's 1981 financing requirements will be the subject of a further filing with this Commission.

NEEI claims exemption from the competitive bidding requirements of Rule 50 for the issuance of its notes to the Banks pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $7,500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21731), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective in part:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that NEEI be, and it hereby is, authorized forthwith to enter into the Amendment to the Loan Agreement, and to increase its loans thereunder in calendar 1980 from $60,000,000 to $80,000,000.

IT IS FURTHER ORDERED that jurisdiction be, and hereby is, reserved with respect to any increase in NEEI's borrowings under the Loan Agreement beyond $80,000,000, which increased borrowings shall not be made without further order of this Commission.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21762/October 28, 1980

In the Matter of

THE POTOMAC EDISON COMPANY
Downsville Pike
Hagerstown, MD 21740

(70-6504)

NOTICE OF PROPOSAL TO ISSUE AND SELL PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Potomac Edison Company ("Potomac"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Potomac proposes to issue and sell an aggregate amount of its preferred stock ("Stock") not to exceed $25 million in par value, in one or more series, each such series to have a par value of $100 per share. Potomac proposes to sell the Stock pursuant to competitive bidding unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable, in which event Potomac proposes, subject to authorization by the Commission by further order, to either privately place the Stock with institutional investors or to negotiate with underwriters for the sale of the Stock.

Each series of the Stock will be redeemable at any time at the option of Potomac, except that prior to five years after the first day of the month in which the Stock is issued (or such other date as the Commission may authorize), each series of the Stock shall not be redeemable directly or indirectly with, or in anticipation of, monies borrowed or the proceeds of the sale of the Stock at a cost of money less than the cost of money in respect of such series. The annual dividend rate (which will be a multiple of $0.04) to be borne by each series and the price to be paid to Potomac (which shall not be less than 100% and no more than 102-3/4% of par), or, in the event Potomac determines that the price to it for the Stock

and the initial price to the public shall be 100% of par, the compensation per share to be paid to the underwriters will be determined by (1) competitive bidding, (2) by negotiations between Potomac and private investors, or (3) by negotiations with underwriters for the sale of such series. It is expected that the successful bidders or, in the event of a negotiated transaction the underwriters, will make a public offering of the Stock, unless the size of any series offered makes such public offering impracticable.

Potomac states that under present market conditions for preferred stock it is difficult to determine what sinking fund provisions, if any, would result in the most advantageous terms and conditions for the sale of the Stock to Potomac. Potomac desires to have available sufficient flexibility to adjust such provisions to developments in the market for such securities, when and as they occur, in order to obtain the best possible price and dividend rate for the Stock. Similarly, it is difficult to determine what the most advantageous timing of the sale of the Stock would be. It is therefore proposed that Potomac will decide on the sinking fund provisions to be applicable to any series at a later time which may be before or after the date on which an invitation for bids, in the event of competitive bidding, is issued, or the date on which negotiations for a private placement or a negotiated sale to underwriters are commenced. If the Stock is sold in more than one series, no condition is to be contained in the purchase contract for one series of the Stock requiring the issuance and sale of any other series of the Stock.

The proceeds from the sale of the Stock are expected to be used, together with other funds which may become available to Potomac, to pay or prepay to the extent desirable Potomac's short-term debt, to finance its construction program and for other corporate purposes.

On September 15, 1980, Potomac had $6 million of short-term debt outstanding. Potomac expects that approximately $31 million of such short-term debt will be outstanding as of the time the Stock is proposed to be issued and $31 million on December 31, 1980 if the Stock has not been sold in December. Potomac's gross construction expenditures for 1980 are estimated to be $64 million and for 1981 and 1982 to aggregate between $117 and $128 million.

If for any reason (including market conditions) the Stock or any series thereof is not sold on or about December 11, 1980, Potomac will so notify this Commission and will seek, subject to further order of this Commission, to sell the Stock on or before March 31, 1981.

The fees and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that the Public Service Commission of Maryland and the State Corporation Commission of Virginia must authorize the proposed transaction and that no other state commission or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21763/October 28, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
NATIONAL GAS STORAGE CORPORATION
SENECA RESOURCES CORPORATION
Buffalo, New York

(70-6441)

ORDER AUTHORIZING ALLOCATION OF TAXES WITHIN A HOLDING COMPANY SYSTEM IN A MANNER DIFFERING FROM THAT PERMITTED BY RULE 45

National Fuel Gas Company ("National"), a registered holding company, and its four subsidiary companies, National Fuel Gas Supply Corporation, National Fuel Gas Distribution Corporation, National Gas Storage Corporation and Seneca Resources Corporation ("Seneca") have filed a declaration and an amendment thereto with this Commission pursuant to Sections 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the proposed transaction.

By order dated April 17, 1963 (HCAR No. 14853) the Commission granted National authority to allocate the National Fuel Gas System's consolidated federal income tax liabilities, after giving effect to investment tax credits allowed, in a manner differing from that permitted by Rule 45 under the Act. By order dated October 17, 1978 (HCAR No. 20733), the Commission granted National authorization to further modify its manner of allocating consolidated federal income tax liabilities among its subsidiaries for the years 1978 and 1979. National and its subsidiaries now request authority to allocate consolidated tax liabilities for their 1980 and 1981 fiscal years in the same manner as authorized by the Commission's order dated October 17, 1978 (HCAR No. 20733).

Seneca, National's exploration and development subsidiary, has incurred and is expected to continue to incur tax losses. During initial years, a large portion of the related expenses for gas exploration and development, such as intangible drilling and development costs and the abandonment of certain leasehold interests, although capitalized on Seneca's books, are deducted as current expenses for federal income tax purposes. These deductions produce tax losses which consequently result in savings to the system by decreasing the system's consolidated tax liability. However, under the tax allocation method set out in Rule 45(b) of the Act, the benefit of such current reductions are allocated to subsidiaries in the system other than Seneca, whose tax losses decrease the tax liability of the system. This allocation would make unavailable to Seneca the tax benefits which might otherwise be utilized in furtherance of its efforts to develop additional gas reserves which may be needed in the future to supplement the System's supplies.

It is stated that the proposed method of tax allocation will enable Seneca to utilize the tax losses sustained in the initial years of its exploration and development program as a source of funds for future exploration and development of gas reserves. By utilizing the tax allocation procedure authorized by the Commission's previous orders, Seneca received benefits of $2,088,575 during the 1978 fiscal year, and $3,688,302 during the 1979 fiscal year. These benefits resulted from tax losses sustained and investment tax credits generated by Seneca's exploration and development program. It is stated that expenditures for exploration and development normally exceed revenues from newly discovered reserves for a period of several years and that, as a result, it is uncertain when Seneca will be in a profitable tax position.

National proposes to calculate the system's tax liability to be reported on its consolidated tax return for its 1980 and 1981 fiscal years in the usual manner, but, for purposes of allocating liability among individual subsidiaries in the system, will add back the reduction in such tax liability generated by Seneca's tax loss during each year. This combined amount (adjusted consolidated tax liability) will then be allocated among the system companies which are not in a tax loss position in accordance with the procedure specified in Rule 45. The other subsidiaries will then make payments to National of their allocated share of the adjusted consolidated tax liability.

National, in turn, will pay to Seneca the cash equivalent of the differences between the actual consolidated tax liability of the system and the aggregate amounts received by National from its other subsidiaries. In no event will the tax allocated to any subsidiary exceed the amount of tax based upon a separate return computed as if each subsidiary had always filed its tax return on a separate return basis.

Expenditures for Seneca's exploration and development program are presently estimated at $17,000,000 for fiscal 1980. Based on this budgeted amount, it is estimated that Seneca will have a net tax loss of $10,120,000 for the 1980 fiscal year. The proposed transaction will allow Seneca to continue to receive the benefit of its tax losses during 1980 and 1981, and enable it to sustain the level of expenditures necessary to find and develop gas reserves. In future years, when Seneca has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback or carryover provisions of the Internal Revenue Code ("Code") in order to comply with the separate return limitation provisions of the Code and Rule 45 of the Act. To the extent that Seneca receives tax benefits pursuant to the proposed transaction, such benefits would be applied to reduce any tax credits in future years to which Seneca might otherwise become entitled under the aforementioned separate return limitation provisions.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,930. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21736), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable standards of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended so as to allow filing on a semi-annual basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21764/October 29, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
New York, New York

NATIONAL FUEL GAS DISTRIBUTION CORPORATION
Buffalo, New York

NATIONAL FUEL GAS SUPPLY CORPORATION
Oil City, Pennsylvania

(70-6395)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF COMMERCIAL PAPER AND NOTES TO BANKS BY HOLDING COMPANY AND RELATED LOANS TO SUBSIDIARY COMPANY

National Fuel Gas Company ("National"), a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By order in this proceeding dated January 21, 1980 (HCAR No. 21402) the Commission authorized National to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $30,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to The Chase

Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to National Fuel Gas Distribution Corporation ("Distribution Corporation") ("TRANSACTION A"). The Commission also authorized National to issue and sell from time to time during the same period up to $20,000,000 aggregate principal amount at any one time outstanding of its commercial paper and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation ("TRANSACTION B").

In addition, National was authorized to establish lines of credit with various banks aggregating $50,000,000 and to issue and sell from time to time short-term unsecured notes and loan the proceeds to National Fuel Gas Supply Corporation ("Supply Corporation") ("TRANSACTION C"). Supply Corporation uses the funds for working capital and to purchase gas placed in storage during the summer months.

In order to take advantage of more favorable commercial paper borrowing rates, National has filed a post-effective amendment to seek authorization to make the following changes in their proposals outlined as TRANSACTION A and TRANSACTION B in the original application-declaration:

TRANSACTION A: National now proposes to issue and sell from time to time through December 31, 1980, up to $10,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to Chase and to loan the proceeds therefrom to Distribution Corporation.

The short-term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest based on the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. National has informally agreed with Chase to maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20% was required, the effective cost of money, based on a 12.25% prime rate, would be 15.3125%. There will be no commitment fee or any closing or related cost in connection with the above borrowings.

National proposes to exchange the proceeds from the sale of its short-term notes for up to $10,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $10,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

TRANSACTION B: National now proposes to issue and sell from time to time through December 31, 1980, up to $40,000,000 aggregate principal amount at any one time outstanding of its commercial paper to A. G. Becker & Co., Incorporated ("Dealer") and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation.

The decision to issue commercial paper or short-term notes is at the discretion of National, except that, if the effective cost for commercial paper exceeds the cost of equivalent borrowings from Chase on the date of issue, National will issue its short-term unsecured notes to Chase. The commercial paper will be sold by National to the Dealer on the same terms and conditions as provided in the original application-declaration.

National proposes to exchange the proceeds from the sale of its short-term notes and/or commercial paper for up to $40,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $40,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

It is stated that all of the other terms and conditions in the order dated January 21, 1980, will remain the same.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21735), and

no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21765/October 29, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

(70-6506)

NOTICE OF PROPOSAL TO ISSUE AND SELL DEBENTURES AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $100,000,000 principal amount of _____% Debentures, Series Due December, 2000 (New Debentures). The interest rate is to be specified in the bids for the purchase of the New Debentures. The New Debentures will be issued under a Twenty-ninth Supplemental Indenture to the 1961 Indenture between Columbia and Morgan Guaranty Trust Company of New York, Trustee. The proposed Twenty-ninth Supplemental Indenture is to be dated as of December 1, 1980.

It is contemplated that the formula for the calculation of the regular redemption prices of the New Debentures will provide that the regular redemption price for the twelve-month period commencing December 1, 1980 will be the initial public offering price of the New Debentures (exclusive of accrued interest) plus a premium equal to the interest rate of the New Debentures. For each twelve month period thereafter, the regular redemption price shall be scaled down by 1/19th of the amount by which the regular redemption price for the twelve-month period commencing December 1, 1980 exceeds the principal amount of the New Debentures, except that on and after December 1, 1999 the regular redemption price shall be the principal amount of the New Debentures, without premium. In instances where the regular redemption prices would be applicable, Columbia shall not have the right to redeem any of the New Debentures prior to December 1, 1985 directly or indirectly, with borrowed funds, or in anticipation of funds to be borrowed, having an effective annual interest cost to Columbia of less than the effective annual interest cost to Columbia of the New Debentures.

A mandatory sinking fund for the New Debentures will be provided to retire $93,750,000 principal amount (representing 93.75%) prior to maturity through annual retirements of $6,250,000 principal amount beginning in 1985. In addition to such mandatory sinking fund obligation, Columbia shall have the non-cumulative option to redeem on any sinking fund date, at the then current sinking fund redemption price, up to an additional $9,375,000 principal amount of the New Debentures, but no redemption made pursuant to such option shall reduce any sinking fund requirement.

It is stated that the net proceeds from the sale of the New Debentures will be used for general corporate purposes including the 1980 capital expenditure

program of Columbia's subsidiaries, which is presently estimated at $450,000,000. Of the total program, approximately $240,000,000 is associated with additions and improvements necessary for the system to receive, transport, store and distribute quantities of gas from established sources in connection with the requirements of the system's customers. The remaining $210,000,000 involves primarily projects for improving the system's gas supply. From time to time, Columbia has cash in excess of its requirements for short periods. It is anticipated that such will be the case in 1980 following the issuance of the New Debentures. During such periods, it is Columbia's practice to invest such cash in high quality short-term debt securities.

It is further stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. A statement of the fees, commissions, and expenses related to the proposed transaction is to be filed by amendment.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 25, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21766/October 29, 1980

In the Matter of

THE SOUTHERN COMPANY
Atlanta, Georgia

(70-6469)

MEMORANDUM OPINION AND ORDER AUTHORIZING ISSUANCE AND SALE OF COMMON STOCK AT COMPETITIVE BIDDING AND DENYING HEARING

The Southern Company ("Southern"), a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50 promulgated thereunder regarding the proposed public offering of up to 17,000,000 shares of its common stock, $5 par value. Notice of Southern's amended proposal was duly published in the manner prescribed in Rule 23 under the Act (HCAR No. 21704, September 4, 1980) and objections and a request for hearing have been filed, as described below.

Southern intends to make an offering of common stock in November, 1980 in a quantity governed by prevailing market conditions and to offer, if feasible, additional shares on or before February 28, 1981. The aggregate offerings will not exceed 17,000,000 shares or $200,000,000 of estimated cash proceeds, whichever is less. The registration statement filed for the initial offering, which is subject to amendment, specifies a maximum of 11,000,000 shares estimated to yield cash proceeds of $132,000,000.

Southern will designate the number of shares of common stock to be offered in its invitation for proposals under Rule 50(b). The invitation will specify that Southern may increase or reduce the number of shares to be offered by notices to be given to prospective bidders not less than 24 hours prior to

the time of bidding.

Southern has reserved the right to apply for an exception to the competitive bidding requirements of Rule 50(b) with respect to the offerings of common stock. We will reserve jurisdiction over such possible applications.

The Southern Company owns all of the common stock of Georgia Power Company ("Georgia"), Alabama Power Company ("Alabama"), Mississippi Power Company ("Mississippi"), and Gulf Power Company ("Gulf") electric utility companies which form a single integrated electric utility system serving most of the states of Georgia and Alabama, the eastern half of Mississippi and a northwestern segment of Florida and of a service company, which renders services at cost, under the Act, to the operating subsidiaries.[1] As of June 30, 1980, net consolidated utility plan of the system was $9.5 billion, of which about $2 billion was under construction, consolidated operating revenues for the preceding twelve months were about $3.3 billion, and net income after preferred dividends about $268 million.

Southern conducts no other business. Its assets are the stock of its subsidiaries and temporary cash balances. Southern's consolidated and corporate capitalization, at June 30, 1980, is summarized below:

	(In Millions)			
	Consolidated		*Corporate*	
	Amount	*%*	*Amount*	*%*
Long term. debt	$4,929	55.59	42	1.60
Current maturities	454	5.12	42	1.60
Preferred stock	944	10.64		
Common equity	2,540	28.65	2,540	96.80
Total	$8,867	100.00	$2,624	100.00

The bulk of the current maturities are those of Alabama and are in the process of being refunded. The financing involved, and the origin of the obligation are the subject of our Alabama opinion of September 10, 1980. For present purposes, it is sufficient to note that Southern is the source of the common equity in that financing program, and that the proposed sale of Southern stock was a major element in the planning.

Southern's corporate income for the twelve months ended March 31, 1980, was:

	(In Millions)
Equity in earnings of subsidiary companies	$250.1
Other Income	12.2
Income	$262.3
General expenses and taxes	(4.4)
Interest expense	(14.5)
Net Income	$243.4
Common dividends	(225.1)
Amortization of capital stock expense	(0.7)
Increase in retained earnings	$17.6

Southern's budget for 1980, which assumed the full $200 million of public offerings, is:

(In Millions)

			Investment in subsidiaries	Investment in subsidiaries as of 9/30/80
Sale of Common Stock				
Continuous plans	$93.8	Alabama	$146.0	$56.0
Proposed public offerings	200.0	Georgia	10.3	7.3
Total	$293.8	Mississippi	7.0	0.3
Internal sources	(36.5)	Gulf	53.0	1.2
Term loan, 1980 payment	(41.0)		$216.3	$64.8
Available	$216.3			

It is presently expected that only $132 million will be raised from the initial offering, which may require a $68 million deferral of the proposed investments. The budgeted $53 million for Gulf included $29 million to acquire a fractional interest in coal generating plants under construction by Georgia. That transaction between Southern subsidiaries requires our approval under the Act, which has not yet been applied for.[2] The balance of deficiency, including any revisions of the present plans for the initial offering, is well within the standby short term debt limit we have authorized for Southern. (HCAR No. 21501, March 28, 1980)

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[1]We have reviewed Alabama (HCAR No. 21711, September 10, 1980) and Georgia (HCAR No. 21737, October 1, 1980) in recent opinions.

[2]We postponed consideration of objections of a group of customers and Southern shareholders, to the transaction until approval of the transaction was sought. *Gulf Power Company* (HCAR No. 21419, February 5, 1980)

Southern's last underwritten public offering of common stock was at the end of 1977, (HCAR No. 20220, October 21, 1977), interrupting its policy of annual offerings. The interruption reflected the adverse effects of the Alabama's rate litigation described in our September 10, 1980 opinion. As explained in that opinion, the relief obtained from the Alabama Supreme Court in October 1979, phases into Southern's twelve month income statements over the next year[3], as the higher rates are actually collected, so the Southern system had to time its financing accordingly.

The decline in the common equity ratio to under 30%, as shown in the above capitalization table, and which also affects the subsidiaries, as discussed in our recent opinions, can only be corrected by an offering of new common stock, of the magnitude proposed, and must be effected promptly. The declaration is drawn to allow Southern and potential underwriters a substantial degree in flexibility, over the next four months, in tailoring the common stock financing to day to day market conditions. But, the need for the financing is too urgent to permit abandonment or significant delay.

We conclude that the proposed new common stock of Southern is reasonably adapted to the capital structure of Southern and its system, and to their earning power, and that the proposed sale thereof is solely for the purpose of financing the business of Southern as a holding company responsible for financing the business of its subsidiaries as electric utility companies.

Three persons, each a common shareholder of Southern and residential customer of Georgia, have filed objections to Southern's proposed financing and request that a hearing be held before any authorization is granted. Their major contentions are: 1) the Southern system construction program to be partially financed through the proposed sale is excessive and improvident; 2) the proposed sale will contribute to the perpetuation of an existing imbalance in rates return on equity among Southern's four operating subsidiaries, such imbalance being detrimental to Georgia; 3) this Commission is required before acting on Southern's application, to prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 ("NEPA"); and, 4) the proposed sale of common stock will result in additional dilution of the value of the outstanding shares of common stock and that existing shareholders should be extended preemptive rights to purchase such shares.

With regards to the first three contentions, the complainants have raised essentially the same objections in the last three Southern System filings. We will not repeat the analysis and conclusions expressed in our opinions in *The Southern Company* (HCAR No. 21665, July 24, 1980), *Alabama Power Company*, (HCAR No. 21711, September 10, 1980), and *Georgia Power Company* (HCAR No. 21737, October 1, 1980). They are controlling here.

New common stock of an actively traded company, such as Southern, is necessarily sold to the public at the market value of the outstanding shares. The expenses of the sale, principally the underwriters "spread", determined by the competitive bidding process, are deducted to determine the proceeds to the issuer. Southern's estimate of a $12 a share offering price was based on the September 19, 1980, closing price. The actual price will be determined on the day of the respective offerings. But that price will almost certainly be less than the book value, $16.69 at June 30, 1980. The proposed 17 million new shares will increase the 152 million outstanding shares by about 11.1%, so any discount will reduce the book value of each outstanding share by about one eighth of the actual average per share discount on the new stock.[4]

Securities are always sold at market, which only by a rare coincidence would correspond to book value. For a long period during our administration of the Act, the new common stock of Southern, like most utilities, commanded a substantial premium, in which outstanding shares participated through the same mechanism. For the last decade, discounts

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[3]Its draft registration statement, filed October 1, 1980, shows net income, after preferred dividends:

(In Millions)

	1977	*1978*	*1979*	*12 months to 6/30/80*	*12 months to 8/31/80*
Net income	$245.1	$201.6	$219.1	$268.0	$300.9
Per share	$1.95	$1.45	$1.51	$1.80	$2.01
Dividend	$1.48	$1.54	$1.54	$1.54	
Market Price					
High	18-1/8	17-7/8	14-7/8	14-5/8	
Low	15-5/8	13-3/4	14-7/8	10-5/8	

[4]Assuming a $12 offering price and a $.25 spread on 17 million shares, the book value dilution of the outstanding shares would be about 3.7%.

have been usual. The immediate causes of the change, escalating interest rates and escalating fuel costs, the elements of inflation to which utilities are particularly sensitive, are obvious. They are not conditions which can be dealt with through this proceeding. Nor can the Southern system suspend operations until the economy changes.

The public offering of Southern common is expressly excluded from the preemptive rights provisions of its articles of incorporation for good reason.[5] Such an offering provides its shareholders, along with the rest of the public, a direct opportunity to purchase as much of the new stock as they wish. A preliminary offer to shareholders only is not needed for that purpose, but requires a complex and time consuming procedure which interferes with the immediate sale of the full issue.

The request for hearing will be denied.

The fees and expenses to be incurred in connection with the initial offering are estimated at $276,000, including listing fees on the New York Stock Exchange of $27,500, printing fees estimated at $85,000, fees for services rendered by Southern Company Services, Inc. estimated at $15,000, accounting fees estimated at $50,000 and legal fees of counsel for Southern estimated at $45,000. The fee of counsel for the underwriters is estimated to be $30,000, and is to be paid by the successful bidders. The record is incomplete with respect to the expenses of a second offering. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder that the declaration, as amended, be and it hereby is, permitted to become effective forthwith with respect to the issue, and sale, by competitive bidding of up to an aggregate of 17,000,000 shares or $200,000,000 of estimated cash proceeds, whichever is less subject to the conditions of Rule 24; the registration statement with respect to each offering, filed with the Commission under the Securities Act of 1933 shall also be part of the record in this proceeding; and

IT IS FURTHER ORDERED, that jurisdiction be, and it hereby is, reserved with respect to:

(1) Any post-effective amendment Southern may file for an exception from the competitive bidding requirements of Rule 50; and,

(2) The fees and expenses incurred with respect to a subsequent offering of common stock hereunder.

IT IS FURTHER ORDERED that the request for a hearing be, and it hereby is, denied.

By the Commission.

George A. Fitzsimmons
Secretary

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[5] *The Commonwealth & Southern Corp.* 26 SEC 464, 485 (1947). As indicated above, the number of shares to be offered is to be adjusted to market conditions.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21767/October 29, 1980

ALLOCATION OF CONSOLIDATED FEDERAL INCOME TAX LIABILITY BY REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES

ACTION: Proposed amendment to rule.

SUMMARY: The Commission is publishing for comment an amendment to Rule 45 pertaining to the methods by which registered holding companies and their subsidiaries may allocate consolidated federal income taxes. The amendment deletes paragraph (b)(6) of Rule 45, which now provides an exception from the application requirements of Rule 45(a) in case of income tax allocations which are made by any one of three approved methods, and adds paragraph (c), which supersedes paragraph (b)(6) and which permits additional methods for allocating the consolidated income tax liability.

DATE: Comments must be received on or before December 31, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-862. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Grant G. Guthrie, Associate Director, (202) 523-5156, Division of Corporate Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 45(b)(6) is a conditional general authorization by rule for the members of a holding company system to join in a consolidated federal income tax return without applying each year, under Rule 45(a), for a specific order authorizing such action. The authorization is required by Section 12(b) of the Act. The rule's substantive function is to specify the manner of allocating the joint tax liability among the members of the system, in accordance with our responsibility under Section 12(b) to ensure that such intercompany agreements be on terms which "the Commission deems necessary or appropriate in the public interest or the protection of investors or consumers."

Exploitation of utility companies by holding companies through asserted misallocation of consolidated tax return benefits was among the abuses examined in the investigations underlying the enactment of the Act (Senate Doc. 92, Part 72A, 70th Congress, 1st Sess., 1930 (pp. 477-482)). Since the initial evidence of the practices was followed almost immediately in 1932 by abolition of the consolidated return privilege altogether, this subject did not arise until that privilege was restored in 1941. Rule 45(b)(6) was adopted forthwith (HCAR No. 2902, July 23, 1941). It was last revised (HCAR No. 12776, January 12, 1955) after the enactment of the Internal Revenue Code of 1954.

The Rule, as revised in 1955, has proven, in recent years, to be incomplete in one area. The case in which one or more operating companies in a system suffers a loss is not explicitly dealt with. The general terms of the rule are consistent with divergent treatments of this contingency.

The most significant and recurrent source of such losses, as computed under the tax laws, are subsidiaries organized for oil and gas exploration, since that activity is characterized by large initial and immediately deductible costs, while the production of oil and gas, and taxable income, occurs significantly later. And fuel supply problems have led to quite material investments in this area in recent years. The difficulty is not, however, limited to that situation. Operating utility companies are not wholly immune to loss years. Cf. *Alabama Power Company* (HCAR No. 21023, April 30, 1979).

We have dealt with this deficiency through declarations and orders authorizing specific allocations under Rule 45(a), the alternative to Rule 45(b)(6). Although such orders, in a sense, involve deviations from the standard conditions prescribed by the general rule, it would be more accurate to say that they resolved the ambiguity of Rule 45(b)(6) as applied to factual situations not anticipated when it was promulgated. Since these deviations have been granted regularly and consistently in cases involving fundamentally identical facts which appear likely to recur, it is time to incorporate the principles developed into the rule itself.

The proposed revised rule will be renumbered Rule 45(c), in recognition of its discrete subject and length. The proposed rule will delete the incorporation by reference of two subsections of the Internal Revenue Code of 1954. It is unnecessary for our rule to specify that a tax allocation agreement must be permitted by the underlying tax laws. While the simple formulae specified by Section 1552(a) of the Internal Revenue Code are quite suitable for purposes of the Act, they serve different functions under the two statutes. The present rule, like the revision proposed, restricts the substantive discretion permitted by the tax law. Accordingly, we have incorporated the useful portions of these subsections in the text of the proposed rule, facilitating statement of the limitations imposed under the Act.

The rule deals with the allocation of the actual aggregate tax liability of the consolidated group for each tax year among the members of the consolidated group. The tax initially determined by the consolidated tax return may subsequently be revised, through Internal Revenue Service audit or otherwise. Such changes must also be allocated when determined, in the same manner as though the adjustments on which they are based had formed part of the original consolidated return.

Since there are significant divergences between methods of computing income for financial reporting purposes and those employed in the tax laws, it must be emphasized that the rule applies only to allocation of the actual current tax liability. Application of such modifications as deferred taxes, required by financial reporting standards, is independent of the rule, although the accounting

should be consistent with the results of the underlying tax allocation.

The basic deficiency observed in the present rule was that both of the allocation methods incorporated from the 1954 Internal Revenue Code have been interpreted as limiting the allocation of the consolidated tax liability to those members of the group having taxable income for the year, excluding those having a negative income for tax purposes. This means that the consolidated taxable income will always be less than the combined taxable income of those members of the group participating in the allocation and that the group members whose excess deductions create the reduction in the consolidated tax are barred from sharing in the saving.

The corporate relationships required by the Act assure that the deductible corporate expenses of the holding company itself will always create a consolidated tax saving, since Section 13(a) of the Act precludes such expenses being passed on to the subsidiaries, through service charge or contract, so as to transform them into corporate deductions of the subsidiaries. In light of the legislative history referred to, an expense reimbursement of the holding company, in the guise of a tax allocation, would seem inconsistent with Section 13(a). The exclusion in our earlier rule of the holding company from sharing in consolidated return savings was intentional and will continue. These considerations do not apply to other companies in the group that incur losses.

Our 1955 rule did address one aspect of the consolidated return problem, the tax loss carryover, by the proviso

(i) that the tax allocated to each subsidiary company shall not exceed the amount of tax of such company based on a separate return computed as if such company had *always* filed its tax returns on a separate return basis. (emphasis supplied)

For tax purposes, of course, the use of the loss of a member of the consolidated group currently in the consolidated return leaves no loss to be applied to other years. Without the proviso, each subsidiary would be charged on the basis of its current income, if any, each year, and a company incurring a loss would receive no tax benefits, either currently or in the future. The proviso preserved a possibility of future recoupment.

When the Internal Revenue Service dealt with this subject in 1966, Regulation §1.1502-33(d), it adopted two alternative standard methods.[1] The first, (i), is essentially that specified by the proviso of our rule. The second, (ii), would in substance permit a current settlement by crediting the loss company with a share of the tax benefits it provided in the current year, rather than deferring such settlement through the internal carry forward computation. This second alternative is essentially the method we also have adopted in the series of Rule 45(a) orders referred to above.

The investment tax credit, an important addition to the tax law subsequent to the adoption of our present rule, is similar in significant respects to the tax loss. It is clearly identifiable to a particular member of the group, its incidence has no necessary relationship to current income, and its use in the consolidated return precludes a carryover by the company entitled to it. Other matters requiring clarification include the allocation of items, such as capital gains or losses, involving differences in tax rates or other special limitations.

Under the Act, each company in a registered system is, in important respects, expected and required to be a separate economic entity. While the Act effectively precludes the existence of minority common stock interests in the subsidiary companies, and thus eliminates potential conflict of interest, it deals principally with utility companies, whose rates are separately regulated under procedures which assign material weight to taxes as part of the cost of service. Uncompensated use of tax benefits intended for one utility company, to reduce the costs of another utility company, permanently assigns those benefits to an entirely different group of consumers, based solely on the fortuity of the common ownership of the utility companies and the relative timing of their respective periods of prosperity or distress.

The integration requirements of Section 11(b) of the Act limit registered systems to a single integrated utility system and businesses incidental thereto. The consolidated tax returns of such systems, accordingly, will not include, to any significant

[1]Regulation 1.1502-33(d)(iii) provides, as a third alternative, any other method approved by the Commissioner of Internal Revenue.

degree, the fruits of diverse and unrelated enterprises.[2] The service at cost requirement of Section 13(b) means that the related businesses in the system are not independent profit centers. They are regulated, under Sections 13 and 15 of the Act, as sources of services and goods required by the associate public utility companies. Their taxes, positive or negative, are elements of the cost at which their services are rendered.

In this context, it is necessary that a current, reasonable and unequivocal annual determination of each member company's tax be established. The proposed rule makes explicit the need for the written agreement contemplated by the tax laws. In view of the common control of all members of the consolidated group, the rule will continue to specify, as conditions, the principal terms of the allocation. It does not preclude the inclusion of further or more detailed terms, within the scope of the conditions prescribed.

While tax agreements inconsistent with the rule may, in principle, still be applied for under Rule 45(a), such action is not expected. It would be justified only in truly unforeseen and exceptional circumstances.

The proposed rule has been drawn to preserve the alternative specific allocation methods available under the present rule, or under Section 1552 of the Internal Revenue Code and the regulations thereunder. The registered systems and other interested parties are particularly invited to comment on which of these methods they, in fact, use or wish to use, the relevant practical differences among them in the context of the kind of companies subject to the Act, and whether the number of alternatives should be curtailed.

TEXT OF THE PROPOSED RULE

It is proposed to amend 17 CFR 250 by deleting paragraph (b)(6) of §250.45 and adding thereto a new paragraph (c), as follows:

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1950

§250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

* * * * *

(b) * * *

(6) (Delete)

(c) The declaration requirement of paragraph (a) of this section shall not apply to the filing of a consolidated tax return by the eligible associate companies in a registered holding company system, or to the execution or performance of the agreement referred to herein, if such consolidated tax return is filed pursuant to a tax agreement, in writing, among the associate companies participating therein for a term of one or more full tax years, and the agreement provides for allocation among such associate companies of the liabilities and benefits arising from such consolidated tax return for each full tax year in a manner not inconsistent with the following conditions:

(1) Definitions:

"Consolidated tax" is the aggregate tax liability for a tax year, being the tax shown on the consolidated return and any adjustments thereto thereafter determined.

"Corporate taxable income" is the income or loss of an associate company for a tax year, computed as though such company had filed a separate return on the same basis as used in the consolidated return, except that dividend income from associate companies shall be disregarded, and other intercompany transactions, eliminated in consolidation, shall be given appropriate effect.

"Separate return tax" is the hypothetical tax of an associate company on its corporate taxable income for a tax year, adjusted to allow for any carryovers or carrybacks from other tax years if their unavailability is due to their inconsistent use in a consolidated return for another year. Carryovers or carrybacks shall not be so taken into account if the associate company has received a corporate tax credit therefor.

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[2]The possibility of some unrelated income or expenses cannot be rigorously excluded since changes in circumstances and other fortuities can result in such income. For example, a utility company's research and development may produce discoveries of commercial value. Surplus property may have other uses. And mineral reserves can include by-products. But such factors are also incidental and usually modest.

"Corporate tax credit" is a hypothetical negative tax of an associate company for a tax year, equal to the amount by which the consolidated tax is reduced through inclusion of a corporate taxable loss, or other tax benefit of such associate company in the consolidated tax return.

(2) The consolidated tax shall be apportioned to the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

(3) The tax agreement shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(i) of this section if the sum of the corporate taxable incomes of all members of the group in any taxable year differs from the consolidated taxable income because of intercompany transactions excluded from the consolidated return. It shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) of this section to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustment provisions will be directed to allocating to the individual members of the group the material effects of any particular features of the tax law applicable to them.

(4) The tax agreement may exclude from the allocation under paragraph (c)(2)(i) of this section subsidiary companies not having a corporate taxable income for the year being allocated, or under paragraph (c)(2)(ii) of this section subsidiary companies not having a separate return tax for the year being allocated. If the agreement so elects, it shall make appropriate and equitable provision for preservation to each of the subsidiary companies so excluded of the equivalent of any rights which such subsidiary company would have had, under the applicable tax law, had it filed a separate return, to use in other years any loss or credit availed of by the group through the consolidated return. With respect to carryover rights, such provisions will normally consist of recognition of the carryover in future allocations by reducing the consolidated tax allocation for the subsequent year to the subsidiary entitled to the benefit, and by charging the excess to the companies which had benefited by the prior deduction or credit. In case of carrybacks, the subsidiary excluded would normally be entitled to immediate payment from the members receiving a tax reduction through its use, in the consolidated return, (of the refund foregone).

(5) The agreement may, instead of excluding members as provided in paragraph (c)(4) of this section, include all members of the group in the tax allocation, recognizing negative corporate income or negative corporate tax, according to the allocation method chosen. If the agreement so provides, those companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment from this fund. Such payments for tax benefits contributed to the consolidated return shall be accounted for in the same manner as tax refunds, provided that any such payment received by a subsidiary company which is not a public utility company shall be applied to reduce the costs incurred by such company for purposes of determining the costs of goods or services supplied by such company to associate companies under section 13(b) of the Act in the manner prescribed by the Commission by rule or order under that section.

(6) The tax agreement for each taxable year shall be filed as an exhibit to the system's annual report on Form U5S (§259.5s of this chapter) for the previous taxable year. The initial filing upon the effective date of this amendment shall be made as an amendment to the last Form U5S filed. If an existing tax agreement is merely renewed or amended, prior filings may be incorporated by reference.

STATUTORY AUTHORITY: The Commission hereby publishes for comment proposed amendments to Rule 45 pursuant to the provision of Sections 12(b) and 20(a) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 78a *et seq.*].

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21768/October 30, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

(70-4596)
(54-259)

MEMORANDUM FINDINGS AND OPINION APPROVING PLAN FOR SIMPLIFICATION OF HOLDING COMPANY SYSTEM

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Columbus and Southern Ohio Electric Company ("CSOE"), an electric utility subsidiary of AEP, have filed a joint plan ("Plan") pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act") providing for the retirement of the minority interest in the common stock of CSOE.

We approved AEP's proposal to acquire control of CSOE by offering to exchange 1.3 AEP common shares for each common share of CSOE in a series of opinions and orders, jurisdiction over the solicitation being released March 28, 1980.[1] AEP acquired 88.45% of the CSOE stock on May 9, 1980, the closing date under the tender offer. The offer had been conditioned on the tender of at least 80% of the voting shares of CSOE[2] and become final on the closing date.

AEP has continued to accept additional CSOE common shares under its tender offer,[3] and the Plan will extend the period for voluntary exchanges until the effective date of the Plan, except that no exchange will be made on a record date for either CSOE common shares or AEP common shares. It is accordingly expected that the 2.2% minority interest in CSOE will be further reduced by the effective date of the Plan, but experience in other cases has shown that it cannot be entirely eliminated except through a Section 11 plan.

We stated, in authorizing the tender offer:

> Section 10(c)(1) of the Act provides that we may not approve an acquisition if, among other things, it "...is detrimental to the carrying out of the provisions of Section 11..." We have held that the existence of a minority interest is contrary to the standards of Section 11(b)(2), and, in the instant case, such detrimental effects may arise if AEP should acquire less than all of the outstanding CSOE common stock. AEP has agreed to file a plan, jointly with CSOE, to retire any such minority interest pursuant to a plan under section 11(e)."[4]

AEP filed the Plan before us, which has been duly noticed[5] and copies of such notice were mailed by

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[1]Compliance with most of the requirements of the Act was ruled on in HCAR No. 20633, July 21, 1978. The terms of the offer, and other reserved questions, were passed on in HCAR No. 21433, February 13, 1980, and the solicitation was cleared in HCAR No. 21498, March 28, 1980.

[2]Since the CSOE preferred and preference shares are also voting shares, but were not tendered for, that condition required tender of more than 80% of the common stock. CSOE had outstanding at the close of business on that date:

	Shares	*Votes*
Preferred $100	469,429	469,429
Preferred $25 (1/4 vote)	127,233	32,083
Preference $100	548,342	548,342
Common	16,410,426	16,410,426
Total		17,460,280

The 14,515,000 tendered common shares were 83.1% of the CSOE voting shares. CSOE's offer to repurchase preferred shares expired April 22, 1980. It was accepted by 93.8% of the eligible preferred stock.

[3]By August 19, 1980, further exchanges had increased AEP's holdings to 16,052,208 CSOE shares — 97.8%.

[4]HCAR No. 21433 (February 13, 1980) (footnotes omitted).

[5]HCAR No. 21656 (July 15, 1980). The Plan was filed June 18, 1980, and amended July 9, 1980. Further clarifying amendments were filed October 10, 1980. This opinion deals with the Plan as so amended.

applicants to all holders of record of CSOE common shares. No hearing thereon has been requested, nor does one appear to be needed.

The Plan is subject to our approval and its approval and enforcement by a United States District Court ("Enforcement Court"), pursuant to Section 11(e) of the Act. The effective date of the Plan, to be set by AEP, will be a date not more than 30 days after the entry of such order by the Enforcement Court.

The Plan provides that each holder of CSOE common stock, on the effective date of the Plan, except AEP, shall instead become the owner and holder of record of 1.3 shares of AEP common stock for each CSOE share owned, and that AEP shall become the owner of the CSOE common stock. The outstanding certificates for the CSOE minority common shares shall cease, on that date, to represent any interest in or claim against CSOE. CSOE shall issue to AEP a new certificate or certificates for all of the minority common shares then outstanding.

AEP shall issue, on the effective date, to the bank which is its transfer agent ("Agent"), instructions irrevocable for five years to issue, for the purposes hereinafter stated, AEP common shares equal to 1.3 times the number of CSOE minority common shares then outstanding.[6] The Agent shall allocate to each holder of record of minority CSOE shares at the close of business on the day immediately preceding the effective date of the Plan, full AEP common shares equal to 1.3 times the number of CSOE common shares held, excluding any fractional AEP share. It shall sell on the New York Stock Exchange, as soon as practicable thereafter, the balance of the AEP shares, representing the fractional remainders, for the account of the CSOE holders who would otherwise be entitled to a fractional AEP share. The net proceeds, including the fractional share adjustment paid by AEP, if any, shall be allotted to those minority CSOE holders.

The AEP shares shall be deemed to be issued and outstanding and owned by the former CSOE minority shareholders for all purposes, including the payment of AEP dividends and voting, subject only to the five and fifteen year limits on completing the exchange described hereafter. Each former CSOE shareholder shall be entitled, upon surrender within 5 years of the CSOE certificate to AEP or the Agent, to receive the AEP shares, and the fractional proceeds, without interest. Former holders of CSOE shares who are unable to surrender their CSOE certificates, because of loss, destruction or other disability, may establish their right to receive the new shares and proceeds in the same manner as other AEP shareholders with a like disability.

On or after the fifth anniversary of the effective date of the Plan, the Agent may deliver to AEP any remaining fractional share proceeds held by it, and will have no further responsibility or obligation to any person with respect to such funds or with respect to certificates previously representing minority CSOE common shares.

If the Enforcement Court, on application on or after the fifth anniversary of the effective date of the Plan, finds that AEP has made all reasonable efforts to locate holders of unexchanged shares of CSOE common stock neither AEP nor CSOE shall have any further obligation to solicit the surrender of any unsurrendered certificate, but AEP shall until the fifteenth anniversary of the effective date of the Plan, nevertheless issue the AEP shares and pay, without interest, the fractional proceeds to any former CSOE shareholder or the successor thereof, who surrenders a CSOE share certificate or otherwise establishes a right thereto. Neither AEP nor CSOE, nor any other person shall have any other obligation whatsoever with respect to the minority CSOE common shares.

The Companies Involved

AEP is a holding company whose subsidiaries provide electric utility service in an area extending from southeastern Virginia and a small portion of eastern Tennessee in a generally northwesterly direction to southwestern Michigan. AEP's service territory, which includes portions of Indiana, Kentucky, Ohio, Tennessee, Virginia, West Virginia and Michigan, has a total area of about 42,000 square miles and an aggregate population of about 6,300,000. Its consolidated assets were $8.2 billion at December 31, 1979, and its operating revenues and net income were $2.8 billion and $261 million, respectively, for the year then ended. AEP's service area is largely rural. The largest community served (prior to the acquisition of CSOE) was Fort Wayne, Indiana, with a population of about 180,000.

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[6]If a fraction results AEP will pay in cash to the agent the market value of the fraction, based on the closing price of AEP shares on the trading day immediately preceding the effective date of the Plan.

CSOE is principally an urban system, supplying power in the City of Columbus, but it also serves an extensive area in southeastern Ohio. Its service area has a population of about 1.3 million. Its consolidated assets were $1.3 billion at December 31, 1979, and its operating revenues and net income were $417 million and $46 million, respectively, for the year then ended.

Compliance with Statutory Standards

Before we may approve a plan filed pursuant to Section 11(e) of the Act, we must find that such plan is necessary to effectuate the provisions of Section 11(b) of the Act and is fair and equitable to the persons affected thereby. We must also find the proposed transactions satisfy the other applicable provisions of the Act.

The Plan is directed to elimination of the publicly-held minority common stock interest in CSOE by substituting a stock interest in AEP. We have consistently held that the existence of a minority interest in a subsidiary is contrary to the standards of Section 11(b)(2), and we make the same finding here.[7] The Plan is an appropriate and necessary means of compliance.

The "fair and equitable" standard of Section 11(e) requires that each security holder affected by a plan receive thereunder "the equitable equivalent of the rights surrendered."[8] A determination as to fairness requires a comparison of the financial characteristics of the securities surrendered and received under the Plan. In making such comparison, primary emphasis is given to currently effective rights to earnings and dividends.[9]

We examined, in our 1978 opinion, the two systems, with particular attention to the effect of the proposed combination, and our opinion in February of this year focused in large part on comparison of the common stock of the two companies, in the context of the exchange offer, at the same rate as proposed by the Plan. The combination is now consummated, AEP owning about 98% of CSOE common shares. The present record adds to the data previously reviewed, actual results for the year 1979, and for the 12 months ended June 30, 1980.[10]

The preferred stock recapitalization was incident to the acquisition by AEP. It temporarily distorted CSOE's capital structure, a distortion intended to be corrected by financing in the near future.[11] A more permanent effect was a reduction of common equity by about $14 million, due to the premiums and expenses incurred in the recapitalization and a substantial long range increase in fixed charges, the exact amount of which depend on the money costs incurred in the pending refunding. We exclude the adverse effects of the recapitalization from our consideration of the fairness of the Plan, since these costs would not have been incurred by CSOE as an independent company. They nevertheless, illustrate concretely the practical disadvantages to which minority common stockholders are exposed and the

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[7]*Union Electric Company,* HCAR No. 20013 (April 29, 1977); *Eastern Utilities Associates,* 43 SEC 243, 246 (1967) and cases cited therein.

[8]*Otis & Co.* v. *SEC,* 323 U.S. 624, 639-640 (1945).

[9]*SEC* v. *Central-Illinois Securities Corp.,* 338 U.S. 96, 130 (1949).

[10]Appendix A hereto incorporates 1979 in the historical tables developed for our previous opinion. Appendix B compares the June 30, 1980, consolidated balance sheet of the AEP system, including CSOE, with that of CSOE, noting the effect of the concurrent recapitalization of CSOE's preferred stock.

[11]CSOE borrowed $65.3 million to consummate the cash portion of its offer to its preferred stockholders. It was recently authorized to issue and sell (HCAR No. 21723, September 23, 1980), $50 million of new preferred stock and $80 million of first mortgage bonds. The pro forma effect of this refunding, as of June 30, 1980, on capitalization ratios would be:

	CSOE Actual		*Financing*		*CSOE Proforma*		*AEP Proforma*	
	Amount	*%*	*Amount*		*Amount*	*%*	*Amount*	*%*
Long term debt	$586	41.9	$80		$666	47.6	$4,904	49.9
Short term	224	16.0	(130)		94	6.7	510	5.2
Debt	$810	57.9	$(50)		$760	54.3	$5,414	55 1
Deferred taxes	62	4.4	—		62	4.4	481	4.9
Preferred and preference	105	7.5	50		155	11.1	876	8.9
Common equity	422	30.2	—		422	30.2	3,058	31.1
Total	$1,399	100.0	0		$1,399	100.0	$9,829	100.0

A $30 million 1980 equity contribution is also proposed by AEP, which cannot be made in that form until the minority interest is eliminated. It would bring CSOE's short-term debt and common equity ratio even closer to that of the system.

reasons for requiring the elimination of such potentially conflicting interests.

As shareholders of AEP, the CSOE shareholders would continue as equity owners of an integrated electric utility system, of which CSOE is a central and important part. The consolidated capital structure of the AEP system parallels closely that of CSOE, so the character and rank of their securities would not be changed.

AEP offered a 14.9% common stock interest in the combined system, for the common stock of CSOE. The Plan would complete the acquisition on that basis. Over the past 7 years, 1973-1979, CSOE provided 13.61% of the combined income for common stock[12] and represented, at the time of the offer, 14.28% of the common equity.

Appendix A also compares the 1.3 shares of AEP with the CSOE common shares, in terms of net income, dividends, book value and market prices over the 13 years 1967-1979. The data for the 12 months ended June 30, 1980, did not differ materially from 1979. The earnings and book value are consistent with the aggregates just described. AEP has consistently paid significantly higher dividends than CSOE, the 1.3 shares yielding over 20% more in dividends, and has enjoyed a significantly higher market price.

On the basis of the entire record, from which the foregoing factors have been selected for special analysis, we find that the Plan is fair and equitable to the minority shareholders of CSOE and the AEP, and otherwise meets all the requirements of Section 11(e) of the Act.

OTHER APPLICABLE STATUTORY PROVISIONS

The issuance by AEP of its common shares is subject to the provisions of Section 7 of the Act. We find that the AEP common shares satisfy the requirements of Clause (A) of Section 7(c)(1) and all the requirements of Section 7(d) of the Act. As the AEP common shares will be issued only to shareholders of CSOE pursuant to a plan which we have found to be fair and equitable, the transaction cannot be the subject of competitive bidding and an exception from the competitive bidding requirements of Rule 50 will be granted.

The acquisition by AEP of the publicly held shares of common stock of CSOE is subject to the provisions of Sections 9(a) and 10 of the Act. We make no adverse findings under Sections 10(b) and 10(c)(1) of the Act. The purpose of the Plan is to comply with Section 11(b) of the Act, so Section 10(c)(2) is satisfied.

OTHER MATTERS

Accounting Treatment

The proposed transaction will be recorded on the books of AEP in the same manner as prescribed in our opinion approving the tender offer, which we find still appropriate.

Court Enforcement

As a condition precedent to its consummation, the Plan provides that it be approved and ordered enforced by an appropriate District Court of the United States. As requested by AEP, we shall apply to an appropriate court for approval and enforcement of the Plan, and our order will stay the consummation of the Plan until such court order has been entered. It will not, however, preclude AEP from continuing to exchange its shares for CSOE shares tendered pursuant to our previous order.

Fees and Expenses

The Plan provides that AEP will pay the fees and expenses relating to the Plan. Since the record is incomplete concerning this matter, we shall reserve jurisdiction with respect thereto.

Tax Recitals

AEP and CSOE have requested that any order approving the Plan include appropriate tax recitals pursuant to Section 1081(f) of the Internal Revenue Code of 1954 and Section 270(c) of the Tax Law of the State of New York. The Plan is for the purposes specified and our order of approval will include fuller findings on this subject.

CONCLUSION

Based upon the foregoing, we shall enter an order (1) directing that AEP and CSOE, pursuant to Section

[12]This period includes 1978, a year in which CSOE's income was abnormally low. Excluding 1978, CSOE's contribution was 14.21%. For 1979 it was 14.98%.

COLUMBUS & SOUTHERN OHIO ELECTRIC—AMERICAN ELECTRIC POWER COMPANY
ANALYSIS OF EARNINGS AND COMMON EQUITY
(In Millions)

Year	CSOE Net Income After Preferred Div. (a)	AEP—CSOE Combined Net Income After Pref. (a+b)	(a)/(a+b) = %	CSOE Common Equity (c)	AEP—CSOE Combined Common Equity (c+d)	(c)/(c+d) = %
1973 =	$ 22	$ 197	11.17%	$ 192	$ 1,516	12.66%
1974 =	16	193	8.29%	193	1,715	11.25%
1975 =	36	226	15.93%	267	1,976	13.51%
1976 =	46	276	16.67%	356	2,309	15.42%
1977 =	44	279	15.77%	422	2,623	16.09%
1978 =	27	263	10.27%	415	2,790	14.87%
1979 =	46	307	14.98%	431	3,018	14.28%

COMPARISON OF 1.3 AEP COMMON SHARES WITH ONE CSO COMMON SHARE
At the End of Each Calendar Year

	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Reported earnings per													
1.3 AEP shares ..	2.60	2.73	2.86	2.99	3.09	3.24	3.54	2.50**	3.07	3.29	3.12	2.94	2.98
1.0 CSO share ...	2.55	2.49	2.59	2.42	2.13	2.65	2.97	2.04	3.60	3.71	3.05	1.73	2.84
AEP as percent of CSO	1.02	1.10	1.10	1.24	1.45	1.22	1.19	1.23	0.85	0.89	1.02	1.70	1.05
Dividends per													
1.3 AEP shares ..	1.90	2.00	2.07	2.15	2.21	2.29	2.40	2.57	2.60	2.62	2.70	2.77	2.85
1.0 CSO share ...	1.54	1.64	1.72	1.76	1.80	1.84	1.92	1.96	1.98	2.08	2.23	2.32	2.32***
AEP as percent of CSO	1.23	1.22	1.20	1.22	1.23	1.25	1.25	1.31	1.31	1.26	1.21	1.19	1.23
Book value per													
1.3 AEP shares ..	17.30	18.19	19.96	21.58	23.45	24.40	26.16	27.17	26.73	27.26	27.79	27.90	27.72
1.0 CSO share ...	19.96	20.79	21.64	22.30	22.82	23.80	24.95	25.03	24.31	25.46	26.33	25.69	26.36
AEP as percent of CSO	0.87	0.87	0.92	0.97	1.03	1.03	1.05	1.09	1.10	1.07	1.06	1.09	1.05
Year end market prices per *													
1.3 AEP shares ..	48.75	49.08	39.16	37.05	39.49	39.00	32.50	18.69	27.30	33.15	31.69	27.46	23.24
1.0 CSO share ...	37.00	44.25	29.75	28.38	27.50	28.38	24.10	12.25	23.00	27.00	26.75	21.00	21.13
AEP as percent of CSO	1.32	1.11	1.32	1.31	1.44	1.37	1.35	1.53	1.19	1.23	1.18	1.31	1.10

* Prices of January 19, 1968, immediately before announcement of proposed tender, used.

** Excludes 1974 accounting revision, 58¢ per share.

*** Does not include dividend of 39¢ per share paid in December 1979 in accordance with realignment of dividend record and payment dates with AEP. SOURCE: Annual Report of CSOE for 1979.

AEP Consolidated	1973	1974	1975	1976*	1977*	1978	1979
KWH sold in (millions)	74,912	75,858	75,917	84,913	81,865	85,932	95,508
Operating revenues	$ 979	$ 1,333	$ 1,625	$ 1,833	$ 2,029	$ 2,389	$ 2,814
Operating expenses:							
Fuel	$ 289	$ 571	$ 698	$ 753	$ 833	$ 1,092	$ 1,180
Other operations	164	183	184	192	226	208	365
Maintenance	74	87	82	103	136	163	172
Depreciation	115	128	156	180	185	204	224
Taxes—non income ..	63	73	91	104	129	145	164
Income taxes	(14)	(12)	9	29	48	51	105
Operating expenses .	$ 691	$ 1,030	$ 1,220	$ 1,361	$ 1,557	$ 1,863	$ 2,210
Operating income	$ 288	$ 303	$ 405	$ 472	$ 472	$ 526	604
Other income—net	10	4	3	6	7	3	3
AFUDC—gross (a) ...	88	119	82	69	95	95	91
Interest—gross (a)	(187)	(259)	(262)	(273)	(296)	(335)	(379)
Preferred dividends	(25)	(31)	(38)	(44)	(46)	(52)	(58)
Consolidated income, after subsidiary preferred dividends ..	$ 174	$ 136	$ 190	$ 230	$ 235	$ 236	$ 261
Accounting adjustment (b)		41					
		$ 177					

* As restated in 1978 10-K. The restatement reflected the outcome of certain rate cases, but had a relatively small net effect.

(a) AFUDC includes the portion credited to fixed charges and, in 1978, the related tax adjustment.

(b) In 1974, the system commenced recording revenue when service was rendered rather than on the later billing date, and deferring additional fuel costs until the time permitted for inclusion of such costs in the member companies energy adjustment clauses for rate purposes. The non recurring adjustment reflected the changes in accounts receivable and deferred charges, and related tax accounts, to make them consistent with the new accounting procedures.

CSO	1973	1974	1975	1976	1977	1978	1979
KWH sold (in millions)	7,536	7,767	7,851	8,133	8,727	8,626	9,034
Operating revenues	$158	$189	$259	$280	$320	$366	$417
Operating expenses:							
Fuel & purchased power	$ 36	$ 62	$ 88	$ 90	$ 99	$131	$119
Other operations	28	32	35	43	53	66	70
Maintenance	15	16	20	25	25	34	38
Depreciation	19	21	23	24	31	36	40
Taxes—non income	17	20	21	24	29	32	38
Income taxes	3	(4)	11	7	7	1	22
Operating expenses	$118	$147	$198	$213	$244	$300	$327
Operating income	$ 40	$ 42	$ 61	$ 67	$ 76	$ 66	$ 90
Other income (including coal operations)	1	—	2	3	—	1	3
AFUDC—gross(a)	6	8	14	24	22	23	27
Interest—gross	(21)	(29)	(35)	(40)	(44)	(51)	(60)
Preferred dividends	(4)	(5)	(6)	(8)	(10)	(12)	(14)
Net income after preferred dividends	$ 22	$ 16	$ 36	$ 46	$ 44	$ 27	$ 46

(a) Includes AFUDC credited to fixed charges, and, in 1978, related tax adjustment.

CONDENSED CONSOLIDATED BALANCE SHEET
JUNE 30, 1980
(in millions)

AEP AND CSOE ACTUAL AND CSOE ADJUSTED TO ELIMINATE PRINCIPAL EFFECTS OF RECAPITALIZATION

	Adjusted CSOE	Effects of Preferred Stock Recapitalization	CSOE Actual	AEP Including CSOE b/	Percent Represented By CSOE	Percent Represented By Adjusted CSOE
Current assets	$ 135	$(2)	$ 133	$ 1,043	12.75	12.94
Utility plant - net	1,317		1,317	8,888	14.82	14.82
Other assets - net	27		27	334	8.08	8.08
Excess cost of investments in subs.				48		
Deferred debts	20		20	194	10.31	10.31
Total assets	$1,499	$(2)	$1,497	$10,507	14.25	14.27
Notes & current maturities	$ 159	$ 65	$ 224	$ 640	35.00	24.85
Other current liabilities	95		95	607	15.65	15.65
Long-term debt	586		586	4,824	12.15	12.15
Operating reserves & other deferrals	3		3	71	4.23	4.233
Liabilities & reserves	$ 843	$ 65	$ 408	$ 6,142	14.78	13.93
Deferred taxes	62		62	481	12.89	12.89
Preferred stock	158	(108)	50	771	6.49	20.49
Preference stock		55	55	55	100.00	
Common & paid-in capital	292	(1) a/	291	2,320	12.54	12.59
Retained earnings	144	(13)	131	738	17.75	19.51
	$1,499	$(2)	$1,497	$10,507	14.25	14.27

Capitalization ratios:	Amount	Percent	Amount	Percent	Amount	Percent
Long-term debt	$ 586	41.8	$ 586	41.9	$ 4,824	49.1
Notes & current maturities	159	11.4	224	16.0	640	6.5
Total debt	$ 745	53.2	$ 810	57.9	$ 5,464	55.6
Deferred taxes	62	4.4	62	4.4	481	4.9
Preferred & preference stock	158	11.3	105	7.5	826	8.4
Common equity	436	31.1	422	30.2	3,058	31.1
Total capitalization	$1,401	100.0	$1,399	100.0	$ 9,829	100.0

a/ CSOE spent $66,903,000 and issued $54,816,000 of its new preference stock, at par, to repurchase $108,203,000 of its outstanding preferred stock. It borrowed $65.3 million, the approximate price of the shares repurchased for cash. The premium and expenses on the shares repurchased, for cash or new stock, was charged to CSOE's retained earnings after adjustment for the recorded premium on the retired shares. The adjustment to cash and retained earnings shown also includes a $404,000 allowance for the excess of the dividends on the preference stock and interest. after a tax adjustment of about 46.4%, on the $65.3 million bank loan, during the period to June 30, 1980, over the dividends which would have accrued on the preferred shares retired; plus $12,000 of other expenses.

b/ AEP's balance sheet assumes 100% acquisition of the CSOE common. At June 30, 1980, the AEP common stock shown included 616,655 AEP shares (0.426%) reserved for 474,350 (2.89%) then unexchanged CSOE shares.

11(b)(2) of the Act, take appropriate action to effectuate the elimination of the publicly held interests in the common stock of CSOE, (2) approving the Plan filed pursuant to Section 11(e) of the Act, and (3) excepting the issuance and sale by AEP of its common shares from the competitive bidding requirements of Rule 50 under the Act. We shall reserve jurisdiction with respect to the fees and expenses incurred and to be incurred in connection with the Plan, and our order will provide that the Plan shall not be consummated until an appropriate court has entered an order approving and enforcing the Plan.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21769/October 30, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

(70-4596)
(54-259)

ORDER DIRECTING THE ELIMINATION OF PUBLICLY-HELD COMMON STOCK INTERESTS PURSUANT TO SECTION 11(b)(2) AND APPROVING PLAN FILED PURSUANT TO SECTION 11(e)

American Electric Power Company, Inc. ("AEP"), a registered holding company, having filed pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935 ("Act"), a plan and an amendment thereto ("Plan") for the elimination of the publicly-held interests in the common stock of its electric utility subsidiary Columbus and Southern Ohio Electric Company ("CSOE");

Appropriate notice having been given affording all interested persons an opportunity to request a hearing with respect to the Plan;

AEP having requested, pursuant to Section 11(e) of the Act, that the Commission apply to an appropriate United States District Court to enforce and carry out the terms and provisions of the Plan;

AEP having further requested that, if the Commission approves the Plan, the Commission's order contain the findings and recitals necessary to meet the requirements of Section 1081 of the Internal Revenue Code of 1954 and Section 270(c) of the Tax Law of the State of New York;

The Commission having considered the record and having this day issued its Memorandum Findings and Opinion; on the basis of such Memorandum Findings and Opinion:

IT IS ORDERED, pursuant to Section 11(b)(2) of the Act, that AEP and CSOE be, and each hereby is, directed to take appropriate action to effect the elimination of the publicly-held shares of common stock of CSOE;

IT IS FURTHER ORDERED, pursuant to Section 11(e) of the Act, that the Plan be, and it hereby is, approved, subject to the terms and conditions of Rule 24 and subject to the following additional terms and conditions:

(1) This order shall not be operative to authorize consummation of the Plan until an appropriate United States District Court shall, upon application thereto, enter an order approving and enforcing the Plan;

(2) Jurisdiction is reserved to determine the reasonableness of all fees and expenses and other remuneration incurred or to be incurred by AEP in connection with the Plan, the transactions incident thereto, and all proceedings on such Plan or related thereto:

(3) Jurisdiction is reserved with respect to the entering of such further orders and the taking of such further action as the Commission may deem necessary or appropriate to effectuate the requirements of Section 11(b) of the Act.

IT IS FURTHER ORDERED that the issuance and sale by AEP of its common shares be, and they hereby are, excepted from the competitive bidding requirements of Rule 50 under the Act.

IT IS FURTHER ORDERED AND RECITED in accordance with Section 1081 of the Internal Revenue Code of 1954, as amended, and Section 270(c) of the Tax Law of the State of New York, that the delivery and transfer of certificates for common shares of CSOE, the acquisition of certificates for common shares of CSOE by AEP, the issuance and delivery by AEP of certificates for common shares of AEP, the acquisition by those entitled thereto of certificates for common shares of AEP and the sale by or on behalf of AEP of certificates for common shares of AEP, all as provided in the Plan, are necessary or appropriate to effectuate the provisions of Section 11(b) of the Public Utility Holding Company Act of 1935.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21770/October 30, 1980

In the Matter of

MIDDLE SOUTH ENERGY, INC.
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

(70-6337)

ORDER AUTHORIZING TRANSACTIONS RELATED TO ACQUISITION OF 10% UNDIVIDED OWNERSHIP INTEREST IN NUCLEAR-FUELED ELECTRIC GENERATING STATION

Middle South Energy, Inc. ("MSE") and Mississippi Power & Light Company ("MP&L"), electric utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company, have filed a declaration and amendments thereto with this Commission pursuant to Sections 12(d) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 45 promulgated thereunder regarding the following proposed transactions.

The declaration concerns certain transactions between MSE and MP&L related to the acquisition by South Mississippi Electric Power Association ("SMEPA") of a ten percent (10%) undivided ownership interest in MSE's Grand Gulf Nuclear Electric Station ("Grand Gulf Plant"). MSE was incorporated in 1974 to own and finance certain future generating capacity of the Middle South System. The Grand Gulf Plant is a two-unit, nuclear-fueled electric generating station being constructed on the east bank of the Mississippi River near Port Gibson, Mississippi. Each unit is to have a net capacity of 1,250 MW; the first unit is now scheduled to be placed in commercial operation in April 1982 and the second unit is now scheduled to be placed in commercial operation in April 1986. Construction costs of the Grand Gulf Plan, excluding nuclear fuel, were estimated in December 1979 to total $3,049 million, of which approximately $1,419.4 million have been expended through December 31, 1979.

SMEPA is a public-utility company engaged exclusively in the generation and transmission of electric energy for its seven member Rural Electric Cooperatives in the State of Mississippi. The balance of the electric power requirements of SMEPA's members is obtained primarily from Mississippi Power Company. SMEPA operates in 19 counties in Mississippi, and, as of December 31, 1979, provided electric service to approximately 76,260 ultimate consumers through its members. The total installed generation capability of SMEPA's electric utility plan as of December 31, 1979, was 573,000 KW, consisting of five steam electric units and two combustion turbine units. The peak demand on SMEPA's system in 1979 was 266,000 KW, which reflects a decrease of 2.2% from the 1978 peak demand.

SMEPA's acquisition of the ten percent (10%) undivided ownership interest in the Grand Gulf Plan will be governed by the terms of a Joint Construction, Acquisition and Ownership Agreement between MSE and SMEPA ("Ownership Agreement"). The Ownership Agreement provides that, commencing with a closing date, SMEPA will begin to advance monthly to MSE 100% of the cost of construction estimated for the following month. SMEPA will continue contributing 100% of the cost of construction in such manner until its investment in the Grand Gulf Plan, plus its AFUDC equals 10% of the total cost of construction plus each party's accrued allowance for funds used during construction. It is estimated that, assuming a closing date of July 1, 1980, SMEPA would need to contribute $200 million to the cost of construction to bring its ownership interest to 10% based upon the estimates set forth above. Based on the current schedule of construction, SMEPA's interest would reach 10% by April 1981. At such time, MSE and SMEPA would commence making joint contributions to the cost of construction on a 90%-10% basis and payments would continue on such basis until completion of the Grand Gulf Plant.

MSE proposes to obtain a release from the lien of its Mortgage and Deed of Trust, dated as of June 15, 1977, as amended, of the undivided ownership interest in the Grand Gulf Plan to be acquired by SMEPA during the adjustment period. MSE intends to notify holders of its outstanding first mortgage bonds of the proposed transactions and to obtain their consent to certain aspects thereof.

Pursuant to the terms of an Income Tax Indemnification Agreement, SMEPA will agree to indemnify MSE from certain federal and state income or gains taxes if the transactions are deemed to be the equivalent of a taxable sale or disposition of any interest of MSE

in the Grand Gulf Plant. SMEPA has also agreed to pay MSE, at the time its interest in the Grand Gulf Plant is confirmed at 10%, the amount of $1.5 million, which MSE and SMEPA agree compensates MSE for all costs incurred, past, present, and future, relating to the Grand Gulf Plant that have not been capitalized, such as planning, negotiation, education, and similar unallocated administrative and general expenses. Such payment shall not thereafter be used in calculating SMEPA's undivided ownership interest in Grand Gulf. MSE will apply SMEPA's payments to the cost of constructing the Grand Gulf Plant.

MP&L will act for MSE and SMEPA in the construction of the Grand Gulf Plant pursuant to the terms of the Service Agreement between MP&L and MSE, dated as of June 21, 1974. MSE and SMEPA will enter into an Operating Agreement providing for the sole operation of the Grand Gulf Plant by MSE for itself and as agent for SMEPA. MP&L will act for MSE and SMEPA in the operation of Grand Gulf Plant pursuant to the terms of the Service Agreement.

MSE and SMEPA will be able to schedule energy out of the Grand Gulf Plant in any amount up to 90% and 10%, respectively, of the energy available from the Plant and each may schedule any additional available energy from the Plant not being utilized by the other. In general, MSE and SMEPA will pay the fixed costs of operating the Grand Gulf Plant in proportion to their undivided ownership interest in the Plant and will pay the cost which vary by energy taken (including fuel cost) in proportion to the amount of energy taken.

Under a Substitute Power Agreement, MP&L will agree to sell power and energy to SMEPA if commercial operation of Unit No. 1 is delayed beyond April 1, 1982, or commercial operation of Unit No. 2 is delayed beyond April 1, 1986, in each case for other than Force Majeure or certain other reasons. SMEPA will be entitled to purchase up to the amount of power and energy it could have purchased had either Unit been placed in commercial operation by the scheduled dates. SMEPA will pay MP&L's average system cost for such power. MP&L can terminate service if the particular Unit is placed in commercial operation, if SMEPA ceases having an interest in the Unit or no longer needs the power and energy being provided by MP&L, and in any event five (5) years after service commences.

MP&L will also agree to sell power and energy to SMEPA if MSE ceases operating the Grand Gulf Plant for economic reasons. SMEPA will be entitled to purchase up to the amount of power and energy it could have purchased had the Plant not been shut down. SMEPA will pay MP&L the cost it would have paid had the Grand Gulf Plant been operating. MP&L's obligation to provide such power and energy ends thirty (30) years from the date Unit No. 1 begins commercial operation. MSE will reimburse MP&L for any net operating loss incurred as a result of this arrangement.

Requisite authorization for the proposed transactions has been obtained from the Nuclear Regulatory Commission and the Mississippi Public Service Commission. No other state or federal commission, other than this Commission, has jurisdiction over MSE's or MP&L's participation in the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21601), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 595/October 28, 1980

In the Matter of

PACIFIC SOUTHWEST AIRLINES
File No. 22-10730

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)(1)(ii)

The Securities and Exchange Commission has issued an order on an application by Pacific Southwest Airlines pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeships of United States Trust Company of New York under (i) an existing Indenture qualified under the Act in 1967; (ii) an existing Indenture qualified under the Act in 1979; and (iii) two proposed Trust Agreements that will not be qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under such Indentures or Trust Agreements.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11411/October 24, 1980

In the Matter of

STATE BOND AND MORTGAGE COMPANY
100-106 North Minnesota Street
New Ulm, Minnesota 56073

(812-4726)

ORDER OF THE COMMISSION PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING CERTAIN LOANS FROM THE PROVISIONS OF SECTION 17(a)(3) OF THE ACT

On September 24, 1980, a notice was issued (Investment Company Act Release No. 11371) of an application filed on August 29, 1980, and an amendment thereto on September 18, 1980, by State Bond and Mortgage Company ("Applicant"), registered under the Investment Company Act of 1940 (the "Act") as a face-amount certificate company, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting from the provisions of Section 17(a)(3) of the Act certain guaranteed student loans to be made by State Bank & Trust Company of New Ulm ("State Bank"), a wholly-owned subsidiary of Applicant, to children of officers, directors and employees of Applicant.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that guaranteed student loans made by State Bank to children of officers, directors and employees of Applicant be, and hereby are, exempted from the provisions of Section 17(a)(3) of the Act, effective forthwith, subject to the following conditions:

1. The loans are to be student loans guaranteed and administered by the Higher Education Assistance Foundation, a private non-profit Minnesota Corporation, and reinsured by the federal government pursuant to the statutory provisions and regulations of the Guaranteed Student Loan Program.

2. State Bank shall not pay a finder's fee in connection with any loan covered by the order, nor shall Applicant pay to State Bank a fee for any such loan.

3. All loans covered by the order shall be made in accordance with the applicable State and/or

Federal banking laws, including any applicable rules of the Federal Reserve Board.

4. All loans made pursuant to the requested order shall be issued only to those individuals who are affiliated with State Bank by reason of their being children of officers, directors or employees of Applicant.

5. All loans, and the terms thereof, made pursuant to the order shall be in accordance with the normal lending policies of State Bank and shall not be inconsistent with any policies of State Bank or of Applicant.

6. Any guaranteed student loan to one individual, which when aggregated with all such previous student loans to such individual, exceeds $5,000.00 shall be approved by the Board of Directors of State Bank or by an executive committee thereof pursuant to delegated authority.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11412/October 27, 1980

In the Matter of

INTERCAPITAL HIGH YIELD SECURITIES INC.
INTERCAPITAL INDUSTRY-VALUED SECURITIES INC.
INTERCAPITAL TAX-EXEMPT SECURITIES INC.
INTERCAPITAL LIQUID ASSET FUND INC.
One Battery Park Plaza
New York, New York 10004

and

DEAN WITTER REYNOLDS INC.
130 Liberty Street
New York, New York 10006

(812-4620)

ORDER PURSUANT TO SECTION 11(a) OF THE ACT PERMITTING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT IN CONNECTION WITH SUCH EXCHANGES

InterCapital High Yield Securities Inc., InterCapital Industry-Valued Securities Inc., InterCapital Tax-Exempt Securities Inc. and InterCapital Liquid Asset Fund Inc. (collectively, the "Funds"), registered, open-end, diversified, management investment companies, and Dean Witter Reynolds Inc. (collectively, with the Funds, "Applicants") filed an application on February 27, 1980, and an amendment thereto on May 14, 1980, for an order pursuant to Section 11(a) of the Investment Company Act of 1940 ("Act") approving certain proposed offers of exchange of shares among the Funds on a basis other than their relative net asset values and pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act in connection with such exchanges.

On September 4, 1980, a notice (Investment Company Act Release No. 11333) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11(a) of the Act, that the terms of the proposed exchange offers be, and hereby are, approved, effective forthwith; and

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from Section 22(d) of the Act, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11413/October 27, 1980

In the Matter of

TRUST FOR LIQUID ASSETS
421 Seventh Avenue
Pittsburgh, Pennsylvania 15219

(812-4712)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Trust For Liquid Assets ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 13, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, subject to conditions, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On September 18, 1980, a notice was issued (Investment Company Act Release No. 11360) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost, be and hereby is granted, effective forthwith, subject to the following conditions:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the trustees undertake—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the trustees shall be the following:

(a) Review by the trustees, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the trustees will promptly consider what action, if any, should be initiated by the trustees.

(c) Where the trustees believe the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

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[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the trustees in the exercise of their discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar donominated instruments which the trustees determine present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11414/October 28, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6254

INVESTMENT COMPANY ACT OF 1940
Release No. 11415/October 28, 1980

In the Matter of

MIDWEST INCOME INVESTMENT COMPANY
508 Dixie Terminal Building
Cincinnati, Ohio 45202

(812-4705)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Midwest Income Investment Company ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on July 25, 1980 requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On September 18, 1980 a notice (Investment Company Act Release No. 11363) was issued of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed,

and the Commission has not ordered a hearing.

The matter having been considered, it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. In supervising Applicant's operations and delegating special responsibilities involving its portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize its net asset value per share as computed for the purpose of distribution, redemption and repurchase, at $1,000 per share.

2. Included within the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1,000 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1,000 amortized cost price per share of Applicant exceeds 1/2 of 1 percent, a requirement that Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's board of directors believes the extent of any deviation from the $1,000 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders of Applicant, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; utilizing a net asset value per share as determined by using available market quotations; or a revaluation of all or an appropriate portion of the portfolio based on current market factors.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of its board of directors' meetings. The documents preserved pursuant to this condition

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[1]Applicant states that to fulfill this condition it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by Applicant's board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11416/October 30, 1980

In the Matter of

THE RESERVE FUND, INC.
810 Seventh Avenue
New York, New York 10019

(812-4674)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

The Reserve Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on May 1, 1980, and an amendment thereto on July 22, 1980, pursuant to Section 6(c) of the Act, for an order of the Commission exempting Applicant from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost.

On October 2, 1980, a notice was issued (Investment Company Act Release No. 11385) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for an order of exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1, thereunder, to the extent necessary to permit Applicant's assets to be valued at amortized cost as set forth in the application, be and hereby is granted, effective forthwith, subject to the following conditions agreed to by Applicant:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share determined by reference to market factors from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such

review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; redemption of shares in kind; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year (unless subject to a repurchase agreement with a maturity of one year or less), or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. If the dispositioin of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1. above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]To fulfill this condition, Applicant intends to use available market quotations in its current valuation system and any other indicators of market value of portfolio instruments which its Board of Directors from time to time may consider appropriate.

INVESTMENT COMPANY ACT OF 1940
Release No. 11417/October 30, 1980

In the Matter of

CAPITAL CORPORATION OF AMERICA
BARTON M. BANKS
and
MARTIN M. NEWMAN
1521 Walnut Street
Philadelphia, Pennsylvania

(812-4561)

ORDER PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER

Capital Corporation of America ("CCA"), registered under the Investment Company Act of 1940 ("Act") as a non-diversified, closed-end, management investment company and a federal licensee under the Small Business Investment Act of 1958, Martin M. Newman ("Newman"), president and director of CCA, and Barton M. Banks ("Banks"), secretary and director of CCA, filed an application on November 2, 1979, and an amendment thereto on June 16, 1980, for an order of the Commission, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Banks and Newman to enter into, and perform pursuant to, employment agreements with CCA which were negotiated in connection with the sale of a controlling interest in CCA.

On August 13, 1980, a notice was issued (Investment Company Act Release No. 11304) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found, on the basis of the information stated in the application, that the participation of CCA in the proposed transaction, on the basis proposed, will be consistent with the provisions, policies and purposes of the Act, and that such participation will be on a basis not less advantageous than that of other participants. Accordingly,

IT IS ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the proposed transaction be, and hereby is, permitted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11418/October 30, 1980

In the Matter of

GIRARD HIGH YIELD CORPORATE FUND
10960 Wilshire Boulevard
Suite 336
Los Angeles, California 90024

(811-2702)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Girard High Yield Corporate Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company filed an application on August 25, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a California corporation, registered under the Act on November 10, 1976. On or about that same date it filed a registration statement (File No. 2-57616) on Form S-5 under the Securities Act of 1933 covering 100,000 shares of its common stock in connection with a proposed public offering of its shares. On August 1, 1977, Applicant filed a request to withdraw this registration statement, and on September 28, 1977, the Commission issued an order permitting Applicant to withdraw its registration statement pursuant to Rule 477 under the 1933 Act, 17 CFR 230.477. Thus, Applicant has

never engaged in a public offering of shares of its common stock.

Applicant states that it has no securityholders. The application states that Applicant does not have any assets or liabilities currently outstanding, and that it is not a party to any litigation or administrative proceeding. The application further states that Applicant is presently an inactive corporation under California law, and is not engaged in and does not propose to engage in any business activities other than those necessary for the winding up of its affairs. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 24, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11419/October 30, 1980

In the Matter of

GIRARD FEDERAL TAX EXEMPT FUND
10960 Wilshire Boulevard
Suite 336
Los Angeles, CA 90024

(811-2697)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Girard Federal Tax Exempt Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company filed an application on August 25, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a California corporation, registered under the Act on October 26, 1976. On or about the same date it filed a registration statement on Form S-5 under the Securities Act of 1933 covering 100,000 shares of its common stock in connection with a proposed public offering of its shares. On August 1, 1977, Applicant filed a request to withdraw this registration statement, and on September 28, 1977, the Commission issued an order permitting Applicant to withdraw its registration statement pursuant to Rule 477 under the 1933 Act, 17 CFR 230.477. Thus, Applicant has never engaged in a public offering of shares of its common stock.

Applicant states that it has no securityholders. The application states that Applicant does not have any assets or liabilities currently outstanding, and that it

is not a party to any litigation or administrative proceedings. The application further states that Applicant is presently an inactive corporation under California law, and is not engaged in and does not propose to engage in any business activities other than those necessary for the winding up of its affairs. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interersted person may, not later than November 24, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11420/October 30, 1980

In the Matter of

FIRST INVESTORS LIFE INSURANCE COMPANY
FIRST INVESTORS LIFE VARIABLE ANNUITY FUND A
FIRST INVESTORS SPECIAL BOND FUND, INC.
c/o First Investors Life Insurance Company
120 Wall Street
New York, NY 10005

(812-4663)

ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING A CERTAIN OFFER OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 26(a) AND 27(c)(2)

First Investors Life Variable Annuity Fund A ("Variable Annuity Fund A"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), First Investors Special Bond Fund, Inc. ("Bond Fund"), a diversified open-end management investment company registered under the Act and First Investors Life Insurance Company (the "Company") (hereinafter collectively referred to as "Applicants"), filed an application on April 16, 1980 and an amendment thereto on May 20, 1980, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 26(a) and 27(c)(2) and for approval of a certain offer of exchange pursuant to Section 11 of the Act.

On July 23, 1980, a notice was issued (Investment Company Act Release No. 11272) of the filing of the Application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offer be, and hereby is,

approved, effective forthwith.

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 26(a) and Section 27(c)(2) be, and hereby is granted effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 736/October 27, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17250/October 27, 1980

LITIGATION

Litigation Release No. 9219/October 29, 1980

UNITED STATES v. *ROBERT F. DZIURGOT* (D.N.H.) (Criminal No. 79-38-01-D)

Willis H. Riccio, Administrator of the Boston Regional Office of the United States Securities and Exchange Commission, and the Honorable William H. Shaheen, United States Attorney for the District of New Hampshire, today announced that Robert F. Dziurgot an attorney, of New Ipswich, New Hampshire and New York City, New York was sentenced by Chief District Court Judge Shane Devine, to two five year terms in federal prison to run concurrently, as the result of his conviction by a federal jury at Concord, New Hampshire. The jury had returned its verdict on September 23, 1980. Dziurgot had been convicted on one count of transporting in interstate commerce/ and one count of having received and converted certain stolen securities, that is, ten (10) 1961 City of Sunnyvale, California Municipal Improvement Bonds valued at $50,000

The Court ordered the two five year concurrent sentences to be served consecutively to a two year sentence which Dziurgot received for income tax evasion in a separate trial. In pronouncing sentence Chief Judge Devine stated: "Because he (Dziurgot) was an attorney, his benavior was a blot."

Presentation of the case was handled by Ruthann Niosi and Robert J. Lynn, Assistant U.S. Attorneys on the staff of Mr. Shaheen. Investigation in the case was handled by Arthur F. Carr, Chief Enforcement Attorney of our Boston Regional Office.

(For further information see Litigation Releases Nos. LR-9187 and LR-8954.).

Litigation Release No. 9220/October 29, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CANTOR FITZGERALD AGENCY CORP., CLARENCE G. THARP, PAUL LANZA, RICHARD E. MEARS, GEORGE DEQUATTRO, JOHN P. TERRANOVA AND VINCENT BARATTA,* 80 Civil-6137 (S.D.N.Y., 1980)

The Securities and Exchange Commission ("Commission") today announced the filing of a complaint in the United States District Court for the Southern District of New York seeking injunctive relief against Cantor Fitzgerald Agency Corp. ("Agency"), New York, New York, an unregistered broker-dealer, Clarence G. Tharp ("Tharp"), Roswell, Georgia, Paul Lanza ("Lanza"), Brooklyn, New York, Richard E. Mears ("Mears"), Saddle River, New Jersey, George DeQuattro ("DeQuattro"), Brooklyn, New York, John P. Terranova ("Terranova"), Syosset, New York and Vincent Baratta ("Baratta"), Keyport, New Jersey. The individual defendants are present or former officers and/or directors of Agency. The complaint alleges that the defendants violated and aided and abetted violations of certain of the anti-fraud provisions of the Securities Act of 1933 and the

Securities Exchange Act of 1934 in connection with transactions in U.S. Government guaranteed securities, including Government National Mortgage Association ("GNMA") and Federal Home Loan Mortgage Corporation ("FHLMC") securities.

The Commission alleges in its complaint that Tharp, Lanza, Mears and Baratta caused Agency to enter into numerous adjusted trades with several thrift institutions, including savings and loan associations and at least one credit union. In such transactions involving immediate (within thirty days) and forward deliveries, it is alleged, Agency falsely confirmed purchases of GNMA and FHLMC securities from customers at above market prices without disclosing that such purchases were conditioned upon contemporaneous sales to such customers of like securities at above market prices. These transactions were allegedly used to defer recognition of losses which occurred when the market prices of the securities held by or committed to be purchased by customers declined, in the hope that such market prices would rise and eliminate or reduce customers' losses. The Commission alleges that in many instances Agency also required customers to pay fees to cover any loss to Agency on such transactions, and that such fees were falsely stated to be refundable.

The Commission also alleges that Tharp, Lanza, Mears and Baratta caused Agency to enter into numerous advance fee trades with thrift institutions. In such transactions, the Commission alleges Agency paid the customer one point (1% of the principal amount of the transaction) after trade date, which the Commission alleges the customer typically recognized as current income. It is alleged Agency falsely confirmed such transactions at prices one point above the market prices, and that customers typically recorded the purchase of securities in advance fee transactions at prices inflated by the one point fee.

The Commission further alleges that Agency, aided and abetted by the individual defendants, engaged in adjusted trades in standby transactions (i.e., trades for optional forward delivery). In such transactions, it is alleged, Agency purchased from thrift institutions existing standby commitments at above market prices and contemporaneously sold to such customers new standby commitments at above then current market prices. In connection with the sale by Agency of such new standby commitments, the complaint alleges that Agency purchased a matching standby from a third party from who it received a relatively large fee and passed onto the thrift institution an unreasonably small portion of that fee. The complaint also alleges that Agency falsely confirmed such transactions to its thrift institution customers and failed to disclose certain material elements of such transactions.

The Commission further alleges that Terranova, DeQuattro and Mears, as control persons of Agency, a broker-dealer, were responsible for the conduct of its business, and that they acted in reckless disregard of their duty to assure that the alleged violations of law by Agency did not occur.

It is also alleged that Agency and Tharp in connection with its transactions with one credit union provided the former portfolio manager of that credit union with entertainment in an apparent attempt to influence securities portfolio decisions.

Simultaneously with the filing of the complaint, Agency, Terranova, Tharp, Lanza, DeQuattro, and Baratta consented to the entry of a final judgment of permanent injunction, without admitting or denying the allegations contained in the complaint. Mears remains a defendant in the Commission action.

Agency also has consented to pay to the Clerk of the Court in cash all monies, if any, in excess of the amount paid for its issued and outstanding stock, as reflected in its books of account, after liquidation of its present commitments and payment of, or making provision for payment of, all indebtedness justly owed by Agency, including subordinated indebtedness. Agency has also agreed that such monies, if any, shall be distributed pursuant to a plan of distribution to be submitted to and approved by the Commission staff, and that Agency shall make full and complete accounting to the Commission staff when the staff deems it appropriate.

Litigation Release No. 9221/October 29, 1980

SECURITIES AND EXCHANGE COMMISSION v. *SCHEER FINANCIAL CORPORATION, ET AL.* Civ. No. 76-C-3567 (N.D. Ill.)

William D. Goldsberry, Administrator of the Chicago Regional Office, announced that on August 6, 1980, the Honorable John F. Grady, Judge of the United States District Court for the Northern District of Illinois, Chicago, denied the Commission's Motion for Reconsideration of part of the Court's order entered after trial on December 14, 1978, dismissing Kent B. Rogers as a defendant in the case of *Securities and Exchange Commission* v. *Scheer Financial Corporation, et al.*

The Commission's Complaint in the matter, filed on September 24, 1976, alleged that Rogers and others violated the anti-fraud and reporting provisions of the Federal securities laws in that they filed and caused to be filed by Seaboard Lift Insurance Company of America, a reporting company, a Form 8-K report for the month of February, 1975, which report it was alleged was false and misleading.

The Commission's action against the other defendants had previously been concluded by a consent decree of permanent injunction and a default.

For further information, see Litigation Release Nos. 7595 and 8465.

Litigation Release No. 9222/October 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. *DANIEL H. O'CONNELL, ARTHUR D. TANNER* (United States District Court for the Southern District of New York) (Civil Action No. 80-6183)

The Securities and Exchange Commission today announced the filing of a complaint in the United States District Court for the Southern District of New York seeking injunctive and other equitable relief against Daniel H. O'Connell ("O'Connell") and Arthur D. Tanner ("Tanner") of Tucson, Arizona. The complaint alleged that O'Connell and Tanner violated the anti-fraud provisions of the Securities Exchange Act of 1934 by purchasing the common stock of Catalina Savings and Loan Association ("Catalina") on the basis of material non-public information concerning a proposed tender offer for all of the outstanding shares of Catalina common stock by D.W. Ludwig ("Ludwig"), a shipping magnate. Without admitting or denying the allegations contained in the complaint, Tanner and O'Connell consented to the entry of Final Judgments of Permanent Injunction enjoining O'Connell and Tanner from further violations of the anti-fraud provisions of the federal securities laws and ordering them to disgorge profits of $17,800 and $32,375, respectively, which were derived from the purchase of Catalina common stock.

The complaint alleged that on the evening of August 14, 1980, O'Connell, a Tucson attorney, and Tanner, a Tucson businessman, learned from a director of Catalina, that Catalina's Board of Directors had voted unanimously to recommend that Catalina's shareholders accept a tender offer by Ludwig for all of the outstanding shares of Catalina common stock. They also learned that the company intended to announce this information the following day. That evening, both O'Connell and Tanner telephoned their brokers at home and placed orders to purchase 1600 and 3000 shares of Catalina common stock, respectively, at the opening of trading the following day. On the basis of such information and without disclosing such information, O'Connell's order was executed at approximately 11:00 a.m. Eastern Daylight Time ("E.D.T.") on August 15, 1980, 1000 shares at $10 per share and 600 shares at $11 per share. At approximately the same time, Tanner's order was executed, 1000 shares at $10, 700 shares at $10-1/4, 100 shares at $10-1/2, 200 shares at $10-3/4, 200 shares at $11, 200 shares at $11-3/4 and 600 shares at $12. At 11:30 a.m. E.D.T. Catalina announced that it had received an offer of $26.5 million from Ludwig for all of the outstanding shares of its common stock and further stated that Catalina's Board of Directors had voted to recommend the offer to Catalina's shareholders. This matter was referred to the Commission by the market surveillance staff of the National Association of Securities Dealers.

Litigation Release No. 9223/October 30, 1980

SEC v. UNION PETROCHEMICAL CORP. OF NEVADA, INC., ET AL. (N.D. Tex./Wichita Falls Division) (CA No. 7-8056)

T. Christopher Browne, Assistant Administrator of the Fort Worth Regional Office, announced that on October 9, 1980, the Honorable Eldon Mahon of the United States District Court for the Northern District of Texas, Wichita Falls Division, entered an order permanently enjoining Union Petrochemical Corp. of Nevada, Inc. (Union Petrochemical), Thomas R. Kelly (T. Kelly) and Jerry Pinkston (Pinkston), all of Wichita Falls, Texas, from further violations of the registration and antifraud provisions of the federal securities laws. Defendants Union Petrochemical, T. Kelly and Pinkston consented to the entry of the Order of Permanent Injunction without admitting or denying the allegations of the complaint.

The Commission's complaint specifically alleged that the defendants have engaged in the offer and sale of unregistered securities, namely, the common stock of Union Petrochemical, to investors throughout the United States. The complaint further alleged that in connection with the offer and sale of these securities, the defendants made material misrepresentations and omitted to state material facts, concerning, among other things: the registration of the securities of Union Petrochemical; the nature of Union Petrochemical's business and the profitability of its operations; the nature, extent and value of the assets of Union Petrochemical and its subsidiaries; the nature, extent, value, recoverability and marketability of oil from Union Petrochemical oil leases; the ownership of precious metal mines and the existence of mining operations by Union Petrochemical; the nature, extent, value, recoverability and processing of ore from Union Petrochemical mineral interests; and the existence of audited financial statements of Union Petrochemical and its subsidiary K&D.

Litigation Release No. 9224/October 30, 1980

SECURITIES AND EXCHANGE COMMISSION v. GERALD L. ROGERS, ET AL. (United States District Court for the Central District of California Civil Action No. 80-04841)

The Commission announced today that it filed in the United States District Court for the Central District of California a civil injunctive action seeking a temporary restraining order and preliminary and permanent injunctions against Gerald L. Rogers ("Rogers"), believed to be a resident of the Los Angeles, California area, and International Monetary Exchange, S.A. ("IME") of Panama and Woodland Hills, California, and a permanent injunction against Kallen, Grant & Kosnett ("KGK"), Richard B. Grant ("Grant"), James V. Kosnett ("Kosnett"), Paula Molino d/b/a Telecom ("Molino"), Harry G. Abercrombie ("Abercrombie"), Jay Morgan ("Morgan"), Arnold P. Lepone ("Lepone"), and John F. Sheridan ("Sheridan"), all of whom are believed to reside in the Los Angeles, California area, Norsul Oil & Mining, Ltd. ("Norsul") and Wayne E. Fowler ("Fowler") of Albany, Georgia, Albert Pitts ("Pitts") of Media, Pennsylvania, William A. Kawata ("Kawata") and Thomas B. Moore ("More"), both of whom are believed to reside in the Seattle, Washington area, James G. Mongello ("Mongello"), believed to reside in Scottsdale, Arizona, Charles J. Quattrocchi, Jr. ("Quattrocchi") of Indianapolis, Indiana, Robert G. Braem ("Braem") of Allentown, Pennsylvania, Compagnie Miniere Paul Isnard, S.A.R.L. ("CMPI (SARL)") of French Guiana, and Diversiones Internacionales, S.A. ("DISA") of Panama. The Complaint alleges violations of certain registration and anti-fraud provisions of the Securities Act of 1933 ("Securities Act") and of certain anti-fraud, filing and registration provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the rules thereunder in connection with the sale of a tax shelter program labeled "Gold for Tax Dollars." Additionally, the Commission seeks to have Rogers adjudged in civil contempt of the Court for violating the provisions of a permanent injunction entered against him in an earlier action. The permanent injunction was entered on his consent and prohibits Rogers from violating the registration and anti-fraud provisions of the federal securities laws.

The Complaint alleges that the defendants have violated and are violating the federal securities laws by engaging in the offer and sale of unregistered securities, labeled "Gold for Tax Dollars," involving interests in purported placer gold mining "claims" in Panama and French Guiana and related financial and mining services. The Complaint alleges that, in connection with the offer and sale of "Gold for Tax Dollars" securities, defendants falsely represented material facts to investors including, *inter alia*, that

investors would obtain 400 or 500% federal income tax "write-offs" and substantial "gold profits." The Complaint also alleges that defendants failed to disclose to investors, *inter alia*, that the promised development expenditures upon which the tax "write-offs" are based have not and need not be made; that the amount of monies invested for development was far in excess of necessary expenditures; that explorations and/or initial operations found and produced gold in materially lower quantities than represented; and that with respect to investments in Panama, DISA, the lessor of the "claims," had not acquired an interest in the properties at the time they were leased to investors in 1978.

The Complaint also alleges that defendants failed to disclose to investors that Rogers controlled the "Gold for Tax Dollars" offering and that Rogers was permanently enjoined from violating the federal securities laws.

The Complaint also alleges that defendants failed to disclose that IME was held in civil contempt of a federal district court for failure to obey the court's order to comply with a subpoena duces tecum issued by the Commission seeking information concerning investments in "Gold for Tax Dollars" securities. IME was fined $10,000 per day until it cures its contempt. A judgment of $610,000 has been entered against IME for fines accruing prior to October 8, 1980.

With respect to KGK, Grant and Kosnett, the Complaint alleges that they provided tax opinions which were disseminated with "Gold for Tax Dollars" offering materials to induce investors to buy the securities and to persuade the investors as to the bona-fides of the "Gold for Tax Dollars" offering. The Complaint alleges that in their tax opinion letters, KGK, Grant and Kosnett failed to fully and fairly describe material risks of adverse tax treatment by the Internal Revenue Service and the courts with respect to the deduction of purported development expenses. The Complaint also alleges that KGK, Grant and Kosnett rendered a false and misleading securities opinion letter that was disseminated to "Gold for Tax Dollars" sales agents which, *inter alia*, represented that interests in "Gold for Tax Dollars" are not subject to the federal securities laws.

The Complaint alleges that Norsul and Fowler act as the "Gold Extraction Contractor" for "Gold for Tax Dollars" and that they, *inter alia*, misrepresented in a letter disseminated in "Gold for Tax Dollars" offering materials that gold is found in commercial quantities in the entire French Guiana concession and misrepresented to investors that the development and extraction costs charged by "Gold for Tax Dollars" were reasonable. The Complaint also alleges that Norsul and Fowler filed false and misleading reports with the Commission concerning Norsul's activities with respect to "Gold for Tax Dollars." Additionally, the Complaint alleges that periodic reports required by the Exchange Act have repeatedly been filed late.

With respect to Molino, Abercrombie, Morgan, Lepone, Sheridan, Pitts, Kawata, Moore, Mongello, Quattrocchi, and Braern, the Complaint alleges that they participated in or assisted the offer and sale of "Gold for Tax Dollars" securities.

ACCOUNTING SERIES

ACCOUNTING SERIES
Release No. 283/October 30, 1980

Admin. Proc. File No. 3-5971

In the Matter of

NORLIN G. BOYUM
7851 Metro Parkway
Minneapolis, Minnesota 55420

ORDER INSTITUTING AND SETTLING RULE 2(e) PROCEEDING

This Opinion and Order under Rule 2(e) of the Commission's Rules of Practice [17 CFR 201.2(e)] arises out of the conduct of Norlin G. Boyum ("Boyum"), a partner in the firm of Boyum & Barenscheer. Boyum was the engagement partner on the audit of the November 30, 1976 financial statements of Shaughnessy & Co., Inc.

For the fiscal year ended November 30, 1976, Shaughnessy & Co., Inc. ("Registrant"), a registered broker-dealer, issued false and misleading financial

statements which were included in its annual report on Form X-17A-5. Boyum, the independent accountant for the registrant, issued an audit report expressing an unqualified opinion on those financial statements and representing that an audit had been performed in accordance with generally accepted auditing standards.

Boyum was not engaged to audit the November 30, 1976 financial statements until after January 26, 1977, the date the predecessor auditor's engagement was terminated. The termination occurred because the predecessor auditor noted certain problems (including failure to maintain minimum net capital, material misstatements of financial position, and material breakdown in internal controls) and also had problems with fee arrangements. Most of the audit work had been completed before the termination. Upon his engagement, Boyum purchased the audit workpapers of the predecessor auditor.

The predecessor auditor's workpapers disclosed a preliminary computation of net capital of $20,873 at year end, $4,127 below the required capital of $25,000. The Commission began an investigation of the Registrant as a result of a letter from the predecessor auditor, pointing out a possible net capital deficiency.[1] In connection with the work done by Boyum, adjustments were made to the preliminary computation which increased the year end net capital to $25,608 (as reported in Form X-17A-5).

From June 1976 through July 1977 the Registrant had engaged in a pattern of window-dressing to conceal net capital violations. The window-dressing was accomplished by a check kiting scheme carried out through a company affiliated with the Registrant by virtue of common ownership and was not noted in the workpapers of the predecessor auditor or observed by Boyum. Boyum was aware that the cash transfers were made to help the cash positioins of the companies; however, he did not investigate these transfers, thus, his audit work did not reveal the window-dressing pattern or related net capital violations. Auditing standards clearly require an auditor to satisfy himself as to the purpose, nature, extent, and effect on the financial statements of related party transactions.

Although the amounts were not set forth separately, the November 1975 financial statements included in the Registrant's previous Form X-17A-5 included an expense and accrued liability for that year's audit fees. However, the 1976 financial statements did not include an accrual of audit fees for 1976 even though the amount involved ($3,000) was clearly significant to the net capital position of the Registrant. During the course of his examination, Boyum reversed the accrual of audit fees for 1976 which had been made earlier in the period by the predecessor auditor. Therefore, the Commission believes that the audit report issued by Boyum was deficient in that it failed to indicate that the accounting principles were not applied on a basis consistent with the preceding period.

In connection with the audit of the November 30, 1976 financial statements, Boyum also issued a supplemental report on internal controls. In the view of the Commission, such report was deficient in that it failed to disclose continuous violations of Sectioins 15(c) and 17(a) of the Securities Exchange Act of 1934 and Rules 15c3-1 (net capital rule) and 17a-13 (quarterly box count rule) promulgated thereunder.

Conclusion

The 1976 audit of the Registrant's financial statements, was not conducted in accordance with generally accepted auditing standards and the Commission's requirements. In the Commission's view, Boyum thereby engaged in improper professional conduct.

In his Offer of Settlement, Boyum, without admitting or denying the factual assertions set forth herein, has consented to the issuance of this Opinion and Order and has made the following undertakings:

(1) Respondent has undertaken to use his best efforts to have the accounting firm of which he is a partner and which is a member of the SEC Practice Section of the American Institute of Certified Public Accountants (AICPA) undergo its scheduled peer review in 1981 in accordance with the rules governing members of the SEC Practice Section of the AICPA and to have a copy of the report of that peer review forwarded to the Commission's Chief Accountant's Office and the Commission's Chicago Regional Office.

[1]An injunctive action was instituted against the Registrant nine days after the date of Boyum's audit report on Registrant's financial statements.

(2) Respondent has undertaken to use his best efforts to take those steps necessary to assure that all workpapers prepared in the course of the peer review be preserved intact for a period of three months after the issuance of the report of the reviewers and be made available to the Commission and its staff at their request.

(3) Respondent has undertaken that prior to the completion of the aforementioned peer review, he will use his best efforts to assure that a pre-issuance review will be performed by a partner of an unrelated accounting firm (one which is not unacceptable to the staff of the Commission), with regard to any auditing engagement performed by Respondent, with respect to any financial statements which are to be included with filings made with the Commission by an SEC reporting client.

(4) Respondent has further undertaken to comply with the established general quality control of the firm in which he is a partner which provides, among other things, that his work on an audit engagement be reviewed by an independent partner and/or manager of the firm in which he is a partner, with special skills and interests in an area relevant to the particular engagement, particularly with respect to work performed on audit engagements for any SEC reporting client.

Accordingly, it is hereby ORDERED,

(1) This proceeding under Rule 2(e) of the Commission's Rules of Practice is instituted and Respondent's Offer of Settlement dated August 29, 1980 is hereby accepted.

(2) Respondent will comply with the undertakings set forth in his Offer of Settlement and this Order.

By the Commission.

George A. Fitzsimmons
Secretary

CORPORATE REORGANIZATION

CORPORATE REORGANIZATION
Release No. 324/ October 30, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re

CONTINENTAL INVESTMENT CORPORATION, Debtor.

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

No. 76-1158-MA

ADVISORY REPORT OF THE SECURITIES AND EXCHANGE COMMISSION ON THE PROPOSED PLAN OF REORGANIZATION

I. *INTRODUCTION*

This advisory report is submitted by the Securities and Exchange Commission ("Commission") pursuant to Section 173 of Chapter X of the Bankruptcy Act (11 U.S.C. §573)[1] and Bankruptcy Rule 10-303(b) with respect to the trustee's plan of reorganization ("plan") of Continental Investment Corporation ("CIC").[2]

We conclude that the plan may be found to be fair and equitable and feasible. We suggest (p. 66) certain technical amendments and note (pp. 57-58) an uncertainty in the bank settlement agreement that needs resolution.

[1]Since this case was filed prior to the effective date of the Bankruptcy Code of 1978, it is governed in all respects by the Bankruptcy Act as in effect at the time of the filing of the petition herein. Pub. L. 95-598, Title IV, §403(a).

[2]Our references to "CIC" or "debtor" include Continental Investment Corporation and all of its subsidiaries, except where a distinction among entities is expressly indicated. None of its subsidiaries are debtors in this case.

On April 30, 1976, CIC filed a petition under Chapter XI of the Bankruptcy Act in the United States District Court for the District of Massachusetts. In March 1978, an order of the Bankruptcy Court denying the Commission's motion to transfer the case to Chapter X was reversed by the District Court and on June 9, 1978, an order was entered directing the CIC case to proceed in Chapter X. In August 1978, Paul Lazzaro was appointed Reorganization Trustee ("trustee").

The trustee filed a plan of reorganization on February 25, 1980, which was amended June 24, 1980, to embody a compromise of certain disputes with the sixteen bank creditors (the "banks").[3] The indenture trustee for the debtor's 9% convertible subordinated debentures has proposed further modifications. Other plans of reorganization were filed by a minority stockholders committee,[4] the majority stockholders[5] and a committee for the debtor's 9% subordinated debentures.[6]

Hearings on the trustee's plan commenced May 27, 1980, and continued on twenty-one separate days through June 27, 1980, at the conclusion of which the trustee's plan was found worthy of consideration and referred to the Commission for examination and report. The plan filed by the debentureholders' committee was found not to be worthy of consideration. Thereafter, that Committee, OC Associates and the majority stockholders filed modifications to the trustee's plan. On September 29, 1980 the court referred, pursuant to Section 172, proposed modifications as to treatment of debentureholders and found the plans filed by the majority stockholders not to be worthy of consideration. The Court reserved decision on modifications related to pending objections to the interests of the majority stockholders or OC Associates, or to the capitalization of the reorganized company.

II. *HISTORY OF THE DEBTOR*

CIC was incorporated in 1968 under Massachusetts law to act as a diversified financial service holding company. Its promoters and incorporators were Monte J. and Neil W. Wallace, Julius Jensen III and Durand A. Holladay.[7]

Development of Subsidiaries

During the period 1968 to 1972, CIC formed and acquired a number of subsidiaries. Its first business, Investors Mortgage Insurance Company ("IMI"), a company designed to provide insurance for lenders against loss on mortgage loans, was incorporated in Illinois in July 1968. IMI became, in 1972, a 100% subsidiary of an intermediate holding company, Investors Mortgage Group, Inc. ("Mortgage").

In May 1969, CIC entered the mutual fund field by acquiring, in exchange for approximately 1.2 million shares of its common stock having a market value of approximately $18 million, all of the stock of John P. Chase, Inc. ("Chase"), a Boston based investment counseling company that advised several open-end and closed-end investment companies and

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[3]Upon approval of the compromise by the court on June 27, 1980, the banks withdrew a plan of reorganization theretofore filed by them. An appeal by the majority stockholders (No. 80-1490, 1st Circuit) is pending.

[4]The minority stockholders committee represents shareholders owning approximately 16% of the debtor's outstanding shares of stock including about 9% of such outstanding shares held by present and former management.

[5]The "majority stockholders" consist of Monte J. Wallace and Neil W. Wallace, also sometimes referred to herein as "Wallaces."

[6]The Debentureholders' Protective Committee was formed in 1974 by three institutional creditors, to negotiate with the debtor and the banks as to reorganization. It functioned as the official creditors' committee in the following Chapter XI case. After transfer to Chapter X, the committee was again reconstituted as the Debentureholders' Protective Committee ("debentureholders committee") and currently represents about 399 debentureholders holding about $6,687,000 in principal amount of CIC debentures.

[7]The Wallaces are brothers and were the principal officers of CIC until their resignations in November 1976 from the offices of Chairman and Vice Chairman of the Board of Directors. They and their families presently own, directly or indirectly, 65.6% of the outstanding stock of CIC. The promoters originally received Class A stock, which was subordinated to the common stock sold in a public offering in 1968. The Class A stock was to be converted to common stock when a specified level of earnings was attained, and was converted in 1970

managed private accounts for individuals, institutions and foundations.

In February 1969, CIC offered to acquire Waddell & Reed, Inc. ("W&R"), a large financial services organization, for $82.5 million in cash. By July 1969, approximately 99% of the outstanding stock of W&R had been tendered in response to a tender offer by CIC at $80 per share. Funds for the purchase were obtained by CIC through an eighteen-month unsecured bank loan from a 21-member banking group headed by the First National Bank of Boston ("FNBB"). W&R was a public company which advised the "United Funds" mutual fund group, which in turn had approximately $2.5 billion of managed assets and over 500,000 shareholders. W&R also had a commission sales force of 2,700 full and part-time salesmen located in approximately 300 offices throughout the United States. In addition W&R controlled three major operating subsidiaries: (1) United Investors Life Insurance Co. ("UIL Insurance"), which was formed in 1969 and was 85% owned by W&R; (2) United Funds Management Ltd. ("UF Canada"), a Canadian mutual fund management company, 74% owned by W&R; and (3) Kansas City Securities Corp. ("KC Securities"), a 100% owned securities brokerage firm. A Canadian life insurance company, United Investors Life Assurance Company ("UIL Canada") was owned by and sold with UF Canada.

In July 1969, before completion of the acquisition of W&R, Diversified Advisers, Inc., was organized as a wholly owned subsidiary of CIC and began operating in September 1969 as sponsor and investment adviser to Diversified Mortgage Investors ("DMI"), a real estate investment trust which had been formed as a separate company by CIC's original promoters. DMI derived income primarily from interest and fees on mortgage loans and equity participation acquired in connection with mortgage lending activities.

In February 1970, CIC formed a wholly owned subsidiary known as American Lakes and Land Co. ("AL Land"), a Massachusetts corporation. AL Land then acquired all of the assets and liabilities of a Tennessee corporation of the same name, which had been engaged in the development and sale of recreational homesites. AL Land was unprofitable. The subdivision was transferred to a real estate developer as of January 1, 1974, under complicated terms involving assumption of part of the liabilities by the purchaser, and retention, by CIC through a subsidiary, of pre-sale lot purchaser contracts, subject to other liabilities. Disputes over this sale were settled with court approval on December 27, 1979. The principal terms included conveyance of the balance of these contracts to the purchaser's successor in exchange for payment of $400,00 in cash and release of claims against CIC.

In June 1972, CIC organized ConVest Energy Corporation ("ConVest") as a wholly owned subsidiary for the purpose of conducting oil and gas exploratory drilling programs. It was created to expand existing financial service products at W&R into areas providing tax shelter benefits.

Continental Real Estate Equities, Inc. ("Real Estate") was a wholly owned real estate investment subsidiary of CIC incorporated at the same time as ConVest, in June 1972. Similar to Convest, it was to act as a general partner of public limited partnerships. The objectives of Real Estate were to provide investors with cash flow, capital appreciation and tax advantages, and to furnish W&R with Real Estate partnership units as additional sales products.

ConVest Securities Distributors, Inc., ("Distributors") was formed by CIC in 1972 to coordinate marketing efforts of W&R and Chase with respect to the ConVest and Real Estate programs and to develop a new channel of distribution for CIC products. In both cases, Distributors acted as dealer-manager for the underwriting of the partnership offerings.

In 1972, CIC also organized Research Management Associates, Inc., ("RMA") as a wholly owned subsidiary of W&R. RMA is a registered investment adviser engaged in the discretionary management of financial assets for corporate and non-profit institutions. It specializes in the management of pension, profit sharing and endowment funds.

The years 1968 through 1972 were a period of virtually uninterrupted growth for CIC and its subsidiaries on a consolidated basis, as evidenced in Table I below, showing the components of after-tax net income by subsidiary:

Table I—Continental Investment Corporation
Components of Net Income By Subsidiary
1968-1974

(in thousands)	1968	1969	1970	1971	1972	1973	1974
Chase*	$429	$133	$283	$453	$892	$180	$(98)
UF Canada*		281	427	710	423	130	(452)
UIL Canada*		9	200	420	242	252	256
Diversified Advisers		181	1,087	1,185	1,620	2,304	178
AL Land*			(279)	(735)	(445)	(405)	
Mortgage*	112	157	296	1,041	2,726	3,965	1,395
KC Securities		1,259	2,173	3,376	2,610	716	(27)
Real Estate*						239	206
Discontinued operations	$541	$2,020	$4,187	$6,450	$8,068	$7,381	$1,458
Goodwill amortization						(107)	(200)
W&R		1,271	1,980	1,741	2,269	879	(900)
UIL Insurance		605	2,264	2,702	3,199	3,071	3,468
ConVest						(109)	503
Distributors						(239)	(550)
Other subsidiaries**			(28)	(7)	(21)	(34)	(47)
CIC corporate		(228)	(201)	(560)	(861)	(1,653)	(1,681)
Total operations	$541	$3,668	$8,202	$10,326	$12,654	$9,189	$2,051
Interest		(1,789)	(3,640)	(3,283)	(3,204)	(4,167)	(5,669)
Loss on Exchange Debentures						(9,318)	
Gain (Loss) on sale of subsidiaries							(17,826)
Minority interest		(159)	(552)	(700)	(667)	(350)	(8)
Net income (loss)	$541	$1,720	$4,010	$6,343	$8,783	$(4,646)	$(21,452)

*Sold.
**Some discontinued.

However, CIC had relied on short-term borrowing to finance its expansion. In October 1970, CIC explored the sale of long-term debt to refinance the $82.5 million bank loan for the acquisition of W&R. It was able to offer and sell only $30 million of 9% convertible[8] subordinated debentures, due November 1, 1990 ("convertible debentures").

Simultaneously with the issuance of the debentures, the bank borrowing agreement was amended to extend the January 1971 maturity date for the remaining $52.5 million of the original bank loan to March 1, 1973 with an attendant increase in the interest rate from 3/4 of 1% over prime to 1% over prime. The terms were again revised in June 1971. The new agreement provided for an annual rate of interest at the greater of 7% or 1% above prime, and a repayment scheduled through May 31, 1976.

By the beginning of 1973, the bank loan had been reduced to $45 million. But CIC borrowed an additional $9 million to purchase the 15% interest in UIL Insurance that W&R had not owned. In the summer of 1973, CIC negotiated a $54 million six-year term Refunding Loan Agreement ("RLA") with a group of lending banks which was executed in March 1974. The RLA replaced the $39 million[9] and $9 million term loans. The additional $6 million in borrowed funds were used for working capital, including support to ConVest, Real Estate and Distributors.

Debenture Exchange

Contrary to CIC's expectation that its stock price

[8]The conversion feature of the debentures was unusual in that, rather than the usual premium of 10-20% above current market price of common stock, the bonds were to be convertible on or after November 5, 1973, at a conversion price to be set 18% below the average market price of the shares for a period of five consecutive trading days immediately prior to November 5, 1973. CIC explained the three year waiting period as offering protection against common stock dilution by the debentureholders for a period during which growth was expected.

[9]After repayment of $6 million during 1973.

would be higher on the November 1973 conversion date than on the October 1970 debenture issue date, the price of CIC's stock fell in 1973 to below 10 from its high of 24-3/8 in 1972, thereby resulting in the 18% conversion discount of the debentures attaching to a lower, rather than higher, market price. Consequently, concern about the effects of conversion upon the existing common stockholders, including CIC's officers and directors[10] led to an exchange offer.

CIC, in April 1973, offered to exchange $1,300 of nonconvertible, 9% Subordinated Debentures, due 1985 ("new debentures") for each $1,000 outstanding 9% convertible subordinated debenture, providing a 30% premium for surrender of the conversion privilege. Holders exchanged $26.3 million, or 88% of the convertible debentures, for $34.2 million of the new debentures.

CIC made a second offer in October 1973 to the still outstanding $3.7 million of convertible debentures and raised the principal premium to 40%, offering $1,400 in principal amount of the new debentures for each $1,000 principal amount of the convertible debentures. As a result of the second exchange offer, the amount of the new debentures was increased to $37 million and the principal amount of the convertible debentures was reduced to $1.5 million. The debenture exchange resulted in an extraordinary charge to CIC's 1973 operations of $9.3 million, thereby generating a $0.33 per share loss. In addition, indebtedness was increased by $8.7 million and annual interest expense was increased by approximately $300,000.

CIC's business plans, at the start of 1974, reflected prevailing projections that the economy would begin the year slowly but close with increased momentum. In early 1974, it implemented expansion plans for the parent and some of its subsidiaries. As the economy declined, many of CIC's subsidiaries, most notably W&R, Diversified Advisors and Mortgage experienced severe financial difficulties and CIC's cash flow declined. It was forced to borrow from its banks to meet its May 1, 1974 interest payment on the new debentures.

In June 1974, CIC and the banks agreed to amend the RLA to defer both principal and interest payments on the long and short-term notes until December 31, 1974 and October 28, 1974, respectively. Deferral was contingent on the banks' satisfaction with progress in improving CIC's financial conditions, failing which the notes were subject to acceleration and call. As collateral for the notes, CIC was required to pledge all the stock of Mortgage which it did on July 9, 1974. On September 3, 1974, the stock of ConVest and notes receivable from Mortgage were pledged as additional collateral.

In October and November 1974, CIC advised its debentureholders that a debentureholders committee composed of holders of substantial dollar amounts of debentures, had been formed for the purpose of representing debentureholders' interests in negotiations with CIC and the banks.[11] The debentureholders were also informed that the banks and the Committee had agreed to defer principal and interest payments to June 30, 1975, that the banks had agreed to provide funds for operations during that time and that the debentureholders had been assigned a second lien on the assets recently pledged to the banks.

The cash shortage arising from CIC's cash flow difficulties, the escalation of interest rates, the $1 million settlement of an S.E.C. action involving KC Securities,[12] and the heavy debt amortization requirements resulted in CIC's sale of three subsidiaries, UF Canada, Real Estate and Chase, by

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[10]CIC's 1972 annual report stated that, based on the closing price of common stock on March 29, 1973, if the convertible debentures were to be converted into common stock on or before November 5, 1973, the Wallaces' percentage ownership of shares outstanding would have been reduced to 47.5%. By April 17, 1973, conversion of the debentures would have diminished the Wallaces' ownership to 43% of the shares outstanding, while that of all officers and directors would have fallen from about 73% to about 51% of the shares.

[11]See footnote 6, p. 2, *spura*.

[12]CIC, and its securities subsidiaries, were the subject of an S.E.C. investigation initiated in October 1972 concerning particular areas of mutual fund management. The S.E.C. proceedings were terminated in 1974 by a consent decree and settlement whereby W&R and KC Securities agreed to refund approximately $1 million to the funds, to withdraw the broker-dealer registration of KC Securities permanently and to insure that the funds' independent directors were kept informed of the funds' brokerage and banking relationships.

the end of 1975, for a total of $4.4 million. A portion of the proceeds was applied to repayment of an additional $3 million which CIC had borrowed from the banks between May 1 and October 31, 1974. The balance was used for operations. In addition, CIC discontinued operations of Diversified Advisers, and KC Securities. These operations represented in the aggregate, a substantial portion of CIC's business in 1972 and 1973.

Voluntary Restructuring

In January 1975, the banks demanded that CIC prepare a plan of reorganization by mid-February.[13] In May 1975, CIC formed a negotiating committee to engage in discussions with the banks and the debentureholders committee, during the course of which the banks insisted on the sale of Mortgage to reduce the bank debt.

By July 1975, an agreement in principle for the restructuring of the bank debt was reached among the negotiating parties, the elements of which were later incorporated in an Omnibus Refinancing Agreement ("ORA"). The ORA, dated as of January 12, 1976, and entered into by CIC and the banks, embodied that part of a proposed voluntary, extra-judicial restructuring of CIC that related to the banks. Among other things, it set forth the conditions under which the banks, through their agent FNBB, would acquire by foreclosure the stock of Mortgage for $34 million. The proceeds from the sale were to be applied directly to CIC's bank debt and, upon resale of Mortgage by the banks, CIC was to receive that portion of the proceeds in excess of the sum of $32 million, plus a carrying charge. The ORA also provided that approximately $4 million in interest accrued from June 30, to December 31, 1975 was to be forgiven and that the banks were to lend CIC up to $1 million to meet restructuring expenses, which was to be forgiven upon successful completion of the restructuring. The banks also agreed to accept, for the remainder of their indebtedness, $20 million of 9-year term notes and $7 million, par value, of senior preferred stock with warrants to purchase up to 600,000 shares of common stock at $2 per share.

Under the terms of the Restructuring Agreement itself, CIC debentureholders were to receive $3.5 million of noninterest bearing debentures, due 1984; $22.5 million, par value, of junior preferred stock, with warrants to purchase up to 1,780,000 shares of common stock at $2 per share; and $16 million of convertible preferred stock, convertible into common stock at $4 per share.

Certain approvals and ratifications of shareholders, which were deemed necessary to effect the proposed restructuring and reorganization of CIC, were obtained by CIC at a special meeting of shareholders held on April 27, 1976. The solicitation for the April 27, 1976 meeting also sought waivers of interests and rights of CIC's debentureholders.

CIC obtained debentureholder consent to a waiver of (1) the debentureholders' subordinated security interests in the common stock of ConVest and the common and preferred stock and two notes of Mortgage which had been pledged to the banks and (2) any possible default under the indentures arising out of the pledge and sales of stock and assets of CIC's subsidiaries.

Filing of the Chapter XI

Out-of-court reorganization was conditioned on 95% acceptance by the debentureholders, which, of course, was not obtained. CIC did, however, obtain sufficient acceptances to meet the requirement for confirmation of a Chapter XI plan of arrangement. CIC filed a Chapter XI petition on April 30, 1976, and simultaneously filed a proposed plan of arrangement embodying the terms of the Restructuring Agreement. The proposed plan provided for full payment of trade and bank debt, the latter as it would be modified under the ORA. The only class to be modified by the plan consisted of the debentureholders.

On April 27, 1976, three days prior to the filing of the Chapter XI petition, Mortgage was sold at auction to CIC's banking group for $34 million.[14] The sale was structured as a strict foreclosure sale and, unlike the issuance of the senior term notes and senior preferred stock in exchange for $27 million in bank indebtedness, discussed above, was not conditioned on consummation of the Chapter XI

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[13]Nevertheless one of the participating lending banks did call the notes in January, thereby accelerating CIC's obligations under the RLA and certain other pledge agreements. The default was one of the subjects of the negotiations.

[14]During 1975, Mortgage provided $13.9 million (29%) of $47.6 million of operating revenues and $2.34 million (43.4%) of $5.39 million of subsidiary income from operations.

plan of arrangement. In January 1977, Mortgage was resold by the banks to Tiger International, Inc. for approximately $36.7 million. Under the terms of the ORA. The banks calculated CIC's share as only $116,012 (p. 57, *infra*).

On June 18, 1976, the Commission moved to transfer the case to Chapter X. The transfer was effected August 7, 1978.[15] None of CIC's subsidiaries are debtors and they have continued to carry on their business, as solvent corporations, throughout this proceeding. As noted, the Wallaces had resigned in November 1976. The trustee continued the incumbent directors and officers of the subsidiaries, and officers of CIC. A management review by Coopers & Lybrand, dated June 18, 1979, led to a realignment of CIC's management structure based on considerations of efficiency.

The subsidiaries have continued to develop new financial products, including the creation of a money market fund, in September 1979, by W&R. ConVest was supplied with $3.5 million, $2.2 million by a purchase by CIC of 50,000 shares of CIC's subsidiary, UIL Insurance, which ConVest had earlier been required to finance, and the balance by a loan, to pay ConVest obligations which were an impediment to registering its 1979 oil and gas program. ConVest has since sponsored its 1980 program.

First Boston Corporation, an investment banker, was employed to value CIC and its subsidiaries. Its work will be discussed in connection with the plan. Several controversies were settled. The principal settlement, embodied in the amended plan, is of the bank debt. Others already approved are identified at relevant points herein.

The following Tables II and III summarize (i) CIC's consolidated income for the years 1975-1979, as retroactively restated in 1979 to reflect CIC's adoption of the full cost method of accounting for oil and gas operations, and (ii) the consolidated balance sheet of CIC at December 31, 1979, and those of the significant constituent companies.

Except as to the reorganization advance, the banks claim a security interest in all of the stock of ConVest, 10% of stock of UIL Insurance, $1.5 million of cash proceeds of a pledged note of Mortgage, and certain minor assets.

Debenture interest at 9% has been accrued but not paid since May 1974. Interest on the bank debt has been accrued at the contractual rate, 1% above the prime rate, not less than 7%. The accrual does not include the default adjustments, an additional 1% and monthly compounding, but does include interest on the $6.1 million of interest capitalized in 1975 as part of the principal.

The accrual on the bank loans for the first half of 1980 was about $2.2 million, an average rate of 17%. CIC also accrued, prior to filing, $1,002,000 of additional bank charges for deficiencies in compensating balances, which would be cancelled under the bank settlement agreement.

CIC has outstanding common shares held on December 31, 1979, by:

	No. of Shares	Percent
Wallaces, directly or indirectly*	8,503,790	65.7
Other officers and directors	1,120,893	8.7
About 4,100 other record-holders	3,319,850	25.6
Total	12,944,533	100.0

*Dover Investments Inc., a subsidiary of Glen Corp., holds 7,834,119 shares (60.5%). The Wallaces each own about 328,000 (2.5%) of the CIC shares directly and all of the stock of Glen Corp. The remaining 13,124 shares are held by family trusts, as to part of which the Wallaces disclaim ownership or control.

Trading in CIC's securities, both debentures and common stock, was suspended on the New York Stock Exchange on January 29, 1975. In April 1976, the securities were delisted. Over-the-counter trading has continued.

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[15]An order refusing transfer was reversed on March 31, 1978, on appeal to the district court. The court of appeals denied a stay on June 9, 1978, and affirmed on October 27, 1978. The Supreme Court denied certiorari April 2, 1979. Part of the delay was occasioned by negotiations concerning more adequate provisions for the debentureholders, which were terminated by the Wallaces' refusal to accept any significant change in their treatment under the Restructuring Agreement.

Table II—Continental Investment Corporation
Summary of Consolidated Income
Fiscal Year Ended December 31,
(in millions)

	1975*	1976*	1977*	1978*	1979
Life insurance	$15	$20	$25	$30	$34
Investment management	18	17	17	17	18
Oil and gas	2	3	3	3	4
Revenues	$35	$40	$45	$50	$56
Operating Income:					
Insurance	$5	$6	$8	$9	$11
Investment management	—	2	2	3	2
Oil and gas	1	2	1	(2)	2
Other	(2)	(1)	(1)	(1)	(1)
Operating income	$4	$9	$10	$9	$13
Discontinued operations[1]	—	1	1	—	1
Interest expense[2]	(9)	(7)	(6)	(6)	(7)
Reorganization costs	—	—	—	(1)	(1)
Provision for income tax	2	(2)	(2)	(2)	(3)
	$(3)				
Write-down for goodwill	(44)[3]				
Net income (loss)	$(47)	$1	$3	$—	$3

*Restated in 1979 to reflect the adoption of the full cost method of accounting for oil and gas properties. The net effect of the change was an aggregate reduction of $457,000 in net amount over the period.

[1]1975 income from operations of Mortgage and Real Estate, $2.3 million, loss on disposition $2.8 million, and gain on sale of another subsidiary, $0.5 million. The recorded 1975 loss on the sale of Mortgage included, $1.5 million advanced by CIC to supplement Mortgage's capital, recovered in 1977. This recovery, and a $630,000 price adjustment in 1976, are the income from discontinued operations in those years. In 1979, a gain of $628,000 was recorded on the AL Land settlement.

[2]Includes accruals on funded debt not being paid.

[3]Includes write-off of $42.4 million representing the excess cost of W&R.

Table III—Continental Investment Corporation
Consolidated Balance Sheet, December 31, 1979
(000 omitted)

Assets	*UIL Insurance*[1]	*W&R*[1]	*ConVest*	*Other Subsidiaries*[2]	*CIC Corporate*	*Consolidated*
Cash and marketable securities[3]	$195	$15,364	$759	$28	$1,918	$18,264
Marketable securities—UIL Ins. Co.[4]	61,251	—	—	—	—	61,251
Accounts receivable	1,505	3,687	4,582	—	101	9,875
Oil and gas properties[5]	—	—	5,994	—	—	5,994
Furniture and equipment—net	120	965	505	—	89	1,679
Other assets	1,792	667	388	—	1,809	4,656
Deferred policy acquisition costs	33,854	—	—	—	—	33,854
Other deferred charges	—	321	30	—	519	870
Total	$98,717	$21,004	$12,258	$28	$4,436	$136,443
Intercompany debt	—	—	—	4,876	2,033	—**
UIL Insurance Co., at equity	—	39,012	—	—	4,334	—**
Other subsidiaries, at equity	—	—	—	—	70,712	—**
Excess cost of subsidiaries	—	10,792	—	—	662	11,454
Total assets	$98,717	$70,808	$12,258	$4,904	$82,177	$147,897
Liabilities						
Accounts and accruals[6]	$2,691	$5,042	$4,489	$932	$577	$12,946
Additional bank fees*	—	—	—	—	1,002	1,002
Open securities transactions	83	2,299	—	—	—	2,382
Notes payable	—	—	1,355	—	—	1,355
Intercompany debt	—	3	2,030	5	4,873	—**
Reserves—life and annuity	41,946	—	—	—	—	41,946
Deferred taxes	10,650	941	(801)	966	(1,190)	11,351
Total	$55,370	$8,285	$7,073	$1,903	$5,262	$70,982
Debt to be adjusted*	—	—	—	—	99,767	99,767
Common and paid-in capital	2,000	37,973	1,864	4,077**	24,963	24,963
Retained earnings (deficit)[7]	41,347	24,550	3,321	(1,076)**	(47,815)	(47,815
Total liabilities	$98,717	$70,808	$12,258	$4,904	$82,177	$147,897

*See text.
**Eliminated in consolidation.

[1]Excluding UIL Insurance but including two small wholly owned subsidiaries.

[2]ConVest Securities Distributors is active as a sales agent, Diversified Advisers, Inc. and AL Land have been substantially liquidated.

[3]Includes $12,541,000 of marketable securities, principally certificates of deposit, commercial paper and federal obligations, plus $944,000 of shares of mutual funds sponsored by W&R.

[4]The investments of UIL Insurance have been segregated.

	(000 omitted)			
			Balance Sheet Valuation	
	Cost	Market	Amount	Basis
Bonds	$51,392	$41,710	$51,386	Amortized cost
Redeemable preferred	1,725	1,498	1,725	Amortized cost
Other Preferred	4,573	3,669	3,669	Market
Common	4,146	4,471	4,471	Market
	$61,836	$51,348	$61,251	

[5]Based on full cost method of accounting.

[6]Includes income taxes currently payable, UIL Insurance, $380,000, W&R and its other subsidiaries, consolidated, $405,000.

[7]Net of securities valuation allowance, representing unrealized losses on marketable securities, $577,000 for UIL Insurance, $55,000 for W&R and $612,000 for CIC Corporate. All but the parents reserve are eliminated in consolidated.

The funded debt of CIC consists of:

	(000 omitted)			
	Principal		Interest as of 12-31-79	Total
Refunding loan agreement	$19,228			
Interest to 03-31-75	6,123			
Reorganization advance	500	$25,851	$15,521	$41,372
9% Subordinated Debentures:				
Convertible	$1,511			
Non-convertible	37,159	38,670	19,725	58,395
Total		$64,521	$35,246	$99,767

The operating companies are discussed in the valuation section hereof. Disputed liabilities, not reflected on the balance sheet, include:

1. Diversified Mortgage Investors, Inc. ("DMI") a real estate investment trust formerly sponsored by CIC has filed a $1.2 million claim, based on alleged overcharges by Diversified Advisers, Inc.

2. Robert W. Stark, Jr., filed suit against CIC in 1975, based upon an alleged breach of employment contract. He filed a proof of claim for $2.7 million which includes claimed treble damages on the assertion that CIC's conduct violated a Massachusetts statute prohibiting unfair methods of competition.

3. Hornblower & Weeks-Hemphill Noyes, Inc. ("Hornblower"), the underwriter of CIC's 1973 debenture exchange has filed a contingent indemnification claim. Hornblower is one of a number of defendants remaining in a $3 million suit commenced by an allegedly defrauded purchaser of such debentures predicated upon violations of securities laws, common law and negligence. CIC, among others, was dismissed as a defendant upon approval by the court, on September 15, 1980, of a settlement calling for payment of $95,000 by CIC.

In March 1979, pursuant to Bankruptcy Rule 10-215(c)(4) an application for approval of purchase and sale of debentures revealed that, in February 1979, Drexel Burnham Lambert, Incorporated ("Drexel") had purchased approximately $6.5 million principal amount of CIC's 9% subordinated debentures due in 1985 from members of the debentureholders committee, while an employee of Drexel was also a member of the committee. Drexel sold a number of the debentures to certain of its employees.

Although it granted the committee's application for retroactive approval of the transaction, the District Court ordered Drexel and its employees to refrain from disposing of the debentures and directed the trustee to conduct discovery in order to determine whether the debentures had been acquired in breach of fiduciary duty.

In April 1979, the trustee instituted an adversary proceeding against Drexel and certain of its employees and their families. On March 17, 1980, the court approved a settlement, whereby the action was dismissed on payment of $130,000 to the estate. An appeal, filed by the majority stockholders, is pending (Docket No. 80-1362 1st Circuit).

III. *SUMMARY OF THE PLAN*

The trustee's plan is an internal plan of reorganization predicated on the solvency of the debtor and contemplates continuance of CIC's

businesses as presently constituted. Non-debenture claims will be satisfied by payment in cash, a new issue of secured notes in the principal amount of $10 million or through issuance of additional shares of presently authorized common stock or a combination thereof. The present debentures will be replaced with common stock. The present stock will remain outstanding.[16] No other securities will be issued.

Administrative costs, to be paid in cash, are estimated at $1.6 million, and include the $95,000 settlement described above, and allowances of compensation to be determined by the court. Bank creditors are to receive for their claims of about $45 million: $20 million in cash following confirmation of the plan; $10 million in the form of secured notes; and the balance of their claim in common stock, without step-up. The trustee has informed the court that he intends to sell a portion of ConVest's interest in certain oil and gas reserves to the extent necessary to provide the proposed cash distribution.

The secured notes are to mature seven years after the date of confirmation. They will bear variable interest at a defined prime rate, not to exceed 15%, payable quarterly. Interest only will be paid in each of the first two years. Principal payments of $2 million are required at the end of the third year and each year thereafter. If CIC or its subsidiaries dispose of specified assets, the net proceeds will be applied to prepay the notes. The notes will be secured by a pledge of all of ConVest's outstanding shares and 10% of the outstanding stock of UIL Insurance. Other security presently held by the banks will be released.

Creditors in the two subordinated debenture-holder classes will receive common stock valued at 112% of the amount of their debenture claim, principal and interest accrued to the date of confirmation. Other creditors, i.e., the disputed claims described above, if allowed, will also receive 112% of their allowed claims, in common stock.[17]

The plan also extends common stock registration rights to large shareholders, which may be exercised twice within 5 years, with piggyback rights extended to all shareholders. Registration costs will be borne by CIC.

The plan embodies a compromise of objections to bank claims. The salient features of the compromise are that the banks relinquish their claim to default interest rates and any step-up they would be entitled to on common stock. The estate, in return, abandons certain claims against the banks arising from provisions of the ORA and the aborted restructuring.[18] The compromise is conditioined on the confirmation of the plan and its consummation. If the plan fails, the parties revert to their original legal positions without regard to concessions made in the settlement agreement.

Table IV below shows the distribution of cash, securities and stock to the creditors and the respective holdings of all parties, including stockholders, based on the court's tentative valuation of $166 million.

The reorganized company will be managed by a board of directors consisting of nine members designated by the trustee and subject to court approval pursuant to Section 221(5) of Chapter X. The trustee will be a tenth non-voting director until the earlier of his discharge by the court or his resignation. The initial board will serve until the annual meeting of shareholders to be held no later than seventeen months after the expected date of confirmation. The plan does not provide for cumulative voting for the subsequent election of directors nor does it grant the shareholders pre-emptive rights.

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[16]Objections and modifications have been proposed seeking reduction of the Wallaces' stock interest.

[17]Intercompany obligations arising from consolidated return tax allocations, are not affected by the plan, since they are subject to Internal Revenue Service audit, but would have no net effect on the reorganized company.

[18]These claims and the compromise are more fully discussed at pp. 55-62 *infra*.

Table IV—Continental Investment Corporation
Estimated Distribution Per Trustee's Plan
(000 omitted)

	Allowed Claims 12-31-80[1]	Cash	Secured Notes	Balance	Common Stock Amount	Shares[2]	Percent Claims Balance	Outstanding
Administrative claims	$1,600	$1,600	$	$	$			
Bank group per settlement	45,000	20,000	10,000	15,000	15,000	3,875	100.0	11.16
Subordinated debentures	61,875			61,875	69,300	17,906[4]	112.0	51.56
Common—12,944,533 shares	—	—	—		50,100	12,944[4]		37.28
Total[3]	$108,475	$21,600	$10,000		$134,400	34,725		100.00

[1]Includes 1980 interest on debentures at 9% and estimated variable rate interest on bank loans of $3,628,000, about 14% on principal. Variations in the average interest rate would change the $15 million balance and the number of shares to be issued to the banks, but such variations would be minor, a 1% change in rate equaling $260,000 or 65,000 shares.

[2]Based on court's tentative valuation of $166 million. Deducting the cash and new notes, this would equate the new stock to $134.4 million or $3.87 per share.

[3]Subject to disputes as to claims and subordination discussed in this report.

[4]Share-for-share for present common. About 463 shares for each $1,000 of debenture principal, which represents $1,792 with accrued interest.

IV. *APPLICABLE STATUTORY STANDARDS*

Before a plan of reorganization may be approved or confirmed by the court, the plan must be found by the court to be "fair and equitable, and feasible."[19] The Supreme Court has held that fairness requires ". . .that each security holder in the order of his priority receives from that which is available for the satisfaction of his claim the equitable equivalent of the rights surrendered."[20] This means that senior interests must receive full compensation for their claims before junior interests may participate and that all of the creditors must be compensated in full before stockholders can participate at all.[21]

Fairness does not demand that creditors be compensated in cash. Indeed full payment in cash is the exception rather than the rule. Payment can be and usually is made in securities, and those securities may be

> ". . .of the same grade as are received by junior interests. Requirements of feasibility. . .frequently necessitate it in the interests of simpler and more conservative capital structures. And standards of fairness permit it. . . .[But] while creditors may be given inferior grades of securities, their 'superior rights' must be recognized. Clearly, those prior rights are not recognized, in cases where stockholders are participating in the plan, if creditors are given only a face amount of inferior securities equal

[19]Sections 174 and 221(2) of Chapter X.

"It is clear. . .that the Congress has required both that the required percentages of each class of security holders approve the plan and that the plan be found to be 'fair and equitable'. The former is not a substitute for the latter. The court is not merely a ministerial register of the vote of the several classes of security holders. All those interested in the estate are entitled to the court's protection. . . .The contrary conclusion. . .would make the judicial determination on the issue of fairness a mere formality and would effectively destroy the function and the duty imposed by the Congress on the district courts. . . .That function and duty are no less here than they are in equity receivership reorganizations, where this Court said, 'Every important determination by the court in receivership proceedings calls for an informed, independent judgment'. *National Surety Co.* v. *Coriell*, 289 U.S. 426, 436." So spoke a unanimous Supreme Court in *Case* v. *Los Angeles Lumber Products Co., Ltd.*, 308 U.S. 106, 114-115 (1939).

[20]*Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 318 U.S. 523, 565 (1943).

[21]*Case* v. *Los Angeles Lumber Products Co.*, 308 U.S. 106, 115-132 (1939); *Consolidated Rock Products Co.* v. *DuBois*, 312 U.S. 510, 527 (1941).

to the face amount of their claims. They must receive, in addition, compensation for the senior rights which they are to surrender. If they receive less than that full compensatory treatment, some of their property rights will be appropriated for the benefit of stockholders without compensation. That is not permissible."[22]

The fair and equitable concept, however, does not relate exclusively to appropriate allocations between classes of creditors and stockholders. It extends as well to other aspects of the reorganization proceeding. Thus, where, as here, a compromise of bank claims is embodied in the plan of reorganization, the court is required to reach an informed, independent determination that such compromise is fair and equitable.[23] It also necessarily means, among other things, that creditors cannot be permitted to participate beyond their claims at the expense of stockholders.[24] Accordingly, value is of central significance in corporate reorganization.[25]

The value of a business for corporate reorganization purposes turns principally on its earning capacity. As the late Judge Frank of the United States Court of Appeals for the Second Circuit observed:

> "Value is the present worth of future anticipated earnings. It is not directly dependent on past earnings; these latter are important only as a guide in the prediction of future earnings."[26]

The application of this standard, "requires a prediction of what will occur in the future, an estimate, as distinguished from mathematical certainty is all that can be made. But that estimate must be based on an informed judgment which embraces all facts relevant to future earning capacity and hence to present worth, including, of course, the nature and condition of the properties, the past earnings record and all circumstances which indicate whether or not that record is a reliable criteria of future performance."[27]

Thus, to arrive at the value of a debtor's business, prospective earnings are converted to present value by applying a capitalization rate or discount rate reflecting the expected annual rate of return on profit. Where the company involved manufactures specific products or provides services, forseable earnings are capitalized at an appropriate rate derived from market yields on comparable businesses which reflect the business risk of the enterprise. In the case of a company such as

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[22]*Consolidated Rock Products Co.* v. *DuBois, supra,* 312 U.S. 510, 528-529. The court went on to observe (pp. 529-530) that

"Practical adjustments, rather than a rigid formula, are necessary. The method of effecting full compensation for senior claimants will vary from case to case. As indicated in the Boyd case (228 U.S. at p. 508), the creditors are entitled to have the full value of the property, whether 'present or prospective, for dividends or only for purposes of control,' first appropriated to payment of their claims. But whether in case of a solvent company the creditors should be made whole for the change in or loss of their seniority by an increased participation in assets, in earnings or in control, or in any combination thereof, will be dependent on the facts and requirements of each case. So long as the new securities offered are of a value equal to the creditors' claims, the appropriateness of the formula employed rests in the informed discretion of the court." (footnote omitted).

[23]*Protective Committee* v. *Anderson,* 390 U.S. 414 (1968).

[24]See *Protective Committee* v. *Anderson, supra,* at 445-454; *Knight* v. *Wertheim & Co.,* 158 F.2d 838, 843 (2nd Cir. 1946).

[25]See *Consolidated Rock Products Co.* v. *DuBois, supra,* 312 U.S. at 524:

". . .[I]t is apparent that a determination of. . .value must be made so that criteria will be available to determine an appropriate allocation of new securities between bondholders [creditors] and stockholders in case there is an equity remaining after the bondholders [creditors] have been made whole."

[26]Frank, *Epithetical Jurisprudence and the Work of the Securities and Exchange Commission in the Administration of Chapter X of the Bankruptcy Act,* 18 N.Y.U.L.Q. Rev. 317, 342, n. 68 (1941) cited with approval in *Protective Committee* v. *Anderson,* 390 U.S. 414, n. 20 (1968).

[27]*Consolidated Rock Products Co.* v. *DuBois, supra,* 312 U.S. at 526.

ConVest, which is engaged principally in the production and sale of oil and natural gas, both of which are wasting assets, the appropriate method of valuation is to discount net cash receipts to present value.[28] This method provides both for a return of capital and a predetermined rate of income on that capital. But even the selection of the appropriate discount rate involves a judgment which must be reasonably related to rates of return generally expected by investors from comparable investment opportunities.

Apart from the capitalization of prospective income, other valuation elements may include, as they do in the instant case, i) cash and other assets not needed for the continuing business, and ii) the present value of available tax benefits. The final reorganization value is not meant to be the market price of the stock yet to be issued by a debtor about to take its leave of the bankruptcy court.[29]

Feasibility requires among other things that the cash needed to carry out the plan be on hand, that the reorganized company begin life with adequate working capital, and that it be in a position to meet its obligations. The capital structure should be simple and conservative. This is necessary to minimize the likelihood of return engagements in the bankruptcy court with new losses to creditors and stockholders, fresh rounds of fees and further imposition on the time of the federal courts.

From what we have said it is clear that valuation is central to the reorganization process. Should creditors' claims exceed the value of the business, shareholders have no economic interest in the debtor. Conversely, if the business is worth more than the aggregate amount to which the holders of senior interests are entitled, those who hold junior interests must be given appropriate participation in the reorganized enterprise. Valuation is also significant for purposes of feasibility since the proposed capitalization must be related to the value of the enterprise.

V. *EARNINGS AND VALUATIONS*

Valuations were offered for the court's consideration by the trustee, $179 million; the committee of bank creditors, $136 million; the debentureholders committee, $110.5 million; majority stockholders, $219-$229 million; and OC Associates[30] $96.6 million. The court tentatively found a value of $166 million.

First Boston Corporation ("First Boston") testified for the trustee, Merrill Lynch White Weld Capital Markets Group ("Merrill Lynch") for the bank creditors, Lehman Brothers Kuhn Loeb, Inc. ("Lehman") for OC Associates, Harris S. Richardson, Jr. ("Richardson"), Dudley M. Harman ("Harman") for the debentureholders committee, and Allen R. Finlay ("Finlay") for the majority stockholders. Each of the companies named is an investment banker. The three individuals are business consultants.[31]

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[28]*Parker Petroleum Co., Inc.*, 39 SEC 548, 559-568 (1959); *King Resources Company*, Corporate Reorganization Release No. 316 (August 13, 1975), 7 SEC Docket 615, 622-627; *Imperial-American Resources Fund, Inc.*, Corporate Reorganization Release No. 320 (September 28, 1976), 10 SEC Docket 630-639.

[29]As one reorganization court aptly pointed out,

"Reorganization value represents the best estimate of value the marketplace would put on a company comparable to New Company. However, because of uncertainties associated with a company emerging from Chapter X proceedings, possible initial selling pressure, and perhaps other factors, individual shares of stock of New Company may trade in the near future at less than reorganization value." *Equity Funding Corporation of America*, 416 F. Supp. 132, 145 (C.D. Cal. 1975).

[30]OC Associates is a joint venture of an affiliate of Oppenheimer & Co., an investment banker, and the Charter Company, an oil company. The partnership, and its predecessor, Oppenheimer, acquired about $22.8 million principal amount (59%) of CIC debentures between November 1978 and the end of 1979.

[31]The actuaries and petroleum engineers who testified were aligned as follows:

Acutaries:		
For Trustee:	Milliman & Robertson	"Tulin"
For OC Associates:	Coopers & Lybrand, actuarial division	"Hill"
	Tillinghast, Nelson & Warren	"Anderson"
For majority stockholders:	Robert S. Yoder, Associates	"Yoder"
Petroleum Engineers		
For trustee:	BP Huddleston & Co.	"Huddleston"
For OC Associates:	Ryder Scott Company	"Gaston"

The conflicting values developed by the contending parties reflect differing views on a wide range of factors. Since CIC's three principal businesses have different characteristics, it will be most convenient to start by considering them separately. A fuller description of each of the businesses is contained in Appendix A.

UIL Insurance

The witnesses for the trustee, OC Associates and the majority stockholders addressed the actuarial value of the insurance company. The trustee's witness, Tulin, made a full actuarial study of the company, and the disagreement of the other two studies centered on limited critical factors.[32]

Their conclusions may be summarized as follows:

	(in millions)		
	Trustee	*O. C. Associates*	*Majority Stock-holders*
Adjusted statutory book value	$27	$27	$27
Insurance currently in force	54	36	54
Less re-insurance	(3)	(3)	(3)
Future new business	48	20	71
Annuity business	1	1	1
Phase III:			
Federal income tax	(10)	(1)	
Total	$117	$80	$150

The only significant actuarial difference was raised by OC Associates actuary Hill. He was of the opinion that the conversion options provided by the insurance company's modified premium whole life plan[33] would lead to adverse selection. He doubled the mortality rate[34] for the 11th to 15th years of such policies, producing a lower profit thereon. On rebuttal, the trustees' witness testified that adverse selection had been considered in developing his valuation, that the annual renewable term policies had been adjusted for that factor, but that the analysis of the modified premium whole life policies had produced an adjustment, even assuming perfect selection by the policy holder, which he considered negligible.

The trustee's witness also testified that he had just rerun the projections, incorporating Hill's double mortality factor, and found the change would have reduced the value by $4 million, half on existing and half on new business. Hill had testified that the change would reduce the value $11 million, of which $7 million would be on new business.

The principal differences among the experts were as to growth and discount factors. The discount rate is the factor used to reduce projected annual revenue over a period of years to a single present value. The trustee's expert used an annual compounded rate of 12%. The majority stockholders' witness also used 12%. OC Associates' witness testified that the range should be 12-18%, and used the midpoint, 15%, to represent that range.

The growth rate, which refers to the assumptions made as to annual increases in policies through new sales, applies to the new business component, although the present value of the resulting profits also depends on the kind of policies assumed to be sold, involving the actuarial factors, and the discount rate applied to such future benefits.

The trustee's witness assumed a sharp increase in sales in the first five years, about 15% in 1980, and 11% annually from 1981-1984. The growth assumption was dropped to 3-1/2% in 1985 and scaled down annually to 2-1/4% in 1990. The recent historical experience has been:

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[32]OC Associates witness testified that it also made a complete study, but both its data and most of its assumptions were the same as those used by Tulin. Cf. *Equity Funding Corporation,* Corporate Reorganization Release No. 317 (November 25, 1975), 8 SEC Docket 589, 605, 610; *Equity Funding Corporation,* 416 F. Supp. 132, 142, 143 (C.D. Cal. 1975).

[33]The modified premium whole life plan, in substance, charges term insurance rates for the first 10 years. A small advance deposit distinguishes it technically from a convertible term policy. At the end of that period, the policy holder may accept an ordinary life premium, based on attained age, defer that decision by converting to another modified premium whole life plan, starting another 10 years of term rate, or converting to a declining ordinary life policy which maintains a low premium by steadily reducing coverage. The fourth unstated option would be to let the policy lapse. Adverse selection refers to the probability that policy holders will make the most unfavorable choice for the company, in the light of the policy holders then state of health.

[34]All of the experts used as a base 82% of the 1965-70 Base Select and Ultimate ANB Table.

	Annual Premiums (in millions)	Percentage Increase
1974	$2.9	—
1975	$4.4	52.0
1976	$6.6	50.0
1977	$5.4	(18.0)
1978	$5.6	3.7
1979	$5.7	1.8

Lathrop, a First Boston expert on insurance company valuation, attributed much of the 1975-1976 growth to a successful promotion of modified premium whole life policies in the southeast and the 1977 drop to loss of the responsible sales staff in that region. He stated that the company no longer emphasized that class of business. The future growth rates were based on forecasts of growth in sales force and a per capita sales factor.

The actuary for the majority stockholders, Yoder, assumed an initial growth rate of 15%, graded down to 10-1/2. In his view, Tulin was extremely conservative. He emphasized the compound average annual rate of 17% for 1975-1979, despite the adverse effect of CIC's bankruptcy. The pattern for that period, shown above, however, is obviously unsuitable for averaging.

OC Associates' witness assumed a compound 7% growth rate for the six year period 1978-1984. The inclusion of the two low growth historical years means that this assumption includes a sharp recovery following the reorganization. Like the trustee's witness, he assumed the growth will drop to 3.5% in 1985, grading down to 2.24%.

The majority stockholders' actuary also criticized the investment income factor used. The investments of an insurance company, representing its reserves, produce a significant part of its income. Such investments are normally long term, but a "new money rate" is applied to new investments, from future reserve increases and maturities of old investments. The trustee's witness assumed a 12% new money rate for 1980, grading down to 7-1/2% by 1990.

Since the new money rate is incremental, its immediate effect on the total investment income is limited, but grows as the existing portfolio is replaced over time. Since the new money rate also enters into the offsetting reserve calculation, complex offsetting adjustments result from any change.

The majority stockholders' actuary stated that both the growth rate and new money rate failed to give adequate weight to the effect of inflation, but does not seem to have recalculated the new money rate factor.

The final area of difference is the "Phase III" tax.[35] The trustee's actuary's predictions led to Phase III tax liability, commencing in 1989 and continuing for the balance of their projection and aggregating $112 million over those 16 years, which was discounted to $10 million present value. The majority stockholders actuary rejected this assumption, stating that no insurance company has yet incurred a Phase III tax unless it was liquidated and concluding that proper tax planning would avoid that obligation.

OC Associates actuary assumed lower profits and a lower peak.[36] These combinations produced an aggregate tax of about $8 million, which their higher discount rate reduced to $1 million present value.

All parties, except the majority stockholders accepted normalized earnings of UIL Insurance, within the $11-$12 million range. Trustee's witness was of the opinion that projections for more than two years tend to become unreliable. However, he felt that normalized earnings need not be reached for 2 to 3 years so that the average of his projected earnings of 1980-1983, $12 million, appeared to be appropriate.

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[35]Under the Internal Revenue Code, life insurance company income is divided into two parts, one being income from the investment portfolio, the second being the excess of premium income over claims and benefits. The reserves for future benefits are specially computed and, subject to complicated limitations, up to half of the underwriting income is excluded from taxable income and allocated to a policy holders' surplus. A Phase III tax arises if the accumulated policy holders' surplus exceeds specified percentages of statutory reserves or premium income, or is otherwise withdrawn. This is a species of deferred taxable income, which remains untaxed for an indefinite period, unless the specified contingencies occur.

[36]The five year high growth period 1980-1984 would escalate the deferred amount, while the following low growth period assumed reduces sharply the statutory maximums, automatically forcing a portion of the accumulation into taxable income.

OC Associates witness arrived at normalized earnings of $11 million by averaging his projection of earnings for the same four years.[37]

The debentureholders committee witness accepted trustee's earnings projections, but reduced the average to $11.4 million to compensate for unforeseen adverse factors, such as a recession and the possibility that management might not be able to meet projections for increasing the W&R sales force or to achieve the forecast rate of growth in the face of an expected increase in competition.

The bank group's witness also accepted trustee's projections but averaged only the three years 1980-1982 to arrive at $11.1 million. It was his view that over this period the economy would go through a cycle comencing with the current recession, a recovery starting sometime in the first half of 1981, and a favorable business climate in 1982. It would not require a longer period to achieve an earnings level free of the effects of the bankruptcy.

The majority stockholders expert preferred to use the $8.4 million of 1979 actual earnings as his base, and apply a multiplier of 16.7 to reach $140 million although he criticized the trustee's forecast of $12 million as being too low.

The experts each chose a sample of life insurance companies[38] and computed multipliers in the standard fashion, with results as tabulated:

	First Boston For Trustee	*Merrill Lynch For Banks*	*Lehman For O.C. Assoc.*	*Fulkerson For Majority Stock-holders*
Companies selected	15	14	6	4
Range	6.4 to 10.2	5.5 to 8.2	6.4 to 8.3	12.1 to 22.2
Multiples used	9.75	7.8	[2]	16.7
		(in millions)		
Value assigned	$117	$86.6[1]	[2]	$140
Actuarial value	117	NA	$80	150

[1]Adding back a $600,000 parent company expense allocation for comparability.

[2]Lehman, like the witness for the debentureholders committee, was of the opinion that a separate valuation was improper. Seegal testified, that, if necessary, he would apply a multiplier of 6 to reach a $66 million value. For another purpose, Lehman's witness, Snowden used $90 million as the top range of the actuarial value.

ConVest

ConVest has sponsored an oil and gas limited partnership each year since 1973, two in 1980.[39] The limited partners received 60% of the partnership revenues and ConVest 40%. ConVest also invests and participates, usually to the extent of 1%, in the limited partners' portion. The partnership assets are principally on shore in the Gulf states, but include leases in Wyoming. As of January 1, 1979, the partnerships had interests in 95 completed wells in 22 fields.

The trustee's petroleum engineers, B P Huddleston & Co. Inc., valued the ConVest oil and gas resources as of January 1, 1979, and updated their valuation as of January 1, 1980. Valuation of oil and gas reserves is based on an engineering determination of total amount of oil or gas which can be economically produced from a reservoir, the annual rate of production, and the costs of production. Price forecasts determine the annual revenues over the life of the property, from which are deducted production costs and severance taxes to compute the annual cash income. Most of the capital costs of acquiring and drilling the wells and the antecedent exploration costs, have already been expended and are not reflected in this computation.

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[37]Despite the extensive disagreements of the trustee's and OC Associates actuarial witnesses, there was a remarkably close concurrence in the projections of income for the next four years. Calculating the respective four year averages to two decimal places yields $11.98 million for the trustee's forecast and $11.43 million for OC Associates' forecast, although they rounded in opposite directions.

[38]Nine of Merrill Lynch's 14 insurance companies and all six of Lehman's were included in First Boston's 15. Fulkerson's selection was unique. Business Men's Assurance Company appeared in all but Fulkerson's list, but First Boston and Lehman excluded differing parts of its history because of anomalies. First Boston and Lehman averaged on a quarterly basis, Merrill Lynch averaged the high and low ratios and Fulkerson used the annual mean. Merrill Lynch limited its review to the past 12 months, First Boston and Lehman to a five year history, and Fulkerson used 10 years.

[39]The ConVest 1980 Energy Income Program does not engage in exploration, but is limited to already proven reserves, and ConVest's interest is 15% rather than 40%.

The engineers allow for additional development costs, such as offsetting wells, and replacements. The forecast annual cash flow is, in part, a return of capital.[40] It present value is established by applying an appropriate compound discount rate.

The critical valuation elements are thus the engineers' reserve data, the assumed future prices of the product, and the annual discount rate employed. Production costs are normally insignificant.

The trustee's witness fixed the proven and probable reserves of the partnerships at January 1, 1980, at about 4.2 million barrels of oil and 12 million MCF of natural gas. Based on his pricing forecast, this would produce about $210 million gross, or $165 million after future costs. He applied a 12% annual discount rate to place the present value of the partnership reserve at $94.2 million. The calculation of ConVest's share of the partnersip reserves was made by First Boston. It represented slightly over 41%[41], or $38,970,000 of the $94,239,000 present value.

The petroleum engineer for OC Associates, Gaston, also valued the reserves as of January 1, 1980. He had segregated ConVest's interests in the partnership from the beginning, and so arrived directly at a present value for ConVest's interest of about $30.6 million for proven reserves and $2.3 million for probable reserves.[42] However, these computations were based on a 10% discount rate compounded monthly, an effective annual rate of about 10.47%, rather than the 12% annual rate used by trustee's petroleum engineer, and so understate the difference between the two appraisals.

Before discussing the substantive disagreements it is important to eliminate the facial confusion arising from the differing base discount rates, and the differing stage at which focus was shifted from the value of the partnership reserves to the value of ConVest's share therein. The fullest attempt at reconciliation in the record was based on simultaneously restating the OC Associates' exhibit to include the full partnership reserves and the trustee's exhibit to apply a 10% discount rate. The results may be summarized as follows:

	Trustee's	*OC Associates*
Future net income	$164,598,686	$126,542,726
Discounted at 10%	101,760,648	79,770,815
ConVest share 40%	$40,704,256	$31,908,326[43]
Ryder Scott reserve adjustments:		
Masar	(1,346,000)	
Pollan[44]	(7,450,000)	
	$31,908,256	$31,908,326

This reconciliation is a little too good to be true. As the table shows, Gaston's use of 40% as ConVest's share of the partnership produced a value $1 million less than the $32,894,343 he had reached by a full computation in his report.

If, as Gaston apparently testified, the $79.8 million partnership value he presented included an additional $3,280,000 for the three sold leases, the discrepancy in his computation widens by 40%, thereof, or $1.3 million, to $2.3 million. If the $79.8 million did not in fact include this adjustment, the same $1.3 million discrepancy would appear as a needed but unmade adjustment of the trustee's value.

Moreover, the two engineers used different pricing, the trustee's expert using an 8% annual escalation factor for oil prices and OC Associates expert using 9%. This necessarily created another unadjusted for

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[40]Since the Internal Revenue Code also permits immediate deduction of most of the antecedent cost, the annual cash flow is close to the taxable income for any particular well, but deductions for new exploration and development tend to offset the income from completed wells, as long as the business expands.

[41]In the 1973 partnership, ConVest owns 4%, rather than 1%, in addition to its general partner's share.

[42]Major further downward adjustments were subsequently made in the OC Associates valuation, which ranged from $23 million down to $16 million, to which we will return.

[43]ConVest sold early in 1980, the partnership interests in, Grass Island, Apache Ranch and Farwell Island properties for about $4.5 million in cash. They had been included in the trustee's exhibit at an aggregate value of $2,929,000, but were excluded from OC Associates report because of the sale. At OC Associates' 10% discount rate, the present value would have been $3,280,000.

[44]Including other undescribed adjustments to the extent of about 5%.

difference in their values.[45] This difference, however, would increase OC Associates value and so would tend to offset the other discrepancies noted.

The engineering disputes are actually limited to the two OC Associate adjustments tabulated in the tentative reconciliation. Two gas wells had been successfully completed in the Masar field at the time of the trustee's original report and that property was classified as a proven reserve. After a brief period of actual production, one of the wells ceased to flow, and the second experienced a major and unexpected decline in production. OC Associates witness concluded that the difficulty was not mechanical, and indicated that the recoverable reserves were less than half of the original quantity assigned. The trustee's witness believed it was a mechanical problem and assumed that two previously separate zones are now in communication. He recognized, however, the possibility that Masar might water out.

Four wells were drilled in 1980 in the Pollan field, after the trustee's expert's valuation. Three were successfully completed. OC Associates engineer adjusted the proven reserves upward, on the basis of this experience, eliminating the probable reserves assigned by the trustee's engineer.

The fourth well, identified as A-3, was viewed by OC Associates engineer as unproductive.[46] Based on this conclusion, another dry hole of about the same depth in the area, and an analysis of the geological structure, he decided that the contour lines in the Pollan field should be sharply narrowed and that leases in the western part of the field owned by ConVest should no longer be considered as containing even probable reserves. The trustee's witness had assigned proven reserves to this area.

The substantive engineering disagreements are a useful reminder of the complexity of the oil business. Each new well adds data which may change previous conclusions. As usual, the early 1980 drilling produced both good and bad news for ConVest. But the changes do not appear to be critical. There was far more agreement then disagreement among the engineers.

The inherent uncertainties about what is in the ground must be reflected in the discount used to value the properties. And it is on this aspect that the important controversies among the parties focused.[47]

The trustee's witnesses applied a 12% annual discount rate. OC Associates witnesses reached a result equivalent to a 20% discount rate by a rather complicated process and submitted three other alternatives. The bank group's financial witness applied a 15% annual discount rate. Their results are tabulated below as presented, including a series of additional factors. Each party accepted management's estimate of general administrative expenses as 4% of net revenues, and of effective income tax rates.[48]

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[45]The Windfall Profits Tax Act of 1980 became law after the trustee's exhibit was prepared, but before OC Associates report. The extent of the exemptions remained uncertain until the end of the legislative process, when provisions that would have exempted properties like ConVest's were deleted. The trustee's witness was of the view that the tax effect made the difference in escalation rates insignificant.

[46]He was aware that oil was found in it on swab testing, but did not accept that as evidence of capacity to be a commercial producer.

[47]The majority stockholders presented Robert S. Pindyck, a professor of economics, to testify as to future oil prices. He testified as to world oil prices, but was of the opinion domestic prices will reach the world level by October 1981. He expected a real price increase at the annual rate of 4%. The dollar increase forecast was the sum of the 4% and the annual inflation rate, assuming a reasonably stable political situation in the Middle East. The majority stockholders' valuation witness computed the effect of these price assumptions and concluded they would increase future partnership reserves and cash flow, after allowing for additional costs by $47.7 million (29%) and the present value of ConVest's interest therein by $9.6 million (25%) before income tax. It was brought out on cross examination that the forecast 1999 price was $237 a barrel. The majority stockholders also based their administrative expense on 4% of the trustee's average estimate rather than on their own estimate.

[48]The rates were developed year by year for the first years ranging from 10% to 22.6%. A uniform 30% was applied thereafter, the overall average being 18.9%. Due to the effect of discounting, variations in later years have little impact on the result.

Table V[1]—ConVest Energy Corporation
Components of Value as of January 1, 1980
(000 omitted)

			Majority	OC Associates				
			Stock-			Exhibits	Exhibits	Exhibits
Present Values:	*Trustee*	*Banks*	*holders*	*Ex. 4*	*Ex. 8*	*9 & 12*	*10 & 12*	*11 & 12*
Discount rate employed	12%	15%	12%	20%	10%	15/20%[3]	20/25%[3]	
Reserves[2]	$38,970	$32,992	$48,608	$23,002	$31,440	$24,834	$20,569	
General & administrative expenses*	(1,445)	(1,319)	(1,445)	—	(1,260)	(990)	(822)	
Provision for income taxes*	(7,092)	(6,066)	(8,914)	—	(6,117)	(4,570)	(3,625)	
Net	$30,433	$25,607	$38,249	$23,000[4]	$24,063[5]	$19,274	$16,122	
Adjusted	—	—		—	—	—	—	$16,536[6]
Adjustments to reserves*	—	—		—	—	—	—	—
Expense split, Williams Ranch	437	398		334	334	334	334	334
Collections on partnership notes	2,071	1,783		1,579	1,579	1,579	1,579	1,579
Grass Island sale	691	691		—	—	—	—	—
1980 income fund	698	698		698	698	698	698	698
Total	$34,330	$29,177		$25,611	$26,674	$21,885	$18,733	$19,147[6]

*See text.

[1]Data has been obtained or extrapolated from First Boston's report of March 1980, Schedule XI; Majority Stockholders Revised Exhibit 43; Bank Committee Exhibit 1-d; and the OC Associates exhibits as indicated.

[2]Represents ConVest's share of partnership interests in future net revenues. This share was variously computed as follows: Trustee, 44% of 1973 Program and 41% of 1974-79 programs for an effective average of 41.35%; Majority Stockholders, 41.3%; Bank Committee, 41%; OC Associates, 40%.

[3]For proven and probable reserves, respectively.

[4]Rounded from $22,569,000 computed by alternative method discussed in text.

[5]Revised from $24,070 shown on exhibit to avoid arithmetical discrepancy.

[6]OC Ex. 8, reduced to percentage values ranging from 72.5% to 32.5%, used on OC Ex. 4. The $16,536 was transposed as $16,563 on OC Ex. 12, so our total of $19,147 differs by the same amount from the OC Ex. 12 total of $19,174.

[7]Lehman report of May 1980, as amended in testimony and OC Ex. 12.

The differences in amount reflect principally the different discount rates,[49] but also the OC Associates changes in reserve estimates.

The "Expense Split on Williams Ranch" adjustment corrects an error. The ConVest partnership agreements charge ConVest for tangible costs and the limited partners for intangible costs. It was found that the formula would work out to 20% for ConVest on the particular property, contrary to the original working assumptions. Again the differences in amount reflect the discount rate differences.

At the time of the hearing, ConVest had raised, but not invested, $3 million from its 1980 Energy Income Fund Program. The interest on uninvested funds is credited to the limited partners, but on investment, ConVest becomes entitled to 31%, (15% as operator and 16% as investor) of the oil and gas revenues. This is the fund limited to acquisition of already developed programs. A $698,000 allowance for the value of that prospective revenue was eventually accepted by the parties.

ConVest will also receive a portion of the limited partners' 60% share of oil and gas revenues in reimbursement for costs advanced by it to the partnerships on the 1975 and 1977 programs. These receivables had been written off in ConVest's accounts, but the programs have been successful enough to provide for partial collection. Accordingly, this portion of the revenue is assimulated to ConVest's 40%, each party applying its own discount rates.

As noted above, the revenues from the three leases sold in 1980 were excluded from OC Associates engineering study, but included in the study of the trustee's engineer made before the sale, and also used by the bank group as the basis for its discount

[49]For tax and expense deductions, OC Associates applied its base 10% compounded monthly rate. The others applied their general 12% or 15% rate.

adjustment. The trustee and the bank group adjusted their reserve valuation by adding $691,000, the amount by which the sales price exceeded the discounted value assigned the lease revenues.

In principle, these leases should now be excluded from the reserve valuation. They have been replaced by cash in hand. But the necessary detail for such adjustment is not in the record.[50] As long as the proceeds are not counted twice, it is sufficient for the purpose to adjust in this manner, but it must be remembered that OC Associates computation differs from the other two for this reason.

We return to OC Associates method of reaching its ultimate valuation. Again it is necessary to clarify semantic disputes, which occupied a great deal of hearing time, to reach the underlying substantive disagreements. OC Associates Exhibit 4 was identified on its face as an "Estimate of Fair Market Value" and followed a standard industry practice[51] of adjusting the discounted present value of the reserves, as revised by their engineer, by a percentage to obtain a "1st Estimate Fair Market Value".

OC Associates witness applies 72-1/2% to his discounted present value to price the principal reserves examined and checked it against a straight 20% discount, finding the two amounts to be about equal.[52] Since the other experts adhered to a straight discount method, it is valid and simpler to speak of OC Associates choice of a 20% discount rate for comparative purposes. The two methods were expressly used and produced essentially the same results.

The confusion at the hearing arose from OC Associates insistence that the "fair market value" identification in its own exhibit was a misnomer, and the percentage factor employed was really a risk adjustment factor reflecting an engineer's estimate of the risk that the engineer's reserve estimates would not be realized. It was urged that such a risk adjustment factor was an essential part of any engineering appraisal of oil and gas reserves and that failure of the trustee's engineer to so reduce the appraisal was a fatal omission in the trustee's valuation.

We cannot accept that testimony. OC Associates experienced engineer, despite testifying that a risk adjustment factor was a standard industry practice, submitted a conventional report in this case and identified his proposed adjustment repeatedly as a fair market value adjustment in the exhibit in which he first proposed it. When pressed. on cross-examination, for an instance in which he had previously used a risk adjustment factor, he merely described a large appraisal in which he had submitted a conventional report. He later learned that the properties appraised had been sold and satisfied himself that application of the same percentages to that appraisal as he supported here would have approximated the sale price. At best, this bore on the relationship of his estimates to fair market value, since he used no new information about actual production in his personal check of his prior report. A closer examination of OC Associates Exibit 4 reveals that an express risk factor "Ratio to Proved Producing" was applied to distinguish

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[50]Their present value in the trustee's appraisal was $2,929,000 for the full partnership interest. The bank group value cannot be fixed without a year by year discounting at their rate. And the percentage overhead and income tax adjustments included these revenues and are also a little high.

[51]This practice has a sound pragmatic basis. Once a computer is programmed with the complex lease by lease data, it is relatively simple to obtain present values reflecting any of a wide variety of possible assumptions, but a third party cannot factor in such adjustments without a computer programmed with the full engineering data. Hence bargaining perforce tends to take the form of applying a simple percentage adjustment to the basic computer produced bottom line. The industry preference testified to, for use of a general discount rate, currently 10%, rather than a rate selected from the money market, reflects the same practical limitations. It preserves the comparability of the engineers' basic computations. The yield can be adjusted by a subsequent uniform percentage factor, reached by negotiation.

[52]OC Associates divided reserves into five categories and scaled down the percentage factor for each category. Since the producing reserves were predominant, this refinement made little difference. The trustee's engineer had also distinguished among the standard categories in his underlying data, used and accepted except as noted above, by OC Associates' expert. The trustee's witness allowed for the category differences by weighting his discount rate.

between the five categories of reserves, ranging from 100% for proved producing to 45% for probable undeveloped. These factors were applied to the 72.5% fair market value base, so as to value proved producing reserves at 72-1/2% of their discounted present value, and probable undeveloped reserves at 32-1/2%.

Considering the fair market value adjustment as an additional risk factor would involve the application of no less than three adjustments for the same risk, including the engineer's initial recovery rate. The third would involve a large and uniform discount on all wells land all categories of reserves for what is inherently a site specific risk. And it would leave no adjustment for an obvious, important and uniformly applicable element, the need to adjust the basic 10% discount rate to current market. We can only conclude that the engineering witness somehow inextricably confused and equated the fair market value adjustment with which he started with the production risk he defined.

This equation is not totally erroneous. Reserve studies have a high degree of validity and are relied on every day in buying, selling and lending on oil and gas reserves. But they are fallible. Any investment, whether in a security or a property, involves some risk of failure. The mathematical yield offered or expected includes both a pure return and a risk allowance. OC Associates engineer's testimony reduces to an opinion that a 10% discount rate would represent a risk free return and that that rate must be doubled to allow for his own potential for error. His modest evaluation of his own work must be weighed in the context of his conservative reductions of reserve estimates, the conceptual confusion displayed in his testimony and the opinions of the other petroleum engineers.

The reserves are off-balance sheet assets. ConVest's December 31, 1979 balance sheet (Table III *supra*) shows entirely different assets.[53] Most of these assets are the source of the production valued by the engineers and will be consumed in such operation. The mobile equipment, including a small airplane purchased about a year ago for about $250,000, is similarly not an independent source of income, or capable of surviving the production period. The opinion of the trustee's expert that the salvage potential of well equipment is too small to be worth further study is realistic. Strictly speaking, the undrilled acreage is in a different category, but assigning no value to its possible reserves is part of the overall weighting of various reserve categories, and valid as long as such acreage is a reasonable proportion of the total.

The reserve approach omits the future business aspect of ConVest's operation and its record of relative success in obtaining new reserves. Such intangibles as experienced personnel and accumulated geological data are related to this aspect of its business. This subject is part of more general methodological issues, to which we will return.

Waddell & Reed, Inc. ("W&R")

W&R's primary sources of income[54] are management and service fees from mutual funds it manages and commissions on the mutual fund shares, insurance policies and limited partnership interests sold. Its expenses are the costs of the staff and facilities used for these businesses. Its revenues depend on the size of the mutual funds managed and the annual volume of sales.

Its assets consist principally of working capital, much of which is in the form of short-term investments. One effect of this case has been an accumulation of cash equivalent, representing its profits, well above normal levels. The resulting interest income must be eliminated from W&R's earnings record since the plan disposes of the excess cash which produced it.

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[53]

000 omitted		
Productive leaseholds	$1,368	
Lease and well equipment	7,269	
Abandoned equipment	515	
Undrilled acreage	422	
Other	248	
Total Cost	$9,822	
Depreciation and amortization	(3,828)	$5,994
Furniture and equipment—net		504
Total		$6,498

[54]Although W&R also owns 90% of the stock of UIL Insurance and receives the dividends thereon, this investment is segregated for analytical purposes. RMA, the investment advisor subsidiary, which earns fees for managing accounts for other clients, principally pension and endowment funds, is included in our discussion of W&R. W&R has no proprietary interest in the mutual funds, except for a small inventory of their shares included in investments for purposes of this report.

After reviewing W&R's earnings history, the trustee's expert, First Boston, chose the average of its after tax income for the three years 1977-1979, $1,048,000, eliminating the interest on excess cash, as representative of W&R's earning power. The management of W&R had forecast a substantial increase in income following reorganization.[55] First Boston decided that the volatility of the securities markets and the dependence of W&R's revenues on levels of securities prices,[56] precluded reliable forecasting. They did accept an after-tax increase of $1 million a year, commencing in 1982, based on expected fee changes. The historical $1,048,000 per annum, for the years 1980 and 1981, and $2,048,000 for the years 1982 and 1983 were averaged over the 4 years to produce "normalized" earnings of $1,548,000.

First Boston had examined the price/earnings ratio of five investment management companies over the period 1974-1978 and concluded that a multiple of 7 was appropriate for W&R. They considered W&R slightly better than the average of the five comparable companies. First Boston rounded the $10,836,000 product to $11 million, as the value of W&R, excluding excess cash and its investment in UIL Insurance, which were separately valued.

Merrill Lynch, the bank groups valuation expert, accepted the $1,548,000 earnings base, but was of the opinion that a $200,000 deduction should be made for part of CIC's corporate expenses. The witness applied a multiplier of 6 to $1,348,000 and concluded that W&R's business was worth $8 million. Merrill Lynch also examined the price/earnings ratios of the limited number of publicly held investment management companies, focusing on the last twelve months. Although they did not state the details, their results do not appear to differ radically from the 6.7 average found by First Boston. Merrill Lynch decided that W&R was inferior to the companies examined. Its multiple of 6 was "somewhat below the average" it computed.

The majority stockholders' expert, Finlay, disagreed on a number of points. He stated that First Boston had overlooked RMA, which historically has not quite broken even, but which W&R's management considers an important profit potential, once the discouraging influence of CIC's bankruptcy was removed, and had similarly failed to allow for the reorganization's favorable effect on W&R's future. He considered that the 1979 earnings, included in First Boston's average, should have been adjusted to eliminate the costs of establishing W&R's money market fund, and that its subsequent success had been denied recognition by the First Boston method.

He took First Boston's $11 million valuation as a base, but increased it to $17 million to include a "control" premium. He treated the $17 million as a minimum and considered $26 million as the higher end of the range, based on his views as to the inadequacy of the earnings base used by First Boston. His conclusion was that $20 million was a reasonable value for W&R.

We will note at this point that the control factor invoked is not applicable. Although CIC will control W&R, most of the recipients of CIC stock under the plan will have small holdings. Inclusion of a control premium in the value of their shares would be illusory. Moreover, W&R's value turns, not on its own assets, but on its contractual relationships with the mutual funds it serves. Its profits from those relationships are already fully reflected in its income forecasts.

OC Associates witness, Lehman, relied on the 1977-1979 historical income and assumed an after-tax fee increase of about $1 million a year, but included this in its three year average, producing normalized earnings of $2,026,000 after adjusting for the interest on excess funds. We note here that this procedure seems superior to First Boston's, whose method actually recognized only half the increase by averaging two years' increase over 4 years. Lehman discussed the prospect of improvement due to elimination of the bankruptcy status. It concluded that the principal limits on both W&R's sales force and on the investment adviser subsidiary are the competition in the field. It gave no weight to the bankruptcy factor as far as the sales efforts were

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[55]The Company's forecast, prepared early in 1979, assumed a 59% increase in sales force by 1984, a 109.6% increase in the Standard & Poors 500 index of stock market prices and a 63% increase in W&R's revenues. The result was a W&R net income growing from $1.4 million in 1978 to $4.8 million in 1984. The average for the four years 1981-1984 was $3.65 million. Trustee's Exhibit 25 reduced the management forecast to an average of $2.85 million.

[56]Both the size of the managed portfolios and the price of shares thereof depend directly on market values, and in turn govern the amount of fees and commissions.

concerned. It expected the investment advisor's position to continue to improve, but concluded that the change in status would not have significant results. Lehman employed a multiplier of 5 to value W&R at $10 million. It disagreed with First Boston's multiple for two reasons. It noted that the financial service companies that First Boston had examined did not rely significantly on distributioin of investment products, a major part of W&R's business, and that the comparable companies had a high cash dividend yield.[57]

Available Cash

An income based valuation includes all of the physical assets, including working capital, needed to carry on the businesses which produce the income. In the present case, for example, the large portfolio of marketable securities held by UIL Insurance is not separately valued because such investments are an essential part of a life insurance business, and the income therefrom is included in the earning power of that company.

Working capital employed in a business includes both current assets, such as accounts receivable and inventories, and current liabilities, both representing the lag between making a sale or incurring an expense and the time of actual payment. Although individual items in these categories turn over rapidly, they are continuously replaced and it is convenient to regard the working capital as a single fund employed in the business. It is a net fund because the delay in payments offsets, pro tanto, delays in collections.

Cash is part of working capital, and accumulations in excess of the needed working capital are normally represented by excess cash balances (including temporary cash investments). This excess is the cash available to distribute under a plan, and is not reflected in the going concern income forecasts. Consequently, excess or available cash is an addition to the estate's going concern value.[58]

Available cash as of December 31, 1980 was computed by the trustee's staff as follows:

	(000 omitted)			
	W&R	*ConVest*	*CIC*	*Total*
Cash availability	$9,500	$1,250	$4,100	$14,850
Capital requirements	(3,200)	(1,200)	(1,000)	(5,400)
Excess	$6,300	$50	$3,100	$9,450
Administrative claims				(1,500)
Available for distribution				$7,950

UIL Insurance is reflected indirectly in the computation. Since it is a regulated insurance company, cash from this source is available only through a proper dividend, included in computation of its parents' resources.

UIL Insurance had a balance of $1,547,000 of shareholders surplus at December 31, 1979, and forecast a 1980 statutory addition of $2,616,000 to that account, less a $2.5 million dividend.[59] The

[57]The fact that W&R has not actually paid high dividends is not relevant. The cash accumulation referred to demonstrates that that was merely a matter of administrative convenience. It will continue to be, since dividends will be paid only to CIC. Lehman presumably was relying on the notes CIC must service to distinguish it from similar companies on this ground.

[58]Other assets, in particular cases, may also be surplus to the requirements of the ongoing business, while cash balances may be needed for scheduled business improvements, requiring further appropriate adjustments, but such complications are not a significant factor here.

[59]The statutory surplus, as determined under insurance law, was:

	000 omitted			
	Dec. 31 1979	*Forecast Income 1980*	*Dividend*	*Forecast Balance 12/31/80*
Shareholders	$1,547	$2,616	$(2,500)	$1,663
Policyholders	9,699	2,581		12,280
Other	16,024	1,973		17,997
Total	$27,270	$7,170	$(2,500)	$31,940

The balance of the retained earnings shown in Table III p. 14 *supra*, consists of adjustments under generally accepted accounting principles ("GAAP") adopted a few years ago to make life insurance accounting more realistic, but not recognized by insurance law. Dividends in excess of the greater of 10% statutory surplus or the prior year's statutory net gain ($6,442,000) require approval of the Missouri Division of Insurance.

The Internal Revenue Code has its own definitions, followed in the table. The "other" category represents items recognized under insurance law, but not under the Internal Revenue Code. In general, dividends in excess of the "shareholders surplus" would have substantial tax consequences.

growth forecast for UIL Insurance requires appropriate enhancement of the shareholders' capital, a need also monitored by the state insurance authority.

The following Table summarizes the working capital for the other three significant companies, at December 31, 1979, and the forecast changes therein:

Table VI
(000 omitted)

	W&R	ConVest	CIC	Consolidated
*Per Table III**				
Cash & marketable securities	$15,364	$759	$1,918	$18,041
Accounts receivable	3,687	4,582	101	8,370
	$19,051	$5,341	$2,019	$26,411
Current liabilities	(7,341)[1]	(4,489)	(577)	(12,407)
Net 12-31-79	$11,710[2]	$852	$1,442	$14,004
1980 Budgets:				
Net income before taxes	2,117	2,991	(1,520)[4]	3,588
Depreciation & depletion	321	900	28	1,249
Intercompany payments	(1,500)[3]	250	1,500	250
UIL Insurance dividend			2,500	2,500
	$12,649	$4,993	$3,950	$21,591
Sale of three leases		1,750		1,750
Payment of bank loans		(1,105)		(1,105)
Collections on limited partnership advances		378		378
Leases & equipment		(1,917)		(1,917)
1980 Income program		(486)		(486)
	$12,648	$3,613	$3,950	$20,211
Proposed distribution	(6,300)	(50)	(3,100)	$(9,450)
Working Capital	$6,348	$3,563[5]	$850	$10,761

*Page 14, *supra*.

[1]Including open securities transactions.

[2]The net capital computation required by S.E.C. Rule 15e3-1(c)(2) under the Securities Exchange Act of 1934 used by W&R is not appropriate at the beginning of this computation. It does set a minimum below which W&R's capital may not be reduced, and is a necessary check on the final result, but is relevant only at that stage. It is directed to "quick assets" in the context of a hypothetical cessation of business.

[3]Payments of $125,000 a month. This is mostly a tax allocation for CIC's operating loss, any balance being treated as a dividend.

[4]Excluding accrued interest on funded debt. Consists of $1,228,000 of corporate expenses, $844,000 of reorganization expenses, minus $552,000 of investment and other income.

[5]The ConVest cash flow was supplied by CIC's letter of September 29, 1980. The letter also deducts $2,359,000 for payment of accounts payable, which would not affect net working capital, but reduces the cash to about the $1.2 million considered necessary for the 1981 program.

The latest ConVest data calls for a $2.4 million increase in non cash working capital, the occasion for which has not really been explained. The September 29, 1980 letter suggests that this will be in the form of halving the present $4.5 million current liability level. ConVest is paying its bills in the ordinary course of business. Its level of current liabilities depends on the rate at which new obligations are incurred, primarily in its drilling program, which was quite active at the beginning of this year. However, a slackening of drilling would be inconsistent with the two sizable 1980 programs. Moreover, such a change would tend to increase cash balances within a very short period by reducing the payment part of the current asset cycle.

The conclusion that ConVest's operation will not be a significant source of available cash in 1980 may nevertheless be valid. The indicated expansion, through the new programs would normally call for more working capital. However, the new investments are not included in the January 1, 1980, reserve valuation, a substantial omission. On the other hand, a further sale of existing reserves is relied on to provide the balance of the $20 million payment to the banks contemplated by the plan. Adjustments are needed for both.

Management proposed to keep $3.3 million of capital in W&R and $1 million in reorganized CIC. The W&R requirement consisted of $500,000 plus $800,000 as one-twelfth of estimated $10 million current liability level plus $1.9 million, computed as one fourth of annual management fee income. We need not linger over the rationale for these calculations. W&R is a company with large and growing responsibilities. Apart from its ownership of UIL Insurance, which adds substance to its financial statements, but is not liquid, and the usual office equipment, its business is essentially a cash business. The amount proposed to be retained, however calculated, does not seem excessive or disproportionate.

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[59]UIL Insurance is not included in the consolidated return, since life insurance companies are separately taxed under the Internal Revenue Code. Amendments to the Code (26 U.S.C. 1504(c) and 1503(c)) would permit its inclusion in years subsequent to 1980. The inclusion is optional, but is irrevocable once the election is made. The Code, Section 1503(c), imposes substantial limitations on use of losses of nonlife members of the consolidated group against income of a life company. The tentative conclusion of CIC's counsel was that an election would not be desirable.

Tax loss carryover

At the end of 1979, CIC claimed on its consolidated tax return,[59] $25.1 million of net operating loss carryovers and $600,000 of investment tax credits. The amounts are subject to Internal Revenue Service audit. The expiration dates are:

	(In Millions)	
Dec. 31	*Loss Carryover*	*Tax Credits*
1980	$5.2	0.6
1983	$5.2	
1984	$3.1	some of which
1985	$5.7	extend to 1986
1986	$5.9	
	$25.1	$0.6

Loss carryovers are deductible from taxable income and produce a tax reduction or saving at the statutory tax rate, currently 46%, of their amount. Tax credits produce a 100% savings when used. Such savings are usable only to the extent taxable income is earned.

The going concern valuations are based on after tax income, and the potential tax benefits, because of their transitory nature, are valued separately, as the present value of the taxes that would not actually be paid because of the carryover.

All parties, except OC Associates, accepted the $7.5 million present value developed by trustees expert, First Boston, for the tax loss. Lehman, OC Associates witness concluded that current deductions in 1980, principally interest on funded debt, would exceed income and that the tax loss expiring in 1980 could not be used. It also adopted a 15% discount rate. The net result was its valuation of the carryover at $4.6 million. All of these conclusions were based on false premises.

ConVest, although consolidated, is subject to special tax rules as an oil and gas company. It has accumulated $2.4 million of percentage depletion deductions, which do not expire. In the original CIC forecasts, the depletion was deducted before applying the carryover, but on reexamination, it has been determined that the depletion deductions are postponed until the loss carryovers have been exhausted.

The proposed sale of part of ConVest's reserves to fund part of the plan, will also have a significant 1980 tax effect, since the original forecasts did not include sufficient taxable income in 1980 to use all of the loss expiring in that year. The balance of any 1980 gain will accelerate realization of the tax loss. CIC's letter of September 29, 1980, recomputes the tax forecasts to allow for all of those factors, except the proposed lease sale.[60] The data, which includes the most recent management projections of income is shown below.

[60]Our staff suggested this omission, since too many significant variables could be introduced by a sale estimate, while the revised forecast can be readily adjusted to reflect any sale proposed.

Table VII—Continental Investment Corporation
(000 omitted)

	1980	*1981*	*1982*	*1983*	*1984*
W&R*	$1,158	$1,792	$4,424	$5,232	$(6,106)
RMA*	100	396	941	1,415	(2,131)
ConVest	2,991	6,268	6,250	6,217	6,043
Distributors	(50)	(250)	(375)	(500)	(625)
CIC*	(879)	(1,340)	(1,552)	(1,648)	(1,667)
Escrow earnings	195	—	—	—	(195)
Eliminate excess interest income[1]	—	(1,054)	(1,558)	(1,666)	(1,739)
Total	$3,515	$5,812	$8,130	$9,050	$10,249
Pro forma interest expense[2]	(7,400)	(1,500)	(1,500)	(1,050)	(750)
Amortization[3]	(1,200)	(1,200)	—	—	—
Taxable income (loss)	$(5,085)	$3,112	$6,630	$8,000	$9,499
Hypothetical income tax at 46%	—[5]	(1,432)	(3,050)	(3,680)	(4,370)
Pro forma after tax income (loss)	$(5,085)	$1,680	$3,580	$4,320	$5,129

Summary of Tax Savings

	Tax Loss Expired	Tax Loss Used	Depletion Used[5]	Investment Tax Credit Used[5]	Total Savings
1980	$5,185	$[1]	$—	$—	$—
1981	—	3,112	—	—	1,432
1982	—	6,630	—	—	3,050
1983	—	8,000	—	—	3,680
1984	—	2,179	1,452	324	1,994
1985			948	210	646
	$5,185	$19,921	$2,400	$534	$10,802
Discounted		at 12%			$7,109
		at 15%			6,462

*As forecast in Tr. Ex. 25. The ConVest forecast in that exhibit was revised in the September 29, 1980 letter.

[1]Elimination of interest income forecast on cash to be distributer' under the plan.

[2]Estimated, based on present debt for 1980 and on $10 million of refunding debt at 15% maximum rate from January 1, 1981.

[3]Deductible amortization of excess cost of subsidiaries.

[4]Ignores effect of planned lease sale in 1980 for reasons discussed at p. 52, *infra*.

[5]Depletion limited to 65% of consolidated taxable income after deducting available loss carryovers. Investment tax credit limited to 90% of tax. The forecast 1980 loss is applied, in the computation, to 1984, but the tax saving therefrom is not included. The proposed lease sale would probably permit use of all of the investment tax credit in 1984 and shift some of the depletion carryover from 1985 to 1984, assuming the income is as forecast.

Conclusions as to Valuation

The evidence as to the actuarial value of CIC's life insurance subsidiary and the value of the reserves owned by ConVest was necessary because the earning power of the principal and characteristic assets of these businesses, the insurance contracts of UIL Insurance, and the oil and gas reserves of ConVest have long been recognized as not adequately represented by the traditional annual income statements.[61] Unlike a manufacturing business, whose future income depends essentially on future sales, a large part of a life insurance company's future income arises from long-term contracts already made, its insurance in force. And the reserves already acquired by an oil and gas company similarly produce income over many years. Both can be realized on currently by sale or some form of reinsurance at prices based on the kind of actuarial or engineering analysis used here. Accordingly, such studies underlie the valuation of these kinds of businesses.

However, the third element of the actuarial valuation of UIL Insurance, the new business, turns principally on sales estimates, not in itself a province of actuarial science. It is this factor that accounts for most of the disagreement among the dollar values assigned by the experts. This issue does not differ from the sales forecasting incident to the planning of any business. The significance of the oil and gas reserves is also limited in the context of this case by the need to sell important reserves to fund the plan.[62] Reserves sold will not produce income in the future and the proceeds will be distributed at consummation, so these assets do not enter into the value of the new stock.

ConVest's primary role in the reorganized company is as a source of sales of future partnership interersts and of future exploration and development. The balance of its existing reserves are a minor, although not insignificant, additional asset.

So placed in perspective, the debate over whether reorganized CIC should be valued as one business or three is readily resolved. CIC is and will be a single company with all of its material activities having a common and critical nexus of an experienced and

[61]As noted both businesses receive special treatment under the Internal Revenue Code for the same reason. A major reform of insurance financial reporting incorporating actuarial studies, was adopted February 14, 1974, Securities Act Release No. 33-5456. On August 31, 1978, Securities Act Release Nos. 33-5966 to 5968, the Commission concluded that both of the traditional accounting methods for oil and gas companies were inadequate because they failed to reflect the reserves. It authorized, on an interim basis, use of a modified traditional method, supplemented by disclosure of reserve data and it proposed development of reserve recognition accounting. Much work has been done, but no definitive conclusions reached in this area.

[62]Discussion of the difficulties of selling ConVest's fractional interest in the reserves would be pertinent if that were contemplated. But the only sales assumed are partnership sales of the entire interest in particular, properties, involving no such complications. ConVest's fraction applies to division of the proceeds.

effective sales organization.[63] Its ownership of UIL Insurance and ConVest and the contractual relationships with the funds managed by W&R and its subsidiary are important factors in the future of both the sales organization and of the subsidiaries and independent sources of consolidated income. The complexities of the group required separate examination of the parts, but they must be fitted together.

Giving effect to the proposed sale of oil and gas reserves to fund the plan is needed to make more specific the company which will result from the plan and whose stock is what is really being assigned a value. The goal of $12 million cash is fixed by the requirements of the plan.[64] ConVest has valuable developed reserves for which the present market appears to be favorable. As Huddleston stated

> "There is a willingness of purchases (sic) of oil properties to bid extremely high prices."[65]

The three leases sold early this year produced about 150% of the present value just assigned by Huddleston to their reserves.

It is most convenient to treat the $12 million as additional available cash, and to revise both the ConVest value and the tax loss carryover to reflect the effects of such a sale before consummation of the plan. ConVest has estimated the taxable income from such a sale at $9 million. This would offset the loss, due to interest accruals, otherwise forecast for tax purposes for 1980, and use most of old loss carryover expiring in 1980, another reason for selecting this fund source. Since neither the expiring loss nor the 1980 loss has been included in the revised tax loss forecast tabulated above, no direct change in its present value is needed.

Huddleston's reserve present value would be reduced by the sale. For testing purposes, we will use the same $12 million. The sale of reserves would also affect ConVest's future income and the details of the computation of the savings from the tax loss in future years. However, the forecast indicates full use of the available carryovers of all types, in early 1985, so the presently uncomputable change will be minor. We noted above that the January 1, 1980 reserve valuation approach to ConVest omitted, except for the allowance made for the consummated 1980 program, all consideration of its future business. Similarly, the available cash computations, deducted substantial current capital expenditures the benefits of which are not reflected elsewhere.

The uncertainties of exploration for oil and gas would make it rash to compute a return or value on future discoveries. The focus on proven reserves in this business is well founded. But this positive factor, reinforced by the sharing of costs with limited partners, offsets the approximations involved in other steps in the valuation of ConVest.

We concur in the similarly conservative approach of First Boston to CIC's forecasts of a rapid sales growth following consummation. All of CIC's operations are in highly competitive fields. Its experience during this case demonstrates that it is an effective competitor, and the reorganization will certainly improve its position. But there are too many other variables for a general translation of that change into dollars of income.

The lag in its fee schedules is an objective and quantifiable consequence of this case. And having significantly lower than market charges is a clear present competitive advantage. The earnings history of W&R requires an upward adjustment for the foreseeable improvement in earnings, which will flow directly from the change in status on reorganization. We note above that First Boston's method actually allowed for only half of the fee differential. If that change were the only variable, the adjustment would be inadequate. But the relationship of the fee level to competitive position is also significant. The assumption that W&R is in a

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[63]Equity Funding Corporation of America entered reorganization as a very similar company. But the course of events, particularly the massive fraud which led to the failure, changed its character. The mutual funds it sponsored immediately terminated the management contracts, and EFCA's sales force disbanded. Its reorganization focused on its tangible assets, its status as a large insurance holding company.

[64]Our discussion of available cash left some open questions, which may be revisited in discussing feasibility. But for present purposes, it is best to assume completion of the trustee's announced program.

[65]Tr. 13-91. At Tr. 13-122 he testified that this market has prevailed for the past two or three years.

position to improve its earnings level by $500,000 is sounder than the particular mechanism used to compute the amount of the increase.

The relatively conservative approach to each of the various elements of value supports and justifies First Boston's selection of higher than average multipliers. At this point, it is necessary to recognize that CIC is, and will remain a single company and that its value will be represented by a single class of common stock, which necessarily will have a single price earnings ratio. UIL Insurance will be the dominate component, in terms of both assets and earnings. Accordingly, life insurance companies must be the primary guide to the reorganized company's value.

The Court found a value of $166 million for the estate. About $21.6 million will be distributed in cash on consummation, so must be excluded from the value of the reorganized company. And the $10 million in secured term notes are merely a deferred additional cash distribution. The relevant finding is $134.4 million for the stock of the reorganized company, approximately $3.87 a new share.

These findings are realistic and fully supported by the record, although we would reach that conclusion by a somewhat different route. The $21.6 million of available cash has already been discussed and drops out of the calculation. The pro forma components of the reorganized company are:

	Normalized After tax Earnings	*Value found by the Court*	*Adjusted for Lease Sale*
UIL Insurance	$11.5	$105.0	$105.0
W&R and subsidiary	1.5	11.0	11.0
ConVest and Distributors	3.0	33.0	21.0
CIC corporate expenses	(1.3)	—	—
Tax loss carryover	—	7.5	7.5
Reorganized company	$14.7	$156.5	$144.5
Available cash		9.5	21.5
Total		166.0	$166.0

The $10 million of new notes are well secured variable rate obligations and may be deducted at face value, leaving $134.4 million applicable to the new stock. The $100,000 difference represents a failure to fully allow in the record for the recent settlement of a lawsuit for $95,000, which increased the estimated cash requirements to $21.6 million, a change too small to be worth adjusting for.

ConVest's income from reserves already held will be quite high in the next few years. After taxes and administrative expenses, the four year annual average is $6.1 million, peaking at $7.9 million in 1981, declining at the rate of about $1 million a year through 1985, and dwindling at a slower rate thereafter. About 74% of the discounted value accepted by the court would thus be realized in the first four years.

The proposed sales, including the $1.2 million of present value of the three leases already sold, represent about 40% of the $33 million, but will probably consist of the properties most advanced in development. Accordingly, we have used a $3 million ConVest income level, a little less than half of that forecast from all property. These are not really normalized earnings but new programs will tend to produce reserves to replace those being exhausted.

The losses, or more realistically, the forecast excess selling costs, accounted for by Distributors, are a direct function of the future ConVest programs, the profits of which are excluded from this computation. Assuming competent management, such costs will not be incurred unless productive. Without overlooking the risk of an unsuccessful program, these costs need not be allowed for as a continuing expense item.

We have given express recognition to CIC's corporate overhead, accepting the post reorganization estimate of $1.3 million for 1981. There is no point in allocating these charges to the various operating subsidiaries and escalation factors used for later years relate to inflation and growth factors which also have been eliminated from consideration on the income side.

The tax savings represent $10.8 million over 6 years, the approximate amount of the principal of the new notes payable over the same period, but are a short-term asset which it is hoped will not recur. Accordingly, the tax loss value included in the court's valuation must be kept separate, leaving a going concern value of $137 million for the reorganized company.

This is 9.3 times the $14.7 million of annual earning power, a little lower than the 9.75 multiplier derived by First Boston for UIL Insurance. We agree with First Boston that checking the special segment valuations by a traditional income method is a valuable verification technique. The consistency of the results strongly supports the Court's own analysis of the evidence.

Such a valuation is an informed judgment, balancing a myriad of variables and proabilities. The mathematical processes involved force the discussion into a form of somewhat illusory precision. The $166 million represents more realistically a point in a range. Its validity depends on the conclusion that the possibilities of the estate being less than $160 million or more than $170 million are small and about equal, in the light of present knowledge and expectations. The court's finding meets that test.

VI. *FAIRNESS AND EQUITY*

In discussing the fairness and equity of the plan, we must pretermit two issues now being independently examined by the court, objections to the parity treatment of the debentures purchased by OC Associates and of the common stock held by the Wallaces. These are matters relating to the allowance and classification of claims[66]. The final decision on the merits of the particular claim will determine what is fair and equitable for the holder. To the extent that decision might reduce the full participation assumed herein, it would enhance the amount available for the other parties.

Any relief awarded against either OC Associates or the majority shareholders would take the form of a reduction of the number of new shares to be issued to them. Award of such grounds relied on by the court, as to which other interests were injured by the conduct relied on. The shares, if any, withheld from OC Associates or the majority stockholders would be the medium for compensating those injured. Hence, no possible outcome of these disputes could render the plan unfair, if it is fair on the assumption that challenged holdings are treated on full parity.

The bank settlement agreement is not so readily severed. The banks are to receive $20 million in cash, on consummation, $10 million in installments, with interest, during the 2nd to 7th years thereafter and the balance of their claim, about $15 million in stock. The computation of the present debt may be summarized as follows:

	04-30-76	Credit for Mortgage	Balance 12/31-79
Refunding loan agreement	$50,550	$(31,322)	$19,228
Capitalized interest to 06-30-75	6,123	—	6,123
Short-term loans	2,560	(2,560)	—
Reorganization loans	500	—	500
Interest bearing balance	$59,733	$(33,882)	$25,851
Accrued int. 07-01-75 to 04-30-76	5,913	(118)	5,795
Pre-bankruptcy balance	$65,646	$(34,000)	$31,646
		Average Rate	
Post bankruptcy interest:			
05-01-76 to 12-31-76	$1,408	8.17%	$—
1977	2,062	7.98%	—
1978	2,653	10.26%	—
1979	3,602	13.93%	9,725
			$41,371
CIC balance 12-31-79		14.04%	3,629
Estimated 1980			$45,000

The application of the Mortgage sale proceeds credit is reported in footnote 7 to CIC's Form 10-K for 1976. The $118,000 applied to accrued interest appears to have been the interest on the short term unsecured notes, to which the credit was first applied. The Form 10-K did not distinguish between pre and post filing interest accruals. The April 30, 1976 balance was taken from the Trustee's 167(1) Report and the balance of the 1976 accrual treated as an 8- months post-bankruptcy accrual.

The Mortgage credit was the $34 million agreed to be bid by the banks at a foreclosure sale on April 27, 1976. On October 26, 1976, Tiger International Inc., offered to purchase the stock for 108% of the stockholders equity as shown by the audited December 31, 1976, balance sheet of Mortgage, but not less than $37 million or more than $39 million. On January 14, 1977, the First National Bank of Boston, agent for the lending banks reported a net realization of $36,217,704[67]

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[66]There is no dispute as the quantity or validity of the securities held by these parties. In essence, the objectors seek to reduce or deny participation to their securities based on asserted misconduct of the holders, an equitable remedy which turns on factual issues and the court's determination. *Taylor* vs. *Standard Gas & Electric Company*, 306 US 307, 322-323 (1939). *Commonwealth Light & Power Company*, 141 F2d 734, 739-741 (7th Cir. 1944), *cert. den.* 322 U.S. 766; *Inland Gas Corp.*, 187 F.2d 813, 815-816 (6th Cir. 1951). The equitable subordination remedy is preserved by Section 510(c) of the new Code (11 USC 510(c)).

[67]

Gross proceeds		$36,700,000*
Goldman Sachs' commission	$392,000*	
Legal fees	90,296	(482,296)
		$36,217,704

*The report indicates that Goldman Sachs' commission was $467,000 against which a $75,000 deposit had been credited indicating an actual sales price of $36,775,000.

The report claimed credit for $36,026,692 leaving an excess of $116,012, which would be credited against the $27 million of securities to be received by the banks under their agreement with respect to CIC's pending Chapter XI plan of arrangement.

The Omnibus Refunding Agreement, dated January 12, 1976, referred to, provided in pertinent part, that if Mortgage were resold for more than $32 million plus carrying charges, the excess would be so credited. The contract allowed 12.11% annual carrying charge on the $32 million[68], computed from January 1, 1976. The total to January 14, 1977 was $4,026,692, which, with the $32 million base, was $36,026,692. The $116,012 acknowledged excess has not been credited or, so as far as we can ascertain from the record, been otherwise allowed for. We are aware that the ORA provided only for a credit against the specific securities to be issued under the aborted Chapter XI plan, so that may also be a benefit which the bank group considers CIC to have forfeited.

A substantially large amount is also involved. The ORA provided explicitly for carrying charges from January 1, 1976, but the foreclosure was not actually effected until four months later. The reduction of the bank loan for the $34 million bid occurred on April 28, 1976, and the $1,542,000 increase in CIC's interest accruals during this four months was at an annual rate of about 7.74% on the full $59,733,000 of principal indebtedness for that period. Almost $900,000 of that accrual, still included in the banks' claim, thus duplicated the approximately $1.3 million of carrying charges computed for the first third of 1976 under the ORA.[69]

We cannot view the double interest charge as intended in view of the failure to refer to it in the contemporaneous proxy solicitation which discussed in detail the relevant agreements. The ambiguity could be resolved by concluding that the Mortgage credit was intended to be effective as of January 1, 1976, if ratified and consummated, as it was, and the parties overlooked the need for a retroactive adjustment for the interest tentatively accrued on the loans; or the higher ORA carrying charges, about $1.3 million, for the period before the actual sale, could be eliminated, increasing the excess from $116,012 to about $1.4 million, a solution which would make acute the question of how the ORA should be interpreted as to application of the excess under a different plan of reorganization.

The plan incorporates the trustee's application for approval of the settlement, which says that

> "Senior debt will consist of principal of approximately $25.8 million and interest calculated at the contract non-default rate (estimated to total approximately $19.7 million by December 31, 1980)"

We doubt if it contemplated further examination of the kind of questions pointed out here, but the record does not indicate that the settling parties were aware of them. We turn to the broader issues being settled.

The bank debt originated as an 18-month loan to finance the $82.5 million purchase of W&R in 1969. The debt was outstanding at the time of the original sale of the subordinated debentures in October 1970, which involved concurrent recasting and extension of the bank debt. It was restructured again at the time of the debenture exchange offers. Consequently, the senior position of this obligation vis-a-vis both debentureholders and stockholders was well disclosed and established.

The bank group worked with CIC's management, commencing in 1974, in efforts to resolve mounting financial difficulties by substantially changing the rights of CIC's other security holders, especially the debentureholders. The procedural steps, culminating in the Chapter XI filing on April 30, 1976, which commenced this case, are detailed at pp. 8-11, *supra*. In the process, the banks were granted security, commencing July 9, 1974, and ultimately, two days before the Chapter XI filing, CIC acquiesced in the foreclosure of Mortgage to cover

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[68]Six banks with 43.26% of the loans received 15% and ten banks with 56.74% of the loans received 10%. The contract would have reduced the 15% rate to 10% on confirmation of the Chapter XI plan, and to 6% on January 1, 1978, while holding the 10% rate constant, but these changes never went into effect. During the initial period, interest was compounded annually, so the 14 days in January 1977 include interest on the approximately $3,875,000 of 1976 interest.

[69]Due to the variable interest rate, only approximations are possible without a detailed analysis of the original records. But the $34 million credit is far too large for there to be any doubt that the duplication occurred.

the larger part of the debt. As noted at the pages cited, a 157 page solicitation, dated March 19, 1976, of CIC's stockholders and debentureholders resulted in (1) ratification by the shareholders at an April 27, 1976, meeting of the pledges and the Mortgage sale, (2) shareholder approval of the proposed changes in capitalization, (3) receipt of acceptances of the proposed plan by a large majority of the debentureholders, and (4) debentureholder ratification of the bank pledges and a waiver, under the terms of their indentures, of conflicting junior security interests.

The plan was directed to transforming most of the debentureholders' claims into two series of junior preferred stock. The voting rights were fixed to give the debentureholders new stock representing 24.6% of the voting power, which would leave the officers and directors 58% of the voting power, including just about 50% for the Wallaces' 65% of the common stock.

The banks offered an unconditional credit of $34 million against the approximately $61 million then owed them, upon the transfer of Mortgage, and three significant concessions if the plan was consummated as proposed within a time limit fixed. They would waive the accrued interest for the period from June 30 to December 31, 1975, about $4.3 million, contribute $500,000 advanced for reorganization costs prior to the filing date, reimburse CIC for up to an additional $500,000 for that purpose, and accept payment of the $27 million balance of their debt in the form of senior term notes and senior preferred stock, over a period extending through 1984. The new securities specified were to bear interest at 1% above prime, but included a 9% maximum rate. Payments on the securities to be issued to the debentureholders, however, were subordinate and contingent on prior satisfaction of the banks' securities. The settlement accepts the bank's position that these concessions are no longer required. With respect to Mortgage, the ORA offered CIC additional benefits, contingent on the amount realized by the banks on resale, as described above.

The ORA covered both the agreed foreclosure of Mortgage and the terms upon which the balance of the banks' claims were to be settled. It is in substance, the first settlement agreement with the banks. The principal consideration to them was eliminating of the risk that a bankruptcy filing by the debtor would subject Mortgage to administration as part of CIC's estate, and the ORA was drawn to give the banks, to the fullest extent legally possible, uncontrolled discretion with respect to Mortgage, and to make that part of the agreement independent of the imminent commencement of this case. This part of the agreement was promptly consummated.

Substantial benefits were offered to CIC and its security holders, but except for the unconditional credit of $34 million arising from the agreed foreclosure sale, were made contingent on early consummation of the Chapter XI plan proposed by CIC. The banks thereby made the foregiveness of about $4.3 million of accrued interest, up to $1 million to be supplied for reorganization expenses, and possibly CIC's right to share in the proceeds of a favorable sale of Mortgage, contingent on the debentureholders limitation to the exiguous provision made for them in the plan. Although the banks, as such, would not have been affected by changes favorable to the debentureholders, if not made at their expense, such changes could only have been at the expense of the third significant party in interest, the Wallaces with almost two thirds of the common stock, who could not be affected without their consent, in the Chapter XI proceeding selected. The deadlock which resulted was foreseeable from the beginning.

It has been our position, since the beginning of this case, that Chapter XI was being improperly used to impose an unnecessary and inordinate loss of rights on the debentureholders. The conclusion that the bank creditors stepped beyond the normal scope of enforcing their debts follows. We are not relying on a desire or intent to injure the debenture holders or to aid the Wallaces.[70] We described above the effort to create the debentureholders' committee and the ratifications solicited and secured. And absent a bankruptcy filing, the banks had to deal with those in control of CIC. But the context and the effects

[70]It was disclosed in the March 19, 1976, prospectus that subsidiaries of W corporation, which then held most of the Wallaces' CIC stock "have had since 1962 and continue to have significant borrowing relationships with the First National Bank of Boston" and that these loans had been restructured in 1974 and guaranteed by W Corporation. Old Colony Trust Company, the indenture trustee for CIC's original debenture issuer, was merged into First Boston in 1971 and First Boston continued as indenture trustee for that issue, although the outstanding debentures for which it was fiduciary were reduced to $1.5 million by the exchange offer.

identified here are factual and raised challenges to their claims which led to the proposed settlement.

The banks offered, and the trustee accepted, a waiver of their claim to default interest and acceptance of common stock at a rate 10.7% less than that proposed for the debentureholders, eliminating an adverse litigation risk to the estate of about $12 million. The litigation risks to the banks are more difficult to quantify.

We can give little weight to the dispute as to an asserted oral understanding as to how and when Mortgage would be resold. More than a blind application of the parol evidence rule is involved. The fact that a detailed and comprehensive contract was drawn, after extensive negotiations, which dealt at length with the resale, leaves no room for insertion of critical and conflicting oral agreements. Moreover, nothing short of an agreement as to a specific minimum price, a specific and objectively determinable time, or a requirement of joint consent to any sale, would be sufficient to create a meaningful restriction on the banks' judgment as to a sale.

The trustee focused on adapting the settlement terms of the ORA to the present context. The banks, as such, clearly had no lawful interest in enforcing the division of the CIC estate among CIC's other security holders in the manner specified by the plan they initially endorsed, so the fact that the present reorganization follows instead the legal requirements of the Bankruptcy Act would not in itself relieve them of their substantive obligations under the ORA. The concessions they offered were not a gratuity. They were the express predicate for both the shareholders and debentureholders ratification of the security they had taken and of the foreclosure sale of Mortgage. The banks were provident enough to collect the larger part of their consideration under the ORA in advance.

The failure to meet the time limits set for consummation of the reorganization and delivery of the new securities for the balance of their claims to the banks is a more substantial excuse for regarding their ORA offers as having lapsed. This defense is not conclusive, since much of the delay stemmed from their choice or acquiescence in the unfair terms offered by the debtor and the procedure used in an unsuccessful effort to avoid an effective challenge thereto. We are aware that the ultimate obstacle to a fair and expeditious reorganization was another party, and that the banks repeatedly extended the time for consummating a plan. But this pattern demonstrates the coercive aspect of the very time limitation the banks must rely on as an excuse for withdrawing the benefits they offered CIC. The time limit meant that extensive waivers of rights would be required for CIC to actually receive the full contractual consideration for abandoning Mortgage. It is unimportant whether the banks had an expectation or preference as to the winner in the test of obduracy. In the event, the banks became the winner by default.

The strength of the trustee's case lay in the partial failure of the consideration CIC was to receive under the ORA due to the inability of its parties to control the course of this case as planned. A clause protecting the banks from the unforeseeable consequences of unexpected delay is not *per se* improper, although it has arbitrary and potentially penal aspects that leave room for traditional equitable relief. Its actual conflict with the investor protection provisions of the Bankruptcy Act casts an additional cloud on its presence in a contract made in anticipation of a bankruptcy case.

Nevertheless, there is ample room for dispute as to whether the banks' ORA obligations survived, and even more uncertainty as to what adjustment of their claims would be equitable. The need for settlement is obvious.

The legal rank, the amounts of money lent and repaid, and the significant actions of the banks are comprehensively dealt with in the record. We agree with the court's findings as to the right of the banks to resell Mortgage and hence see no lack of relevant evidence on the resale. Nor do we view questions of intent and purpose as sufficiently significant to make the lack of extensive examination of bank witnesses and records a fatal omission.[71]

Examination of the banks' claims is more

[71]Section 167 does not require examination of every conceivable witness and document. Intensive discovery is productive only if directed to matters as to which there is a reasonable expectation of useful results. A substantial element of judgment is involved in dismissing a field as too sterile to be worth plowing. It would have been reasonable for the trustee's counsel to have inquired a little further. But the possibility of such inquiries bearing fruit seems negligible.

elementary. The record thereon is unsatisfactory and the intent of the settling parties on some points is not clear. We would recommend an application to the Court of Appeals to remand for clarification on at least this question, unless the trustee and the banks agree on the definitive amount of the claims intended to be allowed.

Subject to this caveat, which involves a relatively small fraction of the claims and the estate, the bank settlement is within the range of the litigating contingencies, and does not render the plan unfair.

The debentureholders committee objected to allocation of all of the cash and new notes to the banks. This allocation flows from the subordination clauses of the debenture indentures which provide, in substance, that distributions allocated in this kind of case to debentureholders shall be distributed instead to senior creditors until the senior creditors have been paid in full. In cases of insolvency, the subordination clauses would transfer a large part, if not all, of the debentureholders share of the estate to the banks. When, as here, debtor is solvent, both classes of creditors are entitled to satisfaction. The clauses still expressly grant the senior creditors prior right to cash distributions and have properly been followed by the plan with respect to both the immediate and deferred cash payments (represented by the new notes). Only stock is left for the debentureholders.

The plan provides that creditors' claims shall be satisfied by issuing stock at 112% of the "reorganization value" for the allowed amount of their claims, including post bankruptcy interest. The banks, as noted, agreed to accept the balance of their claims at reorganization value, waiving the 12% step-up. OC Associates, the largest debentureholder proposed modification of the rate to 115%, while the majority stockholders proposed it be reduced to 105%.

The step-up is a recognition that a creditor's legal priority over the stockholders is lost when a plan transforms him into a stockholder, and that this change of rights calls for some compensation.[72]

Although the debentureholders do lose in this case, subordinated creditor rank, it is a rank that has been of little comfort to them since 1974, when most of them received a 30% or 40% principal bonus for foregoing their right to voluntarily become stockholders. The change gives them voting power, unlimited right to share in profits, and a position junior only to $10 million of new term notes rather than to $45 million of senior debt. The sacrifice in rank should not be exaggerated.

Nevertheless the step-up also serves other purposes. The amount set in the plan is about 5.5% of the reorganization value found for the new stock, which as emphasized above, really represents a range of values. A step-up, in effect compensates creditors at a rate closer to the lower end of that range, appropriate conservatism. The 12% rate is liberal, but not beyond the bounds of a reasonable allowance.

The suggestion that the plan should be modified to limit post filing purchases of debentures to 100%, rather than 112%, is untenable. The debt represented by the debenture is transferable, and a purchaser succeeds to the rights incident to that debt.[73] Consequently, a distinction cannot be drawn among debentureholders based solely on the date of their acquisition of the debt.[74] A reduction or limitation of a purchaser's claim is, of course, a well established remedy for inequitable conduct in a reorganization context, but depends on

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[72]OC Associates' basic position is that debtor is insolvent and that the stockholders should receive nothing. In such a case, no step-up would be appropriate, since the debentureholders would suffer no relative loss of prior rank. The 12% step-up transfers about $7.4 million of reorganization value, based on the court's valuation, from the stockholders to the debentureholders, a 5% step-up would reduce this to $3.1 million. The difference is about 34 cents per old common share.

[73]A security holder may also have rights in addition to the simple contract claim represented by his security, which would not pass to a purchaser. *Four Seasons Nursing Centers, Inc.* 472 F2d 747 (10th Cir., 1973); *Principale* vs. *GPU* 164 F2d 220 (2d Cir., 1947). But that exception is not involved here.

[74]*Moulded Products Inc.* v. *Barry*, 474 F2d 220, 224-225 (8th Cir. 1973); *In Lorraine Castle Apartments Building Corporation* 149 F2d 55, 58 (7th Cir. 1945), *cert. den.* 326 US 728; cf *Manufacturers Trust Company* v. *Becker*, 338 US 304 (1949); *SEC* v. *Chenery Corp.*, 318 US 80, 90 (1943).

establishment of wrongful action.[75]

The indenture trustee for the orginal debenture issue, those who did not accept the exchange offer in 1973, proposed a modification to allow those debentureholders 130% to 140% of their claims in order to place them on a parity with the holders of the same class who exchanged and now hold claims including the 1973 exchange premium.

The precedents they cite are of limited help.[76] *Associated Gas and Electric Co.*, 61 FSupp 11 (S.D. NY, 1944) involved a case in which debtor had transferred substantially all of its assets to a subsidiary and offered debentures of that subsidiary in exchange for those of the parent. The new debentures sharply reduced, in complicated ways, the interest rate and other obligations represented by the old, but were prima facie senior to the parent's issues. After several years, both companies entered Chapter X.

The complexity of the recapitalization raised a plethora of issues, including its initial validity in terms of fraudulent conveyance, the status of intercompany debts created and "forgiven" at various stages and the time limits or lack thereof of effecting the exchange. The controversy was settled by compromise which recognized the unexchanged parent company debentures as essentially on parity with those of the subsidiary, but allowed the subsidiary debentureholders an increment, which equalled about the amount of interest lost through the exchange.

The court approved the compromise, but rejected pp. 53-54 the interest recoupment justification for its amount. It noted that this required treating the lost interest, without any legal basis, as a priority claim, senior to the principal of all the debentures, which could be satisfied only in part because of insolvency. The compromise was acceptable because it gave due recognition to the litigating risk that the new debentures might succeed in their claim to have obtained senior rank through the exchange.

The exchange offer in this case, however, improvident in other respects, involved no such abridgment of the vested rights of unexchanging debentureholders. And CIC made strenuous efforts to induce all debentureholders to exchange. The power of this court to correct inequities is clear, but stronger evidence of inequity would be required to justify the modification proposed.

The suggestion that this particular debenture issue should be separately classified is wholly without merit. Both issues are the same kind of obligations and would remain the same, even if the court were to accept the contention that the claim of the unexchanging debentures should be increased to give them the benefit of the 1973 exchange offer. Their rights under that offer are purely a question of law and have nothing to do with their classification as unsecured creditors.

VII. *FEASIBILITY*

The only significant feasibility question is $12 million expected to be obtained by sale of oil and gas reserves. The evidence as to the reserves available, and the current market for such property, supports the conclusion that this can be effected. We have accepted the goal of raising $12 million by this means because it produces collateral advantages in terms of the 1980 tax status, and the need to offer the whole of a substantial property precluded fine tuning the amount, while the conservative approach to drawing funds from other subsidiaries was consistent with the growth expectations there. There is substantial room for adjustment of the fund sources as far as feasibility is concerned but difficulty in obtaining $12 million from reserve sales would indicate that the commitment to pay $20 million on the bak debt might involve a serious sacrifice and call for reexamination of related aspects of the plan.

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[75] *The Van Sweringen Co.*, 119 F2d 231, 234 (6th Cir., 1941) *cert. den.* 314 US 671; *In re Norcor Mfg. Co.*, 109 F2d 407, 411 (7th Cir. 1940), *cert. den.* 310 US 625; *In Re Marquette Manor Bldg. Corp.*, 97 F2d 733, 735 (7 Cir. 1938), *cert. den.* 305 US 648; cf *Mosser* v. *Darrow* 341 US 267, 273, 274 (1951), *SEC* v. *Chenery Corp.*, 332 US 194 204-209 (1947).

[76] *Scherk* v. *Newton*, 152 F2d 747 (10th Cir., 1945) and *Farlec & Co.* v. *Springfield-South Main Realty Co.*, 86 F2d 931 (1st Cir. 1936), each were cases in which debtor had, for no lawful reason, refused to pay interest on part of its bonds, while paying interest on other debts. The bondholders discriminated against thus had an additional undisputable claim for the unpaid interest. They received full payment in one case and settled for half in the other.

VIII. *OTHER MATTERS*

Article 5.3 of the Plan provides that debentureholders shall receive "the number of shares of common stock having a reorganization value equal to 112% of the amount of the allowed claim represented by each debenture so declined." Allowed claim is defined in Article 1.4, and Reorganization value in Article 1.34, the latter definition being the aggregate value of $134.4 million discussed above.

The per share reorganization value cannot be computed until the exact number of shares to be issued is determined, which will be affected by the amount of allowed claims. This will depend on (1) the confirmation date, which will control the amount of accrued interest for both banks and debentureholders, and (2) the decision on the pending disputed claims.

The Court's finding of value can be readily converted into a per share equivalent for each debenture holder (Table III, p. 14 *supra*). But the formula approach and the additive method used by the court leave room for controversy as to whether the effect of such changes as the pending lease sale do or do not call for a recalculation.

We would strongly recommend that the plan be amended to make specific the number of shares to be issued for each $100 of creditor claims. Consideration should be given to eliminating most of the fractional share problem dealt with in Article 9.5 by selecting an implied reorganization value and an effective date on which to terminate accrual of interest, which will fix the number of shares to be received by debentureholders.

This technique will also eliminate the need for the legally doubtful protective provision in Article 12.5 which would limit the distribution to contested claims to the amount in the reserve fund, if allowances exceeded the reserved amount. A large reserve fund prejudices the common stockholders by reducing the per share value and increasing the number of shares issued to allowed claims. Undue curtailment of the fund shifts the risk of an underestimate to the holders of the contested claims, and delays the satisfaction of those who proceed diligently until "the last contested claim is eliminated." The amounts at stake here are too small to make such a procrustean solution necessary, even if it were lawful.

CIC is a reporting company under the Securities Exchange Act of 1934, and the reorgnized company will continue to be a reporting company, pursuant to Section 12(g) of the Act (15 U.S.C. 781(g)). We would recommend that, as soon as practicable after confirmation, appropriate pro forma financial statements of the reorganized company be submitted to our Division of Corporation Finance for examination and review.

IX. *CONCLUSION*

The plan may be approved if the question raised about the bank settlement agreement is satisfactorily resolved. Unless the proposed oil and gas sale is completed, feasibility amendments will be required before it can be confirmed and promptly consummated.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX A
DESCRIPTION OF CONTINUING OPERATIONS

UIL Insurance was organized in 1961 and is licensed to do business in the District of Columbia and all states of the United States except for New York. Historically, the company has emphasized the sale of term life insurance. As of December 31, 1979, 83.1% of UIL Insurance's life insurance in force consisted of term insurance while 16.9% consisted of whole life and endowment. As of the same date, approximately 65% of UIL Insurance's sales were generated by W&R's sales force and about 35% by independent agents. The management intends to increase its reliance on independent agents to the extent possible.

As shown below, UILIC's operating income has increased annually except for a slight decline in 1975 and after-tax profits have increased annually except for slight declines recorded in 1973 and 1975.

Its earnings record and statistics are tabulated below:

	(000 omitted)	
		Income
Year	*Operating*	*Net*
1969	$892	$605
1970	2,836	2,264
1971	3,512	3,199
1972	3,804	3,071
1973	3,937	3,468
1974	4,875	3,267
1975	4,743	5,004
1976	6,499	6,087
1977	8,146	7,342
1978	9,775	8,392
1979	11,005	2,702

*After Federal income taxes, paid on separate company basis.

	(000 omitted except as otherwise noted)				
	1975	*1976*	*1977*	*1978*	*1979*
Life insurance in force[1]	$2,485,000	$3,052,000	$3,428,000	$4,065,000	$4,758,000
New business issued[1]	618,000	913,000	780,000	1,023,000	1,157,000
Insurance terminated[2]	295,000	357,000	411,000	393,000	472,000
Policies in force[3]	60.0%	68.6%	73.6%	78.8%	84.8%
First year premiums[4]	4,450	6,582	5,413	5,583	5,733
Renewal premiums[4]	10,413	12,302	15,092	16,854	19,384
Annuity premiums[4]	315	488	1,904	3,883	4,991
Total premium income[4]	15,178	19,372	22,410	26,320	30,108
Net investment income[5]	1,441	1,891	2,479	3,289	4,489
Admitted assets[4, 7]	28,336	35,705	46,078	59,761	73,375
Invested assets[6]	22,100	28,300	37,300	49,900	62,296
Capital and surplus[4]	14,009	16,307	21,253	25,038	29,270
General expenses as a percent of net premium income[8]	12.4%	13.8%	12.1%	9.6%	9.8%
Rate of net investment income to mean assets[5,9]	7.20%	7.49%	7.56%	7.55%	8.08%
Lapse ratio[5, 9]	11.1%	11.2%	11.1%	9.4%	9.5%
Mortality[10]	84.0%	70.0%	61.0%	75.0%	74.1%

[1]Annual Statement, 1979, page 14A.

[2]1975 First Boston Report, Schedule III, page 2; 1976-79, Annual Statement, 1979, page 15, line 21.

[3]1975 First Boston Report, Schedule III, page 2; 1976-79, Annual Statements page 15, line 31E.

[4]1979 Annual Statement, page 14A.

[5]1979 Annual Statement, page 14B.

[6]1975-78, First Boston Report, Schedule III, page 2; 1979 Annual Statement, page 2.

[7]Non-admitted assets range from $1.2 to $1.9 million and consist primarily of agents' balances.

[8]1975-78, First Boston Report, Schedule III, page 2; 1979 Annual Statement Ex. 5, Col. (1), line 13, divided by Line 1, Col. (1), page 4.

[9]Surrenders and lapses divided by mean of insurance in force.

[10]1975-78, First Boston Report, Appendix I, page 5; 1979, Operations Review, Fourth Quarter 1979, page 1.

The statistics are based on statutory accounting, as required by state regulation. The income statements follow the revised GAAP accounting required for that purpose since 1974.[1]

Its investments are conventional. At December 31, 1979, it had 81.7% in bonds, 17.1% in preferred and common stocks, the 1.2% balance representing policy loans and mortgage loans.

UIL Insurance's main offices are located on leased premises at One Crown Center, Kansas City, Missouri. As of December 31, 1979, UIL Insurance employed 84 persons.

The company's life insurance portfolio is comprised of annual renewable term[2], several types of reducing term and modified whole life policies, whole life and a new series of reducing term mortgage protection insurance products which was introduced in mid-1979. Customers' options include waiver of premium, disability income and double indemnity benefits. All policies are on a non-participating basis. Flexible premium deferred annuities are also sold. Neither group life nor group accident and health are offered.

W&R, whose sales force generates the bulk of UIL Insurance's sales, acts as a general agent, receiving a commission and, in turn, compensates its sales personnel. Brokerage business comes from independent agents. UIL Insurance employs several sales representatives who solicit independent general agents to submit business to UIL Insurance. It had contracts with about 650 agents.

UIL Insurance's mortality experience on a cumulative basis over recent years has been favorable. In the first quarter of 1980, mortality experience rose to 81.5%. Mortality experience is the number of the issuer's death claims. It is compared with the mortality assumptions in the prescribed actuarial tables used in computing policy reserves. Mortality risk is limited by reinsurance. The present policy is to reinsure risks in excess of $300,000 on any one life, and to such other risks as underwriting judgment calls for. Reinsurance currently amounts to about 5% of insurance in force. In the first quarter of 1980, however, mortality experience rose to 81.5%.

Shown below are summaries of the actual results of operations for the five years ended December 31, 1979 and the projected results for the six years ended December 31, 1984. The 1981-1984 projections were prepared by Tulin and adopted by UIL Insurance's management, although differing substantially from management's earlier projections.[3] The experts testifying at the plan hearings, except the majority stockholders' experts, concluded that UIL Insurance's operation had not been severely impaired by the bankruptcy. The projections for 1980-1984 introduced into evidence consist of operating income and net income totals, without further detail.

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[1]GAAP Insurance accounting, an acronym for "generally accepted accounting principles", was incorporated in our Regulation SX by our Accounting Series Release No. 152, February 14, 1974. It adjusts the statutory accounts for statement purposes. The significant differences are that under GAAP, (a) policy and annuity acquisition costs are amortized over their respective lives rather than treated as expenses in the year incurred, (b) income is reported as earned, (c) provision is made for deferred income taxes, (d) certain assets designated as non-admitted assets and not recorded for statutory purposes are recorded for accounting purposes, and (e) realized gains or losses on investments are included in net income. Essentially, statutory accounting is on a cash basis whereas GAAP reporting is on the accrual basis.

[2]Annual renewable term policies keep a constant face amount while the premium increases, reducing term policies keep the premium constant while reducing the amount of insurance.

[3]Trustee Ex. 25, cf. First Boston Report, Appendix I, Page 6.

UIL Insurance*
(000's Omitted)

Year[1]	Revenues Premiums	Revenues Investments[2]	Revenues Total	Gross Margin[3]	%	General Operating Expenses[6]	%	Operating Income	%	Provision for taxes	%	Net Income[5]	%
						ACTUAL							
1975[7]	$13,779	$1,542	$15,321	$10,058	65.6	$5,315	34.7	$4,743	31.0	$1,233	8.0	$3,510	22.9
1976[7]	17,625	2,049	19,674	12,062	61.3	5,563	28.3	6,499	33.0	1,584	8.1	4,915	25.0
1977[7]	22,001	2,654	24,655	16,380	66.4	8,234	33.4	8,146	33.0	2,115	8.6	6,031	24.5
1978[7]	26,192	3,572	29,764	22,085	74.2	12,310	41.4	9,775	32.8	2,443	8.2	7,332	24.6
1979[8]	29,503	4,773	34,276	26,256	76.6	15,251	44.5	11,005	32.1	2,613	7.6	8,392	24.5
						PROJECTED							
1979[7]	$29,595	$4,856	$34,451	$26,246	76.2	$15,967	46.3	$10,279	29.8	$2,533	7.4	$7,746	22.9
1980								12,700				9,500	
1981								14,800				11,100	
1982								16,800				12,600	
1983								19,600				14,700	
1984								22,500				16,900	

*On the basis of generally accepted accounting principles ("GAAP").

[1]Ended December 31.

[2]Gross.

[3]Revenues less first year's commissions, renewal commissions and other direct selling expenses.

[4]Percentage of total revenues.

[5]Excluding capital gains: 1975 - $127,000; 1976 - $89,000; 1977 - $56,000; 1978 - $10,000.

[6]Net of deferred acquisition costs.

[7]First Boston Report Appendix I, Page 6. Computed percentages added.

[8]S.E.C. Exhibit #1, Page 6. Computed percentages added.

The results for the first quarter of 1980 are as follows:[4]

	1980	Percent	1979	Percent
	(000 omitted)			
Premium revenues	$7,711	83.6	$6,840	86.6
Investment revenues	1,513	16.4	1,062	13.4
Total revenues	$9,224	100.0	$7,902	100.0
Gross margin	$7,082	76.8	$6,011	76.1
General operating expenses	$4,285	46.5	$3,638	46.0
Operating income	$2,797	30.3	$2,373	30.0
Provision for taxes	692	7.2	586	7.4
Net income	$2,105	22.8	$1,787	22.6

For the first three months of 1980, reported revenues were 16.7% above the like period of the prior year. Net income increased 18.4%.

ConVest

ConVest was organized by CIC in 1972. Its first oil and gas exploration program was marketed in 1973. An additional program was marketed in each subsequent year, with two programs offered in 1980, one limited to investment in properties already producing.

Originally, ConVest served purely as an investment manager. The responsibility for almost all exploration, development and production rested with an independent oil operator. In 1976, ConVest established its own operating departments to conduct exploration and drilling activities. Since then, ConVest has generated 60-65% of its exploration prospects internally while contracting externally for the remainder. ConVest does not engage in any exploration or drilling activity other than through the programs which it sponsors.

Exploration activity has been concentrated in Texas, and a lesser degree in Mississippi, Louisiana and Wyoming. Drilling has been conducted almost entirely on-shore with a limited amount of bay-water drilling.

ConVest's main office is located on leased premises at 1700 West Loop South, Houston, Texas. Approximately 49 persons are employed, including

[4]SEC Ex. 2(c) Page 13, excluding capital gains of $17,000 for 1980 period and $5,000 for the 1979 period.

the staff of Distributors. Presently, ConVest serves as general partner in nine limited partnerships including two 1980 Programs. The ConVest 1980 Energy Income Program commenced operations on January 24, 1980 with limited partner subscriptions of $3 million, including $486,000 invested by ConVest as a limited partner. The ConVest 1980 Energy Program became effective February 29, 1980. Williams Ranch, in the 1978 Program, in February 1980 had 12 wells drilled and producing. This has been by far the most successful of the programs. The gas pipeline for the 1978 Program was expected to be completed in time for revenues from the sale of gas to commence in March 1980. In January and February 1980, ConVest consummated the sales of the 1976 Program's interest in three developed properties for a total consideration of $4.5 million of which ConVest's share approximated $1.7 million.

The drilling undertaken by ConVest represents a balanced program in that about 25% of the prospects drilled are exploratory with the remainder being development projects. Drilling is done primarily on properties in relatively close proximity to already proven reserves and where the presumed geological structure is similar to that holding proximate reserves. ConVest seeks to limit its net exposure on a given well to $250,000. If it should appear that a well will cost a greater amount, the excess is shared with other parties, usually other participants in that well.

With respect to each program, ConVest receives 6% of the limited partners' contributions as a non recurring management fee,[5] and sales agents, primarily Distributors, receive a 9% commission.[6] The balance of ConVest's revenues are derived from its interest in the production of the oil and gas properties discovered. Therefore, revenues and profitability are dependent on the success of the exploration programs.

ConVest, as general partner in each exploration program, contributes certain capitalized leasehold costs and tangible drilling costs as tabulated below. The limited partners contribute the intangible drilling and development costs and bear certain other costs and fees. Revenues are divided 60% to the limited partners and 40% to ConVest, as general partner. The costs allocated to the limited partners are deductible for tax purposes in the year incurred.

	Limited Partners[1]	*ConVest*
Costs through the Wellhead		
Christmas tree:		
Non-capital	100%	—
Capital	—	100%
Cost of Leases:		
Non-productive	100%	—
Productive	—	100%
Joint costs[2]	60%	40%
Other currently tax deductible costs	100%	—

[1]ConVest has a 4% limited partnership interest in the 1973 Program and 1% in each of the 1974-1979 Programs.

[2]Facilities costs downstream from Christmas tree, allocated ConVest overhead, operating and lifting costs. The Christmas tree is the equipment at the top of the pipe.

In addition to the 40% interest and the first year management fee which ConVest receives as general partner, ConVest is reimbursed for direct expenditures made on behalf of the partnerships and for a portion of its general overhead attributable to partnership operations. In addition, ConVest is reimbursed for certain capital costs associated with wells which prove to be non-productive.

ConVest generates and maintains an inventory of oil and gas prospects which may be drilled by its oil and gas programs or by other entities. When operator, ConVest is responsible for the supervision of drilling, completion and production activities, including collection, payment and distribution of all revenues, costs and expenses associated with the wells to the owners of working and royalty interests. Fractional ownership is general in the oil business. The partnership leases are subject to land owners and other royalties, and normally shared with other owners who divide both costs and revenues with the partnerships under operating agreements under which operation may be vested in ConVest or in another owner.

Limited partners' subscriptions to each of the 1973-

[5]The management fees, net of registration costs incurred in connection with the formation of each program, are recorded as a reduction of the cost of oil and gas properties.

[6]Distributors operates at a loss and is expected to continue to do so. Since it serves only ConVest, we include its loss in our analysis of ConVest.

79 drilling programs have been:

Program	(000 omitted) Offering[1]	Subscriptions
1973	$10,000	$2,205
1974	15,000	8,463
1975	8,000	6,066
1976	10,000	3,773
1977	8,000	6,909
1978	10,000	6,972
1979	10,000	4,925[2]
		$39,313

[1]From Prospectuses or Forms S-1.

[2]The lower level of 1979 subscriptions is attributed to CIC's financial problems and bankruptcy proceedings and the bad weather which prevailed during the offering period (see First Boston Report Schedule VII, page 8).

Limited partners are offered a conditional right to tender their interests to ConVest. The price, as defined in the partnership agreement is the estimated present value of proven reserves, as determined annually by independent petroleum engineers, applying a discount rate of 2% over prime, and deducting up to 30% "for special risk factors" from the result. Probable reserves are disregarded.

As of December 31, 1979, the projected maximum annual repurchase commitment, utilizing the aforementioned estimated values based upon an engineering reserve report as of January 1, 1980, is as follows:

Year of Commitment	(000 omitted) Amount
1980	$3,593
1981	$1,000
1982	$1,285
1983	$1,000
1984	$1,000
later years	$4,000
	$11,878

Footnote 9 to ConVest's 1979 financial statements.

The 1980 Program will add a maximum of $1 million or 25% of the limited partners' capital contribution, whichever is less, annually from 1984-1991. The 1980 Income Program will add a maximum of $750,000 annually from 1986-1994. Repurchases to date have been nominal: 1977, $23,000; 1978, $14,000; and 1979, $21,000 (Notes to consolidated Financial Statements, 10K 1977, 1978 and 1979).

These projected commitments are continually subject to revision as a result of revaluation of estimated proven reserves or changes therein arising from additional exploration and development activities. The maximum annual purchase commitment based on the purchase agreements, assuming a sufficiently high valuation of the proved reserves, would be $57.7 million as at December 31, 1979.

Since its formation in 1972, ConVest has shown the following operating results:

(000 omitted)*

Year	ConVest Operating Income	Adjustment[1]	Adjusted	Distributors[2]	Combined
1973	$(235)	$	$(235)	(239)	$(474)
1974	734		734	(550)	184
1975	1,212		1,212	(131)	1,081
1976	1,434		1,434	(21)	1,413
1977	1,254	(650)	604	(10)	594
1978	605	(2,574)	(1,969)	(21)	(1,990)
1979	1,544		1,544	(39)	1,505

[1]Write-offs of receivables from the 1974 and 1977 Programs, respectively. These receivables were created when ConVest advanced funds to the programs in anticipation of future revenues. Engineering reserve reports indicated that full reimbursements were in doubt and allowances were recorded to provide for the doubtful portions. More recent evaluations indicate a partial recovery of the initial write-off (p. 37 *supra*)

[2]Distributors act as dealer manager paying the commissions of soliciting dealers. The 9% fixed commission from the partnership does not fully cover its costs. The large losses in early years include the similar service to Real Estate disposed of in 1975, and reflect the start up of the two programs.

*The 1975-1979 Convest data is from CIC's 1979 Form 10K. Distributors' history and the first years of ConVest are from the Trustee's 167(1) report. 1975-1978 have been retroactively restated to reflect the company's adoption, effective January 1, 1979, of full cost accounting which modified the company's existing method.

Results for the first quarter of 1980 are as follows:

	(000's omitted) 1980	%	1979	%
Total Revenues	$1,496	100.0	$871	100.0
Cost of Operations	626	41.8	441	50.6
Gross Margin	$870	58.2	$430	49.4
Other Expenses	229	15.3	143	16.4
Operating Income	$641	42.9	$287	32.9
Interest Expense	76	5.1	68	7.8
Provision for Taxes	53	3.5	22	2.5
Net Income	$512	34.3	$197	22.6

The increase in first quarter revenues was primarily the result of increased production in the 1978 program. Management's revised projections of net income for the years 1981-1984 are:

Net Income (loss)
(000-s omitted)

Year	ConVest[1]	Distributors[2]
1981	$6,268	$(135)
1982	$6,250	$(202)
1983	$6,217	$(270)
1984	$6,043	$(337)

[1]CIC letter of September 29, 1980.

[2]Trustee's Exhibit 25. The exhibit showed 1980-1983 but was revised to postpone the estimates for 1 year.

In arriving at its original projections, management assumed that reserves would increase to $74.4 million in 1984 from a projected level of $18.9 million as at December 31, 1979. This reflects a preliminary engineering report dated January 1, 1979 evaluating the 1973-1978 Programs as of December 31, 1978, and the assumption that reserves on future programs will be similar to historical results, i.e., a 4-1 ratio of reserves to investment. As to revenues, the original projection again reflected the engineer's report and assumed that future programs will produce the same annual revenues as the 1973-1977 Programs.[7]

The original projection also assumed that amounts raised by subscriptions from limited partners will increase from $7.0 million in 1978 to $25 million in 1984. This was expected to be achieved largely as a result of the ability to attract funds through broker-dealers. Management believes that the end of this case would eliminate present reluctance of independent broker-dealers to sell ConVest offerings. It was anticipated that amounts raised by W&R salesmen will increase from $6.6 million to $10.0 million, and amounts raised by broker-dealers will increase from $0.4 million to $15.0 million.

Future lease acquisition costs and the cost of well equipment were expected to be in line with past experience, i.e., 25% of amounts raised. Well equipment on development will be financed by bank loans to partnerships and repaid over the subsequent two years. A cost and price escalation factor of 7% per annum is assumed. Overhead expenses of the operating departments are expected to increase in proportion to amounts raised while those of the administrative departments are expected to increase 10% per year.

The revised projections take into account the updated engineering report of BP Huddleston as of January 1, 1980. The amount expected to be raised from new programs by broker-dealers was deferred one year to reflect the later completion of the Chapter X proceedings than was anticipated by the original projections.

Waddell & Reed

W&R was acquired by CIC in 1969. It is the national distributor and investment manager of a number of mutual funds registered under the Investment Company Act of 1940.[8] W&R also acts as sponsor of several periodic investment plans for the accumulation of shares of the managed funds and manages a number of private investment accounts, the latter through its wholly-owned subsidiary, Research Management Associates. In addition, W&R accounts for about 65% of total sales of life insurance policies issued by UIL Insurance and most of the funds raised by the limited partnerships sponsored by ConVest.

W&R receives compensation from the managed funds based on a percentage of net asset values, and underwriting commissions on sales of fund shares and fees for shareholder services. W&R currently offers bond funds, tax exempt bond funds, several varieties of common stock funds and a money market fund. Commission income is also derived from sales of life insurance and oil and gas partnership units.

Since 1960 the mutual fund industry as a whole has experienced rapid growth. As shown below, the severe setback suffered by the equity mutual funds sector after 1972 has been more than offset by the growth in money market funds.

Year		Number of Reporting Funds[1]	Number of Accounts	(Billions)
1972		410	10,635.3	59.8
1973		421	10,330.9	46.5
1974	Mutual Funds[2]	416	9,970.4	34.1
	Money Market Funds	15	103.8	1.7
1975	Mutual Funds	390	9,712.5	42.2
	Money Market Funds	36	208.8	3.7
1976	Mutual Funds	404	8,879.4	47.6
	Money Market Funds	48	180.7	3.7

[7]First Boston Appendix I, Page 17.

[8]Each fund, investment management, underwriting and shareholder servicing agreement is of one year's duration cancellable on 60 days notice.

1977	Mutual Funds	427	8,515.1	45.0
	Money Market Funds	50	177.5	3.9
1978	Mutual Funds	444	8,190.6	45.0
	Money Market Funds	61	467.8	10.9
1979	Mutual Funds	448	7,485.4	49.3
	Money Market Funds	76	2,307.9	45.2

[1]table abstracted from Investment Company Institute 1980 Mutual Fund Fact Book. Not all existing funds report to the Institute. More than 700 existed as of December 31, 1979 with only 524 reporting. However, these 524 represented 93.8% of mutual fund industry assets (Fact Book page 13). In the aggregate, therefore, mutual fund assets were slightly in excess of $100 billion at December 31, 1979.

[2]includes Bond and Income Funds.

As of December 31, 1979, the net asset value of mutual funds managed by W&R totalled approximately $1.6 billion[9], including $40.2 million in the United Cash Management Fund and $44.6 million in the United High Income Fund which two funds were first introduced in 1979.[10]

As shown below, W&R has been profitable since its acquisition in 1969 except for the year 1974.

Year	(000-s omitted)[1] Operating Income	Net Income[2]
1969	$2,690	$1,271
1970	3,436	1,980
1971	3,780	1,741
1972	4,931	2,269
1973	2,090	879
1974	(1,814)[3]	(900)[3]
1975	128	64
1976	2,458	1,229
1977	2,396	1,226
1978	2,846	1,441
1979	1,950	1,067

[1]Years 1969-1978 abstracted from Trustee's 167 report Exhibits D&E: 1979 taken from SEC Ex. 1 Page 11.

[2]Excluding equity in net income of subsidiaries.

[3]Loss.

The poor showing during the 1973 to 1975 period resulted from a decline in the aggregate net assets of the funds managed by W&R. This decline resulted primarily from the decline in prices of securities generally during that period and, to a lesser degree, from net redemptions of shares of the open-end funds. Securities price improved during 1975 and 1976 as did the level of net assets of the managed funds. The years 1977 through 1979 again involved lower levels of net assets managed for the same reasons, net although less acute. Earnings were also adversely affected by an inability to increase fees, since management believes this case would provide the funds a good excuse for rejecting any change in the contracts.

In 1979, W&R significantly expanded its marketing program particularly with respect to the two new funds previously mentioned. The expansion involved the development and utilization of fund related computer programs, the creation of an inventory promotion aids and supplies, and the continued education of sales force to improve its productivity. The attendant cost lowered the 1979 results, but management believes that such cost will be translated into future profits.

Shown below are selected statistics relating to the W&R managed mutual funds at the end of each of five years ending December 31, 1979.

Year Ended December 31[1]

	1975	1976	1977	1978	1979	Compound Annual Growth Rate
Average Net Asset Value Funds Managed (000,000)	$1,767	$1,910	$1,778	$1,695	$1,609	(2.3%)
% change	2.7%	8.1%	(6.9%)	(4.7%)	(5.1%)	—
Redemption Rate	6.31%	11.72%	10.33%	12.08%	15.70%	—
Redemption Rate (Industry)[2]	9.70%	15.20%	14.37%	16.00%	15.60%	—
Number of Shareholders Accounts (000) Voluntary	293.3	272.3	257.5	239.5	223.6	(6.6)%
Contractual	149.5	132.2	116.1	102.0	87.9	(12.4)%
Total	442.8	404.5	373.6	341.5	311.5	(8.4)%

[1]Abstracted from First Boston report Schedule III.

[2]Investment Company Institute 1980 Mutual Fund Fact Book (page 24) shows percentages for 1977-1978 which differ from the above, as follows: 1977 - 13.0%; 1978 - 16.4%; 1979 - 17.8%.

The W&R sales force is typical of other mutual fund sales forces in that most of the sales force is part-time and a relatively small number of salesmen earn a disproportionate share of the commissions. In 1978, 9% of the sales representatives received 59% of the total commissions paid to salesmen. For 1977

[9]First Boston update Section III.

[10]Operations Review 4th Quarter 1979, Page 3.

the figures were 8% and 55%, respectively.[11] According to management, about half of all new sales people leave within one year and about 85% leave within three years.[12]

Shown below are investment product sales, insurance sales and oil and gas partnership unit sales and the total number of sales and sales per sales representative for the years 1975 to 1979:

	(in millions)[1]					Compound Annual Growth Rate
	1975	1976	1977	1978	1979	
Investment Product Sales	$78	$75	$80	$81	$135	14.7%
Insurance Sales—Annualized Premiums	3,100	4,559	3,693	3,692	3,898	5.9
Oil & Gas Partnership Unit Sales	5.7	3.6	6.4	6.6	7.2[2]	6.0

	Average Number of Sales	Number of Sales		Sales Per Representative	
Year	Representatives	Investment	Insurance	Investment	Insurance
1975	2,147	18,454	13,922	8.6	6.5
1976	2,561	17,594	18,572	6.9	7.3
1977	2,350[3]	18,489	13,984	7.9	6.0
1978	1,884	18,301	12,794	9.7	6.8
1979	1,925[4]	32,906	13,292	17.1	6.9

[1]abstracted from First Boston Report Schedule III.

[2]Includes sales of $2.5 million from "ConVest 1980 Energy Program".

[3]During 1977 there occurred the resignation of a large number of salesmen in the southeastern United States.

[4]Reflects marketing of two new funds.

W&R's main offices are located in leased premises at One Crown Center, Kansas City, Missouri. Sales offices, many of which are occupied under tenant-at-will arrangements numbered 79 at December 31, 1979 and were located in 34 states.[13] 67 of these were divisional offices while the others are considered to be "satellite offices." Employees other than sales representatives and district managers numbered 381 at December 31, 1979. 1858 sales personnel were employed on that date.[14] During 1979, a national sales manager was appointed with the objective of upgrading the quality of the sales force and developing new sales concepts. The management expects to add six divisional offices in each year through 1984.

Shown below are summaries of operations for the five years ended December 31, 1979, original projections submitted by management for the year 1979 as well as updated projections of after-tax net income for 1981-1984.

[11]First Boston Report, Schedule V, page 7.

[12]Lehman, page 16.

[13]For 12/31/78 figures see First Boston Report Schedule V Page 8.

[14]Operations Review 4th Quarter 1979, page 12.

(000's Omitted)*
(Percentages are of revenues)

Calendar Year	Revenues	Direct Selling Expense	Gross Margin	%	Operating Expenses	%	Operating Income	%	Provision for taxes	%	Net Income	%
1975	$19,916	17,086	$12,830	64.4	$12,702	63.8	$128	0.6	$64	0.3	$64	0.3
1976	22,890	8,834	14,056	61.4	11,598	50.7	2,458	10.7	1,229	5.4	1,229	5.4
1977	23,094	9,524	13,570	58.8	11,174	48.4	2,396	10.4	1,170	5.1	1,226	5.3
1978	22,056	8,954	13,102	59.4	10.256	46.5	2,846	12.9	1,402	6.4	1,444	6.5
1979	23,195	9,653	13,542	58.4	11,592	50.0	1,950	8.4	883	3.8	1,067	4.6
						Projected						
1979	22,005	8,741	13,264	60.3	10,959	49.8	2,305	10.5	1,105	5.0	1,200	5.4
1980											—	
1981											896	
1982											2,212	
1983											2,616	
1984											3,053	

*The historical data are from Appendix I to the First Boston Report, p. 11, 1979 from SEC Exhibit #1, page 11. The 1979 forecast is also from The First Boston Report. The Trustee's Exhibit 25, p. 5 provided net income estimates only for 1981-1984 and did not revise the old 1980 forecast which seems to have been abandoned.

Management's original projections for 1979-1984, were based on the following key assumptions: 1) the sales force would increase at a 7.7% compound annual growth rate from 1807 at December 31, 1978 to the level of 2880 representatives on December 31, 1984; 2) investment product sales would increase at a 10.8% compound annual growth rate from $81 million in 1978 to $150,000,000 for 1984; 3) the Standard and Poor 500 Index would increase at 13.1% compound annual growth rate rising from 97.6 at the end of 1978 to 204.6 as at December 31, 1984, and 4) redemptions by mutual fund shareholders would be at the rate of 10% for 1979 and 8% for 1980-1984.[15] Further, it was assumed that the Gross National Product would increase 11% in 1979 and 9% in 1980-1984 and the Consumer Price Index would increase 9% in 1979, 7.5% in 1980 and 6% in 1981-1984. Projections of management fee revenues were based on multiplying the projected increase on assets managed by the fee schedule currently in effect.

The revised projections for 1981-1984 assume that management fees of United Funds will increase by $1.8 million per year effective January 1, 1982 and that assets of the United Cash Management Fund and other new fixed income products would increase $200 million per year. Assets of all other mutual funds managed were projected at 1980 levels. (Trustee's Exhibit 25) While the original assumptions regarding securities market growth were not changed, alternative projections were created, as of May 15, 1980, to test the sensitivity of W&R's results to current conditions i.e., a relatively flat stock market and higher than normal inflation. These alternative projections indicate that over the next four years W&R results would be not too different from the original projections which assumed lower inflation and higher stock market appreciation.

Shown below are the results of the first quarter of 1980.

(000's Omitted)[16]

Revenues	1980	%	1979	%
Investment Product Commissions	$1,991	30.3	1,319	23.4
Investment Product Commissions	1,438	21.9	1,377	24.5
Management Fees	1,868	28.4	1,838	32.6
Investment Income	446	6.8	257	4.6
Other	827	12.6	842	14.9
Total Revenues	$6,570	100.0	$5,633	100.0
Direct Selling Expenses	$2,773	42.2	$2,289	40.6
Gross Margin	$3,797	57.8	$3,344	59.4
Operating Expenses	3,264	49.7	2,810	49.9
Operating Income	$533	8.1	$534	9.5
Provision for Taxes	245	3.7	258	4.6
Net Income	$288	4.4	$278	4.9

For the first three months of 1980, reported revenues were 16.6% above the like period of the prior year. The increase in net income was nominal reflecting an 18.4% increase in direct selling and operating expenses. Stock market action in March was the principal cause of lower asset values and, correspondingly, the nominal increase in management fees despite the increased amounts invested.[17]

RMA was organized by CIC in 1972 as a wholly-owned subsidiary of W&R. RMA is a registered investment adviser engaged in discretionary management of financial assets for corporate and non-profit institutions and specializes in managing pension, profit sharing and endowment funds.

To date RMA has been a modest operation. It achieved a level of approximately $500,000 in revenues, primarily from managed accounts, in 1979 and realized initial operating and net incomes of $92,000 and $50,000, respectively.[18]

Management's revised forecasts of net income for the years 1981-1984 are $214,000, $508,000, $764,000 and $1,151,000, respectively.[19] These amounts reflect the delay of the original projections one year. The projection for 1980 was not revised but the $50,000 net income actually realized for 1979 is not an inappropriate projection for 1980.[20]

Projections of management fee revenues from private accounts are based on an assumed increase in assets managed from $278 million in 1978 to $2.4 billion in 1984. Projected revenues from services rendered to managed mutual funds is expected to increase at the rate of inflation.

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[15]The rate actually increased from 13.5% in 1978 to 15.7% in 1979. The trustee, however, reported that sales in the first 7 weeks of 1980 exceeded redemptions by $13 million, the first positive result in several years.

[16]SEC Ex. 2(c) Page 19.

[17]Operations Review March 1980 Pages 2 and 3.

[18]Operations Review 4th Quarter 1979, page 26.

[19]Trustee's Ex. 25, page 5.

[20]First Quarter 1980 Operations Review discloses net income of $9,000 compared to $4,000 realized in the like quarter of 1979.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6255	460
Securities Exchange Act	16986B, 17263-76	462
Public Utility Holding Company Act	21771-79	474
Investment Company Act	11421-34	488
Investment Advisers Act	737	519
Litigation	9225-30	519

This listing covers releases issued from 10/31/80-11/6/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

34-17272 Delegation of Authority to Director of Opinions and Review authority to, among other things, rule on motions to stay certain orders in disciplinary proceedings and requests for oral argument in appeals from certain actions of self-regulatory organizations.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions

34-16986B	34-17267	34-17275
34-17263	34-17268	34-17276
34-17264	34-17271	

34-17265 Extension of Comment Period dealing with FOCUS Reporting System; Requirements for Financial Reporting [File No. S7-851—Comment period Expires 11/30/80].

IC-11421 Adoption of Rule 17j-1 under the Investment Company Act of 1940 providing guidance to investment companies as to the minimum standards of conduct appropriate for persons who have access to information regarding the purchase and sale of portfolio securities by investment companies.

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OPINION

34-17274 **ALBERT S. PITTS**

Where registered principal of member firm of registered securities association unlawfully sold unregistered securities, and offering circulars failed to disclose his extra sales compensation, *held*, association's findings of violation *sustained*, and sanctions *affirmed*.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6255/November 6, 1980

In the matter of

O'MELVENY & MYERS RETIREMENT PLAN AND TRUST AGREEMENT FOR PARTNERS
611 West Sixth Street
Los Angeles, CA 90017

(18-67)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE O'MELVENY & MYERS RETIREMENT PLAN AND TRUST AGREEMENT FOR PARTNERS

NOTICE IS HEREBY GIVEN that the law firm of O'Melveny & Myers (the "Firm" or "Applicant"), a California partnership, has by letter dated December 6, 1979, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for any participations or interests issued in connection with its Retirement Plan and Trust Agreement for Partners (the "Plan") for qualifying partners of the Applicant. All interested persons are referred to the application, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers all of Applicant's qualifying partners, of whom there were 66 active and 8 retired as of August 2, 1979. The Plan provides that a partner is eligible to participate as of the date he or she becomes a member of the Partnership. Participation is voluntary and each partner becomes a Plan "participant" on the December 31st following his or her satisfaction of the eligibility requirements.

The Plan is of a type commonly referred to as a "Keogh" plan, which covers persons (in this case certain partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended ("Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) is inapplicable to the interests in the Plan, absent an order of the Commission.

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

The Plan became effective on January 1, 1963, and was amended effective January 1, 1976 and further amended on December 31, 1977, August 14, 1978 and August 1, 1979. Applicant states that the Internal Revenue Service ("IRS") has issued a ruling to the effect that the Plan is a qualified one under Section 401(a) of the Internal Revenue Code of 1954 ("Code"). The Plan is an employee pension benefit plan subject to the full fiduciary, reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

Participation in the Plan is voluntary. To become a participant a Partner may contribute, or cause the Partnership to contribute on his or her behalf to the Plan, up to a certain percentage of his or her Partner's Earnings each year. Subject to certain limitations under the Plan, participants may further contribute up to, an amount equal to 10% of his or her aggregate earning during his or her participation in the Plan, less the amount of the deductible contribution described in the preceding sentence.

The Plan is administered by a committee (the "Committee") appointed by the Management Committee of the Partnership. The Committee has overall responsibility and authority in connection with the Plan, including the right to determine all questions relating to eligibility to participate, to determine, compute and certify to the Trustee under the Plan the amount and kind of benefits payable to participants, to authorize all disbursements by the Trustee from the Trust and to make rules for the regulation of the Plan.

The trust agreement contains provisions for separate investment funds. Fund A is an equity fund, Fund B is a fixed income fund, Fund C is a cash equivalent fund, Fund D is a managed equity fund, and Fund E consists of individually managed accounts. The Trustee is solely responsible for for investmer.t of amounts contributed to the Plan and held in Fund A and in Fund B. The Committee is responsible for the investment of amounts held in Fund C and in Fund D, except to the extent, pursuant to the Plan, the Committee delegates the management of such Fund assets to a separate Investment Manager. The investment of amounts in Fund E accounts is directed by individual participants. Each participant designates whether and to what extent his or her contributions are to be credited to Fund A, Fund B, Fund C, Fund D or Fund E.

Applicant contends that were the Firm a corporation, rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises extensive admininstrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to the participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 2, 1980 at 5:30 p.m., submit to the Commission a request for a hearing on the matter, accompanied by a statement of the naure of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter

will be issued as of course following December 2, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 16986B/November 3, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-AMEX-80-13)

ORDER GRANTING EFFECTIVENESS TO PROPOSED RULE CHANGE

On July 28, 1980, Securities Exchange Act Release No. 16986A was issued staying the effective date of the approval of a proposed rule change by the American Stock Exchange, Inc. ("Amex") (SR-Amex-80-13) until notice was received that all action required for effectiveness was completed.

On October 27, 1980, Amex filed notice with the Commission that the Exchange membership has approved the proposed rule change, completing the necessary requirements.

The rule change will amend the Amex Constitution and rules to eliminate the requirement that the principal purpose of every member and member organization be the transaction of business as a broker or dealer in securities.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17263/October 31, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-26

The Chicago Board Options Exchange, Incorporated submitted on October 24, 1980, a proposed rule change under Rule 19b-4 to require that members effecting transactions with an Order Book Official ("OBO") obtain an oral confirmation from the OBO or his staff as to the material terms of the transaction.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 7, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17264/October 31, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-10

The Municipal Securities Rulemaking Board (the "MSRB") submitted, on October 22, 1980, a proposed rule change under Rule 19b-4 to amend MSRB rule A-3 relating to membership on the Board. The proposed rule change would alter the nomination and election procedures of the MSRB by revising the dates by which certain actions must be taken and by providing that, in the event additional industry candidates are nominated, the candidate receiving a plurality of votes cast would be elected. Previously a simple majority was required, with a run-off election held if no candidate received more than 50% of the vote. Proposed rule A-3 would also eliminate all references to initial Board members.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 3, 1980. In order to assist the Commission in determining whether to abrogate the proposed rule change, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-10.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17265/October 31, 1980

FOCUS REPORTING SYSTEM: REQUIREMENTS FOR FINANCIAL REPORTING.

ACTION: Extension of comment period.

SUMMARY: On September 9, 1980, the Commission published for comment proposed amendments to Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 under the Securities Exchange Act of 1934. In Release No. 34-17213, October 14, 1980, the period for public comment was extended until October 31, 1980. The Commission is further extending the period for submitting comments until November 30, 1980.

DATE: Comments must be received on or before November 30, 1980.

ADDRESSES: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-851 and will be available for inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W. Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202)272-2370; or William J. Atkinson, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, Washington, D.C. 20549 (202)523-5493.

SUPPLEMENTARY INFORMATION: On September 9,

1980, the Commission published for comment Proposed Amendments to Part I, Part II, and Part IIA of Form X-17A (17 CFR 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 (17 CFR 240.17a-5) under the Securities Exchange Act of 1934. The proposed amendments would revise the Form so as to clarify certain financial and operational reporting requirements of securities brokers and dealers, to require more detailed reporting of some items, and to eliminate or consolidate other items. Rule 17a-5 would be amended to require the filing of two copies of the annual audited report at the Commission's headquarters' office instead of the single copy now required.

Notice of the request for comments was given by Securities Exchange Act Release No. 34-17138 (September 9, 1980) and by publication in the Federal. Register (45 FR 62092 (September 19, 1980)). Interested persons were invited to submit written comments prior to October 15, 1980. In Release No. 34-17213, October 14, 1980; 45 FR 69248, October 20, 1980, the period for public comment was extended until October 31, 1980. Based on the comments received thus far, the Commission feels it would be in the public interest to further extend the comment period.

Accordingly, the Commission today has extended the period for the submission of written comments concerning the foregoing proposed amendments until November 30, 1980.

Finally, it is not expected that any changes in Part II of the FOCUS Report pursuant to Securities Exchange Act Release No. 17138 can be adopted before sometime in 1981. It is anticipated, however, that if any changes in Part II of the FOCUS Report are made in 1981, the first filing of the revised Part II would cover the period from January 1, 1981 to the date of the first Report and thus provide the income data necessary for monitoring. Firms will continue to file the current Part II in regular course until any revisions are adopted. All interested persons are invited to comment on the feasibility and impact of this implementation process, as well as the changes proposed in Release No. 17138.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17266/October 31, 1980

An order has been issued granting the application of NATIONAL EDUCATION CORPORATION to withdraw its capital stock (no par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release no. 17267/November 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-27

The American Stock Exchange, Inc. ("Amex") submitted on October 17, 1980, a proposed rule change under Rule 19b-4 to incorporate Securities Exchange Act Rules 19c-1 and 19c-3[1] as Amex Rule 5(c). Rule 19c-3, which is required to be incorporated within the rules of each national securities exchange, provides that an exchange may not prohibit its members, member organizations, or affiliated persons from effecting over-the-counter transactions in any equity security that, subject to certain exceptions, is not a "covered security" as that term is defined in Rule 19c-3.[2]

The proposal also would rescind Amex Rule 189, which probibits off-floor purchases by a specialist, and Amex Rule 550, which prohibits participation by Amex members and member organizations in off-floor secondry distributions of securities traded on the Amex, would be modified to permit such participation when the distribution is made on an agency basis or does not involve a "covered security" as defined in Rule 19c-3.

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[1]17 CFR 240.19c-1, 240.19c-3. Rule 19c-3 recently was adopted by the Commission in Securities Exchange Act Release No. 16888 (July 11, 1980), 45 FR 41125 (June 18, 1980), 20 SEC Docket (June 24, 1980).

[2]In general, covered securities include any equity security that initially was listed and registered on a national securities exchange on or after April 26, 1979. For further explanation, see Rule 19c-3(b)(3).

Publication of the submission is expected to be made in the *Federal Register* during the week of November 3, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-27.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17268/November 3, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE AMERICAN STOCK EXCHANGE, INC.

File No. SR-Amex-80-26

The American Stock Exchange, Inc. submitted on October 27, 1980, a proposed rule change under Rule 19b-4 to adopt as Amex Rule 620 a simplified small claim arbitration procedure for resolving disputes between Amex members or member organizations where the amount in dispute is $5000 or less. The proposed rule is similar to Amex Rule 619 which currently governs small claim disputes between public customers and Amex members or member organizations.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 3, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publications in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-26.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17269/November 4, 1980

In the Matter of Applications of the

BOSTON STOCK EXCHANGE, INC.
For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Boston Stock Exchange ("BSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:[1]

Akzona Inc.
Common Stock, $1.25 Par Value (File No. 7-5745)

Automatic Data Processing, Inc.
Common Stock, $.10 Par Value (File No. 7-5746)

Bache Group, Inc.
Common Stock, $2, Par Value (File No. 7-5747)

Bay Financial Corp. (Del.)
Common Stock No Par Value (File No. 7-5748)

Belden Corp.
Common Stock, $5 Par Value (File No. 7-5750)

Benguet Corporation
Common Stock Class B, .77 (Philippine Currency) (File No. 7-5751)

Beverly Enterprises
Common Stock, $.10 Par Value (File No. 5752)

Castle & Cooke, Inc.
Common Stock, No Par Value (File No. 7-5753)

Chris-Craft Industries, Inc.
Common Stock, $.50 Par Value (File No. 7-5754)

Consolidated Oil & Gas Co.
Common Stock, $.20 Par Value (File No. 7-5755)

Crestmont Oil & Gas Co.
Common stock, $1 Par Value (File No. 7-5756)

Crouse-Hinds Co.
Common Stock, $1 2/3 Par Value (File No. 7-5757)

Dataproducts Corp.
Common Stock, $.10 Par Value (File No. 7-5758)

Di Giorgio Corp.
Common Stock, $2.50 Par Value (File No. 7-5759)

DMG, Inc.
Common Stock, No Par Value (File No. 7-5760)

The Commission finds that approval of the BSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the BSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the BSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the BSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 69078 (October 17, 1980). The Commission has received no comments with respect to these applications.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Boston Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17270/November 4, 1980

A notice has been issued giving interested persons until November 26, 1980 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in three stocks which are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17271/November 5, 1980

In the Matter of

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-80-8)

ORDER APPROVING PROPOSED RULE CHANGE

On May 13, 1980, the Midwest Stock Exchange, Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends its recordkeeping requirement regarding transactions effected in margin accounts and amends its advertising rule regarding examination authority.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17141, September 9, 1980) and by publication in the *Federal Register* (45 FR 61840, September 17, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rule and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17272/November 5, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11429/November 5, 1980

INVESTMENT ADVISORS ACT OF 1940
Release No. 737/November 5, 1980

DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE OF OPINIONS AND REVIEW

ACTION: Final rule.

SUMMARY: The Commission is amending its Rules of Organization to delegate to the Director of the Office of Opinions and Review the authority to rule on motions to stay final Commission orders in disciplinary proceedings pending appeal to the federal courts; motions to stay disciplinary action taken by a self-regulatory organization pending review of that action by the Commission; and requests for oral argument in appeals from disciplinary or exclusionary action taken by self-regulatory organizations. The Commission believes that it will facilitate timely disposition of these applications if authority to rule on them is delegated to the Director of the Office of Opinions and Review.

EFFECTIVE DATE: November 5, 1980.

FOR FURTHER INFORMATION CONTACT: William S. Stern, Director, Office of Opinions and Review, 500 North Capitol Street, Washington, D.C. 20549, (202)272-2450.

SUPPLEMENTARY INFORMATION: The Commission adjudicates appeals both from disciplinary action assessed by its admininstrative law judges in cases instituted by the Commission under the securities acts and Rule 2(e) of its Rules of Practice, and from disciplinary action taken by various self-regulatory organizations. It has the authority to stay its orders affirming or modifying such action pending appeal of those orders to the federal courts. It also has the authority to stay disciplinary action taken by a self-regulatory organization pending Commission review of that action. In addition, pursuant to Rule 19d-3(f) under the Securities Exchange Act (17 CFR §240.19d-3(f)), the Commission has discretion to grant or deny oral argument in connection with appeals from disciplinary or exclusionary action taken by self-regulatory organizations pursuant to Section 19(d)(2) of the Act. The Commission believes that the determination of stay applications and requests for oral argument in the above situations would be greatly facilitated by delegating those determinations to the Director of the Office of Opinions and Review. Accordingly, the Commission, acting pursuant to the Act of August 20, 1962, Publ. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), hereby amends Section 200.30-8 (17 CFR §200.30-8) of the Commission's rules relating to general organization by adding new paragraphs (a)(4), (a)(5) and (a)(6) to delegate to the Director of the Office of Opinions and Review authority to determine stay applications and requests for oral argument as set forth above.

The Commission finds, in accordance with 5 U.S.C. §553(b)(A) and 5 U.S.C §553(d) of the Admininstrative Procedure Act, that the foregoing action relates solely to agency organization, procedure, or practice and that notice and public procedures in accordance with 5 U.S.C. §553 are not necessary pursuant to subsection (b) thereof and that, in view of the foregoing action does not impose any burden on competition.

Part 200 of Title 17 of the Code of Federal Regulations is amended by adding paragraphs (a)(4), (a)(5), and (a)(6) to §200.30-8, as follows:

PART 200-ORGANIZATION: CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§200.30-8 Delegation of authority to Director of Office of Opinions and Review.

* * * * *

(a) * * *

(4) With respect to disciplinary proceedings conducted or reviewed pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78(a), et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), the Investment Advisers Act of 1940 (15 U.S.C 80b-1, et seq.), and the provisions of Rule 2(e) of the Commission's rules of practice (§201.2(e) of this chapter), to determine applications to stay Commission orders imposing, affirming, or modifying sanctions pending appeal of those orders to the federal courts.

(5) With respect to disciplinary review proceedings pursuant to sections 19(d) and (e) of the Securities

Exchange Act of 1934 (15 U.S.C. 78s(d) and (e)), to determine applications for a stay of disciplinary action taken by a self-regulatory organization pending Commission review of that action.

(6) In connection with Commission review of disciplinary and exclusionary actions taken by self-regulatory organizations, pursuant to sections 19(e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of §240.19d-3(f) of this chapter. (Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2)).

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17273/November 5, 1980

An order has been issued granting the application of the *New York Stock Exchange, Inc.* to strike the common Stock ($1 par value), 5 1/4% Convertible Subordinated Debentures due 3-1-93, 7 1/4% Sinking Fund Debentures due 3-1-93, 11% Subordinated Debentures due 12-1-99, and 12% Sinking Fund Debentures due 12-1-99 of WHITE MOTOR CORPORATION from listing and registration theron.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17274/November 6, 1980

Admin. Proc. File No. 3-5829

In the Matter of the Application of

ALBERT S. PITTS
415 East Baltimore Avenue
Media, Pennsylvania

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS.

Violations of Rules of Fair Practice

Sales of Unregistered Securities

Failure to Disclose Compension

Where registered principal of member firm of registered securities association unlawfully sold unregistered securities, and offering circulars failed to disclose his extra sales compensation, *held*, associations' findings of violation *sustained*, and sanctions *affirmed*.

APPEARANCES:

Albert S. Pitts, pro se.

Andrew McR. Barnes and *Peter J. Chepucavage*, for the National Association of Securities Dealers, Inc.

I.

Albert S. Pitts, a registered principal of a member firm of the National Association of Securities Dealers, Inc. ("NASD"), appeals from NASD disciplinary action. The NASD found that, during the period from September 1 through December 31, 1976, applicant unlawfully sold unregistered securities and that, in connection therewith, investors were furnished offering circulars that failed to disclose material facts. It censured Pitts, fined him $25,000 and suspended him for one year from association with any NASD member.[1] Our findings are based on an independent review of the record.

II.

On August 15, 1976, Pitts contracted with an affiliate of Cal-Am Corporation to sell interests in various limited partnerships whose general partners were Cal-Am and companies and persons affiliated therewith. The partnerships, whose capitalization ranged from $150,000 to $500,000, were formed to acquire and operate various coal mining leases, and offered investors an attractive tax write-off. Interests in these ventures were sold pursuant to claimed

[1]The NASD also assessed costs.

private offering exemptions from the registration provisions of the Securities Act. Pitts sold interests totaling $320,000 in eight of these limited partnerships to 21 investors. In addition, in his capacity as wholesaler for Cal-Am's mid-Atlantic regions,[2] Pitts participated in the sale of interests totaling about $3.6 million in eight partnerships, including four which Pitts had not sold directly, to an additional 56 customers.[3]

Applicant claims that the various Cal-Am offerings were entitled to private offering exemptions from registration pursuant to Section 4(2) of the Securities Act and Rule 146 thereunder.[4] However, it is well settled that the burden of establishing the availability of an exemption from registration rests upon those who claim. it.[5] Pitts failed to meet that burden.

Rule 146 place a limit of 35 on the number of persons who may purchase a single offering of securities.[6] We agree with the NASD that all of the purportedly separate offerings of Cal-Am coal partnerships sold by or through Pitts constituted a single integrated offering. Whether a series of securities offerings should be integrated is a question of fact to be determined by the consideration of various criteria, any one or more of which may be determinative.[7] Here, all of the offe.ings involved the same class of security; they were all made at the same period of time; they were all offered for the same type of consideration; and they all had the same general purpose. Indeed, applicant acknowledges that the different offering circulars were all identical except for the property descriptions.[8] In addition, the various Cal-Am offerings were treated interchangeably. Pitts admitted that he knew of one instance where a customer was given an interest in one partnership after having paid for an interest in another, and that he understood that the same thing had happened in the case of other investors.

We are convinced that the sale of interests in the various Cal-Am limited partnerships constituted a single, integrated offering. Accordingly, since sales of these interests were not limited to 35 persons, no exemption from registration was available under Rule 146. Moreover, Pitts failed to show, in accordance with Rule 146(d)(2), that, immediately prior to the sales in question, he had reasonable grounds to believe that the offerees, either alone or together with their representatives, were capable of evaluating the merits and risks of their prospective investments.

Applicant maintains that, even if Rule 146 is inapplicable, the Cal-Am offering still qualifies for an exemption under Section 4(2) because the offering circulars assertedly made all of the necessary disclosure. Initially, we note that Pitts failed to show that all purchasers and offerees received anoffering circular. Moreover, as noted below, the circulars did not disclose Pitts' compensation for his role in the distribution. In any event, "mere disclosure of the

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[2]As wholesaler, Pitts contacted a number of broker-dealers in his region and acquainted them with the Cal-Am offerings. He testified that he only dealt with NASD member firms, not individuals, and required each firm to report to him the name of each customer and the partnership in which the customer purchased an interest.

[3]Pitts admitted that many of the broker-dealer firms in his region relied on him for their "due diligence" investigations.

[4]Section 4(2) of the Act exempts from registration "transactions by an issuer not involving any public offering." Rule 146 prescribes a non-exclusive method for obtaining the exemption provided by Section 4(2).

[5]See *S.E.C.* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *United States* v. *Custer Channel Wing Corporation*, 376 F.2d 675, 678, (C.A. 4, 1967), *cert. denied*, 389 U.S. 850; *Hill York Corporation* v. *American International Franchises, Inc.*, 448 F.2d 680, 690 (C.A. 5, 1971).

[6]Rule 146(g).

[7]See *S.E.C.* v. *Murphy*, F.2d (C.A. 9, July 23, 1980); *Mark E. O'Leary*, 43 S.E.C. 842, 847 (1968), *aff'd*, 424 F.2d 908 (C.A.D.C., 1970), and authorities there cited; *Apex Financial Corporation*, Securities Exchange Act Release No., 16749 (April 16, 1980), 19 SEC Docket 1221; Securities Act Release No. 4552 (November 6, 1962).

[8]Pitts failed to substantiate his claim that each partnership was an independently viable mining operation. See *S.E.C.* v. *Murphy, supra*.

same information that would be contained in the registration statement does not assure exemption" from registration.[9] In determining the availability of a private offering exemption, a primary consideration is whether the offering is made to persons who possess the necessary sophistication and are able to fend for themselves.[10] Aside from his own conclusionary statements,[11] Pitts produced no evidence that any of the Cal-Am offerees met that standard. Accordingly, he did not meet his burden of establishing that the Cal-Am offering was entitled to an exemption under Section 4(2).[12]

Pitts also asserts that he reasonably relied on the advice of counsel that an exemption from registration was available.[13] However, one "consultation" on which Pitts purportedly relied was admittedly "informal conversation" of about ten minutes during which no mention of Cal-Am or Rule 146 was made and no advice was given "for the record." A second attorney testified that he could not recall what advice he had given Pitts. In any event, although reliance on counsel may be a mitigative factor, it cannot relieve Pitts of responsibility for his violations of registration provisions.[14]

As we have often pointed out, persons such as Pitts "have a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act, and should be reasonably certain that such an exemption is available before engaging in transactions which raise a question of compliance with those requirements."[15] Pitts was admittedly aware that there were at least 150 purportedly separate Cal-Am coal partnerships being offered to the public, and that he was dealing with what he himself characterized as a "gray area."

We conclude that the NASD's findings of violation with respect to applicant's sales of unregistered securities should be affirmed.

III.

The NASD found that Pitts failed to comply with high standards of commercial honor and just and equitable principles of trade in that the Cal-Am offering circulars that were furnished to investors failed to disclose compensation that was paid to Pitts by Legal Mortgage Corporation ("LMC"), a company under common control with Cal-Am. The pertinent facts are as follows.

In addition to a salary, LMC paid Pitts an override on all sales made by the broker-dealers that Pitts enlisted in the Cal-Am sales effort. The override amounted to 3% of the gross dollar amount invested in Cal-Am limited partnerships, and Pitts was paid about $109,000 of such compensation during the period in question.

Moreover, in November 1976, Pitts received two 15-year loans of $9,000 and $24,000, respectively, from LMC. The loans were made to finance applicant's investments in two Cal-Am limited partnerships, and the purchased securities served as collateral for the loans. LMC has recourse only against the collateral, at the loans' maturity, to recover principal and

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[9] *S.E.C.* v. *Continental Tobacco Co.*, 463 F.2d 137, 160 (C.A. 5, 1972). See also *Hill York Corp.* v. *American International Franchises, Inc.*, *supra*, 448 F.2d at 688 n. 5; *Doran* v. *Petroleum Management Corp.*, 545 F.2d 893, 906-907 (C.A. 5, 1977); Securities Act Release No. 5487 (April 23, 1974), 4 SEC Docket 154, 155.

[10] *S.E.C.* v. *Ralston Purina Co.*, *supra*, 346 U.S. at 125; *Thomas A. Sartain, Sr.*, Securities Exchange Act Release No. 16561 (February 8, 1980), 19 SEC Docket 562, 566; Securities Act Release No. 5487, *supra*.

[11] We reject Pitts' suggestion that persons in higher tax brackets are necessarily sophisticated investors.

[12] As one court has stated, the evidence justifying an exemption "must be . . . explicit, exact, and not built on conclusionary statements of the [applicant]." *Lively* v. *Hirschfeld*, 440 F.2d 631, 633 (C.A. 10, 1971).

[13] Pitts further notes that the "offering memoranda were prepared by counsel for the limited partnerships." However, Pitts could not rely on that fact in determining the legality of the Cal-Am distribution. See. *M.V. Gray Investments, Inc.*, 44 S.E.C. 567, 569 (1971).

[14] See, e.g., *Mark E. O'Leary*, *supra*. 43 S.E.C. at 848.

[15] *Merrill Lynch, Pierce, Fenner & Smith Incorporated*, 45 S.E.C. 185, 188 (1973). See also *Quinn & Company* v. *S.E.C.* 452 F.2d943, 946-947 (C.A. 10, 1971), *cert. denied*, 406 U.S. 957 (1972).

accrued interest of 10% per annum. In the interim, 75% of total receipts from the collateral was to be applied to reduce the loan balances. We agree with the NASD's determination that the "loans" which Pitts received were additional compensation for wholesaling Cal-Am partnership interests.[16]

The offering circulars which Cal-Am investors received recited that sales commissions equal to 10% of the gross proceeds of the offering would be paid. Pitts testified that, in fact, the broker-dealers whom he recruited received that amount for their sales. However, as Pitts was well aware, the circulars made no disclosure of the compensation that Cal-Am was paying him in the form of overrides and "loans." We consider that such compensation, which was clearly an added sales incentive, was of material significance to investors who purchased their Cal-Am interests from brokers recruited by Pitts. Thus the compensation should have been disclosed in the circulars, even though it was not paid from the proceeds of the offering.[17]

We accordingly affirm the NASD's findings of violation.

IV.

Pitts asserts that the sanctions imposed by the NASD are excessive and oppressive. He states, among other things, that he was not a principal of Cal-Am, that on the basis of his independent investigation he had reasonable grounds to believe that an exemption from registration was available, and that the $25,000 fine assessed by the Association is unreasonable.

We do not consider that any reduction in sanction is warranted. The registration provisions which Pitts violated are a keystone of the entire system of securities regulation and set forth basic reguirements for the protection of investors. Moreover, the offering circulars for the Cal-Am securities that Pitts was distributing failed to make proper disclosure with respect to his sales compensation. The NASD's Board of Governors, in reducing the total bar imposed by the Association's District Committee to a one-year suspension, took into account the investigation that Pitts made with respect to Cal-Am as well as his previously unblemished record. Finally, we note that the fine assessed against Pitts is far less than the profits he earned from his improper conduct.[18]

Under all the circumstances, we are unable to conclude that the sanctions imposed by the NASD are excessive or oppressive.

An appropriate order will issue.

By the Commission (Chairman WILLIAMS and Commissioners LOOMIS, EVANS, FRIEDMAN and THOMAS).

George A. Fitzsimmons
Secretary

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[16]See *Howard D. Gatliff*, Securities Exchange Act Release No. 16680 (March 20, 1980), 19 SEC Docket 934, 936.

[17]See Schedule A, Item 17 of the Securities Act.

[18]See *Philip S. Sirianni*, Securities Exchange Act Release No. 17077 (August 20, 1980), 20 SEC Docket 971, 974.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17174/November 6, 1980

Admin. Proc. File No. 3-5829

In the Matter of the Application of

ALBERT S. PITTS
415 East Baltimore Avenue
Media, Pennsylvania

FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Albert S. Pitts, and the Association's assessment of costs, be, and they hereby are, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17275/November 6, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-30)

The National Securities Clearing Corporation submitted on October 23, 1980, a proposed rule change establishing fees for its Demand As Of service.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 10, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submission should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-30.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17276/November 6, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE INCORPORATED

File No. SR-PSE-80-20

The Pacific Stock Exchange Incorporated ("PSE") submitted, on October 28, 1980, a proposed rule change under Rule 19b-4 to amend its Options Floor Procedure Advice A-1 to relieve floor brokers who hold market orders from the obligation to remain at the trading post during opening rotations.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 10, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-20.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21771/October 31, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

COLUMBIA GULF TRANSMISSION COMPANY
3805 West Alabama Avenue
Houston, Texas 77027

(70-6476)

NOTICE OF PROPOSAL TO ENTER INTO PARTNERSHIP AGREEMENTS RELATING TO CONSTRUCTION AND OWNERSHIP OF NATURAL GAS PIPELINE AND TO ISSUE AND SELL NOTES IN SUPPORT THEREOF

NOTICE IS HEREBY GIVEN that the Columbia Gas System, Inc. ("Columbia"), a registered holding company, and Columbia Gulf Transmission Company ("Columbia Gulf"), a wholly-owned natural gas transmission subsidiary of Columbia, have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b), 9 and 10 of the Act and Rule 51 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transations.

Columbia Gulf and four other unaffiliated natural gas transmission companies have entered into partnership agreements which relate to construction and ownership of a new 800 mile natural gas pipeline system, to be known as the Trailblazer system, through which new supplies of natural gas being developed in Wyoming, Utah, Idaho, Nebraska and Colorado will be transported, directly and by displacement, to the mid-western and eastern markets owned by the partners. The partners are Colorado Interstate Gas Company ("Colorado"), Columbia Gulf, Mountain Fuel

Resources, Inc. ("Resources"), Natural Gas Pipeline Company of America ("Natural"), and Northern Natural Gas Company ("Northern"), hereafter referred to as the Companies.

The Trailblazer system, which is estimated to cost $533 million, will be comprised of three segments. The western segment, referred to as the Overthrust Pipeline and named for the "Overthrust" discovery areas, will be approximately 88 miles long and will cost an estimated $57 million. It will be jointly owned by all five partners and will be designed, constructed and operated by Resources. Construction will be initially financed out of $17.1 million in partnership equity contributions (Columbia Gulf's contribution will be approximately $3.4 million) and the remaining $39.9 million with bank loans. The short-term bank loans will be repaid with proceeds from the subsequent issuance of long-term debt securities. The debt securities issued will be an obligation of the partnership, not of Columbia Gulf or any of the partners. Initial capacity of this pipeline will be approximately 400 million cubic feet per day.

The middle segment, Colorado Interstate Pipeline, will extend approximately 264 miles from near Rock Springs, Wyoming to a point south of Cheyenne, Wyoming, near Rockport, Colorado and will cost an estimated $195 million. This segment will be owned, built, financed and operated by Colorado and will have an initial capacity when completed of 665 million cubic feet of gas per day.

The eastern segment, known as the Trailblazer Pipeline, will be jointly owned by Natural, Columbia Gulf and Northern, and will transport gas supplies eastward for those partners. Total cost of this segment, which will consist of 445 miles of 36 inch diameter pipeline, is estimated at approximately $281 million. Natural, or its affiliate, will design, construct, and operate this segment, which will have an initial operating capacity of 525 million cubic feet of gas per day. Construction will be initially financed out of $84.3 million in equity contributions and the remainder with term bank loans. Columbia's equity contribution to the Trailblazer Pipeline segment will total approximately $28.1 million. The term bank loans for the Trailblazer Pipeline facilities will be repaid, at prevailing rates, with proceeds from a subsequent permanent financing program consisting of some combination of debt securities. The precise combination and provisions of the securities to be issued will depend upon market conditions at the time such securities are sold. The debt securities issued will be an obligation of the partnership, not of Columbia Gulf, Natural or Northern.

Columbia Gulf proposes to participate in the construction and ownership of the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through its membership in the Overthrust Pipeline Company General Partnership Agreement ("Overthrust Pipeline Company") and the Trailblazer Pipeline Company General Partnership Agreement ("Trailblazer Pipeline Company"), each of which is dated September 20, 1979, and amended and restated as of February 21, 1980. The central segment of the Trailblazer system, to be constructed, financed, owned and operated by Colorado alone, did not require any partnership agreement covering all three pipeline segments, which together form the Trailblazer system. However, an agreement covering all three pipeline segments was also entered into on September 20, 1979, and amended and restated as of February 21, 1980. It coordinates their activities and is called the Pipeline Project Agreement for the Trailblazer System. The parties are Colorado, Columbia Gulf, Columbia Gas Transmission Corporation, Resources, Mountain Fuel Supply Company, Natural, Northern, Overthrust Pipeline Company and Trailblazer Pipeline Company.

The Overthrust and Trailblazer Pipeline Company Agreements provide, in each case, that the partnerships shall be managed by management committees consisting of a representative selected by each partner and that no partner may incur any obligation on behalf of the management committees. In the event that a partner defaults with respect to its obligation to make a capital contribution, the agreements provide that the non-defaulting partners may contribute or lend funds to the partnership in equal amounts which total the amount of the default, and after 60 days, may require the defaulting partner to assign its interest in the partnership to a third party. All distributive shares of income, profit, loss, deduction or credit are allocable to the partners in accordance with each partner's capital participation which, in the case of the Overthrust Pipeline Company, is one-fifth, and, in the case of the Trailblazer Pipeline Company, one-third. Except with the unanimous consent of the management committee, a partner may not transfer any interest in either partnership, and no partner may withdraw from either partnership, except that the management committees may request

Columbia Gulf to withdraw in the event that this Commission does not approve any capital contribution to the partnerships for which Columbia Gulf is obligated by the partnership agreements.

Columbia Gulf proposes to finance its participation in the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through the issuance and sale to Columbia of up to $33 million of either 20 year installment promissory notes and/or 7 year floating rate term notes. The installment notes are to be unsecured and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on September 30 of each of the years 1982 to 2001, inclusive. Interest on the notes would accrue from the date of their issuance, on the unpaid principal thereof, and be paid semi-annually in accordance with the provisions of said notes. The interest rate would be the effective cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%.

Columbia sold $100,000,000 principal amount of debentures on August 13, 1980 (HCAR No. 21671), at an effective cost of money of 12.9%. Subject to market conditions, Columbia anticipates selling additional long-term securities during the project's construction period. Therefore, installment notes issued prior to such additional sale of debentures would bear an interest rate of 12.9% and installment notes issued subsequent to any of Columbia's future debenture issues would carry an interest rate related to the last such sale prior to the issuance of said notes. Should Columbia issue any notes under the Revolving Credit and Term Loan Agreement, dated as of April 1, 1980, ("Agreement") among Columbia and certain banks named therein, then Floating Rate Term Notes ("Floating Rate Notes") due March 31, 1987 would be issued by Columbia Gulf in lieu of installment notes. Such would be dated the date of their issue and would bear interest at Columbia's effective cost of money of any borrowings under the Agreement. Any such Floating Rate Notes issued would be refinanced upon maturity.

The fees and expenses to be incurred in connection with the proposed transactions are $23,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions. The participants in the Trailblazer system have applied to the Federal Energy Regulatory Commission ("FERC") for a certificate of public convenience and necessity to build and operate the pipeline (FERC Docket No. CP 79-80).

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration as amended or as it may be further amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may further be amended, may be granted and be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21772/October 31, 1980

In the Matter of

NEW ENGLAND POWER COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6509)

NOTICE OF PROPOSED ISSUANCE AND SALE OF GENERAL AND REFUNDING BONDS AT COMPETITIVE BIDDING AND PLEDGE OF FIRST MORTGAGE BONDS TO GENERAL AND REFUNDING MORTGAGE TRUSTEE; PROPOSED ISSUE AND SALE OF PREFERRED STOCK AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that New England Power Company ("NEPCO"), a subsidiary of New England Electric System, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEPCO proposes to issue and sell not exceeding $50,000,000 principal amount of general and refunding bonds to be designated General and Refunding Mortgage Bonds, Series E, ____%, due ____ ("Series E Bonds"), to bear interest at such rate and to be issued at such price as shall be determined by competitive bidding. The terms and conditions relating to bids provide that each bid shall specify the interest rate, which shall be a multiple of 1/8 of 1%, to be borne by the Series E Bonds (if the interest rate specified exceeds 15% per annum, further orders of state commissions exercising jurisdiction would be necessary), and the price, exclusive of accrued interest, to be paid to NEPCO therefor, which shall be not less than 98% of the principal amount nor more than 101-3/4% thereof. The Series E Bonds will bear interest, paid semiannually, for the date as of which bonds of the series are first authenticated at the rate per annum shown in their title. The Series E Bonds will be redeemable at general and special redemption prices. However, the Series E Bonds may not be redeemed at general redemption prices during the first five years of their term through refunding operations at a lesser effective interest cost to NEPCO.

The Series E Bonds will be issued under a General and Refunding Mortgage Indenture and Deed of Trust dated as of January 1, 1977, as amended and supplemented by a Third Supplemental Indenture (collectively the "G&R Indenture") and will be secured with all other bonds issued under the G&R Indenture by a mortgage lien on substantially all the properties then owned, and, to the extent permitted by law, thereafter acquired by NEPCO, subject to the lien of the First Mortgage Indenture, liens permitted by the G&R Indenture, and exclusive of property excepted by the G&R Indenture. All G&R bonds will be further secured by first mortgage bonds which NEPCO is obligated to issue and pledge with the G&R Trustee as described below.

By an order dated January 7, 1977 (HCAR No. 19844) the Commission authorized the execution and deliverance to the trustee of the G&R Indenture. The G&R Indenture was created in order to eliminate, among other items, certain provisions in NEPCO's First Mortgage Indenture dealing with restrictions on bondable property and definitions of additional property and net earnings. While NEPCO no longer issues bonds pursuant to its present first mortgage indenture for sale to the public, first mortgage bonds are, however, still issued and pledged to the Trustee under the G&R Indenture as additional security for the G&R Bonds. A principal amount of not exceeding $25 million additional first mortgage bonds to be designated First Mortgage Bonds, Series Z, ____%, due ____ ("Series Z Bonds") will be issued and pledged. The Series Z Bonds will be a new issue of first mortgage bonds ("First Mortgage Bonds") issued under and secured by the Indenture of Trust and First Mortgage dated as of November 15, 1936, and indentures supplemental thereto and will have the same interest rate and maturity as the Series E Bonds. Neither the principal of, nor the premium, if any, nor the interest on the Series Z Bonds shall be payable unless a default shall have occurred under the G&R Indenture or the First Mortgage Indenture.

NEPCO further proposes to issue and sell not exceeding $50 million of preferred stock in the form of 500,000 shares of a new series of its Dividend Series Preferred Stock (par value $100) to be designated Cumulative Preferred Stock, $100 par value, ____% Series ("new preferred stock"). The

new preferred stock has not yet been approved by stockholders and NEPCO will only issue stock upon receipt of all necessary regulatory and stockholder approvals.

The new preferred stock will bear such dividend rate and be issued at such price as will be determined by competitive bidding. The terms and conditions relating to bids will provide that each bid shall specify the dividend rate to be borne by the new preferred stock and that such dividend rate shall be a multiple of .04 of 1%. In addition, each bid must specify the price to be paid to NEPCO for the new preferred stock which shall not be less than par nor more than 102.75 percent of par. If the dividend rate specified exceeds 14% per annum, further orders of state commissions exercising jurisdiction would be necessary. Dividends will be cumulative from the date of initial issue. The new preferred stock will not be redeemable during the first five years after its issuance in connection with a refunding by the issuance of debt securities at a lesser effective interest cost or other preferred stock at a lesser effective dividend cost to NEPCO.

NEPCO will designate by telephone or telegram to prospective bidders not latter than 12 Noon, E.S.T., on the second full business day prior to the time designated for the submission of bids (i) the date on which the Series E Bonds shall mature, which date shall be not less than 5 nor more than 30 years from the first day of the month as of which the Series E Bonds are issued, and (ii) the sinking fund for the new preferred stock which will retire up to 5% of the initial issue each year.

NEPCO has currently scheduled the issue and sale of the Series E Bonds and new preferred stock in December 1980; however, due to uncertain market conditions, NEPCO may sell such securities any time prior to April 1, 1981. The issue and sale of the Series E Bonds and the new preferred stock are separate transactions, and are not contingent upon each other.

NEPCO's short-term borrowings pursuant to Commission authorization totaled about $59 million at August 31, 1980. NEPCO expects that such borrowings will exceed $100 million by December 31, 1980 if the Series E Bonds or the New Preferred Stock are not issued by that date. The proceeds from the sale of Series E Bonds and/or the preferred stock will be applied to the payment of short-term borrowings incurred for, or to the cost of, or to the reimbursement of the treasury for uncapitalized additions and improvements to the plant and property of NEPCO and any other uncapitalized expenditures of NEPCO.

Statements of the fees, commissions and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The proposed transactions are subject to the jurisdiction of the Connecticut Division of Public Utility Control, the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission and the Vermont Public Service Board. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21773/November 3, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

(70-6498)

NOTICE OF PROPOSAL TO ISSUE AND SELL FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Arkansas proposes to issue and sell at competitive bidding up to $70,000,000 in principal amount of its first mortgage bonds ("Bonds") of a series having a term of not less than five nor more than thirty years. Arkansas will determine, and give notice to bidders of, the principal amount of the bonds, if less than $70,000,000, and of the maturity date of the bonds on a business day and not later than 24 hours prior to the time fixed for the presentation of the bids. The interest rate of the Bonds, (which will be a multiple of 1/8 of 1%) and the price, exclusive of accrued interest, to be paid to Arkansas for the Bonds (which will not be less than $100% nor more than 102-3/4% of the principal amount thereof) will be determined by competitive bidding.

The Bonds are to be issued as a new series of Arkansas' First Mortgage Bonds under its Mortgage and Deed of Trust, dated as of October 1, 1944, to Guaranty Trust Company of New York (currently known as Morgan Guaranty Trust company of New York) and Henry A. Theis (John W. Flaherty, successor), as Trustees, as heretofore supplemented and as proposed to be further supplemented by a Thirty-second Supplemental Indenture ("Supplemental Indenture") thereto. The Supplemental Indenture will include a prohibition, for a period of not more than five years, against refunding the Bonds, directly or indirectly, with the proceeds of funds borrowed at a lower effective interest cost.

Arkansas proposes to use the net proceeds derived from the issuance and sale of the Bonds for the payment of a portion of the short-term indebtedness incurred or estimated to be incurred for financing Arkansas' construction program. Arkansas' 1980 construction program is expected to result in expenditures of approximately $283,600,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated to be $190,000. Legal fees of counsel for the successful bidders are estimated at $20,000. It is stated that the Arkansas Public Service Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration whichhe desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and others issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21774/November 3, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

MISSISSIPPI POWER & LIGHT COMPANY
Electric Building
Jackson, Mississippi 39205

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70112

(70-6514)

NOTICE OF PROPOSED ISSUANCE AND SALE OF NOTES TO BANKS AND COMMERCIAL PAPER

NOTICE IS HEREBY GIVEN that Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service Inc. ("New Orleans"), electric utility subsidiaries of Middle South Utilities, Inc., a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Arkansas, Louisiana, Mississippi, and New Orleans currently have in effect separate programs under which each of them is authorized to issue and sell unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper to meet its interim financing requirements. (See File Nos. 70-6381, 70-6225, 70-6408, and 70-6369, respectively.) Arkansas, Louisiana, Mississippi, and New Orleans each proposes now to revise the foregoing programs and to issue and sell individually from time to time through June 30, 1982, unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper in aggregate principal amounts outstanding at any one time equal to the lesser, from time to time, of (i) $170,000,000, $190,000,000, $45,000,000, and $22,000,000, respectively, or (ii) 10 percent of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed and then outstanding and (b) the capital and surplus of each company as then stated on its books of account (which 10 percent is the maximum principal amount of unsecured short-term borrowings permissible under the provisions of the respective charters without the appropriate consent of their respective preferred stockholders). On the basis of the foregoing 10 percent restriction, Arkansas, Louisiana, Mississippi, and New Orleans would have been permitted, as of July 31, 1980, to issue and sell short-term promissory notes (including commercial paper), in aggregate principal amounts of up to $163,500,000, $157,800,000, $37,600,000, and $23,000,000, respectively. Subject to the foregoing limitations, the nature of each issue of such notes (including commercial paper) will be determined in the light of the then prevailing market conditions and other factors.

It is stated that in accordance with the past practices, short-term bank borrowings will be made by each of the companies from a group of commercial banks which are located in the general service area of the respective company ("Territorial Banks"). In addition, each of the companies intends to effect short-term borrowings under consolidated "either/or" lines of credit established with a group of commercial banks located outside the general service areas of the companies ("Non-territorial Banks"). Under the proposed "either/or" borrowing arrangements, each of the Non-territorial Banks would provide a single line of credit which would be available to any and all of the declarants. It is stated that this consolidation of credit lines is expected to be preferable to existing arrangements whereby each of the companies currently maintains separate lines with various Non-terriorial Banks in that it will allow for the maintenance of lines of credit for the declarants, on an aggregate basis, at the minimum levels necessary to provide adequate amounts of capital as required from time to time, will minimize the related costs of borrowing, including commitment fees and/or compensating balance requirements, and will afford the Middle South System greater control over the cost of short-term funds.

The notes proposed to be issued and sold by each company to the Territorial Banks and the Non-territorial Banks will be in the form of unsecured promissory notes, will be payable not more than 270 days from the date of issuance with the right of renewal, will bear interest at a rate per annum no greater than the prime commercial bank rate in effect at the lending bank on the date of issuance or renewal or from time to time depending upon the requirements of the lending bank, and will, at the option of the company, or, under certain circumstances, with the consent of the lending bank, be prepayable, in whole or in part, at any time without premium or penalty.

Each of the declarants maintains accounts with its Territorial Banks, and, although balances in these accounts may be deemed to be compensating balances, these accounts are working accounts, and fluctuations in their balances do not reflect or depend upon fluctuations in the amounts of bank loans outstanding. Assuming that a 20% compensating balance is maintained and assuming a 13.5% per annum prime commercial bank rate, the effective interest cost for borrowings from Territorial Banks would be 16.875% per annum.

With respect to borrowings from the Non-territorial Banks, it is anticipated that the Non-territorial Banks will require the maintenance of compensating balances and/or the payment of commitment fees with respect to the amount of loan commitments and/or loans outstanding, but in no case will the total of such compensating balances exceed 12%. Assuming that a 12% compensating balance is maintained and assuming a 13.5% per annum prime commercial bank rate, the effective interest cost for borrowings from Non-territorial Banks would be 15.34% per annum.

The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturities to be determined by market conditions, effective cost of money to the respective declarant, and such company's anticipated cash requirements at the time of issuance. In accordance with the established custom and practices in the market, the proposed commercial paper will not be payable prior to maturity. Each company proposes to issue, reissue, and sell the commercial paper directly to a dealer in commercial paper ("Dealer") at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality of that particular maturity sold by public-utility issuers to commercial paper dealers.

No commission or fee will be payable in connection with the issuance and sale of the commercial paper. Each Dealer, as principal, will reoffer and sell the commercial paper at the customary discount rate for commercial paper. Each Dealer in reoffering the commercial paper will limit the reoffer and sale to a non-public customer list for each declarant containing not more than 200 buyers of commercial paper. It is anticipated that the commercial paper will be held by the buyers to maturity; however, each Dealer may, if desired by a buyer, repurchase the commercial paper for resale to others on the list of customers.

As of July 31, 1980, the construction programs of the declarants in 1981 and 1982 are estimated to result in the following expenditures:

	Arkansas	*Louisiana*	*Mississippi*	*New Orleans*
1981	$308,100,000	$280,200,000	$158,700,000	$25,200,000
1982	168,500,000	293,800,000	84,900,000	27,900,000

The net proceeds to be received by the companies from the issuance and sale of the notes (including commercial paper) referred to herein, together with other funds available, from time to time, to the companies from their operations or derived from the issuance and sale of long-term debt and/or equity securities, will be applied to their construction programs and other lawful purposes.

The declarants request that they be granted authority to file individually and on a quarterly basis their certificates under Rule 24.

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $10,000, including legal fees of $5,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 28, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be

addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and others issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21775/November 4, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

SOUTHERN APPALACHIAN COAL COMPANY
Charleston, West Virginia

(70-5723)

SUPPLEMENTAL ORDER AUTHORIZING PAYMENT OF DIVIDEND

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Southern Appalachian Coal Company ("SACO"), a coal mining subsidiary of Appalachian, have filed with this Commission a post-effective amendment to their declaration previously filed and amended pursuant to Section 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder concerning the following proposed transaction.

By order dated December 29, 1978 (HCAR No. 20860), Appalachian was authorized to make cash capital contributions to SACO through December 31, 1978, of up to $16,000,000, and SACO was authorized to pay dividends to Appalachian of up to $12,000,000 through December 31, 1978. Jurisdiction was reserved in said order with respect to proposed additional dividends from SACO to Appalachian of $4,000,000 to be paid when sufficient cash had been internally generated by SACO, then thought to be possible by mid-1980. Said reservation of jurisdiction was continued in the supplemental order of February 6, 1980 (HCAR No. 21424), which authorized a rate of return on Appalachian's investment in SACO.

By post-effective amendment declarants state that SACO now has adequate cash resources to declare and pay the $4,000,000 dividend to Appalachian, and request that the jurisdiction heretofore reserved concerning the same be released.

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended by said post-effective amendment, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that SACO be, and it hereby is, authorized forthwith to pay an additional dividend to Appalachian of up to $4,000,000, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, and that the jurisdiction heretofore reserved concerning such $4,000,000 dividend be, and the same hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21776/November 5, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
Westborough, Massachusetts

(70-5750)

ORDER AUTHORIZING EXTENSION OF AND INCREASE IN SHORT-TERM BORROWINGS

New England Electric System ("NEES"), a registered holding company, has filed with this Commission post-effective amendments to its application-declaration previously filed and amended pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following proposed transaction.

By orders dated December 1, 1975, May 23, 1977, December 18, 1978, and December 6, 1979 (HCAR Nos. 19272, 20047, 20834 and 21330), NEES was authorized to issue short-term notes to banks through December 31, 1980, in an aggregate amount not to exceed $25,000,000 outstanding at any one time.

By post-effective amendments filed in this proceeding, NEES now proposes that such borrowing authority be extended through December 31, 1981, and that the maximum permitted borrowings be increased to $50,000,000.

Although no formal commitments have been made, NEES expects such borrowings will be made from amoung 34 commercial banks set forth in the post-effective amendments. The proposed borrowings will be evidenced by notes maturing in less than one year from date of issuance and bearing interest at a rate not in excess of the prime rate. NEES may either maintain compensating balances of 10% of the line of credit made available and 10% of any borrowings thereunder, or pay fees equivalent to such requirements. Based on a prime rate of 14.5%, the effective interest cost would be 18.13%.

Concerning the proposed increase in the maximum permitted borrowings, it is stated that NEES needs such increase to give it greater flexibility in the timing of its next common share issue in light of plans to make capital contributions to its subsidiary New England Power Company of $20,000,000 in October 1980 (which contribution was authorized in HCAR No. 21760, October 27, 1980) and $40,000,000 in 1981 (which contribution will be the subject of a future filing), and to make further funds available to its fuel subsidiary New England Energy Incorporated in 1980 and 1981 (which funding will also be the subject to a future filing).

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21739), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21777/November 5, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25314

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
99 North Front Street
Columbus, Ohio 43215

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
340-17th Street
Ashland, Kentucky 41101

COLUMBIA GULF TRANSMISSION COMPANY
3805 West Alabama Avenue
Houston, Texas 77027

COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
20 Montchanin Road
Wilmington, Delaware 19807

(70-6435)

NOTICE OF PROPOSED INTRASYSTEM FINANCING

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated May 28, 1980 (HCAR No. 21593), Columbia, among other things, was authorized to make short-term advances on open account of up to $145,000,000 to Columbia Gas Transmission Corporation ("Columbia Transmission"). It is now proposed that such advances be increased to $170,000,000.

It is also proposed that Columbia Transmission issue and sell, and that Columbia acquire, installment notes and/or floating rate term notes up to the amount of $60,000,000. The issuance and sale of these notes will be subject to the same terms and conditions as those of certain other subsidiaries as described previously in the application-declaration.

It is stated that the increase of $25,000,000 in advance to Columbia Transmission is required in order to provide Columbia Transmission with sufficient funds to finance gas purchases and other normal short-term seasonal requirements. The issuance of $60,000,000 in notes is required to finance Columbia Transmission's capital expenditures. The additional financing requirements are a result of lower sales volumes.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to

whether a hearing is ordered will receive any notices and others issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21778/November 5, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
Tulsa, Oklahoma

TRANSOK PIPE LINE COMPANY
Tulsa, Oklahoma

(70-6501)

ORDER AUTHORIZING SALE AND LEASE BACK OF OFFICE BUILDING; GUARANTEE OF LESSEE'S OBLIGATIONS BY AFFILIATE

Transok Pipe Line Company ("Transok"), an intrastate pipe line company and a subsidiary of Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, has, with its parent, filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the proposed transaction.

PSO owns an office building in Tulsa, Oklahoma which it presently leases to Transok for a rental of $28,290 per month. The property has a depreciation book value of $1,028.244 and a fair market value of approximately $3,750,000, determined pursuant to appraisal. PSO proposes to sell the property to Pubson Associates Limited Partnership, a Connecticut limited partnership ("lessor") to be formed by Integrated Resources, Inc., which partnership will own the property and enter into a long-term net lease ("lease") with Transok as lessee. The sales price of the property will be $3,750,000 cash, subject to appraisal. PSO will guarantee to the lessor all of Transok's obligations as lessee under the lease.

The lease will have a term of 25 years ("basic term"), beginning on the closing date of the transaction, which is anticipated to occur in November, 1980, and will contain two 10-year renewal options. As rental for the use of the property, Transok will agree to pay, monthly in arrears, .643% of the capitalized cost of the property during the first 5 years of the basic term, 1.003% of the capitalized cost of the property during the second 5 years of the basic term, 1.192% of the capitalized cost of the property during the third 5 years of the basic term and 1.303% of the capitalized cost of the property during the last 10 years of the basic term of the lease. If Transok exercises the renewal options, it will be required to pay .767% of the capitalized cost of the property, monthly in arrears, during each month of the renewal term. Capitalized cost, for purpose of calculating the rentals payable by Transok, is defined to be an amount equal to the lessor's purchase price of the property from PSO plus amounts paid by the lessor for title insurance, recording costs, mortgage taxes and other costs incurred by the lessor in connection with its permanent mortgage loan. The capitalized cost will be approximately $3,765,000. Transok's rental payments under the lease will total $290,507 for the first year compared to the $339,480 per year it is currently paying to PSO. The foregoing rentals have been calculated by the lessor on the assumption that it can obtain permanent financing on terms acceptable to it at a fixed annual interest cost of 12%. The lessor has advised PSO that it has a commitment from an insurance company to provide this financing at the assumed interest rate but the base rentals are subject to adjustment, upward or downward, in the event the permanent financing is at an interest cost other than 12% per annum.

The lease will be a net lease and in addition to Transok's obligation to pay rentals, Transok will be required to pay all taxes (other than income taxes of the lessor), assessments, utility charges, the cost of insurance, repairs and maintenance and will agree to maintain the property in good order and repair and to keep the property free of all liens and encumbrances except those permitted by the terms of the lease. If during the term of the lease the property sustains a casualty (including condemnation) which renders the property

unsuitable for restoration and continued use by Transok, or if at any time during the last 10 years of the 25 year basic term of the lease Transok determines that the property has become uneconomical for continued use in Transok's operations, the lease will terminate and Transok will be required to make a rejectable offer to purchase the property at a price determined by reference to a casualty value schedule designated in the lease. Transok will be given the right to sublease the property provided that, upon such sublease, its obligations under the lease and PSO's obligations under the guaranty will not be affected.

PSO will enter into an Agreement of Guaranty (the "Guaranty") with the lessor pursuant to which PSO will agree, unconditionally and irrevocably, to perform, observe and discharge each and every one of the covenants, agreements, terms and conditions of Transok under the lease, to the extent not performed by Transok. The Guaranty will provide that PSO shall be required to perform the obligations of Transok under the lease in the event of the disaffirmance of the lease by a trustee or receiver of the property of Transok in a bankruptcy proceeding affecting Transok. PSO will further agree under the guaranty to provide to the lessor certain information relating to its financial condition.

The proceeds to be derived from the sale of the property will be used by PSO to repay short-term borrowings which were incurred for PSO obligations, including projects under construction. Approximately $13,400,000 of short-term borrowings are expected to be outstanding as of November 30, 1980, the anticipated closing date of the sale to the lessor. No funds generated from the sale of the property will be utilized to pay the cost of facilities which would not be needed to provide service to customers of PSO if it were not part of the Central and South West System. No expenditures will be made by PSO for the construction or acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended. For the purpose of the foregoing representation, it is assumed that none of the facilities the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (File No. 3-4951), would be needed to provide service to customers of PSO if it were not part of the Central and South West System.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $13,500, including legal fees of $10,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21742), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21779/November 6, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
215 North Front Street
Columbus, Ohio 43215

INDIANA & MICHIGAN ELECTRIC COMPANY
2101 Spy Run Avenue
Fort Wayne, Indiana 46801

KENTUCKY POWER COMPANY
1701 Central Avenue
Ashland, Kentucky 41101

KINGSPORT POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

MICHIGAN POWER COMPANY
Post Office Box 367
Three Rivers, Michigan 49093

OHIO POWER COMPANY
301 Cleveland Avenue, S.W.
Canton, Ohio 44701

WHEELING ELECTRIC COMPANY
51 Sixteenth St.
Wheeling, West Virginia 26003

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-6361)

NOTICE OF PROPOSAL OF HOLDING COMPANY TO ISSUE AND SELL SHORT-TERM NOTES TO BANKS AND TO MAKE CASH CAPITAL CONTRIBUTIONS TO SUBSIDIARIES

NOTICE IS HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Columbus and Southern Ohio Electric Company ("CSOE"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Michigan Power Company ("Michigan"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling"), AEP's subsidiary public utility companies, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 12 of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By prior order in this proceeding (HCAR No. 21352, December 21, 1979), AEP was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper respectively, in an amount of up to $165,000,000, such notes maturing no later than June 30, 1981. AEP was also authorized to make cash capital contributions prior to January 1, 1981 to certain of its subsidiaries. By supplemental order in this proceeding (HCAR No. 21442, February 20, 1980), AEP was authorized to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of $229,000,000 subject to the previously ordered limit on outstanding notes. By further supplemental order in this proceeding (HCAR No. 21488, March 25, 1980), AEP was authorized to make cash capital contributions to Michigan from time to time prior to January 1, 1981 in an aggregate amount of $10,000,000. Also by further supplemental order in this proceeding (HCAR 21596, May 29, 1980), AEP was authorized to issue and sell short-term notes to 14 banks with lines of credit in an aggregate amount of $274,000,000, subject to the previously ordered limit on outstanding notes.

By post-effective amendment AEP proposes to issue and sell, from time to time prior to January 1, 1982, short-term notes to 14 banks with lines of credit in an aggregate amount of $239,000,000, maturing no later than June 30, 1982. AEP also requests authority to make cash capital contributions from time to time subsequent to December 31, 1980 and prior to January 1, 1982, to Appalachian in the amount of $60 million, to CSOE in the amount of $40 million, to I&M in the amount of $90 million, to KPCO

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in the amount of $20 million and to Ohio Power in the amount of $60 million. The currently estimated construction program of Appalachian for 1981 is $215 million, for CSOE is $143 million, for I&M is $320 million, for KPCO is $47 million and for Ohio Power is $225 million.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that the proposed cash capital contributions to be made during 1981 by AEP to Appalachian are subject to authorization by the State Corporation Commission of Virginia and the Public Service Commission of West Virginia. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11421/October 31, 1980

PREVENTION OF CERTAIN UNLAWFUL ACTIVITIES WITH RESPECT TO REGISTERED INVESTMENT COMPANIES

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announced that it is adopting a rule under the Investment Company Act of 1940 to provide guidance to investment companies as to the minimum standards of conduct appropriate for persons who have access to information regarding the purchase and sale of portfolio securities by investment companies. The rule prohibits certain activities on the part of persons affiliated with registered investment companies or their investment advisers or principal underwriters. In addition, the rule requires such entities to establish codes of ethics applicable to certain persons associated with them, and requires that these persons make certain reports regarding their securities transactions.

EFFECTIVE DATES: (1) As to paragraph (a), October 31, 1980; (2) as to all other paragraphs, May 1, 1981.

FOR FURTHER INFORMATION CONTACT: S. Elliott Cohan, Esq. (202) 272-2060, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting Rule 17j-1 [17 CFR 270.17j-1] ("Rule") under the Investment Company Act of 1940 ("Act"). The Rule is designed to implement Section 17(j) of the Act [15 U.S.C. 80a-17(j)] which provides that:

> "It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such

person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business."

BACKGROUND

Section 17(j) was added to the Act in 1970 as a result of a recommendation to Congress by the Commission that the Commission be authorized to adopt rules for the protection of investors in connection with trading in securities purchased and sold by investment companies by persons affiliated with them or their investment advisers or principal underwriters.[1] This recommendation was based upon the Commission's earlier finding that transactions by such persons in securities held by investment companies often placed such persons in a position of conflict of interest, and that the considerable disagreement in the investment company industry as to the nature and extent of obligations in this area suggested a need for clearer and higher standards of conduct.[2]

The Commission believes that the conditions which led to the original recommendation are to some extent still present in the investment company industry. Through its examination program, the Commission has become aware of an increasing number of situations involving parallel trading by individuals with knowledge regarding transactions anticipated or engaged in by registered investment companies. Therefore, the Commission believes it would be desirable to provide guidance to the investment company industry as to the minimum standards of conduct which it believes would be appropriate for persons with access to information regarding the purchase and sale of portfolio securities of investment companies. However, the variety of employment and institutional arrangements utilized by different investment companies renders impracticable a rule designed to cover all conceivable possibilities. Moreover, as a matter of policy the Commission believes the introduction and tailoring of ethical restraints on the behavior of persons associated with an investment company can best be left in the first instance to the directors of the investment company. Therefore, the Commission believes it is appropriate to impose an obligation on individual investment companies and their investment advisers and principal underwriters to prescribe standards and procedures reasonably designed to prevent the fraudulent or manipulative activities proscribed by the Rule.

The Rule is intended to be broad enough to permit those entities required to adopt codes of ethics to establish the standards and procedures that they believe are necessary to prevent fraudulent, deceptive and manipulative practices. However, the Commission believes that certain activities may be of such a nature as to create the type of conflict of interest situations to which Section 17(j) was addressed. The Commission expects that these potential abusive activities would be specifically considered by entities required to adopt code of ethics. For example, it is expected that an effective code of ethics will be designed, in part, to eliminate conflict of interest situations where access persons improperly are able to gain personal benefit through their relationship with the investment company. Such situations might exist if access persons were to engage in personal securities transactions involving securities which are held by the investment company or which are to be acquired by such investment company, or involving securities which, although they have not yet been purchased or sold by the investment company, are being considered for purchase or sale. Furthermore, such activities may create an incentive for such persons to influence improperly the investment strategy of the company.

Entities subject to the Rule should, therefore, consider whether to provide in their codes of ethics prohibitions against access persons engaging in such activities and appropriate guidelines for

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[1]See Public Policy Implications of Investment Company Growth, H. R. Rep. No. 2337, 89th Cong., 2d Sess. 200 (1966).

[2]See Report of the Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess, pt. 4, at 235-55 (1963).

determining when a transaction by an access person is prohibited. In this regard, the entity may have to determine the point at which a purchase or sale recommendation is deemed to reach a stage where a concurrent or related transaction in the same security by an access person would present a danger of abuse. Though such a threat may not exist where particular securities are merely being reviewed as part of a general industrial survey or other broad monitoring of the securities markets, an access person may take unfair advantage of an investment company once a particular security has become a probable target of purchase or sale by the investment company.

Another situation which would appear to present a conflict of interest of the type to which Section 17(j) is addressed might occur where access persons already own a particular security and through their positionof influence over the investment company attempt to cause the investment company to purchase, sell or hold the same security. This situation could be especially abusive where the investment strategy recommended by the access person may be expected to create a personal benefit to the access person. The Commission expects such a situation would be considered also in adopting codes of ethics, and that appropriate prohibitions, restrictions or guidelines would be included in the codes of ethics.

Although entities, in adopting their codes of ethics, may determine to prohibit certain (or all) of the activities discussed above, the Commission recognizes that there may be certain types of personal transactions by access persons which may not create the conflict of interest situations to which Section 17(j) was addressed. These nonabusive transactions might be generally characterized as ones which are: non-volitional on the part of the access person involved in the transaction; only remotely potentially harmful to the investment company because they would be very unlikely to affect a highly institutional market; or clearly not related economically to the securities to be purchased, sold or held by the investment company.[3] The broad language of the Rule is intended to permit entities to consider transactions by access persons in the context of their particular business operations when adopting their individual codes of ethics.

The Commission is endeavoring in this discussion to offer guidance with regard to the type of activities which should be considered by entities in designing and adopting codes of ethics. It is not attempting to list all activities and circumstances which could or should be the subject of concern by those entities, for it is the entities themselves, required by the Rule to adopt codes of ethics, that bear the primary responsibility for identifying those areas which present a potential for abuse by access persons. In this regard, the Commission has instructed its Division of Investment Management through the inspection program to monitor carefully developments under the Rule. If it appears to the Commission that entities are not adopting and enforcing codes which deal adequately with potential abuses in terms of current economic conditions, the Commission may determine that it is necessary to exercise further its authority under Section 17(j), and it may then consider whether it would be necessary and appropriate to propose amendments to the Rule specifically to prohibit certain abusive activities.

DISCUSSION

The Commission proposed Rule 17j-1 (the "proposed rule") and requested public comments on that proposed rulemaking in Investment Company Act Release No. 10162, 43 FR 12721 (March 17, 1978), File No. S7-738 ("Release No. 10162"). Forty-two letters of comment were received.

General Anti-Fraud Provisions

Paragraph (a) of the proposed rule was a general antifraud provision similar to Section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)] and Rule 10b-5 under the Securities Exchange Act of 1934 [17 CFR 240.10b-5], and would have prohibited, generally speaking, fraudulent trading by certain persons affiliated with investment companies or their investment advisers or principal underwriters with respect to securities held or to be acquired by the investment company. Almost all of the letters received opposed adoption of the anti-fraud section of the proposed rule. Commentators argued that this provision was overly broad and outside the authority

[3]For example, an entity required to adopt a code of ethics might determine that there is little or no potential for abuse where the particular purchase transaction is part of an automatic dividend reinvestment plan in which the access person participates.

granted the Commission in Section 17(j). Another argument advanced by most of the commentators opposed to the provision was that, as proposed, any securities transaction — whether or not in securities being held, purchased or sold by the investment company — by an affiliated person of an investment company or its investment adviser and principal underwriter would be subject to the anti-fraud provision of the proposed rule.

In response to these comments, the Commission has made certain changes in this paragraph in order to clarify its intent that the anti-fraud provision should be limited to purchases and sales of securities held or to be acquired by a registered investment company.[4] The Commission expects that the anti-fraud section in the final rule, as revised, will accomplish one of the objectives desired by Congress in enacting Section 17(j).

Code of Ethics

Paragraph (b) of the proposed rule would have required each registered investment company, and each investment adviser of or principal underwriter for the investment company, to adopt a written code of ethics containing provisions reasonably necessary to prevent certain persons associated with an investment company from violating the general anti-fraud provisions of paragraph (a). Two commentators suggested that the codes of ethics should allow an investment company the option of permitting an "access person"[5] to obtain written clearance from a designated person or body prior to effecting any personal securities transaction. This procedure, it was suggested, would help assure the investment company and the access person that the proposed securities transaction was proper.

The Commission has determined to retain the approach taken in the proposed rule, i.e., to let individual entities take fully into account their own unique circumstances in designing their codes of ethics prescribing standards of conduct which effectuate the purposes of the Rule. The Commission would not have any objection to a prior clearance procedure where the investment company directors believed it was appropriate for their particular investment company arrangements. However, it is concerned that, if the Commission were to modify the proposed rule explicitly to require or allow all investment companies to adopt prior clearance procedures, ten it would appear that the Commission had concluded that any code of ethics which did not contain a prior clearance procedure would be fatally defective. Accordingly, the Commission believes the current approach is more desirable because it gives maximum flexibility to the entities which must design the codes of ethics.

However, paragraph (b)(1) requiring the adoption of codes of ethics by certain entities has been modified to make clear that such codes of ethics need only apply to access persons of those individual entities.

In addition, the language of paragraph (b)(1) of the Rule has been altered by deleting the words "and detect" in order to clarify the Commission's belief that entities which adopt codes of ethics have an affirmative duty to take appropriate steps to enforce the standards of conduct contained in the codes of ethics where violations occur. In terms of implementation and fulfillment of the statutory mandate that entities be required to adopt codes of ethics as a means reasonably necessary to prevent improper acts, those entities in designing codes of ethics must go beyond mere detection of improper acts; rather, the codes of ethics must necessarily also include provisions addressed to enforcement of the codes of ethics.

It should be noted that a violation of any provision of a particular code of ethics would not be considered a *per se*, unlawful act prohibited by paragraphs (a) and (b) of the Rule. Rather, the Commission believes that such a violation should and would be considered, with all the surrounding facts and circumstances, merely as one piece of evidence in determining whether, in addition to a violation of the code of ethics, a violation of the anti-fraud provisions of the Rule also has occurred.

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[4]In this regard, it should be noted that a major criticism of the proposed rule by the commentators was alleviated merely by correcting an unfortunate error which occurred in the printing of the proposed rule.

[5]Briefly, paragraph (e)(1) of the proposed rule would have defined the term "access person" to mean a director, officer or general partner, or an employee of an investment company, investment adviser or principal underwriter whose functions or duties relate to the determination of what securities an investment company should purchase or sell.

Reporting Requirements

Paragraph (c) of the proposed rule would have required access persons to report certain information about securities transactions to the investment company, investment adviser or principal underwriter, subject to certain exceptions.

Many commentators objected to the Commission's approach in the proposed rule of requiring reports of certain disinterested directors who might have access to information concerning an investment company's portfolio transactions, even though the proposed rule would have limited the transactions to be reported by such persons who are not "interested persons"[6] of an investment company. Commentators argued that this reporting requirement would pose an undue burden on disinterested directors making it difficult to attract high caliber people.

The proposed rule stated that a disinterested director would be required to report transactions only if he or she "has actual knowledge that, within the most recent 30 days, such security was purchased or sold by the investment company or such purchase or sale by such company was considered by the company or its adviser." Commentators suggested that this limited reporting requirement for disinterested directors should be extended to those persons who, though interested persons of the investment company, are not "affiliated persons."[7] It was argued that requiring these outside directors to file reports, even with the limitations permitted, will alienate and antagonize them and again make it more difficult to attract qualified people.

The Commission has carefully considered those comments which sought to expand the more limited reporting requirements for disinterested directors to include also those directors who, though unaffiliated with the investment company on whose board they sit, still come within the definition of "interested person." The Commission believes that it is appropriate, in continuing the statutory distinctions made between interested and disinterested persons in the Act, to subject all interested directors to the full reporting requirements of the Rule. Therefore, no change has been made in this regard.

Furthermore, the Commission believes that the limited reporting requirement permitted by paragraph (c)(3)(ii) does not present an unduly onerous burden to those directors who are not interested persons of investment companies. Although the Commission recognizes that the preparation of these reports may be time consuming, it understands that that type of reporting requirement is used already by some industrial companies and some investment companies as a matter of fundamental corporate policy. Extrapolating from those experiences, the Commission does not believe that this reporting requirement is so burdensome as to force talented individuals to choose not to serve as investment company directors. In addition, the imposition of such responsibility does not appear to be inconsistent with other responsibilities imposed by Congress on disinterested directors throughout the Act.

With respect to the requirement that disinterested directors submit reports about their securities transactions only where they have actual knowledge that the investment company purchased or sold (or was considering the purchase or sale of) a security, the Commission is concerned that the "actual knowledge" standard previously employed in the proposed rule may be a difficult concept for investment companies to administer. For example, in determining whether a disinterested director had properly filed reports with the investment company, the other investment company directors might be placed in the difficult position of having to evaluate the credibility of testimony or an affidavit of such disinterested director wherein he contends that, although the circumstances might suggest otherwise, he really did not know about a particular investment company security transaction. Also, the Commission is concerned that an "actual knowledge" standard inappropriately might encourage a disinterested director to avoid situations or committee assignments, although otherwise within the proper scope of his official duties as a director of an investment company, where he might become privy to substantial knowledge about proposed and actual investment

[6]The term "interested person" is defined in Section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)].

[7]The term "affiliated person" is defined in Section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)] and is substantially more restrictive than the definition of "interested person."

company security transactions. To avoid creating unnecessary problems, the Commission has determined that disinterested directors should be required to report transactions when they know or, in the ordinary course of fulfilling their official duties as directors of the investment company, should have known that the investment company purchased or sold (or was considering the purchase or sale of) the security involved. While this modifies the standard used in the proposed rule, it is intended to clarify the circumstances under which disinterested directors should file reports of their security transactions. The Commission believes that this modified reporting obligation is consistent withthe regulatory scheme of the Act and the general responsibilities of directors to be aware of the activities of those investment companies for which they serve.

In addition, the proposed rule has been modified to shorten and clarify the period of time during which a reportable transaction by the disinterested director takes place. Pursuant to the Rule as modified, a transaction need be reported only if it occurs within 15 days prior to or after either: (1) the purchase or sale of such security by the investment company; or (2) the consideration of such purchase or sale by the investment company or its investment adviser.

Beneficial Ownership — Paragraph (c)(1)

Several commentators raised questions concerning the term "beneficial ownership" as it related to the reporting requirements of the proposed rule. Commentators expressed confusion as to whether beneficial ownership for purposes of paragraph (c)(1) of the proposed rule should be construed in accordance with the definition in Rule 13d-3 of the Securities Exchange Act of 1934 [17 CFR 240.13d-3] or the general meaning in Section 16 [15 U.S.C. 78p] of that act.

To alleviate any confusion as to how the term "beneficial ownership" will be construed, the Commission has concluded that beneficial ownership should be interpreted in a manner which is consistent with the way it is presently interpreted for purposes of determining whether an individual is subject to the requirements of Section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder. However, in light of the diverse composition of investment company portfolios, transactions in all securities as to which the access person has or acquires any direct or indirect beneficial ownership, whether or not such securities are issued by companies registered pursuant to Section 12 of the Securities Exchange Act [15 U.S.C. 78l], must be considered as subject to Section 16 solely for purposes of the reporting requirements of the Rule.

Access Person — Paragraph (e)(1)

Four commentators argued that the definition of access person in paragraph (e)(1) of the proposed rule was overly broad. Briefly, paragraph (e)(1) of the proposed rule would have defined the term "access person" to mean all directors, officers, general partners and advisory persons, as defined, with respect to a registered investment company or its investment adviser, and with respect to principal underwriters, all directors, officers or general partners. It was pointed out that such a definition would be unduly burdensome to institutions such as banks which, as a result of being primarily engaged in a business other than advising registered investment companies, allocate only a small part of their staff to the operations of any investment company managed by them. These commentators suggested that the term "access person" should be defined separately for investment advisers that are primarily engaged in a business other than advising registered investment companies.

One commentator argued that, with respect to principal underwriters, the definition of access person was overly broad also. This argument was advanced using reasoning similar to that used in the case of investment advisers primarily engaged in a business other than advising investment companies.

In recognition of the above comments, the definition of "access person" has been changed in order to ensure that the Rule will apply only to those persons who have an active part in the management, portfolio selection or underwriting functions of the investment companies with which they are associated. The Commission has determined that, where the investment adviser is primarily engaged in a business other than advising registered investment companies, only those directors, officers, general partners or advisory persons of the investment adviser who are involved in making investment decisions or portfolio selections for the registered investment company should be subject to the Rule. Similarly, the Commission has concluded that only those directors, officers or general partners of principal underwriters for registered investment

companies who participate in recommending the purchase or sale of securities by such companies should be considered access persons.

Advisory Person — Paragraph (e)(2)(i) & (ii)

Although no specific comments were received, the Commission is concerned that the definition of advisory person in the proposed rule might, for purposes of the reporting requirements, have created unintentional confusion as to whether employees of companies in control relationships with investment companies or their investment advisers who obtain information regarding the purchase or sale of a security by a registered investment company were subject to the reporting provisions of the Rule. Accordingly, the Commission has altered the definition of advisory person to make clear its intention that the Rule apply both to natural persons and certain employees of companies in a control relationship to such investment company or investment adviser. The Commission believes that this change is consistent with both the mandate given by the Congress in Section 17(j) of the Act and the general regulatory scheme of the Act.

Security — Paragraph (e)(5)

Briefly, the term "security" was defined to except only securities issued by the United States government. Several commentators suggested that the exception to the definition of "security" provided in paragraph (e)(4) of the proposed rule should be expanded to include all money market instruments and shares of open-end investment companies. Commentators argued that these securities do not present an opportunity for profiting at the expense of an investment company.

After analyzing the comments received in regard to the definition of "security," the Commission has concluded that money market instruments and shares of open-end investment companies present very little opportunity for the type of improper trading that the Rule is intended to cover. The exceptions to the definition of security have, therefore, been expanded to include bankers' acceptances, bank certificates of deposit, commercial paper and shares of open-end investment companies.

Consideration of Purchases and Sales — Paragraphs (c)(3)(ii) and (e)(6)

As noted in footnote 9 of Release No. 10162 proposing Rule 17j-1, commentators on an earlier proposal of the Rule suggested that that proposal's trading prohibition with respect to securities "being considered" for purchase or sale by an investment company was too broad. Similar comments were advanced regarding the proposed rule as that concept is used in paragraphs (c)(3)(ii) and (e)(6). The Commission continues to believe that the scope of the trading prohibition was intended by Congress to be very broad, but that the mechanics of setting parameters for determining when a transaction is "being considered" by a particular investment company can best be resolved by the investment company, investment adviser or principal underwriter in the codes of ethics required to be adopted under the Rule.

Other Comments

One comment received suggested that all reports made pursuant to the code of ethics should be filed with the independent accountants to preserve the privacy of respondents. The Commission believes that filing the required reports with the entity of which the individual is an access person will ensure the maximum amount of privacy.

Two commentators suggested that the time for filing the required reports should be extended to 30 days after the end of the quarter. After considering this suggestion, the Commission has decided that the 10 day time requirement for filing the reports is adequate and, therefore, no change has been made in the Rule.

EFFECTIVE DATES

The effective dates of Rule 17j-1 are as follows:

(1) As to paragraph (a), October 31, 1980;

(2) As to all other paragraphs, May 1, 1981.

The commission finds, in accordance with Section 553(d) of the Administrative Procedure Act of 1946 [5 U.S.C. 553(d)] that good cause exists for dispensing with the normal 30-day delay in the effectiveness of paragraph (a) of the Rule. Further, the Commission believes that these effective dates should allow all those subject to the rule sufficient time to adopt appropriate codes of ethics and establish the necessary reporting and record keeping procedures.

TEXT OF RULE 17j-1

Accordingly, 17 CFR Part 270 is amended by adding §270.17j-1 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§270.17j-1 Certain unlawful acts, practices, or courses of business and requirements relating to codes of ethics with respect to registered investment companies.

(a) It shall be unlawful for any affiliate person of or principal underwriter for a registered investment company, or any affiliated person of an investment adviser of or principal underwriter for a registered investment company in connection with the purchase or sale, directly or indirectly, by such person of a security held or to be acquired, as defined in this section, by such registered investment company —

(1) To employ any device, scheme or artifice to defraud such registered investment company;

(2) To make to such registered investment company any untrue statement of a material fact or omit to state to such registered investment company a material fact necessary in order to make the statements made, in light of the cirucmstances under which they are made, not misleading;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any such registered investment company; or

(4) To engage in any manipulative practice with respect to such registered investment company.

(b)(1) Every registered investment company, and each investment adviser of or principal underwriter for such investment company, shall adopt a written code of ethics containing provisions reasonably necessary to prevent its access persons from engaging in any act, practice, or course of business prohibited by paragraph (a) of this section and shall use reasonable diligence, and institute procedures reasonably necessary, to prevent violations of such code.

(2) The requirements of paragraph (b)(1) shall not apply to any underwriter (i) which is not an affiliated person of the registered investment company or its investment adviser, and (ii) none of whose officers, directors or general partners serves as an officer, director or general partner of such registered investment company or investment adviser.

(c)(1) Every access person of a registered investment company or of an investment adviser of or principal underwriter for such investment company shall report to such investment company, investment advisor or principal underwriter of which he or she is an access person the information described in paragraph (c)(2) with respect to transactions in any security in which such access person has, or by reason of such transaction acquires, any direct or indirect beneficial ownership in the security: *Provided, however*, That any such report may contain a statement that the report shall not be construed as an admission by the person making such report that he or she has any direct or indirect beneficial ownership in the security to which the report relates. For purposes of this section, beneficial ownership shall be interpreted in the same manner as it would be in determining whether a person is subject to the provisions of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder, except that the determination of direct or indirect beneficial ownership shall apply to all securities which the access person has or acquires.

(2) Every report required to be made pursuant to paragraph (c)(1) shall be made not later than 10 days after the end of the calendar quarter in which the transaction to which the report relates was effected, and shall contain the following information:

(i) The date of the transaction, the title and the number of shares, and the principal amount of each security involved:

(ii) The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

(iii) The price at which the transaction was effected; and

(iv) The name of the broker, dealer or bank with or through whom the transaction was effected.

(3) Notwithstanding the provisions of paragraph (c)(1), no person shall be required to make a report:

(i) With respect to transactions effected for any

account over which such person does not have any direct or indirect influence or control;

(ii) If such person is not an "interested person" of a registered investment company within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)], and would be required to make such a report solely by reason of being a director of such investment company, except where such director knew or, in the ordinary course of fulfilling his official duties as a director of the registered investment company, should have known that during the 15-day period immediately preceding or after the date of the transaction in a security by the director such security is or was purchased or sold by such investment company or such purchase or sale by such investment company is or was considered by the investment company or its investment adviser;

(iii) Where the principal underwriter, as to which such person is an access person, (A) is not an affiliated person of the registered investment company or any investment adviser of such investment company, and (B) has no officers, directors, or general partners who serve as officers, directors or general partners of such investment company or any such investment adviser; or

(iv) Where a report made to an investment adviser would duplicate information recorded pursuant to Rules 204-2(a)(12) or 204-2(a)(13) [17 CFR 275.204-2(a)(12) and 275.204-2(a)(13)] under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1, et seq.].

(4) Each registered investment company, investment adviser and principal underwriter to which reports are required to be made pursuant to this section shall identify all access persons who are under a duty to make such reports to it and shall inform such persons of such duty.

(d) Each registered investment company, investment adviser and principal underwriter which is required to adopt a code of ethics or to which reports are required to be made by access persons shall, at its principal place of business, maintain records in the manner and to the extent set forth below, and make such records available to the Commission or any representative thereof at any time and from time to time for reasonable periodic, special or other examination.

(1) A copy of each such code of ethics which is, or at any time within the past five years has been, in effect shall be preserved in an easily accessible place;

(2) A record of any violation of such code of ethics, and of any action taken as a result of such violation, shall be preserved in an easily accessible place for a period of not less than five years following the end of the fiscal year in which the violation occurs;

(3) A copy of each report made by an access person pursuant to this rule shall be preserved for a period of not less than five years from the end of the fiscal year in which it is made, the first two years in an easily accessible place; and

(4) A list of all persons who are, or within the past five years have been, required to make reports pursuant to this section shall be maintained in an easily accessible place.

(e) As used in this rule

(1) "Access person" means:

(i) With respect to a registered investment company or an investment adviser thereof, any director, officer, general partner, or advisory person, as defined in this section, of such investment company or investment adviser;

(ii) With respect to a principal underwriter, any director, officer, or general partner of such principal underwriter who in the ordinary course of his business makes, participates in or obtains information regarding the purchase or sale of securities for the registered investment company for which the principal underwriter so acts or whose functions or duties as part of the ordinary course of his business relate to the making of any recommendation to such investment company regarding the purchase or sale of securities.

(iii) Notwithstanding the provisions of paragraph (e)(1)(i), where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, the term "access person" shall mean: any director, officer, general partner, or advisory person of the investment adviser who, with respect to any registered investment company, makes any recommendation, participates in the determination of which recommendation shall be made, or whose principal function or duties relate to the determination of which recommendation shall

be made to any registered investment company; or who, in connection with his duties, obtains any information concerning securities recommendations being made by such investment adviser to any registered investment company.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since its organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (A) its total sales and revenues, and (B) its income (or loss) before income taxes and extraordinary items from such other business or businesses.

(2) "Advisory person" of a registered investment company or an investment adviser thereof means:

(i) Any employee of such company or investment adviser (or of any company in a control relationship to such investment company or investment adviser) who, in connection with his regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of a security by a registered investment company, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

(ii) Any natural person in a control relationship to such company or investment adviser who obtains information concerning recommendations made to such company with regard to the purchase or sale of a security.

(3) "Control" shall have the same meaning as that set forth in section 2(a)(9) of the Act [15 U.S.C. 80a-2(a)(9)].

(4) "Purchase or sale of a security" includes, *inter alia*, the writing of an option to purchase or sell a security.

(5) "Security" shall have the meaning set forth in section 2(a)(36) of the Act [15 U.S.C. 80a-2(a)(36)], except that it shall not include securities issued by the Government of the United States, bankers' acceptances, bank certificates of deposit, commercial paper and shares of registered open-end investment companies.

(6) "Security held or to be acquired" by a registered investment company means any security as defined in this rule which, within the most recent 15 days, (i) is or has been held by such company, or (ii) is being or has been considered by such company or its investment adviser for purchase by such company.

AUTHORITY

The Commission is adopting Rule 17j-1 under its authority in Sections 17(j) and 38(a) of the Act [15 U.S.C. 80a-17(j) and 15 U.S.C. 80a-37(a)]. It finds that any changes in the rule from the proposal published in Investment Company Act Release No. 10162 have already been generally subject to comment and pertain to matters of form or are less burdensome than those proposed. Further notice and rulemaking procedures under the Administrative Procedure Act [15 U.S.C. 553] are, therefore, unnecessary.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11422/October 31, 1980

In the Matter of

INVESTMENT GUIDANCE FUND, INC.
4000 Chester Avenue
Cleveland, Ohio 44103

(811-1574)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER OF THE COMMISSION DECLARING THAT THE APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Investment Guidance Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 25, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a corporation organized under laws of the State of Ohio, registered under the Act on December 11, 1967, and filed a registration statement on Form S-5 under the Securities Act of 1933 for the public offer and sale of shares of its common stock on February 15, 1968. Applicant's 1933 Act registration statement was declared effective by the Commission on June 16, 1968, and an initial public offering of its securities commenced on June 17, 1968.

Applicant further states that on January 22, 1980, the Board of Directors of Applicant approved an Agreement and Plan of Reorganization of the Applicant ("Plan"), whereby Applicant would transfer substantially all of its assets to Weingarten Equity Fund, Inc. ("WEF") in exchange for shares of WEF. According to the Plan, the number of shares of WEF which would be issued to Applicant would be determined on the basis of the relative net asset values of WEF and Applicant, subject to certain adjustments, at the close of business on the day preceding the effective date of the Plan. Applicant represents that on April 17, 1980, the shareholders of Applicant approved the Plan and that the effective date for the Plan was April 30, 1980. Pursuant to the Plan, Applicant states that it received 102,831.582 shares of WEF and that all shares of WEF have been distributed to the shareholders of Applicant. Expenses incurred in implementing the Plan were borne by Weingarten Management Corporation, the investment adviser to WEF, and Roulston & Company, Inc., the investment adviser to Applicant.

Applicant represents that it currently has no assets except for $200 in a checking account which will be distributed to WEF pursuant to the Plan and will not be invested in securities. Applicant further represents that it has no outstanding debts or other liabilities, has no securityholders, is not a party to any pending litigation or administrative proceeding, and has ceased all business activities other than activities necessary for the final winding up of its affairs. Applicant further states that it was formally dissolved under the laws of the State of Ohio on August 1, 1980. Finally, Applicant represents that within the last eighteen months it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 24, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the

Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11423/October 31, 1980

In the Matter of

GOVERNMENT EMPLOYEE'S INVESTMENT FUND, INC.
P.O. Box 572
Rancho Santa Fe, California 92067

(811-1872)

ORDER PURSUANT TO SECTION 8(f) OF THE ACT DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Government Employee's Investment Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on July 7, 1980, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act.

On October 2, 1980, a notice was issued (Investment Company Act Release No. 11383) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Government Employee's Investment Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11424/October 31, 1980

In the Matter of

REAL ESTATE ASSOCIATES LIMITED III,
NATIONAL PARTNERSHIP INVESTMENTS CORP.,

and

NATIONAL PARTNERSHIP INVESTMENTS ASSOCIATES
1901 Avenue of the Stars
Los Angeles, California 90067

(812-4731)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Real Estate Associates Limited III ("REAL III"), a California limited partnership, and its general partners, National Partnership Investments Corp. and National Partnership Investments Associates ("General Partners" and, together with REAL III, collectively referred to hereinafter as "Applicants"), filed an application on September 8, 1980, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting REAL III from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that REAL III was formed under the California Limited Partnership Act on July 25, 1980, and is designed to implement the policy of Title IX of the Housing and Urban Development Act of 1968 to

provide private investors with a means of acquiring equity interests in government-assisted low and moderate income housing. REAL III will acquire limited partnership interests in local limited partnerships ("Local Limited Partnerships") which own or lease government-assisted rental housing projects for low and moderate income persons.

REAL III itself is organized as a limited partnership because a limited partnership is the only form of organization which provides an investor with both liability limited to his capital investment and the ability to claim on his individual tax return the deductions, losses, credits, and other tax items a partnership can pass through to its partners. Therefore, REAL III will operate as a "two tier" partnership; *i.e.*, REAL III, a limited partnership, will invest in Local Limited Partnerships which, in turn, will be engaged in the development, building, ownership, or leasing of government-assisted housing for low and moderate income persons.

One of the primary objectives of REAL III is to pass through to its partners during the early years of the partnership net losses which may be used to offset other taxable income. Another of REAL III's primary objectives is to invest in projects which will appreciate in value.

REAL III has filed a registration statement under the Securities Act of 1933, as amended, covering the sale of 3,000 Units to be offered at a maximum price of $5,000 per Unit. Each Unit consists of two limited partnership interests and a warrant to purchase two additional limited partnership interests, exercisable by January 22, 1982 (the "Warrants"). The Warrants will entitle an investor to purchase the related limited partnership interesets for $2,500 each, the equivalent price per limited partnership interest acquired pursuant to the purchase of a Unit. In the event that any Warrant is not exercised, the respective limited partnership interests may be sold by REAL III to other qualifying offerees.

Commencing in 1982, REAL III will allocate 62½% of profits and losses to the limited partnership interests sold in 1982 (whether sold by exercise of the Warrants or by subscriptions for interests as to which the Warrants were not exercised), and 37½% of its profits and losses to the limited partnership interests sold in 1981. This allocation will continue until the aggregate profits and losses allocated to the limited partnership interests sold in 1982 equal the aggregate profits and losses allocated to limited partnership interests sold in 1982 equal the aggregate profits and losses allocated to limited partnership interests sold in 1981. The effect of this allocation is expected to be that, in the course of the life of REAL III, interests purchased in 1981 by investors who do not exercise the Warrants to purchase interests in 1982, and interests for which subscriptions pursuant to the unexercised Warrants are accepted in 1982, will have been allocated an equal aggregate amount of profits and losses in REAL III and will have equivalent capital accounts. After this equalization of capital accounts is attained, all interests will be treated equally without regard to the date they were purchased.

Interests in REAL III will be sold only to qualified investors with a minimum subscription of one Unit ($5,000). The General Partners will contribute to REAL III $12,500, an amount representing approximately 1%, .08%, or .04%, respectively, of the total capitalization depending upon whether the minimum, maximum (excluding exercise of the Warrants), or maximum (including exercise of the Warrants) offering amount is sold. It is estimated that REAL III will have as proceeds of its public offering, a minimum of $1,056,000 and maximums (depending upon the exercise of the Warrants) of approximately $13,200,000 or $26,737,000 available for investment after deductions for sales commissions and anticipated offering expenses.

Offers to sell and sales of the Units to the public are proposed to be effected through E. F. Hutton & Company Inc. and other selected members of the National Association of Securities Dealers, Inc., none of which will own or owns any interest in either of the General Partners or will have or has any other material relationship with their directors, officers, or partners. Such broker-dealers will use their best efforts as agents for REAL III and thereafter to sell any limited partnership interests available upon the non-exercise of the Warrants.

No subscription for Units will be accepted unless the subscribing investor will represent in the Subscription Agreement for Units (1) that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $50,000 and an annual gross income of at least $50,000, or that he has a net worth (exclusive of home, furnishings, and automobiles) of at least $200,000, or that he is purchasing in a fiduciary capacity for a person or entity which has such net worth and annual gross income; and (2) that he is aware of the risks involved

in investing in REAL III. He also must represent that some part of his annual income for 1981 will be taxable at the federal tax rate of 50% or more, and that he anticipates that some part of his income for the next six years will, but for the effect of his investment in the Units and limited partnership interests or other tax shelters, be taxable at such 50% rate. In addition, the partnership agreement of REAL III will require that during the first five years following effectiveness of the registration statement, each transferee of limited partnership interests must represent that he meets the suitability standards set forth above.

REAL III will be controlled by the General Partners pursuant to a partnership agreement ("Partnership Agreement") between the General Partners and limited partners, whereby the limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of REAL III. However, limited partners owning a majority of limited partnership interests will have the right to amend the Partnership Agreement, dissolve REAL III, remove one or both of the General Partners and elect successor general partners, and continue REAL III upon the death, insanity, retirement, or bankruptcy of a General Partner. Also under the Partnership Agreement, each limited partner or his representative is entitled to review the records of REAL III at reasonable times, including the register of names, addresses, and number of limited partnership interests owned by each other limited partner.

Applicants state that REAL III will invest not less than 90% of its available capital in Local Limited Partnerships which own or lease government-assisted housing projects. REAL III may also invest up to 10% of its capital in limited partnerships owning other residential projects. REAL III has not yet identified any specific Local Limited Partnership or projects in which it proposes to invest. However, Applicants state that REAL III will make its investments in accordance with both detailed criteria for selecting particular projects for investment and certain investment policies which may not be changed without approval by the limited partners owning at least a majority of the outstanding limited partnership interests.

Because REAL III will invest only in limited partnership interests, both REAL III and the General Partners will have only limited control over the management of the Local Limited Partnerships. However, REAL III will own at least 50%, and, in many cases, 90% of the limited partnership interests of a Local Limited Partnership. Moreover, in negotiating Local Limited Partnership Agreements, the General Partners will endeavor to provide REAL III with one or more of the following: the right to approve or disapprove the sale of the project; the right to demand a dissolution of the Local Limited Partnership; and the right to demand the resignation of the local general partners. In addition, REAL III's capital contribution to a Local Limited Partnership will be made in stages, and, in most cases, REAL III will withhold the major portion of its contribution until the project has been constructed and is operating.

Although the General Partners are engaged in other real estate transactions and manage other similar limited partnerships, REAL III will not sell, acquire, or lease properties or interests therein to or from the General Partners or their affiliates. Further, the General Partners have undertaken that no new public offerings with the same investment objectives as REAL III will be commenced until substantially all funds raised by REAL III have been committed to investment or otherwise utilized as described in the REAL III prospectus.

The General Partners will be entitled to receive 1% of REAL III's profits, losses, and distributions subject to the conditions that their 1% share of net cash flow will be reduced each year by the amount of annual management fees which are paid or payable to them in that year. In addition to their 1% participation in REAL III's profits, losses, and distributions, the General Partners will receive certain fees for overseeing the conduct of REAL III's affairs and the continuing operation of each project. Applicants represent that these fees are in substantial conformity with the standards imposed by the Midwest Securities Commissioners and the California Corporations Commissioner, and that to the best of their knowledge all such fees are in compliance with the current rules promulgated by such authorities.

In the initial period, the General Partners will be paid a fee for the organization and initial management of REAL III, the syndication of the Units and the provision of certain financing commitments, if any, aggregating approximately 0.9% of invested assets. Invested assets are defined as the sum of the capital contributions anticipated to be made by REAL III to the Local Limited Partnerships and the aggregate

amount of the nonrecourse mortgage loans on the projects owned by such Local Limited Partnerships attributable to REAL III's capital contributions. The General Partners also will receive acquisition and selection fees for their services in connection with the selection, evaluation, negotiation, and acquisition of REAL III's investments. The aggregate amount of such fees will equal approximately 1.3% of invested assets. Of the proceeds from the sale of the Units, Applicants anticipate that approximately a minimum of $117,600 and maximums (depending upon the exercise of the Warrants) of $1,500,000 and $3,100,000 will be paid for these organization, initial management, syndication, and commitment fees, and acquisition and selection fees.

During REAL III's operational period, the General Partners will receive, in consideration for their management services, an annual fee in an amount equal to 0.5% of invested assets to be paid out of REAL III's general funds. As noted above, this annual management fee will be applied against the General Partners' 1% share of REAL III's net cash flow. Finally, when a project is sold, the General Partners will receive a liquidation fee based upon the net proceeds only after payment to the limited partners of their invested capital in the project, plus an amount sufficient to pay their federal and state taxes.

REAL III states that it will file with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 all required annual reports, quarterly reports, and current reports on Forms 10-K, 10-Q, and 8-K, as well as any other reports required by such act. The General Partners will also send each limited partner a year-end report containing financial statements audited by REAL III's independent accountants and tax information necessary for the preparation of each limited partner's federal income tax return. In addition, each limited partner will receive a report at least semiannually of REAL III's activities and the operational status of its investments, as well as interim reports regarding acquisitions.

Under the California Limited Partnership Act, and under the terms of the Partnership Agreement, the corporate General Partner, which has registered as an investment adviser under the Investment Advisers Act of 1940, and the non-corporate General Partner, are fiduciaries of REAL III and its limited partners. Applicants state that under the Partnership Agreement, the officers and directors of the corporate General Partner and the partners of the non-corporate General Partner will be indemnified only when a court finds that such persons' conduct fairly and equitably merits indemnity in the amount claimed.

Without conceding that REAL III is an investment company as defined in the Act, Applicants request that REAL III be exempt from the provisions of the Act pursuant to Section 6(c). Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act and rule thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that the exemption of REAL III from all provisions of the Act is both necessary and appropriate in the public interest. Applicants assert that the form of organization of REAL III, *i.e.*, a limited partnership, which is necessary to limit the liability of private investors investing in subsidized low and moderate income housing, is incompatible with the regulatory framework of the Act. Applicants contend that to discourage the two-tier limited partnership arrangement by application of the Act would eliminate the primary means of attracting private equity capital into government-assisted housing and would frustrate the national policy declared by Congress "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income persons." Applicants further state that the exemption would be consistent with the protection of investors and the purposes and policies of the Act. The limited partnership interests in REAL III are being sold only to relatively sophisticated investors who will be apprised of the management of REAL III and of the Local Limited Partnerships through reports sent to the limited partners and filed with the Commission. Furthermore, Applicants state that the General Partners' discretion to invest the assets of REAL III is proscribed by its stated investment policies and objectives, which may be changed only by the vote of the holders of at least a majority of the outstanding limited partnership interests. With a majority vote, the limited partners will also have the right to dissolve REAL III, to amend the Partnership Agreement, and to remove the General Partners.

Applicants further assert that although the involvement of the General Partners in similar past

and future partnerships could create a conflict of interest, such potential conflicts are mitigated by the General Partners' undertaking not to make any conflicting new public offering until substantially all of REAL III's funds have been committed and to follow prescribed procedures for determining which partnership should make an investment in the event of a conflict. Moreover, Applicants state that the Partnership Agreement prohibits certain transactions between REAL III and its General Partners and their affiliates in order to eliminate or significantly mitigate conflicts of interest.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 25, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11425/November 4, 1980

In the Matter of

FAMILY LIFE INSURANCE COMPANY

AND

MERRILL LYNCH VARIABLE ANNUITY ACCOUNT
Park Place
Seattle, WA 98101

AND

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
One Liberty Plaza
New York, NY 10080

(812-4718)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 12(d)(1), 22(c), 26(a), 27(c)(1), 27(c)(2) AND 27(d) OF THE ACT AND RULE 22c-1 THEREUNDER AND PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

NOTICE IS HEREBY GIVEN that Family Life Insurance Company ("FLIC"), a stock life and disability insurance company organized under the laws of the State of Washington, Merrill Lynch Variable Annuity Account (the "Account"), a separate account of FLIC registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), the principal underwriter for the Account, (collectively referred to herein as "Applicants") filed an application on August 25, 1980, and amendments thereto on September 25, October 14, and October 30, 1980, for an order of the Commission pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 12(d)(1), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder and pursuant to Section 11 of the Act approving certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

FLIC, a wholly-owned subsidiary of Merrill Lynch & Company, Inc., a diversified financial services holding company organized in 1973, established the Account on July 21, 1980 for the purpose of funding certain variable annuity contracts to be issued by FLIC ("Contracts"). Assets of the Account will be invested in shares of Merrill Lynch Corporate Bond Fund, Inc., Merrill Lynch Basic Value Fund, Inc., Merrill Lynch Special Value Fund, Inc., Merrill Lynch Ready Assets Trust, and Merrill Lynch Capital Fund, Inc., all of which are diversified open-end management companies registered under the Act. Merrill Lynch Corporate Bond Fund is a series company with three separate portfolios, and assets of the Account will be invested in shares of each such portfolio. (The above-named Funds and the separate portfolios of the Corporate bond Fund are referred to herein as the "Funds"). The investment advisers of the Funds are direct or indirect wholly-owned subsidiaries of Merrill Lynch & Company, Inc. MLPF&S, which is the principal underwriter of the Contracts, is also a subsidiary of Merrill Lynch & Company, Inc., and a broker-dealer registered under the Securities Exchange Act of 1934.

The Contracts funded through the Account are individual deferred variable annuity contracts designed for use in connection with retirement plans meeting the requirements of Sections 401, 403(a), 404, or 408 of the Internal Revenue Code of 1954 ("qualified plans") or plans not entitled to special income tax treatment under such or comparable provisions of the Code ("non-qualified plans"). The contract owner may allocate all or a portion of each purchase payment among one or more sub-accounts of the Account for investment in shares of one or more of the Funds (or portfolios of the Corporate bond Fund) selected by the owner. With respect to each Fund (or portfolio of the Corporate Bond Fund) the Account will be divided into one sub-account for qualified plans and one sub-account for non-qualified plans. Upon notice to FLIC, the contract owner may transfer all or part of the contract value from one sub-account to another. However, no transfer may be made within six months of the date of issue of the Contract, and all transfers must be at least six months apart. Such sub-account transfers, as well as all other investments, are also subject to any applicable limits and rules established by each of the affected Funds.

Applicants state that under the Contracts no sales charges will be deducted from purchase payments as they are made. Instead, a contingent deferred sales charge will be assessed in some circumstances in the event of a full or partial withdrawal of the net contract value. The contingent deferred sales charge made at withdrawal will be the lesser of (i) 5% of the total purchase payments made within 7 years prior to the date of withdrawal, or (ii) 5% of the amount withdrawn. The cumulative total of all contingent deferred sales charges made within 7 years prior to the date of withdrawal will never exceed 5% of the total purchase payments made during the same period. No charge will be made for such part of the first withdrawal in any contract year as does not exceed 10% of the sum of all purchase payments made more than one year prior to the date of withdrawal. The contingent deferred sales charge may be reduced when sales of Contracts are made to a trustee, employer or similar party pursuant to a retirement plan or similar arrangement for sales of Contracts to a group of individuals if such program results in a savings of sales expenses. Any such reduction will not be unfairly discriminatory to any contract owner.

Other charges under the Contracts include a contract administration charge of $30 which FLIC deducts from the value of each Contract on each contract anniversary on or prior to the annuity date. Such charge will also be deducted upon the withdrawal in full of the contract value on any date other than a contract anniversary. The contract administration charge is designed only to reimburse FLIC for administration expenses on a cumulative basis. In addition, FLIC will assess an expense risk charge and a mortality risk premium which on an annual basis will equal 0.5% and 0.8%, respectively, of the daily net asset value of the Account. Finally, any premium taxes imposed by a state or other government entity will be deducted from the contract value at the annuity date.

Section 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants state that the contingent deferred sales charge is not within the definition of sales load set forth in Section 2(a)(35), since it is not deducted from the payment received from the

contract owner. However, Applicants assert that the charge is designed to cover precisely those expenses to which the definition of sales load relates and if treated as such would be subject to certain provisions of Section 27 of the Act. Accordingly, Applicants have requested an exemption from Section 2(a)(35) to avoid any question as to the consistency of the proposed contingent deferred sales charge with the loading pattern contemplated by Sections 2(a)(35) and 27.

Applicants state that although FLIC will make no deduction from purchase payments for sales charges, it will incur expenses relating to the sale of the Contracts under which such payments are made, including commissions paid to sales personnel, costs of advertising and sales promotion, costs of the prospectus allocable to new sales and sales administration. Applicants state further that the contingent deferred sales charge, if applicable, will be assessed by FLIC to reimburse it solely for expenses relating to the sale of the Contracts, and that but for the timing of its imposition, the charge for these expenses fits squarely within the Section 2(a)(35) definition of "sales load." Applicants assert that deferring the sales charge and making it contingent upon the occurrence of an event which may never occur do not alter the basic nature of the charge which remains in all other respects a sales load. Applicants maintain that the sales charge provisions of the Contracts are to the advantage of contract owners in that the assessment of a contingent deferred sales charge will permit the entire purchase payment to be allocated to the Account for investment in shares of the Funds and if the contract owner makes no withdrawals, has made no purchase payments for 7 years, or makes only one withdrawal in any contract year which does not exceed 10% of the sum of all purchase payments made more than one year prior to the date of withdrawal, all purchase payments under the Contract will be completely free of any sales charge. Finally, Applicants state that the charge is clearly within the amount permitted by Section 27(a)(1) of the Act, since the cumulative total of all contingent deferred sales charges cannot exceed 5% of the total purchase payments made.

Section 2(a)(32) and 27(d)

Section 2(a)(32) of the Act defines a "redeemable security" as any security under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act requires that the holder of a periodic payment plan certificate be able to surrender the certificate at any time within the first eighteen months after its issuance and receive the value of his account and any amount paid for sales loading in excess of 15 percent of the gross payments made on such certificate. Applicants submit that the imposition of the contingent deferred sales charge is not inconsistent with the requirements of either Sections 2(a)(32) or 27(d) that the holder of a periodic payment plan certificate receive his proportionate share of the issuer's current net assets or his account value, respectively. However, in order to avoid any question as to the applicability of such sections, Applicants have requested an exemption from the definition of redeemable security in Section 2(a)(32) and from the requirements of Section 27(d) to the extent necessary to permit Applicants to offer the Contracts with the proposed contingent deferred sales charge.

Applicants assert that under the contracts the contract owner's proportionate share or account value could be viewed as the gross purchase payments made, plus or minus any increase or decrease in value, less the contingent deferred sales charge and that the difference between the loading pattern contemplated by Sections 2(a)(32) and 27(d) and that proposed for the Contracts is limited to deferring the assessment of the sales charge. Applicants state that deferring the imposition of the sales charge does not prevent the contract owner from receiving as his proportionate share of the issuer's current net assets or the value of his account the amount he would otherwise receive on withdrawal or redemption. Applicants maintain that the contingent deferred sales charge is merely deducted at the time of withdrawal in determining the proportionate share or account value, rather than being deducted from purchase payments. Applicants contend that the contingent deferred sales charge defers the timing of the imposition of the sales charge and makes the charge contingent on the occurrence of an event which might never occur. Finally, Applicants state that this method of assessing sales charges permits the contract owner's net amount invested to be increased and, in certain circumstances, may result in no sales charge being assessed, thereby benefiting the contract owner.

Section 22(c) and rule 22c-1

Section 22(c) of the Act and Rule 22c-1 thereunder prohibit a registered investment company issuing a redeemable security from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that the contingent deferred sales charge is not violative of Section 22(c) or Rule 22c-1 thereunder. However, in order to avoid any question as to the applicability of the Section and Rule, Applicants have requested an exemption therefrom to the extent necessary to permit Applicants to offer the Contracts with the proposed contingent deferred sales charge.

Applicants state that the value at which a full or partial withdrawal under a Contract is effected will be based on the current net asset value and that the contingent deferred sales charge will merely be deducted at the time of withdrawal in determining the payment to which the contract owner is entitled or the reduction in the contract value resulting from the withdrawal.

Section 27(c)(1)

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or any depositor of or underwriter for such company, to sell any such certificate unless it is a redeemable security. Applicants state that they do not believe that the imposition of a contingent deferred sales charge in connection with certain withdrawals, which will be fully disclosed in the prospectus relating to the Contracts, restricts the redeemability of the Contracts for purposes of Section 27(c)(1). Applicants contend that a view to the contrary would be especially difficult to maintain if the relief requested from the definition of redeemable security in Section 2(a)(32) should be granted. However, in order to avoid any question as to the applicability of Section 27(c)(1), Applicants have requested an exemption from the provisions of Section 27(c)(1) to the extent necessary to permit Applicants to offer the Contracts on the terms proposed.

Applicants assert that the Contracts are clearly redeemable securities, whether the sales charge is deducted from purchase payments at the time of purchase, or whether such charge is deferred and made contingent upon an event which may or may not occur at a later time during the contract period. Applicants state that this is particularly true where, as here, the deferral of the contingent deferred sales charge until a withdrawal is effected has the general effect of increasing the contract value in comparison with the contract value that would result were the sales charge deducted from purchase payments prior to investment.

Sections 26(a) and 27(c)(2)

Sections 26(a) and 27(c)(2) of the Act, as here pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments other than the sales load are deposited with a qualified bank as trustee or custodian and held under an indenture or agreement containing specific provisions. Such agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust, (ii) shall not resign until the trust has been liquidated or a successor has been appointed, (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services performed and reimbursement of expenses incurred as are provided for in the agreement, and (iv) shall not be allowed as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

Applicants have requested an exemption from the provisions of Sections 27(c)(2) and 26(a)(2)(C) to the extent necessary to permit them to offer the contract with the proposed contingent deferred sales charge. Applicants state that the proposed sales charge is not inconsistent with the purposes of Sections 27(c)(2) and 26(a), which were not intended to prevent the depositor of a unit investment trust from imposing a sales load in connection with the sale of the trust's securities. Applicants observe that Section 27(c)(2) specifically excepts sales load deductions from the requirement that the proceeds be deposited with a trustee or custodian and assert that deferring the sales charge and making it contingent upon an event which may never occur do not change the basic nature of the charge as a sales load within the contemplation of Section 27(c)(2). Applicants contend that the contingent deferred sales charge should not be deemed to be the type of charge the payment of which would be disallowed as an

expense to a trustee or custodian, since the charge is intended specifically to reimburse Applicants for sales-related expenses.

Applicants have also requested an exemption from the provisions of Sections 27(c)(2) and 26(a) to permit purchase payments under the Contracts to be held by FLIC or its agent rather than by a bank as custodian or trustee pursuant to an agreement meeting the requirements of Section 26(a). Applicants state that as a life insurance company, FLIC must retain ownership of the Account's assets and therefore may not convey them to another in trust and that there appears to be little or no necessity for requiring a bank trustee or custodian in the context of an established insurance company offering variable annuity contracts through a separate account registered as a unit investment trust. Applicants represent that FLIC is subject to extensive supervision and regulation by the Washington Insurance Department and is also subject to the insurance laws and regulations of other states and jurisdictions in which it is licensed to operate. Applicants state that the supervision and inspection to which FLIC is subject are applicable to the Account so as to afford protection to variable annuity contract owners and provide assurance of FLIC's performance of its obligations to such owners. In addition, Applicants assert that all obligations under FLIC's variable annuity contracts will be general obligations of FLIC which may not be abrogated and that the assets and retained earnings of FLIC provide ample assurance of its financial ability to meet its obligations under such contracts. Finally, Applicants state that it is contemplated that the Fund shares issued to the Account will be held pursuant to an open account system and will not be represented by any transferable stock certificates which might require a trusteeship or custodianship for safekeeping purposes.

Applicants assert that the contingent deferred sales charge will cover, at most, sales expenses incurred by FLIC only with respect to the Contract under which the charge is made and that sales expenses incurred with respect to Contracts which do not terminate prematurely will initially be provided for out of FLIC's surplus. Applicants state that FLIC expects that the level of contract sales should be sufficient to generate profits adequate to compensate for sales expenses not recovered through the contingent deferred sales charge and that such profits will be attributable principally to the mortality risk premium and expense risk charge. Applicants indicate that the grant of the requested relief will permit FLIC to assess a mortality risk premium and expense risk charge, which would otherwise be precluded by Section 26(a). They also acknowledge the Commission's concern as to the propriety of investment companies bearing distribution expenses. However, Applicants assert that no specific factor was included in establishing the level of the mortality risk premium and expense risk charge for the purposes of recovering sales expenses in excess of contingent deferred sales charge revenues. Applicants also represent that even if FLIC realizes no profit in respect of the Contracts it will still have incurred sales expenses not recovered through the contingent deferred sales charge, for which expenses no reimbursement from contract owners may be obtained. Finally, Applicants submit that the contract charges are consistent with industry practice and that an additional sales charge would not be in the best interest of contract owners.

Applicants have consented to the requested exemption being made subject to the following conditions: (1) that the charges to variable annuity contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose, and (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

Section 12(d)(1)

Section 12(d)(1)(A) of the Act makes it unlawful for a registered investment company (the "acquiring company") to acquire any security issued by any other investment company (the "acquired company") if, after such acquisition, (i) the acquiring company, alone or together with other companies controlled by it, owns more than three percent of the total outstanding voting stock of the acquired company; (ii) more than five percent of the value of the acquiring company's assets consists of

securities of the acquired company, or (iii) more than ten percent of the value of the acquiring company's assets consists of securities issued by the acquired company and other investment companies. Section 12(d)(1)(B) makes it unlawful for a registered open-end investment company (the "acquired company") or its principal underwriter knowingly to dispose of any security issued by the acquired company to any other investment company (the "acquiring company") if, immediately after such disposition, more than (i) three percent of the total outstanding voting stock of the acquired company is owned by the acquiring company and any companies controlled by it; or (ii) ten percent of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies or companies controlled by them.

Applicants state that while shares of the Funds are and will continue to be offered directly to the public, shares of the funds held by the Account will exceed the percentage limitation set forth in Section 12(d)(1)(A)(iii) and may exceed the other percentage limitations set forth in Sections 12(d)(1)(A) and (B). Applicants suggest that subsection (E) of Section 12(d)(1) may make it unnecessary for them to seek an exemption from Section 12(d)(1) since subsection (E) provides that the provisions of Section 12(d)(1) do not apply if (i) the principal underwriter for the investment company is a broker or dealer registered under the Securities Exchange Act of 1934, and (ii) the securities are the only investment securities held by a registered unit investment trust that issues two or more classes or series or securities, each of which provides for the accumulation of shares of a different investment company. Applicants indicate that they may satisfy the conditions of subsection (E), but in order to avoid any question concerning the scope of relief afforded by subsection (E) they have requested an exemption from the provisions of Section 12(d)(1) to the extent necessary to permit the Account to invest in shares of the Funds without regard to the limitations of Sections 12(d)(1)(A) and (B).

Applicants contend that the proposed arrangement does not appear to present the type of abuse or danger against which Section 12(d)(1) was intended to guard. They state that that section was apparently intended to prevent the "pyramiding" of investment companies and that it is not their intent to "pyramid" but merely to grant to their customers and prospective customers flexibility in the choice of investment funds.

Section 11

Section 11(a) of the Act makes it unlawful for a registered open-end investment company, or its principal underwriter, to offer securities of an investment company in exchange for other securities of the same or another investment company unless the exchange either is based on the respective net asset values of the securities or has received prior approval of the Commission. Section 11(c) provides that in the case of a unit investment trust the prohibition of Section 11(a) is applicable regardless of the basis of the exchange. Applicants submit that the proposed transfers of contract value from one sub-account of the Account to another are not prohibited by Section 11. However, in order to avoid any question in this regard, Applicants have requested an order pursuant to Section 11 approving the transfer provisions described above.

Applicants state that the apparent purpose of Section 11 is to protect investors against unfair exchange offers. Applicants assert that since the transfer privilege under the Contracts will be based on the respective net asset values of the shares of the underlying funds and no charges will be imposed on exercise of the privilege, the investor is assured that the arrangement is fair. Applicants contend that variable annuity contracts are normally purchased as long term investments and that a transfer privilege is in the best interest of contract owners by facilitating their periodic reevaluation and adjustment of investment objectives.

Section 6(c)

Section 6(c) of the Act provides in pertinent part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN THAT any interested person may, not later than November 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by

a statement as to the nature of his/her interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following November 28, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11426/November 4, 1980

In the Matter of

HARTFORD VARIABLE ANNUITY LIFE INSURANCE COMPANY

SHEARSON/HARTFORD VARIABLE ACCOUNT "A"
Hartford Plaza
Hartford, Connecticut 06115

AND

SHEARSON LOEB RHOADES, INC.
14 Wall Street
New York, New York 10005

(812-4703)

ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM THE PROVISIONS OF SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), 27(d), OF THE ACT AND RULE 22c-1 THEREUNDER AND PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

Hartford Variable Annuity Life Insurance Company, a stock life insurance company organized under the laws of the state of Connecticut; Shearson/Hartford Variable Account "A", a unit investment trust registered under the Investment Company Act of 1940 ("Act") and Shearson Loeb Rhoades Inc., a broker-dealer registered under the Securities Exchange Act of 1934 (collectively "Applicants") filed an application on July 11, 1980 and an amendment thereto on October 1, 1980 pursuant to Section 6(c) of the Act for an Order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), and 27(d) of the Act to the extent requested and for an Order pursuant to Section 11(a) of the Act with respect to offers of exchange.

On September 3, 1980 a notice was issued (Investment Company Act Release No. 11386) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, and pursuant to Section 6(c) of the Act, that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder, be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11427/November 4, 1980

In the Matter of

CHASE NATIONAL INCOME FUND, INC.
1000 N. Central Expressway
Dallas, Texas 75231

(811-2555)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On September 29, 1980, a notice was issued (Investment Company Act Release No. 11378) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Chase National Income Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Chase National Income Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11428/November 4, 1980

In the Matter of

GRADISON CASH RESERVES, INC.
580 Building
Cincinnati, Ohio 45202

(812-4739)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Gradison Cash Reserves, Inc. ("Applicant"), registered under the Investment Company Act of 1940 (the "Act"), as an open-end, diversified management investment company, filed an application on September 24, 1980, and an amendment thereto on October 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose objective is to seek maximum current income consistent with preservation of capital. The application also states that Gradison & Company Incorporated acts as the investment adviser of the Applicant. As of September 5, 1980, Applicant had net assets of approximately $321,300,000. The minimum initial investment in shares of the Applicant is $1000.

Applicnat represents that its net assets are invested in a variety of short-term money market instruments normally maturing within one year from the date of purchase which include obligations issued or guaranteed by the U.S. Government or its agencies or instrumentalities, obligations of domestic banks which are members of the Federal Deposit Insurance Corporation, obligations of savings and loan associations which are members of the Federal Savings and Loan Insurance Corporation, prime

commercial paper, other corporate obligations with remaining maturities of one year or less, floating rate notes and repurchase agreements.

The application represents that permissible commercial paper investments of the Applicant consist only of direct obligations which, when purchased, are rated A-1 by Standard and Poor's Corporation or Prime-1 by Moody's Investors Service, Inc., or which are issued by companies having an outstanding unsecured debt issue currently rated AA or better by Standard and Poor's or Aa or better by Moody's. The application further states that other corporate obligations eligible for investment by the Applicant consist of those with remaining maturities of one year or less which, when purchased, are rated AA or better by Standard and Poor's or Aa or better by Moody's The application further states that floating rate notes, when purchased by the Applicant, must satisfy the rating standards for other corporate obligations.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of the rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that its experience has been that investors in a "money market" fund desire a stable net asset value, preferably at $1.00 per share, and a steady flow of investment income. Applicant represents that to maintain a net asset value per share of $1.00 and nevertheless employ the amortized cost method of valuation to reflect a more consistent yield, Applicant has found it necessary to invest its assets primarily in securities having remaining maturities of 60 days or less. Applicant further represents that, if it is permitted to do so, the ability to purchase securities having remaining maturities of more than 60 days and to value them by means of the amortized cost method of valuation would provide management of the Applicant and its investment adviser substantial additional flexibility in managing the Applicant's portfolio of investments to respond to fluctuating interest rate levels, while at the same time enabling the Applicant to maintain its net asset value per share at $1.00. The application states that the board of directors of the Applicant has determined that an average portfolio maturity of approximately 120 days satisfies the two previously-mentioned requirements of its investors — that is, such an average maturity substantially protects the investors from the possibility of significant volatility in the value of portfolio instruments, while at the same time providing a yield on portfolio instruments commensurate with yields available in the general

money market, which yield might not otherwise be available with a portfolio having an average maturity of a shorter duration.

The Applicant consents to the imposition of the following conditions in any order granting the exemptions requested:

(1) In supervising the Applicant's operations and delegating to the Applicant's investment adviser special responsibilities involving portfolio management, the Applicant's board of directors undertakes — as a particular responsibility within the overall duty of care owed to its stockholders — to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objective, to stabilize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included among the procedures to be adopted by the board of directors shall be the following duties and responsibilities:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's $1.00 amortized cost price per share from the net asset value per share as determined by using available market quotations, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or any other unfair result to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair result, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of the Applicant's portfolio; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) The Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described in condition 1 above, and the Applicant will record, maintain and preserved for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) The Applicant will limit its portfolio instruments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks,

[1]The Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, the Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market investments published by reputable sources.

[2]In fulfilling this latter condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

(6) The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, such attachment will describe the nature and circumstances of such action.

The Applicant represents that its board of directors has determined in good faith that in light of the facts and circumstances described above, and subject to compliance with the above conditions, the amortized cost method of valuation would be appropriate and preferable for the Applicant. The Applicant further represents that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 28, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11429/November 5, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17272/November 5, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11430/November 5, 1980

In the Matter of

1ST REAL PROPERTY SECURITIES FUND
c/o Gregory C. Welton
1417 Via Arco
Palos Verdes Estates, California 90274

(811-2231)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that 1st Real Property Securities Fund ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined by the Act.

The Fund registered under the Act on October 4, 1971. Information contained in the files of the Commission indicates that the Fund's registration statement under the Securities Act of 1933 (File No. 2-42039) was ordered abandoned by the Commission on May 8, 1975. In addition, the fund has never filed the annual and periodic reports required by Section 30 of the Act. Moreover, efforts by the staff of the Division to contact the Fund have been unsuccessful. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 1, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11431/November 6, 1980

In the Matter of

COCA-COLA INTERNATIONAL CORPORATION
251 Trust Company of Georgia Building
Atlanta, Georgia 30303

(811-443)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER OF THE COMMISSION DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Coca-Cola International Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on October 15, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of the State of Delaware on November 18, 1922. It registered under the Act on May 19, 1941, and was exempted from the provisions of Sections 8(b) and 30(d) of the Act by an order of the Commission dated August 12, 1941 (Investment Company Act Release No. 188). Applicant has never filed a registration statement pursuant to the Securities Act of 1933, and thus has never made a public offering of its securities. As of March 31, 1980, Applicant's assets, other than approximately $1,247,802 in cash and cash equivalents, consisted of 17,981,376 shares of the common stock of The Coca-Cola Company ("Coca-Cola"), a Delaware Corporation. As of August 7, 1980, Applicant had outstanding 92,991 shares of its common stock with an aggregate net asset value, exclusive of the value of its shares of common stock of Coca-Cola ($657,260,388), of $348,294.40, or 3.74546 per share. Such shares were held by 560 stockholders of record.

Applicant states that its Board of Directors on March 5, 1980, adopted a Plan of Complete Liquidation (the

"Plan"), and that, in accordance with the requirements of Delaware law, Applicant's stockholders approved the Plan at a special meeting of stockholders held on July 31, 1980. Pursuant to the Plan, Applicant transferred $22,825.90 to the trustees of a liquidating trust (the "Trustees"), who will use the assets to satisfy any contingent or unascertained obligations of Applicant which may become payable in the future. The application states that expenses in connection with its liquidation, aggregating approximately $260,000, were paid by Applicant. Applicant, in early August, 1980, distributed to its stockholders 17,854,272 shares of Coca-Cola and $325,468.50 in cash. The distribution to stockholders was effected by a transfer to Trust Company Bank, which is acting as Exchange Agent under the Plan on behalf of the stockholders (the "Exchange Agent"). The application states that upon surrender of his certificate, or certificates, representing shares of common stock in Applicant to the Exchange Agent, each stockholder will receive his pro rata portion of the assets transferred to the Exchange Agent. In addition, Applicant states that the Trustees will terminate the liquidating trust on or before August 1, 1983; and at that time the Trustees will transfer all assets remaining in the liquidating trust to the Exchange Agent, for distribution pro rata to Applicant's stockholders.

Applicant asserts that it currently has no assets, that to the best of its knowledge its outstanding debts and liabilities do not exceed the amount transferred to the Trustees under the liquidating trust, and that it is not currently a party to any litigation or administrative proceedings. The application also states that Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs. Finally, Applicant states that it filed a Certificate of Dissolution with the Secretary of State of Delaware on August 6, 1980, thereby effecting Applicant's formal dissolution.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than November 30, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11432/November 6, 1980

In the Matter of

MEXICO FUND
Suite 318
1150 Anchorage Lane
San Diego, CA 92106

(811-2409)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On September 24, 1980, a notice was issued (Investment Company Act Release No. 11370) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Mexico Fund ("Fund"), registered under the Act as a closed-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Mexico Fund under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11433/November 6, 1980

In the Matter of

THE FIRST GUARDIAN SECURITIES CORPORATION
20 Pine Street
New York, New York 10005

(811-535)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

On September 23, 1980, a notice was issued (Investment Company Act Release No. 11369) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that The First Guardian Securities Corporation ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of The First Guardian Securities Corporation under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11434/November 6, 1980

In the Matter of

PUTNAM CONVERTIBLE FUND, INC.
PUTNAM INTERNATIONAL EQUITIES FUND, INC.
THE GEORGE PUTNAM FUND OF BOSTON
THE PUTNAM GROWTH FUND
PUTNAM HIGH YIELD TRUST
THE PUTNAM INCOME FUND, INC.
PUTNAM INVESTORS FUND, INC.
PUTNAM OPTION INCOME TRUST
PUTNAM TAX EXEMPT INCOME FUND
PUTNAM VISTA FUND, INC.
PUTNAM VOYAGER FUND, INC.
PUTNAM FUND DISTRIBUTORS, INC.
265 Franklin Street
Boston, MA 02110
and
CHEMICAL FUND, INC.
SURVEYOR FUND, INC.
61 Broadway
New York, NY 10006

(812-2280)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING CERTAIN ORDERS OF EXEMPTION FROM SECTION 22(d) OF THE ACT AND RULE 22d-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Putnam Convertible Fund, Inc., Putnam International Equities Fund, Inc., The George Putnam Fund of Boston, The Putnam Growth Fund, Putnam High Yield Trust ("High Yield"), The Putnam Income Fund, Inc., Putnam Investors Fund, Inc., Putnam Option Income Trust, Putnam Tax Exempt Income Fund ("Tax Exempt"), Putnam Vista Fund, Inc., Putnam Voyager Fund, Inc. (collectively, "Putnam Funds"), Chemical Fund, Inc. ("Chemical"), and Surveyor Fund, Inc. ("Surveyor"), diversified, open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Putnam Fund Distributors, Inc. ("Distributor") (collectively, "Applicants"), filed an application on April 11, 1980, with an amendment thereto on August 1, 1980, for an order, pursuant to Section 6(c) of the Act, amending the following orders of exemption from Section 22(d) of the Act and Rule 22d-1 thereunder: *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Rel. No. 9794 (June 2, 1977); *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Rel. No. 9918 (Sept. 7, 1977); *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Rel. No. 10535 (Dec. 22, 1978). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Distributor serves as principal underwriter for the Putnam Funds, Chemical and Surveyor, and that it is a wholly-owned subsidiary of Marsh & McLennan Management Company, a holding company whose other subsidiaries include The Putnam Management Company, Inc., which serves as investment manager for the Putnam Funds, and Eberstadt Asset Management, Inc., whose subsidiary, Eberstadt Fund Management, Inc., serves as investment manager of Chemical and Surveyor. According to the application, Marsh & McLennan Management Company is a wholly-owned subsidiary of Marsh & McLennan Companies, Inc., a publicly-owned company.

Applicants state that Eberstadt Fund Management, Inc., became a subsidiary of Marsh & McLennan Companies, Inc., in April, 1979, following the transfer of the investment management business of F. Eberstadt & Co., Inc., and that Distributor subsequently became principal underwriter for Chemical and Surveyor.

Investment Company Act Release No. 9794 permits sales at net asset value of the securities of the Putnam Funds (other than High Yield) to tax-qualified employee benefit plans for employees of Distributor and its affiliates. For a summary of the reasons asserted for the issuance of that order, see Investment Company Act Release No. 9759. Applicants request an amendment of the order contained in Release No. 9794 to permit such sales of the securities of High Yield, Chemical, Surveyor and any new open-end management investment company ("New Fund") having Putnam Management Company, Inc., or Eberstadt Fund Management, Inc. (or their successors or corporate affiliates) as its investment manager or having Distributor (or its successors or corporate affiliates) as its principal underwriter.

Investment Company Act Release No. 9918 permits sales of the securities of the Putnam Funds (other than Tax Exempt and High Yield) at net asset value plus a sales charge of 4.5% of the offering price

(without variance regardless of the quantity purchased) to members of qualified groups (as defined in application 812-4082). For a summary of the reasons asserted for the issuance of the order contained in Release No. 9918, and of the definition of qualified groups, see Investment Company Act Release No. 9878. Applicants request an amendment of that order to permit such sales of the securities of High Yield, Tax Exempt, Chemical, Surveyor and any New Fund.

Investment Company Act Release No. 10535 permits sales of the securities of the Putnam Funds at net asset value to employees of Marsh & McLennan Asset Management Company and of its subsidiaries which provide investment management and related services who are participants in a non-tax qualified employee benefit plan described in application 812-4367. For a summary of the reasons asserted for the issuance of the order contained in Release No. 10535 and a description of the employee benefit plan, see Investment Company Act Release No. 10491. Applicants request an amendment of that order to permit such sales of the securities of Chemical, Surveyor and any New Fund.

Section 22(d) of the Act provides, in part, that no registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer except at a current public offering price described in the prospectus. Rule 22d-1 provides an exemption from Section 22(d) to the extent necessary to permit the sale of redeemable securities of a registered investment company at prices which reflect reductions in or eliminations of the sales load under certain stated circumstances.

Section 6(c) of the Act provides that the Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or apropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that amendment of the existing exemptions from Section 22(d) of the Act and Rule 22d-1 thereunder, as requested in the application, is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act, and that Applicants are entitled to such amendments for reasons identical to those set forth in the applications on which such exemptions originally were based. Applicants assert that they are entitled to the amendment of such Section 22(d) exemptions to include sales of New Funds because such amendments would preclude the need for future applications of this nature seeking only to extend prior orders to cover securities of investment companies that have been organized by or have engaged. a common investment manager or principal underwriter since the date of such prior orders and would thus save the Commission and its staff and the Applicants and such investment companies unnecessary and deplicative effort and expense.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 1, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 737/November 5, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17272/November 5, 1980

LITIGATION

Litigation Release No. 9225/November 3, 1980

SECURITIES AND EXCHANGE COMMISSION v. *ROBINEX INTERNATIONAL, LTD.* (United States District Court for the District of Columbia, Civil Action No. 80-1530)

The Commission announced today that on October 31, 1980 the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Robinex International, Ltd., of Hollywood, Florida, ("Robinex") restraining and enjoining Robinex from failing to file timely periodic reports and ordering it to comply with certain undertakings. Robinex, consenting to the entry of the Court's judgment, admitted it had failed to file reports in a timely fashion. The Commission's complaint was filed on June 20, 1980.

The Complaint alleged that Robinex, as part of a continuing course of violative conduct, failed to timely file with the Commission certain Annual Reports and Quarterly Reports required to have been filed. Robinex has agreed to adopt procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9226/November 3, 1980

SEC v. *MISTER DISCOUNT STOCKBROKERS, INC.* (N.D. Ill. 80C2795)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on October 15, 1980 Federal Judge Prentice H. Marshall, sitting at Chicago, Illinois, entered an Order of Permanent Injunction against Mister Discount Stockbrokers, Inc. (Mr. Discount) of Chicago, Illinois. This injunction was entered with the consent of the defendant brokerage firm and barred it from future violations of the Commission's net capital, customer protection and books and records provisions of the Federal securities laws.

The Commission was joined in this action, which was filed June 3, 1980, by the Securities Investor Protection Corporation (SIPC), which requested the entry of a protective decree adjudicating that the customers of Mr. Discount were in need of protection under the provisions of the Securities Investor Protection Act of 1970.

On the same date Mr. Discount consented to the appointment of a SIPC trustee who is proceeding with the orderly liquidation of the defendant brokerage firm.

Litigation Release No. 9227/November 4, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CHARLES W. PETERSEN AND JOSEPH F. X. GILLIN* (United States District Court for the District of Columbia, Civil Action No. 80-2819)

The Commission today announced that the United States District Court for the District of Columbia entered Final Judgments of Permanent Injunction

against Charles W. Petersen, of Huntington Valley, Pennsylvania, and Joseph F. X. Gillin, of Drexel Hill, Pennsylvania. Petersen, formerly Executive Vice President of J. B. Lippincott Company, and Gillin, formerly the Treasurer and Comptroller of Lippincott, were enjoined from violating the periodic reporting provisions of the Securities Exchange Act of 1934. The Defendants consented to the entry of the Final Judgments of Permanent Injunction without admitting or denying the allegations in the Commission's Complaint, which was filed today.

It was alleged in the Complaint that Petersen and Gillin filed or caused to be filed annual and other periodic reports, including Lippincott's Annual Report on Form 10-K for 1977 and Quarterly Reports for interim periods in 1977, which contained omissions and untrue statements of material facts. On March 31, 1978, following an announcement of a tentative agreement for the merger of Lippincott and Harper & Row Publishers, Inc., Lippincott filed its Annual Report on Form 10-K for 1977 reporting net income of $32,277. In August 1978, following a pre-acquisition investigation by Harper & Row's auditors of Lippincott's books and a review by accountants on behalf of Lippincott, Lippincott filed an amendment to its Annual Report for 1977 reflecting substantial adjustments and reporting a net loss for 1977 of $1,876,000. The Commission alleged in the Complaint that net income, retained earnings and certain assets, including accounts receivable, of Lippincott were materially overstated in financial statements in Lippincott's Annual Report as originally filed. It alleged that net income and accounts receivable were overstated due to, among other reasons, Lippincott's failure to adjust its accounts to reflect forgiveness of indebtedness, erroneous balances, unreconciled differences between control and detail accounts and uncollectable amounts. Lippincott was merged into Harper & Row in September 1978 following a successful offer for Lippincott's common stock under terms less favorable than originally announced.

Litigation Release No. 9228/November 4, 1980

SECURITIES AND EXCHANGE COMMISSION v. *GERALD L. ROGERS, ET AL.* (United States District Court for the Central District of California, Civil Action No. 80-04841)

The Securities and Exchange Commission announced that on November 3, 1980, the Honorable Marianna R. Pfaelzer, United States District Judge, Central District of California entered a temporary restraining order against Gerald L. Rogers, ("Rogers") believed to be a resident of the Los Angeles, California area, International Monetary Exchange, S.A., ("IME") of Panama and Woodland Hills, California area, and its officers, agents, servants, employees, and all persons and entities in active concert or participation with them. This order, which is in effect until November 12, 1980, prohibits Rogers and IME from, among other things, offering or selling "Gold for Tax Dollars." The court also scheduled for November 12, 1980, a hearing on the Commission's request for a preliminary injunction and its request that Rogers be held in civil contempt of an order entered in an earlier action.

Litigation Release No. 9229/November 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *ROBERT M. ADLER,* United States District Court for the District of Columbia (Civil Action No. 80-2830)

The Securities and Exchange Commission announced that it initiated an injunctive action against Robert M. Adler of Washington, D.C., by the filing of a complaint charging Adler with violations of the registration and antifraud provisions of the Securities Act of 1933 and seeking injunctive and certain other equitable relief. In its Complaint, the Commission alleged that Adler, working in concert with Edward H. Heller and others, engaged in a scheme to defraud the public through the sale of unregistered securities — interests in tax shelter limited partnerships purportedly engaged in the business of cultivating and marketing horticultural products. The Commission instituted an injunctive action against Heller and these others on October 14, 1980. *See Securities Exchange Commission* v. *Edward H. Heller, et al.,* U.S.D.C., D.D.C., Civil Action No. 80-2608. The Commission further alleged that Adler prepared false and misleading tax opinions which were included in the offering circulars used in the offer and sale of these securities, that, prior to such circulars being used in the offer and sale of securities, he reviewed and helped prepare the offering circulars which contained other false and misleading statements concerning the application of investors' funds, the failure to borrow additional

funds in order to make tax deductible purchases of horticultural products, and Heller's relationships with certain entities with which the partnerships did business and that he was engaged in the unlawful offer and sale of unregistered securities.

On the same day of the filing of the Commission's Complaint, the Commission's action was settled by consent by the entry of a Final Judgment of Permanent Injunction enjoining Adler from violation of the registration and antifraud provisions of the Securities Act of 1933. The Final Judgment also prohibits Adler from disseminating his tax opinions rendered in connection with the offer or sale of securities described in the Commission's Complaint and requires him to inform persons who inquire about such opinions that these opinions can no longer be relied upon. In addition, the Final Judgment prohibits Adler from practicing before the Commission or rendering tax or securities opinions or advice in connection with any offerings of securities to ten or more persons or any offerings of securities in tax shelters; however, the Final Judgment provides that after five years, upon an application to the Court and a proper showing, Adler may seek relief from the provisions barring him from practicing before the Commission or rendering tax or securities advice in connection with securities offerings.

Litigation Release No. 9230/November 6, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CARRIBA AIR, INC., ET AL.*, Civil Action No. C80-1918A (N.D. Ga., filed Nov. 5, 1980).

Jule B. Greene, Administrator of the Atlanta Regional Office of the Securities and Exchange Commission (the "Commission"), announced the filing of the Commission's Complaint on November 5, 1980, in U.S. District Court for the Northern District of Georgia against Carriba Air, Inc. ("Carriba"), a Colorado corporation with its principal place of business located in Isle Verde, Puerto Rico; Marvin Winograde of Napa, California, a principal shareholder, promoter, director and vice-president of Carriba; Gertrude Pollard, a principal shareholder, promoter, director and secretary-treasurer of Carriba; Richard Williams, a consultant employed by Carriba, and Frederick H. Rehm, III, president of Carriba. Ms. Pollard and Messrs. Williams and Rehm are residents of Puerto Rico. The Commission's Complaint requests a temporary restraining order, preliminary and permanent injunctions against the defendants, and further requests the Court to impose a constructive trust over the proceeds of the recently concluded offer and sale of 12,000,000 shares of Carriba common stock. Carriba is a newly formed corporation that recently received approval to operate a passenger airline in the Carribean area.

The Commissioin's Complaint alleges that the defendants have violated the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 by selling common stock of Carriba to the general public pursuant to an S-18 Registration Statement and related Prospectus in which the defendants made untrue statements of material facts and omitted to disclose material facts to Carriba's investors, principally concerning the activities of the defendants and others in the failure of several similar airline ventures in Puerto Rico and Alaska during the past 11 years.

Upon the filing of the Commission's Complaint, the Honorable Robert Hall, U.S. District Judge in Atlanta, heard argument on the Commission's request for a temporary restraining order, requiring the defendants to comply with the provisions of the federal securities laws and to refrain from wasting the proceeds of the Carriba stock offering. Counsel for Carriba represented that the proceeds of the offering would be returned to the purchasers; accordingly, Judge Hall took the matter under advisement. Further proceedings will continue on Monday, November 10, 1980 in Atlanta.

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RELEASES IN THIS ISSUE

		PAGE
Securities Act	6256-60	523
Securities Exchange Act	17277-98	557
Public Utility Holding Company Act	21780-88	566
Trust Indenture Act	596-97	577
Investment Company Act	11435-39	577
Investment Advisers Act	738	585
Litigation	9231-34	586
Accounting Series	284	588
Corporate Reorganization	324A	588

This listing covers releases issued from 11/7/80-11/13/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6256	Adoption of a notice-of-sales form to be used by issuers that sell their securities in reliance upon new Section 4(6) of the Securities Act of 1933.
33-6259	Withdrawal of proposed staff guidelines for disclosure in registration statements and periodic reports filed by electric and gas utility companies under the federal securities laws.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions

34-17277	34-17285	34-17288
34-17280	34-17286	34-17289
34-17281	34-17287	

33-6260	Technical amendments to rules, forms and schedules; Delegation of authority to the Director of the Division of Corporation Finance.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6256/November 7, 1980

ADOPTION OF INTERIM NOTICE-OF-SALES FORM FOR TRANSACTIONS PURSUANT TO SECTION 4(6)

SE 129:

ACTION: Adoption of interim form.

SUMMARY: The Commission is adopting, on an interim basis, a notice-of-sales form to be used by issuers that sell their securities in reliance upon new Section 4(6) of the Securities Act of 1933. Section 4(6) provides an exemption from registration under the Securities Act of 1933 for offers and sales of securities by any issuer solely to one or more "accredited investors" if the aggregate offering price does not exceed the amount allowed under Section 3(b) of that Act. The exemption requires the issuer to file a notice of such sales with the Commission on such forms as the Commission shall prescribe. The form adopted today is in response to the legislative amendments included in the Small Business Investment Incentive Act of 1980. The Commission is also soliciting public comment on whether the interim form should be adopted as the final form.

EFFECTIVE DATE: Upon publication in the Federal Register. Comments of the interim form must be received on or before December 31, 1980.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-863 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272-2644), Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is adopting, on an interim basis, Form 4(6), a notice-of-sales form to be used by issuers that sell their securities in reliance upon Section 4(6)[1] of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.]. Section 4(6) was included in the Securities Act pursuant to the recently enacted Small Business Investment Incentive Act of 1980 (the "Act") [Pub. L. No. 96-477 (October 21, 1980)]. It provides an exemption from the registration provisions of the Securities Act for transactions involving offers and sales of securities by an issuer solely to one or more "accredited investors"[2] if the aggregate offering price does not exceed the amount allowed under Section 3(b) of that Act.[3] No advertising or public solicitation is permitted in connection with such transactions, and the issuer is required to file a notice of such sales with the

---

[1]The provisions of Section 4 of the Securities Act provide in pertinent part:

The provisions of Section 5 shall not apply to —

(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.

[2]New Section 2(15) of the Securities Act provides:

(15) the term "accredited investor" shall mean —

(i) a bank as defined in section 3(a)(21) of the Act whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Securities Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets, under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

[3]As amended by Section 302 of the Small Business Act, the ceiling amount of Section 3(b) is increased to $5,000,000.

Commission on such forms as the Commission shall prescribe. In order to permit issuers immediately to utilize Section 4(6), the Commission is adopting Form 4(6) on an interim basis and seeking public comment with respect to the form and content of a final notice.

The enactment of Section 4(6) is intended to reflect Congressional concern that small businesses should have an adequate market to raise capital.[4] In this regard, the new statutory exemption conforms in many respects to the Commission's recently adopted Rule 242 [17 CFR 230.242].[5] Rule 242, promulgated under Section 3(b) of the Securities Act, provides an exemption from registration for sales of securities by domestic or Canadian corporate issuers to an unlimited number of accredited persons as defined in the rule, and to 35 non-accredited persons.

Similar to the adoption of the accredited investor concept in Rule 242, the rationale underlying the adoption of Section 4(6) is that financial institutions and other sophisticated investors purchasing securities in a small private offering are able to "fend for themselves." Consequently, as in Rule 242, Section 4(6) does not specify what information the issuer must furnish to accredited investors. However, any issuer relying on the exemption must file a notice of such sales with the Commission. The primary purpose of the notice requirement is to elicit information which the Commission expects will be necessary in assessing the effectiveness of the exemption as a capital raising device for small business in a manner that is consistent with the public interest and the protection of investors.[6]

Form 4(6) is substantially similar to Form 242 [17 CFR 239.242] except certain information has been deleted that would be inapplicable to a Section 4(6) offering. For example, Item 2 under Section D in Form 242 has been modified to eliminate the reference to sales to nonaccredited persons since those investors are not permitted to purchase securities in Section 4(6) transactions. In addition, Item 3 under Section D of Rule 242, which elicits information about the type and dollar amount of other Section 3(b) exemptive offerings within the preceding six months, has also been eliminated, since such information was designed to elicit information regarding the somewhat complex calculation of the aggregate dollar limit that is permitted to be sold under the Rule.[7] Finally, the undertaking in Section E of Form 242 to furnish to the Commission, upon the written request of its staff, the information furnished by the issuer to any non-accredited person has been deleted since non-accredited persons may not purchase in a Section 4(6) offering. Other technical amendments have been made relating primarily to the identification of the form.

Form 4(6) must be filed by the issuer no later than 10 days after the first sale of securities is made in reliance on the exemption. The issuer must also make a final filing no later than 10 days after the completion date of the issue. If, however, the issue is completed within 10 days after the first sale, a single notice may be filed. The issuer must also file periodic updates every six months until a final notice is filed. Copies of the form may be obtained from the Commission's regional offices or the Commission's headquarters at 500 North Capitol Street, Washington, D.C. 20549.

Form 4(6) will be effective until December 31, 1981 absent further action by the Commission. The Commission is soliciting comment on the efficacy of Form 4(6) before it adopts a final form. Specific comment is requested as to whether the information called for by the form is necessary or appropriate for implementing an effective monitoring program.

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[4]S. Rep. No. 958, 96th Cong., 2d Sess, at 45 (1980).

[5]Securities Act Release No. 6180 (January 17, 1980) [45 FR 6362].

[6]In its report on S. 2990, which proposed Section 4(6) as finally adopted by the House, the Senate Committee on Banking, Housing and Urban Affairs stated that it "...anticipates that the Commission will monitor the effectiveness of the exemption to evaluate whether it is consistent with the underlying objectives of the federal securities laws to protect the integrity of the securities markets and fosters investor confidence in the capital formation process." S. Rep. No. 958, *supra* note 4, at 45.

[7]Paragraph (c) of Rule 242 limits the amount of each issue of securities sold pursuant to the rule to $2,000,000. For purposes of calculating the dollar limit, an issuer must include the aggregate gross proceeds for all Section 3(b) sales, other than Regulation A sales under an employee plan, in the six months preceding the commencement of and during the Rule 242 issue.

PROCEDURAL MATTERS

For the reasons stated above, the Commission believes that it is appropriate to adopt interim Form 4(6), effective until December 31, 1981, in view of the enactment of the Small Business Investment Incentive Act of 1980. Accordingly, the Commission, pursuant to Section 553(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b), for good cause finds that prior notice and comment are not required, and that to provide for prior notice and comment is unnecessary and contrary to the public interest. In addition, the Commission, pursuant to Section 553(d) of the APA, 5 U.S.C. 553(d) finds good cause to adopt the foregoing interim Form effective immediately, in view of the recent enactment of the Small Business Investment Incentive Act, since any delay in such action by the Commission would, in the Commission's view, frustrate the intent of Congress to provide a vehicle by which small businesses may raise capital.

IN VIEW OF THE FOREGOING

Part 239 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding §239.246 to read as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§239.246 Form 4(6), notice of sales of securities pursuant to section 4(6) of the Securities Act of 1933.

(a) Five copies of a notice on this form shall be filed with the Commission:

(1) No later than 10 days after the first sale of securities in any issue is made in reliance on section 4(6) of the Securities Act of 1933.

(2) No later than 10 days after the completion date of the offering of such issue; *Provided, however,* That only one notice need be filed if the offering of the issue is completed within the 10-day period described in (1) above and this form is filed not later than at the conclusion of that period but subsequent to the completion of the offering of the issue; and

(3) Every six months after the first sale of securities in the issue made in reliance on section 4(6) unless the final notice required by (2) above has been filed.

(b) If more than one notice is required to be filed as to any issue of securities offered in reliance on section 4(6), notices other than the original notice need only report the issuer's name and the information in response to Part D and any material changes in Parts A through C from the facts previously reported.

(c) A notice of this form shall be deemed to be filed with the Commission:

(1) as of the date on which it is received at the Commission's principal office in Washington, D.C., or

(2) if the notice is delivered to the Commission after the date on which it is required to be filed, as of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office in Washington, D.C.

EFFECTIVE DATE: Form 4(6) is effective upon publication in the Federal Register and will expire on December 31, 1981, absent further action by the Commission.

AUTHORITY: The Commission hereby adopts Form 4(6) pursuant to Sections 4(6) and 19(a) of the Securities Act of 1933. [Sec. 602, Pub. L. No. 96-477; Sec. 19(a), 48 Stat. 85; Sec. 209, 48 Stat. 908; Sec. 308(a)(2) 90 Stat. 57; 15 U.S.C. 77s(a).]

By the Commission.

George A. Fitzsimmons
Secretary

FORM 4(6)

U. S. SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

SEC USE ONLY		
SERIAL		
19-		-

NOTICE OF SALES OF SECURITIES PURSUANT TO SECTION 4(6) OF THE SECURITIES ACT OF 1933

SEC USE ONLY

Nature of this filing with respect to this issue.

INSTRUCTION: Circle "N" for a new filing or "A" for an amended filing.

ORIGINAL 1 N A COMBINED ORIGINAL AND FINAL 2 N A SIX-MONTH UPDATE 3 N A FINAL 4 N A

INSTRUCTIONS: Five copies of this notice are to be filed with the Commission: (a) no later than 10 days after the first sale of securities in any issue is made in reliance on Section 4(6) (original); (b) no later than 10 days after the completion date of the offering of such issue (final), *except that only one notice need be filed if the offering of the issue is completed within the 10-day period described in "(a)" above and this notice is filed no later than at the conclusion of that period but subsequently to the completion of the issue* (combined original and final); and (c) every six months after the first sale of securities in the issue is made in reliance on Section 4(6), unless a final notice has been filed in accordance with "(b)" above (6-month up-date). If more than one notice is required to be filed as to any issue of securities offered in reliance on the exemption notices other than the original notice need only report the issuer's name and information in response to Part D and any material changes from the facts previously reported in Parts A through C. This notice shall be deemed to be filed with the Commission for purposes of the exemption as of the date on which the notice is received by the Commission, or, if delivered to the Commission after the date on which it is due, as of the date on which it is mailed by means of United States registered or certified mail to the Commission's Office of Small Business Policy, Division of Corporation Finance, at the Commission's principal office at 500 North Capitol Street, Washington, D.C. 20549.

INSTRUCTION: State the address of the issuer's executive offices and, if different, the address at which the issuer's principal business operations are conducted or proposed to be conducted.

NAME		
ADDRESS OF EXECUTIVE OFFICES		
CITY	STATE	ZIP
AREA CODE	TELEPHONE NUMBER	
ADDRESS OF PRINCIPAL BUSINESS OPERATIONS		
CITY	STATE	ZIP
AREA CODE	TELEPHONE NUMBER	

GENERAL INSTRUCTIONS: Please check the box(es) for the appropriate response(s) to each item or fill in the blanks. Please answer all items. If additional space is required, indicate the answer on the attached continuation sheet.

A. Basic Identification of Issuer.

1. Has the issuer filed any periodic reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934? YES ☐ NO ☐

   If yes, please indicate the file number of the docket in which the periodic reports are filed. _____

2. Please indicate the issuer's IRS employer identification number. If an application for such number is pending, please enter "00-0000000." ☐☐-☐☐☐☐☐☐☐

3. Has the issuer been assigned a CUSIP number for its securities? YES ☐ NO ☐ ◄3

If yes, please specify the first six (6) digits. If no, please enter "000000." ☐☐☐☐☐☐

4. Please check the appropriate box for each exchange or market, if any, where the issuer's securities are traded.

American Stock Exchange . . . . . a. ☐
Boston Stock Exchange . . . . . b. ☐
Cincinnati Stock Exchange . . . . . c. ☐
Midwest Stock Exchange . . . . . d. ☐
Over-the-Counter (including National Association of Securities Dealers Automated Quotations System) . . e. ☐
New York Stock Exchange . . . . . f. ☐
Philadelphia Stock Exchange . . . . . g. ☐
Pacific Stock Exchange . . . . . h. ☐

Other *Please Specify* . . . . . i. ☐

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None. . . . . j. ☐

5. Please indicate the issuer's Standard Industrial Classification (SIC) at the 3 or 4 digit level. If the issuer has more than one SIC, please enter the issuer's primary SIC. If a 3 digit SIC is given, enter "X" in the left-most box. ☐☐☐☐

B. Statistical Information About the Issuer

INSTRUCTION: Please enter the letter for the appropriate response to each item in Part B in the box indicated. If the issuer's first fiscal year has not yet ended, furnish the requested information as of a date, or as to a period ending on a date, no more than 90 days prior to the first sale of securities in this issue.

1. What were the issuer's gross revenues for its most recently ended fiscal year? ☐

a. Less than $500,000 b. $500,001 – $1,000,000 c. $1,000,001 – $3,000,000
d. $3,000,001 – $5,000,000 e. $5,000,001 – $10,000,000 f. $10,000,001 – $25,000,000
g. $25,000,001 – $100,000,000 h. Over $100,000,000

2. What were the issuer's total consolidated assets as of the end of its latest fiscal year? ☐

a. Less than $50,000 b. $50,000 – $250,000 c. $250,001 – $500,000
d. $500,001 – $1,000,000 e. $1,000,001 – $3,000,000 f. $3,000,001 – $5,000,000
g. $5,000,001 – $10,000,000 h. Over $10,000,000

3. What was the issuer's net income for its most recently ended fiscal year? ☐

a. None or net loss b. $1 – $50,000 c. $50,000 – $250,000 d. $250,001 – $500,000
e. $500,001 – $1,000,000 f. $1,000,001 – $3,000,000 g. $3,000,001 – $5,000,000
h. $5,000,001 – $10,000,000 i. Over $10,000,000

4. What was the issuer's shareholders' equity at the end of its latest fiscal year? ☐

a. Less than $25,000 b. $25,000 – $125,000 c. $125,001 – 250,000
d. $250,001 – $500,000 e. $500,001 – $1,000,000 f. $1,000,001 – $3,000,000
g. $3,000,001 – $5,000,000 h. $5,000,001 – $10,000,000 i. Over $10,000,000

5. How many shareholders did the issuer have at the end of its latest fiscal year? ☐

a. 0 – 10 b. 11 – 25 c. 26 – 50 d. 51 – 99 e. 100 – 199
f. 200 – 299 g. 300 – 399 h. 400 – 499 i. 500 or more

6. How many shares were held by non-affiliated shareholders at the end of the issuer's latest fiscal year? ☐

a. Less than 500,000 b. 500,001 – 1,500,000 c. 1,500,001 – 2,500,000
d. 2,500,001 – 3,500,000 e. 3,500,001 – 5,000,000 f. Over 5,000,000

7. How many shares were outstanding at the end of the issuer's latest fiscal year? ☐

a. Less than 500,000 b. 500,001 – 1,500,000 c. 1,500,001 – 2,500,000
d. 2,500,001 – 3,500,000 e. 3,500,001 – 5,000,000 f. Over 5,000,000

8. How many full-time employees did the issuer have at the end of its latest fiscal year? ☐

a. 0 b. 1 – 5 c. 6 – 10 d. 11 – 20 e. 21 – 30 f. 31 – 40
g. 41 – 50 h. 51 – 100 i. 101 – 250 j. 251 – 500 k. 501 – 750 l. Over 750

9. How many part-time employees did the issuer have at the end of its latest fiscal year? ☐

a. 0 b. 1 – 5 c. 6 – 10 d. 11 – 20 e. 21 – 30 f. 31 – 40
g. 41 – 50 h. Over 50

C. Brief Narrative Information About the Issuer.

1. In what year was the issuer incorporated; or organized? ☐☐☐☐

2. In what state is the issuer incorporated or organized? Please enter the standard two-letter U.S. Postal Service abbreviation. Enter "CN" if the issuer is organized in Canada. ☐☐

3. Please briefly describe the issuer's business.

_____

_____

_____

_____

4. Please list the full name and address of the following persons: each promoter of the issuer involved in the offering of securities as to which sales pursuant to Section 4(6) are reported on this notice, the issuer's chief executive officer, and each of the issuer's affiliates. Indicate the status of each person named by placing an "X" in the applicable box(es) opposite such person's name. The term "promoter" includes · · ·

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more or any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as brokerage commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

NAME			
ADDRESS	CITY	STATE	ZIP
NAME			
ADDRESS	CITY	STATE	ZIP

CEO	Aff	Pro

CEO	Aff	Pro

5. Please list the full name and address of each person who has been or will be paid or given directly or indirectly any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in any offering pursuant to Section 4(6).

NAME			
ADDRESS	CITY	STATE	ZIP
NAME			
ADDRESS	CITY	STATE	ZIP

SEC USE ONLY
8 -

SEC USE ONLY
8 -

D. Section 3(b) Sales Limit and Other Information About the Offering

INSTRUCTION: If a response to any item is "none" or "zero," please enter zero ("0") in the corresponding space.

1. Type and aggregate offering price of securities intended to be sold pursuant to Section 4(6) in this issue.
   a. Debt . . . . . $ _____
   b. Equity . . . . . $ _____
   c. Convertible . . . . . $ _____

2. Number of accredited persons who have purchased securities in this issue in transactions in reliance on Section 4(6) and aggregate dollar amounts of their purchases to date.

Number of Purchasers (A)	Aggregate Dollar Amount (B)
_____	$ _____

3. Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities being offered in this issue. Insofar as practicable, give amounts for the categories listed below. The information may be given as subject to future contingencies. If the expenditure in any category is not known, furnish an estimate and place an "X" in the box to the left of the amount given.

a.	Blue Sky Fees and Expenses	$ ☐
b.	Transfer Agents' Fees	☐
c.	Printing and Engraving Costs	☐ ◀5
d.	Legal Fees	☐
e.	Accounting Fees	☐
f.	Engineering Fees	☐
g.	Sales Commissions *(including Finders' Fees)*	☐
h.	Other Expenses *(Identify)*	
	_____	☐ ◀6
	_____	☐
	Total	$ ☐

4. Indicate below the amount of the gross proceeds to the issuer *(other than amounts specified in Item D.4 above)* proposed to be used or used for each of the purposes listed below. If the amount to be used for any purpose is not known, furnish an estimate and place an "X" in the box to the left of the amount given.

		Payments to officers, directors and affiliates (A)	Payments to others (B)	
a.	Salaries and fees	$ ☐	$ ☐	
b.	Purchase of real estate	☐	☐	◀7
c.	Purchase and installation of machinery and equipment	☐	☐	
d.	Construction of plant building and facilities	☐	☐	
e.	Development expense *(product development, research, patent costs, etc.)*	☐	☐	◀8
f.	Purchase of raw materials, inventories, supplies, etc.	☐	☐	
g.	Selling, advertising, and other sales promotion	☐	☐	
h.	Acquisition of other businesses	☐	☐	◀9
i.	Repayment of loans	☐	☐	
j.	Working capital	☐	☐	
	Other – please specify			
k.	_____	☐	☐	◀10
l.	_____	☐	☐	
m.	_____	☐	☐	
n.	_____	☐	☐	◀11
	Total	$ ☐	$ ☐	

The issuer has duly caused this notice to be signed on its behalf by the undersigned duly authorized officer or person acting in a similar capacity.

DATE OF NOTICE _____

ISSUER _____

SIGNATURE _____

NAME _____

TITLE _____

INSTRUCTION: Print the name and title of the signing representative under his signature. At lease one copy of the notice filed with the Commission's principal office in Washington, D.C. shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION

Intentional misstatements or omissions of fact constitute Federal Criminal Violations (See 18 U.S.C. 1001).

Item of Form (identify)	Answer

Item of Form (identify)	Answer

SECURITIES ACT OF 1933
Release No. 6257/November 10, 1980

In the Matter of

H.R. 10 PLAN OF BLANK, ROME, COMISKY & McCAULEY
Four Penn Center Plaza
Philadelphia, PA 19103

(18-82)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 FOR AN ORDER EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS ISSUED IN CONNECTION WITH THE H.R. 10 PLAN OF BLANK, ROME, COMISKY & McCAULEY

NOTICE IS HEREBY GIVEN that the law firm of Blank, Rome, Comisky & McCauley (hereinafter the "Firm" or "Applicant"), a Pennsylvania partnership, has, by letters dated June 27, 1980 and October 29, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for any participations or interests issued in connection with the H.R. 10 Plan for Blank, Rome, Comisky & McCauley, as amended (the "Plan"). All interested persons are referred to those documents, which are on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

The Plan covers partners and employees of the Firm who were participants in the Plan as of February 1, 1976 and all other employees and partners of the Firm, other than owner-partners, who have both attained age 25 and completed three years of service without a break in service. However, employees of the Firm as of February 1, 1976 who have completed five years of service, without a break in service, may participate before attaining age 25. As of February 1, 1980, the participants consisted of 48 partners and 14 associates as well as clerical, secretarial and other staff personnel.

The Plan is of a type, commonly referred to as a "Keogh" plan, which covers persons (in this case the Firm's partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, even though the Plan is qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan absent an order of the Commission issued under Section 3(a)(2).

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant states that the Plan was adopted in 1968 and was amended and restated in its entirety, effective as of February 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service has issued a ruling to the effect that the Plan, as so amended and restated, continues to be a qualified plan under Section 401 of the Code. The Plan is an employee pension benefit plan subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA.

Administration of the Plan is the responsibility of the Plan Administrator and such persons or committees as the Plan Administrator may choose. The Plan Trustees have the responsibility of managing and supervising all funds, securities and other property of the Trust.

The Plan has a mandatory Firm contribution feature and a voluntary participant contribution feature, both of which are based on a percentage of compensation. In general the Firm's annual contribution on behalf of a participant is an amount equal to the lesser of $7,500 or 7½% of his compensation or earned income for the year. A participant may voluntarily contribute an amount which does not exceed 10% of his total compensation or earned income for all plan years during which he has been eligible to participate; provided that the amount of contribution in excess of the greater of 6% of his compensation or earned income for the year, or 50% of his contribution,

cannot exceed 17½% of his compensation or earned income for any given plan year. Voluntary contributions may be invested together with Firm contributions or invested separately.

Distributions may be made in accordance with one or more options approved by the Plan Administrator, including lump sum payment, installment payments, and purchase of an insurance company contract providing for installment payments. The amount distributed each year shall be at least equal to the aggregate accrued benefit of the participant divided by his life expectancy. Undistributed portions shall be deposited in a savings account or invested in a certificate of deposit.

The assets of the Plan will not be commingled in collective investment funds with the assets of the plans of other employers. In this connection it shall be noted that, while the Trustee Agreement does not prohibit investment in any common collective or commingled trust fund maintained by a corporate trustee, the Applicant, through the Trustees, retains administrative control of the Plan, including ultimate control over the investment policies. Applicant states that no investment in a common trust fund where Plan trust funds would be commingled with those of others is or will be authorized by the Plan Administrator.

The Applicant may at any time modify, amend or terminate the Plan, in whole or in part, or discontinue contributions to the Trust, so long as no action by the Firm shall divert Trust assets for purposes other than for the exclusive benefit of the participants or their beneficiaries, or cause Trust assets to revert to the Firm, or retroactively deprive any participant or his beneficiary of any benefit to which he was entitled under the Plan by reason of Firm contributions prior to the modification or amendment, unless required by law, or impose additional duties on the Trustees without their consent. The Plan shall terminate automatically upon the termination of the partnership, unless otherwise agreed by the successor to the Applicant's business and the Trustees.

The Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan to participants (other than such material as the Firm is required to distribute under ERISA) and has not made and does not intend to make any solicitation of contributions under the Plan.

The Plan is subject to ERISA and the Firm has complied and will comply with all of the ERISA reporting and disclosure requirements. A Summary Plan Description, written in language understandable to the average participant, is delivered to each participant. In addition, a Summary Annual Report is delivered to each participant and also to persons currently receiving benefits. Each participant and person receiving benefits is informed that the full annual report for the Plan is available upon request. Further, each participant is furnished, upon request, on an annual basis, a statement of his or her accrued benefit under the Plan.

III. Discussion

Applicant states that the Plan is not a uniform prototype plan of a type marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons. The Plan was prepared by attorneys in the Firm and covers only the legal and support staff of the Applicant. Accordingly, Applicant contends that the Plan does not present the risks associated with the sale of interests or participations in multi-employer plans marketed by sponsoring financial institutions. Also, Applicant contends that the registration requirement exists only because the Firm does business in the form of a partnership, rather than a corporation, and that if the Firm were incorporated, its partners would not be considered "employees" within the meaning of Section 401(c)(1) of the Code and there would be no question as to the availability of the exemption from registration.

Further, Applicant states that it maintains substantial administrative control over the Plan with a Plan Administrator who has overall responsibility and authority for administration of the Plan, including interpretation of the provisions of the Plan, establishment and enforcement of rules and regulations relating to administration of the Plan, determination of the amount of benefits payable to any person in accordance with the provision of the Plan, and authorization of payment of such benefits and of the proper expenses related to the administration of the Plan.

Applicant also argues that the Plan covers partners and associate lawyers of the Firm, who are professionals generally sophisticated in investments and financial analysis and able to protect their interests adequately without the

protection of the regulation requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to all participants, including the non-professional participants.

Finally, Applicant contends that the reason Congress did not exempt plans in which self-employed persons are participants was to prevent the sale, without registration, of participations or interests in pre-packaged plans offered by financial institutions to self-employed persons lacking the sophistication to protect themselves. Applicant also submits that Congress inserted the provision giving the Commission authority to exempt, upon application, a stock bonus, pension, profit-sharing, or annuity plan covering employees, some or all of whom are "employees" within the meaning of Section 401(c)(1) of the Code, in order to exempt from registration partnership plans where such plans are comparable to those exempted by Section 3(a)(2) and where the dangers created by the lack of registration are not present.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 4, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement of the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the matter will be issued as of course following December 4, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6258/November 10, 1980

In the Matter of

THE SKADDEN, ARPS, SLATE, MEAGHER & FLOM RETIREMENT PLAN
919 Third Avenue
New York, NY 10022

(18-66)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE SKADDEN, ARPS, SLATE, MEAGHER & FLOM RETIREMENT PLAN

NOTICE IS HEREBY GIVEN that Skadden, Arps, Slate, Meagher & Flom (the "Applicant"), a law firm organized as a partnership under the laws of the State of New York, has, by letter dated November 29, 1979, and amended by letter dated October 24, 1980, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for interests or participations issued in connection with the Skadden, Arps, Slate, Meagher & Flom Retirement Plan (the "Plan"). All interested persons are referred to that application, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. Introduction

All partners and employees automatically become participants in the Plan if they are at least 25 years of

age and have completed one year of service with the Firm. As of March 31, 1980, 49 partners and 138 other employees were participants in the Plan.

The Plan is of the type commonly referred to as a "Keogh" plan, which covers persons (in this case, the Firm's partners) who are "employees" within the meaning of Section 401(c)(1) of the Internal Revenue Code of 1954, as amended (the "Code"). Therefore, even though it is anticipated that the Plan will continue to be qualified under Section 401 of the Code, the exemption provided by Section 3(a)(2) of the Act is inapplicable to interests in the Plan.

In relevant part, Section 3(a)(2) provides that the Commission may exempt from the provisions of Section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees, some or all of whom are employees within the meaning of Section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

II. Description and Administration of the Plan

Applicant represents that the Plan became effective as of April 1, 1975, and was amended effective April 1, 1980. Applicant has applied for, but has not yet received, a letter from the Internal Revenue Service ("IRS") determining that the Plan, as amended, is a qualified plan under Section 401 of the Code. The Plan is an employee retirement plan subject to the full reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 ("ERISA").

The Plan has a mandatory Firm contribution feature and a voluntary participant contribution feature, both of which are based on a percentage of compensation. Applicant states that it contributes annually to the Plan an amount equal to 7% of each participant's annual compensation in excess of the Applicable Social Security Wage Base (as defined in the Plan) plus an additional percentage (calculated according to a formula in the Plan of total compensation of "Legal Employees" (as defined in the Plan). Applicant further states that each participant may elect to make voluntary contributions to the Plan in an amount of up to 10% of their annual compensation.

Applicant exercises administrative and ministerial functions in connection with the Plan. A committee of four of the Applicant's partners ("New Trustees"), appointed by Applicant, administers the Plan and interprets its provisions. Applicant has no power to invest or direct the investment of firm or individual contributions to the Plan. However, the New Trustees may exercise limited investment discretion with respect to the assets of the Plan as amended.

Prior to the adoption of the Plan amendment effective April 1, 1980, all funds contributed to the Plan were promptly delivered to the Trustees (the "ABRA Trustees") of the American Bar Retirement Association Master Trust for Self-Employed Retirement Plans (the "ABRA Trust"). The ABRA Trustees, in turn, have entered into an agreement with the Equitable Life Assurance Society of the United States ("Equitable") providing for two separate investment vehicles: (i) a fixed income account, and (ii) an equity account invested in common stocks. The ABRA Trust is a sub-trust under the Plan as amended. The New Trustees will be empowered to either invest firm contributions in the ABRA Trust, or invest such contributions in other investments permitted under the Plan and selected by the New Trustees. Applicant presently contemplates that the New Trustees initially will invest only in either the ABRA Trust fixed income account or direct obligations of the United States Government. Participants in the Plan who make voluntary contributions will be permitted to direct the investment of such voluntary contributions in the ABRA Trust fixed income or equity accounts or in such other permitted investments as may be selected by the New Trustees. Applicant represents that interests or participations in the ABRA Trust are registered under the Act. The ABRA Trust prospectus is made available by Applicant to all participants in the Plan.

Applicant contends that were it a corporation rather than a partnership, interests or participations issued in connection with the Plan would be exempt from registration under Section 3(a)(2) of the Act, because no person who would be an "employee" within the meaning of Section 401(c)(1) of the Code would participate in the Plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the Plan be registered under the Act.

Applicant also maintains that were the Firm's

partners not permitted to participate in the Plan, the interests or participants issued in connection with such Plan, would be exempt under Section 3(a)(2) since no other persons covered by such Plan would be "employees" within the meaning of Section 401(c)(1) of the Code. Applicant argues that there is no valid basis for a contrary result merely because the Plan also covers partners in the Firm.

Applicant also states that it is engaged in furnishing legal services which involve financially sophisticated and complex matters, exercises administrative control over the Plan, and believes that it is able to represent adequately its own interests and those of its partners and employees without the protection of the registration requirements of the Act. Applicant believes that the rigorous disclosure requirements of ERISA and the fiduciary standards and duties imposed thereunder are adequate to provide full protection to Plan participants.

Finally, Applicant argues that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest any intent on the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the Act. Applicant argues that its Plan is distinguishable from multi-employer plans or uniform prototype plans designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons and that these latter plans are the type of plans Congress intended to exclude from the Section 3(a)(2) exemption. Applicant states that the Amended Plan will cover partners and employees of a single firm and will not be a uniform prototype plan of a type designed to be marketed by a sponsoring financial institution or promoter to numerous unrelated self-employed persons.

For all of the foregoing reasons, Applicant believes that the Commission should issue an order finding that an exemption from the provisions of Section 5 of the Act for interests or participations issued in connection with the Plan is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 2, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request to be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following December 2, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6259/November 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17290/November 13, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21783/November 13, 1980

WITHDRAWAL OF PROPOSED GUIDELINES FOR DISCLOSURE BY ELECTRIC AND GAS UTILITIES

ACTION: Withdrawal of proposed guidelines for disclosure by electric and gas utilities.

SUMMARY: The Securities and Exchange Commission today withdrew proposed staff guidelines for disclosure in registration statements and periodic reports filed by electric and gas utility companies under the federal securities laws. Promulgation of the proposed guidelines is not

necessary at this time for several reasons, such as the adequate disclosure currently provided in filings by the industry as a whole. Although the guidelines are being withdrawn, the Commission encourages utilities to consider the areas of disclosure addressed by the proposal in complying with the requirements of the federal securities laws.

EFFECTIVE DATE: (30 days after publication in the *Federal Register*).

FOR FURTHER INFORMATION CONTACT: Until the effective date, contact William H. Carter (202)-272-2604, Steven C. Duvall (202)-272-2685 or Charles C. Leber (202)-272-2663, Securities and Exchange Commission, 500 N. Capitol St., Washington, D.C. 20549. Thereafter contact only Steven C. Duvall or Charles C. Leber.

SUPPLEMENTARY INFORMATION: The Commission today withdrew proposed Guides 63 and 6, "Guidelines for Disclosure by Electric and Gas Utility Companies," of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933[1] and the Guides for the Preparation and Filing of Reports and Registration Statements under the Securities Exchange Act of 1934,[2] respectively.

The proposed recision of Guide 30, "Disclosure of Principal Sources of Electric Revenues," of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933[3] is similarly not being implemented at this time. Although Guide 30 remains in effect, it is presently being studied as part of a comprehensive re-evaluation of the Guides under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.][4]

I. General Background and Reasons for Withdrawal of Proposed Guidelines.

Publication of the proposed guidelines for electric and gas utilities in 1979[5] resulted in part from a recommendation of the Advisory Committee on Corporate Disclosure that the Commission develop industry guidelines with requirements which reflected the particular characteristics of specific industries.[6] As stated in prior releases, electric and gas utilities were chosen because of the substantial capital needs of the industry and the frequency with which utilities use public markets as a source of funds.[7]

Generally, the proposed guidelines reflected the areas of disclosure and levels of information contained in the filings by certain gas and electric utilities. Thus, with two exceptions,[8] the proposals would have standardized the current disclosure practices exemplified by the better filings with the Commission by public utilities.

Seventy-two letters of comment were received.[9] The commentators generally opposed the guidelines as proposed. Two primary issues appeared to be of

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[1]Release No. 33-4936 (December 9, 1968) [33 FR 18617].

[2]Release No. 34-13639 (June 17, 1977) [42 FR 31780].

[3]Release No. 33-4936 (December 9, 1968) [33 FR 18617]; Release No. 33-5791 (December 20, 1976) [41 FR 56306].

[4]Release No. 33-6163, (December 5, 1979) [44 FR 72604].

[5]Release No. 33-6085 (June 25, 1979) [44 FR 38792].

[6]Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess., November 3, 1977 at 329.

[7]Release Nos. 33-5827 (May 19, 1977) (42 FR 27260); 33-6085 (July 2, 1979) (44 FR 38792).

[8]See note 10 *infra*.

[9]Letters were received from the following categories of commentors: electric and gas institutes or associations (3); electric and gas utilities (61); other corporations (1); accounting firms (2); law firms (3); governmental agencies (1); other interested persons (1). Copies of the letters of comments, as well as a copy of the summary of comments prepared by the Commission staff, are available for public inspection in File S7-696 in the Commission's Public Reference Room located at 1100 L Street, N.W., Washington, D.C.

concern. First, according to the commentators the proposals would have required excessive detail and voluminous disclosure. In the commentators' opinion, such disclosures are unnecessary, would result in marginal benefits to the average investor which benefits would be outweighed by the added burdens of compliance, and would hamper registrants' flexibility in making disclosure which adequately reflects the specific circumstances of a particular utility. Second, the majority of commentators objected to mandating any forward looking information, as well as to the length of the time periods for forward looking information and the resultant need to update such information.

Certain other commentators, however, apparently misunderstood the type of information requested in the proposed guidelines. For example, a number of commentators believed that the proposed guidelines required a subjective evaluation of regulatory commissions when in fact it only requested objective data derived from the latest regulatory action(s).

After analyzing the comments received and conducting a selective review of recent filings by certain utilities, the Commission continues to believe that the areas of disclosure in the proposal are generally appropriate in filings by electric and gas utilities. However, for the reasons enumerated below, the Commission does not believe that it is either necessary or appropriate to standardize these areas of disclosure in a formal guideline at this time.

First, while levels of disclosure vary among companies, utility industry filings generally provide adequate disclosure. With the two exceptions noted above,[10] the areas of disclosure in a large number of utility filings are substantially similar to those in the proposed guidelines. Promulgation of the guidelines would standardize these areas and increase the amount of detailed disclosure. Although this may benefit a few sophisticated investors, many other sophisticated investors, such as analysts, already have access to such information through utility filings with other governmental agencies.[11] Further, the additional disclosures would likely provide marginal benefits to the average investor. Moreover, the benefit may be outweighed by the increased burden of compliance by utilities. Therefore, the Commission believes that a standard guideline is not necessary at this time.

Second, because of the diversity of the registrants within the utility industry detailed, uniform disclosure requirements may not be appropriate for each registrant in every instance. Comprehensive industry guidelines, such as those proposed, may result in inflexibility when the required types of disclosure are not generally applicable throughout the industry. Such inflexibility may result in mechanical and lengthy disclosure documents which do not provide meaningful information to investors and prevent a registrant from concentrating on areas of disclosure which are most pertinent to its particular facts and circumstances.

Finally, the Commission is concerned that the volume of technical, statistical disclosure which would be required by the proposed guidelines might tend to discourage integration of formal Commission filings and informal security holder reports that the Commission is attempting to foster.[12]

Although the proposed guidelines are being withdrawn, the Commission encourages registrants in the electric and gas utility industry to consider the areas of disclosure in the proposal. In the Commission's view, sound disclosure policy involves consideration of these areas with respect to the individual circumstances of registrants within the industry. In addition, the Commission encourages such registrants to provide disclosure beyond that

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[10]These two exceptions are mandatory forward looking information and expanded disclosure of the public utility regulatory environment. With regard to forward looking information the Commission has decided that more experience is needed in this area and that it would be premature to mandate such disclosure at this time. With regard to the regulatory environment, the Commission believes this disclosure can be better obtained through the voluntary action of registrants and the comment process on individual filings, rather than by means of a guideline.

[11]Registrants in this industry are highly regulated and are required to file publicly available reports with state and federal agencies for purposes of rate determinations and for approval of certain types of financing.

[12]*See, e.g.*, Securities Act Release No. 6231 (September 2, 1980) [45 FR 63670].

currently required by specific regulations, such as Regulation S-K [17 CFR 229.20]. In this regard, the Commission will continue to monitor filings to ensure that full and fair disclosure is made and where necessary and appropriate may issue interpretations or propose rules in the future which address disclosure issues in the electric and gas utility industry.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6260/November 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17291/November 13, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21784/November 13, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11439/November 13, 1980

ACCOUNTING SERIES
Release No. 284/November 13, 1980

TECHNICAL ADMENDMENTS TO RULES, FORMS AND SCHEDULES; DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE DIVISION OF CORPORATION FINANCE

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of technical amendments to rules, forms and schedules under the Securities Act of 1933 and the Securities Exchange Act of 1934 and amendments to the Commission's general organization rule relating to delegation of authority to the Director of the Division of Corporation Finance. The technical amendments correct certain outdated references, inadvertent omissions and typographical errors and clarify certain terminology and instructions; the amendments to the rule delegating authority to the Director of the Division of Corporation Finance reconcile the provisions of that rule to the provisions of recently revised Rule 12b-25.

EFFECTIVE DATE: (Upon publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the amendments, Mary Margaret Hammond at (202)-272-3059 or Elizabeth K. Norsworthy at (202)-272-2589. Thereafter, William E. Toomey at (202)-272-2573.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced certain technical amendments to rules, forms and schedules under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq.] and to the Commission's general organization rule which delegates authority to the Director of the Division of Corporation Finance [17 CFR 200.30-1]. The following rules, forms, and schedules are affected by these amendments: Rule 30-1; Rules 3-09 and 5-03 of Regulations S-X [17 CFR 210.3-09]; Items 3, 5, 6, 7 and 9 of Regulation S-K [17 CFR 229.20]; Form S-1 [17 CFR 239.11]; Form S-8 [17 CFR 239.16b]; Form S-11 [17 CFR 239.18]; Form S-7 [17 CFR 239.26]; Form S-16 [17 CFR 239.27]; Form S-18 [17 CFR 239.28]; Rule 12b-25 [17 CFR 240.12b-25]; Rule 14a-4 [17 CFR 240.14a-4]; Rule 14a-6 [17 CFR 240.14a-6]; Rule 14c-5 [17 CFR 240.14c-5]; Schedule 14A [17 CFR 240.14a-101]; Schedule 14B [17 CFR 240.14a-102]; Appendix A to Schedule 14A [17 CFR 240.14a-103]; Schedule 14d-1 [17 CFR 240.14d-100]; Form 8-K [17 CFR 249.308] and Form 10-K [17 CFR 249.310].

The first part of this release describes the general nature of the technical changes and the reasons therefor in order to provide a framework for understanding the text of the technical amendments set forth below. The second part of this release summarizes the amendment to the Commission's general organization rule which delegates authority to the Director of the Division of Corporation Finance and explains the reasons for such amendments.

(I) TECHNICAL CHANGES

The technical amendments announced today are adopted in order (i) to amend certain rules, forms, and schedules under the Securities Act and the Exchange Act to reflect the recent adoption or amendment of certain other rules and forms under those Acts, (ii) to revise certain cross-references in the rules, forms and schedules under the Securities Act and the Exchange Act which have become

outdated by reason of the adoption of uniform disclosure items in Regulation S-K; (iii) to correct certain inadvertent omissions and typographical errors made in connection with the recent adoption and amendment of Regulation S-X, Regulation S-K, and certain rules and forms under the Securities Act and the Exchange Act; and (iv) to clarify certain terminology and instructions used in certain rules and forms under the Exchange Act.

The recent adoption and amendment of certain rules and forms under the Securities Act and the Exchange Act have necessitated the amendment of certain other rules and forms in minor respects. For example, Instruction 3 to Item 6 of Regulation S-K, providing for standard disclosure of the security ownership of certain beneficial owners and management, states that the registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to Section 13(d) of the Exchange Act. In order to reflect recent amendments to Rule 13d-1(b) [17 CFR 240.13d-1(b)][1] which provide that after December 31, 1978, certain beneficial owners must file a Schedule 13G, the first sentence of Instruction 3 is changed to read: "The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to Sections 13(d) or 13(g) of the Exchange Act."[2]

Similarly, the adoption of standard disclosure items in Regulation S-K required change in a number of cross-references in the rules, forms and schedules under the Securities Act and the Exchange Act. For example, Instruction 3 to Item 1 of Form S-11 [17 CFR 239.18], providing for disclosure of the distribution spread of the securities being registered, instructs the registrant, if any of the securities being registered are to be offered for the account of security holders, to set forth following the distribution table a reference to the information called for by Instruction 4 to Item 18. To reflect the revision of Item 18 of Form S-11 to incorporate by reference the requirements of Item 6 of Regulation S-K [Security Ownership of Certain Beneficial Owners and Management], Instruction 3 to Item 1 of

[1]See Exchange Act Release No. 34-14692 (April 21, 1978) [43 FR 18484].

[2]Comparable changes are as follows: The reference to General Instruction H of Form 10-K in Instruction 4 to Item 3(b) of Regulation S-K is changed to refer to General Instruction G of Form 10-K in order to reflect recent amendments to Form 10-K (*See* Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630]; the reference to "dividends paid" in paragraph (c) of Item 9 of Regulation S-K is changed to "dividends declared" in order to reconcile the language used in Item 9 with the language used in Item 10 of Regulation S-K (*See* Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630]; the reference to Items 26, 27, 28 and 30 of Form S-1 in paragraph (b) of General Instruction G to Form S-1 is changed to refer to Items 25, 26, 27 and 29 of Form S-1 in order to reflect the renumbering of S-1 items (*See* Securities Act Release No. 5949 (July 28, 1978) [45 FR 34402] and Securities Act Release No. 6019 (January 30, 1979) [44 FR 7864]; Instruction 2 to Item 14 of Form S-1 which refers to Form S-9 is deleted to reflect the rescission of Form S-9 (*See* Securities Act Release No. 5791 (December 20, 1976) [41 FR 56301]); the reference to Item 21 of Form S-1 in Instruction (b) for Summary Prospectuses in Form S-1 is changed to refer to Item 19 of Form S-1 in order to reflect the renumbering of S-1 items (*See* Securities Act Release No. 5949 (July 28, 1978) [43 FR 34402]; the requirement that a registrant submit two marked copies of a registration statement on Form S-8 found in General Instruction F to Form S-8 is changed to require the submission of one marked copy in order to reflect the recent amendment of Form S-8 and Rule 464 [17 CFR 230.464] to provide for automatic effectiveness (*See* Securities Act Release No. 6190 (February 22, 1980) [45 FR 13438]; the reference to Item 22(b) of Form S-11 in paragraph (d) of Supplemental Information Required by Form S-11 is changed to refer to Item 21(b) of Form S-11 in order to reflect the renumbering of S-11 items (*See* Securities Act Release No. 5949 (July 28, 1978) [43 FR 34402]; the reference to Instruction 3(b) of Instructions as to Financial Statements of Form 10-K in Rule 12b-25(f)(1) is changed to refer to Rule 3-09(a) of Regulation S-X in order to reflect the relocation of that Instruction from Form 10-K to Regulation S-X (*See* technical amendment to Rule 3.09(a) of Regulation S-X described in note 7 infra); the reference to Form 20 in Instruction 1 to Item 9 of Schedule 14d-1 is changed to refer to Form 20-F in order to reflect the recent substitution of Form 20-F [17 CFR 240.220f] for From 20 (*See* Exchange Act Release No. 16371 (November 29, 1979) [44 FR 70132]).

Form S-11 is amended to refer to the applicable instruction in Item 6 of Regulation S-K.[3]

In the adoption of recent amendments to the rules and forms, inadvertent omissions and typographical errors were made which require correction as soon as possible. For example, when Item 11 [Management Discussion and Analysis of Financial Condition and Results of Operations] was recently added to Regulation S-K, Guides 1 and 22 to the Preparation and Filing of Registration Statements and Periodic Reports [17 CFR 231.4936] requiring similar information in Securities Act and Exchange Act filings were withdrawn. However, when the forms, rules and schedules under the Securities Act and the Exchange Act were amended to incorporate by reference new Item 11,[4] amendment of Item 14 of Schedule 14A was inadvertently omitted. Item 14 of Schedule 14A, therefore, is revised by these technical amendments to incorporate by reference the information required by Item 11 of Regulation S-K, i.e. management discussion and analysis of financial condition and results of operations.

Similarly, when Item 7 [Exhibits] was recently added to Regulation S-K,[5] a typographical error was made in paragraph (b)(10)(b)(3) which describes certain material contracts which must be filed as exhibits.

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[3]Comparable changes occasioned by the adoption of Regulation S-K are as follows: the cross-reference to Item 19(a) in General Instruction F of Form S-1 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Item 19(a) in Item 21 of Form S-1 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Item 18(b) of Form S-1 in Instruction (a) for Summary Prospectuses in Form S-1 is changed to refer to Item 4(d) of Regulation S-K; the cross-reference to Item 18(a) of Form S-11 in paragraph (a) of Supplemental Information Required by Form S-11 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Part II of Form 10-K in paragraph (b) of General Instruction A to Form S-7 are changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Items 16, 17, 19 and 20 of Form S-1 in paragraph (a) of General Instruction G to Form S-7 is changed to refer to Items 3, 4, and 6 of Regulation S-K; the cross-reference to Item 19(a) of Form S-1 in paragraph (a) of General Instruction G to Form S-7 is changed to refer to Item 6(a) of Regulation S-K; the cross-reference to Items 16-20 of Form S-1 in Item 10 of Form S-7 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Part II of Form 10-K in Undertaking D of Form S-7 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-reference to Items 16-20 of Form S-1 in Item 8(b) of Form S-16 is changed to refer to Items 3, 4 and 6 of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 9 of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 9 of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 9 of Schedule 14A is changed to refer to Instruction 6 of Item 4(a) of Regulation S-K; the cross-references to Item 7(d)(1) and (2) of Schedule 14A in Instruction 3(c) to Item 9 of Schedule 14A are changed to refer to Item 4(d)(1) and (2) of Regulation S-K; the cross-reference to Instruction 1 of Item 7(d) of Schedule 14A in Instruction 3(c) to Item 9 of Schedule 14A is changed to refer to Instruction 1 of Item 4(d) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 10(d) of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 10(c) and (d) of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 10 of Schedule 14A is changed to refer to Instruction 6 of Item 4(a) of Regulation S-K; the cross-references to Item 7(a) of Schedule 14A in Item 11(b) and (c) of Schedule 14A are changed to refer to Item 4(a) of Regulation S-K; the cross-reference to Item 7 of Schedule 14A in Item 11(c) of Schedule 14A is changed to refer to Item 4 of Regulation S-K; the cross-reference to Instruction 1 to Item 7(b) of Schedule 14A in Instruction 1 to Item 11 of Schedule 14A is changed to refer to Instruction 6 to Item 4(a) of Regulation S-K; the cross-reference to Item 7(f) of Schedule 14A in Item 4(b) of Schedule 14B is changed to refer to Item 4(f) of Regulation S-K; the cross-references to Item 7(d) of Schedule 14A in Appendix A to Schedule 14A is changed to refer to Item 4(d) of Regulation S-K; the cross-reference to Instruction 4 to Item 7(d) of Schedule 14A in Appendix A to Schedule 14A is changed to refer to Instruction 5 to Item 4(d) of Regulation S-K.

[4]See Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630].

[5]See Securities Act Release No. 6230 (August 27, 1980) [45 FR 58822].

As proposed, that paragraph was drafted to require the filing of "[a]ny contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 10% of all such assets of the registrant and its subsidiaries."[6] At the time of adoption, however, the phrase "of all such assets" was mistakenly typed as "of the assets," thereby inadvertently changing the materiality test from a percentage of fixed assets to a percentage of all assets. Paragraph (b)(10)(b)(3) of Item 7 is, therefore, changed by these technical amendments to substitute the phrase "of such fixed assets" for "of the assets."[7]

Finally, certain technical amendments are adopted in order to clarify the meaning of certain rules and forms under the Exchange Act. For example, Rule 14a-4 requires that the form of proxy indicate "the identity of the persons on whose behalf the solicitation is made" if the solicitation is made other than by a majority of the board of directors. In order to make clear that a group soliciting proxies in opposition to the board of directors need not identify every individual member of the group, the above phrase has been deleted.

Similarly, the note to Rule 14a-6 [(Proxy) Material Required to be Filed] and Rule 14c-5 [Filing of Information Statement], stating that the printing of definitive copies for distribution should be deferred until staff comments are received and considered, is eliminated in view of confusion expressed as to whether the note modifies the provisions of Rule 14a-6 and 14c-5, which specify the time periods

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[6]*See* Securities Act Release No. 6149 (November 16, 1979) [44 FR 67143].

[7]*See also* paragraph 9(b)(3) of the Instructions as to Exhibits in Form S-18 which is revised by these amendments to substitute the phrase "of such fixed assets" for "of the assets" to correct the same typographical error. Comparable changes are as follows: Rule 3-09(a) of Regulation S-X is changed to include former Instruction 3(b) to Financial Statements required by Form 10-K which was inadvertently omitted when the instructions to financial statements were centralized in Regulation S-X (*See* Securities Act Release No. 6234 (September 2, 1980) [45 FR 63682]; Paragraphs (b)(7) and (b)(9) of Rule 5-03 of Regulation S-X are changed to include the phrase "in the income statement or in a note thereto" which was inadvertently omitted when Regulation S-X was recently revised (*See* Securities Act Release No. 6233 (September 2, 1980) [45 FR 63660]; Item 3(e)(1) of Regulation S-K is changed to include a reference to "executive officer" in the first sentence which was inadvertently omitted at the time Item 3 of Regulation S-K was adopted (*See* Securities Act Release No. 5949 (July 28, 1978). [43 FR 34402]); Instruction 4 to Item 5 of Regulation S-K is changed to include a reference to "affiliate of the registrant" which was inadvertently omitted at the time Item 5 of Regulation S-K was adopted (*See* Securities Act Release No. 5949 (July 28, 1978) [43 FR 34402]); Column (2) requiring the name of the beneficial owner is added to Item 6(b) of Regulation S-K to correct its inadvertent omission at the time Item 6 of Regulation S-K was adopted (*See* Securities Act Release No. 5949 (July 28, 1978) [43 FR 34402]); Table I of Item 7 of Regulation S-K is revised to delete the "x" from the S-8 column with respect to tax opinion exhibits to correct a typographical error made at the time Item 7 of Regulation S-K was adopted (*See* Securities Act Release No. 6230 (August 27, 1980) [45 FR 58822]); Table I of Item 7 of Regulation S-K is revised to delete the "x" from the S-2 column with respect to letters regarding unaudited financial information to correct a typographical error made at the time Item 7 of Regulation S-K was adopted (*See* Securities Act Release No. 6230 (August 27, 1980) [45 FR 58822]); the reference to "Section 410" of the Internal Revenue Code in paragraph (b)(5)(b) of Item 7 of Regulation S-K is changed to "Section 401" to correct a typographical error made at the time Item 7 of Regulation S-K was adopted (*See* Securities Act Release No. 6230 (August 27, 1980) [45 FR 58822]; paragraph (b)(22) of Item 7 of Regulation S-K is amended to include former Instruction 5 to Item 4 of Form 10-K which was inadvertently omitted at the time of recent amendments to Form 10-K (*See* Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630]; the first paragraph of Item 15 of Schedule 14A is revised to add the last sentence of former Item 15(c) of Schedule 14A which was inadvertently omitted when the instructions to financial statements were centralized in Regulation S-X (*See* Securities Act Release No. 6234 (September 2, 1980) [45 FR 63682]; the second paragraph of General Instruction D of Form 10-K is revised to add two sentences which were inadvertently omitted at the time of recent amendments to Form 10-K (*See* Securities Act Release No. 6231 (September 2, 1980) [45 FR 63630].

during which proxy material and information statements must be on file with the Commission. In order to make clear that the provisions of Rule 14a-6 and Rule 14c-5 should not be modified, the note is eliminated.

Instruction 4 to Form 8-K, requiring that a request for relief from financial statement requirements be separately submitted, is also clarified by stating that such requests should be addressed to the Chief Accountant of the Division of Corporation Finance.

(II) *Delegated Authority*
The amendments to the Commision's rule of general organization delegating authority to the Director of the Division of Corporation Finance reconcile the provisions of that rule to the provisions of recently revised Rule 12b-25.

Recent amendments to Rule 12b-25[8] eliminated applications for extensions of time to file information, documents or reports under the Exchange Act, except with respect to certain audited financial statements required by Items 2 and 7 of Form 8-K. At present, however, Rule 30-1 delegates authority to the Director of the Division of Corporation Finance to grant or deny applications filed pursuant to Rule 12b-25 for extensions of time to file information, documents or reports under the Exchange Act. Accordingly, in order to make the provisions of Rule 30-1 consistent with amended Rule 12b-25, paragraph (d)(2)(i) of Rule 30-1 is amended to grant the Director authority to extend the time for filing financial statements required by Exchange Act forms and paragraph (d)(5) is amended to delete reference to the Director's authority to grant or deny applications filed pursuant to Rule 12b-25.

REQUEST FOR COMMENT

In connection with the Commission's continuing review of the rules, regulations, schedules and forms under the Securities Act and the Exchange Act,[9] interested persons are specifically invited to submit comments identifying any additional inconsistencies, out-of-date references or confusing terminology which have not been corrected by the instant release.

TEXT OF AMENDMENTS

17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. In §200.30-1 paragraphs (d) (2)(i) and (d) (5) are amended to read as follows:

§200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) * * *

(2) * * *

(i) To extend the time for filing or to permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character;

* * * * *

(5) To grant or deny applications filed pursuant to section 12(g) (1) of the Act (15 U.S.C. 78*l*(g) (1)) for extensions of time within which to file registration statements pursuant to that section; provided the applicant is advised of his right to have any such denial reviewed by the Commission.

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

2. In §210.3-09 paragraph (a) is amended to read as follows:

§210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.
(a) Subject to §210.3A-03 regarding group financial statements and paragraphs (b) and (c) of this section, there shall be filed for each majority-owned

[8]See Exchange Act Release No. 16718 (April 2, 1980) [45 FR 23651].

[9]See Securities Act Release No. 6163 (December 5, 1979) [44 FR 72604].

subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant and were required to file financial statements. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant. For purposes of a filing on form 10-K, if the fiscal year of any subsidiary not consolidated or 50 percent or less owned person ends within 90 days before the date of filing, or after the date of filing, the financial statements required by this paragraph may be filed as an amendment to the report within 90 days after the end of such subsidiary's or other person's fiscal year.

* * * * *

3. In §210.5-03 paragraphs (b) 7 and (b) 9 are amended to read as follows:

§210.5-03 Income statements.

(b) * * *

7. *Non-operating income.*

State separately in the income statement or in a note thereto amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under §210.4-08(k). Material amounts included under miscellaneous other income shall be separately stated in the income statement or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

* * * * *

9. *Non-operating expenses.*

State separately in the income statement or in a note thereto amounts of (a) losses on securities (net of profits) and (b) miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated in the income statement or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S—K

4. In §229.20 Items 3, 5, 6, 7 and 9 are amended as follows:

§229.20 Information required in document.

* * * * *

Item 3. Directors and executive officers.

* * * * *

(b) * * *

* * * * *

Instructions. * * *

4. The information regarding executive officers called for by item 3 need not be furnished in proxy or information statements prepared in accordance with schedule 14A by those registrants relying on general instruction G of form 10-K, provided that such information is furnished in a separate item captioned Executive officers of the registrant, and included in part I of the registrant's annual report on form 10-K.

* * * * *

(e) *Business experience.* (1) Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

* * * * *

Item 5. Legal proceedings.

* * * * *

Instructions. * * *

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than 5 percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries, also shall be described.

* * * * *

Item 6. Security ownership of certain beneficial owners and management.

* * * * *

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in rule 13d-3(d)(1) under the Exchange Act.

(1)	(2)	(3)	(4)
Title of class	Name of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(c) *Changes in control.*

* * * * *

Instructions. * * *

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to sections 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

* * * * *

Item 7. Exhibits.

* * * * *

TABLE I

SECURITIES ACT OF 1933-FREQUENTLY USED FORMS

	S-1	S-2	S-7	S-8	S-11	S-14	S-15	S-16
* * * * *								
(8) Opinion re tax matters	X	X	X		X	X	X	X
* * * * *								
(16) Letter re unaudited financial information	X		X	X	X	X	X	X
* * * * *								

(b) * * *

(5) *Opinion re legality—*

(a) * * *

(b) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA either (i) an opinion of counsel which confirms compliance with the provisions of the written documents constituting the plan with the requirements of that Act pertaining to such provisions; or (ii) a copy of the Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code; or (iii) an opinion of counsel attaching a copy of the determination letter, that any amended provisions of the plan adopted subsequent to such determination comply with the requirements of the Act pertaining to such provisions.

* * * * *

(10) *Material contracts—*

(a) * * *

(b) * * *

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the registrant on a consolidated basis; or

* * * * *

(22) *Subsidiaries—*

(a) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list should be repeated in each annual filing or an express reference made to the most recent filing containing a complete and accurate list.

(b) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in rule 1.02(v) (17 CFR 210.1-02(v) of Regulation S-X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another federal agency.

* * * * *

Item 9. Market price of the registrant's common stock and related security holder matters.

* * * * *

(c) State the frequency and amount of any dividends declared during the past two years with respect to such common stock and briefly describe any restriction on the isuer's present or future ability to pay such dividends.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. *Exchange Offers.*

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus shall also include the information which would be required by Items 6 to 10 inclusive and Item 12 if the securities of such other issuer were registered on this form. Item 11 should be included if any promoter of such other issuer is a promoter, officer or director of the registrant or a security holder named in answer to Item 6(a) of Regulation S-K [17 CFR 229.20]. There shall also be included the information concerning such securities of such other issuer which would be called for by Items 13, 14 or 15 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

* * * * *

G. *Preparation of Part II.*

(a) * * *

(b) If the information required by Items 25, 26, 27, or 29 has been given in a registration statement, application for registration or annual report filed with the Commission pursuant to any act administered by the Commission and no additional information is needed to make the information previously filed accurate, complete and up to date, the required information may be incorporated by a specific reference to the page or pages of the previous filing which contains such information.

* * * * *

Item 14. *Long-Term Debt Being Registered.*

(f) * * *

Instruction. The instructions to Item 13 shall also

apply to this item. Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this form.

* * * * *

Item 21. *Marketing Arrangements.*

Briefly describe any arrangement known to the registrant or to any person named in answer to Item 2 or Item 6(a) of Regulation S-K (17 CFR 229.20) made for any of the following purposes:

* * * * *

INSTRUCTIONS AS TO SUMMARY PROSPECTUSES

* * * * *

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public; as to Item 2(a), the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; as to Item 2(c), a brief statement as to the manner of distribution; as to Item 3, a brief statement of the principal purposes for which the proceeds are to be used; Item 4; Item 5; as to Item 6, only the selected financial data (Item 10 of Regulation S-K, 17 CFR 229.20) and the ratio of earnings to fixed charges (sub items 6a-6c) need be provided; Item 7, if the registrant was organized within 5 years; as to Item 9, a brief statement of the general character of the business done and included to be done; Item 11(a); as to Item 12, a brief statement of the nature and present status of any material pending legal proceedings; as to Item 13, only 13(a)(1) and (2); as to Item 14(a), a brief statement as to interest and maturity provisions; as to Item 15, information corresponding to the foregoing; and as to Item 17 only the information required by Item 4(a) of Regulation S-K [17 CFR 229.20] with respect to outstanding options to purchase securities of any class being registered.

(b) The summary prospectus shall not contain a summary or condensation of the information required by Item 9.

5. Section 239.16b is amended to read as follows:

§239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans.

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies.

Original registration statements on this Form S-8 will become effective automatically on the twentieth day after the date of filing (Rule 456, 17 CFR 230.456), pursuant to the provisions of Section 8(a) of the Act (Rule 459, 17 CFR 230.459). Pre-effective amendments may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, 17 CFR 230.475a). Accordingly, the filing of a pre-effective amendment will not commence a new twenty-day period. Post-effective amendments on this form shall become effective upon the date of filing (Rule 464, 17 CFR 230.464). Delaying amendments are not permitted in connection with either original filings or amendments (Rule 473(d), 17 CFR 239.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 485 (17 CFR 230.485) must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (17 CFR 230.402, 230.472) shall be filed with the Commission; *Provided, however,* That the number of additional copies referred to in Rule 402(a)(2) may be reduced from ten to two and the number of additional copies referred to in Rule 472(a) may be reduced from eight to two, one of which shall be marked to clearly and precisely indicate changes.

* * * * *

6. Section 239.18 is amended to read as follows:

§239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 1. *Distribution Spread.*

(a) * * *

Instructions. * * *

3. If any of the securities being registered are to be offered for the account of security holders, set forth following the above table a reference to the information called for by Instruction 8 to Item 6 of Regulation S-K (17 CFR 229.20).

* * * * *

SUPPLEMENTAL INFORMATION

* * * * *

(a) If within the past twelve months any report pertaining to broad aspects of the registrant's present or proposed operations, or to any substantial properties owned or to be acquired by the registrant, has been prepared for the registrant, any security holder named in answer to Item 6(a) of Regulation S-K [17 CFR 229.20] or any principal underwriter of the securities being registered, a copy of each such report shall be furnished as supplemental information. A brief statement of the use and any distribution of such report shall be furnished also. Any report submitted as supplemental information will be returned upon request.

* * * * *

(d) A brief description of any bankruptcy, receivership, assignment for the benefit of creditors or similar proceedings within the past five years with respect to any director, officer or parent of the registrant or any person named in answer to Item 21(b).

* * * * *

7. Section 239.26 is amended to read as follows:

§239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

GENERAL INSTRUCTIONS

A. *RULE AS TO USE OF FORM S-7.*

* * * * *

(b) The registrant (1) has been subject to the requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this form; (2) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing and if the registrant has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has actually been filed within the time period prescribed by that rule; and (3) if subject only to the requirements of section 15(d) of the Securities Exchange Act of 1934, has sent to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) under the Securities Exchange Act of 1934 and Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) within the twelve calendar months preceding the filing of the registration statement, except that the information required by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) need only be provided to common stockholders and holders of securities convertible into common stock.

* * * * *

G. *Exchange offers.*

(a) If any of the securities being registered are offered in exchange for assets or securities of any other person, the prospectus shall include, in addition to the other information called for by this form, the information concerning the registrant called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20). Describe any substantial interest in the other person, direct or indirect, by security holders or otherwise, held within the past three years by the registrant or by each affiliate of the registrant or by any officer, director or security holder of the registrant named in answer to Item 6(a) of Regulation S-K (17 CFR 229.20) or by each associate of such person.

* * * * *

Item 10. *Management and Others.*

If there has been a change in control of the registrant within the past thirty-six calendar months, describe the change in control and provide any information

called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) which has not been "previously reported" as defined in Rule 12b-2 (17 CFR 240.12b-2) under the Securities Exchange Act of 1934.

* * * * *

UNDERTAKINGS

* * * * *

D. The following undertaking shall be included in the registration statement if the registrant is subject only to the requirements of Section 15(d) of the Securities Exchange Act of 1934:

"The undersigned registrant hereby undertakes, so long as it remains subject to a duty to file under Section 15(d) of the Securities Exchange Act of 1934, to send to all security holders of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) under the Securities Exchange Act of 1934, and Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) except that the information required by Items 3, 4 and 6 of Regulation S-K need only be provided to common stockholders and holders of securities convertible into common stock."

* * * * *

8. Section 239.27 is amended to read as follows:

§239.27 Form S-16, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

Item 8. *Additional Information.*

* * * * *

(b) If there has been a change in control of the issuer within the past thirty-six calendar months which has not been "previously reported" as defined in Rule 12b-2 under the Securities Exchange Act of 1934, describe the change in control and provide any information called for by Items 3, 4 and 6 of Regulation S-K (17 CFR 229.20) which has not been "previously reported."

* * * * *

9. Section 239.28 is amended as follows:

§239.28. Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

(9) *Material contracts* — * * *

(b) * * *

(3) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the registrant on a consolidated basis; or

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. In §240.12b-25 paragraph (f)(1) is amended to read as follows:

§240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K or 10-Q.

* * * * *

(f) * * *

(1) Financial statements to be filed by amendment to a form 10-K as provided for by paragraph (a) of §210.3-09 or schedules to be filed by amendment in accordance with general instruction A to form 10-K; or

* * * * *

11. In §240.14a-4 paragraph (a) is amended to read as follows:

§240.14a-4 Requirements as to proxy.

(a) The form of proxy (1) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the issuer's board of directors or, if provided other

than by a majority of the board of directors, shall indicate in bold-face type on whose behalf the solicitation is made; (2) shall provide a specifically designated blank space for dating the proxy card; and (3) shall identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the issuer or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.

* * * * *

12. §240.14a-6 is amended by eliminating the note which follows paragraph (f).

13. §240.14c-5 is amended by eliminating the note which follows paragraph (d).

14. In §240.14a-101 Items 9, 10, 11, 14 and 15 are amended to read as follows:

§240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 9. *Bonus, profit sharing and other remuneration plans.*

* * * * *

(c) State the name and position with the issuer of each person specified in item 4(a) of Regulation S-K (17 CFR 229.20) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and item 4 of Regulation S-K (17 CFR 229.20), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

* * * * *

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20).

* * * * *

(c) If action is to be taken with respect to any plan in which directors or officers may participate, the information called for by item 4(d)(1) and (2) of Regulation S-K (17 CFR 229.20) shall be furnished for the last five fiscal years of the issuer and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group. If any named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and by such named person and such other directors and officers as a group. The information called for by this instruction 3(c) is in lieu of the information since the beginning of the issuer's last fiscal year called for by item 4(d)(1) and (2) of Regulation S-K (17 CFR 229.20). If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five-year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan," as the quoted terms are defined in sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in Appendix A (§240.14a-103). See instruction 1 to item 4(d) of Regulation S-K (17 CFR 229.20).

* * * * *

Item 10. *Pension and retirement plans.*

* * * * *

(c) State (1) the name and position with the issuer of each person specified in item 4(a) of Regulation S-K (17 CFR 229.20) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefits estimated to be

payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and item 4 of Regulation S-K (17 CFR 229.20), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

* * * * *

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20). Instruction 2 to item 9 shall apply to this item.

* * * * *

Item 11. *Options, warrants or rights.*

* * * * *

(b) State separately the amount of options, warrants or rights received or to be received by the following persons, naming each such person: (i) each director or officer named in answer to item 4(a) of Regulation S-K (17 CFR 229.20); (ii) each nominee for election as a director of the issuer; (iii) each associate of such directors, officers or nominees; and (iv) each other person who received or is to receive 5% or more of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information in addition to that required by this item and Item 4 of Regulation S-K, as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 4(a) of Regulation S-K (17 CFR 229.20) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in instruction 6 to item 4(a) of Regulation S-K (17 CFR 229.20).

* * * * *

Item 14. *Mergers, consolidations, acquisitions and similar matters.*

* * * * *

(b) * * *

(9) Furnish the information required by item 11 of Regulation S-K (17 CFR 229.20).

* * * * *

Item 15. *Financial statements and supplementary data.*

If action is to be taken with respect to any matter specified in items 12, 13 or 14 above, furnish the financial statements required by Regulation S-X and the supplementary financial information requested by item 12 of Regulation S-K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate. In the usual case, financial statements are deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but are not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidated, acquisition or similar transaction.

* * * * *

15. In §240.14a-102 Item 4 is amended as follows:

§240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to §240.14a-11(c) (Rule 14a-11(c)).

* * * * *

Item 4. *Further matters.*

* * * * *

(b) Furnish for yourself and your associates the information required by item 4(f) of Regulation S-K (17 CFR 229.20).

* * * * *

16. Section 240.14a-103 is amended to read as follows:

§240.14a-103 Appendix A to Schedule 14A (§240.14a-101).

The table set forth below is an illustration of the presentation in tabular form of the information required by item 4(d) of Regulation S-K (17 CFR 229.20) and instruction 3(c) to item 9(d), which also applies to items 10(d) and 11(c). If only item 4(d) of Regulation S-K (17 CFR 229.20) applies and items 9, 10 and 11 are inapplicable, information need only be furnished for the period specified in item 4(d) of Regulation S-K (17 CFR 229.20), information as to shares sold may be omitted, and the reference at the foot of the table to options granted to employees may be omitted. See instruction 5 to item 4(d) of Regulation S-K. Other tabular presentations are, of course, acceptable if they include the necessary data. Tabular presentation may not be needed if only a very few options have been granted.

* * * * *

17. In §240.14d-100 Instruction 1 to Item 9 is amended to read as follows:

§240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

Item 9. *Financial Statements of Certain Bidders.*

* * * * *

Instructions. 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) financial statements prepared in compliance with form 10 as amended (§249.210 of this chapter) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with form 20-F (§249.220f of this chapter) for a foreign bidder which is otherwise eligible to use such form.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. §249.308 is amended to read as follows:

§249.308 Form 8-K, for current reports.

* * * * *

4. Filing of other financial information in certain cases.

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, extend the time for filing the financial statements herein required or permit the omission of one or more of such financial statements or the filing in substitution therefor of appropriate statements of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practical difficulties. A written request for such relief should be submitted, separately from the subject report or the cover letter to the report, to the Chief Accountant of the Division of Corporation Finance. The request, other than a request for an extension of time to file (except where necessary for a determination of the request), shall set forth the following information:

* * * * *

19. In §249.310 General Instruction D is amended to read as follows:

§249.310 Form 10-K, annual report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

D. Signature and Filing of Report. * * *

The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report.

* * * * *

STATUTORY AUTHORITY

The technical amendments set forth herein are adopted pursuant to authority in Sections 7, 10 and 19(a) of the Securities Act [15 U.S.C. 77g, 77j, 77s(a)]; Sections 13, 14, 15(d) and 23(a) of the Exchange Act [15 U.S.C. 78m, 78n, 78o(d), 78w(a)]; Sections 5(b), 14 and 20(a) of The Public Utility Holding Company Act of 1935 [15 U.S.C. 79e(b), 79n, 79t(a)]; and Sections 8, 30, 31(c) and 38(a) of The Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)]. The amendments to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance are adopted pursuant to Section 1(a) of the Delegation of Functions Act [15 U.S.C. 78d-1(a)].

[Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 13, 14, 15(d), 23(a), 48 Stat. 894, 895, 901; secs. 3, 8, 49, Stat. 1377, 1379; sec. 203(a), 49 Stat. 704; secs. 4, 5, 6, 78 Stat. 569, 570-574; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; secs. 5(b), 14, 20(a), 49 Stat. 812, 827, 833; secs. 8, 30, 31(c), 38(a), 54 Stat. 803, 836, 838, 841; 74 Stat. 201; 84 Stat. 1415; sec. 1(a), 76 Stat. 394; 89 Stat. 163; 15 U.S.C. 77g, 77j, 77s(a), 78m, 78n, 78o(d), 78w(a), 79e(b), 79n, 79t(a), 80a-8, 80a-29, 80a-30(c), 80a-37(a), 78d-1(a)].

PROCEDURAL MATTERS

With respect to the technical amendments to the rules, forms and schedules under the Exchange Act, as required by Section 23(a) of the Exchange Act (15 U.S.C. 78w(a)), the Commission has considered the impact that such technical amendments would have on competition and has concluded that such amendments would not impose any burden on competition.

With respect to the technical amendments to Regulation S-X, Regulation S-K, and the rules, forms and schedules under the Securities Act and the Exchange Act, the Commission believes that it is appropriate to adopt these technical amendments effective immediately in order to clarify rule changes adopted by the Commission on August 27, 1980[10] and September 2, 1980[11] and to eliminate as soon as possible potential confusion resulting from inconsistencies, inadvertent omissions and typographical errors described above. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedure Act ("APA") (5 U.S.C. 553(b)) for good cause finds that notice and opportunity for public comment are not required and that to provide for such notice and comment at this time is impracticable, unnecessary and contrary to the public interest. In addition, the Commission, pursuant to Section 553(d) of the APA (5 U.S.C. 553(d)) finds good cause to adopt the foregoing technical amendments effective immediately in order to clarify existing provisions of Regulations S-X and S-K and the rules, forms and schedules under the Securities Act and the Exchange Act.

With respect to the amendments to the Commission's general organization rule delegating authority to the Director of the Division of Corporation Finance, the Commission finds that such amendments relate solely to agency management and personnel and, accordingly, are excepted pursuant to Section 553(a)(2) of the APA (5 U.S.C. §553(a)(1)) from the provisions of the APA which require prior notice and comment (5 U.S.C. 553(b)) and postponement of the effective date for at least 30 days after publication in the Federal Register (5 U.S.C. 553(d)).

By the Commission.

George A. Fitzsimmons
Secretary

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[10]See Securities Act Release No. 6230 (August 27, 1980) [45 FR 58822].

[11]See Securities Act Release No. 6231 (September 2, 1980) [45 FR 6360] and Securities Act Release No. 6234 (September 2, 1980) [45 FR 63682].

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17277/November 7, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE MUNICIPAL SECURITIES RULEMAKING BOARD

File No. SR-MSRB-80-11

The Municipal Securities Rulemaking Board (the "MSRB") submitted on October 29, 1980, a proposed rule change under Rule 19b-4 to amend MSRB rule G-15 relating to customer confirmations. The proposed rule changes would extend from December 1, 1980, to October 1, 1981, the effective date of that part of the amendments to rule G-15 (File No. SR-MSRB-79-6, approved by the Commission in Securities Exchange Act Release No. 16707 (March 28, 1980)) which required that confirmations of transactions in callable securities effected at a dollar price in excess of par include certain yield information. All other requirements of the previous amendments to rule G-15 will continue to become effective on December 1, 1980,[1] including the requirements that confirmations of transactions in callable securities contain a legend indicating that the yield shown may be affected by the exercise of call provisions and that information concerning such call provisions will be provided upon request, and, with the exception of transactions in callable securities effected at a dollar price in excess of par, that confirmations of transactions effected on a dollar basis include yield information.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 10, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-MSRB-80-11.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Notice of the approval of the extension from September 24, 1980, to December 1, 1980 of the effective date of the previous amendments to rule G-15 (File No. SR-MSRB-80-7) was published in Securities Exchange Act Release No. 17150 (September 12, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17278/November 7, 1980

A notice has been issued giving interested persons until December 2, 1980 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in four stocks which are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17279/November 7, 1980

In the Matter of Application of the

MIDWEST STOCK EXCHANGE, INCORPORATED

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

UNR Industries, Inc.
Common Stock, $2.50 Par Value (File No. 7-5761)[1]

The Commission finds that approval of the MSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 69325 (October 20, 1980). The Commission has received no comments with respect to this application.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Midwest Stock Exchange in the above named security is hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17280/November 7, 1980

In the Matter of

CHICAGO BOARD OPTIONS EXCHANGE, INC.
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-21)

ORDER APPROVING PROPOSED RULE CHANGE

On August 13, 1980, the Chicago Board Options Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends its Rule 4.4 to increase the limits of any compensation or gratuity given by any member in any one year without the prior consent of the employer and the Exchange to $50.00 for an employee of the Exchange, and $100.000 for an employee of any other member, or non-member broker, dealer, bank or institution.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17088, August 25, 1980) and by publication in the *Federal Register* (45 FR 57802, August 29, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in

particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17281/November 10, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-20

The National Association of Securities Dealers, Inc. (the "Association") submitted on October 28, 1980, a proposed rule change under Rule 19b-4 to revise Parts II and XII of Schedule D of the Association's By-Laws to increase the initial and maintenance requirements for inclusion in the NASDAQ System. The Association has indicated that it is proposing an increase in the NASDAQ listing standards in an effort to account for the effects of inflation since the existing requirements were instituted in 1971.

Specifically, the proposed amendments to Part II of Schedule D would raise the requirements for initial inclusion in the NASDAQ System from $1 million in total assets and $500 thousand in total capital and surplus to $2 million in total assets and $1 million in total capital and surplus. In addition, the proposed rule filing would raise the maintenance requirements of the NASDAQ System from $500 thousand in total assets and $250 thousand in total capital and surplus to $750 thousand in total assets and $375 thousand in total capital and surplus. The proposed revision of the NASDAQ listing standards would apply to Authorized Domestic Securities, as well as Authorized Foreign Securities and American Depository Receipts. However, the proposed rule change would delay the increase in maintenance requirements for twelve months following the effective date of the rule change to allow companies additional time to comply with the increased standards. In addition, the proposed rule change would amend Part XII of Schedule D to continue the ability of companies not on NASDAQ to be included on local lists without regard to price if such companies report no less than the minimum assets and capital and surplus required for inclusion in the NASDAQ System.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 10, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-20.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17282/November 10, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:[1]

Basic Resources Corporation
Common Stock, $.05 Par Value (File No. 7-5762)
John H. Harland Company
Common Stock, $1 Par Value (File No. 7-5763)
Thermo Electron Corporation
Common Stock, $1 Par Value (File No. 7-5764)

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 70363 (October 23, 1980). The Commission has received no comments with respect to these applications.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17283/November 10, 1980

In the Matter of Applications of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:[1]

General American Oil Co. of Texas
Common Stock, $1 Par Value (File No. 7-5765)
Knogo Corporation

[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 70364 (October 23, 1980). The Commission has received no comments with respect to these applications.

Common Stock, $.01 Par Value (File No. 7-5766)
Helmerich & Payne, Inc.
Common Stock, $.10 Par Value (File No. 7-5767)

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensure that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17284/November 10, 1980

An order has been issued granting the application of GOLDEN NUGGET, INC. to withdraw its common stock ($.833 par value) from listing and registration on the *American Stock Exchange*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17285/November 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NEW YORK STOCK EXCHANGE, INCORPORATED

File No. SR-NYSE-80-35

The New York Stock Exchange, Inc. submitted on September 29, 1980, a proposed rule change under Rule 19b-4 to clarify the intent of Rule 326 which is to require a member that carries customer accounts to cease expansion of or reduce its business if certain conditions relating to their financial responsibility have existed for more than 15 consecutive business days; to provide that the Rule would become effective for a member having been so restricted without having to wait for the 15 days to elapse; and, to provide that the member will not be sanctioned for temporary non-compliance.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 10, 1980. In order to assist the Commission in determining whether to approve the proposed rule change or to institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-35.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L

Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17286/November 12, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 90014

(SR-PSE-80-17)

ORDER APPROVING PROPOSED RULE CHANGE

On September 29, 1980, the Pacific Stock Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which sets forth acceptable methods of allocating options exercise notices among options trading accounts at member organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17179, September 30, 1980) and by publication in the *Federal Register* (45 FR 66932, October 8, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(1) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17287/November 12, 1980

In the Matter of

PHILADELPHIA STOCK EXCHANGE, INC.
17th Street & Stock Exchange Place
Philadelphia, Pennsylvania 19103

(SR-Phlx-80-22)

ORDER APPROVING PROPOSED RULE CHANGE

On September 16, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which permits members to execute transactions in Phlx options as principals in the over-the-counter market for a premium not in excess of $1 per contract.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17188, October 2, 1980) and by publication in the *Federal Register* (45 FR 67180, October 9, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(1) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17288/November 12, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PACIFIC STOCK EXCHANGE, INC.

(File No. SR-PSE-80-19)

Pacific Stock Exchange, Inc., ("PSE"), submitted on October 3, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act, prohibiting market-makers and specialists from making a practice of "free-riding."

Publication of the submission is expected to be made in the *Federal Register* during the week of November 17, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-19.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17289/November 13, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(SR-NASD-79-5)

ORDER APPROVING PROPOSED RULE CHANGE

On May 14, 1979, the National Association of Securities Dealers, Inc. ("NASD") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change that adds a new Section 37 to Article III of the NASD's Rules of Fair Practice concerning standards and filing requirements for member advertising and sales literature. The proposal eliminates the requirement that advertisements be submitted for review within five days of use and adopts a routine "spot check" procedure for advertisements and sales literature. However, members who have not filed advertisements with the NASD for a period of at least one year are required to file with the NASD at least ten days prior to use for a period of one year. In addition, sales literature and advertisements relating to investment companies are required to be filed with the NASD within ten days of use. The proposed rule change also codifies in Section 37 the NASD's Advertising Interpretation under Article III Section I of the Rules of Fair Practice.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 15891, June 1, 1979) and by publication in the *Federal Register* (44 FR 33206, June 8, 1979). The first amendment to the proposal was submitted on August 21, 1980. Notice of the amendment was given by publication of a Commission Release (Securities Exchange Act Release No. 17098, August 28, 1980) and by publication in the *Federal Register* (45 FR 58994, September 5, 1980). The NASD submitted a second amendment to the proposal on October 7, 1980 which provided notice of final action on the prior amendment by the NASD Board of Governors. All written statements with respect to the proposed rule

change that were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular, the requirements of Section 15A, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17290/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6259/November 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17291/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6260/November 13, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17292/November 13, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the temporary suspension of over-the-counter trading of the securities of Indy Raceways, Inc. ("Indy"), a Delaware corporation located at P.O. Box 198, Pompano Beach, Florida 33061 for the ten day period commencing at 2:00 p.m. on November 13, 1980 and terminating at midnight (EST) on November 22, 1980.

The Commission suspended trading in the securities of Indy at the request of the corporation and because of recent unusual and unexplained market activity during October 1980 when the price of Indy's stock increased from $.10 per share to at least $1.25 per share.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

If any broker-dealer or other person has any information which may relate to this matter, the Division of Enforcement of the Securities and Exchange Commission should be telephoned at (212)-264-1690.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17293/November 13, 1980

In the Matter of

EAST BOSTON COMMUNITY DEVELOPMENT CORPORATION

File No. 81-634

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE ACT

The Securities and Exchange Commission has issued an order granting the application of East Boston Community Development Corporation (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an exemption from the provisions of Sections 13 and 14 of the 1934 Act.

Applicant is a federally-funded community development corporation, controlled by members of the community. Each of Applicant's stockholders owns one nominally priced share of voting stock. There is no trading interest in these securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17294/November 13, 1980

In the Matter of

P.E.C. ELECTRONICS CORPORATION

File No. 81-632

APPLICATION PURSUANT TO SECTION 12(h)

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the Application of P.E.C. Electronics Corporation (the "Applicant"), for an order exempting the Applicant from filing reports on Forms 10-Q and 10-K pursuant to the provisions of Section 13 of the 1934 Act. It appears to the Commission that the requested exemption is consistent with the public interest and the protection of investors since the Applicant has no operations and is presently distributing its assets in accordance with a plan of liquidation approved by its shareholders. The Applicant will continue to report significant events on Form 8-K.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17295/November 13, 1980

In the Matter of

R.E.I. LIQUIDATING CORPORATION

File No. 81-631

APPLICATION PURSUANT TO SECTION 12(h)

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the Application of R.E.I. Liquidating Corporation ("Applicant"), formerly Rodale Electronics, Inc., for an order exempting the Applicant from filing reports on Forms 10-Q and 10-K pursuant to the provisions of Section 13 of the 1934 Act. It appears to the Commission that the requested exemption is consistent with the public interest and the protection of investors since the Applicant has no operations and is presently distributing its assets in accordance with a plan of liquidation approved by its shareholders. The Applicant will continue to report significant events on Form 8-K.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17296/November 13, 1980

In the Matter of

LIFE ASSURANCE COMPANY OF PENNSYLVANIA

File No. 81-629

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THAT ACT

The Securities and Exchange Commission has issued an order granting the application of Life Assurance Company of Pennsylvania (the

"Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Section 15(d) of that Act.

It appeared to the Commission that the requested exemption would not be inconsistent with the public interest or the protection of investors, inasmuch as Applicant has no publicly-held securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17297/November 13, 1980

In the Matter of

LOYAL AMERICAN LIFE INSURANCE COMPANY

File No. 81-638

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the application of Loyal American Life Insurance Company ("Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934, for an exemption from the reporting requirements of Section 15(d) of that Act.

It appears to the Commission that the requested exemption is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17298/November 13, 1980

QUAKER PROFIT-SHARING AND INVESTMENT PLAN

ORDER GRANTING APPLICATION PURSUANT TO SECTION 12(h) OF THE 1934 ACT

The Securities and Exchange Commission has issued an order granting the application of the Quaker Profit-Sharing and Investment Plan pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an exemption from the reporting requirements of Section 15(d) of that Act.

The matter having been considered, it is found that the requested exemption is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1934 Act.

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21780/November 7, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

(70-5503)

NOTICE OF PROPOSED ISSUANCE OF REFUNDING BONDS BY COUNTY AUTHORITY IN CONNECTIN WITH POLLUTION CONTROL FINANCING

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration in this proceeding pursuant to Sections 9(a), 10, and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order in this proceeding dated December 10, 1974 (HCAR No. 18703), Appalachian was authorized to enter into an agreement of sale ("Agreement") with the Industrial Development Authority of Russell County, Virginia (the

"Authority") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Glen Lyn and Clinch River plants. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $45,000,000, or, in the case of proceeds from the sale of refunding bonds, to the payment of principal, premium (if any), and interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Appalachian under an installment sale arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of December 10, 1974, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of the Revenue Bonds to be issued and sold by the Authority.

By order dated December 27, 1974, and December 17, 1975 (HCAR Nos. 18736 and 19303), such jurisdiction was released concerning the sales of Revenue Bonds in the principal amounts of $24,000,000 and $17,000,000, respectively, as such sales affected the purchase price to Appalachian. By order dated November 14, 1979 (HCAR No. 21295), jurisdiction was also released concerning the sale of a series of refunding bonds in the aggregate principal amount of $11,000,000, the net proceeds of which were to be used for the refunding at their maturity on December 1, 1979, of $10,500,000 principal amount of Revenue Bonds previously issued by the authority.

By post-effective amendment, it is now stated that the Authority intends to issue and sell in 1980 a series of refunding bonds ("Series D Bonds") in the aggregate principal amount of $6,240,000, the proceeds of which will be used to provide for the principal and interest payments required for the refunding, at their stated maturity on December 1, 1980, of $6,000,000 aggregate principal amount of Revenue Bonds of the Authority which were issued and sold by the Authority on December 30, 1975. It is contemplated that the Series D Bonds will be issued and sold by the Authority to Manufacturers Hanover Trust Company for cash consideration equal to the principal amount of the Series D Bonds. The Series D Bonds are to mature by their terms on April 1, 1981, and are to bear interest at an annual rate equal from time to time to 70% of the then effective prime commercial loan rate of Manufacturers Hanover Trust Company.

It is further stated that subsequent to the issue and sale of the Series D Bonds, the Authority will issue and sell a series of refunding bonds ("Series E Bonds") in the aggregate principal amount of up to $6,500,000, the proceeds of which will be used to provide for the refunding, at or prior to their stated maturity on April 1, 1981, of the Series D Bonds. The Series E Bonds will be issued pursuant to the Indenture and a Fourth Supplemental Indenture of Trust between the Authority and the Trustee. The Series E Bonds will bear interest semi-annually, will mature at a date or dates not less than five years nor more than 30 years from the date of their issuance, and will not be redeemable at the option of the Authority within 10 years from the date of their issuance except under certain circumstances. The Series E Bonds will be sold by the Authority pursuant to arrangements with an underwriter.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by further amendment. It is represented that the State Corporation Commission of Virginia has jurisdiction over the proposed transaction and that no other state commission and no federal commission, other than this Commission, has jurisdiction thereover.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant

at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21781/November 10, 1980

In the Matter of

GEORGIA POWER COMPANY
270 Peachtree Street, N.W.
Atlanta, Georgia 30303

(70-6507)

NOTICE OF PROPOSED SALE OF UNDIVIDED OWNERSHIP INTERESTS IN COMBUSTION TURBINE ELECTRIC GENERATING UNIT

NOTICE IS HEREBY GIVEN that Georgia Power Company ("Georgia"), a public-utility subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Georgia is currently the sole owner of a 50 MWe nominally rated combustion turbine electric generating unit ("Combustion Turbine") located at Plant Hal Wansley ("Plant Wansley") in Heard and Carroll Counties, Georgia, and the owner of a 53.5% undivided ownership interest in Plant Wansley as a tenant in common with Oglethorpe Power Corporation ("OPC"), an electric membership generation & transmission corporation, the Municipal Electric Authority of Georgia ("MEAG"), a public body corporate and politic and an instrumentality of the State of Georgia, and the City of Dalton, Georgia ("Dalton"), an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners, which own, respectively, 30%, 15.1%, and 1.4% undivided ownership interests in Plant Wansley.

Georgia proposes to sell to OPC, MEAG, and Dalton 30%, 15.1%, and 1.4% undivided ownership interests, respectively, in the Combustion Turbine pursuant to proposed Plant Hal Wansley Combustion Turbine Agreements ("Combustion Turbine Agreements") between Georgia and OPC, Georgia and MEAG, and Georgia and Dalton. Georgia will obtain a release of such undivided ownership interests in the Combustion Turbine to be sold to OPC, MEAG, and Dalton from the lien of Georgia's First Mortgage Bond Indenture.

The closing of such sales to OPC, MEAG, and Dalton is scheduled to take place on or about December 15, 1980. The closing is subject to, among other things, the receipt by the parties of all requisite approvals of all applicable regulatory agencies. At the closing, OPC, MEAG, and Dalton will pay to Georgia, in consideration for the sale of such property, an amount equal to 30%, 15.1%, and 1.4%, respectively, of the costs incurred by Georgia to construct the Combustion Turbine and to provide the initial fuel oil stock. In addition, OPC, MEAG, and Dalton will pay to Georgia an amount in respect of Georgia's cost of long-term borrowings incurred to finance such construction. Assuming the closing of such sales were to take place on December 15, 1980, Georgia estimates that it would receive approximately $4,536,178 from OPC, $2,283,210 from MEAG, and $211,688 from Dalton. Georgia expects to apply the proceeds of such sales toward the cost of its construction program.

Construction of the Combustion Turbine has been completed. After the closing of such sales, the Combustion Turbine will be considered by Georgia,

OPC, MEAG, and Dalton as part of Plant Wansley, and the rights and obligations of Georgia, OPC, MEAG, and Dalton with respect to the Combustion Turbine will be governed as to most matters by certain agreements. The proposed Combustion Turbine Agreements will provide that Georgia is to purchase from OPC, MEAG, and Dalton their entire respective entitlements to capacity and energy from the Combustion Turbine. Georgia will pay OPC, MEAG, and Dalton monthly in respect of such entitlements to capacity, an amount equivalent to the effective amount which a partial requirements customer of Georgia would pay to Georgia for an equivalent amount of reserve capacity pursuant to Georgia's FERC Electric Tariff, Original Volume No. 2, and Georgia will pay OPC's, MEAG's and Dalton's respective shares of operating costs and will replace their respective shares of fuel and material stock consumed in connection with the Combustion Turbine, except that if the Combustion Turbine is used in connection with the Plant Wansley coal-fired generating units, OPC, MEAG, and Dalton will pay 30%, 15.1% and 1.4%, respectively, of the operating and fuel costs associated therewith. Such purchases from OPC, MEAG, and Dalton must be made regardless of the availability of capacity and energy from the Combustion Turbine. Georgia's obligation to purchase another co-owner's entitlement to energy and capacity may be terminated by either Georgia or such other co-owner at any time after five years following such other co-owner's purchase of an interest in the Combustion Turbine.

The fees and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transactions are to be filed by amendment. It is stated that no state and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21782/November 12, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

(70-6206)

NOTICE OF PROPOSED INCREASE IN NUMBER OF SHARES OF HOLDING COMPANY'S COMMON STOCK TO BE ISSUED AND SOLD PURSUANT TO EMPLOYEES' THRIFT PLAN

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 24, 1978 (HCAR No. 20742), CSW was authorized to issue and sell up to

1,000,000 shares of its authorized but unissued common stock par value $3.50 per share, pursuant to a CSW Employees' Thrift Plan ("Plan"). The Plan provides a means by which eligible employees of CSW and its direct and indirect subsidiaries, Central Power and Light Company, Central and South West Fuels, Inc., Central and South West Services, Inc., Public Service Company of Oklahoma, Transok Pipeline Company, Southwestern Electric Power Company and West Texas Utilities Company (together, "CSW Subsidiaries"), may maintain a regular savings program and to provide additional benefits for such employees upon retirement. Under the Plan, the participating employers, *i.e.*, the CSW Subsidiaries, make contributions of cash monthly, out of net income in an amount equal to 50% of the basic deposit made by each employee with less than 20 years of service and 75% of the basic deposit for those employees with 20 years of service or more.

The Plan permits each participating employee to make monthly payments to his Plan account in an amount equal to 2%, 4% or 6% of his annual salary, and to make additional deposits in amount not to exceed 4% of his annual salary for each year of service since he became a participant in the Plan. The deposits by participating employees and the corresponding contributions by employers are paid monthly to the Trustee under the Plan, the First National Bank in Dallas, for investment.

The Trustee, pursuant to written direction from each participating employee, invests funds held in each such employee's Plan account under either of two investment options. Under the first option, the Trustee invests a participant's funds in the common stock of CSW (up to 5% of the total number of CSW shares at that time outstanding), the Trustee purchasing such shares from CSW at the average of the closing prices for CSW common stock as reported on the New York Stock Exchange composite for the 20 consecutive trading days ending with the last trading day of the month with respect to which the employer contributions and employee basic deposits being invested were made. Under the second option, the Trustee invests a participant's funds in an unsegregated fund managed under contract with the Equitable Life Assurance Society of the United States, which fund is principally invested in mortgages and debt securities and the return on which is guaranteed by Equitable.

By post-effective amendment CSW requests an increase from 1,000,000 to 4,000,000 in the number of authorized but unissued shares of its common stock that may be issued and sold pursuant to the Plan. It is stated that through September 30, 1980, CSW had issued and sold 751,791 such shares pursuant to the Plan, and that it is presently anticipated that an additional 3,033,000 shares (assuming a price per CSW share of $13.50) would have to be issued between October 1, 1980, and December 31, 1985, to meet the projected demand for such shares under the Plan. It is stated that CSW will apply the proceeds from the sale of such shares through loan or equity contributions to its subsidiaries (which contributions will be the subject of future filings with this Commission) for use in their ongoing construction programs.

CSW requests an exception from the competitive bidding requirements of Rule 50 under the Act for the proposed issuance and sale of the additional shares under the Plan pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $600. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered

will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21783/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6259/November 13, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21784/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6260/November 13, 1980

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21785/November 13, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

(70-6363)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the proposed transactions. All interested persons are referred to the amended application, which is summarized below, for a complete description of the proposed transactions.

By orders in this proceeding dated December 21, 1979, February 21, 1980, and May 30, 1980 (HCAR Nos. 21353, 21445, and 21599), Appalachian was authorized to issue and sell, from time to time prior to January 1, 1981, short-term notes to a group of banks and commercial paper to a dealer in an amount of up to $200,000,000 outstanding at any one time, such notes and commercial paper maturing no later than June 30, 1981.

It is now proposed that such notes to banks and commercial paper be issued and sold from time to time prior to January 1, 1982, with a maturity no later than June 30, 1982. Appalachian has credit arrangements totaling $463,770,000 with 94 banks. This represents an increase of $25,000,000 in lines of credit shared with affiliates, including Columbus and Southern Ohio Electric Company. Fees and balances for shared lines of credit are borne by Appalachian and participating affiliates in proportion to their respective projected maximum need for such credit faclities. Although the shared lines of credit have been increased, the participation by Columbus and Southern Ohio Electric Company will have the effect of reducing the fees and balances to be borne by Appalachian.

The proceeds of the notes to banks and commercial paper will be used to pay the general obligations of Appalachian, including expenses incurred in its various construction projects. The estimated cost of its construction program for 1981 is approximately $215,000,000.

The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $500. It is stated that the State Corporation Commission of Virginia has jurisdiction over the proposed transactions and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested

person may, not later than December 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as now amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21786/November 13, 1980

In the Matter of

SYSTEM FUELS, INC.
Noro Plaza
666 Poydras
New Orleans, Louisiana 70130

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

MISSISSIPPI POWER & LIGHT COMPANY
Electric Building
Jackson, Mississippi 39205

NEW ORLEANS PUBLIC SERVICE, INC.
317 Baronne Street
New Orleans, Louisiana 70112

(70-6519)

NOTICE OF PROPOSAL TO MAKE SHORT-TERM BANK BORROWINGS PURSUANT TO A LOAN AGREEMENT; GUARANTEE OF SUCH BORROWINGS BY PARENT COMPANIES

NOTICE IS HEREBY GIVEN that System Fuels, Inc. ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. (collectively, the "operating companies"), each a public utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated August 1, 1979 (HCAR No. 21171) SFI was authorized to make unsecured borrowings through December 8, 1980 of up to $75,000,000 at any one time outstanding under a line of credit with Hibernia National Bank in New Orleans ("Hibernia"). As of August 31, 1980, SFI's borrowings under this line of credit aggregated $3,900,000 in principal amount, and it is anticipated that at maturity, on December 8, 1980, such borrowings will aggregate approximately $45,000,000 in principal amount. In order to provide SFI funds with which to (a) repay its borrowings from Hibernia at maturity, (b) finance a portion of SFI's fuel oil inventory, (c) finance SFI-s acquisition of natural gas and (d) finance other expenditures in connection with its fuel supply program, and to meet SFI's commitment to endeavor to obtain funds for its corporate expenditures from external sources under advantageous arrangements in lieu of making borrowings from its parent companies. SFI proposes to enter into a Loan Agreement ("loan agreement") with Citibank, N.A. ("bank").

Pursuant to and subject to the limitations set forth in the loan agreement, SFI will be entitled to borrow and reborrow from the bank, and the bank will commit itself to lend to SFI, during the period commencing on the effective date of the loan agreement ("effective date") and terminating on December 31, 1982 ("termination date"), up to an aggregate principal amount at any one time outstanding not to exceed $60,000,000 ("commitment"); provided that at no time shall the bank be obligated to make loans to SFI under the loan agreement in an aggregate principal amount at any one time outstanding in excess of the borrowings base. As used in the loan agreement, the borrowing base is defined to mean an amount equal to 85 percent of the net book value of the assets from time to time owned by SFI exclusive of leasehold improvements and construction work in progress ("collateral").

The proposed borrowings will be in addition to other borrowing arrangements currently maintained by SFI for the purpose of securing funds from external sources to finance its fuel supply business and which have previously been authorized by this Commission.

Borrowings by SFI from the bank pursuant to the loan agreement will be evidenced by a single master note of SFI ("note"), representing the obligation of SFI to pay the amount of the commitment or, if less, the aggregate unpaid principal amount of all loans made by the bank thereunder, plus accrued interest. The date and amount of each loan made by the bank, and the date and amount of each payment by SFI of principal of the loans under the loan agreement, will be recorded by the bank on a schedule annexed to the note. The note will be payable to the order of the bank, be dated the effective date, be stated to mature on the termination date, and bear interest on the unpaid principal amount thereof at a rate per annum equal to the rate of interest announced publicly by the bank in New York, New York from time to time as the bank's base rate. Based on the commitment fee of 1/2 of 1% per annum on the average daily unused portion of the commitment (estimated solely for purposes of the following computation at $24,000,000), and based upon the bank's base rate of 15½% per annum in effect on November 10, 1980, SFI estimates that its cost of money in respect of the proposed borrowings as of that date would be 15.8% per annum.

The loan agreement will provide that SFI may at any time, without premium or penalty, prepay the note, in whole or in part, and that if at any time the unpaid principal amount of the note then outstanding exceeds the borrowing base, SFI will be required, without premium or penalty, to prepay an amount not less than the amount by which such unpaid principal amount of the note then exceeds the borrowing base.

For the bank's commitment under the loan agreement, SFI will pay to the bank a commitment fee for the period from the effective date to the termination date or earlier termination of the commitment, computed at the rate of one-half of one percent per annum on the average daily unused portion of the commitment. The loan agreement will also provide that SFI may, at its option, terminate early, or reduce, from time to time, the commitment.

Pursuant to the terms of the loan agreement, SFI will covenant and agree to keep the collateral free and clear of all liens and encumbrances, except certain permitted encumbrances specified therein, and will further covenant and agree, but only upon receipt of 60 days' prior written notice from the bank, to grant to the bank, to the extent permitted by applicable laws, a first priority, perfected security interest (or other analogous security device) in the collateral, subject to prior permitted encumbrances, to secure the performance by SFI of its obligations to the bank under the loan agreement and the note.

In addition, and as an inducement to the bank to enter into these financing arrangements with SFI, the operating companies propose to join with SFI as parties to the loan agreement and to covenant and agree with the bank, severally in accordance with their present respective shares of ownership of the common stock of SFI, that they will take any and all action as, from time to time, may be necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations to the bank pursuant to the loan agreement and the note. The operating companies will further covenant and agree that they will, unless otherwise consented to in writing by the bank, maintain their respective shares of ownership of the common stock of SFI, for the period during which any portion of the principal amount of the note remains unpaid, in approximately the same proportions as currently held by them.

The terms of the loan agreement will not require that SFI maintain compensating balances with the bank. It is expected, however, that, over the term of the

loan agreement, SFI will maintain working balances with the bank, although fluctuations in these balances will not reflect or depend upon fluctuations in the amount of loans to SFI outstanding.

A statement of the fees, commission and expenses to be incurred in connection with the proposed transaction. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 5, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21787/November 13, 1980

In the Matter of

KENTUCKY POWER COMPANY
1701 Central Avenue
Ashland, Kentucky 41101

(70-6511)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS

NOTICE IS HEREBY GIVEN that Kentucky Power Company ("Kentucky"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete description of the proposed transactions.

Kentucky proposes to issue and sell short-term notes to a group of banks in an aggregate amount not to exceed $50,000,000 outstanding at any one time. As of September 18, 1980, Kentucky had $13,250,000 aggregate principal amount of short-term debt outstanding. It is proposed that the notes to banks be issued from time to time and be renewed from time to time prior to January 1, 1982, as funds may be required, provided that none of such notes shall mature later than June 30, 1982.

Kentucky has established lines of credit with 20 banks under which it may borrow an aggregate amount not to exceed $371,900,000 outstanding at any one time. The fees and balances for these lines of credit are borne by Kentucky and participating affiliates of Kentucky in proportion to their respective projected maximum need for such credit facilities. The addition of Columbus and Southern Ohio Electric Company, an affiliate of Kentucky, to this participation has the effect of reducing the relative amount of such fees and balances to be borne by Kentucky.

Each note will be prepayable by Kentucky at any time without premium or penalty. It is stated that the effective cost of money to Kentucky under any of its arrangements with the various banks, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 17.5% on the basis of a prime commercial rate of 14%.

The proceeds of the short-term notes will be added to the general funds of Kentucky and used to pay the general obligations of Kentucky, including expenses

incurred in its various construction projects and for other corporate purposes. The estimated cost of its construction program for the year 1981 is approximately $47,000,000.

Kentucky requests that the certificates of notification under Rule 24 with respect to issuance by Kentucky of the notes to banks be filed quarterly.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $2,500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdictioin over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and others issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21788/November 13, 1980

In the Matter of

CAPE COD GAS COMPANY
Hyannis, Massachusetts

(70-6503)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS TO INSTITUTIONAL INVESTOR PURSUANT TO A PRIVATE OFFERING

Cape Cod Gas Company ("Cape Cod"), a public utility subsidiary of Colonial Gas Energy System ("Colonial"), a holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(4) promulgated thereunder regarding the private placement of first mortgage bonds.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Cape Cod is seeking authorization to issue and sell up to $1,000,00 of its 14% first mortgage bonds due 1995 which are to be sold to John Hancock Mutual Life Insurance Company. It claims exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(4).

Cape Cod's capital structure as of July 31, 1980, and pro forma is shown in the following table.

Cape Cod
(000's Omitted)

	Unaudited		*Pro Forma*	
	Amount	*%*	*Amount*	*%*
Long-term debt	$13,713	44.73	$13,488	44.32
Notes Payable Banks	6,000	19.57	6,000	19.71
Total Debt	$19,713	64.30	$19,488	64.03
Preferred Stock	1,079	3.52	1,079	3.55
Common Equity	9,866	32.18	9,866	32.42
Total Capitalization	$30,658	100.0	$30,433	100.0

A statement of bond and total fixed charges coverages as of July 31, 1980, is reflected below, based on the reported income for the twelve months ended that day.

	(Unaudited)	(Pro Forma)
Income before taxes	$3,692	$3,692
Bond Interest	1,246	1,319
Bond Interest Coverage	2.96 x	2.80 x
Total Interest	3,050	3,092
Preferred Dividends	2,035	2,108
Total Fixed Charges	70	70
Coverages for Total Fixed Charges and Preferred Stock Dividends	1.45 x	1.42 x

The bonds will be issued under Cape Cod's Indenture of Mortgage and Deed of Trust, as amended and supplemented, and will be of equal rank with the outstanding bonds. The bonds will have an average life of approximately 10 years and will not be redeemable for five years nor refundable for an additional five years in anticipation of borrowings having a lower effective interest cost or a shorter weighted average life than that remaining on the Cape Cod bonds. The Cape Cod bonds will mature November, 1995 and will be subject to sinking fund requirements beginning in the third year and increasing at designated intervals. The sinking fund provides for annual payments of $50,000 at the end of the third, fourth and fifth years; annual payments of $80,000 at the end of the tenth, eleventh and twelfth years; annual payments of $90,000 at the end of the thirteenth and fourteenth years; and a final payment of $150,000 at maturity (November 1995).

Under the terms of Cape Cod's Indenture of Mortgage and Deed of Trust, as amended or supplemented, current debt plus long-term debt may not exceed 70% of total capitalization plus current debt. Cape Cod may not (a) pay dividends (other than in shares of its common stock) or make other distributions on its common stock or (b) acquire any shares of any class of its capital stock if, after giving effect thereto, the sum of (1) payments to acquire capital stock made after June 30, 1978, less amounts received by Cape Cod from the sale of capital stock after the same date, plus (2) all dividends and distributions on capital stock declared, paid or accrued after December 31, 1978 would exceed (3) net earnings arising after December 31, 1978 available for capital stock dividends; provided that Cape Cod will not pay common stock dividends or voluntarily purchase or redeem any shares of any class of its capital stock if, after giving effect thereto, Cape Cod would have retained earnings of less than one dollar; provided further that these restrictions shall not prevent Cape Cod from meeting required preferred stock sinking fund payments or from acquiring shares of the proceeds of the substantially concurrent sale of, other shares of its capital stock. Further Cape Cod may not merge or consolidate unless the surviving entity is in compliance with all of the terms and provisions of the indenture.

The proceeds of the bonds will be used by Cape Cod to refund approximately $1,000,000 in principal amount of First Mortgage Bonds, Series E, 5½% due November 15, 1980.

The fees and expenses incurred or to be incurred in connection with the proposed transactions are estimated at $35,000, including legal fees estimated at $25,000 which include legal fees of counsel for the insurance company estimated at $20,000 and printing fees of $10,000. The Massachusetts Department of Public Utilities has authorized the proposed issuance and sale of bonds. No other state or federal commission except this Commission, has jurisdiction over such transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21750), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 596/November 7, 1980

The Securities and Exchange Commission has issued an order under the Trust Indenture Act (the "Act") on application from Jones & Laughlin Steel Corporation (the "Company") that the trusteeship of Mellon Bank N.A. ("Mellon") under three indentures of the Company, one of which qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary to disqualify Mellon from acting as trustee under two of such indentures.

TRUST INDENTURE ACT OF 1939
Release No. 597/November 10, 1980

File No. 22-10702

CHRYSLER FINANCIAL CORPORATION

The Securities and Exchange Commission has issued a notice giving interested persons until December 1, 1980 to request a hearing on an application by Chrysler Financial Corporation for a determination by the Commission that the trusteeship of United States Trust Company of New York under nine indentures is not so likely to involve a material conflict of interest as to make it necessary to disqualify United States Trust Company of New York from acting as trustee under any of these indentures.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11435/November 7, 1980

In the Matter of

INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS SELECTIVE FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
IDS NEW DIMENSIONS FUND, INC.
IDS PROGRESSIVE FUND, INC.
IDS GROWTH FUND, INC.
IDS BOND FUND, INC.
IDS CASH MANAGEMENT FUND, INC.
IDS TAX-EXEMPT BOND FUND, INC.
IDS HIGH YIELD TAX-EXEMPT FUND,INC.
IDS TAX-FREE MONEY FUND, INC.
100 Roanoke Building
Minneapolis, Minnesota 55402

and

INVESTORS DIVERSIFIED SERVICES, INC.
IDS Tower
Minneapolis, Minnesota 55402

(812-4403)

NOTICE OF FILING OF AN APPLICATION FOR AN ORDER AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) AND RULE 22d-1 THEREUNDER PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING OFFERS OF EXCHANGE PURSUANT TO SECTION 11(a) OF THE ACT

NOTICE IS HEREBY GIVEN that Investors Mutual, Inc. ("Mutual"), Investors Stock Fund, Inc. ("Stock"), Investors Variable Payment Fund, Inc. ("Variable"), Investors Selective Fund, Inc. ("Selective"), IDS New Dimensions Fund, Inc. ("New Dimensions"), IDS Progressive Fund, Inc. ("Progressive"), IDS Growth Fund, Inc. ("Growth"), IDS Cash Management Fund, Inc. ("Cash Management"), IDS Tax-Exempt Bond Fund, Inc. ("Tax-Exempt"), IDS Bond Fund, Inc. ("Bond"), IDS High Yield Tax-Exempt Fund, Inc. ("High Yield"), and IDS Tax-Free Money Fund, Inc. ("Tax-Free Money Fund") (collectively referred to as the Funds), open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Investors Diversified Services, Inc. ("IDS"), each Fund's investment adviser and principal underwriter (collectively referred to with the Funds as "Applicants"), filed an application on September 18, 1980, and an amendment thereto on October 20, 1980, requesting an order of the Commission amending in the manner described below earlier orders of the Commission. (See Investment

Company Act Release No. 9807, June 7, 1977; Investment Company Act Release No. 10742, June 20, 1979; Investment Company Act Release No. 10954, November 27, 1979; Investment Company Act Release No. 11128, April 11, 1980.) These earlier orders, pursuant to Section 11(a) of the Act, permitted certain transfers among the Funds on a basis other than their relative net asset value per share at the time of transfer and, pursuant to Section 6(c) of the Act, exempted such transfers from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

IDS, as principal underwriter for the Funds, maintains a continuous public offering of shares of each of the Funds at their respective net asset value plus a sales charge. IDS is registered as a broker/dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940. On purchases of less than $15,000, the sales charge is 3½% for Bond, 7% for Selective, 8% for Mutual, Stock, Variable, New Dimensions, Progressive and Growth. Tax-Exempt and High Yield have a 4% sales charge on purchases of less than $50,000. For each of the Funds, the sales charge is reduced on larger purchases, except Bond which has a level 3½% sales charge. There is no sales charge for purchases of Cash Management or Tax-Free Money Fund. All of the Funds permit reinvestment of capital gains distributions without payment of a sales charge. All of the Funds, except Bond, permit reinvestment of dividends without a sales charge.

Applicants represent that pursuant to the earlier orders of the Commission dated June 7, 1977, June 20, 1979, November 27, 1979, and April 11, 1980, the shareholders of Mutual, Stock, Variable, Progressive, New Dimensions and Growth currently have the privilege of transferring their shares into shares of each of the Funds, except Bond, at net asset value without paying a sales charge. Applicants further state that the shareholders of Selective, Bond, Tax-Exempt and High Yield who have held their shares for eight months or more have the same transfer privilege described above, except that shareholders of High Yield, Selective and Tax-Exempt may transfer their shares at net asset value into Tax-Exempt or High Yield at any time. The shareholders of each of the Funds, except Cash Management and Tax-Free Money Fund, who have held their shares eight months or more may transfer into Bond at net asset value without paying a sales charge.

Applicants further represent that the shareholders of each of the Funds, except Cash Management and Tax-Free Money Fund, who have held their shares for less than eight months may transfer into Bond upon paying an additional sales charge, if any. Shareholders of Bond, Tax-Exempt and High Yield who have held their shares for less than eight months have the privilege of transferring into Mutual, Stock, Variable, Progressive, Growth, New Dimensions, Selective, Tax-Exempt, and High Yield upon paying any additional sales charge. Applicants further state that shareholders of Selective who have held their shares for less than eight months may transfer into Mutual, Stock, Variable, Progressive, Growth, and New Dimensions, upon paying any additional sales charge.

Shareholders of Cash Management who acquire their shares with redemption proceeds from one of the other Funds may transfer their shares into shares of each of the Funds, except for Bond, at net asset value without paying a sales charge. Those shareholders of Cash Management seeking to transfer into Bond who acquired their shares with proceeds redeemed from one of the other Funds: (1) where the sales charge assessed by the other Fund is less than the charge that would have been assessed had the investment been in Bond originally; and (2) where the time span invested in Cash Management plus the time span of any prior investment in such Fund is less than eight months must pay an additional sales charge upon transferring into Bond. Shares of Cash Management that were purchased directly, and dividends earned on such investments, may be redeemed and the redemption proceeds invested in shares of each of the Funds by paying the applicable sales charge. Shares of Cash Management that were acquired with the redemption proceeds from one of the other Funds will be transferred first.

Applicants state that in the past record keeping restrictions prohibited transfers from Bond, Tax-Exempt, High Yield and Selective into Cash Management and Tax-Free Money Fund prior to an eight-month investment in any of such Funds. However, it is now possible to track the investments of shareholders of Bond, Tax-Exempt, High Yield and Selective, and thus Applicants state that such transfers are now permitted.

In each instance of a transfer in which an additional sales charge is assessed, the charge is equal to the difference between the sales charge actually paid and that which would have been imposed had the original investment been in the Fund into which the subsequent transfer was made.

Each Applicant now proposes to offer its shares, according to the following plan, to the shareholders of Tax-Free Money Fund and Cash Management who redeem their shares and immediately reinvest the proceeds of such redemption in the shares of one of the other Applicants. If the shares of Tax-Free Money Fund or Cash Management were purchased directly, the transfer will be on the basis of the net asset value at the time of transfer, plus any sales charge described in the prospectus of the Fund into which the transfer is made. Any reinvested dividends earned on this original direct investment will be transferred in the same manner. If the shares of Tax-Free Money Fund or Cash Management were acquired with proceeds redeemed from one of the other Funds, and both:

(1) the sales charge assessed by such other Fund is less than the charge that would have been assessed had the investment originally been in the Fund transferred to from Tax-Free Money Fund or Cash Management; and

(2) the time span invested in Tax-Free Money Fund or Cash Management, plus the time span invested in such other Fund is less than eight months;

then each Applicant will accept such transfers from Cash Management or Tax-Free Money Fund upon payment of an additional sales charge equal to the difference between the sales charge actually paid and the charge that would have been paid had the investment been made in the succeeding Fund originally. No sales charge will be assessed by any Applicant upon transfers (including both principal and dividends earned on that principal) accepted from shareholders of Tax-Free Money Fund or Cash Management who acquired their shares with proceeds redeemed from one of the other Funds and whose total time of investment in the Funds exceeds eight months.

Applicants state that the purpose of the transfer privileges and the eight-month restriction is to discourage attempts to unfairly circumvent higher sales charges. Shares of Tax-Free Money Fund and Cash Management that were acquired with the redemption proceeds from one of the other Funds will be transferred first. Appropriate disclosure of the terms of the proposed transfer privileges will be made in the prospectuses of Cash Management and Tax-Free Money Fund.

Applicants further represent that pursuant to the distribution agreements between IDS and each of the Funds, except Cash Management and Tax-Free Money Fund, IDS receives a sales charge equal to the difference between the total amount received upon each sale of shares and the net asset value of such shares at the time of sale, a portion of which is paid to IDS sales representatives as commissions. With respect to those transfers described above which involve the payment of any additional sales charge, Applicants state that IDS will pay to the applicable sales representative that portion of the additional sales charge which he would have received if the sale of shares of the higher load Fund had been made initially. Applicants further state that they believe that there is not sufficient financial incentive for an IDS sales representative to initiate such transfers for his own benefit. Applicants represent that IDS has established sufficient internal monitoring and review procedures to ensure that such transfers are made at the request of the customer and not for the IDS sales representative's personal gain (including monitoring the frequency of transfers handled by individual representatives).

Section 11(a) of the Act provides that it shall be unlawful for any registered, open-end company or any principal underwriter for such company to make, or cause to be made, an offer to the shareholder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset value of the respective securities to be exchanged unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus. The sales charge described in the prospectus of each of the Funds is normally greater than the sales charge which would be applicable to a proposed transfer. Rule 22d-1 permits certain variations in sales load, none of which it is alleged

are applicable to the proposed transfer privileges.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

On the basis of the foregoing, Applicants submit that the proposed exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 1, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11436/November 7, 1980

In the Matter of

SHEARSON DAILY DIVIDEND INC.
SHEARSON GOVERNMENT AND AGENCIES INC.
14 Wall Street
New York, New York 10005

(812-4728)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Shearson Daily Dividend Inc. ("Daily Dividend") and Shearson Government and Agencies Inc. ("SGA") (collectively, "Applicants"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed an application on September 2, 1980, for an order, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicants to value their respective portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Appliants state that Daily Dividend is a "money market fund" that invests in a variety of money market instruments with the primary objective of seeking safety, liquidity, and, to the extent consistent with the foregoing, a high income return. Applicants state that Daily Dividend currently computes its net asset value per share by rounding to the nearest one cent on a share value of one dollar, pursuant to a conditional order of exemption (Investment Company Act Release No. 10743) issued by the Commission on June 21, 1979.

Applicants state that SGA originally was organized as a "money market fund" under the name Shearson Cash Reserve Inc., with an investment objective substantially identical to that of Daily Dividend, sales of the shares of which were restricted as a result of the Credit Control Program adopted by the Board of Governors of the Federal reserve System. Applicants

further state that, when that program was discontinued, shareholders of SGA became shareholders of Daily Dividend or else redeemed their interests, with the exception of Shearson Loeb Rhoades Inc. With the written consent of that sole remaining shareholder, SGA's investment objective was changed to limit its investments to money market instruments issued or guaranteed by the United States government, its agencies or instrumentalities.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefore issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicants state that the experience of their adviser and administrator indicates that two qualities are helpful in order to attract investment in a "money market" fund: (1) stability of principal and (2) steady flow of investment income. Applicants assert that by utilizing high quality money market instruments of short maturities combined with a stable net asset value, preferably $1.00 per share, it would be possible to provide those features to a variety of investors. Applicants' boards of directors believe that given the nature of Applicants' policies and operations, there normally will be a relatively negligible discrepancy between market value and amortized cost value of Applicants' portfolio securities. Applicants' boards of directors have determined in good faith that in light of the characteristics of each Applicant, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicants and reflects fair value of those securities. Accordingly, Applicants request an order, pursuant to Section 6(c) of the Act, exempting them from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit their assets to be valued using the amortized cost valuation method.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants assert that their application meets the standards of Section 6(c) of the Act in light of their management policies, and have agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising each Applicant's operations and delegating special responsibilities involving portfolio management to each Applicant's investment adviser, each Applicant's board of directors undertakes — as a particular responsibility within the overall duty of care owed to its shareholders — to establish procedures reasonably designed, taking into account current market

conditions and each fund's investment objectives, to stabilize each fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the respective boards of directors shall be the following:

(a) Review by each fund's board of directors, as its deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the fund's $1.00 amortized cost price per share, and maintenance of records of such review. To fulfill this condition, each Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten the fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Each Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that neither Applicant will (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the affected fund will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Each Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and each Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Each Applicant will limit its portfolio investments, including repurchased agreements if any, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Each Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 1, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such

communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11437/November 10, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

THE DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, NY 10016

AND

MONEYMART ASSETS, INC.
100 Gold Street
New York, NY 10038

(812-4719)

NOTICE OF FILING OF AN APPLICATION TO AMEND AN ORDER OF EXEMPTION GRANTED PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

NOTICE IS HEREBY GIVEN that Beneficial National Life Insurance Company (the "Company"), a stock life insurance company incorporated under the laws of the State of New York, the Dreyfus Rainbow Annuity Variable Account A (the "Variable Account"), a separate account of the Company established under New York Insurance Law and registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), and MoneyMart Assets Inc., (the "Fund"), a Maryland corporation registered as an open-end diversified management investment company under the Act (hereinafter collectively referred to as the "Applicants") filed an application on August 5, 1980 requesting an order of the Commission amending a prior order of the Commission dated May 19, 1980 (Investment Company Act Release No. 11173), as amended August 27, 1980 (Investment Company Act Release No. 11317), exempting Applicants from the provisions of Section 11(c) of the Act to the extent necessary to permit the Applicants to offer shareholders of the Fund the option to exchange their shares for Individual Single Purchase Payment Variable Annuity Contracts (the "Contracts") offered by the Company. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Applicants state that Continental Illinois National Bank and Trust Company of Chicago ("Continental") serves as the Fund's investment adviser. For its services, Continental is paid a monthly fee at an annual rate of .25 of 1% of the average value of the Fund's assets during the preceding month up to $50,000,000, .20 of 1% from $50,000,000 up to $200,000,000, .15 of 1% from $200,000,000 to $1,000,000, and .10 of 1% of the average value of the Fund's assets in excess of $1,000,000,000. As of July 15, 1980, the Fund's assets were $1,755,784,150.10. Bache Halsey Stuart Shields Incorporated ("Bache") serves as the Fund's administrator and distributor and bears certain costs of the operations of the Fund. It is paid a monthly fee at an annual rate of .25 of 1% of the average value of the Fund's net assets in excess of $50,000,000 and .20 of 1% of the Fund's assets in excess of $50,000,000 during the preceding month. State Street Bank and Trust Company is custodian of the Fund's investments and its transfer and dividend disbursing agent.

According to the application, the Applicants propose to permit shareholders of the Fund to exchange their

shares for the Contracts. Such shareholders will be notified of the offer of exchange and will be permitted to make such an exchange without payment of a fee, sales load, transfer charge or administrative charge. Purchase payments for the Contracts in the form of shares of the Fund to be exchanged will be allocated to the Variable Account and will be invested by the Variable Account in shares of the Fund.

The Applicants state that the Contracts will be sold by licensed insurance agents in those states where the Contracts may be lawfully sold. Such agents will be registered representatives or broker-dealers registered under the Securities Exchange Act of 1934 which are members of the National Association of Securities Dealers, Inc. The Contracts will be distributed through Dreyfus Service Organization, Inc. ("DSO") and Bache. The Applicants further state that the Company has agreed to pay insurance commissions to DSO for its services as an insurance general agent in distributing the Contracts. DSO may have subagents to whom it may pay a portion of its commission. In the case of Contracts under which the Fund will be the underlying investment medium, Bache will be such a subagent.

Section 11(c) of the Act prohibits offers to exchange securities of an open-end investment company for securities of a unit investment trust. The Applicants submit that they are therefore prohibited from offering shareholders of the Fund, an open-end investment company, the opportunity to exchange their shares for securities of the Variable Account, a unit investment trust, absent an exemptive order by the Commission.

In support of the relief requested, the Applicants state their belief that the Contracts can provide valuable features for retirement and financial planning for the existing shareholders of the Fund. The Contracts provide the facility for Contract Owners to provide for lifetime retirement income. The Contracts may also enable Contract Owners to defer current income taxes on investment income attributable to the Contracts. Existing shareholders of the Fund will therefore be afforded benefits which they do not now possess if they avail themselves of the exchange offer.

The Applicants further state that the proposed exchange of securities of the Fund for the Contracts is accomplished at net asset value without assessment of any fee or charge in connection with such exchange. The proposed exchange is entirely voluntary and is solely at the election of existing shareholders of the Fund. The Contracts can be acquired by such an exchange on a basis which permits existing Fund shareholders to add annuity features to their financial plans while retaining the investment orientation which they already possess.

According to the application, in no event will solicitation of existing Fund shareholders be made until such shareholders have been provided with a currently effective prospectus for the Contracts and for the Fund. The Applicants submit that this will enable such shareholders to evaluate the appropriateness of any such exchange.

For the reasons stated in their application, the Applicants submit that the requested exemption from the provisions of Section 11(c) of the Act is appropriate and in the public interest, is consistent with the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 5, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said December 5, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment

Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11438/November 12, 1980

In the Matter of

TAX DEFERRED FUND, INC.
660 Madison Avenue
New York, New York 10021

(811-2845)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On October 17, 1980, a notice was issued (Investment Company Act Release No. 11405) stating that Tax Deferred Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 25, 1979, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to section 8(f) of the Act, that the registration of Tax Deferred Fund, Inc., under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11439/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6260/November 13, 1980

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 738/November 10, 1980

MULLER AND COMPANY
EDDIE A. MULLER
RUDY MOLHO
HENRY J. KIEPER

The Securities and Exchange Commission has ordered public administrative proceedings, pursuant to Sections 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act"), against Muller and Company ("Muller"), a registered investment adviser with its principal place of business in New York City, Eddie A. Muller ("E. Muller"), a general partner of Muller, and Rudy Molho ("Molho") and Henry J. Kieper ("Kieper"), respectively a former and a current employee of Muller. The proceedings are based upon allegations by the Commission's staff that Muller willfully violated the anti-fraud provisions of the Advisers Act (Sections 206(1), (2) and (4) and Rule 206(4)-1 thereunder); that individual respondents E. Muller, Molho and Kieper willfully aided and abetted such violations; and that Muller, E. Muller and Molho failed reasonably to supervise Muller's employees with a view to preventing such violations. The Order for Proceedings charges that false and misleading statements were made by Respondents in Muller advertisements and to Muller's municipal bond fund clients concerning the operation of Muller's municipal bond pricing service.

A hearing will be scheduled to take evidence on the allegations to determine whether or not such allegations are true, to afford Respondents an opportunity to establish any defenses to such allegations and to determine what, if any, remedial action shall be ordered by the Commission.

LITIGATION

Litigation Release No. 9231/November 10, 1980

SECURITIES AND EXCHANGE COMMISSION v. *EDWARD H. HELLER, ET AL.*, United States District Court for the District of Columbia (Civil Action No. 80-2608)

The Securities and Exchange Commission announced that on November 10, 1980, Judge June Green of the United States District Court for the District of Columbia entered in the above-referenced action a Final Judgment against the defendants Edward H. Heller, Capital Management International, Inc., American Flowerland, Inc., Florida Flowerland, Inc., Agri-Business Management, Inc., and Flowerland International, Inc., permanently enjoining those defendants from violation of the registration and antifraud provisions of the Securities Act of 1933 and the antifraud provisions of the Securities Exchange Act of 1934. Such Final Judgment was entered with the consent of such defendants. By the Final Judgments, Judge Green appointed Robert A. Baker as Special Agent to take control of, preserve and manage the operations of the five corporate defendants mentioned above. The Commission had alleged in its complaint filed on October 14, 1980, that Heller had controlled such defendants and that such companies were instrumental in the perpetration of the fraud described in such complaint. The Final Judgment permanently bars Heller from acting as or being associated with a broker, dealer, or investment adviser who is registered or required to be registered with the Commission. In addition, the Final Judgment requires that Heller give the Commission twenty days notice before participating in any offer or sale of securities in tax shelters to which the federal securities laws would apply.

On November 7, 1980, Heller filed with the Court, pursuant to the Court's order of October 15, 1980, an affidavit setting forth Heller's financial condition. That affidavit indicates Heller's liabilities substantially exceed his assets. The Final Judgment requires Heller to submit to a deposition by the attorneys for the Commission and the Special Agent at which Heller will testify concerning his assets and liabilities and the status of the operations of the above-named corporate defendants, their parents, subsidiaries, and affiliates as of the date of the entry by the Court of the Temporary Restraining Order, October 15, 1980. The Final Judgment also provides that if it is determined that Heller misrepresented his assets or liabilities or the value of such assets in his affidavit, the Commission may apply to the Court to have such assets disgorged for the benefit of the investors.

Litigation Release No. 9232/November 12, 1980

U.S. v. *GRANT H. ROYLANCE* (USDC, Utah, CR-80-0080)

Ronald L. Rencher, United States Attorney for the District of Utah, Robert H. Davenport, Regional Administrator of the Denver Regional Office of the Securities and Exchange Commission, and John C. Wagner, Special Agent-in-Charge of the Salt Lake City Office of the Federal Bureau of Investigation, announced that on October 27, 1980, a jury sitting before the Honorable Bruce S. Jenkins, United States District Judge for the District of Utah, Central Division, returned a verdict of guilty against Grant H. Roylance of Springville, Utah, on two counts of fraud in connection with the offer and sale of securities, one count of interstate transportation of money obtained by fraud, and six counts of mail fraud.

The indictment filed on June 19, 1980, charged Roylance with fraud in connection with the offer and sale of the securities of G. R. and Associates, Inc., as part of a scheme to raise funds for the alleged purchase and refinement of gold ore concentrate.

The jury also found Mr. Roylance not guilty on two counts of mail fraud and one count of interstate transportation of money obtained by fraud.

In a related civil injunctive action, Roylance consented to the entry of an order permanently enjoining him from violating the registration and antifraud provisions of the securities laws.

For further information see Litigation Releases Nos. 8840, 8879 and 9123.

Litigation Release No. 9233/November 12, 1980

SEC v. *MONTEREY SECURITIES CORPORATION AND PATRICK LEROY MCDONALD* (N.D. Calif., Civil Action No. C-80-4024)

Leonard H. Rossen, Regional Administrator of the Commission's Los Angeles Regional Office, and Bobby C. Lawyer, Associate Regional Administrator in charge of the Commission's San Francisco Branch Office, announced that on October 24, 1980, the Commission filed a civil action in the United States District Court for the Northern District of California naming as defendants Monterey Securities Corporation ("Monterey"), a San Francisco based broker-dealer registered with the Commission, and Patrick Leroy McDonald ("McDonald"), its president and sole shareholder.

The complaint seeks to enjoin the defendants from further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b), 15(c)(3), and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 15c3-1, 15c3-3, and 17a-3 thereunder, and, in addition, seeks to enjoin McDonaid from further violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 12b-20 thereunder.

The complaint alleges that from September 1979 to April 1980, the defendants failed to compute Monterey's net capital requirements and did not maintain the minimum net capital required by the Exchange Act; that the defendants failed to make periodic computations to determine if deposits needed to be made in a special reserve account for the exclusive benefit of customers and to establish such an account and to make required deposits, and failed to obtain promptly and to maintain physical possession or control of fully-paid customer securities; and that the defendants failed to maintain and to keep current specified books and records relating to Monterey's business.

Additionally, the complaint alleges that the defendants received funds and securities from investors, failed to execute their trade orders, and converted the funds and securities to their own benefit; and that they failed to deliver securities from Monterey's inventory after receiving funds for their purchase and failed to pay for securities after receiving them from sellers of securities.

The complaint charges further that McDonald, on behalf of his wholly-owned corporation, Patrick Barney & Co., Inc., made false and misleading statements in a Schedule 13D he filed with the Commission, in that in September 1979, in reporting an option to acquire over five percent of the stock of Habanero Corporation ("Habanero"), McDonald stated that he had made no other arrangements with respect to that stock, whereas he had already received money from investors seeking to purchase Habanero stock.

Simultaneously with the filing of the complaint, the Securities Investor Protection Corporation filed an application, to which the Commission consented, to intervene in the action and to be appointed trustee for liquidation of the business of Monterey.

Litigation Release No. 9234/November 13, 1980

U.S. v. *JAMES E. CORR, III, ET AL.*, 80 Crim. D.C. 503 (D.D.C.)

The Securities and Exchange Commission announced that on November 12, 1980, James E. Corr, III ("Corr") of St. Petersburg Beach, Florida pleaded guilty before Judge Aubrey E. Robinson, Jr. in the United States District Court for the District of Columbia to one count of an information charging him with having violated the anti-fraud provisions of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Judge Robinson set sentencing for January 8, 1981.

The guilty plea and the information were the outgrowth of an investigation by a grand jury that began in July, 1980 to determine whether Corr and his wife, Neica L. Corr, as a result of their trading activity in the securities of C.H.B. Foods, Inc. were in criminal contempt of a "Final Judgment of Permanent Injunction and Other Relief" which had previously been entered against them by the United

States District Court for the District of Columbia.

The Commission had previously instituted public administrative proceedings against a brokerage firm and two former registered representatives at different firms as a result of transactions by their customers in the stock of C.H.B. Foods. Simultaneously with the institution of the proceedings, the Commission accepted Offers of Settlement from the brokerage firm and one of the registered representatives in which they, without admitting or denying the allegations or findings in the Commission's Orders, consented to the issuance of Orders by the Commission making certain findings and imposing remedial sanctions. The pending proceeding against the other registered representative is to determine whether he violated the securities laws in connection with his alleged participation in a scheme to manipulate upward the market price of the common stock of C.H.B. Foods, Inc., during 1978 and early 1979. For further information, see Releases Nos. 17180, 17181 and 17182 under the Securities Exchange Act of 1934, dated September 30, 1980.

ACCOUNTING SERIES

ACCOUNTING SERIES
Release No. 284/November 13, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6260/November 13, 1980

CORPORATE REORGANIZATION

CORPORATE REORGANIZATION
Release No. 324A/November 7, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re

CONTINENTAL INVESTMENT CORPORATION,
Debtor.

No. 76-1158-MA

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

CORRECTIONS TO ADVISORY REPORT DATED OCTOBER 30, 1980 FILED BY SECURITIES AND EXCHANGE COMMISSION

The Advisory Report of the Securities and Exchange Commission dated October 30, 1980, Corporate Reorganization Release #324 is hereby corrected as follows:

1. P. A. 1. The Net Income figure for 1971 was misplaced, shifting all figures following. The last column of the table should read as follows:

Net
$605
2,264
2,702
3,199
3,071
3,468
3,627
5,004
6,087
7,342
8,392

2. P. 13, Table II. Column headed "1979", figure opposite oil and gas under Operating Income should be "1" instead of "2".

3. P. 48, Table. Under the column "Tax Credits" the figure 0.6 should be moved down one line so that it follows after the year 1983.

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21/no9

sec docket

VOLUME 21, NO. 9 DECEMBER 9, 1980

RELEASES IN THIS ISSUE

		PAGE
Securities Act	- 6264-65	683
Securities Exchange Act	-17316-45	686
Public Utility Holding Company Act	-21798-06	735
Investment Company Act	-11452-59	748
Investment Advisers Act	- 740	767
Litigation	- 9238-45	768
Securities Investor Protection Act	- 94-	771

This listing covers releases issued from 11/21/80-11/26/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6264 Announcement of a comprehensive review of the Commission's statistical program.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-17322	34-17326	34-17342
34-17324	34-17330	34-17344
34-17325	34-17339	34-17345

34-17321 Adotion of amendments to implement the record-keeping and production requirements of Section 17(a) of the 1934 Act.

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SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6264/November 21, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17316/November 21, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11452/November 21, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 740/November 21, 1980

SE1.29:

COMPREHENSIVE REVIEW OF THE COMMISSION'S STATISTICAL PROGRAM

ACTION: Announcement of a comprehensive review of the Commission's statistical program.

SUMMARY: The Securities and Exchange Commission has announced that it is undertaking a comprehensive review of its statistical program. The Commission has begun an internal review, but it also seeks the views and insights of the public, particularly the users of its published statistical data. The purpose of this announcement, therefore, is to encourage the submission of constructive commentary and suggestions for enhancing the usefulness of the Commission's statistical program.

DATE: Comments must be received on or before January 31, 1981.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to file No. 4-241. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeffry L. Davis, Assistant Director, Directorate of Economic and Policy Analysis (telephone 202/272-2850), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is undertaking a comprehensive review of its statistical program, focusing upon: (1) the benefits to the Commission, other government agencies and the public of continuing to publish statistical data; (2) the specific needs served by the publication of specific data series; (3) the identification of additional data series for which there exists a public need; (4) the availability of alternative data sources; and (5) the costs associated with the collection, processing and publication of data series, individually and collectively.

On an internal basis, this review began several months ago with the formation of a Statistical Strategy Planning Group within the Commission's Directorate of Economic and Policy Analysis. This Group was assigned the task of analyzing, from a practical cost-benefit perspective, all statistical data series published in the Commission's *Monthly Statistical Review*. The Group's analysis is now being reviewed with respect to the implementation of its recommendations.

During the course of the review by the Statistical Strategy Planning Group, and in consultation with the Group, the editorial management of the *SEC Monthly Statistical Review* was restructured. An Editor, an Associate Editor and an Editorial Board (consisting of professional economists) were appointed in order to establish clearer lines of responsibility for the publication. The Editorial Board's first priority was to accomplish, as soon as possible, any revisions in the format of the publication and the presentation of the data series which the Board deemed to be necessary and desirable. As a result of the Board's efforts, the Commission's *Statistical Bulletin* has been renamed the *SEC Monthly Statistical Review*; the explanatory notes accompanying the data presentations have been expanded and improved, some of the statistical tables have been modified in format, content and frequency of publication; a brief "Statistical Highlights" feature and a list of other publications have been added; and additional changes have been planned, including the republication of Executive Summaries from recent Commission studies and changes in the coverage of the published tables.

As a part of the internal program review, the Commission staff conducted an audit of its Registered Offerings Statistics ("ROS") data base. The ROS data base is continuously updated and maintained by the Commission staff using as primary source documents the registration statements filed with the Commission. The labor intensity of this maintenance effort creates the potential for human error, while its public availability (on computer tape) and its usage within the Commission impose a high standard of reliability. For these reasons, an audit was designed to measure the reliability of the data base. In view of the potential for error, the results were encouraging; the measured error rate was only slightly greater than two percent. In addition, the audit has provided the staff with guidance for improving the process by which the data base is maintained; such improvements are expected to produce an even lower error rate.

While this release is an attempt to generate external suggestions and comments, the Commission has

already sought such input from other government agencies. In cooperation with the Office of Federal Statistical Policy Standards, the Commission has designed a questionnaire and distributed it to 31 senior level economic/statistical personnel representing Federal government agencies which are most likely to use or have need for the statistical data produced by the Commission. The questionnaire seeks responses to detailed questions regarding whether or not each data series is used, how frequently it is used, for what purpose it is used, whether alternative sources exist, and how the presentation of the series might be improved.

The Commission's statistical program review is a part of a larger effort to enhance, within the constraints of the Commission's limited resources, the reliability and usefulness of its regulatory data bases. Thus, this review is linked, for example, with the Commission's recently announced proposal to revise the Financial and Operational Combined Uniform Single (FOCUS) Report (in Securities Exchange Act Release No. 17138, September 9, 1980; 45 FR 62092, September 18, 1980), which is the key data gathering source for the Commission's broker-dealer regulatory data base. The FOCUS Report revision and this broader review are representative of the Commission's regulatory data base management initiatives and, for this reason, they share the objective of achieving maximal benefit from the most efficient application of the Commission's limited statistical resources.

The Commission encourages comments from all sectors of the public and particularly from regular users and potential users of the Commission's statistical data. The Commission requests specific comments on the data series published in the *SEC Monthly Statistical Review*; those series fall into the following categories: (1) Stock Market Statistics; (2) Options Market Statistics (3) Securities Offering Statistics; (4) Securities Registration Statistics; (5) Pension Fund Statistics; (6) Institutional Stock Transaction and Stockholding Statistics; and (7) Broker-Dealer Financial Statistics. Where possible, comments should refer to specific data series and should indicate for each category how the data is used, how frequently it is used, whether alternative sources are available and the identity of such sources, and how the data could be improved to meet the needs of the user. Although the Commission seeks specific comments relating to identified data series, it welcomes any other constructive comments relevant to its statistical program.

All comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 and should refer to File No. 4-241. All correspondence with regard to this release will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6265/November 21, 1980

Admin. Proc. File No. 3-5744

In the Matter of

THE REGISTRATION STATEMENT OF LAS VEGAS HAWAIIAN DEVELOPMENT COMPANY

File No. 2-59095

ORDER PERMITTING WITHDRAWAL OF REGISTRATION STATEMENT AND DISMISSING PROCEEDINGS

Pursuant to 17 C.F.R. §230.477, Las Vegas Hawaiian Development Company ("registrant") has submitted an application to withdraw the registration statement which is the subject of these proceedings pursuant to Section 8(d) of the Securities Act of 1933, as amended ("Securities Act").[1] As grounds for its application registrant has asked the Commission to consider the following:

1. The principals of the registrant, Richard MacDonald, Frances R. MacDonald and Richard C. MacDonald, were permanently enjoined on July 10, 1980 by the United States District Court for the District of Hawaii from violations of registration and

[1] *In the Matter of the Registration Statement of Law Vegas Hawaiian Development Company*, Securities Act Release No. 6074, May 29, 1979.

anti-fraud provisions of the federal securities laws;[2]

2. Pursuant to the Commission's enforcement action resulting in the aforementioned injunction, the Court appointed a receiver whose duties, among others, include an investigation of the real estate which is the subject of the registrant's registration statement and the transmittal of a report directly to the individual purchasers thereof;

3. The results of the Commission's enforcement action have been publicized in two Honolulu daily newspapers of general circulation;

4. No offers or sales of the registrant's securities have been made, and the registrant undertakes to make no such offers or sales; and

5. The principals of the registrant undertake to comply in the future with all relevant provisions of Sections 6, 7, 8 and 10 of the Securities Act [15 U.S.C. §77a *et seq.*].

Having considered the foregoing, the Commission finds that withdrawal of the registrant's registration statement is consistent with the public interest and the protection of investors. The Commission therefore consents, pursuant to 17 C.F.R. §230.477, to registrant's application to withdraw its registration statement.

There being no further need for proceedings in this matter,

IT IS ORDERED that the instant proceeding be and hereby is dismissed.

By the Commission.

George A. Fitzsimmons
Secretary

[2]SEC v. Richard MacDonald, et al., Civil No. 79-0283 (D. Haw. 1980).

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17316/November 21, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6264/November 21, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17317/November 21, 1980

The Securities and Exchange Commission announced, pursuant to Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"), the single ten-day suspension of trading for the period commencing at 9:45 a.m. on November 21, 1980 and terminating at midnight on November 30, 1980 of the securities of Diagnostic Data, Inc., ("Diagnostic"), a Delaware corporation located at 518 Logue Avenue, Mountain View, California 94043.

The Commission suspended trading in the securities of Diagnostic to permit dissemination of information concerning questions which have been raised concerning possible undisclosed related-party transactions among certain members of management, the Board of Directors and a substantial shareholder of the Company; possible undisclosed changes in the beneficial ownership of the common stock of Diagnostic; and possible arrangements and understandings among certain members of the dissident group of shareholders of Diagnostic and certain officers of Diagnostic and a substantial shareholder of the Company.

The Commission cautions brokers, dealers, shareholders and prospective purchasers that they should carefully consider the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be aware of the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and

until they have strictly complied with all the provisions of such rule. If any broker or dealer has any questions as to whether or not he has complied with such rule, he should not enter any quotation but immediately contact the staff of the Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with such rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of such rule, the Commission will consider the need for prompt enforcement action.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17318/November 21, 1980

An order has been issued granting the application of JOHN H. HARLAND COMPANY to withdraw its common stock ($1 par value) from listing and registration on the *American Stock Exchange, Inc.*

SECURITIES EXCHANGE ACT OF 1934
Release No. 17319/November 21, 1980

In the Matter of Application of the

CINCINNATI STOCK EXCHANGE

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Cincinnati Stock Exchange ("CSE") has filed an application with the Commission pursuant to Section 12(f) (1) (B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Metro-Goldwyn-Mayer Film Co.
Common Stock, No Par Value (File No. 7-5773)[1]

The Commission finds that approval of the CSE's application for unlisted trading privileges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the CSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the CSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the CSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f) (1) (B) of the Act, that the application for unlisted trading privileges on the Cincinnati Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 72852 (November 3, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17320/November 21, 1980

A notice has been issued giving interested persons until December 12, 1980 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in the common stock ($1 par value) of AAR CORPORATION and the common stock ($1 par value) of CRAY RESEARCH INCORORATED which are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No 17321/November 21, 1980

RECORD PRODUCTION OBLIGATIONS AND RECORD DESTRUCTION AND DISPOSITION RIGHTS OF REGISTERED CLEARING AGENCIES, THE MUNICIPAL SECURITIES RULEMAKING BOARD, NATIONAL SECURITIES EXCHANGES AND REGISTERED SECURITIES ASSOCIATIONS

ACTION: Final ruies.

SUMMARY: The Commission is adoting proposed amendments to Rules 17a-1 and 17a-6 [17 CFR §§240.17a-1, 17a-6] under the Securities Exchange Act of 1934 ("Act") governing record retention, production and destruction by self-regulatory organizations which extend the requirements embodied therein to registered clearing agencies and the Municipal Securities Rulemaking Board. The amendments are being adopted to implement the recordkeeping and production requirements of Section 17(a) of the Act. In accordance with Section 17A(d) (3) (A) (i) of the Act, 15 U.S.C. 78q-1 (d) (3) (A) (i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMTION CONTACT: Judith W. Axe, Esq,, Division of Market Regulation; Securites and Exchange Commission, Room 357, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272-2398.

SUPPLEMENTARY INFORMATION: On July 8, 1980, the Commission issued a release proposing to exercise its authority under Section 17(a) of the Securities Exchange Act[1] to amend Rules 17a-1 and 17a-6 [17 CFR §§240.17a-1, 240.17a-6] to extend the record retention, production and destruction requirements embodied therein to registered clearing agencies and the Municipal Securities Rulemaking Board ("MSRB").[2]

Presently, Rule 17a-1 requires only exchanges and associations to keep, and to permit copying by members of the Commission's staff of all documents made or received by such organizations in the course of their business and in the conduct of their self-regulatory activities. The rule also requires that such records be kept for a period of not less than five years subject to the provisions of Commission Rule 17a-6. Rule 17a-6, which permits the early destruction or conversion to microfilm or other recording media of records maintained under Rule 17a-1, pursuant to a record destruction plan filed with and approved by the Commission, also currently applies only to exchanges and associations.[3]

The Commission believes that it would be appropriate at this time to extend its rules regarding record keeping and record destruction to registered clearing agencies and MSRB.[4] Accordingly, the Commission has determined to exercise its

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[1]15 U.S.C. 78q(a).

[2]Securities Exchange Act Release No. 16966 (July 8, 1980), 45 FR 47160 (July 14, 1980). The Commission subsequently extended the comment period until October 10, 1980. Securities Exchange Act Release No. 17074 (August 18, 1980), 45 FR 56822 (August 26, 1980). No comments were received on the proposed amendments.

[3]Of course, under Section 17(b) of the Act, representatives of the Commission have direct statutory authority to obtain copies of any records maintained by persons described in Section 17(a) in the course of periodic, special or other examinations.

[4]One year after Rules 17a-1 and 17a-6 were adopted by the Commission, Congress expanded the record keeping and production requirements of Section 17(a) to include, among others, registered clearing agencies and the MSRB as part of the Securities Acts Amendments of 1975. Pub. Law 94-26 (June 4, 1975).

rulemaking authority under Section 17(a) of the Act to amend Rules 17a-1 and 17a-6 in the manner proposed in its July release.[5] The proposed amendments were not prompted by any lack of cooperation from the MSRB or the clearing agencies in furnishing documents requested by the Commission staff.

For the reasons stated above, the Commission finds that the proposed amendments are appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act. Accordingly, the Commission, acting pursuant to its authority under Section 23(a)(1) of the Act,[6] hereby revises §§240.17a-1 and 240.17a-6 of Part 240 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.17a-1 Recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

(a) Every national securities exchange, national securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.

(b) Every national securities exchange, national securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall keep all such documents for a period of not less than five years, the first two years in an early accessible place, subject to the destruction and disposition provisions of Rule 17a-6.

(c) Every national securities exchange, registered securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by its pursuant to paragraphs (a) and (b) of this section.

§240.17a-6 Right of national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board to destroy or dispose of documents.

(a) Any document kept by or on file with a national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board pursuant to the Act or any rule or regulation thereunder may be destroyed or otherwise disposed of by such exchange, association, clearing agency or the Municipal Securities Rulemaking Board at the end of five years or at such earlier date as is specified in a plan for the destruction or disposition of any such documents if such plan has been filed with the Commission by such exchange, association, clearing agency or the Municipal Securities Rulemaking Board and has been declared effective by the Commission.

(b) Such plan may provide that any such document may be transferred to microfilm or other recording medium after such time as specified in the plan and thereafter be maintained and preserved in that form. If a national securities exchange, association, clearing agency or the Municipal Securities Rulemaking Board uses microfilm or other recording medium it shall (1) be ready at all times to provide, and immediately provide, easily readable projection of the microfilm or other recording medium and easily readable hard copy thereof, (2) provide indexes permitting the immediate location of any such document on the microfilm or other recording medium, and (3) in the case of microfilm, store a duplicate copy of the microfilm separately from the original microfilm for the time required.

(c) For the purposes of this rule a plan filed with the Commission by a national securities exchange, association, clearing agency or the Municipal Securities Rulemaking Board shall not become effective unless the Commission, having due regard for the public interest and for the protection of investors, declares the plan to be effective. The Commission in its declaration may limit the applications, reports, and documents as to which it shall apply, and may impose any other terms and conditions to the plan and to the period of its

[5]At this time the Commission also is correcting a textual error made in drafting the original rule which inadvertently omitted national securities associations from subparagraph (a) of Rule 17a-6.

[6]15 U.S.C. 78w(a)(1).

effectiveness which it deems necessary or appropriate in the public interest or for the protection of investors.

By the Commission.

George A. Fitszimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17322/November 21, 1980

NATIONAL SECURITIES CLEARING CORPORATION ("NSCC")

(SR-NSCC-80-26)

ORDER APPROVING PROPOSED RULE CHANGE

On August 13, 1980, NSCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change amending its rules to clarify that the corporation's facilities are available to Members and Non-Clearing Members as a conduit for submission of stock transfer tax reports and remittances required by the New York State Tax Law.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17097, August 28, 1980) and by publication in the Federal Register (45 FR 58996, September 5, 1980). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitszimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17323/November 21, 1980

A notice has been issued giving interested persons until December 12, 1980 to comment on the application of the *Pacific Stock Exchange* for unlisted trading privileges in the common stock ($.62½ par value) of LILLY (ELI) AND COMPANY which is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17324/November 21, 1980

In the Matter of

MIDWEST STTOCK EXCHANGE, INCORPORATED
120 South LaSalle Street
Chicago, Illinois 60603

(SR-MSE-79-20)

ORDER APPROVING PROPOSED RULE CHANGE

On September 17, 1980, the Midwest Stock Exchange, Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends certain rules in order to facilitate the examination of members for compliance and conforms the Exchange rule to the Federal Reserve Board's margin rules.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17165, October 9, 1980) and by publication in the *Federal Register* (45 FR 68819, October 16, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed

rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are approved.

By the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitszimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17325/November 21, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

File No. SR-CBOE-80-8

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on August 8, 1980, a proposed rule change under Rule 19b-4 to modify its rules to provide for exchange-based trading of options contracts on United States Treasury notes and bonds.

Publication of the submission is expected to be made in the *Federal Register* during the week of November 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 90 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-80-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitszimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17326/November 21, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-31)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on November 14, 1980, the American Stock Exchange, Inc. ("Amex") filed with the Commission copies of a proposed rule change which replaces a requirement that members submit monthly reports of certain uncovered short positions with a requirement that such reports be submitted only upon request.

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Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-80-31.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that a similar proposal by the CBOE,[1] for which opportunity for public comment was provided, was recently approved by the Commission.[2]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change reference above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitszimmons
Secretary

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[1]See File No. SR-CBOE-80-24.

[2]Securities Exchange Act Release No. 17244 (October 24, 1980).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17327/November 24, 1980

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 94/November 24, 1980

In the Matter of

ROBERT J. MAIETTA, et al.

The Commission announced the institution of public administrative proceedings against Robert J. Maietta (Maietta), formerly a registered representative of Margolis & Co., Inc. (Margolis), a former broker-dealer with its principal place of business in Minneapolis, Minnesota; John H. Neuberger (Neugberger), formerly the president of Margolis; and Brian J. Mahoney (Mahoney), formerly the president of Brokers' Trading, Inc. (Brokers' Trading), a broker-dealer for which a Securities Investor Protection Corporation trustee was appointed on December 22, 1977.

The Order for Proceedings alleges that: Maietta has been convicted of perjury and is enjoined from violating Sections 5(a), 5(c), 17(a) of the Securities Act of 1933 ("Securities ACt"), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and wilfully violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and wilfully aided and abetted violations of Section 7 of the Exchange Act and Regulation T thereunder; Mahoney wilfully aided and abetted violations of Sections 7, 10(b), and 15(b) of the Exchange Act and Rules 10b-5 and 15b1-1 and Regulation T thereunder; and Neuberger is enjoined from violating Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and wilfully aided and abetted violations of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder.

The Order further alleges that Mahoney and Neuberger failed to reasonably supervise employees under their supervision. In addition, the Order alleges that Maietta was a controlling person and Mahoney was president and director of Brokers' Trading for which a trustee was appointed pursuant to the Securities Investor Protection Act of 1970.

The Commission simultaneously issued an order accepting offers of settlement from Maietta and Neuberger, and finding that Maietta and Neuberger

had violated the provisions as alleged above. The Commission also barred Maietta from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer ("the entities"); and suspended Neuberger from association with any such entity for a period of 180 days and thereafter barred Neuberger from association with any such entity in a proprietary, executive, managerial, or supervisory capacity. Maietta and Neuberger consented to the above findings and sanctions without admitting or denying the allegations and findings, except that Maietta admitted that he had been convicted and enjoined, and Neuberger admitted that he had been enjoined.

A hearing will be scheduled to determine whether the allegations against Mahoney are true, and what, if any, remedial action should be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17328/November 24, 1980

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 95/November 24, 1980

Admin. Proc. File No. 3-5976

In the Matter of

ROBERT J. MAIETTA
JOHN H. NEUBERGER

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I.

In these administrative proceedings ordered pursuant to the Securities Exchange Act of 1934 (Exchange Act) and the Securities Investor Protection Act of 1970 (SIPA), Robert J. Maietta (Maietta) and John H. Neuberger (Neuberger) have each submitted an Offer of Settlement which the Commission has determined to accept.[1] With regard to the allegations contained in Section II, Paragraphs A and B of the Order for Public Proceedings and the findings based thereon, Maietta and Neuberger, by their offers of settlement, admit such allegations and findings. Additionally, solely for the purpose of these proceedings and without admitting or denying the other allegations contained in the Order for Public Proceedings or the other findings contained herein, Maietta and Neuberger have consented to the findings and sanctions set forth below.[2]

II.

On the basis of the Order for Public Proceedings and the Offers of Settlement submitted by Maietta and Neuberger, it is found that:

A. In March 1978, the United States District Court for the Southern District of New York convicted Maietta of two counts of perjury stemming from testimony given before the Commission.[3]

B. In April 1978, the United States District Court for the Southern District of New York permanently enjoined Maietta and Neuberger from further violations of the registration and antifraud provisions of the federal securities laws.[4]

C. Maietta wilfully violated Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 19(b) of the Exchange Act and Rule 10b-5 thereunder; Maietta wilfully aided and abetted violations of Section 7(c) of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System; and Maietta was a controlling person of Brokers' Trading, Inc. for which a trustee was appointed pursuant to the SIPA.

D. Neuberger wilfully aided and abetted violations of Section 15(b) of the Exchange Act and Rule 15b3-1 thereunder, and Neuberger failed reasonably to supervise persons under his supervision with a view toward preventing violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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[1]The Order instituting proceedings was issued simultaneously with this order. In the Matter of Robert J. Maietta, et al.

[2]The findings herein are not binding on any other respondent named in these proceedings.

[3]United States v. Maietta, 78 CR 208 (LFM) (S.D.N.Y.).

[4]Securities and Exchange Commission v. Dimensional Entertainment Corp., 77 C 5290 (CHT) (S.D.N.Y.).

III.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement submitted by Maietta and Neuberger. Accordingly, IT IS ORDERED that:

A. Maietta be, and he hereby is, barred from association in any capacity with any broker, dealer, investment company, investment adviser or municipal securities dealer.

B. Effective upon the opening of business on the second Monday following the date of this Order, Neuberger be, and he hereby is, suspended from any association with any broker, dealer, investment company, investment adviser, or municipal securities dealer for a period of 180 days, provided however, that he may continue to be employed by Noble Securities Company or its successor during such suspension period in a clerical or bookkeeping capacity. Thereafter, Neuberger be, and hereby is, barred from association with any broker, dealer, investment company, investment adviser, or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity.

C. Upon the termination of the 180-day suspension in paragraph B above, Neuberger may become associated with a broker, dealer, investment company, investment adviser, or municipal securities dealer in other than a proprietary, executive, managerial, or supervisory capacity upon a showing in the form of an affidavit from his employer that he will be adequately supervised, as provided in his offer of settlement.

By the Commission.

George A. Fitszimmons
Secretary

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 17329/November 24, 1980

Admin. Proc. File No. 3-5975

In the Matter of

ROBERT J. MAIETTA,
WILLIAM S. WRIGHT, JR.,
JOHN HENRY NEUBERGER,
JOEL E. MARCUS and
JOHN RUSSEL POTTER

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTIONS 15(b) AND 19(h) OF THE SECURITIES EXCHANGE ACT OF 1934

I.

The Commission deems it appropriate that public administrative proceedings be instituted with regard to Robert J. Maietta ("Maietta"), who was a control person of a broker-dealer which withdrew its registration with the Commission on April 15, 1978; John Henry Neuberger ("Neuberger"), who is employed by a broker-dealer regisered with the Commission; William S. Wright, Jr. ("Wright"), who is employed by a broker-dealer registered with the Commission; Joel E. Marcus ("Marcus"), who is employed by a broker-dealer registered with the Commission; and John Russel Potter ("Potter"), who is employed by a broker-dealer registered with the Commission.

In anticipation of the institution of these proceedings, each of the Respondents has submitted offers of settlement which the Commission has determined to accept. By their offers of settlement, Respondents Maietta, Wright, Neuberger and Potter admit to findings by the Commission, set forth below, that they were enjoined from further violations of the registration and anti-fraud provisions of the federal securties laws by the United States District Court for the Southern District of New York and Respondent Maietta admits to a further finding, set forth below, that he pled guilty to two counts of perjury in sworn testimony before the Commission in the United States District Court for the Southern District of New York. Additionally, solely for the purpose of these proceedings and without admitting or denying the other findings herein, Respondents Maietta, Wright, Neuberger, Marcus and Potter consent to the entry of the findings and sanctions set forth below.

II.

Accordingly, it is ORDERED that administrative proceedings pursuant to Sections 15(b) and 19(h) of the Exchange Act be, and they hereby are, instituted.

III.

On the basis of the Order for Proceedings and the Offers of Settlement, it is found that:

A. Respondent Maietta

1. wilfully violated and wilfully aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder in that, among other things, Maietta:

a. participated in the sales of unregistered common stock of Dimensional Entertainment Corp. "Dimensional") in the over-the-counter market;

b. participated in the manipulation of the over-the-counter market in Dimensional common stock;

c. solicited private purchases of unregistered Dimensional common stock on behalf of a control person of Dimensional;

d. sold unregistered Dimensional common stock on behalf of a Dimensional control person through nominee accounts at the broker-dealer at which he was employed; and

e. made material misrepresentations and omitted to state material facts concerning the operation and financial status of Dimensional in connection with the purchase and sales of Dimensional common stock;

2. pled guilty on March 28, 1978 to two counts of perjury in testimony before the Commission and was enjoined from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5 and 10b-6 promulgated thereunder, pursuant to a consent judgment entered in the United States District Court for the Southern District of New York on April 28, 1978, in *SEC* v. *Dimensional Entertainment Corp., et al.*, 77 Civ. 5290 (S.D.N.Y.).

B. Respondent Neuberger

1. wilfully violated and wilfully aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, wilfully aided and abetted violations of Section 15(c) of the Exchange Act and Rule 15c2-11 thereunder, and failed reasonably to supervise persons who were subject to his supervision with a view to preventing violations by said persons pursuant to Section 15(b)(4)(E) of the Exchange Act, in that, among other things, Neuberger:

a. failed reasonably to supervise Respondents Maietta and Wright who were subject to his supervision with a view toward preventing certain of the violations reflected in sections A and C herein and which were committed by such persons;

b. solicited a private purchase of unregistered Dimensional common stock on behalf of a control person of Dimensional; and

c. engaged in a scheme to conceal the true identity of the seller of Dimensional common stock in furtherance of a manipulation of the market in that security;

2. was enjoined from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Section 15(c) of the Exchange Act and Rule 15c2-11 promulgated thereunder, pursuant to a consent judgment entered in the United States District Court for the Southern District of New York on April 27, 1978, in *SEC* v. *Dimensional Entertainment Corp., et al.*, 77 Civ. 5290 (S.D.N.Y.).

C. Respondent Wright

1. wilfully violated and wilfully aided and abetted violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that, among other things, Wright:

a. solicited the purchase of unregistered Dimensional stock on behalf of a control person of Dimensional;

b. utilized a nominee account to sell unregistered Dimensional common stock purchased from a control person of Dimensional;

c. made material misrepresentations and omitted to state material facts in connection with the purchase and sale of Dimensional common stock; and

d. solicited customers for the purchase of his

personal Dimensional common stock without disclosing that he was selling his personal stock;

2. was enjoined from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, pursuant to a consent judgment entered in the United States District Court for the Southern District of New York on April 27, 1978, in *SEC* v. *Dimensional Entertainment Corp., et al.*, 77 Civ. 5290 (S.D.N.Y.).

D. Respondent Marcus

1. wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that, among other things, Marcus:

a. accepted payments on a monthly basis from a control person of Dimensional in exchange for his causing the broker-dealer with which he was employed to appear as a market maker in Dimensional common stock; and

b. failed to disclose this practice to the public.

E. Respondent Potter

1. wilfully violated and wilfully aided and abetted violations of Sections 5(a), 5(c) and 17(c) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in that, among other things, Potter:

a. participated in the sale of unregistered common stock of Dimensional by selling, in his own name, such securities, which were provided to him by a control person of Dimensional, on behalf of that control person;

b. received approximately 15% of the proceeds of the sale of the Dimensional securities described in subparagraph (a) above; and

c. failed to disclose to the public his activities as described above;

2. was enjoined from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, pursuant to a consent judgment entered in the United States District Court for the Southern District of New York on February 15, 1978, in *SEC* v. *Dimensional Entertainment Corp., et al.*, 77 Civ. 5290 (S.D.N.Y.).

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement submitted by Respondents Maietta, Wright, Neuberger, Marcus and Potter, respectively.

Accordingly, IT IS ORDERED that:

1. Respondent Maietta be, and hereby is, barred from association in any capacity with any broker, dealer, investment company, investment adviser or municipal securities dealer;

2. Respondent Neuberger be, and hereby is, suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 180 days, provided however, that he may continue to be employed by Noble Securities, Inc. or its successor during such suspension period in a clerical or bookkeeping capacity. Thereafter, Respondent Neuberger be, and hereby is, barred from association with any broker, dealer, investment company, investement adviser or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity.

3. Respondent Wright be, and hereby is, suspended from association in any capacity with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 30 days. Thereafter, Respondent Wright be, and hereby is, barred from association with any broker, dealer, investment company, investment adviser or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity.

4. Respondent Marcus be, and hereby is, suspended from association with any broker, dealer, investment company investment adviser, or municipal securities dealer in any capacity for a period of 14 days.

5. Respondent Potter be, and hereby is, suspended from association with any broker, dealer, investment company, investment adviser or municipal securities dealer in any proprietary, executive, managerial or supervisory capacity, provided however, that Potter may apply to the Commission for association in such capacity after the expiration

of one year from the date of this Order.

6. The suspension periods applicable to Respondents Neuberger, Wright, Potter and Marcus are to commence on the opening of business on the second Monday following the date of this Order. The bar order applicable to Respondent Maietta is to commence on the date of this Order.

7. Upon completion of their respective suspension periods, Respondents Neuberger, Wright, Marcus, and Potter shall provide the New York Regional Office of the Commission with affidavits indicating their compliance with their respective suspensions. Further, before Respondents Neuberger, Wright, Marcus and Potter can resume the activities from which they are hereby suspended, they shall cause their respective employers to provide the New York Regional Office of the Commission with an affidavit attesting to the proper supervision of said Respondents in their employment.

By the Commission.

George A. Fitszimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17330/November 24, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE, INC.

File No. SR-PSE-80-21

The Pacific Stock Exchange, Incorporated ("PSE") submitted on November 17, 1980, a proposed rule change under Rule 19b-4 to require that each PSE specialist have a registered specialist assistant ("RSA") with full authority to transact business on behalf of the specialist, in order to provide enhanced coverage of every specialist post.[1]

Publication of the submission is expected to be made in the *Federal Register* during the week of November 24, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitszimmons
Secretary

SECURITIES EXCHAGE ACT OF 1934
Release No. 17331/November 24, 1980

In the Matter of

LIFE ASSURANCE COMPANY OF PENNSYLVANIA

File No. 81-639

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until December 16, 1980 to request a hearing on an application by Combined Insurance Company of American (the "Applicant"), pursuant to Section 12(h) of the Securities Exchange Act of 1934 (the "1934 Act"), for an order exempting it from the

[1]The use of RSAs would apply only on the PSE's equity floor which has a specialist system, and not on the PSE's options floor, which has a completing market maker system.

provisions of Sections 13 and 15(d) of that Act. The Applicant, a wholly owned subsidiary of Combined International Corporation, has outstanding $8,776,000 aggregate principal amount of 4¼% Subordinated Debentures Due 1998 exchangeable for common stock of American International Group, Inc. which is held by approximately 108 holders.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17332/November 24, 1980

In the Matter of

LAS VEGAS BANCORPORATION

File No.: 81-645

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until December 16, 1980, to request a hearing on an application of Las Vegas Bancorporation, (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an order exempting the Applicant from the periodic reporting requirements under Secion 13 of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17333/November 24, 1980

In the Matter of

WOOD COUNTY TELEPHONE COMPANY

File No. 81-640

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until December 16, 1980 to request a hearing on an application by Wood County Telephone Company ("Applicant") for an order exempting Applicant from the registration provisions of Section 12(g) of the Securities Exchange Act of 1934.

Applicant furnishes telephone service to four counties in central Wisconsin and is regulated as a public utility by the Wisconsin Public Service Commission. All of Applicant's stockholders are Wisconsin residents, and there is no trading market for its securities.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17334/November 24, 1980

In the Matter of

GLENDALE FEDERAL SAVINGS AND LOAN ASSOCIATION, AS ORIGINATOR AND SERVICER

File No. 81-637

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until December 16, 1980, to request a hearing on an application of Glendale Federal Savings and Loan Association, as Originator and Servicer, (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934 for an order exempting the Applicant from certain reporting requirements under Section 13 of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17335/November 25, 1980

Admin. Proc. File No. 3-5877

In the Matter of

FRANK J. GUIFFRIDA
UNITED MONETARY SERVICES, INC.

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

I

In these administrative proceedings ordered pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act")[1] respondents Frank J. Guiffrida ("Giuffrida") and United Monetary Services ("UMS") have

[1] *In the Matter of Verrilli, Altschuler, Schwartz, Inc., et al.*, Administrative Proceeding File No. 3-5877 (February 13, 1980).

submitted Offers of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings, Guiffrida and UMS have consented to the findings of willful violations and sanctions set forth below.

II

On the basis of the Order for Public Proceedings and the Offers of Settlement, it is found that:[2]

A. Giuffrida willfully violated and willfully aided and abetted violations of Sections 5(b) and 5(c) of the Securities Act of 1933 ("Securities Act") and willfully aided and abetted violations of Section 15(a) of the Exchange Act; and

B. UMS willfully violated and willfully aided and abetted violations of Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of teh Exchange Act and failed reasonably to supervise persons who were subject to its supervision with a view to preventing such violations pursuant to Section 15(b)(4)(E) of the Exchange Act;

in connection with the offer and sale of the securities of ATVA Enterprises, Inc., as alleged in the Order for Public Proceedings.

III

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement submitted by Giuffrida and UMS, respectively.

Accordingly, IT IS ORDERED that effective as of the second Monday following the date of this Order:

A. Giuffrida is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser, broker or dealer in connection with any offering of such unregistered securities, provided that Guiffrida may engage in such activities in connection with the offer to sell or sale of unregistered securities pursuant to Rule 147 promulgated under the Securities Act.

B. UMS is suspended for a period of three months from offering to sell or selling any securities the sale of which was not previously registered pursuant to the Securities Act or which have not been previously resold in reliance upon the exemption provided in Section 4(1) of the Securities Act ("unregistered securities"), or acting as an offeree representative, investment adviser broker or dealer in connection with any offering of such unregistered securities, provided that UMS may engage in such activities in connection with an offering of unregistered securities pursuant to Rule 147 promulgated under the Securities Act.

IT IS FURTHER ORDERED that Giuffrida and UMS comply with the undertakings enumerated in their respective Offers of Settlement.

By the Commission.

George A. Fitszimmons
Secretary

[2]The findings contained in this Order shall not be binding upon other respondents in this proceeding.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17336/November 25, 1980

A notice has been issued giving interested persons until December 15, 1980 to comment on the application of the *Pacific Stock Exchange* for unlisted trading privileges in the common stock ($1 par value) of CSX CORPORATION which is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17337/November 25, 1980

A notice has been issued giving interested persons until December 15, 1980 to comment on the application of the *Midwest Stock Exchange* for unlisted trading privileges in the common stock ($1 par value) of GENRAD INCORPORATED which is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17338/November 25, 1980

An order has been issued granting the application of the *American Stock Exchange* to strike the call option contracts of SIMPLICITY PATTERN CO., INC.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17339/November 25, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE NATIONAL SECURITIES CLEARING CORPORATION

(File No. SR-NSCC-80-33)

National Securities Clearing Corporation ("NSCC") submitted on November 7, 1980, a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act that changes the bond trade recording fee, currently based on the par value of trades, to $.24 per side.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 1, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NSCC-80-33.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitszimmons
Secretary

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 17340/November 25, 1980

In the Matter of

PETITION OF NATIONAL SECURITIES CLEARING CORPORATION FOR REVIEW OF DELEGATED DECISION BY ETHICS COUNSEL

ORDER DENYING MOTION TO DISQUALIFY ANTHONY C.J. NULAND

National Securities Clearing Corporation ("NSCC") has moved to disqualify Anthony C.J. Nuland from representing Bradford Securities Processing Services, Inc. and Bradford National Corporation ("Bradford") in connection with certain pending rule filings (SR-NSCC-78-2, SR-BSPS-77-5, SR-BSPS-80-3), on the ground that these filings are the same matter as that for which Mr. Nuland had substantial responsibility while on the staff of the Commission.[1] The Commission's Ethics Counsel, pursuant to delegated authority, concluded that these rule filings are not the same matter and that, therefore, NSCC had failed to present any basis under the Commission's Conduct Regulations for disqualification of Mr. Nuland. NSCC has brought this petition for review of the Ethics Counsel's decision. For the reasons set forth below, we affirm that decision.

In asking the Commission to reverse the Ethics Counsel's decision, NSCC raises only two arguments. First, it contends that the Ethics Counsel

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[1]*See In the Matter of Application of National Securities Clearing Corporation for Registration as a Clearing Agency*, Securities Exchange Act Release No. 13163 (Jan. 13, 1977), 11 SEC Docket 1448 (Jan. 25, 1977). *See also Bradford National Corp. v. Securities and Exchange Commission*, 590 F.2d 1085 (D.C. Cir. 1978).

ignored evidence of Mr. Nuland's prior official involvement with issues presented by Bradford in the instant proceedings. In our view, if the extent of Mr. Nuland's responsibility at the Commission were in dispute, this criticism of the Ethics Counsel's decision would be understandable. However, it is undisputed, and the Ethics Counsel so found, that Mr. Nuland had "substantial" responsibility for the prior proceeding, the degree of involvement which triggers the prohibition on later private representation in the same matter. Furthermore, the Ethics Counsel did not ignore, as NSCC contends, the presence of the interface issue in both proceedings, but specifically considered and rejected it as a controlling factor (see Decision, pp. 12-13). The Ethics Counsel also recognized that the earlier proceedings were broader in scope than just the registration issue, but concluded that, to the extent broad policy standards were set, these were "quasi-legislative determinations as to which no future disqualification would attach" (*id.* at 10). NSCC's first contention of error is unfounded.

Second, NSCC urges that the Ethics Counsel erred in stating and applying the legal standard for determining whether the former and present proceedings involve the same matter. The term "matter" is defined in the Commission's Conduct Regulation as "a discrete and isolatable transaction or set of transactions between identifiable parties." 17 CFR 200.735-8(a)(1). In determining whether the former and current proceedings are the same matter, the Ethics Counsel properly followed the directive of the Office of Personnal Management.

"In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest." 5 CFR 737.5(c)(4).

In addition to these factors, the Ethics Counsel focused on the purposes of the two proceedings. NSCC specifically challenges this consideration of purpose. But, the Ethics Counsel's contrasting of the purposes served to emphasize that the proceedings involve some fundamental differences in facts and issues despite surface similarities. Indeed, this "purpose" analysis recently has been judicially endorsed in the context of a disqualification motion concerning a former government lawyer. *See State of Mississippi* v. *United States* Civil Action No. 79-3469 (D. D.C. Sept. 29, 1980) (three judge district court). *notice of appeal filed* (Oct. 28, 1980). This contention of NSCC is similarly without merit.

The motion of NSCC to disqualify Mr. Nuland from representing Bradford in certain pending rule findings is denied for the reasons set forth above and in the decision of the Ethics Counsel attached hereto as appendix A.

By the Commission.

George A. Fitszimmons
Secretary

UNITED STATES OF AMERICAN SECURITIES AND EXCHANGE COMMISSION

In the Matter of

THE APPLICATION OF NATIONAL SECURITIES CLEARING CORPORATION FOR APPROVAL OF RULE FILING SR-NCSS-78-2

SR-NSCC-78-2

In the Matter of

THE APPLICATION OF BRADFORD SECURITIES PROCESSING SERVICES, INC. FOR APPROVAL OF FILINGS SR-BSPS-77-5 AND SR-BSPS-80-3

SR-BSPS-77-5

SR-BSPS-89-3

DECISION DENYING REQUEST OF NATIONAL SECURITIES CLEARING CORPORATION TO DISQUALIFY ANTHONY C.J. NULAND AS COUNSEL FOR BRADFORD SECURITIES PROCESSING SERVICES, INC. AND BRADFORD NATIONAL CORPORATION

Dated: August 7, 1980

APPENDIX A

On June 5, 1980, National Securities Clearing Corporation ("NSCC"), submitted to the Commissioners a motion to disqualify Anthony C.J. Nuland as counsel for Bradford Securities Processing Services, Inc. and Bradford National

Corporation ("Bradford"), in connection with three pending rule filings.[1] Mr. Nuland was from 1975 to 1977 an Assistant and later Associate Director of the Commission's Division of Market Regulation. In these capacities, Mr. Nuland had substantial staff responsibility for recommendations to the Commission *In the Matter of the National Securities Clearing Corporation for Registration as a Clearing Agency*, Securities Exchange Act Release No. 13163 (January 13, 1977), 11 *SEC Docket* 1448 (Jan. 25, 1977), and subsequently participated in the litigation commenced by Bradford against the Commission which was predicated on the Commission's decision in that matter.[2]

The claim NSCC makes is that Mr. Nuland, because of his participation in the Commission's decision on NSCC's application to register as a clearing agency, is disqualified pursuant to Rule 8[3] of the Commission's conduct Regulation and Disciplinary Rule 9-101(B) of the American Bar Association's Code of Professional Responsibility[4] from participation as counsel to Bradford in the presently pending applications of both NSCC and Bradford.

Disqualification of former government employees from private employment is, in most cases, applicable only to particular matters involving a specific party or parties[5] and depends on the former employee's degree of responsiblity for a particular matter. It is undisputed that Mr. Nuland had substantial responsibility for the formulation of the staff position and recommendations to the Commission concerning the NSCC registration application. In view of that fact, if that decision involved a "matter" for conflict of interest purposes, Rule 8(a)(1) of the Commission's Conduct Regulation, 17 CFR 200.735(8)(a)(1), permanently bars him from representing anyone in connection with that "matter".

Therefore, the central question is whether the Commission proceeding in 1977, concerning registration of NSCC, and the currently pending applications are "matters" for conflict of interest purposes and further, if they are such "matters", whether they are the same "matter."

For the purpose of the Commission's Conduct Regulation, a "matter" is defined as "a discrete and isolatable transaction or set of transactions between identifiable parties." The definition is intended to underscore the distinction between work on particular matters to which future disqualification attaches and work on agency rules of general applicability, procedures or legislation which does not disqualify a person with respect to future representations.[6]

The principal evil, which future disqualification is intended to remedy, is "switching sides" by a former government employee with respect to a "matter" for which he or she had significant responsibility while

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[1]Two filings have been made by Bradford, SR-BSPS-77-5 and SR-BSPS-80-3, and one filing was made by MSCC, SR-NSCC-78-2.

[2]*Bradford National Clearing Corporation, et al* v. *Securities and Exchange Commission*, 590 F.2d 1085 (D.C. Cir. 1978)

[3]The rule which deals with post-employment restrictions is Rule 8. NSCC's motion refers to Rule 6. The applicable rule was Rule 6 until the Commission amended its Conduct Regulation, revising, in the process, the numbering system for the individual rules. 45 *Fed. Reg.* 36063 (May 29, 1980).

[4]We need not consider separately a possible violation of Disciplinary Rule 9-101(B) since its prohibition has been incorporated into Rule 8 of the Commission's Conduct Regulation.

[5]An exception is 18 U.S.C. 207(c) which is intended to provide for a "cooling off" period after government service and is a one-year bar against high level government employees making any appearances before their former agencies ina representative capacity. Mr. Nuland, having left government service before the adoption of that provision was never subject to its restriciton.

[6]This distinction has been consistently noted since the adoption of the federal conflict of interest law on which the Commission rule is based. *See Memorandum of Attorney General Regarding Conflict of Interest Provisions of Public Law 87-849*, 28 *Fed. Reg.* 985f (Feb. 1, 1963). It has also been incorporated in the definition of "Matter" in Formal Opinion 342 of the American Bar Association Committee on Ethics and Professional Responsibility, 62 *ABA J* 517, 522 (1975) ("Opinion 342"), which concerned imputation of disqualification to partners and associates of personally disqualified attorneys. It is, in fact, the ABA's definition which the Commission has incorporated into Rule 8(a)(1).

in government service. Allowing such "switching of sides" would raise the serious concern that confidential information previously gained might be utilized in a subsequent proceeding, and that the government lawyer might handle assignments, while in government service, in a way which would encourage his or her own future employment with regard to the same matter.[7] Also to be considered, though of less significance, is the desire to avoid even the appearance of impropriety.[8] However, rulemaking of general applicability is not the kind of proceeding to which disqualification normally attaches because the question of switching sides does not usually arise.[9] Moreover, such generalized rulemaking is usually conducted in public proceeedings, eliminating the possibility of disclosure of confidential information.

Bradford's initial contention is that the 1977 proceeding is essentially rulemaking and therefore not a "matter" as to which disqualification applies.[10] But, a determination as to whether the proceedings here involved are "matters" requiring future disqualification, and if so, whether they are the same "matters," is one which can only be made with reference to the specific proceedings involved.

The NSCC Registration Decision ("The 1977 Proceedings")

In the 1975 Amendments to the Securities Exchange Act of 1934[11] (the "Act") Congress granted to the Commission broad authority over clearing agencies and transfer agents, including the authority to approve or deny each application for registration as a registered clearing agency pursuant to Section 17A of the Act, 15 U.S.C. 78q-1(1975), and Rule 17Ab2-1 thereunder, 17 CFR 240.17Ab2-1. Pursuant to Section 17A of the Act, the Commission was directed to use authority granted to it to "facilitate the establishment of a national system for the prompt and accurate clearance of transactions in securities."[12]

While the Commission had been granted broad powers over clearance and settlement functions, Congress had provided some focus for exercising these responsibilities including outlining specific determinations which the Commission was required to make before approving an application for registration as a clearing agency. Included among these, were determinations as to the effect the approval or denial of the registration would have on the public interest, the protection of investors, the safeguarding of funds and securities and the

[7]*See* Opinion 343 *supra* at 521; Opinion 889 of the Committee on Professional and Judicial Ethics of the Bar of the City of New York, 31 *The Record* 552, 555 (1976) ("Opinion 889). *See also*, Release of the Office of Government Ethics promulgating rules concerning Post Employment Conflict of Interest, 45 *Fed. Reg.* 7402, 7408 (Feb. 1, 1980).

[8]Opinion 342 *supra* at 520.

We recognize that Mr. Nuland's representation of Bradford might be a situation as to which reasonable minds might differ with respect to the appearance of impropriety.

However, in addressing the question of disqualification the prophylactic line which has been drawn rests on the concept of "matter" and relationship to a "matter," not on the subjective "appearance of impropriety." While "appearance" is a factor to be considered in the totality of the situation it cannot be the principal basis for a decision. *See Armstrong* v. *McAlpin*, No. 79-7042 (2d Cir. June 20, 1980) (*en banc*), slip opinion at 23.

It should be noted that previous to undertaking representation of Bradford Mr. Nuland consulted with members of the staff of the Office of General Counsel and the Division of Market Regulation, who orally informed him that he could undertake the representation without violating the Commission's rules.

[9]While the question of "switching sides" does not usually arise in the context of a rulemaking proceeding of general applicability, it does arise, however, in the narrow situation where a former government attorney attacks the legitimacy of a rule he or she was responsible for promulgating while in government service. In such an instance the former government attorney would indeed be considered to be "switching sides" and would be barred from participating in such an attack. *See* Opinion 889 *supra* at 558.

[10]Memorandum in Opposition to Motion to Disqualify Counsel, pp. 15-22 (June 30, 1980).

[11]Pub. L. No. 94-29.

[12]Section 17A(a)(2), 15 U.S.C. 78q-1(a)(2) (1975).

maintenance of fair competition.[13]

On March 29, 1976, the Commission gave notice of the filing of NSCC's application for registration as a clearing agency.[14] The application contemplated the formation of NSCC by consolidation of the American Stock Exchange Clearing Corporation ("ASECC"), the National Clearing Corporation ("NCC") and the Stock Clearing Corporation ("SCC"), and the incorporation in NSCC of the clearing and settlement functions performed by each of those entities for members of their respective parent organizations—the American Stock Exchange, the New York Stock Exchange and the National Association of Securities Dealers.

The application for registration of an entity which would consolidate three large existing clearance and settlement operations, provided a focus for the Commission's consideration of the characteristics and structure of the prospective national clearance and settlement system,[15] as well as, the role an entity such as NSCC might play in the overall plan. Therefore, before reaching a decision with respect to NSCC's application, the Commission considered written comments and held oral proceedings to explore the many issues involved.

On January 13, 1977, the Commission issued its order granting NSCC temporary registration as a clearing agency. Because the Commission had considered a number of broad policy issues in reaching a decision, its order was a comprehensive statement of its resolution of legislative-type facts relevant to the decision. Therefore, the order set out the circumstances leading to the adoption of the 1975 Amendments to the Act, as well as, the Commission's view of the scope and characteristics of a national clearing and settlement system. With that as a preface, the Commission specifically considered NSCC's application and its effect on the prospective national clearance system. The Commission concluded that granting NSCC's application would accelerate the formation of a national system, but because the Commission was concerned with the effect on competition in the securities clearing industry which the formation of NSCC might have,[16] the Commission imposed four conditions on NSCC's registration—the free interface condition, the remote comparison condition, the OTC comparison condition and the common branch facility condition.

During the course of the Commission's consideration of NSCC's application, Bradford submitted written comments to the Commission after the publication of the Commission's release detailing proposed conditions for approval and a request for comments.[17] Bradford played no further part in the Commission's proceeding, but subsequently sought review in the United States Court of Appeals of the Commission's order granting NSCC temporary registration.

(SR-BSPS-77-5; SR-BSPS-80-3; SR-NSCC-78-2) ("The Current Proceedings").

Bradford is a registered clearing agency. Its principal business is the physical receipt and delivery of municipal securities and government guaranteed securities. It also offers a financing service for transactions processed through its facilities, but it currently does not offer automated comparison and clearance services.

In October 1977, Bradford filed,[18] for Commission

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[13]*Id.*

[14]Securities Exchange Act Release No. 12274 (March 29, 1974), 9 *SEC Docket* 305 (Apr. 13, 1976).

[15]On December 1, 1975, previous to the filing of NSCC's application, the Commission had granted temporary registration to 13 individual clearing agencies including ASECC, NCC and SCC. However, the registration of individual clearing agencies did not raise the same issues, particularly the issue of competition among registered entities.

[16]*Competition was a factor which the Commission was required to consider in review applications for registrations. See* Sec. 17A(a)(2), 15 U.S.C. 78q-1(a)(2) and Sec. 17A(b)(3)(I), 15 U.S.C. 78q-1(b)(3)(I).

[17]Securities Exchange Act Release No. 12954 (Nov. 3, 1976), 10 *SEC Docket* 851 (Nov. 16, 1979).

[18]The papers relating to this proposal (SR-BSPS-77-5) were originally submitted to the Commission on August 29, 1977, however, because no schedule of actual charges was included, a request for such schedule was made. The schedule was submitted on October 19, 1977. Since it is Commission practice to consider the date of filing to be the date a completed filing is made, Bradford's submission was considered filed on October 19, 1977.

approval, a proposed rule change which would authorize it to establish an automated trade comparison and reporting system for transactions in all securities. Subsequently, on February 2, 1978, Bradford submitted SR-BSPS-78-1, seeking authority to establish a pilot program for a trade comparison and reporting system limited to transactions in municipal securities. On February 25, 1980, Bradford amended its October 1977 filing, by withdrawing the trade comparison and reporting system initially proposed and substituting for it an operationally different system, which was limited to transactions in municipal and government securities. Bradford also withdrew its February 1978 filing proposing a pilot trade comparison and reporting program, and filed another proposed rule change that would authorize it to establish a balance order system for transactions in municipal and government securities.

On February 2, 1978, NSCC filed a proposed rule change which would authorize it to include municipal securities among the securities eligible for automated processing at NSCC. Currently NSCC's automated operations are limited to processing transactions in equity and corporate debt securities. While NSCC now provides physical delivery services that participants can use to deliver municipal securities, it provides no automated processing for such securities. The effect of NSCC's rule proposal would be to permit it, for the first time, to process municipal securities transactions in an automated environment.

After the filing of NSCC's proposed rule change, Bradford submitted several letters to the Commission expressing its concern that NSCC's proposal to expand its services to municipal securities was intended to enhance NSCC's monopoly position and eliminate competition. In a subsequent letter Bradford suggested that, if NSCC's proposal is to be approved, it should be conditioned on the establishment of a free interface with Bradford. Mr. Nuland was retained by Bradford in February 1980, after the submission of these letters to the Commission, and has, since then, worked on Bradford's own proposals and its coments on NSCC's proposals.

* * *

The proceedings involved in this matter are unique, being neither strictly rulemaking nor adjudication. Therefore, although the process by which decisions in both the 1977 proceeding and in the current proceeding are reached involve notice and comment—a procedure normally associated with rulemaking, the Commission's decisions are in the form of "orders" which generally result from adjudications. The procedure is a hybrid i.e., an informal adjudication. As such, the orders, though made after the application of rulemaking type proceedings, apply to a specific party and not to the entire industry.

In the 1977 proceeding, the question at issue was whether NSCC should be permitted to register as a clearing agency. Since the Commission's proceeding involved a determination with respect to this specific entity, the proceeding must be considered a "matter" requiring subsequent disqualification in appropriate cases.[19] In a like manner, the current proceedings will involve specific determinations with respect to both NSCC and Bradford and must be considered "matters" for disqualification purposes. Therefore, although the notice and comment procedure utilized in these informal proceedings closely resemble the procedures inherent in rulemaking, these informal adjudicatory proceedings, resulting as they do in orders directed at specific parties, must be deemed "matters" for purposes of disqualification.[20]

In reviewing the 1977 proceeding, however, it is evident that the Commission did more at that time than determine the question of NSCC's registration. In its order, it laid the basic groundwork for the establishment of a national clearing and settlement system. To the extent, therefore, that the Commission adopted broad policy standards applicable to the formation of a national clearance

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[19]The evil of "switching sides" would indeed be present if a Commission employee with responsibility for the matter subsequently attempted to represent NSCC in proceedings which attempts to overturn or modify the Commission's decision regarding NSCC's registration.

[20]*See Brown et al.* v. *D.C. Board of Zoning Adjustment,* No. 13620 (D.C. Ct. App. Mar. 31, 1980). (In determining whether two zoning proceedings are the same "matter," "a formal distinction between rulemaking and adjudication should not automatically rule out the possibility that the two proceedings concern the same matter when both proceedings determine rights in the same property." Slip Opinion at 14).

system, these involved the resolution of legislative-type facts and broad policy issues, and resulted in quasi-legislative determinations as to which no future disqualification would attach. But, the Commission's specific determination with respect to the registration of NSCC, is a sufficiently discrete and insolatable determination to require future disqualification to attach. Therefore, because Mr. Nuland had substantial responsibility for the proceeding involving NSCC, he is permanently disqualified from participating in any future "matter" in which that registration decision is an issue.[21]

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Since we have determined that both the 1977 proceeding and the current proceeding are "matters" for disqualification purposes, the question now to be resolved is whether the proceedings involve the same "matter." The factors generally considered in making such determinations are whether the "matters" involve the same basic facts, related issues, the same or related parties, and the same confidential information and the length of time between the proceedings.[22]

While determinations based on the foregoing factors may be appropriate in the context of a private suit or government enforcement action, such factors have less applicability in the context of the proceedings under consideration here which involve the exercise of legislative-type authority. And, just as the formal distinction between rulemaking and adjudication cannot be woodenly adhered to in determining what is a "matter," blindly adhering to standards inappropriate for determining whether "matters" are the same and consequently require disqualification, would be in error.

Because the Commission is required by statute to make certain specific determinations with regard to clearing agency rulemaking, it is likely that all such proceedings will involve the same *issues*. Moreover, since there is only a small universe of registered clearing agencies, and NSCC and Bradford are competitors, it is likely that in all rulemaking proceedings involving clearing agencies, there will be comments from all industry participants, and, in those proceedings filed either by NSCC or Bradford, it is likely that the other will be a participant, certainly to the extent of making comments. In addition, the question of confidential information as a standard for disqualification is not likely to arise in proceedings such as these, since they are public proceedings with a public record maintained.

The single important factor remaining of those generally considered appropriate for determining disqualification is "the same basic facts." In the context of a proceeding like those under consideration, even that, is not an appropriate standard. The facts generally referred to in making determinations with respect to disqualification are adjudicative-type facts, *i.e.*, facts upon which a decision is to be made with respect to liabilities under existing laws.[23] The facts at issue in these proceedings are, rather, legislative in nature, looking to the making of decisions with prospective applicability and aimed at implementing a national policy.[24]

While NSCC claims that the free interface is common to both proceedings, and that commonality should serve to disqualify Mr. Nuland,[25] the use of the free interface to affect competition is a policy decision. The question of competition and the means to foster it will be a determination which the Commission is required to make in every proceeding involving clearing agencies.[26] Whether the free interface is required, will be a determination based on the effect a rule proposed by a clearing agency will have on the industry, a determination which can only be based on the Commission's assessment of

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[21]*See Buckeye Power, Inc.*, No. EL 79-20, (Federal Energy Regulatory Commission, Jan. 22, 1980).

[22]*See* 5 CFR 737.5(c)(4).

[23]*See e.g. General Motors Corporation* v. *City of New York*, 501 F.2d 639, 650-651 (2d Cir. 1974).

[24]*See Bradford National Clearing Corporation* v. *Securities and Exchange Commission, supra* at 1092-1095.

[25]Motion of National Securities Clearing Corporation to Disqualify Counsel for Bradford Securities Processing Services, Inc. and Bradford National Corporation, pp. 7-12 (June 5, 1980).

[26]In the 1977 proceeding a question was the competitive effect of NSCC's formation on the development of a national clearance and settlement system, while in the current proceeding we are dealing with competition in the clearing and settlement of muncipal securities.

the situation at the time a particular rule is approved or denied. The possibility of "switching sides" requiring disqualification does not arise in relation to a question such as the application of a free interface, because a determination as to whether its imposition is appropriate will turn on legislative-type facts, not adjudicative ones.

It appears, therefore, that the most important factor to base a determination of disqualification in informal adjudicatory proceedings such as these, is the main purpose of the proceeding. In this instance, the focus of the 1977 proceeding was on the question of the formation of NSCC and its registration as a clearing agency. The current proceedings, involve the question of the formation of systems to clear municipal securities propounded by both NSCC and Bradford.

Therefore, since the 1977 proceeding and the current proceeding focus on completely separate questions, and there is no indication that the Commission's consideration in the current proceeding will involve modifying or changing its order in the 1977 proceeding, we conclude that the 1977 proceeding and the current proceedings are separate "matters." Consequently, Mr. Nuland is not disqualified from participation in the current proceedings.[27]

[27]At the time Mr. Nuland resigned from the Commission the Commission's Conduct Regulation contained a one year prohobition on representations before the Commission involving a matter which was under the former government employee's "official responsibility." Therefore, Mr. Nuland was subject to a one year disqualification with respect to SR-BSPS-77-5 which is part of the current proceeding. Bradford's papers with respect to that filing were received by an employee under Mr. Nuland's supervision on August 2, 1977. *See* n. 17 *supra*. That disqualification, however, expired in October 1978.

After Mr. Nuland's departure, the Commission's Rule was amended to comport with the amendments to 18 U.S.C. 207(b) and now contains a two year prohibition applicable to matters for which a former government employee had "official responsibility." Rule 8(a)(3), 17 CFR 20.735-8(a)(3). Even if this more stringent rule would have been applicable to Mr. Nuland, the disqualification would have expired in October 1979.

Myrna Siegel
Ethics Counsel

SECURITIES EXCHANGE ACT OF 1934
Release No. 17341/November 25, 1980

In the Matter of Applications of the

PHILADELPHIA STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Philadelphia Stock Exchange ("Phlx") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:

Patrick Petroleum Co.
Common Stock, $.10 Par Value (File No. 7-5768)[1]
Amstar Corp.
Common Stock, $1 Par Value (File No. 7-5769)
Federal Express Corp.
Common Stock, $.10 Par Value (File No. 7-5770)
Management Assistance, Inc.
Common Stock, $.40 Par Value (File No. 7-5774)[2]

The Commission finds that approval of the Phlx's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the Phlx is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection

[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 71697 (October 29, 1980). The Commission has received no comments with respect to this application.

[2]Notice of these applications was given by publication in the *Federal Register*. 45 FR 73566 (November 5, 1980). The Commission has received no comments with respect to these applications.

authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Phlx are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the Phlx applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Philadelphia Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17342/November 26, 1980

In the Matter of

THE DEPOSITORY TRUST COMPANY ("DTC")
55 Water Street
New York, New York 10041

(SR-DTC-80-5)

ORDER APPROVING PROPOSED RULE CHANGE

On August 18, 1980, DTC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change establishing a new fee schedule for DTC's major services.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17081, August 21, 1980) and by publication in the Federal Register (45 FR 57619, August 28, 1980). One written comment was received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies and, in particular, the requirements of Section 17A of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17343/November 26, 1980

In the Matter of

PROPOSED RULE CHANGES SUBMITTED BY BRADFORD SECURITIES PROCESSING SERVICES, INC. (File Nos. SR-BSPS-77-5 and SR-BSPS-80-3) **AND NATIONAL SECURITIES CLEARING CORPORATION** (File No. SR-NSCC-78-2)

ORDER APPROVING PROPOSED RULE CHANGES

SUMMARY

Bradford Securities Processing Services, Inc. ("BSPS") has submitted proposed rule changes to the Commission that would establish a trade comparison and reporting system and a balance order system for transactions in municipal and government securities. National Securities Clearing

Corporation ("NSCC") has submitted a proposed rule change that would make transactions in municipal securities eligible for processing through NSCC's comparison, balance order and continuous net settlement systems. BSPS also has requested that the approval of its and NSCC's proposals be conditioned on the establishment of a "free interface" between NSCC's and BSPS's systems.

The Commission has determined to approve NSCC's and BSPS's proposals for processing transactions in municipal securities subject to certain conditions.[1] Among other things, the Commission will require NSCC and BSPS to operate their systems for processing transactions in municipal securities on a test basis for six months. During the test period, BSPS and NSCC each will have to submit reports to the Commission concerning the operation of their respective systems. Approval of BSPS's and NSCC's systems also will be conditioned on the establishment of free interfaces between NSCC's and BSPS's systems for processing transactions in municipal securities.

INTRODUCTION

BSPS's Proposals

On October 19, 1977, BSPS submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act"), a proposed rule change (File No. SR-BSPS-77-5) that would have established a trade comparison and reporting service for transactions in all securities. The Commission published notice of that proposed rule change in the *Federal Register* on November 15, 1977, and requested comment thereon.[2] On February 2, 1978, BSPS submitted a proposed rule change (File No. SR-BSPS-78-1) that would have established a limited version of its trade comparison and reporting service pending Commission action on BSPS's previous filing. The system contemplated by that filing would have been limited to not more than fifteen participants and to transactions in "exempted securities."[3] The Commission published notice of that proposed rule change in the *Federal Register* on February 21, 1978 and requested comment thereon.[4] No comments were received on either of the two rule filings within the comment periods announced in the *Federal Register*. A number of comment letters were received after the expiration of the respective comment periods, however.

In conjunction with its review of those proposed rule changes, the staff sent BSPS a letter dated October 19, 1978 asking a number of questions designed to provide a more detailed description of BSPS's proposed services. On December 11, 1979, the staff sent BSPS a letter asking whether BSPS still intended to offer the trade comparison and reporting service proposed in its two rule filings. By letter dated December 20, 1979, BSPS responded that it still intended to offer the proposed service and that it was finalizing its response to the questions set forth in the staff's October 19, 1978 letter. BSPS responded to those questions by letter dated December 24, 1979.

On February 25, 1980, BSPS withdrew the limited trade comparison and reporting system proposed in SR-BSPS-78-1 and submitted an amendment to SR-BSPS-77-5. In brief, that amendment replaced the trade comparison and reporting system originally proposed with an operationally different trade comparison and reporting system limited to transactions in municipal and government securities. Also on February 25, 1980, BSPS filed a proposed rule change (File No. SR-BSPS-80-3) establishing a balance order service for the clearance of transactions in municipal and government securities. In connection with its filings, BSPS requested that the proposals be considered concurrently. On March 10, 1980, BSPS submitted amendments to both proposed rule changes. The Commission published notice of the amended proposals in the *Federal Register* on March 21, 1980 and requested comments thereon.[5] A number of comment letters were received regarding those

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[1]The Commission, however, has determined not to approve that portion of BSPS's filings concerning the processing of transactions in government securities. Rather, the Commission will request that BSPS submit further information concerning its proposal for processing government securities.

[2]Securities Exchange Act Release No. 14141 (November 11, 1977), 42 FR 59139.

[3]The term "exempted securities" is defined in Section 3(a)(12) of the Act.

[4]Securities Exchange Act Release No. 14465 (February 13, 1978), 43 FR 7277.

[5]Securities Exchange Act Release No. 16654 (March 14, 1980), 45 FR 18528; Securities Exchange Act Release No. 16655 (March 14, 1980), 45 FR 19530.

proposed rule changes.

NSCC's Proposals

In January 1978, NSCC advised the Commission staff that its Board of Directors was about to consider a proposal to add municipal securities to the list of securities eligible for processing at NSCC.[6] NSCC argued that this new service would not violate a Commission restriction on NSCC's offering new services.[7] The staff concluded, however, that NSCC's proposal would abridge that restriction and so advised NSCC. NSCC nevertheless filed a proposed rule change (File No. SR-NSCC-78-2) on February 9, 1978.[8] That proposal would permit NSCC for the first time to compare and clear transactions in municipal securities. The Commission published notice of the proposed rule change in the *Federal Register* on February 22, 1978, and requested comment thereon.[9] The Commission received a number of comment letters concerning that filing.

On March 14, 1979, the Commission, with two exceptions, released NSCC from any restriction or limitation on its operations except for the conditions to its registration.[10] Among the restrictions lifted was the prohibition against NSCC's offering new services.

DESCRIPTION OF NSCC'S AND BSPS'S PROPOSED SYSTEMS

Before discussing NSCC's and BSPS's proposed systems, the Commission believes that a brief description of the current method for processing municipal securities transactions would be helpful. The processing of transactions in municipal securities is similar to the manner in which equity and corporate debt transactions were processed prior to the advent of automated systems for transactions in those securities. After execution of a transaction in municipal securities, the parties send confirmations to each other, generally through the mail. If those confirmations do not agree, the parties contact each other, usually by telephone or mail, and attempt to resolve the terms of the trade. Once agreement has been reached, the seller customarily delivers securities to the buyer in exchange for payment. Delivery is made either by a courier, through drafting and collection services or through phy cal delivery services operated by clearing agencies.[11]

Because the confirmation process largely is dependent on the mail, it often is not possible for parties to reach agreement on the terms of a transaction in time to settle on the fifth business day following execution of the trade as is customary. This problem can result in a large number of fails to

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[6]Letter dated January 12, 1978 from Robert J. Woldow, Vice President and General Counsel of NSCC, to Robert J. Millstone, Senior Special Counsel, Division of Market Regulation.

[7]In granting clearing agency registration to NSCC in January 1977, the Commission imposed several conditions on NSCC's registration. Securities Exchange Act Release No. 13163 (January 13, 1977). Subsequently, in a letter dates October 2, 1977, the Commission advised NSCC that, until it had fulfilled the conditions to its registration, it should:

limit the deployment of its resources to the conduct of everyday operations and to the satisfaction of the conditions to its registration, and not offer to its participants, or to any other person, service which it is not now performing.

[8]On February 27, 1978, NSCC amended the proposed rule change to indicate that its Executive Committee had approved the proposed action pursuant to delegated authority.

[9]Securities Exchange Act Release No. 14469 (February 14, 1978), 43 FR 7386. By letter dated February 1, 1980, the staff requested additional information concerning the filing. NSCC responded to that request by letter dated February 29, 1980.

[10]*See* Securities Exchange Act Release No. 15640 (March 14, 1979), 44 FR 17838 (March 23, 1979), for a discussion of the bases of the Commission's decision.

[11]Rule G-12 of the Municipal Securities Rulemaking Board ("MSRB") specifies certain requirements that municpal securities brokers and dealers must follow in comparing and settling municipal securities transactions.

deliver and fails to receive.[12] Also, because transactions are settled individually on a physical delivery basis, municipal securities brokers and dealers having both purchase and sale transactions in the same issue often cannot redeliver securities received on a given day in satisfaction of their delivery obligations in the same security. This problem also results in fails to receive and fails to deliver and imposes additional financing costs on municipal securities brokers and dealers.

NSCC's Proposed Services

NSCC's proposal would permit NSCC for the first time to include municipal securities among those securities eligible for processing through NSCC's automated systems. Those systems include NSCC's comparison system, balance order system and continuous net settlement ("CNS") system. Currently, use of those systems is limited to transactions in equity and corporate debt securities. NSCC, however, does offer physical delivery services that can be used to deliver municipal securities. Those services would be available to settle deliver and receive instructions for municipal securities transactions issued by NSCC's comparison and balance order systems.

In brief, to use NSCC's comparison system, a participant would submit municipal securities transaction information to NSCC. NSCC would match that information against information submitted by other participants and report compared transactions, uncompared transactions, and "advisories"[13] to participants. After an opportunity for participants to submit correct trade information, NSCC would compare that corrected information and would notify participants of transactions that compared as well as those that remained uncompared. Compared transactions normally would be submitted to NSCC's balance order or CNS system.[14] Participants, however, could request that NSCC issue security orders (receive and deliver instructions) for individual transactions. Settlement of those security orders would be made on a physical delivery basis through the means chosen by the participants to the transaction.

In NSCC's balance order system, NSCC would generate a daily net "buy" or "sell" position for each municipal issue in which participants have compared trades. NSCC then would issue balance orders (deliver and receive instructions) to participants. Due to the allocation procedure used for issuing balance orders, participants could be instructed to deliver securities to, or receive securities from, participants with whom they did not trade. NSCC also would issue a clearance cash adjustment statement to participants.[15] The amount specified in that statement would be paid to, or received from, NSCC by participants. Settlement, however, would be made on a physical delivery basis through the means chosen by the two participants to whom balance orders were issued. Those means would include the physical delivery services currently offered by NSCC.[16] Fails to deliver and fails

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[12]At the same time, the parties to a municipal securities transaction often will settle that transaction on the fifth business day following execution even if the comparison process is not completed. In this situation, the terms of the transaction are confirmed after settlement date. *See* MSRB Rule G-12(d)(vi).

[13]If a participant submits a trade for which there is no match (that is, corresponding transaction information was not submitted by the participant named as the *contra* party to the trade), an advisory would be sent to the participant named as the *contra* party in the submitted trade. If the participant receiving the advisory agrees with the submitted trade, it acknowledges the advisory and returns it to the clearing agency which enters it into its system as a compared trade.

[14]NSCC's proposal does not envision processing transactions through interfaces.

[15]In a balance order system, an average daily price is assigned to an issue. An average price is used in order that transactions executed at different prices may be netted against each other. The cash adjustment reflects the net difference between the actual prices at which a participant's transactions in an issue were executed and the average price assigned to that issue by the clearing agency.

[16]Those physical delivery services are NSCC's two envelope settlement services and its Correspondent Delivery and Collection Service ("CDCS"). NSCC's New York City envelope service consists of a central location where participants can drop off envelopes containing securities and have those envelopes placed in another participant's "box." Participants can come to the central location at any time to see whether they have received an envelope. NSCC's other envelope service operates between New York

to receive would be resolved between the participants to whom balance orders were issued.

NSCC's CNS system would sever the link between the parties to a compared transaction and would interpose NSCC as the *contra* party to the transaction. Following that interpositioning, NSCC would generate a net "buy" or "sell" position for each issue in which participants have compared municipal securities transactions and would net that position against any outstanding unsettled net buy or sell positions remaining in the system. NSCC also would compute a net money position for all transactions that settled that day. As the *contra* side to transactions, NSCC would be the entity obligated to deliver, or receive, securities and money and the entity with which participants would resolve fails to deliver or receive securities. NSCC would carry fails forward from day to day as open obligations, and would protect itself against financial risk by obtaining mark-to-the-market payments from participants whose failure to satisfy their obligations places the system at risk. Because the settlement of transactions processed through NSCC's CNS system is made by book entry movement in The Depository Trust company ("DTC"), the use of NSCC's CNS system for processing municipal securities transactions would be limited to the issues eligible for deposit at DTC.[17]

NSCC would charge the same fees for processing municipal securities transactions as it currently does for processing equity and corporate debt securities.

BSPS's Proposes Services

BSPS's primary business is the processing of transactions in fixed income securities. That activity consists largely of the delivery, and financing of, transactions in municipal and government securities.[18] BSPS's current services would be available for settling deliver and receive instructions generated by its proposed comparison and balance order systems.

BSPS's proposed trade comparison and reporting service (the "comparison service") and BSPS's proposed balance order service would be used only for transactions in municipal and government securities.[19] To use BSPS's proposed comparison

Footnote 16 continued

City and a number of regional cities. Envelopes are shipped between cities by couriers. Participants using either envelope service submit a credit slip with each envelope which informs NSCC of the amount by which the delivering participant's account at NSCC should be debited. CDCS is a drafting and collection service similar to that provided by many banks. In brief, CDCS consists of a network of facilities through which participants can deliver securities against payment. Although an NSCC participant can use CDCS to deliver to another participant, it primarily is used for deliveries to non-participants.

[17]In January 1978, the Commission approved a rule change authorizing DTC to include interchangeable municipal securities issues among those issues eligible for deposit at DTC. Interchangeable municipal securities issues are those that can be issued in either bearer or registered form. To date, however, DTC has made only a small number of municipal securities issues eligible for deposit. As a result, the use of NSCC's CNS system for processing municipal securities issues would be limited at this time.

[18]In brief, BSPS picks up securities from a seller and delivers them to a buyer against payment of the purchase price. Payment is remitted to the seller upon receipt by BSPS of the proceeds of the sale from the buyer. Alternatively, BSPS advances the full purchase price to the seller and credits the seller's account when BSPS collects the proceeds of the sale from the buyer. BSPS also acts as agent for a buyer by picking up municipal securities from the seller pursuant to the buyer's instructions. The buyer either may pay the necessary funds to BSPS or BSPS may advance to the buyer the funds necessary to pay for the securities. BSPS also redelivers securities versus payment pursuant to the buyer's instructions. For its services, BSPS charges a transaction fee, its out of pocket expenses, and a fee based on the prime interest rate for any funds advanced.

[19]For purposes of BSPS's proposed service, municipal securities are those securities defined as municipal securities by Section 3(a)(29) of the Act and which appear in BSPS's "Book of Designated Securities." Government securities have been defined by BSPS to include (1) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States and (ii) securities issued or guaranteed by corporations in which the United States has a direct or indirect interest and designated as exempted securities by the Secretary of the Treasury.

service, participants would submit transaction information to BSPS. BSPS would match that information and would provide participants with a report indicating compared transactions, uncompared transactions and advisories. Next, after participants have had an opportunity to submit corrected information, BSPS would match that information and would provide participants with a report identifying compared transactions and those that had remained uncompared. At this point, compared transactions could be routed to BSPS's proposed balance order system or to an interfaced clearing agency. Alternatively, BSPS could issue receive or deliver instructions.[20] Uncompared transactions would be dropped from the system at this time.

Transactions processed through BSPS's proposed balance order service could be submitted to BSPS either through BSPS's comparison service, through a comparison interface with another clearing agency or through a clearing interface with another clearing agency. After netting those transactions, BSPS would issue netted deliver and receive obligations as well as a cash adjustment statement.[21] Settlement would be made on a physical delivery basis through the means chosen by the participants to whom balance orders are issued. Those means would include BSPS's current physical delivery services. Participants would pay to, or receive from, BSPS the money amount specified in the cash adjustment statement.

BSPS's proposed fee schedules for both the comparison service and the balance order service are maximum fees from which BSPS could grant discounts. BSPS, however, is unable at this time to identify the factor which it would take into account in granting discounts. Accordingly, by letter dated March 10, 1980, BSPS undertook not to grant any discounts without first submitting a proposed rule change pursuant to Section 19(b)(3)(A) of the Act describing the factors it would use in determining discounts.

SUMMARY OF COMMENT LETTERS

The Commission has received numerous comment letters concerning the proposed rule changes filed by NSCC and BSPS, including a lengthy exchange of arguments between NSCC and BSPS. Set forth below is a brief summary of those letters. Although NSCC's and BSPS's principal arguments are discussed later in greater detail, the Commission believes it would be useful to provide an overview of the exchange of comments between NSCC and BSPS and of the numerous other comments received on NSCC's and BSPS's proposals.

By letters dated April 6 and June 22, 1978, BSPS expressed concern about delays in Commission consideration of its proposals as well as concern that NSCC's proposal was designed to enhance NSCC's "monopoly" position and to eliminate competition. In its letter dated June 22, BSPS also argued that, because of the competitive impact of NSCC's proposal on BSPS, the Commission should disapprove NSCC's proposal. By letter dated May 12, 1978, Bradford National Corporation ("BNC"), BSPS's parent corporation, also discussed the competitive impact of NSCC's proposal and argued that it should be disapproved by the Commission.

During the Spring and Summer of 1979, the Commission received numerous comment letters urging prompt approval of NSCC's filing. Generally, those commentors stated that significant benefits would accrue from a more efficient system for processing transactions in municipal securities.

By letter dated December 14, 1979, BSPS expressed concern about the manner in which NSCC had acted in connection with the processing of certain trades in New York State Housing Finance Authority ("New York State HFA") bonds, as well as NSCC's refusal to discuss interfacing NSCC's and BSPS's proposed systems during that period.[22] BSPS also requested

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[20]Settlement of those receive or deliver instructions would be made on a physical delivery basis through the means chosen by the participants.

[21]BSPS also would be authorized to require participants to make mark-to-the-market payments for unsettled transactions.

[22]In late November 1979, the Commission received reports concerning difficulties in the clearance and settlement of the transactions in a New York State HFA bond issue. Because of the large number of fails to deliver and fails to receive that had occurred, the Commission authorized NSCC and BSPS to use their proposed systems on a one-time basis to process transactions in that issue.

Although both NSCC's and BSPS's systems proved successful in comparing the transactions, NSCC and BSPS agreed that NSCC's system would be used to

that, if NSCC's proposal were to be approved, approval should be conditioned on the prior establishment of a "free interface" with any requesting clearing agency.

On December 19, 1979, NSCC wrote the Commission to urge prompt approval of NSCC's proposed rule change, citing the benefits that automated comparison and clearance systems would bring to the municipal securities industry. NSCC argued that the recent problems that had arisen in connection with trading in New York State HFA bonds had created a "potential crisis" that could "either have been averted or substantially minimized if NSCC's proposed rule change had been in place."

On January 15, 1980, NSCC again wrote the Commission to express its view that the events involving the trading of New York State HFA bonds demonstrated the urgent need for approval of NSCC's rule filing. NSCC also disputed the contentions in BSPS's December 14, 1979 letter that NSCC had behaved anticompetitively in resolving the problems associated with the clearance and settlement of transactions in New York State HFA bonds. In rebuttal, NSCC argued that its refusal to discuss BSPS's demand for a free interface in the context of the HFA bond situation was not anti-competitive. Rather, NSCC believed the complexity of the free interface issue required that it be studied at length. Because of the benefits of its proposed system, NSCC continued, it would be unthinkable for the Commission to delay approving NSCC's filing while the free interface issue was being studied.

On December 21, 1979, BSPS, sent a letter to its participants urging them to write the Commission to request that the Commission condition approval of NSCC's municipal service on the prior establishment of a free interface with BSPS. The Commission received a number of letters that generally followed the model comment letter suggested by BSPS.

Over the next several months, the Commission also received a number of comment letters urging the prompt approval of NSCC's and BSPS's filings. Those commentors argued that the comparison and clearance of municipal bonds is one of the few areas of securities processing that is performed through manual systems, that such processing is costly and cumbersome, and that the need to process municipal securities transactions manually would be reduced significantly if automated systems were available.

On March 31, 1980, in response to a staff request for a more complete explanation of BSPS's concerns and for a clarification of the extent to which BSPS's earlier comments remained relevant to consideration of its proposals, BSPS submitted a memorandum discussing "the legal and policy concerns that BSPS believes compel the Commission to condition any approval [of the proposed systems] on the concurrent establishment of [comparison and clearance] interfaces between those systems."[23] BSPS argued that the absence of interfaces would severely affect its ability to compete with NSCC in providing services for municipal securities. BSPS also argued that the interface between NSCC and BSPS should be free since the existence of interface fees would pose the same potential threat to the viability of BSPS as would the absence of interfaces. In addition, BSPS asserted that Commission approval of BSPS's and NSCC's rule changes before interfaces were established between the two systems would constitute a radical departure from the Commission's recognition of the importance of interfaces to the development of a national system as evidenced in the order approving NSCC's registration and in the Commission's proposed

Footnote 22 continued

complete the processing. The reason only one system was used to complete the processing was that, absent an interface, the use of two systems would have reduced the number of transactions that could have been netted and thus the benefits of using the systems. NSCC subsequently informed the Commission that 493 trades totaling $70,359,530 were compared and were netted to 44 balance orders with receive and deliver obligations totaling $8,965,530.

[23]That memorandum, as well as several later submissions, was prepared by Anthony Nuland, counsel to BSPS. On June 5, 1980, NSCC filed a motion to disqualify Nuland from representing BSPS before the Commission on NSCC's and BSPS's municipal securities rule filings. NSCC's motion, which alleged a conflict of interest in Nuland's representation of BSPS, was denied by the Commission's Ethics Counsel. NSCC appealed the Ethics Counsel's decision to the Commission. On November 25, 1980, the Commission affirmed the Ethics Counsel's decision.

standards for clearing agency registration.[24]

On May 21, 1980, NSCC submitted a rebuttal to BSPS's March 31, 1980 memorandum. In its rebuttal, NSCC charged that the free interfaces proposed by BSPS were similar to a sponsored account arrangement and were "nothing more than an attempt to obtain free clearance services from NSCC." NSCC further argued that none of the policy considerations that justified the existing free interfaces between NSCC and other clearing agencies applied to BSPS. In addition, NSCC argued that "BSPS does not, in many significant respects, satisfy the standards appropriate for operation as a full-fledged clearing agency." NSCC concluded that, as a result, "the grant to [BSPS] of [free interfaces] would impose unjustifiable costs and unacceptable risks upon NSCC or any other clearing agency with which [BSPS] might deal."[25] Finally, NSCC argued that, even if free interfaces between BSPS and NSCC were warranted, there was no reason to delay approving both entities' rule filings while those interfaces were being developed.

By letter dated June 4, 1980, BSPS replied to NSCC's letter of May 21, 1980. In brief, BSPS characterized NSCC's letter as reflecting "a serious misunderstanding of the proposals for clearing and comparison interfaces made by. . .BSPS." BSPS argued that it was not seeking a sponsored account arrangement with NSCC but rather an interface operationally similar to the interfaces for transactions in over-the-counter securities currently in operation between NSCC and other clearing agencies. BSPS explained that the interface "would be free only in the sense that BSPS and NSCC would charge participants the same fee for comparing and clearing inter-agency transactions through the interfaces as for comparing and clearing intra-agency transactions." In response to NSCC's charge that BSPS was not a "full-fledged" clearing agency, BSPS stated that it "is prepared to take any reasonable steps necessary to maintain the operational and financial integrity of the interfaces."

By letter dated June 4, 1980, BSPS responded to a request from the staff for further clarification concerning the extent to which the concerns expressed in BSPS's earlier comment letters still were relevant. In that letter, BSPS indicated that the "parallel operation of [NSCC's and BSPS's] proposed systems with the kinds of interfaces described in [BSPS's March 31, 1980 submission] would largely pull the anticompetitive sting of NSCC's entry into the processing of municipal securities." Absent the establishment of those interfaces, however, BSPS indicated that it still would be concerned about the competitive impact of NSCC's proposal.

On June 5, 1980, BSPS submitted a memorandum prepared by Professor Richard Posner of the University of Chicago Law School arguing that operation of the proposed systems without an interface would limit the utility and efficiency of both systems and would restrain competition among clearing agencies and competition among broker-dealers. In addition, BSPS submitted a copy of a letter it had sent to the Public Securities Association that, among other things, contained BSPS's analysis of the one-time use of its and NSCC's systems to process transactions in New York State HFA bonds. BSPS argued that its analysis indicated that operation of both systems without an interface would reduce the efficiency of both systems and would adversely affect the competitive posture of both BSPS and its participants.

By letter dated July 1, 1980, NSCC raised several additional concerns regarding BSPS's request for a free interface.[26] First, after indicating that BSPS's interface proposal was less like a sponsored account and more like the interfaces for over-the-counter transactions currently in existence, NSCC argued that BSPS's proposed interface nevertheless would result in "serious operational problems and high costs." Second, NSCC argued that a free interface would result in a "subsidy" and could result in participants' using economically less efficient

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[24]Subsequently, the Commission decided not to adopt Commission standards but rather to publish standards that the Division of Market Regulation would use in evaluating clearing agencies' organizations, capacities and rules in accordance with the clearing agency registration provisions of Section 17A(b)(3) of the Act. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[25]NSCC made a similar argument in a comment letter dated June 5, 1980 concerning BSPS's application for full registration as a clearing agency.

[26]On June 17, 1980, NSCC filed suit against BSPS in New York state court alleging that BSPS and BNC, by filing objections to NSCC's municipal rule filing, had breached a 1978 settlement agreement between BNC and NSCC. That suit is pending.

means for processing municipal securities transactions. NSCC indicated that, for example, dual participation might be a more economical means for processing municipal securities transactions than use of an interface. Third, NSCC argued that BSPS's free interface demand would require the Commission to engage in rate-fixing for individual services, an endeavor for which it believes the Commission had neither statutory authority nor expertise.

Near that time, the Commission also received several comment letters stressing the benefits of NSCC's and BSPS's proposed systems and urging that the Commission's approval of those systems not be delayed pending study of the interface questions raised by NSCC and BSPS.

By letter dated October 23, 1980, NSCC wrote the Commission to express NSCC's concern about delays in the Commission's consideration of NSCC's proposal. NSCC also argued that granting BSPS's request for a free interface would only delay further the implementation of NSCC's proposed system and that, because of the benefits to the municipal securities industry of NSCC's proposed system, the Commission should approve NSCC's proposal as quickly as practicable without conditions.

Although most of the comment letters on NSCC's and BSPS's proposed rule changes were not received during the official comment periods for those filings, the Commission believes they are helpful to its consideration of the proposals and, accordingly, has exercised its discretion to include those letters in the public record.[27]

DETERMINATIONS REGARDING NSCC'S AND BSPS'S RULE PROPOSALS

Before discussing its determinations regarding NSCC's and BSPS's proposed rule changes, the Commission believes it would be helpful to provide an overview of how that discussion is organized. The discussion of the Commission's determinations is divided into six sections. First, the Commission discusses the scope of its determinations. Second, the Commission considers whether NSCC's and BSPS's proposed systems for processing transactions in municipal securities should be approved. Third, the Commission considers whether BSPS's proposed system for processing transactions in government securities should be approved. Fourth, the Commission considers whether interfaces should be established between the proposed systems. Fifth, the Commission considers whether interfaces between the proposed systems should be free as to participants. Sixth, the Commission considers when those interfaces should be established. In addition, preceding each of the three sections in which the Commission considers interface issues is a summary of the principal arguments presented by NSCC and BSPS on those issues.

Scope of the Commission's Determinations

Under Section 19(b) (2) of the Act, the Commission must approve BSPS's and NSCC's proposed rule changes if the Commission finds that they are consistent with the requirements of the Act and the rules thereunder applicable to registered clearing agencies. If the Commission is unable to make that finding, it must institute proceedings to determine whether to disapprove the proposed rule changes.

The principal provisions of the Act applicable to clearing agencies are contained in Section 17A of the Act. Paragraph (b)(3) of that section requires that the rules of a clearing agency, among other things: (i) be "designed to promote the prompt and accurate clearance and settlement of securities transactions," (ii) be "designed to assure the safeguarding of funds and securities which are in the custody or control of the clearing agency," (iii) be "designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions," (iv) be "designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest," (v) "do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the [Act]," and (vi) "provide for the equitable allocation of reasonable dues, fees, and other charges among its participants."

[27]Rule 28 of the Commission's Rules of Practice, 17 CFR §201.28, allows the Commission in its discretion to accept and include in the public record comments received after the close of the comment period in any case or adjudication which is not determined on the record after notice and opportunity for hearing.

The Commission's determinations regarding NSCC's and BSPS's proposals also must be made in the context of the Commission's statutory responsibility to facilitate the establishment of a national clearance and settlement system. Section 17A(a) directs the Commission to use its authority under the Act "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities (other than exempted securities) in accordance with [certain Congressional findings and objectives.]" Those findings and objectives are that:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

In facilitating the development of the national clearance and settlement system, the Commission also is directed to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds and the maintenance of fair competition among brokers and dealers and clearing agencies.

In addition to those findings and objectives, the Commission is directed by Section 17A(e) of the Act "to use its authority under [the Act] to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities. . . ."

NSCC's and BSPS's Proposed Systems For Processing Transactions in Municipal Securities Transactions Are Approved

The Commission believes that automated comparison and clearance systems would provide substantial benefits to the municipal securities industry. Those systems have resulted in significant improvements in the processing of equity and corporate debt securities and should bring many of the same improvements to the processing of municipal securities transactions.[28] In particular, NSCC's and BSPS's proposed systems (i) will enable municipal securities brokers and dealers to compare transactions through a central entity rather than having to relate directly to each broker and dealer with whom they executed transactions, (ii) will increase standardization in the processing of transactions in municipal securities, (iii) will reduce the number of deliveries that otherwise would have to be made, (iv) will reduce the number of fails to receive and fails to deliver and the capital charges resulting therefrom and (v) will reduce the financing costs of settling municipal securities transactions. The large number of letters urging Commission approval of NSCC's and BSPS's proposals and the successful use of both systems on a test basis in November 1979 also attest to the benefits of automated systems for the comparison and clearance of municipal securities transactions.

At the same time, the Commission believes that both NSCC's and BSPS's systems should be tested thoroughly before beginning full-scale operations. Although BSPS's principal business currently is the settlement of municipal securities transactions, BSPS is not experienced in operating automated comparison and clearance systems.[29] In contrast,

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[28]Because municipal securities, except for the DTC program, still are not depository eligible and because many municipal securities brokers and dealers are not yet clearing agency participants, those systems initially would not resut in all of the benefits that have resulted from automating the processing of transactions in equity and corporate debt securities.

[29]A BSPS affiliate, Bradford National Clearing Corporation ("BNCC"), was the facilities manager of the National Clearing Corporation ("NCC"), one of the entities that merged to form NSCC. As NCC's facilities manager, BNCC operated an automated system for processing transactions in equity and corporate debt securities. In addition, BNCC for a short time was the facilities manager of the Pacific Clearing Corporation. That system, however, also was confined to transactions in equity and corporate debt securities.

NSCC, although currently operating automated comparison and clearance systems for equity and corporate debt securities, is not experienced in processing municipal transactions except for its physical delivery services. Moreover, many of the persons that could be expected to use the proposed systems are not familiar with automated clearing systems.[30] Consequently, the Commission believes it would be prudent to require NSCC and BSPS to operate their proposed systems initially on a test basis with a limited number of participants.

More specifically, the Commission will require NSCC and BSPS to operate their systems on a test basis for six months. That test period will begin on December 15, 1980 and will run until June 15, 1981. Initially, each clearing agency will be able to offer its proposed systems to five participants; after the systems have been operating for two months, to ten additional participants; and after the systems have been operating for four months, to an additional ten participants. The Commission also will require NSCC and BSPS during the test period to provide a monthly report describing the operation of their respective systems and containing a statistical profile of the operation of their respective systems. In addition, the Commission will require NSCC and BSPS each to provide by May 15, 1981 an opinion report prepared by an independent public accountant concerning each clearing agency's system of internal accounting control for its proposed systems. Finally, the Commission will retain the authority to extent the test period for either system if at any time during the test period either system appears not to be operating in a safe or efficient manner.

The advantage of a test period is that it will provide a controlled environment in which NSCC and BSPS can gain experience in operating their proposed systems and can make whatever adjustments may be necessary to ensure safe and efficient operation before beginning full-scale operations. Also, by requiring NSCC and BSPS to provide the Commission with monitoring data and with reports on their respective systems of internal accounting control during the test period, the Commission will be better able to assess how well each system will operate during full-scale operation. Finally, by limiting the number of participants that can ensure that both systems are expanded in an orderly manner and that participants are thoroughly familiar with the new systems. The disadvantage of a test period is that the full benefits of NSCC's and BSPS's proposed systems will be delayed for a short period of time. On balance, however, the Commission believes that disadvantage is more than outweighed by the advantages of a test period.

Finally, in determining to approve NSCC's proposed rule change, the Commission also has determined that NSCC at this time should not use the pricing policy known as geographic price mutualization ("GPM") for the processing of transactions in municipal securities. Instead, the Commission will condition its approval of NSCC's proposal on NSC's imposing the same surcharge on transactions in municipal securities processed through NSCC's branch newwork that NSCC currently imposes on transactions in securities listed on a national securities exchange and processed through NSCC's branch network.[31]

BSPS's Proposed Systems for Processing Transactions in Government Securities Is Not Approved at this Time

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[30]Because many potential users of BSPS's and NSCC's proposed systems deal only in municipal securities and because automated systems for municipal securities transactions have not been available, many municipal securities brokers and dealers have not previously used automated processing systems.

[31]Under GPM, NSCC would charge the same basic fees for transactions submitted through its branch network as for those submitted to its New York City facility. NSCC's use of GPM was remanded to the Commission for "further study and explication" by the United States Court of Appeals for the District of Columbia in *Bradford National Clearing Corporation et al. v. Securities and Exchange Commission et al.*, 590 F.2d 1085 (D.C. Cir. 1978). Until it completes its consideration of that remand, the Commission has determined that NSCC should use GPM only for those services for which NSCC used GPM at the time of the remand. *See* Securities Exchange Act Release No. 15222 (October 6, 1978), note 36. That determination has resulted in NSCC's use of GPM for processing transactions in securities traded in the over-the-counter market while imposing a surcharge on securities listed on a national securities exchange and processed through NSCC's branch network. *See* Securities Exchange Act Release No. 16085 (August 3, 1979); and Securities Exchange Act Release No. 16213 (September 21, 1979).

Although the Commission is approving the use of BSPS's proposed systems for processing transactions in municipal securities, the Commission has determined not to approve the use of BSPS's proposed systems for processing transactions in government securities at this time. There are many different types of government securities, each of which can have significantly different characteristics. In particular, there can be significant differences in the settlement requirements for different types of government securities and in the risks posed to a clearing agency and its participants from processing different types of government securities. In addition, there also are different types of transactions that can be entered into for a specific type of government security. Those different types of transactions also can pose varying risks and processing problems. As a result, the Commission has determined that before approving BSPS's proposed systems for processing transactions in government securities, BSPS should amend its proposal to identify the specific types of government securities that BSPS intends to process and, for each specific government security that BSPS would process, the type of transactions that would be processed. Those amendments also should discuss the risks to BSPS and its participants that would arise from processing those transactions, the steps BSPS would take to counter those risks and any special procedures that BSPS would use in processing those transactions.

Approval of NSCC's and BSPS's Proposals is Conditioned on the Establishment of Interfaces Between NSCC's and BSPS's Proposed Systems

(i) *BSPS's Arguments*—BSPS makes three principal arguments why the Commission should require BSPS and NSCC to establish an interface between their proposed systems. First, BSPS argues that the absence of an interface would reduce the efficiency of both systems. BSPS explains that, absent an interface at the comparison level, only dual participants "would be able to submit the bulk of their municipal securities transactions to automated comparison systems." In contrast, sole participants would continue to have to use the current, inefficient comparison process when trading with sole participants in the other clearing agency. At the clearance level, BSPS argues that the absence of an interface would severely curtail the principal objective of the proposed systems—that is, the netting of transactions and the corresponding reduction in the number of settlements participants are required to make.

BSPS continues that the operation of two non-interfaced systems would present three choices to users, or potential users, of the systems: (i) dual participation, (ii) sole participation or (ii) non-participation in either system. Dual participation, BSPS indicates, "would require payment of two sets of clearing agency fees and maintenance of two clearing agency processing streams." In contrast, BSPS indicates that, although sole participants would pay only one set of clearing agency fees and would maintain only one clearing agency processing stream, sole participants would have to continue to process a larger proportion of their volume, than would dual participants, by means of the current inefficient processing procedures for municipal securities transactions. Confronted with this choice, BSPS believes, a broker or dealer "with limited involvement in municipal securities trading might opt for non-participation in either system." BSPS concludes that, if this were to occur, the benefits of both systems would be further reduced.[32]

Second, BSPS believes that the absence of an interface would adversely affect the competitive position of many of the municipal securities broker and dealers that currently are BSPS's participants. In brief, BSPS argues that many of the major municipal securities underwriters already use NSCC for processing their equity and corporate debt transactions and that, because of the back-office processing advantages of dealing with the smallest number of clearing agencies possible, those underwriters probably would use NSCC to process their municipal securities transactions. In contract, BSPS believes that "[m]any municipal securities brokers and dealers involved in purchasing municipal securities from underwriters and selling them to other municipal securities broker-dealers, banks and a wide range of end purchasers ('wholesaling dealers') are participants in BSPS and presumably would elect to use BSPS's municipal securities comparison and clearing services."

[32]At the settlement level, BSPS indicates that, although the increased netting resulting from the establishment of an interface would reduce the number of settlements participants would be required to make, most municipal securities transactions "would [continue to] have to be settled by certificate delivery due to the limited number of municipal securities which are eligible for inclusion in DTC or in other securities depositories."

BSPS continues that, absent an interface between the proposed systems, underwriting dealers that are NSCC participants could attempt to hold down their processing costs by not joining BSPS and by insisting that sole BSPS participants either join NSCC in order to receive deliveries of underwritten securities or accept an adjustment in price reflecting the underwriters' cost of delivering securities to them.[33] BSPS argues that, if this were to occur, wholesaling dealers "would be required to belong, and incur the costs of belonging, to two clearing agencies while underwriting dealers would be able to limit their memberships to NSCC and, accordingly, avoid the costs of belonging to more than one registered clearing agency."[34] In addition, BSPS argues that, to the extent underwriting dealers that are sole NSCC participants engage in wholesaling municipal securities, they would have a significant competitive advantage over wholesaling dealers that are required to incur the cost of dual participation.

Third, BSPS argues that the absence of an interface would adversely affect its competitive position. BSPS begins that, because of "the disparity in the size of the BSPS and NSCC operations and the differences in their respective potential sensitivity to fluctuations in the volume of their municipal securities processing business," the absence of an interface would severely affect the ability of BSPS to compete with NSCC in providing comparison and clearance services for municipal securities transactions. BSPS adds that, because of the costs of dual participation, BSPS participants that are induced to join NSCC "would ultimately be constrained to discontinue whichever clearing agency participation the participants could easily afford to do without." BSPS continues that, because NSCC is the system favored by underwriting dealers, wholesaling dealers probably would discontinue participating in BSPS. BSPS also suggests that the "absence of an interface is more likely to draw BSPS sole participants to NSCC than to draw NSCC sole participants to BSPS." BSPS argues that, for broker-dealers that process their equity and corporate debt transactions through NSCC, it would be inefficient and uneconomical for them to process their municipal securities transactions through another clearing agency. In contrast, BSPS contends, "a decision by a sole BSPS participant to move its municipal securities processing to NSCC would simply involving [sic] changing clearing agencies."

In addition to its arguments in support of interfaces, BSPS also describes what it believes should be the operational requisites of interfaces between the two systems. Specifically, BSPS believes that both the comparison and clearing interface must permit a sole participant in either BSPS or NSCC to submit uncompared trade data, for comparison only, or for comparison and clearing; to submit compared trade data for clearing; and, in completing those functions, to relate only to the clearing agency to which it belongs. In addition, BSPS states that balance orders must be with a participant in one of the two clearing agencies and must have a compatible format so that a participant to which a deliver obligation is issued will be settling with a participant with a matching receive obligation.[35] Aside from these general requisites, however, BSPS believes that technical matters concerning the interface should be resolved between the operational personnel of NSCC and BSPS.[36]

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[33]BSPS also argues that, if the municipal securities broker-dealers, banks and end purchasers (presumably institutions) that currently are NSCC participants also would use NSCC's proposed municipal securities system, wholesaling dealers competing for their business would have an additional incentive to join NSCC absent an interface.

[34]BSPS explains that the principal costs of dual participation would be (i) the costs of maintaining two internal processing streams for municipal securities transaction; (ii) the costs of whatever clearing deposit, letter of credit or bonding requirements the clearing agencies would impose; and (iii) the participation and other non-volume-based fees that participants would have to pay.

[35]BSPS also describes several operational approaches that it believes could be used as a basis for the interface. BSPS indicates that those approaches could serve as an initial framework for discussions between it and NSCC.

[36]Among the technical matters that BSPS suggests should be resolved between the two clearing agencies are: (i) whether the interface should operate on a data exchange basis, through a shared performance of interfacing functions or through an alternating performance of interfacing functions and (ii) whether each clearing agency should interpose itself between its participants and the other clearing agency.

Finally, BSPS indicates that it recognizes that the "operation of an interface may place constraints on the freedom of each interfacing clearing agency to make improvements in its system." To ameliorate this possibility, BSPS suggests that it and NSCC form a participant committee to evaluate the need for, and to recommend, systems improvements affecting the interface.

(ii) *NSCC's Arguments*—In response to BSPS's position, NSCC states that it does not dispute BSPS's characterization of the general benefits of interfaces. NSCC argues, however, that BSPS's demand is "nothing more than an attempt to obtain free clearance services from NSCC." NSCC explains that what BSPS is requesting is not an interface but rather a sponsored account arrangement, similar to that currently existing between NSCC and DTC.[37] NSCC indicates that, under this arrangement, NSCC would clear and net all trades of BSPS's participants and forward the resulting balance orders to BSPS to be passed out to BSPS's participants. NSCC continues that it has no objection to providing that service, as long as BSPS pays the same fees that any NSCC participant would be required to pay for such an arrangement. NSCC also indicates that it would be willing to act as a comparison "hub" for all municipal securities trades or for trades between its participants and BSPS's participants. Again, however, NSCC argues that it should be paid for that service. Finally, NSCC concludes that, if BSPS's proposal were to be adopted, "[i]nstead of there being two systems, each offering similar services in competition with one another, the result would effectively be *one* operation, a riskless joint venture of two ostensible competitors." (Emphasis in original.)

Next, NSCC argues that BSPS's conclusions concerning the competitive impact of non-interfaced systems are "sheer sophistry." NSCC explains that BSPS's contention that clearing agency membership is a factor in an underwriter's selection of an underwriting syndicate is "fanciful." NSCC also disputes BSPS's contention that underwriting dealers that currently use both NSCC and BSPS will drop their BSPS membership if NSCC is permitted to process municipal securities transactions. Instead, NSCC suggests that underwriters probably would retain membership in both NSCC and BSPS, absent an interface, in order to take advantage of automated clearance for as many of their transactions as possible.

NSCC also disagrees with BSPS's argument that noninterfaced systems would have an adverse competitive impact on BSPS. NSCC argues that BSPS's statement that there would be an exodus of wholesaling dealers from BSPS to NSCC, absent an interface, "has been shown to be specious." In addition, NSCC argues that, to the extent that BSPS suggests that it is more sensitive to a reduction in the volume of its municipal securities processing business than is NSCC, that argument is "little more than a plea" that BSPS be protected from normal competitive forces.

Finally, NSCC argues that BSPS's proposal "would have a highly destructive impact upon the innovation and technological progress that genuine competition is intended to foster." NSCC explains that, because for all practical purposes the two clearing agencies would be operating an enforced joint venture, each innovation that NSCC developed would be subject to a forced sharing agreement with BSPS. NSCC also argues that it would not even be able to make appropriate systems changes without BSPS's approval. NSCC concludes that no surer recipe could be found for "technological inertia and entrepreneurial paralysis."

(iii) *BSPS's Rebuttal*—In rebuttal, BSPS argues that NSCC's characterization of BSPS's interface proposal is inaccurate. BSPS explains that, rather than a sponsored account arrangement, its proposal envisions that "most, or all, of the processing steps involved in comparing and clearing intra-agency transactions would be performed by each of the interfacing clearing agencies." BSPS also explains that, depending on the operational frame work of the interface, the work involved in comparing and clearing inter-agency transactions could be: (i) divided between BSPS and NSCC; (ii) performed by either clearing agency under a cost-reimbursement arrangement; or (iii) performed by both BSPS and

[37]The Commission notes that because NSCC's CNS system is tied operationally to DTC's system, NSCC participants using NSCC's CNS system also must be direct or indirect participants in DTC. The sponsored account arrangement between NSCC and DTC permits NSCC members whose transaction volume does not justify incurring the expense of full membership in DTC to join indirectly through NSCC. NSCC pays fees to DTC for transactions in the sponsored accounts and guarantees the obligations of its sponsored account participants to DTC.

NSCC in duplicate. Finally, BSPS indicates that, if necessary, it would be willing to compare and clear NSCC intra-agency trades.[38]

(iv) *NSCC's Rebuttal*—In rebuttal, NSCC argues that, although BSPS's latest interface proposal seems more like the existing interfaces between NSCC and regional clearing agencies, BSPS's proposal would present "many operational difficulties and high unnecessary costs." NSCC explains that interfacing NSCC's and BSPS's proposed balance order systems would require each clearing agency to receive physical certificates from participants and to deliver those securities either to the other clearing agency or to the other clearing agency's participants, depending on the structure of the interface. NSCC indicates this processing would be time-consuming and costly. NSCC continues that, in contrast, a sponsored account arrangement, such as that which it believed BSPS seemed to have proposed originally, makes "a great deal of sense operationally and in terms of cost." NSCC concludes that BSPS's latest proposal "seems to make little sense from a cost or operational point of view, but has the advantage for [BSPS] of creating at least the appearance of [BSPS's] performing some function that would entitle it to services from NSCC at less than normal cost."

(v) *The Commission's Determinations*—The Commission believes that interfaces between NSCC's and BSPS's proposed systems would increase the efficiency of both systems and would benefit participants in both systems, thereby furthering the establishment of the national clearance and settlement system envisioned by Congress in Section 17A of the Act.

The benefits of interfaces have been recognized by Congress in Section 17A of the Act and by the Commission in other contexts. Section 17A(a) (2) of the Act directs the Commission to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities in accordance with certan Congressional findings. One of those findings set out in Section 17A(a) (1) of the Act is that:

[t]he *linking* of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors. (Emphasis added.)

In addition, the Commission, in describing what should be the characteristics of a national clearance and settlement system in the order granting NSCC registration as a clearing agency, determined that participants should be able "to compare, account for and settle through one entity all trades in securities included in the system, regardless of the location of the other party to the trade or the market in which the trade is executed."[39] The attainment of that goal is dependent on the establishment of a system of interfaces among clearing agencies. In addition, the Commission's requirement that NSCC, as a condition to its registration, establish interfaces with the Midwest Clearing Corporation, the Pacific Clearing Corporation and the Stock Clearing Corporation of Philadelphia, as well as a link with the Boston Stock Exchange Clearing Corporation, also was a recognition of the importance of interfaces to the development of a national clearance and settlement system.[40]

More recently, the Division of Market Regulation's standards for registration as a clearing agency stated that "[i]nterfaces among clearing agencies are important to the development of a national clearance and settlement system composed of autonomous clearing agencies."[41]

In addition to the importance placed on interfaces by the Securities Exchange Act and the Commission, the voluntary establishment of numerous interfaces at both the clearing corporation and depository levels attest to the benefits of interfaces to the securities industry.

In the present context, interfacing NSCC's and BSPS's proposed systems would allow persons wishing to process as large a percentage of their municipal securities transactions as possible in an automated environment to do so in a single account at one clearing agency without having to become a

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[38]BSPS also suggests that the over-the-counter interfaces between NSCC and the regional clearing agencies could serve as a model for the interface between NSCC and BSPS.

[39]Securities Exchange Act Release No. 13163 (January 13, 1977).

[40]*Id.*

[41]Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

participant in both BSPS and NSCC. Interfacing the two systems also would result in greater netting of transactions and thus would reduce further the number of settlements that currently have to be made in the municipal securities markets. That reduction should help to minimize the number of fails to receive and fails to deliver that currently exist in the settlement of municipal securities transactions as well as the financing costs of settling municipal securities transactions. Moreover, by not having to become dual participants, participants would have to pay membership and other non-volume-related fees to only one clearing agency. Finally, because participants would have to maintain only one clearing agency processing stream for municipal securities transactions and would have to be familiar with only one set of procedures and forms for those transactions, participants' back-office operations should be simpler and less costly.

Turning to the competitive arguments raised by NSCC and BSPS, although the Commission recognizes that the events projected by BSPS could occur, BSPS has not convinced the Commission that those events inevitably would occur or that they would occur in the magnitude suggested by BSPS. More specifically, the Commission recognizes that persons currently using NSCC to process their equity and corporate debt securities would have an incentive to use NSCC for their municipal securities processing.[42] By doing so, those persons would receive certain benefits. Among those benefits would be that the money settlement for municipal securities transactions would be netted with the money settlement for equity and corporate debt transactions. In addition, rather than having to relate to two clearing agencies and to use two sets of procedures, participants could use one clearing agency processing stream. Participants also would not have to pay two sets of membership and other non-volume related fees.

At the same time, the Commission cannot conclude that those persons would not use BSPS's proposed services absent an interface. That decision would depend on a number of factors, including the costs of dual participation, the cost of processing municipal securities transactions with BSPS sole participants on a nonautomated basis and the utility of BSPS's other services.[43]

In addition, BSPS has not convinced the Commission that, absent an interface, "wholesaling" dealers that initially chose to use BSPS's proposed service would be drawn inevitably into dual participation and thereafter induced to become NSCC sole participants. The Commission recognizes that in order to reduce their costs municipal securities underwriters that are sole NSCC participants may try to require as a condition to participating in an underwriting that sole BSPS participants join NSCC or accept an adjustment in price reflecting the underwriters' additional cost of delivering securities to them. The extent to which sole BSPS participants would be induced to become dual participants, however, again would depend on a number of factors, including the fees charged by each clearing agency, the range and quality of services offered by each clearing agency and the number of transactions BSPS's participants have with NSCC's participants. Similarly, the decision by a wholesaling dealer to maintain dual participation or to become a sole participant would depend on a number of factors, including the cost of dual versus sole participation, the utility and range of services offered by each clearing agency, the cost of processing municipal securities transactions on a non-automated basis and the percentage of transactions with participants in each clearing agency.

For the reasons discussed above, the Commission has determined that interfaces should be established between NSCC's and BSPS's proposed comparison systems and between NSCC's and BSPS's proposed balance order systems. Interfaces would increase the efficiency of both systems and would increase the benefits of both systems to participants. The Commission also recognizes that, absent interfaces, there would be certain economic incentives, as discussed above, for potential users of the proposed systems to choose NSCC's system. Establishment of interfaces would significantly reduce those economic incentives. Also, as discussed below, the Commission has not been persuaded by NSCC's arguments against interfacing the proposed systems.

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[42]The Commission also recognizes that NSCC processes by far the largest number of equity and corporate debt transactions and that many persons doing an equity and corporate debt business as well as a municipal securities business already are NSCC participants.

[43]For example, BSPS offers financing and physical delivery services.

In arguing against BSPS's proposal for interfacing NSCC's and BSPS's proposed systems, NSCC makes two principal arguments. First, NSCC argues that BSPS's proposal would result in a costly and time-consuming interface. At the same time, although NSCC has not been able to agree with the specific proposals offered by BSPS, NSCC has acknowledged that there would be benefits in linking, or interfacing, the proposed systems. For example, NSCC acknowledges that linking its and BSPS's proposed systems through a sponsored account arrangement would make sense operationally and in terms of costs.

In determining that interfaces should be established between NSCC-s and BSPS's comparison and balance order systems for municipal securities, the Commission has determined not to mandate the specific operational details of those interfaces nor to endorse any of NSCC's or BSPS's specific proposals at this time. As a general matter, the Commission believes it is appropriate for operational decisions to be made by the personnel of the clearing agencies. In this instance, as discussed above, although NSCC and BSPS have not been able to agree on a specific proposal, both NSCC and BSPS have suggested different ways in which their systems could be linked or interfaced. Those proposals could serve as a basis for an agreement between the two clearing agencies. Accordingly, as is discussed subsequently, the Commission will require NSCC and BSPS to establish a coordinating committee to facilitate the resolution of the operational details of the interfaces.

Second, with regard to NSCC's concern that an interface would cause technological inertia, the Commission recognizes that enhancements to existing interfaced services may have to be coordinated if an interface is to continue to operate. That problem has not proven troublesome in other contexts, however. Moreover, as a general rule, the Commission believes that the introduction of new services need not be delayed until an interfaced clearing agency has developed a comparable service. As a result, the Commission does not believe that interfacing NSCC's and BSPS's proposed systems would be a significant factor discouraging the development of new services by either clearing agency.

Approval of NSCC's and BSPS's Proposals Is Conditioned on the Establishment of Interfaces Which Are Free as To Participants

(i) *BSPS's Arguments*—In addition to requesting the establishment of interfaces between NSCC's and BSPS's proposed systems concurrently with those systems beginning operations, BSPS requests that the interfaces be free as to participants. BSPS explains that the term "free interface" means that participants would pay the same fee for comparing and clearing inter-agency transactions through an interface as they would for comparing and clearing intra-agency transactions.

BSPS continues that the term "free interface" does not refer to the costs to interfaced clearing agencies of establishing and operating an interface. BSPS indicates that it believes those costs should be allocated between interfaced clearing agencies: (i) by each bearing their respective costs of establishing the interface, and an appropriate portion of any common costs, or (ii) by each bearing an appropriate portion of all costs of establishing the interfaces, including each clearing agency's internal costs. BSPS also envisions that either of the above cost-sharing arrangements would be used to defray the ongoing expenses of operating the interface.

Next, BSPS discusses why it believes "the existence of any interface fees poses the same potential threat to the viability of its municipal securities clearing and comparison systems as the operation of the. . . systems without interfaces." First, BSPS explains that, if interfaces are not free to their respective participants, sole participants in each clearing agency will incur an additional expense for processing transactions with sole participants in the other clearing agency. BSPS indicates that, if those participants' aggregate interface fees exceed the cost of dual participation, sole participants could decide to become dual participants rather than to continue to use the interface. Second, BSPS argues that, although high charges would favor dual participation, even low interface fees "could impair the utility of the [interfaces] to a participant whose transactions through the [interfaces] were a high percentage of all its transactions." Third, BSPS argues that underwriting dealers could adjust transaction prices to wholesaling dealers in order to pass on the underwriting dealers' costs of using the [interfaces]." Finally, BSPS concludes that, although it "recognizes that the effects of interface fees on competition between BSPS and NSCC would vary depending on the amount of the fees and the mix of municipal securities transactions processed by BSPS participants. . ., [t]he effects of interface fees are so difficult to monitor, let alone predict, that the

imposition of any interface fee is likely to undermine the viability of the [interfaces]."

(ii) *NSCC's Arguments*—NSCC makes a number of arguments why it believes the Commission should not mandate the establishment of a free interface between NSCC's and BSPS's proposed systems. NSCC begins by arguing that "[f]ree interfaces are departures from cost-based pricing that can be justified, if at all, only on the basis of some overriding public policy concern." NSCC explains that Section 17A(b)(3)(D) of the Securities Exchange Act requires that "[t]he rules of the clearing agency [must] provide for the equitable allocation of reasonable dues, fees, and other charges among its participants." Given this statutory mandate, NSCC concludes that, "[a]bsent overriding [national clearance and settlement or national market system] goals, the principle governing fee allocation must be the concept that fees should be based on the cost of services provided." "Failure to adhere to this principle," NSCC believes, "leads to economic distortions as use of 'free' services expands and the use of other services that must bear the actual cost of the 'free' services contracts without economic justification."

NSCC continues that the one overriding concern identified to date, and the basis of the Free Interface Condition to its registration, was the concern that NSCC might obtain an insurmountable lead over the non-New York clearing agencies unless they were able to offer one-account processing through full, and initially free, interfaces prior to NSCC's offering similar services. NSCC indicates that "[w]ithout such an interim requirement, there was concern that 'NSCC could obtain a competitive advantage by charging interface fees. . .designed to encourage brokers and dealers located outside New York City to use the NSCC network rather than another clearing corporation.' " NSCC further indicates that the opponents of interface fees hypothesized that the loss of participants by non-New York clearing agencies might, in turn, negatively impact their affiliated market places. NSCC concludes that "[i]t was to meet this specific concern, and *not* as part of any general policy favoring subsidies to competing clearing corporations, that the Commission required NSCC to establish free interfaces with [three regional clearing corporations]." (Emphasis in original.)

Next, NSCC offers three principal reasons why the justification behind the Free Interface Condition to its registration "cannot simply be carried over into the field of municipal securities as a basis for granting a similar subsidy to BSPS." First, NSCC argues that BSPS plays no national market system role.

Second, NSCC indicates that BNC, BSPS's parent, controls several bank and broker-dealer subsidiaries that compete directly with NSCC's bank and broker-dealer participants. NSCC continues that, "[i]f BSPS's free interface demand were acceded to, those [BNC] broker-dealer and bank affiliates would gain a wholly unwarranted competitive advantage over all other broker-dealers and banks." NSCC explains that its participants currently bear the cost of interfaces on a mutualized basis as part of the fees they pay and that it would not be appropriate to require them to "subsidize the operations of BSPS and its affiliated brokers and banks, which would be their own direct competitors." NSCC also concludes that BNC "should not be allowed to take advantage of a special subsidy program merely to increase the return to its own public shareholders."

Third, NSCC argues that:

> if BSPS were deemed entitled to a free interface with NSCC, it is difficult to see a principled basis for denying a similar free interface to any other securities industry entity that performs some type of clearance function and might choose to apply for registration as a clearing agency. Correspondent brokers, banks that engage in physical delivery of municipal securities, broker-dealers that offer fully disclosed clearing to other brokers—all would be entitled to free interfaces with as much legitimacy as BSPS. The Commission can avoid future free interface demands from entities such as these only by making it clear that the policy behind the Free Interface Condition confines its application to the non-New York exchange-affiliated clearing agencies that the Condition originally covered.

NSCC concludes that because of the above considerations "any interface with BSPS should not only bear normal interface charges, but also fully reflect the additional extra costs to NSCC of handling an interface transaction (*i.e.*, the interface should not only reflect the revenue that NSCC gives up from interface transactions but also the large additional cost to NSCC of operating the interface.)"

Finally, NSCC argues that the "free interface subsidy," if ever warranted, should be available "to only those entities that are in fact clearing agencies within the generally accepted criteria of today's clearing environment." NSCC explains that, although BSPS has received temporary registration as a clearing agency, "BSPS lacks most of the essential attributes that a clearing agency should have, and would be demonstrably unable to satisfy the Commission's own standards for permanent clearing agency registration." NSCC continues that BSPS's failure "to utilize either the organizational structure or the operational safeguards of a normal clearing agency makes it inappropriate to put a contra side clearing agency and its participants at risk by requiring it to operate a free interface with BSPS."

(iii) *BSPS's Rebuttal*—In response, BSPS states that it has never requested and does not intend to request that NSCC compare and clear BSPS intra-agency transactions. Moreover, BSPS indicates it "has offered to compare and clear. . .BSPS-NSCC inter-agency transactions and, if operationally desirable, would be prepared to compare and clear NSCC intra-agency transactions." BSPS continues that it also "is prepared to absorb its share of the marginal incremental costs incurred by it and NSCC in processing transactions through the interfaces." BSPS adds, however, that "[u]nlike NSCC, [it] does not believe that the costs of an interface properly include the revenues which the clearing agency loses by not charging a participant submitting an inter-agency transaction for the side of the transaction submitted to an interfacing clearing agency." Finally, BSPS iterates that its proposed interface "would be 'free' only in the sense that BSPS and NSCC would charge participants the same fee for comparing and clearing inter-agency transactions through the interfaces as for comparing and clearing intra-agency transactions."

With regard to NSCC's comment that BSPS is not a true clearing agency, BSPS states that BSPS, like NSCC, is currently operating under an extension granted by the Commission of its temporary registration as a clearing agency. BSPS also indicates that it "has rules defining the services it provides, fee schedules, participation standards, and mechanisms for determining initially, and thereafter monitoring, the financial condition of its participants." BSPS further indicates that it has 276 participants that are not BSPS affiliates. BSPS continues that it is prepared to take "any reasonable steps necessary to maintain the operational and financial integrity of the interfaces, including steps to provide adequate assurances that BSPS participants would satisfy receive and deliver obligations incurred in connection with inter-agency transactions." Finally, BSPS states that it, like other clearing agencies, "will be required to adopt any safeguards, procedures and governance provisions which the Commission eventually includes in its standards for the permanent registration of clearing agencies."

(iv) *NSCC's Rebuttal*—NSCC argues that it believes BSPS's interface proposal would be too costly to be attractive to many participants although BSPS believes otherwise. NSCC continues that "neither conclusion can be validated *except* by measuring the demand for the interface when it bears normal costs, undistorted by subsidies" (emphasis in original). NSCC explains that a free interface would provide an incentive to process transactions through an interface rather than through some other method, such as dual participation, that might be more efficient. NSCC concludes that market demand, unclouded by subsidies, should determine the extent of interface use.

NSCC also argues that BSPS's proposal for a free interface "would require the Commission to engage in a complicated and guideless rate-making and subsidy-cost/benefit analysis. . .," and that "[t]he Commission has no statutory authority or experience in fixing rates for individual services."

(v) *The Commission's Determinations*—In discussing the free interface issues raised by NSCC and BSPS, the Commission has considered two principal questions. First, what are the costs of an interface and how should those costs be allocated between clearing agencies? Second, how should the costs allocated to each clearing agency be recovered from its participants?

(a) *What are the costs of an interface and how should those costs be allocated between clearing agencies?*—In general, there are two types of cost associated with an interface. The first type of cost arises from additional activities that each clearing agency has to perform as a result of the interface ("interface activities"). Among those activities are data transmission and the reconciliation of interface positions. The second type of cost arises from certain activities that will have to be performed regardless of whether there is an interface

("common activities").[44] As a practical matter, those common activities have to be performed by one entity. That entity could be either clearing agency or a third party. Among those activities are the comparison and netting of inter-agency municipal securities transactions.

As previously discussed, the Commission has determined not to specify the operational details of the interfaces at this time. Rather, the Commission will require NSCC and BSPS to establish a coordinating committee to facilitate the resolution by NSCC and BSPS of those operational details. Until those operational details are resolved, it will be unclear whether NSCC, BSPS or a third party will perform the common functions of the interface.

Also as previously discussed, both BSPS and NSCC have put forward proposals to perform the common activities of the interfaces. For example, BSPS has offered to compare inter-agency municipal securities transactions and to net, and issue balance orders for, inter-agency municipal securities transactions. BSPS also has indicated that it would be willing for NSCC to perform those functions. NSCC, in turn, has offered to act as a comparison hub for inter-agency municipal securities transactions or to process transactions on a sponsored account basis. NSCC and BSPS disagree, however, on how the entity performing the common activities of the interface should be compensated. BSPS argues that the clearing agency performing the common activities should charge only its incremental cost while NSCC argues that BSPS should pay NSCC the same fees as do other NSCC participants.

As for the cost of interface activities, BSPS suggests that (i) each clearing agency could bear its own costs or (ii) that those costs could be added to the cost of the common activities of the interface and that each clearing agency then could be assigned an appropriate portion of all the costs of the interfaces. NSCC, in turn, argues that BSPS should bear the "large additional cost to NSCC of operating the interface."

In addition to giving NSCC and BSPS an opportunity to determine the operational requisites of the interface, the Commission believes that NSCC and BSPS also should be given an opportunity to determine on what basis the entity performing the common activities of the interfaces should be compensated and how the costs of the interfaces should be allocated. As discussed above, the resolution of those issues will depend in part on the determination of which entity will perform what common activities. Also, the Commission again believes it is more appropriate that the two clearing agencies initially make these types of determinations. Accordingly, the Commission will require that the coordinating committee also consider the basis on which entities performing the common activities should be compensated and the manner in which the costs of the interface should be allocated. Moreover, because the principal focus of NSCC's and BSPS's comments has been on whether interfaces should be established and not on the cost and cost allocation aspects of the interfaces, if NSCC and BSPS are not able to resolve those issues, the reports that the coordinating committee will be required to make to the Commission should provide a better record for a Commission decision.

(b) *How should the costs allocated to each clearing agency be recovered from participants?*—The Commission also considered the basis on which clearing agencies could recover the costs of an interface from participants. In a "free interface," participants pay the same fee for comparing and clearing transactions through an interface as they do for comparing and clearing intra-agency transactions. The cost of the interface thus is mutualized by each clearing agency. In contrast, if an interface is not free, the cost of an interface is charged only to those participants that process transactions through the interface.

The Commission believes that the interfaces between NSCC's and BSPS's proposed systems should be free interfaces for three principal reasons. First, interface fees have a tendency to discourage use of an interface and, if set at a sufficiently high level, could undermine, or effectively eliminate, the benefits of an interface. Second, the Commission agrees with BSPS that the effects of interface fees are difficult to monitor, let alone predict, and there would be considerable regulatory costs associated with monitoring and evaluating those fees. Free interfaces would reduce the need for the Commission to become involved in disputes over cost allocation and would avoid the risk that undesirable effects may result from interface fees.

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[44]This statement assumes that transactions processed through an interface would be processed by one of the two clearing agencies absent an interface.

Third, absent overriding policy reasons, the Commission believes that all of a clearing agency's participants should contribute toward a clearing agency's participation in a national system. In discussing the free interface condition to NSCC's registration, the Commission determined that:

> Current trading practices obligate the selling side of a transaction to make delivery to the buying side of the transaction. Once interfaces are in place, a party to a transaction effected on an exchange or through use of an OTC trading mechanism will not know the location at which the other party to the transaction has elected to clear and settle securities transactions. As a result, all parties to exchange and OTC transactions would have an equal likelihood of entering into sale transactions which would occasion the use of interfaces.[45]

That reasoning applies equally to the municipal securities market. More specifically, when executing a municipal securities transaction an entity will not know the location at which the other party to the transaction will process that transaction. For example, in a given transaction, an NSCC participant could deal with another NSCC participant, a BSPS participant or a dual participant. In addition, due to the allocation feature of balance order systems, a participant in one clearing agency that executes a transaction with a participant in an interfaced clearing agency could be instructed to receive securities from, or deliver securities to, a participant in its own clearing agency, while a participant that deals only with participants in its own clearing agency could be instructed to deliver securities to, or receive securities from, a participant in an interfaced clearing agency. Similarly, the netting feature of balance order systems could result in a participant "netting-out" even though it executed a transaction with a participant in another clearing agency.

The Commission also has not been persuaded by NSCC's arguments that interfaces between the two systems should bear interface charges. NSCC argues that free interfaces are departures from cost-based pricing that can be justified, if at all, only on the basis of some overriding public policy concern. The Commission does not agree with NSCC's premise. Rather, as discussed above, as a general matter, the Commission believes that all participants of a clearing agency should contribute toward a clearing agency's participation in a national system.

NSCC also makes six other arguments why it believes BSPS's request should not be granted. First, NSCC argues that the basis for the Free Interface Condition to its registration was concern that interface fees might result in the loss of participants by non-New York clearing agencies, and that loss, in turn, might negatively impact their affiliated marketplaces. NSCC adds that BSPS plays no national market system role. The Commission disagrees with NSCC's characterization of the purpose of the Free Interface Condition. While the Commission agrees that the effect of NSCC's registration on regional exchanges was a consideration in the Commission's decision to impose conditions on NSCC's registration, that effect was only one of a number of considerations that formed the basis for the Commission's determination.[46]

Second, NSCC argues that a free interface would grant BSPS's broker-dealer and bank affiliates an unwarranted competitive advantage over other broker-dealers by allowing the BSPS affiliates to clear through BSPS and avail themselves of essentially free services through the use of BSPS's interfaces. The Commission is not persuaded by this argument. Because BSPS's affiliates would have to pay the same fees and meet the same participation standards as BSPS's other prticipants, they would not receive preferential treatment over other BSPS participants. The Commission also does not believe that a free interface would give BSPS's affiliates an unwarranted advantage over NSCC's participants. In a free interface, each clearing agency incurs costs in operating an interface and recovers those costs in full from its participants on a mutualized basis. As a result, participants that do not process transactions through the interface, or that process only a small number of transactions, pay the same fee as participants that have a large number of interface transactions. Participants that do not use the interface or do so only occasionally thus could be characterized as "subsidizing" the heavier users of the interface. However, such a "subsidy" would result in NSCC participants' "subsidizing" other NSCC participants and in BSPS participants' "subsidizing" other BSPS participants but not in NSCC participants' "subsidizing" BSPS participants. Moreover, as discussed above, the Commission

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[45]Securities Exchange Act No. 13163 (January 13, 1977).

[46]*See generally*, Securities Exchange Act Release No. 13153 (January 13, 1977).

believes that it is difficult to determine to what extent participants "use" an interface and that as a general matter all participants of a clearing agency should contribute toward that clearing agency's participation in the national clearance and settlement system.

Third, NSCC argues that, if the Commission grants BSPS a free interface, it would be difficult to deny free interfaces to other securities industry entities that perform some type of clearance function and that register as clearing agencies. NSCC adds that "correspondent brokers, banks that engage in physical delivery of municipal securities, broker-dealers that offer fully disclosed clearing to other brokers—all would be entitled to a free interface with as much legitimacy as BSPS." Although NSCC does not identify the basis for that concern, the Commission assumes that NSCC is concerned that free interfaces would encourage new entry and that a multiplicity of interfaced clearing agencies would result in a costlier, less efficient system. In addition, NSCC may be arguing that free interfaces would make entry into the securities processing field more attractive and that, to the extent new entrants attract volume away from an existing clearing agency, that existing clearing agency's per unit costs, and thus its fees for its remaining participants, would increase significantly.

The Commission recognizes that, if there is a proliferation of linked clearing agencies, at some point the costs of interfacing those entities could outweigh the efficiencies that result from the interfaces. The Commission believes that concern is somewhat speculative in this context, however. There have been no clearing corporation registrations since NSCC was required to establish free interfaces with three regional clearing agencies. Moreover, there are significant cost to registering as a clearing agency. In addition to the monetary cost of complying with the requirements of Section 17A of the Act, compliance with those requirements limits the manner in which a clearing agency can conduct its business. Absent more persuasive evidence, the Commission does not believe that NSCC's concern about the potential for a proliferation of clearing agencies is a reason for not requiring a free interface.

Fourth, NSCC argues that a free interface with BSPS is especially inappropriate because BSPS is not a "true" clearing agency, as that term is accepted in today's clearing environment. NSCC further argues that, because BSPS is not a true clearing agency, a free interface with BSPS presents particular risks to NSCC and its participants.

The Commission does not share NSCC's concern. BSPS has been granted temporary registration as a clearing agency, as has NSCC, pursuant to Securities Exchange Act Rule 17Ab-2. In addition, pursuant to the Division of Market Regulation's standards for clearing agency registration, BSPS soon will have to file an amended application for registration as a clearing agency. Prior to granting BSPS fulll registration as a clearing agency, the Commission will have to determine that BSPS's rules and procedures are in compliance with the requirements of Section 17A of the Act.

With regard to NSCC's concern that BSPS presents particular risks to NSCC and its participants, the Division of Market Regulation's standards for clearing agency registration recognize the right of one clearing agency to "require reasonable assurance of another clearing agency's ability to meet its obligations of its participants." Also as discussed, BSPS has agreed to take "any reasonable steps necessary to maintain the operational and financial integrity of the interfaces, including steps to provide adequate assurances that BSPS participants would satisfy receive and deliver obligations incurred in connection with inter-agency transactions."

Fifth, NSCC argues that BSPS's interface proposal would be costly but that, if that interface were free, there would be an economic incentive for participants to use the interface in spite of the cost rather than some other method to process transactions, such as dual participation, that might be more efficient. The Commission is not persuaded by NSCC's arguments for several reasons. The Commission at this time has not mandated any particular interface structure. More importantly, however, NSCC has not persuaded the Commission that, in light of the well recognized benefits of interfaces, dual participation would be a more efficient method of processing municipal securities transactions. As discussed, the Commission believes that interfacing NSCC's and BSPS's proposed systems would improve the efficiency of both systems and would increase the value of those systems to participants. Dual participation, on the other hand, would negate many of those benefits. For example, dual participation would reduce the number of municipal securities transactions that could be netted, and would correspondingly increase the number of settlements that would have to be made. That effect would increase fails to deliver and fails to receive between municipal

securities brokers and dealers and would increase participants' financing costs. Dual participation also would mean that municipal securities brokers and dealers would have to pay two sets of membership and other non-volume related fees and would have to maintain two clearing agency processing streams. Finally, also as discussed, the Commission believes that as a general matter all participants of a clearing agency should contribute toward its involvement in the national clearing and settlement system.

Finally, the Commission strongly disagrees with NSCC's argument that the Commission has no statutory authority to determine whether an interface should be free as to participants. Contrary to NSCC's assertion, Section 17A of the Act makes plain that the Commission's responsibilities include such determinations. For example, 17A(b) of the Act requires that the Commission determine that the "rules of clearing agencies provide for the equitable allocation of dues, fees and other charges." The fees NSCC and BSPS will charge for use of interfaces clearly are within that statutory charge. Section 17A(b) of the Act also requires the Commission to determine that the "rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency, and to remove impediments to and perfect the mechanism of a national system." As discussed, the imposition of interface fees could affect significantly the efficiency and utility of NSCC's and BSPS's proposed systems.

In addition, in *Bradford National Clearing Corporation v. Securities and Exchange Commission*, the United States Court of Appeals for the District of Columbia in reviewing the scope of the Commission's authority in Section 17A, held that any decision by a clearing agency is reviewable by the Commission if that decision "may affect the realization of the national clearing system envisioned by Congress—*i.e.*, one that is safe, efficient *and* competitive."[47] The Commission believes that the decision by a clearing agency to impose interface fees clearly could impair the efficiency and utility of interfaced services.

Approval of NSCC's and BSPS's Proposals Is Conditioned on the Establishment of Interfaces Concurrently with the Termination of the Operation of the Systems on a Test Basis

(i) *BSPS's Arguments*—BSPS makes two principal arguments why the Commission should require NSCC and BSPS to establish an interface at the time their proposed systems begin operations. First, BSPS argues that it operationally is easier and less disruptive to establish an interface prior to, rather than after, commencement of the proposed systems. BSPS estimates that, assuming good faith by both clearing agencies, an interface could be fully operational "within less than six months" if established prior to the systems beginning operations. In contrast, BSPS believes that, if interfacing is not initiated until after the systems are fully operational, it "would take considerably longer." BSPS indicates, for example, that, once the systems are operational, establishing an interface would require both clearing agencies to reprogram various operations and replace forms, and may entail hardware modifications and changes in fee schedules.

Second, BSPS argues that delaying an interface would have an adverse effect on both clearing agencies' participants. In brief, BSPS indicates that to the extent NSCC and BSPS have to change their systems to accommodate an interface, participants in both systems would have to modify recently established back office operations. BSPS also indicates that "decisions made by participants regarding their processing streams, the clearing organization to which they belong and their trading activities [would be] affected by the availability or unavailability of interfaces and [would be] difficult and expensive to reverse once taken." Finally, BSPS fears that, because of the operational problems and costs resulting from non-interfaced systems, participants could become disenchanted with the proposed systems and could revert to exception processing "rather than make the adjustments to their backoffice operation necessary to interact with interfaced systems."

In addition, BSPS argues that, without Commission action, the two systems would operate independently and inefficiently, "and that progress toward interfaces will be sufficiently delayed for both wholesaling dealers and BSPS to become victims of the competitive inequities inherent in a noninterfaced operation of the systems." BSPS argues that, despite the generally acknowledged

[47] 590 F.2d 1085, 1114 (D.C. Cir. 1978) (emphasis in original).

advantages of interfaced clearing systems, "the history of interfacing in securities processing has been one of halting progress, ususally achieved only at the Commission's insistence." BSPS indicates that the reason for that halting progress has been that the implementation and operation of almost every proposed interface has been of more importance to one of the two interfacing clearing agencies than to the other. BSPS indicates that, typically, the reluctant clearing agency either believed it was more appropriate to allocate its energies and resources to other areas or was concerned that the establishment of an interface would dilute a competitive advantage. BSPS concludes that in this instances, "NSCC will be the reluctant party." As support for its conclusion, BSPS argues that, although revenues from municipal securities processing are important to BSPS, they are relatively unimportant to NSCC. BSPS also argues that BSPS has had difficulty in getting NSCC to discuss establishing an interface.

Next, BSPS argues that "the strongest inducement to both it and NSCC to promptly establish the interfaces would be a Commission determination not to permit either BSPS's or NSCC's systems to be implemented unless comparison and clearing interfaces were in place." BSPS explains that both BSPS and NSCC participants are anxious to obtain automated municipal securities services and that, if one party were perceived to be dilatory in establishing the interface and delaying the availability of the proposed systems, that clearing agency would risk losing business.

BSPS also outlines two measures the Commission could take if it is concerned that either NSCC or BSPS would not work diligently toward the establishment of the interface. First, BSPS suggests requiring NSCC and BSPS to establish a schedule for implementing the interface and to report periodically whether the schedule is being met. If one party were found to be responsible for a delay, BSPS suggests that the Commission allow the other party to implement its system while conditioning the implementation of the dilatory party's system on the completion of the interface. BSPS also suggests that the Commission could take other action against the dilatory clearing agency, including a proceeding under Section 19(h) of the Act. Second, BSPS suggests the Commission could require each clearing agency to post a bond to indemnify participants against savings that would be lost because of a failure by one or both clearing agencies to meet that schedule.

(ii) *NSCC's Argument*—In response, NSCC argues that it is easier operationally to establish an interface between operating systems than it is to construct an interface at the outset. NSCC explains that the "testing of an interface would be easier with real transactions from existing systems." NSCC also believes that BSPS's contention that approval of both systems should be delayed until an interface is established is baseless, "since interfaces of the type currently in operation are transparent to participants in interfaced clearing agencies. . ."

NSCC also argues that BSPS's demand for an interface concurrent with commencement of operations is designed to delay implementation of both proposals. NSCC believes that BSPS long has sought to delay NSCC's proposed clearance system for municipal securities and that BSPS's request for an interface concurrent with commencement of operations is the latest facet of that plan. NSCC explains that "[f]or two years, [BSPS] was quite content to sit back, without competition from a modern balance order clearance system for municipal securities, and carry on a lucrative business in trade-for-trade settlement, reaping large profits from transaction fees and interest revenues that would be reduced through the netting achieved by balance order clearance." NSCC continues that "[n]ow, when the municipal securities industry will no longer tolerate the continued absence of netting and balance order clearance, [BSPS] demands a *free* interface, knowing that this demand is unacceptable to the industry." (Emphasis in original.) NSCC concludes that BSPS hopes to create a "no lose situation for itself—either there will be no change in the *status quo*, in which case [BSPS] will happily continue to profit from transaction fees and interest charges on trade-for-trade settlement at the industry's expense, or NSCC will be forced to accept a free interface, in which case . . . NSCC will be required to grant [BSPS] free clearance services."

(iii) *The Commission's Determinations*—Because of the benefits that would result from the establishment of interfaces between NSCC's and BSPS's proposed systems, the Commision believes that the interfaces should be established at an early date. At the same time, the Commission recognizes that it will take time for NSCC and BSPS to work-out the operational details of the interfaces and to test the interfaces prior to putting them into operation. Consequently, establishing an interface concurrently with the commencement of the operation of the proposed systems on a test basis

would delay the implementation of beneficial systems.

The Commission believes the best solution to those conflicting demands is to allow the test period to begin immediately but to require that an interface be established concurrently with the termination of the test period and the expansion of both systems to full-scale operation. This approach has a number of benefits. First, it would allow NSCC and BSPS to implement and begin testing their systems immediately. In addition, it would enable those participants chosen to participate in the test period to receive the benefits of automated municipal sercurities processing at the earliest possible date.

Second, this approach would address the operational concerns raised by both NSCC and BSPS. More specifically, this approach would address NSCC's comment that it is easier to interface systems after they are operational. At the same time, although this approach does not adopt BSPS's concern about the difficulty of interfacing existing systems, if BSPS and its participants know that interfaces are to be developed by the two clearing agencies and that those interfaces would be established at the end of the test period, they should be able to maintain sufficient flexibility in their operations to accommodate any changes necessitated by the interfaces. NSCC and its participants similarly should be able to accommodate any operational changes necessitated by the interfaces. Moreover, only the limited number of participants using the systems during the test period would be faced with the possibility of having to make operational changes to their systems.

Third, this approach would focus pressure from the securities industry on NSCC and BSPS to resolve their differences. The Commission recognizes that the relationship between NSCC and BSPS has not been a paradigm of cooperation. Rather, both clearing agencies, not only in this proceeding but also in other contexts, have had serious disagreements. The Commission is concerned that those differences may interfere with the speedy establishment of interfaces. The Commission believes that not authorizing NSCC and BSPS to operate their systems on a full-scale basis until an interface is established should result in the municipal securities industry's working with NSCC and BSPS in an effort to insure that interfaces are established as quickly as possible.

As an additional step to encourage the speedy establishment of interfaces, the Commission will require NSCC and BSPS to establish a coordinating committee whose task will be to facilitate the development by NSCC and BSPS of: (i) the operational framework of the interfaces; (ii) the method of compensation for performing the common activities of the interfaces; (iii) the method of allocatig the costs of the interfaces between NSCC and BSPS; and (iv) the steps necessary to maintain the operational and financial integrity of the interfaces. That committee should consist of at least ten persons. Two of those persons should be management personnel from NSCC; two should be management personnel from BSPS; and the remainder should be equally divided between participants or potential participants in NSCC's and BSPS's proposed systems. The committee should meet at least biweekly to resolve outstanding operational details concerning the establishment of the interfaces.[48] In addition, the committee should report to the Committee in writing soon after each meeting on (i) the progress that has been made in establishing the interfaces; (ii) the issues that remain unresolved and (iii) the position each clearing agency takes on unresolved issues.[49]

In order to encourage the speedy establishment of interfaces, the Commission also will require NSCC and BSPS to submit a joint plan for establishing interfaces no later than April 15, 1980. That plan should provide for the establishment of those interfaces concurrently with the termination of the operation of those systems on a test basis and on the expansion of those systems to full scale operation. That plan also should specify, among other things: (i) the operational framework of the interfaces, including the entity or entities that will perform the common activities of the interfaces; (ii) the method

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[48]The Commission believes that, in view of the importance of automated clearing to the municipal securities industry, organizations such as the Municipal Securities Rulemaking Board and the Public Securities Association could provide important assistance in this process by attending the meetings of the coordinating committee and offering their expertise to BSPS and NSCC.

[49]An additional benefit of the committee is that its written reports will help provide a record on which the Commission can rely if interfaces are not established by the end of the test period and further Commission action is required.

of compensation for performing the common activities of the interfaces; (iii) the method of allocating the costs of the interfaces between NSCC and BSPS; and (iv) the assurances that each clearing agency will provide to maintain the financial and operational integrity of the interfaces.

Finally, if the interfaces are not established by the time the test period is scheduled to terminate, NSCC's and BSPS's authority to operate their systems for processing municipal securities transactions shall expire absent affirmative Commission action.

CONDITIONS AND DIRECTIVES

In accordance with the provisions of Section 19(b)(2) of the Act, the Commission has determined that, subject to the terms contained in this order, NSCC's proposed rule change and BSPS's proposed rule changes, insofar as they apply to municipal securities transactions, are consistent with the requirements of the Act and the rules and regulations applicable to registered clearing agencies, and in particular: (i) are designed to promote the prompt and accurate clearance and settlement of securities transactions; (ii) are designed to assure the safeguarding of funds and securities which are in the custody or control of NSCC or BSPS; (iii) are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; (iv) are designed to remove the impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; (v) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; (vi) provide for the equitable allocation of reasonable dues, fees, and other charges among their participants; and (vii) reduce the physical movement of securities certificates;

IT THEREFORE IS ORDERED THAT SR-NSCC-78-2 AND THAT SR-BSPS-77-5 and SR-BSPS-80-3, insofar as they apply to transactions in municipal securities, are approved, subject to the terms contained in this order, including the following conditions and directives:

(i) NSCC and BSPS shall operate their proposed automated systems for processing municipal securities transactions on a test basis for a six month period commencing December 15, 1980. Initially, NSCC and BSPS each shall offer their proposed systems to no more than five participants; after the systems have been operating for two months, to no more than 15 participants each; and after the systems have been operating for four months, to no more than 25 participants each; and

(ii) During the test period, NSCC and BSPS shall provide the Commission with a monthly report describing the operation of their respective systems and containing a statistical profile of the operation of their respective systems. Furthermore, NSCC and BSPS each shall provide by May 15, 1981 an opinion report prepared by an independent public accountant concerning the operation of its system of internal accounting control during the first four months of operation of its proposed systems; and

(iii) NSCC may not use the pricing policy known as geographic price mutualization for th eprocessing of transactions in municipal securities. Rather, NSCC must impose the same surcharge on municipal securities transactions processed through its branch network that NSCC currently imposes on transactions in securities listed on a national securities exchange and processed through NSCC's branch network; and

(iv) On or before April 15, 1981, NSCC and BSPS shall submit to the Commission a joint plan for the establishment of interfaces between their comparison systems and balance order systems for municipal securities transactions. That plan shall provide for the establishment of those interfaces concurrently with the termination of the operation of those systems on a test basis; and

(v) NSCC and BSPS shall establish interfaces between their comparison systems and between their balance order systems concurrently with the termination of the operation of the systems on a test basis. In the event that those interfaces are not established, NSCC's and BSPS's authority to operate their systems shall expire absent affirmative Commission action. Also in connection with those interfaces, neither NSCC nor BSPS shall charge their participants an interface fee or any fee which would operate as an interface fee; and

FURTHER ORDERED, that NSCC and BSPS shall form a coordinating committee to facilitate the determination by NSCC and BSPS of: (i) the

operational framework of the interfaces, (ii) the method of compensation for performing the common activities of the interfaces, (iii) the method of allocating the costs of those interfaces between NSCC and BSPS, and (iv) the steps necessary to maintain the operational and financial integrity of the interfaces. The coordinating committee shall consist of at least ten persons: (i) two members shall be management personnel from NSCC, (ii) two members shall be management personnel from BSPS, and (iii) the remainder shall be equally divided between participants or potential participants in NSCC's and BSPS's respective systems. The coordinating committee shall meet at least biweekly to resolve outstanding operational details concerning the establishment of the interfaces and shall report to the Commission shortly after each meeting on (i) the progress that has been made in establishing the interfaces, (ii) the issues that remain unresolved, and (iii) each clearing agency's position on unresolved issues.

Finally, because the Commission has requested BSPS to submit additional information on its proposed systems for processing transactions in government securities, the Commission has not considered those portions of SR-BSPS-77-5 and SR-BSPS-80-3 relating to the processing of transactions in government securities.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17344/November 26, 1980

In the Matter of

MUNICIPAL SECURITIES RULEMAKING BOARD
Suite 507
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

(SR-MSRB-80-11)

ORDER APPROVING PROPOSED RULE CHANGE

On October 29, 1980, the Municipal Securities Rulemaking Board (the "MSRB") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would extend from December 1, 1980, to October 1, 1981, the effective date of that part of the amendments to rule G-15 (File No. SR-MSRB-79-6, approved by the Commission in Securities Exchange Act Release No. 16707 (March 28, 1980)) which requires that confirmations of transactions in callable securities effected at a dollar price in excess of par include certain yield information. All other requirements of the March amendments to rule G-15 will continue to become effective on December 1, 1980,[1] including the requirement that confirmations of transactions in callable securities contain a legend indicating that the yield shown may be affected by the exercise of call provisions and that information concerning such call provisions will be provided upon request, and, with the exception of transactions in callable securities effected at a dollar price in excess of par, that confirmations of transactions effected on a dollar basis include yield information.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17277 (November 7, 1980)) and by publication in the *Federal Register* (45 FR 75039 (November 13, 1980)). No comments with respect to the proposed rule change have been received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The proposed rule change extends from December 1, 1980, a date prior to the thirtieth day after publication of the notice of filing, to October 1, 1981, the effective date of part of the March amendments

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[1]Notice of the approval of the extension from September 24, 1980, to December 1, 1980, of the effective date of the previous amendments to rule G-15 (File No. SR-MSRB-80-7) was published in Securities Exchange Act Release No. 17150 (September 12, 1980).

to rule G-15. Because the intent of this extension is to relieve brokers, dealers, and municipal securities dealers of a portion of the requirements scheduled to become effective on December 1, 1980, its purpose would be thwarted if it were not approved prior to that date.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17345/November 26, 1980

NOTICE OF EFFECTIVENESS OF A PROPOSED RULE CHANGE BY THE PACIFIC CLEARING CORPORATION

(File No. SR-PCC-80-4)

The Pacific Clearing Corporation ("PCC") submitted on November 25, 1980, a proposed rule change redesignating and renumbering its existing rules.

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4 thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 1, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PCC-80-4.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21798/November 21, 1980

In the Matter of

MIDDLE SOUTH ENERGY, INC.
New Orleans, Louisiana

(70-6259)

ORDER RELEASING JURISDICTION OVER FEES, COMMISSIONS AND EXPENSES INCURRED IN CONNECTION WITH THE SALE OF FIRST MORTGAGE BONDS

Middle South Energy, Inc. ("MSEI"), a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the transaction.

By orders dated March 28, 1979 (HCAR No. 20977) and December 20, 1979 (HCAR No. 21347) MSEI was authorized to privately place up to $200 million of its first mortgage bonds with a group of institutional investors. Pursuant to that authorization MSEI was able to place $98.5 million

principal amount of such bonds. By those orders jurisdiction was reserved over the fees, commissions and expenses to be incurred by MSEI in connection with the sale of the first mortgage bonds. MSEI has not filed a post-effective amendment to its application-declaration informing the Commission that such fees, commissions and expenses total $281,000 including fees of company's counsel of $110,500, fee of bond purchasers' counsel of $45,000, printing expenses of $51,471 and the financial advisor's fee and expenses of $67,800 determined pursuant to the letter agreement dated September 18, 1978, between MSEI and its financial advisor.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 20932), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction reserved in the aforementioned orders of March 28, 1979 and December 20, 1979 over the fees, commissions and expenses incurred by MSEI with respect to the instant transaction be, and it hereby is, released effective forthwith.

For the commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21799/November 21, 1980

In the Matter of

BLACKSTONE VALLEY ELECTRIC COMPANY
Lincoln, Rhode Island

(70-6510)

ORDER AUTHORIZING AMENDMENT OF PREFERRED STOCK PROVISIONS

Blackstone Valley Electric Company ("BVEC"), an electric utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 promulgated thereunder regarding the following transactions.

The declaration states that the provisions relating to the issuance and the terms, limitations, and relative rights and preferences of the preferred stock of BVEC are set out in the Preferred Stock Provisions. The Preferred Stock Provisions provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of BVEC having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital (including premiums on capital stock) and surplus of the company and that the amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

BVEC proposes to amend the Preferred Stock Provisions and intends to hold a special meeting of the holders of its preferred stock on November 24, 1980, to permit such shareholders to consider and act upon a proposal to authorize BVEC, for a five year period, to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation thereon. Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the short-term unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series) voting as a single class.

In connection with the special meeting to be held on November 24, 1980, BVEC is soliciting proxies seeking the affirmative vote of holders of its preferred stock with respect to the above-described amendment to the Preferred Stock Provisions. Such solicitation was authorized by order in this proceeding dated October 15, 1980 (HCAR No. 21745).

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21745), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction heretofore reserved in this proceeding be, and it hereby is, released.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21800/November 21, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6499)

SUPPLEMENTAL ORDER AUTHORIZING NEGOTIATIONS FOR THE ISSUANCE AND SALE OF PREFERRED STOCK ON A PRIVATE PLACEMENT BASIS AND EXCEPTION FROM COMPETITIVE BIDDING

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder regarding the following proposed transaction.

By order in this proceeding dated October 21, 1980 (HCAR No. 21755), Appalachian was authorized to issue and sell up to $80,000,000 aggregate principal amount of its first mortgage bonds and up to 1,600,000 shares of a new series of its no par cumulative preferred stock pursuant to the competitive bidding requirements of Rule 50 under the Act.

By post-effective amendment, Appalachian states that on October 29, 1980, it received bids on the sale of the $80,000,000 of first mortgage bonds which resulted in an annual cost of money to the company, which was accepted, of 14.717%. Appalachian had also invited bids for the preferred stock. On the basis of reliable market information, including a sale on October 29, 1980, of $30,000,000 of preferred stock at competitive bidding by Louisiana Power & Light Company, an unaffiliated company, at an annual cost of money of 16.06%, Appalachian was satisfied that it would not receive an acceptable bid for the preferred stock. Appalachian advised the three bidding groups which had formed to bid on the cumulative preferred stock that the company would postpone the sale.

Appalachian presently believes that there is a possibility that the company may be able to sell the cumulative preferred stock to a limited number of institutions on a private placement basis which could result in an estimated annual cost of money to the company of 14.5% to 14.75%. At the moment, the private placement market for senior securities is offering yields of about 100 basis points below the public offering market. Such differentials involve

weighing of qualitative factors and are volatile, but the date indicates that market is worth exploring. Appalachian now proposes, therefore, that it be authorized, by supplemental order, to explore this alternative by contacting institutions with the objective of selling up to 1,600,000 shares of its cumulative preferred stock on a private placement basis without the use of an investment banker or the payment of any placement or other fees.

The Virginia State Corporation Commission and the Tennessee Public Service Commission have authorized the issuance and sale of the preferred stock. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as now amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as now amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved over any terms, conditions, and fees with respect to the proposed preferred stock.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21801/November 21, 1980

In the Matter of

THE CONNECTICUT LIGHT & POWER COMPANY
Selden Street
Berlin, Connecticut 06037

WESTERN MASSACHUSETTS ELECTRIC COMPANY
174 Brush Hill Avenue
West Springfield, Massachusetts 01089

THE HARTFORD ELECTRIC LIGHT COMPANY
Selden Street
Berlin, Connecticut 06037

(70-5929)

NOTICE OF PROPOSAL TO SELL INTEREST IN ELECTRIC GENERATING FACILITY

NOTICE IS HEREBY GIVEN that the Connecticut Light & Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO") and Western Massachusetts Electric Company ("WMECO"), each a public utility subsidiary of Northeast Utilities, a registered holding company, have filed a post-effective amendment to a declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transaction.

By orders dated December 29, 1978 (HCAR No. 20854), February 7, 1979 (HCAR No. 20915) and June 26, 1979 (HCAR No. 21118) CL&P was authorized to sell portions of its 11.97760% joint ownership interest in Seabrook Unit Nos. 1 and 2 ("Seabrook Project"), nuclear-fired electric generating facilities presently under construction in Seabrook, New Hampshire. Pursuant to those orders CL&P sold an aggregate 7.48443% interest to Bangor Hydro-Electric Company, Town of Hudson Massachusetts Light & Power Company, Taunton Municipal Lighting Plant Commission, Maine Public Service Company, Massachusetts Municipal Wholesale Electric Cooperative and Vermont Electric Cooperative, Inc. Jurisdiction was reserved over further sales of CL&P's remaining interest in the Seabrook Project pending completion of the record with respect to those transactions. CL&P has now filed a post-effective amendment to its declaration seeking authorization to sell a 0.43332% interest in the Seabrook Project to Fitchburg Gas and Electric Light Company ("Fitchburg"). Assuming a transfer on December 31, 1980, the consideration to be received by CL&P from Fitchburg is estimated at $5,543,000.

The Commission's order of June 26, 1979 stated that CL&P also intended to sell portions of its remaining interest in the Seabrook Project to Montaup Electric Company ("Montaup") and New Bedford Gas and Edison Light Company ("New Bedford") as well as to Fitchburg. New Bedford subsequently decided not to proceed with its purchase. In addition, the Massachusetts Department of Public Utilities denied Montaup's request for approval of its purchase from CL&P of an interest in the Seabrook Project. CL&P has withdrawn its request for authorization to sell such interest and after consummation of the proposed sale to Fitchburg will retain a 4.05985% ownership interest in the Seabrook Project. It is estimated that as a result of the proposed transfer to Fitchburg, CL&P will reduce its expenditures for capital programs, including nuclear-fuel expenditures, by $7,637,000 for the years 1981 through 1985.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. The proposed transfer to Fitchburg has been approved by the Connecticut Department of Public Utility Control, The Massachusetts Department of Public Utilities and the New Hampshire Public Service Commission. The United States Nuclear Regulatory Commission must authorize the amendment of the construction permits for Seabrook Unit Nos. 1 and 2 to reflect the proposed transfer to Fitchburg. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 15, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21802/November 21, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-5503)

INTERIM SUPPLEMENTAL ORDER REGARDING ISSUANCE AND SALE OF REFUNDING BONDS BY COUNTY AUTHORITY IN CONNECTION WITH POLLUTION CONTROL FINANCING

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration in this proceeding pursuant to Sections 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44(b)(3) promulgated thereunder regarding the following proposed transaction.

By order in this proceeding dated December 10, 1974 (HCAR No. 18703), Appalachian was authorized to enter into an agreement of sale ("Agreement") with the Industrial Development Authority of Russell County, Virginia (the "Authority")— concerning the financing of pollution control facilities ("Facilities") at Appalachian's Glen Lyn and Clinch River plants. Under the Agreement the Authority is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be

deposited by the Authority with the trustee ("Trustee") under the indenture ("Indenture") entered into between the Authority and Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the costs of construction of the Facilities, originally estimated at $45,000,000, or, in the case of proceedings from the sale of refunding bonds, to the payment of principal, premium (if any), and interest on Revenue Bonds to be refunded. Appalachian conveyed an undivided interest in a portion of the Facilities to the Authority, which portion the Authority sold to Appalachian under an installment sale arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the Authority to pay, when due, the interest and principal on the Revenue Bonds. Jurisdiction was reserved in the order of December 10, 1974, with respect to the payment of the purchase price of the Facilities by installment payments insofar as such payments were affected by the interest rate or rates of the Revenue Bonds to be issued and sold by the Authority.

By post-effective amendment, it is now stated that the Authority intends to issue and sell in 1980 a series of refunding bonds ("Series D Bonds") in the aggregate principal amount of $6,240,000, the proceeds of which will be used to provide for the principal and interest payments required for the refunding, at their stated maturity on December 1, 1980, of $6,000,000 aggregate principal amount of Revenue Bonds of the Authority which were issued and sold by the Authority on December 30, 1975. It is contemplated that the Series D Bonds will be issued and sold by the Authority to Manufacturers Hanover Trust Company for cash consideration equal to the principal amount of the Series D Bonds. The Series D Bonds are to mature by their terms on April 1, 1981, and are to bear interest at an annual rate equal from time to time to 70% of the then effective prime commercial loan rate of Manufacturers Hanover Trust Company.

It is further stated that subsequent to the issue and sale of the Series D Bonds, the Authority will issue and sell a series of refunding bonds ("Series E Bonds") in the aggregate principal amount of up to $6,500,000, the proceeds of which will be used to provide for the refunding, at or prior to their stated maturity on April 1, 1981, of the Series D Bonds. The Series E Bonds will be issued pursuant to the Indenture and a Fourth Supplemental Indenture of Trust between the Authority and the Trustee. The Series E Bonds will bear interest semi-annually, will mature at a date or dates not less than five years nor more than 30 years from the date of their issuance, and will not be redeemable at the option of the Authority within 10 years from the date of their issuance except under certain circumstances. The Series E Bonds will be sold by the Authority pursuant to arrangements with an underwriter.

Appalachian has requested immediate action with respect to the short-term Series D Bonds. Jurisdiction will be reserved with respect to the Series E Bonds.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective with respect to the Series D Bonds:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended by said post-effective amendment, be, and it hereby is granted and permitted to become effective forthwith with respect to the Series D Bonds, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiciton be, and it hereby is, reserved with respect to the Series E Bonds.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21803/November 24, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
NEW ENGLAND POWER COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6518)

NOTICE OF PROPOSAL FOR ONE SUBSIDIARY TO ENTER INTO JOINT VENTURE TO BUILD A COLLIER, FOR ANOTHER SUBSIDIARY TO LEASE THE COLLIER FROM THE JOINT VENTURE AND FOR THE HOLDING COMPANY TO MAKE CERTAIN GUARANTEES AND ADVANCES IN CONNECTION WITH THOSE TRANSACTIONS

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, New England Energy Incorporated ("NEEI"), a fuel supply subsidiary of NEES, and New England Power Company ("NEPCO"), an electric utility subsidiary of NEES, have filed a joint application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10, 12(b), 12(f) and 13(b) of the Act and Rules 45(b)(3) and 86 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The applicants-declarants seek authorization for (1) NEEI to enter into a joint venture to build, own or lease, and operate a self-unloading coal-fired collier; (2) for NEPCO to charter the vessel from the joint venture for a term of 24-1/2 years; (3) for NEES to make certain guarantees in connection with these transactions and (4) for NEES to advance to NEEI and NEEI to provide to the joint venture funds for initial capital and for construction of the collier. The applicants-declarants also seek an exception under Section 13(b) from the service-at-cost requirement of that Section.

NEPCO is presently engaged in the conversion to coal of its three oil-fired electric generating units at Brayton Point. These units have a combined generating capacity of 1162 megawatts and upon conversion by the end of 1981 will have annual coal requirements of approximately 3 million tons. NEPCO also plans to convert to coal its three oil-fired units at Salem Harbor, assuming such conversion is economically and environmentally feasible. These units have a combined generating capacity of 317 megawatts and when fully converted will have annual coal requirements of 600,000 tons. The Brayton Point and Salem Harbor units were coal fired prior to their conversion to oil burning in 1968. Because rail service to Salem Harbor is poor and is nonexistant to Brayton Point, coal was delivered to those plants by sea prior to 1968. NEPCO states that such transportation of coal to Brayton Point and Salem Harbor by large ocean-going vessel remains more economical than any rail transportation that is currently or likely to become available.

Coal will be purchased from mines in Virginia, West Virginia and Pennsylvania and shipped by rail to East Coast ports where it will be loaded onto the collier to be built by the joint venture for shipment to Brayton Point or Salem Harbor. In order to maximize flexibility and minimize the chances of a disruption in supply, three railroads will be contracted with to deliver coal to the port or ports served by each railroad.

NEPCO is now chartering vessels to provide the coal for its reconverted generating plants. It states that for the past ten years there has been no substantial movement of coal by water along the East Coast, and for the preceding ten years the trade was diminishing. As a result the few vessels left which are appropriate for carrying coal are all thirty or more years old. These ships are deteriorating and their hulls are becoming too thin to withstand the use of onshore unloading equipment without extensive repairs. Both in the past and at present, movements of coal depend on vessels charted by the shipper. In light of these factors it was decided that the most economical alternative available was to build a new collier.

NEEI and Keystone Shipping Company ("Keystone"), a nonaffiliate, as members of the joint venture, having signed a letter of intent with the Quincy Shipbuilding Division of the General Dynamics Corporation to enter into a contract for the construction of the collier. The price for the vessel will be $57,500,000, escalated at 7% per annum from October 31, 1980, to the date of execution of the contract. In addition to the price paid under the construction contract the cost of additional

equipment and other costs will bring the total estimated cost of the vessel to approximately $65 million. The delivery date will be December 31, 1982, extended for each day from October 31, 1980, to the execution of the contract.

Under the letter of intent NEES has agreed to provide at the time of execution of the construction contract a guarantee of the joint venture's obligations thereunder.

The vessel will be 665 feet in length and will have a summer mean draft of about 32', fully loaded and with normal bunkers, water and stores. This draft is the maximum which can be accommodated at Salem Harbor without additional dredging. It also permits use of most other major East Coast ports. The vessel will be designed to burn coal as fuel, but will also be fitted for burning bunker oil. This dual capability will permit the vessel to burn low sulfur fuel oil, if required for environmental reasons, while entering and leaving port. Its fuel consumption is expected to be about 442 barrels of fuel oil, or about 100 tons of steam coal per day, when making 15 knots, fully loaded, at sea under normal conditions. The vessel will be designed to receive cargo at a sustained rate of up to 5,000 short tons per hour under normal conditions. The collier will have a capacity of approximately 36,000 tons which will enable it to carry approximately 80% of the total coal requirements at Brayton Point, approximately 2.4 million tons annually. The remaining transportation requirements will be covered by open market charters of additional ships. The collier will have a self-unloading capability of 3,500 tons per hour. Without this capability new onshore unloading facilities having a unloading capacity of 600 tons per hour would have to be constructed at Brayton Point and Salem Harbor at a cost of approximately $14 million at each site. The shipboard unloading mechanism is estimated to cost $9 million. The higher rate of unloading will give the collier a faster turn-around time, reducing the delivered cost of coal and allowing the ship to accommodate its schedule of deliveries. On the basis of these features, the self unloading is expected to cost about $1.20 a ton, compared to $4.50 a ton for reliance on shore facilities.

The collier will be owned by New England Collier Company, a joint venture of NEEI and Keystone, which will charter the vessel to NEPCO for a period of 24 years, 6 months, commencing at the time of delivery of the collier to the joint venture. NEEI will have a 51% participation in the joint venture, with Keystone having the other 49%. The initial capital of the joint venture will be $450,000 to be contributed by each participant in its respective interest percentage. Except as otherwise provided, additional advances, as well as profits and losses, will be in the ratio of the participating interests. Such additional advances will be made as necessary to provide additional funds for working capital and for the construction and operation of the collier and for the financing thereof. The advances will be deemed loans repayable by the joint venture and will be subordinated, if necessary, to other obligations incurred by the joint venture in connection with financing the construction of the ship.

The joint venture contemplates that NEEI will arrange for, and negotiate the terms of, the financing of construction of the vessel, with the concurrence of Keystone and NEPCO. The preferred method of financing will be a leveraged lease under which a lessor will receive an assignment of the construction contract from the joint venture, pay for construction of the vessel, and charter the vessel to the joint venture under a demise charter which will be, in all material respects, the equivalent of a leveraged lease. It is anticipated that the lessor will finance the construction with 70% bonds guaranteed by the U.S. Maritime Administration and 30% equity supplied by the lessor. The lessor will receive the benefits of investment tax credit and other tax benefits. Charges payable by the joint venture under the demise charter will reflect lessor's cost of financing, as negotiated by NEEI and approved by Keystone. It is expected that the lessor's financing will be secured by a mortgage of the vessel, as well as an assignment of the joint venture's rights under the charter with NEPCO. It is also proposed that NEES and Keystone's parent company, Chas. Kurz & Co., Inc., will guarantee the performance of their respective subsidiaries under the demise charter. This guarantee will cover the payment by the joint venture of all costs under the demise charter under all circumstances, including the situation in which payments by NEPCO under the charter are based on market value which is less than such costs under the demise charter. The joint venture will be managed by a management committee comprised of two representatives of NEEI and one representative of Keystone.

The joint venture has selected the shipyard and agreed on the construction price as stated above. The joint venture is to advance in installments

16.22% of the contract price during the first year, about 58.7% during the balance of the construction period, pay 23.1% on delivery and the final 2% within 3 months thereafter. Until financing is arranged, 51% of those advances will be provided by NEES, directly or indirectly.

It is expected that the delivery date will be in the first quarter of 1983. The contract provides that the vessel will be delivered to NEPCO under the charter, simultaneously with the delivery by the shipyard, after completion of dock and sea trials. It contains various alternatives for dealing with possible defects under the construction contract. In general, if the vessel is not delivered, the charter terminates. NEPCO has the right under the charter to monitor construction of the vessel and to require the joint venture to assign to it warranty rights against the shipyard and its materialmen and subcontractors. After any such transfer of rights, the joint venture shall not be liable to NEPCO for any claims arising from construction of the vessel.

NEPCO will pay to the joint venture under the charter an annual fixed rate during each calendar year which will be 90% of the then current market rate for similar coal-carrying vessels as determined by NEPCO and the joint venture annually in accordance with further provisions. Payments will be made in equal monthly installments in advance on the first day of each month.

The annual fixed rate will be set by the first day of October immediately preceding a calendar year. It will be based on charges for the use of vessels similar to the collier, engaged in the same trade over the same geographic route for periods of one year or more. For the purpose, vessels similar to the collier will mean coal-fired, self-unloading, United States flag vessels of 20,000 to 40,000 deadweight tons. If there is no such market rate for coal-fired vessels, the market rate for oil-fired vessels will be utilized. If there is not a market rate for self-unloading vessels, an amount of $1.20 per short ton of coal will be added to the market rate for vessels which are not self-unloading. In setting the annual fixed rate, the joint venture and NEPCO will consider all relevant charters known to them as having been made during the preceding twelve-month period for performance during the next calendar year. If no such charter known to the joint venture and NEPCO, they will consider charters made for the previous year. If agreement cannot be reached on the annual fixed rate for a coming year the matter is to be submitted to arbitration. The annual fixed rate will be subject to escalation on a quarterly basis if certain changes occur in the consumer price index and in fuel price. Increases and decreases in the annual fixed rate from year to year will be subject to certain limitations set forth in the charter.

The joint venture will be responsible for the maintenance and operations of the collier and will contract with Keystone Shipping Company to operate the vessel as its agent. In this capacity, Keystone will, subject to approval by NEEI and/or NEPCO in certain instances, negotiate the construction contract and supervise construction of the collier, apply for all necessary approvals for design, construction, licensing and operation of the ship and file all applications with the U.S. Maritime Administration required to consummate the financing of the vessel. It is expected that the joint venture will be able to provide the services of the collier to NEPCO at a 10% discount from the market price for such services, as defined under a complex formula contained in the charter. Applicants-declarants state that this venture involves the kind of special and unusual circumstances which entitle it to an exemption from general service-at-cost requirement of Section 13(b) of the Act.

NEPCO will have the right to subcharter the collier or to request the joint venture to find alternate employment for the vessel. The proceeds of any such subcharter or employment will be applied against the charter hire. Any excess of proceeds of such alternate employment over the highest subcharter hire previously received by NEPCO will go to the joint venture.

NEEI will be reimbursed monthly by the joint venture for expenses and costs incurred in discharging its obligations under the joint venture agreement. Keystone will be reimbursed monthly for expenses and costs incurred in discharging its obligations under the agreement. Such reimbursement will be at Keystone's prevailing rates except to the extent that such reimbursement is otherwise provided for under agreement between Keystone and the Joint Venture.

The charter may be terminated by NEPCO upon six months notice to the joint venture and is also terminable upon the occurrence of certain events. In those specified events the joint venture is entitled to require NEPCO to assume all of the joint venture's obligations. Upon such payment, all rights in the

collier, or insurance or requisition proceeds, become the property of NEPCO.

A statement of the fees, commission and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that no state or federal regulatory authority other than this Commission has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21804/November 25, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
25 Research Drive
Westborough, Massachusetts 05181

(70-5543)

NOTICE OF PROPOSED 1981 INVESTMENTS BY FUEL SUBSIDIARY IN EXISTING OIL AND GAS EXPLORATION AND DEVELOPMENT PARTNERSHIP

NOTICE IS HEREBY GIVEN that New England Electric System ("NEES"), a registered holding company, and New England Energy Incorporated ("NEEI"), a fuel subsidiary of NEES, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12 of the Act and Rules 43 and 45(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 30, 1974 (HCAR No. 18635), NEES was authorized to organize NEEI, acquire its capital stock and make investments (including subordinated notes) in NEEI of up to $20,250,000 through July 31, 1976, and NEEI was authorized to enter into a partnership agreement ("Agreement") with Samedan Oil Corporation ("Samedan"), a wholly owned subsidiary of Noble Affiliates, Inc., to explore for oil and gas in the continental United States (both onshore and offshore). Said order included the granting of applicants-declarants' request for an exception from the consolidated tax allocation provisions of Rule 45(b)(6) pursuant to Rule 45(a), on terms and conditions therein set forth for the tax years 1974, 1975 and 1976, permitting NEEI to be credited with and receive the cash equivalent of reductions in consolidated tax liabilities arising from the inclusion of its tax losses in the consolidated tax returns of the NEES System; such exception has been extended for the tax years 1977 through and including 1981 by subsequent orders (HCAR Nos. 19580 and 21567, dated June 18, 1976, and May 12, 1980, respectively). By order dated June 18, 1976 (HCAR No. 19580), NEES was authorized to increase its investment in NEEI to $45,000,000 through December 31, 1979 (which date was subsequently extended to December 31, 1988), with NEEI to use such investments to finance its procurement and inventory activities and to

finance fuel exploration and development activities with Samedan and/or other parties. By order dated July 19, 1978 (HCAR No. 20632), NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract on terms and conditions therein set forth, which included, among other things, a provision that the price of fuel oil sold by NEEI to NEP would be adjusted by the difference between the proceeds from the sale of NEEI production to nonaffiliates and the costs related to such production.

By order dated July 25, 1979 (HCAR No. 21558), NEEI was authorized to enter into a loan agreement with commercial banks for an $80,000,000 revolving credit loan, upon the termination of which will become a term loan, $60,000,000 of which amount was to be available in 1980. By order dated October 28, 1980 (HCAR No. 21761), NEEI was authorized (1) to enter into an amendment to said loan agreement, which amendment increased the banks' loan commitments to $80,000,000 in 1980 and $105,000,000 in 1981, and (2) to make borrowings under the amended loan agreement of $80,000,000, jurisdiction being reserved with respect to any borrowings beyond $80,000,000. By order dated December 29, 1979 (HCAR No. 21365), NEEI was authorized (1) to enter an amendment to the Agreement with Samedan, which amendment extended the term of the Agreement through December 31, 1984, and (2) to invest in the partnership a maximum amount of $30,000,000 for exploration, development or any other purpose from January 1, 1980, through December 31, 1980, which amount for said period was increased to $60,000,000 by order dated August 7, 1980 (HCAR No. 21673).

In the instant post-effective amendment applicants-declarants request that NEEI be authorized to make investments in the partnership with Samedan for the year ending December 31, 1981, of up to $75,000,000 for exploration and development. Such amount of proposed additional investment is separate from that being sought by NEEI in a different filing now pending before this Commission (File No. 70-6513), in which filing NEEI has requested authorization to enter into an oil and gas partnership with Dorchester Exploration Incorporated ("Dorchester") and to invest $15,000,000 therein in 1980, and the partnership agreement concerning which calls for additional expenditures by NEEI for exploration purposes in 1981 of up to $25,000,000. Both Samedan partnership program and the proposed venture with Dorchester are part of a 15-year plan for the NEES system under which NEEI has an objective of achieving production of 5.5 million equivalent barrels by 1996.

The basic features of the Agreement with Samedan include the following: (1) Samedan's acting as managing partner; (2) a limitation on the geographical scope of the partnership's activities to the continental United States (including Alaska), both onshore and offshore; (3) each partner's having a fifty percent interest in the partnership, with NEEI paying a larger share of the costs of exploration (to compensate Samedan for management and expertise in running the partnership as managing partner as well as for Samedan's accumulated geological and geophysical work in evaluating prospects); (4) each partner's sharing equally the costs of development and production of successful prospects; (5) each partner's being entitled to take in kind or sell one-half of the partnership production of oil and gas (with NEEI also having a first call to purchase Samedan's share of oil produced from any prospect); and (6) the partnership's being terminable by either partner at the end of any calendar year on sixty day's prior notice.

It is stated that NEEI had invested approximately $112,000,000 in the partnership with Samedan through July 1, 1980, and that NEEI's share of the total proved and probable reserves discovered through such date, including 1.2 million equivalent barrels of production, was 12.4 million equivalent barrels. Costs associated with these reserves, calculated in the manner approved in the order of July 19, 1978 (HCAR No. 20632), including capital costs and costs associated with production, were approximately $137,900,000 or a current average cost per equivalent barrel of $11.12. The average price realized in 1980 (through June 30) was approximately $13.84 per equivalent barrel. It is estimated that NEEI production and sales will result in savings in fuel costs for the NEES system of approximately $2,800,000 in 1980, bringing to approximately $4,250,000 the total savings achieved from inception through December 31, 1980, as a result of the program.

Concerning the proposed 1981 investment by NEEI in the Samedan partnership, it is stated that NEEI estimates its share of the partnership expenses for exploration alone will be $45,000,000 and its share

of development expenses will be $30,000,000. Hence NEEI requests authorization to invest up to $75,000,000 in the Samedan partnership for the year ending December 31, 1981. The financing for such proposed investment will consist of (1) additional funds from NEEI's loan agreement with commercial banks, borrowings thereunder being $54,000,000 at September 30, 1980, and 1981 borrowings, subject to Commission approval, being $105,000,000; (2) additional investments by NEES in NEEI, $45,000,000 being the total presently authorized amount, of which $23,975,000 was invested at September 30, 1980; (3) additional funds from the receipts of the cash equivalent of reduction in consolidated tax liabilities as a result of the inclusion of NEEI's losses in the consolidated tax returns of the NEES system, it being estimated that NEEI will receive approximately $24,000,000 from other NEES system companies in 1981; and (4) funds from the sale of NEEI production under the terms of the order of July 19, 1978 (HCAR No. 20632), NEEI presently expecting to recover approximately $15,000,000 of its investment in this manner in 1981.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, icluding the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21805/November 25, 1980

In the Matter of

AMERICAN ELECTRIC POWER COMPANY, INC.
2 Broadway
New York, New York 10004

(70-6522)

NOTICE OF PROPOSAL OF HOLDING COMPANY TO ACT AS SURETY FOR SUBSIDIARY

NOTICE IF HEREBY GIVEN that American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 12(b) and 12(f) of the Act and Rule 45(b)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

On September 22, 1980, Wheeling filed with the Public Service Commission of West Virginia ("State Commission") new increased rates for electric services in West Virginia. By order dated October 16, 1980 the State Commission permitted the increased rates to go into effect on October 16, 1980 prior tothe completion of its investigation of such increased rates to go into effect on October 16, 1980 prior to the completion of its investigation of such increased making of refunds to its customers in the event that the State Commission's final order in the proceeding should require refunds to be made. It was

determined that Wheeling post its own bond with AEP as surety in order to avoid the $5,000 per annum cost of obtaining a commercial bond. Because the State Commission's order was issued without prior notice or a hearing, AEP did not have sufficient time to seek prior approval from this Commission for the execution of the surety bond. In reliance on the provisions of Rule 45(b)(3), on October 20, 1980 AEP, as surety, and Wheeling, as principal, executed a statutory bond in the amount of $1,000,000 which was posted with the State Commission on October 21, 1980. AEP will act as surety without charging a fee. AEP and Wheeling filed a statement, dated October 29, 1980, pursuant to Rule 45(b)(3) advising this Commission of the action taken by AEP. AEP now seeks approval of that transaction.

The fees and expenses incurred by AEP in connection with this transaction are estimated not to exceed $2,500 including legal fees estimated not to exceed $500. It is stated that no state or federal commission other than this Commission has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 19, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact of law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21806/November 26, 1980

In the Matter of

BLACKSTONE VALLEY ELECTRIC COMPANY
Washington Highway, P.O. Box 1111
Lincoln, Rhode Island 02865

EASTERN EDISON COMPANY
36 Main Street
Brockton, Massachusetts 02403

MONTAUP ELECTRIC COMPANY
P.O. Box 391
Fall River, Massachusetts 02722

(70-6523)

NOTICE OF PROPOSED SHORT-TERM BORROWINGS BY SUBSIDIARIES

NOTICE IS HEREBY GIVEN that Blackstone Valley Electric Company ("Blackstone"), Eastern Edison Company ("Eastern Edison") and Montaup Electric Company ("Montaup"), electric utility subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(c) of the Act and Rules 42(b)(2) and 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Declarants propose to make borrowings from banks in the following maximum amounts to be outstanding at any one tme during the period from December 28, 1980 to December 31, 1981: Blackstone, $7,000,000; Eastern Edison, $18,000,000; and Montaup, $42,000,000.

Blackstone has scheduled a December 17, 1980 closing on its issuance of $30,000,000 principal amount of First Mortgage Bonds (File No. 70-6477). If that closing takes place on schedule, an amendment will be filed to reduce Blackstone's request authorization from $7,000,000 to $2,000,000.

Short-term notes will be issued to banks except to the extent that such short-term borrowings of Montaup may include commercial paper to be issued to a commercial paper dealer. Before entering into any commercial paper arrangements, Montaup will seek specific authorization from this Commission by amendment to its declaration.

The declarants have credit lines with a number of banks subject in some cases to commitment fees and/or compensating balance requirements. The bank credit lines expire at various times in 1981 and their continued availability is subject to continuing review by the banks involved. Bank credit lines of the declarants may be changed and additional lines may be obtained from other banks.

The credit line arrangements include (1) borrowing at the prime rate with no formal compensating balances; (2) borrowing at the prime rate with compensating balances not exceeding 15%; and (2) borrowing at the prime rate together with a commitment fee based on a fraction of the prime rate not exceeding 8% of Prime. Assuming a prime rate of 16.25% and the maximum balance requirements of 15%, the effective interest rate would be 19.12%.

Proceeds are to be applied to: (1) renew outstanding notes payable to banks as they become due; (2) finance the companies' respective 1981 construction programs which are estimated to be approximately $6,800,000 in the case of Blackstone, $8,800,000 in the case of Eastern Edison, and $40,700,000 in the case of Montaup; and (3) provide funds to meet certain sinking fund requirements in the case of Eastern Edison.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $1,200 in legal fees and expenses. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11452/November 21, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6264

INVESTMENT COMPANY ACT OF 1940
Release No. 11453/November 21, 1980

In the Matter of

KEMPER INVESTORS LIFE INSURANCE COMPANY

KEMPER INVESTORS LIFE INSURANCE COMPANY VARIABLE ANNUITY ACCOUNT C

KEMPER INCOME AND CAPITAL PRESERVATION FUND, INC.

KEMPER FUND FOR GOVERNMENT GUARANTEED SECURITIES, INC.

KEMPER HIGH YIELD FUND, INC.

KEMPER GROWTH FUND, INC.

KEMPER OPTION INCOME FUND,INC.

KEMPER MONEY MARKET FUND, INC.

KEMPER TOTAL RETURN FUND, INC.

AND

KEMPER FINANCIAL SERVICES, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(812-4632)

ORDER PURSUANT TO SECTION 11 OF THE INVESTMENT COMPANY ACT OF 1940 APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) AND 27(d) OF THE ACT, AND RULE 22c-1 THEREUNDER

Kemper Investors Life Insurance Company ("KILICO"), Kemper Investors Life Insurance Company Variable Account C, a separate account of KILICO registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Kemper Income and Capital Preservation Fund, Inc., Kemper High Yield Fund, Inc., Kemper Total Return Fund, Inc., Kemper Growth Fund, Inc., Kemper Option Income Fund, Inc., Kemper Money Market Fund, Inc., and Kemper Fund For Government Guaranteed Securities, Inc., (collectively, the "Funds") each of which is registered under the Act as an open-end, diversified investment management company, and Kemper Financial Service, Inc., the investment manager and principal underwriter for the Funds, registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker/dealer under the Securities Exchange Act of 1934 filed an application on March 10, 1980, and amendments thereto on June 25, 1980, July 18, 1980, September 5, 1980 and September 8, 1980, for an order of the Commission pursuant to Section 11 of the Act, approving certain offers of exchange and pursuant to Section 6(c) of the Act, granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder insofar as such exemptions are necessary to permit the transactions described in the application.

On September 18, 1980 a notice was issued (Investment Company Act Release No. 11364) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed exchange offers be, and hereby are, approved, and pursuant to Section 6(c) of the Act, that the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the Act, and Rule 22c-1 thereunder, be, and hereby are, granted, effective forthwith.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11454/November 21, 1980

In the Matter of

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED;

BACHE HALSEY STUART SHIELDS INCORPORATED;

DEAN WITTER REYNOLDS INC.;

SHEARSON LOEB RHOADES, INC.; AND THE EQUITY INCOME FUND,

FIRST UTILITY COMMON STOCK SERIES (A UNIT INVESTMENT TRUST) AND SUBSEQUENT SERIES

C/O MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
One Liberty Plaza
165 Broadway
New York, New York 10080

(812-4661)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTIONS 6(c) AND 11 OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTIONS 11(c), 14(a) AND 22(d) OF THE ACT AND RULE 19b-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bache Halsey Stuart Shields Incorporated, Dean Witter Reynolds, Inc., Shearson Loeb Rhoades, Inc. ("Sponsors") and The Equity Income Fund, First Utility Common Stock Series and subsequent Series ("Fund") (collectively the "Applicants"), filed an application on April 8, 1980, and amendments thereto on July 24, October 6, and November 17, 1980, pursuant to Sections 6(c) and 11 of the Act for an order of the Commission (1) exempting the Fund from compliance with the net worth requirements of Section 14(a) of the Act, (2) exempting the Applicants from the provisions of Rule 19b-1 under the Act to permit the Fund to make more than one distribution of capital gains in any one taxable year and (3) exempting the Applicants from the provisions of Section 11(c) and 22(d) of the Act to permit unitholders to exchange their units for units of any other Series of the fund or of certain other unit investment trusts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the format for each Series of the Fund will be substantially the same. Each Series will be created by a trust indenture ("Indenture") between the Sponsors and a trustee and/or co-trustee ("Trustee"). Other firms may act as sponsor or sponsors of future Series in addition to or in substitution for the Sponsors, but if none of the Sponsors would remain a Sponsor as a result of any proposed substitution, the Sponsors will cause to be filed a new registration statement under the Act concerning the Fund. In addition, different entities may be named Trustee for future Series. Prior to the deposit of underlying securities ("Securities") in a Series the Sponsors purchase such Securities for an accumulation account. It is contemplated that the Securities purchased for deposit in the various Series will generally be publicly-traded common stocks issued by public utility companies engaged in the production, transmission and distribution of electric energy, gas, water and telephone services, but, depending on the availability of offerings of appropriate securities and general market conditions, the kinds of securities may include other appropriate types of common stocks.

Applicants indicate that upon effectiveness of the registration statement pursuant to the Securities Act of 1933, the units of Series are offered to the public separately through a final prospectus at a public offering price computed by dividing the aggregate value of the underlying Securities by the number of units outstanding, plus a sales charge and, during the initial public offering (including the initial public offering of additional units of the Fund), a fee for New York State stock transfer tax applicable to the deposit of Securities in the Fund. A proportionate share of the amount in the income account (established by the Indenture) at the date of delivery of the units to the purchaser is added to the public offering price.

Applicants state that the redemption price per unit is computed by the Trustee on each June 30 and December 31 (or the last business day prior thereto), on any business day as of the evaluation time next following the tender of any unit for redemption, and on any other business day desired by the Trustee, by adding (a) the aggregate value fo the Securities determined by the Trustee (including the value of any accumulated but unpaid dividends as to which

Securities are not trading "ex dividend" as of the date of computation) and (b) cash on hand in the Fund (including dividends receivable on Securities trading ex-dividend but excluding cash deposited by the Sponsors for the purchase of Securities) and deducting therefrom the sum of taxes or other governmental charges against the Fund not previously deducted, accrued expenses of the Trust Fund including, but not limited to, unpaid fees and expenses of the Trustee (including legal and auditing expenses), the Co-Trustee, the Sponsors (for their administrative function) and counsel, and cash held for distribution to certificateholders of record as of a date prior to the evaluation; and dividing the result of such computation by the number of units outstanding as of the date thereof.

The Applicants represent that while the Sponsors are not obligated to do so, it is their intention to maintain a market for units of each Series and continuously to offer to purchase such units at prices, subject to change at any time, equal to the current redemption price of units in each Series. If the supply of units of any Series exceeds demand, or for some other business reason, the Sponsors may discontinue at any time purchases of units of such Series.

In addition, the Applicants state that the Sponsors intend to allow unitholders to exchange units of any Series for units of any other Series of the Fund and of certain series of Municipal Investment Trust Fund, The Corporate Income Fund or The Government Securities Income Fund (the "Exchange Funds") on the basis of a reduced fixed sales charge per unit ("Exchange Option"). While the structures of the Exchange Funds and the various series are very similar in most respects to each other and to the Funds, the investment objectives of the Exchange Funds may be different. Thus, the primary objective of the Municipal Investment Trust Fund is tax-exempt income while the primary investment objective of The Corporate Income Fund and The Government Securities Income Fund is income which is subject to Federal income taxation, and subgroupings of series under the basic Exchange Funds have investment objectives which are slightly different evidencing specialized investment objectives within these general categories. This Exchange Option, according to Applicants, would have the effect of providing unitholders of Series of the Fund with a convenient means of transferring interests as their investment requirements change into other series of the Exchange Funds, and would serve as an alternative to disposition of a unitholder's interest, either in the secondary market or through redemption. The Applicants state that the Sponsors intend to hold the Exchange Option open under most circumstances, but that they do, however, reserve the right to modify, suspend or terminate the Exchange Option at any time without further notice to unitholders.

The Applicants state that while it is anticipated that units in most cases can be sold in the secondary market for an amount equal to the redemption price per unit, units may be submitted to the Trustee for redemption at any time out of assets of the Series. Consistent with Rule 22c-1, the unitholder would receive cash in an amount per unit equal to the redemption price per unit as determined on any business day as of the evaluation time next following such tender.

The application provides that the Sponsors may direct the Trustee to dispose of Securities upon the occurrence of certain market or credit factors that in the opinion of the Sponsors would make the retention of such Securities in the Series detrimental to the interests of the unitholders, or if the disposition of such Securities is made desirable in the opinion of the Sponsors by the existence of certain other technical factors which will be described in the prospectus for the Series. The proceeds of any such dispositions may be distributed to unitholders or may be reinvested in accordance with the provisions of the Indenture for the Series.

The Applicants state that divident income (including any redemption proceeds received in respect of publicly traded equity securities) received by a Series, less applicable expenses, will be distributed monthly on a pro rata basis to unitholders of record as of the record day on the next following distribution day. The Trustee furnishes unitholders with each distribution a statement of the amount per unit of income and other receipts, if any, which are being distributed. Within a reasonable period after the end of each calendar year the Trustee will furnish to each person who at any time during the calendar year was a unitholder of record a statement in reasonable detail (i) summarizing transactions for such year in the income, capital and reserve accounts, (ii) identifying Securities sold and purchased during and listing Securities held at the end of such year, (iii) stating redemption price per unit based upon the computation thereof made on the 31st day of

December of such year (iv) specifying the amounts distributed during such year from the income and capital accounts; and (v) if applicable, summarizing transactions for such year with respect to such person's participating in the reinvestment program.

Section 14(a) of the Act provides that a registered investment company, prior to making a public offering of its securities, (1) have a net worth of at least $100,000, (2) have previously made a public offering and at that time have had a net worth of $100,000 or (3) have made arrangements for at least $100,000 to be paid in by 25 or fewer persons before acceptance of public subscriptions.

The Applicants represent that each Series, at the date of deposit of the underlying Securities and before any unit is offered to the public, is intended to have a net worth, represented by the market value of the securities on that date in excess of $100,000. The Sponsors intend to sell all the units to the public at the public offering price disclosed in the prospectus for each Series, which will also contain information concerning the Securities deposited in the particular Series. The Sponsors also intend to maintain a secondary market for units of each Series at prices equal to the redemption value of the units as of the time of each regular evaluation. It is the contention of the Applicants that the proposed course of conduct of the Sponsors outlined above, as well as the history of the Sponsors in the securities industry, demonstrates that each Series will be managed in a responsible way by responsible persons. The Applicants also contend that any requirements that the Sponsors invest in $100,000 or more of units of each Series under investment letters would only increase the cost to the Sponsors of marketing the units without creating any significant increase in the protection of unitholders. The Applicants also contend that each Series will have a net worth far in excess of $100,000 fully invested in securities on the date of deposit for each Series and will therefore fully comply with Section 14(a)(1).

In connection with their request for exemption, the Applicants agree, as a condition to such exemption, that they will refund, on demand and without deduction, all sales charges to purchasers of units of any Series from the Sponsors or from any underwriter or dealer participating in the distribution and liquidate the Securities held by any Series and distribute the proceeds thereof, if, within ninety days from the time that the registration statement relating to the units of such Series shall have become effective under the Securities Act of 1933, the net worth of the Series should be reduced to less than $100,000 or is such Series shall have been terminated. The Sponsors further agree to instruct the Trustee to terminate such Series in the event redemption by the Sponsors of units which have not been sold in the initial distribution thereof results in such Series having a net worth of less than 40% of the net worth of Securities in its original portfolio, and in the event of any such termination the Sponsors will refund, on demand and without deduction, all sales charges to purchasers of units of such Series from the Sponsors or from any underwriter or dealer participating in the distribution. The Sponsors further agree that any future Sponsor will, as a condition to becoming a Sponsor, agree to the foregoing undertakings.

Rule 19b-1(a) provides in substance that no registered investment company which is a "regulated investment company" as defined in Section 851 of the Internal Revenue Code shall distribute more than one capital gain dividend in any one taxable year.

The Applicants state that distributions of net investment income are made to unitholders each month. Applicants state that any net realized capital gains will not be distributed on any Series more frequently than once a year unless and until the Commission orders Applicants exempted from Rule 19b-1. Distributions of capital to unitholders are likely to arise only in the following instances: (1) Securities might be liquidated in order to provide the funds necessary to meet redemptions and (2) Securities may be disposed of in order to maintain the qualification of such Series as a regulated investment company under the Internal Revenue Code.

The application states that the dangers against which Rule 19b-1 is intended to guard do not exist in the case of the Fund since events which might give rise to capital gains, such as the tendering of units for redemption, the prepayment of Securities or other market or credit factors and the need to maintain qualification as a regulated investment company will be substantially independent of any action by the Sponsor and the Trustee. The regular distribution per unit will be fairly constant within a specified range and return of capital or any capital gains distribution will be clearly distinguished from income distribution in the accompanying report by

the Trustee to unitholders. In order to comply with the literal requirements of Rule 19b-1, each Series would be forced to hold any monies constituting capital gains from the disposition of Securities until the end of its taxable year. Applicants contend that such a practice would be to the detriment of the unitholders. Paragraph (b) of Rule 19b-1 provides that a unit investment trust may distribute capital gains dividends received from a regulated investment company within a reasonable time after receipt. Applicants assert that the purpose behind such provision is to avoid forcing a unit investment trust to accumulate valid distributions received throughout the year until year end and that the operations of the Fund in this regard are squarely within the purpose of such provision.

Section 11(c) of the Act prohibits any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company unless the terms of the offer have been approved by the Commission or are in accordance with rules and regulations prescribed by the Commission with respect to such offers. Section 22(d) of the Act prohibits a registered investment company from selling any redeemable security issued by it except to or through a principal underwriter for distribution other than at the current public offering price described in its prospectus. None of the exemptions from the provisions of Sections 11 or 22(d) appear to apply to the proposed Exchange Option. Applicants therefore would be unable to proceed with the Exchange Option unless, pursuant to Sections 6(c) and 11 of the Act, the Commission exempts the Exchange Option from the provisions of Sections 11(c) and 22(d).

The Applicants state that it is intended that if the requested exemptions are granted, the Exchange Option would operate as follows: as indicated in the application and spelled out in more detail in the prospectus for the various serious of the Exchange Funds, the Sponsors intend to maintain a market for units of each series of each Exchange Fund. The Exchange Option would be meant to operate only as to units of the various series of the Exchange Funds as to which such market may from time to time be maintained. A unitholder wishing to dispose of those of his units for which a market is maintained would have the option to exchange his units into units of any other series of any Exchange Fund for which a market is also maintained. While it is not presently contemplated that unitholders would be permitted to exchange their units into units of other series which are available on original issue, the Sponsors might at some future date determine to permit such exchanges. When any unitholder notifies the Sponsors of his desire to exercise his Exchange Option the Sponsors would deliver to such unitholder a current prospectus for those series in which the unitholder has indicated an interest and which the Sponsors have available to offer to the unitholder as a result of acquisitions by them in the secondary market.

The Applicants state that the exchange transaction would operate in a manner essentially identical to any secondary transaction, except that the Sponsors seek authority to allow a reduced sales charge in a transaction pursuant to the Exchange Option. Without the Exchange Option, units of any series repurchased by the Sponsors are normally resold at a public offering price based upon the offering side evaluation of the underlying securities plus a sales charge of 3.25 percent or 3.9 percent of the public offering price depending on the nature of the portfolio making up the particular series.

The Underwriting Sponsors seek authority to sell units of Exchange Funds pursuant to the Exchange Option at a price equal to the offering side evaluation of the underlying securities divided by the number of units outstanding or in the case of the Fund, at the redemption price per unit, plus a fixed charge of $15 per unit. Such $15 fixed charge can be expected to approximate about 1.50 percent of the unit offering price but, of course, the actual percentage will change depending upon changes in market values of the underlying securities. The Sponsors reserve the right to change such fixed charge from time to time to the extent necessary to reflect fluctuations in the costs of professional assistance and operational expenses in connection with these exchange transactions.

The application provides that a person who purchased units of a series and paid a per unit sales charge less than the per unit sales charge of the series of Exchange Fund for which such unitholder desires to exchange would be permitted to exercise the Exchange Option at the unit offering price plus the sales charge of $15 per unit provided that such unitholder has held his units for a period of at least eight months. Any unitholder who has not held such units for an eight month period would be permitted to exchange such units at the unit offering price plus a sales charge based on the greater of $15 per unit or an amount which together with the initial sales

charge paid in connection with the acquisition of the units being exchanged equals the sales charge of the series for which such unitholders desires to exchange, determined as of the date of exchange.

The Applicants state that a unitholder would not be permitted to make up any difference between the amount representing the units being submitted for exchange and the units being acquired. That is to say, a unitholder would be permitted to acquire pursuant to the Exchange Option whole units only and any excess amounts representing sales price of units submitted for exchange would be remitted to the unitholder.

The Applicants state that under the proposed Exchange Option, a person desiring to dispose of units of one series and acquire units to another series may wish to do so for a number of reasons—such as changes in his or her particular investment goals or requirements or in order to take advantage of possible tax benefits flowing from the exchange. Taking these factors into account it is likely that there will be a continuing need to assess an investor's individual financial and tax position and in all probability the account executives of the Sponsors will actively participate in financially counseling the investor as to the proper course of action to follow taking into account all of the relevant investment factors involved. However, the fact that the investor is an existing customer whose essential investment needs have been identified should produce some transaction savings. Further, as a result of the fact that all of the Exchange Funds are very similar investment vehicles, an exchanging unitholder may require somewhat less advice than if he was acquiring an interest in an entirely different kind of investment. It is the belief of Applicants that a charge of $15 is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses which are contemplated in connection with these exchange transactions. This sales charge compares favorably with the customary sales charge applicable to nonexchange transactions in connection with primary and secondary sales of units of the Exchange Funds and it is submitted that such a sales charge is warranted in that sales charges should cover the reasonable costs related to the exercise of the Exchange Option and yet give exchanging unitholders an opportunity to share in expected cost savings.

The Applicants maintain that the requirement that a holder of units of a series of the Exchange Funds which are acquired at a lower sales charge than that applicable to direct purchase of the units to be acquired under the Exchange Option pay an adjusted sales charge for an exchange during the first eight months in which he has held the units to be exchanged is appropriate in order to maintain the equitable treatment of the various investors in each series. Otherwise, it could be possible under certain circumstances for a person to acquire units of a series of an Exchange Fund with a lower sales charge and immediately to convert such units into other units of the same Exchange Fund or units of a series with a high sales charge and to pay a lower total sales charge than a person purchasing units of such series directly. Under normal circumstances this situation is unlikely, since the initial sales charge on direct purchases of units with a lower sales charge (currently 3.25 percent of the public offering price) plus the conversion sales charges ($15 per unit or approximately 1.50 percent of the public offering price) usually will exceed the sales charge related to direct purchases of units of series with a higher sales charge (currently 3.90 percent). However, if the price of the units of series with the higher sales charge were to increase sharply, the $15 sales charge on exchange could represent less than the difference between the lower sales charge and the higher sales charge, in which case the exchanging unitholder could obtain an unfair price advantage when compared to investors making direct purchases of units of the applicable series. However, after a unitholder of a series with a lower sales charge has held such units for an adequate period of time, the discriminatory nature of permitting that person to effect an exchange transaction at a reduced sales charge is not as compelling, and thus it is believed that the possible abuses outlined above are no longer material if the converting unitholder of a series with a lower sales charge has held his units for at least eight months.

The Applicants contend that the sales charge of $15 achieves a major goal of passing cost savings on to investors and yet fairly compensates brokers for their investment advice, financial planning and operational expenses. The cost savings incident to initial investor solicitation can be passed on to the customer and brokers can still be adequately compensated for services rendered.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or

transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 15, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controvered, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11455/November 24, 1980

In the Matter of

INTERNATIONAL SATELLITE INDUSTRIES, INC.
250 West 94th Street
New York, New York 10025

(811-2911)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY.

NOTICE IS HEREBY GIVEN that International Satellite Industries, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management investment company, filed an application on October 29, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, registered under the Act on Mary 5, 1979, and filed a registration statement (File No. 2-63746) on Form N-2 under the Securities Act of 1933 ("1933 Act") to make a public offering of shares of its capital stock. This registration statement did not become effective and was withdrawn pursuant to Rule 477 under the 1933 Act on January 20, 1980. Thus, Applicant has never engaged in a public offering of shares of its capital stock. Furthermore, Applicant has never filed any of the periodic reports required by the Act.

The application states that Applicant does not have any assets or debts currently outstanding, has no securityholders and is not a party to any pending litigation or administrative proceeding. The application further states that Applicant is presently a corporation in good standing under Delaware law, but that it is not engaged in and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs. Finally, Applicant states that it has not within the last eighteen months transferred any of its assets to a separate trust, the beneficiaries of which were or are

securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application therein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponemens thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11456/November 24, 1980

In the Matter of

SECOND OHIO CAPITAL FUND INC.
c/o The Ohio Company
62 East Broad Street
Columbus, Ohio 43215

(811-1299)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940.

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that Second Ohio Capital Fund Inc. ("Fund"), registered under the Act as open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of the State of Ohio on January 25, 1965, and registered under the Act on February 8, 1965. The Commission files further indicate that on June 17, 1967, a notice of an application filed pursuant to Section 17(b) of the Act for an order of the Commission exempting the proposed merger of the Fund into the Ohio Capital Fund Inc. from the provisions of Section 17(a) of the Act was issued (Investment Company Act Release No. 4991), and that the requested order was issued on June 30, 1967 (Investment Company Act Release No. 5016). Furthermore, the Fund has not filed any of the periodic reports required by the Act since 1967. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

SECTION 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any person may, not

later than December 22, 1980,, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11457/November 26, 1980

In the Matter of

MFS/NWNL VARIABLE ACCOUNT

AND

NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY
20 Washington Avenue South
Minneapolis, MN 55440

(812-4648)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2), AND 27(d) OF THE ACT, AND RULE 22c-1 THEREUNDER.

NOTICE IS HEREBY GIVEN that Northwestern National Life Insurance Company ("NWNL" or "Company") and MFS/NWNL Variable Account ("Separate Account") (hereinafter collectively referred to as "Applicants"), a separate account of NWNL registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on March 31, 1980 and amendments thereto on July 3, 1980 and November 10, 1980 for an order of the Commission pursuant to Section 11 of the Act approving certain offers of exchange and pursuant to Section 6(c) of the Act granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder insofar as such exemptions are necessary to permit the transactions described below. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

BACKGROUND

NWNL is a stock and mutual life insurance company organized under the laws of the State of Minnesota. MFS/NWNL is a separate account of the Company established for the purpose of funding variable annuity contracts issued by the Company. Purchase payments made by or on behalf of the owner of such contracts are allocated to one or more Sub-Accounts of the Separate Account, as selected by the owner (or, if not so selected, to the Sub-Account which invests in shares of Massachusetts Cash Management Trust), in the form of Accumulation Units (units of measure used to determine the value of the Contract before annuity payments start), the value of which will vary with the value of the respective Sub-Accounts of the Separate Account. The assets of each Sub-Account are to be invested in shares (at net asset value) of one of a group of mutual funds (the "Funds"): Massachusetts Cash Management Trust; Massachusetts Financial High Income Trust; Massachusetts Financial Bond Fund, Inc; Massachusetts Income Development Fund, Inc.; Massachusetts Investors Trust; Massachusetts Financial Development Fund, Inc.; Massachusetts Investors Growth Stock Fund, Inc. and Massachusetts Capital Development Fund, Inc.

Massachusetts Financial Services Company, a limited partnership organized under the laws of the State of Massachusetts ("MFS"), is the principal underwriter and investment adviser for each of the Funds and is paid fees for its services by the Funds. The Company intends to enter into a contract with MFS under which MFS will agree to perform certain administrative functions relating to the Contracts and the Separate Account. MFS will be paid a monthly fee by the Company for such functions. Clarendon Insurance Agency, Inc., an affiliate of MFS, will act as principal underwriter of the Contracts. The Company or its agent will provide bookkeeping and other administrative services of the type normally performed by custodians of unit investment trusts.

Under the Contracts, usually a single purchase payment will be made, although subsequent purchase payments are allowed. The minimum amount the Company will accept as an initial purchase payment is $5,000. However, if the contract is purchased by or in connection with a Qualified Plan, the minimum amount the Company will accept as an initial purchase payment is $1,500.

No deduction for a sales charge will be made from purchase payments for the Contracts. However, if part of all of the Contract Value is surrendered, the Company will deduct a charge ("contingent deferred sales charge" or "surrender charge") as follows:

(1) For Contracts in force for 24 months or less, a surrender charge will be made equal to 5% of the amount of the surrender, provided that in no case will the surrender charge together with surrender charges previously made exceed 5% of total purchase payments received.

(2) For Contracts in force for more than 24 months but not more than 96 months, no surrender charge will be made if the surrender, together with prior surrenders made after the Contract has been in effect for 24 months, does not exceed 10% of the purchase payments received by the Company. A 5% surrender charge will be applied to surrenders in excess of the foregoing, provided that in no case will the surrender charge, together with surrender charges previously made, exceed 5% of total purchase payments received.

(3) For Contracts in force for more than 96 months, no surrender charge will be made if the surrender, together with all prior surrenders made within 96 months, does not exceed the current value of purchase payments received by the Company within 96 months before the surrender plus 10% of the purchase payments received by the Company within 96 months before the surrender. A 5% surrender charge will be applied to surrenders in excess of the foregoing, provided that in no case will the surrender charge, together with surrender charges previously made, exceed 5% of total purchase payments received.

The Company will assess the Separate Account with a daily charge for mortality and expense risks equal, on an annual basis, to .9% and .4% of the daily Contract values, respectively. Also, NWNL intends to assess an administrative charge of $30 per year against each contract participating in the Separate Account, and to deduct premium taxes where applicable.

CONTINGENT DEFERRED SALES CHARGE

Section 2(a)(35)

Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer less any portion of such difference deducted for trustee's or custodians' fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional expenses.

Applicants submit that he proposed surrender charge is consistent with the intent of the definition of sales load contained in the Act. The charge would be imposed by the Company to reimburse it for expenses related to the sale of the Contracts, which the Applicants submit is within the Section 2(a)(35) definition of sales load but for the timing of the imposition of the charge.

Nevertheless, Applicants have requested an exemption from the provisions of Section 2(a)(35) to the extent such exemption may be necessary to implement the proposed pricing of their contracts.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming or repurchasing any such

security except at a price based on the current net asset value of such security. When the contract owner surrenders all or a part of the contract value, the proceeds paid on such surrender will be based on the current net asset value. The Contingent Deferred Sales Charge will be deducted at the time of surrender in arriving at the contract owner's proportionate share or account value.

While Applicants do not believe that the imposition of the contingent deferred sales charge is violative of Section 22(c) or Rule 22c-1, they have requested an exemption from the provisions of Section 22(c) and Rule 22c-1 thereunder, to the extent necessary, to offer the contracts as proposed.

Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) prohibits a registered investment company or depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

Section 26(a)(2)(C) of the Act, as here pertinent, provides, in substance, that no payment to the depositor or principal underwriter of a unit investment trust shall be allowed the custodian bank as an expense, except a fee, not exceeding such reasonable amounts as the Commission may prescribe, as compensation for performing bookkeeping and other administrative expenses normally performed by the custodian.

Applicants allege that the Contingent Deferred Sales Charge to be imposed (if any) upon the surrender of the Contracts issued with respect to the Separate Account is designed to recover distribution costs relating to the sales of the Contracts. The Contracts merely defer the time when the sales charge may be imposed.

Applicants further allege that since there is nothing in the Act to suggest that if Contingent Deferred Sales Charges were being used at the time the Act was promulgated, that deductions for such sales charges would not have been permitted, and, since it is in the Contract Owner's best interests that the entire amount of their purchase payments be invested at the time when made, they have requested an exemption from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act, to the extent necessary, in order to permit the offer and sale of the Contracts subject to the Contingent Deferred Sales Charge as described above.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets or the cash equivalent thereof.

Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that the contracts offered are not periodic payment contracts but request exemption from such Sections, to the extent necessary, to offer the contracts. Applicants submit that the imposition of a Contingent Deferred Sales Charge does not violate Sections 2(a)(32) and 27(d).

Applicants assert that Sections 2(a)(32) and 27(d) contemplate the assessment of an initial sales load and that under the contracts the net amount invested is the gross purchase payments. Thus, the owner's proportionate share or account value would be the gross purchase payments, plus or minus any increase or decrease in value less the Charge. Applicants assert that deferring the imposition of the charge in no way restricts the contract owner from receiving his proportionate share or account value upon surrender. Applicants contend that the charge is contingent upon an event which might never occur, and that the purchaser's initial amount invested is maximized, thus providing a benefit to the purchaser. Applicants have requested an exemption from the provisions of Sections 2(a)(32) and 27(d), to the extent necessary, to permit the imposition of the Surrender Charge and to offer the contracts.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, prohibits any registered investment company issuing periodic payment plan certificate, or

depositor or underwriter of such company, to sell any such certificate unless it is a redeemable security. Applicants assert that the contracts issued are not periodic payment plans but nevertheless request an exemption, to the extent necessary, to offer the contracts.

Applicants submit that the Contingent Deferred Sales Charge is not a restriction on redemption under Section 27(c)(1). Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner from receiving his proportionate share or current value on surrender and has the effect, through deferral of sales charge until contract value is withdrawn, of increasing the contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit the charge to be imposed only upon surrender of contract values.

ANNUAL ADMINISTRATIVE CHARGE

As previously noted, the Contracts are subject to an annual administrative charge. If the value of a Contract is surrendered for its full value on other than the Contract Anniversary date, the administrative charge will be deducted from the owner's redemption proceeds.

Because the provisions of the Act discussed above under the heading "Contingent Deferred Sales Charge" may be said to be equally applicable in this situation, Applicants hereby request an exemption from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d) and Rule 22c-1, to the extent necessary, to permit the deduction of the annual administrative charge under the circumstances described.

PERFORMANCE OF CUSTODIAL FUNCTIONS

Sections 26(a)(1), 26(a)(2)(D) and 27(c)(2) as noted prohibit a registered investment company or depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1) and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

Section 26(a)(1) requires the trustee or custodian to be a bank which meets certain financial standards. Applicants request an exemption from the provisions of Section 26(a)(1) of the Act in order that NWNL may hold the property and assets in its vault facilities which it contends are comparable to the vaults of large commercial banks and adequate protection will thereby be afforded to owners of contracts issued with respect to the Separate Account. Also, NWNL will limit access to the vault.

Section 26(a)(2)(D) of the Act requires, in part, that the custodian shall have possession of all the securities and other property in which the funds of the unit investment trust are invested. The Applicants assert that the primary purpose of Section 26(a)(2)(D) relating to the possession of trust assets is to provide for their safekeeping. The Applicants contend that to require that shares certificates be physically issued by each of the Funds under the circumstances would not significantly add to the safety of the unit investment trust's assets and would result in unnecessary administrative expenses. As noted, the assets of the Separate Account will be invested exclusively in shares of the several Funds. Furthermore, the custodian of the several Funds will have physical possession of the portfolio securities and other assets of the Funds.

The Applicants request that the Commission enter an order of exemption from the pertinent provisions of Section 26(a)(2)(D) in order that "book shares" evidencing the investment of purchase payments may be accepted.

Section 26(a)(2)(D) of the Act also requires that the securities and other property in which the funds of the unit investment trust are invested shall be segregated and held in trust until distribution.

Applicants state that while the assets of the Separate Account will be segregated, the Company, as a life insurance company, may not properly place the assets of the Separate Account in trust because the insurance laws of the State of Minnesota require the Company to retain ownership and control of the disposition of its property. If the Company is permitted to hold in custody for safekeeping the assets of the Separate Account, an exemption from the foregoing Sections of the Act will be necessary in order that the Company shall not be required to hold such assets in trust.

In support of the requested exemptions from the foregoing provisions of the Act, the Applicants state that the Company is subject to extensive supervision and control by the Commissioner of Insurance of the State of Minnesota and the comparable official of each state in which it does busienss. Such supervision requires the Company to file complete and detailed periodic reports. The Applicants also state that the activities of the Company are subject to review by the Commissioner of Insurance of the State of Minnesota nad his representatives at all times and are subject to comprehensive examinations periodically. Further, the Company, under an arrangement for recordkeeping, will maintain either itself or through an agent a record of all purchases and redemptions of Fund shares with respect to the Separate Account. Consequently, the Applicants submit that a custodianship is unnecessary under the circumstances.

In summary, the Applicants request exemption from the provisions of Sections 26(a)(1), 26(a)(2)(D) and 27(c)(2) of the Act in order that the Company may perform the safekeeping and other functions normally performed by a custodian with respect to the Separate Account: that the property and assets of the Separate Account do not have to be held in trust although segregated; and that the investments of the trust in shares of the several Funds may be held in "book share" form.

PAYMENT OF CONTRACT FEES AND CHARGES

Sections 26(a)(2)(D) and 27(c)(2)

Sections 26(a)(2)(D) further provides that the custodian have possession of all securities and other property in which the funds of the trust are invested subject only to the charges and collections allowed under clauses (A), (B) and (C) of Section 26(a)(2) until distribution thereof to the security holders of the trust.

The Applicants request an exemption from the provisions of Sections 26(a)(2)(D) and 27(c)(2) to the extent necessary to permit the deduction by the Company and the payment to the Company of an annual administrative charge, the Expense Risk Charge, the Mortality Risk Premium and any premium tax, as set forth above.

The Applicants consent that the foregoing requested exemptions from Sections 26(a) and 27(c)(2) may be made subject to the following conditions: (1) that the deductions under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of the Separate Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and the Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

EXCHANGES

Section 11

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter therefor to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless the terms of the offer have first been submitted to the Commission. Section 11(c) provides that the provisions of subsection (a) shall be applicable irrespective of the basis of exchange to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust and to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The Applicants propose to permit owners to request the transfer, subject to any conditions the Funds whose shares are involved may impose, of all or part of a Sub-Account's value to other Sub-Accounts. There is no charge for such a transfer, other than those that may be made by the Funds. The Applicants submit that the proposed transfer rights will afford an owner the availability of choice among shares of mutual funds having different objectives, and that the granting of such rights is in recognition of the potentially changing nature of the owner's investment objectives and retirement needs over the

years.

The Applicants further assert that the proposed transfer rights involve only a change in the underlying accumulation or annuity units related to a Contract, which are merely accounting units of measure to quantify Contract Value and, thus, do not involve the exchange of a unit investment trust security for the security of any other investment company. However, to avoid any questions that might be raised as to the applicability of Section 11(c), the Applicants request an order pursuant to Section 11 to the extent necessary to permit the proposed offer of transfer rights described above.

Section 6(c)

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transactions or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the Act if, and to the extent, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following December 22, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11458/November 26, 1980

In the Matter of

SCHENUIT INDUSTRIES, INC.
2360 West Joppa Road
Lutherville, Maryland 21093

(812-4741)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT ON A TEMPORARY BASIS.

NOTICE IS HEREBY GIVEN that Schenuit Industries, Inc. ("Applicant"), a Maryland corporation, filed an application on September 30, 1980, and amendments thereto on November 17, 1980, and November 20, 1980, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act on a temporary basis. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant, operating through its wholly-owned subsidiaries, is a diversified manufacturer of home, lawn and garden products and industrial wood products. Applicant states that it has one outstanding class of equity securities, no par common stock, which is owned by approximately 1,000 shareholders of record and is listed for trading on the American Stock Exchange. Of the approximately 855,000 such shares outstanding, approximately 50% are owned by the three daughters of Applicant's founder ("Principal Shareholders") and the remainder by the public. Applicant notes that its shares are registered with the Commission pursuant to the Securities Exchange Act of 1934 ("1934 Act"), and Applicant is

subject to the reporting requirements of the 1934 Act and the rules adopted thereunder. Applicant states that it has met those reporting requirements in a timely manner since the initial registration of its shares under the 1934 Act in 1967.

The application states that on July 1, 1980, Applicant entered into an agreement ("Agreement") whereby Applicant would sell substantially all of its assets and business, subject to substantially all of its liabilities, to Allegheny Ludlum Industries, Inc. and several of its subsidiaries (collectively, "ALI" in exchange for a cash price of $28,234,800, subject to a possible downward adjustment of up to $1,000,000 should Applicant fail to satisfy certain earnings performance standards for the fiscal year ended September 30, 1980. The application further states that while ALI is assuming substantially all of Applicant's liabilities, Applicant will remain exposed to unknown and uninsured contingent liabilities attributable to Applicant's discontinued tire manufacturing operations, as well as potential liability for Applicant's obligations under the Agreement. The application states that the Principal Shareholders have represented that they will not vote to merge, liquidate or consolidate Applicant for at least two years following the sale of assets to ALI unless the survivor corporation succeeds to all liabilities of Applicant, or other indemnification satsifactory to ALI is provided. The Agreement requires that Applicant hold ALI harmless, for a period of two years, for any losses arising out of any possible misrepresentations or breaches of warranties made by Applicant in the Agreement. Applicant further states that necessary filings were made with the Federal Trade Commission and the Antitrust Division of the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and that the time period for governmental action under that act has expired without any action having been taken. Applicant also states that on September 25, 1980, the sale of assets to ALI was approved by the Applicant's shareholders.

Applicant states that in late January, 1981, approximately 30 days after the completion of the sale of assets, it will initiate a cash tender offer to all of its shareholders to repurchase all of Applicant's outstanding shasres. The tender offer will be made at a price which will be not less than the net asset value per share at the approximate time of the commencement of the tender offer and in no event less than $32.40 per share. Rule 13e-4 under the 1934 Act generally requires an issuer making a tender offer to permit tendered securities to be withdrawn at any time until expiration of ten business days from the commencement of the tender offer by the issuer. The application states that after such ten day period, prompt payment of the tender offer price will be made by Maryland National Bank, the depository, as properly tendered share certificates are received. Applicant further states that such tender offer will expire on May 1, 1981, but may be extended (as to time only) by Applicant for a period of thirty days. According to the application, the Principal Shareholders will not accept the tender offer, and after such offer are expected to own in excess of 50 percent of Applicant's outstanding shares. It is further stated in the application that Applicant will have passive or personal holding company income, as defined by the Internal Revenue Code, for its fiscal year 1981. The application states that, in the opinion of counsel, Applicant may become a personal holding company for federal income tax purposes for its fiscal year ending September 30, 1981, and will in all likelihood become so for subsequent years. Applicant states that, in the opinion of counsel, it will not be entitled to the favorable tax treatment accorded registered investment companies under the Internal Revenue Code and will therefore be subject to federal income tax at the corporate level. In the opinion of counsel, Applicant will also be subject to the additional 70 percent penalty tax imposed on any personal holding company income which is not distributed to its shareholders and that distributed personal holding company income, other than certain dividend income, will be subject to taxation at both the corporate and shareholder level. According to the Applicant, in its opinion there is little or no incentive for its shareholders, other than the Principal Shareholders, to refuse to tender their shares pursuant to the tender offer, but it is nonetheless impossible to predict whether Applicant will have fewer than 100 beneficial owners of its common shares at the conclusion of the tender offer.

In pertinent part, Sections 3(a)(1) and 3(a)(3) of the Act respectively define an investment company as any issuer which: (i) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; or (ii) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a

value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant states that upon receipt of the cash proceeds of the sale of its assets, Applicant expects to maintain its corporate existence as a personal holding company and to invest and reinvest the proceeds for the benefit of the continuing shareholders of Applicant and to provide a source of funds to pay shareholders who tender their shares pursuant to the tender offer. Applicant therefore states that immediately after the completion of the sale of assets it will be unable to represent that its activities would not come within the definition of investment company contained in Sections 3(a)(1) or 3(a)(3) of the Act.

Section 3(c)(1) of the Act excludes from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to made a public offering of its securities. Applicant states that if the tender offer is successful in reducing its shareholders to fewer than 100 it will be excluded from the definition of investment company by Section 3(c)(1) of the Act. However, Applicant states that from the time of the sale of its assets to ALI until such time as the number of its shareholders may be reduced to fewer than 100, Applicant will be an investment company as defined by the Act and absent the requested order of exemption will be subject to all the provisions thereof.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, ay conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order, pursuant to Section 6(c) of the Act. of the Commission exempting Applicant from all provisions of the Act for a period commencing with the date of such order and expiring eight months thereafter, or 60 days after completion of the tender offer, whichever period is shorter. In support of its request Applicant asserts that it is not the type of organization intended by Congress to be subject to regulation under the Act, but rather that it will be in the nature of a transient investment company between the time of the closing of the sale of assets to ALI and the time it intends to qualify for the exclusion from the definition of investment company contained in Section 3(c)(1) of the Act. Applicant further asserts that a company which will technically be an investment company for a short period of time should not be required to register under the Act and subsequently deregister if, within a reasonably short period, the company has resolved to take whatever action may be necessary to bring its status outside the definition of investment company contained in the Act and adequate measures are taken for the protection of its shareholders. Applicant asserts that it will submit to the conditions described below and that those conditions generally, and particularly the restraints on its investment activities and the short duration of the requested order of exemption, render it unnecessary to extend the additional protection which the Act was designed to provide to shareholders of conventional investment companies. Finally, Applicant asserts that in light of: (1) its history as an operating company; (2) the continuing jurisdiction of the Commission under the 1934 Act over Applicant's activities; (3) the temporary and conditional nature of the requested order of exemption; (4) Applicant's intention, if required to register under the Act, to register but file an application to deregister as soon as its number of shareholders is reduced below 100; and (5) its special circumstances, that the granting of the requested order of exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that any order granted by the Commission in response to this application may be subject to the following conditions:

(1) Applicant will use its best efforts to cause the number of its shareholders to be reduced to fewer than 100 by means of the above described tender offer and to promptly advise the Commission's staff of the date of the termination of the tender offer;

(2) During the effectiveness of the temporary order of exemption, the entire fund owned by Applicant for the benefit of its shareholders following the sale of assets to ALI will be held by a bank as custodian and

will be invested under the direction of Applicant's board of directors. At least 75 percent of the value of the funds will at all times, during the period of the effectiveness of the order of exemption, be invested in short term debt securities issued or guaranteed as to principal and interest by the United States or an agency acting as an instrumentality of the United States or in high quality commercial paper obligations rated Prime-1 by Moody's Investors Service, Inc. ("Moodys") or A-1 by Standard and Poor's Corporation ("S&P"). The remaining 25% of the fund may be invested in preferred stocks traded on a national securities exchange and rated A or better by Moody's or S&P;

(3) Upon termination of the requested order of exemption, if Applicant has 100 or more shareholders, it will: (A) apply to the Commission for a temporary or permanent extension of such order; (B) engage in a recapitalization, reorganization or such other corporate activity as may be necessary to reduce the number of its shareholders to fewer than 100; or (C) promptly register under the Act and comply with all the relevant provisions thereof.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 19, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11459/November 26, 1980

In the Matter of

MFS/NWNL VARIABLE ACCOUNT

AND

NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY
20 Washington Avenue South
Minneapolis, MN 55440

(812-4764)

NOTICE OF APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTIONS 22(e), 27(c)(1) AND 27(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Northwestern National Life Insurance Company ("Company" or "NWNL") a stock and mutual life insurance company organized under the laws of the state of Minnesota and MFS/NWNL Variable Account (the "Variable Account"), a separate account of NWNL registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on November 10, 1980 pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

The Variable Account was established by resolution of the Board of Directors pursuant to Minnesota Statutes §61A.13 to 61A.21, as amended, on September 13, 1979 for the purpose of investing contributions received under certain variable annuity contracts issued in conjunction with plans which may or may not qualify for special tax treatment. These plans include qualified plans

under Sections 401(a) of the Internal Revenue Code of 1954, as amended (the "Code"), including so called "H.R. 10 plans" or "Keogh plans" or annuity purchase plans adopted pursuant to Sections 403(b) or 408 of the Code.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available to certain employees an Optional Retirement Program (the "Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the Program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits of such annuities are to be available only upon termination of employment in Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Because of uncertainty regarding the effect of these amendments, the University of Texas System (the "System") requested the opinion of the Attorney General of Texas with respect to several questions concerning such amendments. The Attorney General rendered an opinion dated February 18, 1975, in response to the System's letter. The Attorney General interpreted Section 51.358 to prohibit provisions in a variable annuity contract issued in connection with the Program on or after June 14, 1973, which provide for making available the redemption value of such contract prior to the occurrence of one of the conditions specified in the statute, i.e., termination of employment, retirement, death or total disability. Moreover, the opinion further stated that the prohibitions of Section 51.358 were impliedly in effect upon the establishment of the Program (in 1967) and that notwithstanding any language which may be contained in existing contracts, a participant in the Program has never had the right to redeem his annuity contract otherwise than in accordance with the limitations described above. The opinion did not affect the right of a participant to transfer the redemption value of his annuity contract from one carrier to another; accordingly, the granting of the relief requested in the application would not affect such right.

Sections 27(c)(1), 22(e) and 27(d)

Section 27(c)(1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a)(32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with Section 51.358 as it pertains to redemption values under Contracts issued to participants in the Program subsequent to the date of such exemptive order.

Applicants assert that if such exemptions are not granted, persons participating in the Program

effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Additionally, participants will be unable to obtain the state's matching contributions for the purchase of an equity-based retirement vehicle. In this respect, the Attorney General's opinion indicated that these matching contributions will encourage participation in the retirement plan but that unrestricted withdrawals prior to retirement might be detrimental to an effective retirement vehicle. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the state of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, all sales literature that is to be used in conjunction with the sale of these Contracts will be reviewed for the existence of material representations that are inconsistent with the restrictions to be placed on these Contracts, and the salespeople involved in soliciting in this market will be instructed to bring this restriction specifically to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following December 22, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 740/November 21, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6264/November 21, 1980

LITIGATION

Litigation Release No. 9238/November 21, 1980

UNITED STATES OF AMERICA v. *JACK C. PETTEE* (W.D. N.C. Criminal No. A-CR-80-47)

Jule B. Greene, Administrator of the Atlanta Regional Office and Harold M. Edwards, United States Attorney for the Western District of North Carolina, announced that on November 7, 1980, Jack C. Pette, of Asheville, North Carolina, was convicted by a jury of four counts of securities fraud in connection with the offer and sale of promissory notes of Thermal Belt Air Service, Inc. ("Thermal Belt"), a North Carolina corporation.

The indictment charged, among other things, that beginning prior to 1973 and continuing to about October 31, 1977, Pette engaged in a scheme to defraud purchasers of Thermal Belt promissory notes, by making misrepresentations of material facts and/or omitting to state material facts concerning: (1) Thermal Belt's insolvency since 1968; (2) the company's consistent history of operating losses; and (3) the use of the proceeds.

Pettee, the president and a director of Thermal Belt, was previously permanently enjoined from violations of the registration and anti-fraud provisions of the Securities Act of 1933, the Investment Advisers Act of 1940 and the anti-fraud provisions of the Securities Exchange Act of 1934 in an action brought by the Commission in 1978. In that action, Pettee consented to the entry of a permanent injunction without admitting or denying the allegations in the complaint.

On November 13, 1980, the Honorable Woodrow Wilson Jones, United States District Judge for the Western District of North Carolina, sentenced Pettee to 3 years in a federal penitentiary and imposed a $10,000 fine; required 3 years additional probation and, as a condition of probation, required Pettee to pay the fines, the costs of his court appointed counsel and his court costs.

For further information, see Litigation Release Nos. 9186 and 8447.

Litigation Release No. 9239/November 21, 1980

UNITED STATES OF AMERICA v. *JOHN P. HUBERTY* (United States District Court for the District of Minnesota, Criminal Action File No. 4-80-112)

Thomas K. Berg, United States Attorney for the District of Minnesota, and William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on November 9, 1980, a Federal Grand Jury at Minneapolis, Minnesota, returned a 15-count indictment against John P. Huberty of Minnetonka, Minnesota, charging him with violations of the mail fraud statute (18 U.S.C. 1341) in connection with an alleged scheme by Huberty, a salesman for a registered broker-dealer, in which he obtained approximately $1 million for the purpose of purchasing securities on behalf of his customers but instead was taken by him for his own personal use.

Huberty had, on June 30, 1980, pursuant to a complaint filed by the Commission, been preliminarily enjoined from further violations of the anti-fraud provisions of the Federal securities laws. In the Commission's action, a receiver was appointed and Huberty was ordered to disgorge all funds and assets received by him in connection with the above matters.

For further information, see Litigation Release Nos. 9116 and 9140.

Litigation Release No. 9240/November 21, 1980

SECURITIES AND EXCHANGE COMMISSION v. *DANIEL M. TABAS* (United States District Court for the District of the District of Columbia, Civil Action No. 80-2957.)

The Securities and Exchange Commission announced that on November 20, 1980 the Honorable Oliver Gasch, United States District Judge, signed a final judgment of permanent injunction against Daniel M. Tabas. Tabas consented to the entry of the injunction, which enjoins him from further violations of Section 13(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 12b-20 and 13d-1 thereunder, without admitting or denying the allegations contained in the Commission's Complaint. Tabas

also agreed to file certain amended reports on Schedule 13-D and other undertakings.

The Complaint alleges that Tabas, along with certain other related persons and entities, was a member of a group formed to acquire, hold and vote securities of the Lincoln National Company ("Lincoln"), a one-bank holding company which is the sole owner of Lincoln Bank ("the Bank"). In 1971, that group held over 14% of Lincoln's common stock and over the next nine years acquired an additional 5½%. The Complaint further alleges that Tabas, on behalf of his group, attempted to substantially influence the operations of Lincoln, by among other things, naming directors to Lincoln's Board of Directors, obtaining employment for his son, and influencing Lincoln to issue stock dividends. In connection with the securing employment for his son, Tabas, on behalf of the group, allegedly agreed to cease purchasing additional Lincoln common stock. Tabas also allegedly participated in the settlement of litigation against Lincoln whereby, among other things, he and members of his group were given the right to name certain members of Lincoln's Board of Directors in exchange for agreeing to vote their shares, in all but extraordinary matters, as directed by Lincoln's Board. According to the Complaint, Tabas failed to make timely and accurate filings on Schedule 13-D reflecting his activities relating to the Bank and Lincoln common stock including the matters described above, as required by Section 13(d) of the Exchange Act.

Litigation Release No. 9241/November 24, 1980

SEC v. SAFEGUARD INVESTMENT CORP., D/B/A SAFEGUARD COMPANY, ET AL. (W.D. Pa., Civil Action No. 80-777)

Paul F. Leonard, Administrator of the Washington Regional Office of the Securities and Exch;ange Commission and Ralph M. Fratkin, Chairman of the Pennsylvania Securities Commission, announced that on October 9, 1980, the Honorable Donald E. Ziegler, United States District Court Judge for the Western District of Pennsylvania, entered final judgments permanently enjoining Anthony J. Pivirotto (Pivirotto) and John Robert Woods (Woods) from further violations of the securities registration and antifraud provisions of the federal securities laws. The complaint had alleged violation of these provisions in connection with the offer and sale of the securities of Safeguard Investment Corp. (Safeguard) in the form of participation interests in mortgage investments. Pivirotto and Woods consented to the entry of the judgments without admitting or denying the allegations of the complaint. Previously, on September 2, 1980, a final judgment enjoining Safeguard from further violations of the securities registration and anti-fraud provisions was entered by consent, with Safeguard neither admitting nor denying the allegations of the complaint.

Also on September 2, 1980, the Court directed Safeguard's Trustee in Bankruptcy to perform the accounting of investor monies previously ordered by the Court as part of the preliminary injunctive relief in this case. The Commission will render assistance to the Trustee until the accounting is completed, at which time the court will determine whether and in what amount disgorgement is necessary. (*SEC v. Safeguard Investment Corp., d/b/a Safeguard Company, et al.*, W.D. Pa., Civil Action No. 80-777).

For further information, see Litigation Release No. 9122.

Litigation Release No. 9242/November 24, 1980

UNITED STATES v. RUSSELL E. PHILLIPS, ET AL. (Western District of Missouri)

William D. Goldsberry, Administrator of the Chicago Regional Office, and Ronald S. Reed, Jr., United States Attorney for the Western District of Missouri, annouced that on November 14, 1980, the Honorable Warren K. Urbom, Chief Judge of the United States District Court for the District of Nebraska, sentenced Quinton Darence Cloninger of Shreveport, Louisiana, to ten years imprisonment, a $15,000 fine and five years probation following his release. Quinton Darence Cloninger was convicted of conspiracy, racketeering and securities fraud in connection with the offer and sale of the securities of Progressive Farmers Association of Springfield, Missouri. All remaining counts of the indictment against Cloninger had been severed before trial.

(For further information, see Litigation Release Nos. 7932 and 9213.)

Litigation Release No. 9243/November 24, 1980

SEC v. STERLING ENTERPRISES, INC. ET AL. (United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 79 C 3421)

William D. Goldsberry, Administrator of the Chicago Regional Office of the Securities and Exchange Commission, announced that on November 7, 1980, the Honorable Thomas R. McMillen, United States District Court Judge for the Northern District of Illinois, Eastern Division, entered final judgments of permanent injunction and other equitable relief against Sterling Enterprises, Inc. (Sterling), Pro-Vest, Inc. (Pro-Vest) and John A. Meatte (Meatte), the chairman of the board of Sterling and president of both Sterling and Pro-Vest. The judgments were entered after Sterling, Pro-Vest and Meatte were adjudged in default and after the Court considered the pleadings, affidavit and exhibits filed by the Commission.

The complaint alleges, among other things, that Sterling, Pro-Vest and Meatte participated in the preparation and dissemination of prospectuses in connection with the offer and sale of unregistered interests in limited partnerships and that the prospectuses contain untrue statements of material facts and omit to state material facts. These misstatements and omissions concern, among other things, the financial condition of the issuer, the use of proceeds raised from the sale of securities and the existence of pending litigation against the issuer and its officers involving alleged violations of the securities laws.

The judgments enjoin Sterling, Pro-Vest and Meatte from further violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder in connection with the offer and sale of securities. The judgments also order Sterling, Pro-Vest and Meatte to each provide the Court, within 60 days of the entry of the judgments, with an accounting of the funds raised from investors. In addition, after receipt of the accountings, the Court will make a determination whether an order of disgorgement from Sterling, Pro-Vest and Meatte is appropriate.

Litigation Release No. 9244/November 24, 1980

SECURITIES AND EXCHANGE COMMISSION v. GERALD L. ROGERS, ET AL. (United States District Court for the Central District of California, Civil Action No. 80-04841 MRP)

The Securities and Exchange Commission ("Commission") announced that on November 12, 1980, the Honorable Mariana R. Pfaelzer, United States District Judge, Central District of California, entered a Preliminary Injunction against International Monetary Exchange, S.A. ("IME"). Additionally, Judge Pfaelzer, upon Roger's consent, continued until December 12, 1980, a Temporary Restraining Order entered against Gerald L. Rogers ("Rogers") on November 3, 1980. On December 12, 1980, the Court is scheduled to hear the Commission's Applications for a Preliminary Injunction against Rogers and for an Order adjudging Rogers in Civil Contempt of a previous Order enjoining him from violating the Federal securities laws. The Preliminary Injunction and Temporary Restraining Order prohibit Rogers, IME, its officers, agents, servants, employees, and all persons and entities in active concert or participation with them, from, among other things, offering or selling "Gold for Tax Dollars" securities and violating the registration and anti-fraud provisions of the Federal securities laws. In addition, the Preliminary Injunction entered against IME "freezes" investments in "Gold for Tax Dollars" securities and requires IME to file with the Court, by December 11, 1980, an accounting for all investments in "Gold for Tax Dollars" securities. The Commission requests that individuals with information concerning "Gold for Tax Dollars" securities contact Jeremy Rosenblum at (202) 272-2302.

Related Litigation Releases: No. 9224/October 30, 1980, No. 9228/October 3, 1980.

Litigation Release No. 9245/November 25, 1980

SECURITIES AND EXCHANGE COMMISSION v. *LAWRENCE D. MARKHAM, HAROLD A. KUNZ AND PHILLIP STEPHAN* (U.S.D.C., E.D. Wa., Civil Action File No. C-80-436-JLQ)

Jack H. Bookey, Regional Administrator of the Seattle Regional Office, announced the filing of a complaint in the U.S. District Court for the Eastern District of Washington, at Spokane, on October 24, 1980 against Lawrence D. Markham, Harold A. Kunz and Phillip Stephan. The Commission's complaint alleged that the defendants have been engaging in the sale of unregistered securities, namely investment contracts involving the sale and lease-back and lease-over of personal property, in violation of Sections 5(a) and (c) of the Securities Act of 1933. The complaint further alleged that in connection with such sales, the defendants made untrue statements of material facts and omitted to disclose material facts regarding the use of investor funds, conflicts of interest, the financial condition of persons and entities on whom investors were relying and the risk involved with the investment. Defendants Kunz and Stephan consented to the entry of a decree of permanent injunction against them enjoining them from further violations of the registration and antifraud provisions of the securities acts without admitting or denying the allegations of the SEC's complaint.

SECURITIES INVESTOR PROTECTION ACT OF 1970

SECURITIES INVESTOR PROTECTION ACT OF 1970
Release No. 94/November 24, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17327/November 24, 1980

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VOLUME 21, NO. 10 DECEMBER 16, 1980

RELEASES IN THIS ISSUE

Securities Act	6266-68	773
Securities Exchange Act	17346-54	780
Public Utility Holding Company Act	21807-20	787
Trust Indenture Act	598-99	812
Investment Company Act	11460-78	813
Investment Advisers Act	741	834
Litigation	9246-51	835

This listing covers releases issued from 11/27/80-12/5/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

34-17354 Interpretative release relating to beneficial ownership rules.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-17348 34-17349 34-17350

33-6268 Adoption of an amendment to Rule 13d-2(a) pertaining to the requirements for the filing of amendments to Schedule 13D.

34-17347 Withdrawal of proposed temporary rules which would have suspended to varying degrees the operation of the "tick" test provisions of a rule that governs short sales.

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SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6266/December 3, 1980

In the Matter of

SE 1.29

O'MELVENY & MYERS RETIREMENT PLAN AND TRUST AGREEMENT FOR PARTNERS
611 West Sixth Street
Los Angeles, Calif. 90017

(18-67)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE O'MELVENY & MYERS RETIREMENT PLAN & TRUST AGREEMENT FOR PARTNERS

O'Melveny & Myers, a law firm organized as a California partnership, filed an application on December 6, 1979, for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests cr participations issued in connection with the O'Melveny & Myers Retirement Plan & Trust Agreement for Partners ("Plan").

On November 6, 1980, a notice was issued (Securities Act Release No. 6255) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to the delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6267/December 3, 1980

In the Matter of

SKADDEN, ARPS, SLATE, MEAGHER & FLOM RETIREMENT PLAN
919 Third Avenue
New York, NY 10022

(18-66)

ORDER PURSUANT TO SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE SKADDEN, ARPS, SLATE, MEAGHER & FLOM RETIREMENT PLAN

Skadden, Arps, Slate, Meagher & Flom, a law firm organized as a New York partnership, filed an application on November 29, 1979, amended and updated by letter dated October 24, 1980, for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the Skadden, Arps, Slate, Meagher & Flom Retirement Plan ("Plan").

On November 10, 1980, a notice was issued (Securities Act Release No. 6258) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No hearing has been requested, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or praticipations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act Effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6268/December 4, 1980

SECURITIES EXCHANGE ACT OF 1934
Release No. 17353/December 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11475/December 4, 1980

FILING AND DISCLOSURE REQUIREMENTS RELATING TO BENEFICIAL OWNERSHIP

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of an amendment to Rule 13d-2(a) pertaining to the requirements for the filing of amendments to Schedule 13D. Schedule 13D specifies the information required to be included in reports of beneficial ownership filed pursuant to Rule 13d-1(a). This amendment removes the availability of an exception to the requirement for filing an amendment under Rule 13d-2(a), which provided that an amendment would not be required if the acquisition of shares of a class, together with all other acquisitions during the preceding twelve months, did not exceed two percent of that class. This is necessary to close a disclosure gap in the beneficial ownership reporting requirements.

EFFECTIVE DATE: Thirty days after the publication of this release in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date of the rule contact W. Scott Cooper (202-272-2589), Office of Disclosure Policy; thereafter, contact Joseph G. Connolly, Jr. (202-272-3097) or David B. Myatt (202-272-2707), Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, N. W., Washington, D. C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of an amendment to Rule 13d-2(a) [17 CFR 240.13d-2(a)] under the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. I 1977)]. Rule 13d-2(a) sets forth the requirements for the filing of amendments to reports of beneficial ownership filed on Schedule 13D [17 CFR 240.13d-101]. This amendment to Rule 13d-2(a) removes the availability of an exception to requirements for the filing of amendments previously available for an acquisition which, when taken together with all other acquisitions during the preceding twelve months, did not exceed two percent of the class. This action is a result, in part, of the Commission's ongoing examination of the beneficial ownership reporting requirements which was conducted in connection with the Commission's report to Congress pursuant to Section 13(h) of the Exchange Act.[1]

The amendment of Rule 13d-2(a) is based on the proposal as published for comment on April 16, 1980,[2] the comment received and the Commission's experience.

I. *Background*

As part of the Williams Act,[3] Pub. L. No. 90-439, 82 Stat. 454 (1968), Congress added Section 13(d) to the Exchange Act. Generally, Section 13(d)(1) and Rule 13d-1(a) (17 CFR 240.13d-1(a)) adopted thereunder require a report by any person (or group of persons) who, as a result of an acquisition, becomes the beneficial owner of more than five percent of certain classes of equity securities of certain issuers. The report, which is to be filed with the Commission, sent to the issuer and sent to any national securities exchange where the security is traded, is required to contain, among other things, information concerning the acquiring person, the nature of the beneficial ownership disclosed, the source and amount of funds used in the acquisition, the number of shares beneficially owned and any contracts or understandings with respect to any securities of the subject company.[4] The legislative history of that section indicates that it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities by persons who would then have the

[1]The report of the Commission pursuant to Section 13(h) was submitted to Congress on June 27, 1980.

[2]Release No. 34-16748 [45 FR 27781].

[3]Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Exchange Act.

[4]The specific disclosure requirements are set forth in Schedule 13D.

potential to change or influence control of the issuer.[5]

Section 13(d)(2) of the Exchange Act provides that if a material change occurs in the information set forth in the report, an amendment shall be filed with the Commission and sent to the issuer and to any exchange in accordance with such rules and regulations as the Commission may prescribe. Rule 13d-2 [17 CRF 240.13d-2] as originally adopted implemented the authority under Section 13(d)(2) by merely re-stating the statutory requirements. In 1978, Rule 13d-2 was amended by Release No. 34-14692, April 21, 1978 [43 FR 18484], which established Regulation 13D-G and new Rule 13d-2 for the filing of amendments to Schedule 13D and Schedule 13G [17 CFR 240.13d-102]. Rule 13d-2(a) provides that if a material change occurs in the information set forth in a statement required in Rule 13d-1(a), including but not limited to an increase or decrease in the percentage of the class beneficially owned, the person who was required to report shall file and send an amendment disclosing the changes. Under Rule 13d-2(a), an acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities is deemed to be "material for the purposes of this rule, but acquisitions or dispositions of less than such amount may be material, depending upon the facts and circumstances. The next-to-last sentence of Rule 13d-2(a) provides, however, that the requirement that an amendment be filed with respect to an acquisition which materially increases the percentage of the class beneficially owned shall not apply if such acquisition is exempted by Section 13(d)(6)(B) of the Exchange Act.

New Rule 13d-2(a) reversed and at the same time incorporated certain interpretive positions taken by the staff of the Commission. First, the Commission reversed a position previously taken whereby each acquisition made after the five percent threshold was exceeded, no matter how small, was viewed as triggering a new filing requirement under Section 13(d)(1) to be satisified by the filing of an original Schedule 13D.[6] The position was reversed because the Commission believed that the burden of filing a Schedule 13D is not justified with respect to the acquisition or disposition of an immaterial amount of stock.[7] Second, prior interpretative positions were incorporated and made clear by including in Rule 13d-2(a) the provisions which excepted less than two percent acquisitions from the amendment requirements pursuant to Section 13(d)(6)(B).[8]

Section 13(d)(6)(B) states that the provisions of Section 13(d) shall not apply to any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of the securities of the same class during the preceding twelve months, does not exceed 2 percent of that class. This exemption is based on the belief that slow acquisitions totalling less than two percent within a twelve month period are unlikely to affect control.[9] This exemption operates on a rolling twelve-month basis, that is, for any acquisition to be exempt under Section 13(d)(6)(B) from the reporting obligation, it must, when taken together with all other acquisitions of beneficial ownership by the same person of securities of the same class during the preceding twelve months, not exceed two percent of the class.

II. *Discussion*

Of the six comment letters[10] received, three commentators agreed with the Commission's belief that acquisitions of less than two percent may be material and, if so, an amendment of the previously filed Schedule 13D should be required. Two of these

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[5]S. Rep. No. 550, 90th Cong., 1st Sess. 7 (1967); H.R. Rep. No. 1711, 90th Cong., 2d Sess. 8 (1968); *see also* Hearings on S.510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967).

[6]No-action letters: Gerald F. Fisher, Swiss Re Holding (North America) Inc., dated August 26, 1976; James E. Christensen of Law, Weathers, Richardson & Dutcher, dated January 13, 1976; and Wilbur C. Leonard, Esq., dated March 12, 1973.

[7]Release No. 34-14692, *supra*.

[8]No-action letter: James E. Christensen of Law, Weathers, Richardson & Dutcher, dated January 13, 1976.

[9]Comment, *Section 13(d) and Disclosure of Corporate Equity Ownership*, 119 U. Pa. L. Rev. 853, 865 (1971).

[10]One of the six commentators submitted a letter which argued against a change in the amendment requirements of Schedule 13G, which was not the subject of this rulemaking proceeding.

commentators suggested that the Commission take additional steps in connection with the alteration of the requirements for the filing of amendments to Schedule 13D. One suggestion was that the Commission add a note to Rule 13d-2(a) that would indicate that in the opinion of the Commission the exemption in Section 13(d)(6)(B) of the Exchange Act does not apply to the amendment requirements. This suggestion was based upon a concern that the differences in requirements between Section 13(d)(6)(B) and the rule as amended may be a source of confusion in the future. The other suggestion was to limit the effect of the amendment by revising the rule to require an amendment for an acquisition of one percent or more only if either (1) such acquisition, when coupled with acquisitions during the preceding twelve months, exceeds two percent of the class or (2) such acquisition is otherwise material under all facts and circumstances.

Two commentators opposed the elimination of this provision from Rule 13d-2(a). Their opposition was based on the view that the legislative history and the statutory language indicates that Section 13(d)(6)(B) applies to Section 13(d)(2) and the rules adopted thereunder. Moveover, these commentators questioned whether the Commission could utilize Section 13(g) to accomplish this amendment, and one commentator suggested that the Commission request additional legislation to close this gap.

The Commission believes, however, that Section 13(d)(6)(B) does not apply to the amendment requirements of Section 13(d)(2), and that the exemption under 13(d)(6)(B) conflicts with the requirement under Section 13(d)(2) for an amendment if a material change occurs within the facts set forth in a report filed under Section 13(d). Thus, the Commission believes it is no longer appropriate to interpret Section 13(d)(6)(B) as creating an exemption from Section 13(d)(2). Section 13(d)(2) imposes additional obligations on a person who is already within the beneficial ownership reporting system under Section 13(d). Section 13(d)(6)(B), by its terms, exempts from the beneficial ownership reporting system any person whose acquisitions are covered by its provisions. The contradiction in these provisions lies in the fact that even though a person already within the reporting system has an obligation to amend a statement pursuant to Section 13(d)(2), Section 13(d)(6)(B) would exempt those additional acquisitions from the reporting system. However, the apparent contradiction can be resolved by resort to the legislative history of the Williams Act. The section-by-section summaries of the Williams Act in both House and Senate Reports state that the exemption presently found in Section 13(d)(6)(B) was to be from the filing requirements of Section 13(d)(1), and no mention is made of the amendment provisions of Section 13(d)(2).[11]

In addition, this interpretation comports with the Congressional purpose behind the statutory requirements. Section 13(d) was enacted to require disclosure of information by persons who have acquired a substantial interest, or increased their interest in the equity securities of a company by a substantial amount, within a relatively short period of time.[12] The focus was on the potential to influence control of the company by the acquisition of an equity interest of more than 5 percent of the company.[13] The two percent exemption in Section 13(d)(6)(B) provides definition to what would not be considered a rapid accumulation of an interest in the company. The two percent exemption should therefore not apply to amendments, because by acquiring five percent beneficial ownership the person has already acquired an interest in the company which has the potential to influence

[11]H.R. Rep. No. 1711, 90th Cong., 2nd Sess., 9 (1968). S. Rep. No. 550, 90th Cong., 1st Sess. 8 (1967). This treatment of Section 13(d)(6)(B) must be compared with the treatment in the legislative history of the comparable exemption to Section 14(d). The same Senate and House reports, listed above, stated in the section-by-section summaries that Section 14(d)(8)(A) provides an exemption from all of Section 14(d).

[12]H.R. Rep. No. 1711, *supra*, at 8. S. Rep. No. 550, *supra*, at 7.

[13]Comment, *Section 13(d) and Disclosure of Corporate Equity Ownership*, *supra*, at 858.

control of the company.[14] Moreover, an exception in the amendment requirements for acquisitions of less than two percent would have the effect of masking an acquisition which may indeed be material and important to the market, the company and its shareholders.[15]

Furthermore, the provision as it now stands creates an inappropriate gap in the comprehensive disclosure system of beneficial ownership. An acquisition of less than 2 percent during succeeding twelve month periods for a number of years could substantially increase the ownership of a particular person without a requirement for disclosure of that increased ownership. This result is contrary to the intent of Congress as evidenced by the enactment of Section 13(g) of the Exchange Act in 1977[16] which was designed to close inappropriate and anomalous gaps in the legislative scheme of disclosure under the Exchange Act and result in across-the-board disclosure essential to a cohesive and comprehensive reporting system.[17] The exemptions or gaps that Section 13(g) was to delete in the development of a comprehensive disclosure system were primarily those exemptions from Section 13(d) for persons who had acquired their interests before 1970 and persons who had acquired an interest of more than five percent through acquisitions of less than two percent within any twelve month period. In the Commission's view, it is anomalous to require material amendments from persons who acquisitions were deemed to be unlikely to affect control[18] and at the same time to except from the reporting requirements information concerning acquisitions of a similar size by persons whose ownership has already reached a level which has the potential to influence control of the issuer.

The Commission believes that Sections 13(g)(1)(B) and 13(g)(2) of the Exchange Act provide a separate and independent basis of authority to require the reporting of any increase in ownership, whether above or below the two percent level. Section 13(g) was enacted to supplement the statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively.[19] The broad authority under Section 13(g) was to be implemented by requiring a short statement detailing relevant ownership information[20] without extensive historical ownership and transaction information.[21] Under Section 13(g), the Commission has the authority to specify the frequency of reports and the events which trigger reporting. The result of the enactment of Section 13(g) was intended to be across-the-board disclosure essential to a cohesive and comprehensive reporting system.[22] Thus, the

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[14]The lowering of the reporting threshold from ten to five percent for Section 13(d) was justified on the grounds that an investment of between five and ten percent of the securities of a company can have a significant impact on the public market for that company's stock, and shareholders are entitled to full disclosure when over five percent of the company's stock has been acquired. S. Rep. 91-1125, 91st Cong., 2d. Sess. 3 (1970).

[15]For example, an acquisition of 0.5% of the securities of a company within a twelve month period which increases the beneficial ownership of a particular person from 49.9% to 50.4% while presently excepted from disclosure would be a material event.

[16]Sections 13(g) was added to the Exchange Act by the Domestic and Foreign Investment Improved Disclosure Act of 1977, Pub. L. No. 95-213, §203, 91 Stat. 1499. Section 13(g)(1) requires any person owning beneficially more than five percent of Section 13(d) securities to file with the Commission a short statement detailing relevant ownership information and to transmit such ownership statement to the issuer.

[17]S. Rep. No. 95-114, 95th Cong., 1st Sess. 6 (1977).

[18]Section 13(g)(2) governs amendments to reports filed under Section 13(g) and is substantially the same as Section 13(d)(2), but Section 13(g) has no provision analogous to Section 13(d)(6)(B). Rule 13d-2(b) [17 CFR 240.13d(b)] adopted under Section 13(g)(2) requires an annual amendment to Schedule 13G and has no exception for acquisitions exempted by Section 13(d)(6)(B).

[19]S. Rep. No. 114, 95th Cong., 1st Sess. 13 (1977).

[20]*Id.*

[21]H.R. Rep. No. 95-831, 95th Cong., 1st Sess. 14 (1977); 123 Cong. Rec. S14902 (daily ed. December 6, 1977) (remarks of Senator Tower).

[22]123 Cong. Rec. S19400 (daily ed. December 6, 1977) (remarks of Senator Williams).

Commission believes that Section 13(g) would provide authority to require the reporting of an increase in beneficial ownership, which would currently be exempted from the amendment requirements under Rule 13d-2(a), at whatever frequency and upon whatever events the Commission would deem necessary and appropriate. Consistent, however, with the direction in Section 13(g)(5),[23] the Commission believes that it is more appropriate to require this reporting by amendment to Schedule 13D rather than on Schedule 13G, because this approach will foster the development of a comprehensive reporting system while avoiding duplicative reporting requirements[24]

Under this amendment to Rule 13d-2(a), the requirement to amend Schedule 13D will be governed by the materiality standards for acquisitions or dispositions set forth in Rule 13d-2(a). Thus, an acquisition or disposition of more than one percent will be presumed to be material and an amendment will be required to be filed promptly. Moreover, an acquisition or disposition of less than one percent, depending upon the facts and circumstances, may be deemed to be material. In contrast to the previous interpretative position incorporated into the present Rule 13d-2(a), the exemption under Section 13(d)(6)(B) would not apply to the amendment requirements.

III. *Text of Amendment*

17 CFR Part 240 is amended by amending paragraph (a) of §240. 13d-2 as follows:

PART 240 - RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

§240.13d-2 Filing of amendments to Schedules 13D or 13G.

(a) Schedule 13D—If any material change occurs in the facts set forth in the statement required by Rule 13d-1(a) (§240.13d-1(a)), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the Commission and send or cause to be sent to the issuer at its principal executive office, by registered or certified mail, and to each exchange on which the security is traded an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this rule; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. Six copies of each such amendment shall be filed with the Commission.

* * * * *

[§2, 82 Stat. 454; §§202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(d), 78m(g).]

Statutory Authority

The Commission hereby amends Rule 13d-2(a) pursuant to Section 13(d) and Section 13(g) the Exchange Act.

By the Commission.

George A. Fitzsimmons
Secretary

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[23]Section 13(g)(5) directs the Commission in exercising its authority under Section 13(g) to take such steps as it deems necessary or appropriate in the public interest or for the protection of investors to avoid unnecessarily duplicative reporting by and minimize the compliance burdens on persons required to report.

[24]It should be noted that an amendment to a statement filed on Schedule 13D is required to be filed promptly after the event which triggers the amendment requirement, but initial statements or amendments to a statement filed on Schedule 13G are required to be filed within 45 days of the end of the calendar year. As a result of requiring the reporting of the information currently excepted by the provisions of Rule 13d-2(a) as an amendment to a statement filed on Schedule 13D, the frequency of the amendments will be greater than would have been required if the provisions for the reporting of this information had become part of the rules as currently adopted by the Commission for the filing of statements on Schedule 13C. The Commission believes that this differing treatment is appropriate, because the persons who would be subject to reporting under this change in the amendment requirements have acquired their substantial interest in the securities of the issuer within a relatively shorter period of time than persons who would be required to file on Schedule 13G pursuant to Rule 13d-1(c).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17346/November 28, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
BOSTON STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
NEW YORK STOCK EXCHANGE, INC.
PACIFIC STOCK EXCHANGE, INC.
PHILADELPHIA STOCK EXCHANGE, INC.

ORDER APPROVING PROPOSED AMENDMENT TO THE INTERMARKET TRADING SYSTEM PLAN

(File No. 4-208)

On September 3, 1980, the participants in the Intermarket Trading System ("ITS")[1] filed with the Commission an amendment ("Amendment") to the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage" ("ITS Plan").[2] The Amendment provides the ITS Operating Committee[3] with authority to implement and administer a pilot program with respect to the Pre-Opening Application created under the terms of the ITS Plan.[4] The pilot would be designed to determine the appropriateness of effecting the Pre-Opening Application based on price parameters outside the previous trading day's closing price which are other than those currently contained in the ITS Plan and shortening the period of time after which an inquiring specialist may open a stock in his market after inquiring of other specialists.

Notice of the proposed Amendment was given by issuance of a Commission release[5] and by publication in the *Federal Register*.[6] No comments were received with respect to the Amendment.

The Commission understands that this pilot is designed to reduce the price parameters used in the Pre-Opening Application. The Commission believes that the reduced price parameters may provide a greater opportunity for participation in primary exchange opening transactions by regional exchange broker-dealers. In addition, the shortened time period after which an inquiring specialist may open a stock in his market may promote the efficiency of the Pre-Opening Application.

Therefore, the Commission, having due regard for the purposes of the Act, including the public interest, the protection of investors, the maintenance of fair and orderly markets, and the need to remove impediments to, and perfect the mechanisms of, a national market system, has declared the Amendment effective as of the date of this release.

IT IS THEREFORE ORDERED, pursuant to Section 11A of the Act, that the above-mentioned proposed Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

George A. Fitzsimmons
Secretary

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[1]The participants include the American, Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges.

[2]The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. Approval on a temporary basis has been extended through January 31, 1983. Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

[3]The ITS Operating Committee includes one member from each ITS participant.

[4]*See* Section 5(b) of the ITS Plan. The Pre-Opening Application enables a specialist on one ITS participant exchange to obtain any pre-opening interest of specialists on other participant exchanges. Currently, a specialist arranging an opening transaction is required to inquire of interest from other specialists whenever he determines that the opening transaction in his market in a stock traded in the ITS will be at a price which is more than one-quarter of a point away from the closing price on the previous trading day. The inquiring specialist is prohibited from opening the stock until not less than five minutes after inquiring of other specialists.

[5]Securities Exchange Act Release No. 17200 (October 7, 1980), 21 SEC Docket 94 (October 21, 1980).

[6]45 FR 68818 (October 16, 1980).

[7]*See* Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. §§ 78d-1, 78d-2); 17 CFR § 200.30-3(a)(29).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17347/November 28, 1980

SHORT SALES OF SECURITIES

ACTION: Withdrawal of proposed rules.

SUMMARY: The Commission is withdrawing proposed temporary rules which would have suspended to varying degrees the operation of the "tick" test provisions of a rule that governs short sales. The commentators generally indicated that the "tick" test provisions of that rule continue to be appropriate for the protection of investors and should not be modified.

FOR FURTHER INFORMATION CONTACT: Carlos M. Morales, (202-272-3103), Room 301, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the withdrawal of proposed Rules 10a-3(T)[A], 10a-3(T)[B] and 10a-3(T)[C] ("Rule10a-3(T)") [17 CFR §§240.10a-3(T)[A], 240.10a-3(T)[B], and 240.10a-3(T)[C]) under the Act[1] which would have suspended in part the operation of the "tick" test provisions of Rule 10a-1 under the Act.[2]

The proposals received relatively limited comment.[3] Commentators generally indicated that, in their view, the "tick" test provisions of Rule 10a-1 work well and should not be modified. In addition, in connection with the Commission's program to facilitate the establishment of a national market system, the Commission has adopted certain amendments ("Amendments") to Rule 10a-1[4] which demonstrate continued reliance on the "tick" test of

[1]15 U.S.C. §§ 78a *et seq.*, as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong., & Ad. News 97.

[2]See Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 56530. The "tick" test compares the price of a proposed short sale to immediately preceding transactions to determine its permissibility. With respect to securities as to which last sale information is disseminated in the consolidated transaction reporting system, the short sale rule generally provides that short sales may be effected only on a plus tick (*i.e.*, at a price above the price at which the immediately preceding last sale was effected) or a zero-plus tick (*i.e.*, at a price equal to the last sale if the last preceding transaction at a different price was at a lower price), established by reference to the last sale in the consolidated transaction reporting system. See Rule 10a-1(a)(1).

[3]Letter from Vincent J. Murphy To George A. Fitzsimmons, Secretary, SEC, dated February 23, 1977; Letter from James E. Buck, Secretary, The New York Stock Exchange, to George A. Fitzsimmons, Secretary, SEC, dated March 17, 1977; letter from Charles D. Kirkpatrick, II, Lynch, Jones & Ryan to George A. Fitzsimmons, Secretary, SEC, dated March 17, 1977; letter from William F. Devin, Chairman, Institutional Advisory Committee on Trading, The New York Stock Exchange, to George A. Fitzsimmons, Secretary, SEC, dated April 4, 1977; letter from Edward J. O'Brien, President, Securities Industry Association to the SEC, dated April 15, 1977; letter from William S. Boothby, Jr., Chairman, Blyth Eastman Dillon & Co., to George A. Fitzsimmons, Secretary, SEC, dated May 2, 1977; letter from William G. Burns, Vice President and Treasurer, American Telephone and Telegraph Company to George A. Fitzsimmons, Secretary, SEC, undated; letter from Norman S. Poser, Executive Vice President, American Stock Exchange, Inc., to George A. Fitzsimmons, Secretary, SEC, dated May 4, 1977; letter from John E. Merow, Chairman, Committee on Securities Regulations, The Association of the Bar of the City of New York, to George A. Fitzsimmons, Secretary, SEC, dated May 20, 1977; letter from Jesse D. Saunders, Vice President, Government and Industry Relations, Philadelphia Stock Exchange, to George A. Fitzsimmons, Secretary, SEC, dated May 18, 1977; letter from Gordon S. Macklin, President, National Association of Securities Dealers, Inc., to George A. Fitzsimmons, Secretary, SEC, dated May 27, 1977. These comments are contained in the Commission's Public File No. S7-665.

[4]See Securities Exchange Act Release No. 17314 (November 20, 1980).

Rule 10a-1.[5] In view of comments received in connection with proposed Rule 10a-3(T) and the Rule 10a-1 Amendments, and because of the substantial time that has elapsed since Rule 10a-3(T) was proposed, the Commission has determined to formally withdraw proposed Rule 10a-3(T) at this time.[6]

By the Commission.

George A. Fitzsimmons
Secretary

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[5]The Amendments resolve a conflict between the short sale rule and the Commission's firm quotation rule, Rule 11Ac1-1 [17 CFR §240.11Ac1-1] ("Quote Rule") by permitting brokers and dealers to honor offers communicated pursuant to the Quote Rule in the event of a trade through. *See id.* at 2-3. One commentator on the Amendments suggested that, in light of the time which has passed since the proposed of Rule 10a-3(T), the Commission either formally withdraw that rule or republish it for comment. Letter from Warren F. Grienenberger, Chairman, American Bar Association, Federal Regulation of Securities Committee, and John M. Liftin, Chairman, Subcommittee on Securities Market and Market Regulation to George A. Fitzsimmons, Secretary, SEC, dated September 18, 1980. This letter is contained in Commission File No. S7-842.

[6]The Commission wishes to point out, however, that its action today is limited to withdrawal of the specific proposals relative to suspension of the "tick" test provisions of Rule 10a-1. Still pending are two other rule proposals relative to short selling published at the same time as proposed Rule 10a-3(T), (i) proposed Rule 10b-11, which would establish explicit borrowing requirements in connection with short sales (Securities Exchange Act Release No. 13091 (December 21, 1976), 42 FR 56530), and (ii) proposed Rule 10b-21 (and related amendments to the Commission's recordkeeping rules) governing short sales prior to and during underwritten offerings for cash (Securities Exchange Act Release No. 13092 (December 21, 1976), 41 FR 56542).

SECURITIES EXCHANGE ACT OF 1934
Release No. 17348/December 1, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY CINCINNATI STOCK EXCHANGE

File No. SR-CSE-80-6

The Cincinnati Stock Exchange submitted, on November 17, 1980, a proposed rule change under Rule 19b-4 to reduce from $2.00 to $1.00 the fee charged to non-member broker-dealers for extensions of time pursuant to the Federal Reserve Act's Regulation T[1] and Securities Exchange Act Rule 15c3-3.[2] Broker-dealers that are CSE members are already entitled to the $1.00 rate and will not be affected by this proposal.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 ("Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 1, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register.* Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-CSE-80-6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which

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[1]12 CFR § 220.1 *et seq.* 12 CFR § 220.3(f) for extension requirements under Regulation T.

[2]17 CFR § 240.15c3-3.

may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N. W., Washington, D. C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17349/December 1, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE, INCORPORATED

File No. SR-PSE-80-22

The Pacific Stock Exchange, Incorporated ("PSE") submitted on November 17, 1980, a proposed rule change under Rule 19b-4 to modify the PSE's four existing XYZ agreement forms designed for use between an applicant for PSE membership and the applicant's financial backer.[1] The modifications would permit the use of XYZ agreements for financing equity floor memberships, as well as for financing options floor memberships.[2] Further, under the terms of the XYZ forms, the period of time that the PSE could extend deadlines for the orderly closing of an applicant's business or its transfer from an applicant to a backer would be increased from 30 to 60 days. The PSE's present requirement that all agreements between an applicant and a backer must be approved by the PSE would be rescinded.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 1, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-PSE-80-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N. W., Washington, D. C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]The four XYZ agreements, while containing the same general language, have variations depending on whether an applicant or a backer is a sole proprietorship or a member organization.

[2]Presently, XYZ forms are available only for financing options floor memberships, but under the proposed rule change they would also be available for financing equity floor memberships. This would be achieved by deleting from each of the XYZ forms certain language that has always been interpreted by the PSE as barring the use of the forms for equity floor memberships.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17350/December 1, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-22

The National Association of Securities Dealers, Inc. (the "NASD") submitted on November 25, 1980, a proposed rule change under Rule 19b-4 to redesignate Section 37 of Article III of the NASD's Rules of Fair Practice as Section 35,[1] and to change cross references within the Rules of Fair Practice to reflect this change. The NASD has stated that the proposed rule change would permit the various sections of Article III to be presented in a continuous order.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act"). At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 1, 1980. In order to assist the Commission in determining whether to abrogate the proposed rule change, interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-NASD-80-22.

Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N. W., Washington, D. C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17351/December 1, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INCORPORATED

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Sectin 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange:[1]

Permian Basin Royalty Trust
Shares of Beneficial Interest (File No. 7-5775)

San Juan Basin Royalty Trust
Shares of Beneficial Interest (File No. 7-5776)

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[1]The substance of this section of the Rules of Fair Practice, entitled "Communications with the Public" was approved by the Commission on November 13, 1980, as announced in Securities Exchange Act Release No. 17289.

[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 74607 (November 10, 1980). The Commission has received no comments with respect to these applications.

The West Company, Inc.
Common Stock, $.25 Par Value (File No. 7-5777)

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17352/December 2, 1980

An order has been issued granting the application of the *American Stock Exchange* to strike the common stock ($1 par value) of VESELY COMPANY from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17353/December 4, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6268

SECURITIES EXCHANGE ACT OF 1934
Release No. 17354/December 4, 1980

INTERPRETATIVE RELEASE RELATING TO BENEFICIAL OWNERSHIP RULES

ACTION: Publication of staff interpretations.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of this release reflecting the views of the Division of Corporation Finance (the "Division") with respect to the requirements for filing amendments to beneficial ownership reports on Schedule 13D or Schedule 13G. The Division's views relate to the information required to be presented on the cover pages of amendments to statements filed on these schedules. These views are being published in response to a number of requests for interpretive advice received by the Division and to ensure the accuracy of beneficial ownership information.

FOR FURTHER INFORMATION CONTACT: Persons with specific questions concerning the subject matter of this release or the beneficial ownership reporting requirements in general should contact Joseph G. Connolly, Jr., (202) 272-3097 or David B. Myatt (202) 272-2707, Office of Tender Offers, Division of Corporation Finance, Securities and

Exchance Commission, Washington, D. C. 20549.

SUPPLEMENTARY INFORMATION: On January 5, 1979, the Commission issued Release No. 34-15461 [44 FR 2022], which announced the adoption of the final provisions in the development of the comprehensive beneficial ownership reporting requirements under Regulation 13D-G [17 CFR 240.13d-1 through 240.13d-102]. This release amended the filing requirements under Regulation 13D-G to expand the cover pages for Schedule 13D [17 CFR 240.13d-101] and Schedule 13G [17 CFR 240.13d-102]. The expanded cover pages were adopted to assist in the tabulation of beneficial ownership information and to foster the public availability of the information contained in the schedules. The amendments provided that the persons filing the schedules would abstract certain data from within the statements and include this information in the cover page. This abstracted information was required to facilitate the entry of such data into a computer system.

The Division often receives requests for interpretative advice as to the appropriate information to be included on a cover page of an amendment to a statement filed on Schedules 13D and 13G. Also, the Division has an interest in promoting the accuracy and completeness of the beneficial ownership information received by the Commission in order to develop a complete and accurate tabulation of beneficial ownership information. Therefore, the Division has requested that the Commission publish these views with respect to the information required to be included in cover pages for amendments.

The requirements for the filing of amendments to Schedule 13D or Schedule 13G are found in Rule 13d-2 [17 CFR 240.13d-2]. In general, an amendment to a filing on Schedule 13D is required to be filed promptly if any material change[1] occurs in the facts set forth in the Schedule 13D, including, but not limited to, any material increase or decrease in the percentage of securities beneficially owned. Rule 13d-2(b) provides that if a person continues to meet the requirements for filing Schedule 13G, such person shall amend a statement filed on Schedule 13G within 45 days after the end of the calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that schedule, or if there are no changes from the previous filing a signed statement to that effect under cover of Schedule 13G.

The Division often receives requests for interpretive advice concerning the proper documents to be filed in the amendment process, particularly in the period during which amendments are required for statements filed on Schedule 13G. The Division also has an interest in ensuring that amendments are properly filed, because the comprehensive tabulation of beneficial ownership cannot be kept accurate if amendments are improperly filed. Therefore, the Division is presenting its views as to the required proccedures for filing amendments to statements filed on Schedule 13D or Schedule 13G, in order that the public may be made aware of the proper requirements and to ensure that the information in the comprehensive tabulation is accurate.

Each amendment filed with respect to a change in the information disclosed previously on the cover page for a statement filed on Schedule 13D or Schedule 13G must include a cover page which includes all required information.[2] This requirement

[1]Rule 13d-2(a) states that an acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more shall be deemed "material" for the purposes of the rule; acquisitions or dispositions of less than such amounts may be material, depending on the facts and circumstances. Rule 13d-2(a) previously provided that this requirement would not apply if the acquisition when taken together with all other acquisitions within the preceding twelve months does not exceed two percent. The Commission has today deleted this later exception from Rule 13d-2(a), so that the requirement for amendments will be the one percent test or materiality based on the facts and circumstances. (Release No. 34-17353, December 4, 1980).

[2]For statements filed on Schedule 13D, there has been confusion with respect to the proper information to be supplied on the line of the cover page requesting the date of the event which required the filing. With respect to a cover page of an amendment to a statement filed on Schedule 13D, the date should refer to the event which required the initial filing.

is stated on the cover page of Schedule 13D and Schedule 13G.[3] The provisions with respect to the information required on a cover page differ from the Division's informal interpretative position as to the textual items of the schedules. With respect to the textual items, the Division's position is that only those items in which there has been a change in the disclosed information must be included in an amendment. However, this distinction is necessary to provide for a complete and accurate tabulation of beneficial ownership information. An amendment is often filed to a Schedule 13D or Schedule 13G where a cover page has not been previously filed. In those cases, without the entire amount of information it is extremely difficult to input the abstracted data. Also, cover pages have been filed with minimal identifying information and, as a result, it is difficult to identify the person filing the amendment or the issuer of the securities which are the subject of the filing.

With respect to statements of no change filed on Schedule 13G, Rule 13d-2(b) requires a signed statement to that effect under cover of Schedule 13G. The Division believes that this requirement means that each signed statement of no change must be filed with a Schedule 13G cover page with sufficient information to identify the issuer, the class of securities and the reporting person. If a cover page has never been filed with respect to this security holding, the Division believes that a full cover page is required to be filed with a statement of no change.[4]

As indicated in the instructions to the cover page, reporting persons may comply with the cover page reporting requirements by filing completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Exchange Act rules as to such matters as clarity and size. Blank copies of the cover pages may be obtained from "Publications," Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549, (202) 272-2559.

Accordingly, 17 CFR Part 241 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21807/November 28, 1980

In the Matter of

SYSTEM FUELS, INC.
Noro Plaza
666 Poydras
New Orleans, Louisiana 70130

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

LOUISIANA POWER & LIGHT COMPANY
142 Delaronde Street
New Orleans, Louisiana 70174

MISSISSIPPI POWER & LIGHT COMPANY
Electric Building
Jackson, Mississippi 39205

NEW ORLEANS PUBLIC SERVICE INC.
317 Baronne Street
New Orleans, Louisiana 70112

(70-6097)

[3]A note at the bottom of the cover page indicates that the whole cover page must be completed for the initial filing and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

[4]In addition, the Division believes that this would be the procedure to be followed for those amendments to statements filed on Schedule 13D or possibly on Schedule 13G where there is no change to information abstracted on the cover page but where there is a change in information in the textual items of the schedule, *e.g.*, a change in the purpose of the transactions or a change in the persons who control the reporting person.

NOTICE OF PROPOSAL BY FUEL PROCUREMENT SUBSIDIARY TO FINANCE EXPLORATION FOR DEVELOPMENT, PRODUCTION AND PROCUREMENT OF FUEL OF VARIOUS TYPES; PROPOSAL BY SUCH SUBSIDIARY TO MAKE BORROWINGS FROM ITS PUBLIC UTILITY PARENT COMPANIES

NOTICE IS HEREBY GIVEN that System Fuels, Inc. ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. (collectively the "Operating Companies"), each a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed post-effective amendments to an application-declarationm previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(3) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 28, 1979 (HCAR No. 21367) in this matter SFI was authorized to make long term borrowings of up to $117,000,000 through December 31, 1980 from the Operating Companies in order to finance, in part, SFI's fuel procurement, storage and transportation activities. It is estimated that pursuant to such authorization $54,500,000 will be outstanding on December 31, 1980. SFI proposes to enter into an amendment to its Loan Agreement, dated January 4, 1978 with the Operating Companies, as previously amended on January 1, 1979 and January 1, 1980. The Loan Agreement, as it is proposed to be amended, will provide for additional borrowings in 1981 of up to $207,000,000 through December 31, 1981. Any amounts outstanding as of December 31, 1980 will be converted into loans under the Loan Agreement as it is to be amended. Consequently, the amount of borrowings which have been, or are proposed to be, made under the Loan Agreement through December 31, 1981 is estimated to be $261,500,000, which amount will be adjusted to reflect the actual amount of loans outstanding at December 31, 1980.

It is presently contemplated that additional net capital of $47,000,000 will be required for SFI's fuel procurement program during 1981, as follows:

Fuel Supply Programs:	*Amount*
A. Gas and Oil Exploration, Development and Production	$ —
B. Uranium Exploration	8,100,000
C. Nuclear Fuel Procurement	24,400,000
D. Coal Procurement	3,700,000
E. Fuel Oil Program	
1. Fuel Oil Procurement	15,200,000
2. Fuel Oil Storage and Handling	1,400,000
Total Capital Requirements	52,800,000
Less: Depreciation and Deferred Taxes	5,800,000
Net Capital Requirement	$47,000,000

The uranium exploration program includes $5,200,000 in connection with the continuation of existing arrangements with three exploration companies and $2,900,000 for carrying costs, including interest charges and general and administrative expenses relating to the uranium exploration program to be capitalized.

The $24,400,000 budgeted for nuclear fuel procurement and processing will supplement short-term borrowings of up to $60,000,000 authorized by the Commission's order dated October 31, 1978 (HCAR No. 20753).

The $3,700,000 to be allocated to SFI's coal program will involve expenditures for carrying costs, consulting services, and overhead expenses to be capitalized in connection with the coal supply arrangement with North Antelope Coal Company.

To assure the availability to the Operating Companies of an adequate supply of fuel oil it will be necessary to have an inventory on hand at January 1, 1981 and December 31, 1981 of 6,500,000 bbls. and 6,100,000 bbls., respectively. During the ensuing twelve months, the inventory level will vary because of seasonal factors and other conditions. However, due to an increase in cost, the inventory at December 31, 1981 is expected to be worth approximately $162,500,000 compared to an estimated worth of approximately $142,100,000, at January 1, 1981. Also, SFI anticipates expenditures of $1,400,000 in 1981 for the construction of an

additional storage tank and to make certain improvements to the existing tanks, docking and unloading facilities. Of the total $163,900,000 to be invested in its oil procurement program during 1981, SFI expects to finance $100,000,000 through borrowings under the Loan Agreement dated as of May 28, 1980 among Clipper Oil Corporation, SFI and the Operating Companies, as authorized in the Commission's order of May 22, 1980 (HCAR No. 21584). A significant portion of the balance is expected to be financed through borrowings under SFI's proposed Loan Agreement with Citibank, N.A., (File No. 70-6519). Although the Citibank Loan Agreement may be used by SFI for its general fuel supply purposes, it has been assumed, for the purposes hereof, that $47,300,000 of borrowings thereunder will be used for SFI's fuel oil program, thereby resulting in a net capital requirement of $16,600,000.

Potential borrowing requirements of SFI during 1981 include up to $60,000,000 for payment of commercial paper and $100,000,000 for payment of borrowings from Clipper Oil Corporation and a net amount of $47,000,000 for SFI's fuel supply programs. SFI will partially finance its nuclear materials and processing services supply program during 1981 by the issuance of its commercial paper notes backed by Aetna's Bond of Indemnity and its fuel oil program in 1981 by borrowings from Clipper Oil Corporation. SFI has retained the right to cancel the program with Aetna at any time should it become economically disadvantageous. In addition, the program may be terminated upon the occurrence of certain events. SFI currently estimates that the maximum amount of notes or obligations to Aetna at any one time outstanding during 1981 will total $60,000,000. SFI seeks authority to make borrowings under the Loan Agreement, if necessary, in 1981, in an amount sufficient to effect repayment of its borrowings or reimbursement of Aetna. In addition, SFI will endeavor to extend, renew or otherwise refinance its borrowings from Clipper Oil Corporation under a loan agreement among SFI, Clipper Oil Corporation and the Operating Companies, which loan agreement, unless renewed will terminate on May 28, 1981. If such loan agreement is not extended or renewed, or no refinancing is available, SFI will need to effect $100,000,000 of borrowings under the loan agreement in order to pay these borrowings at maturity. SFI also states that it needs the assurance that borrowing capacity is available immediately to meet contingencies which might arise in connection with leasing and other transactions previously entered into.

SFI proposes to enter into an amendment to the Loan Agreement with the Operating Companies pursuant to which SFI would be authorized to make borrowings, which will mature on December 31, 2006, from the Operating Companies, from time to time through December 31, 1981 in an aggregate amount not to exceed, at any one time, the sum of $207,000,000 and the amount to be outstanding at December 31, 1980 under the existing Loan Agreement, currently estimated to be $54,500,000, which amount will be converted into loans under the amended Loan Agreement. Such borrowings would be in addition to the $26,500,000 of outstanding borrowings authorized by the Commission by order dated December 17, 1971 (HCAR No. 17400) and the $13,000,000 of outstanding borrowings authorized by Commission Orders dated December 17, 1973 (HCAR No. 18221) and December 24, 1975 (HCAR No. 19314) and December 30, 1976 (HCAR No. 19835).

Under the Loan Agreement, each Operating Company will agree to make loans to SFI until December 31, 1981 in aggregate principal amounts at any one time outstanding up to but not exceeding the following amounts:

Operating Company	*Commitment*
Arkansas Power & Light Company...	$83,870,000
Louisiana Power & Light Company ..	111,145,000
Mississippi Power & Light Company...	42,385,000
New Orleans Public Service Inc.	24,100,000
TOTAL	$261,500,000

The amounts of the commitments include an assumed $54,500,000 to be outstanding under the 1980 Loan Agreement at December 31, 1980 and will vary to reflect the loans actually outstanding at that time. Each Operating Company's commitment to make additional loans in 1981 is equal to an amount in such proportion as its kilowatt-hour sales for the twelve months ended September 30, 1980 bear to the total kilowatt-hour sales of the Operating Companies for that period, computed in both cases by including sales to rural electric cooperatives and municipalities but excluding sales to other public utilities.

The obligation of SFI to repay the loans made by each Operating Company under the Loan Agreement shall

be evidenced by the promissory note ("Note") of SFI in a principal amount equal to such Operating Company's commitment and payable to the order of such Operating Company on December 31, 2006. SFI will authorize each Operating Company to endorse on the reverse side of the Note payable to such Operating Company an appropriate notation evidencing its pro rata share of the loans made to SFI under the Loan Agreement and each prepayment and payment of principal with respect to such loans. Each loan will be made pro rata according to the commitments. Simultaneously with the delivery of the Notes and their appropriate notation for borrowings outstanding at December 31, 1980 under the existing Loan Agreement, the Notes issued under the existing Loan Agreement which evidence such borrowings will be returned to SFI and cancelled. Each Note will bear interest on the unpaid principal balance thereof, adjustable monthly on the first day of each month, at an annual rate for such month equal to the annual rate of interest borne on the last day of the preceding month by the short-term bank borrowings of the Operating Company to which such Note shall have been issued. If on the last day of the month, such Operating Company shall have short-term bank borrowings bearing more than one rate of interest, the highest rate shall apply. If, on the last day of any month, such Operating Company shall not have any short-term bank borrowings, the prime commercial rate generally charged by commercial banks in New York City on such day to responsible and substantial corporate borrowers shall apply. The loans will be prepayable at any time in any amount without premium or penalty. Each prepayment on account of the unpaid principal balance of the Notes will be made by SFI to the Operating Companies pro rata in accordance with their respective percentage shares of the commitments.

SFI states that it will borrow from external sources in lieu of making borrowings from the Operating Companies when effecting such external borrowings is more advantageous to SFI and the System under the circumstances at the time. Subject to the receipt of such regulatory approvals from the Commission as may be necessary at the time, it is anticipated that SFI may borrow from banks, insurance companies and other non-affiliated lenders and enter into specific arrangements for financing.

The rights and obligations of the parties under the Loan Agreement will be subject to certain restrictions set forth in the participation agreement with Aetna and the loan agreement with Clipper Oil Corporation. These restrictions relate principally to the payment or prepayment by SFI of its indebtedness to the Operating Companies during the terms of those agreements. In carrying out its financing program for 1981, SFI represents that it will at all times maintain the aggregate of its capital stock, surplus, and principal amount of its indebtedness to the Operating Companies at an amount equal to at least 35% of SFI's total capitalization.

SFI also requests that its existing authorization be extended through December 31, 1981 for the following:

1) The Operating Companies, in connection with a transaction in the ordinary course of SFI's fuel supply business and not involving the issuance of a security, to assure any party contracting with SFI that the Operating Companies will, in accordance with their respective shares of ownership of the Common Stock of SFI, take such action as may be appropriate from time to time to keep SFI in a sound financial condition so that it may discharge its obligations under the particular contract; and

2) To have personnel employed by the other companies in the System perform services for SFI at cost where it is more economical and efficient for such personnel to perform such services.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 22, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated-addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date,

the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21808/December 1, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

THE EAST OHIO GAS COMPANY
THE RIVER GAS COMPANY
WEST OHIO GAS COMPANY

(70-6525)

NOTICE OF PROPOSAL TO MAKE LOANS TO RESIDENTIAL HEATING CUSTOMERS TO FINANCE HOME INSULATION INSTALLMENT AND TO ACQUIRE PROMISSORY NOTES

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, The East Ohio Gas Company, The River Gas Company and West Ohio Gas Company (collectively referred to as "the subsidiaries") all of which are wholly-owned subsidiaries of Consolidated, have filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9 and 10 of the Act and Rule 40 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application for a complete statement of the proposed transaction.

The subsidiaries seek authorization to conduct, in accordance with the law of the State of Ohio, a residential insulation financing program ("Program") and to acquire unsecured installment promissory notes from residential gas space heating customers pursuant to the Program. Under the Program, each subsidiary will lend to each of their respective qualified residential heating customers amounts up to $750 for installation of insulation of the customer's single or double family gas heating residence if a financial institution listed as an institution that will finance such installations denies a loan to any such customers. Financing for the program will be derived from internally generated funds.

It is stated that the terms of the loans under the proposed Program shall not exceed 24 months. The interest charged on such loans will not exceed a rate equal to 4% in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank, Fourth Federal Reserve District, at the time the loan is executed. The discount rate on 90-day commercial paper in effect on October 30, 1980 at the Federal Reserve Bank, Fourth Federal Reserve District, was quoted at 11%. At the end of the first year, the subsidiary shall set the rate of interest charged so that revenues derived therefrom will equal the costs of administering the Program. It is stated that if costs exceed 4% over the commercial paper discount rate, the excess will be assumed by the subsidiary. When costs are less than the revenues recovered from interest charges, customers who had loans outstanding during that year will be credited an amount in proportion to their respective loans and interest payments during that year. The credit will be applied against the customer's unpaid balance or bill the following year. Repayment within 90 days will be treated as cash and will incur no interest.

The maximum amount of loans outstanding at any one time from all the subsidiaries during the years 1981, 1982 and 1983 shall not exceed $9,500, $19,000 and $28,500 respectively. The maximum aggregate amounts of loans outstanding during the period 1981 through December 31, 1983 at any one time for each individual subsidiary will be as follows:

Applicants	Amount 1981	1982	1983
East Ohio	$5,000	$10,000	$15,000
River	2,250	4,500	6,750
West Ohio	2,250	4,500	6,750

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $1,100 including charges for services of Consolidated Natural Gas Service Company, Inc. estimated at $1,000. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted, as provided in Rule 23 of the General Rules and Regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21809/December 1, 1980

In the Matter of

THE POTOMAC EDISON COMPANY
Hagerstown, Md.

(70-6504)

ORDER AUTHORIZING PROPOSAL TO ISSUE AND SELL PREFERRED STOCK AT COMPETITIVE BIDDING

The Potomac Edison Company ("Potomac"), an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed with this Commission a declaration pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

Potomac proposes to issue and sell an aggregate amount of its preferred stock ("Stock") not to exceed $25 million in par value, in one or more series, each such series to have a par value of $100 per share. Potomac proposes to sell the Stock pursuant to competitive bidding unless market conditions, because of the size of any series or other conditions, make competitive bidding impractical or undesirable, in which event Potomac proposes, subject to authorization by the Commission by further order, to either privately place the Stock with institutional investors or to negotiate with underwriters for the sale of the Stock.

Each series of the Stock will be redeemable at any time at the option of Potomac, except that prior to five years after the first day of the month in which the Stock is issued (or such other date as the Commission may authorize), each series of the Stock shall not be redeemable directly or indirectly with, or in anticipation of, monies borrowed or the proceeds of the sale of the Stock at a cost of money less than the cost of money in respect of such series. The annual dividend rate (which will be a multiple of $0.04) to be borne by each series and the price to be paid to Potomac (which shall not be less than 100% and not more than 102-3/4% of par), or, in the event Potomac determines that the price to it for the Stock and the initial price to the public shall be 100% of par, the compensation per share to be paid to the underwriters will be determined by (1) competitive

bidding, (2) by negotiations between Potomac and private investors, or (3) by negotiations with underwriters for the sale of such series. It is expected that the successful bidders or, in the event of a negotiated transaction the underwriters, will make a public offering of the Stock, unless the size of any series offered makes such public offering impracticable.

Potomac states that under present market conditions for preferred stock it is difficult to determine what sinking fund provisions, if any, would result in the most advantageous terms and conditions for the sale of the Stock to Potomac. Potomac desires to have available sufficient flexibility to adjust such provisions to developments in the market for such securities, when and as they occur, in order to obtain the best possible price and dividend rate for the Stock. Similarly, it is difficult to determine what the most advantageous timing of the sale of the Stock would be. It is therefore proposed that Potomac will decide on the sinking fund provisions to be applicable to any series at a later time which may be before or after the date on which an invitation for bids, in the event of competitive bidding, is issued, or the date on which negotiations for a private placement or a negotiated sale to underwriters are commenced. If the Stock is sold in more than one series, no condition is to be contained in the purchase contract for one series of the Stock requiring the issuance and sale of any other series of the Stock.

The proceeds from the sale of the Stock are expected to be used, together with other funds which may become available to Potomac, to pay or prepay to the extent desirable Potomac's short-term debt, to finance its construction program and for other corporate purposes.

On September 15, 1980 Potomac had $6 million of short-term debt outstanding. Potomac expects that approximately $31 million of such short-term debt will be outstanding as of the time the Stock is proposed to be issued and $31 million on December 31, 1980 if the Stock has not been sold in December. Potomac's gross construction expenditures for 1980 are estimated to be $64 million and for 1981 and 1982 to aggregate between $117 and $128 million.

If for any reason (including market conditions) the Stock or any series thereof is not sold on or about December 11, 1980, Potomac will so notify this Commission and will seek, subject to further order of this Commission, to sell the Stock on or before March 31, 1981.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $129,000. The Public Service Commission of Maryland and the State Corporation Commission of Virginia have authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21762), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21810/December 1, 1980

In the Matter of

MONONGAHELA POWER COMPANY
1310 Fairmont Avenue
Fairmont, West Virginia 26554

THE POTOMAC EDISON COMPANY
Downsville Pike
Hagerstown, Maryland 21740

WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601
(70-6516)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER TO DEALER; REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Monongahela Power Company ("Monongahela"), The Potomac Edison Company ("Potomac"), and West Penn Power Company ("West Penn"), each a wholly-owned electric utility subsidiary of Allegheny Power System, Inc. ("Allegheny"), a registered holding company, have filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Monongahela, Potomac, and West Penn propose to issue, reissue, sell and renew short-term notes to banks and commercial paper to provide short-term funds for the period from January 1, 1981 through June 30, 1982. The notes and commercial paper will be issued, reissued, sold and renewed from time to time as funds may be required prior to June 30, 1982, provided that no such notes or commercial paper will mature after December 31, 1982. Applicants request that, from the date of the granting of the application filed in this matter to June 30, 1982, the exemption from the provisions of Section 6(a) of the Act afforded to each by the first sentence of Section 6(b) thereof be increased to the extent necessary to permit the issuance and sale of notes to banks and commercial paper to dealers in commercial paper in an aggregate amount not to exceed $58,000,000 in the case of Monongahela, $57,000,000 in the case of Potomac, and $94,000,000 in the case of West Penn. These amounts include any notes which may remain outstanding under the Commission's order dated June 20, 1979 (HCAR No. 21110) and represent the maximum amount of notes for which authorization is presently sought. Changes may be made in the maximum amount of authorized outstanding notes after the filing of a post-effective amendment setting forth such changes and upon further order of this Commission.

As of August 31, 1980, Monongahela and Potomac had short-term debt outstanding of $7,500,000 and $9,500,000, respectively. West Penn had no short-term debt outstanding. It is stated that as of December 31, 1980, Monongahela, Potomac and West Penn will have approximately $21,500,000; $7,000,000; and $7,000,000 of short-term debt outstanding, respectively, pursuant to the Commission's order dated June 20, 1979 (HCAR No. 21110), assuming the sale of $60 million of Pollution Control Notes by West Penn and of $25 million aggregate par value of Preferred Stock by Potomac prior to December 31, 1980. No additional commercial paper or notes to banks can be issued pursuant to that order after December 31, 1980.

Each note payable to a bank will be dated as of the date of that borrowing, will mature ot more than two hundred-seventy (270) days after the date of issuance or renewal thereof, will bear interest at the prime or comparable interest rate, in effect at the time of issuance, at the bank from which the borrowing is made or the rate in effect at that bank from time to time, and will be prepayable at any time without premium or penalty. The words "comparable interest rate of the bank from which the borrowing is made" shall include fixed or floating rates computed on the basis of differentials over or under nationally published rates of interest such as the rate for "federal funds" which result in an overall interest rate less than the prime rate in effect at such banks. The bank loans will be obtained from seven domestic banks pursuant to established lines of credit. The aggregate maximum principal amount of borrowings for all companies outstanding at any one time shall be $240,000,000. The maximum amount of such borrowings outstanding at any one time for Monongahela, Potomac and West Penn will not, when taken together with any commercial paper outstanding, be in excess of $58,000,00, $57,000,000, $94,000,000 respectively. These amounts include any notes or commercial paper which may be outstanding pursuant to the Commission's order of June 20, 1979 (HCAR No. 21110). Balances are maintained by one or more of such companies at all of these banks to meet regular operating requirements as well as, when necessary, in connection with these lines of credit. It is stated that compensating cash balance requirements are generally either on the basis of a percentage of the line of credit extended by such bank not to exceed 10%, or a higher percentage of notes outstanding not to exceed 20%, whichever is greater, or a percentage of the line of credit not to exceed 10% plus a

percentage not to exceed 10% of notes outstanding in each case on an average annual basis. If such balances were maintained solely to fulfill compensating balance requirements for borrowings, the effective interest cost of issuing and selling the notes would be no more than 20.312% based on a prime commercial credit rate of 16.25%.

Applicants will file with the Commission by amendment (i) the names of any additional banks to which it proposes to issue and sell notes and (ii) in the event notes are to be issued and sold to any bank in amounts in excess of the amount indicated for such bank in the filing, such excess amount, and in either case, appropriate information as to compensating balances in connection therewith. No notes will be issued to such unidentified banks or in such excess amounts prior to the issuance by the Commission of a supplemental order in connection therewith.

Certain of the banks have offered to substitute fees for, or to be used in conjunction with lower compensating balances than those set forth above. The fee arrangements vary. In some cases fees equal to a specific percentage of the prime commercial rate (not to exceed 8-1/2% of the prime commercial rate) are involved, while in another instance the arrangement provides that balances be maintained equal to 5% of the line of credit with an additional fee of 2-1/2% of prime payable. The fee arrangements would not be utilized unless the effective cost thereof is less than the compensating balance arrangement in effect at the bank at that time. The proposed fee arrangements produce an effective interest cost of issuing and selling the notes of a maximum of 19.437% based on a prime commercial rate of 16.25% rather than the maximum effective interest cost of 20.312% resulting from meeting the compensating cash balance requirements set forth above.

The commercial paper will bein the form of promissory notes in denominations of not less than $50,000 nor more than $5,000,000; will be of varying maturities, with no maturity more than 270 days after the date of issue; and will not be prepayable prior to maturity. Each of the companies has designated A.G. Becker & Co. as its commercial paper dealer. The commercial paper notes will be sold by each of the companies directly to the dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers to dealers in commercial paper. The dealer may reoffer the commercial paper at a discount rate of 1/8 of 1% per annum less than the discount rate to Monongahela, Potomac or West Penn. Commercial paper notes may be issued if (1) the interest cost thereof is equal to or less than the effective interest cost at which such company could borrow the same amount from the Banks at that time or (2) such company cannot at that time borrow the same amount for the same period of time from the Banks. The dealer will reoffer the commercial paper notes to not more than 200 of its commercial and industrial customers, identified and designated in a list for each company prepared in advance. Such customers include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and universities, financial companies and non-financial corporations which invest funds in commercial paper. It is expected that the commercial paper notes will be held by the dealer's customers to maturity, but if the customers wish to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the notes and reoffer them to others on said list.

Exemption from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) thereof, is requested for the proposed issuance and sale of commercial paper since it is not practicable to invite competitive bids for commercial paper and current rates for commercial paper for prime borrowers such as applicants are published daily in financial publications. Applicants also request authority to file certificates under Rule 24 with respect to the issuance and sale of commercial paper on a quarterly basis.

It is stated that the proceeds from the issuance and sale of the proposed short-term borrowings will be used by each company to operate its business as an electric public utility, including the financing of its construction program and acquisition of property. The estimated gross construction expenditures for 1981 and 1982 are estimated to total between $115 and $127 million in the case of Monongahela, between $118 and $129 million in the case of Potomac, and between $258 million and $275 million in the case of West Penn. Unless otherwise authorized by this Commission, any short-term debt outstanding hereunder after June 30, 1982, will be retired by each of such Companies having such short-term debt outstanding not later than December 31, 1982, from internal cash resources,

or sale of permanent debt, preferred stock or common stock or such other securities as the Commission and other regulatory authorities having jurisdiction may authorize.

It is stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated to be approximately $24,400, including rating fees aggregating approximately $8,000 for each company.

It is stated that the State Corporation Commission of Virginia has jurisdiction over the issuance and sale by Potomac of the short-term debt. It is further stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants at the above-stated addresses and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21811/December 1, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

LOUISIANA POWER & LIGHT COMPANY
NEW ORLEANS PUBLIC SERVICE INC.
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

(70-6514)

ORDER AUTHORIZING ISSUANCE AND SALE OF NOTES TO BANKS AND COMMERCIAL PAPER

Arkansas Power & Light Company ("Arkansas"), Louisiana Power & Light Company ("Louisiana"), Mississippi Power & Light Company ("Mississippi"), and New Orleans Public Service Inc. ("New Orleans"), electric utility subsidiaries of Middle South Utilities, Inc., a registered holding company, have filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

Arkansas, Louisiana, Mississippi, and New Orleans currently have in effect separate programs under which each of them is authorized to issue and sell unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper to meet its interim financing requirements. (See File Nos. 70-6381, 70-6225, 70-6408, and 70-6369, respectively.) Arkansas, Louisiana, Mississippi, and New Orleans each proposes now to revise the foregoing programs and to issue and sell individually from time to time through June 30, 1982, unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper in aggregate principal amounts outstanding at any one time equal to the lesser, from time to time, of (i) $170,000,000, $190,000,000, $45,000,000, and $22,000,000, respectively, or (ii) 10 percent of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed and then outstanding and (b) the capital and surplus of each company as then stated on its books of account

(which 10 percent is the maximum principal amount of unsecured short-term borrowings permissible under the provisions of the respective charters without the appropriate consent of their respective preferred stockholders). On the basis of the foregoing 10 percent restriction, Arkansas, Louisiana, Mississippi, and New Orleans would have been permitted, as of July 31, 1980, to issue and sell short-term promissory notes (including commercial paper) in aggregate principal amounts of up to $163,500,000, $157,800,000, $37,600,000, and $23,000,000, respectively. Subject to the foregoing limitations, the nature of each issue of such notes (including commercial paper) will be determined in the light of the then prevailing market conditions and other factors.

It is stated that in accordance with the past practices, short-term bank borrowings will be made by each of the companies from a group of commercial banks which are located in the general service area of the respective company ("Territorial Banks"). In addition, each of the companies intends to effect short-term borrowings under consolidated "either/or" lines of credit established with a group of commercial banks located outside the general service areas of the companies ("Non-territorial Banks"). Under the proposed "either/or" borrowing arrangements, each of the Non-territorial Banks would provide a single line of credit which would be available to any and all of the declarants. It is stated that this consolidation of credit lines is expected to be preferable to existing arrangements whereby each of the companies currently maintains separate lines with various Non-territorial Banks in that it will allow for the maintenance of lines of credit for the declarants, on an aggregate basis, at the minimum levels necessary to provide adequate amounts of capital as required from time to time, will minimize the related costs of borrowing, including commitment fees and/or compensating balance requirements, and will afford the Middle South System greater control over the cost of short-term funds.

The notes proposed to be issued and sold by each company to the Territorial Banks and the Non-territorial Banks will be in the form of unsecured promissory notes, will be payable not more than 270 days from the date of issuance with the right of renewal, will bear interest at a rate per annum no greater than the prime commercial bank rate in effect at the lending bank on the date of issuance or renewal or from time to time depending upon the requirements of the lending bank, and will, at the option of the company, or, under certain circumstances, with the consent of the lending bank, be prepayable, in while or in part, at any time without premium or penalty.

The net proceeds to be received by the companies from the issuance and sale of the notes (including commercial paper) referred to herein, together with other funds available, from time to time, to the companies from their operations or derived from the issuance and sale of long-term debt and/or equity securities, will be applied to their construction programs and other lawful purposes.

The declarants request that they be granted authority to file individually and on a quarterly basis their certificates under Rule 24.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21774), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder with respect to the proposed transactions is extended as requested so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21812/December 1, 1980

In the Matter of

GULF POWER COMPANY
75 North Pace Boulevard
P.O. Box 1151
Pensacola, Florida 32520

(70-6530)

NOTICE OF PROPOSED ACQUISITION OF TRANSMISSION LINE

NOTICE IS HEREBY GIVEN that Gulf Power Company ("Gulf"), a public-utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Gulf proposes to acquire from Florida Power Corporation ("Florida"), a non-affiliated Florida corporation, a portion of a certain 230KV transmission line (115KV operated) located in Bay County, Florida. The affected portion of the transmission line, which is a facility for local distribution of electric power being located beyond the point of interconnection of the systems of Gulf and Florida, is approximately 0.91 mile long. Gulf is to pay a purchase price of $73,530 in cash for the transmission line. The depreciated value of such property is $34,284.

Such transmission line lies between an existing Gulf substation and an interconnection with Florida, and its purchase is necessary to maintain Gulf's territorial integrity. Gulf proposes to utilize such transmission line for a future 115KV loop between two of Gulf's existing substations.

It is stated that the fees and expenses to be incurred in connection with the proposed acquisition are estimated not to exceed $3,000 and that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21813/December 1, 1980

In the Matter of

ARKANSAS-MISSOURI POWER COMPANY
405 West Park Street
Blytheville, Arkansas 72315

(70-6388)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM BANK NOTES

NOTICE IS HEREBY GIVEN that Arkansas-Missouri Power Company ("Arkansas-Missouri"), a wholly-owned subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the

declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated January 11, 1980 (HCAR No. 21390), Arkansas-Missouri was authorized to issue and sell to the First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes in an amount not to exceed $5,000,000 at any one time outstanding and maturing no later than January 11, 1981.

Arkansas now proposes to issue and sell to First National Bank in Little Rock, Arkansas, for the account of participating banks, unsecured promissory notes payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the effective date of the Commission's supplemental order herein. The promissory notes will bear interest, payable quarterly and at maturity, on the unpaid principal amount thereof at a rate per annum equal to the commercial loan rate of Chemical Bank, New York, New York, from time to time in effect on borrowings having a 90-day maturity by responsible and substantial corporate borrowers. Arkansas-Missouri will not be required to maintain any compensating balances with, or pay any commitment fee to, any of the participating banks in connection with the proposed transactions. The notes will, at the option of the company, be prepayable in whole or in part at any time without premium or penalty.

The proposed borrowings will be in addition to other banks borrowings by the company from (1) First National Bank in Little Rock, Arkansas, which total $5,500,000 as of the date of the post-effective amendment and may not exceed $5,500,000 at any one time outstanding, and (2) Worthen Bank & Trust Company, Little Rock, Arkansas, which total $5,500,000 as of the date of the post-effective amendment and may not exceed $5,500,000 at any one time outstanding.

It is stated that the net proceeds to be received by Arkansas-Missouri from the issuance and sale of the proposed notes will be applied to the payment at or prior to maturity of the bank borrowings previously authorized in this proceeding (estimated to total $3,000,000 in principal amount at the time of the supplemental order herein), to its construction program, and to other lawful corporate purposes. It is also stated that in connection with the proposed consolidation of the electric properties of Arkansas-Missouri with those of Arkansas Power & Light Company ("AP&L"), an associate company, AP&L, upon acquiring all the outstanding shares of the common stock of the company from Middle South Utilities, Inc., will thereafter cause Arkansas-Missouri to be liquidated and dissolved and its assets to be distributed to AP&L (File No. 70-6326). In conjunction with these transactions, and at the time of the liquidation of Arkansas-Missouri and the distribution of its assets to AP&L, AP&L will assume all the company's obligations and liabilities, including the company's then outstanding short-term indebtedness represented by notes payable to banks.

It is further stated that no special or separable fees or expenses are expected to be incurred by the company in connection with the issuance and sale of the notes. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested persons may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment to the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21814/December 2, 1980

In the Matter of

CONSOLIDATED NATURAL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10020

CNG PRODUCING COMPANY
CONSOLIDATED GAS SUPPLY CORPORATION
CONSOLIDATED SYSTEM LNG COMPANY
THE EAST OHIO GAS COMPANY
THE PEOPLES NATURAL GAS COMPANY
WEST OHIO GAS COMPANY

(70-6526)

NOTICE OF PROPOSED INTRASYSTEM FINANCING

NOTICE IS HEREBY GIVEN that Consolidated Natural Gas Company ("Consolidated"), a registered holding company and its subsidiary companies, CNG Producing Company ("Producing Company"), Consolidated Gas Supply Corporation ("Supply Corporation"), Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), and West Ohio Gas Company ("West Ohio"), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rules 42(b)(2), 45, and 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The filing states that certain companies in the Consolidated system temporarily accumulate cash over and above current requirements, for the most part because of large seasonal heating business. At the same time, Consolidated may require funds for working capital and for the financial requirements of other system companies. Therefore, Consolidated may be making short-term borrowings when subsidiaries with excess cash are making temporary money-market investments outside the system. Accordingly, applicants-declarants are of the opinion that it would be advantageous to alleviate this situation and to continue the temporary prepayment of subsidiary long-term notes to optimize the internal utilization of excess cash funds accumulated within the system.

It is proposed that the following subsidiaries make temporary prepayments on long-term notes held by Consolidated from excess cash funds, from time to time prior to December 31, 1981, not exceeding at any time the amounts set forth below:

East Ohio	$75,000,000
Peoples	15,000,000
Producing Company	10,000,000
Supply Corporation	50,000,000
LNG Company	10,000,000
West Ohio	3,500,000
	$163,500,000

Consolidated estimates that the aggregate prepayment of $163,500,000 is the maximum that can be utilized for the temporary financing of system requirements during 1981.

The long-term notes temporarily prepaid by an individual subsidiary will be those bearing the highest rate outstanding at the time of each prepayment. Interest on such notes will cease upon prepayment and start again upon reinstatement of the notes. As funds are thereafter required by such subsidiary for corporate purposes, including construction, it is proposed that advances be made on open account to the subsidiary by Consolidated in an aggregate amount not to exceed the amount of long-term notes previously prepaid, less any current maturities applicable to notes which have matured subsequent to the prepayment dates. The open account advances will bear interest during 1981 at the same rate or rates as borne by the equivalent principal amounts of the notes previously prepaid by such subsidiary but in reverse order to that of the prepayments, i.e., from the lowest rate on the notes previously prepaid to the highest rate. Interest on the open account advances will commence on the date of the advance and will become due on June 30, 1981, and December 31, 1981, and/or on the date such advances are repaid by the reinstatement of the prepaid notes.

It is proposed that open account advances to a subsidiary be increased or decreased from time to time in accordance with variations in the cash flow of the subsidiary. At no time will the advances outstanding be in excess of the notes prepaid. At such time as the open account advances equal the aggregate amount of the prepaid notes, or in any event not later than December 31, 1981, the notes prepaid by a subsidiary will be reinstated in repayment of the related outstanding open account advances made to the subsidiary by Consolidated. If the aggregate of the notes prepaid exceeds such advances at the end of 1981, Consolidated proposes to make cash repayment of the difference in order to effect reinstatement of the proposed notes in full. No financing of any subsidiary which may presently or subsequently be authorized by this Commission in connection with the construction or gas storage programs of any such subsidiary will be consummated until such time as advances have been made in an amount equal to the amount of notes prepaid.

It is stated that the proposed transactions will be beneficial to the system because they will: (1) permit subsidiary companies with excess cash to prepay temporarily long-term notes held by Consolidated, with a resulting reduction in their interest expense; (2) make available to Consolidated a temporary cash source for working capital and for the financing of other companies within the system; and (3) permit Consolidated, which obtains all external financing required by the system, to defer or prepay short-term financing such as inventory loans with banks and commercial paper borrowings for working capital.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $600 including $500 payable to Consolidated Natural Gas Service Company, Inc., a subsidiary, for services at cost which include legal fees. The Public Service Commission of West Virginia has jurisdiction over the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21815/December 2, 1980

In the Matter of

APPALACHIAN POWER COMPANY
40 Franklin Road
Roanoke, Virginia 24009

(70-6171)

NOTICE OF PROPOSED TRANSACTION CONCERNING THE FINANCING OF POLLUTION CONTROL FACILITIES

NOTICE IS HEREBY GIVEN that Appalachian Power Company ("Appalachian"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration previously filed in this proceeding pursuant to Sections 9(a), 10 and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule

44(b)(3) promulgated thereunder concerning the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated June 30, 1978 (HCAR No. 20610), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Mason County, West Virginia ("County") concerning the financing of pollution control facilities ("Facilities") at Appalachian's Mountaineer Plant and Phillip Sporn Plant. Under the Agreement the County is to issue and sell its pollution control revenue bonds ("Revenue Bonds"), in one or more series, the proceeds from which sales are to be deposited by the County with the trustee ("Trustee") under the indenture ("Indenture") entered into between the County and Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds would then be applied to the payment of the costs of construction of the Facilities, then estimated at $120,000,000. Appalachian conveyed to the County the equipment previously constructed related to the Facilities, subject to the lien of its first mortgage. The Agreement provides for the sale of the Facilities to Appalachian, the payment by Appalachian of the purchase price in semi-annual installments over a term of years and the assignment and pledge to the Trustee of the County's interest in, and monies receivable by the County under, the Agreement.

The Agreement also provides that each installment of the purchase price will be in such amount (together with other monies held by the Trustee for such purposes) as will enable the County to pay, when due: (i) the interest on the Revenue Bonds; (ii) the principal amount of the Revenue Bonds payable at their stated maturities; and (iii) all amounts payable in connection with mandatory redemption of the Revenue Bonds. Appalachian is also obligated to pay the fees and charges of the Trustee, as well as certain administrative expenses of the County. Appalachian may prepay the purchase price (i) by paying, under certain conditions, amounts sufficient to redeem all Revenue Bonds then outstanding and all other amounts payable under the Indenture, or (ii) at any time by depositing monies in the Indenture's bond fund or delivering to the Trustee amount sufficient to provide for the release of the Indenture. Upon prepayment, Appalachian may terminate the Agreement.

Pursuant to Commission authorization (HCAR Nos. 20610 and 21103) the County issued and sold two series of Bonds, Series A and Series B. Series A was $40,000,00 in principal amount, bears interest at a rate of 7-3/4% per annum, matures July 1, 2008, and was sold to underwriters at 98% of principal face amount (resulting in an effective interest cost of 7.9%) and was resold to the public at 100% of principal face amount. Series B was $50,000,000 principal amount, bears interest at a rate of 7.5% per annum, matures June 1, 2009 and was sold to underwriters at 98.225% of principal amount (resulting in an effective interest cost of approximately 7.65% per annum) and was resold to the public at 100% of principal face amount.

By post-effective amendment to this proceeding, Appalachian seeks authorization to issue an additional series of Bonds in the aggregate principal amount of up to $40,000,000 ("Series C") to provide additional funds to cover the Cost of Construction of the Facilities The Series C Bonds will be issued pursuant to the Indenture, as supplemented, which will provide that the proceeds from the sale of the Series C Bonds would be deposited by the County with the Trustee and applied to payment of the Cost of Construction of the project, which includes reimbursement for amounts Appalachian has previously expended, or to be expended, to pay the Cost of Construction.

The Series C Bonds will bear interest semi-annually, mature at a date or dates not less than 5 years nor more than 30 years from the date of issuance, and be subject to mandatory redemption as specified in the Supplemental Indenture. The Series C Bonds will be on a parity with the Series A and B Bonds.

It is contemplated that the Series C Bonds will be sold by the County pursuant to arrangements with a group of underwriters represented by Goldman, Sachs & Co. While Appalachian will not be a party to the underwriting arrangements for the Series C Bonds, the Agreement provides that the Series C shall have such terms as shall be specified by Appalachian. Appalachian understands that interest on the Series C Bonds will be exempt from federal income taxation under the provisions of Section 103 of the Internal Revenue Code of 1954, as amended (except for interest on any Series C Bonds during a period in which it is held by a person who is a substantial user of the Project or a related person). Appalachian has been advised that the annual

interest rate on obligations, the interest on which is tax exempt, historically have been and can be expected at the time of issue of the Series C Bonds to be 1-1/2% to 2-1/2% lower than the rates on obligations of like tenor and comparable quality, the interest on which is fully subject to federal income tax.

It is contemplated that the Series C Bonds will be sold by the County on or about the time when the Industrial Development and Revenue Authority of Russel County, Virginia (the "Authority"), effects a sale of $6,500,000 principal amount of its Series E Bonds in connection with the refunding of bonds previously issued and sold by the Authority in connection with the installation of pollution control facilities at the Glen Lyn and Clinch River Plants of Appalachian, pursuant to arrangements described in the proceeding in File No. 70-5503 (the "Russel County Series E Bonds"). The sale of the Series C Bonds by the County, and the sale by the Authority of the Russel County Series E Bonds are not interdependent but are part of an overall financing program of Appalachian which contemplates that such Series C Bonds and such Russel County Series E Bonds will be issued and sold through arrangements with Goldman Sachs & Co., as underwriter, or as the manager of a group of underwriters, in substantially concurrent sales by the County and the Authority.

The fees and expenses incurred or to be incurred in connection with the proposed transaction will be filed by amendment. The State Corporation Commission of Virginia has jurisdiction over the proposed issuance of the bonds.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application-declaration as amended by said post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washingtn, D.C. 20549. A copy of such request should be served personally or by mail upon the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21816/December 2, 1980

In the Matter of

YANKEE ATOMIC ELECTRIC COMPANY
25 Research Drive
Westborough, Massachusetts 01581

(70-6517)

NOTICE OF PROPOSED ISSUANCE AND SALE OF SHORT-TERM PROMISSORY NOTES TO A BANK AND COMMERCIAL PAPER TO A COMMERCIAL PAPER DEALER; REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING REQUIREMENT

Yankee Atomic Electric Company ("Yankee Atomic"), an electric utility subsidiary Company of New England Electric System ("NEES") and Northeast Utilities ("NU"), registered holding companies, has filed an application-declaration designating Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2), 50(a)(2), and 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Yankee Atomic proposes to issue and sell short-term notes to a bank and commercial paper to a commercial paper dealer to provide short-term funds for the period through December 31, 1981. The proceeds from the notes and commercial paper

will be used to finance the cost of nuclear fuel, capitalizable expenditures and other corporate purposes. The notes are proposed to be sold to the First National Bank of Boston, or to A. G. Becker & Company, Inc. ("Becker"), a commercial paper dealer, or to both, up to a maximum aggregate principal amount of $21,000,00 to be outstanding at any one time.

The proposed bank borrowings will be evidenced by notes maturing in less than one year from the date of issuance. The notes will provide for prior payment in whole or in part without premium. The notes will bear interest not in excess of 110% of the prime rate (plus a commitment fee of 5/8 of 1% of the line of credit). Under such terms, the effective cost of borrowing would be approximately 18.5% per annum assuming borrowings at the maximum amount of the line of credit and the current prime rate of 16.25%.

The commercial paper would be issued and sold through December 31, 1981, directly to Becker. Becker, as a principal, will reoffer such commercial paper to not more than 100 of its customers whose names appear on a non-public list prepared in advance by Becker. No additions will be made to such list of customers. Each list includes commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, municipal and state benefit funds, eleemosynary institutions, finance companies and non-financial corporations. It is expected that such commercial paper will be held to maturity, by the purchasers. However, should any purchaser wish to resell prior to maturity, Becker, pursuant to an oral repurchase agreement, will repurchase the paper for resale to others on the list of customers. The commercial paper will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, will be in denominations of not less than $50,000 nor more than $1,000,000 and will not by its terms be prepayable prior to maturity. It will be purchased by Becker from Yankee Atomic at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity sold by public utility issuers to commercial paper dealers. Becker will initially reoffer the commercial paper at a discount rate not exceeding 1/8 of 1% per annum less than the prevailing discount rate to Yankee Atomic.

Yankee Atomic now has short-term borrowing authority aggregating $21,000,000 through December 31, 1980 pursuant to this Commission's Order dated December 19, 1979 (HCAR No. 21346). Yankee Atomic expects to have about $14,500,000 of short-term debt outstanding at the end of 1980. During 1981 Yankee Atomic expects to spend approximately $10,000,000 for plant improvements.

The proposed short-term borrowing will be repaid from time to time in part from internally generated funds and the balance will be refinanced either through additional short-term borrowings or, subject to prior Commission approval, permanent financing.

Yankee Atomic states that the proposed issuance and sale of notes to a bank are excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(2) thereof. Yankee Atomic also requests an exception pursuant to Rule 50(a)(5) for the issuance of commercial paper because the current rates for commercial paper for prime borrowers such as Yankee Atomic are readily ascertainable by reference to daily financial publications and do not require competitive bidding in order to determine the reasonableness thereof, and because it is impractical to publish invitations for bids for commercial paper. Yankee Atomic also requests that it be permitted to file certificates required by Rule 24 with respect to the proposed transactions on a quarterly basis.

The fees and expenses to be incurred in connection with the proposed transaction will be $1,000 for services at cost performed by New England Power Service Company. No state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for the request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as

filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21817/December 2, 1980

In the Matter of

NEW ENGLAND ENERGY INCORPORATED
25 Research Drive
Westborough, Massachusetts 01581

(70-6513)

NOTICE OF PROPOSAL THAT FUEL SUBSIDIARY ENTER INTO A SECOND OIL AND GAS EXPLORATION AND DEVELOPMENT PARTNERSHIP AND OF PROPOSED 1980 AND 1981 INVESTMENTS THEREIN

NOTICE IS HEREBY GIVEN that New England Energy Incorporated ("NEEI"), a fuel subsidiary of New England Electric System ("NEES"), a registered holding company, has filed with this Commission an application-declaration and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12 and 13 of the Act and Rules 43, 90 and 91 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

NEEI seeks authorization (1) to enter into a partnership agreement ("Agreement") with Dorchester Exploration Incorporated ("Dorchester"), a wholly-owned subsidiary of Dorchester Gas Corporation ("DGC"), for the purpose of engaging in oil and gas exploration, development and production; (2) to invest in the proposed partnership up to $15,000,000 in the period from the date of the Commission's authorization through December 31, 1980; and (3) to invest therein up to $35,000,000 for the calendar year 1981. DGC is a diversified energy corporation whose principal operations include petroleum exploration and production and the refining, processing and marketing of petroleum products. It operates a 26,500 barrel per day crude oil refinery. Through its subsidiary, Dorchester, DGC is involved in the exploration, production and sale of crude oil and natural gas. Dorchester has been actively engaged in oil and gas exploration, development and production since 1972.

The basic features of the proposed Agreement with Dorchester include the following: (1) Dorchester's acting as managing partner; (2) a limitation on the geographical scope of the partnership's activities to the continental United States (including Alaska), both onshore and offshore; (3) each partner's having a fifty percent interest in the partnership, with NEEI paying a larger share of the costs of exploration (to compensate Dorchester for management and expertise in running the partnership as well as for Dorchester's accumulated geological and geophysical work in evaluating prospects); (4) each partner's sharing equally the costs of development and production of successful prospects; (5) each partner's being entitled to take in kind or sell one-half of the partnership production of oil and gas (with NEEI also having a first call to purchase Dorchester's share of production from any prospect); and (6) the partnership's being terminable by either partner on sixty day's prior written notice. The partnership will have a term from a retroactive effective date of July 1, 1980, to December 31, 1984. The agreement calls for annual contributions by NEEI for exploration programs (which contributions do not include any amounts for development and production) of up to the following amounts: 1980, $15,000,000; 1981, $25,000,000; 1982, $30,000,000; 1983, $30,000,000; and 1984, $30,000,000. NEEI's requested authorization for 1981 of $35,000,000 includes $25,000,000 for exploration and $10,000,000 for development.

All aspects of the proposed transactions involving the Dorchester partnership, including but not limited to the disposition of NEEI production

resulting from the partnership, the sale and delivery to New England Power Company ("NEP," a generating affiliate of NEEI) of fuel oil obtained through such disposition, and the determination of costs, including costs of capital, will be carried out under the terms set forth in the Commission's order of July 19, 1978 (HCAR No. 20632). That order concerned, among other things, sales of fuel by NEEI to NEP from NEEI's oil and gas exploration and development partnership with Samedan Oil Corporation ("Samedan"). Therein were set forth three options concerning the disposition of NEEI's production, which options will also be applicable to NEEI's production from the Dorchester partnership, as follows:

(1) Arrange to refine the NEEI production through nonaffiliated refineries, sell to NEP any resulting fuel meeting NEP's requirements, and sell the by-products to nonaffiliates, unless usuable by NEP;

(2) Exchange the NEEI production with nonaffiliates for fuel meeting the requirements of NEP; and

(3) Sell the NEEI production to nonaffiliates and use the proceeds to purchase fuel meeting the requirements of NEP.

NEEI will sell fuel to NEP at prices determined in accordance with Rule 91. Under the options given above, such prices will be determined as follows:

(a) In the case of (1) above, the price of fuel sold to NEP will be NEEI's cost, as defined below, for NEEI production plus costs of subsequent production, refining, transporations, and any other costs related to such fuel less the net proceeds from the sale of by-products;

(b) In the case of (2) above, the price of fuel sold to NEP will be NEEI's cost, as defined below, for the quantity of NEEI production exchanged for fuel meeting the requirements of NEP, plus any transportation and other costs related to such fuel;

(c) In the case of (3) above, NEEI will sell to NEP, as soon as practicable, substitute fuel in the form of equivalent barrels of residual fuel oil. It need not make a special purchase for this purpose, but may allocate part of a purchase or of a delivery from its inventory as such substitute. The price of the substitute fuel will be the cost of such fuel to NEEI, including transporation and all other costs associated with the transaction, but the difference between (i) the proceeds from the sale to nonaffiliates of the NEEI production involved in the transaction and (ii) the costs, as defined below, relating to such NEEI production, will be applied as an adjustment to that price when determined.

The unit cost of NEEI production, in terms of equivalent barrels, will be the sum of a unit charge from a full cost pool, consisting of all exploration, development, general, administrative, capital and other costs not associated with production, and a unit charge based on quarterly production costs. Total production costs during each quarter shall be divided by the equivalent barrels produced, to determine retroactively the unit production cost. The costs in the full cost pool, including capital costs as defined in the order of July 19, 1978, incurred by NEEI in the Dorchester partnership during the period from its inception to a date to be selected at a later time will be divided by the total estimated equivalent barrels of reserves on that date, plus the equivalent barrels produced prior to that date, to determine the cost per equivalent barrel, which unit cost shall be applied to each equivalent barrel produced prior to such date. The unit cost shall be recomputed quarterly based on current reserve estimates plus the equivalent barrels produced during the quarter and the balance of the full cost pool. The resulting unit costs shall be applied to the production during that quarter.

Concerning the financing of NEEI's proposed investments of $15,000,000 in 1980 and $35,000,000 in 1981 in the Dorchester partnership, it is stated that NEEI intends to use the following sources previously authorized by the Commission: (1) additional funds from NEEI's loan agreement with commercial banks, borrowings thereunder being $59,000,000 at October 31, 1980, and 1980 borrowings being authorized at $80,000,000 with a filing pending to increase 1981 borrowings to $105,000,000 (HCAR No. 21761, October 28, 1980); (2) additional investments by NEES in NEEI, $45,000,000 being the total presently authorized amount (HCAR Nos. 19580 and 21158, June 18, 1976, and July 25, 1979) of which $25,875,000 was invested at October 31, 1980; (3) additional funds from the receipt of the cash equivalent of reduction in consolidated tax liabilities as a result of the inclusion of NEEI's losses in the consolidated tax returns of the NEES system (HCAR No. 21567, May 12, 1980), it being estimated that NEEI will receive approximately $14,000,000 in 1980 and $24,000,000 in 1981 from other NEES system

companies; and (4) funds from the sale of NEEI production under the terms of the order of July 19, 1978 (HCAR No. 20632), NEEI presently expecting to recover approximately $12,000,000 of its investment in this manner in 1980 and approximately $16,000,000 in 1981. It is further stated that NEEI intends to enter into a long-term financing arrangement in connection with its oil and gas exploration and development activities in 1981; such financing arrangement will be the subject of a future filing with this Commission.

The proposed partnership with Dorchester is in addition to NEEI's existing partnership with Samedan, mentioned above, various details of which existing partnership were authorized in a series of prior orders in File No. 70-5543 dated October 30, 1974, June 18, 1976, July 18, 1978, December 29, 1979, May 12, 1980, and August 7, 1980 (HCAR Nos. 18635, 19580, 20632, 21365, 21567, and 21673). NEEI presently has pending a request that it be authorized to invest in its partnerhsip with Samedan up to $75,000,000 in 1981. It is stated that NEEI had invested approximately $112,000,000 in the partnership with Samedan through July 1, 1980, and that NEEI's share of the total proved and probable reserves discovered through such date, including 1.2 million equivalent barrels of production, was 12.4 million equivalent barrels. Costs associated with these reserves, calculated in the manner approved in the order of July 19, 1978 (HCAR No. 20632), including capital costs and costs associated with production, were approximately $137,900,000, or a current average cost per equivalent barrel of $111.12. The average price realized in 1980 (through June 30) was approximately $13.84 per equivalent barrel. It is estimated that NEEI production and sales will result in savings in fuel costs for the NEES system of approximately $2,800,000 in 1980, bringing to approximately $4,250,000 the total savings achieved from inception through December 31, 1980, as a result of the program.

Both the Samedan partnership and the proposed partnership with Dorchester are part of a 15-year plan for the NEES system, under which plan NEEI has an objective of achieving production of 5.5 million equivalent barrels by 1996, thus substantially reducing the dependence of the NEES system on foreign oil. The fuel oil needs of the system in 1996 are presently estimated at between 10,000,000 barrels (maximum) and 5,000,000 barrels (minimum).

The fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter incuding the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1940
Release No. 21818/December 2, 1980

In the Matter of

SOUTHERN OHIO COAL COMPANY
Moundsville, West Virginia

OHIO POWER COMPANY
Canton, Ohio

(70-6215)

ORDER AUTHORIZING EXTENSION OF FINANCING FOR COAL MINING SUBSIDIARY

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Southern Ohio Coal Company ("SOCO"), a coal mining subsidiary of Ohio Power, have filed with this Commission post-effective amendments to their application-declaration previously filed and amended pursuant to Sections 6, 7, 12(b), 12(c) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 45, 46 and 50 promulgated thereunder concerning the following matter.

By order dated April 17, 1979 (HCAR No. 21008), SOCO was authorized, among other things, to enter into a term loan agreement with a group of banks providing for a loan of up to $130,000,000 which loan matures December 31, 1986, and requires the payment of quarterly installments in such amounts as will retire 15% of the principal amount outstanding on December 31, 1980, in each of the years 1981 through 1985 and 25% of such principal amount in 1986. The notes ("Notes") evidencing the loan bear interest, payable quarterly, at 109% of the prime rate of Citibank, N.A., and SOCO pays the banks a commitment fee of ½ of 1% per annum on the unused amount of the banks' commitments. Other terms of the loan, and related matters concerning it as it related to the pricing of SOCO's coal, are set forth in said order. The order also provided that the notes "shall be prepaid on or prior to December 31, 1979, unless the borrowings are permitted for a longer period by further order of this Commission . . ." By order dated December 21, 1979 (HCAR No. 21355), applicants-declarants were granted an extension from December 31, 1979, until December 31, 1980, of the time by which the Notes must be prepaid unless permitted for a longer period by further order.

By post-effective amendments applicants-declarants request a further extension from December 31, 1980, until December 31, 1981, of the time by which the Notes must be prepaid unless permitted for a longer period by further order. Applicants-declarants claim that possible economic benefits from the authorized financing arrangements (which were claimed to result in a reduction in the price of coal sold to Ohio Power when the prime rate is below 9.71%, or above, depending on effective tax rates (assuming an effective tax rate of 13.8%, the "break even" prime rate under the proposal was calculated to be 10.56%)) will be realized when the prime rate (currently 17.75%) returns to more normal historical levels. In addition they assert that the financial alternatives for repayment of the Notes are currently unattractive, stating that repayment would require the sale of senior securities at an interest rate in excess of 14%, such rate to be locked in for at least five years.

There are not additional fees or expenses to be incurred in connection with the proposed extension. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed extension.

Upon the basis of the facts in the record, as amended by said post-effective amendments, it is hereby found that the applicable standards of the Act and the Rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers and said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and Rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21819/December 2, 1980

In the Matter of

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

(70-6508)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

Louisiana proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, up to $100,000,000 principal amount of its first mortgage bonds of a new series having a term of not less than five years nor more than thirty years. The interest rate of the bonds (which will be a multiple of 1/8th of 1%) and the price, exclusive of accured interest, to be paid to Louisiana for the bonds (which will not be less than 98% nor more than 101-¾% of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under Louisiana's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Chase Manhattan Bank (National Association), Trustee, as heretofore supplemented by various indentures and as it is to be futher supplemented by a Twenty-eighth Supplemental Indenture to be dated as of the first day of the calendar month in which the bonds are issued. The supplemental indenture will include a prohibition, for a period of not more than five years, against refunding the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

Louisiana will use the net proceeds derived from the sale of the bonds to pay, in part, short-term borrowings estimated to total $100,000,000 at the time the proceeds are received, to finance, in part, Louisiana's construction program (estimated to total approximately $263,800,000 in 1980), and for other corporate purposes.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21746), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21820/December 3, 1980

In the Matter of

CONNECTICUT YANKEE ATOMIC POWER COMPANY
P.O. Box 270
Hartford, Connecticut 06101

NEW ENGLAND POWER COMPANY
25 Research Drive
Westborough, Massachusetts 01581

WESTERN MASSACHUSETTS ELECTRIC COMPANY
174 Brush Hill Avenue
West Springfield, Massachusetts 01089

CENTRAL MAINE POWER COMPANY
Edison Drive
Augusta, Maine 04336

THE CONNECTICUT LIGHT AND POWER COMPANY
P.O. Box 270
Hartford, Connecticut 06101

THE HARTFORD ELECTRIC LIGHT COMPANY
P.O. Box 270
Hartford, Connecticut 06101

MONTAUP ELECTRIC COMPANY
c/o Eastern Utilities Associates
P.O. Box 2333
Boston, Massachusetts 02107

(70-6524)

NOTICE OF PROPOSED ISSUANCE AND SALE OF LONG-TERM SUBORDINATED PROMISSORY NOTES TO SPONSOR COMPANIES; EXCEPTION FROM COMPETITIVE BIDDING

The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), subsidiaries of Northeast Utilities ("NU") and Connecticut Yankee Atomic Power Company ("Connecticut Yankee") a subsidiary both of NU and New England Electric System ("NEES"), also a registered holding company, together with the New England Power Company ("NEP"), a subsidiary of NEES, Montaup Electric Company ("Montaup") a subsidiary of Eastern Edison Company, in turn a subsidiary of Eastern Utilities Associates ("EUA"), a registered holding company, and Central Maine Power Company ("Central Maine") an exempt holding company, have filed an application-declaration and amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9 and 10 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Connecticut Yankee is the owner of a 575,000 KW nuclear electric generating plant located in Haddam, Connecticut. That plant has been in commercial operation since January 1968. The outstanding shares of Connecticut Yankee's common stock are owned by the applicants-declarants and Cambridge Electric Light Company ("Cambridge"), Central Vermont Public Service Corporation ("Central Vermont"), United Illuminating Company, Boston Edison Company ("Boston Edison") and Public Service Company of New Hampshire ("PSNH"), all of which are not subject to the filing requirements imposed by the Nuclear Regulatory Commission and studies undertaken by Connecticut Yankee after the nuclear accident at Three Mile Island, Connecticut Yankee anticipates that its 1980 construction program expenditures for modifications to the plant will total approximately $24,000,000. Additional construction expenditures of approximately $28,100,000 in 1981; $26,700,000 in 1982 and at least $15,400,000 in 1983 are also expected.

In 1979, Connecticut Yankee entered into an arrangement whereby two banks will provide financing of up to $50,000,000 for nuclear fuel under a trust arrangement. This trust arrangement obligates Connecticut Yankee to purchase the fuel from the trust on completion of enrichment of the fuel and to reimburse the trust at that time for payments made by the trust for such fuel and for the accrued financing costs associated with that fuel. Pursuant to this trust arrangement, Connecticut Yankee will be required to expend approximately $16,700,000 in December 1980 and approximately $15,800,00 in January 1981. Connecticut Yankee expects additional necessary fuel expenditures, as reimbursements to the trust and/or direct payments to fuel expenditures, as reimbursements to the trust and/or direct payment to fuel vendors which are not covered by the trust arrangement, of approximately $3,800,000 during the balance of 1981,

$41,300,000 in 1982 and $48,900,000 in 1983.

Connecticut Yankee estimates that in order to meet the above requirements, to meet principal payments on its outstanding indebtedness and to repay Sponsor's contributions, it will require financing from external sources of $30,000,000 in December 1980; $60,000,000 in 1981; $45,000,000 in 1982 and $35,00,000 in 1983.

By order dated May 6, 1980 (HCAR No. 21551), the Commission authorized Connecticut Yankee to offer $40,000,000 to $60,000,000 of debentures on a negotiated basis to institutional investors. A private placement was attempted but could not be negotiated. To date, the company has been unable to find institutional investors willing to make a commitment to purchase such debentures. It believes that a successful placement can be effected with more direct Sponsor support for the issue and it intends to develop modified arrangements to provide such support. As an interim financing measure, it has filed the proposal described herein to meet its immediate capital needs.

Connecticut Yankee proposes to issue subordinated notes ("Debt Securities") to Sponsors in an aggregate amount of up to $40,000,000 outstanding at any one time pursuant to the five-year Capital Contribution Agreement dated November 1, 1980 ("Agreement"). The financing is to be an interim measure if additional long or medium-term debt financing can be effected in 1981-1983. The promissory notes under each Agreement shall be subordinated to all other borrowings of Connecticut Yankee (other than borrowings represented by other notes issued pursuant to said Agreement or any of the other similar Agreements between Connecticut Yankee and other other Sponsors or issued pursuant to any similar capital contribution agreement hereafter entered into) and to any obligations of Connecticut Yankee under a fuel trust or any similar financing arragement.

The Debt Securities will mature of January 1, 1998, would be prepayable in whole or in part without penalty or premium and would bear interest at a rate per annum equal to 1-½% in excess of the prime rate in effect from time to time at the Connecticut Bank and Trust Company, Hartford, Connecticut. It is proposed that an aggregate of $30,000,000 of the Debt Securities would be issued during December 1980 and January 1981 to provide funds for scheduled nuclear fuel payments in those months. The remaining $10,000,000 of the Debt Securities may be issued in December 1980 to provide funds to retire outstanding short-term borrowings, $24,725,000 as of October 31, 1980. Connecticut Yankee expects to prepay all of such principal amount of the Debt Securities outstanding in the second half of 1981 from the proceeds of an anticipated issue of long-term debentures or similar debt. It proposes that any balance of Debt Securities, and any prepaid Debt Securities, may be reissued subsequently at any time and from time to time prior to November 1, 1985.

The Sponsors are expected to agree to purchase the Debt Securities in proportion to their respective ownership percentages in Connecticut Yankee as follows:

Company	*Ownership %*	*Amount*
The Connecticut Light and Power Company	25.0	$10,000,000
New England Power Company	15.0	6,000,000
Boston Edison Company	9.5	3,800,000
The Hartford Electric Light Company	9.5	3,800,000
The United Illuminating Company	9.5	3,800,000
Western Massachusetts Electric Company	9.5	3,800,000
Central Maine Power Company	6.0	2,400,000
Public Service Company of New Hampshire	5.0	2,000,000
Cambridge Electric Light Company	4.5	1,800,000
Montaup Electric Company	4.5	1,800,000
Central Vermont Public Service Corporation	2.0	800,000
Total	100.0%	$40,000,000

Exception from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5) is requested for the proposed issuance and sale of the Debt Securities because Connecticut Yankee believes that purchase by the Sponsors under existing contractual arrangements is the only means by which it can meet its capital needs within the time available and that the proposed terms will be unattractive to outside investors.

The fees and expenses incurred in connection with the proposed transactions will be filed by amendment. The Connecticut Department of Public

Utility Control has jurisdiction over the issuance of the Debt Securities and over their acquisition by CL&P, HELCO, WMECO, NEP, Montaup, Central Maine, PSNH and Central Vermont; the Massachusetts Department of Public Utilities has jurisdiction over the acquisition of the Debt Securities by NEP, WMECO, Montaup, Boston Edison and Cambridge; and the Federal Energy Regulatory Commission ("FERC") has jurisdiction over the acquisition of Debt Securities by Boston Edison, United Illuminating, PSNH, Cambridge and Central Vermont. It is further stated that no other state commission and no federal commission, other than FERC and this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 598/December 1, 1980

In the Matter of

CRYSLER FINANCIAL CORPORATION

File No. 22-10702

ORDER GRANTING APPLICATION PURSUANT TO SECTION 310(b)1(ii) OF THE TRUST INDENTURE ACT OF 1939

The Securities and Exchange Commission has issued an order on an application by Chrysler Financial Corporation to Section 310(b)(1)ii of the Trust Indenture Act of 1939 (the "1939 Act") declaring that the trusteeship of United States Trust Company of New York under nine indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify United States Trust Company of New York from acting as trustee under any of these indentures.

TRUST INDENTURE ACT OF 1939
Release No. 599/December 3, 1980

The Securities and Exchange Commission has issued a notice giving all interested persons until December 26, 1980 to request a hearing on an application by Union Tank Car Company pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeship of Manufactures Hanover Trust Company under two indentures of Union Tank Car Company is not so likely to involve a material conflict of interest as to make it necessary to disqualify Manufacturers from acting as trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11460/November 28, 1980

In the Matter of

VOYAGER VARIABLE ANNUITY FUND
VOYAGER VARIABLE ANNUITY ACCOUNT C
VOYAGER VARIABLE ANNUITY ACCOUNT D

AND

VOYAGER LIFE INSURANCE COMPANY
2255 Phyllis Street
Jacksonville, FL 32204

(812-4709)

ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM SECTIONS 2(a)(32), 2(a)(35), 22(c) 26(a)(2)(C), 27(c)(1), 27(c)92), 27(d) AND RULE 22c-1 THEREUNDER

Voyager Variable Annuity Fund ("Fund"), Voyager Variable Annuity Account C, and Voyager Variable Annuity Account D of Voyager Life Insurance Company, a Florida domiciled stock life insurance company, filed an application on August 12, 1980 and an amendment thereto on October 23, 1980 for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") granting exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder. The Fund and the Accounts are registered under the Act as open-end, diversified, management investment companies.

On September 26, 1980, a notice was issued (Investment Company Act Release No. 11377) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No hearing has been requested and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the exemptions from Sections 2(a)(32), 2(a)(35), 22(c) 26(a)(2)(C), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder be, and hereby are, granted effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11461/November 28, 1980

In the Matter of

VOYAGER VARIABLE ANNUITY ACCOUNT C
VOYAGER VARIALBE ANNUITY ACCOUNT D

AND

VOYAGER LIFE INSURANCE COMPANY
2255 Phyllis Street
Jacksonville, FL 32204

(812-4710)

ORDER PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940 GRANTING EXEMPTIONS FROM SECTIONS 14(a) AND 27(c)(2) OF THE ACT

Voyager Variable Annuity Account C, and Voyager Variable Annuity Account D, diversified, open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Voyager Life Insurance Company, a stock life insurance company incorporated under the laws of the State of Florida, filed an application on August 12, 1980 and an amendment thereto on October 23, 1980 for an order of the Commission pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 14(a) and 27(c)(2) of the Act.

On September 26, 1980 a notice was issued (Investment Company Release No. 11376) of the

filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No hearing has been requested and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the exemptions from Sections 14(a) and 27(c)(2) of the Act be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11462/November 28, 1980

In the Matter of

REAL ESTATE ASSOCIATES LIMITED III,
NATIONAL PARTNERSHIP INVESTMENTS CORP.

AND

NATIONAL PARTNERSHIP INVESTMENTS ASSOCIATES
1901 Avenue of the Stars
Los Angeles, California 90067

(812-4731)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM ALL PROVISIONS OF THE ACT

Real Estate Associates Limited III ("REAL III"), a California limited partnership organized to invest through other limited partnerships in government-assisted low and moderate income rental housing, and its general partners, National Partnership Investments Corp. and National Partnership Investments Associates (collectively, "Applicants"), filed an application on September 8, 1980, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting REAL III from all provisions of the Act and the rules thereunder.

On October 31, 1980, a notice was issued (Investment Company Act Release No. 11424) of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that Real Estate Associates Limited III be, and hereby is, exempted from all provisions of the Act and rules thereunder, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11463/November 28, 1980

In the Matter of

INVESTMENT GUIDANCE FUND, INC.
4000 Chester Avenue
Cleveland, Ohio 44103

(811-1574)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT THE APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

Investment Guidance Fund, Inc. ("Applicant"), an Ohio corporation registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 25, 1980, pursuant to Section 8(f) of the Act for an order of the Commission

declaring that Applicant has ceased to be an investment company as defined in the Act.

On October 31, 1980, a notice was issued (Investment Company Act Release No. 11432) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Investment Guidance Fund, Inc. under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11464/November 28, 1980

In the Matter of

GIRARD HIGH YIELD CORPORATE FUND
10960 Wilshire Blvd.
Suite 336
Los Angeles, California 90024

(811-2702)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On October 30, 1980, a notice was issued (Investment Company Act Release No. 11418) stating that Girard High Yield Corporate Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 25, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursu;ant to Section 8(f) of the Act, that the registration of Girard High Yield Corporate Fund under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11465/November 28, 1980

In the Matter of

GIRARD FEDERAL TAX EXEMPT FUND
10960 Wilshire Blvd.
Suite 336
Los Angeles, California 90024

(811-2697)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On October 30, 1980, a notice was issued (Investment Company Act Release No. 11419) stating that Girard Federal Tax Exempt Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 25, 1980, pursuant to

Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Girard Federal Tax Exempt Fund under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11466/December 1, 1980

In the Matter of

COCA-COLA INTERNATIONAL CORPORATION
251 Trust Company of Georgia Building
Atlanta, Georgia 30303

(811-443)

ORDER PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

On November 6, 1980, a notice was issued (Investment Company Act Release No. 11431) stating that Coca-Cola International Corporation ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on October 15, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that the Applicant has ceased to be an investment company as that term is defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Applicant has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of Coca-Cola International Corporation under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11467/December 1, 1980

In the Matter of

EMPIRE STATE MUNICIPAL EXEMPT TRUST,
GLICKENHAUS & CO.,
LEBENTHAL & CO., INC.,

AND

MOSELY, HALLGARTEN, ESTABROOK & WEEDEN INC.
c/o Glickenhaus & Co.
522 Fifth Avenue
New York, New York 10036

(812-4734)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 11 OF THE ACT TO PERMIT AN OFFER OF EXCHANGE AND PURSUANT TO SECTION 6(c) OF THE ACT FOR AN EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) OF THE ACT

NOTICE IS HEREBY GIVEN that Empire State Municipal Exempt Trust, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and its sponsors, Glickenhaus & Co., Lebenthal & Co., Inc. and Mosely, Hallgarten, Estabrook & Weeden Inc. (collectively, "Sponsors") (hereinafter collectively referred to as "Applicants") filed an application on September 10, 1980, and amendments thereto on September 30, 1980, and November 25, 1980, requesting an order of the Commission (1) pursuant to Section 11 of the Act permitting exchange of units of series of the Trust for units of other such series at net asset value plus a fixed and reduced sales charge per unit, pursuant to an exchange option ("Plan"), and (2) for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Section 22(d) of the Act to the extent necessary to permit such exchanges. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Trust is comprised of Sixteen Series of similar but separate unit investment trusts organized under the laws of the State of New York. According to the application, the first series of the Trust was designated Municipal Exempt Trust, New York Exempt Series 1 and the second and third series were designated Municipal Exempt Trust, New York Series 2 and New York Series 3, respectively, and for these three series Glickenhaus & Co. acts as sole sponsor. Applicants further state that after the above three series had been created, the name of the Trust for all future series was changed to Empire State Municipal Exempt Trust and each succeeding series has been designated by a different series number commencing with Series 10. According to the application, the primary objectives of the Trust are tax-exempt income and conservation of capital through an investment in a diversified portfolio of tax-exempt bonds issued by or on behalf of the State of New York and counties, municipalities or political subdivisions thereof or issued by certain United States territories or possessions and their public authorities so that the interest on these securities will be exempt from all Federal, New York State and New York City income tax under existing law.

Each series of the Trust is governed by the provisions of such Series' Trust Agreement and Indenture. Applicants state that, for each series of the Trust, the Sponsors acquire a portfolio of securities which is deposited with one or more trustee banks in exchange for certificates representing an undivided interest in the deposited portfolio. The units are then offered to the public at a public offering price which is based on the offering prices of the underlying portfolio securities, plus a sales charge. The application states that the sales charge is currently 4½ percent of the public offering price on sales of fewer than 500 units.

The Applicants state that, while not required to do so, the Sponsors maintain a secondary market for the units of each series of the Trust at prices based on the offering side evaluation of the underlying portfolio securities then in effect.

The sponsors propose to offer, subject of the conditions described below, the Plan to unitholders of the various series of the Trust. According to the application, the purpose of the Plan is to provide investors in each of the series of the Trust a convenient means of transferring interests as their investment requirements change. Applicants state that the Sponsors contemplate holding the Plan open at all times, although they reserve the right to modify, suspend or terminate the Plan at any time without notice to unitholders. It is intended that the Plan will operate as follows: a unitholder wishing to dispose of his units in a series for which a secondary market is being maintained will have the option to convert his units into units of any other series of the Trust for which units are available for sale in the secondary market and the Sponsors are participating in the Plan. When a unitholder notifies the Sponsors of his desire to participate in the Plan, the Sponsors will deliver a current prospectus for series of the Trust which the Sponsors have available as a result of secondary market acquisitions and in which the unitholder has indicated an interest. The unitholder may then select the series into which he desires his investment to be converted. A conversion transaction pursuant to the Plan ill operate in a manner essentially identical to any secondary market transaction except that the Applicants propose to allow a reduced sales charge in a transaction under the Plan. According to the application, at the present time units of the Trust are repurchased by the Sponsors at prices based on the aggregate offering side evaluation of the underlying securities in the portfolio of the series and are resold at a public offering price based on the offering side evaluation of the underlying securities plus a sales charge of 4½% on purchases of fewer than 500 units. Applicants further state that, while it is not presently

contemplated that unitholders would be permitted to exchange their units into units of other series which are available during the initial offering period, the Sponsors may at some future date permit such exchanges. Applicants also state that the Sponsors may change the repurchase price to a per unit price based on the aggregate bid side evaluation of the underlying portfolio securities of a series and resell them at that price plus a specified sales charge. Applicants further state that in the event the repurchase price is changed to a per unit price based on the aggregate bid side evaluation of the underlying portfolio securities of a series, the Sponsors will not permit conversions of units pursuant to the Plan to be made into units of other series which are available during their initial offering period.

Applicants propose to sell units pursuant to the Plan at the repurchase price as paid by the Sponsors, plus a fixed charge of $15.00 per unit except for unitholders of a series with a sales charge less than the sales charge of the series into which they desire to convert. In such instances, according to the application, unitholders who have held their units for a period of less than six months would have to pay a sales charge based on the greater of $15.00 or an amount which together with the sales charge paid in connection with the purchase of the units being exchanged equals the sales charge of the series into which the exchange is being made. The application further states that conversion transactions will be effected only in whole units. Under the Plan unitholders would not be permitted to make up any difference between the amount representing the units being submitted for conversion and the units of the new series being acquired. To illustrate, a holder of five units of a series in the Trust with an offering side evaluation of $1,100 may seek conversion into units of a series with an offering side evaluation of $900. The unitholders' units will yield $5,500 which amount may be invested in units of the other series. Should five units of the other series be purchased, the charge would be $4,575 ($4,500 for the units and a $75 sales charge). The remaining $925 would be returned to the unitholder in cash.

The application states that the proposed fixed, reduced sales charge of $15 rather than the customary 4½% sales charge for regular and secondary market sales is proposed by the Sponsors as a result of certain cost savings; which reduction, in the judgment of Applicants, would be beneficial to investors. According to the application, a person desiring to dispose of units of one series and acquire units of another series may do so for a number of reasons, such as a change in investment goals or requirements. Thus, it is likely, according to Applicants, that there will be a continuing need to assess an investor's individual financial position and in all probability the account executives of the Sponsors will actively participate in counseling the investor as to the proper course of action to follow considering all of the relevant investment factors involved. However, Applicants assert that since the investor is an existing customer whose essential investment needs have previously been identified, some transactional savings will be produced. Further, Applicants contend that as a result of the fact that all the series of the Trust are very similar investment vehicles, an exchanging unitholder may require less advice than if he was acquiring an interest in an entirely different kind of investment. Applicants state that they believe that the reduced sales charge of $15 is a reasonable and justifiable expense to be allocated for the professional assistance contemplated in connection with the conversion transaction. Applicants argue that this sales charge compares favorably with the regular sales charge applicable to the sale of units in the primary and secondary market. According to the Applicants, the proposed fixed, reduced sales charge should cover reasonable costs related to the conversion of units under the Plan and yet give participants anm opportunity to share in cost savings.

Section 11(c) of the Act provides, among other things, that exchange offers involving registered unit investment trusts are subject to the provisions of Section 11(a) of the Act irrespective of the basis of exchange. Section 11(a) of the Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make, or cause to be made, an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person

except at a current offering price described in the prospectus. The sales charge described in the prospectuses of each of the Series of the Trust for effecting regular secondary market purchase and sale transactions is greater than the sales charge which will be applicable to transactions under the plan. Rule 22d-1 under the Act permits certain variations in sales charges, none of which it is alleged will be applicable to transactions under the Plan.

Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 26, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11468/December 1, 1980

In the Matter of

MONARCH LIFE INSURANCE COMPANY

AND

VARIABLE ACCOUNT A OF
MONARCH LIFE INSURANCE COMPANY
1250 State Street
Springfield, Massachusetts 01133

(812-4752)

NOTICE OF APPLICATION FOR AN ORDER APPROVING CERTAIN OFFERS OF EXCHANGE PURSUANT TO SECTIONS 11(a) AND 11(c) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN THAT Monarch Life Insurance Company ("Monarch") and Variable Account A of Monarch Life Insurance Company ("Variable Account A" or "Account"), as issuers of Monarch's Variable Life Insurance Policy funded by Variable Account A ("VLI Policy"), filed an application on October 24, 1980 for an order of the Securities and Exchange Commission ("Commission") approving certain offers of exchange of Monarch and Variable Account A (collectively known as "Applicants"), pursuant to Sections 11(a) and 11(c) of the Investment Company Act of 1940 ("Act"). All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein which are summarized below.

Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts, with its principal office located in Springfield, Massachusetts. Monarch is a wholly-owned subsidiary of Monarch Capital Corporation, a Delaware corporation organized in 1968 as a holding company.

Monarch plans to issue its VLI Policy through a

separate account, Variable Account A. Pursuant to a resolution of the Monarch Board of Directors adopted on March 31, 1980, Variable Account A was established by Monarch under Section 132G of chapter 175 of the Massachusetts General Laws. Variable Account A will be maintained as a unit investment trust class of investment company within the meaning of Section 4(2) of the Act. All assets held in Variable Account A will be used to purchase shares at net asset value issued by the Merrill Lynch Investment Series Fund, Inc. ("Series Fund"). Initially, there will be five investment divisions within the Account, each of which will invest only in the shares of a single mutual fund portfolio of the Series Fund.

The Series Fund is organized as a series company within the meaning of Section 18(f)(2) of the Act and Rule 18f-2 thereunder. The Series Fund will receive advice with respect to the investments of each of its portfolios from Merrill Lynch Asset Management, Inc. ("MLAM"), which will provide administrative services and investment advice and make all investment decisions for the Series Fund. MLAM, a subsidiary of Merrill Lynch & Co., Inc., is a registered investment adviser under the Investment Advisers Act of 1940.

The Applicants state that the VLI Policy is designed to provide lifetime insurance coverage to the insured; it also may be surrendered for its net cash value while the insured is living. The death benefits and cash values under a given Policy will vary based on investments made in Variable Account A. The death benefit may increase or decrease on each policy anniversary but it will never decrease below a guaranteed minimum amount set forth in the Policy. A Policy's cash value may increase or decrease on any day and no minimum amount of cash value is guaranteed.

In the application for a VLI Policy, the policyowner will designate how the net premium is to be allocated among the investment divisions of Variable Account A. No less than 10% of the net premium may be allocated to any division selected.

The amount allocated to Variable Account A with respect to each Policy will equal the annual premium for a standard risk Policy less deductions for "sales load," state premium taxes, annual administrative expenses, and risk charges. There will be an additional charge made in the first policy year to cover administrative expenses to issue a Policy.

As set forth in the VLI Policy, the policyowner may change the allocation of funds supporting the existing investment base of the policyowner's VLI Policy from any one or more of the investment divisions of Variable Account A investing in corresponding portfolios of the underlying Series Fund to any other of the investment divisions of Variable Account A. A policyowner may request this reallocation at any time, but not more than twice during each policy year. Such change will take effect as of the close of business on the day notice is received, provided no premiums are overdue. Each reallocation will be based upon the value of the Policy's total investment base and the net asset values of the underlying mutual fund portfolos at the close of business on the day the reallocation request is received.

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter therefore to make an offer to the holder of a security of such company or of any other open-end investment company to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged unless terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the Act provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The Applicants argue that, although Variable Account A is a unit investment trust, they do not believe exercise of the reallocation privilege involves the exchange of securities of a unit investment trust for the securities of any other investment company. The Applicants state that in economic reality, the reallocation privilege involves an exchange at net asset value between two or more of the underlying portfolios of the Series Fund, which is a registered open-end company. The policyowner is not being offered the opportunity to make an exchange of a VLI Policy (which is the unit investment trust security) for an investment in another investment company. The Applicants state that only one unit investment trust, Variable Account A, is involved and that the Account will remain the funding vehicle for the Policies throughout these reallocations. In all events, the ownership of the Series Fund shares which are involved will always remain with Variable Account A.

The Applicants further state that whatever "transaction" or "exchange" that might be said to take place between one or more of the underlying portfolios of the Series Fund will have no economic significance to the policyowner apart from the change in the underlying shares of the Series Fund used to support the Policy's total investment base.

Nevertheless, in the event Section 11(a) of the Act may be considered applicable by virtue of Section 11(c), Applicants are requesting approval of the Commission, pursuant to Sections 11(a) and 11(c) of the Act, to the extent necessary to enable Applicants to offer policyowners the opportunity to reallocate the funds supporting their Policies.

The Applicants assert that none of the dangers or any of the abuses for which Section 11 of the Act was enacted to prevent would be present in the reallocation transaction. The Applicants state that the reallocation privilege is equitable to all policyowners. It is available to all policyowners on an entirely voluntary basis. The rights of policyowners under the VLI Policy will be unaffected by the exercise of this reallocation privilege.

The Applicants state that the reallocation of funds will be at net asset value without the imposition of any charge, sales load, or other fee. No remuneration will inure to Monarch, Variable Account A, or the Series Fund upon the reallocation transaction. The Applicants further state that the reallocation provision of the VLI Policy provides policyowners with greater flexibility to adjust the underlying investment base of the VLI Policy in accordance with their perception of the changing economic climate. The Applicants assert that the reallocation privilege is consistent with, and equivalent to, the protections provided by Section 11 of the Act, and that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN THAT any interested person may, not later than December 26, 1980 at 5:30 p.m., submit to the Commission in writing a request for hearing on the application, accompanied by a statement of the nature of his or her interest, the reasons for such request, and issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following December 26, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11469/December 2, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

THE DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, N.Y. 10016

AND

CASH RESERVE MANAGEMENT, INC.
One Boston Place
Boston, MA 02108

(812-4720)

NOTICE OF FILING OF AN APPLICATION TO AMEND AN ORDER OF EXEMPTION GRANTED PURSUANT TO SECTION 11 OF THE ACT APPROVING CERTAIN OFFERS OF EXCHANGE

NOTICE IS HEREBY GIVEN THAT Beneficial National Life Insurance Company (the "Company"), a stock life insurance company incorporated under the laws of the State of New York, The Dreyfus Rainbow Annuity Variable Account A (the "Variable Account"), a separate investment account of the Company established under New York Insurance Law and registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), and Cash Reserve Management, Inc., ("Management"), a Maryland corporation registered as an open-end diversified management investment company under the Act (hereinafter collectively referred to as "Applicants") filed an application on August 18, 1980 requesting an order of the Commission amending a prior order of the Commission dated May 19, 1980 (Investment Company Act Release No. 11173) to exempt Applicants from the provisions of Section 11(c) of the Act to the extent necessary to permit Applicants to offer shareholders of Management the option to exchange their shares for Individual Single Purchase Payment Variable Annuity Contracts (the "Contracts") offered by the Company. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Morgan Guaranty Trust Company of New York ("Morgan Guaranty") serves as Management's investment advisor. For its services, Morgan Guaranty is paid an annual fee, computed daily and payable monthly, equal to .20 of 1% of Management's average daily net assets up to $1,000,000,000, .125 of 1% from $1,000,000,000 up to $1,750,000,000, and .10 of 1% of Management's average daily net assets in excess of $1,750,000,000. As of June 30, 1980, Management's net assets were $2,728,631,294. E.F. Hutton & Company, Inc. ("Hutton") serves as Management's administrator and distributor and bears certain costs of the operations of Management. As administrator, Hutton is paid an annual fee, computed daily and payable monthly, equal to .20 of 1% of Management's average daily net assets up to $1,000,000,000, .275 of 1% from $1,000,000,000 up to $2,500,000,000, and .25 of 1% of Management's average daily net assets in excess of $2,500,000,000. New England Merchants National Bank is custodian of Management's investments and its transfer and dividend disbursing agent.

According to the application, Applicants propose to permit shareholders of Management to exchange their shares for the Contracts. Such shareholders will be notified of the offer of exchange and will be permitted to make such an exchange without payment of a fee, sales load, transfer charge or administrative charge. Purchase payments for the Contracts in the form of shares of Management to be exchanged will be allocated to the Variable Account and will be invested by the Variable Account in shares of Management.

The Applicants state that the Contracts will be sold by licensed insurance agents in those states where the Contracts may be lawfully sold. Such agents will be registered representatives or broker-dealers registered under the Securities Exchange Act of 1934 which are members of the National Association of Securities Dealers, Inc. The Contracts will be distributed through Dreyfus Service Organization, Inc. ("DSO") and Hutton. The Applicants further state that the Company has agreed to pay insurance commissions to DSO for its services as an insurance general agent in distributing the Contracts. DSO may have subagents to whom it may pay a portion of its commission. In the case of Contracts under which Management will be the underlying investment medium, Hutton will be such a subagent.

Section 11(c) of the Act prohibits offers of exchanges of securities of an open-end investment company for securities of a unit investment trust. The Applicants submit that they are therefore prohibited from offering shareholders of Management, an open-end investment company, the opportunity to exchange their shares for securities of the Variable Account, a unit investment trust, absent approval by the Commission.

In support of the relief requested, Applicants state their belief that the Contracts can provide valuable features for retirement and financial planning for the existing shareholders of Management. The Contracts provide the facility for Contract Owners to provide for lifetime retirement income. The Contracts may also enable Contract Owners to defer current income taxes on investment income attributable to the Contracts. Existing shareholders of Management will therefore be afforded benefits which they do not now possess if they avail themselves of the exchange offer.

The Applicants further state that the proposed exchange of securities of Management for the

Contracts is accomplished at net asset value without assessment of any fee or charge in connection with such exchange. The proposed exchange is entirely voluntary and is solely at the election of existing shareholders of Management. The Contracts can be acquired by such an exchange on a basis which permits existing Management shareholders to add annuity features to their financial plans while retaining the investment orientation which they already possess.

The Applicants state that in no event will solicitation of existing Management shareholders be made until such shareholders have been provided with a currently effective prospectus for the Contracts and for Management. The Applicants submit that this will enable such shareholders to evaluate the appropriateness of any such exchange.

For the foregoing reasons, Applicants submit that the requested exemption from the provisions of Section 11(c) of the Act is appropriate and in the public interest, is consistent with the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN THAT any interested person may, not later than December 26, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following December 26, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11470/December 3, 1980

In the Matter of

SUPERVISED CASH ACCOUNT, INC.
120 South LaSalle Street
Chicago, Illinois 60603

(811-3017)

NOTICE OF FILING OF APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Supervised Cash Account, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end, management investment company, filed an application on September 18, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was a "money market fund" organized as a "clone" of Cash Equivalent Fund, Inc. ("Cash Equivalent Fund"), and was incorporated under the laws of Maryland following the ruling by the Board of Governors of the Federal Reserve System that required "money market funds" to maintain special reserve deposits. On March 20, 1980, Applicant registered under the Act and at the same time filed a registration statement under the Securities Act of 1933, which became effective on March 28, 1980, covering an indefinite amount of shares of common stock. As stated in the application, Kemper Financial Services, Inc. ("Kemper"), served as investment adviser and principal underwriter for both Applicant and Cash

Equivalent Fund and Applicant had the same board of directors as Cash Equivalent Fund. According to the application, upon the termination of the reserve requirements for money market funds, Applicant's board of directors determined that the need to maintain a separate clone fund no longer existed. Applicant states that in order to achieve efficiencies and savings for shareholders, on July 28, 1980, its board of directors authorized the merger of Applicant into Cash Equivalent Fund and authorized Applicant's officers to proceed to obtain such shareholder approval as was necessary to effectuate the merger.

As stated in the application, Applicant's shareholders received a letter dated July 30, 1980, advising them that Applicant's board of directors had approved the combining of Applicant with Cash Equivalent Fund and that shareholders had the option of (1) exchanging their shares of Applicant for the same number of shares of Cash Equivalent Fund or (2) redeeming their investment in Applicant in its entirety. Applicant states that as of August 14, 1980, the date prior to the date of the merger, Applicant had 375,308,604 shares of common stock, par value $.001, outstanding. Applicant further states that the net asset value per share on that date was $1.00. Applicant represents that after the exchange of shares was effectuated, the sole remaining shareholder, Kemper, voted upon and approved the merger of Applicant into Cash Equivalent Fund. Applicant further represents that pursuant to the terms of the merger, all of its assets were transferred, in conformance with the guidelines of Investment Company Act Release No. 11263 (July 21, 1980) and without payment of any brokerage commission, to Cash Equivalent Fund, based upon net asset values calculated as of the close of business on August 15, 1980, the date of the merger. In addition, Applicant states that all expenses (which did not exceed $50,000) incurred by Applicant in connection with the merger were assumed and paid by Kemper.

Applicant represents that at this time it: (1) has no assets of any nature or value; (2) has no debts or other outstanding liabilities; (3) has no securityholders; (4) is not a party to any litigation or administrative proceeding; and (5) is engaged in no business activities other than those necessary for the winding up of its affairs. In that regard, Applicant states that it has filed a certificate of dissolution with the State of Maryland and has been formally dissolved under state law.

Section 8(f) of the Act provides, in part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application therein will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11471/December 3, 1980

In the Matter of

1ST REAL PROPERTY SECURITIES FUND
c/o Gregory C. Welton
1417 Via Arco
Palos Verdes Estates, California 90274

(811-2231)

ORDER TERMINATING REGISTRATION PURSUANT TO SECTION 8(f) OF THE ACT

On November 5, 1980, a notice was issued (Investment Company Act Release No. 11430) stating that the Commission proposed, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion that 1st Real Property Securities Fund ("Fund"), registered under the Act as a closed-end, non-diversified management investment company, has ceased to be an investment company as defined in the Act.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the Fund has ceased to be an investment company. Accordingly,

IT IS ORDERED, pursuant to Section 8(f) of the Act, that the registration of 1st Real Property Securities Fund under the Act shall forthwith cease to be in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11472/December 3, 1980

In the Matter of

BENEFICIAL NATIONAL LIFE INSURANCE COMPANY

AND

THE DREYFUS RAINBOW ANNUITY VARIABLE ACCOUNT A
Two Park Avenue
New York, NY 10016

AND

MONEYMART ASSETS, INC.
100 Gold Street
New York, NY 10038

(812-4719)

ORDER PURSUANT TO SECTION 11 OF THE ACT AMENDING AN ORDER APPROVING CERTAIN OFFERS OF EXCHANGE

Beneficial National Life Insurance Company ("Beneficial"), a stock life insurance company organized under the laws of the State of New York, the Dreyfus Rainbow Annuity Variable Account A (the "Separate Account"), a separate account of Beneficial's registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and MoneyMart Assets, Inc. (the "Fund"), a Maryland corporation registered as an open-end diversified management investment company under the Act (hereinafter collectively referred to as the "Applicants") filed an application on August 5, 1980 requesting an order of the Commission amending a prior order of the Commission dated May 19, 1980 (Investment Company Act Release No. 11173), as amended August 27, 1980 (Investment Company Act Release No. 11317), pursuant to Section 11 of the Act approving Applicants' proposal to offer shareholders of the Fund the option to exchange their shares for Individual Single Purchase Payment Variable Annuity Contracts offered by Beneficial.

On November 10, 1980 a notice was issued (Investment Company Act Release No. 11437) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the proposed amendment to the order approving certain offers of exchange be, and hereby is, approved, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11473/December 4, 1980

In the Matter of

INVESTMENT GROWTH FUND, INC.
1175 N.E. 125th Street
Miami, Florida 33161

(811-1426)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Investment Growth Fund, Inc. ("Fund"), registered under the Act as a closed-end, diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized on August 17, 1966, under the laws of the State of Florida under the name of American Growth Plan, Inc. The Fund registered under the Act on September 2, 1966. During October, 1966, the Fund's name was changed to Investment Growth Fund, Inc. The Fund also filed a registration statement (File No. 2-25475) pursuant to the Securities Act of 1933 in connection with a proposed public offering of shares of its capital stock. The 1933 Act registration statement was not made effective, and the Fund did not make a public offering of its securities. The Fund requested withdrawal of this registration statement, pursuant to Rule 477 under the 1933 Act, and the Commission ordered it withdrawn as of August 20, 1974. The Fund has not filed any of the periodic reports required by the Act since July 12, 1968. Finally, information in the Commission's files indicates that after the withdrawal of such registration statement the Fund was abandoned, and that it ceased to exist as a corporate entity and to profitably engage in any business. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11474/December 4, 1980

In the Matter of

THE COLWYN RISK FUND, INC.
Russett Lane
Orchard Heights
Essex, Connecticut 06426

(811-1956)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that The Colwyn Risk Fund, Inc. ("Fund"), registered under the Act as a closed-end, non-diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund was organized under the laws of New Jersey on September 29, 1969, and registered under the Act on October 15, 1969, as a closed-end, non-diversified, management investment company. In addition, the Fund filed a registration statement (File No. 2-35027) pursuant to the Securities Act of 1933 in connection with a proposed public offering of shares of its capital stock. Although the 1933 Act registration statement was made effective on April 22, 1970, the Fund did not make a public offering of its securities. The Fund has never filed any of the periodic reports required by the Act. Finally, information in the Commission's files indicates that the Fund was abandoned, and that it has ceased to exist as a corporate entity and to profitably engage in any business. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11475/December 4, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6268/December 4, 1980

INVESTMENT COMPANY ACT OF 1940
Release No.11476/December 4, 1980

In the Matter of

GRADISON CASH RESERVES, INC.
580 Building
Cincinnati, Ohio 45202

(812-4739)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Gradison Cash Reserves, Inc. ("Applicant"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified management investment company, filed an application on September 24, 1980, and an amendment thereto on October 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to value its portfolio securities using the amortized cost method of valuation.

On November 4, 1980, a notice (Investment Company Act Release No. 11428) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented;

(1) In supervising the Applicant's operations and delegating to the Applicant's investment adviser special responsibilities involving portfolio management, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its stockholders—to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objective, to stabilize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included among the procedures to be adopted by the board of directors shall be the following duties and responsibilities:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the Applicant's $1.00 amortized cost price per share from the net asset value per share as determined by using available market quotations, and the maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or any other unfair result to investors or existing stockholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair result, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of the Applicant's portfolio; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) The Applicant will maintain a dollar-weighted

[1]To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market investments published by reputable sources.

average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) The Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described in condition 1 above, and the Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) The Applicant will limit its portfolio instruments, including repurchase agreements, to those U.S. dollar-denominated instruments which the board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

(6) The Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, such attachment will describe the nature and circumstances of such action.

[2]In fulfilling this latter condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, the Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11477/December 4, 1980

In the Matter of

FLORIDA MUTUAL U.S. GOVERNMENT SECURITIES FUND, INC.
Suite 1507, Landmark Bank Bldg.
One Financial Plaza
Ft. Lauderdale, Florida 33394

(812-4711)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Florida Mutual U.S. Government Securities Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on August 13, 1980, with an amendment thereto on October 15, 1980, for an order of the Commission pursuant to Section 6(c) of the Act exempting its proposed money market fund portfolio ("Portfolio I") from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit calculation of the net asset value per share of Portfolio I using the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant is a corporation, organized and existing under the laws of the State of Florida, that has not yet commenced a public distribution of its shares. Applicant states that it intends to operate Portfolio I, one of its two proposed portfolios of investment securities, as a "money market" fund, offering investors a

convenient means to invest in a professionally managed portfolio of obligations issued by, or guaranteed as to principal and interest by, the United States government, its agencies or instrumentalities ("U.S. government obligations"). Applicant also states that it will seek to obtain as high a level of current income as is consistent with the preservation of principal and liquidity within the standards prescribed for Portfolio I.

Applicant represents that it intends that its investments will consist of two portfolios, differentiated by the maturity of their permitted investments, and that all of its assets will be invested in U.S. government obligations. The permitted investments of Portfolio I will be U.S. government obligations maturing within one year or less, so long as the dollar-weighted average portfolio maturity is 120 days or less. Applicant further states that Portfolio I may: (1) engage in repurchase agreements collateralized by U.S. government obligations with a maturity in excess of one year; (2) make loans of its portfolio securities; (3) engage in reverse repurchase agreements; and (4) purchase U.S. government obligations on a "when-issued" basis. Applicant represents that it will comply with the requirements of Investment Company Act Release No. 10666 where that release applies to such transactions. Applicant states that it may also purchase "floating rate" U.S. government obligations for Portfolio I when and if a satisfactory method is determined for ascertaining the maturity of such instruments for the purpose of the amortized cost method of valuation.

Applicant states that it will declare the net income of Portfolio I as a dividend on each business day and that accrued dividends for a month will be paid on the last business day of that month. Dividends will be reinvested automatically (unless otherwise instructed by the shareholder) in additional shares of the appropriate portfolio at the net asset value next determined after the date on which dividends are paid. Net income of each portfolio will consist of interest accrued or discount earned (including both original issue and market discount), less amortization of premium and estimated, accrued expenses of Applicant allocated to each portfolio's operations.

Since Applicant does not intend to include realized and unrealized gains and losses on securities in Portfolio I in the net income of the portfolio for dividend purposes, Applicant will endeavor to reduce the amount of unrealized gains and losses in Portfolio I which result from interest rate changes by maintaining a dollar-weighted average portfolio maturity in Portfolio I of 120 days or less. Applicant proposes to value the securities in Portfolio I by means of the amortized cost method of valuation, subject to the conditions enumerated below.

Applicant represents that professional, institutional, and other sophisticated investors comprise an important source of its potential investors. Applicant anticipates that in order to attract and retain such investors, it must have a stable net asset value (preferably at $1.00 per share) and a constant and steady flow of investment income.

Applicant states that Portfolio I will consist of securities maturing within one year or less, so long as the dollar-weighted average maturity of the portfolio is 120 days or less. Applicant asserts that, with respect to securities maturing within one year or less, there normally is a negligible discrepancy between market value and the amortized cost of such securities. Applicant believes that valuation of the securities in Portfolio I on the basis of amortized cost will benefit its shareholders by enabling it to maintain a constant $1.00 per share purchase and redemption price, while at the same time providing shareholders with a steady flow of investment income through daily dividends which reflect Applicant's net income as earned. Applicant states that its board of directors has determined in good faith that, in light of the characteristics of Applicant described above and, subject to compliance with the conditions listed below, the amortized cost method of valuing portfolio securities is appropriate and preferable for Portfolio I and reflects fair value of its securities, absent unusual or extraordinary circumstances.

As here pertinent, Section 2(a)(41) of the Act defines value to mean (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to

purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company, used in computing its price for the purposes of distribution, redemption and repurchase, shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that upon application the Commission may conditionally or unconditionally exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant requests an order, pursuant to Section 6(c) of the Act, exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1(a) thereunder to the extent necessary to permit Portfolio I to value its assets using the amortized cost method of valuation.

Applicant has agreed to adhere to the following conditions in any order of the Commission granting the exemptive relief requested.

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareolders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included within the procedures adopted by the board of directors are the following duties and responsibilities:

(a) Review by the board of directors as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1%, a reuqirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its

[1]Applicant states that to fulfill this condition it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' consideration and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Applicant submits that its use of the amortized cost method of valuing its securities in Portfolio I, subject to the conditions enumerated above, will benefit its shareholders by enabling it to maintain more effectively a $1.00 per share purchase and redemption price while simultaneously providing the opportunity for a steadier flow of investment income to shareholders. Applicant asserts that the granting of the requested exemptions by the Commission is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11478/December 4, 1980

In the Matter of

AMERICAN EMPIRE MUTUAL FUND, INC.
Suite 420
102 North Brand Boulevard
Glendale, California 91203

[2]In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(811-2076)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that American Empire Mutual Fund, Inc. ("Fund"), registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund filed its Notification of Registration (Form N-8A) pursuant to Section 8 of the Act on June 26, 1970. On December 23, 1970, the Fund filed its Registration Statement on Form N-8b-1 under the Act, and a Registration Statement on Form S-5 under the Securities Act of 1933 ("Securities Act"). On May 12, 1972, pursuant to Rule 479 of the General Rules and Regulations of the Securities Act, the Fund and its agent for service were sent a registered letter, return receipt requested, notifying them either to amend the Securities Act Registration Statement to comply with the applicable requirements of the Securities Act and the rules and regulations thereunder or to withdraw it within 30 days of the receipt of such letter. The Fund did not comply with either of these requests. In a letter to the Commission dated June 27, 1972, the Fund stated, among other things, that it had issued no securities and had no assets. On July 17, 1972, the Fund's Registration Statement under the Securities Act was declared abandoned by order of the Commission, in accordance with the provisions of Rule 479. On the basis of the foregoing, it appears that the fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, and that upon the effectiveness of such order the registration of such company under the Act shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 741/December 4, 1980

Admin. Proc. File No. 3-5980

In the Matter of

MICHAEL STARBUCK, INC.
(IA-801-13342)
MICHAEL S. STARBUCK

ORDER INSTITUTING PROCEEDINGS MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission's public official files disclose that:

A. Michael Starbuck, Inc. ("Registrant"), a New York corporation whose office was located at 330 West 56th Street, New York, New York, 10019, has been registered with the Commission as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940 ("Advisers Act") since September 22, 1977.

B. Michael S. Starbuck ("M.S. Starbuck") was president and sole shareholder of Registrant. He resides at 330 West 56th Street, New York, New York 10019.

II.

In connection with a proposed administrative proceeding, Registrant and M.S. Starbuck have submitted Offers of Settlement which the Commission has determined to accept.

Solely for the purposes of these proceedings and any other proceedings which may be brought by the Commission or any other governmental or self-regulatory body pursuant to Section 8(b) and 8(d) of the Securities Act of 1933 ("Securities Act"), Sections 15(b), 15A, 15B(c)(4) and 19(h) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Advisers Act, Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") and Section 11(b) of the Securities Investor Protection Act of 1970, without admitting or denying the alleged violations of law, M.S. Starbuck consents to the findings and sanctions relating to him set forth below.

Solely for the purpose of these proceedings, and without admitting or denying the violation of law alleged in the Commission's civil injunctive complaint, Registrant consents to the findings and sanctions relating to it set forth below.

Accordingly, IT IS ORDERED that proceedings pursuant to Sections 203(e) and 203(f) of the Advisers Act, be, and they hereby are, instituted.

On the basis of the Order for Proceedings and the Offers of Settlement, it is found that:

A. M.S. Starbuck, from on or about January 1, 1978 to on or about January 10, 1980, directly and indirectly violated Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of investment interests in Michael Starbuck, Inc. and Associates ("Associates") in that he:

(1) failed to file a registration statement with the Commission with respect to Associates securities;

(2) employed devices, schemes or artifices to defraud actual and prospective investors; and

(3) made untrue statements of, or omitted to state, material facts in obtaining money and property from actual and prospective investors; and

B. Registrant, and M.S. Starbuck, on January 11, 1980, consented to the entry of a Final Judgment of Permanent Injunction in the United States District Court for the Southern District of New York permanently enjoining them from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and

C. It is in the public interest to impose the Sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that:

A. The investment adviser registration of Registrant be, and hereby is, revoked; and

B. M.S. Starbuck be, and hereby is: (1) barred from association with any broker, dealer, investment

adviser or municipal securities dealer; and (2) prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

By the Commission.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9246/December 1, 1980

SEC v. *CORONA CAPITAL CORP., ET AL.* (USDC, UT, Civil Action No. C-78-0314)

Robert H. Davenport, Regional Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that, on November 10, 1980, the Honorable David K. Winder, United States District Judge for the District of Utah, Central Division, entered a Final Judgment of Permanent Injunction against Floyd R. Brown, a lawyer residing in Anaheim, California, enjoining him from violating Sections 5(a), 5(b), 5(c) and 17(a) of the Securities Act of 1933, as amended, in connection with the offer and sale of limited partnership interests in thirty-four separate limited partnerships named in the Order, or any other securities of any issuer. Defendant Floyd R. Brown consented to the entry of the injunction without admitting or denying the allegations of the complaint.

The Commission's complaint, filed August 25, 1978, alleged, in substance, violations of the registration, the prospectus delivery, and the anti-fraud provisions of the federal securities laws in connection with the offer and sale of limited partnership interests in entities engaged in dairy, farming and related operations.

For further information see Litigation Releases Nos. 8538 and 8572.

Litigation Release No. 9247/December 2, 1980

SEC v. *BRIAN PATRICK SMITH*, 80 Civil 3659 (S.D.N.Y.) (RO)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on October 23, 1980, a Final Judgement of Permanent Injunction by Default was entered against Brian Patrick Smith ("Smith") of Flushing, New York, by the Honorable Richard Owen, of the United States District Court for the Southern District of New York. Smith was enjoined from violating Sections 7(f) and 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder and Regulation X promulgated by the Board of governors of the Federal Reserve System. The complaint charged Smith with placing orders for the purchase of the common stock of Jupiter Development Corporation, Ltd. ("Jupiter") without intending to pay, and failing to make timely and proper payment for said purchases. Jupiter is a publicly owned corporation with executive offices located in Edmonton, Alberta and Toronto, Ontario; it is primarily engaged in energy and mining exploration and development projects.

The Complaint alleged that between January and May of this year, Smith ordered the purchase of 38,100 shares of Jupiter stock for a total purchase price of $237,584.60 through two brokerage firms located in Portland, Oregon and failed to pay for any of said purchases. The Complaint further alleged that during the same period, Smith ordered additional shares of Jupiter stock through a brokerage firm located in New York City and tendered six (6) personal checks amounting to $145,667 in payment for said shares; these checks were all returned unpaid for insufficient funds or because the accounts on which the checks were drawn were closed.

For further information see LR-9141.

Litigation Release No. 9248/December 2, 1980

SEC v. *THE INTERNATIONAL MINING EXCHANGE, INC., ET AL.* (USDC, COLO, Civil Action No. 80-K-1198)

Robert H. Davenport, Administrator of the Denver Regional Office of the Securities and Exchange Commission, announced that on November 17, 1980 the Honorable John L. Kane, Jr., Judge, United States District Court for the District of Colorado, denied Plaintiff's Motion for a Preliminary Injunction submitted in the referred to action on September 12, 1980.

Judge Kane's ruling, announced from the bench on November 17, 1980, followed a four day evidentiary hearing. A motion to make additional findings, reconsider, and alter or amend judgment was filed with the Court on November 26, 1980. A pre-trial conference was set for December 2, 1980.

For further information, see Litigation Release No. 9181.

Litigation Release No. 9249/December 2, 1980

SEC v. *CLOYCE K. BOX AND OKC CORP.* (CA 3-80-1217D; N.D. Tex., Dallas Division)

Wayne M. Secore, Administrator of the Fort Worth Regional Office of the Securities and Exchange Commission (SEC), announced that on November 25, 1980, Judge Robert M. Hill of the United States District Court for the Northern District of Texas, entered an Order preliminarily enjoining Cloyce K. Box (Box) of Dallas, Texas, from further violations of the antifraud provisions of the federal securities laws, and Box and OKC Corp. (OKC), also of Dallas, from further violations of the periodic reporting and proxy provisions of the federal securities laws.

The Complaint, filed on September 15, 1980, had alleged that since at least 1973, Box, OKC's chief executive officer, pursuant to secret and undisclosed partnerships and business arrangements, caused OKC to purchase and sell substantial amounts of petroleum products through certain brokers who were his friends and business associates. It was also alleged that, at Box's direction, these "friendly brokers" received preferential price, product delivery and credit arrangements from OKC and, in turn, resold these products at substantial markups. At least two of these "friendly brokers," according to the Complaint, then split their profits with Box. Pursuant to these arrangements, during the period from November 1973 through June 1977, Box received in excess of $5 million. The SEC charged that none of these favorable financial arrangements were disclosed by OKC in its periodic, annual or other reports. Box also used certain of the "friendly brokers" as parties in bogus purchases and sales of petroleum products purportedly engaged in by OKC. The result of these bogus transactions, according to the Complaint, was that both interim and year-end financial statements of OKC were materially false.

Without admitting or denying any of the allegations in the Complaint, defendants Box and OKC consented to the entry of the Order which, in addition to preliminarily enjoining them from further violations of the federal securities laws, provides that OKC shall designate a special corporate committee to review each proposal for the sale, liquidation or other transfer of assets of OKC to assure compliance with the terms of the Plan of Liquidation and Dissolution of OKC Corp. as set forth in proxy solicitations to stockholders, and to assure that each sale, liquidation or transfer of assets is made without undisclosed conflicts of interest.

Additionally, the Order provides that Box will provide the Court with a letter of credit in the amount of $5 million to satisfy any judgment of disgorgement that might be entered when the case is finally resolved on its merits.

For further information, see Litigation Release No. 9183.

Litigation Release No. 9250/December 2, 1980

SEC v. *ARAMIS M. K. NAHABEDIAN, ET AL.* (United States District Court for the Central District of California) (Civil Action No. 80-5280 CBM(FRx))

Leonard H. Rossen, Regional Administrator of the Los Angeles Regional Office, announced the filing of a civil injunctive action on November 25, 1980, in the United States District Court for the Central District of California naming as defendants Aramis

M. K. Nahabedian ("Nahabedian"), Michael R. Simonian ("Simonian"), Joe W. Floyd ("Floyd"), Glenn W. Patterson ("Patterson"), Jack Severns ("Severns"), Jack R. Andrews ("Andrews"), Andrew J. Macht ("Macht") and Raymond S. Blunk ("Blunk").

The complaint alleged, in substance, violations of the anti-fraud provisions of the Securities Exchange Act of 1934 in connection with the defendants' purchases of common stock of Hershey Oil Corporation ("HOC") on the basis of material non-public information, concerning the drilling progress and the results of certain tests which indicated the presence of gas in a well in which HOC held a 14.84% working interest. None of the above-mentioned defendants was employed by HOC at the time of their purchases of HOC common stock, but instead, each defendant was employed by an entity which was a partner of HOC in the drilling of the subject gas well. Nahabedian, Simonian and Floyd were employees of the Woodland Oil Company of Los Angeles, California, and Patterson was an employee of the Pend O'Reille Oil and Gas Company of Houston, Texas, a wholly-owned subsidiary of the Gulf Resources and Chemical Corporation, and Severns, Andrews, Macht and Blunk were employees of MCO Resources, Inc., a wholly-owned subsidiary of MCO Holding, Inc. of Los Angeles, California (formerly known as McCulloch Oil Corporation).

Simultaneously with the filing of the Complaint, all eight defendants consented, without admitting or denying the allegations of the complaint, to the entry of final judgments of permanent injunction restraining them from further violations of the law as alleged in the complaint and to other equitable relief in the form of disgorgement of their profits derived from their purchases of HOC common stock.

Litigation Release No. 9251/December 4, 1980

SEC v. *PALMER YORK, JR., ET AL.* (U.S.D.C., S.D. Calif., Civil Action No. 80-1862-GT)

The Los Angeles Regional Office of the Securities and Exchange Commission announced that on November 26, 1980, it filed suit in Federal District Court in San Diego against Palmer York, Jr. of San Francisco, California and the Shareholders Protective Committee of Portsmouth Square, Inc., charging violations of the federal securities laws. York and the Committee were charged with soliciting proxies in connection with a shareholders' meeting of Portsmouth Square scheduled for December 4, 1980, using false and misleading statements and failing to file required material with the Commission. The Commission charged York and the Committee with soliciting proxies in violation of Section 14(a) of the Securities Exchange Act of 1934 and Rules 14a-6, 14a-9 and 14a-11 thereunder.

Also named as a defendant in the Commisison's action was Portsmouth Square, Inc., a publicly-held company headquartered in San Diego, which was not charged with any violations, but was made a party to permit the Court to enjoin the use of the illegal proxy material.

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sec docket

VOLUME 21, NO. 11 DECEMBER 23, 1980

RELEASES IN THIS ISSUE

Securities Act	6269-71	839
Securities Exchange Act	17355-68	841
Public Utility Holding Company Act	21821-38	853
Trust Indenture Act	600	886
Investment Company Act	11479-89	886
Investment Advisers Act	742	903
Litigation	9252-55	903

This listing covers releases issued from 12/5/80-12/11/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS ANNOUNCEMENT

33-6269 Procedures Applicable to Requests for No-Action and Interpretive Letters.

RULES

The following releases relate to self-regulatory rule proposals and/or adoptions.

34-17355 34-17366 34-17367
34-17362

33-6271 Extension of Comment Period for Proposal Regarding Exemption from Registration of Interests and Participations in Certain H.R. 10 Plans (File No. S7-857—Comment Period Expires January 14, 1981).

34-17368 Delay until September 1, 1981 of Effective Date of portions of Rule 11Ac1-2 governing the Dissemination and Display of Market Information.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6269/December 5, 1980

PROCEDURES APPLICABLE TO REQUESTS FOR NO-ACTION AND INTERPRETIVE LETTERS

In Release No. 33-6253 (October 28, 1980) [45 FR 72644], the Commission described certain procedures recently adopted by the Division of

SE 1.29:

Corporation Finance for responding to all requests for no-action and interpretive letters, except those involving shareholder proposals. The new response procedure involves the use of an endorsement to the incoming letter as a method of reply. Rather than preparing a response in the format of a letter reciting the salient facts of the request and setting forth the position of the Division regarding the issues raised, the Division simply sets forth its position on the issues raised on either the last page of the incoming letter or on a separate page attached at the end of that letter. This new response procedure was instituted in order to make more efficient use of the Division's resources while continuing to provide no-action and interpretive letter advice upon request.

The use of the endorsement procedure has necessitated providing a copy of the requestor's letter, as well as the Division's endorsement response, to all persons within the Commission who receive copies of the Division's no-action and interpretive letters as a matter of record (e.g., The Public Reference Section, certain Regional Offices, etc.). This has placed a new burden on the Division's staff — that of providing multiple photocopies of the requestor's letter. To alleviate this burden, henceforth all persons who request no-action or interpretive letters from the Division should submit an original and seven copies of their request to the following address: Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, Washington, D. C. 20549.

In Release No. 33-5127 (January 25, 1971) [36 FR 2600], the Commission specified certain procedures to be followed by persons submitting requests for no-action or interpretive letters. The Commission is taking this opportunity to remind requestors of the following procedures:

1. The specific subsection of the particular statute to which the letter pertains should be indicated in the upper right-hand corner of the original and each copy of the letter submitted.

2. The names of the company or companies and all other persons involved should be stated. Letters relating to unnamed companies or persons, or to hypothetical situations, will not be answered.

3. Letters should be limited to the particular situation involving the problem at hand, and should not attempt to include every possible type of situation which may arise in the future.

4. While it is essential that letters contain all of the facts necessary to reach a conclusion in the matter, they should be concise and to the point.

5. The writer should indicate why he thinks a problem exists, his own opinion in the matter and the basis for such opinion.

6. If a request for confidential treatment is made, this request and the basis therefor should be included in a separate letter and submitted with the no-action request letter.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6270/December 5, 1980

In the Matter of

H.R. 10 PLAN OF BLANK, ROME, COMISKY & MCCAULEY
Four Penn Center Plaza
Philadelphia, Pa. 19103

(18-82)

ORDER PURSUANT TO SECTION 3(A)(2) OF THE SECURITIES ACT OF 1933 EXEMPTING FROM THE PROVISIONS OF SECTION 5 OF THE ACT INTERESTS OR PARTICIPATIONS IN THE H.R. 10 PLAN OF BLANK, ROME, COMISKY & MCCAULEY.

Blank, Rome, Comisky & McCauley, a law firm organized as a partnership under Pennsylvania law, by letters dated June 27, 1980 and October 29, 1980, filed an application for an exemption from the registration requirements of the Securities Act of 1933 ("Act") for interests or participations issued in connection with the H.R. 10 Plan of Blank, Rome, Comisky & McCauley ("Plan").

On November 10, 1980, a notice was issued (Securities Act Release No. 6257) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 3(a)(2) of the Act, that interests or participations issued in connection with the Plan shall not be subject to the requirements of Section 5 of the Act, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES ACT OF 1933
Release No. 6271/December 11, 1980

EXEMPTION FROM REGISTRATION OF INTERESTS AND PARTICIPATIONS IN CERTAIN H.R. 10 PLANS

ACTION: Extention of comment period.

SUMMARY: The Commission is extending the period for comments set in Securities Act Release No. 6247, published October 14, 1980 requesting public comment regarding proposed Rule 180 under the Securities Act of 1933. The proposed Rule would exempt from the registration provisions of the Securities Act of 1933 interests or participations issued in connection with H.R. 10 plans of certain partnerships. This action is being taken in order to give the public additional time to comment on the proposed Rule.

DATES: Comments should be submitted on or before January 14, 1981.

ADDRESSES: Persons wishing to submit written comments should file 10 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D. C., 20549. All submissions should refer to File No. S7-857 and will be available for public inspection at the Commission's Public Reference Room 6101, 1100 L Street, N. W., Washington, D. C.

FOR FURTHER INFORMATION CONTACT: Mary A. Cole, (202) 272-3023, Division of Investment Management, Securities and Exchange Commmission, 500 North Capitol Street, Washington, D. C., 20549.

SUPPLEMENTARY INFORMATION: Notice was published on October 14, 1980, Securities Act Release No. 6247 [45 FR 69476, October 21, 1980] requesting the submission of views with respect to proposed Rule 180 under the Securities Act of 1933 (the "Act") [15 U.S.C. 77a-77aa]. If adopted, proposed Rule 180 would provide an exemption from the registration requirements of section 5 of the Act [15 U.S.C. 77e] for interests and participations issued in connection with the H.R. 10 plans of partnerships that meet certain criteria. The Commission has received a request from an interested member of the public that the comment period be extended. The Commission has determined that it is in the public interest to allow the request for additional time to submit comments on the proposed rule. Accordingly, the Commission hereby extends the period for comments on proposed Rule 180 to January 14, 1981.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17355/December 5, 1980

In the Matter of

AMERICAN STOCK EXCHANGE, INC.
86 Trinity Place
New York, New York 10006

(SR-Amex-80-25)

ORDER APPROVING PROPOSED RULE CHANGE

On October 16, 1980, The American Stock

Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends Article V, Section 6 of the Exchange Constitution to (1) extend the period of retained disciplinary jurisdiction over former members to one year following termination of membership status, and (2) expand the scope of such jurisdiction to member organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17253, October 27, 1980) and by publication in the *Federal Register* (45 FR 72373, October 31, 1980). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange, and in particular, the requirements of Section 6(b)(5) and 6(b)(6) and the rules and regulations thereunder, in that it will enhance the Exchange's ability to appropriately discipline former members and their associated persons for violations of the Exchange Act or rules of the Exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17356/December 5, 1980

A notice has been issued giving interested persons until December 29, 1980 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in the common stock ($.25 par value of MORAN ENERGY INCORPORATED and the Shares of Beneficial Interest ($1 par value) of BANKAMERICA REALITY INVESTORS. These stocks are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17357/December 5, 1980

In the Matter of Applications of the

MIDWEST STOCK EXCHANGE, INCORPORATED

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATIONS FOR UNLISTED TRADING PRIVILEGES

The Midwest Stock Exchange ("MSE") has filed applications with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on another national securities exchange.[1]

CSX Corporation
Common Stock, $1 Par Value
(File No. 7-5778)

General Re Corporation
Common Stock, $.50 Par Value
(File No. 7-5779)

Moore Corp., Limited
Common Stock, No Par Value
(File No. 7-5780)

Collins Food International Inc.
(Delaware)
Common Stock $.10 Par Value
(File No. 7-5781)

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[1]Notice of these applications was given by publication in the *Federal Register*. 45 FR 75404 (November 14, 1980). The Commission has received no comments with respect to these applications.

The Commission finds that approval of the MSE's applications for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of these applications would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE applications will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the applications for unlisted trading privileges on the Midwest Stock Exchange in the above named securities are hereby approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17358/December 5, 1980

A notice has been issued giving interested persons until December 29, 1980 to comment on the application of the *Pacific Stock Exchange* for unlisted trading privileges in the common stock ($1 par value) of UNITED INNS, INC. This stock is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17359/December 9, 1980

Admin. Proc. File No. 3-5983

In the Matter of

R.O. BELT-O.S. BELT, INC
OSBORN S. BELT

(8-18403)

ORDER INSTITUTING PROCEEDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commission deems it appropriate that public administrative proceedings be instituted with respect to R. O. BELT - O. S. BELT, INC. ("Registrant"), a registered broker-dealer, and Osborn S. Belt ("Belt"), the principal of Registrant, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act").

In anticipation of this administrative proceeding, Registrant and Belt each have submitted an Offer of Settlement ("Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceeding brought by the Commission, and without admitting or denying the findings contained herein, the Respondents hereby consent to the entry of this Order.

II.

Accordingly, IT IS ORDERED that such proceedings pursuant to Section 15(b) of the Exchange Act be, and they hereby are, instituted.

III.

On the basis of this Order Instituting Proceedings and the Offers of Settlement, it is found that:

1. From on or about November 5, 1975, to October 24, 1979, Registrant and Belt wilfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with the offer and sale of securities, namely promissory notes secured by

fractional interests in first deeds of trust in the name of a relative of Belt's, by failing to disclose Belt's financial interest in the properties securing the promissory notes, the previous foreclosure by Belt on the same properties, and Belt's position as borrower on the promissory notes.

2. From on or about April 30, 1978, to on or about July 31, 1978, and from on or about December 31, 1979, to on or about January 21, 1980, Registrant wilfully violated and Belt wilfully aided and abetted violations of Sections 15(c)(3) and Section 17(a) of the Exchange Act and Rules 15c3-1 and 17a-11 promulgated thereunder in that Registrant effected transactions in securities when it did not have the required net capital, failed to send the required telegraphic notice to the Commission, and failed to file the required report.

3. At various times from June 8, 1974, to January 21, 1980, Registrant wilfully violated and Belt wilfully aided and abetted violations of Section 15(c)(3) of the Exchange Act and Rules 15c3-2 and 15c3-3 promulgated thereunder in that Registrant failed to properly maintain, segregate, and account for customer free credit balances.

4. From on or about June 8, 1974, to January 21, 1980, Registrant wilfully violated and Belt wilfully aided and abetted violations of Section 15(b)(9) of the Exchange Act and Rule 15b10-2 thereunder in that it engaged in the acts and practices set forth in 1 through 3 above.

5. During the period from on or about June 8, 1974, to January 21, 1980, Registrant and Belt wilfully violated Sections 5(a) and 5(c) of the Securities Act of 1933 in that Registrant and Belt offered and sold securities, namely promissory notes secured by fractional interests in first deeds of trust coupled with servicing agreements, through the mail, without a registration statement having been filed or in effect with the Commission.

IV.

In view of the foregoing, it is in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED, that:

1. The broker-dealer registration of R. O. Belt - O. S. Belt, Inc. be suspended for a period of sixty (60) calendar days, such suspension to commence on the first Monday following the entry of this Order; provided, however, that such suspension shall not preclude the renewal of any existing loans.

2. Belt is suspended from being associated with any broker or dealer for a period of sixty (60) calendar days, such suspension to commence on the first Monday following the entry of this Order; provided, however, that such suspension shall not preclude activities relating to the renewal of existing loans.

3. R. O. Belt - O. S. Belt, Inc. shall comply with its undertaking to file, with the Washington Regional Office of the Commission, Part II of Form X-17A-5 (the "Report") each month for a period of six (6) months. The first such Report shall be filed within seventeen (17) business days of the end of the first full month of its operations after termination of the suspension period, and each succeeding Report shall be filed within seventeen (17) business days of the end of the month covered by such Report. Such Reports shall contain a calculation of customer free credit balances as of the last day of the month for which the Report is being filed. The Reports will be prepared by R. O. Belt - O. S. Belt, Inc., reviewed by its independent public accountants, and signed by R. O. Belt - O. S. Belt, Inc.'s chief executive officer. 4.

4. R.O. Belt-O.S. Belt, Inc. shall comply with its undertaking to furnish certain of its customers with a letter disclosing the material facts concerning promissory notes in the name of a relative of Belt's, sold to investors.

5. R. O. Belt - O. S. Belt, Inc. and Belt shall comply with their undertaking to furnish the staff of the Commission with an affidavit of compliance with this order within thirty (30) days of the termination of the suspension period imposed herein.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17360/December 9, 1980

INVESTMENT ADVISERS ACT OF 1940
Release No. 742/December 9, 1980

NATIONAL COUNSELOR REPORTS, INC.
DAVID MAGEE

The Securities and Exchange Commission has ordered public administrative proceedings pursuant to Section 203(e) and (f) of the Investment Advisers Act of 1940 ("Advisers Act") against National Counselor Reports, Inc. ("National Counselor"), a registered investment adviser located in Kerrville, Texas and David Magee ("Magee"), president of National Counselor. The proceedings are based upon allegations by the Commission's staff that National Counselor willfully violated the anti-fraud provisions of the Securities Exchange Act of 1934 ("Exchange Act") and of the Advisers Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-1 thereunder; and certain filing provisions of Section 204 of the Advisers Act and Rule 204-1 thereunder; and that Magee willfully aided and abetted certain of such violations. The Order for Proceedings charged that, among other things, (1) National Counselor made, in the May, 1980 issue of its monthly newsletter *Moneytree*, materially false and misleading statements in an article entitled "Occidental: The New American Dream"; (2) Magee purchased call options on Occidental Petroleum Corporation common stock prior to the distribution of the article without disclosing his ownership; (3) National Counselor violated the advertising rules under the Advisers Act by publishing an article in *Moneytree* listing certain specific past recommendations which were profitable without setting forth those which were not profitable; and (4) National Counselor failed to file its revised Form ADV with the Commission until October 21, 1980, although it was due by July 31, 1979.

A hearing will be scheduled to take evidence on the allegations to determine whether or not such allegations are true, to afford respondents an opportunity to establish any defenses to such allegations and to determine what, if any, remedial action shall be ordered by the Commission.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17361/December 10, 1980

Admin. Proc. File No. 3-5982

In the Matter of

WEISKOPF, SILVER & CO.

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND FINDINGS AND ORDER OF THE COMMISSION

The Commission deems it appropriate, following an investigation by its Division of Enforcement, that proceedings be instituted against Weiskopf, Silver & Co. ("Weiskopf, Silver") pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether Weiskopf, Silver effected transactions in the listed options of Bally Manufacturing Corporation ("Bally options") which were not undertaken to fulfill its obligation to maintain a fair and orderly market on the American Stock Exchange (the "Amex"). This matter arises out of trading on certain days in series of Bally options on the Chicago Board Options Exchange (the "CBOE") by Weiskopf, Silver before such Bally option series opened for trading on those days on the Amex.

Weiskopf, Silver, simultaneously with the institution of these proceedings, has submitted an Offer of Settlement as a means of resolving the issues raised in these proceedings. Under the terms of its Offer of Settlement, Weiskopf, Silver, solely for the purpose of these proceedings, makes certain undertakings, and without admitting or denying any of the matters set forth herein, consents to the Findings herein and the issuance of the Order of the Commission

The Commission has determined that it is appropriate and in the public interest to accept the Offer of Settlement of Weiskopf, Silver and the undertakings contained therein, and accordingly issues this Order.

I.

Weiskopf, Silver & Co. is a specialist firm on the Amex and registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act. It is a member of a joint specialist account (the "Bally Specialist") with two other firms. During the period described below the Bally

Specialist was the specialist for one hundred ten stocks and nine options on the Amex including the Bally options.

Bally Manufacturing Corporation ("Bally") is a Delaware corporation whose securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. Its common stock is traded on the New York Stock Exchange. Bally and its subsidiaries design, manufacture, lease and sell coin-operated amusement and gaming devices of various types. A Bally subsidiary, Park Place, Inc., began operation of an Atlantic City, New Jersey gambling casino in December 1979.

Amex Specialist's Trading on CBOE

During the period from September 6, 1978, to April 1979, Weiskopf, Silver often effected transactions in Bally options on the CBOE for the account of the Bally Specialist.[1] On eighteen occasions, involving a total of 313 contracts, the Bally Specialist effected a transaction in a Bally option series on the CBOE before the Bally Specialist opened trading on the Amex.[2] On fifteen separate occasions, the transaction on the CBOE was at a price above or below the eventual opening price of the particular series on the Amex.

On eleven of the occasions referred to above involving 139 of the above described 313 contracts, the Bally Specialist was able to make a profit by effecting a purchase or sale on the Amex opening after it had effected a transaction in the same Bally series on the CBOE. On one of the occasions involving 100 contracts, a loss was sustained by the Bally Specialist.[3] On the other three occasions, the Bally Specialist either bought on both exchanges or sold on both exchanges.

Such transactions were effected for the purpose of having the options open on the two markets at the same price or with a minimal difference in price and avoid a recurrence of the disparities in pricing that had arisen in the past between the CBOE and Amex openings in the Bally option class.[4]

The Bally Specialist, for the purpose of bringing the opening price of Bally options on the CBOE close to the opening price on the Amex, placed orders on the CBOE that were at prices reasonably close to the prices at which it expected the Amex option series to open. By its placing of orders on the CBOE calculated to affect the opening price of a particular Bally series, Weiskopf, Silver, on the occasions described, was able to maintain an appearance that the Amex was a more competitive marketplace in situations where otherwise the CBOE could have been the market with the more advantageous price for someone wishing to either buy or sell the option series.

The attempt by the Bally Specialist to influence the prices on the CBOE and draw them closer to the Amex opening prices violated the Bally Specialist's obligation and duty under Section 11(b) of the Exchange Act and Rule 11b-1 to effect trades for its own account only for the purpose of maintaining a fair and orderly market for Bally options on the

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[1]During such period, the Bally Specialist effected thousands of Bally option transactins involving more than 550,000 option contracts. Of such transactions, 2,607 transactions involving 31,038 option contracts, were effected on the CBOE.

[2]In April 1979, after the initiation of the staff's inquiry in this matter, Weiskopf, Silver ceased effecting any trades in a Bally option series on the CBOE prior to the Amex opening of such series. Also in April 1979, the Amex requested of its specialists trading in dually-traded options that they not effect transactions on the second exchange in those options before the Amex opening for their option. Those specialists have, to date, complied with that request.

[3]The profits for the specialist ranged from $18.75 to $1,562.00 with 9 of the 11 transactions generating profits of less than $250.00. However, the transaction effected at a loss resulted in a loss of $3,750.00, an amount greater than all profits realized on the 11 profitable transactions.

[4]Most notably, on September 1, 1978 (when a consortium of specialist firms and not the Bally Specialist was the specialist for Bally options) when the CBOE opened the Bally November 70 series at 5 and the Amex opened the same series twenty minutes later at 10.

Amex.[5]

II.

FINDINGS

The Commission finds that the actions of Weiskopf, Silver described herein constituted a violation of Section 11(b) of the Exchange Act and Rule 11b-1 thereunder.

III.

ORDER

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Offer of Settlement of Weiskopf, Silver & Co. and, accordingly, IT IS HEREBY ORDERED that proceedings be and they are hereby instituted.

IT IS FURTHER ORDERED that Weiskopf, Silver:

1. Be, and hereby is censured.

2. Comply with its undertaking to refrain from trading in series of Bally options on the CBOE before the opening of such Bally option series on the Amex where the purpose is to attempt to draw the CBOE market price closer to the anticipated Amex opening price.

By the Commission.

George A. Fitzsimmons
Secretary

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[5]A transaction not reasonably necessary to maintain a fair and orderly market has been defined as one "not reasonably calculated to contribute to the maintenance of price continuity [on the exchange] and to minimize the effects of temporary disparity between supply and demand." Sec. Ex. Act Rel. No. 1117 at 2 (March 30, 1937), discussed in Senate Comm. on Banking, Housing and Urban Affairs, *Securities Industry Study*, 92nd Cong. 2nd Sess., pt. 4 at 6-8, 19-20 (1972); see also, Amex Rule 170.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17362/December 10, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA DEPOSITORY TRUST COMPANY

(File No. SR-PDTC-80-2)

The Philadelphia Depository Trust Company submitted on December 8, 1980, a proposed rule change, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, which would enable pledgee banks to make collateral pledged by participants available for use in the stock loan program of Stock Clearing Corporation of Philadelphia.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 15, 1980. Interested persons are invited to submit written data, views and arguments concerning the submission within twenty-one days from the date of publication in the *Federal Register*. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-PDTC-80-2.

Copies of the submission, with accompanying exhibits, and of all written comments will be available for public inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17363/December 10, 1980

In the Matter of

ENI DEVELOPMENT DRILLING PROGRAM 1979B

(File No. 81-646)

APPLICATION PURSUANT TO SECTION 12(h)

The Securities and Exchange Commission has issued a notice giving interested persons until January 5, 1981 to request a hearing on an application by ENI Development Drilling Program 1979B (the "Applicant") pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, for an order partially exempting the Applicant from the provisions of Sections 13 and 15(d) of the 1934 Act.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17364/December 10, 1980

A notice has been issued giving interested persons until January 2, 1981 to comment on the application of the *Philadelphia Stock Exchange* for unlisted trading privileges in the common stock ($1.25 par value) of QUAKER STATE OIL REFINING CORP., which is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17365/December 10, 1980

In the Matter of Application of the

BOSTON STOCK EXCHANGE, INC.

For Unlisted Trading Privileges
Securities Exchange Act of 1934

FINDINGS AND ORDER GRANTING APPLICATION FOR UNLISTED TRADING PRIVILEGES

The Boston Stock Exchange ("BSE") has filed an application with the Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following security which is listed on another national securities exchange:

Imperial Oil Limited
Class A Common Convertible, No Par Value
(File No. 7-5782)[1]

The Commission finds that approval of the BSE's application for unlisted trading privilges in this security is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to Section 6 of the Act, the BSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject security, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject security should contribute to pricing efficiency and to ensuring that transactions on the BSE are executed at prices which are reasonably related to those occurring in other markets. Finally the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the BSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

ACCORDINGLY, IT IS ORDERED, pursuant to Section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges on the Boston Stock Exchange in the above named security is hereby approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[1]Notice of this application was given by publication in the *Federal Register*. 45 FR 76820 (November 20, 1980). The Commission has received no comments with respect to this application.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17366/December 11, 1980

In the Matter of Proposed Rule Change By

NEW YORK STOCK EXCHANGE, INC.

(File No. SR-NYSE-80-36)

ORDER APPROVING PROPOSED RULE CHANGE

On September 26, 1980, the New York Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires Exchange approval of member and member organization bank loan agreements which are given capital value for otherwise non-allowable assets and securities with no ready market value.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17242, October 23, 1980) and by publication in the *Federal Register* (45 FR 71878, October 30, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to National Securities Exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17367/December 11, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-21

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 25, 1980, a proposed rule change under Rule 19b-4 to revise Article III Section 26 of the NASD's Rules of Fair Practice and related interpretations governing member practices in connection with the distribution of investment company securities.

In particular, the proposed rule change would incorporate certain provisions of the interpretation to the "Anti-Reciprocal Rule" into Section 26 and would revise the Rule to permit a member to sell shares of an investment company that follows a disclosed policy of considering sales of its shares as a factor in the selection of broker-dealers to execute portfolio transactions. The proposed rule change would also incorporate into Section 26 certain provisions of the Explanation of the NASD's Board of Governors regarding the "Reciprocal Brokerage Rule" and the Interpretations of the Board of Governors regarding "Special Deals" and "Selling Dividends." Interpretations regarding "Arranging Loans" and "Contractual Plan Withdrawal and Reinstatement Privileges" would be withdrawn.

In addition, the proposed rule change would amend Section 26 to delete language which permits the imposition of a service charge on dividend reinvestment, delete the requirement of filing information with the NASD on increases in sales charges, clarify that principal underwriters of investment companies may purchase shares of the company for investment, and require disclosure to investors when a charge is made for repurchase of investment company shares if the charge could be avoided through redemption of the shares. The proposed rule change would also delete provisions of Section 26 regarding practices in connection with sales or redemptions of investment company securities, since Rule 22c-1 under the Investment Company Act of 1940 regulates such practices. The proposal would also permit an underwriter to pay non-uniform discounts, fees, concessions or commissions ("concessions") to another member if such concessions are disclosed in the prospectus of the investment company.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 30 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549. Reference should be made to File No. SR-NASD-80-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N. W., Washington, D. C.

Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17368/December 11, 1980

DISSEMINATION AND DISPLAY OF TRANSACTION REPORTS, LAST SALE DATA AND QUOTATION INFORMATION

ACTION: Rule amendment.

SUMMARY: In order to allow time for further development and implementation of certain quotation processing facilities, the Commission extends the effective date of portions of its rule governing the dissemination and display of market information to September 1, 1981.

EFFECTIVE DATE: On publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt, Division of Market Regulation, Securities and Exchange Commission, Room 390, 500 North Capitol Street, Washington, D. C. 20549, (202) 272-2883.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the commission announced the adoption of Rule 11Ac1-2 ("Rule") under the Securities Exchange Act of 1934, as amended ("Act").[1] Among other things, the Rule requires that (1) vendors providing quotation information provide, at a minimum, either a best bid and offer, including market identifier and size ("BBO"), derived from quotations from all reporting market centers, including third market makers, or a montage of such quotations ("BBO Requirement"); (2) vendors provide a consolidated last sale and quotation display by means of a stroke sequence involving either a fewer number of key strokes than is used to retrieve displays of individual market center information or by an equal number of key strokes if the transmit key to recall consolidated displays is more prominent ("Key Stroke Requirement"); and (3) vendors provide a display of consolidated transaction information which contains, subject to limited exceptions, all categories of information available in individual market center displays (collectively, "Vendor Display Provisions"). The Vendor Display Provisions were initially due to be effective on October 5, 1980.

Subsequent to the adoption of the Rule, however, the Commission received indications from a number of vendors that the costs which they would have to incur to comply with the BBO Requirement might be reduced if a central facility was developed which could calculate and disseminate the BBO to all vendors. The Commission understands that calculating the BBO, without the use of a central processor, would require storage by each vendor of all exchange and third market quotations and development of software to select and disseminate the BBO each time any quotation changes. Thus, a

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[1]Securities Exchange Release No. 16590 (February 19, 1980) ("Vendor Display Release") 45 FR 12391.

central processor may save vendors some storage, processing and communications costs. For this reason the Commission, on June 24, 1980, announced that it was deferring the effective date of the Vendor Display Provisions from October 5, 1980, to January 3, 1981, because it believed that those provisions:

> should not become effective. . .until the exchanges and the vendors have had an opportunity to explore appropriate methods of providing for more efficient and less costly methods of calculating the [BBO].[2]

In addition, in order to ensure quick process toward this end, the Commission also requested that the self-regulatory organizations participating in the Consolidated Quotation Plan ("CQ Plan Participants") submit to the Commission a joint written report regarding their willingness to develop a BBO central processor.

As discussed more fully below, significant progress has been made toward the development of a new central facility to calculate and disseminate the BBO ("BBO Central Processor"). As a result, the Commission has determined to defer the effective date for the Vendor Display Provisions to September 1 1981, to permit the CQ Plan Participants and the Securities Industry Automation Corporation ("SIAC"), as CQ Plan processor, the time necessary to complete development and implementation of a BBO Central Processor.

II. *Discussion*

In response to the action taken by the Commission deferring the effective date of the Rule, the CQ Plan Participants, after some delay, authorized SIAC to create a proposal for developing and implementing a BBO Central Processor. Subsequently, on August 29, 1980, SIAC submitted a BBO Central Processor proposal to the CQ Operating Committee. After receiving comments on its proposal from the CQ Plan Participants and the vendors, SIAC revised its proposal and, on October 13, 1980, again presented it to the CQ Operating Committee for consideration.

SIAC proposed that the CQ Operating Committee authorize it to develop a BBO Central Processor capability in conjunction with its proposed upgrade and relocation of the New York Stock Exchange's ("NYSE") Market Data System and accompanying upgrade of the computer, communications and processing systems employed by the consolidated quotation and transaction reporting systems ("CQS and CTS"). This upgrade, as proposed, would, among other things, (1) split the CQS and CTS data streams so that each system would depend on separate computer hardware and communications lines[3]; (2) upgrade the computer hardware for both systems; (3) add higher capacity CQS communications lines and (4) employ the new CQS processor and lines to calculate and disseminate the BBO. In response to concerns raised by certain vendors over the costs to them entailed in receiving information from SIAC's new higher capacity communications lines, SIAC also indicated that CTS and CQS information (but not BBO information) would continue to be available to vendors through

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[2]Securities Exchange Release No. 16924 (June 24, 1980) at 4 ("Deferral Release"), 45 FR 44922 at 44923. The Commission also raised concerns that time lags in updating Autoquote bids and offers might cause the BBO display to be misleading. These delays raised the possibility that brokerage firms, registered representatives and investors ...quiring for the BBO during the time interval between dissemination of changes in the quotation in the primary market and generation of corresponding changes in regional quotations by the Autoquote systems may be misled as to the "true" BBO by a stale quotation from a regional exchange.

Subsequently, Quotron Systems, Inc. ("Quotron"), the processor of Autoquote for the Boston ("BSE"), Midwest ("MSE") and Pacific ("PSE") Stock Exchanges, has made certain revisions to the PSE's Autoquote system which have reduced time delays in that system from approximately one minute both at the opening and during the trading day to five seconds at the opening and one second during the trading day. Moreover, Quotron has indicated to the Commission's staff that it intends to take similar action, if necessary, with respect to the Autoquote systems of the BSE and MSE. These enhancements, in conjunction with SIAC's planned systems upgrade, which will be discussed in more detail *infra*, should eliminate the Commission's regulatory concerns regarding misleading information.

[3]The National Association of Securities Dealers and the Philadelphia Stock Exchange, which presently supply transaction and quotation information to SIAC over one line, would, however, be permitted to continue to do so.

lower capacity lines. Accordingly, if a vendor chose to separately calculate the BBO it would not have to make the system changes entailed in receiving information through SIAC's new upgrade lines.

The Commission understands that the CQ Operating Committee unanimously approved "in principle" SIAC's proposal.[4] In addition, the Commission understands that the CQ Operating Committee authorized the NYSE's counsel to draft an amendment authorizing the development, by SIAC, of a BBO Central Processor capability and SIAC to draft final specifications for its upgrade. Finally, the Commission has been informed that representatives of SIAC and the CQ Operating Committee held an informational meeting with the vendors in which SIAC's revised proposal was described and that, while the vendors indicated that they would have to review the proposal in detail, none raised any serious concerns at the meeting.

The Commission continues to believe that the Vendor Display Provisions, especially the BBO Requirement, are essential both for the successful operation of the CQS and to enhance the ability of public investors to ensure best execution of their orders. However, the Commission also believes that the development of a BBO Central Processor would be the most efficient and least costly manner of calculating and disseminating the BBO. Accordingly, the Commission consistently has encouraged the industry to create such a capability within a time period which would not unduly delay the effective date of the Vendor Display Provisions.

While progress toward developing a BBO Central Processor has been slow, it now appears that each of the CQS participants are committed to developing such a capability along the guidelines set forth in SIAC'S revised proposal. In addition, the vendors appear generally positive about SIAC's revised proposal even though, if they choose to receive the BBO from SIAC, they will have to revise their systems to accept information from SIAC's new, higher capacity, communications lines. Accordingly, the Commission now believes that it is highly probable that a Central BBO Processor will be implemented in the near future.

In light of the above, the Commission believes that it is appropriate to delay the effective date of the Vendor Display Provisions until September 1, 1981, in order to provide the CQ Plan Participants and SIAC the time necessary to develop and implement a central BBO Processor. The Commission understands that SIAC has indicated to the CQ Plan Participants that, barring any delays in approval by the CQ Operating Committee of the final specifications, the upgrade, including the implementation of the BBO Central Processor, could be accomplished by August, 1981. Therefore, the Commission anticipates that no further deferral of the Vendor Display Provisions will prove necessary.[5]

For the reason stated above and pursuant to the Administrative Procedure Act (5 U.S.C. §551 *et seq.*), the Commission finds for good cause that notice and public procedure of this amendment to the Rule are impacticable, unnecessary and contrary to the public interest and that there is good cause for making this amendment effective immediately. The Commission also finds that adoption of this amendment to the Rule does not impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

The Securities and Exchange Commission, acting pursuant to the Act, and particularly Sections 1, 3, 6, 9, 10, 15, 17 and 23, Pub. L. No. 78-291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by Sections 2, 3, 4, 11, 14 and 18, Pub. L. No. 94-29, Stat. 97, 104, 121, 137 and 155 (15 U.S.C.§§*78b, 78c, 78f, 78i, 78j, 78o, 78g, and 78w); Section 15A, as added by Section 1, Pub. L. No. 75-219, 52 Stat. 1070, as amended by Section 12, Pub. L. No. 94-29, 89 Stat. 127 (15 U.S.C. §78o-3); Section 11A, as added by Section 7, Pub. L. No. 94-29, 98 Stat. 111 (15 U.S.C.* §78K-1), hereby amends Paragraph (h) of Section 240.11Acl-2 of Title 17 of the Code of Federal Regulations to postpone to September 1, 1981, the effective date of paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) of said Section 240.11Acl-2. The text of the amendment is as follows:

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[4]The CTA Operting Committee also has authorized SIAC's proposed upgrade to the extent it affects the consolidated transaction reporting system.

[5]In this connection, the Commission requests that SIAC provide the Commission with a complete description of, and timetable for, the completion of the planned upgrade as well as periodic status reports, on no less than a quarterly basis, on progress toward the implementation of a BBO Central Processor and completion of the planned upgrade.

PART 240 — GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.11Acl-2 Display of transaction reports, last sale data and quotation information.

* * * * *

(h) *Effective date.* The effective date of this section shall be April 5, 1980, except for paragraph (c)(2)(vi), which shall become effective on July 5, 1980, and paragraphs (b)(2)(ii), (b)(2)(vi) and (c)(2)(i), (ii), (iv), (v) which shall become effective on September 1, 1981.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21821/December 5, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

ARKANSAS POWER & LIGHT COMPANY
First National Building
Little Rock, Arkansas 72203

ARKANSAS-MISSOURI POWER COMPANY
405 West Park Street
Blytheville, Arkansas 72315

ASSOCIATED NATURAL GAS COMPANY
405 West Park Street
Blytheville, Arkansas 72315

(70-6326)

NOTICE OF PROPOSAL TO MERGE ASSOCIATE PUBLIC UTILITY COMPANIES

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Arkansas Power & Light Company ("AP&L") and Arkansas-Missouri Power Company ("Ark-Mo"), each a public utility subsidiary of Middle South, and Associated Natural Gas Company ("Associated"), a public utility subsidiary of Ark-Mo, have filed a joint application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 3(a)(2), 6, 7, 9(a), 10, 12(b), 12(d) and 12(f) of the Act and Rules 2(a)(2), 43, 44, 45 and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Middle South presently owns all the outstanding common shares of AP&L and Ark-Mo. Ark-Mo, in turn, owns all the outstanding common shares of Associated. It is proposed that Ark-Mo will be merged into AP&L with Associated becoming a wholly owned subsidiary of AP&L.

The properties of AP&L consist of facilities for the generation, transmission and distribution of electric power and energy and other property necessary to repair, maintain and operate those facilities for the furnishing of electricity to the public. These facilities extend into 62 of the 75 counties in Arkansas, AP&L also provides electric service in a small area of Tennessee. As of July 31, 1980, AP&L provided electric service to 470,401 customers.

Ark-Mo operates facilities for the generation, transmission and distribution of electric power and energy other property necessary to repair, maintain and operate those facilities for the furnishing of electricity to the public. These facilities extend into 8 counties in northeastern Arkansas and 12 counties in southeastern Missouri. Ark-Mo's generating capacity is limited, its largest generating station consisting of three gas turbines with a net capability of 188 MW and operated by Ark-Mo under a long-term net lease. The properties operated by Ark-Mo are contiguous to, and physically interconnected with, those of AP&L. During the twelve months ended July 31, 1980, the other operating subsidiaries of Middle South, including AP&L, provided through AP&L's transmission system approximately 22 percent of Ark-Mo's energy requirements. As of July

31, 1980, Ark-Mo provided electric service to 59,130 customers.

Associated owns and operates natural gas transmission and distribution facilities in parts of northeastern Arkansas and southeastern, western and northern Missouri. As of July 31, 1980, Associated provided natural gas service to 61,364 customers.

In order to reduce duplication of corporate organization, accounting and operation and to consolidate into one corporate entity, in the interest of increased economic efficiency, electric operations which, with minor exceptions, are already operated as an integrated system, AP&L proposes to acquire all the outstanding shares of common stock of Ark-Mo from Middle South and to effect the liquidation and dissolution of Ark-Mo and the distribution of its assets to AP&L, including the outstanding shares of common stock of Associated ("Associated Common Stock") held by Ark-Mo. The consummation of these proposed transactions, is expected to occur on or about January 1, 1981.

Ark-Mo's proprietary capital, long-term debt (including current maturities) and short-term debt as of July 31, 1980, were in each case as follows:

Proprietary capital:

Common stock - $2.50 par value; authorized, 7,000,000 shares; issued and outstanding, 4,691,988 shares	$11,729,970
Paid-in surplus	7,483,345
Retain earnings (including unappropriated, undistributed subsidiary earnings)	7,947,719
Total proprietary capital	$27,161,034

Long-term debt:

First Mortgage Bonds	
Series E, 4½%, Due 1983	$1,202,000
Series F, 5½%, Due 1988	598,310
Series G, 5⅝%, Due 1990	1,400,000
Series H. 6¼%, Due 1996	3,560,000
Series I, 9¾%, Due 2000	4,600,000
Series J, 8¾%, Due 1998	9,800,000
	$21,160,310
Debentures:	
5⅞%, Due 1983	340,000
7%, Due 1993	3,500,000
Total long-term debt	$25,080,310

Short-term debt:

Notes payable to banks	11,000,000
Notes payable to Middle South	2,100,000
Total short-term debt	$13,100,000

In anticipation of the proposed consolidation between AP&L and Ark-Mo, Ark-Mo proposes to issue and sell, and Middle South proposes to acquire from Ark-Mo, at a price of $2.50 per share, or $5,750,000 in the aggregate, 2,300,000 additional shares of the authorized but unissued common stock, $2.50 par value, of Ark-Mo. As consideration for such shares, Middle South will pay to Ark-Mo $3,650,000 in cash and will surrender to Ark-Mo for cancellation $2,100,000 principal amount of unsecured promissory notes previously issued and sold by Ark-Mo and acquired by Middle South, representing all outstanding promissory notes issued by Ark-Mo and held by Middle South. Upon consummation of the sale by Ark-Mo to Middle South of the additional shares of its common stock, Ark-Mo would immediately thereafter apply the $3,650,000 cash proceeds, together with other funds available to Ark-Mo, to the redemption, at the applicable redemption prices, of its two outstanding series of debentures which, as of July 31, 1980, aggregated $3,840,000 in principal amount. These preliminary transactions would have the effect, as of July 31, 1980, of increasing the total number of outstanding shares of Ark-Mo's common stock to 6,991,988, of increasing the amount of Ark-Mo's total proprietary capital by $5,750,000 to $32,911,034 and of eliminating debentures from Ark-Mo's capital structure.

Middle South, AP&L and Ark-Mo thereafter propose to enter into an Agreement and Plan of Consolidation of Electric Properties ("Plan") which would constitute a plan of reorganization within the meaning of Section 368 of the Internal Revenue Code of 1954, as amended. Pursuant to the Plan, and as the initial step, Middle South would effectuate an exchange with AP&L of all of Ark-Mo's then outstanding 6,991,988 shares of common stock, $2.50 par value ("Ark-Mo Stock"), for additional shares of common stock, $12.50 par value ("Additional Common Stock"), of AP&L. The number of shares of the Additional Common Stock to be issued and exchanged by AP&L with Middle South will be determined by dividing the book value per share of the Additional Common Stock into the net book value of Ark-Mo, including its investment in Associated, on or about the date of exchange of shares. As of July 31, 1980, the net book value of Ark-

Mo, including its investment in Associated, after giving effect to the sale by Ark-Mo to Middle South of the 2,300,000 shares of Akr-Mo's common stock, would be $32,911,034.

As soon as practicable after the exchange of shares, and as the second step under the Plan, AP&L, as sole holder of the Ark-Mo Stock, proposes to cause Ark-Mo to be liquidated and dissolved and its assets distributed, in kind, to AP&L in accordance with the provisions of the Arkansas Business Corporation Act. Accordingly, Ark-Mo proposes to sell, convey, transfer and assign to AP&L all of its right, title and interest in and to all of its properties, both real and personal, including any and all franchises, permits, utility easements, rights-of-way, leases and leasehold interests, any and all contracts, cash on hand and in banks, the Associated Common Stock held by Ark-Mo and a 7½% Subordinated Note due March 15, 1993 of Associated in the principal amount of $4,000,000 ("Associated Note") held by Ark-Mo. AP&L, in turn, proposes to deliver and surrender to Ark-Mo, for retirement and cancellation, the Ark-Mo Stock held by AP&L and to assume all of Ark-Mo's then outstanding liabilities and obligations, including all contractual commitments and lease obligations and obligations with respect to Ark-Mo's then outstanding short-term indebtedness represented by notes payable to banks, which, as of July 31, 1980, aggregated $11,000,000 in principal amount and which is expected to aggregate approximately $14,000,000 in principal amount at the time of such assumption of liability by AP&L.

Concerning the proposed assumption by AP&L of Ark-Mo's short-term bank indebtedness, AP&L has received authorization from the Commission to issue and sell short-term notes to various banks and commercial paper to a dealer in commercial paper in an aggregate principal amount at any one time outstanding not to exceed the lesser, from time to time, of $170,000,000 or 10 percent of AP&L's capitalization (HCAR No. 21811). The authorization requested herein, insofar as it provides for the assumption by AP&L of liability on Ark-Mo's short-term borrowings from certain of the same banks with whom AP&L will maintain separate lines of credit, is intended to constitute a separate and additional authorization for short-term borrowings by AP&L from those banks, subject to the above limitation that the total principal amount of short-term borrowings issued or assumed by AP&L at any one time outstanding may not exceed the lesser, from time to time, of $170,000,000 or 10 percent of AP&L's capitalization.

With respect to Ark-Mo's then outstanding six series of first mortgage bonds ("Ark-Mo Bonds"), AP&L will be deemed to have assumed liability on the Ark-Mo Bonds as a consequence of the liquidation of Ark-Mo and distribution of its assets to AP&L and in contemplation of the proposed exchange by AP&L immediately thereafter of its first mortgage bonds for the Ark-Mo Bonds in the following manner.

In the final step under the Plan, AP&L proposes to issue six new series of its first mortgage bonds ("AP&L 1983-2000 Series Bonds") bearing interest at the same rates, maturing on the same dates and to be issued in the same principal amounts as the Ark-Mo Bonds.

The AP&L 1983-2000 Series Bonds will be issued in exchange, on a series for series and principal amount for principal amount basis, for the then outstanding Ark-Mo Bonds.

The AP&L 1983-2000 Series Bonds are proposed to be created under and pursuant to AP&L's Mortgage and Deed of Trust, dated as of October 1, 1944, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Henry A. Theis (John W. Flaherty, successor), as Trustees, as supplemented by all indentures supplemental thereto, including a thirty-third supplemental indenture ("AP&L Mortgage"). The maturity dates, annual rates of interest, interest payment dates and redemption prices applicable to the AP&L 1983-2000 Series Bonds would be the same as those presently applicable to the corresponding Ark-Mo Bonds being surrendered in exchange therefor, and the sinking fund provisions applicable to the AP&L 1983-2000 Series Bonds would be substantially similar to those applicable to the Ark-Mo Bonds. In other respects, it is contemplated that the AP&L 1983-2000 Series Bonds would have terms and provisions, including those relating to dividend restrictions and limitations on the issuance of additional bonds, which are similar to those applicable to first mortgage bonds currently outstanding under the AP&L Mortgage.

In exchange for the delivery to the holders of the Ark-Mo Bonds of the AP&L 1983-2000 Series Bonds, such holders would deliver and surrender to the corporate trustee under the Ark-Mo Mortgage, for retirement and cancellation, all the Ark-Mo Bonds, whereupon Ark-Mo's Indenture of Mortgage, dated

December 1, 1944, as supplemented, under which the Ark-Mo Bonds were issued ("Ark-Mo Mortgage"), would be immediately satisfied and discharged and cease to be of any further effect. The satisfaction and discharge of the Ark-Mo Mortgage would free for use as a basis for the issuance of additional first mortgage bonds under the AP&L Mortgage, upon consummation of the Plan, property which is currently subject to the lien of the Ark-Mo Mortgage.

All of the Ark-Mo Bonds were originally issued and sold by Ark-Mo in private placement transactions and are currently held by a total of 23 persons, consisting principally of insurance companies, banks and other institutional investors or their nominees. In view of the uniqueness and complexity of the proposed bond exchange arrangements, Ark-Mo contemplates retaining Lehman Brothers Kuhn Loeb Incorporated, New York, N. Y. ("Lehman Brothers"), as financial advisor to assist Ark-Mo in obtaining the consent of the holders of the Ark-Mo Bonds to the delivery and surrender for cancellation of their securities in exchange for the AP&L 1983-2000 Series Bonds. It is anticipated that the formal consent of such holders to the terms of the exchange would be evidenced by their separate execution of a Bond Exchange Agreement, pursuant to which AP&L would issue to such holders the AP&L 1983-2000 Series Bonds and the Ark-Mo Bonds would be delivered and surrendered for cancellation. The Bond Exchange Agreement would provide that no such exchange of securities would be effected unless all holders of the Ark-Mo Bonds agree to the exchange.

Upon consummation of the Plan, AP&L will continue to provide electric service to Ark-Mo's customers and will be the sole holder of the Associated Common Stock and the Associated Note. As the parent company of Associated, AP&L will continue efforts to effect the disposition of the natural gas business conducted by Associated, either through a sale of its assets or of the Associated Common Stock, pursuant to the Commission's May 5, 1971 order (Holding Company Act Rel. No. 17116).

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that the proposed transaction is subject to the jurisdiction of the Arkansas Public Service Commission, the Missouri Public Service Commission and the Tennessee Public Service Commission. It is further stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21822/December 5, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

(70-6476)

ORDER AUTHORIZING PROPOSAL TO ENTER INTO

PARTNERSHIP AGREEMENTS RELATING TO CONSTRUCTION AND OWNERSHIP OF NATURAL GAS PIPELINE AND TO ISSUE AND SELL NOTES IN SUPPORT THEREOF

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and Columbia Gulf Transmission Company ("Columbia Gulf"), a wholly-owned natural gas transmission subsidiary of Columbia, have filed with this Commission an application-declaration and an amendment thereto pursuant to Sections 6(b), 9 and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 51 promulgated thereunder concerning the following proposed transactions.

Columbia Gulf and four other unaffiliated natural gas transmission companies have entered into partnership agreements which relate to construction and ownership of a new 800 mile natural gas pipeline system, to be known as the Trailblazer system, through which new supplies of natural gas being developed in Wyoming, Utah, Idaho, Nebraska and Colorado will be transported, directly and by displacement, to the mid-western and eastern markets owned by the partners. The partners are Colorado Interstate Gas Company ("Colorado"), Columbia Gulf, Mountain Fuel Resources, Inc. ("Resources"), Natural Gas Pipeline Company of America ("Natural"), and Northern Natural Gas Company ("Northern"), hereafter referred to as the Companies.

The Trailblazer system, which is estimated to cost $533 million, will be comprised of three segments. The western segment, referred to as the Overthrust Pipeline and named for the "Overthrust" discovery areas, will be approximately 88 miles long and will cost an estimated $57 million. It will be jointly owned by all five partners and will be designed, constructed and operated by Resources. Construction will be initially financed out of $17.1 million in partnership equity contributions (Columbia Gulf's contribution will be approximately $3.4 million) and the remaining $39.9 million with bank loans. The short-term bank loans will be repaid with proceeds from the subsequent issuance of long-term debt securities. The debt securities issued will be an obligation of the partnership, not of Columbia Gulf or any of the partners. Initial capacity of this pipeline will be approximately 400 million cubic feet per day.

The middle segment, Colorado Interstate Pipeline, will extend approximately 264 miles from near Rock Springs, Wyoming to a point south of Cheyenne, Wyoming, near Rockport, Colorado and will cost an estimated $195 million. This segment will be owned, built, financed and operated by Colorado and will have an initial capacity when completed of 665 million cubic feet of gas per day.

The eastern segment, known as the Trailblazer Pipeline, will be jointly owned by Natural, Columbia Gulf and Northern, and will transport gas supplies eastward for those partners. Total cost of this segment, which will consist of 445 miles of 36 inch diameter pipeline, is estimated at approximately $281 million. Natural, or its affiliate, will design, construct, and operate this segment, which will have an initial operating capacity of 525 million cubic feet of gas per day. Construction will be initially financed out of $84.3 million in equity contributions and the remainder with term bank loans. Columbia's equity contribution to the Trailblazer Pipeline segment will total approximately $28.1 million. The term bank loans for the Trailblazer Pipeline facilities will be repaid, at prevailing rates, with proceeds from a subsequent permanent financing program consisting of some combination of debt securities. The precise combination and provisions of the securities to be issued will depend upon market conditions at the time such securities are sold. The debt securities issued will be an obligation of the partnership, not of Columbia Gulf, Natural or Northern.

Columbia Gulf proposes to participate in the construction and ownership of the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through its membership in the Overthrust Pipeline Company General Partnership Agreement ("Overthrust Pipeline Company") and the Trailblazer Pipeline Company General Partnership Agreement ("Trailblazer Pipeline Company"), each of which is dated September 20, 1979, and amended and restated as of February 21, 1980. The central segment of the Trailblazer system, to be constructed, financed, owned and operated by Colorado alone, did not require any partnership agreement covering all three pipeline segments, which together form the Trailblazer system. However, an agreement covering all three pipeline segments was also entered into on September 20, 1979, and amended and restated as of February 21, 1980. It coordinates their activities and is called the Pipeline Project Agreement for the Trailblazer System. The parties are Colorado, Columbia Gulf, Columbia Gas Transmissin Corporation, Resources,

Mountain Fuel Supply Company, Natural, Northern, Overthrust Pipeline Company and Trailblazer Pipeline Company.

The Overthrust and Trailblazer Pipeline Company Agreements provide, in each case, that the partnerships shall be managed by management committees consisting of a representative selected by each partner and that no partner may incur any obligation on behalf of the management committees. In the event that a partner defaults with respect to its obligation to make a capital contribution, the agreements provide that the non-defaulting partners may contribute or lend funds to the partnership in equal amounts which total the amount of the default, and after 60 days, may require the defaulting partner to assign its interest in the partnership to a third party. All distributive shares of income, profit, loss, deduction or credit are allocable to the partners in accordance with each partner's capital participation which, in the case of the Overthrust Pipeline Company, is one-fifth, and, in the case of the Trailblazer Pipeline Company, one-third. Except with the unanimous consent of the management committee, a partner may not transfer any interest in either partnership, and no partner may withdraw from either partnership, except that the management committees may request Columbia Gulf to withdraw in the event that this Commission does not approve any capital contribution to the partnerships for which Columbia Gulf is obligated by the partnership agreements.

Columbia Gulf proposes to finance its participation in the Overthrust and Trailblazer Pipeline segments of the Trailblazer system through the issuance and sale to Columbia of up to $33 million of either 20 year installment promissory notes and/or 7 year floating rate term notes. The installment notes are to be unsecured and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on September 30 of each of the years 1982 to 2001, inclusive. Interest on the notes would accrue from the date of their semi-annually in accordance with the provisions of said notes. The interest rate would be the effective cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%.

Columbia sold $100,000,000 principal amount of debentures on August 13, 1980 (HCAR No. 21671), at an effective cost of money of 12.9%. Subject to market conditions, Columbia anticipates selling additional long-term securities during the project's construction period. Therefore, installment notes issued prior to such additional sale of debentures would bear an interest rate of 12.9% and installment notes issued subsequent to any of Columbia's future debenture issues would carry an interest rate related to the last such sale prior to the issuance of said notes. Should Columbia issue any notes under the Revolving Credit and Term Loan Agreement, dated as of April 1, 1980, ("Agreement") among Columbia and certain banks named therein, then Floating Rate Term Notes ("Floating Rate Notes") due March 31, 1987 would be issued by Columbia Gulf in lieu of installment notes. Such would be dated the date of their issue and would bear interest at Columbia's effective cost of money of any borrowings under the Agreement. Any such Floating Rate Notes issued would be refinanced upon maturity.

The fees and expenses to be incurred in connection with the proposed transactions are $23,500. It is stated that no state commission and no federal commission, other than this Commission, Has jurisdiction over the proposed transactions. The participants in the Trailblazer system have applied to the Federal Energy Regulatory Commission ("FERC") for a certificate of public convenience and necessity to build and operate the pipeline (FERC Docket No. CP 79-80).

Due notice of the filing of said application-declaration, as amended, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21771) and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be and hereby is granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21823/December 5, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT OF CANADA LTD.
COLUMBIA GAS DEVELOPMENT CORPORATION
20 Montchanin Road
Wilmington, Delaware 19807

COLUMBIA GAS TRANSMISSION CORPORATION
1700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25314

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
99 North Front Street
Columbus, Ohio 43215

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
340 17th Street
Ashland, Kentucky 41101

COLUMBIA GULF TRANSMISSION COMPANY
3805 West Alabama Avenue
Houston, Texas 77027

(70-6520)

NOTICE OF PROPOSED OPEN ACCOUNT ADVANCES TO SUBSIDIARY COMPANIES BY HOLDING COMPANY IN CONNECTION WITH INTRASYSTEM PREPAYMENT OF PROMISSORY NOTES AND RELATED TRANSACTIONS

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly-owned subsidiary companies listed above, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 6(b), 7, 9(a), 10, and 12(b) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

It is stated that during the winter heating season, Columbia's distribution subsidiary companies generate substantial amounts of cash in excess of current requirements. During the same period, however, the transmission subsidiary companies generate lesser amounts of cash and have generally larger capital expenditures, requiring Columbia to advance funds to such subsidiary companies. In recent years, the Commission has authorized open account advances by Columbia to subsidiary companies and certain related transactions which are designed to alleviate this situation. The present filing requests authorization to continue such transactions during the calendar year 1981.

It is proposed that the subsidiary companies listed below will prepay from time to time prior to the end of 1981 with excess cash in aggregate amounts not to exceed the amounts set forth below, a portion of their outstanding installment promissory notes, or for Development Canada, demand promissory notes, ("Notes") held by Columbia. The following amounts represent the estimated aggregate maximum excess funds that such companies are expected to accumulate at any one time during the year 1981.

Columbia Gas System Service Corp.	$9,000,000
Columbia Gas Transmission Corp.	270,000,000
Columbia Gas of Pennsylvania, Inc.	55,000,000
Columbia Gas of New York, Inc.	7,500,000
Columbia Gas of Maryland, Inc.	4,000,000
Columbia Gas of Kentucky, Inc.	12,000,000
Columbia Gas of Virginia, Inc.	6,500,000
Columbia Gas West of Virginia, Inc.	20,000,000
Columbia Gas of Ohio, Inc.	125,000,000
Columbia Gulf Transmission Co.	75,000,000
Columbia Hydrocarbon Co.	5,000,000
The Inland Gas Company, Inc.	4,825,000
Columbia LNG Corp.	126,000,000
Columbia Gas Development Corp.	50,000,000
Columbia Coal Gasification Corp.	5,500,000
Columbia Gas Development of Canada Ltd.	15,000,000
	$790,325,000

In accordance with the Commission's authorization concerning the accounting treatment (HCAR No. 19054 (June 19, 1975)), Development Canada's demand promissory notes were issued to track the allocation to Development Canada of tax benefits generated from its net tax losses for years 1973 through 1980. It is stated that Development Canada should be paid a resonable rate of interest for the period of time the temporary excess funds are being used by Columbia. Therefore, it is proposed that the funds so prepaid will accrue interest credits for Development Canada at a rate equal to the fluctuating prime commercial lending rate in effect from time to time at the agent bank for Columbia's short-term line of credit. As funds are thereafter required for construction and other corporate purposes, funds will be drawn down by Development Canada in such aggregate amounts not to exceed the amount of demand promissory notes previously prepaid. All such funds will be taken down by December 31, 1981. The demand promissory notes will be repaid on a permanent basis as Development Canada incurs tax liabilities through its sale of properties and/or turnaround of timing differences resulting from prior exploration and development deductions. It is presently anticipated that tax payments in the amount of $9 million will be made by Development Canada in 1981 resulting in a concurrent deduction in the demand promissory notes.

The Notes ("Indebtedness") prepaid by the individual companies will be those bearing the highest interest rate outstanding at the time of each prepayment. Interest on such Indebtedness will cease upon prepayment and recommence upon reinstatement. As such funds are thereafter required for construction and other corporate purposes, it is proposed that advances be made on open account to such subsidiary by Columbia in such aggregate amounts not to exceed the amount of Indebtedness previously prepaid, less any current maturities applicable to Notes which have matured subsequent to the date of prepayment.

The open account loans will bear interest at the same rate or rates as borne by the equivalent principal amounts of Indebtedness previously prepaid by such subsidiary during 1980 but in reverse order to that of prepayment; i.e., working up from the lowest rate payable on the Indebtedness previously prepaid to the highest rate. It is intended that advances on open account to an individual subsidiary as proposed therein be increased or decreased from time to time in accordance with variations in the cash flow of the individual subsidiary; however, at no time will the advances outstanding under authority herein requested be in excess of the indebtedness prepaid therefore. Either at such time as the advances equal the aggregate amount of the Indebtedness prepaid or in any event not later than December 31, 1981, the Indebtedness that was prepaid will be reinstated and accepted by Columbia in repayment of the outstanding open account loans.

Financing of construction or gas storage programs of any operating subsidiary company pursuant to Commission authorization will not be consummated until such time as advances have been made in amounts equal to the amount of Indebtedness prepaid. Any subsidiary company which during 1981 has borrowed on open account from Columbia an amount smaller than the amount of Indebtedness theretofore prepaid by it, will, on December 31, 1981, reinstate its Indebtedness to Columbia in an amount sufficient to discharge its open account borrowings, and the balance of its prepaid Indebtedness will be considered to have been permanently prepaid. Such permanent prepayment would be applied against Indebtedness bearing the highest interest rates and would be consummated only with respect to Indebtedness bearing interest at a rate equal to or in excess of the rate applicable to borrowings by subsidiary companies from Columbia as of December 31, 1981. In the event that a permanent prepayment by any subsidiary company would be indicated with respect to Notes bearing an interest rate less than the rate applicable to debt purchased by Columbia from subsidiary companies at December 31, 1981, such Notes will be reinstated by the subsidiary company at or before the end of 1981.

It is stated that the proposed transactions are designed to achieve the following: (1) flexibility to prepay inventory loans with commercial banks and other short-term borrowings at the earliest possible date, (2) deferment of outside financing until aggregate system funds approach a minimum balance, (3) facilitating the internal financing of emergency requirements, and (4) allowing subsidiaries, during any period in which they have excess cash, to decrease their own net corporate interest expense.

Expenses to be incurred by Columbia and its subsidiary companies in connection with the proposed transactions are estimated at $3,750.

It is stated that the Public Service Commission of West Virginia has authorized the prepayment and reissuance of prepaid Notes by Columbia Gas of West Virginia, Inc., that the Public Service Commission of New York has authorized the reissuance of prepaid Notes by Columbia Gas of New York, Inc., that the Public Service Commission of Kentucky has authorized the reissuance of prepaid Notes by Columbia Gas of Kentucky, Inc., and that the State Corporation Commission of Virginia has authorized the reissuance of prepaid Notes by Columbia Gas of Virginia, Inc. It is represented that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. The applicants-declarants have requested that authorization be granted to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not latter than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21824/December 5, 1980

In the Matter of

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

(70-6498)

ORDER AUTHORIZING PROPOSAL TO ISSUE AND SELL FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed with this Commission an application pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder concerning the following proposed transaction.

Arkansas proposes to isssue and sell at competitive bidding up to $70,000,000 in principal amount of its first mortgage bonds ("Bonds") of a series having a term of not less than five nor more than thirty years. Arkansas will determine, and give notice to bidders of, the principal amount of the Bonds, if less than $70,000,000 and of the maturity date of the Bonds on a business day and not later than 24 hours prior to the time fixed for the presentation of the bids. The interest rate of the Bonds, (which will be a multiple of ⅛ of 1%) and the price, exclusive of accrued interest, to be paid to Arkansas for the Bonds (which will not be less than 100% nor more than 102¾% of the principal amount thereof) will be determined by competitive bidding.

The Bonds are to be issued as a new series of Arkansas' First Mortgage Bonds under its Mortgage and Deed of Trust, dated as of October 1, 1944, to Guaranty Trust Company of New York (currently known as Morgan Guaranty Trust Company of New York) and Henry A. Theis (John W. Flaherty, successor), as Trustees, as heretofore supplemented and as proposed to be further supplemented by a Thirty-second Supplemental Indenture ("Supplemental Indenture") thereto. The Supplemental Indenture will include a prohibition, for a period of not more than five years, against refunding the Bonds, directly or indirectly, with the proceeds of funds borrowed at a lower effective interest cost.

Arkansas proposes to use the net proceeds derived from the issuance and sale of the Bonds for the payment of a portion of the short-term indebtedness incurred or estimated to be incurred for financing Arkansas' construction program. Arkansas' 1980 construction program is expected to result in expenditures of approximately $228,800,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated to be $190,000. Legal fees of counsel for the successful bidders are estimated at $20,000. The Arkansas Public Service Commission and the Tennessee Public Service Commission have authorized the proposed transaction. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21773), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate and in the public interest and in the interest of investors and consumers that said application be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21825/December 5, 1980

In the Matter of

CENTRAL POWER & LIGHT COMPANY
Corpus Christi, Texas

(70-6512)

ORDER AUTHORIZING ISSUANCE AND SALE OF FIRST MORTGAGE BONDS AT COMPETITIVE BIDDING

Central Power & Light Company ("CP&L"), an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its first mortgage bonds having a maturity date of December 1, 1990. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be a part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951), would be needed to provide service to customers of CP&L if it were not part of the Central and South West System.

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1982 are estimated at $236,000,000, $212,000,000, and $246,000,000, respectively. Approximately $201,000,000 of the 1980 estimated total had been expended as of October 31, 1980.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21758), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effective forthwith, subject to the terms and conditions prescribed in Rules 24 and 50 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21826/December 5, 1980

In the Matter of

PUBLIC SERVICE COMPANY OF OKLAHOMA
ASH CREEK MINING COMPANY
P.O. Box 201
Tulsa, Oklahoma 74102

(70-5868)

PROPOSAL TO EXTEND AND INCREASE SHORT-TERM LOANS TO MINING SUBSIDIARY

Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, and Ash Creek Mining Company ("Ash Creek"), a mining subsidiary of PSO, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to Sections 6, 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder concerning the following proposed transaction.

By order dated November 30, 1976 (HCAR No. 19777), PSO was authorized to organize and acquire all of the authorized common stock of Ask Creek, and to transfer to Ash Creek all of its existing coal interests in exchange for Ash Creek's common stock in an aggregate par value equal to PSO's capital costs relating to the coal interests. PSO transferred to Ash Creek properties having a cost basis of $3,839,040 in return for 383,904 shares of Ash Creek's common stock, par value $10 per share. Additional properties have not yet been transferred and remain in PSO ownership. PSO was also authorized to make short-term loans to Ash Creek, through December 31, 1977, in the form of either open account advances or evidenced by notes, in an aggregate amount not to exceed $12,500,000 at any one time outstanding, to finance Ash Creek's fuel programs. That authorization has subsequently been extended pursuant to supplemental orders (HCAR Nos. 20329, 20414, 20476, 20505, 20568, 20646, 20710, 20754, 20863, 20926, 20975, 21049, 21364, 21486, 21556, 21640 and 21724). In the latest such supplemental order dated September 23, 1980 (HCAR No. 21724), PSO was authorized to continue its financing of Ash Creek through December 31, 1980, in the maximum principal amount of $1,425,000 outstanding at any one time.

By post-effective amendment applicants-declarants request an extension of PSO's authorization to finance Ash Creek through December 31, 1981, in the maximum principal amount of $1,975,000 outstanding at any one time. Said amount includes approximately $1,425,000 outstanding of such loans expected to be outstanding at December 31, 1980, and $550,000 to cover budgeted expenditures through December 31, 1981.

The reason for such loans is continued and indefinite suspension of mining operations at Ash Creek, pending the securing of permission from the Wyoming Department of Environmental Quality for

coal trucks to use the state highway serving Ash Creek's proposed coal outloading facility for PSO mine No. 1 near Sheridan, Wyoming, and the availability of federal coal leasing on PSO's States Ranch property. Accordingly, Ash Creek has not budgeted expenditures for further coal exploration and mine development activities or for construction of a coal outloading facility. Expenditures are needed, however, for maintenance and administrative costs required to maintain the interests of Ash Creek and PSO.

It is stated that PSO and Ash Creek do not contemplate further development of the coal interests described in this filing, and that they continue to hold and maintain them until they can negotiate a satisfactory sale of the interests to a non-affiliate. Such sale is contemplated irrespective of any actions taken by the Wyoming Department of Environmental Quality with respect to the coal outloading facility and irrespective of any possible future availability of a federal coal leasing program on PSO's States Ranch property.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $400 in legal fees. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 30, 1980 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21827/December 5, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

CENTRAL POWER AND LIGHT COMPANY
P. O. Box 2121
Corpus Christi, Texas 78403

SOUTHWESTERN ELECTRIC POWER COMPANY
P. O. Box 21106
Shreveport, Louisiana 71156

PUBLIC SERVICE COMPANY OF OKLAHOMA
P. O. Box 201
Tulsa, Oklahoma 74102

WEST TEXAS UTILITIES COMPANY
P. O. Box 841
Abilene, Texas 79604

CENTRAL AND SOUTH WEST SERVICES, INC.
2700 One Main Place
Dallas, Texas 75250

(70-6515)

NOTICE OF PROPOSED EXTENSION OF SYSTEM MONEY POOL ARRANGEMENT, PROPOSED ESTABLISHMENT OF NEW SHORT-TERM BORROWING LIMITATIONS AND REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, and five of its subsidiary companies, Central Power and Light Company ("CPL"), Southwestern Electric Power Company ("SWEPCO"),

West Texas Utilities Company ("WTU"), Public Service Company of Oklahoma ("PSO") and Central and South West Services, Inc., ("CSWS") have filed an application-declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9(a), 10, 12(b) and 12(f) thereof and Rules 43 and 45 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

By orders dated June 30, 1978 (HCAR No. 20608) through October 22, 1980 (HCAR No. 21757), CSW and its subsidiaries (collectively the "System") were authorized to incur short-term borrowings through December 31, 1981, in a maximum aggregate amount outstanding of $250,000,000. Each company was authorized to borrow up to the maximum amounts indicated below provided that the aggregate principal amount outstanding of such borrowings for the System did not exceed $250,000,000:

CPL	$100,000,000
PSO	180,000,000
SWEPCO	75,000,000
WTU	15,000,000
CSWS	4,000,000

Applicants are seeking authorization to make short-term borrowings in an aggregate principal amount outstanding not to exceed $300,000,000 through June 30, 1982. In no case will borrowings exceed 10% (or, in the case of PSO and WTU, 20%) of the aggregate amount of the borrower's secured debt, capital stock and premiums thereon and surplus (consolidated, in the case of CSW and PSO) at the time of borrowing. Each company may borrow individually up to the maximum amounts indicated below provided that the total aggregate principal amounts outstanding of such borrowings for the system do not exceed the limit stated above:

CSW	$300,000,000
CPL	110,000,000
PSO	200,000,000
SWEPCO	80,000,000
WTU	35,000,000
CSWS	10,000,000

The borrowings would be effected either through the CSW system money pool, the sale of commercial paper notes to dealers and/or bank borrowings in the event such borrowings would produce a lower cost of money than the issue of commercial paper and to the extent that excess funds through the System mney pool were inadequate to fulfill the subsidiaries requests for short-term loans. The aggregate borrowings from any one or combination of these sources would not exceed the limits stated above. At August 31, 1980, the subsidiaries had the following amounts of short-term borrowings outstanding, all in the form of open account advances from CSW:

CPL	$36,000,000
PSO	12,900,000
SWEPCO	24,000,000
CSWS	2,350,000
WTU	5,700,000

Proceeds of any short-term borrowings (other than borrowings by CSWS), would be used (1) by CPL, PSO (consolidated), SWEPCO and WTU for the interim financing of their capital programs during the period and to provide for other temporary working capital needs; (2) by CSW to loan or contribute as capitals to the subsidiaries for such purposes, and (3) to repay borrowings previously incurred for such purposes. Proceeds of borrowings by CSWS will be used to provide working capital for CSWS's operations or to repay borrowings used for such purpose. The estimated capital programs for 1981 and 1982 respectively for the operating companies are as follows: CSW (consolidated) $638,000,000 and $860,000,000; CPL, $198,000,000 and $278,000,000; PSO, $185,000,000 and $254,000,000; SWEPCO, $204,000,000 and $281,000,000; and WTU, $50,000,000 and $47,000,000. None of the proceeds from such borrowings will be utilized to pay the costs of facilities ("interconnection facilities") which would be unnecessary for the operating companies to provide customer service if such operating company was not part of the CSW System. Nor will operating companies make expenditures for the construction or acquisition of any such facility before all funds authorized under the instant application-declaration have been expended. Such interconnection facilities include all facilities, construction or acquisition of which is or would be part of any proposal for synchronous interstate operation of the CSW System forming the subject of the proceeding in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951) which would not also be required for the

continuation of dis-synchronous interstate/intrastate operation in the mode presently prevailing in the CWS System.

Short-term money operations for the CSW System are coordinated through the use of a money pool which consists of surplus funds of the operating subsidiaries, surplus funds of CSW, external borrowings by CSW from banks and from its sale of commercial paper. Loans are made to the subsidiaries from these funds in the order stated. For example, surplus funds of the operating companies must be exhausted before surplus funds in the treasury of CSW are used. Each borrowing subsidiary will borrow pro rata from each lending subsidiary and CSW (when CSW is lending) pro rate in the proportion which the total amount being loaned by that lending subsidiary (or CSW) through the money pool bears to the total amount being loaned through the money pool. No loan will be made by CSW or a subsidiary if the borrowing subsidiary could borrow more cheaply directly from banks or through the sale of its own commercial paper, subject to further authorization by Commission. The determination of whether a subsidiary or CSW has at any time surplus funds to lend will be made by its respective treasurer or chief financial officer on the basis of cash flow projections. No subsidiary may make a loan to CSW.

Loans to the subsidiaries through the money pool may be made pursuant to open account advances. However, any lender may require the issuance of a promissory note evidencing the transaction. Notes evidencing loans from CSW must mature within one year of issuance and be prepayable in whole or part at any time without premium or penalty. Notes for loans from subsidiaries, would mature no later than the earlier of the date the borrower could be expected to obtain funds to pay the note or the date the lender needs the excess funds for its own use. If a note matures because the lender needs the funds, either another subsidiary with excess funds will take the note through the money pool or CSW would make the loan from available corporate funds or external borrowings.

The daily interest rate on outstanding money pool loans from internal sources will be based on the weighted average daily cost to CSW for external borrowings, or if no such borrowings are outstanding, the daily rate published in *The Wall Street Journal* for General Motors Acceptance Corporation commercial paper of comparable term. The interest rate applicable to loans made from external funds borrowed by CSW would be equal to CSW's net costs for such borrowings.

In recent years CSW has customarily satisfied its short-term borrowing needs and those of its subsidiaries by the sale of commercial paper to commercial paper dealers. It is now seeking further authorization to issue Commercial paper from time to time through June 30, 1982. The commercial paper would have varying maturities not to exceed nine months from the date of issuance, and would be in varying denominations of not less than $25,000,000. The commercial paper notes would be issued and sold by CSW directly to commercial paper dealers at a rate not to exceed the rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity sold by issuers to commercial paper dealers. The interest cost would not exceed the effective cost of money for unsecured prime commercial bank loans prevailing on the date of issue of such commercial paper. The purchasing dealer would reoffer such notes at a rate of 1/10th of 1% per annum or less than the rate to the issuer. The dealer would reoffer the notes to no more than 200 designated customers on a list prepared in advance and provided to this Commission. The customer list will include commercial banks, insurance companies, corporate pension funds, investment funds, foundations, colleges and universities, municipal and state benefit funds, eleemosynary institutions, finance companies and nonfinancial corporations investing surplus funds. It is expected that the commercial paper notes will be held by the customers to maturity, but should they wish to resell prior to maturity, the dealer, pursuant to an oral repurchase agreement, will repurchase such notes and reoffer them to others on said list. CSW's commercial paper would not be prepayable prior to maturity and could not be extended, although certain of the commercial paper could be paid at maturity by application of proceeds from the issuance and sale by CSW of other commercial paper or bank notes issued prior to or contemporaneously with such maturity. At final maturity, the commercial paper borrowings would be repaid by CSW from the payment of loans made to the subsidiaries and from other internal sources, or from other short-term borrowings, if authorized by the Commission. CSW also requests authorization to sell commercial paper directly to certain approved financial institutions on terms identical to the dealer-placed notes. Such direct sales would be made only to institutions on a list furnished to the

Commission and would be undertaken only if the resulting cost of money was equal to or less than that available from dealer-placed commercial paper or bank borrowings.

CSW believes that the use of commercial paper would in most periods result in interest costs lower than those that would result from borrowings from commercial banks. Should borrowings from banks produce a lower cost of money than the issue of commercial paper notes, and to the extent that CSW's corporate funds and subsidiary loans of excess funds through the money pool are inadequate to fulfill the subsidiaries' requests for short-term loans, CSW or the subsidiaries would borrow from banks from time to time. CSW and the subsidiaries also seek authorization to borrow from banks when the cost of such borrowing is greater than the cost of equivalent borrowings through the money pool or through commercial paper sales by CSW, if bank borrowings are necessary to maintain lines of credit with lending banks. Any such borrowings would not exceed $5,000,000 for CSW or any subsidiary and $10,000,000 collectively for the CSW System.

Bank borrowings would be evidenced by promissory notes issued to banks. These notes would be dated as of the date of the borrowing, mature within 12 months, bear interest from issuance to maturity at the prime interest rate or a multiple thereof and be prepayable, in whole or part, without penalty or premium. The cost of borrowing would be at prime, with the exception of First National Bank at Dallas, Security Pacific National Bank and Chemical Bank which would be at 103%, 104% and 107% of prime, respectively.

Compensation arrangements under the bank lines of credit are on a balance or fee basis. The maximum compensating balance is 10% of the line of credit resulting in an effective interest cost of 20.55% based on a prime commercial credit rate of 18.5%. The most onerous commitment fee arrangement provides for borrowing at 107% of the prime rate with a commitment fee of 7% of the prime rate on the line which would result in a maximum effective interest cost of 21.09% based on a prime commercial credit rate of 18.5%.

The cost of compensating balances and fees paid to banks to maintain credit lines will be initially allocated to the subsidiaries on the basis of 10% to WTU and 30% each to CPL, PSO and SWEPCO. Such costs are retroactively reallocated at the end of each calendar year on the basis of relative maximum outstanding short-term borrowings of each company (including CSW when it borrows for its own corporate needs). This provides for a reallocation to each company of that proportion of the total line of credit costs equal to the percentage that its maximum short-term borrowings during the year represent of the aggregate maximum short-term borrowings of all companies on a non-coincidental basis.

In addition, CSW requests authorization to continue arrangements for borrowings of up to $10,000,000, $5,000,000, $10,000,000, and $10,000,000 from funds managed by the trust departments of Mercantile National Bank at Dallas, First City Bank of Dallas, First City National Bank of Houston, and First National Bank and Trust Company of Tulsa, Oklahoma, respectively. Trust fund borrowings would be evidenced by notes payable on demand and bearing interest at a rate equal to the highest annual interest rate on 30 to 179-day commercial paper placed by General Motors Acceptance Corporation as reported in *The Wall Street Journal*.

CSW states that the issuance of bank notes is excepted from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph (a)(2) thereof. An exception from the competitive bidding requirements of Rule 50(b) is requested for the issuance by CSW of commercial paper pursuant to subparagraph (a)(5) thereof, because it is impractical to obtain competitive bids for commercial paper and current commercial paper rates for prime issuers are published in daily financial publications.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. It is further stated that the fees and expenses to be incurred in connecton with the proposed transaction are estimated to be $22,300, including rating fees of $20,800.

It is requested that the reports required by Rule 24 be provided on a quarterly basis.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which

he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21828/December 8, 1980

In the Matter of

SYSTEM FUELS, INC.
New Orleans, Louisiana

ARKANSAS POWER & LIGHT COMPANY
Little Rock, Arkansas

LOUISIANA POWER & LIGHT COMPANY
New Orleans, Louisiana

MISSISSIPPI POWER & LIGHT COMPANY
Jackson, Mississippi

NEW ORLEANS PUBLIC SERVICE, INC.
New Orleans, Louisiana

(70-6519)

ORDER AUTHORIZING SHORT-TERM BANK BORROWINGS PURSUANT TO A LOAN AGREEMENT; GUARANTEE OF SUCH BORROWINGS BY PARENT COMPANIES

System Fuels, Inc. ("SFI"), a fuel procurement subsidiary of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. (collectively, the "operating companies"), each a public utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration and an amendment thereto with this Commission pursuant to Sections 6(a), 7 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(2) promulgated thereunder regarding the proposed transaction.

By order dated August 1, 1979 (HCAR No. 21171) SFI was authorized to make unsecured borrowings through December 8, 1980 of up to $75,000,000 at any one time outstanding under a line of credit with Hibernia National Bank in New Orleans ("Hibernia"). As of August 31, 1980, SFI's borrowings under this line of credit aggregated $3,900,000 in principal amount, and it is anticipated that at maturity, on December 8, 1980, such borrowings will aggregate approximately $45,000,000 in principal amount. In order to provide SFI funds with which to (a) repay its borrowings from Hibernia at maturity, (b) finance a portion of SFI's fuel oil inventory, (c) finance SFI's acquisition of natural gas and (d) finance other expenditures in connection with its fuel supply program, and to meet SFI's commitment to endeavor to obtain funds for its corporate expenditures from external sources under advantageous arrangements in lieu of making borrowings from its parent companies, SFI proposes to enter into a Loan Agreement ("loan agreement") with Citibank, N.A. ("bank").

Pursuant to and subject to the limitations set forth in the loan agreement, SFI will be entitled to borrow and reborrow from the bank, and the bank will commit itself to lend to SFI, during the period commencing on the effective date of the loan agreement ("effective date") and terminating on December 31, 1982 ("termination date"), up to an aggregate principal amount at any one time outstanding not to exceed $60,000,000 ("commitment"); provided that at no time shall the bank be obligated to make loans to SFI under the loan agreement in an aggregate principal amount at any one time outstanding in

excess of the borrowings base. As used in the loan agreement, the borrowing base is defined to mean an amount equal to 85 percent of the net book value of the assets from time to time owned by SFI reflected on SFI's balance sheet under "Property, Plant and Equipment" exclusive of leasehold improvements and construction work in progress ("collateral").

The proposed borrowings will be in addition to other borrowing arrangements currently maintained by SFI for the purpose of securing funds from external sources to finance its fuel supply business and which have previously been authorized by this Commission.

Borrowings by SFI from the bank pursuant to the loan agreement will be evidenced by a single master note of SFI ("note"), representing the obligation by SFI to pay the amount of the commitment or, if less, the aggregate unpaid principal amount of all loans made by the bank thereunder, plus accrued interest. The date and amount of each loan made by the bank, and the date and amount of each payment by SFI of principal of the loans under the loan agreement, will be recorded by the bank on a schedule annexed to the note. The note will be payable to the order of the bank, be dated the effective date, be stated to mature on the termination date, and bear interest on the unpaid principal amount thereof at a rate per annum equal to the rate of interest announced publicly by the bank in New York, New York from time to time as the bank's base rate. Based on the commitment fee of 1/2 of 1% per annum on the average daily unused portion of the Commitment (estimated solely for purposes of the following computation at $24,000,000), and based upon the bank's base rate of 15½% per annum in effect on November 10,1980, SFI estimates that its cost of money in respect of the proposed borrowings as of that date would be 15.8% per annum.

The loan agreement will provide that SFI may at any time, without premium or penalty, prepay the note, in whole or in part, and that if at any time the unpaid principal amount of the note then outstanding exceeds the borrowing base, SFI will be required, without premium or penalty, to prepay an amount not less than the amount by which such unpaid principal amount of the note then exceeds the borrowing base.

For the bank's commitment under the loan agreement, SFI will pay to the bank a commitment fee for the period from the effective date to the termination date or earlier termination of the commitment, computed at the rate of one-half of one percent per annum on the average daily unused portion of the commitment. The loan agreement will also provide that SFI may, at its option, terminate early, or reduce, from time to time, the commitment.

Pursuant to the terms of the loan agreement, SFI will covenant and agree to keep the collateral free and clear of all liens and encumbrances, except certain permitted encumbrances specified therein, and will further covenant and agree, but only upon receipt of 60 days' prior written notice from the bank, to grant to the bank, to the extent permitted by applicable laws, a first priority, perfected security interest (or other analogous security device) in the collateral, subject to prior permitted encumbrances, to secure the performance by SFI of its obligations to the bank under the loan agreement and the note.

In addition, and as an inducement to the bank to enter into these financing arrangements with SFI, the operating companies propose to join with SFI as parties to the loan agreement and to covenant and agree with the bank, severally in accordance with their present respective shares of ownership of the common stock of SFI, that they will take any and all action as, from time to time, may be necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations to the bank pursuant to the loan agreement and the note. The operating companies will further covenant and agree that they will, unless otherwise consented to in writing by the bank, maintain their respective shares of ownership of the common stock of SFI, for the period during which any portion of the principal amount of the note remains unpaid, in approximately the same proportions as currently held by them.

The terms of the loan agreement will not require that SFI maintain compensating balances with the bank. It is expected, however, that, over the term of the loan agreement, SFI will maintain working balances with the bank, although fluctuations in these balances will not reflect or depend upon fluctuations in the amount of loans to SFI outstanding.

The fees, commission and expenses to be incurred in connection with the proposed transaction are estimated at $29,600, including legal fees of $25,000. It is stated that no state or federal regulatory authority, other than this Commission,

has jurisdiction over the proposed transaction.

Due notice of the filing of said declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21786), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said declaration, as amended, be permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said declaration, as amended, be, and it hereby is, permitted to become effected forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certificate thereunder with respect to the proposed transactions is extended so as to allow filing on a quarterly basis.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21829/December 8, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
20 Montchanin Road
Wilmington, Delaware 19807

(70-6521)

NOTICE OF PROPOSAL BY REGISTERED HOLDING COMPANY TO MERGE WITH AN EXEMPT HOLDING COMPANY IN A STOCK-FOR-STOCK TRANSACTION

NOTICE IS HEREBY GIVEN that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed an application-declaration and amendments thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 12(b), 12(f) and 12(g) of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Columbia has entered into a Letter of Interest dated October 9, 1980 with Commonwealth Natural Resources Inc. ("CNR"), a Virginia corporation and a holding company exempt from the Act pursuant to Rule 2. The Letter of Intent calls for the merger of CNR into Columbia, with CNR's subsidiaries becoming subsidiaries of Columbia.

Columbia is engaged solely in the business of owning and holding all of the outstanding securities, with the exception of minor long-term debt and a minority interest in one company, of eighteen subsidiaries engaged in natural gas exploration, production, purchasing, gathering, transmission, storage, distribution and by-product operations; production of synthetic gas ("SG"); and importation of liquefied natural gas ("LNG"). Seven of these subsidiaries are engaged in natural gas distribution ("Columbia Distribution Companies"). Columbia and all of its subsidiaries will be referred to collectively as the Columbia System.

CNR has seven wholly-owned subsidiary companies as follows:

1. Commonwealth Gas Pipeline Corporation ("CNR Pipeline"), an intrastate natural gas transmission company which is regulated by the Virginia State Corporation Commission. CNR pipeline also produces SG from butane feedstock, liquefies natural gas for storage and performs certain services for associate companies pursuant to a management agreement which will be terminated following the merger and replaced by substitute arrangements;

2. Commonwealth Gas Services, Inc. ("CNR Distribution"), formerly Commonwealth Gas Distribution Corporation and Portsmouth Gas Company, a natural gas distribution company which is regulated by the Virginia State Corporation Commission;

3. Commonwealth Energy Company ("CNR Development"), a natural gas development company;

4. Bottled Gas Corporation of Virginia, ("Bottled Gas") Virginia Gas Industries, Inc. ("Virginia Industries") and Henrico Gas Service Corporation ("Henrico"), propane distribution companies;

5. CNG Properties ("CNG"), the owner of three parcels of real estate in three counties.

In addition, one CNR subsidiary, Bottled Gas, owns 50% of the common stock of Atlantic Energy, Inc. ("Atlantic") a company which owns a terminal for the importation of propane and stores butane, used as an SG feedstock, for the CNR Pipeline Company.

The merger terms require that Columbia issue to CNR, for distribution to CNR stockholders, 1.05 shares of Columbia common stock for each share of CNR common stock outstanding at the record date for the CNR stockholders' meeting at which approval of the merger will be sought. No fractional shares will be issued by Columbia. In lieu thereof, cash equal to the value of the fractional shares will be paid to the CNR stockholders. The agreement requires that CNR's outstanding convertible preferred stock be called for redemption prior to the record date for the meeting of stockholders, at which approval of the merger will be sought. At June 30, 1980, 25,687 shares of convertible preferred stock and 1,132,508 shares of common stock were outstanding. If all convertible preferred stock is converted (at a ratio of 1.47 shares of common stock to each share of preferred stock) rather than redeemed, 1,170,267 shares of CNR common stock will be outstanding at the time of the merger, requiring that 1,228,780 shares of Columbia common stock be issued. To the extent that preferred shares are not converted, the number of shares of Columbia common stock to be issued will be less.

Prior to the merger, the consolidation of certain CNR subsidiaries will occur. Specifically, CNG will be merged into CNR Pipeline and two of the propane companies, Bottled Gas and Virginia Industries, will be consolidated into one company. The third propane company, Henrico, may be maintained as a separate subsidiary pending resolution of certain litigation. Therefore, as a result of the merger, Columbia as the surviving corporation would acquire 100% ownership of CNR Pipeline, CNR Distribution, Bottled Gas, Henrico and CNR Development. The assets of CNR Development consist principally of an interest in a twenty-well drilling program in Texas. It is planned that following the merger CNR Development will be consolidated with Columbia Gas Development Corporation, a Columbia subsidiary, either through merger or sale of assets.

The consummation of the merger is conditioned on the prior occurrence of the following events:

1. The Letter of Intent must be approved by the Boards of Directors of the two companies.

2. The Merger Agreement must be negotiated and approved by the Boards of Directors of the respective companies.

3. The Merger Agreement must be approved by CNR stockholders.

4. The consolidation of CNR subsidiaries and redemption of preferred stock are required.

5. The Columbia common stock to be issued must be registered under the Securities Act of 1933 and listed for trading with the New York Stock Exchange upon official notice of issuance.

6. Columbia must receive the approval of the Commission under the Act.

7. CNR must receive either an IRS ruling or an opinion of counsel as to the tax-free status of the exchange of Columbia common stock for the stock in CNR's subsidiaries.

8. The filings required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 must have been made, the required waiting period elapsed and no action initiated by any government agency.

The exchange ratio of 1.05 Columbia common shares for each CNR common share resulted from arm's-length negotiations between CNR and Columbia. It is stated that among the factors considered were the recent and future earnings and cash flow potential of the respective companies, their respective assets and financial conditions and the book and market values of the respective common stocks. The following is a comparison of per share data for CNR common stock and Columbia common stock adjusted to reflect the proposed merger:

	Per Commonwealth Share (Actual)	Per Columbia Share (Actual)	Per Combined Share*	Per 1.05 Combined Shares**
Book Value at September 30, 1980 (Fully Diluted)	$33.32	$34.90	$34.78	$36.52
Cash Dividends Declared During 1979	$1.79	$2.44	N/A	$2.56
Net Earnings (Fully Diluted):				
Twelve Months Ended September 30, 1980 ..	$5.15	$4.61	$4.62	$4.85
Nine Months Ended September 30, 1980 ..	$3.97	$3.32	$3.33	$3.50
Market Value on September 26, 1980***	$27.25	$35.875	N/A	$37.67

*Reflects the combining of Commonwealth and Columbia on a pooling of interests basis.

**1.05 times combined per share amounts, except for cash dividends and market value which are 1.05 times Columbia actual per share amounts.

***Business day preceding public announcement of the proposed transaction.

N/A Not applicable

Columbia states that the addition of the CNR subsidiaries to the Columbia System is a logical extension of the Columbia service area. CNR Pipeline purchases most of its natural gas supply from Columbia Gas Transmission Corporation, Columbia's wholly-owned interstate natural gas transmission subsidiary. A large part of the gas so purchased is eventually sold to CNR Distribution for sale to approximately 47,500 direct retail customers in central and southern Virginia. In central Virginia, CNR Distribution's service area is contiguous to that of Columbia Gas of Virginia, Inc., a wholly-owned subsidiary of Columbia. It is Columbia's intent that the present CNR management will continue to manage the day-to-day operations of the CNR subsidiaries being acquired.

The propane operations of CNR's propane companies are and will continue to be integrally related to CNR Distribution's natural gas service. Propane is used by CNR Distribution to meet peak day requirements. Also, during times of curtailment when natural gas was not available and in locations where a gas pipeline might have been uneconomical, propane has effectively preserved the market for eventual service by natural gas. Some customers of CNR Distribution have contracted with Bottled Gas for propane service, when natural gas has been curtailed.

As a result of the proposed merger, Columbia will succeed to certain obligations of CNR. As of June 30, 1980, Atlantic had outstanding $1,000,000 principal amount of 9½% Secured Promissory Notes, Series A, due June 30, 1986. These notes were sold at private placement and CNR is a guarantor thereof. By virtue of the merger, Columbia will become the guarantor of these Notes. In addition, CNR Pipeline is the lessee of an SNG facility pursuant to a leveraged lease and CNR has guaranteed CNR Pipeline's obligations under that lease and its related obligations under a tax indemnity agreement. By virtue of the merger Columbia will become the guarantor of such obligations. Finally, the common stock of CNR Distribution owned by CNR is pledged to secure the first mortgage bonds of CNR Pipeline. When Commonwealth Natural Gas Company (a predecessor to CNR) acquired Portsmouth Gas Company (a predecessor to CNR Distribution), Commonwealth Natural Gas Company issued the first mortgage bonds and pledged the stock of the acquired company to secure the bonds. Subsequently, the CNR System was reorganized and its debt was transferred to and assumed by CNR Pipeline. The stock in CNR Distribution remained pledged to secure the bonds. After Columbia acquires CNR Distribution common stock as a result of the merger, the stock will remain pledged to secure the bonds of CNR Pipeline.

The stock of the five subsidiaries to be acquired is recorded on the books of CNR utilizing the equity method of accounting. The assets of subsidiaries are recorded on the books of subsidiaries at original cost, except that the 50% ownership of Atlantic by Bottled Gas is accounted for utilizing the equity method of accounting.

In recognition of the reservations contained in the Commission's opinion and order of November 30, 1944 (HCAR No. 5455, 17 S.E.C. 494), as to the retainability by Columbia of its interest in certain wholly-owned subsidiaries, one of which has properties in the Commonwealth of Virginia, Columbia agrees and stipulates that (1) if the Commission authorizes the proposed acquisition of the CNR subsidiaries by Columbia, the Commission's reservation of jurisdiction will be considered to extend also to Columbia's retainability of the CNR subsidiaries or their properties and it will not, nor will the CNR subsidiaries, as wholly-owned subsidiaries of Columbia, in any prior or subsequent Section 11(b)(1) proceeding instituted by the

Commission, take any position or make any argument to the effect that the Commission will have prejudiced its jurisdiction, power or authority to order the divestment of any interest in the CNR subsidiaries or their properties and (2) Columbia consents to the inclusion in the Commission's order that may be entered in this matter of a reservation of full jurisdiction, power and authority under Section 11(b)(1) of the Act.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, is required to approve the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 2, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21830/December 8, 1980

In the Matter of

WEST PENN POWER COMPANY
Greensburg, Pennsylvania

(70-6505)

ORDER AUTHORIZING PROPOSAL TO ISSUE AND SELL PROMISSORY NOTES TO AUTHORITY IN CONNECTION WITH FINANCING OF POLLUTION CONTROL FACILITIES; RESERVATION OF JURISDICTION

West Penn Power Company ("West Penn"), an electric utility subsidiary company of Alleghany Power System, Inc., a registered holding company, has filed an application-declaration, and amendments thereto, with this Commission pursuant to Sections 6, 7, 9, 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

The proposed transactions involve the financing, including the transfer to and purchase from Washington County Industrial Development Authority ("Authority") by West Penn, of certain air and water pollution control equipment and facilities including a flue gas desulferization system, associated sludge disposal and handling facilities, precipitators, lime unloading handling and storage facilities, fly ash handling systems, a new chimney, associated land and interests in land and equipment (collectively known as the "Facilities"), now under construction at West Penn's Mitchell Power Station ("Mitchell") located in Washington County, Pennsylvania. The Facilities are required to be installed to meet air quality standards pursuant to consent decrees embodying settlement agreements with the Federal Environmental Protection Agency and the Pennsylvania Department of Environmental Resources.

The Authority proposes to finance the Facilities by issuing and selling its tax exempt pollution control revenue bond ("Bond"), aggregating $60 million, with a maturity of three years. The Bond will bear an interest rate of 9%, and an effective interest cost of 9.12%.

At the date the financing is consummated, West Penn will transfer to the Authority title to those

portions of the Facilities then in place at Mitchell, subject to the first mortgage lien of the indenture securing West Penn's first mortgage bonds and to a second lien to be imposed on the Facilities. Title to those portions of the Facilities thereafter constructed shall vest in the Authority. The aggregate purchase price of the Facilities will be an amount equal to the aggregate principal amount of the Bond issued by the Authority.

To evidence its obligation to pay the purchase price of the Facilities, West Penn proposes to issue a pollution control note maturing December 1, 1983 in the amount of $60 million, bearing an interest rate of 9% per annum and will receive 98.675% of par ($59,205,000) as the proceeds of the note after deduction of underwriter's discounts of 1.325%. The pollution control note will not have any sinking fund, will not be callable until December 1, 1981, and will be callable thereafter at 100.50% of par until December 1, 1982 and at par thereafter. Reflecting the underwriter's discount, 9.12% is the effective cost to West Penn. Payments on such notes will be made to the trustee and applied to pay the maturing principal, redemption prices, interest and other costs of the Bond as the same become due. West Penn also proposes to pay any trustees' fees or other expenses incurred by the Authority. The Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to a Mortgage and Security Agreement creating a mortgage and security interest in the Facilities and certain other property. It is stated that the Notes will not constitute "unsecured debt" within the meaning of the provisions of West Penn's charter. The proceeds, in excess of the amount which can be drawn down by West Penn as of the closing date (approximately $15 million) will be held by the Trustee in the construction fund and invested by the Trustee, such investments to mature as funds can be drawn down by West Penn.

The Bond will be secured by the Notes and will be supported by various covenants of West Penn to be contained in a Pollution Control Financing Agreement. West Penn will cause the Facilities to be completed and will have complete control of the operation of the Facilities including maintenance thereof.

It is expected that the Authority will engage Goldman, Sach's & Co. and any co-managers that may be desirable to provide financing advice and, together with such other underwriters as may be designated, to underwrite the sale of the Bond. Fees, commissions and expenses of the underwriters and of legal counsel will be included in the total cost of the Facilities.

The proposed transactions have been authorized by the Public Utility Commission of Pennsylvania. The Department of Environmental Resources of the State of Pennsylvania has certified that the Facilities are being installed for air quality purposes. The Secretary of Commerce of the Commonwealth of Pennsylvania has certified the proposed transactions. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21744), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to the fees, commissions and expenses to be incurred in connection with the proposed transactions.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21831/December 8, 1980

In the Matter of

VALERO TRANSMISSION COMPANY
530 McCullough
San Antonio, Texas 78215

(31-776)

NOTICE OF APPLICATION FOR EXEMPTION PURSUANT TO SECTION 2(a)(4)

NOTICE IS HEREBY GIVEN that Valero Transmission Company ("Valero"), a Delaware corporation and a subsidiary of Valero Energy Corporation ("VEC"), also a Delaware corporation, has filed with this Commission an application and an amendment thereto pursuant to Section 2(a)(4) of the Public Utility Holding Company Act of 1935 ("Act") for an order declaring Valero not to be a "gas utility company" under the Act. All interested persons are referred to the amended application, which is summarized below, for a description of the applicant and a statement as to the basis upon which the exemption is sought.

Valero is engaged in the operation of an extensive integrated intrastate pipeline system in Texas, such system consisting of approximately 5,456 miles of pipeline. Valero buys and then transports and sells natural gas, principally to gas and electric utility companies, major pipeline companies, municipalities and industrial users. VEC is engaged in gas systems operations, principally through Valero but also through other subsidiaries of VEC, and in 1980 began to be engaged in gas and oil exploration activities. At December 31, 1979, VEC reported consolidated assets of $649,242,000, and for the year then ended consolidated revenues of $1,328,969,000. At that date and for the same period, Valero reported total assets of $502,547,000, and its total revenues were $1,275,861,000.

Over the years Valero has acquired smaller gas transmission systems to compliment its own system, some of which acquired facilities had small portions which may be deemed to be distribution facilities. In addition, in connection with acquiring existing gas systems and acquiring rights of way and easements for additions to its gas system, Valero permitted certain ranchers and farmers a small sales tap off a line to provide gas for domestic use and, on occasion, permitted sales taps for irrigation sales. This practice, which was customary in the industry at the time, enabled Valero to avoid condemnation proceedings. It is stated that Valero currently makes sales to approximately 93 domestic customers and to approximately 142 irrigation customers.

Valero's sales to domestic and irrigation customers are directly regulated with respect to curtailment by the Texas Railroad Commission ("TRC"), and indirectly regulated with respect to price by the TRC in that it sets the price for other customers in Valero's system and Valero's contracts with its domestic and irrigation customers generally provided that the gas sales rate shall be that set by the TRC for Valero's other customers.

Valero's gas sales, by customer category, for the year ended December 31, 1979, are set forth below:

Type of Sales	*Dollars (000)*	*Sales In MCF (000)*	*Percent of Sales In Dollars*	*Percent of Sales In MCF*
Industrial and Utility	$627,729	273,914	52.523%	52.530%
Municipal	99,474	43,214	8.323	8.287
Pipelines	467,215	203,990	39.092	39.121
Maximum Estimated for Domestic Use (1)	26	11	.002	.002
Irrigation (1)	716	310	.060	.060
Total	$1,195,160	521,439	100.000%	100.000%

(1) There may be some unauthorized domestic use sales, but Valero does not believe such sales would exceed $35,000. Most of such sales are included in sales for irrigation.

As a result of its sales to domestic and irrigation customers, Valero may be deemed to own or operate facilities used for the distribution of natural gas at retail, and therefore may be a "gas utility company" within the meaning of Section 2(a)(4) of the Act. Valero requests that the Commission find that by reason of the small amount of such sales at retail (less than 1/10 of 1% of its total gas sales are to domestic and irrigation customers) Valero will not be deemed a "gas utility company."

Section 2(a)(4) provides, in part, that the Commission may declare a company not to be a "gas utility company" if it finds that "(A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors and consumers that

such company be considered a gas utility company for the purposes of [the Act]." Rule 10(a)(1) under the Act provides, further, that a company shall be exempt from the duties, liabilities and obligations imposed under the Act upon it as a "holding company" with respect to a subsidiary which, insofar as it is a public utility company, is declared not to be a "gas utility company" under Section 2(a)(4).

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 2, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted in the manner provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may take such other action as it deems appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21832/December 9, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY
Columbus, Ohio

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

KENTUCKY POWER COMPANY
Ashland, Kentucky

KINGSPORT POWER COMPANY
Roanoke, Virginia

MICHIGAN POWER COMPANY
Three Rivers, Michigan

OHIO POWER COMPANY
Canton, Ohio

WHEELING ELECTRIC COMPANY
Wheeling, West Virginia

AMERICAN ELECTRIC POWER COMPANY, INC.
New York, New York

(70-6361)

ORDER AUTHORIZING PROPOSAL OF HOLDING COMPANY TO ISSUE AND SELL SHORT-TERM NOTES TO BANKS AND TO MAKE CASH CAPITAL CONTRIBUTIONS TO SUBSIDIARIES

American Electric Power Company, Inc. ("AEP"), a registered holding company, and Appalachian Power Company ("Appalachian"), Columbus and Southern Ohio Electric Company ("CSOE"), Indiana & Michigan Electric Company ("I&M"), Kentucky Power Company ("KPCO"), Kingsport Power Company ("Kingsport"), Michigan Power Company ("Michigan"), Ohio Power Company ("Ohio Power") and Wheeling Electric Company ("Wheeling"), AEP's subsidiary public utility companies, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to Sections 6(b) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) promulgated thereunder concerning the following proposed transactions.

By prior order in this proceeding (HCAR No. 21352, December 21, 1979), AEP was authorized to issue and sell, from time to time, prior to January 1, 1981, short-term notes and commercial paper, to banks, and to a dealer in commercial paper respectively, in an amount of up to $165,000,000, such notes maturing no later than June 30, 1981. AEP was also authorized to make cash capital contributions prior

to January 1, 1981 to certain of its subsidiaries. By supplemental order in this proceeding (HCAR No. 21442, February 20, 1980), AEP was authorized to issue and sell such short-term notes to 11 banks with lines of credit in an aggregate amount of $229,000,000 subject to the previously ordered limit on outstanding notes. By further supplemental order in this proceeding (HCAR No. 21488, March 25, 1980), AEP was authorized to make cash capital contributions to Michigan from time to time prior to January 1, 1981 in an aggregate amount of $10,000,000. Also by further supplemental order in this proceeding (HCAR 21596, May 29, 1980), AEP was authorized to issue and sell short-term notes to 14 banks with lines of credit in an aggregate amount of $274,000,000, subject to the previously ordered limit on outstanding nctes.

By post-effective amendment AEP proposes to issue and sell, from time to time prior to January 1, 1982, short-term notes to 14 banks with lines of credit in an aggregate amount of $239,000,000, maturing no later than June 30, 1982. AEP also requests authority to make cash capital contributions from time to time subsequent to December 31, 1980 and prior to January 1, 1982, to Appalachian in the amount of $60 million, to CSOE in the amount of $40 million, to I&M in the amount of $90 million, to KPCO in the amount of $20 million and to Ohio Power in the amount of $60 million. The currently estimated construction program of Appalachian for 1981 is $215 million, for CSOE is $143 million, for I&M is $320 million, for KPCO is $47 million and for Ohio Power is $225 million.

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $500. The proposed cash capital contributions to be made during 1981 by AEP to Appalachian have been authorized by the State Corporation Commission of Virginia and the Public Service Commission of West Virginia. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application-declaration as amended by said post-effective amendment, has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21779), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21833/December 9, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
Dallas, Texas

(70-6206)

ORDER AUTHORIZING INCREASE IN NUMBER OF SHARES OF HOLDING COMPANY'S COMMON STOCK TO BE ISSUED AND SOLD PURSUANT TO EMPLOYEES' THRIFT PLAN

Central and South West Corporation ("CSW"), a registered holding company, has filed with this Commission post-effective amendments to its application-declaration previously filed and amended pursuant to Section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder concerning the following proposed transaction.

By order dated October 24, 1978 (HCAR No. 20742), CSW was authorized to issue and sell up to 1,000,000 shares of its authorized but unissued common stock, par value $3.50 per share, pursuant to a CSW Employees' Thrift Plan ("Plan"). The Plan provides a means by which eligible employees of CSW and its direct and indirect subsidiaries, Central

Power & Light Company, Central and South West Fuels, Inc., Central and South West Services, Inc., Public Service Company of Oklahoma, Transok Pipeline Company, Southwestern Electric Power Company and West Texas Utilities Company (together, "CSW Subsidiaries"), may maintain a regular savings program and to provide additional benefits for such employees upon retirement. Under the Plan, the participating employers, i.e., the CSW Subsidiaries, make contributions of cash monthly, out of net income in an amount equal to 50% of the basic deposit made by each employee with less than 20 years of service and 75% of the basic deposit for those employees with 20 years of service or more.

The Plan permits each participating employee to make monthly payments to his Plan account in an amount equal to 2%, 4% or 6% of his annual salary, and to make additional deposits in amount not to exceed 4% of his annual salary for each year of service since he became a participant in the Plan. The deposits by participating employees and the corresponding contributions by employers are paid monthly to the Trustee under the Plan, the First National Bank in Dallas, for investment.

The Trustee, pursuant to written direction from each participating employee, invests funds held in each such employee's Plan account under either of two investment options. Under the first option, the Trustee invests a participant's funds in the common stock of CSW (up to 5% of the total number of CSW shares at that time outstanding), the Trustee purchasing such shares from CSW at the average of the closing prices for CSW common stock as reported on the New York Stock Exchange composite for the 20 consecutive trading days ending with the last trading day of the month with respect to which the employer contributions and employee basic deposits being invested were made. Under the second option, the Trustee invests a participant's funds in an unsegregated fund managed under contract with the Equitable Life Assurance Society of the United States, which fund is principally invested in mortgages and debt securities and the return on which is guaranteed by Equitable.

By post-effective amendment CSW requests an increase from 1,000,000 to 4,000,000 in the number of authorized but unissued shares of its common stock that may be issued and sold pursuant to the Plan. It is stated that through September 30, 1980, CSW had issued and sold 751,791 such shares pursuant to the Plan, and that it is presently anticipated that an additional 3,033,000 shares (assuming a price per CSW share of $13.50) would have to be issued between October 1, 1980, and December 31, 1985, to meet the projected demand for such shares under the Plan. It is stated that CSW will apply the proceeds from the sale of such shares through loan or equity contributions to its subsidiaries (which contributions will be the subject of future filings with this Commission) for use in their ongoing construction programs.

CSW requests an exception from the competitive bidding requirements of Rule 50 under the Act for the proposed issuance and sale of the additional shares under the Plan pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $600. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendments to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21782), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendments, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendments, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21834/December 9, 1980

In the Matter of

ALABAMA POWER COMPANY
Birmingham, Alabama

(70-6472)

ORDER RELEASING JURISDICTION OVER FEES INCURRED IN CONNECTION WITH THE ISSUANCE OF A SECOND SERIES OF FIRST MORTGAGE BONDS; CONTINUED RESERVATION OF JURISDICTION OVER OTHER MATTERS

By order dated September 10, 1980 (HCAR No. 21711) Alabama Power Company ("Alabama"), an electric utility subsidiary of The Southern Company, a registered holding company, was authorized, pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), to issue and sell at competitive bidding up to $300 million principal amount of first mortgage bonds ("new Bonds") in one or more series and up to $100 million aggregate stated value of its preferred stock in one or more series. No series of new Bonds or preferred stock may be sold later than February 28, 1981. Pursuant to such authorization Alabama issued and sold on September 24, 1980, an initial series of new Bonds in an aggregate principal amount of $150,000,000. In the order of September 10, 1980, jurisdiction was reserved over, among other matters, any fees and expenses incurred with respect to the sale of the security issues other than the initial series of new Bonds.

Alabama has filed post-effective amendments to its application informing the Commission that it plans to issue a second series of new Bonds in a maximum aggregate principal amount of $100,000,000. It is stated that the fees, commissions and expenses to be incurred in connection with the proposed sale are estimated at $406,000, including the Alabama mortgage privilege tax of $150,000, printing expenses of $60,000, legal fees of $47,000 and accounting fees of $21,500.

The fees of counsel for the underwriters is estimated at $22,000 and will be paid by the successful bidders.

Due notice of the filing of said application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21649), and a hearing has been requested of and denied by the Commission in its order of September 10, 1980. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied with respect to the fees, commissions and expenses to be incurred by Alabama in connection with the sale of a second series of new Bonds and that no adverse findings are necessary with respect thereto; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted effective with respect to the fees, commissions and expenses to be incurred by Alabama in connection with the sale of a second series of new Bonds:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted effective forthwith with respect to the fees, commissions and expenses to be incurred by Alabama in connection with the sale of a second series of new Bonds, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act:

IT IS FURTHER ORDERED that the jurisdiction reserved in the order of September 10, 1980, with respect to the fees and expenses to be incurred in connection with the second series of the new Bonds be, and it hereby is, released effective forthwith:

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved with respect to:

(1) any post-effective amendment Alabama may file for an exception from the competitive bidding requirements of Rule 50;

(2) any change in the terms of the draft supplemental indenture or in the draft charter amendment with respect to the preferred stock, both as now on file in this proceeding;

(3) fees and expenses with respect to the issuance and sale of any series of preferred stock or any additional series of new Bonds.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21835/December 10, 1980

In the Matter of

NEW ENGLAND ELECTRIC SYSTEM
NEW ENGLAND ENERGY INCORPORATED
Westborough, Massachusetts

(70-6260)

ORDER AUTHORIZING INCREASE IN BANK LOANS TO FINANCE FUEL SUBSIDIARY IN 1981

New England Electric System ("NEES"), a registered holding company, and New England Energy Incorporated ("NEEI"), a fuel subsidiary of NEES, have filed with this Commission a further post-effective amendment to their application-declaration previously filed and amended in this matter pursuant to Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 50(a)(2) and 50(a)(3) promulgated thereunder concerning the following proposed transaction.

In a series of prior orders in other proceedings dated October 30, 1974, June 18, 1976, July 19, 1978, December 28, 1979, and August 7, 1980 (HCAR Nos. 18635, 19580, 20632, 21365 and 21673), applicants-declarants were authorized, among other things, to do the following: (1) NEES was authorized to organize NEEI and acquire its capital stock; (2) NEEI was authorized to enter into a partnership agreement with Samedan Oil Corporation ("Samedan"), to explore for oil and gas, and an amendment thereto, said partnership currently extending through December 31, 1984; (3) NEES was authorized to invest in NEEI in the form of common stock and subordinated debt up to $45,000,000 through December 31, 1988; and (4) NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract, on certain terms and conditions, including a full cost pool concerning its oil and gas properties. In the order of August 7, 1980 (HCAR No. 21673), NEEI was authorized to invest up to $60,000,000 in the Samedan partnership during the 1980 calendar year. NEEI has pending before this Commission proposals to invest up to $75,000,000 in the Samedan partnership during 1981 (HCAR No. 21804), and to invest up to $15,000,000 in 1980 and $35,000,000 in 1981 in a proposed partnership with Dorchester Exploration Incorporated (HCAR No. 21817).

By prior order issued in this proceeding dated July 25, 1979 (HCAR No. 21558), NEEI was authorized to enter into an agreement ("Loan Agreement") with the Bank of Montreal and the National Bank of North America (the "Banks") for an $80,000,000 revolving credit loan, up to $40,000,000 of such amount to be made available in 1979, $60,000,000 in 1980, and $80,000,000 in 1981. Upon termination the revolving credit loan will become a term loan. Under the Loan Agreement the revolving credit period runs from January 1, 1979, through December 31, 1981, and may, at NEEI's option be extended for two additional years. The Banks will make a term loan to NEEI upon termination of the revolving credit period in the amount of the revolving credit balance outstanding on the termination date, such loan to be for a maximum of five years and to require equal quarterly payments amortizing the principal. The loan bears interest during the revolving credit period at a rate per annum of 3/4 of 1% over the Bank of Montreal's United States prime rate, or 7/8 of 1% over the London Interbank Offered Rate ("LIBOR") for 30, 60, 90 or 180-day United States dollars deposits, at NEEI's option. The loan bears interest during its term loan period at a rate per annum of 7/8 of 1% over the Bank of Montreal's United States prime rate, or 1% over the LIBOR for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. There is a commitment fee on the unused available portion of the loan commitment of 1/4 of 1% per year (on that year's committed amount) during the revolving credit period and 3/8 of 1% per year during any extension of that period. Interest and the commitment fee are payable quarterly. The loan is prepayable without penalty, and the commitment amount may be reduced in whole or in part without penalty.

Upon the Loan Agreement NEEI is required to maintain a ratio of not more than 70 to 30 with respect to (i) debt outstanding under the Loan Agreement and (ii) subordinated debt payable to NEES and stockholder's equity (excluding any deferred taxes). The latter amount is presently limited to $45,000,000 (HCAR No. 21158, July 25,

1979), so debt outstanding under the Loan Agreement, without regard to the present maximum committed amounts, is limited to $105,000,000. The Loan Agreement also (1) requires NEEI to prepay the loan to the extent it receives proceeds from any long-term financing secured by any of its oil and gas properties included in the full cost pool, (2) limits modifications which may be made to the fuel purchase contract between NEEI and NEP, (3) required NEEI to assign to the Bank of Montreal its rights under the fuel purchase contract.

By order dated October 28, 1980 (HCAR No. 21761), NEEI was authorized to enter into an amendment to the Agreement, which amendment (1) accelerated the 1981 commitment of the Banks from 1981 to October 28, 1980, and (2) increased the Banks' commitment for 1981 to $105,000,000. Jurisdiction was reserved in said order with respect to an increase in NEEI borrowings under the Loan Agreement beyond $80,000,000.

By post-effective amendment NEEI has completed the record concerning its 1981 cash needs. NEEI requests that it be authorized to borrow up to $105,000,000 under the Loan Agreement during 1981, and that the jurisdiction previously reserved be released.

NEEI claims exemption from the competitive bidding requirements of Rule 50 for the issuance of its notes to the Banks pursuant to Rule 50(a)(2).

There are no additional fees or expenses to be incurred in connection with the proposed transaction. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Upon the basis of the facts in the record, as amended by said post-effective amendment, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that NEEI be, and it hereby is, authorized effective January 2, 1981, to increase its loans under the Loan Agreement to $105,000,000 during calendar 1981, subject to the terms and conditions prescribed in rule 24 promulgated under the Act.

IT IS FURTHER ORDERED that the jurisdiction previously reserved with respect to NEEI's borrowings beyond $80,000,000 be, and the same hereby is, released effective January 2, 1981.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21836/December 10, 1980

In the Matter of

THE COLUMBIA GAS SYSTEM, INC.
Wilmington, Delaware

COLUMBIA GAS TRANSMISSION CORPORATION
Charleston, West Virginia

COLUMBIA GAS OF OHIO, INC.
COLUMBIA GAS OF WEST VIRGINIA, INC.
COLUMBIA GAS OF KENTUCKY, INC.
COLUMBIA GAS OF VIRGINIA, INC.
COLUMBIA GAS OF PENNSYLVANIA, INC.
COLUMBIA GAS OF NEW YORK, INC.
COLUMBIA GAS OF MARYLAND, INC.
Columbus, Ohio

COLUMBIA HYDROCARBON CORPORATION
THE INLAND GAS COMPANY, INC.
COLUMBIA COAL GASIFICATION CORPORATION
Ashland, Kentucky

COLUMBIA GULF TRANSMISSION COMPANY
Houston, Texas

COLUMBIA GAS SYSTEM SERVICE CORPORATION
COLUMBIA LNG CORPORATION
COLUMBIA GAS DEVELOPMENT CORPORATION
Wilmington, Delaware

(70-6435)

ORDER AUTHORIZING INTRASYSTEM FINANCING

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiary companies named above have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions.

By order in this proceeding dated May 28, 1980 (HCAR No. 21593), Columbia, among other things, was authorized to make short-term advances on open account of up to $145,000,000 to Columbia Gas Transmission Corporation ("Columbia Transmission"). It is now proposed that such advances be increased to $170,000,000.

It is also proposed that Columbia Transmission issue and sell, and that Columbia acquire, installment notes and/or floating rate term notes up to the amount of $60,000,000. The issuance and sale of these notes will be subject to the same terms and conditions as those of certain other subsidiaries as described previously in the application-declaration.

It is stated that the increase of $25,000,000 in advances to Columbia Transmission is required in order to provide Columbia Transmission with sufficient funds to finance gas purchases and other normal short-term seasonal requirements. The issuance of $60,000,000 in notes is required to finance Columbia Transmission's capital expenditures. The additional financing requirements are a result of lower sales volumes.

The requisite authorization for certain transactions proposed earlier in this proceeding has not yet been obtained from the state public-utility commission for Columbia of New York, and jurisdiction will continue to be reserved with respect thereto.

Due notice of the filing of said application-declaration has been given in the manner prescribed by Rule 23 promulgated under the Act (HCAR No. 21777), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found with respect to the above-described transactions that the applicable provisions of the Act and rules promulgated thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the application-declaration in respect of said transactions be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and the rules thereunder, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith with respect to the above-described transactions, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that the time for filing the certification thereunder is extended as requested so as to allow filing on a quarterly basis.

IT IS FURTHER ORDERED that jurisdiction be, and it hereby is, reserved over the proposed transactions as to which the record is not yet complete.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21837/December 10, 1980

In the Matter of

NATIONAL FUEL GAS COMPANY
30 Rockefeller Plaza
New York, New York 10112

(70-6532)

NOTICE OF PROPOSED INCREASE IN AUTHORIZED SHARES OF PREFERRED STOCK AND LIMITATION IN PREEMPTIVE RIGHTS OF COMMON STOCK AND ORDER AUTHORIZING SOLICITATION OF PROXIES IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN that National Fuel Gas Company ("National"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

National proposes to amend its Restated Certificate of Incorporation ("Certificate") to increase to 3,200,000 from 2,000,000 the number of shares of preferred stock ($25 par value) that National would be authorized to issue. Of the 2,000,000 shares currently authorized, National has issued 1,200,000 shares, which remain outstanding and which represent $30,000,000 of its capitalization. The proposed increase would allow National to raise up to $50,000,000 in additional capital in the form of preferred stock.

It is stated that National will continue to need additional external capital financing to satisfy the long-term financial requirements of certain of its subsidiaries and for its own general corporate purposes. In the past, the company has raised such capital primarily through the issuance of debentures; however, because of the generally higher interest costs incurred in recent debenture issues, and the effect that those higher costs have had on the coverage requirements for the issuance of additional debentures, National believes it is essential that it examine alternative financing arrangements. The authorization to issue additional preferred stock would give National increased flexibility during periods when external financing becomes necessary.

National also proposes to amend its Certificate to limit the preemptive rights of the holders of its common stock. The preemptive rights of the holders of National's preferred stock would not be changed. Under the Certificate as it is proposed to be amended no common stockholder will have preemptive rights with respect to shares, obligations or other securities which (a) are issued pursuant to a public offering; or (b) are issued pursuant to an offering to or through underwriters or investment bankers who shall agree promptly to make public offering thereof; or (c) are issued pursuant to employee benefit plans; or (d) are issued pursuant to programs available to all stockholders or open to all customers of utility subsidiaries of the corporation, including, without limitation, dividend reinvestment and stock purchase programs or limited investment programs.

It is stated that the proposed amendment will make it possible for National to issue previously authorized, but unissued, shares of common stock in a more expedient manner and will assist in administering its automatic dividend reinvestment plan, its employee stock ownership plan, and an employees' thrift plan. Currently, the trustee must purchase the shares of common stock of National on the open market in order to satisfy the funding requirements of the three plans.

National intends to submit the proposed amendments to the holders of its common stock for their approval at its Annual Meeting scheduled for January 29, 1981. In connection therewith, National proposes to solicit proxies from the holders of its common stock. Adoption of the proposals requires the affirmative vote of a majority of the votes cast by the holders of National's common stock. No action of the holders of National's preferred stock is required for the adoption of the proposals. National has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 8, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that National's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rules 62 and 65:

IT IS ORDERED that the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective forthwith pursuant to Rules 62 and 65.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21838/December 11, 1980

In the Matter of

PROVIDENCE ENERGY CORPORATION
100 Weybosset Street
Providence, Rhode Island 02901

(70-6527)

NOTICE OF PROPOSED ACQUISITION TO CREATE HOLDING COMPANY

NOTICE IS HEREBY GIVEN that Providence Energy Corporation ("Providence Energy"), a Rhode Island corporation, has filed with this Commission an application and an amendment thereto pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a)(2) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Providence Energy, a newly organized corporation, proposes to acquire all of the common stock of Providence Gas Company ("Providence Gas"), a Rhode Island corporation and a gas utility as defined in Section 2(a)(4) of the Act, in a transaction in which it is proposed that Providence Merger Company (a wholly-owned subsidiary of Providence Energy) will be merged with and into Providence Gas and under which each of the outstanding shares of common stock of Providence Gas will be converted into one share of the common stock of Providence Energy, and the outstanding shares of Providence Merger Company will be converted into shares of the common stock of Providence Gas. As a result of the reorganization, the present shareholders of Providence Gas will become the shareholders of Providence Energy, which in turn will hold all of the issued and outstanding common stock of Providence Gas, and Providence Energy will be, therefore, a holding company as defined in Section 2(a)(7) of the Act. The shareholders of Providence Gas will be asked to vote on the proposed merger at a meeting to be held on January 12, 1981. The proposed merger requires the affirmative vote of the holders of a majority of the outstanding common stock of Providence Gas. The authorized capital of Providence Gas consists of 2,500,000 shares of common stock, 1,243,598 of which are issued and outstanding, and an unlimited number of shares of preferred stock, none of which have been issued.

Providence Energy was organized on behalf of Providence Gas for the purpose of serving as the publicly-held holding company of Providence Gas and its subsidiaries following the proposed reorganization of Providence Gas. The authorized capital of Providence Energy consists of 3,000,000 shares of common stock, $1.00 par value, of which 100 shares are outstanding and held by Providence Gas, and 1,000,000 shares of preferred stock, $10 par value, none of which have been issued. It is stated that the objective of the reorganization is to create a holding company vehicle which may more easily invest in and obtain financing for areas of business other than Providence Gas' traditional gas business.

Providence Gas is a public utility engaged in the purchase, distribution and sale of natural gas for residential, commercial and industrial use to approximately 115,000 customers within the State of Rhode Island. At September 30, 1980, Providence Gas (consolidated) had total gross utility plant of $81,447,000 and for the twelve months then ended $99,069,000 of operating revenues and $4,215,000 of net income. Its gas sales for the year then ended were 19,731,000 MCF. Providence Gas purchases its natural gas from Algonquin Gas Transmission Company ("Algonquin"), a pipeline company in which Providence Gas has less than a 1% common stock ownership. Providence Gas has a liquified natural gas storage facility of 55,000 barrel capacity located in Exeter, Rhode Island, and has the right to storage of 348,000 barrels of liquified natural gas in a storage tank owned by an affiliate of Algonquin located on land in Providence, Rhode Island, and leased from Providence Gas. Providence Gas' executive offices, distribution and maintenance facilities and storage facilities are all located within

Rhode Island. None of its sales are made to customers outside the State of Rhode Island, and it has no plans for making any such sales.

Providence Gas is also a holding company under Section 2(a)(7) of the Act by virtue of its 100% ownership of the capital stock of Tiverton Gas Company ("Tiverton Gas"), also a Rhode Island gas utility company, which serves approximately 500 customers in the town of Tiverton, Rhode Island. Tiverton Gas also sells bottled gas in Rhode Island and Massachusetts. For the year ended September 30, 1980, the operating revenues of Tiverton Gas were $210,000 and its gas sales were 32,000 MCF. Providence Gas was granted status as an exempt holding company under Sections 3(a)(1) and 3(a)(2) of the Act by order dated April 16, 1975 (HCAR No. 18938). Providence Gas also owns all of the issued and outstanding stock of four non-utility subsidiaries: Bay Front Real Estate Company ("Bay Front"), which holds title to approximately seven acres of land in Newport, Rhode Island, and conducts no business other than owning such land; Prudence Corporation ("Prudence"), which holds title to various parcels of real property used other than in the conduct of a gas utility business; Arrowhead Propane Corporation ("Arrowhead"), through which Providence Gas sells propane fuel for residential, commercial and industrial use; and Resource Monitors, Inc. ("Resource"), which has been organized to serve as the vehicle for collecting the non-utility accounts receivable of Providence Gas and for preventing theft or other diversion of its gas. Providence Gas carries on its books its investments in Bay Front, Prudence, Arrowhead and Resource at $300,000, $493,926, $108,500 and $6,500, respectively.

Providence Energy is not now a holding company, and it does not intend to register as such if the acquisition of Providence Gas is authorized and the merger of Providence Gas and Providence Merger Company consummated. Providence Energy states that it will be entitled to an exemption under Section 3(a)(1) of the Act, on the basis that it and its public utility subsidiaries Providence Gas and Tiverton Gas "are predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized," and intends to claim such exemption by an appropriate filing pursuant to Rule 2 promulgated thereunder. In connection with such filing it is stated that there will be an undertaking that Providence Energy will not issue and sell any preferred stock without prior approval of this Commission.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 5, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 600/December 11, 1980

The Securities and Exchange Commission has issued a notice giving interested persons until December 31, 1980, to request a hearing on an application by Sybron Corporation ("Sybron"), a New York corporation, pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939 declaring that the trusteeship of the Morgan Guaranty Trust Company of New York under three indentures of Sybron is not so likely to involve a material conflict of interest as to make it necessary to disqualify Morgan Guaranty Trust Company of New York from acting as trustee.

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11479/December 5, 1980

In the Matter of

CONTINENTAL BANK OF CANADA
Continental Place
130 Adelaide Street West
Toronto, Canada

(812-4480)

NOTICE OF FILING OF APPLICATION FOR ORDER PURSUANT TO SECTION 3(b)(2) OF THE ACT DECLARING THAT APPLICANT IS NOT AN INVESTMENT COMPANY OR, ALTERNATIVELY, FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Continental Bank of Canada ("Applicant") filed an application on May 24, 1979, and amendments thereto on May 7, 1980, and June 19, 1980, for an order of the Commission pursuant to Section 3(b)(2) of the Investment Company Act of 1940 ("Act"), declaring that Applicant is not an investment company as defined by the Act or, alternatively, for an order pursuant to Section 6(c) of the Act exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a bank which was incorporated by an Act of Parliament of Canada on July 14, 1977, and that it is a wholly owned subsidiary of IAC Limited ("IAC"), Canada's largest sales finance company. According to the application, the incorporation of Applicant was the first step in the conversion of IAC into a Canadian chartered bank. The conversion is to be consummated at the end of a transitional period of up to ten years by a statutory amalgamation of Applicant and IAC.

During such transition period IAC is to divest itself of any assets which a Canadian chartered bank is not permitted to hold and to discharge any liabilities, which it can legally discharge, which could not have been incurred by a Canadian chartered bank.

According to the application, IAC was incorporated under the laws of Canada on February 7, 1925. Its business consists, *inter alia*, of mortgage lending, consumer lending, wholesale and retail sales financing, commercial loans, and financial leasing directly and through subsidiaries in all ten Canadian provinces through 140 branch offices. As of December 31, 1978, IAC had consolidated assets of 3.1 billion Canadian dollars ("C$") of which approximately C$2.8 billion or 85% of its assets consisted of loans. Applicant states that interest income on such loans represented 90% of IAC's consolidated revenues for the year ending December 31, 1978. As of December 31, 1978, IAC had approximately 13.6 million common shares and over 521,000 preferred shares issued and outstanding. Applicant represents that over 97% of such shares are held by Canadian residents.

The application states that IAC has financed its lending operations primarily by the sale in Canada, the United States and elsewhere in the world, of secured notes, unsecured debentures and subordinated debentures and that IAC at the time of the filing of the application had C$2.3 billion of such debt outstanding. $590 million United States dollars

of such securities were issued in the United States and were outstanding and payable at the offices of Morgan Guaranty Trust Company of New York. The application states that IAC issued such securities pursuant to exemptions for commercial paper and private placements contained in the Securities Act of 1933 ("1933 Act") and that such securities have been purchased by institutional and sophisticated investors in principal amounts of not less than C$500,000. The application further asserts that IAC is exempted from the Act's definition of investment company by Section 3(c)(5) of the Act, relating in pertinent part, to sales finance transactions.

Applicant states that the legislation incorporating Applicant provides rules which will govern the operation of Applicant and IAC during the transitional period prior to their statutory amalgamation. Among those rules is a requirement that, after Applicant commences operation, all business of IAC which is eligible for a Canadian chartered bank must be conducted by Applicant and that IAC may not engage in such business. Approximately 85% of IAC's business is eligible for a Canadian chartered bank under the Bank Act of Canada ("Bank Act") which gives Applicant total assets in excess of C$1.5 billion as of January 31, 1980. The application states that the transitional period, which may be up to ten years, has two purposes: (1) to permit a restructuring of the funding of IAC's assets by retiring, in ordinary course, outstanding indebtedness and financing new business of Applicant through acceptance of deposits and issuance of notes, and (2) to provide IAC with time to dispose of assets which are not permissible for Canadian chartered banks and to allow Applicant to develop eligible assets. The application further states that Applicant will gradually expand its traditional consumer and commercial banking services over the next few years. Applicant notes that although it may closely resemble a sales finance company at its inception, at the end of three or four years of operation Applicant will be the same as other Canadian commercial banks in all material respects.

Applicant states that it now offers a full range of banking services to its customers, including: deposit taking and checking facilities; a full range of corporate, commercial and consumer loans; mortgage financing; safekeeping facilities; letters of credit; travellers' checks; bankers' acceptances and foreign exchange. Applicant further states that substantially all of its liabilities for borrowed money consist of deposits of its customers, and that 90% of its business is conducted in Canada with Canadian nationals.

The application states that banking in Canada is a matter of exclusive federal jurisdiction and that each of the 12 chartered banks in Canada was incorporated by an act of the Canadian Parliament and is regulated under the Bank Act. According to the application, the Bank Act contains provisions relating to all aspects of Canadian banking, including the business and powers of chartered banks and detailed regulations concerning: allowable loans, shareholders, directors, capital stock and debentures, maintenance of reserves, auditing requirements, financial disclosure and regular inspection by the Inspector General of Banks. The application further states, with respect to reserve requirements, that Canadian chartered banks are required to maintain primary reserves with the Bank of Canada (the central bank established by the Canadian federal government) in the form of cash and non-interest bearing deposits. Primary reserves must equal at least 12% of demand deposit liabilities payable in Canadian currency and 4% of notice deposit liabilities payable in Canadian currency. According to the application, secondary reserves in the form of cash, short-term treasury bills of Canada and secured day loans to selected investment dealers in an amount set by the Bank of Canada (currently 5% of all deposit liabilities payable in Canadian currency) must also be maintained by Canadian chartered banks.

The application also states that while Canadian chartered banks do not participate in the Canadian securities business, they traditionally have participated in the distribution of their own securities and those of affiliated issuers.

According to the application, banking laws in Canada historically have been subject to revision every 10 years. Legislation amending the Bank Act has been introduced by Parliament which would expand the powers of Canadian chartered banks, increase the regulatory powers of the Inspector General of Banks, and increase the reporting requirements and other types of regulation to which Canadian chartered banks currently are subject.

Applicant proposes to issue both short-term promissory notes ("Short-term notes" of the type generally referred to as commercial paper, and longer-term promissory notes ("Longer-term notes")

(hereinafter, the Short-term notes and Longer-term notes are collectively referred to as "Notes") in large denominations in either bearer or registered form. The Notes will generally be sold through United States investment bankers; however, from time to time Applicant may sell such Notes directly to institutional and other sophisticated investors. Applicant intends that the terms of Short-term notes, including negotiability and minimum denomination, will be such as to qualify them for exemption from registration under Section 3(a)(3) of the 1933 Act and the Longer-term notes will be sold on such terms as to qualify for exemption from registration under Section 4(2) of the 1933 Act. Applicant states that the Short-term notes will have minimum denominations of $100,000, fixed maturities not longer than 270 days from the date of issuance, will not be renewable or extendable beyond 270 days either automatically or at the option of the issuer or holder, and will not be payable upon demand. Applicant also states that the Short-term notes and all future public issues of securities of Applicant in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that its United States counsel shall have certified that such rating has been received; provided, however, that no such rating shall be required to be obtained if in the opinion of United States counsel (having taken into account for the purpose thereof the doctrine of integration as referred to in various releases and no-action letters made public by the Commission) an exemption from registration is available with respect to such issue pursuant to Section 4(2) of the 1933 Act. Further, Applicant states that it will not sell the Short-term notes until it has received an opinion of its United States counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to an exemption under Section 3(a)(3) of the 1933 Act. Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant represents that the Notes will be sold only to institutional or other sophisticated investors, will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all deposit liabilities of Applicant, other than deposits by the Government of Canada or a province thereof, and with all other unsecured, unsubordinated indebtedness of Applicant. The Notes will rank prior to subordinated indebtedness of Applicant and to claims of holders of Applicant's common and preferred shares. The Short-term notes will be prime quality negotiable commercial paper and the proceeds of the Short-term notes will be used to finance current transactions.

Applicant undertakes to ensure that the investment bankers with which it deals in the United States will provide to each offeree of the Short-term notes a memorandum describing the business of Applicant and containing a balance sheet and income statement of Applicant. Applicant states that such financial statements will be accompanied by a brief paragraph highlighting the differences between Canadian accounting principles and generally accepted accounting principles employed by United States companies. Such memoranda will be at least as comprehensive as those customarily used in commercial paper offerings in the United States and will be updated periodically to reflect material changes in Applicant's financial status. With respect to the private placement of the Longer-term notes, Applicant undertakes to provide each offeree with disclosure documentation appropriate to secure an exemption under Section 4(2) of the 1933 Act, but in any event at least as comprehensive as the aforementioned memorandum. Applicant states that, from time to time, it may offer other securities (other than shares of its equity securities) for sale in the United States and undertakes that any offerings of such securities will be made only pursuant to a registration statement under the 1933 Act or pursuant to an applicable exemption from registration. In addition, any such offering will be made on the basis of appropriate disclosure documents which will be at least as comprehensive as those documents which will be used in the presently-proposed offerings.

Applicant undertakes that it will appoint special United States counsel as its agent to accept service of process in any action based on the Notes and instituted in any state or federal court by the holder of any of the Notes. Applicant represents that with respect to such an action it will expressly accept the jurisdiction of any state or federal court in the City and State of New York and that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant further undertakes, as to any future offering of its securities in the United States, to appoint an agent to accept any process which may be served in any action based on such securities and instituted in

any state or federal court by any holder of any such security and will expressly accept jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Such undertakings shall be irrevocable as long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid.

Section 3(a)(3) of the Act provides, in pertinent part, that an issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis is an investment company. Applicant asserts that only if its commercial loans are considered to be "securities" within the meaning of Section 2(a)(36) of the Act could any question be raised concerning its status as an investment company as defined by the Act.

Section 3(b)(2) of the Act provides, in pertinent part, that notwithstanding the definition of investment company contained in Section 3(a)(3) of the Act, an issuer is not an investment company if the Commission, upon application by such issuer, finds and by order declares it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

Applicant argues that even if its commercial loans are deemed to be securities, it would nevertheless be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Accordingly, Applicant requests an order of the Commission pursuant to Section 3(b)(2) of the Act. Applicant submits that the commercial lending relationships between Applicant and its customers go far beyond the somewhat passive concept of investing in, owning, or holding the securities presumably represented by the loans. Applicant further submits that it will be engaged in a variety of traditional banking activities such as consumer and personal lending and that, therefore, Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act and of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Alternatively, Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant asserts that it is requesting such an order of the Commission because of uncertainty concerning whether foreign banks would be defined as "investment companies" under the Act. Applicant submits that granting the requested exemption would benefit both Applicant and institutional and other sophisticated investors in the United States securities markets, and asserts that provisions of the Act are incompatible with the capital structure of Applicant as required by the Bank Act. Applicant further asserts that it is extensively regulated under the Bank Act by the Inspector General of Banks and the Bank of Canada, and that such regulation provides greater investor protection than do the provisions of the Act. Applicant also contends that it is a significantly different type of institution than an investment company and that the abuses which Congress intended to prevent through the Act do not arise in the course of Applicant's bank operations. Applicant submits that based on all the facts and circumstances, granting a conditional exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has agreed to having any order granting its requested relief, pursuant to either Section 3(b)(2) or Section 6(c) of the Act, being conditioned upon Applicant complying with the above described understandings. regarding disclosure documents.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 30, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission

shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued (pursuant to Section 6(c) of the Act) as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11480/December 5, 1980

In the Matter of

SHEARSON DAILY DIVIDEND INC.
SHEARSON GOVERNMENT AND AGENCIES INC.
14 Wall Street
New York, New York 10005

(812-4728)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Shearson Daily Dividend Inc. and Shearson Government and Agencies Inc. ("Applicants"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed an application on September 2, 1980, requesting an order, pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicants to value their respective portfolio securities using the amortized cost method of valuation.

On November 7, 1980, a notice was issued (Investment Company Act Release No. 11436) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent requested be, and hereby is, granted, effective forthwith, subject to the following conditions agreed to by Applicants:

1. In supervising each Applicant's operations and delegating special responsibilities involving portfolio management to each Applicant's investment adviser, each Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and each Applicant's investment objectives, to stabilize each Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the respective boards of directors shall be the following:

(a) Review by each Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the

maintenance of records of such review. To fulfill this condition, each Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value. The quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds 1/2 of 1 percent, the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the fund's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Each Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that neither Applicant will (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the affected fund will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Each Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Each Applicant will limit its portfolio investments, including repurchase agreements, if any, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Each Applicant will include in each of its quarterly reports, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11481/December 5, 1980

In the Matter of

A.T.A. INDUSTRIES, INC.
122-70 Nellis Street
St. Albans, New York 11413

(811-1956)

NOTICE OF PROPOSAL TO TERMINATE REGISTRATION PURSUANT TO SECTION 8(f) OF THE INVESTMENT COMPANY ACT OF 1940

NOTICE IS HEREBY GIVEN that the Commission proposes, pursuant to Section 8(f) of the Investment

Company Act of 1940 ("Act"), to declare by order on its own motion, that A.T.A. Industries, Inc. ("Fund"), a small business investment company registered under the Act as a closed-end, non-diversified, management investment company, has ceased to be an investment company as defined in the Act.

Information in the files of the Commission indicates that the Fund was incorporated on July 17, 1974, under the laws of the State of New York, and filed a Notification of Registration as a closed-end, non-diversified, management investment company with the Commission on March 28, 1975. In addition, the Fund filed a registration statement (File No. 2-53165) pursuant to the Securities Act of 1933 in connection with a proposed public offering of shares of its capital stock. The 1933 Act registration statement was not made effective, and the Fund did not make a public offering of its securities. The Fund failed to respond to a notice under Rule 479 that the registration statement would be declared abandoned unless timely amended or withdrawn. Thus, the registration statement was declared abandoned by order on March 16, 1976. The Fund has never filed any of the periodic reports required by the Act. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order the registration of such company shall cease to be in effect.

NOTICE IS FURTHER GIVEN that any interested person may, not later than December 29, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11482/December 8, 1980

In the Matter of

NEW YORK LIFE FUND, INC.
372 Park Avenue South
New York, N.Y. 10010

(812-4738)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 6(c) OF THE ACT FOR AN ORDER AMENDING AN EXISTING ORDER OF EXEMPTION FROM THE PROVISIONS OF SECTION 17(f) OF THE ACT AND RULE 17f-2 THEREUNDER

NOTICE IS HEREBY GIVEN that New York Life Fund, Inc. ("Fund" or "Applicant"), a diversified open-end management investment company registered under the Investment Company Act of 1940 ("Act") has filed an application pursuant to Section 6(c) of the Act for an Order amending an existing order which granted an exemption from the provisions of Section 17(f) of the Act and Rule 17f-2 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

The Fund was incorporated in the State of New York on December 24, 1969. Shares of the Fund are sold to separate accounts established by New York Life

Insurance Company ("New York Life" or the "Company") for individual variable annuity contracts ("IVA") sold by the Company. Additionally, shares of the Fund may be sold to other separate accounts of the Company as well as to the Company itself and organizations approved by it. No shares of the Fund have yet been sold other than to the IVA separate accounts and Applicant states that there is no intention of selling Fund shares to any other purchasers.

Section 17(f)

Section 17(f) of the Act provides, in pertinent part, that every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank having the qualifications prescribed in Paragraph 1 of Section 26(a) for trustees of unit investment trusts; (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934; or (3) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

Rule 17f-2 provides, among other things, that such assets be placed in a bank subject to the requirements of the rule, one of which limits the persons who shall have access to such assets to only certain specific individuals.

It is proposed that the Fund will deposit with the Manufacturers Hanover Trust Company (the "Bank") publicly held stocks, notes, bonds, debentures and other similar evidences of indebtedness of private corporate and public issues now owned or subsequently purchased by the Fund, such issues to be registered in the nominee name of the Bank or, if eligible, deposited by the Bank in the Depository Trust Company ("DTC") and registered in the latter's nominee name. The Bank is one having the qualifications prescribed in Paragraph (1) of Section 26(a) of the Act and DTC is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934.

On April 30, 1971 the Fund obtained an Order of the Commission (I.C. Rel. 6499) which, among other things, permitted the Company to act as custodian of these securities and other similar investments of the Fund and, to the extent necessary, to permit authorized representations of the Superintendent of Insurance of the State of New York, of other state insurance authorities, and of the National Association of Insurance Commissioners ("NAIC") to have access to such securities and other similar Fund investments maintained in the custody of New York Life.

The Applicant requests modification of such Order and a further exemption from Section 17(f) and Rule 17f-2 thereunder, to the extent necessary, to permit the Fund to maintain its securities and similar investments in the custody of a qualified Bank and to permit such authorized representatives of state insurance authorities and of NAIC to have access to such securities and other investments of Applicant. In addition, Applicant states that modification of such Order is requested to permit access to such securities and investments on behalf of the Fund only by two or more officers or responsible employees of the Company or Fund, acting jointly, at least one of whom would be an officer from a group of ten officers and employees of the Company or of the Fund designated by resolution(s) of the Board of Directors of the Fund.

In support of its requested exemption from Section 17(f) and Rule 17f-2 thereunder, Applicant states that the Company is an insurance company subject to extensive and detailed supervision and regulation by the Superintendent of Insurance of the State of New York as well as the insurance authorities of other states. The Applicant further states that the vault maintained by the Company is comparable to vaults maintained in most banks. In addition, access to the securities and similar investments may be had on behalf of the Fund only by two or more officers or responsible employees of New York Life or the Fund, acting jointly, at least one of whom would be an officer from a group of the officers and employees of New York Life or the Fund, designated by a resolution of the Board of Directors of the Fund. The affairs of the Fund are audited annually by independent certified public accountants who make, on a surprise basis, such checks and verifications of securities held in the vaults as they deem necessary. New York Life, as custodian for securities and similar investments of the Fund, segregates such securities and similar investments at all times from those of any other person including New York Life. Similarly, the Bank intends to hold such securities in custody for the Fund separate and apart from other securities and assets deposited with the Bank, in its capacity as custodian, or otherwise held by the Bank for its own account.

The application further states that it is contemplated that all or substantially all of the Fund's securities which are currently in the custody of New York Life will be deposited with the Bank. In certain instances, however, New York Life may maintain custody with regard to certain securities, primarily those which are ineligible for deposit by the Bank with DTC. It is anticipated that substantially all of the Fund's securities and investments will qualify for the DTC system which accepts most public issues. It is permissible, however, for the Fund to invest in non-public issues, leasehold interests in real estate and short-term obligations which cannot be handled by DTC. Accordingly, it will be necessary for New York Life to continue to act as custodian for the Fund with regard to any securities not deposited with the Bank or any other custodian.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly indicated by the policy and provisions of the Act.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 5, 1981 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reason for such request and the issues of fact or law proposed to be controverted, or he or she may request that they be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after January 5, 1981, as provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11483/December 9, 1980

In the Matter of

SCUDDER CASH INVESTMENT TRUST
SCUDDER MANAGED RESERVES, INC.
SCUDDER, STEVENS & CLARK
SCUDDER FUND DISTRIBUTORS, INC.
FIDUCIARY TRUST COMPANY
ROBERT H. GARDINER
175 Federal Street
Boston, Massachusetts 02110

and

WORCESTER COUNTY NATIONAL BANK
446 Main Street
Worcester, Massachusetts 01608

(812-4757)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING PROPOSED TRANSACTION FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING PARTICIPATION IN THE PROPOSED TRANSACTION

Scudder Cash Investment Trust ("Trust") and Scudder Managed Reserves, Inc. ("Reserves") (hereinafter referred to as the "Funds"), each registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end management investment company; Scudder, Stevens & Clark ("Scudder") and Scudder Fund Distributors, Inc. ("Distributor"), the investment adviser and principal underwriter of the Funds, respectively; Fiduciary Trust Company ("Fiduciary"), Worcester County National Bank ("Worcester") and Robert H. Gardiner ("Mr. Gardiner") (Funds, Scudder, Distributor, Fiduciary,

Worcester and Mr. Gardiner are referred to collectively as "Applicants") filed an application on October 29, 1980, and an amendment thereto on November 12, 1980, pursuant to Section 17(b) of the Act for an order of the Commission exempting from the provisions of Section 17(a) of the Act the proposed acquisition of the assets of Reserves by Trust, and for an order pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder permitting the Applicants to participate in the proposed transaction.

On November 14, 1980, a notice was issued (Investment Company Act Release No. 11443) of the filing of said application. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter having been considered, it is found, on the basis of the information contained in the application, that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the respective policies of the Funds and with the provisions and general purposes of the Act. It is also found that the participation of each of the Funds in the proposed transaction is consistent with the provisions, policies and purposes of the Act and that neither Reserves' nor Trust's participation is on a basis less advantageous than that of any other participant. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the proposed acquisition of the assets of Reserves by Trust be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that said application to permit the joint participation of the Applicants in the proposed transaction be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11484/December 10, 1980

In the Matter of

PUTNAM CONVERTIBLE FUND, INC.
PUTNAM INTERNATIONAL EQUITIES FUND, INC.
THE GEORGE PUTNAM FUND OF BOSTON
THE PUTNAM GROWTH FUND
PUTNAM HIGH YIELD TRUST
THE PUTNAM INCOME FUND, INC.
PUTNAM INVESTORS FUND, INC.
PUTNAM OPTION INCOME TRUST
PUTNAM TAX EXEMPT INCOME FUND
PUTNAM VISTA FUND, INC.
PUTNAM VOYAGER FUND, INC.
PUTNAM FUND DISTRIBUTORS, INC.
265 Franklin Street
Boston, MA 02110

and

CHEMICAL FUND, INC.
SURVEYOR FUND, INC.
61 Broadway
New York, NY 10006

(812-2280)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING CERTAIN ORDERS OF EXEMPTION FROM SECTION 22(d) OF THE ACT AND RULE 22d-1 THEREUNDER

Putnam Convertible Fund, Inc., Putnam International Equities Fund, Inc., The George Putnam Fund of Boston, The Putnam Growth Fund, Putnam High Yield Trust, The Putnam Income Fund, Inc., Putnam Investors Fund, Inc., Putnam Option Income Trust, Putnam Tax Exempt Income Fund, Putnam Vista Fund, Inc., Putnam Voyager Fund, Inc., Chemical Fund, Inc., and Surveyor Fund, Inc., diversified, open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Putnam Fund Distributors, Inc., (collectively, "Applicants"), filed an application on April 11, 1980, with an amendment thereto on August 1, 1980, for an order, pursuant to Section 6(c) of the Act amending the following orders of exemption from Section 22(d) of the Act and Rule 22d-1 thereunder: *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Release No. 9794 (June 2, 1977); *Putnam Convertible Fund, Inc., et al.*, Investment Company

Act Release No. 9918 (Sept. 7, 1977); *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Release No. 10535 (Dec. 22, 1978).

On November 6, 1980, a notice (Investment Company Act Release No. 11434) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for amendment of certain orders of exemption from Section 22(d) of the Act and Rule 22d-1 thereunder specified in the application, to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11485/December 10, 1980

In the Matter of

UNITED CASH MANAGEMENT, INC.
One Crown Center
P.O. Box 1343
Kansas City, Missouri 64141

(812-4740)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT AMENDING PRIOR ORDER EXEMPTING APPLICANT FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

On September 30, 1980, a notice was issued (Investment Company Act Release No. 11380) of an application filed on August 7, 1980, by United Cash Management, Inc. ("Applicant"), an open-end, diversified investment company registered under the Investment Company Act of 1940 ("Act") for an order, pursuant to Section 6(c) of the Act, amending a prior order (Investment Company Act Release No. 10783) ("Prior Order") exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act. The application requested that the Prior Order be amended to read as follows:

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors of Applicant determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the matter would be issued unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested amendment to the Prior Order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act that the requested amendment to the Prior Order be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11486/December 10, 1980

In the Matter of

WESTDEUTSCHE LANDESBANK GIROZENTRALE
Friedlichstrasse 56
4000 Duesseldorf 1
Federal Republic of Germany

(812-4725)

NOTICE OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM ALL PROVISIONS OF THE ACT

NOTICE IS HEREBY GIVEN that Westdeutsche Landesbank Girozentrale ("Applicant") filed an application on August 29, 1980, and an amendment thereto on November 6, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was formed in 1969 as a result of the merger of two banks established in the nineteenth century and that it is incorporated by special act of the State of North-Rhine Westphalia, one of the eleven States constituting the Federal Republic of Germany. It is the third largest bank in the Federal Republic of Germany and is among the top twenty largest banks in the world. At December 31, 1979, it had assets of approximately $54.58 billion and a paid-in capital of $565,980,000. Its capital has been contributed by the State of North-Rhine Westphalia and various regional authorities and banking associations. These contributors are in effect Applicant's stockholders. In addition to its head office at Friedrichstrasse 56, 4000 Duesseldorf 1, Federal Republic of Germany, Applicant has branches and wholly-owned subsidiaries in the Federal Republic of Germany, wholly-owned subsidiaries in Luxembourg and Hong-Kong and branches in London, Tokyo, New York and the Cayman Islands. The New York branch is licensed by the State of New York and is located at 450 Park Avenue, New York, New York 10022.

Applicant states that it performs all the functions of a typical commercial bank. At December 31, 1979, deposits comprised approximately 52.4% and bonds and notes 40.3% of Applicant's total liabilities. Approximately 75.7% of its deposits are from German individuals or entities. On the same date, loans constituted 86.7% of Applicant's total assets and interest on such loans accounted for approximately 65% of its gross income. Approximately 88.4% of these loans were extended to German individuals or entities.

Applicant states that, in addition to its deposit and lending business, it is engaged in providing a wide range of banking services such as leasing and factoring, investment and portfolio management, corporate analysis and advisory services. In addition, Applicant participates in various investment banking activities. Applicant also serves as a state and municipal bank for the State of North-Rhine Westphalia and its municipalities, and as clearing bank for all savings banks located in North-Rhine Westphalia.

Applicant represents that it is extensively regulated pursuant to German banking laws which provide for supervision by the Bundesaufsichtsamt fuer das Kreditwesen ("Federal Banking Supervisory Authority"), the Deutsche Bundesbank (German Central Bank) and by the State of North-Rhine Westphalia. Applicant states that such entities regulate its capital reserves, liquidity and loans. Applicant states that it must report regularly to the Federal Bank Supervisory Authority which may conduct on-site examinations and impose wide-ranging sanctions for violations of banking regulations. In addition, pursuant to the International Banking Act of 1978, Applicant is subject to supervision and regulation by the United States Federal Reserve Board.

Applicant also states that its non-bank depositors are protected by a Sicherheitsreserve (Guaranty Fund) and that the Liquiditaets-Konsortialbank GmbH (Liquidity Consortium Bank) would support Applicant in case of a liquidity squeeze.

Applicant proposes to issue and sell unsecured prime quality commercial paper (the "Notes") denominated in United States dollars, in order to provide an alternative source of supply of United States dollars which supplement United States dollars currently obtained by Applicant in the Eurodollar market. It is stated that under this proposal no Note will be in a denomination smaller

than $100,000. The Notes will be issued and sold by Applicant to a commercial paper dealer in the United States which will reoffer the Notes as principal to investors in the United States. Applicant represents that it does not currently intend to sell the Notes in the United States in excess of an aggregate of $500 million at any one time outstanding.

Applicant states that it undertakes to ensure that the Notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold by a registered United States securities dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicant also states that it undertakes to ensure that each offeree of the Notes will receive prior to purchase a memorandum which briefly describes Applicant's business and includes its most recent publicly available annual financial statements, which shall have been audited in accordance with German accounting principles. Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. Applicant states that such memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated promptly to reflect material changes in Applicant's financial condition.

Applicant represents that the terms of the Notes, including their maturity and minimum denomination, the amount outstanding at any given time, and their manner of offering to investors, will be such as to qualify them for the exemption from registration provided for certain short-term commercial paper by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant states further that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicant states that the Notes will contain no provision for payment on demand, extension, renewal or automatic roolover either at the option of Applicant or the holder. Applicant asserts that, as a consequence, it will not be required to register the Notes under the 1933 Act.

Applicant represents, in addition, that it will not issue and sell the Notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption provided by Section 3(a)(3) of the 1933 Act. Applicant states that it does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act and the Commission expresses to opinion as to the availability of any such exemption. Applicant further represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with the issuance of sale of the Notes.

Applicant also represents that the currently proposed issue of securities and all future issues of securities will have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization and that its United States counsel will have certified that such rating has been received.

Applicant asserts that the Notes will rank *pari passu* among themselves and equally with all other of its unsecured indebtedness (including liabilities to depositors) and will rank prior to its equity securities.

In addition, the State of North-Rhine Westphalia and Applicant's other shareholders will be guarantors of Applicant's obligation under these Notes inasmuch as they are jointly and severably liable for the obligations of Applicant if, and only if, Applicant's assets are insufficient to satisfy such obligations. Applicant undertakes to notify holders of the Notes of such guarantee in case of any default in payment on the Notes by Applicant.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant also states that it will appoint either such bank or the Commission to accept any process which may be served in any action based on the Notes and instituted by the holder of any Note in any state or federal court. Applicant further states that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction

because of the manner of the offering of the Notes or otherwise, but that its authorized agent will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other debt securities, but not including shares of its capital stock, for sale in the United States. Applicant represents that any such future offering of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Applicant states, in connection with any future offering in the United States of its securities, that it will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any state or federal court by the holder of any such security. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Section 3(a)(3) of the Act defines investment company to mean any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Section 6(c) provides that the Commission, by order upon application, may exempt any person from the provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is applying to the Commission because of uncertainty whether or not foreign commercial banks would be defined as "investment companies" under the Act.

Applicant contends that approval of its application is both necessary and appropriate in the public interest. Because compliance with the Act would conflict with its commercial banking practices, Applicant would effectively be precluded from selling securities in the United States if it is required to register as an investment company. Without an exemption, Applicant would be denied access to the only dollar-denominated commercial market in existence, and investors in the United States who would be precluded from purchasing securities issued by foreign banks, would be denied access to an increasingly important segment of the short-term, prime quality securities available for purchase on the international market.

Applicant maintains that foreign banks have a particular need for access to the United States securities markets which goes beyond that for foreign issuers generally. It is stated that because of the development of the large Eurodollar market, major foreign banks which deal in that market need a source of dollars in the event of even a short disruption in the market. Applicant asserts that an exemption pursuant to Section 6(c) could make an important contribution to the stability of the international financial markets. Applicant asserts that its activities are extensively regulated by the German banking authorities and that the limitations imposed by German laws afford substantial protection to investors in debt securities. Finally, Applicant claims that a commercial bank, such as itself, is substantially different from the typical investment company that Congress intended the Act to regulate, and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 5, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of his

or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11487/December 11, 1980

In the Matter of

ROWE PRICE NEW HORIZONS FUND, INC.
100 East Pratt Street
Baltimore, Maryland 21202

(812-4706)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM SECTION 2(a)(19)

On November 17, 1980, a notice was issued (Investment Company Act Release No. 11445) of an application filed on July 28, 1980, and an amendment thereto on November 12, 1980, by Rowe Price New Horizons Fund, Inc. ("Applicant"), a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), requesting an order of the Commission pursuant to Section 6(c) of the Act declaring that Paul M. Wythes shall not be considered an "interested person" of the Applicant or its investment adviser, T. Rowe Price Associates, Inc., as defined in Section 2(a)(19) of the Act by reason of his statute as a limited partner of Hambrecht & Quist, a California limited partnership registered as a broker-dealer under the Securities Exchange Act of 1934.

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the requested exemption from the provisions of Section 2(a)(19) of the Act be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11488/December 11, 1980

In the Matter of

INVESTORS MUTUAL, INC.
INVESTORS STOCK FUND, INC.
INVESTORS SELECTIVE FUND, INC.
INVESTORS VARIABLE PAYMENT FUND, INC.
IDS NEW DIMENSIONS FUND, INC.
IDS PROGRESSIVE FUND, INC.
IDS GROWTH FUND, INC.
IDS BOND FUND, INC.
IDS CASH MANAGEMENT FUND, INC.
IDS TAX-EXEMPT BOND FUND, INC.
IDS HIGH YIELD TAX-EXEMPT FUND, INC.
IDS TAX-FREE MONEY FUND, INC.

1000 Roanoke Building
Minneapolis, Minnesota 55402

and

INVESTORS DIVERSIFIED SERVICES, INC.
IDS Tower
Minneapolis, Minnesota 55402

(812-4403)

ORDER AMENDING A PREVIOUS ORDER GRANTING EXEMPTION FROM THE PROVISIONS OF SECTION 22(d) AND RULE 22d-1 THEREUNDER PURSUANT TO SECTION 6(c) OF THE ACT AND PERMITTING OFFERS OF EXCHANGE PURSUANT TO SECTION 11(a) OF THE ACT

Investors Mutual, Inc., Investors Stock Fund, Inc., Investors Variable Payment Fund, Inc., Investors Selective Fund, Inc., IDS New Dimensions Fund, Inc., IDS Progressive Fund, Inc., IDS Growth Fund, Inc., IDS Cash Management Fund, Inc. ("Cash Management"), IDS Tax-Exempt Bond Fund, Inc., IDS Bond Fund Inc., IDS High Yield Tax-Exempt Fund, Inc., and IDS Tax-Free Money Fund, Inc. ("Tax-Free Money Fund") (collectively referred to as "the Funds"), open-end, management investment companies registered under the Investment Company Act of 1940 ("Act"), and Investors Diversified Services, Inc., each Fund's investment adviser and principal underwriter (collectively referred to with the Funds as "Applicants"), filed an application on September 18, 1980, and an amendment thereto on October 20, 1980, requesting an order of the Commission amending an earlier order of the Commission dated April 11, 1980 (Investment Company Act Release No. 11128), which earlier order amended other orders of the Commission (*See* Investment Company Act Release No. 9807, June 7, 1977; Investment Company Act Release No. 10742, June 20, 1979; Investment Company Act Release No. 10954, November 27, 1979). These earlier orders, pursuant to Section 11(a) of the Act, permitted offers of exchange to be effected among the Funds on a basis other than each Fund's relative net asset value per share at the time of exchange and, pursuant to Section 6(c) of the Act, exempted such exchanges from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder. The amended order extends the exchange offer to shareholders of Cash Management and Tax-Free Money Fund, according to certain specified terms.

On November 7, 1980, a notice (Investment Act Release No. 11435) was issued of the filing of said application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Sections 6(c) and 11 of the Act, that the application for amendment of the Commission's order dated April 11, 1980, contained in Investment Company Act Release No. 11128 to the extent requested, be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11489/December 11, 1980

In the Matter of

THE CYPRUS CORPORATION
THE RET INCOME FUND INCORPORATED
GFM REIT MANAGERS, INC.
GARDNER AND PRESTON MOSS, INC.
JOHN L. GARDNER
ROBERT F. BIRCH
One Winthrop Square
Boston, Massachusetts 02110

and

J. B. FUQUA
J. B. FUQUA FOUNDATION, INC.
3800 First National Bank Tower
Atlanta, Georgia 30383

(812-4697)

ORDER PURSUANT TO SECTION 17(b) OF THE ACT EXEMPTING CERTAIN PROPOSED TRANSACTIONS FROM THE PROVISIONS OF SECTION 17(a) OF THE ACT AND PURSUANT TO SECTION 17(d) OF THE ACT AND RULE 17d-1 THEREUNDER PERMITTING CERTAIN PROPOSED TRANSACTIONS

On October 22, 1980, a notice was issued (Investment Company Act Release No. 11409) of an application of The Cyprus Corporation ("Cyprus"). The RET Income Fund Incorporated ("RET"), GPM REIT Managers, Inc. (the "RET Adviser"), Gardner and Preston Moss, Inc. ("Gardner"), John L. Gardner ("Mr. Gardner"), Robert F. Birch ("Mr. Birch"), J. B. Fuqua ("Mr. Fuqua"), and J. B. Fuqua Foundation, Inc. (the "Foundation") (collectively, "Applicants"), filed on June 26, 1980, and amended on September 18, and October 17, 1980, for an order: (1) pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of Section 17(a) of the Act, in connection with the proposed merger of RET with and into Cyprus, the issuance by Cyprus to Mr. Fuqua and the Foundation of shares of its common stock in exchange for shares of common stock of RET, and the issuance by Cyprus to Gardner, Mr. Gardner and Mr. Birch of shares of its common stock and preferred stock in exchange for shares of common stock and preferred stock of RET; and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Gardner to sell, and Mr. Fuqua to purchase, 88 percent of the stock of the RET Adviser (the "Share Purchase Transaction"); permitting Mr. Fuqua to contribute to Cyprus at no cost to Cyprus, and Cyprus to accept, the assets of the RET Adviser following the Share Purchase Transaction; permitted the RET Adviser to serve as investment adviser to RET during the period between the closing date of the merger and the effective date of the merger following approval of an investment advisory agreement between the RET Adviser and RET (the "New RET Advisory Agreement"); and permitting Gardner to serve as investment adviser to Cyprus following approval of an investment advisory agreement between Gardner and Cyprus (the "GPM Advisory Agreement").

The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued unless a hearing should be ordered. On November 17, 1980, Kemper Investors Life Insurance Company, holder of 1,000 shares of RET preferred stock, filed a request for hearing with respect to the application. That request, however, was subsequently withdrawn after Kemper sold its RET preferred stock, and the Commission has not ordered that a hearing be held with respect to this matter.

The matter has been considered and it is found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the respective policies of Cyprus and RET and with the general purposes of the Act. It is also found that the participation of Cyprus in the Share Purchase Transaction and the participation of RET and Cyprus in the New RET Advisory Agreement and the GPM Advisory Agreement, respectively, is consistent with the provisions, policies and purposes of the Act and is not on a basis less advantageous than that of any other participant. Accordingly,

IT IS ORDERED, pursuant to Section 17(b) of the Act, that the issuance by Cyprus in connection with the proposed merger of RET with and into Cyprus to Mr. Fuqua and the Foundation of shares of its common stock in exchange for shares of common stock of RET, and the issuance by Cyprus to Gardner, Mr. Gardner and Mr. Birch of shares of its common stock and preferred stock in exchange for shares of common stock and preferred stock of RET be, and hereby is, exempted from the provisions of Section 17(a) of the Act, effective forthwith, and

IT IS FURTHER ORDERED, pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, that the application to permit the Share Purchase Transaction; to permit Mr. Fuqua to contribute to Cyprus at no cost to Cyprus, and Cyprus to accept, the assets of the RET Adviser following the Share Purchase Transaction; to permit the RET Adviser to serve as investment adviser to RET during the period between the closing date of the merger and the effective date of the merger following approval of the New RET Advisory Agreement; and to permit Gardner to serve as investment adviser to Cyprus following approval of the GPM Advisory Agreement be, and hereby is, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT ADVISERS ACT OF 1940

INVESTMENT ADVISERS ACT OF 1940
Release No. 742/December 9, 1980

SEE

SECURITIES EXCHANGE ACT OF 1934
Release No. 17360/December 9, 1980

LITIGATION

Litigation Release No. 9252/December 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *AIRCRAFT INSTRUMENT AND DEVELOPMENT, INC.* (United States District Court for the District of Columbia, Civil Action No. 80-2498)

The Commission announced today that on November 28, 1980, the United States District Court for the District of Columbia entered a Final Judgment of Permanent Injunction against Aircraft Instrument and Development, Inc. ("Aircraft") of Wichita, Kansas, restraining and enjoining Aircraft from failing to file timely periodic reports and ordering it to comply with certain undertakings. Aircraft, consenting to the entry of the Court's judgment admitted that it had filed reports in an untimely manner on 13 separate occasions. The Commission's Complaint was filed on September 30, 1980.

The Complaint had alleged that Aircraft, as part of a continuing course of violative conduct extending over several years, failed to file timely with the Commission certain Annual and Quarterly Reports required to have been filed. Aircraft has agreed to adopt certain procedures to assure timely filing of reports required to be filed under the Securities Exchange Act of 1934.

Litigation Release No. 9253/December 5, 1980

SECURITIES AND EXCHANGE COMMISSION v. *COVINGTON BROTHERS TECHNOLOGIES*, 80 Civil 6826 (S.D.N.Y.) (CWP)

Stephen L. Hammerman, Administrator of the New York Regional Office of the Securities and Exchange Commission, announced that on December 3, 1980, the Commission filed a civil injunctive action in the United States District Court for the Southern District of New York seeking to enjoin the following defendants from future violations of the registration, manipulation, anti-fraud and beneficial ownership reporting provisions of the federal securities laws as follows:

(1) Covington Brothers Technologies ("CBT"), a California corporation which also does business as Covington Technologies—Section 17(a) of the Securities Act of 1933 ("Securities Act);

(2) Loran D. Covington ("Loran Covington"), of Fullerton, California, chief executive officer and a director of CBT—Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder;

(3) Robert V. Gibson ("Gibson"), of Newport Beach, California, an attorney and former director of the Presley Companies ("Presley")—Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b), 13(d) and 16(a) of the Exchange Act and Rules 10b-5, 13d-1, 13d-2 and 16a-1 thereunder;

(4) Frank L. Mace ("Frank Mace"), of New York, New York and Newport Beach, California, a financial consultant—Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 9(a)(2), 10(b) and 13(d) of the Exchange Act and Rules 10b-5, 10b-6, 13d-1 and 13d-2 thereunder;

(5) Valerie B. Mace ("Valerie Mace"), of Somers, New York, an attorney and sole shareholder of Gresham Street Capital Corp. ("Gresham") and Kent Consulting Corp. ("Kent")—Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 10(b) and 13(d) of the Exchange Act and Rules 10b-5, 13d-1 and 13d-2 thereunder;

(6) Gresham, a New York corporation—the same provisions specified above for Valerie Mace; and

(7) Kent, a New York corporation—the same provisions specified above for Valerie Mace.

The Complaint alleges that between April and September 1979:

(a) CBT offered and sold securities to the public pursuant to a registration statement which contained misrepresentations of material facts or omissions to state material facts concerning an affiliate of CBT, private sales by CBT insiders and an agreement to support the price of CBT shares in the aftermarket, for which CBT, Loran Covington, Gibson and Mace were responsible;

(b) Frank Mace, Gibson, Loran Covington, Valerie Mace, Gresham and Kent used or caused to be used CBT common stock as collateral in 65 margin accounts with 32 broker-dealers for purchases of securities of public companies, primarily Presley, without disclosing to broker-dealers that the CBT shares were restricted in violation of the anti-fraud provisions of the securities laws;

(c) Frank Mace and other entities effected a series of transactions in the securities of Presley causing the price of Presley to rise from approximately $10 to $20 per share, in violation of the anti-manipulation and anti-fraud provisions of the Exchange Act;

(d) Frank Mace, while participating in a distribution of CBT securities, bid for and purchased CBT shares during a distribution in violation of Section 10(b) of the Exchange Act and Rule 10b-6;

(e) Frank Mace, Gibson, Valarie Mace, Gresham and Kent failed to file Schedules 13D with respect to ownership of CBT shares and failed to file timely and accurate Schedules 13D with respect to ownership of Presley shares; and

(f) Gibson failed to file beneficial ownership reports with respect to Presley shares owned by VGI.

Simultaneously with the filing of the Complaint, Final Judgments of Permanent Injunction were submitted for entry against CBT, Loran Covington, Frank Mace, Valerie Mace, Gresham and Kent. These defendants consented to the entry of the judgments without admitting or denying the allegations of the Commission's Complaint.

In addition to injunctive relief against future violations of Section 17(a) of the Securities Act, CBT was ordered, pursuant to its consent, to:

(1) use its best efforts to secure a Board of Directors composed of a majority of independent directors;

(2) establish an audit committee composed entirely of independent directors with certain special powers and duties; and

(3) institute internal procedures with respect to beneficial ownership reporting requirements.

CBT further undertook to expand its Board of Directors to seven members.

Loran Covington consented to injunctive relief from further violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. He was further ordered, pursuant to his consent, to:

(1) correct and file any required beneficial ownership reports;

(2) secure written opinion of counsel prior to pledging or disposing of CBT shares while an officer, director or control person of CBT; and

(3) use his best efforts to comply with and facilitate the equitable relief agreed to by CBT as listed above.

Frank Mace was enjoined, pursuant to his consent, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Section 9(a)(2), 10(b) and 13(d) of the Exchange Act and Rules 10b-5, 10b-6, 13d-1 and 13d-2 thereunder.

Valerie Mace, Gresham and Kent were each enjoined, pursuant to their consents, from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act, Sections 10(b) and 13(d) of the Exchange Act and Rules 10b-5, 13d-1 and 13d-2 thereunder.

Litigation Release No. 9254/December 8, 1980

SEC v. HAWKINS & HAWKINS INVESTMENTS, ET AL. (N.D. Tex./ Fort Worth Division) (CA 4-80-420)

Wayne M. Secore, Administrator of the Fort Worth Regional Office of the Securities and Exchange

Commission, announced that on November 28, 1980, a complaint was filed in the United States District Court for the Northern District of Texas, Fort Worth Division, against Hawkins & Hawkins Investments (H&H), Kenneth Hawkins (K. Hawkins), and Luther Hawkins (L. Hawkins), all of Fort Worth, Texas.

The Complaint alleged that H&H, K. Hawkins and L. Hawkins violated the registration provisions of the Securities Act of 1933 and the Investment Company Act of 1940. Specifically, the complaint alleges that the defendants offered and sold limited partnership interests to 109 investors in eight states and raised approximately $600,000. The investor funds were pooled and invested in listed call options.

Simultaneously with the filing of the Commission's Complaint, without admitting or denying any of the allegations in the Complaint, the defendants consented to the entry of a final Order of Permanent Injunction. The Order also requires the defendants to make their books and records available to the staff of the Commission no later than December 5, 1980. The Order further requires the defendants to liquidate the portfolio investments and distribute the proceeds pro-rata to investors by December 31, 1980, and to file an accounting with the court following the liquidation and distribution no later than January 15, 1981.

Litigation Release No. 9255/December 9, 1980

SECURITIES AND EXCHANGE COMMISSION v. *CHARLES S. ROSENBLUM* (United States District Court for the District of Massachusetts Civil Action No. 80-2668)

Willis H. Riccio, Administrator of the Commission's Boston Regional Office, announced that on December 2, 1980, the Honorable Joseph L. Tauro of the United States District Court for the District of Massachusetts, entered an order permanently enjoining CHARLES S. ROSENBLUM ("Rosenblum") from further violations of the registration and anti-fraud provisions of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act") in connection with his operation of South Shore Financial Associates ("South Shore"), a real estate financing business located in Braintree, Massachusetts. Rosenblum consented to the entry of the Order of Permanent Injunction without admitting or denying the allegations of the Complaint.

The Commission's Complaint alleges that since on or about April 1, 1972, to the present, the defendant, Rosenblum, offered for sale and sold over $3,000,000 in unregistered securities in the form of promissory notes in connection with the operation of South Shore to investors residing in Florida, Massachusetts, New Hampshire, New York, Rhode Island and Virginia.

Additionally, the Commission's Complaint alleges that in connection with the offer and sale of these securities the defendant made misrepresentations of material facts and omitted to state material facts, concerning, among other things, the safety of the investments, the rate of return, the use of proceeds, South Shore's financial condition, the value of South Shore's assets, the extent of South Shore's liabilities, the profitability of South Shore, the description of South Shore promissory notes as certificates of deposit, the investment of proceeds in personal real estate ventures, the ability to pay South Shore promissory notes as they mature, the existence of collateral for South Shore's real estate loans, the extent of delinquencies of South Shore's real estate loans and South Shore's initiation of foreclosure proceedings.

The Commission's Complaint also alleges that Rosenblum engaged in certain transactions, practices and courses of business which operated or would operate as a fraud upon investors, including failing to provide written information to investors in connection with their initial investments in South Shore promissory notes, soliciting former and current investors to invest and reinvest funds in South Shore promissory notes, soliciting former and current investors to convert existing investments into new investments at higher rates of interest and for longer terms, describing South Shore investments as risk free, furnishing information which misrepresented the extent of liabilities and net worth of South Shore, concealing from investors net losses in operations incurred by South Shore in 1976 through 1978, failing to inform investors of delinquencies on South Shore real estate loans, failing to inform investors of foreclosure proceedings by South Shore in connection with its real estate loans, and soliciting investments, reinvestments and conversions in June, 1978, from former and current investors at higher interest rates and for terms of 5 or 10 years.

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21/12

sec docket

VOLUME 21, NO. 12 DECEMBER 30, 1980

RELEASES IN THIS ISSUE

Securities Act	6272	908
Securities Exchange Act	17369-84	928
Public Utility Holding Company Act	21839-44	984
Trust Indenture Act	601	990
Investment Company Act	11490-97	990
Litigation	9256-58	1007

This listing covers releases issued from 12/12/80-12/17/80. This listing does not affect the legal status of any document published in this issue.

SEC DOCKET INDEX

VOLUME	FOUND IN DOCKET	DATED
1	VOL. 5, No. 15	12/3/74
2	VOL. 5, No. 16	12/10/74
3	VOL. 6, No. 3	1/8/75
4	VOL. 6, No. 15	4/22/75
5	VOL. 6, No. 20	5/28/75
6	VOL. 7, No. 8	7/22/75
7	VOL. 8, No. 15	1/28/76
8	VOL. 9, No. 11	5/18/76
9	VOL. 10, No. 11	10/5/76
10	VOL. 11, No. 9	2/8/77
11	VOL. 12, No. 12	7/19/77
12	VOL. 13, No. 11	11/29/77
13	VOL. 14, No. 12	4/25/78
14	VOL. 15, No. 12	9/12/78
15	VOL. 16, No. 10, p. 647	1/16/79
16	VOL. 17, No. 7, p. 467	5/15/79
17	VOL. 18, No. 6, p. 349	9/13/79
18	VOL. 19, No. 7, p. 529	2/19/80
19	VOL. 20, No. 9, p. 685	7/22/80

SIGNIFICANT ITEMS
RULES

The following releases relate to self-regulatory proposals and/or adoptions

34-17369	34-17374	34-17375
34-17376	34-17380	34-17382

34-17371 Adoption of a proposed rule governing the giving and receiving of selling concessions, discounts and other allowances in connection with fixed price offerings of securities (Papilsky Rule-SR-NASD-78-3).

33-6272 Proposed Amendments to Regulation S-X under the Securities Act of 1933; amendments to Form N-1 and Form N-2 and new Rule 30d-1 under the Investment Company Act of 1940 [File No. S7-865-Comment Period Expires February 16, 1981]

34-17370 Adoption of Amendments to Form U-4, a personal form filed by non-member broker-dealers concerning their associated persons.

34-17383 Adoption of revised Form U-4-the Uniform Application for Securities Industry Registration.

IC-11493 Adoption of Interim Rules Exempting Business Development Companies and Certain of Their Affiliates from Provisions of the Investment Company Act.

SE 1.29:

OPINION

34-17381 **EUGENE T. ICHINOSE, JR.**

Where registered principal of member firm of registered securities association unlawfully sold unregistered securities, failed to give required notice of those sales and others to the firm with which he was associated, improperly engaged in the securities business without required registration as a broker-dealer, and failed to disclose extra sales compensation to investors, *held*, association's findings of violation and sanctions *affirmed*.

SECURITIES ACT OF 1933

SECURITIES ACT OF 1933
Release No. 6272/December 15, 1980

INVESTMENT CO. ACT OF 1940
Release No. 11490/December 15, 1980

STANDARDIZATION OF FINANCIAL STATEMENT REQUIREMENTS IN MANAGEMENT INVESTMENT COMPANY REGISTRATION STATEMENTS AND REPORTS TO SHAREHOLDERS

ACTION: Proposed amendments to forms and proposed rulemaking.

SUMMARY: The Commission is proposing uniform requirements governing the content of and periods to be covered by financial statements included in shareholder reports and in prospectuses (or annual updates) of management investment company registration statements. The proposals would amend the general regulation governing the form and content of and requirements for financial statements by including special provisions for management investment companies. The majority of financial statement instructions would be removed from the registration statement forms and the rule governing shareholder reports. The uniform set of financial statement instructions specified by the general regulation governing financial statements would be made applicable to prospectuses, annual registration statement updates, and shareholder reports. As a result, management investment companies would be able to prepare annually a single set of uniform, updated financial statements that could be used in both the prospectus (or annual update of the registration statement) and the annual report to shareholders. In addition, open-end management investment companies would be permitted, at their option, either to incorporate by reference financial statements included in any shareholder report into the prospectus or to transmit a currently effective prospectus as the equivalent of any report to shareholders. These provisions would eliminate the necessity for open-end management investment companies to print and mail the same financial statements in two different documents. The Commission is proposing these amendments to reduce the costs incurred in preparing and transmitting essentially duplicative financial information and to provide an opportunity for open-end management investment companies to reduce the length of their prospectuses.

DATE: Comments must be received on or before February 16, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-865. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2115, Lawrence A. Friend, Senior Accountant, (202) 272-2095, or Thomas P. Lemke, Esq., (202) 272-2033, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is today proposing: (1) amendments to Regulation S-X [17 CFR 210], the Commission's general regulation regarding the form and content of and requirements for financial statements filed under, *inter alia*, the Securities Act of 1933 ("1933

Act") [15 U.S.C. 77a et seq.] and the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-1 et seq.]; (2) amendments to Form N-1 [17 CFR 239.15, 17 CFR 274.11] and Form N-2 [17 CFR 239.14, 17 CFR 274. 11a-a], the registration statement forms for, respectively, open-end and closed-end management investment companies under both the 1933 Act and the 1940 Act; and (3) a new rule 30d-1 [17 CFR 270,30d-1], regarding reports to shareholders under section 30(d) of the 1940 Act [15 U.S.C. 80a-29(d)]. The proposed amendments would reconcile the differences in the financial statement requirements of prospectuses and shareholder reports by amending the uniform financial statement requirements and instructions of Regulation S-X to include special provisions for management investment companies. In turn, these instructions, with certain modifications, would be made applicable to prospectuses and to annual updates of the 1940 Act registration statement by amendements to the registration statement forms. Finally, new rule 30d-1, which would replace the current rule, would adopt the financial statement requirements of the prospectus for shareholder reports, and would extend the current mailing period requirement for such reports from forty-five days after the close of the period for which the report is made to sixty days after such date. In addition, proposed amendments to Form N-1 and new rule 30d-1 would provide open-end management investment companies two new options for transmitting disclosure documents containing financial information to shareholders and prospective investors. Such companies would be permitted either to incorporate by reference financial statements from shareholder reports into the prospectus, or to transmit a currently effective prospectus as the equivalent of any annual or semiannual report to shareholders, provided that certain conditions are satisified. These proposals are options, so that companies could, if they chose, continue both to include financial statements in prospectuses and to transmit separate shareholder reports.

The proposals to reconcile the financial statement requirements are intended to reduce the costs, imposed by current disclosure requirements, of preparing and transmitting various disclosure documents containing financial statements that are substantively identical but not interchangeable. The proposals with respect to transmission of financial information are intended to provide open-end companies with opportunities for futher reductions in costs by using their prospectuses as a substitute for shareholder reports or, in the alternative, reducing the length of their prospectuses.

BACKGROUND

Section 30(d) of the 1940 Act and rule 30d-1 thereunder require management investment companies to transmit a report to shareholders at least semiannually. These reports are required to contain certain financial statements and other information covering either the first six months of the company's fiscal year (the "semiannual report"), or, in the report made as of the end of the fiscal year (the "annual report"), the entire fiscal year. The financial statements required by the statute and the rule are complemented by the requirements of generally accepted accounting principles ("GAAP"), as described in the *Industry Audit Guide: Audits of Investment Companies* (1973). The financial statements in the company's annual report are required to be audited, and consist of the following:

1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

2) A schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities;

3) An income statement for the most recent fiscal year;[1] and

4) Statements of changes in net assets for the two most recent fiscal years.[2]

In addition, in order to conform to GAAP, the annual report must contain condensed financial information in the form of a table of per share income and capital changes for the five most recent fiscal years, with at least the most recent year

[1]Rule 30d-1(a) requires an income statement for the period for which the report is made, which is the same as that reported pursuant to GAAP.

[2]Rule 30d-1(d)(2) requires a statement of changes, in net assets only for the period for which the report is made, but pursuant to GAAP registrants supply this information for two years in the annual report.

audited ("condensed financial information" or "per share table"). Many annual reports exceed the GAAP standard and provide condensed financial information either for the ten most recent fiscal years, with the five latest years audited, or the five most recent fiscal years, with all five years audited, or the five most recent fiscal years, with all five years audited. Section 30(d)(5) Of the 1940 Act and rule 30d-1 thereunder also require a statement of the aggregate remuneration paid during the period of the report to all directors of the company (as regular and special compensation), to all officers, and to each person of whom any officer or director of the company is an affiliated person.

The above financial statements and other financial information comprise the only requirements and other financial information comprise the only requirements for the annual report to shareholders[3] under section 30(d) and rule 30d-1 thereunder. Although not required by the statute, many investment companies, on a voluntary basis, include narrative material about such topics as general economic conditions, the company's performance, and the services provided to shareholders. Like the financial statements, any narrative material is subject to the prohibition in section 30(d) that it "not be misleading in any material respect in light of the reports required to be filed pursuant to subsections (a) and (b) [of section 30]" (those reports are, respectively, Form N-1R [17 CFR 274.101], the annual report to the Commission, and Form N-1Q [17 CFR 274.106], the quarterly report to the Commission, for management investment companies). Section 34(b) of the 1940 Act [15 U.S.C. 80a-33(b)], which makes it unlawful for any person "to make any untrue statement of a material fact" in any document "filed or transmitted" pursuant to the 1940 Act, also applies to reports made under section 30(d) and rule 30d-1 thereunder.[4]

In addition to the semiannual and annual reports required by section 30(d), open-end managment investment companies engaged in a continuous offering of their shares to the public (the type commonly known as "mutual funds") must bring their prospectuses up to date on an annual basis, pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] and section 24(e)(3) of the 1940 Act [15 U.S.C. 80a-24(e)(3)].[5] Those management investment companies that file Form N-1R (the annual report of certain information to the Commission)[6] must also bring their 1940 Act registration statements up to date annually, pursuant to rule 8b-16 under the 1940 Act [17 CFR 270.8b-16] (the "annual update").[7] Like section 30(d) reports, the prospectus (and the annual update) is required to contain specified financial statements, which must be audited, and the form and content of which are governed by Regulation S-X. The financial statements required consist of the following:

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[3]Semiannual reports are required to include the same financial statements and other information (unaudited) as annual reports, except that, to conform to GAAP, companies present the financial statements only for the period of the report (*i.e.*, the fiscal half-year) and the most recent preceding fiscal year, and condensed financial information only for the period of the report and the five most recent preceding fiscal years.

[4]The annual report under section 30(d) satisfies the requirements of rules 14a-3 and 14c-3 [17 CFR 240.14a-3, 14c-3] under the Securities Exchange Act of 1934 ("1934 Act") [15 U.S.C. 78a et seq.] for the annual report to securityholders.

[5]The requirement to update the prospectus on an annual basis arises from section 10(a)(3), which states that, "when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use." Section 24(e)(3) requires any prospectus relating to a redeemable security issued by an investment company that is updated to meet the requirements of section 10(a)(3) to be filed as a post-effective amendment to the issuer's registration statement.

[6]Form N-1R is required to be filed by all registered management investment companies except those that issue periodic payment plan certificates and small business investment companies.

[7]Mutual funds generally make one filing annually on Form N-1 in satisfaction of the requirements to update the prospectus and the 1940 Act registration statement, while closed-end companies, which do not engage in a continuous offering, make an annual filing on Form N-2 to satisfy rule 8b-16. For mutual funds, the financial statements filed as part of an updated propectus also satisfy the requirements of rule 8b-16.

1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

2) A schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities;

3) Income statements for the three most recent fiscal years;[8] and

4) Statements of change in net assets for the three most recent fiscal years.

In addition, the prospectus (but not the annual update) is required to contain condensed financial information in the form of a table of per share income and capital changes for the ten most recent fiscal years of the registrant, with at least the five most recent years audited.

It is clear from the foregoing discussion that current financial statement requirements result in the preparation by investment companies of largely similar information in their prospectuses and annual reports to shareholders. Moreover, there is considerable overlap in the readership of the two documents. Although the prospectus and the annual report are intended for different purposes—the prospectus, of course, is the principal selling document for potential investors, while the annual report is intended to provide information to existing shareholders—many investment companies use their annual reports as sales literature in attracting new investors, and many investment companies send a current prospectus to existing shareholders as a matter of course.

Nevertheless, under current requirements certain differences prevent the financial statements in the prospectus and the annual report from being interchangeable. First, the time periods within which the two documents must be transmitted are different. Although the two sets of financial statements are usually prepared at about the same time, *i.e.*, shortly after the close of the fiscal year, the annual report must be sent to shareholders within forty-five days after the close of the fiscal year,[9] while the prospectus must become effective (and the annual update made) within 120 days of the close of the fiscal year. Second, the financial statements in the prospectus are governed by Regulation S-X, but those in the annual report under section 30(d) are not. As a result, the schedule of investments in the prospectus presents the individual investments at cost as well as at current value, while the comparable schedule in the annual report omits the cost column. Third, the time periods to be covered by certain financial statements vary. A statement of income is presented for one year and statements of changes in net assets are presented for two years in the annual report; each is presented for three years in the registration statement. The per share table is given for five years (with at least the latest year audited) in the annual report, and ten years (with at least the five most recent years audited) in the prospectus. Last, there are several minor differences in the content of the financial statements as between the annual report and the prospectus, with the statements in the prospectus containing somewhat more information. The ratio of investment company operating expenses to investment income appears in the income statement in the prospectus, but not in the comparable statement in the annual report; per share dividends and distributions to stockholders are included in the statement of changes in net assets in the prospectus but not in the comparable statement in the annual report (although this information appears in the per share tables of both documents); a specimen price-make-up sheet must appear in the prospectus (usually as a continuation of the balance sheet or statement of assets and liabilities) but not in the annual report; and section 30(d)(5) of the 1940 Act requires disclosure of management remuneration in annual reports that is more extensive than the comparable requirement of Regulation S-X concerning prospectuses.

These differences in financial statements required in prospectuses and annual reports are not related to the different purposes for which the documents are intended, but are rather the result of the fact that prospectuses and annual reports evolved at different time from different statutory bases. It appears to the Commission that no useful purpose is

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[8]A registration statement is required to include income statements for the three most recent fiscal years of the registrant, but only the most recent year is required to be included in the prospectus.

[9]This period is extended by present rule 30d-1(a) [17 CFR 270.30d-1(a)] to sixty days for nondiversified companies having one or more majority-owned subsidiaries that are not investment companies.

served by maintaining the vast majority of differences between prospectus and annual report financial statement requirements. Indeed, it could be argued that minor discrepancies between the two documents may be confusing to the investor who receives both sets of financial statements without an expanation of the differences. The proposed amendments announced today would result in a uniform set of financial statement requirements for both prospectuses and annual reports.

The Commission believes that adoption of uniform financial statement requirements for prospectuses and shareholder reports would benefit both investors and management investment companies. Investors would benefit by receiving disclosure documents containing financial statements prepared according to uniform instructions. Similarly, management investment prepared according to uniform instructions. Similarly, managment investment companies would benefit from the reduction in their costs that would result from elimination of the need to prepare, at the close of the fiscal year, two different sets of financial statements.

Mutual funds would be afforded further opportunities to reduce costs associated with the transmission of financial information with two provisions intended to eliminate the need to print the same financial statements as part of two documents. Registrants, at their option, could incorporate financial statements by reference from a shareholder report into the prospectus, so long as persons receiving the prospectus also receive a copy of the shareholder report containing the incorporated financial statements, or in the alternative registrants could transmit a currently effective prospectus as the equivalent of any shareholder report. These options should further reduce costs for, respectively, funds that use shareholders reports as sales literature, and those that send a current prospectus to shareholders every year in addition to the shareholder report. Moreover, funds that choose to incorporate financial statements by reference into the prospectus should be able to shorten their prospectuses with no decrease in the information disclosed to investors, because the shareholder report containing the financial statements would also be furnished. Alternatively, mutual funds would still be free to prepare and send the financial statements separately in both the shareholder report and in the prospectus, as they do now.

These proposals would have no impact on the requirements of the applicable securities laws as to filing and transmitting disclosure documents, except to offer alternative methods for open-end companies to satisfy these requirements. For example, the requirements that an investment company annually update its prospectus (and 1940 Act registration statement), and that prospective investors be furnished with a currently effective prospectus, would not be affected by these proposals. Rather, the provision providing for incorporation by reference would permit an open-end company to satisfy these requirements by filing with the Commission, and supplying potential investors, with both a prospectus that incorporate financial statements from a shareholder report and a copy of that report. Similarly, current shareholders would still have to be furnished with a semiannual and an annual report, but the provision permitting transmission of a currently effective prospectus as the equivalent of a shareholder report would provide open-end companies with another method of satisfying the shareholder report requirements.

It should be noted that, in reconciling the financial statement requirements for prospectuses and shareholder reports, the proposed amendments do not make any substantive increase in those requirements. In the relatively few instances where one set of existing requirements is substantively more burdensome than the other, the Commission is proposing either to adopt the less burdensome requirement as the common standard, or to permit registrants to continue preparing different sets of financial statements for shareholder reports and prospectuses, in accordance with existing standards.

UNIFORM FINANCIAL STATEMENT REQUIREMENTS

To eliminate the differences in financial information provided through prospectuses and annual reports to shareholders, the Commission is proposing amendments to: (1) Regulation S-X, the Commission's general regulation on the form and content of and requirements for financial statements in disclosure documents under the federal securities laws; (2) Forms N-1 and N-2, the registration statement forms under the 1933 and 1940 Acts for, respectively, open-end and closed-end management investment companies; and (3) rule 30d-1 under the 1940 Act governing reports to

shareholders.[10] New rule 3-18 of Regulation S-X [17 CFR 210.3-18] would supplement the centralized set of financial statement instructions in Article 3 of Regulation S-X by providing special instructions for management investment companies.[11] In turn, the amendments to the financial statement items of the registration statement forms (Item 18 of Form N-1[12] and Item 20 of Form N-2) would remove most of the specific instructions from the forms and would make proposed rule 3-18, with minor modifications, applicable to the financial statements required to appear in prospectuses and annual updates, and to the financial statements required in shareholder reports under section 30(d) and rule 30d-1 thereunder. Finally, new rule 30d-1 would make clear that financial statements in shareholder report would have to follow the instructions in the registration statement forms, to the extent those instructions modify the requirements of rule 3-18 of Regulation S-X. As a result of these amendments, both the annual report to shareholders and the current prospectus (or, in the case of a closed-end company, the annual update) of a management investment company would be required to contain the following audited financial statements:

(1) A balance sheet or statement of assets and liabilities as of the close of the most recent fiscal year;

(2) A schedule of investments as of the date of the balance sheet or the date of the statement of assets and liabilities;

(3) An income statement for the most recent fiscal year; and

(4) Statements of changes in net assets for the two most recent fiscal years.

The proposals would reconcile all current differences between financial statement requirements for prospectuses and shareholder reports, with three exceptions. The first exception arises with respect to condensed financial information. The annual report of all management investment companies would still be required to include a per share table for the five most recent fiscal years, with at least the latest year audited,[13] and the current prospectus of open-end companies[14] would still be required to include such information for the ten most recent fiscal years, with at least the five latest years audited. In those situations where an open-end company, pursuant to the proposed optional provisions, elects either to incorporate by reference or to transmit a currently effective prospectus as the equivalent of a shareholder report, however, the shareholder report from which the information is incorporated, or the prospectus transmitted as a shareholder report, would be required to contain condensed financial information for the ten most recent fiscal years, with at least the five latest years audited. These are the periods prescribed for condensed financial information in a prospectus by Item 3(a) of the registration statement forms, and the requirements of that item would have to be met where the document transmitted to a shareholder or prospective investor in a prospectus, or part of a prospectus. A second exception would arise concerning management remuneration disclosure in financial statements. Where an open-end company elects either of the options, such company would have to provide, in the single set of financial statements prepared, management remuneration disclosure that satisfies both the prospectus requirement and the shareholder report requirement.

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[10]The amendment to rule 30d-1 would replace the current rule altogether.

[11]Proposed rule 3-18 thus follows the approach taken for other disclosure documents under the federal securities laws by removing most of the instructions as to financial statements from specific forms and centralizing the instructions in Article 3 of Regulation S-X. *See Uniform Instructions as to Financial Statements—Regulation S-X,* Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63682 (Sept. 25, 1980)].

[12]The financial statement item of Form N-1, formerly Item 17, was renumbered Item 18 by Securities Act Release No. 6243 (Sept 30, 1980) [45 FR 67079 (Oct. 9. 1980)].

[13]Registrants would still be free to continue providing condensed financial information in the annual report for a longer period, such as the ten latest fiscal years, if they chose.

[14]The condensed financial information would not be required in closed-end companies' annual updates because, under Item 3(a) of both forms, it is required only for the prospectus. However, some closed-end companies provide this information now, and they could continue to do so in the future.

A third exception would arise concerning disclosure of the cost of individual securities. Such information is now required to appear in the schedule of investments in prospectuses, pursuant to Article 12 of Regulation S-X, but it does not appear in the comparable schedule in shareholder reports. For purposes of this proposal, the Commission has determined to maintain the requirement of cost information in the schedule of investments in the prospectus, but not to add it to shareholder reports. Accordingly, an open-end company electing either option for transmission of financial information would have to provide disclosure of the cost of individual securities in the schedule of investments that is part of the single set of financial statements. The Commission specifically requests comment on whether cost disclosure is useful to investors and thus should be retained as a requirement of the prospectus.

The appendix to this release consists of a table designed to enable the reader to trace current financial statement requirements for prospectuses shareholder reports to the proposed requirements. The sources for the present and proposed requirements are also provided. The discussions in the succeeding sections of this release provide detail explanations of each proposed change.

The Commission anticipates that most of the benefits to be derived from the reconciliation of financial statement requirements between shareholder reports and prospectuses will accrue to open-end management investment companies, which will be able to use a single set of financial statements for both the annual report to shareholders and the updated prospectus, and, at their option, to send a prospectus in satisfaction of shareholder report requirements or to incorporate financial statements by reference from shareholder reports into the prospectus. Closed-end management investment companies should also benefit, however, by being able to prepare a single set of financial statements for both the annual report to shareholders and the annual update of the registration statement under the 1940 Act. A similar benefit would also accrue to any open-end companies that choose to update their 1933 Act and 1940 Act registration statements through separate filings. Closed-end companies also would be able to incorporate financial statements from the annual report by reference into the annual update of the 1940 Act registration statement.

The reconciliation of financial statement requirements would have the most effect with respect to the prospectus (or the annual update) and the annual report to shareholders, rather than the semiannual report. As noted above, both the prospectus and the annual report are prepared shortly after the close of the fiscal year, and under the proposed amendments the form, content, and time periods for the two sets of financial statements would be identical. The proposed requirements as to form and content of financial statements would also apply to semiannual reports under section 30(d), but those financial statements would be supplied only for the period of the report and for the latest preceding fiscal year, and would not be required to be audited. Thus, such financial statements would, for the most part, appear only in semiannual reports, not in prospectuses as well, because such financial statements would not satisfy the periods required for financial statements in prospectuses. The Commission is aware, however, that some investment companies now update their prospectuses after the close of the fiscal half-year rather than the close of the fiscal year. If the proposed amendments are adopted, such companies would be able to use the same financial statements for the updated prospectus and the semiannual report. Such companies could incorporate financial statements from semiannual reports into prospectuses, or transmit prospectuses in place of semiannual reports, provided that the required financial statements and condensed financial information covered not only the fiscal semiannual period just completed (which need not be audited), but also the periods specified by Regulation S-X for a prospectus (which must be audited).

Proposed Amendments to Regulation S-X

Uniform financial statement requirements have previously been adopted for most registration forms filed by companies other than investment companies under the 1933 or 1934 Acts and for periodic reports to shareholders pursuant to the 1934 Act.[15] The purpose of the proposed

[15]*See Uniform Instructions as to Financial Statements—Regulation S-X,* Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63682 (Sept. 25, 1980)].

amendments to Article 3 of Regulation S-X is to adopt these uniform financial statement requirements, as modified for management investment companies, for the prospectus (or annual update) and reports to shareholders of such companies.

If the Commission were to apply the uniform financial statement requirements in Article 3 to management investment companies, without modifications, the following statements would be required in the prospectus and annual report to shareholders: (1) a balance sheet or statements of assets and liabilities as of the close of each of the two most recent fiscal years (rule 3-01); (2) statements of income for each of the three fiscal years preceding the date of the most recent audited balance sheet or statement of assets and liabilities being filed (rule 3-02); and (3) statements of changes in net assets for each of the three fiscal years preceding the date of the most recent audited balance sheet or statement of assets and liabilities being filed (rule 3-02). Requiring management investment companies to prepare financial statements for these periods, however, not only would be a significant expansion of present requirements, but would also cause such companies to report more financial information than is reasonably necessary for an adequate evaluation of the financial condition of an investment company. To avoid this result, the Commission proposes to amend Article 3 of Regulation S-X. These modifications are found in proposed rule 3-18, "Additions to and omission of certain financial information for management investment companies."

Under paragraph (a) of rule 3-18, management investment companies would be required to furnish a balance sheet or statement of assets and liabilities, as specified by rules 3-01 and 3-12, only for the most recent fiscal year, rather than the two most recent fiscal years prescribed by those rules. This one year requirement is in accord with the present requirements of the prospectus and annual report.

Paragraph (b) of the rule is intended to make clear that, in the case of management investment companies, the statements of income required by rule 3-02 are comprised of the statements of income and expense, statements of realized gain or loss on investments, and statements of unrealized appreciation or depreciation of investments specified by rules 6-04, 6-05, and 6-06 of Regulation S-X [17 CFR 210.6-04, 6-05, and 6-06]. This paragraph makes no changes from present requirements.

Paragraph (c) of the rule would reduce the requirements for statements of income and statements of changes in net assets from the three most recent fiscal years prescribed by rule 3-02.[16] The statement of income would be required for only the most recent fiscal year, while the statement of changes in net assets would be required for the two most recent fiscal years, both in accord with GAAP. Presently, statements of income and statements of changes in net assets are required in a registration statement, pursuant to instruction 16 of Item 18 (instruction 16 of Item 20), for the three latest fiscal years; for statements of income, only the most recent year is required in the prospectus, while the two preceding years may be filed in Part II of the registration statement. The Commission believes that presenting a statement of income for the most recent fiscal year and statements of changes in net assets for the two most recent fiscal years would provide sufficient information to shareholders and prospective investors. In addition, as part of the reconciliation of the financial statement requirements, paragraph (c) omits the requirement of the current financial statement items that the ratio of operating expenses to income appear in the income statements of a prospectus. This requirement does not appear to serve any useful purpose.

Paragraph (d) of proposed rule 3-18 would make clear that the interim financial information requirements of rules 3-01 and 3-12 do not apply to management investment companies. These requirements were recently revised[17] to recognize quarterly reporting requirements under the 1934 Act and to insure that financial information provided in registration statements under the 1933 Act is at least as current as the data already filed by the company under the 1934 Act. Because management investment companies do not file financial information on a quarterly basis under the

[16]Rule 3-02 of Regulation S-X refers to "statements of changes in financial position," a term which, for investment company purposes, is synonymous with "statements of changes in net assets."

[17]Securities Act Release No. 6234 (Sept. 2, 1980) [45 FR 63682 (Sept. 25, 1980)].

1934 Act, these provisions should not apply to such companies. No change in existing requirements for management investment companies as to reporting interim financial information would result from this amendment.

The Commission also proposes to amend Article 1 of Regulation S-X. Paragraph (a)(4) of rule 1-01 would be amended to provide that Regulation S-X states the requirements as to form and content for financial statements in management investment company registration statements and shareholder reports, except as otherwise provided by the registration statement forms. This amendment would make clear that, when the specific forms conflict with the requirements of Regulation S-X, the requirements of the forms prevail. This amendment is necessary because the registration statement forms, as explained below, modify the requirements of Regulation S-X for management investment company prospectuses and shareholder reports.

Proposed Amendments to Registration Statement Forms

The proposed changes to the financial statement items of the registration statement forms, Items 18 of Form N-1 and Item 20 of Form N-2, would accomplish three purposes:

1) eliminating most of the instructions to financial statements from the forms and replacing them with a reference to the uniform financial statement requirements of Regulation S-X;

2) including in the registration statement forms those modifications to financial statements required in Forms N-1 and N-2 and shareholder reports that are not of general applicability and therefore not appropriate for inclusion in Regulation S-X; and

3) specifying the financial statement requirements for all reports to shareholders under rule 30d-1.

The amended financial statement items would require a prospectus (or part I of the annual update) to include the financial statements prescribed by Regulation S-X. New instruction A would adopt the financial statement requirements of Regulation S-X, including proposed rule 3-18, for management investment company registration statements. This reference to Regulation S-X makes no substantive changes in the form and content of financial statements now included in prospectuses, other than those changes with respect to the time periods to be covered by certain statements discussed above with reference to proposed rule 3-18. It should be noted that the reference to Regulation S-X results in the deletion of most instructions from the financial statement items of the registration statement forms.

Instruction A to Form N-1 also repeats a current financial statement instruction applicable only to open-end investment companies, that the specimen price-make-up sheet required by Item 16(a)(7) of Form N-1 (General Information as to Plan of Distribution) may be furnished as a continuation of the balance sheet or statement of assets and liabilities.[18]

Instruction B of the proposed financial statement items specifies two groups of financial statements and schedules which, at the registrant's option, may be omitted from the prospectus (Part I of the annual update) and include in Part II of the registration statement. This instruction does not change present requirements.[19]

Instruction C of the proposed financial statement items retains the current requirement of instruction 16.a. of the financial statement items that, if the registrant has not previously had an effective registration statement under the 1933 Act and the balance sheet or statement of assets and liabilities in its initial registration statement under the 1933 Act is as of a date more than ninety days prior to the date of filing, the prospectus must include a corresponding balance sheet or statement of assets and liabilities as of a date within ninety days prior to the date of filing, in addition to related financial statements from the close of the fiscal year up to the date of the more recent balance sheet. This

[18]This instruction is not applicable to closed-end companies and therefore is not included in Item 20 of Form N-2.

[19]Currently, the registration statement forms provide that the income statements for the two fiscal years preceding the most recent fiscal year may be omitted from the prospectus and filed in Part II of the Registration Statement. No comparable statement is included in proposed instruction B because of the change in proposed rule 3-18(c) as to income statements, discussed above.

instruction would supersede, for such management investment companies, the rules as to age of financial statements in Article 3 of Regulation S-X[20] but would make no changes in present requirements.

The next two instructions of the proposed financial statement items would adopt the uniform set of financial statement instructions of Regulation S-X, as modified by the registration statement forms, for reports to shareholders under section 30(d). Instruction D(1) would require the annual report to contain the financial statements specified by Regulation S-X, as modified by instruction B, for the periods specified by Regulation S-X, as modified by instruction B, for the periods specified by Regulation S-X, except that the cost of individual securities may be omitted from the schedule of investments. Instruction D(2) would require annual reports to contain the condensed financial information required by Item 3(a) of the forms for the five most recent fiscal years, with at least the most recent fiscal year audited.[21] These two instructions would make no substantive changes from present requirements, other than those discussed above regarding time periods for financial statements as prescribed by proposed rule 3-18. One technical change in the statement of changes in net assets required in shareholder reports would result from the reference of shareholder report financial statement requirements to Regulation S-X. This reference would add to shareholder reports the requirement of rule 6-08(b)(8) of Regulation S-X [17 CFR 210.6-08(b)(8)], that the statement of changes in net assets also include, by footnote or otherwise, the aggregate amount per share of dividends and distributions to stockholders. Since this information already is provided in shareholder reports as part of the per share table, registrants can satisfy this requirement for shareholder reports, as most already do for prospectuses, merely by reference in footnote or otherwise to the per share table.

Instruction D(3) would require disclosure in the annual report of aggregate remuneration paid by the company to specified groups, unless this disclosure is shown elsewhere in the report as part of the financial statements. This requirement makes no changes in current annual report requirements, as it is identical to the disclosure now required by section 30(d)(5) of the 1940 Act and rule 30d-1 thereunder. The introductory clause to instruction D(3) was included in recognition of the current practice of a number of companies to disclose information sufficient to satisfy section 30(d)(5) by footnote to their income statements in response to rule 6-04(b)(2) of Regulation S-X [17 CFR 210.6-04(b)(2)]. To the extent that registrants include disclosure sufficient to satisfy instruction D(3) in a footnote to the income statements (or elsewhere in the annual report), separate disclosure of aggregate remuneration would not be required. Registrants that do not choose to include such disclosure by footnote to the financial statements would have to include such disclosure separately in the annual report, as is required now. Finally, the last sentence of instruction D would make the rules in Regulation S-X for the age of financial statements inapplicable to annual reports of management investment companies.

Instruction E(1) of the proposed financial statement items would require all reports to shareholders except the annual report (i.e., primarily the semiannual report),[22] to contain the financial statement specified by Regulation S-X, as modified by instruction B, for the period commencing either with the beginning of the company's fiscal year or a date not later than the date after the close of the period included in the last report under section

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[20]Rules 3-01 and 3-12 [17 CFR 210.3-01, 3-12] require the inclusion in registration statements of interim financial information that is no less current than the interim data required for noninvestment company registrants on Form 10-Q [17 CFR 249.308a], the quarterly report to the Commission under the 1934 Act. To extend the interim financial information requirement to management investment companies, which do not file interim financial information on a quarterly basis, would appear unnecessarily burdensome.

[21]The Commission is specifically excluding from annual reports, and all other section 30(d) reports, the requirement of including the condensed financial information as to senior securities required by Item 3(b) of the forms, because this information appears to be of little usefulness to shareholders.

[22]The language of instruction E covers not only semiannual reports to shareholders, but also the initial report of a newly registered management investment company. It is modeled upon current rule 30d-1(a) and makes no change to current requirements.

30(d),[23] and for the most recent preceding fiscal year, except that the cost of individual securities may be omitted from the schedule of investments. Instruction E(2) would require such reports to contain the condensed financial information specified by Item 3(a) of the forms for the period of the report and for the five most recent fiscal years. These two instructions would make no substantive changes from present requirements. In addition, instruction E(3) would, as discussed above with reference to instruction D(3), preserve the requirement of section 30(d)(5) of the 1940 Act for disclosure in the semiannual report of aggregate remuneration paid by the company. The last sentence of instruction E would make the rules in Regulation S-X as to age of financial statements inapplicable to semiannual reports. Instruction F of Item 18 refers open-end management investment companies to General Instruction E of Form N-1, which contains the provisions for incorporation by reference of financial statements from shareholder reports into the prospectus, as is discussed in detail below.[24]

Proposed Rule 30d-1

New rule 30d-1 would adopt the financial statement requirements in the registration statement forms, as those forms modify Regulation S-X, for annual and semiannual reports to shareholders. As a result, financial statements in both prospectuses and annual reports to shareholders would be prepared pursuant to the uniform instructions for financial statements in Regulation S-X, as modified for management investment companies by proposed rule 3-18 and the forms. All instructions to financial statements have been eliminated from proposed rule 30d-1. Only paragraph (a) of the proposed rule is relevant to the standardization of financial statements and is discussed here. The remaining provisions of the rule refer only to open-end companies and are discussed below.

Paragraph (a) of proposed rule 30d-1, like the current rule, would require every management investment company, at least semiannual, to transmit a report to shareholders. The proposed rule, however, would refer to the financial statement items of the company's registration statement form under the 1940 Act for the content of and periods to be covered by the financial statements in such reports, rather than the present reference to clauses (1) through (6) of section 30(d). This amendment makes no substantive changes, but merely eliminates references to outdated terminology contained in section 30(d). The proposed requirements for shareholder reports are found in instruction D and E of Item 18 of Form N-1 and Item 20 of Form N-2, as discussed above. In addition, proposed rule 30d-1(a) requires the initial report to shareholders of an investment company which is newly registered under the 1940 Act to be made as of the close of the fiscal year or half-year first occurring on or after the date upon which the company has filed its notification of registration under the 1940 Act. This is the same as current requirements.

TRANSMISSION OF FINANCIAL INFORMATION

Reconciliation of the different requirements for financial statements in prospectuses (or annual updates) and in annual reports to shareholders under section 30(d) of the 1940 Act would make it possible for management investment companies to prepare a single set of financial statements for use in both documents. This step, by itself, should eliminate some of the costs of preparation of disclosure documents. In addition, because there is considerable overlap in the readership of annual reports and prospectuses, the Commission is proposing two optional provisions with respect to the way open-end management companies transmit financial information to shareholders and prospective investors. These provisions are designed to permit such companies to eliminate duplicative printing and mailing costs.[25] First, a mutual fund could incorporate financial statements

[23]This is the same period now required by rule 30d-1(a).

[24]This instruction is not applicable to closed-end companies and therefore is not included in Item 20 of Form N-2.

[25]These proposals would apply only to open-end investment companies because they must update their prospectuses annually (see note 5 *supra*), as well as prepare reports to shareholders. Closed-end companies file financial statements as part of their 1940 Act registration statement updates but these are only filed with the Commission; they are not sent to shareholders or prospective investors. Closed-end companies would, however, gain the benefit of the savings to be derived from having to prepare only a single set of financial statements.

from its shareholder reports by reference into its prospectus, provided that the shareholder report was also furnished to persons receiving the prospectus.[26] Second, a fund could elect instead to send a currently effective prospectus (containing financial statements) in satisfaction of any shareholder report requirement.[27]

It should be noted that with both options the single set of financial statements that is prepared must satisfy the requirements of two types of disclosure documents: shareholder reports (annual or semiannual) and prospectuses. The requirements of these two documents would vary in three respects so that registrants, in order to use either of the proposed options, would have to prepare one set of financial statements satisfying both sets of requirements. First, condensed financial information is required in a prospectus for the ten most recent fiscal years, with at least the five most recent years audited, but this information is provided in annual (and semiannual) reports for a shorter period. Thus, any registrant wishing to transmit a prospectus as the equivalent of a shareholder report, or to incorporate by reference from a shareholder report into a prospectus, would have to provide condensed financial information in the single set of financial statements for the longer periods required in a prospectus.

Second, financial statement disclosure of the remuneration paid by an investment company is required in a prospectus as part of the income statements in the format prescribed by rule 6-04(b)(2) of Regulation S-X [17 CFR 210.6-04(b)(2)], but in shareholder reports the format is prescribed by section 30(d)(5) of the 1940 Act, as embodied in instructions D and E of the proposed financial statement items to the registration statement forms. While the formats for this disclosure are somewhat similar, they are not interchangeable. Thus, any registrant wishing to use either option would have to provide disclosure of remuneration sufficient to satisfy the requirements of both rule 6-04(b)(2) of Regulation S-X and section 30(d)(5) of the 1940 Act.

Third, the cost of individual securities in the schedule of investments is required in a prospectus pursuant to Regulation S-X, but it does not appear in the comparable schedule in shareholder reports under GAAP. Thus, any registrant wishing to transmit a prospectus as the equivalent of a shareholder report, or to incorporate by reference from a shareholder report into a prospectus, would have to provide disclosure of the cost of individual securities in the schedule of investments that is part of the single set of financial statements.

These proposed provisions for transmission of financial information would be alternative methods to satisfy current requirements. They are intended to eliminate the need for funds to print and mail the same financial statements in two different documents. Of course, mutual funds may continue to transmit prospectuses and annual reports separately.

Incorporation by Reference

The Commission is proposing to permit open-end management investment companies to incorporate by reference into their prospectuses the financial statements contained in any report to shareholders, semiannual or annual, required by section 30(d) and rule 30d-1 thereunder. This proposal would provide open-end companies with the opportunity to reduce the costs associated with preparing and transmitting different disclosure documents, *i.e.*, the prospectus and reports to shareholders, containing identical financial information. Incorporation by reference would be permitted by two amendments to Form N-1: to General Instruction E, "Incorporation by

[26]This approach is similar to new Form S-15 under the 1933 Act [17 CFR 239.29] for certain business combination transactions. *See* Securities Act Release No. 6232 (Sept. 2, 1980) [45 FR 63647 (Sept. 25, 1980)].

[27]It might be noted that the Commission staff has previously indicated that it is considering whether to recommend that the Commission propose amendments that would require investment companies to provide disclosure about changing prices in their registration statements and post-effective amendments thereto. The instant proposals are not meant to suggest any determination by the Commission or its staff regarding that matter.

Reference," and to Item 10 of Part II, "Undertakings."[28]

Amendments to General Instruction E would permit an open-end company to incorporate by reference condensed financial information, financial statements, or both, contained in a semiannual or annual report, provided three conditions are satisfied: first, the financial information incorporated by reference must be prepared in accordance with and cover at least the periods specified by Form N-1 for a prospectus; second, the registrant must furnish the undertaking prescribed by proposed Item 10(c) of Part II of Form N-1 regarding delivery to all persons to whom the prospectus is furnished of the report to shareholders from which financial information is incorporated; and third, the registrant must include a statement identifying the financial information incorporated by reference at each place in the prospectus where the financial information would have otherwise appeared.

The first condition, that the incorporated financial statements be prepared in accordance with the requirements of Form N-1 for a prospectus, is necessary to ensure that the financial statements incorporated by reference from a report to shareholders, particularly if such report is a semiannual report, are prepared in accordance with, and cover the periods specified by, Form N-1. Thus, any registrant choosing to incorporate by reference from its semiannual report would have to include in such report financial statements that satisfy the requirements both of a shareholder report and a prospectus.[29] This condition also makes a change with respect to condensed financial information disclosure, remuneration disclosure, and cost of securities disclosure, as noted above. Condensed financial information, if incorporated by reference into a prospectus, would have to be presented in the shareholder report for the period required in a prospectus (the ten most recent fiscal years, with at least the five most recent years audited) rather than the period prescribed by GAAP for either an annual report (the five most recent fiscal years, with at least the latest year audited) or a semiannual report (the period of the report plus the most recent preceding fiscal year). Remuneration disclosure would have to be presented in the shareholder report in a form sufficient to satisfy both rule 6-04(b)(2) of Regulation S-X and section 30(d)(5) of the 1940 Act (as embodied in the proposed financial statement items to the forms). To the extent that registrants, in the course of satisfying the disclosure requirement of Regulation S-X, also satisfy the requirement of section 30(d)(5) of the 1940 Act, the information called for by that section would not have to be restated separately. Finally, the cost of individual securities would have to be included in the schedule of investments.

The second condition regarding compliance with the undertaking of Item 10 of Part II is included to help ensure that registrants will fulfill their duty to provide investors with the document containing the incorporated financial statements. Item 10 would require registrants which incorporate by reference to assure that a copy of the shareholder report containing the incorporated financial statements accompanies the prospectus, unless the person receiving the prospectus is a current shareholder who has already been provided with a copy of that shareholder report. This undertaking recognizes that existing shareholders will already have received

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[28]A potential barrier to incorporation by reference, based on practical considerations, is the requirement of present rule 30d-1(a) that open-end companies transmit their reports to shareholders within forty-five days of the close of the period for which the report is being made. The Commission proposes to extend this period to sixty days, as discussed *infra*. This extension should also provide sufficient time for preparation of financial statements to be incorporated by reference.

[29]Accordingly, a registrant choosing to incorporate by reference, or to transmit a prospectus as the equivalent of its semiannual report, would have to include the following financial statements in its semiannual report for the following periods:

Statements	*Periods*
Balance sheets or statements of assets and liabilities	As of the close of the most recent fiscal year (audited) and as of the close of the period covered by the semiannual report (unaudited)
Schedules of investments	As of the date of the balance sheet or statement of assets and liabilities (audited) and as of the date of the semiannual report (unaudited)
Income statements	The most recent fiscal year (audited) and for the period covered by the semiannual report (unaudited)
Statements of changes in net assets	The two most recent fiscal years (audited) and for the period covered by the semiannual report (unaudited)
Condensed financial information	The ten most recent fiscal years (audited) and for the period covered by the semiannual report (unaudited)

a copy of the shareholder report containing the incorporated financial statements, and it would be unnecessarily burdensome to require investment companies to send them another. To accommodate shareholders who have not kept the report, the registrant would further be required to undertake to send a copy of the shareholder report, without charge, to any person requesting one, and to provide the name, address, and telephone number of the person to whom such a request should be directed.[30]

In order to alert readers of a prospectus without financial statements that those statements are located in another document (which either accompanies the prospectus or, in the case of current shareholders, may have been previously furnished), the third condition to General Instruction E would require the registrant to include a statement, at each place in the prospectus where the condensed financial information, financial statements, or both, would otherwise appear,[31] identifying the information in a report to shareholders that is incorporated by reference into the prospectus. The registrant would be responsible for the information incorporated by reference as if it had been set forth in the prospectus.

The proposed amendment to General Instruction E provides further that the registrant, at its option, may specifically describe those portions of its report to shareholders which are not incorporated by reference into the prospectus. If the registrant includes this description, it must be included in the prospectus (along with the description of that information which is incorporated by reference) and may also be included in Part II of the registration statement.

Transmission of a Prospectus as a Report to Shareholders

Paragraph (c) of proposed rule 30d-1 would permit an open-end management investment company to transmit to existing shareholders a copy of its currently effective prospectus under the 1933 Act as the equivalent of any report to shareholders, annual or semiannual, required by section 30(d) and rule 30d-1 thereunder, provided that such prospectus includes specified additional information. This proposal would provide open-end companies with another opportunity to reduce costs associated with preparing and transmitting disclosure documents containing identical financial information. At the same time, shareholders might benefit by being provided with a document containing all of the information that would have been included in a shareholder report plus the additional disclosure contained in a prospectus.

In the case of both the semiannual and annual reports, proposed rule 30d-1(c) would require the prospectus serving as a semiannual or annual report to contain: (1) condensed financial information for the time period required in a prospectus (the ten most recent fiscal years, with at least the five most recent years audited) rather than the shorter periods prescribed for a semiannual or annual report, and (2) remuneration disclosure to satisfy the requirements both of rule 6-04(b)(2) of Regulation S-X and section 30(d)(5) of the 1940 Act. Finally, rule 30d-1(c) would require financial statements and condensed financial information to be provided in the semiannual report not only for the periods required for a prospectus, but also for the additional fiscal half-year period required in a semiannual report.[32]

To take advantage of the provision, it would be necessary, pursuant to proposed rule 30d-1(c), for

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[30]This portion of the proposed amendment to Item 10 is modeled after a similar undertaking in Form S-8 under the 1933 Act [17 CFR 239.16b].

[31]Attention is directed to General Instruction G(2) of Form N-1, which provides that the condensed financial information should not be further back in the prospectus than the fifth page thereof and should not be preceded by any other chart or table. Accordingly, if condensed financial information in a report to shareholders is incorporated by reference into the prospectus, the statement required by General Instruction E would have to appear within the first five pages of the prospectus and would not be preceded by any other chart or table. Likewise, if financial statements in any report to shareholders are incorporated by reference in satisfaction of the requirements of Item 18 of Form N-1, the statement required by General Instruction E would be placed in a separate section following the responses to the previous items in Form N-1, in accordance with the instruction to Item 18.

[32]Note 29 *supra* sets forth a table specifying the financial statements and periods to be covered in a prospectus serving as the equivalent of a semiannual report.

an open-end company to have its updated prospectus become effective and transmitted to shareholders within sixty days after the close of the period for which the report is being made. This sixty-day period is an extension of the forty-five day period for mailing shareholder reports now specified by rule 30d-1(a). The Commission believes this extension is necessary in order to provide sufficient time for open-end companies to take advantage of this provision and the incorporation by reference provision.[33]

The sixty-day period represents a shorter time than the period usually allowed for open-end companies to make the annual update of their prospectus by post-effective amendment.[34] Nevertheless, a period of sixty days for preparation and transmission of a prospectus should be sufficient for companies which are not making any material changes in their prospectus other than the annual update of financial information, since post-effective amendments filed by such companies can become effective automatically, either upon filing or on a date within twenty days of filing, pursuant to rule 465 under the 1933 Act [17 CFR 230.465]. In addition, the time spent in preparation of a traditional report to shareholders would be eliminated for open-end companies electing this provision.

A company that must file its annual updating amendment under rule 465(a), because of a material change requiring disclosure in the prospectus that has occurred since the effective date of the registrant's most recent registration statement or post-effective amendment thereto containing a prospectus, would have to follow special procedures in order to be able to transmit its currently effective prospectus as the equivalent of a shareholder report. Specifically, the registrant would have to update its prospectus through two post-effective filings, rather than one.

The first post-effective amendment would be filed under rule 465(a), disclosing in the narrative part of the prospectus the material changes that make the amendment ineligible for immediate effectiveness under rule 465(b), and would be filed before the end of the registrant's fiscal year. As a result of its timing, this amendment would not contain updated financial statements, but rather the same financial statements as the prospectus in effect at the time the amendment was filed. The amendment would then normally become effective on the sixtieth day after filing pursuant to rule 465(a). After the end of the fiscal year, the registrant would file a second post-effective amendment, containing the financial statements for the recently ended fiscal year as well as the new narrative disclosure that had recently become effective. Provided, of course, that no material events had occurred since the effective date of the first post-effective amendment, the second amendment could be filed pursuant to rule 465(b), and thus could become effective upon filing or within twenty days thereafter. Thus, this second amendment, if timely filed, could become effective within the period for transmitting shareholder reports (*i.e.*, sixty days after the close of the period for which the report is made) so that the prospectus filed as part of the second post-effective amendment could be used as a shareholder report.

Several points should be noted about this procedure. First, the procedure can be used only if the material events which cause the registrant to file under rule 465(a) are of such a nature that adequate disclosure about them can be made solely in the narrative part of the prospectus, without an attendant change in the financial statements. Second, the first post-effective filing should be made before the close of the registrant's fiscal year and at a time such that the sixty-day waiting period of rule 465(a) will expire before the sixtieth day after the end of registrant's fiscal year. Third, the second post-effective amendment could not be filed before the first filing had become effective; otherwise, as a post-effective amendment containing a prospectus, under rule

[33]Because of the standardization of the mailing period at sixty days, the special provisions for nondiversified companies in present rule 30d-1(a) would no longer be necessary and would be eliminated. Additionally, paragraph (d) of the new rule contains a provision for seeking extension of the mailing period that is identical to current requirements.

[34]Pursuant to section 10(a)(3) of the 1933 Act and section 24(e)(3) of the 1940 Act, most investment companies must have an updating post-effective amendment become effective within four months of the end of the fiscal year, *i.e.*, 120 days. *See* note 5 *supra*.

465(c) it would prevent the first filing from becoming effective automatically.[35]

The Commission recognizes that the procedure described above would be less convenient than updating a prospectus by means of a single filing. That procedure, however, would need be followed only by companies whose post-effective amendments were ineligible for immediate effectiveness in a particular year, but which nevertheless wished to use their prospectus as the equivalent of a shareholder report. Moreover, the only other way to make this option available to such companies would be to make the time for furnishing shareholder reports considerably longer than the extension to 60 days being proposed herein. The Commission is not prepared to propose such a greater extension in view of the requirement of section 30(d) of the 1940 Act that information in reports to shareholders be "as of a reasonably current date."

The registration statement forms make no provision in the prospectus for inclusion of narrative material, such as a letter to shareholders, that is typically included (but not required by rule 30d-1) in most reports to shareholders. Nevertheless, registrants electing to transmit a prospectus as the equivalent of a shareholder report would still be free to include such a narrative with the prospectus, with the understanding that any such narrative might be considered part of the prospectus and thus subject to prospectus liability. This, however, will not have a marked effect upon registrants' existing duties with respect to such narratives. Although the narrative portion of a report to shareholders is not specifically required as part of a shareholder report, it is already subject to section 30(d) of the 1940 Act, which provides that a report to shareholders "shall not be misleading in any material respect" in light of reports filed with the Commission on Forms N-1R and N-1Q. It is also subject to section 34(b) of the 1940 Act, which makes unlawful "any untrue statement of a material fact in any...report...filed or transmitted pursuant to this title," as well as to the various other anti-fraud provisions of the federal securities laws, depending upon the facts and circumstances surrounding the use of such report.

TEXT OF PROPOSED AMENDMENTS AND PROPOSED RULES

It is proposed to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By amending paragraphs (a) and (a)(4) of §210.1-01 to read as follows:

§210.1-01 Application of Regulation S-X (17 CFR Part 210).

(a) This part (together with the Accounting Series Releases [Part 211 of this chapter]) states the requirements applicable to the form and content of all financial statements required to be filed as a part of —

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(4) Registration statements and shareholder reports under the Investment Company Act of 1940 [Part 274 of this chapter], except as otherwise specifically provided in the forms which are to be used for registration under this Act.

2. By adding a new §210.3-18 to read as follows:

§210.3-18 Additions to and omission of certain financial information for management investment companies.

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[35]For example, a company with a December 31st fiscal year end, which had experienced a material event since its last post-effective amendment became effective, would file a post-effective amendment on December 20, 1980. This amendment would contain new narrative disclosure, but the financial statements would be as of December 31, 1979. The amendment would become effective automatically on February 18, 1981. The second post-effective amendment, which contained financial statements as of December 31, *1980*, would have to be filed after February 18, but on or before March 1, 1981, and designate an effective date enabling the registrant to transmit it as a shareholder report on or before March 1, 1981, the end of the sixty days after the end of the fiscal year specified by proposed rule 30d-1(c).

(a) Notwithstanding the requirements of §§210.3-01 and 210.3-12 above, the registrant should file a balance sheet or statement of assets and liabilities only as of the close of the most recent fiscal year; such balance sheet or statement of assets and liabilities for the immediately preceding fiscal year may be omitted.

(b) The statements of income required by §210.3-02 shall be comprised of the statements of income and expense, statements of realized gain or loss on investments, and statements of unrealized appreciation or depreciation of investments specified by §§210.6-04, 210.6-05, and 210.6-06, respectively.

(c) Notwithstanding the requirements of §210.3-02, the registrant should file a statement of income only for the most recent fiscal year and statements of changes in net assets for the two most recent fiscal years preceding the date of the balance sheet or statement of assets and liabilities required by paragraph (a) of this section.

(d) Notwithstanding the requirements of §§210.3-01 and 210.3-02, any registration statement that contains financial statements for the interim period between the end of the most recent fiscal year and the date of the most recent balance sheet or statement of assets and liabilities need not also contain financial statements for the corresponding interim period of the preceding fiscal year. Although such interim financial statements may be unaudited, they shall be presented in as much detail as is required by this Regulation S-X.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By amending General Instruction E of Form N-1 by adding the following paragraph to the existing text of the Instruction:

§239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

§274.11 Form N-1, registration statement of open-end management investment companies.

* * * * *

Subject to the above rules, a registrant may incorporate by reference, in response to Item 3(a), "Condensed Financial Information," Item 18, "Financial Statements," or to both Items, the information contained in any report to shareholders meeting the requirements of section 30(d) of the 1940 Act and rule 30d-1 thereunder, provided the following additional conditions are satisfied:

1. The material that is incorporated by reference is prepared in accordance with, and covers the periods specified by, this Form;

2. The registrant furnishes the undertaking specified in Item 10(c) of Part II of this Form regarding delivery of the report to shareholders from which information is incorporated by reference into the prospectus; and

3. The registrant includes a statement, at each place in the prospectus where the information required by Item 3(a), Item 18, or both, would otherwise appear, that the information is incorporated by reference from a report to shareholders. The registrant, at its option, may also specifically describe, in either the prospectus or both the prospectus and Part II of the Registration Statement (in response to Item 1(a)), those portions of the report to shareholders that are not incorporated by reference and are not a part of the Registration Statement.

2. By amending Item 18 of Part I of Form N-1 to read as follows:

Item 18. *Financial Statements*

Instructions:

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S-X [17 CFR 210]. The specimen price-make-up sheet required by Item 16.a. of this Form may be furnished as a continuation of the balance sheet or statement of assets and liabilities specified by Regulation S-X [17 CFR 210.6-01].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S-X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) the statements of any subsidiary which is not a majority-owned subsidiary; and

(2) all schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12-12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12-13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12-14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the 1940 Act which has not previously had an effective Registration Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

D. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] shall contain the following information:

(1) the financial statements (audited) required by Regulation S-X, as modified by Instruction B above, for the periods specified by Regulation S-X, except that the following information required by Regulation S-X may be omitted from any annual report:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) the condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of rules 3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this instruction shall not be included.

E. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1], except the annual report, shall contain the following information (which need not be audited):

(1) the financial statements required by Regulation S-X, as modified by Instruction B above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d-1, and the most recent preceding fiscal year, except that the following information required by Regulation S-X may be omitted from any report to shareholders:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) the condensed financial information required by Item 3(a) of this Form, for the period of the report as specified by (1) above, and the most recent preceding fiscal year; and

(3) unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of rules 3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this instruction shall not be included.

F. Reference is made to General Instruction E

regarding incorporation by reference.

3. By amending Item 10 of Part II of Form N-1 by adding the following paragraph to the existing text of the Item:

Furnish the following undertaking in substantially the following form in all Registration Statements which incorporate by reference the condensed financial information or financial statements contained in a report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder:

(c) an undertaking to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, a copy of the Registrant's report to shareholders furnished pursuant to and meeting the requirements of rule 30d-1 from which the specified information is incorporated by reference, unless such person currently holds securities of the Registrant and otherwise has received a copy of such report, in which case the Registrant shall state in the prospectus that it will furnish, without charge, a copy of such report on request, and the name, address, and telephone number of the person to whom such a request should be directed.

4. By amending Item 20 of Part I of Form N-2 to read as follows:

§239.14 Form N-2 for closed-end management investment companies registered on Form N-8A.

§274.11a-1 Form N-2, registration statement of closed-end management investment companies.

* * * * *

Item 20. *Financial Statements*

Instructions:

A. A Registration Statement on Part I of this Form shall contain, in a separate section following the responses to the foregoing Items, the financial statements and schedules required by Regulation S-X [17 CFR 210].

B. Notwithstanding the requirements of Instruction A above, the following statements and schedules required by Regulation S-X may be omitted from the *prospectus* part of the Registration Statement and included in Part II of such Registration Statement:

(1) the statements of any subsidiary which is not a majority-owned subsidiary; and

(2) all schedules in support of the most recent balance sheet or statement of assets and liabilities, except the following: (a) Schedule I [17 CFR 210.12-12]; (b) columns A, E, and G of Schedule II [17 CFR 210.12-13]; and (c) columns A, B, and D of Schedule III [17 CFR 210.12-14], omitting the information called for by paragraph (b) of footnote 1 to column A.

C. In addition to the requirements of rule 3-18 of Regulation S-X [17 CFR 210.3-18], any company registered under the 1940 Act which has not previously had an effective Regulation Statement under the 1933 Act shall include in its initial Registration Statement under the 1933 Act such additional financial statements and condensed financial information (which need not be audited) as is necessary to make the financial statements and condensed financial information included in the registration statement as of a date within 90 days prior to the date of filing.

D. Every annual report to shareholders required pursuant to section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] shall contain the following information:

(1) the financial statements (audited) required by Regulation S-X, as modified by Instruction B above, for the periods specified by Regulation S-X, except that the following information required by Regulation S-X may be omitted from any annual report:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) the condensed financial information required by Item 3(a) of this Form, for the five most recent fiscal years, with at least the most recent year audited; and

(3) unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the

company is an affiliated person.

Notwithstanding the requirements of §§3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this instruction shall not be included.

E. Every report to shareholders required by section 30(d) of the 1940 Act and rule 30d-1 thereunder [17 CFR 270.30d-1] except the annual report, shall contain the following information (which need not be audited):

(1) the financial statements required by Regulation S-X, as modified by Instruction B above, for the period commencing either with (a) the beginning of the company's fiscal year (or date of organization, if newly organized) or (b) a date not later than the date after the close of the period included in the last report conforming with the requirements of rule 30d-1 and the most recent preceding fiscal year, except that the following information required by Regulation S-X may be omitted from any report to shareholders:

(a) Column C of Schedule I [17 CFR 210.12-12];

(b) Column F of Schedule II [17 CFR 210.12-13]; and

(c) Column C of Schedule III [17 CFR 210.12-14];

(2) the condensed financial information required by Item 3(a) of this Form, for the period of the report, as specified by (1) above, and the most recent preceding fiscal year; and

(3) unless shown elsewhere in the report as part of the financial statements required by (1) above, the aggregate remuneration paid by the company during the period covered by the report (a) to all directors and to all members of any advisory board for regular compensation; (b) to each director and to each member of an advisory board for special compensation; (c) to all officers; and (d) to each person of whom any officer or director of the company is an affiliated person.

Notwithstanding the requirements of §§3-01 and 3-12 of Regulation S-X [17 CFR 210.3-01 and 3-12], interim financial statements other than those required by this instruction shall not be included.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By revising §270.30d-1 to read as follows:

§270.30d-1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semiannually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act (instructions D and E of Item 18 of Form N-1 or Item 20 of Form N-2) except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year first occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) Each report shall be mailed within 60 days after the close of the period for which such report is being made.

(c) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus under the Securities Act, provided such prospectus includes the following additional information: (1) in the case of the prospectus serving as an annual or semiannual report, the remuneration disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus is serving as a report; (2) in the case of the prospectus serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus shall be mailed within 60 days after the close of the period for which the report is being made.

(d) The period of time within which any report prescribed by this rule shall be mailed may be extended by the Commission upon written request showing good cause therefor. Section 270.0-5 shall not apply to such requests.

STATUTORY AUTHORITY: The Commission hereby publishes for comment proposed amendments to Regulation S-X, proposed amendments to Form N-1 and Form N-2, and proposed revised rule 30d-1 pursuant to the authority of sections 7, 8, and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h, and 77s(a)] and sections 8, 30(d), 31(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 80a-29(d), 80a-30(c), and 80a-37(a)].

By the Commission.

George A. Fitzsimmons
Secretary

Appendix—Comparison of Current and Proposed Financial Statement Requirements

Item	*Current Prospectus Requirement*	*Current Annual Report Requirement*	*Proposed Uniform Requirement*
Regulation S-X	Governs form and content of financial statements	Not applicable	Would govern form and content of financial statements in both documents, as modified by registration statement forms.
Balance sheet or statement of assets and liabilities	1 year (instruction 16.c.(i) of forms)	1 year (rule 30d-1(a))	1 year (rule 3-18(a))
Specimen price-make-up sheet	Yes—may be furnished as continuation of balance sheet or statement of assets and liabilities (instruction 16.c.(i) of Form N-1)	Not required	Continue current requirements (Item 18(a) of Form N-1). A registrant using either optional provision would have to provide this information in the single set of financial statements prepared.
Schedule of investments	Yes (instruction 16.c.(i) of forms)	Yes (rule 30d-1(c)	Yes (rule 3-18(a))
Cost of securities in schedule of investments	Yes (Regulation S-X)	No	Continue current requirements. A registrant using either optional provision would have to provide this information in the schedule of investments that is part of the single set of financial statements.
Income statements	3 years (instruction 16.c.(ii) of the forms)	1 year (rule 30d-1(a) and GAAP)	1 year (rule 3-18(c))
Ratio of investment company operating expenses to investment income as part of the income statements	Yes (instruction 16.c.(ii) of the forms)	No	No
Statement of changes in net assets	3 years (instructions 16.c.(iii) of the forms)	2 years (rule 30d-1(d)(2) and GAAP)	2 years (rule 3-18(c))
Per share dividends and distributions to stockholders	Yes, as part of statements of changes in net assets (rule 6-08(b)(8) of Regulation S-X), and as part of per share table (Items 3(a)(4) and 3(a)(6) of registration statement forms)	Not required as part of statements of changes in net assets, but provided as part of per share table (GAAP)	Adoption of Regulation S-X for shareholder reports adds the statements of changes in net assets requirement for shareholder reports, but this requirement could be satisfied by footnote incorporating by reference the comparable disclosure of the per share table.
Condensed financial information	10 years, at least 5 most recent audited (Item 3(a) of forms)	5 years, at least latest year audited (GAAP)	Continue current requirements. A registrant using either optional provision would have to provide condensed financial information not only for periods of the prospectus, but also, in the case of a semi-annual report, for the period of the report.
Disclosure of aggregate management remuneration	Yes (rule 6-04 (b)(2) of Regulation S-X)	Yes (§30(d)(5) of the 1940 Act and rule 30d-1)	Continue current requirements. A registrant using either optional provision would have to provide disclosure in the single set of financial statements prepared, sufficient to satisfy both requirements.

SECURITIES EXCHANGE ACT OF 1934

SECURITIES EXCHANGE ACT OF 1934
Release No. 17369/December 12, 1980

In the Matter

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
LaSalle at Jackson
Chicago, Illinois 60604

(SR-CBOE-80-26)

ORDER APPROVING PROPOSED RULE CHANGE

On October 24, 1980, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which requires that members effecting transactions with an Order Book Official ("OBO") obtain an oral confirmation from the OBO or his staff as to the material terms of the transaction.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was

given by publication of a Commission Release (Securities Exchange Act Release No. 17263, October 31, 1980) and by publication in the *Federal Register* (45 FR 74136, November 7, 1980). No written statements with respect to the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17370/December 12, 1980

INCREASE IN FILING FEE FOR ASSOCIATED PERSONS OF NON-MEMBER BROKER-DEALERS

ACTION: Final rule.

SUMMARY: The Commission is amending Form U-4, a personnel form filed by non-member broker-dealers concerning their associated persons, to raise the level of the initial registration fee for associated persons of such broker-dealers from $35 to $50. The increase in the Form U-4 filing fee will set the level of the initial registration fee for non-member broker-dealers at the same level as the corresponding fee imposed by the National Association of Securities Dealers, Inc. on its members.

EFFECTIVE DATE: Thirty days after publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: William J. Finegan, Office of Reports and Information Services, Securities and Exchange Commission, 1100 L Street, N.W., Washington, D.C. 20549 (202) 523-5545.

SUPPLEMENTARY INFORMATION: Section 15(b)(8) of the Act [15 U.S.C. 78o(b)(8)] authorizes the Commission, by rule, to establish and levy such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed with respect to registered brokers or dealers who are not members of a registered national securities association ("SECO broker-dealers") and their associated persons.[1] Pursuant to that section, the Commission adopted Securities Exchange Act Rules 15b8-1 [17 CFR 240.15b8-1], and 15b9-1 [17 CFR 240.15b9-1], which require SECO broker-dealers to file a Form U-4 [17 CFR 249.502] concerning each associated person engaged in securities activities on behalf of the broker-dealer and to pay to the Commission the fee prescribed by the form.

The amendment to Form U-4 adopted today raises the fee required to be paid by SECO broker-dealers in connection with filing Form U-4 from $35 to $50. This increase will conform the filing fee imposed on SECO broker-dealers to the level of the corresponding fee imposed by the National Association of Securities Dealers, Inc. (the "NASD") on its members.

The Amendment to Form U-4 was proposed by the Commission in Securities Exchange Act Release No. 17162 (September 24, 1980) and was published for public comment in the *Federal Register* on September 30, 1980. No comments were received by the Commission. As noted in the release proposing this amendment to Form U-4,[2] the Commission's experience has been that maintaining annual SECO assessments and specific SECO fees at rates or levels comparable to those imposed by the NASD generates revenues which have reasonably approximated expenditures incident to the administration of the SECO program. It is the Commission's belief that, for the most part, the costs of administering the SECO program continue to

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[1]A non-member broker-dealer who is a member of a national securities exchange may, under limited circumstances, be exempt from this provision. *See*, Securities Exchange Act Rules 15b9-1(e) [17 CFR 240.15b9-1(e)] and 15b9-2(e)(3) [17 CFR 240.15b9-2(e)(3)].

[2]Securities Exchange Act Release No. 17162 (September 24, 1980 (45 FR 64599 (1980)).

warrant the imposition of fees at rates similar to those imposed by the NASD. In addition, the Congress has indicated an intention that SECO broker-dealers be subject to regulation comparable to the NASD's regulation of its members.[3]

The Commission, of course, recognizes the statutory mandate that SECO fees and assessments be reasonable and that they be used to defray the costs of administering the SECO program. In connection with its ongoing responsibilities the Commission may seek to determine whether the rates of specific fees, including Form U-4 filing fees, bear a reasonable correlation to the relevant costs incurred by the Commission in administering the SECO regulatory program. If such an analysis discloses significant variance between the fees collected and the costs incurred in administering the relevant portion of the SECO program, the Commission may consider whether SECO fees should differ from those applicable to NASD members.[4]

On the basis of the foregoing, the Commission hereby amends Part 249 of the Code of Federal Regulations to raise the level of the initial registration fee for associated persons of nonmember broker-dealers. The Commission finds that the amendment to Form U-4 does not impose any burdens on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendment to the special instructions to Form U-4 is adopted pursuant to the Commission's authority in Sections 15(b)(8) and 23(a) [15 U.S.C. 78o(b)(8), 78w(a)] of the Securities Exchange Act of 1934, effective thirty days after publication in the *Federal Register*.

The amendment to the special instructions reads as follows:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers and dealers.

* * * * *

SPECIAL INSTRUCTIONS FOR COMPLETING FORM U-4, UNIFORM APPLICATION FOR SECURITIES AND COMMODITIES INDUSTRY REPRESENTATIVE AND/OR AGENT.

* * * * *

A filing fee of $50 must accompany this form. A check should be made payable to the Securities and Exchange Commission and mailed along with one (1) copy of this Form to the Office of the Comptroller.

* * * * *

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17371/December 12, 1980

In the Matter of

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
1735 K Street, N.W.
Washington, D.C. 20006

(File No. SR-NASD-78-3)

ORDER APPROVING PROPOSED RULE CHANGE

On May 31, 1978, the National Association of Securities Dealers, Inc. (the "NASD") filed with the Commission, pursuant to Section 19(b)(1) of the

[3]H. Rep. No. 1418, 88th Cong., 2nd Sess. at 12 (1964).

[4]*See*, Securities Exchange Act Release No. 16235 (October 2, 1979) (44 FR 57387 (1979)).

Securities Exchange Act of 1934,[1] (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change governing the giving and receiving of selling concessions, discounts and other allowances in connection with fixed price offerings of securities.[2] The proposal was subsequently amended on September 4, 1980.[3] As discussed below, the Commission has determined to approve the proposed rule change, as amended.

I. *BACKGROUND*

The proposed rule change will amend Sections 8 and 24 of Article III of the NASD's Rules of Fair Practice and will add a new Section 36 to Article III and a new Section 1(m) to Article II. Section 8, as amended, will impose a more explicit prohibition on a member's taking securities in trade at more than their fair market price. Section 24, as amended, will, among other things, prohibit the granting of selling concessions, discounts, or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business and will permit such payments to be made or received only as consideration for services rendered in distribution. New Section 36 will prohibit an NASD member from selling to, or placing with, any related person of the member securities that are part of a fixed price offering. Finally, new Section 1(m) of Article II contains a definition of "fixed price offering."

The proposed rule change was filed in response to the legal uncertainty created by a decision in the Southern District of New York, *Papilsky v. Berndt*,[4] in which the court held that, in the absence of a contrary ruling from the NASD or the Commission, "underwriting recapture" was available and legal under the NASD's Rules of Fair Practice. In *Papilsky*, shareholders of an investment company brought a derivative action against the directors of the company and its adviser, Lord Abbett & Co. ("Lord Abbett"), alleging that Lord Abbett, as an NASD member, could have purchased securities in underwritten offerings at the public offering price less the selling concession, resold them to the company at the public offering price and credited the amount of the selling concession against the management fee owed by the company.[5] The court found that Lord Abbett had a fiduciary duty to keep the disinterested directors of the fund fully and fairly informed about the possibility of recapture of selling concessions and that, having failed to perform that duty, Lord Abbett was liable for damages. The court did not reach the question whether Lord Abbett would have been insulated from liability if the company's disinterested directors had reached a reasonable business decision not to recapture selling concessions.[6]

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[1]15 U.S.C. 78s(b)(1).

[2]Notice of the proposed rule change was given by Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). Twenty-two letters of comment were received in response to that release. The Commission had also received twenty-one comment letters before the formal notice of the proposed rule change was published.

[3]Notice of the amendment was given by Securities Exchange Act Release No. 17129 (September 8, 1980), 45 FR 60529 (September 12, 1980). The Commission did not receive any comment letters in response to this release.

[4][1976-77 Dec.] Fed. Sec. L. Rep. (CCH) para 95,627 (S.D.N.Y. 1976).

[5]Lord Abbett acted, not only as adviser to the investment company, but also as principal underwriter of the company's own shares. As principal underwriter, it was registered as a broker-dealer and was a member of the NASD.

[6]*See also Fogel v. Chestnutt*, 533 F.2d 731 (2d Cir. 1975), in which the court held that the adviser was liable in damages for failing to disclose to the disinterested directors of the investment company the possibility of becoming a member of the NASD in order to recapture for the benefit of the company any fees or commissions it could have received as an NASD member. The court stated that there would have been "a different case" if fair disclosure had been made and the doubts, business considerations or both," the investment company should not attempt to recapture commission fees. 533 F.2d at 750. On remand, the District Court held the adviser liable to the company's shareholders for an amount that the court found could have been recaptured through various recapture techniques. [Current] Fed. Sec. L. Rep. (CCH) para 97,550 (S.D.N.Y. 1980).

II. *REVIEW OF PRIOR NASD AND COMMISSION ACTION*

After the *Papilsky* decision, Lord Abbett sent a letter to the NASD asking whether the NASD's Rules of Fair Practice prohibit the recapture of selling concessions in fixed price offerings.[7] The General Counsel of the NASD responded, by letter dated November 23, 1976, that Section 24 of the Rules of Fair Practice did indeed prohibit underwriting recapture. On February 17, 1977, the Commission wrote to the NASD, stating that the NASD's interpretation of Section 24 raised important issues of general applicability with regard to the public interest, the protection of investors and the appropriateness of burdens on competition, and that prior Commission decisions[8] cast doubt on the NASD's authority to interpret Section 24 in such a manner. For those and other reasons, the Commission stated that the interpretation should be filed as a proposed rule change under the Act.

The NASD then requested a conference with the Commission to consider the issue. At a public meeting on May 26, 1977, the Commission inquired whether the NASD's interpretation of Section 24 had been consistently applied to other practices of underwriters and dealers and, if not, whether the prohibition of recapture was an arbitrary application of the rule. The NASD agreed to consider the matter further and to prepare and file a comprehensive proposed rule change.

On September 23, 1977, the NASD circulated to its members for comment a draft of certain proposed amendments to its Rules of Fair Practice (the "1977 Draft"). After receiving comments on the 1977 Draft from its members, the NASD revised the proposal substantially, recirculated it to its members for comment and vote and, on May 31, 1978, filed it with the Commission (the "1978 Proposal").

In view of the complexity of the questions raised by the filing and the importance of the filing to the securities markets and the capital-raising process, the Commission issued a release soliciting additional comment on the issues involved and announcing that public hearings would be held.[9] Sixteen witnesses testified at the hearings, which concluded on November 20, 1979, and the Commission announced that it would accept comments through December 15, 1979.[10]

The hearing and comment process elicited the views of a wide variety of interested persons, including the Securities Industry Association (the "SIA"), regional and national brokerage firms, investment advisers, corporate issuers, industry trade groups, institutional investors, the Department of Justice and the Department of Treasury. After considering these views, the Commission determined at a public meeting on July 3, 1980 to send to the NASD a letter (the "1980 Commission letter") requesting that the NASD consider amending proposed Sections 8 and 24 in certain respects.[11] The NASD then amended

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[7]In addition, Lord Abbett and several other investment advisers to investment companies have filed applications for exemptive orders with the Commission seeking relief from certain provisions of the Investment Company Act of 1940, including Section 17(a) [15 U.S.C. 80a-17(a)], which restricts securities transactions between registered investment companies and their investment advisers. *See, e.g.*, Application of Congress Street Fund, Inc., et al., August 27, 1976 (File No. 812-3092); Application of Lord Abbett & Co., et al., August 23, 1976 (File No. 812-4018); Application of Putnam Management Co., Inc., et al., November 19, 1976 (File No. 812-4055); Application of Fidelity High Yield Municipals, et al., May 8, 1978 (File No. 812-4306). The Division of Investment Management informed these applicants that action could not be taken on their applications until the Commission decided whether to approve the NASD *Papilsky* rule proposal. Since the Commission is now approving the NASD rule proposal, it will not be possible for the Commission to find that the statutory requirements for granting these applications can be met. Accordingly, the Commission believes that these applicants should consider withdrawing their applications.

[8]See text at note 79, *infra*.

[9]Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979).

[10]Securities Exchange Act Release No. 16342 (November 14, 1979), 44 FR 66719 (November 20, 1979). Fifty comment letters were received in response to the May 1979 release announcing public hearings.

[11]Securities Exchange Act Release No. 16956 (July 3, 1980), 45 FR 46951 (July 11, 1980).

the proposed rule change and submitted it to a membership vote. The NASD membership approved the amended proposal by a vote of 1202 to 80, and the NASD filed its final amended version on September 4, 1980. Thereafter, the Commission published that amended proposal for comment.[12]

Pursuant to Section 19(b) of the Act, the Commission has reviewed the proposed rule change and has considered the data, views and arguments that were submitted in the hearings and in written comments received in this proceeding.

Section 19(b)(2) provides that, in order to approve the proposed rule change, the Commission must find it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. For the reasons discussed more fully below, the Commission has determined to approve the proposed rule change, as amended by the NASD. The balance of this order sets forth the Commission's basis for its determination, including: background information on fixed price underwritten offerings (Part III); the evolution of the rule change (Part IV); legal standards for approval of the rule change (Part V); policy considerations bearing on the Commission's decision to approve the proposal (Part VI); and the Commission's conclusion (Part VII).

III. *THE FIXED PRICE UNDERWRITING SYSTEM*

As background for the discussion of the proposed rule change, this section of the release briefly summarizes the Commission's understanding of how the fixed price underwriting system currently operates. That understanding is based on the testimony at the hearings, the comment letters and the Commission's own knowledge and experience in administering the federal securities laws with respect to issuers, broker-dealers and the securities markets in general.

A corporation may acquire needed funds in several ways. It may, for example, borrow money from a bank. It may also sell securities in either a public offering or a private one. If the corporation decides to offer securities, it may engage the services of broker-dealers to sell the securities to the public in either "firm commitment" or "best efforts" underwritings.[13] In a firm commitment underwriting, one or more investment banking firms agree to purchase the securities from the issuer for resale to the public at a specified public offering price.[14] In a best efforts underwriting, broker-dealers do not purchase the securities from the issuer but instead agree for a fee to use their best efforts to sell the securities on behalf of the issuer at the offering price.

In a typical firm commitment offering of securities, investment banking firms organize an underwriting syndicate. Each member of the syndicate agrees to purchase from the issuer a specified amount of the securities and to resell those securities at a specified public offering price. The syndicate is managed by a managing underwriter who, on behalf of the syndicate, executes with the issuer an "underwriting agreement." The underwriting agreement spells out the terms of the offering and the amount of securities that each syndicate member is committed to buy or underwrite.

The syndicate members also execute an "agreement among underwriters" that establishes the obligations of each member. Typically, the agreement grants to the managing underwriter (or underwriters) broad discretionary authority to conduct the offering. Pursuant to that agreement, the managing underwriter may be authorized, among other things, to buy and sell in the open market and for the account of the underwriters the securities being offered, to charge each underwriter for expenses incurred by the manager and to terminate the agreement. The managing underwriter may also select additional broker-dealers to assist the syndicate in selling the securities. Those dealers, who may also be syndicate members (the "selling group"), will sign a "selected dealer agreement," setting forth their rights and obligations, including their agreement to sell the securities at the public offering price.

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[12]See note 3, *supra*.

[13]Other means of distributing securities may include Dutch auctions, English auctions, distributions pursuant to Rule 50 under the Public Utility Holding Company Act, 17 CFR 250.50 (sealed bidding), and shareholder dividend reinvestment and stock purchase plans. See letters from the NASD (August 10, 1979); the SIA (July 31, 1979). See testimony of Goldman Sachs & Co. *In re Papilsky Hearings—Proposed Rule Change by NASD*, File No. 4-282 at 755 (1979) [hereinafter "transcript"].

[14]The public offering price may be determined through negotiation with the issuer or by competitive bidding.

Both the underwriters and the selected dealers agree to sell the securities to the public[15] at a fixed public offering price. The difference between that price and the amount received by the issuer is known as the "gross spread." The spread may range in size from a fraction of 1% to 10% or more of the public offering price depending upon a number of factors, including the characteristics of the security, the risk to the underwriters, the amount of selling effort required and the costs of distributing the security.

The spread normally is composed of three parts: (i) the management fee for the managing underwriter, (ii) the underwriting compensation received by the underwriters, and (iii) the "selling concession" received for any securities sold to the public by any broker-dealer participating in the distribution. Usually, the amount of the selling concession is set in advance by the managing underwriter and may be as much as 60 to 65% of the spread depending upon the effort required to sell the security. The selling concession has increased as a percentage of the spread in recent years.[16]

In connection with some fixed price offerings, the underwriters may elect to "stabilize" the market for the offered security during the distribution. The managing underwriter places in the primary market for the security a syndicate bid to purchase the security that is being underwritten. The bid price is usually set at or just under the public offering price. Stabilization is intended to facilitate an orderly distribution of securities by preventing or retarding a marked decline in the price of the offered security.[17]

As described above, the amount of securities underwritten by each syndicate member is set by agreement. Typically, however, each syndicate member retains control over and directly places only a portion of the securities it agrees to underwrite. This portion is known as its "retention." The remainder of the underwritten securities is placed in a general syndicate account, often called the "pot," under the control of the managing underwriter. During the course of the distribution, the managing underwriter allocates and reallocates securities among syndicate and selling group members for a variety of reasons; particularly the ability of the member to sell the securities. As explained below, the "pot" also provides institutional customers with the convenience of centralized billing and delivery.

Purchasers that buy large amounts of a security, such as institutions, frequently may place their orders directly with the managing underwriter. Customarily, the managing underwriter will deliver the securities and confirm the transaction, but the purchaser may direct that the sale be credited to the account of one or more dealers that are syndicate or selling group members ("designated orders"). The preference of some customers to place designated orders with the managing underwriter has caused some dealers to be included in the selling group at the request of prospective purchasers in cases where the dealers might not otherwise have been asked to participate.

Another method used for selling the underwritten securities involves "swapping." In a swap transaction, securities are taken in trade from a customer in exchange for the underwritten securities. Swaps allow a dealer to reduce his risk in a distribution by diversifying his holdings of securities, and they permit an institution to purchase the securities being distributed in circumstances where it does not have available cash to pay for them or where, for other reasons, it prefers not to pay cash for them. Swaps are most common in

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[15]Usually, the syndicate and selling group members are also permitted to sell the underwritten securities to one another and to any other NASD member at the public offering price less a dealer reallowance that does not exceed a stated percentage of the selling concession.

[16]Witnesses testified at the hearings that the spread negotiated by the issuer and the underwriters is often smaller in an offering that will be sold primarily to institutional purchasers since offerings of that type usually require less selling effort than offerings sold primarily to individuals. Testimony of Goldman Sachs & Co. (transcript at 776-77); Sanford C. Bernstein & Co., Inc. (transcript at 336-37).

[17]The syndicate's stabilizing activities during the offering must be conducted in accordance with the provisions of Rule 10b-7 under the Act (17 CFR 240.10b-7) or, in the case of offerings through rights, Rule 10b-8 (17 CFR 240.10b-8). Witnesses at the hearings testified that stabilization frequently occurs in offerings of equity securities, but almost never in offerings of debt securities. See testimony of the NASD (transcript at 91); McCarthy, Ried, Crisanti & Maffei, Inc. (transcript at 576).

debt offerings and in offerings of other securities that trade on the basis of yield.[18]

If the securities which a dealer receives from the institution have a fair market price lower than that of the underwritten securities, the swap is an "overtrade" prohibited by Section 8 of Article III of the NASD's Rules of Fair Practice.[19] Overtrades result, of course, in a type of discount from the public offering price and are most common when the underwritten securities are difficult to sell because the security was priced too high at the outset or because of intervening market conditions. In such a "sticky deal," overtrades enable the underwriter or selling group member in effect to adjust the public offering price to make the security more attractive, thus infringing on the managing underwriter's power to control the offering and on his decision whether to terminate the pricing restrictions.[20]

For reasons discussed below,[21] the growth in the economic power of institutional investors has exerted pressures on the traditional fixed price underwriting system. In response to those pressures, questions have arisen as to whether institutional investors should attempt to obtain discounts from the public offering prices in fixed price offerings through such practices as "underwriting recapture"[22] or overtrading. In addition, there has been uncertainty about the extent to which institutional fiduciaries should be able to purchase securities from the manager out of the pot, designating other broker-dealers to receive the selling concession to reward them for services or products, such as research, provided to the institution in the course of the offering or in other circumstances.[23]

In the NASD's view, practices such as overtrading and recapture threaten to erode the fixed price offering system. The NASD states that this erosion would result in an increase in (a) underwriting risks, (b) capital-raising costs, (c) unwillingness of individual investors to purchase securities in fixed price offerings and (d) concentration in the investment banking field.[24] In the NASD's opinion, Commission disapproval of the proposed rule change would lead to even greater institutional pressure on the sytem and to a deterioration of the existing ability of securities firms to raise capital for American industry. Accordingly, the NASD and others have urged the Commission to approve the proposed rules.

[18]The Commission understands that swapping is often the result of a selling effort on the part of dealers who suggest a swap to an institution to improve the overall quality or the yield of the institution's portfolio. Letter from the SIA (July 31, 1979); testimony of the NASD (transcript at 143-45).

[19]A swap transaction may be arranged before the effective date of the registration statement. For example, the parties sometimes agree to a "spread swap" in which the security to be swapped is valued in relation to another security, usually a government security. If market forces cause a narrowing of the spread so that the swapped security should be valued at less than the agreed spread in relation to the "benchmark" security, an overtrade may occur if the swap is executed at the previously agreed upon terms. In addition, the practice of spread swapping would raise questions under Section 5 of the Securities Act of 1933 [15 U.S.C. 77e] if the parties in fact reached what was regarded as a binding legal agreement concerning the underwritten securities before the effectiveness of the registration statement.

[20]Under both the agreement among underwriters and the selected dealers agreement, the managing underwriter has the power to keep the agreements and the pricing restrictions in force for a period not exceeding 30, or in some cases 60, days.

[21]See text at notes 111-14, *infra*.

[22]See text at note 4, *supra*.

[23]When research is in effect paid for by the managed account through brokerage commissions or selling concessions, it is said to have been purchased with "soft dollars" (as opposed to payments made by the account manager out of his own funds, known as "hard dollars").

[24]NASD Analysis of the Record Developed in the Matter of Papilsky Hearings from the Perspective of Statutory Authority (March 3, 1980) (the "NASD Analysis of the Record"), at 15-19. See letter from the SIA (July 31, 1979) at 28-35; testimony of Morgan Stanley & Co., Inc. (transcript at 880); Sanford C. Bernstein & Co., Inc. (transcript at 310); The Robinson-Humphrey Co., Inc. (transcript at 843-45); Piper, Jaffray & Hopwood, Inc. (transcript at 656-59).

IV. *EVOLUTION OF THE PROPOSED NASD RULES*

In developing its proposed rule change, the NASD sought to provide a measure of certainty concerning the operation of the fixed price underwriting system. As discussed briefly above, the NASD's rule proposals which the Commission is today approving have evolved over a period of years in response to an exhaustive examination conducted by commentators, the NASD and the Commission itself. That examination has included NASD proceedings and several public proceedings and meetings before the Commission. The evolution of those rules is described below as a prelude to a discussion of the Commission's reasons for finding them to be consistent with the Act.

A. Section 8: swaps and overtrading

1. *Existing Section 8.* Section 8 of the NASD's Rules of Fair Practice currently prohibits a member participating in a fixed price offering from taking other securities, in exchange for the offered ones, at more than their fair market price at the time of purchase. The section is designed to prevent overtrading, but, as currently drafted, provides little guidance to members or to the NASD in its enforcement efforts in differentiating between a permissible swap and a prohibited overtrade.

2. *1977 Draft.* In connection with its 1977 Draft, the NASD stated that swapping is a reasonable business practice that is important to the distribution of securities and should not be prohibited or discouraged. At the same time, however, the NASD noted that overtrading results in a customer's receiving the underwritten security at a price lower than the public offering price. Similarly, if a member effected a swap transaction as an agent and charged less than the normal commission, the customer would receive what in effect amounted to a discount from the public offering price.

In order to make its prohibition of these practices more effective, the NASD expanded Section 8 in the 1977 Draft to include a definition of "fair market price" as a price not lower than the highest independent bid and not higher than the lowest independent offer.[25] The NASD further specified that, if a member acted as agent in the sale of securities taken in trade, it would have to charge a normal commission in connection with the sale. With respect to equity securities that are traded on a national securities exchange or for which quotations are entered in an automated quotation system, the 1977 Draft would have required a member to obtain the quotations from the exchange or from the system. With respect to other types of securities, a member would have been required to obtain quotations from two or more independent dealers or to use an independent agent to obtain the quotations. The section also contained a definition of "normal commission" and "taken in trade." Finally, the 1977 Draft would have required the member to keep certain records to verify that the securities had been taken in trade at a fair market price.

Some NASD members criticized the 1977 Draft as too restrictive since it did not permit a swap transaction to take place at a price lower than the highest independent bid or higher than the lowest independent offer.[26] Others stated that fair market price could not be ascertained solely by reference to objective standards, such as prevailing quotations, because of the numerous factors involved in the determination.[27] A number of commentators also criticized the recordkeeping requirements as being too burdensome.[28]

3. *1978 Proposal.* In its 1978 Proposal, the NASD revised certain provisions in proposed Section 8 in response to its members' comments. The definition of fair market price was revised to include only the limitation that the securities received be valued "not

[25]The NASD noted that permitting sales at a price as high as the lowest independent offer might permit a dealer to pay a customer more than the customer would receive in an outright sale, but stated that it believed it not unusual for sell orders of institutional size to be executed at the offer.

[26]Letters from Piper, Jaffray & Hopwood, Inc. (October 31, 1977); The Robinson-Humphrey Co., Inc. (November 4, 1977).

[27]Letter from Transamerican Investment Management Co. (November 1, 1977).

[28]Letters from Piper, Jaffray & Hopwood, Inc. (October 31, 1977); Printon, Kane & Co. (November 7, 1977).

higher than the lowest independent offer,"[29] and the section was expanded to permit members to effect a swap transaction at a higher price in "an exceptional or unusual case," taking into account all factors relevant to the transaction. The 1978 Proposal listed several factors relevant to determining whether the transaction was "exceptional" or unusual case," taking into account all factors relevant to the transaction. The 1978 Proposal listed several factors relevant to determining whether the transaction was "exceptional" or "unusual," such as whether another customer of the member had given an indication of interest to purchase the securities taken in trade, the member's pattern of trading in those securities or in comparable securities, the member's position in and the availability of the securities, the size of the transaction and the amount by which the price paid exceeded the lowest independent offer. The proposal stated that the member would bear a heavy burden in justifying that the price paid was the fair market price when it exceeded the lowest independent offer.[30]

The commentators on this proposal generally did not object to the definition of fair market price, although some questioned whether any proposal in this area could prevent overtrading.[31] One commentator objected to the "exceptional or unusual case" exception, stating that this provision would make the section unenforceable.[32] Again, some commentators also found the recordkeeping and record retention requirements overly burdensome.[33]

4. *1980 Commission letter.* In its July 3, 1980 letter to the NASD, the Commission stated that the proposed amendments to Section 8 should be strengthened in order to achieve their intended purpose. The Commission was concerned that the proposed amendments to Section 8 would sometimes permit the acceptance of swapped securities at a price in excess of their fair market price. The Commission noted that, since proposed Section 8 did not require that the lowest independent offer be determined with reference to the size of the transaction, it would permit a block of securities to be purchased in a swap at a price equal to that offered for a much smaller quantity even though the block might otherwise trade at a discount. The Commission also stated that since most dealers usually buy securities at their bid price and not at their offer, a dealer's purchase of securities at the lowest offer could, in many instances, constitute an overtrade when compared to the dealer's normal pattern of trading.

The Commission suggested two possible alternative approaches to Section 8. First, the NASD was asked to consider whether it would be appropriate to use the lowest independent offer as a guideline rather than a fixed standard for determining fair market price. Under such an approach, a transaction occurring at or below the lowest independent offer would be presumed to have taken place at the fair market price, although the NASD could rebut the presumption. Second, the Commission stated that the NASD should also consider a standard other than the lowest independent offer as the fair market price, such as the bid. Such a standard could provide a safe harbor only for those transactions occurring below the highest independent bid. The Commission asked the NASD to consider how it could account for the size of a transaction if it used either standard.

5. *1980 Proposal.* Proposed Section 8, as amended in 1980 and now presented for Commission approval, contains a different approach from the earlier drafts. The revision defines fair market price as a price not higher than the price at which the securities would be purchased from the customer or from a similarly situated customer in the ordinary course of business by a dealer in such securities in transactions of similar size and having similar

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[29]The NASD determined that it was unnecessary to prohibit members from valuing swapped securities at less than the highest independent bid in the absence of known abuses and in view of the provisions of the Free-riding and Withholding Interpretation of Article III Section 1 of the Rules of Fair Practice. NASD Manual (CCH) para 2151.06.

[30]The proposal was also revised to require that quotations for preferred stocks be obtained from two or more dealers in view of the fact that the trading characteristics of preferred stocks are more similar to those of debt instruments than to those of common stocks.

[31]Letter from Transamerica Investment Management Co. (September 21, 1978).

[32]Testimony of Sutro & Co., Inc. (transcript at 449-50).

[33]Letter from Transamerica Investment Management Co. (September 21, 1978); testimony of Sutro & Co., Inc. (transcript at 451).

characteristics but not involving a security taken in trade. The revision also contains the following standards and presumptions. First, the section contains a "safe harbor" for swap transactions involving securities other than common stocks if the price paid is not higher than the highest independent bid for the securities at the time of purchase. In such a case, a member will be deemed to have paid the fair market price. Second, the section contains a presumption of compliance for common stocks if the member values the common stocks at a price not higher than the highest independent bid. This presumption may be rebutted by the NASD upon a showing that the price paid in fact exceeded the fair market price. Third, the section contains a presumption of non-compliance if the member takes the securities in trade at a price higher than the lowest independent offer for the securities.[34] Finally, the section provides neither a presumption of compliance nor one of non-compliance if the member pays a price for the swapped securities between the highest independent bid and the lowest independent offer. The section, as amended, also contains revised interpretations that require a member to obtain quotations for the swapped security, other than common stocks, that must be for a size corresponding generally to the amount of the securities taken in trade, although they need not be for the specific size of the transaction. The other provisions of the section are substantially unchanged from the previous drafts.

B. Section 24: selling concessions, discounts and other allowances

1. *Existing Section 24*. Section 24 currently provides that selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services rendered in distribution and shall not be allowed to anyone other than a broker or dealer actually engaged in the investment banking or securities business. The section also contains a provision permitting a member to sell any security owned by him at any net price that may be fixed by him unless prevented therefrom by agreement.

The NASD and others maintain that this section has always prevented direct forms of discounting such as cash rebates.[35] The NASD also maintains that indirect forms of discounting such as recapture[36] are also prohibited by this section. The history of Section 24 is not clear on the latter point.

Section 24 apparently derives from codes approved by President Roosevelt acting under the authority of the National Industrial Recovery Act (the "NIRA"). In late 1933 President Roosevelt approved the Code of Fair Competition for the Investment Bankers Association of America.[37] A special committee of that association drafted fair practice provisions as an amendment to the Code of Fair Competition, and the President approved them in 1934.[38] Included among them were provisions that were described as "tend[ing] to establish one price for all investors irrespective of the size of the transaction or the importance of the purchase."[39] In recommending the inclusion of this provision, the drafting committee stated that "[s]ecurities sold under the public offering price overhang the market after the syndicate distribution. If the concession is large enough, the holder of the security has a constant temptation to make a quick sale at a small profit, and the fact of such sale discourages all men from

[34]The same factors as listed in the 1978 Proposal are relevant to the rebuttal of this presumption. The member, however, bears a heavy burden in showing that it paid the fair market price for the security. If a member takes a security in trade and pays more than the lowest independent offer, it must keep records of all relevant factors it considered important in concluding that the price paid for the securities was the fair market price.

[35]Letters from the NASD (August 10, 1979); Prudential Insurance Company of America (August 1, 1979).

[36]See text accompanying note 4, *supra*.

[37]Approved Code No. 141, Executive Order No. 6456 (Nov. 27, 1933), III National Recovery Administration Codes of Fair Competition 509 [hereinafter cited as "NRA Codes"].

[38]Approved Code No. 141—Amendment No. 2, Executive Order No. 6652 (Mar. 23, 1934), VIII NRA Codes 657.

[39]Letter from Administrator Hugh S. Johnson to President Franklin D. Roosevelt transmitting Approved Code No. 141—Amendment No. 2 for approval (Mar. 23, 1934), VIII NRA Codes 659-60.

buying securities when publicly offered and at the offering price."[40]

Subsequently, in 1935, in response to perceived evasion of the "one price" provision, the drafting committee proposed an amendment requiring an investment banker who received a selling concession to certify that his purchase was solely for the account of clients or, if for his own account, that he intended to redistribute the securities to his clients in the ordinary course of business. This amendment was approved, on behalf of the President, by the National Industrial Recovery Board, which found that the "effect of the amendment would be to consistently maintain the principle of no discrimination between investors by putting all investment bankers on a level with private investors when they purchase securities solely for investment and not for distribution. It proceeds on the theory that an investment banker is entitled to a lower price than that available to the public only when that investment banker actively participates in the distribution to others of the securities in question."[41]

After the United States Supreme Court declared the NIRA to be unconstitutional,[42] the Investment Bankers Conference, Inc. was organized to continue self-regulation on a voluntary basis. The new organization was made up of substantially the same people who had composed the committee that drafted the fair practice provisions of the Investment Bankers Code. In 1937, the Conference adopted rules of fair practice, including a provision comparable to its predecessor in the Investment Bankers Code and virtually identical to existing Section 24.[43] The apparent intent of the new provision was to continue the restrictions on underwritings contained in the Investment Bankers Code.

The NASD was established in 1939,[44] and the Investment Bankers Conference passed out of existence. Many of the rules drafted by the Conference, including the restrictions on underwriting and selling concessions, were carried over as the NASD's rules.[45] In the context of reviewing the NASD's application for registration as a national securities association in 1939, the Commission stated that none of the prohibitions of then Section 15A(b)(7) of the Act, applicable to the rules of the NASD, appeared to be violated by the provisions of Seciton 24.[46] Since 1939 the various District Conduct Committees of the NASD have

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[40]Brief submitted by Joseph C. Hostetler, Counsel, Investment Bankers Code Committee to the National Recovery Administration at the public hearings on the fair practice amendments (Mar. 15, 1934).

[41]Approved Code No. 141—Amendment No. 4, Report to the President and Order (Feb. 27, 1935), XX NRA Codes 433.

[42]*A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495, 538-41 (1935). The Court held that the Congress, in the NIRA, had unconstitutionally delegated its authority by broadly authorizing the President, without sufficient limiting standards, to approve and enforce private trade organizations' codes of fair competition.

[43]Notice of Adoption of Rules of Fair Practice and Complaint Procedure of Investment Bankers Conference, Inc. (May 25, 1937).

[44]In 1938, in what is commonly called the Maloney Act, the Congress added Section 15A to the Act in order to permit the registration of national securities associations with the Commission. The Maloney Act authorized such associations to regulate the activities of their member broker-dealers. The NASD is the only national securities association registered with the Commission.

[45]The NASD, in adopting Section 24, incorporated a minor revision, inserting the words "as such" after "concessions, discounts, or other allowances." It has been variously argued that this provision emphasizes that selling concessions mean *payments* for activities performed in distributing securities or that it indicates that the section was intended to apply only to direct discounts. *Compare* letter from the NASD (June 13, 1977) *with* that of the Prudential Insurance Company of America (Aug. 1, 1979). The available history of the section does not indicate which interpretation is correct, and it may well be that the distinction was not clearly developed in 1939.

[46]*In re Application by National Association of Securities Dealers, Inc.*, 5 SEC 627, 632 (August 7, 1939).

brought over 40 proceedings in which a violation of Section 24 has been found.[47]

2. *1977 Draft.* In 1977, the NASD stated that Section 24 serves a vital function in promoting fairness in the securities distribution process. It suggested that the section ensures that the "trade preference," offered to professionals to facilitate the distribution to investors and represented to the issuer and to the public as granted for that purpose, is not given to those who have not earned it and is not used as a means of unfairly granting a discount to selected investors. The NASD stated that the purposes of its 1977 Draft were to clarify Section 24 and to delineate the standards of eligibility for concessions, discounts, or allowances.

The 1977 Draft provided that a selling concession, discount, or other allowance could be granted only to brokers or dealers actually engaged in the investment banking or securities business and could be granted or received only as consideration for services rendered in distribution. The NASD proposed an interpretation that would have prohibited all designated sales except to members of the underwriting syndicate and then only to the extent of their underwriting commitment. This prohibition would have also applied to institutional purchases effected on a "bill and deliver" basis in which the institution purchased a block of securities, designated several dealers to receive credit for the sales and received from the manager a single bill and one certificate.

Second, the proposed interpretations to Section 24 by the NASD Board of Governors provided that a broker-dealer would be deemed to be improperly granting or receiving a discount if it furnished a purchaser of securities with products or services for an "agreed upon consideration" or furnished "commercially available" services or products, unless the member were compensated for those services or products from sources other than selling concessions, discounts, or other allowances. A service or product would be "commercially available" if it, or a substantially identical service or product, were generally available on a commercial basis either from the member receiving the concession or from some other source. A service or product would be considered to be provided "for cash or other agreed upon consideration" if it, or a substantially identical service or product, were provided to any customer by the member or by others pursuant to an agreement.

The NASD stated that this section was intended (i) to prevent unfair discrimination against customers who were not able to generate sufficient business to receive products or services that could be offset by selling concessions and (ii) to prevent misrepresentations by members that the public offering price was fixed when in fact certain customers had received a discount. The NASD noted that the section would permit dealers and underwriters to continue to supply standard research not offered to anyone for cash or for an agreed upon consideration.

Commentators on this draft noted that its effect would have been to limit designated sales to the major bracket underwriters and would have defined services in distribution too narrowly. They strenuously objected on that basis and pointed out that designated sales did not necessarily imply an absence of direct selling contact or selling effort by the designated dealer.[48]

3. *1978 Proposal.* In response to member comment, the NASD revised the proposed amendment to Section 24 and the related interpretations. The proposal as revised expanded the interpretation of "services in distribution" to include sales efforts on the part of persons outside the underwriting syndicate. The interpretations of "commercially available" and "agreed upon consideration"

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[47]*E.g., District business Conduct Committee No. 2 v. Paul C. Rudolph* (1956) (sale by member of mutual funds to customers at less than the public offering price); *District Business Conduct Committee No. 3 v. Ackerson-Hackett Investment Co.* (1957) (respondent sold debentures in distribution to officers and directors of issuer at a discount); *District Business Conduct Committee No. 3 v. Richard A. Chambers* (1970) (respondent sold shares of a mutual fund at a discount); *District Business Conduct Committee No. 12 v. Samuel Weisberger* (1974) (member acting as a selling group member sold new issues to customers at prices below the stated public offering prices).

[48]*E.g.,* letters from Adams Harkness & Hill (November 8, 1977); Birr Wilson & Co., Inc. (November 1, 1977); Howard, Weil, Labouisse, Friedricks (November 3, 1977); Loewi & Co. (October 31, 1977); Mesirow & Co. (October 31, 1977).

remained substantially the same. In addition, certain recordkeeping and reporting provisions were added to assist the NASD in enforcing the section.

Commentators argued that this formulation of Section 24 unfairly discriminated against smaller firms and research-oriented firms in two respects. First, they suggested that research is a fundamental part of the distribution process since institutional customers' investment decisions usually are made on the basis of research, rather than because of broker-dealers' direct selling efforts, and they argued, therefore, that research should be considered *per se* a service in distribution.[49]

Second, the commentators stated that the effect of the "commercially available" and the "agreed upon consideration" interpretations would be to permit soft-dollar payments for in-house research furnished on an exclusively "goodwill" basis, while precluding such payments for third-party research that had been purchased by a broker-dealer (other than one who was acting as an exclusive distributor of that product or service) and then redistributed on a "goodwill" basis. In addition, a firm would be precluded from making its own in-house research available to one customer for cash and to another for "soft-dollars." Commentators stated that the proposal unfairly discriminated against, and imposed unnecessary competitive burdens on, firms that have limited in-house research capabilities or that derive a substantial portion of their revenues from research services and, therefore, cannot afford to provide research on a "goodwill" basis.[50]

4. *1980 Commission letter.* In its July 3, 1980 letter to the NASD, the Commission stated that the proposed amendments to Section 24 might not be consistent with the Act and indicated that the NASD should modify the proposed amendments to remove those aspects that appeared to be unfairly discriminatory. In that connection, the Commission discussed two alternative formulations of Section 24 that the NASD had discussed in its testimony at the hearings.

Alternative 1: Under the first alternative: (a) the "services in distribution" interpretation would be revised so that the furnishing of *bona fide* research, defined in a manner similar to the Commission's interpretation under Section 28(e) of the Act,[51] would be deemed to be a sufficient service in distribution; (b) the "commercially available" prohibition that derived from the NASD's interpretation would be redefined so as not to apply to such *bona fide* research; and (c) the "agreed upon consideration" limitation that derived from the NASD's interpretation would be modified to allow research that was supplied to one customer for cash or other agreed upon consideration to be also made available to another customer on a "goodwill" basis in connection with a fixed price offering.

This alternative would permit any broker-dealer, not just a member of the underwriting syndicate, to receive designations for research services without having to show that it had engaged in direct selling contact with the customer. Also, the determination whether the provision of research constituted a violation of Section 24 would depend only upon whether the research was provided on a "goodwill basis" and not on whether the research was otherwise commercially available or had a readily ascertainable cash or cash equivalent value.

The Commission noted that this interpretation would be more easily enforceable since it would not be necessary to determine whether a broker-dealer had some direct selling contact with a customer or whether substantially identical research was being offered by others on a cash or cash equivalent basis. Finally, the revised approach appeared to alleviate some potential anticompetitive burdens imposed on firms that deliver third-party research.

The Commission noted, however, that this alternative would still impose a burden on firms that cannot afford to provide research solely on a "goodwill" basis. It appeared to make an artificial distinction between research arrangements that

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[49]Testimony of Sanford C. Bernstein & Co., Inc. (transcript at 305, 312); Prudential Insurance Company of America (transcript at 374-77); McCarthy, Ried, Crisanti & Maffei, Inc. (transcript at 577).

[50]*E.g.*, testimony of Sanford C. Bernstein & Co., Inc. (transcript at 310); letters from McCarthy, Ried, Crisanti & Maffei, Inc. (October 6, 1978 and August 8, 1979).

[51]15 U.S.C. 78bb(e); Securities Exchange Act Release No. 12251 (March 24, 1976), 41 FR 13678 (March 31, 1976).

provide for an explicit *quid pro quo* and those that do not. The Commission stated that this distinction tends to promote artificial compensation arrangements in which all parties know, but never explicitly state, that payment in some manner is expected for research. Finally, the Commission stated that the restrictions imposed on research oriented firms might not be necessary or appropriate in furtherance of the purposes of the Act.

Alternative 2: The second alternative suggested by the NASD at the hearings would be to treat the provision of *bona fide* research as a sufficient service in distribution and to place such research in a class by itself so that, unlike other products and services, it could be furnished for "soft dollars" (even if the consideration were explicitly agreed upon) without being considered to be an improper discount for purposes of Section 24.

The Commission recommended that the NASD amend Section 24 in the manner suggested by the second alternative. The Commission noted that the record contained several policy arguments for treating research as *sui generis* in this fashion. First, many commentators observed that providing research is a valuable service that constitutes a fundamental part of the distribution process and should, therefore, be protected.[52] Second, several commentators maintained that soft dollar payments for research have been prevalent for years without any adverse effect on the fixed price underwriting system and that this practice does not give rise to the abuses that Section 24 was designed to prevent.[53] The Commission noted that the second alternative appeared to eliminate most effectively the discrimination against firms that provide third-party research to their customers. In addition, the Commission stated that it believed the second alternative more clearly and honestly expresses the economic realities of current research compensation practices and that those practices do not appear to have harmed the underwriting system. For those reasons, the Commission concluded that the second alternative would be better designed to carry out the purposes under the Act that the proposed rule change is intended to promote.

5. *1980 Proposal.* The NASD followed the second alternative, as outlined above, in amending Section 24. The proposal, as amended, still prohibits the granting of selling concessions, discounts, or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business and prohibits the granting or receiving of such concessions, discounts, or other allowances except as consideration for services rendered in distribution. The section now contains a proviso that the section shall not prohibit a member from selling any securities to a person, or an account managed by such person, to whom it has provided or will provide *bona fide* research if the stated public offering price is paid by the purchaser. The section also contains a definition of *bona fide* research that is substantially the same as that in Sections 28(e)(3)(A) and (B) of the Act, as interpreted by the Commission. Section 24 specifically excludes from the definition of *bona fide* research "investment management and investment discretionary services," as well as products or services that are readily and customarily available and offered to the general public on a commercial basis.[54]

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[52]Letters from Prudential Insurance Company of America (August 1, 1979); McCarthy, Ried, Crisanti & Maffei, Inc. (October 6, 1978 and August 8, 1979); American Council of Life Insurance (July 31, 1979).

[53]Letter from Prudential Insurance Company of America (August 1, 1979).

[54]The NASD states that, in determining whether the exclusion for *bona fide* research under Section 24 is available in a given instance, members should refer to Commission and staff interpretations of Section 28(e). In that regard, in Securities Exchange Act Release No. 12251 (March 24, 1976), 41 FR 13678 (March 31, 1976), the Commission indicated that items such as "newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies" are examples of products and services that are readily and customarily available and offered to the general public on a commercial basis. The Commission stated that the Section 28(e) safe harbor would not apply to the furnishing of such products and services. Accordingly, they would also not qualify as *bona fide* research for purposes of the NASD's Section 24.

Bona fide research must also be "provided by" the member who receives or retains the selling concession, discount, or other allowance. Under Section 28(e) of the Act, the Commission has stated that the "safe harbor" provided by Section 28(e)

The section also requires a member who grants a selling concession, discount, or other allowance to another person to obtain from that person a written agreement that he will comply with Section 24. If a member grants a selling concession, discount, or other allowance to a non-member broker or dealer in a foreign country, he is also required to obtain from such broker or dealer a written agreement to comply, as though such broker or dealer were a member, with certain provisions of the NASD's Rules of Fair Practice. Section 24 also contains reporting and recordkeeping requirements.

C. Section 36: sales to related persons

Section 36 will prohibit an NASD member, in connection with a fixed price offering of securities, from selling those securities to, or placing them with, any related person of the member. A "related person" is defined generally as a person who owns, or is owned by, or is under common ownership with, a member. The 1977 Draft, the 1978 Proposal and the 1980 Proposal are briefly discussed below.

1. *1977 Draft.* The 1977 Draft permitted a member to sell securities to, or to place securities with, a related person after the termination of the fixed price offering if the member had made a *bona fide* public offering but was unable to sell its entire allotment or retention. The section provided that a member would be presumed not to have made a public offering if the securities immediately traded in the secondary market at a price above the member's cost. Several commentators argued that this provision was too strict since it would have prohibited a member from placing securities in a related account if the price in the aftermarket was above the member's cost but below the public offering price.[55]

2. *1978 Proposal.* The 1978 Proposal differed from the earlier Draft in two respects. First, the section was revised to permit the placing of securities with a related person if that person was a foreign broker-dealer who entered into an agreement, required by Section 24(b), to make a *bona fide* public offering of the securities. The Proposal was also amended to remove the presumption in the 1977 Draft that a *bona fide* public offering had not been made if the price in the aftermarket was more than the member's cost and, in response to the views of the commentators, provided that a *bona fide* public offering would be presumed not to have been made if the price in the aftermarket were higher than the public offering price. The interpretation to that section stated that the determination as to whether a public offering had been made would be based on all the facts and circumstances.

Commentators generally approved of Section 36 as revised,[56] and the Commission did not comment on Section 36 in its July 3, 1980 letter to the NASD. The Proposal was not amended by the NASD's 1980 revisions.

D. Section 1(m): definition of fixed price offering

The proposed rule change also adds a new Section 1(m) to Article II of the Rules of Fair Practice to define the term "fixed price offering." The NASD proposed this amendment to clarify which offerings

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Footnote 54 *continued*

extends only to research that is "provided by" the broker to whom brokerage commissions are paid. The Commission, in Securities Exchange Act Release No. 12251, stated that "Section 28(e) might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties . . . ." The Commission believes that a broker-dealer may be deemed to have provided third party research when it has incurred a direct legal obligation to a third party producer to pay for the research (regardless of whether the research is then sent directly to the broker's fiduciary customer by the third party or instead is sent to the broker who then sends it to its customer). The Commission does not believe, however, that Section 28(e) would apply where the broker was merely used as an alternative means of paying obligations incurred by the fiduciary in its direct dealings with the third party. *See* staff response to Fund Monitoring Services, Inc. [1979 Dec.] Fed. Sec. L. Rep. (CCH) para 81,913 (Sept. 22, 1978). In that regard, a broker-dealer may be deemed to have provided third-party research that it is legally obligated to pay for even if its fiduciary customer participates in the selection of the research services or products to be provided to it by the broker-dealer.

[55]Letters from Sullivan & Cromwell (November 3, 1977); UBS-DB Corp. (October 31, 1977).

[56]Letter from the SIA (July 31, 1979). *But see* letter from Transamerica Investment Management Co.

were subject to the proposed rule change and stated that the proposed rule change would not prohibit members from selling securities to anyone at any fair price so long as they have not represented that there is a fixed offering price.

1. *1977 Draft.* The 1977 Draft defined "fixed price offering" as a public offering of securities by a broker, dealer, or underwriter at a stated public offering price, whether or not such offering is registered under the Securities Act of 1933, except that the term would not have included offerings of "exempted securities" or "municipal securities" as those terms are defined in the Act.

2. *1978 Proposal.* The 1978 Proposal revised proposed Section 1(m) to clarify that the term does not include wholly foreign offerings, although securities publicly offered in United States territories are included, and that it does not include offerings of redeemable securities of registered investment companies where the price is determined by the net asset value of the security There were no comments on proposed Section 1(m), and the Commission did not raise any concerns about it in its July 3, 1980 letter to the NASD. It was not amended by the 1980 Proposal.

V. LEGAL STANDARDS

Under Section 19(b)(2) of the Act, the Commission must approve the NASD's proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to the NASD. If the Commission is unable to make that finding, it must institute proceedings to consider whether to disapprove the proposed rule.

The statutory requirements relevant to such a determination are found, for the most part, in Section 15A(b) of the Act.[57] That section delineates purposes that NASD rules should be designed to achieve. Those purposes or objectives, whether positive goals such as investor protection or prohibitions such as those against unfair discrimination or inappropriate burdens on competition, are stated in the form of broad and elastic concepts. They afford the Commission considerable discretion to use its judgment and knowledge in determining whether a rule complies with the requirements of the Act.[58] Furthermore, the subsections of Section 15A(b) must often be read with reference to one another and to other provisions of the Act. For example, Section 15A(b)(9) provides that an NASD rule may not impose any "burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." Whether a burden on competition is permissible thus turns on whether and to what extent the proposed rule promotes one or more statutory objectives, such as the protection of investors or the public interest. Within that legal framework, the Commission must weigh and balance the strengths and weaknesses of a rule, assess the views and arguments of others and make predictive judgments about the consequences of a proposed rule.

A. Section 15A(b)(2): enforcement considerations

Section 15A(b)(2) requires that the NASD have the capacity to enforce compliance by its members with NASD rules, as well as with the provisions of the Act

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Footnote 56 continued

(November 1, 1977), in which it was alleged that Section 36 discriminated against broker-dealers related to institutional investors by preventing them from selling underwritten securities to such investors, while broker-dealers providing advisory services to an institutional investor were not so restrained. While it is true that Section 36 does not prohibit a broker-dealer from selling underwritten securities to an institution to which it provides advisory services, Section 24 would prohibit the broker-dealer from selling the securities to such a person at less than the public offering price, either directly or indirectly. Also, federal statutory provisions may prohibit or condition the sale. *See* Section 17(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(a)); Section 206(3) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(3)); Rules 206(3)-1 and 206(3)-2 thereunder (17 CFR 275.206(3)-1 and 275.206(3)-2); Section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406; ERISA Prohibited Transaction Exemptions 79-1, 44 FR 5963 (January 30, 1979) and 75-1, 40 FR 50845 (October 31, 1975).

[57] 15 U.S.C. 78o-3(b).

[58] *Bradford National Clearing Corp. v. Securities and Exchange Commission,* 590 F.2d 1085 (D.C. Cir. 1978).

and the rules thereunder. Although the Commission cannot approve NASD rules that are inherently incapable of being fairly and effectively enforced, the fact that a rule may be difficult to enforce or that the NASD may not be able to detect every violation of it would not alone mandate Commission disapproval.[59]

While Section 15A(b)(2) requires the Commission to make a predictive judgment in approving a proposed rule change, the Commission can monitor NASD enforcement of its rules and later reach a different conclusion regarding the NASD's enforcement ability if it finds that a rule cannot be fairly and effectively enforced. While certain provisions of Section 8 and 24 do raise issues of enforceability,[60] discussed below, the Commission believes that the NASD can enforce the proposed rule change, as amended, consistent with the requirements of Section 15A(b)(2).

1. *Section 8*. The overtrading prohibitions of Section 8 may present difficult enforcement questions. First, in order to detect overtrades, the NASD must be able to determine whether a swap transaction has actually occurred. Since the transactions involved in a swap may occur at different times, sometimes several days apart, several commentators and the NASD pointed out that the detection of overtrading can be, and has always been, difficult.[61] The NASD states that, although overtrades that do not involve simultaneous purchases and sales may be more difficult to detect, it will be possible to detect overtrades that occur during the same general time period, particularly if a pattern or practice of overtrading develops.[62] The recordkeeping requirements of Section 8 also should aid in the NASD's enforcement program through its examination of members' books and records.

The NASD must also be able to detect whether the quotations obtained for the swapped securities are authentic.[63] The NASD states that with respect to quotations for common stocks traded on an exchange or listed on an automated quotation system, it will not be difficult to determine the validity of the quotations. Although the determination will be more difficult for other types of securities, the NASD states that it is satisfied that the recordkeeping requirements of Section 8, which require recordation of the time and date of quotations and the names of dealers supplying them, will enable the NASD to maintain adequate surveillance over swap transactions.

The Commission believes that Section 8, as amended, will be easier to enforce than the section as originally filed. Since the section, as amended, provides more objective standards for detecting overtrades and in some instances places the burden on a member to disprove a presumption that certain trades are overtrades, the Commission believes that it can be adequately enforced by the NASD.[64]

2. *Section 24*. Section 24, as drafted in the 1978 Proposal, raised questions concerning the NASD's capacity to enforce the rule. First, the proposal required a broker-dealer to render services in distribution, either by being an underwriter or by

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[59]Enforcement difficulties may be pertinent in evaluating the extent to which a rule may promote various purposes of the Act under other subsections of Section 15A(b). For example, if a rule, for practical purposes, is incapable of being enforced against a certain class of persons, the rule, as applied, may violate the prohibition against unfair discrimination.

[60]Commentators did not question whether the NASD could adequately enforce Section 36, and the Commission believes that the NASD should be able to enforce that section without any special difficulties.

[61]Letters from the NASD (August 10, 1979); the SIA (July 31, 1979).

[62]Letter from the NASD (August 10, 1979).

[63]A practice of asking for a "Section 8 quote" that would be higher than a *bona fide* bid might develop. If such a practice became widespread, but nevertheless virtually impossible to prove in a disciplinary proceeding, and if the practice did not adversely affect capital raising, questions would, of course, arise concerning the usefulness of the overtrading prohibition.

[64]In the May 1979 Release the Commission asked whether the NASD could effectively enforce the requirement in Section 8 that a member charge a "normal commission" in a swap transaction when acting as agent without also effectively fixing or establishing a schedule of commission rates for swap transactions. In response, the NASD stated that since Section 8 defines a normal commission as the amount the member would charge in a like transaction not involving taking securities in trade,

engaging in some direct selling effort, in order to receive a selling concession. The NASD admitted that the direct selling effort requirement would be difficult to police, but noted that the managers of the underwriting group would be of substantial assistance in enforcing that requirement.[65] As amended, however, Section 24 defines the term "services in distribution" to include furnishing of *bona fide* research. Accordingly, the NASD will not be required to verify that research providers made some perfunctory selling effort to satisfy the services in distribution requirement, and one source of potentially troublesome enforcement problems will be avoided in large measure.

Second, Section 24, as drafted in the 1978 Proposal, would have required the NASD to determine whether certain products or services including research were readily and customarily available on a commercial basis and whether a particular product or service was furnished for an agreed upon consideration. If such products or services were so provided, the member would have been required to be fully compensated from sources other than the selling concession or other allowance. Since the interpretations to Section 24 by the NASD's Board of Governors provided that a product or service would be commercially available if it or a substantially identical service or product were furnished to a customer on a commercial basis, the NASD would have been required to make complicated determinations as to whether one kind of research was "substantially similar" to another kind. The NASD acknowledged that this requirement could create difficult interpretive and enforcement problems.[66] In addition, enforcing the "agreed upon consideration" provision would have required the NASD to make artificial distinctions between those research agreements in which the compensation was explictly stated and those in which the compensation arrangement was merely implied.[67] By removing various limitations upon the providing of *bona fide* research in connection with a fixed price offering, the NASD has again substantially eliminated potential enforcement difficulties under Section 24.

The 1978 and 1980 Proposals also provide that if a member furnishes products or services that are commercially available or are provided for an agreed upon consideration, the member must be fully compensated from a source other than selling concessions. The NASD stated that a determination whether full compensation had been paid would be made with reference to the fair market price of the product or service,[68] but other commentators doubted such a requirement could be easily enforced.[69] Nevertheless, by excluding soft-dollar designations for research from the category of prohibited discounts, the NASD has eliminated the need to consider the one type of product for which it might often be particularly difficult to assess fair market value. That should simplify, although not solve completely, the enforcement difficulties.

The rule proposal also raises the question whether the NASD can enforce the requirement that a customer pay a fixed price for an underwritten security when the member and customer have a number of overlapping, negotiable business

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Footnote 64 continued

the commission charged by one member would not have any bearing on whether another member's commission charges were normal. Accordingly, the NASD should be able to enforce the "normal commission" requirement without determining what would be a "normal" commission within the industry generally or establishing a schedule of commissions for swap transactions. Letter from the NASD (August 10, 1979).

[65]Letter from the NASD (August 10, 1979). *See* Opening Statement of Morgan Stanley & Co., Inc. (November 1, 1979).

[66]Letter from the NASD (August 10, 1979). *See* letters from Prudential Insurance Company of America (August 1, 1979); McCarthy, Ried, Crisanti & Maffei, Inc. (August 8, 1979).

[67]Testimony of Ray Garrett, Jr., on behalf of the NASD (transcript at 978-80). As Mr. Garrett pointed out, this interpretation would have the disadvantage of "moving into the area of the raised eyebrow and the timely smile and nod of the head and established practices of behavior, all of which will be as difficult to determine by the finders of fact in these cases as are comparable standards applied in other cases."

[68]Letter from the NASD (August 10, 1979).

[69]Letter from Prudential Insurance Company of America (August 1, 1979).

relationships. Several commentators pointed out that institutions and broker-dealers could evade Section 24 by adjusting prices or commissions paid or services received in other transactions while still paying a "fixed price" for underwritten securities.[70] The testimony of the institutional investors indicates, however, that they are satisfied with the fixed price offering system as it will operate under the rule as amended. Commentators have indicated that institutional investors and broker-dealers will comply with the rule proposal.[71] If that expectation is proven to be unreasonable and enforcement problems develop, the Commission may be forced to reconsider whether regulatory efforts in this area are feasible and whether additional Commission action is needed.

B. Section 15A(b)(6): an overview

As noted above, Section 15A(b) of the Act specifies certain objectives that the NASD's rules, as a group, must affirmatively foster and certain objectives that its rules must not be designed to achieve. Specifically, Section 15A(b)(6) of the Act provides that the rules of the NASD:

> [must be] designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . .to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and [must]. . .not [be] designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by [the Act] matters not related to the purposes of [the Act] or the administration of the [NASD].

In determining whether a rule change proposed by the NASD is consistent with that section, the Commission must look to both the section's affirmative purposes and its negative injunctions. Of course, not every NASD rule need promote each affirmative purpose so long as the NASD's rules as a group promote those purposes. At the same time, however, a proposed rule change would not be consistent with the Act if it violated any one of the negative injunctions (*e.g.*, by being designed to permit unfair discrimination among brokers or dealers).

When it filed the proposed rule change with the Commission and in its comments and testimony, the NASD has argued that the proposed rule change is consistent with the requirements of Section 15A(b)(6). For the reasons discussed below, the Commission has concluded that the proposed rule does not violate the prohibitions of Section 15A(b)(6) and is consistent with that section.

C. Section 15A(b)(6): unfair discrimination

Section 15A(b)(6) provides that a rule of the NASD must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The NASD has maintained that the proposed rule change is consistent with this requirement since it is designed to prevent unfair discrimination among customers by banning practices that would otherwise allow certain classes of customers to receive an undisclosed, more favorable price in public offerings than others received. The NASD argues that, although price discrimination would not be unfair if done in a forthright manner with all investors knowing that they stand on their own bargaining power, the types of discounts precluded by the proposed rule change could never be adequately disclosed in the prospectus.[72]

Under the Act, the Commission need not find that a proposed rule change is designed affirmatively to prevent unfair discrimination against individual investors, but it must make the somewhat different finding that the proposal is not designed to permit unfair discrimination against a class of investors. In that regard, disparate treatment of differently situated parties is not necessarily either fair or unfair, and it might not be unfair to permit one type

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[70]Letter from McCarthy, Ried, Crisanti & Maffei, Inc. (August 8, 1979): testimony of Charles Schwab & Co., Inc. (transcript at 689-90).

[71]Testimony of the SIA (transcript at 244); Goldman Sachs & Co. (transcript at 768).

[72]Letter from the NASD (August 10, 1979). *See also* letters from Association of the Bar of the City of New York (August 7, 1979); Scudder, Stevens and Clark (September 26, 1979).

of customer to obtain a more favorable price than another type of customer.[73] The question is whether the NASD's rule will permit (or for that matter require) broker-dealers to discriminte unfairly among investors by preventing institutional investors from obtaining various kinds of discounts from the offering price.

Fixed price offerings involve only short-term maintenance of a price that is separately negotiated for each offering by the issuer and the underwriters. It occurs in the context of a system for raising capital that has worked well and with which the participants find little fault. That underwriters and an issuer agree to sell securities at a fixed price would not appear to be "unfair" to customers, and the proposed rule change would not prevent an issuer and the underwriters from agreeing, for example, to offer the securities at different prices depending upon the amount of securities that a customer was willing to buy or other such arrangements that would provide different levels of prices. Furthermore, there simply does not appear to be any clear or substantial basis for concluding that those who buy securities in fixed price offerings regard the NASD's proposed rule change, as amended, or the fixed price offering system itself to be "unfair." For those reasons and in view of the rule proposal's beneficial purposes, discussed below, the Commission is not prepared to conclude that the proposed rule change is designed to permit unfair discrimination among customers.[74]

As noted above, the Commission initially had been concerned that the 1978 Proposal might permit unfair discrimination among brokers and dealers. The NASD had acknowledged, in connection with the 1978 Proposal, that Section 24 might have a greater impact on research firms than it would on others. The NASD asserted, however, that differences in impact would not constitute unfair discrimination since the section would be applied to all research providers and to all types of research in the same manner. The NASD stated that all regulation affects business practices and that research broker-dealers would have no claim of unfair discrimination if the Commission found that the regulation was designed to achieve some legitimate end.[75]

Commentators argued, however, that the 1978 Proposal unfairly discriminated against smaller firms and research firms who either distribute third-party research or cannot afford to distribute research on a "goodwill" basis.[76] As noted above, the Commission stated in its July 3, 1980 letter to the NASD that the proposal might not be consistent with the Act, and in response, the NASD revised Section 24 as suggested by the Commission. As so revised, the proposed rule does not retain any of the

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[73]When it prohibited the exchanges from fixing commission rates charged by its members (and earlier when it required the exchanges to introduce volume discounts for large orders), the Commission did not regard as unfair the ability of institutions to obtain more favorable commission rates than individual retail investors were likely to receive. Securities Exchange Act Release No. 11203 (January 23, 1975), 40 FR 7394 (February 20, 1975).

[74]While Section 24 prevents an institutional customer from directly or indirectly receiving a discount from the public offering price, it would not prevent an institutional customer related to an NASD member from indirectly benefiting from its purchase of an underwritten security from that member. In such a situation, the institution would indirectly receive the benefit of the selling concession because of its ownership relation to the NASD member, even though the member did not violate Section 24. In order for the rule change to be consistently applied to all institutional investors, the NASD drafted Section 36 to prohibit, except in limited circumstances, a member from selling to, or placing with, a related person of the member securities that are part of a fixed price offering.

One commentator stated that there are economies of scale in selling securities to institutions and that discounts to such purchasers, if disclosed, would not violate the Act. Letter from Charles Schwab & Co., Inc. (July 31, 1979). *Contra*, testimony of Sutro & Co. (transcript at 481-82); Goldman Sachs & Co. (transcript at 780), where it was indicated that the costs of selling to institutions are not lower than those of selling to individuals.

[75]NASD Analysis of the Record at 22-24. *See also* testimony of Goldman Sachs & Co. (transcript at 772-73).

[76]*E.g.*, letters from Sanford C. Bernstein & Co., Inc. (July 26, 1979); Adams, Harkness & Hill, Inc. (July 10, 1979); Northwestern Mutual Life Insurance Co. (December 12, 1978).

discriminatory elements identified by the commentators and is not designed to permit unfair discrimination among brokers and dealers.

D. Section 15A(b)(6): minimum profits, schedule of commissions, allowances, discounts, or other fees; impediments to a free and open market

Among the more difficult issues raised by the NASD's prohibition against giving discounts from the offering price in a fixed price offering is whether that prohibition would impose any schedule or fix rates of commissions, allowances, discounts, or other fees,[77] or would create an impediment to a free and open market.[78] In 1945 the Commission considered substantially similar questions in an appeal from an NASD disciplinary action brought against several NASD members.[79] The members had been charged with violations of Article III, Section 1 of the NASD Rules of Fair Practice, which provides, "a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." More specifically, the members were alleged to have breached certain fixed price provisions of a syndicate agreement. The Commission overturned the disciplinary sanctions, concluding that an NASD rule or rule interpretation "specifically requiring adherence to price maintenance agreements would be contrary to the provisions of Section 15A(b)(7)."[80]

Two questions had arisen in the appeal under then Section 15A(b)(7): (i) whether Section 1, as interpreted, was designed "to fix minimum profits, to impose any schedule of prices, or to impose any schedule of commissions, allowances, discounts, or other charges"; and (ii) whether Section 1, as interpreted, was designed to remove impediments to and perfect the mechanism of a free and open market. In considering those two issues, the Commission analyzed the Act's prohibition against imposing schedules of prices and discounts as "intimately related to the Congressional objective of keeping the association's activities from impeding the operation of free and open markets."[81] The Commission concluded, first, that by disciplining members for violations of pricing provisions of underwriting agreements, and by the threat of discipline, the NASD was attempting to "impose" schedules of prices and discounts.[82] The Commission then concluded that any rule "designed to promote minimum prices and discounts runs directly counter to the statutory requirement that the [NASD] rules be designed to remove 'impediments to. . .a free and open market.' "[83] Accordingly, the Commission found the NASD's interpretation of Section 1 of Article III to be inconsistent with the Act. At the same time, however, the Commission stated that it was "inclined to the view that the price-maintenance agreements now before [it] were not illegal under the Sherman Act."[84]

The NASD's currently proposed rule change would not, of course, set or fix the public offering price or prescribe the minimum "spread" or underwriters' compensation for any particular offering or category of offerings in general. Under the proposed rule change, the issuer and the underwriters would

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[77]Section 15A(b)(6) requires that NASD rules not be designed "to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members."

[78]Section 15A(b)(6) requires NASD rules to be designed "to remove impediments to and perfect the mechanism of a free and open market and a national market system."

[79]*In re National Association of Securities Dealers, Inc.*, 19 SEC 424 (1945) (the "PSI case" or "PSI").

[80]Section 15A(b)(7) was redesignated Section 15A(b)(6) by the Securities Acts Amendments of 1975 (the "1975 Amendments"). The sections are substantially the same although, before 1975, Section 15A(b)(7) provided that an NASD rule could not be designed to impose any "schedule of prices," in addition to the current prohibitions. This phrase was deleted from the Act by the 1975 Amendments, apparently for reasons not related to the fixed price offering system.

[81]19 SEC at 440.

[82]19 SEC at 438.

[83]19 SEC at 440.

[84]19 SEC at 462. Later, in *United States v. Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953), a federal district court found fixed price underwriting agreements reasonable restraints on trade in light of their limited duration and objective, having the purpose of efficiently promoting, rather than restraining, trade.

remain free to agree among themselves as to the public offering price and the spread in each distribution. Similarly, the amount of the selling concession would be determined by the underwriters for each distribution according to its characteristics. Once an agreement had been reached, however, the proposed rule change would provide a basis for NASD disciplinary action against a member who violated it.

Section 15A(b)(6) clearly indicates that the Congress intended to prevent the NASD from fixing commission rates, as the exchanges did before 1975, and from itself setting the amount of the selling concession. To read the section otherwise would be to ignore the plain meaning of the terms "impose" and "fix". There is, however, no clear indication in the text of the section or in the legislative history that the words "fix" or "impose" should be read more expansively than they are in ordinary usage.[85]

Nothing in the proposed rule change would require that distributions of securities always be structured as "fixed price offerings." Instead, the provisions of the proposed rule change come into play only after the underwriters have themselves agreed to distribute securities through a fixed price offering. Accordingly, it seems inaccurate to speak of a schedule as having been imposed, or of discounts as having been fixed, by rules of the NASD when participants in a common enterprise work towards a joint goal by voluntarily assuming a price maintenance agreement as one of the terms upon which they will risk their capital and expend their energies.[86] As discussed above, broker-dealers enter into underwriting agreements for the express purpose of distributing to the public a particular offering of securities by a single issuer at a particular price. The underwriters act together for a limited time and with a limited objective in a manner more similar to a joint venture than an endeavor where competitors offer like or similar products or services in competition with one another.

While the Commission interpreted the provision "impose any schedule of commissions, allowances, discounts, or other fees to be charged by its members" expansively in 1945,[87] it is not today prepared to conclude that the Congress intended by the use of that phrase to prevent NASD disciplinary action against its members for granting discounts from the public offering price in an offering that is publicly represented to be at a fixed price. The Commission does not believe Section 15A(b)(6) requires it to conclude that the NASD would fix minimum profits or impose a schedule of discounts or fees by prohibiting discounts from the public offering price of a security to be distributed in a fixed price underwriting where the participating broker-

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[85]Commenting on the antecedent to Section 15A(b)(6), the Senate Committee considering the Maloney Act stated,

> As safeguards against abuse, and to make clear that activities of associations under this paragraph are to be consistent with the operation of free and open markets, this paragraph provides that the rules of an association may not be designed to permit unfair discrimination between customers, or issuers, or brokers or dealers, nor to fix minimum profits, nor to impose any schedule of prices, nor to fix minimum rates or impose any schedule of commissions, allowances, discounts, or other charges. Thus, to provide safeguards against unreasonable profits, it is contemplated that associations may adopt rules designed to prevent each member thereof from exacting in any particular transaction a profit which reasonable men would agree was unconscionable in the light of all of the concrete facts and circumstances of that transaction; but an association, whether in a *bona fide* attempt to prevent or under the pretext of preventing unreasonable profits, may not impose any schedule of prices or commissions.

S. Rep. No. 1455, 75 Cong., 3d Sess. 7 (1938). *See also* H.R. Rep. No. 2307, 75th Cong., 3d Sess. 8 (1938), which contained identical language.

[86]*See United States v. Morgan*, 118 F. Supp. at 689.

[87]In the PSI case, the Commission analyzed the provision concerning imposing schedules of fees as "intimately related to the Congressional objective of keeping the [NASD's] activities from impeding the operation of free and open markets," but as is discussed below that objective of Section 15A(b)(6) must today be read in light of new Section 15A(b)(9).

dealer members negotiate a lawful contract to distribute the security at a fixed price.[88]

In the PSI case, the Commission also concluded that the NASD's action to enforce the pricing provisions of an underwriting agreement created an impediment to a free and open market in violation of the Act even though it was "inclined to the view that the price-maintenance agreements [then] before [it] were not illegal under the Sherman Act."[89] In considering the applicability of the Sherman Act to the PSI underwriting agreements and after reviewing the history of price maintenance agreements in the underwriting of securities, the Commission asked: "Does the policy of the Sherman Act require price competition among those who are engaged in a common undertaking under economic circumstances where it is necessary for the various participants to act in combination if their economic function is to be performed at all?"[90] The Commission noted that modern underwriting had evolved to meet several significant needs of a large and growing economy: the need to assure industries seeking capital that they will receive given amounts of money within given periods at an agreed cost and the need of the underwriting community to handle many large issues without risking or tying up almost impossibly vast amounts of capital.[91] The Commission also observed that the Securities Act contempated the fixing of an offering price and an agreement or understanding as to discounts[92] and that by its own rules the Commission regulated the practice of stabilizing prices during an underwriting.[93] In the context of considering the applicability of then Section 15A(b)(7) of the Act to the NASD's rules, however, the Commission characterized such observations and others as "irrelevant."[94] The NASD's action to discipline its members amounted to imposing a schedule of prices and discounts and was a "*per se* 'impediment to. . .a free and open market'."[95] The Commission concluded that the Act simply did not permit the NASD to take any action to enforce pricing provisions of underwriting agreements.[96]

Regardless of the merits of the Commission's analysis in 1945, the Commission today is required to review NASD proposed rules under a different standard than was in effect in 1945. The Congress extensively amended the Act in 1975 and, specifically with respect to competitive issues, the Commission was directed to determine whether any "burden on competition" is "necessary or appropriate in furtherance of the purposes of [the Act]."[97] The Commission must apply that standard when reviewing rules and other actions of self-regulatory organizations and also when it adopts its own rules. As is discussed below, the Act's existing standard for reviewing anticompetitive restraints requires the Commission to weigh the competitive effects of a proposed rule and to assure that the

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[88]Since the use of fixed price offerings of various types by investment bankers had become, by at least 1920, the principal method by which American industry raised capital from the public, it seems extremely unlikely that the investment bankers who participated in shaping the antecedent to Section 15A(b)(6), or the Congress that enacted that legislation, intended to prevent the NASD from sustaining that system but never clearly said no. *See* 1 *Loss, Securities Regulation* (1961) at 163-178. *See also United States v. Morgan* 118 F. Supp. at 644-654, 687-688.

[89]19 SEC 462.

[90]19 SEC at 458.

[91]*Id.*

[92]19 SEC at 460.

[93]*Id.*

[94]19 SEC at 442.

[95]19 SEC at 440.

[96]The Commission also stated "[no showing is made that the use of the NASD as an added instrumentality for enforcing price maintenance agreements is necessary to preserve the present system." 19 SEC at 444.

[97]Sections 6(b)(8), 11A(c)(4)(A), 15A(b)(9), 15B(b)(2)(C), 17A(b)(3)(I) and 23(a)(2); 15 U.S.C. 78f(b)(8), 78k-1(c)(4)(A), 78o-3(b)(9), 78o-4(b)(2)(c), 78q-1(b)(3)(I) and 78w(a)(2).

regulatory purposes of the rule, on balance, warrant the imposition of the burden on competition.[98]

Issues of competition are significant in this proceeding, as they were in the Commission's consideration of NASD disciplinary actions in the PSI case, but in its PSI decision the Commission considered virtually irrelevant any beneficial aspects of the NASD's interpretation of its rules. The Commission believes it would not be correct to follow that *per se* approach today and accordingly is not prepared to conclude as a matter of law that the NASD's rule proposal runs counter to the requirement that the NASD's rules be designed to remove impediments to a free and open market. Furthermore, in weighing the beneficial purposes of the proposed rule change and any burdens on competition, the Commission must consider these factors in the context of securities underwriting today rather than the circumstances of 1945.

E. Section 15A(b)(9): burdens on competition

Section 15A(b)(9), added to the Act in 1975, provides that the rules of the NASD may "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." The legislative history of that section explains that the Commission is to balance the anticompetitive effects of a rule against the purposes of the Act to be furthered by the rule. The Senate Report on S.249, the Senate bill that became the 1975 Amendments, states:

> [T]he Commission's responsibility would be to balance the perceived anti-competitive effect of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so. Competition would not thereby become paramount to the great purposes of the Exchange Act, but the need for and effectiveness of regulatory actions in achieving those purposes would have to be weighed against any detrimental impact on competition.[99]

During congressional hearings on S.249, the Justice Department had argued that the Commission should be required, in passing on self-regulatory organization rules, to adopt the least anticompetitive means of protecting investors and preserving fair and orderly markets in securities.[100] The Congress, however, declined to adopt that rigid standard and instead chose the balancing tests currently found in Section 15A(b)(9) and elsewhere in the Act. The Senate Reports states:

> [t]his explicit obligation to balance, against other regulatory criteria and considerations, the competitive implications of self-regulatory and Commission action should not be viewed as requiring the Commission to justify that such actions be the least anti-competitive manner of achieving a regulatory objective. Rather, the Commission's obligation is to weigh competitive impact in reaching regulatory conclusions. The manner in which it does so is to be subject to judicial scrutiny upon review in the same fashion as are other Commission determinations, with no less deference to the Commission's expertise than is the case in other matters subject to its jurisdiction.[101]

As noted above, the Commission did not follow that approach in the *PSI* case but instead found impediments to the NASD's authority that, in its view, made largely irrelevant any possibly beneficial aspects of the NASD's actions. In 1975, however, the

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[98]Of course, the affirmative mandate of Section 15A(b)(6) (the successor to former Section 15A(b)(7)) still retains its vitality, and the rules of the NASD, taken as a whole, must be designed, among other things, to remove impediments to a free and open market and to perfect the mechanism of a national market system.

[99]Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong. 1st Sess. 13-14 (1975). *See* Conference Report to Accompany S.249, House Rep. No. 94-229, 94th Cong., 1st Sess. 94-95 (1975).

[100]Statement of Donald I. Baker, Deputy Assistant Attorney General, Antitrust Division, Dep't of Justice, and Attachment A thereto, in *Securities Acts Amendments of 1975, Hearings before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs on S. 249*, 94th Cong., 1st Sess. 258, 261 (1975).

[101]Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong. 1st Sess. 13 (1975).

Congress unmistakably indicated that the Commission should not disregard potentially beneficial effects of a rule that imposes some restraint on competition. In that regard, the NASD asserts that the proposed rule change is designed (i) to prevent fraudulent acts and practices by insuring that all public customers pay the public offering price to disclosed in the prospectus, (ii) to protect investors and the public interest by maintaining public confidence in the securities markets by prohibiting practices which allow departures from a previously disclosed public offering price, (iii) to promote just and equitable principles of trade by preventing practices prohibited by agreements between members and the issuer and among themselves and (iv) to promote a free and open market by preventing certain undesirable consequences that could result from unrestrained discounting practices.

F. Related considerations: certain statutory purposes

The NASD and several commentators have argued that the rule proposal would promote various statutory purposes. It was suggested that the rule proposal would prevent fraudulent acts and practices by requiring members to sell securities in a fixed price offering at the public offering price disclosed in the prospectus. The NASD believes that its proposed rule change is necessary to ensure that the prospectus accurately discloses the public offering price as required by the Securities Act of 1933[102] and that many of the kinds of discounts prohibited by its proposed rule could not be adequately disclosed. The Commission believes, however, that the proposed rule is at best tenuously related to the prevention of fraud. It prohibits a relatively large spectrum of discounting practices in fixed price offerings, and the NASD has not demonstrated that all or most of those arrangements could not be disclosed.

Some commentators argued that disclosure would be an alternative approach to the issues raised by the proposed rule change, pointing out that if discounting practices are disclosed in the prospectus, investors would not be misled. The NASD and others argued that disclosure is not a viable alternative to the prohibition of discounts essentially because disclosure of rebating practices would contribute to the erosion of the fixed price offering system and of public confidence in the fairness of the securities markets.[103] The NASD suggested that individual investors would be discouraged from purchasing newly issued securities if they were informed that certain purchasers paid less that the public offering price.[104] Also, the disclosure of discounting practices could, in the NASD's view, further undermine the stability of the markets by increasing the pressure for discounts from the public offering price. The practice of stabilization would be especially threatened.[105] The NASD predicted that, if the practice of crediting selling concessions against legal hard dollar obligations becomes prevalent, money managers might purchase securities in offerings, pay off hard dollar obligations and then resell the securities into the stabilizing bid. In the case of offerings in which stabilization is attempted, a significant number of sales into the stabilizing bid could force the underwriters to lower the bid and cause the market price of the security to fall, further disillusioning

[102]Item 16 of Schedule A to the Securities Act of 1933 requires the disclosure of the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. The Commission's approval of the proposed NASD rules today does not address the question of what disclosure, if any, of practices permitted by the rules is required.

[103]Letters from Prudential Insurance Company of America (August 1, 1979); Scudder, Stevens & Clark (September 26, 1979); testimony of Goldman, Sachs & Co. (transcript at 719-20).

[104]Letter from the NASD (August 10, 1979). *See* testimony of Goldman Sachs & Co. (transcript at 719-20). Other commentators disagreed, stating that small investors would be unaffected by such disclosure, particularly if the disclosed practices were soft dollar designations for research that would be unavailable to individuals. Letters from American Council of Life Insurance (July 31, 1979); Prudential Insurance Company of America (August 1, 1979).

[105]*See* letter from the SIA (July 31, 1979).

investors as to the value of their purchase.[106] It is difficult to predict the consequences of disclosure of any of the practices that the NASD wishes to prohibit, but it appears that disclosure would not adequately resolve all the concerns underlying the NASD's proposed rule change.

Some commentators have argued that the proposed rule change would promote just and equitable principles of trade by providing a way to enforce underwriting agreements. A breach of contract without proper justification is generally regarded as unethical[107] and, while judicial remedies might be pursued for such violations, commentators argue that access to the courts is very costly, time consuming and particularly ineffective in the context of an underwritten offering. As noted above, fixed price offering agreements have been viewed as lawful by the *Morgan* court and by the Commission, and the NASD's rule proposal is reasonably designed to deter violations of those agreements.

Also, the NASD has argued that the proposed rule would prohibit the granting of discounts in circumstances that would be regarded by many to be unfair. It further suggests that those who come to believe that they have been unfairly treated by the underwriting system may lose confidence in it, concluding that the securities markets operate for the benefit of the large and powerful at the expense of others. Such perceptions can injure the Nation's capital-raising system, and the NASD has sought to use its power to promote just and equitable principles of trade in an effort to prevent those perceptions.

In addition, the NASD argues that the proposed rule change would remove impediments to a free and open market. The NASD believes that an erosion of the fixed price offering system, which could result without the rule, could lead to increased concentration in the underwriting business. Many commentators argued that, without a means of enforcing fixed price underwriting agreements, managers would form smaller syndicates limited mainly to major underwriting firms.[108] Commentators further feared that the inability to enforce these agreements would increase the risk of underwriting, causing firms to withdraw from the investment banking business. Finally, it was frequently asserted that the cumulative effect of these predicted results effectively would be to deny many issuers access to the securities markets, making it particularly difficult for small issuers to raise capital.

The Commission believes that the proposal is designed to achieve beneficial purposes. At the same time, the proposed rule change does limit the ability of underwriters and customers to negotiate separately any discount from the offering price in a fixed price offering. In the next section of this release, the Commission discusses its assessment of the rule change's intended purposes in light of any adverse competitive consequences that may result from its approval.

VI. POLICY CONSIDERATIONS: BALANCING OF COMPETITIVE IMPLICATIONS AND REGULATORY PURPOSES

Participants in the Commission's proceedings, as well as the NASD, have stated that the NASD's proposed rule change is designed to further such statutory goals as the promotion of just and equitable principles of trade. Many of those participants, however, have urged the Commission to consider the proposal in light of public interest considerations that transcend any single statutory goal contained in, for example, Section 15A(b)(6) and to consider the importance of the NASD's proposed rule change to achieving those broader ends.

The arguments in favor of preserving the system as a means of raising capital are attractive, particularly since issuers, underwriters and institutional investors all seem to be reasonably satisfied with the relationships and distribution techniques currently employed in fixed price offerings. For the most part,

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[106]See testimony of Morgan Stanley & Co., Inc. (transcript at 917). *But see* testimony of Goldman Sachs & Co. (transcript at 777-79) (that it would be possible to stabilize an offering at the net price to broker-dealers).

[107]*E.g., Buchman v. SEC*, 553 F.2d 816, 820-21 (2d Cir. 1977); *Nassau Securities Service v. SEC*, 348 F.2d 133 (2d Cir. 1965); *Friedman & Co.*, 45 SEC 393 (1973); *Southern Brokerage Co., Inc.*, 42 SEC 449 (1964).

[108]Letter from the SIA (July 31, 1979); testimony of Sutro & Co., Inc. (transcript at 446); Morgan Stanley & Co., Inc. (transcript at 880).

the areas of disagreement that surfaced among participants were confined to the proposal's treatment of research and a few other specific problems and did not involve any wholesale condemnation of the existing underwriting system.

The fixed price offering system has served as an effective means of raising capital in this country. Through the years, the system has satisfied the underwriters' desire for reasonable risk allocation and the issuer's desire for efficient, low-cost capital raising. It has afforded investors an opportunity to participate in primary distributions at relatively low cost and has distributed large quantities of investment securities to investors without disturbing existing secondary markets unduly. The undisciplined erosion of that system, which some commentators have suggested could result without the NASD's proposed rule change, could be disruptive to the capital formation process.

At the same time, however, the issues at stake in the "Papilsky" proceeding are somewhat more complicated than simply whether the fixed price underwriting system *per se* should be preserved or abolished. The fixed price offering system that exists today does not preclude all practices that might be thought to result in indirect price discounts, nor would the NASD's proposed rule change eliminate all variations in the system. The issues involved in the approval of this proposed rule change, therefore, also involve a determination as to which practices should be tolerated and who should control them.

For this reason, the policy issues and the underlying economic issues in the "Papilsky" filing may have some bearing on the evolving relationship between underwriters (particularly managing underwriters) and institutional investors as well as the preservation of the fixed price offering system. It appears that the NASD's rule proposal is designed in part to strengthen the existing underwriting system by preserving the ability of underwriters to resist the bargaining power of institutional investors and by providing a measure of discipline over the underwriting system's development. It is, of course, theoretically possible that some semblance of the current system could be maintained[109] even if the relative positions of economic power between the underwriters and institutions were allowed to shift in response to competitive pressure. Nevertheless, the Commission need not and should not analyze the proposal in light of only theoretically possible (and as yet untried) alternatives to the current system but instead may approve the filing because it allows competitive forces to continue to work in certain ways and at the same time provides appropriate support for a system that has well served the process of capital formation for American industry without countervailing abusive practices.

A. Historical Developments

One important factor that affects the current operation of the fixed price underwriting system is the fact that the securities industry no longer controls the investment process to the extent it once

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[109]The current method of conducting fixed price offerings is not immutable. Methods of underwriting corporate securities have evolved substantially over the years in response to business and legal considerations. The current method is different, for example, from the method that had been used before the federal securities laws were enacted. As described in 1934 by the Senate in its Report on Stock Exchange Practices, the earlier method involved a system of multiple step-ups in price that varies considerably from today's syndicate practices:

The mechanics of syndication ordinarily used by investment bankers in connection with a public offering are sometimes inexplicably complex. First, an original group or syndicate is formed which purchases the entire issue from the corporation. A subsequent larger group assumes the commitment of the original group. It is not unusual for three or four such groups or syndicates to be formed for the purpose of assuming the issue successively. The final group is a selling group or syndicate composed of investment dealers throughout the country, who effect the ultimate merchandising operation and place the issue in the hands of the investing public. These groups are variously known as "the originating syndicate," "the banking syndicate," "the intermediary syndicate," and "the retail or selling syndicate." As the issue is passed from one to the other, the price is "stepped up" or increased until the security reaches the public, which pays the maximum price.

Report of the Senate Comm. on Banking and Currency Pursuant to S. Res. 84 (72d Cong.), and S. Res. 56 and S. Res. 97 (73d Cong.), S. Rep. No. 1455, 73d Cong., 2d Sess. 93-94 (1934) [footnote omitted].

did. At the time the securities laws were passed in the 1930's, the securities industry enjoyed a much greater role in the investment process than it does today. Particularly after the enactment of the Glass-Steagall Act in 1933,[110] which barred commercial banks from underwriting corporate securities, the securities industry had virtually complete control over the process of corporate securities distribution and secondary market trading in corporate securities. To a much greater degree than was later to be the case, the securities industry had as its customers the individual retail investors of this Nation and performed an intermediation function that, in many cases, extended all the way from the individual investor to the corporate issuer, in the case of securities distributions, and to the specialist's post, in the case of exchange trading.

Over the next several decades, however, the securities industry's position changed dramatically. By the 1960's, it had become clear that institutional investors, including bank trust departments, insurance companies, mutual funds and pension funds, had made serious inroads, capturing a substantial portion of the intermediation function and thereby supplanting in considerable measure the securities industry in its dealings with individual investors.[111] By the 1960's, a large portion of the equity securities and debt securities being issued by corporations were bought by institutional investors acting as financial intermediaries for the individuals whom the securities industry had previously served.[112]

The reasons for that change are many and complex. One is the changing perception of fiduciary obligations that had previously hampered the growth of institutional investor participation, particularly in the equity markets. As fiduciaries gradually became interested in achieving economic growth in the portfolios they managed instead of concentrating primarily on safety and income, it became possible for savers to invest in the stock market through a financial intermediary, either by creating a trust or by establishing an account managed by a bank or other institutional investor.

Undoubtedly, the tax laws also played a major part in the growth of financial intermediaries as institutional investors. The growth of tax deferred corporate and union pension funds[113] meant that large new pools of money became available for investment in the securities markets. Because of the size and the number of such plans, the securities industry was unable to retain the grasp it had previously had on the entire gamut of intermediation between the investor and the market. Bank trust departments, investment advisers and insurance companies began to play a major role in managing the assets of those who received their compensation in the form of tax deferred pension contributions.

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[110]48 Stat. 162 [codified in scattered sections of 12 U.S.C.].

[111]The growth of institutional investors during that period is analyzed in a report issued by the National Bureau of Economic Research that was published as part of the Commission's Institutional Investor Study. Securities and Exchange Commission, Institutional Investor Study Report, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. pt. 6 (1971). The conclusions of that study are summarized at pages 35-124 (pt. 1) of the study.

[112]A similar change was observed in the case of secondary trading on the New York Stock Exchange. Whereas that market had largely been a retail market at the time of the enactment of the Act in 1934, during and after the 1960's approximately 70% of the public (*i.e.*, non-member) trading volume on the New York Stock Exchange represented trading by institutional investors. New York Stock Exchange, Fact Book 1980 at 51 (1980).

[113]*See, e.g.*, Private Pension Plan Reform, Report of the Senate Comm. on Finance, together with Additional and Supplemental Views, on S.1179, S. Rep. No. 93-383, 93d Cong., 1st Sess. 12 (1973). In 1948, the United States Court of Appeals for the Seventh Circuit upheld a district court holding that pensions were a form of remuneration for labor within the terms of the National Labor Relations Act and, accordingly, were mandatory subjects for collective bargaining. *Inland Steel Company v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949). That decision paved the way for the rapid growth of collectively bargained pension plans and the expansion of pension benefits to union members. Retirement Income Security for Employees Act of 1973, Report to Accompany S.4, S. Rep. No. 93-127, 93d Cong., 1st Sess. 3 (1973).

During the same period, mutual funds exhibited explosive growth. The growth in mutual fund investments brought into the market many investors who, if they had invested directly, would not have been able to achieve a diversified portfolio. It both augmented the volume of investor dollars that were available for investment in the market and magnified the existing trend toward "institutionalization" of the market.[114]

B. Continuing Support for the Fixed Price Underwriting System

Although the increased economic power of institutional investors as financial intermediaries has exerted some pressure on the tranditional fixed price underwriting system, the continued use of that system has virtually universal support among the participants in the markets.[115] In the underwriting area, the existence of a fixed price from which discounts are available only to broker-dealers is predicted on the notion of a wholesale market for broker-dealers and a retail one for "public" customers. Now that institutions share in the intermediation process that was once largely confined to the securities industry, the continued effort to threat institutions as "public" customers and to sell securities to them at prices that do not recognize their intermediation function might, at first blush, appear to be unrealistic. Nevertheless, it currently appears that institutional investors remain generally willing to accept a role in the underwriting process that does not give them direct participation and direct discounts.[116]

At the same time, the NASD's proposed rule represents some effort to allow but regulate the ability of institutional investors to get some "mileage" out of their underwriting business.[117] The NASD's efforts to support the syndicate manager's discretionary responsibilities is evident in several respects. First, the NASD's proposed new Section 36 is aimed at preventing institutions from forming NASD subsidiaries and purchasing through those subsidiaries in fixed price offerings. That section would prevent institutions from directing selling concessions to themselves. Second, the proposed amendments to Section 24 would limit the ability of an institutional investor to allocate underwriting purchases on the basis of goods and services. The Section 24 provision (as interpreted by the NASD Board of Governors) would, however, allow an NASD member to receive a selling concession on the basis of bona fide research and other services in distribution but not on the basis of other types of goods or services. By imposing those limitations, the NASD recognizes some ability on the part of institutional purchasers to consider research in making allocation decisions but refuses to allow the institutional investor complete freedom to negotiate the purchase price of a security.

For the most part, the institutional investors have not urged that these particular restrictions are inappropriate,[118] and the NASD's proposal appears

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[114]*See, e.g.*, Wharton School of Commerce and Finance, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. (1962); Securities and Exchange Commission, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. (1966).

[115]That support is strongly expressed in the comment letters, testimony and other materials filed by institutional investors and echoes the views expressed by both the issuers and the underwriters. *E.g.*, letters from SIA (July 31, 1979); Bacon Whipple & Co. (October 3, 1979); Chomerics (October 10, 1979); GAF Corp. (January 8, 1980); Mobil Corporation (January 18, 1980); Avon Products, Inc. (December 14, 1979); State Street (January 11, 1980). Testimony of Goldman Sachs & Co. (transcript at 712); Morgan Stanley & Co., Inc. (transcript at 875-76).

[116]Section 36, of course, explicitly prevents institutional investors from assuming this intermediation function by forming NASD subsidiaries. Most commentators did not object to this prohibition, and it appears to be necessary to prevent evasion of Section 24.

[117]See letter from the SIA at 10-11 (July 31, 1979).

[118]*But see* letter from the American Bankers Association (August 2, 1979) on the NASD's 1978 Proposal in which the Association stated that it was "opposed to the proposed rule changes particularly those proposed in Section 24." The Association did not comment on amended Section 24. Section 36, of course, would impose no new restraints on banks, who long have been prohibited from participating in securities underwriting directly or through affiliates. 12 U.S.C. 24, 78, 335, 377, 378 (1976) (provisions of the Glass-Steagall Act precluding underwriting and dealings in corporate securities directly or through securities affiliate and prohibiting baank officers,

in accordance with the expressed expectations and needs of most of the participants in fixed price offerings.

C. Aftermath of Papilsky: Need for Certainty

The *Papilsky* case has created uncertainity as to the obligations of institutional investors, particularly fiduciaries, in connection with purchases in fixed price offerings. That uncertainty has generated considerable concern and questions about the underwriting system and the role of institutional investors. Those questions, however, should be resolved in order to allow fiduciaries to know what range of alternatives they have in purchasing securities in fixed price offerings.[119]

In that connection, underwriting "recapture" techniques have caused some to draw analogies between the fixed commission rate experience and the question of underwriting recapture, but those analogies, particularly if too facile, can be misleading. While in the case of both fixed commission rates and fixed price underwritings, institutional investors exerted economic pressure through their control of large pools of investor dollars, there are a number of differences.

One difference between fixed commission rates and fixed price offerings is that there has not been the collapse in the underwriting area that occurred in the fixed commission rate area. From what the Commission was told in the hearings and in the comment letters received in this proceeding, it appears that the pressures that eroded and ultimately destroyed the fixed commission rate system have not developed to the same degree in the underwriting area.

In addition, the fixed commission rate system was far more rigid than the fixed price underwriting system has been. Unlike the fixed minimum commission rate schedules that the exchanges devised, fixed price offerings are structured by the underwriters on a deal-by-deal basis, and the underwriting spread if frequently negotiated with a view to recognizing the presence of institutional investors.[120] From the institution's point of view there is a second difference. Unlike fixed commission rates on stock exchanges, institutions have many alternatives to purchasing securities in fixed price offerings. In the case of debt securities, they can buy comparable securities in the secondary markets. They can even buy the securities that are being offered, if they are willing to wait until the pricing restrictions are lifted, without paying any fixed dealer spread. The fixed price offering system is far more flexible than the fixed commission rate system was and may be more capable of withstanding the economic pressures that ultimately destroyed the fixed commission rate system.[121]

Footnote 118 continued

directors, or employees from working for a securities affiliate and expressly prohibiting affiliates from engaging in securities activities); 12 U.S.C. 1843 (1976) (provision of the Bank Holding Co. Act imposing similar restraints on bank holding company subsidiaries); 12 CFR 225.4(a), 225.125 (1980). *See Investment Company Institute v. Camp*, 401 U.S. 617, 625 n. 12 (1971).

[119]See note 7, *supra*.

[120]See note 16, *supra*.

[121]In eliminating fixed commission rates in 1975, the Commission concluded that, among other things, the fixed commission rate system had not worked, that it could not reasonably be made to work, and that it had had a demonstrably bad effect on the markets:

The basic reason for the Commission's decision to adopt Rule 19b-3 was the conclusion that, under present circumstances, the free play of competition can provide a level and structure of commission rates which will better serve the interests of the investing public, the securities markets, the securities industry, the national economy and the public interest than any system of price fixing which can reasonably be devised. . . .

* * *

The existing commission rate structure has demonstrably worked badly during that period. . . .It has led to distortions, evasions, conflicts of interest, and inefficiencies, and has obstructed at every step the ability of the securities markets to adapt themselves to the demands of our time. It has impeded the evolution of a central market system and has fragmented the markets, impairing their ability to concentrate the flow of orders and to mobilize marketmaking resources necessary to provide depth and liquidity in a market increasingly affected by institutional participation.

Furthermore, it does not appear that the fixed price underwriting system has produced the economic distortions and fiduciary corruption that characterized the final days of sixed commission rates. The experience with fixed commission rates in the secondary markets was attended by a substantial and ongoing incidence of abusive practices. Fiduciaries and broker-dealers devised intricate means of evading the fixed minimum broker rates and dealt with excess commission money in ways that frequently did not benefit the managed account holders who had paid the commissions ostensibly for brokerage services.[122] The Commission is not aware, however, of any comparable developments in the underwriting context, and the commentators on the Papilsky filing have strongly emphasized that the underwriting system has not collapsed as did the fixed commission rate system.

While the exchange-mandated system of fixed commission rates by means of uniform rate regulation did not work well as a method of pricing brokerage services, the current underwriting system has been a very effective means of pricing both securities and underwriting services. The system has satisfied the desires of issuers for efficient, low cost capital raising, as well as the underwriters' desire for reasonable risk allocation. Investors have been able to participate in new offerings of securities, and large quantities of securities have been distributed without serious disruption of secondary trading markets.

The underwriting system will no doubt continue to evolve, but the Commission believes that the NASD's proposed rule change should prevent an undisciplined erosion of that system without creating gross economic distortions and sham arrangements of the kind that developed during the later years of fixed commission rates. Most commentators have perceived some danger that various discounting arrangements could undermine the existing system, causing (i) increased underwriting risk, (ii) increased cost to issuers, (iii) increased unwillingness of individual investors to participate in offerings and (iv) increased concentration in investment banking.

Even if the fears of some commentators are exaggerated, the Commission's proceedings have shown that, in the absence of the NASD's proposed rule change, substantially increased pressure could be brought to bear on the fixed price offering system. That increased pressure might derive from perceptions of fiduciary obligation or simply from powerful economic forces, or both. Its effect might be to cause, or to hasten, some or all of the predicted adverse consequences that troubled many commentators.

In assessing whether such consequences are likely, it is also important to keep in perspective the likelihood of any theoretical benefits of allowing the fixed price offering system to evolve without any NASD intervention. That system is not shackled with industry-wide price fixing as was true in the case of

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Footnote 121 continued

Securities Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (February 20, 1975) at 23, 25 [footnote omitted].

[122]In that regard, the Commission stated in 1975 when it adopted Rule 19b-3:

Since brokers provide a great variety of services which are compensated by commissions, institutional managers are constantly tempted to direct the brokerage business of their beneficiaries to brokers who will provide services for the benefit of the manager. The problem is aggravated by the fact that under prevailing accounting practices and tax law, commissions are treated as part of the purchase price of securities sold, rather than being accounted for as expenses incurred in the management of the portfolio. Under these circumstances, investment managers may be inclined to seek services in exchange for brokerage since the cost of such services may be buried in the carrying value of the portfolio securities rather than charged to the beneficiaries as an expense of administration. The tendency of this situation to corrupt fiduciary relationships is not the least of the evils resulting from the present commission rate system. Even where no misconduct is present, the situation leads to inefficiency in the management of assets. The foregoing does not mean that fiduciaries may not utilize commissions on transactions for beneficiaries to obtain for their beneficiaries research and other valuable services. . . .

Securities Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (February 20, 1975) at n. 42.

fixed commission rates. Broker-dealers compete to participate in offerings. The public offering price and the underwriters compensation are negotiated by the issuer and the underwriters without regulatory restraint. The securities so priced are then offered to the public, who have many comparable alternative investment opportunities and may elect not to buy them if the pricing is inappropriate.

Permitting institutional investors to exert their own economic power to reduce the underwriters' compensation in each offering might in the short term effectively reduce the price paid for securities by some investors. The long-term effects on underwriting risk, the level of underwriters' compensation and costs to issuers and individual investors and the number of underwriters willing to participate in offerings are by no means necessarily beneficial, however. Institutional investors, underwriters and issuers have been well represented in the Commission's proceedings, and the testimony received strongly suggests that disapproval of the NASD's proposal would be likely to do more harm than good.

VII. CONCLUSION

For the reasons stated above, the Commission has concluded that the proposed rule change is consistent with the Act and the rules thereunder applicable to the NASD. In performing its customary oversight responsibilities, the Commission will continue to observe the operation of the fixed price offering system with a view to determining whether the NASD's rules are being complied with and enforced. If it should appear that the rules are not being observed and cannot be enforced effectively, in the future the Commission can revisit this matter. For today, however, the Commission has determined that the record of this proceeding strongly supports approval of the NASD's proposed rule change.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

By the Commission, (Chairman Williams, Commissioners Loomis, Friedman, and Thomas), Commissioner Evans dissenting.*

George A. Fitzsimmons
Secretary

*Dissenting Opinion of Commissioner Evans follows.

Commissioner Evans, dissenting.

I respectfully dissent from the action of my colleagues approving amendments to the National Association of Securities Dealers' Rules of Fair Practice because I do not believe it is appropriate as a matter of governmental policy, nor do I believe that the rule meets the standards required for its approval. The stated purpose of the amendments is to prohibit selling concessions, discounts or other allowances to persons other than brokers and dealers engaged in the investment banking or securities business and to permit such payments to be made or received only as consideration for services rendered in distribution. More plainly stated, this is an anti-competitive price maintenance rule which employs the regulatory power of the Federal Government to restrict the normal operation of economic market forces in determining the sale price of securities in certain underwritten offerings.[1]

Not only is this undesirable as a matter of governmental policy, I do not believe it is possible to maintain fixed prices effectively through regulation in a service industry where there are many participants, where quality of service cannot be objectively measured, and where there are multi-faceted business relationships between buyers and sellers in which prices can be and are adjusted indirectly.

Experience with regulations of this kind over the past several decades has shown that to the extent these amendments in fact have an impact, it will be to

[1]While it might be argued that the regulation is being imposed by the NASD and not by the Commission, I find that distinction not to be meaningful in this context. I do not mean to suggest, of course, that the NASD is an arm of the Federal Government. Indeed it is not, but it does exercise quasi-governmental authority. Moreover, this proposal would not be before the Commission if it could be implemented without our approval. *See* Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S.249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 22-26 (1975); *In re Abercrombie*, Securities Exchange Act Release No. 16285 (Oct. 18, 1979).

foster inefficiency and misallocation of resources and will be detrimental to our capital-raising system over the long term. In addition, the Commission's order runs counter to what appears to be a national consensus that regulated industries should not be routinely granted exemptions from competitive principles that are considered to be essential elsewhere. In various industries protectionist regulations are being removed without apparent deleterious effects.

Because of the strong industry and institutional support for a price-fixing rule over the nearly four years that the Commission has been considering this issue, I have sought a satisfactory theoretical or empirical basis on which I could support the NASD rule proposals, but have been unsuccessful. We have, of course, received many conclusory statements to the effect that the fixed price underwriting system is the most efficient means of raising capital and that it cannot be maintained absent approval of the NASD rule proposal. I do not argue that contractual arrangements among syndicate members are inappropriate or should be prohibited[2] and I recognize that the fixed price underwriting system has operated in this country for well over half a century and raises many billions of dollars of capital for American business each year. There has been no showing, however, that the system cannot be maintained without a specific governmental order supporting it. If the system is better and more efficient than the alternatives, it should continue to exist on its merits and not require regulatory coercion by the Federal Government.

Also very troublesome to me is the effort to portray the fixed price underwriting system as one in which all purchasers receive equal value for the same price. The present rule proposal became acceptable to the securities industry and institutional purchasers only when it was changed to permit large investors to receive economic benefits which are not available to small investors. Thus the rule serves to perpetuate the present condition in which the fixed price is a facade behind which both direct and indirect discounts have been given in the form of various types of services for years.

The difficulty in trying to establish a rule to prohibit discounts is evident from the evolution of this NASD proposal. It began as an attempt to limit the payment or receipt of discounts from a fixed selling price to securities professionals who earned it by participating in the distribution to investors. In its original form, it would have precluded discounts, in the form of products or services granted for an "agreed upon consideration" or which were "commercially available," to any investor and would have limited designated sales to members of the underwriting syndicate. The intent of these restrictions was to prevent unfair discrimination against customers who were unable to bargain for goods and services that could be offset by selling concessions and to prevent misrepresentations that the public offering price was fixed when, in fact, certain customers were receiving discounts. Understandably, this created strong opposition from those who would have been prohibited from giving and receiving discounts.

Institutional purchasers who would have been limited in their ability to bargain for services and smaller firms that are usually members of the selling group, but are unable to be members of the underwriting group, argued that it favored large securities firms and was unfairly discriminatory. In response to this opposition, the proposal and interpretations relating to it were eventually altered to permit all *bona fide* research to be considered as facilitating distribution, even if the research had nothing to do with the issue being underwritten and came from or through a firm that was not participating in selling the securities. Thus, research can be obtained from "soft dollars" where the consideration is explicitly agreed upon without its being viewed as an unacceptable discount under Section 24 of the NASD's Rules of Fair Practice as long as the public offering price is paid by the purchaser.

In other words, the primary discounting problem has been "resolved" by defining it away in a manner that the Commission stated expresses more clearly the economic realities of current research compensation practices and appears to be

[2]Although I oppose the NASD proposal as unjustified intervention into our market economy, my dissent should not be taken to imply that I favor any governmental action to prohibit issuers and their underwriters from choosing fixed price offerings as the preferred method for distributing securities. *See United States v. Morgan*, 118 F. Supp. 621 (S.D.N.Y. 1953).

acceptable to the industry and institutions. Just because the relationship is in accord with present research compensation practices, however, does not alter the fact that it embodies an economic discount from the fixed offering price.

The Commission's order approving the NASD's proposed rule change sets forth quite clearly the complex problems that the NASD filing presents. Knowing that the Commission would be called upon to resolve such problems, Congress has vested in the Commission both the power and the responsibility to make difficult judgments and has provided a legal framework within which to determine whether to approve or disapprove rule proposals. Within that framework, I cannot justify approval of the NASD proposal.

Under Section 19(b)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), the Commission must find that a proposed rule is consistent with the Exchange Act and the rules and regulations applicable to the NASD. The applicable requirements, each of which must be satisfied, are found in subparagraphs (b)(2), (b)(6), and (b)(9) of Section 15A.

Section 15A(b)(2) requires that the NASD have the ability to enforce compliance by its members and associated persons with its rules. I have the utmost respect for the ability and dedication of the NASD and its staff. Nevertheless, given the sophistication of the participants, the economic interests at stake, and the complex structure of our securities markets, the NASD has not set forth facts upon which I can conclude that it is capable of detecting non-compliance and enforcing the provisions of the rule changes approved by the Commission.

Enforcement has been made less difficult, of course, by abandoning the attempt to prohibit those who are not involved in direct selling efforts from sharing in the underwriting proceeds and providing that the selling concession may be used to pay for all *bona fide* research. Moreover, standards by which to determine overtrading have also been made more objective. Nevertheless, there is no practical way even to detect overtrading in many instances, particularly those that do not involve simultaneous purchases, nor is it possible to enforce prohibitions against indirect adjustments in the prices at which securities are sold. The Commission's order recognizes these problems but states that "[c]ommentators have indicated that institutional investors and broker-dealers will comply with the rule proposal." I think the commentators are probably correct, but I do not consider voluntary compliance by most participants as meeting the required enforceability standards.

Section 15A(b)(6) establishes certain purposes that the NASD rules must be designed to achieve as well as certain prohibited purposes which they must not be designed to achieve. In order to be consistent with the Exchange Act, a particular rule need not be designed to achieve all of the purposes but it must not violate one of the prescribed prohibitions.

The first stated purpose which NASD rules may be designed to achieve is the prevention of fraudulent and manipulative acts and practices. The NASD contends it is misleading to allow discounts from the price per share stated in a prospectus in connection with a fixed price underwriting, that discounts cannot be disclosed with the necessary particularity in any event, and that an outright prohibition of such discounts is therefore necessary in order to prevent fraud.

I agree with the statement in the Commission's order that "the proposed rule at best is tenuously related to the prevention of fraud." Neither the NASD nor any other participant in this proceeding has demonstrated that discounting practices cannot be adequately disclosed. In my view, the potential for discounts from a fixed price in the form of soft dollar payments for unrelated research (permitted by the NASD rule) is required to be disclosed under Section 16 of Schedule A of the Securities Act of 1933. If that can be adequately described, and I believe it can, I see no reason why other forms of discounts could not also be appropriately disclosed. Thus, I do not see how the rule changes can be justified as necessary to prevent fraud.

Another purpose which NASD rules should be designed to accomplish is the promotion of just and equitable principles of trade. The *PSI* decision, discussed at length in the Commission's order, held under the predecessor provision of Section 15A(b)(6) that the obligation of the NASD to promote just and equitable principles of trade does not authorize it to impose sanctions for a breach of a fixed price underwriting agreement.[3]

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[3]*In re National Association of Securities Dealers, Inc.*, 19 SEC 424 (1945).

Under Section 15A(b)(6) rules may not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. In my opinion, serious questions are raised in that regard. It can be argued that by preventing institutions from obtaining discounts from the fixed offering price which, according to the record of this proceeding, their market power would permit them to obtain in the absence of the NASD rule, they are being unfairly discriminated against.

Section 15A(b)(6) also prohibits rules which are designed to fix minimum profits or impose any schedule or fix rates of commissions, allowances, discounts or other fees charged by its members. The NASD contends that the proposal does not mandate a fixed price but requires only that members adhere to any price maintenance agreements they enter into. The Commission's order asserts that since the provisions of the proposed rule change come into play only after the underwriters have themselves agreed to distribute securities through a fixed pricing offering, it seems "inaccurate to speak of a schedule as having been imposed or of discounts as having been fixed by rules of the NASD. . . ." The Commission's response to that argument in the *PSI* case was that:

> Whether or not the. . .agreements were voluntarily adopted and whether or not the minimum profits and schedule of prices and discounts were "fixed" by the agreements, it is the NASD which is seeking to enforce the schedule, and thus to "impose" it and other similar schedules by its application of the rule in disciplinary proceedings.[4]

If an NASD rule is construed either to fix or to impose rates or fees, it contravenes an express and explicit prohibition. In such a case, the Commission is not permitted to look elsewhere in the Exchange Act in order to approve the rule under another standard. In particular, the balancing test in Section 15A(b)(9) of the Exchange Act would be neither available nor relevant.

My colleagues agree with this construction in their order, but they conclude that the NASD's proposed rule change should not be construed to impose or fix rates or fees. They suggest that the Commission in the *PSI* case interpreted the fixing or imposing prohibition more expansively than it needed to and state that the Commission is not today prepared to conclude that Congress intended to prevent NASD disciplinary action against its members for granting discounts from the public offering price in an offering that is publicly represented to be at a fixed price. Accordingly, they conclude that the *per se* prohibition against imposing or fixing prices does not apply and the Commission is authorized to look to the balancing test in Section 15A(b)(9), and to other provisions, in evaluating the proposed rule change.

On the basis of the record in this proceeding, I am uncomfortable with that analysis. The NASD and others stated that the proposed rule change is needed to prevent the collapse of the fixed price underwriting system. They also suggested that, in the years that have intervened since 1945, changes in the markets (including the increased use of securities depositories) have made it no longer possible to enforce underwriting agreements, and particularly their price-fixing terms, without direct intervention by the NASD. My colleagues seem to have accepted that argument in concluding that the NASD rules would afford the underwriting system "a needed measure of support" and would help to prevent an "undisciplined erosion" of the underwriting system.

Ironically, those conclusions by the Commission, and the arguments made by the NASD and others, can be used to support the position that the NASD rules do indeed impose rates, allowances, discounts or other fees. But for the NASD, the Commission was told, competitive pressures, coupled with the difficulties of resorting to private action to enforce underwriting contracts, would make it impossible to maintain the fixed rates. The NASD, therefore, could be viewed as a necessary instrumentality for imposing the price-fixing arrangement. That argumentation could certainly lead to the conclusion that the NASD was imposing the rates even though the amounts of discounts and allowances were established separately by underwriters and issuers.

Although I am not satisfied with the reasoning in the Commission's order overturning the *PSI* decision, I have not found it necessary to base my dissent on a contrary conclusion. It can be and is based primarily on an inability to conclude, in accord with Section

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[4] *Id.* at 438.

15A(b)(9), that the burdens placed on competition by the NADD rule proposal are necessary or appropriate in furtherance of the purposes of the Exchange Act.

I realize that deviation from the tried and true involves some risk, but risk is an integral part of a free market system. The genius of administrative agencies, and in my view one of the principal justifications for their existence, is the ability to anticipate as well as to respond to change. If we found issuers were unable to raise capital economically as a result of a failure to approve this rule change, I have enough confidence in this Commission and the participants in the market to believe that prompt action would be taken to correct the situation.

I am not pessimistic, however, as to the changes which would be brought about by market forces in the absence of this NASD rule. In all probability, the capital-raising system that has served this country well would not be destroyed but instead would evolve into a better system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17372/December 12, 1980

In the Matter of

BEVILL, BRESLER & SCHULMAN INCORORATED, ET AL.

Admin. Proc. File No. 3-5934

The Securities and Exchange Commission has ordered the institution of public administrative proceedings against Bevill, Bresler & Schulman Incorporated ("BBS"), a registered broker-dealer firm located in Newwark, New Jersey; against two unregistered corporate affiliates of BBS; against Robert L. Bevill, Summit, New Jersey, president of BBS; against certain former managers of the firm's Houston office, Andrew Dale Ledbetter, Fort Lauderdale, Florida and Charles Frederick Marshall, Houston, Texas; and against 12 former salesmen and a former trader, most of whom were employed in the firm's Houston office, namely, Joe A. Clements, Houston, Texas; Edward Earl Rotenberry, Spring, Texas; Jimmy Wayne Briggs, Dallas, Texas; Ronald P. Byerly, Houston, Texas; John A. Cooper, Austin, Texas; John A. Hammond, Lafayette Hill, Pennsylvania; Max B. Hill, Houston, Texas; Patrick T. Michael, Memphis, Tennessee; Stewart L. Michaels, New York, New York; Jack L. Pemberton, Memphis, Tennessee; Lawrence L. Silverstein, Germantown, Tennessee; Larry D. Slayton, Garland, Texas; and James W. Winter, Houston, Texas.

In the Order for Public Proceedings, the Division of Enforcement alleges that the respondents violated and aided and abetted violations of the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934 in connection with government securities transactions with customers, including savings and loan associations and credit unions. The Order alleges that material misleading statements were made concerning the nature and risks of trading in government securities for mandatory and optional forward delivery. It is also alleged that respective respondents violated the anti-fraud provisions by engaging in so-called adjusted trading (whereby a contemporaneous purchase and sale of securities were effected with a customer at prices above the market price); by executing unauthorized trades; by inducing and approving unsuitable transactions; and by charging excessive prices. The Order further alleges that BBS violated certain broker-dealer bookkeeping provisions under the 1934 Act by failing to make and keep accurate confirmations of purchases and sales in connection with adjusted trades. In addition, the Order charges BBS, Bevill, Ledbetter and Marshall with failing reasonably to supervise certain respondents named in the Order.

Simultaneously with the institution of public administrative proceedings, the Commission has determined that it was appropriate and in the public interest to accept settlement offers from 15 of the 19 respondents; accordingly, the Commission has issued an order imposing remedial sanctions against the settling respondents. That order is issued simultaneously herewith. Respective settling respondents consented, without admitting or denying the allegations, to Commission findings of violations of the antifraud provisions and to failures to supervise. The Commission, pursuant to the firm's settlement offer, ordered the registrant broker-dealer firm and its corporate affiliates to refrain from engaging for 60 days in forward transactions in government securities; to refrain from opening any branch offices for six months; to conduct a thorough review of its compliance procedures and the implementation thereof and the firm was censured. The varied sanctions of the individual respondents

include substantial suspensions and supervisory bars.

A hearing will be scheduled to take evidence on the staff's allegations and to afford the non-settling respondents (Hammond, Slayton, Michaels and Winter) an opportunity to establish any defenses thereto for the purpose of determining whether remedial sanctions are appropriate in the public interest.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17373/December 12, 1980

In the Matter of:

BEVILL, BRESLER & SCHULMAN INCORPORATED
(No. 8-18885)
BEVILL, BRESLER & SCHULMAN GOVERNMENT SECURITIES, INC.
BEVILL, BRESLER & SCHULMAN ASSET MANAGEMENT CORPORATION
ROBERT L. BEVILL
ANDREW DALE LEDBETTER
CHARLES FREDERICK MARSHALL
JIMMY WAYNE BRIGGS
RONALD P. BYERLY
JOE A. CLEMENTS
JOHN A. COOPER
MAX B. HILL
PATRICK T. MICHAEL
JACK L. PEMBERTON
EDWARD E. ROTENBERRY
LAWRENCE L. SILVERSTEIN

FINDINGS AND ORDER IMPOSING REMEDIAL SANCTIONS

In these proceedings ordered pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (the "1934 Act"), Respondents Bevill, Bresler & Schulman Incorporated ("BBS"), Bevill, Bresler & Schulman Government Securities, Inc. ("GSI"), Bevill, Bresler & Schulman Asset Management Corporation ("AMC"), Robert L. Bevill ("Bevill"), Andrew Dale Ledbetter ("Ledbetter"), Charles Frederick Marshall ("Marshall"), Lawrence L. Silverstein ("Silverstein"), Patrick T. Michael ("Michael"), Ronald P. Byerly ("Byerly"), Edward E. Rotenberry ("Rotenberry"), Jimmy Wayne Briggs ("Briggs"), John A. Cooper ("Cooper"), Jack L. Pemberton ("Pemberton"), Max B. Hill ("Hill") and Joe A. Clements ("Clements") and have submitted Offers of Settlement which the Commission has determined to accept.[1] Solely for the purpose of settling these proceedings and without admitting or denying the allegations contained in the Order for Public Proceedings (the "Order"), the above Respondents consent to the findings of violations and the sanctions contained in this order.[2]

On the basis of the Order and the Offers of Settlement, the Commission finds that:

(1) BBS wilfully violated and wilfully aided and abetted violations of Section 17(a) of the Securities Act of 1933 (the "1933 Act") and Sections 10(b) and 17(a) of the 1934 Act and Rules 10b-5 and 17a-3 thereunder, as alleged in the Order, and failed reasonably to supervise, with a view toward preventing the violations alleged in the Order, persons who were subject to its supervision at the time of such violations alleged in the Order and who committed such violations alleged in the Order.

(2) GSI and AMC each wilfully violated and wilfully aided and abetted violations of Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act and Rule 10b-5 thereunder, as alleged in the Order.

(3) Bevill wilfully violated and wilfully aided and abetted violations of Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act and Rule 10b-5 thereunder, as alleged in the Order, wilfully aided and abetted violations of Section 17(a) of the 1934 Act and Rule 17a-3 thereunder, as alleged in the Order, and failed reasonably to supervise, with a view toward preventing the violations alleged in the Order, persons who were subject to his supervision at the time of such violations alleged in the Order and who committed such violations alleged in the Order.

(4) Ledbetter and Marshall each failed reasonably to supervise, with a view toward preventing the violations alleged in the Order, persons who were subject to their supervision at the time of such

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[1]The Order for Public Proceedings was issued simultaneously with the Commission's acceptance of such Offers of Settlement.

[2]The findings herein are not binding on any other Respondent named in this proceeding.

violations alleged in the Order and who committed such violations alleged in the Order.

(5) Silverstein, Michael, Byerly, Rotenberry, Briggs, Cooper, Pemberton, Hill and Clements each wilfully violated and wilfully aided and abetted violations of Section 17(a) of the 1933 Act and Section 10(b) of the 1934 Act and Rule 10b-5 thereunder, as alleged in the Order.

(6) It is appropriate and in the public interest to impose the sanctions specified in the Offers of Settlement.

Accordingly, IT IS ORDERED that effective December 18, 1980:

(1) BBS refrain from engaging in the purchase and sale of U.S. government guaranteed securities for both mandatory and optional forward delivery for a period of 60 (sixty) days; provided, however, that BBS shall not be prohibited from entering into transactions with other dealers in securities and with mortgage banks, and provided further that BBS shall not be prohibited from engaging in such transactions where the settlement date shall be not more than 30 (thirty) days from the trade date.

(2) BBS; refrain for six months from opening any new branch offices.

(3) BBS comply with its agreement and undertaking to conduct, with the assistance of its counsel, a thorough review of its compliance procedures and the implementation thereof with a view to adoption and implementation of compliance procedures recommended by counsel.

(4) BBS be and hereby is censured.

(5) GSI and AMC be and hereby are censured.

(6) GSI and AMC comply with the prohibitions, agreements and undertakings set forth in paragraphs 1, 2 and 3 above.

(7) Bevill refrain from acting as a supervisor in connection with all activities pertaining to U.S. Government and U.S. Government guaranteed securities (other than activities of a clerical or ministerial nature) for a period of 45 calendar days.

(8) Bevill be and hereby is censured.

(9) Ledbetter be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 120 calendar days, and is also barred from association in a supervisory or compliance capacity with any broker or dealer, investment company, investment adviser or municipal securities dealer, provided that Ledbetter shall have a right to reapply to act in a supervisory or compliance capacity after one year.

(10) Marshall be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 60 calendar days, and is also concurrently suspended from association in a supervisory capacity with any broker or dealer, investment company, investment adviser capacity or municipal securities dealer for a period of six months.

(11) Michael be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of nine months.

(12) Byerly be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of nine months.

(13) Rotenberry be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 60 calendar days.

(14) Briggs be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 40 calendar days.

(15) Cooper and Pemberton be and hereby are suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 30 calendar days.

(16) Hill be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 21 calendar days.

(17) Silverstein be and hereby is suspended from association with any broker or dealer, investment company, investment adviser or municipal securities dealer for a period of 20 calendar days.

(18) Clements be and hereby is censured.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17374/December 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

File No. SR-NASD-80-23

The National Association of Securities Dealers, Inc. submitted on December 8, 1980, a proposed rule change under Rule 19b-4 to amend its rules regarding otpions sales communications to conform them to comparable rules of the options exchanges.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-80-23.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17375/December 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY PACIFIC STOCK EXCHANGE, INC.

File No. SR-PSE-80-24

The Pacific Stock Exchange, Incorporated ("PSE") submitted on December 4, 1980, a proposed rule change under Rule 19b-4 to increase the PSE's listing fees with respect to the initial listing of bonds, the initial listing of additional shares of stock or warrants, and the annual listing maintenance fees for all PSE securities.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-24.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

Copies of the filing and of any subsequent

amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17376/December 15, 1980

NOTICE OF FILING AND EFFECTIVENESS OF PROPOSED RULE CHANGE BY THE NEW YORK STOCK EXCHANGE, INC.

File No. SR-NYSE-80-44

The New York Stock Exchange, Inc. ("NYSE") submitted, on November 17, 1980, a proposed rule change under Rule 19b-4 to increase the rates charged for the Bond Ticker, Bond Ticker Display, Delayed Prices Service, Equity Total Transaction Tape and Bond Bid-Asked Tape, Closing Price Tape and Range Tape, in order to recover a portion of the increased operating expenses associated with these services. In addition, the filing establishes rates for the following new tape services: Bond Total Transaction and Equity Closing Quote.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the *Federal Register* during the week of December 15, 1980. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-80-44.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17377/December 15, 1980

A notice has been issued giving interested persons until January 8, 1981 to comment on the application of WYNN'S INTERNATIONAL, INC. to withdraw from listing and registration on the *American Stock Exchange*.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17378/December 15, 1980

A notice has been issued giving interested persons until January 8, 1981 to comment on the applications of the *Midwest Stock Exchange* for unlisted trading privileges in three stocks which are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17379/December 15, 1980

An order has been issued granting the application of the *New York Stock Exchange* to strike the common stock ($.01 par value) and the $1 cumulative convertible preferred stock of APPLIED DIGITAL DATA SYSTEMS, INC., from listing and registration thereon.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17380/December 15, 1980

NOTICE OF FILING OF PROPOSED RULE CHANGE BY THE PHILADELPHIA STOCK EXCHANGE. INC.

File No. SR-Phlx-80-24

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on October 6, 1980, a proposed rule change under Rule 19b-4 to create an Allocation, Evaluation, and Securities Committee and an Executive Committee as standing Phlx committees.[1] The present Admissions Committee, Floor Procedures Committee, and Options Committee, which are standing committees, would be given additional duties[2] and the Stock List Committee would be discontinued.[3] All the standing committees, except as otherwise provided in Phlx's By-Laws, would be composed of nine or more persons, to be appointed by Phlx's Chairman of the Board with the approval of the Phlx Board of Governors.[4]

A majority of the new Allocation, Evaluation and Securities Committee would be composed of members who conduct a public securities business, with the balance consisting of equity floor and options floor members[5] and would have authority over the allocation, retention, and transfer of privileges to deal in securities on the equity and options trading floors. It also would perform the functions of the discontinued Stock List Committee involving the listing and delisting of equity securities.[6]

The new Executive Committee would consist of the following officials: the Phlx's Chairman of the Board (who would chair the Executive Committee), the two Vice Chairmen, the immediate past Chairman, the President, the Executive Vice President, and three other Board members to be appointed by the Chairman.[7] The Executive Committee would be authorized to implement and execute policy previously approved by the Board of Governors.[8]

The present Admissions Committee would have authority over admission and readmission to exchange membership.[9] Under the proposed rules, any application who is rejected for admission would be entitled to notification in writing as to the reasons and to a review or hearing by the Admission Committee, and, if finally rejected by the Admissions Committee the applicant would be entitled to an appeal to the Board of Governors.[10]

The present Floor Procedure Committee would have additional responsibilities regarding equity floor supervision over specialists, odd-lot dealers, and floor brokers, and it would be required to establish training procedures for equity floor members.[11]

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[1]Proposed Phlx By-Laws, Section 5-3.

[2]*Id.*, Sections 10-6, 10-12, and 10-15.

[3]*Id.*, Section 10-1(a).

[4]*Id.* Further, except as otherwise provided in Phlx's By-Laws, the decision of a majority of members present at a committee meeting, where a quorum exists, would be the decision of the committee. *Id.* Section 10-3(a).

[5]*Id.*, Section 10-7(a), (b).

[6]*Id.*, Section 10-7(d). The current Section 10-14 of the By-Laws, which sets forth the present authority of the Stock List Committee, would be re-numbered as Section 10-7(d) under the provisions on the proposed Allocation, Evaluation and Securities Committee.

[7]Proposed By-Laws, Section 10-10(a).

[8]*Id.*, Section 10-10(b).

[9]*Id.*, Section 10-6(a).

[10]*Id.*, Section 12-4(b), (c), (f).

[11]Proposed By-Laws Section 10-12.

The present Options Committee, in addition to its present responsibilities, would supervise all means of options floor communication, the location of equipment and use of floor space, and Phlx's relations with other options exchanges. Further, the Options Committee would have jurisdiction over the approval of underlying stocks for options trading and would make and enforce options floor decorum rules.[12]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17251, October 17, 1980) and by publication in the *Federal Register* (45 FR 72853, November 3, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

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[12] *Id.*, Section 10-15.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17381/December 16, 1980

Admin. Proc. File No. 3-5839

In the Matter of the Application of

EUGENE T. ICHINOSE, JR.
5761 Haleola Street
Honolulu, Hawaii

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Violations of Rules of Fair Practice

Sale of Unregistered Securities

Failure to Inform Employer of Private Securities Transactions

Failure to Register as a Broker-Dealer

Failure to Disclose Compensation

Where registered principal of member firm of registered securities association unlawfully sold unregistered securities, failed to give required notice of those sales and others to the firm with which he was associated, improperly engaged in the securities business without required registration as a broker-dealer, and failed to disclose extra sales compensation to investors, *held*, association's findings of violation and sanctions *affirmed*.

APPEARANCES:

Lawrence I. Weisman, for applicant.

Andrew McR. Barnes and *Peter J. Chepucavage*, for the National Association of Securities Dealers, Inc.

I.

Eugene T. Ichinose, Jr., who was a registered principal of M. H. Deckard & Co., Inc., appeals from disciplinary action taken against him by the National

Association of Securities Dealers, Inc. ("NASD"). The NASD found that Ichinose unlawfully sold unregistered securities, failed to give Deckard written notification of private securities transactions, failed to make material disclosures to investors, and improperly engaged in the securities business as an unregistered broker-dealer. It censured Ichinose, fined him $15,000, and suspended him from association with any NASD member as a principal for one year. Our findings are based on an independent review of the record.[1]

II.

In 1976, at the same time that he was acting as manager of the Honolulu branch office of Deckard, then an NASD member firm, Ichinose and various salesmen under his supervision sold interests in certain limited partnerships organized by Ichinose that were not sold through Deckard. In addition, Ichinose and some of the salesmen had individual contracts with Cal-Am Corporation pursuant to which they sold, independently of Deckard, interests in limited partnerships whose general partners were Cal-Am and companies and persons affiliated therewith. Cal-Am paid Ichinose commissions equal to 10% of the gross proceeds of his own sales, part of the 10% commissions on sales made by his salesmen, and a 3½% override on all Cal-Am sales made by his group. In 1976, Ichinose's total Cal-Am earnings from these sources amounted to more than $40,000.

III.

The NASD found that Ichinose participated in the unlawful sale of the unregistered securities of various Cal-Am partnerships. Ichinose argues that the NASD failed to establish a *prima facie* case that registration provisions were violated. He further asserts that there is no evidence that the Cal-Am offerings were not exempt from registration under Section 4(2) of the Securities Act and Rule 146 thereunder.[2]

It is clear from the record that the Cal-Am securities in question were not registered under the Securities Act,[3] that Ichinose participated in the sale of those securities, and that the mails were used in connection with such sales. Thus the NASD established a *prima facie* case that Ichinose violated the Securities Act's registration provisions.[4] Moreover, it is well settled that the burden of establishing the availability of an exemption from registration rests upon those who claim it.[5] Ichinose failed to meet that burden. As one court has stated, "The evidence must be. . .explicit, exact, and not built on conclusionary statements of the [respondents]."[6] No such evidence was presented here.

Ichinose argues that he had a right to rely on the assurances given him by Cal-Am, its attorneys, and a local attorney, that the offerings were entitled to the exemption provided for private placements under Rule 146.

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[1]Citing *Collins Securities Corp. v. S.E.C.*, 562 F.2d 820 (C.A.D.C., 1977), Ichinose argues that the charges against him must be proven by clear and convincing evidence. Even apart from the question of whether *Collins* applies to NASD proceedings, the clear and convincing standard is only applicable to cases of fraud, and we make no finding of fraud here. In any event, we find the evidence with respect to Ichinose's violations clear and convincing.

[2]Section 4(2) of the Act exempts from registration "transactions by an issuer not involving any public offering." Rule 146 prescribes a non-exclusive method for obtaining the exemption provided by Section 4(2).

[3]The offering circular in the record states that the Cal-Am interests covered thereby were being sold "pursuant to an exemption from registration under the Securities Act of 1933." And Ichinose testified that Cal-Am's other tax shelter programs were "almost word-for-word alike."

[4]See *Hill York Corporation v. American International Franchises, Inc.*, 448 F.2d 680, 686 (C.A. 5, 1971); *Doran v. Petroleum Management Corp.*, 545 F.2d 893, 899 (C.A. 5, 1977).

[5]See *S.E.C. v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953); *United States v. Custer Channel Wing Corporation*, 376 F.2d 675, 678 (C.A. 4, 1967), *cert. denied*, 389 U.S. 850; *Hill York Corporation v. American International Franchises, Inc., supra*, 448 F.2d at 690.

[6]*Lively v. Hirschfeld*, 440 F.2d 631, 633 (C.A. 10, 1971).

As we have often pointed out, persons such as Ichinose "have a responsibility to be aware of the requirements necessary to establish an exemption from the registration requirements of the Securities Act, and should be reasonably certain that such an exemption is available before engaging in transactions which raise a question of compliance with those requirements."[7] Ichinose could not simply rely on the statements made by Cal-Am.[8] Moreover, the record fails to show that he obtained any assurances from the local attorney with respect to the transactions in question. Nor does it show with any specificity what advice he may have received from Cal-Am's attorneys. In any event, even assuming Ichinose received good advice from those attorneys, the record fails to demonstrate that he followed it. Ichinose did not show, in accordance with Rule 146(d)(1), that he had reasonable grounds to believe, immediately prior to any offer, that all offerees were either capable of evaluating the merits and risks of a prospective investment or able to bear the economic risk of such an investment. Nor did Ichinose show, in accordance with Rule 146(d)(2), that he had reasonable grounds to believe, immediately prior to the sales in question, that all offerees, either alone or together with their representatives, were capable of evaluating the merits and risks of their prospective investments or that they were able to bear the economic risk of those investments. Moreover, with respect to the exemption provided by Section 4(2), Ichinose did not show that the offering was made to persons who possessed the necessary sophistication and were able to fend for themselves.[9]

It is clear that Ichinose participated in the unlawful sale of unregistered Cal-Am securities. Hence we affirm the NASD's findings of violation.

IV.

The NASD Board of Governors' interpretation with respect to private securities transactions, which was adopted in August 1976, provides in relevant part as follows:

> "It shall be deemed conduct inconsistnet with just and equitable principles of trade for any person associated with a member to engage in a private securities transaction outside the regular course or scope of his association or employment with a member, for himself, or with or for any other person without prior written notification to the member."[10]

The NASD found that Ichinose failed to give Deckard prior written notification of his transactions in Cal-Am and other securities during the period from September through December 31, 1976, and the record fully supports that finding.

Prior to the adoption of the NASD's interpretation, the Association's rules, in relevant part, merely prohibited the concealment of private securities transactions from one's employer. Ichinose testified that he notified a Deckard official orally of his "intention to make local syndications," and that he did not know about the NASD's new interpretation until he received a copy of it in December 1976. He states that, as soon as he received it, he resigned from Deckard. However, an NASD official stated on the record that the new interpretation was sent to all NASD members and their branch offices in August 1976. In any event, it is immaterial, except as a possible mitigative factor, whether or not Ichinose was aware that he was violating NASD rules.[11] We accordingly affirm the NASD's findings of violation with respect to Ichinose's private securities

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[7]*Merrill Lynch, Pierce, Fenner & Smith Incorporated,* 45 S.E.C. 185, 188 (1973). See also *Quinn & Company* v. *S.E.C.,* 452 F.2d 943, 946-947 (C.A. 10, 1971), *cert. denied,* 406 U.S. 957 (1972).

[8]See *Apex Financial Corporation,* Securities Exchange Act Release No. 16749 (April 16, 1980), 19 SEC Docket 1221, 1222, and authorities there cited.

[9]*S.E.C.* v. *Ralston Purina Co., supra,* 346 U.S. at 125; *Albert S. Pitts,* Securities Exchange Act Release No. 17274 (November 6, 1980), 21 SEC Docket 469, 471; *Thomas A. Sartain, Sr.,* Securities Exchange Act Release No. 16561 (February 8, 1980), 19 SEC Docket 562, 566; Securities Act Release No. 5487 (April 23, 1974), 4 SEC Docket 154, 155.

[10]NASD Manual para. 2177, p. 2109-3.

[11]See *Regents of the University of Minnesota* v. *The National Collegiate Athletic Association,* 560 F.2d 352, 369 (C.A. 8, 1977); *Safeco Securities, Inc.,* 45 S.E.C. 303, 306-307 (1973); *Rothschild Securities Corporation,* 45 S.E.C. 444, 446 (1974).

transactions during the period September through December 1976.[12]

V.

The NASD found that Ichinose failed to comply with just and equitable principles of trade in that he unlawfully engaged in the securities business without being registered with this Commission as a broker-dealer under Section 15(a) of the Securities Exchange Act. As we have seen, Ichinose and salesmen under his supervision sold interests in various Cal-Am offerings and other securities independently of Deckard.

Ichinose claims that he conducted his business solely in Hawaii and therefore was entitled to the exemption from registration provided for a broker-dealer "whose business is exclusively intrastate." However, the general partners of the various Cal-Am limited partnerships distributed by Ichinose were not located in Hawaii, and in those circumstances Ichinose was not entitled to an intrastate exemption from broker-dealer registration.[13] We accordingly affirm the NASD's finding of violation with respect to the period April Through December 1976, while Ichinose was engaged in selling Cal-Am securities.[14]

VI.

As noted above, Ichinose received additional compensation for his group's Cal-Am sales in the form of a 3½% override. The NASD found that Ichinose failed to comply with just and equitable principles of trade by failing to disclose this additional compensation to investors.

Ichinose admittedly did not inform all of his customers that he was receiving a 3½% override on their Cal-Am purchases. He points to the Cal-Am offering circular in the record which states that sales commissions equal to 10% of the purchase price will be paid, but that "in some situations" there would be "an additional overriding commission." However, that recitation did not constitute adequate disclosure of the 3½% override that Ichinose received.

We consider that such compensation, which was clearly an added sales incentive, was of material significance to investors in Cal-Am partnerships, and should have been disclosed even if it was not paid from the proceeds of the offerings.[15] We accordingly affirm the NASD's finding that Ichinose

[12]We set aside additional findings of violation made by the NASD with respect to private securities transactions by Ichinose prior to September 1976 and subsequent to his resignation from Deckard as of December 31, 1976. Ichinose further states that Deckard did not pay the operating expenses of its Honolulu office, and that it did not even supervise that office. However, as long as Ichinose remained associated with Deckard, he was required to give it proper notification of his private securities transactions.

[13]See *Professional Investors, Inc.*, 37 S.E.C. 173, 175-176 (1956); *Peoples Securities Company*, 39 S.E.C. 641, 652-653 (1960), *aff'd sub nom. Peoples Securities Co. v. S.E.C.*, 289 F.2d 268 (C.A. 5, 1961). See also Weiss, *Registration and Regulation of Brokers and Dealers* (1965), at pp. 13-15; 2 Loss, *Securities Regulation*, (2d ed. 1961), at pp. 1299-1300.

[14]We set aside the NASD's findings of violation with respect to other time periods. Ichinose further claims that the NASD lacks "jurisdiction" to charge him with failing to register as a broker-dealer. He also argues that the NASD proceeding placed him in "double jeopardy" because of an earlier injunctive action involving similar charges brought against him by this Commission. These contentions are wholly lacking in merit. We have repeatedly approved the NASD's uniform practice of treating violations of the securities acts as violations of the Association's ethical standards. See *Management Financial Inc.*, Securities Exchange Act Release No. 12098 (February 11, 1976), 8 SEC Docket 1248, 1252, and cases there cited. Moreover, there is no basis for Ichinose's claim of "double jeopardy." The Exchange Act provides several parallel and compatible procedures for the achievement of its objectives, and the use of more than one avenue is in many instances both proper and appropriate. See *Lile & Co., Inc.*, 42 S.E.C. 664, 670 (1965), and the cases there collected. See also *A. G. Bellin Securities Corp.*, 39 S.E.C. 178, 186 (1959).

[15]See *Howard D. Gatliff*, Securities Exchange Act Release No. 16680 (March 20, 1980), 19 SEC Docket 934, 936. The NASD found that Ichinose also violated its rules by failing to disclose to investors additional compensation that he received from Cal-Am in the form of an $18,000 non-recourse loan to finance his investment in a Cal-Am partnership. However, after Ichinose received the loan, in November 1976, he effected only one more sale of a

failed to comply with just and equitable principles of trade.[16]

VII.

We now turn to the various procedural arguments raised by Ichinose.

Ichinose claims that the NASD's Board of Governors improperly increased the sanctions against him without giving him notice or an opportunity to be heard. We disagree.

The NASD District Committee which heard this case censured Ichinose and fined him $15,000.[17] Following his appeal to the NASD's Board of Governors, the NASD notified Ichinose's counsel that Ichinose would have the opportunity for a hearing before a subcommittee of the Board, and "that the Board [was] free to modify any findings and penalties imposed by the District Committee, including dismissals." After a hearing before the Board,[18] it affirmed the District Committee's findings of violation but, in addition to the sanctions imposed by the Committee, suspended Ichinose from acting as a principal with any member firm for one year. Since Ichinose was expressly notified prior to the Board hearing that the Board could modify the sanctions which the Committee had imposed, there was clearly no impropriety here.[19]

Ichinose further complains that he did not have the opportunity to cross-examine certain Deckard officials and an attorney who assertedly gave him legal advice in connection with some of the activities at issue here. However, neither the Deckard officials nor the attorney in question testified in the proceedings before the NASD.[20] And the record does not show that Ichinose made any effort to call them as witnesses.[21]

Footnote 15 continued

Cal-Am partnership interest. And the record is not clear that Ichinose failed to disclose the loan in connection with that sale. We accordingly set aside the NASD's finding of violation in this regard.

[16]In view of this conclusion, we need not reach the NASD's additional finding that Ichinose's conduct also violated NASD antifraud provisions, and we accordingly set that finding aside.

[17]Ichinose claims that the District Committee did not give him a fair hearing because one of its members was prejudiced against him. The incident involving the alleged prejudice was unrelated to these proceedings. In any event, the member in question did not sit on the hearing panel in this case, and was no longer a member of the NASD's District Committee when it issued its decision herein.

[18]Ichinose complains that there was no Board hearing. This argument is wholly lacking in merit. Because Ichinose was located in Hawaii and the Board hearing panel in Washington, D.C., a hearing was conducted by telephone conference call at Ichinose's request. And, contrary to Ichinose's further contention, a transcript of that hearing is in the record.

[19]Thus the requirement specified in *Todd and Company, Inc.* v. *S.E.C.*, 557 F.2d 1008, 1014 (C.A. 3, 1977) was met. Section 16(b) of the NASD's Code of Procedure for Handling Trade Practice Complaints expressly empowers the Board, in connection with its review of District Committee disciplinary action, to increase any sanction that the Board finds inadequate after appropriate notice and opportunity for hearing. NASD Manual para 3015, pp. 3027-3028.

[20]Ichinose claims that the NASD improperly considered certain written statements submitted to it by certain Deckard officials and their counsel. It does not appear that the NASD relied on those statements in making its findings against Ichinose. In any event, we have not considered them in connection with our *de novo* review of this matter.

Ichinose further complains about the introduction into evidence of two memoranda from NASD counsel reflecting conversations with the attorney who assertedly gave Ichinose legal advice. But, at the hearing before the Board, the NASD introduced those memoranda into evidence with the express approval of Ichinose and his counsel.

[21]Ichinose asserts that, at the District Committee hearing, the NASD "promised" to hold a further hearing in order to take testimony from certain

In an action brought by this Commission in February 1978, Ichinose was permanently enjoined, with his consent, from unlawfully selling unregistered securities and engaging in the securities business as an unregistered broker-dealer.[22] Ichinose asserts that he consented to the injunction on the basis of a representation made by our staff. According to Ichinose, our staff told him that the NASD had agreed that, if it should bring proceedings against him for the same activities as those involved in the injunctive action, only a nominal fine would be imposed.[23]

Evidence in the record contradicts Ichinose's assertion. In a letter to Ichinose's counsel dated November 16, 1977, the NASD stated that "neither the Association nor the Commission can grant...any assurance that a particular sanction will be imposed if Mr. Ichinose consents to [the injunctive] order." And about three weeks later, in a letter dated December 5, 1977, our staff advised Ichinose's counsel that it had informed the NASD of the proposed consent order in the injunctive action, but "would not attempt to influence the NASD with respect to the propriety of any particular sanction" it might impose.

We have carefully reviewed the record of the proceedings below with respect to all of Ichinose's procedural contentions, and we find no unfairness in his treatment by the NASD.[24] In any event, Ichinose has not been prejudiced, since the NASD's findings have been accorded *de novo* review by this Commission.[25]

VIII.

Ichinose argues that the sanctions imposed by the NASD are excessive. Even though we have set aside certain of the NASD's findings of violation, we cannot agree. Ichinose engaged in serious misconduct. The Securities Act's registration provisions set forth basic requirements for the protection of investors, and the requirement that non-exempt broker-dealers register as such is a keystone of the entire system of broker-dealer regulation. A salesman's "private" securities transactions deprive the public of protection it is entitled to expect, and may expose the firm with which he is associated to unwarranted risks.[26] Moreover, Ichinose failed to make material disclosure to investors with respect to his sales compensation. Finally, we note that the fine assessed against Ichinose is far less than the profits he earned from his improper conduct.[27]

Under all the circumstances, we are unable to conclude that the sanctions imposed by the NASD are excessive or oppressive.

An appropriate order will issue.[28]

By the Commission (Commissioners LOOMIS, EVANS, FRIEDMAN and THOMAS); Chairman WILLIAMS not participating.

George A. Fitzsimmons
Secretary

Footnote 21 continued

Deckard officials who were also respondents in this proceeding. However, NASD counsel merely noted that the District Committee had granted the Deckard officials' request for a separate hearing, and indicated that, since some of their testimony might be relevant to the issues involving Ichinose, he would be advised of the time and place of such hearing. But the Deckard respondents subsequently declined to appear, and no hearing was held.

[22]*S.E.C.* v. *Eugene T. Ichinose, Jr.*, Civil Action No. 78-48 (D. Hawaii, February 15, 1978). Ichinose neither admitted nor denied the charges in the complaint.

[23]Ichinose's request for a hearing on this issue is denied.

[24]Ichinose also complains of supervisory restrictions imposed by the NASD on his present employment as a result of the statutory disqualification arising from the injunction entered against him. However, those restrictions are not before us in this proceeding.

[25]See *R. H. Johnson & Co.* v. *S.E.C.*, 198 F.2d 690, 695 (C.A. 2, 1952), *cert. denied*, 344 U.S. 855; *Schultz* v. *S.E.C.*, 614 F.2d 561, 568 (C.A. 7, 1980).

[26]See *Anthony J. Amato*, 45 S.E.C. 282, 285 (1973).

[27]See *Philip S. Sirianni*, Securities Exchange Act Release No. 17077 (August 20, 1980), 20 SEC Docket 971, 974.

[28]We have fully considered all of the arguments made by Ichinose. His contentions are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed in this opinion.

SECURITIES EXCHANGE ACT OF 1934
Release No. 17381/December 16, 1980

Admin. Proc. File No. 3-5839

In the Matter of the Application of

EUGENE T. ICHINOSE, JR.
5761 Haleola Street
Honolulu, Hawaii

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by the National Association of Securities Dealers, Inc. against Eugene T. Ichinose, Jr. be, and it hereby is, affirmed.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17382/December 16, 1980

In the Matter of

PACIFIC STOCK EXCHANGE INCORPORATED
301 Pine Street
San Francisco, California 94104

(SR-PSE-80-25)

NOTICE OF FILING OF PROPOSED RULE CHANGE AND ORDER APPROVING PROPOSED RULE CHANGE

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on December 8, 1980, the Pacific Stock Exchange Incorporated ("PSE") filed with the Commission copies of a proposed rule change which replaces a requirement that members submit monthly reports of certain uncovered short positions with a requirement that such reports be submitted only on request.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-PSE-80-25.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. §552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that a similar proposal by the Chicago Board Options Exchange, Incorporated[1] for which opportunity for public comment was provided, was recently approved by the Commission.[2]

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[1]See File No. SR-CBOE-80-24.

[2]Securities Exch;ange Act Release No. 17244 (October 24, 1980).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17383/December 17, 1980

FORM U-4, THE UNIFORM APPLICATION FOR SECURITIES INDUSTRY REGISTRATION

ACTION: Adoption of revised Form U-4.

SUMMARY: The Commission is adopting revised Form U-4, the Uniform Application for Securities Industry Registration, which was developed and submitted to the Commission by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators). The revised form will, among other things, reflect the provisions of the Securities Acts Amendments of 1975 (the "1975 Amendments").

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. York, Division of Market Regulation, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 272-2376.

SUPPLEMENTARY INFORMATION: The Commission solicited comments to the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).[1] This action adopts the revised form, essentially as proposed, with minor modifications made in response to comments on the proposal.

Background

Form U-4, the Uniform Application for Securities Industry Registration,[2] is the personnel form which the Commission requires to be filed by a registered broker or dealer who is not a member of a registered national securities association, on behalf of associated persons of such broker or dealer. The present Form U-4 is also accepted as a uniform application form for associated persons by 46 states, all national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").[3]

The form was developed by an ad hoc committee of the North American Securities Administrators Association ("NASAA," the organization of state securities administrators) which included representatives from the Commission, the NASD, the New York Stock Exchange, Inc. ("NYSE"), and other self-regulatory organizations. It was adopted in its present form in 1975.[4]

The form was adopted prior to the enactment of the Securities Acts Amendments of 1975 (the "1975 Amendments") and therefore did not reflect fully and accurately the provisions of Section 3(a)(39)(D) and (E)[5] and Section 15(b)(4)(A)[6] of the amended Securities Exchange Act of 1934 (the "Act"). Section 3(a)(39) of the Act designates five categories wherein a person is subject to a statutory disqualification within respect to membership or participation in, or association with a member of, a self-regulatory organization.[7] Section 15(b)(4) of the

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[1]45 FR 47853 (July 17, 1980); 20 SEC Docket 640.

[2]17 CFR §249.502. Formerly, the Uniform Application for Securities and Commodities Industry Registration. Because the commodities industry does not use Form U-4, reference to that industry has been omitted from the name of the form.

[3]In regard to representatives associated with brokers or dealers, the term "application" is somewhat inappropriate since, unless a disqualifying condition exists or the requisite examination requirement is not met, acceptance of the form for filing automatically qualifies the individual.

[4]Securities Exchange Act Release No. 11424 (May 16, 1975), 7 SEC Docket 2.

[5]15 U.S.C. §78c (1976).

[6]15 U.S.C. §78o (1976).

[7]The substance of Section 3(a)(39)(D) and (E) of the Act is reflected in questions 28B and 29B of the revised Form U-4.

Act indicates the type of conduct for which the Commission may impose limitations upon a broker or dealer and persons associated with a broker or dealer.[8]

Therefore, the NASAA ad hoc committee reconvened to consider the necessary revisions of the form. In addition to reflecting the 1975 Amendments it was apparent that certain other revisions of Form U-4, both in format and substance, were appropriate. For example, the committee decided to solicit additional data from the applicant so that the form could be used as a basis for completing Item 10(a) of Form BD relating to statutory disqualifications.[9] Furthermore, certain revisions to the form were necessary so that it would continue to be accepted as a uniform form by the states and the self-regulatory organizations.[10]

The NASAA ad hoc committee completed its work on Form U-4 in February 1980 and submitted the revised form to the NASAA Uniformity Committee in April 1980. Subsequently, the Uniformity Committee requested comments from the NASAA membership concerning the revised form.

In addition to the comments of the NASAA membership, the NASAA Uniformity Committee sought public reaction to the revised form prior to adoption by the Board of Directors. Accordingly, the Commission published for comment the proposed revisions of Form U-4 in Securities Exchange Act Release No. 16977 (July 10, 1980).

The NASAA ad hoc committee met in September 1980 to consider the comments received by NASAA and the Commission concerning the revised form. The majority of the comments supported the revised form. However, the committee decided to make the following changes to the previously proposed form: 1) the name of the form has been changed (see footnote 2); 2) the certification clauses on page 4 have been rewritten for improved clarity; and 3) the form has been adapted for computer use. Subsequently, the NASAA Board of Directors adopted the form as amended and recommended by the advisory committee. The Commission has also reviewed the public omments and concurs with the actions of the ad hoc committee. As a result, the Commission adopts the revised Form U-4.

II. *The Revised Form U-4*

The overall structure of the revised form is similar to the old form. The first part of the form is to be completed by both the applicant and the broker or dealer with which the applicant will be associated. It contains general information regarding the self-regulatory organizations and jurisdictions with which the associated person is to be registered and the identify of the prospective employer. It also indicates the capacity in which the applicant will be employed and whether or not he or she has passed an examination for registration or been granted a waiver or qualified for an exemption.

The second part of the form, to be completed by the applicant, contains information concerning the person's personal and educational background and business associations; and series of questions concerning any disciplinary proceedings or court actions brought against such person; and information about criminal convictions. The form also requires various certifications by both the broker or dealer and the applicant.

Several changes in format have been made in order to improve clarity and eliminate duplicative information. As noted above, new questions have been added in order to include information required by the 1975 Amendments and Item 10(a) of Form BD. The revised Form U-4 continues to request the information required by Rule 17a-3(a)(12) and therefore may be used by a broker or dealer to satisfy the record retention requirements imposed by that rule.[11]

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[8]The substance of Section 15(b)(4)(A) of the Act is reflected in question 28A of the revised Form U-4.

[9]An affirmative answer to those questions on Form U-4 relating to statutory disqualifications will alert a broker or dealer that Item 10(a) of Form BD must be amended to reflect this information.

[10]During its April 1980 meeting, the NASAA membership approved the implementation of a Central Registration Depository ("CRD"), to be activated on January 1, 1981. The initial focus of the CRD is a consolidated nationwide system for registering securities agents. Therefore, Form U-4 is essential to the orderly development of the CRD program.

[11]17 CFR §240.17a-3(a)(12). Rule 17a-3(a)(12) requires an associated person to complete a questionnaire or application for employment to be

Accordingly, the Commission is amending Title 17, Chapter II, of the Code of Federal Regulations by revising §249.502.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§249.502 Form U-4, personnel form, to be filed by registered brokers or dealers not members of a registered national securities association, for associated persons of such brokers or dealers.

Copies of the revised form have been filed with the Office of the Federal Register as part of the original document. Copies may be obtained from the Office of Publications, 500 North Capitol Street, N.W., Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons
Secretary

SECURITIES EXCHANGE ACT OF 1934
Release No. 17384/December 17, 1980

Admin. Proc. File No. 3-5985

In the Matter of

PAINE, WEBBER, JACKSON & CURTIS INCORPORATED
(BD 8-16267)

PAINE WEBBER INCORPORATED

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 15(b), 19(h) AND 15(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934, AND FINDINGS, OPINION AND ORDER OF THE COMMISSION

I.

The Commission's official public files disclose that:

A. Paine, Webber, Jackson & Curtis Incorporated ("Paine Webber") is a Delaware corporation with its principal place of business located at 140 Broadway, New York, New York. Paine Webber is registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and as an investment adviser pursuant to Section 203(e) of the Investment Advisers Act of 1940. Paine Webber is a member of the New York and American Stock Exchanges and most other securities exchanges.

B. Paine Webber Incorporated ("PWI") is a Delaware corporation with its principal place of business located at 140 Broadway, New York, New York. PWI's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York and Pacific Stock Exchanges. Paine Webber is a wholly owned subsidiary of PWI. During all times relevant herein, PWI has filed quarterly reports with the Commission pursuant to Section 13(a) of the Exchange Act and the rules thereunder.

II.

The Commission deems it appropriate and in the public interest that pursuant to Sections 15(b) and 19(h) of the Exchange Act, proceedings be instituted with respect to Paine Webber and pursuant to Sections 15(b) and 15(c)(4) of the Exchange Act, proceedings be instituted with respect to PWI.[1] In these proceedings, the Commission alleges that Paine Webber wilfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3, 17a-3, 17a-11 and 17a-13 thereunder, and that PWI failed to comply with Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder.

Simultaneously with the institution of these proceedings, Paine Webber and PWI have submitted Offers of Settlement ("Offers") for the purpose of resolving these proceedings. Under the terms of their Offers, Paine Webber and PWI, solely for the purposes of these proceedings and any other

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Footnote 11 continued
approved by the member, broker or dealer. The information required by Rule 17a-3(a)(12) is covered in the background section and several of the questions of Form U-4. *See, e.g.*, questions 27F and 28C of the revised form.

[1]The Commission also brings this proceeding against PWI as a person associated with a broker-dealer registered with the Commission.

proceedings brought by the Commission, and without admitting or denying any of the allegations, facts, findings or other conclusions contained herein (other than those facts previously contained in certain filings made with the Commission), consent to the issuance of this Order of the Commission.

After due consideration of the Offers and upon the recommendation of the staff, the Commission has determined that it is appropriate and in the public interest to accept the Offers and to order the sanction and undertakings contained in the Offers and, accordingly, IT IS ORDERED that proceedings pursuant to Section 15(b), 15(c)(4) and 19(h) of the Exchange Act be, and they hereby are, instituted.

III.

OPINION

Background

Paine Webber is among the largest New York Stock Exchange members in terms of total securities commission revenues. The firm provides individual and institutional clients with a full range of financial services, including the purchase and sale of securities, options and commodities. It also provides corporate and governmental clients with investment banking services and acts as a dealer in corporate, municipal and United States government and agency securities. Paine Webber has a branch office system comprised of more than 200 offices located throughout the United States, a small number of representative foreign offices, and in excess of 400,000 customer accounts.

After the close of business on December 31, 1979, Blyth Eastman Dillion & Co. Incorporated ("BEDCO"), a registered broker-dealer, was merged into PWI. This resulted in the addition of approximately 100,000 BEDCO customer accounts into Paine Webber's operating system. The merger, one of the largest in the securities industry, brought together two major investment firms with total revenues of over $900 million and total capitalization of in excess of $220 million.

As a result of complications resulting from integrating BEDCO customer and other accounts into the Paine Webber operating system, compounded by the sustained high level of securities trading activity, Paine Webber encountered processing and clearing problems beginning in late December 1979. As a consequence of these operational problems, Paine Webber's books and records became substantially unreliable in major respects. For instance, the firm experienced numerous suspense account items,[2] a high volume of stock record breaks,[3] and great difficulty in processing securities transactions for both customer and proprietary accounts. Further, as a result of a New York Stock Exchange review of Paine Webber's FOCUS Report for the month ending May 30, 1980, the Exchange has recently advised the firm of a number of potential capital charges, directly attributable to the condition of the firm's books and records, which would have been substantial and would have also resulted in a violation of the Commission's net capital rule as at May 30.[4]

In order to deal with the existing operational problems, the firm diverted significant resources from the normal processing of daily transactions. This diversion, however, resulted in the creation of additional problems, including the inability to process current transactions and a further compounding of the post-merger operational difficulties.

Since the inception of its operational problems, Paine Webber has changed management at the highest levels, including hiring a new executive vice president with responsibility over operations. In addition, the firm has made a substantial commitment to upgrade its operational systems and has taken steps to enhance its net capital position. Finally, to redress its operational problems, the firm has incurred substantial additional personnel costs, including overtime costs and outside consultant fees.

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[2]A suspense account occurs when the firm cannot identify the proper account for which securities and/or monies have been received.

[3]A stock record break occurs when there are discrepancies in the firm's records concerning securities positions, i.e., the long positions do not balance with the short positions.

[4]The Exchange has initiated proceedings against Paine Webber with respect to which the firm has entered into a stipulation and consent. The Commission, in issuing this Order, has taken into consideration the Exchange proceeding.

The undertakings set forth in the Offers will enable the Commission and its staff to monitor closely the firm's efforts to overcome the balance of its operational difficulties and to take such other steps as may be appropriate in the event that these problems recur or that additional problems emerge.

Quarterly Securities Count

A critical element in determining any brokerage firm's financial and operational condition is the quarterly count ("box count") of all its securities positions pursuant to Section 17(a) of the Exchange Act and Rule 17a-13(b) thereunder. In substance, this rule requires broker-dealers to physically examine, count and verify all securities positions (e.g., equities, corporate bonds and municipal and government securities), and to compare the results of such count and verification with such firm's records at least once in each calendar quarter. The rule then requires the firm to record on its books and records any unresolved differences[5] within seven business days after the date of each required box count. The seven business days should be measured from the date of the commencement of the box count. Unresolved short differences must be deducted from the firm's net capital.[6]

During the first two calendar quarters of 1980, Paine Webber conducted only one complete count of its securities positions, thereby violating Rule 17a-13. Moreover, although the bulk of the box count (i.e., that part which was done only once during the first two calendar quarters of 1980) was begun on March 28, 1980, the short differences resulting from this count were not recorded on the firm's books until May 22, 1980 (equity securities) and May 28, 1980 (corporate bonds), far in excess of the seven business days permitted by Rule 17a-13. Had the firm recorded the short differences on its records seven business days after March 28, 1980, the resulting charge to net capital could have been so substantial as to have made it likely that the firm would have been required to not expand or to reduce significantly its broker-dealer business or to cease doing business in accordance with the net capital requirements of the New York Stock Exchange and Section 15(c)(3) of the Exchange Act.

Books and Records

Section 17(a) of the Exchange Act and Rule 17a-3(a) thereunder require every broker-dealer to make and keep current various books and records reflecting, among other things, the securities and money positions of customers and the firm itself. This rule also requires the firm to make and keep a computation of its current net capital. Implicit in this rule is a requirement that the firm's books and records be accurate at all times. As noted above, particularly during the first six months of 1980, Paine Webber's books and records were substantially unreliable in major respects and thus did not properly reflect the firm's securities activities and financial condition. Accordingly, during this period Paine Webber did not make and keep current its books and records, as required by Section 17(a) of the Exchange Act and Rule 17a-3(a).

Other Violations

During the relevant period, Paine Webber's operational problems resulted in violations of various other provisions of the Exchange Act. For example, Paine Webber violated Section 15(c)(3) of the Exchange Act and Rule 15c3-3(e) thereunder, which provisions require all broker-dealers to segregate funds sufficient for the protection of customers; the amount required to be deposited in a Special Reserve Bank Account for the Exclusive Benefit of Customers is to be computed in accordance with a formula set forth in the rule. In February 1980, Paine Webber inaccurately computed the amount to be deposited in the aforementioned bank account.

Similarly, during the relevant period, Paine Webber did not make and keep current an accurate record of the computation of its net capital as of the trial balance date, in violation of Section 17(a) of the

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[5]A securities count difference results when the box count reflects positions different, either long or short, than those reflected in the firm's books. A short difference occurs when the firm cannot account for securities which, according to its records, should be in its possession or under its control.

[6]With few exceptions, the net capital provisions of the Exchange Act (Sections 15(c)(3) and Rule 15c3-1 thereunder) prohibit brokerage firms from doing business unless they have a sufficient amount of net capital computed in accordance with the net capital rule.

Exchange Act and Rule 17a-3(a)(11) thereunder. Finally, the firm did not provide the Commission with the requisite telegraphic notice of its failure to make and keep current and accurate: (1) its ledgers (or other records) reflecting all long and short stock record differences; and (2) its net capital computation, in violation of Section 17(a) of the Exchange Act and Rule 17a-11(c) thereunder.

PWI

Pursuant to Section 13(a) of the Exchange Act and Rule 13a-13 thereunder, PWI is required to file quarterly reports with the Commission on Form 10-Q for the first three fiscal quarters of each fiscal year. In addition to information expressly required to be included in a report filed pursuant to Section 13 of the Exchange Act, Rule 12b-20 requires the inclusion of such further material information as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

On May 16, 1980, PWI filed with the Commission its quarterly report on Form 10-Q for the three month period ended March 31, 1980.[7] In connection with the discussion concerning reserves established for potential charges to the capital of Paine Webber, PWI's principal subsidiary, the Form 10-Q (at page 10, Note 7, "Reserves") disclosed that:

> . . .a security count was commenced under the control of our independent public accountants. The reconciliation of the March 28, 1980 security count, while substantially complete, has not yet been finalized.

This statement was not complete in that it omitted to disclose that had Paine Webber recorded on its books and records the unresolved differences arising out of its March 28, 1980 quarterly security count in a timely manner as required by Rule 17a-13(b)(5), the resulting charge to the firm's net capital could have been so substantial as to have made it likely that the firm would have been required to not expand or to reduce significantly its broker-dealer business or to cease doing business, in accordance with the net capital requirements of Section 15(c)(3) of the Exchange Act and the rules of the New York Stock Exchange.

IV.

On the basis of this Order and the Offers, the Commission finds that:

A. Paine Webber wilfully violated Sections 15(c) and 17(a) of the Exchange Act and Rules 15c3-3, 17a-3, 17a-11 and 17a-13 thereunder; and

B. PWI filed with the Commission a quarterly report on Form 10-Q for the three month period ended March 31, 1980 which failed to comply with Section 13(a) of the Exchange Act and Rules 13a-13 and 12b-20 thereunder.

V.

On the basis of this Order and the Offers, it is hereby ORDERED that:

A. Paine Webber is censured;

B. Paine Webber shall conduct all securities counts in accordance with Rule 17a-13 of the Exchange Act. In connection with the securities counts to be conducted by Paine Webber for all calendar quarters through December 31, 1981, Paine Webber shall file with the Commission's staff ("staff"):

(1) At least fifteen calendar days before the first day of each calendar quarter, a schedule setting forth the dates of the commencement of its securities count for that quarter and the date on which all unresolved differences arising out of the securities count shall be recorded on Paine Webber's books kand records, which recording date shall not be later than seven business days after the commencement of the securities count;[8] and

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[7]During the period between January 28, 1980 and May 15, 1980, PWI, through certain press interviews and releases, disclosed the existence of operational problems at Paine Webber. These press items relate to, but are not the subject of, this proceeding. The Commission believes that several of the aforementioned press items may have been potentially misleading in that they could have more fully portrayed the extent and ramifications of Paine Webber's operational problems.

[8]With respect to those positions for which a verification ("confirmation") is required to be sent in accordance with Rule 17a-13(b)(3), the recording date for differences disclosed in the confirmation process shall be the earlier of seven business days after the confirmation is returned or twenty-two business days after the commencement of the

(2)(a) Within ten business days after the commencement of the securities count, a report reflecting the specific internal audit procedures utilized to conduct the securities count and the results of the count to date, including the market value of long and short differences; and within twenty-five business days after the commencement of the securities count, a follow-up report reflecting the completed results of the count, including the total market value of all long and short differences (all such reports will include an acknowledgement that the short differences have been comprehended as charges to Paine Webber's net capital computations); or

(b) If a cyclical count is conducted, then within ten business days after the commencement of each segment of each cyclical securities count ("segment"), a report reflecting the specific internal audit procedures utilized to conduct that segment and the results of that segment to date, including the market value of long and short differences; and within twenty-five business days after the commencement of each segment, a follow-up report reflecting the completed results of that segment, including the total market value of all long and short differences (all such reports will include an acknowledgement that the short differences have been comprehended as charges to Paine Webber's net capital computations).

C. Prior to December 31, 1981, Paine Webber shall neither acquire the business of, nor otherwise combine or merge with, any other broker-dealer and it shall not make any significant expansion of its securities broker-dealer activities except in accordance with arrangements approved by the staff. Paine Webber shall not otherwise increase its business to a level whereby its ability to execute and process its securities transactions will be materially adversely affected;

D. Paine Webber's books and records shall be made and kept current in compliance with the requirements of Section 17 of the Exchange Act and the rules and regulations thereunder;

E. Paine Webber shall, through March 31, 1981, furnish the staff with those weekly statistical reports summarizing its operational performance which it is presently furnishing the staff; from April 1, 1981 through December 31, 1981, Paine Webber shall furnish the staff with monthly statistical reports summarizing such performance or, if requested by the staff, the weekly reports shall continue;

F. With respect to any material adverse change through December 31, 1981 in Paine Webber's financial or operational condition discovered by, or otherwise coming to the attention of, Paine Webber, PWI or its independent auditors, whether or not reflected in any report required to be filed herein, Paine Webber shall (1) immediately notify the staff of the change and what steps it will take to rectify the change and (2) thereafter report to the staff on a continuing basis with respect to the status of its corrective actions; and

G. Paine Webber shall through December 31, 1981:

(1) Engage its independent auditors to review, on a quarterly basis, Paine Webber's FOCUS Reports and file with the staff a report in accordance with procedures set forth in the letter previously submitted by Arthur Young & Co., Paine Webber's present independent auditors; and

(2) In addition to other reports and procedures referred to herein, review its operational performance, compliance with specified regulatory provisions and customer complaints, and submit reports to the staff in accordance with procedures set forth in a letter previously submitted by Paine Webber.

VI.

On the basis of this Order and the Offers, it is hereby ORDERED that PWI shall:

A. File promptly an Amendment to Report on Form 8 which shall contain a copy of the Order as an exhibit and shall amend PWI's Quarterly Reports on Form 10-Q for the quarters ended March 31, 1980 and June 30, 1980, with reference to Paine Webber's March 28, 1980 securities count and the New York Stock Exchange's review of Paine Webber's FOCUS report for the month ending May 30, 1980.

Footnote 8 continued

securities count, in the event that the confirmation is not returned within fifteen business days after the commencement of the count.

B. Comply promptly and fully in all material respects with the Exchange Act, including the reporting and dissemination of information requirements thereof, by making filings with the Commission and public announcements concerning the existence and consequences of any material operational problems of Paine Webber, including material noncompliance with the sections and rules of the Exchange Act as are alleged to have been violated in this Order.

C. Send to the audit committee of the PWI board of directors, which consists entirely of independent directors, all reports required to be filed with the staff by Paine Webber and its independent auditors pursuant to the Order, not later than the same day as the reports are filed with the staff; and direct such committee to file with the staff and with PWI's board of directors, on a quarterly basis through December 31, 1981, a written report concerning whether, in its reasonable judgment, Paine Webber is in compliance in all material respects with the terms, conditions and undertakings agreed to by Paine Webber in the Offer, including compliance with the sections and rules of the Exchange Act as are alleged to have been violated in the Order.

VII.

On the basis of this Order and the Offers, it is further ORDERED that:

If the staff shall allege that there has been a material breach of any of the terms, conditions and undertakings set forth in this Order or the Offers, including material violations of the sections and rules of the Exchange Act as are alleged to have been violated in the Order, a hearing may be convened in accordance with the Commission's Rules of Practice, in order to determine whether such a breach has occurred and, if so, what, if any, remedial action is appropriate in the public interest against Paine Webber and/or PWI, as the case may be.

By the Commission.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21839/December 12, 1980

In the Matter of

CENTRAL AND SOUTH WEST CORPORATION
2700 One Main Place
Dallas, Texas 75250

(70-6529)

NOTICE OF PROPOSED ISSUANCE AND SALE OF COMMON STOCK PURSUANT TO DIVIDEND REINVESTMENT AND STOCK PURCHASE PLAN

NOTICE IS HEREBY GIVEN that Central and South West Corporation ("CSW"), a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete description of the proposed transaction.

By orders dated January 12, 1977, April 24, 1978, April 20, 1979, and January 16, 1980, in File No. 70-5948 (HCAR Nos. 19850, 20514, 21012, and 21396), CSW was authorized to issue and sell through December 31, 1981, not to exceed 1,000,000 shares of its authorized and unissued common stock, par value $3.50 per share, pursuant to CSW's Automatic Dividend Reinvestment and Stock Purchase Plan ("Plan"). As of September 30, 1980, CSW has issued and sold 661,920 shares of its common stock pursuant to the Plan.

CSW now proposes to increase the number of shares of common stock authorized to be issued under the Plan by 3,000,000 shares ("New Shares") to bring the total number of shares authorized to be issued under the Plan to 4,000,000 shares and to extend the time period authorized for such issuance through December 31, 1985. No other changes in the Plan are contemplated at this time.

It is stated that since the effective date of the Plan,

participation by shareowners has increased each year. Based on CSW's current estimate, the Plan will generate approximately $44,000,000 for the period October 1, 1980, to December 31, 1985. Assuming that the purchase price of CSW common stock were $13.50 per share, approximately 3,259,259 additional shares would be issued under the Plan. The additional 3,259,259 shares added to the 661,920 shares already issued under the Plan would result in a total requirement of 3,921,179 shares. CSW believes that the new total of 4,000,000 shares is necessary to afford adequate leeway for the purchase of additional shares by the Plan while providing for the possibility that the purchase price per share may be less than the assumption thereby requiring substantially more additional shares.

Proceeds derived by CSW from the sale of the New Shares will be applied through loans or equity contributions towards the continuing construction programs of CSW's subsidiary companies. Such loans or equity contributions will be the subject of additional filings with the Commission.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,400. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 12, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereunder or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21840/December 12, 1980

In the Matter of

INDIANA & MICHIGAN ELECTRIC COMPANY
Fort Wayne, Indiana

(70-6362)

ORDER AUTHORIZING PROPOSED CHANGES IN SHORT-TERM BORROWING AUTHORIZATION

Indiana & Michigan Electric Company ("I&M"), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed and amended in this matter pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) promulgated thereunder concerning the following proposed transaction.

By prior orders in this proceeding (HCAR Nos. 21366, 2144, 21537, and 21595 dated December 28, 1979, February 21, 1980, April 24, 1980 and May 29, 1980, respectively), I&M has been authorized to issue and sell notes to banks and commercial paper to a dealer in an aggregate amount not to exceed $200,000,000 pursuant to lines of credit totalling $404,655,000 with 47 banks.

By post-effective amendment I&M proposes to issue and sell, from timne to time prior to January 1, 1982, short-term notes to banks and commercial paper to a dealer in commercial paper maturing no later than June 30, 1982. I&M also proposes to increase its credit arrangements with 47 banks to total $429,375,000. This represents an increase of $25 million in lines of credit shared with affiliates, including Columbus and Southern Ohio Electric

Company ("CSOE"). Fees and balances for shared lines of credit are borne by I&M and participating affiliates in proportion to their respective projected maximum need for such credit facilities. Although the shared lines of credit have been increased, the participation by CSOE will have the effect of reducing the fees and balances to be borne by I&M. The previously ordered limit of $200,000,000 on outstanding notes will remain the same. The presently estimated cost of I&M's consolidated construction program for 1981 is approximately $320 million.

The fees and expenses to be incurred in connection with the proposed transaction will not exceed $500. No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Due notice of the filing of said post-effective amendment to the application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21789), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act, except that certificates thereunder shall be filed quarterly.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21841/December 15, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
New Orleans, Louisiana

ARKANSAS-MISSOURI POWER COMPANY
Blytheville, Arkansas

(70-5936)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES BY SUBSIDIARY COMPANY AND ACQUISITION THEREOF BY HOLDING COMPANY

Arkansas-Missouri Power Company ("Ark-Mo"), a subsidiary company of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(b), 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

By orders in this proceeding dated December 28, 1976, December 29, 1977, December 20, 1978, and December 28, 1979 (HCAR Nos. 19826, 20349, 20841, and 21370), Ark-Mo was authorized to issue and sell to Middle South from time to time through December 31, 1980, and Middle South was authorized to acquire, up to $2,100,000 of Ark-Mo's unsecured short-term promissory notes of a maturity of not more than twelve months. Presently, $2,100,000 of such notes are outstanding, with a maturity of December 31, 1980.

Ark-Mo now proposes to extend such $2,100,000 of short-term borrowings for one year. The proposed notes will be in the form of unsecured promissory notes payable not more than twelve months from the date of issuance (and in any event to mature not later than December 31, 1981) and bearing interest at a rate per annum equivalent to the sum of 3/4 of 1% and 105% of the commercial loan rate of Manufacturers Hanover Trust Company from time to time in effect on borrowings having a 90-day maturity by its most responsible and substantial domestic corporate borrowers. The notes will, at the option of Ark-Mo, be prepayable in whole or in part at any time without premium or penalty.

The net proceeds to be received by Ark-Mo from the issuance and sale of the proposed notes will be applied to the payment at maturity of Ark-Mo's presently outstanding borrowings from Middle South.

It is stated that later, in anticipation of the proposed consolidation of the electric properties of Arkansas Power & Light Company and Ark-Mo (File No. 70-6326), Ark-Mo intends to issue and sell to Middle South additional shares of its authorized but unissued common stock, $2.50 par value, in exchange for the surrender by Middle South to Ark-Mo for cancellation of the $2,100,000 principal amount of unsecured promissory notes presently proposed to be issued and sold by Ark-Mo and acquired by Middle South.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21791), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended by said post-effective amendment, be granted and permitted to become effective:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application-declaration, as amended by said post-effective amendment, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21842/December 15, 1980

In the Matter of

MIDDLE SOUTH UTILITIES, INC.
225 Baronne Street
New Orleans, Louisiana 70112

ARKANSAS POWER & LIGHT COMPANY
Post Office Box 551
Little Rock, Arkansas 72203

(70-6416)

NOTICE OF PROPOSAL TO EXTEND TIME PERIOD DURING WHICH SUBSIDIARY MAY SELL COMMON STOCK TO ITS PARENT

NOTICE IS HEREBY GIVEN that Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Arkansas Power & Light Company ("Arkansas"), an electric utility subsidiary of Middle South, have filed a post-effective amendment to an application-declaration previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b), 9(a), 10 and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By an order dated March 25, 1980 in this matter (HCAR No. 21493) Arkansas was authorized to issue and sell to Middle South, from time to time during the 1980 calendar year, up to 5,600,000 shares of Arkansas' common stock, par value $12.50 per share. At December 1, 1980 Arkansas had issued and sold to Middle South 2,400,000 shares of common stock pursuant to such authorization for an aggregate price of $30,000,000. Arkansas had not sold the remaining 3,200,000 shares which it was previously authorized to sell in 1980 and does not intend to make such sales during 1980.

Arkansas and Middle South state that it is preferable that the sale of the remaining 3,200,000 shares of common stock be timed to coincide with Arkansas' cash needs from time to time during the 1981 calendar year. Such needs are determined primarily by the nature and pace of Arkansas' construction program. Accordingly, it is proposed that the time

during which Arkansas may sell the remaining 3,200,000 common shares to Middle South be extended through the 1981 calendar year, such sales to occur in such installments and at such times as will be determined by Arkansas and Middle South.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $2,000. It is stated that the Arkansas Public Service Commission and the Tennessee Public Service Commission have jurisdiction over the proposed transaction. It is stated that no other state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 8, 1981, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21843/December 15, 1980

In the Matter of

KENTUCKY POWER COMPANY
Ashland, Kentucky

(70-6511)

ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS

Kentucky Power Company ("Kentucky"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application and amendments thereto with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions.

Kentucky proposes to issue and sell short-term notes to a group of banks in an aggregate amount not to exceed $50,000,000 outstanding at any one time. As of September 18, 1980, Kentucky had $13,250,000 aggregate principal amount of short-term debt outstanding. It is proposed that the notes to banks be issued from time to time and be renewed from time to time prior to January 1, 1982, as funds may be required, provided that none of such notes shall mature later than June 30, 1982.

Kentucky has established lines of credit with 20 banks under which it may borrow an aggregate amount not to exceed $371,900,000 outstanding at any one time. The fees and balances for these lines of credit are borne by Kentucky and participating affiliates of Kentucky in proportion to their respective projected maximum need for such credit facilities. The addition of Columbus and Southern Ohio Electric Company, an affiliate of Kentucky, to this participation has the effect of reducing the relative amount of such fees and balances to be borne by Kentucky.

Each note will be prepayable by Kentucky at any time without premium or penalty. It is stated that the effective cost of money to Kentucky under any of its arrangements with the various banks, assuming full use of the line of credit, would not exceed 125% of the prime commercial rate in effect from time to time, or not more than 25% on the basis of a prime commercial rate of 20%.

The proceeds of the short-term notes will be added to the general funds of Kentucky and used to pay the general obligations of Kentucky, including expenses incurred in its various construction projects and for other corporate purposes. The estimated cost of its construction program for the year 1981 is approximately $47,000,000.

Kentucky requests that the certificates of notification under Rule 24 with respect to the issuance by Kentucky of the notes to banks be filed quarterly.

No state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said application has been given in the manner prescribed in Rule 23 promulgated under the Act (HCAR No. 21787), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that said application, as amended, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 21844/December 15, 1980

In the Matter of

APPALACHIAN POWER COMPANY
Roanoke, Virginia

(70-6363)

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE AND SALE OF SHORT-TERM NOTES TO BANKS AND COMMERCIAL PAPER

Appalachian Power Company ("Appalachian"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed with this Commission a post-effective amendment to its application in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder regarding the proposed transactions.

By orders in this proceeding dated December 21, 1979, February 21, 1980, and May 30, 1980 (HCAR Nos. 21353, 21445, and 21599), Appalachian was authorized to issue and sell, from time to time prior to January 1, 1981, short-term notes to a group of banks and commercial paper to a dealer in an amount of up to $200,000,000 outstanding at any one time, such notes and commercial paper maturing no later than June 30, 1981.

It is now proposed that such notes to banks and commercial paper be issued and sold from time to time prior to January 1, 1982, with a maturity no later than June 30, 1982. Applachian has credit arrangements totaling $463,770,000 with 94 banks. This represents an increase of $25,000,000 in lines of credit shared with affiliates, including Columbus and Southern Ohio Electric Company. Fees and balances for shared lines of credit are borne by Appalachian and participating affiliates in proportion to their respective projected maximum need for such credit facilities. Although the shared lines of credit have been increased, the participation by Columbus and Southern Ohio Electric Company will have the effect of reducing the fees and balances to be borne by Appalachian.

The proceeds of the notes to banks and commercial paper will be used to pay the general obligations of Appalachian, including expenses incurred in its various construction projects. The estimated cost of its construction program for 1981 is approximately $215,000,000.

The State Corporation Commission of Virginia has authorized the proposed transactions. No other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of said post-effective amendment to the application has been given in the manner prescribed in Rule 23 promulated under the Act (HCAR No. 21785), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest of investors and consumers that said application, as amended by said post-effective amendment, be granted:

IT IS ORDERED, pursuant to the applicable provisions of the Act and rules thereunder, that said application, as amended by said post-effective amendment, be, and it hereby is, granted, effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

TRUST INDENTURE ACT OF 1939

TRUST INDENTURE ACT OF 1939
Release No. 601/December 12, 1980

MORAN ENERGY INC.

File No. 22-9567

A notice has been issued giving interested persons until January 5, 1981, to request a hearing on an application of Moran Energy Inc., pursuant to Section 310(b)(1)(ii) of the Trust Indenture Act of 1939, declaring that the trusteeship of First City National Bank of Houston under an indenture qualified under the Trust Indenture Act and another indenture not so qualified, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify First National City Bank of Houston acting as trustee unc both indentures. (Rel. TI—)

INVESTMENT COMPANY ACT OF 1940

INVESTMENT COMPANY ACT OF 1940
Release No. 11490/December 15, 1980

SEE

SECURITIES ACT OF 1933
Release No. 6272/December 15, 1980

INVESTMENT COMPANY ACT OF 1940
Release No. 11491/December 12, 1980

In the Matter of

T. ROWE PRICE GROWTH STOCK FUND, INC.
ROWE PRICE NEW HORIZONS FUND, INC.
ROWE PRICE NEW ERA FUND, INC.
ROWE PRICE NEW INCOME FUND, INC.
ROWE PRICE PRIME RESERVE FUND, INC.
ROWE PRICE TAX-FREE INCOME FUND, INC.
ROWE PRICE INTERNATIONAL FUND, INC.
100 East Pratt Street
Baltimore, Maryland 21202

(812-4716)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT FOR EXEMPTION FROM SECTION 10(b)(2) OF THE ACT

NOTICE IS HEREBY GIVEN that T. Rowe Price Growth Stock Fund, Inc. ("Growth Stock Fund"), Rowe Price New Horizons Fund, Inc. ("New Horizons Fund"), Rowe Price New Era Fund, Inc. ("New Era Fund"), Rowe Price New Income Fund, Inc. ("New Income Fund"), Rowe Price Prime Reserve Fund, Inc. ("Prime Reserve Fund"), Rowe Price Tax-Free Income Fund, Inc. ("Tax-Free Fund"), and Rowe Price International Fund, Inc. ("International Fund")

(collectively referred to as the "Applicants"), all open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), filed an application on August 22, 1980, and an amendment thereto on November 12, 1980, pursuant to Section 6(c) of the Act for an order of the Commission exempting the Applicants and any other investment company or companies of which T. Rowe Price Associates, Inc. ("Price Associates"), or Rowe Price-Fleming International, Inc. ("Price-Fleming"), is the investment adviser from Section 10(b)(2) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that each of the Applicants is incorporated under Maryland law and currently sells its shares directly to the public, without the utilization of intermediary brokers and dealers. Each of the Applicants is a no-load fund which meets the requirements of Section 10(d) of the Act which permits investment companies meeting such requirements to have only one director who is not an interested person of their adviser. Price Associates serves as investment adviser to all the Applicants except International Fund, which is advised by Price-Fleming, a corporation jointly owned by Price Associates and Robert Fleming.

According to the application, each of the Applicants proposes to enter into an underwriting agreement with Rowe Price Marketing, Inc. ("Marketing"), a wholly-owned subsidiary of Price Associates, which, as agent, will offer Applicants' shares to investors in those states in which the shares are qualified for sale and in which Marketing is qualified as a broker-dealer. Applicants represent that Marketing's registration as a broker-dealer has been declared effective by the Commission and that Marketing has filed an application for membership with the National Association of Security Dealers, Inc. ("NASD"), which is pending approval. The application indicates that the proposed underwriting agreement will provide that Marketing accept orders for shares of the Applicants at net asset value without sales commission or sales load. Marketing will have no responsibility with respect to redemptions.

Section 10(b)(2) of the Act provides that no registered investment company shall use as a principal underwriter of securities issued by it, any director, officer or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any such principal underwriters.

According to the application, it has been the policy of each of the Applicants' board of directors to endeavor to have at least 40% of its members be disinterested persons of their respective investment advisers. The application states that the boards of directors of New Era Fund, New Income Fund, Prime Reserve Fund, and the International Fund have a majority of disinterested persons of Marketing, the proposed principal underwriter; that 50% of the directors of New Horizons are not interested persons of Marketing; and that at least 40% of the directors of Growth Stock Fund and Tax-Free Fund are not interested persons. The application states that, if the Applicants enter into underwriting agreements with Marketing, it is almost inevitable that all of their directors who are interested persons of Price Associates would also be interested persons of Marketing. Thus, Applicants seek an order pursuant to Section 6(c) of the Act exempting them and any other investment company advised by Price Associates or Price-Fleming from Section 10(b)(2) of the Act to permit up to 60% of their respective boards of directors to be interested persons of Marketing.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants state that the proposed change in the method of distribution will eliminate duplicative and burdensome state registrations of each of the Applicants as broker-dealers, broker-issuers or dealers. In addition, the application states that distribution of securities through an underwriter would significantly reduce the number of individual agent registrations in the various states. Applicants further represent that the proposed distribution method will subject Marketing and the Price

organization for the first time to broker-dealer regulation under the Securities Exchange Act of 1934 and the rules of the NASD.

According to the application, it is anticipated that sales and promotional expenses will continue to be borne by the Applicants' advisers under the proposed distribution method. In addition, Applicants intend to comply with the provisions of Section 10(d) which prohibits them from incurring sales and promotional expenses. Applicants also submit that the reasons for permitting an investment company which meets the requirements of Section 10(d) to have only one director completely independent of the investment adviser are equally persuasive for permitting it to have only one director who is not an interested person of a principal underwriter which is wholly owned by the investment adviser.

As a condition to any order granting the relief requested Applicants have undertaken that they (1) will maintain the composition of their respective board of directors so that at least 40% of its members are persons who are not interested persons of its adviser or principal underwriter, barring temporary periods where the percentage is less due to death, resignation, or removal of one or more directors; (2) obtain from Price Associates an undertaking that Marketing will remain a wholly-owned subsidiary of Price Associates continuously during the period the Applicants operate under the order; and (3) obtain from their advisers separate representations that they do not believe the institution of the proposed new distribution method will give rise to the need for an increase in the respective rates of advisory fees currently being paid by the Applicants for which they act as investment adviser.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 7, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11492/December 12, 1980

In the Matter of

LEHMAN MULTI-CURRENCY ASSETS FUND, INC.
55 Water Street
New York, New York 10041

(811-2855)

NOTICE OF FILING OF AN APPLICATION PURSUANT TO SECTION 8(f) OF THE ACT FOR AN ORDER DECLARING THAT APPLICANT HAS CEASED TO BE AN INVESTMENT COMPANY

NOTICE IS HEREBY GIVEN that Lehman Multi-Currency Assets Fund, Inc. ("Applicant"), an open-end, non-diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 23, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Maryland corporation. On July 31, 1978, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 with respect to an indefinite

amount of shares of its common stock, par value $1.00 per share. Such registration was declared effective on December 6, 1978, and Applicant commenced the initial public offering of its shares in July of 1979.

On March 31, 1980, Applicant's board of directors, by unanimous vote, adopted resolutions authorizing the liquidation and dissolution of Applicant. The stockholders of Applicant approved such resolution on May 20, 1980. Pursuant to the proposal for liquidation approved by Applicant's stockholders and upon expiration of the 60-day stockholder notice period prescribed by the Maryland General Corporation Law, Applicant distributed to all its stockholders a liquidating distribution equal to such stockholders' proportionate interests in Applicant's net assets. On June 11, 1980, Applicant filed articles of dissolution with the State of Maryland and, accordingly, Applicant has been dissolved under Maryland Law.

According to the application, Applicant has retained $375.00 of its assets in order to satisfy New York State and City Franchise Taxes for the fiscal year ended September 30, 1980, which are required to be paid on or before December 15, 1980. Applicant represents that it has no other assets and liabilities other than those described above, that it is not a party to any litigation or administration proceeding, and that it has no security holders. Applicant further represents that the expenses of liquidation amounted to about $5,859.00, approximately $515.00 of which was borne by Applicant's investment adviser, Lehman Management Co., Inc., with the remainder being allocated to Applicant's shareholders. Finally, Applicant states that it is not now engaged in, nor does it proposed to engage in, any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 7, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11493/December 16, 1980

INTERIM RULES EXEMPTING BUSINESS DEVELOPMENT COMPANIES AND CERTAIN OF THEIR AFFILIATES FROM PROVISIONS OF THE INVESTMENT COMPANY ACT

ACTION: Adoption of interim rules; request for comment.

SUMMARY: The Commission is adopting, on an interim basis, two rules under the Investment Company Act of 1940 as recently amended by the Small Business Investment Incentive Act of 1980. The first of these rules recognizes the intent of Congress to permit certain transactions between a business development company and a company controlled by it or certain affiliated persons of such latter company without requiring prior approval of the Commission. The second rule recognizes the intent of Congress to permit a business development company to acquire the securities of and operate a

wholly-owned small business investment company. The Commission is also soliciting public comment on whether these interim rules should be adopted as permanent ones.

EFFECTIVE DATE: December 16, 1980. Comments on the interim rules must be received by January 30, 1981.

ADDRESSES: All communications on the matters discussed in this release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-866 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Marsha Gilman, Esq. (202-272-3036), Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 21, 1980, the President signed into law amendments (the "1980 Amendments") to the Investment Company Act of 1940 (the "1940 Act") [15 U.S.C. 80a-1 *et seq.*], as Title I of the Small Business Investment Incentive Act of 1980 [Public Law No. 96-477]. The 1980 Amendments, which became effective immediately upon their signing by the President, represent the considerable efforts of Congress and numerous other participants, including representatives of the Commission and the "venture capital" industry, to enhance the flow of capital to small, developing businesses and financially troubled businesses. The 1980 Amendments make available to certain companies, defined as "business development companies," exemptions from certain provisions of the 1940 Act, and permit such companies to take advantage of a carefully-tailored pattern of substantive regulation which takes into account their special needs and characteristics, while at the same time preserving important investor protections.

A business development company is defined as a domestic, closed-end company[1] which is operated for the purpose of making certain types of investments[2] and which makes available significant managerial assistance[3] to the companies in which it invests. Generally, a company which elects to be treated as a business development company,[4] or intends within 90 days to so elect,[5] is exempt from certain provisions of sections 1 through 53 of the 1940 Act [15 U.S.C. 80a-1 through 15 U.S.C. 80a-52] and, in lieu of the provisions of sections 1 through 53 (except to the extent provided in sections 59 through 65 [15 U.S.C. 80a-58 through 15 U.S.C. 80a-64]), a carefully tailored regulatory structure is substituted.

In enacting this regulatory structure for business development companies, Congress sought to

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[1]A closed-end company is defined generally by section 5(a)(2) of the 1940 Act [15 U.S.C. 80a-5(a)(2)] as a company which does not issue any redeemable security.

[2]Section 55(a) of the 1940 Act [15 U.S.C. 80a-54(a)], in part, describes the securities of companies in which business development companies can invest. These securities generally must comprise at least 70 percent of the value of the business development company's investment assets. The companies in which business development companies can invest are primarily "eligible portfolio companies," which are defined in section 2(a)(46) of the 1940 Act [15 U.S.C. 80a-2(a)(46)]. The list of qualifying investments in section 55(a) is in keeping with the intent of the 1980 Amendments: to enhance the flow of capital to small, developing businesses and financially troubled businesses.

[3]The term "significant managerial assistance" is defined in section 2(a)(47) of the 1940 Act [15 U.S.C. 80a-2(a)(47)].

[4]A company may elect to be treated as a business development company by filing with the Commission a notification of election pursuant to section 54(a) [15 U.S.C. 80a-53(a)].

[5]A privately-held company which would be excluded from the definition of investment company except that it presently proposed to make a public offering of its securities may notify the Commission, pursuant to section 6(f)(2) [15 U.S.C. 80a-6(f)(2)], that it intends, within 90 days, to elect to be treated as a business development company.

encourage capital investment in small, developing businesses and financially troubled businesses.[6] It has come to the Commission's attention, however, that there are two instances in which these purposes may be impeded by what appear to be inadvertent drafting errors in the 1980 Amendments. First, under the 1980 Amendments, prior Commission approval would be required[7] for transactions in which a business development company and a company controlled by it or affiliated persons of such controlled company participate as principals. Second, a business development company is prohibited under these amendments from acquiring the securities of and operating a wholly-owned small business investment company ("SBIC"). The legislative history of the 1980 Amendments strongly suggests that Congress did not intend either result.

Therefore, in recognition of Congress' belief in the potential importance of business development companies to the American economy, the Commission has determined to issue, on an interim basis, two rules which it believes will correct the inadvertent consequences of the drafting errors and to solicit public comment on whether these interim rules should be adopted as permanent rules.

Transactions with Affiliates: Rule 57b-1

Section 17 of the 1940 Act [15 U.S.C. 80a-17], in relevant part, generally requires Commission approval before a registered investment company engages in transactions in which conflicts of interest may exist because of the participation of affiliated persons[8] of, or principal underwriters for, the company. This requirement ensures that no person who might be capable of overreaching an investment company be allowed to deal with it until the Commission has determined that the proposed transactions are fair and that there will not be any such overreaching. The Commission has promulgated rules exempting from the prohibitions of section 17 certain transactions as to which it has determined that the possibility that affiliated persons may overreach the investment company is remote.

Section 57 [15 U.S.C. 80a-56] is applicable to business development companies in lieu of those provisions of section 17 which relate to transactions by registered investment companies with affiliated persons.[9] The effects of these two sections are similar in that each reflects an intent to prohibit transactions in which business development

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[6]The legislative history of the bill which became the 1980 Amendments discusses the need for the legislation:

The Committee [on Interstate and Foreign Commerce] is well aware of the slowing of the flow of capital to American enterprise, particularly to smaller, growing businesses, that has occurred in recent years. The importance of these businesses to the American economic system in terms of innovation, productivity, increased competition and the jobs they create is, of course, critical. Hence, the need to reverse this downward trend is of compelling public concern. Without doubt, the slowdown that has occurred is the product of many economic forces quite apart from the costs of securities regulation—taxes and inflation principal among them—and the Congress has been separately addressing all these factors in a wide variety of ways. But no undue cost should be shielded from scrutiny. As but one means of dealing with the more general problem, this Bill seeks specifically to reduce some of the costs of government regulation imposed on the capital-raising process, to the extent that it can be done without sacrificing necessary investor protection.

H.R. Rep. No. 1341, 96th Cong., 2d Sess. 20 (1980) ["Committee Report"]. *See also* S. Rep. No. 958, 96th Cong., 2d Sess. 4 (1980).

[7]But see discussion in the text following note 16, *infra*, of existing Commission exemptive rules which are applicable to business development companies.

[8]The term "affiliated person" is defined in section 2(a)(3) of the 1940 Act [15 U.S.C. 80a-2(a)(3)].

[9]Section 57 separates into two groups persons related to a business development company and, depending upon the nature of that relationship, permits transactions with those persons to proceed after review and approval by either the Commission or the business development company's board of directors. The prohibited transactions set forth in sections 57(a) and 57(d) [15 U.S.C. 80a-56(a) and 15 U.S.C. 80a-56(d)] apply, respectively, to those persons set forth in sections 57(b) and 57(e) [15 U.S.C. 80a-56(b) and 15 U.S.C. 80a-56(e)]. Transactions of a business development company with persons not specifically identified in these sections can proceed without formal review by the Commission or the business development

companies or investment companies may be overreached by their respective affiliates. However, while Commission exemptive rulemaking under section 17 permits transactions between investment companies and their affiliates in those situations where the possibility of overreaching is remote, Congress incorporated directly into the 1940 Act similar permissive provisions with respect to transactions between business development companies and specified affiliated persons.

The exemptive rules under section 17 relate to transactions between an investment company and certain affiliated persons of the investment company.[10] Among others, non-controlled portfolio affiliates[11] of the investment company may participate in such transactions, as well as persons directly or indirectly controlled by the investment company.[12] Section 57 also prohibits transactions between a business development company and certain of its affiliated persons. However, non-controlled portfolio affiliates of a business development company are not among those persons whose participation in transactions with the business development company requires Commission approval (under section 57(c) [57 U.S.C. 80a-56(c)] or specific statutory findings regarding the transaction by the company's board of directors (under section 57(f) [15 U.S.C. 80a-56(f)].[13] The legislative history of the 1980 Amendments indicates that Congress also did not intend to require Commission approval or such specific statutory findings by the board of directors of a business development company for transactions between the company and a controlled portfolio affiliate. As the House Committee Report on the bill which became the 1980 Amendments states:

> Conspicuously absent from the prohibitions in section 57 against transactions with the business development company are *persons which it controls* or of which it holds at least 5 percent of the outstanding securities. Also omitted from the prohibitions are persons affiliated with such so-called "downstream affiliates" of the business development company. In this regard, it should be noted that the Commission has undertaken through rulemaking to exempt all investment companies from prohibitions relating to transactions solely between investment companies and such downstream affiliates. The Committee again wishes to note that if experience demonstrates that under such exclusion from statutory prohibitions investors are not being adequately protected, the Committee would expect to revisit this area.

H.R. Rep. No. 1341, 96th Cong., 2d Sess. 48 (1980) ["Committee Report"] (emphasis added).[14] However, due to an apparently inadvertent drafting error, business development company transactions involving controlled portfolio affiliates and certain affiliated persons of such affiliates must be approved by the Commission.[15] The Commission

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Footnote 9 continued

company's board. Of course, as part of its fiduciary responsibility, the board of directors of a business development company has a duty to consider the appropriateness of a business development company's participation in all transactions.

[10]*See, e.g.*, rules 17a-6 and 17d-1(d)(5) [17 CFR 270.17a-6 and 17 CFR 270.17d-1(d)(5), respectively].

[11]Section 2(a)(3)(B) [15 U.S.C. 80a-2(a)(3)(B)] includes within the definition of "affiliated person" "any person 5 per centum or more of whose outstanding voting securities are directlyor indirectly owned, controlled, or held with power to vote" by another person. Because such a 5 percent interest does not constitute control under section 2(a)(9) [15 U.S.C. 80a-2(a)(9)], this type of downstream affiliate is often described as a "non-controlled portfolio affiliate."

[12]Section 2(a)(3)(C) [15 U.S.C. 80a-2(a)(3)(C)] defines an affiliated person to include "any person directly or indirectly. . .controlled by" another person. This type of downstream affiliate is often described as a "controlled portfolio affiliate."

[13]*See* sections 57(b) and 57(e).

[14]*See also* S. Rep. No. 958, 96th Cong., 2d Sess. 31 (1980).

[15]Section 57(b)(2) [15 U.S.C. 80a-56(b)(2)] applies the prohibitions of section 57(a) to, among others, "any. . .person directly or indirectly. . .controlled by . . .a business development company. . .or any person who is, within the meaning of section 2(a)(3)(C) or (D), an affiliated person of any such person. . . ."

proposes to correct this error by the instant rulemaking.

As noted above, this corrective result is comparable to rules 17a-6 and 17d-1(d)(5) which the Commission has adopted under section 17 with respect to investment companies.[16] Rules 17a-6 and 17d-1(d)(5) are also relevant to the instant rulemaking because section 57(i) [15 U.S.C. 80a-56(i)] makes the Commission's rules under section 17 available to business development companies until rules are adopted under sections 57(a) and 57(d). Thus, business development companies relying on section 57(i) could take advantage of the exemptive rules under section 17, including those provisions which would permit transactions involving controlled and non-controlled portfolio affiliates. Because of the clear Congressional intent that a statutory exemption be provided for a business development company's transactions with non-controlled and controlled downstream affiliates, and that business development companies not be required in this respect to rely on rules under section 17, the Commission believes it is more appropriate in this instance to adopt this rule under section 57(b). Of course, to the extent they contain exemptive relief not already granted directly by the 1980 Amendments, the rules under section 17, especially rule 17d-1, will continue to apply to business development companies as provided in section 57(i)

Based upon the legislative history of the 1980 Amendments and the Commission's understanding of the negotiations, in which its representatives participated, preceding the drafting of the legislation, it is clear that the legislation's prohibitions of business development company transactions with controlled portfolio affiliates was a drafting error. Pursuant to the authority of the Commission under section 6(c) [15 U.S.C. 80a-6(c)], section 38(a) [15 U.S.C. 80a-37(a)] and section 59 [15 U.S.C. 80a-58], the Commission, therefore, is adopting interim rule 57b-1 to permit without prior Commission approval transactions between a business development company and a person directly or indirectly controlled by it or certain affiliated persons of such a person.

Functions and Activities of Business Development Companies: Rule 60a-1

Section 12(d)(1) of the 1940 Act [15 U.S.C. 80a-12(d)(1)] limits the acquisition by an investment company of securities issued by other investment companies. Generally, an investment company may not invest more than five percent of its assets in another investment company, nor own more than three percent of another investment company's voting stock.[17] Section 12(d)(1) was intended to prohibit pyramiding of investment companies, *i.e.*,

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[16]In this regard, it should be noted that like the result with respect to investment companies under the section 17 rules, a transaction involving a business development company where a person controlled by a person identified in section 57(b) is also a participant would require prior approval by the Commission pursuant to section 57(c). Thus, for example, if a business development company held a controlling interest in one of its portfolio affiliates and an officer of the business development company also held a controlling interest in that portfolio affiliate, Commission approval under section 57(c) would be required for any transaction involving the business development company and such controlled portfolio affiliate not because the portfolio affiliate is controlled by the business development company but because it is controlled by an officer of the business development company. In this case, rule 57b-1 would not exempt any such transaction because the controlled portfolio affiliate is not affiliated with the business development company "solely because" it is controlled by the business development company; rather, it would be affiliated with the business development company also because of the affiliation through the controlling interest held by one of its officers. Of course, the business development company, its controlled portfolio affiliate or its officer may submit an application pursuant to section 57(c) which provides that the Commission may exempt any transaction involving both the business development company and its officer and the controlled portfolio affiliate if its terms meet the relevant standards.

[17]Section 12(d)(1) states, in part:

(A) It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring

the ownership and control of one investment company by another. Pyramiding may present an opportunity for an individual or group to exercise control over the activities of an investment company while having only a comparatively nominal financial stake in the company. Pyramiding was a concern of the Commission and of Congress when it enacted the 1940 Act, and when it enacted amendments to the 1940 Act in 1970.[18] Indeed, Congress specifically stated in the 1940 Act that the national public interest and the interest of investors are adversely affected "when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control."[19] New section 60 of the 1940 Act [15 U.S.C. 80a-59] makes section 12(d)(1) applicable to business development companies to the same extent as if they were registered closed-end investment companies.[20] Therefore, a business development company could not acquire more than limited amounts of securities issued by an investment company.

Small business investment companies ("SBICs") are licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 [15 U.S.C. 631 *et seq.*] to provide capital to small businesses. Because of their investments, SBICs may fall within the 1940 Act's definition of "investment company."[21] Even if an SBIC were excluded from the definition of investment company by section 3(c)(1) of the 1940 Act [15 U.S.C. 80a-

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Footnote 17 continued

company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) more than 3 percent centum of the total outstanding voting stock of the acquired company;

(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

[18]See Report of the Securities and Exchange Commission on Investment Trusts and Investment Companies, pt. III, H.R. Doc. No. 136, 77th Cong. 2739 (1941); Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. 180 (1940); Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 307-324 (1966); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 10-11, 23 (1970).

[19]Section 1(b)(4) of the 1940 Act [15 U.S.C. 80a-1(b)(4)].

[20]Section 60 states, in relevant part: "Notwithstanding the exemption set forth in section 6(f), sectin 12 shall apply to a business development company to the same extent as if it were a registered closed-end investment company. . . ." Section 6(f) [15 U.S.C. 80a-6(f)] generally exempts business development companies from the provisions of sections 1 through 53 of the 1940 Act.

[21]An SBIC could be an investment company within the 1940 Act's definitions in either section 3(a)(1) [15 U.S.C. 80a-3(a)(1)] or section 3(a)(3) [15 U.S.C. 80a-3(a)(3)]. Section 3(a)(1) defines investment company to mean "any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." Section 3(a)(3) defines as an investment company "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

3(c)(1)],[22] it would nevertheless be deemed to be an investment company for purposes of section 12(d)(1).[23] Thus, neither business development companies nor investment companies may invest in the securities of an SBIC in an amount which exceeds the stringent limitations in section 12(d)(1).

The Commission has, on occasion, granted exemptive relief from certain provisions of the 1940 Act to permit investment companies to conduct venture capital-like activities through wholly-owned SBICs.[24] In doing so, however, the Commission has required certain conditions to be met, and thereby preserved important investor protections.[25]

It is clear that Congress did not intend to prohibit business development companies from acquiring the securities of and operating wholly-owned SBICs. Indeed, the 1980 Amendments specifically recognize the possibility of such ownership. Under the 1980 Amendments, a significant portion of the assets of a business development company must be

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[22]Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities is excluded from the definition of investment company, pursuant to section 3(c)(1). An SBIC most likely would not be able to rely upon any other exclusion from the definition of investment company.

[23]While an issuer relying on the exclusion provided by section 3(c)(1) would not have to register or be regulated as an investment company, under section 3(c)(1)(A) any such issuer, including any SBIC, "nonetheless is deemed to be an investment company for purposes of section 12(d)(1)." Thus, an SBIC which is wholly-owned by a business development company would be deemed to be an investment company for the purposes of section 12(d)(1) if that SBIC were relying upon section 3(c)(1).

[24]*See, e.g.*, Boston Capital Corp., Investment Company Act Release No. 5353 (Apr. 22, 1968); Southeastern Capital Corp., Investment Company Act Release No. 6181 (Sept. 9, 1970); First Midwest Capital Corp., Investment Company Act Release No. 6213 (Oct. 15, 1970).

[25]Among the conditions in the orders cited in note 24 *supra* were the following: that the parent's investment in the SBIC subsidiary not exceed 25% of the parent's assets; that the subsidiary be wholly-owned; that the subsidiary comply with section 15 of the 1940 Act [15 U.S.C. 80a-15] with respect to any advisory or underwriting contracts and that the shareholders or directors of both the parent and the subsidiary approve any such contracts; that the shareholders of both the parent and subsidiary approve changes in the subsidiary's fundamental investment policies; that the parent individually and on a consolidated basis with the subsidiary meet the asset coverage requirements of section 18(a) of the 1940 Act [15 U.S.C. 80a-18(a)]; and that reports to stockholders by the parent include separate financials for the subsidiary.

These conditions were imposed because, even if the SBIC subsidiary could rely on then section 3(c)(1), section 48(a) of the 1940 Act [15 U.S.C. 80a-47(a)] prohibits a registered investment company from doing indirectly what it cannot do directly. If a registered investment company were permitted to form a subsidiary which would engage in investment company activities outside the substantive regulatory scheme created by the 1940 Act, the investment company and its investment company subsidiary both could violate certain substantive prohibitions of the 1940 Act, as well as section 48(a), to the detriment of the registered investment company's shareholders. Thus, any company which is primarily engaged in investment company activities and which is controlled by a registered investment company is also subject through the operation of section 48(a) to the regulatory requirements of the 1940 Act. This conclusion of law is reflected in the orders discussed in note 24 *supra*.

Congress obviously understood this problem, for as part of the 1980 Amendments it modified section 48 of the 1940 Act as it applies to business development companies. New section 65 of the 1940 Act [15 U.S.C. 80a-64] provides that section 48 not be construed to require any company which, although it is wholly-owned or controlled by a business development company, is not itself an investment company within the meaning of section 3(a) of the 1940 Act, to comply with the provisions of the 1940 Act solely because it is wholly-owned or controlled by a business development company. The legislative history makes clear that, unlike registered investment companies with SBIC subsidiaries, business development companies frequently own controlling interests in downstream

invested in securities of eligible portfolio companies.[26] A wholly-owned SBIC is expressly identified as an eligible portfolio company.[27] The Commission therefore believes that, solely by reason of a drafting error, SBICs which are wholly-owned by business development companies are brought within the anti-pyramiding limitations of section 12(d)(1). Because of this drafting error, and pursuant to the authority under sections 6(c), 38(a) and 59, the Commission is adopting interim rule 60a-1 to permit an SBIC to be a wholly-owned subsidiary of a business development company notwithstanding the restrictions of section 12(d)(1). However, notwithstanding the status of the subsidiary as a business development company itself and whether or not it was excluded from registration as an investment company by section 3(c)(1), such a subsidiary still would be subject to the regulatory provisions of the 1940 Act because its parent is a business development company whose investment company subsidiaries would also be subject to the 1940 Act's regulatory provisions through the application of section 65.[28] If a business development company which has such a wholly-owned subsidiary did not wish its subsidiary to be subject to certain of the regulatory requirements of the 1940 Act, it could file an application for exemptive relief.[29]

PROCEDURAL MATTERS

The Commission believes that the interim rules adopted today will correct inadvertent results of the 1980 Amendments and that their prompt adoption is required in order that business development companies might effectively provide capital to small, developing businesses and financially troubled businesses. In accordance with section 553(d)(1) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(d)(1)], because each of these rules is exemptive in nature, publication thirty days before their effective dates is unnecessary. In accordance with section 553(b)(B) of the APA [5 U.S.C. 553(b)(B)], the Commission, for good cause, finds that notice and opportunity for public comment on the adoption of the interim rules are similarly not required because such notice and opportunity would be unnecessary and contrary to the public interest. However, the Commission is simultaneously soliciting public comment on whether these interim rules should be adopted as final rules.

TEXT OF RULES

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

Part 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. By adding §270.57b-1 to read as follows:

§270.57b-1 Exemption for downstream affiliates of business development companies.

Notwithstanding subsection (b)(2) of section 57 of the Act, the provisions of subsection (a) of that section shall not apply to any person (a) solely because that person is directly or indirectly controlled by a business development company or

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Footnote 25 continued

affiliates which may be operating companies not within the ambit of section 3(a) of the 1940 Act. Accordingly, because Congress intended to encourage the operation of small, developing businesses and financially troubled businesses which were not engaged in investment company activities, it excluded such operating subsidiaries from the regulation imposed by the usual construction of section 48(a), discussed above. *See* Committee Report at 61 and S. Rep. No. 958, 96th Cong., 2d Sess. 37 (1980).

[26]The term "eligible portfolio company" is defined in section 2(a)(46) of the 1940 Act.

[27]*See also* Committee Report at 29 and S. Rep. No. 958, 96th Cong., 2d Sess. 15 (1980).

[28]Section 65 states that section 48 of the 1940 Act shall apply to business development companies as if they were closed-end investment companies. *See* note 25 *supra*. Thus, a business development company cannot do indirectly through a subsidiary what it is prohibited from doing directly. This provision effectively regulates the actions of the subsidiary in much the same manner as its parent business development company.

[29]In this regard, the business development company might consider the conditions under which the exemptive orders mentioned in note 24 *supra* were issued.

(b) solely because that person is, within the meaning of section 2(a)(3)(C) or (D) of the Act, an affiliated person of a person described in (a) of this section.

2. By adding §270.60a-1 to read as follows:

§270.60a-1 Exemption for certain business development companies.

Section 12(d)(1)(A) and (C) of the Act shall not apply to the acquisition by a business development company of the outstanding voting securities of a small business investment company licensed to do business under the Small Business Investment Act of 1958 which is operated as a wholly-owned subsidiary of the business development company.

STATUTORY BASIS: Rules 57b-1 and 60a-1 are adopted pursuant to section 6(c) [15 U.S.C. 80a-6(c)], section 38(a) [15 U.S.C. 80a-37(a)] and section 59 [15 U.S.C. 80a-58] of the Act.

By the Commission.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11494/December 16, 1980

In the Matter of

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
BACHE HALSEY STUART SHIELDS INCORPORATED
DEAN WITTER REYNOLDS INC.
SHEARSON LOEB RHOADES, INC., AND
THE EQUITY INCOME FUND,
FIRST UTILITY COMMON STOCK SERIES
(A UNIT INVESTMENT TRUST) AND
SUBSEQUENT SERIES

C/O MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
One Liberty Plaza
165 Broadway
New York, New York 10080

(812-4661)

ORDER PURSUANT TO SECTION 6(c) AND 11 OF THE ACT EXEMPTING APPLICANTS FROM THE PROVISIONS OF SECTIONS 11(c), 14(a) AND 22(d) OF THE ACT AND RULE 19b-1 THEREUNDER

Perrill Lynch, Pierce, Fenner & Smith Incorporated, Bache Halsey Stuart Shields Incorporated, Dean Witter Reynolds, Inc., Shearson Loeb Rhoades, Inc. and The Equity Income Fund, First Utility Common Stock Series and subsequent Series ("Fund") (collectively the "Applicants"), filed an application, on April 8, 1980, and amendments thereto on July 24, October 6, and November 17, 1980, pursuant to Sections 6(c) and 11 of the Act for an order of the Commission (1) exempting the Fund from compliance with the net worth requirements of Section 14(a) of the Act, (2) exempting the Applicants from the provisions of Rule 19b-1 under the Act to permit the Fund to make more than one distribution of capital gains in any one taxable year and (3) exempting the Applicants from the provisions of Sections 11(c) and 22(d) of the Act to permit unitholders to exchange their units for units of any other Series of the Fund or of certain other unit investment trusts.

On November 21, 1980, a notice was issued (Investment Company Act Release No. 11454) of the filing of the application. The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 11 of the Act, that the terms of the proposed exchange offer be and hereby are, approved, effective forthwith; and

IT IS FURTHER ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from Sections 14(a) and 22(d) of the Act and Rule 19b-1 under the Act, to the extent requested, be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11495/December 16, 1980

In the Matter of

PACIFIC AMERICAN LIQUID ASSETS, INC.
707 Wilshire Boulevard
Los Angeles, California 90017

(812-4755)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

Pacific American Liquid Assets, Inc., ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 27, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation.

On November 19, 1980, a notice was issued of the filing of the application (Investment Company Act Release No. 11450). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the exemption requested pursuant to Section 6(c) of the Act is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation, be, and hereby is, granted, effective forthwith, subject to the following conditions:

(1) In supervising the Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser, the Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the Applicant's investment objectives, to stablize the Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the Applicant's $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviatioin from the $1.00 amortized cost price per share exceeds 1/2 of 1%, Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's board of directors believes the extent of any deviation from the Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

[1]To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions selected by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments furnished by reputable sources.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Applicant's board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, if any, to those United States dollar-denominated instruments which Applicant's board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by Applicant's board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11496/December 16, 1980

In the Matter of

MUNICIPAL CASH RESERVE MANAGEMENT, INC.
One Battery Park Plaza
New York, New York 10004

(812-4756)

NOTICE OF FILING OF APPLICATION FOR AN ORDER PURSUANT TO SECTION 6(c) OF THE ACT EXEMPTING APPLICANT FROM THE PROVISIONS OF SECTION 2(a)(41) OF THE ACT AND RULES 2a-4 AND 22c-1 THEREUNDER

NOTICE IS HEREBY GIVEN that Municipal Cash Reserve Management Inc. ("Applicant"), an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 28, 1980, and amendments thereto on December 5, 1980, and December 9, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to compute its net asset value per share using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the application, Applicant is designed for individuals, corporations, partnerships, institutions and institutional investors maintaining accounts with E. F. Hutton and Company, Inc., who wish to receive income substantially exempt from federal income taxes. Applicant states that its investment objective is the maximization of current income exempt from federal income taxes consistent with the maintenance of liquidity in a portfolio consisting of investment grade, short-term municipal securities. Applicant indicates that it will

seek to achieve this objective by investing in a diversified portfolio of debt obligations issued by states, territories or possessions of the United States and the District of Columbia or their political subdivisions, agencies, instrumentalities or authorities, which are exempt from federal income tax in the opinion of each issuer's bond counsel. According to the application, all of the securities in Applicant's portfolio will mature, or have been called for redemption, within one year or less, and the dollar-weighted average life of such securities shall be 120 days or less.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that it believes that potential investors in shares of the Applicant are concerned that (1) the net asset value of their shares remain stable and (2) investment income be steady. Applicant asserts that by maintaining a portfolio of high quality money market instruments of short maturities, it can provide these features to investors. The Applicant's board of directors has determined that the fair market value of securities with a maturity of 60 days or less should be determined by using the amortized cost method of valuation. Accordingly, Applicant requests exemptions from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant expressly consents to the imposition of the following conditions in any order granting the relief it requests:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's board of directors undertakes—as a particular responsibility within the overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objective, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

(2) Included within the procedures to be adopted by Applicant's board of directors shall be the following:

(a) Review by Applicant's board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the

maintenance of records of such review.[1]

(b) In the event that such deviation from Applicant's $1.00 amortized cost price per share exceeds 1/2 of 1%, a requirement that the Applicant's board of directors will promptly consider what action, if any, should be initiated.

(c) Where Applicant's board of directors believes that the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent rerasonably practicable such dilution or unfair results, which action may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of the Fund; reducing or withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of Applicant's board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of Applicant's board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to the rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which Applicant's board of directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, are of comparable quality as determined by the board of directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

NOTICE IS FURTHER GIVEN that any interested person may, not later than January 9, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion.

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[1]To fulfill this obligation, the Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2]In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

INVESTMENT COMPANY ACT OF 1940
Release No. 11497/December 17, 1980

In the Matter of

ROWE PRICE PRIME RESERVE FUND, INC.
100 East Pratt Street
Baltimore, Maryland 21202

(812-4715)

ORDER PURSUANT TO SECTION 6(c) OF THE ACT GRANTING EXEMPTION FROM THE PROVISIONS OF RULES 2a-4 AND 22c-1 UNDER THE ACT

Rowe Price Prime Reserve Fund, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on August 22, 1980, and an amendment thereto on November 6, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for purposes of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar.

On November 17, 1980, a notice (Investment Company Act Release No. 11447) was issued of the filing of said appication. The notice gave interested persons an opportunity to request a hearing, and stated that an order disposing of the application would be issued as of course unless a hearing should be ordered. Nor equest for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered, and it is found that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly,

IT IS ORDERED, pursuant to Section 6(c) of the Act, that the application for exemption from the provisions of Rules 2a-4 and 22c-1 under the Act, to the extent requested, be, and hereby is, granted, effective forthwith, subject to the following conditions to which Applicant has consented:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to the Applicant's investment adviser, undertakes (as a particular responsibility within the board's overall duty of care owed to Applicant's shareholders) to assure, to the extent reasonably practical, taking into account current market conditions affecting the Applicant's investment objective, that Applicant's net asset value per share as computed for purposes of effecting sales, redemptions and repurchases of its shares, rounded to the nearest one cent, will not deviate from $1.00.

2. Applicant will seek to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant's purchases of portfolio instruments, including repurchase agreements, will be limited to those U.S. dollar denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons
Secretary

LITIGATION

Litigation Release No. 9256/December 12, 1980

SEC v. STANWOOD OIL CORPORATION, ET AL., (W.D. Pa., Erie Div., Civil Action No. 80-206 Erie)

Paul F. Leonard, Administrator of the Washington Regional Office, and Ralph M. Fratkin, Chairman of the Pennsylvania Securities Commission, announced that on December 8, 1980, a complaint seeking permanent injunctive relief was filed in the United States District Court for the Western District of Pennsylvania, Erie Division, against Stanwood Oil Corporation (Stanwood), a Pennsylvania corporation, and John G. Starr, its president.

The complaint alleges that Defendants violated the securities registration and antifraud provisions of the federal securities laws in connection with the offer and sale of unregistered Stanwood Securities in the form of common stock and notes, by means of untrue statements of material fact and failure to state material facts related to, among other things, Stanwood's oil and gas reserves, and prospects for the company's diversification into business ventures, including a purported agreement to purchase a casino hotel to be built in Atlantic City, New Jersey. The complaint further alleges that such misstatements and omissions, among others, were made to investors and prospective investors and were contained in press releases issued by Stanwood over the financial newswires and carried as paid advertisements in securities trade publications.

Stanwood stock is owned by approximately 4000 public shareholders and is traded over-the-counter.

A motion for a preliminary injunction was filed by the Commission simultaneously with the filing of its complaint. Chief Judge Gerald Weber has set the motion for hearing on December 22, 1980.

Litigation Release No. 9257/December 12, 1980

SEC v. WACO FINANCIAL, INC. AND J. JEROME PREVATTE (W.D. Mich. Civil No. K80-670CA4)

William D. Goldsberry, Administrator of the Chicago Regional Office, announced that on December 2, 1980, the Honorable Benjamin F. Gibson, United States District Judge for the Western District of Michigan, signed an Order of Permanent Injunction by Consent against WACO Financial, Inc. (WACO), a registered broker-dealer located in Kalamazoo, Michigan, and J. Jerome Prevatte (Prevatte), WACO's President, Treasurer and majority shareholder. The Defendants were permanently enjoined from violating Sections 15(c) and 17(a) of the Securities Exchange Act of 1934 and Rules 15c3-1, 15c3-3, 17a-3, 17a-4 and 17a-5 promulgated thereunder.

The Complaint, filed on September 26, 1980, alleged that WACO, aided and abetted by Prevatte, from in or about August 31, 1980 to the date of the Complaint, had not maintained the required minimum net capital as computed in accordance with Rule 15c3-1; and while carrying customers' free credit balances, failed or neglected to maintain in a Reserve Bank Account or Accounts, cash or qualified securities in the amount computed pursuant to the formula prescribed by Rule 15c3-3(e). The Complaint further alleged that WACO, aided and abetted by Prevatte, from July 15, 1980 to the date of the Complaint had not made, kept current or preserved those books and records relating to WACO's business required by Rules 17a-3 and 17a-4. In addition, the Complaint alleged that WACO, aided and abetted by Prevatte, did not file with the Commission a report of its financial condition for the year ending June 30, 1980, as required by Rule 17a-5.

For further information, see Litigation Release No. 9208.

Litigation Release No. 9258/December 17, 1980

SECURITIES AND EXCHANGE COMMISSION v. CABLE/TEL CORP. ET AL., 80 Civil 7170 (S.D.N.Y.)

Stephen L. Hammerman, Administrator of the Commission's New York Regional Office, announced that on December 17, 1980 the Commission filed a complaint in the U.S. District Court for the Southern District of New York seeking injunctive and other equitable relief against the following defendants:

Cable/Tel Corp. of Englewood Cliffs, New Jersey;
Cable/Tel Systems Corp. of Englewood Cliffs, New Jersey;
Six Star Cablevision Holding Co., Inc. of Englewood Cliffs, New Jersey;
Cable Promotions, Inc. of Englewood Cliffs, New Jersey;
Six Star Cablevision Construction Co., Inc. (as successor to Micro Constructors, Inc.) of Englewood Cliffs, New Jersey;
Six Star Cablevision Management Corp. of Englewood Cliffs, New Jersey;
Communications Finance Systems, Inc. of Englewood Cliffs, New Jersey;
Six Star Cablevision of Gardner, Kansas, Inc. of Kansas City, Kansas;
Six Star Cablevision of De Soto, Kansas, Inc. of Kansas City, Kansas;
Six Star Cablevision of Bonner Springs, Kansas, Inc. of Kansas City, Kansas;
Six Star Cablevision of Kansas City, Kansas, Inc. of Kansas City, Kansas;
Six Star Cablevision of Lee's Summit, Missouri, Inc. of Grandview, Missouri;
Six Star Cablevision of Belton, Missouri, Inc. of Grandview, Missouri;
Six Star Cablevision of Ypsilanti Township, Inc. of Ypsilanti, Michigan;
Six Star Cablevision of Howell, Inc. of Brighton, Michigan;
Six Star Cablevision of Green Oak Township, Inc. of Brighton, Michigan;
Six Star Cablevision of Inglewood, Inc. of Inglewood, California;
Six Star Cablevision of Pomona, California, Inc. of Santa Ana, California;
Washtenaw Cablevision of Ypsilanti, Inc. of Ypsilanti, Michigan;
Washtenaw Cablevision of Superior, Inc. of Ypsilanti, Michigan;
Six Star Cablevision, Inc. of Brighton, Michigan;
Stuart C. Harris ("Harris") of Fairlawn, New Jersey;
Roger H. Maggio ("Maggio") of Tenafly, New Jersey;
Paul L. Skulsky ("Skulsky") of Spring Valley, New York;
Martin E. Hecht ("Hecht") of New York, New York;
Investors Planning Group, Inc. ("IPG") of New York, New York;
Tom Kaye ("Kaye"), believed to be a resident of New York;
Arnold H. Bruck ("Bruck") of Riverdale, New York;
Continental Consultants Corp. ("CCC") of Fairlawn, New Jersey;
Benjamin Rabin ("Rabin") of Fairlawn, New Jersey;
Irving Bersak ("Bersak") of West Orange, New Jersey;
Haims & Co. and Haims & Co., P.C. of Stamford, Connecticut;
Michael Buzzeo ("Buzzeo") of Norwalk, Connecticut;
Van Ron Inc. ("Van Ron") of Columbus, Ohio; and
Frank Van Arsdale ("Van Arsdale") of Columbus, Ohio.

The complaint alleges that, during 1977 and/or 1978, the defendants offered and sold to over 700 investors approximatley $88,100,000 worth ($22.1 million in cash and recourse promissory notes and $66 million in nonrecourse notes) of unregistered securities in the form of tax sheltered investment interests in cable television ("CATV") systems in violation of the registration and anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. The various CATV systems in question are located in 17 communities situated in four states.

According to the complaint, the investments consist of a package of contracts providing each investor with: (a) a fractionalized ownership interest in one of the 17 CATV systems; (b) municipal franchise rights to the investor's portion of the aforementioned CATV system; and (c) all services necessary for the operation, management, promotion and maintenance of the investor's portion of the CATV system.

The complaint further alleges that the defendants made misrepresentations and omitted to state material facts in connection with the offer and sale of the above described cable television investment interests concerning, among other things: (a) the use of investor monies; (b) the cost of constructing the investors' CATV systems; (c) the payment of commissions; (d) the timing of the completion of construction of the CATV systems; (e) the availability of promised tax benefits; (f) projections of subscriber saturation and potential profits; (g) the ownership by the Cable/Tel companies of CATV franchises; (h) restrictions against investor ownership of their CATV systems; (i) the ability of the investors to independently operate the CATV systems; and (j) the financial condition of the Cable/Tel companies.

All of the defendants are charged with violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of Securities Exchange Act

of 1934 and Rule 10b-5 thereunder. According to the complaint, the defendants are described as follows:

(a) The first 22 of the above listed defendants (hereinafter collectively referred to as the "Cable/Tel companies") are a group of affiliated companies that were and/or are engaged in the business of acquiring, constructing, operating and financing cable television systems and they provided various services contracted for by investors;

(b) Defendants Harris, Maggio and Skulsky formed or acquired the Cable/Tel companies and controlled them during all relevant times. Additionally, these three defendants organized a multi-layered sales network consisting of over 100 selling agents who were experienced in marketing tax sheltered investments and who were primarily accountants, attorneys, registered representatives associated with broker-dealers and financial advisors.

(c) Defendant Hecht is a New York attorney who served as general counsel to the Cable/Tel companies and assisted in the preparation of various promotional literature and contracts. Hecht also prepared a securities opinion enabling the investment interests to be offered and sold without registration with the Commission; and

(d) The remaining defendants marketed the cable television investments and, according to the complaint, are further described as follows:

(1) Defendant IPG is a corporation involved in marketing tax sheltered investment. Defendant Kaye is IPG's president and defendant Bruck is an employee of IPG;

(2) Defendant CCC is also a corporation involved in marketing tax sheltered investments and defendant Rabin is its president;

(3) Defendant Bersak is a registered representative of a broker-dealer registered with the Commission;

(4) Defendants Haims & Co. and Haims & Co., P.C. are accounting firms and defendant Buzzeo, a certified public accountant, is a principal of each; and

(5) Defendant Van Ron is a corporation involved in marketing tax sheltered investments and defendant Van Arsdale is its president.

In addition to preliminary and permanent injunctive relief sought against all of the defendants, the complaint seeks an accounting of all proceeds obtained from investors and disgorgement of illicit profits and/or commissions.

Simultaneously with the filing of the complaint, all the defendant Cable/Tel companies and defendants Harris and Skulsky consented, without admitting or denying the allegations contained in the Commission's complaint, to the entry of Final Judgments of Permanent Injunction and Orders for Other Equitable Relief ("Final Judgments"). The Final Judgments order the Cable/Tel companies to, among other things: (a) retain an independent accountant to determine and report on the use of proceeds obtained from investors; (b) pay to investors an "adjustment" of monies, if any, determined by the accountant to have been used for purposes unrelated to the investment interests in CATV systems; and (c) appoint an "Advisory Committee" composed of five investors to, among other things, examine and review the accounting, financial and operating controls with respect to the operation of their CATV systems.

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